CURRENT PERIODICAL SERIES

PUBLICATION NO: 2575

TITLE: FEDERAL REGISTER

VOLUME: 44 ISSUES: 111-119

DATE: June 7 - 19 1979 Pages: 32635-36000
Reel 12 of 13

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6-7-79
Vol. 44 No. 111
Pages 32635-33040

Federal Register

Thursday
June 7, 1979

Highlights

32635 **Independent Water Project Review** Executive order

32646 **Interest on Deposits** FRS eliminates minimum denomination requirements imposed on certain time deposits, modifies interest forfeiture penalty imposed for early withdrawal and increases the ceiling rate of interest on savings deposits to 5¼ per cent; effective 7-1-79

33028 **Safe Schools Program** HEW/OE issues proposals governing the awards of discretionary grants for developing projects designed to prevent, reduce, and encourage the reporting of serious crime to local law enforcement agencies; comments by 8-6-79

33036 **Preschool Partnership Program** HEW/OE proposes regulations governing the awarding of direct discretionary grants to establish programs of educational service; comments by 8-6-79

33022 **Correction Education Demonstration Program** HEW/OE proposes financial assistance for the purpose of developing projects relating to the academic and vocational education of juvenile delinquents, youth offenders, and adult criminal offenders; comments by 8-6-79

32657 **Arbitrage Bonds** Treasury/IRS issues income tax regulations; effective 5-31-79

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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Area Code 202-523-5240

Highlights

32711 **Mobile Home Construction and Safety Standards** HUD request comments on fire safety, egress safety, transportability, energy conservation, structural system performance, wind safety, freezing, and glazing requirements; comments by 8-6-79

32699 **Antarctica Conservation Act of 1978** NSF acts to conserve and protect native animals and plants and to protect the Antarctic ecological systems, effective 7-1-79

32854 **National Pollutant Discharge Elimination System** EPA revises program to clarify, improve, fill in significant gaps in coverage and make regulatory changes necessary under the 1977 amendments to the Clean Water Act; effective 6-14 and 8-13, and 10-12-79; comments by 8-6-79 (Part II of this issue)

32643 **Mandatory Petroleum Allocation** DOE/ERA establishes allocation levels for crude oil and petroleum products supplied to the Department of Defense; effective 6-7-79

32645 **Mandatory Petroleum Price Regulations** DOE/ERA removes DOE octane posting requirements to avoid conflicting with more comprehensive FTC requirements; effective 6-1-79

32715 **National Forest System** USDA/FS announces Committee of Scientists meeting on proposed rules to guide land and resource management planning; meeting 6-20 and 6-21-79

32651 **Freedom of Information** Metric Board adopts procedures to afford maximum access to the public to information; effective 6-7-79

32972 **Hazardous Materials** DOT/MTB proposes numerical identification system and improved emergency response capability; comments by 8-7-79

32758 **Generalized System of Preferences** Special Representative for Trade Negotiations publishes results of 1978 annual review of petitions and notice of 7-17-79 deadline for next full review; public hearings during the week of 9-24-79

32637 **Wrapping of Cotton** USDA/CCC issues specifications governing cotton bale packaging materials used for 1979 and subsequent crops cotton pledged for price support loans; effective 6-7-79

32834 **Sunshine Act Meetings**

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32958 **Part III, Commerce**
32972 **Part IV, DOT/MTB**
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Title 3—

The President

Executive Order 12141 of June 5, 1979

Independent Water Project Review

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to provide for an orderly implementation of the independent review of Federal water resource programs and projects, subsections (b) and (c) of Section 1–105 of Executive Order No. 12113 of January 4, 1979, are hereby amended to read as follows:

"(b) After October 1, 1979, an agency shall not submit to the Council, during any calendar quarter, more than one-third of the total reports, proposals, and plans scheduled for review during any one fiscal year.

"(c) The Chairman of the Council, or his designee, shall transmit the results of the impartial technical review to the appropriate agency head. The transmittal shall include identification of any specific variations from Council approved procedures and manuals and the steps necessary to bring the plan into conformance. The results of the review shall be transmitted to the agency head within 60 days of the agency's submission of the report, proposal, or plan provided that funds and other resources have been made available for the review.".

Jimmy Carter

THE WHITE HOUSE,
June 5, 1979.

[FR Doc. 79-17843
Filed 6-5-79; 2:58 pm]
Billing code 3195-01-M

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Order 908, Amdt. 1]

Valencia Orange Grown in Arizona and Designated Part of California; Limitation of Handling

Agricultural Marketing Service, USDA.

Action: Final rule.

Summary: This amendment increases the quantity of Valencia oranges that may be handled to 1,500,000 cartons for the 1978-79 season. It is issued for orderly marketing of the crop and is designed to provide producers with the benefits of the Agricultural Marketing Agreement Act of 1937, as amended.

Effective date: November 13, 1978.

For further information contact: Malvina Shanklin, 202-447-5975.

Supplementary information: This amendment is issued under Marketing Agreement and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California, hereinafter referred to as the "order". The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act".

The Valencia Orange Administrative Committee, established under the order, recommended that the quantity of Valencia oranges which may be handled during the 1978-79 season be increased from 1,200,000 cartons to 1,500,000 cartons. The Administrative Committee found that the increase is necessary because of other factors which have developed since the order was made effective. This amendment is issued to increase the quantity of Valencia oranges which may be handled during the 1978-79 season to effectuate the declared policy of the Act.

The Administrative Committee considered the current and prospective supply of

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Regulation 615]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period June 8–14, 1979. Such action is needed to provide for orderly marketing of fresh Valencia oranges for this period due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: June 8, 1979.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Valencia Orange Administrative Committee and upon other available information. It is hereby found that the action will tend to effectuate the declared policy of the act. This regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

The committee met on June 5, 1979 to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of Valencia oranges deemed advisable to be handled during the specified week. The committee reports the demand for Valencia oranges has turned dull.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulations at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 908.915 Valencia Orange Regulation 615.

Order. (a) The quantities of Valencia oranges grown in Arizona and California which may be handled during the period June 8, 1979, through June 14, 1979, are established as follows:

(1) District 1: 336,000 cartons;
(2) District 2: 284,000 cartons;
(3) District 3: Unlimited.

(b) As used in this section, "handled", "District 1", "District 2", "District 3", and "carton" mean the same as defined in the marketing order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: June 6, 1979.

D. S. Kuryloski,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-17617 Filed 6-6-79; 11:22 am]
BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1427

Wrapping of Cotton; Specifications for Bale Packaging Materials

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule provides the specifications governing cotton bale packaging materials used for 1979 and subsequent crops cotton pledged for price support loans. This rule is needed in order that producers and others will know what materials are acceptable to CCC. Bales of cotton will be acceptable for price support loans only if they conform to these specifications.

EFFECTIVE DATE: June 7, 1979.

FOR FURTHER INFORMATION CONTACT: Dalton J. Ustynik, ASCS, (202) 447–6811, P.O. Box 2415, Washington, D.C. 20013.

SUPPLEMENTARY INFORMATION: On September 1, 1978, Commodity Credit Corporation (CCC) published in the Federal Register (43 FR 39115) a notice that the Department proposed to make certain determinations concerning the 1979 crops of upland and extra long staple cotton. Such determinations included a determination of the specifications for bale packaging materials applicable to 1979 crop cotton pledged to CCC for price support loans.

Four responses were received concerning the specifications. Three recommended adopting the specifications as recommended by the Cotton Industry Bale Packaging Committee and one recommended that all wrapping material contain at least 85 percent cotton. In addition to changes published on January 23, 1979, (44 FR 5641), the Committee recommended that (1) twelve pound new and salvage jute bagging be dropped from the list of approved packaging material, (2) nine pound salvage jute material be approved, and (3) cotton bagging patterns be approved for use on all bales and cotton bags be approved for use on compressed cotton. After consideration of all responses to the notice and recommendations made by the committee, it has been determined that the specifications will be revised to eliminate twelve pound new and salvage jute bagging as approved packaging material, that nine pound salvage jute material be approved, and that cotton bagging be approved for use on all bales and cotton bags be approved for use on compressed cotton. These revised specifications are designed to lower tare weights, while still adequately protecting the cotton, and to improve the management of tare weights.

Accordingly, the Specifications for Bale Packaging Materials Used in Wrapping Cotton published in 43 FR 19193 on May 4, 1978, as amended, are revised to read as set forth below, effective with the 1979 crop of cotton. The material previously appearing in these regulations remains in full force and effect as to the crop to which it was applicable.

PART 1427—COTTON

* * * * *

Subpart—Specifications for Bale Packaging Materials

Sec.
1427.1901 Purpose.
1427.1902 Specifications for bale ties and buckles.
1427.1903 Specifications for bagging.
1427.1904 Official tare weights.
1427.1905 Test methods.

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 (b) and (c); secs. 101, 103, 401, 63 Stat. 1051, as amended (7 U.S.C. 1441, 1444, 1421).)

Subpart—Specifications for Bale Packaging Materials

§ 1427.1901 Purpose.

This subpart is for the purpose of announcing the specifications applicable to bale packaging materials for packaging the 1979 and subsequent crops of cotton tendered to CCC for loans, unless otherwise approved by the Executive Vice President, CCC, or his designee: *Provided, however,* That all bales of cotton packaged and identified with the testing programs of the Cotton Industry Bale Packaging Committee sponsored by the National Cotton Council of America will be exempt from the provisions of this subpart, and any bale packaging materials carried over from 1978 which were eligible for packaging 1978 crop loan cotton also may be used to package 1979 crop cotton pledged for loans.

§ 1427.1902 Specifications for bale ties and buckles.

Any fixed length bale ties used on flat bales shall not exceed 10 feet, 3 inches in length, excluding overlap. All ties and buckles or fasteners must be coated or finished with a rust inhibitor. All ties which are underneath the wrapping material shall be wire or cold rolled high tensile steel strapping.

(a) *General requirements*—(1) *Number of ties required.* (i) Flat bales (bales having densities of less than 20 pounds per cubic foot) must have not less than 6 ties.

(ii) Standard density bales (bales having densities of at least 20 pounds but less than 28 pounds per cubic foot) must have not less than 8 ties.

(iii) Universal density bales (bales having densities of 28 pounds or more per cubic foot) must have not less than 8 ties.

(2) *Flat bales packaged with nonreuseable ties.* Except for bales stored only in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia, if the ties on a bale are not suitable for reuse when the bale is compressed, the ties will not be deemed to meet these specifications unless the producer has prepaid any warehouse charge for furnishing new bale ties. If the bale is stored at a warehouse not having compress facilities and bales shipped from the warehouse are normally compressed in transit, the warehouse receipt must show that the bale ties are not suitable for reuse when the bale is compressed and the charge assessed by the nearest compress in line of transit for furnishing new bale ties will be deducted from the loan proceeds.

(b) *Conventional hot rolled steel ties and buckles.* The total weight of bale ties and buckles to tie each bale of cotton shall not be less than 8½ pounds. Such ties may be used only on flat, modified flat and bales compressed at a warehouse.

(c) *Cold rolled high tensile steel strapping.* The supplier's name or trademark must be printed or embossed on every 36 inches of strapping.

(1) *For use on flat bales and standard density and universal density and universal density bales compressed at a warehouse.* The strapping shall have a minimum width of three-fourths of an inch and minimum thickness of 0.025 inch with zero tolerance, minimum weight of 1 pound per 15.7 linear feet of strapping or 4 pounds per bale of cotton, minimum breaking strength of 2,400 pounds with a joint strength of not less than 2,040 pounds.

(2) *For use on gin standard density and gin universal density bales.* The strapping shall have a minimum width of three-fourths of an inch and minimum thickness of 0.031 inch with zero tolerance, minimum weight of 1 pound per 12.7 linear feet of strapping or 5 pounds per bale of cotton and minimum breaking strength of 3,200 pounds with a joint strength of not less than 2,720 pounds for gin standard density bales or 4,000 pounds with a joint strength of not less than 3,400 pounds for gin universal density bales.

(3) *Keylock type fixed length tie for use on flat bales and universal density bales compressed at a warehouse.* The bale tie must have a minimum width of 0.74 inches and a minimum thickness of 0.025 inches, minimum weight of 4 pounds per bale of cotton, minimum breaking strength of 3,200 pounds with a joint strength of not less than 2,700 pounds. The tie shall be constructed so as not to disengage at the joint while tucking or while being handled with clamp trucks.

(d) *Wire ties.* Ties must be manufactured from wire which conform to ASTM–A–510 issued by the American Society for Testing Materials (ASTM). Each bundle of wire shall bear a certification that the wire ties have been manufactured according to the specifications for Bale Packaging Materials as published in Part 1427, Chapter XIV, Title 7 of the Code of Federal Regulations. The certification shall also show the name and address of the wire tie manufacturer and contain a quality control code which will permit the ties to be identified to the 2,000 pound lot and/or wire carrier. Wire tie manufacturers shall follow a regular procedure of testing and inspection which involves a minimum of one break test on a sample from each 2,000 pound lot and/or wire carrier. Wire ties shall be fabricated within the United States.

(1) *For use on flat bales and bales compressed to standard density and universal density at a warehouse*—(i) *Square knot type wire.* The ties shall not be smaller than 10-gauge with a minimum joint strength of 1,650 pounds including the connection. Joints may be on side of bales.

(ii) *Crosshead type wire.* The ties shall not be smaller than 10-gauge with a minimum joint strength of 1,650 pounds including the connection. The minimum elongation of the wire shall be one inch per 10 inches. Joints may be on side of bales.

(2) *For use on gin standard density and gin universal density bales.* The ties shall be not smaller than 9-gauge. The breaking strength of the wire must not be less than 3,400 pounds with a joint strength of not less than 2,100 pounds with the joints placed on the tops of the bales. If the joints are placed on the sides of the bales, the breaking strength of the wire must not be less than 3,200 pounds with a joint strength of not less than 3,040 pounds.

§ 1427.1903 Specifications for bagging.

Except in cases where shrink-pack polyethylene bags, cotton bags, polypropylene half-bag panel combinations, or spiral sewn bags of burlap and/or polypropylene are used, each bale must be wrapped with a pattern of bagging consisting of two pieces (panels) of bagging material. All

bagging material must be clean, in sound condition, and of sufficient strength to adequately protect the cotton. The material must not have salt or other corrosive material added and must not contain sisal or other hard fiber or any other material which will contaminate or adversely affect cotton as determined by the President or Executive Vice President, Commodity Credit Corporation.

(a) *New jute bagging used to wrap gin standard density and gin universal density bales.* Each one-half pattern (panel) of new jute bagging used for wrapping must not be less than 96 inches or more than 100 inches in length for gin universal density bales and not less than 100 inches or more than 102 inches in length for gin standard density bales and must not be less than 40 or more than 48 inches in width. The bagging must contain not less than 150 warp yarns per 40 inches of bagging of a size equal to or larger than the weft (filling) yarns, must contain not less than 25 weft (filling) yarns per 12 inches of bagging and must weigh not less than 7⅛ and not more than 8⅛ pounds per pattern (two panels) at 13.75 percent moisture content (not moisture regain). A marker warp yarn of the same size as the remaining warp yarns, made of jute or plied cotton, dyed dark green with a colorfast, nonbleeding dye of a type which will not be subject to permanent staining of cotton fiber under normal weathering conditions must be placed in the center of each panel to designate the 8-pound tare weight of the bagging.

(b) *Compact center type new jute bagging*—(1) *Used to wrap flat bales (24 ounces per linear yard).* Each one-half pattern (panel) of compact center type new jute bagging used to wrap flat bales must not be less than 106 inches or more than 115 inches in length and must not be less than 46 inches in width. The bagging must contain a center panel not less than 32 inches wide and contain not less than 110 warp yarns and an outer edge not less than 7 inches wide containing not less than 13 warp yarns including selvage. The outer edge may contain more than 13 warp yarns and the center panel may exceed 32 inches provided the bagging contains not less than 41 warp yarns per 12 inches and still meet these specifications provided all other requirements contained herein are met. The warp yarn must be a size equal to or larger than the weft (filling) yarns. The bagging must contain not less than 25 weft (filling) yarns per 12 inches of bagging with a minimum weft yarn weight of 40 pounds per spindle (14,400 yards). The bagging must weigh not less than 8⅛ and not more than 9⅛ pounds per pattern (two panels) at 13.75 percent moisture content (not moisture regain). A marker warp yarn of the same size as the other warp yarns, made of jute or a plied cotton yarn, dyed dark blue with a colorfast, non-bleeding dye of a type which will not be subject to permanent staining of cotton fiber under normal weathering conditions must be placed in the center of each panel to designate the 9-pound tare weight.

(2) *Used to wrap gin standard and universal density bale.* Compact center type new jute bagging (24 ounces per linear yard) meeting the same width and fabric construction requirements for compact center type new jute bagging as used on flat bales cut to a length of not less than 96 inches or more than 101 inches in length, weighing not less than 7⅛ and not more than 8⅛ pounds per pattern (two panels) at 13.75 percent moisture content (not moisture regain) and containing a dark green center market yarn may be used to wrap gin standard and gin universal density bales.

(c) *Salvage jute (burlap) bagging*—(1) *General requirements.* Salvage jute (burlap) bagging must be processed specifically for cotton bale coverings from once-used good quality closely woven heavy jute bags previously used for sugar, coffee, cocoa, or other products approved by the President or Executive Vice President, CCC. Each one-half pattern (panel) must be composed of not more than three pieces of used bag cloth of the same construction and weight. There must not be more than two crosswise sewn seams and not more than one lengthwise sewn seam when measured across any single width of the panel in any one-half pattern (seams, hems, and necessary patches in the original bags from which the bagging is made will not be considered sewn seams). Overlap at seams and patches must not be greater than 3½ inches. Overlaps, patches, and hems sewn into bagging to increase the weight of lightweight material will not be permitted. Sewn seams must be such that the edges of the joined pieces coincide to make a symmetrical one-half pattern without appreciable displacement of the edge of one piece of bagging relative to the edge of the adjoining piece in the seam. Sewing must be with strong thread with not larger than ⅜ inch stitching.

(2) *To wrap flat bales.* Each one-half pattern (panel) used to wrap flat bales must not be less than 106 inches or more than 112 inches in length and must be not less than 46 inches or more than 52 inches in width. The bagging must weigh not less than 8⅛ and not more than 10 pounds per pattern (two panels) at 13.75 percent moisture content (not moisture regain).

(3) *To wrap modified flat bales.* Each one half pattern used to wrap modified flat bales must not be less than 106 inches or more than 112 inches in length and must not be less than 46 inches or more than 52 inches in width. The bagging must weigh not less than 8⅛ or more than 10 pounds per pattern (two panels) at 13.75 percent moisture content (not moisture regain.)

(4) *To wrap gin standard density and gin universal density bales.* Each one-half pattern (panel) used to wrap gin standard and gin universal density must not be less than 40 inches or more than 48 inches in width and must be not less than 96 inches or more than 102 inches in length. The bagging must weigh not less than 7⅛ and not more than 10 pounds per pattern (two panels) at 13.75 moisture content (not moisture regain).

(d) *Spiral sewn burlap bags used to wrap gin standard and gin universal density bales and bales compressed to standard density and universal density at a warehouse.*—(1) *Material.* Spiral sewn burlap bags used to wrap gin standard and gin universal density bales and bales compressed to standard density and universal density at a warehouse must be spiral sewn from new burlap which is not less than 60 inches wide before sewing and weighs not less than 13.25 ounces per linear yard (this corresponds to burlap weighing 8.9 ounces per 40-incl. width). The material must have a true selvage on each side. Spiral sewn bags made from split burlap with raw edges will not be acceptable.

(2) *Bag size.* The bag size must be tailored to individual bale size at each location. Bags shall fit bales tightly, but must be large enough to minimize bursting and long enough to completely cover and secure heads of bales.

(3) *Seams.* Seams must be sewn with a type 401 stitch, minimum four stitches per inch, and 4/12 or 5/12 cotton thread, or 1,000 denier polypropylene thread meeting ultraviolet inhibitor concentration requirements of paragraph (g)(2)(iii) of this section, with breaking strength of 5 grams per denier.

(e) *Cotton bagging*—(1) *General requirements.* Bagging made from 100 percent cotton must weigh not less than 7.7 ounces per square yard with a minimum weight of 4 pounds per pattern for flat and modified bales, 3.1 pounds for gin standard density bales, 3 pounds for gin universal density bales, and bales compressed at a warehouse at 8.5 percent moisture content (not moisture regain).

(i) *Panel requirements.* Bales wrapped with cotton bagging must be tied with wire or high tensile steel strapping. Each panel of bagging must not be less than 48 inches in width, and 112 inches in length for flat or modified flat bales, 100 inches in length and 42 inches in width for gin standard density bales and 96 inches in length and 42 inches in width for gin universal density bales and compressed at a warehouse. Each panel must be constructed with true selvages on each side.

(ii) *Bag requirements.* Sewn cotton bags may be used to wrap gin standard, gin universal density and bales compressed at a warehouse.

(A) *Material.* The bagging must be constructed of warp knitted cotton fabric as specified in paragraph (g)(3) of this section. Bags may be constructed with two panels sewn on each side to form a bag or form a single folded pattern.

(B) *Bag size.* The bag size must be tailored to individual bale sizes at each location. Bags shall fit bales tightly but must be large enough to minimize bursting and long enough to completely cover and secure heads.

(C) *Seams.* Seams must be sewn with a type SSA–1 or LSA–1 seam, type 401 stitch, minimum 6 stitches per inch with 4/12 or 5/12 cotton thread.

(2) *Woven.* The bagging must contain not less than 120 warp yarns (plied or single) per 12 inches of bagging of a size equal to or larger than the weft (filling) yarns and must contain not less than 78 weft (filling) yarns (plied or single) per 12 inches of bagging.

(3) *Warp knitted.* The bagging must be constructed with not less than two guide bars. The bagging must contain not less than five wales per inch and not less than six courses per inch. All yarns (plied or single) must be form connected with each other. The bagging must have stabilized construction with elongation or stretch not less than 15 percent or more than 30 percent. Variation in tensile strength in wale and course direction must not exceed 20 percent. The bagging must have a minimum bursting strength of 75 pounds.

(f) *Polyethylene shrink-pack bags used to wrap gin standard density and gin universal density bales.* Polyethylene shrink-pack bags used to wrap gin standard and gin universal density bales must meet the following requirements:

(1) *Density.* The bag must be low density virgin polyethylene.

(2) *Color.* The bag must be clear.

(3) *Gauge.* The gauge shall be not less than 8 mil.

(4) *Gauge tolerance.* The average of any 20 evenly spaced points around the length and width of a bag must be within plus or minus 10 percent of 8 mil. Yield on any order of 2,000 pounds or more shall not vary more than plus or minus 3 percent from the nominal yield.

(5) *Tensile strength.* For machine (length) and transverse (cross) direction the tensile strength must be not less than 2,500 pounds per square inch, and for transverse (cross) direction, not less than 2,000 pounds per square inch.

(6) *Elongation.* For both machine (length) and transverse (cross) direction the elongation must be not less than 400 percent.

(7) *Impact resistance.* The impact resistance must be not less than 450 grams.

(8) *Slip characteristics.* Bags must be low slip (coefficient of friction not less than 0.50) with no anti-block or slip additive included.

(9) *Tagging.* A piece of woven yarn scrim not less than 5 inches by 7 inches and laminated on each side with polyethylene must be placed inside the bag on the head of bale and heat welded to the cover, or some other suitable reinforcing material must be bonded to the bag.

(10) *Tare weight.* Tare weight shall be not less than 2 pounds per shrink-pack bag.

(11) *Sealing head of bales.* Extra precaution must be taken in sealing heads of bales to provide maximum coverage and protection.

(12) *Shrink ratio.* The ratio of machine (length) direction shrink to the transverse (cross) direction shrink must not exceed 1.5:1.

(13) *Total tare weight.* The total tare weight (i.e. bag and ties) shall be printed on the bag. Printing shall read "total tare = lbs." and the bale tare weight shall be included in the appropriate space.

(14) *Bag size.* Each bag shall be not less than 87 inches in length when used on 54 inch by 20 inch presses and not less than 83 inches in length when used on 50 inch by 20 inch presses.

(g) *Polypropylene material*—(1) *General.* Polypropylene material used to wrap bales shall be new polypropylene fabric manufactured in the United States from yarn and resins produced in the United States and woven specifically for use on cotton bales. The bale covers shall be uniform in size and color, clean, unstained, and free of any extraneous material.

(2) *Yarns.* No scrap, reground, or reworked polymer shall be used, except that unoriented edge trim may be reground and directly recycled during operation of extruder.

(i) *Type.* The yarn shall be crystalline or isotatic polypropylene tape yarn.

(ii) *Dimension.* Yarn dimensions shall be 2.1 mils thick, plus or minus 0.2 mil and 95 mils wide, plus or minus 2 mils.

(iii) *Inhibitor concentration.* The yarn shall be stabilized by a system containing organo-nickel complex ultraviolet light inhibitor. The yarn shall contain organo-nickel complex at a concentration of not less than 0.1 percent nickel as metal from the inhibitor. The Cotton Industry Bale Packaging Committee will have samples checked periodically by a private laboratory at manufacturers' expense.

(3) *Fabric woven from stabilized yarns*— (i) *Minimum weight.* The fabric must weigh an average of not less than 3 ounces per square yard and no test sample shall weigh less than 2.8 ounces per square yard.

(ii) *Yarn count.* There must be 12 warp yarns, plus or minus 1, per inch, and 10 weft yarns, plus or minus 1, per inch.

(iii) *Color.* The color of the fabric shall be translucent light gold, unless otherwise approved by the Cotton Industry Bale Packaging Committee. A different colored warp yarn meeting ultraviolet inhibitor concentration must be inserted in the center of each panel by the fabric manufacturer. The center of each panel must be marked in the weft direction with a clearly visible line running across the entire width of the panel or with a series of three lines having a minimum of 12 inches on each edge and a minimum of 6 inches in the center. The lines must be within one inch of the true center of the length of the panel.

(iv) *Tensile strength.* Minimum tensile strength shall be 125 pounds per inch average in the warp direction and 100 pounds per inch average in the weft direction. Ten samples shall be tested in each direction for this determination and no single test shall be more than 10 pounds per inch below the specified average.

(v) *Elongation.* Fabric shall have an elongation to break of not less than 15 percent average in both warp and weft directions. Ten samples shall be tested in each direction for this determination and no single test value shall be below 12 percent.

(vi) *Selvage.* Each outer edge of the fabric shall be a tucked selvage or natural selvage containing not less than the number of warp ends prevalent in the body of the fabric. A heat cut selvage will not be acceptable. Ends of cut sheets and spiral sewn bags must be

finished by heat cutting to give a pin test value of at least 40 pounds per inch.

(vii) *Air permeability.* The fabric in an unstressed state must permit not less than 5 cubic feet per minute per square foot, nor more than 50 cubic feet per minute per square foot of air flow.

(viii) *Weathering resistance.* The fabric shall retain not less than 70 percent of its original tensile breaking strength after 1,200 hours exposure to accelerated weathering.

(4) *Coatings.* Any coating added to the fabric to reduce gloss, fibrillation, slippage, or for other technical reasons, shall be as stable as the fabric to which it has been applied when exposed to accelerated weathering. Such coating must not adversely affect cotton which it is to contact.

(5) *Minimum panel size.* (i) Each panel of bagging must be not less than 52 inches in width and 112 inches in length for use on nonmodified flat presses (28 inch width bales).

(ii) Each panel of bagging must be not less than 48 inches in width and 112 inches in length for use on modified flat presses (25 inch width bales).

(iii) Each panel of bagging must be not less than 44 inches in width and 100 inches in length for use on gin standard density bales.

(iv) Each panel of bagging must be not less than 44 inches in width and 96 inches in length for use on gin universal density bales.

(6) *Additional specifications for spiral sewn bags.* Spiral sewn polypropylene bags must meet the following requirements:

(i) Fabric shall conform to the specifications for woven polypropylene fabric specifications.

(ii) The fabric from which each bag is sewn shall be a minimum of 60 inches in width.

(iii) The bag size must be tailored to individual bale size at each location. Bags shall fit bales tightly, but must be large enough to minimize bursting and long enough to completely cover and secure heads of bales.

(iv) Seams must be sewn in accordance with the following: Type SSN–1 Seam, type 401 stitch, minimum four stitches per inch, and 4/12 or 5/12 cotton thread, or 1,000 denier polypropylene thread meeting ultraviolet inhibitor concentration requirements of paragraph (g)(2)(iii) of this section, with breaking strength of 5 grams per denier. Sewn seams at bottom of bags must be a minimum of ¾ inch from heat cut edges and be of type SSA–1.

(7) *Additional requirements for half-bag panel combinations.* Half-bag panel combinations must meet the following requirements:

(i) Fabric shall conform to specifications for woven polypropylene fabric specifications.

(ii) The half-bag size must be tailored to individual bale size at each gin location.

(A) *Flat presses.* For flat presses each half-bag shall be not less than 30 inches in depth and each panel shall be not less than 48 inches in width and 112 inches in length.

(B) *Gin universal presses.* For 54 inch by 20 inch gin universal presses, each half-bag shall be not less than 32 inches in depth and each panel shall be not less than 40 inches in width and 96 inches in length. For 50 inch by 20 inch presses, each half-bag shall be not less than 34 inches in depth and each panel shall be not less than 40 inches in width and 96 inches in length.

(C) *Gin standard presses.* For gin standard presses, each half bag shall not be less than 40 inches in width and 100 inches in length.

(iii) Seams must be sewn in accordance with the following: Type SSN–1 seam, type 401 stitch, minimum four stitches per inch, and 4/12 or 5/12 cotton thread or 1,000 denier polypropylene thread meeting ultraviolet inhibitor concentration requirements of paragraph (g)(2)(iii) of this section, with breaking strength of 5 grams per denier. All cuts shall be heat cut or shall be rolled to prevent ravelling.

(8) *Identification markings.* Each panel and/or spiral sewn bag must have the name or trademark of the fabric manufacturer (that is, the company weaving the material) suitably printed no more than 36 inches apart and 8 to 12 inches from the panel selvage. Each identification mark shall be at least three-fourths inch in height but not more than one inch in height. The identification markings shall be placed on record with the Cotton Industry Bale Packaging Committee and CCC.

(9) *Inspection and certification requirements—(i) Responsibility for inspection.* The fabric manufacturer and the supplier are both responsible for performance of all inspection requirements as specified herein. They may use their own or any other facilities suitable for the performance of such inspection requirements, unless such facilities are disapproved by the Cotton Industry Bale Packaging Committee or CCC.

(ii) *Right to perform inspection or testing.* Reasonable inspection or tests deemed necessary may be performed by the Cotton Industry Bale Packaging Committee and/or CCC to assure that materials conform to prescribed specifications.

(iii) *Inspection or testing expense.* Expense for such inspection or testing shall be borne by the fabric manufacturer or supplier.

(iv) *Certification required by the Cotton Industry Bale Packaging Committee—(A) Submission of samples.* All manufacturers of polypropylene must submit samples to a private testing laboratory selected by the Cotton Industry Bale Packaging Committee or CCC for certification that materials meet all prescribed specifications.

(B) *Approved list.* Upon receipt of testing results, the Cotton Industry Bale Packaging Committee will publicize throughout the cotton industry a list of approved manufacturers and their trademarks.

(C) *Responsibility for components and materials.* The supplier and fabric manufacturer are responsible for insuring that components and materials used are manufactured, examined, and tested in accordance with approved specifications and standards.

(D) *Certification of fabric furnished.* Fabric manufacturers shall certify to customers that the fabric furnished has been manufactured in the United States from yarn and resins produced in the United States for use as cotton bale covers, and which meet the material specifications herein, and that the manufacturer is on the Cotton Industry Bale Packaging Committee's approved list.

§ 1427.1004 Official tare weights.

The following table shows official CCC tare weights for various combinations of approved wrapping material. CCC will not accept any bales for loans which carry a tare weight different than the one shown below:

(a) Tares for 1979 and Subsequent Crops:

Wrapping material	Bale ties: Wire or high tensile steel strapping [4]	Bale ties: Hot rolled steel ties with buckles [5]
Woven Polypropylene [1]	5	11
Polyethylene bags, [2] burlap spiral bags, cotton	7	
Compact jute [3] for use on all bales and selvage jute on gin universal density and gin standard density bales only	12	18

(b) Additional Tares for 1979 Crop Only (Carryover Begging):

Wrapping materials	Bale ties	
	Wire or high tensile steel strapping	Hot rolled steel ties with buckles
New 12 pound jute and salvage jute on flat bales only [4]	15	21
T-2 jute bagging [5]	19	16

[1] Woven polypropylene can be identified by its pale yellow color. This category includes all patterns of polypropylene including two sheets, half bag/sheet combinations and spiral sewn bags. Such material must meet all other requirements in § 1427.1906(g).

[2] Polyethelene bags can be identified by the clear color. The total tare weight is printed on the bag. Burlap spiral bags can be identified by the lightweight burlap fabric sewn to form a bag which completely encloses a bale. Cotton bagging is any packaging material made from all cotton fiber. Bagging must meet all other requirements for that type of bagging set forth in § 1427.1906(d), (e), and (f).

[3] Compact jute can be identified by the dark blue or green center marking yarns on each panel of bagging. Salvage jute is commonly referred to as sugar bagging and can be identified by seams and markings indicating that the material was previously used for other commodities. Such bagging must meet all other requirements as set forth in § 1427.1906(b), and (c).

[4] Twelve-pound new jute can be distinguished from other approved new jute panels by the absence of center marking yarns. Salvage jute can be identified by seams and markings indicating that the material was previously used for other commodities.

[5] T-2 jute bagging can be identified by the red or black center marking yarn on each panel.

[6] Wire or strapping includes all wire or high tensile steel strapping other than conventional hot rolled steel ties with buckles and must meet all applicable requirements in § 1427.1902 (c) and (d).

[7] Bands with buckles consist of conventional hot rolled steel ties with buckles which meet requirements set forth in § 1427.1902(b).

§ 1427.1906 Test methods.

The following testing methods will be used by CCC in determining whether bagging and bale ties and buckles or fasteners used to package cotton tendered for CCC loans beginning with the 1979 crop of cotton meets the above specifications. Except for polyethylene shrink-pack bags, spiral sewn burlap bags, cotton bags, and bagging manufactured from polypropylene material, each sample of bagging selected for testing will consist of one-half pattern. (Each sample of polyethylene shrink-pack bag and spiral sewn burlap bag and cotton bag will consist of one bag polypropylene material selected for testing and will consist of a minimum of ten randomly selected panels or spiral sewn bags or an equivalent amount of flat goods in cases where the material is tested before it is in panel or spiral sewn bag form.)

(a) *Weight and strength of bale ties and buckles.* The bale ties and buckles will be weighed on suitable accurate scales and the weight determined to the nearest one-half pound. A bundle or package of ties and buckles may be weighed and averaged to determine the weight of ties and buckles necessary to package a bale of cotton. For high tensile steel strapping, a given number of feet of strapping will be weighed to determine the number of feet of strapping per pound. Breaking strength and joint strength tests will be made only when determined to be necessary.

(b) *Length.* The length of the sample will be measured directly using a measuring stick, steel tape, or other suitably graduated device. The sample will be laid out flat on a smooth horizontal surface and the length measured. Both salvages for jute and cotton panels will be measured and the length of each side of polyethylene shrink pack bags will be measured. The length of the sample will be the average of the two measurements rounded to the nearest inch. Jute and cotton measurements will be made on the sample in equilibrium with standard atmospheric conditions as specified in A.S.T.M. D 1776 62–T.

(c) *Width.* The width of the sample will be measured directly using a measuring stick, steel tape, or other suitably graduated device and will include the selvages. The sample will be laid out flat on a smooth horizontal surface and the measurements made perpendicular to the lengths (selvages in the case of jute and cotton). Three width measurements will be taken on each sample. One measurement will be made at the center of the sample and two other measurements will be made approximately 12 inches in from each end of the sample. The average of the three measurements rounded to the nearest inch, will be the width. For compact center type new jute, the compact center shall be measured between the outer edges of the outer-most yarns in the more compact area. The loosely woven edges shall be measured from the outer edge of the outer-most warp yarn of the compact area to the outside edge including selvage. Three width measurements will be taken at locations described above for other width measurements and averaged. Jute and cotton measurements will be made on the sample in equilibrium with standard atmospheric conditions as specified in A.S.T.M. D 1776 62–T.

(d) *Warp yarn count.* For new jute (except for the compact center type new jute) and woven cotton bagging, the number of warp ends in the width of the sample including the selvages will be counted at each end of the sample. The average of the two counts will be divided by the width, as determined above. This figure will be multiplied by 12 to detemine warp yarns per 12 inches of bagging or by 40 to determine warp yarns per 40 inches of bagging. For compact center type new jute bagging, the number of warp ends in the denser center area will be counted at each end of the sample and averaged. The average of the two counts will be the warp yarn count for the compact center section. The number of warp ends in the outer edges will be counted at each end and at each edge including selvages and averaged. The average of the two counts will be the warp yarn count for the outer edges. For polypropylene bagging, the number of warp ends in a 12 inch width of the sample will be counted. This figure will be divided by 12 to determine the warp yarns per inch of bagging.

(e) *Weft yarn count.* The number of weft (filling) yarns over a measured length of 36 inches on each sample of new jute, and woven cotton bagging will be counted. The number counted divided by 3 will be the weft yarn count per 12 inches. For polypropylene bagging, the number of weft ends in a 12 inch length of the sample will be counted. This figure will be divided by 12 to determine the weft yarns per inch of bagging.

(f) *Weight of bagging.* The weight of bagging, except for polypropylene material, will be determined by weighing on suitable accurate scales, and the weight per pattern will be determined to the nearest one-tenth pound. Several patterns (or bales of bagging patterns) may be weighed simultaneously and the weight averaged. The weight for jute bagging will be calculated on the basis of 13.75 percent moisture content (not moisture regain) and for cotton bagging on the basis of 8.5 percent moisture content (not moisture regain). (Polypropylene fabric weight will be determined as prescribed in paragraph (k) (3) of this section.)

(g) *Wale count of warp knitted cotton bagging.* The number of wales or ribs running lengthwise of the sample from warp knitted cotton bagging will be counted over a measured width (relaxed state) of 12 inches on each sample. The number counted divided by 12 will be the wale count per inch.

(h) *Course count of warp knitted cotton bagging.* The number of courses or loops which form a line horizontal to the wales or ribs will be counted over a measured length (relaxed state) of 12 inches on each sample of warp knitted cotton bagging. The number counted divided by 12 will be the course count per inch.

(i) *Additional tests on warp knitted cotton bagging.* Elongation or stretch properties of warp knitted cotton bagging will be tested at one pound per inch static load using methods as specified in A.S.T.M. D 2594. Bursting strength will be tested on an approved type of constant rate of traverse

machine equipped with a bursting attachment (ball burst) as specified in A.S.T.M. D 231.

(j) *Additional tests for polyethylene material.* The gauge and gauge tolerance of polyethylene material shall be tested in accordance with A.S.T.M. D 374. The tensile strength and elongation shall be tested in accordance with A.S.T.M. D 882–67. Impact resistance should be tested in accordance with A.S.T.M. Method B 1709–67 slip characteristics in accordance with A.S.T.M. D 1894. The ratio of machine direction shrink to transverse direction shrink will be calculated in accordance with A.S.T.M. D 2732.

(k) *Additonal test procedures for polypropylene material*— (1) *Yarn dimensions.* Polypropylene material shall also be tested as follows: Yarn dimensions will be tested as specified in A.S.T.M. D 3218–73T.

(2) *Inhibitor concentration.* Yarn shall be removed from the warp direction of each test sample and analyzed for ultraviolet inhibitor concentration by following applicable analytical test procedure as specified in method Military—B 52472B (ME) paragraph 4.4.2.7.2.2. atomic absorption method. Specimen yarns shall likewise be removed from the weft or fill direction and tested for inhibitor concentration. Values obtained less than 0.1 percent nickel as metal for the inhibitor in either warp or weft direction of the fabric shall be deemed nonconformance and constitute failure of this test.

(3) *Fabric weight.* The fabric weight per square yard shall be determined as specified in Federal Test Method Standard No. 191, method 5041.

(4) *Tensile strength and elongation.* A minimum of ten randomly selected samples will be tested for tensile strength and elongation to break at standard conditions and in accordance with Federal Test Method Standard No. 191.

(5) *Accelerated weathering*—(i) *Preparation of specimens.* The sample unit will be one finished panel or spiral sewn bag or an equivalent amount of flat goods. Three swatches 4 inches by 12 inches shall be cut from each principal direction (warp and weft) of the fabric. Each swatch shall be cut into two 4 inch by 6 inch test specimens: One specimen to be used for initial break strength and the other specimen to be used for break strength after accelerated weathering. The specimens shall be marked to indicate which are cut with the long dimension in the warp direction and which have the long dimension in the weft direction.

(ii) *Initial tensile breaking strength.* The marked control specimens shall be conditioned for 24 hours at the standard condition specified in Federal Test Method Standard No. 191 and shall be tested for breaking strength in accordance with Federal Test Method Standard No. 191, method 5100.1. The result shall be averaged for specimens in warp direction and averaged for specimens in weft direction and the averages shall be recorded as the initial breaking strength in warp and weft directions. An average in warp of less than 125 pounds or less than 100 pounds in the weft direction shall constitute failure of this test.

(iii) *Breaking tensile strength after accelerated weathering.* The balance of the specimens shall be tested in accordance with Federal Test Method Standard No. 191, method 5804 for not less than 1,200 hours, except that the black panel temperature shall be maintained at 155 F. plus or minus 3 F. The black panel temperature shall be read during the final 10 minutes of a cycle just before the water spray period starts. At the completion of 1,200 hours exposure to accelerated weathering, the specimens shall again be conditioned for 24 hours at the standard conditions specified in Federal Test Method Standard No. 191. After conditioning, the exposed specimens shall be tested for breaking strength in accordance with Federal Test Method Standard No. 191, method 5100.1. An average breaking strength of less than 70 percent of the initial average breaking strength recorded for its respective warp or fill yarn direction shall constitute failure of this test.

(6) *Ends of heat cut sheets and/or spiral sewn bags.* Heat cut ends of cotton bale cover sheets and spiral tubing shall be evaluated for heat cut strength as specified in ASTM Method D 751. Pin test values of less than 40 pounds, as per this method, shall constitute failure of this test.

(7) Air permeability. The fabric shall be tested for air permeability as specified in ASTM D 737–46. Air permeability values of less than 5 or more than 50 cubic feet per minute per square foot will constitute failure of this test.

This subpart is effective for all loans made on the 1979 and subsequent crops of cotton.

Note.—This rule has been determined to be not significant under the USDA criteria implementing Executive Order 12044. This rule contains necessary operating decisions needed to implement the national average cotton loan rate, announced on October 31, 1978, for which an approved Final Impact Statement is available from Mr. Charles Cunningham, ASCS, (202) 447–7973.

Signed at Washington, D.C. on May 31, 1979.

Stewart N. Smith,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 79-17739 Filed 6-6-79; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 211

[Docket No. ERA-R-79-29]

Mandatory Petroleum Allocation Regulations; Levels for Department of Defense Uses

AGENCY: Department of Energy Economic Regulatory Administration.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is today adopting an amendment to the current regulation establishing allocation levels for crude oil and petroleum products supplied to the Department of Defense (DOD). The amendment provides that DOD will be entitled to receive its current requirements for crude oil and allocated products only for essential military- and readiness-oriented operations, rather than all non-housekeeping uses as currently provided. All other DOD activities will be supplied at the allocation level applicable to the particular use involved, subject to suppliers' allocation fractions.

In recent years the DOD has pursued stringent conservation measures for petroleum consumption for nonessential uses and, as a result of its efforts, has reduced significantly its consumption of petroleum for such uses. In changing DOD's allocation level for nonessential activities, the amendment adopted today thus effectively makes the allocation regulations consistent with DOD's current practices regarding petroleum consumption for these activites.

EFFECTIVE DATE: This amendment is effective June 7, 1979.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette, (Comment Procedures), Economic Regulatory Administration, Room 2222–A, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254–5201.

William L. Webb (Office of Public Information), Economic Regulatory Administration, Room B–110, 2000 M

Street, N.W., Washington, D.C. 20461, (202) 634–2170.

William E. Caldwell (Regulations and Emergency Planning), Economic Regulatory Administration, Room 2304, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254–8034.

Samuel M. Bradley (Office of General Counsel), Department of Energy, Room 6A–127, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–6754.

SUPPLEMENTARY INFORMATION:

I. *Introduction*
II. *Amendment Adopted*
III. *Procedural Requirements*
A. *Section 553(b) of the Administrative Procedure Act and Section 501 of the DOE Act*
B. *Section 404 of the DOE Act*
C. *Section 7 of the FEA Act*
D. *Section 553(d) of the Administrative Procedure Act*
E. *Executive Order 12044*
F. *National Environmental Policy Act*

I. Introduction

The allocation of crude oil and refined petroleum products for use by DOD has been accorded the highest priority designation in the ERA's petroleum allocation regulations. Thus, section 211.26 of the petroleum allocation regulations provides that the DOE is entitled to receive current requirments for crude oil and allocated products for all uses (except housekeeping requirements) without regard to the allocation fractions which DOD's suppliers establish for their non-priority customers. Recently, the President recommended that DOE, working in consultation with DOD, consider changing DOD's allocation level for motor gasoline for nonessential uses to ensure that DOE would receive its current requirements for this product only for direct, essential military- and readiness-oriented operations.

Based on our discussions with DOD, we believe that changing DOD's allocation level for non-essential uses is appropriate not only for motor gasoline, but for all other covered products and crude oil as well. In recent years, DOD has pursued stringent conservation measures with respect to its consumption of petroleum products, particularly automotive fuels for non-essential uses. As a result of these efforts, DOD has reduced significantly its petroleum consumption for such uses. For example, in California alone DOD reduced its consumption of motor gasoline by 41.5 percent from 1975 to 1978, a period during which total state consumption increased by 14.1 percent.

In light of DOD's conservation program, changing DOD's allocation level for non-essential uses is not likely to increase appreciably petroleum supplies available for the general public. However, since this action will make the allocation regulations consistent with DOD"s current practices regarding petroleum consumption for non-essential uses, we have determined to amend section 211.26 effective immediately.

We recognize that the national interest requires that adequate supplies of petroleum products for defense uses be available at all times. However, ERA and DOD believe that the amendment adopted today will not in any way impair DOD's mission capabilities or endanger national security.

II. Amendment Adopted

We are implementing this action by revising section 211.26(a) of the petroleum allocation regulations to provide that DOD will be entitled to receive its current requirements for petroleum, without being subject to an allocation fraction, only for essential military and readiness-oriented operations. All other DOD activities will be supplied at the appropriate allocation level specified in the various petroleum product subparts of Part 211 for the particular use involved.

III. Procedural Requirements

A. *Section 553(b) of the Administrative Procedure Act and Section 501 of the DOE Act.* Section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*, APA) requires that general notice of proposed rulemaking shall be published in the **Federal Register** unless persons subject to it are named and have actual notice of the proposal. Except when notice or hearing is required by statute, the requirement for a notice of proposed rulemaking does not apply when the agency finds (and incorporates the finding and a brief statement of its reasons) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest. For the reasons set forth in the "Introduction" section of this preamble and, in particular, the fact that implementation of this amendment is not likely to affect significantly the currently available supply of allocated products, we find that the section 553(b) requirements are unnecessary in this rulemaking proceeding.

In view of our determination that the requirements of APA section 553(b) are inapplicable, the prior notice requirement of subsection (b) of section 501 of the Department of Energy Organization Act (42 U.S.C. § 7101 *et seq.*, Pub. L. 95–91, DOE Act) also is inapplicable.

We also have determined, for the reasons stated above in support of waiving the APA section 553(b) requirements, that no substantial issue of law or fact exists with respect to this rulemaking and that the rulemaking is unlikely to have substantial impact on the nation's economy or large numbers of individuals or businesses. Accordingly, the hearing requirements of subsections (c) and (d) of section 501 of the DOE Act are inapplicable.

B. *Section 404 of the DOE Act.* Section 404(a) of the DOE Act requires that the Federal Energy Regulatory Commission (FERC) be notified whenever the Secretary of Energy proposes to prescribe rules, regulations, and statements of policy of general applicability in the exercise of functions transferred to him under section 301 or section 306 of the DOE Act. If the FERC determines, within such period as the Secretary may prescribe, that the proposed action may significantly affect any of its functions under sections 402(a)(1) or (b) of the DOE Act, the Secretary shall immediately refer the matter to the FERC.

Following an opportunity to review this rulemaking, the FERC has declined to determine that it may significantly affect one of its functions under the sections noted above.

C. *Section 7 of the FEA Act.* As required by section 7(a) of the Federal Energy Administration Act of 1974 (15 U.S.C. § 787 *et seq.*, Pub. L. 93–275, as amended), the requirements of which remain in effect under section 501(a) of the DOE Act, a copy of this rulemaking was submitted to the Administrator of the Environmental Protection Agency for his comments concerning the impact of the rulemaking on the qualify of the environment. The Administrator had no comments.

D. *Section 553(d) of the Administrative Procedure Act.* Section 553(d) of the Administrative Procedure Act requires that a substantive rule not become effective less than thirty days after its publication unless the agency promulgating the rule finds good cause to waive this requirement and publishes this finding together with the rule. Since the purpose of this amendment to the DOD allocation levels is to insure that DOE receives its current requirements for petroleum products only for essential military- and readiness-oriented operations, we believe that it is in the public interest that the amendment be made effective immediately.

E. *Executive Order 12044.* In accordance with the DOE's criteria governing "significant regulations" set forth in paragraph 8(a)(3) of DOE Order 2030 (44 FR 1982, January 3, 1979), we have determined that the regulation set forth at the end of this preamble is not a significant regulation. Accordingly, the sixty-day advance public comment period and other rulemaking requirements specified in Executive Order 12044, entitled "Improving Government Regulations" (43 FR 12661, March 23, 1978), and DOE's implementing procedures, DOE Order 2030, are inapplicable.

F. *National Environmental Policy Act.* It has been determined that this final rule does not constitute a "major Federal action significantly affecting the quality of the human environment" within the meaning of the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, and therefore an environmental assessment or an environmental impact statement is not required by NEPA and the applicable DOE regulations for compliance with NEPA.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, 15 U.S.C. § 787 *et seq.*, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, 42 U.S.C. § 6201 *et seq.*, Pub. L. 94-163, as amended, Pub. L. 94-385, and Pub. L. 95-70; Department of Energy Organization Act, 42 U.S.C. § 7101 *et seq.*, Pub. L. 95-91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, Part 211 of Chapter II of Title 10 of the Code of Federal Regulations is amended as set forth below, effective immediately.

Issued in Washington, D.C., June 4, 1979.

David J. Bardin,

Administrator, Economic Regulatory Administration.

Section 211.26 is amended by revising paragraph (a) to read as follows:

§ 211.26 Department of Defense allocations.

(a) Allocations of crude oil or any allocated product to the Department of Defense (except for requirements not related to essential military- and readiness-oriented operations) shall be supplied at an allocation level of one hundred (100) percent of current requirements without being subject to an allocation fraction.

* * * * *

[FR Doc. 79-17729 Filed 6-6-79; 8:45 am]

BILLING CODE 6450-01-M

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10 CFR Part 212

[Docket No. ERA-R-79-8]

Mandatory Petroleum Price Regulations; Retailers—Deletion of DOE Octane Posting Requirements

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final Rule.

SUMMARY: The Economic Regulatory Administration of the Department of Energy hereby amends the octane posting provisions of the Mandatory Petroleum Price Regulations. Under the amendments issued today the DOE octane posting requirements will be deleted on June 1, 1979, the effective date of the more comprehensive Federal Trade Commission octane posting regulations adopted pursuant to the Petroleum Marketing Practices Act. The DOE regulations which require the posting of maximum lawful selling prices on the pump by gasoline retailers will be retained.

DATES: Effective June 1, 1979.

FOR FURTHER INFORMATION CONTACT:

William Webb (Office of Public Information), Economic Regulatory Administration, 2000 M Street, NW., Room B-110, Washington, D.C. 20461 (202) 634-2170.

Lloyd Costley (Office of Regulations and Emergency Planning), Economic Regulatory Administration, 2000 M Street, NW., Room 2314, Washington, D.C. 20461 (202) 254-8034.

William Mayo Lee (Office of General Counsel), Department of Energy, 1000 Independence Avenue, SW., Room 6A-127, Washington, D.C. 20585 (202-252-6754).

SUPPLEMENTARY INFORMATION:

I. *Background.*
II. *Amendments Adopted.*
III. *Other Matters.*

I. Background

Section 212.129(b) of the DOE Mandatory Petroleum Price Regulations requires that retail gasoline dealers post in a prominent place on the face of each pump and in numbers at least one-half inch high, the octane rating and maximum lawful selling price of each grade of gasoline dispensed from that pump. The price and octane posting requirement was orginally adopted by the Cost of Living Council (CLC), a predecessor agency of the DOE, effective September 8, 1973 as part of the Phase IV petroleum price regulations. (See 38 FR 22536, August 22, 1973 and 38 FR 24214, September 6, 1973). An extension to November 21, 1973 to acquire the stickers and post the price and octane rating was later granted. (See 39 FR 1901, January 15, 1974). The requirement was reviewed and continued by the Federal Energy Administration with two modifications: dealers are to use their own labels rather than the uniform labels issued by the CLC and distributed through Post Offices, and the octane rating is to be determined only by the (R+M)/2 method. (40 FR 6323, February 11, 1975).

The original purpose of the price and octane posting requirement was to establish a regulatory relationship between the price and octane quality of the gasoline. For example, any reduction in the octane rating without a corresponding change in price would be a violation of the price regulations. It was also felt that octane posting would result in substantial savings to the consumer in that many motorists would avoid purchasing more expensive higher octane fuel than their vehicles require. The primary purpose of the price posting requirement was to advise the consumer of the federal price ceiling for that grade of gasoline at that station, and to help enlist the consumer as an enforcement agent.

On June 19, 1978, the Petroleum Marketing Practices Act (PMPA Pub. L. 95-297) was enacted. Title II of the PMPA entitled "Octane Disclosure," requires in part that the Federal Trade Commission (FTC) issue regulations which provide "uniform methods for the certification and posting of octane ratings by industry members." On September 19, 1978, the FTC issued its Notice of Proposed Rulemaking and Public Hearing concerning the certification and posting of octane ratings (43 FR 43028, September 22, 1978).

In order to avoid duplication and conflict in federal octane posting requirements, the DOE, on February 16, 1979, issued a Notice of Proposed Rulemaking and Public Hearing concerning the DOE octane posting regulations. (44 FR 11237, February 28, 1979). The Notice proposed to delete the DOE octane posting requirements effective on the effective date of the FTC regulations. The Notice also requested comment on whether the DOE price posting regulations should be modified or deleted.

While there was insufficient response to the request for oral comments to hold a public hearing, twenty-six written

comments were received. Comments were received from 12 private citizens, 12 major oil companies, the Broward County (Florida) Board of Commissioners and the Illinois Department of Agriculture. Of the 12 private citizens commenting, 11 favored a federal requirement (FTC or DOE) of octane posting and price posting; one citizen favored eliminating posting but requiring the dealer to make the information available on request. All of the 12 major oil companies favored deletion of the DOE octane posting requirement to avoid duplication with the FTC rules. With respect to price posting, seven of the major oil companies favored deletion of the DOE requirement, three favored retention of the rule and two suggested, in lieu of price posting on the pump, a requirement that dealers post a general certification that all of the gasoline prices at the station are at or below the DOE maximum lawful selling price. The Broward County Board of Commissioners commented that the posting requirements (DOE or FTC) should be publicized sufficiently for the public to assist the government in obtaining enforcement. The Illinois Department of Agriculture commented on the necessity of octane posting because of the reduced performance of some vehicles on lower octane gasolines.

The Environmental Protection Agency submitted the following comments:

"We have no objections to eliminating the octane posting requirement given proposed Federal Trade Commission action under the Petroleum Marketing Practices Act. We would expect, of course, that the DOE requirement would not be revoked until the FTC rule becomes effective. However, we believe the requirement of posting maximum lawful selling prices should be retained and enforced. Enforcement of the price posting regulation could reduce excessive unleaded gasoline prices that stem from pricing violations. This, in turn, could help prevent excessive unleaded/leaded price differentials and thus assist in reducing fuel switching (use of leaded gasoline in vehicles requiring unleaded gasoline) caused by those excessive differentials. This point was made in DOE's Final Environmental Impact Statement on Motor Gasoline Deregulation (FEIS at V–3)."

II. Amendments Adopted

The DOE has determined that it is appropriate to delete the octane posting requirements in § 212.129(b) but to retain the price posting requirement.

In our February 16, 1979 Notice regarding the octane posting rules, we proposed to delete our requirement effective on the effective date of the FTC regulations which at that time, had not been established. On March 29, 1979 the FTC issued its final regulations regarding the certification and posting of octane ratings to be effective June 1, 1979. (44 FR 19160, March 30, 1979). Accordingly, under these amendments, the DOE octane posting requirement is deleted effective June 1, 1979.

The DOE has determined that none of the substantive provisions of the FTC rules regarding octane certification and posting are inconsistent with the objectives of the DOE rules. The FTC regulations will require octane posting in larger numbers than the DOE requirement and will use the same method for determining the octane rating: (R+M)/2.

With respect to the price posting requirement, we have determined that because of the current upward pressure on gasoline prices, caused by reduced allocations in some areas and other factors, it is in the best interest of the consumer to be able to compare the high prices being paid for gasoline with the posted DOE maximum lawful selling prices. We also believe that the price posting serves as a reminder to the dealer of the legal requirement to calculate the selling price pursuant to Section 212.93 of the DOE Mandatory Petroleum Price Regulations. It should be noted that the posting requirement in this section is in addition to posting the selling price which is normally displayed on the retail pump.

III. Other Matters

Section 553(d) of the Administrative Procedure Act requires that a substantive rule not become effective less than thirty days after its publication unless the agency promulgating the rule finds good cause to waive this requirement and publishes this finding together with the rule. We have determined that good cause is found to waive the Section 553(d) requirement and adopt this rule effective June 1, 1979 in order to avoid an overlap in the DOE and the FTC octane posting requirements.

In accordance with Section 404 of the DOE Act, the Federal Energy Regulatory Commission received a copy of the proposed rulemaking and has notified ERA that it has determined that the proposed regulations would not significantly affect any function within its jurisdiction under Section 402(a)(1), (b), and (c)(1) of the DOE Act.

On the basis of criteria in Executive Order No. 12044 and the DOE implementing procedures, we do not believe this rule will have a substantial impact on the economy. Therefore, we have determined this is not a significant regulation and no regulatory analysis pursuant to that Executive Order is required.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*, Pub. L. 93–159, as amended, Pub. L. 93–511, Pub. L. 94–99, Pub. L. 94–133, Pub. L. 94–163, and Pub. L. 94–385; Federal Energy Administration Act of 1974, 15 U.S.C. § 787 *et seq.*, Pub. L. 93–275, as amended, Pub. L. 94–332, Pub. L. 94–385, Pub. L. 95–70, and Pub. L. 95–91; Energy Policy and Conservation Act, 42 U.S.C. § 6201 *et seq.*, Pub. L. 94–163, as amended, Pub. L. 94–385, and Pub. L. 95–70; Department of Energy Organization Act, 42 U.S.C. § 7101 *et seq.*, Pub. L. 95–91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, Part 212 of Chapter II of Title 10 of the Code of Federal Regulations is amended as set forth below, effective immediately.

Issued in Washington, D.C., June 1, 1979.

Richard B. Hersog,

Acting Administrator, Economic Regulatory Administration.

Section 212.129 is amended by revising paragraph (b) to read as follows:

§ 212.129 Price information and posting.

* * * * *

(b) Each retail seller of gasoline shall post and maintain in legible form, in numbers of a conspicuous size (not less than one-half (½) inch high), and in a prominent place on each face of each pump used to dispense gasoline in retail sales, the maximum permissible price allowed to be charged pursuant to Subparts E or F of this part for such product. The posting of the actual selling price is not considered to be the posting of the maximum permissible price as required by this section. Whenever an adjustment is made to the maximum permissible price, each seller must post the new adjusted maximum permissible price, and remove the prior posted price.

[FR Doc. 79-17725 Filed 6-6-79; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Regulation Q; Docket No. R-0215]

Interest on Deposits; Early Withdrawal Penalty and Maximum Rates of Interest

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: On April 3, 1978, the Board of Governors of the Federal Reserve System invited public comment of

proposals to amend Regulation Q to provide additional returns to savers (44 FR 21023).

The period for receipt of public comment on the proposed amendments expired on May 5, 1979. After consideration of the comments submitted and the views expressed therein, the Board has determined to take the following actions:

(1) Creation of a new time deposit category with a maturity of 4 years or more and no required minimum denomination.

(2) Elimination of the $1,000 minimum denomination requirements currently imposed on certain time deposits by Regulation Q. (The $10,000 minimum denomination requirement on the 26-week money market time deposit, however, is retained.)

(3) Modification of the interest forfeiture penalty required to be imposed when funds are withdrawn from time deposits prior to maturity.

(4) Increase the ceiling rate of interest payable on savings deposits by member banks from five percent to five and one-quarter percent.

EFFECTIVE DATE: July 1, 1979.

FOR FURTHER INFORMATION CONTACT: Gilbert T. Schwartz, Assistant General Counsel (202/452-3623) or Anthony F. Cole, Senior Attorney (202/452-3711), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: In response to notice published in the Federal Register (44 FR 21023), the Board has received and reviewed over 900 comments on its proposals to provide additional returns to savers. A majority of those responding generally favored action to provide savers with higher rates of return but opposed certain operational aspects of the proposals as unnecessarily complex, costly to administer and difficult for member banks and depositors to understand. With reference to the specific proposals, a majority of respondents commenting favored adoption of the proposed 5-year time deposit. The proposed six-month interest forfeiture penalty for early withdrawals and application of such a penalty to all time deposits also were favored by a majority of respondents. A substantial number of respondents commented that a maturity shorter than five years for the proposed instrument was preferable. A majority of respondents commenting opposed adoption of the proposed 8-year rising rate time deposit and the bonus savings proposal. The respondents generally commented that these two proposals would create costly operational problems and would be confusing to customers. Reduction of the minimum denomination requirements currently imposed on certain time deposits under Regulation Q (12 CFR 217.7) from $1,000 to $500 was favored by a majority of respondents commenting. In addition, a substantial number of respondents favored totally eliminating the minimum denomination requirements for all certificates of deposit, other than the 26-week money market certificate. A detailed summary of comments received is available upon request from the Board's Office of Public Affairs, telephone (202) 452-3215.

After consideration of the comments received, the Board has determined not to adopt the proposals to create an 8-year rising rate time deposit and to authorize the payment of an interest bonus on savings funds. The Board, however, has determined to amend Regulation Q (12 CFR 217) to: (1) create a new time depoist category with a maturity of 4 years or more and with a maximum ceiling rate of interest based on the average 4-year yield on Treasury securities; (2) eliminate the $1,000 minimum denomination requirements currently imposed on certain time deposits; (3) modify the penalty required to be imposed upon the withdrawal of funds from time deposits prior to maturity; and (4) increase the ceiling rate of interest payable on savings deposits to five and one-quarter percent. The Board believes that these amendments will enable individuals to obtain higher rates of return on their savings without adversely affecting the viability of the nation's financial system. A discussion of the amendments adopted follows.

I. *Four-year fixed rate, variable ceiling time deposit*

Beginning July 1, 1979, member banks will be permitted to offer a nonnegotiable time deposit with a maturity of 4 years or more at a ceiling rate tied to the average 4-year yield on United States Treasury securities. The ceiling rate will be the same even if a member bank issues the new time deposit with maturities in excess of four years. Although no minimum denomination will be required, member banks are free to establish a minimum denomination requirement for this new category of deposit. The existing fixed ceiling time deposits with maturities of 4, 6 and 8 years at ceiling rates of 7¼, 7½ and 8 per cent, respectively, are not affected by this action and will remain in effect.

The ceiling rate on the new deposit category will be established each month for new deposits received during that month at one and one-quarter per cent below the average 4-year yield for United States Treasury securities as determined by the U.S. Treasury Department. Beginning the first day of every month, a member bank will be permitted to pay interest at a ceiling rate of one and one-quarter per cent below the average 4-year yield as announced by the Treasury. This ceiling rate will remain in effect for all instruments issued during the month until the first day of the next month when a new ceiling rate will go into effect for instruments issued on or after that date. The ceiling rate of interest established at the time of issue of any time deposit in this category will not change during the period the deposit is outstanding. Member banks are permitted to compound and compute interest on this deposit in accordance with any of the methods authorized by section 217.3 of Regulation Q. The average 4-year yield will be announced three business days prior to the effective date (the first day of the month) and will represent an average of the 4-year yields for the previous five business days. As explained more fully hereinafter, the minimum penalty required to be imposed upon the withdrawal of funds from this category of time deposit is a forfeiture of six months interest at the rate being paid on the deposit.

With respect to this new deposit category, member banks should maintain data such as rates paid and amounts issued in a manner that facilitates reporting to the Board.

II. *Elimination of minimum denomination requirements*

Effective July 1, 1979, the Board has amended Regulation Q to eliminate the $1,000 minimum denomination requirements currently imposed on time deposits with maturities of 4 years or more in order to earn interest at a ceiling rate of 7¼ per cent or more (12 CFR 217.7(b)(2), (3), and (4)). Although no minimum denomination will be required on such deposits, member banks will be free to impose such requirements. However, the $10,000 minimum denomination required on 26-week money market time deposits by section 217.7(f) of Regulation Q (12 CFR 217.7(f)) will remain in effect. The Board believes that this action will broaden the availability of time deposit categories to all depositors and enable small savers to obtain higher yields on their funds.

III. *Penalty for early withdrawals*

Regulation Q currently provides that where a member bank agrees to pay a time deposit prior to maturity, the bank must impose an early withdrawal penalty on the funds withdrawn (12 CFR 217.4(d)). The current minimum required penalty is a reduction in the rate of interest paid on the funds withdrawn to a rate not to exceed the rate currently prescribed for a savings deposit (5 per cent) plus a forfeiture of three months interest at such rate. Under the current structure, the amount of the early withdrawal penalty increases significantly the longer the deposit is maintained. In order to reduce the severity of this penalty, the Board has amended section 217.4(d) of Regulation Q (12 CFR 217.4(d)) to create a new early withdrawal penalty.

Effective July 1, 1979, the minimum required early withdrawal penalty on time deposits with original maturities of one year or less is a forfeiture of three months interest on the amount withdrawn at the rate being paid on the deposit. If the amount withdrawn has been on deposit for less than three months, however, all interest is forfeited. The minimum required early withdrawal penalty on time deposits with original maturities of more than one year is a forfeiture of six months interest on the amount withdrawn at the rate being paid on the deposit. If the amount withdrawn has been on deposit for less than six months, however, all interest is forfeited. No reduction of interest to the savings rate will be required. This penalty will apply to all time deposit contracts entered into on or after July 1, 1979, and to all existing time deposit contracts that are extended or reviewed on or after July 1, 1979. The new penalty is a minimum required penalty only and a member bank is free to specify in its deposit contract a more severe premature withdrawal penalty as long as such penalty is disclosed to the depositor. Time deposits entered into before July 1, 1979, and not extended or renewed on or after such date, will continue to be subject to the Board's current penalty rule which requires a reduction of the rate of interest paid on the funds withdrawn before maturity to the savings rate, less three months interest at that rate.

IV. Ceiling Rate on Savings Deposits

Regulation Q currently provides that no member bank shall pay interest on any savings deposit at a rate in excess of 5 per cent (12 CFR 217.7(c)). Effective July 1, 1979, the Board has amended Regulation Q to increase the ceiling rate of interest payable on savings deposits by member banks, except savings deposits that are subject to negotiable orders of withdrawal, from 5 per cent to 5¼ per cent. This action is being taken in lieu of the proposal to authorize member banks to pay an interest bonus on savings funds held by individuals or certain nonprofit organizations and will provide higher returns to savers. The ceiling rate of interest payable by member banks on savings deposits subject to negotiable orders of withdrawal will remain at 5 per cent.

Pursuant to its authority under section 19(j) of the Federal Reserve Act (12 U.S.C. § 371b) to prescribe rules governing the payment of interest on deposits, effective July 1, 1979, the Board amends Regulation Q (12 CFR §§ 217.4, 217.6, and 217.7) as follows:

(1) Amend § 217.4 (d) and (e) to read as follows:

§ 217.4 Payment of time deposits before maturity.

* * * * *

(d) *Penalty for early withdrawals.* Where a time deposit with an original maturity of one year or less, or any portion thereof, is paid before maturity, a depositor shall forfeit at least three months of interest on the amount withdrawn at the rate being paid on the deposit. If the amount withdrawn has remained on deposit for less than three months, all interest shall be forfeited. Where a time deposit with an original maturity of more than one year, or any portion thereof, is paid before maturity, a depositor shall forfeit at least six months interest on the amount withdrawn at the rate being paid on the deposit. If the amount has remained on deposit for less than six months, all interest shall be forfeited.[11] Where necessary to comply with the requirements of this paragraph, any interest already paid to or for the account of the depositor shall be deducted from the amount requested to be withdrawn. Any amendment of a time deposit contract that results in an increase in the rate of interest paid or in a reduction in the maturity of the deposit constitutes a payment of the time deposit before maturity. A time deposit may be paid before maturity without a forfeiture of interest as prescribed by this paragraph in the following circumstances: * * *

(e) *Disclosure of early withdrawal penalty.* At the time a depositor enters into a time deposit contract with a member bank, the bank shall provide a written statement of the effect of the penalty prescribed in paragraph (d) of this section, which shall (1) state clearly that the customer has contracted to keep his funds on deposit for the stated maturity and (2) describe fully and clearly how such penalty provisions apply to time deposits in such bank, in the event the bank, notwithstanding the contract provisions, permits payment before maturity. Such statements shall be expressly called to the attention of the customer.

* * * * *

(2) Amend § 217.6(e) to read as follows:

§ 217.6 Advertising of interest on deposits.

* * * * *

(e) *Penalty for early withdrawals.* Any advertisement, announcement, or solicitation relating to interest paid by a member bank on time deposits shall include clear and conspicuous notice that the bank is prohibited from allowing payment of a time deposit before maturity unless substantial interest is forfeited. Such notice may state that,

"Substantial interest penalty is required for early withdrawal."

* * * * *

(3) Amend § 217.7 as follows:

§ 217.7 Maximum rates of interest payable by member banks on time and savings deposits.

* * * * *

(b) *Fixed ceiling time deposits of less than $100,000.* Except as provided in paragrphs (a), (d), (e), (f), and (g), no member bank shall pay interest on any time deposit at a rate in excess of the applicable rate under the following schedule:

Maturity	Maximum percent
30 days or more but less than 90 days	5
90 days or more but less than 1 year	5¼
1 year or more but less than 30 months	6
30 months or more but less than 4 years	6½
4 years or more but less than 6 years	7¼
6 years or more but less than 8 years	7¼
8 years or more	7¾

(c) *Savings deposits.* No member bank shall pay interest at a rate in excess of 5¼ per cent on any savings deposit. Provided, however, that no member

[11] The provisions of this paragraph apply to all time deposit contracts entered into on or after July 1, 1979, and to all existing time deposit contracts that are extended or renewed (whether by automatic renewal or otherwise) on or after such date. All contracts not subject to the provisions of this paragraph shall be subject to the restrictions of § 217.4(d) in effect prior to July 1, 1979, which provided that where a time deposit, or any portion thereof, is paid before maturity, a member bank may pay interest on the amount withdrawn at a rate not to exceed that prescribed in § 217.7 for a savings deposit and the depositor shall forfeit three months of interest payable at such rate. If, however, the amount withdrawn has remained on deposit for three months or less, all interest shall be forfeited.

bank shall pay interest at a rate in excess of 5 per cent on any savings deposit that is subject to negotiable orders of withdrawal, the issuance of which is authorized by Federal law.

(d) *Governmental unit time deposits of less than $100,000.* Except as provided in paragraphs (a), (f), and (g), no member bank shall pay interest on any time deposit which consists of funds deposited to the credit of, or in which the entire beneficial interest is held by, the United States, any State of the United States, or any county, municipality or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, or political subdivision thereof, at a rate in excess of 8 per cent.[2]

(e) *Individual Retirement Account and Keogh (H.R. 10) Plan deposits of less than $100,000.* Except as provided in paragraphs (a) and (g), a member bank may pay interest on any time deposit with a maturity of three years or more that consists of funds deposited to the credit of, or in which the entire beneficial interest is held by, an individual pursuant to an Individual Retirement Account agreement or Keogh (H.R. 10) Plan established pursuant to 26 U.S.C. (I.R.C. 1954) §§ 408, 401, at a rate not in excess of 8 per cent.[2]

(f) *26-week money market time deposits of less than $100,000.* Except as provided in paragraph (a), a member bank may pay interest on any nonnegotiable time deposit of $10,000 or more, with a maturity of 26 weeks, at a rate not to exceed the rate established (auction average on a discount basis) for United States Treasury bills with maturities of 26 weeks issued on or immediately prior to the date of deposit. Rounding such rate to the next higher rate is not permitted. A member bank may not compound interest during the term of this deposit. A member bank may offer this category of time deposit to all depositors.

(g) *Time deposits of less than $100,000 with maturities of four years or more.* Except as provided in paragraphs (a) and (b), a member bank may pay interest on any nonnegotiable time deposit with a maturity of four years or more that is issued on or after the first day of every month at a rate not to exceed one and one-quarter per cent below the average 4-year yield for United States Treasury securities as determined and announced by the United States Department of the Treasury three business days prior to the first day of such month. The average 4-year yield will be rounded by the United States Department of the Treasury to the nearest 5 basis points. A member bank may offer this category of time deposit to all depositors.

By order of the Board of Governors, May 30, 1979.

Theodore E. Allison,
Secretary of the Board.

[FR Doc. 79-17087 Filed 6-6-79; 8:45 am]
BILLING CODE 6210-01-M

[2] The ceiling rate on this category is the highest fixed ceiling rate that may be paid on time deposits under $100,000 by any Federally insured commercial bank, mutual savings bank, or savings and loan association.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 303

Remote Service Facility Procedures; Correction

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule relating to remote service facility procedures published at 44 FR 17995, March 26, 1979.

FOR FURTHER INFORMATION CONTACT: Roger A. Hood, Assistant General Counsel, Federal Deposit Insurance Corporation, Washington, D.C. 20429, 202-389-4628.

SUPPLEMENTARY INFORMATION:

In FR Doc. 79-9132 appearing at page 17995 in the **Federal Register** of Monday, March 26, 1979, the following change should be made:

1. On page 17997, the second textual sentence of the paragraph concerning § 303.14(d)(1) is corrected by deleting the comma after the word "application" the second time the word appears and by adding the footnote number "13" at the end of the sentence. As corrected, the sentence reads:

In other cases, once the Corporation's field examiner has completed the investigation of an application subject to the provisions of this section, anyone who, within the 15-day period prescribed in paragraph (b)(2) of this section, filed a written notice of intent to protest the granting of the application shall be entitled to file a formal protest and request an opportunity to be heard so long as that person does so within 15 days after receipt of the notice set forth in paragraph (d)(2) of this section.[13]

Dated: May 30, 1979.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 79-17010 Filed 6-6-79; 8:45 am]
BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 79-WE-8-AD; Amdt. 39-3488]

Airworthiness Directives; AiResearch Model TPE 331-10-501G Engines

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to certain operators of AiResearch Model TPE 331-10-501G engines by priority message dated May 10, 1979. This AD was required because of a possibility of dual engine failure which could result in a complete loss of propulsive power.

DATES: Effective June 12, 1979, except with respect to certain persons specified in the body of the AD.

Compliance schedule—As prescribed in the body of the AD.

FOR FURTHER INFORMATION CONTACT: Jerry Presba, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone (213) 536-6351.

SUPPLEMENTARY INFORMATION: Pursuant to the authority delegated by the Administrator, an AD was adopted on May 10, 1979 and made effective immdiately by telegram to certain known operators of AiResearch Model TPE 331-10-501G engines because of failures of the forged third stage turbine wheel, Part No. 3101516-1, installed in the Swearingen Merlin IIIB airplane.

Since it was found that immediate corrective action was required, notice and public procedure thereon was impracticable and contrary to the public interest and good cause existed, therefore, making the AD effective immediately as to certain operators of AiResearch Model TPE 331-10-501G engines. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to Section 39.13 of Part 39 of the Federal

Aviation Regulations to make it effective as to all persons.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by adding the following new airworthiness directive:

AiResearch Manufacturing Company of Arizona: Applies to all AiResearch Model TPE 331–10–501G engines incorporating the forged third stage turbine wheel, Part Number 3101516–1, installed in the Swearingen Merlin IIIB airplane.

Note.—The engine and airplane manufacturer's records indicate that the subject forged third stage turbine wheels, Part Number 3101516–1, are contained in the following serial numbered TPE 331–10–501G turboprop engines and are installed on the following Swearingen Merlin IIIB airplanes:

Engine serial No.	Airplane serial No.	Airplane registration
P35003	T282	LV-BHP (Argentina)
P35004	T282	
P35008	T284	N600TA (Teterbury Aviation, NJ)
P35010	T284	
P35009	T285	N444EF (Fairchild)
P35012	T285	
P35011	T286	VH-SWK (Dillwell, in Australia)
P35013	T286	
P35017	T288	N5495M (Dillwell, in Australia)
P35018	T288	
P35014	T287	N5495M (Planes, Inc., Atlanta, GA)
P35015	T287	
P35016	T289	N91CH (Duncan Aviation, NB)
P35020	T289	
P35022	T309	N29TA (Teterbury Aviation, NJ)
P35023	T309	
P35021	T301	N5652M (Western Airmotive,
P35024	T301	Hillsboro, OR)
P35025	T302	N5497M (Houston, TX)
P35026	T302	
P35007	T283	D-IBB (Cologne, Germany)
P35019	T278	N5111B (Philadelphia)

Compliance required as indicated.

To reduce the possible hazard from the total loss of power of one or more engines during a single flight resulting from the failure of the forged third stage turbine wheel blade, accomplish the following.

(a) Within the next 10 operating hours time in service after May 10, 1979, on at least one of the affected TPE 331–10–501G engines on each affected airplane, unless already accomplished, remove the forged third stage turbine wheel, Part Number 3101516–1, and replace it with a cast third stage turbine wheel, Part Number 3102655–1, in accordance with existing maintenance instructions.

Note.—Suitable instructions may be found in TPE 331–10 Engine Maintenance Manual, AiResearch Part Number 72–00–23.

(b) Within the next 50 operating hours time in service after May 10, 1979, on all TPE 331–10–501G engines installed on the Merlin IIIB airplane, unless already accomplished, remove the forged third stage turbine wheel, Part Number 3101516–1, and replace it with a cast third stage turbine wheel, Part Number 3102655–1, in accordance with instructions referenced in Paragraph (a) of this airworthiness directive.

(c) Alternative actions which provide an equivalent level of safety may be used when approved by the Chief, Aircraft Engineering Division, FAA Western Region.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the actions required by this AD.

(e) Upon request of operator, an FAA maintenance inspector, subject to prior approval of the Chief, Aircraft Engineering Division, FAA Western Region may adjust the initial and repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for that operator.

This amendment becomes effective upon publication in the Federal Register as to all persons except those persons to whom it was made immediately effective by telegram dated May 10, 1979, which contains this amendment.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89).

Issued in Los Angeles, California on May 25, 1979.

Leon C. Daugherty,

Director, FAA Western Region.

[FR Doc. 79–17478 Filed 6–6–79; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Airworthiness Docket No. 74–WE–34–AD; Amdt. 39–3487]

Airworthiness Directives; McDonnell Douglas DC–9 Airplanes

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) applicable to McDonnell Douglas DC–9 airplanes equipped with welded engine aft isolator mounts by extending the repetitive inspection interval to 850 hours. The amendment is needed to allow inspection at a scheduled inspection interval of the DC–9 operator.

DATES: Effective June 12, 1979. Compliance schedule—As prescribed in the body of the AD.

ADDRESSES: The applicable service information may be obtained from: McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attn: L. A. Eisenberg, C1–750, 54–60.

Also, a copy of the service information may be reviewed at, or a copy obtained from:

Rules Docket in Room 916, FAA, 800 Independence Avenue, SW., Washington, D.C. 20591, or

Rules Docket in Room 6W14, FAA Western Region, 15000 Aviation Boulevard, Hawthorne, California 90261.

FOR FURTHER INFORMATION CONTACT: Jerry Presba, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536–6351.

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39–1995, AD 74–22–01, which currently requires a repetitive inspection interval of 750 hours time-in-service of all welded engine aft isolator mounts on McDonnell Douglas DC–9 airplanes. Since issuing Amendment 39–1995, the FAA has determined that the repetitive inspection interval should be increased to 850 hours time-in-service to allow DC–9 operators to perform the inspection at an established inspection period for their fleet. Such a change will allow inspection at the main maintenance base by personnel most familiar with the non-destructive techniques required, thus ensuring more reliable results than would likely be the case of field inspections.

Since this amendment relieves a restriction and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and good cause exists for making the amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by amending Amendment 39–1995, AD 74–22–01 to read in pertinent part as follows:

§ 39.13 Airworthiness Directives.

* * * * *

* * * "and thereafter at intervals not to exceed 650 hours' time-in-service, inspect the aft engine mount" * * *
* * * * *

This amendment becomes effective June 12, 1979.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89.)

The Federal Aviation Administration has determined that this document is not significant in accordance with the criteria required by Executive Order 12044 and set forth in interim Department of Transportation Guidelines.

Issued in Los Angeles, California on May 25, 1979.

Leon C. Daugherty,
Director, FAA Western Region.

[FR Doc. 79-17677 Filed 6-6-79; 8:45 am]
BILLING CODE 4910-13-M

METRIC BOARD

15 CFR Part 501

Procedures for Availability of Information Under the Freedom of Information Act

AGENCY: United States Metric Board.

ACTION: Final Rule.

SUMMARY: The United States Metric Board adopts procedures for its operations in order to implement the Freedom of Information Act. Such procedures shall afford maximum access for the public to information regarding the activity of the United States Metric Board.

EFFECTIVE DATE: June 7, 1979.

FOR FURTHER INFORMATION CONTACT: John Milo Bryant, Office of General Counsel, 1815 North Lynn Street, Suite 600, Arlington, VA 22209, 703-235-1933.

SUPPLEMENTARY INFORMATION: On Thursday, March 8, 1979 there was published in the Federal Register (44 FR 12690) a notice of proposed rule making by the United States Metric Board which would amend Title 15, Chapter V by adding Part 501.

The public was afforded a 30-day period in which to submit written comments, data, and views on the proposal. No comments of any kind were received during that period.

Accordingly, under the authority of 5 USC 552(g) the USMB hereby adopts the Procedures for Availability of Information Under The Freedom of Information Act (15 CFR Part 501) as appearing in the Federal Register on March 8, 1979 (44 FR 12690), effective June 7, 1979.

Dated at Arlington, Virginia this 31 day of May 1979.

For United States Metric Board.

Malcolm E. O'Hagan,
Executive Director.

Title 15, Chapter V of the Code of Federal Regulations is amended by adding Part 501 to read as follows:

Sec.
501.1 Organization and authority—United States Metric Board.
501.2 Statement of policy.
501.3 Material to be published in the Federal Register.
501.4 Effect of non-publication.
501.5 Incorporation by reference.
501.6 Records generally available.
501.7 Current index.
501.8 Additional documents and records generally available for inspection and copying.
501.9 Exemptions.
501.10 Procedures for obtaining records.
501.11 Actions on requests.
501.12 Appeal.
501.13 Fees for services.

Authority: 5 U.S.C. 552.

§ 501.1 Organization and authority—United States Metric Board.

(a) The United States Metric Board is an independent agency of the Federal Government created by the Metric Conversion Act of 1975 (P.L. 94-168, 15 USC 205a-205k), hereinafter referred to as the Act.

(b) Section 3 of the Act states "that the policy of the United States shall be to coordinate and plan the increasing use of the metric system in the United States and to establish a United States Metric Board to coordinate the voluntary conversion to the metric system". In implementing the policy the Board has the responsibility to devise and carry out a broad program of planning, coordination, and public education.

(c) The Board consists of a Chairman and sixteen members appointed by the President with the advice and consent of the Senate to serve for six-year terms of office with the exception of the first appointees. The terms of office of the members of the Board first taking office shall expire as designated by the President at the time of nomination; five at the end of the 2nd year; five at the end of the 4th year and six at the end of the sixth year. The term of office of the Chairman of the Board will be six years.

§ 501.2 Statement of policy.

United States Metric Board records and informational materials are available to the fullest extent possible consistent with 5 U.S.C. section 552, as amended, and will be promptly furnished to any member of the public.

§ 501.3 Material to be published in the Federal Register.

The Board will separately state and concurrently publish the following materials in the Federal Register for the guidance of the public:

(a) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available.

(b) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, and examinations.

(c) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency.

(d) Every amendment, revision, or repeal of the foregoing.

§ 501.4 Effect of non-publication.

Except to the extent that a person has actual and timely notice of the terms thereof, no person shall in any manner be required to resort to, or be adversely affected by, any matter required to be published in the Federal Register and not so published.

§ 501.5 Incorporation by reference.

For purposes of this part, matter which is reasonably available to the class of person affected thereby shall be deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

§ 501.6 Records generally available.

The Board will make promptly available to any member of the public the following documents:

(a) Proposed and Final Decisions (including dissenting opinions and all orders made with respect thereto);

(b) Statements of policy and interpretations which have been adopted by the Board which have been published in the Federal Register; and

(c) A current index, which shall be updated at least quarterly covering the foregoing material adopted, issued or promulgated after July 1, 1978. Publication of an index is deemed both impractical and unnecessary. However, copies of the index are available upon request for a fee of the direct cost of duplication.

§ 501.7 Current index.

This Board shall maintain and make available for public inspection and copying, current indices providing identifying information for the public as to any matter issued, adopted, or promulgated after July 1, 1978, as required to be indexed by 5 U.S.C. 552(a)(2).

§ 501.8 Additional documents and records generally available for inspection and copying.

The following kinds of documents are also available for inspection and copying at the Offices of the Board:

(a) Rules of practice and procedure.

(b) Annual report of the Board to the Congress of the United States and the President of the United States.

(c) Bound volumes of Board decisions.

(d) The Metric Act of 1975 and related Acts.

(e) Press releases and other miscellaneous material concerning Board operations.

§ 501.9 Exemptions.

In the event any document or record requested shall contain material which is exempt from disclosure under this section, any reasonably segregable portion of that record shall be provided to any person requesting same, after deletion of the portions which are exempt under this section. Documents or records determined to be exempt from disclosure hereunder may nonetheless be provided upon request in the event it is determined that the provision of such document would not violate the public interest or the right of any person to whom such information may pertain, and the disclosure is not prohibited by law or Executive Order. The following categories or records are exempt from disclosure under the provision of 5 U.S.C. 552(b):

(a) Records specifically required by Executive Order to be kept secret in the interest of the national defense or foreign policy and are in fact properly classified pursuant to such Executive Order. This exemption may apply to records in the custody of the Board which have been transmitted to the Board by another agency which has designated the record as nonpublic under Executive Order.

(b) Records related solely to the internal personnel rules and practices of the Board.

(c) Records specifically exempted from disclosure by statute.

(d) Information given in confidence. This includes information obtained by or given to the Board which constitutes confidential commercial or financial information, privileged information, or other information which was given to the Board in confidence or would not customarily be released by the person from whom it was obtained.

(e) Interagency or Intraagency memoranda or letters which would not be available by law to a private party in litigation with the Board. Such communications include interagency memoranda, drafts, staff memoranda transmitted to the Board, written communications between the Board, the Executive Director, and the General Counsel, regarding the preparation of Board decisions, other documents received or generated in the process of issuing a decision, or regulation, and reports and other work papers of staff attorneys, accountants, and investigators.

(f) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(g) Investigation files compiled for law enforcement purposes but only to the extent that the production of such records would—

(1) Interfere with information proceedings;

(2) Deprive a person of a right to a fair trial or an impartial adjudication;

(3) Constitute an unwarranted invasion of personal privacy;

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of criminal investigation, or by an agency conducting a lawful security intelligence investigation, confidential information furnished only by the confidential source;

(5) Disclose investigative techniques and procedure; or

(6) Endanger the life or physical safety of law enforcement personnel.

§ 501.10 Procedures for obtaining records.

(a) Each person desiring access to a record covered by this part must comply with the following provisions:

(1) A written request must be made for the record.

(2) Such request must indicate that it is being made under the Freedom of Information Act.

(3) The envelope in which the request is sent must be prominently marked with the letters "FOIA".

(4) The request must be addressed to the appropriate official or employee of the Board as set forth in paragraph (c) of this section.

(5) The foregoing requirements must be complied with whether the request is mailed or hand-delivered to the Board.

(b) If the requirements of paragraph (a) of the section are not met, the ten day time limit described in § 501.11 will not begin to run until the request has been identified by an official or employee of the Board as a request, under the Freedom of Information Act and has been received by the appropriate official or employee of the Board.

(c) Each person desiring access to a record covered in this Part that is located at the Board, or to obtain a copy of such a record must make a written request to Director, Office of Public Information, United States Metric Board, 1815 North Lynn Street, Suite 301, Arlington, VA 22209.

(d) Each request would reasonably describe the particular record requested. The request should specify the subject matter, the date when it was made and the person or office that made it. If the description is insufficient, the official or employee handling the request may notify the person making the request and to the extent possible, indicate the additional data required.

(e) Each record made availabale under this section is available for inspection and copying during regular working hours. Original documents may be copied but may not be released from custody.

(f) Authority to administer this Part in connection with Board records is delegated to the Director, Office of Public Information or Board employee acting in his or her stead.

§ 501.11 Actions on requests.

(a) The Director, Office of Public Information or any employee acting in his stead shall determine within ten days (excepting Saturdays, Sundays or legal public holidays) after the receipt of any such request, whether to comply with such request. Upon receipt of a request for a Board record which is available, the Director, Office of Public Information or any employee acting in his stead shall notify the requester as to the time the record is available, and shall promptly make the record available after advising such requester of the applicable fees under § 501.13. The person making such request shall be notified immediately after any adverse determination, the reasons for making such adverse determination and the right of such person to appeal.

(b) Any denial of a request for a record shall be written and signed by Director, Office of Public Information or Board employee acting in his or her

stead, including a statement for the reason of denial. Such statement shall contain, as applicable:

(1) A reference to the specific exemption under the Freedom of Information Act authorizing the withholding of a record, and to the extent consistent with the purpose of the exemption of how the exemption applies to the record withheld.

(2) If a record requested does not exist or has been legally disposed of, the requester shall be so notified.

(c) In unusual circumstances, the time prescribed in paragraph (a) may be extended by written notice to the person making such request setting forth the reasons for such extension and the data on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this paragraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request—

(1) The need to search for and collect the requested records from other establishments that are separate from the office processing the request;

(2) The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practical speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest herein.

(d) With respect to determinations on appeals, such determinations shall be made within twenty days (excepting Saturdays, Sundays, and holidays) after the receipt of such appeal. If, on appeal, the denial of the request for records is in whole or in part upheld, the Board shall notify the person making such request of the provisions for judicial review of that determination under section 552(a)(4) of Title 5 U.S.C.

§ 501.12 Appeal.

(a) Any person to whom a record has not been made available within the time limits established by paragraph (a) of § 501.11, and any person who has been given an adverse determination pursuant to paragraph (b) of § 501.11, that a record he or she has requested will not be disclosed, may apply to the General Counsel of the Board, for reconsideration of the request. A determination that a record will not be disclosed is not administratively final for the purpose of judicial review unless it was made by the General Counsel, unless the applicable time limit has passed without a determination of the appeal having been made.

(b) Each application for reconsideration must be made in writing within thirty days from the date of receipt of the original denial and must include all information and arguments relied upon by the person making the request. Such application must indicate that it is an appeal from a denial of a request made under the Freedom of Information Act. The envelope in which the application is sent must be prominently marked with the letters "FOIA". If these requirements are not met, twenty day time limit described in § 501.11(d) will not begin to run until the application has been identified by an employee of the Board as an application under the Freedom of Information Act and has been received by the appropriate office.

(c) Whenever the General Counsel determines it to be necessary, he or she may require the person making the request to furnish additional information, or proof of factual allegations, and may order other proceedings appropriate in the circumstances. The decision of the General Counsel as to the availability of the record is administratively final.

(d) The decision by the General Counsel not to disclose a record under this part is considered to be a withholding for the purposes of Section 552(a)(3) of Title 5, U.S.C.

§ 501.13 Fees for services.

Unless otherwise waived by paragraphs (d) and (e) of this section, the following fees shall be imposed for the reproduction of any record disclosed pursuant to this part.

(a) Copying of records and documents. Five cents per copy for each page.

(b) Search fees. (1) clerical searches. $6.00 for each hour spent by clerical personnel searching for and producing a requested record or document, including time spent copying any record. (2) $15.00 for each one hour spent by supervisory or professional personnel searching for and producing a requested record, including time spent copying any record.

(c) Certification and validation of records. $1.00 per certification or authentication.

(d) The General Counsel may reduce or waive payment of fees in whole or in part when he determines that such reduction or waiver is in the public interest because furnishing the information can be considered as primarily benefiting the general public, or unless the requester is a government agency or indigent.

(e) No fees will be charged (1) for time spent in examining the requested records for the purpose of determining whether an exemption can and should be asserted, (2) for time spent in deleting exempt matters being withheld from records to furnish, (3) for time spent monitoring a requester's inspection of agency records made available to him in this manner, or (4) for records not found or determined to be totally exempt from disclosure.

(f) Payment of fees under this part should be made to the Treasury of the United States.

(g) Unless the request for services where fees are chargeable under this part, specifically states that whatever cost is involved will be acceptable or acceptable up to a specified limit that covers anticipated costs, a request that is expected to involve assessed fees in excess of $50 will not be deemed to have been received until the requester is advised promptly at the time of receipt of request of the anticipated cost and agrees to bear it. When the anticipated fees exceed $50, a deposit of $25 must be made within ten working days of advising the requester of such costs.

[FR Doc. 79-17765 Filed 6-6-79; 8:45 am]
BILLING CODE 6820-61-M

DEPARTMENT OF STATE

22 CFR Part 41

[Departmental Regulation 108.778]

Visa Issuance Procedures

AGENCY: State Department.

ACTION: Final rule.

SUMMARY: A new paragraph (l) concerning visa issuance procedures is added to § 41.124 to provide that the imprint of a rubber stamp seal of the issuing consular office and the signature of a consular officer affixed on an identity card, duly issued under the Olympic Rules Bylaws, shall constitute the issuance of a visa to certain aliens participating in the Summer or Winter Olympic Games, or the Pan American Games or other Regional Games to be held in the United States.

EFFECTIVE DATE: June 7, 1979.

FOR FURTHER INFORMATION, CONTACT: Cornelius D. Scully, Acting Director, Office of Legislation, Regulations and Advisory Assistance, Visa Services, Bureau of Consular Affairs, Department of State. (202) 632-1980.

SUPPLEMENTARY INFORMATION: To facilitate the entry into the United States of participants in Summer or Winter Olympic Games, or the Pan American Games or other Regional Games held under the auspices of the International Olympic Committee, the Department, in consultation with the Immigration and Naturalization Service, has determined that a simplified form of a nonimmigrant visa stamp placed on an identity card duly issued under the Olympic Rules Bylaws, plus the signature of the consular officer affixed on the card will constitute a duly issued visa to the bearer of such a card. Both the Department and the Service are satisfied that a properly completed games' identity card meets the requirements of a travel document under section 101(a)(30) and 212(a)(26) of the Immigration and Nationality Act. Compliance with the provisions of Section 553 of Title 5 of the United States Code (80 Stat. 383) as to notice of proposed rule making and delayed effective date is unnecessary in this instance because the amendment to § 41.124 is merely a technical change designed to simplify the process of issuing nonimmigrant visas to participants in the above Games.

Section 41.124 is amended by adding a new subparagraph (1) to read as follows:

§ 41.124 Procedures in issuing visas.

* * * * *

(l) *Olympic Games, Pan American Games or other Regional Games.* Notwithstanding the provisions of paragraph (c) of this section, in the case of an alien who:

(1) Is a participant in the Summer or Winter Olympic Games, the Pan American Games or other Regional Games under the auspices of the International Olympic Committee, held in the United States; and

(2) Is the holder of an official identity card which has been issued for participation in such Games under the Olympic Rules Bylaws, which includes the signature of a competent authority of the participating government and the assurance of that government's recognition of the card for reentry by the bearer for an additional period of six months beyond the expiration date of the card, and which otherwise meets the requirements of sections 101(a)(30) and 212(a)(26) of the Immigration and Nationality Act.

a stamp consisting of:

(i) The imprint of the issuing post's rubber stamp seal; and

(ii) The signature of a consular officer affixed on the identity card

shall constitute a multiple entry B-1/B-2 visa valid for the duration of the card, or, in the case of a representative of foreign press, radio, film or other foreign information media, a multiple entry I visa valid for the duration of the card.

This amendment is issued pursuant to the authority contained in Section 104 of the Immigration and Nationality Act (sec. 104, 66 Stat. 8 U.S.C. 1104).

Dated: June 4, 1979.

Barbara M. Watson,

Assistant Secretary for Consular Affairs.

[FR Doc. 79-17857 Filed 6-6-79; 8:45 am]

BILLING CODE 4710-06-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

24 CFR Part 1914

[Docket No. FI 5495]

Suspension of Community Eligibility Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, Federal Emergency Management Agency [1]

ACTION: Final rule.

SUMMARY: This rule lists communities where the sale of flood insurance, as authorized under the National Flood Insurance Program (NFIP), will be suspended because of noncompliance with the flood plain management requirements of the program.

EFFECTIVE DATES: The third date ("Susp.") listed in the fifth column.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless and appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (24 CFR Part 1909 et seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date subsidized flood insurance is no longer available in the community.

In addition, the Federal Insurance Administrator has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. Section 202 (a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended, provides that no direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquistion of buildings in the identified special flood hazard area of communities not participating in the NFIP, with respect to which a year has elasped since identification of the community as having flood prone areas, as shown on the Federal Insurance Administration's initial flood insurance map of the community. This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

In each entry, a complete chronology of effective dates appears for each listed community.

Section 1914.6 is amended by adding in alphabetical sequence new entries to the table.

[1] The functions of the Federal Insurance Administration, U.S. Department of Housing and Urban Development, were transferred to the newly established Federal emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979)

§ 1914.6 List of eligible communities.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified	Date[1]
Idaho	Shoshone	Kellogg, city of	160131-B	June 28, 1974, emergency, July 2, 1979, regular, July 2, 1979, suspended.	Jan. 9, 1974 Jan. 23, 1976	Do.
Do	do	Pinehurst, city of	160300-A	Sept. 27, 1974, emergency, July 2, 1979, regular, July 2, 1979, suspended.	Jan. 31, 1975	Do.
Do	do	Wallace, city of	160118-B	May 15, 1974, emergency, July 2, 1979, regular, July 2, 1979, suspended.	June 7, 1974 Jan. 16, 1976	Do.
Louisiana	East Baton Rouge Parish	Unincorporated areas	220036-A	June 12, 1970, emergency, July 2, 1979, regular, July 2, 1979, suspended.	Nov. 22, 1974	Do.
Maryland	Montgomery	do	240049-B	Oct. 31, 1972, emergency, July 2, 1979, regular, July 2, 1979, suspended.	July 18, 1975 Apr. 2, 1976	Do.
Massachusetts	Worcester	Millbury, town of	250316-B	May 4, 1973, emergency, July 2, 1979, regular, July 2, 1979, suspended.	Feb. 22, 1974 Mar. 4, 1977	Do.
Do	Hampshire	Westhampton, town of	250173-B	Mar. 12, 1975, emergency, July 2, 1979, regular, July 2, 1979, suspended.	June 28, 1974 July 16, 1976	Do.
Michigan	Saginaw	Saginaw, township of	260190-B	July 13, 1973, emergency, July 2, 1979, regular, July 2, 1979, suspended.	Sept. 13, 1974 July 9, 1976	Do.
Do	do	Zilwaukee, city of	260295-B	Jan. 21, 1974, emergency, July 2, 1979, regular, July 2, 1979, suspended.	May 17, 1974	Do.
Minnesota	Carver	Chanhassen, city of	270051-B	June 23, 1975, emergency, July 2, 1979, regular, July 2, 1979, suspended.	Nov. 8, 1973 July 2, 1976	Do.
Do	Washington	Lake Elmo, city of	270065-B	Aug. 18, 1972, emergency, July 2, 1979, regular, July 2, 1979, suspended.	May 17, 1974 June 4, 1976	Do.
Do	Brown	Springfield, city of	270038-B	Apr. 22, 1976, emergency, July 2, 1979, regular, July 2, 1979, suspended.	Nov. 30, 1973 Mar. 19, 1976	Do.
Mississippi	Hinds	Unincorporated areas	280070-B	Dec. 19, 1973, emergency, July 2, 1979, regular, July 2, 1979, suspended.	Oct. 18, 1974 Feb. 24, 1978	Do.
Do	Attala	Kosciusko, city of	280007-B	Nov. 15, 1974, emergency, July 2, 1979, regular, July 2, 1979, suspended.	Jan. 23, 1974 June 18, 1976	Do.
Montana	Lincoln	Libby, city of	300048-B	July 2, 1975, emergency, July 2, 1979, regular, July 2, 1979, suspended.	May 31, 1974	Do.
New Hampshire	Hillsborough	Amherst, town of	330091-B	May 28, 1974, emergency, July 2, 1979, regular, July 2, 1979, suspended.	May 28, 1974	Do.
Do	Carroll	Jackson, town of	330014-B	Aug. 21, 1975, emergency, July 2, 1979, regular, July 2, 1979, suspended.	Aug. 30, 1974 Nov. 5, 1976	Do.
New Jersey	Bergen	Allendale, Borough of	340019-A	June 2, 1972, emergency, July 2, 1979, regular, July 2, 1979, suspended.	Mar. 16, 1973	Do.
Do	Monmouth	Keyport, Borough of	340304-B	Jan. 23, 1974, emergency, July 2, 1979, regular, July 2, 1979, suspended.	Jan. 23, 1974 Feb. 6, 1976	Do.
Do	Burlington	Riverside, township of	340113-B	Feb. 9, 1973, emergency, July 2, 1979, regular, July 2, 1979, suspended.	Feb. 11, 1977	Do.
Do	do	Willingboro, township of	340116-B	Sept. 15, 1972, emergency, July 2, 1979, regular, July 2, 1979, suspended.	Nov. 30, 1973 Oct. 8, 1976	Do.
New York	Erie	Colden, town of	360233-B	May 27, 1975, emergency, July 2, 1979, regular, July 2, 1979, suspended.	May 31, 1974 July 2, 1976	Do.
Do	do	Lancaster, village of	360348-C	May 19, 1975, emergency, July 2, 1979, regular, July 2, 1979, suspended.	Apr. 12, 1974, May 14, 1976 Mar. 4, 1977	Do.
Pennsylvania	Montgomery	Lower Providence, township of	420703-A	Mar. 30, 1973, emergency, July 2, 1979, regular, July 2, 1979, suspended.	Dec. 28, 1973	Do.
Rhode Island	Providence	Burrillville, town of	440019-B	June 5, 1975, emergency, July 2, 1979, regular, July 2, 1979, suspended.	Sept. 13, 1974 Aug. 2, 1977	Do.
Texas	Tarrant	Benbrook, city of	480586-B	Nov. 2, 1973, emergency, July 2, 1979, regular, July 2, 1979, suspended.	May 3, 1974 Mar. 4, 1977	Do.
Do	Mason	Mason, city of	480467-B	Mar. 5, 1976, emergency, July 2, 1979, regular, July 2, 1979, suspended.	May 10, 1974 Apr. 16, 1976	Do.
Vermont	Windsor	Hartford, town of	500148-A	Feb. 11, 1972, emergency, July 2, 1979, regular, July 2, 1979, suspended.	Nov. 22, 1974	Do.
Virginia		Fredericksburg, city of	510065-B	Nov. 5, 1973, emergency, July 2, 1979, regular, July 2, 1979, suspended.	June 21, 1974 Oct. 31, 1975	Do.
Washington	Whitman	Colfax, town of	530244-A	June 18, 1976, emergency, July 2, 1979, regular, July 2, 1979, suspended.	May 2, 1975	Do.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified	State[1]
Do	Kitsap	Poulsbo, city of	530241-B	June 19, 1974, emergency, July 2, 1979, regular, July 2, 1979, suspended.	Dec. 6, 1974 Feb. 20, 1976	Do.

[1] Certain Federal assistance no longer available in special flood hazard area.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.)

Issued: May 31, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-17446 Filed 6-6-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1914]

[Docket No. FI 5494]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, Federal Emergency Management Agency [1]

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Federal Insurance Administrator has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

Section 1914.6 is amended by adding in alphabetical sequence new entries to the table.

[1] The functions of the Federal Insurance Administration, U.S. Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979)

§ 1914.6 List of eligible communities.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified
Alabama	Tuscaloosa	Tuscaloosa, city of	010203-A	May 21, 1979, suspension withdrawn.	Oct. 24, 1975.
New Hampshire	Merrimack	Canterbury, town of	330108-A	do	Apr. 5, 1974 and Jan. 14, 1978.
California	San Bernadino	Barstow, city of	060271	May 24, 1979, emergency.	Jan. 17, 1975.
Mississippi	Lawrence	Unincorporated areas	280272	May 22, 1979, emergency.	Sept. 16, 1977.
New York	Warren	Thurman, town of	360881	May 24, 1979, emergency.	Aug. 23, 1978.
Pennsylvania	York	Loganville, borough of	422213	do	
South Dakota	Grant	Unincorporated areas	460060-A	do	Dec. 20, 1977.
Ohio	Ottawa	Marblehead, village of	390749	May 29, 1979, emergency.	Apr. 16, 1976.
Georgia	Talbot	Unincorporated areas	130066	May 30, 1979, emergency.	Mar. 28, 1978.
Michigan	Calhoun	Marengo, township of	260563	do	Sept. 19, 1975.
Pennsylvania	Butler	Allegheny, township of	422341	do	Mar. 28, 1978.
Do	Bradford	Overton, township of	421402-A	May 31, 1979, emergency.	Aug. 30, 1974 and Aug. 6, 1976.
Do	Potter	Pleasant Valley, township of	421884	do	Nov. 29, 1974.
Do	York	Warrington, township of	422232	do	Dec. 27, 1974.
Tennessee	Carter	Unincorporated areas	470024	May 30, 1979	July 15, 1977.
Missouri	Lawrence	Pierce City, city of	290203-A	May 6, 1975, emergency May 29, 1979, withdrawal.	May 17, 1974 and June 11, 1976.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.)

Issued: May 31, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-17448 Filed 6-6-79; 8:45 am]

BILLING CODE 4210-23-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7627]

Arbitrage Bonds; Income Tax; Taxable Years Beginning After December 31, 1953

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to arbitrage bonds. Changes to the applicable tax law were made by the Tax Reform Act of 1969. These regulations affect purchasers and governmental issuers of tax-exempt bonds.

DATE: The regulations are effective for governmental obligations issued after May 31, 1979. For governmental obligations issued before the effective date of the final regulations, the proposed income tax regulations (26 CFR Part 1), as amended, under section 103(c) of the Internal Revenue Code of 1954 shall apply according to their internal effective dates. However, for purposes of applying the preceding two sentences, bonds that were the subject of a validation proceeding commenced before May 3, 1978, and with respect to which a bona fide preliminary offering statement had been prepared in final form for distribution before May 11, 1978, shall be considered to have been issued on May 2, 1978.

FOR FURTHER INFORMATION CONTACT: Leonard T. Marcinko of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention CC:LR:T, 202-566-3459).

SUPPLEMENTARY INFORMATION:

Background

On May 3, 1973, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 103(c) of the Internal Revenue code of 1954 (38 FR 10944). The proposed regulations were revised by notices of proposed rulemaking published in the Federal Register for December 3, 1975 (40 FR 56488), October 29, 1976 (41 FR 47679), May 31, 1977 (42 FR 27610), June 9, 1977 (42 FR 29517), May 8, 1978 (43 FR 19675), and September 7, 1978 (43 FR 39822), and corrected by notices published in the Federal Register for May 11, 1973 (38 FR 12405), December 18, 1975 (40 FR 58856), November 24, 1976 (41 FR 51840), and June 21, 1977 (42 FR 31462). These amendments were proposed to conform the Income Tax Regulations to section 601(a) of the Tax Reform Act of 1969 (83 Stat. 656). After consideration of all comments from interested persons regarding the proposed regulations, they are adopted as revised by this Treasury decision.

Explanation of Provisions

Section 103(a)(1) of the Internal Revenue Code of 1954 provides that gross income generally does not include interest on obligations of a State or political subdivision thereof. However, under section 103(c)(1) of the Code, as added by the Tax Reform Act of 1969, the interest on an arbitrage bond is not excludable from gross income. An arbitrage bond is generally defined as an obligation all or a major portion of the proceeds of which are reasonably expected to be used directly or indirectly (A) to acquire securities or obligations that may be expected to produce a yield over the term of the governmental issue that is materially higher than the yield on such issue; or (B) to replace funds used directly or indirectly to acquire securites or obligations described in (A).

The final regulations make a change to § 1.103-13(b)(5)(iv) of the proposed regulations, relating to an over-issuance of governmental obligations. Under the proposed regulations the yield on acquired obligations, acquired with the proceeds of an over-issuance, was materially higher than the yield on the govenmental obligations if the yield on such acquired obligations exceeded the yield on the governmental obligations by any amount. Under the final regulations, a small differential is permitted between the yield on the acquired obligations and the yield on the governmental obligations in the case of an over-issuance.

Under § 1.103-14(b) of the proposed regulations, the proceeds of an issue of governmental obligations may be invested at a materially higher yield during a 3-year temporary period if certain requirements are met. One of these requirements is that within 6 months after the date of issue, the State or local governmental unit must incur a substantial binding obligation to commence or acquire the project or projects to be financed by the issue. Certain comments received on the proposed regulations evidenced some uncertainty as to what constitutes a binding obligation for purposes of this requirement. The final regulations provide in § 1.103-14(b)(3)(iv) that an obligation may be binding by law or by

custom and usage. Also, a binding obligation may be subject to contingencies, if such contingencies are not within the issuer's control.

Section 1.103–14(b)(13) of the proposed regulations, as added by the September 7, 1978, notice of proposed rulemaking, provides a temporary period where an issuer requests a ruling under paragraph (d)(2) or (e)(5)(iii) of § 1.103–14 that its reserve or replacement fund is reasonably required. This temporary period continues from the date of issue until 30 days after final disposition of the ruling request. The proposed regulations require that the issuer apply for such a ruling at least 2 weeks prior to the issuance of the bonds. One of the comments pointed out that these provisions prevent an issuer from ever obtaining a ruling as to the size of its reserve or replacement fund, unless the request is made at least 2 weeks before the bonds are issued. This is true even if the issuer is willing to forego the special temporary period of § 1.103–14(b)(13). The final regulations take account of this problem by requiring that the ruling request be made at least 2 weeks prior to issuance of the bonds only where the issuer elects to use the temporary period provided in § 1.103–14(b)(13) of the regulations.

The last substantive change made to the proposed regulations by this Treasury decision is to the provisions relating to reasonably required reserve or replacement funds. Paragraph (d)(5) of § 1.103–14 of the final regulations provides that certain mandatory accumulations in a reserve fund for one or more issues of governmental obligations will be considered reasonably required if three conditions are met. First, amounts must be paid into the fund as a result of a constitutional provision, statute, or ordinance adopted before May 3, 1978. Second, under the constitutional provision, statute, or ordinance, amounts paid into the fund can be used only to pay debt service on the issues. Third, the size of the payments made into the fund must be independent of the size of the outstanding bond issues of the governmental unit.

The final regulations delete the rule in proposed § 1.103–13(b)(6) relating to obligations taken down by purchasers pursuant to a delayed delivery agreement. This deletion was made to reflect the fact that the October 9, 1969, effective date is no longer relevant and was not intended to have any substantive effect.

The remainder of the changes made to the proposed regulations by this Treasury decision are technical or clerical in nature and have no substantive effect upon the rules adopted. Provisions in the proposed regulations that relate to obligations issued prior to the effective date of the final regulations have been deleted.

The regulations adopted by this Treasury decision impose no new reporting burdens or recordkeeping requirements. The principal effect of the final regulations is the implementation of the arbitrage bond restrictions of section 103(c) of the Code, as amended by the Tax Reform Act of 1969. Evaluation of the effectiveness of these regulations after issuance will be based upon comments received from offices within Treasury and the Internal Revenue Service, other governmental agencies, State and local governments, and the public.

Drafting Information

The principal author of this regulation is Leonard T. Marcinko of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended by adding, immediately after § 1.103–12, new §§ 1.103–13, 1.103–14, and 1.103–15, to read as follows:

§ 1.103–13 Arbitrage bonds.

(a) *Scope*—(1) *In general.* Under section 103(c)(1), an arbitrage bond shall be treated as an obligation not described in section 103(a)(1) and § 1.103–1. Thus, the interest on an arbitrage bond will be included in gross income and subject to Federal income taxation. In general, arbitrage bonds are obligations issued by a State or local governmental unit, the proceeds of which are reasonably expected to be used to acquire other obligations where the yield on such acquired obligations will be materially higher than the yield on the governmental obligations during the term of such governmental issue. The term "arbitrage bond" is defined in paragraph (b)(1) of this section. Under paragraph (b) of § 1.103–14, the investment of all or a portion of the proceeds of an issue of obligations for a temporary period or periods will not cause such obligations to be arbitrage bonds regardless of the yield produced by such investment. Paragraph (b)(6) of § 1.103–14 provides a temporary period for investment proceeds. Under paragraph (b)(1) of this section, the investment of less than a major portion of the proceeds of the issue in acquired obligations at a materially higher yield will not cause such obligations to be arbitrage bonds. Similarly, under paragraph (d) of § 1.103–14, the investment of a portion of the proceeds as a reasonably required reserve or replacement fund will not cause such obligations to be arbitrage bonds regardless of the yield produced by such investment. Even if an obligation is not an arbitrage bond under section 103(c), such bond may nevertheless be treated as an obligation which is not described in section 103(a)(1) and § 1.103–1 if it is an industrial development bond under section 103(b). For regulations as to special issues of Federal Treasury obligations offered to State and local governmental units, see 31 CFR Part 344.

(2) *Reasonable expectations.* (i) Under section 103(c)(2), the determination whether an obligation is an arbitrage bond depends on the issuer's reasonable expectations, as of the date of issue, regarding the amount and use of the proceeds of the issue. Thus, an obligation is not an arbitrage bond if, based on the issuer's reasonable expectations on the date of issue, the proceeds will not be used in a manner that would cause the obligation to be an arbitrage bond under section 103(c)(2), this section, § 1.103–14, and § 1.103–15. Reasonable expectations as to future events regarding governmental obligations may be established to the extent permitted by the certification described in subdivision (ii) of this subparagraph. For the treatment of certain issues with a face amount of $2,500,000 or less, see subdivision (iii) of this subparagraph.

(ii) (A) A State or local governmental unit may certify, in the bond indenture or a related document, reasonable expectations of the issuer on the date of issue as to future events.

(B) Certification by a State or local governmental unit will not tend to establish conclusions of law (including legal characterizations of future events).

(C) An officer responsible for issuing the bonds must certify for the issuer.

(D) In addition to the matters certified, the certification must set forth (in brief and summary terms) the facts and estimates on which the issuer's expectations are based and state that, to the best of the knowledge and belief of the certifying officer, the issuer's expectations are reasonable.

(E) (*1*) If a temporary period of more than 3 years is allowed under § 1.103–14(b)(5)(ii) (relating to certain

construction issues), the issuer must commission an independent architect or engineer to prepare a study of the planned construction. An architect or engineer will be considered independent if he is not employed by the issuer on a permanent basis.

(2) The study prepared by the architect or engineer must accompany the certification and must include an estimated completion date for each stage of the construction.

(F) Subsequent events do not affect a certification made in accordance with this subdivision.

(iii) In the case of an issue with a face amount of $2,500,000 or less, an unqualified opinion of counsel that such obligations are not arbitrage bonds can be conclusively relied upon by the holders of the obligations, if the opinion is reasonable and is not given in bad faith. This subdivision (iii) shall apply only to the first $2,500,000 of governmental obligations issued by (or on behalf of) a State or local governmental unit for the same project in any 12-month period. Thus, for example, if a town issues $2,500,000 of bonds for a school building on July 1, 1980, this subdivision does not apply to additional bonds issued for the same school building before July 1, 1981.

(iv) (A) If a certification contains a material misrepresentation, the Commissioner may disqualify the issuer. The Commissioner will publish notice that the issuer is disqualified in the Internal Revenue Bulletin. The disqualification will not affect bonds issued before the notice is published.

(B) An issuer that is disqualifed may not certify an issue under subdivision (ii) of this subparagraph.

(C) The Commissioner will give an issuer reasonable opportunity to be heard before it is disqualifed.

(D) If appropriate, the Commissioner may requalify an issuer. The Commissioner will publish notice that the issuer has been requalified in the Internal Revenue Bulletin.

(v) The provisions of this subparagraph may be illustrated by the following examples:

Example (1). (i) On July 5, 1980, city A issues $3,000,000 of municipal bonds to finance the construction of a water treatment facility. The city includes in the bond indenture a certification which contains a statement that 85 percent of the receipts from the sale of the bonds will be used for construction costs by July 5, 1983.

(ii) Construction of the water treatment facility was determined by the Environmental Protection Agency to have certain adverse effects. Consequently, work on the project was halted and the facility was redesigned to avoid the effects with the result that 85 percent of the receipts from sale of the bonds will not be expended for project costs by July 5, 1983. The certification is conclusive as to the issuer's reasonable expectations that 85 percent of receipts will be expended for construction costs by July 5, 1983.

(iii) Under the circumstances described in subdivision (ii), city A has not made a material misrepresentation in the certification which would permit the Commissioner to disqualify city A under subdivision (iv) of this subparagraph. If, however, city A did not actually expect that 85 percent of the receipts from sale of the bonds would be used for construction costs by July 5, 1983, the certification would contain a material misrepresentation. Under those circumstances, the Commissioner may disqualify city A.

Example (2). On January 1, 1980, city A sells $5 million of 6-percent refunding bonds. City A certifies the bonds in the manner described in subdivision (ii) of this subparagraph. In addition, attorney X gives an opinion that the bonds are not arbitrage bonds. In connection with the refunding issue, city A makes use of an artifice or device as described in paragraph (j) of this section. As a result, the legal conclusion reached by attorney X is erroneous and the refunding bonds are arbitrage bonds despite the certification.

Example (3). (i) The chairman of the county commission of county X made the following certification with respect to an issue of governmental obligations:

(1) The county is issuing and delivering, simultaneously with the delivery of this certificate, $2,500,000 principal amount of its General Obligation Library Bonds dated December 1, 1980 (herein called "the bonds"). The bonds are being issued for the purpose of providing for payment of a portion of the costs of constructing and equipping a new public library in and for the county.

(2) The estimated total costs of constructing and equipping said library (which is herein called "the library") will be not less than $3,235,000. The said total costs are expected to be financed with (i) $2,500,000 of proceeds from the sale of the bonds, (ii) a Federal grant in the amount of not more than $560,000, and (iii) approximately $151,000 in building funds made available to the county by the county X library board. The county has not yet determined how it will finance the deficiency ($24,000).

(3) The county has heretofore entered into a contract for the construction of the library, which contract obligates the payment by the county of not less than $100,000. The actual work of constructing the library began during the month of September 1980. It is contemplated that such work will proceed with due diligence to completion, expected on or about October 1, 1982.

(4) The county has heretofore expended, for payment of costs incurred in constructing and equipping the library, approximately $758,000, derived from (a) portions of the aforesaid Federal grant, (b) short-term borrowings made in anticipation of the issuance and sale of the bonds and which will be fully repaid within 5 days following the issuance of the bonds, and (c) building funds made available to the county by the county X library board.

(5) The principal proceeds to be derived by the county from the sale of the bonds (excluding the "premium" anticipated to be received by the county from such sale, which premium will, as required by law, be applied to payment of interest maturing with respect to the bonds on June 1, 1980) are expected to be used, needed, and fully expended for payment of costs of constructing and equipping the library (including the repayment of the short-term borrowings referred to in the preceding paragraph (4)) by no later than May 1, 1980.

(6) Except for the debt service fund established under section XII of the bond resolution, the county has not created or established, and does not expect to create or establish, any sinking fund or other similar fund.

(7) To the best of my knowledge, information, and belief, the above expectations are reasonable.

(8) The county has not been notified of any listing of it by the Internal Revenue Service as an issuer that may not certify its bonds.

(9) This certificate is being executed and delivered pursuant to §§ 1.103–13, 1.103–14, and 1.103–15 of the Income Tax Regulations under the Internal Revenue Code of 1954, as amended, and the undersigned chairman of the county commission is one of the officers of the county charged (by resolution and order of the said county commission) with the responsibility of issuing the bonds.

(ii) This certification by county X meets the requirements of subdivision (ii) of this subparagraph and conclusively establishes the county's reasonable expectations on the date of issue as to the future events described in the certification. However, nothing contained in this certification tends to establish any conclusions of law.

Example (4). (i) The chairman of the board of directors and the secretary-treasurer of the industrial development board of city A, a public corporation organized under the laws of State B (herein called "the Industrial Board"), made the following certification:

(1) The Industrial Board is issuing and delivering simultaneously with the delivery of this certificate, its Environmental Improvement Revenue Bonds, 1980 series A dated November 1, 1980, in the principal amount of $9,000,000 (herein called "the bonds"). The bonds are being issued for the purpose of providing funds for the permanent financing of costs of acquiring, constructing, installing and equipping, on certain real property located in county J, the air pollution control facilities described on exhibit A attached hereto and made a part hereto (the said facilities being herein together called "the project facilities"). Those of the project facilities described in paragraph (1) of said exhibit A are herein called "the quench car facilities"; those described in paragraph (2) of said exhibit A, the "sinter line facilities"; and those described in paragraph (3) of said exhibit A, "the mixer fume control facilities."

(2) The project facilities and certain real property (and interests therein) appurtenant thereto are, upon the completion of the acquisition, construction, installation, and

equipment of the project facilities, to be sold by the Industrial Board, on an installment basis, to Corporation C, a Delaware corporation (herein called "the corporation"), under and pursuant to an agreement of sale dated as of November 1, 1988 (herein called "the agreement"), between the Industrial Board (as seller) and the corporation (as buyer).

(3) The actual work of acquiring, constructing, installing, and equipping the quench car facilities has, pursuant to the provisions of a letter agreement between the corporation and the Industrial Board (which letter agreement was executed on behalf of the Industrial Board on May 10, 1988, and the corporation on May 11, 1988), heretofore begun and binding contracts or commitments obligating the expenditure, for the work of acquiring, constructing, installing, and equipping the quench car facilities, of not less than $100,000 have heretofore been entered into or made. It is anticipated that the total financeable costs of such acquisition, construction, installation, and equipment (excluding a pro rata portion of (a) interest during construction and (b) the expenses anticipate to be incurred, in connection with the issuance of the bonds) will be approximately $1,231,370. It is expected that the work of acquiring, constructing, installing, and equipping the quench car facilities will proceed with due diligence to full completion, presently anticipated on or about October 1, 1989.

(4) The actual work of acquiring, constructing, installing, and equipping the sinter line facilities has, pursuant to the provisions of a letter agreement between the corporation and the Industrial Board (which letter agreement was executed on behalf of the Industrial Board on May 10, 1988, and on behalf of the corporation on May 11, 1988), heretofore begun, and binding contracts or commitments obligating the expenditure for the work of acquiring, constructing, installing, and equipping the sinter line facilities of not less than $100,000 have heretofore been entered into or made. It is anticipated that the total financeable costs of such acquisition, construction, installation, and equipment (excluding a pro rata portion of (a) interest during construction and (b) the expenses anticipated to be incurred in connection with the issuance of the bonds) will be approximately $1,780,000. It is expected that the work of acquiring, constructing, installing, and equipping the sinter line facilities will proceed with due diligence to full completion, presently anticipated on or about January 1, 1990.

(5) While the actual work of acquiring, constructing, installing, and equipping the mixer fume control has not yet begun, binding contracts or commitments obligating the expenditure for the work of acquiring, constructing, installing, and equipping the mixer fume control facilities of not less than $100,000 have heretofore been entered into or made, and such actual work is expected to begin on or about June 30, 1989. Further, all such work is anticipated to proceed with due diligence thereafter to completion, presently expected on or about September 1, 1990. The total financeable costs of acquiring, constructing, installing, and equipping the mixer fume control facilities (excluding a pro rata portion of (a) interest during construction and (b) the expenses anticipated to be incurred in connection with the issuance of the bonds) are expected to be approximately $2,660,000.

(6) The total proceeds to be received by the Industrial Board on the sale of the bonds, i.e., the gross sum of $5,998,633.33, does not exceed the total of—

(a) The estimated total financeable costs of acquiring, constructing, installing, and equipping the project facilities (excluding (a) interest during construction and (b) the expenses anticipated to be incurred in connection with the issuance of the bonds), viz., the gross sum of $5,691,370, plus

(b) Interest on the bonds during construction of the project facilities and the expenses anticipated to be incurred in connection with the issuance of the bonds, viz., the gross sum of $263,630, plus

(c) The amount required to be set aside out of the proceeds to be derived by the Industrial Board from the sale of the bonds, for payment of a portion of the interest maturing thereon on May 1, 1989, viz., the sum of $43,633.33.

(7) The proceeds to be derived by the Board from the sale of the bonds, viz., the gross sum of $5,998,633.33, are expected to be needed and fully expended as follows:

(a) $43,633.33 of said proceeds will be set aside and paid into the "bond fund" (as said term is used and defined in the trust indenture dated as of November 1, 1988, between the Industrial Board and the First National Bank of A, under which the bonds are being issued) simultaneously with the issuance and delivery of the bonds and used and applied for payment of a portion of the interest maturing thereon on May 1, 1989;

(b) $263,630 of said proceeds will be expended for payment of (i) interest on the bonds during construction of the project facilities, and (ii) the expenses anticipated to be incurred in connection with the issuance of the bonds; and

(c) The remaining $5,691,370 of said proceeds will be expended for payment of the costs of acquiring, construction, equipping, and installing the project facilities (excluding (i) interest on the bonds during construction of the project facilities and (ii) the expenses anticipated to be incurred in connection with the issuance of the bonds) substantially in accordance with the following schedules:

Quarter during which expected to be expended	Amount expected to be expended			
	Sinter line	Quench car	Mixer fume control	Total
1988, Fourth	$280,000			$280,000
1989, First	250,000		$50,000	300,000
1989, Second	430,000	$720,250	350,000	1,500,250
1989, Third	550,000	511,120	800,000	1,861,120
1989, Fourth	270,000		1,150,000	1,420,000
1990, First			300,000	300,000
1990, Second			30,000	30,000
Totals	1,780,000	1,231,370	2,680,000	5,691,370

(8) The facts and estimates in paragraphs (2) through (7) are based on representations made by Corporation C. The board is not aware of any facts or circumstances that would cause it to question the accuracy of the representations made by Corporation C.

(9) Money deposited in the debt service fund established by article X of the indenture for the bonds will be used to pay principal of and interest on the bonds and the board reasonably expects that there will be no other funds that will be so used.

(10) Any money deposited in the debt service fund will be spent within a 13-month period beginning on the date of deposit, and any amount received from investment of money held in the debt service fund will be spent within a 1-year period beginning on the date of receipt.

(11) To the best of our knowledge, information, and belief, the above expectations are reasonable.

(12) The Industrial Board has not been notified of any listing of it by the Internal Revenue Service as an issuer that may not certify its bonds.

(13) The undersigned are those officers of the Industrial Board charged, by resolution of the board of directors of the industrial Board, with the responsibility of actually issuing and delivering the bonds.

(ii) This certification by the Industrial Board of city A meets the requirements of subdivision (ii) of this subparagraph and conclusively establishes the board's reasonable expectations on the date of issue as to the future events described in the certification. However, nothing contained in this certification tends to establish any conclusions of law.

(iii) It has been assumed that the letter agreement described in this example constitutes "some other similar official action" within the meaning of § 1.103–8(a)(5).

Example (5). City D issues $10 million of 7-percent revenue bonds for the purpose of constructing a water treatment facility. Certain proceeds of the revenue bonds will be deposited with a trustee. In part, the trust agreement provides as follows: "In the event city D is of the opinion that it is necessary to restrict or limit the yield on the investment of any moneys paid to or held by the trustee hereunder in order to avoid the bonds, or any

series thereof, being considered 'arbitrage bonds' within the meaning of the Internal Revenue Code of 1954, as amended, the city may issue to the trustee a written certificate to such effect (along with appropriate written instructions), in which event the trustee will take such action as is necessary so to restrict or limit the yield on such investment in accordance with such certificate and instructions, irrespective of whether the trustee shares such opinion." If city D uses reasonable care in the selection of the trustee, it can reasonably expect the trustee to invest the funds in accordance with the trust agreement. This reasonable expectation will be conclusive without regard to the subsequent actions of the trustee.

Example (6). County Y, in connection with an issue of revenue bonds, covenants in the bond indenture that it will proceed with due diligence to spend the bond proceeds for the construction of a library. This covenant is included in the indenture as a bona fide safeguard for the protection of the bondholders. County Y can reasonably expect to comply with this covenant and, therefore, to satisfy the due diligence test of § 1.103–14(b)(4). The result is the same whether or not the bond proceeds are actually spent with due diligence.

(3) *Innocent mistake.* Bonds are not arbitrage bonds merely because of an inadvertent, insubstantial error (e.g., in arithmetic).

(b) *Definitions.* For purposes of this section, § 1.103–14, and § 1.103–15, the following definitions and rules apply:

(1) *Arbitrage bonds.* (i) Under section 103(c)(2), an obligation is an arbitrage bond if it is issued by a State or local governmental unit as part of an issue of obligations (for purposes of this section, § 1.103–14, and § 1.103–15 referred to as governmental obligations) all or a major portion of the proceeds of which are reasonably expected to be used directly or indirectly—

(A) To acquire acquired obligations which may reasonably be expected, on the date of issue of such governmental obligations, to produce a yield during the term of the issue of such governmental obligations which is materially higher than the yield on such issue, or

(B) To replace funds used directly or indirectly to acquire such obligations (see example (1) of § 1.103–14(e)(7)(ii)).

(ii) A major portion of the proceeds of an issue is any amount which at any time exceeds 15 percent of the original face amount of the issue. If the original proceeds of an issue determined without regard to issuing expenses are less than 98 percent of the original face amount of the issue, the percentage specified in the preceding sentence shall be based on the amount of such original proceeds. See § 1.103–14(e) for special rules that apply to refunding issues. In determining whether acquired obligations allocable to proceeds invested as less than a major portion at a materially higher yield are so invested, a major portion of the proceeds is invested at a materially higher yield if one or more of such obligations is acquired at a discount or results in interest payments for any annual period in excess of interest payments for any preceding annual period (thus reinvesting annually accrued interest or discount as principal) and if by taking into account the amount of such discount or excess interest (not discounted to present value) ratably each year over the term of such obligation the sum of such amounts plus the purchase price of all obligations allocable to less than a major portion at any time exceeds the amount specified in this paragraph (b)(1)(ii). The term "materially higher" is defined in paragraph (b)(5) of this section. Yield is computed under paragraphs (c) and (d) of this section. For rules with respect to bonds issued to finance certain governmental programs and with respect to exempt arbitrage bonds for educational personnel, see, respectively, paragraphs (h) and (e) of this section. Acquired obligations are defined in paragraph (b)(4) of this section and are allocated under paragraph (f) of this section to proceeds of governmental obligations.

(2) *Proceeds.* The types of proceeds attributable to an issue of governmental obligations are defined and illustrated as follows:

(i) "Original proceeds" are net amounts [after payment of all expenses of issuing the obligations] received by the State or local governmental unit as a result of the sale of such issue. Examples of issuing expenses are advertising and printing costs, financial advisors' and counsel fees, initial fees of trustees, paying agents, certifying or authenticating agents, and similar expenses.

(ii)(A) "Investment proceeds" are amounts received at any time by the issuer, such as interest and dividends, resulting from the investment of any proceeds of an issue of obligations in acquired nonpurpose obligations and amounts received as interest or dividends resulting from the investment of any proceeds of such issue in acquired purpose obligations. Thus, for example, the interest received on acquired Federal obligations purchased with the proceeds of an issue of governmental obligations constitutes investment proceeds of such issue whether or not such acquired obligations represent amounts invested for a temporary period or in a reasonably required reserve or replacement fund under § 1.103–14. Investment proceeds are increased by any profits and decreased (if necessary, below zero) by any losses on such investments. Amounts received from the investment of any proceeds of an issue (other than a refunding issue) are not investment proceeds if, within 1 year of receipt, such amounts are commingled for the purpose of accounting for expenditures with substantial tax or other substantial revenues from operations by a State or local governmental unit.

(B) Despite § 1.103–13(b)(2)(ii)(A), "investment proceeds" do not include receipts from investment of amounts treated as proceeds under § 1.103–13(g) (relating to invested sinking funds).

(3) *State or local governmental unit.* The term "State or local governmental unit" shall have the same meaning as in paragraph (a) of § 1.103–1.

(4) *Acquired obligations.* (i) The term "acquired obligations" means securities and obligations allocated to the proceeds of an issue of governmental obligations during the period of time that such issue is outstanding.

(ii) The term "securities" has the same meaning as in section 165(g)(2) (A) and (B). Thus, the term "security" means (A) a share of stock in a corporation, or (B) a right to subscribe for or to receive a share of stock in a corporation.

(iii) The term "obligation" means any evidence of indebtedness which is not described in section 103(a)(1). Thus, for example, if interest on a bond issued by a State or local governmental unit is not exempt in the hands of the holder because it is an industrial development bond or an arbitrage bond, the bond is an obligation within the meaning of this subdivision. For another example, a transaction which in form is a lease of property by a State or local governmental unit but which is treated for Federal income tax purposes as a loan (or an installment sale) is an obligation for purposes of this subdivision. Time or demand deposits (whether or not such deposits are interest-bearing) are obligations within the meaning of this subdivision to the extent that such deposit or deposits are maintained for the purposes for which the proceeds of the issue of obligations may be expended (including as a purpose any investment in a reserve or replacement fund). Cash is not an acquired obligation. For example, cash held or received by the trustee of an issue is not taken into account as a zero-yield obligation for the period it is held before being invested in an acquired obligation or for the period that it is held

after repayment of an obligation and before being reinvested in an acquired obligation. A contract between the issuer and another person is an acquired obligation if the other person is required under the contract personally (and not in his capacity as trustee or agent) to discharge any obligation of the issuer.

(iv) The classes of acquired obligations and the definitions of such classes are as follows:

(A) "Acquired purpose obligations" are obligations acquired to carry out the purpose of a governmental program for which the governmental obligations are issued. Thus, for example, a note secured by a mortgage on a facility built with the proceeds of an exempt small issue of industrial development bonds (within the meaning of section 103(b)(6) and § 1.103–10) is an acquired purpose obligation in the hands of the issuer of such exempt small issue. Obligations acquired solely for the purpose of realizing an arbitrage profit are not acquired purpose obligations. Acquired obligations acquired with proceeds of a refunding issue that are to be used to discharge the prior issue or that are invested in a reasonably required reserve or replacement fund as less than a major portion are not acquired purpose obligations. However, acquired obligations acquired with transferred proceeds may be acquired purpose obligations if such obligations would have been so treated if the prior issue had not been refunded.

(B) "Acquired nonpurpose obligations" are acquired obligations other than acquired purpose obligations.

(5) *Materially higher.* (i) The yield produced by acquired obligations is materially higher than the yield produced by an issue of governmental obligations if the yield produced by the acquired obligations exceeds the yield produced by the issue of governmental obligations by more than (A) one-eighth of 1 percentage point or (B), at the election of the issuer, one-half of 1 percentage point if the issuer waives the provisions of paragraph (b) (1) through (5) of § 1.103–14 (relating to the temporary period). Notwithstanding an election under (B) of this subdivision, the requirements of paragraph (b)(2)(ii) of § 1.103–14 (relating to the expenditure test) must be satisfied. See paragraph (b)(5) (ii) and (iii) of this section for rules regarding refunding proceeds, and see paragraph (b)(5)(iv) of this section for rules regarding an over-issuance of obligations.

(ii) In the case of a refunding issue, the rules of paragraph (b)(5)(iii) of this section apply to such issue in lieu of the provisions of paragraph (b)(5)(i) and (e)(1)(ii) of this section. The term "refunding issue" is defined in § 1.103–14(e)(2)(i).

(iii) (A) Prior to the date on which the last obligation of the prior issue (as defined in § 1.103–14(e)(2)(i)) is discharged, the yield produced by acquired obligations allocated to the proceeds (other than transferred proceeds as defined in § 1.103–14(e)(2)(ii)) of the refunding issue is materially higher than the yield produced by such issue if the yield on such acquired obligations is higher than—

$$Y+[(\$25{,}000\times Y)\div P]$$

where—

(1) "Y" stands for the yield on the issue, and

(2) "P" stands for the amount of the original proceeds of the issue.

(B) The rules of paragraph (b)(5)(i) of this section apply to the yield produced by acquired obligations allocated to *(1)* transferred proceeds and *(2)* on or after the date on which the last obligation of the prior issue is discharged, other proceeds of the refunding issue. The determination as to whether the yield on acquired obligations allocated to transferred proceeds is materially higher shall be made with reference to the yield on the refunding issue. The rules of paragraph (b)(5) (i)(B) and (iv) of this section and the rules of paragraph (e)(1)(ii) of this section shall apply to transferred proceeds if such rules applied to the prior issue.

(C) If a refunding issue refunds a prior issue that is a refunding issue, proceeds of the prior refunding issue that would be treated as transferred proceeds of the subsequent refunding issue under § 1.103–14(e)(2)(ii) shall not be treated as transferred proceeds prior to the date on which the last obligation of the issue which is not a refunding issue is discharged by the prior refunding issue or series of refunding issues. Rather, prior to that date, such proceeds shall be treated as proceeds of the subsequent refunding issue in applying this subdivision (iii). After such date, paragraph (b)(5)(iii)(B) applies to such proceeds.

(iv) If it is reasonably expected that the original proceeds of an issue will exceed the amount necessary for the governmental purpose or purposes of the issue by more than 5 percent of such amount, the rules of this subdivision shall apply in lieu of the provisions of paragraph (b)(5) (i) and (iii) of this section. Any portion of the issue issued solely for the purpose of investing such portion at a materially higher yield as less than a major portion is not issued for a governmental purpose. If there are two or more projects (within the meaning of § 1.103–14(b)(2)), such projects shall, for purposes of this subdivision, be deemed to be a single governmental purpose. The yield produced by acquired obligations acquired with the proceeds of such issue (including any acquired obligations held during the temporary periods described in § 1.103–14(b), any amounts invested in the reserve or replacement fund as defined in § 1.103–14(d), and any investments of less than a major portion of such proceeds as described in paragraph (b)(1) of this section) is materially higher than the yield produced by an issue of governmental obligations if the yield produced by the acquired obligations is higher than—

$$Y+[(\$5{,}000\times Y)\div P]$$

where—

(A) "Y" stands for the yield on the issue, and

(B) "P" stands for the amount of the original proceeds of the issue.

Nothing in this subdivision implies that a deliberate over-issuance of less than 5 percent will not be treated as an artifice or device (§ 1.103–13(j)).

(v) The following examples illustrate the application of paragraph (b)(5)(iv) of this section:

Example (1). On July 1, 1987, city A sells $10 million of 7-percent series A revenue bonds and $5 million of 4-percent series B special obligation bonds at par in the full cash defeasance of a prior issue. Assuming that under State law and the bond indenture the amount necessary to achieve the purpose of the refunding is only $10 million, paragraph (b)(5)(iv) of this section applies to both the series A and the series B issues.

Example (2). On July 1, 1988, city B sells $10 million of 7-percent revenue bonds at par. One and a half million dollars of the bond proceeds will be placed in a debt service reserve fund and invested for 25 years in Treasury bonds at a yield of 8½ percent. Assume that a reserve fund of no more than $800,000 is reasonably required for the revenue bonds. Based on these facts, paragraph (b)(5)(iv) of this section applies to the revenue bonds. Therefore, the revenue bonds are arbitrage bonds.

Example (3). On July 1, 1988, city C has outstanding $20 million of revenue bonds. In addition, city C has accumulated $15 million in a sinking fund for the revenue bonds. Assume that city C sells approximately $23 million of refunding bonds at par, defeasing the prior issue and freeing the sinking fund from any lien. The $15 million held in the sinking fund will continue to be invested in long-term Treasury bonds. Of the proceeds of the refunding issue, $20 million will be used to call the revenue bonds at par and $3 million will be used to establish a reserve of $3 million. Based on these facts, paragraph (b)(5)(iv) of this section applies to the

refunding issue. The amount necessary to call the outstanding revenue bonds is only $5 million (i.e., $20 million less the $15 million held in the sinking fund). Thus, at least $15 million of the proceeds of the refunding issue will not be needed for any governmental purpose.

(vi) Except as provided in subdivision (viii) of this subparagraph (and despite anything in § 1.103–13 (b) or (e) to the contrary), § 1.103–13(b)(5)(vii) applies to any acquired obligation that is allocated to amounts treated as proceeds under § 1.103–13(g) (relating to invested sinking funds).

(vii) Materially higher than the yield on an issue means higher than—

$$Y+[(\$5{,}000\times Y)\div F]$$

where—

(A) "Y" stands for the yield on the issue, and

(B) "F" stands for the maximum amount that will be accumulated in a sinking fund (or funds) for the issue.

(viii) The yield on an acquired program obligation is materially higher than the yield on an issue if the yield on the acquired program obligation exceeds—

(A) The yield on the issue, plus

(B) One and a half percentage points.

(ix) In lieu of the amount described in § 1.103–13(b)(5)(viii)(B), the issuer may substitute such larger amount as is necessary to pay expenses (including losses resulting from bad debts) reasonably expected to be incurred as a direct result of administering the program to the extent that such amounts are not payable with funds appropriated from other sources.

(6) *Date of issue.* The date of issue of an obligation is the date on which there is a physical delivery of the evidences of indebtedness in exchange for the amount of the issue price. For example, obligations are issued when the issuer physically exchanges the obligations for the underwriter's (or other purchaser's) check.

(7) *Term of an issue.* The term of an issue is the period beginning on the date of issue and ending on the latest maturity date of any obligation of the issue without regard to optional redemption dates.

(8) *Bond indentures and related documents.* The term "bond indenture" includes a bond resolution or ordinance. With respect to a bond indenture, the term "related documents" includes, for example, a trust agreement, a prospectus, or a transcript of proceedings and accompanying certificates.

(9) *Multipurpose issues.* (i) In the case of an issue of governmental obligations—

(A) Issued to finance two or more projects with respect to which the temporary periods provided in paragraph (b) (1) or (5) of § 1.103–14 are different (including different temporary periods resulting from an election under paragraph (b)(5)(i)(B) of this section), or

(B) Part of the proceeds of which are used for refunding to which the rules of paragraph (e) of § 1.103–14 apply or for a governmental program to which the rules of paragraph (h) of this section apply,

the portion of the proceeds of such governmental obligations to be used to finance project having different temporary periods or to be used partly for refunding or partly for a governmental program shall be treated as separate issues of governmental obligations for purposes of determining the temporary period requirements, the reasonably required reserve or replacement fund, the application of the major portion test, and the application of § 1.103–15 (relating to excess proceeds) with respect to each such separate issue.

(ii) For purposes of this section and for purposes of § 1.103–14, the term "project" means any governmental purpose financed by the issue of governmental obligations. Such purpose does not include the investment of the proceeds of such issue in acquired nonpurpose obligations.

(10) *Issue.* (i) Two or more obligations are part of the same "issue" if the obligations—

(A) Are issued at substantially the same time,

(B) Are sold pursuant to a common plan of financing, and

(C) Will be paid out of substantially the same source of funds (or will have substantially the same claim to be paid out of substantially the same source of funds).

All other facts such as whether the obligations are offered by the same official statement or are sold under the same indenture) are irrelevant for purposes of this subparagraph.

(ii) The following examples illustrate the application of this subparagraph:

Example (1). On January 1, 1980, city T issues $10,000,000 of series A revenue bonds and on January 7, 1980, city T issues $5,000,000 of series B revenue bonds. The series A and series B bonds are sold pursuant to a common plan of financing and both will be paid solely out of revenues of the city T water works. Based on these facts, the series A and series B bonds are all part of one issue.

Example (2). The facts are the same as in example (1), except that the series B bonds are special obligation bonds and will be paid out of interest on Treasury obligations. Because the series A and series B bonds will not be paid from the same source of funds, they are treated as separate issues.

(11) *Discharged.* An issue is "discharged" when cash is available on the date due (whether at maturity or upon prior call for redemption) at the place of payment and interest ceases to accrue on the issue.

(12) *Bona fide debt service fund.* (i) A bona fide debt service fund is a fund that is used primarily to achieve a proper matching of revenues and debt service within each bond year.

(ii) A bona fide debt service fund for a single issue must be depleted at least once a year except for a reasonable carryover amount (not to exceed the greater of (A) 1 year's earnings on the fund or (B) one-twelfth of annual debt service).

(iii) A bona fide debt service fund may be established for two or more issues, provided that the total amount in the fund at no time exceeds the total of the amounts that could be held in bona fide debt service funds established separately for each of the issues.

(c) *Computation of yield—*(1) *In general.* (i) Paragraph (c)(1)(iii) of this section provides rules to determine the yield on acquired nonpurpose obligations allocable to a refunding issue. Paragraph (c)(1)(ii) of this section provides rules to determine yield on governmental obligations and all other acquired obligations.

(ii) For purposes of this section and § 1.103–14, the term "yield" means that yield which when used in computing the present worth of all payments of principal and interest to be paid on the obligation produces an amount equal to the purchase price. The yield on both governmental obligations and acquired obligations shall be calculated by the use of the same frequency interval of compounding interest. Thus, for example, if the yield on the governmental obligations is determined on the basis of semiannual interest compounding, then the yield on acquired obligations acquired with the proceeds of such governmental obligations shall also be expressed in terms of semiannual interest compounding. In the case of governmental obligations, the computation must be made separately for each issue of obligations issued by a governmental unit, except that a single computation may be made for two or more issues if, before the issuance of the last issue, the issuer established to the satisfaction of the Commissioner that

the single computation will not distort yield or otherwise tend to defeat the purposes of section 103(c). In the case of acquired obligations, the computation shall be made separately with respect to each class of acquired obligations referred to in paragraph (b)(4)(iv) of this section allocated to an issue of governmental obligations. The yield produced by an acquired obligation which is a security may be computed by any method which is consistent with the principles of the actuarial method of computing yield. For purposes of such computations, securities held beyond the last expected maturity date of the governmental obligations shall be deemed to be sold on such maturity date. In cases where the issuer has no reasonable expectations as to the amount of principal to be repaid on an acquired security at the time that such security is sold, the amount of such principal shall be deemed to be the same as the fair market value of such security on the date of issue of the governmental obligations to which such security is allocated or, if later, the date on which such security is acquired. No yield computation need be made with respect to an acquired obligation while such obligation is held during the temporary period or periods referred to in paragraph (b) or (e) of § 1.103–14, since yield allocable to such temporary period or periods is disregarded in determining whether a governmental obligation is an arbitrage bond. However, in the case of an acquired obligation which is held during and after a temporary period, if the yield applicable to the temporary period exceeds the yield of a comparable obligation that could be acquired and held only during such temporary period, then the computation of yield on such acquired obligation must be made by taking into account the yield allocable to such temporary period or periods. No computation need be made with respect to acquired obligations which represent a reasonably required reserve or replacement fund under paragraph (d) or (e) of § 1.103–14 or represent investments of less than a major portion of the proceeds within the meaning of paragraph (b)(1) of this section or paragraph (e) of § 1.103–14. See paragraph (b)(5)(iv) of this section for rules regarding an over-issuance of obligations.

(iii) (A) In the case of acquired nonpurpose obligations (as defined in paragraph (b)(4)(iv)(B) of this section) allocable to a refunding issue, the term "yield" means the yield computed under paragraph (c)(1)(ii) of this section based on the market price of the acquired obligations as determined under this paragraph (c)(1)(iii). This paragraph (c)(1)(iii) applies to proceeds of the refunding issue during the period beginning on the date of issue and ending on the date the last obligation of the prior issue is discharged.

(B) The market price of an acquired obligation shall be the mean of the bid and offered prices on an established market where such obligation is traded on the date of issue of the refunding issue, or, if earlier, on the date of a binding contract to acquire such obligation, or if there are no bid and offered prices on such date, on the first day preceding such date for which there are bid and offiered prices. Any acquired obligation for which there is not an established market shall be treated as producing a yield materially higher than the yield of the refunding issue and will cause obligations of the refunding issue to be arbitrage bonds, unless no yield computation is necessary under paragraph (c)(1)(ii) of this section with respect to such acquired obligation. Any market especially established to provide an acquired obligation to an issuer of governmental obligations will not be treated as an established market. For example, if a person sell stripped coupon bonds to issuers of governmental obligations and there is not an established market for sales of such bonds to other persons, such sales will not establish a market. The mean market price may be determined by reference to any appropriate publication, such as, for example, "Composite Closing Quotations for United States Government Securities" published by the Federal Reserve Bank of New York. Where the price of an obligation is quoted on an established market in terms of yield, the market price shall be the price necessary to produce such yield using the method of computing yield under paragraph (c)(1)(ii) of this section (determined without regard to any administrative costs with respect to such obligation). The market price of an acquired obligation may be established by the borrowing practices of the issuer of the obligation, as, for example, by determining the market price based on the interest ordinarily paid by such issuer to persons other than governmental units with respect to obligations of comparable maturities. The market price of a time or demand deposit (other than a deposit acquired with transferred proceeds) shall be determined under the preceding sentence by taking into account the yield that would be paid by the obligor if the deposit were held as an interest bearing deposit for the expected period of the deposit, except that if the yield actually paid is higher than such yield the market price shall be the amount of the deposit. If the price paid for an obligation is lower than the mean market price, such lower price shall be the market price for purposes of this paragraph. If the price paid for an obligation is higher than the mean market price, such higher price may be used as the market price only if the obligation is acquired in an arm's length transaction without regard to any amount paid to reduce the yield on the obligation. For purposes of this paragraph, where a United States Treasury obligation is acquired directly from the United States Treasury, such acquisition shall be treated as establishing a market for such obligation and as establishing the market price of such obligation.

(C) The market price of a certificate of deposit issued by a commercial bank may be determined as the bona fide bid price quoted by a dealer who maintains an active secondary market in such certificates of deposit.

(iv) The rules in paragraph (c)(1)(iii) shall also apply to acquired obligations that are allocable to amounts treated as proceeds under paragraph (g) of this section.

(2) *Classes of acquired obligations.* The yield produced by a class of acquired obligations shall be computed as if all of the obligations of such class comprised a single issue of obligations, whether or not such obligations are to be acquired or held concurrently. Thus, for example, if an issuer uses the proceeds of an issue to acquire two blocks of nonpurpose obligations (such as, for example, Federal obligations) with different interest rates and maturity periods for each block, the yield on such acquired nonpurpose obligations shall be computed as if such issuer acquired one issue of obligations with different interest rates and maturity periods. The maturity period of each acquired obligation shall be the period that the State or local governmental unit will hold such obligation.

(3) *Student loans.* Payments made by the Commissioner of Education pursuant to section 127(a) of the Education Amendments of 1976 are not taken into account in determining yield on student loan notes.

(4) *Example.* The provisions of this paragraph may be illustrated by the following example:

Example. (i) On January 1, 1984, city A sells for a premium of $100,000 a 5-year $1 million obligation. City A will make semiannual interest payments beginning on July 1, 1984, of $26,425.68 and will make the $1 million principal payment on January 1, 1989. The proceeds of the issue are to be used for a municipal construction project, and city A reasonably expects on the date of issue that the project will be paid for by January 1, 1987. A portion of the proceeds of the issue are invested in a reasonably required reserve or replacement fund which will extend through the term of the issue. On January 1, 1984, $9,300 of the proceeds of the issue (other than the proceeds invested in the reasonably required reserve and replacement fund) are used to buy an acquired obligation which has a par value of $10,000 a stated interest rate of 4.7565 percent per annum, and a maturity date of January 1, 1989. Interest on the acquired obligation will be paid annually at the rate of $475.65. Interest on the acquired obligation will be used when received to pay construction expenses as received.

(ii) The yield on the governmental obligations is 5 percent and is computed as follows:

Date	Payments (interest and principal)	Present worth factor	Column (1) times column (2)
7-1-84	$26,425.68	$0.97560976	$25,787.44
1-1-85	26,425.68	0.95181440	24,670.68
7-1-85	26,425.68	0.92859941	23,665.05
1-1-86	26,425.68	0.90595064	23,000.05
7-1-86	26,425.68	0.88385429	23,165.17
1-1-87	26,425.68	0.86229657	21,459.62
7-1-87	26,425.68	0.84126984	20,843.69
1-1-88	26,425.68	0.82074457	20,698.42
7-1-88	26,425.68	0.80072639	20,167.24
1-1-89	26,425.68	0.78119649	20,485.84
1-1-89	1,000,000.00	0.78119649	781,196.49
Total			1,100,000.04

The present worth factor represents the present worth of a dollar payable at the specified future date based on an annual interest rate of 5 percent compounded semiannually.

(iii) The yield on the acquired obligation is 5.124257 percent and is computed as follows:

	Payments (interest and principal)	Present worth factor	Column (1) times column (2)
Year 1	$475.65	$0.9696819900	$462.37
Year 2	475.65	0.9037574700	430.06
	10,000.00	0.9037574700	9,037.57
Total			9,918.99

The present worth factor represents the present worth of a dollar payable at the specified future date based on an annual interest rate of 5.124257 percent compounded semiannually. Since the yield on the acquired obligation allocable to the temporary period does not exceed the current market true yield on a comparable acquired obligation held for a 3-year period, no yield computation need be made with respect to such acquired obligation while it is held during the 3-year temporary period. Thus, the yield is computed as though the obligation matured on January 1, 1988, and as though the obligation were purchased at a discount of $80 (two-fifths of the $200 discount on the obligation).

(5) *Certain administrative costs.* If acquired purpose obligations are allocable (under § 1.103–13(f)) to an issue, then the following rules apply:

(i) In determining the yield on the acquired purpose obligations, administrative costs paid by the obligor shall not be taken into account.

(ii) Subdivision (i) of this subparagraph applies whether or not the obligor's payments are made from bond proceeds and whether or not such payments merely reimburse the issuer. For this purpose, any payments made by the obligor may be treated as reimbursements of administrative costs, *provided* That the present value of such payments does not exceed the present value of administrative costs paid by the issuer.

(iii) In determining the present value of any payments or costs, the yield on the issue (as determined under § 1.103–13 (c) and (d)) shall be used as the discount rate.

(iv) For purposes of this subparagraph, the term "administrative costs" means—

(A) The cost of issuing, carrying, or repaying the issue,

(B) The underwriter's spread, and

(C) The cost of purchasing, carrying, and selling or redeeming acquired purpose obligations.

(6) *Monthly payments.* An issuer may treat regular monthly payments on an acquired purpose obligation as if they were received semiannually.

(7) *Examples.* The following examples illustrate the application of subparagraphs (5) and (6) of this paragraph:

Example (1). On January 1, 1988, authority A sells $1,050,000 of single-family housing bonds. The yield on the bonds is 7 percent (determined under § 1.103–13 (c) and (d) on the basis of semiannual compounding). Authority A uses the bond proceeds to make 50 identical 25-year mortgage loans of $20,000 each. The mortgage loans are acquired program obligations (within the meaning of § 1.103–13(h)). Authority A uses the remaining $50,000 of proceeds to cover the underwriter's spread and to pay other administrative costs on January 1, 1988. Under the terms of each mortgage loan, authority A will receive level monthly payments of $168.98. Of each payment, $161.87 will be denominated principal and interest, and the remaining $7.11 will be denominated a "finance fee." On January 1, 1988, the present value of all these finance fees (using a discount rate of 7 percent) is $50,000. Therefore, these fees merely reimburse authority A for $50,000 of administrative costs. Accordingly, the finance fees are not taken into account in determining the yield on the mortgage notes. Consequently, the yield on the mortgage notes (computed by treating monthly payments as received semiannually on January 1 and July 1 of each year) is only 8.5 percent. Under § 1.103–13(b)(5)(viii), this yield of 8.5 percent is not materially higher than the yield on the single-family housing bonds.

Example (2). The facts are the same as in example (1), except that the entire monthly payment of $168.98 on each mortgage note will be denominated principal and interest. Although the stated interest rate on the mortgage notes is 9.02 percent, the results are the same as in example (1). There is no requirement that reimbursement for administrative costs must be stated seperately as a finance fee; it may be included in interest.

(8) *Insurance.* (i) Premiums paid to insure a governmental issue are treated as interest paid on the issue, provided that the present value of the premiums is less than the present value of the interest reasonably expected to be saved as a result of the insurance.

(ii) In determining present value for purposes of this subparagraph, the yield on the governmental issue (determined

without regard to this subparagraph) shall be used as the discount rate.

(d) *Administrative costs and purchase price*—(1) *Treatment of administrative costs.* Despite anything in paragraph (c) to the contrary, administrative costs shall not be taken into account in determining yield on obligations.

(2) *Purchase price.* (i) If an issue of governmental obligations is sold to the public, the term "purchase price" means the initial offering price to the public (excluding bond houses, brokers, and other intermediaries).

(ii) If an issue of governmental obligations is privately placed, the purchase price of each obligation is the price paid by the first buyer of the obligation. For this purpose, the term "first buyer" does not include any bond house, broker, or other intermediary.

(iii) If the purchase price of an obligation is unreasonably low, then the yield on the obligation shall be determined as if its purchase price were equal to its fair market value on the date of issue.

(3) *Illustrations.* The following examples illustrate the application of this paragraph:

Example (1). On January 1, 1989, city A sells a $10 million issue of 10-year, 6-percent revenue bonds. The purchase price of the issue is $9,800,000. The yield on the revenue bonds is 6.27 percent. Administrative costs are not taken into account in determining yield.

Example (2). On January 1, 1990, city B sells $20 million of 5-percent general obligation bonds to underwriter X for $19,800,000. Underwriter X offers and sells the entire issue to the public at par. The purchase price of the issue is $20 million. The yield on the issue is 5 percent. The underwriter's spread is not taken into account in determining yield.

Example (3). On January 1, 1991, city C sells $12 million of revenue bonds and uses part of the proceeds to buy a 6-percent Treasury note at par. The yield on the Treasury note is 6 percent. Administrative costs are not taken into account in determining yield.

(e) *Exempt abritrage bonds for personnel of educational institutions*—(1) *In general.* Under section 103(c)(3), except as provided in subparagraph (3) of this paragraph, interest paid on an issue of arbitrage bonds is not includible in gross income if—

(i) The bonds are issued as part of an issue 90 percent of the proceeds of which are used to provide permanent financing for real property occupied or to be occupied for residential purposes by the personnel of an educational institution (within the meaning of section 170(b)(1)(A)(ii)) which grants baccalaureate or higher degrees or to replace funds which are so used, and

(ii) The yield on the bonds (computed in accordance with paragraphs (c) and (d) of this section) is not more than 1 percentage point lower than the yield on obligations acquired in providing such financing.

(2) *Other definitions.* The following definitions shall apply for purposes of this paragraph:

(i) The term "real property" means land or improvements thereon, such as buildings or other inherently permanent structures thereon (including items which are structural components of such buildings or structures). In addition, the term "real property" includes interests in real property. Local law definitions will not be controlling for purposes of determining the meaning of the term "real property" as used in section 103(c)(3) and this paragraph. The term includes items which are structural components of a building such as the wiring, plumbing systems, central heating or central air-conditioning machinery, pipes or ducts, and elevators or escalators installed in the building. The term also includes built-in air conditioners, stoves, refrigerators, and dishwashers, but does not include any other equipment or accessories which are not structural components of the building.

(ii) The term "personnel of an educational institution" means the personnel who are employed by the institution on a full-time basis for at least one semester even if such persons are also enrolled for a degree and take courses. The determination whether a person is employed on a full-time basis depends upon the customary practice of the educational institution.

(3) *Obligations held by substantial users or related persons.* Subparagraph (1) of this paragraph shall not apply to any bond for any period during which it is held by a person who is a substantial user of the real property financed by the proceeds of the issue of which it is a part or by a member of the family (within the meaning of section 318(a)(1)) of any such person. A person is a substantial user of such real property if he occupies such property for any period in excess of 3 months.

(f) *Allocations of investments and expenditures*—(1) *In general.* A State or local governmental unit shall allocate the cost of its acquired obligations to the unspent proceeds of each issue of governmental obligations issued by such unit. Unspent proceeds of an issue are the proceeds of such issue minus expenditures made with such proceeds other than amounts expended on acquired purpose or nonpurpose obligations. In cases where any such expenditure is made from the proceeds of several issues of governmental obligations or from several types of proceeds, such expenditure shall be allocated among such proceeds. Allocations under this paragraph may be made at any time and under any reasonable method chosen by the State or local governmental unit, provided that the method of allocation satisfies the requirements in subparagraph (4) of this paragraph.

(2) *Repayments of principal.* Repayments of principal on acquired obligations are a reduction in the allocable cost of such acquired obligations. Repayments of principal on acquired purpose obligations are a reduction in the amount of unspent proceeds to which such principal was allocated.

(3) *Time or demand deposits.* The cost of a time or demand deposit may be allocated to the proceeds of an issue of governmental obligations to the extent that such time or demand deposits are maintained for the purposes for which the proceeds of such governmental obligations may be expended (including as a purpose any investments in a reserve or replacement fund). Thus, for example, if authority A, having one issue of governmental obligations outstanding, has a checking account which on January 1, 1984, reflects a balance of $500,000, and if such authority's records show that $200,000 of such balance are proceeds of an outstanding issue of governmental obligations which are to be used to pay construction costs on the project financed with the proceeds of such issue, then authority A may allocate $200,000 of such account to the outstanding issue of governmental obligations.

(4) *Requirements.* (i) All allocations made under this paragraph must be consistent with one another.

(ii) Obligations purchased with the original proceeds of a refunding issue must be allocated to such proceeds.

(iii) Obligations not purchased with original proceeds of a refunding issue may not be allocated to such proceeds.

(iv) Obligations purchased with amounts treated as proceeds under § 1.103–13(g) (relating to invested sinking funds) must be allocated to such amounts.

(v) If any obligation is allocated to two or more sources of funds, each receipt of principal or interest on the obligation must be allocated ratably among the several sources of funds. (See

examples (4) and (5) of subparagraph (5) of this paragraph.)

(5) *Examples.* The following examples illustrate the application of this paragraph.

Example (1). On January 1, 1984, authority B issues a $10 million government obligation at a premium of $500,000 for the purpose of purchasing home loans. Authority B expects that prior to September 1, 1984, it will have expenditures and receipts with respect to the issue as follows:

Date	Expenditure	Receipt	Explanation
1-1-84	$50,000		Issuing expenses.
2-1-84	1,000,000		Treasury obligations.
3-1-84	8,000,000		Housing loans.
6-1-84	500,000		Debt service paid with bond proceeds.
6-1-84		$250,000	Interest on Treasury obligations.
8-1-84		50,000	Repayment of principal on Treasury obligation.
9-1-84		225,000	Interest on loans.
9-1-84		10,000	Repayment of principal on housing loans.

When computing the allocable proceeds of the issue as of September 1, 1984, authority B expects to reduce the $10,500,000 original proceeds by the following amounts:

Issuing expenses	$50,000
Debt service	500,000
Repayment of principal on housing loans	10,000
Total	560,000

The following receipts result in an increase in allocable proceeds:

Interest on Treasury obligations	$250,000
Interest on loans	200,000
Total	450,000

Thus, the $10,500,000 original proceeds will be decreased as of September 1, 1984, by a net amount of $340,000, and on such date the amount of allocable proceeds is $10,160,000. The investment in housing loans and Treasury obligations does not decrease unspent proceeds since the investment is for acquired purpose and acquired nonpurpose obligations. The repayment of principal on the Treasury obligations does not increase unspent proceeds. The repayment of principal on the housing loans reduces the amount of unspent proceeds. The repayments of principal on the housing loans and the Treasury obligations reduce the allocable cost of the acquired obligations. Thus, on September 1, 1984, authority B will have $950,000 in Treasury obligations and $7,990,000 in housing loans which may be allocated to the unspent proceeds of the governmental obligations.

Example (2). On January 1, 1984, city C issues a 10-year 5 million dollar revenue bond issue with a yield of 8 percent for the purpose of constructing a revenue producing facility. City C expects to receive, by January 1, 1988, proceeds from the issue as follows:

Proceeds from bond sales	$5,000,000
Investment proceeds	800,000
Total	5,800,000

The city expects expenditures, by January 1, 1988, with regard to the issue as follows:

Issuing expenses	$25,000
Construction expenses	3,750,000
Debt service paid with bond proceeds	250,000
Total qualifying expenditures	4,025,000
Debt service paid with revenues	800,000

On January 1, 1988, city C has $1,475,000 in proceeds which have not been expended on either the project or debt service. (The debt service paid with revenues was not paid with proceeds of the issue and thus does not decrease proceeds.) On January 1, 1988, city C has a reserve or replacement fund for this issue (as described in § 1.103–14(d)) in the amount of $750,000. Also, $50,000 of the investment proceeds are invested for a temporary period (as described in § 1.103–14(b)(6)). As of January 1, 1988, the city may allocate to the proceeds of the issue $675,000 in acquired obligations which do not have a materially higher yield. Furthermore, the city may allocate to the proceeds of the issue $800,000 in acquired obligations with a materially higher yield.

Example (3). On January 1, 1981, city C expects that on January 1, 1988, its records will show the following information regarding the city's outstanding issues of governmental obligations, including the issue of obligations described in example (2):

Governmental Obligations

Date of issue	Yield	Proceeds which may be used to acquire materially higher yield acquired obligations	Proceeds which may be used to acquire obligations which do not have a materially higher yield
3-5-65	4.2		
12-12-79	7.7		
6-6-80	6.1	$475,000	$625,000
6-10-81	5.3	850,000	1,250,000
1-1-84	8.0	800,000	675,000
Total		2,225,000	2,450,000

Assume that the issue of December 13, 1979, is an issue of taxable industrial development bonds. City C may allocate its acquired obligations using any method it chooses. For January 1, 1988, city C chooses to allocate its acquired obligations as follows:

Acquired Obligations

Yield	Cost of acquired obligations	Allocated to issue of May 6, 1980	Allocated to issue of June 10, 1981	Allocated to issue of Jan. 1, 1984
8.0	$2,700,000			
4.0	300,000			$300,000
9	250,000	$250,000		
7.5	1,600,000	275,000		
5.0	1,000,000		$1,000,000	
6.9	500,000		300,000	175,000
7.0	125,000			
Total	5,875,000	525,000	1,300,000	675,000

City C also allocates $2,225,000 of acquired obligations to the $2,225,000 in proceeds of issues which may be used to acquire materially higher yield acquired obligations. The $250,000 acquired obligation allocated to the May 6, 1980, issue is a noninterest bearing cash deposit which the city maintains as a replacement fund for the project which was constructed with the proceeds of that issue. It is unnecessary to make any further allocations because the obligations issued on March 5, 1965, are not subject to the provisions of section 103(c), since they were not issued after October 9, 1969, and the obligations issued December 13, 1979, are taxable industrial development bonds.

Example (4). On February 1, 1980, county T issues series A revenue bonds and series B special obligation bonds in the full cash defeasance of a prior issue. $40,000 of proceeds of the series A issue and $60,000 of proceeds of the series B issue are used together to purchase an acquired obligation. County T allocates interest with a present value of $60,000 to the series B issue and the remaining interest and principal to the Series A issue. This allocation is improper. Instead, county T must allocate 40 percent of each payment of principal or interest on the acquired obligation to the series A issue and 60 percent of each such payment to the series B issue; no other allocation is permitted.

Example (5). On February 1, 1980, city A issues $10 million of revenue bonds for the purpose of constructing a water treatment facility. On the same day, city A purchases an acquired obligation for $1 million. Two hundred thousand dollars of the acquired obligation is allocated to proceeds of the revenue bonds that are held in a reserve fund and invested at an unrestricted yield (see § 1.103–14(d)). $700,000 of the acquired obligation is allocated to proceeds of the revenue bonds that are invested at a restricted yield, and the remaining $100,000 is allocated to other funds (which are not proceeds of the revenue bonds). Of each payment of principal and interest on the acquired obligation, city A must allocate 20 percent to the bond proceeds that are invested at an unrestricted yield, 70 percent to the bond proceeds that are invested at a restricted yield, and 10 percent to the other funds.

(g) *Invested sinking funds*—(1) *In general.* Amounts held in a sinking fund for an issue (and receipts from investment of the sinking fund) are treated as proceeds of the issue.

(2) *Sinking fund.* The term "sinking fund" includes a debt service fund, redemption fund, reserve fund, replacement fund, or any similar fund, to the extent that the issuer reasonably expects to use the fund to pay principal or interest on the issue.

(3) *Withdrawals.* Amounts withdrawn from a sinking fund are not treated as proceeds under this paragraph after they are withdrawn.

(4) *Prior issue.* Original proceeds, investment proceeds, and transferred proceeds of a prior issue are not treated as proceeds of a refunding issue under this paragraph. See, however, § 1.103–14(e)(2)(ii) for rules relating to transferred proceeds.

(5) *Other proceeds.* Amounts treated as proceeds of an issue under § 1.103–13(b)(2) (relating to original proceeds and investment proceeds) are not treated as proceeds of the issue under this paragraph.

(6) *Allocation.* A sinking fund for two or more issues must be allocated between the issues either—

(i) In proportion to their original face amounts, or

(ii) According to the total amount of debt service on the issues that will actually be paid from the sinking fund.

(7) *Illustrations.* The following examples illustrate the application of this paragraph:

Example (1). On January 1, 1989, city A sells $8 million of general obligation bonds at par. All the proceeds of the general obligation bonds will be spent before January 1, 1990, to build a new library. Beginning on January 1, 1990, city A will make periodic deposits into a sinking fund for the general obligation bonds. The amount held in the sinking fund will increase until it equals $8 million on January 1, 2016, and then it will be used to retire all of the outstanding general obligation bonds. The first $1.2 million (i.e., .15×$8 million) accumulated in the sinking fund may be invested at an unrestricted yield pursuant to § 1.103–13(b)(1)(ii) (relating to the major portion test). Except as provided in § 1.103–14(d) (relating to temporary periods), none of the remainder may be invested at a yield that is materially higher (within the meaning of § 1.103–13(b)(5)(vii)) than the yield on the general obligation bonds.

Example (2). The facts are the same as in example (1). In addition, city A establishes a bona fide debt service fund for the general obligation bonds. No amounts are held in the debt service fund longer than 13 months. The result is the same as in example (1).

(h) *Acquired program obligations*—(1) *General rule.* The term "acquired program obligations" means acquired purpose obligations that carry out the purpose of a governmental program described in subparagraph (2) of this paragraph.

(2) *Governmental programs.* A governmental program is described in this subparagraph if—

(i) The program involves the acquisition of acquired purpose obligations;

(ii) At least 90 percent of all such obligations acquired under the program, by amount of cost outstanding, are evidences of loans to a substantial number of persons representing the general public, loans to exempt persons within the meaning of section 103(b)(3), loans to provide housing and related facilities, or any combination of the foregoing;

(iii) At least 90 percent of all of the amounts received by the governmental unit with respect to obligations acquired under the program shall be used for one or more of the following purposes: To pay the principal or interest or otherwise to service the debt on governmental obligations relating to the governmental program; to reimburse the governmental unit, or to pay, for administrative costs of issuing such governmental obligations; to reimburse the governmental unit, or to pay, for administrative and other costs and anticipated future losses directly related to the program financed by such governmental obligations; to make additional loans for the same general purposes specified in such program; or to redeem and retire governmental obligations at the next earliest possible date of redemption; and

(iv) The program documents require that any person (or any related person, as defined in section 103(b)(6)(C)) from whom the governmental unit may, under the program, acquire obligations shall not, pursuant to an arrangement, formal or informal, purchase the governmental obligations in an amount related to the amount of the obligations to be acquired under the program from such person by the governmental unit.

(3) *Examples.* The following examples illustrate governmental programs described in subparagraph (2) of this paragraph:

Example (1). State A issues obligations the proceeds of which are to be used to purchase certain home mortgage notes from commercial banks. The purpose of the governmental program is to encourage the construction of low income residential housing by creating a secondary market for mortgage notes and thereby increasing the availability of mortgage money for low income housing. Amounts received as interest and principal payments on the mortgage notes are to be used for one or more of the following purposes: (1) To service the debt on the governmental obligations, (2) to retire such obligations at their earliest possible date of redemption, and (3) to purchase additional mortgage notes. The governmental program is one which is described in subparagraph (2) of this paragraph.

Example (2). State B issues obligations the proceeds of which are to be used to make loans directly to students and to purchase from commercial banks promissory notes made by students as the result of loans made to them by such banks. The legislation authorizing the student loan program provides that the purpose of the program is to enable financially disadvantaged students to

continue their studies. The legislation also provides that purchases will be made from banks only where such banks agree that an amount at least equal to the purchase price will be devoted to new or additional student loans. The governmental program is one which is described in subparagraph (2) of this paragraph.

Example (3). Authority C issues obligations the proceeds of which are to be used to purchase land to be sold to veterans. The governmental unit will receive purchase-money mortgage notes secured by mortgages on the land from the veterans in return for such land. The purpose of the program is to enable veterans to acquire land at reduced cost. Amounts received as interest and principal payments on the mortgage notes are to be used for one or more of the following purposes: (1) To pay the administrative costs directly related to the program, (2) to service the debt on the governmental obligations, (3) to retire such governmental obligations at their earliest possible call date, and (4) to purchase additional land to be sold to veterans. The governmental program is one which is described in subparagraph (2) of this paragraph.

(i) [Reserved.]

(j) *Artifice or device.* If an artifice or device is employed in connection with the issuance of a governmental obligation, such obligation will be considered an arbitrage bond within the meaning of section 103(c)(2). For purposes of this section, the term "artifice or device" means a transaction or series of transactions that attempts to circumvent the provisions of section 103 (c), this section, § 1.103–14, or § 1.103–15—

(1) Enabling the issuer to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage, and

(2) Increasing the burden on the market for tax-exempt obligations.

Examples of increased burdens on the market for tax-exempt obligations include selling obligations that would not otherwise be sold, selling more obligations than would otherwise be necessary, and issuing obligations sooner or allowing them to remain outstanding longer than would otherwise be necessary. In no case shall it be considered an artifice or device to invest bond proceeds (or amounts treated as bond proceeds) at a materially higher yield if specifically provided for in section 103(c)(4). The provisions of this paragraph may be illustrated by the following examples:

Example (1). Authority E decides to refund certain revenue bonds. However, E intentionally delays the issuance of the refunding bonds until 2 years before the call date of the refunded bonds in order to take advantage of the 2-year temporary period provided by § 1.103–14(e)(3)(ii)(B). The ability of authority E to invest proceeds of the refunding issue at a materially higher yield during the temporary period makes this refunding more attractive than would be the case if such investment were not permitted. Authority E's decision to delay the issuance of the refunding bonds to take advantage of this temporary period is not an artifice or device within the meaning of this paragraph because investment of bond proceeds at a materially higher yield during a temporary period is specifically provided for in section 103(c)(4). In addition, the purpose of the temporary period in § 1.103–14(e)(3)(ii)(B) is to encourage issuers to delay advance refundings until later in the term of the prior issue.

Example (2). On January 1, 1981, authority K sells $1 million of 40-year industrial development bonds at par. The proceeds of the industrial development bonds will be needed to make a $1 million loan to corporation X for 5 years. When the principal of the loan is repaid on January 1, 1986, authority K will invest this sum in Treasury bonds at a yield that is materially higher than the yield on the industrial development bonds. By selling bonds with a term that is 35 years longer than necessary, authority K has attempted to use an artifice or device to defeat the purpose of section 103(c).

Example (3). On January 1, 1981, city L sells $10 million of tax anticipation notes. For purposes of determining the cumulative cash flow deficit on January 1, 1982, city L assumes that the amount of its anticipated expenditures for the month of January 1982 is reasonably required as a cash balance. See § 1.103–14(c)(2). City L conducts no investigation into its actual cash balance requirements. Therefore, city L is unable to ascertain whether 1 month's expenditures is, in fact, a reasonable balance. City L has not used an artifice or device in connection with the tax anticipation notes. The purpose of the 1-month figure in § 1.103–14(c)(2)(ii) is to eliminate the need for city L to conduct an investigation of its cash balance requirements.

Example (4). On January 1, 1983, city M sells $10 million of 8-percent refunding bonds. The proceeds of the refunding bonds will be held in escrow until they are used to pay principal and interest on a 3-percent prior issue. Although the prior issue is callable at par, it will be left outstanding until maturity. Moreover, amounts held in the escrow will be invested at a yield of 5 percent. Based on these facts, city M has not used an artifice or device. It has allowed the 3-percent prior issue to remain outstanding merely because it would be unwise to buy back the prior issue at par. Further, city M does not stand to make any profit by exploiting the difference between taxable and tax-exempt interest rates.

§ 1.103–14 Temporary investments, reserve funds, and refunding issues.

(a) *Temporary investments*—(1) *In general.* Under section 103(c)(4)(A), an obligation shall not be treated as an arbitrage bond solely by reason of the fact that all or a portion of the proceeds of the issue of which such obligation is a part may be invested in materially higher yield acquired obligations for a temporary period until such time as such proceeds are used for the purpose for which such obligations were issued. Thus, the investment for such temporary period of the proceeds of an issue of governmental obligations in acquired obligations which produce a yield materially higher than the yield produced by such issue of governmental obligations will not cause such governmental obligations to be treated as arbitrage bonds. See paragraph (d) of this section for rules with respect to a reasonably required reserve, and see § 1.103–13(b)(1) for rules relating to the major portion test.

(2) *Multipurpose issues.* See § 1.103–13(b)(9) for rules regarding application of the temporary period requirements to an issue which finances two or more projects with different temporary periods.

(b) *Temporary period.*—(1) *In general.* Original proceeds and investment proceeds of an issue of governmental obligations that are invested in acquired obligations during a 3-year period (or the period determined under paragraph (b)(5) of this section) beginning on the date of issue are invested for a temporary period if the requirements of paragraph (b) (2), (3), and (4) of this section are satisfied. See paragraph (b)(8) for the temporary period relating to investment proceeds. This paragraph (b) does not apply in the case of an issue of obligations issued in anticipation of taxes or other revenues. See paragraph (c) of this section for rules relating to temporary periods for tax and other revenue anticipation notes.

(2) *Expenditure test.*—(i) An amount equal to 85 percent of spendable proceeds must be expended on the project or projects by the end of the period described in paragraph (b)(1) of this section which applies to the issue.

(ii) In the case of an election under § 1.103–13(b)(5)(i)(B) (relating to materially higher), 85 percent of spendable proceeds must be expended on the project or projects by the end of the 3-year period beginning on the date of issue and an amount equal to 95 percent of spendable proceeds must be expended on the project or projects by the end of the 4-year period beginning on the date of issue.

(iii) The term "spendable proceeds" means, in respect of an issue of governmental obligations, the original proceeds described in paragraph (b)(2)(i) of § 1.103–13 minus the sum of (A) the amount of any reasonably required reserve or replacement fund for the issue (within the meaning of paragraph

(d) of this section), (B) the excess of the amount of any original proceeds which, if invested, would be treated as less than a major portion of the proceeds (within the meaning of paragraph (b)(1) of § 1.103–13) over the amount determined under paragraph (b)(2)(iii)(A) of this section, and (C) the amount of any original proceeds expended within the temporary period (or the periods described in paragraph (b)(2)(ii) of this section) in payment of the debt service (i.e., principal, interest, or both) on such issue of governmental obligations to the holders of such obligations (as contrasted to a sinking fund payment).

(3) *Time test.* (i) Within 6 months after the date of issue of the governmental obligations, the State or local govenmental unit must incur a substantial binding obligation to commence or acquire the project or projects, whether or not identified on the date of issue, to be financed by the issue. If, however, there are good business reasons, other than arbitrage profit, for the issuer to delay incurring such substantial binding obligation, then the issuer may have a longer period, not to exceed a 1–year period from the date on which such govenmental obligations are issued.

(ii) A substantial binding obligation to commence exists on the date on which the issuer incurs a binding obligation to a third party involving a substantial expenditure for some part of the project, such as, for example, architectural or engineering services, land acquisition, site development, construction materials, or the purchase of equipment for the project, or, in the case of services, commits itself to make an equivalent expenditure for similar services by employees of the issuer.

(iii) A contract or commitment for services which otherwise meets the requirements of this subparagraph shall be considered binding notwithstanding that it is to be performed in several stages, each subsequent stage being conditioned on a new clearance.

(iv) The obligation may be binding by law or by custom and usage. Further, it may be subject to contingencies, provided that the contingencies are not within the issuer's control.

(v) A binding obligation to expend the lesser of (A) an amount equal to 2½ percent of that portion of the estimated total project cost financed by the issue of governmental obligations and by prior issues or (B) $100,000, shall be substantial.

(4) *Due diligence test.* After a substantial binding obligation to acquire or commence the project or projects is incurred (as described in paragrah (b)(3) of this section), work on or acquisition of the project or projects must proceed with due diligence to completion.

(5) *Exception.* (i) If investments of proceeds do not qualify as investments for a temporary period because the requirement of paragraph (b)(2)(i) of this section (relating to the expenditure test) is not satisfied, such investments shall nevertheless be considered to be for a temporary period if prior to the issuance of the governmental obligations the issuer demonstrates to the satisfaction of the Commissioner that, on the basis of facts, estimates, and circumstances in existence on the date of such issue, a longer temporary period is necessary.

(ii) In the case of an issue of governmental obligations issued to finance a construction project, if investments of proceeds do not qualify as investments for a temporary period because the requirement of paragraph (b)(2)(i) of this section (relating to the expenditure test) is not satisfied, such investments shall nevertheless be considered to be for a temporary period if the issuer certifies under § 1.103–13(a)(2)(ii) that on the basis of the facts, estimates, and circumstances in existence on the date of issue, a longer temporary period not exceeding a 5-year period beginning on the date of issue is necessary.

(6) *Investment proceeds.* Investment proceeds of an issue of governmental obligations that are invested during the period described in paragraph (b)(1) of this section during a 1-year period beginning on the date of the receipt of such investment proceeds are invested for a temporary period.

(7) *Replacement issue.* (i) In the case of a replacement issue of obligations (as defined in paragraph (b)(7)(ii) of this section) that replaces an earlier issue of obligations of the issuer, the period described in paragraph (b)(1) of this section for the replacement issue shall be reduced by a period equal to the period during which the obligations of the earlier issue were outstanding. See paragraph (e)(3) of this section for rules relating to temporary period for a refunding issue.

(ii) The term "replacement issue of obligations" means any obligations which are issued after the retirement of all or a portion of an earlier issue of obligations if the proceeds of such subsequently issued obligations—

(A) Are used to replace any proceeds of such earlier issue (or of such retired portion) which were not expended on the project for which such earlier issue was issued, and

(B) Are use for substantially the same project as was intended for such replaced and unexpended proceeds.

(8) *Invested sinking funds.* Thirty days is the temporary period for amounts treated as proceeds of an issue because they are accumulated in a sinking fund for the issue (see § 1.103–13(g)). The temporary period begins on the date of accumulation.

(9) *Interest.* Despite subparagraph (8) of this paragraph, one year is the temporary period for amounts received from investment of a sinking fund.

(10) *Debt service fund.* (i) Despite subparagraphs (8) and (9) of this paragraph, 13 months is the temporary period for amounts contributed to a bona fide debt service fund (as defined in § 1.103–13(b)(12)).

(ii) If a portion (but not all) of a fund satisfies the requirement of bona fide debt service fund, then that portion is allowed a 13-month temporary period under this subparagraph. However, the remainder of the fund is not allowed the 13-month temporary period. Thus, for example, assume that a single fund serves both as a bona fide debt service fund and as a reserve fund. The portion of the fund that serves as a bona fide debt service fund is allowed a 13-month temporary period under this subparagraph. However, the remainder of the fund is not allowed a temporary period of 13 months. If this subdivision applies, then the requirement for annual depletion in §1.103–13(b)(12) applies only to the portion of the fund that constitutes a bona fide debt service fund.

(11) *Revolving fund.* (i) The term "revolving fund" means a fund—

(A) That consists of receipts from the sale of property acquired with bond proceeds and payments of principal on acquired program obligations; and

(B) (*1*) That will be used for the acquisition of additional property or acquired program obligations, or

(*2*) Whose governing instrument requires the acquisition of additional property or acquired program obligations to the extent that suitable property or obligations are reasonably available.

(ii) For purposes of this subparagraph, the term "property" does not include securities (within the meaning of section 165(g)(2) (A) or (B)) or obligations (other than obligations described in section 103(a) (1) or (2)).

(iii) Despite subparagraphs (8) to (10) of this paragraph, the temporary period for amounts deposited in a revolving fund is 3 years from the date of deposit.

(12) *Certain new money issues.* (i) In addition to the other temporary periods

allowed by this paragraph, a sinking fund for an issue shall have a temporary period that—

(A) Begins on the date of issue, and

(B) Ends on the first call date (but not more than 10 years after the date of issue).

(ii) This subparagraph does not apply to an issue unless the issuer makes a reasonable effort to schedule payment of as much debt service as is practicable in each year before the first call date. Thus, nothing in this subparagraph implies that the use of a sinking fund to postpone the maturity of bonds will not be treated as an artifice or device under § 1.103–13(j). On the other hand, use of the temporary period allowed by this subparagraph is not, in and of itself, an artifice or device.

(iii) This subparagraph does not apply to a refunding issue unless the prior issue had a term of less than 3 years and was issued in anticipation of permanent financing.

(iv) Despite subdivision (iii) of this subparagraph, the term of the prior issue may be longer than 3 years if the issuer demonstrates to the satisfaction of the Commissioner, prior to the issuance of the permanent financing, that a longer period of time was necessary.

(v) If this subparagraph applies to a refunding issue, then the 10-year limit in subdivision (i)(B) shall be reduced by the term of the prior issue.

(vi) The following example illustrates the application of this subparagraph:

Example. On January 1, 1980, housing authority A issues $4 million of bond anticipation notes. The bond anticipation notes have a term of 5 years. On January 1, 1980, authority A reasonably expects to roll the notes over into permanent financing within 3 years. However, due to unexpected difficulties, authority A is unable to issue permanent financing until July 1, 1984. Assume that, prior to July 1, 1984, authority A demonstrates to the satisfaction of the Commissioner that a term of 4½ years was necessary for the temporary financing. Unless subdivision (ii) of this subparagraph applies, amounts accumulated in a sinking fund for the permanent financing will be allowed a temporary period beginning on July 1, 1984, and ending on the first call date. However, this temporary period may in no event exceed 5½ years (i.e., 10 years minus 4½ years).

(13) *Reserve or replacement funds.* (i) In addition to the other temporary periods allowed by this paragraph, where an issuer has applied for a ruling that a reserve or replacement fund is necessary under paragraph (d)(2) or (e)(5)(iii) of this section, any amount in excess of the amount provided in paragraph (d)(1) of this section shall have the temporary period allowed under subdivision (ii) of this subparagraph.

(ii) The excess amount described in subdivision (i) shall have a temporary period that—

(A) Begins on the date of issue, and

(B) Ends 30 days after the earlier of: (*1*) the date the ruling is issued (whether favorable or unfavorable), (*2*) the date the request for such ruling is withdrawn, or (*3*) the date such request is administratively closed by the Internal Revenue Service.

(iii) This subparagraph does not apply unless the ruling request is made at least two weeks prior to the issuance of the governmental obligations, is made in good faith, and satisfies the procedural requirements of § 601.201 (Statement of Procedural Rules).

(14) *Methods of accounting.* For purposes of this paragraph, the issuer may account for a sinking fund in any reasonable manner. Thus, for example, the issuer may use the first-in-first-out method or the last-in-first-out method. Further, if net revenues for any bond year equal or exceed debt service, then the issuer may assume that current debt service is paid entirely from current revenues.

(15) *Illustrations.* The following examples illustrate the application of this paragraph:

Example (1). (a) On September 1, 1980, city W sells a $2 million 20-year issue of 6-percent special assessment bonds. The original proceeds of the issue amount to $1,950,000. Of this amount, $60,000 will be used to make the first payment of interest, $140,000 will be deposited in a reasonably required reserve fund, and the remainder will be used to pave streets.

(b) Persons who own property in city W will be subject to a special assessment totaling $2 million. Each property owner will be required to pay his share of the special assessment in equal annual installments due on August 1 over the next 20 years. The special assessment may be prepaid at any time. However, if the special assessment is not prepaid, then the outstanding balance of the assessment will bear interest at 6 percent, due on August 1 of each year.

(c) $100,000 of the special assessment bonds will mature on September 1 of each year 1981 to 1990. In addition, $1 million of term bonds will mature on September 1, 2000. The term bonds are callable at par beginning on September 1, 1990.

(d) City W will accumulate prepayments of the special assessment in a sinking fund until September 1, 1990. At that time, all amounts in the sinking fund will be used to call term bonds due in the year 2000.

(e) Based on these facts, city W's sinking fund is allowed a 10-year temporary period that ends on September 1, 1990. See subparagraph (12).

(f) After September 1, 1990, the sinking fund will be mandatory in character. All amounts deposited in the sinking fund will be used to call term bonds on September 1 of each year. Therefore, the sinking fund will serve merely as means to match revenues and debt service. Accordingly, amounts deposited in the sinking fund after September 1, 1990, will be allowed a 13-month temporary period under subparagraph (10).

Example (2). On July 1, 1981, authority X sells a $3 million 20-year issue of 8-percent school bonds. Authority X uses the original proceeds of the issue to build a school building and leases the building to school district Y. School district Y has general taxing powers. Under the terms of the lease, school district Y is unconditionally obligated to pay $130,000 on January 1 and July 1 of each year 1982 to 2002. These payments will be sufficient to enable authority X to pay level debt service and retire the school bonds over 20 years. Nevertheless, authority X will not pay any principal on the school bonds until July 1, 1991. Instead, authority X will deposit the excess of rents over interest in a sinking fund until July 1, 1991. Based on these facts, authority X will not make a reasonable effort to pay principal on the school bonds before July 1, 1991. Therefore, rents deposited in the sinking fund will be allowed a temporary period of only 30 days.

(c) *Tax and other revenue anticipation notes*—(1) *In general.* In the case of an issue of obligations issued in anticipation of taxes or other revenues, proceeds that are invested are an investment for a temporary period if such obligations—

(i) Will not be outstanding after (A) a period ending 13 months after the date on which such obligations are issued, (B) a period ending 60 days (but not more than 24 months after such obligations are issued) after the last date for payment without interest or penalty of the anticipated tax (or last installment thereof) imposed by an annual tax levy or the first year's tax (or last installment thereof) of the anticipated tax imposed by a levy for more than 1 year, or (C) in the case of obligations issued in anticipation of governmental grants or advances and not in anticipation of taxes or revenues from other sources, a period ending 6 months after the date on which the issuer expects to receive such grants or advances (but not more than 30 months after such obligations are issued), and

(ii) Will not be issued in an amount greater than the maximum anticipated cumulative cash flow deficit to be financed by such anticipated tax or other revenue sources for the period for which such taxes or other revenues are anticipated and during which such obligations are outstanding.

(2) *Cumulative cash flow deficit.* For purposes of this subparagraph, the cumulative cash flow deficit at any time during a period is an amount equal to:

(i) The amount that the issuing State or local government unit will expend from the beginning of such period to such computation date to pay expenditures which would ordinarily be paid out of or financed by the anticipated tax or other revenues, plus

(ii) The amount reasonably required by the issuer as a cash balance on hand at all times (the amount of the anticipated expenditures for a period of 1 month from such time being deemed to be reasonably required for this purpose), minus

(iii) The sum of the amounts (other than the proceeds of the issue in question), whether in the form of cash, marketable securities, or otherwise which will be available for the payment of such expenditures from the beginning of such period to such time.

(3) *Amount available for payment.* For purposes of paragraph (b)(2)(iii) of this section, amounts in accounts will be considered to be available for the payment of such expenditures to the extent that such accounts may, without legislative or judicial action, be invaded to pay such expenditures without a legislative, judicial, or contractual requirement that such accounts be reimbursed.

(4) *Example.* The following example illustrates the provisions of this paragraph:

Example. County B plans to issue 13-month tax anticipation notes on July 1, 1981, in anticipation of income tax revenues in the amount of $4 million to be received on March 1, 1982, and real property tax revenues in the amount of $8 million to be received on May 1, 1982. Assume that all receipts will be received on the first day of each month. The maximum amount of such notes which may be issued pursuant to the provisions of subparagraph (3) of this paragraph may be determined in accordance with the following table on the basis of the facts assumed:

	Estimated expenditures	Estimated receipts [1]	Cumulative surplus (or deficit) at end of month [2]
June			$2,000,000
July	$750,000	$40,000	1,290,000
August	900,000	36,450	426,450
September	1,100,000	32,132	(641,418)
October	1,250,000	26,782	(1,864,636)
November	1,000,000	20,576	(2,844,060)
December	800,000	15,779	(3,627,281)
January	1,100,000	11,858	(4,716,000)
February	1,280,994	6,417	(6,000,000)
March	1,000,000	4,020,000	(2,980,000)
April	1,535,100	15,100	(4,500,000)
May	975,000	8,475,000	3,000,000
June	1,515,000	15,000	1,500,000

[1] Tax receipts plus proceeds from investments.
[2] Does not include amount of reasonably required cash balance.

The maximum cumulative deficit is $7 million which occurs at the end of February (i.e., $6 million cumulative deficit at the end of February plus $1 million reasonably required as a cash balance on hand (the amount of the anticipated expenditures for March)). Thus, an investment of the proceeds of the county B notes will be an investment for a temporary period if such notes are not issued in an amount in excess of $7 million.

(d) *Reasonably required reserve or replacement fund—*(1) *In general.* Under section 103(c)(4)(B), an obligation shall not be treated as an arbitrage bond solely by reason of the fact that a portion of any proceeds of the issue of which such obligation is a part may be invested in materially higher yield acquired obligations which are part of a reasonably required reserve or replacement fund. Except as provided in subparagraphs (2) and (4) of this paragraph, a reserve or replacement fund will be considered to be reasonably required only if the amount so invested at any time during the term of the issue does not exceed 15 percent of the original face amount of the issue. If the original proceeds of an issue (determined without regard to issuing expenses) are less than 98 percent of the original face amount of such issue, then the percentage specified in the preceding sentence shall be based on the amount of such original proceeds. For the purpose of determining whether the amount invested exceeds the amount specified in the preceding sentence, the rules of § 1.103–13(b)(1)(ii) apply. A reasonably required reserve or replacement fund may consist of one or more funds, or portions of funds, however labeled, derived from one or more sources. Thus, for example, a sinking fund described in § 1.103–13(g)(2) might also be a reasonably required reserve or replacement fund.

(2) *Exception.* If an amount in excess of the amount provided in paragraph (d)(1) of this section is invested in a reserve or replacement fund, such excess will be considered to be invested in a reasonably required reserve or replacement fund if—

(i) The issuer applies for a ruling that the specified reserve or replacement fund is necessary, and

(ii) A ruling to that effect is subsequently issued to the governmental unit (before or after the date of issuance of the obligations).

The procedure set forth in the preceding sentence does not preclude an issuer from relying on a published ruling in which the Commissioner specifically designates a category of reserve or replacement funds as reasonably required.

(3) *Relationship to major portion test.* To the extent that proceeds of an issue of governmental obligations are invested at a materially higher yield in a reasonably required reserve or replacement fund, such proceeds are included as proceeds invested in materially higher yield acquired obligations for purposes of the major portion test in § 1.103–13(b)(1). Thus, if the sum of the proceeds invested in materially higher yield acquired obligations equals the maximum investment permitted under this paragraph, then the investment of any other proceeds in materially higher yield acquired obligations may cause the obligations of such issue to be arbitrage bonds.

(4) *Pledge of endowment.* Endowment funds of a college, university, or other similar institution (such as a hospital or charity) pledged as collateral for an issue will be considered to be a reasonably required reserve if the pledged funds:

(i) Were derived from gifts or bequests (including the income thereon);

(ii) Were not raised for the purpose of carrying out the project financed by the issue;

(iii) Are not reasonably expected to be used (directly or indirectly) to pay principal or interest on the issue; and

(iv) Are held as part of the institution's permanent capital.

The following example illustrates the application of this subparagraph:

Example. The health and educational facilities authority of State X ("the X authority") plans to issue long-term bonds to finance a new medical school building for college A. The bonds will be collateralized by a pledge of securities held by college A as quasi-endowment funds (funds functioning as endowment). In the financing agreement, college A represents that the pledged

securities are quasi-endowment funds derived from gifts or bequests (or the income therefrom) and that it will expend on the construction of the medical school building an amount equal to or greater than the amount of funds raised for the purpose of such construction (including amounts that it reasonably expects to receive in the future from pledges or otherwise), and no such funds will be pledged as collateral for the issue. Authority X is not aware of any facts or circumstances that would cause it to question the accuracy of the representations made by college A. In addition, on the basis of facts and estimates including projections indicating that revenues from other sources during the next 5 years will be more than sufficient to pay debt service on the issue, authority X does not reasonably expect that the pledged funds or the income therefrom will be required to make payment of principal or interest on the issue. Based on the reasonable expectations of authority X, the pledged funds satisfy the requirements of this paragraph. Authority X does not need a ruling under subparagraph (2) of this paragraph.

(5) *Certain mandatory accumulations.* A reserve fund for one or more issues is reasonably required if:

(i) Amounts must be paid into the fund under a constitutional provision, statute, or ordinance adopted before May 3, 1978;

(ii) Under the constitutional provision, statute, or ordinance, amounts paid into the fund (and receipts from investment of the fund) can be used only to pay debt service on the issues and for no other purpose; and

(iii) The size of the payments made into the fund is independent of the size of the outstanding issues (including the debt service thereon).

The following example illustrates the application of this subparagraph:

Example. (i) On June 30, 1979, city B in State A had on deposit in a general bond sinking fund cash and U.S. Government securities aggregating $21 million. The money in the general bond sinking fund was derived principally from a 6½ mill annual city ad valorem tax ("the general bond tax") that is now, and has been for over 50 years, required by the constitution of State A to be used and applied solely for payment of the principal of and the interest on city B's general bonds and that has been levied by city B for more than 50 years. A portion of the money in the general bond sinking fund was derived from the investment of money in the fund. The revenue derived by city B from the general bond tax is received on an annual basis as taxpayers pay their respective annual ad valorem tax. Substantially all such revenue is received by city B during the period from January 1 to January 31 in each year.

(ii) On July 1, 1979, city B created two new funds, a general bond debt service fund (which was created to achieve a proper matching of revenues and debt service within each calendar year) and a general bond reserve fund. Immediately thereafter, city B transferred from the sinking fund—

(1) To the debt service fund the sum of $2 million (an amount equal to the debt service maturing on city B's general bonds during the period July 1, 1979–December 31, 1979), and

(2) To the reserve fund the entire balance ($19 million) then remaining on deposit in the sinking fund.

after which the sinking fund was closed.

(iii) In each of the calendar years ending on December 31, 1980 and 1981, city B received from the general bond tax the sum of $5 million, which it applied (within 30 days after receipt) as follows:

	Year ending December 31	
	1980	1981
To the debt service fund	$3,825,000	$3,840,000
To the reserve fund	1,075,000	1,160,000

(iv) The debt service (principal and interest) maturing with respect to city B's general bonds during each of such 2 years aggregated $4 million, and amounts on deposit in the debt service fund were during each of such years invested in U.S. Government securities. The cash flow of the debt service fund during each of such years, and during 1979, was as follows:

	Year ending December 31		
	1979 *	1980	1981
Balance at beginning of period	$2,000,000	$75,000	$160,000
Receipts:			
General bond tax	0	3,925,000	3,840,000
Investment income	75,000	160,000	160,500
	2,075,000	4,160,000	4,160,500
Less expenditures:			
Debt service	2,000,000	4,000,000	4,000,000
Balance at end of period	75,000	160,000	160,500

The entire amount expended from the debt service fund during each of such years was applied and used, on or before the end of each of such years, for payment of debt service on city B's general bonds. The balance remaining on deposit in the debt service fund at the end of each of such years was greater than one-twelfth of the debt service maturing with respect to city B's general bonds during the next succeeding calendar year (but not in excess of the annual earnings on the debt service fund).

(v) Amounts on deposit in the reserve fund during each of the years 1979, 1980, and 1981 were invested in U.S. Government securities. As a result of the transfers and payments into the reserve fund that are referred to in items (ii) and (iii) and the receipt of investment income from the reserve fund, the cash flow of the reserve fund for the years ending December 31, 1979, 1980, and 1981 was as follows:

	Year ending December 31		
	1979 *	1980	1981
Balance at beginning of period	$19,000,000	$19,800,000	$22,575,000
Receipts:			
General bond tax	0	1,075,000	1,160,000
Investment income	800,000	1,700,000	1,940,000
Balance at end of period	19,800,000	22,575,000	25,675,000

* For 1979, period was a 6-month one, beginning July 1, 1979.

(vi) City B did not issue any general bonds during the period May 3, 1978, through December 31, 1981. On January 1, 1982, city B issues and sells to underwriters (at par plus accrued interest) $15 million principal amount of general bonds ("the 1982 general bonds") maturing serially in the years 1985–2012. Immediately prior to the issuance of the 1982 general bonds, city B had outstanding $50 million principal amount of other general bonds, being the outstanding portions of issues aggregating $65 million in original principal amount, all of which were sold to underwriters at par plus accrued interest. Thus, immediately following the issuance of the 1982 general bonds, city B will have outstanding $65 million principal amount of general bonds, being the outstanding portions

of issues aggregating the $100 million in original principal amount.

(vii) Under the constitution of State A, amounts on deposit in the debt service fund and the reserve fund (and receipts from the investment of those funds) are available for payment of the principal of and the interest on all of city B's general bonds (including the 1982 general bonds and any other general bonds that city B may in the future issue) on a *pari passu* basis and can be used for no other purpose. While city B reasonably expects to use for payment of the principal of and the interest on its general bonds (including the 1982 general bonds) the money paid into the debt service fund out of proceeds to be derived from the levy of the general bond tax, it does not expect to use any of the money in the reserve fund for payment of such debt service except as follows:

(1) In calendar years 1982 to 1988, inclusive, the revenue to be received from the general bond tax are anticipated to be insufficient to pay maturing debt service on city B's outstanding general bonds (including the 1982 general bonds), and it will, it is expected, be necessary for city B to use money in the reserve fund to make up this anticipated deficit in general bond tax receipts;

(2) In other calendar years, it may be necessary to use income from the investment of reserve fund money to provide for payment of maturing debt service on city B's general bonds (including the 1982 general bonds); and

(3) In the case of other deficiencies (presently unanticipated) in current receipts from the general bond tax necessitating an "invasion" of the reserve fund.

City B expects to continue paying the entire proceeds from the general bond bond tax into the debt service fund and the reserve fund as during the years 1979–1981 except for such adjustments as are necessary to reflect (a) increases in debt service on its general bonds resulting from the issuance of the 1982 general bonds and (b) decreases in debt service on its general bonds resulting from retirement of principal of various outstanding series. In the years following the issuance of the 1982 general bonds, the balance on deposit in the reserve fund is expected to show moderate increases (except in the years 1982 to 1988, inclusive), while both the outstanding principal of city B's general bonds and the original principal amount of those thereof that are then outstanding are anticipated to decline. The money on deposit in the debt service fund and the reserve fund are expected continuously to be invested in taxable securities at a yield that will be materially higher than the yield on the 1982 general bonds.

(viii) Except for the debt service fund and the reserve fund, city B has no sinking or other similar fund that it reasonably expects to use for payment of the principal of or the interest on the 1982 general bonds, nor does it expect to create any such fund. While city B has pledged its full faith and credit for payment of the 1982 general bonds, it did not pledge therefor the debt service fund, the reserve fund, or any other specific revenues, funds, or assets of the city, except to the extent that the constitutional provision of State A, referred to in items (i) and (vii) above, may have itself effected or imposed a pledge of the debt service fund and the reserve fund for the benefit of the 1982 general bonds (and for all other general bonds of city B). While city B does not at the time it issues the 1982 general bonds have any present plans for issuing any further general bonds, nothing contained in any of the proceedings of city B relating to the 1982 general bonds imposes any restrictions on the issuance of further general bonds by city B. At the time the 1982 general bonds are issued, city B could, under its then applicable debt limit, issue up to $10 million principal amount of further general bonds without exceeding such debt limit.

(ix) Based upon the foregoing facts, the reserve fund established by city B is reasonably required under paragraph (d)(4) of this section.

(e) *Refunding issue*—(1) *In general.* This paragraph applies to refunding issues. The general rules regarding the temporary period (see paragraph (b) of this section), the reasonably required reserve or replacement fund (see paragraph (d) of this section), and the major portion test (see § 1.103–13(b)(1)) do not apply to a refunding issue except as provided in this paragraph. This paragraph does not apply to proceeds of a prior issue until they become "transferred proceeds" under the rules in subparagraph (2) of this paragraph.

(i) *Operating rules; temporary period.* (A) The rules in this subdivision apply solely for purposes of subparagraph (3) of this paragraph (relating to the temporary period).

(B) If two or more refunding issues are used to refund the same prior issue and if the refunding is in substance a single transaction, then the refunding issues are treated as a single issue.

(C) If a refunding issue is used to refund a portion (but not all) of the prior issue, then the refunded and nonrefunded portions of the prior issue are treated as separate issues.

(D) The following examples illustrate the application of this subdivision:

Example (1). City A has outstanding $10 million of noncallable 9-percent revenue bonds (the "prior issue") due on January 1, 1990. On January 1, 1980, city A issues $6 million of series A 6½-percent general obligation bonds and $4 million of series B 7-percent revenue bonds at par in a crossover refunding of the prior issue. For purposes of the temporary period rules in subparagraph (3), the two refunding issues are treated as a single issue.

Example (2). City B has outstanding $8 million of noncallable 9-percent revenue bonds (the "prior issue") due on January 1, 1990. On January 1, 1980, city A issues $3 million of 6¾-percent refunding bonds at par in a crossover refunding of a portion of the prior issue. The remaining $5 million of the prior issue will be paid from revenues. Based on these facts, the prior issue is treated as two separate issues—one of $3 million and one of $5 million—for purposes of the temporary period rules in subparagraph (3).

Example (3). City C has outstanding $12 million of noncallable 9-percent revenue bonds (the "prior issue") due according to the following schedule:

(Dollars in millions)	
Jan. 1, 1981	2
Jan. 1, 1982	4
Jan. 1, 1983	6

On January 1, 1980, city C issues $2 million of series B 6½ percent general obligation bonds and $6 million of series A 7-percent guaranteed revenue bonds at par in a crossover refunding of two portions of the prior issue. The proceeds of the series B bonds will be used to pay the $2 million due on January 1, 1981, and the proceeds of the series A bonds will be used to pay the $6 million due on January 1, 1982 will be paid from revenues. For purposes of the temporary period rules in subparagraph (3), the series A and series B issues are treated as a single issue. In addition, the $6 million refunded portion and the $4 million nonrefunded portion of the prior issue are treated as separate issues.

(ii) *Operating rules; transferred proceeds, minor portion, and 4–R fund.* (A) The rules in this subdivision apply solely for purposes of subparagraphs (2), (4), (5), and (6) of this paragraph.

Subparagraphs (2), (4), (5), and (6) relate, respectively, to transferred proceeds, the major portion test, the reasonably required reserve or replacement fund, and the adjusted maturity date.

(B) If the proceeds of a refunding issue are used to refund two or more prior issues, then the portion of the proceeds used to refund each prior issue is treated as a separate refunding issue.

(C) If a refunding issue is used to refund a portion (but not all) of a prior issue, then:

(1) The refunded and nonrefunded portions of the prior issue are treated as separate issues,

(2) Unspent proceeds of the prior issue must be allocated ratably between the separate issues, and

(3) If any unspent proceeds of the prior issue are invested at an unrestricted yield pursuant to paragraph (d) of this section or § 1.103–13(b)(1)(ii), those proceeds must be allocated ratably between the separate issues.

(D) Notwithstanding subdivision (ii)(C) of this subparagraph, if a series B issue is used together with one or more series A issues in a gross refunding of a prior issue and if the requirements of § 1.103–15(c)(2) (i), (ii), (iii), and (iv) are satisfied, then:

(1) Each portion of the prior issue that is refunded by one of the series A issues is treated as a separate issue,

(2) All unspent proceeds of the prior issue must be allocated ratably among the separate issues,

(3) If any unspent proceeds of the prior issue are invested at an unrestricted yield pursuant to paragraph (d) of this section or § 1.103–13(b)(1)(ii), those proceeds must be allocated ratably among the separate issues, and

(4) None of the unspent proceeds of the prior issue may be allocated to any portion of the prior issue that is refunded by the series B issue.

For purposes of this subdivision, the terms "series B issue" and "series A issues" have the same meaning as in § 1.103–15(c).

(E) The following examples illustrate the application of this subdivision:

Example (1). City E has outstanding $10 million of noncallable 9-percent revenue bonds and $5 million of noncallable 8-percent revenue bonds due on January 1, 1990. On January 1, 1983, city E issues $15 million of 6-percent general obligation bonds at par in a crossover refunding of both issues of revenue bonds. Under this subdivision, the refunding issue is treated as two separate issues—one of $10 million and one of $5 million.

Example (2). The facts are the same as in example (1) of subdivision (i) (D) of this subparagraph. Under this subdivision, the prior issue is treated as two separate issues—one $9 million issue ("issue p-1") that is refunded by the series A bonds and one $4 million issue ("issue p-2") that is refunded by the series B bonds. Assuming that $1 million of the proceeds of the prior issue remain unspent on January 1, 1980, $600,000 of these unspent proceeds must be allocated to issue p-1 and the remaining $400,000 must be allocated to issue p-2. Assuming further that $500,000 of the unspent proceeds of the prior issue are invested at an unrestricted yield in a replacement fund, $300,000 of these proceeds must be allocated to issue p-1 and the remaining $200,000 must be allocated to issue p-2.

Example (3). The facts are the same as in example (2) of this subdivision, except that the prior issue will be retired serially. The result is the same except that issues p-1 and p-2 may be further subdivided under subparagraph (6) of this paragraph (relating to adjusted maturity date).

Example (4). The facts are the same as in example (2) of subdivision (i) (D) of this subparagraph. Under this subdivision, the prior issue is treated as two separate issues—one $3 million issue that is refunded and one $5 million issue that is not refunded.

Example (5). The facts are the same as in example (3) of subdivision (i) (D) of this subparagraph. Under this subdivision, the prior issue is treated as three separate issues—one $2 million issue that is refunded by the series A bonds, one $4 million issue that is not refunded, and one $6 million issue that is refunded by the series B bonds.

Example (6). The facts are the same as in example (4) of § 1.103–15(i). As a result of this subdivision, all unspent proceeds of the prior issue would become transferred proceeds of the series A issue, and none would become transferred proceeds of the series B issue. The result would be the same even if some of the proceeds of the series B issue were used to pay principal on the prior issue.

(2) *Definition.* (i) A refunding issue is an issue of governmental obligations the proceeds of which are used to pay any principal or interest on any other issue of governmental obligations (hereinafter referred to as the "prior issue"). The "refunding issue" and "prior issue" must be issued by the same governmental unit or the "prior issue" may be issued by a governmental unit that is included within the governmental unit that issues the refunding issue. The use of proceeds of an issue of governmental obligations within 1 year after the date of issue of such issue to pay interest on other governmental obligations need not be treated as the refunding of a prior issue unless the principal of the other governmental obligations is also refunded. In addition, the use of proceeds of an issue to pay certain capitalized interest (as defined in paragraph (e)(2)(iii) of this section) on a prior governmental issue need not be treated as the refunding of such prior issue. An issue of obligations to which paragraph (c) of this section applies issued in anticipation of revenues to finance annual budget expenses of the issuer (including supplemental appropriations and other expenses) shall not be treated as a refunding issue unless issued to refund a prior issue of obligations of such issuer issued in anticipation of revenues for the same budget period.

(ii) At the time that proceeds of the refunding issue discharge the outstanding principal of the prior issue, proceeds of the prior issue become proceeds of the refunding issue (hereinafter referred to as "transferred proceeds") and cease to be proceeds of the prior issue. In the case of a discharge of a portion of such principal, the amount of proceeds of the prior issue that become transferred proceeds is an amount which bears the same relationship to the total proceeds of such prior issue at the time of such discharge as the amount of such discharged principal bears to the total principal of the prior issue outstanding immediately prior to such discharge. In the case of a refunding issue, as the proceeds of the prior issue become transferred proceeds, those proceeds of the prior issue which are invested in materially higher yield obligations pursuant to the provisions of paragraph (d) of this section or § 1.103–13(b)(1)(ii) shall become transferred proceeds ratably. Generally, it is not necessary to apply the preceding two sentences for purposes of § 1.103–14(e)(4) and (5). (This is because of § 1.103–14(e)(6), which treats different parts of the prior issue as separate issues.)

(iii) For purposes of paragraph (e)(2)(i) of this section, interest on a prior governmental obligation shall be treated as capitalized interest if such interest accrues within the period of time necessary to complete the construction or the acquisition of the project for which such prior issue was issued plus 1 year thereafter. In lieu of the 1 year

referred to in the preceding sentence, there may be substituted a period not longer than 5 years if, prior to the issuance of the obligations the proceeds of which are used to pay interest on a prior issue of obligations, the issuer demonstrates to the satisfaction of the Commissioner that because of inadequate revenues during the period of commencement of operations of the project such interest should be treated as capitalized interest. For example, if a first issue is issued on January 1, 1986, to provide funds to construct a hospital and it is necessary to issue a second issue on January 1, 1989, to provide additional funds to complete construction of the hospital, the use of any proceeds of the second issue to pay interest on the first issue during the period needed to complete construction of the hospital, plus one year thereafter, need not be treated as a refunding of the first issue. However, if the hospital had been completed on January 1, 1989, and a second issue is issued on January 1, 1991, both to provide funds for a new wing for the hospital and to pay interest on the 1986 issue, interest on the first issue is not treated as capitalized interest unless the issuer demonstrates that there are not sufficient revenues from the hospital (without regard to any revenues or losses from the new wing) to pay the interest on the first issue accruing during the period beginning January 1, 1989 and ending not later than January 1, 1994.

(iv) Despite § 1.103–14(e)(2)(ii), the term "transferred proceeds" does not include amounts treated as proceeds of the prior issue under § 1.103–13(g) (relating to invested sinking funds).

(3) *Temporary period.* (i) Proceeds (other than transferred proceeds) of a refunding issue that are invested for a period described in paragraph (e)(3)(ii) of this section are invested for a temporary period. Paragraph (e)(3)(ii) (B) and (C) of this section applies only if the period beginning on the date of issue and ending on the date of discharge of the last obligation of the prior issue is not longer than the period determined under such paragraph. Except as provided in the preceding sentence, the issuer shall be allowed the longer of the temporary periods determined under paragraph (e)(3)(ii) (A) or (B) or (at the issuer's option) the temporary period determined under paragraph (c)(3)(ii)(C). This subparagraph (except for subdivision (viii) and (ix)) does not apply to amounts treated as proceeds under § 1.103–13(g) (relating to invested sinking funds). For the temporary period for an invested sinking fund, see § 1.103–14(b) (8) to (12).

(ii) The periods provided by this subdivision are—

(A) A 30-day period beginning on the date of issue;

(B) A period which is not in excess of the shortest of—

(*1*) A period beginning on the date of issue and ending on the date on which the last obligation of the prior issue is discharged,

(*2*) 2 years,

(*3*) A period equal to 25 percent of the term of the refunding issue,

(*4*) A period equal to the greater of—

(*i*) 50 percent of the term of the prior issue, but not more than 6 months, or

(*ii*) 25 percent of the term of the prior issue, or

(*5*) In case of a refunding issue which is part of a series of refunding issues, where a refunding issue is refunded by a refunding issue, 2 years reduced by the sum of all temporary periods for all prior refunding issues in such series to which this subdivision (ii)(B) or paragraph (e)(3)(ii)(C) of this section applied. See paragraph (e)(3)(ii)(C)(*3*) of this section for the application of this subdivision (ii)(B)(*5*) to a refunding issue described in paragraph (e)(3)(ii)(C)(*1*) of this section.

(C)(*1*) In the case of a refunding issue for which different temporary periods under paragraph (e)(3)(ii) (A) or (B) of this section would apply to portions of such issue because

(*i*) Proceeds of the refunding issue are used to pay principal or interest on two or more prior issues, or

(*ii*) One or more portions of the issue is part of a series of refunding issues under paragraph (e)(3)(ii)(B)(*5*) of this section,

(*2*) the period described in paragraph (e)(3)(ii)(C)(*2*) of this section.

(*2*) The period described in this subdivision (ii)(C)(*2*) is a period determined by (*i*) multiplying the number of months (rounded to at least one decimal point) or days in the period determined under paragraph (e)(3)(ii) (A) or (B) of this section (determined without regard to paragraph (e)(3)(ii)(B)(*1*) of this section and without regard to any allocation under paragraph (e)(3)(ii)(C)(*3*) of this section with respect to such issue) for each such portion of the refunding issue by the amount of principal and interest of the prior issue discharged by each such portion and (*ii*) dividing the sum of the amounts determined under paragraph (e)(3)(ii)(C)(*2*)(*i*) of this section by the total amount of principal and interest to be refund by all portions of the refunding issue.

(*3*) In the case of the refunding of any prior issue to which this subdivision (ii)(C) applied, the reduction referred to in paragraph (e)(3)(ii)(B)(*5*) of this section for the temporary period for such prior issue shall be the temporary period of the issue determined under this subdivision (ii)(C) rather than the periods under paragraph (e)(3)(ii) (A) or (B) of this section used in determining the temporary period of the issue under this subdivision (ii)(C). Because of the application of this subdivision (ii)(C) to a refunding issue, the sum of the temporary period for a portion of such issue and all prior temporary periods under paragraph (e)(3)(ii) (B) or (C) of this section for such portion may exceed 2 years. If such sum exceeds 2 years then, for purposes of determining the amount of the reduction under paragraph (e)(3)(ii)(B)(*5*) of this section for the portions of such issue in which the sum of temporary periods does not exceed 2 years, the temporary period determined under this subdivision (ii)(C) for such other portions shall be increased by a period determined by multiplying such excess by a fraction the numerator of which is the amount of principal and interest to be discharged by the portion exceeding 2 years and the denominator of which is the amount of remaining principal and interest to be discharged by all other portions of such issue. If the temporary period in paragraph (e)(3)(ii)(A) of this section is used for any portion of the issue in determining the temporary period of the issue under this subdivision (ii)(C), and the temporary period under paragraph (e)(3)(ii)(B)(*5*) of this section for such portion is a period shorter than 31 days, then, for purposes of the preceding sentence, the excess shall be the period by which the temporary period under this subdivision (ii)(C) for such issue exceeds 30 days. If, as a result of any increase under this subdivision (ii)(C)(*3*), the cumulative temporary period for another portion exceeds 2 years, such excess shall also be allocated in accordance with this subdivision (ii)(C)(*3*).

(iii) Proceeds to which any temporary period provided in paragraph (b) of this section for the prior issue applied (or to which any temporary period would apply if such prior issue had been issued after October 9, 1969) which become transferred proceeds and are invested during the period beginning on the date of transfer and ending on the date on which the applicable temporary period for such prior issue would end (determined without regard to the discharge of the prior issue) are invested for a temporary period.

(iv) If proceeds of a prior issue are permitted to be invested in materially higher yield acquired obligations beyond any temporary period provided in paragraph (b) of this section because such proceeds were not expended as anticipated (or could be so invested if such prior issue were not discharged), and if prior to the issuance of the refunding issue the issuer demonstrates to the satisfaction of the Commissioner that, on the basis of facts, estimates, and circumstances in existence on the date of issue, a reasonable extension of such investment is necessary for such proceeds, then such proceeds may be invested in materially higher yield acquired obligations when such proceeds become transferred proceeds. In determining whether an extension under this subdivision is necessary and in determining the period of any such extension, the Commissioner shall take into account (A) whether the proceeds can be expended on the project or projects in a reasonable period of time and (B) the effect of applying such proceeds to pay all or any portion of the principal or interest, when due, of the prior issue.

(v) In the case of a refunding issue, the 1-year period described in paragraph (b)(6) shall not apply to investment proceeds to be used to discharge the prior issue. For the purpose of applying the preceding sentence to investments that are not made with transferred proceeds, a reference to paragraph (e)(3)(i) and (ii) of this section shall be substituted for the reference to paragraph (b)(1) of this section appearing in paragraph (b)(6) of this section.

(vi) Where an issue of obligations to which paragraph (c) of this section applies is a refunding issue, transferred proceeds shall be deemed invested for a temporary period if the obligations of the refunding issue (A) will not be outstanding after the period applicable to the prior issue under paragraph (c)(1)(i) of this section (determined, in the case of the 6 months referred to therein, on the basis of the facts, estimates, and circumstances in existence on the date of issue of the refunding issue) and (B) will not be issued in an amount greater than the amount determined under paragraph (c)(1)(ii) of this section.

(vii) Proceeds of a refunding issue are invested for a temporary period if those proceeds—

(A) Are received as accrued interest for a period not to exceed 6 months and will not be used to discharge the prior issue, and

(B) Are invested and will be expended during the 1-year period beginning on the date of issue.

(viii) Proceeds of a refunding issue that will not be used to discharge the prior issue (other than proceeds described in paragraph (e)(3)(vii) of this section) are invested for a temporary period if those proceeds are invested during a 1-year period beginning on the date of issue but only to the extent that those proceeds either are used to pay issuance costs or do not exceed 1 percent of the original proceeds of the refunding issue.

(ix) Proceeds of a refunding issue that will not be used to discharge the prior issue (other than proceeds described in paragraph (e)(3)(vii) and (viii) of this section) are invested for a temporary period to the extent that those proceeds do not exceed the lesser of—

(A) $10,000, or

(B) One percent of the original proceeds of the refunding issue.

(4) *Major portion test.* (i) Proceeds of a refunding issue may be invested in materially higher yield obligations pursuant to § 1.103–13(b)(1)(ii) (relating to major portion test), subject to the following limitations:

(A) Acquired obligations that are invested at a materially higher yield pursuant to § 1.103–13(b)(1)(ii) may be acquired only with transferred proceeds.

(B) Proceeds of the refunding issue may be invested in materially higher yield acquired obligations pursuant to § 1.103–13(b)(1)(ii) only to the extent that they do not exceed the amount provided in § 1.103–13(b)(1)(ii) determined with reference to the prior issue.

(ii) To the extent that proceeds of an issue of governmental obligations are invested at a materially higher yield in a reasonably required reserve or replacement fund, such proceeds are included as proceeds invested in materially higher yield acquired obligations for purposes of the major portion test in § 1.103–13(b)(1)(ii). See the allocation rule in paragraph (e)(1)(ii)(C) and (D) of this section if less than the outstanding principal amount of the prior issue is refunded with the proceeds of a refunding issue.

(5) *Reasonably required reserve or replacement fund.* (i) Proceeds of a refunding issue (including transferred proceeds) may be invested in materially higher yield acquired obligations pursuant to paragraph (d) of this section (relating to a reasonably required reserve or replacement fund), subject to the following limitations:

(A) Acquired obligations that are invested at a materially higher yield pursuant to paragraph (d) of this section may be acquired only with transferred proceeds or proceeds of the refunding issue that are not to be used to discharge the prior issue.

(B) At any time before the adjusted maturity date of the prior issue, proceeds of the refunding issue may not be invested at a materially higher yield pursuant to paragraph (d) of this section.

(C) If a refunding issue is a series B issue (within the meaning of § 1.103–15(c)) and if the requirements in § 1.103–15(c)(2) are satisfied, then the proceeds of the refunding issue may not be invested at a materially higher yield pursuant to paragraph (d) of this section.

(ii) See the allocation rule in paragraph (e)(1)(ii)(C) and (D) of this section if less than the outstanding principal amount of the prior issue is refunded with the proceeds of a refunding issue.

(iii) If an amount in excess of the amount allowed under paragraphs (d)(1) and (e)(5) of this section is invested in a reserve or replacement fund for a refunding issue, such excess may be invested at a yield that is materially higher than the yield on the refunding issue only if—

(A) The issuer applies for a ruling that the specified reserve or replacement fund is necessary, and

(B) A ruling to that effect is subsequently issued to the issuer (before or after the date of issuance of the obligations).

The procedure set forth in the preceding sentence does not preclude an issuer from relying on a published ruling in which the Commissioner specifically designates a category of reserve or replacement funds as reasonably required for refunding issues.

(6) *Adjusted maturity date.* (i) The adjusted maturity date of a prior issue is the earlier of—

(A) The maturity date, or

(B) The expected call date (provided that the expected call date is not unreasonably early).

(ii) If different parts of the prior issue have different adjusted maturity dates, then (solely for purposes of paragraph (e)(4) and (5) of this section) those different parts shall be treated as separate issues and the amount of any proceeds of the prior issue shall be allocated among the different parts in the same proportion as each part bears to the total outstanding principal amount of the prior issue. If parts of a prior issue are treated as separate issues under the preceding sentence, and if the proceeds of the refunding issue are used to refund two or more such parts, then

(solely for purposes of paragraph (e) (4) and (5) of this section) the portion of the proceeds of the refunding issue used to refund each such part of the prior issue shall be treated as a separate refunding issue.

(7) *Exception.* (i) Section 1.103–14(e)(5)(i)(B) does not apply to amounts deposited in a reserve or replacement fund for a refunding issue to the extent that such amounts—

(A) Were held in a reasonably required reserve or replacement fund for the prior issue, or

(B) Would (but for the refunding) have been deposited in a reasonably required reserve or replacement fund for the prior issue.

(ii) The following examples illustrate the application of this subparagraph:

Example (1). On July 1, 1987, city A issues $10 million of revenue bonds. No reserve or replacement fund is created for the revenue bonds. On July 1, 1989, city A issues $11 million of refunding bonds to defease the 1987 issue. City A accumulates a reserve fund of $800,000 for the 1989 issue. This reserve fund is pledged as collateral for the 1989 issue, and city A is unable to make withdrawals from the reserve fund at any time during the term of the 1989 issue (except to pay debt service on the 1989 issue). Assume that the entire 1987 issue will be called on July 1, 1997, and no portion of the 1987 issue will be retired before that date. Based on these facts, the proceeds of the 1989 issue replace amounts held in the reserve fund within the meaning of section 103(c)(2)(B). Therefore, these amounts are subject to the same yield restrictions, and generally have the same status, as proceeds of the 1989 issue. As a result, the revenues deposited in the reserve fund are subject to arbitrage yield restrictions until July 1, 1997 (see § 1.103–14(e)(5)(i)(B)) unless city A makes the demonstration required by § 1.103–14(e)(5)(iii). The result is the same whether or not city A reasonably expects to use amounts held in the reserve fund to pay debt service on the 1989 issue.

Example (2). On January 1, 1988, city B issues $10 million of revenue bonds. Under the bond indenture, city B is required to deposit revenues of $200,000 a year for 5 years in a reasonably required reserve fund for the 1988 issue (the "1988 reserve"). On January 1, 1990, city B issues $11 million of refunding bonds to defease the 1988 issue. At that time, city B transfers the $400,000 accumulated in the 1988 reserve to a reasonably required reserve fund for the 1990 issue (the "1990 reserve"). In addition, city B deposits revenues of $200,000 a year in the 1990 reserve for the next 3 years. Based on these facts, the amounts held in the 1990 reserve may be invested at an unrestricted yield pursuant to § 1.103–14(d).

§ 1.103–15 Excess proceeds.

(a) *General rule.* If the excess proceeds (as defined in paragraph (b) of this section) of a refunding issue exceed 1 percent of the original proceeds, then (except as provided in paragraphs (c), (d), (e), and (f) of this section) the refunding obligations are arbitrage bonds.

(b) *Excess proceeds*—(1) *In general.* For purposes of this section, the "excess proceeds" of a refunding issue are all proceeds (including investment proceeds) other than:

(i) Proceeds that will be used to pay principal, interest, or call premium on the prior issue;

(ii) Proceeds that will be used to pay not more than 6 months' accrued interest on the refunding issue;

(iii) Proceeds that will be used to pay capitalized interest (as defined in subparagraph (2) of this paragraph) on the refunding issue;

(iv) Proceeds that will be used as part of a reasonably required reserve or replacement fund for the refunding issue;

(v) Proceeds that will be used to pay the administrative costs of—

(A) Repaying the prior issue,

(B) Carrying and repaying the refunding issue, or

(C) Purchasing, carrying, and selling or redeeming obligations acquired with the proceeds of the refunding issue;

(vi) Transferred proceeds that will be used for the purpose of the prior issue;

(vii) Investment proceeds derived from the investment of a reasonably required reserve or replacement fund;

(viii) Interest on acquired purpose obligations; and

(ix) Amounts treated as proceeds solely because they are accumulated in a sinking fund for the refunding issue (see § 1.103–13(g)).

(2) *Capitalized interest.* For purposes of subparagraph (1) of this paragraph, "capitalized interest" means interest on a refunding issue that accrues within—

(i) The period of time necessary to complete the construction or acquisition of the project for which the prior issue was issued, plus

(ii)(A) One year, or

(B) A period not longer than 5 years if, prior to the issuance of the refunding issue, the issuer demonstrates to the satisfaction of the Commissioner that, because of inadequate revenues during the commencement of operations of the project, interest which accrues during that period should be treated as capitalized interest.

(c) *First exception: gross refunding*—(1) *In general.* If a refunding issue (hereinafter called the "series B issue") is used together with one or more other refunding issues (hereinafter called the "series A issues") in a gross refunding of a prior issue and if all five of the requirements set out in subparagraph (2) of this paragraph are satisfied, then this section shall not apply to the series B issue or the series A issues.

(2) *Requirements.* The requirements referred to in subparagraph (1) of this paragraph are as follows:

(i) Substantially all of the excess proceeds of the series B issue and substantially all of the excess proceeds of each series A issue will be used to pay principal and interest on the series B issue. (For the meaning of "substantially all", see paragraph (d)(2) of this section.).

(ii) Substantially all of the excess proceeds of the series B issue and substantially all of the excess proceeds of each series A issue will be investment proceeds.

(iii) At least 99 percent of all principal and interest on the series B issue will be paid with proceeds of the series B and series A issues or with the earnings on other amounts put into escrow to discharge the prior issue.

(iv) The series B issue will not be discharged later than the prior issue.

(v) At no time will the proceeds of the series B issue which have been spent exceed the sum of the payments made on or before that time of—

(A) Principal and interest on the series B issue, and

(B) Administrative costs of the series B issue described in paragraph (b)(1)(v) (B) and (C) of this section.

(d) *Second exception: crossover refunding*—(1) *In general.* This section shall not apply to a refunding issue if both of the following requirements are satisfied:

(i) Substantially all of the excess proceeds of the refunding issue will be used to pay interest that accrues on the refunding issue before the prior issue is discharged,

(ii) No proceeds of any refunding issue will be used to pay interest on the prior issue or to replace funds that are used directly or indirectly to pay such interest.

(2) *Substantially all.* For purposes of paragraphs (c)(2) and (d)(1) of this section, "substantially all" of the excess proceeds of a refunding issue means all of the excess proceeds except for an amount not larger than 1 percent of the original proceeds.

(e) *Third exception: prior ruling*—(1) *In general.* This section shall not apply to a refunding issue if, prior to the issuance of the refunding issue, the issuer demonstrates to the satisfaction of the Commissioner that it will not realize any material debt service or other savings directly or indirectly from the receipt of excess proceeds

amounting to more than 1 percent of the original proceeds of the issue.

(2) *Material.* For purposes of this paragraph—

(i) A debt service or other savings is material if it has a present value of more than $100 on the day the refunding issue is sold;

(ii) In determining the present value of any debt service or other savings, the yield on the refunding issue (as determined under § 1.103–13(c)(2)(ii)) shall be used as the discount rate.

(f) *Fourth exception: temporary period.* This section shall not apply to a refunding issue if the prior issue is discharged within 180 days after the refunding bonds are issued.

(g) *Special rule.* If the original proceeds of a refunding issue are less than $500,000, then "$5,000" shall be substituted for "1 percent of the original proceeds" in paragraphs (a) and (d)(2) of this section and for "1 percent of the original proceeds of the issue" in paragraph (e)(1) of this section.

(h) *Meaning of terms.* The terms used in this section have the same meaning as in §§ 1.103–13 and 1.103–14.

(i) *Transferred proceeds.* For purposes of this section, all original proceeds, investment proceeds, and transferred proceeds of the prior issue are treated as transferred proceeds of the refunding issue, except for amounts spent before the refunding bonds are issued.

(j) *Illustrations.* For purposes of this paragraph, it is assumed that city A has outstanding $10 million of noncallable 9-percent revenue bonds (the "prior issue") due on January 1, 1990. Principal and interest on the prior issue are payable solely from revenues of the city A water works. In order to modify restrictions in the bond indenture, city A contemplates refunding the prior issue on January 1, 1983. To that end, city A takes under consideration four different advance refunding programs:

Example (1). The first refunding program contemplates a standard defeasance of the prior issue. In this first program, city A would issue $11,500,000 of 7-percent refunding bonds at par on January 1, 1983. The refunding bonds would mature on January 1, 1990 and would be paid solely from revenues of the city A water works. The original proceeds of the refunding bonds would be $11,435,000 (*i.e.*, $11,500,000 less issuing expenses of $65,000) and the investment proceeds (derived from investment in 6.5-percent Treasury obligations) would be $4,916,620. Of the total $16,351,620 of proceeds, $10,000,000 would be used to pay principal on the prior issue, $6,300,000 would be used to pay interest on the prior issue, $35,000 would be used to pay administrative costs of purchasing, carrying, and redeeming acquired obligations, $10,000 would be used to pay administrative costs of carrying and repaying the refunding bonds, and the remaining $6,620 would be used to pay principal on the refunding bonds. Based on these assumptions, the excess proceeds of the refunding issue (*i.e.*, $6,620) would be less than 1 percent of the original proceeds (*i.e.*, .01×$11,435,000=$114,350). Therefore, the refunding bonds would not be treated as arbitrage bonds under this section. (See paragraph (a) of this section.)

Example (2). The second refunding program contemplates a full cash defeasance of the prior issue. In this second program, city A would issue $11,135,000 of series A revenue bonds and $5,320,000 of series B special obligation bonds at par on January 1, 1983. The series A bonds would bear a 7-percent coupon, would mature on January 1, 1990, and would be paid solely from revenues of the city A water works. The series B bonds would bear a 4-percent coupon, would be paid solely out of earnings on amounts put into escrow to defease the prior issue, and would mature according to the following schedule:

July 1, 1983	$410,000
January 1, 1984	420,000
July 1, 1984	410,000
January 1, 1985	405,000
July 1, 1985	395,000
January 1, 1986	395,000
July 1, 1986	385,000
January 1, 1987	375,000
July 1, 1987	370,000
January 1, 1988	365,000
July 1, 1988	355,000
January 1, 1989	350,000
July 1, 1989	340,000
January 1, 1990	335,000

The yield on the series B bonds (computed separately) would be approximately 4¼ percent (see § 1.103–13(c)). The proceeds of both the series A and series B issues would be invested in United States Treasury obligations paying 6.5 percent. Even though the combined yield on the series A and series B issues would be somewhat greater than 6.5 percent, the series B bonds would be arbitrage bonds.

Example (3). The third refunding program also contemplates a full cash defeasance of the prior issue. In this third refunding program, city A would issue $16,455, 000 of 6¾-percent refunding bonds at par on January 1, 1983. The 6¾-percent refunding bonds would be an amalgamation of the series A and B refunding bonds described in example (2) of this paragraph. The 6¾-percent refunding bonds would be paid partly from revenues of the city A water works and partly from earnings on amounts put into escrow to defease the prior issue. They would mature according to the following schedule:

July 1, 1983	$410,000
January 1, 1984	430,000
July 1, 1984	410,000
January 1, 1985	405,000
July 1, 1985	395,000
January 1, 1986	395,000
July 1, 1986	385,000
January 1, 1987	375,000
July 1, 1987	370,000
January 1, 1988	365,000
July 1, 1988	355,000
January 1, 1989	350,000
July 1, 1989	340,000
January 1, 1990	11,470,000

The original proceeds of this 6¾-percent refunding issue would be $16,355,000 (*i.e.*, $16,455,000 less issuing expenses of $100,000) and the investment proceeds (derived from investment in 6.5 percent Treasury obligations) would be $6,085,625. Of the total $22,440,625 of proceeds, $10,000,000 would be used to pay principal on the prior issue, $6,300,000 would be used to pay interest on the prior issue, $50,000 would be used to pay administrative costs of purchasing, carrying, and redeeming acquired obligations, $767,100 would be used to pay interest on the refunding bonds, and the remaining $5,323,525 would be used to pay principal on the refunding bonds. Based on these assumptions, the excess proceeds of the 6¾-percent refunding issue would be $6,080,625 (*i.e.*, $767,100 + $5,323,525), which is $5,927,075 more than the amount permitted under paragraph (a) of this section (*i.e.*, 1 percent of the original proceeds = .01 × $16,355,000 = $163,550). City A would realize a debt service savings of approximately $115,000 by using the 6¾-percent refunding bonds to refund the prior issue instead of using the 7-percent refunding bonds described in example (1) of this paragraph. Moreover, at least $101 of the $115,000 savings would result from city A's receipt of $5,927,075 of impermissible excess proceeds. Therefore, the 6¾-percent refunding bonds would not come within the exception in paragraph (e) of this section. Because the 6¾-percent refunding bonds would also fail to come within the exceptions in paragraphs (c) and (d) of this section, they would be arbitrage bonds.

Example (4). (a) The fourth refunding program also contemplated a full cash defeasance of the prior issue. In this fourth refunding program, city A would issue $11,500,000 of series A revenue bonds and $4,950,000 of series B special obligation bonds at par on January 1, 1983. The series A bonds would bear a 7-percent coupon, would mature on January 1, 1990, and would be paid solely from revenues of the city A water works. The series B bonds would bear a 4-percent coupon, would be paid solely out of earnings on amounts put into escrow to discharge the prior issue, and would mature as shown in column C of Table II (see item (b) of this example).

(b) Table I shows receipts and payments of proceeds of the series A issue. Table II shows receipts and payments of proceeds of the Series B issue. For explanatory notes, see item (c) of this example.

Table I

A Date	B Original proceeds spent	C Investment proceeds spent	D Administrative costs	E Remaining proceeds	F Cash balance
1-1-83	$35,000	0	$35,000	$11,400,000	0
7-1-83	79,500	$370,500	0	11,320,500	0
1-1-84	83,084	367,916	1,000	11,237,400	$16
7-1-84	84,785	365,215	0	11,152,600	31
1-1-85	88,541	362,459	1,000	11,064,000	60
7-1-85	89,425	359,580	0	10,974,000	75
1-1-86	94,358	356,642	1,000	10,879,000	12
7-1-86	96,423	353,577	0	10,782,600	89
1-1-87	100,559	350,441	1,000	10,682,000	30
7-1-87	102,825	347,175	0	10,579,200	5
1-1-88	107,166	343,834	1,000	10,472,200	39
7-1-88	109,650	340,350	0	10,362,600	89
1-1-89	114,216	336,784	1,000	10,249,400	78
7-1-89	116,827	333,073	0	10,131,500	46
1-1-90	10,131,546	329,274	4,000	0	0

Table II

A Date	B Interest paid on series B issue	C Principal paid on series B issue	D Investment proceeds spent	E Original proceeds spent	F Administrative costs	G Remaining proceeds	M Cash balance	I Outstanding principal amount of series B issue
1-1-83	0	0	0	$15,000	$15,000	$4,900,000	0	$4,900,000
7-1-83	99,000	$375,000	$103,500	370,500	0	4,529,500	$2,934	4,575,000
1-1-84	91,500	375,000	100,584	368,916	1,000	4,162,500	668	4,200,000
7-1-84	84,000	370,000	88,785	365,215	0	3,797,200	2,491	3,830,000
1-1-85	76,800	365,000	81,141	361,459	1,000	3,435,000	2,782	3,465,000
7-1-85	69,300	365,000	74,720	359,580	0	3,076,300	2,734	3,100,000
1-1-86	62,000	360,000	67,358	355,642	1,000	2,720,000	2,358	2,740,000
7-1-86	54,800	360,000	61,223	353,577	0	2,367,100	1,074	2,388,000
1-1-87	47,800	350,000	49,159	349,441	1,000	2,017,900	2,400	2,030,000
7-1-87	40,800	350,000	43,425	347,175	0	1,670,400	2,639	1,690,000
1-1-88	33,800	345,000	36,766	342,834	1,000	1,327,600	2,599	1,345,000
7-1-88	26,700	345,000	31,350	340,350	0	987,300	765	990,000
1-1-89	19,600	335,000	20,016	336,784	1,000	651,300	2,215	655,000
7-1-89	13,100	335,000	15,027	333,073	0	318,400	1,299	320,000
1-1-90	6,400	320,000	9,232	310,454	1,000	0	0	0

(c) The following notes explain Tables I and II in item (b) of this example:

(1) Column B of Table I shows when the original proceeds of the series A issue would be spent. The original proceeds would be $11,435,000 (*i.e.*, $11,500,000 less issuing expenses of $65,000). Of these original proceeds, $10,000,000 would be used to pay principal on the prior issue, $1,400,000 would be used to pay interest on the prior issue, and the remaining $35,000 would be used to pay administrative costs of investing the proceeds of the series A issue.

(2) Column C of Table I shows when the investment proceeds of the series A issue would be spent. (All these investment proceeds would be spent at the same time they were received.) Of the $4,916,620 of investment proceeds, $10,000 would be used to pay administrative costs of carrying and repaying the series A issue, $4,900,714 (which would be excess proceeds) would be used to pay principal and interest on the series B issue, and the remaining $6,106 would be used to pay principal on the series A issue. These investment proceeds would be derived from investing the original proceeds of the series A issue in 6½-percent Treasury obligations. (It is assumed that 6½ percent is the highest rate that the Treasury will pay on January 1, 1983.)

(3) Column D of Table I shows administrative costs of carrying the series A issue and of investing the proceeds of the series A issue. These administrative costs would be paid with proceeds of the series A issue.

(4) Column E of Table I shows the amount of original proceeds of the series A issue that would be invested in Treasury obligations as of the end of the corresponding day in column A.

(5) Column F of Table I shows small amounts of original proceeds that would be kept in a checking account. These amounts would be temporary investments (see § 1.103–14(e)(3)(ix)).

(6) Column B of Table II shows the interest that would be paid on the series B issue.

(7) Column C of Table II shows the principal that would be paid on the series B issue.

(8) Column D of Table II shows when the investment proceeds of the series B issue would be spent. (Not all these investment proceeds would be spent at the same time they were received. Some would be put into the checking account described in item (c)(12) of this example.) Of the $781,286 of investment proceeds, $7,000 would be used to pay administrative costs of carrying and repaying the series B issue, and the remaining $774,286 (which would be excess proceeds) would be used to pay principal and interest on the series B issue. These investment proceeds would be derived from investing the original proceeds of the series B issue in 4.345-percent Treasury obligations. (However, the yield on the acquired obligations, taking into account $15,000 of administrative costs paid on January 1, 1983, would be only 4.252 percent. The yield on the series B issue would also be 4.252 percent.)

(9) Column E of Table II shows when the original proceeds of the series B issue would be spent. The original proceeds would be $4,915,000 (*i.e.*, $4,950,000 less issuing expenses of $35,000). All these original proceeds would be used to pay interest on the prior issue except for $15,000 that would be used to pay administrative costs of investing the original proceeds of the series B issue.

(10) Column F of Table II shows administrative costs of carrying and repaying the series B issue and investing the proceeds of the series B issue. These administrative costs would be paid with investment proceeds of the series B issue.

(11) Column G of Table II shows the amount of original proceeds of the series B

issue that would be invested in Treasury obligations as of the end of the corresponding day in column A.

(12) Column H of Table II shows small amounts of original and investment proceeds of the series B issue that would be kept in a checking account. These amounts would be temporary investments (see § 1.103–14(e)(3)(ix)).

(d) Based on items (a), (b), and (c) of this example, the following conclusions may be drawn:

(1) All of the excess proceeds of the series B issue and substantially all (*i.e.*, all but $6,106) of the excess proceeds of the series A issue would be used to pay principal and interest on the series B issue.

(2) All of the excess proceeds of the series B and series A issues would be investment proceeds.

(3) All of the principal and interest on the series B issue would be paid with proceeds of the series B and series A issues.

(4) The series B issue would be discharged on January 1, 1990, the same day as the prior issue.

(5) The proceeds of the series B issue would not be spent faster than principal and interest on the series B issue and administrative costs of the series B issue would be paid. For example, on January 1, 1984, $956,500 of proceeds of the series B would have been spent (*i.e.*, $752,416 of original proceeds plus $204,084 of investment proceeds), which is the same as the $956,500 of principal, interest, and administrative costs of the series B issue that would be paid on or before January 1, 1984 (*i.e.*, $750,000 of principal plus $190,500 of interest plus $16,000 of administrative costs).

(e) Based on the conclusions in item (d) of this example, the series A and series B bonds are not treated as arbitrage bonds under this section (see paragraph (c) of this section).

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Jerome Kurtz,

Commissioner of Internal Revenue.

Approved: May 8, 1979.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 79-17314 Filed 5-31-79; 8:45 am]

BILLING CODE 4830-01-M

RENEGOTIATION BOARD

32 CFR Chapter XIV

Removal of Chapter From CFR

Editorial Note: The activities and funding of the Renegotiation Board were terminated effective March 31, 1979, under Title V of Pub. L. 95–431 (92 Stat. 1043). Therefore, Title 32, Chapter XIV is deleted from the *Code of Federal Regulations*.

BILLING CODE 6820-27-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 806a

Releasing Information From and Providing Access to Military Personnel Records

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: This rule (32 CFR Part 806a) is deleted because of limited applicability to the general public. Intended effect is to insure that only regulations which substantially affect the public be maintained in the Air Force portion of the Code of Federal Regulations.

EFFECTIVE DATE: June 1, 1979.

FOR FURTHER INFORMATION CONTACT: Mrs. Carol M. Rose, Air Force Federal Register Liaison Officer, AS/DASJR, Pentagon, Washington, DC 20330. Phone: (202) 697–1861.

Carol M. Rose,

Air Force Federal Register Liaison Officer.

[FR Doc. 79-17307 Filed 6-6-79; 8:45 am]

BILLING CODE 3910-01-M

32 CFR Part 807a

Distribution of Federal Catalog System Data to the Public

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: This rule (32 CFR 807a) is deleted because of limited applicability to the general public. Intended effect is to insure that only regulations which substantially affect the public be maintained in the Air Force portion of the Code of Federal Regulations.

EFFECTIVE DATE: June 1, 1979.

FOR FURTHER INFORMATION CONTACT: Mrs. Carol M. Rose, Air Force Federal Register Liaison Officer, AS/DASJR, Pentagon, Washington, DC 20330. Phone: (202) 697–1861.

Carol M. Rose,

Air Force Federal Register Liaison Officer.

[FR Doc. 79-17308 Filed 6-6-79; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 164

[CGD 77-168]

Navigation Safety Regulations; Electronic Navigation Equipment

AGENCY: Coast Guard, DOT.

ACTION: Correction.

SUMMARY: On May 31, 1979 the Coast Guard published an interim final rule in the **Federal Register** (44 FR 31592) which contained an incorrect effective date. This error is corrected by deleting in the first column, on the second line of the "EFFECTIVE DATE" section of the rule, the words, "July 16, 1979" and substituting a colon.

FOR FURTHER INFORMATION CONTACT: Mr. Fred A. Schwer, Project Manager, Office of Marine Environment and Systems (G–WLE–4/73), Room 7315, Department of Transportation, Nassif Bldg, 400 Seventh St., S.W., Washington, D.C. 20950, (202) 426–4958.

(Sec. 2, Pub. L. 95–474 (33 U.S.C. 1221); 49 CFR 1.46(n)(4))

Dated: June 4, 1979.

F.P. Schubert,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Environment and Systems.

[FR Doc. 79-17777 Filed 6-6-79; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 1236–1]

Air Programs; Approval and Promulgation of Implementation Plans Tennessee: Adoption of Plan Revisions

AGENCY: U.S. Environmental Protection Agency, Region IV.

ACTION: Final rule.

SUMMARY: The Tennessee Air Pollution Control Board adopted, after public notice and public hearing, revisions in their rules and regulations, to become effective April 12, June 16, 1978. The revisions involve changes in the diffusion equation limiting particulate emissions, continous monitoring requirements, vinyl chloride regulations, procedures for review of new sources in non-attainment areas, emission limits for wood-fired fuel burning equipment and other miscellaneous changes. These

provisions were described in a notice of proposed rulemaking in the Federal Register of February 23, 1979 (44 FR 10781). No comments were received on the proposal. The changes are today approved as proposed.

DATES: These changes are effective June 7, 1979.

ADDRESSES: Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, EPA (PM-213), 401 M. Street, S.W., Washington, D.C. 20460.
EPA Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30308.
Tennessee Air Pollution Control Division, 256 Capitol Hill Building, Nashville, Tennessee 37219.

FOR FURTHER INFORMATION CONTACT: Mr. Archie Lee, Air Programs Branch, EPA Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30308, 404/881-2864.

SUPPLEMENTARY INFORMATION: Proposed changes in the Tennessee Air Pollution Control Regulations were adopted by the Tennessee Air Pollution Control Board and submitted to EPA as a revision to the State Implementation Plan. The major revisions are discussed below.

The previous regulation allowing dispersion enhancement techniques was corrected, and sources are prevented from returning to the diffusion equation after being regulated by the process weight table. Another revision fulfills, EPA's requirements for continuous monitoring and requires written reports on emissions. In addition, Tennessee now has emission standards for vinyl chloride that are equivalent to federal standards.

Wood-fired boilers were exempt under the Tennessee Air Quality Act until recently when the State Legislature removed their exemption. Regulations for control of wood-fired boilers were adopted in the original SIP but these requirements were based on the example region concept. Now that the Board has had time to reconsider the implications of the example region concept, they have adjusted the emission limits to conform more closely to those required to achieve the air quality standards, without placing any unneccessary control burdens on the sources involved.

Chapter 9, Construction and Operating Permits, has been revised to include provisions of the December 21, 1976, Interpretative Ruling in issuing permits to sources in or impacting non-attainment areas. Other miscellaneous changes were adopted regarding conflict of interest and other housecleaning matters.

The Administrator's review of these materials indicates that implementation of the present revisions will have no adverse impact on the attainment and maintenance of the National Ambient Air Quality Standards. Accordingly, these revisions are approved, effective June, 7, 1979.

(Section 110(a) of the Clean Air Act (42 U.S.C. 7410(a))).

Dated: May 24, 1979.

Douglas M. Costle,

Administrator.

Note.—Incorporation by reference provisions approved by the Director of the Federal Register May 18, 1972. A copy of the incorporated material is on file in the office of the Federal Register library.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart RR—Tennessee

In § 52.2220, paragraph (c) is amended by adding subparagraph (29) as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(29) Regulations providing for continous monitoring of existing sources, control of vinyl chloride emissions, review of new sources in nonattainment areas, control of emissions from wood-fired boilers, change in diffusion equation limiting particulate emissions, conflict of interest rules and miscellaneous other changes, submitted on May 3 and June 22, 1978, by the Tennessee Department of Public Health, Division of Air Pollution Control.

[FR Doc. 79-17604 Filed 6-6-79; 8:45 am]

BILLING CODE 6560-01-M

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40 CFR Part 65

[FRL 1236-7]

Approval of Delayed Compliance Order Issued by State of Utah; Through the Air Conservation Committee to Spanish Fork Foundry, Spanish Fork, Utah

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the State of Utah through the Air Conservation Committee to the Spanish Fork Foundry. The Order requires the Foundry to complete construction and installation of new buildings and electric furnaces, discontinue use of existing furnaces and achieve compliance with certain regulations contained in the federally-approved Utah State Implementation Plan (SIP). Because of the Administrator's approval, Spanish Fork Foundry's compliance with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violation of the SIP regulations covered by the Order during the period the Order is in effect.

DATE: This rule takes effect on June 7, 1979.

FOR FURTHER INFORMATION CONTACT: Ms. Christine Phillips, Chief, General Enforcement Section, Enforcement Division, EPA, Region VIII, 1860 Lincoln Street, Denver, Colorado 80295, telephone 303-837-2361.

ADDRESSES: A copy of the Delayed Compliance Order, any supporting material, and any comments received in response to a prior Federal Register notice proposing approval of the Order are available for public inspection and copying during normal business hours at: Enforcement Division, EPA, Region VIII, 1860 Lincoln Street, Denver, Colorado 80295.

SUPPLEMENTARY INFORMATION: On March 21, 1979, the Regional Administrator of EPA's Region VIII Office published in the Federal Register, 44 FR 18530, a notice proposing approval of a delayed compliance order issued by the State of Utah, through the Air Conservation Committee to the Spanish Fork Foundry. The notice asked for public comments by April 27, 1979, on EPA's proposed approval of the Order. No comments were received during this period.

Therefore, the delayed compliance order issued to Spanish Fork Foundry is approved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places Spanish Fork Foundry on a schedule to complete construction and installation of new buildings and electric furnaces, discontinue use of existing furnaces and achieve compliance as expeditiously as practicable with Section 2.2.1 of the Air Conservation Regulations, a part of the federally-approved Utah State

Implementation Plan. The Order also imposes the Foundry submit reports to the Committee within five days of completion of construction and installation of new buildings and furnaces certifying compliance with the outlined schedule. If the conditions of the Order are met, it will permit Spanish Fork Foundry to delay compliance with the SIP regulations covered by the Order until July 1, 1979. The Foundry is unable to immediately comply with these regulations.

In consideration of the foregoing, Chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By adding the following entry to the table in § 65.491 to read as follows:

§ 65.491 EPA Approval of State delayed compliance orders issued to major stationary sources.

* * * * *

Source	Location	Order No.	SIP regulation involved	Date of FR proposal	Final compliance date
*	*	*	*	*	*
Spanish Fork Foundry	Spanish Fork, Utah	A-79-4	Section 2.2.1	3-21-79	7-1-79

EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the need to immediately place Spanish Fork Foundry on a schedule which is effective under the Clean Air Act for compliance with the applicable requirements of the Utah State Implementation Plan.

Authority: 42 U.S.C. 7413 U.S.C. 7413(d), 7601.

Dated: May 29, 1979.

Douglas M. Costle,

Administrator.

[FR Doc. 79-17603 Filed 6-6-79; 8:45 am]

BILLING CODE 6560-01-M

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40 CFR Part 65

[FRL 1236-8]

Approval of Delayed Compliance Order Issued by State of Washington Department of Ecology to the Louisiana Pacific Corp.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the State of Washington Department of Ecology to the Louisiana Pacific Corporation. The Order requires the company to bring air emissions from its sawmill at Ione, Washington into compliance with certain regulations contained in the federally approved Washington State Implementation Plan (SIP). Because of the Administrator's approval, Louisiana Pacific's compliance with the Order will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the Order during the period the Order is in effect.

DATES: This rule takes effect on June 7, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth D. Brooks, EPA, Washington Air Coordinator, 13400 Northrup Way, Suite 3, Bellevue, Washington 98004, telephone (206) 455-7218.

ADDRESSES: A copy of the Delayed Compliance Order, any supporting material, and any comments received in response to a prior Federal Register notice proposing approval of the Order are available for public inspection and copy (for appropriate charges) during normal business hours at the Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, 11th Floor (11E).

SUPPLEMENTARY INFORMATION: On March 28, 1979, the Regional Administrator of EPA's Region 10 Office published in the Federal Register, 44 FR 18534, a notice proposing approval of a delayed compliance order issued by the State of Washington Department of Ecology to the Louisiana Pacific Corporation. The notice asked for public comments by April 27, 1979 on EPA's proposed approval of the Order. No public comments were received in response to the proposal notice.

Therefore, the delayed compliance order issued to Louisiana Pacific Corporation is approved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places Louisiana Pacific Corporation on a schedule to bring its wigwam burner at Ione, Washington into compliance as expeditiously as practicable with the Washington Administrative Code (WAC) 18-04-040, a part of the federally approved Washington State Implementation Plan. The Order also imposes interim requirements which meet Sections 113(d)(1)(C) and 113(d)(7) of the Act, and reporting requirements. Inclusion of interim monitoring requirements in the Order would be unreasonable. If the conditions of the Order are met, it will permit Louisiana Pacific to delay compliance with the SIP regulations covered by the Order until July 1, 1979. The company is unable to immediately comply with these regulations.

If the Administrator determines that Louisiana Pacific Corporation is in violation of a requirement contained in the Order, one or more of the actions required by Section 113(d)(9) of the Action will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under Section 307(b) of the Act.

EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the need to immediately place Louisiana Pacific Corporation on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) of the Washington State Implementation Plan.

Authority: 42 U.S.C. 7413(d), 7601.

Dated: May 29, 1979.

Douglas M. Costle,

Administrator.

In consideration of the foregoing, Chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

By adding the following entry to the table in § 65.521:

§ 65.521 EPA approval of State delayed compliance orders issued to major stationary sources

The State orders identified below have been approved by the Administrator in accordance with

section 113(d)(2) of the Act and with this part. With regard to each order, the Administrator has made all the determinations and findings which are necessary for approval of the order under section 113(d) of the Act.

Source	Location	Order No.	SIP regulation(s) involved	Date of FR proposal	Final compliance date
•	•	•	•	•	•
Louisiana Pacific Corp.	Ione, Wash.	W12	WAC 18-04-040.	3/28/79	7/1/79
•	•	•	•	•	•

[FR Doc. 79-17688 Filed 6-6-79; 8:45 am]
BILLING CODE 6560-01-M

40 CFR Part 162

[FRL 1242-3; OPP—250013]

Regulations for the Enforcement of the Federal Insecticide, Fungicide, and Rodenticide Act; Registration, Reregistration and Classification Procedures

AGENCY: Environmental Protection Agency (EPA), Office of Pesticide Programs.

ACTION: Notification to Secretary of Agriculture of Final Regulation.

SUMMARY: Notice is given as required by Section 25(a)(2)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, that the Administrator, EPA, has forwarded to the Secretary of the U.S. Department of Agriculture a copy of EPA's final regulation designed to exempt those pesticides offered solely for use on humans that are also new drugs from the provisions of the FIFRA. It also clarifies the EPA policy relative to the registration of pesticide products that are not new drugs or new animal drugs.

FOR FURTHER INFORMATION CONTACT: Jay Ellenberger, Registration Division (TS-767), office of Pesticide Programs, EPA, Room E-329, 401 M Street, S.W., Washington, D.C. 20460, telephone 202/426-9490.

SUPPLEMENTARY INFORMATION: Section 25(a)(2)(B) of FIFRA states that the Administrator shall provide the Secretary of Agriculture a copy of any final regulation at least 30 days prior to signing it for publication in the Federal Register. If the Secretary comments in writing regarding the final regulation within 15 days after receiving it, the Administrator shall publish in the Federal Register (with the final regulation) the comments of the Secretary, if requested, and the response of the Administrator. If the Secretary does not comment in writing within 15 days after receiving the final regulations, the Administrator may sign such regulation for publication in the Federal Register any time after the 15-day period.

Pursuant to FIFRA Section 25(a)(3), a copy of this final regulation has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. The final regulation has also been submitted to the FIFRA Scientific Advisory Panel, as required by Section 25(d).

(Section 25 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136))

Dated: June 1, 1979.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 79-17738 Filed 6-6-79; 8:45 am]
BILLING CODE 6560-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

41 CFR Part 3

[Procurement Regulation Directive 78-11]

NASA Procurement Regulation (NPR)

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: The Cost Accounting Standards (CAS) Board has amended its regulations, effective August 1, 1978 (43 FR 24819, June 8, 1978) to exempt contracts awarded to educational institutions, except for contracts to be performed by a Federally Funded Research and Development Center (FFRDC) operated by such an institution. This Procurement Regulation Directive includes implementing changes to NASA Procurement Regulations 3.1203(a) and 3.1204-1(a).

EFFECTIVE DATE: June, 7, 1979.

FOR FURTHER INFORMATION CONTACT: James H. Wilson, Policy Division (Code HP-1), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: 755-2237.

SUPPLEMENTARY INFORMATION: This Procurement Regulation Directive also provides other recent revisions in CAS Board regulations and standards, including the promulgation of CAS 415 (4 CFR 415), "Accounting for the Cost of Deferred Compensation." It also reflects that other CAS have been changed in Appendix "O" which references Cost Accounting Standards.

Authority: The provisions of this document are issued under 42 U.S.C. 2473(b)(1).

Stuart J. Evans,

Director of Procurement.

1. In Part 3, 3.1203(a) is revised to read as follows:

3.1203 Prime Contractor disclosure Statement(s).

(a) *Solicitation Notice.* The notice entitled Disclosure Statement-Cost Accounting Practices and Certification in 3.501(b)(1)(A), shall be inserted in all solicitations which are likely to result in a negotiated contract exceeding $100,000, except when the price is (i) based on established catalog or market prices of commercial items sold in substantial quantities to the general public or (ii) set by law or regulation. The notice shall not be inserted if the solicitation is limited to small business concerns or to educational institutions subject to the cost principles in Part 15, subpart 3 (except that the notice shall be inserted in solicitations sent to Federally Funded Research and Development Centers operated by an educational institution). The notice should also be excluded from solicitations sent to the Canadian Commercial Corporation or solicitations which will result in contracts executed and performed in their entirety outside the United States, its territories and possessions.

* * * * *

2. As set forth below, in 3.1204-1, paragraph (a)(iii) is revised; in paragraph (a)(iv) the word "or" is deleted and added at the end of paragraph (a)(v); paragraph (a)(vi) is added; and paragraph (c) is revised:

3.1204-1 Prime Contracts and Solicitations.

* * * * *

(a) * * *

(iii) contracts awarded to an educational institution subject to the cost principles in Part 15, Subpart 3 except for contracts to be performed by a Federally Funded Research and Development Center (FFRDC) operated by such an institution;

(iv) contracts with contractors who are eligible for and have elected to use modified contract coverage under Part 332 of Appendix O (see (c) below);

(v) contracts which are executed and performed in their entirety outside the United States, its territories and possessions; or

(vi) contracts for which the Cost Accounting Standards Board has approved other waivers or exemptions pursuant to Paragraph 331.30 of Appendix O.

* * * * *

(c) The clauses in 7.104-55(a)(2) and (b) shall be inserted in all solicitations likely to result in a negotiated contract exceeding $100,000, and in all such contracts exceeding $100,000, but under $10,000,000, unless exempt in accordance with (a)(i) through (iii) or (v) and (vi) above, when the offeror certifies he is eligible for and elects to use modified contract coverage under provisions of Part 332 of Appendix O (see (a)(iv) above). In order to administer this exemption effectively, the solicitation notice in 3.501(b)(1)(C) shall be inserted in all solicitations requiring the inclusion of the solicitation notices in 3.501(b)(1)(A).

[FR Doc. 79-17884 Filed 6-6-79; 8:45 am]

BILLING CODE 7510-01-M

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41 CFR Parts 2, 3, 7, 16, 20, 25

[Procurement Regulation Directive 79-12]

NASA Procurement Regulation (NPR)

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: The changes in this document are made to further align the NASA Procurement Regulation with the Armed Services Procurement Regulation in areas as follows:

1. Solicitation of Bids
2. Late Bids, Modification of Bids or Withdrawal of Bids Clause
3. Solicitation of Proposals
4. Engineering Change Proposals and Change Order Accounting
5. Miscellaneous Forms
6. Contracts and Agreements Totally Funded by DOE
7. Distribution of Contractual Documents
8. Production Reporting

EFFECTIVE DATE: June 7, 1979.

FOR FURTHER INFORMATION CONTACT: James H. Wilson, Policy Division (Code HP-1), NASA Headquarters, Washington, D.C. 20546, telephone: 755-2237.

SUPPLEMENTARY INFORMATION: (1) in 2.201-1 paragraph (61) pertaining to exchange and/or sale of property and paragraph (62) pertaining to energy conservation are added as additional items to be considered during preparation of invitations for bids.

(2) The "Late Bid" clause in 2.303-2 is revised to permit consideration of late bids bearing a Canadian Postal Service postmark and sent by either registered or certified mail.

(3) In 3.501, paragraph (b) is revised to modify the language to be inserted in solicitations pertaining to late proposals, modification of proposals, withdrawal of proposals, exchange and/or sale of property, and energy conservation.

(4) In Part 7, 7.204-89, 7.204-90, 7.303-89, 7.303-90, 7.403-89, 7.403-90, 7.452-89 and 7.452-90 are added to require the use of the "Engineering Change Proposals" clause and "Change Order Accounting" clause, when applicable.

(5) Editorial changes are made in 16.800 and 16.816.

(6) In Part 20, 20.203-4 is revised to insert the contract number prefix to be used on contracts and agreements that are totally funded by DOE. Such prefix will be used by all NASA installations.

(7) Revisions are made in 20.401 to:

(a) Eliminate the need to furnish information copies of contracts and modifications to contracts that require approval of the Director of Procurement;

(b) Eliminate the requirement to distribute copies of approval letters to the Program Office; and

(c) Authorize NASA Headquarters to forward approved (or disapproved) contracts or supplemental agreements to the official deemed appropriate.

(8) In Part 25, 25.2 is revised to provide that when production progress reporting is to be required, the contractor may be required to prepare and submit such reports.

Authority: The provisions of this document are issued under 42 U.S.C. 2473(c)(1).

Stuart J. Evans,
Director of Procurement.

PART 2—PROCUREMENT BY FORMAL ADVERTISING

1. In 2.201-1, paragraphs (a)(61) and (a)(62) are added as follows:

2.201-1 Supply and Service Contracts.

(61) If the solicitation offers property for exchange/sale or both, see Part 4, Subpart 1.

(62) See 1.339 "Energy Conservation."

2. The clause in 2.303-2 is revised to read as follows:

2.303-2 Late Bids, Modifications of Bids or Withdrawal of Bids.

* * * * *

Late Bids, Modifications of Bids or Withdrawal of Bids (September 1979)

(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and either:

(i) it was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for the receipt of bids (e.g., a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th or earlier); or

(ii) it was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation.

(b) Any modification or withdrawal of bid is subject to the same conditions as in (a) above except that withdrawal of bids by telegram is authorized. A bid may also be withdrawn in person by a bidder or his authorized representative, provided his identity is made known and he signs a receipt for the bid, but only if the withdrawal is made prior to the exact time set for receipt of bids.

(c) The only acceptable evidence is to establish:

(i) the date of mailing of a late bid, modification or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U.S. or Canadian Postal Service. If neither postmark shows a legible date, the bid, modification or withdrawal shall be deemed to have been mailed late. (The term "postmark" means a printed, stamped or otherwise placed impression that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. or Canadian Postal Service).

(ii) the time receipt at the Government installation is the time/date stamp of such installation on the bid wrapper or other documentary evidence of receipt maintained by the installation.

(d) Notwithstanding the above, a late modification of an otherwise successful bid which makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

Note.—The term "telegram" includes mailgrams.

PART 3—PROCUREMENT BY NEGOTIATION

3. In 3.501, paragraph (b)(v) is revised as set forth below. Paragraphs (b)(lxxxvi) and (b)(lxxxvii) are added.

S3.501 Preparation of Request for Proposals or Request for Quotations.

* * * * *

(b) ***

(v) with respect to late proposals, modifications of proposals, and withdrawal of proposals, include the provision set forth in 3.802–4(c) (this provision will be appropriately modified in the case of request for quotations); where Standard Form 33 (Solicitation, Offer, and Award) is used, the following notice shall be prominently set forth in the request for proposals:

Notice to Offerors—Late Proposals, Modifications of Proposals, and Withdrawal of Proposals (September 1978)

Paragraph 8, "Late Proposals, Modification of Proposals, and Withdrawal of Proposals," of Standard Form 33A does not apply to this solicitation. See the special provision in this solicitation entitled, "Late Proposals."

* * * * *

(lxxxvi) If the solicitation offers property for exchange/sale or both, see Part 4, Subpart 1.

(lxxxvii) See 1.339 "Energy Conservation."

* * * * *

4. As set forth below, in 3.802–4(c) the title is revised; in 3.802–4(c)(1) the provision is revised; paragraph 3.802–4(c)(5) is renumbered to read 3.802–4(c)(6) and is revised, and a new 3.802–4(c)(5) is added.

S3.802–4 Request for Proposals.

* * * * *

(c) *Late Proposals, Late Unsolicited Revisions to Proposals and Withdrawal of Proposals.*

(1) Except with respect to procurements estimated not to exceed $10,000, written requests for proposals shall contain the following provision:

Late Proposals and Withdrawal of Proposals (September 1978)

The Government reserves the right to consider proposals or modifications thereof received after the date indicated for such purpose, but before award is made, should such action be in the interest of the Government. Proposals may be withdrawn by written or telegraphic notice received at any time prior to award. Proposals may be withdrawn in person by an offeror or his authorized representative, provided such individual furnishes proper identification and signs a receipt for the proposal prior to award.

* * * * *

(5) Offerors may withdraw their proposal any time prior to award, provided that the conditions set forth in the provision entitled "Late Proposals and Withdrawal of Proposals" in (1) above are satisfied.

(6) The provisions of (1) through (5) above are also applicable to late quotations. In the case of a request for quotations, the provisions set forth in (1) above will be appropriately modified.

* * * * *

PART 7—CONTRACT CLAUSES

(5) In Part 7, as set forth below, 7.204–87 and 7.204–88 are added and marked reserved; 7.204–89 and 7.204–90 are added.

7.204–87 and 7.204–88 [Reserved]

7.204–89 Engineering Change Proposals (ECP's). In accordance with 26.205, the clause under 7.104–89 is a sample clause.

7.204–90 Change Order Accounting. In accordance with 26–205, the clause under 7.104–90 is a sample clause.

6. In Part 7, as set forth below, 7.303–87 through 7.303–88 are added and marked reserved; 7.303–89 and 7.303–90 are added.

7.303–87 and 7.303–88 [Reserved]

7.303–89 Engineering Change Proposals (ECP's). In accordance with 26.205, the clause under 7.104–89 is a sample clause.

7.303–90 Change Order Accounting. In accordance with 26.205, the clause under 7.104–90 is a sample clause.

7.402–8 [Amended]

7. The date of the clause "Subcontract" in paragraph 7.402–8(a) is changed to read (September 1977).

8. In Part 7, as set forth below, 7.403–87 and 7.403–88 are added and marked reserved; 7.403–89 and 7.403–90 are added.

7.403–87 and 7.403–88 [Reserved]

7.403–89 Engineering Change Proposals (ECP's). In accordance with 26.205, the clause under 7.104–89 is a sample clause.

7.403–90 Change Order Accounting. In accordance with 26.205, the clause under 7.104–90 is a sample clause.

9. In Part 7, as set forth below, 7.452–87 and 7.452–88 are added and marked reserved; and 7.452–89 and 7.452–90 are added.

7.452–87 and 7.452–88 [Reserved]

7.452–89 Engineering Change Proposals (ECP's). In accordance with 26.205, the clause under 7.104–89 is a sample clause.

7.452–90 Change Order Accounting. In accordance with 26.205, the clause under 7.104–90 is a sample clause.

7.702–12 [Amended]

10. The date of the clause in 7.702–12 entitled "Use and Charges" is changed to read "September 1978" instead of "April 1977". Under "Rental Rates" of the clause in paragraph (ii) change "Over 10 years . . . 75%" to read "Over 10 years . . . 0.75%."

PART 16—PROCUREMENT FORMS

16.001 [Amended]

11. In 16.001(b) change the date of Standard Form 33–A to read "(7–77)" in place of "(3–69)."

12. In Part 16, 16.800 and 16.816 are revised as follows:

16.800 Scope of Subpart.

This Subpart prescribes miscellaneous forms, other than contract forms, for use in connection with the procurement of supplies and services.

16.816 Identical Bid Report for Procurement (DJ 1500).

This form shall be used in reporting identical bids, pursuant to 1.114.

PART 20—ADMINISTRATIVE MATTERS

13. In part 20, 20.203–4 is revised as follows:

20.203–4 Assigned Contract or Agreement Prefixes.

Approved prefixes for NASA contract or agreement numbers are as follows:

Headquarters and prefix

Headquarters Administration Office, NASW.
Procurement Office (Basic Agreements and Institutional Cost Sharing Agreements), NAS 11.

Field Installations, Offices, and Prefix.

Langley Research Center, NAS 1.
Ames Research Center, NAS 2.
Lewis Research Center, NAS 3.
Dryden Flight Research Center, NAS 4.
Goddard Space Flight Center, NAS 5.
Wallops Flight Center, NAS 6.
NASA Resident Procurement Office—JPL, NAS 7.
George C. Marshall Space Flight Center, NAS 8.
Lyndon B. Johnson Space Center, NAS 9.
John F. Kennedy Space Center, NAS 10.
National Space Technology Laboratories, NAS 13.

All contracts that are totally funded by the Department of Energy (DOE) shall be assigned the following prefix:

Den———
No.——

This contract prefix designation represents Department of Energy (DE), and NASA (N), and the Center identification number (No.); e.g. DEN 8

would be the MSFC prefix designation. The DEN——— 8 prefix would be followed by five blank spaces and the numeral one, i.e. Den———8———1. Contracts will be sequentially numbered beginning with "1." No contract number shall exceed eleven (11) total digits.

14. In Part 20, 20.401–2 and 20.401–3 are revised as follows:

S20.401–2 Contracts Requiring Headquarters Approval. On all contracts and all supplemental agreements issued thereto, requiring approval of the Director of Procurement, one executed copy will be retained by the Office of Procurement, NASA Headquarters (see 20.401–3).

S20.401–3 Distribution of Contract Documents by Headquarters. Upon approval (or disapproval) of the proposed contract or supplemental agreement, the Director of Procurement will forward the original and two executed copies of the contract or supplemental agreement together with the contract file to the Procurement Officer or other official as deemed appropriate.

PART 25—PRODUCTION SURVEILLANCE AND REPORTING

15. In Part 25, 25.202 and 25.203 are revised as follows:

S25.202 Production Progress Reporting by Contractors.

(a) When production progress reports are required from the contractor, the clause set forth in ASPR 7–104.51 shall be included in the contract.

(b) Reports shall be made on DD Form 375, Production Progress Reports, or any other form approved by the Office of Management and Budget under the Federal Reports Act of 1942 (P.L. 77–831). Automatic data processing equipment printouts may be substituted for the DD Form 375 provided they contain identical data. Automatic data processing cards or tape or electrical transmissions which contain the data normally contained in these reports may be authorized in lieu of the printed form. Contract schedule provisions supporting the clause referenced in (a) above shall contain but not be limited to instructions relative to (i) the frequency and timing (normally five workdays after each reporting period) of reporting; (ii) the contract line items, exhibits, or exhibit line items for which reporting is required; (iii) offices and mailing addresses to which reports shall be sent, including the purchasing office, the contract administration office (three copies), status control activities and inventory managers, if appropriate; and (iv) special requirements as to codes and formats. When reporting an actual or potential delinquency, the contractor prepared DD Form 375c shall, as a minimum, contain the following data:

(i) Problem—a statement of the difficulty, the reasons therefor and whether caused by the Government or the contractor;

(ii) items and quantities affected;

(iii) date of commencement of the anticipated or actual delinquency;

(iv) action taken by the contractor to overcome the anticipated or actual delinquency;

(v) estimated recovery date based upon evaluation of the factors contributing to the delinquency; and

(vi) a realistic schedule revision which can be met by the contractor.

In the absence of an actual or potential delinquency, the DD Form 375c may be used to provide any information which the contractor deems appropriate.

(c) If the contract is assigned or delegated for contract administration, the contract administration office shall take appropriate action to enforce contract production reporting requirements. The accuracy of contractor-prepared reports shall be verified by either (i) a program of continuous surveillance over the contractor's system for preparation of the reports, or (ii) by individual review of each report.

(d) If the contractor's report indicates that the contract schedule will be met and the contract administration office concurs, no further report by the contract administration office is required. If, on the other hand, either (i) the contractor forecasts a delivery or performance failure, or (ii) the contract administration office does not concur in the contractor's no-failure report, and in either case (A) the delay is expected to be for more than 30 days, or (B) purchasing office action, in any case, is deemed necessary, the contract administration office shall add an endorsement and forward a copy to the purchasing office and to the inventory control manager unless otherwise specified in the contract, within four working days after receipt of the contractor's report. The endorsement shall include:

(i) comments as to nonconcurrence, if applicable;

(ii) Action Taken—by the contractor and by the Government to overcome the anticipated or actual delinquency;

(iii) Action Required—a positive recommendation to the purchasing office of the action necessary to correct the delinquency, including any realistic schedule revision which can be met by the contractor and the extent to which the contractor may have excusable cause of delay. When other actions are indicated, such as those leading to default termination, the contract administration office shall indicate specific dates by which Government action should be taken to preserve the Government's rights.

S25.203 Delinquency Reports Initiated by Contract Administration Offices.

The contract administration office may, at any time, and, at its option, advise the purchasing office or, if so identified in the contract, the inventory manager, of any potential or actual delay in performance or delivery. Advice may be furnished by use of:

(i) DD Form 375–2, Delay in Delivery (Flash Notice), in accordance with (b);

(ii) DD Form 375, Production Progress Report, plus DD Form 375c (continuation); or

(iii) message; or

(iv) letter.

[FR Doc. 79–17086 Filed 6–6–79; 8:45 am]
BILLING CODE 7510–01–M

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41 CFR Parts 1, 7

[Procurement Regulation Directive 78–13]

NASA Procurement Regulation (NPR)

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: The changes in this document are made to further align the NASA Procurement Regulation with the Armed Services Procurement Regulation in the areas of advance payment of contract financing and property administration.

EFFECTIVE DATE: June 7, 1979.

FOR FURTHER INFORMATION CONTACT: James H. Wilson, Policy Division (Code HP–1), NASA Headquarters, Washington, D.C. 20546, Telephone: 755–2237.

SUPPLEMENTARY INFORMATION: 1. In Part 1, 1.358 is revised; in Part 7, 7.452–4 is revised; and Appendix J, 5001 is revised. These revisions are to update NASA Procurement Regulation coverage on advance payments authorization for primary recipient nonprofit organizations and educational institutions.

2. Supplement 3 to the NASA Procurement Regulation is revised to:

(a) clarify the reporting requirements associated with NASA Form 1018; and

(b) redefine the property administrator's duties and responsibilities.

Authority: The provisions of this document are issued under 42 U.S.C. 2473(b)(1).

Stuart J. Evans,
Director of Procurement.

PART 1—GENERAL PROVISIONS

1. In Part 1, 1.358 is revised as follows:

1.358 Advance Payment Method of Contract Financing.

Advance payments without interest are authorized for contracts with primary recipient nonprofit organizations and educational institutions. Primary recipient means a recipient organization receiving cash advances directly from the Federal Government. The statutory authorities for advance payments are 10 U.S.C. 2307, 42 U.S.C. 2473(c)(5), and Public Law 85–804 as implemented by Executive Order 10789. (See 3.303(a)(ii), *Determinations and Findings Below the Administrator Level*, 7.452–4, *Advance Payments*, and Appendix J, Subpart 50, *Advance Payments*.)

PART 7—CONTRACT CLAUSES

2. In Part 7, 7.452–4 through 7.452–6 [Reserved] is revised to read 7.452–5 and 7.452–6 [Reserved]; in Part 7, 7.452–4 is added as follows:

7.452–4 Advance Payments.

(a) When advance payments are to be made (see 1.358), insert the following clause:

Advance Payment (October 1978)

(a) *Payment Method.* Advance payments by the *(insert "Letter of Credit" or "Direct Treasury Check")* method will be made in accordance with procedures provided in writing to the Contractor by the Contracting Officer. The Contracting Officer reserves the right to redetermine the payment method to be used. Upon such redetermination the Contracting Officer shall unilaterally amend this contract and notify the Contractor in writing 45 days prior to the effective date of the change in method of payment.

(b) *Amount of Advance and Other Payments.* In no instance will the total payments provided under the contract exceed the amount of the contract, as amended, less the amount of withholding provided therein.

(c) *Use of Funds.* The advance payments provided shall be used by the Contractor solely for the purposes of making payments for items of allowable costs allocable to this contract, pursuant to NASA Procurement Regulation, Part 15, or to reimburse the Contractor for such items of cost, and for such other purposes as the Contracting Officer may approve in writing. The Contractor shall not make advance payments to his contractors or subcontractors with advance payments received from the Government under this contract. Any interpretation required as to the proper use of funds shall be made in writing by the Contracting Officer.

(d) *Return of Funds.* The Contractor may at any time repay all or any part of funds obtained by advance payments. When requested in writing by the Contracting Officer, the Contractor shall repay to the Government such amount of the unobligated balance of advance payments as the Contracting Officer deems to be in excess of the Contractor's current needs or the unpaid contract price.

(e) *Termination of Advance Payments.* If the Contractor demonstrates an unwillingness or inability to establish procedures or follow the written procedures provided by the Contracting Officer to minimize the elapsed time between advance payments and the related disbursements, the Contracting Officer may terminate the advance payments by providing written notification of such termination to the Contractor. In that event the Contracting Officer may require immediate repayment to the Government of the unobligated balance of advance payments and unilaterally amend this contract to prescribe an appropriate payment clause that will be applicable thereafter.

(f) *Liquidation.* If, upon completion or termination of this contract, all advance payments obtained by the Contractor have not been fully liquidated by authorized charges under the contract, the unliquidated balance shall be deducted from any sums due the Contractor from the Government, and any excess funds shall be repaid by the Contractor to the Government upon demand.

(g) *Lien on Property Under Contract.* Any and all advance payments made under this contract shall be secured by a lien in favor of the Government, paramount to all other liens, upon the supplies or other things covered by this contract and on all material and other property acquired for or allocated to the performance of this contract, except to the extent that the Government by virtue of any other provision of this contract, or otherwise, shall have valid title to such supplies, materials, or other property as against other creditors of the Contractor. The Contractor shall identify by marking or segregating all property which is subject to a lien in favor of the Government by virtue of any provision of this contract in such a way as to indicate that it is subject to such lien and that it has been acquired for or allocated to the performance of this contract. If for any reason such supplies, materials, or other property are not identified by marking or segregation, the Government shall be deemed to have a lien to the extent of the Government's interest under this contract on any mass of property with which such supplies, materials, or other property are comingled. The Contractor shall maintain adequate accounting control over such property on his books and records.

If, at any time during the progress of the work on the contract, it becomes necessary to deliver any item or items and materials upon which the Government has a lien as aforesaid to a third person, the Contractor shall notify such third person of the lien herein provided and shall obtain from such third person a receipt in duplicate, acknowledging the existence of such lien. A copy of each receipt shall be delivered by the Contractor to the Contracting Officer. If this contract is terminated in whole or in part and the Contractor is authorized to sell or retain termination inventory acquired for or allocated to this contract, such sale or retention shall be made only if approved by the Contracting Officer, which approval shall constitute a release of the Government's lien hereunder to the extent that such termination inventory is sold or retained, and to the extent that the proceeds of the sale, or the credit allowed for such retention on the Contractor's termination claim, is applied in reduction of advance payments then outstanding hereunder.

(h) *Default Provisions.* Upon the occurrence of any of the following events of default,

(i) termination of this contract by reason of fault of the Contractor;

(ii) a finding by the Contracting Officer that the Contractor

(A) has failed to observe any of the convenants, conditions or warranties of these provisions or has failed to comply with any material provision of this contract, or

(B) has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract, or

(C) has allocated inventory to this contract substantially exceeding reasonable requirements, or

(D) is delinquent in payment of taxes or of the costs of performance of this contract in the ordinary course of business;

(iii) appointment of a trustee, receiver or liquidator for all or a substantial part of the Contractor's property, or institution of bankruptcy, reorganization, arrangement or liquidation proceedings by or against the Contractor; or

(iv) the commission of an act of bankruptcy; the Government, without limiting any rights which it may otherwise have, may, in its discretion and upon written notice to the Contractor, withhold further withdrawals and payments on this contract.

Upon the continuance of any such events of default for a period of thirty (30) days after such written notice to the Contractor, the Government may, in its discretion, and without limiting any other rights which the Government may have, take the following additional actions as it may deem appropriate in the circumstances;

(A) charge interest on advance payments outstanding during the period of any such default at the rate established by the Secretary of the Treasury pursuant to Public Law 92–41, 85 Stat. 97 for the Renegotiation Board;

(B) demand immediate repayment of the unliquidated balance of advance payments hereunder; or

(C) take possession of and, with or without advertisement, sell at public sale at which the Government may be the purchaser, or at private sale, all or any part of the property on

which the Government has a lien under this contract and, after deducting any expenses incident to such sale, apply the net proceeds of such sale in reduction of the unliquidated balance of advance payments hereunder and in reduction of any other claims of the Government against the Contractor.

(i) *Prohibition Against Assignment.* Notwithstanding any other provisions of this contract, the Contractor shall not transfer, pledge, or otherwise assign this contract or any interest therein, or any claim arising thereunder, to any party or parties, bank, trust company, or other financing institution.

(j) *Information-Access to Records.* The Contractor shall furnish to the cognizant NASA installation Financial Management Office quarterly Federal Cash Transactions Reports (Standard Form 272) as prescribed in instructions provided to the Contractor and such other information concerning the financial operation of the Contractor's business as may be requested. The Contractor shall afford to the Contracting Officer or his representative proper facilities for inspection of the Contractor's books, records and accounts, at all reasonable times until the expiration of 3 years from the date of final payment under this contract.

(k) *Other Security.* The terms of this contract shall be considered adequate security for advance payments hereunder, except that if at any time the Contracting Officer deems the security furnished by the Contractor to be inadequate, the Contractor shall furnish such additional security as may be satisfactory to the Contracting Officer, to the extent that such additional security is available.

(b) The contracting officer, in consultation with General Counsel, may require special security provisions if appropriate in particular cases. For example, the following clause may be included if considered appropriate:

Security for Advance Payments (October 1978)

During the period of time that advance payments may be made hereunder and so long as any such advance payments remain unliquidated, the Contractor shall not mortgage, pledge, or otherwise encumber, or suffer to be encumbered, any of the assets of the Contractor now owned or hereafter acquired by him, or permit any preexisting mortgages, liens, or other encumbrances to remain on or attach to any assets of the Contractor which are allocated to the performance of this contract and with respect to which the Government has a lien hereunder, without the prior written consent of the Contracting Officer.

3. In Appendix J, J. 5000 and J. 5002 are revised as follows:

J. 5000 Scope of Subpart. This Subpart sets forth guidance for the preparation of an Advance Payments Determination and Findings to be made by the Director of Procurement.

J. 5001 Advance Payments. The following is the standard text of findings, determination and authorization for use in establishing advance payments with nonprofit institutions (including educational institutions).

National Aeronautics and Space Administration, Washington, D.C.

Findings, Determination, and Authorization for Advance Payments

1. I hereby find that:

a. The National Aeronautics and Space Administration and (contractor) ..... have entered (propose to enter) into negotiated Contract No. ..... for (purpose of the contract).)

(Summary of the specific facts and significant circumstances concerning the contract and contractor, which together with the other findings, will clearly support the determinations below.)

b. Advance payments in an amount not to exceed $..... are required by the contractor in order to perform under the contract. Such amount does not exceed the unpaid contract price.

c. The advance payments are necessary for prompt and efficient performance of the contract, which will benefit the Government.

d. The "Advance Payments" clause contains appropriate provisions for the protection of the Government's interest. This includes provisions that the Government will have a lien, paramount to all other liens, upon (i) the supplies contracted for, and (ii) any material or property acquired for the performance of the contract. Such security is deemed to be adequate.

e. The contractor is a nonprofit (educational) (and) (research) institution, and the contract is for (experimental) (,) (research and development) work, without profit to the contractor.

Determination

2. Upon the basis of the above findings, I hereby determine that the making of advance payments, without interest, is in the public interest.

Authorization

Advance payments in the amount of $..... are hereby authorized pursuant to 10 U.S.C. 2307. Outstanding payments may at no time exceed the unpaid contract price.

Director of Procurement
Date: ———

Instructions:

1. A request for advance payment provisions will be prepared in final form (original and the official file copy (NASA Form 1267) and forwarded to the Director of Procurement, NASA Headquarters (Code HS-1) for approval. The request should include the following: (a) the name of the cognizant NASA Headquarters Program or Staff Office; (b) the negotiation exception to support the requirement, if it is other than 10 U.S.C. 2304(a)(5); (c) if a fee is contemplated, the estimated cost, amount and percent of fee, the total cost and fee, and the factors that were considered in determining the fee (see 3.808); and (d) the name and phone number of the contracting officer or negotiator.

2. A separate [Findings, Determination and Authorization for Advance Payments] will be prepared for each request for authorization of advance payments. Request to increase the amount of advance payments involving modifications, supplemental agreements or extensions to an existing contract on which advance payments previously have been authorized will clearly indicate the amount of the increase required, the previous amount authorized, and the new total.

3. Insert the appropriate words and phrases in the form set forth above.

4. Modifications to adapt to special facts and circumstances are permitted provided that they do not conflict with the statutory requirements set forth in 10 U.S.C. 2307 or other cited statutory authority.

5. 10 U.S.C. 2307 will normally be the statutory authority cited for authorizing advance payments. When appropriate, advance payments are also authorized pursuant to 42 U.S.C. 2473(c)(5) and pursuant to Public Law 85-804 as implemented by Executive Order 10789.

4. Supplement 3 is revised as follows:

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Supplement No. 3—Property Administration

Subpart 1—Introduction

S3.100 Scope of Supplement.

This Supplement is issued for the guidance of personnel engaged in the administration of contract provisions relating to Government property in the possession of contractors. It prescribes uniform procedures and techniques to (i) meet management data requirements of the Government, and (ii) to assure performance of property control to protect the interests of the Government at a minimum cost through a uniform property administration program.

S3.101 General.

This Supplement sets forth instructions to assure uniformity in the administration of contract provisions relating to Government property in the possession of contractors and is applicable to all NASA personnel having responsibilities in this area. It prescribes procedures and techniques to (i) meet management data requirements of the Government, and (ii) to assure performance of property control to protect the interests of the Government at a minimum cost through a uniform NASA property administration program. The scope of the program shall be determined by the amount of Government property, the complexity of the contractor's property control system, and other conditions revealed by review of the contract and correlation of its provisions with the property control system.

S3.102 Definitions.

As used in this Supplement, the following terms have the meanings stated below:

S3.102-1 *Category* means a major segment of a contractor's property control system (*e.g.*, acquisition, receiving, records, storage and movement, consumption, utilization, maintenance, physical inventories, subcontractor control, and disposition).

S3.102-2 *Characteristic* means a segment of a functional area subject to analysis or review. Characteristics are classified as Class I, which is subject to statistical sampling, and Class II, which is subject to judgment or observation techniques.

S3.102-3 *Lot* means an aggregation of documents, records, articles, or actions selected for review due to common characteristics. For evaluation of the lot all characteristics for which a lot is tested must be common to all units within the lot.

S3.102-4 *Supporting Responsibility* relates to the assignment of a subcontract, or a portion of a prime contract being performed at a secondary location of the prime contractor, to a property administrator other than the individual assigned to the prime location.

S3.102-5 *Property Control System* identifies a contractor's internal management program encompassing the protection, preservation, accounting for and control of property from its acquisition through disposition.

S3.103 Responsibilities.

(a) The property administrator shall evaluate the contractor's management and control of Government property and ascertain whether the contractor is effectively complying with the contract and NPR provisions. These responsibilities include:

(i) developing and applying a system survey program for each contractor under his cognizance;

(ii) evaluating the contractor's property control system and approving or recommending disapproval of the system;

(iii) advising the administrative contracting officer of the contractor's noncompliance with approved procedures and other significant problem areas which he cannot resolve whether this information is obtained through a formal system survey or through other means and recommending appropriate action, which may include disapproval;

(iv) resolution of property administration matters as necessary with the contractor's management, personnel from Government procurement and logistics activities, and representatives of the NASA Management Audit Office, Defense Contract Audit Agency (DCAA) and of other Government agencies; and

(v) recognition of the functions of other Government personnel having cognizance of Government property, and obtaining their assistance when required. [These functions include, but are not limited to, contract audit, quality assurance, engineering, pricing, and other technical areas. Assistance and advice on matters involving analyses of the contractor's books and accounting records and on any other audit matters deemed appropriate shall be obtained from the cognizant auditor.]

(b) Property administrators' (or other Government industrial property personnel) participation in pre-award surveys/post-award orientations is required whenever significant amounts of government property will be involved in order to reveal and resolve property management problems early in the procurement cycle.

Subpart 2—Initiation of Property Administration

S3.201 Control of Assignments.

(a) The Procurement Officer or his designee shall establish and maintain a Contract Assignment Control Register for each contractor, showing:

(i) the contractor's name and address;

(ii) contract number;

(iii) type of contract;

(iv) date of assignment of the property administrator and his name; and

(v) date of completion or rescission of the contract, or transfer of the property administrator.

(b) Property reported to have been received at a contractor's plant without contractual coverage shall be carried in a suspense file, pending investigation and resolution by the property.

843.202 Analysis of Contract and Establishment of Contract Property Control Data Files.

(a) The property administrator shall analyze each contract providing for Government property to estimate the property administration effort which must be applied. The analysis shall be sufficient to establish the management controls necessary for assuring compliance with contract requirements and the development of a suitable system survey program.

(b) A Property Summary Record shall be established by the property administrator containing the following information:

(i) contractor's name and address, and the contract number;

(ii) type of contract, modifications (including change orders), and special or nonstandard clauses pertaining to Government property;

(iii) date of final review and date of execution and transmittal of the DD Form 1593;

(iv) supporting property administration assignments; and

(v) name(s) of the property administrator(s) and date(s) of tenure.

(c) The property administrator shall establish a Contract Property Control

Data file which shall include as a minimum:

(i) Property Summary Data Record;

(ii) copy of the contract or extract of provisions thereof pertinent to property administration, and comparable data regarding any subcontracts involving Government property;

(iii) record of initial review, evaluation, and approval of the contractor's property control system; and, if applicable, record of withdrawal of approval and basis therefor, reinstatement of approval, and deviations granted;

(iv) record of visits, property system surveys performed including appropriate work papers, deficiencies disclosed and corrective actions taken;

(v) contractor's receipts for Government property, when required;

(vi) record of final review and execution of property administrator's statement of closure of the contract property account;

(vii) other pertinent correspondence and documents, including as applicable, inventory adjustments, investigations, recommendations, and determinations;

(viii) records concerning supporting property administration delegations; assist actions involving special reviews; and other applicable reviews at subcontractor's plants;

(ix) records of inspection and audits performed by other activities; and

(x) reports relating to Government property prepared by the contractor pursuant to the contracts. When more than one contract is involved at the same contractor's location, records relating to more than one contract shall be transferred to a contractor's General File and the Property Summary Data Record shall be so annotated.

Subpart 3—Evaluation and Approval of Contractor's Property Control System

53.301 General.

Normally, the initial contact by the Contract Administration Office with a contractor is through a post-award orientation conference or post-award letter. When a conference is held, the property administrator shall assure suitable discussion of property administration requirements, and responsibilities. When a conference is not held, the property administrator, upon assignment of a contract, shall forward a letter to the contractor:

(i) inviting attention to the contractor's responsibilities regarding Government property under the contract, including any specialized controls, and the extent of his liability for loss, damage or destruction of Government property during any period in which the contractor's property control system does not have the written approval of the property administrator;

(ii) requesting the name of the contractor's representatives to contact for review and discussion of the proposed property control system; and

(iii) requesting that policies, instructions and procedures necessary to fully implement the property control system be available for evaluation.

53.302 Initial Evaluation of the Contractor's Property Control system.

53.302-1 *Review of Procedures.* (a) Following assignment of an initial contract, the property administrator shall review the contractor's property control system to determine:

(i) inadequate or questionable areas in the proposed procedures for compliance with NPR Appendix B or C, and other contract requirements;

(ii) essential controls not provided by the proposed procedures;

(iii) areas in the proposed procedures requiring physical observation or verification; and

(iv) subcontractors, or secondary locations of prime contract performance, and the need for physical observation or verification of property controls at those locations.

(b) It is normal industry practice to provide for the control of property by means of written procedures that communicate company standards, techniques, and instructions to operational personnel for uniform application. However, a contractor with few employees may not have a need for written procedures for effective management of Government property. In such cases, the property administrator shall evaluate the adequacy of the contractor's system on the basis of the contractor's explanation of his controls and observation of the application thereof, and he shall prepare a brief description of the applicable procedures for inclusion in the Contract Property Control Data File. In the latter instance, the contractor's signature shall be obtained signifying his concurrence with the property administrator's written description.

(c) The contractor's plant may be visited to determine that his operation of the system provides adequate controls for the Government property to be furnished or acquired.

(d) The choice of the methods to be used to obtain the information necessary for approval of the contractor's property control system is a matter of judgment by the property administrator. Test examinations and verification in specific categories may be necessary to assure the reliability of the final evaluation and conclusions as to the acceptability of controls for all categories and the system as a whole.

(e) The property administrator shall examine the contractor's procedures to be used to determine the extent to which they meet the criteria for property control required by Appendix B or C and other contract requirements, as appropriate. He shall make necessary tests of the contractor's system, and as each portion is analyzed, the acceptability of the procedures shall be appropriately noted or commented upon as the basis for preparation of the record of system evaluation (see 53.302-4).

(f) When the contractor's property control system has previously been approved and a new contract requires the expansion of existing or the establishment of additional controls, the review should normally be limited to the new requirements. If the system is adequate, the property administrator shall record this fact on the Property Summary Data Record for the contract. Notification to the contractor is not required. However, if the property administrator determines that the contractor's property control system does not adequately meet the new contract requirements, the Property Summary Data Record for the contract involved shall be appropriately annotated and the contractor shall be notified in writing of the required changes.

(g) In the review of the contractor's property control system, the property administrator shall consider the provisions of B.311 or C.311 and shall assure that the contractor's system provides for maintenance of financial data and the furnishing of required reports within the time limits specified.

53.302-2 *Exit Interview with the Contractor.* Upon completion of the property administrator's review, he shall hold an exit interview with the contractor to discuss any category in which the adequacy of controls or procedures was found to be defective and will advise where corrective action is required before an approval of the system can be granted. When the contractor is willing to correct a deficiency or questionable practice immediately, the documentation supporting the property administrator's findings and conclusions shall include a statement to this effect. The contracting officer responsible for the predominant value of NASA property at the facility shall also attend the exit interview with the contractor when major deficiencies

exist in the property control system, past deficiencies remain uncorrected, or the dollar value of the personal property involved is in excess of $1,000,000.

S3.302–3 *Record of System Evaluation.* Upon completing his evaluation of the contractor's system, the property administrator shall prepare a written summary of his findings to support approval of the system or requirement for corrective action prior to such approval. A report of visit or other documentation may be utilized if the participating contractor and Government personnel are listed, actions taken are adequately described, and the property administrator's determination is clearly stated.

S3.302–4 *Notification of Deficiencies.* The property administrator shall prepare a letter to the contractor for signature by the contracting officer who attended the exit interview, listing the deficiencies found during the evaluation of his property control system and noting any agreement by the contractor to correct deficiencies. The contractor shall be requested to respond within 30 days and to provide the precise action to be taken and the time required to correct each deficiency.

S3.302–5 *Resolution of Differences.* When the contractor's response to the contracting officer's letter is unsatisfactory, the contracting officer, along with the property administrator, shall meet with the contractor in an effort to arrive at a corrective program that is mutually satisfactory. The contractor will be requested to confirm in writing any new commitments arising out of these discussions. In the event the contractor fails to correct deficiencies in his property control system within a reasonable period, the contracting officer will refer the matter by memorandum to appropriate levels of management within the NASA installation and Headquarters staff offices, depending on the criticality of the problem involved. The memorandum shall include:

(i) a specific, concise, and documented statement of the problem;

(ii) a statement of the contractor's position; and (iii) the recommended action.

S3.302–6 *Letter of Approval.* (a) The approval of a contractor's property control system by the property administrator shall be conditioned upon a joint determination by the property administrator and the contracting officer who attended the exit interview, that no deficiencies exist in the property control system or that where minor deficiencies exist the contractor has agreed to take satisfactory corrective action.

(b) When the contractor's property control system is acceptable, the property administrator shall advise the contractor in writing. However, when the approval has been preceded by an exchange of correspondence between the contracting officer and the contractor (S3.302–5 and S3.302–6), the property administrator will make reference to the correspondence in his approval and advise the contractor that the corrective action taken or planned is acceptable. A copy of the letter of approval shall be sent to the contracting officer who attended the exit interview.

(c) When the contract involves Government property at subcontractor plants or prime contractor secondary locations, or both, and the controls for the property at such locations have been determined to be adequate, the approval shall be expanded to include the procedures governing Government property at such locations.

Subpart 4—Property Administration During Contractor Performance

S3.401 Property Administration Plan.

(a) A property administration plan shall be developed for each contractor's plan covering the property control system utilized in connection with Government contracts. The plan shall provide for surveys and shall be augmented to cover responsibilities imposed by new contracts, changing conditions, or marginal performance. In the event approval of the contractor's system is unduly delayed at inception of the contract due to failure of the contractor to provide an acceptable system, or is withdrawn due to unsatisfactory conditions disclosed after approval, the property administration plan shall be expanded to the degree necessary to reasonably assure that loss, damage or destruction of Government property is disclosed in a timely manner. Further, special attention shall be given to reasonably assuring that any loss, damage or destruction occurring during a period when a contractor's system is not approved is identified prior to approval or reapproval.

(b) The property administrator must exercise judgment in developing his plan and in determining what categories (see Annex I) of the contractor's property control system warrant examination. Limited dollar amounts and activity, types of property, complexity of the contractor's system, risk to the Government, and previous experience regarding the adequacy of contractor controls are factors determining the extent and scope of the system survey plan. Guidance is contained in S3.402–1(b) covering criteria for surveillance of a contractor's property control system.

S3.402 System Survey.

S3.402–1 *Surveillance.* A complete system survey shall be conducted at least once each calendar year to obtain thorough knowledge of the contractor's system of property control and his efficiency. Completion of a system survey, involving complex property control systems, may require detailed tests and evaluations over an extended period of time. If deficiencies in physical control or records are disclosed, corrective action must be secured, and the effectiveness of such correction evaluated. In such instances, test and evaluation of any one category shall be completed as expeditiously as possible, and the working papers and analysis retained for consideration and incorporation into the summary and survey case file.

S3.402–2 *Scheduling and Planning.* (a) At the beginning of each calendar year, the property administrator shall prepare a schedule showing the names of the contractors and the projected dates on which each system survey shall be initiated and completed.

(b) Prior to initiation of any system survey, the property administrator shall establish a survey plan which shall provide, as a minimum:

(i) identification and listing of the categories, functional areas and characteristics to be evaluated (see Annex I);

(ii) evaluation of approved property control procedures applicable to the categories to be examined, and noting of any portions thereof that should be reviewed with operating personnel for possible updating. (If any functional area of the property control system is not covered by procedures, no attempt should be made to survey that area at that time, but that portion of the system should be recorded as unsatisfactory and action taken to correct the condition.); and

(iii) preparation of work papers necessary to document the file.

S3.402–3 *Testing the System.* (a) *General.* In conducting tests of the contractor's property control system, the following factors should be considered to assure adequate coverage of requirements peculiar to particular classes of property and functional areas.

(b) *Materials.* Materials should be considered as bulk quantities, as contrasted to individual items. Examinations should be directed to:

(i) tracing inbound transportation units from (A) bills of lading or other

transportation documents to receiving reports, in order to determine that the receiving reports are accurately prepared and that proper action is taken on shortages, damages, or other discrepancies, and (B) stock records to assure that the receipts were accurately posted (see B.307 or C.307 as applicable);

(ii) abstracting nomenclature and balance data from stock records and making physical counts to determine accuracy of the stock records;

(iii) tracing posting of credits to (A) stock records (by date, reference number, and quantity) and (B) issue documents, in order to assure accuracy of the postings and validity of the documents (signature by authorized individual and indication of reasons for issue or point of delivery, or both, to indicate proper contract use); and

(iv) determining to the extent practicable at the point of receipt and use, whether undue quantities are issued, charged to cost, and held on plant floor rather than being held under better security in stores.

(c) *Custodial Items.* Issues shall be traced from store's records to tool cribs, office stock rooms, uniform rooms, and the like, to determine that they are taken into account as part of a sound control system. It should be determined that issues to contractor personnel are covered by tool chits, uniform slips, or other mechanisms designed to assure return, or ability to locate items which are to be returned, assuring that new items are not issued without return of worn-out items or that suitable explanation is provided.

(d) *End Items.* General Techniques for survey of materials are applicable to end items placed in storage pending shipment. Examination shall include tracing from Government acceptance records of the contractor's claims for reimbursement to physical quantities on hand and quantities on validated shipping documents.

(e) *Plant Equipment Costing Less Than $1,000.* In the event summary record accounting is utilized for this class of property, as authorized by B.306(d), examination using the "bulk quantities" approach in (b) above is applicable but shall also cover:

(i) Identification as required by B.402 and B.404, respectively; for other than minor plant equipment, the identification number shall be physically verified; and

(ii) Location as prescribed in B.306(d)(vii), creating need for physical verification of presence or absence of the property in the location shown by the location record.

(f) *Plant Equipment Costing $1,000 or More.* Testing on an item-by-item basis is usually required to achieve desired results. Determinations demanding special attention include whether:

(i) Government screening and approval requirements are observed;

(ii) classification of property is accurate, both at time of acquisition or purchase and at time of receipt through the use of the DSAH–4215 series of IPE Handbooks and Cataloging Handbooks H2–1, H2–2, and H2–3;

(iii) an item is actually applied to the requirement for which acquired, and, if deviation is made, that necessary notice and Government approval (when applicable) have been obtained;

(iv) receiving documentation is complete and accurate, indicating assignment of identification number, treatment of accessory and auxiliary equipment as required by B.306(b), and the DD Form 1342 (DoD Property Record) is prepared and processed when required by B.306–1;

(v) from physical inspection of the property, the equipment records are accurate, including location and classification as to use (examination shall be conducted from property to records and from records to property); and

(vi) disposition action is initiated as required when a piece of equipment is no longer required at the plant (examination shall include adequacy of procedure for the preparation and submission of DD form 1342 (Property Record) where specified, propriety of authority for shipment, and proper accounting for accessory and auxiliary equipment).

(g) *Special Test Equipment.* The examination of special test equipment shall be essentially the same as for plant equipment costing $1,000 or more except for recognizing the greater complexity of assemblies classified as single items and the possible need for assistance and advice of engineering personnel. Examinations shall include tracing of individual components into the assembly to assure a clear trail, particularly with respect to general purpose test equipment components, and propriety of disposition of components upon disassembly.

(h) *Special Tooling.* Testing for plant equipment, as in (e) and (f) above, may be used as a guide to establishment of the method and sampling to be utilized for special tooling. When option as to title to special tooling is involved under terms of the contract (see 13.704), examination need only be sufficient to comply with the request of the contracting officer.

(i) *Real Property.* After initial turnover of real property to a contractor, tests and examinations normally shall be directed to work orders of the contractor and documentation from Government sources as to additions and other capital improvements or disposals or capital decreases.

(j) *Scrap and Salvage.* Tests relating to scrap and salvage may be similar to those for materials as outlined in (b) above. However, special attention should be given to:

(i) tracing from credit entries on materials records (showing turn-in to scrap) to corresponding debits to scrap records;

(ii) determining from analysis of consumption of materials over a given period of time that the quantities indicated as being scrapped or spoiled are matched with comparable receipts in the scrap and salvage accounts; and

(iii) determining that when conversions of units of property to pounds of scrap or from estimated to scale weights or to other units of measure are made, the formula for the conversion is shown on the document affected, or is readily available in the approved contractor procedure.

(k) *Analyzing Consumption of Materials.* It shall be determined by both physical examination and analysis of records that quantities consumed are for proper purposes and in reasonable amounts. In analyzing consumption of component parts or other productive materials, unit allowance (equalling amount required per end-item plus normal spoilage) for each line item of materials may be available in the contract, bill of materials, blueprints, or shop drawing of items fabricated, or in cost computations supporting the end-item price. If such unit allowance information is not available, technical personnel may be consulted as to whether quantities consumed are within accepted standards of the industry.

(l) *Testing of Physical Inventories.* The property administrator has the option of conducting his tests of the contractor's physical inventories either during the performance of the inventory or subsequent to its completion. In either event, tests shall evidence physical counts of selected items without knowledge of record balances, verification of the entries on count slips, comparisons with records, preparation of documents necessary to any adjustments required, approval of adjustments, and the referral of lists of adjustments to the property administrator pursuant to B.506.

(m) *Examination of Maintenance Program.* The actions scheduled shall be

traced to determine that they are or have been performed and that the actions stated by the contractor's procedures have been included. Also, the records of the maintenance or repair shop or the contractor's purchase orders shall be examined as to causes of breakdowns of equipment to determine whether they were the result of inadequate preventive or routine maintenance.

S3.402–4 *Performing the Survey.* (a) In performing the survey, the property administrator shall follow the procedures in (b) through (e) below.

(b) The lost size shall be estimated. Insofar as possible, lots selected shall consist of current operations of the contractor, *i.e.:*

(i) those transactions (excepting disposition transactions) which have occurred during the last 90 days immediately preceding the date of sampling and the documents recording those actions. (If no transactions have taken place during the last 90 days, samples will be taken from transactions going back to the last system survey.) The lot should encompass the maximum number of units possible within a functional area. For example, transactions pertaining to special tooling, special test equipment, and plant equipment may be combined into a single lot and sampled for their common characteristics. Characteristics that are not common to units sampled shall be extracted for evaluation as a part of a separate lot. Sample sizes shall be selected from the attached table (Annex II);

(ii) articles in the possession or control of the contractor at that time; and

(iii) disposition actions occurring since the last occurring survey was made.

The lot should encompass the maximum number of units possible within a functional area. For example, transactions pertaining to special tooling, special test equipment, and plant equipment may be combined into a single lot and sampled for their common characteristics. Characteristics that are not common to units sampled shall be extracted for evaluation as a part of a separate lot. Sample sizes shall be selected from the attached (Annexs II).

(c) After the examinations are performed and the findings recorded, the findings shall be analyzed and the conclusions and recommendations recorded. Decisions as to satisfactory or unsatisfactory conditions shall be made for each lot at the functional area level.

(d) When any category is found to be unsatisfactory during a survey, the property administrator shall determine the effects upon the complete system. All other applicable categories shall be subjected to survey actions in order to ascertain the existence of other defective areas and the full scope of defectiveness in the overall system.

(e) Problems disclosed during the survey shall be discussed with the contractor's personnel as they are noted, or during the exit interviews. Every effort shall be made to resolve differences on an informal basis. Resolved problem areas shall be reported in the record of system evaluation with the notation that they were corrected.

S3.402–5 *Summary.* A formal record shall be prepared by the property administrator at the conclusion of each system survey in the format set fourth below:

(i) *Introduction:* contractor's name and address, period of survey, and types of property involved;

(ii) *Method used:* explain method of performing the survey;

(iii) *Conclusions:* state conclusions reached (In event of finding of unsatisfactory categories, functional areas or characteristics, identify the defects found.); and

(iv) *Action required:* state actions, if any, necessary to correct unsatisfactory conditions. A summary of the system survey shall be fowarded to the contractor. The contractor shall be advised of any unsatisfactory conditions and requested to correct them within the time limitations agreed to during the exit interview. The contractor shall also be advised by letter that failure to correct the unsatisfactory conditions may result in disapproval of his property control system. A copy of the summary shall also be retained in a survey case file, and whenever unsatisfactory conditions have been disclosed, a copy of the summary shall be provided to the administrative contracting officer. When conditions dictate, *i.e.,* indication of significant noncompliance with contract requirements or other continued failures jeopardizing the interest of the Government, the purchasing office and the pre-award survey monitor shall also be advised in writing.

S3.402–6 *Correction of Unsatisfactory Conditions.* In the case of disclosure of unsatisfactory conditions, the property adminstrator shall maintain follow-up to ascertain that corrective action is taken. In the event the contractor fails to take corrective action or to respond to the letter forwarded as prescribed in S3.402–5 above, the property administrator shall proceed in accordance with S3.302–6 and 13.403–1.

S3.402–7A *Survey Case File.* A case file shall be established for each system survey performed, containing the survey plan, work papers, and the summary. The case file shall be maintained in the Contract Property Control Data File or the Contractor's General File.

S3.402–8 *Statistical Sampling.* (a) *General.* Statistical sampling is a tool to support the property administrator's judgment; it does not supplant his judgment. Statistical sampling is accomplished by examination of characteristics, as to defects, in order to evaluate and determine the performance level for each functional area and category within each property control system. The lot should encompass the maximum possible number of line items of property, records and documents. Care should be exercised, however, to assure that the items in the lot have common characteristics and that the same control elements of the property control system apply; otherwise, more than one lot will be necessary. Items selected for sampling may be used to examine characteristics of more than one category (*i.e.,* items selected under records may be used to examine characteristics of acquisition, stock control, storage and movement, maintenance, physical inventory, utilization, and consumption).

(b) *Use of Statistical Sampling Plans.* The Government's risk shall not exceed 10% (a 90% confidence level) excepting any slight variations due to changes in lot sizes. Annex II contains sampling plans for use in achieving a confidence level of 90 percent. Annex III is a table of random numbers which may be used. The number of samples examined shall be equal to the sample size given in the table. If the number of defective sample units found is equal to or less than the number in Column S for the lot size involved, the lot shall be considered satisfactory. If the number of defective sample units is equal to or greater than the number in Column U for the lot size involved, it shall be considered unsatisfactory.

(c) *Random Number Table.* The following information is a guide which may be used in drawing a sample with a table of random numbers. Other randomization techniques may be applied *provided* they are defined beforehand in the property administration survey plan and exhibit clear protection against bias. Care must be exercised to assure that the number of items in the lot is not overestimated so as to avoid selection of random

numbers greater than the lot. For example, if the lot is 9,000, only numbers lower than 9,001 shall be selected. Using a random table to draw a random sample requires four steps which are:

(i) *First Step:* A pattern must be established between the numbers in the table and items in the lot to be sampled. It is possible to use the whole random number or any portion thereof. For instance, the number 18,967 may appear in the table. If the lot size is more than 99 but less than 1,000, a three digit number is required and either the first three digits (189) or the last three (967) may be used. If the lot size is more than 999 but less than 10,000, a four digit number is required and either the first four digits (1,896) or the last four (8,967) may be used. Once this pattern has been established, it must be consistently used throughout the sample selection process.

(ii) *Second Step:* A procedure for selecting the numbers from the table must be selected. Any systematic path for going through the table, if the path is clear and does not cross over or re-use any number previously used, is acceptable. It is possible to proceed across rows, down columns, diagonally, clockwise, counterclockwise, or in some combinations of these methods; however, it is usually desirable to choose a simple pattern and go down columns or across rows.

(iii) *Third Step:* The starting point in the table shall be selected at random. The most used method is to open the table of random numbers to any page and to use the number upon which the pencil point falls as the starting point.

(iv) *Fourth Step:* Beginning at the starting point and proceeding through the table as planned in the Second Step, record the numbers found in succession in the table, using all or part of the number as planned in the First Step. Duplicate numbers shall be skipped. The selection process shall be continued until the required sample size is drawn.

Numbers taken from the random table shall be arranged and recorded in numerical order. If the units of the lot to be examined are already consecutively numbered, the units having the numbers corresponding to those taken from the random table become the sample units. Otherwise, the sample units shall be found by counting to the numbers taken from the random table.

S3.403 Additional Administrative Responsibilities.

The initial review, evaluation, and subsequent visits should provide the property administrator with a reasonable indication of future workload with each contractor. Loss, damage, destruction, or excessive consumption of Government property (see S3.802) are areas which demand significant and prompt attention by the property administrator. This is particularly important in the case of a contractor whose system is in an unapproved status.

S3.404 Declaration of Excess Property.

A problem area often disclosed by systems surveys is the failure of a contractor to comply with B.101(d) or C.101(e) in the reporting of Government property which is not needed (is excess) in performance of the contract. The property administrator shall fully document and report any such finding to the administrative contracting officer. After a report of excess received from a contractor has been referred to the plant clearance officer for screening and ultimate disposition, the property administrator shall maintain follow-up to assure prompt disposition action. For centrally reportable plant equipment, the property administrator shall:

(i) assure the preparation and submission of individual reports (DD Form 1342) required of the contractor pursuant to B.306–1 and C.306–1;

(ii) accomplish such verifications as necessary to permit certifications required by the forms; and

(iii) transmit the report to the NASA contracting officer, Attention: Industrial Property Specialist.

S3.405 Identification of Industrial Plant Equipment.

Contractors acquiring or possessing Government-owned industrial plant equipment (IPE) shall provide prenumbered identification media (metal plates and decals) with the designation "NASA Property" and serial number(s) for identification of IPE pursuant to B.404 and C.404. The property administrator shall, within the framework of the contract, ensure that contractors affix the permanent identification number to each item of IPE at time of receipt. The property administrator shall make arrangements with the contractors to reidentify IPE already in their possession with the permanent number at the time of the regularly scheduled inventory or at some time as agreed to between the property administrator and the contractors involved.

Subpart 5—Closure of Contracts

S3.501 Completion or Termination.

Upon completion or termination of a contract, the property administrator shall:

(i) monitor the actions of the contractor in returning excess Government property not referred to the plant clearance officer; and

(ii) advise the cognizant plant clearance officer as to the existence at a contractor's plant of residual property requiring disposal.

S3.502 Final Review and Closing of Contracts.

(a) When informed that disposition of Government property under a contract has been completed, the property administrator shall perform a final review which shall include a signed determination that:

(i) disposition of Government property has been properly accomplished and documented;

(ii) adjustment documents, including request of the contractor for relief from responsibility, have been processed to completion;

(iii) proceeds from disposals or other property transactions, including adjustments, have been properly credited to the contract or paid to the Government as directed by the contracting officer;

(iv) all questions as to title to property fabricated or acquired under the contract have been resolved and appropriately documented; and

(v) the Contract Property Control Record File is complete and ready for retirement.

(b) When final review pursuant to (a) above reveals that such action is proper, the property administrator shall accomplish and sign a DD Form 1593, *Contract Administration Completion Record.*

(c) The executed DD Form 1593 shall be forwarded to the contracting officer and the Property Summary Data Record shall be so annotated, and shall be retired with the contract file.

Subpart 6—Special Subjects

S3.601 Government Property at Alternate Locations of the Prime Contractor and Subcontractor Plants.

S3.601–1 *General.* (a) Government property provided to a prime contractor may be located at other plants of the prime contractor or at subcontractor locations. The prime contractor is accountable and responsible to the Government for such property and shall assure that the records and controls of such property comply with the provisions of NPR Appendix B or C, appropriate.

(b) A Government property administrator cognizant of the location where the property is situated shall

normally be designated to perform required surveys of the property control system and exercise surveillance over such property as a supporting responsibility.

S3.601–2 *Request for Supporting Property Administration.* (a) When the property administrator determines that supporting property administration is required, he shall direct a written request to the cognizant contract administration office asking that a property administrator be assigned. The request for supporting property administration shall include:

(i) the name and address of the prime contractor;

(ii) the prime contract number;

(iii) the name and address of the alternate location of the prime contractor, or of the subcontractor where the property is to be located;

(iv) a listing of the property to be furnished, or, if property is to be acquired locally, a statement to this effect; and

(v) a copy of the subcontract or other document under which the property is to be furnished or acquired.

(b) Concurrent with the action cited in (a) above, the property administrator shall ascertain whether the prime contractor will perform the necessary reviews and surveillance with his own personnel, or elects to rely upon the system approval and continuing surveillance by a supporting property administrator, of the property control system at the alternate location or subcontractor plant. If the prime contractor indicates that he will accept the findings of a supporting property administrator, a statement in writing to that effect shall be obtained. If the prime contractor does not so elect, he shall be required to perform the requisite reviews and surveillance and document his actions and findings.

S3.601–3 *Request for Occasional Assistance.* (a) If a single item or limited quantities of property will be so located, the property administrator may determine that supporting property administration is unnecessary, *provided:*

(i) that the prime contractor's records shall adequately reflect the location and use being made of such property;

(ii) the nature of the property is such that the possibility of its use for unauthorized purposes is unlikely; and

(iii) the nature of the property is such that a program of preventive maintenance is not required.

(b) When supporting property administration will not be requested, the services of a property administrator in the contract administration office cognizant of the site where the property is located may be requested on an occasional basis to perform special reviews or such other support as may be necessary. Repeated requests for such assistance indicate a requirement for requesting supporting property administration.

S3.602 Loss, Damage, or Destruction of Government Property.

S3.602–1 *General.* Normally, contract provisions provide for assumption of risk of loss, damage, or destruction of Government property as described in (a) through (f) below:

(a) Advertised and certain negotiated fixed-price contracts provide that the contractor assumes the risk for all Government property provided thereunder (see 13.702(a)).

(b) Other negotiated fixed-price contracts provide that the contractor assumes the risk for all Government property provided thereunder, with the exception of loss, damage, or destruction due to causes listed under the "excepted perils" of the clause set forth in 13.702(b) and in connection with which there was not willful misconduct or lack of good faith of any of the contractor's managerial personnel as defined therein.

(c) Cost-reimbursement supplies and services contracts (see 13.703) and cost-reimbursement and fixed-price research and development contracts with nonprofit institutions (see 13.707 and 13.706, respectively) provide that the Government assumes the risk for all Government property provided thereunder when there is no willful misconduct or lack or good faith or any of the contractor's managerial personnel as defined in the terms of the contract.

(d) There are certain events for which the Government does not assume the risk of loss, damage, or destruction of Government property, such as risks which the contract expressly requires the contractor to insure against. Therefore, contract clauses should be thoroughly reviewed and understood before a conclusion is reached by the property administrator or a determination made by the contracting officer. Advice shall be obtained from appropriate legal counsel on questions of legal meaning or intent.

(e) "Willful misconduct" may involve any intentional or deliberate act or failure to act which causes, or results in, the loss, damage, or destruction of Government property.

(f) "Lack of good faith" may involve gross neglect or disregard of the terms of the contract or of appropriate directions of the contracting officer or his authorized representatives. Examples of lack of good faith may be demonstrated by the failure of the contractor's managerial personnel to establish and maintain proper training and supervision of employees and proper application of controls in compliance with instructions issued authorized Government personnel.

(g) In the event any portion of the contractor's system is found to be unsatisfactory, increased surveillance of the deficient portion will be instituted to prevent, to the extent possible, any loss, damage or destruction of Government property. Further, special attention shall be given to reasonably assuring that any loss, damage or destruction occurring during a period when a contractor's system is not approved is identified prior to approval or reinstatement of approval.

S3.602–2 *Loss, Damage, or Destruction of Government Property While in Contractor's Possession or Control.* (a) The property administrator shall require the contractor to report to him all cases of loss, damage, or destruction of Government property in his possession or control (including such property in the possession or control of his subcontractors) as soon as such fact becomes known.

(b) When physical inventories, consumption analyses, or other actions disclose (i) consumption of Government property which is considered unreasonable by the property administrator, or (ii) loss, damage, or destruction of Government property which has not been reported by the contractor, the property administrator shall prepare a statement of the items and amount of loss involved. This statement shall be furnished to the contractor for investigation and submission of a written statement to the property administrator relative to the incidents reported.

(c) The contractor's report and statement referenced in (a) and (b) above shall contain factual data as to the circumstances surrounding the loss, damage, destruction, or excessive consumption, including the following:

(i) the contractor's name and the contract number;

(ii) description of items lost, damaged, destroyed, or unreasonably consumed;

(iii) cost of property lost, damaged, destroyed, or unreasonably consumed and cost of repairs in instances of damages (in event actual cost is not known, use reasonable estimate);

(iv) date, time (if pertinent) and cause or origin of the loss, damage, destruction, or consumption;

(v) known interests in any commingled property of which the

Government property lost, damaged, destroyed, or unreasonably consumed is (or was) a part;

(vi) insurance, if any, covering the Government property or any part of interest in any commingled property;

(vii) actions taken by the contractor to prevent further loss, damage, destruction, or unreasonable consumption and to prevent repetition of similar incidents; and

(viii) other facts or circumstances relevant to determination of liability and responsibility for repair or replacement.

(d) The property administrator shall investigate the incident to the degree required to reach a valid and supportable conclusion as to (i) liability of the contractor for the loss, damage, destruction, or unreasonable consumption under the terms of the contract, and (ii) the course of action required to conclude the adjustment action. When required, the assistance of the quality assurance representative, the industrial specialist, the insurance officer, legal counsel or other technician will be secured. When the contractor acknowledges liability, the property administrator shall forward a copy of the credit memorandum or other adjusting document to the administrative contracting officer and auditor, if appropriate, to assure proper credit. In the event analysis of contract provisions and circumstances establishes that the loss, damage, destruction, or consumption constitutes risks assumed by the Government, the property administrator shall so advise the contractor in writing, thereby relieving the contractor of responsibility for the property. A copy of the documentation and notification to the contractor shall be retained in the Contract Property Control Data File for the contract.

(e) If the property administrator concludes that the contractor should be liable for the loss, damage, destruction, or unreasonable consumption of Government property, he shall forward the complete file with his conclusions and recommendations to the contracting officer for review and determination. The file shall contain:

(i) a statement of facts as supported by investigation;

(ii) recommendations as to contractor's liability, and the amount thereof;

(iii) recommendations as to action to be taken with regard to third party liability, if appropriate;

(iv) requirements for disposition, repair, or replacement of the damaged property; and

(v) other pertinent comments.

A copy of the determination shall be furnished to the contractor, to the property administrator, and a copy shall be retained in the files of the contracting officer. The property administrator's copy shall be filed in the Contract Property Control Data File for the contract when all pertinent actions, such as compensation to the Government or repair or replacement of the property, have been completed.

83.603 *Financial Reports.*

(a) The property administrator is responsible for obtaining appropriate financial reports as prescribed in B.311 and C.311 for all contracts assigned to him. Reports shall be accumulated and reviewed. Contractors are required to submit separate reports on each contract which contain the property reporting clause (7.104–54) except as noted in Appendices B and C, Attachment 3, paragraph 4(c). The reports shall be distributed in accordance with the procedures outlined in paragraph (b) below.

(b) Three copies of each of the contractor's annual property financial reports (NASA Form 1018), shall be reviewed, signed and forwarded by the property administrator to the contracting officer or his designee, as identified in the property reporting clause, within ten days after receipt. The contracting officer, or his designee, will immediately forward one copy of each report to the cogizant financial management office and one copy to the Director of Supply and Equipment Management Division (Code BE–5), NASA Headquarters, Washington, D.C. 20546.

Subpart 7—Contractor Utilization of Government IPE

83.701 Utilization Surveys.

(a) Responsibility for assuring that the contractor has effective procedures to evaluate Industrial Plant Equipment (IPE) utilization rests with the property administrator. However, when necessary, the contract administration office shall provide specialists qualified to perform the technical portion of utilization surveys to assist the property administrator in determining the adequacy of the contractor's [illegible] procedures.

(b) Upon assignment of an initial contract under which Government-owned IPE is to be provided to a contractor, the property administrator shall require the contractor, in accordance with B.603 or C.603, to establish procedures and techniques for controlling the utilization of Government-owned IPE. The property administrator, with the assistance of technical specialists, if necessary, shall evaluate the procedures established by the contractor for effective utilization of IPE. A record of the evaluation shall be prepared and become a part of the property administration file. If the procedures are determined inadequate, the record shall identify the deficiencies and the corrective actions necessary. In the event the deficiencies are not corrected by the contractor, the property administrator shall promptly refer the matter to the contracting officer.

(c) Follow-up surveys of the contractor's utilization procedures related to Government-owned IPE shall be performed at least annually. At contractor facilities having a substantial quantity of IPE items, the surveys should normally be conducted on a continual basis, reviewing equipment utilization records and physically observing a group of preselected items during each portion of the survey. Such follow-up surveys shall be conducted to the degree determined necessary considering the findings or prior surveys and the contractor's performance history in identifying and declaring equipment excess to authorized requirements. The contractor shall be required to support the retention of all Government-owned IPE by data keyed to specific Government programs. Maximum use will be made of contractor's machine loading data, order boards, production planning records, and machine time records and other production control methods.

(d) Special surveys shall be conducted when a significant change occurs in the contractor's production schedules. Examples of such changes are terminations, completion of contracts or major adjustments in programs. Special surveys may be limited to a given department, activity, or division of a contractor's operation.

(e) In the absence of adequate justification for retention, Government-owned IPE will be identified and reported in accordance with Part 24. Items which are part of approved inactive package plants, standby lines or active base packages are exempted from utilization surveys. The contract administration office shall ascertain periodically whether existing authorizations for standby, lay-away, and other mobilization requirements are current.

(f) Recommendations for contractor action to correct or improve controls shall be discussed by the property administrator with contractor managerial personnel to reach

agreement as to corrective action. When action by the contractor is recommended, follow-up shall be maintained to assure that appropriate action is taken. In event satisfactory resolution cannot be reaches, the matter shall referred to the NASA contracting officer.

S3.702 Records of Surveys.

The property administrator shall prepare a record incorporating written findings, conclusions and recommendations at the conclusion of each survey. Where appropriate, the record of the property administrator may be limited to a statement expressing concurrence with the reports of other specialists. One copy of each record shall be retained in the property administration file. Additional copies shall be prepared and distributed as findings and conclusions may necessitate.

S3.703 Scope of Survey.

The following matters are among those which shall be considered and used to the extent applicable in preparing for, conducting and recording the results of the IPE Utilization Surveys:

(i) identification of contracts under which IPE was furnished or acquired:

(ii) number and dollar value of IPE items in contractor's possession;

(iii) adequacy of equipment usage records;

(iv) identification of contracts for which use of IPE is authorized;

(v) other authorized use (Government or commercial) of the IPE, whether required approvals have been obtained, and whether rental payment is required;

(vi) planned machine loadings (including performance of a physical review of selected IPE items);

(vii) whether contractor-owned equipment of like function is loaded prior to loading Government-owned IPE;

(viii) items reported by quality assurance representatives or other personnel to be in a questionable use and utilization status; and

(ix) items of plant equipment that may be made available for other use by combining work of two or more machines on a single machine with low utilization rate. In such case the survey record should indicate the date the DD Form 1342, DoD Property Record, was forwarded to the NASA contracting officer.

[FR Doc. 79-17688 Filed 6-6-79; 8:45 am]
BILLING CODE 7510-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

42 CFR Part 57

Health Professions Student Loans

AGENCY: Public Health Service, HEW.

ACTION: Correction to Final Regulations.

SUMMARY: This is a correction to the Final Regulations issued by the Department of Health, Education, and Welfare on May 18, 1979 (44 FR 29053) (FR Doc 79-15450) for the Health Professions Student Loan Program under sections 740-744 of the Public Health Service Act. The purpose of the correction is to add several clarifying phrases to one section.

EFFECTIVE DATE: This correction is effective on June 7, 1979.

FOR FURTHER INFORMATION CONTACT: Mrs. Alice Swift, Associate Director for Planning, Evaluation, and Legislation, Division of Manpower Training Support, Bureau of Health Manpower, Health Resources Administration, 3700 East-West Highway, Center Building, Room 9-50, Hyattsville, MD. 20782 (telephone 301-436-6383).

SUPPLEMENTARY INFORMATION: The Final Regulations published on May 18 (44 FR 29053) inadvertently omitted three phrases in § 57.206 designed to clarify provisions regarding (1) how to determine "resources" when establishing the eligibility of medical and osteopathic students, and (2) how to select loan applicants. Consequently, § 57.206 as published on May 18 is deleted, and replaced as set forth below.

Dated: June 1, 1979.

Joseph A. Califano, Jr.,
Secretary.

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

§ 57.206 Eligibility and selection of health professions student loan applicants.

(a) *Determination of eligibility.* (1) Applicants are eligible for consideration for a health professions student loan if they are:

(i) Nationals of the United States, permanent residents of the Trust Territory of the Pacific Islands or the Northern Mariana Islands or lawful permanent residents of the United States, Puerto Rico, the Virgin Islands or Guam;

(ii) Enrolled, or accepted for enrollment in the school as full-time students;

(iii) In need of the amount of the loan to pursue a full-time course of study at the school; and

(iv) Of exceptional financial need in the case of students of medicine or osteopathy who will graduate after June 30, 1979. A student will be considered to demonstrate exceptional financial need if the school determines that his or her resources, as described in § 57.206(b)(1), do not exceed the lesser of $5,000 or one-half of the costs of attendance at the school. Summer earnings, educational loans, veterans (G.I.) benefits and earnings during the school year will not be considered as resources in determining whether an applicant meets the eligibility criteria for exceptional financial need.

(2) The school must provide written notification to each applicant of the provisions of section 741(f) of the Act under which the Secretary may repay all or part of a loan.

(b) *Selection of applicants.* The school will select qualified applicants, including medical and osteopathic applicants, and determine the amount of student loans by considering:

(1) The financial resources available to the student by using one of the national need analysis systems or any other procedure approved by the Commissioner of Education and published under 45 CFR 144.13 in combination with other information which the school has regarding the student's financial status. The school must take into account, regardless of the tax status of the student, the expected contribution from parents, spouse, self or other family members; and

(2) The costs reasonably necessary for the student's attendance at the school, including any special needs and obligations which directly affect the student's ability to attend the school on a full-time basis. The school must document the criteria used for determining these costs.

(c) *Selection of medical and osteopathic student applicants.* In addition to the factors in § 57.206(b), the school must select medical and osteopathic students graduating after June 30, 1979, based on the order of greatest need, taking into consideration the other resources available to the student through the school. For purposes of establishing priority for selecting medical and osteopathic student applicants to receive health professions student loans, summer earnings, educational loans, veterans (G.I.) benefits, and earnings during the school

year will be considered as financial resources.

[FR Doc. 79-17979 Filed 6-6-79; 8:45 am]
BILLING CODE 4110-86-M.

NATIONAL SCIENCE FOUNDATION

45 CFR Part 670

Conservation of Antarctic Animals and Plants

AGENCY: National Science Foundation.

ACTION: Final regulations.

SUMMARY: The National Science Foundation issues regulations to conserve and protect animals and plants native to Antarctica, pursuant to the Antarctic Conservation Act of 1978, Pub. L. 95–541. These regulations apply to all United States citizens in Antarctica and to everyone importing into or exporting from the United States designated Antarctic animals and certain Antarctic plants or parts of them. The purpose of the regulations is to protect Antarctic ecological systems in accordance with measures which have been internationally established. Civil and criminal penalties for noncompliance are provided in the Act.

These regulations designate native animals and plants and designate areas where activities are restricted. They also establish a system of permits to take native animals, to collect certain plants, to import into or export from the United States Antarctic animals and certain Antarctic plants, to introduce non-indigenous species into Antarctica, and to restrict entry into certain areas of Antarctica.

Measures to restrict the discharge and disposal of pollutants in Antarctica will be the subject of separate regulations at a later date.

EFFECTIVE DATE: July 1, 1979.

FOR FURTHER INFORMATION CONTACT: Dr. Edward P. Todd, Division of Polar Programs, National Science Foundation, Washington, D.C. 20550. Telephone: 202–632–4024.

SUPPLEMENTARY INFORMATION: The primary purpose of the Antarctic Conservation Act is to implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora". The Agreed Measures were developed by the Antarctic Treaty Consultative Parties under the Antarctic Treaty of 1959. The Agreed Measures recommend establishment of a permit system for various activities in Antarctica and designation of certain mammals and certain geographic areas as requiring special protection. These regulations meet the requirements of the Agreed Measures and related measures recommended under the Treaty.

Subpart A of these regulations sets forth their purpose and scope and defines terms used in these regulations. Prohibited acts and exceptions to them are discussed in Subpart B. The procedures for obtaining a permit and the terms and conditions of such permits are set forth in Subpart C. Subpart D designates as native mammals or native birds all mammals and birds found in Antarctica, except whales regulated by the International Whaling Commission. Activities involving these designated mammals or birds require a permit. More restrictive requirements for mammals and birds designated as Specially Protected Species are set forth in Subpart E. Areas of outstanding ecological interest are designated as Specially Protected Areas in Subpart G. No one may enter these areas or collect any native plants in these areas without a permit. Native plants are designated in Subpart F. Animal and plant fossils are not covered by these regulations. Areas of unique scientific value that need protection from interference are designated as Sites of Special Scientific Interest in Subpart H. Entry into certain of these areas without a permit is also prohibited. Conditions under which Antarctic animals and birds and certain Antarctic plants may be imported into or exported from the United States are set forth in Subpart I. Finally, Subpart J sets forth conditions where the introduction into Antarctica of non-indigenous plants and animals is permitted.

The Antarctic Conservation Act does not supersede the requirements of the Marine Mammal Protection Act of 1972, the Endangered Species Act of 1973, or the Migratory Bird Treaty Act. Applications for permits involving native mammals or native birds covered by those acts will be forwarded to the agencies that administer them. If they disapprove the application, no permit will be issued under these regulations. If the permit is approved by the appropriate agency, the Director still must determine whether to issue a permit pursuant to these regulations. Civil and criminal penalties may be imposed not only under the other acts but also under the Antarctic Conservation Act.

On March 6, 1978, proposed regulations to implement the Act were published. Of the four comments received, two noted that these regulations apply to many animals which are already protected by other legislation. The Act makes clear that Congress was aware of this duplication. The Act, seeking to reduce the possible burden on the public, requires the National Science Foundation to forward any application it receives to the appropriate agency when that application involves animals protected under other legislation. This procedure is set forth in § 670.11(f) of this part.

Of the other two letters, only one raised substantive problems. This letter questions whether a carrier moving Antarctic plants and animals in contravention of the Act is "transporting" these products. Transportation within the meaning of the Act applies to the individual or individuals who, knowing that such transportation has not been authorized, nonetheless place the Antarctic animals or plants in the transportation system. A carrier having no knowledge that such transportation is unauthorized would not commit a violation of the Act.

Although not expressly addressed in the public comments, there is a concern that the prohibition on transporting Antarctic animals and certain Antarctic plants without a U.S. permit could interfere with international cooperation. For example, U.S. aircraft or vessels frequently transport specimens from Antarctica to foreign countries—specimens which have been taken or collected pursuant to a permit issued by the foreign government. Similar problems may exist when the U.S. transports non-indigenous plants and animals to Antarctica for a foreign government. A new § 670.8 has been added to this part which would create an exception for such transportation or introduction. The exception would only apply to transportation or introduction by a U.S. Government agency on behalf of a foreign national who holds a permit from a foreign government. This exception would not apply to importation into the United States.

A new Part 670 is added Title 45 CFR, Chapter VI to read as follows:

PART 670—CONSERVATION OF ANTARCTIC ANIMALS AND PLANTS

Subpart A—Introduction

Sec.
670.1 Purpose of regulations.
670.2 Scope.
670.3 Definitions.

Subpart B—Prohibited Acts, Exceptions

670.4 Prohibited Acts.
670.5 Exceptions in extraordinary circumstances.
670.6 Prior possession exception.
670.7 Food exception.
670.8 Foreign Permit Exceptions.
670.6 Prior possession exception.
670.7 Food exception.
670.8 Foreign Permit Exceptions.

Subpart C—Permits

670.9 Application for permits.
670.10 General issuance criteria.
670.11 Permit administration.
670.12 Conditions of permits.
670.13 Modification, Suspension and Revocation.
670.14 [Reserved]

Subpart D—Native Mammals and Native Birds

670.15 Specific issuance criteria.
670.16 Content of permit applications.
670.17 Designation of native mammals.
670.18 Designation of native birds.
670.19 [Reserved]

Subpart E—Specially Protected Species of Mammals and Birds

670.20 Specific issuance criteria.
670.21 Content of permit applications.
670.22 Designation of specially protected species of mammals and birds.
670.23 [Reserved]

Subpart F—Native Plants

670.24 Specific issuance criteria.
670.25 Content of permit applications.
670.26 Designation of native plants.
670.27 [Reserved]

Subpart G—Specially Protected Areas

670.28 Specific issuance criteria.
670.29 Content of permit applications.
670.30 Designation of specially protected areas.
670.31 [Reserved]

Subpart H—Sites of Special Scientific Interest

670.32 Specific issuance criteria.
670.33 Content of permit applications.
670.34 Designation of sites of special scientific interest and management plans for those sites.
670.35 [Reserved]

Subpart I—Import Into and Export From the United States

670.36 Specific issuance criteria for imports.
670.37 Specific issuance criteria for exports.
670.38 Content of permit applications.
670.39 Entry and exit ports.
670.40 [Reserved]

Subpart J—Introduction of Non-Indigenous Plants and Animals

670.41 Specific issuance criteria.
670.42 Content of permit applications.
670.43 Conditions of permits.
670.44 [Reserved]

Authority: Sec. 11, Pub. L. 81–507, 64 Stat. 149 (42 U.S.C. 1870) as amended; Pub. L. 95–541, 92 Stat. 2048 (16 U.S.C. 2401).

Subpart A—Introduction

§ 670.1 Purpose of regulations.

The purpose of these regulations is to conserve and protect the native mammals, native birds and native plants of Antarctica and the ecosystem upon which they depend and to implement the Antarctic Conservation Act of 1978, Pub. L. 95–541.

§ 670.2 Scope.

These regulations apply to:

(a) Taking any mammal or bird native to Antarctica,

(b) Collecting any plant native to Antarctica in a specially protected area,

(c) Entering any specially protected area or site of special scientific interest,

(d) Importing into or exporting from the United States any mammal or bird native to Antarctica or any plant collected in a specially protected area, and

(e) Introducing into Antarctica any non-indigenous plant or animal.

§ 670.3 Definitions.

In this part:

"Act" means the Antarctic Conservation Act of 1978, Pub. L. 95–541, 92 Stat. 2048 (16 U.S.C. 2401 et. seq.)

"Agreed Measures" means the Agreed Measures for Conservation of Antarctic Fauna and Flora, as recommended for approval at the Third Antarctic Treaty Consultative Meeting, and as amended in accord with Article IX (1) of the Treaty.

"Antarctica" means the area south of 60 degrees south latitude.

"Collect" means to cut, sever, or move any native plant, or to attempt to engage in any such action.

"Director" means the Director of the National Science Foundation, or an officer or employee of the Foundation designated by the Director.

"Foreign person" means any individual who is a citizen or national of a foreign nation; any corporation, partnership, trust, association or other legal entity existing or organized under the laws of a foreign nation; any department, agency, or other instrumentality of any foreign nation and any office, employee, or agent of any such instrumentality.

"Management plan" means the restrictions applicable to activities in Sites of Special Scientific Interest.

"Native bird" means a member of any species of the class *Aves*, which is indigenous to Antarctica or occurs there through natural agencies of dispersal that is designated in Subpart D of this Part. It includes any part, product, egg, or offspring of or the dead body or parts thereof excluding fossils.

"Native mammal" means a member of any species of the class Mammalia, except species regulated by the International Whaling Commission, which is indigenous to Antarctica or occurs there through natural agencies of dispersal that is designated in Subpart D of this part. It includes any part, product, egg, or offspring of or the dead body or parts excluding fossils.

"Native plant" means any kind of vegetation at any stage of its life cycle indigenous to Antarctica or occurring there through natural agencies of dispersal, including seeds but excluding fossils, that is designated in Subpart F of this part.

"Site of Special Scientific Interest" means an area of unique value for scientific investigation designated in Subpart H of this part as needing protection from interference.

"Specially Protected Area" means an area of outstanding scientific or ecological interest designated in Subpart C of this part.

"Specially Protected Species" means any species of native mammal or native bird that is approved by the United States for special protection under the Agreed Measures and is designated in Subpart E of this part.

"Take" means to remove, harass, molest, harm, pursue, hunt, shoot, wound, kill, trap, capture, restrain, or tag any native mammal or native bird, or to attempt to engage in such conduct.

"Treaty" means the Antarctic Treaty signed in Washington, D.C., on December 1, 1959.

"United States" means the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands, including the Government of the Northern Mariana Islands.

"United States citizen" means any individual who is a citizen or national of the United States; any corporation, partnership, trust, association, or other legal entity existing or organized under the laws of any of the United States; any department, agency, or other instrumentality of the Federal Government or of any State; and any officer, employee, or agent of any such entity or instrumentality.

Subpart B—Prohibited Acts, Exceptions

§ 670.4 Prohibited acts.

Unless a permit has been issued pursuant to Subpart C of this part or unless one of the exceptions stated in §§ 670.5 through 670.8 is applicable, it is unlawful to commit, attempt to commit, or cause to be committed any of the acts described in paragraphs (a) through (h) of this section.

(a) *Taking any native mammal or native bird.* It is unlawful for any United States citizen to take within Antarctica any native mammal or native bird.

(b) *Collecting native plants.* It is unlawful for any United States citizen to collect a native plant in a specially protected area.

(c) *Entry into designated area.* It is unlawful for any United States citizen to enter any specially protected area or to enter certain sites of special scientific interest.

(d) *Possession and transfer of native mammals, plants or birds.* It is unlawful for any United States citizen wherever located or any foreign person while within the United States to possess, sell, offer for sale, deliver, receive, carry, transport, or ship by any means whatever any native plant collected in a specially protected area, or any native mammal or native bird taken in Antarctica.

(e) *Import into or export from the United States.* It is unlawful for any United States citizen wherever located or any foreign person while within the United States to import into the United States or export from the United States any native mammal or native bird or any native plant collected in a specially protected area.

(f) *Introduction of non-indigenous animals and plants into Antarctica.* It is unlawful for any United States citizen to introduce into Antarctica any animal or plant that is not indigenous to Antarctica as specified in Subpart J of this part, except as provided in § 670.7 and 670.8.

(g) *Violation of regulations.* It is unlawful for any United States citizen wherever located or any foreign person while within the United States to violate the regulations set forth in this Part.

(h) *Violation of permit conditions.* It is unlawful for any permit holder, whether or not a United States citizen, to violate any term or condition of any permit issued under Subpart C of this Part.

§ 670.5 Exceptions in extraordinary circumstances.

(a) *Human life.* No act described in § 670.4 shall be unlawful if committed under emergency circumstances to prevent the loss of human life.

(b) *Aiding or salvaging native mammals or native birds.* The prohibition on taking shall not apply to taking native mammals or native birds if such action is necessary to:

(1) Aid a sick, injured, or orphaned specimen;

(2) Dispose of a dead specimen; or

(3) Salvage a dead specimen which may be useful for scientific study.

(c) *Reporting.* Any actions taken under the exceptions in this section shall be reported promptly to the Director.

§ 670.6 Prior possession exception.

(a) *Exception.* Section 670.4 shall not apply to (1) any native mammal, bird or plant which is held in captivity on or before October 28, 1978, or (2) any offspring of any such mammal, bird, or plant.

(b) *Presumption.* With respect to any prohibited act set forth in § 670.4 which occurs after April 29, 1979, the Act creates a rebuttable presumption that the native mammal, native bird, or native plant involved in such act was not held in captivity on or before October 28, 1978, or was not an offspring referred to in paragraph (a) of this section.

§ 670.7 Food exception.

Paragraph (f) of § 670.4 shall not apply to the introduction of animals and plants into Antarctica for use as food so long as animals and plants used for this purpose are kept under controlled conditions. This exception shall not apply to living non-indigenous species of birds.

§ 670.8 Foreign permit exceptions.

Paragraphs (d) and (f) of § 670.4 shall not apply to transporting, carrying, receiving, or possessing native mammals, native plants, or native birds or to the introduction into Antarctica of non-indigenous animals and plants when conducted by an agency of the U.S. Government on behalf of a foreign national operating under a permit issued by a foreign government to give effect to the Agreed Measures.

Subpart C—Permits

§ 670.9 Applications for permits.

(a) *General content of permit applications.* All applications for a permit shall be dated and signed by the applicant and shall contain the following information:

(1) The name and address of the applicant;

(i) Where the applicant is an individual, the business or institutional affiliation the applicant; and

(ii) Where the applicant is a corporation, firm, partnership, institution, or agency, either private or public, the name and address of its president or principal officer.

(2) The scientific names and the numbers of native plants to be collected in a specially protected area; or the scientific names and the numbers of native mammals or native birds to be taken;

(3) A description of the native mammals, native birds, or native plants to be taken or collected, including as appropriate the age, size, sex, and condition, e.g., whether pregnant or nursing;

(4) A complete description of the location, time period, and manner of taking or collecting, including the proposed access to the location;

(5) Whether the native mammals, birds, or plants, or parts of them are to be imported into the United States, and if so, their ultimate disposition;

(6) Where the application is for the introduction of non-indigenous plants and animals, the scientific name and the number to be introduced;

(7) Whether agents as referred to in § 670.12 will be used; and

(8) The desired effective date of the permit.

(b) *Content of specific permit applications.* In addition to the general information required for permit applications set forth in this subpart, the applicant must submit additional information relating to the specific action for which the permit is being sought. These additional requirements are set forth in the sections of this part dealing with the subject matter of the permit applications as follows:

Native Mammals and Native Birds—§ 670.16.
Specially Protected Species—§ 670.21.
Native Plants—§ 670.25.
Specially Protected Areas—§ 670.29.
Sites of Special Scientific Interest—§ 670.33.
Import into or Export from the U.S.—§ 670.38.
Introduction on Non-Indigenous Plants and Animals—§ 670.42.

(c) *Certification.* Applications for permits shall include the following certification:

I certify that the information submitted in this application for a permit is complete and accurate to the best of my knowledge and belief. Any false statement will subject me to the criminal penalties of 18 U.S.C. 1001.

(d) *Address to which applications should be sent.* Each application shall be in writing, addressed to:

Permit Office, Division of Polar Programs, National Science Foundation, Washington, D.C. 20550.

(e) *Sufficiency of application.* The sufficiency of the application shall be determined by the Director. The Director may waive any requirement for information, or require such additional information as determined to be

relevant to the processing of the application.

(f) *Withdrawal.* An applicant may withdraw the application at any time.

(g) *Publication of permit applications.* The Director shall publish notice in the Federal Register of each application for a permit. The notice shall invite the submission by interested parties, within 30 days after the date of publication of the notice, of written data, comments, or views with respect to the application. Information received by the Director as a part of any application shall be available to the public as a matter of public record.

§ 670.10 General issuance criteria.

Upon receipt of a complete and properly-executed application for a permit and the expiration of the applicable public comment period, the Director will decide whether to issue the permit. In making this decision, the Director will consider, in addition to the specific criteria set forth in the appropriate subparts of this part:

(a) Whether the authorization requested meets the objectives of the Act and the requirements of these regulations;

(b) The judgment of persons having expertise in matters germane to the application; and

(c) Whether the applicant has failed to disclose material information required or has made false statements about any material fact in connection with his application.

§ 670.11 Permit administration.

(a) *Issuance of permits.* The Director may approve an application in whole or in part. Permits shall be issued in writing and be signed by the Director. Each permit may contain such terms and conditions as are consistent with the Act and this part.

(b) *Denial.* The applicant shall be notified in writing of the denial of any permit request or part of a request, and the reason for such denial. If authorized in the notice of denial, the applicant may submit further information, or reasons why the permit should not be denied. Such further submissions shall not be considered a new application.

(c) *Amendment of applications or permits.* An applicant or permit holder desiring to have any term or condition of his application or permit modified must submit full justification and supporting information in conformance with the provisions of this subpart and the subpart governing the activities sought to be carried out under the modified permit. Any application for modification of a permit that involves a material change beyond the terms originally requested will normally be subject to the same procedures as a new application.

(d) *Notice of issuance or denial.* Within 10 days after the date of the issuance or denial of a permit, the Director shall publish notice of the issuance or denial in the Federal Register.

(e) *Agents of the permit holder.* The Director may authorize the permit holder to designate agents to act on behalf of the permit holder.

(f) *Marine mammals, endangered species and migratory birds.* If the Director receives a permit application involving any native mammal which is a marine mammal as defined by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(5)), any species which is an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), or any native bird which is protected under the Migratory Bird Treaty Act (16 U.S.C. 701 et seq.), the Director shall submit a copy of the application to the Secretary of Commerce or to the Secretary of the Interior, as appropriate. If the appropriate Secretary determines that a permit should not be issued pursuant to any of the cited acts, the Director shall not issue a permit. The Director shall inform the applicant of any denial by the appropriate secretary and no further action will be taken on the application. If, however, the appropriate Secretary issues a permit pursuant to the requirements of the cited acts, the Director still must determine whether the proposed action is consistent with the Act and these regulations.

§ 670.12 Conditions of permits.

(a) *Possession of permits.* Permits issued under these regulations, or copies of them, must be in the possession of persons to whom they are issued and their agents when conducting the authorized action.

(b) *Display of permits.* Any permit issued shall be displayed for inspection upon request to the Director, designated agents of the Director, or any person with enforcement responsibilities.

(c) *Filing of reports.* Permit holders may be required to file reports of the activities conducted under a permit. Reports shall be submitted to the Director not later than June 30 for the preceding 12 months.

§ 670.13 Modification, suspension, and revocation.

(a) The Director may modify, suspend, or revoke, in whole or in part, any permit issued under this section:

(1) In order to make the permit consistent with any change to any regulation in this part made after the date of issuance of the permit;

(2) If there is any change in conditions which makes the permit inconsistent with the purpose of the Act and these regulations; or

(3) In any case in which there has been any violation of any term or condition of the permit, any regulation in this part, or any provision of the Act.

(b) Whenever the Director proposes any modifications, suspension, or revocation of a permit under this subsection, the permittee shall be afforded opportunity, after due notice, for a hearing by the Director with respect to such proposed modification, suspension, or revocation. If a hearing is requested, the action proposed by the Director shall not take effect before a decision is issued by him after the hearing, unless the proposed action is taken by the Director to meet an emergency situation.

(c) Notice of the modification, suspension, or revocation of any permit by the Director shall be published in the Federal Register within 10 days from the date of the Director's decision.

§ 670.14 [Reserved]

Subpart D—Native Mammals and Native Birds

§ 670.15 Specific issuance criteria.

With the exception of specially protected species of mammals and birds designated in Subpart E of this part, permits to take a mammal or bird in Antarctica designated as a native mammal in § 670.17 or as a native bird in § 670.18 may be issued:

(a) Only for the purpose of providing.—(1) Specimens for scientific study or scientific information, or

(2) Specimens for museums, zoological gardens, or other educational or cultural institutions or uses;

(b) Shall ensure, as far as possible, that.—(1) No more native mammals or native birds are taken in any year than can normally be replaced by natural reproduction in the following breeding season, and

(2) The variety of species and the balance of the natural ecological systems within Antarctica are maintained; and

(3) The authorized taking, transporting, carrying, or shipping of any native mammal or native bird is carried out in a humane manner.

§ 670.16 Contents of permit applications.

In addition to the information required in Subpart C of this part, an applicant

seeking a permit to take a native mammal or native bird shall include a complete description of the project including the purpose of the proposed taking, the use to be made of the native mammals or native birds, and the ultimate disposition of the native mammals or native birds. Sufficient information must be provided to establish that the taking, transporting, carrying, or shipping will be humane.

§ 670.17 Designation of native mammals.

The following are designated native mammals:

Dolphin:
  Hourglass—Lagenorhynchus cruciger.
Seal:
  Crabeater—Lobodon carcinophagus.
  Elephant—Mirounga leonina.
  Kerguelen Fur—Arctocephalus gazella.*
  Leopard—Hydrurga leptonyx.
  Ross—Ommatophoca rossi.*
  Weddell—Leptonychotes weddelli.
Whale:
  Arnoux's Beaked—Berardius arnuxii.
  Killer—Orcinus orca.
  Long-finned Pilot—Globicephala melaena.
  Southern Bottlenose—Hyperoodon planifrons.

*These species of mammals have been designated as specially protected species and are subject to Subpart E of this part.

§ 670.18 Designation of native birds.

The following are designated native birds:

Albatross:
  Black-browed—Diomedea melanophris.
  Gray-headed—Diomedea chrysostoma.
  Light-mantled Sooty—Phoebetria palpebrata.
  Wandering—Diomedea exulans.
Fulmar:
  Northern Giant—Macronectes halli.
  Southern—Fulmarus glacialoides.
  Southern Giant—Macronectes giganteus.
Gull:
  Southern Black-backed—Larus dominicanus.
Jaeger:
  Parasitic—Stercorarius parasiticus.
  Pomarine—Stercorarius pomarinus.
Penguin:
  Adelie—Pygoscelis adeliae.
  Chinstrap—Pygoscelis antarctica.
  Emperor—Aptenodytes forsteri.
  Gentoo—Pygoscelis papua.
  King—Aptenodytes patagonicus.
  Macaroni—Eudyptes chrysolophus.
  Rockhopper—Eudyptes crestatus.
Petrel:
  Antarctic—Thalassoica antarctica.
  Black-bellied Storm—Fregetta tropica.
  Blue—Halobaena caerulea.
  Gray—Procellaria cinerea.
  Great-winged—Pterodroma macroptera.
  Kerguelen—Pterodroma brevirostris.
  Mottled—Pterodroma inexpectata.
  Snow—Pagodroma nivea.
  Soft-plumaged—Pterodroma mollis.
  South Georgia Diving—Pelecanoides georgicus.
  White-bellied Storm—Fregetta grallaria.
  White-chinned—Procellaria aequinoctialis.
  White-headed—Pterodroma lessoni.
  Wilson's Storm—Oceanites oceanicus.
Pigeon:
  Cape—Daption capense.
Pintail:
  South American Yellow-billed—Anas georgica spinicauda.
Prion:
  Antarctic—Pachyptila desolata.
  Narrow-billed—Pachyptila belcheri.
Shag:
  Blue-eyed—Phalacrocorax atriceps.
Shearwater:
  Sooty—Puffinus griseus.
Skua:
  Brown—Catharacta lonnbergi.
  South Polar—Catharacta maccormicki.
Swallow:
  Barn—Hirundo rustica.
Sheathbill:
  American—Chionis alba.
Tern:
  Antarctic—Sterna vittata.
  Arctic—Sterna paradisaea.

§ 670.19 [Reserved]

Subpart E—Specially Protected Species of Mammals and Birds

§ 670.20 Specific issuance criteria.

Permits authorizing the taking of mammals or birds designated as a specially protected species of mammals and birds in § 670.22 may only be issued if

(a) There is a compelling scientific purpose for such taking;

(b) The actions allowed under any such permit will not jeopardize the existing natural ecological system, or the survival of that species; and

(c) The authorized taking, transporting, carrying, or shipping of any native mammal or native bird is carried out in a humane manner.

§ 670.21 Content of permit applications.

In addition to the information required in Subpart C of this part, an applicant seeking a permit to take a specially protected species shall include the following in the application:

(a) A detailed scientific justification of the need for taking the specially protected species, including a discussion of possible alternative species;

(b) Information demonstrating that the proposed action will not jeopardize the existing natural ecological system or the survival of that species; and

(c) Information establishing that the taking, transplanting, carrying, or shipping of any native mammal or native bird is carried out in a humane manner.

§ 670.22 Designation of specially protected species of mammals and birds.

The Act states that the Director shall designate as a specially protected species any native species of mammal or bird which is approved by the United States for special protection under the Agreed Measures. The following two species have been so approved and are hereby designated specially protected species:

Common Name and Scientific Name

Kerguelen Fur Seal—Arctocephalus tropicalis gazella.
Ross Seal—Ommatophoca rossi.

§ 670.23 [Reserved]

Subpart F—Native Plants

§ 670.24 Specific issuance criteria.

Permits authorizing the collection of any native plant designated in § 670.26 from a specially protected area designated in § 670.30 may be issued only if

(a) There is a compelling scientific purpose for such collection which cannot be served elsewhere, and

(b) The actions allowed under any such permit will not jeopardize the natural ecological system existing in that area.

§ 670.25 Content of permit applications.

In addition to the information required in Subpart C of this part, an applicant seeking a permit to collect a native plant in a specially protected area shall include the following in the application:

(a) A detailed scientific justification of the need for the collection, including a discussion of alternatives; and

(b) Information demonstrating that the proposed action will not jeopardize the unique natural ecological system existing in that area.

§ 670.26 Designation of native plants.

All plants found in Antarctica are designated native plants, including:

Fungi—Lichens.
Vascular Plants—Marine algae.
Bryophytes—Freshwater algae.

§ 670.27 [Reserved]

Subpart G—Specially Protected Areas

§ 670.28 Specific issuance criteria.

Permits authorizing entry into any specially protected area designated in § 670.30 of this title may be issued only if

(a) There is a compelling scientific purpose for such entry which cannot be served elsewhere, and

(b) The actions allowed under any such permit will not jeopardize the

natural ecological system existing in that area.

No permit shall be issued that allows the operation of any surface vehicle in a specially protected area.

§ 670.29 Content of permit applications.

In addition to the information required in Subpart C of this part, and applicant seeking a permit to enter a specially protected area shall include the following in the application.

(a) A detailed scientific justification of the need for such entry, including a discussion of alternatives; and

(b) Information demonstrating that the proposed action will not jeopardize the unique natural ecological system existing in that area.

§ 670.30 Designation of specially protected areas.

The Act states the Director shall designate as a specially protected area, each area identified under the Agreed Measures as needing special protection. The following areas have been so identified and are designated as specially protected areas:

(a) Taylor Rookery, MacRobertson Land situated at Latitude 67° 28′ South, Longitude 60° 50′ East.

(b) Rookery Islands in Holme Bay.

(c) Ardery Island and Odbert Island in Vincennes Bay.

(d) Sabrina Island and Balleny Islands in the Ross Sea

(e) Beaufort Island in the Ross Sea.

(f) Cape Hallett in Victoria Land.

(g) Dion Islands in Marguerite Bay.

(h) Green Island in the Berthelot Islands.

(i) Cape Shirreff on Livingston Island.

(j) Moe Island in the South Orkney Islands.

(k) Lynch Island in the South Orkney Islands.

(l) Powell Island (southern portion only), Fredriksen Island, Michelsen Island, Christofferson Island, Grey Island and all unnamed islands within one mile of these islands; all of which are part of the South Orkney Islands.

(m) Coppermine Peninsula on Robert Island.

(n) Litchfield Island in the Palmer Archipelago.

Maps specifying these areas in greater detail may be obtained from the Director.

§ 670.31 [Reserved]

Subpart H—Sites of Special Scientific Interest

§ 670.32 Specific issuance criteria.

Sites of Special Scientific Interest, designated in § 670.34, are sites where scientific investigations are being conducted or are planned and there is a demonstrable risk of interference which would jeopardize those investigations. Certain of these sites do not require limitations on entry to protect their value for scientific investigations. No permit is required for entry into these sites but entrants must comply with the managment plan. Permits to enter sites for which an entry permit is required may be issued only if the proposed entry is consistent with the management plan:

§ 670.33 Content of permit applications.

In addition to the information required in Subpart C of this part, an applicant seeking a permit to enter a site of special scientific interest shall include the following in the application:

(a) The justification for such entry;

(b) Information demonstrating that the proposed action will not jeopardize the unique scientific value of the area; and

(c) A statement demonstrating the consistency of the proposed action with the management plan.

§ 670.34 Designation of sites of special scientific interest and management plans for those sites.

The Act states that the Director shall designate as a site of special scientific interest each area approved by the United States in accordance with Recommendation VIII–3 of the Eighth Antarctic Treaty Consultative Meeting. The Act also requires the Director to prescribe a management plan for such sites which is consistent with any management plan approved by the United States in accordance with that Recommendation. Accordingly, the following areas are designated as sites of special scientific interest to be managed in accordance with the management plan set forth after each designation:

(a) *Sites of Special Scientific Interest Requiring a Permit for Entry.*—(1)(i) Cape Royds on Ross Island, (ii) Cape Crozier on Ross Island, and (iii) Haswell Island Management Plan. Entry by foot only for scientific purposes will be authorized. Pedestrians may not move through areas populated by birds except as necessary in the course of scientific investigations. A compelling scientific purpose must be demonstrated before a permit will be issued to take a native bird from this Site.

(2) Fildes Peninsula on King George Island Managment Plan. The operation of surface vehicles and the landing of helicopters are not permitted within the Site except in an emergency. No buildings or other facilities may be erected on this Site. No rock samples may be obtained unless authorized in the entry permit. Such authorization shall be given only for compelling scientific purposes.

(3) Byers Peninsula on Livingston Island Managment Plan. The operation of surface vehicles is not permitted within the Site except in an emergency. No buildings or other facilities may be erected on this Site. No rock samples may be obtained unless authorized in the entry permit. Such authorization shall be given only for compelling scientific purposes.

(4) Barwick Valley in Victoria Land Management Plan. Entry on foot only will be authorized. Overflight is not permitted. Permanent field camps, landfill disposal, and other activities which would introduce new materials or organisms, including microorganisms, into the Site are not permitted. All materials carried into the Site shall be removed.

(b) *Sites of Special Scientific Interest not Requiring a Permit for Entry.*—(1) Arrival Heights on Ross Island Management Plan. Vehicles and pedestrians shall keep to designated tracks. No radio frequency transmitting equipment other than low power transceivers for local essential communication may be installed within the Site.

(c) *Maps.*—Maps identifying the designated Sites of Special Scientific Interest in greater detail are available from the Director.

§ 670.35 [Reserved]

Subpart I—Import Into and Export From the United States

§ 670.36 Specific issuance criteria for imports.

Subject to compliance with other applicable law, any person who takes a native mammal or native bird or collects a native plant under a permit issued under these regulations may import it into the United States unless the Director finds that importation would not further the purpose for which it was taken or collected. If the importation is for a purpose other than that for which the native mammal or native bird was taken or the native plant collected, the Director may permit importation upon a finding that importation would be consistent with the purposes of the Act, these regulations, or the permit under which they were taken or collected.

§ 670.37 Specific issuance criteria for exports.

The Director may permit export from the United States of any native plant taken from a specially protected area or

of any native mammal or native bird upon a finding that exportation would be consistent with the purposes of the Act, these regulations, or the permit under which they were taken or collected.

§ 670.38 Contents of permit applications.

In addition to the information required in Subpart C of this part, an applicant seeking a permit to import into or export from the United States a native plant taken from a specially protected area, a native mammal, or a native bird shall include the following in the application:

(a) Information demonstrating that the import or export would further the purposes for which the species was taken or collected; or

(b) Information demonstrating that the import or export is consistent with the purposes of the Act or these regulations; and

(c) A statement as to which U.S. port will be used for the import or export.

The application shall also include information describing the intended ultimate disposition of the imported or exported item.

§ 670.39 Entry and exit ports.

Any native plant collected in a specially protected area and any native mammal or native bird imported into or exported from the United States must enter or leave the United States at ports designated by the Secretary of Interior in 50 CFR Part 14. The ports presently designated are:

(a) New York, New York,
(b) Miami, Florida,
(c) Chicago, Illinois,
(d) San Francisco, California,
(e) New Orleans, Louisiana,
(f) Seattle, Washington,
(g) Honolulu, Hawaii.

Permits to import or export at non-designated ports may be sought from the Secretary of Interior pursuant to Subpart C, 50 CFR Part 14.

§ 670.40 [Reserved]

Subpart J—Introduction of Non-Indigenous Plants and Animals

§ 670.41 Specific issuance criteria.

For purposes consistent with the Act, only the following plants and animals may be considered for a permit allowing their introduction into Antarctica:

(a) sledge dogs;
(b) domestic animals and plants; and
(c) laboratory animals and plants including viruses, bacteria, yeasts, and fungi.

Living non-indigenous species of birds shall not be introduced into Antarctica.

§ 670.42 Content of permit applications.

Applications for the importation of plants and animals into Antarctica must describe (a) the need for the plants or animals, (b) how the applicant will ensure that the plants or animals will not harmfully interfere with the natural system, and (c) how the plants or animals will be removed from Antarctica or destroyed after they have served their purpose.

§ 670.43 Conditions of permits.

(a) *General.* All permits allowing the introduction of non-indigenous plants and animals will require that the animal or plant be kept under controlled conditions to prevent harmful interference with the natural system and that after serving its purpose the plant or animal shall be removed from Antarctica or destroyed in a manner that protects the natural system of Antarctica.

(b) *Dogs.* In addition to the requirements of paragraph (a) of this section, all dogs imported into Antarctica shall be inoculated against the following diseases:

(1) Distemper;
(2) Contagious canine hepatitis;
(3) Rabies; and
(4) Leptospirosis [L. canicola and L. icterohaemorragicae].

Each dog shall be inoculated at least two months before importation, and a certificate of inoculation shall accompany each dog. No dog shall be allowed to run free in Antarctica.

§ 670.44 [Reserved]

Signed at Washington, D.C., on May 31, 1979.

Richard G. Atkinson,
Director.

[FR Doc. 79-17000 Filed 6-6-79; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 601

Organization, Function, and Procedures

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Final Rule.

SUMMARY: The purpose of this document is to revise the sequence in which UMTA officials assume and perform the duties of the Administrator when he or she is absent or disabled (line of succession). Under this regulation, when the Administrator and Deputy Administrator are absent or disabled, the duties of the Administrator will be performed by the Associate Administrator for Policy, Budget and Program Development. If this official is also absent or disabled, the duties of the Administrator will be performed by the Associate Administrator for Planning, Management and Demonstrations. The remainder of the line of succession regulation remains unchanged, except that the Associate Administrator for Transportation Planning position is deleted since this position no longer exists.

EFFECTIVE DATE: May 29, 1979.

FOR FURTHER INFORMATION CONTACT: Joseph Marshall, Acting Director, Office of Public Affairs, Urban Mass Transportation Administration, Room 9330, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-4043.

SUPPLEMENTARY INFORMATION: Since this is a matter relating to agency management, under 5 U.S.C. 553, notice and comment are not required, and the rule may be made effective less than 30 days after publication.

Accordingly, Part 601 of Title 49 of the Code of Federal Regulations is amended by revising § 601.4(b) and (c) to read as follows, and by deleting § 601.4(g).

§ 601.4 Responsibilities of the Administrator.

* * * * *

(b) Associate Administrator for Policy, Budget and Program Development.

(c) Associate Administrator for Planning, Management and Demonstrations.

* * * * *

(49 CFR 1.51)

Dated: May 29, 1979.

Gary D. Gayton,
Acting Administrator.

[FR Doc. 79-17000 Filed 6-6-79; 8:45 am]
BILLING CODE 4910-57-M

Proposed Rules

Federal Register
Vol. 44, No. 111
Thursday, June 7, 1979

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 907]

Navel Oranges Grown in Arizona and Designated Part of California; Proposed Amendment of Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The proposed action would establish a separate district for that part of the production area north of the 38th Parallel. The proposal is designed to recognize differences in keeping quality of navel oranges produced in the proposed district for purpose of regulation under the marketing order.

DATE: Comments must be received on August 6, 1979.

ADDRESS: Comments should be filed in duplicate with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, telephone (202) 447-5975.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department is considering proposed amendment, as hereinafter set forth, of the rules and regulations (Subpart—Rules and Regulations; 7 CFR 907.100 *et seq.*) currently in effect pursuant to the applicable provisions of the amended marketing agreement and Order No. 907, as amended (7 CFR Part 907). The order regulates the handling of navel oranges grown in Arizona and designated part of California. This is a regulatory program effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action has not been determined significant under the USDA criteria for implementing Executive Order 12044.

The proposal to amend said rules and regulations was recommended by the Navel Orange Administrative Committee established under the order as the agency to administer the terms and provisions thereof.

At a meeting held on April 24, 1979, the Navel Orange Administrative Committee recommended pursuant to § 907.66(d) of the order that a separate prorate district be established for that part of the production area north of the 38th Parallel. The committee determined that such action is necessary and appropriate to give recognition of the fact that there are general differences in keeping quality of navel oranges produced in the proposed district compared to such oranges produced in other parts of the production area. Under the order the production area is divided into three districts for the purpose of regulation with a provision that the committee may, with the approval of the Secretary, establish a separate district for that part of the production area north of the 38th Parallel. Such proposed district would be designated as District 4. The proposed action recognizes that oranges produced in the proposed district do not have the keeping quality of fruit produced in some other areas. The order prorates the weekly volume of shipments allocated to a district among handlers in the district separately from handlers in other districts. The proposal is designed to allow growers and handlers in the proposed district to develop a shipping schedule tailored to their particular harvesting and marketing situation and thereby add flexibility to their handling operations. Presently, the part of the production area north of the 38th Parallel is included in District 1 which is defined to mean that part of the State of California which is south of a line drawn due east and west through the present post office in Red Bluff, California, and north of a line drawn due east and west through the present post office in Gorman, California, and west of the extension of a line drawn due north and south through the present post office in White Water, California, but excluding San Luis Obispo and Santa Barbara Counties. Under the proposal the boundaries of District 1 would be defined to mean that part of the State of California which is south of the 38th Parallel and north of a line drawn due east and west through the present post office in Gorman, California, and west of the extension of a line drawn due north and south through the present post office in White Water, California, but excluding San Luis Obispo and Santa Barbara Counties. As proposed, a new District 4 would encompass that area north of the 38th Parallel and south of a line drawen due east and west through the present post office in Red Bluff, California.

The proposal is to add a new section reading as follows:

§ 907.166 Change in definition of district 1 and establishment of a new district 4.

(a) District 1 shall include that part of the State of California which is south of the 38th Parallel and north of a line drawn due east and west through the present post office in Gorman, California, and west of the extension of a line drawn due north and south through the present post office in White Water, California, but excluding San Luis Obispo and Santa Barbara Counties.

(b) District 4 shall include that part of the State of California which is north of the 38th Parallel and south of a line drawn due east and west through the present post office in Red Bluff, California.

Dated: June 4, 1979.

D. S. Kuryloski,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-17711 Filed 6-6-79; 8:45 am]
BILLING CODE 3410-02-M

[7 CFR Part 948]

Irish Potatoes Grown in Colorado—Area No. 3; Proposed Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed regulation would require fresh market shipments of potatoes grown in Colorado—Area No. 3 to be inspected and meet minimum grade, size and maturity requirements. The regulation should promote orderly marketing of such potatoes and keep less desirable qualities and sizes from being shipped to consumers.

DATE: Comments due July 5, 1979.

ADDRESSES: Comments should be sent to: Hearing Clerk, Room 1077 South Building, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written comments shall be submitted, and they will be made available for public inspection at the office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Donald S. Kuryloski, Acting Deputy Director, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone: (202) 447–6393.

SUPPLEMENTARY INFORMATION: Marketing Agreement No. 97 and Order No. 948, both as amended, regulate the handling of potatoes grown in designated counties of Colorado Area No. 3. It is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The Colorado Area No. 3 Potato Committee, established under the order, is responsible for its local administration.

This notice is based upon recommendations made by the committee at its public meeting in Greeley, Colorado, on May 16, 1979.

The grade, size, maturity and inspection requirements recommended herein are similar to those which have been issued during past seasons. They are necessary to prevent potatoes of poor quality or undesirable sizes from being distributed to fresh market outlets. The specific proposals, hereinafter set forth, would benefit consumers and producers by standardizing and improving the quality of the potatoes shipped from the production area.

Exceptions would be provided to certain of these requirements to recognize special situations in which such requirements would be inappropriate or unreasonable.

Shipments would be permitted to certain special purpose outlets without regard to the grade, size, maturity and inspection requirements, provided that safeguards were met to prevent such potatoes from reaching unauthorized outlets. Certified seed would be exempt because requirements for this outlet differ greatly from those for fresh market. Shipments for use as livestock feed would likewise be exempt. Since no purpose would be served by regulating potatoes used for charity purposes, such shipments would be exempt. Also potatoes for most processing uses are exempt under the legislative authority for this part.

Potatoes for prepeeling would be handled without regard to maturity requirements since skinning of such potatoes would be of no consequence. Also, the maturity requirements terminate on December 31 because at that stage of the marketing season potatoes are generally mature with skins firmly set.

In order to maximize the benefits of orderly marketing the proposed regulation should become effective on July 16, when the marketing season is expected to begin. Interested persons were given an opportunity to comment on the proposal at an open public meeting held at Greeley, Colorado, on May 16, where it was unanimously recommended by the committee. This proposal is similar to regulations in effect for past seasons. It is hereby determined that the thirty days allowed for comments should be sufficient under these circumstances and will effectuate the declared policy of the act.

The proposal is as follows:

§ 948.381 Handling regulation.

During the period July 16, 1979, through June 30, 1980, no person shall handle any lot of potatoes grown in Area No. 3 unless such potatoes meet the requirements of paragraphs (a), (b) and (c) of this section, or unless such potatoes are handled in accordance with paragraphs (d) and (e), or (f) of this section.

(a) *Grade and size requirements—All varieties.* U.S. No. 2 or better grade, 1⅞ inches minimum diameter or 4 ounces minimum weight. However, Size B may be handled if U.S. No. 1 grade.

(b) *Maturity (skinning) requirements—All varieties.* Through December 31, 1979, for U.S. No. 2 grade, not more than "moderately skinned," and for all other grades, not more than "slightly skinned;" thereafter no maturity requirements.

(c) *Inspection.* (1) No handler shall handle any potatoes for which inspection is required unless an appropriate inspection certificate has been issued with respect thereto and the certificate is valid at the time of shipment. For purpose of operation under this part it is hereby determined pursuant to paragraph (d) of § 946.40, that each inspection certificate shall be valid for a period not to exceed five days following the date of inspection as shown on the inspection certificate.

(2) No handler may transport or cause the transportation by motor vehicle of any shipment of potatoes for which an inspection certificate is required unless each shipment is accompanied by a copy of the inspection certificate applicable thereto and the copy is made available for examination at any time upon request.

(d) *Special purpose shipments.* (1) The grade, size, maturity and inspection requirements of paragraphs (a), (b), and (c) of this section shall not be applicable to shipments of potatoes for:

(i) Livestock feed;

(ii) Charity;

(iii) Canning, freezing, and "other processing" as hereinafter defined; and

(iv) Certified seed potatoes (§ 948.6).

(2) The maturity requirements set forth in paragraph (b) of this section shall not be applicable to shipments of potatoes for prepeeling.

(e) *Safeguards.* Each handler making shipments of potatoes pursuant to paragraph (d) of this section shall:

(1) Prior to shipment, apply for and obtain a Certificate of Privilege from the committee;

(2) Furnish the committee such reports and documents as required, including certification by the buyer or receiver on the use of such potatoes; and

(3) Bill each shipment directly to the applicable buyer or receiver.

(f) *Minimum quantity.* For purposes of regulation under this part, each person may handle up to but not to exceed 1,000 pounds of potatoes per shipment without regard to the requirements of paragraphs (a) and (b) of this section, but this exception shall not apply to any shipment of over 1,000 pounds of potatoes.

(g) *Definitions.* The terms "U.S. No. 1," "U.S. No. 2," "Size B," "moderately skinned" and "slightly skinned" shall have the same meaning as when used in the United States Standards for Grades of Potatoes (7 CFR 2851.1540—2851.1566) including the tolerances set forth therein. The term "prepeeling" means the commercial preparation in a prepeeling plant of clean, sound, fresh potatoes by washing, peeling or otherwise removing the outer skin, trimming, sorting, and properly treating to prevent discoloration preparatory to sale in one or more of the styles of peeled potatoes described in § 2852.2422 United States Standards for Grades of Peeled Potatoes (7 CFR 2852.2421—2852.2433). The term "other processing" has the same meaning as the term appearing in the act and includes, but is not restricted to, potatoes for dehydration, chips, shoestrings, starch, and flour. It includes only that preparation of potatoes for market which involves the application of heat or cold to such an extent that the natural form or stability of the commodity undergoes a substantial change. The act of peeling, cooling, slicing, dicing, or applying material to prevent oxidation

does not constitute "other processing." All other terms used in this section shall have the same meaning as when used in Marketing Agreement No. 97, as amended, and this part.

(h) *Applicability to imports.* Pursuant to Section 8e of the act and § 980.1, "Import regulations" (7 CFR 980.1), round white varieties of Irish potatoes, except certified seed potatoes, imported into the United States during the period August 1, 1979, through June 4, 1980, shall meet the minimum grade, size, quality, and maturity requirements specified in paragraphs (a) and (b) of the section.

Dated: June 4, 1979.

Note.—This proposed regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

D. S. Kuryloski,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-17712 Filed 6-6-79; 8:45 am]

BILLING CODE 3410-02-M

[7 CFR Part 1099]

[Docket No. AO-183-A36]

Milk in the Paducah, Ky., Marketing Area; Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Public hearing on proposed rules.

SUMMARY: The hearing is being held at the request of Dairymen, Inc. (DI), a cooperative that represents most of the dairy farmers that supply milk for the market. DI's proposal would allow greater diversions of producer milk to nonpool plants. The cooperative claims that its proposed changes would reduce marketing costs and are necessary to reflect current marketing conditions.

DATE: June 22, 1979.

ADDRESS: Holiday Inn, 727 Joe Clifton Drive, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-4829.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a public hearing to be held at the Holiday Inn, 727 Joe Clifton Drive, Paducah, Kentucky, beginning at 9:00 a.m., on June 22, 1979, with respect to proposed amendments to the tentative marketing agreement and to the order, regulating the handling of milk in the Paducah, Kentucky, marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

The proposed amendments, set forth below, have not received the approval of the Secretary of Agriculture.

Proposed By dairymen, Inc.

Proposal No. 1

Revise paragraphs (c)(2) and (c)(3) of § 1099.13 *Producer milk* to read as follows:

§ 1099.13 Producer milk.

* * * * *

(c) * * *

(2) If diverted by a cooperative association for its account as milk of its members to nonpool plants which does not exceed 33 percent of the milk physically received from member producers of such cooperative association at pool plants during the month in any of the months of April through August and December and 25 percent in other months, except that if milk of members is diverted by the cooperative association in excess of the specified percentages, no milk diverted by the cooperative association during the month shall be producer milk unless the cooperative association designates the dairy farmers whose milk is not producer milk;

(3) If diverted by a handler in his capacity as the operator of a pool plant, as milk of a producer who is not a member of a cooperative association diverting milk pursuant to paragraph (c)(2) of this section, which does not exceed 33 percent of the agrregate quantity of milk received at such plant from such nonmember producers during the month in any of the months of April through August and December and 25 percent in other months, except that if milk of nonmember producers is diverted by the handler in excess of the specified percentages, no milk diverted by the handler during the month shall be producer milk unless the handler designates the dairy farmers whose milk is not producer milk; and

* * * * *

Proposed by the Dairy Division, Agricultural Marketing Service

Proposal No. 2

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, 2550 Schuetz Road, P.O. Box 1485, Maryland Heights, Missouri 63043, or from the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250, or may be there inspected.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture.
Office of the Administrator, Agricultural Marketing Service.
Office of the General Counsel.
Dairy Division, Agricultural Marketing Service (Washington office only).
Office of the Market Administrator, Paducah, Kentucky, Marketing Area.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, D.C., on June 4, 1979.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 79-17710 Filed 6-6-79; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Chapter I]

[Summary Notice No. PR-79-5]

Summary of Petitions Received and Dispositions of Petitions Denied

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rule making and of dispositions of petitions denied.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rule making (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rule making procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Publication of this notice and any information it contains or omits is not intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and be received on or before: August 7, 1979.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-24), Petition Docket No. , 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-24), Room 916, FAA Headquarters Building (FOB 10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C. on June 1, 1979.

Edward P. Faberman,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

Petitions for Rulemaking

Docket No.	Petitioner	Description of the rule requested
19178	Air Line Pilots Association	DESCRIPTION OF PETITION To amend FAR 121.189 to require that line-up measurement (runway) be taken into account when determining accelerate-stop distances and maximum takeoff weights for large turbine-engine air carrier aircraft. The minimum distance to line-up is that distance from the takeoff threshold required to align the aircraft in takeoff position on the active runway. The maximum takeoff weights and accelerate stop distance would be predicated on the remaining usable runway length. PETITIONER'S REASONS FOR RULE U.S. carriers operating into Australia must comply with these requirements, and if ICAO accepts the requirement as a standard the FAA will have to accept the change or file a Notice of Difference.
18666	Aircraft Finance Association	DESCRIPTION OF PETITION To amend 14 CFR Part 49.35 to reflect an administrative procedural change to require a Seller of an aircraft to provide either Releases or Consents from the holders of liens against the aircraft for which a bill of Sale is submitted. PETITIONER'S REASONS FOR RULE To better protect all persons using the Federal Aircraft Registry.

Petitions for Rulemaking: Denied

None during the period from May 28 through June 1, 1979.

[FR Doc. 79-17673 Filed 6-6-79; 8:45 am]
BILLING CODE 4910-13-M

[14 CFR Chapter I]

Alteration of Philadelphia Terminal Control Center; Meeting

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice of informal Airspace Meeting.

SUMMARY: This notice announces an informal airspace meeting to be held on the proposed alteration of the Philadelphia, Pennsylvania Terminal Control Area (TCA) Docket No. 18605-AEA-7-PHL.

DATE: June 22, 1979, 7:00 to 10:00 pm.

ADDRESS: William J. Green, Federal Building, Rooms 3306 and 3310, 600 Arch St., Philadelphia, Pa. 19106.

FOR FURTHER INFORMATION: Mr. Robert J. Beckelman, Chief, Philadelphia International Airport Traffic Control Tower (ATCT), Federal Aviation Administration, Philadelphia, Pennsylvania 19153, telephone number: 215/365-6007. Office hours are 8:00 a.m. to 4:30 p.m. Monday through Friday.

SUPPLEMENTARY INFORMATION: This informal airspace meeting is to give interested persons a chance to submit such written data, views, or arguments as they may desire to discuss the proposed alteration of the Philadelphia, Pennsylvania TCA. The information obtained from this informal airspace meeting will be given consideration during the composition of the Notice of Proposed Rule Making (NPRM). All interested individuals and groups are invited to attend, but limited to space available.

Issued on: May 29, 1979.

Walter H. Mitchell,

Chief, Airspace and Procedures Branch.

[FR Doc. 79-17480 Filed 6-6-79; 8:45 am]
BILLING CODE 4910-13-M

[14 CFR Part 71]

[Airspace Docket No. 79-ASW-13]

Proposed Designation of Transition Area; Corning, Ark.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rule making.

SUMMARY: This notice proposes to designate a transition area at Corning, Ark., to provide controlled airspace for aircraft executing a proposed instrument approach procedure to the Corning Municipal Airport using a proposed approach from the Walnut Ridge VORTAC. Coincident with this action, the airport is changed from visual flight rules (VFR) to Instrument Flight Rules (IFR).

DATES: Comments must be received by July 9, 1979.

ADDRESSES: Send comments on the proposal to: Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101.

The official docket may be examined at the following location: Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Forth Worth, Texas.

An informal docket may be examined at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Manuel R. Hugonnett, Airspace and Procedures Branch (ASW-530), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, Texas 76101; telephone: (817) 624-4911, extension 302.

SUPPLEMENTARY INFORMATION: Subpart G 71.181 (44 FR 442) of FAR Part 71 contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft conducting IFR activity. Designation of a transition area at Corning, Ark., will necessitate an amendment to this subpart.

Comments Invited

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Soutwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, Texas 76101. All communications received on or before July 9, 1979 will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rule making (NPRM) by submitting a request to the Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, Texas 76101, or by calling (817) 624-4911, extension 302. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should contact the office listed above.

The Proposal

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate a transition area at Corning, Ark. The FAA believes this action will enhance IFR operations at the Corning Municipal Airport by providing controlled airspace for aircraft executing a proposed instrument approach procedure using the Walnut Ridge VORTAC. Subpart G of Part 71 was republished in the Federal Register on January 2, 1979 (44 FR 442).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 442) by adding the Corning, Ark., transition area as follows:

Corning, Ark.

That airspace extending upward from 700 feet above the surface within a 5.0 statute mile radius of the Corning Municipal Airport, Corning, Ark., latitude 36°24'14"N., longitude 90°38'58"W.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a); and Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979.) Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Fort Worth, Texas, on May 25, 1979.

Henry N. Stewart,

Acting Director, Southwest Region.

[FR Doc. 79-17479 Filed 6-6-79; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[18 CFR Chapter I]

[Docket No. RM79-19]

Treatment of Certain Production-Related Costs for Natural Gas To Be Sold and Transported Through the Alaska Natural Gas Transportation System; Notice Inviting Comments

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice Inviting Comments.

SUMMARY: Subsequent to the close of the comment period in this docket, the Commission's Alaskan Delegate received an authorized study reviewing Alaska Natural Gas Transportation System issues. In addition, two gas sale and purchase agreements were filed with the Commission subsequent to the close of the comment period. In that these three documents may be relevant to the issues raised in Docket No. RM79-19, the Commission is placing these documents on the public record of this rulemaking and requesting comments on them from parties of record to the rulemaking.

DATE: Response to be filed by June 15, 1979.

ADDRESS: All responses to reference Docket No. RM79-19, and to be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

All responses to be served on parties of record per addresses supplied on the service list as of May 30, 1979.

FOR FURTHER INFORMATION CONTACT: John Adger, Director, Alaska Natural Gas Project Office, Federal Energy Regulatory Commission, 941 North Capitol Street NE., Washington, D.C. 20426,(202) 275-3827.

SUPPLEMENTARY INFORMATION: On February 2, 1979, the Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking and Statement of Policy respecting the treatment of certain production-related costs for natural gas sold and transported through the Alaska Natural Gas Transportation System (Docket No. RM79-19). Pursuant to a Notice of Extension of Time, issued February 27, 1979, the comment and reply comment period for the proposed rulemaking ended April 2, 1979.

Subsequent to that date, a previously authorized staff study, entitled "A Review of Alaska Natural Gas Transportation System Issues," was submitted to the Commission's Alaskan Delegate. The study discusses issues that may be germane to Docket No. RM79-19.

In addition, on May 25, 1979, pursuant to Section 5.V.2 of the *Decision and Report to Congress on the Alaska Natural Gas Transportation System*, Northern Natural Gas Company (Northern) filed with the Commission a copy of the Gas Sale and Purchase Agreement, Prudhoe Bay Unit, Alaska, between Northern and Exxon Corporation (Exxon). Contemporaneously, pursuant to Section 5.V.2. of the *Decision*, Pacific Gas and

Electric Company (Pacific) filed with the Commission a copy of a Gas Sale and Purchase Agreement, Prudhoe Bay Unit, Alaska, between Pacific and Exxon. These agreements may also be germane to the issues in Docket No. RM79–19.

Accordingly, the Commission is making the study and the gas sale and purchase agreements part of the record in Docket No. RM79–19. In order to ensure that the study and the agreements are made available to all parties, and to give them an opportunity to respond, the Commission is reopening the comment period of Docket No. RM79–19 for the sole purpose of obtaining comments on the study and the agreements. The Commission invites parties of record to submit written data, views, and other information concerning the study and the agreements. An original and 14 copies should be filed by June 15, 1979.

Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, and should reference Docket No. RM79–19. All written submissions will be placed in the Commission's public files and will be available for public inspection in the Commission's Office of Public Information, 825 North Capitol Street, N.E., Room 1000, Washington, D.C. during regular business hours.

All comments submitted pursuant to this Notice should be served on all parties on the service list for Docket No. RM79–19.

In consideration of the foregoing, the Commission orders:

(1) The Alaska Gas Project Office will promptly serve on all parties who are on the service list for Docket No. RM79–19 as of May 30, 1979, a copy of this Notice, a copy of the study entitled "A Review of Alaska Gas Transportation System Issues," and copies of the above described gas purchase and sale agreements filed by Northern Natural Gas Company and Pacific Gas and Electric Company.

(2) The comment period for Docket No. RM79–19 is extended to June 15, 1979, for the sole purpose of eliciting data, views, and other written comments on the study and the agreements. Parties of record in Docket No. RM79–19 are invited to file such comments on or before June 15, 1979, with service of copies on all other parties on the service list.

(3) The study and the agreements shall be made a part of the record in Docket No. RM79–19.

By Direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79–17648 Filed 6–6–79; 8:45 am]

BILLING CODE 6450–01

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[24 CFR Part 811]

[Docket No. R–79–673]

Use of Federally Guaranteed Mortgage-Backed Securities in Connection with Tax-Exempt Obligations

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of Transmittal of Proposed Rule to Congress under Section 7(o) of the Department of HUD Act.

SUMMARY: Recently enacted legislation authorizes Congress to review certain HUD rules for fifteen (15) calendar days of continuous session of Congress prior to each such rule's publication in the Federal Register. This Notice lists and summarizes for public information a proposed rule which the Secretary is submitting to Congress for such review.

FOR FURTHER INFORMATION CONTACT: Burton Bloomberg, Director, Office of Regulations Office of General Counsel, 451 7th Street, S.W., Washington, D.C. 20410 (202) 755–6207.

SUPPLEMENTARY INFORMATION: Concurrently with issuance of this Notice, the Secretary is forwarding to the Chairmen and Ranking Minority Members of both the Senate Banking, Housing and Urban Affairs Committee and the House Banking, Finance and Urban Affairs Committee the following rulemaking document:

[24 CFR Part 811]

Subpart B—Use of Federally Guaranteed Mortgage-Backed Securities in Connection With Tax-Exempt Obligations

This proposed rule would authorize use of tax-exempt obligations in connection with Government National Mortgage Association mortgage-backed securities for Section 8 multifamily housing projects. The rule prescribes financing arrangements, establishes processing requirements and sets standards for interest rates, fees and charges.

(Sec. 7(o), Department of HUD Act, (42 U.S.C. 3535(o)) sec. 324, Housing and Community Development Amendments of 1978)

Issued at Washington, D.C. June 1, 1979.

Jay Janis,

Under Secretary, Department of Housing and Urban Development.

[FR Doc. 79–17743 Filed 6–6–79; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection

[24 CFR Part 3280]

[Docket No. R–79–672]

Revision of Mobile Home Construction and Safety Standards

AGENCY: Department of Housing and Urban Development, Office of Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: This advance notice requests comments from the public on areas of the Federal Mobile Home Construction and Safety Standards which are being considered for revision prior to publication of the proposed amendments to those standards. The purpose of this notice is to solicit advice and information on: (1) What revisions are needed in major areas of the Federal standards which the Department is presently examining for possible amendments; (2) what other areas of the standards should be considered for amendment; (3) how the standards should be amended to alleviate problems with the above areas of concern. These comments are solicited to assure full public participation prior to the issuance of the proposed rule.

DATE: Comments are due on or before August 6, 1979. Comments received after

this date will be considered if time permits.

ADDRESS: Comments should be sent to: Rules Docket Clerk, Office of the Secretary, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Richard A. Mandlen, Director, Standards Division, Office of Mobile Home Standards, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. (202) 426–1872.

SUPPLEMENTARY INFORMATION: This notice is being issued to obtain comment on areas of the mobile home construction and safety standards which are bing examined for amendment, what other additional areas need to be considered for revision, and how those areas should be revised. Since publication of the final rule in 1975, the Department has been conducting research studies on various aspects of the standards to determine their adequacy to meet the purposes of the Act. The Department is also considering information previously received from the public, other governmental agencies, and its own experience in enforcing the standards in identifying the areas of the standards it is considering for possible amendment.

The major areas of the standards the Department is considering for revision are listed below. The Department requests comments on the questions cited for each area along with suggested revisions.

1. Fire Safety

Are the fire safety provisions adequate to reduce the causes of fire, effectively restrain the spread of fire, and reliably warn occupants of impending fire dangers? Specifically, (a) Are the present interior finish and combustibility requirements providing adequate protection against fire and smoke caused deaths and property damage? (b) Are the locations and sensitivity levels for smoke detectors adequate? (c) Should additional fire warning and protective devices such as gas and heat detectors or fire extinguishers be required? (d) Should alcove furnace installations exposed to the interior living space of the mobile home continue to be permitted without a door to the enclosure? (e) Are there provisions in other sections of the standards which could be revised to reduce the level of fire hazards?

2. Egress Safety

Are the location and type of egress facilities adequate to allow occupants time to escape in the event of fire or other types of emergencies? Specifically, (a) Are the present exit path requirements including size and location of interior and exterior doors adequate to facilitate egress? (b) Are the location, operability and size of secondary egress paths, including windows and devices, adequate to facilitate occupant escape? (c) Are the certification and follow-up testing and inspection procedures adequate for egress devices?

3. Transportation

Are the transportation system requirements adequate to provide safe highway movement and to limit damage that would affect the long term durability of the structure resulting from road shock and vibration forces? Specifically, (a) What provisions, including design requirements, should be considered to reduce damage to the body, frame and running gear systems that result from the dynamic and shock forces induced by highway movement? (b) What requirements are necessary to regulate re-use of running gear components? (c) Should temporary stiffening devices or other provisions be required to prevent transportation damage to multiple wide mobile homes or mobile homes with large openings? (d) What additional requirements are necessary to assure safe transport during highway movement?

4. Energy Conservation

What additional provisions for improving energy conservation should be considered? How should indoor air quality and increased potential for condensation be limited while tightening the structure to improve energy conservation? Specifically, (a) Should the thermal transmission coefficients for the climatic zones be revised? (b) Should the total window and door area be restricted? (c) What additional requirements should be imposed to prevent condensation in the wall, ceiling and floor cavities of mobile homes and to remove excessive moisture from the interior of the mobile home? (d) Are the test procedures and limits or energy efficiency ratios established by the standards for heat producing and cooling appliances adequate to limit energy consumption? (e) Should the use of storm windows or insulated glass be required for all climatic zones? (f) What requirements can be established to more effectively control heat losses from air infiltration? (g) Should minimum levels of air infiltration be established to insure that the air quality does not go below limits which could impair the health of the occupants? (h) Should controls be established to limit the amount of certain air pollutants, such as formaldehyde, in the living space of a mobile home? (i) What criteria should be established for determining acceptability of insulating materials (i.e., foam plastic, cellulosic fiber, etc.)?

5. Structural System Performance

Are the standards adequate to provide sufficient resistance to structural loads and environmental effects to insure safe performance and long term durability? Specifically, (a) What provisions are necessary to assure that adhesives have adequate strength and durability? (b) What provisions should be clarified as acceptable engineering design assumptions for the distribution of lateral forces through the structure? (c) What levels of protection for exterior coverings and fasteners should be established to prevent corrosion of those materials? (d) Are the standards adequate to protect the structure from damage due to moisture migration? (e) In states where overlapping snow load zones exist in the present standards, should the standards be revised to utilize the most severe of those requirements? (f) What provisions should be considered to prevent warping of floor systems (i.e., installation of vapor barrier, etc.)? (g) What specific procedures should be established to qualify structural components during initial and follow-up testing periods (i.e., number of tests performed for initial qualification, frequency of follow-up tests, failure of a tested component under follow-up evaluation, etc.)?

6. Wind Safety

Are the design requirements adequate to maintain structural intergrity and resist overturning from high velocity winds? Specifically, (a) How should the standards be revised to assure that components, fasteners and the integrated structure are adequate to resist high wind forces? (b) Are the design requirements for anchoring systems adequate to prevent overturning and lateral movement resulting from wind forces? (c) Where more than one wind zone is specified in a given state, should the standards be revised to utilize the more restrictive requirement for the entire state?

7. Protection Against Freezing

Are the standards adequate to prevent damage from freezing to components and systems of the mobile home? Specifically, (a) What additional provisions should be incorporated into the standards to limit the freeze-up of water lines both internal and external to the mobile home? (b) What provisions should be considered to assure that egress windows do not freeze, including stipulations for thermal breaks, sealed insulating glass, or the use of exterior rather than interior mounted storm windows?

8. Glazing Requirements

Do the safety glazing provisions of the standards provide adequate protection against hazardous impact? Specifically, (a) Should the Department adopt the architectural glazing provisions recently adopted by CPSC? (b) Should mirror wardrobe doors be required to be backed by a material capable of being a wardrobe door itself?

The Department also requests comments on areas of the standards not already discussed and any other information which will assist the Department in developing more effective standards. Additional information that will be useful to the Department includes:

a. Cost data for anticipated revisions;

b. Potential benefits of anticipated revisions;

c. Negative effects of anticipated revisions;

d. Need for clarification; and

e. Problems or areas not covered by the present standards.

The Department has not yet determined but is presently considering the necessity for preparing either an Environmental Impact Statement or a Regulatory Analysis or both.

This notice is being issued pursuant to the provisions of section 604(d) of the National Mobile Home Construction and Safety Standards Act of 1974.

(Secs. 604, 625 of the National Mobile Home Construction and Safety Standards Act of 1974, (42 U.S.C. 5403 and 5424))

Issued at Washington, D.C., May 30, 1979.

Richard C. D. Fleming,

General Deputy Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection.

[FR Doc. 79-17672 Filed 6-6-79; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 79-045]

[33 CFR Part 110]

Disestablishment of Special Anchorage Area, Lake Mead, Nev.

AGENCY: Coast Guard.

ACTION: Proposed rule.

SUMMARY: At the request of the U.S. National Park Service, Boulder City, Nevada, the Coast Guard is proposing to disestablish Special Anchorage Area (e)(2), Lake Mead, Nevada. Portions of the anchorage extend into a narrow section of the Lake which is highly transited. Disestablishment of this special anchorage, in which unlighted vessels may anchor, would enhance navigational safety in the area.

DATES: Comments must be received on or before July 23, 1979.

ADDRESSES: Comments should be submitted to and are available for examination at the Office of the Commander, Eleventh Coast Guard District, Union Bank Building, 400 Oceangate, Long Beach, California 90822.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Howard E. Snow, Office of Marine Environmental and Systems (G-WLE/73), Room 7315, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590, (202)-426-1934.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Each person submitting a comment should include the writers name and address, identify this notice (CGD 79-045), and give the reasons for the comment. All comments received before the expiration date of the comment period will be considered before final action is taken on this proposal. No public hearing is planned but one may be held at a time and place to be set in a later notice in the Federal Register if requested in writing by an interested person raising a genuine issue and desiring to comment orally at a public hearing.

DRAFTING INFORMATION: The principal persons involved in drafting this proposal are Lieutenant Commander H. E. Snow, Project Manager, Office of Marine Environment and Systems, and Lieutenant J. W. Salter, Project Attorney Office of the Chief Counsel.

Discussion of Proposed Rule

At the request of the U.S. National Park Service, Boulder City, Nevada, the Coast Guard is proposing to disestablish Special Anchorage Area (e)(2), Lake Mead, Nevada. The Park Service has indicated the area has not been used as an anchorage for over ten years. Additionally, portions of the anchorage extend into a narrow section of the lake which is highly transited. Therefore, disestablishment of this anchorage, in which unlighted vessels may anchor, would enhance navigational safety in the area. Adequate anchorage space will be provided for the area by the 10 additional special anchorage located in various parts of Lake Mead.

An Environmental Assessment was completed in April 1979 which determined that there would be no impact on the quality of the human environment.

The Coast Guard has determined, in accordance with the Department of Transportation's "Regulatory Policies and Procedure", (44 FR 11034) that this amendment is not significant. The impact of this amendment will be minimal, and accordingly, it does not warrant full evaluation. Lake Mead contains 10 additional special anchorages that will provide adequate anchorage space in the area.

§ 110.127 [Amended]

In consideration of the foregoing it is proposed to amend Part 110 of Title 33, Code of Federal Regulations by deleting § 110.127(e)(2).

(Sec. 1, 30 Stat. 98 as amended (33 U.S.C. 180); sec. 6(g)(1)(B), 80 Stat. 937 (49 U.S.C. 1655(g)(1)(B)); 49 CFR 1.46(c)(2).)

Dated: May 31, 1979.

R. H. Scarborough,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

[FR Doc. 79-17776 Filed 6-6-79; 8:45 am]

BILLING CODE 4910-14-M

[33 CFR Parts 157, 164]

[46 CFR Parts 30, 32, 34]

[CGD 77-058b, 77-063, 77-057a]

Tanker Safety and Pollution Prevention

AGENCY: Coast Guard, DOT.

ACTION: Notice of delay in publishing final regulations.

SUMMARY: This document gives notice of the delay in issuing final regulations for segregated ballast tanks, dedicated clean ballast tanks, crude oil washing systems, inert gas and deck foam

systems, and improved steering gear standards on tank vessels. This delay is necessitated by the longer than expected process of developing proposed regulations and by the recommendations of several commenters to hold certain provisions of the proposed regulations in abeyance until completion of the Eleventh Session of the Intergovernmental Maritime Consultative Organization (IMCO) sponsored Marine Environmental Protection Council. This document informs the public that although the final regulations will be published and become effective in the fall of 1979, under the provisions of the Port and Tanker Safety Act, those regulations will provide that a tank vessel that is contracted for after June 1, 1979, but before issuance of the final regulations, must be in compliance with the applicable requirements of the Act and the final regulations in order to be issued a Certificate of Inspection or a Certificate of Compliance.

ADDRESSES: A copy of the information contained in the subject dockets is available for examination at the Marine Safety Council (G–GMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Commander George F. Ireland, Merchant Marine Technical Division, (G–MMT–1/82), Room 8207, U.S. Coast Guard, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590, Telephone: (202) 426–4431.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform the public that—

(1) the proposed regulations of February 12, 1979 for tank vessels, implementing the standards contained in the *Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973*, the *Protocol of 1978 Relating to the International Convention for the Safety of Life at Sea, 1974* and certain requirements of Subsection 7 of Section 5 of the Port and Tanker Safety Act of 1978, are expected to be published as final regulations no later than October 1, 1979; and

(2) although these final regulations will be published and become effective in the fall of 1979, under the provisions of the Port and Tanker Safety Act, the regulations will provide that a tank vessel that is contracted for after June 1, 1979, but before the issuance of the final regulations, must be in compliance with the applicable requirements of the Act and the final regulations in order to be issued a Certificate of Inspection or a Certificate of Compliance.

Discussion

In the February 12, 1979 **Federal Register** (44 FR 8984), the Coast Guard issued proposed regulations for certain tank vessels which included standards for segregated ballast tanks, dedicated clean ballast tanks, and crude oil washing systems (CGD 77–058b), improved steering gear (CGD 77–063), and inert gas and deck foam systems (CGD 77–057a). The proposed standards are essentially the same as the standards and recommendations contained in the *Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973* and the *Protocol of 1978 Relating to the International Convention for the Safety of Life at Sea, 1974* which were developed at the IMCO sponsored Tanker Safety and Pollution Prevention (TSPP) Conference. The proposal also implements the majority of Subsection 7 of Section 5 of the Port and Tanker Safety Act of 1978. Under the TSPP Protocols and the Port and Tanker Safety Act, certain tank vessels contracted for after June 1, 1979 will have to comply with specified equipment and construction standards. A Draft Regulatory Analysis and Environmental Impact Statement regarding these proposed regulations was prepared and made available to the public on February 20, 1979.

Interested persons were given an opportunity to submit written comments to the Coast Guard concerning the proposal until April 16, 1979. Two public hearings were held, one in Washington, D.C. on March 21, 1979 and the other in San Francisco on March 28, 1979. Fifty-nine commenters have responded to the proposed regulations in writing and through the public hearings. The Coast Guard is now evaluating those comments in preparation for publishing final regulations.

The Coast Guard originally planned to issue final regulations before June 1, 1979, for the guidance of interested parties entering into tanker construction contracts after June 1, 1979. It is now planned, instead, to issue final regulations no later than October 1, 1979. By law, however, the Port and Tanker Safety Act of 1978 mandates that regulations be issued requiring certain tank vessels contracted for after June 1, 1979, to comply with the applicable construction and equipment requirements contained in the law. Similar requirements exist for tank vessels whose construction is started after January 1, 1980. Preparation of the proposed regulations was a complex process of rewording the language of the TSPP Conference into language acceptable for issuance as U.S regulations. This process took longer than expected, resulting in publication of the proposed regulations three months later than planned.

In addition, implementing details of some provisions of the TSPP Protocols, from which the proposed regulations were developed, are undergoing evaluation by IMCO and will be discussed at the upcoming Eleventh Session of the Marine Environmental Protection Council (MEPC XI) Meeting on June 11–15, 1979. A number of commenters have recommended holding the regulations regarding these provisions in abeyance until MEPC XI has made a determination on these items. The Coast Guard agrees that these matters should be resolved at IMCO prior to issuing final regulations.

In view of these events, the Coast Guard has decided to delay issuing final rules.

Taking into account public comments received, the Coast Guard is currently formulating final regulations on the issues not to be discussed at MEPC XI (which is a majority of the items). At the same time a Final Regulatory Analysis and Environmental Impact Statement is being prepared. Upon completion of MEPC XI, the Coast Guard will finalize as regulations, those remaining details which are to be discussed at MEPC XI. The entire package (final regulations and Final Regulatory Analysis and EIS) will then be forwarded for administrative review and approval. Coast Guard and Department of Transportation procedures provide that the Final EIS will be made available to the public 30 days prior to the effective date of final regulations.

This notice is to advise interested persons that although the final regulations for tanker safety and pollution prevention will not be published and become effective until the fall of 1979, under the provisions of the Port and Tanker Safety Act, those regulations willl provide that a tank vessel that is contracted for after June 1, 1979, but before issuance of the finall regulations, must be in compliance with the regulations before a Certificate of Inspection or a Certificate of Compliance will be issued after completion of construction.

(Sec. 5, Pub. L. 95–474 (46 U.S.C. 391a); 49 CFR 1.46).

Dated: June 4, 1979.

J. P. Stewart,

Rear Admiral, U.S. Coast Guard, Acting Commandant.

[FR Doc. 79-17778 Filed 6-6-79; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF AGRICULTURE

Forest Service

[36 CFR Part 219]

National Forest System Land and Resource Management Planning; Public Meeting on Proposed Guidelines

AGENCY: Forest Service. USDA.

ACTION: A National Forest Management Act Committee of Scientists' meeting on proposed rules to guide land and resource management planning on the National Forest System.

SUMMARY: A Committee of Scientists' meeting will be held regarding the proposed rules published in the May 4, 1979 Federal Register, Volume 44, No. 88 (pages 26,583–26,599), by the Department of Agriculture, pursuant to Section 6 of the National Forest Management Act.

DATES: Committee of Scientists' meeting: June 20–21, 1979—8:30 a.m.

ADDRESS: Meeting location: Southeastern Forest Experiment Station, Post Office Building, Otis Street, Asheville, North Carolina.

FOR FUTHER INFORMATION CONTACT: Charles R. Hartgraves, Director, Land Management Planning, P.O. Box 2417, Washington, D.C. 20013 (202–447–6697).

SUPPLEMENTARY INFORMATION:

Notice of Meeting

There will be a Committee of Scientists' meeting in Asheville, North Carolina, June 20–21, 1979. The purpose of the meeting is to review the revised proposed NFMA rules published in the May 4, 1979 Federal Register Volume 44, No. 88 (pages 26,583–26,599), and to prepare a report to the Secretary of Agriculture concerning their technical adequacy. The meeting will be held at the Southeastern Forest Experiment Station, Post Office Building, Otis Street, Asheville, North Carolina.

The Comittee prepared a report to the Secretary on the proposed rules which were published in the August 31, 1979 Federal Register, Volume 43, No. 170 (pages 39,0046–39,059). The Committee's report on the technical adequacy of the August 31, 1979 proposed rules was published in the May 4, 1979 Federal Register, Volume 44, No. 88, (pages 26,599–26,657).

The report to be prepared at the June 20–21, 1979 meeting will evaluate the second draft rules published in the May 4, 1979 Federal Register.

Dated: May 31, 1979.

W. D. Williams,

Acting Deputy Chief.

[FR Doc. 79-17737 Filed 6-6-79; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 65]

[FRL 1242-4]

Proposed Delayed Compliance Order for A. P. Green Refractories Co., Freeport, Tex.

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to issue a delayed compliance order (DCO) to A. P. Green Refractories Co., located in Freeport, Texas. The DCO requires the company to bring air emissions from its shaft kiln stack into compliance with certain regulations contained in the federally approved Texas State implementation plan (SIP). Because the company is unable to comply with these regulations at this time, the proposed DCO would establish an expeditious schedule requiring final compliance by July 1, 1979. Source compliance with the order would preclude suits under the Federal enforcement and citizen suit provision of the Clean Air Act for violation of the SIP regulations covered by the order. The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on EPA's proposed issuance of the order.

DATES: Written comments must be received on or before July 9, 1979. All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held after 21 days prior notice of the date, time, and place of the hearing has been given in this publication.

ADDRESSES: Comments and requests for a public hearing should be submitted to the Director, Enforcement Division, EPA, Region 6, First International Building, 1201 Elm Street, Dallas, Texas 75270. Material supporting the order and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: James L. Veach, EPA, Region 6, First International Building, 1201 Elm Street, Dallas, Texas 75270, telephone (214)767–2760.

SUPPLEMENTARY INFORMATION: A. P. Green Refractories Co. operates a refractory production facility at Freeport, Texas. The proposed order addresses emissions from the shaft kiln stack at this facility, which is subject to Texas Air Control Board Regulation I, Rule 105.1, particulate emissions limitations, and Rule 103.1, opacity limitations. These regulations limit the emissions of particulates and are part of the federally approved Texas State implementation plan. The order requires final compliance with the regulation by July 1, 1979, and the source has consented to its terms. The source has agreed to meet the order's increments during the period of this informal rulemaking. The source has satisfied the first two increments contained in the order.

The proposed order satisfies the applicable requirements of Section 113(d) of the Clean Air Act (the Act). If the order is issued, source compliance with its terms would preclude further EPA enforcement action under section 113 of the Act against the source for violations of the regulations covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provisions of the Act (Section 304) would be similarly precluded.

Comments received by the date specified above will be considered in determining whether EPA should issue the order. Testimony given at any public hearing concerning the order will also be considered. After the public comment period and any public hearing, the Administrator of EPA will publish in the Federal Register the Agency's final action on the order in 40 CFR Part 65.

(42 U.S.C. 7413, 7601)

Dated: June 1, 1979.

Adlene Harrison,

Regional Administrator, Region 6.

In consideration of the foregoing, it is proposed to amend 40 CFR Chapter I, as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By amending the table in § 65.460 to reflect approval of the following delayed complaince order.

[Docket No. DCO-TX-79-1]

United States Environmental Protection Agency Region 6

In the matter of A. P. Green Refractories Co., Freeport, Texas (Docket No. DCO-TX-79-1). Proceedings under section 113(d) of the Clean Air Act, as amended.

Delayed Compliance Order

This order is issued pursuant to Section 113(d)(1) of the Clean Air Act, as amended, 42 U.S.C. 7413(d)(1) (hereinafter referred to as the "Act"). This order contains a schedule for compliance and reporting requirements. Public notice, opportunity for a public hearing, and 30 days notice to the State of Texas has been provided pursuant to Section 113(d)(1) of the Act.

Findings

On June 29, 1978, the U.S. Environmental Protection Agency (EPA) issued a Notice of Violation to A. P. Green Refractories Co. (hereinafter referred to as the "Company") upon a finding that the shaft kiln stack at the Freeport, Texas, facility was in violation of the Texas Air Control Board Regulation I, Rule 105.1, a part of the applicable Texas implementation plan, which limits the emissions of particulate matter from any source.

Emission tests for particulate matter from the shaft kiln stack were conducted on November 1-2, 1978, which established that the violation was continuing. In addition, on November 1-2, 1978, readings of the opacity of emissions from the shaft kiln stack demonstrated violations of Texas Air Control Board Regulation I, Rule 103.1, a part of the applicable Texas implementation plan limiting the opacity of emissions from any source.

After a thorough investigation and analysis of all relevant facts, including the compliance plan submitted by the Company at EPA's request, it is determined that the schedule for compliance set forth in this order is expeditious as practicable, and that the terms of this order comply with Section 113(d) of the Act.

Ordered I.—Abatement Program

That the Company shall complete the following acts with respect to control of particulate matter emissions from the shaft kiln stack at its Freeport, Texas, facility, on or before the dates specified:

1. February 15, 1979—Complete engineering design. (Completed)
2. March 15, 1979—Complete detail design and start fabrication. (Completed)
3. May 1, 1979—Begin field work.
4. June 15, 1979—Complete field work.
5. June 30, 1979—Achieve compliance with Texas Air Control Board Regulation I, Rules 103.1 and 105.1.

II.—Interim Requirements

Prior to completion of the acts required in Part I—Abatement Program above, all exhaust gases form the shaft kiln shall be vented through the existing cyclones to remove particulate matter from the exhaust gases. During the time period covered by Part I—Abatement Program above, the Company shall maintain the existing cyclones to ensure that they are in operable condition, and operate the cyclones at all times while the shaft kiln is operating.

III.—Emissions Tests

That no later than August 1, 1979, the Company conduct emission tests for particulate matter on the combined emissions of exhaust gases from the shaft kiln and the Herreshoff furnace. The emission tests shall be conducted in accordance with the testing procedures outlined in the Texas Air Control Board Compliance Manual (Revised October 1975).

IV.—Reporting Requirements

A. That the Company report in writing to EPA no later than five (5) days after the date specified for taking each action required by Part I—Abatement Program above, whether such action was taken.

B. That within five (5) days after the date specified for conducting the emission tests required by Part III—Emission Tests, the company shall notify EPA in writing whether or not the emission tests were completed, supplying the dates when the emission tests were conducted.

C. That no later than September 1, 1979, the Company is to submit a written report of the sampling of the emissions.

D. That the Company provide EPA within thirty (30) days notice prior to the conducting of the emission tests required by Part III—Emission Tests in order to afford an opportunity to evaluate the test procedure and to have an observer present at such testing.

E. If delay is anticipated in meeting any requirement of this order, the Company shall immediately notify EPA in writing of the anticipated delay and reasons therefor. Notification to EPA of any anticipated delay shall not excuse the delay.

F. All submittals and notifications to EPA pursuant to this order shall be made to the Director, Enforcement Division, EPA, Region 6, First International Building, 1201 Elm Street, Dallas, Texas 75270.

V.—Compliance Responsibility

Nothing herein shall relieve the Company from complying with all other applicable federal, state, or local regulations.

VI.—Termination of Order

This order shall be terminated in accordance with Section 113(d)(8) of the Act if the Administrator determines on the record, after notice and hearing, that an inability to comply with Texas Air Control Board Regulation I, Rules 103.1 and 105.1 no longer exists.

VII.—Violations of Requirements

Violation of any requirement of this order shall result in one or more of the following actions:

1. Enforcement of such requirement through the commencement of a civil action for injunctive relief and the assessment of civil penalties pursuant to Section 113(b) of the Act, or a criminal prosecution pursuant to Section 113(c) of the Act, or both.
2. Revocation of this order, after notice and opportunity for a public hearing, and subsequent enforcement of Texas Air Control Board Regulation I, Rules 103.1 and 105.1 in accordance with Section 113(b) and/or (c) of the Act.
3. If such violation occurs on or after July 1, 1979, notice of noncompliance and subsequent action pursuant to Section 120 of the Act.

VIII.—Noncompliance Penalty

The Company is hereby notified that its failure to achieve compliance by July 1, 1979, will result in a requirement to pay a noncompliance penalty under Section 120 of the Act. In the event of such failure, the Company will be formally notified, pursuant to Section 120(b)(3) and any regulations promulgated thereunder, of its noncompliance.

IX.—Effective Date

This order is effective upon Federal Register promulgation.

Consent Provision

A. P. Green Refractories Company acknowledges that its Freeport, Texas, facility is in violation of Texas Air Control Board Regulation I, Rules 103.1 and 105.1, consents to the terms of the order, and hereby waives any and all rights under any provision of law to challenge this order.

Date: _____.

A. P. Green Refractories Co.

[FR Doc. 79-17739 Filed 6-6-79; 8:45 am]
BILLING CODE 6560-01-M

[40 CFR Part 65]

[FRL 1242-6; Docket No. 79-03]

Proposed Delayed Compliance Order for Airco Alloys, Division of Airco, Inc., Calvert City, Ky.

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to issue a Federal Delayed Compliance Order (DCO) to Airco Alloys, a division of Airco, Inc., located in Calvert City, Kentucky. The DCO requires Airco Alloys to bring air emissions from its ferroalloy plant into compliance with certain air pollution control regulations contained in the federally-approved Kentucky State Implementation Plan (SIP). Because Airco Alloys is unable to comply with these regulations at this time, the proposed DCO would establish an expeditious schedule requiring final compliance by July 1, 1979. If issued by EPA, the federal DCO would prevent suits under the federal enforcement and citizen suit provision(s) of the Clean Air

Act for violation of the SIP regulations covered by the Order.

The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on this proposed DCO.

DATES: Written comments must be received on or before July 9, 1979. All requests for a public hearing must be received on or before [fifteen days from date of publication] and should be accompanied by a statement as to why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held after at least twenty-one days prior notice of the date, time, and place of the hearing has been given in this publication.

ADDRESSES: Comments and requests for a public hearing should be submitted to the Director, Enforcement Division, EPA, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30308. Material supporting the Delayed Compliance Order and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Richard S. DuBose, Air Enforcement Branch, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30308, Telephone Number (404) 881–4298.

SUPPLEMENTARY INFORMATION: Airco Alloys operates a ferroalloy plant at Calvert City, Kentucky. The proposed order addresses emissions from the metallurgical treatment process and the crushing and screening operations at this ferroalloy plant, which are subject to Kentucky Air Pollution Control Regulations 401 KAR 3:060 Section 4(3) and 401 KAR 3:060 Section 14(2), respectively. These regulations limit the emission of particulate matter and fugitive emissions, respectively, and are part of the federally approved Kentucky State Implementation Plan. The Order requires final compliance with the regulation by July 1, 1979.

The proposed Delayed Compliance Order satisfies the applicable requirements of section 113(d) of the Act. If the Federal Delayed Compliance Order is issued, source compliance with its terms would preclude further EPA enforcement action under Section 113 of the Act against this source for violations of the state air pollution control regulations covered by the Order during the period the Delayed Compliance Order is in effect. Enforcement against the source under the citizen suit provisions of the Act (Section 304) would also be barred. In the event of an emergency air pollution episode, the source would have to comply with all of the provisions of Section 303 of the Act. Comments received by the date specified above will be considered in determining whether EPA should issue the Delayed Compliance Order. Testimony given at any public hearing concerning the Delayed Compliance Order will also be considered. After the public comment period, and after EPA has reviewed any comments received in response to this notice, the Administrator of EPA will publish in the Federal Register the Agency's final action on the Order in 40 CFR Part 65.

Dated: June 1, 1979.

John C. White,

Regional Administrator, Region IV.

In consideration of the foregoing, it is proposed to amend Part 65 of Chapter 1, Title 40, Code of Federal Regulations as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By amending the table in § 65.220 to reflect approval of the following order:

[Docket No. 79–03]

United States Environmental Protection Agency, Region IV

In the matter of Airco Alloys, a Division of Airco, Inc., Calvert City, Kentucky (Docket No. 79–03).

Delayed Compliance Order

The following Order is issued this date pursuant to Section 113(d)(1) of the Clean Air Act, as amended, 42 U.S.C. § 7413 (hereinafter referred to as the "Act"). Public notice and opportunity for public hearing have been provided. The Order contains a schedule with a timetable for compliance, interim requirements and reporting requirements. Final compliance is required as expeditously as practicable, but not later than July 1, 1979. The source is hereby notified that it may be required to pay a noncompliance penalty in the event it fails to achieve final compliance by July 1, 1979. In the event of such failure, the Company will be formally notified, pursuant to Section 120(b)(3) and any regulations promulgated thereunder, of its noncompliance. Nothing in this Order shall be construed as a waiver of the right of the Company to contest the validity of any noncompliance penalty, or the legality, constitutionality or reasonableness of the imposition of noncompliance penalties or any regulations adopted pursuant to Section 120 of the Act, 42 U.S.C. § 7420. The Commonwealth of Kentucky has been given thirty (30) days notice of this Order.

Findings

On April 28, 1978, the Director of the Enforcement Division, Region IV of the United States Environmental Protection Agency (hereinafter referred to as U.S. EPA), pursuant to authority delegated to him by the Administrator, issued a Notice of Violation to the Airco Alloys Division, Airco Incorporated (hereinafter referred to as the "Company") that certain alloy furnaces, numbered 4, 5, 6, 7, 8, 9, 12, 13, 14, 15 and 18, in Calvert City, Kentucky, were found in violation of Kentucky Air Pollution Control Regulation 401 KAR 3:060, Section 4(3), dealing with the control of particulate emissions from process sources.

Pursuant to Section 113(a)(4) of the Act, opportunity to confer with the representatives of the U.S. EPA was given to the Company. Informal conferences were held on March 14 and April 3, 1979. On the basis of information presented at the above-mentioned conferences and obtained during compliance inspections conducted on May 3, 1978, May 25, 1978, and February 27–28, 1979, U.S. EPA finds that particulate emissions from process sources identified in the Notice of Violation of April 28, 1978, have continued beyond the 30th day, as required by Section 113(a)(1) of the Act. Region IV of U.S. EPA has reviewed and formally disapproved in the Federal Register a state delayed compliance order issued by the Kentucky Department for Natural Resources and Enivronmental Protection. After a thorough investigation of all relevant facts, U.S. EPA has determined that the Company is currently unable to comply with the applicable Kentucky air pollution control regulations.

Therefore, in consideration of the above, it is hereby Ordered:

I. Abatement Program

That the Company shall continue to operate and maintain its present particulate control equipment, and shall undertake additional particulate and fugitive emissions control measures as hereinafter described, so as to comply with the attached Appendices governing an abatement program, incorporated into and made a part of this delayed compliance order for the control of particulate and fugitive emissions at the Company's ferroalloy plant located in Calvert City, Kentucky.

Said Appendices are designated as follows:

(a) Appendix A: Metallurgical treatment process occurring in the vicinity of furnace 13.

(b) Appendix B: Stationary crushing and screening plants numbered 4 and 8.

(c) Appendix C: Stationary crushing and screening plant number 5.

(d) Appendix D: Portable crushing and screening equipment.

(e) Appendix E: Stationary crushing and screening plant number 2.

II. Reporting—Addressees

That all reports and other items required by this delayed compliance order are to be made to the Director, Enforcement Division, United States Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30308, with copies to the Director, Division of Air Pollution Control, Commonwealth of Kentucky, Capital Plaza Tower, Frankfort, Kentucky 40601.

III. Progress Reports and Milestone Certification

That the Company submit, no later than five (5) days after the end of each month, commencing with the month of April 1979, monthly progress reports which shall contain specific information on the program toward each milestone specified in Part I as well as a cumulative summary of progress to date. If any delay is anticipated in meeting said milestones, the Company shall immediately notify U.S. EPA and the Director, Division of Air Pollution Control, Commonwealth of Kentucky in writing of the anticipated delay and reasons therefor. Any notice of delay hereunder shall in and of itself not be construed as an excuse thereof. In addition, the Company shall submit, no later than five (5) days after the deadline for completing each milestone required by Part I, a certification to U.S. EPA and the Director, Division of Air Pollution Control, Commonwealth of Kentucky, whether such milestone has been met.

IV. Notice of Tests

That U.S. EPA and the Director, Division of Air Pollution Control, Commonwealth of Kentucky, be provided with ten (10) days notice prior to conduction any performance tests as required in Part I in order to afford U.S. EPA and the Commonwealth of Kentucky an opportunity to have an observer present at such testing.

V. Interim Requirements

That for the period during which this Order is in effect, the Company shall at all times comply with the following interim emission limitations:

(a) As an interim visible emission limit for the metallurgical treatment process in the vicinity of Furnace 13, the visible emissions from all building openings while the metallurgical treatment process is occuring shall not exceed 60% opacity. The compliance status of the metallurgical treatment process in regard to the interim visible emission limit will be determined by using Reference Method 9 as codified in 40 CFR 60, except that visible emission readings will be collected over the entire duration of a treatment cycle and the averaging time will be the length of the entire treatment process. Beginning May 21, 1979, and continuing for each day thereafter until final compliance is achieved, Airco representatives shall collect visible emissions data during at least one complete metallurgical treatment process cycle each day. These daily readings shall be submitted with each monthly progress report.

(b) Regarding the crushing and screening operations, it has been agreed among all parties that there are no practicable interim emission limits or interim requirements which can reasonably be applied to these operations.

If, at any time during the pendency of this Order, the applicable interim visible emission limitation set forth above is exceeded, the Company shall immediately take all reasonable actions necessary to minimize and/or abate such excess emissions and to prevent their recurrence; the Company shall notify U.S. EPA and the Director, Division of Air Pollution Control, Commonwealth of Kentucky, of the occurrences as soon as possible, but no later than forty-eight hours after the start of the occurrence; and the Company shall, within ten days after the termination of each such occurrence, submit to U.S. EPA and the Director, Division of Air Pollution Control, Commonwealth of Kentucky, a written report regarding the occurrence, which shall address the cause(s) of the occurrence and all the efforts the Company has taken to date concerning it.

In addition to the foregoing interim emission limitation for the period during which this Order is in effect, the Company shall take all reasonable steps necessary to comply with other applicable emission limitations contained in the State Implementation Plan insofar as the Company is able.

Furthermore, the Company shall comply with any emergency requirements specified by U.S. EPA pursuant to section 303 of the Clean Air Act, 42 U.S.C. 7603, and by the Commonwealth of Kentucky pursuant to applicable Kentucky state law in order to prevent an imminent and substantial endangerment to human health.

VI. Continuous Monitoring

That for the purposes of this delayed compliance order, U.S. EPA finds that the use of continuous monitors is unreasonable.

VII. Malfunctions and Breakdowns

That the Company shall perform operation and maintenance practices on all sources as necessary to prevent malfunctions or breakdowns and to reduce emissions in excess of regulations to the maximum extent practicable. When emissions due to sudden and unforeseen malfunction of the affected facility are or may be in excess of the maximum allowables as set forth in this delayed compliance order, for greater than four (4) hours, the Company shall notify U.S. EPA and the Director, Division of Air Pollution Control, Commonwealth of Kentucky, by telephone or telegram as promptly as possible, and in no event later than twelve (12) hours following the start of such malfunction, and shall cause written notice to be sent to U.S. EPA and the Director, Division of Air Pollution Control, Commonwealth of Kentucky, no later than the end of the next working day following the start of such malfunction. Such notices shall specify the name of the affected facility, its location, the address and telephone number of the person responsible for the affected facility, the nature and cause of the malfunction, the date and time when such malfunction was first observed, the expected duration, and an estimate of the physical and chemical composition, rate, and concentration of the emission. The Company shall remedy the malfunction or breakdown as soon as possible thereafter and shall take reasonable steps to reduce emissions in excess of the interim emission limits during the malfunction or breakdown.

U.S. EPA and/or the Director, Division of Air Pollution Control, Commonwealth of Kentucky, shall have the authority during a malfunction or breakdown to require the Company to take specific steps to reduce emissions, including process equipment modifications and/or reductions, or termination if necessary. Within ten (10) days after the termination of a malfunction or breakdown requiring the above notification, the Company shall in a report submit:

(1) The time the excess emission began and ended;

(2) The time of the beginning and end of malfunction or breakdown which is asserted to be the cause of the excess emission;

(3) An estimate of the physical and chemical composition, rate, and concentration of emissions which occurred.

(4) An explanation and, where appropriate, an engineering analysis of the cause of the malfunction or breakdown;

(5) A description of those operating and/or maintenance procedures and practices in use prior to and during the occurrence, which were designed to prevent or minimize the extent and duration of the malfunction or breakdown;

(6) Any other steps taken to minimize the extent or duration of the malfunction or breakdown;

(7) An analysis of what steps will be taken to prevent or minimize similar occurences in the future; and

(8) Such additional information as U.S. EPA or the Director, Division of Air Pollution Control, Commonwealth of Kentucky, may require.

VIII. Violation of Requirements

That violation of any requirement of this Order shall result in immediate enforcement action by U.S. EPA pursuant to Sections 113(d)(9), 113(b), and 113(c)(1) of the Clean Air Act.

IX. Compliance Responsibility

That nothing herein shall relieve the source from complying with all other applicable federal, state or local law.

X. Noncompliance Penalty

That failure of the Company to achieve compliance with the emission limitations or compliance schedules set forth in this Order by July 1, 1979, or such later date as is provided in accordance with Section 120(b)(3) of the Act may subject the Company to an administratively assessed noncompliance penalty pursuant to the requirements of Section 120 of the Act and any rules and regulations promulgated pursuant thereto, unless the Company is exempted by Section 120(a) (B) or (C) of the Act. In the event of such noncompliance, the Company will be formally notified of its noncompliance pursuant to Section 120(b)(3) of the Act.

XI. Final Compliance Visible Emission Limits

That the Company shall achieve and maintain the below listed visible emission limits. Said visible emission limits shall be achieved no later than June 29, 1979, and shall be used to determine final compliance with the applicable Kentucky emission limiting regulations.

The visible emission (VE) limit for each of the following sources will be as follows:

Source	VE limit (Percent)
(a) VE's from all building openings while furnaces are operating under routine smelting/melting conditions and no ancillary operations are occurring; applies to furnaces 4, 6, 9, 12, 14, 15 and 16	15
(b) VE's from all building openings while furnaces are being tapped; applies to furnaces 4, 6, 9, 12, 14, 15 and 16	25
(c) VE's from baghouse exhaust outlets while no malfunctions are occurring; applies to all baghouses	3
(d) VE's from all building openings while furnace 13 is operating under routine melting conditions and no auxiliary operations are occurring; applies to furnace 13 only	20
(e) VE's from all building openings while the metallurgical treatment process is occurring in the vicinity of furnace 13; applies during metallurgical treatment process only	40
(f) VE's from all building openings while pouring of metal and slag from ladles into castbeds or molds; applies to products and slag from all furnaces	40
(g) There is no limitation on visible emissions when a blowing tap (as defined in 40 CFR 60.261) occurs	

In regard to the VE limits as specified in items (1)(a) through (1)(f) above, the compliance status of all sources will be determine by using EPA Reference Method 9 as codified in 40 CFR 60. The tapping at furnaces 4, 6, 9, 12, 14, 15 and 16 is considered to begin with the initiation of the process of opening the tap hole and to be concluded when the process of plugging the tap hole is completed. The metallurgical treatment process is considered to begin with the pouring of silicomanganese into the reaction ladle, or with the tapping of furnace 13 into ladle 13A if molten silicomanganese is not poured into the reaction ladle and silicomanganese is added cold, and to conclude with the pouring of the reaction product into the holding ladle.

Dated:

Administrator.

Consent [1]

The Company acknowledges that the particulate and fugitive emissions from its facility in Calvert City, Kentucky, are in violation of the applicable emission limitations contained in the federally-approved Kentucky State Implementation Plan. The Company has reviewed this delayed compliance order, believes it to be a reasonable and expeditious means to achieve compliance with the applicable fugitive and particulate emission limiting regulations as contained in the federally-approved Kentucky State Implementation Plan, and consents to all of the requirements and terms of this delayed compliance order.

Furthermore, the Company acknowledges the necessity of complying with the interim emission limitations and abatement procedures contained herein which are designed to ensure the attainment of national ambient air quality standards for the specified pollutants and consents to said interim emission limitations and abatement procedures in order to protect the public health and welfare.

The Company hereby represents that it has full corporate authority and the necessary corporate approval to enter into and perform in accordance with the terms and provisions of this delayed compliance order. The signatory below represents that he has the requisite corporate authority to execute this consent on behalf of the company.

Dated: _____.

[1] This consent is hereby attached to an incorporated by reference into Delayed Compliance Order 79-63 issued to Airco Alloys on _____ pursuant to Section 113(d)(1) of the Clean Air Act, 42 U.S.C. § 7413.

Airco Alloys Division of AIRCO, INC.

Appendix A.—Delayed Compliance Order [2]

Airco Alloys shall complete the following acts with respect to the control of particulate emissions from the metallurgical treatment process which occurs in the vicinity of furnace 13 at the Airco Alloys facility located in Calvert City, Kentucky, on or before the dates specified:

(1) March 28, 1979—Complete engineering for sheeting for building closure and hood addition to improve collection of particulate matter for furnace 13 and the metallurgical treatment process.

(2) April 15, 1979—Complete material purchases for the sheeting for building closure and hood addition referred to in item (1) of this Appendix.

(3) May 1, 1979—Initiate on-site construction or modification of sheeting for building closure and hood addition referred to in item (1) of this Appendix.

(4) June 15, 1979—Complete installation or necessary modification of sheeting for building closure and hood addition referred to in item (1) of this Appendix.

(5) June 28, 1979—Complete operational evaluation and adjustments of sheeting for building closure and hood addition referred to in item (1) of this Appendix.

(6) June 29, 1979—Achieve and demonstrate final compliance with the final visible emission limit specified in Part XI of Delayed Compliance Order 79-63 and with Kentucky Air Pollution Control Regulation 401 KAR 3:060, Section 4(3), by means of performance tests conducted in accordance with EPA Reference Method 9 as codified in 40 CFR 60 and certify such compliance to the U.S. Environmental Protection Agency and the Director, Division of Air Pollution Control, Commonwealth of Kentucky.

Appendix B.—Delayed Compliance Order [3]

Airco Alloys shall complete the following acts with respect to the control of fugitive emissions from stationary crushing and screening plants numbered 4 and 6 at the Airco Alloys facility located in Calvert City, Kentucky, on or before the dates specified:

[2] This Appendix is attached to and incorporated by reference into Delayed Compliance Order 79-63 issued to Airco Alloys on _____ pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(d).

[3] This Appendix is attached to and incorporated by reference into Delayed Compliance Order 79-63 issued to Airco Alloys on _____ pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d)

(1) February 28, 1979—Complete foundations for baghouse for fugitive emission control.

(2) March 30, 1979—Complete significant material purchases for baghouse for fugitive emission control.

(3) March 30, 1979—Complete erection of collector portion of baghouse for fugitive emission control.

(4) June 1, 1979—Complete erection of ductwork portion of baghouse for fugitive emission control.

(5) June 15, 1979—Complete electrical and mechanical phases of construction of baghouse for fugitive emission control.

(6) June 28, 1979—Complete operational evaluation and adjustments of baghouse for fugitive emission control.

(7) June 29, 1979—Achieve and demonstrate final compliance with the final visible emission limit specified in Part XI of Delayed Compliance Order 79-63 and with Kentucky Air Pollution Control Regulation 401 KAR 3:060, Section 14(2) by means of performance tests conducted in accordance with EPA Reference Method 9 as codified in 40 CFR 60 and certify such compliance to the U.S. Environmental Protection Agency and the Director Division of Air Pollution Control, Commonwealth of Kentucky.

Appendix C.—Delayed Compliance Order [4]

Airco Alloys shall complete the following acts with respect to the control of fugitive emissions from stationary crushing and screening plant number 5 at the Airco Alloys facility located in Calvert City, Kentucky, on or before the dates specified:

(1) March 30, 1979—Complete foundations for baghouse for fugitive emission control.

(2) April 1, 1979—Complete significant material purchases for baghouse for fugitive emission control.

(3) April 30, 1979—Complete erection of collector portion of baghouse for fugitive emission control.

(4) June 1, 1979—Complete erection of ductwork portion of baghouse for fugitive emission control.

(5) June 15, 1979—Complete electrical and mechanical phases of construction of baghouse for fugitive emission control.

(6) June 28, 1979—Complete operational evaluation and adjustments of baghouse for fugitive emission control.

(7) June 29, 1979—Achieve and demonstrate final compliance with the final visible emission limit specified in Part XI of Delayed Compliance Order 79-63 and with Kentucky Air Pollution Control Regulation 401 KAR 3:060, Section 14(2), by means of performance tests conducted in accordance with EPA Reference Method 9 as codified in 40 CFR 60 and certify such compliance to the Environmental Protection Agency and the Director, Division of Air Pollution Control, Commonwealth of Kentucky.

[4] This Appendix is attached to and incorporated by reference into Delayed Compliance Order 79-63 issued to Airco Alloys on _____ pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d).

Appendix D.—Delayed Compliance Order [5]

Airco Alloys shall complete the following acts with respect to the control of fugitive emissions from portable crushing and screening equipment at the Airco Alloys facility located in Calvert City, Kentucky, on or before the dates specified:

(1) April 1, 1979—Complete engineering for wet suppression devices for fugitive emission control.

(2) April 15, 1979—Complete significant material purchases for wet suppression devices for fugitive emission control.

(3) April 30, 1979—Initiate on-site construction of wet suppression devices for fugitive emission control.

(4) May 30, 1979—Complete installation of wet suppression devices for fugutive emission control.

(5) June 28, 1979—Complete operational evaluation and adjustments of wet suppression devices for fugitive emission control.

(6) June 29, 1979—Achieve and demonstrate final compliance with Kentucky Air Pollution Control Regulation 401 KAR 3:060, Section 14(2), and certify such complicance to the Director, Division of Air Pollution Control, Commonwealth of Kentucky.

(7) July 1, 1979—The use of portable grizzlies which will not be controlled by the installation of wet suppression devices in accordance with the schedule specified in items (1) through (6) of this Appendix will be discontinued before July 1, 1979.

Appendix E.—Delayed Compliance Order [6]

Airco Alloys shall complete the following acts with respect to the control of fugitive emissions from stationary crushing and screening plant number 2 at the Airco Alloys facility located in Calvert City, Kentucky, on or before the dates specified:

(1) July 1, 1979—Stationary crushing and screening plant number 2 shall be rendered non-operational.

[FR Doc. 79-17740 Filed 6-6-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Part 65]

[FRL 1240-3]

Withdrawal of a Proposed Approval of an Administrative Order Issued by Minnesota Pollution Control Agency to Wilson Foods Corp.

AGENCY: U.S. Environmental Protection Agency.

ACTION: Withdrawal or Proposed Approval.

SUMMARY: The U.S. EPA is withdrawing its proposed approval of an Administrative Order issued by the Minnesota Pollution Control Agency to Wilson Foods Corporation, Albert Lea, Minnesota. The proposed approval was published in the Federal Register on March 28, 1979 (44 FR 18532). The Notice invited public comments on the proposed approval. Comments were received concerning the Minnesotra Regulations cited in the Order. The Minnesota Pollution Control Agency amended their regulations in 1976. This amendment included changes to APC–4 and APC–11. The amended APC–11. The amended APC–4 and APC–11 did not become part of the Minnesota State Implementation Plan (SIP). The U.S. EPA does not have the authority to approve or disapprove a State Order which does not concern SIP regulations. Therefore, the U.S. EPA is withdrawing their propposed approval of the State Delayed Compliance Order for Wilson Foods Corporation.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia Colantoni, Enforcement Division, U.S. EPA, 230 South Dearborn Street, Illinois 60604, (312) 353–2082.

Dated: May 14, 1979.

John McGuire,

Regional Administrator.

[FR Doc 17605 Filed 6-6-79; 8:45 am]

BILLING CODE 6560-01-M

[5] This Appendix is attached to and incorporated by reference into Delayed Compliance Order 79-63 issued to Airco Alloys on————pursuant to Section 113(d) of the Clean Air Act. 42 U.S.C. § 7413(d).

[6] This Appendix is hereby attached to and incorporated by reference into Delayed Compliance Order 79-63 issued to Airco Alloys on———— pursuant to Section 113(d)(1) of the Clean Air Act, 42 U.S.C. § 7413(d).

DEPARTMENT OF TRANSPORTATION

Coast Guard

[46 CFR Parts 31 and 35]

[CGD 73-243]

Flammable and Combustible Cargoes; Cargo Information Cards; Extension of Comment Period

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice—extension of comment period.

SUMMARY: In the Federal Register of March 29, 1979 (44 FR 18709) the Coast Guard proposed to amend the rules for a barge that carries flammable or combustible cargoes to require cargo information cards for the flammable and combustible cargoes it has on board. This notice extends the comment period for the proposal to June 29, 1979.

The original closing date was May 11, 1979. The American Waterways Operators (AWO) has requested an extension of the comment period in order to allow additional time for thorough review of the proposal.

DATES: Comments must be received on or before June 29, 1979.

ADDRESS: Comments should be submitted to Commandant (G–CMC/81) (CGD 73–243), U.S. Coast Guard, Washington, D.C. 20590.

Comments will be available for examination at the Marine Safety Council (G–CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Robert M. Query, Office of Merchant Marine Safety (G–MHM/83), Room 6309, Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. (202 426–1217).

Drafting Information

The principal persons involved in drafting this proposal are: Robert M. Query, Project Manager, Office of Merchant Marine Safety and Lt. John W. Salter, Project Attorney, Office of the Chief Counsel.

(46 U.S.C. 170; 46 U.S.C. 391a; 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b) and (n)(4)).

Dated: May 25, 1979.

Henry H. Bell,

Rear Admiral, U.S. Coast Guard, Chief Office of Merchant Marine Safety.

[FR Doc. 79-17775 Filed 6-6-79; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 94

[SS Docket No. 79-18; RM-2824; RM-1635 RM-1849; and RM-2045]

Providing Regulations for Use in Public Utility Distribution Automation Systems; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Order Further Extending Time for Filing Comments.

SUMMARY: The FCC has granted the Utilities Telecommuncations Council's request for a further extension of time for filing comments and reply comments in the matter of a proposed amendment of Part 94 regulations concerning use of radio in public utility distribution automation systems. This request was supported by a new development which indicates an interference problem with certain frequencies set forth in the notice of proposed rule making (43 FR 54106, November 20, 1978).

DATES: Comments now due June 15, 1979 and reply comments now due July 15, 1979.

ADDRESSES: Federal Communications Commission 1919 M Street, N.W., Washington, D.C. 20554, Room 5120.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Private Radio Bureau (202) 632-6497.

Adopted: May 29, 1979.

Released: May 30, 1979.

By the Chief, Private Radio Bureau.

In the Matter of: Amendment of Part 94 of the Rules to Provide Regulations for Use of Radio in Public Utility Distribution Automation Systems, SS Docket No. 79-18, RM-2824, RM-1635, RM-1849, RM-2045, Order Further Extending Time for Filing Comments [44 FR 25886].

1. The Utilities Telecommunications Council (UTC) has requested a further extension of time until June 15, 1979, within which to file comments in the above entitled matter. It also requested that the date for filing reply comments be extended to July 15, 1979. Comments and reply comments are now due May 30, and June 30, 1979, respectively.

2. In support of its request, the petitioner indicates that although UTC was able to complete the reports and studies mentioned in its earlier Motion, and was ready to make filing on May 30, a new development indicated a possible interference problem with certain frequencies set forth in the Notice of Proposed Rule Making. Approximately two weeks would be needed to thoroughly study and resolve this problem and be prepared to address it in detail in the Comments.

3. It appears that good cause has been shown and that the public interest would be served by granting the additional period asked in order to afford the petitioner and other interested parties a full opportunity for the preparation and presentation of their views in this proceeding.

4. Accordingly, it is ordered, Pursuant to Sections 0.331 and 1.46 of the Commission's Rules, that the time for filing comments in the above-captioned proceeding is Further Extended from May 30, 1979, to June 15, 1979, and for filing reply comments from June 30, 1979, to July 15, 1979.

Carlos V. Roberts,

Chief, Private Radio Bureau.

[FR Doc. 79-17684 Filed 6-6-79; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 44, No. 111
Thursday, June 7, 1979

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Pond Creek Watershed, Texas; Deauthorization of Federal Funding

Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83–566, and the Soil Conservation Service Guidelines (7 CFR 622), and Soil Conservation Service gives notice of the deauthorization of Federal funding for the Pond Creek Watershed project, Bell, Falls, and Milan Counties, Texas, effective on May 14, 1979.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program, Pub. L. 83–566, 16 USC 1001–1008)

Dated: May 30, 1979.

Joseph W. Haas,

Assistant Administrator for Water Resources, Soil Conservation Service.

[FR Doc. 79-17822 Filed 6-6-79; 8:45 am]
BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Office of Federal Statistical Policy and Standards

Standard Industrial Classification; Procedures and Principles for Revision

AGENCY: Office of Federal Statistical Policy and Standards, Department of Commerce.

ACTION: Final notice of Procedures and Principles for the revision of the Standard Industrial Classification.

SUMMARY: This document outlines the procedures and principles for revision of the Standard Industrial Classification (SIC). Comments received on the proposed procedures published in the December 28, 1978 Federal Register have been taken into account.

Introduction

The changes are the result of a review of the procedures and principles under which industries are identified for Federal statistical purposes. These definitions must be based on objective procedures and principles formulated so as to identify all industries as consistently as possible. A periodic review is necessary to ensure the objectivity and consistency of the criteria and that relevant data are used.

Changes

The most significant change from the 1972 procedures and principles is consideration of temporary industries. The Technical Committee may designate temporary industries to provide comparability between the existing and new SIC. At the next SIC revision each temporary industry would be combined with the appropriate industry.

The other significant change is that specialization or coverage requirements will be lower for new industries that are very large and higher for new industries if they are smaller than average size.

FOR FURTHER INFORMATION CONTACT: Milo Peterson, Office of Federal Statistical Policy and Standards, U.S. Department of Commerce, Washington, D.C. 20230, Telephone (202) 673–7977.

Note.—The Department of Commerce has determined that this proposal is not a significant regulation requiring preparation of a regulatory analysis under Executive Order Number 12044.

Courtenay M. Slater,

Chief Economist for the Department of Commerce.

Principles and Procedures for the Review and Maintenance of the Establishment Standard Industrial Classification Mannual (Proposal)

Prepared by the technical committee on industrial classification*

A. Purpose and Scope.

This SIC was developed for use in the classification of establishments by type of economic activity in which engaged. It is a classification of establishments rather than of companies or legal entities or enterprises,[1] by kinds of business and not by occupations or commodities. It encompasses all economic activity.

The purposes of this SIC are to facilitate the collection, tabulation, presentation, and analysis of data relating to establishments and to promote uniformity and comparability in the presentation of statistical data collected by various agencies of the U.S. Government. It is also used by state agencies, trade associations, private business and other organizations.

The basic purpose and objective of a periodic review is to update the classification so as to make it possible to better reflect statistically the existing industrial structure of the economy. It should provide the means for introducing new industry detail resulting from economic growth or technological change, as well as for deleting industries no longer significant.

B. Principles for Review of the Classification

In the review of the structure and detail of the 1972 edition of the establishment *SIC Manual* (as amended for 1977), the Technical Committee will be guided by the general principles described below. These principles should also be taken into consideration by others, both within and outside of Government, in the preparation of proposed changes.

(1) *Structure of the classification.* The classification should conform to the actual structure of industry as it is found to exist in the American economy. It does not, therefore, follow any single principle, such as the use of the products, market structure, the nature of the raw materials, etc., neither in its detail nor in its basic structure. It is a general-purpose framework which can have its basic detail rearranged for various analytical purposes.

(2) *Unit of classification.* The SIC is designed to classify the establishments

*The Technical Committee on Industrial Classification is chaired by the Office of Federal Statistical Policy and Standards. The following agencies are represented on the Committee: Bureau of the Census, Bureau of Domestic Business Development, Bureau of Economic Analysis, Bureau of Labor Statistics, Bureau of Mines, Department of Agriculture, Department of Energy, Employment and Training Administration, Environmental Protection Agency, Federal Reserve System, Federal Trade Commission, General Services Administration, Internal Revenue Service, International Trade Commission, National Center for Health Statistics, Securities and Exchange Commission, Small Business Administration, Social Security Administration.

[1] A separate classification for companies has been established in the 1974 *Enterprise Standard Industrial Classification Manual.*

according to the kind of economic activity in which such units are engaged.

An *establishment* is an economic unit which produces goods or services—for example, a farm, a mine, a factory, a store. In most instances, the establishment is at a single physical location and is engaged in one, or predominantly one, type of economic activity for which an industry code is applicable.

Where a single physical location encompasses two or more distinct and separate economic activities for which different industrial classification codes seem applicable, such activities should be treated as separate establishments and classified in separate industries, provided it is determined that: (1) no one industry description in the Standard Industrial Classification includes such combined activities; (2) the employment in each such economic activity is significant; (3) such activities are not ordinarily associated with one another at common physical locations; and (4) reports can be prepared on the number of employees, their wages and salaries, and other establishment type data.

A *kind-of-activity unit* is a special type of establishment in that there is no restriction with respect to the geographic area in which the activity of the unit is carried on. The kind-of-activity unit—which applies to activities such as construction, transportation and communication—generally carries on the same kind of activity over a more or less wide geographic area. Frequently separate records relating to such activity for a given portion of the area are not maintained.

An establishment is not necessarily identical with a company or legal entity or enterprise, which may consist of one or more establishments. Also, it is to be disinguished from organizational sub-units or departments within an establishment. Supplemental interpertations of the definition of an establishment are included in the industry descriptions of the Standard Industrial Classification.

The SIC distinguishes between *central administrative and auxiliary* establishments—which are primarily engaged in providing management, general administrative, and support services for other establishments of the same company or enterprise—and *operating* establishments—which produce goods and services primarily for the general public or for establishments owned or controlled by other companies or enterprises.

Activities of the type performed at separate administrative offices and auxiliary establishments are, in fact, normally carried on as an integral part of individual operating establishments. Hence, this type of activity is only partially measured by the statistics on separately reported central administrative offices and auxiliary establishments.

(3) *Basis of classification.* Each establishment is to be classified according to its major activity as defined by the 4-digit industries. Major activity is to be determined by the product or group of products produced or handled, or service rendered. Ideally, the principal product or service should be determined by reference to "value added." In practice, however, it is rarely possible to obtain this information for individual products or services, and it becomes necessary to adopt some other criteria [2] which may be expected to give approximately the same results.

(4) *Economic significance, specialization and coverage.* To be recognized as an industry, each group of establishments must have significance from the standpoint of number of persons employed, volume of business and other economic factors, such as number of establishments, payroll, or value added. These factors are taken into account in determining the economic significance of an industry by relating the totals for the industry to the average for all industries in the same economic division (mining, manufacturing, etc.)

Generally speaking, an existing SIC industry is considered to meet the requirements for economic significance if the average of the factors represents 10 percent or more of the average industry in the same division. A new industry, however, should attain a score of 20 percent or more of the average industry. Thus, for example, based on data from the 1972 Census of Manufactures, the average manufacturing industry has (dollar figures in millions): 711 establishments; 40,000 employees; $356 payroll; $785 value added; $1,807 shipments.

Note that an exception to the principle of economic significance is found in the grouping of establishments into industries described as "not elsewhere classified."

In order that an industry at the most detailed level of classification properly reflect the activity being measured, the output of the establishments in the industry should (1) consist largely of those goods and services defining the industry and (2) account for the bulk of the specified goods and services provided by all establishments.

For manufacturing industries these factors are measured by the primary product specialization and coverage ratios, respectively.

The *primary product specialization ratio* describes the proportion of product shipments (both primary and secondary) of the industry represented by those products defining the industry. The *coverage ratio* is the proportion of the products defining the industry shipped by establishments classified in the industry to total shipments of such products by all manufacturing establishments.

The minimum ratio for primary product specialization is 82. When applying the specialization test, it is well to remember that an industry may sometimes specialize in only one product (Malt or Beet Sugar), in other instances, establishments in an industry may typically produce and thus specialize in a wide variety of products (as in Meat Packing Plants; Blast Furnaces, Steel Works, and Rolling and Finishing Mills; and Radio and Television Transmitting, Signaling, and Detection Equipment and Apparatus). For varying reasons, industries have through the years developed in a diverse manner. In such instances it is important, therefore, that the specialization ratios be applied and interpreted in the light of the typical product mix defining the particular industry.

In applying coverage ratio factors, separate criteria are established for industries with "captive" output within and outside the industry as distinguished from industries primarily producing for commerical sale. The minimum coverage ratio for industries producing for commerical sale is 70, whereas the coverage ratio for all other industries is 50, except for industries producing from purchased materials (stage of process classification). The minimum coverage ratio for this latter group of industries (e.g., Blended and Prepared Flour, etc.) is 33. The coverage ratio for industries with significant "captive" counterparts (minimum coverage of 50 per cent) should be computed on the basis of the proportion of total output (shipments for sale, interplant transfers, and production for use within the same establishment) accounted for by the given industry compared with total output in all industries. Examples of such industries are Gray Iron Foundries, Automotive Stampings, and Iron and Steel Forgings.

Separate industries for establishments primarily engaged in activities that are

[2] Other criteria include data on value of production, shipments, sales or receipts, payroll, number of employees, etc.

rapidly expanding but which do not meet the quantitative measures in the usual reference statistics also may be established. Such separate industry identification will be based on statistical evidence of current size, growth by a specified time, and on the customary requirements, other than size, for establishing new industries. Proposed industries which meet the criteria only marginally should also show reasonable recent growth or evidence of future growth.

Proposed industries should generally meet all three criteria of economic significance, specialization, and coverage. However, industries which are considerably larger in economic significance than required may be acceptable even if they are slightly low in specialization or coverage. Thus, the specialization or coverage minimum requirement may be reduced by a percentage point for each doubling in economic size of the proposed industry.

C. Considerations in Evaluating Proposed Changes

Proposals for new or amended industry definitions (4-digit) as well as for the transfer of existing industries to other Industry Groups (3-digit), Major Groups (2-digit), or Economic Divisions, will be evaluated on the basis of the following considerations.

(1) Proposals for change should be accompanied by detailed statistical justification of adherence to the criteria described in section B above. It is recognized that exact data will not always be available; nevertheless as much evidence as possible should be provided to justify a change. Changes that would cross 3-digit and 2-digit SIC lines require stronger justification than those that would be confined within an existing 3-digit Industry Group. Here, especially, the alteration in the size and composition of the Industry Group from which the products or services would be taken must be ascertained and the proposed revision should strengthen or clarify and not weaken the existing groups. Modifications crossing industry division lines, such as from manufacturing to nonmanufacturing, would call for even more careful consideration.

(2) In proposing new industries, it is essential to recognize the effect of the amendments on existing industries and on the continuity of statistical series. A significant weakening of a statistically sound existing industry or series would be an argument against constituting a new category. The position paper submitted by the proponent for a change must deal with the consequences on the industries affected. Each establishment is currently classifiable in some industry. The subdivision of an existing industry into two or more qualifying industries would permit the development of statistics comparable with the past and would, therefore, receive more favorable consideration. In order to permit historical comparability to the current SIC, the Technical Committee may transfer activities or industries across Group lines and maintain them within their new Group as temporary separate industries, even though they may not meet the criteria for size, specialization, or coverage. Each temporary industry will be combined with another industry in the new Group when the SIC is next revised.

(3) Proposed amendments will be evaluated on the basis of costs, in terms of time and money to government agencies, business and other users of the classification, incurred in changing current records and for collection or new data necessary for the revised code determination; and effect of change in terms of burden on respondent, or availability of information in respondent records.

(4) Proposed new industries will be evaluated on the basis of data from the most current Economic Census and other appropriated sources relevant to the criteria followed in establishing new industries.

(5) The Technical Committee will take cognizance of the International Standard Industrial Classification (ISIC) insofar as comparability with the United States establishment SIC is affected by proposed revisions.

(6) Proposed industries must contain a sufficient number of establishments so that agencies will be able to publish data within the constriction of not revealing the operations of individual producers.

(7) Consideration will be given to the capability for assessing the impact of international trade on proposed industries.

D. Clarification and Interpretation of Industry Definitions

Proposed amendments in present industry definitions having no effect on the scope of industrial activity included but designed to improve interpretations of the industry, as well as all proposed new index items an amendments in present index items, will be processed by the Subcommittee on Code Assignment and Interpretation.

E. Time Schedule

All proposed amendments to the 1972/1977 edition of the establishment *SIC Manual* should be submitted to the Chairman of the Technical Committee on Industrial Classification at the Office of Federal Statistical Policy and Standards, Department of Commerce, Washington, D.C., 20230, as soon as possible, but by no later than March 30, 1980 to permit transmittal of Technical Committee recommendations to the Office of Federal Statistical Policy and Standards by January 1, 1981. The revised edition of the classification will be effective on January 1, 1982.

F. Public Review Procedure

All amendments to the 1972/1977 edition of the establishment *SIC Manual* recommended by the Technical Committee will be made available for public review and comment prior to final action by the Committee. Those making proposals will be notified directly of actions taken; others will be advised through the Federal Register. Notice will probably be issued in January, 1981. A 60-day period will be allowed for appeals to actions proposed by the Technical Committee.

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; Amended Systems of Records

AGENCY: Office of the Secretary of Defense (OSD).

ACTION: Notice of amendments to systems of records.

SUMMARY: The Office of the Secretary of Defense proposes to alter two systems of records subject to the Privacy Act of 1974. The specific changes to the system being amended are set forth below followed by the system published in their entirety as amended.

DATES: These systems shall be amended as proposed without further notice on July 7, 1979, unless comments are received on or before July 7, 1979, which would result in a contrary determination and require republication for further comments.

ADDRESS: Any public comments, including written data, views or arguments concerning the amendments should be addressed to the System Manager identified in the particular record system concerned.

FOR FURTHER INFORMATION CONTACT: Mr. James S. Nash, Chief, Records Management Division, WHS, Room 5C-

315, The Pentagon, Washington, DC 20301, telephone: 202-695-0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices inventory subject to the Privacy Act of 1974 (5 U.S.C. 522a) P.L. 93-579 have been published to date in the Federal Register as follows:

FR Doc. 77-28255 (42 FR 50731) September 28, 1977
FR Doc. 78-25819 (43 FR 42375) September 20, 1978
FR Doc. 78-34821 (43 FR 58406) December 14, 1978
FR Doc. 78-35943 (43 FR 60331) December 27, 1978
FR Doc. 79-8788 (44 FR 17786) March 23, 1979
FR Doc. 79-11351 (44 FR 22143) April 13, 1979
FR Doc. 79-15287 (44 FR 26706) May 16, 1979

The proposed amendments are within the purview of the provisions of 5 U.S.C. 522a(o) of the Act which requires the submission of an altered system report which was submitted on May 18, 1979.

H. E. Lofdahl,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.
June 1, 1979.

DWHS SPM001

System name: Application for Pentagon Parking Permit (43 FR 42433, September 20, 1978)

Changes:

System location: Delete the entire entry and insert: "DoD Parking Control Office, Directorate for Space Management and Services, Washington Headquarters Services, Department of Defense, Pentagon, Washington, D.C. 20301."

Categories of individuals covered by the system: Delete "Office of the Secretary of Defense and those of organizations serviced by OSD", and insert: "Department of Defense".

Categories of records in the system: Delege the entire entry, and insert the revised entry which reads as follows: "File contains DD Form 1199, Application for Pentagon Parking Permit, and DD Form 1200, Pentagon Parking Permit Replacement/Re-Use of Space Request."

The routine uses section is revised to read as follows:

Routine uses of records maintained in the system, including categories of users, and the purposes of such uses: The purpose of this system is to assign Pentagon parking to eligible Department of Defense personnel.

Internal users, uses, and purposes: To be used by DoD Parking Control Office to assign Pentagon parking to eligible DoD personnel.

External users, uses, and purposes: See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices."

Safeguards: Delete "OSD Parking Control Officer.", and insert: "DoD Parking Control Office."

Retention and disposal: Delege "Office of the Secretary of Defense and satellite organizations.", and insert: "Department of Defense".

System manager(s) and address: Delete "Office of the Secretary of Defense", and insert: "Department of Defense".

Notification procedure: Delete "Office of the Secretary of Defense", and insert: "Department of Defense".

Record access procedures: Delete "Office of the Secretary of Defense", and insert: "Department of Defense".

DWHS SPM001

SYSTEM NAME:

Application for Pentagon Parking Permit.

SYSTEM LOCATION:

DoD Parking Control Office, Directorate for Space Management and Services, Washington Headquarters Services, Department of Defense, Pentagon, Washington, D.C. 20301.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Parking applications received from employees of the Department of Defense.

CATEGORIES OF RECORDS IN THE SYSTEM:

File includes: DD Form 1199, Application for Pentagon Parking Permit, and DD Form 1200, Pentagon Parking Permit Replacement/Re-Use of Space Request.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The purpose of this system is to assign Pentagon parking to eligible Department of Defense personnel.

Internal users, uses, and purposes:

To be used by DoD Parking Control Office to assign pentagon parking to eligible DoD personnel.

External users, uses, and purposes:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Card records in card file.

RETRIEVABILITY:

Filed alphabetically by last name.

SAFEGUARDS:

Under direct control of the DoD Parking Control Office. Office is locked and guarded.

RETENTION AND DISPOSAL:

Records are kept on active applicants and destroyed when they depart Department of Defense.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Space Management and Services, Washington Headquarters Services, Department of Defense, Pentagon, Washington, D.C. 20301.

NOTIFICATION PROCEDURE:

Information may be obtained from: Director, Space Management and Services, Washington Headquarters Services, Department of Defense, Room 3C345, Pentagon, Washington, D.C. 20301, Telephone: 202-697-7241.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Director, Space Management and Services, Washington headquarters Services, Department of Defense, Room 3C345, Pentagon, Washington, D.C. 20301.

Written requests for information should contain the full name of the individual and the name of the employing component.

For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license or Pentagon building pass.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Application for Pentagon Parking Permit, DD Form 1199, and related forms.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DWHS SPM002

System name: Pentagon Computeride (43 FR 42434, September 20, 1978)

Changes: Delete "Pentagon Computeride" from "*System name:*", and insert: "Pentagon Carpool Locator".

System location: Delete the paragraph under "Decentralized Segments", and insert: "DoD Parking Control Office, Directorate for Space Management and Services, Washington Headquarters Services, Department of Defense, Pentagon, Washington, D.C. 20301".

Categories of individuals covered by the system: In line one, insert the words "Department of Defense (DoD)", between the word "All" and "personnel".

The routine uses section is revised to read as follows:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Immediately following this heading, add the following: "This system assigns and administers allocated carpool parking spaces at the Pentagon."

Internal users, uses, and purposes: DoD Parking Control Office—To assign and administer allocated carpool parking spaces at the Pentagon.

Air Force Data Services Center—To provide printout to each individual in the system which list other participants who live near him/her who are potential carpool prospects and to provide a complete printout of all participants to the DoD Parking Control Office and the General Services Administration (GSA).

Individuals—To contact other participants on either his/her individual printout or the DoD Parking Control Office's complete printout to determine their interest in carpooling.

External users, uses, and purposes: General Services Administration—To use carpool data in areawide system when and if implemented.

Storage: Delete the entry, and insert a new entry which heads as follows: "Computer magnetic tapes, disk, and paper printouts."

Safeguards: Delete the entry, and insert: "All participants have access to the data, which is under direct control of the DoD Parking Control Office. Office is locked and guarded. Computer media resident at the Air Force Data Services Center is stored in controlled areas. Dial-up computer terminal access is controlled by user passwords that are periodically changed."

Retention and disposal: Add after the first sentence: "Records of personnel removed from the Pentagon Carpool Locator shall be kept one to three months and then destroyed."

System manager(s) and address: Delete "Office of the Secretary of Defense", and insert: "Department of Defense".

Notification procedure: Delete "Office of the Secretary of Defense", and insert: "Department of Defense".

Record access procedures: Delete "Office of the Secretary of Defense" in paragraph one, and insert: "Department of Defense". Add the following as the fourth paragraph reads as follows: "The computer system has the facility to access all data stored in the data base. DoD Parking Control Office has exclusive access to the data base and controls updating the files."

Record source categories: Delete "DoD Computeride Application Form DD 1950", and insert: "Carpool Locator Card (DD Form 2170)".

DWHS SPM002

SYSTEM NAME:

Pentagon Carpool Locator.

SYSTEM LOCATION:

Primary System—Air Force Data Services Center

Decentralized Segments—DoD Parking Control Office, Directorate for Space Management and Services, Washington Headquarters Service, Department of Defense, Pentagon, Washington, D.C. 20301.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Department of Defense (DoD) personnel who participate in Pentagon Building carpools.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of individual, DoD Component Code, home address, working hours, Pentagon office room number, office phone number, map coordinate of home address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

This system assigns and administers allocated carpool parking spaces at the Pentagon.

Internal users, uses, and purposes:

DoD Parking Control Office—To assign and administer allocated carpool parking spaces at the Pentagon.

Air Force Data Services Center—To provide a printout to each individual in the system which lists other participants who live near him/her who are potential carpool prospects, and to provide and complete printout of all participants to the DoD Parking Control Office and the General Services Administration (GSA).

Individuals—To contact other participants on either his/her individual printout or the DoD Parking Control Office's complete printout to determine their interest in carpooling.

External users, uses and purposes:

General Services Administration—To use carpool data in area-wide system when and if implemented.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer magnetic tapes, disk and paper printouts.

RETRIEVABILITY:

Information is accessed and retrieved by name and home address map grid.

SAFEGUARDS:

All participants have access to the data, which is under direct control of the DoD Parking Control Office. Office is locked and guarded. Computer media resident at the Air Force Data Services Center is stored in controlled areas. Dial-up computer terminal access is controlled by user passwords that are periodically changed.

RENTENTION AND DISPOSAL:

Data is retained only on active participants. Records of personnel removed from the Pentagon Carpool Locator shall be kept one to three months and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Space Management and Services, Washington Headquarters Services, Department of Defense, Pentagon, Washington, D.C. 20301.

NOTIFICATION PROCEDURE:

Information may be obtained from: Director, Space Management and Services, Washington Headquarters Services, Department of Defense, Room 3C345, Pentagon, Washington, D.C. 20301, Telephone: 202-697-7241.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Director, Space Management and Services, Washington Headquarters Services, Department of Defense, Room 3C345, Pentagon, Washington, D.C. 20301.

Written requests for information should contain the full name of the

individual, current address and telephone number.

For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license or Pentagon building pass.

The computer system has the facility to access all data stored in the data base. DoD Parking Control Office has exclusive access to the data base and controls updating the files.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Carpool Locator Card (DD Form 2170).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 79-17735 Filed 6-6-79; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF DEFENSE

Department of the Army

Chief of Engineers Environmental Advisory Board; Open Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory committee Act (Public Law 92-463), notice is hereby given that the next meeting of the Environmental Advisory Board (EAB) of the Chief of Engineers will be held on June 28, 1979 at the Radisson Hotel, in the Grand Ballroom, 7th floor, 505 North Michigan Avenue, Chicago, Illinois 60611. All sessions of the meeting are open to the public. Time and subjects of each session follow:

A.M. Session

0800—Opening Remarks
0825—Environmental Considerations in Water Resources Planning
0900—Integration of Principles and Standards (P&S) and NEPA in the Planning Process
1000—Discussion Period

P.M. Session

1300—Corps (Civil Works) Organization for Planning Process, OCE/Division-District levels.
1345—Discussion
1545—Study Management and Staff Composition
1615—Discussions
1715—Public Comments
1745—Summary of EAB meeting
1800—Adjourn

Seating in the meeting room is limited to approximately 50 persons. Written statements, to be made part of the minutes, may be submitted prior to, or up to 10 days following, the meeting, but oral participation by the public is limited because of the time schedule. Persons planning to attend or desiring further information should contact Lt Col George F. Boone, Assistant Director of Civil Works, Environmental Programs, Office of the Chief of Engineers, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20314, Telephone (202) 693-7093.

Marian G. Spittle,
Liaison Officer with the Federal Register.
June 4, 1979.

[FR Doc. 79-17698 Filed 6-6-79; 8:45 am]

BILLING CODE 3710-08-M

Carolina Refining & Distributing Co.; Intent To Prepare Draft Environmental Impact Statement for Proposed Oil Refinery

Intent to prepare a Draft Environmental Impact Statement (DEIS) for a regulatory permit action involving an oil refinery proposed by Carolina Refining and Distributing Company (CRDC) in Carteret County, North Carolina, near the confluence of Newport River and the Atlantic Intracoastal Waterway (AIWW).

LEAD AGENCY: US Army Corps of Engineers, Wilmington District, North Carolina.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement.

SUMMARY: CRDC plans to process partially refined or crude oil of either foreign or domestic origin. The sources and properties of the oils to be processed have not been established at this time, but this information will be provided when available. The nominal capacity of the refinery will be approximately 30,00 barrels per day. Among the products to be produced are lead-free gasoline, jet fuel, diesel fuel, high purity coke, and elemental sulfur.

Construction of the refinery and related facilities including pipelines, offices, control laboratory, shops warehouses, fire fighting equipment, fresh water supply and effluent waste treatment facilities is expected to span approximately 12 months and to furnish employment over that period for an average workforce of about 50 persons. Operation of the refinery will require a permanent workforce of about 125 persons. The preliminary estimated cost to complete construction for the project is $92 million in 1978. David and Floyd Engineers, Inc., the applicant's consultant, intend to subcontract the design of the refinery and the types of process units to be installed.

Present plans are to deliver crude or partially refined oil to the State port in Morehead City. There is an existing oil terminal at the State Port. An additional tanker once a week and additional barge traffic are anticipated to supply the refinery. Crude oil is to be temporarily stored in tanks at the Port and transhipped to the refinery via underground/underwater pipelines. The applicant's preferred pipeline route would be north from the State Port through Crab Point Thorofare, then across Newport River to land just west of Atlantic Intracoastal Waterway (AIWW). The applicant proposes to install two 12-inch pipes and one 4-inch pipe 6 feet below bottom. An alternate pipeline route crossing the harbor eastward toward Beaufort, then turning northward on the east side of Newport River to a point opposite the plant site, and then westward across the AIWW and Core Creek was considered. Refined products are to be shipped directly from the refinery or returned to the port and shipped by tank truck, rail, pipeline, barge, or tanker.

Water for the proposed plant would be primarily from deep wells. A secondary source of water would be internal reuse of various plant process water. Approximately 1.0 million gallons per day (MGD) is to be supplied to the plant. Approximately 0.5 MGD water is to be reused and/or recycled within the facility. Treated waste (including sewage) effluent of approximately 0.75 MGD is to be discharged into Newport River. In addition, storm runoff water from the site is to be treated for grease and oils before discharge. Liquid dicharge from the refinery must be certified by the State of North Carolina and would required a National Pollutant Discharge Elimination System (NPDES) permit. Air emissions are to be controlled by application of best available control technology (BACT) a currently required by North Carolina and Environmental Protection Agency regulations.

A scoping meeting will be held to help determine issues to be addressed in the Draft Enviromental Impact Statement (DEIS) and for identifying the significant issues related to the proposed action. The meeting is scheduled as follows: 21 June 1979, 7:30 p.m., Joslyn Hall, Carteret Technical Institute, Morehead City, NC 28557.

All affected Federal, State, and local agencies, and all other interested persons or groups are encouraged to attend this meeting. Written and oral comments will be taken at the meeting

and written comments will be accepted until 2 July 1979. As a result of this meeting a scope of work will be developed for the DEIS. This scope will be made available to the public.

The merits of the applicant's proposal will not be debated at this meeting. The purpose of the meeting is to assist in developing the scope of the required EIS. The Wilmington District Corps of Engineers will conduct an exhaustive "public interest review" of this proposal which will coincide with the publication of the DEIS. Public and agency comment on the merits of the project, both verbal and written, will be received in the administrative record of the permit application at that time. It is anticipated that the DEIS should be released for review and comment in late 1979.

Representatives of several North Carolina regulatory agencies will participate in conducting the scoping meetings. In addition CRDC must recieve some 12 state authorizations prior to construction and/or operation of the proposed facility. Also the state has formed a Technical Advisory Committee, of which the Corps is a member, to assist the applicant through the permit processes.

The significant issues to be analyzed indepth in the DEIS will probably be air pollution, oil spills, impacts on endangered and threatened species, energy needs, and socioeconomic impacts.

Questions about the proposed action and DEIS can be answered by Mr. Frank Yelverton, Special Projects Manager, Regulatory Functions Branch, Wilmington District Corps of Engineers, PO Box 1890, Wilmington, North Carolina 28402, telephone (919) 343-4640, (FTS) 671-4640.

A. A. Kopcsak,

Major, Corps of Engineers, Acting District Engineer.

[FR Doc. 79-17823 Filed 6-6-79; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 56516-6061-01-77]

Stony Brook Phase I Project Intermediate Load Powerplant, Massachusetts Municipal Wholesale Electric Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Determination to Classify the Massachusetts Municipal Wholesale Electric Company's Proposed Intermediate Load Powerplant as an "Existing" Facility.

SUMMARY: On April 3, 1979, the Massachusetts Municipal Wholesale Electric Company (MMWEC) submitted to the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) a request to classify its proposed Stony Brook Phase I Project intermediate load combined cycle powerplant (intermediate load powerplant) as an "existing" facility pursuant to § 515.6 of the Revised Interim Rule to Permit Classification of Certain Powerplants and Installations as Existing Facilities (Revised Interim Rule) issued on March 21, 1979 (44 FR 17464) pursuant to the provisions of the Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620 (FUA). MMWEC later submitted additional information in further support of its request.

ERA has completed it analysis of MMWEC's request and has determined that MMWEC has satisfactorily demonstrated that it would suffer a substantial financial penalty in excess of 25% of the total projected project cost as of November 9, 1978, within the meaning of § 515.6 of the Revised Interim Rule.

ERA has determined that MMWEC's intermediate load powerplant is an "existing" facility and is now subject to the provisions of Title III of FUA.

FOR FURTHER INFORMATION CONTACT:

William L. Webb (Office of Public Information), Economic Regulatory Administration, Department of Energy, 2000 M Street, NW., Room B-110, Washington, D.C. 20461, Phone: (202) 634-2170.

Charles A. Falcone, Director, Division of Existing Facilities Conversion, Economic Regulatory Administration, Department of Energy, 2000 M Street, NW., Room 3128I, Washington, D.C. 20461, (202) 254-7450.

James H. Heffernan (Office of the General Counsel), Department of Energy, 12th and Pennsylvania Avenue, NW., Room 7134, Washington, D.C. 20461, (202) 633-8814.

Robert L. Davies, Deputy Assistant Administrator, Office of Fuels Regulation, Economic Regulatory Administration, 2000 M Street, NW., Room 7202, Washington, D.C. 20461 (202) 254-3910.

SUPPLEMENTARY INFORMATION: (1) On November 27, 1978, MMWEC submitted a request to classify its Stony Brook Phase I Project as an "existing" facility pursuant to the Interim Rule to Permit Classification of Certain Powerplants and Installations as Existing Facilities (43 FR 54912) issued by ERA on November 22, 1978. On the basis of the materials submitted by MMWEC in November, the Stony Brook Phase I Project was then tentatively classified as a "new" facility because no major powerplant components had been delivered or installed at the site prior to November 9, 1978.

Pursuant to Section 902 of FUA, ERA proceeded to evaluate MMWEC's materials to determine whether the Stony Brook Phase I Project, consisting of two 85 MW simple cycle peakload units (Docket No. 56516-6061-01-01) and a 341 MW combined cycle unit (Docket No. 56516-6061-02-01), qualified for an exemption under Title II of FUA. On December 14, 1978, ERA issued a Tentative Decision and Order, which stated (1) the powerplants at Stony Brook were determined to be "new" facilities; (2) MMWEC did not submit evidence sufficient to justify an exemption for its intermediate load unit; and (3) the evidence submitted justified the granting of a permanent peakload exemption for its simple cycle peaking units.

On March 21, 1979, ERA issued the Revised Interim Rule substantially changing the regulations previously issued by ERA on November 22, 1978. On April 3, 1979, MMWEC filed a new request for classification under the Revised Interim Rule to have its intermediate load powerplant classified as an "existing" facility under Section 515.6 of the Revised Interim Rule applicable to substantial financial penalties. ERA has determined that MMWEC's intermediate load powerplant qualifies to be classified as an existing facility pursuant to Section 515.6 of the Revised Interim Rule. As a result, Section 2 of the Tentative Decision and Order issued by ERA on December 14, 1978, applicable to MMWEC's intermediate load unit, is hereby withdrawn.

(2) A copy of ERA's Summary of Analysis dated May 19, 1979 is available for examination in the Office of Public Information, at the above address.

Issued in Washington, D.C., June 1, 1979.

Doris J. Dewton,

Acting Assisting Administrator, Office of Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-17881 Filed 6-6-79; 8:45 am]

BILLING CODE 6450-01-M

Industrial Energy Conservation Program, Availability of Initial Report Form on the Use of Energy-Saving Recovered Materials

AGENCY: Department of Energy.

ACTION: Notice of availability of Report Form.

SUMMARY: The Department of Energy (DOE) is announcing the availability of Form CS–153, Initial Report on the Use of Energy-Saving Recovered Materials. DOE has mailed Form CS–153 to those corporations which it has identified in the Federal Register (44 FR 9044, February 12, 1979; 44 FR 28750, May 16, 1979) as required to report. DOE is notifying any identified corporation which has not received the form of this reporting requirement and is also notifying any other corporation which is required to report on energy consumption in SIC 22, 26, 30 or 33, pursuant to "Notice of Information Filing Requirement" (44 FR 1770, January 8, 1979), that it must respond to that notice and, if identified by DOE, will be required to file Form CS–153.

FOR FURTHER INFORMATION CONTACT:

Lewis S. Newman, Office of Industrial Programs, U.S. Department of Energy, 20 Massachusetts Avenue, N.W., Washington, D.C. 20585 (202)376–4803.

Pamela Pelcovits, U.S. Department of Energy, 20 Massachusetts Avenue, N.W., Washington, D.C. 20585 (202)376–9469.

SUPPLEMENTARY INFORMATION: Section 461 of the National Energy Conservation Policy Act (Pub. L. 95–619) (NECPA) adds a new section 374A to Part E of Title III of the Energy Policy and Conservation Act (42 U.S.C. 6341–6346) (EPCA). This new section directs the Department of Energy (DOE) to establish targets for the increased utilization of energy-saving recovered materials (recovered materials) in four industries—metals and metal products, paper and allied products, textile mill products and rubber. In addition, certain corporations identified by DOE in these four industries are required under section 374A(e) of the EPCA to report to DOE on their use of recovered materials, as follows: initially, on the volume of recovered materials the corporation is using in each of its manufacturing operations in the United States and any plans it has to increase such use in each of the next ten years; and thereafter annually, on the progress it has made to increase its use of recovered materials to reach the targets established by DOE for its industry.

DOE published a Federal Register notice on January 8, 1979 (44 FR 1770), as corrected by a Federal Register notice published on January 19, 1979 (44 FR 4006), which required certain manufacturing corporations to file information on their energy consumption in calendar year 1977. The information filed pursuant to that notice was used by DOE to identify corporations which consumed at least one trillion Btu's in 1977 in any of 20 major energy-consuming manufacturing industries, as required by section 372 of the EPCA. DOE published a list of identified corporations in a Federal Register notice published on February 12, 1979 (44 FR 9044), and published a subsequent list on May 16, 1979 (44 FR 28750).

All corporations identified by DOE in any of the following major energy-consuming industries:

Primary metal industries	SIC 33
Paper and allied product	SIC 26
Textile mill products	SIC 22
Rubber and miscellaneous plastic products	SIC 30

are required to file Form CS–153, Initial Report on the use of Energy-Saving Recovered Materials. Form CS–153 sets forth the procedures for preparing and transmitting to DOE the initial report on the use of recovered materials, either directly or through third parties. The information required to be reported must be received by DOE no later than July 31, 1979, regardless of whether Form CS–153 is sent directly to DOE or through third parties.

DOE has mailed Form CS–153 directly to identified corporations in these four industries. Identified corporations which have not received the form or which need additional copies may obtain them by contacting DOE at the address provided above in this notice. Moreover, any other corporation which meets the criteria for identification, as set forth in the January 8, 1979, notice, must respond to DOE, as required by that notice, and if identified by DOE in any of the four industries listed above will be required to file Form CS–153.

(Energy Policy and Conservation Act (Pub. L. 94–163), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619); Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended; E.O. 11790 (39 FR 23185); The Department of Energy Organization Act (Pub. L. 95–91); E.O. 12009 (42 FR 46267).)

Issued in Washington, D.C. June 1, 1979.

Maxine Savitz,

Deputy Assistant Secretary Conservation and Solar Applications.

[FR Doc. 79-17691 Filed 6-6-79; 8:45 am]

BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the United States of America and Switzerland and the Additional Agreement Between the United States of America and the European Atomic Energy Community (EURATOM) Concerning the Peaceful Uses of Atomic Energy.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following retransfer: RTD/SD(EU)–28, from West Germany to Sweden, 11,580 kilograms Uranium, containing 411.090 kilograms U–235 (3.55%) for fabrication of fuel elements for the Beznau II power reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the approval of this retransfer will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: June 1, 1979.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 79-17692 Filed 6-6-79; 8:45 am]

BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs; Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement Between the Government of the United States of America and the International Atomic Energy Agency (IAEA) for Cooperation in Peaceful Application.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale: Contract No. S–IA–101, United States to Yugoslavia, 3.3 grams normal Uranium as pitchblende ore, and 3.8 grams Thorium as monazite sand, to be used for calibrating counting equipment.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: June 1, 1979.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 79-17686 Filed 6-6-79; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council, Task Groups of the Committee on Materials and Manpower Requirements; Meeting

Notice is hereby given that a task group of the Committee on Materials and Manpower Requirements will meet in June 1979. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Materials and Manpower Requirements will analyze the potential constraints in these areas which may inhibit future production and will report its findings to the National Petroleum Council. Its analysis and findings will be based on information and data to be gathered by the various task groups. The task group scheduling a meeting is the Drilling Equipment Task Group. The time, location and agenda of the meeting follows:

The third meeting of the Drilling Equipment Task Group will be held on Thursday, June 14, 1979, starting at 8:00 a.m., 9th Floor, Armco Building, 1455 West Loop South, Houston, Texas.

The tentative agenda for the meeting follows:

1. Introductory remarks by Chairman and Government Cochairman.
2. Review the results of the Drilling Equipment Task Group's survey.
3. Discuss the preparation of the Drilling Equipment Task Group's report.
4. Discussion of any other matters pertinent to the overall assignment of the Drilling Equipment Task Group.

The meeting is open to the public. The chairman of the task force is empowered to conduct the meeting in a fashion that will, in his judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the task force will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform James R. Hemphill, Office of Resource Applications, 202/633-8383, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room GA 152, DOE, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on June 1, 1979.

R. Dobie Langenkamp,

Deputy Assistant Secretary, Oil, Natural Gas and Shale Resources, Resource Applications.

[FR Doc. 79-17717 Filed 6-6-79; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council, Task Group of the Committee on Unconventional Gas Sources; Meeting

Notice is hereby given that three task groups of the Committee on Unconventional Gas Sources will meet in June and July 1979. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Unconventional Gas Sources will analyze the potential constraints in these areas which may inhibit future production and will report its findings to the National Petroleum Council. Its analysis and findings will be based on information and data to be gathered by the various task groups. The task groups scheduling meetings are the Geopressured Brines Task Group, the Coal Seams Task Group, and the Tight Gas Reservoirs Task Group. The time, location and agenda of the task groups' meetings follows:

The fourth meeting of the Geopressured Brines Task Group will be held on Thursday, June 14, 1979, starting at 9:00 a.m., 9th Floor Conference Room, Union Oil Company of California, 900 Executive Plaza West, 4635 Southwest Freeway, Houston, Texas.

The tentative agenda for the meeting follows:

1. Introductory remarks by Chairman and Government Cochairman.
2. Discussion of report outline for the Geopressured Brines Task Group.
3. Review of preliminary results for the Geopressured Brines Task Group.
4. Review Geopressured Brines Task Group's assignments.
5. Discussion of any other matters pertinent to the overall assignment of the Geopressured Brines Task Group.

The fifth meeting of the Coal Seams Task Group will be held on Thursday, June 28, 1979, starting at 10:00 a.m., in the NPC Conference Room, 1625 K Street, NW., Washington, D.C.

The tentative agenda for the meeting follows:

1. Introductory remarks by Chairman and Government Cochairman.
2. Discussion of the study methodology to be employed by the Coal Seams Task Group.
3. Discussion of the timetable of the Coal Seams Task Group.
4. Discussion of any other matters pertinent to the overall assignment of the Coal Seams Task Group.

The eighth meeting of the Tight Gas Reservoir Task Group will be held on Thursday, July 26, 1979, starting at 1:00 p.m. and on Friday, July 27, 1979, starting at 8:30 a.m., in the Conference Room of Mobil Oil Corporation, Prudential Plaza Building, 1645 Curtis Street, Denver, Colorado.

The tentative agenda for the meeting follows:

1. Introductory remarks by Chairman and Government Cochairman.
2. Discussion of the report outline of the Tight Gas Reservoirs Task Group.
3. Review of preliminary results of the Tight Gas Reservoirs Task Group.
4. Review of the Tight Gas Reservoirs Task Group's assignments.
5. Discussion of any other matters pertinent to the overall assignment of the Tight Gas Reservoirs Task Group.

The meetings are open to the public. The chairmen of the task groups are empowered to conduct the meetings in a fashion that will, in their judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with any task group will be permitted to do so, either before or after the meetings. Members of the public who wish to make oral statements should inform Lucio A. D'Andrea, Office of Resource Applications, 202/633-9482, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meetings will be available for public review at the Freedom of Information Public Reading Room, Room GA 152, DOE, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on June 1, 1979.

R. Dobie Langenkamp,

Deputy Assistant Secretary Oil, Natural Gas and Shale Resources, Resource Applications.

[FR Doc. 79-17718 Filed 6-6-79; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council, Task Group of the Committee on Unconventional Gas Sources; Meeting

Notice is hereby given that a task group of the Committee on Unconventional Gas Sources will meet in June 1979. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Unconventional Gas Sources will analyze the potential constraints in these areas which may inhibit future production and will report its findings to the National Petroleum Council. Its analysis and findings will be based on information and data to be gathered by the various task groups. The task group scheduling a meeting is the Tight Gas Reservoirs Task Group. The time, location and agenda of the task group's meeting follows:

The seventh meeting of the Tight Gas Reservoirs Task Group, originally scheduled to meet on Friday, June 22, 1979, is hereby rescheduled for Thursday, June 21, 1979, starting at 1:00 p.m. and Friday, June 22, 1979, starting at 8:30 a.m., in the Conference Room of Mobil Oil Corporation, Prudential Plaza, 1645 Curtis Street, Denver, Colorado.

The tentative agenda for the meeting follows:

1. Introductory remarks by Chairman and Government Cochairman.
2. Discussion of the overall progress of the Tight Gas Reservoirs Task Group.
3. Review status of separate assignments of the Tight Gas Reservoirs Task Group.
4. Discussion of any other matters pertinent to the overall assignment of the Tight Gas Reservoirs Task Group.

The meeting is open to the public. The chairman of the task group is empowered to conduct the meeting in a fashion that will, in his judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the task group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Lucio A. D'Andrea, Office of Resource Applications, 202/633-9482, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room GA 152, DOE, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on June 1, 1979.

R. Dobie Langenkamp,

Deputy Assistant Secretary, Oil, Natural Gas and Shale Resources, Resource Applications.

[FR Doc. 79-17719 Filed 6-6-79; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council, Task Group of the Committee on Unconventional Gas Sources; Meeting

Notice is hereby given that a subcommittee of the Committee on Unconventional Gas Sources will meet in June 1979. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Unconventional Gas Sources will analyze the potential constraints in these areas which may inhibit future production and will report its findings to the National Petroleum Council. Its analysis and findings will be based on information and data to be gathered by the various task groups. The subcommittee scheduling a meeting is the Coordinating Subcommittee. The time, location and agenda of the subcommittee meeting follows:

The second meeting of the Coordinating Subcommittee will be held on Wednesday, June 20, 1979, starting at 9:00 a.m., 44th Floor Conference Room, Shell Oil Company, One Shell Plaza, Houston, Texas.

The tentative agenda for the meeting follows:

1. Introductory remarks by Chairman and Government Cochairman.
2. Review the progress of the Task Groups.
3. Discussion of the preparation of the Coordinating Subcommittee's report draft.
4. Discussion of the timetable of the Coordinating Subcommittee.
5. Discussion of any other matters pertinent to the overall assignment of the Coordinating Subcommittee.

The meeting is open to the public. The chairman of the subcommittee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Lucio A. D'Andrea, Office of Resource Applications, 202/633-9482, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room GA 152, DOE, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on June 1, 1979.

R. Dobie Langenkamp,

Deputy Assistant Secretary, Oil, Natural Gas and Shale Resources, Resource Applications.

[FR Doc. 79-17720 Filed 6-6-79; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Technology

Fossil Energy Advisory Committee Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given that the Fossil Energy Advisory Committee will meet Tuesday, June 26, 1979, at 8:00 a.m., at the Sheraton Inn Airport Hotel, Conference Room B-4, 1160 Thorn Run Road Extension, Coraopolis, Pennsylvania.

The purpose of the committee is to provide the Department of Energy with advice in developing through research, new and more efficient methods of mining, preparing and utilizing coal.

The tentative agenda is as follows:

8:00 a.m.—Opening Remarks—Dr. William E. Shoupp, Fossil Energy Advisory Committee (FEAC).
8:15 a.m.—Introduction and Welcoming Remarks—Mr. George Fumich, Jr., Program Director for Fossil Energy.
8:30 a.m.—DOE Underground Coal Mining R&D Program—Mr. William B. Schmidt, Fossil Fuel Extraction.
9:15 a.m.—FEAC Question and Answer Period on DOE Underground Coal Mining R&D Program.
9:45 a.m.—Break.
10:00 a.m.—DOE Surface Coal Mining R&D Program—Mr. Douglas B. Uthus, Fossil Fuel Extraction.
10:20 a.m.—FEAC Question and Answer Period on DOE Surface Coal Mining R&D Program.
10:45 a.m.—Coal Mining, Environmental and Health and Safety R&D Programs—Mr. John Murphy, Research Director, Pittsburgh Mining and Safety Research Center, Bureau of Mines (BOM).
11:30 a.m.—FEAC Question and Answer Period on BOM Coal Mining, Environmental and Health and Safety R&D Program.
12:00 noon—Lunch.

1:15 p.m.—MSHA Coal Mining Health and Safety Regulatory Program—Mr. Donald W. Huntley, District Manager, Pittsburgh Coal Mining Safety and Health Administration, Bureau of Mines.
2:00 p.m.—FEAC Question and Answer Period on MSHA Coal Mining Health and Safety Regulatory Program.
2:30 p.m.—An Overview of Industrial Aspects of the National Coal Program:
(Chairman)—Mr. Eric H. Reichl, FEAC Member.
(Guest Speaker)—Mr. William N. Poundstone, Executive Vice President; Consolidation Coal Company.
(Guest Speaker)—Mr. Joe Yancik, Vice President, National Coal Association.
(Guest Speaker)—Dr. Charles C. Potter, Chairman, Rochester and Pittsburgh Coal Company.
4:05 p.m.—FEAC Discussion on Agenda Topics:
(Chairman)—Dr. George R. Hill, FEAC Member.
5:00 p.m.—Public Comment (10 minute rule).

The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should call the Advisory Committee Management Office (202) 252–5187, at least 5 days prior to the meeting and reasonable provision will be made to include their presentation on the agenda.

Transcripts of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room GA–152, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcript from the reporter. An Executive Summary of the meeting may be obtained by calling the Advisory Committee Management Office at the above number.

Issued at Washington, D.C., on June 4, 1979.

Georgia Hildreth,

Director, Advisory Committee Management.

[FR Doc. 79-17721 Filed 6-6-79; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER79-368]

Central Hudson Gas & Electric Corp.; Rate Filing

June 1, 1979.

The filing Company submits the following:

Take notice that on May 29, 1979, Central Hudson Gas & Electric Corporation (Central Hudson) tendered for filing its development of actual costs for 1978 related to transmission service provided from the Roseton Generating Plant to Consolidated Edison Company of New York, Inc. (Con Edison) and Niagara Mohawk Power Corporation (Niagara Mohawk) in accordance with the provisions of its Rate Schedule F.E.R.C. No. 42.

The actual costs for 1978 amounted to $1.1105 per Mw-day to Con Edison and $3.8030 per Mw-day to Niagara Mohawk and are the basis on which estimated charges for 1979 will be billed.

Central Hudson requests waiver on the notice requirements set forth in 18 CFR 35.11 of the Regulations to permit charges to become effective January 1, 1979 as agreed by the parties.

Central Hudson states that a copy of its filing was served on Con Edison, Niagara Mohawk and the State of New York Public Service Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426 in accordance with 18 CFR 1.8, 1.10. All such petitions or protests should be filed on or before June 22, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-17660 Filed 6-6-79; 8:45 am]

BILLING CODE 6450-01-M

Cumberland Oil Producing Co., Inc. et al.; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 31, 1979.

On May 16, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act 1978.

State of Tennessee, State Oil and Gas Board

FERC Control Number: JD79-5754
API Well Number: 41-129-20091
Section of NGPA: 108
Operator: Cumberland Oil Producing Co., Inc.
Well Name: Plateau Properties #2 (Harrison)
Field: Frankfort NE
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 15 MMcf.

FERC Control Number: JD79-5755
API Well Number: 41-129-20104
Section of NGPA: 108
Operator: Cumberland Oil Producing Co., Inc.
Well Name: M. Branstetter #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 10 MMcf.

FERC Control Number: JD79-5756
API Well Number: 41-129-20120
Section of NGPA: 108
Operator: Cumberland Oil Producing Co., Inc.
Well Name: E. Howard #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 18 MMcf.

FERC Control Number: JD79-5757
API Well Number: 41-129-20131
Section of NGPA: 108
Operator: Cumberland Oil Producing Co., Inc.
Well Name: Plateau Properties #3 (Harrison)
Field: Frankfort NE
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 15 MMcf.

FERC Control Number: JD79-5758
API Well Number: 41-129-20314
Section of NGPA: 108
Operator: Cumberland Oil Producing Co., Inc.
Well Name: G. Barnet #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 6 MMcf.

FERC Control Number: JD79-5759
API Well Number: 41-129-10039
Section of NGPA: 108
Operator: Cumberland Oil Producing Co., Inc.
Well Name: J. Bye #2
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 0.5 MMcf.

FERC Control Number: JD79-5760
API Well Number: 41-129-20378
Section of NGPA: 108
Operator: Cumberland Oil Producing Co., Inc.
Well Name: C. Potter et al Unit #1
Field: Frankfort NE
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 6 MMcf.

FERC Control Number: JD79-5761
API Well Number: 41-129-20220
Section of NGPA: 108

Operator: Cumberland Oil Producing Co., Inc.
Well Name: W. W. Ivey #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 0.5 MMcf.

FERC Control Number: JD79-5762
API Well Number: 41-129-10034
Section of NGPA: 108
Operator: Cumberland Oil Producing Co., Inc.
Well Name: S. Luchin #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 0.5 MMcf.

FERC Control Number: JD79-5763
API Well Number: 41-129-20316
Section of NGPA: 108
Operator: Cumberland Oil Producing Co., Inc.
Well Name: F. Susak #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 7 MMcf.

FERC Control Number: JD79-5764
API Well Number: 41-129-10033
Section of NGPA: 108
Operator: Cumberland Oil Producing Co., Inc.
Well Name: A. Bigoness et al Unit #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 8 MMcf.

FERC Control Number: JD79-5765
API Well Number: 41-129-20077
Section of NGPA: 108
Operator: Cumberland Oil Producing Co., Inc.
Well Name: Plateau Properties #3 (Jack Markham)
Field: Frankfort NE
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 10 MMcf.

FERC Control Number: JD79-5766
API Well Number: 41-129-10035
Section of NGPA: 108
Operator: Cumberland Oil Producing Co., Inc.
Well Name: S. Luchin #2
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 3 MMcf.

FERC Control Number: JD79-5767
API Well Number: 41-129-20069
Section of NGPA: 108
Operator: Cumberland Oil Producing Co., Inc.
Well Name: L. Duncan #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 7 MMcf.

FERC Control Number: JD79-5768
API Well Number: 41-129-10036
Section of NGPA: 108
Operator: Cumberland Oil Producing Co., Inc.
Well Name: O. Cole #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 0.1 MMcf.

FERC Control Number: JD79-5769
API Well Number: 41-129-10041
Section of NGPA: 108

Operator: Cumberland Oil Producing Co., Inc.
Well Name: J. D. Mize #1
Field: Frankfort NE
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 7 MMcf.

FERC Control Number: JD79-5770
API Well Number: 41-129-00004
Section of NGPA: 108
Operator: Cumberland Oil Producing Co., Inc.
Well Name: J. Bye #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 0.5 MMcf.

FERC Control Number: JD79-5771
API Well Number: 41-129-10043
Section of NGPA: 108
Operator: Cumberland Oil Producing Co., Inc.
Well Name: Plateau Properties #2A (Markham)
Field: Frankfort NE
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 10 MMcf.

FERC Control Number: JD79-5772
API Well Number: 41-129-10042
Section of NGPA: 108
Operator: Cumberland Oil Producing Co., Inc.
Well Name: Plateau Properties #2 (MARGAM)
Field: Frankfort NE
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 10 MMcf.

FERC Control Number: JD79-5773
API Well Number: N/A
Section of NGPA: 108
Operator: Universal Land and Mineral Co.
Well Name: David Summer #2—Permit #1052
Field: Sunbright Gas Field
County:
Purchaser: Intrastate Energy Corp.
Volume: 36 MMcf.

FERC Control Number: JD79-5774
API Well Number: 41-129-20128
Section of NGPA: 108
Operator: Universal Land & Mineral Leasing Co.
Well Name: William Summer #1 Permit #787
Field: Sunbright Gas Field
County: Morgan
Purchaser: Intrastate Energy Corp.
Volume: 72 MMcf.

FERC Control Number: JD79-5775
API Well Number: N/A
Section of NGPA: 108
Operator: Universal Land & Mineral Co.
Well Name: William Summer #2 Permit #1244
Field: Sunbright Gas Field
County: Morgan
Purchaser: Intrastate Energy Corp.
Volume: 36 MMcf.

FERC Control Number: JD79-5776
API Well Number: N/A
Section of NGPA: 108
Operator: Universal Land & Mineral Co.
Well Name: David Summer #1 Permit #1252
Field: Sunbright Gas Field
County: Morgan
Purchaser: Intrastate Energy Corp.
Volume: 36 MMcf.

FERC Control Number: JD79-5777
API Well Number: N/A
Section of NGPA: 108
Operator: Universal Land & Mineral Co.
Well Name: String Field #1 Permit #1063
Field: Sunbright Gas Field
County: Morgan
Purchaser: Intrastate Energy Corp.
Volume: 29 MMcf.

FERC Control Number: JD79-5778
API Well Number: N/A
Section of NGPA: 108
Operator: Universal Land & Mineral Co.
Well Name: David Summer #3 Permit #1927
Field: Sunbright Gas Field
County: Morgan
Purchaser: Intrastate Energy Co.
Volume: 36 MMcf.

FERC Control Number: JD79-5779
API Well Number: N/A
Section of NGPA: 102
Operator: Universal Land & Mineral Co.
Well Name: Jones #1
Field: Sunbright Gas Field
County: Morgan
Purchaser: Intrastate Energy Corp.
Volume: N/A.

FERC Control Number: JD79-5780
API Well Number: N/A
Section of NGPA: 102
Operator: Universal Land & Mineral Co.
Well Name: William Summer #1 Permit #787
Field: Sunbright Gas Field
County: Morgan
Purchaser: Intrastate Energy Corp.
Volume: N/A.

FERC Control Number: JD79-5781
API Well Number: N/A
Section of NGPA: 102
Operator: Universal Land & Mineral Co.
Well Name: William Summer #2 Permit #1244
Field: Sunbright Gas Field
County: Morgan
Purchaser: Intrastate Energy Corp.
Volume: N/A.

FERC Control Number: JD79-5782
API Well Number: N/A
Section of NGPA: 102
Operator: Universal Land & Mineral Co.
Well Name: String Field #1 Permit #1063
Field: Sunbright Gas Field
County: Morgan
Purchaser: Intrastate Energy Corp.
Volume: N/A.

FERC Control Number: JD79-5783
API Well Number: 41-151-20360
Section of NGPA: 102
Operator: Low Gap-Reuben Hollow
Well Name: Brimstone-Newport #1
Field:
County: Scott
Purchaser: N/A
Volume: N/A.

FERC Control Number: JD79-5784
API Well Number: 41-151-20356
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Sexton et al #1
Field: N/A
County: Scott
Purchaser: Intrastate Energy Corp.
Volume: 40 MMcf.

FERC Control Number: JD79-5785
API Well Number: 41-151-20350
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Brimstone-Brimstone #1
Field: Low Gap-Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A.

FERC Control Number: JD79-5786
API Well Number: 41-151-20271
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Duncan-Brummett #1
Field: Low Gap-Reuben Hollow
County: Scott
Purchaser: Monteagle-Ft. Payne
Volume: N/A.

FERC Control Number: JD79-5787
API Well Number: 41-151-20230
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Criscillis Bowling Walker #1
Field: Low Gap-Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A.

FERC Control Number: JD79-5788
API Well Number: 41-151-20226
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Brimstone Company #5
Field: Low Gap-Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A.

FERC Control Number: JD79-5789
API Well Number: 41-51-20222
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Brimstone Company #4
Field: N/A
County:
Purchaser: N/A
Volume: N/A.

FERC Control Number: JD79-5790
API Well Number: 41-151-20288
Section of NGPA: 102
Operator: Dixie Oil Company.
Well Name: Brimstone #6
Field: Low Gap-Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A.

FERC Control Number: JD79-5791
API Well Number: 41-151-20351
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Brimstone Company #8
Field: Low Gap-Reuben Hollow
County: N/A
Purchaser: N/A
Volume: N/A.

FERC Control Number: JD79-5792
API Well Number: 41-151-20305
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Brummett-Brimstone #1
Field: Low Gap Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A.

FERC Control Number: JD79-5793
API Well Number: 41-151-20313
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Brimstone-Brummett-Wilson #1
Field: Low Gap Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A

FERC Control Number: JD79-5794
API Well Number: 41-151-20280
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Brummett-Duncan-Brimstone #1
Field: Low Gap Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A.

FERC Control Number: JD79-5795
API Well Number: 41-151-20290
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Brummett-Duncan-Brimstone
Field: Low Gap Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A.

FERC Control Number: JD79-5796
API Well Number: 41-151-20301
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Brimstone #7
Field: Low Gap Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A

FERC Control Number: JD79-5797
API Well Number: 41-129-20374
Section of NGPA: 102
Operator: Cumberland Oil Producing Co. Inc.
Well Name: R. Aytes et al Unit #1
Field: Frankfort NE
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 28 MMcf.

FERC Control Number: JD79-5798
API Well Number: 41-129-20391
Section of NGPA: 102
Operator: Cumberland Oil Producing Co. Inc.
Well Name: T. Lavender et al Unit #1
Field: Unnamed
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 11 MMcf.

FERC Control Number: JD79-5799
API Well Number: 41-129-20394
Section of NGPA: 102
Operator: Cumberland Oil Producing Co. Inc.
Well Name: D. Branstetter et al Unit #1
Field: Unnamed
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 25 MMcf.

FERC Control Number: JD79-5800
API Well Number: 41-129-20314
Section of NGPA: 102
Operator: Cumberland Oil Producing Co. Inc.
Well Name: G. Barnett #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 6 MMcf.

FERC Control Number: JD79-5801
API Well Number: 41-129-20339
Section of NGPA: 102
Operator: Cumberland Oil Producing Co. Inc.
Well Name:
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 15 MMcf.

FERC Control Number: JD79-5802
API Well Number: 41-129-20329
Section of NGPA: 102
Operator: Cumberland Oil Company
Well Name: B. Woolum #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 15 MMcf.

FERC Control Number: JD79-5803
API Well Number: 41-129-20312
Section of NGPA: 102
Operator: Cumberland Oil Producing Co. Inc.
Well Name: C. Zeigler #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 12 MMcf.

FERC Control Number: JD79-5804
API Well Number: 41-129-20340
Section of NGPA: 102
Operator: Cumberland Oil Producing Company, Inc.
Well Name: J. Dobies #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 10 MMcf.

FERC Control Number: JD79-5805
API Well Number: 41-129-10043
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: Plateau Properties #2A (Markham)
Field: Frankfort NE
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 10 MMcf.

FERC Control Number: JD79-5806
API Well Number: 41-129-10042
Section of NGPA: 102
Operator: Cumberland Oil Co., Inc.
Well Name: Plateau Properties #2 (Markham)
Field: Frankfort NE
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 10 MMcf.

FERC Control Number: JD79-5807
API Well Number: 41-129-20294
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: Needham et al Unit #1
Field: Unnamed
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 30 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825

North Capitol Street, NE., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 22, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-17699 Filed 6-6-79; 8:45 am]
BILLING CODE 6450-01-M

Michel T. Halbouty; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 31, 1979.

On May 2, 1979, the Federal Energy Regulatory Commission received notice of a determination pursuant to 18 CFR 274.104 of the Natural Gas Policy Act of 1978, applicable to:

Railroad Commission of Texas
FERC Control Number: JD79-6296
API Well Number: NA
Section: 103
Operator: Michel T. Halbouty
Well Name: Rocker "B" Lse. #7
Field: Sprayberry (Trend Area)
County: Reagan
Purchaser: El Paso Natural Gas Co.
Volume: 18 MMcf.

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E. Washington, D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 22, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-17692 Filed 6-6-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. RP79-65]

United Gas Pipe Line Co., Rescheduling Conference

June 1, 1979.

The informal settlement conference scheduled to be held in this proceeding on June 7, 1979, has been rescheduled for June 11, 1979, at 1:30 P.M., in Room 3200, 941 North Capitol Street, N.E., Washington, D.C. 20426.

Customers and other interested persons will be permitted to attend, but if such persons have not previously been permitted to intervene by order of the Commission, attendance will not be deemed to authorize intervention as a party in these proceedings.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-17691 Filed 6-6-79; 8:45 am]
BILLING CODE 6450-01-M

Advisory Committee on Revision of Rules of Practice and Procedure, Subcommittee on Ex Parte and Separation of Functions; Meeting

June 5, 1979.

Pursuant to the Provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given that the subcommittee on *Ex Parte* and Separation of Functions of the Advisory Committee on Revision of Rules of Practice and Procedure will meet on Friday, June 8, 1979 from 2 p.m. to 5 p.m., at the Federal Energy Regulatory Commission, 825 N. Capitol St., N.E., Hearing Room A, Washington, D.C.

The Subcommittee on *Ex Parte* and Separation of Functions had anticipated that it would report to the full Advisory Committee on the Rules of Practice and Procedure on its recommendations concerning *Ex Parte* and separation of functions matters at a meeting of the Full Advisory Committee scheduled for Friday, June 8, 1979 at 2 p.m. However, the Subcommittee on *Ex Parte* and Separation of Functions, at its meeting of June 1, 1979, determined it needed to further consider its business. Accordingly, the meeting of the Full Advisory Committee scheduled for June 8 at 2 p.m. is cancelled, and the Subcommittee on *Ex Parte* and Separation of Functions will meet at 2 p.m. on Friday, June 8, 1979 to continue preparation of the recommendations respecting revision of the Commission's *Ex Parte* and separation of functions regulations.

The meeting is open to the public. A transcript of the meeting will be available for public review and copying at FERC's Division of Public Information, Room 1000, 825 N. Capitol St., N.E., between the hours of 8:00 a.m. and 5:30 p.m. Monday through Friday except Federal holidays. In addition, any person may purchase a copy of the transcript from the reporter.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-17700 Filed 6-6-79; 8:45 am]
BILLING CODE 6450-01-M

Office of Energy Conservation and Solar Applications; Meeting Regarding Emergency Building Temperature Restrictions Program

Notice is hereby given that the Department of Energy (DOE) will hold a meeting with the National Association of Counties on Friday, June 8, 1979, at 9:00 a.m. in the 5th Floor Conference Room, 1735 New York Avenue, N.W., Washington, D.C.

The purpose of the meeting will be to discuss the role of the counties in implementing the Emergency Building Temperature Restrictions Program. This program is authorized by the President's "Standby Conservation Plan No. 2: Emergency Building Temperature Restrictions," which recently was approved by the Congress.

Issued in Washington, D.C., on June 5, 1979.

Maxine Savitz,
Deputy Assistant Secretary, Conservation and Solar Applications.

[FR Doc. 79-17623 Filed 6-6-79; 1:00 pm]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1242-2; OPP-C30134A]

Pesticide Programs; Approval of Application to Conditionally Register Pesticide Product Containing New Active Ingredient

On June 24, 1977, notice was given (42 FR 32294) that Dow Chemical Co., P.O. Box 1706, Midland, MI 48640, had filed an application (EPA File Symbol 464-LUA) with the Environmental Protection Agency (EPA) to register the pesticide product GARLON 3A HERBICIDE, containing 44.4% of the active ingredient triclopyr (3,5,6-trichloro-2-pyridinyloxyacetic acid), as the triethylamine salt, which was not previously registered at the time of submission. Notice of registration is given in accordance with 40 CFR 162.7(d)(2).

This application was conditionally approved May 9, 1979 and the product has been assigned the EPA Registration No. 464-546. GARLON 3A HERBICIDE is classified for general use in the control of woody plants and broadleaf weeds on rights-of-way and industrial sites and

for use in forest site preparation. A copy of the approved label and list of data references used to support registration are available for public inspection in the office of the Federal Register Section, Program Support Division (TS–757), Office of Pesticide Programs, Rm. 401 East Tower, 401 M St., SW., Washington, DC 20460. The data and other information used to support registration, except for the material specifically protected by Section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136) will be available for public inspection in accordance with section 3(c)(2) of FIFRA, within 30 days after the registration date of May 9, 1979. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), EPA, 401 M St., SW, Washington, DC 20460. Such requests should: 1) identify the product by name and registration number and 2) specify the data or information desired.

Dated: June 1, 1979.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 79-17736 Filed 6-6-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1241–5; OPP–30000/12C]

Intent To Conditionally Register a Pesticide Produce Containing Amitraz for Use on Pears

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Notice of Intent to Conditionally Register a Pesticide product Containing Amitraz for Use on Pears and to Not Grant Registration of this Product for Use on Apples; Notice of Availability of Position Document 4.

FOR FURTHER INFORMATION CONTACT: Jeff Kempter, Project Manager, Special Pesticide Review Division, Office of Pesticide Programs (TS-791), EPA, Washington, D.C. 20460 (703/557–7986).

SUPPLEMENTARY INFORMATION: On July 23, 1976, the Environmental Protection Agency (EPA) received an application for registration of a pesticide product (BAAM EC) containing amitraz for use on apples and pears. On April 6, 1977, EPA published in the Federal Register (42 FR 18299), a notice of rebuttable presumption against registration (RPAR) of amitraz based on its determination that amitraz and a metabolite of amitraz had induced cancer in laboratory animals. After issuance of the RPAR, the Agency considered comments submitted by applicant for registration and other persons for the purpose of rebutting the presumption or demonstrating possible benefits of amitraz. The Agency also received and considered comments from the U.S. Department of Agriculture (USDA) on the possible benefits of amitraz.

After reviewing all the submitted information and considering the requirements for full registration under Section 3(c)(5) of FIFRA and for conditional registration of pesticides containing unregistered active ingredients under Section 3(c)(7)(C), the Agency determined that it would conditionally register amitraz for use on pears and would not register that pesticide for use on apples. Notice of this determination was published in the Federal Register on January 12, 1979 (44 FR 2678–2682). That notice, Amitraz Position Document 3, which detailed the Agency's reasons for its determination, and other documents referenced in the Position Document were sent to the FIFRA Scientific Advisory Panel (SAP) and USDA for comment. EPA has received comments from SAP and USDA, as well as from the applicant for registration and other interested persons on its January 12, 1979 Notice of Determination.

After considering all these comments, the Agency has concluded the following with respect to risks and benefits: (1) there is weakly positive evidence that amitraz is a potential human carcinogen; (2) use of amitraz on pears and apples for a short period of time would pose a very small risk of cancer to applicators, bystanders, and the general U.S. population; (3) a bioassay of the carcinogenicity of amitraz on mice submitted by the applicant suffers from deficiencies which make it unreliable for purposes of estimating the risks resulting from exposure to amitraz over a long period of time; (4) use of amitraz on pears may result in significant benefits; and (5) use of amitraz on apples would result in insignificant or speculative benefits.

The Agency has made the following decisions on the pending application for registration of amitraz:

1. The bioassay for carcinogenicity of amitraz in mice does not satisfy the data requirements for full registration under Section 3(c)(5). Therefore, the Agency cannot consider granting full registration for use of amitraz on either apples or pears until another bioassay has been conducted.

2. The Agency cannot grant conditional registration of amitraz for use on apples because the requirements of Section 3(c)(7)(C) of FIFRA have not been met. That section permits conditional registration of pesticide products containing unregistered active ingredients only if such registration would not cause any unreasonable adverse effects and would be in the public interest. Because use of amitraz on apples would result in a small carcinogenic risk to people and insignificant benefits, the Agency concludes that such use would cause unreasonable adverse effects and would not be in the public interest.

3. The Agency will conditionally register amitraz for restricted use on pears for four years under Section 3(c)(7)(C) of FIFRA. The Agency has concluded that such registration would not cause any unreasonable adverse effects and would be in the public interest because it would result in substantial benefits and very small risks.

This registration will be subject to certain terms and conditions. Label directions will specify that only certified applicators may spray amitraz, and will also require a 7-day preharvest interval, protective clothing for applicators, and a prohibition against reentry until the treated leaves are dry and in any event until 24 hours after application. Also, additional benefits data and another mouse oncogenic bioassay must be submitted within 4 years, with annual reports of progress and test results. If the registrant does not meet these stipulations, the conditional registration may be cancelled.

The Agency will issue a conditional registration of amitraz for use on pears after the applicant agrees in writing to the conditions and terms specified in this document and agrees to satisfy all of the Agency's data requirements.

Position Document 4 (PD 4) follows this Notice of Intent to Conditionally Register Pesticide Products Containing Amitraz for Use on Pears. It explains in detail the Agency's analysis of the comments submitted by the USDA, SAP, and other interested parties regarding Position Document 3 (PD 3). Appendix A of PD 4 contains the SAP and USDA comments in their entirety. PD 3 sets forth the Agency's reasons and factual bases for the regulatory actions proposed in the January 12, 1979, Notice of Determination. PD 3 and PD 4 provide the reasons and factual bases for the decisions and regulatory actions initiated in today's notice.

Dated: June 4, 1979.

Steven D. Jellinek,

Assistant Administrator for Toxic Substances.

[FR Doc. 79-17701 Filed 6-6-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1241-6; PF-130]

Pesticide Programs; Filing of Pesticide/Food Additive Petitions

Pursuant to sections 408(d)(1) and 409(b)(5) of the Federal Food, Drug, and Cosmetic Act, the Environmental Protection Agency (EPA) gives notice that the following petitions have been submitted to the Agency for consideration.

PP 9F2196. BASF Wyandotte Corp., 100 Cherry Hill Rd., PO Box 181, Parsippany, NJ 07054. Proposes that 40 CFR 180.363 be amended by establishing tolerances for residues of the herbicide fluchloralin [*N*-(2-chloroethyl)-a,a,a-trifluoro-2,6-dinitro-*N*-propyl-p-toluidine] in or on the raw agricultural commodities peanuts and peanut hay at 0.05 part per million (ppm), and peanut hulls at 0.1 ppm. The proposed analytical method for determining residues is by gas chromatography using an electron capture detector. PM25—Mr. Robert Taylor, 202/755-2196.

FAP 9H5216. Chevron Chemical Co., 940 Hensley St., Richmond, CA 94804. Proposes that 21 CFR 193.10 be amended by establishing a regulation outlining the safe use of the insecticide acephate (*O,S*-dimethyl acetylphosphoramidothioate) with the following prescribed conditions.

(a) Application shall be limited solely to spot and/or crack and crevice treatment in food handling establishments where food and food products are held, processed, prepared or served. Spray concentration shall be limited to a maximum of 1.0% active ingredient. For crack and crevice treatments, equipment capable of delivering a pin-stream of insecticide shall be used. For spot treatments, a coarse, low-pressure spray shall be used to avoid atomization or splashing of the spray. Contamination of food-contact surfaces shall be avoided.

(b) To assure safe use of the insecticide, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling. PM16—Mr. William Miller, 202/755-0315.

Interested persons are invited to submit written comments on these petitions to the Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, EPA, Rm. 401, East Tower, 401 M St., SW., Washington, DC 20460. Inquiries concerning these petitions may be directed to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, at the above address, or by telephone at the numbers cited. Written comments should bear a notation indicating the petition number to which the comments pertain. Comments may be made at any time while a petition is pending before the Agency. All written comments filed pursuant to this notice will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4:00 p.m. Monday through Friday.

Dated: May 29, 1979.

Douglas D. Campt,

Director, Registration Division.

[FR Doc. 79-17702 Filed 6-6-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1241-7; PF-132]

Pesticide Programs; Filing of Pesticide Petitions

Pursuant to section 408(d)(1) of the Federal Food, Drug, and Cosmetic Act, the Environmental Protection Agency (EPA) gives notice that the following petitions have been submitted to the Agency for consideration.

PP 9F2190. Sandoz, Inc., 480 Camino del Rio South, Suite 204, San Diego, CA 92108. Proposes that 40 CFR 180.356 be amended by establishing tolerances for the combined residues of the herbicide norflurazon [4-chloro-5-(methylamino)-2-(a,a,a-trifluoro-*m*-tolyl)-3(2*H*)-pyridazinone] and its desmethyl metabolite [4-chloro-5-amino-2-(a,a,a-trifluoro-*m*-tolyl)-3(2*H*)-pyridazinone] in or on the raw agricultural commodities peanuts at 0.6 part per million (ppm); soybeans at 0.5 ppm; soybean seed, peanut seed, and peanut shells at 0.2 ppm. The proposed analytical method for determining residues is by gas chromatographic analysis method. PM23–Ms Willa Garner, 202/755–1397.

PP 9F2197. Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105. Proposes that 40 CFR 180 be amended by establishing tolerances for the residues of the herbicide oxyfluorfen [2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-trifluoro-methyl) benzene] in or on the raw agricultural commodities almonds, stone fruits, and grapes at 0.05 ppm and almond hulls at 0.10 ppm. The proposed analytical method for determining residues is by gas-liquid chromatographic procedure using an electron capture device. PM25–Mr. Robert Taylor, 202/755–2196.

PP 9F2208. Ciba-Geigy Corp., PO Box 11422, Greensboro, NC 27409. Proposes that 40 CFR 180.368 be amended by establishing tolerance for the combined residues of the herbicide metolachlor [2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl) acetamide] and its metabolites determined as [2-[2-ethyl-6-methylphenyl) amino]-1-propanol] and [4-[2-ethyl-6-methylphenyl]-2-hydroxy-5-methyl-3-morpholinone), each expressed as parent metolachlor, in or on the raw agricultural commodity potatoes at 0.1 ppm. The proposed analytical method for determining residues is by gas chromatography with a Coulson N2 detector. PM23.

Interested persons are invited to submit written comments on these petitions to the Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, EPA, Rm. 401, East Tower, 401 M St., SW, Washington, DC 20460. Inquiries concerning these petitions may be directed to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, at the above address, or by telephone at the numbers cited. Written comments should bear a notation indicating the petition number to which the comments pertain. Comments may be made at any time while a petition is pending before the Agency. All written comments filed pursuant to this notice will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4:00 p.m. Monday through Friday.

Dated: May 29, 1979.

Douglas D. Campt,

Director, Registration Division.

[FR Doc. 79-17703 Filed 6-6-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1242-1; PF-131]

Pesticide Programs; Filing of Pesticide/Food/Feed Additive Petitions

Pursuant to sections 408(d)(1) and 409(b)(5) of the Federal Food, Drug, and Cosmetic Act, the Environmental Protection Agency (EPA) gives notice that the following petitions have been submitted to the Agency for consideration.

PP 9F2192. ICI Americas Inc., Concord Pike and New Murphy Road, Wilmington, DE 19897. Proposes that 40 CFR 180.378 be amended by establishing tolerances for residues of the insecticide permethrin [(3-phenoxyphenyl)-methyl

(±)-cis, trans-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate] in or on the raw agricultural commodities lettuce and cabbage at 1.0 part per million (ppm). The proposed analytical method for determining residues is by gas-liquid chromatography procedure using an electron capture detector. PM17-Franklin Gee, (202/426-9425).

FAP 9H5212. ICI Americas Inc. Proposes that 21 CFR 561 be amended by permitting residues of the insecticide permethrin in or on the feed commodities lettuce and cabbage refuse at 50 ppm. PM17.

PP 9F2195. Zoecon Corp., 975 California Ave., Palo Alto, CA 94304. Proposes that 40 CFR 180.359 be amended by establishing a tolerance for residues of the insert growth regulator methoprene [isopropyl (*E,E*)-11-methoxy-3,7,11-trimethyl-2,4-dodecadienoate] in or on the raw agricultural commodity mushrooms at 3.0 ppm. The proposed analytical method for determining residues is by gas-liquid chromatography with flame ionization detector. PM17.

PP 9F2196. FMC Corp., 2000 Market St., Philadelphia, PA 19103. Proposes that 40 CFR 180.378 be amended by establishing tolerances for residues of the insecticide permethrin in or on the raw agricultural commodities soybeans, poultry, and eggs at 0.05 ppm. The proposed analytical method for determining residues is by gas chromatography with electron capture detector. PM17.

FAP 9H5215. FMC Corp. Proposes that 21 CFR 193 be amended by permitting residues of the insecticide permethrin in or on the food commodity soybean oil at 0.2 ppm. PM17.

FAP 9H5215. FMC Corp. Proposes that 21 CFR 561 be amended by permitting residues of the insecticide permethrin in or on the feed commodity soybean hulls at 0.5 ppm. PM17.

PP 9F2201. Union Carbide Corp., 2001 Jefferson Davis Highway, Suite 401, Arlington, VA 22202. Proposes that 40 CFR 180.269 be amended by establishing tolerances for the combined residues of the nematocide aldicarb [2-methyl-2-(methylthio) propionaldehyde *O*-(methyl-carbamoyl)oxime] and its cholinesterase-inhibiting metabolites 2-methyl-2-(methylsulfinyl) propionaldehyde *O*-(methylcarbamoyl)oxime and 2-methyl-2-(methylsulfonyl) propionaldehyde *O*-(methylcarbamoyl)oxime in or on the raw agricultural commodities citrus (grapefruits, lemons, and limes) at 0.3 ppm. The proposed analytical method for determining residues is by gas chromatography utilizing a flame photometric detector specific for sulfur-containing compounds. PM12—Mr. Frank Sanders, (202/426-9425).

FAP 9H5218. Union Carbide Corp. Proposes that 21 CFR 561.30 be amended by permitting residues of the nematocide aldicarb in or on the animal feed citrus pulp at 0.6 ppm. PM12.

Interested persons are invited to submit written comments on these petitions to the Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, EPA, Rm. E-401, 401 M St., SW, Washington, DC 20460. Inquiries concerning these petitions may be directed to the designated Product Manager (PM), Registration Division (TS-767); Office of Pesticide Program, at the above address, or by telephone at the numbers cited. Written comments should bear a notation indicating the petition number to which comments pertain. Comments may be made at any time while a petition is pending before the Agency. All written comments filed pursuant to this notice will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4:00 p.m. Monday through Friday.

Dated: June 4, 1979.

Douglas D. Campt,

Director, Registration Division.

[FR Doc. 79-17735 Filed 6-6-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1241-8; OPP-C31029]

Pesticide Programs; Receipt of Application to Conditionally Register Pesticide Product Entailing a Changed Use Pattern

Zoecon Corp., 975 California Ave., Palo Alto, CA 94304, has submitted to the Enironmental Protection Agency (EPA) an application to conditionally register the product KABAT TOBACCO PROTECTOR (EPA File Symbol 20954-RL) containing 5.0% of the active ingredient methoprene [isopropyl (*E,E*)-11-methoxy-3,7,11-trimethyl-2,4-dodecadienoate]. The application received from Zoecon Corp. proposes that the use pattern of this pesticide be changed to include use on stored tobacco to control cigarette beetle. The application also proposes that the product be classified for general use.

Notice of receipt of this application does not indicate a decision by the Agency on the application. Interested persons are invited to submit written comments on this application to the Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, EPA, Rm. EB-47, 401 M St., SW, Washington, DC 20460. The comments must be received within 30 days from the date of publication of this notice in the Federal Register and should bear a notation indicating the EPA File Symbol "20954-RL". Comments received within the specified time period will be considered before a final decision is made; comments received after the specified time period will be considered only to the extent possible without delaying processing of the application. Specific questions concerning this application and the data submitted should be directed to Product Manager (PM) 17, Mr. Franklin Gee, Registration Division (TS-767), Office of Pesticide Programs, at the above address or by telephone at 202/426-9425. The label furnished by Zoecon Corp., as well as all written comments filed pursuant to this notice will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4:00 p.m. Monday through Friday.

Notice of approval or denial of this application to register KABAT TOBACCO PROTECTOR will be announced in the Federal Register. Except for such material protected by Section 10 of the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA) as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136), the test data and other information submitted in support of registration as well as other scientific information deemed relevant to the registration decision may be made available after approval under the provision of the Freedom of Information Act. The procedures for requesting such data will be given in the Federal Register if an application is approved.

Dated: June 4, 1979.

Douglas D. Campt,

Director, Registration Division.

[FR Doc. 79-17734 Filed 6-6-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1241-2]

Summit County, Ohio, Nonattainment Designation; Additional Information

ACTION: Request for public comments.

SUMMARY: The Environmental Protection Agency (EPA) requests comments on additional information which supports EPA's designation of a portion of Summit County as an area which has not attained the national ambient air quality standards (NAAQS) for sulfur dioxide. The additional information consists of monitoring data collected and submitted to EPA by industry in Akron, Ohio. EPA's designation,

published October 5, 1978 (43 FR 45993), was based on air quality dispersion modeling. The monitoring data confirms that designation.

DATE: Comments should be submitted by June 22, 1979.

ADDRESSES: Send Comments to: Debra Costello, Air Programs Branch, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Data is available for inspection at the above address during normal working hours.

SUPPLEMENTARY INFORMATION: On March 3, 1978 the Administrator of EPA published a list of nonattainment areas for the nation pursuant to Section 107 of the Clean Air Act. 43 FR 8962. Following a sixty-day comment period, the Administrator repromulgated the designations list with modifications based on comments. 43 FR 45993. Summit County, Ohio, was listed among those areas of the country which had not yet achieved the NAAQS for sulfur dioxide. The Summit County designation was based on air quality dispersion modeling which demonstrated that air quality in Summit County is poorer than the national standards.

EPA received numerous comments that existing air quality monitors in Summit County showed attainment. The comments contended therefore that EPA should designate Summit County an attainment area based on the monitoring and that modeling analyses should not be used as the basis for determining the designation. EPA responded that Section 171(2) specifically authorized the use of modeling analyses to make area designations. In addition, EPA noted the established inadequacies of most monitoring systems.

EPA had performed dispersion modeling analyses of Summit County to set emission limitations for sulfur dioxide pollution sources in the County. Several industries in the Akron area of Summit County challenged EPA's modeling results in the United States Court of Appeals for the Sixth Circuit arguing that the EPA's modeling did not accurately calculate the pollution levels in the area and that available monitoring data showed attainment of the national standards. At the same time, a group of Akron industries were undertaking a "Summit County RAM Modeling and Monitoring Study" which involves setting out twelve continuous monitors in Akron, collecting the monitoring data and making comparisons with the model analyses. The monitors began recording pollution concentrations in October of 1978.

The first quarter (October–December, 1978) of this data was submitted to EPA on April 18, 1979. The first quarter data show that pollution levels significantly above the 24-hour primary health standard of 365 $\mu g/m3$ are being recorded at several locations in Akron. Pollution concentration of 455, 452, 426, 410, and 394 have been recorded at three locations in the Akron area. Since more than one 24-hour pollution measurement above the 365 $\mu g/m3$ safety level in one year is a violation of the national standard, violations have been measured at one monitoring site and exceedances of the standard or near exceedances have been measured at three other sites. These levels have been recorded at locations either where monitors have not previously been sited or where existing monitors had not previously recorded levels above the standard. Before the new monitors were installed, levels above the national standard had not been measured in Akron.

Since these data support EPA's designation of Summit County and were not available when the designations were made, EPA is now requesting comment on the data as additional support for the nonattainment designation. The basis for the designation remains EPA's sulfur dioxide modeling analyses which show that air quality in Akron is poorer than the national standards. The additional data only confirm that designation.

Dated: May 31, 1979.

John McGuire,
Regional Administrator.

Pollution Concentrations Recorded in Akron, Ohio: October 1978–December 1978

Monitoring site	Ppm*	µg/m3 at 1013.2mb 298 K	Mo/Day/Hr
PPG Pumphouse	.171	455	12/14/10
SR Avenue	.160	426	12/5/17
SR Avenue	.154	410	12/15/02
SR Avenue	.170	452	12/16/02
Barberton H.S.	.137	364	12/16/08
East H.S.	.139	395	10/8/24

*The 24-hour concentrations have been calculated on a 24-hour running average from hourly recorded pollution concentrations. A running average of hourly recordings is used to determine a 24-hour pollution level pursuant to EPA guidelines for the evaluation of air quality monitoring data. Guidelines for the Interpretation of Air Quality Standards, February, 1977.

[FR Doc. 79-17737 Filed 6-6-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1249-6; OPP-50536]

State-FIFRA Issues Research and Evaluation Group (SFIREG); Working Committee on Certification; Open Meeting

AGENCY: Environmental Protection Agency (EPA), Office of Pesticide Programs.

ACTION: Notice of Open Meeting.

SUMMARY: There will be a two-day meeting of the Working Committee on Certification of the State FIFRA Issues Research and Evaluation Group (SFIREG) on Wednesday and Thursday, June 13 and 14, 1979, beginning each day at 8:30 a.m. and ending by noon on June 14th. The meeting will be held at the Radison-Muehlebach Hotel, Kansas City, Missouri, Telephone: (816) 471-1400, and will be open to the public.

FOR FURTHER INFORMATION CONTACT:
Mr. Gary Gingery, Montana Department of Agriculture, Helena, Montana, Telephone: (406) 499-2144; or
Mr. Andrew Caraker, Office of Pesticide Programs (TS-770—M), EPA, 401 M Street SW., Washington, D.C. 20460, Telephone: (202) 472-9403.

SUPPLEMENTARY INFORMATION: This is the third meeting of the Working Committee on Certification. The meeting will be concerned with the following topics:

1. Criteria for Guidelines for Industry-sponsored applicator training;
2. Cost criteria for funding formula for grants to State Lead Agencies;
3. Re-certification of applicators:
   a. Is it needed?
   b. If so, how should it be accomplished?
4. Establish priorities for training material needs;
5. Follow up on proposed record keeping systems for applicator certification; and
6. Other topics as appropriate.

Dated: June 1, 1979.

Edwin L. Johnson,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 79-17602 Filed 6-6-79; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL MARITIME COMMISSION

Public Access to Financial Statements

AGENCY: Federal Maritime Commission.

ACTION: Procedure for Public Access to Financial Statements.

SUMMARY: The Federal Maritime Commission has adopted a procedure for the inspection or copying of financial reports filed by Commission employees pursuant to the Ethics in Government Act of 1978. Reports may be inspected in the Office of the Secretary, and copies may be purchased by filing requests with the Secretary. A fee of 5¢ per page plus postage with be assessed to cover the cost of reproduction or mailing. Also available for inspection or copying are the respective official position descriptions for each employee who has filed a financial statement.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Office of the Secretary, Federal Maritime Commission, 1100 L Street, N.W., Room 11101, Washington, D.C. 20573.

By the Commission May 30, 1979.

Francis C. Hurney,

Secretary.

[FR Doc. 79-17713 Filed 6-6-79; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 79-59]

Stute International, Inc.—Independent Ocean Freight Forwarder Application; Order of Investigation and Hearing

Stute International, Inc., filed an application for a license as an independent ocean freight forwarder. During the course of the Commission's investigation of the applicant, it was disclosed that the firm may not meet the definition of an independent ocean freight forwarder since, through its parent company, it appeared to be connected with a consignee of goods from the United States on at least 51 shipments from the United States. Furthermore, the firm was also connected to a party which appeared to be involved in illegal rebating practices on at least 51 shipments in the foreign commerce of the United States and thus the applicant firm may not otherwise be "fit" to be licensed.

Section 1, Shipping Act, 1916, requires that applicants for licenses or licensees be independent of shipper or consignee connections. Specifically the statute defines an independent ocean freight forwarder as "* * * a person carrying on the business of forwarding * * * who is not a shipper or consignee or a seller or purchaser of shipments to foreign countries, nor has any beneficial interest therein, nor directly or indirectly controls or is controlled by such shipper or consignee or by any person having such a beneficial interest."

Section 44(b) of the Shipping Act, 1916, requires that applicants be found to be fit, willing and able properly to carry on the business of forwarding and to conform to the provisions of the Shipping Act, 1916, as amended, and the requirements, rules and regulations of the Commission issued thereunder. Otherwise, such application shall be denied.

The applicant's connection with a consignee of goods from the United States appears to prevent it from meeting the definition of an independent ocean freight forwarder as set forth in the Shipping Act, 1916, and the Commission's General Order 4. Its connection with a firm, which was possibly engaged in illegal rebating practices, also brings into question the issue of whether the applicant meets the standard of "fitness" required for licensing under section 44(b), Shipping Act, 1916.

The Commission's investigation revealed that the applicant firm is owned 100 percent by Stute-Verkehrs GmbH which in turn is owned 100 percent by Kloeckner & Co. Furthermore, there is at least one joint officer/director, Heinrich Joost, of both Kloeckner & Co., and the applicant firm. Kloeckner & Co. owns 99 percent of the stock of Chemie-Mineralien KG-Bremen (Chemie). Chemie is shown as a consignee of merchandise from the United States on at least 51 shipments for which illegal rebates were paid.

Pursuant to section 510.8 of the Commission's General Order 4 (46 CFR 510.8), the Commission on February 28, 1979, advised Stute International, Inc., of its intent to deny the application for the reasons set out above. By letter dated March 15, 1979, Stute International, Inc., requested the opportunity to show at a hearing that denial of its application is unwarranted.

Now therefore it is ordered, That pursuant to sections 1, 22 and 44 (46 U.S.C. 801, 821 and 841b) of the Shipping Act, 1916, and section 510.8 of the Commission's General Order 4 (46 CFR 510.8), a proceeding is hereby instituted to determine (1) whether Stute International, Inc., meets the definition of an independent ocean freight forwarder as set forth in the Shipping Act, 1916, and (2) whether Stute International, Inc., is otherwise fit to be licensed as an independent ocean freight forwarder.

It is further ordered, that Stute International, Inc., be made respondent in this proceeding and that the matter be assigned for public hearing before an Administrative Law Judge at a date and place to be determined by the Administrative Law Judge presiding, but in no event, later than December 3, 1979. The hearing shall include oral testimony and cross-examination at the discretion of the presiding officer only upon a showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions or other documents, or that the nature of the matter in issue is such that an oral hearing and cross-examination are otherwise necessary for the development of an adequate record.

It is further ordered, that this order be published in the **Federal Register** and that a copy thereof be served upon the respondent.

It is further ordered, that any person other than the respondent and the Commission's Bureau of Hearing Counsel having an interest and desiring to participate in this proceeding may do so by filing a timely petition for Leave to Intervene pursuant to section 510.72 of the Commission's rules.

It is further ordered, that all further notices issued by or on behalf of the Commission in this proceeding, including notice of time and place of hearing or of prehearing conference, shall be mailed directly to all parties of record.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 79-17715 Filed 6-6-79; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

Gulf Resources & Chemical Corp.; Early Termination of Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the 30-day waiting period of the premerger notification rules.

SUMMARY: Gulf Resources & Chemical Corporation is granted early termination of the 30-day waiting period provided by law and the premerger notification rules with respect to its proposed acquisition of securities of International Systems & Controls Corporation. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted both by golf Resources and ISCC. Neither agency intends to take any

action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: May 30, 1979.

FOR FURTHER INFORMATION CONTACT:

Malcolm R. Pfunder, Assistant Director for Evaluation, Bureau of Competition, Room 394, Federal Trade Commission, Washington, D.C. 20580 (202–523–3404).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act and § 803.11 of the rules implementing the Act permit the agencies, in individual cases, to terminate this waiting period prior to its expiration and to publish notice of this action in the **Federal Register**.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 79-17574 Filed 6-6-79; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

Advisory Committee on Accreditation and Institutional Eligibility; Amended Meeting

AGENCY: Department of Health, Education, and Welfare, Office of Education.

ACTION: Revision to Notice of Public Meeting.

SUMMARY: This notice sets forth changes in time and agenda items of the next public meeting of the Advisory Committee on Accreditation and Institutional Eligibility. Notice of the meeting was published previously in the **Federal Register** on April 30, 1979, 44 FR 25270–25271. Notice of these meetings is required under the Federal Advisory Committee Act (5 U.S.C. Appendix 1, 10(a)(2)). This document is intended to notify the general public of its opportunity to attend and participate.

DATES: June 20, 1979, 9:00 a.m. to 4:45 p.m., local time; June 21, 9:00 a.m. to 6:00 p.m.; and June 22, 9:00 a.m. to 2:00 p.m. Following the meeting, the Policy Review Subcommittee of the Advisory Committee will meet from 2:00 p.m. to 4:00 p.m., June 22. Requests for oral presentations regarding any of the matters added in this notice must be received on or before June 8, 1979. All written material which a party wishes to file may be submitted at any time and will be considered by the Advisory Committee.

ADDRESS: Old Town Holiday Inn, 480 King Street, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: John R. Proffitt, Director, Division of Eligibility and Agency Evaluation, Office of Education, Room 3030, ROB 3, 400 Maryland Avenue SW., Washington, D.C. 20202 (202/245–9873).

The schedule of the meeting is revised as noted above. In addition, the review of the petition of the Commission on Colleges, Southern Association of Colleges and Schools is removed from the agenda. The following policy matters affecting accreditation and institutional eligibility are added to the agenda:

Review of the Federal Eligibility System, including a summary by the Division of Eligibility and Agency Evaluation; excerpts from the GAO Report *What Assurances Does Office of Education's Eligibility Process Provide?*; excerpts from the report of the Carnegie Council on Policy Studies in Higher Education *Fair Practices in Higher Education: Rights and Responsibilities of Students and Their Colleges in a Period of Intensified Competition for Enrollments*; and the Advisory Committee recommendations regarding reauthorization of the Higher Education Act of 1965

Review of the Recognition Process, including an overview and a history of the development of revisions to the Criteria for Recognition

Also, the Policy Review Subcommittee of the Advisory Committee will meet from 2:00 p.m. to 4:00 p.m. on June 22. The subcommittee is established under the authority of the Advisory Committee's Charter. The subcommittee identifies policy and procedural issues affecting accreditation and institutional eligibility, reviews potential solutions and recommends appropriate action to the Advisory Committee. The meeting on June 22 will identify policy issues which have arisen during the Advisory Committee meeting, will establish priorities for the future review of these issues and will consider alternative solutions to certain policy matters. The meeting is open to the public.

Requests for oral presentations before the Committee or the Subcommittee concerning new matters published in this notice should be submitted in writing to the Director, Division of Eligibility and Agency Evaluation, Office of Education, Room 3030, ROB 3, 400 Maryland Avenue, S.W., Washington, D.C. 20202. Requests should include the names of all persons seeking an appearance, the party or parties which they represent (if applicable), and the purpose for which the presentation is requested. Requests must be received by the Division of Eligibility and Agency Evaluation on or before June 8, 1979. Time constraints may limit oral presentations. However, all additional written material that a party wishes to file will be considered by the Advisory Committee.

Records shall be kept of all Committee proceedings and shall be available for public inspection at the Division of Eligibility and Agency Evaluation.

Signed at Washington, D.C. on May 25, 1979.

John R. Proffitt,

Director, Division of Eligibility and Agency Evaluation, Office of Education.

[FR Doc. 79-17626 Filed 6-6-79; 8:45 am]

BILLING CODE 4110-02-M

Health Resources Administration

Determination of Population of Health Service Areas

Section 1516 of the Public Health Service Act (included in the National Health Planning and Resources Development Act of 1974, Pub. L. 93–641), authorizes the Secretary of Health, Education, and Welfare to make grants (hereinafter referred to as "planning grants") to health systems agencies to assist them in meeting their costs of operation. The amount of the planning grant to each health systems agency, as provided in the regulations governing this program (42 CFR Part 122, Subpart C), is determined in accordance with a formula set forth in the regulations, and is based in part upon a determination by the Secretary of the population of the health service area to be served by each agency. Section 122.205 of the governing regulations provides that the Secretary will determine the population of the areas based upon the latest available estimate from the Department of Commerce, and will publish annually in the **Federal Register** a list of all health service areas and their populations. The populations of the health service areas will be published prior to the final allocation of funds in each fiscal year. Pursuant to section 1536 of the Act, certain States (District of Columbia, Rhode Island and Hawaii) as well as the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, the Northern Mariana Islands and American Samoa do not have health service areas established within them or health systems agencies designated for them

but are nonetheless eligible to receive planning grants based in part upon their population. This Notice sets forth the population of these areas as of July 1, 1976, on the same basis as for health service areas.

The Secretary of Health, Education, and Welfare has determined, for puposes of the determination of planning grants for health systems agencies for Fiscal Year 1979, that the population of the health service areas, based on the latest available estimates of the Department of Commerce, are to be derived from the July 1, 1976 estimates which appear in Population Reports, Series P–25, Nos. 731 and 740–789, issued by the Bureau of Census. These Series P–25 Population Reports furnish the latest available estimates for the population of States and territories by counties, incorporated places, and selected minor jurisdictions (known as "revenue-sharing estimates") which are on a comparable, uniform, and consistent basis, as needed for the derivation of population totals for health service areas. Data from the Department of Treasury, Office of Revenue Sharing "Tribe List and Extract" were used to make adjustments of the population of health service areas in Arizona and the health service area that includes portions of Arizona, New Mexico, and Utah.

Accordingly, the Secretary has made the following determination of population of the health service and other areas as described above.

Dated: May 25, 1979.

Henry A. Foley,

Administrator, Health Resources Administration.

Health Service Area Population for Purposes of Determination of Planning Grants Fiscal Year 1979*

	Health service area	Population
Alabama	1	702,359
	2	218,141
	3	660,026
	4	470,866
	5	660,073
	6	676,904
See GA. No. 5	(7)	
Alaska	1	50,918
	2	275,945
	3	83,769
American Samoa	Sec. 1536	30,100
Arizona	1	1,383,887
	2	571,055
	3	144,543
	4	132,830
Incl. Utah No. 2–5, 809 and N. Mexico No. 3–49,080.		
	5	110,891
Arkansas	1	638,118
	2	561,201
	3	459,506
	4	458,026
California	1	577,510
	2	1,102,550
	3	834,723
	4	1,467,929
	5	1,869,931
	6	707,540
	7	1,205,367
	8	886,510
	9	1,160,332
	10	737,762
	11	6,997,366
	12	1,266,360
	13	1,755,619
	14	1,710,912
Colorado	1	1,757,166
	2	577,665
	3	241,124
Connecticut	1	632,391
	2	591,756
	3	499,949
	4	902,555
	5	476,542
Delaware	1	581,832
District of Columbia	Sec. 1536	700,130
Florida	1	790,813
	2	564,010
	3	910,703
	4	1,492,181
	5	814,970
	6	797,046
	7	646,560
	8	850,992
	9	1,491,743
Georgia . . . See Tenn. No. 3.	(1)	
	2	522,387
	3	2,056,256
Incl. S. Car. No. 5–95,671.	4	592,842
Incl. Ala. No. 7–46,614	5	775,689
	6	532,271
	7	548,866
Guam	Sec. 1536	95,900
Hawaii	Sec. 1536	883,523
Idaho	1	833,067
Illinois	1	570,555
	2	702,646
	3	569,177
	4	781,883
	5	805,695
	6	3,074,064
	7	2,816,470
	8	803,866
	9	456,932
Incl. Iowa No. 3–191,591	10	429,711
See Mo. No. 3	11	
Indiana	1	1,921,462
	2	2,122,636
	3	1,268,916
Iowa. Incl. Neb. No. 4–16,229.	1	2,513,374
See Neb. No. 3	(2)	
See Ill. No. 10	(3)	
Kansas	1	428,509
	2	581,932
	3	812,906
See Mo. No. 1	(4)	
Kentucky	1	1,746,464
	2	1,435,366
See Ohio No. 1	(3)	
Louisiana	1	1,422,979
	2	1,372,693
	3	1,094,515
	1	1,072,568
Maine	1	314,927
Maryland	2	573,819
	3	815,933
	4	2,144,489
	5	276,128
Massachusetts	1	821,235
	2	675,267
	3	475,981
	4	2,196,510
	5	977,766
	6	644,220
Michigan	1	4,711,127
	2	676,507
	3	755,074
	4	1,026,467
	5	586,367
	6	748,739
	7	304,271
	8	280,194
Minnesota:		
See N.D. No. 2	(1)	
Incl. Wisc. No. 7–192,721	2	470,135
See N.D. No. 3	(3)	
	4	420,594
	5	1,935,846
	6	528,040
	7	366,201
Mississippi	1	2,205,499
Missouri:		
Incl. Kan. No. 4–478,786	1	1,237,966
	2	1,084,336
Incl. Ill. No. 11–677,821	3	2,363,801
	4	569,949
	5	466,736
Montana	1	755,436
Nebraska	1	618,983
	2	371,723
Incl. Iowa No. 2–165,389	3	730,545
See Iowa No. 1	(4)	
Nevada	1	366,954
	2	345,867
New Hampshire	1	827,000
New Jersey	1	1,343,308
	2	1,970,756
	3	572,744
	4	2,012,467
	5	1,485,217
New Mexico	1	1,121,788
See Ariz. No. 4	(2)	
New York	1	1,749,433
	2	1,212,888
	3	1,428,886
Incl. Pa. No. 8–103,980	4	420,633
	5	1,255,731
	6	1,909,637
	7	7,422,807
	8	2,677,206
North Carolina	1	936,884
	2	1,037,536
	3	922,262
	4	744,633
	5	830,342
	6	688,440
North Dakota	1	280,414
Incl. Minn. No. 1–158,914	2	310,858
Incl. Minn. No. 3–193,627	3	366,437
Northern Mariana Islands	Sec. 1536	15,700
Ohio . . . Incl. Ky. No. 2–253,902.	1	1,706,719
	2	1,114,240
	3	400,616
	4	1,005,391
	5	1,502,699
	6	701,458
	7	828,828
	8	669,590
	9	2,233,390
	10	758,975
Oklahoma	1	2,767,182
Oregon	1	1,016,682
	2	566,915
	3	310,299
Pennsylvania	1	3,777,037
	2	902,091
	3	907,747
	4	1,334,045
	5	729,108
	6	2,903,292
	7	758,647
See N.Y. No. 4	(8)	
	9	495,103
Puerto Rico	1	3,205,000
Rhode Island	Sec/ 1536	939,420
South Carolina	1	756,729
	2	762,609
	3	569,303
	4	629,913
See Ga. No. 4	(9)	
South Dakota	1	695,799
Tennessee:		
Incl. Va. No. 8–85,934	1	473,263
	2	772,807
Incl. Ga. No. 1–88,224	3	553,879
	4	1,370,624

Health Service Area Population for Purposes of Determination of Planning Grants Fiscal Year 1979*—Continued

	Health service area	Population
	6	748,739
	7	304,271
	8	280,194
Minnesota:		
See N.D. No. 2	(1)	
Incl. Wisc. No. 7–192,721	2	470,135
See N.D. No. 3	(3)	
	4	420,594
	5	1,935,846
	6	528,040
	7	366,201
Mississippi	1	2,205,499
Missouri:		
Incl. Kan. No. 4–478,786	1	1,237,966
	2	1,084,336
Incl. Ill. No. 11–677,821	3	2,363,801
	4	569,949
	5	466,736
Montana	1	755,436
Nebraska	1	618,983
	2	371,723
Incl. Iowa No. 2–165,389	3	730,545
See Iowa No. 1	(4)	
Nevada	1	366,954
	2	345,867
New Hampshire	1	827,000
New Jersey	1	1,343,308
	2	1,970,756
	3	572,744
	4	2,012,467
	5	1,485,217
New Mexico	1	1,121,788
See Ariz. No. 4	(2)	
New York	1	1,749,433
	2	1,212,888
	3	1,428,886
Incl. Pa. No. 8–103,980	4	420,633
	5	1,255,731
	6	1,909,637
	7	7,422,807
	8	2,677,206
North Carolina	1	936,884
	2	1,037,536
	3	922,262
	4	744,633
	5	830,342
	6	688,440
North Dakota	1	280,414
Incl. Minn. No. 1–158,914	2	310,858
Incl. Minn. No. 3–193,627	3	366,437
Northern Mariana Islands	Sec. 1536	15,700
Ohio . . . Incl. Ky. No. 2–253,902.	1	1,706,719
	2	1,114,240
	3	400,616
	4	1,005,391
	5	1,502,699
	6	701,458
	7	828,828
	8	669,590
	9	2,233,390
	10	758,975
Oklahoma	1	2,767,182
Oregon	1	1,016,682
	2	566,915
	3	310,299
Pennsylvania	1	3,777,037
	2	902,091
	3	907,747
	4	1,334,045
	5	729,108
	6	2,903,292
	7	758,647
See N.Y. No. 4	(8)	
	9	495,103
Puerto Rico	1	3,205,000
Rhode Island	Sec/ 1536	939,420
South Carolina	1	756,729
	2	762,609
	3	569,303
	4	629,913
See Ga. No. 4	(9)	
South Dakota	1	695,799
Tennessee:		
Incl. Va. No. 8–85,934	1	473,263
	2	772,807
Incl. Ga. No. 1–88,224	3	553,879
	4	1,370,624

Health Service Area Population for Purposes of Determination of Planning Grants Fiscal Year 1979[1]—Continued

	Health service area	Population
	6	[illegible]
	8	[illegible]
Texas	1	[illegible]
	2	[illegible]
	3	[illegible]
	4	[illegible]
	5	2,660,067
	6	1,260,601
	7	792,571
	8	1,131,167
	9	1,236,573
	10	660,766
	11	2,757,470
	12	320,060
Trust Territory of the Pacific Islands.	Sec. 1526	108,000
Utah	1	1,226,142
See Ariz. No. 4	(2)	
Vermont	1	480,000
Virginia	1	647,777
	2	1,827,135
	3	1,660,126
	4	521,142
	5	1,260,629
See Tenn. No. 1	(3)	
Virgin Islands	Sec. 1526	84,000
Washington	1	2,108,008
	2	660,000
	3	431,000
	4	477,205
West Virginia	1	1,852,160
Wisconsin	1	707,551
	2	1,700,557
	3	460,007
	4	602,202
	5	602,207
	6	570,446
See Minn. No. 2	(7)	
Wyoming	1	330,616
Total	218	218,405,574

[1] Population based on Bureau of the Census "revenue-sharing" estimates for July 1, 1978, as noted in the accompanying text of this Notice.

[FR Doc. 79-17701 Filed 6-6-79; 8:45 am]

BILLING CODE 4110-83-M

Determination of Population of the States

Section 1525 of the Public Health Service Act (included in the National Health Planning and Resources Development Act of 1974, Pub. L. 93-641), authorizes the Secretary of Health, Education, and Welfare to make grants ("planning and development grants") to State health planning and development agencies ("State Agencies") to assist them in meeting their costs of operation. The amount of the planning and development grant to each State health planning and development agency, as provided in the regulations governing this program (42 CFR Part 123, Subpart C), is as determined by a formula provided in the regulations, based in part upon a determination by the Secretary of the population of the States. Section 123.204(b) of the governing regulations provides that the Secretary will determine the population of each State based upon the latest available estimate from the Department of Commerce, and will publish annually in the Federal Register a list of all States and their populations. The purpose of this Notice is to publish this list for purposes of determining grants for fiscal year 1979.

The latest available Department of Commerce estimates of the populations of the States are the July 1, 1978 provisional estimates, which appear in the report of the Bureau of the Census, Series P-25, No. 793.

The list shown below provides these estimates, but includes population figures for Hawaii, Rhode Island, District of Columbia, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, American Samoa and the Northern Mariana Islands, which are based on July 1, 1978 estimates. Since the Secretary has determined that these States and territories meet the requirements of section 1536 of the Act, the amount of their grants as State Agencies shall be computed in accordance with 42 CFR 122.501(c). Consequently, the populations of these States and territories are determined by the Secretary in accordance with 42 CFR 122.205, and are derived on the same basis as the populations of the health service areas. The basis is described in a separate Notice in this issue of the Federal Register.

Accordingly, the Secretary has made the following determination of populations of the States.

Dated: May 25, 1979.

Henry A. Foley,

Administrator, Health Resource Administration

Population of the States for Purposes of Determination of Planning and Development Grants, Fiscal Year 1979[1]

Alabama	3,742,000
Alaska	402,000
American Samoa, Sec. 1526	30,000
Arizona	2,354,000
Arkansas	2,190,000
California	22,294,000
Colorado	2,870,000
Connecticut	3,080,000
Delaware	580,000
District of Columbia, Sec. 1526	700,000
Florida	8,264,000
Georgia	5,094,000
Guam, Sec. 1526	90,000
Hawaii, Sec. 1526	894,000
Idaho	870,000
Illinois	11,240,000
Indiana	5,374,000
Iowa	2,896,000
Kansas	2,348,000
Kentucky	3,400,000
Louisiana	3,800,000
Maine	1,091,000
Maryland	4,143,000
Massachusetts	5,774,000
Michigan	9,180,000
Minnesota	4,078,000
Mississippi	2,424,000
Missouri	4,890,000
Montana	786,000
Nebraska	1,583,000
Nevada	690,000
New Hampshire	871,000
New Jersey	7,327,000
New Mexico	1,212,000
New York	17,748,000
North Carolina	5,577,000
North Dakota	652,000
Northern Mariana Islands, Sec. 1526	18,000
Ohio	10,749,000
Oklahoma	2,898,000
Oregon	2,644,000
Pennsylvania	11,788,000
Puerto Rico	3,283,000
Rhode Island, Sec. 1526	899,000
South Carolina	2,916,000
South Dakota	690,000
Tennessee	4,397,000
Texas	12,914,000
Trust Territory, Sec. 1526	110,000
Utah	1,227,000
Vermont	487,000
Virginia	5,148,000
Virgin Islands, Sec. 1526	95,000
Washington	3,774,000
West Virginia	1,860,000
Wisconsin	4,679,000
Wyoming	490,000
Total	221,894,000

[1] Population based on Bureau of the Census provisional estimates for July 1, 1978, except for States and territories which meet the requirements of Section 1536 of the Public Health Service Act, as noted in the accompanying text of this Notice. Population figures for these States and territories relate to July 1, 1978, and are the same (except for rounding), as those shown in the population estimates for health service areas presented in a separate Notice in this issue of the Federal Register.

[FR Doc. 79-17702 Filed 6-6-79; 8:45 am]

BILLING CODE 4110-83-M

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

Office of Human Development Services

White House Conference on Handicapped Individuals; National Implementation Advisory Committee; Meeting

The White House Conference on Handicapped Individuals Implementation Advisory Committee was established by the Department of Health, Education and Welfare to advise and assist the Secretary of HEW in the review and implementation of the recommendations made by the White House Conference on Handicapped Individuals.

Notice is hereby given pursuant to The Federal Advisory Committee Act, (Public Law 92-463, 5 U.S.C. App. 1, sec. 10, 1976) that the Committee will hold a meeting on June 27, 28 and 29, 1979 from 9:00 AM to 5:00 PM, Room [illegible], Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C.

At this meeting the Committee will review actions taken by the federal government to implement items of the Implementation Plan, Vol. 111 of the White House Conference Documents.

Further information on the Committee may be obtained from Mr. Peter Rosenstein, White House Conference Implementation Unit, Room 3520, 330 C Street S.W., Washington D.C. 20201, Telephone (202) 245-3186. Advisory Committee meetings are open for public observation.

Dated: June 4, 1979.

Arnold Sampson,

HDS Committee Management Officer.

[FR Doc. 79-17853 Filed 6-6-79; 8:45 am]

BILLING CODE 4110-93-M

Social Security Administration Advisory Council on Social Security; Public Meetings

AGENCY: Advisory Council on Social Security, HEW.

ACTION: Notice is hereby given, pursuant to Public Law 92-463, that the Advisory Council on Social Security, established pursuant to section 706 of the Social Security Act, as amended, will meet on Friday, July 6, 1979 from 9:00 a.m. to 5:00 p.m. and Saturday, July 7, 1979, from 9:00 a.m. to 5:00 p.m. at the Marriott Twin Bridges Hotel, U.S. 1 and I-395, Washington, D.C. 20024. The meetings will be devoted to the topics of social security benefits and financing.

These meetings are open to the public.

Individuals and groups who wish to have their interest in the Social Security program taken into account by the Council may submit written comments, views, or suggestions to Mr. Lawrence H. Thompson.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence H. Thompson, Executive Director, Advisory Council on Social Security, P.O. Box 17054, Baltimore, Maryland 21235.

Telephone inquiries should be directed to Mr. Edward F. Moore, (301) 594-3171.

(Catalog of Federal Domestic Assistance Program Numbers 13.800-13.807 Social Security Program.)

Dated: June 1, 1979.

Lawrence H. Thompson,

Executive Director, Advisory Council on Social Security.

[FR Doc. 79-17814 Filed 6-6-79; 8:45 am]

BILLING CODE 4110-07-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. D-79-569]

Designation of Authority

AGENCY: Hartford Area Office, Region I, (HUD).

ACTION: Designation of Authority—Order of Succession.

SUMMARY: This document designates the order of succession to the position of Acting Area Manager, in the absence of the Area Manager and the Deputy Area Manager.

EFFECTIVE DATE: April 16, 1979.

SUPPLEMENTARY INFORMATION: The officials appointed to the following listed positions in the Hartford Area Office, Region I, are hereby designated to serve as Acting Area Manager, Hartford, Region I, during the absence of the Area Manager and Deputy Area Manager, with all powers, functions, and duties redelegated or assigned to the Area Manager: Provided, that no official is authorized to serve as Acting Area Manager unless all other officials whose titles precede his in this designation are unable to act by reason of absence or vacancy in the position:

1. Director, Housing Division.
2. Director, Community Planning and Development Division.
3. Area Counsel.
4. Director, Fair Housing and Equal Opportunity Division.

This designation shall supersede any previous designations.

Issued at Hartford, Connecticut, April 16, 1979.

John W. McLean,

Area Manager, Hartford Area Office Region I.

[FR Doc. 79-17843 Filed 6-6-79; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. D-79-551]

Office of the Service Office Supervisor, Fort Worth Service Office; Designation

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of Line of Succession.

SUMMARY: The Service Office Supervisor is designating officials who may serve as Acting Service Office Supervisor during the absence of, or vacancy in the position of, the Service Office Supervisor.

EFFECTIVE DATE: April 13, 1979.

SUPPLEMENTARY INFORMATION: Each of the officials appointed to the following positions is designated to serve as Acting Service Office Supervisor during the absence of, or vacancy in the position of, the Service Office Supervisor, with all the powers, functions, and duties redelegated or assigned to the Service Office Supervisor; provided that no official is authorized to serve as Acting Service Office Supervisor unless all officials before him in this designation are unavailable to act by reason of absence or vacancy in the position:

1. Deputy Service Office Supervisor.
2. Chief, Mortgage Credit.
3. Chief Appraiser.

Irving Statman,

Area Manager Dallas Area Office Region VI (Dallas).

Thomas J. Armstrong,

Regional Administrator, Region VI (Dallas).

[FR Doc. 79-17844 Filed 6-6-79; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. D-79-568]

Office of the Area Manager; Oklahoma City Area Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of Line of Succession.

SUMMARY: The Area Manager is designating officials who may serve as Acting Area Manager during the absence of, or vacancy in the position of, the Area Manager.

EFFECTIVE DATE: June 7, 1979.

SUPPLEMENTARY INFORMATION: Each of the officials appointed to the following position is designated to serve as Acting Area Manager during the absence of, or vacancy in the position of, the Area Manager, with all the powers, functions, and duties redelegated or assigned to the Area Manager: Provided, that no official is authorized to serve as Acting Area Manager unless all preceding officials in this designation are unavailable to act by reason of absence or vacancy in the position:

1. Deputy Area Manager.
2. Director, Housing Division.
3. Area Counsel.
4. Director, Community Planning & Development Division.

This designation supersedes the unpublished designation effective February 2, 1977.

[Delegation of Authority by the Secretary effective October 1, 1970; 36 FR 3389, February 23, 1971].

Emil L. Huber, Jr.,

Area Manager, Oklahoma City Area Office, Region VI (Dallas).

Thomas J. Armstrong,

Regional Administrator, Region VI (Dallas).

[FR Doc. 79-17045 Filed 6-6-79; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. D-79-574]

Baltimore Area Office; Designation of Authority

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of Authority, Order of Succession.

SUMMARY: Updates the designation of officials who may serve as Acting Area Manager for the Baltimore Area Office when the Area Manager is unable to serve by reason of absence.

EFFECTIVE DATE: January 1, 1979.

FOR FURTHER INFORMATION CONTACT: William F. Hall, Jr., Regional Counsel, U.S. Department of Housing and Urban Development, Region III, 6th & Walnut Streets, Room 894, Philadelphia, Pennsylvania 19106.

Designation of Acting Area Manager for Baltimore Area Office

Each of the officials appointed to the following positions is designated to serve as Acting Area Manager during the absence of the Area Manager, with all the powers, functions and duties delegated or assigned to the Area Manager; *Provided*, That no official is authorized to serve as Acting Area Manager unless all officials listed before him/her in this designation are unavailable to act by reason of absence or vacancy in the position:

1. Deputy Area Manager.
2. Director, Housing Division.
3. Director, CPD Division.
4. Area Counsel.

The designation supersedes the designation effective June 27, 1975 (40 FR 28843).

(Delegation of Authority (36 FR 3389, 2-23-71) (37 FR 748, 1-18-72))

Harry W. Stoller,

Deputy Regional Administrator, Region III (Phila.).

[FR Doc. 79-17027 Filed 6-6-79; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. D-79-571]

Charleston Service Office; Designation of Authority

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of Authority, Order of Succession.

SUMMARY: Updates the designation of officials who may serve as Acting Supervisor for the Charleston Service Office when the Supervisor is unable to serve by reason of absence.

EFFECTIVE DATE: January 1, 1979.

FOR FURTHER INFORMATION CONTACT: William F. Hall, Jr., Regional Counsel, U.S. Department of Housing and Urban Development, Region III, 6th & Walnut Streets, Room 894, Philadelphia, Pennsylvania 19106.

Designation of Acting Supervisor for Charleston Service Office

Each of the officials appointed to the following positions is designated to serve as Acting Supervisor during the absence of the Supervisor, with all the powers, functions and duties delegated or assigned to the Supervisor; *Provided*, That no official is authorized to serve as Acting Supervisor unless all officials listed before him/her in this designation are unavailable to act by reason of absence or vacancy in the position:

1. Deputy Supervisor for Development.
2. Deputy Supervisor for Management.

(Delegation of Authority (36 FR 3389, 2-23-71) (37 FR 748, 1-18-72))

Harry W. Stoller,

Deputy Regional Administrator, Region III (Phila.).

[FR Doc. 79-17031 Filed 6-6-79; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. D-79-575]

Washington, D.C., Area Office; Designation of Authority

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of Authority, Order of Succession.

SUMMARY: Updates the designation of officials who may serve as Acting Area Manager for the Washington, D.C. Area Office when the Area Manager is unable to serve by reason of absence.

EFFECTIVE DATE: January 1, 1979.

FOR FURTHER INFORMATION CONTACT: William F. Hall, Jr., Regional Counsel, U.S. Department of Housing and Urban Development, Region III, 6th & Walnut Streets, Room 894, Philadelphia, Pennsylvania 19106.

Designation of Acting Area Manager for Washington, D.C., Area Office

Each of the officials appointed to the following positions is designated to serve as Acting area Manager during the absence of the Area Manager, with all the powers, functions and duties delegated or assigned to the Area Manager; *Provided*, That no official is authorized to serve as Acting Area Manager unless all officials listed before him/her in this designation are unavailable to act by reason of absence or vacancy in the position:

1. Deputy Area Manager.
2. Area Counsel.
3. Director, Housing Division.
4. Director, Community Planning and Development Division.

The designation supersedes the designation effective June 27, 1975 (40 FR 28843).

(Delegation of Authority (36 FR 3389, 2-23-71) (37 FR 748, 1-18-72))

Harry W. Stoller,

Deputy Regional Administrator, Region III (Phila.).

[FR Doc. 79-17033 Filed 6-6-79; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. D-79-573]

Pittsburgh Area Office; Designation of Authority

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of Authority, Order of Succession.

SUMMARY: Updates the designation of officials who may serve as Acting Area Manager for the Pittsburgh Area Office when the Area Manager is unable to serve by reason of absence.

EFFECTIVE DATE: January 1, 1979.

FOR FURTHER INFORMATION CONTACT: William F. Hall, Jr., Regional Counsel, U.S. Department of Housing and Urban Development, Region III, 6th & Walnut Streets, Room 894, Philadelphia, Pennsylvania 19106.

Designation of Acting Area Manager for Pittsburgh Area Office

Each of the officials appointed to the following positions is designated to serve as Acting Area Manager during the absence of the Area Manager, with

all powers, functions and duties delegated or assigned to the Area Manager; *Provided,* That no official is authorized to serve as Acting Area Manager unless all officials listed before him/her in this designation are unavailable to act by reason of absence or vacancy in the position:

1. Deputy Area Manager.
2. Director, Housing Division.
3. Director, CPD Division.
4. Area Counsel.

The designation supersedes the designation effective June 27, 1975 (40 FR 28843).

(Delegation of Authority (36 FR 3389, 2-23-71) (37 FR 746, 1-18-72))

Harry W. Staller,

Deputy Regional Administrator, Region III (Phila.).

[FR Doc. 79-17639 Filed 6-6-79; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. D-79-570]

Philadelphia, Pa., Area Office; Designation of Authority

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of Authority, Order of Succession.

SUMMARY: Updates the designation of officials who may serve as Acting Area Manager for the Philadelphia, Pa. Area Office when the Area Manager is unable to serve by reason of absence.

EFFECTIVE DATE: July 2, 1978.

FOR FURTHER INFORMATION CONTACT: William F. Hall, Jr., Regional Counsel, U.S. Department of Housing and Urban Development, Region III, 6th & Walnut Streets, Room 994, Philadelphia, Pa. 19106, (215) 597-2655.

Designation of Acting Area Manager for Philadelphia Area Office

Each of the officials appointed to the following positions is designated to serve as acting Area Manager during the absence of the Area Manager, with all the powers, functions and duties delegated or assigned to the Area Manager; *Provided,* That no official is authorized to serve as Acting Area Manager unless all officials listed before him/her in this designation are unavailable to act by reason of absence or vacancy in the position:

1. Deputy Area Manager.
2. Director, Community Planning and Development Division.
3. Director, Housing divisions.
4. Area Counsel.

The Designation supersedes the designation effective Tuesday, August 4, 1975 (40 FR 33851).

(Delegation of Authority (36 FR 3389, 2-23-71) (37 FR 746, 1-18-72))

Harry W. Staller,

Deputy Regional Administrator, Region III (Phila.)

[FR Doc. 79-17672 Filed 6-6-79; 8:45 am]

BILLING CODE 4210-02-M

[Docket No. D-79-572]

Richmond Area Office; Designation of Authority

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of Authority, Order of Succession.

SUMMARY: Updates the designation of officials who may serve as Acting Area Manager for the Richmond Area Office when the Area Manager is unable to serve by reason of absence.

EFFECTIVE DATE: February 23, 1979.

FOR FURTHER INFORMATION CONTACT: William F. Hall, Jr., Regional Counsel, U.S. Department of Housing and Urban Development, Region III, 6th & Walnut Streets, Room 994, Philadelphia, Pennsylvania 19106.

Designation of Acting Area Manager for Richmond Area Office

Each of the officials appointed to the following positions is designated to serve as Acting Area Manager during the absence of the Area Manager, with all the powers, functions and duties delegated or assigned to the Area Manager; Provided, That no official is authorized to serve as Acting Area Manager unless all officials listed before him/her in this designation are unavailable to act by reason of absence or vacancy in the position:

1. Deputy Area Manager.
2. Director, Community Planning and Development Division.
3. Director, Housing Division.
4. Deputy Director for Housing Development.
5. Deputy Director for Housing Management.

The designation supersedes the designation effective July 9, 1975 (40 FR 28843).

(Delegation of Authority (36 FR 3389, 2-23-71) (37 FR 746, 1-18-72))

Harry W. Staller,

Deputy Regional Administrator, Region III (Phila.).

[FR Doc. 79-17640 Filed 6-6-79; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[Portland Area Office Redelegation Order 3, Amendment No. 7]

Superintendents; Delegation of Authority Concerning Real Property Management Matters

May 9, 1979.

This notice is published in exercise of authority delegated by Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 1.

This delegation is issued under the authority delegated to the Commissioner of Indian Affairs from the Secretary of the Interior in 10 BIAM 2.1 and redelegated by the Commissioner to the Area Directors in 10 BIAM 3.

The Portland Area Office Redelegation Order 3 published beginning on page 15813 of the October 14, 1969, Federal Register (34 FR 15813) is amended in Section 2.10 to remove the dollar limitation on trust to trust transactions which may be approved by the Superintendents.

As amended, Part 2 of Portland Area Office Redelegation Order 3 reads as follows:

PART 2—AUTHORITY OF SUPERINTENDENTS, SCHOOL SUPERINTENDENT, AND PROJECT ENGINEER

Subject to the provisions of Part 1, Superintendents, School Superintendents, and Project Engineer may exercise the authority of the Area Director as indicated in this part.

* * * * *

Sec. 2.10 Sales, fee patents and other matters.—Sales, fee patents and other matters to be conducted when authorized by law in accordance with 25 CFR Part 121.

* * * * *

(c) Approve conveyances on approved forms when land remains in trust for sales, exchanges, gifts, partitions, and acquisitions of trust lands.

* * * * * *

Effective Date. This amendment is effective June 7, 1979.

Vicent Little,

Area Director.

Approved:

Martin E. Seneca, Jr.,

Acting Deputy Commissioner of Indian Affairs.

[FR Doc. 79-17625 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[Bureau Order No. 701, Amendment No. 25]

Cadastral Survey—Redelegation of Authority

Bureau Order No. 701, dated July 23, 1964, is further amended as follows:

Part V is amended to read:

PART V—REDELEGATION OF AUTHORITY TO THE CHIEF, DIVISION OF CADASTRAL SURVEY, HEADQUARTERS OFFICE

Section 5.0—Function of Chief, Division of Cadastral Survey. (a) In accordance with existing policies, regulations, and procedures of this Department, and under the direct supervision of the Assistant Director-Technical Services, the Chief, Division of Cadastral Survey of the Bureau of Land Management, is authorized to perform all functions and to sign for the Director, all documents relating to the appointment of mineral surveyors.

Part IX is added as follows:

PART IX—REDELEGATION OF AUTHORITY TO THE CHIEF, CADASTRAL SURVEY EXAMINATION AND APPROVAL STAFF, SERVICE CENTER

Section 9.0—Functions of the Chief, Cadastral Survey Examination and Approval Staff. (a) In accordance with existing policies, regulations and procedures of this Department, and under the administrative supervision of the Chief, Office of Technical and Scientific Services, and the technical supervision of the Chief, Division of Cadastral Survey, Headquarters Office, the Chief, Cadastral Survey Examination and Approval Staff, is authorized to perform all functions and to sign for the Director, all documents relating to (1) approval and acceptance of all types of surveys, (2) approval of all types of protracted surveys, and (3) approval of Outer Continental Shelf Official Protraction Diagrams.

Arnold E. Petty,
Acting Director.

June 4, 1979.

[FR Doc. 79-17630 Filed 6-6-79; 8:45 am]
BILLING CODE 4310-84-M

[I-14810]

Offer of Lands

May 28, 1979.

Pursuant to the provisions of the Act of May 31, 1962 (76 Stat. 89), the following lands, found upon survey to be omitted lands of the United States, will be offered for sale:

Boise Meridian, Idaho

T. 7 N., R. 39 E.,
Sec. 24, lots 5 and 6;
Sec. 25, lots 5, 6, and 7;
Sec. 26, lot 12;
Sec. 34, lots 11, 12, 13, 14, and 16 (portion lying north of the Hibbard-Piano Road)
T. 7 N., R. 40 E.,
Sec. 8, lot 3;
Sec. 10, lot 14 (portion lying south of an east-west line which intersects the restored meander line for the left bank at angle point 3, and the west line of lot 14), NW¼SE¼ (portion lying east of fence which parallels road along east edge of Consolidated Farmers Canal), lot 23 (portion lying east of fence which parallels road along east side of Consolidated Farmers Canal);
Sec. 18, lot 12, lot 14 (portion beginning at the witness corner of an angle point 4 on the restored original meander line for the right bank; thence northeasterly along original meander line for approximately 17 chains to the intersection with the east lot line of lot 14; thence south along east lot line for approximately 20.5 chains to the intersection with the restored original meander line for the left bank; thence southwesterly along original meander line for approximately 5.5 chains to the special meander corner for the right bank; thence north approximately 3.5 chains; thence northwesterly (N 44° W) for approximately 10 chains to the witness corner of angle point 4, the point of beginning.
T. 7 N., R. 40 E.,
Sec. 16, lot 15;
Sec. 17, lots 7 and 12;
Sec. 18, lot 8;
Sec. 19, lots 10, 11, 12, 14, and 16.

The area described aggregates approximately 186.16 acres.

2. The plat of survey was filed in the Land Office records in Boise at 10:00 a.m. on June 14, 1978.

3. Persons claiming a preference right in accordance with the provisions of the Act, must file with the Bureau of Land Management, Federal Building, 550 West Fort Street, Box 042, Boise, Idaho 83724, before August 1, 1979, a notice of their intention to apply to purchase all or part of the lands as qualified preference right claimants.

4. The Act grants a preference right to purchase the above lands to any citizens of the United States (including corporations, partnerships, firms, or other legal entity having authority to hold title to lands in the State of Idaho) who, in good faith, under color of title or claiming as a riparian owner has, prior to March 30, 1961, placed valuable improvements upon, reduced to cultivation, or occupied any of the lands so offered for sale, or whose ancestors or predecessors in interest have taken such action.

5. The lands are determined to be suitable for sale and will be sold at their fair market value subject to:

(a) Qualified preference right claims.

(b) A reservation to the United States of all the coal, oil, gas, shale, phosphate, potash, sodium, native asphalt, solid and semisolid bitumen and bituminous rock, including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried, together with the right to prospect for, mine, and remove the same.

(c) A reservation to the United States of a 100-foot strip of land along and parallel to the banks of the Snake River for use of the public for access and recreation.

Loris J. Welker,
Chief, Division of Technical Services.

[FR Doc. 79-17627 Filed 6-6-79; 8:45 am]
BILLING CODE 4310-84-M

Outer Continental Shelf Official Protraction Diagram; Availability

Notice is hereby given that, effective with this publication, the following OCS Official Protraction Diagrams, last approved or revised on the date indicated, are on file and available, for information only, in the New York Outer Continental Shelf Office, Bureau of Land Management, New York, New York. In accordance with Title 43, Code of Federal Regulations, these protraction diagrams are the basic record for the description of mineral and oil and gas lease offers in the geographic areas they represent.

Outer Continental Shelf Official Protraction Diagrams

Description and Latest Revision or Approval Date

NJ 18-11—Currituck Sound, April 25, 1978.
NJ 18-2—Veatch Canyon, January 25, 1979.

Copies of these protraction diagrams may be purchased for $2.00 each from the Manager, New York Outer Continental Shelf Office, Federal Building, 26 Federal Plaza, Suite 32-120, New York, New York 10007.

Dated: May 8, 1979.

Judith B. Gresham,
Acting Manager, New York Outer Continental Shelf Office.

[FR Doc. 79-17629 Filed 6-6-79; 8:45 am]
BILLING CODE 4310-84-M

Outer Continental Shelf Official Protraction Diagram; Availability

Notice is hereby given that, effective with this publication, the following OCS Official Protraction Diagrams, last approved or revised on the date indicated, are on file and available, for information only, in the New York Outer Continental Shelf Office, Bureau of Land Management, New York, New York. In accordance with Title 43, Code of Federal Regulations, these protraction diagrams are the basic record for the description of mineral and oil and gas lease offers in the geographic areas they represent.

Outer Continental Shelf Official Protraction Diagrams

Description and latest revision or approval date

NJ 18-12—April 18, 1979.
NK 19-8—Chatham, April 18, 1979.

Copies of these protraction diagrams may be purchased for $2.00 each from the Manager, New York Outer Continental Shelf Office, Federal Building, 26 Federal Plaza, Suite 32-120, New York, New York 10007.

Dated: May 18, 1979.

Frank Basile,

Manager, New York Outer Continental Shelf Office.

[FR Doc. 79-17629 Filed 6-6-79; 8:45 am]
BILLING CODE 4310-84-M

Vale District Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Public Law 92-463 that a meeting of the Vale District Grazing Advisory Board will be held on June 28, 1979.

The meeting will begin at 9:00 a.m. in the Conference Room of the Bureau of Land Management at 365 "A" Street, West, Vale, Oregon 97918.

The agenda for the meeting will include: (1) Proposed expenditure of range betterment funds in fiscal year 1980 and (2) A field tour to review an area preparatory to the development of an Allotment Management Plan.

The meeting is open to the public. Interested persons may make oral statements to the board, or may file written statements for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 365 "A" Street, West, Vale, Oregon 97918, by June 25, 1979. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the board meeting will be maintained in the District Office and be available during regular business hours for public inspection and reproduction within 30 days following the meeting.

Fearl M. Parker,

District Manager.

May 29, 1979.

[FR Doc. 79-17630 Filed 6-6-79; 8:45 am]
BILLING CODE 4310-84-M

Wyoming; Scab Creek Wilderness Instant Study Area Environmental Impact Statement Scoping Meetings

May 29, 1979.

Section 1501.7(b)(4) of the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act requires that scoping meetings be held prior to the preparation of an environmental impact statement (EIS). In accordance with that subsection, scoping meetings will be held to assess the issues, interest, and significance of the proposal to designate the Scab Creek Instant Study Area as a wilderness area, prior to starting the Scab Creedk EIS. Those lands which are to be evaluated in the EIS are:

Sixth Principal Meridian, Wyoming

T. 32 N., R. 106 W.,
Section 4;
Section 5;
Section 6;
Section 7, Lots 3 to 8, inclusive, NE¼NE¼ and NE¼NW¼;
Section 8, Lots 1 and 2;
Section 9, NE¼.
T. 33 N., R. 106 W.,
Section 17;
Section 18, Lots 1 and 2, NE¼, E½NW¼, NE¼, SW¼, N½SE¼;
Section 19, S½SE¼NE¼, NE¼SE¼;
Section 20;
Section 21, S½;
Section 23;
Section 29, N½, SE¼, NW¼SW¼, and E½SW¼;
Section 32, Lots 2, 3, and 4, NE¼, and N½SE¼;
Section 33.
T. 32 N., R. 107 W.,
Section 1, Lots 6, 7, 8, and 13 and SW¼SE¼;
Section 12, Lots 1 and 2, W½NE¼, and NE¼NW¼.
T. 33 N., R. 107 W.,
Section 13, N½;
Section 14, NE¼ (excluding waters of Soda Lake), and NE¼NW¼ (excluding waters of Soda Lake).

This encompasses approximately 8,000 acres.

Public comment is hereby requested from all persons who wish to state their views or interest on the significance of this proposal to designate these lands as wilderness. This public comment will be used to determine the scope of impacts to be addressed in the EIS for the Scab Creek Instant Study Area. There will be three public meetings to gather the public comment. The meetings will be held at the Lander Resource Area Office in Lander, Wyoming, at 7 p.m. on June 26, 1979, the Pinedale Resource Area Office in Pinedale, Wyoming, at 7 p.m. on June 27, 1979, and at the Rock Springs District Office in Rock Springs, Wyoming, at 7 p.m. on June 28, 1979, to present the proposal and obtain comments from the public.

Following the meetings, the Bureau of Land Management will prepare an EIS for public review and make a report, through the Director, Bureau of Land Management, and the Secretary of the Interior, to the President of the United States with a recommendation on whether or not the Scab Creek Instant Study Area should be included in the National Wilderness Preservation System.

Further information can be obtained by contacting Jerry Wilfong, Scab Creek EIS Team Leader, Rock Springs District Office, Bureau of Land Management, Box 1869, Rock Springs, Wyoming 82901, telephone (307) 382-5350.

Daniel P. Baker,

State Director.

[FR Doc. 79-17631 Filed 6-6-79; 8:45 am]
BILLING CODE 4310-84-M

Montrose District Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Montrose District Grazing Advisory Board will be held on July 17 and 18, 1979. On July 17 the meeting will convene at 10:00 a.m. in the conference room of the Bureau of Land Management Office, Highway 550 South, Montrose, Colorado. On July 18 the meeting will convene at 8:00 a.m. at the same place.

On July 18 attendees will travel to allotments within the Gunnison Basin Resource Area to discuss grazing use problems and associated alternatives and look at present range conditions and trends.

The agenda for the meeting will include: (1) Nomination and election procedures for 1979 election; (2) the expenditure of advisory board funds for range improvements; (3) a review and update on implementation of allotment management plans and related projects in the Uncompahgre Basin Resource Area; (4) a review of the current status and program relating to the planning

process and environmental statement efforts in the Gunnison Basin American Flats—Silverton Planning Areas; and, (5) the arrangements for the next meeting.

The meeting is open to the public. Interested persons may make oral statements to the board between 10:00 and 11:00 a.m. on July 17, 1979, or file written statements for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, P.O. Box 1269, Montrose, Colorado, 81401, by July 13, 1979. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Persons desiring to make the tour on July 18 should furnish their own transportation, food, and drink.

Summary minutes of the board meeting will be maintained in the District Office and be available for public inspection and reproductions (during regular business hours) within 30 days following the meeting.

Marlyn V. Jones,

District Manager.

[FR Doc. 79-17687 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-84-M

[NM 36799, 36804, 36807, 36842, 36843, 36844, 36845 and 36846]

New Mexico; Applications

May 29, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for eight 4½-inch natural gas pipeline rights-of-way across the following lands:

New Mexico Principal Meridian, New Mexico

T. 28 N., R. 5 W.,
Sec. 23, SE¼NE¼.
T. 29 N., R. 8 W.,
Sec. 8, lot 7;
Sec. 9, S½NE¼;
Sec. 14, SW¼SE¼;
Sec. 23, NW¼NE¼, N½SW¼ and SW¼SW¼;
Sec. 27, NE¼Ne¼.
T. 30 N., R. 10 W.,
Sec. 3, lots 5 and 8.
T. 26 N., R. 13 W.,
Sec. 11, lot 1;
Sec. 12, lot 4 and SW¼SW¼.

These pipelines will convey natural gas across 1.505 miles of public lands in Rio Arriba and San Juan Counties, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of land Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

Fred E. Padilla,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-17688 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-84-M

[NM 36740 and 36754]

New Mexico; Applications

May 25, 1979.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has filed rights-of-way applications for a cathodic protection station and two 4½-inch natural gas pipelines across the following lands:

New Mexico Principal Meridian, New Mexico

T. 18 S., R. 29 E.,
Sec. 18, lot 4 and E½SW¼;
Sec. 19, lot 1.
T. 26 S., R. 32 E.,
Sec. 11, NE¼NW¼.

The cathodic protection station, with appurtenances, and the pipelines will convey natural gas across 0.461 of a mile of public lands in Eddy and Lea Counties, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

Fred E. Padilla,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-17689 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-84-M

[NM 36840]

New Mexico; Application

May 29, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Gas Company of New Mexico has applied for five 4-inch natural gas pipeline rights-of-way across the following land:

New Mexico Principal Meridian, New Mexico

T. 31 N., R. 12 W.,
Sec. 27, NE¼SE¼ and S½SE¼;
Sec. 28, N½NE¼, NE¼NW¼ and NE¼ SE¼;
Sec. 34, SE¼NE¼, SE¼NW¼ and N½SE¼.

This pipeline will convey natural gas across 1.34 miles in length of public land in San Juan County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

Fred E. Padilla,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-17690 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-84-M

[NM 36737]

New Mexico; Application

May 31, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Llano, Incorporated has applied for one 4½-inch natural gas pipeline right-of-way across the following land:

New Mexico Principal Meridian, New Mexico

T. 21 S., R. 26 E.,
Sec. 21, E½SW¼;
Sec. 28, NE¼NW¼.

This pipeline will convey natural gas across 0.634 of a mile of public land in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management,

P.O. Box 1397, Roswell, New Mexico 88201.

Fred E. Padilla,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-17601 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-84-M

[NM 36839]

New Mexico; Application

May 30, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Gas Company of New Mexico has applied for a right-of-way application for one 4-inch natural gas pipeline and two well sites across the following land:

New Mexico Principal Meridian, New Mexico

T. 18 S., R. 31 E.,
Sec. 27, SW¼NW¼ and W½SW¼;
Sec. 34, W½NW¼ and NW¼SW¼.

This pipeline will convey natural gas across 1.158 miles of public land in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

Fred E. Padilla,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-17602 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-84-M

[NM 36750]

New Mexico; Application

May 31, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Northwest Pipeline Corporation has applied for three 4½-inch natural gas pipelines right-of-way across the following lands:

New Mexico Principal Meridian, New Mexico

T. 31 N., R. 8 W.,
Sec. 6, lots 1, 2 and 3.
T. 32 N., R. 8 W.,
Sec. 30, lots 3, 4 and SE¼SW¼;
Sec. 31, lot 4, W½NE¼, NE¼NW¼ and SE¼SW¼.
T. 32 N., R. 9 W.,
Sec. 25, lots 9, 10, 13, 14 and 15.

These pipelines will convey natural gas across 2.135 miles of public lands in San Juan County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

Fred E. Padilla,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-17603 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-84-M

[NM 36862]

New Mexico; Application

May 31, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Transwestern Pipeline Company has applied for one 4-inch natural gas pipeline right-of-way across the following land:

New Mexico Principal Meridian, New Mexico

T. 17 S., R. 25 E.,
Sec. 32, SE¼SE¼,
Sec. 33, N½SW¼ and SW¼SW¼.

This pipeline will convey natural gas across 0.564 of a mile of public land in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

Fred E. Padilla,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-17604 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-84-M

[U-27914]

Utah; Proposed Withdrawal and Reservation of Lands

The Bureau of Land Management, Department of the Interior has filed withdrawal application, U-27914, for the following described public lands from settlement, sale, location, or entry under the general land laws, including the mining laws subject to valid existing rights:

Salt Lake Meridian

T. 13 S., R. 4 W.,
Sec. 29, W½NE¼, SE¼NE¼, E½W½, SE¼;
Sec. 32, F½, E½NW¼, SW¼;
Sec. 33, SW¼SW¼.
T. 13 S., R. 4 W.,
Sec. 4, lot 4;
Sec. 5, lots 1, 2;
Sec. 8, S½SE¼;
Sec. 9, S½SW¼;
Sec. 17, N½NE¼.
T. 13 S., R. 5 W.,
Sec. 12, SE¼;
Sec. 13, E½, SW¼;
Sec. 14, SE¼;
Sec. 23, N½NE¼;
Sec. 24, N½N½;
Sec. 33, N½SE¼, SE¼SE¼;
Sec. 34, S½;
Sec. 35, SW¼.
T 14 S., R. 5 W.,
Sec. 3, lots 1, 2, 3, 4, S½ N½, SE¼.

The area described aggregates approximately 3,541.85 acres in Juab County, Utah.

The applicant desires the withdrawal to protect existing and planned recreational developments within the Little Sahara Recreation Lands. These consist of roads, campgrounds, picnic areas and a visitor center and administration site. On or before July 20, 1979, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned authorized officer of the Bureau of Land Management.

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976, notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal. All interested persons who desire to be heard on the proposed withdrawal must submit a written request for a hearing to the undersigned. Notice of the public hearing will be published in the Federal Register giving the time and place of

such hearing. The public hearing will be scheduled and conducted in accordance with BLM manual, § 2351.16B.

The Departmentof the Interior's regulations provide that the authorized officer of the BLM will undertake such investigations as are necessary to determine the existing and potential demands for the lands and their resources with the view of assuring that the area sought is the minimum essential to meet the applicant's needs, providing for the maximum concurrent utilization of the lands for purposes other than the applicant's and reaching agreement on the concurrent management of the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior, who will determine whether or not the lands will be withdrawn and reserved as requested by the applicant agency.

The determination of the Secretary on the application will be published in the Federal Register.

For a period of 2 years from the date of publication of this notice in the Federal Register, the lands will be segregated from entry as specified above unless the application is rejected or the withdrawal is approved prior to that date. If the withdrawal is approved by the Secretary, the segregation will remain in effect for a period of 20 years from the date of such approval.

All communications in connection with this proposed withdrawal should be addressed to the undersigned, Bureau of Land Management, Department of the Interior, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111.

Dated: June 1, 1979.

Paul L. Howard,

State Director.

[FR Doc. 79-17688 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-84-M

[U-28415]

Utah; Order Providing for Opening of Public Lands

1. In an exchange of lands made under the provision of Section 8 of the Act of June 28, 1934, 48 Stat. 1272, as amended 43 U.S.C. 315g (1970), the following described lands have been reconveyed to the United States:

Salt Lake Meridian, Utah

T. 17 S., R. 16 E.,
Sec. 27, SW¼NW¼, W½SE¼.
T. 18 S., R. 16 E.,
Sec. 10, NW¼SE¼;
Sec. 31, lot 3, SW¼SE¼.
T. 20 S., R. 16 E.,
Sec. 3, lot 12;
Sec. 8, S½SW¼,
Sec. 17, lots 1, 2, 3.

Area aggregates 483.35 acres in Emery County

2. The mineral rights in the lands were reserved (U.S. has always had the mineral rights to the coal in Twps. 17 and 18 S., R. 16 E.) and are not affected by this order.

3. The lands shall be open to operation of the public land laws generally at 10:00 a.m. on July 15, 1979, subject to valid existing rights, the provision of existing withdrawals, and provisions of the Bureau of Land Management classification for multiple use management.

4. The topography of the lands run from rough and mountainous to relatively level lands along the Green River. The lands, while in private ownership, were used for livestock grazing.

5. Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111.

Dated: May 29, 1979.

Paul L. Howard,

State Director.

[FR Doc. 79-17689 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-84-M

[W-66223]

Wyoming; Application

May 31, 1979.

Notice is hereby given that pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Company of Colorado Springs, Colorado filed an application for a right-of-way to construct a 4½" O.D. natural gas pipeline, a 4' by 8' meter house and related metering and dehydration facilities for the purpose of transporting natural gas across the following described public lands:

Sixth Principal Meridian, Wyoming

T. 23 N., R. 94 W.,
Sec. 4, lot 2, SW¼NE¼, W½SE¼.
T. 24 N., R. 94 W.,
Sec. 33, W½SE¼.

The proposed pipeline will transport natural gas from the No. 1-33 Red Desert Well located in the SE¼ of section 33, T. 24 N., R. 94 W., to a point of connection with an existing pipeline located in the SE¼ of section 4, T. 23 N., R. 94 W., all within Sweetwater County, Wyoming. The proposed 4' by 8' meter house and related metering and dehydration facilities are to be located entirely within the proposed 50' right-of-way in the W½SE¼ of section 33, T. 24 N., R. 94 W., Sweetwater County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-17687 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-84-M

[W-66203]

Wyoming; Application

May 31, 1979.

Notice is hereby given that pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Phillips Petroleum Company of Bartlesville, Oklahoma filed an application for a right-of-way to construct a 4" I.D. buried pipeline for the purpose of transporting natural gas across the following described public lands:

Sixth Principal Meridian, Wyoming

T. 46 N., R. 77W.,
Sec. 3, SW¼SW¼;
Sec. 4, SE¼SE¼;
Sec. 9, NE¼NE¼.

The proposed pipeline to connect the Davis Oil Culp Draw Unit II Well #36 in section 9, will transport natural gas from a point in the NE¼NE¼, section 9, to a point in the SW¼SW¼, section 3, all within T. 46 N., R. 77 W., Johnson County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager,

Bureau of Land Managment, 951 Union Boulevard, Casper Wyoming 82601.

Harold G. Stinchcomb,

Chief, Branck of Lands and Minerals Operations.

[FR Doc. 79-17698 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-84-M

[W-62274]

Wyoming; Application

May 31, 1979.

Notice is hereby given that pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Kansas-Nebraska Natural Gas Company of Hastings, Nebraska filed an application to amend their existing right-of-way to construct an additional 6" pipeline within the existing 50 foot right-of-way for the purpose of transporting natural gas across the following described public lands:

Sixth Principal Meridian, Wyoming

T. 38 N., R. 91 W.,
Sec. 5, lot 1.
T. 39 N., R. 91 W.,
Sec. 32, SE¼SE¼.

The proposed additional pipeline will be located entirely within the existing 50' right-of-way 10' west and south of the existing 8" pipeline, and will serve the Long Butte #2-8 well located in the NE¼ of section 5, T. 38 N., R. 91 W., and the Long Butte #1-32 well located in the SE¼SE¼ of section 32, T. 39 N., R. 91 W., all within Fremont County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-17730 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-84-M

[W-68222]

Wyoming; Application

May 31, 1979.

Notice is hereby given that pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Company of Colorado Springs, Colorado filed an application for a right-of-way to construct a 4½" O.D. natural gas pipeline, a 4' by 6' meter house and related metering and dehydration facilities for the purpose of transporting natural gas across the following described public lands:

Sixth Principal Meridian, Wyoming

T. 22 N., R. 94 W.,
Sec. 28, N½SW¼.

The proposed pipeline will transport natural gas from the Siberia Ridge Unit #11 Well located in the N½SW¼ of Section 28, to a point of connection with an existing pipeline located in the E½SW¼ of section 29, all within T. 22 N., R. 94 W., Sweetwater County, Wyoming. The proposed 4' by 6' meter house and related metering and dehydration facilities are to be located entirely within the proposed 50 foot right-of-way in the N½SW¼ of Section 28, T. 22 N., R. 94 W., Sweetwater County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-17744 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Reclamation

Contract Negotiations With the Central Utah Water Conservancy District and the Ute Indian Tribe; Intent to Negotiate a Contract for Repayment of Construction Costs of the Upalco Unit

The Department of the Interior, through the Bureau of Reclamation, intends to negotiate a contract with the Central Utah Water Conservancy District, Orem, Utah, and the Ute Indian Tribe, Fort Duchesne, Utah, for repayment of construction costs and operation and maintenance of the Upalco Unit of the Central Utah Project near Roosevelt, Utah. The contract will be written pursuant to the Reclamation Project Act of 1939 (53 Stat. 1187) and the Colorado River Storage Project Act of April 11, 1956 (70 Stat. 105).

The Upalco Unit of the Central Utah Project was authorized by the Colorado River Storage Project of 1956. The unit will store, regulate, and convey water primarily for irrigation to Indian and non-Indian lands. There will be some project water used for municipal and industrial purposes. It will also conserve and develop fish and wildlife resources, provide recreational opportunities, and control floods.

The irrigation water under the proposed contract will be made available to Indian and non-Indian farmers along the Lake Fork River in northeastern Utah. Municipal and industrial water will be made available to communities in the vicinity of Roosevelt, Utah.

Contractual arrangements will be negotiated with the Central Utah Water Conservancy District for repayment of an appropriate share of the project costs associated with irrigation and municipal and industrial water service. The repayment obligation associated with Indian irrigation water will be deferred as long as the lands involved remain in Indian ownership pursuant to the Colorado River Storage Project Act of April 11, 1956 (70 Stat. 105) which extends the Leavitt Act of July 1, 1932 (47 Stat. 504).

The public is invited to submit written comments on the form of the proposed contract not later than 30 days after the completed contract draft is declared to be available to the public.

For further information about scheduled meetings and copies of the proposed contract form, please contact LaVar Richman, Bureau of Reclamation, Central Utah Projects Office, P.O. Box 1338, Provo, Utah 84601, telephone (801) 374-8610. All meetings scheduled by the Bureau of Reclamation with the potential contractors for the purpose of discussing terms and conditions of the proposed contract shall be open to the general public as observers. Advance notice of such meetings shall be furnished to those parties requesting such notice from the office identified above.

All written correspondence concerning the proposed contract shall be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383) as amended.

Dated: May 31, 1979.

R. Keith Higginson,

Commissioner of Reclamation.

[FR Doc. 79-17605 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Endangered Species Permit; Receipt of Application

The applicants listed below wish to be authorized to conduct the specified activity with the indicated Endangered Species:

Applicant: Ray L. Holmes, Rt. 5, Box 37 GC, Tahlequah, Oklahoma 74464—PRT 2-4224.

The applicant requests a permit to purchase in interstate commerce two white-eared pheasants (*Crossoptilon crossoptilon*) from Charles Sivelle, Dix Hills, New York, for enhancement of propagation.

Applicant: Oklahoma City Zoo, 2101 N.E. 50th, Oklahoma City, Oklahoma 73111—PRT 2-4227.

The applicant requests a permit to purchase in interstate commerce two barasingha (=swamp deer) (*Cervus duvauceli*) from the Patio Ranch, San Antonio, Texas, for zoological exhibition and enhancement of propagation.

Applicant: Woodland Park Zoological Gardens, 5500 Phinney Ave. N., Seattle, Washington 98103—PRT 2-4234.

The applicant requests a permit to purchase in interstate commerce one female diana leaf monkey (*Cercopithecus diana*) from the El Paso Zoo, El Paso, Texas, for zoological exhibition and enhancement of propagation.

Humane care and treatment during transport, if applicable, has been indicated by the applicant.

Document and other information submitted with these applications are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service, WPO, Washington, D.C. 20240.

Interested persons may comment on these applications within 30 days of the date of this publication by submitting written data, views, or arguments to the Director at the above address.

Dated: May 25, 1979.

Donald G. Donahoe,

Chief, Permit Branch, Federal Wildlife Permit Office U.S. Fish and Wildlife Service.

[FR Doc. 79-17603 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Receipt of Application

Applicant: Dr. Jorge K. Leong, National Marine Fisheries Service, 4700 Avenue U, Galveston, Texas 77550.

The applicant requests a permit to export gonadic and associated tissues of Atlantic ridley sea turtles (*Lepidochelys kempi*) to the University of Toronto, Canada, for scientific purposes. The tissues are from specimens already preserved at the Galveston Laboratory.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-4255. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address within 30 days of the date of this publication. Please refer to the file number when submitting comments.

Dated: May 25, 1979.

Donald G. Donahoe,

Chief, Permit Branch, Federal Wildlife Permit Office, Fish and Wildlife Service.

[FR Doc. 79-17604 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Receipt of Application

Applicant: Indiana Bat Recovery Team, U.S. Fish & Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

The applicant requests an amendment to add the gray bat (*Myotis grisescens*) to his permit for scientific research with the Indiana bat (*Myotis sodalis*) which includes capturing for tagging, blood sampling, and release and to change the permittee to Regional Director, Region 6, U.S. Fish and Wildlife Service, Denver, Colorado.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-2174. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address within 30 days of the date of this publication. Please refer to the file number when submitting comments.

Dated: May 24, 1979.

Donald G. Donahoe,

Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79-17606 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Receipt of Application

Applicant: Dr. Donald W. Linzey, Dept. of Biology, Virginia Polytechnic Institute and State University, Blacksburg, Virginia 24061.

The applicant requests a permit to capture Indiana bats (*Myotis sodalis*), gray bats (*Myotis grisescens*), and eastern cougars (*Felis concolor cougar*) for identification and release for scientific purposes.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-4244. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address within 30 days of the date of this publication. Please refer to the file number when submitting comments.

Dated: May 24, 1979.

Donald G. Donahoe,

Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79-17605 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Gateway National Recreation Area Advisory Commission Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Gateway National Recreation Area Advisory Commission will be held commencing at 10:00 a.m., Thursday, June 28, 1979, at Floyd Bennett Field, Building No. 272, Conference Room, Brooklyn, New York.

The Commission was established by Pub. L. 92-592 to meet and consult with the Secretary of the Interior on general

policies and specific matters relating to the development of Gateway National Recreation Area.

The members of the Commission are:

Marian Heiskell, Chairman, New York, New York.
Alexander J. D. Greeley, New York.
Paul Larson, Lakewood, New Jersey.
Orin Lehman, Albany, New York.
Gordon Litwin, Newark, New Jersey.
Terrence D. Moore, Newark, New Jersey.
Sheldon Pollack, New York, New York.
Peter M. Rivera, Bronx, New York.
Jose A. Sanchez, Jersey City, New Jersey.
Nathaniel Washington, Newark, New Jersey.

The matters to be discussed at this meeting include:

1. Advisory Commission subcommittees reports.
2. Old and new business.
3. Presentation of Gateway National Recreation Area Recreation Management Plan.
4. Presentation of Gateway National Recreation Area, Sandy Hook Unit, North Beach Alternatives.
5. Presentation of Gateway National Recreation Area summer programs.

The meeting will be open to the public. However, facilities and space to accommodate members of the public are limited, and persons will be accommodated on a first-come, first served basis. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Herbert S. Cables, Jr., Superintendent, Gateway National Recreation Area, Headquarters, Building 69, Floyd Bennett Field, Brooklyn, New York 11234, Area Code (212) 630-0353.

Minutes of the meeting will be available for inspection four weeks after the meeting at the Gateway National Recreation Area Headquarters Building.

Dated: June 1, 1979.

Herbert S. Cables, Jr.,

Superintendent.

[FR Doc. 79-17700 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-70-M

Public Hearings Wilderness Study and General Management Plan Canaveral National Seashore, Fla.

Notice is hereby given in accordance with section 8 of the Act of January 3, 1975 (88 Stat. 2125 (16 U.S.C. 459j-7 et seq.)), and in accordance with Departmental procedures as identified in 43 CFR 19.5 that public hearings will be held at the following locations and times for the purpose of receiving comments and suggestions as to the suitability of lands within Canaveral National Seashore for designation as wilderness. Also, as part of the National Park Service's program for public participation in planning, these public hearings will also serve to receive comments and suggestions on the draft general management plan for the Canaveral National Seashore.

July 9, 1979, at 6:30 p.m.—New Smyrna Beach High School, 100 Quay Assisi, New Smyrna Beach, Florida.

July 10, 1979, at 6:30 p.m.—Titusville High School, 1850 South Washington Avenue, Titusville, Florida.

A packet containing a preliminary wilderness study report and accompanied general management plan may be obtained from the Superintendent, Canaveral National Seashore, P.O. Box 2583, Titusville, Florida 32780, telephone (305) 867-4675 or from the Regional Director, Southeast Region, National Park Service, 1895 Phoenix Boulevard, Atlanta, Georgia 30349, telephone (404) 996-2520 extension 253.

A map of the areas studied for their suitability or nonsuitability as wilderness is available for review at the locations noted above and in Room 1210 of the Department of the Interior Building at 18th and C Streets, N.W., Washington, D.C.

Interested individuals, representatives of organizations and public officials are invited to express their views in person at the aforementioned public hearings, provided they notify the Hearing Officer by July 6, 1979, of their desire to appear. Those not wishing to appear in person may submit written statements on the wilderness study report and the draft general management plan to the Hearing Officer for inclusion in the official record which will be held open for written statements until August 10, 1979. The Hearing Officer may be reached by writing or telephoning the Superintendent, Canaveral National Seashore.

Time limitations may make it necessary to limit the length of oral presentations and to restrict to one person the presentation made in behalf of an organization. An oral statement may, however, be supplemented by a more complete written statement that may be submitted to the Hearing Officer at the time of presentation of the oral statement. Written statements presented in person at the hearings will be considered for inclusion in the transcribed hearing record. However, all materials presented at the hearing shall be subject to a determination by the Hearing Officer that they are appropriate for inclusion in the hearing record. To the extent that time is available after presentation of oral statements by those who have given the required advance notice, the Hearing Officer will give others present an opportunity to be heard.

After an explanation of the preliminary wilderness study report and the draft general management plan by a representative of the National Park Service, the Hearing Officer, insofar as possible, will adhere to the following order in calling for the presentation of oral statements:

(1) Governor of the State or his representative.

(2) Members of Congress.

(3) Members of the State Legislature.

(4) Official representatives of the counties in which the National Seashore is located.

(5) Officials of other Federal Agencies or public bodies.

(6) Organizations in alphabetical order.

(7) Individuals in alphabetical order.

(8) Others not giving advance notice, to the extent there is remaining time.

Date: May 18, 1979.

William J. Whalen,

Director, National Park Service.

[FR Doc. 79-17699 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

Evaluation of Law-Related Education Program; Announcement of Solicitation for Grant Application

The National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP), Office of Juvenile Justice and Delinquency Prevention (OJJDP), U.S. Department of Justice recently announced an evaluation of the OJJDP/NIJJDP Law-Related Education Program.

Applications will be considered from private or public agencies and organizations or individuals. The maximum funding level for this twelve (12) month effort is $400,000. The deadline date for receipt of applications has been extended from June 15, 1979 to July 6, 1979.

Potential applicants may obtain a copy of the solicitation by writing to: National Institute for Juvenile justice and Delinquency Prevention, U.S. Department of Justice, 633 Indiana Avenue, NW., Room 304, Washington.

D.C. 20531, attention: James C. Howell, or by calling area (202) 724–5893.

David B. West,

Acting Associate Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 79-17708 Filed 6-6-79; 8:45 am]

BILLING CODE 4410-18-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NASA Notice 79-58]

Systematic Review Guidelines

A. *Authorization.* Under the provisions of Section 3–402 of Executive Order 12065, the National Aeronautics and Space Administration authorizes the Archivist of the United States to apply these guidelines in the review of classified information over 20 years old unless otherwise provided in E, below. The guidelines apply only to information over which this agency has jurisdiction and which has been transferred to the General Services Administration and accessioned into the National Archives of the United States.

B. *Categories of Information Excepted from Automatic Declassification.* All classified information over 20 years old which is under the jurisdiction of this agency and which has become part of the National Archives of the United States is automatically declassified unless it falls into one of the categories described below:

1. All documents that are marked as containing Restricted Data as defined in 42 U.S.C. 2014. The declassification of these documents must be authorized by the Department of Energy as required by the Atomic Energy Act, as amended.

2. In view of the provisions of Section 3–402, Executive Order 12065, it is requested that documents related to the following types of information be referred to the NASA Security Classification Officer (para. C.) for review in order that their national security sensitivity may be determined.

a. The planning, negotiation and implementation of cooperative and reimbursable agreement and arrangements with aeronautical and space agencies of foreign governments for flight and groundbased projects.

b. Agreements and arrangements concerning the use of equipment, facilities, competence or sites of foreign agencies.

c. Development and execution of NASA and U.S. policies related to the space activities of the United Nations and other international organizations.

d. Development and execution of U.S. export and munitions control policies relating to space technology.

e. Intelligence methods, techniques, and sources.

f. The formulation and implementation of National Policy on intelligence or military operations.

C. *Agency Assistance to the National Archives.* This agency has designated Mr. Arnold K. Daue, Security Classification Manager (755–3400), to be the contact point for National Archives personnel to request assistance in identifying and separating documents and specific elements of information within the documents cited in paragraph B. 2. that are deemed to require continued protection. He and others who may be designated from time to time are authorized to declassify informatin exempted from declassification under B. 2. These persons will make recommendations to me for continued protection of the documents or categories of information requiring continued classification protection.

D. *Downgrading.* All Top Secret classified information over 20 years old which is under the jurisdiction of this agency and which has become part of the National Archives of the United States is automatically downgraded to Secret.

E. *Continuing Application of Earlier Guidelines.* The systematic review guidelines listed below which were previously authorized for use by the Archivist of the United States to declassify those NASA formal publications dated prior to January 1, 1960, in accordance with the requirements of E.O. 11652, shall continue to be applied in the review of such publications under this agency's jurisdiction.

1. Guideline dated July 6, 1973, signed by Willis H. Shapley, Acting Chairman, Security Classification Program Committee.

2. Guideline dated January 2, 1976. Subject: Statement Regarding Declassification Actions.

3. Guideline dated February 6, 1976, signed by Howard G. Maines, Chief, Classification Management and Industrial Security Branch.

4. Guideline dated July 26, 1978, signed by Arnold K. Daue, Security Classification Manager.

A. M. Lovelace,

Acting Administrator.

[FR Doc. 79-17613 Filed 6-6-79; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

[N–AR 79–28]

Accident Report, Safety Recommendations and Responses; Availability

Pipeline Accident Report

Mid-America Pipeline System Liquefied Petroleum Gas Pipeline Rupture and Fire, Donnellson, Iowa, August 4, 1978 (NTSB–PAR–79–1).—Copies of the National Transportation Safety Board's formal report on the investigation of this accident are now available to the public. The report, released May 25, shows that at 12:02 a.m., c.d.t., propane that had vaporized and spread widely from a ruptured 8-inch liquefied petroleum gas (LPG) pipeline owned by the Mid-America Pipeline System (MAPCO) was ignited by an unknown source in a rural area near Donnellson. The intense fire killed two persons and critically burned three others as they fled their homes; one of the critically burned persons later died. A farmhouse and six outbuildings were destroyed, and two adjacent homes were damaged. Before the fire burned out at 3:30 a.m., 3,750 barrels (157,500 gallons) burned and 75 acres of cornfields and woods were damaged.

The Safety Board determined that the probable cause of this accident was the failure of an 8-inch propane pipeline due to the combined stresses that were exerted on the pipeline when it was lowered 3 months before the accident and to a dent and gouge which had weakened the pipe. The dent and gouge had been incurred before the pipeline had been completed in 1962.

During its investigation of this accident the Safety Board found that MAPCO's emergency procedure plan was obsolete, and last November 20 recommended that MAPCO update its list of individuals who should be contacted to close specific valves in an emergency and institute a procedure to assure that the list is updated at least annually. The Board further urged MAPCO to conduct periodic training for public emergency response agencies along the route of its pipelines. (For recommendations P–78–66 and 67, see 43 FR 58112, November 30, 1978.)

As a result of its complete investigation, the Safety Board further recommended, on May 15, that MAPCO: Establish written procedures requiring company employees to insure that precautions are taken to eliminate excessive or sudden changes in elevation when lowering a section of

pipeline; emphasize to its personnel the importance of a thorough inspection, to minimize the occurrence of dents and gouges which could result in similar accidents; and determine by analytical means the stresses produced on pipe steel when projects require the lowering of a section, and design a safety factor to insure that these stresses will not affect the integrity of the line (P–79–2 through 5).

In a separate letter addressed to the American Petroleum Institute on May 18 the Safety Board urged that the trade association bring to the attention of member companies the need to use proper engineering techniques when it is necessary to relocate or lower a section of pipeline (P–79–7). Also on May 18 the Safety Board recommended that the American Iron and Steel Institute and the American Petroleum Institute undertake research for more stringent LPG pipeline specifications to minimize the effects of dents and gouges (P–79–8).

Additionally, this accident investigation prompted the Safety Board on May 15 to urge the Materials Transportation Bureau, U.S. Department of Transportation to reevaluate all recommendatons made by the Safety Board concernng LPG and to expedite those that require rulemaking (P–79–6). (See also 44 FR 30180, May 24, 1979.)

Aviation Safety Recommendation Letters

A–79–35 through 39.—Five additional recommendations were issued by the Safety Board on June 1 to the Federal Aviation Administration as a result of investigation into the crash of a National Airlines Boeing 727 during an approach to the Pensacola (Fla.) Regional Airport, May 8, 1978. The aircraft came to rest in 12 feet of water in Escambia Bay, about 3 miles off shore. The 52 passengers and six crewmembers successfully evacuated from the aircraft, but three passengers drowned. Two flight attendants and two passengers were injured seriously, and seven passengers were injured slightly.

There was no warning of the impact and no "preditching" preparation was made. Investigation also indicated that although decelerative forces were moderate, the cabin floor under the last two seat rows was destroyed and the aft tail cone access door (with its jumpseat) separated from the aircraft structure. The aft cabin was inundated almost immediately and water was about 4 feet deep in the forward cabin when the aircraft came to rest on the bottom of the bay. As the aircraft settled tail-first in the water, the occupants evacuated from six of the eight exits. The survivors experienced several difficulties with emergency equipment both during and after the evacuation.

The Safety Board found that the aircraft was not equipped, nor was it required to be equipped, with approved flotation-type seat cushions. Further, the survivors experienced numerous problems with locating, removing, unpacking, donning, and inflating lifevests, because they either did not have time to obtain them or they did not realize that the aircraft was in the water. Crewmembers either threw lifevests to passengers who were in the water or swam and carried lifevests to the passengers. In view of these findings, the Safety Board now recommends that FAA:

Issue an Air Carrier Operations Bulletin requesting Principal Operations Inspectors to insure that air carrier training programs include instructions to crewmembers with respect to the availability, capabilities, and use of flotable seat cushions on their aircraft. (A–79–35)

Amend 14 CFR 121.340 to require that all passenger-carrying air carrier aircraft be equipped with approved flotation-type seat cushions. (A–79–36)

Amend 14 CFR 121.571 to require that passengers be briefed on the location of approved flotation devices before each flight that requires the aircraft to pass over a large body of water during takeoff, departure, approach, or landing. (A–79–37)

Issue an Air Carrier Maintenance Bulletin instructing Maintenance Inspectors to emphasize to their assigned air carrier maintenance departments the need to maintain in a workable condition the closures of lifevest stowage pockets. (A–79–38)

Expedite the issuance of the Notice of Proposed Rule Making which addresses revisions to Technical Standard Order C13c (14 CFR 37.123) for lifevests. The revisions to this order should eliminate the difficulties identified in this accident with respect to the packaging, doning, and operation of lifevests by uninstructed subjects under stress. (A–79–39)

Each of the above recommendations is designated "Class II, Priority Action." Also in connection with this accident investigation, the Safety Board on May 1 issued four other Class II recommendations, Nos. A–79–27 through 30, to the FAA. Those recommendations concerned ground proximity warning systems. (See 44 FR 27510, May 10, 1979.)

A–79–41.—On May 27, within hours after the Safety Board began its investigation of the worst aviation disaster in American history—the American Airlines DC–10 accident at Chicago's O'Hare International Airport on May 25—the Board issued a "Class I, Urgent Action" recommendation to FAA:

Issue immediately an emergency Airworthiness Directive to inspect all pylon attach points on all DC–10 aircraft by approved inspection methods. (A–79–41)

The No. 1 engine and pylon separated from the aircraft during the takeoff roll, and the investigation has revealed the presence of a fatigue fracture of the No. 1 pylon forward thrust link attach bolt, part No. RA23001–8.

Responses to Safety Recommendations

Aviation

A–78–53 through 55.—The Federal Aviation Administration on May 23 responded to the Safety Board's comments of March 7 on FAA's initial response of last November 9 (43 FR 55021, November 24, 1979). The recommendations were issued following investigation of the fatal accident involving a Columbia Pacific Airlines Beechcraft model 99 which attained an excessively steep climb immediately after takeoff on February 10, 1978, from Richland (Wash.) Airport and crashed.

Referring to A–78–53, which recommended that an Airworthiness Directive be issued to require an immediate one-time inspection of the Beech 99 stabilizer trim system and its associated position-indicating and out-of-trim warning circuitry, the Board on March 7 said it agrees with FAA's fault analysis that two faults must occur to cause unwanted trim movement, but does not view the possibility of such occurrence as the major problem. Rather, the Board believes that a faulty position indicator or out-of-trim warning system alone can induce a pilot to initiate a takeoff with an undesirable trim setting. The Board said that while the flight test investigation of Beech 99, Serial No. U–126, did verify that the airplane is controllable under the full nose-up trim aft center of gravity loaded condition, it indicated such controllability was contingent upon immediate awareness and action on the part of the pilot. The February 10, 1978, accident shows that such expectations may not be realized. A review of aircraft service records did not reveal adverse service history of trim system components, but the Board's own investigation of only a few aircraft indicated a problem; therefore, faculty systems, particularly the trim-position-indicating portion, do exist and are potential accident causation factors. The Board believes that an Airworthiness Directive is justified and will continue to monitor the service history of the Beech 99 trim system.

In response, FAA has reevaluated the horizontal trim system on Beech 99

airplanes and current service history. FAA says it does not have the required evidence of an unsafe condition to support airworthiness action at this time. Advisory Circular No. 43-16, "General Aviation Airworthiness Alerts, Alert No. 9," dated April 1979 contains an item recommending rigid adherence to the manufacturer's inspection program.

Recommendation A-78-54 asked that an inspection be required at 2,000-hour intervals to ensure that the primary and secondary mode of the horizontal stabilizer actuator are capable of deflecting the stabilizer under specified airloads. The Board's previous comments apply regarding the controllability of the aircraft when grossly out of trim. Since slippage of the clutch will affect the operation of both the main and the standby trim modes, the Board continues to believe that a periodic in spection is justified and that the FAA should reconsider issuing a require ment for such action following development of the Beech Aircraft Company procedure. FAA's May 29 response notes that the manufacturer has devel oped a test procedure and expects to add this to the maintenance manual in approximately 90 days.

With respect to A-78-55, which recommended changing the Minimum Equipment List (MEL) to make an operable out-of-trim warning system mandatory for flight, the Board on March 7 questioned the rationale of the FAA's rejection. The Board said that if the out-of-trim warning system had been operational on the Beech Model 99 on February 19, 1978, the accident which took 17 lives would not have occurred. The simplicity of the design engineering of the system is such that even the most fla grant of violators of preflight inspection requirements would have been warned that their aircraft was out of trim for takeoff. Instead of re quiring this system, the MEL states that the aircraft may be flown with an inoperable out-of-trim warning, but that the pilot must visually check the position of the horizontal stabilizer. Although pilots are expected to preflight their aircraft and comply with the visual inspection provision of the MEL, pressures for on-time departures and failure to deplane at midstation stops can influence the thoroughness of such inspections. The Board does not believe that such a provision is an acceptable substitute.

FAA states in response to the Board's comments that a Master Minimum Equipment List (MMEL) for multiengine aircraft used in operations conducted under 14 CFR Part 135 is being developed. FAA will reevaluate all of the items on the current MEL to determine if they meet the re quirements of § 135.179. FAA expects to complete the Beech 99 MMEL in July 1979.

A-78-77 and 78.—FAA's letter of May 29 updates the action taken to implement these recommendations, developed during investigation of the Pacific Southwest Airlines Boeing 727-214/Cessna 172 midair collision last September 25 over San Diego, Calif.

In response to A-78-77, which recommended that FAA implement a Terminal Radar Service Area (TRSA) at Lindbergh Airport in San Diego, FAA states that a TRSA was implemented at that airport on April 19. In addition, the airport traffic control tower has been equipped with the following:

BRITE Alphanumerics—commissioned January 22, 1979.
Minimum Safe Altitude Warning and Conflict Alert Enhancements—commissioned February 14, 1979.

Recommendation A-78-78 asked FAA to review procedures at all airports which are used regularly by air carrier and general aviation aircraft to determine which other areas require either a terminal control area or a terminal radar service area and establish the appropriate one. FAA's comments refer to its response of last December 27 (44 FR 2441, Janu ary 11, 1979) informing the Board that FAA's program to expedite the on-going TRSA establishment program at all air carrier airports, where capability exists, was well underway and that a Notice of Proposed Rule Making concerning establishment of additional Terminal Control Areas (TCA) was to be issued prior to January 1, 1979. This proposal (Docket 18605) was issued January 4. FAA also provides a copy of its "Plan for Enhanced Safety of Flight Operations in the National Airspace System" which details FAA action to establish additional TCA's and TRSA's with the proposed implementation dates.

Highway

H-78-65 and 66.—American Trucking Associations, Inc., On May 25 responded to recommendations issued following investigation of the tractor-semitrailer/multiple-vehicle collision and override which oc curred on I-285, Atlanta, Ga., June 20, 1977. (See 43 FR 51150, November 2, 1978.) The recommendations asked ATA to emphasize education al programs at the State, regional, and national levels to bring about a better understanding of, and compliance with, the safety regulations and safety practices of truck operators, especially small carriers per forming for-hire or private carriage service (H-78-65), and to conduct a special study to determine if there are other techniques and programs which may be developed and utilized on an industrywide basis to improve driver knowledge and conduct (H-78-66).

ATA reports that last November 1 its Board of Directors adopted a resolution for renewed emphasis on various aspects of the trucking industry's safety program and to conduct the recommended special study leading to improved driver knowledge and conduct on the highways. Since then, the industry has been studying hours of service of drivers and this has resulted in information that will further ATA's efforts to assure that drivers and carriers have a better understanding of hours-of-service requirements and the reasons why compliance with the requirements is essential.

According to ATA, the industry has a national roadside inspection program which involves inspection of equipment and driver records to determine the condition of drivers and vehicles. Results of inspections are provided to motor carrier management for action to improve safety of operations. Additionally, in early 1979 ATA developed driver letters and a poster which are designed to remind drivers of the need to maintain a safe following distance and to be alert for stopped vehicles, especially in construction zones. (Copies of these materials are attached to ATA's letter.) They supplement other materials dealing with following and stopping distances already developed by ATA.

ATA reports that the Past National Chairman's Advisory Board of ATA's Council of Safety Supervisors will meet on June 28, 1979, in Boston to determine the elements of a special study program as recommended by the Safety Board and to plan additional activities that will be responsive to the resolution of the ATA Board of Directors and Safety Board recommendations.

Railroad

R-78-28 through 31.—The Association of American Railroads (AAR) on May 15 responded to the Safety Board's request of last November 24 for reconsideration of AAR's September 20 response (43 FR 52310, November 9, 1978) to recommendations issued following the Board's public hearing on derailments and the carriage of hazardous materials by rail. The hearings were held in early April 1978. The recommendations called on AAR to: Restructure the membership

and procedures of AAR's Committee on Tank Cars to eliminate conflicts of interest between shippers and the railroad industry in safety decisions (R–78–28); review and adopt all safety analysis methods that will strengthen the safety approval procedures within AAR Committees acting on hazardous materials tank car design and modification questions (R–78–29); implement emergency procedures for approval of facilities and locations for installation of shelf couplers and head shields on DOT 112A/114A tank cars (R–78–30); and develop and document a system to notify the Federal Railroad Administration of critical car components that exhibit critical failures annually and recommend regulatory action as required (R–78–31).

With respect to R–78–28, the Safety Board's November 24 letter referred to its safety effectiveness evaluation report, No. NTSB–SEE–78–2, which noted that an interlocking directorship exists on the AAR Tank Car Committee in that all members are either directly connected with carriers or shipper-related trade associations. The Board did not concur with AAR's statement of "no conflict of interest" within the Committee, citing, for example, the means to improve tank car safety through the use of shelf couplers was known for many years, yet there was no demonstrated action by the Committee to require coupler retrofitting. The Board said the inactivity strongly suggests a self-serving quality on the part of the Committee membership, a quality that does not lend itself to enhancing railroad safety, and strongly urged that AAR reassess its position of maintaining the present committee structure and procedures.

AAR's May 15 response states, "* * * we know of no conflict of interest between shippers and the railroad industry *in safety decisions.*" While recognizing that some conflict of interest between shippers and carriers does exist, AAR reemphasized that in matters relating to safety of transportation, it knows of no conflict of interest. In regard to retrofitting tank cars with shelf couplers, AAR calls attention to the hazardous materials regulation that mandated FRA-approved couplers on new tank cars. The AAR in 1974 and again in 1975 petitioned the U.S. Department of Transportation to add shelf couplers to the approved list. Both petitions were denied and in view of this denial, it was considered inappropriate to require retrofitting existing cars manufactured prior to the effective date of the regulation governing approved couplers on new cars. AAR concludes that since action of the Tank Car Committee is subject to the authority of the Mechanical Division General Committee and final authority in regard to hazardous materials regulations rests with DOT, there is no benefit to restructuring membership and procedures of the Tank Car Committee.

Regarding R–78–29 and in answer to the Safety Board's request for further information as to the safety analysis presently practiced prior to the approval of 112A and 114A tank car design or modification, AAR says that its Tank Car Committee has no *formal* safety analysis presently practiced prior to approval of tank car design or modifications. AAR notes that the Specification 112 and 114 tank cars were approved 20 years ago and doubts that formal safety analysis procedures were used extensively at that time. AAR states that if the Safety Board has a recommended safety analysis method that has demonstrated by acceptable methods that it will strengthen the safety approval procedures, the technical committees are willing to review and adopt it.

The Safety Board asked, referring to recommendation R–78–30, for further information regarding the feasibility of issuing emergency certification of appropriate repair track facilities so that the time frame for head shield retrofitting may be more readily met. AAR states, "* * * the industry feels very strongly that it is not proper to authorize repair track facilities to apply head shields." AAR says this was the industry position at the public hearing. The application of head shields requires specialized procedures which are not readily available on typical repair tracks, and AAR has no reason to believe that the existing time frame for head shield retrofitting will not be met.

With reference to R–78–31, the Safety Board sought further information regarding AAR's system of detecting components exhibiting high failure levels and relaying the findings to FRA. As examples, the Board asked: Is the information generally received from carriers' repair tracks, or from other sources, such as accident investigation developments? Also, at what point in failure levels is an "Early Warning" advisory issued? In response, AAR says it uses various systems to discover components exhibiting high failure rates. Major railroads may furnish failure reports, or a car owner may advise regarding failure of components on a particular series of cars, and at other times a report of one or two unusual incidents from a particular railroad would generate an inquiry to other railroads requesting information on similar failure experience. AAR notes that the Early Warning Advisory is issued at various failure levels depending upon individual circumstances. AAR states, "The complexities of component failure in railroad operating environment are such that analysis by competent industry personnel is preferable to an inflexible computer program which is designed to furnish safe or unsafe answers."

Note.—Single copies of the Safety Board's accident reports are available without charge, as long as limited supplies last. Copies of the recommendation letters issued by the Board, response letters and related correspondence are also available free of charge. All requests for copies must be in writing, identified by report or recommendation number. Address inquiries to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

Multiple copies of accident reports may be purchased by mail from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22151.

(Secs. 304(a)(2) and 307 of the Independent Safety Board Act of 1974 (Pub. L. 93–633, 88 Stat. 2169, 2172 (49 U.S.C. 1903, 1906)))

Margaret L. Fisher,

Federal Register Liaison Officer.

June 4, 1979.

[FR Doc. 79–17582 Filed 6–6–79; 8:45 am]

BILLING CODE 4910–58–M

OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

Trade Policy Staff Committee; Generalized System of Preferences (GSP) Subcommittee

Summary. The purposes of this notice are to (1) publish results of the review of proposals for changes in product coverage in the Generalized System of Preferences (GSP) (see part I below and Annexes I and II); and (2) publish notice of the deadline for receipt of petitions concerning GSP product eligibility for the next full review (see part II below).

I. *Results of Review of Petitions for Changes in Product Coverage.* This publication describes results of the 1978 annual review of petitions for changes in the list of imported articles eligible for duty-free treatment under the Generalized System of Preferences (GSP). The GSP is provided for in the Trade Act of 1974 (88 Stat. 2066–2071, 19 U.S.C. 2461–2466). The review was conducted pursuant to regulations codified at 15 CFR Part 2007. Results of the review were implemented as of March 1, 1979 by Executive Order No.

12124 of February 28, 1979 (44 FR 11729). The disposition of the petitions accepted for review by the Trade Policy Staff Committee (TPSC) is set forth in Annex I to this notice. Petitions that remain pending are listed in Annex II.

II. *Notice of Deadline for Receipt of Petitions Requesting Modification of the List of Articles Eligible for Duty-Free Treatment under the GSP.* Notice is hereby given that, in order to be considered in the next full review of products covered by the GSP, petitions for modification of the list of articles receiving duty-free treatment under the GSP must be received no later than the close of business on Tuesday, July 17, 1979. Petitioners should be guided in the preparation of their petitions by the GSP regulations codified at 15 CFR Part 2007 (42 FR 45532, September 9, 1977). Petitions should be submitted in twenty copies in English to the Chairman, GSP Subcommittee, 1800 G Street, N.W., Room 711 Washington, DC. 20506. Notice of petitions accepted for review by the GSP Subcommittee of the TPSC will be published in the Federal Register. Public hearings on all petitions accepted for review will be held during the week of September 24, 1979.

William B. Kelly,

Chairman, Trade Policy Staff Committee.

BILLING CODE 3190-01-M

Annex I

Case Reviews Completed

Petitions

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner	Action taken
A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences				
76-B-19	607.65	Ferrotungsten and ferrosilicon tungsten	Samicorp, Inc. New York, N.Y.	Petition Granted
77-B-3	136.30	Garlic	Government of Chile	Petition Granted
77-B-5	145.40	Almonds: shelled	Government of Chile	Petition Denied
77-B-11	152.76	Fruit paste	Government of Chile	Petition Denied
77-B-16	337.20	Silk fabrics	Government of India	Petition Granted
77-B-18	361.21	Jute floor coverings	Government of Bangladesh	Petition Granted
77-B-22	380.0001	Men's or boy's lace wearing apparel, of cotton	Guatemala Export Promotion Centre Guatemala City, Guatemala	Petition Denied
77-B-23	380.0203	Men's or boys lace wearing apparel, of wool	do.	Petition Denied
77-B-24	380.0566 (part)	Men's or boy's lace wearing apparel, of jute	Government of Bangladesh	Petition Denied
77-B-25	380.0905	Men's coats, of cotton, not over $4.00 each	Guatemala Export Promotion Centre Guatemala City Guatemala	Petition Denied
77-B-26	380.1205	Men's coats, of cotton, over $4.00 each	do.	Petition Denied
77-B-27	380.1505	Men's dressing gowns, of cotton, not over $2.50 each	do.	Petition Denied
77-B-28	380.1805	Men's dressing gowns, of cotton, over $2.50 each	do.	Petition Denied
77-B-29	380.2705	Men's shirts, of cotton	do.	Petition Denied

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

Annex I (Continued)

Case Reviews Completed (Continued)

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner	Action taken
A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.)				
77-B-30	380.3305	Men's vests, of cotton, not over $2.00 each	do.	Petition Denied
77-B-31	380.3605	Men's vests, of cotton, over $2.00 each	do.	Petition Denied
77-B-32	380.3905	Other men's or boy's wearing apparel, of cotton, NSPF	do.	Petition Denied
77-B-33	380.6305	Other men's or boy's wearing apparel, of wool, not over $4.00 per pound	Guatemala Export Promotion Centre Guatemala City, Guatemala	Petition Denied
77-B-34	382.0001	Women's or girl's lace wearing apparel, of cotton	do.	Petition Denied
77-B-35	382.0202	Women's or girl's lace wearing apparel, of wool	do.	Petition Denied
77-B-36	382.1510	Women's dressing gowns, of cotton, not over $2.50 each	do.	Petition Denied
77-B-37	382.1810	Women's dressing gowns, of cotton, over $2.50 each	do.	Petition Denied
77-B-38	382.2710	Women's vests, of cotton, not over $2.00 each	do.	Petition Denied
77-B-39	382.3010	Women's vests, of cotton, over $2.50 each	do.	Petition Denied
77-B-40	382.3301	Other women's wearing apparel, of cotton, NSPF	do.	Petition Denied
77-B-41	382.6005	Women's wearing apparel, of wool, not over $4.00 per pound	do.	Petition Denied
77-B-42	382.6305	Women's wearing apparel, of wool, over $4.00 per pound	do.	Petition Denied
77-B-43	386.09	Lace or net articles, NSPF	Caritas Bangladesh Dacca, Bangladesh	Petition Granted

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

Annex I (Continued)

Case Reviews Completed (Continued)

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner	Action taken	
	A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.)				
77-B-46	387.32	Other articles, not ornamented, of jute	do.	Petition Granted	78-4
77-B-50	646.80	Padlocks	Government of India	Petition Denied	
77-B-51	646.89	Cabinet locks	do.	Petition Granted	78-5
77-B-53	648.80	Forged slip joint pliers under $6.00/dz.	do.	Petition Granted	78-6
77-B-61	706.20	Luggage and handbags in part of braid	Caritas Bangladesh Dacca, Bangladesh	Petition Denied	78-10
77-B-62	706.2340	Handbags of jute	Government of Bangladesh	Petition Denied	
77-B-66	732.18	Bicycles	Government of India	Petition Denied	78-11
77-B-67	732.30	Bicycle frames	Government of Brazil Government of India	Petition Denied	78-12
77-B-68	732.38	Three speed hubs; caliper brakes free wheel sprockets	Government of Brazil Government of India	Petition Granted	78-13
77-B-70	740.34	Watch bracelets: valued not over $5 per dozen	Brite Industries Inc. Providence, R.I.	Petition Granted	78-15
77-B-110	145.08	Coconut meat	Government of Sri Lanka	Petition Granted	78-25
77-B-111	382.0901	Women's coats, of cotton, not over $4.00 each	Guatemala Export Promotion Centre Guatemala City, Guatemala	Petition Denied	78-26
TPSC Own motion	601.54	Tungsten ore	TPSC	Petition Granted	78-27
78-1	112.20	Sardines	Government of Peru	Petition Denied	78-28
78-2	112.22	Sardines	do.	Petition Denied	78-33
78-3	114.15	Crabmeat	Government of Colombia	Petition Denied	78-34

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

Annex I (Continued)

Case Reviews Completed (Continued)

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner	Action taken
		A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.)		
78-4	117.8560	Cheeses over 25 cents per lb.	Nahariya Dairy Strauss, Ltd., Israel	Petition Withdrawn
	117.8560 pt.	Smoked cream cheese	Government of Nicaragua	Petition Denied
78-5	117.8570	Other cheeses	Nahariya Dairy Strauss, Ltd., Israel	Petition Withdrawn
78-6	121.50	Pig and hog leather	Government of Yugoslavia	Petition Denied
78-10	140.55	Dried vegetables, nes	Deco-Swiss Dehydration Co., Ltd., Israel	Petition Granted
78-11	140.75	Other vegetable flour	Government of Colombia	Petition Denied
78-12	141.60	Pimientos	National Fruit & Vegetables Board, Portugal	Petition Denied
78-13	141.66	Tomatoes, other	do. Government of Argentina	Petition Denied
78-15	152.65	Papaya fruit paste	Government of Costa Rica	Petition Denied
78-25	204.40	Unlined jewelry boxes	Government of India Government of Colombia	Petition Granted
78-26	204.45	Lined jewelry boxes	Government of Colombia	Petition Denied
78-27	240.23	Other plywood	Government of Nicaragua	Petition Denied
78-28	306.3172	Other wool finer than 44s	Government of Argentina	Petition Denied
78-33	316.60	Cordage of man-made fibers	Tama Plastics Industries, Israel	Petition Denied
78-34	336.10	Woven fabrics of wool	Government of Bolivia	Petition Denied

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

Annex I (Continued)

Case Reviews Completed (Continued)

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner	Action taken
	A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.)			
78-35	336.60	Other woven fabrics of wool	do.	Petition Denied
78-37	345.30	Knit fabrics of wool	do.	Petition Denied
78-40	360.15	Floor coverings over 66-2/3 cents per sq. yard	Government of Pakistan Government of Lesotho	Petition Denied
78-41	360.4825	Other floor coverings of wool	Government of Bolivia	Petition Denied
78-42	363.0110	Sheets and pillow cases of cotton	Government of Lesotho	Petition Withdrawn
78-44	363.0505	Other bedding, of cotton	do.	Petition Withdrawn
78-45	363.0530	Other bedding, of vegetable fibers	do.	Petition Withdrawn
78-46	363.10	Blankets, of wool	Government of Lesotho Government of Bolivia	Petition Denied
78-47	363.2550	Lace or net bedding	Government of Lesotho	Petition Withdrawn
78-48	363.2590	Other lace or net bedding	do.	Petition Withdrawn
78-49	363.3005	Other sheets and pillow cases, of cotton	do.	Petition Withdrawn
78-50	363.35	Other sheets and pillow cases, of vegetable fibers	do.	Petition Withdrawn
78-51	363.5010	Bedspreads, block-printed	do.	Petition Withdrawn
78-52	363.5110	Bedspreads, not block-printed	do.	Petition Withdrawn
78-53	363.6010	Other bedding of vegetable fibers NSPF	do.	Petition Withdrawn
78-54	363.65	Wool blankets	Government of Lesotho Government of Bolivia	Petition Denied
78-55	363.80	Silk blankets	Government of Lesotho	Petition Withdrawn

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

Annex I (Continued)

Case Reviews Completed (Continued)

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner	Action taken
		A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.)		
78-56	363.8510	Other bedding of man-made fibers	do.	Petition Withdrawn
78-57	363.90	Other bedding of other vegetable fibers	do.	Petition Withdrawn
78-58	364.05	Tapestry wall hangings	do.	Petition Withdrawn
78-59	364.1610	Other certified hand-loomed tapestries, of vegetable fibers	do.	Petition Withdrawn
78-60	364.20	Tapestries, of wool, not over $2.00 per pound	Government of Lesotho Artesanias Titicaca, Ltda., Bolivia	Petition Denied
78-61	364.22	Tapestries, of wool, over $2.00 per pound	Artesanias Titicaca, Ltda., Bolivia Government of Peru	Petition Denied
78-62	365.0010	Handmade lace furnishings	Government of Lesotho	Petition Withdrawn
78-66	365.3195	Other machine made lace furnishings	Government of Lesotho	Petition Withdrawn
78-67	365.3595	Lace furnishings made on a bobbinet machine	Government of Lesotho	Petition Denied
78-68	365.4030	Lace furnishings, of veg. fibers, made on a Nottingham machine	do.	Petition Withdrawn
78-69	365.4595	Other lace furnishings made on a Nottingham machine	do.	Petition Withdrawn
78-70	365.5095	Lace furnishings made on other machines	do.	Petition Withdrawn
78-71	365.7095	Other burnt-out lace furnishings	do.	Petition Denied
78-72	365.7595	Lace, nettings, etc.	do.	Petition Denied
78-73	365.7810	Other net furnishings, of cotton	Government of Lesotho	Petition Withdrawn
78-74	365.80	Damask tablecloths	do.	Petition Withdrawn

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

Annex I (Continued)

Case Reviews Completed (Continued)

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner	Action Taken
		A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.)		
78-75	365.81	Curtains and drapes, of veg. fiber	do.	Petition Withdrawn
78-76	365.83	Towels and washcloths of veg. fiber	do.	Petition Withdrawn
78-77	365.84	Other net furnishing of veg. fiber, NES	do.	Petition Withdrawn
78-78	365.8620	Handloomed pillow covers of wool	Government of Bolivia Artesanias Titicaca, Ltda, Bolivia	Petition Denied
78-79	366.12	Curtains and drapes, pile or tufted of veg. fiber	Government of Lesotho	Petition Withdrawn
78-80	366.1510	Curtains and drapes handloomed	do.	Petition Withdrawn
78-81	366.1540	Other curtains and drapes	do.	Petition Withdrawn
78-82	366.2710	Towels, of cotton	do.	Petition Withdrawn
78-83	366.30	Towels, of veg fibers, not over 100 yarns/ sq. inch	do.	Petition Withdrawn
78-84	366.33	Towels of veg. fibers, over 100 but not over 120 yarns/ sq. yard	do.	Petition Withdrawn
78-85	366.36	Towels of veg. fibers, over 120 yards/sq. inch	do.	Petition Withdrawn
78-86	366.39	Towels, of veg. fiber, pile or tufted	do.	Petition Withdrawn
78-87	366.4710	Tablecloths and napkins, of cotton, other hand-loomed and folklore products	do.	Petition Withdrawn
78-88	366.48	Damask	do.	Petition Withdrawn
78-89	366.51	Damask tablecloths	do.	Petition Withdrawn
78-90	366.54	Damask napkins	do.	Petition Withdrawn

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

Annex I (Continued)

Case Reviews Completed (Continued)

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner	Action Taken
A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.)				
78-94	374.25	Embroidered hosiery, of wool	Government of Lesotho Government of Bolivia	Petition Denied
78-98	403.6065	Other Amines or D(-)-Para-hydroxphenylglycine	Plantex/Ikapharm Ltd., Israel	Petition Denied
77-99	406.02	Dyes, sulfur black	Government of India	Petition Denied
78-100	406.04	Dyes, vat blue 1	do.	Petition Denied
78-101	406.10	Various dyes	do.	Petition Denied
78-102	406.50	Various dyes	do.	Petition Denied
78-103	406.60	Various dyes	do.	Petition Denied
78-104	406.70	Various dyes	do.	Petition Denied
78-105	407.8511	Ampicillin and its salts	Plantex/Ikapharm Ltd., Israel	Petition Denied
78-106	407.8517 or 407.8517 pt.	Amoxicillin trihydrate	do.	Petition Denied
78-107	407.8523 or 407.8523 pt.	Sulfamethoxazole	do.	Petition Denied
78-108	407.8527 or 407.8527 pt.	Trimethoprim	do.	Petition Denied
78-109	407.8555 or 407.8555 pt.	Amitriptyline and Imipramine	do.	Petition Denied
78-111	632.8420	Unwrought alloys, other	Government of Yugoslavia	Petition Denied
78-112	642.08	Stainless steel wire strand	Government of Colombia	Petition Granted

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

Annex I (Continued)

Case Reviews Completed (Continued)

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner	Action Taken
A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.)				
78-113	642.11	Other roopes, cables, and cordage	do.	Petition Denied
78-114	642.14	Stainless steel rope	do.	Petiton Granted
78-115	650.15	Knives with rubber or plastic handles	Government of Colombia	Petition Granted
78-116	650.21	Other knives	do.	Petition Granted
78-117	650.45	Forks with rubber or plastic handles	Government of Malaysia	Petition Granted
78-118	650.56	Spoons and ladles of base metal	Government of Colombia Government of Malaysia	Petition Granted
78-120	685.34	Tone arms	Government of Argentina	Petition Granted
78-121	686.1035	Variable resistors, other	Electromecaica Portuguesa Ltda., Portugal Government of Malaysia	Petition Denied
78-140	704.65	Gloves of wool, certified folklore products	Government of Bolivia	Petition Denied
78-142	706.06	Luggage of leather	Government of Argentina Government of Colombia	Petition Denied
78-143	727.10	Furniture of veg. fiber	Government of the Philippines Government of Singapore	Petition Denied
78-144	737.22	Dolls	Government of Colombia Government of Bolivia	Petition Denied
78-145	737.2225	Other dolls	Horne International, San Diego, California	Petition Denied
78-146	760.48	Lead pencils	Jerusalem Pencils, Ltd., Israel	Petition Withdrawn

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

Annex I (Continued)

Case Reviews Completed (Continued)

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner	Action Taken
	B. Petitions to remove products from the list of eligible articles for the Generalized System of Preferences			
77-9	603.45	Materials, chief value tungsten	Refractory Metal Assn. Princeton, New Jersey	Petition Denied
	629.25	Tungsten: waste & scrap	do.	Petition Denied
	629.26	Tungsten: waste & scrap	do.	Petition Denied
	649.43	Cutting tools	do.	Petition Denied
	649.48	Dies	do.	Petition Denied
	649.53	Tooltips	do.	Petition Denied
77-B-83	774.60	Parts of footwear	American Footwear Industries Assoc. Arlington, Va.	Petition Denied
77-B-86	791.24	Cut leather uppers for shoes	do.	Petition Granted
78-147	121.25	Upholstery leather	Tanner's Council of America, N.Y., N.Y.	Petition Denied
78-148	121.65	Other leather	do.	Petition Denied
78-149	653.9425	Stainless steel cooking and kitchen ware	Metal Cookware Manufacturer's Association, Wash., D.C.	Petition Denied
78-150	654.1015	Aluminum cookware, not enameled	do.	Petition Denied
78-151	654.1055	Aluminum cookware, enameled	do.	Petition Denied
78-152	708.0140	Ophthalmic lenses	Optical Manufacturer's Assoc., Arlington, Va.	Petition Denied
78-153	708.47	Eyeglass frames	do.	Petition Denied
78-154	708.53	Firearm scopes	W.R. Weaver Company El Paso, Texas	Petition Denied
78-155	722.1210	110 cameras	Nat'l. Assoc. of Photographic Manu., Inc. Harrison, New York	Petition Denied

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

Annex I (Continued)

Case Reviews Completed (Continued)

ase No.	TSUS or TSUSA 1/ item No.	Article	Petitioner	Action Taken
	B. Petitions to remove products from the list of eligible articles for the Generalized System of Preferences (con.)			
78-156	722.1225	Other cameras	do.	Petition Denied
78-157	725.03	Other, stringed musical instruments	United Furniture Workers of America N.Y., N.Y.	Petition Denied
78-158	725.10	Pipe organs	do.	Petition Denied
78-159	730.37	Shotguns, not valued over $5 each	Winchester Group New Haven, Ct.	Petition Denied
78-160	730.39	Shotguns, valued over $5 but not over $10 each	do.	Petition Denied
78-161	730.41	Shotguns, valued over $10 but not over $25 each	do.	Petition Denied
78-162	730.43	Shotguns, valued over $25 but not over $50 each	do.	Petition Denied
78-163	730.45	Shotguns, valued over $50 each	do.	Petition Denied
78-164	731.05	Fishing tackle: snelled hooks	American Fish. Tackle Manu. Assoc., Tackle Representative Assoc.	Petition Denied
78-167	731.24	Fishing reels, valued over $8.45 each	do.	Petition Denied
78-168	731.26	Parts of fishing reels	do.	Petition Denied
78-169	731.65	Artificial baits and flies	do.	Petition Granted
78-170	734.20	Game machines	Wolverine Toy Booneville, Ar.	Petition Denied
78-171	737.80	Other toys	do.	Petition Denied
78-172	737.9550	Percussion caps	Societe Pyragric, France	Petition Denied
78-173	771.4212	Polyvinyl chloride sheet and film	The Plastics Import Action Committee, Washington, D.C.	Petition Denied
78-174	790.15	Fly ribbons	Aeroxon Products, Inc. New Rochelle, N.Y.	Petition Denied
78-175	791.76	Leather wearing apparel	Nat'l. Outerwear & Sportswear Assoc., Inc.	Petition Granted

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

Annex I (Continued)

Case Reviews Completed (Continued)

ase No.	TSUS or TSUSA 1/ item No.	Article	Petitioner	Action Taken
		C. Petitions to subdivide TSUS items currently designated as eligible articles for the Generalized System of Preferences		
78-176	206.98	Wooden drapery hardware	Essex Mercantile Corp., Brooklyn, N.Y.	Petition Denied
78-177	653.49	Cast iron parts for stoves	Parker International Hollywood, Calif.	Petition Granted
78-178	685.90	Glass fuses	D & R Assoc., Inc. Boca Raton, Fl.	Petition Denied
78-179	722.51	Motorcycle tires	P.J. Co., Inc. Carson, Calif.	Petition Denied

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

Annex II

Case Reviews Pending

Petitions

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered items which are being considered, and such language is not itself intended to describe articles which are under consideration]	
		A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences.	
		Vegetables, fresh, chilled, or frozen (but not reduced in size nor otherwise prepared or preserved):	
		[Articles provided for in TSUS items 135.10 thru 137.80]	
		Other:	
		Fresh or chilled:	
78-7	137.8660	Jicamas and yams (genus Dioscorea)	Government of Colombia
		Vegetables, fresh, chilled, or frozen, and cut, sliced or otherwise reduced in size (but not otherwise prepared or preserved):	
		[Broccoli, cauliflower, and okra]	
		Other:	
		Frozen:	
		[Asparagus]	
78-8	138.5060 or 138.5060 pt.	Other or Yucca	Government of Costa Rica, do.
		Vegetables, dried, desiccated, or dehydrated, whether or not reduced in size or reduced to flour (but not otherwise prepared or preserved):	
		Dried, desiccated, or dehydrated:	
		[Beans, chickpeas or garbanzos, cowpeas, garlic, lentils, lupines, and onions]	
		Peas:	
78-9	140.45	Split	Deco-Swiss Deyhdration Company, Ltd., Israel
		Papayas, fresh, or prepared or preserved:	
78-14	148.65	Prepared or preserved	Government of Panama, Government of Peru
		Brandy:	
		[Pisco and singani]	
		Other:	
		In containers each holding not over 1 gallon:	
78-16	168.27 pt.	Slivovitz, valued not over $9 per gallon	Government of Yugoslavia
78-17	168.28 pt.	Slivovitz, valued over $9 per gallon	do.
		In containers each holding over 1 gallon:	
78-18	168.29 pt.	Slivovitz, valued not over $9 per gallon	do.

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202)

Annex II (Continued)

Case Reviews Pending (Continued)

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner
		A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.)	
78-19	168.90	Imitations of brandy and other spirituous beverages	Government of Yugoslavia
78-20	176.17	Coconut oil	Trust Territory of the Pacific Islands, Government of Malaysia
		Olive oil:	
		[Rendered unfit for use as food]	
		Other:	
78-21	176.29	Weighing with the immediate container under 40 pounds	Government of Argentina, Government of Turkey
		Edible preparations not specially provided for (including prepared meals individually packaged):	
		[Of gelatin]	
		Other:	
		[Containing over 5.5 percent by weight of butterfat and not packaged for retail sale]	
		Other:	
		[Wheat gluten]	
		Other:	
		[Provided for in TSUS items 950.16 or 950.23; pancake flour and other flour mixes; refrigerated (including frozen) doughs]	
78-22	182.9888 or 182.9888 pt.	Other or Bioprotein of fish origin for human use	Government of Uruguay do.
		Animal feeds, and ingredients therefor, not specially provided for:	
		[Meat, including meat offal, not fit for human consumption]	
		[Byproducts obtained from the milling of grains, mixed feeds, and mixed-feed ingredients]	
		Other:	
		[Animal feeds provided for in TSUS item 950.17]	
78-23	184.7540 or 184.7540 pt.	Other or Hydrolized fish protein for livestock	do. do.

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202)

Annex II (Continued)

Case Reviews Pending (Continued)

Case No.	TSUS or TSUSA 1/ Item No.	Article	Petitioner
		A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.)	
78-24	192.20	Cut flowers, fresh; bouquets, wreaths, sprays, or similar articles made from such flowers or other fresh plant parts	Dominican Republic Center for Export Promotion, Dominican Republic, Government of Panama
	or 192.20 pt.	or Cut orchids, fresh	Government of Singapore
		Cordage:	
		Of vegetable fibers:	
		Of hard (leaf) fibers:	
		Not of stranded construction:	
78-29	315.25	[Binder twine and baler twine] Other	Exporcorda-Exportadora de Cordoarias, Lda, Portugal
		Of stranded construction:	
78-30	315.30	Measuring under 3/16 inch in diameter	do.
		Measuring 3/16 or over but under 3/4 inch in diameter:	
78-31	315.40	Of sisal, of henequen, or of sisal and henequen	do.
		Measuring 3/4 inch or over in diameter:	
78-32	315.55	[Of abaca] Of sisal, of henequen, or of sisal and henequen	do.
		Woven fabrics of silk:	
		In chief value, but not wholly of silk:	
		[Containing over 17 percent of wool by weight]	
		Other:	
		Not jacquard-figured:	
		Degummed, bleached, or colored:	
78-36	337.7035	[Subject to man-made fiber restraints] Other	Government of India
		Woven or knit fabrics (except pile or tufted fabrics), of textile materials, coated or filled, not specially provided for:	
		[Oilcloths; tracing cloth; window hollands of cotton]	
		Other:	
78-38	356.25	Of vegetable fibers	Floctex Industries, Ltd., Israel
78-39	356.40	Of man-made fibers	do.

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202)

Annex II (Continued)

Case Reviews Pending (Continued)

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner
		A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.)	
		Lace or net bedding, whether or not ornamented, and other bedding, ornamented:	
		Of vegetable fibers:	
		Sheets and pillowcases (including bolster cases):	
		[Of cotton]	
78-43	363.02	Other	Government of Colombia, Government of Lesotho
		Lace or net furnishings, whether or not ornamented, and other furnishings, ornamented:	
		Handmade-lace furnishings:	
78-63	365.15	Valued over $50 per pound	Government of Lesotho
		Machine-made-lace furnishings:	
		Made on a Leavers (including go-through) machine:	
		12 points or finer:	
		[Of man-made fibers]	
78-64	365.25	Other	do.
		Not 12 points or finer:	
78-65	365.29	Of vegetable fibers (except cotton), or of wool	do.
		Burnt-out-lace furnishings:	
		[Of man-made fibers]	
78-71	365.7095	Other	do.
		Of lace, of netting, or of lace and netting, and made in designs or patterns formed wholly or in substantial part by joining (by applique or otherwise) machine-made, or handmade and machine-made, materials by handwork:	
		[Of cotton]	
		[Of man-made fibers]	
78-72	365.7595	Other	do.
		Mufflers, scarves, shawls, and veils, all the foregoing of textile materials:	
		[Lace or net articles, whether or not ornamented, and other articles, ornamented]	
		Other articles, not ornamented:	
		Of silk:	
		Not knit:	
		Weighing over 1 ounce per square yard and rectangular in shape:	
78-91	372.60	Valued over $5 per dozen	Government of India
78-92	372.65	Other	do.

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202)

Annex II

Case Reviews Pending (Continued)

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner
		A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.)	
		Men's and boys' neckties, of textile materials:	
		Not ornamented:	
		Of silk:	
78-93	373.22	Not knit	Government of India
		Other women's, girls', or infants' wearing apparel, not ornamented:	
		Of silk:	
		Not knit:	
		[Subject to cotton restraints; subject to wool restraints; subject to man-made fiber restraints]	
78-97	382.72 pt. 2/	Other	do.
		Fluorspar:	
78-110	522.21	Containing over 97% by weight of calcium fluoride	Fluorspar Company of Kenya, Ltd., Kenya
		Parts of textile machinery:	
		Needles for knitting machines:	
78-119	670.58	Latch needles	Government of Brazil
		Electronic tubes (except X-ray tubes); photocells; transistors and other related electronic crystal components; mounted piezo-electric crystals; all the foregoing and parts thereof:	
		[Television picture tubes]	
78-122	687.60	Other	Government of Argentina
		Transistors and related electronic crystal components; mounted piezo-electric crystals:	
		Transistors:	
78-123	687.6025	With a dissipation rating of less than 1 watt	Government of Malaysia, Government of Singapore
78-124	687.6027	With a dissipation rating of 1 watt or greater	Government of Malaysia, Government of Singapore
		Integrated circuits:	
		Monolithic:	
78-125	687.6031	Linear	Government of Malaysia
		Other:	
		Bipolar:	
78-126	687.6036	Transistor-transistor logic	do.
78-127	687.6037	Emitter coupled logic	do.
78-128	687.6039	Other	do.

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202)
2/ TSUSA items 382.7264 through 382.7282

Annex II (Continued)

Case Reviews Pending (Continued)

Case No.	TSUS or TSUSA 1/ Item No.	Article	Petitioner
		A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.)	
		Electronic tubes (except X-ray tubes), etc. (con.):	
		Other (con.):	
		Transistors and related electronic crystal components, etc. (con.):	
		Integrated circuits (con.):	
		Monolithic (con.):	
		Other (con.):	
		Other:	
78-129	687.6043	Metal oxide silicon	Government of Malaysia
78-130	687.6046	Other	do.
78-131	687.6053	Other	do.
		Diodes and rectifiers:	
78-132	687.6058	Photo-sensitive	do.
78-133	687.6059	Zener	do.
78-134	687.6061	Microwave	do.
78-135	687.6062	Thyristors	do.
		Other:	
78-136	687.6066	With a maximum current of 0.500 amperes or less	do.
78-137	687.6067	Other	do.
78-138	687.6068	Mounted pieso-electric crystals	Government of Singapore
		Other, including parts not specially provided for:	
		[Parts of semi-conductors]	
78-139	687.6086 or 687.6086 pt.	Other or Electronic tube mounts	do.
		Gloves of rubber or plastics:	
		Seamless:	
78-141	705.82	Surgical and medical	The Ansell Corporation, Wilmington, DE., Government of Malaysia

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202)

Annex II (Continued)

Case Reviews Pending (Continued)

Case No.	TSUS or TSUSA 1/ Item No.	Article	Petitioner
		B. Petitions to remove products from the list of eligible articles for the Generalized System of Preferences.	
		Fishing reels and parts thereof:	
78-165	731.20	Reels: Valued not over $2.70 each	American Fishing Tackle Manufacturers Association, Chicago, IL., Tackle Representative Association Chicago, IL.
78-166	731.22	Valued over $2.70 but not over $8.45 each	American Fishing Tackle Manufacturers Association, Chicago, IL., Tackle Representative Association, Chicago, IL.

[FR Doc. 79-17877 Filed 6-6-79; 8:45 am]

BILLING CODE 3190-01-C

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202)

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice CM-8/203]

Study Group 1 of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group 1 of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on June 27 and 28, 1979 at 10:00 a.m. in Room 511 of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. This Study Group deals with U.S. Government regulatory aspects of international telegraph and telephone operations and tariffs.

The Study Group will discuss international telecommunications questions relating to telegraph, telex, data transmission and leased channel services in order to develop U.S. positions to be taken at international CCITT meetings.

Members of the general public may attend the meeting and join in the discussion subject to instructions of the Chairman. Admittance of public members will be limited to the seating available.

Requests for further information should be directed to Richard H. Howarth, State Department, Washington, D.C. 20520, telephone (202) 632-1007.

Dated: May 30, 1979.

Richard H. Howarth,

Chairman, U.S. CCITT National Committee.

[FR Doc. 79-17652 Filed 6-6-79; 8:45 am]

BILLING CODE 4710-07-M

SUSQUEHANNA RIVER BASIN COMMISSION

Public Hearing; Holtwood/York Haven Hydroelectric Projects

Notice is hereby given that the Susquehanna River Basin Commission will hold a public hearing as part of its review of the Holtwood and York Haven Hydroelectric Projects. The public hearing will begin at 1:00 PM on Thursday, July 12, 1979 at the Penn Harris Motor Inn, Susquehanna Room—Main Building, By Pass Routes 11 and 15, Camp Hill, PA.

The hearing is being held to receive pertinent testimony from the power companies and other interested parties concerning operation of the two projects and their impacts on the water and related resources of the basin. Each of the project owners and operators have applied to the Susquehanna River Basin Commission for approval to continue to use the basin's water resources for the operation of their respective facilities.

Holtwood Hydroelectric Project is owned by the Pennsylvania Power and Light Company (PP&L). The project is located on the Susquehanna River approximately 15 miles south of Lancaster, Pennsylvania and 22 miles southeast of York, Pennsylvania. The project, with an average effective capacity of 102,000 kw consists of a dam, powerhouse, reservoir and certain appurtenant electrical transmission facilities situated within the Counties of Lancaster and York, Pennsylvania. The reservoir formed by the dam extends upstream about 8 miles and has a surface area of about 2,400 acres.

York Haven Hydroelectric Project is owned by the York Haven Power Company, a wholly owned affiliate of Metrolitan Edison Company. The project is located on the Susquehanna River approximately 17 Miles downstream from Harrisburg, Pennsylvania. The project, with an average effective capacity of 19,000 kw consists of a dam, powerhouse, reservoir and certain appurtenant electrical transmission facilities situated within the Counties of Dauphin, Lancaster and York, Pennsylvania. The reservoir formed by the dam extends upstream about 4 miles and has a surface area of about 2,210 acres.

The principal areas of interest upon which the Commission is basis its review of both projects are:

I. Flood Control
II. Water Supply
  A. Minimum Flow Releases
  B. Authorized Diversions
III. Water Quality
IV. Recreation, Fish, and Wildlife
V. Cultural and Visual Amenities
VI. General Concerns
  A. Redevelopment Plans
  B. Debris Management
  C. Term of License

The application documents filed by the project sponsers are available for public inspection during regular business hours at the office of the Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pennsylvania 17102. The offices are open to the public from 8:00 Am to 4:00 PM, Monday through Friday.

The hearing will be a legislative type of hearing under the SRBC rules of procedure governing review of projects to receive oral or written statements from interested individuals. Although the Commission will be asking questions of witnesses, this hearing is not a forum for cross examination by other participants.

Persons wishing to participate in the hearing may present oral and/or written testimony. Although not required, those wishing to testify in person are requested to contact the secretary to the Commission, in writing, prior to the hearing, at the above address.

Further information may be obtained by writing to the undersigned at the address of the Susquehanna River Basin Commission noted above or calling 717/238-0423.

Dated: June 1, 1979.

Robert J. Bielo,

Executive Director.

[FR Doc. 79-17704 Filed 6-6-79; 8:45 am]

BILLING CODE 7040-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-79-8]

Petitions for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemptions received and of dispositions of petitions issued.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I) and of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Publication of this notice and any information it contains or omits is not intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: June 27, 1979.

ADDRESSES: Send comments on any petition in triplicate to:
Federal Aviation Administration, Office

of the chief Counsel, Attn: Rules Docket (AGC-24), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-24), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW, Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on June 1, 1979.

Edward P. Faberman,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

Petitions for Exemptions

Docket No.	Petitioner	Regulations affected	Description of relief sought
None during the period from May 28 through June 1, 1979.			

Dispositions of Petitions for Exemptions

Docket No.	Petitioner	Regulations affected	Description of relief sought—disposition
19107	Gem State Airlines	14 CFR 121.291	To permit petitioner to place into passenger carrying service a Convair 580 with 50 passenger seats without conducting an emergency evacuation demonstration. *Granted 5/25/79.*
19151	Robert Bradley Knapp	14 CFR 135.243(a)	To allow Mr. Knapp to serve as pilot in command for Air Hawaii Corporation without having an ATPC. *Granted 5/25/79.*
19172	Delta Air Lines	14 CFR 121.291	To allow petitioner to begin L-1011-385-3 operations with 241 passenger Seats without first conducting a full seating capacity emergency evacuation demonstration. *Granted 5/25/79.*
16743	Charles F. Willis III	14 CFR Part 121	Petitioner requests amendment of Exemption No. 2603A to include B-707-320B aircraft N408PA among those operated for the carriage of refugees. *Granted 5/25/79.*
16800	British Midland Airways, Ltd	14 CFR Part 68	To amend Exemption No. 2704, as amended, to include an additional airman in the appendix so that he may serve on leased, U.S. registered B-707 aircraft N448M. *Granted 5/25/79.*
16912	Transasian Airlines	14 CFR Parts 21, 61	To amend Exemption No. 2714 to include additional airmen in the appendix so that they may serve as flight crewmembers on U.S.-registered B-707-320B aircraft N7627B leased from West Bay Leasing, Inc./Euro-Eastern World Transport Holding, Ltd. *Granted 5/25/79.*

[FR Doc. 79-17661 Filed 6-6-79; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-79-7A]

Petitions for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Correction.

SUMMARY: On May 31, 1979, the FAA published a notice summarizing petitions for exemption filed with the FAA (44 FR 31340). That notice incorrectly stated that the period for submitting comments on the petition closed on June 14, 1979. This notice corrects that error.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before: June 20, 1979.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-24), Petition Docket No.———, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-24), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW, Washington, D.C. 20591; telephone (202) 426-3644.

SUPPLEMENTARY INFORMATION: Summary Notice No. PE-79-7 (44 FR 31340; May 31, 1979) inadvertently and incorrectly stated that the comment period closed June 14, 1979. Under 14 CFR 11.27(c), comments on petitions for exemptions may be filed within 20 days after the summary is published in the Federal Register. Thus, the comment period should close on June 20, 1979.

The Correction

Accordingly, the comment period prescribed in Summary Notice No. PE-79-7 is hereby corrected to allow submission of comments on the petitions on and before June 20, 1979.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on June 1, 1979.

Edward P. Faberman,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

[FR Doc. 79-17662 Filed 6-6-79; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

Minority Business Resource Center Advisory Committee; Public Availability of Report of Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. II, 1972) and OMB Circular A-63 of March 27, 1974 notice is hereby given of the availability of the report of the closed meeting of the Minority Business Resource Center Advisory Committee held on April 13, 1979 at the Airport Hilton Hotel in Chicago, Illinois.

Copies of the report have been filed and are available for public inspection at two locations. They are:

Library of Congress, Federal Advisory Committee Deck, Exchange and Gift Division, Washington, D.C. 20541,
and
Department of Transportation, Federal Railroad Administration, Minority Business Resource Center, Room PL 413, 400 7th Street SW., Washington, D.C. 20590.

General information pertaining to the meeting may be obtained from Harvey C. Jones, Advisory Committee Staff Advisor, Department of Transportation, Federal Railroad Administration, Minority Business Resource Center, 400 7th Street SW., Washington, D.C. 20590, telephone (202) 472-2449.

Issued in Washington, D.C. on May 1, 1979.

Kenneth R. Bolton,

Director, Minority Business Resource Center.

[FR Doc. 79-17716 Filed 6-6-79; 8:45 am]

BILLING CODE 4910-09-M

National Highway Traffic Safety Administration

[Docket No. IP78-8; Notice 2]

General Motors Corp.; Grant of Petition for Inconsequential Noncompliance

This notice grants the petition by General Motors Corp. of Warren, Michigan ("GM" herein) to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for an apparent noncompliance with 49 CFR 571.208, Motor Vehicle Safety Standard No. 208, *Occupant Crash Protection,* on the basis that it is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on November 27, 1978, and an opportunity afforded for comment (43 FR 55304).

Pursuant to paragraph S4.1.2.3.1 of Motor Vehicle Safety Standard No. 208, GM manufactures passenger cars with seat belt assemblies that conform with the requirement of Motor Vehicle Safety Standard No. 209. It has discovered that belt assemblies used in 44 Chevrolet Impala and Caprice vehicles manufactured in early April 1978 contain belts that do not comply with S4.1(k) of Standard No. 209 in that they are incorrectly marked as having been manufactured in 1977 when, in fact, they were manufactured in 1978. GM argued that this noncompliance is inconsequential as it relates to motor vehicle safety because it has no effect upon any aspect of performance of the seat belt assembly. In the event of a recall of seat belt assemblies, GM's records enable it to identify the 44 vehicles which contain the incorrectly labeled belts.

No comments were received on the petition. NHTSA concurs with GM's position that the noncompliance is only a labeling error, and does not affect performance of the seat belt assembly. Accordingly, it has been determined that the noncompliance with Standards No. 209 herein described is inconsequential as it relates to motor vehicle safety, and the petition by General Motors Corp. is hereby granted.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on May 29, 1979.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 79-17312 Filed 6-6-79; 8:45 am]

BILLING CODE 4910-59-M

Highway Safety Program; Amendment of Qualified Products List of Evidential Breath Measurement Devices

AGENCY: National Highway Traffic Safety Administration. (NHTSA), DOT.

ACTION: Notice.

SUMMARY: This notice amends the Qualified Products List for devices which have been found to qualify under the Standard for Devices to Measure Breath Alcohol (38 FR 30459).

EFFECTIVE DATE: June 7, 1979.

ADDRESS: Administrator, NHTSA, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: John Moulden, Office of Driver and Pedestrian Programs, Traffic Safety Programs, NHTSA, Washington, D.C. 20590, 202-426-0078.

SUPPLEMENTARY INFORMATION: The Qualified Products List of Evidential Breath Measurement Devices was initially issued November 21, 1974 (39 FR 41399), and was most recently amended June 26, 1978 (43 FR 27630). Devices on the list may be purchased with Federal funds under the Highway Safety Act, Pub. L. 89-564, 80 Stat. 731, 73 U.S.C. 402, 403.

In accordance with the Breath Measurement Standard, semi-annual testing of devices was conducted during August 1978. At this testing two devices, not previously on the Qualified Products List, the Intoxilyzer 4011A 27-101000 with fixed filter calibration option and the Auto-Intoximeter AI-1000 met all performances requirements.

Also, in accordance with the Breath Measurement Standard, the 1979 semi-annual qualification testing of devices was conducted during the months of February and March 1979. At the testing, another device, the Intoxilyzer 4011AS, also met all the performance requirements, including the requirements of the Standard for Mobile Breath Testers.

The Qualified Products List is therefore amended as follows:

Qualified Products List

The qualified products meeting all performance requirements, including those for Mobile Evidential Breath Testers, are as follows, listed alphabetically by manufacturer:

Device and Manufacturer

1. Alert J3AD Breath Tester (battery powered), Alcohol Countermeasure Systems, Port Huron, Michigan (formerly Borg-Warner Corp., Des Plaines, Illinois).
2. Alert J3AC, Alcohol Countermeasure Systems, Port Huron, Michigan (formerly Borg-Warner Corp., Des Plaines, Illinois).
3. S-11 Breath Tester, Alcohol Countermeasure Systems, Port Huron, Michigan (formerly Borg-Warner Corp., Des Plaines, Illinois).
4. Intoxilyzer Model 4011, CMI, Inc., Minturn, Colorado.
5. Intoxilyzer Model 4011A, CMI, Inc., Minturn, Colorado.
6. Intoxilyzer 4011A 27-10100, CMI, Inc., Minturn, Colorado.
7. Intoxilyzer 4011A 27-10100 with fixed filter calibration option, CMI, Inc., Minturn, Colorado.
8. Intoxilyzer 4011AS, CMI, Inc., Minturn, Colorado.
9. Alco-limiter, Energetics Science, Inc., Elmsford, New York.
10. Auto-Intoximeter AI-1000, Intoximeters, Inc., St. Louis, Missouri.
11. Gas Chromatograph Intoximeter Mark IV, Intoximeters, Inc., St. Louis, Missouri.
12. Gas Chromatograph Mark IV A, Intoximeters, Inc., St. Louis, Missouri.
13. Mark II Gas Chromatograph, Intoximeters, Inc., St. Louis, Missouri.
14. Alcolmeter AE-D1, Lion Laboratories, Ltd., Cardiff, Wales, United Kingdom.
15. Intoxilyzer Model 4011, Omicron Systems Corp., Palo Alto, California.
16. Breathalyzer Models 900A, 1000, Smith & Wesson Electronics Co., Springfield, Massachusetts.

17. Roadside Breath Tester, U.S. Department of Transportation, Washington, D.C.

The qualified products meeting all performance requirements, excluding those for Mobile Evidential Breath Testers, are as follows, listed alphabetically by manufacturer:

Device and Manufacturer

1. Alco-Tector Model 500, Decatur Electronics, Decatur, Illinois.

2. Auto-Intoximeter AI 1, Intoximeters, Inc., St. Louis, Missouri.

3. Photo-Electronics Intoximeter, Intoximeters, Inc., St. Louis, Missouri.

4. Alco-Analyzer Model 1000, Luckey Laboratories, Inc., San Bernardino, California.

U.S.C. 402, 403.)

Issued: June 1, 1979.

K. W. Heathington,

Associate Administrator, Traffic Safety Programs.

[FR Doc. 79-17580 Filed 6-6-79; 8:45 am]

BILLING CODE 4910-59-M

Withdrawal of Initial Defect Determination and Cancellation of Meeting

On April 26, 1979, Lynn L. Bradford, Acting Associate Administrator for Enforcement, NHTSA, notified Ford Motor Company of his initial determination of a safety-related defect in the fuel systems of 1970–1973 Ford Mavericks and 1971–1973 Mercury Comets. A public meeting concerning the Maverick–Comet fuel systems was scheduled for May 29, 1979 and subsequently postponed until July 13, 1979. (44 FR 32060, June 4, 1979).

Thereafter, evidence that Mavericks whose fuel systems has caught fire during crash testing conducted during NHTSA's investigation had previously undergone major repairs came to my attention. This information in Mr. Bradford's view undermines the initial determination. When this evidence was brought to my attention by Mr. Bradford, I carefully considered it and agreed with him that it cast doubt upon the initial determination, since it is possible that the failure of the fuel system can be attributable to changes in the configuration or strength of the system resulting from the prior repairs. Accordingly, I promptly notified Ford Motor Company, through a letter dated May 31, 1979, that the initial defect determination regarding the 1970–73 Ford Maverick and 1971–73 Mercury Comet was withdrawn. I also advised Ford Motor Company that the investigation of the alleged defect was continuing.

The public meeting scheduled for July 13, 1979 concerning the alleged defect is hereby cancelled.

Copies of all crach test reports and other materials considered in reaching the initial defect determination are available for review in the NHTSA Technical Reference Division, Room 5108, Nassif Building, Washington, D.C. 20590, between 7:45 a.m. and 4:15 p.m.

Issued on May 31, 1979.

Joan Claybrook,

Administrator.

[FR Doc. 79-17590 Filed 6-6-79; 8:45 am]

BILLING CODE 4910-59-M

VETERANS ADMINISTRATION

Replacement Medical Center; Portland, Oreg.; Availability of Draft Environmental Impact Statement

Notice is hereby given that a document entitled "Draft Environmental Impact Statement for the Veterans Administration Replacement Medical Center, Portland, Oregon," dated May 1979, has been prepared as required by the National Environmental Policy Act of 1969.

The two viable alternate locations for the Medical Center are the present 25 acre Portland VA Medical Center site and the Emanuel site, an 18 acre parcel adjacent to the Emanuel Hospital, Portland, Oregon. The Medical Center will have 600 hospital beds and the necessary outpatient and support functions. The facility will replace the outmoded Veterans Administration Medical Center on Terwilliger Boulevard, Portland, Oregon.

The Draft Statement discusses the environmental impact of the Replacement Medical Center for the viable alternatives including "No Action". The document is being placed for public examination in the Veterans Administration office in Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. Willard Sitler, Director, Environmental Affairs Office (004A), Room 1018, Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C., (202–389–2526).

Single copies of the Draft Statement may be obtained on request to: Director, Environmental Affairs Office (004A), Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420.

By direction of the Administrator.

Dated: May 22, 1979.

Maury S. Crelle, Jr.,

Assistant Deputy Administrator for Financial Management and Construction.

[FR Doc. 79-17589 Filed 6-6-79; 8:45 am]

BILLING CODE 8320-01-M

INTERSTATE COMMERCE COMMISSION

[Notice No. 98]

Motor Carrier Temporary Authority Applications

May 24, 1979.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

NOTE: All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

MC 87928 (Sub-50TA), filed April 9, 1979. Applicant: AUTOMOBILE TRANSPORT, INC., 36555 Michigan

Avenue, Wayne, MI 48184. Representative: Eugene C. Ewald, 100 West Long Lake Road, Suite 102, Bloomfield Hills, MI 48013. *New automobiles and trucks,* in secondary movements, in truckaway service, from Naperville, IL to points in IA, MN, MO, WI and Overland Park, KS, for 180 days. An underlying ETA seeks 90 days Authority. Supporting Shipper(s) Nissan Motor Corporation, 18501 South Figueroa Street, Carson, CA 90248. Send protests to: C. R. Flemming, D/S, ICC, 225 Federal Building, Lansing, MI 48933.

MC 100449 (Sub-109TA), filed March 7, 1979. Applicant: MALLINGER TRUCK LINE, INC., R.R. No. 4, Fort Dodge, IA 50501. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. *Foodstuffs,* except in bulk, from the facilities of Interstate Foods Corp. at Chicago, IL, to points in TX, TN, and KS , for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Interstate Foods Corp., 3800 Morgan, Chicago, IL 60609. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 100449 (Sub-110TA), filed March 29, 1979. Applicant: MALLINGER TRUCK LINE, INC., R.R. #4, Fort Dodge, IA 50501. Representative: Thomas E. Leahy, 1980 Financial Center, Des Moines, IA 50309. *Plastic products,* except in bulk, from the facilities of Western Plastics Corporation at or near Mankato, MN to points in IL, IN, IA, KS, MO, MT, TX, NE, ND, SD, OK, WI and CO, and equipment materials and supplies used in the manufacture of plastic products, except commodities in bulk, from points in TX to Mankato, MN for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Western Plastics Corporation, 1905 First Ave., P.O. Box 3143, Mankato, MN 56001. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 103798 (Sub-38TA), filed April 5, 1979. Applicant: MARTEN TRANSPORT, LTD., Route 3, Mondovi, WI 54755. Representative: Robert S. Lee, 1000 First National Bank Building, Minneapolis, MN 55402. *Meat and packinghouse products* from the plantsite and storage facilities of Wilson Foods Corporation at Albert, Lea, MN to points in CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Wilson Foods Corporation, 4545 Lincoln Boulevard, Oklahoma City, OK 73105. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 112989 (Sub-97TA), filed April 12, 1979. Applicant: WEST COAST TRUCK LINES, INC., 85647 Highway 99 South, Eugene, OR 97405. Representative: John W. White, Jr., 85647 Highway 99 South, Eugene, OR 97405. *Iron and Steel Coils* from Detroit, MI to Los Angeles and San Francisco, CA; Portland, OR and Seattle, WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): McLouth Steel Corporation, 300 S. Livernois, Detroit, MI 48209. Send protests to: A. E. Odoms, DS, ICC, 114 Pioneer Courthouse, Portland, OR 97204.

MC 118989 (Sub-215TA), filed March 6, 1979. Applicant: CONTAINER TRANSIT, INC., 5223 S. 9th St., Milwaukee, WI 53221. Representative: Rolland K. Draves, "Same address as applicant". *Paper products,* from Green Bay, WI to points in IL, IN, MI, OH, KY, WV, & PA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): American Can Co., P.O. Box 702, Neenah, WI 54956. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 119789 (Sub-584TA), filed April 4, 1979. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: James K. Newbold, Jr., address same as above. *Liquid plastic, in containers, in mechanically refrigerated equipment,* from Houston, TX and Geismar, LA to Atlanta, GA; Seattle, WA; Portland, OR; Sacramento, CA; Minneapolis, MN; Niles, MI; St. Louis, MO; Pittsburgh, PA; and Buffalo, NY for 180 days. Underlying ETA for 90 days filed. Supporting shipper(s): Foam Systems Co., P.O. Box 5347, Riverside, CA 92507. Send protests to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 119789 (Sub-585TA), filed April 16, 1979. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: James K. Newbold, Jr., address same as above. *Such commodities as are dealt in by wholesale, retail and chain grocery stores, hardware, drug stores and materials and supplies (except in bulk) used in the manufacture therefore,* Between Canton, OH on the one hand, and Dallas, TX and Los Angeles, CA on the other for 180 days. Underlying ETA for 90 days filed. Supporting shipper(s): Boyle-Midway, Division of American Home Products Corporation, 685 Third Avenue, New York, NY 10017. Send protests to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 126079 (Sub-6TA), filed March 20, 1979. Applicant: STOUT CORPORATION, 1200 West 200 South, P.O. Box 186, Provo, UT 84601. Representative: Irene Warr, 430 Judge Building, Salt Lake City, UT 84111. Contract Carrier, irregular routes. (1) *roofing products, insulation products, wallboard, and panel electric wallboard* and (2) *materials, equipment and supplies* used in the manufactuer, distribution and installation of the commodities described in (1) from CA, OR, CO, WA, Cody, WY, Albuquerque, NM, Phoenix and Nogales, AZ, to UT. (3) *Insulation products and materials, equipment and supplies* used in the manufacturer, distribution and installation thereof from Salt Lake County, UT to Phoenix, AZ, for 180 days. Restricted to a transportation service to be performed under a continuing contract or contracts with P-K Supply Company Division of Bird & Son, Inc. An underlying ETA seeks 90 days authority. Supporting shipper(s): Bird & Son, Inc., Washington Street, East Walpole, MA 12032. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake city, UT 84138.

MC 136008 (Sub-104TA), filed April 6, 1979. Applicant: JOE BROWN COMPANY, INC., 20 Third Street N.E., Ardmore OK 73401. Representative: John Tipsword, P.O. Box 6210. Moore, OK 73153. *Feed grade phosphates,* in bulk, in tank vehicles, (1) from Houston, TX, to OK, KS, AR, & MO; and (2) from Joplin, MO, to AR, KS, OK, & TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Hooker Chemical Corporation, P.O. Box 4280, Houston, TX 77210. Send protests to: Connie Stanley, Transportation Assistant, Interstate Commerce Commission, Room 240 Old Post Office & Court House Bld., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 138289 (Sub-11TA), filed April 16, 1979. Applicant: TRAILS TRUCKING, INC., 1825 De La Cruz Blvd., Santa Clara, CA 95050. Representative: W. J. Monheim, P.O. Box 1756, Whittier, CA 90609. *Contract carrier:* irregular routes: Fibreboard building board, from Santa Clara, CA to points in AZ, CA, ID, MT, NV, NM, OR, UT, WA, WY, and El Paso, TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Fiberglas Corporation, Fiberglas Tower, Toledo, OH 43659. Send protests to: District Supervisor, 211

Main, Suite 500, San Francisco, CA 94105.

MC 138469 (Sub-144TA), filed April 9, 1979. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73107. Representative: Daniel O. Hands, Attorney at Law, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. (1) *Fireplaces, fireplace parts, fireplace accessories,* and (2) *equipment, materials and supplies used in the manufacture and distribution of fireplaces,* from the facilities of Heatilator Fireplaces, Division of Vega Industries, Inc., at or near Centerville and Mt. Pleasant, IA, to points in the States of AL, AZ, AR, CA, CO, FL, GA, ID, LA, MS, MT, NV, NM, NC, OK, OR, SC, TN, TX, UT, WA, & WY, restricted to traffic originating at the named origins, for 180 days. Supporting Shipper(s): Heatilator Fireplaces, Division of Vega Industries, Inc., P.O. Box 409, Mt. Pleasant, IA 52641. Send protests to: Connie Stanley, Transportation Assistant, Interstate Commerce Commission, Room 240 Old Post Office & Court House Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 139638 (Sub-7TA), filed April 6, 1979. Applicant: N. L. MONTGOMERY, INC., P.O. Box 626, Rocky Mount, VA 24151. Representative: W. T. Jones, President, same address as above. *Lumber and lumber mill products* from points in VA on the one hand, and on the other, points in NC for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Epperson Layers Lumber Co., Ararat, VA 24053, Brown-Bledsoe Lumber Company, P.O. Box 100098, Greensboro, N.C. 27404, S. W. Barnes, Inc., P.O. Box 85, Crozet, VA 22932, Leisure Land & Timber Co., Inc., P.O. Box 3763, Martinsville, VA 24112. Send protests to: Paul D. Collins, DS, ICC, Room 10-502 Federal Bldg., 400 N. 8th St. Richmond, VA 23240.

MC 140829 (Sub-234TA), filed April 16, 1979. Applicant: CARGO, INC., P.O. Box 206, U.S. Hwy 20, Sioux City, IA 51102. Representative: William J. Hanlon, Esq., 55 Madison Ave., Morristown, NJ 07960. *General commodities (except Classes A & B explosives, commodities in bulk, in tank vehicles),* from the facilities of West Coast Shippers Association in the commercial zones of New York City, NY and Philadelphia, PA to points in CO, IL, KS, MN, MO, NM, OK, and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): West Coast Shippers Association, 200 South 71st St., Philadelphia, PA 19142. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 141108 (Sub-6TA), filed April 13, 1979. Applicant: D & C EXPRESS, INC., P.O. Box 746, Wilton, IA 52778. Representative: Kenneth F. Duley, Box 279, Ottumwa, IA 52501. (1) *Iron and steel articles,* from the plantsite and storage facilities of North Star Steel Company located at or near Wilton, IA to points in OH and PA. (2) *Materials, equipment and supplies,* (except commodities in bulk), used in the manufacture and distribution of iron and steel articles, from OH and PA to the facilities of North Star Steel Company located at or near Wilton, IA. Supporting shipper(s): North Star Steel Co., P.O. Box 495, Wilton, IA 52778. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 141958 (Sub-14TA), filed April 25, 1979. Applicant: FEDCO FREIGHTLINES, INC., P.O. Box 422, Effingham, IL 62401. Representive: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. Authority sought to operate as a Contract Carrier by motor vehicle, over irregular routes, transporting: Drug and personal care products, cleaning and washing compounds, maintenance supplies for institutional and industrial use, such commodities as are dealt in by wholesale, retail, and chain drug, grocery, and food business houses, and materials, equipment and supplies used in the manufacture and distribution of the above described commodities (except commodities in bulk), between points in IL, IN, KY, MI, MO, OH, TN, PA, and Kansas City, KS, for 180 days, under a continuing contract or contracts with The Procter & Gamble Company and its wholly-owned subidiaries, The Proceder & Gamble Distributing Company, The Procter & Gamble Manufacturing Company, The Procter & Gamble Paper Products Company, and The Folger Coffee Company. Supporting shipper(s): The Procter & Gamble Company and its wholly-owned subidiaries, The Proceder & Gamble Distributing Company, The Procter & Gamble Manufacturing Company, The Procter & Gamble Paper Products Company, and The Folger Coffee Company, P.O. Box 599, Cincinnati, OH 45201. Send protests to: Charles Little, District Supervisor, Interstate Commerce Commission, Leland Bldg., 4th Fl., 527 E. Capitol, Springfield, IL 62706.

MC 142508 (Sub-74TA), filed April 16, 1979. Applicant: NATIONAL TRANSPORTATION, INC., P.O. Box 37465, 10810 South 144th Street, Omaha, NE 68137. Representive: Lanny N. Fauss, P.O. Box 37096, Omaha, NE 68137. *Drugs, medicines, and toilet preparations,* from the facilities of Smith Kline & French at Philadelphia, PA commercial zone to Southaven, MS, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Smith Kline & French Laboratories, P.O. Box 7929, Philadelphia, PA 19101. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 142508 (Sub-75TA), filed April 16, 1979. Applicant: NATIONAL TRANSPORTATION, INC., P.O. Box 37465, 10810 So. 144th St., Omaha, NE 68137. Representive: Lanny N. Fauss, P.O. Box 37096, Omaha, NE 68137. *Drink mixes (except in bulk),* from Byhalia, MS to points in CO, CT, IL, IA, KS, MA, MO, MN, NE, NJ, NY, PA, RI, SD, and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Professional Mixers, Inc., 300 Chesterfield Center, Suite 210, Chesterfield, MO 63017. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 142508 (Sub-76TA), filed April 20, 1979. Applicant: NATIONAL TRANSPORTATION, INC., 10810 South 144th St., P.O. Box 37465, Omaha, NE 68137. Representative: Lanny N. Fauss, P.O. Box 37096, Omaha, NE 68137. *Fruit and berry products and condiments,* from Yuba City, CA and Markham, WA to points in AZ, MN, ND, SD, OK, TX, UT, and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ocean Spray Cranberries, Inc., Markham, WA 98520. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 142508 (Sub-77TA), filed April 20, 1979. Applicant: NATIONAL TRANSPORTATION, INC., 10810 So. 144th St., P.O. Box 37465, Omaha, NE 68137. Representative: Lanny N. Fauss, P.O. Box 37096, Omaha, NE 68137. *Canned goods,* from the facilities of Campbells Soup Company at or near Chicago, IL to points in IN, KY, and MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Campbell Sales Company, 2550 West 35th St., Chicago, IL 60632. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 142968 (Sub-2TA), filed April 11, 1979. Applicant: EMERGENCY MEDICAL DELIVERIES, INCORPORATED, 3613 Marine Rd., Toledo, OH 43609. Representative: Michael M. Briley, 300 Madison Ave., 12th Fl., Toledo, OH 43603. (1) *Medicinal intravenous solutions, dialysis patient treatment kits, mineral water and liquid formaldehyde (except commodities in bulk in tank vehicles),* and (2) *materials*

and supplies used in the administration of the commodities in (1) above (except commodities in bulk in tank vehicles), between (a) Toledo, OH, on the one hand, and, on the other, points in IL (except Cook, Will, DuPage and Lake Counties), KY and WI (south of SR 33) and (b) Cleveland, OH on the one hand, and, on the other, points in the Lower Peninsula of MI, PA (West of Interstate Hwy. 81 and SR 15), and WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Erika, Inc., 1 Erika Plaza, Rockleigh, NJ; the Kolff Foundation, 10300 Carnegie Ave., Cleveland, OH 44106. Send protests to: P. J. Crawford, TCS, 600 Arch St., Rm. 3238, Phila., PA 19106.

MC 143058 (Sub-9TA), filed April 10, 1979. Applicant: TRANS WEST CARRIERS, INC., 14416 Slover Avenue, Fontana, CA 92355. Representative: Richard C. Celio, 1415 West Garvey Avenue, suite 102, West Covina, CA 91790. *Plumbers' goods and fittings and materials, supplies, and equipment used in the manufacture and distribution thereof,* from Los Angeles and San Bernardino Counties, CA to points in and west of MT, WY, CO, and NM (except CA), for 180 days. Supporting shipper(s): Plumbing Fixtures Division, Norris Industries, 700 Fairway Drive, City of Industry, CA 91744. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, P.O. Box 1551, Los Angeles, CA 90053.

MC 144119 (Sub-3TA), filed March 16, 1979. Applicant: HANSEN CONSOLIDATORS, INC., 16121 Canary Street, La Mirada, CA 90638. Representative: Miles L. Kavaller, Mandel & Kavaller, 315 So. Beverly Drive, Suite 315, Beverly Hills, CA 90212. *Such commodities as are dealt in by grocery, drug and variety stores,* originating at the facilities of Wilson Manufacturing Corporation and its division, Hugh H. Wilson Company, in Sunbury, PA to La Mirada, CA and Carrollton, TX, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Wilson Manufacturing Corporation and Hugh H. Wilson Company, a division of Wilson Manufacturing Corporation, Packer Street, Sunbury, PA 17801. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, California 90012.

MC 144188 (Sub-6TA), filed April 10, 1979. Applicant: P. L. LAWTON, INC., P.O. Box 325, Berwick, PA 18603. Representative: John M. Musselman, P.O. Box 1146, Harrisburg, PA 17108. *Such merchandise* as is dealt in by retail, wholesale, chain grocery and food business houses (except commodities in bulk and frozen foods), from Chicago, IL, and points in its commercial zone, and Northbrook, IL, to points in CT, DE, MA, MD, ME, NH, NJ, NY, OH, PA, RI, VA, VT, WV and DC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Borden Foods, Div. of Borden, Inc., 180 E. Broad St., Columbus, OH 43215. Send protests to: ICC, Wm. J. Green, Jr., Federal Bldg., 600 Arch St., Philadelphia, PA 19106.

MC 144239 (Sub-10TA), filed April 25, 1979. Applicant: J.L.T. CORPORATION, Route 22, White House Station, N.J. 08889. Representative: Charles J. Williams, 1815 Front Street, Scotch Plains, N.J. 07076. *Contract carrier:* irregular routes: *Frozen sour dough bread,* in vehicles equipped with mechanical refrigeration, from the facilities of Parisian Baking Co. at San Francisco, CA to Boston, MA, Baltimore, MD, Columbus, OH, New York, NY and Philadelphia, PA, under contract with Parisian Baking Co., for 180 days. An underlying ETA (partial) seeks 90 days authority. Supporting shipper(s): Parisian Baking Co., 1995 Evans Avenue, San Francisco, CA 94124. Send protests to: District Supervisor, ICC, 428 East State Street, Room 204, Trenton, N.J. 08608.

MC 144428 (Sub-7TA), filed April 19, 1979. Applicant: TRUCKADYNE, INC., Route 16, Mendon, MA 01756. Representative: Peter A. North, Route 16, Mendon, MA 01756. *Contract carrier:* irregular routes: *Plastic articles, flashlights, lanterns, batteries, lighting fixtures, and other products used or useful in the manufacturing, marketing, and processing of the above products,* between the facilities of Ray-O-Vac at Clinton and Harvard, MA, on the one hand, and, on the other, points in CA, GA, IL, MO, NJ, OH, OR, TN, TX and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ray-O-Vac Division of ESB, Inc., 56 Green Street, Clinton, MA 01510. Send protests to: David M. Miller, DS, ICC, 436 Dwight Street, Springfield, MA 01103.

MC 144688 (Sub-7TA), filed April 9, 1979. Applicant: BIL-RIC TRANSPORT SYSTEMS, INC., 92 East Main Street, Somerville, NJ 08876. Representative: Joseph F. Hoary, 121 South Main Street, Taylor, PA 18517. Contract carrier, irregular routes for 180 days. Such commodities as are manufactured, sold and distributed by retain grocery and drug stores, for the account of Beecham Products Company (except commodities in bulk and foodstuffs) From the plantsites of Beecham Products Company at Rockwood, MI, Clifton, NJ and Morrisville (Bucks County) PA to Rockwood, Michigan, Clifton, NJ and Morrisville (Bucks County) PA, Los Angeles, CA, Denver, CO, Savannah, GA, Chicago, IL, Kansas City, MO, Milwaukie, OR, Memphis, TN and Dallas, TX. Supporting Shipper(s): Beecham Products Company, P.O. Box 1467, Pittsburgh, PA 15230. Send protests to: Irwin Rosen, TS, ICC, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 144889 (Sub-7TA), filed March 21, 1979. Applicant: RONWAL TRANSPORTATION, INC., 2000 Calumet Avenue, Hammond, IN 46320. Representative: Walter C. Rybarowicz, (same as applicant). *Iron and steel articles;* from the facilities of U.S. Steel Corp. at/near Gary, In to points and places in IL on and north of U.S. Hwy. 36. An underlying ETA seeks 90 days authority. Supporting Shipper(s): U.S. Steel Corp., 1000 East 80th Place, Merrillville, IN 46410. Send protests to: Annie Booker, Transportation Assistant, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 144969 (Sub-2TA), filed April 11, 1979. Applicant: BLUE RIDGE MOUNTAIN CONTRACT CARRIER, INC., P.O. Box 1965, Dalton, GA 30720. Representative: S. H. Rich, 1600 Cromwell Ct., Charlotte, NC 28205. *Contracts Carrier: irregulqr routes: Carpets, carpeting, carpet ramments, or rugs* from Floyd and Gordon Counties, to points in the States of CT, IL, ME, MA, NY, OH, OR, PA, RI, SC, TX, VA, and WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Marglen Industries, Inc., Div. of Transportation, P.O. Box 3028, Ward Mt. Rd., Rome, GA 30161. Send protests to: Sara K. Davis TA, ICC, 1252 W. Peachtree St., N.W., Room 300, Atlanta, GA 30309.

MC 145288 (Sub-2TA), filed April 13, 1979. Applicant: SPECIALIZED HAULING CORPORATION, Box 488, Barre, VT 05641. Representative: John P. Monte, Box 568, Barre, VT 05641. *Utility poles.* (1) between points in ME, on the one hand, and, on the other, points in VT, and (2) from points in VT to points in Coos, Grafton, Sullivan, Hillsboro and Cheshire Counties, NH, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Southern Wood Piedmont Company, PO Box 5447, Spartanburg, SC 20304. Send protests to: ICC, PO Box 548, Montpelier, VT 05602.

MC 145309F (Sub-1TA), filed April 20, 1979. Applicant: BLACK PINE TRUCKING, INC., Rt. 8 Box 97, Idaho Falls, ID 83401. Representative: Garry Tolbert (same as above). *Liquid and bulk fertilizer and feed ingredients,* between points in ID, MTUT & WY on the one hand, and on the other, points in NV, MT, UT & WY, under continuing contract with Northwest PMS/Feed Service, for 180 days. An underlying ETA seeks 90 day authority. Supporting Shipper(s): Northwest PMS/Feed Service, P.O. Box 2143, Idaho Falls, ID 83401. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 145359 (Sub-3TA), filed March 19, 1979. Applicant: THERMO TRANSPORT, INC., 156 E. Market Street, Indianapolis, IN 46204. Representative: Donald W. Smith, Suite 945–9000 Keystone Crossing, Indianapolis, IN 46240. *Iron and steel articles,* from the facilities of Jones & Laughlin Steel Corporation at Hammond, IN to points in Los Angeles, Orange, San Bernardino, Ventura, San Diego, Kings, Alameda, Contra Costa, Marin, Santa Clara, San Mateo, Solano, Sacramento, Sonoma Counties, CA, for 180 days. Supporting Shipper(s): Jones & Laughlin Steel Corporation, 1690 W. Carson Street, Pittsburgh, PA 16263. SEND PROTESTS TO: Beverly J. Williams, Transportation Assistant, I.C.C. 46 E. Ohio St., Rm 429, Indianapolis, IN 46204.

MC 145359 (Sub-4TA), filed March 19, 1979. Applicant: THERMO TRANSPORT, INC., 156 E. Market Street, Indianapolis, IN 46204. Representative: Donald W. Smith, Suite 945–9000 Keystone Crossing, Indianapolis, IN 46240. *Copper, brass, aluminum and bronze articles, cable materials, wire, wire products and materials and supplies used in the distribution thereof,* from the facilities of Revere Copper and Brass Incorporated at Rome, NY, to Los Angeles and San Francisco, CA, for 180 days. Supporting Shipper(s): Revere Copper and Brass Incorporated, P.O. Box 191, Rome, NY 13440. SEND PROTESTS TO: Beverly J. Williams, Transportation Assistant, I.C.C. 46 E. Ohio St., Rm 429, Indianapolis, IN 46204. An underlying ETA seeks 90 days authority.

MC 145399 (Sub-7TA), filed April 25, 1979. Applicant: SHAY DISTRIBUTING CO., INC., P.O. Box 3465, Orange, CA 92665. Representative: Kim G. Meyer, P.O. Box 56387, Atlanta, GA 30343. *Furniture parts,* from the facilities of Hoover Universal, Inc., at or near (1) Leitchfield, KY to McKinney, Waco and Brenham, TX; Portland, OR; Minneapolis, MN; Denver, CO; Richmond and Vernon, CA; Phoenix, AZ; and Chicago, IL, and their respective commercial zones; (2) Delaplain, KY to Phoenix, AZ; South Gate and Richmond, CA; Denver, CO; St. Paul, MN; Portland, OR; Brenham and Fort Worth, TX; and their respective commercial zones; and (3) Georgetown, KY to Vernon, CA, and its commercial zone, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting Shipper(s): Hoover Universal, Inc., Route 2, Triport Road, Georgetown, KY 40324. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, P.O. Box 1551, Los Angeles, CA 90053.

MC 145928 (Sub-1TA), filed April 17, 1979. Applicant: PANTEGO DISTRIBUTING COMPANY, INC., P.O. Box 176, Pantego, NC 27860. Representative: Peter A. Greene, 900 17th Street, N.W., Washington, DC 20006. *Paper and paper products* from the facilities of Weyerhaeuser Company, Inc., in NC to points in CT, FL, NJ, RI, NY, MA, ME, NH, VT, and to the facilities of Weyerhaeuser Company at Seymour, IN for 180 days. An underlying ETA has been filed seeking 90 days authority. Supporting Shipper(s): Weyerhaeuser Company, P.O. Box 787, Plymouth, NC 27962. Send protests to: Mr. Archie W. Andrews, D/S ICC, P.O. Box 26896, Raleigh, NC 27611.

MC 145979 (Sub-2TA), filed April 9, 1979. Applicant: CALIFORNIA EXPRESS, LTD., 100 Beta Drive, P.O. Box 756, Franklin, TN 37064. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. *Electric motors and electric motor parts* from Lexington, McMinnville and Davidson County, TN to points in AZ, CA, NV, OR, UT, and WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Gould, Inc., 1831 Chestnut Street, St. Louis, MO 63116. Send protests to: Glenda Kuss, TA, ICC, Suite A–422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 146128 (Sub-3TA), filed April 4, 1979. Applicant: MERRITT FOODS COMPANY d.b.a., Merritt Refrigerated Service, 2940 Guinotte Street, Kansas City, Missouri 64120. Representative: Arthur J. Cerra, P.O. Box 19251, 2100 Ten Main Center, Kansas City, Missouri 64141. Confectionery and foodstuffs, in mechanically refrigerated equipment from the commercial zone of Chicago, IL to the commercial zone of Kansas City, MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Chicago Candy & Grocery Shipper's Assoc., 2535 North 25th Avenue, Franklin Park, IL 60131. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, Missouri 64106.

MC 146258 (Sub-7TA), filed April 11, 1979. Applicant: M. R. BRUTON, INC., P.O. Box 547, Cuba, MO 65453. Representative: Stephen H. Loeb, Atty., Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. *Iron and steel articles* (except commodities in bulk) from the facilities of La Barge, Inc., at St. Louis, MO to points in AZ, AR, CA, LA, NM, OK, and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): LABARGE, Inc., Tubular Div., 20 S. 4th St., St. Louis, MO 63102. Send protests to: P. E. Binder, DS, ICC, Rm. 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 146258 (Sub-8TA), filed April 11, 1979. Applicant: M. R. BRUTON, INC., P.O. Box 547, Cuba, MO 65453. Representative: Stephen H. Loeb, Atty., Suite 200, 205 W Touhy Ave., Park Ridge, IL 60068. *Fertilizer,* in bags, from Salida, CO to points in IL and Mo, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): U. S. Soil Products, Route 1, Box 54, Calendonia, MO 63631. Send protests to: P. E. Binder, DS, ICC, Rm. 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 146329 (Sub-4TA), filed April 2, 1979. Applicant: W-H TRANSPORTATION CO., INC., P.O. Box 1222, Wausau, WI 54401. Representative: Wayne Wilson, 150 E. Gilman St., Madison, WI 53703. *Such commodities as are dealt in or used by agricultural equipment and industrial equipment dealers and manufacturers* (except commodities in bulk) from Racine, WI to points in KS, MT and NE, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): J. I. Case Co., 700 State St., Racine, WI 53404. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 146568 (Sub-1TA), filed March 19, 1979. Applicant: PHOENIX BIRD, INC., Suite 118, 1 Neshaminy Plaza, Street Rd. and Bristol Pike, Cornwells Heights, PA 19020. Representative: Ronald Cobert, Suite 501—1730 M St. NW., Washington, DC 20036. Contract, irregular routes, *Drugs, toilet preparations, medicine and health care items, (except in bulk),* from Ft. Washington, PA; Lewes and

Millsboro, DE; Burlington and Pennsauken, NJ; and Washington, DC to points in CA, CO, FL, GA, IL, IN, IA, KS, KY, LA, MI, MN, MO, NE, NC, OH, OK, SC, TN, TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Wm. H. Rorer, Inc., 500 Virginia Dr., Ft. Washington, PA 19034.Send protests to: T. M. Esposito, Trans. Asst., 600 Arch St., Room 3238, Phila., PA 19106.

MC 146569 (Sub-1TA), filed April 6, 1979. Applicant: WELTON MOTOR FREIGHT, INC., 1301 Hermitage Road, Richmond, VA 23220. Representative: Calvin F. Major, Attorney at Law, 200 W. Grace St., Suite 415, Richmond, Virginia 23220. Contract—irregular: (1) *Lime and limestone products* and (2) *prilled nitrogen*, in bulk, from (1) Virginia to eastern counties (east of U.S. 95) of North Carolina; and (2) from Tunis, N.C. to points in VA; MD; DE and WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Southern States Cooperative, Inc., P.O. Box 26234, Richmond, VA 23260 Albemarle Chemical Company, P.O. Box 38, Hartford, N.C. 27944. Send protests to: Paul D. Collins, DS, ICC, Room 10-502 Federal Bldg., 400 North 8th Street, Richmond, VA 23240.

MC 146578 (Sub-1TA), filed April 24, 1979. Applicant: PALMETTO MOTOR LINES, INC., 7159 Lone Oak Road, Spartanburg, SC 29302. Representative: Nina G. Shelts, P.O. Box 6445, Spartanburg, SC 29304. *Can ends or tops, flat or nested; containers; sheet, iron or steel, S.U.; plate, iron, tin or steel. Pulpboard or fibreboard boxes, without wooden frames, (paper boxes), corrugated K.D. flat or folded flat,* between Spartanburg County, SC on the one hand, and, on the other, points in NC, GA and TN, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Crown Cork & Seal Co., Inc., 9300 Ashton Rd., Philadelphia, PA 19136, Harley Corporation, P.O. Box 5427, Spartanburg, SC 29304, A. & H. Waste Company, P.O. Box 378, Arcadia, SC 29320. Send protests to: E. E. Strotheid, D/S, ICC Rm. 302, 1400 Building, 1400 Pickens St., Columbia, SC 29201.

MC 146616 (Sub-2TA), filed March 15, 1979. Applicant: CLIFFORD L. WILSON, Niawa Star Route, Park Rapids, MN 56470. Representative: Richard P. Anderson, 502 First National Bank Bldg., Fargo, ND 58126. *Contract carrier:* irregular routes: in interstate or foreign commerce, (1) *Lath, snowfence, fence building materials, bridging and grade stakes*, from the facilities of Franklin Fence Co. at or near Verges and Williams, MN to points in IA, SD, WI, ND and NE, under contract(s) with Franklin Fence Co., and (2) *Wood products, including lumber, ties, treated timber, posts and poles*, from the facilities of North Star Lumber & Supply Co. at or near Menahga, MN to points in IA, ND, SD and WI, and ports of entry between the United States and Canada located in ND and MN, under contract(s) with North Star Lumber & Supply Co., for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): North Star Lumber & Supply Company, Menahga, MN 56464; Franklin Fence, Vergas, MN 56587. Send protests to: DS, ICC, Room 268, Fed. Bldg. & U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

MC 146639 (Sub-1TA), filed April 4, 1979. Applicant: JOHNNY'S TRANSFER CO., INC., 530 Gulf Dr., Charlotte, NC 28206. Representative: Johnny Collis Rogers, 530 Gulf Dr., Charlotte, NC 28206. *Contract* carrier-irregular routes: *Empty fibre, shipping drums, parts, and components not in bulk* from the facilities of the Continental Group, Inc., Continental Forest Industries, Charlotte, NC to all points in SC, NC, and GA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): The Continental Group, Inc., Continental Forest Industries, Office Park II, Greenwich, CT 06830. Send protests to: District Supervisor Terrell Price, 800 Briar Creek Rd-Rm CC516, Mart Office Building, Charlotte, NC 28205.

MC 146650 (Sub-2TA), filed April 17, 1979. Applicant: GOLDSTON TRANSFER, INC., P.O. Box 338, Eden, NC 27288. Representative: K. Edward Wolcott, 1200 Gas Light Tower, 235 Peachtree St., N.E., Atlanta, GA 30303. *Malt beverage containers, container ends, and container caps* from Greensboro, NC and Ringgold, VA to Eden, NC for 180 days. An underlying ETA has been filed seeking 90 days authority. Supporting Shipper(s): Brockway Glass Co., Inc., P.O. Box 30 RFD 1, Ringgold, VA 24586. Kaiser Aluminum & Chemical Sales, Inc., 200 Route 22, Hillside, NJ 07205. Send protests to: Mr. Archie W. Andrews, D/S ICC, P.O. Box 26896, Raleigh, NC 27611.

MC 146668 (Sub-1TA), filed March 30, 1979. Applicant: MICHAEL BENNETT TRUCKING, INC., 18 E. Amador, Seneca, KS 66538. Representative: Clyde N. Christey, Kansas Credit Union Bldg., 1010 Tyler, Suite 110-L, Topeka, KS 66612. *Alfalfa Products*, from the facilities of Western Alfalfa Corp., Topeka, KS to points in AR, OK, and MO; and from the facilities of Western Alfalfa Corp. Odessa and Schuyler, NE to points in KS and MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Western Alfalfa Corporation, 6600 Glenwood, Shawnee Mission, KS 66202. Send protest to: Thomas P. O'Hara, D/S, ICC, 256 Federal Bldg., 444 S. E. Quincy, Topeka, KS 66683.

MC 146686 (Sub-1TA), filed April 20, 1979. Applicant: ROAD WEST, INC., 1315 E. Holt Blvd., P.O. Box 3637, Ontario, CA 91761. Representative: Peter R. Atchison (same address as applicant). *Contract:* irregular: *Label stock and equipment, parts and supplies used in the manufacture of label stock (except commodities in bulk and those requiring special equipment),* from Peach Tree City, GA; Fitchburg, MA; Holyoke, MA; International Falls, MN; Akron, Dayton, Hamilton and Painesville, OH; Quakertown, PA; and Rhinelander, WI, to the facilities of Fasson, An Avery International Company, at Guasmenga, CA, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting Shipper(s): Fasson, An Avery International Company, 6200 Ninth Street, Cucamonga, CA 91730. Send protest to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, P.O. Box 1551, Los Angeles, CA 90053.

MC 146689 (Sub-1TA), filed March 10, 1979. Applicant: KENNETH E. JONES & JAMES H. PARRISH, d.b.a. DE SOTO TRAIL, 282 East Main St., Franklin, NC 28734. Representative: Bruce E. Mitchell Esq., 3390 Peachtree Rd., NE, Atlanta GA 30326. *Contract* Carrier-Irregular Routes; *Building materials* between the facilities of Zickgraf Hardwood Company at or near Franklin, NC, on the one hand, and on the other, to points in GA, FL, SC, VA, WV, MD, NJ, PA, NY, CT, RI, MA, NH, VT and ME and DC, for 180 days. An underlying ETA seeks 90 days authority. Operations to be performed under contract or continuing contracts with/Zickgraf Hardwood Co. Supporting Shipper(s): Zickgraf Hardwood Company, P.O. Box 230, Franklin, NC 28734. Send protests to: District Supervisor Terrell Price, 800 Briar Creek Rd-Rm CC516, Mart Office Building, Charlotte, NC 28205.

MC 146718 (Sub-1TA), filed March 20, 1979. Applicant: MILNE ENTERPRISES, INC., 72 Littleworth Rd, Dover, NH 03820. Representative: Richard V. Wiebusch, Esquire, Sheehan, Phinney, Bass & Green, 1000 Elm St, Manchester, NH 03101. *Gasoline, kerosene and fuel oils, in bulk*, between points in ME, MA, NH, RI, and VT, for 180 days. Supporting Shipper(s): There are six shippers. Their

statements may be examined at the office listed below and headquarters. Send protests to: Ross J. Seymour, DS, ICC, Rm 3, 6 Loudon Rd, Concord, NH 03301.

MC 146719 (Sub-1TA), filed April 12, 1979. Applicant: MATERIAL DELIVERY SERVICE, INC., P.O. Drawer F, Alabaster, AL 35007. Representative: Charles N. Schueler, Route 1, Box 312, Wilsonville, AL 35186. *Lime kiln dust,* in bulk, from Shelby County, AL, to Fulton County, GA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ash Management Corporation, 3226 Cedar Bluff Drive, Marietta, GA 30028. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616–2121 Building, Birmingham, AL 35203.

MC 146729 (Sub-1TA), filed April 26, 1979. Applicant: JAMES S. HELWIG & ALLEN L. GRIMLAND, d.b.a. H & G LEASING, 2901 Inwood, Dallas, TX 75235. Representative: Paul D. Angenend, P.O. Box 2207, Austin, TX 78768. *Lime (except in bulk)* from Dallas and Midlothian, TX, to Commerce and San Jose, CA; Denver, CO; Orlando, FL; Atlanta, GA; Council Bluffs, IA; Topeka, KS; Louisville, KY; Jackson, MS; Salisbury, NC; Kirkwood, NY; Massilion, OH; Williamsport, PA; Memphis, TN; Vancouver, WA; and Beloit and Monroe, WI, for 180 days. Underlying ETA filed. Supporting shipper(s): Atlantes Industries, Inc., 8320 Chancellor Row, Dallas, TX 75245. Send protests to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 146758 (Sub-1TA), filed April 10, 1979. Applicant: LADLIE TRANSPORTATION, INC., 103 East Main Street, Albert Lea, MN 56007. Representative: Robert S. Lee, 1000 First National Bank Building, Minneapolis, MN 55402. *(1) Cheese, cheese products and synthetic cheese; and (2) Equipment, materials and supplies used in the manufacture of commodities in (1) above* from points in WI to points in IL, IA and MO, for 180 days. An underlyilng ETA seeks 90 days authority. Supporting shipper(s): L. D. Schreiber Cheese Co., Inc., Corporate Traffic Manager, P.O. Box 610, Green Bay, WI 54305. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 146788 (Sub-1TA), filed April 13, 1979. Applicant: NORMAN JOHNSON d.b.a. JOHNSON TRUCKING, 913 South 13th Place, Norfolk, NE 68701. Representative: Norman Johnson (same address as applicant). *Contract carrier:* Irregular routes: *Iron and steel,* (1) from Pueblo, CO; Wilton, IA; St. Louis, MO; Minneapolis and St. Paul, MN; Portland, OR; Salt Lake City, UT; and points in IL, IN, and TX to the facilities of Norfolk Iron and Metal at Norfolk, Nebraska; and (2) from the facilities of Norfolk Iron and Metal at Norfolk, NE to points in CA, CO, IA, IL, IN, KS, MO, MI, MN, MT, ND, SD, UT, and WY, under contract with Norfolk Iron and Metal, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Norfolk Iron and Metal, 300 Braasch Ave., Norfolk, NE 68701. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 146789 (Sub-1TA), filed April 13, 1979. Applicant: NORRIS O'DEY d.b.a. O'DEY TRANSPORTATION, 104 Monroe Ave., Norfolk, NE 68701. Representative: Norris O'Dey, Same address as above. *Contract carrier:* irregular routes: *Iron and steel,* (1) from Pueblo, CO; Wilton, IA; St. Louis, MO; Minneapolis and St. Paul, MN; Portland, OR; Salt Lake City, UT; and points in IL, IN, and TX to the facilities of Norfolk Iron and Metal at Norfolk, NE; and (2) from the facilities of Norfolk Iron and Metal at Norfolk, NE to points in CA, CO, IA, IL, IN, KS, MO, MI, MN, MT, ND, SD, UT, and WY, under contract with Norfolk Iron and Metal, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Norfolk Iron and Metal, 300 Braasch Ave., Norfolk, NE 68701. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 146798 (Sub-1TA), filed April 16, 1979. Applicant: SULLIVAN TRUCKING, INC., 1340 Umatilla Street, Denver, CO 80204. Representative: Richard P. Kissinger, 50 S. Steele St., Suite 330, Denver, CO 80209. *Common carrier:* irregular routes: *(1) Malt Beverages and related advertising materials* from Jefferson County, CO to points in AZ, CA, ID, NV, UT, and WA; *(2) Empty used beverage containers for recycling, and materials and supplies used in and dealt with by breweries* from points in AZ, CA, ID, NV, UT, and WA to points in Jefferson County, CO for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Adolph Coors Co., Golden, CO 80401. Send protests to: District Supervisor R. L. Buchanan, Interstate Commerce Commission, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 146799 (Sub-1TA), filed April 13, 1979. Applicant: J & S TRUCKING, INC., 7515 East Slauson Avenue, Commerce, CA 90040. Representative: Michael A. Salcido, 7515 East Slauson Avenue, Commerce, CA 90040. *(1) Iron or steel articles, and (2) Foodstuffs, cold pack or frozen, that normally is sold by retail stores or retail warehouses to retail customers,* from points and places in Los Angeles and Orange Counties, CA to points and places in AZ. An underlying ETA seeks 90 days authority. Supporting Shipper(s): State Pipe & Supply, 7545 Telegraph Road, Los Angeles, CA 90040. Arctic Cold Storage, Inc., 13033 Arctic Circle Drive, Santa Fe Springs, CA 90670. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, P.O. Box 1551, Los Angeles, CA 90053.

MC 146819 (Sub-1TA), filed April 17, 1979. Applicant: TRANS-WEST SERVICE, 8856 East Rosecrans Avenue, Downey, CA 90242. Representative: John Aryon, "Same Address As Applicant". *Potato chips, twists, puffs, french fries, and hash brown potatoes,* between points and places in Los Angeles County, CA and points and places in Clark County, NV, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting Shipper(s): Bell Brand Foods, Inc., 8825 Millergrove Drive, Santa Fe Springs, CA 90670. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, P.O. Box 1551, Los Angeles, CA 90053.

MC 146828 (Sub-2TA), filed April 26, 1979. Applicant: WILLIE ODELL DAWSON, 470 N. E. Middlefield Rd., Portland, OR 97211. Representative: John A. Anderson, Suite 1440–200 Market Bldg., Portland, OR 97201. *Contract, irregular, shakes, shingles and ridgetrim* from Montesano, Elma, Pe Ell, Raymond and Lakeside, WA to Fresno, CA under a continuing contract or contracts with Lovejoy Building Materials, Fresno, CA, for 180 days. A corresponding ETA was granted 4/19/79 for 30 + 2 and a Permanent has been filed. An underlying ETA seeks 90 days authority. Supporting shipper(s): Lovejoy Building Materials, 724 N. Monte, Fresno, CA 93728. Send protests to: R. V. Dubay, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, Portland, Oregon 97204.

MC 146839 (Sub-1TA), filed April 18, 1979. Applicant: T. C. TRANSPORTATION, INC., 290 Lawrence Ave., So. San Francisco, CA 94080. Representative: Michael S. Rubin, 256 Montgomery St., 5th Floor, San Francisco, CA 94104. General commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special

equipment), between points in San Francisco, San Mateo, Alameda and Santa Clara Counties, CA, on the one hand, and on the other, points in Los Angeles County, CA restricted to traffic having a prior or subsequent movement by air, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Air Express International, 299 Lawrence Ave., So. San Francisco, CA 94080, and Behring International, Inc., 20 Rollins Rd., Millbrae, CA 94030. Send protests to: District Supervisor, 211 Main, Suite 500, San Francisco, CA 94105.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-17608 Filed 6-6-79; 8:45 am]
BILLING CODE 7035-01-M

[Volume No. 12]

Permanent Authority Decisions; Decision-Notice

Correction

In FR Doc. 79-5542, published at page 10827, on Friday, February 23, 1979, on page 10833, in the third column, in the paragraph "MC 117940 [Sub-303F]", in the second line the applicant's name reading "NATIONAL CARRIERS, INC." should be corrected to read "NATIONWIDE CARRIERS, INC.".

BILLING CODE 1505-01-M

[Decisions Volume No. 63]

Permanent Authority Applications; Decision-Notice

Decided: May 18, 1979.

The following applications filed on or before February 28, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR § 1100.247). For applications filed before March 1, 1979, these rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the application is published in the Federal Register. Failure to file a protest, within 30 days, will be considered as a waiver of opposition to the application. A protest under these rules should comply with Rule 247(e)(3) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding, (as specifically noted below), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. A protestant should include a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describe in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named. If the protest includes a request for oral hearing, such request shall meet the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

On cases filed on or after March 1, 1979, petitions for intervention either with or without leave are appropriate.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If applicant has introduced rates as an issue it is noted. Upon request an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. § 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a protestant, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. § 10101 subject to the right of the Commission, which is expressly reserved, to impose such conditions as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. § 10930(a) [formerly section 210 of the Interstate Commerce Act].

In the absence of legally sufficient protests, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

H. G. Homme, Jr.,
Secretary.

MC 19945 (Sub-70F), filed February 22, 1979. Applicant: BEHNKEN TRUCK SERVICE, INC., Route #13, New Athens, IL 62264. Representative: Ernest A. Brooks II, 1301 Ambassador Bldg., St. Louis, MO 63101. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *salt*, from St. Louis, MO, to points in IN and IL. (Hearing site: St. Louis, MO.)

MC 24784 (Sub-21F), filed February 22, 1979. Applicant: BARRY, INC., 403 South Water, Olathe, KS 66061. Representative: Arthur J. Cerra, P.O. Box 19251, 2100 TenMain Center, Kansas

City, Mo 64141. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *plastic articles and rubber articles*, (1) between the facilities of Industrial Plastics Corp., at (a) Council Grove, KS, (b) Elkhart, IN, and (c) Fitzgerald, GA, and (2) from Council Grove, KS, to Burlington, IA, Greenville, MS, and Pilot Rock, OR. (Hearing site: Kansas City, MO.)

MC 73165 (Sub-465F), filed February 2, 1979. Applicant: EAGLE MOTOR LINES, INC., P.O. Box 11086, Birmingham, AL 35202. Representative: R. Cameron Rollins (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *cooling towers and condensers*, and (2) *accessories, materials, and supplies* used for cooling towers, from the facilities of Baltimore Air Coil Company, at or near Paxton, IL, to points in AL, AR, CO, FL, GA, IL, IA, KS, LA, MI, MS, MN, MT, NE, NM, ND, OK, SD, TN, TX, WI, and WY. (Hearing site: Memphis, TN, or Columbus, OH)

MC 97345 (Sub-4F), filed January 26, 1979, previously noticed in the Federal Register issue of April 3, 1979. Applicant: DUFFY STORAGE & MOVING CO., d.b.a. DUFFY HEAVY MOVING CO., 389 S. Lipan Street, Denver, CO 80223. Representative: Robert G. Shepherd, Jr., 915 Pennsylvania Bldg., 425 13th Street, NW., Washington, DC 20004. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *commodities* which because of size or weight require the use of special equipment, (2) *concrete products*, (3) *construction materials, equipment, and supplies*, (4) *mining materials, equipment, and supplies*, (5) *telephone and power line materials*, (6) *transformers*, (7) *plant equipment and parts* thereof, between points in CO, WY, UT, NM, and AZ, and those in NE and KS on and west of U.S. Hwy 183, and (8) *general commodities* (except those of unusual value, classes A and B explosives, and commodities in bulk), between points in Denver, Adams, Arapahoe, and Jefferson Counties, CO, restricted in parts (1), (2), (3), (4), (5), (6), and (7), against (a) service between points in Denver, Adams, Arapahoe, and Jefferson Counties, CO, (b) transportation of commodities in bulk, and (c) the transportation of oilfield commodities for the oil and gas industries, as defined in *Mercer, Extension—Oilfield Commodities*, 74 M.C.C. 459. Condition: Prior or coincidental cancellation, at applicant's written request of its Certificate of Registration in MC–97345 Sub 2.

Note.—Applicant seeks to convert its Certificate of Registration which now authorizes the transportation of (a) *general commodities*, between points in Denver, Adams, Arapahoe, and Jefferson Counties, CO, (b) *commodities* which because of size or weight, require the use of special equipment, *concrete products*, and *self-propelled equipment and machinery*, between points in CO, (c) *construction materials and supplies*, restricted to shipments from or to construction sites, between points in CO, and (d) *plant machinery and plant equipment* (including incidental parts and materials moving in connection therewith), between points in CO, with the restrictions named above.

Note.—This republication indicates the correct route description. (Hearing site: Denver, CO.)

MC 99234 (Sub-12F), filed February 13, 1979. Applicant: WESTWAY MOTOR FREIGHT, INC., 5231 Monroe St., Denver, CO 80216. Representative: Leslie R. Kehl, 1600 Lincoln Center, 1660 Lincoln St., Denver, CO 80264. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *malt beverages*, from points in Jefferson County, CO, to points in AZ, CA, ID, and KS; and (2) *materials and supplies* as are dealt in or used by breweries, in the reverse direction. (Hearing site: Denver, CO.)

MC 105045 (Sub-95F), filed February 9, 1979. Applicant: R. L. JEFFRIES TRUCKING CO., INC., P.O. Box 3277, Evansville, IN 47701. Representative: Paul F. Sullivan, 711 Washington Bldg., Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *refrigeration equipment*, from the facilities of Vollrath Refrigeration, Inc., at Pell City, AL, to points in the United States, (except AK and HI). (Hearing site: Birmingham, AL).

MC 106074 (Sub-86F), filed February 13, 1979. Applicant: B & P MOTOR LINES, INC., Oakland Rd. and U.S. Hwy. 221 South, Forest City, NC 28043. Representative: Clyde W. Carver, Suite 212, 5299 Roswell Rd., NE., Atlanta, GA 30342. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *rubber articles* and *plastic articles*, from the facilities of Entek Corp. of America, at or near Irving, TX, to points in FL, GA, IL, IN, IA, KS, MO, NC, SC, and VA; and (2) *materials and supplies* used in the manufacture of the commodities named in (1) above, in the reverse direction, restricted in part (2) above against the transportation of commodities in bulk, in tank vehicles. (Hearing site: Dallas, TX, or Atlanta, GA).

Note.—Dual operations may be involved.

MC 106644 (Sub-275F), filed February 21, 1979. Applicant: SUPERIOR TRUCKING COMPANY, INC., P.O. Box 916, Atlanta, GA 30301. Representative: Louis C. Parker, III (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *fabricated steel products, trailers, agricultural implements, and metal buildings*, and (2) *parts and accessories* for the commodities in (1) above, from the facilities of The Brinkley Company, in Montgomery and Warren Counties, MO, to points in the United States (except AK and HI), restricted to the transportation of traffic originating at the named origins. (Hearing site: St. Louis, MO, or Washington, DC).

MC 109124 (Sub-62F), filed February 22, 1979. Applicant: SENTLE TRUCKING CORPORATION, P.O. Box 7850, Toledo, OH 43619. Representative: James M. Burtch, 100 E. Broad St., Suite 1800, Columbus, OH 43215. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, from the facilities of Jones & Laughlin Steel Corporation, at Warren, MI, to the facilities of (1) Jones & Laughlin Steel Corporation, at (a) Aliquippa and Pittsburgh, PA, and (b) Cleveland, OH, (2) Jessop Steel Co., at Washington, PA, and (3) Washington Steel Co., at Houston, PA, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Columbus, OH, or Pittsburgh, PA).

MC 110325 (Sub-93F), filed January 29, 1979, previously noticed in the Federal Register of March 20, 1979. Applicant: TRANSCON LINES, a corporation, P.O. Box 92220, Los Angeles, CA 90009. Representative: Wentworth E. Griffin, Midland Building, 1221 Baltimore Avenue, Kansas City, MO 64105. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Charleston, WV, and St. Louis, MO, (a) over Interstate Hwy 64, and (b) from Charleston over U.S. Hwy 60 to junction U.S. Hwy 52, then over U.S. Hwy 52 to

junction U.S. Hwy 50, then over U.S. Hwy 50 to junction U.S. Hwy 40, then over U.S. Hwy 40 to St. Louis, and return over the same route, (2) between Owensboro and Bowling Green, KY, over U.S. Hwy 231, (3) between Owensboro and junction Green River Parkway and U.S. Hwy 231, over Green River Parkway, (4) between Mayfield and London, KY, over KY Hwy 80, (5) between London, KY, and Cincinnati, OH, (a) over U.S. Hwy 25, and (b) over Interstate Hwy 75, (6) between Somerset and Lexington, KY, from Somerset over U.S. Hwy 27 to junction U.S. Hwy 150, then over U.S. Hwy 150 to junction U.S. Hwy 127, then over U.S. Hwy 127 to junction U.S. Hwy 68, then over U.S. Hwy 68 to Lexington, and return over the same route, (7) between Harrodsburg, KY and junction U.S. Hwy 127 and Interstate Hwy 64, over U.S. Hwy 127, (8) between junction U.S. Hwys 25 and 42 and Bowling Green, KY, from junction U.S. Hwys 25 and 42 over U.S. Hwy 42 to junction U.S. Hwy 31W, then over U.S. Hwy 31W to Bowling Green, and return over the same route, (9) between junction U.S. Hwys 42 and 31E and Glasgow, KY, over U.S. Hwy 31E, (10) between junction Interstate Hwys 71 and 75 and junction Interstate Hwy 65 and KY Hwy 80, from the junction of Interstate Hwys 71 and 75 over Interstate Hwy 71 to junction Interstate Hwy 65, then over Interstate Hwy 65 to junction Interstate Hwy 65 and KY Hwy 80, and return over the same route, (11) between Indianapolis, IN, and Hopkinsville, KY, from Indianapolis, over U.S. Hwy 40 to junction U.S. Hwy 41, then over U.S. Hwy 41 to junction U.S. Hwy Alt. 41, at or near Madisonville, KY, then over U.S. Hwy Alt. 41 to junction U.S. Hwy 41, at or near Nortonville, then over U.S. Hwy 41 to Hopkinsville, and return over the same route, (12) between Indianapolis and junction Interstate Hwy 40 and U.S. Hwy 41, over Interstate Hwy 70, (13) between Henderson and Hopkinsville, KY, from Henderson over Pennyrile Parkway to junction U.S. Hwy 41, then over U.S. Hwy 41 to junction Pennyrile Parkway, then over Pennyrile Parkway to Hopkinsville, and return over the same route, (14) between Stanford and Mt. Vernon, KY, over U.S. Hwy 150, (15) between Edmonton and Harrodsburg, KY, over U.S. Hwy 68, (16) between Indianapolis, IN, and Louisville, KY, (a) over U.S. Hwy 31, and (b) over Interstate Hwy 65, (17) between Owensboro, KY, and Indianapolis, IN, from Owensboro over U.S. Hwy 231 to junction IN Hwy 54, then over IN Hwy 54 to junction IN Hwy 445, then over IN Hwy 445 to junction IN Hwy 45, then over IN Hwy 45 to junction IN Hwy 37, then over IN Hwy 37 to Indianapolis, and return over the same route, (18) between Nashville, TN, and Bowling Green, KY, (a) over U.S. Hwy 31W, and (b) over Interstate Hwy 65, (19) between Nashville, TN, and Hopkinsville, KY, (a) over U.S. Hwy 41, and (b) over U.S. Hwy Alt. 41, (20) between Lexington, KY, and Memphis, TN, from Lexington over U.S. Hwy 60 to junction U.S. Hwy 51, then over U.S. Hwy 51 to Memphis, and return over the same route, (21) between junction U.S. Hwy 60 and Blue Grass Parkway and junction Purchase Parkway and U.S. Hwy 51, from junction U.S. Hwy 60 and Blue Grass Parkway over Blue Grass Parkway to junction Interstate Hwy 65, then over Interstate Hwy 65 to junction Western Kentucky Parkway, then over Western Kentucky Parkway to junction Purchase Parkway, then over Purchase Parkway to junction U.S. Hwy 51, and return over the same route, (22) between junction U.S. Hwy 60 and U.S. Hwy 62 and junction U.S. Hwy 45 and U.S. Hwy 51, from junction U.S. Hwy 60 and U.S. Hwy 62 over U.S. Hwy 62 to junction U.S. Hwy 45, then over U.S. Hwy 45 to junction U.S. Hwy 51, and return over the same route, (23) between junction KY Hwy 80 and Interstate Hwy 65 and Somerset, KY, from junction KY Hwy 80 and Interstate Hwy 65 over Interstate Hwy 65 to junction Cumberland Parkway, then over Cumberland Parkway to Somerset, and return over the same route, (24) between junction U.S. Hwy 150 and U.S. Hwy 27 and Lexington, KY, over U.S. Hwy 27, (25) between junction U.S. Hwy 50 and IN Hwy 37 and junction IN Hwy 37 and IN Hwy 45, over IN Hwy 37, (26) between junction U.S. Hwy 60 and U.S. Hwy 52 and junction U.S. Hwy 60 and U.S. Hwy 62, over U.S. Hwy 60, serving in (1) through (26) above, all intermediate points, and the off-route points of Jefferson, Fayette, Boyd, Daviess, Marshall, Warren, McCracken, Clark, Hardin, Franklin, Boone, Graves, Nelson, Taylor, Kenton, Oldham, Bullitt, Scott, Woodford, Jessamine, Bourbon, Campbell, Greenup, Larue, and Henderson Counties, KY, Ripley and New Bern, TN, and Mount Vernon, IL. (Hearing sites: Lexington and Louisville, KY, Memphis, TN and St. Louis, MO)

Note.—This republication indicates the correct route description in (20) and the off-route point of Ripley, TN.

MC 114274 (Sub-59F), filed February 11, 1979. Applicant: VITALIS TRUCK LINES, INC., 137 N.E. 48th St. Place, Des Moines, IA 50306. Representative: William H. Towle, 180 North LaSalle, St., Chicago, IL 60601. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Iowa Beef Processors, Inc., at or near (1) Dakota City and West Point, NE, and (2) Ft. Dodge and Denison, IA, to points in CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT, VA, WV, and DC, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Omaha, NE or Kansas City, KS.)

MC 116544 (Sub-170F), filed February 13, 1979. Applicant: ALTRUK FREIGHT SYSTEMS, INC., 1703 Embarcadero Rd., Palo Alto, CA 94303. Representative: Kirk Wm. Horton, P.O. Box 10061, Palo Alto, CA. 94303. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in by grocery business houses (except commodities in bulk, in tank vehicles), in vehicles equipped with mechanical refrigeration, from the facilities of Kraft, Inc., at or near Garland, TX, to points in AR, KS, MO, OK, and CO, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Chicago, IL, or Washington, DC.)

MC 119435 (Sub-6F), filed January 30, 1979. Applicant: WADDELL TRANSFER, INC., P.O. Box 168, Atkins, VA 24311. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in or used by the manufacturers and distributors of clay, clay products, concrete, concrete products, shale, shale products, and mortar mixes, (except commodities in bulk, in tank vehicles), between the facilities of (1) General Shale Products Corporation, at or near (a) Sparta and McMinnville, TN, (b) Huntsville, AL, (c) Louisville, KY, and (d) Indianapolis and Evansville, IN, (2) Sparta Concrete Company, at or near Sparta, TN, and (3) McMinnville Concrete Products, Inc., at or near McMinnville, TN; on the one hand, and, on the other, those points in the United States in and east of ND, SD, NE, OK, and TX, under continuing contract(s) with General Shale Products

Corporation, of Johnson City, TN. (Hearing site: Washington, DC.)

MC 121654 (Sub-18F), filed February 13, 1979. Applicant: COASTAL TRANSPORT & TRADING CO., a Corporation, P.O. Box 7436, Savannah, GA 31408. Representative: Alan E. Serby, 3390 Peachtree Rd., 5th Floor, Atlanta, GA 30326. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *aluminum products*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of aluminum products (except commodities in bulk), between the facilities of Consolidated Aluminum Corp., at or near Gulfport, MS, on the one hand, and, on the other, points in AL, GA, FL, NC, SC, TN, and VA. (Hearing site: St. Louis, MO.)

MC 123074 (Sub-13F), filed February 16, 1979. Applicant: M. L. ASBURY, INC., 1100 South Oakwood, Detroit, MI 48217. Representative: William B. Elmer, 12635 East Nine Mile Rd., St. Clair Shores, MI 48080. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *asphalt and asphalt products*, in bulk, in tank vehicles, from Detroit, MI, to points in DeKalb County, IN. (Hearing site: Detroit, MI.)

MC 123074 (Sub-14F), filed February 16, 1979. Applicant: M. L. ASBURY, INC., 1100 South Oakwood, Detroit, MI 48217. Representative: William B. Elmer, 21635 East Nine Mile Rd., St. Clair Shores, MI 48080. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *asphalt* and *asphalt products*, in bulk, in tank vehicles, from Detroit, MI, to points in Elkhart, LaPorte, Porter, and St. Joseph Counties, IN. (Hearing site: Detroit, MI.)

MC 123405 (Sub-65F), filed February 12, 1979. Applicant: FOOD TRANSPORT, INC., R. D. #1, Thomasville, PA 17364. Representative: Christian V. Graf, 407 North Front Street, Harrisburg, PA 17101. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting beverage preparations, from the facilities of Coca Cola Co., Foods Division, at Auburndale, FL, to points in PA, NJ, NY, MD, OH, DE, and DC. (Hearing site: Harrisburg, PA, or Washington, DC.)

MC 124004 (Sub-49F), filed February 13, 1979. Applicant: RICHARD DAHN, INC., 620 West Mountain Rd., Sparta, NJ 07871. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *dry commodities*, in bulk, between the facilities of Allied Chemical Corp., at Solvay and Syracuse, NY, on the one hand, and, on the other, those points in the United States in and east of MN, IA, MO, AR, and TX. (Hearing site: New York, NY, or Washington, DC.)

MC 124964 (Sub-30F), filed February 21, 1979. Applicant: J. M. BOOTH TRUCKING, INC., P.O. Box 907, Eustis, FL 32726. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *such commodities* as are dealt in or used by grocery and department stores (except commodities in bulk), and (2) *agricultural commodities* which are otherwise exempt from economic regulation under 49 U.S.C. § 10526(a)(6) (formerly Section 203(b)(6) of the Interstate Commerce Act, in mixed loads with the commodities described in (1) above, (except commodities in bulk), between Cossackie, Scotia, Waterford, and Waverly, NY, points in Hudson, Bergen, Essex, Passaic, Union, and Somerset Counties, NJ, and Westchester, Nassau, Suffolk, and Rockland Counties, NY, on the one hand, and, on the other, those points in FL on and south of FL Hwy 44, under continuing contract(s) with The Grand Union Company, of Elmwood Park, N.J. (Hearing site: New York, NY, or Jacksonville, FL.)

MC 124964 (Sub-32F), filed February 13, 1979. Applicant: J. M. BOOTH TRUCKING, INC., P.O. Box 907, Eustis, FL 32726. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *non-alcoholic beverages, and concentrates* (except frozen), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), and (3) *fruit salads*, in mixed loads with the commodities in (1) and (2) above, between the facilities of Doric Foods Corporation at or near Findlay, OH, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with Doric Foods Corporation, of Mount Dora, Fl. (Hearing site: Jacksonville, FL, or Washington, DC.)

MC 126255 (Sub-6F), filed February 16, 1979. Applicant: BUTLER-JONES AIR FREIGHT, INC., Salisbury-Wicomico Airport, P.O. 1984, Salisbury, MD 21801. Representative: Peter A. Greene, 900 17th St., NW, Washington, DC 20006. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, commodities in bulk, household goods as defined by the Commission, and those requiring special equipment), between Salisbury-Wicomico Airport, at Salisbury, MD, and Philadelphia International Airport, at Philadelphia, PA, restricted to the transportation of traffic having an immediately prior or subsequent movement by air. (Hearing site: Washington, DC, or Salisbury, MD.)

MC 126844 (Sub-70F), filed February 5, 1979. Applicant: R.D.S. TRUCKING CO., INC., 1713 North Main Road, Vineland, NJ 08360. Representative: Kenneth F. Dudley, 611 Church Street, P.O. Box 279, Ottumwa, IA 52501. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities*, (except articles of unusual value, classes A and B explosives, household goods, as defined by the Commission, commodities in bulk, and those requiring the use of special equipment), (1) from Chicago, IL, to points in CO, FL, GA, IL, IN, IA, KS, MI, MN, MO, NE, NJ, NY, OH, PA, TX, and WI, (2) from Philadelphia, PA, and points in NJ, to points in CO, FL, GA, IL, IN, IA, KS, MI, MN, MO, NE, NJ, NY, OH, PA, TX, and WI, and (3) from Marinette, WI, to Chicago, IL, and Philadelphia, PA. (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 134064 (Sub-22F), filed February 13, 1979. Applicant: INTERSTATE TRANSPORT, INC., 1620 Atlanta Hwy, Gainesville, GA 30501. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *petroleum products* (except in bulk), from the facilities of Witco Chemical Corporation, at or near Bradford, PA, to points in AL, FL, GA, LA, SC, and MS. (Hearing site: Atlanta, GA, or Pittsburgh, PA.)

MC 134105 (Sub-31F), filed November 22, 1978 previously noticed in the Federal Register of February 20, 1979. Applicant: CELERYVALE TRANSPORT, INC., 1318 East 23rd Street, Chattanooga, TN 37404. Representative: Daniel O. Hands, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. To operate as a *common carrier*, by motor vehicle, in interstate or foreign

commerce, over irregular routes, transporting *confectionery and confectionery products*, (except commodities in bulk), from the facilities of Charms Company, at or near Covington, TN, to points in AL, AR, CO, FL, GA, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, NE, NC, ND, OH, OK, SC, SD, TX, and WI, restricted to the transportation of traffice originating at the named origin and destined to the indicated destinations. (Hearing site: Chicago, IL.)

Note.—This republication correctly indicates that authority is sought to MO and not MD.

MC 136606 (Sub-91F), filed February 1, 1979. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *precast concrete products*, from Denver, CO, and Oshkosh, WI, to those points in the United States in and west of WI, IL, MO, AR, and LA (except AK and HI). (Hearing site: Milwaukee, WI, or Chicago, IL.)

MC 138144 (Sub-46F), filed February 13, 1979. Applicant: FRED OLSON CO., INC., 6022 W. State St., Milwaukee, WI 53213. Representative: W. D. Brejcha, 10 S. LaSalle St., Suite 1600, Chicago, IL 60603. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) (a) *bagged sand*, from Ottawa, IL, (b) *steel*, from Sterling, IL, and (c) *strand*, from Chicago, IL, to the facilities, of J. W. Peters & Sons at Burlington, WI, and (2) *precast concrete*, from the facilities of J. W. Peters & Sons, at Burlington, WI, to points in IA, IL, IN, and MI. (Hearing site: Chicago, IL, or Milwaukee, WI.)

Note.—Dual operations may be involved.

MC 139234 (Sub-6F), filed February 22, 1979. Applicant: BRUCE'S TRANSPORT SERVICE, INC., 5721 North Ventura Ave., Ventura, CA 93001. Representative: David P. Christianson, 707 Wilshire Blvd., Suite 1800, Los Angeles, CA 90017. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *dry barium sulfate*, in bulk, between points in CA, OR, WA, NV, UT, AR, NM, MT, CO, ID, and WY, under continuing contract(s) with DMCO Services, a division of Halliburton Company, of Long Beach, CA. (Hearing site: Los Angeles, CA.)

MC 139615 (Sub-24F), filed February 16, 1979. Applicant: D.R.S. TRANSPORT, INC., P.O. Box 29, Oskaloosa, IA 52577. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *wrought iron pipe*, from the facilities of Unarco-Leavitt Division of Unarco Industries, Inc., at or near Chicago, Blue Island, and Evanston, IL, to points in IA and NE. (Hearing site: Chicago, IL.)

MC 141804 (Sub-180F), filed February 16, 1979. Applicant: WESTERN EXPRESS, division of INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *electric storage batteries*, (2) *parts and accessories* for batteries, and (3) *equipment and supplies* used in the production of (1) and (2) above, between points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Gould, Inc. (Hearing site: Los Angeles or San Francisco, CA.)

MC 141804 (Sub-181F), filed February 21, 1979. Applicant: WESTERN EXPRESS, division of INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *building equipment, building materials, and building supplies*, between points in AZ, CA, OR, TX, UT, and WA, on the one hand, and, on the other, those points in the United States in and east of MN, IA, MO, AR, and LA. (Hearing site: Los Angeles or San Francisco, CA.)

MC 141804 (Sub-182F), filed February 21, 1979. Applicant: WESTERN EXPRESS, Division of Interstate Rental, Inc., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *furniture and furniture parts*, (a) from points in AL, NC, IN, VA, MN, TN, MS, and TX to the facilities of Grantree Furniture Rental in AZ, CA, CO, MN, NV, OK, OR, TX, UT, and WA, and (b) from points in CA to the facilities of Grantree Furniture Rental in AZ, CO, MN, NV, OK, OR, TX, UT, and WA, restricted in (a) and (b) above, to the transportation of traffic destined to the indicated destinations. (Hearing site: Los Angeles or San Francisco, CA.)

MC 141804 (Sub-183F), filed February 22, 1979. Applicant: WESTERN EXPRESS, Division of Interstate Rental, Inc., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs*, from Fontana and City of Commerce, CA, to Florence, KY. (Hearing site: Los Angeles or San Francisco, CA.)

MC 141804 (Sub-184F), filed February 22, 1979. Applicant: WESTERN EXPRESS, Division of Interstate Rental, Inc., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *glass and glass containers*, from the facilities of Brockway Glass Company, in OH and PA, to points in CA, restricted to the transportation of traffic originating at the named origins. (Hearing site: Los Angeles or San Francisco, CA.)

MC 141804 (Sub-185F), filed February 22, 1979. Applicant: WESTERN EXPRESS, Division of Interstate Rental, Inc., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *vehicle accessories, vehicle parts, and vehicle supplies*, between points in CA, on the one hand, and on the other, those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Los Angeles or San Francisco, CA.)

MC 142254 (Sub-4F), filed February 16, 1979. Applicant: FRIEDL FUEL & CARTAGE, INC., 417 W. Whitewater St., Whitewater, WI 54190. Representative: Wayne W. Wilson, 150 East Gilman St., Madison, WI 53703. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *paper, paper products, and printed matter*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk, in tank vehicles) between the facilities of Sturgis Newport Business Forms, a Division of Litton Industries, at or near Whitewater, WI, on the one hand, and, on the other, points in DE, IL, IA, IN, KS, KY, MD, MI, MN, MO, NE, NJ, ND, NY, NC, OH, PA, SD, TN, VA, and DC, restricted to the transportation of traffic originating at or

destined to the named facilities. (Hearing site: Madison or Milwaukee, WI)

MC 144855 (Sub-8F), filed February 20, 1979. Applicant: TRANS CONTINENTAL CARRIERS, 169 E. Liberty Ave., Anaheim, CA 92803. Representative: Elizabeth I. Abreu, 1800 United California Bank Bldg., 707 Wilshire Blvd., Los Angeles, CA 90017. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) (a) *such commodities* as are dealt in or used by retail department stores and retail drug stores, (except foodstuffs), and (b) *foodstuffs*, from Dallas and Houston, TX, Vernon, Torrance, and Culver City, CA, Philadelphia and Hanover, Pa, and Monticello, NY, to points in the United States (except AK and HI); (2) *bread*, between points in the United States (except AK and HI); and (3) *materials, equipment, and supplies* used in the manufacture and distribution of bread, (except commodities in bulk), from points in the United States (except AK and HI), to points in Los Angeles County, CA. (Hearing site: Los Angeles, CA.)

Note.—(1) Applicant states that it intends to convert the contract authority held by it in MC-139485 Sub 8 to common carrier authority. Applicant has requested coincidental cancellation of its authority in MC-139485 Sub 8, issued December 12, 1978, upon issuance of the certificate granted in this proceeding. (2) Dual operations may be involved. (Hearing site: Los Angeles, CA.)

MC 145525 (Sub-2F), filed February 22, 1979. Applicant: ERIEVIEW CARTAGE, INC., 100 Erieview Plaza, P.O. Box 6977, Cleveland, OH 44144. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *electric cables and aluminum articles*, and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), between the facilities of Alcan Aluminum Corporation, at or near Bay St. Louis, MS, and Tucker, GA, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with Alcan Aluminum Corp., of Cleveland, OH. (Hearing site: Cleveland, OH.)

MC 145865 (Sub-2F), filed February 12, 1979. Applicant: METONGA COMPANY, INC., 913 N. Hazeldell Avenue, Crandon, WI 54520. Representative: Nancy J. Johnson, Route 1, Box 169C, Crandon, WI 54520. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *nitro carbo nitrate*, in bags, from points in Ontonagon County, MI, to points in Outagamie County, WI. (Hearing site: Escanaba, MI, or Madison, WI.)

Note.—The authority granted here is limited in point of time to a period of five (5) years from the date of issuance.

MC 146194 (Sub-2F), filed February 16, 1979. Applicant: M. T. S. TRUCKING, INC., 113 Center St., Jackson, MN 56143. Representative: Val M. Higgins, 1000 First National Bank Bldg., Minneapolis, MN 55402. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *hides*, from the facilities of John Morrell & Co., at Estherville, IA, to Kansas City, MO. (Hearing site: Minneapolis-St. Paul, MN.)

MC 146234F, filed January 29, 1979. Applicant: BURNHAM TRUCKING COMPANY, INC., P.O. Box 393, 4101 West Burnham Street, Milwaukee, WI 53201. Representative: Daniel C. Sullivan, 10 South LaSalle Street, Chicago, IL 60603. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in or used by manufacturers and distributors of (1) buildings and building sections, and (2) iron and steel articles, (except commodities in bulk), between Milwaukee, WI, Baltimore, MD, Lima and Cincinnati, OH, Dallas, TX, Cullman, AL, Chicago, IL, and Los Angeles and Fremont, CA, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with Inryco, Inc., of Milwaukee, WI, J. T. Ryerson & Sons, Inc., of Chicago, IL, and Inland Steel Company, of Chicago, IL. (Hearing site: Milwaukee, WI, or Chicago, IL.)

MC 146484F, filed February 22, 1979. Applicant: F. J. CRIKOS TRUCKING, INC., 141 Heiman Lane, Cotati, CA 94928. Representative: Eldon M. Johnson, 650 California St., Suite 2808, San Francisco, CA 94108. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *alumina* (except in bulk), *aluminum, and aluminum products*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) above, from the facilities of Kaiser Aluminum and Chemical Corporation, at Trentwood, Mead, and Tacoma, WA, to points in CA, under a continuing contract(s) with Kaiser Aluminum & Chemical Corp., of Oakland, CA. (Hearing site: San Francisco, CA, or Spokane, WA.)

Passengers

MC 146445F, filed February 21, 1979. Applicant: SHARP BUS LINES LIMITED, R.R. #2, St. George, Ontario, Canada NOE 1NO. Representative: Robert D. Gunderman, 710 Statler Bldg., Buffalo, NY 14202. To operate as a *common carrier*, by motor vehicle, in foreign commerce only, over irregular routes, transporting *passengers and their baggage*, in special and charter operations, beginning and ending at all ports of entry on the international boundary line between the United States and Canada, and extending to points in the United States (including AK, but excluding HI). (Hearing site: Buffalo, NY.)

Freight Forwarder

FF 434 (Sub-4F), filed February 21, 1979. Applicant: TRANSCONEX, INC., 3000 N.W. 74 Ave., Miami, FL 33152. Representative: Alan F. Wohlstetter, 1700 K St., NW., Washington, DC 20006. To operate as a *freight forwarder*, in interstate commerce, in the transportation of *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, motor vehicles, commodities in bulk, and those requiring special equipment), in containers or trailers, from Atlanta, GA, to Savannah, GA, restricted to the transportation of traffic (1) having an immediately subsequent movement by water or air and (2) destined to a point outside the United States. (Hearing site: Atlanta, GA)

[FR Doc. 79-17705 Filed 6-6-79; 8:45 am]
BILLING CODE 7035-01-M

[Notice No. 84]

Motor Carrier Temporary Authority Applications

May 21, 1979.

The following are notices of filing of applications for temporary authority under Section 210(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. One

copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

MC 361 (Sub-19TA), filed April 18, 1979. Applicant: GENOVA EXPRESS LINES, INC., P.O. Box 136, Williamstown, NJ 08094. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *(1) Batteries and (2) equipment, materials and supplies* used in the manufacture and sale of the commodities in (1) (except commodities in bulk), between the facilities of Exide Power Systems, Division of ESB Incorporated located at or near Sumter, SC, on the one hand, and, on the other, points in PA, NJ, NY, MD and DE, for 180 days. Supporting shipper(s): Exide Power Systems, Division ESB Incorporated, 19 Gibralter Road, Horsham, PA 19044. Send protests to: District Supervisor, ICC, 428 East State Street, Room 204, Trenton, NJ 08608.

MC 2091 (Sub-3TA), filed April 10, 1979. Applicant: REDDICK AUTO EXPRESS, INC., P.O. Box 47, North Syracuse, NY 13212. Representative: Herbert M. Canter, Esq. and Benjamin D. Levine, Esq., 305 Montgomery Street, Syracuse, NY 13202. *General commodities (except those of unusual value, Classes A and B explosives, household goods, as defined by the Commission, commodities in bulk and commodities requiring special equipment),* between Syracuse, NY on the one hand, and on the other, points in Madison and Oneida Counties, NY. Supporting shipper(s): There are 10 supporting shippers. Their statements may be examined at the office listed below or headquarters. Send protests to: Interstate Commerce Commission, U.S. Courthouse and Federal Bldg., 100 S. Clinton, St.—Room 1259, Syracuse, NY 13260.

MC 2960 (Sub-31TA), filed April 18, 1979. Applicant: ENGLAND TRANSPORTATION COMPANY OF TEXAS, 2301 McKinney St., Houston TX 77023. Representative: Lawrence A. Winkle, Suite 1125 Exchange Park, P.O. Box 45538, Dallas, TX 75245. Common carrier over irregular routes. *Chemicals in ocean going containers* from the facilities of Dow Chemical USA at or near Freeport, TX to Houston, TX. Restricted to traffic originating at the above origin and restricted to traffic having a subsequent movement by water. Seeking 180 days authority. An underlying ETA seeks 90 days. Supporting shipper(s): Sealand Service, Inc., 8402 Clinton Dr., Galena Park, TX 77547. Send protests to: John F. Mensing, 9610 Federal Bldg., 515 Rusk Ave., Houston, TX 77002.

MC 4941 (Sub-44TA), filed April 13, 1979. Applicant: QUINN FREIGHT LINES INC., 1093 North Montello Street, Brockton, MA 02403. Representative: Russell S. Callahan (same address as applicant). Authority sought to operate as a common carrier, over irregular routes in the transportation of *gypsum and gypsum products and materials, equipment and supplies used in the installation and distribution of gypsum and gypsum products,* from Buchanan, NY to points in PA for 180 days. Supporting shipper(s): Georgia-Pacific Corporation, 1062 Lancaster Ave., Rosemont, PA 19010. Send protests to: John B. Thomas, District Supervisor, Interstate Commerce Commission, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 9291 (Sub-19TA), filed April 23, 1979. Applicant: CARROL BALL TRANSPORT, INC., P.O. Box 53, 312 E. Market, Centerville, KS 66014. Representative: Clyde N. Christey, Kansas Credit Union Bldg., 1010 Tyler, Suite 110-L, Topeka, KS 66612. (1) *Salvage Railroad Tracks, Railroad Ties and Salvage Bridge Steel,* between points and places in MO, IA, IL, AR, SD, NE, KS, OK and CO; and (2) *Items Necessary in the Construction and Repair of Railroads,* from Denver, CO, Columbus, MS, Houston and Texarkana, TX, Kansas City, MO, Madison and Carbondale, IL, Birmingham, AL, Atlanta, GA, E St. Louis, IL to points and places in MT, WY, NV, UT, CO, NM, ND, SD, NE, KS, OK, TX, MN, IA, IL, IN, KY, TN, MS, AL and GA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ties & Tracks, Inc., 6500 Flora, Kansas City, MO 64131, and Smith-Miller Construction Co., Inc., P.O. Box 448, Pleasanton, KS 66075. Send protests to: Thomas P. O'Hara, DS, ICC, 256 Federal Bldg., 4444 S.E. Quincy, Topeka, KS 66683.

MC 52861 (Sub-63TA), filed February 5, 1979. Applicant: WILLS TRUCKING, INC., 4500 Rockside Road, Cleveland, OH 44131. Representative: John A. Wilson, 3185 Columbia Road, Richfield, OH 44286. *Scrap metal* (non-ferrous) in dump vehicles, from Belleville, MI, to Wabash, IN and Depue and Chicago, IL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Huron Valley Steel, 41000 Huron River Drive, Belleville, MI 48111. Send protests to: Mary Wehner, District Supervisor, Interstate Commerce Commission, 1240 E. Ninth Street, Cleveland, OH 44199.

MC 70151 (Sub-52TA), filed April 18, 1979. Applicant: UNITED TRUCKING SERVICE, INC., 8505 West Warren Avenue, Dearborn, MI 48126. Representative: LaVergne L. Adsit, 8505 West Warren Avenue, Dearborn, MI 48126. *General Commodities* (except those of unusual value, Class A and B Explosives, household goods as described by the Commission, commodities in bulk and commodities requiring special equipment), Serving Honda of America Manufacturing, Inc. plantsite located on U.S. Hwy 33, 7 miles northwest of Marysville, Union County, OH as an off-route point in connection with carriers presently authorized regular route operations to and from Columbus, OH. Supporting shipper(s): Honda of America Mfg. Inc. 6000 Busch Blvd. Suite 201, Columbus, OH 43229. Send protests to: C. R. Flemming, D/S, I.C.C., 225 Federal Building, Lansing, MI 48933.

MC 82841 (Sub-252TA), filed April 11, 1979. Applicant: HUNT TRANSPORTATION, INC., 10770 "I" St., Omaha, NE 68127. Representative: William E. Christensen, (same address as applicant). *Iron and steel articles,* from the facilities of Armco, Inc., at Ashland, KY and Middletown, OH to points in AR, KS, IA, MN, MO, NE, OK, TX, CO, MI, and LA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Armco, Inc., 708 Curtis Street, Middletown, OH. Send

protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 94901 (Sub-6TA), filed April 25, 1979. Applicant: EDDY MOVING & STORAGE CO., INC., 4 Warehouse Lane, Elmsford, NY 10523. Representative: John L. Alfano, Esq., 550 Mamaroneck Avenue, Harrison, NY 10528. *Printed matter, documents and records,* between Dobbs Ferry, NY, on the one hand, and, on the other, Westport and Farmington, CT. An underlying ETA seeks 90 days authority. (For 180 days.) Supporting shipper(s): Stauffer Chemical Company, Dobbs Ferry, NY 10522. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

MC 94901 (Sub-7TA), filed April 25, 1979. Applicant: EDDY MOVING & STORAGE CO., INC., 4 Warehouse Lane, Elmsford, NY 10523. Representative: John L. Alfano, Esq., 550 Mamaroneck Avenue, Harrison, NY 10528. *Unexposed dry photo films, electrical appliances or instruments, X-Ray accessories (no tubes), paper and chemicals,* between Elmsford, NY, on the one hand, and, on the other, points in CT. An underlying ETA seeks 90 days authority. (For 180 days.) Supporting shipper(s): Picker Corporation, Elmsford, NY 10523. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

MC 101280 (Sub-11TA), filed April 18, 1979. Applicant: PARIS TRANSPORT, INC., 500 West Monroe St., Paris, IL 61944. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701. *Corn and corn products* from Paris, IL, to Louisville, KY; Buffalo and Depew, NY, and points in IA, NM, and MO, (restricted to movements originating at the facility of Illinois Cereal Mills, Inc., at Paris, IL.) Supporting shipper(s): Illinois Cereal Mills, Inc., 615 South Jefferson St., Paris, IL 61944. Send protests to: Charles D. Little, District Supervisor, ICC, Rm. 414 Leland Office Bldg., 527 East Capitol Avenue, Springfield, IL 62701.

MC 104430 (Sub-56TA), filed April 24, 1979. Applicant: CAPITAL TRANSPORT CO., INC., P.O. Box 408, McComb, MS 39648. Representative: Fred W. Johnson, Jr., P.O. Box 22628, Jackson, MS 39205. *Petroleum and petroleum products,* in bulk, in tank vehicles, from Montgomery, AL to points in MS, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Dynamic Industries, Inc., 2810 Glenda Ave., Ft. Worth, TX 76117. Send protests to: Alan Tarrant, D/S, ICC, Rm. 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 111201 (Sub-42TA), filed April 6, 1979. Applicant: J. N. ZELLNER & SON TRANSFER COMPANY, P.O. Box 91247, East Point, GA 30365. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. *Metal containers and tin plate, and materials, equipment and supplies used in the manufacture or distribution of metal containers and tin plate (except in bulk)* between the facilities of Crown Cork and Seal Company, Inc., at or near Atlanta, GA, on the one hand, and on the other, points in AL, FL, NC, SC and TN for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Crown Cork and Seal Company, Inc., 125 Ottley Drive, Atlanta, GA 30324. Send protests to: Sara K. Davis TA, ICC, 1252 W. Peachtree St., N.W., Room 300, Atlanta, GA 30309.

MC 112801 (Sub-228TA), filed March 24, 1979. Applicant: TRANSPORT SERVICE CO., 15 Salt Creek Lane, Hinsdale, IL 60521. Representative: Gene Smith (address same as applicant). *Liquefied Petroleum Gas, in bulk, in shipper-owned tank trailers,* from East Chicago, IN to points in GA, IL, IA, KY, MI, MN, MO, OH, PA and WI for 180 days. Supporting Shipper(s): Phillips Petroleum Company, 222 East Ogden Avenue, Hinsdale, IL 60521. Send protests to: Annie Booker, TA, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 113271 (Sub-55TA), filed April 17, 1979. Applicant: CHEMICAL TRANSPORT, P.O. Box 2644, Great Falls, MT 59403. Representative: Ray F. Koby, P.O. Box 2567, Great Falls, MT 59403. (a) *Empty beverage containers,* and (b) *empty beverage containers and incidential advertising and display materials when moving in the same vehicle at the same time* from points in King, Pierce and Snohomish Counties, WA to points in MT, for 180 days. Supporting shipper(s): Great Falls Coca-Cola Bottling Co., Inc., 1117 Seventh St. South, Great Falls, MT 59403. Send protests to: Paul J. Labane, D/S, ICC 2602 First Avenue North Billings, MT 59101.

MC 115311 (Sub-501TA), filed March 21, 1979. Applicant: J & M TRANSPORTATION CO., INC., P.O. Box 488, Milledgeville, GA 31061. Representative: Ralph B. Matthews, 235 Peachtree St., Suite 1200, Atlanta, GA 30303. *Limestone* from Cabbage Grove Quarry, Taylor County, FL to points in the States of AL, GA, NC, SC, and TN. for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Farmers Dolomite Lime Company, 900 Second St., N.E., P.O. Box 1018, Moultrie, GA 31768. Send protests to: Sara K. Davis TA, ICC, 1252 W. Peachtree St., N.W., Room 300, Atlanta, GA 30309.

MC 115730 (Sub-73TA), filed February 15, 1979. Applicant: THE MICKOW CORP., P.O. Box 1774, Des Moines, IA 50309. Representative: Cecil L. Geottsch, 1100 Des Moines Bldg., Des Moines, IA 50309. *Conveyor parts and structural components* from Gering, NE, to the Captain Mine Site at or near Percy, IL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Lockwood Corp., Highway 92—Box 190, Gering, NE 69341. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 115730 (Sub-74TA), filed April 6, 1979. Applicant: THE MICKOW CORP., P.O. Box 1774, Des Moines, IA 50306. Representative: Cecil L. Goettsch, 1100 Des Moines Bldg., Des Moines, IA 50309. (1) *steel tubing* from Warren, OH to Hydraulics Unlimited Mfg. Co. in Eaton, CO; (2) *hydraulic hoists* from Eaton, CO to points in and east of KS, ND, NE, OK, SD, and TX for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Hydraulics Unlimited Mfg. Co., 600 Oak St., Eaton, CO 80615. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 115730 (Sub-75TA), filed April 11, 1979. Applicant: THE MICKOW CORP., P.O. Box 1774, Des Moines, IA 50306. Representative: Cecil L. Geottsch, 1100 Des Moines Bldg., Des Mines, IA 50309. *Iron and steel articles* from Norfolk, NE to points in the United States (except AK and HI) for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Vulcraft Division, Nucor Corporation, P.O. Box 59, Norfolk, NE 68701. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 115841 (Sub-704TA), filed April 26, 1979. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., 9041 Executive Park Drive, Suite 110, Building 100, Knoxville, TN 37919. Representative: D. R. Beeler (same address as applicant). *Furniture, furnishings, accessories and fixtures* from North Carolina and Virginia to points in WI, IL, MN & MO, for 180 days. Supporting shipper(s): Wicks Furniture, 351 W. Dundee Road, Wheeling, IL 60090. Send protests to: Glenda Kuss, T/A, ICC, Suite A-422, U.S. Courthouse, 801 Broadway, Nashville, TN 37203.

MC 116130 (Sub-112TA), filed April 11, 1979. Applicant: SOUTH EASTERN

XPRESS, INC., P.O. Box 4550, Fort Worth, TX 76115. Representative: Billy R. Reid, P.O. Box 8535, Fort Worth, TX 76112. *Bananas, and agricultural commodities exempt from regulations under Section 203(b)(6) of the Act, in mixed loads with bananas,* from Port Hueneme, CA, to points in AZ, AR, CA, CO, ID, IA, KS, LA, MN, MO, MT, NE, NM, NV, ND, OK OR, SD, TX, UT, WA, and WY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Del Monte Bananas Company, P.O. Box 011948, Miami, FL 33101. Send protests to: Martha A. Powell, T/A, I.C.C., Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 116570 (Sub-5TA), filed April 18, 1979. Applicant: DE FAZIO EXPRESS, INC., 1628 Springbrook Avenue, Moosic, PA 18507. Representative: Edward M. Alfano, 350 Mamaroneck Avenue, Harrison, NY 10528. *Contract carrier: irregular routes: such commodities as are dealt in by a manufacturer of carbonated beverages and materials, equipment and supplies used in the production, manufacture and distribution of carbonated beverages,* except commodities in bulk, from the facilities of Centrell & Cochrane, Inc. at Elizabeth and Garfield, NJ, to Baltimore and Landover, MD, Washington, DC, points in PA on and east of U.S. Hwy 15, Camp Hill, Carlisle, Gettysburg, Mechanicsburg, and Shiremanstown, PA for 180 days. Supporting shipper(s): Centrell & Cochrane, Inc., 397 E. 54th Street, Elmwood Park, NJ 07407. Send protests to: ICC, Federal Reserve Bank Bldg., 101 N. Seventh Street, Room 620, Philadelphia, PA 19106.

MC 119630 (Sub-22TA), filed April 26, 1979. Applicant: VAN TASSEL, INC., 5th & Grand, Pittsburg, KS 66762. Representative: Dean Williamson, Suite 615 East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. *Plastic pipe, iron gate valves, and fire hydrants,* from Springfield, IL to points in IA, KS, & MO., for 180 days, common, irregular; supporting shipper: Contract Utility Sales Company, Springfield, IL 62706; send protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg., Wichita, KS 67202.

MC 119710 (Sub-27TA), filed April 25, 1979. Applicant: SHUPE BROS. CO., P.O. Box 929, Greeley, CO 80631. Representative: Paul F. Sullivan, 711 Washington Bldg., Washington, D.C. 20005. Contract carrier: irregular route: *(A) Dry animal and poultry feeds and feed ingredients and materials and supplies used in the raising of livestock* (except liquid commodities, in bulk, in tank vehicles) from the facilities of Moorman Manufacturing Co., Herford, TX to points in NM, OK, KS, CO and NE; and (B) *equipment, materials and supplies* (except liquid commodities, in bulk, in tank vehicles) used in the manufacture of the commodities named in (A) above from the destination area to the described facilities of the named shipper; restricted to service performed under contract with Moorman Manufacturing Co., Quincy, IL, for 180 days. Underlying ETA filed seeking 90 days authority. Supporting shipper: Moorman Manufacturing Co., 1000 N. 30th St., Quincy, IL 62301. Send protests to: D/S Roger L. Buchanan, ICC, 492 U.S. Customs House, 721 19th St., Denver, CO 80202.

MC 124170 (Sub-123TA), filed April 2, 1979. Applicant: FROSTWAYS, INC., 3000 Chrysler Service Drive, Detroit, MI 48207. Representative: William J. Boyd, 600 Enterprise Drive, Suite 222, Oak Brook, IL 60521. *Meats,* from the facilities of Peschke Packing Co., Detroit, MI to Dallas and Laredo, TX, for 180 days. An underlying ETA for 90 days has been granted. Supporting shipper(s): Peschke Packing Co., 18615 Sherwood Avenue, Detroit, MI 48234. Send protests to: C. R. Flemming, D/S, ICC, 225 Federal Building, Lansing, MI 48933.

MC 124170 (Sub-124TA), filed April 12, 1979. Applicant: FROSTWAYS, INC., 3000 Chrysler Service Drive, Detroit, MI 48207. Representative: William J. Boyd, 600 Enterprise Drive, Suite 222, Oak Brook, IL 60521. *Bananas and agricultural commodities* exempt from regulation under Section 10526(a)(6) of the Interstate Commerce Act when transported in mixed loads with bananas, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Del Monte Banana Company, 1201 Brickel Avenue, Miami, FL 33101. Send protests to: C. R. Flemming, D/S, ICC, 225 Federal Building, Lansing, MI 48933.

MC 124251 (Sub-65TA), filed March 16, 1979. Applicant: JACK JORDAN, INC., 3661 South Dixie Road, (P.O. Box 669), Dalton, GA 30720. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. *Plastic liquid, adhesives and latex, liquid, in bulk, in tank vehicles* from DeKalb County, GA to Norfolk, VA and New Orleans, LA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Industrial Adhesives, Inc., 359 Dekalb Industrial Way, Decatur, GA 30030. Send protests to: Sara K. Davis, TA, ICC, 1252 W. Peachtree St., NW., Room 300, Atlanta, GA 30309.

MC 124251 (Sub-66TA), filed March 19, 1979. Applicant: JACK JORDAN, INC., P.O. Box 669, Dalton, GA 30720. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. *Latex, liquid, in bulk, in tank vehicles* from the facilities of GAF Corporation at or near Chattanooga, TN to the facilities of GAF Corporation at or near Fullerton, PA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): GAF Corporation, P.O. Box 3037, Chattanooga, TN 37401. Send protests to: Sara K. Davis, TA, ICC, 1252 W. Peachtree St., NW., Room 300, Atlanta, GA 30309.

MC 124251 (Sub-67TA), filed April 9, 1979. Applicant: JACK JORDAN, INC., P.O. Box 669, Dalton, GA 30720. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. *Liquid Chemicals, in bulk, in tank vehicles* from Fulton County, GA, to points in CO, TX, and UT, and points in the US in and east of MN, IA, MO, AR, and LA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): AZS Chemical Company, 782 Marietta Blvd., Atlanta, GA 30318. Send protests to: Sara K. Davis, TA, ICC, 1252 W. Peachtree St., NW., Room 300, Atlanta, GA 30309.

MC 124251 (Sub-68TA), filed April 11, 1979. Applicant: JACK JORDAN, INC., 3661 South Dixie Road, P.O. Box 669, Dalton, GA 30720. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. (1) *Overprint varnish, in bulk, in tank vehicles,* from the facilities of Mead Chemicals at or near Atlanta, GA to the facilities of Mead Packaging, Division of The Mead Corporation, at or near Buena Park, CA. (2) *Ethyl acetate, denatured ethyl alcohol and normal propyl acetate or alcohol,* from Longview, TX, to the facilities of Mead Chemicals at or near Atlanta, GA (3) *Isopropanol and methyl ethyl ketone,* from Baton Rouge, LA, to the facilities of Mead Chemicals at or near Atlanta, GA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Mead Chemicals, 949 Herndon St., NW., Atlanta, GA 30302. Send protests to: Sara K. Davis, TA, ICC, 1252 W. Peachtree St., NW., Room 300, Atlanta, GA 30309.

MC 124511 (Sub-55TA), filed April 5, 1979. Applicant: OLIVER MOTOR SERVICE, INC., P.O. Box 229, East Highway 54, Mexico, MO 65265. Representative: Leonard R. Kofkin, 39 South LaSalle Street, Chicago, IL 60603. *Steel articles,* from Chicago, IL and points within its commercial zone to the

facilities of A. B. Chance at Washington, MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): A. B. Chance Co., 100 West 10th, Washington, MO 63090. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 127730 (Sub-3TA), filed April 17, 1979. Applicant: A.A.A. CARTAGE, INC., 5938 South 13th, Milwaukee, WI 53221. Representative: Rolfe Hanson, 121 W. Doty St., Madison, WI 53703. *General commodities,* except Classes A & B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring the use of special equipment and (2) *empty demountable steamship containers* between Hartford, WI, on the one hand, and Milwaukee, WI and Chicago, IL on the other hand restricted to shipments having an immediate prior or subsequent movement by rail or water, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Micro Design, Inc., 857 W. State St., Hartford, WI 53027. Send protests to: Gail Daugherty, Transportation Asst., ICC, Bureau of Operations, U.S. Federal Bldg. and Courthouse, 517 East Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 128021 (Sub-40TA), filed April 25, 1979. Applicant: DIVERSIFIED TRUCKING CORP., 309 Williamson Avenue, Opelika, AL 36801. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. Contract, irregular: *(1) Charcoal, charcoal briquets, vermiculite, active carbon, hickory chips, charcoal lighter fluid, and charcoal grills and accessories* between all points in the United States, under a contract or contracts executed and in force with The Husky Industries, Inc., of Atlanta, GA, for 180 days. Supporting Shipper(s): Husky Industries, Inc., 62 Perimeter Center, East, Atlanta, GA 30346. Send protests to: Mabel E. Holston, T/A. ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 133541 (Sub-6TA), filed April 26, 1979. Applicant: McKIBBEN MOTOR SERVICE, INC., 494 W. Sharon Rd., Cincinnati, OH 45246. Representative: James Duvall, 220 W. Bridge St., Dublin, OH 43017. *Contract carrier:* irregular routes: *Containers, container ends, and materials equipment and supplies used in the manufacture, sale and distribution of containers,* between the facilities of Continental Can Company—U.S.A. at Sharonville, Worthington and Columbus, OH, on the one hand, and, on the other, points in IL, IN, KY, MI and TN, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Continental Can Company—U.S.A., J. R. Jendora, Regional Manager-Traffic & Distribution, 11550 Mosteller Rd., Cincinnati, OH 45241. Send protests to: Bureau of Operations, ICC, Wm. J. Green, Jr., Federal Bldg., 600 Arch St., Room 3238, Philadelphia, PA 19106.

MC 135691 (Sub-29TA), filed April 26, 1979. Applicant: DALLAS CARRIERS CORP., 3610 Garden Brook Drive, Box 340080, Dallas, TX 75234. Representative: J. Max Harding, P.O. Box 82028, Lincoln, NE 68501. Contract carrier, irregular routes, *sugar, citric acid, and xylitol (a wood sugar), except in bulk,* from the facilities of Hoffmann-LaRoche, Inc., located at or near Belvidere, Nutley and Branchburg, NJ to Salisbury, MD; Decatur, GA; Dallas and Ft. Worth, TX; and points in CA, IL, IN, IA, MI, MO, NE, NC, OH and VA for 180 days. Underlying ETA for 90 days filed. Performed under a continuing contract(s) with Hoffmann-LaRoche, Inc. Supporting Shipper(s): Hoffmann-LaRoche, Inc., 340 Kingsland St., Nutley, NJ 07110. Send protests to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 136500 (Sub-7TA), filed April 17, 1979. Applicant: SERVICE EQUIPMENT & TRUCKING, INC., Box 162, Mattoon, IL 61932. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. *Steel articles and parts* used in the manufacture of railroad freight cars for the account of Portec, Inc., Midwest Railcar Operations from points in the U.S. except AL and HI to Clinton, IL, and from Clinton, IL, to Novi, MI; Waukesha, WI; and Winder and Columbus, GA. Supporting shipper(s): Portec, Inc. Midwest Railcar Operations, 213 West Adams, Clinton, IL 61727. Send protests to: Charles D. Little, DS, ICC, RM 414 Leland Office Bldg., 527 East Capitol Ave., Springfield, IL 62701.

MC 136511 (Sub-46TA), filed April 13, 1979. Applicant: VIRGINIA APPALACHIAN LUMBER CORPORATION, 9640 Timberlake Road, Lynchburg, VA 24502. Representative: Elizabeth A. Purcell, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, D.C. 20001. *New furniture,* (1) from the facilities of Stanley Furniture Division of Mead Co. at Waynesboro, VA to points in CO, NM, WY, MT, and LA (2) from the facilities of Stanley Furniture Division of Mead Co. at Stanleytown, VA and West End, NC to points in CO, NM, WY, MT, TX, OK and LA, for 180 days. Supporting shipper(s): The Mead Corporation, Courthouse Plaza Northeast, Dayton, OH 45463. Send protests to: Charles F. Myers, DS, ICC, Room 10-502 Federal Bldg., 400 North 8th Street, Richmond, VA 23240.

MC 138841 (Sub-13TA), filed April 13, 1979. Applicant: BLACK HILLS TRUCKING CO., P.O. Box 2130, Rapid City, SD 57709. Representative: James W. Olson, P.O. Box 1552, Rapid City, SD 57709. *Swinging beef and beef products* from Gibbon, NE to Los Angeles, CA commercial zone for 180 days. Supporting shipper(s): Gibbon Pack, P.O. Box Q, Gibbon, NE 68840. Send protests to: J. L. Hammond, DS, ICC, Room 455, Federal Bldg., Pierre, South Dakota 57501.

MC 138841 (Sub-14TA), filed April 18, 1979. Applicant: BLACK HILLS TRUCKING CO., P.O. Box 2130, Rapid City, SD 57709. Representative: James W. Olson, P.O. Box 1552, Rapid City, SD 57709. *Beef* from Gibbon, NE to Portland, OR, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Gibbon Pack, P.O. Box Q, Gibbon, NE 68840. Send protests to: J. L. Hammond, DS, ICC, Room 455, Federal Bldg., Pierre, SD 57501.

MC 139190 (Sub-7TA), filed April 24, 1979. Applicant: KOCH TRUCK LINE, INC., 619 Iowa, Sabetha, KS 66534. Representative: Eugene W. Hiatt, 207 Casson Bldg., 603 Topeka Blvd., Topeka, KS 66603. *Contract carrier:* irregular routes: (1) *Agricultural Machinery and Parts and Flatbed Trailers,* from Marysville, KS to CA, CO, IA, ID, IL, IN, MN, MO, NY, OH, PA, WA, WI, WY; and (2) *Steel Products, Steel Plates, Steel Bars, Steel Structurals, Steel Tubing, Trailer Axles, Cast Iron Hubs, and Drums for Trailer Vehicles,* from IA, IL, OH and MO to Marysville, KS, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Landoll Corporation, 1700 May Street, Marysville, KS 66508. Send protests to: Thomas P. O'Hara, DS, ICC, 256 Federal Bldg., 444 S. E. Quincy, Topeka, KS 66683.

MC 140511 (Sub-10TA), filed April 18, 1979. Applicant: AUTOLOG CORPORATION, 319 West 101 Street, New York, N.Y. 10025. Representative: Larsh B. Mewhinney, Esq., 555 Madison Avenue, New York, N.Y. 10022. *Used automobiles, vans and pickup trucks, and baggage, sporting equipment, and personal effects of the owners thereof, in truckaway service, in secondary movements,* between Boston, MA, Hartford, CT, New York, NY, Philadelphia and Pittsburgh, PA, on the one hand, and, on the other, Seattle, WA, Portland, OR, Salt Lake City, UT,

Denver, CO, San Francisco, San Diego and Los Angeles, CA, Phoenix, AZ, and Albuquerque, NM. An underlying ETA seeks 90 days authority. Supporting shipper(s): 1. Geo. E. Dewey Co., Inc., Bloomfield, CT. 2. ABC-TV, 60 Jane St., New York, NY 10014. 3. Grand Prix Auto Wholesalers Inc., 1531 Jerome Ave., New York, N.Y. 10452. 4. Herbert Weissenstein, 800 West End Ave., New York, NY 10025. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

MC 141350 (Sub-2TA), filed April 2, 1979. Applicant: BOBBY STEVENS HAULING CONTRACTORS, INC., P.O. Box 207, Fortson, GA 31808. Representative: Bobby Stevens (same as applicant). *Rood building materials and aggregates in bulk in dump-type vehicles* from points in GA to points in Autauga, Barbour, Bullock, Butler, Calhoun, Chambers, Chilton, Clay, Cleburne, Coffee, Coosa, Crenshaw, Dale, Elmore, Geneva, Henry, Houston, Lee, Lowndes, Macon, Montgomery, Pike, Randolph, Russell, Talladega, and Tallapoosa Counties, AL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Brady Williamson Construction Company, P.O. Box 6306, Columbus, GA 31907. Send protests to: Sara K. Davis TA, ICC, 1252 W. Peachtree St. NW., Room 300, Atlanta, GA 30309.

MC 141921 (Sub-53TA), filed March 6, 1979. Applicant: SAV-ON TRANSPORTATION, INC., 143 Frontage Rd., Manchester, NH 03103. Representive: John A. Sykes (same address as applicant). *Swimming pools, swimming pool parts, and accessories,* from East Greenwich, RI, to points in CO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Weatherking Products, Inc., 1485 South County Tr, East Greenwich, RI 02818. Send protests to: Ross J. Seymour, DS, ICC, Rm 3, 6 Loudon Rd., Concord, NH 03301.

MC 142040 (Sub-4TA), filed April 24, 1979. Applicant: AMBER DELIVERY SERVICE INC., 25 Franklin St., Malden, MA 02148. Representive: Joseph T. Bambrick, Jr., P.O. Box 216, Douglassville, PA 19518. Authority sought to operate as a common carreir, over irregular routes, in the transportation of *general commodities (except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) limited to individual shipments not exceeding 500 pounds* between all points in ME, NH, RI, CT and NY for 180 days. Supporting shipper(s): RCA Corp., Burlington, MA, Data General, Westboro, MA, Microwave Associates, Burlington, MA, The Foxboro Co., Foxboro, MA, Gould Inc., Andover, MA and GTE International Sys. Corp., Waltham, MA. Send protests to: John B. Thomas, District Supervisor, Interstate Commerce Commission, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 142181 (Sub-5TA), filed April 25, 1979. Applicant: LIBERTY CONTRACT CARRIER, INC., P.O. Box 1104, 214 Hermitage Ave., Nashville, TN 37203. Representive: Robert L. Baker, 618 United American Bank Bldg., Nashville, TN 37219. *Contract carrier:* irregular routes: *(1) Foodstuffs, and (2) Commodities used in the manufacture and distribution of foodstuffs,* between the facilities utilized by Ragu' Foods, Inc., at or near Owensboro and Henderson, KY and Evansville, IN, on the one hand, and on the other, points in IA, KS, MO, NE, NC, & OK, for 180 days. Supporting shipper(s): Ragu' Foods, Inc., 33 Benedict Place, Greenwich, CT 06830. Send protests to: Glenda Kuss, T/A, ICC, Suite A-422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 142491 (Sub-6TA), filed April 6, 1979. Applicant: WAYMAR TRANSPORT CORP., 1755 S.E. 106th St., Runnells, IA 50237. Representive: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. *Fresh meat* from the facilities of Swift & Co. at Rochelle, IL to Cincinnati, OH, and Huntington, WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Swift & Co., 115 W. Jackson Blvd., Chicago, IL 60604. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 142631 (Sub-18TA), filed April 26, 1979. Applicant: HAMRIC TRANSPORTATION, INC., 3318 E. Jefferson, Grand Praid, TX 75051. Representative: D. Paul Stafford, Winkle and Wells, Suite 1125, Exchange Park, P.O. Box 45538, Dallas, TX 75245. *Metal tubing,* (1) from Allenport and Beaver Falls, PA; Alliance, Lorain, Canton, and Shelby, OH; Milwaukee, WI; Elkhart and Gary, IN; Chicago and Fairbury, IL; Houston, TX; and Phoenix, AZ, to the facilities of Kilsbuy Tubesupply located a Tulsa, OK; Denver, CO; Grand Prairie and Houston, TX; Portland, OR; Los Angeles and San Leandro, CA; Seattle, WA; Charlotte, NC; Little Rock, AR; New Orleans, LA; Wichita, KS; and Birmingham, AL, restricted to traffic destined to the facility of Kilsby Tubesupply; (2) between the facilities of Kilsby Tubesupply located at Tulsa, OK; Denver, CO; Grand Prairie and Houston, TX; Portland, OR; Los Angeles and San Leandro, CA; Seattle, WA; Charlotte, NC; Little Rock, AR; New Orleans, LA; Wichita, KS; and Birmingham, AL, restricted to traffic originating at and destined to the facilities of Kilsby Tubesupply for 180 days. Underlying ETA filed. Supporting shipper(s): Kilsby Tubesupply, 2200 West Marshall, Grand Prairie, TX 75050. Send protests to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, 1100 Commerce St., Room 13C12, Dallas, TX 75242.

MC 142941 (Sub-44TA), filed April 17, 1979. Applicant: SCARBOROUGH TRUCK LINES, INC., 1313 N. 25th Ave., Phoenix, AZ 85009. Representative: Lewis P. Ames, 111 W. Monroe, 10th Floor, Phoenix, AZ 85003. *Such commodities as are dealt in by wholesale, retail, chain an grocery food business houses, and discount houses (except commodities in bulk),* from the facilities of S. C. Johnson & Son, Inc., at or near Waxdale, WI to AZ, CA, CO and NV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): S. C. Johnson & Son, Inc., 1525 House St., Racine, WI 53403. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025. Supporting shipper(s): S. C. Johnson & Son, Inc., 1525 House St., Racine, WI 53403. Send Protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025.

MC 143501 (Sub-2TA), filed March 30, 1979. Applicant: R.G.C. CARGO CARRIERS, INC., P.O. Box 528, South Holland, IL 60473. Representative: James E. Savitz, Suite 145, 4 Professional Drive, Gaithersburg, MD 20760. *Contract carrier:* Irregular route, *foodstuffs and related advertising materials and supplies and display racks,* from Sparks, NV to Thornton, IL for 180 days. Supporting shipper(s): Specialty Brands, Inc., P.O. Box 2187, South San Francisco, CA 94080. Send protests to: Annie Booker, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 143610 (Sub-1TA), filed February 23, 1979, published in the Federal Register of April 2, 1979, and republished this issue. Applicant: PAUL YATES, INC., 6601 West Orangewood, Glendale, AZ 85301. Applicant's representative: Charles E. Creager, P.O. Box 1417, Hagerstown, MD 21740. Contract: Irregular: (1) *Foods, foodstuffs, food treating compounds, chemicals, preservatives and additives* (except in bulk), *advertising paraphernalia, and*

materials, equipment and supplies used in the manufacture, preparation, sale and distribution of spices, extracts, convenience foods, snack foods, confectionery products, food dressing, and foodstuffs and (2) *commodities,* the transportation of which are exempt from regulation under the provisions of section 203(b) of the Interstate Commerce Act in mixed loads with the commodities described in (1) above, between points in the United States except Alaska and Hawaii, restricted to the movement of traffic moving from, to or between the manufacturing facilities, plants, warehouses, distribution centers, processing and/or manufacturing contractors and shipping and receiving facilities of or used by McCormick & Company, Inc., its divisions and its subsidiary corporations, and limited to a service performed under continuing contracts with McCormick & Company, Inc. of Baltimore, MD. Shipper: McCormick and Co., Inc. Send protests to Thomas Klobas, ICC, 2020 Federal Bldg., 230 N. First Avenue, Phoenix, AZ 85025. The purpose of this republication is to redescribe the authority sought.

MC 143701 (Sub-9TA), filed April 4, 1979. Applicant: HODGES FREIGHT LINES, INC., 5733 Airline Highway, Suite 805, Metairie, LA 70003. Representative: Lester C. Arvin, 814 Century Plaza Building, Wichita, KS 67202. *Prepared animal food, pet supplies and materials and supplies* used in the manufacture thereof, (except commodities in bulk) between the plantsite of Hills Division of Riviana Foods, Inc. at or near Topeka, KS; Commerce City and Hayward, CA; and Miami, FL on the one hand and on the other, points and places in the U.S. (except AK, HI, ME, NH, VT, CT, NY and DE), for 180 days. An underlying ETA seeks 90 day authority. Supporting shipper(s): Hills Division of Riviana Foods, Jefferson and River Boulevard, Topeka, Kansas. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 143701 (Sub-10TA), filed April 25, 1979. Applicant: HODGES FREIGHT LINES, INC., (formerly William Oberste, Inc.), 5733 Airline Highway, Suite 805, Metairie, LA 7000s. Representative: Lester C. Arvin, 814 Century Plaza Building, Wichita, KS 67202. *Bananas, and agricultural commodities exempt from regulation under Section 203(b)(6) of the Interstate Commerce Act, in mixed loads with bananas having an immediately prior movement by water* from the facilities of Best Banana, Inc., at or near Norfolk, VA to the States of IL, MI, OH, NY, MA, PA, MD, WV, VA, DC, NC, SC, MO, and IN, for 180 days. Applicant has also filed underlying ETA for 90 days. Supporting shipper(s): Best Banana, Inc., 3616 Virigina Beach, Norfolk, VA 23502. Send protests to: Robert J. Kiespel, DS, ICC, T-9038 Federal Bldg., 701 Loyola Ave., New Orleans, LA 70113.

MC 143730 (Sub-3TA), filed March 9, 1979. Applicant: PENINSULA TRUCKING CO., INC., 705 Morehouse Dr., New Castle, DE 19720. Representative: Richard M. Ochroch, 316 S. 16th St., Philadelphia, PA 19103. Contract carrier, irregular routes, *Meat, meat products, by-products and articles used and distributed by meat packing houses,* between Philadelphia, PA, on the one hand, and, on the other, points in GA, FL, NC, SC, TN, WV and VA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Hygrade Food Products Corp., P.O.B. 4471, Detroit, MI 48219. Send protests to: T. M. Esposito, Trans. Asst., 600 Arch St., Room 3238, Philadelphia, PA 19106.

MC 144461 (Sub-2TA), filed April 23, 1979. Applicant: BILLY M. EDMONDSON, d/b/a EDMONDSON SWIFT MEAT TRANSPORT, Route 1, Georgetown, GA 31754. Representative: Dixie Newhouse, Suite 301, 1307 Dolley Madison Boulevard, McLean, VA 22101. *Contract carrier,* irregular route, *Foodstuffs in vehicles equipped with temperature control* from the facilities of or utilized by M&M/ Mars Snack-Master Division, at Albany, GA to Arlington, TX; Waco, TX, Los Angeles and San Francisco, CA, Denver, CO, Salt Lake City, UT, and Kansas City, MO, under a continuing contract with M&M/Mars Snack-Master Division, Albany, GA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): M&M/Mars Snack-Master Division, a division of Mars Inc., P.O. Box 3289, Albany, GA. Send protests to: G. H. Fauss, Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 144740 (Sub-13TA), filed March 20, 1979. Applicant: L. G. DE WITT, INC., P.O. Box 70, Ellerbe, NC 28338. Representative: Terrence D. Jones, 2033 K Street NW., Suite 300, Washington, DC 20006, *Contract* Carrier-Irregular routes; *Foodstuffs* from the facilities of or utilized by Foodways National Inc., located at Wethersfield and Hartford, CT and New Paltz, NY to points in CA, FL, GA, IL, KS, MI, MN, MO, OH, TX, and WI, for 180 days. Supporting shipper(s): Foodways National, Inc., 1000 Silas Deane Highway, Wethersfield, CT 06109. Send protests to: Terrell Price, District Supervisor, 800 Briar Creek Rd-Rm CC516, Mart Office Building, Charlotte, NC 28205.

MC 145870 (Sub-11TA), filed April 16, 1979. Applicant: L-J-R HAULING, INCORPORTED, P.O. Box 699, Dublin, Virginia 24084. Representative: Wilmer B. Hill, Attorney at law, Suite 805, 666 Eleventh Street NW., Washington, D.C. 20001. *Iron and steel articles,* from points in AL, IL, IN, KY, MD, OH, PA, TN, and WV to the facilities of Enterprise Fabricators, Inc., at Bristol, VA, for 180 days. An underlying ETA seeks authority for 90 days. Supporting shipper(s): Enterprise Fabricators, Inc., P.O. Box 151, Bristol, VA 24201. Send protests to: Charles F. Myers, DS, ICC, Room 10-502 Federal Bldg., 400 North 8th Street, Richmond, VA 23240.

MC 145950 (Sub-16TA), filed April 5, 1979. Applicant: BAYWOOD TRANSPORT, INC., 2611 University Parks Drive, Waco, TX 76706. Representative: Arthur Grimes, (same address as applicant). *Meat, meat products, and articles distributed by meat packinghouses as described in Sections A and C of Appendix I to the report in Descriptions of Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk),* from the facilities of Armour Food Company at or near Bayonne and Port Newark, NJ, to Chicago, IL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Armour Food Company, Greyhound Tower, Phoenix, AZ 85077. Send protests to: Martha A. Powell, T/A, I.C.C., Room 9A27, Fed. Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 145950 (Sub-17TA), filed April 23, 1979. Applicant: BAYWOOD TRANSPORT, INC., P.O. Box 2611, Waco, TX 76076. Representative: Harry F. Horak, 5001 Brentwood Stair Road, Suite 115, Fort Worth, TX 76112. *Meats, meat products, meat by-products, and articles distributed by meat packinghouses as described in Sections A, B and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk),* from the facilities used by Swift and Company at or near Kansas City, KS, to points in CA and OR, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Swift & Company, 115 W. Jackson Blvd., Chicago, IL 60604. Send protests to: Martha A. Powell, T/A, ICC, 9A27 Fed. Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 145950 (Sub-18TA), filed April 23, 1979. Applicant: BAYWOOD

TRANSPORT, INC., P.O. Box 2611, Waco, TX 76076. Representative: Harry F. Horak, 5001 Brentwood Stair Road, Suite 115, Fort Worth, TX 76112. *Meats, meat products, meat by-products, and articles distributed by meat packinghouses as described in Sections A, B and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk),* from the facilities used by Swift and Company at or near Rochelle and St. Charles, IL, to points in CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Swift & Company, 115 W. Jackson Blvd., Chicago, IL 60604. Send protests to: Martha A. Powell, T/A, ICC, 9A27 Fed. Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 145950 (Sub-19TA), filed April 23, 1979. Applicant: BAYWOOD TRANSPORT, INC., P.O. Box 2611, Waco, TX 76076. Representative: Harry F. Horak, 5001 Brentwood Stair Road, Suite 115, Fort Worth, TX 76112. *Frozen dessert topping,* from the facilities used by Swift and Company at Holland, Michigan, to points in CA, MA and NJ, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Swift & Company, 115 W. Jackson Blvd., Chicago, IL 60604. Send protests to: Martha A. Powell, T/A, ICC, 9A27 Fed. Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 145950 (Sub-20TA), filed April 23, 1979. Applicant: BAYWOOD TRANSPORT, INC., P.O. Box 2611, Waco, TX 76076. Representative: Harry F. Horak, 5001 Brentwood Stair Road, Suite 115, Fort Worth, TX 76112. *Shortening, lard, and margarine,* from the facilities used by Swift and Company, at or near Bradley, IL, to points in CA, NM, and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Swift & Company, 115 W. Jackson Blvd., Chicago, IL 60604. Send protests to: Martha A. Powell, T/A, ICC, 9A27 Fed. Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 146181 (Sub-2TA), filed April 12, 1979. Applicant: NORTHEAST TRANSPORT COMPANY, P.O. Box 1252, 1325 Paterson Plank Road, Secaucus, NJ 07094. Representive: Rick A. Rude, Suite 801, 1730 Rhode Island Avenue, NW, Washington, DC 20036. Contract irregular. *Such commodities* as are dealt in by manufacturers and distributors of printed matter, paper and paper products. Between East Greenville, PA and Franklin, KY., for 180 days. Supporting shipper(s): Brown Printing Company, Inc., Hwy 14 West, Waseca, MN 56093. Send protests to: Robert E. Johnston, D/S, ICC, 9 Clinton St., Newark, NJ 07102.

MC 146240 (Sub-1TA), filed March 8, 1979. Applicant: TOPCO TRANSPORT, INC., North-South Road, Scranton, PA 18504. Representive: Joseph F. Hoary, 121 S. Main St., Taylor, PA 18517. *General commodities* (except Class A and B explosives, household goods as defined by the Commission, and commodities in bulk), between the facilities of Topmark Distribution Center, Inc., Scranton, PA, on the one hand, and, on the other, points in NY, NJ, DE, MD, MA, RI, CT, OH, NH, ME and DC, restricted to shipments having an origin and destination at Topmark Distribution Center, Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Topmark Distribution Center, Inc., North-South Road, Scranton, PA 18504. Send protests to: P. J. Kenworthy, D/S, ICC, 314 US Post Office Bldg., Scranton, PA 18503.

MC 146360 (Sub-2TA), filed April 24, 1979. Applicant: FLOYD SMITH, JR. TRUCKING, 5303 Valle Grande, Meridian, ID 83642. Representive: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. *Chimney pipe and materials and supplies used in the installation and manufacture thereof,* (1) from Logan, OH to Belmont, Ca and Nampa, ID (2) from Nampa, ID to Belmont, CA, Logan, OH, and Dallas, TX, (restricted to traffic originating at or destined to the facilities of Metalbestos Systems, Inc.), for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Metalbestos Systems, Inc., P.O. Box 372, 1820 E. Fargo Ave., Nampa, ID 83651. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 146360 (Sub-3TA), filed April 24, 1979. Applicant: FLOYD SMITH, JR. TRUCKING INC., 5303 Valle Grande, Meridian, ID 83642. Representive: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. *Carpets, carpet pads and materials and supplies used in the installation thereof,* (1) from points in GA to the facilities of Crown Distributing Co. at or near Salt Lake City, UT, Boise and Pocatello, ID and (2) from Salt Lake City, UT to the facilities of Crown Distributing Co. at or near Boise and Pocatello, ID, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Crown Distributing Co., 980 West, 2610 South, Salt Lake City, UT 84119. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 146360 (Sub-4TA), filed April 11, 1979. Applicant: FLOYD SMITH, JR. TRUCKING, INC., 5303 Valle Grande, Meridian, ID 83642. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. *Bananas and pineapples,* from Mobile, AL, Galveston and Corpus Christi, TX, Gulfport, MS, and Wilmington, CA to Saskatoon, Saskatchewan, Canada. Supporting shipper(s): The Codville Co., P.O. Box 750, 2820 Jasper Ave., Saskatoon, Saskatchewan, Canada S7K 3L9. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 146851 (Sub-1TA), filed April 16, 1979. Applicant: ARTHUR W. COULTER, d.b.a. A. W. COULTER TRUCKING, 24280 Avenue 96, Terra Bella, CA 93270. Representative: Earl N. Miles, Jr., 3704 Candlewood Drive, Bakersfield, CA 93306. *Lumber,* from points in Fresno and Tulare Counties, CA to points in the State of AZ, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting Shipper(s): Sierra Forest Products, P.O. Box 608, Terra Bella, CA 93270. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, P.O. Box 1551, Los Angeles, CA 90053.

MC 146900 (Sub-1TA), filed April 13, 1979. Applicant: VERMILLION BROTHERS, INC., R.R. No. 2, Box 2, Keokuk, IA 52632. Representative: George Vermillion, Jr. (same as applicant). *Meat, meat products, meat by-products and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in Motor Carrier Certificates 61 MCC 209 and 766 (except hides and commodities in bulk), from Chicago, IL to points in CA for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Rose Packing Company, Inc., R.R. No. 3 S. Barrington Rd., Barrington, IL 60010. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 146901 (Sub-1TA), filed April 16, 1979. Applicant: HAROLD R. ANDERSEN d.b.a. HAROLD ANDERSEN MOVING SERVICE, 123 East 17th St., South Sioux City, NE 68776. Representative: D. Douglas Titus, Suite 510, Benson Building, Sioux City, IA 51101. *Contract carrier:* irregular routes: *Household appliances and articles distributed by household appliance distributors,* from Sioux City, IA to all points in NE and SD, for 180 days, under contract with Jones Distributing Co. An underlying ETA seeks 90 days authority. Supporting

Shipper(s): Jones Distributing Co., 2650 Bridgport, Sioux City, IA 51111. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 146820 (Sub-1TA), filed April 16, 1979. Applicant: B & G TRUCKING, INC. 77 East Wilson Bridge Road, Worthington, Ohio 43085. Representative: David A. Turano, 100 East Broad Street, Columbus, Ohio 43215. Contract-irregular. (1) *Pulpboard* NOI in rolls, not corrugated, between Circleville, OH, on the one hand, and, on the other, points in IN, IL, KY and MI. (2) *Scrap or waste paper* for recycling purposes between the States of IL, IN, OH, MI and KY. (3) *Pulpboard* NOI in rolls or sheets, not corrugated between Carthage, IN, on the one hand, and, on the other, points in KY, PA, IL and OH. (4) *Fibreboard boxes corrugated KDF* between Anderson, IN, on the one hand, and, on the other, points in IL, KY, MI and OH. (5) *Fibreboard boxes corrugated KDF* between Ravenna, OH, on the one hand, and, on the other, points in PA, MI, IN, WV, and IL. (6) *Fibreboard boxes corrugated KDF* between Blue Ash, OH, on the one hand, and, on the other, points in IL, IN, KY, MI, and WV. (7) *Fibreboard cans,* straight sided, set up, between Piqua, OH, on the one hand, and, on the other, points in PA, IN, IL, KY, and MI. (8) *Fibreboard cans,* straight sided, set up, and materials and supplies, between Jeffersonville, IN, on the one hand, and, on the other, points in MI, IL, and KY. (9) *Fibreboard boxes,* other than corrugated, KDF between Muncie, IN, on the one hand, and, on the other, points in MI, OH, IL, and KY. (10) *Pulpboard* NOI, in rolls or sheets, corrugated or not corrugated, fiberboard boxes corrugated KDF, fiberboard boxes other than corrugated KDF, between Carol Stream, IL, on the one hand, and, on the other, points in IN, OH and MI. (11) *Pulpboard* NOI, in rolls or sheets, corrugated or not corrugated, fiberboard boxes corrugated KDF, fiberboard boxes other than corrugated KDF, between Chicago, IL, on the one hand, and, on the other, points in IN, OH, and MI. Restricted to service performed under contract or continuing contracts with Container Corporation of America. Underlying ETA seeks 90 days authority. Supporting shipper(s): Container Corporation of America, 300 East North Ave., Carol Stream, IL 60187. Send protests to: ICC, WM Jr. Green Jr. Federal Bldg., 600 Arch Street, Philadelphia, PA 19106.

Passenger Authority

MC 123481 (Sub-3TA), filed April 25, 1979. Applicant: BROWN LINES, INC., 22 First Street West, Kalispell, MT 59901. Representative: Charles A. Webb, Room 800 South, 1800 M Street N.W., Washington, DC 20036. *Passengers and their baggage and express shipments in the same vehicle with passengers* from Kalispell, MT via U.S. Hwy 93 North to Whitefish, MT, thence South via U.S. Hwy 93 to junction of MT Hwy 40, thence East over MT Hwy 40 to junction of U.S. Hwy 2, thence East via U.S. Hwy 2 to Shelby, MT and return over the same route serving all intermediate points, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): There are seven supporting shippers. Their statements may be examined at the office listed below and headquarters. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 123481 (Sub-4TA), filed April 25, 1979. Applicant: BROWN LINES, INC., 22 First Street West, Kalispell, MT 59901. Representative: Charles A. Webb, Room 800 South, 1800 M Street N.W., Washington, DC 20036. *Passengers and their baggage with express shipments in the same vehicle with passengers* (1) from Kalispell, MT West to Troy, MT via U.S Hwy 2, thence East to Junction MT Hwy 202, thence South on MT Hwy 202 to MT Hwy 200, thence Northwest to Sandpoint, ID and return over the same route serving allintermediate points, and (2) from Kalispell, MT South on U.S. Hwy 93 to Junction MT 28, thence Southwest on MT Hwy 28 to Plaint, MT at the Junction on MT Hwy 200, thence Northwest on MT Hwy 200 to Sandpoint, ID and return over the same route serving all intermediate points and the off-route points of Elmo, Lonepine and Hot Springs, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Camas Hot Sprins, Drawer M, Hot Springs, MT 59845, Thompson Falls-Trout Creek-Noxon Chamber of Commerce, Box 493, Thompson Falls, MT 59873, Lake Aire Motel, P.O. Box 306, Hope Lake, ID 83836. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

By the Commission.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-17708 Filed 6-6-79; 8:45 am]

BILLING CODE 7035-01-M

[Notice No. 86]

Motor Carrier Temporary Authority Applications

May 24, 1979.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

MC 4405 (Sub-603TA), filed May 8, 1979. Applicant: DEALERS TRANSIT, INC., P.O. Box 236, Tulsa, OK 74101. Representative: Leonard L. Bennett (same address as applicant). *Commodities which because of size or weight require the use of special equipment or handling and parts thereof or accessories thereto when transported with such commodities,* from Belle Chase, Harvey and New Orleans, LA, to

points in IL, IN, IA, MN, & WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Power Enterprises, Inc., P.O. Box 6261, New Orleans, LA 70174. Avondale Ship Yards, Harvey, LA 70058. M. G. Maher & Co., Inc., 442 Canal Street, New Orleans, LA 70130. Gulf-Eng. Co., Inc., 1000 St. Peters St., New Orleans, LA 70130. Mechanical Equipment Company, Inc., 861 Carondelet St., New Orleans, LA 70130. Send protests to: D/S, ICC, Room 240, Old Post Office, 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 8515 (Sub-16TA), filed March 20, 1979. Applicant: TOBLER TRANSFER, INC., Jct. Int. 80 and IL 89, Spring Valley, IL. Representative: Leonard R. Kofkin, 39 South LaSalle Street, Chicago, IL 60603. Regular Routes: *General commodities*, (except those of unusual value, high explosives, livestock, household goods, commodities in bulk, and those requiring special equipment): (1) Between Davenport, IA and Princeton, IL, serving no intermediate points; From Davenport, IA over Interstate Highway 80 to Princeton, IL and return over the same route; (2) Between Davenport, IA and Rockford, IL, serving the intermediate point of Sterling, IL. From Davenport, IA over IL Highway 2 to Rockford, IL and return over the same route; (3) Between Davenport, IA and Peoria, IL, serving the intermediate point of Galesburg, IL. From IA over Interstate Highway 80 to junction Interstate Highway 74, then over Interstate Highway 74 to Peoria, IL and return over the same route; (4) Between Rockford, IL and Mendota, IL, serving Mendota, IL as a point of joinder only. From Rockford, IL over U.S. Highway 51 to Mendota, IL and return over the same route; and (5) Between Davenport, IA and Galva, IL, serving no intermediate points. From Davenport, IA over Interstate Highway 80 to junction Interstate Highway 74, then over Interstate Highway 74 to junction IL Highway 17, then over IL Highway 17 to junction U.S. Highway 34, then over U.S. Highway 34 to Galva, IL and return over the same route, for 180 days. An underlying ETA seeks 90 day authority. Supporting shipper(s): 46 Supporting shippers. Send protests to: Annie Booker, TA, ICC, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 8535 (Sub-84TA), filed May 11, 1979. Applicant: GEORGE TRANSFER AND RIGGING COMPANY, INC., P.O. Box 500, Parkton, MD 21120. Representative: Charles J. McLaughlin, (same as above). *Iron and Steel articles*, from the facilities of Armco Inc., located at Ashland, KY and Middletown, OH to IL, IN and MI, for 90 days. An underlying ETA seeks 90 days. Restricted to traffic originating at the above facilities. Supporting shipper(s): Charles W. Hall, Armco Inc., Middletown, OH 45043. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore, MD 21201.

MC 15975 (Sub-14TA), filed April 17, 1979. Applicant: BUSKE LINES, INC., 123 West Tyler Ave., Litchfield, IL 62056. Representative: Howard Buske (same address as applicant). Common Irregular: *Air conditioners, washers, dryers, and materials, equipment and supplies* used in the manufacture, distribution, and repair of the above name commodities. Restricted against the transportation of commodities in bulk, or those because of size and weight, require special equipment, between the facilities of Fedders Corp. at Edison, NJ; Buffalo, NY; Frederick and Elkton, MD; and Effingham and Herrin, IL, on one hand, and, points in U.S., on the other (except AK and HI), for 180 days. An underlying ETA seeks 90 days. Supporting shipper(s): Fedders Corp., Woodbridge Ave., Edison, NJ 08817. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, Rm. 414, Leland Office Bldg., 527 East Capitol Ave., Springfield, IL 62701.

MC 24794 (Sub-26TA), filed May 7, 1979. Applicant: BARRY, INC., 463 South Water, Olathe, KS 66061. Representative: Arthur J. Cerra, 2100 TenMain Center, P.O. Box 19251, Kansas City, MO 64141. *Iron and Steel Articles*, from the facilities of Bull Moose Tube Company at Gerald, MO to points in AR, CO, IA, KS, LA, NE, OK and TX, for 180 days. Supporting shipper(s): Bull Moose Tube Co., Highway 50, P.O. Box 214, Gerald, MO 63037. Send protests to: John V. Barry, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 28825 (Sub-3TA), filed April 26, 1979. Applicant: ANDREWS VAN LINES, INC., Seventh and Park Avenue, P.O. Box 1000, Norfolk, NE 68701. Representative: Steven K. Kuhlmann, P.O. Box 82028, Lincoln, NE 68501. *Pillows and padding*, from Middletown, IN to points in the States in and west of WI, IL, MO, AR, and LA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Liebhardt Mills, Inc., P.O. Box 121, State Road 236, Middletown, IN. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 30844 (Sub-648TA), filed May 2, 1979. Applicant: KROBLIN REFRIGERATED XPRESS, INC., 2125 Commercial St., P.O. Box 5000, Waterloo, IA 50702. Representative: John P. Rhodes (same as applicant). *Meats, meat products, meat by-products, and articles distributed by meat packinghouses as described in Sections A, C and D of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities bulk)*, between Britt and Mason City, IA, on the one hand, and, on the other, points in and east of ND, SD, NE, CO, OK and TX, restricted to shipments originating at or destined to the facilities utilized by Lauridsen Foods, Inc., at or near Britt, IA and Armour and Co. at Mason City, IA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Armour and Co., Greyhound Tower, Phoenix, AZ 85077. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 39414 (Sub-17TA), filed May 7, 1979. Applicant: TYLER TRUCK LINES, INC., 2824 Judge Road, Oakfield, NY 14125. Representative: S. Michael Richards, P.O. Box 225, 44 North Avenue, Webster, NY 14580. Contract carrier—irregular routes. *Adhesives, building materials, gypsum and gypsum products line, paint and paint products, fabricated metal products (except commodities in bulk)*, from the facilities of the United States Gypsum Company at Genoa, Gypsum and Warren, OH; Detroit, MI; East Chicago and Shoals, IN; and Franklin Park, IL to all points in CT, DC, DE, ME, MI, MD, MA, NJ, NH, NY, OH, PA, RI, VT, VA and WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper: United States Gypsum Company, 101 South Wacker Drive, Chicago, IL 60606. Send protests to: Richard H. Cattadoris, DS, ICC, 910 Federal Bldg., 111 W. Huron Street, Buffalo, NY 14202.

MC 40494 (Sub-14TA), filed April 23, 1979. Applicant: HILBURN TRUCKING, INC., 19401 East 20th St., Independence, MO 64057. Representative: S. Harrison Kahn, Jeremy Kahn, Suite 733 Investment Building, Washington, D.C. 20005. *Such commodities as are dealt in by Agricultural Equipment Dealers*, from the facilities of Deere & Company located in Rock Island County, IL to points in TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Deere & Company, John Deere Road, Moline, IL 61265. Send protests to: V. V. Coble, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 44735 (Sub-41TA), filed April 12, 1979. Applicant: KISSICK TRUCK LINES, INC., 7101 East 12th Street, Kansas City, MO 64126. Representative:

John E. Jandera, 641 Harrison Street, Topeka, KS 66603. *Iron and steel articles,* from the facilities of Inland Steel Company at East Chicago, IN, to points in IL, IA, MO and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Inland Steel Company, 30 West Monroe Street, Chicago, IL 60603. Send protests to: Vernon V. Coble, DS, ICC, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 52704 (Sub-221TA), filed May 8, 1979. Applicant: GLENN McCLENDON TRUCKING COMPANY, INC., P.O. Drawer "H", LaFayette, AL 36862. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. *Malt beverages and related advertising materials,* (except in bulk), from the facilities of Pabst Brewing Co. in Houston County, GA, to points in the United States in and east of WI, IL, MO, AR and TX (except the States of CT, ME, MA, NH, NY, PA, RI and VT), for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Pabst Brewing Co., P.O. Box 1013, Perry, GA 31069. Send protests to: Mabel E. Holston, T/A ICC, Room 1616—2121 Building, Birmingham, AL 35203.

MC 53965 (Sub-153TA), filed May 9, 1979. Applicant: GRAVES TRUCK LINE, INC., P.O. Drawer 1387, Salina, KS 67401. Representative: Bruce A. Bullock, same address as applicant. *Meats, Meat Products, and Meat By-Products, and Articles Distributed by Meat Packinghouses,* as described in Sections A, C and D of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766, except hides and commodities in bulk, between the facilities of Lauridsen Foods, Inc. at or near Britt, IA and the facilities of Armour & Company at or near Mason City, IA on the one hand, and on the other, points in CO, NE, MO, IL, OH, IN, KY, TN, AR, LA, TX, NM, AZ, OK and KS, restricted to traffic originating at or destined to the facilities of Armour & Co. at Mason City, IA or the facilities of Lauridsen Foods, Inc. at Britt, IA, for 180 days. Supporting shipper(s): Armour and Company, Greyhound Tower, Phoenix, AZ 85077. Send protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg., 110 North Market St., Wichita, KS 67202.

MC 59655 (Sub-22TA), filed April 27, 1979. Applicant: SHEEHAN CARRIERS, INC., 62 Lime Kiln Road, Suffern, NY 10901. Representative: George A. Olsen, POB 357, Gladstone, NJ 07934. *Plastic bottles,* from Langhorne, PA, to points in the New York, NY Commercial Zone, and Cranston, RI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Pepsi-Cola Company, Anderson Hill Road, Purchase, NY 10577. Send protests to: Maria B. Kejss, TA, ICC, 26 Federal Plaza, New York, N.Y. 10007.

MC 59655 (Sub-23TA), filed May 14, 1979. Applicant: SHEEHAN CARRIERS, INC., 62 Lime Kiln Road, Suffern, NY 10901. Representative: George A. Olsen, POB 357, Gladstone, NJ 07934. *Malt beverages and related advertising materials, and materials, equipment and supplies used in the manufacture and sale of malt beverages* between points in Onondaga and Oswego Counties, NY, on the one hand, and, on the other, points in the States of CT, ME, MA, NH, VT, VA, RI, OH, PA, MD, DE, NJ, and NY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Miller Brewing Company, 3939 W. Highland Blvd., Milwaukee, WI 53208. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

MC 73165 (Sub-476TA), filed May 2, 1979. Applicant: EAGLE MOTOR LINES, INC., 830 North 33rd Street, Birmingham, AL 35202. Representative: R. Cameron Rollins, P.O. Box 11086, Birmingham, AL 35202. *Plastic pipe, fittings and connections for plastic pipe, and materials and supplies used in the manufacture and distribution therefor,* except commodities in bulk, from the facilities of R. & G. Sloane Manufacturing Company at or near Valley View, OH, to points in MD, SC, WI, NJ, LA, MO, PA, MI and GA; and from Bakersfield, Santa Ana and Sun Valley, CA, to point in the U.S. (except AK and HI), for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): R. & G. Sloane Manufacturing Company, 7600 North Clybourn Avenue, Sun Valley, CA 91352. Send protests to: Mabel E. Holston, T/A, ICC , Room 1616—2121 Building, Birmingham, Al 35203.

MC 60014 (Sub-118 TA), filed May 2, 1979. Applicant: AERO TRUCKING, INC., Box 308, Monroeville, PA 15146. Representative: A. Charles Tell, 100 East Broad Street, Columbus, OH 43215. *Building materials (except in bulk) pipe* from the facilities of Johns Manville Products Corp. at or near Manville, NJ and Woodstock, VA to points in OH for 180 days. An ETA seeks 90 days operating authority. Supporting shipper(s): Johns Manville Products Corp., 200 N. Main Street, Manville, NJ 08835. Send protests to: J. J. England, DS, ICC 2111 Federal Bldg., Pittsburgh, PA 15222.

MC 94635 (Sub-9TA), filed April 27, 1979. Applicant: INTERSTATE SAND & GRAVEL TRANSPORTATION, INC., 717 Elmer Street, Vineland, N.J. 08360. Representative: Terrence D. Jones, 2033 K Street, NW., Washington, D.C. 20006. *Contract carrier:* irregular routes: sand, from the facilities of New Jersey Silica Sand Co. located near Millville, NJ to points in CT, DE, MD, MA, NY, OH, RI, VA and PA (except points in Bucks, Berks Lehigh, Lebanon, Lancaster, Chester, Delaware, Montgomery and Philadelphia Counties), for 180 days. An underlying ETA seeks 90 day authority. Supporting shipper(s): New Jersey Silica Sand Co., Box 630, Millville, N.J. 08332. Send protests to: District Supervisor, ICC, 428 East State Street, Room 204, Trenton, N.J. 08608.

MC 101075 (Sub-125TA), filed May 7, 1979. Applicant: TRANSPORT, INC., P.O. Box 396, Moorhead, MN 56560. Representative: Ronald B. Pitsenbarger (same as applicant). *Anhydrous ammonia,* in bulk, from Pine Bend, MN to points in WI, and from Glenwood, MN to points in ND and SD, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Farmers Union Central Exchange, Incorporated, a/k/a CENEX, P.O. Box 43089, St. Paul, MN 55164. Send protests to: DS, ICC, Room 268 Fed. Bldg., 657 2nd Avenue North, Fargo, ND 58102.

MC 107515 (Sub-1231TA), filed March 29, 1979. Applicant: REFRIGERATED TRANSPORT CO., INC., Post Office Box 308, Forest Park, GA 30050. Representative: Alan E. Serby & Richard M. Tettelbaum, Serby & Mitchell, P.C., Fifth Floor, Lenox Towers South, 3390 Peachtree Road, NE., Atlanta, GA 30326. *Meats, meat products and meat by-products (except commodities in bulk), as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766, and (2) foodstuffs, except those described in (1) above, when moving in mixed loads with articles in (1) above, in mechanically refrigerated vehicles,* from Milan, IL to Goodlettsville, TN and points in FL, GA, NC and SC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Oscar Mayer & Co., Inc., P.O. Box 7188, Madison, WI 53707. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., NW., Rm. 300, Atlanta, GA 30309.

MC 108185 (Sub-52TA), filed April 30, 1979. Applicant: JACK COLE-DIXIE HIGHWAY COMPANY, 215 South 11th Street, Minneapolis, MN 55403.

Representative: Patrick B. Northup, 1100 Des Moines Building, Des Moines, IA 50209. *(1) Tractors (except tractors with vehicle beds, bed frames, or 5th wheels); (2) Agricultural machinery and implements; (3) Industrial and construction machinery and equipment; and (4) Parts, attachments and accessories for Parts (1) through (3) above* from Detroit, MI to points in AL, FL, GA, LA, MS, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Massey-Ferguson, Inc., 1901 Bell Avenue, Des Moines, IA 50321. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building, 110 South 4th Street, Minneapolis, MN 55401.

MC 111434 (Sub-99TA), filed May 8, 1979. Applicant: DON WARD, INC., 241 W. 56th Avenue, Denver, CO 80216. Representative: Don L. Ward (same address). *Aluminum Sulphate (Alum),* from Denver, CO to Amarillo, TX, for 180 days. An underlying ETA seeks authority for 90 days. Supporting shipper(s): Allied Chemical Corp., Industrial Chemicals Div., P.O. Box 1139R, Morristown, NJ 07960. Send protests to: District Supervisor R. L. Buchanan, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 112595 (Sub-88TA), filed May 2, 1979. Applicant: FORD BROTHERS, INC., P.O. Box 727, Ironton, OH 45638. Representative: Richard T. Trettin (same address as applicant). *Liquid chemicals, in bulk, in tank vehicles,* from the facilities of Dow Chemical U.S.A. at Hanging Rock, OH to points in the States of MN, IA, MO, WI, IL, IN, KY, TN, MI, VA, WV, DE, MD and points in NY west of a line starting at Point Breeze, NY and continuing along SR 98 southward to SR 39, west on SR 39 to SR 16, then south to SR 17, west to U.S. Hwy 219, to the PA border, and points in PA west of a line starting at the NY border along US Hwy 219 southward to the MD border, for 180 days. Supporting shipper(s): Dow Chemical U.S.A., Eastern Division, 14955 Sprague Road, Strongsville, OH 44136. Send protests to: J. A. Niggemyer, DS, 416 Old P.O. Bldg., Wheeling, WV 26003.

MC 114274 (Sub-61TA), filed May 2, 1979. Applicant: VITALIS TRUCK LINES, INC., P.O. Box 1703, Des Moines, IA 50306. Representative: William H. Towle, 180 N. LaSalle St., Chicago, IL 60601. *Fresh meats and packinghouse products* from the facilities of Wilson Foods Corporation at Des Moines, IA, to points in CO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wilson Foods Corporation, 4545 Lincoln Blvd., Oklahoma City, OK 73105. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 114274 (Sub-62TA), filed May 11, 1979. Applicant: VITALIS TRUCK LINES, INC., 137 N.E. 46th St. Place, Des Moines, IA 50306. Representative: William H. Towle, 180 N. LaSalle St., Chicago, IL 60601. *Beverages* from Lenexa, KS to Omaha, NE and Cedar Rapids and Davenport, IA for 180 days. Supporting shipper(s): Mid-America Container Coporation, 10001 Industrial Blvd., Lenexa, KS 66215. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 115975 (Sub-36TA), filed March 30, 1979. Applicant: CBW TRANSPORT SERVICE, INC., P.O. Box 48, St. Louis, MO 63101. Representative: Ernest A. Brooks II, 1301 Ambassador Bldg., St. Louis, MO 63101. Contract Irregular: *Petroleum lubricating oils,* in bulk, in tank vehicles, form the facilities of Mobil Oil Corporation at St. Louis, MO to Hawkeye Coal Co. at Coal Run, KY under continuing bilateral contract with Mobil Oil Company, for 180 days. Supporting shipper(s): Mobil Oil Corporation, 8350 North Central Expressway, #522, Dallas, TX 75206. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, Rm. 414, Leland Office Bldg., 527 East Capitol Ave., Springfield, IL 62701.

MC 115975 (Sub-37TA), filed April 10, 1979. Applicant: C. B. W. TRANSPORT, P.O. Box 48, Wood River, IL 62095. Representative: Ernest A. Brooks, II, 1301 Ambassador Bldg., St. Louis, MO 63101. Contract Irregular: *Petroleum grease,* in bulk, in tank vehicles, from the facilities of Southwest Grease at Olathe, KS to U.S. Rubber Reclaiming Company at Vicksburg, MS, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Mobil Oil Corporation, 8350 North Central Expressway, #522, Dallas, TX 75206. Send protests to: Charles D. Little, District Supervisor, Rm. 414, Leland Office Bldg., 527 East Capitol Ave., Springfield, IL 62701.

MC 116045 (Sub-51TA), filed April 27, 1979. Applicant: NEUMAN TRANSIT CO., INC., P.O. Box 38, Rawlins, WY 82301. Representative: Leslie R. Kehl of Jones, Meiklejohn, Kehl & Lyons, 1600 Lincoln Center, 1660 Lincoln St., Denver, CO 80264. *Hydrogen peroxide,* in bulk, from Natrona County, WY to points in Wy. Restricted: The service authorized herein shall be limited to transportation of shipments having an immediate prior movement by rail. An underlying ETA seeks 90 days authority. For 180 days. Supporting shipper(s): F. M. C. Corp., 2000 Market St., Philadelphia, PA 19103. Send protests to: Paul A. Naughton, DS, ICC, Rm. 105 Federal Bldg. and Crt. House, 111 South Wolcott, Casper, Wy 82601.

MC 116254 (Sub-265TA), filed May 8, 1979. Applicant: CHEM-HAULERS, INC., 118 East Mobile Plaza, Florence, AL 35630. Representative: Mr. Hampton Mills (same address as applicant). *Aluminum, brass and copper articles,* from Rome, NY, to points in AL, AR, FL, GA, IA, IL, IN, KS, KY, LA, MI, MO, MN, MS, NC, OK, SC, TN, TX, and VA. For 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Revere Copper and Brass Inc., P.O. Box 191, Rome, NY 13440. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616—2121 Building, Birmingham, AL 35203.

MC 117765 (Sub-261TA), filed May 1, 1979. Applicant: HAHN TRUCK LINE, INC., 1100 S. MacArthur, P.O. Box 75218, Oklahoma City, Oklahoma 73147. Representive: R. E. Hagan, 1100 S. MacArthur, P.O. Box 75218, Oklahoma City, Oklahoma 73147. *Non-Frozen Foodstuffs,* in containers from plant site of Vlasic Foods, Inc., Greenville, MS to KS, OK, & MO. for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Vlasic Foods, Inc., 33200 West 14 Mile Road, West Bloomfield, Mich. 48033. Send protests to: Connie Stanley, TA, ICC, Room 240, Old Post Office Bldg., 215 N.W. Third Street, Oklahoma City, Oklahoma 73102.

MC 117765 (Sub-262TA), filed April 27, 1979. Applicant: HAHN TRUCK LINE, INC., 1100 S. MacArthur, P.O. Box 75218, Oklahoma City, Oklahoma 73147. Representive: R. E. Hagan (same address as applicant). *Yarn,* from the facilities of Hollytex Carpet Mills, Milledgeville, GA, to the facilities of Hollytex Carpet Mills, Anadarko, OK, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Hollytex Carpet Mills, P.O. Box 368, Anadarko, OK 73005. Send protests to: District Supervisor, ICC, Room 240, Old Post Office Bldg., 215 N.W. 3rd, Oklahoma City, Oklahoma 73102.

MC 119765 (Sub-61TA), filed April 2, 1979. Applicant: EIGHT WAY XPRESS, INC., 5402 So. 27th St., Omaha, NE 68107. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Rd., Omaha, NE 68106. *Meats and packinghouse products,* from Harlan, IA to Lodi, CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Gary McFarland, Western Iowa Pork Co., East Highway 44, P.O. Box 510, Harlan, IA 51537. Send protests

to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 119765 (Sub-82TA), filed April 11, 1979. Applicant: EIGHT WAY XPRESS, INC., 5402 So. 27th St., Omaha, NE 68107. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Rd., Omaha, NE 68106. *Such commodities as are dealt in by grocery, hardware, and department stores (except foodstuffs),* from the facilities of Boyle-Midway, Division of American Home Products Corporation at Chicago, IL to points in AR, KS, IA, MN, MO, NE, and OK, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Boyle-Midway, Division of American Home Products Corporation, 5151 West 73rd Street, Chicago, IL 60638. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 121664 (Sub-73TA), filed May 4, 1979. Applicant: HORNADY TRUCK LINE, INC., P.O. Box 846, Monroeville, AL 36460. Representative: W. E. Grant, 1702 First Avenue South, Birmingham, AL 35233. *Lumber,* from the International Boundary between the United States and Canada, in MI, to points in AR, AL, FL, GA, LA, MS, TN and TX; and from Camilla and Thomasville, GA and Abbeville and Mt. Vernon, AL, to points in OH, MI, PA, and IN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Empire Wholesale Lumber Company, Miami and Gault Street, Akron, OH 44311. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616–2121 Building, Birmingham, AL 35203.

MC 123074 (Sub-15TA), filed April 27, 1979. Applicant: M. L. ASBURY, INC., 1100 South Oakwood, Detroit, MI 48217. Representative: William B. Elmer, 21635 East Nine Mile Road, St. Clair Shores, MI 48080. *Asphalt and asphalt products,* in bulk, in tank vehicles; from Detroit, MI to LaGrange and Steuben Counties, IN. For 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Marathon Oil Company, 539 South Main Street, Findlay, OH 45840. Send protests to: C. R. Flemming, D/S, I.C.C., 225 Federal Building, Lansing, MI 48933.

MC 125985 (Sub-27TA), filed April 10, 1979. Applicant: AUTO DRIVEAWAY COMPANY, 310 South Michigan Avenue, Chicago, IL 60604. Representative: Daniel B. Johnson, 4304 East-West Highway, Washington, D.C. 20014. *Pickup trucks and panel trucks greater than ¾ ton in secondary movements in driveaway service,* between points in AZ, CA, CO, GA, IL, IN, MA, NJ, NY, OR, UT and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wacker Corporation, 3608 W. Elm St., Milwaukee, WI. Send protests to: Annie Booker, TA, ICC, 1386 Everett Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 128095 (Sub-29TA), filed April 23, 1979. Applicant: IBCO TRUCK LINE, INC., P.O. Box 1402, Tupelo, MS 38801. Representative: Fred W. Johnson, Jr., 1500 Deposit Guaranty Plaza, P.O. Box 22828, Jackson, MS 39205. *New Office Furniture* from the facilities of Anderson Hickey Company located at or near Halls, TN and Henderson, TX to points in the United States in and east of the states of TX, OK, KS, NE, SD and ND, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Anderson Hickey Company, P.O. Box 80, Henderson, TX 75652. Send protests to: Floyd A. Johnson, DS, ICC, Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 128095 (Sub-30TA), filed May 7, 1979. Applicant: IBCO TRUCK LINE, INC., P.O. Box 1402, Tupelo, MS 38801. Representative: Fred W. Johnson, Jr., 1500 Deposit Guaranty Plaza, P.O. Box 22828, Jackson, MS 39205. (1) *Polyethylene foam* from Pontotoc, MS to points in AL, AR, CA, CO, FL, GA, IL, IN, IA, KS, KY, LA, MN, MO, NC, OH, OK, SC, TN, TX, WA and WI; and (2) *Gusset bags, padded bags, macerated pads, sleeve pads, and cellulose wadding* from Salem, IL; Granite Falls and High Point, NC to Pontotoc, MS, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Jiffy Manufacturing Co., Inc., Box 469, Salem, IL 62881. Send protests to: Floyd A. Johnson, DS, ICC, Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 128205 (Sub-75TA), filed April 23, 1979. Applicant: BULKMATIC TRANSPORT COMPANY, 12000 South Doty Avenue, Chicago, IL 60628. Representative: Arnold L. Burke, 180 North LaSalle St., Chicago, IL 60601. *Fertilizer, in bulk,* from Erie, Cordova, Chicago, Lemont, Belvidere and Seneca, IL to points in WI, MI, IN, IL and IA, for 180 days. Supporting shipper(s): International Minerals & Chemicals Corp., 421 E. Hawley St., Mundelein, IL 60060. Send protests to: Annie Booker, TA, ICC, 1386 Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 128745 (Sub-3TA), filed April 27, 1979. Applicant: MIEDZINSKI'S TRANSFER, INC., P.O. Box 294, Leonardtown, MD 20650. Representative: Frank B. Hand, Jr., P.O. Drawer C, Berryville, VA 22611. *Contract Carrier,* irregular routes—*Telephone equipment, material and supplies,* between the site of the Western Electric Co. distribution center in Arlington County, VA, on the one hand, and, on the other, the sites of the Chesapeake and Potomac Telephone Company of Maryland supply and service centers located at Leonardtown (St. Marys County), Odenton (Anne Arundel Co.), and Waldorf (Charles Co.), MD, under contract with Western Electric Co., Cockeysville, MD, for 90 days. An underlying ETA seeking 90 days has been filed. Supporting shipper(s): K. N. Burleson, Western Electric Co., 225 Schilling Circle, Cockeysville, MD 21030. Send protests to: T. M. Esposito, TA, ICC, 600 Arch St., Room 63236, Philadelphia, PA 19106.

MC 129645 (Sub-73TA), filed May 4, 1979. Applicant: BASIL J. SMEESTER AND JOSEPH G. SMEESTER, d.b.a. SMEESTER BROTHERS TRUCKING, 1330 South Jackson Street, Iron Mountain, MI 49801. Representative: H. G. Denny, 1330 South Jackson Street, Iron Mountain, MI 49801. *Iron and steel and iron and steel articles,* from the facilities of Wheeling-Pittsburgh Steel Corporation at Allenport, PA to points in MI. For 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wheeling-Pittsburgh Steel Corporation, P.O. Box 118, Pittsburgh, PA 15230. Send protests to: C. R. Flemming, D/S, I.C.C., 225 Federal Building, Lansing, MI 48933.

MC 129784 (Sub-6TA), filed May 3, 1979. Applicant: DAVISON TRANSPORT, INC., P.O. Drawer 846, Ruston, LA 71270. Representative: Tom E. Moore (same address as applicant). *Chemicals, in bulk, in tank and hopper-type vehicles,* between ERCO Industries, Inc. plant (located approximately five miles south of Monroe, LA on Highway 165 at or near the community known as Rilla, LA) on the one hand, and, on the other, points in AL, AR, FL, GA, KY, MS, MO, NC, OK, SC, TN, TX, and VA, for 180 days. Supporting shipper(s): ERCO Industries, Inc., P.O. Box 1612, Monroe, LA 71201. Send protests to: Robert J. Kirspel, DS, ICC, T-9038 Federal Bldg., 701 Loyola Ave., New Orleans, LA 70113.

MC 129905 (Sub-5TA), filed May 1, 1979. Applicant: ALL STATES MOVING & STORAGE CO., INC., 2800 Navy Boulevard, Pensacola, FL 32505. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *New Furniture,* from Federal Correctional Institution near Tallahassee, FL, to points in the United States (except HI and AK) restricted to shipments destined to United States federally owned or maintained facilities,

for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Federal Prison Industries, Inc., Tallahassee, FL 32300. Send protests to: Mabel E. Holston, TA, ICC, Suite 1616, 2121 Building, Birmingham, AL 35203.

MC 133095 (Sub-254TA), filed April 23, 1979. Applicant: TEXAS-CONTINENTAL EXPRESS, INC., P.O. Box 434, Euless, TX 76039. Representative: Marshall Kragen, 1835 K St., N.W., Suite 600, Washington, D.C. 20006. *Packaged petroleum products,* from Farmers Valley, New Kensington, and Emlenton, PA; and Congo and St. Marys, WV, to points in GA, AL, MS, AR, LA, and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Quaker State Oil Refining Corp., P.O. Box 988, Oil City, PA 16301. Send protests to: Martha A. Powell, T/A, I.C.C., Room 9A27 Fed. Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 133655 (Sub-152TA), filed April 30, 1979. Applicant: TRANS-NATIONAL TRUCK, INC., P.O. Box 31300, Amarillo, TX 79120. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. *Such commodities* as are used in the construction and operation of nuclear power plants between the facilities of the Black Fox Nuclear Power Plant located in Rogers' County, OK on and south of OK Hwy 33, on the one hand, and, on the other, points in and west of ND, SD, NE, KS, OK, and TX, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting Shipper(s): Public Service Company of Oklahoma, P.O. Box 201, Tulsa, OK 74102. Send protests to: Martha Powell, TA, 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 133655 (Sub-153TA), filed April 27, 1979. Applicant: TRANS-NATIONAL TRUCK, INC., P.O. Box 31300, Amarillo, TX 79120. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. *Such commodities as are dealt in by discount and variety stores* (except commodities in bulk), between Ridgefield, NJ on the one hand, and, on the other, points in LA; restricted to traffic originating at or destined to the facilities of S. H. Kress and Company, for 180 days. Supporting Shipper(s): S. H. Kress and Company, 114 Fifth Avenue, New York, NY 10011. Send protests to: District Supervisor Haskell E. Ballard, Box F-13206 Federal Building, Amarillo, TX 79101.

MC 133655 (Sub-154TA), filed May 11, 1979. Applicant: TRANS-NATIONAL TRUCK, INC., P.O. Box 31300, Amarillo, TX 79120. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. *Trimmers and equipment, materials, and supplies* used in the manufacture, sale, and distribution of trimmers, between Houston, TX on the one hand, and on the other, points in CA, IL, MT, OH, OR, PA, and SD, for 180 days. An underlying ETA seeks up to 90 days authority. Supporting Shipper(s): Weedeater, 10515 Harwin Drive, Houston, TX 77036. Send protests to: Martha Powell, Transportation Assistant, Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 133655 (Sub-155TA), filed May 11, 1979. Applicant: TRANS-NATIONAL TRUCK, INC., P.O. Box 31300, Amarillo, TX 79120. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. (1) *Fiberglass rovings, woven rovings, chopped strand, mat, and reinforcements; and (2) equipment, materials, and supplies* used in the manufacture and distribution of the commodities in (1) above between Wichita Falls, TX on the one hand, and, on the other, points in CA, FL, KS, NH, NY, OH, RI, and WA, for 180 days. An underlying ETA seeks up to 90 days authority. Supporting Shipper(s): CertainTeed Corporation/Frd, 4515 Allendale Road, Wichita Falls, TX 76310. Send protests to: Martha Powell, Transportation Assistant, Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 133655 (Sub-156TA), filed May 11, 1979. Applicant: TRANS-NATIONAL TRUCK, INC., P.O. Box 31300, Amarillo, TX 79105. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. *Meats, meat products, and meat by-products* from Amarillo, TX to points in CA, IL, IN, KS, and OH, for 180 days. Supporting shipper(s): Consolidated Pet Foods, Inc., P.O. Box 30488, Amarillo, TX 79120. Send protests to: Martha Powell, Transportation Assistant, Room 9A27, Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 133775 (Sub-22TA), filed April 25, 1979. Applicant: REEFER TRANSIT LINE, INC., 1977 West 103rd Street, Chicago, IL 60643. Representative: Elaine M. Conway, 10 S. LaSalle St., Suite 1600, Chicago, IL 60603. *Meats, meat products, meat by-products, and articles distributed by meat packinghouses, as described in Sections A, C and D of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk),* (1) from points in IL, IN, KS, MN, MO, NE, SD and WI to the facilities of Lauridsen Foods, Inc. at or near Britt, IA; (2) from the facilities of Lauridsen Foods, Inc. at or near Britt, IA and the facilities of Armour and Company at or near Mason City, IA to points in AL, AR, CO, CT, DE, FL, GA, IL, IN, KS, LA, MA, MD, ME, MI, MO, MN, MS, NE, NC, ND, NY, NJ, NH, OK, OH, PA, RI, SC, SD, TN, TX, VA, VT, WI and WV, for 180 days. Restricted to shipments originating at or destined to the above-named facilities. An underlying ETA seeks 90 days authority. Supporting shipper(s): Armour and Company, Greyhound Tower, Phoenix, AZ 85077. Send protests to: Annie Booker, TA, ICC, 1386 Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 134235 (Sub-20TA), filed April 27, 1979. Applicant: KUHNLE BROTHERS, INC., P.O. Box 128, Chagrin Falls, OH 44022. Representative: Kenneth T. Johnson, Bankers Trust Bldg., Jamestown, NY 14701. *Salt,* from Baltimore, MD, to points in DE, MD, NJ, NY, PA, and VA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Watkins Salt Company, P.O. Box 150, Watkins Glen, NY 14891. Send protests to: Mary Wehner, D/S, ICC, 731 Federal Bldg., Cleveland, OH 44199.

MC 134635 (Sub-3TA), filed May 4, 1979. Applicant: WINSTON CARRIERS, INC., P.O. Box 347, Double Springs, AL 35553. Representative: Dwight L. Koerber, Jr., 805 McLachlen Bank Building, 666 Eleventh Street, NW., Washington, DC 20001. Contract, irregular: *Trailers designed to be drawn by passenger automobiles, buildings and buildings in sections moving on wheeled undercarriages,* from Shelby, NC, to points in VA, SC, GA, TN, KY, MD, WV and DE, and rejected shipments on return, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Winston Homes of North Carolina, a Division of Winston Industries, P.O. Box 1330, Shelby, NC 28150. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 135606 (Sub-39TA), filed May 8, 1979. Applicant: B & R DRAYAGE, INC., P.O. Box 8534, Battlefield Sta., Jackson, MS 39204. Representative: Douglas C. Wynn, P.O. Box 1295, Greenville, MS 38701. (1) *Paper and paper articles, and fiberboard, plastic and metal containers, and fittings and closures therefor, and* (2) *equipment, materials and supplies used in the manufacture and distribution of commodities described in* (1) *above* (except commodities in bulk and those requiring special equipment) between the

facilities of Container Corp. of America at or near Kenner, LA; Dallas, Fort Worth and Houston, TX, on the one hand, and, on the other, points in AL, AR, FL, GA, LA, MS, OK, TN and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Container Corp. of America, P.O. Box 1441, Ft. Worth, TX 76101. Send protests to: Alan Tarrant, D/S, ICC, Rm. 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 135895 (Sub-40TA), filed April 9, 1979. Applicant: B & R DRAYAGE, INC., P.O. Box 8534, Battlefield Sta., Jackson, MS 39204. Representative: Douglas C. Wynn, P.O. Box 1295, Greenville, MS 38701. *Charcoal, charcoal briquetts, charcoal lighter fluid, hickory chips and related barbeque items, and wooden shipping pallets* (except commodities in bulk and those requiring special equipment) between the facilities of Husky Industries, Inc. at or near Meridian and Pachuta, MS and Branson, MO, on the one hand, and, on the other, points in AL, AR, FL, GA, LA, MS, MO, NC, OK, SC, TN and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Husky Industries, Inc., 62 Perimeter Center E., Atlanta, GA 30346. Send protests to: Alan Tarrant, D/S, ICC, Rm. 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 135924 (Sub-10TA), filed May 7, 1979. Applicant: SIMONS TRUCKING CO., INC., 3851 River Road, Grand Rapids, MN 55744. Representative: Samuel Rubenstein/David Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. *Steel pipe* from the facilities of Naylor Pipe Co. at Chicago, IL to Grand Rapids, Hoyt Lakes, Keewatin, Mt. Iron and Nashwauk, MN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Naylor Pipe Company, 1230 East 92nd Street, Chicago, IL 60619. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 135924 (Sub-11TA), filed May 7, 1979. Applicant: SIMONS TRUCKING COMPANY, INC., 3851 River Road, Grand Rapids, MN 55744. Representative: Samuel Rubenstein/David Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. *Steel pipe* from the facilities of Naylor Pipe Company at Chicago, IL to Hibbing, MN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Naylor Pipe Company, 1230 East 92nd Street, Chicago, IL 60619. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building, 110 South 4th Street, Minneapolis, MN 55401.

MC 136315 (Sub-73TA), filed May 9, 1979. Applicant: OLEN BURRAGE TRUCKING, INC., Route 9, Box 22–A, Philadelphia, MS 39350. Representative: Fred W. Johnson, Jr., P.O. Box 22628, Jackson, MS 39205. *Composition board and sheets* from the facilities of Champion International Corp. at or near Oxford, MS to points in IL, IN, IA, KY, MI, MN, MO, OH, PA and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Champion International Corp., Knightsbridge Dr., Hamilton, OH 45020. Send protests to: Alan Tarrant, D/S, ICC, Rm. 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 136605 (Sub-107TA), filed May 2, 1979. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (Same address as applicant). *Roofing materials* (1) from the facilities of Johns-Manville Sales Corporation located at or near Pittsburg, CA to points in OR, WA, ID, UT and MT; and (2) from the facilities of Johns-Manville Sales Corporation located in Los Angeles County, CA to points in OR, WA, ID and UT, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Johns-Manville Sales Corporation, 2800 Campus Dr., San Mateo, CA 94403. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 136605 (Sub-108TA), filed May 2, 1979. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (Same address as Applicant). *Poles and piling, treated and untreated,* from points in the states of MT, WY, ND and SD, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): North Pacific Lumber Co., P.O. Box 3515, Portland, OR 97208. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 136605 (Sub-109TA), filed May 9, 1979. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (Same address as Applicant). *Iron and steel articles* from the facilities of HyAlloy Steels Company located at or near Chicago, IL to points in the States of CA, AZ, UT and ID, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): HyAlloy Steels Company, 5100 West 73rd St., Chicago, IL 60638. Send protests to: Paul Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 136605 (Sub-106TA), filed April 26, 1979. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (Same address as Applicant). (1) *Lumber mill products, and wood products* from the facilities of Emmer Bros. Co., Inc., located at or near Laurel, MT to points in the states of IL, IN, KS, MI, MO, OH and OK; and (2) *Insulation board* from the facilities of Emmer Bros. Co., Inc., located at or near Laurel, MT to points in the states of CO, IL, IN, IA, KS, MI, MN, MO, NE, ND, OH, OK, SD, WI and WY, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Emmer Brothers Company, 6800 France Ave. So., Minneapolis, MN 55435. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 136605 (Sub-105TA), filed April 20, 1979. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (Same address as Applicant). *Scrap materials for recycle* from Deer Lodge County, MT to points in the states of WA, OR and CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Alaska Steel and Supply Company, E. 3810 DeSmet, Spokane, WA 99220. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 136115 (Sub-7TA), filed March 28, 1979. Applicant: FRANK D. CORBIN, 1308 Ambrose Drive, Winchester, VA 22601. Representative: Edward N. Button, 1329 Pennsylvania Avenue, Hagerstown, MD 21740. *Contract carrier:* Irregular routes: *Acoustical tile panels, noise control products, accessories, materials, equipment and supplies used in the manufacture and distribution thereof,* between Hagerstown, MD and its commercial zone on the one hand, and, on the other, points in NY, PA, WV, TN, GA, NC, SC, FL, MD, OH, DE, NJ, VA, CT, RI, MA, NH, VT, ME, IL and DC, for 180 days. Supporting Shipper(s): Acoustiflex Corporation, 611 Center Street, Plainfield, IL 60544. Send protests to: T. M. Esposito, TA, ICC, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 136635 (Sub-66TA), filed April 19, 1979. Applicant: CAROLINA WESTERN EXPRESS, INC., Box 3005, Gastonia, NC 28052. Representative: W. C. Sutton (Same as above). *Supplies and materials used in the manufacture and sale of venetian blinds (except in bulk)* from Montoursville, PA to Westminster, CA and Athens, Ga, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Liken Home Furnishings, 7130 Fenwick Lane, Westminster, CA 92683. Send protests to: Terrell Price, DS, ICC, 800 Briar

Creek Rd, Rm. CC516, Mart Office Building, Charlotte, NC 28205.

MC 136635 (Sub-85TA), filed April 19, 1979. Applicant: CAROLINA WESTERN EXPRESS, INC., P.O. Box 3995, Gastonia, NC 28052. Representative: W. C. Sutton (Same as above). *Non-alcoholic cocktail mixes* from Byhalia, MS to points east of TX, KS, NE, SD and ND, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Professional Mixers, Inc., 300 Chesterfield Center, Suite 210, Chesterfield, MO 63017. Send protests to: Terrell Price, DS, ICC, 800 Briar Creek Rd, Rm. CC516, Mart Office Building, Charlotte, NC 28205.

MC 136635 (Sub-83TA), filed April 19, 1979. Applicant: CAROLINA WESTERN EXPRESS, INC., Box 3995, Gastonia, NC 28052. Representive: W. C. Sutton (same as above). *Textiles and textile products, supplies and materials used in the manufacture, packaging and sale thereof* from Monroe, Balfour, Greensboro, Salisbury, NC and Clemson, SC to Los Angeles, CA and points in its commercial zone, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): PRF Corporation, P.O. Box 709, Monroe, NC 28110. Send protests to: Terrell Price, DS, ICC, 800 Briar Creek Rd, Rm. CC516, Mart Office Building, Charlotte, NC 28205.

MC 136635 (Sub-84TA), filed April 19, 1979. Applicant: CAROLINA WESTERN EXPRESS, INC., Box 3995, Gastonia, NC 28052. Representive: W. C. Sutton, Box 3995, Gastonia, NC 28052. *Plastic pipe, tubing, fittings and connections (except in bulk)* from Sun Valley, Santa Ana, and Bakersfield, CA and Cleveland, OH to points in and east of MN, IA, MO, AR, and LA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): R & G Sloane Manufacturing Co., Inc., 7800 North Clybourn Ave., Sun Valley, CA 91352. Send protests to: Terrell Price, DS, ICC, 800 Briar Creek Rd, Rm. CC516, Mart Office Building, Charlotte, NC 28205.

MC 136805 (Sub-6TA), filed April 11, 1979. Applicant: S&L Services, Inc., R.D. 1, Milton, PA 17847. Representive: Terrence D. Jones, 2033 K St., NW., Washington, D.C. 20006. *Foodstuffs, except in bulk,* from facilities of American Home Foods, a division of American Home Products Corp., at or near Milton, PA to pts. in DE, MA, MD, ME, NH, RI, VA, VT, WV and DC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): American Home Foods, Div. of American Home Products Corp., 685 Third Ave., New York, NY 10017. Send protests to: Peter R. Guman, D/S, 600 Arch St., Rm. 3238, Phila., PA 19106.

MC 136824 (Sub-23TA), filed May 10, 1979. Applicant: REDWAY CARRIERS, INC., 5010 40th St., Kenosha, WI 53140. Representive: Paul J. Maton, 10 S. LaSalle St., Suite 1620, Chicago, IL 60603. Contract carrier; irregular routes; *Food products, dry or liquid, in containers; materials and supplies incidental to and used in the processing, canning and bottling of said food products,* between the facilities of Oconomowoc Canning Corp. at Poinette, DeForest, Waunakee, Sun Prairie, Cobb, Merrill and Oconomowoc, WI, on the one hand, and on the other, points in AL, GA, IL, IN, KY, LA, MS, MD, OK, TN, IA, KS, MI, PA and AR, for 180 days. Supporting shipper(s): Oconomowoc Canning Co., 628 E. Wisconsin Ave., Oconomowoc, WI 53066. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 136875 (Sub-169TA), filed March 20, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Road, Boise, ID 83705. Representative: F. L. Sigloh (same address as applicant). *Bakery products,* (except in bulk), from McComb, OH to Buena Park, Union City, Richmond, Oakland, and San Francisco, CA and their respective commercial zones and Milwaukee, OR. Restricted to traffic originated at and destined to named origins and destinations, for 180 days. An underlying ETA seeks 90 day authority. Supporting shipper: Nabisco, Inc., Hanover, NJ 07936. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 136875 (Sub-170TA), filed March 20, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Road, Boise, ID 83705. Representative: F. L. Sigloh (same as above). *Lime,* except in bulk, from Dolomite, UT to Meridian, ID, for 180 days. An underlying ETA seeks 90 day authority. Supporting shipper(s): Wholesalers, Inc., 1300 E. Franklin Road, Meridian, ID 83642. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 136875 (Sub-173TA), filed April 19, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Road, Boise, ID 83705. Representative: F. L. Sigloh (same as above). *Feed, feed ingredients and supplements, except commodities in bulk,* from Denver and Pueblo, CO to points in ID, OR, and WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): North Pacific Trading Co., 1505 S. E. Gideon, Portland, OR 97202. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 136875 (Sub-174TA), filed April 20, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Road, Boise, ID 83705. Representative: F. L. Sigloh (same as above). *Brick and masonry supplies,* from Denver and Boulder, CO to points in Ada and Canyon Counties, ID, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Wholesalers, Inc., 1300 E. Franklin Road, Meridian, ID 83642. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 136875 (Sub-176TA), filed April 20, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Road, Boise, ID 83705. Representative: F. L. Sigloh (same as above). *Such products as are dealt in by wholesale and retail drug discount stores, except drugs and medicines, and except commodities in bulk,* from the facilities of Formac-Valu-Rite, a subsidiary of Foremost-McKesson, Inc., located as Los Angeles, CA to the facilities of Formac-Valu-Rite at Portland, OR and its respective commercial zones, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Formac-Valu-Rite, a subsidiary of Foremost-McKesson, Inc., Crocker Plaza, One Post Street, San Francisco, CA 94104. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 136875 (Sub-177TA), filed April 20, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Road, Boise, ID 83705. Representative: F. L. Sigloh (same as above). *Metal tool boxes and tanks,* from Jonesboro, AR to Yuba City, Sacramento and Fresno, CA; Lamar, CO; Salt lake City, UT; Idaho Falls and Caldwell, ID; and Island City and Ontario, OR, for 180 days. An underlyng ETA seeks 90 day authority. Supporting shipper(s): D & B Supply Co., Inc., 3816 Cleveland Blvd., Caldwell, ID 83605. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 136875 (Sub-178TA), filed May 4, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Road, Boise, ID 83705. Representative: F. L. Sigloh (same as above). *Asphalt in rolls,* from Cody, WY to points in Elmore, Owyhee, Boise, Gem, Ada, Payette, Canyon and Washington Counties, ID and Malheur and Baker Counties, OR, for 180 days. An underlying ETA seeks 90 day authority. Supporting shipper(s): Western

Wholesale & Supply Corp. of Boise, 2717 Fletcher, Boise, ID. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 139555 (Sub-5TA), filed April 23, 1979. Applicant: MODULAR TRANSPORTATION CO., P.O. Box 1822, Grand Rapids, MI 49501. Representative: William D. Parsley, 1200 Bank of Lansing Building, Lansing, MI 48933. *Gypsum, gypsum products, plasterboard joint systems and building materials, and materials, equipment and supplies* used in the manufacture and distribution and installation of gypsum, gypsum products, plasterboard joint systems and building materials, except commodities in bulk in tank vehicles; (1) between the facilities of Grand Rapids Gypsum Co. at or near Grand Rapids, MI on the one hand and on the other, points in IN, IL, OH, KY and (2) between facilities of Grand Rapids System Company at or near Cleveland, OH, on the one hand, and on the other, points in IN, MI and IL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Grand Rapids Gypsum Co., Inc. 201 Monroe Ave., Grand Rapids, MI 49502. Send Protests to: C. R. Flemming, D/S, I.C.C., 225 Federal Building, Lansing, MI 48933.

MC 139555 (Sub-6TA), filed May 4, 1979. Applicant: MODULAR TRANSPORTATION CO., P.O. Box 1822, Grand Rapids, MI 49501. Representative: William D. Parsley, 1200 Bank of Lansing Building, Lansing, MI 48933. *Gypsum and building materials, and materials, equipment, and supplies* used in or incidental to the manufacture, installation and distribution of gypsum and building materials; between the facilities of Georgia-Pacific Corporation-Gypsum Division at or near Chicago, IL and Franklin (Warren County), OH, on the one hand, and on the other, all points in IL (also points in IL) (interstate movement), IN, KY, MI, OH, (also points in Ohio interstate movements) and WI, for 180 days. Supporting shipper(s): Georgia-Pacific Corporation, 1062 Lancaster Avenue, Rosemont, Pa 19010. Send protests to: C. R. Flemming, D/S, I.C.C., 225 Federal Building, MI 48933.

MC 140294 (Sub-4TA), filed March 26, 1979. Applicant: GENERAL FREIGHTS, INC., P.O. Box 1946, Middleburg Pike, Hagerstown, MD 21740. Representative: Edward N. Button, 1329 Pennsylvania Ave., Hagerstown, MD 21740. *Toys, games and accessories for toys and games,* (1) between facilities of CBS Toys, division of CBS, Inc., at or near Harrisburg, Lancaster, Herndon, PA, on the one hand, and, on the other, Baltimore, MD, restricted to the transportation of traffic having a prior or subsequent movement by rail and (2) between the facilities of CBS Toys, at or near Harrisburg, Lancaster, Herndon, PA, on the one hand, and, on the other, facilities of CBS Toys, at or near Hagerstown, MD, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): CBS Toys, Division of CBS, Inc., Longmeedow Rd., Hagerstown, MD 21740. Send protests to: T. M. Esposito, Trans. Asst., 101 S. 7th St., Room 320, Phila., PA 19106.

MC 140635 (Sub-16TA), filed April 23, 1979. Applicant: ADAMS LINES, INC., 2819 N Street, Omaha, NE 68107. Representative: Edward A. O'Donnell, 1004 29th St., Sioux City, IA 51104. *Meats, meat products, meat by-products, and articles distributed by meat packinghouses, as described in Sections A and C of Appendix I to the Report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except hides and commodities in bulk, in tank vehicles,* from the facilities of Palamera Beef Corp., at Omaha, NE to points in CT, DE, DC, FL, GA, IL, IN, IA, ME, MD, MA, MI, MN, NH, NJ, NY, OH, PA, RI, TN, VT, VA, WV, and WI, for 180 days. Restricted to traffic originating at named facility and destined to named states except traffic moving in foreign commerce. Supporting shipper(s): Palamera Beef Corp., 25th & Z Streets, Omaha, NE 68107. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 141604 (Sub-216TA), filed April 17, 1979. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). *Vehicle parts and accessories,* from Los Angeles County, CA to points in the U.S. in and east of MN, IA, MO, AR, and LA. Restricted to traffic originating at the facilities of Cyclone Automotive Products, Inc., for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Cyclone Automotive Products, Inc., 7040 Lankershim Blvd., North Hollywood, CA 91605. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, P.O. Box 1551, Los Angeles, CA 90053.

MC 141604 (Sub-217TA), filed May 8, 1979. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman, P.O. Box 3488, Ontario, CA 91761. *Common:* Irregular: *Vehicle Motor Parts and Accessories,* between points in CA on the one hand, and on the other hand points in and east of TX, KS, OK, NE, SD, and ND. Restricted to traffic originating at or destined to the facilities of CALHAC, INC., for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Calhac, Inc., 12620 Hiddencreek Way, Cerritos, CA 90701. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, P.O. Box 1551, Los Angeles, CA 90053.

MC 141804 (Sub-218TA), filed May 7, 1979. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman, P.O. Box 3488, Ontario, CA 91761. *Common:* Irregular: *Bathroom fixtures and hardware,* from Algoma, WI to points in CA, OR, and WA, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Oliemite Corp., 3941 Via Mondo St., Compton, CA 90221. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, P.O. Box 1551, Los Angeles, CA 90053.

MC 142364 (Sub-3TA), filed May 4, 1979. Applicant: KENNETH SAGELY, d.b.a. SAGELY PRODUCE, 2802 Kibler Road, Van Buren, AR 72956. Representative: Don Garrison, P.O. Box 159, Rogers, AR 72756. *Ground clay* from the facilities of Lowe's Inc., at or near Bloomfield, MO and Olmsted, IL to points in AR, KS, OK and TX, for 180 days as a common carrier over irregular routes. An underlying ETA seeks 90 days authority. Supporting shipper(s): Lowe's Inc., 348 South Columbia Street, South Bend, IN 46601. Send protests to: William H. Land, Jr., DS, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 142715 (Sub-4TA), filed May 8, 1979. Applicant: LENERTZ, INC., P.O. Box 141, South St. Paul, MN 55075. Representative: K. O. Petrick (same address as applicant). *Such commodities as are dealt in by wholesale or retail food business houses and drugstore outlets (except commodities in bulk)* from the facilities utilized by Procter & Gamble Co. at or near Cincinnati, OH to points in CT, DC, MD, MA, NJ, NY, PA and RI, restricted to traffic originating at the facilities utilized by the Procter & Gamble Co. at or near Cincinnati, OH and destined to points in the named states, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The Procter & Gamble Distributing Company, P.O. Box 599, Cincinnati, OH 45201.

Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building, 110 South 4th Street, Minneapolis, MN 55401.

MC 142715 (Sub-46TA), filed April 5, 1979. Applicant: LENERTZ, INC., P.O. Box 141, South St. Paul, MN 55075. Representative: K. O. Petrick (same address as applicant). *Foodstuffs (except commodities in bulk)*, from (1) Beloit, WI to points in MD, MA, NJ, NY, OH, PA and DC; and (2) Owatonna, MN to Foxboro, MA and Teterboro, NJ, restricted to traffic originating at the facilities of Geo. A. Hormel and Co. at named origin and destined to the named points and states, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Geo. A. Hormel & Company, Supervisor—Motor Carrier Services, P.O. Box 800, Austin, MN 55912. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 142715 (Sub-49TA), filed April 9, 1979. Applicant: LENERTZ, INC., P.O. Box 141, South St. Paul, MN 55075. Representative: K. O. Petrick (same address as applicant). *Bakery products (except commodities in bulk)* from Chicago, IL to points in ND, SD, NE, MN, IA, WI, IN, MI, OH, PA and NY, restricted to traffic originating at the facilities of Salerno-Megowen Biscuit Co., Niles, IL and destined to points in the named states, for 180 days. Supporting shipper(s): Salerno-Megoen Biscuit Co., Traffic Manager, 7777 North Caldwell, Chicago, IL 60648. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 142715 (Sub-50TA), filed April 16, 1979. Applicant: LENERTZ, INC., P.O. Box 141, South St. Paul, MN 55075. Representative: K. O. Petrick (same address as applicant). *Foodstuffs (except commodities in bulk)* from the facilities of American Home Foods, Milton, PA to LaPorte, IN and Chicago, IL and points in its commercial zone, restricted to traffic originating at the facilities of American Home Foods, Milton, PA and destined to the named points, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): American Home Foods Division of American Home Products Corporation, 685 Third Avenue, New York, NY 10017. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 143165 (Sub-4TA), filed April 20, 1979. Applicant: CHARLES W. MC CLELLAND, d.b.a. MC CLELLAND LUMBER TRANSPORTS, P.O. Box 73, Cuba, MO 65453. Representative: Charles W. McClelland (address: same as above). *Contract carrier*, irregular routes *Steel tubing and pipe, and materials, equipment and supplies* used or useful in the manufacture and distribution of such commodities (except commodities in bulk and those because of size or weight require the use of special equipment) between the facilities of Maverick Tube Corp. at or near Union, MO on the one hand, and, on the other, AR, IL, IN, IA, KY, KS, LA, MI, MS, NE, NC, OH, PA, TN, TX, OK and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Maverick Tube Corp., P.O. Box 696, Union, MO 63084. Send protests to: P. E. Binder, DS, ICC, Rm. 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 143605 (Sub-5TA), filed May 8, 1979. Applicant: B & M EXPRESS, INC., 500 South Western, Oklahoma City, OK 73106. Representative: C. L. Phillips, Room 248—Classen Terrace Bldg., 1411 N. Classen, Oklahoma City, OK 73106. *Contract carrier:* Irregular routes: (1) *Pulpboard cartons and/or boxes* in LTL and truckload shipments; and (2) *Materials, equipment and supplies* used in the manufacture and distribution of the commodities described in Par. (1) above, (except commodities in bulk and commodities which because of size or weight require the use of special equipment), between Conway and Harrison, AR and Greenville, TX, on the one hand, and, on the other, points in AL, CO, IA, IL, KY, LA, MS, MO, NM, & TN, for 180 days. Note: The service authorized herein is restricted to a transportation service to be performed under a continuing contract(s) with Rock-Tenn Company of Norcross, GA. Supporting shipper(s): Rock-Tenn Company, P.O. Box 547, Conway, AR 72032. Send protests to: D/S, ICC, Room 240 Old Post Office, 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 143775 (Sub-59TA), filed April 13, 1979. Applicant: PAUL YATES, INC., 6601 W. Orangewood, Glendale, AZ 85301. Representative: Michael R. Burke (address same as applicant) (1) Paint, varnish, thinners, solvents and shellacs and (2) materials and supplies used in the application, sale and distribution of (1) above, (1) from Vernon, CA and Baltimore, MD to points in the United States (except AK, HI, Plymouth, MN, Berkeley and Kansas City, MO, Cheektowaga, NY, Middleburgh Hts., OH, and Dallas, TX) and (2) from Compton, CA, Chicago, IL, Atlanta, GA and Linden, NJ and their respective commercial zones to points in the United States (except AK and HI), restricted to traffic originating at the facilities of Dutch Boy, Inc. and against shipments in bulk, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Dutch Boy, Inc., 500 Central Ave., Northfield, IL 60093. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025.

MC 143775 (Sub-60TA), filed April 2, 1979. Applicant: PAUL YATES, INC., 6601 W. Orangewood, Glendale, AZ 85301. Representative: Michael R. Burke (same address as applicant) *General Commodities (except classes A & B explosives, household goods, commodities in bulk and those requiring the use of special equipment)*, (1) from Philadelphia, PA to CA, IL and TX and (2) from Chicago, IL to Philadelphia, PA, restricted to traffic moving for the account of Cooperative Shippers Association, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Cooperative Shipper Association, 4252 Rising Sun Ave., Philadelphia, PA 19140. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025.

MC 143775 (Sub-91TA), filed April 2, 1979. Applicant: PAUL YATES, INC., 6601 W. Orangewood, Glendale, AZ 85301. Representative: Michael R. Burke (same address as applicant) *Pesticides, including insecticides, fungicides and weed killing compounds (except in bulk)*, from Kansas City, MO and its commercial zone, to points in AZ, CA, CO, ID, MT, NM, OR, NV, UT, WA and WY in temperature controlled equipment, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Mobay Chemical Corporation, P.O. Box 4913, Hawthorne Rd., Kansas City, MO. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025.

MC 143775 (Sub-92TA), filed April 16, 1979. Applicant: PAUL YATES, INC., 6601 W. Orangewood, Glendale, AZ 85301. Representative: Michael R. Burke, address same as Applicant. *General commodities, restricted to traffic moving for the account of Northeastern PA Shippers Cooperative Association, Inc.*, from points in Broome and Chemung Counties, NY and Lackawanna, Lehigh Luzerne, Northampton and Wayne Counties, PA to points in IL, MO, TX, CA, WA, OR, CO, MN, WI, GA, FL, MI and NE, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s):

Northeastern PA Shippers Cooperative Association, Inc., Suite 300, PA Park Bldg., Pittston, PA 18640. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025.

MC 144275 (Sub-2TA), filed May 7, 1979. Applicant: JK EXPRESS, INC., P.O. Box 2508, Trenton, N.J. 08690. Representative: Mel P. Booker, Jr., Esq., 110 South Columbus Street, Alexandria, Virginia 22314. *Contract carrier:* irregular routes: *Sealers,* moving in shipper-owned trailers, from the facilities of Cosmicoat, Inc. located at or near Ewing Township, NJ to Marysville, PA; Fredericksburg, VA; Beltsville, MD; Statesville, NC; and points in their respective commercial zones. Restricted to traffic moving under a continuing contract(s) with Cosmicoat, Inc. of Wooster, OH, for 180 days. An underlying ETA seeks 90 day authority. Supporting Shipper(s): Cosmicoat, Inc., 100 Lexington Avenue, Trenton, N.J. 08618. Send protests to: District Supervisor, ICC, 428 East State Street, Room 204, Trenton, N.J. 08608.

MC 144604 (Sub-1TA), filed April 18, 1979. Applicant: J & R AUTO TRANSPORT, INC., P.O. Box 27, Summersville, MO 65571. Representative: Tom B. Kretsinger & Kretsinger & Kretsinger, 20 East Franklin, Liberty, MO 64068. *Boats,* from Springfield, MO to points and places in the United States, for 180 days. Supporting Shipper(s): J. L. M. Industries, Inc., 2855 W. College Rd., Springfield, MO 65802. Send protests to: John V. Barry, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 144605 (Sub-6TA), filed May 7, 1979. Applicant: HOPPY LINES, INC., 420 Devonshire Drive, Brea, CA 92521. Representative: Miles L. Kavaller, Mandel & Kavaller, 315 South Beverly Drive, Suite 315, Beverly Hills, CA 90212. *Fire extinguishers and materials and supplies used in the manufacture of* fire extinguisher, except in bulk, originating at the facilities of Amerex Corporation at Trussville, AL, to Los Angeles County, CA and Seattle, WA and from Riverside and Los Angeles Counties CA to the facilities of Amerex Corporation, located in Trussville, AL., for 180 days. Supporting Shipper(s): Amerex Corporation, P.O. Box 81, Trussville, AL 35173. Send protests to: Irene Carlos, P.O. Box 1551, Los Angeles, California 90053.

MC 144605 (Sub-7TA), filed April 27, 1979. Applicant: HOPPY LINES, INC., 420 Devonshire Drive, Brea, CA 92521. Representative: Miles L. Kavaller, Mandel & Kavaller, Attorney-at-Law, 315 South Beverly Drive, Suite 315, Beverly Hills, CA 90212. *Common:* Irregular: *Electric motors and parts,* from the facilities of Westinghouse Electric Corporation located at or near Lima, Bellfontaine, Upper Sandusky, and West Carrollton, OH and Union City, Indiana to points in AZ and CA, for 180 days. Supporting Shipper(s): Westinghouse Electric Corporation, 290 Ledger Road, No. Huntington, PA 15642. Send protests to: Irene Carlos, TA, ICC, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, California 90012.

MC 145195 (Sub-3TA), filed May 8, 1979. Applicant: DEEJAY TRANSPORTATION, INC., P.O. Box 651, Horace, ND 58047. Representative: Charles E. Johnson, P.O. Box 1982, Bismarck, ND 58501. *Non-alcoholic beverages,* from Minneapolis, MN and its commercial zone to points in ND (except Grand Forks and Fargo), for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Shasta, 3530 East 28th Street, Minneapolis, MN 55406. Gold Medal Beverage Company, A Division of Beatrice Foods, 553 N. Fairview Avenue, St. Paul, MN 55104. Send protests to: DS, ICC, Bureau of Operations, Room 268 Federal Bldg. & U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

MC 145025 (Sub-4TA), filed April 23, 1979. Applicant: CONSIGNOR'S INC., P.O. Box 42, Centerville, OH 45459. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215. *Contract carrier:* irregular routes: *Truck, trailer, mobile home and recreational vehicle parts and accessories, and materials, equipment and supplies used in the manufacture and distribution thereof (except commodities in bulk and commodities which, because of size or weight, require the use of special equipment),* between the facilities of Dayton Walther Corporation and its Divisions located at Cincinnati, Dayton, Fayette, Moraine and Portsmouth, OH; Carrollton and Franklin, KY; Muncie and Richmond, IN; Americus, GA; Union City, TN; and Commerce, TX, including points in their respective commercial zones, on the one hand, and, on the other, points in the states of GA, IN, IL, KY, LA, MD, MI, NY, OH, PA, TN, and TX, for 180 days. Restricted to service performed under contract or continuing contracts with Dayton Walther Corporation of Dayton, OH. An underlying ETA seeks 90 days authority. Supporting shipper: Dayton Walther Corporation, Myna Burba, Shipping & Receiving Supervisor, 2800 East River Rd., Dayton, OH 45401. Send protests to: Bureau of Operations, ICC, 600 Arch St., Room 3238, Philadelphia, PA 19106.

MC 145294 (Sub-2TA), filed April 27, 1979. Applicant: JAMES T. BARTLETT AND CHARLES C. BROWN, A PARTNERSHIP, d/b/a CHASE AND THOMAS TRUCKING CO., Rt. 50, P.O. Drawer 510, Bridgeport, WV 26330. Representative: John M. Friedman, 2930 Putnam ave., Hurricane, WV 25526. *Silica sand,* in bulk, in dump vehicles, from points in Frederick County, VA, to points in MD, PA, WV and Kingsport and Nashville, TN, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Unimin Corporation, No. 4 Greenwich Office Park, Greenwich, CT 06830. Send protests to: J. A. Niggemyer, DS, 416 Old P.O. Building, Wheeling, WV 26003.

MC 145435 (Sub-4TA), filed April 19, 1979. Applicant: WESTERN AG INDUSTRIES, INC., 2750 North Parkway, Fresno, CA 93771. Representative: Roland J. Mefford, 2750 North Parkway, Fresno, CA 93771. Contract carrier; irregular routes. *Carpet, carpet padding, and congoleum resilient,* from points in GA and NJ on one hand, and points in AZ, CA, OR, and NV, on the other hand, for 180 days. Supporting shipper: La Salle Deitch Co., 1231 Warner Ave., Tustin, CA 92680. Send protests to: District Supervisor, 211 Main, Suite 500, San Francisco, CA 94105.

MC 145475 (Sub-1TA), filed April 4, 1979. Applicant: FRONTIER LEASING, INC., Route 7, Box 173, Joplin, Missouri 64801. Representative: Turner White or Bruce McCurry, 910 Plaza Towers, Springfield, Missouri 65804. Aluminum; aluminum ingots and sows; aluminum billets and dross; scrap metals; iron sand, shot; ferro alloys; foundry facings; fire brick or high temp bonding mortar; power house slag; and coke, between points in AL, AR, IL, IN, KS, MI, MO, OH, WV, and WI on the one hand and points in AL, AR, IL, IN, IA, KS, LA, MI, MO, NE, OH, TN, TX, WV and WI on the other, for 180 days. An underlying ETA seeks 90 days authority. Restriction: Restricted to shipments under continuing contract or contracts with Tower Metals and Ore Products, Division of Tang Industries of Ft. Scott, KS; Wade's Aluminum Products, Inc. of Ft. Scott, KS; Central Non Ferrous, Inc. of Joplin, MO; Wells Aluminum, Inc. of Monett, MO; and Midvale Mining and Manufacturing Company of Tulsa, OK. Supporting Shipper(s): (1) Tower Meta's and Ore, Division of Tang Industries, 301 N. Hill, Ft. Scott, KS. (2) Midvale Mining & Mfg. Co., 11304 E. Tecumseh Street, Tulsa, OK 74116. (3) Wells

Aluminum, Inc., 808 County Road, Monett, MO 65708. (4) Wade's Alu. Products, Inc., Route 2, P.O. Box 762, Fort Scott, KS. (5) Central NonFerrous, Twelfth and Iowa, Joplin, MO 64801. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, Missouri 64106.

MC 145595 (Sub-5TA) filed April 2, 1979. Applicant: WARREN G. GORMLEY, d.b.a. GROMLEY TRUCKING, 1607 W. Swan, Springfield, Missouri 65807. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, Iowa 50309. *Charcoal, charcoal briquets, fireplace logs, wood chips, lighter fluid and all related products* (except liquid commodities in bulk), from Meta, MO to points in AZ, CA, CO, FL, GA, KS, MS, NM, OK, OH, SD, TX, UT, WA and NE for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Standard Milling Company, P.O. Box 410, Kansas City, MO 64141. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 145665 (Sub-4TA), filed May 1, 1979. Applicant: TYSON FOODS, INC., 2210 Oaklawn, P.O. Drawer E, Springdale, AR 72764. Representative: Michael H. Mashburn, 111 Holcomb, P.O. Box 908, Springdale, AR 72764. *General commodities*, except these of unusual value, dangerous explosives, household goods as defined in the Practices of Motor Carriers of Household Goods 17 MCC 467, commodities in bulk, commodities requiring special equipment and those injurious to or contaminating to other lading, from points in MO, RI, IN, LA, CT and NH to Bentonville, Searcy and Fort Smith, AR, for 180 days as a contract carrier over irregular routes. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Wal-Mart Stores, Inc., P.O. Box 116, Bentonville, AR 72712. Send protests to: William H. Land, Jr., DS, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 145685 (Sub-2TA), filed March 12, 1979. Applicant: MAC EWAN MOTOR LINES, Inc., P. O. B. 858, West Chester, PA 19380. Representative: Dean N. Wolfe, Suite 145, 4 Professional Dr., Gaithersburg, MD 20760. Contract, irregular routes, *Such commodities as are dealt in by wholesale, retail, and chain grocery and food business houses* (except commodities in bulk and frozen commodities), from the facilities of the Clorox Co. at Chicago, IL to the facilities of the Clorox Co. at Jersey City, NJ, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): The Clorox Co., 125 Statue of Liberty Dr., Jersey City, NJ 07086. Send protests to: T. M. Esposito, Trans. Asst., 600 Arch St., Room 3238, Phila., PA 19106.

MC 145755 (Sub-2TA), filed March 26, 1979. Applicant: D & L CARTAGE, INC., P.O. Box 170, 1805 Bernice Road, Lansing, IL 60438. Representative: James Robert Evans, 145 West Wisconsin Avenue, Neenah, WI 54956. *Iron and steel articles*, from the facilities of Jones & Laughlin Steel Corporation at Chicago, IL and its commercial zone, to Davenport, IA and its commercial zone, and to points on and North of US Hwy 36 from IN state line to Decatur, IL and then route US Hwy 48 to US Hwy 29 to US Hwy 36 to IA state line, for 180 days. An underlying ETA was granted for 90 days authority. Supporting Shipper(s): Jones & Laughlin Steel Corporation, 3001 Dickey Road, East Chicago, IN 46312. Send protests to: Annie Booker, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 145765 (Sub-1TA), filed April 3, 1979. Applicant: WIEST TRUCKLINE, INC., 1305 6th Avenue SW., Jamestown, ND 58401. Representative: Charles E. Johnson, 418 East Rosser Avenue, P.O. Box 1982, Bismarck, ND 58501. *Iron and steel articles*, from the facilities of United States Steel Corporation at or near Gary, IN, South Chicago, Joliet and Waukegan, IL to points in MN, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): United States Steel Corporation, 1000 East 80th Place, Merrillville, IN 46410. Send protests to: DS, ICC, Bureau of Operations, Room 268 Fed. Bldg. & U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

MC 145965 (Sub-2TA), filed May 2, 1979. Applicant: TOMORROW TRANSPORTS, INC., 1257 Central Ave., Hamilton, OH 45011. Representative: Jerry B. Sellman, Muldoon, Pemberton and Ferris, 50 W. Broad St., Columbus, OH 43215. *Plastic film or sheeting*, (1) from Augusta, KY, to Los Angeles, CA; Greenwood, SC; Dallas, El Paso, Houston, San Antonio and Waco, TX; and Douglas, AZ; (2) from Fresno, CA, to El Paso, TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Clopay Corporation, Plastic Products Division, William R. Sonnycalf, Distribution Manager, 801B West 8th St., Cincinnati, OH 45203. Send protests to: Bureau of Operations, ICC, Wm. J. Green, Jr., Federal Bldg., 600 Arch St., Room 3238, Philadelphia, PA 19106.

MC 146035 (Sub-5TA), filed April 18, 1979. Applicant: McGEE-BALLENGER TRUCKING CO., INC., P.O. Box 851, Mauldin, SC 29662. Representative: Edwin M. Synder, Sullivan and Leavitt, P.C., P.O. Box 400, Northville, MI 48167. *Contract carrier; irregular routes: Carpets, carpeting, carpet remnants, or rugs, and soft surface fabrics*, from the facilities of Dan River Mills, Inc., located at or near Greenville, SC, to points in TX, AZ, CA, WA, NV, UT, CO, and OR, for the account of Dan River Mills, Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Dan River Mills, Inc., P.O. Box 187, Greenville, SC 29602. Send protests to: E. E. Strotheid, D/S, ICC, Rm. 302, 1400 Bldg., 1400 Pickens Street, Columbia, SC 29201.

MC 146135 (Sub-1TA), filed April 10, 1979. Applicant: HRIBAR BROS., INC., 1571 Waukesha Road, Caledonia, WI 53108. Representative: Lee R. Hribar (same address as applicant). *Sand, gravel, stone, crushed stone, limestone, agricultural lime, slag, and dirt*, between Milwaukee, Waukesha, Racine, and Kenosha Counties, WI on the one hand, and, on other Lake, McHenry and Cook Counties, IL and Lake County, IN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Vulcan Materials Corporation, 1501 3-Mile Rd., Racine, WI. Send protests to: G. Daugherty, TA, ICC, Federal Bldg., 517 E. Wisconsin Ave. Rm. 619, Milwaukee, WI 53202.

MC 146235 (Sub-1TA), filed February 5, 1979. Applicant: J. H. SIMS TRUCKING COMPANY, INC., 505 South Palmetto Avenue, Ontario, California 91761. Representative: Richard C. Celio, 1415 West Garvey Avenue, West Covina, CA 91790. *Citrus products*, between Ontario and Corona, CA, on the one hand, and, on the other, Long Beach and Los Angeles, CA Harbors, having a prior or subsequent movement by water, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Sunkist Growers, 616 East Sunkist Street, Ontario, CA 91761. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, California 90012.

MC 146435 (Sub-1TA), filed April 5, 1979. Applicant: SMITH TRUCK BROKERAGE, INC., P.O. Box 974, Willmar, MN 56201. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. *Candy, confectionery and dessert preparations* from Chicago, IL to Minneapolis, MN,

Billings, MT, Spokane and Seattle, WA, Portland, OR, and Salt Lake City, UT, and their respective commercial zones, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Leaf Confectionery, Inc., Distribution Manager, 1155 North Cicero Avenue, Chicago, IL 60651. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 146565 (Sub-1TA), filed May 8, 1979. Applicant: WESTERN SALES TRANSPORTATION, INC., 1810 N. 11th St., Omaha, NE 68110. Representative: James F. Crosby, P.O. Box 37205, Omaha, NE 68137. *Aluminum foil food containers,* from the facilities of Wilkinson Manufacturing Co., at Ft. Calhoun, NE to Deerfield, IL; LaPorte and Lafayette, IN; and Chicago, IL and points in its commercial zone, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wilkinson Manufacturing Co., Ft. Calhoun, NE 68023. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 146585 (Sub-1TA), filed April 17, 1979. Applicant: DOUBLE DD TRUCK LINE, INC., 8860 S. Lone Elder Road, Canby, OR 97013. Representative: Jerry R. Woods, Suite 1440—200 Market Building, Portland, OR 97201. *Lumber and lumber mill products* from points in Baker, Crook, Deschutes, Harney, Jefferson, Klamath, Lake, Union, and Wasco Counties, OR to points in Adams, Arapahoe, Denver and Jefferson Counties, CO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Deschutes Pine Sales, Inc., P.O. Box 1243, Bend, OR 97701. Send protests to: A. E. Odoms, District Supervisor, ICC, 114 Pioneer Courthouse, 555 S W. Yamhill Street, Portland, OR 97204.

MC 146575 (Sub-1TA), filed March 12, 1979. Applicant: GARY PARISH, d.b.a., G & C FREIGHT SERVICE, 647 SW 143rd, Seattle, WA 98166. Representative: Gary Parish, 647 SW 143rd, Seattle, WA 98166. *Contract carrier:* irregular routes: *Material equipment and supplies used in the manufacturing, distribution, installation and maintenance of framing and structural roof systems,* between points in WA, OR, CA, ID, MT, NV and UT, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Victor Construction, Inc., 13319 S. E. 160th Place, Renton, WA 98055. Send protests to: Shirley M. Holmes, T/A ICC, 858 Federal Bldg., 915 Second Avenue, Seattle, WA 98174.

MC 146645 (Sub-1TA), filed April 10, 1979. Applicant: ELWYN NICE TRUCKING, INC., Route 1, Morrison, IL 61270. Representative: Albert A. Andrin, 180 North LaSalle St., Chicago, IL 60601. *Anhydrous ammonia,* in bulk, in tank vehicles, from points in IA to Whiteside County, IL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Farmers Elevator & Supply Co., E. Market St., Morrison, IL. Send protests to: Annie Booker, TA, ICC, 1386 Everett Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 146685 (Sub-1TA), filed April 3, 1979. Applicant: TRANSPORT ROBERT RICHER INC., P.O. Box 351, Valleyfield, PQ, Canada. Representative: J.A.R. Bouffard, 30 Lakeshore Road, Suite 1012, Pointe-Claire, PQ, Canada H9S 4H2. *Automobiles, trucks and busses and parts and accessories therefor, in specially designed car carrier equipment,* between the ports of entry on the International Boundary Line between the United States and Canada, on the one hand, and, on the other, points in MA, NY and VT. Restricted to traffic having a prior or subsequent movement in the Province of Quebec, for 180 days. An underlying ETA seeks 90 days. Supporting shipper(s): Orly Automobiles Inc., Lachine, PQ, Canada; Norbert Automobile Ltee, Lachine, PQ, Canada; Lallier Automobile Inc., Montreal, PQ, Canada. Send protests to: ICC, P.O. Box 548, Montpelier, VT 05602.

MC 146805 (Sub-2TA), filed April 16, 1979. Applicant: J. R. PORTER, INC., Rt. 5, Box 589, South Point, OH 45680. Representative: R. William Berry, 406 2nd Ave., Chesapeake, OH 45619. *Contract carrier*—irregular routes: *Cement, hydraulic, masonry, natural or portland, in bags,* from Huntington, WV to all points in OH and KY, under a contract with Louisville Cement Company, Louisville, KY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Louisville Cement Company, P.O. Box 35750, Louisville, KY 40232. Send protests to: J. A. Niggemyer, DS, 416 Old P.O. Bldg., Wheeling, WV 26003.

MC 146814 (Sub-1TA), filed May 7, 1979. Applicant: VAN WYK, INC., C Street, Box 433, Sheldon, IA 51201. Representative: Edward A. O'Donnell, 1004 29th St., Sioux City, IA 51104. *Meat, meat products, meat by-products, and articles distributed by meat packinghouses, as described in Sections A & C of Appendix I to the Report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766, except hides and commodities in bulk, in tank vehicles,* from the facilities of Spencer Foods, Inc., at Fort Dodge and Spencer, IA to points in IL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Spencer Foods, Inc., P.O. Box 544, Schuyler, NE 68661. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 146864 (Sub-1TA), filed April 24, 1979. Applicant: DON BRISSON, P.O. Box 23142, Tigard, OR 97223. Representative: Philip G. Skofstad, 1300 N.E. Linden, Gresham, OR 97030. (1) Green veneer from Brookings and Roseburg, OR to Arcata, CA. (2) Dry veneer from Arcata, CA to Roseburg, Grants Pass, Brookings, and Gold Beach, OR. (3) Plywood from Arcata, CA to Reno, NV, Denver, CO, and Albuquerque, NM. And, from Brookings and Gold Beach, OR to Arcata, CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Four Point Recovery Corporation, 10100 SW Walnut, Tigard, OR 97223. Send protests to: A. E. Odoms, DS, ICC, 114 Pioneer Courthouse, Portland, OR 97204.

MC 147014 (Sub-1TA), filed May 8, 1979. Applicant: TOM DONAHUE TRUCKING, INC., 3463 W. St. Paul Ave., Milwaukee, WI 53233. Representative: Roger S. Bessey, 740 N. Plankinton Ave., Milwaukee, WI 53203. *General commodities* (except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), restricted to shipments transported for Westransco, Inc. (FF-52), from Milwaukee, WI and its Commercial Zone to Chicago, IL and its Commercial Zone, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Westransco, Inc., 3633 W. 38th St., Chicago, IL 60632. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Room 619, Milwaukee, WI 53202.

MC 147044 (Sub-1TA), filed May 4, 1979. Applicant: SOUTHWEST TRAILS, INC., 18925 Anelo Street, Carson, CA 90725. Representative: R. Y. Schureman, Attorney-at-Law, 1545 Wilshire Blvd., Los Angeles, CA 90017. *Blended gasoline, distillate fuel oil and jet fuels, from points in Los Angeles and Kern Counties, California, to points in Arizona, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Gustafson Oil Company of California, 1888 Century Park East, Century City, CA 90067. Send protests to: Irene Carlos, P.O. Box 1551, Los Angeles, CA 90053.*

MC 147144 (Sub-1TA), filed May 8, 1979. Applicant: INTERNATIONAL

CARRIERS, INC., 4300 NW. 37th Ave., Miami, FL 33142. Representative: Ronald N. Cobert, Suite 501, 1730 M St. NW., Washington, D.C. 20036. *General commodities* (except those of unusual value, classes A & B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) from the facilities utilized by Piggy Back Shippers Association of Florida, Inc., at or near Jersey City, NJ, Chicago, IL, and Boston, MA to the facilities utilized by Piggy Back Shippers Association of Florida, Inc. at or near Jacksonville, Orlando, Miami and Tampa, FL, restricted to movements on the bills of lading of shippers' associations for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Piggy Back Shippers Assn. of FL, Inc., 1240 S.E. 10th Ct., P.O. Box 1390, Hialeah, FL 33010. Send protests to: Donna M. Jones, T/A, ICC, Suite 101, 8410 N.W. 53rd Terr., Miami, FL 33166.

MC 147184 (Sub-1TA), filed May 7, 1979. Applicant: GOLD CHIP, INC., 14 James Thomas Rd., Malvern, PA 19355. Representative: James Law (same address as applicant:). *Passengers and their baggage, limited to the transportation of not more than 11 passengers in any one vehicle, not including the driver thereof, and not including children under 10 years of age who do not occupy a separate seat of seats,* between Montgomery County, Chester County, Bucks County, PA on the one hand, and on the other, Atlantic County, NJ for 180 days. Supporting shipper(s): There are 5 statements in support attached to this application which may be examined at the I.C.C. in Washington, D.C. or copies of which may be examined in the field office named below. Send protests to: ICC, Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 115322 (Sub-176TA), filed March 26, 1979, and published in Federal Register issue of May 15, 1979, and republished as corrected this issue. Applicant: REDWING REFRIGERATED, INC., 8515 Palm River Road, P.O. Box 420, Tampa, FL 33601. Representative: L. W. Fincher, (same address as applicant). Petroleum and petroleum products, in packages and in bulk, from Bradford, PA to VA, NC, SC, GA, FL, AL, MS, LA, and TN for 180 days. The purpose of this republication is to correct MC number. Supporting Shipper(s): Witco Chemical Corporation, 77 N. Kendall Avenue, Bradford, PA 16701. Send protests to: Donna M. Jones, TA, Interstate Commerce Commission, Monterey Building, Suite 101, 8410 N.W. 53rd Terrace, Miami, FL 33166.

By the Commission.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-17707 Filed 6-6-79; 8:45 am]

BILLING CODE 7035-01-M

May 29, 1979.

[Notice No. 89]

Motor Carrier Temporary Authority Applications

May 29, 1979.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

MC 1824 (Sub-91TA), filed May 18, 1979. Applicant: PRESTON TRUCKING COMPANY, INC., 151 Easton Blvd., Preston, MD 21655. Representative: Charles S. Perry (same as above). *Bananas,* from Baltimore, MD to Indianapolis, IN, for 90 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Peter Comtabad, Chiquita Brands, Inc., 15 Marcedes Dr., Montvale, NJ 07645. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore, MD 21201.

MC 4194 (Sub-1TA), filed April 20, 1979. Applicant: GILBERT STORAGE & TRANSFER CORPORATION, 2301 Greene Street, Lynchburg, VA 24506. Representative: Elizabeth A. Purcell, 666 Eleventh Street NW., Suite 805, Washington, D.C. 20001. *Household goods* as defined by the Commission, between points in NC and VA on the one hand, and, on the other, points in AL, GA, FL and SC for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ivory Forwarding, Inc., West Palm Beach, FL 33407; Ocean Air International, Inc., R.D. #1, Bargettstown, PA 15021; Swift International, Inc., 7901 Fourth Street North, Suite 207 St. Petersburg, FL 33734; Wiley & Wilson, Inc., P.O. Box 877, Lynchburg, VA 24505; National Forwarding Co., Inc., 2800 Roosevelt Road, Broadview, IL 60153. Send protests to: Charles F. Myers, DS, ICC, Room 10-502 Federal Bldg., 400 North 8th St., Richmond, VA 23240.

MC 6544 (Sub-34 TA), filed May 15, 1979. Applicant: GALVESTON TRUCK LINE CORPORATION, 7415 Wingate, Houston, TX 77011. Representative: Joe G. Fender, 711 Louisiana, Suite 1150, Houston, TX 77002. Common carrier over irregular routes. *Petroleum and petroleum products,* in containers; advertising matter and commodities used or distributed by retail or wholesale marketers or distributors of petroleum products from Ponca City, OK to points in TX on and east of a line extending from the Oklahoma-Texas state line along U.S. Highway 83 to the junction of U.S. Highway 277, thence along Highway 277 to the U.S.-Mexico boundary at or near Del Rio, TX for 180 days. Supporting shipper(s): Continental Oil Company, 5 Greenway Plaza E., Houston, TX 77046. Send protests to: John F. Mensing, District Supervisor, Interstate Commerce Commission, 515 Rusk Ave. No. 8610, Houston, TX 77002.

MC 24784 (Sub-27 TA), filed May 14, 1979. Applicant: BARRY, INC., 403 South Water, Olathe, Kansas 66061. Representative: Arthur J. Cerra, 2100 TenMain Center, P.O. Box 19251, Kansas City, MO 64141. *Iron and Steel Articles,* from the facilities of Roll Steel Corp. at Skokie, IL to points in AR, CO, IA, KS, LA, NE, OK and TX, for 180 days. An

underlying ETA seeks 90 days authority. Supporting shipper(s): Roll Steel Corp., 6101 Oakton St., Skokie, IL 60077. Send protests to: John V. Barry, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 56244 (Sub-82 TA), filed April 25, 1979. Applicant: KUHN TRANSPORTATION COMPANY, INC., P.O. Box 98, R.D. No. 2, Gardners, PA 17324. Representative: John M. Musselman, P.O. Box 1146, 410 N. Third St., Harrisburg, PA 17108. *Grain and soybean products, and foodstuffs* (except commodities in bulk), from the facilities of Archer Daniels Midland Company at Decatur, IL and points in its commercial zone, to points in DC, MD, NJ, NY and PA, restricted to shipments originating at the indicated origins and destined to the indicated destinations for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Archer Daniels Midland Company, P.O. Box 1470, Decatur, IL 62525. Send protests to: ICC, Federal Reserve Bank Bldg., 101 N. 7th St., Room 620, Phila., PA 19106.

MC 73134 (Sub-4 TA), filed April 30, 1979. Applicant: SUPREME EXPRESS & TRANSFER CO., 3311 Chouteau, St. Louis, MO 63103. Representative: Ernest A. Brooks II, 1301 Ambassador Bldg., St. Louis, MO 63101. Contract irregular: *Copper, copper products, insulated tubing, and commodities used in the manufacture and distribution* of the foregoing commodities (except commodities in bulk), between the facilities of Cerro Copper Products Company at Sauget, IL on the one hand, and, on the other, points in KS, TX, OK, GA, TN, AR, KY, MO, IA, PA, AL, IN, IL, OH, WI, MI and MN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Cerro Copper Products Company, P.O. Box 681, East St. Louis, IL, 62202. Send protests to: P. E. Binder, OC, ICC, Rm. 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 104104 (Sub-17TA), filed April 30, 1979. Applicant: GEORGE A. FETZER, INC., Newton-Sussex Road, Augusta, NJ 07822. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Printing paper.* From Pulaski, NY to points in CT, NJ, and points in PA East of the Susquehanna River. For 180 days. Supporting shipper(s): Schoeller Technical Paper Sales, Inc., P.O. Box 250, Pulaski, NY 13142. Send protests to: Joel Morrows, D/S, ICC, 9 Clinton St., Rm 618, Newark, NJ 07102.

MC 104104 (Sub-18TA), filed May 10, 1979. Applicant: GEORGE A. FETZER, INC., Newton-Sussex Road, Augusta, NJ 07822. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. Insulating materials and plastics, and on return materials and supplies used in connection therewith except in bulk from Netcong and Stanhope, NJ to points in the US east of the Mississippi River, except CT, DE, DC, KY, ME, MD, MA, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, & WV, for 180 days. Supporting shipper(s): United States Mineral Products Company, Stanhope, NJ 07874. Send protests to: Joel Morrows, D/S, ICC, 744 Broad St., Rm 522, Newark, NJ 07102.

MC 106074 (Sub-106TA), filed May 7, 1979. Applicant: B & P MOTOR LINES, INC., Shiloh Rd and US Highway 221 South, Forest City, NC 28043. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30342. *Foodstuffs (except in bulk)* from Milwaukee, WI to the facilities utilized by Carnation Company at Chattanooga, TN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Carnation Company, 5045 Wilshire Blvd., Los Angeles, CA 90036. Send protests to: District Supervisor Terrell Price, 800 Briar Creek Rd, Rm CC516, Mart Office Building, Charlotte, NC 28205.

MC 106074 (Sub-109TA), filed May 7, 1979. Applicant: B & P MOTOR LINES, INC., Shiloh Rd and US Highway 221 South, Forest City, NC 28043. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. *Metal containers, metal container closures, metal container ends, and metal container accessories* from the facilities of Carnation Company at Mansfield, TX to Chattanooga, TN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Carnation Company, 5045 Wilshire Blvd., Los Angeles, CA 90036. Send protests to: District Supervisor Terrell Price, 800 Briar Creek Rd, Rm CC516, Mart Office Building, Charlotte, NC 28205.

MC 106074 (Sub-110TA), filed May 15, 1979. Applicant: B AND P MOTOR LINES, INC., Shiloh Road and US Highway 221 South, Forest City, NC 28043. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. *Animal feed, canned and dry,* from Jefferson, WI to Chattanooga, TN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Carnation Company, 5045 Wilshire Blvd., Los Angeles, CA 90036. Send protests to: District Supervisor Terrell Price, 800 Briar Creek Rd., Rm. CC516, Mart Office Building, Charlotte, NC 28205.

MC 107515 (Sub-1236TA), filed April 18, 1979. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, Fifth Floor, Lenox Towers South, 3390 Peachtree Road, N.E., Atlanta, GA 30326. *Lighting fixtures and/or parts thereof* from the facilities of Lithonia Lighting, Div. of National Service Industries, Inc., at or near Cochran and Conyers, GA to points in AZ, CA, CO, CT, DE, ID, IN, KY, MD, MA, ME, MI, MT, NV, NH, NJ, NM, OH, OR, PA, RI, UT, VA, VT, WA, WV, WY and DC for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Lithonia Lighting, Division of National Service Industries, Inc., Conyers, GA 30207. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

MC 107515 (Sub-1239TA), filed May 1, 1979. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby and Richard M. Tettelbaum, Fifth Floor, Lenox Towers South, 3390 Peachtree Road, N.E., Atlanta, GA 30326. *Chain saws, snow throwers and garden, lawn turf and golf course care equipment* from facilities of The Toro Company in Minneapolis-St. Paul, MN and points in their respective commercial zones to points in AL, AR, FL, GA, KY, LA, MS, NC, SC and TN for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The Toro Company, 8111 Lyndale Avenue S., Minneapolis, MN 55420. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

MC 107515 (Sub-1237TA), filed April 12, 1979. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby and Richard M. Tettelbaum, Fifth Floor, Lenox Towers South, 3390 Peachtree Road, N.E., Atlanta, GA 30326. *Coffee and coffee products (except commodities in bulk),* from the facilities of The Folger Coffee Company, a subsidiary of The Procter & Gamble Company, New Orleans, LA, to points in FL for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The Proctor & Gamble Distributing Company, P.O. Box 599, Cincinnati, OH 45201. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

MC 109604 (Sub-1TA), filed May 18, 1979. Applicant: BILLIE ORTON TRUCKING, Route 3, Memphis, MO 63555. Representative: Frank W. Taylor, Jr., Suite 600, 1221 Baltimore Ave., Kansas City, MO 64105. Contract

irregular: *Beer and containers*, between Grinnell, IA, on the one hand, and, on the other, Columbus, OH; Kansas City, MO–KS and its Commercial Zone; and East St. Louis, IL. For 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Grinnell Beverage Company, Inc., Grinnell, IA. Send protests to: Vernon V. Coble, DS, ICC, 600 Federal Off. Bldg., 911 Walnut Street, Kansas City, MO 64106.

MC 113764 (Sub-65TA), filed May 7, 1979. Applicant: LAIDLAW TRANSPORT LIMITED, 65 Guise Street, Hamilton, Ontario L8L 4M1. Representative: Douglas R. Gowland, (address same as above). *Ferronickel*, between points in PA, OH, MI and NY and ports of entry on the International Boundary between the United States and Canada located at MI and NY, for 180 days. Supporting shipper: Falconbridge Nickel Mines Limited, P.O. Box 40, Commerce Court West, Toronto, Ontario. Send protests to: R. H. Cattadoris, DS, ICC, 910 Federal Bldg., 111 W. Huron St., Buffalo, NY 14202. NOTE: Applicant does intend to tack this authority with authority it presently holds in MC–113764.

MC 114604 (Sub-73TA), filed May 10, 1979. Applicant: CAUDELL TRANSPORT, INC., P.O. Drawer I, Forest Park, GA 30050. Representative: Frank D. Hall, Suite 713, 3384 Peachtree Rd., N.E., Atlanta, GA 30326. *Frozen foods* from Memphis and Tossville, TN to points in AL, NC, SC, GA, LA, KY, VA and WV for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Mid-South Refrigerated Warehouse Co., 1100 E. Parkway S., Memphis, TN 38114. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., NW., Rm. 300, Atlanta, GA 30309.

MC 115654 (Sub-144TA), filed May 1, 1979. Applicant: TENNESSEE CARTAGE CO., INC., P.O. Box 23193, Nashville, TN 37202. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 Thirteenth St. N.W., Washington, DC 20004. *Heating and air conditioning equipment and parts and accessories for heating and air conditioning equipment (except commodities, the transportation of which because of size and weight require the use of special equipment and commodities in bulk, in tank vehicles)* from Davidson County, TN, to points in IL, IN, KY, MO, OH, that part of MI on and south of Michigan Hwy 10, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Heil Quaker Corporation, 1714 Heil Quaker Blvd., LaVergne, TN 37086. Send protests to: Glenda Kuss, TA, ICC, Suite A–422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 115654 (Sub-145TA), filed May 4, 1979. Applicant: TENNESSEE CARTAGE CO., INC., P.O. Box 23193, Nashville, TN 37202. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 Thirteenth St. N.W., Washington, DC 20004. *Such commodities as are dealt in by wholesale and retail grocery house (except commodities in bulk)* from the facilities of Procter & Gamble at or near Cincinnati, OH, to points in TN (including the Memphis, TN commercial zone), for 180 days. Supporting shipper(s): The Procter & Gamble Distributing Company, P.O. Box 599, Cincinnati, OH 45201. Send protests to: Glenda Kuss, TA, ICC, Suite A–422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 115904 (Sub-138TA), filed April 6, 1979. Applicant: GROVER TRUCKING CO., 1710 West Broadway, Idaho Falls, ID 83401. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. *Used computer paper and baled cardboard*, from Idaho Falls, ID to points in CA, OR and WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Diversified Resources, 2195 Owen Street, Ammon, ID 83401. Send protest to: Barney L. Hardin, D/S, ICC, Suite 110, 1461 Shoreline Dr., Boise, ID 83706.

MC 115924 (Sub-36TA), filed April 23, 1979. Applicant: SUGAR TRANSPORT, INC., P.O. Box 4063, Port Wentworth, GA 31407. Representative: F. C. Williams, Jr., 1 Grange Road, Port Wentworth, GA 31407. *Contract carrier, irregular routes, Liquid fertilizer solutions, in bulk, in tank vehicles*, from points in Chatham County, GA, on the one hand, and on the other, to points in NC, SC, and FL for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Kaiser Agricultural Chemicals, Division of Kaiser Aluminum & Chemical Corp., P.O. Box 246, Savannah, GA 31402. Send protests to: G. H. FAUSS, Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 116544 (Sub-174TA), filed April 30, 1979. Applicant: ALTRUK FREIGHT SYSTEMS, INC., 1703 Embarcadero Rd., Palo Alto, CA 94303. Representative: Richard G. Lougee, P.O. box 10061, Palo Alto, CA 94303. *Frozen and non-frozen citrus products and citrus juices;* from FL to AZ, AR, CA, CO, IL, IA, KS, LA, MN, MS, MO, MT, NE, NV, NM, ND, OK, SD, TX, UT, WI and WY for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Shurfine-Central Corp., 211 N. Mannheim Rd., Northlake, IL 60164 and Southern Fruit Distributors, Inc., P.O. Box 6367, Orlando, FL 32803. Send protests to: District Supervisor, 211 Main, Suite 500, San Francisco, CA 94105.

MC 117304 (Sub-38TA), filed April 25, 1979. Applicant: DON PAFFILE d.b.a. PAFFILE TRUCK LINES, 8160 N.W. Frontage Rd., Troutdale, OR 97061. Representative: George R. Labissoniere, 1100 Norton Bldg., Seattle, WA 98104. *Paper, paper products and materials, equipment and supplies used in manufacture and distribution of paper and paper products* between the facilities of Potlatch Corpn. at Lewiston, ID on the one hand and on the other, all points in CA, OR and WA for 180 days. A corresponding ETA, MC 117304 R–8 was granted 4/27/79 for 30+2, expires, 7/25/79, and a permanent will be filed within 60 days of grant. Supporting shipper(s): Potlatch Corpn., P.O. Box 1016, Lewiston, ID 83501. Send protests to: R. V. Dubay, D/S, ICC, 114 Pioneer Courthouse, Portland, OR 97204.

MC 119774 (Sub-101TA), filed May 3, 1979. Applicant: EAGLE TRUCKING COMPANY, P.O. Box 471, Kilgore, TX 75662. Representative: Bernard H. English, 6270 Firth Road, Fort Worth, TX 76116 and William A. Stanley, same as above. *Concrete cylinder pipe*, from the facilities of Gifford Hill American, at or near Grand Prairie, TX to Little Rock, AR for 180 days. Underlying ETA seeks 90 days authority. Supporting shipper(s): Gifford Hill American, 1004 Meyers Road, P.O. Box 1571, Grand Prairie, TX 75051. Send protests to: Opal M. Jones, TA, ICC, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 121664 (Sub-74TA), filed May 1, 1979. Applicant: HORNADY TRUCK LINE, INC., P.O. Box 846, Monroeville, AL 36460. Representative: W. E. Grant, 1702 First Avenue South, Birmingham, AL 35201. *(1) Coil steel*, from Selma, AL to points in ND, SD, NE, KS, OK, MN, IA, MO, MI, IL, IN, KY, VA, MD, DE, NY, VT, NH, CT, RI, MA, and ME. *(2) Materials and supplies*, except in bulk, from points in ND, SD, NE, KA, OK, MN, IA, MO, MI, IL, IN, KY, VA, MD, DE, NY, VT, NH, CT, RI, MA, ME to Selma, AL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Polymer Metals, P.O. Box 37, Selma, AL 36701. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616—2121 Building, Birmingham, AL 35203.

MC 123744 (Sub-53TA), filed May 11, 1979. Applicant: BUTLER TRUCKING COMPANY, P.O. Box 88, Woodland, PA 16881. Representative: E. Steward Butler, P.O. Box 88, Woodland, PA 16881. Brick,

from Caledonia and Morral, Ohio to points in Pennsylvania, New Jersey and Maryland for 180 days. Supporting shipper(s): Marion Brick Corporation, P.O. Box 548, Marion, OH 43302. Send protests to: J. J. England, D/S, I.C.C., 2111 Federal Building, Pittsburgh, PA 15222.

MC 123744 (Sub-54TA), filed May 11, 1979. Applicant: BUTLER TRUCKING COMPANY, P.O. Box 88, Woodland, PA 16881. Representative: Dwight L. Koerber, Jr., Esquire, 805 McLachlen Bank Building, 666 Eleventh Street, NW., Washington, D.C. 20001. *Iron and steel articles,* from the facilities of Jones & Laughlin Steel Corporation at Aliquippa, PA, Pittsburgh, PA and Youngstown, OH to points in NJ, DE, MD, VA, MO, those points in NY east of State Highway 12, and those points in IL located within the East St. Louis, IL, St. Louis, MO commercial zone as defined by the Commission, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Jones & Laughlin Steel Corporation, 1600 W. Carson Street, Room 121, Pittsburgh, PA 15203. Send protests to: J. J. England, D/S, I.C.C., 2111 Federal Building, Pittsburgh, PA 15222.

MC 124004 (Sub-52TA), filed March 30, 1979. Applicant: RICHARD DAHN, INC., 620 West Mountain Rd., Sparta, NJ 07871. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Authority sought to operate as a common carrier by motor vehicle, over irregular routes, transporting *dry fertilizer and fertilizer ingredients, in bulk, in dump vehicles,* from Hopewell, VA to points in the states of DE, MD, NJ, PA, VA, WV and NC for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Allied Chemical Corporation, P.O. Box 2120, Houston, TX 77001. Send protests to: John B. Thomas, District Supervisor, Interstate Commerce Commission, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 124554 (Sub-36TA), filed May 17, 1979. Applicant: LANG CARTAGE CORP., P.O. Box 1465, Waukesha, WI 53187. Representative: Richard Alexander, 710 N. Plankinton Ave., Milwaukee, WI 53203. Contract carrier; irregular routes; *Such merchandise as is dealt in by retail mail order houses,* from facilities of Stanley Home Products, Inc. at Dubuque, IA to points in Cook, Lake, Rock, Nobles, Pipestone, Murray, Lyon, Lincoln, Yellow Medicine, Chippewa, Lac Qui Parle, Swift, Big Stone, Traverse, Stevens, Grant, Douglas, Wilkin, Otter Tail, Wadena, Crow Wing, Aitkin, Cass, Hubbard, Becker, Clay, Norman, Mahnomen, Clearwater, Red Lake, Pennington, Polk, Marshall, Beltrami, Kittson, Roseau, Lake of the Woods, Koochiching, and Itasca Counties, MN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Stanley Home Products, Inc., 3110 Washington St., Dubuque, IA 52001. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 124964 (Sub-36TA), filed April 23, 1979. Applicant: JOSEPH M. BOOTH, d.b.a., J. M. BOOTH TRUCKING, P.O. Box 907, Eustis, FL 32726. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Contract Carrier,* irregular routes, Cheese and cheese products, from Plymouth, WI and Van Wert, OH, to points in AL, FL, and GA under a continuing contract or contracts with Borden Foods, a Division of Borden, Inc. for 180 days. Supporting shipper(s): Borden Foods, Div. of Borden, Inc., 180 E. Broad Street, Columbus, OH 43215. Send protests to: G. H. Fauss, Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 125335 (Sub-60TA), filed April 9, 1979. Applicant: GOODWAY TRANSPORT, INC., P.O. Box 2283, York, PA 17405. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NB 68501. *Frozen foods,* from the facilities of The Pillsbury Company, at or near Murfreesboro and Nashville, TN, to points in the United States east of the Mississippi River for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Olivia M. Bradley, Traffic Manager, Frozen Foods Division, The Pillsbury Company, 608 Secons Avenue S., Minneapolis, MN 55402. Send protests to: Interstate Commerce Commission, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 125335 (Sub-61TA), filed April 12, 1979. Applicant: GOODWAY TRANSPORT, INC., P.O. Box 2283, York, PA 17405. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NB 68501. *Canned foodstuffs,* from facilities of Campbell Soup Co. at or near Maxton, NC to pts. in GA and FL, for 180 days. Supporting shipper(s): Campbell Soup Co., Maxton, NC 28364. Send protests to: Peter R. Guman, D/S, 600 Arch St., Rm. 3238, Phila., PA 19106.

MC 125335 (Sub-62TA), filed April 23, 1979. Applicant: GOODWAY TRANSPORT, INC., P.O. Box 2283, York, PA 17405. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NB 68501. *Candy and confectionery,* in vehicles equipped with mechanical refrigeration, from the facilities of M & M MARS COMPANY at Hackettstown and Elizabeth, NJ, and Elizabethtown, PA, to points in IL, WI and MN for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Daniel B. Craver, Traffic Manager, M&M/MARS, Division of Mars, Inc., Hackettstown, NJ 07840. Send protests to: ICC, 600 Arch Street, Room 3238, Phila., PA 19106.

MC 125335 (Sub-63TA), filed April 30, 1979. Applicant: GOODWAY TRANSPORT, INC., P.O. Box 2283, York, PA 17405. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NB 68501. *Motorcycles and recreational vehicles, parts and components and accessories thereof, and such commodities as are used in the manufacture, sale and distribution of motorcycles and recreational vehicles,* from the facilities of AMF, York Division, at or near York, and Middletown, PA, to points in WI, IA, MS, AL, GA, FL, KN, NB, MN and MO, and from Milwaukee, WI to the facilities of AMF, York Division, at or near York, PA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): AMF, York Division, 1425 Eden Road, York, PA 17402. Send protests to: ICC, 101 N. 7th St., Room 620, Phila., PA 19106.

MC 125335 (Sub-64TA), filed May 7, 1979. Applicant: GOODWAY TRANSPORT, INC., P.O. Box 2283, York, PA 17405. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NB 68501. *Cheese and cheese products in vehicles equipped with mechanical refrigeration,* from the facilities of Swift & Co. at or near Green Bay, WI to points in CT, DC, DE, GA, KY, MA, ME, MD, MI, NC, NH, NJ, NY, PA, RI, SC, TN, VA, VT, & WV for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Swift & Co., 115 W. Jackson Blvd., Chicago, IL 60604. Send protests to: ICC, Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila. PA 19106.

MC 125335 (Sub-65TA), filed April 12, 1979. Applicant: GOODWAY TRANSPORT, INC., P.O. Box 2283, York, PA 17405. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NB 68501. *Frozen foods,* from facilities of Rich Products Corps. at or near Appleton, WI to Murfreesboro, TN and Atlanta, GA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Rich Products Corp., Box 348, 1145 Niagara St., Buffalo, N.Y. 14240. Send protests to: Harvey Eckart, D/S, 600 Arch St., Rm 3238, Phila., PA 19106.

MC 127534 (Sub-22TA), filed May 9, 1979. Applicant: QUADREL BROS. TRUCKING COMPANY, INC., 1003 Hart

Street, Rahway, NJ 07065.
Representative: John L. Alfano and Roy A. Jacobs, Esqs., 550 Mamaroneck Avenue, Harrison, NY 10528.
Lubricating oil, in bulk, in special roll on—roll off tank trailers, from Bayonne, NJ to Baltimore, MD, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Exxon Company, U.S.A., 800 Bell Street, Houston, TX 77001. Send protests to: Robert E. Johnston, DS, ICC, 744 Broad Street, Room 522 Newark, NJ 07102.

MC 127905 (Sub-1TA), filed May 3, 1979. Applicant: LYNN H. SCOTT, INC., 8532 Blossvale Road, Blossvale, NY 13308. Representative: Lynn H. Scott & Lemoyne D. Scott, Pres. & Vice-Pres., 8532 Blossvale Road, Blossvale, NY 13308. *Sand in tank vehicles, in bags in van vehicles and in dump vehicles,* from the Town of Annsville, NY (Oneida County), to points in AL, AR, GA, IL, IA, KY, LA, MN, MS, MO, NC, SC, TN and WI, for 180 days. ETA for 30 days only was granted under R with effective date of April 12, 1979. Thirty days extension granted with effective date of May 12, 1979. Supporting shipper(s): Whitehead Brothers Company, Douglas L. Finch, Traffic Coordinator, 60 Hanover Road, Florham Park, NJ 07932. Send protests to: Interstate Commerce Commission, 338–342 Federal Bldg., 436 Dwight Street, Springfield, MA 01103.

MC 127974 (Sub-17 TA), filed May 1, 1979. Applicant: P. LIEDTKA TRUCKING, INC., 110 Patterson Avenue, Trenton, N.J. 08610. Representative: Alan Kahn, Esquire, Two Penn Center Plaza, Philadelphia, PA 19102. *Roofing materials,* and *materials and supplies* used in the installation of roofing materials from the facilities of the Celotex Corporation in or near Chester, WV to points in NJ, PA and MA, for 180 days. Supporting shipper(s): Celotex Corporation, 1500 Dale Mabry, Tampa, FL 33607. Send protests to: District Supervisor, ICC, 428 East State Street, Room 204, Trenton, NJ 08608.

MC 128205 (Sub-76 TA), filed May 7, 1979. Applicant: BULKMATIC TRANSPORT COMPANY, 12000 South Doty Ave., Chicago, IL 60628. Representative: Arnold L. Burke, 180 North LaSalle St., Chicago, IL 60601. *Flour in bulk,* (1) from Hastings, MN to WI, IL, IN, MI, KY, OH, IA and MO; (2) From Alton, IL to WI, IA, MO, IN, MI, OH and KY for 180 days. Supporting shipper(s): Peavey Company, Peavey Building, 730 2nd Ave., S. Minneapolis, MN 55402. Send protests to: David Hunt, Transportation Assistant, 219 S. Dearborn St., Room 1386, Chicago, IL 60604.

MC 129784 (Sub-9 TA), filed April 23, 1979. Applicant: DAVISON TRANSPORT, INC., P.O. Drawer 846, Ruston, LA 71270. Representative: Tom E. Moore (same address as applicant). Applicant is seeking authority to operate as a common carrier over irregular routes transporting *petroleum and petroleum products, (except gasoline),* in bulk, from the facilities of Cross Oil Refinery at Smackover, AR to points in AL, AR, GA, IL, LA, MI, MS, MO, NC, OH, OK, TN, TX and WI, for 180 days. Supporting shipper(s): Cross Oil Refinery, P.O. Box 105, Smackover, AR 71762. Send protests to: Robert J. Kirspel, DS, ICC, T–9038 Federal Bldg., 701 Loyola Ave., New Orleans, LA 70113.

MC 128064 (Sub-7 TA), filed May 1, 1979. Applicant: REES TRUCKING CO., INC., P.O. Box G, Houston, MO 65483. Representative: Herman W. Huber, 101 East High Street, Jefferson City, MO 65101. *Iron and Steel Articles,* from Chicago, IL, Lake Porter and LaPorte Counties, IN to Greene County, MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): General Electric Company, 2401 East Sunshine St., Springfield, MO 65804; Karchmer Steel, 4724 W. Maple, Springfield, MO 65802; Central States Stamping Co., Inc., 2958 E. Division, Springfield, MO 65802; Mono Manufacturing Company, Inc., P.O. Box 2787, C.S.S., Springfield, MO 65803. Send protests to: John V. Barry, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO. 64106.

MC 133565 (Sub-15TA), filed April 9, 1979. Applicant: TRUE TRANSPORT, INC., P.O. Box 829, Newark, NJ 07101. Representative: Leamon McCoy, 15 Stockton Street, Newark, NJ 07105. Commodities requiring protection from heat or cold, having a prior or subsequent movement by water. Empty trailers, containers, and container chassis, having a prior or subsequent movement by water. Between points in the commercial zones of Baltimore, MD, New York, NY, Philadelphia, PA, Norfolk, VA, on the one hand, and, on the other points in CO, IN, IL, IA, KS, KY, MN, MO, MI, NE, ND, OH, SD, WI, and, in that part of PA on and west of a line beginning at the PA-NY state line, at or near Lawrenceville, PA, and extending along U.S. Highway 15 to Junction U.S. Highway 11 at or near Camp Hill, PA, thence along U.S. Highway 11 to the PA-MD state line. For 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): There are nine (9) supporting shippers on file at Newark, NJ and Washington, D.C. Send protests to: Irwin Rosen, TS, ICC, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 133684 (Sub-29TA), filed March 27, 1979. Applicant: GORDON FAST FREIGHT, INC., 2205 Pacific Hwy E., Tacoma, WA 98422. Representative: Michael D. Duppenthaler, 211 S. Washington St., Seattle, WA 98104. *Charcoal, charcoal briquettes, lighter fluid, hickory chips, fireplace logs, (compressed from sawdust), and related barbecue items,* from White City, OR to points in AZ, CA, CO, ID, MT, NY, NM, UT, WA and WY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Husky Industries, Inc., 62 Perimeter Center E., Atlanta, GA 30346. Send protests to: Shirley M. Holmes, T/A, ICC, 858 Federal Bldg., Seattle, WA 98174.

MC 135634 (Sub-6TA), filed March 16, 1979. Applicant: JOSEPH M. HANEY, SR., d.b.a., J. M. HANEY TRUCKING CO., 4754 Mahoning Ave., Youngstown, OH 44515. Representative: Robert J. Gill, Esq., 29 S. LaSalle St., Suite 740, Chicago, IL 60603. Contract carrier, irregular routes, *automobile parts, accessories, equipment and supplies,* except commodities in bulk and commodities which require specialized equipment, between the facilities of Midas International Corporation at or near Chicago, IL, and points in IN under a continuing contract(s) with Midas International Corporation, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Midas International Corporation, 4101 West 42 Place, Chicago, IL 60632. Send protests to: Mary Wehner, D/S, I.C.C., 731 Federal Bldg., Cleveland, OH 44199.

MC 135874 (Sub-166TA), filed May 15, 1979. Applicant: LTL PERISHABLES, INC., 550 East 5th Street South, South St. Paul, MN 55075. Representative: Paul Nelson (same address an applicant). *Building materials and supplies (except in bulk)* from the facilities of Alside, Inc. at or near Cuyahoga Falls, OH to Milan and Rock Island, IL, and St. Louis, MO-IL Commercial Zone, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Alside, Inc., P.O. Box 2010, Akron, OH 44309. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 135874 (Sub-169TA), filed May 15, 1979. Applicant: LTL PERISHABLES, INC., 550 East 5th Street South, South St. Paul MN 55075. Representative: Paul Nelson (same address as applicant).

Building materials and supplies (except in bulk) from the facilities of Alside, Inc. at or near Cuyahoga Falls, OH to points in the Upper Peninsula of MI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Alside, Inc., P.O. Box 2010, Akron, OH 44309. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 138824 (Sub-24TA), filed April 19, 1979. Applicant: REDWAY CARRIERS, INC., 5910 49th St., Kenosha, WI 53140. Representative: Paul J. Maton, 10 S. LaSalle St., Suite 1620, Chicago, IL 60603. Contract carrier; irregular routes; *Glass containers and closures therefor* from facilities of Ball Corp. at or near Mudelein, IL; Lake and Cook Counties, IL, on the one hand, and, on the other, points in IA, MN & WI, for 180 days. Supporting shipper(s): Ball Corp., 345 S. High St., Muncie, IN 47302. Send protests to: G. Daugherty, TA, ICC, Federal Bldg., 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 138824 (Sub-25TA), filed April 17, 1979. Applicant: REDWAY CARRIERS, INC., 5910 49th St., Kenosha, WI 53140. Representative: Paul Maton, 10 S. LaSalle St., Suite 1620, Chicago, IL 60603. Contract carrier; irregular routes; *Food products, dry or liquid, in container, materials, and supplies incidental to and used in processing, canning and bottling of said food products,* restricted against transportation of commodities in bulk (1) between the facilities of Ocean Spray Cranberries, Inc., located at or near Kenosha, WI; North Chicago, IL; Montgomery, AL; Northeast, PA; Sulphur Springs, TX; Grawn, MI; Bordentown, NJ; Middleboro, MA and Lake Wales, FL and (2) between facilities named in (1) above, on the one hand, and, on the other, points in MO, WI, IL, IN, OH, KY, AR, MN, TN, AL, MS, GA, FL, SC, PA, LA, MI, ND, SD, IA, TX, OK, KS, NE, CO & NC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ocean Spray Cranberries, Inc., 7600 S. 60th Ave., Kenosha, WI 53140. Send protests to: G. Daugherty, TA, ICC, Federal Bldg., 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 138875 (Sub-171TA), filed April 3, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Road, Boise, ID 83705. Representative: F. L. Sigloh (same address as applicant). *Drugs, toilet preparations, health care products, magnesium hydroxide, and alumina calcined* (except in bulk) in vehicles equipped with mechanical refrigeration, from Lewes, DE, Friendship, NC, Lakewood, NJ and Philadelphia, PA to points in AZ, CA, ID, NV, OR, WA and UT. Restricted to traffic originating at named origins, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: McNeil Laboratories, 500 Office Center Drive, Fort Washington, PA 19034. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 138875 (Sub-172TA), filed April 5, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Road, Boise, ID 83705. Representative: F. L. Sigloh (same address as applicant). *Frozen bakery products* (except commodities in bulk), from the facilities used by Ore-Ida Foods, Inc., located at Lake City, PA and Massillon, OH to Los Angeles, San Bernadino and Orange Counties, CA and Portland, OR and its commercial zone, for 108 days. An underlying ETA seeks 90 days authority. Supporting shipper: Ore-Ida Foods, Inc., P.O. Box 10, Boise, ID 83707. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 138875 (Sub-175TA), filed April 20, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Road, Boise, ID 83705. Representative: F. L. Sigloh (same address as applicant). *Materials and supplies used in the manufacture, distribution, and installation of mobile homes, campers and recreational vehicles, except commodities in bulk,* from Chicago, IL to Boise, ID and Salem, OR and their respective commercial zones, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Triangle Home Products, Inc., 945 E. 93rd Street, Chicago, IL 60619. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 138875 (Sub-179TA), filed April 25, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Road, Boise, ID 83705. Representative: F. L. Sigloh (same address as applicant). *Metal storage cabinets and steel shelving,* from Aurora, IL, Hatfield, PA, Dickson, TN, and Dallas, TX to Salt Lake City, UT, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Equipment Distributors, 860 N. 500 W., Salt Lake City, UT 84116. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 138875 (Sub-180TA), filed April 20, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Road, Boise, ID 83705. Representative: F. L. Sigloh (same address as applicant). *Doors, door hardware and accessories,* from Portland OR to Salt Lake City, UT and its commercial zone. For 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Jim Walter Doors Divisions, Celotex Corporation a Subsidiary of Jim Walter Corporation, P.O. Box 66317, Portland, OR 97266. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 139254 (Sub-20TA), filed April 26, 1979. Applicant: BROOKS TRANSPORTATION, INC., 3630 Kelley Ave., Cleveland, OH 44114. Representative: John P. McMahon, Esq., 100 East Broad St., Columbus, OH 43215. Contract carrier, irregular routes, *synthetic rubber* (except commodities in bulk), from East Camden, AR, to points in the U.S. in and east of MN, IA, MO, AR, and LA, limited to a transportation service to be performed under a continuing contract(s) with The B. F. Goodrich Company, Chemical Division, for 180 days. Supporting shipper: The B. F. Goodrich Company, Chemical Division, 6100 Oak Tree Blvd., Cleveland, OH 44131. Send protests to: Mary Wehner, D/S, ICC, 731 Federal Bldg., Cleveland, OH 44199.

MC 139274 (Sub-7TA), filed April 6, 1979. Applicant: THE DANIEL COMPANY OF SPRINGFIELD, 419 E. Kearney, Springfield, MO 65803. Representative: Bruce McCurry, 910 Plaza Towers, Springfield, MO 65804. Contract, irregular, *General commodities* except articles of unusual value, classes A & B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, between points in the U.S. (except AK and HI) under a continuing contract(s) with R. T. French Company of Rochester, NY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The R. T. French Company, 4455 E. Mustard Way, Springfield, MO. Send protests to: John V. Barry, DS, ICC, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 139495 (Sub-446TA), filed April 23, 1979. Applicant: NATIONAL CARRIERS, INC., P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. *Chemicals, Pesticides, Insecticides, Fungicides and Weed Killing Compounds,* from Kansas City, MO to points in the States of AZ, CA, CO, ID, NM, OR, NV, UT, WA, WY, IL, FL, MS, TN, LA and TX, for 180 days,

common, irregular. Supporting shipper(s): Mobay Chemical Corporation, Agric. Chem. Div., P.O. Box 4913, Kansas City, MO 64120. Send protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg., Wichita, KS 67202.

MC 139495 (Sub-447TA), filed May 10, 1979. Applicant: NATIONAL CARRIERS, INC., P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. *Retail Stores Freight All Kinds*, from York, PA to Dallas, TX and Los Angeles, CA.; for 180 days, irregular; An underlying ETA seeks 90 days authority. Supporting shipper(s): McCrory Stores, Div. of McCrory Corp., 2955 East Market, York, PA. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 101 Litwin Bldg., Wichita, KS 67202.

MC 139605 (Sub-4TA), filed April 1, 1979. Applicant: B MOTOR FREIGHT, INC., 451 Old Airport Rd., New Castle, DE 19720. Representative: Dennis M. Barnes, 1800 M St. NW., Washington, DC 20036. *Contract carrier*, irregular routes, *General commodities* (excluding bulk commodities and household goods) and *hazardous materials* (excluding Class A and B explosives) for the account of E. I. DuPont de Nemours & Co., between all points in NJ, DE, PA, TN and GA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): E. I. DuPont de Nemours & Co., Wilmington, DE 19898. Send protests to: T. M. Esposito, Trans. Asst., 101 S. 7th St., Room 3238, Philadelphia, PA 19106.

MC 140615 (Sub-41TA), filed April 25, 1979. Applicant: DAIRYLAND TRANSPORT, INC., P.O. Box 1116, Wisconsin Rapids, WI 54494. Representative: Terrence Jones, 2033 K St. NW., Washington, DC 20006. *Such commodities as are dealt in by wholesale and retail drug stores* (except commodities in bulk) from facilities of Carter-Wallace, Inc., Cranbury and Lakewood, NJ to points in IL, IN, MI & OH, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Carter-Wallace, Inc., Half-Acre Rd., Cranbury, NJ 08512. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Room 619, Milwaukee, WI 53202.

MC 140945 (Sub-2TA), filed April 13, 1979. Applicant: JAMES W. CROWE, INC., 307 Brennan Rd., Columbus, GA 31903. Representative: C. E. Walker, P.O. Box 1085, Columbus, GA 31902. *Contract carrier: irregular routes: Architectural precast concrete viz: precast tile, slabs and building components, in containers, loose or on pallets, volume truckload minimum 36,000 pounds* between the plant site of Kendrick Concrete Products Company, Inc., at or near Columbus, GA, and all points and places in the States of AL, FL, and GA (to GA would be intrastate), for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Kendrick Concrete Products Co., Inc., 302 Brown Ave., Columbus, GA 31903. Send protests to: Sara K. Davis TA, ICC, 1252 W. Peachtree St. NW., Room 300, Atlanta, GA 30309.

MC 140615 (Sub-42TA), filed April 27, 1979. Applicant: DAIRYLAND TRANSPORT, INC., P.O. Box 1116, Wisconsin Rapids, WI 54494. Representative: Dennis Brown (same address as applicant). (1) *Paper and paper articles* from Neenah & Menasha, WI to points on and east of ND, SD, NE, CO, OK, TX and (2) *Materials, Parts and supplies used in the manufacture and distribution of paper and paper articles* from points on and east of ND, SD, NE, CO, OK, TX to Neenah & Menasha, WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wisconsin Tissue Mills, Inc., 3rd St., Menasha, WI 54952. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 141804 (Sub-219TA), filed April 6, 1979. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman, P.O. Box 3488, Ontario, CA 91761. *Vehicle parts and accessories and steel wheels*, between points in San Diego County, CA, on the one hand, and, on the other, points in the U.S. in and east of ND, SD, NE, KS, OK and TX, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Jay Bee Wheels, Division of Jay Bee Industries, 1352 Pioneer Way, El Cajon, CA 92020. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, P.O. Box 1551, Los Angeles, CA 90053.

MC 140484 (Sub-43TA), filed May 4, 1979. Applicant: LESTER COGGINS TRUCKING, INC., 2671 E. Edison Ave., P.O. Box 69, Fort Myers, FL 33902. Representative: Frank T. Day, (same address as applicant). *Roofing, roofing materials and related products* (except commodities in bulk and in tank vehicles) from Tuscaloosa, AL to points in FL for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Tamko Asphalt Products, Inc., 220 W. 4th, Joplin, MO 64801. Send protests to: Donna M. Jones, T/A, ICC, Suite 101, 8410 N.W. 53rd Terr., Miami, FL 33166.

MC 140104 (Sub-7TA), filed April 24, 1979. Applicant: TOLEDO FRIGID LINES, INC., 4000 Fitch Road, Toledo, OH 43613. Representative: Jerry B. Sellman, 50 West Broad St., Columbus, OH 43215. *Contract carrier*: irregular routes: *(1) Such merchandise as is dealt in by wholesale, retail, chain grocery and food business houses, institutions, catalog showroom stores, and home center stores, except commodities in bulk, and (2) Equipment, materials and supplies used in the preparation and distribution of commodities described in (1) above*, between Toledo and Maumee, OH, on the one hand, and on the other, points in CA, CO, FL, ID, IL, IN, KY, MD, MA, MI, MN, MO, PA, TX, WA and WI for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Seaway Food Town, Inc., 1020 Ford St., Maumee, OH 43537. Send protests to: ICC, Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 143434 (Sub-2TA), filed April 27, 1979. Applicant: CHARLES McALPIN d.b.a. CHARLES McALPIN TRUCKING, 1420 Danville Road SW., Decatur, AL 35601. Representative: D. H. Markstein, Jr., 512 Massey Building, Birmingham, AL 35203. *Paper and paper products*, from the facilities of Champion International Corp., at or near Courtland, AL; to points in AZ, CA, NM, OR, TX and WA. For 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Champion International Corporation, Knightsbridge Drive, Hamilton, OH 45020. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 143594 (Sub-9TA), filed May 7, 1979. Applicant: NATIONAL BULK TRANSPORT, INC., P.O. Box 5078, Atlanta, GA 30302. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Ft. Lauderdale, FL 33308. *Liquid chemicals, in bulk in tank vehicles*, from the facilities of Georgia Pacific Corp. at or near Plaquemine, LA to Crossett, El Dorado, Little Rock, Malvern, Ashdown, Pine Bluff, Ft. Smith, and Van Buren, AR, Lufkin, Beaumont, Houston, Dallas and Waxahachie, TX, Memphis, TN, Taylorsville, Louisville, Gulfport, Smith County and Hamilton, MS, Russellville, SC, Conway, NC, Brewton, AL, Cincinnati and Columbus, OH, Waxdale, WI, Valliant, OK, Palatka, FL and Vienna and Port Wentworth, GA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Georgia Pacific Corp., P.O. Box 629, Plaquemine, LA

70704. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St. NW., Room 300, Atlanta, GA 30309.

MC 143775 (Sub-93TA), filed April 30, 1979. Applicant: PAUL YATES, INC., 6601 W. Orangewood, Glendale, AZ 85301. Representative: Michael R. Burke (same address as applicant). *Carpet strips, molding, staples, tools, nails, adhesives, sealant, solvents, stains, wood preservatives and materials, equipment and supplies used in the manufacture, sale and distribution thereof,* (1) from Calexico, CA to points in the United States (except AK and HI), (2) from Los Angeles County, CA to Calexico, CA; restricted to traffic originating at or destined to the facilities of Roberts Consolidated Industries, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Roberts Consolidated Ind., 600 N. Baldwin Park Blvd., City of Industry, CA 91749. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025.

MC 143775 (Sub-94TA), filed May 2, 1979. Applicant: PAUL YATES, INC., 6601 W. Orangewood, Glendale, AZ 85301. Representative: Michael R. Burke (same address as applicant). *General commodities (except Classes A & B explosives, household goods, commodities in bulk and those requiring the use of special equipment)* (1) from Atlanta, GA, Boston, MA, Jersey City, NJ, New York, NY, Charlotte, NC, Greensboro, NC, Philadelphia, PA, and Greenville, SC, and their respective commercial zones to AZ, CA and NM, (2) from Los Angeles, CA and its commercial zone, to Phoenix, AZ and Kansas City, MO, (1) and (2) above restricted to traffic originating at or destined to the facilities of LAWI/CSA Consolidators, Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: LAWI/CSA Consolidators, Inc., 805 N. Brand Blvd., Glendale, CA 91203. Send protests to: Ronald R. Mau, DS, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025.

MC 143775 (Sub-95TA), filed May 2, 1979. Applicant: PAUL YATES, INC., 6601 W. Orangewood, Glendale, AZ 85301. Representative: Edward N. Button, 1329 Pennsylvania Ave., Hagerstown, MD 21740. *General commodities (except Classes A & B explosives, commodities in bulk, household goods and commodities requiring special equipment),* between the facilities of the Charter Oaks Shippers Cooperative Association, Inc., at or near Berlin, CT on the one hand, and on the other, points in WA, OR, CA, NV, ID, AZ, UT, MT, WY, CO, NM, TX, and KS, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: The Charter Oaks Shippers Cooperative Association, Inc., 1 Parkland Dr., Darien, CT 06820. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025.

MC 144884 (Sub-2TA), filed April 30, 1979. Applicant: ARTHUR E. JOHNSTON & MICHAEL A. JOHNSTON, d/b/a/ JOHNSTON TRUCKING, P.O. Box 325, Spearfish, SD 57783. Representative: J. Maurice Andren, 1734 Sheridan Lake Road, Rapid City, SD 57701. *Lumber and lumber products* from Newcastle, WY and points in its commercial zone to points in IL, IN, KY, MI, OH, and WI for 180 days. Supporting shipper(s): Cambria Forest Industries, Inc., P.O. Box 490, Newcastle, WY 82701. Send protests to: J. L. Hammond, DS, ICC, Room 455, Federal Bldg., Pierre, SD 57501.

MC 145054 (Sub-16TA), filed May 2, 1979. Applicant: COORS TRANSPORTATION COMPANY, 5101 York Street, Denver, CO 80216. Representative: Leslie R. Kehl, 1600 Lincoln Center, 1660 Lincoln Street, Denver, CO 80264. *Foodstuffs (canned or preserved)* from facilities of Heinz USA, Div. of H. J. Heinz Co., Iowa City and Muscatine, IA to points in CO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Heinz USA, Division of H. J. Heinz Company, P.O. Box 57, Pittsburgh, PA 15230. Send protests to: Herbert C. Ruoff, District Supervisor, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 145034 (Sub-1TA), filed May 2, 1979. Applicant: SKY TRUCKING COMPANY, 2163 Hancock Street, San Diego, CA 92110. Representative: Milton W. Flack, 4311 Wilshire Blvd., Suite 300, Los Angeles, CA 90010. *General commodities (except Classes A and B explosives and articles of unusual value) in containers or in trailers,* between Los Angeles, CA, on the one hand, and, on the other, points in San Diego County, CA, for 180 days. Restricted to the transportation of traffic having an immediately prior or subsequent movement by water. An underlying ETA seeks up to 90 days authority. Supporting shipper(s): Balfour Dalgety Marine, Inc., 700 S. Flower Street, Los Angeles, CA 90017; "K" Line-Kerr Corporation, 1 Market Plaza, San Francisco, CA 94105; Kerr Steamship Company, Inc., 1 Market Plaza, San Francisco, CA 94105; Evergreen-United Corporation, 400 Oceangate, Suite 128, Long Beach, CA 90802. Send protests to: Irene Carlos, TA, ICC, P.O. Box 1551, Los Angeles, CA 90053.

MC 145044 (Sub-4TA), filed April 28, 1979. Applicant: FOREDECK TRANSPORTATION, INC., Whitewood Lane, Oak Ridge, NJ 07438. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Confectionery,* between St. Louis, MO on the one hand, and, on the other, points in the U.S. (except AK and HI), for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Switzer Candy Co., Division of Beatrice Foods, Inc., 1600 N. Broadway, St. Louis, MO 63102. Send protests to: Joel Morrows, D/S, ICC, 9 Clinton St., Room 618, Newark, NJ 07102.

MC 145094 (Sub-3TA), filed April 27, 1979. Applicant: BOBBY KITCHENS, INC., P.O. Box 6161, Jackson, MS 39208. Representative: Fred W. Johnson, Jr., P.O. Box 22828, Jackson, MS 39205. *Contract carrier:* irregular routes: (1) *Tile* from Houston, MS to points in AZ, CA, CO, ID, MT, NM, NV, OR, TX, UT and WA, and (2) *Soapstone* in bags, from Riverside and VanHorn, TX to Houston, MS, for the account of Spartek, Inc., Gulf States Ceramic Tile div., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Spartek, Inc.—Gulf States Ceramic, P.O. Box 472, Houston, MS 38851. Send protests to: Alan Tarrant, D/S, ICC, Room 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 145454 (Sub-6TA), filed April 16, 1979. Applicant: SOUTHERN REFRIGERATED TRANSPORTATION COMPANY, INC., 2154 Green Valley Drive, Crown Point, IN 46307. Representative: Anthony E. Young, 29 S. LaSalle St., Suite 350, Chicago, IL 60603. *Bananas, pineapples and plantains,* from Tampa, FL and Charleston, SC to points in IN, OH, MI, IL, KY, MO, KS, IA, WI and MN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Del Monte Banana Company, P.O. Box 011940, Miami, FL 33101. Send protests to: Annie Booker, TA, ICC, 1386 Everett Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 145435 (Sub-5TA), filed May 9, 1979. Applicant: WESTERN AG INDUSTRIES, INC., 2750 No. Parkway, Fresno, CA 93771. Representative: Roland J. Mefford (same address as above). *Contract carrier, irregular routes: Carpet, carpet padding, and floor tile,* from points in GA, IL, NJ, to points in AZ and CA, for 180 days. Supporting shipper: Butler-Johnson Corp., 5031–24th St., Sacramento, CA 95822. Send protests to: District Supervisor, 211

Main, Suite 500, San Francisco, CA 94105.

MC 145824 (Sub-2TA), filed April 30, 1979. Applicant: J. V. CARBONE, INC., 33 Marion Avenue, New Providence, NJ 07974. Representative: Theodore Polydoroff, Suite 301, 1307 Dolly Madison Boulevard. *Sand and gravel,* in bulk, in dump vehicles. From the facilities of Warner Company, Falls Township, PA to points in NJ and NY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Warner Company, 1721 Arch Street, Philadelphia, PA 19103. Send protests to: Robert E. Johnston, DS, ICC, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 146044 (Sub-1TA), filed April 24, 1979. Applicant: EDJO, INC., P.O. Box 746, Arcata, CA 95521. Representative: Robert E. Thomas (same address as applicant). *Lumber, Plywood, and Baled wood pulp* from points in Humboldt County, CA to points in Mendocino and Shasta Counties, CA for subsequent out of state movement by rail, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Simpson Timber Company, P.O. Drawer V, Arcata, CA 95521. Send protests to: A. J. Rodriguez, DS, ICC, 211 Main Street, Suite 500, San Francisco, CA 94105.

MC 146624 (Sub-2TA), filed April 23, 1979. Applicant: CHARLES W. MILLER and HOWARD W. MILLER, d.b.a. MILLER BROS. TRUCKING, 800 Cherry St., Liberty Center, OH 43532. Representative: A. Charles Tell, 100 East Broad St., Columbus, OH 43215. *Containers, container closures, glassware, packaging products, container components and scrap materials, and materials, equipment, and supplies used in the manufacture, sale, and distribution of the foregoing commodities (except commodities in bulk, in tank vehicles, and those which because of size or weight require the use of special equipment),* between the facilities of Libbey Glass Division of Owens-Illinois, Inc. at Toledo, OH, Shreveport, LA, and Mire Loma, CA, restricted to movements from or to the facilities of Owens-Illinois, Inc., for 180 days. Supporting shipper(s): Libbey Glass, Div. Owens-Illinois, Inc., P.O. Box 919, Toledo, OH 43693. Send protests to: ICC, Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19100.

MC 146725 (Sub-1TA), filed April 13, 1979. Applicant: FREEPORT TRANSPORT, INC., P.O. Box 1275, Freeport Center, Clearfield, UT 84016. Representative: Bruce W. Shand, 430 Judge Building, Salt Lake City, UT 84111. *Lumber, lumber mill products, and wood products,* from the facilities of Potlatch Corporation, located at or near Coeur d'Alene, St. Maries, Potlatch, Lewiston, Kamiah, Spalding, Jaype (near Pierce), Sandt, and Post Falls, ID to points in IN, MI, MO, and OH, for 180 days. An underlying ETA requests 90 days authority. Supporting shipper(s): Potlatch Corporation, P.O. Box 1016, Lewiston, ID 83501. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 146735 (Sub-1TA), filed April 17, 1979. Applicant: R. J. ANDERSON, INC., 1020 Heinz Street, Berkeley, CA 94710. Representive: William D. Taylor, Handler, Baker & Greene, P.C., 100 Pine Street, Suite 2550, San Francisco, CA 94111. *General commodities* (except classes A&B explosives, household goods, items of extraordinary value and commodities in bulk), between Stockton, Sacramento, Fairfield, San Francisco, Oakland, Watsonville, Richmond, Novato and Alameda, CA, for 180 days. Restricted to traffic having prior or subsequent movement in interstate commerce either by rail, ocean vessel and/or motor vehicle. An underlying ETA seeks 90 days authority. Supporting shipper(s): There are eight (8) shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: A. J. Rodriguez, DS, ICC, 211 Main Street, Suite 500, San Francisco, CA 94105.

MC 146754 (Sub-2TA), filed March 30, 1979. Applicant: TENNANT TRUCK LINES, INC., P.O. Box 336, Orion, IL 61273. Representive: Joseph Winter, 29 South La Salle St., Chicago, IL 60603. *Such commodities as are dealt in or used by manufacturers and dealers of agricultural equipment, industrial equipment, and lawn and leisure products (except commodities in bulk),* from the facilities used by International Harvester Company at East Moline, Moline and Rock Island, IL to points in IN and IA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): International Harvester Company, 401 North Michigan Ave., Chicago, IL 60611. Send protests to: Annie Booker, TA, ICC, 1386 Everett Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 146815 (Sub-2TA), filed April 16, 1979. Applicant: ROLAND GIGUERE, d.b.a. Giguere & Son R.F.D. No. 1 Pownal Rd., Auburn, ME 04210. Representive: J. Michael May, Suite 508, 1447 Peachtree St., N.E., Atlanta, GA 30309. Contract: Irregular: *Bakery waste and sweepings, and feed ingredients,* in bulk, between the facilities of International Bakerage, Inc., at Carteret, NJ, on the one hand, and, on the other, points in CT and ME, for 180 days. Supporting shipper(s): International Bakerage, Inc., Suite 1-M 3300 Northeast Expressway, Atlanta, GA 30341. Send protests to: Donald G. Weiler, District Supervisor, ICC, 76 Pearl St., Rm. 303, Portland, ME 04111.

MC 146824 (Sub-1TA), filed May 2, 1979. Applicant: BEARCLAW INDUSTRIES, INC., 201 Rio Trail, Amarillo, TX 79106. Representive: Weldon Reed, Jr., 4231 West 2nd, Amarillo, TX 79106. *Foodstuffs, additives and byproducts,* packaged, unpacked, and in bulk, from Cimarron and Texas Counties, OK to points in AL, FL, LA, MA, MS, NY, SC, TX, NM, AZ, CA, CO, WA, and OR, for 180 days. An underlying ETA seeks up to 90 days authority. Supporting shipper(s): Milo Products, Inc., Box 906, Boise City, OK 73933. Send protests to: Martha Powell, Transportation Assistant, 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 146825 (Sub-1TA), filed April 27, 1979. Applicant: HICKMAN INTERSTATE SYSTEMS, 710 Livestock Exchange Bldg., Omaha, NE 68107. Representive: Chris Hickman (same address as above). *Contract carrier:* Irregular routes: *Prepared frozen foods, meats, meat products, meat by-products and packinghouse products, fish and poultry products; materials, equipment and supplies used in the manufacture, sale and distribution of the above,* between Omhaam NE and Council Bluffs, IA, on the one hand, and, on the other, Miami and Jacksonville, FL; Birmingham, Anniston, Mobile, AL; Memphis and Nashville, TN; Atlanta, GA; Lexington, Louisville, and Nicholasville, KY; Monroe, New Orleans, and Shreveport, LA; Jackson and Southaven, MS; Phoenix, AZ; Los Angeles, Santa Fe Springs, San Francisco, Sacramento, Richmond, Fresno, Fremont, and Oakland, CA; San Angelo, Lubbock, Dallas, Irving, Farmers Branch, Brownwood, El Paso, Lufkin, San Antonio, Victoria, Ft. Worth, Grand Prairie, and Houston, TX; Albuquerque, NM; Bonner Springs, Hutchinson, Wichita, Elwood, Kansas City, and Scott City, KS; Sikeston, Cape Girardeau, Springfield, Kansas City and St. Joseph, MO; Salt Lake City and Layton, UT; Boise, ID; Portland and Clackamas, OR; Seattle, Bellevue, and Spokane, WA, and their respective commercial zones, for 180 days, under continuing contract with Blue Star Foods, Inc. An underlying ETA seeks 90 days authority. Supporting shipper(s): Blue Star Foods, Inc., 1023 4th St., Council Bluffs, IA 51501. Send

protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 146834 (Sub-1TA), filed May 3, 1979. Applicant: HOWARD GRIGGS TRUCKING, INC., Route 1, Box 187, Tuskegee, AL 36083. Representative: Howard Griggs, President (same address as applicant). *Rock, sand, soil, gravel, stone, clay and asphalt,* in bulk, in dump trucks; and *fertilizer,* in bulk or in bags, from points in Muscogee, Talbot, Taylor and Troup Counties, GA, to points in Russell, Lee, Macon, Chambers, Bullock and Tallapoosa Counties, AL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Castone Corporation, P.O. Box 747, Opelika, AL 36801; Dixie Concrete Pipe Company, Inc., Route 3, Box 470, Tuskegee, AL 36083; Starr and Sons Construction Co., Inc., Route 1, Box 61, Auburn, AL 36830; B. W. Capps and Son, Route 1, Box 365, Opelika, AL 36801; East Alabama Paving Co., Inc., Box 11, Old Columbus Road, Opelika, AL 36801. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616–2121 Bldg., Birmingham, AL 35203.

MC 146844 (Sub-1TA), filed April 26, 1979. Applicant: NATIONAL TRUCK BROKERAGE, INC. d.b.a. HICKS MOTOR LINE, 219 West Main, P.O. Box 176, Humboldt, TN 38343. Representative: Thomas A. Stroud, 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. *Meat, meat products, meat by-products, and articles distributed by meat packing houses, as described in Sections A and C of Appendix I to the Report and Descriptions in Motor Carrier Certificates 61 M.C.C. 209 and 766, (except hides and commodities in bulk), and foodstuffs, when transported in the same vehicle at the same time with the commodities described above,* from the facilities of Reelfoot Packing Company at Union City, TN and Humboldt, TN to points in the United States (except AK and HI), for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Reelfoot Packing Company, Union City, TN 38261. Send protests to: Floyd A. Johnson, DS, ICC, Suite 2008, 100 North Main Street, Memphis, TN 38103.

MC 146845 (Sub-1TA), filed April 19, 1979. Applicant: J. D. RAY COMPANY, 107 Glenwood Drive, Americus, GA 31709. Representative: Norman J. Bolinger, 1729 Gulf Life Tower, Jacksonville, FL 32207. *Contract carrier,* irregular route; *particleboard, finished and unfinished, and materials, equipment, and supplies used in the manufacture, sale, and distribution of particleboard, finished and unfinished,* between the facilities of Designs of Americus, Inc. at or near Americus, GA, on the one hand, and, on the other, points in AL, FL, NC, and SC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Designs of Americus, Inc., Industrial Blvd., Americus, GA 31709. Send protests to: G. H. Fauss, Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 146855 (Sub-1TA), filed April 23, 1979. Applicant: JOEL WEHRMAN, Rt. 2, Box 2011 (Stohler Rd.), Selah, WA 98942. Representative: Henry C. Winters, Evergreen Bldg., Renton, WA 98055. Contract, irregular, *plastic packaging articles and materials and supplies* used in the production of plastic packaging articles between points in the states of AR, CA, ID, IA, MT, OR and WA, restricted to the transportation of traffic originating at or destined to facilities of Western Foam Pak, Inc. A corresponding ETA was granted April 23, 1979, for 30 + 2, MC 146855R. Supporting shipper(s): Western Foam Pak, Inc., 1111 N. 20th Ave., Yakima, WA 98902. Send protests to: R. V. Dubay, D/S, ICC, 114 Pioneer Courthouse, Portland, Oregon, 97204.

MC 146865 (Sub-1TA), filed April 16, 1979. Applicant: M. T. SERVICES, INC., 6513 Landay Ave., Baltimore, MD 21237. Representative: James W. Lawson, 1511 K St., N.W., Washington, DC 20005. *General commodities (except those of unusual value, Classes A & B Explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment),* having a prior to subsequent movement by rail or water, between Baltimore, MD and points in the States of MD, DE, NJ, NY, PA, OH, WV, VA and Washington, DC, for 90 days. An underlying ETA was granted for 90 days. Supporting shipper(s): There are 5 letters in support of this application. Their statements may be examined at the office listed below and Headquarters. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore, MD 21201.

MC 146884 (Sub-2TA), filed April 26, 1979. Applicant: HALL'S FAST MOTOR FREIGHT, INC., 330 Oak Tree Avenue, South Plainfield, NJ 07080. Representative: Ronald I. Shapss, Esq., 450 Seventh Avenue, New York, NY 10001. Contract carrier, irregular routes for 180 days. *Liquid penicillin* in totes, and empty totes. Between New Brunswick and South Plainfield, NJ, on the one hand, and, on the other, Kenly, NC. An underlying ETA seeks 90 days authority. Supporting shipper(s): E. R. Squibb & Son, Inc., 5 Georges Road, New Brunswick, NJ 08902. Send protests to: Irwin Rosen, TS, ICC, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 146885 (Sub-1TA), filed May 1, 1979. Applicant: BEN CAPOBIANCO TRUCKING, INC., 5275 Talawanda Dr., Fairfield, OH 45014. Representative: Jerry B. Sellman, Muldoon, Pemberton & Ferris, 50 W. Broad St., Columbus, OH 43215. *General commodities (except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* from the facilities of Nationwide Shipper Cooperative Association, Inc., located at or near Cincinnati, OH, to points in AZ, CA and NV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Nationwide Shipper Cooperative Association, Inc., Robert A. Murphy, General Manager, 1400 Gest St., Cincinnati, OH 45203. Send protests to: Bureau of Operations, ICC, Wm. J. Green, Jr., Federal Bldg., 600 Arch St., Room 3238, Philadelphia, PA 19106.

MC 146895 (Sub-1TA), filed May 3, 1979. Applicant: JOHNNY J. FOWLKES, J. J. FOWLKES TRUCKING COMPANY, Rt. 2, Box 90, Selma, AL 36701. Representative: Terry P. Wilson, 420 South Lawrence Street, Montgomery, AL 36104. *Malt beverages, in containers, and related advertising materials,* from Jacksonville, FL, to Selma, AL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Capital City Beverage Co. of Selma, Inc., 497 Oak Street, Selma, AL 36701. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 147005 (Sub-1TA), filed April 9, 1979. Applicant: STEPHEN J. GROVE, d.b.a. GROVE TRUCKING, 7297 Village Parkway, Dublin, CA 94566. Representative: Eldon M. Johnson, 650 California St., Suite 2808, San Francisco, CA 94108. *Foodstuffs,* in vehicles equipped with mechanical refrigeration, from the United States Department of Defense Perishable Subsistence Center at Alameda, CA to points in the States of NV, OR and UT, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): United States Department of Perishable Subsistence Center, 2155 Mariner Square Loop, Alameda, CA 94566. Send protests to: District Supervisor M. M. Butler, 211 Main, Suite 500, San Francisco, CA 94105.

MC 147015 (Sub-1TA), filed May 1, 1979. Applicant: JAMES P. TAYLOR d.b.a. JAMES TAYLOR TRUCKING, 3718 Gass Lake Road, Manitowoc, WI 54220. Representative: Wayne W.

Wilson, 150 East Gilman Street, Madison, WI 53703. *Lime and limestone products* (except in bulk, in tank vehicles) from the facilities of Rockwell Lime Company in Manitowoc County, Wisconsin to points in IL, IN, IA, MI, MN and MO. Authority sought for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Rockwell Lime Company, Route 2, Box 124, Manitowoc, WI 54220. Send protests to: John E. Ryden, DS, ICC, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 147034 (Sub-1TA), filed May 14, 1979. Applicant: ALBANESE TRANSPORT, INC., 3537 Apulia Road, Jamesville, NY 13078. Representative: Frank Pompo, 820 University Bldg., Syracuse, NY 13201. *Wood chips, sawdust, bark, rough sawn lumber, planned lumber pallets, all in bulk,* from Cazenovia and Syracuse, NY and its commercial zone to all points in PA, VA, NJ, NC and MD, with returned, rejected, refused products of the same description in reverse direction, for 180 days. Underlying ETA for 90 days under R granted and effective May 7, 1979. Supporting shipper(s): B & B Lumber Company, Inc., Robert H. Booher, Pres., Allied Chemical Quarry, Jamesville, NY 13078. Johnson Bros. Lumber, Paul A. Johnson, Owner, Balina Road, Cazenovia, NY 13035. Send protests to: Interstate Commerce Commission, 910 Federal Bldg., 111 West Huron St., Buffalo, NY 14202.

MC 147035 (Sub-1TA), filed May 7, 1979. Applicant: J. HOWARD LEASING, INC., 253 Southwest Cutoff, Worcester, Massachusetts 01604. Representative: James F. Martin, Jr., 8 W. Morse Road, Bellingham, MA 02019. Contract carrier: irregular routes: *Frozen concentrates, materials and supplies,* between the facilities of Newton Foods, Inc., Taunton, MA, on the one hand, and, on the other, points in ME, NH, VT, MA, RI, CT, NY, NJ, PA, MD, DE, WV, VA, FL, IL, MI and OH, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Newton Foods, Inc., 500 Turnpike Street, Canton, MA 02021. Send protests to: David M. Miller, DS, ICC, 436 Dwight Street, Springfield, MA 01103.

MC 147045 (Sub-1TA), filed May 4, 1979. Applicant: CALIFORNIA TRANSPORTATION LABOR, INC., 8901 South Eastern Avenue, Bell Gardens, CA 90201. Representative: Wyman C. Knapp, Knapp, Grossman & Marsh, 1800 UCB Bldg., 707 Wilshire Blvd., Los Angeles, CA 90017. *Refined petroleum products in bulk,* from points in Los Angeles County, CA, to points in Clark and Nye Counties, NV; and, from points in Los Angeles County, CA, to Phoenix, Tucson, and Bull Head City, AZ, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Newhall Refining Co., Inc., 22874 N. Clampit Rd., Newhall, CA 91321. Send protests to: Irene Carlos, P.O. Box 1551, Los Angeles, California 90053.

MC 147074 (Sub-1TA), filed May 17, 1979. Applicant: E Z FREIGHT LINES, Gould & E. 40th Street, Bayonne, NJ 07002. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. Aluminum extrusions, aluminum billets and aluminum ingots. (1) From Coldwater, MI to New Brunswick, NJ and Winton and Burlington, NC and (2) From Winton and Burlington, NC to DE, IN, MD, MI, NJ, KY, OH, PA, VA, and WV for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): New Jersey Aluminum Co., P.O. Box 73, North Brunswick, NJ 08902. Send protests to: Robert E. Johnston, DS, ICC, 744 Broad Street, Room 522, Newark, NJ 07102.

MC 147104 (Sub-1TA), filed May 14, 1979. Applicant: WILLIAM OLINGER and MICHAEL OLINGER, d.b.a. OLINGER TRUCK SERVICE, Route 1, Box 182, Hector, MN 55342. Representative: James E. Ballenthin, 630 Osborn Building St. Paul, MN 55102. *Beat pulp pellets* from Renville, MN to Superior, WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Southern Minnesota Sugar Corporation, 400 South County Road 18, Room 490, Minneapolis, MN 55426. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 147186 (Sub-1TA), filed May 9, 1979. Applicant: STEVE FARRAR, P.O. Box 31, Waynesboro, MS 39367. Representative: Kent F. Hudson, 202 Main St., Purvis, MS 39475. *Water, drilling mud, oil spillage, and bulk sediments in connection with oil and gas exploration, production, discovery and drilling* from Waynesboro, MS, to points in AL, FL, and LA, for 180 days. Supporting shipper(s): Getty Oil Co., P.O. Box 16678, Mobile, AL 36616. Chesley-Pruet Drilling Co., P.O. Box 324, Laurel, MS 39440. Send protests to: Alan Tarrant, D/S, ICC, Rm. 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 147204 (Sub-1TA), filed May 16, 1979. Applicant: JACK'S TRUCK RENTAL, INC. Route 3 Box 61, Holts Summit, MO 65043. Representative: Mrs. Chester Surface, Route 3 Box 61, Holts Summit, MO 65043. *Freight, all kinds,* in straight or mixed shipments, between Cedar City, Jefferson City and Moberly, MO on the one hand, and, on the other, points and places in Missouri within 75 miles thereof RESTRICTED to shipments having a prior or subsequent move by rail in TOFC service. For 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): McGraw-Edison Co., Portable Appliance and Tool Group, 1801 N. Stadium Blvd., Columbia, MO 65201. Send protests to: Vernon V. Coble, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 147314 filed May 10, 1979. Applicant: GARFIELD TRANSPORTATION SYSTEMS, INC., 1426 Clark Street, Montreal, PQ, Canada H2X 2R3. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. (1) *General commodities* (except Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), in containers or trailers, restricted to the transportation of shipments having a prior or subsequent movement by water in foreign commerce, and in bond, between ports of entry on the United States—Canada Boundary Line in NY and VT on the one hand, and, on the other, Weehawken, NJ, and (2) *Empty containers, trailers, and trailer chassis,* from Weehawken, NJ to ports of entry on the US—Canada Boundary Line in NY and VT, for 180 days. Supporting shipper(s): Aquatainer Ltd., 485 St Jean Street, Montreal, PQ, Canada H2Y 2R6. Send protests to: ICC, PO Box 548, Montpelier, VT 05602.

MC 147315 TA, filed May 4, 1979. Applicant: TRIWAYS, INC., 2455 E. 27th St., Los Angeles, CA 90058. Representative: William Davidson (same as above). Contract carrier, irregular routes: *Garments on hangers, wearing apparel, piece goods cut or uncut, carpeting, draperies, furniture blanket wrapped or in cartons and freight all kinds in unitized loads.* Points in Los Angeles County and Orange County California on the one hand, and Utah and Nevada on the other hand, for 180 days. Supporting shipper(s): Catalina Inc., 6040 Bandini Blvd., Los Angeles, CA 90040. Send protests to: Irene Carlos, TA, P.O. Box 1551, Los Angeles, CA 90053.

By the Commission.

H. G. Homme, Jr.,
Secretary

[FR Doc. 79-17705 Filed 6-6-79; 8:45 am]
BILLING CODE 7035-01-M

[Notice No. 90

Motor Carrier Temporary Authority Applications

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register**. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

MC 1515 (Sub-264TA), filed May 17, 1979. Applicant: GREYHOUND LINES, INC., Greyhound Tower, Phoenix, AZ 85077. Representative: Lat J. Celmins (same address as applicant). Common, Regular, *Passengers and their baggage and express and newspapers in the same vehicle with passengers*, (Route 1) between Bay Shore, NY and Riverhead, NY, serving all intermediate points: From Bay Shore over NY Hwy 27 to Junction NY Hwy 51, then over NY Hwy 51 to Riverhead, and return over the same route, (Route 2) between Junction NY Hwy 101 and NY Hwy 27 and Riverhead, NY, serving all intermediate points: From Junction NY Hwy 101 and NY Hwy 27 over NY Hwy 101 to Junction NY Hwy 495, then over NY Hwy 495 to Junction NY Hwy 24, then over NY Hwy 24 to Riverhead, and return over the same route, for 180 days. An underlying ETA seeks 90 days authority. Applicant requests to tack this authority with authority it presently holds in No. MC 1515. Supporting shipper(s): 1. Cantin Fabrics, 301 E. Main St., Riverhead, NY 11901. 2. Riverhead Stationery, 121 Main St., Riverhead, NY. 3. Karen H. Philipps, 14 Vautrin Ave., Holtsville, NY 11742. 4. Jermaine Aquino, P.O. Box 755, Southold, NY 11971. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025.

MC 1515 (Sub-265TA), filed May 21, 1979. Applicant: GREYHOUND LINES, INC., Greyhound Tower, Phoenix, AZ 85077. Representative: Lat J. Celmins (same address as applicant). Passengers and their baggage and express and newspapers in the same vehicle with passengers, between Phoenix, AZ and Tempe, AZ, serving the intermediate point of Scottsdale, AZ only: From Phoenix over city streets via Scottsdale to Tempe, and return over the same route, for 180 days. Applicant requests to tack this authority with authority it presently holds in No. MC 1515. Supporting shipper(s): There are ten (10) supporting shippers. Their statements may be examined at the office listed below and headquarters. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025.

MC 1515 (Sub-266TA), filed May 14, 1979. Applicant: GREYHOUND LINES, INC., Greyhound Tower, Phoenix, AZ 85077. Representative: Lat J. Celmins (same address as applicant). *Passengers and their baggage and express and newspapers in the same vehicle with passengers*, between Rhinelander, WI and Eagle River, WI, serving all intermediate points: From Rhinelander over WI Hwy 17 to Eagle River, and return over the same route, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): There are five (5) supporting shippers. Their statements may be examined at the office listed below and headquarters. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025. NOTE: Applicant request to tack this authority with authority it presently holds in No. MC-1515 Sub 71.

MC 1824 (Sub-92TA), filed May 21, 1979. Applicant: PRESTON TRUCKING COMPANY, INC., 151 Easton Blvd., Preston, MD 21655. Representative: C. S. Perry (same as above). *Bananas*, from Norfolk, VA to points in the States of CT, DE, GA, IL, IN, IA, KS, KY, MD, MA, ME, MI, MN, MO, NE, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, WI and DC, for 90 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Robert Rogers, Best Banana Company, 3616 E. Virginia Beach Blvd., Norfolk, VA 23502. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore MD 21201.

MC 1824 (Sub-93TA), filed May 21, 1979. Applicant: PRESTON TRUCKING COMPANY, INC., 151 Easton Blvd., Preston, MD 21655. Representative: C. S. Perry (same as above). *Petroleum and petroleum products, vehicle body sealer and sound deadener compound* (except commodities in bulk) from Congo and St. Marys, WV, Emlenton, Farmers Valley and New Kensington, PA, to points in the States of IL, IN, MD, MI, OH, VA and WI for 90 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): J. D. Campbell, GTM, Quaker State Oil Refining Corporation, P.O. Box 999, Oil City, PA 16301. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore MD 21201.

MC 8535 (Sub-85TA), filed May 16, 1979. Applicant: GEORGE TRANSFER AND RIGGING COMPANY, INCORPORATED, P.O. Box 500, Parkton, MD 21120. Representative: Charles J. McLaughlin (same as above) *Iron and Steel Articles* from the facilities of Armco Inc. located at Butler, PA and Zanesville, OH to IL and IN. (Restricted to traffic originating at the above facilities.) For 90 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Charles W. Hall, Dir. of Transportation, Armco, Inc., Middletown, OH 45043. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore MD 21201.

MC 94205 (Sub-290TA), filed May 14, 1979. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305—Route 460 West, Windsor, VA 23487. Representative: Clyde W. Carver, Attorney, P.O. Box 720434, Atlanta, GA 30342. *Foodstuffs* (except in bulk) in vehicles equipped with mechanical refrigeration, from points in Cobb, Dekalb, Fulton, Clayton, and Gwinnett Countires, GA, to points in the states of KY, MD, NC, OH, PA, TN, VA, WV, and

DC. Restricted to traffic originating at the facilities of Commercial Cold Storage, Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Commercial Cold Storage, Inc., 4300 Pleasantdale Road, Atlanta, GA 30340. Send protests to: Paul D. Collins, DS, ICC, Room 10-502 Federal Bldg., 400 North 8th Street, Richmond, VA 23240.

MC 97244 (Sub-2TA), filed May 17, 1979. Applicant: MASS. TRANSPORTATION, INC., 187 Sidney Street, Cambridge, MA 02139. Representative: Frank J. Weiner, 15 Court Sq., Boston, MA 02108. *Common carrier:* irregular route: *liquid sugar, in bulk,* from Lakeville, NY to Allen Park, MI, for 180 days, an underlying ETA seeks 90 days authority. Supporting shipper(s): Corn Sweeteners, Inc., A Division of Archer-Daniels Midland Co., 24 East Street, Cambridge, MA 02141. Send protests to: John B. Thomas, District Supervisor, Interstate Commerce Commission, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 99234 (Sub-14TA), filed May 14, 1979. Applicant: WESTWAY MOTOR FREIGHT, INC., 5231 Monroe St., Denver, CO 80216. Representative: Leslie R. Kehl, 1600 Lincoln Center, 1660 Lincoln St., Denver, CO 80264. *Alcoholic beverages (including wine and brandy) and non-alcoholic beverage mixes)* from points in CA to points in CO and Cheyenne, WY for 180 days. Underlying ETA filed seeking 90 days authority. Supporting shippers: R&L Distributing, 5270 Fox St., Denver, CO 80216; Wholesale Liquor Company, 29 Fordham Circle, Pueblo, CO 81002; Wyoming Liquor Commission, Cheyenne, WY 82002. Send protests to: D/S Roger L. Buchanan, ICC, 721 19th St., 492 U.S. Customs House, Denver, CO 80202.

MC 100785 (Sub-4TA), filed May 15, 1979. Applicant: LAWRENCE E. BULT, d.b.a., L. BULT CARTAGE, 123 North Williams, Thornton, IL 60476. Representative: Robert A. Kriscunas, 1301 Merchants Plaza, Indianapolis, IN 46204. (1) *Ferro alloys,* from Chicago, IL to Wilton, IA and (2) *Steel articles,* from Wilton, IA to Chicago, IL for 180 days. An underlying ETA for 90 days authority was filed. Supporting shipper(s): North Star Steel Co., P.O. Box 743, Wilton, IA 52778. Send protests to: Annie Booker, TA, 219 South Dearborn Street, Rm. 1386, Chicago, IL 60604.

MC 104104 (Sub-19TA), filed May 8, 1979. Applicant: GEORGE A. FETZER, INC., Newton-Sussex Road, Augusta, NJ 07822. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Cleaning compounds,* (except in bulk), and, on return *materials,* and *supplies* used in the manufacturing and sales thereof, (except in bulk) from Port Jervis, NY to points in the US east of the Mississippi River, for 180 days. Supporting shipper(s): Barrier Industries, Inc., Box X, Port Jervis, NY 12771. Send protests to: Joel Morrows, D/S, ICC, 9 Clinton Street, Newark, NJ 07102.

MC 105865 (Sub-3TA), filed May 18, 1979. Applicant: SMART TRUCK LINE, INC., P.O. Box 73, Beattie, KS 66406. Representative: William B. Barker, 641 Harrison, Topeka, KS 66603. (a) *Feed and Feed Ingredients,* from Kansas City and St. Joseph, MO to points in Jewell, Smith, Republic, Washington, Marshall, Nemaha, Brown, Doniphan, Osborne, Mitchell, Cloud, Clay, Riley, Pottawatomie, Jackson, Atchison, Russell, Lincoln, Ottawa, Ellsworth, Saline, Dickinson, Geary, Wabaunsee, Shawnee, Jefferson, Leavenworth, Douglas and Wyandotte Counties, KS; and Franklin, Webster, Nuckolls, Thayer, Jefferson, Gage, Pawnee and Richardson Counties, NE; (b) *Fertilizer and Fertilizer Materials,* from St. Joseph, MO to the destinations listed in part (a) above; (c) *Feed and Feed Ingredients,* from Weeping Water, NE to the KS Counties listed in part (a) above; 180 days, common, irregular; supporting shipper: Farmland Industries, Inc., Kansas City, MO 64116; Send protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg., Wichita, KS 67202.

MC 106074 (Sub-111TA), filed April 26, 1979. Applicant: B & P MOTOR LINES, INC., Shiloh Road and U.S. Hwy 221 South, Forest City, NC 28043. Representative: Clyde W. Carver, Attorney, P.O. Box 720434, Atlanta, GA 30328. *Glass containers* from the plant site of Thatcher Glass at Streator, IL to points in NC for 180 days. Supporting shipper(s): Thatcher Glass Manufacturing Co., Division of Dart Industries, Inc., P.O. Box 265, Elmira, NY 14902. Send protests to: Terrell Price, DS, ICC, 800 Briar Creek Rd., Rm. CC516, Charlotte, NC 28205.

MC 106074 (Sub-112TA), filed May 3, 1979. Applicant: B & P MOTOR LINES, INC., Shiloh Road and US Hwy. 221 South, Forest City, NC 28043. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. *Materials and supplies used in the manufacture of decorations and ornaments* from points in IL, KY, NJ, OH, PA and TX to Gastonia, NC. Restricted to the transportation of traffic moving to the facilities of Rauch Industries, Inc. at Gastonia, NC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Rauch Industries, Inc., P.O. Box 609, Gastonia, NC 28052. Send protests to: Terrell Price, D/S, ICC, 800-Briar Creek Rd.-Rm. CC516, Mart Office Building, Charlotte, NC 28205.

MC 107295 (Sub-92TA), filed April 27, 1979. Applicant: PRE-FAB TRANSIT CO., P.O. Box 146, Farmer City, IL 61842. Representative: Duane Zehr, P.O. Box 146, Farmer City, IL 61842. *Water screens, intake fabrications, trash rakes, parts and accessories* for the above named commodities from Pearland, TX to points in U.S. except (AK and HI), for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Royce Equipment Company, P.O. Box 34543, Houston, TX 77034. Send protests to: Charles D. Little, D/S, ICC, 414 Lenand Bldg., 527 Capitol Avenue, Springfield, IL 62701.

MC 109084 (Sub 39TA), filed May 1, 1979. Applicant: TEX-O-KAN TRANSPORTATION COMPANY, INC., 3301 E. Loop 820 South, P.O. Box 8367, Fort Worth, TX 76112. Representative: George C. Jackson (same address as applicant). *Iron and steel articles, pipe, tubing, and conduit,* from Washington and Allegheny Counties, PA, to points in TX, OK, LA, AR, and MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Tubular Goods, Inc., 1 East Court, Moorestown, NJ 08057. Send protests to: Martha A. Powell, T/A, I.C.C., Room 9A27 Fed. Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 109584 (Sub-196TA), filed May 14, 1979. Applicant: ARIZONA-PACIFIC TANK LINES, 3960 Quebec St., P.O. Box 7240, Denver, CO 80207. Representative: Rick Barker (same address as applicant). *Cottonseed oil, crude or refined, in bulk, in tank vehicles,* from Phoenix, AZ to Houston and Bayport, TX for 180 days. Underlying ETA filed seeking 90 days authority. Supporting shipper(s): Anderson-Clayton Co., Inc., P.O. Box 2966, Phoenix, AZ 85062. Send protests to: D/S Roger L. Buchanan, ICC, 492 U.S. Customs House, Denver, CO 80202.

MC 111045 (Sub-166TA), filed April 18, 1979. Applicant: REDWING CARRIERS, INC., 8515 Palm River Road, P.O. Box 426, Tampa, FL 33601. Representative: L. W. Fincher (same address as applicant). Chemicals, in bulk, from Geismar, LA to LeMoyne, AL for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Virginia Chemicals, Inc., 3340 West Norfolk Rd., Portsmouth, VA 23703. Send protests to: Donna M. Jones, T/A, ICC, Suite 101, 8410 N.W. 53rd Terr., Miami, FL 33166.

MC 111045 (Sub-169TA), filed April 20, 1979. Applicant: REDWING CARRIERS, INC., 8515 Palm River Road, P.O. Box 426, Tampa, FL 33601. Representative: L. W. Fincher (same address as applicant). *Pulpmill liquids,* in bulk, in tank vehicles, between plant sites of International Paper Co. at or near Natchez, MS and Mobile, AL for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: International Paper Company, P.O. Box 160707, Mobile, AL 36616. Send protests to: Donna M. Jones, T/A, ICC, Suite 101, 8410 N.W. 53rd Terr., Miami, FL 33166.

MC 111375 (Sub-108TA), filed May 15, 1979. Applicant: PIRKLE REFRIGERATED FREIGHT LINES, INC., P.O. Box 3358, Madison, WI 53704. Representative: Elaine Conway, 10 S. LaSalle St., Suite 1600, Chicago, IL 60603. *Paper and paper products,* from Brokaw and Mosinee, WI to AZ, CA, ID, MT, NM, NV, OR, UT, WA, and WY for 180 days. Supporting shipper: Wausau Paper Mills Co., Brokaw, WI 54417. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 111375 (Sub-109TA), filed May 16, 1979. Applicant: PIRKLE REFRIGERATED FREIGHT LINES, INC., P.O. Box 3358, Madison, WI 53704. Representative: Bernard Kompare, Suite 1600, 10 S. LaSalle St., Chicago, IL 60603. *Such commodities as are dealt in or used by grocery, drug and hardware business houses and retail chain stores* (except commodities in bulk), from facilities of Colgate-Palmolive Co., located at or near Berkeley, CA to points in OR & WA, restricted to transportation of traffic originating at the above-named origins, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Colgate-Palmolive Co., 2700 7th St., Berkeley, CA 94710. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 111434 (Sub-100TA), filed May 11, 1979. Applicant: DON WARD, INC., 241 West 56th Avenue, Denver, CO 80216. Representative: Don L. Ward (same address). *Cement,* from Trident, MT to points in WY, for 180 days. An underlying ETA seeks authority for 90 days. Supporting shipper: Ideal Basic Industries, Inc., Cement Division, 950 17th Street, Denver, CO 80202. Send protests to: R. L. Buchanan, D/S, ICC, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 111545 (Sub-261TA), filed May 1, 1979. Applicant: HOME TRANSPORTATION COMPANY, INC., 1425 Franklin Road, S.E., Marietta, GA 30067. Representative: Robert E. Born, P.O. Box 6426, Station A, Marietta, GA 30065. Self-propelled sweepers from Olathe, KS to points in MI, AL, VA, MD, NY, NJ, MA, TX, OH, PA and IN for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Olathe Manufacturing Corp., 100 Industrial Pkwy., Olathe, KS 66061. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

MC 113024 (Sub-160TA), filed April 25, 1979. Applicant: ARLINGTON J. WILLIAMS, INC., 1398 S. DuPont Highway, Smyrna, DE 19977. Representative: Samuel W. Earnshaw, 833 Washington Bldg., Washington, DC 20005. *Contract carrier;* irregular routes: *Clothing, dry goods, drugs, medicines, toilet preparations and articles,* from Dover, DE and Camarillo, CA, to points in the States of AR, CO, NE, NV and UT, under a continuing contract with International Playtex, Inc., Dover, DE, for 90 days. An underlying ETA seeks 90 days. Supporting shipper(s): James M. Harrison, International Playtex, Inc., Box 631, Dover, DE 19901. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore, Md. 21201.

MC 113325 (Sub-160TA), filed May 11, 1979. Applicant: SLAY TRANSPORTATION CO., 2001 S. 7th St., St. Louis, MO 63104. Representative: T. M. Tahan (same as applicant). *Chemicals,* in bulk, in tank vehicles from the plant site of Monsanto Co. at or near Chocolate Bayou and Texas City, TX and the Houston, TX commercial zone to all points in the US in and east of LA, AR, MO, IA, and MN, for 180 days. Supporting shipper(s): Monsanto Company, 800 N. Lindberg, St. Louis, MO 63166. Send protests to: P. E. Binder, DS, ICC, Rm. 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 118865 (Sub-12TA), filed April 9, 1979. Applicant: CEMENT EXPRESS, INC., Hokes Mill Rd. & Lemon St., York, PA 17404. Representative: Jerome Mulroy (same as applicant). *Cement (Portland and Masonry, in bulk or package),* from York, PA to points in FL, GA, and SC for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Medusa Cement Company, 2300 W. Market St., York, PA 17404. Send protests to: Peter R. Guman, D/S, 600 Arch St., Rm. 3238, Phila, Pa 19106.

MC 114604 (Sub-74TA), filed May 10, 1979. Applicant: CAUDELL TRANSPORT, INC., P.O. Drawer I, Forest Park, GA 30326. Representative: Frank D. Hall, Suite 713, 3384 Peachtree Rd., NE., Atlanta, GA 30326. *Preserved foodstuffs* (1) between the facilities of National Fruit Products Co., Inc. at Martinsburg, WV, Winchester and Timbersville, VA and Lincolnton, NC and (2) from the facilities of National Fruit Products Co., Inc. at Martinsburg, WV, Winchester and Timbersville, VA and Lincolnton, NC to points in AL, FL, GA, LA, MS, TN, SC and VA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): National Fruit Products Co., Inc., 550 Fairmont Ave., Winchester, VA 22601. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., N. W., Rm. 300, Atlanta, GA 30309.

MC 114725 (Sub-99TA), filed May 9, 1979. Applicant: WYNNE TRANSPORT SERVICE, INC., 2222 North 11th St., Omaha, NE 68110. Representative: Donald F. Swerczek (same address as applicant). *Liquid fertilizer, in bulk, in tank vehicles,* from Audubon, IA to points in NE, KS, and MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Great Dane Fertilizer, Inc., Box 86, Audubon, IA 50025. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 115215 (Sub-36TA), filed May 15, 1979. Applicant: NEW TRUCK LINES, INC., P.O. Box 639, Perry, FL 32347. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *Sheetrock;* from points in AL to points in FL for 180 days. Supporting shipper(s): Mason Lumber Co., Inc., 915 N. Court St., P.O. Box 1786, Montgomery, AL 36103. Send protests to: G. H. Fauss, DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 115904 (Sub-139TA), filed May 11, 1979. Applicant: GROVER TRUCKING CO., 1710 West Broadway, Idaho Falls, ID 83401. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. *Potash,* from Carlsbad, NM to points in ID, OR, UT and WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): WMB, 980 E. Green St., Suite 110, Pasadena, CA 91106. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 116004 (Sub-56TA), filed May 22, 1979. Applicant: TEXAS OKLAHOMA EXPRESS, INC., 2222 E. Grauwyler Road, Irving, TX 75061. Representative: Doris Hughes, P.O. Box 47112, Dallas, TX 75247. Common Carrier, regular routes, *General commodities, (except those of unusual value, Classes A & B explosives, household goods as defined by the Commission, commodities in bulk or those requiring special equipment),* serving Muskogee, OK as off-route point in connection with regular route

authority as shown in MC–116004 and applicable subs thereto, for 180 days. Applicant request authority to interline at Dallas, Ft. Worth and Amarillo, TX; Wichita, KS; St. Louis and Kansas City, MO; Oklahoma City and Tulsa, OK and to tack this authority with authority it presently holds in No. MC 116004. An underlying ETA seeks 90 days authority. Supporting shipper(s): There are nine (9) supporting shippers. Send protests to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 75202.

MC 116004 (Sub-57TA), filed May 22, 1979. Applicant: TEXAS OKLAHOMA EXPRESS, INC., 2222 E. Grauwyler, Irving, TX 75061. Representative: Doris Hughes, P.O. Box 47112, Dallas, TX 75247. Common carrier, regular routes, transport *General Commodities (with usual exceptions)* serving the facilities of P.P.G. Industries at or near Woodward, OK as an off-route point in connection with carrier's otherwise authorized regular route operations, for 180 days. Applicant requests authority to interline at Dallas, Ft. Worth and Amarillo, TX; St. Louis and Kansas City, MO; Tulsa and Oklahoma City, OK; and Wichita, KS and to tack this authority with authority it presently holds in No. MC 116004. An underlying ETA seeks 90 days authority. Supporting shipper(s): PPG Industries, Inc., One Gateway Center, Pittsburgh, PA 15222. Send protests to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, 819 Taylor Street, Room 9A27 Federal Building, Fort Worth, TX 75202.

MC 116254 (Sub-266TA), filed May 15, 1979. Applicant: CHEM-HAULERS, INC., 116 East Mobile Plaza, Florence, AL 35630. Representative: M. D. Miller (same address as applicant). *Aluminum and aluminum articles*, from the facilities of Martin-Marietta Aluminum at Hancock County, KY, to points in AL, AR, CO, CT, DE, FL, GA, IL, IN, IA, KY, LA, ME, MD, MA, MI (Lower Peninsula), MN, MS, MO, NE, NH, NJ, NC, OH, PA, RI, SC, TN, TX, VA, VT, WV, WI, KS OK and the District of Columbia, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Martin-Marietta Aluminum, Inc., 6801 Rockledge Drive, Bethesda, MD 20034. Send protests to: Mabel E. Holston, T/A, ICC, Suite 1616–2121 Building, Birmingham, AL 35203.

MC 116254 (Sub-267TA), filed May 18, 1979. Applicant: CHEM-HAULERS, INC., P.O. Box 339, Florence, AL 35630. Representative: Mr. Hampton M. Mills (same address as above). *Iron and steel articles*, from Madison River Terminal, located in Madison, IN, to points in IL, IN, MI, and OH, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Madison River Terminal, 140 Vaughn Drive, Box 253, Madison, IN 47250. Send protests to: Mabel E. Holston, T/A, ICC, Suite 1616–2121 Building, Birmingham, AL 35203.

MC 117815 (Sub-302TA), filed May 15, 1979. Applicant: PULLEY FREIGHT LINES, INC., 405 S.E. 20th St., Des Moines, IA 50317. Representative: Daniel O. Hands, Suite 200, 205 West Touhy Ave., Park Ridge, IL 60068. *Bones* from the facilities of Dubuque Packing Co., Inc. at Denison, IA to the facilities of Swift & Company at St. Joseph, MO for 180 days. Restricted to traffic originating at the named origin and destined to the named destination. An underlying ETA seeks 90 days authority. Supporting shipper(s): Swift & Company, 30 N. LaSalle St., Chicago, IL. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 118535 (Sub-136TA), filed May 8, 1979. Applicant: TIONA TRUCK LINE, INC., 102 West Ohio, Butler, MO 64730. Representative: Tom Ventura, 102 West Ohio, Butler, MO 64730. *Fertilizer materials*, from Walnut Ridge, AR to all points in CO, IA, MO, NE, NM, OK and TX, for 180 days. Supporting shipper(s): Frit Industries, Inc., P.O. Box 850, Ozark, AL 36360. Send protests to: Vernon V. Coble, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 118535 (Sub-138TA), filed May 8, 1979. Applicant: TIONA TRUCK LINE, INC., 102 West Ohio, Butler, MO 64730. Representative: Tom Ventura, 102 West Ohio, Butler, MO 64730. *Lead Oxide*, from Terrell, TX to Denver, CO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Powerlab Inc., Box 913, Terrell, TX 75160. Send protests to: John V. Barry, DS, ICC, 600 Federal Building, 911 Walnut St., Kansas City, MO 64106.

MC 119345 (Sub-1TA), filed May 14, 1979. Applicant: CARY TRUCKING, INC., Box 285, Downs, KS 67437. Representative: Richard E. Dietz, 118 West Main St., Osborne, KS 67473. *Hides and Packinghouse By-Products*, (1) From Great Bend, KS to MN, WI, and TX; and (2) from Butler, MO to MN, WI, and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Cox Hide Company, P.O. 212, Butler, MO 64730. Send protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg., 110 No. Market, Wichita, KS 67202.

MC 119345 (Sub-2TA), filed May 4, 1979. Applicant: CARY TRUCKING, INC., Box 285, Downs, KS 67437. Representative: Richard E. Dietz, 118 West Main Street, Osborne, KS 67473. *Hides, Meat Scraps and Packinghouse By-Products*, (a) From Gibbon, NE; Mankato, Great Bend and Hutchinson, KS to Butler, St. Joseph and Kansas City, MO; (b) From Hutchinson and Mankato, KS to Lincoln and Omaha, NE, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper: Cox Hide Company, 710 West Harrison, Butler, MO 64730. Send Protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg., 110 No. Market St., Wichita, KS 67202.

MC 119694 (Sub-13TA), filed May 21, 1979. Applicant: BOWARD TRUCK LINE, INC., 104 Azar Building, Glen Burnie, MD 21061. Representative: G. F. Morgan, Jr., (same as above). *Paper, pulpboard or fibreboard* from Big Island, VA to points in the States of NC and SC, for 180 days. Supporting shipper(s): Lester E. Pierce, Owens-Illinois, Inc., P.O. Box 1035, Toledo, OH 43666. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Building, Baltimore, MD 21201.

MC 123885 (Sub-31TA), filed May 17, 1979. Applicant: C & R TRANSFER CO., P.O. Box 1010, Rapid City, SD 57709. Representative: Floyd E. Archer, P.O. Box 1794, Sioux Falls, SD 57101. *Liquid asphalt and residual fuel* from the plant site of Little America Refining Co. near Evansville, WY to job sites near Danbury, Broken Bow and Lindsay, NE for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): J. L. Healy Construction Co., 36 Riverview Heights, Sioux Falls, SD 57105. Send protests to: J. L. Hammond, DS, ICC, Room 455, Federal Building, Pierre, SD 57501.

MC 124174 (Sub-149TA), filed May 15, 1979. Applicant: MOMSEN TRUCKING CO., 13811 "L" Street, Omaha, NE 68137. Representative: Karl E. Momsen (same address as applicant). *Iron and steel decking, flooring or roofing*, from Gloucester City, NJ to Omaha, NE, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Paxton & Vierling Steel Co., 5 and Avenue H., Carter Lake, IA 68110. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 124774 (Sub-112TA), filed May 10, 1979. Applicant: MIDWEST REFRIGERATED EXPRESS, INC., 4440 Buckingham Avenue, Omaha, NE 68107. Representative: Arlyn L. Westergren, Suite 100, 7101 Mercy Road, Omaha, NE 68106. *Iron and steel articles*, from Chicago, IL and its commercial zone to Omaha, NE, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Phillips Manufacturing Co., Inc., 4601 South 76th St., Omaha, NE 68127. Send protests to: Carroll Russell,

ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 128305 (Sub-119TA), filed May 18, 1979. Applicant: BOYD BROTHERS TRANSPORTATION CO., INC., Rtd 1, Box 18, Clayton, AL 36016. Representative: George A. Olsen, P.O. Box 357, Gladston, NJ 07934. *Railway car wheels, iron or steel, loose or mounted on axles, with or without bearings.* From the facilities of Griffin Wheel Co., Keokuk, IA, on the one hand, and on the other, points in AL, MS, TN, GA, NC, SC, and FL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Griffin Wheel Company, Division of Amsted Industries, Inc., 200 West Monore Street, Chicago, IL 60606. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616—2121 Building, Birmingham, AL 35203.

MC 128205 (Sub-77TA), filed May 14, 1979. Applicant: BULKMATIC TRANSPORT COMPANY, 12000 South Doty Avenue, Chicago, IL 60628. Representative: Arnold L. Burke, 180 North LaSalle Street, Chicago, IL 60601. *Flour,* in bulk, from Winona, Wabasha, New Ulm, New Prague and St. Paul, MN to WI, IA, MO, IL, IN, MI, KY, OH, PA, NY, MA, NJ, WV, VA and MD for 180 days. Supporting shipper(s): Bay State Milling Company, 1776 Heritage Drive, North Quincy, MA 02171. Send protests to: Annie Booker, TA, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 133655 (Sub-157TA), filed May 16, 1979. Applicant: TRANS-NATIONAL TRUCK, INC., P.O. Box 31300, Amarillo, TX 79120. Representative: Warren L. Troupe, 2480 E. Commercial Bouleward, Fort Lauderdale, FL 33308. *Meat, meat products, and meat by-products, and articles distributed by meat packing houses* as described in Sections A, C, and D of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766, (except hides and commodities in bulk) between the facilities of Lauridsen Foods, Inc. located at or near Britt, IA and Armour & Company located at or near Mason City, IA, on the one hand, and, on the other, points in AR, CT, DE, IL, IN, KS, LA, ME, MD, NH, NJ, NY, OH, OK, PA, RI, TX, VT, VA, WV, AND DC, for 180 days. Supporting shipper(s): Armour & Company, Greyhound Tower, Phoenix, AZ 85077. Send protests to: Martha Powell, Transportation Assistant, Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 133805 (Sub-20TA), filed May 9, 1979. Applicant: LONE STAR CARRIERS, INC., Route 1, Box 48, Tolar, TX 76476. Representative: Harry F. Horak, 5001 Brentwood Stair Road, Suite 115, Forth Worth, TX 76112. *Meats, meat products, meat by-products, and articles distributed by meat packinghouses, as described in Sections A and C of Appendix I to the report in Description in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk, in tank trucks),* from the facilities used by Swift Fresh Meats Company at or near Cactus, TX, to points in AL, CA, CT, DE, FL, GA, IL, IN, KY, MA, MI, MS, ME, MD, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, and DC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Swift & Company, 115 W. Jackson Boulevard, Chicago, IL 60604. Send protests to: Martha A. Powell, T/A, I.C.C., Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 133805 (Sub-21TA), filed May 9, 1979. Applicant: LONE STAR CARRIERS, INC., Rt. 1, Box 48, Tolar, TX 76476. Representative: Harry F. Horak, 5001 Brentwood Stair Rd., Suite 115, Fort Worth, TX 76112. *Charcoal briquets, lighter fluid, hickory chips and related barbeque items,* (1) from the facilities used by Husky Industries, Inc. at or near Pachuta, MS, to points in AL, FL, GA, LA, NC, SC, TN, TX, CO, and OK, and (2) from the facilities used by Husky Industries, Inc. at or near Branson, MO, to points in AL, AK, AR, CA, CT, DE, GA, ID, IL, IN, IA, KS, KY, FL, LA, MA, MD, MS, MN, MT, NV, NH, NJ, MI, NY, NC, OH, OR, PA, RI, SC, TN, UT, VA, WV, WA, WI, WY, CO, OK and TX, for 180 days. Supporting Shipper(s): Husky Industries, Inc., 62 Perineter Center East, Atlanta, GA. Send protests to: Martha A. Powell, T/A, I.C.C., Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 133805 (Sub-22TA), filed May 9, 1979. Applicant: LONE STAR CARRIERS, INC., Rt. 1, Box 48, Tolar, TX 76476. Representative: Harry F. Horak, 5001 Brentwood Stair Rd., Suite 115, Fort Worth, TX 76112. *Promotional materials, china, flatware, cookware, glassware, and related commodities,* between the facilities used by the Easterling Company at or near Des Plaines, IL, on the one hand, and, on the other, point in the U.S. (except AK and HI), for 180 days. Supporting shipper(s): The Easterling Company, 2200 South Mt. Propsect Rd., Des Plaines, IL 60018. Send protests to: Martha A. Powell, T/A, I.C.C., Room 9A27 Federal Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 133805 (Sub-23TA), filed May 9, 1979. Applicant: LONE STAR CARRIERS, INC., Rt. 1, Box 48, Tolar, TX 76476. Representative: Harry F. Horak, 5001 Brentwood Stair Rd., Suite 115, Fort Worth, TX 76112. *Meat, meat products, meat by-products, and articles distributed by meat packinghouses as described in Sections A and C of Appendix I to the report in Descriptions of Motor Carrier Certificates, 61 MCC 209 and 766 (except hides and commodities in bulk),* from the facilities used by San Antonio Packing, at or near San Antonio, TX, to points in CA, FL, GA, WI, TN, OK, MS, LA, KS, IA, IL, NJ, and NY, restricted to shipment originating at said origin and destined to points in the named destination states, for 180 days. An underlying ETA seeks 90 days authority filed. Supporting shipper(s): San Antonio Packing, 1717 S. Brazos, San Antonio, TX 78207. Send protests to: Martha A. Powell, T/A, I.C.C., Room 9A27 Federal Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 133805 (Sub-24TA), filed May 9, 1979. Applicant: LONE STAR CARRIERS, INC., Rt. 1, Box 48, Tolar, TX 76476. Representative: Harry F. Horak, 5001 Brentwood Stair Rd., Suite 115, Fort Worth, TX 76112. *(1) Such merchandise as is dealt in by discount and variety stores (except foodstuffs, furniture, and commodities in bulk), and (2) foodstuffs (except in bulk) and furniture, in mixed loads with the commodities in (1) above,* from the facilities of K Mart Corporation at or near Charlotte, NC, to Kansas City, MO and Dallas, TX, for 180 days. An underlying ETA seeks 90 days authority filed. Supporting shipper(s): K Mart Corporation, 3100 W. Big Beaver Road, Troy, MI 48084. Send protests to: Martha A. Powell, T/A, I.C.C., Room 9A27 Federal Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 134405(Sub-74TA), filed May 17, 1979. Applicant: BACON TRANSPORT COMPANY, P.O. Box 1134, Ardmore, OK 73401. Representative: Wilburn L. Williamson, Suite 615–East, The Oil Center, 2601 Northwest Expressway Oklahoma City, OK 73112. *Asphalt,* in bulk, in tank vehicles, from Houston and South Houston, TX, to McCurtain County, OK, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Riffe Petroleum Co., 111 Philtower Building, Tulsa, OK 74103. Send protests to: Connie Stanley, Transportation Assistant, Interstate Commerce Commission, Room 240 Old Post Office & Court House Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 134755 (Sub-187TA), filed May 10, 1979. Applicant: CHARTER EXPRESS, INC., 1959 East Turner St., P.O. Box

3772, Springfield, MO 65804. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. *Petroleum and petroleum products in packages*, from Maryland Heights, MO, to points in KS for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Pennzoil Company, P.O. Box 808, Oil City, PA 16301. Send protests to: John V. Barry, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 136605 (Sub-110TA), filed May 17, 1979. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (same address as Applicant). *Cement and cement products* from the facilities of BMD-Sakrete located at or near Denver, CO to points in WY and NE, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Building Material Distributors, 940 West 3rd Ave., Denver, CO 80223. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 136605 (Sub-111TA), filed May 17, 1979. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (same address as Applicant). *Lumber and lumber mill products* from the facilities of Brand S Corporation located at or near Livingston, MT to points in IL, IN, WI, IA, MN, NE, ND, SD, OK and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Brand S Corporation, Airport Road, Corvallis, OR 97330. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 138144 (Sub-51TA), filed May 14, 1979. Applicant: FRED OLSON CO., INC., 6022 W. State St., Milwaukee, WI 53213. Representative: Wm. Brejcha, 10 S. LaSalle St., Chicago, IL 60603. (1) *Insulation board and accessories used in the installation thereof* from facilities of Johns-Manville Sales Corp. at or near Alexandria, IN to points in IL & WI; (2) *Insulation board and accessories used in the installation thereof* from the facilities of Johns-Manville Perlite Corp., at or near Rockdale, IL to MI, OH & to points in WI Counties of Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Door, Douglas, Dunn, Eau Claire, Florence, Forest, Iron, Jackson, LaCrosse, Langlade, Lincoln, Marathon, Marinette, Menominee, Monroe, Oconto, Oneida, Pepin, Pierce, Polk, Portage, Price, Rusk, St. Croix, Sawyer, Shawano, Taylor, Trempealeau, Vernon, Vilas, Washburn & Wood; and (3) *Building materials and cement pipe containing asbestos fiber* from the facilities of Johns-Manville Sales Corp. at or near Waukegan, IL to IN, MO, OH & to points in WI Counties named in (2) above, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Johns-Manville Sales Corp., 2222 Kensington Court, Oak Brook, IL 60521. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 139495 (Sub-445TA), filed April 23, 1979. Applicant: NATIONAL CARRIERS, INC., P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. *Petroleum, petroleum products in containers, and advertising matter and commodities used or distributed by retail or wholesale marketers of petroleum products*, from Ponca City, OK to points in WA, OR, CA, NV, ID, MT, WY, UT, CO, AZ, NM, ND, SD, NE, KS, TX, MN, IA, MO, IL, IN, WI; for 180 days, common, irregular; Supporting shipper: Continental Oil Co., Houston, TX; send protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg., Wichita, KS. 67202.

MC 139495 (Sub-446TA), filed May 17, 1979. Applicant: NATIONAL CARRIERS, INC., P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Springs, MD 20910. *Meat, meat products, and meat by products and articles distributed by meat packers* (in vehicles equipped with mechanical refrigeration), from Garden City, KS to points in the states of CA, CO, TX, NE, MO, AR, LA, MS, AL, GA, FL, SC, NC, TN, KY, IL, OH, WV, VA, IN, MD, DL, PA, NJ, NY, MA, CT, RI, VT, NH, ME (Restricted to traffic originating at the facilities of Farmland Industries at Garden City, KS and destined to the above states; common, irregular, 180 days. Supporting shipper: Farmland Foods, Inc., Garden City, KS. Send protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg., Wichita, KS 67202.

MC 141145 (Sub-2TA), filed May 7, 1979. Applicant: REYNOLDS & COMPANY, INC., Box 227, No. 1 Railroad Avenue, Waynesboro, GA 30830. Representative: Thomas L. Reynolds, Wood Valley Rd., Waynesboro, GA 30830. *Lumber, forest products, bark, sawdust, wood chips and wood fuel* from the facilities of the Forest Products Division, Kimberly-Clark Corp. at or near Waynesboro, GA to points in NC, SC and TN for 180 days. Supporting shipper(s): Kimberly-Clark Corp., 1414 W. Larsen Road, Neenah, WI 54956. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., NW, Rm. 300, Atlanta, GA 30309.

Note.—Applicant does intend to tack this authority with authority it presently holds in MC-141145.

MC 141245 (Sub-7TA), filed May 17, 1979. Applicant: BARRETT TRUCKING CO., INC., 16 Austin Drive, Burlington, VT 05401. Representative: John A. Barrett (same address as applicant). *Malt beverages*, from the facilities of Miller Brewing Co., Fulton, NY to Barre, VT, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wark Bros. Inc., P.O. Box 190, South Barre, VT 05670. Send protests to: ICC, P.O. Box 548, Montpelier, VT 05602.

MC 141245 (Sub-8TA), filed May 1, 1979. Applicant: BARRETT TRUCKING CO., INC., 16 Austin Drive, Burlington, VT 05401. Representative: John A. Barrett (same address as applicant). *Swimming pools* from Fort Wayne, IN to Burlington, VT, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Pool World, Inc., 16 Austin Drive, Burlington, VT 05401. Send protests to: ICC, P.O. Box 548, Montpelier, VT 05602.

MC 141245 (Sub-9TA), filed May 1, 1979. Applicant: BARRETT TRUCKING CO., INC., 16 Austin Drive, Burlington, VT 05401. Representative: John A. Barrett (same address as applicant). (1) *Flour* from Buffalo, NY to Burlington, VT, (2) *canned goods* from Marion, NY to Burlington, VT, (3) *Wine* from Canandaigua, NY to Burlington, VT, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Champlain Valley Fruit Co., Inc., 237 S. Champlain Street, Burlington, VT 05401. Send protests to: ICC,P.O. Box 548, Montpelier, VT 05602.

MC 142484 (Sub-6TA), filed May 15, 1979. Applicant: STRINGFELLOW TRANSPORTATION COMPANY, INC., 724 3rd Avenue, North, Birmingham, AL 35203. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. Contract, irregular: *Treated and untreated forest products and lumber mill products and lumber*, between the facilities of Walker Williams Lumber Co., Inc. at Hatchechubbee, AL, on the one hand, and on the other, points in IN, IL, OH, IA, WI, MO, and MI, for 180 days. Supporting shipper(s): Walker Williams Lumber Company, Inc., P.O. Box 170, Hatchechubbee, AL 36858. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616—2121 Building, Birmingham, AL 35203.

MC 142715 (Sub-52TA), filed May 11, 1979. Applicant: LENERTZ, INC., P.O. Box 141, South St. Paul, MN 55075. Representative: K. O. Petrick (same address as applicant). *Foodstuffs and confectionery (except commodities in*

bulk) from Hershey, PA to points in IA, IL, IN, KS, MO, MN, MI, NE, ND, SD and WI, restricted to traffic originating at the facilities of Hershey Foods Corporation and its subsidiaries and destined to the named states, for 180 days. Supporting shipper(s): Hershey Foods Corporation, 19 East Chocolate Avenue, Hershey, PA 17033. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building, South 4th Street, Minneapolis, MN 55401.

MC 142835 (Sub-3TA), filed May 11, 1979. Applicant: CARSON MOTOR LINES, INC., P.O. Box 909, Lakeland, FL 33802. Representative: A. Charles Tell, 100 East Broad St., Columbus, OH 43215. *New furniture,* set up, from the facilities of Thayer Coggin, Inc., at High Point, NC to points in FL for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Thayer Coggin, Inc., 427 South Rd., High Point, NC 27262. Send protests to: Donna M. Jones, T/A, ICC, Suite 101, 8410 N.W. 53rd Terr., Miami, FL 33166.

MC 142905 (Sub-7TA), filed April 2, 1979. Applicant: PETROLEUM TRANSPORTATION CORPORATION, 9717 East 42nd Street, Tulsa, OK 74145. Representative: Thomas N. Willess, 1000 Sixteenth Street, NW., Washington, DC 20036. *Anhydrous ammonia and nitrogen fertilizer solution,* from the facility of Agrico Chemical Co., at or near Williams (Verdigris), OK, to points in AR, KS, TX, and MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Phillips Petroleum Company, 154 Phillips Building Annex, Bartlesville, OK 74004. Send protests to: Connie Stanley, TA, ICC, Room 240 Old Post Office and Court House Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 143206 (Sub-4TA), filed May 21, 1979. Applicant: DAVE HAAS, INC., 203 E. Birch St., Thorp, WI 54771. Representative: Wayne Wilson, 150 E. Gilman St., Madison, WI 53703. *Iron and steel articles* from Crawfordsville, IN; Minneapolis, MN; Chicago, IL; and Fort Worth, TX to the facilities of Industrial Fabricators, Inc., at Thorp, WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Industrial Fabricators, Inc., Thorp, WI 54771. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 144504 (Sub-1TA), filed May 16, 1979. Applicant: DELTA CHARTER SERVICE, INC., 4900 East Mariposa, Stockton, CA 95206. Representative: Eldon M. Johnson, 650 California Street, Suite 2808, San Francisco, CA 94108. *Passengers and their baggage, in the same vehicle with passengers, in charter operations,* beginning and ending at points in San Joaquin County, CA, and extending to points in Douglas, Storey and Washoe Counties, and Carson City, NV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Nationwide Travel, 5311 Elkhorn Blvd., Sacramento, CA 95842, Cal-Vada Fun Tours, 551 N. Hunter St. No. 10, Stockton, CA 95202, Amer. Legion Post No. 263, 1535 2nd St., Escalon, CA 95320, Wood's Wanderer's, Inc., 4729 N. Pershing Ave., Stockton, CA 95207, and Southwest Police Dept., 22 E. Market St., Stockton, CA 95202. Send protests to: A. J. Rodriguez, DS, ICC, 211 Main Street, Suite 500, San Francisco, CA 94105.

MC 145054 (Sub-17TA), filed May 16, 1979. Applicant: COORS TRANSPORTATION COMPANY, 5101 York Street, Denver, CO 80216. Representative: Leslie R. Kehl, 1600 Lincoln Center, 1660 Lincoln Street, Denver, CO 80264. *Meat, meat products, and articles distributed by meat packinghouses,* from facilities of Wilson Foods Corp. at Cedar Rapids, Cherokee and Des Moines, IA to all points in the State of CO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wilson Foods Corporation, 4545 Lincoln Blvd., Oklahoma City, OK 73105. Send protests to: District Supervisor Herbert C. Ruoff, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 145425 (Sub-1TA), filed May 9, 1979. Applicant: DAN'S MOVING & STORAGE, INC., 222 Lake Shore Drive West, Dunkirk, NY 14048. Representative: William J. Hirsch, Atty., Suite 1125, 43 Court Street, Buffalo, NY 14202. *Used household goods, unaccompanied baggage and personal effects,* between points in Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans and Wyoming Counties, NY. Restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized, and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization, and unpacking, uncrating, and decontainerization of such traffic, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Department of the Army, United States Army Legal Services Agency, Nassif Bldg., Falls Church, VA 22041. Send protests to: Richard H. Cattadoris, DS, ICC, 910 Federal Bldg., 111 W. Huron Street, Buffalo, NY 14202.

MC 145598 (Sub-7TA), filed May 7, 1979. Applicant: WARREN G. GORMLEY, dba GORMLEY TRUCKING, 1307 W. Swan, Springfield, Missouri 65807. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. *Charcoal, charcoal briquets, fireplace logs, wood chips, lighter fluid* and *related products* (except commodities in bulk) from Branson, MO, to AR, LA, MS, IN, TN, IL, OH, TX, OK, KY, NE, IA, WV, VA, PA, CA, CO, KS, UT, and NV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shippers(s): Husky Industries, 62 Perimeter Center East, Atlanta, GA 30346. Send protests to: John V. Barry, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 145614 (Sub-3TA), filed May 22, 1979. Applicant: TRIPLE A TRANSPORT, INC., 193 Main Street, Springvale, ME 04083. Representative: John C. Lightbody, 30 Exchange St., Portland, ME 04101. *Fresh meat* from Commerce City, CO to points in ME and NY, for 180 days. Supporting shipper(s): Gold Star Beef Co., Inc., 4810 Newport St., Commerce City, CO 80022. Send protests to: Donald G. Weiler, District Supervisor, ICC, 76 Pearl St., Rm. 303, Portland, ME 04111.

MC 145765 (Sub-2TA), filed April 3, 1979. Applicant: WIEST TRUCKLINE, INC., 1305 6th Avenue S.W., Jamestown, ND 58401.Representative: Charles E. Johnson, 418 East Rosser Avenue, P.O. Box 1982, Bismarck, ND 58501, *Iron and steel articles,* from Chicago and Granite City, IL, Minneapolis, MN, and Wilton, IA, and points in their commercial zones, to the facilities of Northern Plains Steel, and O'Day Equipment, Inc., at or near Fargo, ND, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s):Northern Plains Steel, P.O. Box 6080, Fargo, ND 58102. O'Day Equipment, Inc., 2500 Main Avenue, Fargo, ND 58102. Send protests to: DS, ICC, Bureau of Operations, Room 268 Fed. Bldg. & U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

MC 146545 (Sub-1TA), filed May 1, 1979. Applicant: DELMAR L. HAUCK, P.O. Box 66, R.D. #2, York, PA 17402. Representative: John M. Musselman, c/o Rhoads, Sinon & Hendershot, P.O. Box 1146, 410 N. 3rd St., Harrisburg, PA 17108. *Truck trailers and cargo containers* between Middletown, PA and points in its commercial zone, and points in CT, DE, MD, NJ, NY, RI, VA, and DC, for 180 days. Supporting shipper(s): Fruehauf Corporation, P.O. Box 238, Detroit, MI 48232. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 146635 (Sub-1TA), filed May 15, 1979. Applicant: CLOVER LEAF LINES, INC., 4031 N. 37th St., Milwaukee, WI

53222. Representative: Daniel Dineen, 710 N. Plankinton Ave., Milwaukee, WI 53203. Contract carrier; irregular routes; *Cheese and cheese products* from facilities of Associated Milk Producers, Inc. at Portage and Clair, WI to points in AZ, CA, CO & NM, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Associated Milk Producers, Inc., P.O. Box 455, New Ulm, MN 56073. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 146814 (Sub-2TA), filed May 16, 1979. Applicant: VAN WYK, INC., C Street—Box 433, Sheldon, IA 51201. Representative: Edward A. O'Donnell, 1004 29th Street, Sioux City, IA 51104. *Meat, meat products, meat by-products, and articles distributed by meat packinghouses, as described in Sections A & C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766, except hides and commodities in bulk, in tank vehicles,* from the facilities of John Morrel & Co., Sioux City, IA to points in IL, MI, and OH, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): John Morrell & Co., 208 S. LaSalle St., Chicago, IL 60604. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 146845 (Sub-2TA), filed May 8, 1979. Applicant: J. D. RAY COMPANY, 107 Glenwood Drive, P.O. Box 1183, Americus, GA 31709. Representative: Norman J. Bolinger, 1729 Gulf Life Tower, Jacksonville, FL 32207. *Contract carrier,* irregular routes, *particle board, finished and unfinished, and materials, equipment, and supplies used in the manufacture, sale, and distribution of particleboard, finished and unfinished,* between the facilities of Designs of Americus, Inc., at or near Americus, GA, on the one hand, and, on the other points in LA for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Designs of Americus, Inc., Industrial Boulevard, Americus, GA 31709. Send protests to: G. H. Fauss, Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 146975 (Sub-1TA), filed April 26, 1979. Applicant: HOWARD KEBLER, 10960 Cutler Road, R #1, Eagle, MI 48822. Representative: Howard Kebler, 10960 Cutler Road, R #1, Eagle, MI 48822. *Brick* from Points in Indiana, OH and IL to the Lower Peninsula of MI. For 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): George P. Anderson Co. P. O. Box 16038, Lansing, MI 48901. SEND PROTESTS TO: C. R. Flemming, D/S, I.C.C., 225 Federal Building, Lansing, MI 48933.

MC 147074 (Sub-2TA), filed May 8, 1979. Applicant: E Z FREIGHT LINES, Gould & E. 46th St., Bayonne, NJ 07002. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Cigars, snuff and chewing and smoking tobacco.* From Kingston, PA Wheeling, WV and Helmetta, NJ to Charlotte, NC, San Francisco, CA Kingston, PA, Helmetta, NJ and Wheeling, WV, for 180 days. Supporting Shipper(s): General Cigar and Tob. Co., P.O. Box 2000, Dayton, NJ 08810. Send protests to: Robert E. Johnston, D/S, 744 Broad St., Rm 522, Newark, NJ 07102.

MC 147074 (Sub-3TA), filed May 10, 1979. Applicant: E Z FREIGHT LINES, Gould & E. 46th St., Bayonne, NJ 07002. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Wiping cloths, cotton sweepings and cotton piece goods.* Between Dunellen and New Brunswick, NJ on the one hand, and on the other, points in AL, CA, CT, GA, IL, IN, MA, NY, NC, OH, PA, SC, VA, & WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Nu Tex Corp., 130 South 2nd St., Dunellen, NJ 08812. Send protests to: Robert E. Johnston, D/S ICC, 9 Clinton St., Newark, NJ 07102.

By the Commission.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-17709 Filed 6-6-79; 8:45 am]
BILLING CODE 7035-01-M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 111
Thursday, June 7, 1979

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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[M-226, Amdt. 5; June 4, 1979]

CIVIL AERONAUTICS BOARD.

Addition and closure of item to the June, 1979, meeting agenda.

TIME AND DATE: 9:30 a.m., June 5, 1979.

PLACE: Room 1027 (Open), Room 1011 (Closed), 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 29. Pan American's refiled fuel-related fare increases in international markets. (BIA)

STATUS: Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: Pan American is requesting short notice tariff permission to implement its proposed increases on June 15, 1979. June 5, 1979 is the last day there will be the opportunity for a quorum before the proposed tariff effective date. No earlier notice was possible due to the fact that the proposed was only filed on May 25, 1979 and is still undergoing staff analysis. Accordingly, the following Board Members have voted that agency business requires that the Board meet on this item on less than seven days' notice and that no earlier announcement of the meeting was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

Public disclosure, particularly to foreign governments of opinions, evaluations, and strategies discussed could seriously compromise the ability of the United States Government to achieve understanding in future rate negotiations which would be in the best interests of the United States. Accordingly, we believe that public observation of this meeting would involve matters the premature disclosure of which would be likely to significantly frustrate future action within the meaning of the exemption provided under 5 U.S.C. 552b(c)(9) and 14 CFR section 310b.5(9)(B) and that the meeting should be closed:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

Persons Expected To attend

Board Members.—Chairman, Marvin S. Cohen; Member, Richard J. O'Melia; Member, Elizabeth E. Bailey; and Member, Gloria Schaffer.
Assistants to Board Members.—Mr. David M. Kirstein, Mr. James L. Deegan, and Mr. Stephen H. Lachter.
Office of the Managing Director.—Mr. Cressworth Lander.
Executive Assistant to Managing Director.—Mr. John R. Hancock.
Office of the General Director.—Mr. Michael E. Levine.
Bureau of International Affairs.—Mr. Sanford Rederer, Mr. Donald Litton, Mr. Douglas Leister, Mr. John Kiser, Mr. Richard M. Loughlin, Mr. Ivars V. Mellups, Mr. Rosario J. Scibilia, Mr. David A. Levitt, Mr. Francis S. Murphy, Mr. Michael Pelcovits, Ms. Mary I. Pett, Mr. James S. Horneman, Mr. John A. Driscoll, Mr. Herbert P. Aswall, and Mr. Mark Kahan.
Office of the General Counsel.—Mr. Philip J. Bakes, Jr., Mr. Gary Edles, Mr. Peter Schwarzkopf, and Mr. Michael Schopf.
Bureau of Domestic Aviation.—Ms. Barbara A. Clark.
Bureau of Consumer Protection.—Mr. Reuben B. Robertson and Ms. Patricia Kennedy.
Office of Economic Analysis.—Mr. Larry Manheim.
Office of the Secretary.—Mrs. Phyllis T. Kaylor, Ms. Deborah A. Lee, and Ms. Louise Patrick.

General Counsel Certification

I certify that this meeting may be closed to the public under 5 U.S.C. 522b(c)(9) and 14 CFR section 310b.5(9)(B) and that this meeting may be closed to public observation.

Philip J. Bakes, Jr.,
General Counsel.

[S-1139-79 Filed 6-5-79; 3:52 pm]
BILLING CODE 6320-01-M

2

[M-226, Amdt. 6; June 4, 1979]

CIVIL AERONAUTICS BOARD.

Addition of item to the June 5, 1979, meeting agenda.

TIME AND DATE: 9:30 a.m., June 5, 1979.

PLACE: Room 1027 (Open), room 1011 (Closed), 1825 Connecticut Avenue NW., Washington, D.C. 10428.

SUBJECT: 4b. Docket 32851, IATA Show Cause Proceeding, proposed Order revising procedural dates set forth in Order 79-5-113 and responding to petitions for reconsideration of that Order. (BDA)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: The Chairman has requested that Item 4b. be placed on the June 5, 1979 calendar for consideration by the Board so that the parties can have the earliest possible notice of a revised schedule in this Docket. Since the next Board meeting will not be held until June 20, 1979 the parties would be substantially prejudiced if they were not informed before that time. Accordingly, the following Members have voted that agency business requires the addition of Item 4b. to the June 5, 1979 agenda and that no earlier announcement of this addition was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-1140-79 Filed 6-5-79; 3:52 pm]
BILLING CODE 6320-01-M

3

[M-225, Amdt. 1; May 29, 1979]

CIVIL AERONAUTICS BOARD.

Cancellation of Meeting

TIME AND DATE: 2 p.m., June 5, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: Aero-America to make a presentation regarding its present and proposed operations.

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: Aero-America is scheduled to make a

presentation to the Board on Tuesday, June 5, 1979. The reason for Aero-America's presentation is its desire to inform the Board and the public about "the carrier's present and proposed operations." Its proposed operations are the subject of formal proceedings which will be promptly scheduled for oral argument. The Board believes that it would be preferable to defer Aero-America's informal presentation until after the Board's decision is reached in the formal proceedings in order to avoid any overlap between the formal cases and the presentation. We regret any inconvenience this deferral may have caused. Accordingly, the following Members have voted that agency business requires the presentation be deferred from the June 5, 1979 agenda and that no earlier announcement of this deferral was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-1123-79 Filed 6-5-79; 9:05 am]

BILLING CODE 6320-01-M

4

[M-226, Amdt. 1; May 31, 1979]

CIVIL AERONAUTICS BOARD.

Addition of items to the June 5, 1979, meeting agenda.

TIME AND DATE: 9:30 a.m., June 5, 1979.

PLACE: Room 1027 (Open), Room 1011 (Closed), 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

4a. Board views on General Accounting Office proposed recommendation of legislation to give the Federal Trade Commission authority over all package tours. (OGC)

27a. Docket 34758, Aerolineas Territorials de Colombia Ltda. "AEROTAL" application for a foreign air carrier permit. (Memo No. 8874, BIA, OGC, BLJ)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: The General Accounting Office is planning to publish imminently its recommendation of legislation to give the Federal Trade Commission authority over all package tours and needs the Board's views on the proposed recommendation before publication. Item 4a is being added so that the Board's views can be given to the General Accounting Office prior to their publication date. If Item 27a is not considered at the June 5, 1979 meeting, the applicant probably will have to seek additional exemption authority or interrupt its service. Accordingly, the following Members have voted that agency business requires the addition of Items 4a and 27a to the June 5, 1979 agenda and that no earlier announcement was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-1124-79 Filed 6-5-79; 9:05 am]

BILLING CODE 6320-01-M

5

[M-226, Amdt. 2; June 4, 1979]

CIVIL AERONAUTICS BOARD.

Corrected Copy [1]

Addition of item to the June 7, 1979, meeting agenda.

TIME AND DATE: 9:30 a.m., June 5, 1979.

PLACE: Room 1027 (Open), Room 1011 (Closed), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT: 1a. Nondiscrimination on the basis of handicap in the employment practices of carriers receiving federal financial assistance. (BCP)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: This item was discussed at the May 31, 1979 Board Meeting and the staff is revising the proposed draft. The Board would like to expeditiously consider the draft and submit its comments to HEW. Accordingly, the following Members have voted that agency business requires the addition of Item 1a to the June 5, 1979 agenda and that no earlier announcement of this addition was possible:

Chairman, Marvin S. Cohen
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-1125-79 Filed 6-5-79; 9:05 am]

BILLING CODE 6320-01-M

6

[M-226, Amdt. 3; May 31, 1979]

CIVIL AERONAUTICS BOARD.

Addition of item to the June 5, 1979, meeting agenda.

TIME AND DATE: 9:30 a.m., June 5, 1979.

PLACE: Room 1027 (Open), Room 1011 (Closed), 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 27b. Wild Card Route Case Instituting Order (To determine selection of carrier and new city gateway for U.S.-London service) (BIA)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: This item could not meet administratively scheduled deadlines for the June 5, 1979 meeting because of last minute intra-Bureau coordination. It is essential that the Board take action on it immediately so that the prescribed deadline for Board decision date can be met. Accordingly, the following Members have voted that agency business requires the addition of Item 27b to the June 5, 1979 agenda and that no earlier announcement of this addition was possible:

Chairman Marvin S. Cohen
Member Richard J. O'Melia
Member Elizabeth E. Bailey
Member Gloria Schaffer

[S-1126-79 Filed 6-5-79; 9:05 am]

BILLING CODE 6320-01-M

7

[M-226, Amdt. 4; June 1, 1979]

CIVIL AERONAUTICS BOARD.

Addition of item to the June 5, 1979, meeting agenda.

TIME AND DATE: 9:30 a.m., June 5, 1979.

PLACE: Room 1027 (Open), Room 1011 (Closed), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT: 6a. Dockets 34826 and 34828, Applications of United Air Lines and Trans World Airlines for exemptions. (OGC)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: One of the applicants, United Air Lines, wants to begin service on June 8 if it receives approval from the Board. Because of the press of other work, the staff was unable to prepare its memorandum by the regular closing date for the June 5 calendar, and United must know by June 7, 1979 whether or not it will be permitted to operate its flights. Accordingly, the following Members have voted that agency business requires the addition of Item 6a to the June 5, 1979 agenda and that no earlier announcement of this addition was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey

[1] Change in date on line 1 in Supplementary Information.

Member, Gloria Schaffer

[S-1127-79 Filed 6-5-79; 9:05 am]

BILLING CODE 6320-01-M

8

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, June 7, 1979.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Additional item to be considered at Open Commission Meeting.

MATTER TO BE CONSIDERED:

Agenda, Item No., and Subject

Broadcast—6—Amendment of delegations of authority to Chief of Broadcast Bureau.

Additional information concerning this meeting may be obtained from the FCC Public Affairs Office, telephone number (202) 632-7260.

Issued: June 4, 1979.

[S-1130-79 Filed 6-5-79; 10:46 am]

BILLING CODE 6712-01-M

9

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, June 7, 1979.

PLACE: Room 856, 1919 M Street., N.W., Washington, D.C.

STATUS: Closed Commission Meeting following the Open Meeting.

MATTERS TO BE CONSIDERED:

Agenda, Item No., and Subject

Hearing—1—Application for review filed by Lincoln-Douglas Communications and motion for expedited consideration filed by Midwest Broadcasting Company in the Springfield, Illinois FM proceeding (Docket Nos. 21340 and 21341).

Hearing—2—Petitions for reconsideration of a final Commission decision remanded from the Court of Appeals in the Radio Carrollton, Carrollton, Georgia, AM proceedings (Docket Nos. 19636 and 19637).

General—1—Subpoena of FCC records by AT&T in connection with *United States* v. *AT &T, et al.*, Civil Action No. 74-1698 (D.D.C.).

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from the FCC Public Affairs Office, telephone number (202) 632-7260.

Issued: June 1, 1979.

[S-1131-79 Filed 6-5-79; 10:46 am]

BILLING CODE 6712-01-M

10

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, June 7, 1979.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Open Commission Meeting.

MATTERS TO BE CONSIDERED:

Agenda, Item No., and Subject

Hearing—1—Petition for review by Review Board of the Supplemental Initial Decision in the WNYC/WCCO consolidated AM broadcast proceeding (Docket Nos. 11227, 17588 and 19403).

Hearing—2—Request that order issued pursuant to delegated authority in the New York, New York-Minneapolis, Minnesota Am proceeding be set aside (Docket Nos. 11227, 17588 and 19403).

Hearing—3—Motion to disqualify counsel in the Columbus, Ohio comparative TV proceeding (BC Docket Nos. 78-395 and 78-396).

Hearing—4—Settlement reimbursement in the Richmond, Virginia (WTVR-TV-AM-FM), renewal proceeding (Docket No. 21409).

General—1—Amendment of Sec. 83.224 of the Rules to exempt certain vessels operating in Vessel Traffic Service (VTS) areas from VHF Channel 16 listening watch requirements (156.800 MHz).

General—2—Allocation of 900 MHz frequencies for the creation of a new Personal Radio Service.

General—3—Biological effects of radio frequencies radiation.

General—4—FOIA request by James Reston, Jr., to inspect records and tapes of amateur Radio transmissions of The People's Temple. FOIA Control No. 9-80.

Private Radio—1—Amendment of Part 87 of the Commission's Rules to provide a frequency for helicopter air-to-air communcations. RM 3293.

Private Radio—2—Expansion of fixed point-to-point operations in the 450-470 MHz bands to include narrow band, multi-channel stations.

Private Radio—3—Petition by ATS Mobile Telephone, Inc. for reconsideration of denial, by delegated authority, of ATS's petition for a Cease and Desist and Show Cause order why General Communications Co., Inc.'s Business Radio license should not be revoked.

Private Radio—4—Amendment of Parts 81 and 83 of the Rules to add San Francisco and Seattle to the designated radio protection areas for Vessel Traffic Services.

Common Carrier—1—American Satellite Corporation's petition to reject RCA American Communications, Inc.'s tariff establishing rates and regulations for new 56 kilobit/sec. service.

Common Carrier—2—Notice of Proposed Rule Making seeking to amend Part 68 to allow connection of customer-provided telephone equipment to private line services without "connecting arrangements".

Assignment and Transfer—1—Applications for consent to the voluntary transfer of control of Starr Broadcasting Group, Inc. to Shamrock Broadcasting Company, Inc.

Assignment and Transfer—2—Applications for consent to voluntary transfer of control of Combined Communications Corp. from John J. Louis, Jr., Karl Eller, et al., to Gannett Co., Inc.; application for consent to voluntary assignment of license of WHEC-TV, Rochester, New York from WHEC, Inc. (a wholly owned subsidiary of Gannett) to BENI Broadcasting of Rochester, Inc.; co-pending request for a tax certificate in connection with WHEC-TV transaction.

Assignment and Transfer—3—Application for consent to voluntary assignment of license for AM station WCFL, Chicago, Illinois, from Chicago Federation of Labor and Industrial Union Council to WCFL, Inc.

Aural—1—Application by Doubleday Broadcasting Co., Inc. for assignment of call letters KWK-FM to its recently acquired station WGNU-FM, Granite City, Illinois.

Aural—2—Application by Portorican American Company, Inc. for FM broadcast station CP for station WOQI, Ponce, Puerto Rico, and for waiver of Section 73.213(f)(1).

Aural—3—Request for presunrise service filed by radio Akron, Inc., (WHLO), Akron, Ohio.

Television—1—Applications by Spanish International Communications Corp. to construct TV translator stations to serve Hartford, Connecticut; Bakersfield, California; Philadelphia, Pennsylvania; and Denver, Colorado.

Broadcast—1—Television Waveform Standards concerning horizontal and vertical blanking.

Broadcast—2—Broadcast Reregulation Order.

Broadcast—3—Digitally coded program-related material in the video portion of signals.

Broadcast—4—Restructuring of Part 73 of the Rules.

Broadcast—5—Proposed Rule Making on stereophonic broadcasting by AM station (Docket 21313).

Complaints and Compliance—1—Field investigation into the operations of Radio Station WYEN-FM, Des Plaines Illinois.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning the meeting may be obtained from the FCC Public Information Office, telephone number (202) 632-7260.

Issued: June 1, 1979.

[S-1132-79 Filed 6-5-79; 10:46 am]

BILLING CODE 6712-01-M

11

FEDERAL DEPOSIT INSURANCE CORPORATION.

TIME AND DATE: 2 p.m. on Monday, June 11, 1979.

PLACE: Board Room, 6th Floor, FDIC Building, 550–17th Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Disposition of minutes of previous meetings.

Memorandum and resolution proposing the final adoption and publication of amendments to Part 309 of the Corporation's rules and regulations, entitled "Disclosure of Information".

Memorandum proposing the appointment of an agent for service of process in the State of Minnesota.

Resolution expressing the Board's appreciation to Ms. Carmen J. Sullivan for her contributions to the Corporation and to the public while serving as Acting Director of the Office of Consumer Affairs and Civil Rights.

Reports of committees and officers:

Minutes of the actions approved by the committee on Liquidations, Loans and Purchases of Assets pursuant to authority delegated by the Board of Directors.

Reports of the Director of the Division of Bank Supervision with respect to applications or request approved by him and the various Regional Directors pursuant to authority delegated by the Board of Directors.

CONTACT PERSON FOR MORE INFORMATION: Mr. Hoyle. L. Robinson, Executive Secretary, (202) 389–4425.

[S–1123–79 Filed 6–6–79; 11:26 am]

BILLING CODE 6714–01–M

12

FEDERAL DEPOSIT INSURANCE CORPORATION.

TIME AND DATE: 2:30 p.m. on Monday, June 11, 1979.

PLACE: Board Room, 6th Floor, FDIC Building, 550—17th Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Applications for Federal deposit insurance:

The City Bank of San Francisco, a proposed new bank to be located at the northeast corner of Sansome and Pine Streets, San Francisco, California, for Federal deposit insurance.

Louisiana Bank of Ouachita Parish, a proposed new bank to be located at North 7th and West Jackson Streets, West Monroe, Louisiana, for Federal deposit insurance.

Missouri Southern Bank, a proposed new bank to be located at 1319 North Porter Wagoner Boulevard, West Plains, Missouri, for Federal deposit insurance.

Request pursuant to section 19 of the Federal Deposit Insurance Act for consent to service of a person convicted of an offense involving dishonesty or a breach of trust as a director, officer, or employee of an insured bank:

Name of person and of bank authorized to be exempt from disclosure pursuant to the provisions of subsection (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6)).

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 43,921–L—Franklin National Bank, New York, New York; The Hamilton National Bank of Chattanooga, Chattanooga, Tennessee; American Bank & Trust Company, New York, New York; Farmers Bank of the State of Delaware, Dover, Delaware.

Case No. 43,942–L—Franklin National Bank, New York, New York.

Case No. 43,945–L—Tri-City Bank, Warren, Michigan.

Case No. 43,946–L—Northeast Bank of Houston, Houston, Texas.

Case No. 43,947–L—Franklin National Bank, New York, New York.

Case No. 43,949–L—The Hamilton Bank and Trust Company, Atlanta, Georgia.

Memorandum re: Bank of Woodmoor, Woodmoor (P.O. Monument), Colorado.

Recommendations with respect to the initiation or termination of cease-and-desist proceedings, termination-of-insurance proceedings, or suspension or removal proceedings against certain insured banks or officers or directors thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

CONTACT PERSON FOR MORE INFORMATION: Mr. Hoyle L. Robinson, Executive Secretary, (202) 389–4425

[S–1124–79 Filed 6–6–79; 11:26 am]

BILLING CODE 6714–01–M

13

FEDERAL ELECTION COMMISSION.

FEDERAL REGISTER NO. FR–S–1108.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 7, 1979 at 10 a.m.

CHANGE IN MEETING: The following item has been added to the open portion of the meeting:

Review of Commission audit policies and procedures.

The following item has been added to the closed portion of the meeting:

Udall 1976 Committee audit report.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred S. Eiland, Public Information Officer, Telephone: 202–523–4065.

Marjorie W. Emmons,
Secretary to the Commission.

[S–1137–79 Filed 6–5–79; 2:37 pm]

BILLING CODE 6715–01–M

14

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Tuesday, June 12, 1979 at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance, Personnel, Udall 1976 Committee Audit Report.

* * * * *

DATE AND TIME: Wednesday, June 13, 1979 at 10 a.m.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Any matters not concluded on June 12, 1979; Udall 1976 Committee Audit Report

* * * * *

DATE AND TIME: Thursday, June 14, 1979 at 10 a.m.

STATUS: Portions of this meeting will be open to the public and portions will be closed.

MATTERS TO BE CONSIDERED:

Setting of dates for future meetings.

Correction and approval of minutes.

Advisory opinions; AO 1979–22 Evan S. Dobelle, Counsel, Carter-Mondale Presidential Committee, Inc. ("Committee"); AO 1979–26 Charles E. Grassley, U.S. House of Representatives.

Thresholds for review of Presidential Disclosure Reports.

Index Pricing Policy.

Contract proposal on use of sampling techniques for matching fund certification program.

Proposed regulations on the funding and sponsorship of debates.

Commission Program Reviews.

FEC monthly status report on the Presidential public funding process.
Budget Execution report.
Appropriations and budget.
Classification actions.
Routine administrative matters.

Portions closed to the public:
Any matters not included on June 12 and 13.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred S. Eiland, Public Information Officer, Telephone: 202–523–4065.

[S-1115-79 Filed 6-5-79; 2:43 pm]
BILLING CODE 6715-01-M

15

INTERNATIONAL TRADE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 31387 (May 31, 1979).

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Thursday, June 7, 1979.

CHANGES IN THE MEETING:

The following item, previously scheduled for the meeting of Thursday, June 7, 1979, has been rescheduled and added to the agenda for the meeting on Tuesday, June 12, 1979:

8. Carbon steel plate from Poland (inv. AA1921–203)—briefing and vote.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

[S-1130-79 Filed 6-5-79; 2:10 pm]
BILLING CODE 7020-02-M

16

NATIONAL LABOR RELATIONS BOARD.

AGENCY HOLDING THE MEETING: National Labor Relations Board.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 30192, published May 24, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., Monday, June 4, 1979.

CHANGES IN THE MEETING:

1. The time and date of the meeting has been changed to: 9 a.m., Tuesday, June 12, 1979.
2. Matters to be considered has been changed to read: Personnel matters pertaining to Senior Executive Service.

Dated: Washington, D.C., June 5, 1979.
By direction of the Board.

George A. Leet,
Associate Executive Secretary, National Labor Relations Board.

[S-1141-79 Filed 6-5-79; 3:52 pm]
BILLING CODE 7545-01-M

17

NATIONAL TRANSPORTATION SAFETY BOARD.

TIME AND DATE: 9 a.m., Thursday, June 14, 1979. [NM–79–19]

PLACE: NTSB Board Room, National Transportation Safety Board, 800 Independence Avenue SW., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Marine Accident Report*—Grounding and capsizing of clam digger PATTI–B at Ocean City, Md., May 9, 1978.
2. *Marine Accident Report*—Sinking of the offshore supply vessel M/V SABINE SEAHORSE in the Gulf of Mexico, January 31, 1978.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming, 202–472–6022.

June 5, 1979.

[S-1142-79 Filed 6-5-79; 4:06 pm]
BILLING CODE 4910-58-M

18

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: June 2, 4, 5 and 7, 1979.

PLACE: Commissioners' Conference Room, 1717 H St., N.W., Washington, D.C.

STATUS: Open/Closed (Changes).

MATTERS TO BE CONSIDERED:

Saturday, June 2, 5 p.m.

Discussion of Personnel Matter (Approximately 30 minutes—Closed—Ex 6)

Monday, June 4, 1:30 p.m.

The "Discussion of Personnel Matter" (Approximately 1½ hours—Closed—Ex 6) is Postponed to Tuesday, June 5 at 10:30 a.m.

Tuesday, June 5, 10:30 a.m.

The "Second Periodic Review of NRC Fiscal Year 1979 Operating Budget and Decision Unit Tracking" (Approximately 1½ hours—Public meeting) is Postponed to Thursday, June 7 at 9:30 a.m.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee, 202–634–1410.

Dated: June 4, 1979
Roger M. Tweed,
Office of the Secretary.

[S-1135-79 Filed 6-5-79; 1:04 pm]
BILLING CODE 7590-01-M

19

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 28925—May 17, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 1 p.m. on June 7, 1979.

CHANGES IN THE MEETING: This meeting has been canceled and will be rescheduled at a later date to be announced.

Dated: June 4, 1979.

[S-1129-79 Filed 6-5-79; 9:05 am]
BILLING CODE 7600-01-M

20

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 10 a.m. on June 12, 1979.

PLACE: Fourth Floor Courtroom, U.S. Court of Customs and Patent Appeals, 717 Madison Place, N.W., Washington, D.C.

STATUS: Open meeting.

MATTERS TO BE CONSIDERED: The Commissioners will hear and consider oral argument from the parties in the matter of *Secretary of Labor* v. *New England Telephone & Telegraph Company*, OSHRC Docket No. 76–3010.

CONTACT PERSON FOR MORE INFORMATION: Ms. Particia Bausell, (202) 634–4015.

Dated: June 4, 1979.

[S-1128-79 Filed 6-5-79; 9:05 am]
BILLING CODE 7600-01-M

Federal Register

Thursday
June 7, 1979

Part II

Environmental Protection Agency

National Pollutant Discharge Elimination System; Revision of Regulations

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 6, 115, 121, 122, 123, 124, 125, 402, and 403

[FRL 1201-2]

National Pollutant Discharge Elimination System; Revision of Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extensively revises the existing regulations governing the National Pollutant Discharge Elimination System (NPDES) program for three purposes:

(1) To clarify and improve existing program regulations and procedures in light of past experience;

(2) To fill significant gaps in coverage under the existing regulations, particularly in response to court decisions and the emerging emphasis on the control of toxic and hazardous pollutants; and

(3) To make the regulatory changes which are necessary under the 1977 amendments to the Clean Water Act.

DATES: These regulations will be considered issued for purposes of judicial review at 1:00 p.m. eastern time on June 14, 1979. If such date is a Federal holiday, the issuance date will be considered to be 1:00 p.m. eastern time on the next day after the seventh day which is not a Federal holiday. Parts 121, 122, 123, 125 and 403 of this regulation shall be effective August 13, 1979. Part 124 is effective as provided in § 124.135. In order to assist EPA to correct typographical errors, incorrect cross-references, and similar technical errors, comments of a technical and nonsubstantive nature on this final regulation may be submitted not later than August 13, 1979. However, the effective dates will not be delayed by consideration of such comments.

FOR FURTHER INFORMATION CONTACT: Edward A. Kramer (EN-336), Office of Water Enforcement, Environmental Protection Agency, Washington, DC 20460 (202-755-0750).

SUPPLEMENTARY INFORMATION:

Background

The Federal Water Pollution Control Act Amendments of 1972 established the National Pollutant Discharge Elimination System (NPDES) permit program. Shortly after, in December 1972 and May 1973, EPA promulgated regulations outling the NPDES program in two Parts. 40 CFR Part 124 established substantive requirements for approved State NPDES programs, while Part 125 established the similar requirements of the EPA permit program. These two Parts, revised several times, are the existing NPDES regulations which remain in force until the effective date of these regulations published today.

In 1977, a new phase of the NPDES program began, prompted by several developments. First, five years of experience with dischargers, approved NPDES States, and the courts had been gained. Second, the "first round" of NPDES permits, issued for a term of five years, were beginning to expire. Third, a major statutory deadline (July 1, 1977) had passed, and the 1983 deadline for achievement of more stringent treatment requirements became the new program goal, along with an increased emphasis on the control of toxic and hazardous pollutants. In late 1977, Congress enacted the Clean Water Act of 1977, making several significant changes in the scope and direction of the NPDES program. These changes include: revisions of the 1983 treatment requirements for industrial dischargers; extensions of the 1977 treatment deadline for certain municipal and industrial dischargers; provisions for certain variances from technology-based treatment requirements; recognition of the Consent Decree in *NRDC* v. *Train*, 8 ERC 2120 (D.D.C. 1976); requirements for best management practices in certain industrial permits; provision for control of sewage sludge disposal in NPDES permits; provision for EPA to issue permits if it objects to a State NPDES permit; and authorization of State assumption of the permit programs under sections 318, 404, and 405.

In addition to the need for regulatory revisions to address these major developments, the former regulations had to be amended and reorganized because they had become unwieldy. On one hand, much needless duplication of the basic substantive and procedural requirements between the former State and Federal NPDES program regulations can be eliminated. Under the regulations published today, the basic substantive and procedural requirements applicable to all permits are set forth in Parts 122 and 124. Part 123, which establishes State Permit Program Requirements, cross-references provisions from those Parts which are applicable to State programs. EPA believes that this new structure will help to simplify the regulations for use by permittees, the States, and the public, and will avoid inconsistencies between State and Federal programs.

Parts of the former NPDES regulations were either too terse to provide meaningful guidance or left significant permit-related issues unaddressed. For example, in many situations the former regulations governing adjudicatory hearings provided inadequate assistance or direction to Presiding Officers or the parties. Based upon several years of experience accumulated by EPA in conducting these hearings, the regulations published today for Part 124 provide more detailed procedures better tailored to result in responsible, informed permit issuance decisions. Similarly, and for the same purpose, the regulations published today for Parts 122 and 125 provide guidance on substantive questions formerly unaddressed in regulations.

Accordingly, five new Parts of Title 40, incorporating all of existing Parts 115, 122, 123, 124, 125 and 402, as well as portions of § 6.900, are established as follows:

- **PART 121—STATE CERTIFICATION OF ACTIVITIES REQUIRING A FEDERAL LICENSE OR PERMIT**
- **PART 122—NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**
- **PART 123—STATE PERMIT PROGRAM REQUIREMENTS**
- **PART 124—PROCEDURES FOR DECISIONMAKING REGARDING NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS**
- **PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

A "Guide to the NPDES Regulations" which describes the regulations has been prepared and is available by writing the Environmental Protection Agency, Public Information Center (PM-215), 401 M Street, S.W., Washington, D.C. 20460.

These regulations were proposed on August 21, 1978. (43 FR 37078). Originally, the comment period on the proposed regulations was to have ended on October 20, 1978. However, based on many requests from the public, the comment period was extended to November 20, 1978 (43 FR 47213, October 13, 1978). During the comment period, two public meetings were held: one in Washington, D.C. and one in San Francisco. Over 100 people attended each meeting and over 500 letters were

submitted containing thousands of comments. Comments were catalogued and summarized for each section of the proposal. These final regulations revise the proposed regulations based on comments received. A summary of comments received and the bases for revisions are discussed later in this preamble.

In addition to the August 21, 1978 proposal, EPA published other regulations governing specific portions of the NPDES program. These regulations were promulgated separately from the August 21, 1978 core package because of statutory deadlines for application by permittees for certain extensions and modifications or because of other pressing needs. The following table summarizes all regulations recently published by EPA concerning the NPDES program. Except as noted in the table, these separately published regulations have been incorporated into this final rule.

Table I

Federal Register Date	Summary of regulation	Status of regulations as of last publication	Comments
Feb. 4, 1977 (42 FR 6846)	*General Permit Program.* Proposed establishment of a new general program covering point source discharges.	Proposed Rule.	Incorporated in final rule, primarily at § 122.46.
Apr. 25, 1978 (43 FR 17984)	*301(h) Modifications.* Proposed establishment of criteria, standards and procedures for granting 301(h) permit modifications to the secondary treatment requirements for certain ocean discharges.	Proposed Rule.	Procedures incorporated into Part 124, Subpart G, of Part 125 reserved for standards and criteria.
May 16, 1978 (43 FR 21206)	*301(i) Extensions.* Establishes criteria for granting extensions for compliance with 1977 statutory deadline for municipal treatment requirements and industries planning to connect to these treatment systems and a method for incorporating these extensions in the NPDES program.	Interim Final Rule.	Incorporated in final rule as Subpart J of Part 125.
May 23, 1978 (43 FR 22160)	*Veto/Modification.* Revised Parts 124 and 125 of EPA regulations to clarify the procedures and criteria which EPA will use in exercising its authority to object to (veto) the issuance of State NPDES permits and to require modification of permits to incorporate BAT/Toxic requirements in accordance with NRDC Consent Decree of June 8, 1976.	Final Rule	Veto regulations incorporated in final rule at § 123.23. Modification regulations incorporated in final rule at § 122.15(b).
June 26, 1978 (43 FR 27736)	*Pretreatment.* Pretreatment regulations to control the introduction of non-domestic wastes into municipal treatment plants.	Final Rule	Technical conforming amendments made by this final rule.
Aug. 21, 1978 (43 FR 37078)	*NPDES Regulations* Proposed revision to the NPDES regulations	Proposed Rule.	Incorporated in final rule as Parts 122, 123, 124, and 125.
Sept. 1, 1978 (43 FR 38582)	*Best Management Practices.* Proposed establishment of new controls on toxic and hazardous pollutants by imposing in NPDES permits Best Management Practices for ancillary industrial activities.	Proposed Rule.	Incorporated, in part, in Part 125, Subpart K.
Sept. 1, 1978 (43 FR 39276)	*Spill Prevention Control and Countermeasures (SPCC).* Requirements for SPCC Plans to prevent discharges of hazardous substances from facilities subject to NPDES permits.	Proposed Rule.	Not part of final rule.
Sept. 13, 1978 (43 FR 40859)	*Best Available Technology (BAT) Modifications.* Establishes requirements for application for modifications of BAT non-conventionals under 301(c) and/or 301(g).	Interim Final Rule.	Incorporated in final rule at § 124.51(b).
Dec. 11, 1978 (43 FR 58068)	*Second Round Permits.* Established strategy to ensure NPDES permit will reflect 1983 treatment requirements by issuing short-term permits set to expire 18 months after the scheduled date of promulgation of BAT guidelines for industries affected by the NRDC Consent Decree.	Final Rule	Incorporated in final rule at § 122.12(c) and § 122.15(b).

The incorporated regulations have been renumbered to conform with the codification of this final rule. Any additional changes (i.e., based on public comments) are discussed later in this preamble.

These final NPDES regulations set the framework for EPA's consolidated permit regulations, which will soon be proposed in the Federal Register. The proposed consolidated permit regulations will cover the NPDES and section 404 (discharge of dredged or fill material) programs under the Clean Water Act, the hazardous waste management program under the Resource Conservation and Recovery Act, and the underground injection control program under the Safe Drinking Water Act. When promulgated, the consolidated regulations will occupy Parts 122–124 of Title 40 of the Code of Federal Regulations. The final NPDES regulations will be incorporated into the proposed consolidated regulations without significant change. The Preamble to the consolidated regulations will highlight the changes made during the process of program consolidation that affect the NPDES program, and will invite comments on the proposed changes. The final NPDES regulations will remain effective until the consolidated regulations are published in final form.

Judicial Review of the Regulations

The issue has arisen as to where and when judicial review will be available on these regulations. For the benefit of those who might be affected by these regulations, and to avoid, if possible, premature attempts to seek review for protective reasons based on concern that EPA will oppose review when it is proper, a brief outline of the Agency's views on reviewability of these regulations follows.

Judicial review of most regulatory actions under the Clean Water Act is available under section 509(b). That section identifies specific actions which are reviewable in the Courts of Appeals. Judicial review of two permit-related actions is available under section 509(b): "issuing or denying any permit" (section 509(b)(1)(F)) and "making any determination as to a State permit program" (section 509(b)(1)(D)). However, review is not provided for actions in issuing general regulations governing the issuance of NPDES permits. NPDES regulations have been in force since 1973, and no court has held that they are independently reviewable. They have, however, been reviewed in the context of individual permit issuance actions, for which review in the Courts of Appeals is explicitly provided. See, e.g., *Marathon Oil Company* v. *EPA*, 564 F.2d 1253 (9th Cir. 1977), *Seacoast Anti-Pollution League* v. *Costle*, 572 F.2d 872 (1st Cir. 1978).

The alternative to direct review of NPDES regulations under section 509(b) has been rejected by the Court of

Appeals for the Third Circuit. In *American Iron and Steel Institute* v. *EPA (AISI II)*, 543 F.2d 521 (3rd Cir. 1976), the court held that "net/gross" provisions of NPDES regulations (which currently appear, in amended form, as § 122.16 (f) and (g) of these regulations) are not reviewable in the abstract, but become reviewable either in the context of individual effluent limitations guidelines or NPDES permit issuance. *AISI II* at 528.

EPA agrees with the Court's analysis in *AISI II*. Today's regulations will be reviewable when NPDES permits are issued. A very few, such as net/gross provisions, may also become reviewable when effluent limitations guidelines are promulgated. None are reviewable now in the Courts of Appeals.

There remains a question not addressed by the *AISI II* decision: Is review of these regulations available in District Courts? EPA believes that District Court review is not available now. Two of the reasons cited in *AISI II* for the unavailability of Court of Appeals review similarly militate against District Court review: The absence of a factual context to focus review, and the absence of a concrete record to aid the reviewing court; *AISI II* at 528. Moreover, the absence of immediate effect on the discharger and other parties points persuasively to a conclusion that today's regulations are not ripe for review in either the District Courts or the Courts of Appeals. As the Supreme Court stated in *Toilet Goods Ass'n.* v. *Gardner*, 387 U.S. 158, 165 (1967) the challenged regulations:

> would at most lead only to . . . a determination that can then be promptly challenged through an administrative procedure, which in turn is reviewable by a court. Such review will provide an adequate forum for testing the regulation in a concrete situation. [Footnotes omitted.]

EPA believes, for the same reasons, that the NPDES regulations should be reviewed in the concrete context of permit issuance proceedings. See *Diamond Shamrock Corp.* v. *Costle*, 580 F. 2d 670 (D.C. Cir. 1978).

Issuance Date of the Regulations

EPA further wishes to point out that the NPDES regulations will not be considered issued for the purpose of judicial review (if available at this time) until 1:00 p.m. eastern time, 7 days after publication in the Federal Register (June 14, 1979). EPA published notice of this intent to have a delayed issuance date on May 1, 1979, 44 FR 25475. The regulations will not become effective until 60 days from that issuance date (August 13, 1979) except for Part 124 which will be 120 days (October 12, 1979). In addition, due to the length of NPDES regulations and the number of cross-references, EPA will accept nonsubstantitive comments (e.g., typographical errors, incorrect cross-references, missing lines, etc.) during this same 60-day period. This nonsubstantive comment period will not affect the effective date of the NPDES regulations.

Overview of These Regulations

I. Part 121—State Certification of Activities Requiring a Federal License or Permit

A. *What Does This Part Do?* Part 121 contains State certification procedures and requirements applicable to all Federal Licenses and permits other than NPDES.

B. *How Does This Part Relate to Existing Regulations?* The existing State certification regulations predate the Federal Water Pollution Control Act Amendments of 1972 and have never been updated. However, because of the impact of State certification of non-NPDES permits on a myriad of Federal programs, it will be necessary to consult with the affected agencies in some detail before changes are made. State certification of Federal licenses or permits other than NPDES will continue unchanged. This Part merely redesignates the existing regulations, formerly 40 CFR 123, as Part 121. State Certification of NPDES permits is discussed in the overview of Part 124.

C. *How Does This Part Relate to the August 21, 1978 Proposed Regulations?* The August 21, 1978 proposal inadvertently deleted existing State certification regulations. This deletion was noted in a comment from the public. In response to the comment, this Part has been retained.

II. Part 122—National Pollutant Discharge Elimination System

A. *What Does This Part Do?* Proposed Part 122 establishes the basic "program definition" of the NPDES, whether administered by EPA or an approved State. This Part covers the full range of substantive program requirements, spelling out in detail: who must apply for a permit; how a permit is issued; what terms, conditions, and schedules of compliance must be incorporated into permits; when and how monitoring and reporting of permit compliance must be performed; when permits may be revised or reissued; and what special requirements apply to certain types of dischargers.

B. *How Does This Part Relate To Existing Regulations?* The former regulations contain separate NPDES program requirements for approved States (40 CFR Part 124) and for EPA (40 CFR Part 125). The majority of provisions under former Parts 124 and 125 are duplicative. To eliminate this duplication, the NPDES program requirements applicable to both EPA and approved States have now been consolidated into one set of regulations in Part 122. The process for approval of a State program to administer the NPDES is in a separate Part (see Part 123 below), which cross-references the applicable substantive requirements of Part 122.

Part 122 regulations reflect significant developments which have occurred since the NPDES program began. Furthermore, provisions of the former regulations have been reorganized and rewritten. New regulations have been included where the former regulations do not adequately address the requirements of the Act (i.e., where court decisions have altered aspects of the NPDES program, where EPA guidance for administration of the NPDES program was not previously incorporated into regulations, and where experience in administering the program has highlighted gaps in effective implementation of the Act). Finally, certain revisions have been made to conform the NPDES program to provisions of the 1977 amendments to the Clean Water Act.

C. *How Does This Part Relate to the August 21, 1978 Proposed Regulations?* The following is a discussion of the significant comments received and the basis for revisions made to Part 122 of the proposed regulations. Minor editorial changes have been made in all sections.

§ 122.3 Definitions.

§ 122.3(f) Definition of "best management practices".

Many commenters indicated confusion as to the relationship between best management practices mandated under section 304(e) of the Act and best management practices which might be required under other authorities (e.g., through section 401 State certification; pursuant to section 208(e) for water quality management plan requirements; where effluent limitations are inappropriate or infeasible to control plant source discharges in accordance with *NRDC* v. *Costle* (Runoff Point Sources) 568 F.2d 1369 (D.C. Cir. 1977)). To clarify this point, it should be noted that the definition of best management

practices in paragraph (f), while adapted from section 304(e) language and legislative history, applies to uses of the term "under any or all authorities." Thus, the term has been used to reflect section 304(e) as well as requirements imposed under section 402(a)(1) in accordance with the Runoff Point Sources decision in *NRDC* v. *Costle*.

Several commenters also noted that the legislative history of section 304(e) specifically excludes actual plant process design and related operating decisions from the definition of best management practices. EPA agrees, and has revised the definition to include this limitation authority under section 304(e).

§ 122.3(k) (proposed § 122.3(j)) Definition of "discharge of a pollutant".

Many commenters disagreed with one or more of the types of activities included within the definition of a "discharge of a pollutant" in proposed paragraph (j). In response, the following revisions and clarifications have been incorporated into the final regulations.

First, the regulations have been clarified to indicate that a discharge to a pipe is not, in and of itself, a discharge of pollutants subject to the permit program. A discharge to a pipe must ultimately reach navigable waters in order to fall within the purview of the NPDES requirements.

Second, a number of comments questioned the statutory authority for the requirement in the proposed § 122.3[j] that classified a discharge through a State or municipally owned treatment system as a direct discharge, if that treatment system was not designed and constructed to meet the "applicable requirements of section 301(b) of the Act." These commenters argued that this provision placed an undue burden on industrial users of State/municipal treatment systems and that this method of control was beyond authority granted EPA by the Act.

EPA has changed this requirement in response to these comments, although the Agency believes that the proposed regulations were within its authority. This provision in revised § 122.3(k) now defines as a "discharge of a pollutant" only those discharges into pipes which do not lead to a treatment system, but rather into waters of the United States.

On the other hand, a discharger discharging into a storm sewer or other publicly owned conveyance which does not lead to a publicly owned treatment works, but directly to navigable waters, is clearly subject to the permit requirement. See *United States* v. *Granite State Packing Co.*, 343 F. Supp. 57 (D.N.H. 1972), *aff'd.*, 470 F.2d 305 (1st Cir. 1972). The final regulations continue to reflect this requirement.

Third, the provision in the proposed definition of "discharge of pollutant," which stated that discharges through State or municipal systems handling primarily industrial wastes be considered direct discharges has been deleted in response to comments. Many commenters considered the proposed approach to be unwieldly and inconsistent with the language of the Act regarding publicly owned treatment works (POTWs). This provision was intended to allow a more equitable control of compatible wastes (biochemical oxygen demand (BOD) and suspended solids (SS)) which are discharged into POTWs by industries (incompatible industrial wastes are controlled through the pretreatment regulations, 40 CFR Part 403). At present, POTWs are required by the Act to achieve, at a minimum, the effluent quality attainable through the application of secondary treatment. The secondary treatment information regulation (40 CFR Part 133) controls concentration and percent removal of BOD and SS, pollutant parameters normally associated with domestic wastes. However, many POTWs receive and treat large amounts of industrial waste. The secondary treatment information regulation does not completely address compatible industrial waste; 40 CFR § 133.103(b) only allows an upward adjustment of the concentration limits where the effluent limitation guidelines, which would be applicable to the industry if it were a direct discharger, are *less* stringent than secondary treatment. 40 CFR 133 does not allow for *more* stringent concentration limits where industrial effluent limitations guidelines are more stringent. Nor does the secondary treatment regulation allow for any adjustment of the 85% removal requirement. The proposed provision would have allowed EPA to address these two areas and we continue to believe that it is supportable under the Act. However, we do agree with those commenters who said that such a provision would be very unwieldly and would make permit writing under these circumstances a very difficult task. Therefore, we have deleted this provision and intend to deal with these issues by revising the definition of secondary treatment or alternatively, covering these areas in a revision to the definition of best practicable waste treatment technology.

Further, a number of commenters objected to the provision which included discharges through pipes, sewers or other conveyances owned by third parties other than a State or municipality as direct discharges. These commenters argued that such discharges, at a minimum, should be considered to be discharges through treatment systems. In addition, many commenters questioned the statutory authority and practicability of such a provision.

EPA has revised this provision to indicate that discharges through privately owned treatment systems are direct discharges. Moreover, EPA continues to believe that adequate authority exists for such a provision. This provision reflects EPA's interpretation of the Act in the Decision of the General Counsel No. 43 (Friendwood Development Company). Nevertheless, EPA does not intend for this requirement to result in many permits for a single discharge point. To avoid the administrative problems caused by multiple permits, EPA recommends the issuance of a single permit to all users as well as the control or treatment facility, with all parties listed as permittees and with joint and several liability for obligations under the permit.

Finally, a number of commenters argued that the inclusion of surface runoff channelized into point sources in the proposed definition of "discharge of a pollutant" was overreaching in light of the statutory exclusion of irrigation return flows. Many commenters also argued that the definition was confusing when read in conjunction with proposed § 122.4 (Exclusions), § 122.45 (Separate storm sewers), and § 122.46 (Silvicultural activities). This definition has not been changed. The concerns of the commenters have been addressed through revisions to § 122.4, § 122.45, and § 122.46. For further details see discussion on these sections later in this preamble.

§ 122.3(l) (proposed § 122.3(K)) Definition of "discharge monitoring report".

A number of comments were received on the proposed definition of "discharge monitoring report." Some argued that the definition should allow more flexibility to States in development of a form for reporting of self-monitoring results by permittees. Other commenters argued that EPA standard national forms for Discharge Monitoring Reports should be used both by EPA and by approved States. EPA was persuaded by the latter arguments and has changed the definition to require the use of standard national forms by both EPA and approved NPDES States. This will

facilitate the use of computer systems designed to directly read and analyze the reported information. It will also increase the ability of all program offices within EPA to share such information. EPA will provide the States with preprinted standard forms (States may substitute their name, logo, etc. on these forms) and will also provide necessary computer software.

§ 122.3(t) (Proposed § 122.3(s)) Definition of "navigable waters".

The definition of "navigable waters" has been slightly revised to clarify its intent and scope, but the basic thrust and coverage remain the same as in the proposed rules.

Some commenters suggested that EPA exclude certain types of impoundments of navigable waters from the definition, such as holding ponds, cooling ponds, and closed cycle lagoons. Under some circumstances, it is appropriate to impound navigable streams in order to create a cooling pond or lake. EPA does not mean to prohibit this practice and applicable regulations specifically recognize this use and specify where it is allowable to comply with technology-based regulations. For example, in 40 CFR § 423.11 (m) and (n), the terms "cooling pond" and "cooling lake" are distinguished. A "cooling pond" may under some circumstances be navigable waters, but usually is not. A "cooling lake" is always a navigable water. Yet in either case affluent guidelines explicitly recognize some circumstances in which it is appropriate to use such impoundments for treatment. (Compare 40 CFR § 423.13(1)(3) with 40 CFR § 423.15(1)(2)). These are exceptional cases, however. In general, the Act's requirements must be met at the point of discharge into navigable waters.

Some commenters suggested that waste treatment systems be excluded from the definition of navigable waters. EPA disagrees with this comment where cooling ponds are involved. Such ponds are frequently extremely large in size and some harbor fish populations which invite recreational uses. If such ponds are opened for recreational use, recreational users of the previously non-navigable waters could be exposed to potentially harmful effects where, for example, fish are contaminated and consumed by such users. EPA believes this use should remain subject to control under the Act's regulatory provisions, and that such broad jurisdiction is consistent with the thrust of the Act and its legislative history.

Use by industries in interstate commerce. Some controversy has centered around the question of what waters are defined as "waters of the United States" because of use by industries in interstate commerce for industrial purposes. The Decision of the General Counsel No. 73 concluded that the definition in the previous regulations required actual use by an industrial user downstream from the discharger. Since there were no users downstream from the discharging industry, the stream in question was found not to be waters of the United States. The opinion explicitly stated, however, that it was based upon the regulations, not the Act, and left open the question whether EPA was free to adopt a broader definition tied to the susceptibility of the stream of use by industries in interstate commerce.

These regulations are intended to broaden the definition of waters of the United States in the manner suggested by Decision No. 73. Waters will be considered to be waters of the United States not only if they are actually used, but also if they may be susceptible to use, for industrial purposes by industries in interstate commerce. Thus the regulations now focus, not on the nature of the stream's users, but on the characteristics of the stream itself, and it will no longer be necessary to show actual industrial use for a stream to fall within the definition.

On the other hand, except for cooling ponds which meet the criteria for "waters of the United States" (such as, for example, those which are used for fishing or other recreational purposes by interstate travelers), EPA agrees with a frequently encountered comment that waste treatment lagoons or other waste treatment systems should not be considered waters of the United States. Accordingly, the definition has been revised to exclude such treatment systems.

Moreover, if any portion of a stream is used or susceptible to use by industries in commerce, the entire stream is waters of the United States. As an example, assume that three industries in interstate commerce (A, B and C), lie along a stream which flows into a small lake contained entirely on the property of Industry C, and from which there is no outflow. Industries A and B are upstream of Industry C. All three use the stream for industrial purposes and discharge effluent into the stream. The stream is waters of the United States because it is used by industries in interstate commerce. All three industries require NPDES permits, including Industry C, even though there is no user downstream from Industry C. The question of actual or potential use downstream from the discharger (Industry C) is not relevant to the determination, since the character of the stream as a whole is clearly such as to be susceptible to use by an industry in interstate commerce.

§§ 122.3 (u) and (v) (proposed § 122.3(t)) Definition of "new sources and new dischargers".

Some commenters objected to the definition of new source in the proposed regulations, particularly the 120-day limit in paragraph (t)(1)(ii) for the promulgation of proposed standards. These commenters pointed out that the 120-day limit for promulgation of standards was not part of the statutory definition of new sources in section 306 of the Act and so went beyond proper EPA authority. EPA believes that the definition of new source in section 306 of the Act must be read in the context of section 306 in its entirety. Section 306(b)(1)(B) contemplates the promulgation of new source performance standards within 120 days of proposal. See Decision of the General Counsel No. 71. Read together with the definition in section 306(a)(2), this section supports the language of both the proposed and final regulation. Further, there is also an overriding policy in support of the 120-day limitation; since construction of a source to meet new source performance standards can only proceed in a meaningful way if final standards are available, any inequities which may result from EPA failure to promulgate standards within 120 days of proposal are resolved by the language of section 306(d). A source which falls outside the new source definition but is a new discharger and commences construction after October 18, 1972, may gain the benefit of the new source protection period by satisfying the requirements of section 306(d). See preamble discussion of § 122.47(d).

A number of commenters objected to the use of the definition of "new discharger" in proposed § 122.3(t)(2) (now § 122.3(v)). They argued the definition would automatically require a new permit when a discharger ceased operation during the term of the permit. They also suggested the definition could be read to impose new source performance standards on a discharger which recommences operation after terminating a discharge. EPA has revised the definition of "new discharger" in response to these comments. The term now applies only to a genuinely new source of discharge but which is not a "new source" as defined in section 306 of the Act because applicable performance standards have not been issued. The final regulations

continue to require that new dischargers meet applicable standards and limitations upon commencement of discharge, and identify most of these sources as eligible under section 306(d) of the Act and § 122.47(d) for the ten year protection from more stringent standards of performance.

EPA does not intend to require a new permit automatically when a discharge ceases. Many permits cover facilities which in the normal course of their operations cease and recommence discharge. Their permits do not lapse when they cease discharging. However, the proposed rules were intended to require a source which shuts down (including those which do so in order to escape a statutory deadline or other requirement) to meet all applicable standards and limitations upon recommencement of discharge. This requirement is now contained in § 122.17(c)(3).

Definitions of Application, Discharge Monitoring Report, New Source/ Environmental Questionnaire and Permit. Proposed § 122.3 referenced Appendices A, B, C and D which were to contain copies of the application form, permit format, new source/ environmental questionnaire and discharge monitoring reports, respectively. These Appendices have been deleted from the final regulations pending completion of these forms. They will be published at a later date.

A new Appendix A has been added which is a redesignation and redivision of the industrial categories appendix contained in former regulations promulgated on May 23, 1978 and December 11, 1978 (see Table I of this preamble). The Appendix has been revised to conform to the modified settlement agreement approved by the District Court and issued on March 9, 1979, in *NRDC* v. *Costle* (which modifies the *NRDC* v. *Train* 8 ERC 2120 (D.D.C. 1976), settlement agreement of June 8, 1976). Additional time after the issuance date for effluent limitations guidelines under the consent decree has been added to allow for processing of permits. This Appendix will be updated from time to time if further modifications are made.

New Definitions. In response to comments requesting definitions for additional terms, EPA has included several new definitions in the final regulations.

A definition of "publicly owned treatment works" ("POTWs") (§ 122.3(bb)) has been added which is consistent with the definition of POTW found in other EPA regulations, e.g., 40 CFR § 403.3(m).

A definition of "Direct discharge" (§ 122.3(h)) has been added which states that this term means the discharge of pollutants.

The term "Director" (§ 122.3(i)) has been changed to include both the Regional Administrator and the State Director, as appropriate. Generally, the use of the term Director means that the regulation is applicable to both EPA and approved States. The terms "Regional Administrator" (§ 122.3(cc)), "Enforcement Division Director" (§ 122.3(n)) and "State Director" (§ 122.3(ii)) are now used only where the regulation addresses an action that is unique to one of those people. This change in the use of the term "Director" necessitated the addition of a new term, "State Director" which is the same definition as was found for "Director" in proposed § 122.3(h).

A definition of "process waste water" (§ 122.3(aa)) has been added which restates the definition found in 40 CFR § 401.11(q).

§ 122.4 Exclusions.

Some commenters thought proposed § 122.4(a)(1) over-stepped EPA's statutory authority to control vessels when "operating in a capacity other than a vessel." Commenters felt that the language in section 502(12)(B) of the Act which defines "discharge of a pollutant" as "any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source *other than a vessel or other floating craft,*" (emphasis added) precluded regulating mining vessels as point sources. The Act does not define "vessels or other floating craft", but it appears that those terms refer to transportation vessels. The legislative history of the Federal Water Pollution Control Act Amendments of 1972 (FWPCA) and the Marine Protection Research and Sanctuaries Act (MPRSA) of the same year, indicated that all ocean discharges within the jurisdiction of the United States were to be regulated by EPA under one Act or the other. As the Senate Public Works Committee noted on the FWPCA:

> Coupled with the provisions in the bill reported by the Committee on Public Works, the bill to be reported from the Commerce Committee [i.e., the MPRSA] should enable the United States to have complete and integrated regulation of the disposal of pollutants *into all waters and over all sources of pollutants subject to its jurisdiction (emphasis added).* See A *Legislative History of the Water Pollution Control Act Amendments of 1972, Senate Committee on Public Works,* 93d Cong., 1st sess. (1973) at 1482 (hereafter FWPCA Legis. Hist.).

Hence, if the commenters are right, the MPRSA or Ocean Dumping Act would require permits for temporarily fixed drilling vessels, ocean mining dredge ships or processing vessels.

We believe the greater weight of authority points to the fact that similar structures should be treated similarly, i.e., an oil platform at sea and an oil platform that is temporarily anchored to the bottom of the sea should have to meet the same requirements under the same Act. Similarly a deepsea mining processing ship should have the same requirements as an onshore processing plant discharging into the ocean. It appears the exception in section 502(12)(B) was intended solely to exclude redundant authority over ocean dumping under NPDES and the Ocean Dumping Act.

The Clean Water Act clearly is better designed to regulate routine industrial discharges. The industry-by-industry approach required for effluent limitation guidelines under the Act is more attuned to handling discharges from these two industries than the Ocean Dumping Act since the Ocean Dumping Act requires extensive studies aimed at finding alternatives to ocean discharges.

Regular sewage discharges from vessels are still regulated by the Coast Guard under section 312 of the Act. Paragraph 122.4(a)(1) is aimed at industrial processes that occur at sea.

Many commenters objected to the comment after § 122.4(a)(2) in the proposed regulations regarding the relationship of section 402 and 404 permits, which incorporated the "primary purpose" test presently stated in Corps of Engineers regulations for section 404 permits, 33 CFR § 323.2(m). These commenters objected to the vagueness of the comment and to the implication that both a section 402 and a section 404 permit could be required for the same activity. This comment has been deleted because the Agency is currently reviewing its position on the overlap between section 402 and 404 permits. Part of this Agency review involves a draft policy document concerning the applicability of the NPDES program to the disposal of solid waste in waters of the United States. Since Agency policy was not resolved at the time of publication of these final regulations, no resolution or further clarification is now appropriate.

Many commenters objected to the restriction contained in § 122.4(a)(3) of the proposed regulations that limited that exclusion to indirect dischargers as defined in § 122.3(o) of the proposed regulations. Although § 122.4(a)(3) has been retained without change, these

comments have been reviewed in conjunction with comments submitted on proposed § 122.3(j) (definition of "discharge of pollutant"). For further details, see preamble discussion on proposed § 122.3(j).

Many commenters objected to the comment after § 122.4(a)(4), pertaining to the exclusion of irrigation return flows, as being beyond EPA authority. Comments under this section were considered in conjunction with those received under proposed § 122.3(j) (discharge of pollutant), § 122.45 (separate storm sewers), and § 122.46 (silvicultural activities). The comment has been deleted and changes have been made in § 122.46 which address many of the concerns raised by commenters.

§ 122.5 Signatories.

Many commenters objected to the proposed revision of § 122.5, which required that all permit program forms be signed by a principal executive officer of a level of at least vice president for a corporation, or by an equivalent level official for partnerships or for public facilities. This section has been changed to require that only permit applications must be signed by a principal executive officer or equivalent official. Other permit program forms may be signed by a duly authorized representative of the appropriate official so long as the authorized representative is responsible for the overall operation of the discharging facility, and the authorization is made in writing. Further, the signatory may rely on the representations of the person immediately responsible for obtaining the information in the document when certifying to its accuracy, etc. This change will ease the paperwork burden upon the regulated community, while at the same time providing an equal degree of legal accountability on the part of the principal executive officer or equivalent level official. By authorizing a representative to sign other permit program forms, the responsible official does not lose legal accountability for the accuracy of the information that is submitted.

§ 122.10 Application for a permit.

A number of commenters were concerned about the intent of proposed § 122.10(b) regarding enforcement against persons currently discharging without a permit who have applied for, but have not yet received, an NPDES permit. In response, EPA has deleted this section. However, EPA wishes to clarify its enforcement policy with regard to existing dischargers who have submitted timely and sufficient applications for an initial NPDES permit, and have otherwise proceeded in good faith, but have not yet received a permit through no fault of their own. In those cases, these dischargers will not be subject to enforcement action by EPA for discharging without a permit.

EPA has also placed the requirements of proposed § 124.11(b) and (c) into § 122.10 so that all the requirements relating to permit application will be contained in one section.

Many commenters objected to the requirement in proposed § 124.11(b)(3) and (c) for submitting applications 180 days before the present permit expired (180 days before the discharge) when there is no concomitant requirement on the issuing authority to issue a permit in a resonable time. Because of the significant resource restraints on States and EPA, it may not be possible to issue permits to all applicants, especially minor dischargers, in a set time period. Although the statute requires a permit for a lawful discharge of pollutants, the fact a discharger is without a permit due to the lack of action by the issuing authority will weigh heavily against the instituting of enforcement actions.

§ 122.12 Duration and transferability.

Some commenters suggested that the five year limit for permit terms be extended to ten years for new sources. While new sources and certain new dischargers may qualify for a "protection period" from any more stringent standards of performance under section 306(d) of the Act, the five year permit term is an express statutory requirement and cannot be altered through these regulations. However, permits may be continued under the Administrative Procedure Act (APA) where the applicant has submitted a timely application for renewal and EPA has been unable to process the application. See § 122.12(b).

Several comments were also received on proposed § 122.12(c) (now § 122.12(d)), which established requirements for transfer of permits. Many of these comments objected to the required approval by the permitting authority prior to transfer, arguing (1) restraint of trade and (2) increase of paperwork. EPA does not agree with the first argument but does agree with the second. Accordingly, paragraph (d) has been revised to make transfer approval automatic within 30 days unless action is taken by the Director. The Director's option to require a new application for permit reissuance or modification, as well as the requirement for a written agreement between the transferor and transferee specifying transfer of liability has been retained.

A new section, § 122.12(c) has been added which substantially incorporates the requirements of former § 124.46 (Compliance with 1984 Treatment Deadlines for Discharges of Toxic Pollutants 43 FR 58066). Some of the requirements originally in former § 124.46, (e.g., the permit must incorporate "[a]ny other terms and conditions necessary to carry out the provisions of the Act") have not been repeated in new § 124.12(c) because they are elsewhere in Part 122.

EPA has moved proposed § 122.33 to § 122.12(b) because "extension of expiring permits" is more logically dealt with in this section on permit duration. In porposed § 122.33, EPA indicated that expiring permits could be "extended" under 5 U.S.C. section 558(c) (section 9(c) of the APA. For clarity EPA has substituted the terms "continuation" or "continued" for "extension" or "extended," since the APA does not use the terms "extension" or extended."

Proposed § 122.33(a)—Many commenters objected to the restrictions in proposed § 122.33(a) for automatic continuations, arguing that the only restriction provided by the APA for automatic continuation is "timely and sufficient application for a renewal." Some commenters suggested deletion of the requirement that the delay in permit issuance not be caused by actions of the permittee (proposed § 122.33(a)(2)). Other commenters suggested revising the requirement to provide that requests for evidentiary hearings do not constitute a delay caused by the permittee.

In response to these comments, EPA has deleted proposed § 122.33(a)(2) from the final regulations, but believes that delays caused by the permittee may in some cases render a permit application "untimely." Proposed § 122.33(a)(3) (now § 122.12(b)(1)(ii)) restricts permit continuation to instances where the Regional Administrator is unable to issue a new permit before the expiration date of the old permit. This provision has been retained but it is intended only to implement the requirement of section 558(c) that there be no final Agency determination on an application, and not to restrict the applicability of section 558(c).

§ 122.33(c)—Proposed § 122.33(c)(2) (now § 122.12(b)(3)) indicated that a permit continuation could be denied by the Enforcement Division Director when the permittee was not in compliance with the expiring permit. Many commenters contended that such a denial is not authorized by the APA.

EPA agrees and has redrafted § 122.12(b)(3)(iii) accordingly. However, if the Regional Administrator makes a final determination to deny an application for permit reissuance, section 558(c) is by its terms no longer applicable, and the discharger is subject to enforcement action for discharging without a permit.

Several commenters questioned the applicability of this section to permits issues by EPA in NPDES States before the State program was approved. In response to this question, § 122.12(b)(4) clarifies that although § 122.12(b) does not apply where EPA originally issued the permit but an NPDES State is now the permit issuing authority, States may continue the State-issued permit if so authorized under State law.

§ 122.13 Prohibitions.

§ 122.13(b)—Several commenters expressed concern over the role of State certification in the permit issuance process. This issue is addressed more directly in the preamble discussion of Part 124, Subpart C.

§ 122.13(c)—See the preamble discussion to § 123.23 for a discussion of EPA's authority to object to the issuance of State-issued permits under section 402(d) of the Act.

§ 122.13(i)—In response to a number of comments, § 122.13(i) has been modified. This section has been changed to clarify that only a new source or a new discharger into a water quality segment (as defined in 40 CFR § 130.20(o)(1)) must demonstrate that there are sufficient pollutant load allocations to allow the discharge and that the facility is entitled to these allocations. The proposal applied to all new sources or new dischargers, including those to an effluent limitation segment (as defined in 40 CFR § 130.20(a)(2)). However, upon review of the comments, the Agency determined that the requirement was appropriate only in water quality segments.

§ 122.14 Conditions applicable to all permits.

§ 122.14(a)—This section in the proposed regulations (the permit as a limited authorization to discharge) received the greatest number of comments. Many of these comments pointed out the difficulty of analyzing the effect of paragraph (a) without the benefit of reviewing the application form to which it is tied. The Agency agrees with these comments. As a result, the substantive requirements of paragraph (a) are reserved in these final regulations and will be reproposed, together with publication of a draft application form, in the summer of 1979. In conjunction with the application form revision, the Agency is also examining the overall permit scheme, including use of the application data, monitoring requirements, enforcement, the relationship of the application to section 311 and other such considerations.

Although paragraph (a) is withdrawn and reserved for reproposal, a comment has been inserted in its place to reemphasize the Agency's commitment to moving towards the national goal of the elimination of the discharge of pollutants as stated by section 101(a)(1) of the Act. It is no longer acceptable for a discharger to disclaim responsibility for being aware of the impact of its discharges upon human health and upon the environment. The Agency, therefore, expects each applicant to discharge pollutants only in accordance with its application and permit.

Many comments on this paragraph discussed the difficulty of its implementation. In its ongoing development of a new application form, the Agency is addressing many of the major concerns expressed, and commenters will have an opportunity to raise these issues when the Agency proposes its revised approach this summer.

§ 122.14(b)—The language of § 122.14(b) has been shortened to eliminate superfluous language. The substance remains unchanged.

§ 122.14(d)—Several commenters argued that permits should only be modified to incorporate section 307(a) standards or prohibitions where the pollutant has been found to be injurious to health. However, the Agency is not empowered to ignore the criteria of section 307(a), which include toxicity, persistence, degradability, and the effect on organisms in waters. When a standard is promulgated under section 307(a) to establish these criteria, it should be incorporated into the permit. However, where a standard under section 307(a) controls a pollutant identified as injurious to health, it is effective and enforceable *whether or not* incorporated into permits and must be complied with by the time set forth in the promulgated standard.

Many commenters were concerned that modification proceedings to conform the permit to a toxic effluent standard or prohibition might also open other permit conditions to modification. Such a result is contrary to this paragraph's express language. Other terms and conditions may be modified only in accordance with § 122.31.

The comment to § 122.14(d) has been expanded to indicate that when the new NPDES application form becomes available, this paragraph will be reproposed to require submission of a new application or partial application as part of the modification proceedings of this paragraph.

§ 122.14(e)—Many commenters objected to the requirement that permittees notify the Director of process changes or other modifications which do not result in permit violations. In response, this paragraph has been revised to require only notification of activities which would constitute cause for permit modification or revocation and reissuance. This requirement, as revised, is necessary because process or other changes may result in significant discharges of pollutants which are not limited by the permit. Upon receipt of notification under this paragraph, the Director can require further information on a new application which may either justify permit modification or indicate that no modification is necessary.

Several other commenters expressed concern that this paragraph would require daily notifications as a result of variability in their discharges. As noted in the above discussion, this paragraph has been revised and should, therefore, minimize any potential problems presented by waste stream variability.

§ 122.14(f)—In response to comments, § 122.14(f) has been revised. As revised, EPA believes this provision is consistent with the Supreme Court's decision in *Marshall* v. *Barlow's Inc.*, 436 U.S. 307, (1978).

§ 122.14(g)—Several commenters expressed doubts whether EPA is legally authorized to require proper operation and maintenance of facilities and systems, including requirements such as effective management of treatment facilities and adequate staffing and training. Such requirements are clearly authorized by section 402(a)(2) of the Act, which requires the Administrator to prescribe conditions in permits which will assure compliance with the requirements of section 402(a)(1).

§ 122.14(h)—A number of commenters questioned the need to report "minor" noncompliance under § 122.14(h) within 24 hours of becoming aware of the noncompliance. They felt that the Discharge Monitoring Reports (DMR) under § 122.22 provide a sufficiently prompt method of notification. EPA agrees that in instances of "minor" noncompliance the DMR does provide a sufficiently prompt method of notification and has revised § 122.14(h)(2)(iii) to reflect this. In response to comments, we have also revised § 122.14(h)(2)(i) to require 24 hour reporting only for violations of

discharges containing the toxic pollutants limited by toxic pollutant effluent standards under section 307(a) (e.g., Aldrin/dieldrin, Endrin, Toxaphene, Benzidene, Polychlorinated Biphenyls and DDT/DDD and DDE). In addition a new § 122.14(h)(2)(ii) has been added which gives the Director the discretion to require 24-hour and/or five-day reporting in a permit for other noncomplying discharges which may pose health problems (e.g., section 311 substances). The purpose of such prompt reporting is to enable the permitting authority to use the information to make a case-specific determination of the severity of the violation, its possible environmental effects and mitigation possibilities.

The majority of the commenters were concerned with the difficulty in providing the required noncompliance information within 24 hours. Several commenters stated that the determination of corrective measures may in some cases take longer than 24 hours to develop. As stated earlier, this 24-hour requirement is now mandatory for only certain instances of noncompliance. While EPA expects these dischargers to formulate a plan of action for correcting the situation within 24 hours of a violation, such plan may indicate various options for corrective action. It is necessary, however, that the best possible information, including notice of the noncompliance, be provided to the permitting authority within 24 hours of the time that the permittee was aware of the noncompliance so as to enable any action necessary to prevent a crisis, such as contamination of a downstream drinking supply.

Many commenters requested that the term "becoming aware" be more precisely defined. This language has not been changed because it was intended to cover "awareness" based on any or all sources of information such as analysis, measurement or observation.

Some commenters felt that the five-day requirement for submission for written information might not be long enough if a corporate vice president must sign a letter, under the requirements of § 122.5. This situation has been addressed in changes to § 122.5, which now allows for the delegation of such responsibilities and through changes to § 122.14(h)(iii) discussed earlier.

§ 122.14(i)—The language of § 122.14(i) has been shortened to eliminate superfluous language but the substance remains unchanged.

Proposed § 122.14(j)—The substance of this section has been moved to Part 125, Subpart A. The requirement that permits to POTWs include sewage sludge disposal conditions under section 405 has been moved to § 122.15(h). Many commenters objected to the prohibition against discharge of solids, sludges, filter backwash or pollutants removed in the course of treatment or control of wastewaters. However, to allow discharge of substances which have been removed by treatment systems would result in circumvention of the Act's requirements for limiting discharge of those substances which can be removed by the treatment.

§ 122.14(j)—Some commenters argued that halting or reducing production as required in proposed § 122.14(k) (now § 122.14(j)) may cause greater environmental harm than continuation of production. The Agency believes that the pollution problems which may occur as a result of shutdown and startup will generally be less severe than those characteristic of situations of continual noncompliance. Rather than require the Director to decide immediately in each case whether the environmental harm caused by shutdown or reduction might be greater than that caused by continual noncompliance, the requirements of this subsection have been retained. It should also be noted that paragraph (j) is not as harsh as some commenters have indicated, since it is modified somewhat by the upset and bypass provisions.

§ 122.14(k)—In response to comments, the bypass provision (proposed § 122.14(l)) has been redrafted for clarity. Many commenters stated that the bypass notification requirements were impractical and internally inconsistent. The provision has been modified to require permittees to submit notice within 24 hours of becoming aware of the bypass in those circumstances where the necessity for a bypass cannot be anticipated. Where the need for a bypass is known in advance, the permittee must now submit a request for approval at least 10 days before the anticipated event.

Several commenters stated that it was inappropriate for the Agency to limit bypasses to situations where there is a risk of "serious" injury. This provision has been modified to apply where there is a risk of "personal" injury.

Commenters objected to the statement that treatment facilities should generally be constructed with redundant or backup equipment. This comment was merely intended to note that proper engineering practices often involve the use of redundant or backup systems for equipment such as pumps or power supplies. Such practice can eliminate any noncompliance during periods of equipment malfunction or maintenance. This comment has been modified to clarify that the pemitting authority will take into account whether the bypass involved regular preventive maintenance for which backup equipment should have been available.

Several commenters stated that bypasses should be authorized during periods of preventive or corrective maintenance. However, in most cases waste treatment facilities should be designed with redundant equipment and with sufficient storage capacity such that bypassing is not necessary during periods of maintenance. The bypass provision is intended to provide relief from permit limitations during unusual circumstances; it is not intended to allow limitations to be routinely exceeded.

Some commenters objected to the requirement that the public be afforded an opportunity to comment on requests for bypasses. However, the Agency believes that the critical review offered by the public is a useful element of the system.

Many commenters argued that economic loss caused by delays in production should be included in the definition of severe property damage. After serious consideration, the Agency has rejected this position. Except in limited cases, the Clean Water Act does not authorize noncompliance with effluent limitations because of the cost to an individual facility. Where effluent limitations, which include consideration of the cost of operation of waste treatment facilities, have been properly established, a source must either comply or close. Nonetheless, this section provides for the authorization of intentional bypass where failure to bypass would result in severe property damage. In most cases this damage would be to the treatment facility itself; thus, failure to allow bypass would jeopardize future adequate treatment. In the oil and gas production industry, severe property damage includes permanent loss of oil which might result if a well were to be shut in. For electric generating facilities, curtailing production might risk substantial property loss to users of the electricity. In all of these cases consideration beyond the economic loss to the permittee warrant a bypass.

Further, although permittees may be required to limit production rather than exceed limitations, this risk can be minimized by the prudent use of back-up equipment and the capacity to store untreated wastes during periods of maintenance. The Agency will consider

the reasons for noncompliance in exercising its discretion to enforce.

§ *122.14(l)*—In response to comments, the upset provision (proposed § 122.14(m)) has been redrafted for clarity. Many commenters also noted that proposed subparagraph (m)(2) provided only that an upset "may" constitute an affirmative defense. However, it is the Agency's intention that a defense of upset is available if the applicable conditions are satisfied. The provision has been amended to reflect this.

The comment following this section relating to judicial review of Agency determinations was confusing to several commenters. In response to these concerns, the comment has been revised to indicate that the initial Agency determination on a claim of upset constitutes an exercise of prosecutorial discretion, not final Agency action subject to judicial review. Since upset is an affirmative defense, the permittee's opportunity for review of a claim of upset will be in the context of any enforcement action for noncompliance.

Many commenters stated that an upset should not be treated as a permit violation in the first place and that it was improper to require permittees to prove an upset as an affirmative defense in a court action. Commenters relied on *Marathon Oil Co.* v. *EPA*, 564 F.2d 1253 (9th Cir. 1977) in support of this position.

The Agency believes that this upset provision is fully consistent with all legal opinions dealing with this issue. Most Courts have concluded that no upset provisions need be provided. In *Weyerhouser Co.* v. *Costle*, 590 F.2d 1011, 1056–58 (D.D. Cir. 1978) and *Corn Refiners Ass'n* v. *Costle*, (No. 78–1069, 8th Cir. April 2, 1979) the District of Columbia and the Eighth Circuits recently held that EPA's exercise of its enforcement discretion would adequately deal with any possible problem. *See also United States Steel* v. *Train*, 556 F.2d 822, 842, n.3 (7th Cir. 1977); *American Petroleum Institute* v. *EPA*, 540 F. 2d 1023, 1035–36 (10th Cir. 1976). Although the Agency will continue to exercise its enforcement discretion, EPA believes that all parties will benefit from allowing permittees an opportunity to present their claims in a formal judicial proceeding. This provision also meets the requirements set out in those decisions which required some form of upset relief. See *Marathon Oil Co.* v. *EPA, supra; FMC Corp.* v. *Train*, 539 F.2d 973, 986 (4th Cir. 1976). In *Marathon*, the Court of Appeals for the Ninth Circuit clearly indicated that the burden of proof and the obligation to provide relevant evidence establishing that the noncompliance could not have been prevented could be placed on the permittee. The requirement that an upset be established as an affirmative defense is an efficient and effective method of implementing this obligation. The only alternative approach would be to require an administrative determination with respect to upsets. However, Congress has indicated, in reference to section 309(a)(5)(B) of the Act, that enforcement actions should not be bogged down in administrative determinations or showing of fault. See *A Legislative History of the Clean Water Act of 1977*, Senate Committee on Environment and Public Works, 95th Cong., 2d sess. (1978) at 464–65 (hereafter *CWA Legis. Hist.*). Although the upset provision does authorize permittees a limited opportunity to make such showings, it is properly placed in the context of judicial determinations in an enforcement action.

Commenters have not been able to identify significant impacts from this approach. The Act contains no provision for administrative penalties, and sanctions can only be imposed after a judicial determination of a violation. Further, noncompliance reporting requirements exist independently of whether the noncompliance was caused by an upset. One commenter did note that under § 122.31, a permit may be withdrawn by administrative action for previous violations. It is agreed that an opportunity to prove upset must be afforded in such cases.

While the Agency will, of course, consider the possibility of upset where relevant, it must be stressed that upsets are exceptional events which should occur infrequently. The upset provision should not be construed as providing relief where there is a pattern of permit violation.

In response to comments, § 122.14(l)(1) has been revised to indicate that noncompliance due to operational error or lack of preventive maintenance does not constitute an upset. EPA believes these revisions clarify the situations listed in the original proposal.

Commenters objected to the requirement that a specific cause be identified in establishing an upset. They claimed that even properly run facilities may have upsets for which no particular cause can be found. However, requiring permittees to identify the cause of noncompliance is an essential aspect of placing the burden of proof on the permittee to show that an upset was beyond its control. If upsets could be proved merely by asserting that a facility was being properly run at the time of noncompliance, the burden of proof would be reversed and the prosecution would be required to establish the cause of the upset to rebut this showing. Such an approach would make enforcement extraordinarily difficult. Congress intended that prosecution for permit violation be swift and simple, and this provision implements that objective while allowing permittees to demonstrate that noncompliance could not be avoided. Further, the requirement that a cause be identified will encourage permittees to examine the operation of their treatment system and will help ensure that noncompliance is not repeated. Finally, where a cause of noncompliance cannot be identified, the Agency may still exercise prosecutorial discretion not to enforce in situations where it is not warranted.

Some commenters asserted that the upset provision would undercut the States' authority to impose stricter effluent limitations. In response to this concern, EPA has revised this section to make clear what was originally intended—the upset provision applies only to violations of technology-based effluent limitations established pursuant to sections 304 and 306 of the Act. This change is consistent with the *Marathon* decision, and necessary to achieve the goals of the Act. Violations of stricter State standards or water quality based effluent limitations are not subject to a defense of upset.

§ 122.15 Applicable limitations, standards, prohibitions and conditions.

§ *122.15(f)*—Paragraph (f) listed situations where limitations more stringent than those required by sections 301(b)(1)(A), 301(b)(1)(B), 301(b)(2)(B), and 306 of the Act would be required. Some commenters suggested an additional situation, where necessary to conform to applicable water quality requirements under section 402(a)(2) of the Act, when the discharge affects a State other than the certifying State. EPA agrees and has added § 122.15(f)(4) to cover this situation.

Some commenters were concerned that paragraph (f)(8), which indicated that additional or more stringent permit limits could be established based on "fundamentally different factors," might be misinterpreted to mean that fundamentally different factors variances could only result in additional or more stringent limits. To address their concerns, EPA has added a comment indicating that less stringent permit limits may also be requested based on fundamentally different factors. Further details as to fundamentally different

factors variances are found in Part 125, Subpart D, and related preamble discussion.

Paragraph (f)(9), which provides for incorporation of additional requirements, conditions or limitations into a new source permit based on the National Environmental Policy Act or section 511 of the Clean Water Act, provides the basis for the incorporation into NPDES permits of conditions related to an Environmental Impact Statement (EIS). Some commenters suggested nonwater related EIS condition cannot be placed in permits. However, EPA believes that EIS-related conditions may be imposed in NPDES permits in order to minimize any adverse impacts on the environment identified in the EIS, regardless of their relation to water pollution or water quality problems. (See September 23, 1976, Memorandum of the General Counsel, entitled *EIS Regulations for NPDES Permits* and former 40 CFR § 6.918). To do otherwise would negate the purpose and intent behind the requirement that an environmental impact statement be prepared.

Commenters also argued that the Act does not authorize the case-by-case establishment of technology-based permit limitations as contemplated by paragraph (f)(10). This argument is unpersuasive in light of section 402(a)(1) of the Act, which authorizes the establishment of "necessary" conditions in the absence of effluent limitations guidelines. Moreover, this argument has been rejected in the courts and by long-standing EPA policy (see preamble discussion to Part 125, Subpart A). Thus, this section has not been changed.

A new paragraph § 122.15(f)(11) has been added to assure consistency with the pretreatment regulations (40 CFR Part 403) which may, in some cases, require more stringent limitations.

§ *122.15(g)*—A number of commenters questioned the relationship between "best management practices," under proposed § 122.3(f) and § 122.15(g); and "operating practices" under proposed § 122.15(i). Since best management practices include operating practices, the two sections have been combined.

Thus, paragraph (g), has been revised to clarify that "best management practices" (BMPs) may be required in permits where numeric effluent limitations are infeasible, or where reasonably necessary to achieve effluent limitations and standards. These BMPs are similar to those authorized pursuant to section 304(e) of the Act (which is covered in detail in Part 125, Subpart K); however, they are authorized by section 402 and EPA's authority has been so recognized in *NRDC* v. *Costle*, (Runoff Point Sources). In addition, a comment has been added which provides examples of BMPs which could be required under paragraph (g). See also preamble discussion under proposed § 122.3.

§ *122.15(i)*—Proposed paragraph (j) (now paragraph (i)) which prohibited "backsliding" in permit levels of control with limited exceptions, has been retained. The concerns of some commenters about the effect of paragraph (j), where permits are based on interim final effluent guidelines which are more stringent than final effluent guidelines, have been addressed in § 122.31. Paragraph (j) is superseded in these cases by § 122.31(e)(4), which allows limitations based on more stringent interim final limitations to be modified based on less stringent final guidelines if a modification request is made in a timely manner. In addition, § 122.15(i)(3) now indicates that there is a third instance where "backsliding" will be allowed, i.e., for conventional pollutants. Congress directed EPA to shift its pollution control technology to toxics. (See *CWA Legis. Hist.*, Statement of Managers, at 269). The 1977 amendments to the Act (sections 301(b)(2)(E) and 304(b)(4)) set out a completely new test for conventional pollutants. The new requirement, known as best conventional technology (BCT), is based on a comparison to the cost of secondary treatment and a cost/benefit test. The test sets best practicable technology (BPT) effluent guidelines as a floor and best available technology (BAT) as a ceiling. In a small number of cases, where no promulgated guidelines were in effect at the time of initial permit issuance, (i.e., where a section 402(a)(1) limit is very stringent) the test may result in effluent limits for BCT less stringent than limitations in the original permit for BPT. In these cases, EPA believes that, consistent with Congressional intent, backsliding to BCT should be allowed.

§ *122.16 Calculation and specifications effluent limitations and standards.*

§ *122.16(a)*—A number of commenters suggested that "actual production," as used in proposed § 122.16(a) as the basis for calculating permit limitations, standards or prohibitions, should be defined or clarified.

In response to these suggestions, a comment to § 122.16(a) has been added, which explains that permit limitations will be calculated based upon a reasonable measure of production, taking into account historical data in the case of existing facilities, or market data for new or significantly modified facilities or processes. In the case of new or modified facilities or processes, permit limitations are subject to subsequent modification once a pattern of production figures become available.

Other commenters questioned whether proposed § 122.16(a) was intended to apply to POTWs, and if so, how? In response to these comments, EPA has added a new § 122.16(a)(3) which states that POTW permit limitations are to based on design flow. Basing POTW permit limitations on design flow will allow growth, while at the same time maintain the proper level of treatment due to the 85% removal requirement in 40 CFR Part 133. Since the percentage removal requirement is not applicable to industries, their limits must be based on actual production.

In response to a specific invitation for comments in the August 21, 1978, preamble discussion on proposed § 122.16 some commenters favored the use of an alternative effluent limitation approach for calculating permit limits. The approach described in that preamble was: (1) Determine a total technology-based effluent limitation for the entire plant and (2) relocate this total discharge among the outfalls, as long as the plant continues to meet the overall technology-based requirement. EPA is still evaluating this proposal. Should it prove appropriate within the constraints of the Act, EPA may adopt this alternative approach in future rulemaking. This portion of § 122.16(a) is promulgated as proposed.

§ *122.16(c)*—A number of commenters suggested that certain terms in § 122.16(c) (Proposed § 122.16(b)) such as "maximum daily discharge", "average monthly discharge" and "average seven consecutive day discharge" be defined. These definitions have been added to § 122.16(c) and for clarity the term "average seven consecutive day discharge" has been replaced by "average weekly discharge".

Several commenters questioned the distinction between the terms used in § 122.16(c) for the calculation of permit limitations of POTWs and discharges other than POTWs. The distinction between these two general types of discharges is based upon existing requirements in effluent guidelines and its secondary treatment information (40 CFR Part 133). In order to maintain consistency with effluent guideline and secondary treatment requirements, § 122.16(c) has not been changed, except as discussed earlier.

A number of commenters urged that the permitting authority should have the

discretion to require either mass- or concentration-based limitations, depending on the nature of the process and the receiving waters. This approach has not been adopted, except as provided in § 122.16(d), because the Agency continues to believe that most permit limitations standards and prohibitions must be expressed quantitatively in terms of mass in order to preclude the use of dilution as a substitute for treatment. Paragraph (d) of § 122.16 allows the use of concentration limits under circumstances in which administrative or technical problems make the use of mass limits impracticable or inconsistent with other requirements such as promulgated effluent guidelines or pretreatment standards. (EPA has decided to state pretreatment standards in terms of concentration and wherever possible to provide an equivalent mass per unit of production, see preamble discussion to 40 CFR Part 403, June 26, 1978, 43 FR 27743–27744).

§ 122.16 (f) and (g)—Paragraph 122.16(g) (proposed § 122.16(f)) provides for issuance of permits based on net terms rather than gross terms. Dischargers may receive a credit, under specific conditions, for pollutants present in their intake waters. Numerous commenters objected to the conditions under which a credit would be granted and suggested that the various conditions be deleted. EPA has not deleted any of the conditions necessary for achieving a credit allowance and, therefore, receiving a permit calculated on a net basis. EPA considers these conditions as reasonable and consistent with court decisions and also believes they are necessary for achieving the goals of the Act.

The limitations upon the net/gross provision in these final regulations grow out of the technical basis on which effluent limitations guidelines are established. Without exception, EPA has developed effluent limitations guidelines on a gross, not a net, basis. The guidelines assume that a treatment technology will achieve a final effluent concentration which is independent of fluctuations in influent concentration, within a very broad range. (For a discussion of the independence of effluent concentration from raw waste concentration in the petroleum refining industry, for example, see 40 FR 21930–21949 (May 20, 1975).) The effluent levels achieved by good treatment may be close to background levels in some receiving waters. This fact underlines the mischief which can result from an indiscriminate application of net limitations. A plant may have a treatment system which, properly operated, achieves a suspended solids limit of 15 mg/l with a raw waste between 150–600 or more mg/l. If the intake concentration is 15 mg/l, this will have no effect upon the achievable final effluent concentration. Yet indiscriminate application of the "net" requirement would allow the discharger to discharge 30 mg/l, or twice the concentration which a well-run treatment system should achieve. For this reason, EPA has restricted the application of the "net" allowance to those cases where the treatment required by the Act will not remove the pollutants in the intake water (such as, for example, where cooling water is discharged without settling).

Many commenters suggested that proposed § 122.16(f) (now § 122.16(g)(1)) be revised to read that permits "shall" be written on a net basis rather than the discretionary "may" in the proposed regulation. EPA has accepted these comments in part. EPA does not believe every permit should automatically be written on a net basis (assuming the conditions of § 122.16(g) are met) because some dischargers may not want to do the sampling, etc., necessary to develop a net permit. Therefore, the discharger must actually request calculation on a net basis at the time of permit application. However, EPA does believe, if calculation on a net basis *is* requested, and all the conditions of § 122.16(g) are met, the permit should be written on a net basis. To this extent, EPA has accepted the suggestion of these commenters.

Several commenters objected to the requirement in § 122.16(g)(1) (proposed § 122.16(f)) that limits the availability of credit to those dischargers who discharge their effluent into the same body of water from which they received their influent. While a discharger should not be held responsible for pollutants already existing in its water supply if the discharge is into the same body of water from which the discharger took water, the same reasoning cannot support allowance of a credit where the discharge is into another body of water. The grant of a credit in the latter case would allow a discharger to transfer pollutants from one body of water to another, thus, adding pollutants to receiving waters for the first time. An exception to this rule is where the discharge is made into a tributary of the stream from which the influent was taken. In such a case a credit may be allowed since the tributary will be considered to be the same body of water as the downstream lake or river for the purpose of § 122.16(g).

A number of commenters objected to proposed § 122.16(f)(2) (now § 122.16(g)(2)) as being vague. The intent of this section was to deny calculation of effluent limitations on a net basis if the discharger's influent treatment system (to clean water for the manufacturing process) or the wastewater treatment system entirely removes specific pollutants which had been present in the intake waters and are limited by the discharger's permit. This intent has been clarified in § 122.16(g)(1)(i)(B).

The provision that a credit shall only be allowed for pollutants present after any treatment steps have been performed on the intake water is also repeated in § 122.16(g)(2) (proposed § 122.16(f)(4)). Some commenters objected to this requirement suggesting that EPA has no jurisdiction to regulate intake pollutants but may only regulate pollutants added by the discharger. See *Appalachian Power Co.* v. *Train*, 545 F.2d 1351, 1377 (4th Cir. 1976). In *Appalachian Power* the court said that EPA only had jurisdiction over pollutants added by the discharger. EPA believes that when a source changes the character or concentration of an intake pollutant and then discharges it, the source is, in effect, adding a pollutant to the water. For example, one step in the pretreatment of intake water in many industries is chlorination to protect pipes and process equipment from algae formation. This treatment will result in chlorination of the intake pollutants thereby rendering them more toxic. When this occurs, the discharger should not be allowed to pass through those pollutants in its waste stream without some responsibility for treatment. If the discharger can demonstrate that the character or concentration of the pollutants has not changed after pretreatment, then a credit for those pollutants will be allowed. These determinations will have to be made on a case-by-case basis.

A credit may be allowed for the amount of pollutant remaining in a discharger's intake water after any treatment of the intake waters and wastewater treatment. Thus, if a discharger treats its intake water and removes 90 percent of a pollutant, the discharger may be entitled to a credit for the remaining ten percent left in the water used in the plant process. If the discharger's waste treatment system also removes 90 percent of the pollutant, the discharger's credit of ten percent shall be reduced by 90 percent because the pollutant remaining in the influent is being treated a second time, thereby, reducing the pollutant by an additional

90 percent. Therefore, the discharger's total credit following both treatments would be one percent of the pollutant in the original influent. To clarify this result, the word "incidentally" was deleted from § 122.16(g)(2) (proposed § 122.16(f)(4)).

Some commenters objected to the requirement in § 122.16(g)(2) (proposed § 122.15(f)(4)) that a credit could not be granted where the pollutants in the intake waters were "chemically or biologically" different from the discharge water. This requirement was considered vague and overly broad. EPA disagrees. Generic pollutant parameters such as biochemical oxygen demand (BOD), chemical oxygen demand (COD), total organic carbon (TOC) or total suspended solids (TSS) are broad measurements of a number of specific chemicals or materials. TSS, as measured at an intake point, may consist mostly of river silt; but after being used in a process the TSS, as measured at the outfall, may include substantial quantities of metals or other materials with toxic characteristics. EPA considers it essential to avoid allowance of credit when the pollutants in the discharge water vary significantly in toxicity from the pollutants in the intake water. Dischargers should not be allowed an unrestricted right to add more toxic pollutants to their discharge waters.

Finally, a new sentence has been added to § 122.16(g)(2) stating that a credit not be allowed for the discharge of pollutants which have been made more concentrated by a discharger (the third sentence has been similarly revised to state that the pollutants discharged cannot vary physically, e.g., in concentration from the pollutants in the intake water). For example, when waters are taken from a stream and used in a cooling pond, this use may result in the loss (through evaporation or otherwise) of significant amounts of the water thereby concentrating the remaining pollutants. This action by the discharger—causing the character of the water to change by increasing the amount of pollutants per volume of water—constitutes an addition of pollutants to the stream. Therefore, a source will not be allowed to discharge this water without treatment.

§ *122.16(h)*—A number of comments were received on the subject of batch discharges, under § 122.16(h), suggesting that definitions of terms used in § 122.16(h) be provided, and that restrictions on batch discharges be relaxed.

Paragraph 122.16(h) has been redrafted. The Agency's intent is unchanged, however, the terminology has been clarified. As proposed, the paragraph used the terms "continuous," "batch" and "intermittent" discharges but did not define them. In final form, paragraph (c) now defines "continuous discharge" and paragraph (h) now deals with "noncontinuous discharges." In addition, paragraph (h) now clearly indicates that the requirements of § 122.16 (c) and (d) (proposed paragraphs (b) and (d)) are applicable to the discharges described in this paragraph. Subparagraph (h)(2) has been revised to clarify that limits refer to specific pollutants.

Several commenters argued that batch discharges should be limited only in cases where water quality standards would be violated. Such a provision would be inconsistent with the Act's technology-based treatment requirements which apply regardless of water quality impacts.

§ *122.16(i)*—Many commenters urged that the Agency should not impose limitations and standards upon internal waste streams under § 122.16(i) and questioned the Agency's authority to do so. Other commenters urged that the Agency should broaden the circumstances under which internal waste stream limitations would be imposed. EPA continues to believe that the Act provides authority to regulate internal waste streams in appropriate circumstances. The Agency's intent regarding the imposition of limitations upon internal waste streams has been clarified by means of a comment to § 122.16(i) which states that limitations on internal waste streams will not be imposed routinely, but only under exceptional circumstances which make monitoring of the final discharge point impractical or infeasible. The comment also provides examples of where internal waste stream limitations might be necessary.

§ *122.17 Schedules of compliance.*

Several commenters thought that proposed § 122.17(e) (now § 122.17(d)) provided for a schedule of compliance which allowed compliance after the statutory deadline. This was not EPA's intent, so to avoid any possible confusion this paragraph has been revised to clarify that compliance with statutory treatment requirements must be as soon as possible, but no later than the applicable deadline imposed by the Act.

In response to comments, § 122.17(c) has been redrafted to explain in greater detail the use of two alternative schedules of compliance in cases of planned or contemplated plant "shut-down" or discharge to a publicly owned treatment works. These two schedules, when read together will indicate a critical date for the decision to cease discharge rather than proceed toward compliance—and irreversible date on which steps toward compliance must be taken. No later than this date, if the permittee does not intend to construct the required treatment technology, it must make a firm public commitment to cease discharge. Examples of firm public commitment have been provided in the Comment to § 122.17(c).

Some commenters also thought that the requirements of § 122.17(c) should not apply where a discharge to a POTW is planned, but should apply where Federal funding problems, beyond the control of the permittee, delay the planned "tie-in" to the POTW. In cases of this sort, paragraph (c) must be considered in conjunction with sections 301(i)(2) and 309(a) of the Act, which authorize limited extensions of statutory compliance dates. EPA has no intention of negating these provisions of the Act through the operation of paragraph (c).

A new paragraph, § 122.17(e) has been added to deal with the situation where a POTW received a section 202(a)(2) innovative and alternative wastewater technology grant. POTWs constructing facilities with this grant money may not achieve the statutory treatment limitations because the innovative technology, as applied, may not work as planned when the facility is completed. Section 202(a)(3) of the Act recognizes that the facilities may have to be modified or replaced and thus, to encourage innovative and alternative technologies, authorizes grants of 100 percent of these costs if the Administrator determines that certain conditions are met. EPA believes that in order for the Permits Program and the Construction Grants Program to work in concert, the permit schedule of compliance should be modified if this unique type of construction grant is awarded. Thus, this new paragraph provides that the permit may be modified to extend the schedule to account for the amount of time lost in building the first treatment plant. This new paragraph does not, however, authorize EPA to extend the statutory date for compliance. If the POTW cannot achieve compliance in time, the schedule will not be extended. However EPA, in it exercise of prosecutorial discretion, may consider the grant under section 202(a)(3) when assessing the POTWs efforts to comply with statutory treatment requirements.

§ 122.20 Monitoring.

Several commenters suggested that § 122.20(b), which requires the Director to specify monitoring requirements in permits, should be deleted. No change has been made in this paragraph. EPA believes that there is an important need to tie permit limits to specific monitoring equipment or methods, such as biomonitoring, in complex situations involving toxic pollutants.

§ 122.20 (c) and (d)—Section 122.20 has been amended to provide guidance for establishing sampling and measuring requirements in NPDES permits. The section also requires that once monitoring requirements are established for an NPDES permit such requirements cannot be changed unless the permit is modified in accordance with § 122.31.

In establishing monitoring requirements there are several considerations. Many effluent limitation guidelines have been determined by statistical analysis of the pollutant levels found in a large number of composite samples or in grab samples. Consequently, a permitting authority may require that sampling for compliance monitoring be done in a manner consistent with the data base used in setting the limitation guideline. The development documents for effluent limitation guidelines often indicate the general method of sampling used to accumulate the data for guidelines setting. The revisions to § 122.20(c) indicate that less detailed monitoring may be appropriate in some cases, but once a permittee has accepted a given set of monitoring requirements, the permittee is bound by that approach unless the permit is modified for other reasons, in which case monitoring requirements may be reexamined.

§ 122.22 Reporting of monitoring results and compliance by permittees.

Several commenters objected to § 122.22(a) because it could be read to require permittees to submit monitoring results to both EPA and where appropriate the NPDES State. In response to these comments, EPA has substituted the term "Director" for the proposed terms "Enforcement Division Director and . . . Director" to indicate that only one report must be submitted to the appropriate permit issuing authority (unless otherwise specifically required).

Several commenters objected to the requirements for reporting of monitoring results for pollutants not limited in the permit. However, section 308 of the Act clearly authorizes such a requirement. Even in those situations where monitoring is not required, it is clear that if the permittee has conducted monitoring activities, they should be reported to provide as complete and accurate a picture of the discharge as possible.

Other commenters suggested that § 122.22(a) should be limited to monitoring done at the monitoring points specified in the permit. EPA has not accepted this suggestion since it would allow circumvention of this requirement by sampling at a point other than that specified in the permit.

Several commenters suggested that the imposition of a maximum $10,000 fine per violation (e.g., false statement) (§ 122.22(d)) is inconsistent with section 309(c)(2) of the Act. This is a misreading of the Act, which states that any person who knowingly makes "any" false statement should be liable up to $10,000. If this section is violated several times as a result of several false statements, each violation is separately subject to the statutory fine.

§ 122.23 Quarterly noncompliance reporting.

Many comments were received indicating that definitions of "major" and "minor" permittees should be provided in the regulations. However, "major" and "minor" are not permanent classifications. Rather, these classifications are intended to provide EPA and the States with flexibility to establish priorities for permitting and compliance activities so as to best utilize existing resources. Thus, it is more appropriate that information on "major" and "minor" classifications be provided in annual guidance, rather than fixed in these regulations. However, in order to emphasize that the "major" or "minor" classification relates to the nature of the discharge and not the nature (or size) of the facility, the regulations have been revised to read major [or] minor "discharger" rather than "permittee" (see, e.g., § 122.23(a)).

Several commenters objected that the quarterly reporting requirements were too frequent, too resource-intensive, and not useful. However, the regulation were designed to minimize the amount of reporting and to focus on the most significant instances of noncompliance by major dischargers in the narrative portion of the report. In fact, the proposed (and final) regulations change the existing requirement by adding narrative information on noncompliance with effluent limitations by major dischargers, continuing the existing narrative reporting requirements on schedule violations by major dischargers, and reducing the required reporting on noncompliance by minor dischargers to annual statistical reporting. EPA believes that these changes will result in less resources devoted to preparing reports while providing the most useful, up-to-date information to interested members of the public.

Many comments were received concerning § 122.23(b)(3). Specifically, concern was expressed that serious effluent limitation violations of short duration would not be reported. Other commenters stated that the definition of a pattern of noncompliance did not adequately handle noncompliance for parameters requiring continuous monitoring. The concern was expressed by many that our definition would result in almost continuous reporting of many minor violations. In response to these comments, two changes have been made. First, the definition of a pattern of noncompliance has been changed by adding the sentence: "This pattern of noncompliance is based on violation of monthly averages and excludes parameters where there is continuous monitoring, such as pH". Second, a paragraph has been added that provides for the reporting of a significant discharge of a pollutant that otherwise would not be reported.

Many other comments were received requesting clarification of requirements for format, copying and distribution. We do not believe such specific details are appropriate for regulation. These concerns will be addressed in guidance issued by the Office of Enforcement on report preparation.

§ 122.31 Modification, revocation and reissuance, and termination.

The majority of the comments on proposed § 122.31 dealt with two general areas. First, many commenters thought that permit modification or revocation was inconsistent with a fixed-term permit and the concept of finality as expressed in section 402(k) of the Act. However, the protection provided by section 402(k) is expressly limited by section 402(b)(1)(C) of the Act, which states that permits may be modified or terminated (revoked) for cause, "including but not limited to" three specified situations which are representative examples, not an exhaustive list. Other situations may also constitute good and valid cause for permit modification or revocation. EPA believes that "cause," as defined in § 122.31, falls well within the authority of section 402(b)(1)(C) of the Act, notwithstanding section 402(k).

Second, a large number of commenters, while recognizing EPA's

authority to modify or revoke permits, suggested that causes for revocation and causes for modification should be listed separately since absolute revocation is a more "severe" measure. EPA agrees with these commenters and has separated and reduced the causes for absoulte revocation. For clarity in distinguishing between the methods used for changing or terminating a permit, three terms are used in § 122.31 and throughout these final regulations: "modification," "revocation and reissuance" and "termination." "Modification" is used where existing permit conditions are changed but the permit expiration date remains the same. "Revocation and reissuance" is used to describe the action to revoke an existing permit and reissue a new permit which provides the permittee the protection of a new five-year permit. Finally, "termination" means the revocation of an existing permit, where a new permit is not reissued.

Proposed § 122.31(d) listed thirteen situations which constituted "cause" for permit modification or termination. In accordance with EPA's decision to separate cause for "termination" from cause for permit "modification" or "revocation and reissuance," a new paragraph (e) has been added to supplement paragraph (d). In the final regulations paragraph (d) contains five situations where a permit can be either "modified," "revoked and reissued" or "terminated." These include the three situations listed in the Act plus two other situations. The first situation is where information indicates that the discharge poses a threat to human health or welfare (see discussion of paragraph (d)(4)). The second situation, a change in ownership, was added in response to comments (see discussion of paragraph (d)(5)).Paragraph (e) lists all other situations which are cause only for permit "modification" or "revocation and reissuance."

Several commenters suggested additional situations that should constitute "cause" for permit modification. The suggested causes included: revisions to the best practicable waste treatment technology standards; promulgation of regulations governing the disposal of sewage sludge under section 405(d) of the Act; and the inability of a permittee to meet permit limitations despite installation of technology contemplated by the permit. EPA does not believe that these situations constitute "cause" for modification or revocation and reissuance. However, in response to comments, two additional "causes" have been added: (1) § 122.31(d)(5), a change in ownership or control of a source which has a permit, consistent with § 122.12(d) (where no changes in the permit are necessary, the permit may be modified but is not subject to public notice or an opportunity for a hearing in accordance with § 122.31(f)(4)), and (2) § 122.31(e)(7), failure of an NPDES State to notify an affected State of a discharge that originates in the NPDES State as required by section 402(b)(3) of the Act.

One commenter also felt that procedural safeguards surrounding the revocation and reissuance, and termination of a permit were inadequate and did not meet the requirements of 5 U.S.C. section 558(c). In response to this concern, it should be noted that §§ 122.1(b)(2) and 122.30 specifically state that all actions will be taken in accordance with the procedural requirements of 40 CFR Part 124, thus providing adequate procedural safeguards.

§ *122.31(d)*—Section 122.31(d)(1) states that "violation of any term or condition of the permit" constitutes cause for permit modification, revocation and reissuance, or termination. Many commenters objected to this and specifically to the use of the word "any" since it did not distinguish between serious, repeated, or willful violations and minor, single, or inadvertent violations. EPA understands that these commenters fear that under the proposed regulations, a single, minor permit violation could result in permit termination and subject the discharger to action for discharging without a permit. While this is an unlikely case, the Act specifically states that violation of any condition of the permit constitutes cause for permit modification or termination. Consequently, EPA has not revised this paragraph; however, the permitting authority will normally consider the seriousness of the violation and the use of other enforcement actions before deciding to terminate a permit under this paragraph.

Paragraph 122.31(d)(2) states that "failure of the permittee to disclose fully all relevant facts or misrepresentation of any relevant facts by the permittee" constituted cause for permit modification, revocation and reissuance, or termination. Many commenters felt that this subsection should require knowing or willful failure to disclose facts. As with proposed § 122.31(d)(1), EPA has not made the suggested change because this paragraph mirrors the language in the Act. In response to comments, however, EPA has clarified the final clause in this paragraph to indicate that misrepresentation of any "relevant" fact is intended to be subject to this paragraph.

The last sentence to both proposed §§ 122.31 (d)(1) and (d)(2) stated that the two situations, violation of any term or condition of a permit or failure of a permittee to disclose all relevant facts, constituted cause for termination, revocation and reissuance, or modification only when such changes would make the permit more stringent. Many commenters strenuously objected to the more stringent requirement in the last sentence and gave examples of when a permit should be made less stringent. Although EPA believes that circumstances justifying a less stringent permit will be extremely rare, comments suggesting such circumstances were persuasive. Accordingly, EPA has deleted the more stringent modification restriction in paragraph (d) (1) and (2) to allow less stringent modifications if justified.

In response to comments which pointed out that proposed § 122.31(d)(3) did not properly paraphrase the statutory definition of "cause" found in section 402(b)(1)(C)(iii) of the Act, EPA has revised this paragraph to be consistent with the Act.

Proposed § 122.31(d)(4) stated that "information indicating the permitted discharge poses a threat to human health or welfare" constituted cause for permit modification or revocation. While some commenters thought this paragraph exceeded EPA's statutory authority, other commenters stated that this provision was consistent with EPA's authority under section 402(k) of the Act. Because EPA concurs with the latter comments and believes that such a provision is consistent with the Act, paragraph (d)(4) is retained as a final regulation. In response to comments suggesting that the "human health or welfare" provision should be "cause" only to modify a permit to make it more stringent, and in keeping with EPA's decision to allow permit termination only in certain limited circumstances, EPA has placed this "cause" under the section which authorizes termination of the permit in addition to modification or revocation and reissuance. Many commenters also felt that this paragraph should be limited to situations where there was a "substantial showing" or "verification" as to the likelihood of an adverse impact on human health. EPA has not adopted these suggestions but points out that the permittee remains free to challenge the existence of a threat to human health or welfare in any proceeding to modify, revoke and reissue, or terminate a permit.

Proposed § 122.31(d)(5) indicated that a discharger's failure or refusal to allow authorized representatives of the permit issuing authority to enter, inspect, or copy materials on the premises as provided in proposed § 122.14(f) constituted cause for permit modification or revocation. Many commenters suggested deletion of this provision because failure to allow such entry, inspection, or copying was a cause for enforcement action under sections 308 and 309 of the Act. Other commenters stated that the provision was inconsistent with the Supreme Court's decision in *Marshall* v. *Barlow's Inc.*, 436 U.S. 307, (1978). In response, EPA has deleted proposed § 122.31(d)(5). Proposed § 122.14(f) was also revised in response to comments. See discussion of § 122.14(f).

§ *122.31(e)*—Proposed § 122.31(d)(6) (now § 122.31(e)(1)) indicated that material and substantial alterations or additions to the discharger's operation constituted cause for permit modification or revocation. In response to comments requesting clarification as to what constitutes "material and substantial alterations or additions," a parenthetical cause has been added to indicate that such change includes situations covered by § 122.14(e) which requires a new permit application.

Some commenters asked under what circumstances would proposed § 122.31(d)(7), now § 122.31(e)(2), be used? Section 122.31(e)(2) might be appropriate if a permit misapplied State water quality standards (in effect at the time of permit issuance) and only secondary treatment was necessary. This section could be used to modify the permit to reflect the proper level of treatment. In addition, § 122.31(e)(2) has been revised to indicate that it can be used for revising more than effluent limitations, e.g., monitoring requirements.

Proposed § 122.31(d)(8) (now § 122.31(e)(3)) indicated circumstances under which revision or withdrawal of EPA promulgated effluent limitations guidelines constituted cause of permit modification or revocation. Many commenters objected that the requirement to file a modification request within ninety (90) days after the Federal Register notice of withdrawal or revision was unreasonable, particularly since the scope of the relaxed guideline or standard may not be known. EPA continues to believe that Federal Register notice is appropriate and adequate and that 90 days is sufficient time for a discharger to determine the scope of the revision or withdrawal.

Several commenters suggested that withdrawal or revision of Water Quality Standards of EPA promulgated interim final effluent limitation guidelines should also constitute cause for permit modification. EPA agrees with these commenters and has revised § 122.31(e)(3) accordingly.

Other commenters suggested modifications should be allowed to make a permit less stringent, when the permit was issued based upon section 402(a)(1) of the Act and the pemit limitations are more stringent than subsequently promulgated effluent guidelines. EPA cannot allow modification to make a permit less stringent under these circumstances since a less stringent modification would constitute unwarranted "backsliding" in pollution control. See *U.S. Steel* v. *Train*, 556 F.2d 822, 846 (7th Cir. 1977). Paragraphs 122.15(i)(1), (2) and (3) lists the only exceptions to this principle.

A few commenters thought there was no need to modify a permit when EPA-promulgated effluent guidelines limitations were withdrawn, revised, or judicially remanded (see proposed § 122.31(d)(8) and (9), now § 122.31(e)(3) and (4)) since the guidelines were no longer applicable or enforceable. These comments indicate a fundamental misconception as to the enforceability of individual permit terms and conditions; permit terms and conditions remain enforceable unless and until they are modified, revoked, or judicially or administratively stayed.

Several commenters objected to proposed § 122.31(d)(11), (now § 122.(e)(6)) which indicated by reference to proposed § 122.14(d) and § 122.15(b) that promulgation of effluent standards limitations or prohibitions under sections 307(a), 301(b)(2)(C) and (D) and 304(b)(2) of the Act constituted cause for permit modification or revocation. Since that paragraph incorporated the requirements of former 40 CFR § 124.46, that requirement has not been changed. However, two additional cross references to § 122.17 (causes for modifications to schedules of compliance) have been added for completeness.

Proposed § 122.31(d)(12), stated that failure of the permit "to apply any applicable standards or limitations" constituted cause for permit modification or revocation. Many commenters objected to that paragraph as unfairly penalizing the permittee for failure of the permit issuing authority to write the permit properly. Other commenters indicated that any attempt to apply limitations or standards which were not in effect at the time of permit issuance constitutes unauthorized overreaching by the permit issuing authority. EPA has carefully considered these comments in light of section 402(k) of the Act and has concluded that, except as provided in § 122.31(e)(7), a permit should not be modified to incorporate new standards or limitations. Accordingly, EPA has deleted that paragraph.

Proposed § 122.31(d)(13), defined cause to include "other circumstances . . . [which] have materially and substantially changed since the permit was issued." Several commenters suggested that this subsection was either too vague or too expansive and should, therefore, be deleted. Although it was not intended that this paragraph be used as a carte blanche to allow permit modifications, EPA understands and partially agrees with the fears of some commenters that this paragraph could be so used. Accordingly, that paragraph has been deleted.

§ *122.31(f)*—Proposed § 122.31(e) (now § 122.31(f)) listed six uncontested actions amending minor provisions of an effective permit that were not subject to the usual procedures of notice and opportunity for hearing unless the modification would render the permit less stringent. Several commenters thought that it was inconsistent to allow only more stringent modification without public notice and an opportunity for hearing and not to allow less stringent modifications in that same manner. EPA believes that a requirement for public notice and opportunity for a hearing for less stringent modifications is necessary, since the public has a right to know of any permit modifications which would render a permit less stringent and could, therefore, adversely affect the environment. The only person who would be affected by a more stringent modification is the permittee and the permittee receives notice of and retains the right to contest any more stringent modifications. If the permittee contests the modification, § 122.31(f), by its terms, is not applicable and the requirements of Part 124 come into effect.

Several commenters suggested that a permit modification to require less frequent monitoring or reporting should be an insignificant modification under § 122.31(f). Since less frequent monitoring or reporting would render a permit less stringent, EPA, for the reasons stated above, believes public notice and an opportunity for a hearing is required.

Other commenters suggested various changes to proposed § 122.31(e)(3) (now § 122.31(f)(3)) to allow more than the proposed 120 days slippage not only for interim compliance dates but also for final compliance dates. An extension of the final compliance date clearly renders the permit less stringent and therefore EPA has not made the suggested changes. EPA further believes that a slippage of more than 120 days in an interim compliance date would, in most cases, interfere with the attainment of a final compliance date. In the development of the *Interim National Municipal Policy and Strategy* EPA carefully considered the effect of the Construction Grants process on the achievement of interim compliance dates by municipal permittees. EPA concluded that 120 days slippage in interim compliance date is sufficient to accommodate the Construction Grants process and that, with careful grants management, EPA is hopeful that even slippages of 120 days will not occur in the future.

§ 122.41 Disposal of pollutants into wells, into publicly owned treatment works, or by land application.

Proposed § 122.41(a) requiring State permits for the disposal of pollutants into wells has been moved from Part 122 to Part 123 because it is applicable solely to NPDES States.

§ 122.41(a)—One commenter recommended that disposal of wastes by land application, as well as by well injection or routing to a POTW should be included in § 122.41. EPA agrees, and this change has been made.

A number of commenters objected to the provision in proposed § 122.41(b) (now § 122.41(a)) requiring adjustment of effluent limitations for discharges into surface waters where a portion of raw waste is injected into a well. These commenters argued that the adjustment provision is inconsistent with *Exxon Corp.* v. *Train,* 554 F.2d 1310 (5th Cir. 1977), and further that EPA should defer to Subpart C of the Safe Drinking Water Act, which establishes controls over well injection.

EPA believes that these commenters have misconstrued the purpose and scope of proposed § 122.41(b) (now § 122.41(a)). The provision does not regulate well injection, directly or indirectly, nor does it place any limit on the amounts which may be injected, the rates of injection, or the design and operation of injected wells. Instead, §122.41 focuses on the remaining wastes which are being discharged into waters of the United States. The purpose of the regulation is to ensure that the Act's treatment requirements are met for discharges into surface waters. Unless adjustment is made in calculating effluent limitations, dischargers using wells, POTWs, or land application for part of their wastes would get treatment "credit" for pollutants so disposed and thus escape application of technology-based requirements to the portions of the wastes disposed to waters of the United States.

Several comments noted that the formula as published in the proposed rules is incorrect and inconsistent with EPA's examples in the preamble. EPA agrees, and has modified the final rules to incorporate the correct method of calculation. This method may be algebraically expressed as:

$$P = E \times \frac{N}{T}$$

where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to waters of the United States, and T is the total wastewater flow.

Several commenters noted that strict application of the formula would allow a discharger to inject concentracted wastes into a well and discharge relatively dilute wastes to surface water with little or no treatment. The last sentence in proposed § 122.41(b) was intended to cover this situation. That sentence allows adjustment of the effluent limitations derived from the formula as necessary to account for changes in "character or treatability" of the wastes disposed into navigable waters. Permit issuing authorities should devise appropriate methods of adjustment in each case, based upon a finding that the wastes being discharged into surface waters are "fundamentally different" from those considered in issuing effluent guidelines. These variances will be controlled by Subpart D of Part 125.

A new paragraph (§ 122.41(a)(1)) has also been added to cover the situation where EPA-promulgated effluent guidelines provide separate standards for a discharge of wastes from a particular process and all wastes from that process go to wells, land application, or POTWs. Such separate process standards would not be used to calculate permit limits.

§ 122.42 Concentrated animal feeding operations.

Proposed § 122.42 subjected concentrated animal feeding operations to individual permits coverage and all other animal feeding operations to general permit coverage. Many commenters objected to EPA's blanket coverage of all animal feeding operations, arguing that many smaller animal feeding operations are not point sources. These commenters also added that such operations were adequately covered by the section 208 planning process. EPA has reconsidered its position and agrees that not all animal feeding operations are point sources and thus subject to permit requirements.

EPA is, therefore, withdrawing the proposed revision; and the final regulations reflect the requirements found in former § 124.82 and § 125.51. Thus, only concentrated animal feeding operations will be subject to individual permits and general permits will not apply to other animal feeding operations.

§ 122.43 Concentrated aquatic animal production facilities.

Many commenters objected to this proposal which subjected concentrated aquatic animal production facilities to individual permit coverage and all other aquatic animal production facilities to general permit coverage. In addition, commenters objected to the provisions for case-by-case designation of certain aquatic animal production facilities as concentrated aquatic animal production facilities, and therefore, subject to individual permits.

As discussed in § 122.42, EPA is withdrawing the proposed revision regarding general permits. The final regulation concerning permit coverage is similar to former 40 CFR § 124.1(u) and § 125.1(ii) requiring only individual permits of concentrated aquatic animal production facilities. However, EPA believes that some aquatic animal production facilities that may not be classified as concentrated under the formula, nevertheless, may be significant contributors of pollution. Because of this, EPA is retaining the provision for case-by-case designation of concentrated aquatic animal production facilities. EPA is revising this to include the following language suggested by one commenter: "In no case shall a permit application be required from a concentrated aquatic animal production facility designated under (the case-by-case provision) until there has been an on-site inspection of the facility and a determination that the facility should and could be regulated under a permit program."

Commenters also objected to combining warm and cold water aquatic animal production facilities and the 9,090 kilograms (approximately 20,000 pounds) of aquatic animals per year cut-

off. In response to these comments, aquatic animal production facilities are now differentiated in the regulations based on whether they produce warm or cold water species and the characteristics of the method of confinement. Warm and cold water production facilities are separated because of basic operational characteristics differences. Cold water aquatic animal production facilities, where concentrated feeding and continuous flow occur, discharge organic pollutants at a rate related to the amount of food fed and the total weight of the animals produced. Small facilities of this type, however, (such as "fishout" ponds and farm ponds) produce negligible amounts of pollution. For this reason a facility which produces less than 9,090 harvest weight kilograms (approximately 20,000 harvest weight pounds) of aquatic animals per year and feeds less than 2,272 kilograms (approximately 5,000 pounds) of food during the month of maximum feeding, is not required to have an NPDES permit unless so required on a case-by-case basis (see § 122.43(c)).

In most cases warm water aquatic animal production facilities differ in construction and operation from cold water facilities. If the discharge from a warm water operation takes place for less than 30 days per year or only during periods of excess runoff, no NPDES permit is required. Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 harvest weight pounds) of warm water aquatic animals per year are also exempted. The 45,454 kilogram figure will apply to warm water aquatic animal production facilities. If sufficient information is submitted to EPA to substantiate a higher figure, EPA will consider amending this section.

Finally, EPA has deleted the non-native fish restriction found in proposed § 122.43(b)(1). Although this restriction was taken from the former regulations, an overwhelming number of commenters objected to the restriction because of its indirect effect on research, sport fishing, and fish management and, generally, because it exceeded EPA's statutory authority. Since EPA agrees that a native/non-native fish distinction bears little relation to the quality of the discharge, this distinction was deleted.

§ 122.45 Separate storm sewers.

On February 4, 1977, the EPA published a proposed rule to establish an NPDES general permit program for irrigation return flows and separate storm sewers (see preamble discussion of § 122.46 *General Permit Program).* The February 4, 1977 proposed definition of "separate storm sewer" was the same as defined in former 40 CFR § 125.52. In the August 21, 1978 proposal, EPA redefined "separate storm sewer" to mean "a conveyance or system of conveyances (including but not limited to pipes, conduits, ditches and channels) primarily used for collecting and conveying storm water runoff." This definition differed from the February 4, 1977 definition, in that the February 4, 1977 proposal required the sewer to be located in an "urbanized area" or otherwise be found to be a significant contributor of pollution. The August 21, 1978 proposal also introduced the concept of case-by-case designations of "concentrated" storm sewers and indicated that concentrated storm sewers require individual permits.

In response to comments objecting to the case-by-case designation of concentrated separate storm sewers and the deletion of the "urbanized area" requirement for separate storm sewers, EPA has returned to the definition of separate storm sewer proposed in February 4, 1977, i.e., the sewer must be located in an urbanized area to be a separate storm sewer and there will be no case-by-case designations of a different category of sewers known as "Concentrated" storm sewers. A conveyance or system of conveyances not located in an urbanized area, can, as proposed in the February 4, 1977 rule, be designated a significant contributor of pollution and be considered a "separate storm sewer" subject to permit requirements. Likewise, under § 122.46(e) concerning general permits, the permit issuing authority can require that sources otherwise subject to a general permit obtain an individual permit. This case-by-case designation is similar to the February 4, 1977 proposal.

A comment has also been added which indicates that the designation of separate storm sewer under this section has no bearing on whether the source is or is not a separate storm sewer for purposes of funding under Title II of the Act. This comment was added to prevent any possible confusion between these regulations and the Title II regulations.

§ 122.46 Silvicultural activities.

Proposed § 122.46 restated the former definition of "silvicultural point source" (40 CFR § 124.85(a) and § 125.54(a)) and introduced the concept of case-by-case designations of silvicultural activities as point sources. Many commenters objected to the case-by-case designation of point sources arguing, among other things, that such designations would negate the section 208 planning process, that the criteria for designations were too vague and that the designation of any additional silvicultural point sources should be through rulemaking procedures. EPA has considered these comments and determined that the four silvicultural point source activities defined under § 122.46(a) (rock crushing, gravel washing, log sorting, and log storage) are sufficient under NPDES because most water pollution from forest management areas is non-point in nature and hence not subject to NPDES. EPA accordingly has deleted all reference to case-by-case designation of silvicultural point sources.

§ 122.47 New sources and new dischargers.

§ 122.47 (a) and (b)—Two commenters pointed out that proposed § 122.47 (a) and (b) did not address the question of whether a mobile drilling rig which relocates requires an EIS upon relocation. The final regulations continue to track the language of section 306(a)(5) of the Act which defines construction to include "any placement, assembly or installation of facilities and equipment . . . at the premises where such equipment will be used," without interpreting this language in the context of mobile drilling rigs. It should be noted that, at present, no new source performance standards have been promulgated for mobile drilling rigs; thus, no mobile drilling rig may be considered a new source at present. The Agency intends to examine the EIS issue at the time that it promulgates new source performance standards for these sources.

§ 122.47(c)—Several commenters remarked that State-issued permits to new sources should require EIS's under proposed § 122.47(c)(1)(ii). Other commenters disagreed. It is clear, however, that the issuance of a permit by a State is not a major Federal Action. *Chesapeake Bay Foundation v. United States* (E.D. Va. June 28, 1978). Therefore, EPA has not changed this statement.

Several commenters objected to the requirement in proposed § 122.47(c) (2) and (3) that the Regional Administrator must accept the EIS recommendations and deny or condition permits in accordance with such recommendations. They argued that the EIS is only a recommendation and that it is the Regional Administrator's duty to evaluate the recommendation and make permit-related decision accordingly. EPA agrees with the thrust of these comments, and the regulation has been redrafted to reflect them.

Many commenters disagreed with the provision of proposed § 122.47(c) (4) and (5) which would bar construction prior to issuance of a permit or negative declaration. However, EPA believes that it is implicit in the requirement of section 511(c) of the Act and of the National Environmental Policy Act (NEPA) that the expected environmental impacts studied in the environmental impact assessment should not be allowed to proceed until that assessment has been concluded. This has consistently been the Agency's position (see former 40 CFR § 6.906, published in 42 FR 2454 (January 11, 1977)) and has recently been reinforced in NEPA regulations published by the Council on Environmental Quality (43 FR 55478, November 29, 1978). Therefore, the position is retained in these final regulations. It should be noted that subparagraph (c)(4) allows the Regional Administrator to approve construction prior to issuance of a permit or finding of no significant impact (i.e., a negative declaration) if he or she determines that such a finding will probably be made.

§ *122.47(d)*—Several commenters pointed out under proposed § 122.47(d)(1)(ii) that construction often creates construction-related discharge and that the 10-year protection period for new source performance standards should not begin at the time of such discharges. Accordingly, the regulations have been modified to trigger the period at the time of discharge only in the case of process or other non-construction related discharges.

The interpretation of section 306(d) has been a vexing legal problem for EPA since the enactment of the 1972 Amendments to the Clean Water Act. That provision grants to a qualifying source meeting "all applicable standards of performance" a ten-year immunity (or immunity during the period of amortization of pollution control facilities, if shorter) from "any more stringent standard of performance." The term "standard of performance" is defined in section 306(a)(1) in such a way as to make it clear that it refers only to new source performance standards issued by the Administrator. Thus the literal effect of section 306(d) is to give a new source a ten-year protection only from more stringent new source performance standards, and not from more stringent BAT, BPT, or BCT effluent limitations.

Reading this provision of the statute literally would make it meaningless, a result Congress could not have intended. New source performance standards are periodically revised to incorporate new designs and in-process changes which can only be incorporated into a new plant when it is first built. If the statute is applied literally, after the protection period expires a new source would have to comply with any revised new source performance standards, some of which might be achievable only by a plant which was designed and constructed from the ground up so as to meet them.

On the other hand, reading the term "standard of performance" (in its second use in section 306(d)) to refer to all technology-based standards not only does violence to the language of the Act (by requiring the same statutory term to have two different meanings in the same sentence and by failing to track the definition in section 306(a)(1)), but also seriously interferes with Congress' command in the 1977 Amendments that technology-based standards for toxic pollutants be expeditiously achieved.

In the proposed regulations EPA sought to deal with these problems of interpretation by construing the protection afforded by section 306(d) to apply only to "more stringent" technology-based effluent limitations controlling the same pollutants as are controlled by the applicable standards of performance. In other words, if the NSPS only limited pollutants A and B, EPA could later impose technology-based effluent limitations for pollutants D and E, but could not impose more stringent technology-based limitations on A and B.

A number of commenters objected to this proposal, arguing that section 306(d) should be read to afford new sources protection against any additional requirements during the protection period. EPA agrees that the protection provided by the proposed regulations should be broadened, although not to the extent suggested by the commenters. Accordingly, the Agency has invoked its rule-making authority under section 501(a) of the Act to fashion an interpretation of section 306(d) that gives the greatest effect possible to the language of the statute in light of congressional purposes. This construction has two principal features. First, it extends the protection afforded by section 306(d) not only to new source performance standards, but to all technology-based requirements under section 301 (BPT, BCT, and BAT). Second, the protection is not extended to toxic pollutants controlled by applicable BAT regulations, but not by the new source performance standards. (The proposed regulations would have exempted from 10-year protection conditions controlling any pollutants not controlled by the applicable new source performance standards.)

In this way, EPA has sought to implement two conflicting congressional goals. On the one hand, new sources must be given some meaningful protection for ten years after construction. Section 306(d) should not be ignored. On the other hand, the purpose of the new provisions of the Act controlling toxic pollutants must not be frustrated by allowing new sources which meet old new source performance standards based on traditional pollutants such as BOD and suspended solids to escape application of BAT controls on toxic pollutants.

A number of commenters suggested that the section 306(d) protection period apply to State water quality standards and other requirements not based on technology. EPA has not adopted these proposals because the term "standard of performance" clearly refers to a technology-based standard. (See section 306(a)(1) of the Act.) Moreover, an earlier version of section 306(d) adopted by the House would have provided protection from any effluent limitation, whether technology-based or water-quality-based. (See FWPCA Legis. Hist. at 965–66.) But the version adopted by the conferees and ultimately enacted provided protection only from "standards of performance." The shift clearly indicated an intent to narrow the type of "standards" from which protection is granted.

In response to comments objecting to the limitation of the protection period to pollutants actually controlled by the standard of performance, § 122.57(d)(2)(ii) allows imposition of a more stringent technology-based effluent limitation during the protection period only if it controls a toxic pollutant. This revision will allow the imposition of additional controls over pollutants which are neither hazardous nor toxic where such control has been specifically identified as necessary to indirectly control toxic pollutants. EPA's present strategy for controlling toxics will involve such indirect regulation in many instances. This best accommodates the purposes of the 1977 Clean Water Act amendments. Congress intended for EPA to shift its focus from the regulation of conventional pollutants to a new program for applying technology-based requirements to toxic pollutants. Under the Act as amended, toxic pollutants are treated separately from less hazardous materials. Section 307(a), as amended in 1977, requires EPA to establish for toxic chemicals either effluent limitations based on the 301(b) criterion of best available

technology economically achievable, or a national standard under section 307(a) itself based on the toxicity of the substance and designed to provide an "ample margin of safety."

The policy of Congress was clearly to control toxic chemical pollution as quickly and as effectively as possible. See *CWA Legis. Hist.* 427–29 (remarks of Senator Muskie). The addition of the new BAT standard for toxic pollutants was intended not to make toxic controls less effective than they would have been under section 307(a), but to allow EPA to use the regulatory mechanisms of section 301(b) when they would be more efficient than those under section 307(a). In light of the expressed intent of Congress to expedite the control of toxic pollutants, EPA believes that the intent of the Act would be ill served by a policy of exempting classes of sources from compliance with toxic controls for ten years, where the Act can be interpreted not to provide such an exemption.

Finally, the protection period will not extend to permit conditions controlling hazardous substances under section 311 of the Act. This exception is intended to carry out the purposes of the 1978 amendments to section 311 of the Act. Those amendments excluded from control under section 311 discharges which are controlled by the permit system under section 402. The legislative history of that provision, though brief, shows that Congress intended for any exemption from section 311 to depend upon the availability of effective control under section 402 of the hazardous substance discharges. Thus, for example, Congressman Breaux, one of the sponsors of the 1978 amendments, said:

> At the present time many industrial point sources have section 402 permits which do not identify or provide for the regulation of designated hazardous substances. Section 311(a)(2) would be amended to provide these sources a reasonable opportunity to identify the constituent elements of their effluent, to develop treatment and management procedures and to apply for a new permit without being liable for section 311 penalties. *Cong. Rec.* (daily ed.) at 13599, October 14, 1978.

New sources should have this same opportunity to apply for a permit that reflects consideration of hazardous substance discharges, and these regulations now accord that opportunity.

Several commenters pointed out that under proposed § 122.47(d)(4) the maximum of a 60-day "start-up" period was insufficient for new sources to meet all permit conditions. One example given was the case of biological oxidation ponds in cold weather. As a result, the time limit has been extended to 90 days.

§ 122.48 General permit program.

On February 4, 1977, EPA published a proposed rule (42 FR 5846) to establish an NPDES general permit program for irrigation return flows and separate storm sewers. The proposed rule arose out of the decision in *NRDC* v. *Costle* (Runoff Point Source), which denied EPA's authority to exclude certain point sources from the permit program. The general permit program outlined a system whereby similar activities in a given geographic area would be covered by a single general permit. The program was intended to provide administrative flexibility in dealing with numerous minor discharges subject to the same limitations.

Approximately 40 comments were received on the proposed regulations during the overall comment period, ending April 1977. Many of these comments addressed problems associated with irrigation return flows. However, after the proposal Congress excluded irrigation return flows from the permit requirements (see section 502(14) of the Act). Accordingly, EPA has exempted those discharges from both individual and general permit coverage, see § 122.4(a)(4).

The August 21, 1978 proposal reserved § 122.48 for the general permit program. Based on comments on the original general permit proposal and the August 21, 1978 proposal, EPA has made several revisions as noted below.

First, as indicated in § 122.48(b), the general permit program is limited to certain types of point sources. While the original general permit proposal covered only separate storm sewers and irrigation return flows (now exempted), comments addressing the administrative flexibility of the approach have prompted us to authorize the use of general permits for other categories of points sources with minor discharges located in the same geographic area. All draft general permits for other categories of points sources must be sent to the EPA Deputy Assistant Administrator for Water Enforcement for a 90-day review (see §§ 123.22, 124.32(a) and the Comment to § 122.48(a)(2)).

Some commenters misinterpreted the proposed regulations and though that EPA was requiring States to use general permits. It should be noted that the general permit program is optional. States (and EPA) retain the right to require individual permits for any and all point sources.

A few commenters were confused as to the proposed timetable for establishment of a general permit program for separate storm sewers which varied depending on whether the permitting authority is a State or EPA. In response, EPA has decided to drop the deadline requirement for submitting a separate storm sewer general permit program. Since the requirements for State general permit programs have been placed in § 123.12, a more in-depth discussion of State requirement can be found in the preamble discussion of that section.

The proposed general permit regulations listed geographic areas which may be appropriate for the issuance of general permits to storm sewers, including political or geographical boundaries. Based on several comments, the final regulations have been revised to include boundaries designated by roads in a State highway system as a geographical area.

Several commenters addressed the procedural aspects of general permit issuance established in the proposed regulations, particularly, public notice. These issues are now covered under Part 124 and have been subject to renewed opportunity to comment in the August 21, 1978 proposal. Although commenters felt the Agency should individually send notice to permittees covered by a general permit, EPA believes that such system would be unwieldy and that Federal Register notice, or other appropriate notice in the case of State issued general permits, is sufficient (see § 124.41(f)).

The original February 4, 1977 proposed general permit terms and conditions have been deleted because they would be duplicative of the provisions in § 122.14 and § 122.15 (permit terms and conditions). Since these sections are more detailed than the general permit proposal, they address the concerns of commenters that proposed general permit terms and conditions were vague and overbroad. Any concerns about unreasonable permit conditions are adequately addressed by a discharger's right to request an individual permit and then request a hearing under Part 124.

Some commenters were confused about the use of best management practices (BMPs) as general permit terms and conditions, including questions on how best management practices would be developed. The use of BMPs for separate storm sewers is of particular importance since "end-of-pipe" effluent limitations may not be the most appropriate means of control. As indicated in the preamble discussion of

BMPs, they may be imposed in general permits under a variety of authorities. To summarize briefly, BMPs may be imposed in general (or individual) NPDES permits, where: uniform numeric effluent limitations are infeasible, in accordance with *NRDC* v. *Costle* (Runoff Point Sources); BMPs are mandated under section 304(e) of the Act to control toxic and hazardous pollutants from ancillary industrial activities; BMPs are "appropriate requirements" related to the achievement of effluent limitations, pursuant to section 402(a)(2) of the Act; BMPs are a condition of State certification for an EPA-issued permit under section 401(d) of the Act; BMPs constitute a more stringent limitation established pursuant to State law or regulations under section 301(b)(1)(C) of the Act; BMPs are required pursuant to the National Environmental Policy Act, where an Environmental Impact Statement (EIS) has been prepared; and BMPs are necessary to assure consistency with a State water quality management plan pursuant to section 208(e) of the Act. (See § 122.15(g).)

A number of commenters noted some problems with the provisions related to revocation of a general permit and issuance of an individual permit to a particular discharger. As a result, the provisions have been redrafted, with several major changes in the final regulations. First, interested persons can request that a general permit be revoked and an individual permit required for a particular permittee. A permittee is adequately protected against arbitrary action in this regard under the procedural safeguards of Part 124. Second, rather than requiring general permit modification, the revocation of a general permit and the issuance of an individual permit now automatically modifies the general permit's applicability to the individual permittee. Public notice and opportunity for comment on the modification of the general permit for this purpose (i.e., solely reflecting a change in covered permittees) is not necessary because public notice will be given of the new individual permit for the permittee. Third, individual permittees can request to be covered by the general permit, and vice versa. In a related vein, a few commenters suggested that a person covered by a general permit should be excluded from general permit coverage where an individual permit is requested, and left unpermitted pending a decision on the individual permit request. This suggestion has not been taken, since it runs contrary to the pollution control goals of the Act and EPA's policy on permit modification and revocation and reissuance.

Finally, EPA has rejected some changes recommended by commenters as inconsistent with the Act's requirements, e.g., general permits may not be issued for terms which exceed five years, and section 208 water quality management agencies may not be designated as permitting authorities for general permits.

III. Part 123—State Permit Program Requirements

A. *What Does This Part Do?* Section 304(i)* of the Act directs the Administrator to promulgate guidelines for State programs setting minimum requirements for State participation in the National Pollutant Discharge Elimination System (NPDES) permit program under sections 402, 318 and 405. Section 101(e) of the Act directs the Administrator to promulgate guidelines setting minimum requirements for public participation in the development, revision and enforcement of State programs approved pursuant to sections 402 or 404. This Part contains the guidelines required by section 304(i) and 101(e). In addition, this Part sets guidelines for State section 404 permit programs regulating discharges of dredged or fill material. The decision to include section 404 permit programs in this Part is based on the very close parallel between the statutory requirements for the NPDES and section 404 permit programs (e.g., compare section 402(b) with section 404(h)).

This Part also specifies the process for EPA approval of State programs and for revision of State programs (including any revisions to existing State programs necessary to conform to the Clean Water Act of 1977). Guidelines for EPA overview of State programs, including the requirement for a Memorandum of Agreement between the State and EPA, and the process for objection to proposed State NPDES permits are also incorporated into this Part.

Many of the substantive requirements for the operation of the NPDES program, whether administered by a State or EPA, are contained in Parts 122, 124 and 125. The provisions of those Parts are applicable to State programs only to the extent they are incorporated by reference into Part 123 (e.g., see § 123.12). Thus, if a provision of Part 122, 124 or 125 is not cross-referenced in Part 123 it is not directly applicable to State NPDES programs. For example, most of the requirements of Part 124 do not apply to States.

A person reading Part 122, 124 or 125 should be able to determine from the context whether the particular provision is applicable to State administered programs. Nonetheless, if any doubt exists Part 123 should be consulted to determine whether or not States must conform to the particular requirement in question. Where an applicable provision of Part 122 incorporates requirements from elsewhere in this Chapter it becomes a State program requirement. For example, § 122.20 is made applicable to State programs under § 123.12 and requires that NPDES permits include monitoring requirements. Under § 122.20(c) the testing done by permittees is required to conform to 40 CFR Part 136. Therefore, these Part 136 requirements are applicable to State programs.

Additional operational requirements of State section 404 programs will be proposed in the near future as part of the "consolidated regulations". These will closely parallel the requirements of Parts 122 and 124 which are applicable to State NPDES programs. Until the remaining requirements to State section 404 programs are proposed, States should seek guidance from Parts 122 and 124, from regulations promulgated by the Corps of Engineers and directly from EPA.

The provisions of Part 123 (including the applicable sections of Parts 122, 124 and 125) are *minimum* requirements and the States are free to impose more stringent requirements at any time. Thus, in the final example of the preceding paragraph, the State is free to ignore the EPA-promulgated effluent guideline if it chooses to impose more stringent effluent limitations than EPA requires under 40 CFR Subchapter N.

B. *How Does This Part Relate to Existing Regulations?* Prior to the promulgation of these regulations the operational requirements for State NPDES programs were contained in former Part 124 and former Part 105 (Public Participation). The process for approval and revision of State programs was developed and contained in EPA policy memoranda and informational communications. The approval and revision process contained in this Part is merely a codification of existing requirements and does not represent any change in these processes.

The public participation guidelines of Part 105 were recently replaced with a revised set of guidelines under Part 25. In doing this EPA decided to remove

*The provisions of section 304 were redesignated as a result of the Clear Water Act of 1977. What is now designated section 304(i) was formerly section 304(h). Congress failed to make corresponding changes to section 402. Cross references in section 402 to section 304(h) should, therefore, be read to mean section 304(i).

State permit programs from the coverage of Part 25 and to incorporate the applicable public participation requirements for State programs into Part 123. This was done so all the major requirements for State programs are contained in one Part. In doing this EPA has incorporated most of the substantive provisions of Part 25 into Part 123 (in certain instances this is done by incorporation of applicable requirements of Part 124).

Public participation in the permit issuance process, pursuant to the requirements of section 101(e) of the Act, is fostered by the public notice requirement (§ 124.41), the statement of basis and fact sheet requirements (§§ 124.33 and 124.34), the public comment period and opportunity for hearing requirements (§ 124.42), and the response to comments section (§ 124.63), all of which are applicable to State NPDES programs.

A basic element of Congress' concern for public participation is to make use of a concerned public in identifying possible noncompliance with permit requirements. To this end Part 123 requires that all permit applications and all effluent data be made available to the public without restriction. All other information must be made available to the public unless shown to be confidential. (See § 124.131.) In addition, "quarterly noncompliance reports" and annual reports prepared under § 122.23 must be made available to the public. The availability of this data ensures that the public can monitor the performance of permittees.

Additionally, the regulations attempt to assure that possible violations identified by the public will be acted upon by the State. Section 123.31 requires that States establish programs to receive and review all evidence submitted by the public.

Finally, citizens have a right to directly initiate enforcement actions in Federal court pursuant to section 505 of the Act. That section also provides that citizens may intervene as a matter of right in any action in Federal court and, in many cases, recover attorney's fees.

C. *How Does This Part Relate to the August 21, 1978 Proposal?* The following is a discussion of the significant comments received and changes made to the August 21, 1978 proposal. Editorial changes have been made to all sections and are not discussed. There has also been a renumbering of the Part 123 sections. There are now fewer sections in Part 123 because a large number of the proposed sections were condensed into § 123.12.

§ 123.1 Purpose and scope.

Many comments suggested EPA should be allowed to complete the permit issuance process, after approving a State program, for those permits "in the pipeline" at the time of program approval. While this approach has merit it cannot be adopted because section 402(c) of the act precludes permit issuance by EPA after the date of approval of a State program. See *Central Hudson Gas and Electric Corp. v. EPA*, 587 F.2d 549 (2nd Cir. 1978). However, EPA will endeavor to avoid these problems, to the extent possible, whenever the transfer of program authority is pending.

In an effort to clarify the status of Federally issued permits after program approval a new paragraph has been added, §123.1(d). It provides that EPA or the Corps (in the case of section 404 programs) retains jurisdiction over Federally issued permits for all purposes until they expire, unless arrangements are made with the State for the State to assume responsibility for administering permits issued by the Federal Government. This retention of jurisdiction may be extended beyond the expiration date of the permit, with the agreement of the State, for the purpose of resolving an ongoing issue, such as an adjudicatory hearing or permit modification request.

Many commenters opposed the provisions in § 123.1 and § 123.62 (proposed § 123.102) which link the permit programs under sections 318 (aquaculture) and 405(a) (disposal of sewage sludge) to the section 402 permit program. These comments suggested that such a linkage is not authorized by law and would impose an additional burden on NPDES States. However, the Clean Water Act of 1977 specifically amended section 318 and 405 to provide that permits issued under these sections are NPDES permits. In light of the prohibition against partial program approval requiring that all elements of the NPDES program be administered by the State, State programs must now include the activities specified in sections 405 and 318.

To avoid any confusion, the language in § 123.1 and § 123.62 has been clarified. A preliminary review of State programs indicates that most existing NPDES States have adequate authority to control the discharges specified in sections 318 and 405(a). Therefore, the requirement that States have authority for controlling these discharges should not impose an additional burden. EPA will assume that existing State programs have the necessary authority and are authorized to implement sections 318 and 405(a). Any State which lacks authority should contact EPA and take whatever action is necessary to modify its program to conform.

Another new provision has been added to this section (§ 123.1(f)) which specifies that the public participation guidelines of section 101(e) are now incorporated into Part 123.

§ 123.2 Definitions.

Four new definitions have been added, i.e., "draft permit," "proposed permit," "Memorandum of Agreement," and "State/EPA Agreement." These definitions conform to existing practice and do not represent any new or changed requirement.

A draft permit is the document prepared by the Director after tentatively determining to issue a permit to an applicant. This draft permit is then put on public notice and circulated in accordance with the applicable sections of Part 124. A fact sheet on the draft permit may be required. A statement of basis is required whenever a fact sheet is not prepared.

After the close of the comment period, the Director analyzes all the information submitted on the draft permit and arrives at a final determination to issue a specific document as a final permit. Where EPA has not waived the right to review the permit, this final determination is subject to EPA review in accordance with § 123.23 before it can become finally effective. The State Director's final determination is sent to EPA as a "proposed permit" in accordance with the Memorandum of Agreement. The State Director may issue the proposed permit as soon as EPA concurs with the proposed permit, or the time for EPA review expires. No proposed permit is required under these regulations whenever EPA has waived its right to review (See §§ 123.23 and 123.7).

The definitions of Memorandum of Agreement and State/EPA Agreement were added to provide clarity. There were several comments questioning the relationship between these two documents. See the preamble discussion of § 123.7 for a discussion of this relationship.

§ 123.3 Elements of a program submission.

A new section (§ 123.3) has been added to clarify and identify all requirements of a program submission in one section. With respect to State program forms, EPA is now more specific as to which State forms it will review (i.e., the permit form and the

permit application form(s)). States will be required to use a standard Discharge Monitoring Report (DMR) form developed by EPA. These forms will be printed by EPA and supplied to States on request. States may, however, substitute their State Agency's name, address, logo, and other similar material for EPA's on the forms. They are designed to be read and analyzed by computer. EPA will supply the computer software associated with the standardized DMR to States as requested.

The use of standard national forms is specifically provided for in the Act (section 304(i)) and enhances EPA's ability to assure a degree of national uniformity of the program. Many comments were received from national companies requesting EPA to standardize all forms. However, the Agency believes that DMRs are the only forms which should be standardized now.

§ 123.4 Program description.

Several comments were received on proposed § 123.3 objecting to the prohibition against allowing more than one State agency to issue section 404 permits. Most of these comments suggested that this is inconsistent with the efforts of several States to provide "one-stop" permitting authorities covering certain activities (e.g., power plant siting councils). EPA disagrees with these comments and believes that it is important to have this permitting authority in one State Agency.

§ 123.5 Memorandum of Agreement with Secretary for section 404 programs.

This requirement was proposed as § 123.3(b) (the program description section) but has been made into a separate section for clarity. Some of the proposed requirements of this section have been eliminated or modified in response to comments. For example, joint processing agreements, while encouraged, are not required. Likewise, the State need not await the completion of a environmental impact statement by the Corps before permit issuance. The most important feature of this Memorandum of Agreement (MOA) is in paragraph (a) and remains unchanged. This requires a delineation of section 404 permitting responsibilities for waters of the State consistent with section 404(g)(1) of the Act.

§ 123.6 Attorney General's Statement.

Section 402(b) of the Act requires that the State Attorney General certify that the State have adequate legal authority to implement the requirements of the NPDES program. Where the State program has independent legal counsel, such counsel may submit the statement in lieu of the State Attorney General. To qualify as "independent legal counsel" the attorney representing the State agency must have authority to independently represent the State agency in court on all matters pertaining to the State program.

Many comments indicated that the requirements of proposed § 123.4(c) were confusing insofar as that paragraph listed a number of sections of Part 123 which, in turn, cross-referenced sections of Parts 122 and 124 as being applicable to State programs. In order to eliminate this confusion, the sections of Part 123 which merely served to cross-reference sections of Part 122 and 124 have been consolidated in a new § 123.12 (see discussion below). Section 123.6(c) is now phrased to require a certification that the State has authority to implement the requirements of Part 123. EPA will continue its past practice of supplying States with a model Attorney General's Statement format.

While EPA has a legal duty to independently review State authorities, the Attorney General's Statement is given great weight in interpreting the requirements of State law.

§ 123.7 Memorandum of Agreement with the Regional Administrator (MOA).

The provision on scope of EPA waiver of review (proposed § 123.5.(b)) drew the most comments on this section and has be modified. The language in the regulations as proposed was based on existing Agency policy on waiver and, therefore, reflected what is presently found in MOA's with the NPDES States. As written, the provision on waivers broadens the scope of waivers available. This waiver of review is now very broad for non-process wastewater discharges; however, in some instances such a waiver is possible only with the prior approval of the EPA Deputy Assistant Administrator for Water Enforcement. On the other hand, EPA will not waive review of any general permits proposed by the State. The waiver provisions of this section only specify the maximum waiver available, and in some instances EPA may choose not to extend this maximum waiver to a State. This is particularly true for a State with a new program where EPA oversight is critical until the program becomes established and experienced.

The entire paragraph on the contents of the MOA (proposed § 123.5(c)) has been reorganized to reflect a more functional arrangement. The requirement that the agreement be reviewed and revised every three years (proposed § 123.5(b)) has been deleted on the basis of many comments suggesting that it was unnecessarily mechanical. Instead, MOA's should be reviewed and revised as necessary to reflect programmatic changes.

Relationship between Memorandum of Agreement and State/EPA Agreement. The State/EPA Agreement is an overall management tool which provides a way for the Regional Administrator and the State to coordinate and, to the maximum extent feasible, integrate programs administered by EPA and the State, emphasizing problem-solving approaches to specific environmental problems. The State/EPA Agreement reflects important decisions on environmental priorities, administrative problems, timing, responsibilities and allocation of resources. In FY 1980, the State/EPA agreement is to cover programs under the Clean Water Act, Safe Drinking Water Act, and Resource Conservation and Recovery Act. Other environmental programs will be added to the process in following years.

The Memorandum of Agreement is a document signed by the Administrator and the State which formally sets forth the relationship between EPA and the State in the administration of an approved State permit program and details specific procedures that must be followed by both parties in the development, issuance, review, and enforcement of permits. The Memorandum of Agreement is the legal basis upon which EPA predicates its continuing decision that State issued permits are consistent with the requirements of the Clean Water Act and implementing regulations. Because of this, any proposed change to an MOA must be reviewed and approved by the Administrator to assure it is consistent with the requirements of Part 123.

The Memorandum of Agreement and the State/EPA Agreement should be consistent. This should not present a problem since they generally address different areas of the State/EPA NPDES relationship. The State/EPA Agreement should include the MOA. However, it may not override it in the instance of any inconsistency. If the State/EPA Agreement indicates that a change is needed in the MOA, the proposed change must be reviewed and decided by the Administrator.

§ 123.8 Sharing of information.

Many commenters raised concerns about the treatment of confidential information submitted to EPA or an NPDES State, particularly when the two

agencies share information. For example, when a State NPDES program is approved EPA gives the State the information in its files. A new § 123.8 has been added to specify how confidential information is treated under these circumstances. Persons interested in this area should consult 40 CFR Part 2 which is also applicable.

§ 123.11 Requirement to obtain a permit.

Proposed § 123.11(c), which specified which State has permit issuing authority for discharges into waters which form the boundary line between States, has been dropped.

§ 123.12 Operational requirements.

This is a new section which combines the requirements of proposed §§ 123.24, 123.21, 123.41, 123.42, 123.43, 123.44, 123.51, 123.52, and 123.61. Each of the proposed sections cross-referenced provisions of Parts 122, 124 and 125 as being applicable to State programs. Comments pointed out that this resulted in a great deal of confusion in understanding what is required of a State. Section 123.12 now combines, in a single section, all the cross-references. In addition, a person reading Parts 122, 124 or 125 should be able to determine, from the context, whether a particular section is applicable to State programs. In case of any doubt, however, § 123.12 is controlling.

It should be noted that, while all the provisions of § 123.12 are applicable to State programs, States need not have detailed State regulations on each provision. For example, as long as a State has adequate legal authority to implement § 123.22 (which indicates how information is submitted to EPA) and acts in accordance with § 123.22, it need not have a regulation which duplicates the Federal requirement. Again, States are always free to impose more stringent requirements than are included in these regulations.

§ 123.12(a)(14)—This section allows States to operate a general permit program. This section greatly modifies and simplifies the requirements for State general permit programs which were proposed at 42 FR 6846 (February 4, 1977); see preamble discussion of § 122.48. Of course, operating a general permit program is strictly optional. A State may choose to require individual permits in all cases. If a State chooses to issue general permits it is subject to the provisions of § 123.12(a)(14). This specifies that such permits shall be issued in accordance with § 122.48, and that they are subject to a full 90-day EPA review, including review by EPA Headquarters for all proposed general permits other than those for separate storm sewers.

§ 123.13 Control of disposal of pollutants into wells.

The requirement of this section was proposed in § 122.41(a) but was moved to § 123.13 since it is applicable only to State programs. Some commenters questioned EPA's authority to require States to control well disposal by permit. Section 402(b)(1)(D) of the Act specifically requires States to have this authority, although EPA lacks similar authority under the Act. See *Exxon Corp.* v. *Train*, 554 F.2d 1310 (5th Cir. 1977). NPDES States are urged to use the authority required by this section in developing and implementing an underground injection control program required under the Safe Drinking Water Act. The requirements of these two Acts are consistent and complementary. State UIC program regulations will be promulgated as part of EPA's consolidated regulations.

The requirement of § 122.41, that permit conditions for surface discharges be adjusted where a portion of the permittee's effluent is discharged underground, into a POTW or by land application, remains applicable to States.

§ 123.22 Transmission of information to EPA.

This section was proposed as § 123.23. Several commenters felt that EPA should provide the permit applicant with a copy of any comment, objection, or recommendation respecting a proposed State permit. EPA agrees and has incorporated such a requirement into § 123.22(a).

§ 123.23 Objections to proposed NPDES permits.

The requirements of this section were not included in the August proposal (Part 124, Subpart L was reserved for these requirements) but were included as a portion of the regulations promulgated at 43 FR 22160–22164, (May 23, 1978). EPA believes that the portion of those regulations dealing with EPA objection to State permits belongs in Part 123 where the other requirements for State programs are contained. Therefore, they will not be included in Subpart L to Part 124. In transferring the objection regulations into § 123.23, no substantive changes were made.

Reviewability of Objections. Although the Agency has not sought comment on the incorporation of the objection regulations into Part 123, and issue associated with these regulations is the availability of administrative and judicial review of EPA's decision to object to a permit.

An EPA objection is, in essence, a determination that certain conditions which are not included in a proposed State permit are necessary to carry out the requirements of the Clean Water Act. Section 402(d)(2) of the Act requires the Administrator, when he objects to the issuance of a permit, to state the reasons and to set forth the effluent limitations and conditions which the permit would include if it were issued by the Administrator. If the State fails to submit a revised permit (after any EPA hearing on the objection), the Administrator may issue the permit. All determinations underlying the objection are then subject to Agency review in accordance with Part 124 of these regulations. Under those regulations, contested provisions of the permit are stayed during Agency review. Thus, EPA's determinations do not affect the discharger until the administrative process is at an end and a final permit is issued.

Where EPA objected to a permit prior to the 1977 amendments to the Act, the Act made no provision for further action by EPA. The objection to the permit was the final Agency action, and the Act prohibited the State from issuing the permit objected to. In these circumstances, the Agency took the position that the objection was reviewable in the Court of Appeals as the Agency's action in "denying any permit" under section 509(b) of the Act. In general, the courts agreed. See, *Republic Steel Corp.* v. *Costle*, 581 F.2d 1228 (6th Cir. 1978); *Ford Motor Company* v. *EPA*, 567 F.2d 661 (6th Cir. 1977); *Mianus River Preservation Committee* v. *Administrator, EPA*, 541 F.2d 909 (2nd Cir. 1976); but see, *Washington* v. *EPA*, 573 F.2d 583 (9th Cir. 1978).

This resulted in a situation which the Senate Report on the 1977 amendments described as the:

> Impasse which may result when the Administrator objects to the issuance of a permit which is contrary to the provisions of the Act and the State is unwilling to issue a permit to the point source which is consistent with the provisions of the Act. Under the present Act, neither EPA nor the State may issue a valid permit in these circumstances. [*CWA Legis. Hist.*, Vol. 4 at 703.]

Accordingly, the Congress amended the Act to allow EPA to issue the permit after an objection. The Senate Committee report criticized EPA as having been "much too hesitant" to take actions to object too State permits, and called for a "vigorous overview of State

programs to assure uniformity and consistency of permit requirements and of the enforcement of violations of permit conditions." *Id.*

The theme of the Senate Report—that the objection was an expeditious mechanism to avoid delays in permit issuance and resolve disputes between the States and EPA—was echoed in the Conference Report on Pub. L. 95-217, which said:

> After the date of enactment of this provision the Administrator is expected to use the authority given by this amendment to issue a permit after objection to a State issued permit. Thus any litigation over the degree of effluent reduction required for a source should take place in the context of judicial review of the permit, rather than in the context of an enforcement action. *. *. *.
>
> Judicial review arising out of this provision would be in the same manner as judicial review of any EPA issued 402 permit. [*CWA Legis. Hist.*, Vol. 3 at 281.]

This passage clearly indicates that EPA permit issuance under section 402 is the only reviewable action associated with an EPA objection. The objection is an interlocutory decision, one which has no effect on the applicant and other interested persons except to shift the forum for hearings and review. Thus, Congress thought judicial review of the permit was the appropriate place to review EPA's determinations. Several other factors militate in favor of this view:

1. The availability of administrative review and the stay provision in EPA's permit issuance regulations means that EPA's objection determination has no effect on the discharger. In such cases, review is properly delayed until Agency action is final and effective. See *Toilet Goods Association* v. *Gardner*, 387 U.S. 158, 165 (1967).

2. Judicial review of an Agency objection prior to final permit issuance would unnecessarily bifurcate the judicial review proceedings and delay final Agency action. Review of the objection could consume months or even years. Permit issuance, appeals, and judicial review of the permit could consume additional months or years.

3. The short time period for Agency action precludes the sort of record building by EPA which is a normal prerequisite of effective judicial review. See *American Iron and Steel Institute* v. *EPA*, 543 F.2d 521 (3rd Cir. 1976).

§ 123.31 Compliance evaluation programs.

This section, which was proposed § 123.71, was retitled and slightly condensed. A few new requirements were included based on existing Agency policy. In particular, this section now requires that the State enforcement program have procedures and ability to receive citizen complaints about possible program violations and to ensure that these complaints are adequately considered. This requirement was included in the public participation regulations of former Part 105 and as proposed in Part 25. In order to include all the public participation requirements for State programs in Part 123, this requirement was moved from Part 25. EPA believes that this is an important aspect of involving the public in enforcement as mandated by section 101(e).

§ 123.32 Enforcement.

Proposed as § 123.72, this section drew many comments. However, most of the provisions of § 123.32 are identical to the requirements of the 1973 regulations (former § 124.73). EPA has not changed these provisions, although minor wording changes have been made for clarification. The new element of § 123.32 (proposed § 123.72(i)) is the addition of a penalty policy provision requiring States to calculate civil penalties for deadline violations using specified criteria. This requirement generated a great deal of confusion. Many commenters feared that States would be required to implement all aspects of EPA's penalty policy including use of the penalty panel and EPA's computer programs. While States are strongly encouraged to use these, § 123.32(i) only requires States to employ the basic precepts of the penalty policy. It allows States to exercise substantial discretion in settling civil enforcement cases. No change was made to the proposed version.

Another new provision, § 123.32(h)(2), has been added to clarify that State enforcement proceedings may not include additional elements of proof or mental state for establishing violations. EPA's approach has consistently been to require States to have the same enforcement remedies that are available to EPA. In exercising this enforcement authority, States should not have any additional elements of proof or other legal requirements which make State imposition of penalties more difficult than EPA action.

Availability of Resources.—Proposed § 123.81. Part of this proposed section has been deleted and part has been moved into § 123.4 (Program description). Proposed § 123.81(b) (identifying criteria for EPA evaluation of State resources) was deleted entirely because these criteria are matters relating to internal EPA review and do not need to be promulgated in the form of regulations. Nonetheless, EPA does require that sufficient resources be devoted to State programs. Proposed § 123.81(a) has been incorporated into § 123.4.

§ 123.42 Agency board membership.

Proposed § 123.83 on Agency board membership drew a very large number of comments, most of which argued that it was too stringent. Nonetheless, since § 123.42 is identical to former § 124.84 and is clearly mandated by section 304(i)(2)(D) of the Act, no changes have been made.

§ 123.51 and § 123.52 Section 402 and 404 approval process.

The approval process sections (proposed §§ 123.91 and 123.92) have been clarified and made more specific. The changes are consistent with the process EPA has routinely employed in these matters. Requirements from the proposed public participation regulations (e.g., the need for EPA to prepare a responsiveness summary) have been added.

§ 123.61 Procedure for revision of State permit programs.

The procedures for State program revision have been clarified and include a new requirement that EPA publish notice of any action substantially modifying a State program. Proposed § 123.103 was inserted into § 123.61.

§ 123.62 NPDES program revisions under the CWA of 1977.

A large number of comments were received on the dates specified in proposed § 123.102(c) for modifications to State programs implementing the 1977 amendments. These dates have been adjusted to be more realistic. Proposed § 123.102(a) was deleted because it contained only optional changes. States are still free to make these changes.

IV. Part 124—Procedures for Decisionmaking Regarding National Pollutant Discharge Elimination System Permits

A. *What Does This Part Do?* Part 124 establishes the procedures which EPA will use for receiving permit applications, writing draft permits, and soliciting public comment on them. It also establishes the procedures which EPA will follow in issuing final permits and holding evidentiary and panel hearings. A number of provisions of this Part are applicable to approved States through incorporation by reference in § 123.12.

B. *How Does This Part Relate To Existing Regulations?* In most cases, this Part will not change the general framework of the former regulations covering permit determinations. Applications for permits will still be filed with the appropriate permit issuing authority; draft permits will be prepared and made available for comment. After comments have been received and analyzed, any necessary changes will be made by the permit issuing authority, and a final permit will be issued. Any interested person will then be able to request an evidentiary hearing on any factual issues involved.

However, significant changes have been made in the procedures for variances, modifications, and other permit actions besides the basic issuance of a permit: In the degree to which permit decisions are documented before an evidentiary hearing begins; in the relationship of prior administrative proceedings to any evidentiary hearing; and in the hearing procedures for "initial licensing". Each of these points, all of which were the subject of comments, are explained in the following sections.

C. *How Does This Part Relate To The August 21, 1978 Proposed Regulations?* The following is a discussion of the significant comments received and the basis for revisions made to Part 124 of the proposed regulations, including the integration of the section 301(h) procedures into Part 124 (section 301(h) procedures were proposed separately on April 25, 1978, 43 FR 17464). Minor editorial changes have been made in all sections.

§ 124.1 Purpose and scope.

A number of comments inquired whether denials of a permit would be subject to the same rights of public comment and potential evidentiary hearing as other permit actions. The answer is "yes" and a new section has been added to make this clear (§ 124.15). A denial of a permit could be based on, among other things, the discharger not complying with the requirements of Part 122, Subpart B.

§ 124.11 Applications.

This section has been modified by moving proposed § 124.11 (b) and (c) into § 122.10. Proposed § 122.17, "Requests for additional information" has been made part of this section.

§ 124.12 Special provisions for applications from new sources.

(1) This section allows the Regional Administrator to delay a hearing on a new source determination until the hearing on the final permit. Some commenters objected to such a delay, arguing that it could result in an Environmental Impact Statement (EIS) being written before the discharger had an opportunity to argue on appeal that the discharge was not a "new source."

The Agency believes the proposed approach is efficient. Hearings on a new source determination and permit terms will often involve common issues and witnesses. In such cases, the Regional Administrator should have the option of either bifurcating the hearing or waiting until after a final permit is written to hear all the issues. The choice will depend on which option would consume the least resources and time. Since EPA is legally responsible for preparing the EIS, EPA will share the burden of making a wrong decision.

(2) Some comments claimed the EPA lacked authority to restrict the construction of new sources pending National Environmental Policy Act (NEPA) environmental review, arguing that the Agency may regulate only discharges and has no power to regulate construction of sources.

While it is true that EPA lacks authority to regulate construction which will not result in a discharge of pollutants, EPA has an obligation under NEPA to consider alternatives to the proposed action where a permit issuance would necessarily involve a discharge. Judicial decisions under NEPA have made it clear the EPA must consider reasonable alternatives, and that the alternatives (where a new source is involved) must always include not permitting the source. Where a source's operation necessarily results in a discharge, denial of an NPDES permit is tantamount to denial of the right to construct the facility. Thus, in such cases, EPA cannot fully consider such environmental matters as land use, air quality degradation, solid waste disposal problems, and others, without consideration of alternatives which involve no construction at the selected site. Since construction of the facility could limit or eliminate some of the options which should be considered, EPA has the authority to require that NEPA review be completed prior to actual construction. For a complete discussion of this issue, see *EPA General Counsel Opinions*, "Water Pollution" at 310–311 (NILS 1979).

Proposed § 124.13 Information required for thermal discharge modifications.

This section, which was essentially substantive requirements for thermal discharges, has been incorporated into Part 125, Subpart H.

§ 124.13 Modification, revocation and reissuance requests.

Several persons urged that it would be inefficient in processing modification requests to require (as proposed in § 124.15) submission first of a request to apply for a modification and then of the application itself. EPA agrees and has revised this section to state that the modification can be based on the initial request itself unless more information is needed.

The proposed regulations also intended to put modification requests and variance applications on the same procedural "track" as other permit applications. They did this by requiring those seeking a modification to write to EPA and request permission to apply for a new permit. If the request was granted, an application could then be filed and would be processed like any other application. This basic approach has been retained in the final regulations.

Suggestions for an automatic right to a hearing when permit modification requests are denied, have been rejected. Departures from the five year cycle of permit issuance and reexamination laid down by section 402(b)(1)(B) of the Act should not be encouraged. If encouraged, they could keep numerous permits in a state of perpetual reexamination to the detriment of the water pollution control program. By the same token, the regulation has been amended to make clear that even modification requests which are granted only reopen the permit to a limited extent.

§ 124.14 Permits required on a case-by-case basis.

This section (proposed § 124.16) provides that sources which in the normal course are subject to a general permit program under § 122.43, may be required to apply for an individual permit in certain cases. Comments urging that an evidentiary hearing be afforded before requiring individual permit application have not been accepted. To allow this would produce long delays and a potential for two consecutive evidentiary hearings on closely related issues. Instead, the question whether an individual permit should be required at all will be open to full reconsideration as part of the deliberations on the potential terms of any such permit.

§ 124.21–24 State certification.

(a) State certification under section 401 of the Act was also the subject of numerous comments.[1]

(1) Many commenters objected to the delays caused by the State certification process in the NPDES program. Specifically they thought that the provision in the proposal for potentially allowing a State one year to certify was unconscionable. In response to those comments the regulations have been modified so that the right to certify will be deemed waived unless exercised within a *specified* reasonable time which shall not exceed 60 days unless the Regional Administrator finds that unusual circumstances require a longer time.

Because of some ambiguity in the certification provisions concerning the role of State certification in the EPA permit issuance process, the certification provisions were amended so as to set out a realistic, workable procedure consistent with the statute. A State will now be required to identify those provisions which it finds necessary to comply with applicable State or Federal law. However, since certification as to Federal requirements would duplicate EPA's work, EPA expects that ordinarily States will limit their certifications to requirements of State law.

Some problems have resulted from the practice of certifying draft permits, which practice has arisen from the practical difficulties of certifying applications. In particular, certifications have not always clearly stated exactly what conditions are necessary to comply with State law, and whether less stringent conditions would also satisfy State law. The final regulations remedy these problems by requiring States to set forth in all cases the minimum terms and conditions which will be necessary to comply with applicable law. For example, if a State certifies a permit with an effluent limitation imposing a daily maximum BOD of 25 mg/1, it will be required to identify also a ceiling representing the minimum level of control, such as 30 mg/1 or 40 mg/1, which the State finds necessary to comply with State law. In responding to public comments, or in an evidentiary hearing, EPA will be barred from considering any effluent limitation less stringent than the "ceiling" set by the State in its certification.

If the State fails to provide the "ceiling" required by these rules, EPA will be free to consider any changes which it finds appropriate during the subsequent permit review process. Of course, the Agency has an independent obligation to include in permits effluent limitations which are necessary to comply with State law, including water quality standards, whether or not the State has certified. See Decision of the General Counsel No. 56.

While EPA recognizes the burden that this procedure imposes upon States, the only logical alternative is unacceptable as a practical matter; that is continual resubmission to the State for recertification each time a draft permit is made less stringent as a result of public review during the permit issuance process.

(2) Changes have been made to allow EPA to modify a permit under certain circumstances if a State changes its certification during the EPA permit review process. The modified certification must be based upon changes in State law or upon a State court decision. Moreover, if a permit is final before the modified certification is received, it will be modified only to delete provisions resulting from a certification found invalid by a State court. These limitations are necessary to avoid a "moving target" of State law during the permit's life. See § 124.86(c) and preamble discussion of that paragraph for a fuller treatment of this issue.

(3) A new section § 124.24 has been added to the State certification Subpart. This addition contains the provisions for concurrence/certification from the April 25, 1978 proposal for section 301(h) modifications. The major divergence from normal permit procedures is that NPDES States (or the certifying Agency within a non-NPDES State) must concur/certify as described in this new section. Proposed § 124.61(a)(2) stated that no final permit shall be issued by EPA which grants a section 301(h) modification until the appropriate State has been given 30 days to approve or disapprove the modification. If the State disapproved the modification within 30 days, the modification would be deleted from the permit. Proposed § 233.45 had a similar provision except that there was no time limitation. One comment to proposed § 233.45 suggested that EPA should allow 30 days for State concurrence or concurrence would be considered denied. Although EPA recognizes the need to reduce delays in section 301(h) processing, we do not believe we can deem concurrence denied (as opposed to waived) if not granted within a certain number of days. Therefore we have instead chosen to deem concurrence/certification waived after 60 days rather than adopt the suggestion that concurrence be deemed denied.

§ 124.31 Draft permit.

A number of comments objected to the statement in proposed § 124.41(a) (now § 124.31(a)) that "any other relevant information" in addition to the types specified could be considered in deciding on a draft permit. Although the Agency has retained the language, it is not intended to allow draft permits to be based on material that is not reflected in the administrative record.

§ 124.32 Other draft permits.

This section provides that when EPA moves to revoke or suspend a permit, it shall do so by formulating a new draft permit subject to notice and comment and potential evidentiary hearing. Although commenters did not object to the purpose behind this section (to make sure that such decisions are made through the same basic procedures that apply to the permit issuance) some commenters suggested that the permit holder should be notified before any such draft permit was issued. EPA has not accepted this suggestion because the draft permit will constitute sufficient notice well before any legally effective action is taken. This section has also been revised to require *all* draft general permits other than separate storm sewers, (whether issued by EPA Regional Offices or the States) be sent to the EPA Deputy Assistant Administrator for Water Enforcement for 90 days for his/her concurrence or denial.

§§ 124.33–35 Statement of basis, fact sheet, and administrative record.

A major purpose of the proposed regulations was to increase the level of explanation of how and why EPA arrived at specific permit conditions, and to specifically identify the documents or other information considered in doing this.

The proposal would have done this by: (1) requiring each permit to be accompanied by a fact sheet explaining the factors considered and the reasons for the decision, and (2) requiring permits to be based on an "administrative record."

The administrative record could simply be an adequately organized file

[1] EPA recognizes that the former regulations in 40 CFR Part 123 are in need of revision. The substance of these regulations predates the 1972 amendments to the Clean Water Act and has never been updated. However, because of the impact of State certification of non-NPDES permits on a myriad of Federal programs, it will be necessary to consult with the affected agencies in some detail before changes are made. Meanwhile, the current certification requirements for Federally issued non-NPDES permits or licenses have been moved from Part 123 to Part 121.

drawer containing the relevant information. This ensures that the information considered in formulating a permit is identified and publicly available for comment. The administrative record requirement does not mean that there must be individual copies of the monitoring or reporting conditions or effluent limitations guidelines and development documents in the file, as long as they are properly cited. EPA's response to the many comments that were received on these provisions is provided below.

(1) A number of commenters argued that to prepare a detailed "fact sheet" and administrative record for every permit would result in a lot of paperwork for which there was no real demand. EPA agrees with these comments since, in our experience, although all permits are made available for public comment, over 90% of the EPA-issued permits become final without any public comment or requests for an evidentiary hearing. Accordingly, § 124.34 (proposed § 124.44) has been rewritten to require a "fact sheet" only for permits to major dischargers and other controversial permits including all variances or modifications. Permits for small discharges will not require a fact sheet and will only require a less detailed "statement of basis".

In many cases the "statement of basis" could consist of the internal memorandum prepared within the Agency which informs the person signing the permit of the guideline or other source of the effluent limits and any issues which the permit raises. By utilizing such an approach, EPA believes we are maximizing the utilization of the permit issuing authority's limited resources without denying the public or permittee basic information upon which to judge the adequacy of the permit.

The regulations have also been revised to provide explicitly that a fact sheet can be prepared for any permit which is the subject of widespread public interest during the public comment period and for which no fact sheet was prepared originally.

(2) Since the fact sheet can be quite extensive, States objected to mailing a copy to each person on a mailing list since most permits have proved to be of little interest. Therefore, the public notice of every draft permit will be sent to those on the mailing list but the fact sheet (or statement of basis) will be sent only on request.

(3) Because the fact sheet requirement has been limited to major or controversial discharges, the requirement of a special level of discussion for discharges of over 500,000 gallons per day has been eliminated. Distinctions among major or controversial permits based on the amount of water discharged do not correspond to any real differences in the degree of discussion that is advisable.

(4) Comments from both industry and EPA Regions on proposed § 124.44(a)(6)(iii) suggested deletion of the requirement that the record contain all documents cited in an EIS or similar analysis. These comments argued that since so many documents are generally cited, the requirement would be impossible practically and would also make the record less, rather than more useful. EPA agrees with these comments and has revised this section accordingly. Persons who wish specific documents to become part of the record may supply those documents as part of their comments under § 124.42.

This section has also been reworded to clarify that generally available material cited in a fact sheet does not need to be physically included in the administrative record.

§ 124.36 Applicability of Subpart D to draft permits incorporating section 301(h) modifications.

A new section, § 124.36, has been added to indicate that Subpart D is applicable to section 301(h) proceedings except, as provided in proposed Subpart C of Part 233, the Administrator, or a person designated by the Administrator will prepare the draft permit, not the Regional Administrator as with other draft permits.

§§ 124.41 and 124.42 Public comments and public notice.

The public notice sections were amended to cut time and paperwork requirements based on overwhelming objections to the proposed changes. On the advice of the States, the public comment period reverts from the proposed 45 days to the former regulations' 30 days. Many States felt that 30 days is sufficient for the vast majority of noncontroversial permits and additional time can be made available for those permits that generate public interest. EPA suggests, however, that a liberal policy be followed in granting extensions of the comment period.

Some commenters suggested that other methods of public notice of an action should be authorized. EPA and the States have found that the mailing list has been by far the most effective means of eliciting public participation into the NPDES process. Therefore, we urge States to develop mailing lists as provided or by any additional means they have found effective.

Similarly, States and EPA Regional Offices both stated that newspaper notices were ineffective in eliciting public comment and were a substantial drain on limited resources. EPA agrees and has revised this section to make newspaper notices shorter as well as optional if other means, such as posting, are utilized.

The proposed regulations allowed certain Federal and State agencies a separate early chance to comment on permit applications before the public comment period began. This provision has been eliminated in response to comments both from EPA Regions and from representatives of dischargers. These agencies now will be expected to comment during the public comment period. In particular cases, however, they may still be consulted informally before the draft permit is formulated.

This revision also deals with those comments which argued that the comments of other agencies on a draft permit must be reflected in the record. As noted elsewhere in this preamble, any permit terms in EPA-issued permits must be supported by the administrative record whether or not they are based on the views of other agencies.

§ 124.43 Obligation to raise points and provide information during the public comment period.

This section is discussed below along with § 124.76.

§ 124.44 Terms requested by the Corps of Engineers and other Government agencies.

Proposed §§ 124.21 and 124.22 stated the circumstances in which terms may be included in an NPDES permit at the request of another Federal agency. Although many comments were received on this, no substantive change has been made because EPA continues to believe the language in the proposal was correct. The Act says that EPA "shall" include in permits those conditions requested by certifying States and the Corps of Engineers.[3] Any challenge to those conditions must therefore be made through the State or Corps of Engineers procedures for challenging decisions. Terms based on the comments of other agencies without such veto authority must be within the discretion of EPA

[3] The statement of one commenter that the Corps authority under section 402(b)(6) of the Act is limited to vetoing permits, not imposing conditions on them, seems simplistic to EPA. A Corps of Engineers' statement that certain terms must be included in a permit can properly be viewed as a statement that the permit will be vetoed unless it contains those terms.

under the Clean Water Act and are therefore subject to the same procedures that apply to permits generally.

In response to comments, affected States are now included in § 124.44(c). This revision clarifies the right of such States under sections 402(b)(5) and 401(a)(2) of the Act to require more stringent requirements so that a discharge of another State does not violate its water quality standards.

§ 124.45 Reopening of comment period.

Proposed § 124.44 (now § 124.45) allowed for reopening of a comment period (or reproposal of a permit) at the discretion of the Regional Administrator.

Several comments suggested an automatic "reply comment" period in which the discharger and others could respond to points made during the main comment period. EPA agrees that this may be a good idea in some specific cases, but it could be unnecessarily burdensome if required by regulation in all cases. Therefore, the proposal has not been changed.

Subpart F—Special Provisions for Variances and Statutory Modifications

In response to several suggestions, the procedures for variances have all been placed in a single Subpart. This revision is done to present the public with an organized view of how variances will be handled within the normal permit procedures.

Under the Clean Water Act and the former regulations, there are more than a dozen different statutory or regulatory provisions on which permit. requirements could be based, and seven provisions under which a variance from those provisions could be granted. Many of these provisions are not covered in the existing regulations, and where they are, the references are scattered through various parts of the Code of Federal Regulations.

Subpart F deals with the problems in two ways. First, it consolidates into one Federal Register Subpart the former procedures for making decisions on permit terms contained in 40 CFR Parts 122 and 402 (relating to thermal discharge requirements) and the former Part 124.

Second, it specifies where in the sequence, "application—draft permit—comment—final permit", permit actions other than the simple one of deciding on permit applications should fit.

In particular, it provides that whenever possible, a variance must be applied for before the close of comment on a draft permit. This will ensure that there is an opportunity to consider all the relevant issues before deciding the terms of a final permit and that issues are not raised at a later date for purposes of delay. The regulations also provide that where a variance is properly requested after this stage but before a permit has become final under § 124.101, the decision on the variance will still be made through the same permit procedures that apply to other permits. This will be done in appropriate cases by issuing a new supplementary draft permit embodying the Agency's response to the variance request, and holding action on the original permit until the supplementary permit has reached the same procedural stage and the two permits can proceed together.

§ 124.51 Time deadlines for applications for variance from and modifications of effluent limitations.

(1) A number of comments argued that the time limits for variance applications set forth in proposed § 124.14 were too strict. These comments have been accepted in a number of particulars.

(a) The statute requires applications for variances under section 301(c) and under section 301(g) to be submitted 270 days after promulgation of the relevant effluent guidelines or by September 25, 1978, whichever is later. However, since EPA has not yet issued crieteria for such applications, it clearly would have been unreasonable to have required a complete application by last September. Accordingly, these regulations incorporate the requirements of previous interim final regulations stating that applicants need only have submitted a very brief notice by September 25, 1978, (or within 270 days of the promulgation of an applicable effluent guideline) to qualify under that deadline. See 43 FR 40859 (Sept. 13, 1978).

Similarly, in the case of section 301(h), § 124.51(c)(1) revises proposed 40 CFR § 233.32 to indicate that a preliminary application must have been submitted to EPA by the statutory deadline, but the final application should not be filed until the section 301(h) criteria are promulgated in final form in Part 125, Subpart G. The criteria, when promulgated, will also specify the method of, and timing for, making a final application. This revision to the timing requirement is necessary because the statutory deadline has passed and EPA has not yet issued section 301(h) criteria.

(b) Dischargers who wish to be considered for a section 301(c) or section 301(g) variance will be required to comply with the substantive requirements of § 124.43 and Part 125 (once they are promulgated) by the close of the public comment period of their draft permits.

In some cases, draft permits will contain effluent limits that are not based on effluent guidelines but may still be eligible for variances. In those cases, it would be impossible to submit supporting evidence that a variance should be granted during the 30-day period of public comment. Therefore, in those cases, and in other cases the Agency believes appropriate, the Regional Administrator may grant an extension for up to six months to allow the applicant to complete his or her submission.

However, there will be many times when waiting until the last minute of the comment period would not be in the interest of the permitting process, the applicant, or the public. Therefore, in those cases where it is clear that a discharger will be submitting an application for a variance, the Director may require the applicant to submit that application in full before the draft permit is formulated. This requirement is intended to reduce the time for permit issuance, especially in those cases where it is clear that a variance or modification will be applied for, such as where the discharger has submitted the 270 day application for a section 301(c) or 301(g) variance (§ 124.51(b)(2)(i)) or where a fundamentally different factors variance is still pending on the first permit. This will lower the permit processing costs for the permitting agencies, the applicant and the public because there will no longer be a draft permit subject to a public notice that is irrelevant to the issues in the final permit.

§ 124.52 Decisions on variances and modifications which EPA or the State can grant.

Section 124.52 explains how decisions will be made on variances. There is a distinction between the variances and modifications EPA and the States may grant and those the Act requires that only EPA may grant.

(1) Many commenters objected to EPA and not approved NPDES States making variance determinations for fundamentally different factors variances, economic variances, environmental variances, and section 301(h) secondary treatment waivers. These commenters thought the States with NPDES authority have the authority to rule on these particular variances.

The 1972 Amendments to the Federal Water Pollution Control Act carefully spell out the relationship between the Federal Government and the States in

achieving the Act's goals of eliminating the discharge of pollutants from the Nation's waters. A major responsibility of the Federal Government under the Act is the development and promulgation of uniform national technology-based standards for categories and classes of industrial discharges. Variances from these standards are allowed if the applicant can show the plant is fundamentally different from those plants used in developing the limits. Since EPA promulgates those national standards, EPA, not the States, is the authority best able to judge if a plant is fundamentally different from those that were the basis for the standard.

The variance sections in the Act clearly designate who the Congress intended to make the determinations. For example, section 316(a) provided for thermal waivers to be granted by either EPA or NPDES States. Specific grants of authority appear in the 1977 amendments which added sections 301(g), 301(h) and 301(i). Section 301(g) authorizes "the Administrator, with the concurrence of the State" to grant variances from BAT effluent limitations. Similarly, section 301(h) provides that permits incorporating modifications of the secondary treatment required may be issued by "the Administrator with the concurrence of the State. . . ." Section 301(i)(1), municipal time extensions like section 316(a) variances, may be granted by the "Administrator (or, if appropriate, the State)." Finally, section 301(c), only mentions the Administrator and so variances under it can only be granted by the Agency.

(2) A number of commenters objected to the condition in the proposal that when the Act required State concurrence in a variance that is issued by EPA, the variance request would not be considered by the Agency until the State had first approved it. In response, proposed § 124.14(e) has been modified in § 124.52(b) to allow the State Director to concur after EPA makes a draft determination. In States where EPA is the permit issuing authority a State will certify the draft permit in the regular procedure. All State (whether NPDES or not) must concur/certify section 301(h) determinations before EPA can issue the section 301(h) modified permit (see § 124.24).

Some commenters objected to considering States' views at all where the act did not explicitly require it. However, States have authority, where State law requires it, to set more stringent limitations for a permittee under sections 401 and 510. Though EPA grants the variances, the variance sections do not allow EPA to overrule State authority to require more stringent State requirements. Therefore, it is not appropriate to disregard State input into variance determinations.

§ 124.55 Special provisions for modifying the secondary treatment requirement under section 301(h).

Paragraph 124.55(a) sets out the requirements for submission of additional information necessary to make a section 301(h) determination. This section is substantially the same as proposed § 233.32(c) except that it states that if an application, "on its face," demonstrates that the applicant is not entitled to a section 301(h) modification, then the applicant cannot submit additional information and the application will be denied. This requirement is consistent with Congressional intent, [*CWA Legis. Hist.* at 448] and has been added to clarify EPA's original intent behind proposed 40 CFR § 233.32(c). This is similar to the "summary denial mechanism" suggested by some commenters.

States argue they should be allowed to issue permits with section 301(h) modifications. EPA disagrees and believes that the proper procedure is dictated by the Act itself. Section 301(h) provides, not that EPA may modify an existing NPDES permit to allow a less than secondary discharge if the permittee meets the requirements of section 301(h), but that EPA may "*issue a permit* under section 402 which modifies the requirements of section 301(b)(1)(B)" (emphasis added). This requires EPA to assume full NPDES permitting authority—even where the State has an approved NPDES permit program—in issuing any section 301(h) permit. This interpretation is buttressed by the fact that the statute calls only for "State concurrence" in any section 301(h) permit issued, and does not require the State to crank the permit back into the State permitting process and add additional terms and conditions necessary to assure compliance with sections of the act other than section 301(h).

EPA believes this result is not only required by the act but makes a great deal of sense as a practical matter. Any other approach would bifurcate the permitting process for section 301(h) dischargers between EPA and the State, resulting in a great deal of confusion (especially since there is some overlap between section 301(h) requirements and other applicable requirements of the act) and delaying issuance of final permits. To clarify this issue, EPA has revised proposed § 124.61(a)(2) (now § 124.55(d)) to indicate that NPDES States may (not must) revoke the existing NPDES permit when they concur in the modification and they may also choose to cosign the section 301(h) permit. EPA hopes that NPDES States will choose to revoke any existing State-issued permits and cosign the EPA-issued section 301(h) permit because this will reduce confusion as to permit limitations.

§ 124.61 Stays.

(a) Proposed § 124.61(a) provided for automatic stays of contested permit provisions if an evidentiary hearing request is granted, or if a petition for review of denial of a request for an evidentiary hearing is filed with the Administrator.

Numerous comments were received on this provision. One recurrent theme was that if a permit was stayed by EPA, compliance schedules in it should be extended for the same period that the stay was in effect. This suggestion has been accepted except where the technology is not contested but the ability of such technology to reach certain effluent limits is. In addition, compliance schedules cannot be stayed where failure to meet a statutory deadline or a permit term of more than five years would result from such an extension. It has been EPA's consistent position that it lacks power to grant dischargers more time to comply with the statutory mandate than Congress has decided they should have, or to extend the statutorily prescribed permit term. However, permits may be continued by operation of law under the Administrative Procedure Act. See § 122.12(b).

(b) A number of comments objected to the statement in proposed § 124.61(c)(2)(ii) (now § 124.61(d)) that a new source or a new discharger is considered to be without a permit pending the completion of any evidentiary hearing. However, this provision is only a logical extension of the provision (which most of these same commenters endorsed), that new permit terms are stayed pending those hearings and therefore has been retained.

For this reason EPA has deleted the provision allowing the Regional Administrator to approve the start of discharge by a new source or a new discharger even though a hearing on that source's permit is still in progress. Such sources which are concerned about their ability to open on schedule under these provisions should apply for the necessary permit far enough in advance of their target opening dates to allow

time for completing all necessary procedures.

EPA has recently established several procedures to expedite the issuance of NPDES and other EPA permits (e.g., Prevention of Significant Deterioration permits for air new sources) to new facilities. EPA has designated in each EPA Regional Office a New Source Coordinator charged with the responsibility of shepherding these applicants through the permit process. EPA has also adopted a policy of (1) informing each new facility within 30 days of request whether a particular permit program will apply to the new facility and (2) determining within 30 days of receipt whether an application is complete. Furthermore, EPA Regions are establishing permit tracking systems or procedures to ensure that new facility applications are addressed expeditiously. All of these initiatives will help minimize delay.

One comment also asked about the relation of § 124.61(c)(2)(ii) to proposed § 124.11(c) (now § 122.10(c)) which required new dischargers to apply 180 days before the scheduled start of operations. The 180 days is a minimum period; it does not preclude applications before then.

(c) A number of commenters asked that a provision be made for appealing stays, or asked about the status and applicability of determinations that permit terms were uncontested and severable from contested ones.

In these regulations we have accommodated these concerns by requiring the Regional Administrator to identify in the notice of a grant of the hearing the terms of the permit which are not contested and therefore are enforceable against the discharger during the permit proceedings. In some cases it may be necessary for the Regional Administrator to write new conditions to represent uncontested requirements. For example, if a final permit would require compliance with effluent limitations representing the application of both technologies A and B, and the discharger agrees that compliance with technology A is appropriate but challenges application of technology B, the Regional Administrator must write specific permit conditions requiring the installation of technology A. The fact sheet or statement of basis should include the type of technology contemplated by the permit writer to meet any technology-based limits in the permit.

Appeals from determinations on uncontested conditions will be available only through the provisions of § 124.101.

(d) A number of comments questioned the provisions in the proposed regulations that made certain deadlines run from the date of receipt of a specified notice. Such a provision could result in different deadlines for different people, and make it more difficult to find out when deadlines actually did elapse. Accordingly, these provisions have been changed to specify the time when the notice is given as the starting point for deadline, and three additional days provided to cover mailing delays (§ 124.134).

§ 124.64 Response to comments.

A major part of the effort in the proposed regulations to increase the extent to which EPA explains the basis for permits was requiring a response to comments received on a draft permit. The substance of those proposed provisions has been left essentially unchanged. However, proposed § 124.63 ("final fact sheet") has been retitled "Response to comments" to clarify that a document must be prepared for every issued permit which responds to all significant comments and objections to the draft permit and indicates which provisions have been changed and the reasons for the change. A comment has also been added to make clear that if new points are raised during the public comment period, EPA has the right to add new material to the administrative record to document its response to those new points.

§ 124.65 Administrative record.

The "administrative record" provisions have not been changed, except to delete the proposed requirement that all records be indexed and subcategorized. Though this may be advisable as a matter of policy for large records in significant cases, it seems inadvisable to require it across the board by regulation.

At the request of NPDES States, the administrative record, as detailed in this section, is not a requirement for State programs.

Subpart H—Evidentiary Hearings for EPA-Issued Permits

§ 124.71 Applicability.

The provision in this section for not holding evidentiary hearings on general permits was approved by the one commenter to address it directly. The Natural Resource Defense Council in its comments did not criticize this approach but asked what alternative mechanisms for tightening requirements on individual sources subject to general permits were available. In response, EPA wishes to point out that interested persons are always free to suggest in their comments on draft general permits, or in a petition to EPA, that issuance of an individual permit should be required. EPA will then be obliged to answer the points made and to issue an individual permit if it appears that step is required.

§ 124.72 Definitions.

Comments from the Natural Resource Defense Council pointed out that the proposal, by automatically making the permittee a party to any evidentiary hearing, could result in the permittee not having to make the commitments to make witnesses available and to file certain papers to focus the issues that are required of those who become parties through their own affirmative actions.

EPA agrees with this comment and has therefore deleted this provision. Permittees will still get notice of all hearing requests, and will be free to intervene in hearings to protect their interests.

§ 124.74 Request's for evidentiary hearings.

(a) The test for "standing" to request an evidentiary hearing has been relaxed in the final version of the regulations. Instead of the stricter test contained in the proposal, the standard in the existing regulations will be retained.

(b) Some comments questioned the provision in § 124.74(b)(4) that persons requesting a hearing agree in advance to make potential witnesses under their control available to testify. EPA lacks explicit subpoena authority for hearings held in connection with NPDES proceedings and this language is necessary to provide some equivalent assurance that needed witnesses will be available. In line with this purpose, and as suggested by other comments, § 124.74(b)(4) (now § 124.74(e)(4)) has been revised to clarify that the duty to produce witnesses only applies when the Presiding Officer has ordered their production.

§ 124.75 Decision on a request for a hearing.

Section 124.75 and § 124.101 have been revised to clarify that a Regional Administrator's denial of a hearing may be appealed to the Administrator, and the Administrator may review or reverse any legal or policy conclusions on which that denial was based.

§ 124.76 Obligation to submit evidence and raise issues before a final permit is issued.

Two major purposes of the proposed changes to EPA procedures were to

encourage resolution of issues at the time of comments on a draft permit, rather than in the far more burdensome context of an evidentiary hearing, and to link that hearing explicitly to the preceding stages of permit issuance. At present, even where all major issues have been fully analyzed and resolved before the final permit was issued, they can be re-examined anew in the evidentiary hearing. The Presiding Officer may not know what happened regarding the permit before the hearing began. Also, new issues might be raised at the evidentiary hearing even though they could have been settled much more simply if raised at an earlier stage.

The proposed regulations attempted to remedy this situation in two ways. First, the administrative record on which the final permit was based would automatically go into evidence at any evidentiary hearing so that the decisionmaker would have the benefit of the earlier stages of consideration of the issues.

Second, no issue could be raised at an evidentiary hearing if it was not first raised during the comment period on the draft permit (proposed § 124.53). An exemption from this requirement was provided if "good cause" could be shown for the failure to raise the issue earlier. These provisions have largely been retained in the final regulations (§ 124.43). The purpose is not to exclude any person from EPA's decision-making process, but rather to focus the attention of the Agency and parties on the informal comment and public hearing stage of the permit issuance process. EPA believes that policy issues and most technical issues relating to the issuance of NPDES permits should be decided in the most open, accessible forum possible, and at a stage where the Agency has the greatest flexibility to make appropriate modifications to the permit. Evidentiary hearings, because they entail great delays, because they are cumbersome, and because only the well-financed can afford to participate, are disfavored as a means of solving any issues other than contested factual issues requiring cross-examination. Not only will this in the long-run lead to greater and better informed citizen participation, it will increase efficiency in the permit issuance process and will speed application of pollution control requirements.

Many comments were received on these different aspects of the proposal. The proposed changes were very widely endorsed and supported in principle. However, non-governmental commenters argued that the regulations went too far in tying the evidentiary hearing to the preceding notice-and-comment stages. These comments have been largely accepted. Specifically, § 124.53 (now § 124.43) and § 124.76 have been amended very much along the lines suggested in the comments of the Utility Water Act Group.

In addition, though the proposed requirement for automatic receipt of the administrative record in evidence has been retained, a comment has been added and the section has been changed slightly to make clear that testimonial material in the administrative record should be subjected to the same tests of its testimonial value as other testimonial material introduced at the evidentiary hearing.

Some comments argued that receiving the administrative record in evidence automatically conflicted with the provision in 5 U.S.C. § 556 for the exclusion of "irrelevant, immaterial, or unduly repetitious evidence". As the comment described above explains, receiving the administrative record in evidence serves to document for the Presiding Officer and the parties the prior proceedings out of which the evidentiary hearing will arise and on which it must in part be based. A substantial useful purpose is therefore served by this procedure. This purpose could not be served as well, and many opportunities for useless arguments would be opened up, if the section were amended to provide that the administrative record could be edited in some fashion before or after its introduction.

§ *124.84 Summary determinations.*

A number of comments objected to the provision in § 124.84 that allowed motions for summary determination to be made "with or without" supporting affidavits. They feared that by explicitly mentioning the possibility of a motion without supporting affidavits, the regulations might result in shifting the burden of proof to the party against whom the motion is made. No such result is intended by this provision. Motions for summary determination must be affirmatively supported. The form of the proposal was only meant to recognize the possibility that material already in the record might amount to that affirmative support.

§ *124.85 Hearing procedure.*

(1) *Burden of proof.* Comments came in on all sides of the question "Who should bear the burden of proof?" The comments discussed, not so much the burden of going forward, which most commenters agreed could properly be shifted by regulation, as the ultimate burden of persuasion. Several changes have been made in response to comments, but the basic approach has not been changed. Because this is a complex issue, it is discussed in some detail.

Most comments agreed that the Act explicitly assigns a burden of persuasion for most variance decisions. The Act explicitly provides that variances under sections 301(c), 301(h), 301(g), and 316(a) may only be granted if the applicant carries an affirmative burden of proof. Variances under section 301(c) are conditioned on a "showing by the owner or operator of such point source satisfactory to the Administrator"; sections 301(g) and 316(a) uses almost the same language; section 301(h) variances may be granted "if the applicant demonstrates to the satisfaction of the Administrator [that the conditions are met"].

The question then becomes what the substantive burden should be for basic permit terms not involving a variance. That question, in EPA's opinion, is of more limited importance than might first appear.

When EPA proposes permit terms, it has a burden of going forward, or, stated differently, an obligation to provide information and material so that other interested persons can understand what the proposed terms are based on and the reasoning behind them. Other persons have a similar burden with respect to terms they propose. This obligation has been recognized by EPA (See Decision of the General Counsel No. 63, pp. 28–31), and is part of the law of informal rulemaking as well. *Portland Cement Ass'n.* v. *Ruckelshaus*, 486 F.2d 375 (D.C. Cir. 1973). The provisions of these regulations on statement of basis and fact sheet, administrative record, and comments are largely aimed at implementing those requirements.

The question of the substantive burden of proof assumes importance when the information provided by the various interested persons under these obligations is fairly evenly balanced in the conclusions it points to. A substantive burden of proof rule can be used to help decide which conclusions should be accepted. It is in this context that the question of whether EPA or the person challenging a permit term bears the burden of proof assumes importance. In one sense, every party could be said to have the "burden of persuasion" as to the permit terms that it was advocating, but that approach would be of little use as a guide to decision. Accordingly, the regulations (as proposed and promulgated) assign the substantive burden of proof to the permit applicant

in all cases. The Administrative Procedure Act (APA), 5 U.S.C. section 556(d) provides that "except as otherwise provided by statute, the proponent of a rule or order has the burden of proof." Since dischargers are under a statutory obligation to apply for and receive an NPDES permit, the United States Court of Appeals for the Seventh Circuit has recently held the discharger is the proponent "as the applicant for a permit, without which it would be forbidden by law to discharge pollutants," *U.S. Steel* v. *EPA*, 536 F.2d 822, 834 (7th Cir. 1977).

Such a conclusion follows from a literal reading of the statute. It also makes sense from the standpoint of the public policy. Though we acknowledge that EPA may have some disposition to favor its own conclusions on the terms of a given permit, in general it can be expected to be more concerned with carrying out the terms of the statute in the context of given permits than a discharger. Accordingly, it is proper to fix the substantive burden of proof on the party which can be expected to have relatively less interest in achievement of the statutory purpose.

Comments were received suggesting that the Agency's position regarding burden of proof is inconsistent with Decision of the General Counsel Nos. 63 and 72. The difficulty is caused by the use of inconsistent terminology in these opinions. In Decision of the General Counsel No. 63, the term "ultimate burden of persuasion" was used with respect to the EPA's obligation under section 316(b) to present evidence regarding best available technology for minimizing the environmental impact of intake structures. In context it is apparent that EPA has the burden of coming forward with evidence regarding intake structures. This cannot shift the ultimate risk of non-persuasion, which lies always with the discharger. To the exent that Decision of the General Counsel No. 63 can be construed to shift this risk of non-persuasion to EPA, it is incorrect. Decision of the General Counsel No. 72 correctly distinguishes between the burden of coming forward with evidence and the risk of non-persuasion, and labels the burden of coming forward the "burden of proof."

(2) *Cross-examination.* (a) Several commenters objected to the restrictions on cross-examination of EPA employees set forth in proposed § 124.83(b)(16). They argued that cross-examination should be allowed on facts which formed the basis of legal or policy matters, or on those matters themselves.

Facts which meet the other tests for cross-examination and which are relevant to legal or policy judgments are of course potentially eligible for cross-examination. However, the proposed language has been retained to underline that cross-examination on legal or policy matters per se should not be allowed. These matters of course deserve to be clarified as much as any factual issues, but cross-examination is not the right way to do it. Written presentations and oral argument can perform the same task far more efficiently and should be relied on instead.

One comment also objected to the provision that required all evidence in an NPDES proceeding to be submitted in written form unless an affirmative showing could be made that oral presentation was necessary. It argued that the Food and Drug Administration (FDA) regulations cited in support of this position did not really support it. However, the FDA regulations at issue are similar to § 124.85(c) and EPA interprets the content of the two provisions as being the same (see 21 CFR § 2.154(b)). FDA regulations require written evidence on "general" matters and leaves the form of presentation to the choice of the parties where "particular" matters are concerned. However, "general" matters are said to involve (among other things) "scientific, medical or technical information not relating to a unique event", 41 FR 51706, 51716 (Nov. 23, 1976), and this is a description that could apply to many issues in an NPDES proceeding.

(c) Proposed § 124.83(c)(5)(iii) is a limited provision for "discovery" in NPDES evidentiary hearings. Comments were received arguing both for the expansion and for the deletion of this section. In the final version, this section has been kept and also applies in panel hearings (Subpart I). Although information may be attainable under the Freedom of Information Act or section 308 of the Act, discovery may be a more useful and direct approach to elicit information for a hearing.

(d) Several comments challenged as illegal the provision in § 124.83(c)(6) authorizing the Presiding Officer to group parties with similar interests. We have not changed this section since we agree with Judge Friendly and the Food and Drug Administration that such a provision is fully authorized by existing law, see *National Nutritional Foods Assoc.* v. *Food and Drug Administration*, 504 F.2d 761, 795 (2d Cir. 1974). See also 41 FR 51706, 51718.

§ 124.86(c) Motions.

The general rule is set out in § 122.15 that the applicable regulations and requirements for NPDES permit issuance are those in effect at the time a permit is issued by a State or by EPA under § 124.81.

This provision is consistent with the decision of the Administrator *In the Matter of U.S. Pipe and Foundry Co.*, NPDES Appeal No. 75-4 reprinted in EPA, *Decisions of the Administrator and Decisions of the General Counsel* v.I at 110 (1975). The Administrator's views on this issue were adopted by the Fifth Circuit in *Alabama ex rel. Baxley* v. *EPA*, 557 F.2d 1101 (5th Cir. 1977).

Proposed § 124.86(c) authorized Presiding Officers to apply in permit hearings regulations issued after the permit is issued under § 124.81. For an explanation of the proposed regulation, see 43 FR 37060 (Aug. 21, 1978).

Several commenters contended that § 124.86(c) violates due process and is inconsistent with the *Alabama* v. *EPA* decision. EPA does not believe that any due process issue can be involved here. All parties will have a full opportunity to challenge in the adjudicatory hearing the application of any regulations which are applied to a discharger under § 124.86(c). Moreover, the provision may not be used when any party would be "unduly prejudiced thereby."

It is the general rule that laws which become effective during the pendency of judicial review proceedings control those proceedings, *Bradley* v. *Richmond School Board*, 416 U.S. 696 (1974); *Republic Steel Corp.* v. *Costle*, 581 F.2d 1228 (6th Cir. 1978). This rule also holds true for the application of Federal regulations in administrative proceedings. *Thorpe* v. *Housing Authority of Durham*, 393 U.S. 268 (1969). The Supreme Court has only recognized exceptions to this general rule to prevent "manifest injustice." *Thorpe* v. *Housing Authority, supra* at 282; *Greene* v. *United States*, 376 U.S. 149 (1964). The Administrator departed from this rule in his decision in *U.S. Pipe, supra.* There he set forth a fixed rule that permits would always be governed by rules in effect at the time of initial permit issuance, and would be unaffected by changes in applicable regulations during permit appeals. The Administrator concluded that:

> To allow permit limitations and conditions to change according to a "floating" standard or guideline during the pendency of a permit review proceeding would be highly disruptive and counter-productive. [Id. at 117]

The Fifth Circuit approved the Administrator's position in *Alabama ex rel. Baxley* v. *EPA, supra.* However, neither the Administrator nor the Fifth Circuit discussed *Bradley* or *Thorpe*,

and EPA can only speculate as to what result would have been reached had those decisions been brought to EPA's and the court's attention.

EPA recognizes the potential for disruption which a continuously shifting field of applicable regulations could bring to permit proceedings. However, the Agency now believes that the *per se* rule established by the Administrator in the *U.S. Pipe* decision was too inflexible and in certain respects unlawful. EPA is clearly obligated under *Bradley* and *Thorpe* to apply new statutory law to administrative proceedings which are not final, unless a contrary legislative intent can be discerned. However, courts will give deference to EPA's own regulations controlling the application of EPA rules to pending proceedings. See *Greene* v. *United States, supra* at 160–162. Moreover, the courts will not apply the *Thorpe* rule blindly where to do so would result in unnecessary delay. *Citizens to Preserve Overton Park* v. *Volpe*, 401 U.S. 402, 418–19 (1971). Accordingly, EPA has preserved the general rule enunciated in the *U.S. Pipe* decision, but has modified it to require the Presiding Officer to apply intervening statutory requirements, and to allow him to apply new regulations where to do so would not unduly prejudice any party. The Agency expects that motions to apply new regulations will be liberally granted where to do so will shorten the hearing or resolve issues (such as determination of BCT or BAT on a case-by-case basis) that otherwise would consume considerable staff and hearing time. See *Public Service Co. of Indiana* v. *FERC*, 575 F.2d 1204 1220–21 (7th Cir. 1978).

§ 124.90 Interlocutory appeal.

The present practice of deciding legal issues separately through referral to the Office of General Counsel has been eliminated. Instead, these issues will be subject to normal interlocutory appeal procedures. The regulations also provide that the General Counsel's Office will play a major role in deciding any legal issues raised in such appeals. This approach was suggested in the comments of the Utility Water Act Group. Similar changes have been made to § 124.101.

This approach presupposes that members of the General Counsel's Office who take part in deciding interlocutory appeals under this provision will not have performed "investigative or prosecutorial functions" in the hearing at issue, and will not be organizationally subordinate to those who have. 5 U.S.C. Section 554(d). In the normal course lawyers in the General Counsel's office do not perform such functions. In NPDES cases where they do, the lawyer in question and all that lawyer's subordinates will be barred from advising the Administrator.

§ 124.101 Appeals to the Administrator.

(1) The proposed regulations would have provided two administrative appeals from ALJ decisions—once to the Regional Administrator and then after that to the Administrator in Washington. In the final regulations the opportunity to appeal to the Regional Administrator has been eliminated and only the appeal to the Administrator has been retained. This will make the process far less cumbersome. Regional Administrators will still be able to express their views by advising on the terms of draft and final permits and either by participating in the evidentiary hearing or by declaring themselves part of the decisional body (and thus subject to the *ex parte* rules of § 124.78) and advising the Administrator.

(2) Comments were received objecting to the provisions in this section for the Administrator to consider new issues on appeal or to base a decision on material erroneously excluded. These provisions were inserted to provide a measure of flexibility in the administrative decisionmaking process. Of course they should not be invoked where the matters to be considered are of a type that properly should have been subject to an evidentiary hearing.

(3) A number of commenters objected to the showing of substantial issues in justification of an appeal to the Administrator has a very broad power § 124.101. We agree with those commenters who stated that the Administrator has a very board power of review of decisions in NPDES permit cases. However, EPA's intent in setting up this program is that: (1) this power of review should be only sparingly exercised; (2) most permits be finally adjudicated at the Regional level; and (3) review by the Administrator be confined to cases which have precedential importance for the program as a whole. The threshold showing as proposed was intended to further that purpose; and thus has been retained.

(4) Another commenter asked about the availability of interlocutory judicial review of decisions such as new source determinations and section 316(a) determinations.

EPA's position is that judicial review is only available for final permits for which appeal to the Administrator has been sought under §124.101. Except in the special cases explicitly described in §124.56 all other decisions in connection with a permit are subject to challenge and revision in future administrative proceedings. They represent cases in which the administrative process is therefore not complete, and are not ripe for review because they fail under the requirement to exhaust administrative remedies.

§§124.111 through 124.127 Non-adversary procedures for initial licensing.

The APA allows decisions on the initial grant of a license or variance to be made by procedures that are much less adversarial than strict court room procedures, even when a formal hearing is required. The regulations use this provision of the APA to move away from traditional format hearings in which EPA and other parties present separate cases before a single hearing officer. Instead, under Subpart I, a panel of EPA employees with expert knowledge of, or responsibility for, the subjects involved will be present at the hearing and will question the parties, subject to over-all control of the proceeding by the Presiding Officer, an Administrative Law Judge. We expect that in some cases no Agency trial staff will be designated, although the regulations allow one to be named if necessary. Instead, the Agency will prepare a draft response to the permit application, and the information contained in the application and the draft response will be the focus of attention at the hearing. The hearing itself will be divided into a "legislative" phase—at which the parties can present views and arguments to the panel and engage in a colloquy, and an "adjudicative" phase—at which formal cross-examination can be ordered if certain threshold conditions are met. After the hearing, the panel will prepare a recommended decision which may be appealed to the Administrator. Though the Administrator will make an independent review of the decision upon deciding to review it, the Administrator would be free to consult with panel members. EPA believes that this procedure complies with the literal language of the "initial licensing" provisions of the APA and fits the purpose of those provisions more closely than existing procedures.

Under the APA, in cases of formal rulemaking, ratemaking or initial licensing, agencies have more latitude than in other formal cases to require the submission of evidence in written form. 5 U.S.C. Section 556(d). An initial decision by the "independent" presiding Administrative Law Judge (ALJ) is not

required; instead any "responsible employee" of the Agency may recommend a decision. 5 U.S.C. Section 557(b)(1).

As the preamble to the proposal explained, these exemptions were provided for initial licensing because the decisions involved were complex and policy-dominated and thus were thought to be "like rulemaking." Since these decisions did not involve accusing anyone of wrongdoing, there was no reasons for "separation of functions" within the Agency or for an initial decision by a statutorily independent individual. Rather, the complexity of the problems required that the Agency be able to draw on its staff experts freely without being hampered by such artificial barriers. *APA: Legislative History;* S. Doc. 248, 79th Cong., 2d. Sess. 204, 229, 262, 361 (1946) (henceforth *APA Leg. Hist.).*

The use of a panel and the omission or deemphasis of an EPA trial staff in proceedings under these regulations would make their structure conform more closely to the non-accusatory nature of the decision in question. The form of proceeding would correspond to its function—a group of EPA employees exploring the issues to determine what decision to make or recommend—rather than to a courtroom trial.

The comments raised a number of closely intertwined objections to the legal justification for this approach and to the implementation of it. The most important general objections are discussed first, followed by a discussion of comments relating to individual sections.

(1) General comments.

(a) *First objection—issuing NPDES permits to existing sources is not "initial licensing".*

The commenters who raised this issue made little effort to support it, and it suffers from the initial weaknesses of being contrary to the plain language of the statute, consistent EPA practice and the relevant judicial opinions.

The APA defines "license" to include:

> The whole or a part of an agency permit, certificate, registration, charter, or other form of permission, 5 U.S.C. section 551(8),

and "licensing" as including:

> Agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license, 5 U.S.C. section 551(9).

Though "initial" is not defined, its natural meaning (according to Webster's Third World Dictionary, unabridged 1947) is "of or relating to the beginning," or, in other words to the *first grant* of the license in question. Neither this definition nor the statutory language offers any basis for distinguishing between first grants of licenses to existing sources and those which are physically new.

In the more than six years since the NPDES system was authorized by the Federal Water Pollution Control Act Amendments of 1972, EPA has consistently treated the first grant of an NPDES permit to an existing source as "initial licensing" and this reading has been upheld by both courts which have considered the point. *United States Steel Corp.* v. *Train*, 556 F.2d 822, 834–35 (6th Cir. 1977); *Marathon Oil Corp.* v. *Environmental Protection Agency*, 564 F.2d 1253, 1265 (9th Cir. 1977).

Analogous provisions of the APA confirm that the exemptions made available for "initial licensing" may properly be used even when an existing source is being permitted. Whatever the examples of "licensing" Congress had in mind, Congress made the same exemptions available for all cases of ratemaking, and ratemaking of course in the majority of cases would involve existing companies.[3]

(b) *"Separation of functions" should be followed in initial licensing.*

"Separation of functions" in the strict sense will be observed in proceedings under this Subpart. Whenever an agency trial staff is named to perform an advocacy role in the hearing, separation of functions requirements will apply to it (§ 124.78).

The comments on this point argued by analogy that persons involved in preparing the draft permit should not sit on the panel, and that members of the panel should not advise the Administrator on appeal. The APA contains no prohibition on either of these practices. Nevertheless, we have discussed them as though the literal bar on separation of functions in the narrow case was concerned.

The legislative history of the APA contains a number of statements cautioning agencies against overbroad application of the exemptions which the text of the statute provides from "separation of functions" requirements and from the requirement to prepare a proposed decision before making a final one. Several commenters argued that these statements demonstrated that NPDES permitting is not the kind of "initial licensing" Congress had in mind, and that accordingly, these exemptions should not be applied to it.

We disagree. As the preamble to the proposal stated, these exemptions were provided for cases which involved a complex array of factual and policy issues requiring a division of labor among the staff, and which were not "accusatory". NPDES permitting easily meets both tests.

Particularly where a permit to a major source is concerned, questions can arise concerning the nature of given industrial processes, their similarity to or difference from other industrial processes, and how this should affect control requirements or classification under effluent limitations guidelines. For section 301(c) determinations, EPA must consider the economic impact of the proposed discharge requirement, and alternative discharge requirements, on the plant itself and the company. Section 316(a) thermal variances can require consideration of the dispersal and persistence of the discharge in the receiving waters, and its effect there on numbers of different species and the ecosystem generally. In many cases, certainty on these points will not be attainable; yet the final judgment will depend on highly discretionary judgments on a variety of legal and factual issues.

In such cases, the final decision will depend largely on "policy" choices about how to choose among uncertainties and weigh various facts against each other, just as it does, for example, when economic information of various sorts must be analyzed for rate-setting purposes, or information on traffic growth, company and community economic health, and other factors must be assessed for purposes of CAB or ICC route awards. These latter decisions are clearly among those which Congress meant to exempt from "separation of functions" requirements, and NPDES permitting in our view should be similarly classified.

Similarly, the initial grant of an NPDES permit is "non-accusatory" like these other decisions because it is the first time the Agency will have confronted the task of applying the standards of the statute to the particular discharge at issue. The Agency will have not made a prior decision to which it might feel compelled to adhere, as could be the case in renewal licensing, and whatever decision is made will not amount to a finding of legal wrongdoing.

The legislative history of the APA, we believe, recognizes these points. Both the House and Senate Reports say at

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[3] Under 5 U.S.C. sections 551 (4) and (5), "rulemaking" includes "ratemaking". 5 U.S.C. section 554, which contains the APA's separation of functions requirements, states in subsection (a) that it only applies to "adjudication", while sections 556(d) and 557(b) contain parallel exemptions from other APA requirements for rulemaking and initial licensing.

one point that "instances" of the exempted categories may arise which "tend to be accusatory in form *and* involve sharply controverted factual issues" and where the exemption contained in 5 U.S.C. section 554(d) from separation of functions should not be invoked (emphasis added). As this preamble explains, the whole purpose of EPA's new provisions is to avoid being "accusatory in form" while for the reasons just given, EPA does not believe they are accusatory in substance. The logic of these passages accordingly does not apply.

Both the House and the Senate reports also say that:

> The alternative intermediate procedure [in 5 U.S.C. section 557(b) (1) and (2)] which an agency may adopt in rulemaking or determining applications for initial licenses is broadly drawn. But even in those cases, if issues of fact are sharply controverted or the case or class of cases tends to become accusatory in nature, sound practice would require the agency to adopt the intermediate *recommended* decision procedure, *APA leg. Hist.* p. 273, accord, p. 210 (emphasis added).

This language only states that agencies should not omit an intermediate decision *entirely* under section 557(b)(2) in the described cases. There is no indication that an intermediate decision by an ALJ would be required; indeed, the implication is to the contrary. The text of 5 U.S.C section 557 provides that as a general matter ALJs in adjudicatory proceedings must render "initial" decisions, but that in rulemaking and initial licensing any "responsible employee" may instead "recommend" a decision. Yet the quoted passages refer to a "recommended" decision (by a "responsible employee"), not an "initial" decision (by an ALJ).

Under this reading, the quoted passage does not pertain to the procedures at issue here, which provide for a recommended decision by the panel in every case.

In addition to these reasons based on the letter of the APA's language and legislative history, we believe EPA has made a legitimate effort to respond to the spirit of the statute. First, the procedures are not mandatory for all cases of initial licensing, and so the Agency will retain discretion to follow more conventional procedures in those cases where they are most appropriate. In general, EPA believes that Regions should consider using these procedures in complicated cases where the record will be long and technical. These are the cases that will best justify the work of assembling and using a panel, and that will profit most from the increased reliance on procedures other than cross-examination. Cases with few issues or issues that are easily focused should be handled through the more customary procedures. However, EPA also believes that Regions must have discretion to make this choice in individual cases, and that the only proper question for judicial review should be whether the procedure actually selected resulted in a legally satisfactory hearing, not whether some other procedure might have been better.

Second, the procedures themselves have been structured to avoid as much as possible creation of an "adversary" or "accusatory" mentality through overreliance on courtroom devices. Finally, in response to comments, the regulations have been rewritten to ensure that there will be independent review of a permit during Agency decisionmaking, but in a way that avoids the costs of formal separation of functions.

The regulations do this by stating that any hearing panel on a permit must include at least two persons who had no connection with preparing the draft permit, and that when the Administrator reviews a permit, any persons assisting him or her directly in preparing the opinion must be "without substantial prior connection with the matter." This will ensure that at successive levels of review new people will take a fresh look at the permit, and that the same small group will not be in charge of decisionmaking from start to finish.

However, no restriction has been placed on who these new people may talk to. To do that would be in effect to re-adopt separation of functions with all its inefficiencies. Instead, the effort has been to build a system of "checks and balances" within the internal structure of the Agency that can serve the same purpose in a less costly manner. See II K. Davis, Administrative Law Treatise 11.10 at 87 (1958).

For these reasons, we believe the elimination of formal "separation of functions" from the new initial licensing procedures is well within the discretion recently recognized by the Supreme Court. "Absent constitutional constraints or extremely compelling circumstances, the administrative agencies should be free to fashion their own rules of inquiry and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties", *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 98 S.Ct. 1197, 1211 (1978) citing and endorsing language from two prior opinions.

(c) *Third objection—variances are not initial licenses.* Many comments argued that the proposed procedures went too far in applying the APA "initial licensing" provisions to "the first decision on any variance applied for by a discharger." We believe our position is supported both by the language of the statute and by its purposes.

Under the APA, " 'license' includes the whole *or part* of any agency permit . . . [or] statutory exemption," and " 'licensing' includes agency process respecting the . . . amendment, modification, or conditioning of a license." (emphasis added) The language of the statute, then, furnishes no reason why a variance cannot be regarded as a "license" in itself, either as "part" of the existing permit or as a "statutory exemption" from the requirements. Granting a variance similarly fits under the definition of "licensing" both because the variance can be viewed as a license in itself and because in any event the proceeding results in the actual or potential amendment or modification of a permit.

This line of construction could be pressed so far that it gave results contrary to the main purposes of the statute. However, where the initial grant of a variance is concerned, the results of this approach are in harmony with those purposes.

The first decision on a statutory or administrative variance granted to a source will be the first occasion on which EPA will be applying the policy of that particular provision of the statute or authorizing regulations to the given discharge. Very often the factual and policy considerations relevant to a decision on that variance will be just as wide-ranging, and just as incapable of precise resolution, as the considerations bearing on the initial grant of the basic permit. For example, variances under sections 301(g), 301(h) and 316(a) of the Act depend on predicting the impact of the uncontrolled discharge on the entire relevant ecosystem, while variances under section 301(c) depend on an assessment and evaluation of the cost of technology for a given plant and on drawing the conclusions that installing this technology would be "beyond the economic capability" of the source and that alternate requirements will result in "reasonable further progress" toward full control.

Such decisions therefore will often fit the tests put forth above for determining when a decision is "initial licensing." Indeed, in *Seacoast Anti-Pollution League* v. *Costle*, 572 F.2d. 872, 875 n.3, 879 (1st Cir. 1978), (henceforth *Seabrook*) the court held in effect that it made little difference whether the *Seabrook* proceedings were characterized as the initial grant of a

permit under section 402 of the Act or the initial grant of a variance under section 316(a)—the procedures would be the same and would be governed by the "initial licensing" provisions of the APA.

The one 21 year old case cited against this conclusion, *Chotin Towing Corp.* v. *Federal Power Commission*, 250 F.2d. 394 (D.C. Cir. 1957) is not on point. That case held that a proceeding to abandon a pipeline was not "initial licensing." The abandonment decision would presumably be made under the same statutory provisions the license was granted under, and would therefore not represent the first time the agency took a position on those provisions in the context of the particular pipeline. By contrast, variances under the Clean Water Act result from the application of statutory provisions on which the Agency will not previously have taken a position, and which therefore fit the purpose of the "initial licensing" provisions the way the abandonment proceeding at issue in *Chotin Towing* did not.

Experience, however, has shown that hearings for variance are seldom necessary. For instance, in all the fundamentally different factor variances decided to date, there has not been a question of fact at issue but if a particular situation applied to a quideline. In such cases, where facts are not at issue, the decision on the variances may be handled without a hearing but on the papers filed by interested parties.

(d) *Fourth objection—cross examination would be unduly limited.* Many comments asserted that the test for being granted cross-examination set forth in these procedures was too strict. The statute, however, states only that cross-examination must be allowed to the extent required for a "full and true disclosure of the [material] facts." A long line of commenters have criticized the tendency of formal administrative hearings to allow long and unproductive cross-examination. The procedures set forth in these regulations do no more than set forth in a manner essentially endorsed by one Court of Appeals, a method by which the standards of the statute may be particularized. *Seabrook* at 880. How rigorously they are applied will depend on the factual circumstances of each particular case.

Commenters also asserted generally that the restrictions on cross-examination in these procedures showed that EPA was prepared to ignore important factual questions in initial licensing.

On the contrary, EPA believes that resolving factual questions may often be important in initial licensing, though there may also be many cases where their resolution is not governing or where they cannot be resolved. However, there are many devices other than cross-examination for such questions. Written comments and panel hearings are two of them. These regulations have been structured to encourage the use of such alternative ways of resolving such important factual questions before the more cumbersome tools of cross-examination are called on.

On a more specific point, several commenters asserted that in requiring testimony to be submitted in written form in initial licensing, the regulations violated the holding in *Seabrook*. However, on March 24, 1978, Administrator Costle issued a Response to the Remand Order in this opinion. In the document that Administrator said:

> The Court of Appeals disapproved the manner in which I requested written information * * * after the initial hearing had been held and when the case was on appeal to me.
>
> Under the Administrative Procedure Act, the submission of evidence in written form may be required in cases, such as this one, concerning the initial grant of a license or permit. The court acknowledged that but held that this result had to be qualified by the special language of the Federal Water Pollution Control Act, which requires an "opportunity for public hearing" in permit cases.
>
> As I read the court's opinion, their holding on this point was motivated by a concern that all evidence received at an adjudicatory hearing be subject to a full opportunity for public comment and potential cross-examination. * * * I do not believe the court meant totally to exclude the use of written testimony in initial licensing cases such as this.
>
> The examples of abuse of the "written evidence" provision the court gave in its opinion all relate to evidence received *after* the hearing. Here I can appreciate the conclusion that evidence so received may, as a practical matter, be less exposed to public comment than it should be, even if a formal opportunity for cross-examination is provided.
>
> No such danger would arise if the evidence is provided before the hearing and can be the subject of comment, argument, and potential cross-examination at it. In addition, the hearing would peovide a chance to correct any unanticipated deficiencies that might arise. Cf. Attorney General's Manual on the Administrative Procedure Act. P. 78. (1947).
>
> By contrast, there is at least a possibility that an absolute right to present direct testimony orally could be abused for purposes of delay in complicated or controversial cases.
>
> The trend of the law has been to allow more latitude, not less, to agencies to require the submission of complicated technical material in written form to increase efficiency and avoid delay, as long as an adequate opportunity for public challenge and dispute was preserved. See 40 *Fed. Reg.* 40662, 40703 (Sept. 3, 1975); 41 *Fed. Reg.* 51710–17 (Nov. 23, 1976).
>
> Beyond these considerations, I believe a careful reading of the conceptual framework of the court's opinion also supports the position I have adopted.
>
> The question of the extent to which written evidence is proper under the APA only arises when an initial licensing decision must be made by formal adjudicatory procedures. Those procedures are only applicable where the statute (or in some cases, due process) requires them. The court held that where adjudicatory decisions are concerned, an intent to hold formal hearings should generally be inferred whenever the statute requires a "hearing" in connection with that decision.
>
> However, to hold that written evidence may not be required in initial licensing cases if the governing statute requires a "hearing" would be inconsistent with that basic analysis. The "written evidence" provision only applies when the statute requires a formal hearing. It was deliberately inserted to govern such hearings. To say that it does not apply whenever the statute at issue requires a "hearing" would be in effect to say that it never or almost never applied, since a statutory "hearing" requirement is necessary to make the APA applicable in the first place. It would be in effect to say that the same statutory reference that makes formal hearing procedures applicable generally also makes the "written evidence" provision for initial licensing cases inapplicable, even though Congress expressly inserted that provision as a general rule for formal hearing procedures.
>
> Though the Federal Water Pollution Control Act does not simply require an opportunity for a hearing, but an opportunity for a "public" hearing, I do not believe that the presence or absence of this one word should change the outcome of the analysis. There is no indication Congress intended such a sweeping result to follow, and the term has never been understood to carry this meaning. Indeed, virtually all hearings are "public" by definition and to the extent "public" has any explicit connotation, I take it to be one of less, rather than more, formality—a hearing to receive *public* views and complaints, rather than to generate a record for decision.
>
> Instead, I take the court's opinion to mean that where the statute requires a "public hearing" any written evidence received must come in before that hearing begins, or at it, so that it can be the subject of potential cross-examination, or other types of challenge, in a public forum.

This interpretation was not challenged in the remand proceedings and has now been decided in EPA's favor by the First Circuit. It is adopted here.

A related change has been made in consequence. Comments came in asking about the relationship between "reply comments" under proposed § 124.119 and post-hearing briefs under § 124.123.

Since under the interpretation here adopted, reply comments could not contain testimonial material in any event, the "reply comment" provision and the section on post-hearing briefs perform the same function and the "reply comment" provision has been deleted.

Some commenters also argued that the use of a panel violates the "on the record" decision requirement of the APA. However, as the court in the *Seabrook* case explicitly recognized, consultation among experts is legal and desirable in decisionmaking in technical areas. *Seabrook* at 872, 880–81. The statutory background discussed above explicitly contemplates that the decision in initial licensing cases may be the work of a group. See especially *APA Leg. Hist. at 229.*

(c) *Fifth objection—there is no need for two procedures.* Several persons urged that having two types of procedures for making decisions on "initial licensing" would be cumbersome and create confusion beyond any purpose it might serve.

We disagree. Procedures analogous to those set forth in Subpart I have been used in other contexts at EPA and have worked well. They have proved easy to follow and did not require undue explanation. The costs of delay and lack of coordination in formal adjudication can be so great that a new approach would be justified if it saved time and effort in only a few cases. We think the savings from this approach will be much more considerable than that.

The Natural Resources Defense Council suggested that these procedures might be adapted to all NPDES permit decisions, which would make the creation of separate initial licensing procedures unnecessary. Though this would be desirable as a matter of policy, in EPA's judgment the legal differences between initial and non-initial licensing under the APA are too great to make such an approach feasible. However, § 124.111(a)(3) has been amended to allow applicants who do not come within the definition of "initial licensing" to voluntarily be subject to these procedures instead of Subpart H. A request under § 124.111(a)(3) made during the public comment period, if granted, can have the effect of this Subpart superseding Subparts E and G.

(2) *The Extent of Disagreement.* Despite the number of comments received on these proposals, EPA believes the disagreement is more about means than about ends. This emerges clearly from the following comments of the Utility Water Act Group, which submitted the longest and most detailed analysis of these procedures. As an alternative to the proposed procedures, they suggested these steps:

> Hearing panels, with independent decision makers [sic] as suggested below, could be used either during the informal public hearings on draft permits or, in proper cases of initial licensing, during the adjudicatory hearing itself. They might, under the supervision of the presiding officer, be used to write some or all of the technical portions of the decisions involved. Separate technical advice (perhaps drawn from the same pool of technical persons involved in the hearing panels, but not including those persons involved in the particular case in question) could be provided to the Administrator on appeal. Thus, the advantages of technical input to the decisionmakers could be combined with independence of decisionmakers, both initially and on review. This would fill the Agency's needs while also providing fair and impartial decision [sic] making.
>
> In the evidentiary hearing process, presiding officers can be authorized to impose very abbreviated cross-examination rights where proper initial licensing cases are involved, subject to the same sorts of tests articulated now in the separate [initial licensing] procedures. The Agency staff would function as party to these proceedings. But the rules could specifically require that they eschew an adversary position and act affirmatively to ensure that the record is adequate and that a reasoned and objective Agency decision results from the process. Participating staff members must be prepared to confess error, after hearing the evidence, on some positions which the staff originally took in the draft permit. [Utility Water Act Group Comments pp. 252–53.]

These are the same basic ends EPA seeks through the special "initial licensing" procedures promulgated today. The only differences are that the Agency believes that a strict, courtroom type separation of functions is too costly in time, resources, and the quality of the resulting decision to be compatible with that goal, and that a "non-adversary" agency staff can only be achieved by removing it from participation in the inherently adversary setting of a trial-type hearing.[4]

Comments on Specific Sections

§124.111 Applicability.

The major questions under this section, regarding the treatment of existing sources, variances and the need for an alternative procedure, have been discussed above. A new provision has been added to allow parties to elect to follow this procedure in cases that do not involve initial licensing.

One commenter raised the question whether a permit to a source that has changed owners would be considered an "initial license" potentially subject to these procedures. The answer is "No"—it is the first permit to the physical facility, not to the owning entity—that is significant under the purposes of the "initial licensing" provisions discussed above.

§124.112 Relation to other Subparts.

A number of commenters point out that the procedures in this Subpart were not articulated in as much detail as the other evidentiary hearing provisions, and asked that more provisions be added.

This lesser degree of formality was to some extent deliberate on EPA's part, since these proceedings are meant to be relatively less "judicialized" in form than those under Subpart H. For that reason, not all the suggestions on this point have been accepted. However, a substantial number have been, and therefore §124.112 has been added to specify the provisions from Subpart E, F, G and H that are incorporated in this Subpart I by reference.

§124.116 Notice of hearing.

Under the proposal, the Regional Administrator would have issued the decision in all cases after the hearing. This proposal left open the question of the role of the Presiding Officer in preparing that decision. To correct this ambiguity the regulations have been rewritten to provide that the Regional Administrator must choose, at the time the notice of hearing is issued, whether the decision will be issued in his or her name or in the name of the Presiding Officer. If the Presiding Officer is chosen, then the analysis and conclusions of the initial decision will be wholly the responsibility of the Presiding Officer, though consultation with the panel and consideration of their views will be expected. If a Regional Administrator decision is chosen, the Presiding Officer will have no obligation to take part in preparing it, although he or she may take part.

§124.120 Panel hearing.

(1) Commenters attacked the provision in this section and §124.121 requiring the Presiding Officer to consult with the panel before making rulings on cross-examination. They argued this might prejudice the independence of the Presiding Officer.

The APA allows decisions in "initial licensing" cases to be "institutional" decisions that draw on the training and experience of a number of different staff members, rather than the work of the Presiding Officer alone. These staff

[4] For further discussion of these and other points relating to these "Initial Licensing" procedures see Pedersen "The Decline of Separation of Functions in Regulatory Agencies", 64 Va. L. Rev. 991 (1978).

members must work from the record in preparing their decision. Under these regulations those staff members will also be members of the hearing panel or its support staff. Because the panel members will therefore have a stake in the contents of the record from which they will all have to work, it is appropriate for the Presiding Officer to consult them on key decisions that may help to shape that record. The Presiding Officer, of course, will retain the final power to rule on these matters.

(2) Several commenters argued that the entire panel be present at any cross-examination under this section. This comment has been accepted, so that all panel members, to the extent feasible, be present

Subpart J—Miscellaneous

§ 124.131 Public access to information.

A number of commenters suggested that trade secret information either should not be disclosed to other persons in NPDES proceedings, or should only be disclosed subject to specific safeguards. The handling of trade secret information has not generally been a problem in NPDES proceedings, in part because the statute restricts the types of information that qualify.

However, to remove any ambiguity EPA has added a reference to EPA's general regulations on this point to this section to make clear that they continue to govern except to the extent that the Clean Water Act mandates disclosure.

§ 124.132 Delegation of authority; time limitations.

Quite a few commenters urged that EPA should set additional deadlines for its actions under this Part, or that failure to meet the deadlines already established should have more drastic consequences. These comments have not been accepted. The Agency's workload, commitments, and future resources are too unpredictable to make it advisable for any more binding deadlines to be set. One of the major purposes of these revisions is to speed the processing of permits and that result should be evident whether or not more deadlines are established.

§ 124.133 EPA Headquarters approval of stipulations or consent agreement.

Some commenters also question the provision that all stipulations be approved by the EPA Deputy Assistant Administrator for Water Enforcement. This provision has been retained because cases which are settled upon stipulation after having been set down for hearing are apt to be the major controversial cases for which a specific provision for central review is appropriate. However, it has been rewritten and renumbered to make clear that only stipulations which settle the case or a major portion of it are subject to this provision.

§ 124.135 Effective date.

While Parts 121, 122, 123, 125, and 403 will be effective 60 days after issuance, this is a new section which states that Part 124, with some exceptions, shall not be effective until 120 days after issuance. This extra time is necessary to allow EPA Regional Offices and NPDES States to change internal operating procedures as necessary.

V. Part 125—Criteria and Standards for the National Pollutant Discharge Elimination System

A. *What Does This Part Do?* Part 125 contains requirements or standards which must be applied by EPA or approved States in making specialized types of permit determinations. One or more of these determinations must often be made in the course of permit issuance or modification.

B. *How Does This Part Relate To Existing Regulations?* Three of the Subparts contained in this Part are taken from existing, i.e., former, EPA regulations. Subpart B (proposed Subpart C) establishes the criteria for issuance of permits to aquaculture projects. These criteria are substantially the same as the criteria in former 40 CFR 115.10. The other requirements of former 40 CFR Part 115 are now contained in various sections of Part 122 and 124. These regulatory revisions were made in response to the 1977 amendments to section 318 which stated that such permits must now be issued pursuant to section 402 of the Act. Since the requirements of former Part 115 are now contained in these regulations, Part 115 is deleted. Subpart H (proposed Subpart I) establishes the criteria for determining alternative effluent limitations under section 316(a) of the Act. The criteria are substantially the same as in former 40 CFR Part 122. Since the requirements of former Part 122 are now contained in these regulations, former Part 122 is deleted. Subpart J (proposed Subpart K) establishes the criteria for extending compliance dates under section 301(i) of the Act. This Subpart J incorporates the interim final section 301(i) regulations published on May 16, 1978.

Two of the Subparts contained in Part 125 were proposed for the first time on August 21, 1978. Subpart A establishes criteria and standards for imposing technology-based treatment requirements under section 301(b) of the Act. Subpart D (proposed Subpart E) establishes criteria and standards for determining fundamentally different factors under sections 301(b)(1)(A), 301(b)(2)(A), 301(b)(2)(E) and 307(b) of the Act.

One Subpart contained in this Part was proposed for the first time on September 1, 1978. Subpart K (proposed reserved Subpart L) establishes criteria and standards for imposing best management practices for ancillary industrial activities under section 304(e) of the Act.

C. *How Does This Part Relate to the August 21, 1978 Proposed Regulations?* The following is a discussion of the significant comments received and the basis for revisions made to Part 125 of the proposed regulations. Minor editorial changes have been made in all sections.

Proposed Reserved Subparts

Proposed reserved Subpart B—EPA Objection to State-Issued Permits Under Section 402(d)(2) of the Act. This Subpart was reserved for the provisions of former 40 CFR § 124.42. EPA has decided to move these requirements to § 123.23 so that all requirements relating to State permit programs will appear in that Part.

Proposed Reserved Subpart L—Criteria and Standards for Best Management Practices Under Section 304(e) of the Act.

This Subpart was reserved in the August 21, 1978 proposal. On September 1, 1978, EPA proposed regulations establishing criteria and standards for best management practices under section 304(e) of the Act. These regulations are now incorporated in part in the final regulations as Subpart K. A more detailed discussion of this Subpart is found in the preamble discussion of Subpart K.

Other Proposed Reserved Subparts.

Other proposed reserved Subparts remain reserved pending development of criteria and standards. These Subparts are relettered as follows:

Subpart C (proposed Subpart D)—Criteria for Extending Compliance Dates for Facilities Installing Innovative Technology

Under Section 301(k) of the Act.

Subpart E (proposed Subpart F)—Criteria for Granting Economic Variances from BAT Under Section 301(c) of the Act.

Subpart F (proposed Subpart G)—Criteria for Granting Water Quality Related Variances Under Section 301(g) of the Act.

Subpart G (proposed Subpart H)—Criteria for Modifying the Secondary Treatment Requirements Under Section 301(h) of the Act (criteria proposed as 40 CFR 233, Subpart B on April 25, 1978).

Subpart I (proposed Subpart J)—Criteria Applicable to Cooling Water Intake Structures Under Section 316(b) of the Act.

Subpart L (proposed Subpart M)—Criteria and Standards for Imposing Conditions for the Disposal of Sewage Sludge Under Section 405 of the Act.

Subpart A—Technology-Based Treatment Requirements

This Subpart establishes the criteria and standards for imposing technology-based treatment requirements of the Clean Water Act into permits under section 301(b). It clarifies and sets forth in regulatory form the long-standing EPA policy that these technology-based treatment requirements represent the minimum levels of controls under section 402, and that they cannot be satisfied through the use of "non-treatment" techniques such as flow augmentation and in-stream mechanical aerators (although such techniques may be used to achieve water quality standards in certain limited circumstances).

Technology-based requirements may be imposed in permits through the application of an EPA promulgated effluent guideline or on a case-by-case basis under section 402(a)(1) of the Act. Case-by-case determinations must consider: the factors listed in section 304(b) of the Act for development of EPA effluent guidelines; EPA draft or proposed development documents or other guidance; and other appropriate factors.

Commenters had little difficulty with the requirement that EPA promulgated effluent guidelines limitations must be applied in permits but several argued that EPA cannot require technology-based effluent limitations to be included in State-issued permits until EPA has promulgated effluent guidelines, citing *Ford Motor Co.* v. *EPA*, 567 F.2d 661 (6th Cir. 1977) and *Washington* v. *EPA*, 573 F.2d 583 (9th Cir. 1978). EPA disagrees and believes that these commenters misread those cases. EPA believes that issuance of these regulations satisfies the criteria expressed by the court in *Ford Motor Co.* v. *EPA*, (which indicated that EPA may "veto" State-issued permits only on the basis of validly promulgated EPA regulations or clear statutory requirements). For example, § 125.3 contains a clear and explicit requirement that even if effluent limitations guidelines have not been promulgated for a class or category of point sources, State and Federal permit issuers are obligated to establish technology-based permit requirements. See *United States Steel Corp.* v. *Train*, 556 F.2d 822 (7th Cir. 1977). As to the decision of the Ninth Circuit in *Washington* v. *EPA*, the court there held that the requirements of sections 301 and 304 of the Act are not self-executing, and that there were no regulations which would support a veto by EPA. The Agency believes that these regulations provide the support the court found lacking in *Washington* v. *EPA*, and that States can properly be required to set case-by-case technology-based effluent limitations even where EPA has not been able to promulgate effluent limitations guidelines. This requirement is also supported by the decision of the Sixth Circuit in *Republic Steel Corp.* v. *Costle*, 581 F.2d 1228 (1978).

Subpart B—Aquaculture

Subpart B (proposed Subpart C) sets out the criteria and standards for approving aquaculture research projects. The final version is essentially unchanged from the proposal except for § 125.11(a)(4). Two commenters pointed out that the proposal requiring the crop be fit for human consumption was too strict, in that it precluded crops which may be consumed by animals or plants. Therefore, this requirement was changed to require only that the crop not have a significant potential for human health hazards resulting from its consumption. As stated earlier, this Subpart incorporates the criteria found in former 40 CFR Part 115, and since the other requirements of 40 CFR Part 115 have been incorporated into the NPDES regulations revision, 40 CFR Part 115 is deleted.

Subpart D—Fundamentally Different Factors Variances

Subpart D (proposed Subpart E) establishes the criteria for determining whether a particular industrial discharger should be subject to more or less stringent effluent limits than those required by national effluent limitations guidelines or pretreatment standards promulgated under sections 301(b)(1)(A), 301(b)(2)(A) and (E), and 307(b) of the Act ("national limits"), because of site-specific "fundamentally different factors". When EPA establishes national limits under these sections of the Act, EPA considers a great deal of information regarding the appropriate statutory factors from various dischargers in an industrial category. In some cases, however, data on a particular discharger may not be available or may not be considered. It may therefore be necessary, on a case-by-case basis, to vary the nationally prescribed limits for a particular discharger if the relevant statutory factors relating to that discharger are shown to be fundamentally different from those previously considered by EPA.

No discharger, however, may be excused from the Act's requirement to meet BPT, BCT, BAT or a pretreatment standard through this variance clause. A discharger may instead receive an individualized definition of such a limitation or standard where the nationally prescribed limit is shown to be more or less stringent than appropriate for the discharger under the Act.

Subpart D is substantially similar to proposed Subpart E. However, the provisions have been reorganized and edited for greater clarity and have been revised in certain respects in response to public comments.

In response to some comments, EPA has deleted proposed § 125.26(a)(3). This paragraph would have prohibited a variance for a discharger if, as a result of the variance, other dischargers (or nonpoint sources) would be subject to additional controls through water-quality wasteload allocations. EPA agrees that potential changes to wasteload allocations are irrelevant when considering the appropriate technology-based limitation for a particular discharger under the Act.

EPA has also modified proposed § 125.26(b)(3) (now § 125.31(d)(3)) by deleting the requirement that a treatment technology must cause a violation of State or Federal law to be considered an adverse non-water quality impact. EPA recognizes that a discharger's non-water quality impact, while not in violation of the law, could be fundamentally worse than the impact of the dischargers EPA studied when promulgating a national limit.

EPA has been prompted by other comments to add a new provision (§ 125.31(e)(4)) which makes clear that specific receiving water quality is not a relevant factor in the fundamentally different factors variance context. To allow relaxation from technology-based limits because of case-by-case variations in receiving water quality would be grossly violative of the Act

and contrary to its fundamental principles. *Weyerhaeuser Company* v. *Costle*, 11 ERC 2149, 2170–73 (D.C. Cir. 1978); *Appalachian Power Company* v. *Train*, 545 F.2d 1351, 1360, 1378 (4th Cir. 1976); *In Re Louisiana-Pacific Corp.*, 10 ERC 1841 (Administrator's Decision 1977). Similarly, new § 125.31(f) makes clear that nothing in the variance provisions impairs rights of States and localities under section 510 of the Act. Thus, a State or local government need not grant a variance even if a discharger satisfies all of the requirements of Subpart D.

It should be stressed that only "fundamental" differences may qualify a discharger for a variance. The above-cited authorities and the Act's legislative history show that Congress intended for plants in a given industrial category to meet technology-based limitations which are as uniform as possible. EPA's national limits are therefore "presumptively applicable," *Appalachian, supra* at 1358, and the variance clause must assure that the "pin-hole safety valve envisioned in the Act and *duPont* does not become a yawning loophole." *Weyerhaeuser, supra* at 2169. Accordingly, a discharger should not expect to obtain a variance by merely showing certain differences between itself and the plants EPA studied since no two plants in the country are exactly alike. The discharger must instead show such a substantial difference with respect to one or more of the relevant statutory factors that either (i) the costs of complying would be wholly out of proportion to the costs EPA considered on a national basis or (ii) the non-water quality environmental impact (including energy requirements) would be fundamentally more adverse than the impacts EPA considered on a national basis.

Paragraph 125.31(e)(2) provides that a variance may not be granted on the basis that a technology which EPA relied upon in establishing a national limit will not achieve the limit at a particular discharger's plant. Rather, a variance must be based on a showing that the discharger's plant is fundamentally different from the plants EPA studied. If a discharger does not believe that EPA's national limit is supported by a technology which EPA identified in its rulemaking record, the discharger's legal recourse is to seek judicial review of the national limit under section 509(b)(1)(E) of the Act within 90 days after promulgation. Alternatively, if the discharger's arguments are based solely on grounds which arose after this 90-day period, the discharger's remedy is to petition EPA for an amendment to its national rules. (See Administrator's final decision in the matter of Martin Marietta Aluminum, Inc.'s request for variance approval, October 1977, at pp. 15–16.)

Finally, as in the proposal, this Subpart does not apply to national limits promulgated in 40 CFR Part 423 (steam electric generating point source category). Pursuant to an order of the U.S. Court of Appeals for the Fourth Circuit, EPA has already published a new BPT variance clause for that industry; 43 FR 44846, September 29, 1978. EPA plans to propose an appropriate BAT variance clause for this category at the same time it proposes new BAT limitations for steam electric plants in compliance with the 1977 Clean Water Act Amendments.

Subpart H—Criteria for Determination of Alternative Thermal Effluent Limitations Section 316(a).

Subpart H (proposed Subpart I) is unchanged except for the addition of language regarding demonstrations of prior applicable harm discussed below. This language is now found in new § 125.72, *Early screening of applications for section 316(a) variances*, (proposed § 124.13); this section was moved into Part 125 because EPA believes it is more in the nature of a substantive, rather than a procedural requirement.

Commenters questioned why EPA did not discuss the use of "absence of prior appreciable harm" demonstrations for obtaining thermal variances under section 316. EPA considers the "absence of prior appreciable harm" demonstrations to be very important part of the section 316(a) process, and when warranted, encourages their use. EPA excluded reference to this type of demonstration because detailed guidance on how and when to conduct them will not be included in these regulations. However, for clarification, a reference to "absence of prior appreciable harm" has been added to this section.

The regulations have also been revised to provide that the specific forms of studies prescribed apply only to the initial grant of a section 316(a) variance. In many cases, neither the nature of the thermal discharge nor the aquatic population will have changed since a variance was initially granted. It would therefore be an unnecessary and costly burden on the Agency and dischargers alike to require a full section 316(a) demonstration for each renewal. Section 125.72 accordingly gives the Director the flexibility to require substantially less information in the case of renewal requests. This does not mean, however, that the Director may not require a full demonstration for a renewal in cases where he has reason to believe that circumstances have changed, that the initial variance may have been improperly granted, or that some adjustment in the terms of the initial variance may be warranted. Persons holding such a variance should, of course, be prepared to justify its continuation with studies based on actual operating experience, and a comment has been added to that effect.

One commenter suggested that the definitions of "representative important species" and "balanced indigenous community" should include only native species unless otherwise designated by the Director. Another commenter suggested the inclusion of all species. EPA has not changed this language.

Several commenters argued that applicants should not be required to analyze cumulative effects of thermal discharges together with other sources of impact upon the affected species as required by proposed § 125.47(a) (now § 125.72(a)). This issue was addressed in the Administrator's first *Seabrook* decision which concluded that analysis of cumulative effects is required.

Several commenters pointed out that the criteria in proposed § 125.47 (now § 125.72) are vague. The criteria have intentionally been written in a general manner because, as one commenter noted, factors in section 316(a) demonstrations are site-specific. Indeed, Agency experience in reviewing section 316(a) requests under the more detailed criteria of the former part 122 ("Thermal Discharges") has shown the inappropriateness of such criteria and has led to the more general criteria of present Part 125, Subpart H.

Subpart J—Criteria for Extending Compliance Dates Under Section 301(i) of the Act.

Proposed Subpart K (now Subpart J) was reserved for the criteria for extending compliance dates under section 301(i) of the Act. On May 16, 1978, EPA published interim final regulations implementing section 301(i) of the Act (43 FR 21206). Section 301(i) authorizes the Administrator, or where appropriate, the State Director, to grant timely requests for permits extending the July 1, 1977 statutory treatment requirements to no later than July 1, 1983. These extensions are potentially available only to POTWs that require construction to meet 1977 treatment levels and to certain dischargers which planned, in good faith, to discharge into a presently unavailable POTW ("tie-

ins"). The purpose of the interim final regulation was to establish the criteria for granting section 301(i) extensions and the method for incorporating these extensions into permits issued under section 402 of the Act. A 60-day comment period was provided, and the Agency received 11 written comments.

The EPA response to significant comments, including the development of an *Interim National Municipal Policy and Strategy* (Notice of Availability published 43 FR 47774, October 17, 1978) is described below.

The Enforcement Compliance Schedule Letter (ECSL) Policy

In the preamble to the interim final regulation, EPA announced that no more municipal ECSLs or comparable State procedural mechanisms would be issued "[s]ince section 301(i) and the ECSL are different solutions to the same noncompliance problem" (43 FR 21287). The preamble further stated that ECSL holders should elect a remedy; they could either request a section 301(i) extension and thus ultimately give up the ECSL or not request a section 301(i) and thus retain the ECSL. EPA strongly encouraged all potentially eligible POTWs, whether or not they held an ECSL, to request section 301(i)(1) extensions. In response to this effort, over 9,500 POTWs have requested section 301(i)(1) extensions while slightly more than 600 POTWs elected to retain their ECSLs. Thus, almost every POTW in the Nation which needs construction to meet the 1977 treatment deadline has either taken advantage of section 301(i)(1) or chosen to retain its ECSL. One commenter expressed the belief that all ECSLs should remain in effect and that the prior granting of an ECSL indicated a finding of good faith and therefore should be dispositive of a section 301(i) request. EPA does not intend to change its policy on the effect of an extension request on an ECSL because to do so after the deadline for 301(i)(1) requests (June 28, 1978) would unfairly penalize the 600 ECSL holding POTWs which may have relied on this EPA policy in deciding not to request an extension. EPA also continues to believe that the prior granting of an ECSL is not dispositive of a 301(i) request and that Congress intended for each request to be considered independently in light of the statutory criteria and actions by the ECSL-holder subsequent to the issuance of the ECSL.

EPA is aware of possible situations under section 301(i)(2) where an extension request must be denied for reasons completely outside the control of the discharger (e.g. the POTW did not request or receive a section 301(i)(1) extension as required by the Act). In such a situation, the use of a section 308(a)(8) order to "tie-in" (or comparable State procedural mechanism) may be appropriate.

Eligibility for a Section 301(i)(1) Extension

Under interim final § 124.103, a POTW would be eligible for a section 301(i)(1) extension if, among other requirements, it required construction to achieve statutory treatment limitations. The term "construction" was defined in interim final § 124.102(a). One commenter suggested that the definition of "construction" should be the same as the definition in section 212 of the Act. EPA agrees with this comment, particularly since the granting of a section 301(i)(1) request and the awarding of Federal financial assistance are closely related. The definition of "construction" has been changed accordingly.

Under interim final § 124.103(a), a POTW that needed construction to achieve the statutory treatment limitations and that had begun "actual construction . . . before July 1, 1977, but construction could not physically be completed by July 1, 1977, despite all expeditious effort of the POTW" was eligible for a section 301(i)(1) extension. "Actual construction" was intended to mean that the POTW must have begun a continuous program of physical construction of the facility before July 1, 1977, as opposed to actions which have been abandoned or are so insignificant that they did not lead to completion of the facility. However, when the EPA Regional offices and NPDES States began to process section 301(i)(1) requests it became apparent that there was some confusion as to what "actual" construction meant since only the term "construction" was defined. Therefore, EPA has clarified this concept by replacing the term "actual construction" with the definition of the term "initiation of construction" to allow a precise definition which is consistent with the construction grants definition found at 40 CFR § 35.905. Thus, under § 125.93 a POTW would be eligible for a section 301(i)(1) extension if it: (1) needs construction to achieve the statutory treatment limitations; (2) before July 1, 1977, issued a notice to proceed under a construction contract for any segment of Step 3 project work (or executed a construction contract if notice to proceed was not necessary) and (3) made all expeditious efforts to complete construction.

Under interim final § 124.103(b) (now § 125.93(b)), a POTW that needed construction to achieve the statutory treatment limitations and did not complete construction because "[F]ederal financial assistance was not available, or was not available in time for construction required to achieve these limitations, and the POTW did not in any significant way contribute to this unavailability or delay", was eligible for a section 301(i)(1) extension. This criterion has not been changed. EPA recognizes that many POTWs, especially minor POTWs, meet this requirement but will not receive Federal funding in time (or at all) to complete construction by July 1, 1983. Since, by the terms of the Act, these POTWs cannot be granted a section 301(i)(1) extension, EPA has developed an *Interim National Municipal Policy and Strategy* which indicates that such POTWs should receive 309(a)(5)(A) Administrative Orders (or comparable State procedural mechanisms) which are also based on the Construction Grant process. These orders, like 301(i)(1) extensions, should not be written to extend the July 1, 1983 deadline.

Section 301(i)(1) Compliance Schedules

Many commenters expressed confusion as to when fixed date compliance schedules, as opposed to floating or ratchet compliance schedules, should be used. This confusion was as a result of the use of the phrases "when the availability of Federal funding is certain" and "when the availability of Federal funding is uncertain" to indicate what type of schedule should be used. EPA discourages the use of ratchet schedules or floating schedules because they decrease the ability of the public to participate in the permit process. Furthermore, by definition, if the availability of Federal funding is so uncertain that compliance with the July 1, 1983 deadline cannot reasonably be assured, then the POTW is not eligible for a section 301(i) extension. Thus the regulations now require fixed date compliance schedules in all instances. In the *Interim National Municipal Policy and Strategy*, EPA established the priority in which section 301(i)(1) extension requests should be considered. Generally, projects in the earliest stage of the Construction Grant process (i.e., Step 1) are to be processed last. One of the reasons for giving Step 1 projects lowest priority was that EPA recognized that uncertainties in the Step 1 planning process, such as the need to prepare an Environmental Impact Statement or to make changes after a

public hearing, make it difficult to project the amount of time it will take to complete the Step 1 planning process. However, if *after* acting on requests from POTWs in Steps 2 and 3, extensions are granted for POTWs in Step 1, fixed dates for the submission of a facility plan should be used, recognizing that up to a four month slippage without permit modification is allowable. Permits issued during or prior to Step 1 planning generally should be written to expire on the date set for submission of a facility plan. The reissued permit will then contain a fixed date compliance schedule derived from the facility plan. However, if the permitting authority is able to accurately establish dates certain beyond the Step 1 process, such dates may be included in the permit.

When developing fixed date compliance schedules based on the construction grant process, the permit issuing authority should assume that appropriation will be provided in accordance with the EPA Annual Operating Guidance. Use of this approach in developing permit compliance dates will be considered sufficient to meet the requirement that the permit assure that the July 1, 1983 deadline will be met. It should also be noted that while the regulations contemplate certification that funding will be available in time to complete construction by July 1, 1983 to be by whatever method the EPA Regional Office and the State agree on, the mere granting of a section 301(i)(1) extension by an NPDES State does not constitute certification.

Subpart K—Criteria and Standards for Imposing Best Management Practice Under Section 304(e) of the Act.

Proposed Subpart L (now Subpart K) was reserved for the criteria and standards for imposing best management practices under section 304(e) of the Act. On September 1, 1978, EPA published proposed regulations establishing these criteria and standards (43 FR 39262). Section 304(e) of the Act authorizes the Administrator to publish regulations to control plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage which may contribute significant amounts of toxic and hazardous pollutants to navigable waters. The purpose of Subpart K is to prevent discharges of toxic and hazardous substances from facilities which are subject to the NPDES. In *NRDC* v. *Costle* (Runoff Point Sources) the court recognized EPA's authority under section 402(a)(1) of the Act to include BMPs in permits where numeric effluent limitations are infeasible or where reasonably necessary to achieve effluent limitations and standards (see § 122.15(g) (2) and (3) and preamble discussion to § 122.15(g)). Subpart K, however, addresses EPA's authority to require BMPs under section 304(e) of the Act.

On September 1, 1978, EPA also proposed Spill Prevention Control and Countermeasure (SPCC) regulations under the authority of section 311(j)(1)(C) of the Act. Section 311(j)(1)(C) authorizes the issuance of regulations establishing procedures, methods and equipment to prevent discharges of oil and hazardous substances from vessels and from on-shore and off-shore facilities and to contain such discharges. The purpose of proposed 40 CFR Part 151 was to prevent discharges of hazardous substances from facilities subject to section 402 permitting requirements.

The approach used in both proposed regulations was similar to the one developed and used in EPA's oil pollution prevention regulation, 40 CFR Part 112. This was the concept of a plan developed by the owner or operator of a facility or by his/her engineer, in accordance with guidelines contained in the respective regulations. The proposal required that the plans be certified by a registered professional engineer and subsequently implemented by the owner or operator.

The requirements of the two proposed regulations (40 CFR Parts 125 and 151) were coordinated and the proposals stated that compliance by a facility with the provisions of the SPCC plan requirements set out in 40 CFR Part 151 would be established as a minimum level of control for the BMP plan required by 40 CFR Part 125. The purpose of publishing the two regulations concurrently was to allow the owner or operator of a permitted facility to develop BMP and SPCC plans concurrently and thereby avoid duplication of environmental controls. The proposal stated that SPCC plans could be incorporated into BMP Plans by reference.

A thirty-day comment period was provided which was extended twenty days (43 FR 47213, October 31, 1978). The Agency received 75 comments and EPA's response to the significant comments is described below.

Several comments were received suggesting that BMP Plans and SPCC Plans are duplicative and should be developed together. Other comments requested a clarification of the relationship between the two. Finally, some comments argued that since BMPs and SPCC Plans are authorized by different sections of the Act, they are therefore designed for different purposes and should not be linked. In response to the first comment, EPA wishes to point out that BMP Programs and SPCC Plans are being developed together. This first step in this development is Subpart K, i.e., BMPs which involve minor new construction or modifications to existing facilities. The second step will be SPCC Plans (and perhaps another BMP regulation) which will emphasize secondary containment to control spills and may require major construction for drainage control, sewering and diking.

EPA believes that a requirement for BMP programs is a necessary step at this time, for a number of reasons. Many industrial permits were issued during 1974 and 1975 and will be due for renewal before the SPCC requirements under section 311 become effective. Since the timing for preparation of SPCC plans by NPDES-permitted facilities will be tied to permit reissuance, many facilities would be subject to no spill prevention controls at all until 1984 or 1985. The development of a BMP program by such facilities will focus attention on the potential for spills and other unplanned discharges and help to prevent such occurrences until the time SPCC requirements become effective. BMP programs will be compatible with later requirements for SPCC plans, and steps taken in implementing a BMP program will satisfy some of the SPCC requirements. Additionally, EPA believes that prevention of unplanned releases of toxic materials requires actions by facilities not yet subject to SPCC requirements, and that the BMP program is an effective and relatively inexpensive way to achieve such prevention.

EPA also agrees with some commenters that, while both BMPs and SPCC Plans have many common features, their emphasis is different. Facilities subject to the NPDES Program normally have continuous discharges of wastewater and the capability to treat that wastewater. SPCC Plans, on the other hand, focus on classic spill events and may require containment. Thus, there is some overlap between BMPs and SPCC Plans (BMPs are normally a subpart of SPCC Plans) and therefore a need exists for a regulatory link. It should be noted that BMPs are broader than SPCC Plans in one sense because BMPs control both section 307 and 311 pollutants whereas SPCC Plans control only section 311 pollutants.

Many commenters argued that the economic impact of the proposed

regulations would be excessive and that the benefits to the environment would not justify the expense of employing the BMPs contemplated by the regulation. Although EPA explicitly requested information in the preamble to the proposed regulation (43 FR 39282) concerning the costs of BMPs and preparation of BMP plans for particular industries, few commenters directly addressed costs. It appears that the major categories of expense in the proposal were for SPCC related requirements. Because of this economic impact, EPA has revised today's regulations to make inclusion of SPCC plans in BMP programs discretionary rather than mandatory as was proposed. [See § 125.104(b)(4)(i).] Thus, Subpart K emphasizes BMPs of a procedural nature (especially preventive maintenance and housekeeping) and BMPs requiring only minor construction.

Based on a recent EPA survey of representative plants in the chemical industry, it appears that many of these type of BMPs are currently in use by facilities. Good housekeeping or preventive maintenance procedures, material recovery programs, safety procedures, training programs, etc. are common and thus the costs of complying with Subpart K will not be great. Facilities are encouraged, nevertheless, to begin planning for BMP-related major construction (drainage control, waste stream segregation, and secondary containment) to coincide with construction related to the installation of best available technology (BAT) and of the implementation of (SPCC) plans. BMP regulations requiring major construction may be published in the future.

Under authority of section 402(a)(1) of the Act, permitting authorities may impose BMPs on a case-by-case basis using best engineering judgment. These case-specific BMPs may be more costly than those contemplated by Subpart K which requires only procedural BMPs or minor construction. Guidance to permitting authorities will emphasize procedural BMPs and will encourage equivalency for potentially costly BMPs, such as secondary containment. Where permitting authorities have knowledge of a specific facility or receive information through the permit application indicating the opportunity for discharges of toxic or hazardous pollutants which could be prevented by a BMP, the permitting authority may impose a BMP based on best engineering judgment. Such BMPs, which may involve construction, are expected to be limited to facilities with spill histories or other indications of an inadequate program to control discharges from ancillary industrial activities.

Several commenters argued that dictating manufacturing process changes or operational procedures and activities went beyond the intent of Congress. EPA does not intend to use BMPs to dictate how plants are operated or to otherwise infringe on plant management's prerogatives. However, section 304(e) does give EPA the authority to prescribe certain "in-plant" procedures or practices which would be useful to prevent the discharge of toxic or hazardous pollutants where traditional effluent limitations guidelines are impractical or ineffective.

To further explain EPA's intent, changes have been made to proposed § 125.62 and § 125.64(b)(4)(iii), now § 125.102 and § 125.104(iii), to clearly distinguish between ancillary manufacturing operations (sources of pollutants) and BMPs (methods to prevent or minimize pollution). For example, preventive maintenance and housekeeping are BMPs, not ancillary operations. Material storage and loading/unloading operations are ancillary manufacturing operations, not BMPs.

To allow due process and public notice of BMP programs, permittees are now required to submit a description of their program with their NPDES permit application. (§ 125.104(c)). Some commenters thought one year for the implementation of BMP plans, proposed § 125.64(c), was too short. EPA feels that the one year after permit issuance is realistic and reasonable, particularly for the BMPs of a procedural nature or minor construction required by this Subpart. However, a discharger could be given more than one year under special circumstances such as coordinating a BMP plan with an SPCC plan required under 40 CFR Part 151.

Many commenters suggested that the term "significant amount" should be defined or that a minimum amount of a particular chemical should be specified to require the preparation of a BMP plan. EPA has not defined this term but wishes to clarify its meaning. In the case of section 311 pollutants EPA has proposed reportable quantities of hazardous substances (44 FR 10271, Feb 16, 1979) and considers these quantities potentially significant for the purpose of this Subpart. For section 307 pollutants, the fact that a chemical is on the section 307 toxic pollutant list indicates potentially toxic effects of its discharge. As guidance to facilities developing BMP programs, two examples are given to demonstrate the definition of "significant amount" in terms of the BMPs applicable to a particular chemical:

1. A facility uses laboratory quantities of toxic chemical X in an analytical chemistry laboratory adjacent to its manufacturing facility. Chemical X is used for no other purpose at the facility. No more than five pounds of the chemical are on hand at any given time. An appropriate BMP could be to label all containers of chemical X with instructions such as "Do not dispose of this material in laboratory sinks. Refer to Laboratory Procedures Manual for Disposal Instructions." The Laboratory Procedures Manual might further provide that chemical X and other compatible chemicals be disposed of in an appropriately labelled 55 gallon drum to be periodically picked up and treated by a responsible hazardous waste contractor in accordance with RCRA regulations.

2. A facility uses thousands of gallons daily of a hazardous chemical Y (a section 311 Category "A" pollutant) as a raw material in a batch chemical manufacturing process and is located next to a small stream. Chemical Y is stored outside in a single 10,000 gallon tank and is periodically pumped to the reactor vessel. An appropriate BMP would be to provide secondary containment around the storage tank in the form of a dike to contain the maximum volume of chemical Y stored in the tank plus a reasonable allowance for rainfall. In the alternate, a facility might choose to use a combination of measures instead of secondary containment to attempt to achieve equivalency to secondary containment. For example, a liquid level alarm, frequent non-destructive testing and daily visual inspections might be employed rather than constructing a dike around the storage tank. However, this latter approach may not satisfy proposed SPCC requirements which require the former approach, i.e., secondary containment wherever reasonable probability of a discharge to navigable waters exists. Thus, provision of secondary containment would satisfy both BMP and proposed SPCC requirements simultaneously.

Numerous commenters stated that the proposed regulations went beyond the intent of Congress because the development of BMPs is discretionary and can only be on the basis of point source categories supplemental to effluent guidelines. EPA disagrees and believes that BMP programs and case-by-case determination of BMPs are appropriate based on the legislative history to section 304(e) (see *CWA Legis. Hist.* at 453 which specifically discusses case-by-case determinations of BMPs). BMPs supplemental to effluent limitations guidelines have not yet been promulgated by EPA. However, the potential for confusion and duplication of effort by the permittee between BMPs and SPCC plans has led us to delete the requirement for a BMP plan in favor of a BMP program. The BMP program approach provides a self-regulatory,

flexible mechanism to control toxic and hazardous pollutant discharges from ancillary sources and will allow permittees to develop BMPs tailored to their particular circumstances with attendant cost savings.

Many comments were received concerning the relationship of BMPs to the requirements of the Resource Conservation and Recovery Act (RCRA), arguing that RCRA requirements should not be imposed by the Clean Water Act. EPA disagrees and wishes to point out that section 304(e) specifically includes the phrase "sludge or waste disposal" as one of four general activities subject to BMPs. Thus § 125.104(b)(4)(ii) has not been changed and continues to require management practices developed by companies to comply with RCRA to simultaneously satisfy the BMP requirements of the Clean Water Act by expressly incorporating the practices into the BMP program.

Many commenters felt that the requirement for a professional engineer (PE) to certify the BMP plan was unnecessary and should be eliminated or made optional. Since Subpart K no longer requires BMP plans, PE certification is no longer required. However, EPA continues to believe that PE certification would assure a *minimum* level of quality in both BMPs and SPCC plans. Since today's regulations are the first step in a two step process, and the second step (SPCC regulations 40 CFR Part 151) may require PE certification of SPCC plans, EPA encourages facilities to develop their programs in accordance with sound engineering practices. These facilities would then have BMP-related procedures and construction which could satisfy, in part, future SPCC requirements.

Economic Impact of Subpart K

Since Subpart K now requires only BMPs of a procedural nature or those requiring minor construction, the costs of compliance with these regulations should be minimal. Permittees are encouraged to use innovative, inexpensive techniques to achieve the basic goal of preventing the discharge of toxic or hazardous pollutants from ancillary industrial activities to surface waters. Because BMP requirements will vary among facilities, guidance will be provided to the permit writers on what requirements are sufficient. This guidance will reflect the conclusion of a BMP cost analysis which is being undertaken by the Agency. The guidance will consider reasonableness of cost. Most facilities have many of these generic BMPs in place and Subpart K only requires documentation of the existing practices or, in some cases, upgrading and documentation of the BMP program. Although BMPs requiring major construction (e.g., grading, paving, sewering, waste stream segregation, covering, and secondary containment) may be included in the BMP program description, the implementation of these BMPs is not mandated by these regulations. Therefore, EPA has determined that Subpart K does not constitute a major regulation requiring the preparation of an economic impact statement under Excecutive Order 12044.

Because there is much flexibility in how the individual facility complies with BMP procedural requirements, there is also flexibility in compliance costs. The cost of developing and implementing BMP procedures is estimated to be within the range of $10,000 to $30,000 per facility for the costs of a materials inventory, some engineering modifications, training, maintenance, housekeeping, and some minor construction for items such as the installation of liquid level alarms. To develop these costs the assumption was made that 50% of the BMP procedural requirements would already be in place in order to meet normal safety, fire, and other occupational or operational standards. Clearly, a facility with minor problems will require a less elaborate program.

Because the requirements may be less flexible under the SPCC program for which these BMP requirements are the first stage and we have so little cost data now on the BMP procedures because of their flexibility, further cost estimates for BMPs will be acquired when we prepare a detailed analysis of the SPCC cost requirements. These estimates will be necessary for the Agency to adequately assess the cost and usefulness of specific aspects of the SPCC program.

Based on existing predictions of NPDES permit issuance, industrial facilities will be required to develop and implement BMP programs on the following schedule:

Number of Permits

FY 1979	2,600
FY 1980	3,000
FY 1981	1,700
FY 1982	1,000

Using an average cost of $20,000 per facility, the total costs of BMPs, thru FY 1982 are expected to be no greater than the following:

FY 1979	$52,000,000
FY 1980	$60,000,000
FY 1981	$34,000,000
FY 1982	$20,000,000

This does not include the cost of BMPs established under authority of section 402(a)(1) using best engineering judgment.

The Agency may propose a new form of BMP guidelines in the future which will describe BMPs which are broadly applicable to industrial facilities and relatively independent of the chemical under consideration. In addition, these BMP guidelines would address more specific or advanced BMPs for certain chemicals or ancillary industrial activities and would include an economic impact analysis. Major construction would probably be required to comply with these *future* BMPs and likely will be required to comply with the SPCC regulations.

VI. The Relationship of the NPDES Program to the Regulation of Hazardous Substances Under Section 311 of the Act

On November 2, 1978, Congress amended section 311 of the Act (Pub. L. 95-576). Because this Congressional action was taken after the August 21, 1978 proposal, EPA feels a brief discussion of the relationship of the NPDES program to section 311 is warranted.

Section 311 of the Act regulates discharges of oil and hazardous substances and contains reporting requirements, penalties and other requirements. Until the 1978 amendments, the relationship between the requirements of section 311 and those of section 402 has been unclear. In particular, it was unclear whether, and to what extent, discharges from facilities with NPDES permits were subject to the provisions of section 311.

On November 2, 1978, Congress amended section 311 and set forth three types of discharges of hazardous substances which will be subject to sections 402 and 309 of the Clean Water Act and excluded from section 311 liability. The three cases excluded are (1) discharges in compliance with a permit under section 402 of the Act, (2) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of the Act, and subject to a condition in such permit, and (3) continous or anticipated intermittent discharges from a point source, identified in a permit or a permit application under section 402 of the Act, which are caused by events occurring within the scope of relevant operating or treatment systems. These excluded discharges are exempted from the

reporting requirements, civil penalties and clean-up cost liabilities under section 311 and are instead subject to sections 402 and 309 of the Act.

On February 16, 1979, EPA proposed regulations addressing the 1978 amendments to section 311 (44 FR 10271, 40 CFR § 117.12). The proposed regulations include detailed criteria for exclusions from section 311. The preamble to that proposal contained an extensive discussion of the criteria for section 311 exemptions. Interested persons are advised to review that proposal. When the section 311 regulations are published in final form, they will be incorporated into NPDES regulations as appropriate.

The Agency is presently developing revised application requirements which will be announced in the near future in the form of proposed regulations and a draft revised NPDES permit application form (reserved § 122.14(a)). The new requirements will afford applicants the opportunity to identify discharges and spills of hazardous substances. Where adequate treatment equipment or management practices are available to control such events, permits will contain appropriate requirements reflecting such control. Coverage of these discharges or spills by permits will result in exemption from the requirements of section 311.

VII. Conforming Amendments to the General Pretreatment Regulations 40 CFR Part 403.

This rulemaking contains a series of technical amendments to the General Pretreatment Regulations for New and Existing Sources of Pollution (40 CFR Part 403, 43 FR 27736–27762, June 26, 1978). These amendments will conform the pretreatment regulations to both the final NPDES regulations and the Public Participation Regulations (40 CFR Part 25, 44 FR 10286–10297 February 16, 1979). Since the provisions in the pretreatment regulations were based on the proposed or draft versions of both the regulations, changes are necessary. The majority of these changes are in the nature of cross-reference corrections in 40 CFR Part 403.

The most significant revision is that the process for EPA review and approval of State pretreatment programs is now governed by 40 CFR § 123.61 rather than 40 CFR § 403.11. This was done to assure that EPA has a uniform process for approving revisions to State NPDES programs. The time deadlines for applying for State pretreatment program approval and the contents of the application will continue to be governed by § 403.10. It is anticipated that further amendments to the pretreatment regulations will be made in the near future.

Note.—The Environmental Protection Agency has determined that this document does not constitute a major regulation requiring preparation of an economic impact statement under Executive Order 12044. In accordance with Executive Order 12044, EPA is committed to evaluating significant new regulations within five years of implementation. The evaluation plan for this regulation was not included in the August 21, 1978 proposal since the Agency policy was established several months subsequent to publication of the proposed regulation. Since an evaluation plan was not included in the proposed regulations, an evaluation plan is not included in this final rule. However, these NPDES regulations will be incorporated into the EPA consolidated permit regulations schedule to be proposed sometime in June 1979. A proposed evaluation plan for these NPDES regulations will be incorporated into the overall evaluation plan for the consolidated permit regulations. EPA anticipates the evaluation plan will include assessments of: reporting requirements; elimination of duplicative requirements for permit applicants and NPDES States; new permit procedures designed to reduce unnecessary delay and the effectiveness of the reorganization of the regulations for greater clarity.

Authority.—These regulations are issued under authority of the Clean Water Act, as amended by the Clean Water Act of 1977, 33 U.S.C. § 1251 *et seq.*

Date: May 22, 1979

Douglas M. Costle,

Administrator.

PART 6—PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS

1. 40 CFR Part 6, Subpart I, is amended by deleting §§ 6.906, 6.909 6.916 (b) and (c) and 6.916.

PART 115—REQUIREMENTS FOR APPROVAL OF AQUACULTURE PROJECTS [DELETED]

2. 40 CFR Part 115 is deleted.

PART 121—STATE CERTIFICATION OF ACTIVITIES REQUIRING A FEDERAL LICENSE OR PERMIT

3. 40 CFR Part 121 is redesignated from 40 CFR Part 123.

4. Part 122 is revised to read as follows:

PART 122—NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Subpart A—General

Sec.

122.1 Purpose and scope.
122.2 Law authorizing NPDES permits.
122.3 Definitions.
122.4 Exclusions.
122.5 Signatories.

Subpart B—NPDES Permit Application and Issuance

122.10 Application for a permit.
122.11 Permit issuance; effect of permit.
122.12 Duration of permits and continuation of expiring permits; Transferability of permits.
122.13 Prohibitions.
122.14 Conditions applicable to all permits.
122.15 Applicable limitations, standards, prohibitions, and conditions.
122.16 Calculation and specification of effluent limitations and standards.
122.17 Schedules of compliance.

Subpart C—Permit Compliance

122.20 Monitoring.
122.21 Recording of monitoring results.
122.22 Reporting of monitoring results and compliance by permittees.
122.23 Noncompliance reporting.

Subpart D—Permit Modification, Revocation and Reissuance, and Termination

122.30 General.
122.31 Modification, revocation and reissuance, and termination.

Subpart E—Special NPDES Programs

122.40 General.
122.41 Disposal of pollutants into wells, into publicly owned treatment works or by land application.
122.42 Concentrated animal feeding operations.
122.43 Concentrated aquatic animal production facilities.
122.44 Aquaculture projects.
122.45 Separate storm sewers.
122.46 Silvicultural activities.
122.47 New sources and new dischargers.
122.48 General permit program.
122.49 Special considerations under Federal law.

Subpart F—Miscellaneous

122.60 Delegation of authority.

Appendix A.—Point Source Categories and Permit Expiration Dates.

Authority.—Clean Water Act, as amended by the Clean Water Act of 1977, 33 U.S.C. 1251 et seq; Administrative Procedure Act, 5 U.S.C. 551 et seq.

Subpart A—General

§ 122.1 Purpose and scope.

(a) The regulations in this Part define the National Pollutant Discharge Elimination System (NPDES) program including permit programs under sections 402, 318 and 405 of the Act. They apply to the programs as administered by EPA and, to the extent incorporated by reference in Part 123, by approved NPDES States.

(b) The regulations in Parts 123, 124, and 125 also apply to the NPDES program as follows:

(1) Part 123 describes the requirements for State participation in

the NPDES permit program and in the permit program established under section 404 of the Act ("section 404 program").

(2) Part 124 describes certain permitting procedures for the NPDES program; these procedures apply in their entirety to the program as it is administered by EPA and, to the extent incorporated by reference in Part 123, by approved NPDES States.

(3) Part 125 describes some of the criteria and standards for making certain determinations in the NPDES program; these criteria and standards apply to the program as administered by EPA and, to the extent incorporated by reference in Part 123, by approved NPDES States.

(c) Section 402 of the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act), (Pub. L. 92–500, as amended by Pub. L. 95–217 and Pub. L. 95–576) establishes the NPDES program. The NPDES program also includes permit program requirements under sections 318 and 405 of the Act. This program regulates the discharge of pollutants from point sources and related activities into the waters of the United States. All such discharges or activities are unlawful absent an NPDES permit. After a permit is obtained, a discharge not in compliance with all permit terms and conditions is unlawful.

(d) NPDES permits are issued by the State Director, or by the EPA Regional Administrator where there is no approved State program or where the permit is for discharges resulting from activities on Indian lands over which the States has no jurisdiction.

[*Comment:* Throughout this Part, the Regional Administrator is designated as the EPA permit issuing authority where no State NPDES program is approved. However, reference to the "Regional Administrator" for purposes of permit issuance should be read to include the Enforcement Division Director. Similarly, the term "State Director" includes the delegated representative of the State Director.]

§ 122.2 Law authorizing NPDES permits.

(a) Section 301(a) of the Act provides that "Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act, the discharge of any pollutant by any person shall be unlawful."

(b) Section 402(a)(1) of the Act provides in part that "the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, . . . upon condition that such discharge will meet either all applicable requirements under sections 301, 302, 306, 307, 308, and 403 of [the] Act, or prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of [the] Act."

(c) Section 318(a) of the Act provides that "The Administrator is authorized, after public hearings, to permit the discharge of a specific pollutant or pollutants under controlled conditions associated with an approved aquaculture project under Federal or State supervision pursuant to section 402 of this Act."

(d) Section 405 of the Act provides, in part, that "where the disposal of sewage sludge resulting from the operation of a treatment works as defined in section 212 of this Act (including the removal of in-place sewage sludge from one location and its deposit at another location) would result in any pollutant from such sewage sludge entering the navigable waters, such disposal is prohibited except in accordance with a permit issued by the Administrator under section 402 of the Act."

(e) Sections 402(b), 318 (b) and (c), and 405(c) of the Act authorize EPA approval of State permit programs for discharges form point sources, discharges to aquaculture projects, and disposal of sewage sludge.

(f) Section 404 of the Act authorizes EPA approval of State permit programs for the discharge of dredge or fill material.

(g) Section 304(i) of the Act provides that the Administrator shall promulgate guidelines establishing uniform application forms and other minimum requirements for the acquisition of information from discharges in approved States and establishing minimum procedural and other elements of approved State NPDES programs.

(h) Section 501(a) of the Act provides that "The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this Act."

(i) Section 101(e) of the Act provides that "Public participation in the development, revision, and enforcement of any regulations, standard, effluent limitations, plan, or program established by the Administrator or any State under this Act shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish regulations specifying minimum guidelines for public participation in such processes." Public participation requirements set forth in these regulations carry out the purposes of 40 CFR 25 and supersede the requirments of that Part as they apply to actions controlled by Parts 121–125 of these regulations.

§ 122.3 Definitions.

The following definitions apply to this Part and to Parts 123, 124 and 125:

[*Comment:* Terms used in this Part and in Parts 123, 124 and 125 which are defined in the Act, and are not defined here shall have the meaning provided in the Act.]

(a) "Act" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act) Pub. L. 92–500, as amended by Pub. L. 95–217 and Pub. L. 95–576, 33 U.S.C. 1251 *et seq.*

(b) "Administrator" means the Administrator of the United States Environmental Protection Agency.

(c) "Application" means:

(1) The EPA standard national forms for applying for an NPDES permit, including any subsequent additions, revisions or modifications, or

(2) Substantially similar forms approved by EPA for use in approved States at the time of a program approval under Part 123, including any approved subsequent additions, revisions or modifications.

[*Comment:* EPA is presently developing a new application form. The essential elements of this new application form will be required to be used by the States.]

(d) "Applicable standards and limitations" means all State, interstate and Federal standards and limitations to which a discharge or related activity is subject under the Act, including, but not limited to, effluent limitations, water quality standards, standards of performance, toxic effluent standards and prohibitions, best management practices, and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 218, 403 and 405 of the Act.

(e) "Approved State program" means a State or interstate permit program which meets the requirements of section 402(b) of the act, and which has been submitted to and approved by EPA under §123.51 and section 402(c) of the Act. Approved State programs must include authority to regulate discharges specified in sections 318 and 405 of the Act through the NPDES program.

(f) "Best management practices" "BMPs" includes treatment requirements, operating and maintenance procedures, schedules of activities, prohibitions of activities, and other management practices to control plant site runoff, spillage, leaks, sludge or waste disposal, or drainage from raw material storage. BMPs may be imposed

in addition to or in the absence of other applicable standards and limitations.

(g) "Contiguous zone" means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone.

(h) "Direct discharge" means the discharge of a pollutant or the discharge of pollutants.

(i) "Director" means the "Regional Administrator" or the "State Director," as appropriate.

[Comment: Where there is no approved State program, the term "Director" refers to the Regional Administrator. Where there is an approved State program, the term "Director" normally refers to the State Director. In some circumstances, however, EPA retains authority to take certain actions even where there is an approved State program. E.g., where EPA issued a permit prior to the approval of a State program, EPA may retain jurisdiction over that permit after program approval, see §123.1(d). In such cases, the term "Director" means the Regional Administrator and not the State Director.]

(j) "Discharge" when used without qualification includes a discharge of a pollutant and a discharge of pollutants.

(k) "Discharge of a pollutant" and "discharge of pollutants" each means:

(1) Any addition of any pollutant or combination of pollutants to navigable waters from any point source, or

(2) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft when being used as a means of transportation.

This definition includes discharge into waters of the United States from: surface runoff which is collected or channelled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality or other party which do not lead to treatment systems; and discharges through pipes, sewers, or other conveyances, leading into treatment systems owned in whole or in part by a third party other than a State or a municipality.

(l) "Discharge Monitoring Report ("DMR") means the EPA uniform national form, including any subsequent additions, revisions or modifications for the reporting of self-monitoring results by permittees. DMRs must be used by appreved States as well as by EPA.

[Comment: EPA will supply DMRs to any approved State upon request. The EPA uniform national forms may be modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA's]

(m) "Effluent limitation" means any restriction imposed by the Director on quantities, rates, and concentrations of pollutants which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean.

(n) "Enforcement Division Director" means the Director of the Enforcement Division within the appropriate Regional Office of the Environmental Protection Agency.

(o) "Environmental Protection Agency" ("EPA") means the United States Environmental protection Agency.

(p) "Indirect discharger" means a non-municipal, non-domestic discharger introducing pollutants to a publicly owned treatment works, which introduction does not constitute a "discharge of pollutants."

(q) "Interstate agency" means an agency of two or more States established by or under an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator.

(r) "Municipality" means a city, town, borough, county, parish, district, association or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Act.

(s) "NPDES" ("National Pollutant Discharge Elimination System") means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits pursuant to sections 402, 318, and 405 of the Act. The term includes any State or interstate program which has been approved by the Administrator.

(t) "Navigable waters" means "waters of the United States, including the territorial seas." This term includes:

(1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(2) Interstate waters, including interstate wetlands;

(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats and wetlands, the use, degradation or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(i) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

(iii) Which are used or could be used for industrial purposes by industries in interstate commerce;

(4) All impoundments of waters otherwise defined as navigable waters under this paragraph;

(5) Tributaries of waters identified in paragraphs (1)–(4) of this section, including adjacent wetlands; and

(6) Wetlands adjacent to waters identified in paragaphs (1)–(5) of this section ("Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally included playa lakes, swamps, marshes, bogs, and similar areas such as sloughs, prairie potholes, wet meadows, prairie river overflows, mudflats, and natural ponds); *provided that* waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States.

[Comment:] For purposes of clarity the term "waters of the United States" is primarily used throughout the regulations rather than "navigable waters"]

(u) "New discharger" means any building, struture, facility or installation: (1) which on October 18, 1972, has never discharged pollutants; (2) which has never received a finally effective NPDES permit; (3) from which there is or may be a new or additional discharge of pollutants; and (4) which does not fall within the definition of "new source."

(v) "New source" means any building, structure, facility or installation from which there is or may be a discharge of pollutants the contruction of which commences:

(1) After promulgation of standards of performance under section 306 of the Act which are applicable to such source; or

(2) After proposal of standards of performance under section 306 which are applicable to such source, but only if the standards are promulgated within 120 days of their proposal.

[*Comment:* See § 122.47 for the criteria and standards to be used in determining whether a source has commenced construction within the meaning of this definition, for the types of construction activities which result in new sources or new dischargers, and for the effect of a new source determination.]

(w) "Permit" means any permit issued by EPA under the authority of section 402 of the Act or by an approved State under the authority of State law, controlling the discharge of pollutants into the waters of the United States.

[*Comment*: Approved States are not required to use the EPA standard permit form. However, State permit forms are reviewed and approved at the time of NPDES program approval. See § 123.3(a)(5).]

(x) "Person" means an individual, corporation, partnership, association, Federal agency, State, municipality, commission, or political subdivision of a State or any interstate body.

(y) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(z) "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(1) Sewage from vessels or

(2) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if such State determines that such injection or disposal will not result in the degradation or ground or surface water resources.

[*Comment*: The legislative history of the Act reflects that "radioactive materials" as included within the definition of "pollutant" in section 502 of the Act means only radioactive materials which are not encompassed in the definition of source, by-product, or special nuclear materials as defined by the Atomic Energy Act of 1954, as amended, and regulated under the Atomic Energy Act. Examples of radioactive materials not covered by the Atomic Energy Act and, therefore, included within the term "pollutant" are radium and accelerator produced isotopes. See *Train* v. *Colorado Public Interest Research Group, Inc.*, 426 U.S. 1 (1976).]

(aa) "Process waste water" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

(bb) "Publicly owned treatment works" ("POTW") means a treatment works as defined in section 212 of the Act, which is owned by a State or municipality, excluding any sewers or other conveyances not leading to a facility providing treatment.

(cc) "Regional Administrator" means the Regional Administrator of the appropriate Regional Office of the Enviromental Protection Agency or the delegated representative of the Regional Administrator.

(dd) "Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of interim requirements (e.g., actions, operations, or milestone events) leading to compliance with applicable standards or limitations or other permit requirements. Unless otherwise provided in these regulations, each schedule shall culminate in a specific requirement to achieve expeditious final compliance with all applicable standards and limitations.

(ee) "Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

(ff) "Sewage from vessels" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under section 312 of the Act, except that with respect to commercial vessels on the Great Lakes this term includes graywater. For the purposes of this definition, "graywater" means galley, bath, and shower water.

(gg) "Sewage sludge" means the solids, residues, and precipitate separated from or created in sewage by the unit processes of a publicly owned treatment works. "Sewage" as used in this definition means any wastes, including wastes from humans, households, commercial establishments, industries, and storm water runoff, that are discharged to or otherwise enter a publicly owned treatment works.

(hh) "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands.

(ii) "State Director" means the chief administrative officer of a State water pollution control agency or interstate agency approved by EPA to administer the NPDES program, or the delegated representative of the State Director. If responsibility for water pollution control and enforcement is divided within a State agency or among two or more State or interstate agencies, "State Director" means the administrative officer authorized to perform the particular procedure or function to which reference is made.

(jj) "Variance" means any mechanism or provision under sections 301 or 316 of the Act and Part 125, or in the applicable effluent limitation guidelines which allow modification to or waivers of the effluent limitation requirements of the Act. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors and sections 301(c), 301(g), 301(h), and 316(a) of the Act, where appropriate.

(kk) "Waters of the United States" means "navigable waters."

§ 122.4 Exclusions.

(a) The following discharges do not require an NPDES permit:

(1) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when a vessel is being used as an energy or mining facility, a storage facility, or a seafood processing facility, or is secured to the bed of the ocean, contiguous zone, or waters of the United States for the purpose of mineral or oil exploration or development;

(2) Discharges of dredged or fill material into waters of the United States and regulated under section 404 of the Act.

(3) The introduction of sewage, industrial wastes or other pollutants into publicly owned treatment works by indirect dischargers.

[*Comment*: This exclusion applies only to the actual introduction of pollutants into publicly owned treatment works. Plans or agreement to switch to this method of disposal in the future do not relieve dischargers of the obligation to apply for and receive permits until all discharges of pollutants to waters of the United States are actually eliminated. All applicable pretreatment standards promulgated under section 307(b) of the Act must also be complied with, and may be included in the permit to the publicly owned treatment works. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other

conveyances owned by a State, municipality, or other party not leading to treatment works. See § 122.3(k)].

(4) Any introduction of pollutants from agricultural and silvicultural activities, including runoff from orchards, cultivated crops, pastures, range lands, and forest lands, except that this exclusion shall not apply to:

(i) Discharges from concentrated animal feeding operations as defined in § 122.42;

(ii) Discharges from concentrated aquatic animal production facilities as defined in § 122.43;

(iii) Discharges to aquaculture projects as defined in § 122.44; and

(iv) Discharges from silvicultural point sources as defined in § 122.46.

(b) The exemption of a discharge from NPDES requirements in paragraph (a) of this section does not preclude State regulation of the exempted discharge under State authority, in accordance with section 510 of the Act.

§ 122.5 Signatories.

(a) All permit applications shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a muncipality, State, Federal, or other public facility, by either a principal executive officer or ranking elected official.

(b) All other reports or requests for information required by the permit issuing authority shall be signed by a person designated in paragraph (a) or a duly authorized representative of such person, if:

(1) The representative so authorized is responsible for the overall operation of the facility from which the discharge originates, e.g., a plant manager, superintendent or person of equivalent responsibity;

(2) The authorization is made in writing by the person designated under paragraph (a); and

(3) The written authorization is submitted to the Director.

(c) Any changes in the written authorization submitted to the permitting authority under paragraph (b) which occur after the issuance of a permit shall be reported to the permitting authority by submitting a copy of a new written authorization which meets the requirements of paragraph (b) (1) and (2).

(d) Any person signing any document under paragraph (a) or (b) shall make the following certification: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in the attached document; and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

[*Comment:* The permit application will be revised to incorporate this statement. Where a permit program document does not contain the statement, the certification must accompany the appropriate document.]

(e) This section is applicable to approved States (see § 123.12). States may adopt language which is equivalent to, but not identical to, the certification statement in paragraph (d), if such equivalent language is approved by the Regional Administrator.

Subpart B—NPDES Permit Application and Issuance

§ 122.10 Application for a permit.

(a) Any person who discharges or proposes to discharge pollutants, except persons covered by general permits under § 122.48 or excluded under § 122.4, shall complete, sign, and submit an application (which includes a BMP program if necessary under § 125.102) to the Director in accordance with Part 124, Subpart B.

(b) Persons currently discharging who have:

(1) Existing permits shall submit a new application under paragraph (c) of this section where facility expansions, production increases, or process modifications will:

(i) Result in new or substantially increased discharges of pollutants or a change in the nature of the discharge of pollutants, or

(ii) Violate the terms and conditions of the existing permit.

(2) Expiring permits shall submit new applications at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Director.

(c) A person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the Regional Administrator.

[*Comment:* Persons proposing a new discharge are encouraged to submit their applications well in advance of the 180 day requirement to avoid delay. In addition, information required by § 124.12(b)(1) must be submitted before on-site construction, which normally will commence long before the permit application is required.]

§ 122.11 Permit issuance; effect of permit.

(a) The receipt of a complete application by the Director initiates the permit issuance process described in Part 124.

(b) Following the permit issuance process the Director may issue or deny a finally effective permit. Where EPA is the permitting authority, EPA action shall not be final for the purpose of judicial review under section 509(b) of the Act until this issuance or denial has taken place. (See § 124.61).

(c) Compliance with a permit during its term constitutes compliance, for purposes of sections 309 and 505, with applicable standards and limitations of the Act, except for any standard imposed under section 307 for a toxic pollutant injurious to human health. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as described in § 122.31.

(d) The issuance of a permit does not:

(1) Convey any property rights of any sort, or any exclusive privileges;

(2) Authorize any injury to private property or invasion of other private rights, or any infringement of Federal, State, or local laws or regulations; or

(3) Preempt any duty to obtain State or local assent required by law for the discharge.

§ 122.12 Duration of permits and continuation of expiring permits; transferability of permits.

(a) *Duration of Permits.* All permits shall be issued for fixed terms not to exceed five years. Permits of less than five years duration may be issued in appropriate circumstances (see paragraph (c)). Permits may be modified, revoked and reissued, or terminated as specified in Subpart D. Except for the continuation provisions of paragraph (b) for expiring permits, the term of a permit shall not be extended beyond five years from its original date of effectiveness by modification, extension or other means.

(b) *Continuation of expiring permits.* (1) Where EPA is the permit issuing authority, the terms and conditions of an expired permit are automatically continued under 5 U.S.C. § 558(c) pending issuance of a new permit if:

(i) The permittee has submitted a timely and sufficient application for a new permit under § 122.10(a); and

(ii) The Regional Administrator is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit

(e.g., where it is impracticable due to time and/or resource constraints).

(2) Permits continued under paragraph (b)(1) remain fully effective and enforceable against the discharger.

(3) Where the permittee is not in compliance with the terms and conditions of the expiring permit:

(i) The permit may be continued under this section pending a final determination by the Regional Administrator on the application for a new permit and enforcement action may be taken based upon the continued permit; or

(ii) The Regional Administrator may make a determination to deny the application for a new permit in accordance with the procedures specified in Part 124. The discharger would then be subject to enforcement action for discharging without a permit.

(4) States authorized to administer the NPDES may continue permits in a similar manner if so authorized by State law. However, a permit is not continued under Federal law where EPA originally issued the permit, but the State is the permitting authority at the time the permit expired. In such case, the discharger is discharging without a permit, from the time the EPA-issued permit expires to the time that the State-issued permit is effective.

(c) No permit issued to a discharger within an industrial category listed in Appendix A of this Part, prior to the applicable permit expiration date listed in Appendix A, may be issued to expire after that date, unless:

(1) The permit incorporates effluent limitations and standards applicable to the discharger which are promulgated or approved under sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) of the Act; or

[*Comment:* EPA is presently reviewing and revising effluent limitations guidelines for industries listed in Appendix A. In some cases, EPA may approve existing guidelines or choose not to develop new guidelines. If EPA decides not to develop new effluent guidelines, it will publish notice in the **Federal Register** as to that decision. Such a **Federal Register** notice would mean, in effect, that the guidelines are "approved" for the purpose of this regulation.]

(2) The permit incorporates:

(i) The "reopener clause" required by § 122.15(b)(1); and

(ii) Effluent limitations to meet the requirements of sections 301(b)(2) (A), (C), (D), (E) and (F) of the Act.

[*Comments:* (1) NPDES States are urged to issue short term permits expiring on or before the dates listed in Appendix A. This will ensure that all appropriate provisions of the Act, including compliance with the effluent limitations by the statutory deadlines, are met in permits issued after the promulgation of effluent guidelines under sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2). Even if States issue long term permits with later expiration dates (in accordance with paragraph (c)(2)), dischargers are legally required to meet all applicable statutory deadlines and requirements, including compliance with any promulgated EPA effluent guidelines defining "best conventional pollutant control technology" (BCT) and "best available control technology economically achieveable" (BAT).

(2) A determination that a particular discharger falls within a given industrial category for purposes of setting a permit expiration date under paragraph (c) is not conclusive as to the discharger's inclusion in that industrial category for any other prupose, and does not prejudice any rights to challenge or change that inclusion at the time a new permit based on that determination is formulated.]

(d) *Transferability of permits.* A permit may be transferred to another person by a permittee if:

(1) The permittee notifies the Director of the proposed transfer;

(2) A written agreement containing a specific date for transfer of permit responsibility and coverage between the current and new permittees (including acknowledgement that the existing permittee is liable for violations up to that date, and that the new permittee is liable for violations from that date on) is submitted to the Director; and

(3) The Director within 30 days does not notify the current permittee and the new permittee of his or her intent to modify, revoke and reissue, or terminate the permit and to require that a new application be filed rather than agreeing to the transfer of the permit.

[*Comment.* A new application could be required under this paragraph where the change of ownership is accompanied by a change or proposed change in process or wastewater characteristics or a change or potential change in any circumstances that the permitting authority believes will affect the conditions or restrictions in the permit.]

§ 122.13 Prohibitions.

No permit shall be issued in the following circumstances:

(a) Where the terms or conditions of the permit do not comply with the applicable guidelines or requirements of the Act, or regulations.

(b) Where the applicant is required to obtain a State or other appropriate certification under section 401 of the Act and Part 124, Subpart C, and that certification has not been obtained or been waived.

(c) By the State Director where the Regional Administrator has objected to issuance of the permit under § 123.23.

(d) Where the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States as required by section 401(a)(2) of the Act.

(e) Where, in the judgment of the Secretary, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge.

(f) For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste.

(g) For any discharge from a point source inconsistent with a plan or plan amendment approved under section 208(b) of the Act.

(h) For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:

(1) Prior to the promulgation of the guidelines under section 403(c) of the Act, unless the Director determines permit issuance to be in the public interest; or

(2) After promulgation of guidelines under section 403(c) of the Act, where insufficient information exists to make a reasonable judgment as to whether the discharge complies with any such guidelines.

(i) To a facility which is a new source or a new discharger, if the discharge from the construction or operation of the facility will:

(1) Cause or contribute to the violation of water quality standards if the point of discharge is located in a segment that was an effluent limitation segment (as defined in 40 CFR § 130.2(o)(2)) prior to the introduction of the discharge from the new source or new discharger; or

(2) Exceed the total pollutant load allocation if the discharge is into a water quality segment as defined in 40 CFR § 130.2(o)(1).

The owner or operator of a facility which is a new source or new discharger into a water quality segment must also demonstrate, at the time of applying for a permit that there are sufficient remaining pollutant load allocations to allow the discharge and that the facility is entitled to these allocations.

§ 122.14 Conditions applicable to all permits.

The following conditions apply to all permits, whether issued by the Regional Administrator or the State Director. They shall be either expressly incorporated into the permit or incorporated by reference.

[*Comment:* If not incorporated by reference, the inclusion of the requirements of this section into permits may require some

wording changes. Where this is the case, the permit conditions should be worded substantially similar to the requirements of this section, and should be of equivalent force.]

(a) [Reserved]

[*Comment:* This paragraph is reserved pending publication of a revised NPDES application form. When a proposed revised application form is available this paragraph will be reproposed in a manner consistent with the proposed revised form. At that time EPA will outline a comprehensive scheme for the relationship between the data required in the application form, monitoring requirements, permit conditions, and the pollutants authorized to be discharged by the permit and not authorized to be discharged by the permit. The existing NPDES application forms should be utilized until the revised application form is available, except as otherwise provided in these regulations. See § 122.5.]

(b) All discharges shall be consistent with the terms and conditions of the permit.

(c) The permit may be modified, terminated, or revoked during its term for cause as described in § 122.31.

(d) If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under section 307(a) of the Act for a toxic pollutant and that standard or prohibition is more stringent than any limitation upon such pollutant in the permit, the Director shall institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

[*Comment*: Effluent standards or prohibitions established under section 307(a) for toxic pollutants injurious to human health are effective within the time provided in the implementing regulations, even absent permit modification.]

(e) Any permittee who knows or has reason to believe that any activity has occurred or will occur which would constitute cause for modification or revocation and reissuance under § 122.31 must report its plans, or such information, to the Director so that the Director can decide whether action to modify or revoke and reissue a permit under § 122.31 will be required. The Director may then require submission of a new application. Submission of such application does not relieve the discharger of the duty to comply with the existing permit until it is modified or reissued.

(f) The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and such other documents as may be required by law:

(1) To enter upon the permittee's premises where a point source is located or where any records must be kept under the terms and conditions of the permit;

(2) To have access to and copy at reasonable times any records that must be kept under the terms and conditions of the permit;

(3) To inspect at reasonable times any monitoring equipment or method required in the permit;

(4) To inspect at reasonable times any collection, treatment, pollution management, or discharge facilities required under the permit; and

(5) To sample at reasonable times any discharge of pollutants.

(g) The permittee shall at all times maintain in good working order and operate as efficiently as possible all facilities and systems (and related appurtenances) for collection and treatment which are installed or used by the permittee for water pollution control and abatement to achieve compliance with the terms and conditions of the permit. Proper operation and maintenance includes but is not limited to effective performance based on designed facility removals, adequate funding, effective management, adequate operator staffing and training, and adequate laboratory and process controls including appropriate quality assurance procedures.

(h)(1) If, for any reason, the permittee does not comply with or will be unable to comply with any maximum daily or average weekly discharge limitations or standards specified in the permit, the permittee shall, at a minimum, provide the Director with the following information as specified in paragraph (h)(2):

(i) A description of the discharge and cause of noncompliance;

(ii) The period of noncompliance, including exact dates and times and/or the anticipated time when the discharge will return to compliance; and

(iii) Steps being taken to reduce, eliminate, and prevent recurrence of the noncomplying discharge.

(2)(i) In the case of any discharge subject to any applicable toxic pollutant effluent standard under section 307(a), the information required by paragraph (1) regarding a violation of such standard shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. If this information is provided orally, a written submission covering these points shall be provided within five days of the time the permittee becomes aware of the circumstances covered by this paragraph.

(ii) In the case of other discharges which could constitute a threat to human health, welfare, or the environment, the Director may require that the information required by paragraph (1) be provided within 24 hours or five days from the time the permittee becomes aware of the circumstances. Where the Director requires 24-hour notice, if the information is provided orally, a written submission covering these points must be provided within five days of the time the permittee becomes aware of the circumstances covered by this paragraph.

[*Comment:* Discharges that may be required to be reported within 24 hours under paragraph (h)(2)(ii) could include discharges containing section 311 pollutants or pollutants which could cause a threat to public drinking water supplies.]

(iii) Where a permittee orally reports a violation within 24 hours in accordance with paragraphs (h)(2) (i) or (ii), the Director may waive, on a case-by-case basis, the requirement that a written submission be provided within five days of the time the permittee becomes aware of the violation.

(iv) In all other cases this information shall be provided in the DMR in accordance with the requirements of § 122.22.

(i) The permittee shall take all reasonable steps to minimize any adverse impact to waters of the United States resulting from noncompliance with the permit.

(j) The permittee, in order to maintain compliance with its permit, shall control production and all discharges upon reduction, loss, or failure of the treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

(k) *Bypass.*

(1) *Definitions.*

(i) "Bypass" means the intentional diversion of wastes from any portion of a treatment facility.

(ii) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which would cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(z) *Conditions necessary for bypass.* Bypass is prohibited unless the following four conditions are met:

(i) Bypass is unavoidable to prevent loss of life, personal injury or severe property damage;

(ii) There are no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment down-time;

(iii) The permittee submits notice of an unanticipated bypass to the Director within 24 hours of becoming aware of the bypass (if this information is provided orally, a written submission must be provided within five days). Where the permittee knows or should have known in advance of the need for a bypass, this prior notification shall be submitted for approval to the director, if possible, at least ten days before the date of the bypass;

[*Comment:* Fully efficient operation of treatment systems is required at all times. Although this generally requires the use of all portions of an existing treatment system, in some cases, maintenance necessary to ensure efficient operation may require bypassing portions of a system. Where such a bypass will not cause applicable effluent limitations or standards to be exceeded, it may be done without notification to the permitting authority. Where, however, a bypass is undertaken for reasons other than essential maintenance or where a bypass would cause effluent limitations or standards to be exceeded, it may be undertaken only in accordance with the provisions of this section.]

(iv) The bypass is allowed under conditions determined to be necessary by the Director to minimize any adverse effects. The public shall be notified and given an opportunity to comment on bypass incidents of significant duration, to the extent feasible.

(3) *Prohibition of bypass.* The Director may prohibit bypass in consideration of the adverse effect of the proposed bypass or where the proposed bypass does not meet the conditions set forth in paragraphs (k)(2) (i) and (ii).

[*Comment:* When a bypass occurs, the burden is on the discharger to demonstrate compliance with this paragraph. If the reason for the bypass was the need for regular preventive maintenance, for which backup equipment should have been provided by the discharger, in accordance with paragraph (2)(ii), the bypass will not be allowed. If there is any doubt as to the necessity of the bypass or the availability of methods to reduce or eliminate the discharge, appropriate enforcement action may be taken.]

(l) *Upset.*—(1) *Definition.* "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(2) *Effect of an upset.* An upset shall constitute an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of paragraph (1)(3) are met.

(3) *Conditions necessary for a demonstration of upset.* A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An upset occurred and that the permittee can identify the specific cause(s) of the upset;

(ii) The permitted facility was at the time being operated in a prudent and workman-like manner and in compliance with proper operation and maintenance procedures;

(iii) The permittee submitted information required in § 122.14(h)(1) within 24 hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five days), and

(iv) The permittee complied with any remedial measures required under § 122.14(i).

(4) *Burden of proof.* In any enforcement proceeding the permittee seeking to establish the occurrence of an upset shall have the burden of proof.

[*Comments:* (1) Upset is only available for permit limits which are based on technology. It is not available for non-technology-based requirements such as water quality standards, State laws, or health or environmentally based toxic pollutant effluent standards. (2) Although in the usual exercise of prosecutorial discretion, Agency enforcement personnel should review any claims that noncompliance was caused by an upset, no determination made in the course of the review constitutes final Agency action subject to judicial review. Permittees will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with technology-based permit effluent limitations.]

§ 122.15 Applicable limitations, standards, prohibitions, and conditions.

Each NPDES permit shall provide for and ensure compliance with all applicable requirements of the Act and regulations promulgated under the Act. For the purposes of this section, an applicable requirement is a statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit issued by a State with an approved NPDES program, or, in the case of a permit issued by EPA, which takes effect prior to the issuance of the permit except as provided in § 124.86(c). Permits shall ensure compliance with the following as applicable:

(a) Effluent limitations and standards under sections 301, 302, 303, 304, 307, 318, and 405 of the Act, including any interim final limitations and standards.

(b) For a discharger within any industrial category listed in Appendix A, requirements under section 307(a)(2) of the Act, as follows:

(1) Prior to the applicable permit expiration date listed in Appendix A,

(i) If applicable standards or limitations have not yet been issued:

(A) The permit shall include conditions stating that, if an applicable standard or limitation is issued or approved under sections 301(b)(2) (C) and (D), 304(b)(2) and 307(a)(2) and such effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit shall be promptly modified or, alternatively, revoked and reissued in accordance with such effluent standard or limitation and any other requirements of the Act then applicable.

[*Comment:* The following language is an acceptable permit condition for the purposes of this section:

"This permit shall be modified, or alternatively, revoked and reissued, to comply with any applicable standard or limitation promulgated or approved under sections 301(b)(2) (C) and (D), 304(b)(2), and 307(a)(2) of the Clean Water Act, if the effluent standard or limitation so issued or approved:

(i) Contains different conditions or is otherwise more stringent than any effluent limitation in the permit; or

(ii) Controls any pollutant not limited in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of the Act then applicable."]

(B) The Director shall promptly modify, or alternatively revoke and reissue, the permit to incorporate an applicable standard or limitation under sections 301(b)(2) (C) and (D), 304(b)(2), and 307(a)(2) is issued or approved if such effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit.

[*Comment:* The requirements of this section are intended to assure compliance with the

1984 statutory deadline for the achievement of best available technology economically achievable for pollutants now listed under section 307(a)(1) of the Act. When a permit is modified or revoked and reissued pursuant to subparagraph (B), additional limitations may be included in the permit to assure achievement of applicable statutory requirements (e.g., best conventional pollutant control technology for "conventional" pollutants and best available technology economically achievable for "non-conventional" pollutants) by appropriate statutory deadlines.]

(ii) If applicable standards or limitations have been issued, the permit shall include those standards or limitations.

(2) Any permit issued after the applicable permit expiration date listed in Appendix A, shall include effluent limitations and a compliance schedule to meet the requirements of sections 301(b)(2) (A), (C), (D), (E), and (F) of the Act, whether or not applicable effluent limitations guidelines have been promulgated or approved. Such permits need not incorporate the clause required by paragraph (b)(1)(i)(A) of this section.

(c) Standards of performance for new sources under section 306 of the Act, including any promulgated interim final effluent limitations and standards.

(d) If the permit is for a discharge from a publicly owned treatment works, a condition requiring the permittee to:

(1) Provide adequate notice to the Director of the following:

(i) Any new introduction of pollutants into that POTW from an indirect discharger which would be subject to sections 301 or 306 of the Act if it were directly discharging those pollutants; and

(ii) Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

[*Comment:* For purposes of this paragraph, adequate notice shall include information on (1) the quality and quantity of effluent to be introduced into such POTW and (2) any anticipated impact of such change in the quantity or quality of effluent to be discharged from such POTW.]

(2) Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under section 307(b) of the Act and 40 CFR Part 403.

(3) Establish a local program when required by and in accordance with 40 CFR Part 403 to assure compliance with pretreatment standards to the extent applicable under section 307(b). The local program shall be incorporated into the permit as described in 40 CFR Part 403.

(4) Require any indirect discharger to such POTW to comply with the reporting requirements of sections 204(b), 307, and 308 of the Act, including any requirements established under 40 CFR Part 403.

(e) Any conditions imposed in grants made by the Administrator to POTWs under sections 201 and 204 of the Act which are reasonably necessary for the achievement of effluent limitations under section 301 of the Act.

[*Comment:* Among other things, this paragraph contemplates permit conditions embodying measures to protect the POTW against overloading and schedules of compliance which are consistent with, and determined from, construction grant award dates.]

(f) Any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under sections 301, 304, 306, 307, 318 and 405 where necessary to:

(1) Achieve water quality standards established under section 303 of the Act;

(2) Attain or maintain a specified water quality through water quality related effluent limits established under section 302 of the Act;

(3) Conform to the conditions of a State certification under section 401 of the Act where EPA is the permit issuing authority;

(4) Conform to applicable water quality requirements under section 401(a)(2) of the Act when the discharge affects a State other than the certifying State;

(5) Incorporate any more stringent limitations, treatment standards or schedules of compliance requirements established under Federal or State law or regulations in accordance with section 301(b)(1)(C) of the Act;

(6) Ensure consistency with the requirements of a Water Quality Management plan approved by EPA under section 208(b) of the Act;

(7) Incorporate section 403(c) criteria under Part 125 Subpart M for ocean discharges;

(8) Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors," under Part 125 Subpart D;

(9) Incorporate other requirements, or conditions, or limitations into a new source permit under the National Environmental Policy Act 42 U.S.C. §§4321 *et seq.* and section 511 of the Act, where EPA is the permit issuing authority;

(10) Establish on a case-by-case basis technology-based limitations controlling a pollutant not included in promulgated effluent limitation guidelines or standards in accordance with §125.3.

(g) Best management practices to control or abate the discharge of pollutants when:

(1) Authorized under section 304(e) of the Act for the control of toxic and hazardous pollutants from ancillary industrial activities;

(2) Numeric effluent limitations are infeasible; or

(3) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes of the Act.

[*Comment:* Examples of best management practices which may be imposed under (g)(2) include: a) proper operator qualifications of treatment facility personnel (see Decision of the General Counsel No. 19), and b) sludge-handling requirements (see Decision of General Counsel No. 33). Examples of best management practices which may be imposed under (g)(3) include: a) coal mining operation's diversion of water from an active coal mining area to prevent contact between water and iron pyrites which could react to form sulfuric acid and wastewaters with low pH values; (b) the construction of sheds over material storage piles to prevent rainfall from leaching materials from these piles and creating a source of pollution; (c) ditching and diversion of rainfall runoff for treatment prior to discharge; and (d) the use of solid, absorbent materials for cleaning up leaks and drips as opposed to washing these materials down a floor drain creating additional sources of pollution. Although these best management practices under (g)(2) and (3) would be required under the authority of *NRDC* v. *Costle*, [Runoff Point Sources) 568 F.2d 1369 (D.C. Cir. 1977) they are similar to those in (g)(1) and Subpart K of Part 125 imposed for toxic and hazardous materials under section 304(e).]

(h) Requirements under section 405 of the Act governing the disposal of sewage sludge from publicly owned treatment works, in accordance with any applicable regulations.

(i) Where a permit is renewed or reissued, interim limitations, standards, or conditions which are at least as stringent as the final limitations, standards or conditions in the previous permit (unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under § 122.31). Where effluent limitations were imposed under section 402(a)(1) of the Act in a previously issued permit and these limitations are more stringent than the subsequently promulgated effluent guidelines, this paragraph shall apply unless:

(1) The discharger has installed the treatment facilities contemplated by the discharger in connection with the issuance of the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations. In this case the limitations in the reissued permit may reflect the level of pollutant control actually achieved (but shall not be less stringent that required by the subsequently promulgated effluent guidelines);

(2) In the case of an approved State, State law prohibits permit conditions more stringent than an applicable effluent guideline; or

(3) The subsequently promulgated effluent guidelines are based on best conventional pollutant control technology (section 301(b)(2)(E) of the Act).

(j) In the case of a permit issued to a facility that may operate at certain times as a means of transportation over water, a general condition that the discharge shall comply with any applicable regulations promulgated by the Secretary of the Department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, and storage of pollutants.

(k) Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired.

§ 122.16 Calculation and specification of effluent limitations and standards.

(a)(1) All permits shall impose final, and where necessary, interim final effluent limitations, standards and prohibitions under §§ 122.14 and 122.15 for each outfall or discharge point of the permitted facility, except as otherwise provided under § 122.15(g)(2) and § 122.16(i).

(2) Except in the case of POTWs, permit limitations, standards or prohibitions shall be calculated based on the actual production and not the designed production capacity of the facility where the promulgated effluent guideline limitations and standards are based on production.

[*Comment:* Where design capacity is not representative of actual production, permit limitations will be calculated to reflect a reasonable measure of actual production, such as the high month during the previous year, or the monthly average for the highest year of the previous five years, for facilities where such data is available. For new sources, or new discharges, actual production generally will be projected production based on market data, and permit limitations may require modification once actual production figures are available.]

(3) In the case of POTWs, permit limitations, standards, or prohibitions shall be calculated based on design flow.

(b) All interim and final permit effluent limitations, standards, or prohibitions established under §§ 122.14 and 122.15 for a metal shall be expressed in terms of the total metal (i.e., the sum of the dissolved and suspended fractions of the metal) unless:

(1) The promulgated effluent limitation and standard under the Act specifies the limitation for the metal in the dissolved or valent form; or

(2) In establishing permit limitations on a case-by-case basis, it is necessary to express the limitation on the metal in the dissolved or valent form in order to carry out the provisions of the Act.

(c) For continuous discharges all interim and final permit effluent limitations, standards, and prohibitions established under §§ 122.14 and 122.15, including those necessary to achieve water quality standards, shall be stated as maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works, and average weekly and average monthly discharge limitations for POTWs.

For the purposes of this part:

(1) A "continuous discharge" means a discharge which occurs without interruption, except for infrequent shutdowns for maintenance, process changes, or other similar activities throughout the operating hours of the facility.

(2) The "maximum daily discharge" is the total mass of a pollutant discharged during the calendar day or, in the case of a pollutant limited in terms other than mass pursuant to paragraph (d), the average concentration or other measurement of the pollutant specified during the calendar day or any 24-hour period that reasonably represents the calendar day for the purposes of sampling. The maximum daily discharge limitation may not be violated during any calendar day.

(3) The "average monthly discharge limitation" is the total mass, and concentration in the case of POTWs, of all daily discharges sampled and/or measured during a calendar month on which daily discharges are sampled and measured, divided by the number of daily discharges sampled and/or measured during such month. The average monthly discharge limitation may not be violated during any calendar month.

(4) The "average weekly discharge limitation" is the total mass and concentration of all daily POTW discharges during any calendar week on which daily discharges are sampled and/or measured, divided by the number of daily discharges sampled and/or measured during such calendar week. The average weekly discharge limitation may not be violated during any calendar week.

[*Comment:* Calculations for all such limitations which require averaging of measurements or of daily discharges, shall utilize an arithmetic mean average, unless otherwise specified or approved by the Director.]

(d) Paragraph (c) is not applicable:

(1) For pH, temperature, radiation or other pollutants which cannot be appropriately expressed by mass; or

(2) Where applicable promulgated effluent guideline limitations, standards, or prohibitions are expressed in other terms than mass, e.g., as concentration levels.

(e) Except as provided in paragraph (f), effluent limitations imposed in permits shall not be adjusted for pollutants in the intake water.

(f)(1) Upon request of the discharger, effluent limitations or standards imposed in a permit will be calculated on a "net" basis, i.e., adjusted to reflect credit for pollutants in the discharger's intake water, if the discharger demonstrates that its intake water is drawn from the same body of water into which the discharge is made and if:

(i)(A) The applicable effluent limitations and standards contained in Subchapter N of this Chapter specifically provide that they shall be applied on a net basis; or

(B) The discharger demonstrates that pollutants present in the intake water will not be substantially removed by the treatment systems operated by the discharger; and

(ii) The permit contains conditions requiring the permittee to conduct additional monitoring (i.e., for flow and concentration of pollutants) as necessary to determine continued eligibility for and compliance with any such adjustments.

The discharger shall notify the Director if this monitoring indicates that eligibility for an adjustment under this section has been altered or no longer exists. In such case, the permit shall be modified or revoked and reissued under § 122.31.

(2) Permit effluent limitations or standards adjusted under this paragraph shall be calculated on the basis of the amount of pollutants present after any treatment steps have been performed on the intake water by or for the

discharger. Adjustments under this paragraph shall be given only to the extent that pollutants in the intake water which are limited in the permit are not removed by the treatment technology employed by the discharger. In addition, effluent limitations or standards shall not be adjusted when the pollutants in the intake water vary physically, chemically or biologically form the pollutants limited by the permit. Nor shall effluent limitations or standards be adjusted when the discharger significantly increases concentrations of pollutants in the intake water, even though the total amount of pollutants might remain the same.

(g) Discharges which are not continuous, as defined in paragraph (c), shall be particularly described and limited, considering the following factors, as appropriate:

(1) Frequency (e.g., a batch discharge shall not occur more than once every 3 weeks);

(2) Total mass (e.g., not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge);

(3) Maximum rate of discharge of pollutants during the discharge (e.g., not to exceed 2 kilograms of zinc per minute); and

(4) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure (e.g., shall not contain at any time more than 0.1 mg/l zinc or more than 250 grams (¼ kilogram) of zinc in any discharge).

(h) Where permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams prior to mixing with other waste streams or cooling water streams. In such instances, the monitoring required by Subpart C shall also be applied to the internal waste streams.

[*Comment:* Limits on internal waste streams will only be imposed in exceptional circumstances, such as where the final discharge point is inaccessible (e.g., under 10 meters of water), where the wastes at the point of discharge are so diluted as to make monitoring impracticable, or where the interferences among pollutants at the point of discharge would make detection and/or analysis impracticable.]

§ 122.17 Schedules of compliance.

(a) Permits shall contain schedules of compliance requiring the permittee to take specific steps where necessary to achieve expeditious compliance with applicable standards and limitations and other requirements. Schedules of compliance shall require compliance as soon as possible, but in no case later than an applicable statutory deadline.

(b) If any permit allows a time for achieving final compliance which exceeds 9 months from the date of permit issuance, the schedule of compliance in the permit shall set forth interim requirements and the dates for their achievement. Examples of interim requirements include the following events: submit complete Step 1 construction grant (for POTWs); let contract (for nonPOTWs); commence construction and complete construction.

(1) In no event shall more than 9 months elapse between dates specified for interim requirements.

(2) If the time necessary for completion of any interim requirements (such as the construction of a treatment facility) is more than nine months and is not readily divisible into stages for completion, the permit shall specify interim dates not more than nine months apart for the submission of reports of progress toward completion of the interim requirements.

(c) A permittee may terminate its direct discharge by cessation of operation or discharge to a POTW rather than achieve applicable standards and limitations by the final date for compliance established in its permit or in the Act under the following circumstances:

(1) If the decision to terminate a direct discharge is made after issuance of a permit:

(i) The permit shall be modified or revoked and reissued to contain a schedule of compliance leading to termination of the direct discharge by a date which is no later than the statutory deadline; or

(ii) The permittee shall terminate direct discharge before noncompliance with any interim requirement specified in the schedule of compliance in the permit.

(2) If the decision to terminate a direct discharge is made before issuance of the permit, the permit shall contain a schedule leading to termination of the direct discharge by a date which is no later than the statutory deadline.

(3) If the permittee contemplates but has not made a final decision to terminate the direct discharge before the issuance of the permit, the permit shall contain alternative schedules leading to compliance as follows:

(i) The schedule shall contain an interim requirement requiring such a final decision no later than a date which allows sufficient time to comply with applicable limitations and standards in accordance with paragraph (c)(3)(ii) of this section, (i.e., a milestone event for commencement of construction of control equipment); and

(ii) A subsequent schedule leading to termination of the direct discharge by a date which is no later than the statutory deadline; and

(iii) A subsequent alternative schedule leading to compliance with applicable standards and limitations, no later than the statutory date; and

(iv) A requirement that after the permittee has made a decision pursuant to paragraph (c)(3)(i) of this section, it shall:

(A) Follow the Schedule required by paragraph (c)(3)(ii) of this section if the decision is to terminate its discharge, or

(B) Follow the schedule required by paragraph (c)(3)(iii) of this section if the decision is not to terminate its discharge; and

(4) If the permittee has made a decision to terminate its direct discharge in accordance with this section, it shall post a bond within 30 days of permit issuance, or the date of the decision, in the amount of the cost of compliance with applicable limitations and standards, payable to the permit issuing authority in the event that termination or compliance with applicable limitations and standards is not achieved by the statutory deadline or the date set forth in the permit, if earlier.

(5) In all cases, the permittee's decision to terminate its direct discharge of pollutants shall be evidenced by a Board of Directors resolution which has been made public or by such other means as EPA determines evidences a firm public commitment.

[*Comment:* A permittee may evidence a firm public commitment: (1) by a resolution of the Board of Directors signed by the Chairman of the Board and the Chief Executive Officer; (2) in the case of a public facility, by appropriate action by either the principal executive officer or elected official or (3) as otherwise appropriate for partnerships, sole proprietorship, etc.]

(d) The Director may, upon request of the applicant, modify a schedule of compliance in an issued permit if he or she determines good and valid cause (such as an act of God, strike, flood, materials shortage, or other events over which the permittee has little or no control or remedy) exists for such modification under § 122.31. In no case shall the compliance schedule be modified to extend beyond an applicable statutory treatment deadline.

(e) In the case of a POTW which has received a grant under section 202(a)(3) of the Act, to fund 100% of the costs to modify or replace facilities construction

with a grant for innovative and alternative wastewater technology under section 202(a)(2), the schedule of compliance may be modified to reflect the amount of time lost during construction of the innovative and alternative facility. In no case shall the compliance schedule be modified to extend beyond an applicable statutory deadline for compliance.

(f) New sources, new dischargers, sources which recommence discharging after terminating operations and those sources which had been indirect dischargers which commence discharging into navigable waters do not qualify for compliance schedules under this section and are subject to § 122.47(d)(4).

Subpart C—Permit Compliance

§ 122.20 Monitoring.

(a) To assure compliance with permit terms and conditions, all permittees shall monitor as specified in the permit:

(1) The amount, concentration, or other measurement specified in § 122.16 for each pollutant specified in the permit;

(2) The volume of effluent discharged from each point source; and

(3) As otherwise specifically required in the permit, e.g., as required under § 122.16(g)(2).

(b) For purposes of paragraph (a), the Director shall specify the following monitoring requirements in the permit:

(1) Requirements concerning proper installation, use, and maintenance of monitoring equipment or methods (including biological monitoring methods where appropriate);

(2) Monitoring frequency, type, and intervals sufficient to yield continuing data representative of the volume of effluent flow and the quantity of pollutants discharged. Variable effluent flows and pollutant quantities shall be monitored at more frequent intervals than relatively constant effluent flows and pollutant quantities; and

(3) Test procedures for the analysis of pollutants meeting the requirements of paragraph (c) of this section.

(c)(1) Test procedures identified in 40 CFR Part 136 shall be utilized for pollutants or parameters listed in that Part, unless an alternative test procedure has been approved under that Part.

(2) Where no test procedure under 40 CFR Part 136 has been approved, the Director shall specify a test method in the permit.

(3) Notwithstanding paragraph (c)(1) of this section, the Director may specify in a permit the test procedure used in developing the data on which an effluent limitations guideline was based, or specified by the standards and guidelines.

(4) Where a method approved under 40 CFR Part 136 for any pollutant or parameter was used in developing the applicable standards and limitations or is specified by the standards and limitations, the same method shall be specified in the permit.

(d) The sampling frequency and other monitoring requirements specified by the Director under paragraph (b) of this section shall, to the extent applicable, be consistent with monitoring requirements specified in a standard or effluent limitations guideline on which the effluent limitations in the permit are based.

(e) If the permittee believes that the monitoring requirements specified by the Director under paragraph (b) of this section in any draft permit under § 124.31 are not sufficient to yield data representative of the volume of effluent flow and the quantity of pollutants discharged, it should request that additional monitoring requirements sufficient to yield such data be included in the final permit. Compliance with effluent limitations contained in the permit will be determined in accordance with the monitoring requirements specified in the permit which, when finally effective, are deemed to yield data representative of the volume of effluent flow and the quantity of pollutants discharged.

(f) The Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this section shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

§ 122.21 Recording of monitoring results.

(a) Any permittee required to monitor under § 122.20 shall maintain records of all monitoring information and monitoring activities, including:

(1) The date, exact place and time of sampling or measurements;

(2) The person(s) who performed the sampling or measurements;

(3) The date(s) analyses were performed;

(4) The person(s) who performed the analyses;

(5) The analytical techniques or methods used; and

(6) The results of such analyses.

(b) All records of monitoring activities and results (including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records) shall be retained by the permittee for three years. The three-year period shall be extended:

(1) Automatically during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or regarding promulgated effluent guidelines applicable to the permittee, or

(2) As requested by the Director.

(c) The Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document required to be maintained under this section shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than six months per violation, or by both.

§ 122.22 Reporting of monitoring results and compliance by permittees.

(a) Permittees shall report to the Director, using Discharge Monitoring Reports, the results of any monitoring specified by the permit. This includes reporting of the results of monitoring required by § 122.20 to the Director, as often as required by the permit, but in no case less than once per year. Other monitoring data not specifically required in the permit (such as internal process or internal waste stream data) or data collected by third parties need not be submitted unless it indicates a violation, but it shall be identified and referenced as a supplement to the DMR.

[*Comment:* Reporting frequency depends upon the nature and effect of the discharge. For discharges such as small volume, non-contact cooling water, annual report submission may be sufficient. Discharges which require more frequent reporting include: variable discharges; discharges which contribute significant amounts of pollutants to the waters of the United States; discharges which contain toxic or hazardous pollutants or other pollutants of concern; and discharges which apply new treatment or control methods.]

(b) If the permittee monitors any pollutant more frequently than required by the permit, using approved analytical methods, the results of this monitoring shall be reported in the DMR. For purposes of this paragraph, "approved analytical methods" are those test procedures for the analysis of pollutants which conform to 40 CFR 136 or are specified in the permit.

(c) Within 14 days after each interim or final permit compliance schedule date, the permittee shall provide the Director with written notice of the permittee's compliance or

noncompliance with the interim or final requirements.

(d) The Act provides that any person who knowingly makes any false statement, representation, or certification in the monitoring report or notice of compliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than six months per violation, or by both.

§ 122.23 Noncompliance reporting.

(a) On the last working day of February, May, August, and November, the State Director shall submit to the Enforcement Division Director information concerning noncompliance with NPDES permit requirements by major dischargers in the State in accordance with the reporting schedule contained in paragraph (g). The Enforcement Division Director shall submit such information, and shall also prepare and submit information for EPA-issued permits, to the EPA Office of Water Enforcement in accordance with paragraph (g).

(b) The reports required by paragraph (a) shall include the following information:

(1) *Failure to complete construction elements.* Noncompliance shall be reported:

(i) When the permittee has failed to complete by the date specified in the permit, an element of the compliance schedule (e.g., award of contract, preliminary plans, begin construction or attain operational level); and

(ii) The permittee has not returned to compliance by accomplishing the requirements of the permit within 30 days from the date a report is due under § 122.22(c).

(2) *Failure to complete or provide compliance schedule reports.* Noncompliance shall be reported in the following circumstances:

(i) When the permittee fails to complete or provide a report required in the permit compliance schedule or under § 122.22 (e.g., progress reports or notification of compliance or noncompliance); and

(ii) The permittee has not returned to compliance by submitting the report within 30 days from the date it is due under § 122.22(c).

(3) *Noncompliance with applicable standards and limitations.* Noncompliance shall be reported:

(i) When the permittee has violated an applicable standard or limitation and has not returned to compliance with the NPDES permit requirements within 45 days from the date that the DMR or notification of noncompliance under § 122.14(h) was due; or

(ii) When a pattern of noncompliance with applicable standards or limitations as determined by the Director exists for any major discharger over a period of 12 months prior to the end of the current reporting period. This pattern of noncompliance is based on violation of monthly averages and excludes parameters where there is continuous monitoring. A pattern of noncompliance shall be reported whenever there is:

(A) Any violation of the same permit or limitation or standard in two consecutive quarters; and

(B) Any violation of one or more permit limitations or standards in each of four consecutive quarters; or

(iii) When, as determined by the Director, a significant discharge of a pollutant occurs, such as a discharge of a toxic or hazardous substance.

(4) *Failure to Report Effluent Data.* Noncompliance shall be reported where the permittee has failed to provide a DMR within 30 days of the date it is due or where the permittee has exceeded effluent limitations and has failed to report this noncompliance.

(5) *Deficient Reports.* Noncompliance shall be reported where the required reports provided by the permittee are so deficient as to cause misunderstanding by the permit issuing authority and thus impede the review of the status of compliance.

(6) *Modifications to schedules of compliance under § 122.17(d).* Noncompliance resulting from or constituting the basis for a modification under § 122.17(d) shall be reported.

[*Comment:* Noncompliance reported under paragraph (b) shall be reported in successive reports until the noncompliance is resolved. The resolution of noncompliance shall be reported, and when the noncompliance is reported as resolved, it will not appear in subsequent reports.]

(c) The narrative information required under paragraph (b) shall:

(1) Include the following data in the following order:

(i) Name, location, and permit number of each noncomplying permittee;

(ii) A brief description and date of each instance of noncompliance;

(iii) The date(s) and a brief description of the action(s) taken by the Director to insure compliance;

(iv) Status of the instance of noncompliance with the date of the action or resolution;

(v) Any details which tend to explain or mitigate an instance of noncompliance; and

(2) Provide separate lists for non-POTWs, POTWs, and Federal permittees;

(3) Combine information concerning schedule and effluent noncompliance in a single entry for each permittee; and

(4) Alphabetize all narrative listings by permittee name. Where two or more permittees have the same name, the lowest permit number shall govern the order of entry, i.e., the lowest number shall be entered first.

(d) Statistical information shall be reported quarterly on all other instances of noncompliance with permit requirements by major dischargers not set forth in paragraph (b) of this section.

(e) For minor dischargers whose compliance has been reviewed by the permitting authority, statistical information on the types of noncompliance listed under paragraph (b) of this section shall be reported annually. In addition, a separate list of minor dischargers which are one or more years behind in construction phases of the compliance schedule shall be submitted annually in alphabetical order by name and permit number.

(f) *Reporting schedules:* (1) The schedule for reporting noncompliance by major dischargers under paragraphs (b), (c), and (d) of this section shall be as follows:

Quarters [1]	Dates for completion of reports
January, February, and March	May 31.[2]
April, May, and June	August 31.[2]
July, August, and September	November 30.[2]
October, November, and December	February 28.[2]

[1] Covered by reports on noncompliance by major dischargers.
[2] Report made available to the public on this date.

(2) The annual reporting period for noncompliance by minor dischargers under paragraph (e) of this section shall end at the end of the Federal fiscal year (currently September 30), with reports completed and available to the public no more than 60 days later.

(g) All reports prepared under this section shall be made available to the public for inspection and copying.

[*Comment:* The distinction between "major" and "minor" dischargers is established in EPA's annual operating guidance for the EPA Regional Offices and the States.]

Subpart D—Permit Modification, Revocation and Reissuance, and Termination

§ 122.30 General.

Permits shall be (a) modified, (b) revoked and reissued, or (c) terminated

only as authorized in this Subpart, and then only in conformance with applicable provisions of Part 124.

§ 122.31 Modification, revocation and reissuance, and termination.

(a) An issued permit may be modified in whole or in part, revoked and reissued, or terminated during its term for cause as specified in this section.

(b) Permit modifications shall not be used to extend the term of a permit beyond 5 years from the original date of issuance.

(c) Modification, revocation and reissuance, or termination of an issued permit may be initiated by the Director under applicable provisions of Part 124. Any interested person may request the Director to modify, revoke and reissue, or terminate an issued permit.

(d) Causes for modification, revocation and reissuance, or termination include the following:

(1) Violation of any term or condition of the permit;

(2) Failure of the permittee to disclose fully all relevant facts or misrepresentation of any relevant facts by the permittee in the application or during the permit issuance process;

(3) A change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit (e.g., plant closure, termination of discharge by connection to a POTW, the promulgation of any applicable effluent standard or prohibition under section 307 of the Act, any change in State law that requires the reduction or elimination of the discharge, etc.);

(4) Information indicating that the permitted discharge poses a threat to human health or welfare; or

(5) A change in ownership or control of a source which has a permit, where required by the Director in accordance with § 122.12(d).

(e) In addition to the provisions of paragraph (d) of this section, causes for modification, or revocation and reissuance, but not termination, of a permit include the following:

(1) Material and substantial alterations or additions to the discharger's operation which were not covered in the effective permit (e.g., production changes, relocation or combination of discharge points, changes in the nature or mix of products produced), provided that such alterations do not constitute total replacement of the process or production equipment causing the discharge which converts it into a new source;

[*Comment:* Certain reconstruction activities may cause the new source provisions of section 306 to become applicable to the discharger. (See § 122.47.) In such cases the new source permit issuance procedures of § 124.12 should be followed rather than the modification procedures of § 124.13.]

(2) The existence of a factor or factors which, if properly and timely brought to the attention of the Director, would have justified the application of limitations or other requirements different from those required by applicable standards or limitations but only if the requester shows that such factor or factors arose after the final permit was issued;

(3) Revision, withdrawal, or modification of water quality standards or EPA promulgated effluent limitations guidelines (including interim final effluent limitations guidelines), *but only when:*

(i) The permit term or condition requested to be modified or revoked was based on a promulgated effluent limitations guideline or an EPA approved or promulgated water quality standards

(ii)(A) EPA has revised, withdrawn, or modified that portion of the effluent limitations guidelines on which the permit term or condition was based; or

(B) EPA has approved a State action with regard to a water quality standard on which the permit term or condition was based; and

(iii) A request for modification, or revocation and reissuance, is filed in accordance with § 124.13 (or applicable State procedures meeting the requirements of § 124.13) within ninety (90) days after **Federal Register** notice of:

(A) Revision, withdrawal, or modification of that portion of the effluent limitations guidelines; or

(B) EPA approval of State action regarding a water quality standard;

(4) Judicial remand of EPA promulgated effluent limitations guidelines, if the remand concerns that portion of the guidelines on which the permit term or condition was based and the request is filed within ninety (90) days of the judicial remand;

(5) Any modification, or revocation and reissuance of permits specifically authorized by the Act, e.g., sections 301(c), 301(g), 301(h), 301(i) or 301(k);

(6) As necessary under §§ 122.14(d), 122.15(b) and 122.17 (c) and (e); or

(7) Failure of an approved State to notify another State whose waters may be affected by the discharge from the approved State, as required by section 402(b)(3) of the Act.

(f) The following permit modifications shall not require public notice and opportunity for hearing under Part 124 unless they would render the applicable standards and limitations in the permit less stringent, or unless contested by the permittee:

(1) Correction of typographical errors;

(2) A change requiring more frequent monitoring or reporting by the permittee;

(3) A change in an interim compliance date, but not beyond 120 days and not where the change would interfere with the attainment of a final compliance date;

(4) A change in ownership or control of a source which has a permit where no other change in the permit is necessary and where transfer is accomplished in accordance with § 122.12(d);

(5) A change in the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge under § 122.47(d)(4); and

(6) Deletion of a point source outfall, where the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.

Subpart E—Special NPDES Programs

§ 122.40 General.

The following sections described NPDES program coverage for certain categories of point source dischargers.

§ 122.41 Disposal of pollutants into wells, into publicly owned treatment works, or by land application.

(a) Where part of a discharger's process waste water is not being discharged into waters of the United States or contiguous zone because it is disposed into a well, into a POTW, or by land application thereby reducing the flow or level of pollutants being discharged into waters of the United States, applicable effluent limitations and standards for the discharge in the permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one of the following methods:

(1) If none of the waste from a particular process is discharged into waters of the United States, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards;

(2) In all cases other than those described in paragraph (1), effluent

limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into waters of the United States, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under Part 125, Subpart D to make them more stringent if dischargers to wells, publicly owned treatment works, or by land application change the character or treatability of the pollutants being discharged to receiving waters.

[*Comments* This method may be algebraically expressed as:
P = E × N / T; where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to waters of the United States, and T is the total wastewater flow.]

(b) Paragraph (a) shall not apply where promulgated effluent limitations guidelines:

(1) Control concentrations of pollutants discharged, but not mass; or

(2) Specify a different specific technique for adjusting effluent limitations to account for well injection.

(c) Paragraph (a) does not alter a discharger's obligation to meet any more stringent requirements established under §§ 122.14 and 122.15.

§ 122.42 Concentrated animal feeding operations.

(a) Concentrated animal feeding operations are point sources subject to the NPDES permit program.

(b) *Definitions.*

(1) "Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

(i) Animals (other than aquatic animals) have been, are, or will be, stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and

(ii) Crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

Two or more animal feeding operations under common ownership are considered, for the purposes of these regulations, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

(2) "Concentrated animal feeding operation" means an animal feeding operation which meets the criteria set forth in paragraphs (b)(2) (i), (ii), or (iii) of this section:

(i) More than the numbers of animals specified in any of the following categories are confined:

(A) 1,000 slaughter and feeder cattle,

(B) 700 mature dairy cattle (whether milked or dry cows),

(C) 2,500 swine each weighing over 25 kilograms (approximately 55 pounds),

(D) 500 horses,

(E) 10,000 sheep or lambs,

(F) 55,000 turkeys,

(G) 100,000 laying hens or broilers (if the facility has a continuous overflow watering),

(H) 30,000 laying hens or broilers (if the facility has a liquid manure system),

(I) 5,000 ducks, or

(J) 1,000 animal units; or

(ii) More than the following numbers and types of animals are confined:

(A) 300 slaughter or feeder cattle,

(B) 200 mature dairy cattle (whether milked or dry cows),

(C) 750 swine each weighing over 25 kilograms (approximately 55 pounds),

(D) 150 horses,

(E) 3,000 sheep or lamb,

(F) 16,500 turkeys,

(G) 30,000 laying hens or broilers (if the facility has continuous overflow watering),

(H) 9,000 laying hens or broilers (if the facility has a liquid manure handling system),

(I) 1,500 ducks, or

(J) 300 animal units;

and either one of the following conditions are met: pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or pollutants are discharged directly into navigable waters which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation. Provided, however, that no animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a 25 year, 24 hour storm event.

(iii) The Director determines that the operation is a significant contributor of pollution to waters of the United States, in accordance with paragraph (c).

(3) The term "animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 25 kilograms (approximately 55 pounds), multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

(4) The term "man-made" means constructed by man and used for the purpose of transporting wastes.

(c) *Case-by-case designation of concentrated animal feeding operations.*

(1) Notwithstanding any other provision of this section, any animal feeding operation may be designated as a concentrated animal feeding operation where it is determined to be a significant contributor of pollution to the waters of the United States. In making this designation the Director shall consider the following factors:

(i) The size of the animal feeding operation and the amount of wastes reaching waters of the United States;

(ii) The location of the animal feeding operation relative to waters of the United States;

(iii) The means of conveyance of animal wastes and process waste waters into waters of the United States;

(iv) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewaters into waters of the United States; and

(v) Other such factors relative to the significance of the pollution problem sought to be regulated.

(2) No animal feeding operation with less than the numbers of animals set forth in paragraphs (b)(2) (i) and (ii) of this section designated as a concentrated animal feeding operation unless:

(i) Pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or

(ii) Pollutants are discharged directly into waters of the United States which originate outside of the facility and pass over, across, through the facility or otherwise come into direct contact with the animals confined in the operation.

(3) In no case shall a permit application be required from a concentrated animal feeding operation designated under this paragraph until there has been an onsite inspection of the operation and a determination that the operation should and could be regulated under the permit program.

§ 122.43 Concentrated aquatic animal production facilities.

(a) Concentrated aquatic animal production facilities, as defined in this section, are point sources subject to the NPDES permit program.

(b) *Definitions.* (1) "Concentrated aquatic animal production facility"

means a hatchery, fish farm, or other facility which contains, grows, or holds:

(i) Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year but does not include:

(A) Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

(B) Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.

(ii) Warm water fish species or other warm water aquatic animals in ponds, raceways or other similar structures which discharge at least 30 days per year, but does not include:

(A) Closed ponds which discharge only during periods of excess runoff; or

(B) Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

(2) "Cold water aquatic animals" include, but are not limited to, the *Salmonidae* family of fish, e.g., trout and salmon.

(3) "Warm water aquatic animals" include, but are not limited to, the *Ameiuride, Centrarchidae* and *Cyprinidae* families of fish, e.g., respectively catfish, sunfish, and minnows.

(c) *Case-by-case designation of concentrated aquatic animal production facilities.* Any warm or cold water aquatic animal production facility not otherwise falling within the definitions provided in paragraph (b) may be designated as a concentrated aquatic animal production facility where the facility is determined to be a significant contributor of pollution to waters of the United States. In making this designation the Director shall consider the following factors:

(1) The location and quality of the receiving waters of the Unites States;

(2) The holding, feeding, and production capacities of the facility;

(3) The quantity and nature of the pollutants reaching waters of the United States; and

(4) Other such factors relating to the significance of the pollution problem sought to be regulated.

In no case shall a permit application be required from a concentrated aquatic animal production facility designated under this paragraph until there has been an on-site inspection of the facility and a determination that the facility should and could be regulated under the permit program.

§ 122.44 Aquaculture projects

(a) Discharges into aquaculture projects, as defined in this section, are subject to the NPDES permit program through section 318 of the Act, and in accordance with Part 125, Subpart B.

(b) *Definitions.* (1) "Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

(2) "Designated project area" means the portions of the waters of the United States within which the applicant for a permit plans to confine the cultivated species, using a method or plan or operation (including, but not limited to physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants permitted under this section and be harvested within a defined geographic area.

§ 122.45 Separate storm sewers.

(a) Separate storm sewers, as defined in this section, are point sources subject to the NPDES permit program. Separate storm sewers may be covered either under individual NPDES permits or under the general permit program [see § 122.48].

(b) *Definition.* "Separate storm sewer" means a conveyance or system of conveyances (including but not limited to pipes, conduits, ditches, and channels) primarily used for collecting and conveying storm water runoff and either:

(1) Located in an urbanized area as designed by the Bureau of Census according to the criteria in 39 FR 15202 (May 1, 1974); or

(2) Not located in an urbanized area but designated as a significant contributor of pollution under paragraph (c).

"Separate storm sewer" does not include any conveyance which discharges process wastewater or storm water runoff contaminated by contact with wastes, raw materials, or pollutant-contaminated soil, from lands or facilities used for industrial or commercial activities, into waters of the United States or into separate storm sewers. Such discharges are subject to the general provision of this Part.

[*Comment:* Whether or not a system of conveyances is or is not a separate storm sewer for purposes of this Part shall have no bearing on whether or not the system is eligible for funding under Title II of the Act, see 40 CFR § 35.925-21.]

(c) *Case-by-case designation of separate storm sewers.* The Director may designate a storm sewer not located in an urbanized area as a separate storm sewer. This designation may be made to the extent allowed or required by EPA promulgated effluent guidelines for point sources in the separate storm sewer category or when:

(1) A Water Quality Management plan under section 208 of the Act, which contains requirements applicable to such point sources is approved; or

(2) A storm sewer is determined to be a significant contributor of pollution to the waters of the United States. In making this determination the following factors shall be considered:

(i) The location of the storm sewer with respect to waters of the United States;

(ii) The size of the storm sewer;

(iii) The quantity and nature of the pollutants reaching waters of the United States; and

(iv) Other such factors relating to the significance of the pollution problems sought to be regulated.

[*Comment:* An NPDES permit for discharges into waters of the United States from a separate storm sewer covers all conveyances which are a part of that separate storm sewer system, even though there may be several owners-operators of such conveyances. However, discharges into separate storm sewers from point sources which are not part of the separate storm sewer systems may also require a permit.]

§ 122.46 Silvicultural activities.

(a) Silvicultural point sources, as defined in this section, are point sources subject to the NPDES permit program.

(b) *Definitions.* (1) "Silvicultural point source" means any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the United States.

[*Comment:* The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation, and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, and road construction and maintenance from which there is runoff during precipitation events. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a section 404 permit (see 33 CFR § 209.120).]

(2) "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel and riprap (see 40 CFR Part 436, Subpart B, and the effluent limitations guidelines pursuant thereto).

(3) "Log sorting and log storage facilities" means facilities whose discharges result from the holding of unprocessed wood, i.e. logs or roundwood with bark or after removal of bark in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking). (See 40 CFR Part 429, Subpart J, and the effluent limitations guidelines pursuant thereto.)

§ 122.47 New sources and new dischargers.

(a) *Definitions.* (1) "New source" and "new discharger" are defined in § 122.3 (u) and (v).

(2) "Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants;

(3) "Existing source" means any source which is not a new source or a new discharger;

(4) "Site" means the land or water area upon which a source and its water pollution control facilities are physically located, including but not limited to adjacent land used for utility systems, repair, storage, shipping or processing areas, or other areas incident to the industrial, manufacturing, or water pollution treatment processes.

(5) "Facilities or equipment" means buildings, structures, process or production equipment or machinery which form a permanent part of the new source and which will be used in its operation, provided that such facilities or equipment are of such value as to represent a substantial commitment to construct. It does not include facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.

(b) *Criteria and standards for new source determination.* (1) The following construction activities result in a new source as defined in § 122.3.

(i) Construction of a source on a site where another source is not located, or

(ii) Construction of a source on a site where another source is located, provided that the process or production equipment which causes the discharge of pollutants from the other source is totally replaced by this construction or the construction results in a new or additional discharge.

[*Comment:* The fact that a source is constructed on a site so that it shares or uses common land or water areas of another source for utility systems, repair, storage, or shipping does not prevent that source from being considered a new source.]

(2) The modification of an existing source by changing existing process or production equipment, replacing existing process or production equipment (except as provided in paragraph (b)(1)), or by the addition of such equipment on the site of the existing source which results in a change in the nature or quantity of pollutants discharged is not a new source under this section. Modifications of this nature are subject to the provisions of § 122.31(e)(2).

(3) Construction of a new source as defined under § 122.3(v) has commenced if the owner or operator has:

(i) Begun, or caused to begin as part of a continuous on-site construction program:

(A) Any placement, assembly, or installation of facilities or equipment;

(B) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(ii) Entered a binding contractual obligation for the purchase of facilities or equipment which is intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

(c) *Requirement of an Environmental Impact Statement.* (1) The issuance of a permit to a new source:

(i) By EPA may be a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 33 U.S.C. 4321 *et seq.* and is subject to the environmental review provisions of NEPA as set out in 40 CFR 6, Subpart I. EPA will determine whether an Environmental Impact Statement (EIS) is required under § 124.12 and 40 CFR 6, Subpart I;

(ii) By an NPDES-approved State is not a Federal action and therefore does not require EPA to conduct an environmental review.

(2) The EIS shall include a recommendation on whether the permit is to be issued or denied.

(i) If the recommendation is to deny the permit, the final EIS shall contain the reasons for the recommendation and list those measures, if any, which the applicant could take to cause the recommendation to be changed;

(ii) If the recommendation is to issue the permit, the final EIS shall recommend the actions which the permittee should take to prevent or minimize any adverse environmental impacts;

(3) The Regional Administrator shall issue or deny the new source NPDES permit following a complete evaluation of any significant beneficial and adverse environmental impacts and a review of the recommendations contained in the EIS.

(4)(i) No on-site construction of a new source for which an EIS is required shall commence before issuance of a final permit incorporating appropriate EIS-related requirements, or before execution by the applicant of a legally binding written agreement which requires compliance with all such requirements, unless such construction is determined by the Regional Administrator not to cause significant adverse environmental impact.

(ii) No on-site construction of a new source for which no EIS is required shall commence before 15 days following issuance of a finding of no significant impact, unless the new source requests permission to construct and the Regional Administrator determines that a finding of no significant impact will probably be made.

(5) The permit applicant must notify the Regional Administrator of any on-site construction which begins before the times specified in paragraph (c)(4) of this section. If on-site construction begins in violation of this paragraph, the Regional Administrator shall advise the owner or operator that it is proceeding with construction at its own risk, and that such construction activities constitute grounds for denial of a permit. The Regional Administrator may seek a court order to enjoin construction in violation of this paragraph.

(d) *Effect of compliance with new source performance standards.* (1) Except as provided in paragraph (d)(2), any new discharger on which construction commenced after October 18, 1972, or any new source, which meets the applicable promulgated new source performance standards before the commencement of discharge, shall not be subject to any more stringent new source performance standards, or to any more stringent technology-based standards under section 301(b)(2) of the Act for the shortest of the following periods:

(i) Ten years from the date that construction is completed;

(ii) Ten years from the date the source begins to discharge process or other non-construction related wastewater; or

(iii) The period of depreciation or amortization of the facility for the purposes of section 167 or 169 (or both) of the Internal Revenue Code of 1954.

[*Comment:* The provisions of this paragraph do not apply to existing sources which modify their pollution control facilities or construct new pollution control facilities and achieve performance standards, but which are neither new sources nor new dischargers or otherwise do not meet the requirements of this paragraph.]

(2) The protection from more stringent standards of performance afforded by paragraph (d)(1) of this section does not apply to:

(i) Additional or more stringent permit conditions which are not technology based, e.g., conditions based on water quality standards, or effluent standards or prohibitions under section 307(a); and

(ii) Additional permit conditions controlling pollutants listed as toxic under section 307(a) of the Act or as hazardous substances under section 311 of the act and which are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic or hazardous where control of those other pollutants has been specifically identified as the method to control the toxic or hazardous pollutant.

(3) Where an NPDES permit issued to a source enjoying a "protection period" under paragraph (d)(1) will expire on or before the expiration of the protection period, such permit shall require the owner or operator of the source to be in compliance with the requirements of section 301 and any other than applicable requirements of the act immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements shall be allowed.

(4) The owner or operator of a new source, a new discharger, a source recommencing discharge after terminating operations, or a source which had been an indirect discharger which commences discharging into navigable waters shall install and have in operating condition, and shall "start-up" all pollution control equipment required to meet the terms and conditions of its permits before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), the owner or operator must meet all permit terms and conditions.

(5) After the effective date of new source performance standards, in accordance with section 306(e), it shall be unlawful for any owner or operator of any new source to operate such source in violation of those standards applicable to such source.

§ 122.48 General permit program.

(a) *Definitions.* (1) The term "separate storm sewer" is defined in § 122.45.

(2) The term "general permit program area" ("GPPA") means any area so designated under paragraph (c) of this section in which all owners or operators of separate storm sewers or other categories of point sources are subject to the same general permit, other than owners or operators of such sources to whom individual NPDES permits have been issued.

[*Comment:* All draft general permits for point sources other than separate storm sewers must be sent to the EPA Deputy Assistant Administrator for Water Enforcement during the public comment period for a 90-day review. If the draft general permit does not meet the criteria of § 122.48(b)(2), the EPA Deputy Assistant Administrator may object to the issuance of the general permit within those 90 days. See § 123.12(a)(14) and 124.32(a)(2).]

(3) The term "general permit" means an authorization to discharge which,

(i) Where issued by EPA, is published in the Federal Register or,

(ii) Where issued by a State, published in accordance with applicable State procedures, and

(iii) Is applicable to all owners and operators of separate storm sewers or other categories of point sources in a designated GPPA, other than owners and operators of such sources to whom individual NPDES permits have been issued.

(b) The Director may regulate the following discharges under general permits:

(1) Separate storm sewers; and

(2) Such other categories of point sources if there are a number of minor point sources operating in a geographical area that:

(i) Involve the same or substantially similar types of operations;

(ii) Discharge the same types of wastes;

(iii) Would require the same effluent limitations or operating conditions;

(iv) Would require the same similar monitoring requirements; and

(v) In the opinion of the director, would be more appropriately controlled under a general permit than under an individual NPDES permit.

(c) Each general permit shall be applicable to a class or category of dischargers meeting the criteria of paragraph (b) within a GPPA designated by the Director.

(1) The GPPA shall correspond with existing geographic or political boundaries such as:

(i) Designated planning areas under sections 208 and 303 of the Act;

(ii) Sewer districts or sewer authorities;

(iii) City, county or State political boundaries;

(iv) State highway systems;

(v) Standard metropolitan statistical areas as defined by the Office of Management and Budget;

(vi) Urbanized areas as defined by the Bureau of Census (see § 122.45(b)(1)); or

(vii) Any other appropriate divisions or combinations of the above boundaries which will encompass the sources subject to the same general permit.

(2) Any designation of any GPPA is subject to review by the Director at the expiration of the general permit for the GPPA, or if individual permits have been issued to all the owners and operators in the categories of point sources within the GPPA, or as necessary to address water quality problems effectively.

(3) General permits shall be issued in accordance with the applicable requirements of Part 124.

[*Comment:* The permit issuing authority is encouraged to provide as much actual notice of the draft general permit to the permitees as possible. This notice would be in addition to the public notice requirements in § 124.41(f) and could include notice in trade association journals and newsletters.]

(d) *Scope of General Permits.* (1) Each general permit shall cover all owners and operators of separate storm sewers or other designated categories of point sources in the GPPA for which the general permit is issued, except:

(i) As provided in paragraph (e); and

(ii) Owners and operators of separate storm sewers or other categories of point sources, who are already subject to individual NPDES permits prior to the effective date of the general permit;

(2)(i) All sources not excluded from general permit coverage for these reasons are permittees subject to the terms and conditions of the general permit.

(ii) Source excluded from general permit coverage solely because they already have an individual NPDES permit may request that the individual permit be revoked, and that they be covered by the general permit. Upon revocation of the individual NPDES permit, the general permit shall apply to such point source.

(e) *Case-by-case designation.* (1) Under § 124.14, the Director may revoke a general permit as it applies to any

person and require such person to apply for and obtain an individual NPDES permit. Interested persons may petition the Director to take action under this paragraph if one of the six cases listed below occurs. Cases where individual NPDES permits may be required include the following:

(i) The covered discharge(s) is a significant contributor of pollution;

(ii) The discharger is not in compliance with the terms and conditions of the general permit;

(iii) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants from the covered point source;

(iv) Effluent limitations guidelines are subsequently promulgated for point sources covered by the general permit;

(v) A Water Quality Management plan containing requirements applicable to such point source is approved; or

(vi) The requirements of paragraph (b)(2)(i) through (iv) are not met.

(2) Where EPA is the permit issuing authority, the Regional Administrator may revoke a general permit as it applies to any person and require such person to apply for an individual NPDES permit if:

(i) There has been an on-site inspection of the facility and a determination that the point source should and could be regulated under an individual permit; and

(ii) The owner or operator has been notified in writing of the revocation of the general permit and that a permit application is required. This notice shall include an application form, a statement that the owner or operator has sixty days from receipt of notice to file the application, and a statement that the general permit no longer authorizes the owner or operator to discharge pollutants.

(3) Any owner or operator subject to a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit such application, with reasons supporting the request, to the Director no later than ninety days after the publication by EPA of the general permit in the Federal Register or the publication by the State in accordance with applicable State law. All such requests shall be granted by issuance of any individual permit if the reasons cited by the owner or operator are adequate to support the request.

(4) Where an individual NPDES permit is issued to an owner or operator otherwise subject to a general permit, the general permit as it applies to the individual NPDES permittee is automatically revoked on the effective date of the individual permit.

(5) Any owner or operator applying for an individual NPDES permit under this paragraph is subject to the procedures set forth in Part 124.

§ 122.49 Special considerations under Federal law.

Under section 301(b)(1)(C) of the Act, permits shall be consistent with and reflect requirements under applicable Federal laws other than the Act, and to the extent authorized by law, requirements under Executive Orders. For permits issued by the Regional Administrators, such Federal requirements include but are not limited to the following:

(a) Executive order 11990 (Protection of Wetlands).

(b) Executive Order 11988 (Preservation of Floodplains).

(c) Sections 3, 4, and 5 of the Wild and Scenic Rivers Act, 16 U.S.C. 1273 et seq.

(d) The National Historic Preservation Act of 1966, 42 U.S.C. 4321 et seq. (and the related Executive Order 11593).

(e) The Land and Water Conservation Act, 16 U.S.C. 460, et seq.

(f) Section 7 of the endangered Species Act, 16 U.S.C. 1531 et seq.

(g) Section 307 of the Coastal Zone Management Act, 16 U.S.C. 1451 et seq.

[*Comment:* NPDES permits must be consistent with approved coastal zone management plans by virtue of sections 307(c)(3)(A) (Federally issued permits) and 307(c)(1) (approval and oversight of State permit programs).]

(h) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq.

(i) The Safe Drinking Water Act, 42 U.S.C. 300f et seq.

(j) The Marine Protection, Research, and Sanctuaries Act (the Ocean Dumping Act), 33 U.S.C. 1401 et seq.

(k) The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq.

(l) The Fish and Wildlife Coordination Act, 16 U.S.C. 661 et seq.

Subpart F—Miscellaneous

§ 122.60 Delegation of authority.

Subject to the appeal provisions of Part 124, the following authorities are hereby delegated to each of the Regional Administrators for the Region in which they are located:

(a) The authority to issue, condition, revoke, modify, deny, monitor, and enforce permits for discharges regulated by the NPDES program under sections 318, 402 and 405 of the Act.

(b) The authority to receive permit applications and related documents from States and to object in writing to the issuance of permits under section 402(d)(2) of the Act or (if such permits are outside the guidelines and requirements of the Act) under sections 402(d) (1), (2) and (4) of the Act.

(c) The authority under section 403(c) of the Act to issue permits under section 402 of the Act for a discharge into the territorial sea, the contiguous zone, or the oceans before the promulgation of guidelines under section 403(c) of the Act, including the determination that issuance is in the public interest.

(d) The authority granted to the Administrator by sections 308(a) and 308(b) of the Act.

(e) The authority to grant variances granted to the Administrator under sections 301(c), 301(g), and 316(a) of the Act.

(f) The authority to grant time extensions of statutory compliance dates under sections 301(i) and 301(k) of the Act.

(g) The authority to establish water-quality-related effluent limitations under section 302 of the Act.

(h) These authorities may be redelegated to the Enforcement Division Director of each Region. Permit issuance authority may not be redelegated below the Enforcement Division Director.

Appendix A—Point Source Categories and Permit Expiration Dates

Point source category	Permit expiration dates
Adhesives	June 30, 1981.
Aluminum Forming	June 30, 1981.
Auto & Other Laundries	June 30, 1981.
Battery Manufacturing	June 30, 1981.
Coal Mining	December 31, 1980.
Coil Coating	June 30, 1981.
Copper Forming	June 30, 1981.
Electric & Electronic Components	June 30, 1981.
Electroplating	June 30, 1981.
Explosives Manufacturing	June 30, 1981.
Foundries	June 30, 1981.
Gum & Wood Chemicals	June 30, 1981.
Inorganic Chemicals	March 31, 1981.
Iron & Steel	September 30, 1980.
Leather Tanning and Finishing	September 30, 1980.
Mechanical Products	June 30, 1981.
Nonferrous Metals	December 31, 1980.
Ore Mining	December 31, 1980.
Organic Chemicals	March 31, 1981.
Paint & Ink	December 31, 1980.
Pesticides	June 30, 1981.
Petroleum Refining	September 30, 1980.
Pharmaceuticals	June 30, 1981.
Photographic Supplies	June 30, 1981.
Plastics Processing	June 30, 1981.
Plastic & Synthetic materials	March 31, 1981.
Porcelain Enamel	June 30, 1981.
Printing & Publishing	December 31, 1980.
Pulp & Paper	March 31, 1981.
Rubber	March 31, 1981.
Soaps & Detergents	June 30, 1981.
Steam Electric	September 30, 1980.
Textile Mills	March 31, 1981.
Timber	September 30, 1980.

5. A new Part 123 is added as follows:

PART 123—STATE PERMIT PROGRAM REQUIREMENTS

Subpart A—General

Sec.
123.1 Purpose and scope.
123.2 Definitions.
123.3 Elements of a program submission.
123.4 Program description.
123.5 Memorandum of Agreement with the Secretary for section 404 programs.
123.6 Attorney General's Statement.
123.7 Memorandum of Agreement with the Regional Administrator.
123.8 Sharing of information.

Subpart B—Requirements of State Programs

123.11 Requirement to obtain a permit.
123.12 Operational requirements.
123.13 Control of disposal of pollutants into wells.
123.14 Inspections, monitoring, entry, and reporting.

Subpart C—Transfer of Information, Objections to Permits

123.21 Receipt and use of Federal information.
123.22 Transmission of information to EPA.
123.23 Objections to proposed NPDES permits.
123.24 Prohibitions.

Subpart D—Enforcement Provisions

123.31 Compliance evaluation programs.
123.32 Enforcement.

Subpart E—Planning and Conflict of Interest Requirements

123.41 Continuing planning process.
123.42 Agency board membership.

Subpart F—Procedures for Approval of State Permit Programs

123.51 Section 402 approval process.
123.52 Section 404 approval process.

Subpart G—Revisions to Approved Programs

123.61 Procedure for revision of State permit programs.
123.62 NPDES program revisions under the Clean Water Act of 1977.

Authority: Clean Water Act, as amended by the Clean Water Act of 1977, 33 U.S.C. 1251 et seq.

Subpart A—General

§ 123.1 Purpose and scope.

(a)(1) This Part specifies the requirements of State section 404 (discharges of dredged or fill material) and NPDES (sections 318, 402, and 405) permit programs which must be met in order to obtain approval of the Administrator under the Clean Water Act.

(2) This Part also specifies the process for approving and modifying State programs and for EPA objection to proposed State permits.

(b) A State permit program which conforms to this Part shall be approved by the Administrator. A State permit program will not be approved by the Administrator under section 402 of the Act unless it has authority to control the discharges specified in sections 318 and 405(a) of the Act. Except as provided below, State section 402 permit programs approved by EPA prior to the date of promulgation of these regulations may implement sections 318 and 405 of the Act. If a State lacks authority to implement these sections, it shall notify EPA and revise its program in accordance with § 123.62. Permit programs under sections 318 and 405 will not be approved independent of a section 402 permit program.

(c) Upon approval (and upon subsequent notification from the State that it is administering the permit program for purposes of section 404), the Administrator or the Secretary (in the case of section 404 programs), shall suspend the issuance of permits for those activities subject to the approved program.

(d) After program approval EPA or the Secretary (in the case of section 404 programs) shall retain jurisdiction over any permits (including general permits) which have been issued by the Federal government unless arrangements have been made with the State in the Memorandum of Agreement for the State to assume responsibility for these permits. Retention of jurisdiction shall include the processing of any permit appeals, modification requests or variance requests; the conduct of inspections, and the receipt and review of self-monitoring reports. If any permit appeal, modification request or variance request is not finally resolved when the Federally issued permit expires, EPA or the Secretary (in the case of section 404 programs) when agreed to by the State, may continue to retain jurisdiction until the matter is resolved. Under section 404(h)(5) of the Act States are entitled, after program approval, to administer and enforce general permits issued by the Secretary. However, if the State chooses not to administer and enforce these permits the Secretary retains jurisdiction until they expire.

(e) Any State permit program approved by the Administrator shall at all times be conducted in accordance with the requirements of this Part (including, where incorporated by reference, provisions of Parts 122, 124, and 125).

(f) These regulations are promulgated under the authority of sections 304(i), 101(e) and 501(a) of the Act, and implement the requirements of those sections.

[*Comment:* No partial program approvals may be granted. States must have authority to issue permits for all discharges into all waters of the United States within the State's jurisdiction. (In appropriate circumstances more than one State Agency can be approved to issue NPDES permits; see § 123.4(b).) In addition, States (including States which have previously been approved) must implement the Clean Water Act of 1977, (Pub. L. 95-217), amendments to sections 313 (Federal facilities); 304(e) (best management practices); and 402(b)(8) (pretreatment) of the Act. Similarly, all the requirements of section 404 must be satisfied prior to approval of a State section 404 program. The section 404 and NPDES programs are independent; a State may obtain approval for one without the other.

Although these regulations require States to administer complete programs, EPA recognizes that, as a matter of Federal law, a State may lack authority to exercise jurisdiction over discharges from facilities on Indian lands. The lack of such authority does not constitute grounds for refusal to authorize State administration of a program. However, to the extent that States have authority to exercise jurisdiction, they are required to do so.]

(g) Nothing in this Part precludes a State from:

(1) Adopting or enforcing any standard, limitation, or other requirement which is more stringent than required under the Act; or

(2) Operating a permit program with a greater scope of coverage than required under the Act.

(h) A State permit program approved under this Part is established and operated under State law.

[*Comment:* EPA has a continuing statutory responsibility to assure that the operation of State programs in in accordance with Federal law. States must cooperate with EPA and assure that it has access to information which it requests in order to carry out this responsibility. See §§ 123.8 and 123.61(d).]

§ 123.2 Definitions.

(a) The definitions in Part 122 apply to this Part.

(b) "Draft permit" means the permit prepared pursuant to §§ 124.31 or 124.32 indicating the State Director's tentative determination to issue or modify a permit with specified conditions.

(c) "Proposed permit" means a state permit or permit modification prepared after the public comment period (and, where applicable, any public hearing) which is sent to EPA for review before final issuance by the State. In the case of section 404 programs, proposed permits are not required unless requested by EPA.

[*Comment:* Where EPA has waived permit review no proposed permit is required under these regulations. The State may issue a final permit after meeting the requirements of §§ 124.31, 124.41, 124.42 and 124.44.]

(d) "Memorandum of Agreement" means the agreement entered into pursuant to § 123.7 between the Regional Administrator and the State Director, governing the relationship, duties, and rights of the parties in operating a State NPDES program.

(e) "State/EPA Agreement" means an agreement between the Regional Administrator and the State which integrates and coordinates EPA and State activities, responsibilities and programs under the Clean Water Act, the Resource Conservation and Recovery Act, and the Safe Drinking Water Act. The scope of the State/EPA Agreement may be expanded in the future to cover other environmental programs. Guidance for these agreements will be published from time to time in the Federal Register (see, e.g., 44 FR 17294 March 21, 1979).

§ 123.3 Elements of a program submission.

(a) EPA will not initiate formal review of a proposed State program until it receives three copies of a complete program submission. If a submission made by a State is not complete, the statutory review period (i.e., the period of time allotted for EPA review under the Act) shall not commence until the deficiency is corrected. The submission shall contain the following elements:

(1) A letter from the Governor of the State requesting program approval;

(2) An Attorney General's Statement as required by § 123.6;

(3) A Memorandum of Agreement as required by § 123.7;

(4) A complete program description as required by § 123.4;

(5) Copies of the permit application and permit forms which the State intends to employ in its program. Except for Discharge Monitoring Reports, forms used by States need not be identical to the forms used by EPA or the Secretary but should require the same basic information. The State need not provide copies of uniform national forms it intends to use but should note that it intends to use these:

[*Comment:* The States are encouraged to use uniform national forms established by the Administrator in the case of NPDES, or the Secretary in the case of section 404 programs. States are required to use uniform national Discharge Monitoring Reports, see § 122.31(1). Regulations will be proposed in the near future specifying information required on State NPDES and section 404 application forms. Uniform national forms may be modified to substitute the State Agency's name, address, logo, and other similar information, as appropriate, in place of EPA's.]

(6) Copies of all applicable statutes and regulations, including those governing applicable State administrative procedures; and

(7) In the case of section 404 programs, a Memorandum of Agreement between the State and the Secretary as required by § 123.5.

(b) If the State's submission is materially changed during the statutory review period, the review period shall recommence.

§ 123.4 Program description.

Any State desiring to administer a permit program shall submit to the Administrator a complete description of the program it proposes to establish and administer under State law or under an interstate compact. The program description shall include:

(a) A description of how the State intends to carry out its responsibilities under the Act.

(b)(1) A description (including organization charts) of the organization and structure of the State agency or agencies which will have responsibility for administering the permit program. NPDES authority may be shared by two or more State agencies but each agency must have Statewide jurisdiction over a class of activities. Where more than one agency is responsible for issuing permits, each agency must make a submission meeting the requirements of § 123.3 before formal EPA review will commence. In the case of section 404 programs, the State must designate one agency to be responsible for issuing section 404 permits.

(2) In the case of section 404 programs, the program description shall describe how the State section 404 agency will interact with other State and local agencies.

[*Comment:* There is no restriction limiting the number and type of state agencies implementing the NPDES program. However, EPA favors the use of a single agency.]

(c) A description of State procedures for the issuance of permits (including general permits if the State chooses to implement § 122.48), and any State appellate review procedures.

(d) A description of the State's priorities for issuance of permits.

(e) A description of the State's priorities for enforcement of permits, including a complete description of the State's compliance tracking and enforcement programs. In addition, in the case of section 404 programs the State must explain how it will coordinate its enforcement strategy with that of the Corps of Engineers and EPA.

(f) A description of the funding arrangements and personnel qualifications for the State's program, including the following information:

(1) A description of the agency staff who will be engaged in carrying out the State program, including the number and occupations of the employees;

(2) A list of the proposed or actual costs of establishing and administering the program, including the cost of the personnel listed in paragraph (f)(1) of this section, the cost of administrative support, and the cost of technical support;

(3) A description of the funding, including Federal grant money, available to the State Director to meet the costs listed in paragraph (f)(2) of this section, including any restriction or limitation upon this funding. Where the State proposes to administer a program of greater scope than is required by Federal law, the information provided under this paragraph shall indicate the resources dedicated to administering the federally required portion of the program; and

(4) For section 404 programs, a description of the categories and sizes of dicharges of dredged or fill material to which the State Director proposes to issue permits. For each category, the following information shall be given:

(i) Estimated number within the category which must file for a permit; and

(ii) Number and percent within each category for which the State has already issued a State permit or equivalent document regulating the discharge.

(g) In the case of section 404 programs, a description of the specific best management practices requirements proposed to be used to satisfy the exemption provisions of section 404(f)(1)(E) for construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment in accordance with applicable regulations.

[*Comment:* Regulations governing these BMPs will be proposed in the near future.]

§ 123.5 Memorandum of Agreement with the Secretary for section 404 programs.

In the case of section 404 programs the State shall enter into a Memorandum of Agreement with the Secretary, which shall include:

(a) An identification of those waters in which the Secretary will suspend the issuance of section 404 permits (pursuant to section 404 (h)(2) and (g)(1))

upon approval of the State program by the Administrator;

(b) Where an agreement is reached, procedures for joint processing of permits for activities which require both a section 404 permit from the State and a section 9 or 10 permit from the Secretary under the River and Harbor Act of 1899.

(c) An identification of those individual and general permits, if any, issued by the Secretary, the terms and conditions of which the State intends to administer and enforce (including inspection, monitoring, and surveillance responsibilities) upon receiving approval of its program, and a plan for transferring these permits to the State.

[*Comment:* See *Comment* to § 123.7(b)(1).]

(d) Procedures whereby the Secretary will transfer to the State pending section 404 permit applications and other relevant information, as specified in § 123.21.

(e) Assurance that the State will not issue any section 404 permit for a discharge which, in the judgment of the Secretary after consultation with the Secretary of the Department in which the Coast Guard is operating, would substantially impair anchorage or navigation.

(f) Those "classes or categories" if any, of proposed State permits for which the Secretary waives the right to review.

(g) Other matters not inconsistent with this Part that the Secretary and the State deem appropriate.

[*Comment:* States that regulate the discharge of dredged or fill material into those traditionally navigable waters which, by virtue of section 404(g)(1), will also require a section 404 permit from the Secretary after State program approval, are strongly encouraged to establish in this Memorandum of Agreement procedures for joint processing of permits, including joint public notices and public hearings.]

§ 123.6 Attorney General's Statement.

(a) Any State desiring to administer a permit program shall submit a statement from the State Attorney General (or the attorney for those State agencies which have independent legal counsel), that the laws of the State, or the interstate compact, as the case may be, provide adequate authority to carry out the program described under § 123.4 and to meet the requirements of this Part. The Attorney General's Statement shall include citations to specific statutes, administrative regulations, and, where appropriate, judicial decisions to demonstrate adequate legal authority.

[*Comment:* To qualify as "independent legal counsel" the attorney signing the statement required by this section must have full authority to independently represent the State in court on all matters pertaining to the State program.]

(b) Where jurisdiction may be exercised over activities on Indian lands, the statement shall certify that the State has such authority.

(c) In the case of section 404 programs, in addition to certifying the authorities described in paragraph (a), the Attorney General's Statement shall also contain:

(1)An analysis of the State's law prohibiting the taking of private property without just compensation, including any applicable judicial interpretations, and assurance that this will not adversely affect the successful implementation of the State's regulation of the discharge of dredged or fill material; and

(2) A certification that the State has authority to prohibit, deny, restrict, or withdraw the specification of disposal sites for the discharge of dredged or fill material in any defined area of those waters for which the State receives section 404 authority, including:

(i) Authority to apply the criteria contained in 40 CFR Part 230;

(ii) Authority (similar to EPA's authority under section 404(c)) to prohibit the discharge of dredged or fill material into areas where such discharges would have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife or recreational areas.

[*Comment:* The above authority to prohibit, deny, restrict, or withdraw the specification of disposal sites should not be limited to situations where an application for a 404 permit has been made, but should also include the authority to designate areas which will not be available for disposal site specification, as described in 40 CFR § 230.7(d). Nothing in subparagraph (c)(2)(ii) is intended to limit the Administrator's authority to take similar actions under section 404(c) of the Act.]

(d) The authorities cited by the State Attorney General or other legal officer as authority to meet the requirements of this Part shall be in the form of lawfully adopted State statutes or regulations which shall be in full force and effect at the time the statement is signed.

[*Comment:* This Part sets forth a number of procedural requirements. For example, § 123.22 requires approved States to transmit information to EPA and other agencies. Not all such procedural requirements need be embodied in State regulations. However, the State must show it has adequate authority to carry out all the requirements of this Part, and that no State statute or regulation is inconsistent with those requirements.]

§ 123.7 Memorandum of Agreement with the regional administrator.

(a) Before the Administrator approves any State NPDES or section 404 program, the State Director and the Regional Administrator shall execute a Memorandum of Agreement (MOA), which shall be approved by the Administrator not later than the time of program approval. In addition to including the requirements of paragraph (b), the Memorandum of Agreement may include other terms, conditions, or agreements relevant to the administration and enforcement of the State's regulatory program which are not inconsistent with this Part. No Memorandum of Agreement shall be approved which restricts EPA's statutory oversight responsibility. The Memorandum of Agreement shall be available for inspection and comment before the public hearing required by §§ 123.51 or 123.52.

(b) The Memorandum of Agreement shall include the following:

(1) Provisions implementing § 123.21 for the prompt transfer of any pending permit applications or any other relevant information not already in the possession of the State Director. Where existing permits are transferred to the State for administration, the Memorandum of Agreement shall contain provisions specifying a procedure for transferring responsibility for these permits. Where existing permits are not transferred, § 123.1(d) applies.

[*Comment:* In many instances States will lack the authority to directly administer permits issued by EPA. However, a procedure may be established to transfer responsibility for these permits. For example, a State could issue permits identical to the outstanding EPA permits which could be simultaneously revoked.]

(2) Provisions implementing §§ 123.22 and 123.23 specifying the basis and procedures for EPA to receive permits and permit applications from the State for review, comment, and objection. In the case of a State section 404 program the State shall assure that it will transmit copies of all proposed permits to the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service at the same time such permits are transmitted to EPA, subject to the right of any of these agencies to waive, in whole or in part, the right to receive such permits.

(3)(i) In the case of section 402 programs, provisions specifying the extent to which EPA review of State-issued permits will be waived under sections 402(d)(3), (e) or (f) of the Act. While the Regional Administrator and

the State may agree to waive EPA review of certain "classes or categories" of permits, no waiver of review may be granted for the following discharges:

(A) Discharges into the territorial sea or contiguous zone;

(B) Discharges which may affect the waters of a State other than the one in which the discharge originates;

(C) Proposed NPDES general permits (see § 122.46);

(D) Discharges from publicly owned treatment works with a daily average discharge exceeding 1 million gallons per day;

(E) Discharges of uncontaminated cooling water with a daily average discharge exceeding 500 million gallons per day;

(F) Discharges from any major discharger or from any discharger within any of the industrial categories listed in Appendix A to Part 122;

(G) Discharges from other sources with a daily average discharge exceeding 0.5 million gallons per day, except that EPA review of permits for discharges of non-process wastewater may be waived, regardless of flow, with the prior concurrence of the EPA Deputy Assistant Administrator for Water Enforcement;

(ii) In the case of section 404 programs, provisions specifying the extent to which EPA review of permit applications and State-issued permits will be waived under sections 404(k) or (l) of the Act. While the Regional Administrator and the State, in consultation with the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service, may agree to waive Federal review of certain "classes or categories" of permits no waiver may be granted for the following activities:

(A) Discharges which may affect the waters of a State other than one from which the discharge originates;

(B) Discharges incidental to activities described in section 404(f)(2) of the Act (i.e., activities having as their purpose bringing an area of the waters of the United States into a new use, where the flow and circulation of waters may be impaired or their reach reduced);

(C) Proposed section 404 general permits; or

(D) Discharges known or suspected to contain toxic or hazardous pollutants in significant amounts.

(iii) Whenever a waiver is granted under paragraph (b)(3) (i) or (ii) of this section, a statement that the Regional Administrator retains the right to terminate the waiver, in whole or in part, at any time by sending the State Director written notice of termination. The waiver shall not affect the duty of the State to supply EPA with copies of all permit applications, public notices and final permits.

(4) Provisions, consistent with this Part, specifying the frequency and content of reports, documents and other information which the State must submit to EPA.

(5) Provisions on the State's enforcement program including:

(i) Provisions for compliance monitoring by the State and by EPA and for the coordination of these efforts. These provisions may specify the basis on which the Regional Administrator will select facilities or activities within the State for EPA inspection;

(ii) Fiscal arrangements for effective litigation support for the State attorney general or other appropriate legal officers;

(iii) The establishment of an enforcement management system implementing the requirements of § 123.31.

(6) Where appropriate, provisions for joint processing of permits by the State and EPA.

[*Comment:* To promote efficiency and to avoid duplication and inconsistency, States are encouraged to enter into joint processing agreements with EPA for permit issuance. Likewise, States are encouraged to consolidate their own permit programs and activities.]

(7) Provisions for modification of the Memorandum of Agreement with the approval of the Administrator.

(c) The Memorandum of Agreement and the State/EPA Agreement should be consistent. If the State/EPA Agreement indicates that a change is needed in the Memorandum of Agreement, the Memorandum of Agreement may be amended in accordance with procedures set forth in this Part. The State/EPA Agreement may not override the Memorandum of Agreement.

[*Comment:* Detailed program priorities and specific arrangements for EPA support of the State program will change and are therefore more appropriately negotiated in the context of annual agreements rather than in the MOA. Where this is the case, it may still be appropriate to specify in the MOA the basis for such detailed agreements, for example, a provision in the MOA specifying that EPA will select facilities in the State for inspection annually as part of the State/EPA Agreement.]

§ 123.8 Sharing of information.

(a) Any information obtained or used pursuant to a State program shall be available to EPA upon request without restriction. If the information has been submitted to the State under a claim of confidentiality, the State must pass that claim on to EPA. Any information obtained from a State and subject to a claim of confidentiality will be treated in accordance with the regulations in 40 CFR Part 2. If EPA obtains information from a State that is not claimed to be confidential, EPA may make that information available to the public without further notice.

(b) EPA may furnish information to States in order to implement these regulations. In the case of information claimed as confidential by submitters, State access will be subject to the rules in 40 CFR Part 2, Subpart B.

Subpart B—Requirements of State Programs

§ 123.11 Requirement to obtain a permit.

(a) State NPDES permit programs must have a statute or regulation, enforceable in State courts, which prohibits the discharge of pollutants by any person except as authorized by a permit in effect under the State program or under section 402 of the Act, except that States need not regulate discharges exempt from the Federal permit requirement under § 122.4.

(b) State section 404 permit programs must have a statute or regulation, enforceable in State courts, which prohibits the discharge of dredged or fill material into waters subject to the State's jurisdiction by any person except as authorized by a permit in effect under the State program or under section 404 of the Act, except that States need not regulate discharges exempt from the Federal permit requirement under section 404(r) or under the regulations implementing section 404(f)(1) of the Act.

[*Comment:* § 123.1(g) provides that States are not preempted from adopting more stringent standards or regulating more activities than the Act requires. For example, States may choose to regulate certain minor categories of discharges of dredged or fill material which have been exempted from the Federal program by section 404(f)(1) of the Act. Likewise, States are not precluded from regulating activities which, by virtue of section 404(g)(1) of the Act, also require a 404 permit from the Secretary. Although State permits in waters described in section 404(g)(1) are not section 404 permits, section 404(t) of the Act provides that a State is not preempted from requiring permits for discharges into these waters. It should be noted that the regulations of the Corps of Engineers encourage joint Corps-State processing of permits, including joint public notices and hearings (33 CFR § 320.4(j)). The Secretary attaches considerable weight to State determinations (33 CFR § 320.4(j)(1)-(7).]

§ 123.12 Operational requirements.

(a) State section 402 programs must have legal authority to implement each of the following provisions and must be administered in conformance with each of the following provisions:

(1) § 122.5—(Signatories);

(2) § 122.11(d)—(Permit issuance; effect of permit);

(3) §122.12(a), (c) and (d)—(Duration and transferability of permits);

(4) §122.13—(Prohibitions);

(5) §122.14—(Conditions applicable to all permits);

(6) §122.15—(Applicable limitations, standards, prohibitions and conditions);

(7) §122.16—(Calculation and specification of effluent limitations and standards);

(8) §122.17(a), (b), (d), (e) and (f)—(Schedules of compliance);

(9) §122.20—(Monitoring);

(10) §122.21—(Recording of monitoring results);

(11) §122.22—(Reporting of monitoring results);

(12) § 122.23—(Noncompliance reporting);

(13) § 122.31—(Modification, revocation and reissuance, and termination);

(14) Part 122, Subpart E except §§ 122.40, 122.47(a)–(c) and 122.49—(Special NPDES Programs)—*provided,* States are not required to implement the general permit program under § 122.48. If a State chooses to issue general permits such action is subject to the following conditions:

(i) Any general permit shall be issued in accordance with § 122.48;

(ii) Prior to, or at the time of proposal of any general permit, the State Attorney General (or other legal officer as appropriate, see § 123.6) shall certify that the State has adequate legal authority to issue and enforce general permits;

(iii) EPA shall have 90 days to review any proposed general permit; and

(iv) All general permits, except those for separate storm sewers, may be objected to on EPA's behalf by the EPA Deputy Assistant Administrator for Water Enforcement. The State shall transmit a copy of any such proposed general permit to the EPA Deputy Assistant Administrator for Water Enforcement at the same time the proposed permit is transmitted to the EPA Regional Office.

(15) § 124.13—(Modification requests);

(16) § 124.31(b)—(Draft permits);

(17) § 124.32(a)—(Other draft permits);

(18) § 124.33—(Statement of basis);

(19) § 124.34—(Fact sheet);

(20) § 124.41—(Public notices);

(21) § 124.42—(Public comments and hearing);

(22) § 124.44—(Comments from government agencies);

(23) § 124.51—(Time requirements for variances), *provided,* State programs are not required to provide for any or all of the variances listed in § 124.51;

(24) § 124.52—(Decision on variances);

(25) § 124.63(a)—(Response to comments);

(26) § 124.121(a)—(Public access);

(27) Subparts A, B, C, D, H, I, J, K and L of Part 125—(NPDES Determinations); and

(28) 40 CFR Parts 129, 133 and Subchapter N.

(b) States seeking approval of section 404 programs should consult with EPA on the operational aspects of their programs.

[*Comment:* Regulations governing the operational aspects of State section 404 programs will be proposed in the near future.]

§ 123.13 Control of disposal of pollutants into wells.

State section 402 permit programs must have authority to issue permits to control the disposal of pollutants into wells. Such authority shall enable the State Director to protect the public health and welfare and to prevent the pollution of ground and surface waters by prohibiting well discharges or by permitting them with appropriate permit terms and conditions.

[*Comment:* States which are authorized to administer the NPDES permit program under section 402 of the Act are encouraged to rely on existing statutory authority, to the extent possible, in developing a State underground injection control (UIC) program under section 1422 of the Safe Drinking Water Act. Section 402(b)(1)(D) of the Clean Water Act requires that NPDES States have the authority "to issue permits which . . . control the disposal of pollutants into wells." In many instances, therefore, NPDES States will have statutory authority to regulate well disposal which satisfies the requirements of the UIC program. However, the Clean Water Act excludes certain types of well injections from the definition of "pollutant." If the State's statutory authority contains a similar exclusion it may need to be modified to qualify for UIC program approval.]

§ 123.14 Inspections, monitoring, entry, and reporting.

Any State permit program shall provide adequate authority to inspect, monitor, enter, and require reports to at least the same extent as required in section 308 of the Act.

Subpart C—Transfer of Information, Objections To Permits

§ 123.21 Receipt and use of Federal information.

Upon receiving EPA approval, the State agency administering a permit program shall be sent any relevant information which was collected by EPA or, where appropriate, the Secretary. The Memoranda of Agreement under §§ 123.5 and 123.7 shall provide for the following, in such manner as the State Director and the Regional Administrator or, where appropriate, the Secretary, shall agree:

(a) Prompt transmission to the State Director from the Regional Administrator or the Secretary of copies of any pending permit applications or any other relevant information collected before the approval of the State permit program and not already in the possession of the State Director. Where existing permits are transferred to the State Director (e.g., for purposes of compliance monitoring, enforcement, or reissuance), relevant information includes support files for permit issuance, compliance reports, and records of enforcement actions.

(b) Procedures to ensure that the State Director will not issue a permit on the basis of any application received from the Regional Administrator or the Secretary which the Regional Administrator or the Secretary identifies as incomplete or otherwise deficient until the State Director receives information sufficient to correct the deficiency.

§ 123.22 Transmission of information to EPA.

(a) Each State agency administering a permit program shall transmit to the Regional Administrator (and in the case of section 404 programs, to the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service), copies of permit program forms and any other relevant information to the extent and in the manner agreed to by the Director and the Regional Administrator in the Memorandum of Agreement and not inconsistent with this Part. EPA review of proposed NPDES general permits is governed by § 123.12(a)(14). The Memorandum of Agreement shall provide for the following:

(1) Prompt transmission to the Regional Administrator of a copy of any complete permit applications received by the State Director.

(2) Prompt transmission to the Regional Administrator and any affected State of notice of every action

taken by the State agency related to the consideration of any permit application, including a copy of each proposed or draft permit and any terms, conditions, requirements, or documents which are related to the proposed or draft permit or which affect the authorization of the proposed permit. In the case of section 404 programs, the above shall be transmitted to the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service at the same time they are transmitted to EPA. The State program shall provide:

(i) A period of time (up to 90 days) in which the Regional Administrator, or where appropriate, the EPA Deputy Assistant Administrator for Water Enforcement (see § 123.12(a)(14)), may comment upon, object to, or make recommendations with respect to the proposed permit and, in the case of section 404 programs, on the permit application. A copy of any comment, objection, or recommendation shall be sent to the permit applicant by EPA. In the case of NPDES general permits, EPA shall have 90 days to comment upon, object to, or make recommendations with respect to the proposed permit.

(ii) In the case of a draft or proposed permit which includes a tentative determination to approve a variance request which may only be authorized by EPA (see § 124.52(b)), formal EPA review of the permit shall not begin under this section and § 123.23 until EPA rules on the variance request.

[*Comment:* Normally EPA review time is substantially less than 90 days. However, EPA reserves the right to take a full 90 days to supply specific grounds for objection where a general objection is filed within the review period of the Memorandum of Agreement. In making comments, objections or recommendations on proposed State section 404 permits, the Regional Administrator will consider any timely written comments submitted to him by the Secretary, the U.S. Fish and Wildlife Service or the National Marine Fisheries Service.]

(3) Transmission to the Regional Administrator of a copy of every issued permit following issuance, along with any and all terms, conditions, requirements, or documents which are related to or affect the authorization of the permit.

(b) In the case of NPDES programs, transmission by the State Director to EPA of:

(1) Notices from publicly owned treatment works under § 122.15(d) and 40 CFR Part 403, upon request of the Regional Administrator;

(2) A copy of any significant comments presented in writing pursuant to the public notice and the response to comments prepared pursuant to § 124.63(a) if:

(i) The Regional Administrator requests this information; or

(ii) The proposed permit contains requirements significantly different from those contained in the tentative determination and draft permit; or

(iii) Significant comments adverse to the tentative determination and draft permit have been presented at the hearing or in writing pursuant to the public notice; and

(3) A quarterly noncompliance report in accordance with § 122.23.

(c) Within the time period agreed upon in the Memorandum of Agreement (or 90 days in the case of proposed NPDES general permits), the Regional Administrator (or, where appropriate, the EPA Deputy Assistant Administrator for Water Enforcement), pursuant to the right to object provided in the Act and § 123.23, may comment upon, object to, or make recommendations with respect to any proposed permit. In the case of section 404 programs, the Regional Administrator shall notify the State Director of his or her intent to comment upon or object to a proposed permit within 30 days of receipt.

(d) The Regional Administrator may, by agreement with the State Director in the Memorandum of Agreement (see § 123.7(b)(3)), waive the right to review, object to, or comment upon permit applications and proposed permits for classes, types, or sizes of discharges within any category of point sources, including the right to receive information under paragraphs (a)(2) and (b)(2) of this section.

(e) Any State section 404 permit program shall provide for transmission by the State Director to the Regional Administrator of the quarterly and annual reports on the permit program, in accordance with applicable regulations.

[*Comment:* Regulations governing reporting requirements for State section 404 programs will be proposed in the near future.]

(f) Any State permit program shall keep such records and submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the State program complies with the requirements of the Act or of this Part.

§ 123.23 Objections to proposed NPDES permits.

(a)(1) Within the period of time provided under the Memorandum of Agreement, the Regional Administrator shall notify the State Director of any objection to issuance of a proposed permit (except as provided in paragraph (a)(2) of this section for proposed general permits). This notification shall set forth in writing the general nature of the objection.

(2) Within 90 days following receipt of the proposed permit which has been objected to under subparagraph (a)(1) of this section, or in the case of general permits, within 90 days after the receipt of the proposed general permit, the Regional Administrator, or, in the case of general permits other than for separate storm sewers, the EPA Deputy Assistant Administrator for Water Enforcement shall set forth in writing and transmit to the State Director:

(i) A statement of the reasons for the objection (including the section of the Act or regulations that support the objection), and

(ii) The actions that must be taken by the State Director in order to eliminate the objection (including the effluent limitations and conditions which the permit would include if it were issued by EPA).

[*Comment:* This paragraph, in effect, modifies any existing agreement between EPA and the State which provides less than 90 days for EPA to supply the specific grounds for an objection. However, where an agreement provides for an EPA review period of less than 90 days EPA must file a general objection, in accordance with paragraph (a)(1) within the time specified in the agreement. This general objection will be followed by a specific objection within the 90-day statutory period. This modification to the MOA's is necessary for EPA review of general permits and since the Clean Water Act of 1977 now requires EPA to provide detailed information concerning acceptable permit terms and conditions. To avoid possible confusion, MOA's should be changed to reflect this.]

(b) The Regional Administrator may object to the issuance of a proposed permit as being outside the guidelines and requirements of the Act. This objection must be based upon one or more of the following grounds:

(1) The permit fails to apply, or to ensure compliance with, any applicable requirement of this Part;

[*Comment:* Under the provisions of this section, a permit not requiring the achievement of required effluent limitations by applicable statutory deadlines shall be subject to objection by the Regional Administrator.]

(2) In the case of any proposed permit for which notification is required under section 402(b)(5) of the Act, the written recommendations of an affected State have not been accepted by the permitting State and the Regional Administrator finds the reasons for rejecting the recommendations are inadequate;

(3) The procedures followed in connection with formulation of the proposed permit failed in a material respect to comply with procedures required by the Act, or by regulations thereunder or by the Memorandum of Agreement;

(4) Any finding made by the State Director in connection with the proposed permit misinterprets the Act or any guidelines or regulations under the Act, or misapplies them to the facts;

(5) Any provisions of the proposed permit relating to the maintenance of records, reporting, monitoring, sampling, or the provision of any other information by the permittee are inadequate, in the judgment of the Regional Administrator, to assure compliance with permit conditions, including effluent standards and limitations required by the Act, by the guidelines and regulations issued under the Act, or by the proposed permit;

(6) In the case of any proposed permit with respect to which applicable standards and limitations under sections 301, 304, 306, 307, 318, 403 and 405 of the Act have not yet been promulgated by the Agency, the proposed permit, in the judgment of the Regional Administrator, fails to carry out the provisions of the Act or of any regulations issued under the Act;

[*Comment:* The provisions of this paragraph apply to determinations made pursuant to § 125.3(c)(2) in the absence of applicable guidelines and to best management practices under section 304(e) of the Act, which must be incorporated into permits as requirements under sections 301, 306, 307, 318, 403, or 405 as the case may be.]

(7) Issuance of the proposed permit would in any other respect be outside the requirements of the Act, or regulations issued under the Act.

(c) Prior to notifying the State Director of an objection based upon any of the grounds set forth in paragraph (b) of this section, the Regional Administrator:

(1) Shall consider all data transmitted pursuant to § 123.22;

(2) May, if the information provided is inadequate to determine whether the proposed permit meets the guidelines and requirements of the Act, request the State Director to transmit to the Regional Administrator the complete record of the permit proceedings before the State, or any portions of the record that the Regional Administrator determines are necessary for review. If this request is made within 30 days of receipt of the State submittal under § 123.22, it shall constitute an interim objection to the issuance of the permit, and the full period of time specified in the Memorandum of Agreement for the Regional Administrator's review shall recommence when the Regional Administrator has received such record or portions; and

(3) May, in his or her discretion and to the extent feasible within the period of time available under the Memorandum of Agreement, afford to every interested person an opportunity to comment on the basis for an objection.

(d) Within 90 days of receipt by the State Director of an objection by the Regional Administrator, the State or any interested person may request that a public hearing be held by the Regional Administrator on the objection. Following a request, the Regional Administrator may provide public notice and hold a public hearing in accordance with the procedures of §§ 124.41 and 124.42 if warranted by significant public interest. A hearing shall be held whenever requested by the State which proposed the permit.

(e) A public hearing held under paragraph (d) shall be conducted by an EPA panel in an orderly and expeditious manner. Members of this panel shall include the Regional Administrator, the Assistant Administrator for Enforcement, the General Counsel, or their respective representatives.

(f) At the conclusion of the public hearing the Regional Administrator shall reaffirm the original objection, modify the terms of the objection, or withdraw the objection, and shall notify the State of this decision.

(g) Where the Regional Administrator has objected to a proposed permit under this section, he or she may issue the permit in accordance with Parts 121, 122 and 124 and any other guidelines and requirements of the Act in the following circumstances:

(1) If no public hearing is held under paragraph (d) and the State does not resubmit a permit revised to meet the Regional Administrator's objection within 90 days of receipt of the objection; or

(2) If a public hearing is held under paragraph (d) and the State does not resubmit a permit revised to meet the Regional Administrator's objection or modified objection within 30 days of the date of the Regional Administrator's notification under paragraph (f) of this section.

[*Comment:* Where the time set out in this paragraph expires without acceptable State action, exclusive authority to issue the permit passes to EPA.]

(h) In the case of proposed general permits for discharges other than from separate storm sewers substitute "EPA Deputy Assistant Administrator for Water Enforcement" for "Regional Administrator" whenever it appears in paragraphs (b), (c), (d), (f) and (g).

§ 123.24 Prohibitions.

Any State permit program shall provide that no permit shall be issued when EPA has objected in writing under section 402(d) or section 404(j) of the Act, whichever is applicable, and in the case of section 404 programs, in any defined area as to which the administrator has made a determination to prohibit or withdraw specification for disposal under section 404(c) of the act. In addition, no permit shall be issued if objected to by the Secretary pursuant to sections 402(b)(6) or 404(h)(1)(F) of the Act.

Subpart D—Enforcement Provisions

§ 123.31 Compliance evaluation programs.

(a) Any State program shall have procedures for receipt, evaluation, and investigation for possible enforcement action of all notices and reports required of permittees (or failure to submit such notices and reports).

(b) Any State section 402 permit program shall have procedures and ability for:

(1) The maintenance of a comprehensive inventory of all sources covered by NPDES permits and a forecast of all reporting requirements to the agency. Any compilation, index or inventory of such sources shall be made available to the Regional Administrator upon request;

(2) Initial screening (i.e., pre-enforcement evaluation) of all permit or grant-related compliance information to identify violations and to establish the priority for further substantive technical evaluation;

(3) Following the initial screening, a substantive technical evaluation, where warranted, of all permit or grant-related compliance information to determine the appropriate agency response;

(4) The maintenance of a management information system which supports and guides the activities of this paragraph and paragraph (c).

(c) Any State program shall have inspection and surveillance procedures to determine, independent of information supplied by dischargers, compliance or noncompliance with applicable program requirements, standards and limitations, filing requirements and permit terms or conditions, including the following:

(1) A program which is capable of surveying State waters to identify dischargers subject to regulation who have failed to apply for permits;

(2) A program for periodic inspections of the activities subject to regulation. The facilities of major dischargers (for a discussion of "major discharger", see *Comment* to § 122.23) shall be inspected at least annually. These inspections shall:

(i) Determine compliance or noncompliance with issued permit terms and conditions and other program requirements, and, in particular, compliance or noncompliance with specific standards and limitations, operation and maintenance requirements, and schedules of compliance;

(ii) Verify the accuracy of information submitted by permittees in reporting forms and other forms supplying monitoring data;

(iii) Verify the adequacy of sampling, monitoring and other methods used by permittees to develop that information; and

(3) A program for investigating evidence of violations of applicable program requirements, standards and limitations, filing requirements, or permit terms and conditions indicated by reports and notifications evaluated under paragraph (b) or by the survey, inspection, and surveillance activities in paragraphs (c) (1) and (2) of this section. This program shall include procedures for receiving and ensuring proper consideration of evidence submitted by the public about violations. Public effort in reporting violations shall be encouraged, and the State Director shall make available information on reporting procedures.

(d) Inspections shall be conducted, samples shall be taken and other information shall be gathered in a manner that will produce evidence admissible in an enforcement proceeding or in court.

§ 123.32 Enforcement.

Any State agency administering a permit program shall have the following powers and procedures and recourse to criminal and civil remedies:

(a) In the case of Section 402 programs, procedures which enable the State Director immediately and effectively to halt or eliminate any imminent or substantial endangerment to the public health or welfare resulting from the discharge of pollutants:

(1) By an order or suit in the appropriate State court to immediately restrain any person causing or contributing to the discharge of pollutants; or

(2) By a procedure for immediate telephone notice to the Regional Administrator of any actual or threatened endangerment to the public health or welfare resulting from the discharge of pollutants.

(b) In the case of section 404 programs, procedures which enable the State Director immediately and effectively to halt or eliminate any unauthorized discharges of dredged or fill material, including the authority to do each of the following:

(1) Issue a cease and desist or an interim protective order to any person responsible for or involved in an unauthorized discharge;

(2) Sue in the appropriate State court to immediately restrain any person responsible for or involved in an unauthorized discharge; and

(3) Immediately notify the Regional Administrator by telephone of any actual or threatened endangerment to the public health or welfare resulting from any discharge of dredged or fill material.

(c) Procedures which enable the State Director to sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any permit term or condition without the necessity of a prior revocation of the permit.

(d) Procedures which enable the State Director to enter any premises in which a source of a discharge, including a treatment facility, is located or in which records must be kept under terms or conditions of a permit, and otherwise to investigate, inspect or monitor any suspected violations of applicable standards and limitations or of permit terms or conditions.

(e) Procedures which enable the State Director to require compliance with and to assess or to sue to recover in court civil penalties, for the violation by any person of the following:

(1) Any applicable standards and limitations;

(2) Any permit term or condition;

(3) Any filing requirements;

(4) Any duty to allow or carry out inspection, entry, or monitoring activities;

(5) any order issued by the State Director under paragraph (a) or (b) of this section; or

(6) Any rules, regulations, or orders issued by the State Director.

(f) Procedures which enable the State Director to seek criminal fines for the willful or negligent violation by any person of any of the following:

(1) Any applicable standard or limitations;

(2) Any permit term or condition; or

(3) Any filing requirements.

(g) Procedures which enable the State Director to seek criminal fines against any person who knowingly makes any false statement, representation, or certification in any permit program form or any notice or report required by the terms and conditions of any issued permit or who knowingly renders inaccurate any monitoring device or method required to be maintained by the State Director.

[*Comment:* It is understood that in many States the State Director is represented in State courts by the State Attorney General or other appropriate legal officer. While the State Director need not appear in court actions under this section, he or she should have the power to request that such actions be brought.]

(h)(1) The maximum civil penalties and criminal fines that can be sought by the State Director under paragraphs (e), (f) and (g) of this section shall be comparable to similar maximum amounts that can be sought by the Administrator under section 309 of the Act. The maximum amounts of these civil penalties or criminal fines shall be applicable to each violation specified in paragraphs (e), (f) and (g) of this section, or, if the violation is continuous, to each day the discharge occurs.

(2) The burden of proof and degree of knowledge or intent required under State law for establishing violations under paragraphs (e), (f) and (g) shall be no greater than the burden of proof or degree of knowledge or intent EPA must show when it brings an action under section 309 of the Act.

[*Comment:* For example, this requirement is not met if the State law includes any mental state as an element of proof for civil violations.]

(i) Any civil penalty assessed, sought, or agreed upon by the State Director under paragraph (e) of this section shall be appropriate to the violation. A civil penalty agreed upon by the State Director in settlement of administrative or judicial litigation may be adjusted by a percentage which represents the likelihood of success of establishing the underlying violation or violations in such litigation. In the event that such a civil penalty would be so severely disproportionate to the resources of the owner or operator of the violating facility that its imposition, together with the costs of expeditious compliance, would jeopardize its continuance in business, the payment of the penalty may be deferred or the penalty may be forgiven in whole or in part, as circumstances may warrant. For violations resulting from a source's failure to bring itself into initial compliance with a statutory or final permit deadline, "appropriate to the

violation" as used in this paragraph, means a penalty which is equal to:

(1) An amount appropriate to redress the harm or risk of harm to public health or the environment; plus

(2) An amount appropriate to remove the economic benefit gained or to be gained from delayed compliance; plus

(3) An amount appropriate as a penalty for the violator's degree of recalcitrance, defiance, or indifference to requirements of the law; plus

(4) An amount appropriate to recover unusual or extraordinary enforcement costs thrust upon the public; minus

(5) An amount, if any, appropriate to reflect any part of the noncompliance attributable to the Government itself; minus

(6) An amount appropriate to reflect any part of the noncompliance caused by factors completely beyond the violator's control (e.g., floods, fires, etc.)

[*Comment:* The following enforcement options, while not mandatory, are highly recommended:

(i) Procedures for assessment by the State Director or by a State court of the costs of an investigation, inspection, or monitoring survey which led to the establishment of the violation;

(ii) Procedures which enable the State Director to assess or to sue any person responsible for an unauthorized discharge for any expenses incurred by the State in removing, correcting, or terminating any adverse effects upon water quality resulting from the unauthorized discharge, whether or not accidental; and

(iii) Procedures which enable the State Director to sue for compensation for any loss or destruction of wildlife, fish, or aquatic life, and for any other actual damages caused by an unauthorized discharge either on behalf of the State, on behalf of any residents of the State who are directly aggrieved by the unauthorized discharge, or both.]

Subpart E—Planning and Conflict of Interest Requirements.

§ 123.41 Continuing planning process.

Any State permit program shall have an approved continuing planning process under 40 CFR Part 35, Subpart G and shall assure that its approved planning process is at all times consistent with the Act.

§ 123.42 Agency board membership.

(a) Each State permit program shall ensure that any board or body which approves all or portions of permits shall not include as a member any person who receives, or has during the previous two years received, a significant portion of income directly or indirectly from permit holders or applicants for a permit.

(b) For the purposes of this section:

(1) "Board or body" includes any individual, including the Director, who has or shares authority to approve all or portions of permits in the first instance, as modified or reissued, or on appeal.

(2) "Significant portion of income" shall mean 10 percent of gross personal income for a calendar year, except that it shall mean 50 percent of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving that portion under retirement, pension, or similar arrangement.

(3) "Permit holders or applicants for a permit" shall not include any department or agency of a State government, such as a Department of Parks or a Department of Fish and Wildlife.

(4) "Income" includes retirement benefits, consultant fees, and stock dividends.

(c) for the purposes of this section, income is not received "directly or indirectly from permit holders or applicants for a permit" where it is derived from mutual fund payments, or from other diversified investments over which the recipient does not know the identity of the primary sources of income.

Subpart F—Procedures for Approval of State Permit Programs

§ 123.51 Section 402 approval process.

(a) After determining that a State program submission is complete, EPA shall publish notice of the State's application in the Federal Register, in enough of the largest newspapers in the State to attract statewide attention, and mail notice to persons known to be interested in such matters, including all people on EPA mailing lists under § 124.41(b) and appropriate State mailing lists and all permit holders and applicants within the State. This notice shall:

(1) Provide a comment period of not less than 45 days during which interested members of the public may express their views on the State program;

(2) Provide for a public hearing within the State to be held no less than 30 days after notice is published in the Federal Register;

(3) Indicate the cost of obtaining a copy of the State's submission;

(4) Indicate where and when the State's submission may be reviewed by the public;

(5) Indicate whom an interested member of the public should contact with any questions; and

(6) Briefly outline the fundamental aspects of the State's proposed program, and the process for EPA review and decision.

(b) Within 90 days of the receipt of a complete program submission under § 123.3 the Administrator shall approve or disapprove the program based on the requirements of this Part and of the Act and taking into consideration all comments received. A responsiveness summary shall be prepared by the Regional Office which identifies the public participation activities conducted, describes the matters presented to the public, summarizes significant comments received and explains the Agency's response to these comments.

(c) If the Administrator approves the State's section 402 program he or she shall notify the State and publish notice in the Federal Register. The Regional Administrator shall suspend the issuance of permits by EPA as of the date of program approval.

(d) If the Administrator disapproves the State program he or she shall notify the State of the reasons for the disapproval and of any revisions or modifications to the State program which are necessary to obtain approval.

§ 123.52 Section 404 approval process.

(a) Within 10 day of receipt of a State section 404 program submission under § 123.3 of this Part, the Administrator shall provide copies of the State's submission to the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service.

(b) After determining that a State program submission is complete, EPA shall publish notice of a State's application in the Federal Register, in enough of the largest newspapers in the State to attract Statewide attention, and mail notice to persons known to be interested in such matters, including all people on appropriate State, EPA, and Corps of Engineers mailing lists and all permit holders and applicants within the State. This notice shall:

(1) Provide a comment period of not less than 45 days during which interested members of the public may express their views on the State program;

(2) Provide for a public hearing within the State to be held no less than 30 days after notice is published in the Federal Register;

(3) Indicate the cost of obtaining a copy of the State's submission;

(4) Indicate where and when the State's submission may be reviewed by the public;

(5) Indicate whom an interested member of the public should contact with any questions; and

(6) Briefly outline the fundamental aspects of the State's proposed program, and the process for EPA review and decision.

(c) Within 120 days of the receipt of a complete program submission under § 123.3 the Administrator shall approve or disapprove the program based on the requirements of this Part and of the Act and taking into consideration all comments received. A responsiveness summary shall be prepared by the Regional Office which identifies the public participation activities conducted, describes the matters presented to the public, summarizes significant comments received and explains the Agency's response to these comments.

(d) If the Administrator approves the State's section 404 program he or she shall notify the State and the Secretary and publish notice in the Federal Register. The Secretary shall suspend the issuance of section 404 permits by the Corps of engineers within the State, except for those waters specified in section 404(g)(1) of the Act as identified in the Memorandum of Agreement between the State and the Secretary (see § 123.5(a)).

(e) If the Administrator disapproves the State program he or she shall notify the State of the reasons for the disapproval and of any revisions or modifications to the State program which are necessary to obtain approval.

Subpart G—Revisions to Approved Programs

§ 123.61 Procedure for revision of State permit programs.

(a) Program revision may be initiated at the request of either EPA or the State. Program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or supplemented. The State Director shall keep EPA fully informed of any proposed modifications to its basic statutory or regulatory authority or its forms, procedures or priorities.

(b) Revision of a State program shall be accomplished as follows:

(1) The State shall submit a modified program description, Attorney General's Statement, Memorandum of Agreement, or other documents as are necessary under the circumstances.

(2) If EPA determines that the proposed program modification(s) is substantial, the Agency shall issue public notice and provide at least 30 days for the public to comment. The public notice shall be mailed to interested persons and shall be published in enough of the largest newspapers in the State to attract statewide attention. The public notice shall summarize the proposed modifications and provide for the opportunity to request a public hearing. A hearing will be held if there is significant public interest.

(3) The program modification shall become effective upon the approval of the Administrator. Notice of approval of substantial program modifications shall be published in the Federal Register. Non-substantial program modifications may be approved by a letter from the Agency.

(c) The State Director shall notify EPA whenever the State proposes to transfer all or part of any program from the approved State agency to any other agency, and shall identify any new division of responsibilities among the agencies involved. The new agency is not authorized to administer the program until approved by the Administrator. Organizational charts required under § 123.4(b) shall be revised and resubmitted.

(d) If the Administrator has reason to believe that circumstances may have changed with respect to a State program, he or she may request, and the State shall provide a supplemental Attorney General's Statement, program description, other document or information as necessary.

§ 123.62 NPDES program revisions under the Clean Water Act of 1977.

(a) Approved State NPDES permit programs shall be revised, if necessary:

(1) To include authority to require permits for the discharges specified in sections 318 and 405(a) of the Act (see § 123.1(b)).

(2) To ensure that permits comply with the requirements of section 304(e) of the Act and Part 125, Subpart K (best management practices).

(3) To comply with the amendment to section 402(b)(8) of the Act, and with 40 CFR Part 403 (pretreatment programs).

(4) To authorize State issuance, monitoring (including reporting, entry, and inspection), and enforcement of permits to Federal facilities to the same extent as any person.

[*Comment:* Facilities on Indian lands are not necessarily Federal facilities.]

(b) All new programs must comply with these regulations upon approval. Any approved State section 402 permit program which requires modification to conform to this Part shall be so modified within one year of the date of promulgation of these regulations, unless a State must amend or enact a statute in order to make the required modification in which case such modification shall take place within two years, except that revision of State programs to implement the requirements of 40 CFR Part 403 (pretreatment) shall be accomplished as provided in 40 CFR § 403.10. In addition, approved States shall submit, within six months, copies of their permit forms for EPA review and approval.

[*Comment:* EPA anticipates that many approved States may need to revise their permit forms to comply with these regulations, particularly § 122.15.]

(c) Failure of an approved State to modify its permit program under this section constitutes grounds for withdrawal of program approval.

8. Part 124 is revised to read as follows:

PART 124—PROCEDURES FOR DECISIONMAKING REGARDING NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS

Subpart A—Applicability

Sec.

124.1 Purpose and scope.
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124.12 Special provisions for applications from new sources.
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Subpart C—State Certification

124.21 Circulation of applications and draft permits to certifying States.
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Subpart D—Preparation of a Draft Permit

124.31 Draft permit after application.
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124.35 Administrative record for EPA draft permits.
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Subpart E—Public Comment and Hearings

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Subpart F—Special Provisions for Variances and Statutory Modifications

124.51 Time deadlines for applications for variances from and modifications of effluent limitations.
124.52 Decisions on variances and modifications.
124.53 Procedures for variances and modifications where EPA is the permit issuing authority.
124.54 Appeals of modifications and variances.
124.55 Special provisions for modifying the secondary treatment requirements under section 301(h).
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124.61 Issuance and effective date of permit; stays.
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Subpart I—Non-Adversary Procedures for Initial Licensing

124.111 Applicability.
124.112 Relation of other Subparts.
124.113 Public notice regarding draft permits and permit conditions.
124.114 Hearings.
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124.116 Notice of hearing.
124.117 Request to participate in hearing.
124.118 Submission of written comments on draft permit.
124.119 Presiding Officer.
124.120 Panel hearing.
124.121 Opportunity for cross-examination.
124.122 Record for final permit.
124.123 Filing of brief, proposed findings of fact and conclusions of law and proposed modified permit.
124.124 Recommended decision.
124.125 Appeal from or review of recommended decision.
124.126 Final decision.
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Subpart J—Miscellaneous

124.131 Public access to information.
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124.133 EPA Headquarters' approval of stipulation or consent agreement.
124.134 Additional time after service by mail.
124.135 Effective date of Part 124.

Authority.—Clean Water Act, as amended by the Clean Water Act of 1977, 33 U.S.C. 1251 et seq; Administrative Procedure Act, 5 U.S.C. 551 et seq.

Subpart A—Applicability

§ 124.1 Purpose and scope.

This Part specifies the procedures governing EPA's issuance of NPDES permits and permit appeals. The portions of this Part listed in § 123.12 apply to State permit programs approved under Part 123. This Part organizes permit decisions into a sequence of seven procedural stages. First, an application must be made in proper form (Subpart B). This application will then be circulated to affected States for certification or the State will certify the draft permit under section 401 (Subpart C). EPA will then prepare a draft permit or permit denial (Subpart D), which will be made available for public comment (Subpart E or I). This is the stage for interested governmental agencies, other than certifying States, to express their views of the permit. After these comments have been considered, EPA will issue a final permit (Subpart G or I), and any interested person may then request an evidentiary hearing on any factual questions involved. The initial decision made after that hearing may then be appealed to the Administrator. Under Part 124, decisions on variance requests will ordinarily be made during the permit issuance process (Subpart F). Requests for permit modifications and other changes in permit terms will be made where possible, through the same procedures that apply in making decisions on initial permits. Each such decision must move through the same procedures of notice-and-comment and potential hearings as the basic permit.

§ 124.2 Definitions.

(a) The definitions of Parts 122, 123 and 125 apply to this Part.

(b) "BAT" or "Best Available Technology" means the level of treatment of best available technology economically achievable as determined by the Administrator.

Subpart B—The Application Process

§ 124.11 Application for a permit.

(a) Any person who discharges or proposes to discharge pollutants, except persons covered by general permits under § 122.48, or excluded under § 122.4, shall complete, sign, and submit an application to the Regional Administrator, in accordance with Part 122, Subpart B.

(b) Expect as provided by § 124.32(a) no NPDES permit other than a general permit shall be issued until the applicant has filed a complete application that complies with the filing requirements in this Subpart and Part 122. If an applicant fails or refuses to correct deficiencies in its NPDES application form, the permit may be denied or appropriate enforcement action may be taken under sections 308, 309, or 402(h) of the Act.

(c) Permit applications shall comply with the signature and certification requirements of § 122.5.

(d) If the Director determines that further information or a site visit is necessary in order to evaluate the discharge completely and accurately, the applicant shall be notified and a date shall be scheduled for receipt of the requested information and for any necessary site visit.

(e) Special procedures for applications for variances and statutory modifications are provided in Subpart F.

§ 124.12 Special provisions for applications from new sources.

(a) The owner or operator of any facility which may be a new source as defined in § 122.3(v) and which is located in a State without an approved NPDES program must comply with the provisions of this section in addition to the requirements of § 124.11.

(b)(1) Before beginning any on-site construction as defined in § 122.47, the owner or operator of any facility which may be a new source must submit information to the Regional Administrator so that he or she can determine if the facility is a new source. The Regional Administrator may request any additional information needed to

determine whether the facility is a new source.

(2) The Regional Administrator shall make an initial determination whether the facility is a new source within 30 days of receiving all necessary information under paragraph (b)(1).

(c) The Regional Administrator shall issue a public notice in accordance with § 124.41 of the new source determination under paragraph (b). The notice shall state that the applicant, if determined to be a new source, must comply with the environmental review requirements of 40 CFR § 6.600 *et seq.*

(d) Any interested person may challenge the Regional Administrator's initial new source determination by requesting an evidentiary hearing under § 124.74 within 30 days of issuance of the public notice of the initial determination. The Regional Administrator may defer the evidentiary hearing on the determination until after a final permit decision is made under § 124.63, and consolidate the hearing on the determination with any hearing on the permit.

§ 124.13 Requests for modification, revocation, and reissuance, or termination.

(a) If a discharger with a permit or an interested person believes that a modification, revocation or reissuance, or termination is justified under the standards of § 122.31, it may request a modification, revocation and reissuance, or termination from the Director in writing. The request shall set forth all facts or reasons known to the requester which may be relevant to a decision on the modification request.

(b)(1) If the Director agrees that the modification or revocation and reissuance request appears to meet the requirements of § 122.31, the Director shall formulate a draft permit under § 124.32 incorporating the changes. If additional information is needed to prepare a draft permit, the Director may request it under § 124.11(d) or in appropriate cases may require the submission of a complete new permit application under § 124.11(a). When a request for a modification under this section is granted and a new draft permit is formulated, only those terms dependent on the request will be reopened. All other aspects of the permit will remain in force until the expiration of the permit. If the permit is revoked and reissued, the draft permit is subject to the same procedures as if the permit had expired and was being reissued.

(2) If the Director agrees that the termination request appears to meet the requirements of § 122.31, the Director shall prepare a notice of intent to terminate under § 124.32.

(3) If the Director decides that the modification request does not appear to meet the requirements of § 122.31 the Director shall reply in writing to the discharger (and the person requesting the modification, if different) briefly setting forth in writing the reasons for that decision.

§ 124.14 Permits required on a case-by-case basis.

(a) Various sections of Part 122 allow the Director to determine, on a case-by-case basis, that certain concentrated animal feeding operations (§ 122.43), aquatic animal production facilities (§ 122.44), separate storm sewers (§ 122.46), and certain other facilities covered by general permits (§ 122.48) that do not generally require individual permits may be required to obtain one because of their contribution to water pollution.

(b) Whenever the Regional Administrator decides that an individual permit should be required under this section, the Regional Administrator shall inform the discharger in writing of that decision, the reasons underlying it and shall include an application form in such notice. The discharger must apply under § 124.11 for a permit within 60 days of such notice. The question whether the initial designation was proper will remain open for consideration during the public comment period under Subpart D and any subsequent hearing.

§ 124.15 Decisions on permit denials and terminations.

(a) The decision to deny a permit which has been applied for shall be made through the same procedures as any other decision on a permit. A draft notice of intent to deny will be issued and made available for public comment, accompanied by a fact sheet or statement of basis. A response to comments and final decision will then be prepared, and an evidentiary hearing with a right of appeal to the Administrator may be requested on the issues raised.

(b) The decision to terminate a permit shall be made through the same procedures that apply to any other permit action initiated by EPA under § 124.32.

(c) References to a "permit" or to decisionmaking on a permit in this Part shall be read to include decisions on permit denial or termination where necessary to carry out the intent of this section.

Subpart C—State Certification

§ 124.21 Circulation of applications or draft permits to certifying States.

(a) Under section 401(a)(1) of the Act, EPA may not issue a permit until a certification is granted or waived in accordance with that section by the State in which the discharge originates or will originate.

(b) When an application is received which does not include a State certification, the Regional Administrator shall forward the application to the certifying State agency with a request that certification be granted or denied.

(c) If State certification has not been received by the time the draft permit is prepared, the Regional Administrator shall send the certifying State agency:

(1) A copy of the draft permit;

(2) A statement that the EPA cannot issue or deny the permit until the certifying State agency has granted or denied certification under § 124.22, or waived its right to certify; and

(3) A statement that the right to certify will be deemed waived unless exercised within a specified reasonable time which shall not exceed 60 days from the date the draft permit is sent to the State unless the Regional Administrator finds that unusual circumstances require a longer time.

§ 124.22 State certification.

(a) Any State certification shall be issued or denied within the reasonable time specified under § 124.21(c)(3). The State shall provide notice of its action, including a copy of any certification, to the applicant and the Regional Administrator.

(b) A State certification shall be made in writing and shall include:

(1) The terms and conditions which will result in compliance with the applicable provisions of sections 208(e), 301, 302, 303, 306, and 307 of the Act and with appropriate requirements of State law;

(2) Where the State certifies a draft permit instead of an application, any conditions, more stringent than those in the draft permit, which the State finds necessary to comply with the requirements listed in paragraph (b)(1) of this section. For each such condition, the provision of the Act or State law which forms the basis for the condition shall be identified. Failure to provide such a statement shall be deemed a waiver of the right to certify with respect to such condition; and

(3) A statement with respect to each term and condition of the draft permit of the extent to which such term or condition can be made less stringent

without violating the requirements of State law including water quality standards. Failure to provide such a statement shall be deemed a waiver of the right to certify with respect to any such less stringent term or condition which may be established during the EPA permit issuance process.

[*Comment:* The requirement of paragraph (b)(3) of this section is necessary to enable the certification to serve its statutory function without requiring continual resubmission to the State. For example, a State might certify that a draft permit containing a technology-based limitation of 300 kg/day of BOD will meet State water quality standards and other State law requirements. However, if during the permit issuance process EPA decides that 400 kg/day is the appropriate technology requirement, it is not clear at present whether the previous State certification continues to be valid. It would be impracticable and would add to delay in permit issuance if EPA resubmitted such permits to the State each time EPA considered setting a less stringent limitation than contained in the draft permit. The requirement that States clearly identify what conditions are necessary to meet State law will simplify the permit issuance process and make certification more useful. However, States may not require EPA to adopt less stringent requirements. See § 124.23(c).]

§ 124.23 Effect of State certification.

(a) Where certification is required under section 401(a)(1) of the Act, no final permit shall be issued:

(1) If certification is denied, or

(2) Unless the final permit incorporates any requirements specified in the certification under § 124.22(b)(1) and (2).

(b) If the State law upon which a certification is based changes, or if a State court stays, vacates, or remands a certification, a State which has issued a certification under § 124.22 may issue a modified certification or notice of waiver and forward it to EPA. If the modified certification is received prior to final Agency action on the permit, the permit shall be issued consistent with any more stringent conditions which are based upon State law identified in such certification. If the certification or notice of waiver is received after final Agency action on the permit, the Regional Administrator may modify the permit only to the extent necessary to delete any conditions based on a condition in a certification found invalid by a State court.

(c) A State may not condition a certification or deny a certification on the grounds that State law requires a less stringent condition. The Regional Administrator shall disregard any such certification conditions, and will consider such denials of certification to constitute waivers of certification.

[*Comment:* State certification rights proceed from the authority of States under section 510 of the Act to set more stringent limitations than those required by the Act. States may not require EPA to disregard or downgrade Federal requirements.]

(d) A permit may be modified during Agency review in any manner consistent with a certification meeting the requirements of § 124.22(b). No such modifications shall require EPA to submit the permit to the State for recertification.

(e) Review and appeals of conditions specified by the State shall be made through the applicable procedures of the State and may not be made through the procedures in this Part.

§ 124.24 Special provisions for State certification and concurrence in applications for section 301(h) modifications.

(a) Where an application for a permit incorporating a request under 301(h) of the Act is submitted to the State, the appropriate State official may either:

(1) Deny the request for the modified permit under section 301(h) (and so notify the applicant and EPA) and if the State is an approved NPDES State and the permit is due for reissuance, proceed to process the permit application under normal procedures; or

(2) Forward a certification meeting the requirements of this Subpart to the Administrator or a person designated by the Administrator.

(b) Where EPA issues a tentative determination on the request for a modified permit under section 301(h), and no certification has been received under paragraph (a), the Administrator or a person designated by the Administrator shall forward the tentative determination to the State in accordance with § 124.21(c) specifying a reasonable time for State certification and concurrence. If the State fails to deny or grant certification and concurrence under paragraph (a) within such reasonable time, certification will be deemed to be waived and the State will be deemed to have concurred in the issuance of a modified permit under section 301(h).

(c) Any certification provided by a State under paragraph (a)(2) shall constitute the State's concurrence (as required by section 301(h)) in the issuance of the section 301(h) modified permit subject to any conditions specified therein by the State.

[*Comment:* Section 301(h) certification/concurrence under this section will not be forwarded to the State by EPA for recertification after the permit issuance process. Accordingly, States must specify any conditions required by State law, including water quality standards, in the certification.]

Subpart D—Preparation of Draft Permit

§ 124.31 Draft permit after application.

(a) If a permit has been properly requested under § 124.11, the Director, after analyzing the data and other information concerning a permit furnished under Subparts B and C, and any other relevant information, shall tentatively decide whether to issue or deny the permit. Any Environmental Impact Statement prepared under 40 CFR § 6.912, and any other applicable factors listed in 40 CFR § 6.920, shall be considered by the Regional Administrator in deciding whether to issue a permit for a new source under this section.

(b) If the Director tentatively decides to issue a permit, a draft permit shall be prepared containing:

(1) All conditions, limitations, or requirements specified in § 122.14;

(2) All effluent limitations, standards, prohibitions, and conditions required by § 122.15, including, where applicable, any conditions certified by a State agency under Subpart C, and all variances or other modifications that are to be included under Subpart F. All effluent limitations and standards shall be calculated and specified as required by § 122.16;

(3) All compliance schedules required by § 122.17; and

(4) All monitoring requirements required by § 122.20.

(c) Any draft permit formulated by EPA shall be based on the administrative record required by § 124.35.

(d) If the Regional Administrator determines under 40 CFR § 6.910 that an EIS shall be prepared for a new source the public notice of the draft permit under this section shall occur at the same time or after a draft EIS is issued.

§ 124.32 Other draft permits.

(a) In the following cases the Director may formulate a draft permit without having received an application from a discharger.

(1) If the Director decides that a permit should be modified, or revoked and reissued under § 122.31, the Director shall formulate a draft permit reflecting the modifications or a draft reissued permit including a notice of intent to revoke the existing permit. If the Director decides that a permit should be terminated, the Director shall issue a notice of intent to terminate.

(2) General permits to be issued either by EPA or by States under § 122.48 shall be proposed in draft form, shall contain the designation of the General Permit Program Area (as defined in § 122.48(a)(2)) and, except for general permits for separate storm sewers, shall be sent to the EPA Deputy Assistant Administrator for Water Enforcement for concurrence or objection during the public comment period. No final permit shall be issued if the EPA Deputy Assistant Administrator for Water Enforcement objects to the general permit. Such objection must be made within 90 days from the date of publication of the public notice for the draft general permit under § 124.41(f).

(b) Any draft permit or notice of intent to revoke or terminate, issued under paragraph (a), shall be based on the administrative record defined in § 124.35.

§ 124.33 Statement of basis.

A statement of basis shall be prepared for every draft permit formulated under §§ 124.31 or 124.32 where a fact sheet is not required under § 124.34. The statement of basis shall briefly describe the derivation of the terms and conditions of the permit and the reasons for them. For instance, if effluent limitations in a permit are based upon the application of treatment technologies, the statement of basis shall identify the technologies and the degree of effluent reduction or control which the treatment technologies are assumed to achieve. The statement of basis shall be part of the administrative record and shall be made available to the discharger and other members of the public on request.

§ 124.34 Fact sheet.

(a) A fact sheet shall be prepared for every draft permit for a major discharger (as established in EPA's annual operating guidance for EPA Regional Offices and the States), any draft permit which incorporates a variance or modification, general permits under § 124.48, and every draft permit which the Regional Administrator or State Director finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the major facts and the significant factual, legal, methodological, and policy questions considered in setting the terms of the draft permit. The Director shall send this fact sheet to the applicant, to the District Engineer of the Corps of Engineers, to the Regional Director of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, to other interested State and Federal agencies, (including EPA where the draft permit is prepared by the State) and to any other person on request. Any of these persons may waive their right to receive a fact sheet for any classes and categories of permits.

(b) The fact sheet shall include: (1) A brief explanation of the express statutory or regulatory provisions on which permit requirements are based, and for permits issued by EPA, appropriate supporting references to the administrative record required by § 124.35;

(2) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable guideline or development documents or standard provisions as required under § 122.15 and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed;

(3) Where appropriate, a sketch or detailed description of the location of the discharge described in the application;

(4) A quantitative description of the discharge described in the application;

(5) Reasons requested variances or modifications do or do not appear justified;

(6) For EPA-issued permits the results of any State certification under Subpart C;

(7) Name and telephone number of a person who can provide additional information; and

(8) Any information, not otherwise specified herein, required by § 124.33.

§ 124.35 Administrative record for EPA draft permits.

(a) Decisions by the Regional Adminstrator to formulate a draft permit under § 124.31 or § 124.32 shall be made on the basis of the administrative record defined in this section.

(b) The record for a draft permit under § 124.31 shall consist of:

(1) The initial application and any supporting data furnished by the applicant;

(2) The draft permit;

(3) The statement of basis required by § 124.33 or fact sheet prepared under § 124.34;

(4) All documents cited in the fact sheet or the statement of basis;

(5) Other documents contained in the supporting file for the permit, including correspondence, telephone and meeting memoranda, compliance reports, etc;

(6) All comments submitted on a new source determination under § 124.12, and any other documents EPA considers relevant to the determination; and

(7) Any environmental assessment, Environmental Impact Statement, negative declaration, or environmental impact appraisal that may have been prepared.

(c) The record for formulating a draft permit under § 124.32 shall consist of the draft permit, the statement of basis required by § 124.33 or fact sheet prepared under § 124.34 and all documents cited in the fact sheet or the statement of basis.

(d) Material readily available at the issuing Regional Office or published material which is generally available, and which is included in the administrative record under the standards of paragraphs (b) and (c), does not need to be physically included in the same file as the rest of the record as long as it is specifically referenced in the statement of basis or the fact sheet.

(e) No later than the time a draft permit is issued, a Record Clerk shall be designated with responsibility for maintaining the records established under this section. Copying of any documents in the record shall be allowed under appropriate arrangements to prevent their loss. The charge for such copies shall be made in accordance with the written schedule contained in 40 CFR Part 2.

[*Comment:* The administrative record for draft permits under this section will comprise the bulk of the material for the final administrative record. See § 124.64.]

§ 124.36 Applicability of Subpart D to draft permits incorporating section 301(h) modifications.

Subpart D is applicable to draft permits incorporating section 301(h) modifications except that the terms "Administrator or a person designated by the Administrator" shall be substituted for the terms "Regional Administrator" as appropriate.

Subpart E—Public Comment and Hearings

§ 124.41 Public notice regarding permits and permit hearings.

(a) Notices shall be circulated in a manner designed to inform interested persons of a hearing or determination dealing with permit denial or issuance. Notice of a draft permit shall allow at least 30 days for public comments and notice of a hearing shall be given 30 days before the hearing.

[*Comment:* At the discretion of the Director, this could include press releases or the use of additional means to elicit public participation.]

(b) Notice of the formulation of any draft permit and notice of all hearings shall be given by the Director:

(1) By mailing a copy to the applicant; to the U.S. Army Corps of Engineers, to Federal and State agencies with jurisdiction over fish, shellfish and wildlife resources and to other appropriate governmental authorities including any affected State; to any person on request and to all persons on a mailing list developed from those who request to be on the list and by using the following methods:

(i) Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

(ii) Notifying the public as to the availability of mailings of public notices through periodic press publication and notices in such publications as Regional and State funded newsletters, environmental bulletins or State Law Journals. The mailing list may be updated from time to time by requesting an indication of continued interest in being on the mailing list; and

(2) By any of the following methods:

(i) By publication of a notice meeting the requirements of paragraph (c) in a daily or weekly newspaper within the area affected by the discharge; or

(ii) By posting a copy of the information required under paragraph (c) and (d) at the principal office of the municipality or political subdivision affected by the facility or discharge, and by posting a copy at the United States Post Office serving those premises; or

(iii) Where the State is the permit issuing authority in any other manner constituting legal notice under State law.

(3) Any person otherwise entitled to receive notice under paragraph (1) of this section may waive the right to receive notice for any classes and categories of permits.

(c) All public notices issued under this section shall contain the following information:

(1) Name and address of the office processing the application or conducting the hearing;

(2) Except in the case of general permits, name and address of the applicant and the discharger (if different from the applicant) and a general description of the location of each existing or proposed discharge point, including the receiving water;

(3) Name of a person, and an address and telephone number where interested persons may obtain further information, including copies of the draft permit, the statement of basis or fact sheet;

(4) For EPA-issued permits, the location of the administrative record required by § 124.35 and the times at which it will be open for public inspection;

(5) If the applicant has properly applied under section 316(a) for a thermal variance, a statement to that effect. The notice shall state that all data submitted by the applicant are available as part of the administrative record for public inspection during office hours. The notice shall also state that any person may comment in writing under § 124.42 upon the applicant's desired alternative effluent limitations and may also request a hearing.

(d) Mailed public notice to those identified in paragraph (b)(1) shall contain the information required under paragraph (c) and the following:

(1) A brief description of the applicant's activities or operations that result in the discharge described in the application, and a statement whether the application pertains to a new or existing discharge;

(2) A brief description of the comment procedures required by § 124.42, including the time and place of any public hearing that will be held.

(3) If the discharge is from a new source, a statement of the Regional Administrator's decision as to whether an Environmental Impact Statement will be or has been prepared.

(4) A statement of the right and procedures to request a public hearing.

(e) In addition to the information required by paragraphs (c) and (d) above, mailed public notice of a draft permit for a discharge where a section 316(a) application has been filed under § 124.51(b)(6) shall include:

(1) A statement that the thermal component of the discharge is subject to effluent limitations under sections 301 or 306 of the Act and a brief description including a quantitative statement of the thermal effluent limitations proposed under sections 301 or 306; and

(2) A statement that a section 316(a) application has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under section 316(a) and a brief description including a quantitative statement of the alternative effluent limitations, if any, included in the application.

(3) If the applicant has filed an early screening application for a section 316(a) variance under § 125.72, a statement that the applicant has submitted such a plan.

(f) Notice of the formulation of a draft general permit and the issuance of a final general permit under § 122.48 shall meet:

(1) The requirements of paragraphs (c) and (d) and shall be published in a daily or weekly newspaper within the area affected by the discharge and in the Federal Register for EPA-issued permits or in a manner constituting legal notice under State law for State-issued permits.

(2) The public notice for general permits shall also include:

(i) A brief description of the types of activities or operations to be covered by the general permit;

(ii) A map or description of the General Permit Program Area; and

(iii) The basis for choosing the General Permit Program Area.

(3) The Director shall use all other reasonable means to notify affected dischargers of the draft and final general permit.

(g) In addition to the information required under paragraph (c), public notice of a public hearing held under § 124.42(b) shall contain the following information:

(1) Reference to the date of the public notice of the draft permit;

(2) Date, time and place of the hearing; and

(3) In the case of a mailed public notice, a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(h) A public notice of the grant of an evidentiary hearing under Subpart H shall contain the information required under paragraph (c), (g)(1), (g)(3) and a mailed public notice of such a hearing shall also include:

(1) Reference to any public hearing under § 124.42 on the disputed permit;

(2) Name and address of the person(s) requesting the evidentiary hearing;

(3) Brief description of the permit terms and conditions which have been contested and for which the evidentiary hearing has been granted;

(4) Brief description of the nature and purpose of the hearing including the following declarations:

(i) Any person seeking to be a party must file a request to be admitted as a party to the hearing within 15 days of the date of publication of this notice;

(ii) Any person seeking to be a party may, subject to the requirements of § 124.76, propose material issues of fact or law not already raised by the original requester or another party;

(iii) The terms and conditions of the permit(s) at issue may be amended after the evidentiary hearing and any person interested in those permit(s) must request to be a party in order to preserve any right to appeal or otherwise contest the final administrative determination.

(5) Names or organizational description of the EPA employees who shall constitute "Agency trial staff" and the "decisional body" under § 124.78 who are subject to the *ex parte* communication rules.

(6) The name, address and office telephone number of the Regional Hearing Clerk.

(i) A public notice for a draft permit that will be processed under Subpart I shall include the information in paragraphs (c) and a statement that any hearing will be held under the non-adversary initial licensing procedures. In addition, a mailed public notice shall include:

(1) The information in paragraph (d) except that a public hearing under paragraph (d)(2) is discretionary with the Regional Administrator;

(2) A statement that the permit will be processed under the nonadversary procedures for initial licensing of Subpart I, together with a brief description of those procedures. This description shall state explicitly the manner and timing for any person to request a hearing on the permit. If EPA has decided on its own motion to hold a hearing, the notice shall so state, and shall also contain the information required by § 124.41(j);

(3) A statement that written comments on the draft permit and, in the case of a section 301(h) application, the tentative determination to grant or deny the application submitted to EPA with thirty (30) days of the date of the notice will be considered by EPA in making a final decision on the application. This 30-day period may be extended up to 60 days *sua sponte* or on request of an interested party;

(4) In the case of the public notice of the draft permit or denial of an application for a modified permit under section 301(h) shall include:

(i) A summary of the information contained in the application; and

(ii) A summary of the tentative determination prepared under § 124.114(f).

(j) A notice of a grant of a panel hearing requested under Subpart I shall include the applicable information from paragraph (i). In addition, the mailed public notices shall include:

(1) Name and address of the person requesting the hearing, or a statement that the hearing is being held by order of the Regional Administrator, and the name and address of each known party to the hearing;

(2) Names or organization description of the EPA employees who shall constitute the "decisional body" and the "Agency trial staff," under § 124.78 who are subject to the *ex parte* communication rules;

(3) A statement whether the recommended decision will be issued by the Presiding Officer or by the Regional Administrator;

(4) The due date for filing a written request to participate in the hearing under § 124.117;

(5) The due date for filing comments under § 124.118; and

(6) The name, address, and office telephone number of the Regional Hearing Clerk.

§ 124.42 Public comments and hearings.

(a) A comment period of at least 30 days following the date of public notice of the formulation of a draft permit shall be provided. During this period any interested persons may submit written comments on the draft permit and administrative record and may request a public hearing. A request for a public hearing shall be in writing and shall state the nature of the issues to be raised. All comments shall be considered in preparing the final permit and shall be responded to as provided in § 124.63.

(b)(1) In appropriate cases, including cases where there is significant public interest, the Director may hold a public hearing on a draft permit or permits. Public notice of that hearing shall be given as specified in § 124.41.

(2) Any person appearing at such a hearing may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required.

§ 124.43 Obligation to raise points and provide information during the comment period.

All persons, including applicants, who believe any of the terms of a draft permit are not appropriate either because one of the variances or modifications listed in Subpart F should be granted or for some other reason, must raise all reasonably ascertainable issues and submit all arguments and factual grounds supporting their position, including all supporting material by the close of the public comment period (including any public hearing period) required by § 124.42.

§ 124.44 Terms requested by the Corps of Engineers and other governmental agencies.

(a) If the District engineer of the Corps of Engineers advises the Director in writing during the public comment period that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant so notified. If the District Engineer advises the Director that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the Director shall include the specified conditions in the permit. Review or appeal of a denial of a permit or of conditions specified by the District Engineer shall be made through the applicable procedures of the Corps of Engineers, and may not be made through the procedures provided in this Part.

(b) If during the comment period the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any State or other Federal Agency with jurisdiction over fish, wildlife, or public health advises the Director in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the Director may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of the Act.

(c) In appropriate cases the Director may consult with one or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the statement of basis, the fact sheet, or the draft permit.

§ 124.45 Reopening of comment period.

If any information or arguments submitted during the public comment period, including information or arguments whose submission is required under § 124.43, appears to raise substantial new questions concerning a permit, the Director may conclude that one of the following actions is necessary for an informed decision:

(a) Formulation of a new draft permit, appropriately modified, under § 124.42;

(b) Preparation of a fact sheet or revised fact sheet under § 124.34 and reopening the comment period under § 124.42; or

(c) Reopening of the comment period under § 124.42 to give interested persons an opportunity to comment on the information or arguments submitted.

In each case the notice required by § 124.41 shall be given.

Subpart F—Special Provisions for Variances and Statutory Modifications

§ 124.51 Time deadlines for applications for variances from and modifications of effluent limitations.

(a) Except as provided in paragraph (d), applications for variances from and

modification of effluent limitations under the statutory and regulatory provisions of the Act shall be made as provided in paragraph (b) and (c).

(b) *Dischargers other than publicly owned treatment works.* (1) A request for a variance based on the presence of "fundamentally different factors" from those on which the effluent limitations guideline was based, shall be made by the close of the public comment period under § 124.42. The request shall explain why the requirements of § 124.43 and Part 125, Subpart D have been met.

(2) A request for a variance from the BAT requirements for section 301(b)(2)(F) pollutants (commonly called "non-conventional" pollutants) pursuant to section 301(c) because of the economic capability of the owner or operator; or pursuant to section 301(g) because of certain environmental considerations, where those requirements were based on effluent limitation guidelines, must be made by:

(i) Submitting an initial application to the Regional Administrator and the State Director stating the name of the applicant, the permit number, the outfall number(s), the applicable effluent guideline, and whether the applicant is applying for a section 301(c) or section 301(g) modification or both. This application shall be filed not later than:

(A) September 25, 1978, for a pollutant which is controlled by a BAT effluent limitation guideline promulgated before December 27, 1977; or

(B) 270 days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 27, 1977;

(ii) Submitting a completed request demonstrating that the requirements of § 124.43 and the applicable requirements of Part 125 have been met no later than the close of the public comment period under § 124.42.

(iii) Requests for variance of effluent limitations based on other than effluent limitation guidelines, shall comply only with paragraph (ii) and need not submit an initial application under paragraph (i).

(3) An extension under section 301(i)(2) of the statutory deadlines in sections 301(b)(1)(A) or (b)(1)(C) based on delay in completion of a publicly owned treatment work into which the source is to discharge must have been requested on or before June 28, 1978, or 180 days after the relevant publicly owned treatment works requests an extension under paragraph (c)(2) of this section, whichever is later. The request shall explain why the requirements of Part 125, Subpart J have been met.

(4) An extension under section 301(k) from the statutory deadline of section 301(b)(2)(A) for best available control technology based on the use of innovative technology may be requested no later than the close of the public comment period under § 124.42 for the discharger's initial permit requiring compliance with best available control technology. The request shall explain why the requirements of § 124.43 and Part 125, Subpart C have been met.

(5) A modification under section 302(b)(2) of requirements under section 302(a) for achieving water quality related effluent limitations may be requested no later than the close of the public comment period under § 124.42 on the permit from which the variance is sought. The request shall explain why the requirements of that section have been met.

(6) A variance under section 316(a) for the thermal component of any discharge must be filed with a timely application for a permit under § 124.11. If thermal effluent limitations are established under section 402(a)(1) or are based on water quality standards the application shall by filed by the close of the public comment period under § 124.42. A copy of the application as required under Part 125, Subpart H shall be sent simultaneously to the appropriate State or interstate certifying agency. (See § 124.56 for special procedures for section 316(a) thermal variances.)

(c) *Publicly owned treatment works.* (1) A preliminary application for a modification under section 301(h) from requirements of section 301(b)(1)(B) for discharges into marine waters must have been submitted to the Agency no later than September 25, 1978. A final application must be submitted in accordance with the filing requirements of Part 125, Subpart G, after that Subpart is promulgated, and shall demonstrate on its face that all the requirements of Part 125, Subpart G have been met. (See § 124.55 for special rules for section 301(h) modifications.)

(2) An extension under section 301(i)(1) from the statutory deadlines in sections 301(b)(1)(B) or (b)(1)C) based on delay in the construction of publicly owned treatment works must have been requested on or before June 28, 1978.

(3) A modification under section 302(b)(2) of the requirements under section 302(a) for achieving water quality based effluent limitations may be requested no later than the close of the public comment period under § 124.42 on the permit from which the modification is sought.

(d)(1) Notwithstanding any later time specified in paragraphs (b) and (c), the Director may notify the applicant before a draft permit is published pursuant to § 124.41 that the draft permit will likely contain limitations which are eligible for variances or modifications. In such notice the Director may require the applicant as a condition of consideration of any potential variance request to submit a full application within a specified reasonable time before the draft permit is formulated. This notice can be sent before the application under § 124.11 has been submitted.

[*Comment:* This paragraph is intended to reduce the time for permit issuance, especially in those cases where it is clear that a variance or modification will be applied for, such as where the discharger has submitted a variance application under § 124.51(b)(2)(i) even before the permit application is filed under § 124.11.]

(2) A discharger who cannot file a complete request required under paragraphs (b)(2)(ii), (b)(2)(iii), (b)(3)(ii) or (b)(3)(iii) may request an extension to apply. Extensions shall be limited to the time the Director determines is necessary to satisfy the requirements of the appropriate regulations, but shall be no more than six months in duration. The request may be granted or denied in the discretion of the Director.

§ 124.52 Decisions on variances and modifications.

(a) The Director may grant or deny the following modifications or variances (subject to EPA objection under § 123.23 for State permits):

(1) Extensions under section 301(i) based on delay in completion of a publicly owned treatment works;

(2) After consultation with the Regional Administrator, extensions under section 301(k) based on the use of innovative technology; or

(3) Variances under section 316(a) for thermal pollution.

(b) The State Director may deny, or forward to the Regional Administrator with a written concurrence or submit to EPA without recommendation a completed application for:

(1) A variance based on the presence of "fundamentally different factors" from those on which an effluent limitations guideline was based;

(2) A variance based on the economic capability of the applicant under section 301(c) of the Act;

(3) A variance based upon certain water quality factors under section 301(g); of

(4) A modification of section 302(b)(2) requirements under section 302(a) (water quality related effluent limitations).

(c) The Regional Administrator may deny, or may forward to the EPA Deputy Assistant Administrator for Water Enforcement with recommendation for approval, an application for a variance listed in paragraph (b) which is forwarded by the State Director, or submitted to the Regional Administrator by the applicant where EPA is the permitting authority.

(d) The EPA Deputy Assistant Administrator for Water Enforcement may approve or deny any variance application submitted under paragraph (c). If the EPA Deputy Assistant Administrator approves the variance, the Director may formulate a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that determination under § 124.54.

§ 124.53 Procedures for variances and modifications where EPA is the permit issuing authority.

(a) In states where EPA is the permit issuing authority and an application for a variance or modification is filed as required by § 124.51, the application shall be processed as follows:

(1) If at the time an application for a variance or modification is submitted the Regional Administrator has received an application under § 124.11 for issuance or renewal of that permit but has not yet formulated a draft permit under § 124.31 covering the discharge in question, the Regional Administrator after obtaining any necessary concurrence of the EPA Deputy Assistant Administrator for Water Enforcement under § 124.52, shall set forth a tentative determination on the request at the time the draft permit is formulated as specified in § 124.31, unless this would significantly delay the processing of the permit. In that case the processing of the variance or modification request may be separated from the permit in accordance with paragraph (3), and the processing of the permit shall proceed without delay.

(2) If at the time an application for a variance or modification is filed the Regional Administrator has formulated a draft permit under § 124.31 covering the discharge in question, but that permit has not yet become final under § 124.101, administrative proceedings concerning that permit may be stayed and the Regional Administrator shall formulate a new draft permit including a tentative determination on the request, and the fact sheet required by § 124.34. However, if this will significantly delay the processing of the existing permit or the Regional Administrator for other reasons considers combining the variance request and the existing permit inadvisable, the request may be separated from the permit in accordance with paragraph (3), and the administrative disposition of the existing permit shall proceed without delay.

(3) If the permit has become final under § 124.101 and no application under § 124.11 concerning it is pending or if the variance or modification request has been separated from a permit as described in paragraphs (1) and (2), the Regional Administrator shall formulate a new draft permit under § 124.31. This permit shall be accompanied by the fact sheet required by § 124.34, except that the only matters considered shall relate to the requested variance.

§ 124.54 Appeals of modifications and variances.

(a) Normally, the appeals of permit determinations are handled in one proceeding, either State or Federal. When a State issues a permit in which EPA has made a variance determination, a separate appeal on that determination is possible. In such cases, requests for appeal of the EPA permit conditions must be filed under Subpart I after the public notice of the grant or denial of the variance. If the owner or operator is challenging issues in a State proceedings on the same permit, the Regional Administrator will decide, in consultation with State officials, which case will be heard first.

(b) Appeals of modifications or variance determinations shall be governed by Subpart I unless the Regional Administrator determines that consolidation with an evidentiary hearing under Subpart H will expedite consideration of the issues presented.

[*Comment:* The panel proceedings of Subpart I will generally be utilized when there is a State-issued permit and only the variance issues are in the Federal forum.]

(c) *Stays for section 301(g) variances.* Under the authority of section 301(j)(2), if a request for an evidentiary hearing is granted regarding a variance under section 301(g), or if a petition for timely review of the denial of a request for an evidentiary hearing is timely filed with the Administrator under § 124.101 with respect to such a variance, any otherwise applicable standards and limitations under section 301 of the Act shall not be stayed unless:

(1) In the judgment of the Regional Administrator, the stay or the variance sought will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity, or synergistic propensities; and

(2) In the judgment of the Regional Administrator, there is a substantial likelihood that the discharger will succeed on the merits of its appeal; and

(3) The discharger files any bond or other appropriate security which is required by the Regional Administrator to assure timely compliance with the requirements from which a variance is sought in the event that the appeal is unsuccessful.

(d) Stays for variances or modifications other than section 301(g) will be granted or denied pursuant to § 124.61.

§ 124.55 Special provisions for modifying the secondary treatment requirement under section 301(h).

(a) Where it is clear on the face of a section 301(h) application that the discharger is not entitled to a modification, the application shall be denied.

(b) In the case of all other section 301(h) applications the Administrator, or a person designated by the Administrator may either:

(1) Give written authorization to an applicant to submit information required by Part 125, Subpart G or the final application by a date certain, not to exceed 9 months, if:

(i) The applicant proposes to submit new or additional information and the applicant demonstrates that:

(A) The applicant made consistent and diligent efforts to obtain such information prior to submitting the final application;

(B) The failure to obtain such information was due to circumstances beyond the control of the applicant; and

(C) Such information can be submitted promptly; or

(ii) The applicant proposes to submit minor corrective information and such information can be submitted promptly; or

(2) Make a written request of an applicant to submit additional information by a date certain, not to exceed 9 months, if such information is necessary to issue a tentative determination under § 124.11(g).

All additional information authorized or requested under this paragraph which is timely received, shall be considered part of the original application.

(c) Applications for modifications under section 301(h) shall be processed independently of any pending

application for the issuance or reissuance of a permit requiring the applicant to meet effluent limitations based on secondary treatment under section 301(b)(1)(B).

(d) No modified permit shall be issued granting a section 301(h) modification unless the appropriate State officials have concurred or waived concurrence pursuant to § 124.24. In the case of a permit issued to an applicant in an approved State, the State Director may:

(1) Revoke any existing permit as of the effective date of the EPA-issued modified permit; and

(2) Co-sign the modified permit, if the Director has indicated an intent to do so in the written concurrence.

(e) Appeals of determinations under section 301(h) shall be governed by Part 124, Subpart I.

§ 124.58 Special procedures for decisions on thermal variances (section 316(a)).

(a) Except as provided in § 124.53 the only issues connected with issuance of a particular permit on which EPA will make a final Agency decision before the final permit is issued under § 124.61 are whether alternative effluent limitations would be justified under section 316(a) and whether cooling water intake structures will use the best available technology under section 316(b). Applicants who wish an early decision on these issues should request it and furnish supporting reasons at the time their applications are filed under § 124.51(b)(6). The Regional Administrator will then decide whether or not to grant it. If it is granted, both the early decision on section 316 (a) or (b) issues and the grant of the balance of the permit shall be considered permit issuance under these regulations, and shall be subject to the same requirements of public notice and comment and the same opportunity for an evidentiary hearing.

(b) If the Regional Administrator, on review of the administrative record, determines that the information necessary to decide whether or not an alternative effluent limitation under section 316(a) should be granted to a source is not likely to be available by the time a decision on permit issuance must be made, the Regional Administrator may issue a permit under § 124.61 for a term of up to five years. This permit shall require that the point source achieve the effluent limitations initially proposed for the control of the thermal component of the discharge no later than the date otherwise required by applicable legal requirements. However, the permit shall also afford the permittee an opportunity to file a demonstration under section 316(a) after conducting such studies as are required under Part 125, Subpart H.

[*Comment:* A new discharger may not commence operation in violation of the thermal effluent limitations which are initially proposed unless and until the section 316(a) variance request is finally approved.]

(c) Any hearing scheduled under paragraph (a) shall be publicized as required by § 124.41 and shall be scheduled enough in advance of the final compliance date specified in the permit to allow the permittee to take necessary measures to comply by that date in the event its request for modification of thermal limits is eventually denied after the hearing is concluded.

(d) Whenever the Regional Administrator defers the determination under section 316(a), any determination under section 316(b) may be deferred.

Subpart G—Issuance and Effective Date of Permit

§ 124.61 Issuance and effective date of permit; stays.

(a)(1) After the close of the public comment period (including any public hearing period) required by § 124.42 on a draft permit, the Regional Administrator shall prepare and issue a final permit and shall serve notice as provided in § 124.60(c) of that action of the applicant, and on each person who has submitted written comments or requested notice of the issuance of the final permit. This notice shall include reference to the procedures available to contest the permit terms under § 124.74 *et seq.*

[*Comment:* A statement signed by a person in the Regional Office that an attached list of persons were mailed the notice of issuance of the final permit is sufficient to meet the requirements of § 124.60(c). The mailed notice need not be sent certified mail.]

(b) Any final permit issued under paragraph (a) constitutes final action of EPA, when it becomes effective under paragraph (c) unless a request for an evidentiary hearing under § 124.75 or a panel hearing under § 124.114 is granted.

(c) Except as provided in paragraphs (d), (e) and (f), a permit or modification shall become effective 30 days after the service of notice of the final permit under paragraph (a), unless a later effective date is specified in the permit.

(d) If a request for an evidentiary hearing is granted under § 124.75 or § 124.111(a)(3) regarding the initial permit issued for a new source or a new discharger, or if a petition for review of the denial of a request for an evidentiary hearing with respect to such a permit is timely filed with the Administrator under § 124.101, the applicant shall be without a permit for the proposed new source or new discharge, pending final Agency action under § 124.101.

(e)(1) If a request for a hearing is granted in whole or in part under § 124.75 or § 124.111(a)(3) regarding a permit for an existing source, or if a petition for review of the denial of a request for an evidentiary hearing with respect to such a permit is timely filed with the Administrator under § 124.101, the force and effect of the contested provisions of the final permit shall be stayed and shall not be subject to judicial review under section 509(b) of the Act, pending final Agency action under § 124.101. The Regional Administrator shall serve notice, in accordance with § 124.75, on the discharger and all parties identifying the terms of the final permit which are not contested and therefore are enforceable obligations of the discharger.

(2) Where effluent limitations are contested, but the underlying control technology is not, the notice shall identify the installation of the technology in accordance with the permit compliance schedules (if uncontested) as an uncontested, enforceable obligation of the permit.

(3) Where a combination of technologies is contested, but a portion of the combination is not contested, such portion shall be identified as uncontested if compatible with the combination of technologies proposed by the requester.

(4) A term or condition, otherwise uncontested, shall not be identified as uncontested if it is inseverable from a contested term or condition.

(5) Uncontested terms and conditions shall become enforceable 20 days after the date of such notice, provided, however, that if a request for an evidentiary hearing on a term or condition was denied and the denial is appealed under § 124.101, then such term or condition shall become enforceable upon the date of the notice of the Administrator's decision on the appeal if the denial is affirmed, or shall be stayed, in accordance with this section, if the Administrator reverses the denial and grants the evidentiary hearing on such permit term.

(6) Uncontested terms and conditions shall include:

(i) Permit requirements for which an evidentiary hearing has been requested but the hearing has been denied;

(ii) Preliminary design and engineering studies or other requirements necessary to achieve the

final permit term or conditions which do not entail substantial expenditures;

(iii) Permit conditions which will have to be met regardless of which party prevails at the evidentiary hearing;

(iv) Where the discharger proposed a less stringent level of treatment than that contained in the final permit, any permit conditions appropriate to meet the levels proposed by the discharger, if the measures required to attain such less stringent level of treatment are consistent with the measure required to attain the limits proposed by the Agency; and

(v) Construction activities such as segregation of waste streams or installation of equipment which would partially meet the final permit terms or conditions and could also be used to achieve the discharger's proposed alternative terms and conditions.

(7) If at any time after a hearing is granted and after the Regional Administrator's notice under paragraph (1), it becomes clear that a permit requirement is no longer contested, any party may request the Presiding Officer to issue an order identifying the requirements as uncontested. The requirement identified in such order shall become enforceable 30 days after the issuance of the order.

(f) Where an evidentiary hearing is granted under § 124.75 on an application for a renewal of an existing permit, all provisions of the existing permit, as well as uncontested provisions of the new permit, shall continue in full force and effect until final Agency action under § 124.101. (See § 122.12(b)). Upon written request from the applicant, the Regional Administrator may modify the existing permit to delete requirements which unnecessarily duplicate uncontested provisions of the new permit.

[*Comment:* The following examples demonstrate the application of § 124.61(e) and (f):

Example 1: The discharger requests and is granted an evidentiary hearing on its contention that the EPA's proposed effluent limitation for total suspended solids (TSS) at level X is too stringent and should be relaxed to level Y. Treatment technology A attains level Y whereas technology A plus B is necessary for level X. In this case, the discharger's obligation to install technology A is effective 30 days after service of the notice under § 124.75(b) and this obligation is not stayed by virtue of the contest as to the need for additional technology B. The discharger would be required to comply with all portions of the compliance schedule relating to design, construction and attainment of technology A, but would obtain a stay of such provisions with respect to technology B. This is true even if the schedule does not separate the two technologies. The discharger must of course also perform all basic work such as segregation of waste streams, site preparation, monitoring, reporting, and initial construction because this will be necessary regardless of the outcome of the contest. The additional obligations of technology B are stayed.

Example 2: The same facts as in Example 1 except that a public interest group has also requested and been granted participation in the evidentiary hearing. The group contends that TSS level X is too lenient and should be tightened to level Z. Treatment technology C, which is inconsistent with both A and B technologies, is required for level Z. In this case the discharger's obligation to install technologies A, A and B, or C are all stayed. The discharger's obligations to perform basic work such as segregation of waste streams, site preparation, monitoring, reporting, and perhaps initial construction are not stayed because they are unaffected by the contest.

Example 3: The discharger requests an evidentiary hearing on two issues: that the permits total suspended solids (TSS) limit and pH limit are each too strict. The Regional Administrator grants the evidentiary hearing on the TSS issue but denies it on the pH claim. The TSS and pH technologies are independent and severable and the discharger does not appeal the denial of hearing on the pH claim. In this case the discharger's obligation to install the pH control technology is not stayed and becomes effective 30 days after service of the Regional Administrator's notice under § 124.75(b). If the underlying technology for the TSS limit is at issue, the TSS limitation is stayed. However, as described in Examples 1 and 2, the discharger's obligations to perform all work unaffected by the stay (e.g., segregation of waste streams, site preparation, initial construction, etc.) are not stayed.

Example 4: The same facts as in Example 3 except that the equipment required for attaining the pH limit is achieved by the installation of the TSS equipment. In this case the Regional Administrator may determine that the pH permit term is inseverable from the TSS contest and thus the limits for both parameters would be stayed by virtue of the hearing on TSS, although as noted in the preceding examples, the discharger's obligations to perform all work unaffected by the stay are not stayed. Note however, that if the pH limit is achievable in an inexpensive and temporary alternative such as additional chemical treatment in the discharger's existing equipment, then the Regional Administrator may determine that the pH permit term is severale and refuse to stay the pH term.

Example 5: The same facts as in Example 3 except that the discharger appeals (to the Administrator) the Regional Administrator's denial of the evidentiary hearing on Issue No. 2 (the pH limit). In this case the pH limitation is also stayed (with the exceptions noted in the preceding examples) at least until the Administrator's decision on such appeal. If the Administrator affirms the denial of the evidentiary hearing on the pH limit then upon service of notice under § 124.75(b) the stay terminates. If the Administrator reverses and thus grants the evidentiary hearing on the pH term then the stay continues until final Agency action.

(g) When issuing a finally effective permit under Subpart I, the Regional Administrator shall extend the permit compliance schedule to the extent required by a stay under this section; provided that no such extension shall be granted which would:

(1) Result in the violation of an applicable statutory deadline; or

(2) Cause the permit to expire more than five years after issuance under § 124.61(a).

[*Comment:* Extensions of compliance schedules will not automatically be granted for a period equal to the period the stay is in effect for an effluent limitation. For example, if both the Agency and the discharger agree that a certain treatment technology is required by the Act where guidelines do not apply, but a hearing is granted to consider the effluent limitations which the technology will achieve, requirements regarding installation of the underlying technology will not be stayed during the hearing. Thus, unless the hearing extends beyond the final compliance date in the permit, it will not ordinarily be necessary to extend the compliance schedule. However, where application of an underlying technology is challenged, the stay for installation requirements relating to that technology would extend for the duration of the hearing.]

(h) For purposes of judicial review under section 509(b) of the Act, final administrative action on a permit does not occur unless and until a party has requested and exhausted its Administrative remedies under Subpart H and I and §124.101. Any party which neglects or fails to seek review under § 124.101 thereby waives its opportunity to exhaust available Agency remedies.

§ 124.62 Final environmental impact statement.

No final permit for a new source shall be issued until at least 30 days after the date of issuance of a final Environmental Impact Statement if one is required under 40 CFR § 6.916.

§ 124.63 Response to comments.

(a) At the time any final permit is issued, the Director shall also prepare a response to comments for that permit. This response to comments shall contain:

(1) A specific indication of which provisions of the draft permit have been changed in the final permit, and the reasons for the change; and

(2) A brief description of and response to all significant comments on the draft permit raised during the public comment period, or during any hearing.

(b) For EPA-issued permits any documents cited in the response to

comments shall be included in the administrative record for the final permit as defined in § 124.64.

[*Comment:* If new points are raised or new material supplied during the public comment period, EPA may document its response to those matters by adding new material to the administrative record.]

§ 124.64 Administrative record for final permit issued by EPA.

(a) Decisions to issue a final permit under § 124.61 shall be made on the basis of the administrative record defined in this section.

(b) The administrative record for any final permit shall consist of the administrative record for the draft permit and

(1) All comments received during the public comment period required by § 124.42;

(2) The tape or transcript of any hearing(s) held under § 124.42;

(3) The response to comments required by § 124.63;

(4) Any final Environmental Impact Statement;

(5) Other documents contained in the supporting file for the permit, including correspondence, telephone and meeting memoranda, compliance reports, etc.; and

(6) The final permit.

These documents shall be added to the record as soon as feasible after their receipt or publication by the Agency.

(c)(1) This section applies to all final permits where the draft permit was subject to the administrative record requirements of § 124.35.

(2) Whether or not a draft permit was formulated or final permit was issued subject to this Subpart, the Regional Administrator, at any time prior to the rendering of an initial decision in an evidentiary hearing on that permit, may withdraw the permit in whole or in part and formulate a new draft permit under § 124.31 addressing the portions so withdrawn. The new draft permit shall proceed through the same process of public comment and opportunity for a public hearing, etc. as would apply to any other draft permit subject to this Part. Any portions of the permit which are not withdrawn and which are not stayed under § 124.61 shall remain in effect.

(d) Material readily available at the issuing Regional Office or published material which is generally available, and which is included in the administrative record under the standards of this section or of § 124.63 ("Response to Comments"), does not need to be physically included in the same file as the rest of the record as long as it is specifically referenced in the fact sheet or statement of basis or in the response to comments.

Subpart H—Evidentiary Hearings for EPA-Issued Permits

§ 124.71 Applicability.

The regulations in this Subpart govern all evidentiary hearings conducted by EPA under section 402 of the Act, except as otherwise provided in Subpart I. An evidentiary hearing is available to challenge any permit issued under § 124.61 except for a general permit. Persons affected by a general permit may not challenge the terms and conditions of a general permit; but may instead apply for an individual permit under § 124.11 as authorized in § 122.48 and then request an evidentiary hearing on the issuance or denial of an individual permit.

§ 124.72 Definitions.

For the purpose of this Subpart H and I, the following definitions are applicable:

(a) "Judicial Officer" means a permanent or temporary employee of the Agency appointed as a Judicial Officer by the Administrator under these regulations and subject to the following conditions:

(1) A Judicial Officer shall be a licensed attorney. A Judicial Officer shall not be employed in the Office of Enforcement or the Office of Water and Waste Management, and shall not participate in the consideration or decision of any case in which he or she performed investigative or prosecutorial functions.

(2) The Administrator may delegate any authority to act in an appeal of a given case under this Subpart to a Judicial Officer who, in addition, may perform other duties for EPA, provided that that delegation shall not preclude a Judicial Officer from referring any motion or case to the Administrator when the Judicial Officer decides referral would be appropriate. The Administrator, in deciding a case, may consult with and assign the drafting of preliminary findings of fact and conclusions and/or a preliminary decision to any Judicial Officer.

(b) "Party" means the EPA trial staff under § 124.78 and any person whose request for a hearing under § 124.74 or whose request to be admitted as a party or to intervene under §§ 124.79 or 124.117 has been granted.

(c) "Presiding Officer" means an Administrative Law Judge appointed under 5 U.S.C. § 3105 and designated to preside at the hearing.

(d) "Regional Hearing Clerk" means an employee of the Agency designated by a Regional Administrator to establish a repository for all books, records, documents and other materials relating to hearings under this Subpart. A Regional Hearing Clerk may be the same person as the Record Clerk required by § 124.35.

§ 124.73 Filing and submission of documents.

(a) All submissions authorized or required to be filed with EPA under this Subpart shall be filed with the Regional Hearing Clerk, unless the regulations provide otherwise. Submissions shall be considered filed on the date on which they are mailed or delivered in person to the Regional Hearing Clerk.

(b) All such submissions shall be signed by the person making the submission, or by an attorney or other authorized agent or representative.

(c)(1) All data and information referred to or in any way relied upon in any such submissions shall be included in full and may not be incorporated by reference, unless previously submitted as part of the administrative record in the same proceeding, except for State or Federal statutes and regulations, judicial decisions published in a national reporter system, officially issued EPA documents of general applicability, and any other material which is generally available or of peripheral relevance, in which case the party relying on it shall file a written undertaking to make copies available as directed by the Regional Administrator or the Presiding Officer.

(2) If any part of the material submitted is in a foreign language, it shall be accompanied by an English translation verified under oath to be complete and accurate, together with the name, address, and a brief statement of the qualifications of the person making the translation. Translations of literature or other material in a foreign language shall be accompanied by copies of the original publication.

(3) Where relevant data or information is contained in a document also containing irrelevant matter, either the irrelevant matter shall be deleted and only the relevant data or information shall be submitted or the relevant portions shall be briefly indicated.

(4) The failure to comply with the requirements of this section or any other requirement in this Subpart may result in the exclusion from consideration of any portion of the submission which

fails to comply. If the Regional Administrator or the Presiding Officer, on motion by any party or *sua sponte*, determines that a submission fails to meet any requirement of this Subpart, the Regional Administrator or Presiding Officer shall direct the Hearing Clerk to return the submission with a copy of the applicable regulations indicating those provisions not complied with in the submission. The party proposing to submit any materials previously rejected shall have 14 days to correct the errors and resubmit, unless the Regional Administrator or the Presiding Officer determines that there is good cause to allow a longer time.

(d) The filing of a submission shall not mean or imply that it in fact meets all applicable requirements or that it contains reasonable grounds for the action requested or that the action requested is in accordance with law.

(e) The original of all statements and documents containing factual material, data, or other information shall be signed in ink and shall state the name, address and the representative capacity of the person making the submission. The person signing shall comply with the signature and certification procedures of § 122.5.

§ 124.74 Requests for evidentiary hearing.

(a) Within 30 days following the service of notice of the Regional Administrator's issuance of a final permit under § 124.61, any interested person may submit a request to the Regional Administrator under paragraph (b) for an evidentiary hearing to reconsider or contest the terms of that permit. If such a request is submitted by a person other than the permittee, the person shall simultaneously serve a copy of the request on the permittee.

(b) In accordance with § 124.76, such requests shall state each legal or factual question alleged to be at issue, and their relevance to the permit decision, together with a designation of the specific factual areas to be adjudicated and the hearing time estimated to be necessary for that adjudication. Information supporting the request or other written document relied upon to support the request shall be submitted as required by § 124.73 unless it is already in the administrative record required by § 124.64.

[*Comment:* This paragraph allows the submission of requests for evidentiary hearings even though both legal and factual issues may be raised, or only legal issues may be raised. In the latter case, because no factual issues were raised, the Regional Administrator would be required to deny the request. However, on review of the denial, the Administrator is authorized by § 124.101(a)(1) to review policy or legal conclusions of the Regional Administrator. EPA is requiring an appeal to the Administrator even of purely legal issues involved in a permit decision to ensure that the Administrator will have an opportunity to review any permit before it will be final and subject to judicial review.]

(c) Such requests shall also contain:

(1) The name, mailing address and telephone number of the person making such request;

(2) A clear and concise factual statement of the nature and scope of the interest of the requester;

(3) The names and addresses of all persons whom the requester represents; and

(4) A statement by the requester that, upon motion of any party, or *sua sponte* by the Presiding Officer and without cost or expense to any other party, the requester shall make available to appear and testify, the following:

(i) The requester;

(ii) All persons represented by the requester; and

(iii) All officers, directors, employees, consultants and agents of the requester and the persons represented by the requester.

(5) Specific references to the contested permit terms and conditions, as well as suggested revised or alternative permit terms and conditions (not excluding permit denial) which, in the judgment of the requester, would be required to implement the purposes and policies of the Act.

(6) In the case of challenges to the application of control or treatment technologies identified in the statement of basis or fact sheet, identification of the basis for the objection, and the alternative technologies or combination of technologies which the requester believes are necessary to meet the requirements of the Act.

(7) Specific identification of each of the discharger's obligations which should be stayed if the request is granted. If the request contests more than one permit term or condition then each obligation which is proposed to be stayed must be referenced to the particular contested term warranting the stay.

(d) The Regional Administrator (upon notice to all persons who have already submitted hearing requests) may extend the time allowed for submitting hearing requests under this section for good cause.

§ 124.75 Decision on request for a hearing.

(a) Following the expiration of the time allowed by § 124.74 for submitting a request for an evidentiary hearing, the Regional Administrator shall determine whether the request shall be granted, denied or granted in part and denied in part. The Regional Administrator shall grant a request either in whole or in part only if the request conforms to the requirements of § 124.74 and sets forth material issues of fact relevant to the issuance of the permit.

(b) If the Regional Administrator grants a request for an evidentiary hearing, in whole or in part, the Regional Administrator shall state and identify the permit terms and conditions which have been contested by the requester and for which the evidentiary hearing has been granted. Permit terms and conditions which are not contested or for which the Regional Administrator has denied the hearing request shall not be affected by or considered at, the evidentiary hearing. The Regional Administrator shall specify these terms and conditions in writing and serve notice in accordance with § 124.91(e).

(c) If the Regional Administrator grants a request for an evidentiary hearing in whole or in part, in regard to a particular proposed permit, then any other request for an evidentiary hearing in regard to that permit shall be treated as a request to be a party and the Regional Administrator shall grant any such request which meets the requirements of paragraph (a) of this section.

(d) If a request for a hearing is denied in whole or in part, the Regional Administrator shall briefly state the reasons. That denial is then subject to review by the Administrator under § 124.101.

§ 124.76 Obligation to raise issues and submit evidence before a final permit is issued.

No evidence shall be submitted by any party to a hearing under this Subpart that was not submitted to the administrative record required by § 124.64 unless good cause is shown for the failure to submit it. No issues shall be raised by any such party that were not submitted to the administrative record required by § 124.64 unless good cause is shown for the failure to submit them. Good cause includes the case where the party seeking to raise the new issues, or introduce new information, shows that it could not reasonably have ascertained the issues or made the information available within the time required by § 124.43.

§ 124.77 Notice of the grant of a hearing.

Public notice of the grant of an evidentiary hearing regarding a permit shall be given as provided in § 124.41(h) and in addition by mailing a copy to all persons who commented on the draft permit or submitted a request for a hearing. Before the issuance of such notice the Regional Administrator shall designate the Agency trial staff and the members of the decisional body (as defined in § 124.78).

§ 124.78 Ex parte communications.

(a)(1) No interested person outside the Agency or member of the Agency trial staff shall make or knowingly cause to be made to any members of the decisional body an *ex parte* communication relevant to the merits of the proceedings.

(2) No member of the decisional body shall make or knowingly cause to be made to any interested person outside the Agency or member of the Agency trial staff an *ex parte* communication relevant to the merits of the proceedings.

(3) A member of the decisional body who receives or who makes or knowingly causes to be made a communication prohibited by this subsection shall file with the Regional Hearing Clerk, for the public record of the hearing, all such written communications or memoranda stating the substance of all such oral communications together with all written responses and memoranda stating the substance of all oral responses.

(b) Upon receipt by any members of the decision making body of an *ex parte* communication knowingly made or knowingly caused to be made by a party in violation of this section, the person presiding at the stage of the hearing then in progress may, to the extent consistent with justice and the policy of the Act require the party to show cause why its claim or interest in the proceedings should not be dismissed, denied, disregarded or otherwise adversely affected on account of such violation.

(c) The prohibitions of this section begins to apply upon issuance of the notice of the grant of a hearing under § 124.77 or § 124.116. This prohibition terminates at the date of final Agency action.

(d) For purposes of this section, the following definitions shall apply:

(1) "Agency trial staff" means those Agency employees, whether temporary or permanent, who have been designated by the Agency under § 124.77 or § 124.116 as available to investigate, litigate and present the evidence, arguments and position of the Agency in the evidentiary hearing or non-adversary initial licensing hearing. Appearance as a witness does not necessarily require a person to be designated as a member of the Agency trial staff;

(2) "Decisional body" means any Agency employee who is or may reasonably be expected to be involved in the decisional process of the proceeding including the Administrator, Judicial Officer, Presiding Officer, the Regional Administrator (if he does not designate himself as a member of the Agency trial staff) and any of their direct support staff participating in the decisional process. In the case of a nonadversary initial licensing proceeding, the decisional body shall also include the panel members whether or not permanently employed by the Agency;

(3) "*Ex parte* communication" means any communication written or oral relating to the merits of the proceeding between the decisional body and an interested person outside the Agency or the Agency trial staff where such communication was not originally filed or stated in the administrative record or in the hearing. *Ex parte* communications do not include:

(i) Communications between Agency employees other than between the Agency trial staff and the members of the decisional body;

(ii) Discussions between the decisional body and either

(A) Interested persons outside the Agency; or

(B) The Agency trial staff;

If all parties have received prior written notice of such proposed communications and have been given the opportunity to be present and participate therein.

(iii) Communications between Agency employees including trial staff but not the decisional body and any persons outside the Agency including interested persons outside the Agency.

(4) "Interested person outside the Agency" includes the permit applicant, any person who filed written comments in the proceeding, any person who requested the hearing, any person who requested to participate or intervene in the hearing, any participant or party in the hearing and the attorney of record for such persons.

§ 124.79 Additional parties and issues.

(a) Any person may submit a request to be admitted as a party within 15 days after the date of mailing, publication or posting of notice of the grant of an evidentiary hearing, whichever occurs last. The Presiding Officer shall grant such requests as meet the requirements of § 124.74 and § 124.76. Such request must specifically identify those issues already raised which the requester seeks to address at the hearing.

(b) After the expiration of the time prescribed in paragraph (a) any person may file a motion for leave to intervene as a party. This motion must meet the requirements of §§ 124.74 and 124.76 and set forth the grounds for the proposed intervention provided, however, that no factual or legal issues in addition to those raised by timely hearing requests may be proposed except for good cause. Any motion to intervene must also contain a verified statement showing good cause for the failure to file a timely request to be admitted as a party. The Regional Administrator, or the Presiding Officer if one has been assigned, shall grant such motion only upon an express finding on the record that:

(1) Extraordinary circumstances justify granting the motion;

(2) The intervener has consented to be bound by:

(i) Prior written agreements and stipulations by and between the existing parties; and

(ii) All orders previously entered in the proceedings; and

(3) Intervention will not cause undue delay or prejudice the rights of the existing parties.

§ 124.80 Filing and service.

(a) An original and one (1) copy of all written submissions relating to an evidentiary hearing filed after the notice of hearing is published shall be filed with the Regional Hearing Clerk.

(b) The party filing any submission shall serve a copy of such submission upon the Presiding Officer and each party of record. Service shall be by mail or personal delivery.

(c) Every submission shall be accompanied by an acknowledgement of service by the person served or proof of service in the form of a statement of the date, place, time, and manner of service and the names of the persons served, certified by the person who made service.

[*Comment:* A signed statement that an attached list of persons were mailed the submission is sufficient to meet the requirements of this paragraph. Certified mail is not required.]

(d) The Regional Hearing Clerk shall maintain and furnish to any person upon request, a list containing the name, service address and telephone number of all parties and their attorneys or duly authorized representatives.

§ 124.81 Assignment of administrative law judge.

No later than the date of mailing, publication or posting of the notice of a grant of an evidentiary hearing, whichever occurs last, the Regional Administrator shall refer the proceeding to the Chief Administrative Law Judge who shall make an assignment of an Administrative Law Judge to serve as Presiding Officer for the hearing.

§ 124.82 Consolidation and severance.

(a) The Administrator, Regional Administrator or Presiding Officer, has the discretion to consolidate, in whole or in part, two or more proceedings to be held under this Subpart, whenever it appears that a joint hearing on any or all of the matters in issue would expedite or simplify consideration of the issues and that no party would be prejudiced thereby. Consolidation shall not affect the right of any party to raise issues that might have been raised had there been no consolidation.

(b) If the Presiding Officer determines consolidation is not conducive to an expeditious, full and fair hearing, any party or issues may be severed and heard separately.

§ 124.83 Prehearing conferences.

(a) The Presiding Officer, *sua sponte*, or at the request of any party, may direct the parties or their attorneys or duly authorized representatives to appear at a specified time and place for one or more conferences before or during a hearing, or to submit written proposals or correspond for the purpose of considering any of the matters set forth in paragraph (c) of this section.

(b) The Presiding Officer shall allow a reasonable period before the hearing begins for the orderly completion of all prehearing procedures and for the submission and disposition of all prehearing motions. Where the circumstances warrant, the Presiding Officer shall call a prehearing conference to inquire into the use of available procedures contemplated by the parties and the time required for their completion, to establish a schedule for their completion, and to set a tentative date for beginning the hearing.

(c) In conferences held, or in suggestions submitted, under paragraph (a), the following matters may be considered:

(1) The necessity or desirability of simplification, clarification, amplification or limitation of the issues.

(2) The admission of facts and of the genuineness of documents, and the possibility of stipulations with respect to facts.

(3) The consideration of and ruling upon objections to the introduction into evidence at the hearing of any written testimony, documents, papers, exhibits, or other submissions proposed by a party, except that the administrative record required by § 124.84 shall be received in evidence subject to the provisions of § 124.85(d)(2). Notwithstanding the foregoing, at any time before the end of the hearing any party may make, and the Presiding Officer shall consider and rule upon, motions to strike testimony or other evidence other than the administrative record on the grounds of relevance, competency or materiality.

(4) The identification of matters of which official notice may be taken.

(5) The establishment of a schedule which includes definite or tentative times for as many of the following as are deemed necessary and proper by the Presiding Officer:

(i) The submission of narrative statements of position on each factual issue in controversy;

(ii) The submission of written testimony and documentary evidence (e.g., affidavits, data, studies, reports and any other type of written material) in support of such statements; or

(iii) Written requests to any party for the production of additional documentation, data, or other information relevant and material to the facts in issue.

(6) The grouping of participants with substantially like interests for purposes of eliminating duplicative or repetitive development of the evidence and making and arguing motions and objections.

(7) Such other matters as may expedite the hearing or aid in the disposition of the matter.

(d) At a prehearing conference or within some reasonable time set by the Presiding Officer, each party shall make available to all other parties the names of experts and other witnesses it expects to call. At its discretion or at the request of the Presiding Officer, a party may include a brief narrative summary of any witness's anticipated testimony. Copies of any written testimony, documents, papers, exhibits, or materials which a party expects to introduce into evidence, and the administrative record required by § 124.84, shall be marked for identification as ordered by the Presiding Officer. Witnesses, proposed written testimony and other evidence may be added or amended only upon a finding by the Presiding Officer that good cause existed for failure to introduce the additional or amended material within the time specified by the Presiding Officer. Agency employees and consultants shall be made available as witnesses by the Agency to the same extent that production of such witnesses is required of other parties under § 124.74(c)(4). (See also § 124.85(b)(16)).

(e) The Presiding Officer shall prepare a written prehearing order reciting the actions taken at the prehearing conference and setting forth the schedule for the hearing, unless a transcript has been taken and accurately reflects these matters. The order shall include a written statement of the areas of factual agreement and disagreement and of the methods and procedures to be used in developing the evidence and the respective duties of the parties in connection therewith. This order shall control the subsequent course of the hearing unless modified by the Presiding Officer for good cause shown.

§ 124.84 Summary determination.

(a) Any party to an evidentiary hearing may move with or without supporting affidavits and briefs for a summary determination in his or her favor upon all or any part of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination. Any such motion shall be filed at least 45 days before the date set for the hearing, except that upon good cause shown such motion may be filed at any time before the close of the hearing.

(b) Any other party may, within 30 days after service of the motion, file and serve a response to it or a counter-motion for summary determination. When a motion for summary determination is made and supported, a party opposing the motion may not rest upon mere allegations or denials but must show, by affidavit or by other materials subject to consideration by the Presiding Officer, that there is a genuine issue of material fact for determination at the hearing.

(c) Affidavits shall be made on personal knowledge, shall set forth facts that would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

(d) The Presiding Officer has the discretion to set the matter for oral argument and call for the submission of proposed findings, conclusions, briefs or memoranda of law. The Presiding Officer shall rule on the motion not more than 30 days after the date responses to the motion are filed under paragraph (b) of this section.

(e) If all issues of material fact are decided on a motion for summary determination, no hearing will be held and the Presiding Officer shall thereupon prepare an initial decison under § 124.89. If the motion for summary determination is denied or if only a partial summary determination is granted, the Presiding Officer shall issue a memorandum opinion, and order, interlocutory in character, and the hearing will proceed on the remaining issues. Appeals from interlocutory rulings are governed by § 124.90.

§ 124.86 Hearing procedure.

(a)(1) The permit applicant always bears the burden of persuading the Agency that a permit authorizing pollutants to be discharged should be issued and not denied. This burden does not shift.

(2) The Agency has the burden of going forward to present an affirmative case in support of any challenged term or condition of a final permit.

[*Comment:* In many cases the documents contained in the administrative record, in particular the fact sheet or statement of basis and the response to comments should adequately discharge this burden.]

(3) Any hearing participant who, by raising material issues of fact, contends:

(i) That particular terms, conditions or requirements in the permit are improper or invalid, and who desires either:

(A) The inclusion of new or different terms, conditions or requirements; or

(B) The deletion of such terms, conditions or requirements; or

(ii) That the denial or issuance of a permit is improper or invalid, shall have the burden of going forward to present an affirmative case upon the issues.

(b) The Presiding Officer shall have the authority and duty to conduct a fair and impartial hearing, to take action to avoid unnecessary delay in the disposition of the proceedings, to maintain order and all powers necessary to these ends, including the power to:

(1) Establish the date, time and place of hearings and conferences;

(2) Establish the methods and procedures to be used in the development of the evidence;

(3) Prepare, after considering the views of the participants, written statements of areas of factual disagreement among the participants;

(4) Hold conferences to settle, simplify, determine or strike any of the issues in a hearing, or to consider other matters that may facilitate the expeditious disposition of the hearing;

(5) Administer oaths and affirmations;

(6) Regulate the course of the hearing and govern the conduct of participants;

(7) Examine witnesses;

(8) Identify and refer issues for interlocutory decision under § 124.90;

(9) Rule on, admit, exclude, or limit evidence;

(10) Establish the time for filing motions, testimony and other written evidence, briefs, findings, and other submissions;

(11) Rule on motions and other procedural matters pending before him, including but not limited to motions for summary determination in accordance with § 124.84;

(12) Order that the hearing be conducted in stages in cases where the number of parties is large or the issues are numerous and complex;

(13) Take any action not inconsistent with the provisions of this subpart for the maintenance of order at the hearing and for the expeditious, fair and impartial conduct of the proceeding;

(14) Provide for the testimony of opposing witnesses to be heard simultaneously or for such witnesses to meet outside the hearing to resolve or isolate issues or conflicts;

(15) Order that trade secrets be treated as confidential business information in accordance with § 124.131; and

(16) Allow such cross-examination as may be required for a full and true disclosure of the facts. No cross-examination shall be permitted on questions of law or policy, or regarding matters (such as the validity of effluent limitations guidelines) that are not subject to challenge in an NPDES proceeding. No Agency witnesses shall be required to testify or be made available for cross-examination on such matters. In determining whether cross-examination shall be permitted the Presiding Officer shall consider whether it is likely to result in clarifying or resolving a disputed issue of fact material to the decision, and whether the issue can be more economically clarified in other ways. The party seeking cross-examination has the burden of demonstrating that this standard has been met.

(c) All direct and rebuttal evidence at an evidentiary hearing shall be submitted in written form, unless, upon motion and good cause shown, the Presiding Officer determines that oral presentation of the evidence on any particular fact will materially assist in the efficient identification and clarification of the hearing issues. Written testimony shall be prepared in narrative form. To the extent that testimony is to be submitted in writing, the Presiding Officer may set dates for the filing of such evidence with the Regional Hearing Clerk as follows:

(1) The participant with the burden of going forward to present an affirmative case upon an issue (as defined in § 124.85(a) of these regulations) shall file direct testimony first.

(2) All participants other than the participants specified in the preceding subsection shall file their direct testimony on said issue not later than 20 days after the date of the filing of the testimony under the preceding subsection.

(3) All rebuttal testimony shall be filed no later than 30 days after the date of the filing of testimony under paragraph (c)(1) of this section.

(d)(1) The Presiding Officer shall admit all relevant, competent and material evidence, except evidence that is unduly repetitious. Evidence may be received at any hearing even though inadmissible under the rules of evidence applicable to judicial proceedings. The weight to be given evidence shall be determined by its reliability and probative value.

(2) The administrative record defined by § 124.84 shall be admitted and received in evidence. Any party may move that a sponsoring witness be provided for a portion or portions of the administrative record. The Presiding Officer, upon finding that the standards for cross-examination of § 124.85(b)(3) have been met and that the administrative record taken as a whole indicates legitimate doubt about such portion of the record, shall grant such motion and direct the appropriate party to produce such witness. If a sponsoring witness cannot be provided, the Presiding Officer may reduce the weight afforded the appropriate portion of the record as a factual statement accordingly.

[*Comment:* Receiving the administrative record into evidence automatically serves several purposes: (1) It documents the prior course of the proceeding; (2) it provides a record of the views of affected persons for consideration by the agency decisionmaker; and (3) it provides factual material for use by the decisionmaker. Subject to § 124.78, parties are free to contest the factual portions of the administrative record in the hearing, and to argue that portions of it should not be given weight unless sponsored by a witness who will be available for cross-examination.]

(3) Whenever any evidence or testimony is excluded by the Presiding Officer as inadmissible, all such evidence or testimony existing in written form shall remain a part of the record as an offer of proof. The party seeking the admission of oral testimony

may make an offer of proof, which shall consist of a brief statement on the record describing the testimony excluded.

(4) Where two or more parties have substantially similar interest and positions, the Presiding Officer may limit the number of attorneys or other party representatives who will be permitted to cross-examine and to make and argue motions and objections on behalf of such parties. Attorneys may, however, engage in cross-examination relevant to matters not adequately covered by previous cross-examination.

(5) Rulings of the Presiding Officer on the admissibility of evidence or testimony, the propriety of cross-examination, and other procedural matters shall appear in the record and shall control further proceedings, unless reversed as a result of an interlocutory appeal taken under § 124.90.

(6) All objections shall be made promptly or be deemed waived. Parties shall be presumed to have taken exception to an adverse ruling. No objection shall be deemed waived by further participation in the hearing.

(e) Parties may at any time stipulate to relevant facts or to settlement. However, all settlements to which the Agency is a party must be approved by the EPA Deputy Assistant Administrator for Water Enforcement in accordance with § 124.133.

§ 124.86 Motions.

(a) Any party may make a motion, (including a motion to dismiss a particular claim or a contested issue), to the Presiding Officer about any matter relating to the proceeding. All motions shall be filed and served as provided in § 124.80 except those made on the record during an oral hearing before the Presiding Officer.

(b) Within 10 days after service of any written motion, any party to the proceeding may file a response to the motion. The time for response may be shortened to three days or extended for an additional ten days by the Presiding Officer for good cause shown.

(c) Notwithstanding § 122.15, any party may file with the Presiding Officer a motion seeking to apply to the permit any regulatory or statutory requirement issued or made available after the issuance of the permit under § 124.61. The Presiding Officer shall grant any motion to apply a new statutory requirement unless he or she finds it contrary to legislative intent. The Presiding Officer may grant a motion to apply a new regulatory requirement where appropriate to carry out the purposes of the Act, and where no party would be unduly prejudiced thereby.

§ 124.87 Record of hearings.

(a) All orders issued by the Presiding Officer, transcripts of oral hearings or arguments, written statements of position, written direct and rebuttal testimony, and any other data, studies, reports, documentation, information and other written material of any kind submitted in the proceeding shall be a part of the record of the hearing, and shall be available except as provided in § 124.131 to the public in the office of the Regional Hearing Clerk promptly upon receipt in that office.

(b) Evidentiary hearings shall be either stenographically reported verbatim or tape recorded, and thereupon transcribed. After the hearing, the reporter shall file with the Regional Hearing Clerk (i) the original of the transcript, and (ii) the exhibits received or offered into evidence at the hearing.

(c) The Regional Hearing Clerk shall promptly notify each of the parties of the filing of the certified transcript of proceedings. Any party who desires a copy of the transcript of the hearing may obtain a copy of the hearing transcript from the Regional Hearing Clerk upon payment of costs.

(d) The Presiding Officer shall allow witnesses, parties, and their counsel an opportunity to submit such written proposed corrections of the transcript of any oral testimony taken at the hearing, pointing out errors that may have been made in transcribing the testimony, as are required to make the transcript conform to the testimony. Except in unusual cases, no more than thirty days shall be allowed for submitting such corrections from the day a complete transcript of the hearing becomes available.

§ 124.88 Proposed findings of fact and conclusions; brief.

Within 45 days after the certified transcript is filed, any party may file with the Regional Hearing Clerk proposed findings of fact and conclusions and a brief in support thereof, each containing appropriate reference to the record. A copy of any such findings, conclusions and brief shall be contemporaneously served upon every other party and the Presiding Officer. The Presiding Officer, for good cause shown, may extend the time for filing the proposed findings and conclusions and/or the brief. The Presiding Officer may allow reply briefs.

§ 124.89 Decisions.

(a) The Presiding Officer shall review and evaluate the record, including the proposed findings and conclusions, any briefs filed by the parties and any interlocutory decisions pursuant to § 124.90 and shall issue and file his initial decision with the Regional Hearing Clerk. The Regional Hearing Clerk shall immediately serve copies of the initial decision upon all parties (or their counsel of record) and the Administrator.

(b) The initial decision of the Presiding Officer shall automatically become effective thirty (30) days after its service unless within such time:

(1) A party files a petition for review by the Administrator pursuant to § 124.101; or

(2) The Administrator *sua sponte* files a notice that he or she will review the decision pursuant to § 124.101.

§ 124.90 Interlocutory appeal.

(a) Except as provided in this section, appeals to the Administrator may be taken only under § 124.101. Appeals from orders or rulings may be taken under this section only if the Presiding Officer, upon motion of a party, certifies those orders or rulings to the Administrator for appeal on the record. Requests to the Presiding Officer for certification must be filed in writing within ten days of service of notice of the order, ruling, or decision and shall state briefly the grounds relied on.

(b) The Presiding Officer may certify an order or ruling for appeal to the Administrator if:

(1) The order or ruling involves an important question on which there is substantial ground for difference of opinion; and

(2) Either:

(i) An immediate appeal of the order or ruling will materially advance the ultimate completion of the proceeding, or,

(ii) A review after the final order is issued will be inadequate or ineffective; and,

(3) Such an appeal is necessary to prevent exceptional delay, expense or prejudice to any party.

(c) To the extent an appeal under this section involves issues of law, the Administrator shall refer those issues to the General Counsel for determination subject to his or her approval.

(d) If the Administrator decides that certification was improperly granted, he or she shall decline to hear the appeal. The Administrator shall accept or decline all interlocutory appeals within 30 days of their submission; if the Administrator takes no action within

that time, the appeal shall be considered dismissed. When the Presiding Officer declines to certify an order or ruling to the Administrator for an interlocutory appeal, it may be reviewed by the Administrator only upon appeal from the initial decision of the Presiding Officer, except when the Administrator determines upon motion of a party and in exceptional circumstances, that to delay review would not be in the public interest. Such motion shall be made within five days after receipt of notification that the Presiding Officer has refused to certify an order or ruling forr interlocutory appeal to the Administrator. Ordinarily, the interlocutory appeal will be decided on the basis of the submissions made to the Presiding Officer. The Administrator may, however, allow briefs and oral argument.

(e) The Presiding Officer may stay the proceeding pending a decision by the Administrator upon an order or ruling certified by the Presiding Officer for an interlocutory appeal, or upon the denial of such certification by the Presiding Officer. Only in exceptional circumstances shall proceedings be stayed.

(f) The failure to request an interlocutory appeal shall not foreclose a party from taking exception to an order or ruling in an appeal under § 124.101.

§ 124.101 Appeal to the Administrator.

(a)(1) Within 30 days after service of an initial decision, or the denial in whole or in part of a request for an evidentiary hearing, any party or requester, as the case may be, may appeal any matter set forth in such initial decision or denial or in any adverse order or ruling to which the party objected during the hearing, by filing with the Administrator notice of appeal and a petition for review. Proof of service upon all parties shall accompany such filing. The petition shall include a statement of the supporting reasons for such exceptions and, where appropriate, a showing that the initial decision contains:

(i) A finding of fact or conclusion of law which is clearly erroneous, or

(ii) An exercise of discretion or policy which is important and which the Administrator should, in his discretion, review.

(2) Within 15 days after service of a petition for review under paragraph (a)(1), any other party to the hearing in question may file a responsive petition.

(3) Policy or legal conclusions made in the course of denying a request for an evidentiary hearing may be reviewed and changed by the Administrator in an appeal under this section.

(b) Within 30 day of an initial decision or denial of an evidentiary hearing the Administrator may, *sua sponte*, review such decision. Within seven (7) days after the Administrator has decided under this section to review an initial decision or the denial of an evidentiary hearing, notice of that decision shall be served by mail upon all affected parties and the Regional Administrator.

(c) Within a reasonable time following the filing of the petition for review, the Administrator shall issue an order either granting or denying the petition for review. When the Administrator grants a petition for review or determines under paragraph (b) to review a decision, the Administrator may notify the parties that only certain issues shall be briefed.

(d) Notwithstanding the grant of a petition for review or a determination under paragraph (b) to review a decision, the Administrator may summarily affirm without opinion an intitial decision or the denial of an evidentiary hearing.

(e) To the extent an appeal under this section involves issues of the law, the Administrator shall refer those issues to the General Counsel for determination subject to his or her approval.

(f) A petition to the Administrator under paragraph (a) for review of any initial decision or the denial of an evidentiary hearing is, under 5 U.S.C. § 704, a prerequisite to the seeking of judicial review of the final decision of the Agency.

(g)(1) If a party timely files a petition for review or if the Administrator *sua sponte* orders review, then, for purpose of judicial review under section 509(b) of the Act, final Agency action on an issue occurs after EPA review procedures are exhausted and the Administrator's decision is issued and is implemented as follows:

(i) If the Administrator denies review or summarily affirms without opinion as provided in § 124.101(d) then the initial decision or denial becomes effective upon the service of notice of such decision.

(ii) If the Administrator issues a decision without remanding the proceeding then the final permit, redrafted as required by the Administrator's decision, shall be reissued and served upon all parties to such appeal in accordance with paragraph (g)(2) of this section.

(iii) If the Administrator issues a decision remanding the proceeding then final Agency action occurs upon completion of the remanded proceeding, including any Administrator appeals to the Administrator therefrom.

(2) For purposes of judicial review under section 509(b) of the Act, final Agency action occurs ten days after a final permit is issued. After Agency review procedures are exhausted a final permit shall be prepared and issued by the Regional Administrator:

(i) When the Administrator issues notice to the parties that review has been denied if review is denied;

(ii) When the Administrator issues a decision if review is not denied and the Administrator does not remand the proceedings; or

(iii) Upon the completion of remand proceedings if the proceedings are remanded unless the Administrator's remand order specifically provides that appeal of the remand decision will be required in order to exhaust administrative remedies.

(h) The petitioner may file a brief in support of the petition within 21 days after the Administrator has granted a petition for review. Any other party may file a responsive brief within 21 days of service of a brief in support of the petition. The petitioner may file a reply brief within 14 days of service of the responsive brief and any person may file an *amicus* brief for the consideration of the Administrator. If the Administrator determines, *sua sponte*, to review an initial Regional Administrator's decision or the denial of an evidentiary hearing, the Administrator shall notify the parties of the briefing schedule.

(i) Review by the Administrator of an initial decision or the denial of an evidentiary hearing shall be limited to issues specified under paragraph (a) of this section, except after notice to all parties, the Administrator may raise and decide other matters which he or she considers material on the basis of the record.

Subpart I—Non-Adversary Procedures for Initial Licensing

§ 124.111 Applicability.

(a) Except as set forth in this Subpart, this Subpart applies in lieu of, and to the complete exclusion of, Subparts E through H in the following cases:

(1) In all proceedings for the issuance of a modified permit under section 301(h) of the Act, except that in such proceedings the terms "Administrator or a person designated by the Administrator" shall be substituted in this Subpart for the term "Regional Administrator"; and

(2) In any proceedings for the issuance of any other permit which constitutes "initial licensing" under the

Administrative Procedure Act, where the Regional Administrator elects to apply this Subpart and explicitly so states in the public notice of the draft permit.

(b) The parties to an evidentiary hearing that would otherwise be held under Subpart H may agree to conduct that hearing in accordance with this Subpart. Any applicant for an NPDES permit which is not an initial license may request, when requesting an evidentiary hearing under § 124.74, that its application be processed under the procedures of this Subpart. If the Regional Administrator agrees with this request, and if a hearing is granted, the notice of the hearing shall be issued under § 124.116 shall include a statement that the permit will be processed under the procedures set forth in this Subpart unless a written objection is received within 30 days. If no such objection is received, the application shall be processed in accordance with §§ 124.117–124.121 of this Subpart, except that any reference to a draft permit shall be taken as referring to the final permit. If an objection is received, Subparts F through H shall be applied instead.

(c) "Initial licensing" includes both the first grant of an NPDES permit to a discharger that has not previously held an NPDES permit and the first decision on any variance applied for by a discharger.

§ 124.112 Relation to other subparts.

The following provisions of Subparts E through H apply to proceedings under this Subpart:

(a) § 124.54 "Terms requested by the Corps of Engineers and other Government Agencies."

(b) § 124.82 "Final environmental impact statement."

(c) § 124.85 "Early decision on certain permit conditions."

(d) § 124.86 "Deferral of decision on certain permit conditions."

(e) § 124.72 "Definitions."

(f) § 124.73 "Filing."

(g) § 124.78 "*Ex parte* communications."

(h) § 124.80 "Filing and service."

(i) § 124.82 "Consolidation and severance."

(j) § 124.85(a) (burden of proof);

(k) § 124.86 "Motions."

(l) § 124.87 "Record of hearings."

(m) § 124.90 "Interlocutory appeal."

§ 124.113 Public notice regarding draft permits and permit conditions.

Public notice of the formulation of a draft permit under this Subpart shall be given as provided in § 124.41(i). At the discretion of the Regional Administrator, the comment period specified in this notice may include an opportunity for a public hearing under § 124.42.

§ 124.114 Hearings.

(a) By the close of the comment period set forth in § 124.113 (§ 124.41(i)), any person may request the Regional Administrator to hold a panel hearing on the draft permit by submitting a written request containing the following:

(1) A brief statement of the interest of the person requesting the hearing;

(2) A statement of any objections to the draft permit;

(3) A statement of the issues which such person proposes to raise for consideration at such hearing; and

(4) Statements meeting the requirements of § 124.74(c)(1)–(5).

(b) Whenever (1) a written request satisfying the requirements of paragraph (a) of this section has been received and presents genuine issues of material fact, or (2) the Regional Administrator determines *sua sponte* that a hearing under this Subpart is necessary or appropriate, the Regional Administrator shall serve written notice of the determination on each person requesting such hearing and the applicant, and shall provide public notice of the determination in accordance with § 124.41(j). If the Regional Administrator determines that a request filed under paragraph (a) of this section does not comply with the requirements of paragraph (a) or does not present genuine issues of fact, the Regional Administrator may deny the request for the hearing and shall serve written notice of such determination on all persons requesting the hearing.

(c) The Regional Administrator may decide before a draft permit is formulated that a hearing should be held under this Part. In such a case the notice issued under § 124.113 shall so state and shall contain the information required by § 124.41(j).

§ 124.115 Effect of denial or absence of request for hearing.

If no request for a hearing is made under § 124.114, or if all such requests are denied under that section, the draft permit shall be treated procedurally as if it were a recommended decision issued under § 124.124 of this Subpart, except that for purposes of § 124.125 and § 124.126 the term "hearing participant" or "person who participated in the hearing" shall be construed to mean the applicant and any person who submitted comments under § 124.41(i)

§ 124.116 Notice of hearing.

Upon granting a request for a hearing under § 124.114 the Regional Administrator shall promptly publish a notice of the hearing as required under § 124.41(j). The mailed notice shall include a statement which indicates whether the Presiding Officer or the Regional Administrator will issue the recommended decision.

§ 124.117 Request to participate in hearing.

(a) Each person desiring to participate in any hearing noticed under this section, shall file a motion to participate with the Regional Hearing Clerk by the deadline set forth in the notice of the grant of the hearing. The request shall include:

(1) A brief statement of the interest of the person in the proceeding;

(2) A brief outline of the points to be addressed;

(3) An estimate of the time required; and

(4) Statements meeting the requirements of § 124.74(c)(1)–(5).

(5) If the request is submitted by an organization, a non-binding list of the persons to take part in the presentation.

(b) As soon as practicable, but in no event later than two weeks before the scheduled date of the hearing, the Presiding Officer shall make a hearing schedule available to the public and shall mail it to each person who requested to participate in the hearing.

§ 124.118 Submission of written comments on draft permit.

(a) No later than 30 days before the scheduled start of the hearing (or such other date as may be set forth in the notice of hearing), each party shall file all of its comments on the draft permit, based on information in the administrative record and any other information which is or reasonably could have been available to that person. All comments shall include any affidavits, studies, data, tests, or other materials relied upon for making any factual statements in the comments.

(b)(1) Written comments filed under paragraph (a) of this section shall constitute the bulk of the evidence submitted at the hearing. Oral statements at the hearing should be brief and in the nature of argument. They should be restricted either to points that could not have been made in written comments, or to emphasizing points which are made in the comments, but which the participant believes can be more effectively argued in the hearing context.

(2) Notwithstanding the foregoing, within two weeks prior to the deadline specified in paragraph (a) of this section for the filing of comments, any party who has filed a request to participate in the hearing may move to submit all or part of its comments orally at the hearing in lieu of submitting written comments and the Presiding Officer shall, within one week, grant such motion if the Presiding Officer finds that such person will be prejudiced if required to submit such comments in written form.

(c) Parties to any hearing may submit written material in response to the comments filed by other participants under paragraph (a) of this section at the time they appear at the panel stage of the hearing under § 124.120.

§ 124.119 Presiding Officer.

(a)(1) Upon the granting of a request for a hearing the Regional Administrator shall, as soon as practicable, request that the Chief Administrative Law Judge assign an Administrative Law Judge as Presiding Officer. The Chief Administrative Law Judge shall thereupon make such assignment.

(2) If all parties to the hearing waive in writing their statutory right to have an Administrative Law Judge preside at the hearing, the Regional Administrator shall name a lawyer permanently or temporarily employed by the Agency and without prior connection with the proceeding to serve as Presiding Officer.

(b) It shall be the duty of the Presiding Officer to conduct a fair and impartial hearing. The Presiding Officer shall have the authority:

(1) Conferred by § 124.85(b)(1)–(15), § 124.83(b) and (c); and

(2) To receive relevant evidence, provided that all comments under § 124.118, the record of the panel hearing under § 124.120, and the administrative record, as defined in § 124.35 (or in the case of voluntary use of these procedures under § 124.111(a)(3), the administrative record for the final permit under § 124.64) shall be received in evidence.

§ 124.120 Panel hearing.

(a) A Presiding Officer shall preside at each hearing held under this Subpart. An EPA panel shall also take part in the hearing. The panel shall consist of three or more temporary or permanent EPA employees having special expertise in areas related to the hearing issue, at least two of whom shall not have taken part in preparing the draft permit. If appropriate for the evaluation of new or different issues presented at the hearing, the panel membership may change or may include persons not employed by EPA.

(b) At the time of the hearing notice pursuant to § 124.116, the Regional Administrator shall designate the persons who shall serve as panel members for the hearing and the Regional Administrator shall file with the Regional Hearing Clerk the name, address and area of expertise of each person so designated. The Regional Administrator may also designate EPA employees who will provide staff support to the panel but who may or may not serve as panel members. Such designated person shall be subject to the *ex parte* rules in § 124.78. The Regional Administrator may also designate Agency trial staff as defined in § 124.78 for the hearing.

(c) At any time before the close of the panel hearing, the Presiding Officer, after consultation with the panel, may request that any person having knowledge concerning the issues raised in the hearing and not then scheduled to participate therein appear and testify at the hearing.

(d) The panel members may question any person participating in the panel hearing. Cross-examination by persons other than panel members shall not be permitted at this stage of the proceeding except where the Presiding Officer determines, after consultation with the panel, that such cross-examination would expedite consideration of the issues. However, the parties may submit written questions to the Presiding Officer for the Presiding Officer to ask the participants, and the Presiding Officer may, after consultation with the panel, and at his or her sole discretion, ask these questions or permit a panel member to ask them.

(e) Within ten days after the close of the hearing, any of the participants shall submit such additional written testimony, affidavits, information or material as such participant deems relevant or which the panel may request of such participant. These additional submissions shall be filed with the Regional Hearing Clerk and shall be a part of the hearing record.

§ 124.121 Opportunity for cross-examination.

(a) Any participant in a panel hearing may submit a written request to cross-examine on any issue of material fact. The motion shall be submitted to the Presiding Officer within 15 days after a full transcript of the panel hearing is filed with the Regional Hearing Clerk and shall specify:

(1) The disputed issue(s) of material fact regarding which cross-examination is requested. This shall include an explanation of why the questions at issue are factual, rather than of an analytical or policy nature, the extent to which they are in dispute in light of the record made up to that stage, and the extent to which they are material to the decision on the application; and

(2) The person(s) a participant desires to cross-examine, and an estimate of the time necessary. This shall include a statement as to why the cross-examination will result in resolving the issue of material fact involved.

(b) After receipt of all motions for cross-examination under paragraph (a), the Presiding Officer, after consultation with the hearing panel, shall promptly issue an order either granting or denying each such request. If any request for cross-examination is granted, the order shall specify:

(1) The issues on which cross-examination is granted;

(2) The persons to be cross-examined on each issue;

(3) The persons allowed to conduct cross-examination;

(4) Time limits for the examination of witnesses by each cross-examiner; and

(5) The date, time and place of the supplementary hearing at which cross-examination shall take place.

In issuing this ruling, the Presiding Officer may determine that one or more participants have the same or similar interests and that to prevent unduly repetitious cross-examination, they should be required to choose a single representative for purposes of cross-examination. In such a case, the order shall simply assign time for cross-examination by that single representative without identifying the representative further. If said participants with the same or similar interests shall fail to designate such single representative, then the Presiding Officer shall divide the assigned time among the representatives of such participants or issue such other order as justice may require.

(c) The Presiding Officer and to the extent possible, the members of the hearing panel shall be present at the supplementary hearing. During the course of the hearing, the Presiding Officer shall have authority to modify any order issued under paragraph (b) of this section. A record will be made under § 124.87.

(d)(1) No later than the time set for requesting cross-examination, a hearing participant may request that alternative methods of clarifying the record (such as the submission of additional written information) be used in lieu of or in

addition to cross-examination. The Presiding Officer shall issue an order granting or denying such request at the time he issues (or would have issued) an order under paragraph (b) of this section. If the request is granted, the order shall specify the alternative provided and any other relevant information (e.g., the due date for submitting written information).

(2) In passing on any request for cross-examination submitted under paragraph (a) of this section, the Presiding Officer may, as a precondition to ruling on the merits of such request, require alternative means of clarifying the record to be used whether or not a request to do so has been made under the immediately preceding paragraph. The person requesting cross-examination shall have one week to comment on the results of utilizing such alternative means, following which the Presiding Officer, as soon as practicable, shall issue an order granting or denying such person's request for cross-examination.

(e) The provisions of § 124.86(d)(2) apply to proceedings under this Subpart.

§ 124.122 Record for final permit.

(a) The record on which the final permit shall be based in any proceeding under this Subpart (other than a proceeding by consent of the parties under § 124.111(a)(3)) consists of:

(1) The administrative record compiled under § 124.35;

(2) Any material submitted under § 124.78 relating to *ex parte* contacts;

(3) All notices issued under § 124.113;

(4) All requests for hearings, and rulings on those requests received or issued under § 124.114;

(5) Any notice of hearing issued under § 124.116;

(6) Any request to participate in the hearing received under § 124.117;

(7) All comments submitted under § 124.118, any motions made under that section and the rulings on them, and any comments filed under § 124.113(b)(9);

(8) The full transcript and other material received into the record of the panel hearing under § 124.120;

(9) Any motions for, or rulings, on cross-examination filed or issued under § 124.121;

(10) Any motions for, orders for and the results of, any alternatives to cross-examination under § 124.121; and

(11) The full transcript of any cross-examination held.

(b) In any proceedings under this Subpart involving a permit which is not an initial license and which are conducted under § 124.111(a)(3), the record for decision shall consist of:

(1) The administrative record under § 124.84;

(2) All requests for hearing submitted under § 124.74, and all rulings on those requests; and

(3) The items specified in subparagraph in subparagraphs (a)(4) though (a)(11) of this section.

§ 124.123 Filing of brief, proposed findings of fact and conclusions of law and proposed modified permit.

Unless otherwise ordered by the Presiding Officer, each party may, within 20 days after all requests for cross-examination are denied or after a transcript of the full hearing including any cross-examination becomes available, submit proposed findings of fact; conclusions regarding material issues of law, fact, or discretion; a proposed modified NPDES permit (if such person is urging that the draft permit should be modified); and a brief in support thereof; together with references to relevant pages of transcript and to relevant exhibits. Within 10 days thereafter each party may file a reply brief concerning matters contained in opposing briefs and containing alternative findings of fact; conclusions regarding material issues of law, fact, or discretion; and a proposed modified permit. Oral argument may be held at the discretion of the Presiding Officer on motion of any party or *sua sponte*.

§ 124.124 Recommended decision.

The person named to prepare the decision shall, as soon as practicable after the conclusion of the hearing, evaluate the record of the hearing and prepare and file a recommended decision with the Regional Hearing Clerk. That person may consult with, and receive assistance from, any member of the hearing panel in drafting the recommended decision, and may delegate the preparation of the recommended decision to the panel or to any member or members of it. This decision shall contain findings of fact, conclusions regarding all material issues of law, and a recommendation as to whether and in what respects the draft permit shall be modified. After the recommended decision has been filed, the Regional Hearing Clerk shall serve a copy of such decision on each party and upon the Administrator.

§ 124.125 Appeal from or review of recommended decision.

Within 30 days after service of the recommended decision, any party may take exception to any matter set forth in such decision or to any adverse order or ruling of the Presiding Officer to which such party objected, and may appeal such exceptions to the Administrator as provided in § 124.101, except that references in § 124.101 to "initial decision" will mean recommended decision under § 124.124.

§ 124.126 Final decision.

As soon as practicable after all appeal proceedings have been completed, the Administrator shall issue a final decision. Such final decision shall include findings of fact; conclusions regarding material issue of law, fact, or discretion, as well as reasons therefor; and a modified NPDES permit to the extent appropriate. It may accept or reject all or part of the recommended decision. The Administrator may delegate some or all of the work of preparing this decision to a person or persons without substantial prior connection with the matter. The Administrator or a person designated by the Administrator may consult with the Presiding Officer, members of the hearing panel or any other EPA employee in preparing the final decison. The Hearing and Record Clerk shall file a copy of the decision on all hearing participants.

§ 124.127 Final decision if there is no review.

If no party appeals a recommended decision to the Administrator, and if the Administrator does not elect to review it; the recommended decision is deemed the final decision of the Agency upon the expiration of the time for filing any appeals.

Subpart J—Miscellaneous

§ 124.131 Public access to information.

(a) All permit applications, effluent data, certifications issued under section 401 of the Act and Subpart C of this Part, comments of all governmental agencies on a permit application, and draft permits and fact sheets prepared shall be available to the public without restriction.

(b) Access to other information shall be governed by the provisions of 40 CFR Part 2.

§ 124.132 Delegation of authority; time limitations.

(a) The Administrator may delegate to a Judicial Officer any or all of his or her authority to act under this Subpart.

(b) The failure of the Administrator, Regional Administrator or Presiding Officer to do any act within the time periods specified herein shall not be construed as a waiver or in derogation of any rights, powers or authority of the

United States Environmental Protection Agency.

(c) Upon a showing by any party that it has been prejudiced by a failure of the Administrator, Regional Administrator, or Presiding Officer to do any act within the time periods specified herein, the Administrator, Regional Administrator, or Presiding Officer, as the case may be, may grant such party such relief of a procedural nature (including extension of any time for compliance or other action) as may be appropriate.

§ 124.133 EPA headquarters' approval of stipulation or consent agreement.

No evidentiary hearing under Subpart H or non-adversary initial licensing hearing under Subpart I may be resolved, settled or decided, in either whole or substantial part, by the stipulation or consent of the parties thereto, unless and until the stipulation or consent agreement is approved and signed by the Deputy Assistant Administrator for Water Enforcement. No stipulation or consent without such approval and signature shall bind EPA or have any force or effect or be filed in any proceeding.

§ 124.134 Additional time after service by mail.

Whenever a party or interested person has the right or is required to do some act or take some proceeding within a prescribed period after the service of notice or other paper upon him or her by mail, three days shall be added to the prescribed time.

§ 124.135 Effective date of Part 124.

(a) All provisions of this Part shall apply to any permit were the draft permit was included in a public notice after October 12, 1979.

(b) All the provisions of Subpart H other then § 124.76 and the provisions of §§ 124.83(c) and 124.85(d)(1) for automatic receipt of the administrative record into evidence shall apply to all hearings for which the notice of hearing is issued after [60 days after date of issuance] *provided* that the Presiding Officer at any such proceeding may vary or suspend any of the terms of these regulations in any hearing that begins before January 1, 1980, to avoid inconvenience or injustice.

(c) Section 124.64(c)(2) provides a mechanism by which EPA may in effect make permits issued before the effective date of this Part subject to its provisions.

7. Part 125 is revised to read as follows:

PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Subpart A—Criteria and Standards for Imposing Technology-Based Treatment Requirements Under Section 301(b) of the Act

Sec.
125.1 Purpose and scope.
125.2 Definitions.
125.3 Technology-based treatment requirements in permits.

Subpart B—Criteria for Issuance of Permits to Aquaculture Projects

125.10 Purpose and scope.
125.11 Criteria.

Subpart C—Criteria for Extending Compliance Dates for Facilities Installing Innovative Technology Under Section 301(k) of the Act [Reserved]

Subpart D—Criteria and Standards for Determining Fundamentally Different Factors Under Sections 301(b)(1)(A), 301(b)(2) (A) and (E), and 307(b) of the Act

125.30 Purpose and scope.
125.31 Criteria.
125.32 Method of application.

Subpart E—Criteria for Granting Economic Variances From Best Available Technology Economically Achievable Under Section 301(c) of the Act [Reserved]

Subpart F—Criteria for Granting Water Quality Related Variances Under Section 301(g) of the Act [Reserved]

Subpart G—Criteria for Modifying the Secondary Treatment Requirement Under Section 301(h) of the Act [Reserved]

Subpart H—Criteria for Determining Alternative Effluent Limitations Under Section 316(a) of the Act.

125.70 Purpose and scope.
125.71 Definitions.
125.72 Early screening of applications for section 316(a) variances.
125.73 Criteria and standards for the determination of alternative effluent limitations under section 316(a).

Subpart I—Criteria Applicable To Cooling Water Intake Structures Under Section 316(b) of the Act [Reserved]

Subpart J—Criteria for Extending Compliance Dates Under Section 301(i) of the Act

125.90 Purpose and scope.
125.91 Definition.
125.92 Requests for permit modification and issuance under section 301(i)(1) of the Act.
125.93 Criteria for permit modification and issuance under section 301(i)(1) of the Act.
125.94 Permit terms and conditions under section 301(i)(1) of the Act.
125.95 Requests for permit modification or issuance under section 301(i)(2) of the Act.
125.96 Criteria for permit modification or issuance under section 301(i)(2) of the Act.
125.97 Permit terms and conditions under section 301(i)(2) of the Act.

Subpart K—Criteria and Standards for Best Management Practices Under Section 304(e) of the Act

125.100 Purpose and scope.
125.101 Definition.
125.102 Applicability of best management practices.
125.103 Permit terms and conditions.
125.104 Best management practices programs.

Subpart L—Criteria and Standards for Imposing Conditions for the Disposal of Sewage Sludge Under Section 405 of the Act [Reserved]

Subpart M—Ocean Dumping Criteria Under Section 403 of the Act [Reserved]

Authority: Clean Water Act, as amended by the Clean Water Act of 1977, 33 U.S.C. 1251 et seq.

Subpart A—Criteria and Standards for Technology-Based Treatment Requirements Under Sections 301(b) and 402 of the Act

§ 125.1 Purpose and scope.

This Subpart establishes criteria and standards for the imposition of technology-based treatment requirements in permits under section 301(b) of the Act, including the application of EPA promulgated effluent limitations and case-by-case determinations of effluent limitations under section 402(a)(1) of the Act.

§ 125.2 Definitions.

Unless otherwise noted, the definitions in Parts 122, 123, and 124 apply to this Part.

§ 125.3 Technology-based treatment requirements in permits.

(a) *General.* Technology-based treatment requirements under section 301(b) of the Act represent the minimum level of control that must be imposed in a permit issued under section 402 of the Act. (See §§ 122.14 and 122.15 for a discussion of additional or more stringent effluent limitations and conditions.) Permits shall contain the following technology-based treatment requirements in accordance with the following statutory deadlines:

(1) For POTW's, effluent limitations based upon:

(i) Secondary treatment—from date of permit issuance; and

(ii) The best practicable waste treatment technology—not later than July 1, 1983; and

(2) For dischargers other than POTW's except as provided in § 122.47(d), effluent limitations requiring:

(i) The best practicable control technology currently available (BPT)—from date of permit issuance;

(ii) For conventional pollutants, the best conventional pollutant control technology (BCT)—not later than July 1, 1984;

(iii) For all toxic pollutants referred to in Committee Print No. 95–30, House Committee on Public Works and Transportation, the best available technology economically achievable (BAT) — not later than July 1, 1984;

(iv) For all toxic pollutants other than those listed in Committee Print No. 95–30, effluent limitations based on the BAT not later than three years after the date such effluent limitations are incorporated into an NPDES permit; and

(v) For all pollutants which are neither toxic nor conventional pollutants, effluent limitations based on BAT not later than three years after the date such effluent limitations are incorporated into an NPDES permit, or July 1, 1984, whichever is later, but in no case later than July 1, 1987.

(b) *Statutory variances and extensions.* (1) The following variances from technology-based treatment requirements are authorized by the Act and may be applied for under § 124.51;

(i) For POTW's, a section 301(h) marine discharge variance from secondary treatment (Subpart G);

(ii) For dischargers other than POTW's;

(A) A section 301(c) economic variance from BAT (Subpart E);

(B) A section 301(g) water quality related variance from BAT (Subpart F); and

(C) A section 316(a) thermal variance from BPT, BCT and BAT (Subpart H).

(2) The following extensions of deadlines for compliance with technology-based treatment requirements are authorized by the Act and may be applied for under § 124.51:

(i) For POTW's a section 301(i) extension of the secondary treatment deadline (Subpart J);

(ii) For dischargers other than POTW's:

(A) A section 301(i) extension of the BPT deadline (Subpart J); and

(B) A section 301(k) extension of the BAT deadline (Subpart C).

(c) *Methods of imposing technology-based treatment requirements in permits.* Technology-based treatment requirements may be imposed through one of the following three methods:

(1) Application of EPA-promulgated effluent limitations developed under section 304 of the Act to dischargers by category or subcategory. These effluent limitations are not applicable to the extent that they have been remanded or withdrawn. However, in the case of a court remand, determinations underlying effluent limitations shall be binding in permit issuance proceedings where those determinations are not required to be reexamined by a court remanding the regulations. In addition, dischargers may seek fundamentally different factors variances from these effluent limitations under § 124.51 and Subpart D of this Part.

(2) On a case-by-case basis under section 402(a)(1) of the Act, to the extent that EPA-promulgated effluent limitations are inapplicable. The permit writer shall apply the appropriate factors listed in section 304 of the Act, and shall consider:

(i) The appropriate technology for the category or class of point sources of which the applicant is a member, based upon all available information (including EPA draft or proposed development documents or guidance); and

(ii) Any unique factors relating to the applicant.

[*Comment:* These factors must be considered in all cases, regardless of whether the permit is being issued by EPA or an approved State.]

(3) Through a combination of the methods in paragraphs (c) (1) and (2) of this section. Where promulgated effluent limitations guidelines only apply to certain aspects of the discharger's operation, or to certain pollutants, other aspects or activities are subject to regulation on a case-by-case basis in order to carry out the provisions of the Act.

(d) Technology-based treatment requirements are applied prior to or at the point of discharge.

(e) Technology-based treatment requirements cannot be satisfied through the use of "non-treatment" techniques such as flow augmentation and in-stream mechanical aerators. However, these techniques may be considered as a method of achieving water quality standards on a case-by-case basis when:

(1) The technology-based treatment requirements applicable to the discharge are not sufficient to achieve the standards;

(2) The discharger agrees to waive any opportunity to request a variance under sections 301 (c), (g) or (h) of the Act; and

(3) The discharger demonstrates that such a technique is the preferred environmental and economic method to achieve the standards after consideration of alternatives such as advanced waste treatment, recycle and reuse, land disposal, changes in operating methods, and other available methods.

(f) Technology-based effluent limitations shall be established under this Subpart for solids, sludges, filter backwash, and other pollutants removed in the course of treatment or control of wastewaters in the same manner as for other pollutants.

Subpart B—Criteria for Issuance of Permits to Aquaculture Projects

§ 125.10 Purpose and scope.

(a) These regulations establish guidelines under sections 318 and 402 of the Act for approval of any discharge of pollutants associated with an aquaculture project.

(b) The regulations authorize, on a selective basis, controlled discharges which would otherwise be unlawful under the Act in order to determine the feasibility of using pollutants to grow aquatic organisms which can be harvested and used beneficially. EPA policy is to encourage such projects, while at the same time protecting other beneficial uses of the waters.

(c) Permits issued for discharges into aquaculture projects under this Subpart are NPDES permits and are subject to the applicable requirements of Parts 122, 123 and 124. Any permit shall include such conditions (including monitoring and reporting requirements) as are necessary to comply with those Parts. Technology-based effluent limitations need not be applied to discharges into the approved project except with respect to toxic pollutants.

§ 125.11 Criteria.

(a) No NPDES permit shall be issued to an aquaculture project unless:

(1) The Director determines that the aquaculture project:

(i) Is intended by the project operator to produce a crop which has significant direct or indirect commercial value (or is intended to be operated for research into possible production of such a crop); and

(ii) Does not occupy a designated project area which is larger than can be economically operated for the crop under cultivation or than is necessary for research purposes.

(2) The applicant has demonstrated, to the satisfaction of the Director, that the use of the pollutant to be discharged to the aquaculture project will result in an increased harvest of organisms under

culture over what would naturally occur in the area;

(3) The applicant has demonstrated, to the satisfaction of the Director, that if the species to be cultivated in the aquaculture project is not indigenous to the immediate geographical area, there will be minimal adverse effects on the flora and fauna indigenous to the area, and the total commercial value of the introduced species is at least equal to that of the displaced or affected indigenous flora and fauna;

(4) The Director determines that the crop will not have a significant potential for human health hazards resulting from its consumption;

(5) The Director determines that migration of pollutants from the designated project area to water outside of the aquaculture project will not cause or contribute to a violation of water quality standards or a violation of the applicable standards and limitations applicable to the supplier of the pollutant that would govern if the aquaculture project were itself a point source. The approval of an aquaculture project shall not result in the enlargement of a pre-existing mixing zone area beyond what had been designated by the State for the original discharge.

(b) No permit shall be issued for any aquaculture project in conflict with a plan or an amendment to a plan approved under section 208(b) of the Act.

(c) No permit shall be issued for any aquaculture project located in the territorial sea, the waters of the contiguous zone, or the oceans, except in conformity with guidelines issued under section 403(c) of the Act.

(d) Designated project areas shall not include a portion of a body of water large enough to expose a substantial portion of the indigenous biota to the conditions within the designated project area. For example, the designated project area shall not include the entire width of a watercourse, since all organisms indigenous to that watercourse might be subjected to discharges of pollutants that would, except for the provisions of section 318 of the Act, violate section 301 of the Act.

(e) Any modifications caused by the construction or creation of a reef, barrier or containment structure shall not unduly alter the tidal regimen of an estuary or interfere with migrations of unconfined aquatic species.

[*Comment:* Any modifications described in this paragraph which result in the discharge of dredged or fill material into navigable waters may be subject to the permit requirements of section 404 of the Act.]

(f) Any pollutants not required by or beneficial to the aquaculture crop shall not exceed applicable standards and limitations when entering the designated project area.

Subpart C—Criteria for Extending Compliance Dates for Facilities Installing Innovative Technology Under Section 301(k) of the Act—[Reserved]

Subpart D—Criteria and Standards for Determining Fundamentally Different Factors Under Sections 301(b)(1)(A), 301(b)(2) (A) and (E), and 307(b) of the Act.

§ 125.30 Purpose and scope.

(a) This Subpart establishes the criteria and standards to be used in determining whether effluent limitations or standards alternative to those required by promulgated EPA effluent limitations guidelines or standards under sections 301, 304, and 307(b) of the Act (hereinafter referred to as "national limits") should be imposed on a discharger because factors relating to the discharger's facilities, equipment, processes or other factors related to the discharger are fundamentally different from the factors considered by EPA in development of the national limits. This Subpart applies to all national limits promulgated under sections 301, 304 and 307(b) of the Act, except for those contained in 40 CFR Part 423 (steam electric generating point source category).

(b) In establishing national limits, EPA takes into account all the information it can collect, develop and solicit regarding the factors listed in sections 304(b), 304(g) and 307(b) of the Act. In some cases, however, data which could affect these national limits as they apply to a particular discharge may not be available or may not be considered during their development. As a result, it may be necessary on a case-by-case basis to adjust the national limits, and make them either more or less stringent as they apply to certain dischargers within an industrial category or subcategory. This will only be done if data specific to that discharger indicates it presents factors fundamentally different from those considered by EPA in developing the limit at issue. Any interested person believing that factors relating to a discharger's facilities, equipment, processes or other facilities related to the discharger are fundamentally different from the factors considered during development of the national limits may request a fundamentally different factors variance under § 124.51(b)(1). In addition, such a variance may be proposed by the Director in the draft permit (see § 123.22(a)(2)(ii)).

§ 125.31 Criteria.

(a) A request for the establishment of effluent limitations under this Subpart (fundamentally different factors variance) shall be approved only if:

(1) There is an applicable national limit which is applied in the permit and specifically controls the pollutant for which alternative effluent limitations or standards have been requested; and

(2) Factors relating to the discharge controlled by the permit are fundamentally different from those considered by EPA in establishing the national limits; and

(3) The request for alternative effluent limitations or standards is made in accordance with the procedural requirements of Part 124.

(b) A request for the establishment of effluent limitations less stringent than those required by national limits guidelines shall be approved only if:

(1) The alternative effluent limitation or standard requested is no less stringent than justified by the fundamental difference; and

(2) The alternative effluent limitation or standard will ensure compliance with sections 208(e) and 301(b)(1)(C) of the Act; and

(3) Compliance with the national limits (either by using the technologies upon which the national limits are based or by other control alternatives) would result in:

(i) A removal cost wholly out of proportion to the removal cost considered during development of the national limits; or

(ii) A non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the national limits.

(c) A request for alternative limits more stringent than required by national limits shall be approved only if:

(1) The alternative effluent limitation or standard requested is no more stringent than justified by the fundamental difference; and

(2) Compliance with the alternative effluent limitation or standard would not result in:

(i) A removal cost wholly out of proportion to the removal cost considered during development of the national limits; or

(ii) A non-water quality environmental impact (including energy requirements) fundamentally more

adverse than the impact considered during development of the national limits.

(d) Factors which may be considered fundamentally different are:

(1) The nature or quality of pollutants contained in the raw waste load of the applicant's process wastewater;

[*Comment:* (1) In determining whether factors concerning the discharger are fundamentally different, EPA will consider, where relevant, the applicable development document for the national limits, associated technical and economic data collected for use in developing each respective national limit, records of legal proceedings, and written and printed documentation including records of communication, etc., relevant to the development of respective national limits which are kept on public file by EPA. (2) Waste stream(s) associated with a discharger's process wastewater which were not considered in the development of the national limits will not ordinarily be treated as fundamentally different under paragraph (a). Instead, national limits should be applied to the other streams, and the unique stream(s) should be subject to limitations based on section 402(a)(1) of the Act. See § 125.2(c)(2).]

(2) The volume of the discharger's process wastewater and effluent discharged;

(3) Non-water quality environmental impact of control and treatment of the discharger's raw waste load;

(4) Energy requirements of the application of control and treatment technology;

(5) Age, size, land availability, and configuration as they relate to the discharger's equipment or facilities; processes employed; process changes; and engineering aspects of the application of control technology;

(6) Cost of compliance with required control technology.

(e) A variance request or portion of such a request under this section shall not be granted on any of the following grounds:

(1) The infeasibility of installing the required waste treatment equipment within the time the Act allows.

[*Comment:* Under this section a variance request may be approved if it is based on factors which relate to the discharger's ability ultimately to achieve national limits but not if it is based on factors which merely affect the discharger's ability to meet the statutory deadlines of sections 301 and 307 of the Act such as labor difficulties, construction schedules, or unavailability of equipment.]

(2) The assertion that the national limits cannot be achieved with the appropriate waste treatment facilities installed, if such assertion is not based on factor(s) listed in paragraph (d) of this section;

[*Comment:* Review of the Administrator's action in promulgating national limits is available only through the judicial review procedures set forth in section 509(b) of the Act.]

(3) The discharger's ability to pay for the required waste treatment; or

(4) The impact of a discharge on local receiving water quality.

(f) Nothing in this section shall be construed to impair the right of any State or locality under section 510 of the Act to impose more stringent limitations than those required by Federal law.

§ 125.32 Method of application.

(a) A written request for a variance under this Subpart shall be submitted in duplicate to the Director in accordance with Part 124 Subpart F.

(b) The burden is on the person requesting the variance to explain that:

(1) Factor(s) listed in § 125.31(b) regarding the discharger's facility are fundamentally different from the factors EPA considered in establishing the national limits. The requester should refer to all relevant material and information, such as the published guideline regulations development document, all associated technical and economic data collected for use in developing each national limit, all records of legal proceedings, and all written and printed documentation including records of communication, etc., relevant to the regulations which are kept on public file by the EPA;

(2) The alternative limitations requested are justified by the fundamental difference alleged in paragraph (b)(1) of this section; and

(3) The appropriate requirements of § 125.31 have been met.

Subpart E—Criteria for Granting Economic Variances from Best Available Technology Economically Achievable Under Section 301(c) of the Act—[Reserved]

Subpart F—Criteria for Granting Water Quality Related Variances Under Section 301(g) of the Act—[Reserved]

Subpart G—Criteria for Modifying the Secondary Treatment Requirement Under Section 301(h) of the Act—[Reserved]

Subpart H—Criteria for Determining Alternative Effluent Limitations Under Section 316(a) of the Act

§ 125.70 Purpose and scope.

Section 316(a) of the Act provides that:

"With respect to any point source otherwise subject to the provisions of section 301 or section 306 of this Act, whenever the owner or operator of any such source, after opportunity for public hearing, can demonstrate to the satisfaction of the Administrator (or, if appropriate, the State) that any effluent limitation proposed for the control of the thermal component of any discharge from such source will require effluent limitations more stringent than necessary to assure the projection [sic] and propagation of a balanced, indigenous population of shellfish, fish and wildlife in and on the body of water into which the discharge is to be made, the Administrator (or, if appropriate, the State) may impose an effluent limitation under such sections on such plant, with respect to the thermal component of such discharge (taking into account the interaction of such thermal component with other pollutants), that will assure the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in and on that body of water."

This Subpart describes the factors, criteria and standards for the establishment of alternative thermal effluent limitations under section 316(a) of the Act in permits issued under section 402(a) of the Act.

§ 125.71 Definitions.

For the purpose of this Subpart:

(a) "Alternative effluent limitations" means all effluent limitations or standards of performance for the control of the thermal component of any discharge which are established under section 316(a) and this Subpart.

(b) "Representative important species" means species which are representative, in terms of their biological needs, of a balanced, indigenous community of shellfish, fish and wildlife in the body of water into which a discharge of heat is made.

(c) The term "balanced, indigenous community" is synonymous with the term "balanced, indigenous population" in the Act and means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species and by a lack of domination by pollution tolerant species. Such a community may include historically non-native species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modifications. Normally, however, such a community will not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance by all sources with section

301(b)(2) of the Act; and may not include species whose presence or abundance is attributable to alternative effluent limitations imposed pursuant to section 316(a).

§ 125.72 Early screening of applications for section 316(a) variances.

(a) Any initial application for a section 316(a) variance shall include the following early screening information:

(1) A description of the alternative effluent limitation requested;

(2) A general description of the method by which the discharger proposes to demonstrate that the otherwise applicable thermal discharge effluent limitations are more stringent than necessary;

(3) A general description of the type of data, studies, experiments and other information which the discharger intends to submit for the demonstration; and

(4) Such data and information as may be available to assist the Director in selecting the appropriate representative important species.

(b) After submitting the early screening information under paragraph (a), the discharger shall consult with the Director at the earliest practicable time (but not later than 30 days after the application is filed) to discuss the discharger's early screening information. Within 60 days after the application is filed, the discharger shall submit for the Director's approval a detailed plan of study which the discharger will undertake to support its section 316(a) demonstration. The discharger shall specify the nature and extent of the following type of information to be included in the plan of study: biological, hydrographical and meteorological data; physical monitoring data; engineering or diffusion models; laboratory studies; representative important species; and other relevant information. In selecting representative important species, special consideration shall be given to species mentioned in applicable water quality standards. After the discharger submits its detailed plan of study, the Director shall either approve the plan or specify any necessary revisions to the plan. The discharger shall provide any additional information or studies which the Director subsequently determines necessary to support the demonstration, including such studies or inspections as may be necessary to select representative important species. The discharger may provide any additional information or studies which the discharger feels are appropriate to support the demonstration.

(c) Any application for the renewal of a section 316(a) variance shall include only such information described in paragraphs (a) and (b) of this section and § 124.73(c)(1) as the Director requests within 60 days after receipt of the permit application.

(d) The Director shall promptly notify the Secretary of Commerce and the Secretary of the Interior, and any affected State of the filing of the request and shall consider any timely recommendations they submit.

(e) In making the demonstration the discharger shall consider any information or guidance published by EPA to assist in making such demonstrations.

(f) If an applicant desires a ruling on a section 316(a) application before the ruling on any other necessary permit terms and conditions, (as provided by § 124.57), it shall so request upon filing its application under paragraph (a) of this section. This request shall be granted or denied in the discretion of the Director.

[*Comment:* At the expiration of the permit, any discharger holding a section 316(a) variance should be prepared to support the continuation of the variance with studies based on the discharger's actual operation experience.]

§ 125.73 Criteria and standards for the determination of alternative effluent limitations under section 316(a).

(a) Thermal discharge effluent limitations or standards established in permits may be less stringent than those required by applicable standards and limitations if the discharger demonstrates to the satisfaction of the director that such effluent limitations are more stringent than necessary to assure the protection and propagation of a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is made. This demonstration must show that the alternative effluent limitation desired by the discharger, considering the cumulative impact of its thermal discharge together with all other significant impacts on the species affected, will assure the protection and propagation of a balanced indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is to be made.

(b) In determining whether or not the protection and propagation of the affected species will be assured, the Director may consider any information contained or referenced in any applicable thermal water quality criteria and thermal water quality information published by the Administrator under section 304(a) of the Act, or any other information he deems relevant.

(c)(1) Existing dischargers may base their demonstration upon the absence of prior appreciable harm in lieu of predictive studies. Any such demonstrations shall show:

(i) That no appreciable harm has resulted from the normal component of the discharge (taking into account the interaction of such thermal component with other pollutants and the additive effect of other thermal sources to a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge has been made; or

(ii) That despite the occurrence of such previous harm, the desired alternative effluent limitations (or appropriate modifications thereof) will nevertheless assure the protection and propagation of a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is made.

(2) In determining whether or not prior appreciable harm has occurred, the Director shall consider the length of time in which the applicant has been discharging and the nature of the discharge.

Subpart I—Criteria Applicable to Cooling Water Intake Structures Under Section 316(b) of the Act [Reserved]

Subpart J—Criteria for Extending Compliance Dates Under Section 301(i) of the Act

§ 125.90 Purpose and scope.

Under sections 301(i)(1) and (2) of the Act, extensions of the 1977 statutory deadline for compliance with certain treatment requirements may be granted by the Director through permit issuance or modification. This Subpart establishes criteria for granting these extensions and the method for incorporating these extensions into permits issued under section 402(a) of the Act.

§ 125.91 Definition.

For purposes of this Subpart, "construction" includes any one of the following: preliminary planning to determine the feasibility of treatment works; engineering, architectural, legal fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items

provided that completion of the facility and attainment of operational level by no later than July 1, 1983, is a reasonable expectation.

§ 125.92 Requests for permit modification and issuance under section 301(i)(1) of the Act.

Any owner or operator of a publicly owned treatment works (POTW) that requires construction to achieve limitations under sections 301(b)(1)(B) or 301(b)(1)(C) of the Act may request modification or issuance of a permit extending the date for compliance with these limitations in accordance with the provisions of § 124.51(c).

§ 125.93 Criteria for permit modification and issuance under section 301(i)(1) of the Act.

No request for a permit modification or issuance under section 301(i)(1) shall be granted unless the Director finds that the POTW requires construction to achieve limitations under sections 301(b)(1)(B) or 301(b)(1)(C) of the Act and did not complete construction for either of the following reasons:

(a) The issuance of a notice to proceed under a construction contract for any segment of Step 3 project work (or if notice to proceed is not required, the execution of the construction contract) occurred before July 1, 1977, but construction could not physically be completed by July 1, 1977, despite all expeditious efforts of the POTW (see initiation of construction as defined in 40 CFR § 35.905 for Step 3); or

(b) Federal financial assistance was not available, or was not available in time for construction required to achieve these limitations, and the POTW did not in any significant way contribute to this unavailability or delay.

§ 125.94 Permit terms and conditions under section 301(i)(1) of the Act.

(a) All permits modified or issued by the Director under section 301(i)(1) of the Act shall contain at a minimum the following permit terms and conditions:

(1) the shortest reasonable schedule of compliance for achievement of limitations under sections 301(b)(1) (B) and (C) but in no event later than July 1, 1983. This schedule shall be based upon the earliest date that Federal financial assistance will be available and construction can be completed and on any additional information submitted by the POTW or otherwise available.

(i) When a facility plan has been approved in accordance with 40 CFR 35, Subpart E, this schedule shall contain dates certain for the completion of actions leading toward the attainment of statutory treatment limitations.

(ii) When the POTW has not completed Step 1 of the construction grants process in accordance with 40 CFR 35, Subpart E, this schedule shall contain a date certain for the submission of a facility plan (completion of Step 1) upon which date the permit should be set to expire. In this case, in order to assure compliance by the POTW by July 1, 1983, the following requirements must be met:

(A) Certification by the State, based on its one or five year project priority list developed pursuant to 40 CFR 35.915(c), that funding will be available in time to ensure compliance by July 1, 1983; and

(B) Reporting once a year (if necessary) by the POTW as to its progress in obtaining Federal funding.

[*Comment:* EPA recognizes that the date for submission of the facility plan may not take into account all the uncertainties of the Step 1 planning process. Because of the uncertainties inherent in the Step 1 planning process, EPA recommends that section 301(i)(1) requests (and permit issuance) for projects that are presently in Step 2 or 3 should be acted on *before* requests from projects in Step 1. When Federal funding in the form of a Step 2 construction grant award is made available, and the Step 1 permit has expired, the permit is to be reissued containing a date certain schedule derived from the facility plan and coordinated with the State Project Priority List.]

(2) A statement ensuring compliance with requirements under sections 201 (b) through (g) of the Act consistent with the terms of the POTWs construction grant.

(3) Abatement practices and interim effluent limitations reflecting optimum operation and maintenance of the existing facilities. These shall include:

(i) Adequate operator staffing and training;

(ii) Adequate laboratory and process controls; and

(iii) Effluent limitations derived from reports of operation and maintenance inspections conducted by EPA or the State, or other guidance.

[*Comment:* Only in exceptional circumstances should in-depth plant evaluations be conducted, e.g., when existing information does not represent the true capabilities of the plant.]

(4) Interim effluent limitations reflecting other non-capital intensive measures for increased pollution control. This shall include any possible minor facility modifications such as piping changes, additional metering and instrumentation or the use of skimming and vacuuming equipment. When an existing POTW is currently violating limitations imposed under section 301(b)(1)(C) of the Act, interim effluent limitations shall be established to minimize adverse water quality impact; these limitations shall not be made less stringent or allow more pollutants to be discharged than are currently being discharged during the term of an extension granted under section 301(i)(1) of the Act.

(b) If a POTW has industrial users, any permit issued or modified by the Director under section 301(i)(1) shall contain any terms and conditions necessary to ensure compliance with 40 CFR 403.

§ 125.95 Requests for permit modification or issuance under section 301(i)(2) of the Act.

Any owner or operator of a point source other than a POTW that will not achieve the requirements of sections 301(b)(1)(A) and 301(b)(1)(C) of the Act because it was scheduled to discharge into a POTW that is presently unable to accept the discharge without construction, may request modification or issuance of a permit extending the date of compliance with these limitations in accordance with the provisions of § 124.51(b).

§ 125.96 Criteria for permit modification or issuance under section 301(i)(2) of the Act.

No request for a permit modification or issuance under section 301(i)(2) of the Act shall be granted unless the Director finds that the discharger has failed to achieve the requirements of sections 301(b)(1)(A) and 301(b)(1)(C) of the Act because it was scheduled to discharge into a POTW that is presently unable to accept the discharge without construction, and:

(a) The discharger has indicated an intent to discharge into the POTW before July 1, 1977, in one of the following ways:

(1) The discharger was issued a permit before July 1, 1977, based upon a discharge into a POTW;

(2) The discharger had a binding contractual obligation before July 1, 1977, (enforceable against the discharger) to discharge into a POTW. Contracts which can be terminated or modified without substantial loss and contracts for feasibility, engineering and design studies do not constitute a contractual obligation under this paragraph.

(3) A construction grant application made by the POTW before July 1, 1977, clearly demonstrated that the discharger was to discharge into the POTW; or

(4) Engineering plans, architectural plans or working drawings prepared for

the POTW before July 1, 1977, clearly demonstrated the discharger was to discharge into the POTW. Plans and drawings, such as those accompanying a bona fide application for a Federal construction grant, are sufficient only to the extent that they were truly representative of the intent of the discharger and the POTW;

(b) The Director finds that the discharger has acted in good faith in its efforts to effectuate discharge into the POTW and to minimize or abate pollution prior to discharge into the POTW. This shall include the following findings:

(i) Failure of the discharger to meet the July 1, 1977, deadline was for reasons beyond its control;

(ii) A history of a high degree of commitment to meet the requirements of the Act as manifested by cooperation with the State or EPA in attempting to resolve disputed issues;

(iii) No history of unjustified delay;

(iv) No past serious or intentional violations of the Act; and

(v) All reasonable measures are being taken to expedite compliance.

[*Comment:* The Director may also consider whether the discharger has operated its facilities competently and responsibly and the exent to which the discharger has completed the necessary prerequisites to having its waste treated by the POTW.]

(c) The POTW will be in operation and available to the discharger July 1, 1983;

(d) The POTW will be able to meet secondary treatment and water quality standard effluent limitations by July 1, 1983, after receiving the waste from the discharger;

(e) The discharger and the POTW have entered into an enforceable contract providing that:

(i) The discharger agrees to discharge its waste to the POTW;

(ii) The POTW agrees to accept and treat that waste by a date certain; and

(iii) The discharger agrees to pay all user charges and industrial cost recovery charges required under section 204 of the Act; and

(f) In the case of a discharge into an existing POTW, such POTW has been granted an extension under section 301(i)(1) of the Act.

§ 125.97 Permit terms and conditions under section 301(i)(2) of the Act.

All permits modified or issued by the Director under section 301(i)(2) of the Act shall contain at a minimum the following permit terms and conditions:

(a) The shortest reasonable schedule of compliance leading to discharge into the POTW, not to extend beyond the earliest date practicable for compliance, or beyond the final compliance date of any extension granted to the appropriate POTW under section 301(i)(1) of the Act, but in no event later than July 1, 1983. This schedule shall be based upon the earliest date by which the appropriate POTW can receive the waste from the discharger and the discharger can complete the necessary prerequisites to having its waste treated by that POTW.

(b) Achievement of effluent limitations and standards under sections 301(b)(1)(A) and 301(b)(1)(C) of the Act by the same final date in the schedule established in paragraph (a) of this section in the event that the permittee does not discharge its wastes to the POTW by the date established under paragraph (a) of this section.

(c) Abatement practices and interim effluent limitations reflecting optimum operation and maintenance of the discharger's existing facilities. These shall include:

(1) Effective performance of facility design removals;

(2) Adequate operator staffing and training; and

(3) Adequate laboratory and process control.

(d) Interim effluent limitations reflecting other non-capital intensive measures for increased pollution control.

(e) Requirements to meet applicable toxic effluent standards and prohibitions after they are promulgated under section 307(a) of the Act.

(f) Requirements to ensure compliance with:

(1) Pretreatment requirements imposed by the POTW pursuant to any extension granted to the POTW under section 301(i)(1);

(2) Any State or local pretreatment requirements; and

(3) Pretreatment standards as promulgated under section 307(b) of the Act.

[*Comment:* The legislative history cites the following example: "[I]f an industry is planning on participating in a municipal system which will not be available until January 1983, that industry would still have to install and operate pretreatment facilities within the time specified for compliance at the time the applicable pretreatment standard was promulgated and in no event later than three years from the date of said promulgation. Thus, if the pretreatment regulations are promulgated March 1, 1979, and require compliance within two years, that industry would be required to comply by March 1, 1981." H.R. Rep. No. 95–830, 95th Cong., 1st Sess., 12712 (daily ed. Dec. 6, 1977).]

(g) Any water conservation requirements necessary to carry out the provisions of the Act or imposed by the POTW pursuant to the contract executed between the discharger and the POTW.

[*Comment:* The existence of such a contract is a prerequisite to granting an extension under section 301(i)(2)(B) of the Act and § 125.96(e).]

Subpart K—Criteria and Standards for Best Management Practices Authorized Under Section 304(e) of the Act

§ 125.100 Purpose and scope.

This Subpart describes how best management practices (BMPs) for ancillary industrial activities under section 304(e) of the Act shall be reflected in permits, including best management practices promulgated in effluent limitations under section 304 and established on a case-by-case basis in permits under section 402(a)(1) of the Act. Best management practices authorized by section 304(e) are included in permits as requirements for the purposes of sections 301, 302, 306, 307, or 403 of the Act, as the case may be.

§ 125.101 Definition.

"Manufacture" means to produce as an intermediate or final product, or by-product.

§ 125.102 Applicability of best management practices.

Dischargers who use, manufacture, store, handle or discharge any pollutant listed as toxic under section 307(a)(1) of the Act or any pollutant listed as hazardous under section 311 of the Act are subject to the requirements of this Subpart for all activities which may result in significant amounts of those pollutants reaching waters of the United States. These activities are ancillary manufacturing operations including: materials storage areas; in-plant transfer, process and material handling areas; loading and unloading operations; plant site runoff; and sludge and waste disposal areas.

§ 125.103 Permit terms and conditions.

(a) Best management practices shall be expressly incorporated into a permit where required by an applicable EPA promulgated effluent limitations guideline under section 304(e);

(b) Best management practices may be expressly incorporated into a permit on a case-by-case basis where determined necessary to carry out the provisions of the Act under section 402(a)(1). In issuing a permit containing BMP

requirements, the Director shall consider the following factors:

(1) Toxicity of the pollutant(s);

(2) Quantity of the pollutant(s) used, produced, or discharged;

(3) History of NPDES permit violations;

(4) History of significant leaks or spills of toxic or hazardous pollutants;

(5) Potential for adverse impact on public health (e.g., proximity to a public water supply) or the environment (e.g., proximity to a sport or commerical fishery); and

(6) Any other factors determined to be relevant to the control of toxic or hazardous pollutants.

(c) Best management practices may be established in permits under paragraph (b) of this section alone or in combination with those required under paragraph (a) of this section.

(d) In addition to the requirements of paragraphs (a) and (b) of this section, dischargers covered under § 125.102 shall develop and implement a best management practices program in accordance with § 125.104 which prevents, or minimizes the potential for, the release of toxic or hazardous pollutants from ancillary activities to waters of the United States.

§ 125.104 Best management practices programs.

(a) BMP programs shall be developed in accordance with good engineering practices and with the provisions of this Subpart.

(b) The BMP program shall:

(1) Be documented in narrative form, and shall include any necessary plot plans, drawings or maps;

(2) Establish specific objectives for the control of toxic and hazardous pollutants.

(i) Each facility component or system shall be examined for its potential for causing a release of significant amounts of toxic or hazardous pollutants to waters of the United States due to equipment failure, improper operation, natural phenomena such as rain or snowfall, etc.

(ii) Where experience indicates a reasonable potential for equipment failure (e.g., a tank overflow or leakage), natural condition (e.g., precipitation), or other circumstances to result in significant amounts of toxic or hazardous pollutants reaching surface waters, the program should include a prediction of the direction, rate of flow and total quantity of toxic or hazardous pollutants which could be discharged from the facility as a result of each condition or circumstance;

(3) Establish specific best management practices to meet the objectives identified under paragraph (b)(2) of this section, addressing each component or system capable of causing a release of significant amounts of toxic or hazardous pollutants to the waters of the United States;

(4) The BMP program:

(i) May reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans under section 311 of the Act and 40 CFR Part 151, and may incorporate any part of such plans into the BMP program by reference;

[*Comment:* EPA has proposed section 311(j)(1)(c) regulations (43 FR 39276) which require facilities subject to NPDES to develop and implement SPCC plans to prevent discharges of reportable quantities of designated hazardous substances. While Subpart K requires only procedural activities and minor construction, the proposed 40 CFR 151 (SPCC regulations) are more stringent and comprehensive with respect to their requirements for spill prevention. In developing BMP programs in accordance with Subpart K, owners or operators should also consider the requirements of proposed 40 CFR 151 which may address many of the same areas of the facility covered by this Subpart.]

(ii) Shall assure the proper management of solid and hazardous waste in accordance with regulations promulgated under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA) (40 U.S.C. 6901 *et seq*). Management practices required under RCRA regulations shall be expressly incorporated into the BMP program; and

(iii) Shall address the following points for the ancillary activities in § 125.102:

(A) Statement of Policy;
(B) Spill Control Committee;
(C) Material Inventory;
(D) Material Compatibility;
(E) Employee Training;
(F) Reporting and Notification Procedures;
(G) Visual Inspections;
(H) Preventive Maintenance;
(I) Housekeeping; and
(J) Security.

[*Comment:* Additional technical information on BMPs and the elements of a BMP program is contained in a publication entitled "NPDES Best Management Practices Guidance Document." Copies may be obtained by written request to Edward A. Kramer (EN-336), Office of Water Enforcement, Environmental Protection Agency, Washington, D.C. 20460.]

(c)(1) The BMP program must be clearly described and submitted as part of the permit application. An application which does not contain a BMP program shall be considered incomplete. Upon receipt of the application, the Director shall approve or modify the program in accordance with the requirements of this Subpart. The BMP program as approved or modified shall be included in the draft permit (§ 124.31). The BMP program shall be subject to the applicable permit issuance requirements of Part 124, resulting in the incorporation of the program (including any modifications of the program resulting from the permit issuance procedures) into the final permit.

(2) Proposed modifications to the BMP program which affect the discharger's permit obligations shall be submitted to the Director for approval. If the Director approves the proposed BMP program modification, the permit shall be modified in accordance with § 122.31, *provided* that the Director may waive the requirements for public notice and opportunity for hearing on such modification if he or she determines that the modification is not significant. The BMP program, or modification thereof, shall be fully implemented as soon as possible but not later than one year after permit issuance, modification, or revocation and reissuance unless the Director specifies a later date in the permit.

[*Comment:* A later date may be specified in the permit, for example, to enable coordinated preparation of the BMP program required under these regulations and the SPCC plan required under 40 CFR 151 or to allow for the completion of construction projects related to the facility's BMP or SPCC program.]

(d) The discharger shall maintain a description of the BMP program at the facility and shall make the description available to the Director upon request.

(e) The owner or operator of a facility subject to this Subpart shall amend the BMP program in accordance with the provisions of this Subpart whenever there is a change in facility design, construction, operation, or maintenance which materially affects the facility's potential for discharge of significant amounts of hazardous or toxic pollutants into the waters of the United States.

(f) If the BMP program proves to be ineffective in achieving the general objective of preventing the release of significant amounts of toxic or hazardous pollutants to those waters and the specific objectives and requirements under paragraph (b) of this section, the permit and/or the BMP program shall be subject to modification to incorporate revised BMP requirements.

Subpart L—Criteria and Standards for Imposing Conditions for the Disposal of Sewage Sludge Under Section 405 of the Act [Reserved]

Subpart M—Ocean Dumping Criteria Under Section 403 of the Act [Reserved]

PART 402—COOLING WATER INTAKE STRUCTURES [DELETED]

8. 40 CFR Part 402 is deleted.

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

9. 40 CFR Part 403 is amended as follows:

A. The Table of Contents is amended by revising the heading for § 403.11 to read as follows:

* * * * *

§ 403.11 Approval procedures for POTW pretreatment programs and revision of categorical pretreatment standards.

* * * * *

B. Section 403.7 is amended by revising paragraph (e)(3) to read as follows:

§ 403.7 [Amended]

* * * * *

(e) * * * (3) The Regional Administrator may agree, in the Memorandum of Agreement under 40 CFR 123.7, to waive the right to review and object to Submissions for authority to revise discharge limits under this section. Such an agreement shall not restrict the Regional Administrator's right to comment upon or object to permits issued to POTWs except to the extent permitted under 40 CFR 123.7(b)(3)(i)(D).

* * * * *

C. Section 403.8 is amended by revising the first sentence of paragraph (f)(2)(vii) to read as follows:

§ 403.8 [Amended]

* * * * *

(f) * * * (2) * * * (vii) Comply with the public participation requirements of 40 CFR Part 25 in the enforcement of National Pretreatment Standards.

* * * * *

§ 403.9 [Amended]

D. Section 403.9(d) is deleted and §§ 403.9(e) and (f) are redesignated as §§ 403.9(d) and (e), respectively.

§ 403.10 [Amended]

E. Section 403.10(d)(1) is amended by deleting the words "set forth in § 403.10(b)" from the first and second sentences.

F. Section 403.10 is amended by revising paragraph (f)(1) to read as follows:

* * * * *

(f) * * * (1) Legal Authority. The Attorney General's Statement submitted in accordance with paragraph (g)(1)(i) shall certify that the Director has authority under State law to operate and enforce the State pretreatment program to the extent required by this Part and by 40 CFR 123.32. At a minimum, the Director shall have the authority to:

* * * * *

G. Section 403.10 is amended by revising paragraph (g)(1) to read as follows:

* * * * *

(g)(1)(i) A statement from the State Attorney General (or the Attorney for those State agencies which have independent legal counsel) that the laws of the State provide adequate authority to implement the requirements of this Part. The authorities cited by the Attorney General in this statement shall be in the form of lawfully adopted State statutes and regulations which shall be in full force and effect before the time of approval of the State pretreatment program.

(ii) Copies of all State statutes and regulations cited in the above statement.

* * * * *

H. Section 403.10 is amended by revising paragraph (g)(3) to read as follows:

* * * * *

(g) * * *

(3) Any modifications or additions to the Memorandum of Agreement (required by 40 CFR 123.7) which may be necessary for EPA and the State to implement the requirements of this Part.

* * * * *

I. Section 403.10 is amended by revising paragraph (h)(2) to read as follows:

* * * * *

(h) * * *

(2) Commence the program revision process set out in 40 CFR 123.61. For purposes of that section all requests for approval of State pretreatment programs shall be deemed substantial program modifications. A comment period of at least 30 days and the opportunity for a hearing shall be afforded the public on all such proposed program revisions.

* * * * *

J. Section 403.10(i) is amended by substituting the words "this Part" for the words "paragraph (g) of this section" in both places they appear.

K. The heading of § 403.11 is revised to read as follows:

§ 403.11 Approval Procedures for POTW Pretreatment Programs and Revision of Categorical Pretreatment Standards.

L. Section 403.11 is amended by revising the first sentence to read as follows:

"The following procedures shall be followed in approving or denying requests for POTW Pretreatment Program approval:"

* * * * *

M. Section 403.11 is amended by deleting all references to § 403.10(f) and (g).

N. Section 403.11(a) is amended by changing the reference in two places from "§ 403.9(e) and (f)" to "§ 403.9(d) and (e)."

O. Section 403.11(b)(1)(i) is amended by deleting from the first sentence the words "shall be published in the Federal Register in the case of a State Submission and"

P. Section 403.11(b)(1)(i)(A) is deleted and subparagraphs (B) and (C) are redesignated to (A) and (B) respectively.

Q. Section 403.11 is amended by revising subparagraph (b)(1)(i)(B), (formerly (b)(1)(i)(C)), to read as follows:

* * * * *

(b) * * *
(1) * * *
(i) * * *

(B) Publication of a notice of request for approval of the Submission in the largest daily newspaper within the jurisdiction(s) served by the POTW.

* * * * *

R. Section 403.11 is amended by substituting the words "30 days" wherever the words "45 days" appear.

S. Section 403.11(b)(2)(ii) is amended by deleting the words "a State or."

T. Section 403.11(e) is amended by deleting the words "or Director."

[FR Doc. 79-17271 Filed 6-6-79; 8:45 am]

BILLING CODE 6560-01-M

Federal Register

Thursday
June 7, 1979

Part III

Department of Commerce

Office of the Secretary

Regional Action Planning Commissions Operations; Administration

DEPARTMENT OF COMMERCE

Office of the Secretary

[13 CFR Part 540]

Regional Action Planning Commissions Operations; Administration

AGENCY: The Special Assistant for Regional Development, Office of the Secretary, Department of Commerce.

ACTION: Proposed rule.

SUMMARY: The Department of Commerce proposes to amend its existing reuglàtions on the Regional Action Planning Commissions to include requirements governing Commissions' administrative responsibilities and the administrative requirements they apply to financial assistance recipients. The objectives of the revisions are to include some requirements previously specified in Secretarial Guidelines, to make general improvements in existing regulations, to add administrative procedures based on past experience in implementing Commission programs, and to make the regulations easily understandable. If adopted, the new rules will enable the Commissions to handle their administrative responsibilities in a more efficient, economical manner. The rules will also be consistent with standard Federal fiscal policies and will insure that grantees and contractors fulfill their responsibilities as recipients of public funds. The proposed rules porvide that individual Commissions may adopt internal codes which, when approved by the Secretary, will supplant these regulations.

DATES: Comments must be received on or before August 6, 1979.

ADDRESS: Send comments to: Office of Regional Development, Room 2092, Main Commerce Building, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Jane Lollis, Office of Regional Development, Room 2092, U.S. Department of Commerce, Washington, D.C. 20230. Telephone: (202) 377–5203.

SUPPLEMENTARY INFORMATION: In March, 1978, the Special Assistant for Regional Development of the Department of Commerce and the Federal Cochairmen of the Regional Action Planning Commissions authorized under Title V of the Public Works and Economic Development Act (42 U.S.C. 3181 *et seq.*) initiated discussions regarding the development of minimum administrative policies and procedures applicable to the Regional Commissions. The need for new guidelines or regulations arose for the following reasons:

(1) Basic administrative and program guidelines and rules had not been thoroughly reviewed since 1970 and new requirements affecting Federal programs have been added and others changed;

(2) The commissions are not federal agencies nor are the Federal Cochairmen employees of the Department of Commerce, so that the management procedures of the Department do no apply;

(3) Since the Commissions are neither state nor local governments, they are subject to none of the procedures applicable to these grantees;

(4) To strengthen the State-Federal partnership and provide the necessary accountability by both partners, clear standards were needed for operation of the commissions;

(5) More comprehensive and precise management procedures were needed to allow for better management by the Commissions and to prevent improprieties.

In order to be enforceable by the Secretary, the rules applicable to the Commissions must be in the form of regulations, developed after public comment; at the same time, any administrative code adopted by the Commissions require both the approval of the Secretary and minimum adherence to the published regulations.

As a result of these discussions, Department of Commerce staff prepared for review a set of draft administrative regulations, which were presented to the Federal Cochairmen in June, 1978. At the request of the Federal Cochairmen, it was agreed in July, 1978, that the Cochairmen also would develop a comprehensive draft document, in consultation with the regional commissions and the Department, incorporating the draft regulations and treating additional areas of internal Commission management. It was further agreed that publications of these regulations would be delayed pending the submission of a draft of the code. On April 9, 1979, the Federal Cochairmen transmitted this draft, entitled the "Uniform Commission Code," to the Secretary, the Commissions and the member Governors for review and comment.

The rules proposed today respond to problems cited in the now completed audit reviews of commission programs and incorporate portions of the Uniform Code which properly may be classified as administrative rules. The Department views this publication as a continuation of the consultation process involving the Department, the Federal Cochairmen, the member Governors, Commission staff, and the public. Also, proposed § 540.201 provides that a commission may adopt its own administrative code which, when approved by the Secretary as meeting the standards of these regulations, will take effect instead of the regulations. The Department anticipates that most Commissions will choose to adopt their own code. We intend to work closely with the Federal Cochairmen and the Governors to insure that any codes include those minimum standards and procedures which will assure sound fiscal management and proper accountability to the public, the Congress and the President. These regulations will be the basic reference for development of the codes in those areas involving the use of Federal funds.

What is the plan for obtaining public comment?

By publication of the proposed regulations, the Department invites interested members of the public to submit their comments. Simultaneously, we are forwarding copies of the proposed rules to the Federal Cochairmen and the Governors who are members of the Commissions, the Chairmen of the House and Senate committees and subcommittees charges with oversight of the commission program, and to the Advisory Commission on Intergovernmental Relations and the National Governors Association. Depending upon the nature and extent of comments received, the Department may initiate a second cycle of public comments.

Are these "significant regulations" as defined in Executive Order 12044?

Executive order 12044 and Department of Commerce Administrative Order 218–7 set forth requirements for improving significant regulations issued by the Department of Commerce. The Special Assistant for Regional Development has determined that these proposed administrative regulations are not "significant," primarily because: they have limited impact on the public; the standards are the minimum for good management and compliance will not be burdensome; the programmatic authorities of the commissions are not affected; and the standards prescribed will not cause major shifts of resources within a commission's budget. Although Executive Order 12044 does not apply to these regulations, the Department feels that is has met the purposes of the Order by its consideration of the need for

regulations and the examination of alternatives, the previous and proposed consultation procedures, and the adherence to standards of plain English during the drafting process.

What will these regulations accomplish?

These regulations reflect the delegation of the Secretary's project approval process and the consequent administrative duties flowing from that delegation. The Regional Development Commissions are joint State/Federal entities authorized to engage in a variety of development planning and financial assistance actitivies. They receive their funding from the Secretary of Commerce, who exercises administrative and program oversight, along with each Commission's Presidentially-appointed Federal Cochairman. Under Executive Order 11386, the Secretary provides Federal policy guidance to the Federal Cochairmen. Under Section 701 of the Public Works and Economic Development Act, 42 U.S.C. 3211, the Secretary is authorized to adopt regulations applicable to the Regional Commissions and the Secretary's functions. The proposed regulations have been drafted under this authority and are applicable to the operations of the Regional Commissions. They do not apply to the operation of each Federal Cochairman's office (or staff), which remains subject to Federal laws and standards.

The application of minimum fiscal and management standards for commissions is an objective shared by the Congress, the Department of Commerce, the Federal Cochairmen and the Governors in improving the accountability for the use of public funds by the commissions. The present administrative standards have proved to the inadequate to meet changing conditions, Federal requirements and authorities since 1970. The Commissions and the Department have found that many problems have arisen due to out-dated or non-existant policies and procedures, especially in the area of grant and contract administration. Accordingly, these proposed regulations are intended to provide minimum standards for Commission's administrative policies and procedures in order to prevent problems and assure that public funds are bing utilized efficiently for the purposes authorized by Congress. These proposed regulations are based on the OMB Circulars A-110 and A-102 relating to grants administration and they impose the same basic requirements on the commissions as the Circulars impose on other federal grantees. Should the Commissions wish they can develop rules for themselves over and above these new requirements.

The proposed regulations are divided into two subparts. Subpart A deals with the transfer of funds to the commissions for their administrative expenses. Subpart B contains minimum administrative requirements applicable to the following Commission activities:

1. Annual Financial Planning and Fiscal Management;
2. Property Management;
3. Records Management;
4. Procurement;
5. Personnel
   a. Duties of the Executive Director
   b. Pay, Benefits and Expenses
   c. Employee Conduct
6. Specific Uses of Funds
7. Commission Financial Assistance
   a. Administrative Standards
   b. Cost Principles
   c. Use of Grants of Contracts
   d. Provisions of Financial Assistance Agreements
   e. Nondiscrimination

Generally, the standards in Subpart B are those which other Federal agencies apply to recipients of financial assistance and with which Federal grantees are familiar.

Accordingly, it is proposed to revise Part 540 of Title 13 CFR to read as follows:

PART 540—ADMINISTRATION

Subpart A—Administrative Expense Grants

Sec.

540.101 Authority and purpose.
540.102 Procedure for obtaining administrative expenses.

Subpart B—General Administrative Provisions Governing Federally Funded Activities and Expenses of the Commissions

540.201 Purpose.
540.202 Financial plan and fiscal management.
540.203 Cost principles applicable to Commissions.
540.204 Records.
540.205 Property management.
540.206 Procurement by Commissions.
540.207 Personnel.
540.208 Prohibition on use of federal funds.
540.209 Administrative requirements for recipients of Commission assistance.
540.210 Nondiscrimination.
540.211 Remedies for noncompliance.

Authority: 42 U.S.C. 3181 et seq., 42 U.S.C. 3204, 42 U.S.C. 3211, E.O. 11386, Department Organization Order 15-5.

Subpart A—Administrative Expense Grants

§ 540.101 Authority and purpose.

(a) The Secretary is authorized by section 505(b) of the Act (42 U.S.C. 3185(b)) to review and approve the administrative expenses of each Regional Commission, and to pay such expenses as the Secretary approves from Federal funds appropriated for such purposes. For the period ending with the last day of the second full fiscal year following the date of establishment of a Commission, the entire administrative expenses of the Commission shall be paid by the Federal Government. Thereafter 50 per centum of such expenses shall be paid by the Federal Government and 50 per centum by the States in the region, except that the administrative expenses of the Federal Cochairman and the staff shall be paid solely by the Federal Government.

(b) The purpose of this subpart is to outline the procedures by which such administrative expenses will be paid by the Federal Government and to set forth provisions governing the expenditure of those funds.

§ 540.102 Procedure for obtaining administrative expenses.

(a) As a condition to receiving administrative expense funds from the Federal Government, each Commission through the Federal Cochairmen shall submit for approval a financial plan to the Secretary in such form as the Secretary may prescribe.

(b) Such administrative expense funds as are approved shall be made available on a quarterly basis. Approved funds will be deposited into a special trust account established by the U.S. Treasury for the exclusive use of the Regional Commissions. Expenditures from such trust funds shall be made only upon the proper certification of a duly authorized officer of the Commission.

Subpart B—General Administrative Provisions Governing Federally Funded Activities and Expenses of the Commissions

§ 540.201 Purpose

(a) The purpose of this part is to assure that all Regional Commissions follow standard and acceptable procedures in administering programs authorized by the Act and assure that they are administratively accountable for the Federal funds which they receive.

(b) A Commission may adopt a code governing the policies and procedures of

that Commission. Any code duly adopted by a Commission and approved by the Secretary as meeting all the requirements of §§ 540.202–209 of these regulations may be used in lieu of such sections. All amendments to such codes shall be approved by the Secretary before they may become effective. A violation of any provision of a code duly adopted by a Commission and approved by the Secretary under this section may be deemed by the Secretary a violation of these regulations and the terms of the grant.

(c) This Subpart shall become effective on October 1, 1979.

§ 540.202 Financial plan and fiscal management

(a) *General.* Each fiscal year each Commission shall prepare an annual financial plan detailing the anticipated administrative and program expenses of the Commission for the fiscal year as prescribed by the Secretary including, but not limited to, the items set forth below:

(1) For all program areas (i.e., Supplemental Grants, Technical Assistance, Planning, Demonstration Programs) the financial plan shall specify estimated quarterly and total expenditures by appropriate sub-program areas.

(2) For the administrative expenses of the Commission, the financial plan shall specify estimated quarterly and total expenditures by object class.

On or before August 1 of each year, the Commission shall have prepared and voted approval of a financial plan for the next fiscal year.

(b) After approval by the Commission, such plan shall be transmitted through the Federal Cochairman to the Secretary of Commerce for review and approval.

(c) Federal grant assistance may be used only in the performance of the activities and work program outlined in the Commission's approved financial plan prepared pursuant to this section.

(d) When required by the Secretary of Commerce or the General Accounting Office policies and procedures, the Commission shall select qualified certified public accountants to make an annual audit of the financial accounts of the Commission.

(e) *Federal Fiscal Management.* (1) Each Federal Cochairman, working with the Commission, will prepare: (i) All budget requests for Commission activities in appropriate form for presentation before budget authorities and congressional committees;

(ii) All requested Federal financial plans and other documentation required in order to receive appropriated Federal funds from the Department of Commerce.

(2) Under the delegated authority of the Secretary of Commerce (DOO 15–6), the Federal Cochairman acts as grantor of Federal funds to the Commission and insures adherence to the Act and to all Federal guidelines and regulations applicable to such grants. As the Federal member in the Commission, the Federal Cochairman is a recipient with the State Cochairman and the States, of the Federal funds. He or she, similarly, has trusteeship equal with that of the States' for the Commission's trust fund containing program and administrative monies.

(3) As the Federal member on the Commission, the Federal Cochairman acts to effect transfers of supplemental grant funds to appropriate Federal grant-in-aid agencies for projects approved by the Commission. He or she insures that all applicable requirements of the Public Works and Economic Development Act (42 U.S.C. 3181 *et seq.*) and Commission requirements are adhered to by the recipient Federal grant-in-aid agency.

(f) Cash management (reserved).

§ 540.203 Cost principles applicable to commissions

The Secretary and the Federal Cochairman shall apply the principles and standards of Federal Management Circular 74–4 for the purpose of determining the reasonableness, allowability and allocability of costs incurred by the Commission.

§ 540.204 Records

(a) The Commissions shall keep such records as will fully disclose the amount and disposition by the recipients of all the funds received from the Federal Government and all other grantors, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources. These records shall also include (1) a record of key action on individual projects which relate to both award and post-award monitoring, evaluation and close-out, in sufficient detail to understand the history of the project and its current status, and (2) such other records as will facilitate an effective audit.

(b) Each Commission shall assure retention of financial records, supporting documents, statistical records, and all other records pertinent to its activities for a minimum period of three years, with the following qualifications:

(1) If any litigation, claim or audit is started before the expiration of the three-year period, the Commission shall retain the records until all litigations, claims or audit findings involving the records have been resolved and the records released by the Secretary.

(2) If a record or set of records is covered by the Records Control Schedule for Regional Action Planning Commissions (U.S. Department of Commerce, March, 1978), the Commissions shall follow the requirements of the Records Control Schedule.

(c) Unless the Records Control Schedule provides another standard, a record retention period starts from one of the following two dates, whichever is later:

(1) The last day of the Federal fiscal year during which the activities occurred for which the record is kept, or

(2) If the record concerns a project, the last day of the Federal fiscal year in which the project was completed.

(d) A Federal Cochairman or the Secretary may transfer certain Commission records to the custody of the Federal Government when either official determines that the records possess long-term value and gives written notice to the Commission.

(e) The Secretary of Commerce, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers and records of a Commission for the purpose of making audits, examinations, excerpts and transcripts.

(f) A Commission shall provide for public access to the records of grantees that are pertinent to a grant. However, the Commission may impose limitations on access when it can demonstrate to the Secretary of Commerce or his or her designee that such records must be kept confidential and would have been excepted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the Federal Government.

§ 540.205 Property management

(a) Each Commission shall observe the standards in this section relating to the utilization and disposition of property furnished to the Commission by the Federal Government or acquired by the Commission in whole or in part with Federal funds. A Commission may adopt its own standards and procedures governing the management of property acquired by it as long as the provisions of this section are included in the Commission's standards.

(b) The following definitions apply for the purposes of this section:

(1) *Real property.* Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

(2) *Personal property.* Property of any kind except real property, i.e. tangible (having physical existence) or intangible (having no physical existence, such as patents, inventions, and copyrights).

(3) *Nonexpendable personal property.* Nonexpendable personal property means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit. A Commission may use its own definition of non-expendable personal property provided that such definition would at least include all tangible personal property as defined above.

(4) *Expendable personal property.* Expendable personal property refers to all tangible personal property other than nonexpendable property.

(5) *Excess property.* Excess property means Federal property under the control of any Federal agency which, as determined by the head thereof, is no longer required for its needs or discharge of its responsibilities.

(6) *Acquisition cost of purchased nonexpendable personal property.* Acquisition cost of an item of purchased nonexpendable personal property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installations, transportation, taxes, duty, or protective intransit insurance, may be included in the unit acquisition cost.

(c) *Real property.* No Commission shall use any Federal funds provided by the Federal Cochairman or by other Federal sources to purchase real property. This prohibition does not apply to bona fide Commission grantees, whose acquisition of real property is governed by other regulations in this Part. This prohibition has no relationship to a gift or donation of real property under the authority of 42 U.S.C. 3186(a)(6), which provides the administrative powers of Regional Commissions. If a Commission acquires real property from a recipient of Commission assistance, it shall request and abide by disposition instructions from the Federal Cochairman.

(d) *Nonexpendable personal property furnished by the Federal Government.* Title to Federally owned property furnished to a Commission remains vested in the Federal Government.

(e) *Inventory.* Each Commission shall submit annually to the Federal Cochairman an inventory listing of Federally owned property in its custody. When a Commission no longer needs the property, it shall report the property to the Federal Cochairman for further Federal utilization. If the Federal Cochairman or the Federal agency from which the property was acquired has no further need for the property, it shall be declared excess and reported to the General Services Administration. After completion of Federal review, appropriate disposition instructions will be issued to the Commission.

(f) *Other nonexpendable property.* When nonexpendable tanible property is acquired by a Commission in part or in whole with funds provided by the Federal Cochairman, title shall not be taken by the Federal Government but shall vest in the Commission subject to the following conditions:

(1) For items of nonexpendable personal property having a unit acquisition cost of $1000 or more, the Federal Government reserves the right to transfer title to the Federal Government or to another Commission named by the Federal Government. Title will be transferred only after the Federal Cochairman identifies the property to the Commission in writing and gives thirty days notice to the Commission that the Federal Government intends to transfer title. When the Federal Government exercises the right to take title, the personal property shall be subject to the provisions for federally-owned nonexpendable property discussed in paragraphs (d) and (e) of this section.

(2) The Commission shall use the property for the activities for which it was acquired. When it is no longer needed for the original activity, the Commission may use the property in its other activities sponsored with Federal funds.

(3) Use of any property for non-Commission activities is prohibited unless approved by the Federal Cochairman and the Secretary. The Federal Cochairman may require a Commission to impose user charges if appropriate. (Department of Commerce Administrative Order 203–5 provides guidance relating to the imposition of user charges.)

(4) When the Commission can no longer use the property:

(i) For nonexpendable property with a unit acquisition cost of less than $1,000, it may sell the property and put the proceeds into the account which funded the purchase;

(ii) For nonexpendable personal property with a unit acquisition cost of $1,000 or more, the Commission shall request disposition instructions from the Federal Cochairman, who shall determine whether the property can be used by the Federal Government. If directed to do so, the Commission shall sell the property and reimburse the Federal Cochairman an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original purchase. The Commission may deduct and retain $100 from the Federal share or ten percent of the proceeds, whichever is greater, for the Commission's selling and handling expenses, but this amount shall not exceed 10 percent of the proceeds.

(g) *Intangible Property.* (1) Inventions and Patents. When a program produces patentable items, patent rights, processes or inventions in whole or in part with funds provided by the Federal Cochairman, such facts shall be promptly and fully reported to the Federal Cochairman. The Federal Cochairman will then determine whether to protect the invention or discovery and how the rights in the invention or discovery, including rights under any patents issued thereon, shall be allocated and administered, consistent with Federal patent policies.

(2) Copyrights. The Commission shall reserve to the Federal Cochairman a royalty-free nonexclusive and irrevocable right to reproduce, publish or otherwise use and authorize others to use for Government purposes, any copyrighted materials to which the Commission has such rights.

(h) *Property management standards for personal property.* Each Commission shall have property management standards for personal property which include the following minimum requirements:

(1) Property records shall include—

(i) A description of the property;

(ii) Identifying serial numbers;

(iii) Name of the holder of the title to the property;

(iv) Acquisition date, cost and the name of the vendor;

(v) Percentage of Federal participation in the cost of the activity for which the property was acquired;

(vi) Unit acquisition cost; and

(vii) Ultimate disposition data.

(2) Property owned by the Federal Government shall be marked to indicate Federal ownership.

(3) Except as specified in paragraph (f) of this section, each Commission shall take a physical inventory of property and reconcile the results with the

property records at least once every two years. The Commission shall report results, discrepancies and follow-up to the Federal Cochairman, who will take appropriate action.

(i) *Expendable personal property.* Title to expendable personal property shall vest in the Commission upon acquisition.

(j) Any nonexpendable disposition or inventory adjustment of Commission property shall be noted in the applicable financial records.

(k) *Program Income.* The purpose of this section is to provide standards for Commissions to account for program income resulting from activities financed in whole or in part with Federal funds. Program income means gross income earned by a Commission from activities supported by Federal funds. Such earnings exclude interest earned or advances and may include, but will not be limited to, income from service fees, sales, user charges, and royalties.

(1) Proceeds from the sale of real and personal property, either provided by the Federal Government or purchased in whole or in part with Federal funds, shall be handled in accordance with paragraphs (c) and (f) of this section pertaining to Property Management.

(2) All program income earned during a fiscal year shall be retained by the Commission and, in accordance with the transfer of funds from the Federal Cochairman, shall be:

(i) Added to funds committed to the particular activity from which the program income arose and used to further eligible objectives; or

(ii) Deducted from the total costs of the particular activity for the purpose of determining the next costs on which the Federal share of costs will be based.

(3) Each Commission shall provide for recording the reciept and expenditure of revenues as a part of an activity's transactions when such revenues are specifically earmarked for an activity in accordance with the transfer of funds from the Federal Cochairman.

§ 540.206 Procurement by commissions.

This section prescribes minimum standards for use by each Commission in establishing its own procedures for the procurement of supplies, equipment, and other services in part or in whole with funds provided by the Federal Cochairman. These standards are furnished to insure that such materials and service are obtained in an effective and economical manner.

(a) *Commission responsibility.* The standards contained in this section do not relieve a Commission of the contractural responsibilities arising under its contracts. The Commission is the responsible authority, without recourse to the Department of Commerce, or to the Federal Government, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into by the Commission in support of activities under financial assistance provided by the Federal Cochairman, subject to any rights of legal appeal which a contractor may have. This includes, but is not limited to: disputes; claims; protests of awards; source evaluations or other matters of a contractural nature. Matters concerning criminal violation of law are to be referred by the Federal or State Cochairmen, Commission members or the staff immediately to the local, state, and/or Federal authority as may have proper jurisdiction.

(b) *Procurement regulations.* A Commission may adopt its own procurement regulations which reflect any applicable State and local law, rules or regulations, provided that procurement made in part or wholly with Federal funds must adhere to the minimum standards set forth in this section.

(c) *Code of conduct for procurement.* Each Commission shall adopt a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts. The Commission shall include in this code the standards for employees required by § 540.207 of these regulations.

(d) *Extent of competition.* A Commission shall conduct all procurement transactions (regardless of whether by formal advertising or by negotiation and without regard to dollar value) in a manner that provides maximum open and free competition consistent with these regulations. A Commission shall not award a contract when competition is restricted or eliminated. Examples of restriction of competition or restraint of trade include unreasonable requirements placed on firms in order for them to qualify to do business or situations involving noncompetitive practices among firms. In order to insure objective contractor performance and eliminate unfair competitive advantage, a contractor that develops or drafts for a particular procurement specifications; requirements; a statement of work; or invitations for bids or requests for proposals shall be excluded from competing for and performing work under the ensuing procurement except when the Federal Cochairman gives written approval to a Commission's request to waive this requirement for a particular procurement. A request for a waiver shall include at least the reason for the waiver and the benefits expected from the waiver compared with the required procedures.

(e) *Procurement procedures.* Each Commission shall establish procurement procedures which provide for, at a minimum, the following procedural requirements:

(1) Before making an award, Commission officials shall review proposed procurement actions to avoid purchasing unnecessary or duplicative items. Where appropriate, these officials shall make an analysis of lease and purchase alternatives to determine which procurement approach would result in the most economical, practical procurement.

(2) Solicitations of offers, whether by formal advertising or negotiations, shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurement, contain features which unduly restrict competition.

(3) Each Commission shall make positive efforts to utilize small business concerns and minority owned business enterprises as sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts utilizing Federal funds.

A Commission must obtain the approval of the Federal Cochairman and the Secretary prior to beginning any steps to procure for itself construction or repair work to realty. At the time of approval, these officials shall provide appropriate guidance to the Commission governing procurement procedures for construction or repair contracts.

(f) *Type of procuring instruments.* The type of procuring instruments used (i.e., fixed price contracts, cost reimbursable contracts, purchase order, etc.), shall be appropriate for the particular procurement and for promoting the best interest of the Commission program involved. (41 CFR 1–3.403 may be used for guidance in selecting the appropriate contract type.) The "cost-plus-a-percentage-of-cost-fee" method of contracting shall not be used.

(g) *Selection of procurement method.*

(1) Whenever feasible, formal advertising, with adequate purchase description, sealed bids, and public openings shall be the preferred method of procurement. However, procurements of $10,000 or less need not be so advertised unless otherwise required by

a State law or regulations. Where such advertised bids are obtained, the awards shall be made to the responsible bidder whose bid is responsive to the invitation and is most advantageous to the Commission, price and other factors considered. (Factors such as discounts, transportation costs, taxes and life cycle costs may be considered in determining the lowest bid.) Invitations for bids shall clearly set forth all requirements which the bidder must fulfill in order for his bid to be evaluated by the Commission. Any or all bids may be rejected when it is in the Commission's interest to do so, and such rejections are in accordance with applicable State law, rules, and regulations.

(2) The Commission may negotiate if it is impracticable and unfeasible to use formal advertising. Generally, the Commission may negotiate procurements if:

(i) The public exigency will not permit the delay incident to advertising;

(ii) The material or service to be procured is available from only one person or firm;

(iii) The aggregate amount involved does not exceed $10,000;

(iv) The contract is for personal or professional services, or for any service to be rendered by a university, college, or other educational institution;

(v) The material or services are to be procured and used outside the limits of the United States and its possessions;

(vi) No acceptable bids have been received after formal advertising. (In such cases, notification of intention to negotiate and reasonable opportunity to negotiate must be given to each responsible bidder who submitted a bid in response to the invitation for bids.);

(vii) The purchases are for highly perishable materials or medical supplies, for material or services where the prices are established by law, for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, for experimental, developmental or research work, for supplies purchased for authorized resale, and for technical or specialized supplies requiring substantial initial investment for manufacture. (Notwithstanding the existence of circumstances justifying negotiation, competition should be obtained to the maximum extent practicable.)

(3) All contemplated sole source procurements where the aggregate expenditure is expected to exceed $10,000 shall be referred to the Federal Cochairman for prior written approval. The file shall include the justification for the sole source procurement and the Federal Cochairmen's written approval.

(h) *Responsible contractors.* A Commission shall award a contract only to a responsible contractor who possesses the demonstrated ability to perform successfully under the terms and conditions of a proposed procurement. The Commission shall give consideration to such matters as contractor integrity, record of past performance, and financial and technical resources or accessibility to necessary resources.

(i) *Commission procurement records.* Each Commission shall maintain records or files sufficient to detail the significant history of a procurement. These records or files shall include, but are not necessarily limited to, information pertinent to the following: rationale for the method of procurement, selection of contract type, contractor selection, and the basis for the cost or price negotiated including the basis for the decision that the cost was reasonable, that the product could be delivered for the price and within the time schedule proposed, evidence of the administering and monitoring actions during contract administration.

(j) *Contract administration.* Each commission shall maintain a system for contract administration to ensure that contractors conform with the terms, conditions, and specifications of the contract or purchase order including modifications, to identify and endeavor to resolve conditions that might adversely affect the Commission's interest, and to ensure that the Commission makes adequate and timely followups of all purchases.

(k) *Contract provisions.* Each Commission shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all procurement contracts or, where applicable, purchase orders:

(1) Contracts shall contain contractual provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contracts violate or breach contract terms, and provide for such sanctions, penalties, and remedial actions as may be appropriate.

(2) All contracts in excess of $10,000 shall contain suitable provisions for termination by the Commission including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated because of circumstances beyond the control of the contractor.

(3) All contracts awarded by a Commission and its contractors as subgrantees having a value of more than $10,000 shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60–1).

(4) Where applicable, all procurements by a Commission in excess of $2,500 that involve the employment of mechanics or laborers shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327–330) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the work week.

(5) All contracts (except those of $10,000 or less) awarded by a Commission shall include a provision to the effect that the Commission, the Federal Cochairman, the Secretary of Commerce and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific program for the purpose of making audit, examination, excerpts, and transcriptions.

(6) A Commission shall require its contractors to maintain all required records for three years after the Commission makes final payments.

(7) Contracts of amounts in excess of $100,000 shall contain a provision that requires the contractor to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act of 1970, (42 USC 1857 et seq.), and the Federal Water Pollution Control Act (13 USC 1252 et seq.), as amended. A Commission shall report violations to the Federal Cochairman, and the Regional Office of the Environmental Protection Agency.

(l) *Technical Evaluations and Cost or Price analysis.* Each commission shall perform and document in the project files a technical evaluation and a cost or price analysis in connection with every negotiated procurement action including

contract modifications. 41 CFR 1-1.305, 306 and 307 provide guidance as to how to perform a technical evaluation. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability. The method and degree of analysis, however, is dependent on the facts surrounding the particular procurement. The Commission shall perform cost analysis when the offeror is required to submit the elements of his/her estimated cost for sole source procurements, and when adequate price competition is lacking, e.g., when only a single bid is received and it is impossible to perform a valid price analysis. Price analysis shall be used in all other instances to determine the reasonableness of the proposed contract price.

(m) *Federal review of proposed contracts.* The Secretary of Commerce or his or her designee may require Department of Commerce approval of proposed contracts and related procurement documents (such as requests for proposal and invitations for bids) whenever a Commission's procurement procedures do not comply with this section and the Federal Cochairman and the Commission are notified in writing as to what corrective action is needed. The Secretary shall send copies of such notifications to the Office of Management and Budget.

(n) *Cooperative intergovernmental agreements.*

(1) To foster greater economy and efficiency in public procurement, each Commission is encouraged to enter into cooperative Federal, Commission or State intergovernmental agreements for procurement and/or use of common goods and services. Before such cooperative purchasing agreements are entered into, a Commission shall determine that joint purchases will be, or are being made, in accordance with the procurement standards in this section.

(2) To benefit from federal purchasing resources, a Commission's procurement of supplies, materials, equipment, furniture and services should be channeled through the central procurement office of the Department of Commerce.

§ 540.207 Personnel.

(a) An Executive Director of a Commission is chief administrative officer of the Commission. Subject to the policies and procedures adopted by the Commission and any applicable laws, regulations and guidelines, an Executive Director is responsible for the efficient administrative operation of the Commission and is responsible to the State and Federal Cochairmen of the Commission. Each commission shall assign such duties to the Executive Director as it deems appropriate, but, at a minimum the Executive Director shall have the authority to perform the following duties:

(1) To supervise and manage the Commission staff in carrying out day-to-day operations and to assure that proper administrative functions are accomplished;

(2) To develop the internal administrative structure of the Commission's staff and to assign functions and duties to employees;

(3) In accordance with Commission policies and after any required approval, to develop and execute for an on behalf of the Commission—

(i) Contracts and purchase orders;

(ii) Grant agreements;

(iii) Leases;

(iv) Personnel actions;

(v) Travel orders;

(vi) Any certifications required for the payment of legitimate expenses;

(4) To insure that Commission procedures and practices reflect applicable ethics requirements, codes of conduct and any laws applicable to Commission officials and employees;

(5) To develop a procurement system consistent with applicable requirements and Commission policies;

(6) To prepare an annual Commission budget for presentation to the Commission and such others as directed by the Commission;

(7) To accept, on behalf of the Commission, funds from the Federal Government and the member States;

(8) To develop a system of budget control to insure that obligations never exceed available unencumbered funds.

(b) Each Commission shall provide for legal assistance to assure adequate preparation and review of documents requiring Commission action and qualified legal advice to the Commission and its staff.

(c) An Executive Director of a Commission, and such other officers and employees as the Commission may determine, shall be bonded in such form and amounts as are determined by the Commission.

(d) *Pay, Benefits, Expenses.* (1) Rate of Compensation—The rate of compensation for positions paid in part or in whole from funds provided to a Commission by the Federal Government shall not exceed the rate paid by the Federal Government for similar positions. Each Commission shall establish for Commission employees experience and education requirements comparable to the Federal requirements (or the requirements of the participating State chosen in paragraph (d)(2)(i) of this section) for similar positions. Each Commission shall keep an up-to-date position description for each of its authorized positions, ensure that it is applicable and made available to the employee occupying that position.

(2) Level of Benefits—(i) No Commission shall establish benefits or adopt benefit policies which exceed the policies or levels of benefits provided by the Federal Government to its employees, unless a Commission contracts with a participating State Government for inclusion in a suitable retirement and employee benefit system as provided in 42 U.S.C. 3186(a)(5). Benefits include, but are not limited to, annual and sick leave and other leave, health insurance, life insurance, and retirement benefits.

(ii) No Commission shall permit any employee to carry forward into any calendar year more than 30 days of accumulated annual leave, computed at the beginning of the first complete pay period in the year.

(iii) Any employee who has been advanced annual or sick leave and who terminates his employment before repaying the advance shall make a payment to the Commission for the amount of advanced annual or sick leave outstanding.

(iv) No Commission shall pay or reimburse any employee for any sick leave accrued during service with the Commission, with the Federal Government, or with any State or local government.

(3) Number and Cost of Employees. Each Commission shall list in the annual financial plan the funding source for all persons employed or to be employed by the Commission for the period covered by the financial plan. Each Commission shall limit both the number of persons employed by it and the amount of funds spent for personnel costs to the number and amount set forth in its financial plan as approved by the Secretary. This limitation does not apply to additional employees not in any way compensated from funds provided to a Commission by the Federal Government.

(4) Specific Salary Prohibitions. No Commission shall pay a salary to or supplement, or make any contribution to, the salary of a State Member of a Commission, or a State Alternate, or any person who acts as a State Alternate at

any time. No persons detailed to serve a Commission under authority of Section 3186 (a)(4) of Title 42, United States Code, relating to Commissions' administrative powers, shall receive any salary or any contribution to or supplementation of salary for his services on the Commission from any source other than one of the following:

(i) The State, local, or intergovernmental department or agency from which the person was detailed; or

(ii) The Commission. No Commission shall use any funds provided by the Federal Cochairman for any purpose in order to circumvent these prohibitions. State Members of a Commission, State Alternates, persons acting as State Alternates at any time and persons on detail to a Commission are referred to Section 3186 (c), Title 42, United States Code, to determine their responsibilities and potential liabilities.

(5) Travel Expenses. Reimbursement for travel costs, including transportation, food and lodging costs, incurred by all Commission personnel in performance of their official duties while away from their regular place of duty, shall not exceed the reimbursement provided by the standard travel regulations of the United States Department of Commerce. Each Commission shall adopt as its own policies for authorizing travel the standard travel requlations of the Department of Commerce, contained in Departmental Administrative Order 204–1, except that for air travel.

(i) For a Commission which has an Executive Director, the Executive Director shall authorize and approve first-class air travel and maintain a record of the reason for authorized air travel for a period of three years. No less than every six months (in September and March) the Executive Director shall report to the Federal Cochairman any first-class air travel by Commission employees.

(ii) For a Commission which has no Executive Director, the Federal Cochairman shall be the official to authorize an approve first-class air travel. The Federal Cochairman shall maintain a record of the reason for all authorized air travel for a period of three years.

(6) Payroll and Attendance. Each Commission shall keep time and attendance records on all persons employed by it to assure proper control over the recording of attendance, overtime, sick and annual leave and other absences from duty and the proper distribution of hours by project. Each payroll period, an authorized Commission supervisor or official shall verify, approve and sign the time and attendance records.

(e) *Conduct.* (1) Standards for Employees.—Each Commission shall adopt standards governing the conduct and reponsibilities of its officers and employees. These standards shall incorporate, but not be limited to, all standards made applicable to Commission officers and employees by Federal or State laws, regulations and policies, including the requirements of these regulations. These standards, at a minimum, shall address the following subjects:

(i) Conflicts of interest;

(ii) Outside financial interests;

(iii) Persons engaged in the award and administration of contracts and grants;

(iv) Gifts;

(v) Entertainment;

(vi) Honoraria;

(vii) Reimbursement for expenses;

(viii) Travel and related expenses;

(ix) Use of public funds and public facilities;

(x) Political activities;

(xi) Use and disclosure of official information;

(xii) Non-discrimination;

(xiii) Nepotism;

(xiv) Lobbying.

(2) *Nepotism.* No Commission supervisor or officer shall appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the Compission in which he or she serves or exercises jurisdiction or control, any individual who is a relative of the supervisor or officer. From the effective date of this regulation, any individual appointed, employed, promoted or advanced in violation of this section shall not receive any pay derived in whole or in part from funds provided to a Commission by the Federal Government. Relative means an individual who is related to a supervisor or officer as father, mother, son, daughter, brother, sister, uncle, husband, wife, father-in-law, son-in-law, sister-in-law, brother-in-law, stepbrother, stepsister, half brother, or half sister.

(3) *Personal financial interests.* (i) Except as provided in paragraph (e)(3)(ii) of this section, no State Member, Alternate, officer, employee or agent of a Commission shall participate in any proceeding, application, award, selection, determination, grant, contract, procurement, claim, or any other activity in which, to his knowledge, at least one of the following has a financial interest that might cause a conflict of interest or create the appearance of a conflict of interest:

(A) The person himself or herself;

(B) His or her spouse;

(C) His or her minor child;

(D) His or her business partner;

(E) Any organization (other than a State or political subdivision of the State) which employs any person listed in paragraph (e)(3)(i) (A), (B), (C) or (D) of this section;

(F) Any organization (other than a State or political subdivision of the State) in which the person is serving as officer, director, trustee, partner or employee;

(G) Any person with whom he or she is serving as officer, director, trustee, partner or employee in any organization;

(H) Any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment.

(ii) Exceptions to paragraph (e)(3)(i) of this section may be obtained if the State Member, Alternate, person acting as an Alternate, officer, employee or agent—

(A) First advises the Commission of the nature and circumstances of the activity;

(B) Makes full disclosure of the financial interest in writing; and

(C) Receives *in advance* a written determination made by the full Commission that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Commission expects from the individual involved.

The Commission shall forward a copy of each of the determinations made under this Rule to the Secretary.

(iii) A Commission may declare void and rescind any contract or other agreement in relation to which it finds that paragraph (e)(3)(i) of this section has been violated. If a Commission chooses not to void and rescind a contract or agreement under these circumstances, it shall forward to the Secretary a report which states:

(A) The factual situation surrounding the contract or agreement;

(B) The personal financial interest involved; and

(C) The reasons for not voiding the contract or agreement.

(iv) State Members, State Alternates, persons acting as State Alternates, officers, and employees of a Commission should refer to 42 U.S.C. 3186, which details prohibitions and penalties for certain personal financial interests.

(v) Paragraph (e)(3) of this section, does not apply to—

(A) The Federal Cochairman; or

(B) Any Federal officer or employee detailed to a Commission pursuant to 42 U.S.C. (a)(3).

These persons remain subject to Sections 202 through 209 of Title 18, United States Code, which proscribe bribery, graft and certain conflicts of interest by Federal officers and employees. A Commission may void and rescind any contract or other agreement in relation to which it finds that any provision of 18 U.S.C. 202–209 has been violated.

(4) *Statement of employment and financial interests.* (i) Each Commission shall identify in its code, regulations or by-laws those officer and employee positions which are subject to the requirement of filing a statement of employment and financial interests.

(ii) At a minimum, each Commission shall require statements of employment and financial interests from the following employees:

(A) The Executive Director; and

(B) Employees in positions whose basic duties and responsibilities require the person to exercise judgment in making a Commission decision or in taking Commission action on

(*1*) Contracting or procurement; or

(*2*) Administering or monitoring grants or contracts.

(iii) A Commission may require other employees to submit a statement if it determines they are in positions having duties and responsibilities which require them to report their employment and financial interests in order to avoid involvement in a possible conflicts of interest situation and to protect the integrity of the Commission.

(iv) At a minimum, the required statement of employment and financial interest shall include the following:

(A) A list of the names of all corporations, companies, firms, or other business enterprises, partnerships, nonprofit organizations and education or other institutions—

(*1*) With which the employee is connected as an employee, officer, owner, director, trustee, partner, adviser, or consultant; or

(*2*) In which he or she has any continuing financial interests, through a pension or retirement plan, shared income, or otherwise, as a result of any current or prior employment or business or professionals association; or

(*3*) In which he or she has any financial interest through the ownership of stocks, bonds, or other securities;

(B) A list of the names of creditors, other than those to whom the employee may be indebted by reason of a mortgage on a property which he or she occupies as a personal residence or to whom he or she may be indebted for current and ordinary household and living expenses; and

(C) A list of interests in real property or rights in lands, including mortgages and trusts, other than property which he or she occupies as a personal residents.

(v) An employee required to submit a statement of employment and financial interests under these regulations shall submit that statement to the Federal Cochairman no later than 90 days after the effective date of these regulations if employed on or before that effective date, or 30 days after his entrance on duty.

(vi) Each employee shall report to the Federal Cochairman changes in, or additions to the information in an employee's statement of employment and financial interests on Sept. 30 each year. If there are no changes or additions, a report indicating that fact is required. Notwithstanding the filing of the annual supplementary statement, each employee shall at all times avoid acquiring a financial interest that could result, or taking any action that would result, in a violation of the financial interest and conflicts-of interest provisions of these regulations and the standards adopted by the Commission.

(vii) The interest of a spouse, a minor child, or a blood relation who is a full-time resident of the employee's immediate household is considered to be an interest of the employee.

(viii) If any information required to be included on a statement or a supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information on his behalf.

(ix) A Commission shall not require an employee to submit in a statement or supplementary statement any information about the employee's connection with or interest in a professional society or a charitable, religious, social, fraternal, recreational, public service, civic or political organization, or a similar organization not conducted as a business enterprise. For this purpose, educational and other institutions doing research or related work involving grants of money from or contracts with the Commission are considered business enterprises and are required to be included in an employee's statement of employment and financial interests.

(x) The Federal Cochairman shall hold each statement of employment and financial interests, and each supplemental statement, in confidence. The Federal Cochairman, the State Cochairman, and the Secretary are authorized to review and retain the filed statements. They shall not allow access to, or information to be disclosed from, a statement for any reason other than to carry out the purpose of this section. They shall not disclose information from a statement except as the Federal Cochairman determines for good cause shown.

(xi) The Federal Cochairman and the State Cochairman shall review statements filed under this Section to ascertain whether or not there exists any conflict or apparent conflict between the personal interest of any employee and the interest of the Commission. If any information or any statement discloses a conflict or apparent conflict, the Federal Cochairman shall advise the employee of the apparent conflict and give him an opportunity to explain it.

(xii) The statements of employment and financial interests and supplementary statements required of employees are in addition to, and not in substitution for or in derogation of, any similar requirement imposed by any law, or the regulations of any other Federal agency.

(xiii) If necessary, the Federal Cochairman shall take immediate remedial action to resolve any apparent conflict of interest, including changing the employee's assigned duties, disqualifying the employee for a particular assignment, or requesting the employee to divest himself of his conflicting interest. The Federal Cochairman shall refer for immediate processing cases involving suspension in accordance with § 540.207(e)(7).

(5) *Gifts, entertainment.* (i) A Commission's standards for employees on gifts and entertainment, at a minimum, shall contain the following provisions:

(A) Except as provided in paragraph(e)(5)(i)(B) of this section, no Commission employee or officer shall accept or solicit, directly or indirectly, any gift, gratuity, entertainment, loan or any other thing of monetary value, from a person who—

(*1*) Has or seeks contracts or grant relations or other business or financial relations with the Commission; or

(*2*) Has interests that may be substantially affected by the performance or nonperformance of the employee's or officer's official duty.

(B) Nothing in paragraph (e)(5)(i)(A) of this section shall prohibit—

(*1*) The solicitation or acceptance of any gift, gratuity, favor, loan, entertainment or any other thing of value which arises out of obvious family or personal relationships, such as those between the parents, children or spouse of the employee and the employee, so

long as it is clear from the circumstances that it is the family or personal relationship rather than the business of the person concerned that is the motivating factor;

(2) The acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance;

(3) The acceptance of loans from banks or other financial insitutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans; and

(4) The acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal value.

(ii) It is the intent of these requirements that an employee avoid any action, whether or not specifically prohibited, which might result in or create the appearance of using public office for private gain, giving preferential treatment to any person, impeding Commission efficiency or economy, losing complete independence or impartiality, making a Commission decision outside official channels, or affecting adversely the confidence of the public in the integrity of the Commission.

(6) *Other provisions.* (i) An employee shall not engage in outside employment or other activity not compatible with the full and proper discharge of the duties and responsibilities of his Commission employment.

(ii) For the purpose of furthering a private interest, an employee shall not, directly or indirectly use, or allow the use of official information obtained through or in connection with his Commission employment which has not been made available to the general public.

(iii) An employee shall not directly or indirectly use, or allow the use of, Commission property of any kind including property leased to the Commission, for other than officially approved activities. An employee has a positive duty to protect and conserve Commission property, including equipment, supplies, and other property entrusted or issued to him.

(7) *Reports, sanctions, appeals.* (i) Whenever it is reported that an employee has committed any act prohibited under any section of this Subpart or has any unresolved conflict of interest which may warrant the imposition of any of the sanctions provided in this Section, the reported violation or conflict shall be processed in substantial compliance with the procedure established in paragraphs (e)(7)(ii) through (iv) of this section. This procedure shall be in addition to any other procedure or sanction required by law.

(ii) Any report under paragraph (e)(7)(i) of this section shall be investigated by Commission staff or may be referred by the Federal Cochairman to the Department of Commerce for investigation. Any investigation shall have as its objective the development of all relevant and material facts and circumstances for the information of the Federal Cochairman and the State Cochairman. The results of the investigation shall be reported to the Federal Cochairman, the State Cochairman, and the Secretary. The two Cochairmen shall study all presented evidence and recommendations and allow the employee involved to present any evidence or statements. After consideration of all material, the two Cochairmen shall determine whether the employee has engaged in a prohibited activity or has an unresolved conflict of interest.

(iii) Any person subject to the Conduct Standards in this Section, who is determined under the procedure in paragraph (e)(7)(ii) of this section to have committed any act prohibited under any Section of this Chapter or to have unresolved conflict of interest which, it is deemed, impairs the Commission's integrity or public confidence in the Commission, shall be dismissed from employment with the Commission or shall undergo suspension (without pay), reprimand, loss of promotion or other sanction as the Federal Cochairman and the State Cochairman jointly deem suitable to impose or require under the circumstances. Such decision may be appealed as provided in the next paragraph.

(iv) An employee subjected to a sanction may appeal a decision of the Cochairmen to the full Commission for a final decision. During the pendency of the appeal, the decision of the Cochairmen shall not be implemented.

(8) *Notice to employees.* The contents of all conduct standards given in or required by this Subpart shall be brought to the attention of the employees of each Commission. Each employee shall certify in writing to the Executive Director that he has read and is familiar with the standards contained in this Subpart and the standards adopted by the Commission pursuant to this Subpart.

§ 540.206 Prohibition on use of Federal funds.

(a) No Commission shall use any funds received from the Federal Government to make, supplement or guarantee a loan.

(b) No part of the Federal grant funds shall be used by any recipient, either directly or indirectly, to assist, solicit, or encourage the relocating of any business establishment from one area to another or to assist, solicit, or encourage the transfer of contract or subcontract work which would result in a transfer of jobs causing unemployment in the area where work was previously performed, or to pay any part of the compensation or expense of employees who may at any time engage in such activities.

(c) No Commission shall use any funds received from the Federal Government for entertainment or gifts.

§ 540.208 Administrative requirements for recipients of Commission assistance.

(a) Each Commission shall adopt and apply the following standards for its recipients of financial assistance:

(1) For Grants to State and Local Governments, the following attachments in Office of Management and Budget (OMB) Circular A–102 (revised as of August 24, 1977)—

(i) A—Cash Depositories;

(ii) B—Bonding and Insurance;

(iii) C—Retention and Custodial Requirements for Records;

(iv) E—Program Income;

(v) F—Matching Share;

(vi) G—Standards for Grantee Financial Management Systems;

(vii) H—Financial Reporting Requirements;

(viii) I—Monitoring and Reporting Program In Performance;

(ix) K—Budget Revision Procedures;

(x) L—Grant Close-out Procedures;

(xi) N—Property Management Standards; and

(xii) O—Procurement Standards.

(2) For grants to and agreements with institutions of higher education, hospitals, and other nonprofit organizations, the following attachments in OMB Circular A–110—

(i) A—Cash Depositories;

(ii) B—Bonding and Insurance;

(iii) C—Retention and Custodial Requirements for Records;

(iv) D—Program Income;

(v)E—Cost Sharing and Matching;

(vi) F—Standards for Financial Management Systems;

(vii) G—Financial Reporting Requirements;

(viii) H—Monitoring and Reporting Program Performance;

(ix) J—Revision of Financial Plans;

(x) K—Closeout Procedures;
(xi) L—Suspension and Termination Procedures;
(xii) N—Property Management Standards; and
(xiii)O—Procurement Standards.

(b) The Federal Cochairman may grant exceptions from the requirements of the attachments listed in paragraphs (a) (1) and (a) (2) of this section when an exception is not prohibited under existing laws and in the best interests of the Commission or necessary to prevent undue hardships or inequity on a grantee or contractor. The Federal Cochairman shall inform the Office of Management and Budget (OMB) in writing with a copy to the Secretary, before granting a request by a Commission for an exception for a Commission financial assistance recipient or class of recipients. (It is the stated policy of the Office of Management and Budget to permit exceptions from Circular requirements only in unusual cases and the Federal Cochairmen are expected to reflect this in their decision.)

(c) If a Commission adopts a form which is a substitute for or is a deviation from a form specified in the attachments listed in paragraph (a) of this section, the Federal Cochairman shall inform OMB in writing with a copy to the Secretary, before the form is put into effect or use.

(d) *Cost principles and standards.* (1) *State and local governments.* When a Commission enters into a grant or contract with a State or local government, the Commission shall apply the principles and standards of Federal Management Circular (FMC) 74–4 for determining reasonableness, allowability and allocability of costs. Under this requirement, references in FMC 74–4 to the term Federal Government or Federal grantor agency shall be read as references to the Regional Commission. Except as authorized in Section C of Attachment B of the Circular, no Commission shall grant exceptions to the principles and standards of FMC 74–4 for any grantee or contractor.

(2) *Educational institutions.* When a Commission enters into a grant or contract with an educational institution, it shall apply the provisions of OMB Circular A–21 (formerly FMC 73–8) for determining the reasonableness, allowability and allocability of costs. Under this requirement, references in A–21 to the Federal Government or to the Federal grantor agency shall be read as references to the Regional Commission.

(3) When a Commission enter into any contract with an individual or a commercial organization, it shall apply the provisions of Subpart 1–15.2 of the Federal Procurement Regulations (41 CFR Subpart 1–15.2) for determining the reasonableness, allowability, and allocability of costs. Under this requirement, references in Subpart 1–15.2 to the term Government, Federal Government or Federal agency shall be read as references to the Regional Commission.

(4) When a Commission enters into an agreement with a nonprofit organization not covered under paragraphs (g)(1) or (2) of this section, it shall apply the provisions of Department of Commerce Cost Principles for Non-Profit Organizations or an equivalent set of Federal cost principles (such as 41 CFR 1–15.2) for determining the reasonableness, allowability and allocability of costs. Under this requirement, references in this document to the term Department, Government, Federal Government or Federal agency shall be read as references to the Regional Commission.

(5) Each Commission shall incorporate the appropriate requirements of this Section into the terms of its grants, contracts and agreements.

(e) In any specific situation involving the transfer of funds to a recipient, a Commission must decide whether to use a grant instrument or a contract.

(1) If the principal purpose of the instrument is the acquisition, by purchase, lease or barter, of property or services for the direct benefit or use of the Commission, the Commission shall use a contract and may not use a grant.

(2) If the principal purpose of the instrument is financial assistance to the recipient in order to accomplish a public purpose of support or stimulation authorized by Title V of the Public Works and Economic Development Act, the Commission should use a grant and not a contract. However, the Executive Director may determine in a specific instance that the use of a contract is appropriate.

(f) Financial assistance activities of a Commission shall meet the following requirements:

(1) A grant or contrat may be entered into by a Commission only for a purpose or purposes authorized by Title V of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3181 *et seq.*

(2) No grant or contract shall be awarded unless there is an approved application from the proposed recipient which discloses how the funds will be used. Each grant or contract shall contain a description of the work to be accomplished under the grant or contract (the "scope of work"). The scope of work shall identify the specific activities which are supported by the financial assistance and the final work products, if any. Each grant or contract shall identify the goals and objectives of the assistance and shall be supported by approved plans, budgets and other information submitted to the Commission by the applicant/recipient which indicate how the funds will meet these objectives and enable the Commission to perform technical evaluations and cost/price analyses.

(3) No grant or contract may be entered into by a Commission for the purpose of funding an individual's salaried position in a unit of government or for paying the salary of any individual. However, all or any part of the compensation (and allowable benefits) of an individual may be a cost charged to grant or contract funds as an expense of carrying out specific duties detailed in the scope of work for the grant or contract. The amount of cost charged will depend upon the services rendered and the extent of benefits received pursuant to grant or contract objectives in accordance with applicable cost principles. Under no circumstances shall grant or contract funds be used to pay any portion of the compensation of a Governor or an Alternate or any person who acts as an Alternate.

(4) A grant or contract with a unit of State or local government shall not provide for payments to cover expenses for general activities which the unit normally incurs to carry out its general governmental responsibilities. Such assistance would be an unauthorized subsidy. A grant or contract shall be for specific, defined tasks or projects.

(5) The Commission shall assess the results of each completed project in relation to its established objectives, measure the overall results of program accomplishments in terms of contributions to each Commission's basic goals and objectives and assure that the evaluation activities are fully documented in the project files. Monitoring and final evaluation and approval of performance under a grant or contract shall not be delegated or assigned to a person who is not an official or employee of the Commission.

(g) *Audit resolutions and project closeout.* (reserved)

(h) Each Commission shall adopt the following:

(1) Procedures for keeping apprised of the status of each project assisted;

(2) Procedures requiring that contract or grant changes be accomplished by formal amendment of the agreement.

that there be adequate consideration for the change if it involves increased funding, and that project files are kept up to date;

(3) Procedures to ensure that payments to recipients do not exceed identified requirements;

(4) Policies for differentiating administrative expenses from programmatic expenditures; and

(5) Requirements for the establishment and maintenance of an official file on each project.

(l) The Secretary shall assist each Commission, when appropriate, to adopt any regulations necessary to implement the provisions of this Section.

§ 540.210 Nondiscrimination

The provisions of Title IV of the Civil Rights Act of 1964 shall apply to the Commission as an agency empowered to extend Federal financial assistance and as a recipient of such assistance. The Commission shall adopt as its own the Regulations of the Department of Commerce implementing Title VI (15 CFR, Subtitle A, Part 8). The Commission and every program or activity receiving Federal assistance directly or indirectly from or through the Commission, shall be subject to an comply with those Regulations. Since a primary objective of such Federal financial assistance is to provide employment, the employment practices provisions of those Regulations shall be applicable to the Commission and to its Federally assisted programs and activities. The Commission may issue rules, regulations, orders and instructions to further implement Title VI and the Regulations, and may obtain assistance from the Department of Commerce, with its concurrence, to aid the Commission and the Federal Cochairman in carrying out its responsibilities under Title VI and the Regulations.

§ 540.211 Remedies for noncompliance

In appropriate circumstances, and after due notice and adequate opportunity for hearing, the Secretary may suspend the financial assistance provided under Title V of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3181 *et seq.*, upon the formal finding that the Commission is in violation of the terms of the grant offer or the provisions of these Regulations.

Robert M. Ramer,

Deputy, Office of Regional Development; Acting Special Assistant for Regional Development.

June 1, 1979.

[FR Doc. 79-17015 Filed 6-6-79; 8:45 am]

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Federal Register

Thursday
June 7, 1979

Part IV

Department of Transportation

Materials Transportation Bureau

Display of Hazardous Materials Identification Numbers; Improved Emergency Response Capability; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Materials Transportation Bureau

[49 CFR Part 172]

[Docket No. HM-126A; Notice No. 79-9]

Display of Hazardous Materials Identification Numbers; Improved Emergency Response Capability

AGENCY: Materials Transportation Bureau, Research and Special Programs. Administration, Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Materials Transportation Bureau (MTB) proposes to adopt a numerical identification system for hazardous materials transported in commerce. These identification numbers would be required to be displayed on shipping papers and packages in association with the required hazardous material descriptions. They would be required to be displayed on orange panels affixed to portble tanks, cargo tanks, and tank cars containing hazardous meterials. The purpose of the proposed regulations is to improve the capability of emergency response personnel (fire, police, et al) to quickly identify hazardous materials and to assure the accurate transmission of information to and from the scenes of accidents involving hazardous materials.

DATES: Comments must be received on or before August 7, 1979.

ADDRESS COMMENTS TO: Dockets Branch, Materials Transportation Bureau, Washington, D.C. 20590 (telephone: 202-472-2726). It is requested that five copies be submitted.

FOR FURTHER INFORMATION CONTACT: L. Metcalfe, Standards Division, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590, 202-426-0656.

SUPPLEMENTARY INFORMATION: This Notice proposes the adoption of an identification numbering system for hazardous materials based primarily on the system adopted for worldwide use by the United Nations Committee of Experts on the Transport of Dangerous Goods. Use of the identification numbering system will provide for improved identification of hazardous materials and the communication of information concerning the handling of such materials when they are involved in transportation accidents. Display of identification numbers would be required in connection with descriptions on shipping papers, on packages of 110 gallons capacity or less, and would be required on orange panels affixed to portable tanks, cargo tanks and tank cars. The MTB believes the use of identification numbers will provide an improved capability to quickly obtain and transmit accurate information about hazardous materials involved in accidents in order to obtain information necessary to deal with such accidents. Another element the MTB believes to be important in providing an improved emergency response capability is a manual it has under development. It will associate identification numbers with brief, concise instructions that will assist emergency personnel during the first minutes of a hazardous materials accident.

Many expressions of interest concerning the need to improve hazardous materials emergency response capabilities have been received from members of Congress, the National Transportation Safety Board, the Secretary of Transportation's Hazardous Materials Task Force, state officials, and most important, fire, police and other emergency service organizations. The MTB believes that the improvements proposed in this Notice will, if adopted, provide the basis for an improved emergency response capability that is not presently available through direct use of technical names; e.g., hexadecyltrichlorosilane (UN 1781), to identify hazardous materials and accurately and quickly communicate information about them.

The primary drafters of this Notice are Alan I. Roberts and Lee E. Metcalfe of the Materials Transportation Bureau.

Background

On June 25, 1975, the Hazardous Materials Regulations Board (HMRB) published in the **Federal Register** (40 FR 26688, Docket HM-126) a request for public comment on hazard information systems. The request listed nine factors to be considered in the evaluation of a hazard information system:

1. Capability of the general public to recognize the existence of the immediate dangers presented by a material;
2. Presentation of information in a manner so that the general public will be able to accurately transmit basic information to emergency response personnel;
3. Compatibility, intermodally and internationally;
4. Capability of application to both bulk and non-bulk shipments;
5. Capability of functioning without use of a manual or other subsidiary documents;
6. Capability to meet the needs of emergency response personnel, carriers, shippers, and the general public;
7. Capability of integration with documentation, packaging, and vehicle identification requirements to help insure accuracy;
8. Capability of implementation without undue economic burden on shippers and carriers; and
9. Capability of indicating degree of hazard.

The request for public comments went on to describe nine different systems that either had been proposed to the Department or were known to be supported by one or more segments of the affected industry or emergency response community. An exception was the DOT hazardous materials information system which was previously subject of a rulemaking proposal under Docket HM-103. The MTB has considered all of these systems and the comments that were received in response to the request, and is now of the view that none are acceptable for adoption. The following is a summary of some of the reasons for this conclusion:

1. At least two of the systems would employ a preassigned before shipment numbering technique to provide specific action information or an indication of the level of hazard (Hazchem, NFPA 704). Although preassignment of numbers presumably would be made by MTB, commenters have not recommended any criteria except for flammability. Use of preassigned numbers would impose substantial delays on the introduction of new materials into commerce and the extensive effort and resources necessary for implementation would make such a system unworkable.
2. Several of the systems would employ numbers or words based primarily on the hazards or properties of a material (HI, RID/ADR, USCG, IATA, Union Carbide, Air Products, Pennwalt). The MTB believes that reliance on the identification of hazards alone is no longer a feasible approach, that specific identification of many materials is essential to the accomplishment of an improved emergency response program. Communication of hazards is important in the initial phases of an accident, and appropriate first contact handling information can be based on hazards; however, many accident situations dictate the need for more detailed information on how to deal with specifically identified materials. This is particularly so in accidents involving

combinations of hazardous materials as is frequently the case in major train derailments.

3. One system would call for shippers to furnish the carrier an emergency response form that would move with each rail car (Canadian Transport Commission). While the basic idea has merit, the MTB considers that (1) such a system would result in the production of emergency response information widely varying in content based on subjective judgments of different shippers, except where industry associations might prepare response information for common materials; (2) the enforceability of such a requirement without detailed Government guidelines would be questionable; and (3) while such a program may be workable for bulk shipments and full loads, the huge amount of paperwork involved would make its implementation impracticable for less-than-carload shipments.

4. One system would call for display of the order of severity in three risk categories—health, flammability, and reactivity (NFPA 704). The MTB and its predecessor have examined the utility of such a system on several occasions. However, no criteria have been suggested for the health and reactivity presentation; therefore, qualitative evaluations must be made in assigning levels of hazard (hence, the preassignment factor discussed in 1 above). In addition, this proposed system places too many hazard factors into three fields, thereby precluding appropriate assessment. Examples are the assignment of health hazard level three to chlorine, liquid oxygen, sodium hydroxide (lye), hydrogen sulfide, and tetraethyl-lead, and the assignment of reactivity level one to calcium oxide (quicklime), antimony pentachloride and chromic acid. The kind of hazard and the extent of the hazard posed by each of these materials is very different from that posed by the others that share the same assigned number. The appropriate action required to handle accidents invoving these materials also is quite different in each case. Consequently such a system is not appropriate for use in a transportation emergency response situation.

The MTB believes that determination of the degree of hazard beyond an examination of the properties of a material requires an assessment of the environment and circumstances at the scene of an accident. In most instances, a preliminary determination of risk can be made based on the information obtained at the scene of an accident. If the initial assessment reveals that a potentially serious situation exists; e.g., a large spill from a tank vehicle placarded POISON and bearing an identification number, then, beyond that basic initial response information provided in the proposed manual, a call should be made to the central response information center to obtain expert advice in fully assessing the level of risk based on the accident environment; i.e., topography, wind direction, proximity to habitations, configuration of the accident, etc., and the properties and quantity of the spilled material in relation thereto. It is not conceivable that all the factors that must be considered in determining risk can be transmitted directly from placards on transport vehicles. Therefore, the identification numbering system has been selected as the best means to assist in quicker and more accurate determinations of risk.

The MTB extends its appreciation to the many individuals, companies, and organizations for their considerable efforts in preparing and submitting comments in reply to the Request for Public Comment. A number of comments were accepted and previously adopted under Docket HM–112, and others not directly related to the proposals in this Notice will be considered in a future rulemaking action.

Of all the comments received in response to the Request, the MTB finds those presented by the Association of American Railroads (AAR) particularly supportive of the concepts on which the proposals in this Notice are based. For this reason, we restate a large portion of the AAR comments:

The Basic Requirements of a Hazard Information System

The communication of hazard information is a very difficult task. It must be capable of use by many different groups, each with a different need for information, and it must be usable in an emergency environment without requiring the use of potentially unavailable supplementary materials. The information which it transmits must be easily recognized, quickly understood and accurately communicated.

Who Needs a Hazard Information System?

The most general answer to this question is that anyone who may potentially come in contact with a transportation accident involving hazardous materials needs an information system in order to be able to make intelligent decisions about the safety of his own life and property and about the lives and property of others.

The general public is the broadest and most inclusive subcategory of people with a need. This group includes both those who are at the scene of an incident and know it and those who are in proximity and are not aware of it. As a rule of thumb, it is probable that no system of hazard information will protect those who are not able to immediately view the sight of the incident except as it alerts those who are in proximity and then pass along the message.

Carrier and shipper personnel are the next group of people with a need for a hazard information system. They may be considered to have certain minimal training in either necessary response countermeasures or in the ability to communicate the fact that an incident involving hazardous materials has taken place.

Emergency response personnel, generally, are taken to be the police and fire departments serving the area in which the hazardous incident takes place. Despite the wide variation in training and competence of such personnel, they are assumed, at a minimum, to be familiar with routine fire fighting and evacuation procedures and, at a more sophisticated level, may be able to apply advanced levels of countermeasure technology.

Expert emergency response teams consist of those with special training in dealing with hazardous commodities. They may be in the employ of shippers and manufacturers, carriers, and governmental agencies. They consist of that group with the highest possible degree of knowledge about the specific commodities involved in particular incidents.

What Is Required of a Hazard Information System?

Each of the four groups outlined above has different needs for a system of hazard information.

The general public should be made aware immediately that a hazard exists and should be able to communicate the very basic facts of that hazard to experts with a higher level of knowledge. These basic facts include the location of the incident, the type of vehicle involved, the occurrence of leakage, fire or explosion and, if vehicle markings are seen, transmission of the fact of such markings or of the wording on them.

Carrier and shipper personnel should be able to communicate all of the information possessed by the general public and, in addition, they should be able to identify the nature of the hazard involved. By having access to the

shipping papers, the carrier and shipper personnel will be able to pass along detailed information concerning the commodities involved to their superiors and to the first emergency units to arrive at the scene. In some instances, carrier and shipper personnel information such as that provided by CHEMTREC.

[Emergency] response personnel require immediate information on the nature of the hazards of the materials involved and any special handling requirements. They should be able to use the information obtained from lower levels of response sophistication to access more detailed data to assist them in handling the specific product involved under the circumstances prevailing at the time of the accident.

Expert emergency response teams need to be able to use the information obtained at the scene and from lower level response groups to provide the most detailed and sophisticated direction for the handling of the incident. They should also be able to assist in proper cleanup and disposal activities following the immediate minimumization of threats to life and property.

Summary

Having analyzed the abilities and needs of those who will have contact with any hazard information system, its essentials are easily stated:

- It must be immediately recognizable as a system describing the existence of a hazard.
- It must be readily understandable by anyone who comes in contact with it.
- The information gained by anyone who comes in contact with it must be readily communicable to all others with a need to know.
- For those with a greater degree of ability, it must be indicative of a reponse pattern applicable to the particular incident.
- It must be uniform among all transportation modes.
- It must be capable of accommodating new hazardous commodities and, for higher levels of sophistication, it would be desirable that it be capable to easy computer implementation.

The Components of the Hazard Information System Developed by the AAR

In this section of the AAR's comments, the primary component parts of our hazard information system will be discussed and, wherever possible, related to the needs of various parties as recognized above.

Shipping Papers

The railroad industry believes that primary reliance must be placed on the shipping papers for information on the name of the product involved and its hazards. Historically, the shipping paper has been seen as the only single source of complete identifying information which travels with a shipment of hazardous materials. Because of all the important exemptions which appear in the regulations for the labeling and placarding of hazardous materials, the complete identification of particular shipments can be accomplished only through the shipping papers which accompany it. The recognition of deficiencies in the current use and content of shipping papers has led to the development of recommendations by the AAR for their correction.

Currently, shipping papers identify only the required classification, that is, the "primary hazard" of the material. This is no longer sufficient; the regulations must be amended to require the inclusion of all major hazards ["major hazards" are those recognized to the tertiary level] for dangerous commodities. This will mean that a shipment of, for instance, sulphuric acid must now be listed on [the] shipping paper as "SULPHURIC ACID, corrosive material, poisonous liquid, Class B."

To make the presence of hazardous materials obvious on the shipping paper, the proper shipping name and all hazards must be listed first and consecutively in each commodity's freight description. The order of materials (regulated or non-regulated) as listed on the shipping paper can be random if this previously described format is employed. The uniform presentation of information on shipping papers will enable transportation and emergency response personnel to readily identify hazardous materials from their descriptions and classifications.

In order to hasten the ability of on-scene personnel to contact those with expert technical information about the commodities involved, an emergency telephone number must be added to the shipping document. This telephone number must provide, on a 24-hour basis, immediate access to emergency assistance from the shipper, a designated industry response group, CHEMTREC, The Bureau of Explosives, or whatever source is deemed by the shipper to be best. It is of the utmost importance that both the immediate and long-term response to a hazardous materials incident be initiated as quickly as possible. In view of the potential for reducing injury, danger to property and adverse environmental consequences, the requirement for an emergency telephone number on shipping documents, to be placed there by the shipper, is a minimal burden.

The railroads of the United States have established a numerical Standard Transportation Commodity Code (STCC) for identifying hazardous materials. The use of STCC numbers is required by mutual railroad agreement and the number is exhibited on waybills covering all shipments. Recent efforts by the STCC Technical Committee of the AAR have resulted in the development of a new series of STCC numbers whose purpose is to specifically identify discrete hazardous materials. This "49-series" was made effective January 1, 1976 and is the vehicle for hazardous materials management which the transportation industry has long needed.

STCC numbers are 7-digit combinations assigned to specific commodities based on hazard characteristics. Within the 7-digit STCC number a means is provided to allow the quick identification of primary, secondary and, in some cases, tertiary hazards, whether or not hazards subordinate to the primary hazard are now recognized by DOT. The 49-series begins with the first two digits, 49, as an identifier for hazardous materials. The next three digits identify the potential hazards of the materials and the final two digits identify the specific commodity * * *.

It is important to note that many materials properly shipped under a general classification, *i.e.*, "flammable liquids, n.o.s.", have now been given specific 49-series STCC numbers based on the specific tariff description currently used. Their movement in transportation is well documented, and therefore, these commodities, as listed in STCC Tariff 1–D (or subsequent revisions), should henceforth be listed in § 172.5 as proper shipping names. The railroads request that the Hazardous Materials Regulations require the shipper to insert the STCC numbers on all shipping papers tendered with goods for transportation. Only [the] shipper knows enough about the materials he produces and ships to ensure the accurate assignment of STCC numbers.

The STCC Code is designed to be flexible and to allow for future expansion to include both new commodities and new combinations of [hazard] classification; a section is already reserved in the STCC Code to designate substances which are environmentally hazardous as defined

by the Environmental Protection Agency.

The precise logic which has been employed to create the 49-series has resulted in numbers whose utility far surpasses those proposed by other organizations including MCA and the United Nations. The middle three digits provide a complete set of numbers to reveal all major potential hazards of each product and this unique feature does not exist in any other system of which the AAR is aware * * *.

The AAR insists that no secondary, untried system of "hazard numbers" be implemented. The 49-series STCC Code is now in existence and in use and the next revision of the Bureau of [Explosives] publication "Emergency Handling of Hazardous Materials in Surface Transportation" will contain a complete listing of all commodities in the 49-series code and the appropriate hazard information for handling emergency situations involving these commodities. A cross reference index will be supplied to locate commodity information if only the 49-series STCC number is known; in addition, a growing number of rail carriers will be able to provide hard copy information about the commodities involved by entering the STCC numbers of commodities involved in incidents into their computers.

Out of an abundance of caution, it must be emphasized that the STCC Code does *not* make the railroads' system just another "numbers game" Hazard Information System. STCC numbers allow precise commodity identification and verification, allow computer accessing for commodity information, provide a means for the retention of hazardous materials movement statistics and assist in the computer generation of shipping documents. They are not intended for use by the general public and, thus, require no first-level-of-response decoding. Their primary purpose is fulfilled at the shipper/carrier interface and in the ability of the shipper or carrier to make precise commodity information known to emergency personnel * * *.

Emergency Action Guide

A unique feature of the AAR Hazard Information System is the Emergency Action Guide for Hazardous Materials Incidents * * *.

The purpose of the Emergency Action Guide is to indicate, primarily for carrier personnel, an initial response pattern to be taken to save lives and prevent injuries. Such an initial response will usually not extend beyond the first fifteen minutes or so following an accident and, with this in mind, the Guide identifies the basic nature of the hazard for each classification of material and describes the "ground rules" for initial emergency action. The Guide, while not suggested as a mandatory requirement, is proposed to be included as part of a trainman's timetable for relevant operations and could be displayed by poster in cabooses and locomotives. When reproduced on durable material, and perhaps folded, such a guide could also be carried in truck cabs, fire engines, and police vehicles. Recommended procedures for using the Guide would include instructions to those to whom it is issued to read it in advance of an emergency in order that, when an emergency occurred, the particular applicable section of the Guide could be easily found.

A basic purpose of the Emergency Action Guide is to fill the gap between the accident and the receipt of information from the party responding to the emergency telephone number and, even if the Guide was not part of the information carried on local community emergency vehicles, it could be available from the train crew, or from the truck driver, to assist the first emergency units on the scene.

The above is not a complete reproduction of the AAR's comments, nor is the copyrighted AAR Emergency Action Guide reproducible in this notice. Sample pages submitted by the AAR may be reviewed in the docket file. However, the quoted comments are representative of AAR's viewpoints concerning matters covered by this Notice. The MTB agrees that primary reliance must still be placed on shipping papers for information relative to "non-bulk" shipments, and that while the display of information on shipping papers has considerably improved following the adoption of regulations under Docket HM-112, further improvements are necessary. The MTB agrees that an identification number should be assigned to hazardous materials for rapid communication of information and employment in the emergency response system. The MTB agrees with the AAR that an emergency action guide or emergency response manual should be employed in the improved system. However, the MTB does not fully agree with the AAR's recommendations on how to accomplish improvements in these three areas.

The Identification Numbers

The MTB is proposing that the UN numbering system be used as the basis for implementation of an improved emergency response system. For a number of years, the United Nations Committee of Experts on the Transport of Dangerous Goods has been assigning identification numbers to specific chemicals and generic descriptions for "dangerous goods." This system is becoming more and more recognized on a worldwide basis. It is referenced in the Dangerous Good Code of the International Maritime Consultative Organization and is under consideration for adoption in the forthcoming standards to be implemented by the International Civil Aviation Organization. This system also is referenced in various procedural documents under development pertaining to international trade documentation. The MTB recently was advised by its Canadian Government counterpart, Transport Canada, that UN identification numbers will be used within Canada in connection with shipments of hazardous materials and that the numbers will be the basis for the Canadian emergency response system.

Several important factors were considered by the MTB in deciding to propose the use of the basic UN numbering system for improved emergency response information:

1. The numbers are assigned by Governmental authorities under the aegis of the Economic and Social Council of the United Nations and have the same meaning throughout worldwide commerce.

2. They have been assigned specifically to identify hazardous materials (dangerous goods) and are intended to have no other meaning or use. Thus, their formulation and application is not dictated by any other competing or overriding considerations.

3. They are assigned, for the most part, to materials requiring separate recognition that are shipped in commercial quantities. Therefore, only four digits are necessary. Other chemical identifier systems have as many as nine digits. The fewer the digits in an identification number, the greater its reliability in an emergency response system employing radio and telephone communications.

4. Numbers are assigned on the basis of the next open number without regard to the particular chemical properties of a material, thereby, avoiding any problems in the availability of numbers for future assignments. Availability of numbers almost inevitably would be a problem if the internal arrangement of digits was meant to have some special meaning; e.g., a chemical grouping or properties assignment. The use of

identification numbers will (1) serve to verify descriptions of chemicals; (2) provide for rapid identification of materials when it may be inappropriate or, even worse, confusing to require display of lengthy chemical names on vehicles; (3) assist in preparation of correct documentation when language translation is necessary; and (4) be an aid in speeding communication of information on materials from accident scenes and the return of more accurate emergency response information. For example, the UN number for acetone is 1090, while the number for acetone cyanohydrin in 1541—a distinction of great importance in conveying appropriate emergency response information.

It is proposed to list UN or U.S. identification numbers in a new column 3a of § 172.101. The number will be preceded by "UN" if the description preceding it is exactly the same or sufficiently similar to the international description (as displayed in the IMCO Code). If the description in § 172.101 is significantly different but addresses the same material as a UN entry, it will be given the same number but will be preceded by "NA" in the United States and Canada. A four-digit number beginning with "9" indicates there is no corresponding UN description (specific or generic) for the material assigned that number. This is the mechanism the MTB and Transport Canada propose to use to assign identification numbers to materials, such as hazardous substances, that have not as yet been assigned numbers by the United Nations Committee of Experts.

The AAR is to be complimented on its attempts to implement a hazardous materials identification numbering system. Its efforts in this regard have, in MTB's opinion, led the way towards providing an improved emergency response capability for hazardous materials. This Standard Transportation Commodity Code (STCC) system, in the absence of any established alternative, is being used in U.S. rail transport with increased frequency. Nevertheless, the MTB believes that what it is proposing in this Notice is preferable to the STCC system as a national, multimodal system for the following reasons:

1. While the 49 STCC series is not to be used for economic purposes, by necessity its formulation was constrained by the need for it to "bridge" into other STCC series numbers established for freight rating/statistical purposes. The following STCC listings illustrate this point:

Specified name in STCC tariff 1-G	STCC number
Combustible liquid n.o.s. (asphalt tile plasticizer)	49 154 06
Combustible liquid n.o.s. (plasticizers, paint, lacquer or varnish)	49 154 10
Combustible liquid n.o.s. (belt dressing)	49 154 16
Combustible liquid n.o.s. (electric wire saturating or finish compound, paraffin base)	49 154 18
Combustible liquid n.o.s. (bay rum)	49 154 20
Combustible liquid n.o.s. (perfumery)	49 154 22
Combustible liquid n.o.s. (after shave lotions)	49 154 24
Combustible liquid n.o.s. (polishing wheel cement thinner)	49 154 26

It is obvious that many STCC entries would serve no useful purpose for improved emergency response. There are a number of entries in Section 172.101 that are end-use terms, a practice which should not be expanded unless proven necessary.

2. If the descriptions in § 172.101 are greatly expanded, as suggested by the AAR, the undesirable result would be reduced accuracy and rapidity of access to information that is essential.

3. The STCC identification numbering system is published in a tariff which is on file with the Interstate Commerce Commission. Additions or deletions are made by, or under the supervision of, representatives of the railroad industry. Neither the transfer of all the listings for hazardous materials in the STCC Tariff nor incorporation of the tariff by reference is appropriate for publication in the Department's Hazardous Materials Regulations. If the AAR believes there are materials inappropriately described by generic descriptions in § 172.101, it should petition the MTB to describe each of them by technical name, thereby affording public participation in a rulemaking proceeding.

4. Recognition of the STCC system is limited to the United States and even within the United States its acceptance and use is further limited—primarily to the shipment of materials by railroad. It is not recognized on a worldwide basis, nor is it likely to be in light of the now-established UN numbering system and the growing applicaton of that system.

Display of the Identification Number

The MTB proposes to require the display of the identification number, as listed in proposed column 3a of § 172.101, on all shipping papers as the third element of a basic description (immediately following the hazard class entry) and on the outside of packagings of 110-gallons capacity or less (immediately following the prescribed shipping name of contents). It also proposes to require that the number be displayed on orange panels affixed to portable tanks, cargo tanks, and tank cars. While not a part of this proposal, the MTB will consider in the future the need to expand the required display of the orange panel to other than bulk shipments of materials.

The MTB believes that the display of the identification numbers must be as uniform as possible to enable ready recognition by emergency response personnel. Further, the MTB recognizes that, with display of the identification numbers on vehicles, it may not be necessary to expand the name marking requirements for tank cars and cargo tanks—an alternative of questionable benefit when complex chemcial names are involved. The display of the numbers on the orange panel will lead to rapid identification of contents. If an identification number addresses a generic description, and such a description is considered inadequate for a particular material, the MTB believes the material should be described in § 172.101 by technical name with an identification number assigned to it following an appropriate rulemaking proceeding. The MTB recognizes that it may have to consider a number of additions and changes to the list of hazardous materials in the future. Concerning the marking of identification numbers on packages, two major factors were considered. First, freight personnel often became the first contact "emergency" personnel when spills and leaks occur. The MTB visualizes that they will be able to make use of the manual in the same manner as emergency response personnel. Sole dependence on complex chemical names without reference to an identification number may lead to an erroneous response. This same view applies to emergency response personnel coming into contact with packages directly in vehicles, on freight docks, or elsewhere. The second factor is the value of the identification number in verifying the shipping information displayed on documents with the information displayed on packages to preclude error.

The Manual

One of the principal comments the HMRB received in response to its proposals under Docket HM-103 was the view that the proposed system (HI) placed heavy reliance on a manual that the HMRB suggested would be placed in each of the 392,000 emergency vehicles (fire, police, etc.) in the Nation. At approximately the same time as the initial proposal under HM-103, the Office of Hazardous Materials initiated distribution of its "Emergency Services Guide for Selected Hazardous Materials" which provides guidance

during the initial phases of an emergency for 45 selected materials that are transported in bulk quantities. To date, more than 880,000 copies of the Guide have been distributed to fire, police, and other emergency services organizations without charge. This fact, plus information that good use has been made of the manual, reinforces the MTB's view that a manual should be a viable part of this improved emergency response effort. It will serve to provide immediate emergency response information, especially important during the first minutes when many judgements and decisions must be made.

The MTB has undertaken the development of a manual of approximately 100 pages that will address virtually all hazardous materials transported in commerce. The manual is being developed on the principle that its statements of information and recommended actions must be concise and clearly understood. In examining other manuals, it is evident that there are only a limited number of recommendations (instructions) that can be given in a manual even though the recommendation may address hundreds of materials. Rather than write a manual with separate instructions for each material—a method that would be unduly burdensome, expensive, and unnecessary—the MTB is planning the manual according to the following format. At the beginning of the manual there will be two lists of virtually all domestic and international shipping names for hazardous materials. The first list will be arranged in numerical order of identification numbers, and the second list in alphabetical order. In both lists, there will be a page reference number associated with each entry. The numbered pages, approximately 60 to 70, will contain initial emergency response information and instructions. Many materials calling for the same initial emergency response action will be covered by the same page of information and instructions. The information pages are being developed in a style similar to those contained in the "HI" manual proposed under Docket HM–103.

The MTB believes that, in many instances, the manual will be all that is needed at the scene of an incident to terminate a minor event or to keep a minor event from becoming a major event of great consequence. However, when a situation requires further assistance, the manual refers the user to CHEMTREC (Chemical Transportation Emergency Center) and other organizations to obtain more detailed information and the help of technical experts.

Other features of the manual under development include (1) display of certain chemical descriptions in red to indicate when evacuation may be necessary; (2) evacuation tables related to small and large spills of the materials listed in red; (3) a page devoted to the display of placards with an indication that the recommendation on a particular page should be followed relative to each placard if, for some reason, shipping papers are not available or the identification number is not displayed; and (4) a typical shipping paper highlighting the description of a hazardous material and its identification number.

Exclusions

The proposals in this Notice do not apply to any material for which its proper shipping description does not have an associated identification number displayed in column 3a of § 172.101. Included in this category would be Consumer commodities, ORM–D and classes A and B explosives.

Consumer commodities properly classed ORM–D due to their quantity and form are not considered to pose a risk sufficient to warrant the application of these requirements. Classes A and B explosives, while under consideration for inclusion in the future, will have to be reviewed in greater detail to determine if a large number of identification numbers are necessary to make more finite distinctions in their risks or if a complete restructuring of the explosives descriptions would be appropriate. The MTB believes that, at the present time, it is desirable to use the "A" and "B" references for explosives presently displayed on shipping papers and placards for direct application in the manual and for communications.

Other Actions

This rulemaking proposal is considered to be a matter of high priority to the MTB. Therefore, other proposals pertaining to the hazardous materials communications regulations will be dealt with in two separate rulemaking actions. Included in these actions will be proposals to (1) permit the use of certain international descriptions (IMCO and forthcoming ICAO descriptions emanating primarily from the UN recommendations); (2) require further description for certain n.o.s. entries; (3) prescribe additional labeling requirements and permit use of certain newly adopted international labels; (4) require a special marking on portable tanks, cargo tanks and tank cars containing unodorized LP gas; and (5) address a number of petitions pertaining to shipping papers, certifications and placarding.

Implementation: Priorities and Costs

The MTB views the timing of the implementation of requirements proposed in this Notice as the major feature of its cost. This view is based on factors such as the present inventories of preprinted shipping documents, premarked (name of contents) inventories of packagings, and the necessary training and education associated with the implementation of the procedures necessary to comply with the regulations proposed herein if they are adopted. Therefore, the MTB believes it should make a statement concerning its contemplated implementation of the regulations proposed in this Notice.

The highest priority will be placed on implementation of documentation and identification (the orange panel) requirements applicable to transportation of hazardous materials in portable tanks, cargo tanks and tank cars. The MTB believes the mandatory compliance date should be no more than one year after the date of publication of the final rule.

The second highest priority will be placed on implementation of the documentation requirements for hazardous materials in packaging (other than bulk) excluding those, such as Consumer commodities, ORM–D, that will not be assigned identification numbers. The MTB believes the mandatory compliance date should be no longer than one year after the date of publication of the final rule.

The lowest priority will be assigned to packaging (less than 110-gallon capacity) markings. The MTB believes that two years should be provided for implementation or, as an alternative, a "grandfather clause" should be provided for packagings in stock prior to the effective date of the new regulations.

Concerning the display of identification numbers on orange panels, the MTB has obtained preliminary cost figures from a major supplier of labels and placards and has determined that, depending on the quantities ordered, the costs of prenumbered panels would be approximately as follows: Panels made of tag board for one time use—10 to 25 cents per panel; panels made of extruded vinyl for short term use—20 to 45 cents per panel; panels made of cast vinyl with plastic coating having an estimated life of five years—36 to 55 cents per panel. The vinyl panels would be adhesive backed to facilitate attachment.

The MTB expects the greatest costs will be incurred in the display of the orange panels on cargo tanks operated by common/contract carriers because of the high frequency in the change of usage of cargo tanks in this particular segment of the transportation industry. This fact is recognized in the existing regulations relative to the marking of the name of contents of cargo tanks. However, the MTB believes the added cost associated with implementation of these proposed requirements is warranted in the interest of providing an improved emergency response capability and is preferable to the alternative of extending the present tanks, as is presently required for portable tanks.

Specific views are invited concerning the proposed implementation of the regulations proposed in this Notice. Commenters should provide factual information concerning inventories of preprinted documents, adjustments in ADP programs, packaging turnover, and training. Broad generalized statements will not beneneficial to the MTB in its efforts to make a serious determination of how the rules are to be implemented, if they are adopted.

In further regard to implementation, the MTB was asked recently if any of the present regulations would preclude application of orange panels such as are proposed in this rulemaking. The MTB's response indicated there is no existing regulation that would prohibit the display of the United Nations identification number after the class entry on a shipping document, nor the display of an orange panel bearing an identification number.

The MTB originally considered that a rulemaking action of this type should be the subject of an advance notice of proposed rulemaking in order to solicit public comments relative to its development. On further consideration, the MTB has decided that a notice of proposed rulemaking is appropriate in order to expedite implementation since the proposals contained herein are confined to one basic issue; i.e., the display of an identification number, with other matters pertaining to improved communications being made the subject of separate rulemaking actions.

Conclusion

The MTB believes (1) adoption of the hazardous materials identification system proposed in this Notice will be a vital initial step in improving emergency response capabilities; (2) that, while the system can function without reliance on a manual, a manual of the type it has under development will significantly enhance emergency response capabilities, particularly during the first minutes of an emergency; (3) the proposed system is compatible intermodally and internationally and will be applicable to bulk and non-bulk shipment to an extent considered necessary; and (4) the proposed system is capable of integration with existing documentation, packaging and vehicle identification requirements that will insure the accuracy of information transmitted to and from emergency response personnel.

In consideration of the foregoing, it is proposed to amend Part 172 of Title 49, Code of Federal Regulations as follows:

1. In § 172.100 paragraph (d) would be amended by adding the following to the end of the paragraph.

§ 172.100 Purpose and use of the table.

* * * * *

(d) * * * Column 3(a) lists the identification numbers assigned to hazardous materials. Those preceded by a "UN" are associated with descriptions considered appropriate for international shipments as well as domestic shipments. Those preceded by an "NA" are associated with descriptions that are not recognized for international shipments, except to and from Canada. If an identification number is the "9000" series, it is either associated with the description of a material that is not appropriately covered by international hazardous materials (dangerous goods) shipping standards or not appropriately addressed by such standards for emergency response information purposes.

* * * * *

2. Section 172.101, the Hazardous Materials Table, would be revised by the addition of column 3(a) to read as follows:

BILLING CODE 4910-60-M

§172.101 Hazardous Materials Table

1

(1) */E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Labels required (if not exempted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
	Accumulator, pressurized (pneumatic or hydraulic), containing nonflammable gas	Nonflammable gas	NA1956	Nonflammable gas	173.306		No limit	No limit	1,2	1,2	
	Acetal	Flammable liquid	UN1088	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	4	
EA	Acetaldehyde ammonia (*RQ-1000/454*)	ORM-A	UN1841	None	173.500	173.510	No limit	No limit			
E	Acetaldehyde (ethyl aldehyde) (*RQ-1000/454*)	Flammable liquid	UN1089	Flammable liquid	None	173.119	Forbidden	10 gallons	1,2	5	
*E	Acetic acid (aqueous solution) (*RQ-1000/454*)	Corrosive material	UN2789	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	Store separate from nitric acid or oxidizing materials
E	Acetic acid, glacial (*RQ-1000/454*)	Corrosive material	UN2789	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	Store separate from nitric acid or oxidizing materials. Segregation same as for flammable liquids
E	Acetic anhydride (*RQ-1000/454*)	Corrosive material	UN1715	Corrosive	173.244	173.245	1 quart	1 gallon	1,2	1,2	
	Acetone	Flammable liquid	UN1090	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	4	
E	Acetone cyanohydrin (*RQ-10/4.54*)	Poison B	UN1541	Poison	None	173.345	Forbidden	55 gallons	1	5	Shade from radiant heat. Store away from corrosive materials
	Acetone oil	Flammable liquid	UN1091	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Acetonitrile	Flammable liquid	UN1648	Flammable liquid	173.118	173.119	1 quart	10 gallons	1	4	Shade from radiant heat
	Acetyl benzoyl peroxide, solid	Forbidden									
	Acetyl benzoyl peroxide solution, *not over 40% peroxide*	Organic peroxide	NA9081	Organic peroxide	None	173.223	Forbidden	1 quart	1,2	1	
E	Acetyl bromide (*RQ-5000/2270*)	Corrosive material	UN1716	Corrosive	173.244	173.247	1 quart	1 gallon	1	1	Keep dry. Glass outage not permitted on passenger vessels
E	Acetyl chloride (*RQ-5000/2270*)	Flammable liquid	UN1717	Flammable liquid	173.244	173.247	1 quart	1 gallon	1	1	Store away from alcohols. Keep cool and dry. Separate longitudinally by an intervening complete compartment or hold from explosives
	Acetyl iodide	Corrosive material	UN1898	Corrosive	173.244	173.247	1 quart	1 gallon	1	1	Keep dry. Glass outage not permitted on passenger vessels
	Acetyl peroxide solution, *not over 25% peroxide*	Organic peroxide	UN9084	Organic peroxide	173.188	173.223	Forbidden	1 quart	1,2	1	
	Acetylene	Flammable gas	UN1001	Flammable gas	None	173.302	Forbidden	300 pounds	1	1	Shade from radiant heat
A	Acetylene tetrabromide	ORM-A	UN2504	None	173.306	173.510	10 gallons	55 gallons			
	Acid butyl phosphate	Corrosive material	UN1718	Corrosive	173.244	173.245	1 quart	5 gallons	1,2	1,2	Glass outage in hampers not permitted under deck
	Acid carboy empty. *See* Carboy empty.										
*	Acid, liquid, n.o.s.	Corrosive material	NA1760	Corrosive	173.244	173.245	1 quart	5 plate	1	4	Keep cool
*	Acid, sludge	Corrosive material	UN1906	Corrosive	None	173.245	Forbidden	1 quart	1,2	1	
E	Acrolein, inhibited (*RQ-1/.454*)	Flammable liquid	UN1092	Flammable liquid and Poison	None	173.132	Forbidden	1 quart	1,2	5	Keep cool. Store away from living quarters
	Acrylic acid	Corrosive material	UN2218	Corrosive	173.244	173.245	1 quart	5 plate	1	1	
E	Acrylonitrile (*RQ-100/45.4*)	Flammable liquid	UN1093	Flammable liquid and Poison	None	173.119	Forbidden	1 quart	1,2	5	Keep cool
	Actuating cartridge, explosive(for extinguisher, or valve)	Class C explosive	NA0276	Explosive C	173.114		50 pounds	150 pounds	1,2	1,2	Keep cool and dry
*	Adhesive, n.o.s. *See* Cement, liquid, n.o.s.		UN1133								
E	Adipic acid (*RQ-5000/2270*)	ORM-E	NA9077 UN1936	None	None	173.510	No limit	No limit	2	2	
	Aerosol product, each aerosol container exceeding 50 cubic inches capacity. See Compressed gas, n.o.s.										
*	Air, compressed	Nonflammable gas	UN1002	Nonflammable gas	173.306	173.302	150 pounds	300 pounds	1,2	1,2	
	Aircraft rocket engine (Commercial)	Flammable solid	NA2791	Flammable solid	None	173.220	Forbidden	300 pounds	1,2	5	
	Aircraft rocket engine igniter (Commercial)	Flammable solid	UN2793	Flammable solid	None	173.220	Forbidden	55 pounds	1,2	5	
	Airplane flare. See Fireworks, special										
*	Alcohol, n.o.s.	Flammable liquid	UN1987	Flammable liquid	173.118	173.135	1 quart	10 gallons	1,2	1	
*	Alcohol, n.o.s.	Combustible liquid	NA1987	None	173.118a	None	No limit	No limit	1,2	1,2	
EA	Aldrin, cast solid (*RQ-1/.454*)	ORM-A	NA2761	None	173.306	173.510	No limit	No limit			
EA	Aldrin mixture, dry, with 65% or less aldrin (*RQ-1/.454*)	ORM-A	NA2761	None	173.306	173.510	No limit	No limit			
E	Aldrin mixture, dry (with more than 65% aldrin) (*RQ-1/.454*)	Poison B	NA2761	Poison	173.364	173.376	50 pounds	200 pounds	1,2	1,2	
E	Aldrin mixture, liquid (with more than 60% aldrin) (*RQ-1/.454*)	Poison B	NA2762	Poison	173.345	173.351	1 quart	55 gallons	1,2	1,2	If flash point less than 141 deg F, segregation same as for flammable liquids
EA	Aldrin mixture, liquid, with 60% or less aldrin (*RQ-1/.454*)	ORM-A	NA2762	None	173.306	173.510	No limit	No limit			
E	Aldrin (*RQ-1/.454*)	Poison B	NA2761	Poison	173.364	173.376	50 pounds	200 pounds	1,2	1,2	
	Alkaline corrosive battery fluid	Corrosive material	NA2797	Corrosive	173.244	173.240 173.247	1 quart	5 gallons	1,2	1,2	
	Alkaline corrosive battery fluid with empty storage battery	Corrosive material	NA2797	Corrosive	None	173.220	Forbidden	5 pints	1,2	1,2	
*	Alkaline corrosive liquid, n.o.s.	Corrosive material	NA1760	Corrosive	173.244	173.240	1 quart	5 gallons	1,2	1,2	
*	Alkaline liquid, n.o.s.	Corrosive material	NA1760	Corrosive	173.244	173.240	1 quart	5 gallons	1,2	1,2	
*	Alkanesulfonic acid	Corrosive material	NA2584	Corrosive	173.244	173.245	5 pints	1 gallon	1,2	1	
	Alkyl aluminum halides. See Pyrophoric liquid, n.o.s.		NA2926								
A	Allethrin	ORM-A		None	173.306	173.510	No limit	No limit			

2 **§172.101 Hazardous Materials Table (cont'd)**

(1) */E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Labels required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(6) (c) Cargo vessel	(6) (d) Passenger vessel	(7) Water shipments (e) Other requirements
E	Allyl alcohol (*RQ-100/45.5*)	Flammable liquid	UN1098	Flammable liquid and Poison	173.118	173.119	1 quart	10 gallons	1,2	1	
	Allyl bromide	Flammable liquid	UN1099	Flammable liquid	173.118	173.119	Forbidden	10 gallons	1,2	1	
E	Allyl chloride (*RQ-1000/454*)	Flammable liquid	UN1100	Flammable liquid	None	173.119	Forbidden	10 gallons	1,2	5	
	Allyl chlorocarbonate	Flammable liquid	UN1722	Flammable liquid	None	173.280	Forbidden	5 pints	1	5	Keep dry. Separate longitudinally by an intervening complete hold or compartment from explosives. Segregation same as for corrosive materials
	Allyl chloroformate. *See* Allyl chlorocarbonate		UN1722								
	Allyl trichlorosilane	Corrosive material	UN1724	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
	Aluminum alkyls. *See* Pyrophoric liquid, n.o.s.		NA2221								
	Aluminum bromide, anhydrous	Corrosive material	UN1725	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	Keep dry
	Aluminum dross, wet *or* hot. *See* Sec. 173.173										
	Aluminum hydride	Flammable solid	UN2463	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solid labeled Dangerous When Wet
*	Aluminum, liquid *or* paint. *See* Paint, enamel, lacquer stain, shellac, varnish, etc.		NA1263								
*	Aluminum, metallic, powder	Flammable solid	UN1396	Flammable solid	173.232	173.233	25 pounds	100 pounds	1,2	1,2	Keep dry. Segregation same as for flammable solids labeled dangerous when wet
	Aluminum nitrate	Oxidizer	UN1438	Oxidizer	173.153	173.189	25 pounds	100 pounds	1,2	1,2	
*	Aluminum phosphate solution	Corrosive material	NA1760	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Aluminum phosphide	Flammable solid	UN1397	Flammable solid and Dangerous when wet	None	173.154	Forbidden	25 pounds	1,2	1,2	Store away from acids and oxidizing materials
RA	Aluminum sulfate (*RQ-5000/2270*)	ORM-B	UN1760	None	None	173.510	25 pounds	100 pounds	22	2	
	Amatol. See High explosive										
	2-(2-Aminoethoxy) ethanol	Corrosive material	NA1760	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	N-Aminoethylpiperazine	Corrosive material	UN2815	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	bis (Aminopropyl) piperazine	Corrosive material	NA1760	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Aminopropylidiethanolamine	Corrosive material	NA1760	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	N-Aminopropylmorpholine	Corrosive material	NA1760	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
E	Ammonia, anhydrous (*RQ-100/45.4*)	Nonflammable gas	UN1005	Nonflammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	4	Stow in well ventilated space
E	Ammonia solution (*containing more than 44% ammonia*) (*RQ-1000/454*)	Nonflammable gas	UN2073	Nonflammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	4	Stow in well ventilated space
	Ammonia solution (containing 44% or less ammonia in water). See Ammonium hydroxide		UN2672								
E	Ammonium acetate (*RQ-5000/2270*)	ORM-E	NA9079	None	None	173.510	No limit	No limit	2	2	
	Ammonium arsenate, solid	Poison B	UN1546	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	Stow away from alkaline corrosives
E	Ammonium benzoate (*RQ-5000/2270*)	ORM-E	NA9080	None	None	173.510	No limit	No limit	2	2	
E	Ammonium bicarbonate (*RQ-5000/2270*)	ORM-E	NA9081	None	None	173.510	No limit	No limit	2	2	
	Ammonium bifluoride. *See* Ammonium hydrogen fluoride		UN1727								
RA	Ammonium bisulfite, solid (*RQ-5000/2270*)	ORM-B	NA2693	None	None	173.510	25 pounds	100 pounds	2	2	
E	Ammonium bisulfite solution (*RQ-5000/2270*)	Corrosive material	UN2693	Corrosive	173.244	173.245	1 quart	5 gallons	2	2	
RA	Ammonium carbamate (*RQ-5000/2270*)	ORM-A	NA9068	None	None	173.510	50 pounds	No limit	2	2	Keep away from heat.
RA	Ammonium carbonate (*RQ-5000/2270*)	ORM-A	NA9084	None	None	173.510	50 pounds	No limit	2	2	Keep away from heat, acids, alum and salts of iron or zinc.
	Ammonium chlorate	Forbidden									
RA	Ammonium chloride (*RQ-5000/2270*)	ORM-E	NA9085	None	None	173.510	No limit	No limit	2	2	
E	Ammonium chromate (*RQ-1000/454*)	ORM-E	NA9086	None	None	173.510	No limit	No limit	2	2	
E	Ammonium citrate (*RQ-5000/2270*)	ORM-E	NA9087	None	None	173.510	No limit	No limit	2	2	
E	Ammonium dichromate (*ammonium bichromate*) (*RQ-1000/454*)	Oxidizer	UN1439	Oxidizer	173.153	173.154 173.225	25 pounds	100 pounds	1,2	1,2	
RA	Ammonium fluoborate (*RQ-5000/2270*)	ORM-B	NA9088	None	None	173.510	25 pounds	100 pounds	2	2	
RA	Ammonium fluoride (*RQ-5000/2270*)	ORM-B	UN2505	None	173.505	173.510 173.800	25 pounds	100 pounds			
E	Ammonium hydrogen fluoride, solid (*RQ-5000/2270*)	Corrosive material	UN1727	Corrosive	173.244	173.245b	25 pounds	100 pounds	2	2	
*E	Ammonium hydrogen fluoride solution (*RQ-5000/2270*)	Corrosive material	UN2817	Corrosive	173.244	173.245	1 quart	5 gallons	1,2	1,2	Keep dry
A	Ammonium hydrogen sulfate	ORM-B	UN2506	None	173.505	173.510 173.800	25 pounds	100 pounds			
A	Ammonium hydrosulfide solution	ORM-A	NA2683	None	173.505	173.510 173.606	10 gallons	55 gallons			
*E	Ammonium hydroxide (*containing not more than 44% ammonia*) (*RQ-1000/454*)	Corrosive material	NA2672	Corrosive	173.244	173.245	2 gallons	2 gallons	1	1	
	Ammonium nitrate-carbonate mixture	Oxidizer	UN2068	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	
	Ammonium nitrate fertilizer, *containing no more than 0.2% carbon*	Oxidizer	UN2067	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	
	Ammonium nitrate-Fuel mixtures. See Blasting agent										

§172.101 Hazardous Materials Table (cont'd)

(1) P/E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Labels required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
	Ammonium nitrate-Fuel mixtures. See High explosive										
	Ammonium nitrate mixed fertilizer	Oxidizer	UN2067	Oxidizer	173.150	173.152	25 pounds	100 pounds	1,2	1,2	
	Ammonium nitrate (no organic coating)	Oxidizer	NA1942	Oxidizer	173.150	173.152	25 pounds	100 pounds	1,2	1,2	
	Ammonium nitrate (organic coating)	Oxidizer	NA1942	Oxidizer	173.150	173.152	25 pounds	100 pounds	1,2	1,2	
	Ammonium nitrate-phosphate	Oxidizer	UN2070	Oxidizer	173.150	173.152	25 pounds	100 pounds	1,2	1,2	
E	Ammonium oxalate (*RQ-5000/2270*)	ORM-E	NA9140	None	None	173.510	25 pounds	100 pounds	3	3	
	Ammonium perchlorate	Oxidizer	UN1442	Oxidizer	173.150	173.154 173.220a	25 pounds	100 pounds	1,2	4	Store away from powdered metals
	Ammonium perchlorate. *See* High explosive										
	Ammonium permanganate	Oxidizer	NA1482	Oxidizer	None	173.154	Forbidden	Forbidden	1,2	1,2	Separate from ammonium compounds and hydrogen peroxide. This material may be forbidden in water transportation by certain countries
	Ammonium picrate. See High explosive										
	Ammonium picrate, wet (*with 10% or more water*)	Flammable solid	UN1310	Flammable solid	173.150		1 pound	1 pound	1	4	Store away from heavy metals and their compounds
A	Ammonium polysulfide solution	ORM-A	UN2818	None	173.505	173.510 173.568	10 gallons	55 gallons			
EA	Ammonium silicofluoride (*RQ-1000/454*)	ORM-E	UN2854	None	None	173.510	25 pounds	100 pounds	2	2	
E	Ammonium sulfamate (*RQ-5000/2270*)	ORM-E	NA9060	None	None	173.510	No limit	No limit	2	2	
W	Ammonium sulfide nitrate	ORM-C	NA1477	None	173.505	173.509			1,2	1,2	Must not be accepted for transportation while hot. Separate by an intervening hold or compartment from Class A explosives. Separate from other explosives, corrosive materials, flammable solids, liquids, or gases, oxidizing materials, organic peroxides or organic materials
*E	Ammonium sulfide solution (*RQ-5000/2270*)	Flammable liquid	UN2683	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1,2	
E	Ammonium sulfite (*RQ-5000/2270*)	ORM-E	NA9080	None	None	173.510	No limit	No limit	2	2	
E	Ammonium tartrate (*RQ-5000/2270*)	ORM-E	NA9081	None	None	173.510	No limit	No limit	2	2	
E	Ammonium thiocyanate (*RQ-5000/2270*)	ORM-E	NA9082	None	None	173.510	No limit	No limit	2	2	
E	Ammonium thiosulfate (*RQ-5000/2270*)	ORM-E	NA9083	None	None	173.510	No limit	No limit	2	2	
	Ammunition, chemical (containing a Poison A liquid or gas). See Chemical ammunition (containing a Poison A material)										
	Ammunition, chemical (containing a Poison B material). See Chemical ammunition (containing a Poison B material)										
	Ammunition, chemical (containing an irritating liquid or solid). See Chemical ammunition (containing an irritating material)										
	Ammunition, chemical, explosive, with Poison A material	Class A explosive		Explosive A and Poison gas	None	173.59	Forbidden	Forbidden	6	5	No other cargo may be stowed in the same hold with these items
	Ammunition, chemical, explosive, with Poison B material	Class A explosive		Explosive A and Poison	None	173.59	Forbidden	Forbidden	6	5	No other cargo may be stowed in the same hold with these items
	Ammunition, chemical, explosive, with irritant	Class A explosive		Explosive A and Irritant	None	173.59	Forbidden	Forbidden	6	5	No other cargo may be stowed in the same hold with these items
	Ammunition for cannon with empty projectile	Class B explosive		Explosive B	None	173.59	Forbidden	Forbidden	1,2	5	
	Ammunition for cannon with explosive projectile	Class A explosive		Explosive A	None	173.54	Forbidden	Forbidden	6	5	
	Ammunition for cannon with gas projectile	Class A explosive		Explosive A	None	173.54	Forbidden	Forbidden	6	5	
	Ammunition for cannon with illuminating projectile	Class A explosive		Explosive A	None	173.54	Forbidden	Forbidden	6	5	
	Ammunition for cannon with incendiary projectile	Class A explosive		Explosive A	None	173.54	Forbidden	Forbidden	6	5	
	Ammunition for cannon with inert loaded projectile	Class B explosive		Explosive B	None	173.59	Forbidden	Forbidden	1,2	5	
	Ammunition for cannon with smoke projectile	Class A explosive		Explosive A	None	173.54	Forbidden	Forbidden	6	5	
	Ammunition for cannon with solid projectile	Class B explosive		Explosive B	None	173.59	Forbidden	Forbidden	1,2	5	
	Ammunition for cannon with tear gas projectile	Class A Explosive		Explosive A	None	173.54	Forbidden	Forbidden	6	5	
	Ammunition for cannon with tear gas projectile	Class B Explosive		Explosive B	None	173.59	Forbidden	Forbidden	1,2	5	
	Ammunition for cannon without projectile	Class B explosive		Explosive B	None	173.59	Forbidden	Forbidden	1,2	65	
	Ammunition for small-arms with explosive projectile	Class A explosive		Explosive A	None	173.58	Forbidden	Forbidden	6	5	
	Ammunition for small-arms with incendiary projectile	Class A explosive		Explosive A	None	173.58	Forbidden	Forbidden	6	5	
	Ammunition, non-explosive					173.55					
	Ammunition, rocket. See Rocket ammunition										
	Ammunition, small-arms. *See* Small-arms ammunition										
E	Amyl acetate (*RQ-1000/454*)	Flammable liquid	UN1104	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1,2	
	Amyl acid phosphate	Corrosive material	UN9819	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Amyl chloride	Flammable liquid	UN1107	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Amyl formate	Flammable liquid	UN1109	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Amyl mercaptan	Flammable liquid	UN1111	Flammable liquid	None	173.141	Forbidden	10 gallons	1,2	1	
	Amyl nitrite	Flammable liquid	UN1113	Flammable liquid	173.118	173.119	1 quart	10gallons	1,2	4	

4 **§172.101 Hazardous Materials Table (cont'd)**

(1) */E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Label(s) required (if not exempted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(c) Other requirements
	Amyl trichlorosilane	Corrosive material	UN1728	Corrosive	None	173.260	Forbidden	10 gallons	1	5	Keep dry
	Amylamine	Flammable liquid	UN1106	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Amylene, *normal*	Flammable liquid	UN1108	Flammable liquid	173.118	173.119	1quart	10 gallons	1,2	1,2	
	Anhydrous ammonia. *See* Ammonia, anhydrous		UN1005								
	Anhydrous hydrazine. *See* Hydrazine, anhydrous		UN2029								
	Anhydrous hydrofluoric acid. *See* Hydrogen fluoride		UN1052								
	Aniline oil drum, empty *See* 173.347(d)	Poison B							1,2	1	Do not accept unless returnable package notice is on drum and the instructions thereon have been carried out
E	Aniline oil, liquid (*RQ-1000/454*)	Poison B	UN1547	Poison	None	173.347	Forbidden	55 gallons	1,2	1,2	Store away from oxidizing materials and acids
	Anisoyl chloride	Corrosive material	UN1729	Corrosive	173.244	173.279	1 quart	1 quart	1	1	Keep dry
*	Antifreeze compound, liquid	Flammable liquid	NA1142	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Antifreeze compound, liquid	Combustible liquid	NA1142	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Antifreeze preparation, liquid	Flammable liquid	NA1142	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Antifreeze preparation, liquid	Combustible liquid	NA1142	None	173.118a	None	No limit	No limit	1,2	1,2	
	Antimonous chloride. *See* Antimony trichloride		UN1733								
A	Antimony lactate, solid	ORM-A	UN1550	None	173.505	173.510	No limit	No limit			
E	Antimony pentachloride (*RQ-1000/454*)	Corrosive material	UN1730	Corrosive	None	173.247	1 quart	1 quart	1	1	Keep dry. Glass carboys not permitted on passenger vessels
*E	Antimony pentachloride solution (*RQ-1000/454*)	Corrosive material	UN1731	Corrosive	173.244	173.245	1 quart	5 pints	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Antimony pentafluoride	Corrosive material	UN1732	Corrosive	None	173.246	Forbidden	35 pounds	1	5	Keep dry
EA	Antimony potassium tartrate solid (*RQ-1000/454*)	ORM-A	UN1551	None	173.505	173.510	No limit	No limit			
A	Antimony sulfide, solid	ORM-A	NA1325	None	173.505	173.510	No limit	No limit			
E	Antimony tribromide, solid (*RQ-1000/454*)	Corrosive material	NA1549	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	Keep dry.
E	Antimony tribromide, solution (*RQ-1000/454*)	Corrosive material	NA1549	Corrosive	173.244	173.245	1 quart	5 pints	2	2	Keep dry.
E	Antimony trichloride, solid (*RQ-1000/454*)	Corrosive material	UN1733	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	Keep dry
*E	Antimony trichloride solution (*RQ-1000/454*)	Corrosive material	NA1733	Corrosive	173.244	173.245	1 quart	5 pints	1	1	Keep dry
E	Antimony trifluoride, solid (*RQ-1000/454*)	Corrosive material	UN1549	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	Keep dry.
E	Antimony trifluoride, solution (*RQ-1000/454*)	Corrosive material	UN1549	Corrosive	173.244	173.245	1 quart	5 pints	2	2	Keep dry.
E	Antimony trioxide (*RQ-5000/2270*)	ORM-E	UN1549	None	None	173.510	No limit	No limit	2	2	
*	Aqua ammonia solution (*containing 44% or less ammonia*). *See* Ammonium hydroxide		NA2672								
*	Argon	Nonflammable gas	UN1006	Nonflammable gas	173.306	173.302 173.314	150 pounds	300 pounds	1,2	1,2	
*	Argon, liquid pressurized	Nonflammable gas	UN1951	Nonflammable gas	None	173.304	Forbidden	300 pounds	1,2	1,2	
	Arsenic acid, solid	Poison B	UN1558	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
*	Arsenic acid solution	Poison B	UN1554	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
	Arsenic bromide, solid	Poison B	UN1555	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Arsenic chloride (*arsenious*) liquid. *See* arsenic trichloride		UN1560								
E	Arsenic disulfide. *See* Arsenic sulfide, solid		NA1557								
	Arsenic iodide, solid	Poison B	NA1557	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
E	Arsenic pentoxide, solid (*RQ-5000/2270*)	Poison B	UN1559	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Arsenic, solid	Poison B	UN1558	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Arsenic sulfide, solid	Poison B	NA1557	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
E	Arsenic trichloride, liquid (*RQ-5000/454*)	Poison B	UN1560	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	Keep dry
E	Arsenic trioxide, solid (*RQ-5000/454*)	Poison B and ORM-E	UN1561	Poison	173.364	173.366 173.366	50 pounds	200 pounds	1,2	1,2	
E	Arsenic trisulfide (*RQ-5000/2270*)	Poison B	NA1557	Poison	173.364	173.365	50 pounds	200 pounds	2	2	
	Arsenic, white, solid. *See* Arsenic trioxide, solid		UN1561								
*	Arsenical compound n.o.s., liquid, *or* arsenical mixture, n.o.s., liquid	Poison B	UN1556	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
*	Arsenical compound n.o.s., solid, *or* arsenical mixture, n.o.s., solid	Poison B	UN1557	Poison	173.364	173.367	50 pounds	200 pounds	1,2	1,2	Keep dry
	Arsenical dip, liquid (*sheep dip*)	Poison B	UN1557	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
	Arsenical dust	Poison B	UN1562	Poison	173.364	173.368	50 pounds	200 pounds	1,2	1,2	
	Arsenical flue dust	Poison B	UN1562	Poison	173.364	173.368	50 pounds	200 pounds	1,2	1,2	
	Arsenious acid, solid. *See* Arsenic trioxide, solid		UN1560								
*	Arsenious and mercuric iodide solution	Poison B	NA2810	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
	Arsine	Poison A	UN2188	Poison gas and Flammable gas	None	173.328	Forbidden	Forbidden	1	5	
*	Asbestos	ORM-C	NA2590	None	173.1090(c)	173.1090(c)	No limit	No limit	1,2	1,2	Store and handle to avoid airborne particles.
W	Asphalt, *at or above its flashpoint*	ORM-C	NA1999	None	None	None	Forbidden	Forbidden	1	5	When applicable, no fire or smoke thereof may be present in the furnace heating the substance while the vehicle is on board a cargo vehicle
*	Asphalt, cut back	Flammable liquid	NA1993	Flammable liquid	173.118	173.131	1 quart	10 gallons	1,2	1	

§172.101 Hazardous Materials Table (cont'd)

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(1) */E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Label(s) required (if not exempt)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
*	Asphalt, cut back	Combustible liquid	NA1999	None	173.118a	None	No limit	No limit	1,2	1,2	
	Automobile, motorcycle, tractor, or other self-propelled vehicle. See Motor Vehicle										
	Automobile, motorcycle, tractor, or other self-propelled vehicle, engine, or other mechanical apparatus, with charged electric storage battery, wet. See Motor Vehicle										
	1-Aziridinyl phosphine oxide (tris). *See* Tris-(1-aziridinyl) phosphine oxide		UN2501								
	Bags, burlap, used, must be closed for the hazardous material previously contained in bag. See 173.28, 173.29										
	Bags, sodium nitrate, empty and unwashed	Flammable solid	UN1320	Flammable solid	None	173.155	Forbidden	25 pounds	1,2	1,2	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
*	Barium oxide, wet, 30% or more water	Flammable solid	UN1571	Flammable solid	None	173.200	Forbidden	1 pound	1,2	1,2	Stow away from heavy metals
	Barium chlorate	Oxidizer	UN1445	Oxidizer	173.150	173.169	25 pounds	100 pounds	1,2	1,2	Separate from ammonium compounds. Stow away from powdered metals
*	Barium chlorate, wet	Oxidizer	NA1445	Oxidizer	173.150	173.168	25 pounds	200 pounds	1,2	1,2	Separate from ammonium compounds. Stow away from powdered metals
R	Barium cyanide, solid (*RQ-10/4.54*)	Poison B	UN1565	Poison	173.370	173.370	25 pounds	200 pounds	1,2	1,2	Stow away from acids
	Barium nitrate	Oxidizer	UN1446	Oxidizer	173.150	173.152	25 pounds	100 pounds	1,2	1,2	
A	Barium oxide	ORM-B	UN1884	None	173.505	173.510 173.600	25 pounds	100 pounds			
	Barium perchlorate	Oxidizer	UN1447	Oxidizer	173.150	173.154	25 pounds	100 pounds	1,2	1,2	Stow away from powdered metals
	Barium permanganate	Oxidizer	UN1448	Oxidizer	173.150	173.154	25 pounds	100 pounds	1,2	1,2	Separate from ammonium compounds and hydrogen peroxide
	Barium peroxide (*dioxide, dioxide*)	Oxidizer	UN1449	Oxidizer	173.150	173.155	25 pounds	100 pounds	1,2	1,2	Keep dry
	Barrel, empty. *See* Drum, empty										
	Battery charged with electrolyte (acid or alkaline battery fluid)	Corrosive material	NA2794	Corrosive	None	173.260	Forbidden	5 pints	1,2	1,2	
	Battery, dry. Not subject to Parts 170-189 of this subchapter										
	Battery, electric storage, wet	Corrosive material	NA2794	Corrosive	173.260		Forbidden	No limit	1,2	1,2	
	Battery, electric storage, wet, with automobile, auto parts, engine (*or other specifically named mechanical apparatus*)	Corrosive material	NA2794	Corrosive	173.260	173.260	No limit	No limit	1/2	1,2	Keep dry
	Battery, electric storage, wet with containers of corrosive battery fluid	Corrosive material	NA2794	Corrosive	None	173.260	Forbidden	2 gallons	1,2	1,2	
	Battery fluid. See Electrolyte (acid) *or* Alkaline battery fluid										
W	Battery parts (*plates, grids, etc. unmounted, unfinished*)	ORM-C		None	173.505	173.915			1,2	4	
	Benaldehyde	Combustible liquid	UN1990	None	173.118a	None	No limit	No limit	1,2	1,2	
R	Benzene (benzol) (*RQ-1000/454*)	Flammable liquid	UN1114	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Benzene phosphorus dichloride	Corrosive material	UN2798	Corrosive	None	173.260a	Forbidden	5 pints	1	5	
	Benzene phosphorus dichloridechloride	Corrosive material	UN2799	Corrosive	None	173.260a	Forbidden	5 pints	1	5	
*	Benzine	Flammable liquid	UN1115	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
R	Benzoic acid (*RQ-5000/2270*)	ORM-E	NA9094	None	None	173.510	No limit	No limit	2	2	
R	Benzonitrile (*RQ-1000/454*)	Combustible liquid	UN2224	None	173.118b	None	No limit	No limit	2	2	
R	Benzoyl chloride (*RQ-1000/454*)	Corrosive material	UN1736	Corrosive	173.244	173.247	1 quart	1 quart	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Benzoyl peroxide	Organic peroxide	NA9087	Organic peroxide	None	173.137 173.138	Forbidden	25 pounds	1,2	1	
	Benzyl bromide (*bromotoluene, alpha*)	Corrosive material	UN1737	Corrosive	None	173.241	Forbidden	5 pints	1	5	Keep dry
R	Benzyl chloride (*RQ-100/45.4*)	Corrosive material	UN1738	Corrosive	173.244	173.245	Forbidden	1 quart	1	4	Keep dry
	Benzyl chlorofluorate (*or Benzyl chloroethanoate*)	Corrosive	UN1739	Corrosive	None	173.245	Forbidden	5 pints	1	5	Keep dry
R	Beryllium chloride (*RQ-5000/2270*)	Poison B	NA1566	Poison	173.364	173.365	50 pounds	200 pounds	2	2	
*	Beryllium compound, n.o.s.	Poison B	UN1566	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
R	Beryllium fluoride (*RQ-5000/2270*)	Poison B	NA1566	Poison	173.364	173.365	50 pounds	200 pounds	2	2	
R	Beryllium nitrate (*RQ-5000/2270*)	Oxidizer	UN2464	Oxidizer	173.150	173.152	25 pounds	100 pounds	2	2	
	Black powder	Class A explosive		Explosive A	None	173.89	Forbidden	Forbidden	4	5	
	Black powder igniter with empty cartridge bag	Class C explosive	NA0226	Explosive C	None	173.100	50 pounds	150 pounds	1,2	1,2	
	Blasting agent, n.o.s.	Blasting agent		Blasting agent	None	173.114a	Forbidden	100 pounds	1,2	1,2	
	Blasting caps—(*1,000 or fewer*) (*Show actual number*)	Class C explosive	NA0057	Explosive C	None	173.100	Forbidden	Forbidden	1,2	5	Portable magazine or metal locker. Do not store blasting caps with any high explosive. Do not handle blasting caps at the same time high explosives are being loaded.
	Blasting caps—electric (*1,000 or fewer*) (*Show actual number*)	Class C explosive		Explosive C	None	173.100	Forbidden	Forbidden	1,2	5	Portable magazine or metal locker. Do not store blasting caps with any high explosive. Do not handle blasting caps at the same time high explosives are being loaded.
	Blasting caps—electric (*more than 1,000*) (*Show actual number*)	Class A explosive		Explosive A	None	173.88	Forbidden	Forbidden	4	5	Magazine. Do not store blasting caps with any high explosives. Do not handle blasting caps at the same time high explosives are being loaded.
	Blasting caps—(*more than 1,000*) (*Show actual number*)	Class A explosive		Explosive A	None	173.88	Forbidden	Forbidden	4	5	Do not store blasting caps with any high explosives. Do not handle blasting caps at the same time high explosives are being loaded.

6 **§172.101 Hazardous Materials Table (cont'd)**

(1) */E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Label(s) required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
	Blasting caps with metal clad mild detonating fuse--*(1,000 or fewer) (Show actual number)*	Class C explosive	NA0361	Explosive C	None	173.108	Forbidden	Forbidden	1,2	5	Portable magazine or metal locker. Do not store blasting caps with any high explosive. Do not handle blasting caps at the same time high explosives are being loaded.
	Blasting caps with safety fuse--*(1,000 or fewer) (Show actual number)*	Class C explosive	NA0361	Explosive C	None	173.108	Forbidden	Forbidden	1,2	5	Portable magazine or metal locker. Do not store blasting caps with any high explosive. Do not handle blasting caps at the same time high explosives are being loaded.
	Blasting caps with safety fuse--*(more than 1,000) (Show actual number)*	Class A explosive		Explosive A	None	173.66 173.67	Forbidden	Forbidden	6	5	Do not store blasting caps with any high explosive. Do not handle blasting caps at the same time high explosives are being loaded.
	Blasting gelatin. See High explosive										
	Blasting powder. See Black powder										
W	Bleaching powder, containing 39% or less available chlorine	ORM-C	UN2208	None	173.505	173.920			1,2	1,2	Keep dry. Stow separate from flammable liquids and acids. Stow away from oils, grease, and similar organic materials.
*	Boiler compound, liquid	Corrosive material	UN1760	Corrosive	173.244	173.249	1 quart	10 gallons	1,2	1,2	
	Bomb, explosive. See Explosive bomb										
	Bomb, explosive with gas, smoke, or incendiary material. See Explosive bomb										
	Bomb, fireworks. See Fireworks, special										
	Bomb, gas, smoke, or incendiary, nonexplosive. See Chemical ammunition										
	Bomb, incendiary, or smoke without bursting charge. See Fireworks, special										
	Bomb, practice, with electric primer or electric squib (non-explosive)				173.55						
	Bomb, sand-loaded or empty (non-explosive)				173.55						
A	Bone oil	ORM-A		None	173.505	173.510	No limit	No limit			
	Booster, explosive	Class A explosive		Explosive A	None	173.69	Forbidden	Forbidden	6	5	
*	Bordeaux arsenite, solid	Poison B	NA2759	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
*	Bordeaux arsenite, liquid	Poison B	NA2759	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
	Boron tribromide	Corrosive material	UN2692	Corrosive	None	173.251	Forbidden	1 quart	1	5	
	Boron trichloride	Corrosive material	UN1741	Corrosive	None	173.251	Forbidden	1 quart	1,2	5	Stow in well ventilated space. Shade from radiant heat. Segregation same as for non-flammable gases.
	Boron trifluoride	Nonflammable gas	UN1008	Nonflammable gas and Poison	None	173.302	Forbidden	Forbidden	1	5	Stow away from living quarters and foodstuffs
	Boron trifluoride-acetic acid complex	Corrosive material	UN1742	Corrosive	173.244	173.247	1 quart	1 gallon	1,2	1,2	
	Bottles, having previously contained a hazardous material and not cleaned. See 173.29										
*W	Box toe board (*nitrocellulose base*)	ORM-C		None	173.505	173.925			1,2	1,2	Provide cool stowage in a compartment having a temperature not exceeding 120 deg F., well away from any sources of heat, and in position to protect or ventilate, even in jettison in event of fire. Separate from explosives, flammable liquids or gases, oxidizing materials, organic peroxides, or corrosive liquids.
*	Box toe gum	Combustible liquid	UN2060	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Box toe gum	Flammable liquid	UN2059	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Bromine	Corrosive material	UN1744	Corrosive	None	173.262	Forbidden	1 quart	1	5	Keep cool
	Bromine pentafluoride	Oxidizer	UN1745	Oxidizer	None	173.246	Forbidden	100 pounds	1	5	Shade from radiant heat. Segregation same as for corrosives
	Bromine trifluoride	Oxidizer	UN1746	Oxidizer and Poison	None	173.246	Forbidden	100 pounds	1	5	Shade from radiant heat. Segregation same as for corrosives
	Bromoacetic acid, solid	Corrosive material	UN1938	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	Keep dry
*	Bromoacetic acid solution	Corrosive material	UN1938	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2	Glass carboys in hampers not permitted under deck
	Bromoacetone, liquid	Poison A	UN1569	Poison gas	None	173.329	Forbidden	Forbidden	1	5	Segregation same as for flammable liquids
	Bromobenzene	Combustible liquid	UN2514	None	173.118a	None	No limit	No limit	1,2	1,2	
	Bromotoluene, alpha. *See* Benzyl bromide		UN1737								
	Brucine, solid (dimethoxy strychnine)	Poison B	UN1570	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
W	Burlap bags, cleaned (*vacuum cleaned, wheel cleaned, or otherwise mechanically brushed*). *See* Burlap cloth										
W	Burlap bags, new. *See* Burlap cloth										
AW	Burlap bags, used and unwashed, *or* not cleaned	ORM-C		None	173.930		No limit	No limit	1	1	Keep cool
W	Burlap cloth (*hessian*)	ORM-C		None	173.931				1,2	1,2	Keep dry. Stow away from organic liquids
	Burnt cotton, not repicked	Flammable solid	NA1325	Flammable solid	None	173.150	Forbidden	Forbidden	1	5	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Burnt fiber	Flammable solid	NA1325	Flammable solid	None	173.169	Forbidden	Forbidden	1,2	1,2	Separate from flammable gases or liquids, oxidizing materials or organic peroxides.
	Burster, explosive	Class A explosive		Explosive A	None	173.69	Forbidden	Forbidden	6	5	
	Butadiene, inhibited	Flammable gas	UN1010	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	1	Stow away from living quarters
	Butane *or* Liquefied petroleum gas. *See* Liquefied petroleum gas		UN1011								
E	Butyl acetate (*RQ-5000/2270*)	Flammable liquid	UN1123	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	

§172.101 Hazardous Materials Table (cont'd)

(1) */E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Labels required (if not exempted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
	n-Butyl acid phosphate. *See* Acid butyl phosphate		UN1718								
	Butyl alcohol. *See* Alcohol, n.o.s.		UN1120								
	Butyl benzoate, normal	Flammable liquid	UN1126	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Butyl chloride	Flammable liquid	UN1127	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Butyl ether	Flammable liquid	UN1149	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1,2	
	Butyl formate	Flammable liquid	UN1128	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	n-Butyl isocyanate	Flammable liquid	UN2485	Flammable liquid and Poison	173.118	173.119	1 quart	10 gallons	1,2	1	
	Butyl mercaptan	Flammable liquid	UN2347	Flammable liquid	None	173.141	Forbidden	10 gallons	1,2	5	
	Butyl phosphoric acid. *See* Acid butyl phosphate		UN1718								
E	n-Butyl phthalate (*RQ-100/45.4*)	ORM-E	NA9066	None	None	173.510	No limit	No limit	2	2	
	Butyl trichlorosilane	Corrosive material	UN1747	Corrosive	None	173.300	Forbidden	10 gallons	1	1	Keep dry
E	Butylamine (*RQ-1000/454*)	Flammable liquid	UN1125	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Butyraldehyde	Flammable liquid	UN1129	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
E	Butyric acid (*RQ-5000/2270*)	Corrosive material	UN2820	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
E	Cadmium acetate (*RQ-100/45.4*)	ORM-E	NA9070	None	None	173.510	No limit	No limit	2	2	
E	Cadmium bromide (*RQ-100/45.4*)	ORM-E	NA9069	None	None	173.510	No limit	No limit	2	2	
E	Cadmium chloride (*RQ-100/45.4*)	ORM-E	NA9070	None	None	173.510	No limit	No limit	1,2	1,2	If stowed under deck, must be stowed in a recoverable location.
E	Calcium arsenate, solid (*RQ-1000/454*)	Poison B	UN1573	Poison	173.364	173.367 173.368	50 pounds	200 pounds	1,2	1,2	
E	Calcium arsenite, solid (*RQ-1000/454*)	Poison B	NA1574	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Calcium bisulfite solution. *See* Calcium hydrogen sulfite solution		NA2693								
E	Calcium carbide (*RQ-5000/2270*)	Flammable solid	UN1402	Flammable solid and dangerous when wet	None	173.178	Forbidden	25 pounds	1,2	1,2	Keep dry. Store away from copper, its alloys, and salts
	Calcium chlorite	Oxidizer	UN1452	Oxidizer	173.159	173.163	25 pounds	100 pounds	1,2	1,2	Separate from ammonium compounds. Store away from powdered metals and cyanide
	Calcium chlorite	Oxidizer	UN1453	Oxidizer	None	173.160	Forbidden	100 pounds	1,2	1,2	Separate from ammonium compounds, powdered materials, and cyanides
E	Calcium chromate (*RQ-1000/454*)	ORM-E	NA9096	None	None	173.510	No limit	No limit	2	2	
AW	Calcium cyanamide, not hydrated, containing more than 0.1% calcium carbide	ORM-C	UN1403	None	None	173.345	25 pounds	200 pounds	1,2	1,2	Segregation same as for flammable solids labeled Dangerous When Wet
*E	Calcium cyanide, solid *or* Calcium cyanide mixture, solid (*RQ-10/4.54*)	Poison B	UN1575	Poison	173.370		25 pounds	200 pounds	1,2	1,2	Stow away from corrosive liquids. Keep dry
E	Calcium dodecylbenzenesulfonate (*RQ-1000/454*)	ORM-E	NA9097	None	None	173.510	No limit	No limit	2	2	
*	Calcium hydrogen sulfite solution	Corrosive material	UN1922	Corrosive	173.244	173.245	1 quart	5 gallons	1,2	1,2	
EA	Calcium hydroxide (*RQ-5000/2270*)	ORM-B	NA9088	None	None	173.510	50 pounds	100 pounds	2	2	
E	Calcium hypochlorite mixture, *dry. (Containing more than 39% available chlorine)* (*RQ-10/4.54*)	Oxidizer	UN1748	Oxidizer	173.168	173.217	50 pounds	100 pounds	1,2	1,2	Keep cool and dry
	Calcium, metal	Flammable solid	NA1401	Flammable solid and Dangerous when wet	173.153	173.154	25 pounds	100 pounds	1,2	4	Keep cool and dry. Segregation same as for flammable solids labeled Dangerous When Wet
	Calcium, metal, crystalline	Flammable solid	NA1401	Flammable solid and Dangerous when wet	None	173.231	Forbidden	25 pounds	1,2	5	Keep cool and dry. Segregation same as for flammable solids labeled Dangerous When Wet
*	Calcium nitrate (*See Sec. 173.182 Note*)	Oxidizer	UN1454	Oxidizer	173.155	173.182	25 pounds	100 pounds	1,2	1,2	
EAW	Calcium oxide (*RQ-5000/2270*)	ORM-B	UN1910	None	173.505	173.650	25 pounds	100 pounds	1,2	1,2	Keep dry. Stow away from explosives, acids, combustible materials, and ammonium salts
	Calcium permanganate	Oxidizer	UN1456	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	Separate from ammonium compounds and hydrogen peroxide
	Calcium peroxide	Oxidizer	UN1457	Oxidizer	173.153	173.155	25 pounds	100 pounds	1,2	1,2	Keep dry
	Calcium phosphide	Flammable solid	UN1360	Flammable solid and Dangerous when wet	None	173.161	Forbidden	25 pounds	1	5	Keep cool and dry. Segregation same as for flammable solids labeled Dangerous When Wet
	Calcium resinate	Flammable solid	UN1313	Flammable solid	None	173.166	Forbidden	125 pounds	1	5	
	Calcium resinate, fused	Flammable solid	UN1314	Flammable solid	None	173.166	Forbidden	125 pounds	1	5	
AW	Camphene	ORM-A	NA9011	None	173.505	173.510	No limit	No limit	1,2	1,2	Stow away from foodstuffs and living quarters
	Camphor oil	Combustible liquid	CN1130	None	173.118a	None	No limit	No limit	1,2	1,2	
	Cannon primers	Class C explosive	NA0078	Explosive C	None	173.197	50 pounds	150 pounds	1,2	5	
	Caprylyl peroxide solution	Organic peroxide	NA9129	Organic peroxide	173.158	173.221	1 quart	1 quart	1,2	4	Keep cool. Stow separate from combustible materials, explosives, or acids
	Caps, blasting. *See* Blasting caps										
	Caps, toy. *See* Toy caps										
EA	Captan (*RQ-10/4.54*)	ORM-A	NA2771	None	None	173.510	100 pounds	No limit	2	2	
EA	Carbaryl (*RQ-100/45.4*)	ORM-A	NA2757	None	173.505	173.510	No limit	No limit			
E	Carbofuran (*RQ-10/4.54*)	Poison B	NA2757	Poison	173.364	173.365	50 pounds	200 pounds	2	2	

8 **§172.101 Hazardous Materials Table (cont'd)**

(1) */E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Label(s) required (if not exempted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
E	Carbolic acid, liquid *or* Phenol, liquid *(liquid tar acid containing over 50% benzophenol) (RQ-1000/454)*	Poison B	NA2312	Poison	173.345	173.349	1 quart	55 gallons	1,2	1,2	
E	Carbolic acid, *or* Phenol *(RQ-1000/454)*	Poison B	NA1671	Poison	173.364	173.369	50 pounds	250 pounds	1,2	1,2	
E	Carbon bisulfide, *or* Carbon disulfide *(RQ-5000/2270)*	Flammable liquid	UN1131	Flammable liquid	None	173.121	Forbidden	Forbidden	1	5	Keep cool. Not permitted on any vessel transporting explosives
*	Carbon dioxide, liquefied	Nonflammable gas	UN2187	Nonflammable gas	173.306	173.304 173.314 173.315	150 pounds	300 pounds	1,2	1,2	
*	Carbon dioxide-nitrous oxide mixture	Nonflammable gas	UN1015	Nonflammable gas	173.306	173..304	150 pounds	300 pounds	1,2	1,2	
*	Carbon dioxide-oxygen mixture	Nonflammable gas	UN1014	Nonflammable gas	173.306	173.304	150 pounds	300 pounds	1,2	1,2	
AW	Carbon dioxide, solid, *or* Dry ice, *or* Carbonice	ORM-A	UN1845	None	None	173.613	440 pounds	440 pounds	1	1	Stow away from open ventilators. Stow away from cyanides or cyanide mixtures, liquid or dry
	Carbon monoxide	Flammable gas	UN1016	Flammable gas	173.306	173.306	Forbidden	150 pounds	1	4	
*	Carbon remover, liquid	Flammable liquid	UN1132	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
EAW	Carbon tetrachloride *(RQ-5000/2270)*	ORM-A	UN1846	None	173.505	173.620	1 quart	55 gallons	1,2	1,2	Stow away from living quarters
	Carbonyl chloride. *See* Phosgene		UN1076								
	Carboys, empty, must be cleaned for the hazardous material previously contained in carboy. See 173.29										
	Cartridge bags, empty, with black powder igniter	Class C explosive	NA0625	Explosive C	None	173.106	50 pounds	150 pounds	1,2	1,2	
	Cartridge cases, empty, primed	Class C explosive	UN0379	Explosive C	None	173.107	50 pounds	150 pounds	1,2	1,2	
	Cartridge, practice ammunition	Class C explosive	NA0362	Explosive C	None	173.101a	50 pounds	150 pounds	1,2	1,2	
	Casinghead gasoline. See Gasoline *or* Naptha										
W	Castor Beans	ORM-C	UN1257	None	173.505	173.552			1,2	1,2	Stow away from living quarters and foodstuffs. Bulk shipments permitted in tight vans or containers only on cargo vessels (Castor beans only)
W	Castor pomace. *See* Castor beans										
*	Caustic, potash, dry, solid, flake, bead, *or* granular. *See* Potassium hydroxide, dry, etc.		UN1813								
*	Caustic potash, liquid *or* solution. *See* Potassium hydroxide solution		UN1814								
	Caustic soda, dry, solid, flake, bead, *or* granular. *See* Sodium hydroxide, dry, etc.		UN1823								
*	Caustic soda, liquid *or* solution. *See* Sodium hydroxide solution		UN1824								
W	*Cellosolve acetate. See* Ethylene glycol monoethyl ether acetate										
W	*Cellosolve. See* Ethylene glycol monoethyl ether										
*	Cement, adhesive, n.o.s. *See* Cement, liquid, n.o.s.		NA1133								
*	Cement, container, linoleum, tile, *or* wallboard, liquid	Flammable liquid	NA1133	Flammable liquid	173.118	173.132	1 quart	15 gallons	1,2	1	
*	Cement, leather	Flammable liquid	NA1133	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Cement, liquid, n.o.s.	Combustible liquid	NA1133	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Cement, liquid, n.o.s.	Flammable liquid	NA1133	Flammable liquid	173.118	173.132	1 quart	10 gallons	1,2	1	
*	Cement, pyroxylin	Flammable liquid	NA1133	Flammable liquid	173.118	173.132	1 quart	15 gallons	1,21,2	51	
*	Cement, roofing, liquid	Flammable liquid	NA1133	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Cement, rubber	Flammable liquid	NA1133	Flammable liquid	173.118	173.132	1 quart	15 gallons	1,2	1	
	Cerium metal	Flammable solid	UN1407	Flammable solid and dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
*	Charcoal, activated	Flammable solid	UN1362	Flammable solid	173.162	173.162	25 pounds	200 pounds	1,2	1,2	
	Charcoal briquettes *or* briquets	Flammable solid	NA1361	Flammable solid	173.162	173.162	50 pounds	50 pounds	1,2	1,2	
	Charcoal screenings, made from 'pinon' wood	Flammable solid	NA1361	Flammable solid	173.162	173.162	25 pounds	200 pounds	1,2	1,	
	Charcoal screenings, wet	Forbidden									
	Charcoal, shell	Flammable solid	NA1361	Flammable solid	173.162	173.162	25 pounds	200 pounds	1,2	1,2	
	Charcoal, wet	Forbidden									
	Charcoal, wood, ground, crushed, granulated, *or* pulverized	Flammable solid	NA1361	Flammable solid	173.162	173.162	25 pounds	200 pounds	1,2	1,2	
	Charcoal, wood, lump	Flammable solid	NA1361	Flammable solid	173.162	173.162	50 pounds	50 pounds	1,2	1,2	
	Charcoal wood screenings, other than 'pinon' wood screenings	Flammable solid	NA1361	Flammable solid	None	173.162	Forbidden	Forbidden	1	1	
	Charged oil well jet perforating gun *(seal explosive contents in guns 20 pounds or more per motor vehicle)*	Class A explosive		Explosive A	None	173.53 173.60	Forbidden	Forbidden			Forbidden
	Charged oil well jet perforating gun *(seal explosive contents in guns not exceeding 20 pounds per motor vehicle or special offshore down hole seal pulled)*	Class C explosive	NA0124	Explosive C	None	173.53 173.110	Forbidden	Forbidden	1,2	5	Forbidden

§172.101 Hazardous Materials Table (cont'd) 9

(1) */E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Labels required (if not exempted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipment (a) Cargo vessel	(7) Water shipment (b) Passenger vessel	(7) Water shipment (c) Other requirements
	Chemical ammunition explosive. See Ammunition, chemical, explosive										
	Chemical ammunition, nonexplosive (*containing a Poison B material*)	Poison B	UN2018	Poison	173.345	173.350	Forbidden	55 gallons			See correct shipping name of applicable Poison B material for storage, special handling, and special segregation requirements
	Chemical ammunition, nonexplosive (*containing an irritating material*)	Irritating material	UN2017	Irritant	None	173.308	Forbidden	20 pounds			See correct shipping name of applicable Irritant material for storage, special handling, and special segregation requirements
	Chemical ammunition, nonexplosive (*containing a Poison A material*)	Poison A	UN2016	Poison gas	None	173.330	Forbidden	Forbidden			See correct shipping name of applicable Poison A material for storage, special handling, and special segregation requirements
*	Chemical kit	Corrosive material	NA1760	Corrosive	173.280		1 quart	1 quart	1,2	1,2	
*	Chlorate and borate mixture (*containing more than 20% chlorate*)	Oxidizer	UN1458	Oxidizer	173.153	173.229	25 pounds	100 pounds	1,2	4	Store away from ammonium compounds and away from powdered metals
*	Chlorate and magnesium chloride mixture (*containing more than 20% chlorate*)	Oxidizer	UN1459	Oxidizer	173.153	173.229	25 pounds	100 pounds	1,2	4	Store away from ammonium compounds, and away from powdered metals
	Chlorate explosive, dry. See High explosive										
	Chlorate, n.o.s.	Oxidizer	UN1461	Oxidizer	173.153	173.165	25 pounds	100 pounds	1,2	4	Store away from ammonium compounds and away from powdered metals
*	Chlorate, n.o.s., wet	Oxidizer	NA1461	Oxidizer	173.153	173.165	25 pounds	200 pounds	1,2	4	Store away from ammonium compounds and away from powdered metals
	Chlorate of potash. *See* Potassium chlorate		UN1485								
	Chlorate of soda. *See* Sodium chlorate		UN1495								
	Chlorate powder. *See* High explosive										
*E	Chlordane, liquid (*RQ-1/.454*)	Combustible liquid	NA2760	None	173.118a	None	No limit	No limit	1,2	1,2	
	Chloric acid. (*See* chlorine dioxide hydrate)		NA3026								
	Chloride of phosphorus. *See* Phosphorus trichloride		NA1809								
	Chloride of sulfur. *See* Sulfur chloride		NA1828								
W	Chlorinated lime (*chloride of lime.*) *See* Bleaching powder		NA2208								
	Chlorine dioxide hydrate, frozen	Oxidizer	NA3026	Oxidizer and Poison	None	173.257	Forbidden	Forbidden			Forbidden
E	Chlorine (*RQ-10/4.54*)	Nonflammable gas	UN1017	Nonflammable gas and Poison	None	173.301 173.314 173.315	Forbidden	Forbidden	1,2	5	Store in a well-ventilated space. Store away from organic materials
	Chlorine trifluoride	Oxidizer	UN1749	Oxidizer and Poison	None	173.245	Forbidden	100 pounds	1,2	5	Store in well ventilated area away from organic material
*	4-Chloro-o-toluidine hydrochloride	Poison B	UN1579	Poison	None	173.302	Forbidden	1 quart	1,2	1,2	
	Chloroacetic acid, liquid or solution. See Monochloroacetic acid, liquid or solution		UN1750								
	Chloroacetic acid, solid	Corrosive material	UN1751	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	Keep dry
	Chloroacetophenone, gas, liquid, *or* solid (CN)	Irritating material	UN1697	Irritant	None	173.302	Forbidden	75 pounds	1	5	
	Chloroacetyl chloride	Corrosive material	UN1752	Corrosive	None	173.256	Forbidden	1 quart	1	5	Keep dry
	Chlorobenzene. *See* Chlorobenzol		UN1134								
E	Chlorobenzol (*RQ-100/45.4*)	Flammable liquid	UN1134	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1,2	
	p-Chlorobenzoyl peroxide	Organic peroxide	NA2118	Organic peroxide	None	173.157 173.189	Forbidden	25 pounds	1	1	
	Chlorodinitrobenzene. See Dinitrochlorobenzene		UN1577								
	Chlorodinitrobenzol. See Dinitrochlorobenzol, solid										
EAW	Chloroform (*RQ-5000/2270*)	ORM-A	UN1888	None	173.505	173.630	10 gallons	55 gallons	1,2	1,2	Store away from living quarters and foodstuffs
	Chlorophenyltrichlorosilane	Corrosive material	UN1753	Corrosive	None	173.260	Forbidden	10 gallons	1	1	Keep dry
	Chloropicrin, absorbed	Poison B	NA1583	Poison	None	173.357	Forbidden	Forbidden	1	5	Keep cool
	Chloropicrin and methyl chloride mixture	Poison A	UN1582	Flammable gas and Poison gas	None	173.329	Forbidden	Forbidden	1	5	Keep cool
	Chloropicrin and nonflammable, nonliquefied compressed gas mixture	Poison A	NA1955	Nonflammable gas and Poison gas	None	173.329	Forbidden	Forbidden	1	5	Keep cool
	Chloropicrin, liquid	Poison B	UN1580	Poison	None	173.357	Forbidden	Forbidden	1	5	Keep cool
	Chloropicrin mixture (*containing no compressed gas or Poison A liquid*)	Poison B	UN1583	Poison	None	173.357	Forbidden	Forbidden	1	5	Keep cool
A	Chloroplatinic acid, solid	ORM-B	UN2507	None	173.505	173.510 173.800	25 pounds	100 pounds			
	2-Chloropropene	Flammable liquid	UN2456	Flammable liquid	None	173.119	Forbidden	10 gallons	1,2	5	
E	Chlorosulfonic acid (*RQ-1000/454*)	Corrosive material	UN1754	Corrosive	173.244	173.254	1 quart	1 quart	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Chlorosulfonic acid-sulfur trioxide mixture	Corrosive material	UN1754	Corrosive	173.244	173.254	1 quart	1 quart	1	1	Keep dry. Glass carboys not permitted on passenger vessels
EA	Chlorpyrifos (*RQ-1/0.454*)	ORM-A	NA2783	None	None	173.510	100 pounds	No limit	2	2	
E	Chromic acetate (*RQ-1000/454*)	ORM-E	NA9101	None	None	173.510	No limit	No limit	2	2	
E	Chromic acid mixture, dry (*RQ-1000/454*)	Oxidizer	NA1463	Oxidizer	173.159	173.164	25 pounds	100 pounds	1,2	1,2	Store away from foodstuffs
E	Chromic acid, solid (*RQ-1000/454*)	Oxidizer	UN1463	Oxidizer	173.159	173.164	25 pounds	100 pounds	1,2	1,2	Store away from foodstuffs. Store separate from flammable liquids and solids
*E	Chromic acid solution (*RQ-1000/454*)	Corrosive material	UN1755	Corrosive	173.244	173.247	1 quart	1 gallon	1	1	
	Chromic anhydride. *See* Chromic acid, solid		NA1463								
	Chromic fluoride, solid	Corrosive material	UN1756	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	
*	Chromic fluoride solution	Corrosive material	UN1757	Corrosive	173.244	173.245	1 quart	1 gallon	1,2	1,2	
E	Chromic sulfate (*RQ-1000/454*)	ORM-E	NA9100	None	None	173.510	No limit	No limit	2	2	
	Chromic trioxide. *See* Chromic acid, solid		UN1463								

10 **§172.101 Hazardous Materials Table (cont'd)**

(1) */E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Label(s) required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements	
	Chromium oxychloride *or* Chromyl chloride.	Corrosive material	UN1758	Corrosive	None	173.247	Forbidden	1 gallon	1	1	Keep dry. Glass carboys not permitted on passenger vessels	
E	Chromous chloride (*RQ-1000/454*)	ORM-E	NA9102	None	None	173.510	No limit	No limit	2	2		
	Cigar and cigarette lighter fluid. See Lighter fluid		UN1226									
•	Cigarette lighter (*or other similar ignition device*)	Flammable gas	UN1057	Flammable gas	173.21 175.10	173.308	21 ounces	25 pounds	1	1		
•	Cigarette lighter (*or other similar ignition device*)	Flammable liquid	NA1099	Flammable liquid	173.21 175.10	173.118	Forbidden	Forbidden	1	1		
	Cigarette lead	Class C explosive	NA0337	Explosive C	None	173.111	50 pounds	150 pounds	1,2	1,2		
	Cloud gas cylinder. See Chemical ammunition											
	Coal briquettes, hot	Forbidden										
	Coal fuelings. *See* Coal ground bituminous, etc.											
	Coal gas. See Hydrocarbon gas, nonliquefied											
	Coal, ground bituminous, sea coal, coal fuelings, etc.	Flammable solid	NA1361	Flammable solid	173.165		Forbidden	Forbidden	1	1	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides	
	Coal oil (*export shipment only*). *See* Kerosene		NA1223									
•	Coal tar distillate	Combustible liquid	NA1137	None	173.118a	None	No limit	No limit	1,2	1,2		
•	Coal tar distillate	Flammable liquid	NA1136	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1		
•	Coal tar dye, liquid (*not otherwise specifically named in Sec. 172.101*)	Corrosive material	NA1760	Corrosive	173.244	173.245 173.249a	1 quart	10 gallons	1,2	1,2		
•	Coal tar light oil	Combustible liquid	NA1137	None	173.118a				1,2	1,2		E
•	Coal tar light oil	Flammable liquid	NA1136	Flammable liquid	173/.118	173.119	1 quart	10 gallons	1,2	1		EA
•	Coal tar naptha	Combustible liquid	NA2553	None	173.118a	None	No limit	No limit	1,2	1,2		W
•	Coal tar naptha	Flammable liquid	NA2553	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1		
•	Coal tar oil	Combustible liquid	NA1137	None	173.118a	None	No limit	No limit	1,2	1,2		
•	Coal tar oil	Flammable liquid	NA1136	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1,2		
•	Cooling solution	Flammable liquid	UN1139	Flammable liquid	173.118	173.182	1 quart	15 gallons	1,2	1		
	Cobalt resinate, precipitated	Flammable solid	UN1318	Flammable solid	None	173.166	Forbidden	125 pounds	1,2	1,2		
E	Cobaltous bromide (*RQ-1000/454*)	ORM-E	NA9103	None	None	173.510	No limit	No limit	2	2		
E	Cobaltous formate (*RQ-1000/454*)	ORM-E	NA9104	None	None	173.510	No limit	No limit	2	2		
E	Cobaltous sulfamate (*RQ-1000/454*)	ORM-E	NA9105	None	None	173.510	No limit	No limit	2	2		
	Cocculus, solid (*fishberry*)	Poison B	UN1584	Poison	173.364	173.385	50 pounds	200 pounds	1,2	1,2		
W	Coconut meal pellets *containing at least 6% and not more than 13% moisture and not more than 10% residual fat content*	ORM-C		None	173.505	173.955			1,2	4	Keep dry	
	Coir. *See* Fibers		NA1372									
	Coke, hot	Forbidden										
	Collodion	Flammable liquid	NA2060	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1		
	Collodion cotton, wet. See Nitrocellulose, wet		UN2555									
	Cologne spirits (*alcohol*)	Flammable liquid	UN1987	Flammable liquid	173.118	173.135	1 quart	10 gallons	1,2	1		
	Columbian spirits (*wood alcohol*)	Flammable liquid	UN1230	Flammable liquid	173.118	173.135	1 quart	10 gallons	1,2	1		
	Combustion fuze	Class C explosive	NA0367	Explosive C	None	173.105	50 pounds	150 pounds	1,2	1,2		
	Combustion primer	Class C explosive	NA0378	Explosive C	None	173.107	50 pounds	150 pounds	1,2	5		W
	Combustible liquid, n.o.s.	Combustible liquid	UN1993	None	173.118a	None	No limit	No limit	1,2	1,2		W
	Commercial shaped charge. See High explosive											W
	Common fireworks. *See* Fireworks, common											W
•	Compound, cleaning, liquid	Flammable liquid	NA1993	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1		
•	Compound, cleaning, liquid	Corrosive material	NA1760	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2		W
•	Compound, cleaning, liquid	Combustible liquid	NA1993	None	173.118a	None	No limit	No limit	1,2	1,2		W
•	Compound, cleaning, liquid (containing hydrochloric (muriatic) acid)	Corrosive material	NA1789	Corrosive	173.244	173.263	1 quart	1 gallon	1	1		
•	Compound, cleaning, liquid (containing hydrofluoric acid)	Corrosive material	NA1790	Corrosive	173.244	173.256	1 quart	1 gallon	1	4		E
•	Compound, cleaning liquid (*containing phosphoric acid, acetic acid, sodium potassium hydroxide*)	Corrosive material	NA1760	Corrosive	173.244	173.245 173.249a	1 quart	1 quart	1,2	1,2		E
•	Compound, enamel	Flammable liquid	NA1263	Flammable liquid	173.118	173.120	1 quart	55 gallons	1,2	1		E
•	Compound, lacquer, paint, *or* varnish, removing, reducing, or thinning, liquid	Combustible liquid	NA1142	None	173.118a				1,2	1,2		
•	Compound, lacquer, paint, *or* varnish removing, liquid	Corrosive material	NA1760	Corrosive	173.244	173.245	1 quart	1 gallon	1,2	1,2		
•	Compound, lacquer, paint, *or* varnish, removing, reducing, *or* thinning, liquid	Flammable liquid	NA1142	Flammable liquid	173.118	173.120	1 quart	55 gallons	1,2	1		
•	Compound, polishing, liquid	Flammable liquid	NA1142	Flammable liquid	173.118	173.129	1	55 gallons	1,2	1		

§172.101 Hazardous Materials Table (cont'd)

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(1) */E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Labels required (if not exempted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments Other requirements
*	Compound, rust preventing *or* Compositid, rust removing	Corrosive material	NA1760	Corrosive	173.144	173.245	1 quart	1 gallon	1,2	1,2	
*	Compound, tree *or* weed killing, liquid	Combustible liquid	NA1993	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Compound, tree *or* weed killing, liquid	Corrosive material	NA1760	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2	
*	Compound, tree *or* weed killing, liquid	Flammable liquid	NA1993	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Compound, tree *or* weed killing, liquid	Poison B	NA2810	Poison	173.345	173.346	1 quart	25 gallons	1,2	1,2	
*	Compound, tree *or* weed killing, solid	Oxidizer	NA1479	Oxidizer	173.152	173.154 173.220	25 pounds	100 pounds			
*	Compound, vulcanizing, liquid	Corrosive material	NA1760	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2	
*	Compound, vulcanizing, liquid	Flammable liquid	NA1145	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Compound, water treatment, liquid. *See* Water treatment, liquid		NA1760								
	Compressed gas, n.o.s.	Flammable gas	UN1954	Flammable gas	173.300	173.302 173.304 173.305	Forbidden	300 pounds	1	4	
	Compressed gas, n.o.s.	Nonflammable gas	UN1956	Nonflammable gas	173.300	173.302 173.304 173.305	150 pounds	300 pounds	1,2	1,2	
	Consumer commodity	ORM-D		None	None	173.510 173.1200	66 pounds gross	66 pounds gross			Not subject to requirements of Part 178
	Container, reused or empty, must be cleaned for the hazardous material previously contained. See 173.28, 173.29										
E	Copper acetoarsenite, solid (*RQ-100/45.4*)	Poison B	UN1585	Poison	173.364	173.367	50 pounds	200 pounds	1,2	1,2	
	Copper arsenite, solid	Poison B	UN1586	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
EA	Copper chloride (*RQ-10/4.54*)	ORM-B	UN9003	None	173.306	173.510 173.800	25 pounds	100 pounds			
	Copper cyanide	Poison B	UN1587	Poison	173.370		25 pounds	200 pounds	1,2	1,2	
W	Copra	ORM-C	UN1363	None	173.305	173.960			1,2	1,2	Store away from acids. Segregation same as for flammable solids. Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Copra pellets. See Coconut meal pellets										
	Cordeau detonant fuse	Class C explosive	NA0065	Explosive C	None	173.104	50 pounds	200 pounds	1,2	1,2	
	Corrosive battery fluid. *See* Electrolyte (acid), *or* Alkaline Corrosive battery fluid										
	Corrosive liquid, n.o.s.	Corrosive material	UN1760	Corrosive	173.244	173.245 173.245a	1 quart	1 quart	1	4	For material that meets only the corrosive to skin criteria of 49 CFR 173.240(a)(1), 'under deck' stowage is also authorized if the description includes the additional entry specified by Sec. 172.[illegible]
	Corrosive solid, n.o.s.	Corrosive material	UN1759	Corrosive	173.244	173.245b	25 pounds	100 pounds	1	4	For material that meets only the corrosive to skin criteria of 49 CFR 173.240(a)(1), 'under deck' stowage is also authorized if the description includes the additional entry specified by Sec. 172.[illegible]
*	Cosmetics, n.o.s.	Combustible liquid	NA1993	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Cosmetics, n.o.s.	Flammable liquid	NA1993	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Cosmetics, n.o.s.	Flammable solid	NA1325	Flammable solid	173.150	173.154	25 pounds	100 pounds	1,2	1,2	
*	Cosmetics, n.o.s.	Oxidizer	NA1479	Oxidizer	173.152	173.154	25 pounds	100 pounds	1,2	1,2	
*	Cosmetics, n.o.s., liquid	Corrosive material	NA1760	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2	
*	Cosmetics, n.o.s., solid	Corrosive material	NA1759	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	Keep dry.
W	Cotton	ORM-C		None	173.305	173.965			1,2	1,2	Segregation same as for flammable solids. *See* 176.900 to 176.906
W	Cotton batting	ORM-C		None	173.305	173.970			1,2	1,2	Keep dry. Stow away from vegetable or animal oils. *See* 176.900 to 176.906
W	Cotton batting drom. *See* Cotton batting										
	Cotton, burnt. See Burnt cotton										
W	Cotton seed hull fiber *or* shavings, pulp, *or* cut linters. *See* Cotton batting										
	Cotton sweepings. *See* Cotton waste										
W	Cotton wadding. *See* Cotton batting										
W	Cotton waste	ORM-C		None	173.305	173.975			1,2	1,2	Keep dry. Stow away from vegetable or animal oils. *See* 176.900 to 176.906
	Cotton waste, oily (*with more than 5% of animal or vegetable oil*)	Flammable solid	UN1364	Flammable solid			Forbidden	Forbidden	1,2	1,2	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
E	Coumaphos (*RQ-10/4.54*)	Poison B	NA2765	Poison	173.364	173.365	50 pounds	200 pounds	2	2	
	Creosote, coal tar	Combustible liquid	NA1993	None	173.118a	None	No limit	No limit	1,2	1,2	
	Creosote oil. See Creosote coal tar										
E	Cresol (*RQ-1000/454*)	Corrosive material	NA2076	Corrosive	173.244	173.245	1 gallon	55 gallons	2	2	
E	Crotonaldehyde (*RQ-100/45.4*)	Flammable liquid	UN1143	Flammable liquid and Poison	173.118	173.119	1 quart	1 gallon	1,2	1	
	Crotonic acid	Corrosive material	UN2823	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Crotonylene	Flammable liquid	UN1144	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	4	
	Crude nitrogen fertilizer solution (more than 25.3 p.s.i.g.)	Nonflammable gas	NA1043	Nonflammable gas	173.300	173.304 173.314	Forbidden	300 pounds	1,2	1,2	
*	Crude oil, petroleum	Combustible liquid	NA1993	None	173.118a	None	No limit	No limit	1,2	1,2	

12 **§172.101 Hazardous Materials Table (cont'd)**

(1) */E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Label(s) required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
*	Crude oil, petroleum	Flammable liquid	NA1993	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Cumene hydroperoxide	Organic peroxide	NA2116	Organic peroxide	173.158	173.224	1 quart	1 quart	1,2	4	
E	Cupric acetate (*RQ-100/45.4*)	ORM-E	NA9106	None	None	173.510	No limit	No limit	2	2	
	Cupric cyanide. See Copper cyanide		UN1587								
E	Cupric nitrate (*RQ-100/45.4*)	Oxidizer	NA1479	Oxidizer	173.158	173.182	25 pounds	100 pounds	2	2	
E	Cupric oxalate (*RQ-100/45.4*)	ORM-E	NA9449	None	None	173.510	No limit	No limit	2	2	
E	Cupric sulfate, ammoniated (*RQ-100/45.4*)	ORM-E	NA9110	None	None	173.510	No limit	No limit	2	2	
E	Cupric sulfate (*RQ-10/4.54*)	ORM-E	NA9109	None	None	173.510	No limit	No limit	2	2	
E	Cupric tartrate (*RQ-100/45.4*)	ORM-E	NA9111	None	None	173.510	No limit	No limit	2	2	
*	Cuprietylene-diamine solution	Corrosive material	UN1761	Corrosive	173.244	173.249	1 quart	1 gallon	1,2	1,2	
*	Cyanide or cyanide mixture, dry	Poison B	UN1588	Poison	173.364	173.370	25 pounds	200 pounds	1,2	1,2	Keep dry. Stow away from acids
	Cyanogen bromide	Poison B	UN1889	Poison	None	173.379	Forbidden	25 pounds	1	5	Shield from radiant heat. Segregation same as for corrosive materials
E	Cyanogen chloride *containing less than 0.9% water* (*RQ-10/4.54*)	Poison A	UN1589	Nonflammable gas and Poison Gas	None	173.328	Forbidden	Forbidden	1	5	Shield from radiant heat
	Cyanogen gas	Poison A	UN1026	Flammable gas and Poison Gas	None	173.328	Forbidden	Forbidden	1	5	
E	Cyclohexane (*RQ-1000/454*)	Flammable liquid	UN1145	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	4	
	Cyclohexanone peroxide, *50 to 85% peroxide*	Organic peroxide	NA2119	Organic peroxide	173.157	173.156	Forbidden	25 pounds	1	1	
	Cyclohexanone peroxide and bis (1-hydroxy cyclohexyl) peroxide mixture. *See appropriate cyclohexanone peroxide entry immediately preceding*										
	Cyclohexanone peroxide, *not over 30% peroxide*	Organic peroxide	NA2896	Organic peroxide	173.153	173.154	2 pounds	25 pounds	1,2	1,2	
	Cyclohexenyl trichlorosilane	Corrosive material	UN1762	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
	Cyclohexyl trichlorosilane	Corrosive material	UN1763	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
	Cyclopentane	Flammable liquid	UN1146	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	4	
	Cyclopentane, methyl	Flammable liquid	UN2298	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	4	
	Cyclopropane	Flammable gas	UN1027	Flammable gas	173.306	173.304	Forbidden	300 pounds	1,2	1	
	Cyclotetramethylenetetranitramine, wet with not less than 10 percent water. See High explosive										
	Cyclotrimethylenetrinitramine, desensitized. See High explosive										
	Cyclotrimethylenetrinitramine, wet with not less than 10% water. See High explosive										
	Cylinder, empty, including ton tanks, must be cleaned for the hazardous material previously contained in cylinder. See 173.29										
EA	2,4-D esters. *See* 2,4-Dichlorophenoxyacetic acid esters		NA2765								
	2,4-D. *See* 2,4-Dichlorophenoxyacetic acid		NA2765								
EA	DDT *or* Dichlorodiphenyltrichloroethane (*RQ-1/.454*)	ORM-A	NA2761	None	173.505	173.510	No limit	No limit			
	Dead oil. See Creosote, coal tar										
	Decaborane	Flammable solid	UN1868	Flammable solid and Poison	173.118a	None	No limit	No limit	1,2	1,2	
	Decahydronaphthalene	Combustible liquid	UN1147	None	173.118a	None	No limit	No limit	1,2	1,2	
	Decalin. See Decahydronaphthalene		UN1147								
	Delay electric igniter	Class C explosive	NA0206	Explosive C	None	173.106	50 pounds	150 pounds	1,3	1,3	
	Denatured alcohol. *See* Alcohol, n.o.s.		UN1095								
	Depth bomb. See Explosive bomb										
	Detonating fuze, Class A, *with or without radioactive components*	Class A explosive		Explosive A	None	173.89	Forbidden	Forbidden	6	5	
	Detonating fuze, Class C explosive	Class C explosive	UN0257	Explosive C	None	173.113	50 pounds	150 pounds	1,3	1,3	
	Detonating primer	Class A explosive		Explosive A	None	173..68	Forbidden	Forbidden	6	5	
*	Di-(2-ethylhexyl) phosphoric acid	Corrosive material	NA1902	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
*	Diacetone alcohol	Flammable liquid	UN1148	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Diacetyl	Flammable liquid	UN2346	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
EA	Diazinon (*RQ-1/.454*)	ORM-A	NA2783	None	173.505	173.510	No limit	No limit			
	Diazodinitrophenol. *See* Initiating explosive										
A	Dibromodifluoromethane	ORM-A	UN1941	None	173.505	173.510 173.605	10 gallons	55 gallons			
W	1,2-Dibromoethane. *See* Ethylene dibromide		UN1605								
E	Dicamba (*RQ-1000/454*)	ORM-E	NA2769	None	None	173.510	No limit	No limit	2	2	
E	Dichlobenil (*RQ-1000/454*)	ORM-E	NA2769	None	None	173.510	No limit	No limit	2	2	
E	Dichlone (*RQ-1/0.454*)	ORM-E	NA2761	None	None	173.510	No limit	No limit	2	2	
E	*1,1-Dichloro-2,2-bis (parachlorophenyl) ethane. See* TDE										
	Dichloroacetic acid	Corrosive material	UN1764	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2	Glass carboys in hampers not permitted under deck

§172.101 Hazardous Materials Table (cont'd)

(1) */E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Label(s) required (if not exempted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
	Dichloroacetyl chloride	Corrosive material	UN1765	Corrosive	173.244	173.247	1 quart	1 gallon	1	4	Keep dry
EA	Dichlorobenzene, ortho, liquid (*RQ-100/45.4*)	ORM-A	UN1591	None	173.505	173.510	No limit	No limit			
EA	Dichlorobenzene, para, solid (*RQ-100/45.4*)	ORM-A	UN1592	None	173.505	173.510	No limit	No limit			
	Dichlorobenzene	Flammable liquid	NA2056	Flammable liquid	173.119	173.119	1 quart	10 gallons	1,2	1,2	
A	Dichlorodifluoroethylene	ORM-A	NA9010	None	173.505	173.510 173.605	10 gallons	55 gallons			
	Dichlorodifluoromethane	Nonflammable gas	UN1028	Nonflammable gas	173.306	173.306 173.314 173.315	150 pounds	300 pounds	1,2	1,2	
	Dichlorodifluoromethane and difluoroethane mixture (*constant boiling mixture*)	Nonflammable gas	UN2602	Nonflammable gas	173.306	173.306 173.314 173.315	150 pounds	300 pounds	1,2	1,2	
	Dichlorodifluoromethane-dichlorotetrafluoroethane mixture	Nonflammable gas	NA1956	Nonflammable gas	173.306	173.306 173.314 173.315	150 pounds	300 pounds	1,2	1,2	
	Dichlorodifluoromethane monochlorodifluoromethane mixture	Nonflammable gas	NA1958	Nonflammable gas	173.306	173.306 173.314 173.315	150 pounds	300 pounds	1,2	1,2	
	Dichlorodifluoromethane-trichloromonofluoromethane mixture	Nonflammable gas	NA1958	Nonflammable gas	173.306	173.306 173.314 173.315	150 pounds	300 pounds	1,2	1,2	
	Dichlorodifluoromethane-trichloromonofluoroethane-monochloro difluoromethane mixture	Nonflammable gas	NA1958	Nonflammable gas	173.306 173.505	173.306 173.314 173.315 173.510	150 pounds-None				
	Dichlorodifluoromethane-trichlorotrifluoroethane mixture	Nonflammable gas	NA1958	Nonflammable gas	173.306	173.306 173.314 173.315	150 pounds	300 pounds	1,2	1,2	
	Dichlorodiphenyltrichloroethane. *See* DDT		NA2761								
	Dichloroethylene	Flammable liquid	UN1150	Flammable liquid	173.119	173.119	1 quart	10 gallons	1,2	1	
	Dichloroisopropyl ether	Corrosive material	UN2490	Corrosive	173.244	173.254	1 quart	10 gallons	1,2	1,2	
A	Dichloromethane *or* methylene chloride	ORM-A	UN1593	None	173.505	173.510 173.605	10 gallons	55 gallons			
*	Dichloropentane	Flammable liquid	UN1152	Flammable liquid	173.119	173.119	1 quart	10 gallons	1,2	1,2	
EA	2,4-Dichlorophenoxyacetic acid esters (*RQ-100/45.4*)	ORM-A	NA2765	None	None	173.510	99 pounds	No limit	2	2	
EA	2,4-Dichlorophenoxyacetic acid (*RQ-100/45.4*)	ORM-A	NA2765	None	173.505	173.510					
	Dichlorophenyltrichlorosilane	Corrosive material	UN1766	Corrosive	None	173.260	Forbidden	10 gallons	1	1	Keep dry
E	Dichloropropane. *See* Propylene dichloride		UN1279								
E	Dichloropropene and propylene dichloride mixture (*RQ-5000/2270*)	Flammable liquid	NA2047	Flammable liquid	173.244	173.245	1 quart	10 gallons	1,2	1,2	
E	Dichloropropene (*RQ-5000/2270*)	Flammable liquid	UN2047	Flammable liquid	173.119	173.119	1 quart	10 gallons	2	2	
E	2,2-Dichloropropionic acid (*RQ-5000/2270*)	Corrosive material	NA1760	Corrosive	173.244	173.245	2 gallons	10 gallons	2	2	
E	Dichlorvos (*RQ-10/4.54*)	Poison B	NA2783	Poison	173.380	173.385	Forbidden	1 quart	2	2	
	Dicumyl peroxide *50% solution*	Organic peroxide	NA3121	Organic peroxide	173.158	173.224	1 quart	1 quart	1,2	4	
	Dicumyl peroxide, dry	Organic peroxide	UN3121	Organic peroxide	173.158	173.154	2 pounds	25 pounds	1,2	1,2	
EA	Dieldrin (*RQ-1/.454*)	ORM-A	NA2761	None	173.505	173.510	No limit	No limit			
	Diesel Fuel. *See* Fuel oil										
	Diethyl carbinol. *See* Ethylene glycol diethyl ether		UN1155								
	Diethyl dichlorosilane	Flammable liquid	UN1767	Flammable liquid	None	173.135	Forbidden	10 gallons	1	1	Keep dry. Segregation same as for corrosives
	Diethyl ketone	Flammable liquid	UN1156	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
E	Diethylamine (*RQ-1000/454*)	Flammable liquid	UN1154	Flammable liquid	173.118	173.119	Forbidden	5 pints	1,2	4	
	Diethylene glycol dinitrate. *See* 173.51	Forbidden									
	1,1-Difluoro 1-chloroethane. *See* Difluoromonochloroethane		UN2517								
	Difluoroethane	Flammable gas	UN1030	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	1	
	Difluoromonochloroethane	Flammable gas	UN2517	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	1	
	Difluorophosphoric acid, anhydrous	Corrosive material	UN1768	Corrosive	None	173.275	Forbidden	1 gallon	1,2	1,2	
	Dihydropyran	Flammable liquid	UN2376	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	4	
	Diisobutyl ketone	Combustible liquid	UN1157	None	173.118a	None	No limit	No limit	1,2	1,2	
	Diisooctyl acid phosphate	Corrosive material	UN1902	Corrosive	173.244	173.256	1 quart	1 quart	1,2	1,2	Glass carboys in hampers not permitted under deck
	Diisopropylamine	Flammable liquid	UN1158	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Diisopropylbenzene hydroperoxide solution, *not over 60% peroxide*	Organic peroxide	NA3171	Organic peroxide	173.158	173.224	1 quart	1 quart	1,2	4	
	Diisopropylethanolamine	Corrosive material	UN2686	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Diisopropylether	Flammable liquid	UN1159	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	4	

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§172.101 Hazardous Materials Table (cont'd)

(1) */E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Label(s) required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(6) Maximum net quantity in one package (a) Cargo vessel	(6) Maximum net quantity in one package (b) Passenger vessel	(7) Water shipments (a) Other requirements
	Dimethyl carbonate	Flammable liquid	UN1161	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Dimethyl ether	Flammable gas	UN1033	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	1	
	Dimethyl sulfate	Corrosive material	UN1595	Corrosive	None	173.255	Forbidden	1 quart	1	5	Keep cool
	Dimethyl sulfide	Flammable liquid	UN1164	Flammable liquid	None	173.119	Forbidden	10 gallons	1,2	5	
E	Dimethylamine, anhydrous (*RQ-1000/454*)	Flammable gas	UN1032	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	4	
E	Dimethylamine, aqueous solution (*RQ-1000/454*)	Flammable liquid	UN1160	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	2,3-Dimethylbutane	Flammable liquid	UN2457	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	4	
	1,4-Dimethylcyclohexane	Flammable liquid	UN2263	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Dimethyldichlorosilane	Flammable liquid	UN1162	Flammable liquid	None	173.135	Forbidden	5 pints	1,2	3	
	Dimethylhexane dihydroperoxide, dry	Forbidden									
	Dimethylhexane dihydroperoxide, (with 30% or more water)	Organic peroxide	NA2174	Organic peroxide	None	173.157	Forbidden	55 pounds	1	1	
	Dimethylhydrazine, unsymmetrical (*UDMH*)	Flammable liquid	UN1163	Flammable liquid and Poison	None	173.145	Forbidden	5 pints	1,2	1	Keep dry. Separate from corrosive and oxidizing materials, and organic peroxides.
E	Dinitrobenzene, solid, *or* dinitrophenol, solid (*RQ-1000/454*)	Poison B	NA1597	Poison	173.364	173.371	50 pounds	200 pounds	1,2	1,2	
*E	Dinitrobenzene solution (*RQ-1000/454*)	Poison B	NA1597	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
	Dinitrochlorobenzol, solid *or* Dinitrochlorobenzene	Poison B	UN1577	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
A	Dinitrocyclohexylphenol	ORM-A	NA9026	None	173.505	173.510	No limit	No limit			
*E	Dinitrophenol solution (*RQ-1000/454*)	Poison B	UN1599	Poison	173.345	173.362a	1 quart	65 pounds	1,2	1,2	Store away from heavy metals and their compounds. If flash point is 141 deg F or less segregation same as for flammable liquids
E	Dinitrotoluene (*RQ-1000/454*)	ORM-E	UN1600	None	None	173.510	No limit	No limit	2	2	
	Dioxane	Flammable liquid	UN1165	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Dioxolane	Flammable liquid	UN1166	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Diphenyl dichlorosilane	Corrosive material	UN1769	Corrosive	None	173.280	Forbidden	10 gallons	1	1	
	Diphenyl methyl bromide, solid	Corrosive material	UN1770	Corrosive	173.244	173.245b	25 pounds	100 pounds	1	4	
•	Diphenyl methyl bromide solution	Corrosive material	UN1770	Corrosive	173.244	173.247	1 quart	1 gallon	1,2	1,2	
•	Diphenylaminechloroarsine (*DM*)	Irritating material	UN1698	Irritant	None	173.382	Forbidden	75 pounds	1	5	
	Diphosgene. See Phosgene										
E	Diquat (*RQ-1000/454*)	ORM-E	NA2781	None	None	173.510	No limit	No limit	2	2	
•	Disinfectant, liquid	Corrosive material	UN1903	Corrosive	173.244	173.245	1 quart	10 gallons	1	4	
•	Disinfectant, liquid	Poison B	UN1601	Poison	173.345	173.346	1 quart	55 gallons	1,2	1	
•	Disinfectant, liquid, n.o.s.	Combustible liquid	NA1993	None	173.118a	None	No limit	No limit	1,2	1,2	
•	Disinfectant, solid	Poison B	UN1601	Poison	173.364	173.365	50 pounds	200 pounds			
	Dispersant Gas *or* Refrigerant Gas. *See* 173.314 NOTE 13 and 173.15 NOTE 9										
•	Distillate (petroleum or coal tar)	Flammable liquid	UN1268	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
E	Disulfoton (*RQ-1/0.454*)	Poison B	NA2783	Poison	173.364	173.365	Forbidden	1 quart	2	2	
E	Diuron (*RQ-100/45.4*)	ORM-E	NA2767	None	None	173.510	No limit	No limit	2	2	
	Divinyl ether	Flammable liquid	UN1167	Flammable liquid	None	173.119	Forbidden	10 gallons	1,2	5	
	Dodecyl trichlorosilane	Corrosive material	UN1771	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
E	Dodecylbenzenesulfonic acid (*RQ-1000/454*)	ORM-E	NA2584	None	None	173.510	No limit	No limit	2	2	
•	Dressing, leather	Combustible liquid	NA1993	None	173.118a	None	No limit	No limit	1,2	1,2	
•	Dressing, leather	Flammable liquid	NA1993	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Drier. See Paint drier, liquid										
	Drill cartridge				173.55						
•	Drugs, n.o.s.	Combustible liquid	NA1993	None	173.118a	None	No limit	No limit	1,2	1,2	
•	Drugs, n.o.s.	Flammable liquid	NA1993	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
•	Drugs, n.o.s.	Flammable solid	NA1325	Flammable solid	173.153	173.154	25 pounds	100 pounds	1,2	1,2	
•	Drugs, n.o.s.	Oxidizer	UN1479	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	
•	Drugs, n.o.s. liquid	Corrosive material	UN1760	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2	
•	Drugs, n.o.s. liquid	Poison B	UN2810	Poison	173.345	173.346	1 quart	55 gallons	1,2	1	
•	Drugs, n.o.s. solid	Corrosive material	UN1759	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	Keep dry
•	Drugs, n.o.s. solid	Poison B	UN2811	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Drums, empty, must be cleaned for the hazardous material previously contained in drum. See 173.29										
	Dry ice. *See* Carbon dioxide, solid										
	Dusts, by-product, poisonous. *See* arsenical dust		UN1845								

§172.101 Hazardous Materials Table (cont'd)

(1) */E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Label(s) required (if not exempted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
*	Dye intermediate, liquid	Corrosive material	UN2801	Corrosive	173.244	173.245 173.245a	1 quart	10 gallons	1,2	1,2	Stow away from foodstuffs and living quarters
	Dynamite. See High explosive										
E	EDTA. *See* Ethylenediaminetetraacetic acid										
	Electric blasting caps. *See* Blasting caps, electric										
	Electric squib	Class C explosive	UN0325	Explosive C	None	173.108	50 pounds	150 pounds	1,2	1,2	
	Electric storage battery, wet. *See* Battery, electric storage, wet		NA2794								
	Electrolyte (acid), battery fluid (*not over 47% acid*)	Corrosive material	UN2796	Corrosive	173.244	173.257	1 quart	5 gallons	1,2	1,2	Glass carboys in hampers not permitted under deck
	Electrolyte (acid), *or* alkaline (*corrosive*) battery fluid packed with dry-storage battery	Corrosive material	NA2797	Corrosive	None	173.258	Forbidden	5 pints	1,2	1,2	
	Electrolyte (acid), or alkaline (*corrosive*) battery fluid packed with battery charger, radio current supply device, or electronic equipment and actuating device.	Corrosive material	NA2797	Corrosive	None	173.258	Forbidden	5 pints	1,2	1,2	
	Empty cartridge bag with black powder igniter	Class C explosive	NA0325	Explosive C	None	173.108	50 pounds	150 pounds	1,2	1,2	
	Empty cartridge case, primed	Class C explosive	UN0055	Explosive C	None	173.107	50 pounds	150 pounds	1,2	1,2	
*	Enamel. *See* Paint, enamel, lacquer, etc.		UN1263								
E	Endosulfan (*RQ-1/0.454*)	Poison B	NA2761	Poison	173.364	173.365	1 pound	10 pounds	1,2	1,2	If stowed under deck, must be stowed in a recoverable location.
E	Endrin (*RQ-1/0.454*)	Poison B	NA2761	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	If stowed under deck, must be stowed in a recoverable location.
	Engine, internal combustion				173.120				1,2	1,2	
	Engine starting fluid	Flammable gas	UN1960	Flammable gas	None	173.304	Forbidden	60 pounds	1,2	5	Not permitted in unventilated containers
E	Epichlorohydrin (*RQ-1000/454*)	Flammable liquid	UN2023	Flammable liquid	173.118	173.119	1 quart	10 gallons	2	2	
*	Eradicator, paint *or* grease, liquid	Flammable liquid	UN1850	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Etching acid, liquid, n.o.s.	Corrosive material	NA1760	Corrosive	None	173.299	Forbidden	10 pounds	1	5	
	Ethane	Flammable gas	UN1035	Flammable gas	173.306	173.304	Forbidden	300 pounds	1,2	4	
	Ether (*ethyl*)	Flammable liquid	UN1155	Flammable liquid	None	173.119	Forbidden	10 gallons	1,2	5	
	Ether, Ethyl. *See* Ether										
E	Ethion (*RQ-10/4.54*)	Poison B	NA2783	Poison	173.364	173.365	Forbidden	1 quart	2	2	
	Ethyl acetate	Flammable liquid	UN1173	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Ethyl acrylate, inhibited	Flammable liquid	UN1917	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Ethyl alcohol. *See* Alcohol, n.o.s.		UN1170								
	Ethyl aldehyde. *See* Acetaldehyde		UN1089								
E	Ethyl benzene (*RQ-1000/454*)	Flammable liquid	UN1175	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Ethyl borate	Flammable liquid	UN1176	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	Keep dry
	Ethyl butyl acetate	Combustible liquid	UN1177	None	173.118a	None	No limit	No limit	1,2	1,2	
	Ethyl butyl ether	Flammable liquid	UN1179	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Ethyl butyraldehyde	Flammable liquid	UN1178	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Ethyl butyrate	Flammable liquid	UN1180	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1,2	
	Ethyl chloride	Flammable liquid	UN1037	Flammable liquid	None	173.123	Forbidden	173.123	1,2	1	Segregation same as for flammable gases
	Ethyl chloroacetate	Combustible liquid	UN1181	None	173.118a	None	No limit	No limit	1,2	1,2	
	Ethyl chloroformate (*chlorocarbonate*)	Flammable liquid	UN1182	Flammable liquid and Poison	None	173.366	Forbidden	5 pints	1,2	1	
	Ethyl chlorothioformate	Corrosive material	UN2826	Corrosive	173.244	173.245 173.245a	1 quart	1 quart	1,2	1	
	Ethyl crotonate	Flammable liquid	UN1862	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Ethyl dichlorosilane	Flammable liquid	UN1183	Flammable liquid	None	173.135	Forbidden	5 pints	1,2	1	
	Ethyl ether. See Ether		UN1155								
	Ethyl formate	Flammable liquid	UN1190	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	4	
	Ethyl lactate	Combustible liquid	UN1192	None	173.118a	None	No limit	No limit	1,2	1,2	
	Ethyl mercaptan	Flammable liquid	UN2363	Flammable liquid	None	173.141	Forbidden	10 gallons	1,2	1	
	Ethyl methyl ether	Flammable liquid	UN1039	Flammable liquid	None	173.119	Forbidden	10 gallons	1,2	1	Segregation same as for flammable gases
	Ethyl methyl ketone	Flammable liquid	UN1193	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Ethyl nitrate (*nitric ether*)	Flammable liquid	NA1993	Flammable liquid	173.118	173.119	Forbidden	Forbidden	1,2	1	
	Ethyl nitrite (*nitrous ether*)	Flammable liquid	UN1194	Flammable liquid	None	173.119	Forbidden	Forbidden	1,2	5	
	Ethyl phenyl dichlorosilane	Corrosive material	UN2435	Corrosive	None	173.290	Forbidden	10 gallons	1	5	

16 **§172.101 Hazardous Materials Table (cont'd)**

(1) */E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Label(s) required (if not exempted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
	Ethyl phosphonothioic dichloride, anhydrous	Corrosive material	NA1760	Corrosive	173.244	173.245 173.245a	1 quart	1 quart	1	4	
	Ethyl phosphonous dichloride, anhydrous	Corrosive material	NA1760	Corrosive	173.244	173.245 173.245a	1 quart	1 quart	1	4	
	Ethyl phosphorodichloridate	Corrosive material	NA1760	Corrosive	173.244	173.245 173.245a	1 quart	1 quart	1	4	
	Ethyl propionate	Flammable liquid	UN1195	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Ethyl silicate (*also ethyl ortho silicate*)	Combustible liquid	UN1292	None	173.118a	None	No limit	No limit	1,2	1,2	
	Ethyl trichlorosilane	Flammable liquid	UN1196	Flammable liquid	None	173.135	Forbidden	5 pints	1,2	1	
	Ethylene	Flammable gas	UN1962	Flammable gas	173.306	173.304	Forbidden	300 pounds	1,2	4	
	Ethylene chlorohydrin	Poison B	UN1135	Poison	173.345	173.346	1 quart	55 gallons	1,2	1	Segregation same as for flammable liquids
RAW	Ethylene dibromide (1,2-dibromethane) (*RQ-1000/454*)	ORM-A	UN1605	None	173.505	173.620	1 quart	55 gallons	1,2	1,2	Stow away from living quarters
E	Ethylene dichloride (*RQ-5000/2270*)	Flammable liquid	UN1184	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Ethylene glycol diethyl ether (*diethyl 'Cellosolve'*)	Combustible liquid	UN1153	None	173.118a	None	No limit	No limit	1,2	1,2	
	Ethylene glycol monoethyl ether (*'Cellosolve'*)	Combustible liquid	UN1171	None	173.118a	None	No limit	No limit	1,2	1,2	
	Ethylene glycol monoethyl ether acetate (*'Cellosolve acetate'*)	Combustible liquid	UN1172	None	173.118a	None	No limit	No limit	1,2	1,2	
	Ethylene glycol monomethyl ether (*methyl 'Cellosolve'*)	Combustible liquid	UN1188	None	173.118a	None	No limit	No limit	1,2	1,2	
	Ethylene glycol monomethyl ether acetate (*methyl 'Cellosolve acetate'*)	Combustible liquid	UN1189	None	173.118a	None	No limit	No limit	1,2	1,2	
	Ethylene imine, inhibited	Flammable liquid	UN1185	Flammable liquid and Poison	None	173.130	Forbidden	5 pints	1,2	1	
	Ethylene oxide	Flammable liquid	UN1040	Flammable liquid	None	173.124	Forbidden	173.124	1,2	1	Segregation same as for flammable gases
E	Ethylenediamine (*RQ-1000/454*)	Flammable liquid	UN1604	Flammable liquid	173.118	173.119	Forbidden	1 quart	2	2	
E	Ethylenediaminetetraacetic acid (*RQ-5000/2270*)	ORM-E	NA9117	None	None	173.510	No limit	No limit	2	2	
	Ethylhexaldehyde	Combustible liquid	UN1191	None	173.118a	None	No limit	No limit	1,2	1,2	
	Etiologic agent, n.o.s.	Etiologic agent	UN2814	Etiologic agent	173.386	173.387	173.388	4 liters			Not permitted except under specific conditions approved by the Department
W	Excelsior (shredded wood) *when dry, clean, and free from oil*	ORM-C		None	173.505	173.560			1,2	1,2	Stow away from organic, corrosive, or oxidizing materials
W	Exothermic ferrochrome	ORM-C		None	173.505	173.565			1	1	
W	Exothermic ferromanganese. *See* Exothermic ferrochrome										
W	Exothermic silicon chrome. *See* Exothermic ferrochrome										
	Explosive auto alarm	Class C explosive	UN0001	Explosive C	None	173.111	50 pounds	150 pounds	1,2	1,2	
	Explosive bomb	Class A explosive		Explosive A	None	173.56	Forbidden	Forbidden	1,2	5	Magazine storage authorized. No other cargo may be stowed in the same hold with these items
	Explosive cable cutter	Class C explosive	UN0070	Explosive C	None	173.102	50 pounds	150 pounds	1,2	1,2	
	Explosive mine	Class A explosive		Explosive A	None	173.56	Forbidden	Forbidden	1,2	5	Magazine storage authorized. No other cargo may be stowed in the same hold with these items
	Explosive, new approval, and evaluation See 173.86										
	Explosive power device, Class B	Class B explosive		Explosive B	None	173.94	Forbidden	150 pounds	1,2	5	
	Explosive power device, Class C	Class C explosive	NA0323	Explosive C	None	173.102	50 pounds	150 pounds	1,2	1,2	
	Explosive projectile	Class A explosive		Explosive A	None	173.56	Forbidden	Forbidden	1,2	5	Magazine storage authorized. No other cargo may be stowed in the same hold with this material
	Explosive release device	Class C explosive	UN0173	Explosive C	None	173.102	50 pounds	150 pounds	1,2	1,2	
	Explosive rivet	Class C explosive	UN0174	Explosive C	None	173.100	50 pounds	150 pounds	1,2	1,2	
	Explosive, sample for laboratory examination					173.86	Forbidden	173.86			
	Explosive torpedo	Class A explosive		Explosive A	None	173.56	Forbidden	Forbidden	1,2	5	Magazine storage authorized. No other cargo may be stowed in the same hold with this material
	Extract, liquid, flavoring	Flammable liquid	UN1197	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Fabric with animal or vegetable oil. See Fibers or fabric containing not more than 9% animal or vegetable fat										
AW	Feed, wet, mixed	ORM-C		None	173.505	173.560	Forbidden	Forbidden	3	3	Stow in cool, dry, well ventilated compartment. Do not stow bags over ten tiers high without dunnage oil. Do not overstow
W	Felt, waste. *See* Cotton waste										
	Felt, waste, wet. *See* Waste wool, wet										
E	Ferric ammonium citrate (*RQ-1000/454*)	ORM-E	NA9115	None	None	173.510	No limit	No limit	2	2	
E	Ferric ammonium oxalate (*RQ-1000/454*)	ORM-E	NA9119	None	None	173.510	No limit	No limit	2	2	
	Ferric arsenate, solid	Poison B	UN1606	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Ferric arsenite, solid	Poison B	UN1607	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
RA	Ferric chloride, solid, *anhydrous* (*RQ-1000/454*)	ORM-B	UN1773	None	173.505	173.510	25 pounds	100 pounds			
*E	Ferric chloride solution (*RQ-1000/454*)	Corrosive material	UN2582	Corrosive	173.244	173.245 173.245a	1 quart	10 quarts	1,2	1,2	

§172.101 Hazardous Materials Table (cont'd)

(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/ E/ A/ W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required if not exempt	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
E	Ferric fluoride (*RQ-100/45.4*)	ORM-E	NA9130	None	None	173.510	No limit	No limit	2	2	
E	Ferric nitrate (*RQ-1000/454*)	Oxidizer	UN1466	Oxidizer	173.158	173.182	25 pounds	100 pounds	2	2	
E	Ferric sulfate (*RQ-1000/454*)	ORM-E	NA9131	None	None	173.510	No limit	No limit	2	2	
W	Ferrophosphorus	ORM-A		None	173.505	173.685			1,2	1,2	Keep dry. Stow away from living quarters
AW	Ferrosilicon, *containing 30% or more but not more than 70% silicon*	ORM-A	UN1408	None	173.505	173.510 173.645	Forbidden	25 pounds	1,2	1,2	Keep dry. Stow away from living quarters. Segregation same as for flammable solids labeled Dangerous When Wet
E	Ferrous ammonium sulfate (*RQ-1000/454*)	ORM-E	NA9122	None	None	173.510	No limit	No limit	2	2	
	Ferrous arsenate (*iron arsenate*), solid	Poison B	UN1608	Poison	173.364	173.368	50 pounds	200 pounds	1,2	1,2	
EA	Ferrous chloride, solid (*RQ-100/45.4*)	ORM-B	NA1759	None	None	173.510	No limit	No limit	2	2	
E	Ferrous chloride, solution (*RQ-100/45.4*)	Corrosive material	NA1760	Corrosive	173.244	173.245	1 quart	5 gallons	2	2	
E	Ferrous sulfate (*RQ-1000/454*)	ORM-E	NA9135	None	None	173.510	No limit	No limit	2	2	
	Fertilizer ammoniating solution containing free ammonia (*more than 25.3 p.s.i.g.*)	Nonflammable gas	UN1043	Nonflammable gas	173.306	173.304 173.314	Forbidden	300 pounds	1,2	4	
	Fertilizer, tankage. *See* Garbage, tankage										
	Fibers, burnt	Flammable solid	NA1372	Flammable solid	None	173.150	Forbidden	Forbidden	1,2	1,2	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
W	Fibers (*jute, hemp, flax, sisal, coir, kapok, and similar vegetable fibers*)	ORM-C	NA1372	None	173.505	173.965			1,2	1,2	Stow away from animal or vegetable oils. Segregation same as for flammable solids
	Fibers *or* fabric, containing not more than 5% animal *or* vegetable oil	Flammable solid	NA1373	Flammable solid	None	173.170	Forbidden	Forbidden	1,2	1,2	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Film (nitrocellulose)	Flammable solid	NA1324 NA9002	Flammable solid	None	173.177	50 pounds	200 pounds	1,2	1,2	Stow away from other flammable cargo or substances
	Film, photographic, (including scrap film), safety, nonflammable, or slow burning. Not subject to requirements of this subchapter										
*	Fire extinguisher	Nonflammable gas	UN1044	Nonflammable gas	173.306		150 pounds	300 pounds	1,2	1,2	
	Fire extinguisher charge containing not more than 50 grains of propellant explosive per unit. Not subject to requirements of this subchapter.										
	Fire extinguisher charge containing sulfuric acid	Corrosive material	UN1774	Corrosive	173.261		1 quart	1 gallon	1,2	1,2	
	Firecracker salute. See Fireworks, common *or* special										
	Firecracker. See Fireworks, common *or* special										
	Fireworks, common	Class C explosive	NA0335	Explosive C	None	173.100 173.108	50 pounds	200 pounds	1,2	1,2	Passenger vessels in metal lockers only
	Fireworks, exhibition display piece. See Fireworks, special										
	Fireworks, special	Class B explosive		Explosive B	None	173.88 173.91	Forbidden	200 pounds	2	2	Passenger vessels in metal lockers only. Toy torpedoes must not be packed with other special fireworks
W	Fish meal *or* fish scrap containing 6% to 12% water	ORM-C	NA1374	None	173.505	173.965			1,2	1,2	Segregation same as for flammable solids. Separate from flammable gases or liquids, oxidizing materials, or organic peroxides. *Use double strip stowage* for cargo 6-12 percent moisture containing not more than 12 percent fat. *Use single strip stowage* for cargo 6-12 percent moisture containing 12-15 percent fat.
	Fish meal *or* fish scrap containing less than 6% or more than 12% water	Flammable solid	NA1374 UN2216	Flammable solid	None	173.171	Forbidden	Forbidden	1,2	1,2	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Fissile radioactive material. *See* Radioactive material, fissile										
*	Flame retardant compound liquid	Corrosive material	NA1760 UN1954	Corrosive	173.244	173.291	1 quart	10 gallons	1,2	1,2	
	Flammable Gas n.o.s. *See* Compressed gas, n.o.s.										
	Flammable liquid, n.o.s.	Flammable liquid	UN1993	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Flammable solid, n.o.s.	Flammable solid	UN1325	Flammable solid	173.150	173.154	25 pounds	25 pounds	1,2	1,2	
	Flare, airplane. See Fireworks, special										
	Flare. See Fireworks, common										
	Flash cartridge. See Fireworks, special *or* Low explosives										
	Flash cracker. See Fireworks, common *or* special										
	Flash powder. See Fireworks, special *or* Low explosives										
	Flax. See Fibers										
	Flexible linear shaped charge, metal clad	Class C explosive	UN0237	Explosive C	None	173.104	50 pounds	300 pounds	1,2	1,2	
	Flowers of sulfur. *See* Sulfur		NA1350								
	Flue dust, poisonous	Poison B	UN1562	Poison	173.364	173.368	50 pounds	200 pounds	1,2	1,2	
	Fluoboric acid	Corrosive material	UN1775 UN1780	Corrosive	173.244	173.288	1 quart	1 gallon	1,2	1,2	
	Fluoric acid. *See* Hydrofluoric acid										
	Fluorine	Nonflammable gas	UN1045 UN1776	Poison and Oxidizer	None	173.302	Forbidden	Forbidden	1	5	Stow in well ventilated space away from organic materials
	Fluorophosphoric acid, anhydrous. *See* Monofluorophosphoric acid, anhydrous										
	Fluorosilicic acid. *See* Hydrofluosilicic acid		UN1778								
	Fluorosulfonic acid *or* Fluosulfonic acid	Corrosive material	UN1777	Corrosive	None	173.274	Forbidden	1 gallon	1	5	Keep dry
EAW	Formaldehyde, *or* formalin solution (*in containers of 110 gallons or less*) (*RQ-1000/454*)	ORM-A	NA2209	None	173.505	173.510	10 gallons	55 gallons	1,2	4	

18 **§172.101 Hazardous Materials Table (cont'd)**

(1) */E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Label(s) required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
E	Formaldehyde, or formalin solution (*in containers over 110 gallons*) (*RQ-1000/454*)	Combustible liquid	NA2209	None	173.118a	None	10 gallons	55 gallons	1,2	1,2	
	Formalin. *See* Formaldehyde solution		UN2209								
E	Formic acid (*RQ-5000/2270*)	Corrosive material	UN1779	Corrosive	173.244	173.245 173.280	1 quart	5 gallons	1,2	1,2	Glass carboys in hampers not permitted under deck
*E	Formic acid solution (*RQ-5000/2270*)	Corrosive material	NA1779	Corrosive	173.244	173.245 173.280	1 quart	5 gallons	1,2	1,2	
*	Fuel, aviation, turbine engine	Flammable liquid	UN1863	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Fuel oil	Combustible liquid	NA1993	None	173.118a	None	No limit	No limit	1,2	1,2	
	Fuel oil, Diesel. *See* Fuel oil		NA1993								
	Fuel oil, No. 1, 2, 4, 5 *or* 6	Combustible liquid	NA1993	None	173.118a	None	No limit	No limit	1,2	1,2	
	Fulminate of mercury, dry	Forbidden									
	Fulminate of mercury, wet. *See* Initiating explosive										
E	Fumaric acid (*RQ-5000/2270*)	ORM-E	NA9126	None	None	173.510	No limit	No limit	2	2	
	Fumaryl chloride	Corrosive material	UN1780	Corrosive	173.244	173.245	1 quart	1 quart	1	1	Glass carboys not permitted
*	*Fuzigun*					173.152					
*E	Furfural (*RQ-1000/454*)	Combustible liquid	UN1199	None	173.118a	None	No limit	No limit	1,2	1	
	Fuse igniter	Class C explosive	NA0325	Explosive C	None	173.106	50 pounds	150 pounds	1,2	1,2	
	Fuse, instantaneous	Class C explosive	UN0101	Explosive C	173.100		50 pounds	150 pounds	1,2	1,2	
	Fuse lighter	Class C explosive	UN0131	Explosive C	None	173.106	50 pounds	150 pounds	1,2	1,2	
	Fuse, mild detonating, metal clad	Class C explosive	NA0104	Explosive C	None	173.104	50 pounds	300 pounds	1,2	1,2	
	Fuse, safety	Class C explosive	UN0105	Explosive C	173.100		50 pounds	300 pounds	1,2	1,2	
	Fuse (*railway or highway*)	Flammable solid	NA2254	Flammable solid	None	173.154a	50 pounds	300 pounds	1,2	1,2	
	Fuel oil	Combustible liquid	UN1201	None	173.118a	None	No limit	No limit	1,2	1,2	
	Fuze, combination	Class C explosive	NA0257	Explosive C	None	173.105	50 pounds	150 pounds	1,2	1,2	
	Fuze, detonating	Class A explosive		Explosive A	None	173.89	Forbidden	Forbidden	6	5	
	Fuze, detonating, Class C explosive	Class C explosive	NA0257	Explosive C	None	173.113	50 pounds	150 pounds	1,2	1,2	
	Fuze, detonating, radioactive	Class A explosive		Explosive A	None	173.89	Forbidden	Forbidden	6	5	
	Fuze, percussion	Class C explosive	NA0320	Explosive C	None	173.105	50 pounds	150 pounds	1,2	1,2	
	Fuze, time	Class C explosive	NA0257	Explosive C	None	173.105	50 pounds	150 pounds	1,2	1,2	
	Fuze, tracer	Class C explosive	NA0306	Explosive C	None	173.105	50 pounds	150 pounds	1,2	1,2	
	Gallium metal, liquid	ORM-B	NA2803	None	None	173.861	Forbidden	Forbidden	1	5	None
	Gallium metal, solid	ORM-B	NA2803	None	None	173.862	40 pounds	40 pounds	1,2	1	Shade from radiant heat
W	Garbage tankage *containing 5% or more water*	ORM-C		None	173.505	173.1000			1,2	1,2	
	Garbage tankage, *containing less than 5% water*	Flammable solid	NA1325	Flammable solid	None	173.209	Forbidden	Forbidden	1	1	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Gas cylinder, empty. *See* Cylinder, empty										
*	Gas drips, hydrocarbon	Combustible liquid	UN1864	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Gas drips, hydrocarbon	Flammable liquid	UN1864	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Gas identification set	Poison A	NA9035	Poison gas	None	173.331	Forbidden	Forbidden	1	5	
*	Gas identification set	Irritating material	NA9035	Irritant	None	173.351	Forbidden	Forbidden	1	5	
	Gas mine. *See* Explosive mine										
	Gas oil. *See* Fuel oil		UN1202								
	Gasoline (*including casing-head and natural*)	Flammable liquid	NA1257	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	4	
	Gelatine Dynamite. *See* High explosive										
	Germane	Poison A	UN2192	Poison gas and Flammable gas	None	173.328	Forbidden	Forbidden	1	5	
	Grenade, empty, primed	Class C explosive	NA0110	Explosive C	None	173.107	50 pounds	150 pounds	1,2	1,2	
	Grenade, hand *or* rifle, explosive (*with or without gas, smoke, or incendiary material*)	Class A explosive		Explosive A	None	173.56	Forbidden	Forbidden	1,2	5	No other cargo may be stowed in the same hold with these items
	Grenade, tear gas	Irritating material	NA1700	Irritant	None	173.335	Forbidden	75 pounds	1,2	1	
	Grenade without bursting charge: With incendiary material (Special fireworks)	Class B explosive		Explosive B	173.91		Forbidden	Forbidden	3	3	Passenger vessels in metal lockers only
	Grenade without bursting charge: With smoke charge (Smoke grenade)	Class C explosive	NA0303	Explosive C	173.108		50 pounds	150 pounds	1,2	1,2	
	Grenade without bursting charge: With Poison A gas charge	Poison A		Poison gas	173.330		Forbidden	Forbidden			See Correct shipping name of applicable Poison A material for stowage, special handling, and special segregation requirements
	Grenade without bursting charge: With Poison B charge	Poison B		Poison	173.350		Forbidden	Forbidden			See Correct shipping name of applicable Poison B material for stowage, special handling, and special segregation requirements

§172.101 Hazardous Materials Table (cont'd)

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(1) */B/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Label(s) required (if not exempt)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
	Guanidine nitrate	Oxidizer	UN1467	Oxidizer	173.153	173.152	25 pounds	100 pounds	1,2	1,2	Separate from nitro-compounds, chlorates, and acids
	Guanyl nitrosamino guanyl tetrazene. See Initiating explosive										
	Guanyl nitrosamino guanylidene hydrazine. See Initiating explosive										
	Guided missile with warhead. See Rocket ammunition with explosive, illuminating, gas, incendiary, or smoke projectile										
	Guided missile, without warhead. See Rocket motor, Class A explosive or Rocket motor, Class B explosive										
	Gunpowder. See High explosive										
E	Guthion (*RQ-1/0.454*)	Poison B	NA2783	Poison	173.384	173.385	50 pounds	200 pounds	2	2	
	Hafnium metal, dry (*See Note 3, Sec. 173.219*)	Flammable solid	UN2545	Flammable solid	None	173.214	Forbidden	75 pounds	1	5	
	Hafnium metal, wet	Flammable solid	UN1326	Flammable solid	None	173.214	Forbidden	150 pounds	1,2	5	
	Hair, wet	Flammable solid	NA1325	Flammable solid	None	173.173	Forbidden	Forbidden	1,2	5	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Hand signal device	Class C explosive	NA0191	Explosive C	None	173.108	50 pounds	200 pounds	1,2	1,2	
W	Hay	ORM-C	UN1327	None	173.505	173.1005			1,2	1,2	Segregation same as for flammable solids. Stow away from animal or vegetable oils
W	Hay or straw (*loose, wet, or damp*)		UN1327								Forbidden for water shipment
	Heater for refrigerator car, liquid fuel type (*containing fuel*)	Flammable liquid		Flammable liquid	173.148		Forbidden	Forbidden	1,2	1	
•	Helium	Nonflammable gas	UN1046	Nonflammable gas	173.306	173.302 173.314	150 pounds	300 pounds	1,2	1,2	
•	Helium-oxygen mixture	Nonflammable gas	NA1980	Nonflammable gas	173.306	173.302	150 pounds	300 pounds	1,2	1,2	
E	Heptachlor (*RQ-1/0.454*)	Poison B	NA2761	Poison	173.384	173.385	50 pounds	200 pounds	1,2	1,2	If stowed under deck, must be stowed in a recoverable location.
	Heptane	Flammable liquid	UN1206	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
W	*Hessian.* See Burlap cloth										
E	Hexachlorocyclopentadiene (*RQ-1/0.454*)	Corrosive material	NA2646	Corrosive	173.244	173.245	1 quart	10 gallons	2	2	
W	Hexachloroethane	ORM-A	NA9077	None	173.505	173.650			1,2	1,2	
	Hexadecyltrichlorosilane	Corrosive material	UN1781	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
	Hexadiene	Flammable liquid	UN2458	Flammable liquid	None	173.119	Forbidden	10 gallons	1,2	5	
	Hexaethyl tetraphosphate and compressed gas mixture	Poison A	UN1612	Poison gas	None	173.334	Forbidden	Forbidden	1	5	Shade from radiant heat
	Hexaethyl tetraphosphate, liquid	Poison B	UN1611	Poison	None	173.356	Forbidden	1 quart	1	4	
	Hexaethyl tetraphosphate mixture, dry (*containing more than 2% hexaethyl tetraphosphate*)	Poison B	NA2783	Poison	None	173.377	Forbidden	200 pounds	1,2	5	
•	Hexaethyl tetraphosphate mixture, dry (*containing not more than 2% hexaethyl tetraphosphate*)	Poison B	NA2783	Poison	173.377	173.377	50 pounds	200 pounds	1,2	4	
	Hexaethyl tetraphosphate mixture, liquid (*containing more than 25% hexaethyl tetraphosphate*)	Poison B	NA2783	Poison	None	173.359	Forbidden	1 quart	1,2	5	
•	Hexaethyl tetraphosphate mixture, liquid (*containing not more than 25% hexaethyl tetraphosphate*)	Poison B	UN2783	Poison	173.359	173.359	1 quart	1 quart	1,2	4	
	Hexafluorophosphoric acid	Corrosive material	UN1782	Corrosive	None	173.275	Forbidden	1 gallon	1,2	1,2	
	Hexafluoropropylene	Nonflammable gas	UN1858	Nonflammable gas	173.306	173.304 173.314 173.315	150 pounds	300 pounds	1	4	
	Hexafluoropropylene oxide	Nonflammable gas	NA1956	Nonflammable gas	173.306	173.304 173.314	150 pounds	300 pounds	1,2	1,2	
•	Hexaldehyde	Flammable liquid	UN1207	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1,2	
	Hexamethylenediamine, solid	Corrosive material	UN2280	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	
•	Hexamethylenediamine, solution	Corrosive material	UN1783	Corrosive	173.244	173.293	1 quart	10 gallons	1,2	1,2	
	Hexamethyleneimine	Corrosive material	UN2493	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Hexane	Flammable liquid	UN1208	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	4	
	Hexanoic acid	Corrosive material	NA1760	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Hexyltrichlorosilane	Corrosive material	UN1784	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
	High explosive	Class A explosive		Explosive A	173.53	173.51 to 173.57	Forbidden	Forbidden	6	5	
	High explosive, liquid	Class A explosive		Explosive A	None	173.52	Forbidden	Forbidden	6	5	
•	Hydraulic accumulator. See Accumulator, pressurized		NA1956								
	Hydrazine, anhydrous	Flammable liquid	UN2029	Flammable liquid and Poison	None	173.276	Forbidden	5 pints	1	5	Segregation same as for corrosives
•	Hydrazine, aqueous solution	Corrosive material	UN3030	Corrosive	None	173.276	Forbidden	5 pints	1	5	
•	Hydriodic acid	Corrosive material	UN1787	Corrosive	173.244	173.245	1 quart	1 gallon	1	1	Glass carboys not permitted on passenger vessel
	Hydrobromic acid, anhydrous. See Hydrogen bromide		UN1048								

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(1) */E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Label(s) required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
	Hydrobromic acid, *more than 49% strength*	Corrosive material	UN1788	Corrosive	None	173.262	Forbidden	Forbidden	1	1	Glass carboys not permitted on passenger vessel
*	Hydrobromic acid not more than 49% strength	Corrosive material	UN1788	Corrosive	173.244	173.262	1 quart	1 gallon	1	1	Glass carboys not permitted on passenger vessel
	Hydrocarbon gas, liquefied	Flammable gas	UN1965	Flammable gas	173.306	173.304 173.314	Forbidden	300 pounds	1,2	1	
*	Hydrocarbon gas, nonliquefied	Flammable gas	UN1964	Flammable gas	173.306	173.302	Forbidden	300 pounds	1,2	1	
E	Hydrochloric acid, anhydrous. *See* Hydrogen chloride		UN1050								
*E	Hydrochloric acid mixture (*RQ-5000/2270*)	Corrosive material	NA1789	Corrosive	173.244	173.263	1 quart	1 gallon	1	1	Glass carboys not permitted on passenger vessel
*E	Hydrochloric acid solution, inhibited (*RQ-5000/2270*)	Corrosive material	NA1789	Corrosive	173.244	173.263	1 quart	1 gallon	1	1	Glass carboys not permitted on passenger vessel
*E	Hydrochloric (*muriatic*) acid (*RQ-5000/2270*)	Corrosive material	UN1789	Corrosive	173.244	173.263	1 quart	1 gallon	1	1	Glass carboys not permitted on passenger vessel
E	Hydrocyanic acid, liquefied (*RQ-10/4.54*)	Poison A	UN1051	Flammable gas and Poison gas	None	173.332	Forbidden	Forbidden	1	5	
E	Hydrocyanic acid (*prussic*), solution (*5% or more hydrocyanic acid*) (*RQ-10/4.54*)	Poison A	NA1613	Flammable gas and Poison gas	None	173.332	Forbidden	Forbidden	1	5	Shade from radiant heat. Aqueous solutions containing more than 50 percent hydrogen cyanide are not permitted in transportation by water
	Hydrocyanic acid (*prussic*), unstabilized	Forbidden									
E	Hydrocyanic acid solution, less than 5% hydrocyanic acid (*RQ-10/4.54*)	Poison B	NA1613	Poison	None	173.351	Forbidden	25 pounds	01	5	Shade from radiant heat
	Hydrofluoric acid, anhydrous. *See* Hydrogen fluoride		UN1052								
*E	Hydrofluoric acid solution (*RQ-5000/2270*)	Corrosive material	UN1790	Corrosive	173.244	173.264	1 quart	1 gallon	1	4	
*E	Hydrofluoric and sulfuric acids, mixture (*RQ-5000/2270*)	Corrosive material	UN1786	Corrosive	None	173.290	Forbidden	1 gallon	1	5	
	Hydrofluoroboric acid. *See* Fluoboric acid		UN1775								
	Hydrofluorosilicic acid	Corrosive material	UN1778	Corrosive	None	173.265	1 quart	1 gallon	1,2	1,2	
	Hydrogen	Flammable gas	UN1049	Flammable gas	173.306	173.302 173.314	Forbidden	300 pounds	1,2	54	
	Hydrogen bromide	Nonflammable gas	UN1048	Nonflammable gas	173.306	173.304	Forbidden	300 pounds	1	4	
	Hydrogen chloride	Nonflammable gas	UN1050	Nonflammable gas	173.306	173.304	Forbidden	300 pounds	1	4	
	Hydrogen fluoride	Corrosive material	NA1790	Corrosive	None	173.264	Forbidden	110 pounds	1	5	Segregation same as for nonflammable gases
	Hydrogen iodide solution. *See* Hydriodic acid		UN1787								
	Hydrogen, liquefied	Flammable gas	UN1966	Flammable gas	None	173.316	Forbidden	Forbidden			Forbidden
	Hydrogen peroxide solution (*8% to 40% peroxide*)	Oxidizer	NA2014	Oxidizer	173.244	173.266	1 quart	1 gallon	1,2	1	Shade from radiant heat. Separate from permanganates. Keep away from powdered metals
	Hydrogen peroxide solution (40% to 52% peroxide)	Oxidizer	NA2014	Oxidizer	173.244	173.266	Forbidden	Forbidden	1	4	Shade from radiant heat. Separate from permanganates. Keep away from powdered metals
	Hydrogen peroxide solution (over 52% peroxide)	Oxidizer	NA2015	Oxidizer	None	173.266	Forbidden	Forbidden	1	5	Shade from radiant heat. Separate from permanganates. Keep away from powdered metals. Concentrations greater than 60% hydrogen peroxide not permitted on any vessel except under conditions approved by the Department
	Hydrogen selenide	Flammable gas	UN2202	Flammable gas and Poison	None	173.328	Forbidden	Forbidden	1	5	
	Hydrogen sulfate. *See* Sulfuric acid		UN1830								
E	Hydrogen sulfide (*RQ-100/45.4*)	Flammable gas	UN1053	Flammable gas and Poison	None	173.304 173.314	Forbidden	300 pounds	1	5	
	Hydrosilicofluoric acid. *See* Hydrofluorosilicic acid		UN1778								
	Hypochlorite solution *containing more than 7% available chlorine by weight*	Corrosive material	NA1791	Corrosive	173.244	173.277	1 quart	4 gallons	1,2	1	Glass carboys in hampers not permitted under deck
*A	Hypochlorite solution containing not more than 7% available chlorine *by weight*	ORM-B	NA1791	None	173.505	173.510	No limit	No limit			
	Igniter	Class C explosive	UN0325	Explosive C	None	173.108	50 pounds	150 pounds	1,2	1,2	
	Igniter cord	Class C explosive	UN0066	Explosive C	None	173.100	50 pounds	150 pounds	1,2	1,2	
	Igniter fuse, metal clad	Class C explosive	NA0105	Explosive C	None	173.105	50 pounds	150 pounds	1,2	1,2	
*	Igniter, jet thrust (jato)	Class A explosive		Explosive A	None	173.79	Forbidden	Forbidden	6	5	
*	Igniter, jet thrust (jato)	Class B explosive		Explosive B	None	173.92	Forbidden	550 pounds	1,2	5	
*	Igniter, rocket motor	Class A explosive		Explosive A	None	173.79	Forbidden	Forbidden	6	5	
*	Igniter, rocket motor	Class B explosive		Explosive B	None	173.92	Forbidden	550 pounds	1,2	5	
	Illuminating projectile. See Fireworks, special										
	Isobutylpropylamine	Corrosive material	UN2269	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Initiating explosive *Dinitrophenol*	Class A explosive		Explosive A	None	173.70	Forbidden	Forbidden	6	5	
	Initiating explosive *Fulminate of mercury*	Class A explosive		Explosive A	None	173.71	Forbidden	Forbidden	6	5	

§172.101 Hazardous Materials Table (cont'd)

(1) */E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Label(s) required (if not exempted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
	Initiating explosive *Guanyl nitrosamino guanylidene hydrazine*	Class A explosive		Explosive A	None	173.72	Forbidden	Forbidden	6	5	
	Initiating explosive *Lead azide, dextrinated type only*	Class A explosive		Explosive A	None	173.73	Forbidden	Forbidden	6	5	
	Initiating explosive *Lead mononitroresorcinate*	Class A explosive		Explosive A	None	173.70	Forbidden	Forbidden	6	5	
	Initiating explosive Lead styphnate (*lead trinitroresorcinate*)	Class A explosive		Explosive A	None	173.74	Forbidden	Forbidden	6	5	
	Initiating explosive *Nitro mannite*	Class A explosive		Explosive A	None	173.75	Forbidden	Forbidden	6	5	
	Initiating explosive *Nitroguanidine*	Class A explosive		Explosive A	None	173.76	Forbidden	Forbidden	6	5	
	Initiating explosive *Pentaerythrite tetranitrate*	Class A explosive		Explosive A	None	173.77	Forbidden	Forbidden	6	5	
	Initiating explosive Tetrazene (*guanyl nitrosamino guanyl tetrazene*)	Class A explosive		Explosive A	None	173.78	Forbidden	Forbidden	6	5	
•	Ink	Combustible liquid	NA2667	None	173.118a	None	No limit	No limit	1,2	1,2	
•	Ink	Flammable liquid	NA1210	Flammable liquid	173.118	173.144	1 quart	10 gallons	1,2	1	
•	Insecticide, dry, n.o.s.	Poison B	NA2588	Poison	173.384	173.385	50 pounds	200 pounds	1,2	1,2	
	Insecticide, liquefied gas (*containing no Poison A or B material*)	Nonflammable gas	NA1968	Nonflammable gas	173.306	173.304	150 pounds	300 pounds	1,2	1,2	
	Insecticide, liquefied gas, containing Poison A material *or* Poison B material	Poison A	NA1967	Poison gas	None	173.329 173.334	Forbidden	Forbidden	1	5	Shade from radiant heat
•	Insecticide, liquid, n.o.s.	Combustible liquid	NA1993	None	173.118a	None	No limit	No limit	1,2	1,2	
•	Insecticide, liquid, n.o.s.	Flammable liquid	NA1993	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
•	Insecticide, liquid, n.o.s.	Poison B	NA2902 NA1993	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
W	Insulation tape (*varnished cloth type*). *See* Oiled material										
	Iodine monochloride	Corrosive material	UN1792	Corrosive	None	173.268	Forbidden	1 quart	1	5	Keep dry
	Iodine pentafluoride	Oxidizer	UN3495	Oxidizer and Poison	None	173.266	Forbidden	100 pounds	1	1	Keep dry
	Iron chloride, solid. *See* Ferric chloride, solid		UN1773								
	Iron mass *or* sponge, *not properly oxidized*	Flammable solid	NA1383	Flammable solid	None	173.174	Forbidden	Forbidden	1,2	5	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Iron mass *or* sponge spent	Flammable solid	NA1376	Flammable solid	None	173.174	Forbidden	Forbidden	1,2	5	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
A	*Iron, oxide, spent*		UN1376				Forbidden	Forbidden			
	Iron oxychloride, solid. *See* Ferric chloride		UN1773								
	Irritating agent, n.o.s.	Irritating material	NA1693	Irritant	173.382		Forbidden	75 pounds	1	1	Stow away from living quarters
	Isobutane *or* Liquefied petroleum gas. *See* Liquefied petroleum gas		UN1969								
	Isobutyl acetate	Flammable liquid	UN1213	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Isobutylamine	Flammable liquid	UN1214	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Isobutylene or Liquefied petroleum gas. *See* Liquefied petroleum gas		UN1055								
	Isobutyric acid	Corrosive material	UN2529	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Isobutyric anhydride	Corrosive material	UN2530	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Isooctane	Flammable liquid	UN1262	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Isooctene	Flammable liquid	UN1216	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	4	
	Isopentane	Flammable liquid	NA2371	Flammable liquid	173.118	173.119	Forbidden	10 gallons	1,2	4	
	Isopentanoic acid	Corrosive material	NA1760	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
E	Isoprene (*RQ-1000/454*)	Flammable liquid	UN1218	Flammable liquid	173.118	173.119	Forbidden	10 gallons	1,2	4	
	Isopropanol. *See* Alcohol, n.o.s.		UN1219								
E	Isopropanolamine dodecylbenzenesulfonate (*RQ-1000/454*)	ORM-E	NA9127	None	None	173.510	No limit	No limit	2	2	
	Isopropyl acetate	Flammable liquid	UN1220	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Isopropyl acid phosphate solid	Corrosive material	UN1793	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	
	Isopropyl mercaptan	Flammable liquid	UN2402	Flammable liquid	None	173.241	Forbidden	10 gallons	1,2	5	
	Isopropyl nitrate	Flammable liquid	UN1222	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Isopropyl percarbonate, stabilized	Organic peroxide	NA2133	Organic peroxide	None	173.222	Forbidden	Forbidden	5	5	
	Isopropyl percarbonate, unstabilized	Organic peroxide	NA2134	Organic peroxide	None	173.218	Forbidden	Forbidden	5	5	
	Isopropyl phosphoric acid, solid. *See* Isopropyl acid phosphate, solid		UN1793								
	Isopropylamine	Flammable liquid	UN1221	Flammable liquid	None	173.119	Forbidden	10 gallons	1,2	5	
•	Jet thrust igniter. *See* Igniter, jet thrust										
•	Jet thrust unit (*jato*)	Class A explosive		Explosive A	None	173.79	Forbidden	Forbidden	6	5	
•	Jet thrust unit (*jato*)	Class B explosive		Explosive B	None	173.92	Forbidden	500 pounds	1,2	5	
W	Jute. *See* Fibers										

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(1) */E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Label(s) required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
W	*Kapok. See* Fibers										
E	Kelthane (*RQ-5000/2270*)	ORM-E	NA2761	None	None	173.510	No limit	No limit	2	2	
E	Kepone (*RQ-1/0.454*)	ORM-E	NA2761	None	None	173.510	No limit	No limit	2	2	
	Kerosene	Combustible liquid	UN1223	None	173.118a	None	No limit	No limit	1,2	1,2	
•	Lacquer base, liquid. *See* Paint, enamel, lacquer, stain, etc.		UN1263								
•	Lacquer base, *or* Lacquer chips, dry	Flammable solid	NA2557	Flammable solid	173.150	173.178	25 pounds	100 pounds	1	1	
•	Lacquer base *or* lacquer chips, plastic (*Wet with alcohol or solvent*)	Flammable liquid	NA1263	Flammable liquid	173.118	173.127	1 quart	25 pounds	1,2	1	
•	Lacquer removing, reducing, *or* thinning compound. *See* Compound, lacquer, paint, *or* varnish, etc., removing, reducing *or* thinning liquid		NA1142								
•	Lacquer. *See* Paint, enamel, lacquer, stain, etc.		UN1263								
	Lauroyl peroxide	Organic peroxide	UN2124	Organic peroxide	173.150	173.157 173.158	2 pounds	25 pounds	1,2	1	
E	Lead acetate (*RQ-5000/2270*)	ORM-E	UN1616	None	None	173.510	No limit	No limit	2	2	
E	Lead arsenate, solid (*RQ-5000/2270*)	Poison B	UN1617	Poison	173.364	173.367	50 pounds	200 pounds	1,2	1,2	
	Lead arsenite, solid	Poison B	UN1618	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Lead azide. See Initiating explosive										
EA	Lead chloride (*RQ-5000/2270*)	ORM-B	NA2291	None	173.505	173.510 173.800	25 pounds	100 pounds			
	Lead cyanide	Poison B	UN1620	Poison	173.370		25 pounds	No limit	1,2	1,2	Stow away from acids
W	Lead dross	ORM-C	NA1794	None	173.505	173.1010			1,2	1,2	Segregation same as for corrosive materials
EA	Lead fluoborate (*RQ-5000/2270*)	ORM-B	NA2291	None	None	173.510	25 pounds	100 pounds	2	2	
EA	Lead fluoride (*RQ-1000/454*)	ORM-B	NA2811	None	None	173.510	25 pounds	100 pounds	2	2	
E	Lead iodide (*RQ-5000/2270*)	ORM-E	NA2811	None	None	173.510	No limit	No limit	2	2	
	Lead mononitroresorcinate. See Initiating explosive										
E	Lead nitrate (*RQ-5000/2270*)	Oxidizer	UN1469	Oxidizer	173.153	173.162	25 pounds	100 pounds	1,2	1,2	Stow away from foodstuffs
	Lead peroxide	Oxidizer	UN1872	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	Stow away from foodstuffs
W	Lead scrap. *See* Lead dross										
E	Lead stearate (*RQ-5000/2270*)	ORM-E	NA2811	None	None	173.510	No limit	No limit	2	2	
	Lead styphnate (lead trinitroresorcinate). See Initiating explosive										
E	Lead sulfate, solid (*containing more than 3% free acid*) (*RQ-5000/2270*)	Corrosive material	UN1794	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	
E	Lead sulfide (*RQ-5000/2270*)	ORM-E	NA2291	None	None	173.510	No limit	No limit	2	2	
E	Lead thiocyanate (*RQ-5000/2270*)	ORM-E	NA2291	None	None	173.510	No limit	No limit	2	2	
•	Leather bleach *or* dressing	Flammable liquid	NA1993	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
•	Leather bleach *or* dressing	Combustible liquid	NA1993	None	173.118a	None	No limit	No limit	1,2	1,2	
	Life-rafts, inflatable	ORM-C		None	None	173.906	1 per inaccessible cargo compartment	No limit	1,2	1,2	
	Lighter fluid	Flammable liquid	UN1226	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Lime-nitrogen. See Calcium cyanamide, not hydrated, etc.		NA1403								
E	Lime, slaked. *See* Calcium hydroxide										
	Lime, unslaked. *See* Calcium oxide		NA1910								
EA	Lindane (*RQ-1/.454*)	ORM-A	NA2761 NA1993	None	173.505	173.510	No limit	No limit			
	Liquefied hydrocarbon gas. *See* Hydrocarbon gas, liquefied										
•	Liquefied nonflammable gas (*charged with nitrogen, carbon dioxide, or air*)	Nonflammable gas	NA1956	Nonflammable gas	173.306	173.304	300 pounds	300 pounds	1,2	1,2	
	Liquefied petroleum gas	Flammable gas	UN1075	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	1	
	Liquid other than one classed as flammable, corrosive, poison or irritant, charged with nitrogen, carbon dioxide, or air. See Compressed gas n.o.s.										
	Lithium acetylide-ethylene diamine complex	Flammable solid	NA2813	Flammable solid and Dangerous when wet	None	173.306	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solid labeled Dangerous When Wet
	Lithium aluminum hydride	Flammable solid	UN1410	Flammable solid and Dangerous when wet	None	173.306	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solid labeled Dangerous When Wet
	Lithium aluminum hydride, ethereal	Flammable liquid	UN1411	Flammable liquid	None	173.127	Forbidden	1 quart	1	5	Segregation same as for flammable solids labeled Dangerous When Wet
	Lithium amide, powdered	Flammable solid	UN1412	Flammable solid	173.150	173.168	25 pounds	100 pounds	1,2	4	Segregation same as for flammable solids labeled Dangerous When Wet
	Lithium borohydride	Flammable solid	UN1413	Flammable solid and Dangerous when wet	None	173.306	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
E	Lithium chromate (*RQ-1000/454*)	ORM-E	NA9154	None	None	173.510	No limit	No limit	2	2	
	Lithium ferrosilicon	Flammable solid	UN2830	Flammable solid and Dangerous when wet	None	173.306	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet

§172.101 Hazardous Materials Table (cont'd)

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(1) */E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Labels required (if not exempt)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
	Lithium hydride	Flammable solid	UN1414	Flammable solid and Dangerous when wet	None	173.306	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet.
	Lithium hydride in fused solid form	Flammable solid	UN2805	Flammable solid and Dangerous when wet	None	173.306	Forbidden	100 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet.
	Lithium hypochlorite compound, dry (containing more than 39% available chlorine)	Oxidizer	UN1471	Oxidizer	173.155	173.217	50 pounds	100 pounds	1,2	1,2	
	Lithium metal	Flammable solid	UN1415	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet.
	Lithium metal, in cartridges	Flammable solid	NA1415	Flammable solid and Dangerous when wet	173.306		1 pound	25 pounds	1,2	4	Segregation same as for flammable solids labeled Dangerous When Wet.
	Lithium nitride	Flammable solid	UN2806	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet.
	Lithium peroxide	Oxidizer	UN1472	Oxidizer	173.155	173.154	25 pounds	100 pounds	1,2	1,2	Keep dry
	Lithium silicon	Flammable solid	UN1417	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	1,2	Segregation same as for flammable solids labeled Dangerous When Wet.
	London purple, solid	Poison B	UN1621	Poison	173.354	173.306	50 pounds	200 pounds	1,2	1,2	
	Low blasting explosive. See Low explosive										
	Low explosive	Class A explosive		Explosive A	None	173.60	Forbidden	Forbidden	6	6	
	Lye. See Sodium hydroxide, solid		UN1823								
	Magnesium aluminum phosphide	Flammable solid	UN1419	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	1,2	Segregation same as for flammable solids labeled Dangerous When Wet.
	Magnesium arsenate, solid	Poison B	UN1622	Poison	173.354	173.357	50 pounds	200 pounds	1,2	1,2	
	Magnesium dross, wet or hot	Forbidden			173.170						
•	Magnesium, metal (*powdered, pellets, turnings, or ribbons*)	Flammable solid	NA1418	Flammable solid and Dangerous when wet	173.153	173.220	25 pounds	100 pounds	1,2	1,2	Segregation same as for flammable solids labeled Dangerous When Wet.
	Magnesium nitrate	Oxidizer	UN1474	Oxidizer	173.153	173.153	25 pounds	100 pounds	1,2	1,2	
	Magnesium perchlorate	Oxidizer	UN1475	Oxidizer	173.155	173.154	25 pounds	100 pounds	1,2	1,2	Store away from powdered metals
	Magnesium peroxide, solid	Oxidizer	UN1476	Oxidizer	173.155	173.154	25 pounds	100 pounds	1,2	1,2	Keep dry
•	Magnesium scrap (*borings, clippings, shavings, sheet, turnings, or scrapings*)	Flammable solid	NA1869	Flammable solid and Dangerous when wet	173.153	173.220	Forbidden	Forbidden	1,2	1,2	Segregation same as for flammable solids labeled Dangerous When Wet.
A	Magnetized material	ORM-C	UN2807	Magnetized material	None	173.1030	No limit	No limit			
EA	Maleic anhydride (*RQ-5000/2270*)	ORM-A	NA2215	None	None	173.510	25 pounds	100 pounds	2	2	Keep tightly closed.
EA	Maleic acid (*RQ-5000/2270*)	ORM-A	NA2215	None	None	173.510	25 pounds	100 pounds	2	2	
EA	Maleic anhydride (*RQ-5000/2270*)	ORM-A	UN2215	None	None	173.510	25 pounds	100 pounds	1	1	
A	Manganese dioxide	ORM-B	NA1479	None	173.506	173.510	No limit	No limit			
	Matches, black. See Matches, strike anywhere		UN1331								
	Matches, safety, book, card, *or* strike-on-box	Flammable solid	UN1944	Flammable solid	173.170		50 pounds	50 pounds	1,2	1	
	Matches, strike anywhere	Flammable solid	UN1331	Flammable solid	None	173.170	Forbidden	Forbidden	1,2	1	
	Matting acid. *See* Sulfuric acid		UN1830								
•	Medicines, n.o.s.	Combustible liquid	NA1851	None	173.118b	None	No limit	No limit	1,2	1,2	
•	Medicines, n.o.s.	Flammable liquid	NA1851	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
•	Medicines, n.o.s.	Flammable solid	NA1851	Flammable solid	173.153	173.154	25 pounds	100 pounds	1,2	1,2	
•	Medicines, n.o.s.	Oxidizer	NA1851	Oxidizer	173.155	173.154	25 pounds	100 pounds	1,2	1,2	
•	Medicines, n.o.s., liquid	Corrosive material	NA1851	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2	
•	Medicines, n.o.s., liquid	Poison B	NA1851	Poison	173.345	173.345	1 quart	55 gallons	1,2	1	
•	Medicines, n.o.s., solid	Corrosive material	NA1851	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	Keep dry
•	Medicines, n.o.s., solid	Poison B	NA1851	Poison	173.354	173.355	50 pounds	200 pounds	1,2	1,2	
	Mesotetrahydro phthalic anhydride	Corrosive material	NA1760	Corrosive	None	173.240	Forbidden	1 quart	1,2	1	
•	Mercaptan mixture, aliphatic	Flammable liquid	NA1228	Flammable liquid	None	173.141	Forbidden	10 gallons	1,2	5	
•	Mercaptan mixture, aliphatic (*in containers over 110 gallons*)	Combustible liquid	NA1228	None	173.118b	None	Forbidden	10 gallons	1,2	1,2	
AW	Mercaptan mixture, aliphatic (*in containers of 110 gallons or less. See 173.141(b)*)	ORM-A	NA1228	None	173.505	173.510	Forbidden	10 gallons	1,2	5	Store in well ventilated space away from living quarters
E	Mercaptodimethur (*RQ-100/45.4*)	ORM-E	NA2757	None	None	173.510	No limit	No limit	2	2	
	Mercuric acetate	Poison B	UN1629	Poison	173.354	173.355	50 pounds	200 pounds	1,2	1,2	
	Mercuric-ammonium chloride, solid	Poison B	UN1630	Poison	173.354	173.355	50 pounds	200 pounds	1,2	1,2	
	Mercuric benzoate, solid	Poison B	UN1631	Poison	173.354	173.355	50 pounds	200 pounds	1,2	1,2	
	Mercuric bromide, solid	Poison B	UN1634	Poison	173.354	173.355	Forbidden	25 pounds	1,2	1,2	
	Mercuric chloride, solid	Poison B	UN1624	Poison	173.354	173.373	Forbidden	25 pounds	1,2	1,2	
E	Mercuric cyanide, solid (*RQ-1/.454*)	Poison B	UN1636	Poison	173.370		25 pounds	200 pounds	1,2	1,2	Store away from acids
	Mercuric iodide, solid	Poison B	UN1638	Poison	173.354	173.355	50 pounds	200 pounds	1,2	1,2	
•	Mercuric iodide solution	Poison B	NA1638	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	

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(1) */E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Labels required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
*	Mercuric nitrate (*RQ-10/4.54*)	Oxidizer	UN1625	Oxidizer	173.158	173.182	25 pounds	100 pounds	1,2	1,2	E stowed under deck, must be stowed in a accessible location.
	Mercuric oleate, solid	Poison B	UN1640	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercuric oxide, solid	Poison B	UN1641	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercuric oxycyanide, solid	Poison B	UN1642	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercuric-potassium cyanide, solid	Poison B	UN1626	Poison	173.364	173.365 173.370	25 pounds	200 pounds	1,2	1,2	Store away from acids Store away from acids
	Mercuric-potassium iodide, solid	Poison B	UN1643	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercuric salicylate solid	Poison B	UN1644	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercuric sulfocyanate, solid	Poison B	NA2025	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
E	Mercuric sulfate, solid (*RQ-10/4.54*)	Poison B	UN1645	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
E	Mercuric sulfocyanate, solid or mercuric thiocyanate, solid (*RQ-10/4.54*)	Poison B	UN1646	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercurol or mercury nucleate, solid	Poison B	UN1639	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercurous acetate, solid	Poison B	NA1629	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercurous bromide, solid	Poison B	NA1634	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercurous gluconate, solid	Poison B	NA1637	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercurous iodide, solid	Poison B	NA1637	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
E	Mercurous nitrate, solid (*RQ-10/4.54*)	Oxidizer	UN1627	Oxidizer	173.158	173.154	50 pounds	100 pounds	1,2	1,2	
	Mercurous oxide, black, solid	Poison B	NA1641	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercurous sulfate, solid	Poison B	UN1628	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
*	Mercury compound, n.o.s., solid	Poison B	UN2025	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Mercury fulminate. See Initiating explosive										
A	Mercury, metallic	ORM-B	NA2809	None	None	173.260	173.260	173.260			
	Mesityl oxide	Flammable liquid	UN1229	Flammable liquid	None	173.119	1 quart	10 gallons	1,2	1,2	
W	Metal borings, shavings, turnings, or cuttings	ORM-C	NA2793	None	173.305	173.1025			1,2	1,2	Keep dry. Not permitted if temperature of material is at or above 130 deg F
	Methane	Flammable gas	UN1971	Flammable gas	173.306	173.302	Forbidden	300 pounds	1,2	4	
	Methanol. *See* Methyl alcohol		UN1230								
E	Methoxychlor (*RQ-1/0.454*)	ORM-E	NA2761	None	None	173.510	No limit	No limit	2	2	
	Methyl acetate	Flammable liquid	UN1231	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methyl acetone	Flammable liquid	UN1232	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methyl acrylate, inhibited	Flammable liquid	UN1919	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methyl alcohol	Flammable liquid	UN1230	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methylamyl acetate	Flammable liquid	UN1233	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1,2	
	Methyl amyl ketone	Combustible liquid	UN1110	None	173.118a	None	No limit	No limit	1,2	1,2	
	Methyl bromide and ethylene dibromide mixture, liquid	Poison B	UN1647	Poison	None	173.358	Forbidden	55 gallons	1	1	
	Methyl bromide and more than 2% chloropicrin mixture, liquid	Poison B	NA1581	Poison	None	173.358	Forbidden	Forbidden	1	5	Shade from ordinary heat
	Methyl bromide and nonflammable, nonliquefied compressed gas mixture, liquid (*including up to 2% chloropicrin*)	Poison B	NA1955	Poison	None	173.358a	Forbidden	300 pounds	1	5	Stow away from living quarters
	Methyl bromide, liquid (bromomethane) (*including up to 2% chloropicrin*)	Poison B	NA1581	Poison	None	173.358	Forbidden	55 gallons	1	5	Stow away from living quarters. Segregation same as for nonflammable gas.
	Methyl butene	Flammable liquid	NA2460	Flammable liquid	None	173.119	Forbidden	10 gallons	1,2	5	
	Methyl butyrate	Flammable liquid	UN1237	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methyl cellosolve acetate. See Ethylene glycol monomethyl ether acetate		UN1189								
	Methyl cellosolve. See Ethylene glycol monomethyl ether		UN1188								
	Methyl chloride	Flammable gas	UN1063	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	4	
*	Methyl chloride-methylene chloride mixture	Flammable gas	UN1912	Flammable gas	173.306	173.304 173.314	Forbidden	300 pounds	1,2	4	
	Methyl chlorocarbonate. *See* Methyl chloroformate		UN1238								
A	Methyl chloroform	ORM-A	UN1231	None	173.505	173.510 173.605	10 gallons	55 gallons			
	Methyl chloroformate	Flammable liquid	UN1238	Flammable liquid and Poison	None	173.266	Forbidden	5 pints	1,2	1	
	Methyl dichloroacetate	Corrosive material	UN2299	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2	
	Methyl dichlorosilane	Flammable liquid	UN1242	Flammable liquid	None	173.136	Forbidden	5 pints	1,2	1	
	Methyl ethyl ether. *See* Ethyl methyl ether		UN1039								
	Methyl ethyl ketone	Flammable liquid	UN1193	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methyl ethyl pyridine	Corrosive material	UN2300	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Methyl formate	Flammable liquid	UN1243	Flammable liquid	173.118	173.119	Forbidden	10 gallons	1,2	4	
	Methyl isopropenyl ketone, inhibited	Flammable liquid	UN1246	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methyl magnesium bromide in ethyl ether not over 40% concentration	Flammable liquid	UN1928	Flammable liquid	None	173.149	Forbidden	Forbidden	1	1	Segregation same as for flammable solids. Separate from flammable gases or liquids, oxidizing materials or organic peroxides
E	Methyl mercaptan (*RQ-100/45.4*)	Flammable gas	UN1064	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	1	
E	Methyl methacrylate monomer, inhibited (*RQ-5000/2270*)	Flammable liquid	UN1247	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	

§172.101 Hazardous Materials Table (cont'd)

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(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not exempted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
E	Methyl methacrylate monomer, uninhibited (high-purity, if acceptable under Sec. 173.21 of this subchapter) (RQ-5000/2270)	Flammable liquid	NA1247	Flammable liquid	173.119	173.119	Forbidden	Forbidden	1,2	1	
	Methyl methylenesuccinic dicarboxylic anhydride. *See* Mesaconic anhydride		NA1718								
E	Methyl parathion, liquid (RQ-100/45.4)	Poison B	NA2783	Poison	None	173.356	Forbidden	1 quart	1,2	1,2	
*E	Methyl parathion mixture, dry (RQ-100/45.4)	Poison B	NA2783	Poison	173.377	173.377	50 pounds	200 pounds	1,2	1,2	
*E	Methyl parathion mixture, liquid, (containing 25% or less methyl parathion) (RQ-100/45.4)	Poison B	NA2783	Poison	None	173.359	1/2 pint	1 quart	1,2	1,2	
E	Methyl parathion mixture, liquid, (containing over 25% methyl parathion) (RQ-100/45.4)	Poison B	NA2783	Poison	None	173.359	Forbidden	1 quart	1,2	1,2	
	Methyl pentane	Flammable liquid	UN1262	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methyl phosphonothioic dichloride, anhydrous	Corrosive material	NA1760	Corrosive	173.244	173.245 173.245a	1 quart	1 quart	1	4	
	Methyl phosphonous dichloride	Corrosive material	NA1760	Corrosive	173.244	173.245 173.245a	1 quart	1 quart	1	4	
	Methyl propionate	Flammable liquid	UN1248	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methyl propyl ketone	Flammable liquid	UN1249	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methyl sulfate. *See* Dimethyl sulfate		UN1595						F		
	Methyl sulfide. *See* Dimethyl sulfide		UN1164								
	Methyl vinyl ketone, inhibited	Flammable liquid	UN1251	Flammable liquid	173.147	173.147	4 ounces	10 gallons	1,2	1	
	Methylacetylene-propadiene, stabilized	Flammable gas	NA1060	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	1	
	Methylal	Flammable liquid	UN1234	Flammable liquid	None	173.119	Forbidden	10 gallons	1,2	5	
	Methylamine, anhydrous *or* Monomethylamine	Flammable gas	UN1061	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1	4	
	Methylchloromethyl ether, anhydrous	Flammable liquid	UN1239	Flammable liquid and Poison	None	173.143	Forbidden	Forbidden	1	5	Shade from radiant heat
	Methylcyclohexane	Flammable liquid	UN2296	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methylcyclopentane	Flammable liquid	UN2298	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	4	
	Methyldichloroarsine	Poison A	NA1556	Poison gas	None	173.326	Forbidden	Forbidden	1	5	Shade from radiant heat
	Methylene chloride. *See* Dichloromethane		UN1593								
	Methylfuran	Flammable liquid	UN2301	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	4	
	Methylhydrazine	Flammable liquid	UN1244	Flammable liquid and Poison	None	173.165	Forbidden	5 pints	1,2	1	Store separate from oxidizing materials and corrosives
	Methylpentadiene	Flammable liquid	UN2461	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Methyltrichlorosilane	Flammable liquid	UN1250	Flammable liquid	None	173.198	Forbidden	10 gallons	1,2	1	
E	Mevinphos (RQ-1/0.454)	Poison B	NA2783	Poison	173.364	173.365	Forbidden	1 quart	2	2	
E	Mexacarbate (RQ-1000/454)	Poison B	NA2757	Poison	173.364	173.365	50 pounds	200 pounds	2	2	
	Mild detonating fuse, metal clad. See Fuse, mild detonating, metal clad										
	Mine, empty. See 173.56										
	Mine, explosive, with gas material. See Explosive mine										
	Mine rescue equipment containing carbon dioxide	Nonflammable gas		Nonflammable gas	173.306		150 pounds	300 pounds	1,2	1,2	
*	Mining reagent, liquid (containing 20% or more cyanic acid)	Corrosive material	NA3052	Corrosive	173.244	173.245 173.245a	1 quart	10 gallons	1,2	1,2	
A	Mipafox	ORM-A	UN2783	None	173.505	173.510	No limit	No limit			
	Mixed acid. *See* Nitrating (*mixed*) acid		NA1796								
A	Molybdenum pentachloride	ORM-B	UN2508	None	173.505	173.510 173.800	25 pounds	100 pounds			
	Monobromotrifluoromethane	Nonflammable gas	UN1009	Nonflammable gas	173.306	173.304 173.314	150 pounds	300 pounds	1,2	1,2	
*	Monochloroacetic acid, liquid *or* solution	Corrosive material	UN1750	Corrosive	173.244	173.294	1 quart	1 quart	1,2	1,2	Glass carboys in hampers not permitted under deck
	Monochloroacetone	Forbidden									
	Monochloroacetone, stabilized *or* inhibited	Irritating material	NA1695	Irritant	None	173.384	Forbidden	5 gallons	1	1	Store away from living quarters
	Monochlorodifluoromethane	Nonflammable gas	UN1018	Nonflammable gas	173.306	173.304 173.314 173.315	150 pounds	300 pounds	1,2	1,2	
	Monochloroethylene. *See* Vinyl chloride		UN1086								
	Monochloropentafluoroethane	Nonflammable gas	UN1020	Nonflammable gas	173.306	173.304	150 pounds	300 pounds	1,2	1,2	
	Monochlorotetrafluoroethane	Nonflammable gas	UN1021	Nonflammable gas	173.306	173.304 173.314	150 pounds	300 pounds	1,2	1,2	
	Monochlorotrifluoromethane	Nonflammable gas	UN1022	Nonflammable gas	173.306	173.304	150 pounds	300 pounds	1,2	1,2	
	Monoethanolamine	Corrosive material	UN2491	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
*	Monoethanolamine, solution	Corrosive material	UN2491	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
E	Monomethylamine (RQ-1000/454)	Flammable liquid	UN1061	Flammable liquid	None	173.148	Forbidden	5 pints	1,2	5	Segregation same as for flammable gas
	Monofluorophosphoric acid, anhydrous	Corrosive material	UN1776	Corrosive	None	173.275	Forbidden	1 gallon	1,2	1,2	Keep dry

26 **§172.101 Hazardous Materials Table (cont'd)**

(1) */E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Label(s) required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
E	Monomethylamine, anhydrous (*RQ-1000/454*)	Flammable gas	UN1061	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	4	
*E	Monomethylamine, aqueous solution (*RQ-1000/454*)	Flammable liquid	UN1235	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	4	Stow away from mercury and its compounds
	Mortar stain, liquid	Combustible liquid	NA1993	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Mortar stain, liquid	Flammable liquid	NA1993	Flammable liquid	173.118	173.128	1 quart	55 gallons	1,2	1	
	Mosk balk. See Naphthalene		UN1334								
	Motion picture film. See Film										
	Motor fuel antiknock compound *or* antiknock compound	Poison B	UN1649	Poison	None	173.354	Forbidden	55 gallons	1	5	If flashpoint less than 141 deg F, segregation same as for flammable liquids
*	Motor fuel, n.o.s.	Combustible liquid	NA1203	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Motor fuel, n.o.s.	Flammable liquid	NA1203	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Motor, internal combustion				173.120						
	Motor vehicle, etc., *including automobile, motorcycle, truck, tractor, and other self-propelled vehicle or equipment powered by internal combustion engine, when offered new or used for transportation and which contain fuel in the engine or fuel tank or the electric storage battery is connected to either terminal of the electrical system*	ORM-C		None	173.120 173.250 173.257 173.306 175.305 176.905				1,2	1,2	
	Muriatic acid. *See* Hydrochloric (*muriatic*) acid		UN1789								
E	Naled (*RQ-10/4.54*)	ORM-E	NA2783	None	None	173.510	No limit	No limit	2	2	
*	Naphtha	Combustible liquid	NA2553	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Naphtha	Flammable liquid	NA2553	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Naphtha distillate	Combustible liquid	NA2553	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Naphtha distillate	Flammable liquid	NA2553	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	*Naphtha petroleum. See* Petroleum naphtha		UN1255								
*	Naphtha, solvent	Combustible liquid	UN1256	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Naphtha, solvent	Flammable liquid	UN1256	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
RAW	Naphthalene *or* Naphthalin (*RQ-5000/2270*)	ORM-A	UN1334	None	173.505	173.655	25 pounds	300 pounds	1,2	1,2	Segregation same as for flammable solids
E	Naphthenic acid (*RQ-100/45.4*)	ORM-E	NA9137	None	None	173.510	No limit	No limit	2	2	
	Natural gasoline. See Gasoline										
	Neohexane	Flammable liquid	UN1208	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	4	
*	Neon	Nonflammable gas	UN1065	Nonflammable gas	173.306	173.302	150 pounds	300 pounds	1,2	1,2	
	New explosive or explosive device				173.51	173.86					
E	Nickel ammonium sulfate (*RQ-5000/2270*)	ORM-E	NA9136	None	None	173.510	No limit	No limit	2	2	
	Nickel carbonyl	Flammable liquid	UN1259	Flammable liquid and Poison	None	173.126	Forbidden	Forbidden	1	5	Not permitted on a vessel carrying explosives. Shade from radiant heat. Segregation same as for flammable liquids 1a*
	Nickel catalyst, wet, *finely divided, activated, or spent. With not less than 40% water or other suitable liquid*	Flammable solid	UN1378	Flammable solid	None	173.238	Forbidden	100 pounds	1,2	1	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
E	Nickel chloride (*RQ-5000/2270*)	ORM-E	NA9139	None	None	173.510	No limit	No limit	2	2	
	Nickel cyanide, solid	Poison B	UN1653	Poison	173.370		25 pounds	200 pounds	1,2	1,2	Stow away from acids
E	Nickel hydroxide (*RQ-1000/454*)	ORM-E	NA9140	None	None	173.510	No limit	No limit	2	2	
E	Nickel nitrate (*RQ-5000/2270*)	Oxidizer	UN2725	Oxidizer	173.153	173.182	25 pounds	100 pounds	2	2	
E	Nickel sulfate (*RQ-5000/2270*)	ORM-E	NA9141	None	None	173.510	No limit	No limit	2	2	
	Nicotine hydrochloride	Poison B	UN1656	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
	Nicotine, liquid	Poison B	UN1654	Poison	None	173.356	Forbidden	55 gallons	1,2	1,2	
	Nicotine salicylate	Poison B	UN1657	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
*	Nicotine sulfate, liquid	Poison B	UN1658	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
	Nicotine sulfate, solid	Poison B	UN1658	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Nicotine tartrate	Poison B	UN1659	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
*	Nitrate, n.o.s.	Oxidizer	NA1477	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	
	Nitrate of ammonia explosive. See High explosive										
	Nitrating (*mixed*) acid	Oxidizer	NA1796	Oxidizer	None	173.267	Forbidden	1 quart	1	5	Segregation same as for corrosive materials
	Nitrating (*mixed*) acid, spent	Corrosive material	UN1826	Corrosive	None	173.248	Forbidden	1 quart	1	5	
E	Nitric acid, 40% or less (*RQ-1000/454*)	Corrosive material	NA1760	Corrosive	None	173.266	Forbidden	5 pints	1	5	Stow away from hydrazine, separate from diethylenetriamine
E	Nitric acid, fuming (*RQ-1000/454*)	Oxidizer	NA2032	Oxidizer and Poison	None	173.266	Forbidden	Forbidden	1	5	Segregation same as for corrosive materials. Stow away from hydrazine, separate from diethylenetriamine
E	Nitric acid (*over 40%*) (*RQ-1000/454*)	Oxidizer	NA2031	Oxidizer and Corrosive	None	173.266	Forbidden	5 pints	1	5	Segregation same as for corrosive materials. Stow away from hydrazine, separate from diethylenetriamine
	Nitric ether. See Ethyl nitrate										
	Nitric oxide	Poison A	UN1660	Poison gas	None	173.337	Forbidden	Forbidden	1	5	
	Nitro carbonitrate. See Blasting agent										
	Nitro carbonitrate. See High explosive										
	Nitroaniline	Poison B	UN1661	Poison	173.364	173.373	50 pounds	200 pounds	1,2	1,2	
	p-Nitroaniline. *See* Nitroaniline		UN1661								
E	Nitrobenzol, liquid (*oil of mirbane, nitrobenzene*) (*RQ-1000/454*)	Poison B	UN1662	Poison	173.345	173.346	1 quart	55 gallons	1,2	1,2	
	Nitrocellulose, colloided, granular *or* flake, wet with not less than 20% alcohol *or* solvent, *or* block, wet with not less than 25% alcohol	Flammable liquid	NA2556	Flammable liquid	173.118	173.127	1 quart	25 pounds	1,2	1	

6172.101 Hazardous Materials Table (cont'd)

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(1) */E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Label(s) required (if not exempted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
	Nitrocellulose, collodion, granular *or* flake, wet with not less than 20% water	Flammable solid	NA2555	Flammable solid	173.153	173.154	25 pounds	100 pounds	1,2	1	
	Nitrocellulose, dry. See High explosive										
	Nitrocellulose fabric, wet with not less than 20% alcohol *or* solvent	Flammable liquid	NA2556	Flammable liquid	173.115	173.127	1 quart	25 pounds	1,2	1	
	Nitrocellulose, wet with not less than 30% alcohol *or* solvent	Flammable liquid	NA2059	Flammable liquid	173.115	173.127	1 quart	25 pounds	1,2	1	
	Nitrocellulose, wet with not less than 20% water	Flammable solid	NA2555	Flammable solid	173.153	173.154	25 pounds	100 pounds	1,2	1	
	Nitrochlorobenzene, meta *or* para, solid	Poison B	NA1578	Poison	173.326	173.376	50 pounds	200 pounds	1,2	1,2	
	Nitrochlorobenzene, ortho, liquid	Poison B	NA1578	Poison	173.345	173.345	1 quart	55 gallons	1,2	1,2	
*	Nitrogen	Nonflammable gas	NA1066	Nonflammable gas	173.302	173.302 173.314	150 pounds	300 pounds	1,2	1,2	
E	Nitrogen dioxide, liquid (*RQ-1000/454*)	Poison A	UN1067	Oxidizer and Poison gas	None	173.336	Forbidden	Forbidden	1	5	Segregation same as for nonflammable gases. Store away from organic materials
*	Nitrogen fertilizer solution	Nonflammable gas	NA1043	Nonflammable gas	173.302	173.304 173.314	150 pounds	300 pounds	1,2	1,2	
	Nitrogen peroxide, liquid	Poison A	NA1067	Oxidizer and Poison gas	None	173.336	Forbidden	Forbidden	1	5	Segregation same as for nonflammable gas. Store away from organic materials
*	Nitrogen, pressurized Liquid	Nonflammable gas	NA1977	Nonflammable gas	None	173.304	Forbidden	300 pounds	1,2	1,2	
	Nitrogen tetroxide, liquid	Poison A	UN1067	Oxidizer and Poison gas	None	173.336	Forbidden	Forbidden	1	5	Segregation same as for nonflammable gases. Store away from organic materials
	Nitroglycerin, liquid, desensitized. See High explosive, liquid										
	Nitroglycerin, liquid, undesensitized. See 173.51	Forbidden									
	Nitroglycerin, spirits of. See Spirits of nitroglycerin		NA1204								
	Nitroguanidine, dry. See High explosive										
	Nitroguanidine, wet with not less than 20% water	Flammable solid	UN1336	Flammable solid	173.153	173.154	25 pounds	100 pounds	1,2	4	
	Nitrohydrochloric acid	Corrosive material	UN1798	Corrosive	None	173.278	Forbidden	5 pints	1	5	
*	Nitrohydrochloric acid, diluted	Corrosive material	NA1798	Corrosive	None	173.278	Forbidden	5 pints	1	5	
	Nitromannite. See High explosive										
	Nitromethane	Flammable liquid	UN1261	Flammable liquid	173.118	173.148a	1 quart	10 gallons	1,2	1,2	
	Nitromuriatic acid. *See* Nitrohydrochloric acid		UN1798								
E	Nitrophenol (*RQ-1000/454*)	ORM-E	UN1663	None	None	173.510	No limit	No limit	2	2	
	Nitrosoguanidine. *See* Initiating explosive										
	Nitrostarch, dry. *See* High explosive										
	Nitrostarch, wet with not less than 30% alcohol *or* solvent	Flammable liquid	NA1960	Flammable liquid	173.115	173.127	1 quart	25 pounds	1,2	1	
	Nitrostarch, wet with not less than 20% water	Flammable solid	UN1337	Flammable solid	173.153	173.154	25 pounds	100 pounds	1	4	
	Nitrosyl chloride	Nonflammable gas	UN1069	Nonflammable gas	173.302	173.304 173.314	Forbidden	300 pounds	1	4	
E	Nitrotoluene (*RQ-1000/454*)	ORM-E	UN1664	None	None	173.510	No limit	No limit	2	2	
	Nitrous. See High explosive										
	Nitrous oxide	Nonflammable gas	UN1070	Nonflammable gas	173.302	173.304 173.315	150 pounds	300 pounds	1,2	1,2	Under deck stowage must be in well-ventilated space
	Nitrozyl	Poison B	NA1660	Poison	173.345	173.345	1 quart	55 gallons	1,2	1	
	Nonflammable gas, n.o.s. *See* Compressed gas, n.o.s.		UN1956								
*	Nonliquefied hydrocarbon gas	Flammable gas	NA1964	Flammable gas	173.306	173.302	Forbidden	300 pounds	1,2	1	
	Nonyltrichlorosilane	Corrosive material	UN1799	Corrosive	None	173.260	Forbidden	10 gallons	1	1	Keep dry
	Nordhausen acid. *See* Sulfuric acid		NA1830								
W	Oakum	ORM-C		None	173.505	173.1050			1,2	1,2	
	Octadecyltrichlorosilane	Corrosive material	UN1800	Corrosive	None	173.260	Forbidden	10 gallons	1	1	Keep dry
	Octane	Flammable liquid	UN1262	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Octyltrichlorosilane	Corrosive material	UN1801	Corrosive	None	173.260	Forbidden	10 gallons	1	1	Keep dry
*	Oil, *described as oil*, n.o.s., petroleum oil, *or* petroleum oil, n.o.s.	Combustible liquid	NA1270	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Oil, *described as oil*, oil, n.o.s., petroleum oil, *or* petroleum oil, n.o.s.	Flammable liquid	NA1270	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Oil of mirbane. See Nitrobenzol, liquid		UN1662								
	Oil of vitriol. *See* Sulfuric acid		NA1830								
	Oil well cartridge	Class C explosive	UN0276	Class C explosive	None	173.112	50 pounds	150 pounds	1,2	1,2	
	Oiled clothing (*manufactured article properly dried to prevent spontaneous heating*). *See* Oiled material		NA1856								
AW	Oiled material (*manufactured article properly dried to prevent spontaneous heating*)	ORM-C	NA1856	None	173.505	173.1035	No limit	No limit	1,2	1,2	
	Oiled paper (*manufactured article properly dried to prevent spontaneous heating*). *See* Oiled material		NA1856								
E	Oleum (*sulfuric acid fuming*) (*RQ-1000/454*)	Corrosive material	NA1831	Corrosive	None	173.272	Forbidden	5 pints	1,2	1	Under deck stowage must be in metal drums only. Keep dry.
*	Organic peroxide, liquid, *or* solution, n.o.s.	Organic peroxide	NA9108	Organic peroxide	173.150	173.221	Forbidden	1 quart	1,2	1,2	Store separate from combustible materials, explosives, or acids.
*	Organic peroxide liquid *or* solution, n.o.s.	Flammable liquid	NA1866	Organic peroxide and Flammable liquid	None	173.119	Forbidden	1 quart	1,2	5	Store separate from combustible materials, explosives, or acids

§172.101 Hazardous Materials Table (cont'd)

(1) */E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Label(s) required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
*	Organic peroxide, solid, n.o.s.	Organic peroxide	NA9187	Organic peroxide	173.153	173.154	Forbidden	25 pounds	1,2	1,2	Stow separate from combustible materials, explosives, or acids.
*	Organic phosphate mixture, organic phosphate compound mixture, *or* organic phosphorus compound mixture, liquid	Poison B	NA2783	Poison	173.350	173.350	1/2 pint	1 quart	1,2	5	
*	Organic phosphate mixture, organic phosphate compound mixture, *or* organic phosphorus compound mixture, solid *or* dry	Poison B	NA2783	Poison	173.377	173.377	50 pounds	200 pounds	1,2	4	
*	Organic phosphate, organic phosphate compound, *or* organic phosphorus compound; mixed with compressed gas	Poison A	NA1955	Poison gas	None	173.334	Forbidden	Forbidden	1	5	Shade from radiant heat
*	Organic phosphate, organic phosphate compound, *or* organic phosphorus compound; liquid	Poison B	NA2783	Poison	None	173.356	Forbidden	1 quart	1,2	5	
*	Organic phosphate, organic phosphate compound, *or* organic phosphorus compound; solid *or* dry	Poison B	NA2783	Poison	None	173.377	Forbidden	200 pounds	1,2	4	
A	ORM-A, n.o.s.	ORM-A	NA1693	None	173.505	173.510	No limit	No limit			
A	ORM-B, n.o.s.	ORM-B	NA1760	None	173.505	173.510	No limit	No limit			
	ORM-C See 173.500 and 176.900										
	Orthonitroaniline. *See* Nitroaniline										
	Oxidizer material packed with other articles. See 173.152		UN1681								
	Oxidizer, *or* Oxidizing material, n.o.s.	Oxidizer	UN1479	Oxidizer	173.153	173.154	25 pounds	25 pounds	1,2	1,2	
*	Oxygen	Nonflammable gas	NA1072	Oxidizer	173.306	173.302 173.314	150 pounds	300 pounds	1,2	1,2	Under deck stowage; must be in well ventilated space
*	Oxygen, pressurized liquid	Nonflammable gas	NA1073	Oxidizer	None	173.304	Forbidden	Forbidden	1,2	1,2	Stow separate from acetylene. Do not overstow with other cargo
*	Paint drier, liquid	Combustible liquid	UN1136	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Paint drier, liquid	Flammable liquid	UN1136	Flammable liquid	173.118	173.188	1 quart	55 gallons	1,2	1	
*	Paint, enamel, lacquer, stain, shellac, *or* varnish, aluminum, bronze, gold, wood filler, liquid *or* lacquer base, liquid	Combustible liquid	NA1263	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Paint, enamel, lacquer, stain, shellac, *or* varnish, aluminum, bronze, gold, wood filler, liquid *or* lacquer base, liquid	Flammable liquid	NA1263	Flammable liquid	173.118	173.128	1 quart	55 gallons	1,2	1	
*	*Paint, reducing or thinning compound. See* Compound, lacquer, paint, *or* varnish, reducing *or* thinning liquid, etc.		NA1142								
	Paper caps. See Toy caps										
W	Paper scrap (*when dry, clean, and free from oil*)	ORM-C		None	173.505	173.1075			1,2	1,2	
	Paper stock, wet	Flammable solid	NA1325	Flammable solid	None	173.185	Forbidden	Forbidden	1,2	1,2	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Paper waste, wet. *See* Waste Paper, wet		NA1325								
	Paper waste (*when dry, clean, and free from oil*). *See* Paper scrap										
EA	Paraformaldehyde (*RQ-1000/454*)	ORM-A	UN2213	None	None	173.510	25 pounds	200 pounds	2	2	
	Peracetic acid	Organic peroxide	UN2131	Organic peroxide	173.153	173.224	1 quart	1 quart	1,2	4	
	Peranitroaniline, solid. *See* Nitroaniline		NA1661								
E	Perchloryl and compressed gas mixture (*RQ-1/.454*)	Poison A	NA1967	Poison gas	None	173.334	Forbidden	Forbidden	1,2	5	
E	Perchloryl, liquid (*RQ-1/.454*)	Poison B	NA2788	Poison	None	173.356	Forbidden	1 quart	1,2		
*E	Perchloryl mixture, dry (*RQ-1/.454*)	Poison B	NA2788	Poison	173.377	173.377	50 pounds	200 pounds	1,2	1,2	
E	Perchloryl mixture, liquid (*RQ-1/.454*)	Poison B	NA2788	Poison	None	173.350	Forbidden	1 quart	1,2	1,2	
	Paris green, solid. *See* Copper acetoarsenite, solid		UN1585								
E	PCBs. *See* Polychlorinated biphenyls										
	Pentaborane	Flammable liquid	UN1380	Poison and Flammable liquid	None	173.136	Forbidden	Forbidden	1	5	Segregation same as for flammable solids. Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
E	Pentachlorophenol (*RQ-10/4.54*)	ORM-E	NA2020	None	None	173.510	No limit	No limit	2	2	
	Pentaerythrite tetranitrate. See Initiating explosive										
	Pentaerythrite tetranitrate, desensitized, wet. See High explosive										
	Pentane	Flammable liquid	UN1265	Flammable liquid	173.118	173.119	Forbidden	10 gallons	1,2	4	
	Penthrite, dry. See High explosive										
	Peracetic acid solution, *not over 40% peracetic acid and not over 6% hydrogen peroxide*	Organic peroxide	NA2131	Organic peroxide	173.223	173.223	1 pint	5 pints	1	4	Shade from radiant heat
*	Perchlorate, n.o.s.	Oxidizer	NA1481	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	Stow away from powdered metals
	Perchloric acid, *exceeding 50% but not exceeding 72% strength*	Oxidizer	UN1873	Oxidizer	None	173.269	Forbidden	5 pints	1	5	Segregation same as for corrosive materials. Stow away from hydrazine.
	Perchloric acid exceeding 72% strength	Forbidden									
*	Perchloric acid, not over 50% acid	Oxidizer	UN1802	Oxidizer	173.244	173.269	Forbidden	5 pints	1	1	Segregation same as for corrosive materials. Stow away from hydrazine.
	Perchloromethylmercaptan	Poison B	UN1670	Poison	173.345	173.360	Forbidden	10 pounds	1	4	
	Percussion cap	Class C explosive	NA0044	Explosive C	None	173.107	50 pounds	150 pounds	1,2	1,2	
	Percussion fuse	Class C explosive	NA0367	Explosive C	None	173.105	50 pounds	150 pounds	1,2	1,2	
A	Perfluoro-2-butene	ORM-A	NA2422	None	173.505	173.510 173.605	10 gallons	55 gallons			
*	Permanganate, n.o.s.	Oxidizer	NA1482	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	Separate from ammonium compounds, hydrogen peroxide, and acids
	Permanganate of potash. See Potassium permanganate		UN1490								
	Peroxide, organic. See Organic Peroxide										

§172.101 Hazardous Materials Table (cont'd)

(1) */E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Label(s) required (if not exempted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
W	Pesticide, water reactive, *including but not limited to fungicides, and herbicides, etc., which contain manganese ethylenebisdithiocarbamate*	ORM-C	NA2210	None	173.505	173.1040			2	2	Keep dry
W	Petroleum coke (*uncalcined*)	ORM-C		None	173.505	173.1045			1,2	1,2	Not [illegible] if temperature of material is at or above 130 deg F
	Petroleum crude. See Crude oil		NA1267								
*	Petroleum distillate	Combustible liquid	UN1300	None	173.115a	None	No limit	No limit	1,2	1,2	
*	Petroleum distillate	Flammable liquid	UN1268	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	4	
	Petroleum ether	Flammable liquid	UN1271	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	4	
	Petroleum gas, liquefied. See Liquefied petroleum gas		UN1075								
*	Petroleum naphtha	Combustible liquid	UN1255	None	173.115a	None	No limit	No limit	1,2	1,2	
*	Petroleum naphtha	Flammable liquid	UN1256	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
A	Phencaptan	ORM-A	NA2709	None	173.505	173.510	No limit	No limit			
	Phenol. *See* Carbolic acid		UN1671								
	Phenyldichloroarsine	Poison B	NA2810	Poison	None	173.355	Forbidden	20 gallons	1	5	
	Phenyltrichlorosilane	Corrosive material	UN1804	Corrosive	None	173.300	Forbidden	10 gallons	1	1	Keep dry
A	Phenylenediamine, meta or para, solid	ORM-A	UN1673	None	173.505	173.510	No limit	No limit			
E	Phosgene (diphosgene) (*RQ-5000/2270*)	Poison A	UN1076	Poison gas	None	173.355	Forbidden	Forbidden	1	5	
	Phosphine	Poison A	UN2199	Flammable gas and Poison gas	None	173.320	Forbidden	Forbidden	1	5	
E	Phosphoric acid *or* Phosphoric Acid Solution (*RQ-5000/2270*)	Corrosive material	UN1805	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	Glass carboys in hampers not permitted under deck
	Phosphoric acid triethylenetamine. *See* Tris-(1-aziridinyl phosphine oxide)		NA2501								
	Phosphoric anhydride (*phosphorus pentoxide*)	Corrosive material	NA1807	Corrosive	None	173.185	Forbidden	100 pounds	1,2	1,2	Keep dry. Glass bottles not permitted under deck
E	Phosphorus, amorphous, red (*RQ-1/.454*)	Flammable solid	UN1338	Flammable solid	None	173.169	Forbidden	11 pounds	1,2	1,2	
	Phosphorus bromide. *See* Phosphorus tribromide		UN1808								
	Phosphorus chloride. *See* Phosphorus trichloride		UN1809								
	Phosphorus heptasulfide	Flammable solid	UN1339	Flammable solid	None	173.226	Forbidden	10 pounds	1,2	1	Separate from oxidizing materials
	Phosphorus oxybromide	Corrosive material	UN1939	Corrosive	None	173.271	Forbidden	1 quart	1	1	Keep dry. Glass carboys not permitted on passenger vessels
E	Phosphorus oxychloride (*RQ-5000/2270*)	Corrosive material	UN1810	Corrosive	None	173.271	Forbidden	1 quart	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Phosphorus pentachloride, solid	Corrosive material	UN1806	Corrosive	None	173.191	Forbidden	5 pounds	1	1	Keep dry
E	Phosphorus pentasulfide (*RQ-1000/454*)	Flammable solid	UN1340	Flammable solid and Dangerous when wet	None	173.226	Forbidden	11 pounds	1,2	1,2	Separate from oxidizing material
	Phosphorus sesquisulfide	Flammable solid	UN1341	Flammable solid and Dangerous when wet	None	173.226	Forbidden	11 pounds	1,2	1	Separate from oxidizing materials
	Phosphorus tribromide	Corrosive material	UN1808	Corrosive	None	173.270	Forbidden	1 quart	1	1	Keep dry. Glass carboys not permitted on passenger vessels
E	Phosphorus trichloride (*RQ-5000/2270*)	Corrosive material	UN1809	Corrosive	None	173.271	Forbidden	1 quart	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Phosphorus trisulfide	Flammable solid	UN1343	Flammable solid	None	173.226	Forbidden	10 pounds	1,2	1	Separate from oxidizing materials
E	Phosphorus, white *or* yellow, dry (*RQ-1/.454*)	Flammable solid	UN1381	Flammable solid and Poison	None	173.190	Forbidden	Forbidden	1,2	5	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
E	Phosphorus, white *or* yellow, in water (*RQ-1/.454*)	Flammable solid	UN1381	Flammable solid and Poison	None	173.190	Forbidden	25 pounds	1,2	5	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Phosphoryl chloride. *See* Phosphorus oxychloride		UN1810								
	Photographic film. See Film										
	Photographic flash powder. See Fireworks, special or Low explosives										
	Picrate, dry. See High explosive										
	Picrate of ammonia. See High explosive										
	Picric acid, dry. See High explosive										
	Picric acid, wet, with not less than 10% water	Flammable solid	NA1344	Flammable solid	None	173.192 173.193	1 pound	25 pounds	1	5	Under deck stowage permitted on cargo vessels if wet with more than 30% water. Store away from heavy metals and their compounds
	Picric acid, wet with not less than 10% water, over 25 pounds. See High explosive										
	Pinane hydroperoxide solution *not over 45% peroxide.*	Organic peroxide	NA2162	Organic peroxide	173.153	173.224	1 quart	1 quart	1,2	4	
	Pine oil	Combustible liquid	UN1272	None	173.115a	None	No limit	No limit	1,2	1,2	
	Pinwheels. *See* Fireworks, common										
	Pivaloyl chloride. *See* Trimethyl acetylchloride		UN9408								
*	Plastic solvent, n.o.s.	Combustible liquid	NA1993	None	173.115a	None	No limit	No limit	1,2	1,2	
*	Plastic solvent, n.o.s.	Flammable liquid	NA1993	Flammable liquid	173.115	173.119	1 quart	10 gallons	1,2	1	

§172.101 Hazardous Materials Table (cont'd)

(1) */E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Label(s) required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
*	Plutonium nitrate solution	Radioactive material	NA9165	Radioactive (See Sec. 172.403)	173.389	173.396			1,2	1,2	
	Poisonous liquid, n.o.s. *or* Poison B, liquid, n.o.s.	Poison B	NA2810	Poison	173.345	173.346	1 quart	55 gallons	1,2	1	
	Poisonous liquid *or* gas, n.o.s.	Poison A	NA9035	Poison gas	None	173.326	Forbidden	Forbidden	1	5	
	Poisonous solid, n.o.s. *or* Poison B, solid, n.o.s.	Poison B	NA2811	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1	
*	Polish, metal, stove, furniture *or* wood, liquid	Combustible liquid	NA1142	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Polish, metal, stove, furniture *or* wood, liquid	Flammable liquid	NA1142	Flammable liquid	173.118	173.129	1 quart	55 gallons	1,2	1	
B	Polychlorinated biphenyls (*RQ-10/4.54*)	ORM-E	UN2315	None	None	173.510	No limit	No limit	1,2	1,2	If stowed under deck, must be stowed in a mechantable location.
*	*Polymerizable material*				173.21						
B	Potassium arsenate, solid (*RQ-1000/454*)	Poison B	UN1677	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
B	Potassium arsenite, solid (*RQ-1000/454*)	Poison B	UN1678	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
*	Potassium bifluoride solution. *See* Potassium hydrogen fluoride solution		UN1811								
	Potassium bromate	Oxidizer	UN1484	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	Separate from ammonium compounds. Stow away from powdered metals.
	Potassium chlorate (*potash chlorate*)	Oxidizer	UN1485	Oxidizer	173.153	173.153	25 pounds	100 pounds	1,2	1,2	Separate from ammonium compounds. Stow away from powdered metals.
B	Potassium chromate (*RQ-1000/454*)	ORM-E	NA9142	None	None	173.510	No limit	No limit	2	2	
E	Potassium cyanide, solid (*RQ-10/4.54*)	Poison B	UN1680	Poison	173.370		25 pounds	200 pounds	1,2	1,2	Stow away from acids
*E	Potassium cyanide solution (*RQ-10/4.54*)	Poison B	UN1680	Poison	173.345	173.352	1 quart	55 gallons	1,2	1,2	Stow away from acids
	Potassium dichloro isocyanurate. *See* Potassium dichloro-s-triazinetrione		NA2465								
	Potassium dichloro-s-triazinetrione, *dry (containing more than 39% available chlorine)*	Oxidizer	NA2465	Oxidizer	173.153	173.217	50 pounds	100 pounds	1,2	1,2	
BA	Potassium dichromate (*RQ-1000/454*)	ORM-A	NA1464	None	173.505	173.510	No limit	No limit			
A	Potassium fluoride	ORM-B	UN1812	None	173.505	173.510	No limit	No limit			
*	Potassium fluoride solution	Corrosive material	UN1812	Corrosive	173.244	173.249	1 quart	5 gallons	1,2	1,2	
	Potassium hydrate. *See* Potassium hydroxide		NA1814								
*	Potassium hydrogen fluoride solution	Corrosive material	NA1811	Corrosive	173.244	173.249	1 quart	5 gallons	1,2	1,2	
A	Potassium hydrogen sulfate, solid	ORM-B	UN2509	None	173.505	173.510	25 pounds	100 pounds			
E	Potassium hydroxide, dry solid, flake, bead, *or* granular (*RQ-1000/454*)	Corrosive material	NA1813	Corrosive	173.244	173.510 173.800 173.245b	25 pounds	100 pounds	1,2	1,2	Keep dry. Do not stow with metals or alloys such as brass, copper, tin, zinc, aluminum, solder, or lead
*E	Potassium hydroxide, liquid *or* solution (*RQ-1000/454*)	Corrosive material	UN1814	Corrosive	173.244	173.249	1 quart	10 gallons	1,2	1,2	
*	Potassium hypochlorite solution. *See* Hypochlorite solutions containing more than 7% available chlorine by weight		NA1791								
A	Potassium metabisulfite	ORM-B		None	173.505	173.510	No limit	No limit			
	Potassium, metal	Flammable solid	UN2257	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
	Potassium, metal, liquid alloy	Flammable solid	UN1420	Flammable solid and Dangerous when wet	None	173.202	Forbidden	1 pound	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
	Potassium nitrate	Oxidizer	UN1486	Oxidizer	173.153	173.152	25 pounds	100 pounds	1,2	1,2	
	Potassium nitrate mixed (*fused*) with sodium nitrite	Oxidizer	UN1487	Oxidizer	173.153	173.153	25 pounds	100 pounds	1,2	1,2	Separate from ammonium compounds and cyanides. Stow away from foodstuffs
	Potassium nitrite	Oxidizer	UN1488	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	Separate from ammonium compounds and cyanides. Stow away from foodstuffs
	Potassium perchlorate	Oxidizer	UN1489	Oxidizer	173.153	173.219	25 pounds	100 pounds	1,2	1,2	Stow away from powdered metals
E	Potassium permanganate (*RQ-100/45.4*)	Oxidizer	UN1490	Oxidizer	173.153	173.154 173.194	25 pounds	100 pounds	1,2	1,2	Separate from ammonium compounds and hydrogen peroxide
	Potassium peroxide	Oxidizer	UN1491	Oxidizer	None	173.154	Forbidden	100 pounds	1,2	1,2	Keep dry
	Potassium sulfide	Flammable solid	NA1382	Flammable solid	173.153	173.207	25 pounds	200 pounds	1,2	1,2	Separate from liquid acids, flammable gases or liquids, oxidizing materials or organic peroxides
	Pressurized product. *See* Compressed gas, n.o.s.										
	Primer, detonating. *See* Detonating primer										
	Primer. *See* Cannon primer, combination primer, or small-arm primer										
	Projectile, explosive. *See* Explosive projectile										
	Projectile, gas, nonexplosive. *See Chemical ammunition, containing Poison or Irritating Material*										
	Projectile, gas, smoke, or incendiary, with burster or bursting with or without detonating fuze. *See* Explosive projectile										
	Projectile, illuminating, incendiary or smoke, with expelling charge but without bursting charge. *See* Fireworks, special										
	Projectile, small-loaded, empty or solid. *See* 173.55										
	Propane *or* Liquefied petroleum gas. *See* Liquefied petroleum gas		UN1978								
E*	Propargite (*RQ-10/4.54*)	ORM-E	NA2765	None	None	173.510	No limit	No limit	2	2	
*	Propellant explosive	Class A explosive		Explosive A	None	173.84	Forbidden	Forbidden	6	5	
	Propellant explosive in water (*Smokeless powder*)	Class B explosive		Explosive B	None	173.98	Forbidden	Forbidden	1,2	5	Magazine storage authorized

§172.101 Hazardous Materials Table (cont'd)

(1) */E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Label(s) required (if not exempted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
	Propellant explosive in water, unstable, condemned, *or* deteriorated (*smokeless powder*)	Class B explosive		Explosive B	None	173.88	Forbidden	Forbidden	1,2	5	Magazine stowage authorized
*	Propellant explosive, liquid	Class B explosive		Explosive B	None	173.88	Forbidden	10 pounds	1,2	5	Magazine stowage authorized
*	Propellant explosive, solid	Class B explosive		Explosive B	None	173.88	Forbidden	10 pounds	1,2	5	Magazine stowage authorized
	Propellant explosive (*solid, Class B, and small-arms primer*). *See* Propellant										
	Propionaldehyde	Flammable liquid	UN1275	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
E	Propionic acid (*RQ-5000/2270*)	Corrosive material	UN1848	Corrosive	173.244	173.245	1 quart	5 gallons	1,2	1,2	Separated by a complete compartment or hold from organic peroxides
*E	Propionic acid solution (*RQ-5000/2270*)	Corrosive material	NA1848	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	Separated by a complete compartment or hold from organic peroxides
E	Propionic anhydride (*RQ-5000/2270*)	Corrosive material	UN2496	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1	Keep dry
	Propyl acetate	Flammable liquid	UN1276	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Propyl alcohol. *See* Alcohol, n.o.s.		UN1274								
	Propyl chloride	Flammable liquid	UN1278	Flammable liquid	None	173.119	Forbidden	10 gallons	1,2	5	
	Propyl formate	Flammable liquid	UN1281	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Propyl mercaptan	Flammable liquid	UN2402	Flammable liquid	None	173.141	Forbidden	10 gallons	1,2	5	
	Propyl trichlorosilane	Corrosive material	UN1816	Corrosive	None	173.280	Forbidden	10 gallons	1	1	Keep dry
	Propylamine	Flammable liquid	UN1277	Flammable liquid	None	173.119	Forbidden	10 gallons	1,2	5	
	Propylene diamine	Flammable liquid	UN2258	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
E	Propylene dichloride (*RQ-5000/2270*)	Flammable liquid	UN1279	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Propylene imine, inhibited	Flammable liquid	UN1921	Flammable liquid	None	173.129	Forbidden	5 pints	1,2	1	
	Propylene *or* Liquefied petroleum gas. *See* Liquefied petroleum gas		UN1077								
E	Propylene oxide (*RQ-5000/2270*)	Flammable liquid	UN1280	Flammable liquid	173.118	173.119	Forbidden	1 gallon	1,2	4	
	Prussic acid. See Hydrocyanic acid (*prussic*), liquid *or* unstabilized										
E	Pyrethrins (*RQ-1000/454*)	ORM-E	NA9184	None	None	173.510	No limit	No limit	2	2	
	Pyridine	Flammable liquid	UN1282	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Pyrophoric liquid, *or* Pyroforic liquids, n.o.s.	Flammable liquid	UN2845	Flammable liquid	None	173.124	Forbidden	Forbidden	1	5	Shade from radiant heat. Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Pyrosulfuryl chloride	Corrosive material	UN1817	Corrosive	173.244	173.247	1 quart	1 quart	1	4	Keep dry. Glass carboys not permitted on passenger vessels
	Pyroxylin plastic scrap	Flammable solid	NA9006	Flammable solid	None	173.166	Forbidden	Forbidden	1	5	Shade from radiant heat
	Pyroxylin plastics, rods, sheets, rolls, or tubes	Flammable solid	NA3006	Flammable solid	173.197		50 pounds	250 pounds	1,2	1	
*	Pyroxylin solution	Combustible liquid	NA3060	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Pyroxylin solution	Flammable liquid	NA3060	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	Pyroxylin solvent, n.o.s.	Combustible liquid	NA3060	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Pyroxylin solvent, n.o.s.	Flammable liquid	NA3060	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Pyrrolidine	Flammable liquid	UN1922	Flammable liquid	173.118	173.119	Forbidden	10 gallons	1,2	1	
	Quicklime. *See* Calcium oxide		NA1910								
E	Quinoline (*RQ-1000/454*)	ORM-E	UN2656	None	None	173.510	No limit	No limit	2	2	
	Radioactive device, n.o.s.	Radioactive material	UN2909	None	173.391				1,2	1,2	
*	Radioactive material, fissile, n.o.s.	Radioactive material	UN2918	Radioactive	173.398	173.396			1,2	1,2	
*	Radioactive material, limited quantity, n.o.s.	Radioactive material	UN2910	None	173.391				1,2	1,2	
*	Radioactive material, low specific activity *or* LSA, n.o.s.	Radioactive material	UN2912	Radioactive	173.398	173.389			1,2	1,2	
*	Radioactive material, n.o.s.	Radioactive material	NA9191	Radioactive	173.398	173.396			1,2	1,2	
*	Radioactive material, special form, n.o.s.	Radioactive material	NA9192	Radioactive	173.398	173.394			1,2	1,2	
	Rags, oily	Flammable solid	UN1856	Flammable solid	None	173.190	Forbidden	Forbidden	1,2	1,2	Keep dry. Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Rags, wet	Flammable solid	NA1325	Flammable solid	None	173.200	Forbidden	Forbidden	1	1	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Railway Fuses. See Fuses										
	Railway torpedo. *See* Torpedo, railway										
	Range oil. *See* Fuel oil		NA1993								
*	*Reducing compound, paint, varnish, lacquer, etc. See* Compound, lacquer, paint *or* varnish, etc., removing, reducing, *or* thinning, liquid										
	Refrigerant gas. *See* Dispersant Gas		UN1078								
*	Refrigerating machine	Nonflammable gas	UN2857	Nonflammable gas	173.306		No limit	No limit	1,2	1,2	

(1)	(2)	(3)	(3A)	(4)	(5) Packaging		(6) Maximum net quantity in one package				(7) Water shipments
*/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	ID Number	Label(s) required (if not excepted)	(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
*	Refrigerating machine	Flammable gas	NA1954	Flammable gas	173.306		No limit	No limit	1,3	1,3	
*	Refrigerating machine	Flammable liquid	NA1993	Flammable liquid	173.150	173.306	No limit	No limit	1,3	1	
*	*Removing compound, paint, varnish, lacquer, etc. See* Compound, lacquer, paint, or varnish, etc., removing, reducing, or thinning, liquid										
*	Resin solution (*resin compound, liquid*)	Combustible liquid	NA2924	None	173.118a	None	No limit	No limit	1,3	1,3	
	Resin solution (*resin compound, liquid*)	Flammable liquid	NA1866	Flammable liquid	173.118	173.119	1 quart	55 gallons	1,3	1	
E	Resorcinol (*RQ-5000/2270*)	ORM-E	NA9188	None	None	173.510	No limit	No limit	2	2	
	Rifle grenade. See Grenade, hand or rifle, explosive										
	Rifle powder. See Propellant explosive, or Black powder										
	Road asphalt or tar, liquid *See* Asphalt, cut back		NA1999								
	Road asphalt or tar (*when heated to or above its flash point*). *See* Asphalt		NA1999								
*	Road oil	Combustible liquid	NA1999	None	173.118a	None	No limit	No limit	1,3	1,3	
	Rocket ammunition with empty projectile	Class B explosive		Explosive B	None	173.90	Forbidden	Forbidden	1,3	5	
	Rocket ammunition with explosive projectile	Class A explosive		Explosive A	None	173.57	Forbidden	Forbidden	6	5	
	Rocket ammunition with gas projectile	Class A explosive		Explosive A	None	173.57	Forbidden	Forbidden	6	5	
	Rocket ammunition with illuminating projectile	Class A explosive		Explosive A	None	173.57	Forbidden	Forbidden	6	5	
	Rocket ammunition with incendiary projectile	Class A explosive		Explosive A	None	173.57	Forbidden	Forbidden	6	5	
	Rocket ammunition with inert loaded projectile	Class B explosive		Explosive B	None	173.90	Forbidden	Forbidden	1,3	5	
	Rocket ammunition with smoke projectile	Class A explosive		Explosive A	None	173.57	Forbidden	Forbidden	6	5	
	Rocket ammunition with solid projectile	Class B explosive		Explosive B	None	173.90	Forbidden	Forbidden	1,3	5	
	Rocket body, with electric primer or electric squib. See 173.55										
	Rocket engine, liquid	Class B explosive		Explosive B	None	173.95	Forbidden	Forbidden	1,3	5	Magazine storage authorized
	Rocket fireworks. See Fireworks, common										
	Rocket head. *See* Explosive projectile										
*	Rocket motor	Class A explosive		Explosive A	None	173.79	Forbidden	Forbidden	6	5	
*	Rocket motor	Class B explosive		Explosive B	None	173.92	Forbidden	550 pounds	1,3	5	
	Roman candle. See Fireworks, common										
W	Rosin (*colophony*) *or* Resin	ORM-C		None	173.505	173.1060			1,3	1,3	
*	Rough ammoniate tankage (*7% or more moisture content*)	Flammable solid	NA1325	Flammable solid	None	173.210	Forbidden	Forbidden	1,3	1,3	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides. Temperature of tankage must not exceed 100 deg F
*	Rough ammoniate tankage (*less than 7% moisture content*)	Flammable solid	NA1325	Flammable solid	None	173.210	Forbidden	Forbidden	1	5	
W	Rubber curing compound (*solid*)	ORM-C		None	173.505	173.1065			1,3	1,3	
	Rubber scrap *or* rubber buffings	Flammable solid	NA1345	Flammable solid	173.153	173.301	10 pounds	10 pounds	1,3	1,3	
*	Rubber shoddy, regenerated rubber, *or* reclaimed	Flammable solid	NA1345	Flammable solid	173.153	173.301	10 pounds	10 pounds	1,3	1,2	
	Rubidium metal	Flammable solid	UN1423	Flammable solid and Dangerous when wet	None	173.206	Forbidden	225 pounds	1,3	5	Segregation same as for flammable solid labeled Dangerous When Wet
	Rubidium metal, in cartridges	Flammable solid	NA1423	Flammable solid and Dangerous when wet	173.206		1 pound	25 pounds	1,3	4	Segregation same as for flammable solid labeled Dangerous When Wet
	Rum, denatured	Flammable liquid	NA1992	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,3	1	
*	Rust preventive coating	Combustible liquid	NA1142	None	173.118a	None	No limit	No limit	1,3	1,3	
	Safety fuse. *See* Fuse, safety										
	Safety squib	Class C explosive	UN0105 NA0206	Explosive C	None	173.106	30 pounds	150 pounds	1,3	1,3	
	Salute. *See* Fireworks common *or* special										
	Sand acid. *See* Hydrofluorosilicic acid										
W	Sawdust (*when dry, clean, and free from oil*)	ORM-C	UN1778	None	173.505	173.1070			1,3	1,3	Keep dry
	Selenic acid, liquid	Corrosive material	UN1905	Corrosive	None	173.245	Forbidden	5 pints	1,3	1,3	
E	Selenium oxide (*RQ-1000/454*)	Poison B	NA2811	Poison	173.364	173.365	50 pounds	200 pounds	2	2	
	Self-lighting cigarette	Flammable solid	NA1325	Flammable solid	173.21		Forbidden	Forbidden	1,3	1,3	Keep dry
	Self propelled vehicle. *See* Motor vehicle										
	Shaped charge, commercial. See High explosive 173.65(h)										
	Shell, fireworks. *See* Fireworks, common *or* special										
*	Shellac. *See* Paint, enamel, lacquer, stain, shellac, varnish, etc.		UN1263								
	Ship, distress signal. *See* Fireworks, special										

§172.101 Hazardous Materials Table (cont'd)

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(1) */E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Label(s) required (if not exempted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
	Signal flare	Class C explosive	HA0191	Explosive C	None	173.108	50 pounds	200 pounds	1,2	1,2	
	Silicofluoric acid. *See* Hydrofluorosilicic acid		UN1778								
	Silicon chloride *or* silicon tetrachloride	Corrosive material	UN1818	Corrosive	173.244	173.247	1 quart	1 gallon	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Silicon chrome, exothermic. *See* Exothermic ferrochrome										
	Silicon tetrafluoride	Nonflammable gas	UN1859	Nonflammable gas	173.306	173.302	Forbidden	300 pounds	1	4	Stow away from foodstuffs
	Silver cyanide	Poison B	UN1684	Poison	173.370		25 pounds	200 pounds	1,2	1,2	Stow away from acids
E	Silver nitrate (*RQ-1/.454*)	Oxidizer	UN1493	Oxidizer	173.188	173.182	25 pounds	100 pounds	1,2	1,2	Stow away from foodstuffs
	Sled. See Fliers										
	Sludge acid. See Acid, sludge		UN1906								
	Small arms ammunition	Class C explosive	HA0012	None	173.101		50 pounds	150 pounds	1,2	1,2	
	Small arms ammunition, irritating (*tear gas*) cartridge	Class C explosive	HA0301	Irritant	None	173.101	Forbidden	150 pounds	1,2	1,2	
	Small arms primer	Class C explosive	HA0078	Explosive C	None	173.107	50 pounds	150 pounds	1,2	1,2	
	Smoke candle	Class C explosive	HA0197	Explosive C	None	173.108	50 pounds	200 pounds	1,2	1,2	
	Smoke generator. See Chemical ammunition, Poison A or B Material										
	Smoke grenade	Class C explosive	HA0197	Explosive C	None	173.108	50 pounds	150 pounds	1,2	1,2	
	Smoke pot	Class C explosive	HA0197	Explosive C	None	173.108	50 pounds	200 pounds	1,2	1,2	
	Smoke projectile with bursting charge. See Explosive projectile										
	Smoke projectile with expelling charge but without bursting charge. See Fireworks, special										
	Smoke signal	Class C explosive	HA0197	Explosive C	None	173.108	50 pounds	200 pounds	1,2	1,2	
	Smokeless powder for cannon or small arms. See Propellant explosive, Class A *or* B										
	Smokeless powder for small arms (*100 pounds or less*)	Flammable solid	HA1325	Flammable solid	173.80	173.197a	Forbidden	Forbidden	1,2	1,2	Segregation same as for explosives
	Soda-arsenal. See High explosive										
*	Soda lime, solid	Corrosive material	HA1907	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	Keep dry
A	Sodium aluminate, solid	ORM-B	UN2812	None	173.505	173.510 173.800	25 pounds	100 pounds			
*	Sodium aluminate solution	Corrosive material	UN1819	Corrosive	173.244	173.249	1 quart	5 gallons	1,2	1,2	
	Sodium aluminum hydride	Flammable solid	UN2835	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
	Sodium amide	Flammable solid	UN1405	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
E	Sodium arsenate (*RQ-1000/454*)	Poison B	UN1685	Poison	173.284	173.285 173.288	50 pounds	200 pounds	1,2	1,2	
*E	Sodium arsenite (solution) liquid (*RQ-1000/454*)	Poison B	UN1686	Poison	173.245	173.246	1 quart	55 gallons	1,2	1,2	
	Sodium azide	Poison B	UN1687	Poison	173.284	173.275	50 pounds	100 pounds	1,2	1,2	Stow away from heavy metals, especially lead and its compounds. Stow separate from acids
E	Sodium bifluoride, solid (*RQ-5000/2270*)	Corrosive material	UN2439	Corrosive	173.244	173.245b	25 pounds	100 pounds	2	2	
E	Sodium bifluoride, solution (*RQ-5000/2270*)	Corrosive material	UN2439	Corrosive	173.244	173.245	1 quart	5 gallons	2	2	
	Sodium bisulfite, solid *or* solution. *See appropriate* Sodium hydrogen sulfite entry		NA1631							6818	
	Sodium bisulfite, solid. *See* Sodium hydrogen sulfite, solid		NA2693								
	Sodium bromate	Oxidizer	UN1494	Oxidizer	173.188	173.154	25 pounds	100 pounds	1,2	1,2	Stow separate from ammonium compounds. Stow away from powdered metals
	Sodium chlorate (*soda chlorate*)	Oxidizer	UN1485	Oxidizer	173.188	173.189	25 pounds	100 pounds	1,2	1,2	Stow separate from ammonium compounds. Stow away from powdered metals
	Sodium chlorite	Oxidizer	UN1496	Oxidizer	None	173.160	Forbidden	100 pounds	1,2	1,2	Stow separate from ammonium compounds. Stow away from powdered metals
*	Sodium chlorite solution (*not exceeding 42% sodium chlorite*)	Corrosive material	NA1908	Corrosive	173.244	173.263	1 quart	4 gallons	1,2	1	Glass carboys in hampers not permitted under deck
E	Sodium chromate (*RQ-1000/454*)	ORM-E	NA9145	None	None	173.510	No limit	No limit	2	2	
E	Sodium cyanide, solid (*RQ-10/4.54*)	Poison B	UN1689	Poison	173.370		25 pounds	200 pounds	1,2	1,2	Stow away from acids
*E	Sodium cyanide solution (*RQ-10/4.54*)	Poison B	NA1689	Poison	173.245	173.352	1 quart	55 gallons	1,2	1,2	Stow away from acids
	Sodium dichloroisocyanurate. *See* Sodium dichloro-s-triazinetrione		UN2465								
	Sodium dichloro-s-triazinetrione (*dry, containing more than 39% available chlorine*)	Oxidizer	UN2465	Oxidizer	173.153	173.217	50 pounds	100 pounds	1,2	1,2	
EA	Sodium dichromate (*RQ-1000/454*)	ORM-A	NA1464	None	173.505	173.510	No limit	No limit			
E	Sodium dodecylbenzenesulfonate (*RQ-1000/454*)	ORM-E	NA9148	None	None	173.510	No limit	No limit	2	2	
EA	Sodium fluoride, solid (*RQ-5000/2270*)	ORM-B	UN1690	None	173.505	173.510	No limit	No limit			
*E	Sodium fluoride solution (*RQ-5000/2270*)	Corrosive material	NA1690	Corrosive	173.244	173.245	1 quart	5 gallons	1,2	1,2	Stow away from acids
	Sodium hydrate. *See* Sodium hydroxide		UN1824								

34 **§172.101 Hazardous Materials Table (cont'd)**

(1) */E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Label(s) required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(c) Cargo vessel	(d) Passenger vessel	(7) Water shipments (e) Other requirements
	Sodium hydride	Flammable solid	UN1427	Flammable solid and Dangerous when wet	None	173.198	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
A	Sodium hydrogen sulfate, solid	ORM-B	UN1821	None	173.505	173.510	25 pounds	100 pounds			
*	Sodium hydrogen sulfate solution	Corrosive material	UN2837	Corrosive	173.244	173.800 173.245	1 quart	1 gallon	1,2	1,2	
HA	Sodium hydrogen sulfite, solid (*RQ-5000/2270*)	ORM-B	NA2693	None	173.505	173.800	25 pounds	100 pounds			
E	Sodium hydrosulfide, solid (*RQ-5000/2270*)	Flammable solid	UN2318	Flammable solid	173.158	173.154	25 pounds	100 pounds	2	6	
E	Sodium hydrosulfide, solution (*RQ-5000/2270*)	Corrosive material	UN1720	Corrosive	173.244	173.245	1 quart	5 gallons	2	2	
	Sodium hydrosulfite (*sodium dithionite*)	Flammable solid	UN1384	Flammable solid	173.156	173.204	25 pounds	100 pounds	1,2	1,2	Keep dry. Below deck stowage in metal drums only. Separate from flammable gases, liquids, oxidizing materials, or organic peroxides
E	Sodium hydroxide, dry solid, flake, bead, *or* granular (*RQ-1000/454*)	Corrosive material	UN1823	Corrosive	173.244	173.245b	25 pounds	200 pounds	1,2	1,2	Keep dry
*E	Sodium hydroxide, liquid *or* solution (*RQ-1000/454*)	Corrosive material	UN1824	Corrosive	173.244	173.249	1 quart	5 gallons	1,2	1,2	
E	*Sodium hypochlorite. See* Hypochlorite solution *or* Hypochlorite solution containing not more than 7% available chlorine										
A	Sodium metabisulfite	ORM-B		None	173.505	173.510	No limit	No limit			
E	Sodium, metal dispersion in organic solvent (*RQ-1000/454*)	Flammable solid	UN1429	Flammable solid and Dangerous when wet	None	173.220	Forbidden	10 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
E	Sodium, metal liquid alloy (*RQ-1000/454*)	Flammable solid	NA1421	Flammable solid and Dangerous when wet	None	173.202	Forbidden	1 pound	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
E	Sodium, metal *or* metallic (*RQ-1000/454*)	Flammable solid	UN1428	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
E	Sodium methylate, alcohol mixture (*RQ-1000/454*)	Combustible liquid	NA1289	None	173.118a	None	No limit	No limit	1,2	1,2	
E	Sodium methylate, alcohol mixture (*RQ-1000/454*)	Flammable liquid	NA1289	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
E	Sodium methylate, alcohol mixture (*RQ-1000/454*)	Corrosive material	NA1289	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2	
E	Sodium methylate, dry (*RQ-1000/454*)	Flammable solid	UN1431	Flammable solid	173.158	173.154	25 pounds	100 pounds	1,2	1	Segregation same as for flammable solids labeled Dangerous When Wet
	Sodium monoxide, solid	Corrosive material	UN1825	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	Keep dry
	Sodium nitrate	Oxidizer	UN1498	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	
	Sodium nitrate bags. See Bags, sodium nitrate, empty and unwashed										
	Sodium nitrite mixed (*fused*) with potassium nitrate	Oxidizer	UN1487	Oxidizer	173.153	173.182	25 pounds	100 pounds	1,2	1,2	
	Sodium nitrite mixture (*sodium nitrate, sodium nitrite, and potassium nitrate*)	Oxidizer	NA1487	Oxidizer	173.153	173.224	25 pounds	100 pounds	1,2	1,2	Store separate from ammonium compounds and cyanides
E	Sodium nitrite (*RQ-100/45.4*)	Oxidizer	UN1500	Oxidizer	173.153	173.224	25 pounds	100 pounds	1,2	1,2	Store separate from ammonium compounds and cyanides
A	Sodium pentachlorophenate	ORM-A	UN2567	None	173.505	173.510	No limit	No limit			Store separate from ammonium compounds and cyanides. Bagged material not permitted on passenger vessels
	Sodium perchlorate	Oxidizer	UN1502	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	
	Sodium permanganate	Oxidizer	UN1503	Oxidizer	173.153	173.154	25 pounds	100 pounds	1,2	1,2	Store away from powdered metals
	Sodium peroxide	Oxidizer	UN1504	Oxidizer	None	173.157	Forbidden	100 pounds	1,2	1	Separate from ammonium compounds and hydrogen peroxide Keep dry. Store away from powdered metals, permanganates, combustible packing of other cargo, and combustible foodstuffs
	Sodium phenolate, solid	Corrosive material	UN2497	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	
E	Sodium phosphate, dibasic (*RQ-5000/2270*)	ORM-E	UN9147	None	None	173.510	No limit	No limit	2	2	
E	Sodium phosphate, tribasic (*RQ-5000/2270*)	ORM-E	UN9148	None	None	173.510	No limit	No limit	2	2	
	Sodium phosphide	Flammable solid	UN1432	Flammable solid and Dangerous when wet	None	173.154	Forbidden	25 pounds	1	5	
	Sodium picramate, wet (*with at least 20% water*)	Flammable solid	UN1349	Flammable solid	None	173.205	Forbidden	25 pounds	1,2	5	Stow away from heavy metals, especially lead, and its compounds
	Sodium potassium alloy	Flammable solid	UN1422	Flammable solid and Dangerous when wet	None	173.206	Forbidden	25 pounds	1,2	5	Under deck stowage must be readily accessible. Segregation same as for flammable solids labeled Dangerous When Wet
E	Sodium selenite (*RQ-1000/454*)	Poison B	NA2630	Poison	173.364	173.365	50 pounds	200 pounds	2	2	
*	Sodium sulfate, acid. *See appropriate* Sodium hydrogen sulfate entry										
*	Sodium sulfide, anhydrous	Flammable solid	UN1385	Flammable solid	173.153	173.207	25 pounds	200 pounds	1,2	1,2	Stow separate from liquid acids. Separate from flammable gases or liquids, oxidizing materials or organic peroxides
*	Solvent, n.o.s.	Combustible liquid	NA1993	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Solvent, n.o.s.	Flammable liquid	NA1993	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
*	*Sparklers. See* Fireworks, common										
	Spent iron moss. See Iron moss, spent		NA1376								
	Spent iron sponge. See Iron sponge, spent		UN1376								
	Spent mixed acid. See Nitrating acid, spent		NA1826								
	Spent sulfuric acid. See sulfuric acid, spent		UN1832								

§172.101 Hazardous Materials Table (cont'd) 35

(1) */E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Label(s) required (if not exempt)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
	Spirits of nitroglycerin, (*1 to 10%*)	Flammable liquid	NA1204	Flammable liquid	None	173.150	Forbidden	6 quarts	1,2	5	Segregation same as for explosives
	Spirits of nitroglycerin, not exceeding 1% nitroglycerin by weight	Flammable liquid	NA1204	Flammable liquid	173.118	173.150	1 quart	6 quarts	1,2	1	
	Spirits of salt. See Hydrochloric acid										
	Sporting powder. See Black powder *or* Propellant explosive, solid, Class B explosive		UN1709								
	Spray starting fluid. See Engine starting fluid										
	Spreader cartridge. See Fireworks, special										
	Squib, electric or safety. See Electric squib *or* Safety squib										
	Stain. *See* Paint, enamel, lacquer, stain, shellac, varnish, etc.		UN1309								
	Stannic phosphide	Flammable solid	UN1433	Flammable solid and Dangerous when wet	None	173.154	Forbidden	25 pounds	1	5	Segregation same as for flammable solid labeled Dangerous When Wet
A	Stannous chloride, solid	ORM-B	NA1759	None	173.505	173.510	No limit	No limit			
*	Starter cartridge	Class B explosive		Explosive B	None	173.98	Forbidden	300 pounds	1,2	5	
*	Starter cartridge	Class C explosive	NA0276	Explosive C	None	173.108	50 pounds	150 pounds	1,2	1,2	
	Storage battery wet. See Battery, electric storage, wet										
	Straw. *See* Hay		UN1327								
	Strontium arsenite, solid	Poison B	UN1691	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Strontium chlorate	Oxidizer	UN1506	Oxidizer	173.156	173.158	25 pounds	100 pounds	1,2	1,2	Stow separate from ammonium compounds. Stow away from powdered metals
*	Strontium chlorate, wet	Oxidizer	UN1506	Oxidizer	173.153	173.158	25 pounds	200 pounds	1,2	1,2	Stow separate from ammonium compounds. Stow away from powdered metals
E	Strontium chromate (*RQ-1000/454*)	ORM-E	NA9140	None	None	173.510	No limit	No limit	2	2	
	Strontium nitrate	Oxidizer	UN1507	Oxidizer	173.158	173.162	25 pounds	100 pounds	1,2	1,2	
	Strontium peroxide	Oxidizer	UN1509	Oxidizer	173.158	173.154	25 pounds	100 pounds	1,2	1,2	Keep dry
*E	Strychnine salt, solid (*RQ-10/4.54*)	Poison B	UN1692	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
E	Strychnine, solid (*RQ-10/4.54*)	Poison B	UN1692	Poison	None	173.377	Forbidden	200 pounds	1,2	1,2	
	Supplement of load. See Initiating explosive										
E	Styrene monomer, inhibited (*RQ-1000/454*)	Flammable liquid	UN2055	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1,2	
	Succinic acid peroxide	Organic peroxide	UN3102	Organic peroxide	173.158	173.157 173.158	Forbidden	25 pounds	1	1	
E	Sulfur chloride (*mono and di*) (*RQ-1000/454*)	Corrosive material	UN1828	Corrosive	None	173.247	Forbidden	1 gallon	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Sulfur dioxide	Nonflammable gas	UN1079	Nonflammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	4	Stow away from living quarters
	Sulfur flower. *See* Sulfur										
	Sulfur hexafluoride	Nonflammable gas	UN1080	Nonflammable gas	173.306	173.304	150 pounds	300 pounds	1,2	1,2	
W	Sulfur, solid	ORM-C	UN1350	None	173.505	173.1000			1,2	1,2	Protect from sparks and open flame. Stow separate from oxidizing materials. Segregation same as for flammable solids
	Sulfur trioxide, stabilized	Corrosive material	UN1829	Corrosive	173.244	173.275	Forbidden	1 gallon	1,2	1,2	Keep dry. Glass bottles not permitted under deck
E	Sulfuric acid (*For fuming sulfuric acid, see* Oleum) (*RQ-1000/454*)	Corrosive material	UN1830	Corrosive	173.244	173.272	1 quart	1 gallon	1	1	Keep dry. Under deck stowage is permitted on cargo vessels only in metal drums
E	Sulfuric acid, spent (*RQ-1000/454*)	Corrosive material	UN1832	Corrosive	None	173.248	Forbidden	1 quart	1	1	Under deck stowage is permitted on cargo vessels only in metal drums
	Sulfuric anhydride. *See* Sulfur trioxide, stabilized		UN1829								
*	Sulfurous acid	Corrosive material	UN1833	Corrosive	173.244	173.245	2 gallons	2 gallons	1,2	1	Glass carboys in lazaret not permitted under deck
	Sulfuryl chloride	Corrosive material	UN1834	Corrosive	173.244	173.247	1 quart	1 quart	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Sulfuryl fluoride	Nonflammable gas	UN2191	Nonflammable gas	173.306	173.304 173.314	150 pounds	300 pounds	1,2	1	
	Sulphur. *See* Sulfur		UN1350								
	Supplementary charge (explosive)	Class A explosive		Explosive A	None	173.89	Forbidden	Forbidden	6	5	
EA	2,4,5-T amines, esters, *or* salts. *See* 2,4,5-Trichlorophenoxyacetic acid, amines, esters, or salts		NA2765								
EA	2,4,5-T. *See* 2,4,5-Trichlorophenoxyacetic acid.		NA2765								
	Tank car, containing residual phosphorus and filled with water or inert gas. See 173.190										
	Tank car, empty (*previously used for a hazardous material*), *See* 173.29										
	Tank car, empty (*previously used for a Poison A material*), *See* 172.510 and 173.29										
	Tank, portable, empty (*previously used for a hazardous material*), *See* 172.510, 173.29 and 172.514										
	Tank truck, empty. *See* 172.510, 172.514 and 173.29										
*	Tankage fertilizer	Flammable solid	NA1800	Flammable solid	None	173.209	Forbidden	Forbidden	1	5	Keep dry. Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
*	Tankage, rough ammoniate	Flammable solid	NA1325	Flammable solid	None	173.210	Forbidden	Forbidden	1	5	Keep dry. Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
	Tankage. *See* Garbage tankage										
*	Tar, liquid	Combustible liquid	UN1999	None	173.118a	None	No limit	No limit	1,2	1,2	

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§172.101 Hazardous Materials Table (cont'd)

(1) */E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Label(s) required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Vessel stowage (a) Cargo vessel	(7) Vessel stowage (b) Passenger vessel	(8) Water shipments (c) Other requirements
*	Tar, liquid	Flammable liquid	UN1999	Flammable liquid	173.118	173.181	1 quart	10 gallons	1,2	1	
E	TDE (*1,1-dichloro-2,2-bis(para-chlorophenyl) ethane*) (*RQ-1/0.454*).	ORM-A	NA2761	None	None	173.510	50 pounds	No limit	2	2	
	Tear gas ammunition. See Chemical ammunition (containing an irritant material)										
	Tear gas candle	Irritating material	UN1700	Irritant	None	173.385	Forbidden	75 pounds	1	5	Stow away from living quarters
	Tear gas cartridge. See Small arms ammunition irritating (*tear gas*) cartridge										
	Tear gas grenade. See Grenade, tear gas										
	Tertiary alcohol. See Alcohol, n.o.s.										
	Tertiary butyl isopropyl benzene hydroperoxide	Organic peroxide	UN3091	Organic peroxide	173.158	173.224	1 quart	1 quart	1,2	4	
AW	Tetrachloroethane	ORM-A	UN1702	None	173.505	173.620	1 quart	10 gallons	1,2	1,2	
A	Tetrachloroethylene *or* Perchloroethylene	ORM-A	UN1897	None	173.505	173.540 173.620	10 gallons	55 gallons			
	Tetraethyl dithiopyrophosphate and compressed gas mixture	Poison A	UN1703	Poison gas	None	173.334	Forbidden	Forbidden	1	5	Shade from radiant heat. Stow away from living quarters. Segregation same as for non-flammable gases
	Tetraethyl dithiopyrophosphate, liquid	Poison B	UN1704	Poison	None	173.356	Forbidden	1 quart	1	5	
	Tetraethyl dithiopyrophosphate mixture, dry	Poison B	UN1704	Poison	None	173.377	Forbidden	200 pounds	1	5	
	Tetraethyl dithiopyrophosphate mixture, liquid	Poison B	UN1704	Poison	None	173.359	Forbidden	1 quart	1	5	
E	Tetraethyl lead, liquid (*including flash point for export shipment by vessel*) (*RQ-100/45.4*)	Poison B	NA1649	Poison	None	173.354	Forbidden	55 gallons	1	5	If flash point is 141 deg F. or less, segregation must be the same as for flammable liquids
E	Tetraethyl pyrophosphate and compressed gas mixture (*RQ-100/45.4*)	Poison A	UN1705	Poison gas	None	173.334	Forbidden	Forbidden	1	5	Shade from radiant heat. Stow away from living quarters. Segregation same as for non-flammable gases
E	Tetraethyl pyrophosphate, liquid (*RQ-100/45.4*)	Poison B	NA2783	Poison	None	173.356	Forbidden	1 quart	1,2	5	
E	Tetraethyl pyrophosphate mixture, dry (*RQ-100/45.4*)	Poison B	NA2783	Poison	None	173.377	Forbidden	200 pounds	1,2	5	
E	Tetraethyl pyrophosphate mixture, liquid (*RQ-100/45.4*)	Poison B	NA2783	Poison	None	173.359	Forbidden	1 quart	1,2	5	
	Tetrafluoroethylene, inhibited	Flammable gas	UN1081	Flammable gas	173.306	173.304	Forbidden	300 pounds	1,2	1,2	
	1,2,3,6-Tetrahydrobenzaldehyde	Corrosive material	UN2498	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	Stow away from living quarters
	Tetrahydrofuran	Flammable liquid	UN2056	Flammable liquid	None	173.119	Forbidden	10 gallons	1,2	5	
	Tetramethylammonium hydroxide, liquid	Corrosive material	UN1835	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
A	Tetramethylmethylenediamine	ORM-A	NA9069	None	173.505	173.510	No limit	No limit			
	Tetranitromethane	Oxidizer	UN1510	Oxidizer	None	173.306	Forbidden	Forbidden	1	5	Shade from radiant heat. Stow away from foodstuffs
	Tetrazene (guanyl nitrosamino guanyltetrazene). See Initiating explosive										
	Tetryl. See High explosive										
*	Textile treating compound mixture, liquid	Corrosive material	NA1760	Corrosive	173.244	173.245 173.249a	1 quart	10 gallons	1,2	1,2	
	Textile waste. *See* Cotton waste										
	Textile waste, wet	Flammable solid	UN1857	Flammable solid	None	173.211	Forbidden	Forbidden	1,2	1,2	
*	Thallium salt, solid, n.o.s.	Poison B	NA1707	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	Segregate from flammable gases or liquids, oxidizing materials, or organic peroxides
E	Thallium sulfate, solid (*RQ-1000/454*)	Poison B	NA1707 NA1142	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Thinner for rust preventive coating. *See* Rust preventive coating										
	Thinning compound, paint, varnish, lacquer etc. See Paint, enamel, lacquer, stain, shellac, varnish, etc.		UN1263								
	Thiocarbonyl chloride. See Thiophosgene										
	Thioglycolic acid	Corrosive material	UN1940	Corrosive	173.244	173.245	1 quart	1 gallon	1,2	1,2	Glass carboys in hampers not permitted under deck
	Thionyl chloride	Corrosive material	UN1836	Corrosive	None	173.247	Forbidden	1 gallon	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Thiophosgene	Poison B	UN2474	Poison	None	173.356	Forbidden	1 gallon	1	5	Shade from radiant heat
	Thiophosphoryl chloride	Corrosive material	UN1837	Corrosive	None	173.371	Forbidden	1 quart	1	1	Keep dry. Glass carboys not permitted on passenger vessels
A	Thiram	ORM-A	NA2771	None	173.505	173.510	No limit	No limit			
	Thorium metal, pyrophoric	Radioactive material	NA9170	Radioactive and Flammable solid	173.226	173.226			1,2	1,2	
	Thorium nitrate	Radioactive material	NA9171	Radioactive and Oxidizer	173.392	173.393			1,2	1,2	Separate longitudinally by a complete hold or compartment from explosives
	Time fuse. See Fuze, time, non-detonating										
	Tin chloride, fuming. *See* Tin tetrachloride, anhydrous		UN1827								
	Tin perchloride. *See* Tin tetrachloride, anhydrous		NA1827								
	Tin tetrachloride, anhydrous	Corrosive material	UN1827	Corrosive	173.244	173.247	1 quart	1 quart	1	1	Keep dry. Glass carboys not permitted on passenger vessels
*	Tinning flux. *See* Zinc chloride solution		NA1840								
	Titanium metal powder, dry or wet with *less than* 20% water	Flammable solid	NA2546	Flammable solid	None	173.206	Forbidden	75 pounds	1,2	5	
	Titanium metal powder, wet with 20% or more water	Flammable solid	NA1352	Flammable solid	None	173.206	Forbidden	150 pounds	1,2	5	
*	Titanium sulfate solution *containing not more than 45% sulfuric acid*	Corrosive material	UN1760	Corrosive	173.244	173.297	1 quart	1 gallon	1	4	Shade from radiant heat. Keep dry

§172.101 Hazardous Materials Table (cont'd) 37

(1) */R/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Labels required (if not exempted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
	Titanium tetrachloride	Corrosive material	UN1838	Corrosive	173.244	173.247	1 quart	10 gallons	1	1	Keep dry. Glass carboys not permitted on passenger vessels
	Toluene diisocyanate	Poison B	UN2078	Poison	173.245	173.248	Forbidden	55 gallons	1,2	1,2	Shade from radiant heat
	Toluene sulfonic acid, liquid	Corrosive material	NA2584	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
E	Toluene (solvent) (*RQ-1000/454*)	Flammable liquid	UN1294	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
A	Toluenediamine	ORM-A	NA1709	None	173.505	173.510	No limit	No limit			
	Torch. See Fireworks, common										
	Torpedo, railway	Class B explosive		Explosive B	None	173.91	Forbidden	300 pounds	1,2	1,2	Passenger vessels in metal lockers only
E	Toxaphene (*RQ-1/0.454*)	ORM-A	NA2761	None	None	173.510	25 pounds	100 pounds	2	2	
	Toy caps	Class C explosive	NA0037	Explosive C	None	173.100 173.109	50 pounds	150 pounds	1,2	1,2	
	Toy propellant device	Class C explosive	NA0038	Explosive C	None	173.111	50 pounds	150 pounds	1,2	1,2	
	Toy smoke device	Class C explosive	NA0037	Explosive C	None	173.111	50 pounds	150 pounds	1,2	1,2	
	Toy torpedo. See Fireworks, special										
E	2,4,5-TP esters. *See* 2,4,5-Trichlorophenoxypropionic acid esters		NA2765								
E	2,4,5-TP. *See* 2,4,5-Trichlorophenoxypropionic acid		NA2765								
	Tracer	Class C explosive	NA0306	Explosive C	None	173.105	50 pounds	150 pounds	1,2	1,2	
	Tracer fuze	Class C explosive	NA0306	Explosive C	None	173.105	50 pounds	150 pounds	1,2	1,2	
	Tractor. *See* Motor vehicle										
	Trailer or truck body with refrigeration or heating equipment. *See* Motor vehicle										
	Treated paper (*manufactured article properly dried to prevent spontaneous heating*). *See* Oiled material										
	Treated textile (*manufactured article properly dried to prevent spontaneous heating*). *See* Oiled material.										
E	Trichlorfon (*RQ-1000/454*)	ORM-A	NA2760	None	None	173.510	25 pounds	100 pounds	2	2	
	Trichloro-s-triazinetrione, dry, containing *over 39% available chlorine*	Oxidizer	UN2468	Oxidizer	173.153	173.217	50 pounds	100 pounds	1,2	1,2	Keep dry
	(mono-(Trichloro) tetra-(monopotassium dichloro)-penta-s-triazinetrione, dry (*containing over 39% available chlorine*)	Oxidizer	NA2468	Oxidizer	173.153	173.217	50 pounds	100 pounds	1,2	1,2	Keep dry
	Trichloroacetic acid, solid	Corrosive material	UN1839	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1	
•	Trichloroacetic acid solution	Corrosive material	UN2564	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2	Glass carboys in hampers not permitted under deck
EA	Trichloroethylene (*RQ-1000/454*)	ORM-A	UN1710	None	173.505	173.510 173.835	10 gallons	55 gallons			
E	Trichlorophenol (*RQ-10/4.54*)	ORM-A	NA2020	None	None	173.510	100 pounds	No limit	2	2	
EA	2,4,5-Trichlorophenoxyacetic acid (*RQ-100/45.4*)	ORM-A	NA2765	None	None	173.510	50 pounds	No limit	2	2	
EA	2,4,5-Trichlorophenoxyacetic acid amines, esters, or salts (*RQ-100/45.4*)	ORM-A	NA2765	None	None	173.510	50 pounds	No limit	2	2	
EA	2,4,5-Trichlorophenoxypropionic acid (*RQ-100/45.4*)	ORM-A	NA2765	None	None	173.510	50 pounds	No limit	2	2	
EA	2,4,5-Trichlorophenoxypropionic acid esters (*RQ-100/45.4*)	ORM-A	NA2765	None	None	173.510	50 pounds	No limit	2	2	
	Trichlorosilane	Flammable liquid	UN1295	Flammable liquid	None	173.126	Forbidden	10 gallons	1	5	Segregation same as for Flammable solids labeled Dangerous When Wet
	Trick matches	Class C explosive	NA0337	Explosive C	None	173.111	Forbidden	Forbidden	1,2	1,2	
	Trick noise maker, explosive	Class C explosive	NA0337	Explosive C	None	173.111	50 pounds	150 pounds	1,2	1,2	
E	Triethanolamine dodecylbenzenesulfonate (*RQ-1000/454*)	ORM-E	NA9161	None	None	173.510	No limit	No limit	2	2	
E	Triethylamine (*RQ-1000/2270*)	Flammable liquid	UN1296	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Trifluorochloroethylene	Flammable gas	UN1082	Flammable gas	173.306	173.304 173.314	Forbidden	10 gallons	1,2	1	
	Trimethyl acetyl chloride	Corrosive material	UN2438	Corrosive	173.244	173.247	1 quart	1 quart	1,2	1,2	
E	Trimethylamine, anhydrous (*RQ-1000/454*)	Flammable gas	UN1083	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1	4	
*E	Trimethylamine, aqueous solution (*RQ-1000/454*)	Flammable liquid	NA1297	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	Store away from mercury and mercury compounds
	Trimethylchlorosilane	Flammable liquid	UN1298	Flammable liquid	None	173.126	Forbidden	10 gallons	1,2	1	
	Trinitrobenzene, dry. See High explosive										
•	Trinitrobenzene, wet *containing at least 10% water*	Flammable solid	NA1354	Flammable solid	173.213		1 pound	1 pound	1	4	Store away from heavy metals and their compounds
	Trinitrobenzoic acid, dry. See High explosive										
•	Trinitrobenzoic acid, wet, *containing at least 10% water*	Flammable solid	NA1355	Flammable solid	None	173.192 173.193	1 pound	25 pounds	1	4	Store away from heavy metals and their compounds
	Trinitrobenzoic acid, wet, containing at least 10% water, over 25 pounds in one outside packaging. See High explosive										
	Trinitroresorcinol. See High explosive										
	Trinitrotoluene, dry. See High explosive										
	Trinitrotoluene, wet *containing at least 10% water*	Flammable solid	NA1356	Flammable solid	173.213		1 pound	1 pound	1	4	Store away from heavy metals and their compounds
	Tris-(1-aziridinyl) phosphine oxide	Corrosive material	UN2501	Corrosive	173.244	173.245b	1 quart	1 gallon	1	1	Keep dry. Glass carboys not permitted on passenger vessels

36 **§172.101 Hazardous Materials Table (cont'd)**

(1) */E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) ID Number	(4) Label(s) required (if not excepted)	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
	Tungsten hexafluoride	Corrosive material	UN2196	Corrosive	None	173.304	Forbidden	110 pounds	1	3	Segregation same as for nonflammable gases.
*	Turpentine	Combustible liquid	UN1299	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Turpentine	Flammable liquid	UN1299	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1,2	
*	Turpentine substitute	Combustible liquid	UN1300	None	173.118a	None	No limit	No limit	1,2	1,2	
*	Turpentine substitute	Flammable liquid	UN1300	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
W	Twisted jute packing (*rope*) (*treated or untreated*). *See* Oakum										
	Uranium hexafluoride, fissile (containing more than 0.7% U-235)	Radioactive material	NA9173	Radioactive and Corrosive	173.398	173.396			1,2	1,2	
	Uranium hexafluoride, low specific activity (*containing 0.7% or less U-235*)	Radioactive material	NA9174	Radioactive and Corrosive	173.392	173.396			1,2	1,2	
	Uranium metal, pyrophoric	Radioactive material	NA9175	Radioactive and Flammable solid	173.392	173.393 173.396			1,2	1,2	
E	Uranyl acetate (*RQ-5000/2270*)	Radioactive material	NA9180	Radioactive material	173.391	173.395	Not applicable	Not applicable	2	2	
	Uranyl nitrate hexahydrate solution	Radioactive material	NA9178	Radioactive and Corrosive	173.392	173.396 173.395 173.396			1,2	1,2	
E	Uranyl nitrate, solid (*RQ-5000/2270*)	Radioactive material	NA9177	Radioactive and Oxidizer	173.392	173.396 173.396			1,2	1,2	Separate longitudinally by an intervening load of incompatible items explosives
*	*Urea nitrate, dry. See* High explosive										
	Urea nitrate, wet *with 10% or more water*	Flammable solid	NA1357	Flammable solid	None	173.192 173.193	1 pound	25 pounds	1,2	1,2	
	Urea nitrate, wet with 10% or more water, over 25 pounds in one outside packaging. See High explosive										
	Urea peroxide	Organic peroxide	NA1511	Organic peroxide	173.158	173.227	2 pounds	25 pounds	1	4	Keep dry. Shade from radiant heat.
	Valeric acid	Corrosive material	NA1760	Corrosive	173.244	173.245	1 quart	10 gallons	1,2	1,2	
	Valeryl chloride	Corrosive material	UN2502	Corrosive	173.244	173.245	1 quart	1 gallon	1,2	1,2	
	Vanadium oxytrichloride	Corrosive material	UN2443	Corrosive	173.244	173.247a	Forbidden	1 quart	1	4	Shade from radiant heat.
	Vanadium oxytrichloride and titanium tetrachloride, mixture	Corrosive material	NA2444	Corrosive	None	173.245 173.245a	Forbidden	1 quart	1	4	Shade from radiant heat.
E	Vanadium pentoxide (*RQ-1000/454*)	Poison B	NA2862	Poison	173.364	173.365	50 pounds	200 pounds	2	2	
	Vanadium tetrachloride	Corrosive material	UN2444	Corrosive	173.244	173.247a	Forbidden	1 quart	1	4	Shade from radiant heat.
E	Vanadyl sulfate (*RQ-1000/454*)	ORM-E	NA9132 NA1166 NA1142	None	None	173.510	No limit	No limit	2	2	
	Varnish drier. See Paint drier, liquid										
	Varnish remover or reducer. See Compound, lacquer, paint or varnish removing, reducing, or thinning liquid										
*	Varnish. *See* Paint, enamel, lacquer, stain, shellac, varnish, etc.		NA1263 NA1263								
	Varnish thinning compound. See Compound, lacquer, paint, or varnish removing, reducing, or thinning liquid										
	Very signal cartridge	Class C explosive	NA0312	Explosive C	None	173.108	50 pounds	200 pounds	1,2	1,2	
E	Vinyl acetate (*RQ-1000/454*)	Flammable liquid	UN1301	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Vinyl chloride	Flammable gas	UN1086	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1,2	4	Stow away from living quarters.
	Vinyl ethyl ether, inhibited	Flammable liquid	UN1302	Flammable liquid	None	173.119	Forbidden	1 gallon	1,2	5	
	Vinyl fluoride, inhibited	Flammable gas	UN1860	Flammable gas	173.306	173.304 173.314 173.315	Forbidden	300 pounds	1	4	
	Vinyl isobutyl ether	Flammable liquid	UN1304	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	1	
	Vinyl methyl ether	Flammable gas	UN1087	Flammable gas	173.306	173.304 173.314	Forbidden	30 pounds	1,2	1	Stow away from living quarters.
	Vinyl trichlorosilane	Flammable liquid	UN1305	Flammable liquid	None	173.135	Forbidden	10 gallons	1,2	1	
E	Vinylidene chloride, inhibited (*RQ-5000/2270*)	Flammable liquid	UN1303	Flammable liquid	173.118	173.119	1 quart	10 gallons	1,2	4	
	Vitriol, oil of. *See* Sulfuric acid										
	War head. See Explosive projectile										
	Waste paper, wet	Flammable solid	NA1325	Flammable solid	None	173.166	Forbidden	Forbidden	1,2	1,2	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides.
	Waste textile, wet	Flammable solid	UN1857	Flammable solid	None	173.211	Forbidden	Forbidden	1,2	1,2	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides.
	Waste wool, wet	Flammable solid	UN1387	Flammable solid	None	173.213	Forbidden	Forbidden	1,2	1,2	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides.
	Water pump system tank charged with compressed air or nitrogen	Nonflammable gas	NA1956	None	173.306		Forbidden	Forbidden	1,2	1,2	
	Water reactive solid, n.o.s.	Flammable solid	UN2813	Flammable solid and Dangerous when wet	173.166	173.154	Forbidden	25 pounds	1,2	4	Segregation same as for flammable solids labeled Dangerous When Wet.

§172.101 Hazardous Materials Table (cont'd) 39

(1) */E/A/W	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(4A) ID Number	(4) Labels required if not exempted	(5) Packaging (a) Exceptions	(5) Packaging (b) Specific requirements	(6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar	(6) Maximum net quantity in one package (b) Cargo only aircraft	(7) Water shipments (a) Cargo vessel	(7) Water shipments (b) Passenger vessel	(7) Water shipments (c) Other requirements
*	Water treatment compounds, liquid	Corrosive material	NA1760	Corrosive	173.244	173.240	1 quart	10 gallons	1	1	
*	Wax, liquid	Combustible liquid	NA1999	None	173.118b	None	No limit	No limit	1,2	1,2	
	Wet lady. See Slide, wet		NA1325								
	Wet textile waste. See Waste textile, wet		UN1857								
	White acid (ammonium hydroxide and hydrochloric acid mixture)	Corrosive material	NA1760	Corrosive	173.244	173.241	1 quart	1 gallon	1	1	
*	Wood filler, liquid. See Paint, varnish, lacquer, stain, shellac, enamel, etc.		NA1263								
	Wood shavings (when dry, clean and free from oil). See Sawdust										
	Wool waste. See Cotton waste										
	Wool waste, wet. See Waste wool, wet		UN1387								
	X-ray film. See Film										
*	Xenon	Nonflammable gas	UN2036	Nonflammable gas	173.302	173.302	100 pounds	300 pounds	1,2	1,2	
R	Xylene (xylol) (RQ-1000/454)	Flammable liquid	UN1307	Flammable liquid	173.119	173.119	1 quart	1 quart	1,2	1,2	
R	Xylenol (RQ-1000/454)	ORM-E	UN2261	None	None	173.510	No limit	No limit	2	2	
	Xylyl bromide	Irritating material	UN1701	Tear gas	None	173.243	Prohibited	10 pounds	1	5	Store away from living quarters
A	Yeast, active, in liquid or granular form	ORM-C		None	None	173.1020	No limit	No limit			
R	Zinc acetate (RQ-1000/454)	ORM-E	NA9189	None	None	173.510	No limit	No limit	2	2	
R	Zinc ammonium chloride (RQ-1000/2270)	ORM-E	NA9184	None	None	173.510	No limit	No limit	2	2	
	Zinc ammonium nitrite	Oxidizer	UN1512	Oxidizer	None	173.266	25 pounds	100 pounds	1,2	5	This material may be prohibited in water transportation by certain countries
	Zinc arsenate	Poison B	UN1712	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
	Zinc arsenite, solid	Poison B	UN1712	Poison	173.364	173.365	50 pounds	200 pounds	1,2	1,2	
R	Zinc borate (RQ-1000/454)	ORM-E	NA9155	None	None	173.510	No limit	No limit	2	2	
R	Zinc bromide (RQ-1000/2270)	ORM-E	NA9186	None	None	173.510	No limit	No limit	2	2	
R	Zinc carbonate (RQ-1000/454)	ORM-E	NA9187	None	None	173.510	No limit	No limit	2	2	
	Zinc chlorate	Oxidizer	UN1513	Oxidizer	173.150	173.168	50 pounds	100 pounds	1,2	1,2	Store separate from ammonium compounds and away from powdered metals
R	Zinc chloride, solid (RQ-1000/2270)	ORM-E	NA2331	None	None	173.510	No limit	No limit	1,2	1,2	
R	Zinc chloride solution (RQ-1000/2270)	Corrosive material	UN1840	Corrosive	173.244	173.245	1 quart	1 quart	1,2	1,2	
R	Zinc cyanide (RQ-10/4.54)	Poison B	UN1713	Poison	173.370		50 pounds	200 pounds	1,2	1,2	Store away from acids
	Zinc ethyl. See Pyrophoric liquids, n.o.s.		NA1366								
R	Zinc fluoride (RQ-1000/454)	ORM-E	NA9190	None	None	173.510	No limit	No limit	2	2	
R	Zinc formate (RQ-1000/454)	ORM-E	NA9120	None	None	173.510	No limit	No limit	2	2	
R	Zinc hydrosulfite (RQ-1000/454)	Flammable solid	NA1931	Flammable solid	173.150	173.154	25 pounds	100 pounds	2	2	
*	Zinc muriate solution. See Zinc chloride solution		NA1840								
R	Zinc nitrate (RQ-1000/2270)	Oxidizer	UN1514	Oxidizer	173.150	173.152	25 pounds	100 pounds	2	2	
	Zinc permanganate	Oxidizer	UN1515	Oxidizer	173.150	173.154	25 pounds	100 pounds	1,2	1,2	Separate from ammonium compounds and hydrogen peroxide
	Zinc peroxide	Oxidizer	UN1516	Oxidizer	173.150	173.154	25 pounds	100 pounds	1,2	1,2	Keep dry
R	Zinc phenolsulfonate (RQ-1000/2270)	ORM-E	NA9180	None	None	173.510	No limit	No limit	2	2	
R	Zinc phosphide (RQ-1000/454)	Flammable solid	UN1714	Flammable solid and Poison	173.150	173.154	Prohibited	25 pounds	2	2	Keep away from oxidizing agents
R	Zinc silicofluoride (RQ-1000/2270)	ORM-E	UN2855	None	None	173.510	No limit	No limit	2	2	
R	Zinc sulfate (RQ-1000/454)	ORM-E	NA9167	None	None	173.510	No limit	No limit	2	2	
	Zirconium hydride	Flammable solid	UN1437	Flammable solid and Dangerous When Wet	None	173.206	Prohibited	100 pounds	1,2	5	Segregation same as for flammable solids labeled Dangerous When Wet
*	Zirconium metal, dry, chemically produced, finer than 20 mesh particle size	Flammable solid	NA2008	Flammable solid	None	173.214	Prohibited	75 pounds	1	5	Separate from flammable gases or liquids, oxidizing materials or organic peroxides
*	Zirconium metal, dry, mechanically produced, finer than 270 mesh particle size	Flammable solid	NA2009	Flammable solid	None	173.214	Prohibited	75 pounds	1	5	Separate from flammable gases or liquids, oxidizing materials or organic peroxides
*	Zirconium, metal, liquid, suspensions	Flammable liquid	NA1308	Flammable liquid	None	173.118	Prohibited	5 gallons	1	5	
	Zirconium metal, wet, chemically produced, finer than 20 mesh particle size	Flammable solid	NA1358	Flammable solid	None	173.214	Prohibited	100 pounds	1,2	5	
	Zirconium metal, wet, mechanically produced, finer than 270 mesh particle size	Flammable solid	NA1309	Flammable solid	None	173.214	Prohibited	100 pounds	1,2	5	
R	Zirconium nitrate (RQ-1000/2270)	Oxidizer	UN2728	Oxidizer	173.150	173.154	25 pounds	100 pounds	2	2	
	Zirconium picramate, wet with at least 20% of water	Flammable solid	UN1517	Flammable solid	None	173.216	Prohibited	25 pounds	1	1	Store away from heavy metals and their salts
R	Zirconium potassium fluoride (RQ-1000/2270)	ORM-E	NA9192	None	None	173.510	No limit	No limit	2	2	
*	Zirconium scrap (forings, clippings, shavings, sheets, or turnings)	Flammable solid	UN1932	Flammable solid	173.150	173.220	Prohibited	Prohibited	1	4	Separate from flammable gases or liquids, oxidizing materials, or organic peroxides
RA	Zirconium sulfate (RQ-1000/2270)	ORM-E	NA9193	None	None	173.510	100 pounds	No limit	2	2	
R	Zirconium tetrachloride, solid (RQ-1000/2270)	Corrosive material	UN2503	Corrosive	173.244	173.245b	25 pounds	100 pounds	1,2	1,2	

BILLING CODE 4910-60-C

3. In § 172.202 paragraph (a)(3) would be added and paragraph (b) would be revised to read as follows:

§ 172.202 Description of hazardous material on shipping papers.

(a) * * *

(3) The identification number assigned to the material in § 172.101.

* * * * *

(b) The basic description specified in paragraphs (a)(1), (2) and (3) of this section must be shown in sequence except that the technical name of the material may be entered between the proper shipping name and the class. For example: "Gasoline, Flammable liquid UN 1203;" "Flammable solid n.o.s. UN 1325;" or "Corrosive liquid n.o.s. (Caprylyl chloride) Corrosive material UN 1760."

* * * * *

4. Section 172.300 would be revised to read as follows:

§ 172.300 General marking requirements.

Except as provided by this subchapter, each person who offers a package containing a hazardous material for transportation shall mark the package with the proper shipping name and identification number assigned to the material in § 172.101. However, when it has been determined by the shipper that a package has been previously marked as required for the material it contains, it need not be remarked. This section does not apply to portable tanks, cargo tanks and tank cars.

5. In § 172.328 paragraphs (a) and (b) would be revised to read as follows:

§ 172.328 Portable tanks.

(a) No person may offer for transportation or transport a portable tank containing a hazardous material unless it is marked legibly—

(1) On each side and each end with the identification number specified for the material in § 172.101 on a panel as specified by § 172.332, and

(2) On each side with the proper shipping name of the material in lettering no less than two inches (50.8mm.) in height.

(b) A portable tank marked with the identification number or name of a specific hazardous material may not be used to transport any other material unless the marking is removed, or changed to identify the hazardous material in the portable tank, whichever is appropriate.

* * * * *

6. In § 172.328 paragraphs (a), and (b) and (c) would be revised to read as follows:

§ 172.328 Cargo tanks.

(a) No person may offer for transportation or transport a hazardous material in a cargo tank unless the cargo tank is marked on each side and each end with the identification number specified for the material in § 172.101 on a panel as specified in § 172.332.

(1) A person who offers a motor carrier a hazardous material for transportation in a cargo tank shall provide to the motor carrier the required identification numbers on panels prior to or at the time the material is offered for transportation unless the cargo tank is already marked with identification numbers as required by this subpart.

(2) A person who offers a cargo tank containing a hazardous material for transportation, shall affix the required identification numbers on panels prior to or at the time the material is offered for transportation unless the cargo tank is already marked with identification numbers as required by this subpart.

(3) As an alternative, the marking required by paragraph (a) of this section on the front of a cargo tank may be on the front of a truck-tractor instead of or in addition to the marking on the front of the cargo tank to which the truck-tractor is attached.

(4) Identification numbers are not required on nurse tanks meeting the provisions of § 173.315(m) of this subchapter.

(b) Except as specified in paragraph (a) of this section, when the name of a material or other marking is required by this subchapter to be marked on a cargo tank, it must be legibly displayed in lettering or numbers no less than two inches (50.8mm.) in height.

* * * * *

(e) A cargo tank marked with the identification number or name of a specific hazardous material may not be used to transport any other material unless the marking is removed, or changed to identify the hazardous material the cargo tank contains, whichever is appropriate.

7. Section 172.330 would be revised to read as follows:

§ 172.330 Tank cars.

(a) No person may offer for transportation or transport a hazardous material in a tank car unless the tank car is marked on each side and each end with the identification number specified for the material in § 172.101 on a panel as specified in § 172.322. Also, when required to be marked by Part 173 or 179 of this subchapter, each tank car and tank car tank (DOT 106 or 110) used to transport a hazardous material must be marked as specified in this subpart with the—

(1) Proper shipping name, or

(2) Common name authorized in this subchapter for the material such as "Refrigerant Gas."

(b) The letters in the marking of a proper shipping or common name must be 4 inches (101.6mm.) or more in height with at least a ⅝ inch (15.9mm.) stroke. The separation between each letter must be at least ¾ inch (19.0mm.).

(c) The marked proper shipping or common name must be—

(1) Affixed to both sides of the tank car tank, and

(2) Except for tank cars transporting DOT 106 and 110 multi-unit tank car tanks, readily visible when viewed from each side of the tank car.

(d) A tank car and a tank car marked with the identification number or name of a specific hazardous material may not be used to transport any other material unless the marking is removed, or changed to identify the hazardous material the tank car or tank car tank contains, whichever is appropriate.

(e) For a hazardous material in a DOT 106 or 110 tank car tank,

(1) The identification number specified for the material in § 172.101 must be marked on one panel as specified in § 172.332 that is affixed to the side of the tank,

(2) A motor vehicle or rail car used to transport the tank car tank must be marked on each side and each end with the identification number specified for the material in § 172.101 on a panel as specified in § 172.332, and

(3) If the tank car tank contains chlorine, marking of the name "Chlorine" is not required when the CHLORINE label is used as provided in § 172.405(b).

8. Section 172.332 would be added to read as follows:

§ 172.332 Identification number markings and orange panel specifications.

(a) The orange panel for portable tanks, cargo tanks and tank cars shall be 6¼ inches (16 cm.) high by 16¼ inches (41.5 cm.) wide with a 7/16 of an inch (12 mm.) black outer boarder. An identification number shall be displayed in 4-inch (100 mm.) black Helvetica Medium numerals. Measurements may vary from those specified plus or minus 0.1 of an inch (3 mm.).

(b) The orange display panel may be made of any durable material prescribed for placards in § 172.519, and shall be of the orange color specified for labels or placards in Appendix A to this Part.

(c) The name of a material respresented by an identification

number may be shown in the upper left border of the orange panel in letters not more than 18 points (¼-inch) high.

(d) Except for size and color, the orange panel and identification numbers are illustrated as follows:

(e) The identification number on an orange panel shall be displayed in proximity to any placard required by §172.504.

(49 U.S.C. 1803, 1804; 1808; 49 CFR 1.53, App. A to Part 1, and paragraph (a)(4) of App. A, Part 106.)

Note. The Materials Transportation Bureau has determined that this document does not contain a major proposal requiring preparation of an economic statement under Executive Order 12044 and DOT implementing procedures (43 FR 9582) nor an environmental impact statement under the National Environmental Policy Act (40 U.S.C. 4321 et seq.).

A regulatory evaluation is available in the public docket.

Issued in Washington, D.C., on May 23, 1979.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation Materials Transportation Bureau.

[FR Doc. 79-18004 Filed 6-6-79; 8:45 am]

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Thursday
June 7, 1979

Federal Register

Part V

Department of Health, Education, and Welfare

Office of Education

Correction Education Demonstration Program

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 161j]

Proposed Rules for the Correction Education Demonstration Program

AGENCY: Office of Education, HEW.

ACTION: Proposed rules.

SUMMARY: The Comissioner of Education proposes to issue regulations to implement the Correction Education Demonstration Project Act of 1978. The program provides financial assistance for the purpose of developing demonstration projects relating to the academic and vocational education of juvenile delinquents, youth offenders, and adult criminal offenders.

DATES: Interested persons are invited to submit written comments, suggestions, or recommendations regarding the proposed regulations on or before August 6, 1979.

Public meetings will be held in each of the ten regions on July 11, 1979. The time for these meetings is—

9:00 a.m.–12:00 Noon.

1:00 p.m.–5:00 p.m.

7:00 p.m.–9:00 p.m.

ADDRESSES: Written comments should be addressed to Dr. James M. Spillane, U.S. Office of Education, Room 2047, FOB–6, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

The locations of the public meetings are—

Region I—Boston—Bunker Hill Community College, Room C 202, Rutherford Avenue, Charlestown, Massachusetts.

Region II—New York—Norman Thomas High School, 111 East 33rd Street, New York City, New York.

Region III—Philadelphia—University City, Holiday Inn, 36th & Chestnut Streets, Philadelphia, Pennsylvania.

Region IV—Atlanta—Suite 2221, 101 Mariette Tower Bldg., Atlanta, Georgia.

Region V—Chicago—Center for Urban Education, 160 West Wendell Street (1050 North Wells), Chicago, Illinois.

Region VI—Dallas—North Lake Junior College, 2000 Walnut Hill Lane, Irving, Texas.

Region VII—Kansas City—Penn Valley Community Junior College, 3201 Southwest Trafficway, Room CC 503, Kansas City, Missouri.

Region VIII—Denver—George Washington High School, Lunch Room, 655 South Monaco Street, Denver, Colorado.

Region IX—San Francisco—Room 209, Federal Office Bldg., 50 United Nations Plaza, San Francisco, California.

Region X—Seattle—Room RC 1132 North Seattle Community College, 9600 College Way North, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Dr. James M. Spillane (202) 245–7292.

FOR INFORMATION ON REGIONAL HEARINGS CONTACT: The appropriate Regional Commissioner for Educational Programs listed below:

Region I, Boston, Dr. Thomas J. Burns, (617) 223–7500.

Region II, New York, Dr. William D. Green, (212) 284–4370.

Region III, Philadelphia, Dr. Albert C. Crambert, (215) 596–1001.

Region IV, Atlanta, Dr. William L. Lewis, (404) 221–2063.

Region V, Chicago, Ms. Juliette Noone Lester, (312) 353–5215.

Region VI, Dallas, Mr. Edward J. Beca, (214) 767–3626.

Region VII, Kansas City, Dr. Harold Blackburn, (816) 374–2276.

Region VIII, Denver, Dr. John Runkel, (303) 837–3544.

Region IX, San Francisco, Dr. Caroline Gillin, (415) 556–4920.

Region X, Seattle, Mr. Allen Apodaca, (206) 442–0460.

SUPPLEMENTARY INFORMATION: The Commissioner is required by law to publish regulations for programs authorized by Congress. Please note that the Congress has not appropriated funds to operate this program in Fiscal Year 1979, and the President's budget does not request funds for Fiscal Year 1980.

The statute and legislative history of the Correction Education Demonstration Project Act, (Section 371–374 of Title III of Pub. L. 95–561) are very brief. The Senate report notes that there are various sources of funds for correction education within the Federal government. It emphasizes, however, that none of these programs is devoted exclusively to the development and implementation of demonstration projects involving new and innovative techniques and methods in the area of correction education.

The statute authorizes demonstration projects relating to academic and vocational education for various categories of offenders. Before proceeding we need to answer a preliminary question: "What is correction education?"

Correction education is education to meet the special educational needs of offenders—needs for individualized instruction and for a high level of supportive services, including transitional services, that enable offenders who have been incarcerated to adjust to the community.

Correction education is also used to refer to any education provided within a correctional facility—a prison or a juvenile training school. Incarceration itself poses special problems for education such as direct coercion to participate, lack of motivation, lack of freedom, and need for increased supervision.

In reviewing the literature on correction education, the Office of Education has noted the following areas of need:

- The need to develop community-based corrections programs which make available a wide range of community services including those of education. This reflects a national trend toward community-based corrections facilities.
- The need to develop transition programs between correctional institutions and the community which offer access to community social and educational services.
- The need for education systems—State educational agencies (SEAs), local educational agencies (LEAs), and institutions of higher education, particularly community colleges, to provide the necessary range of services to clients in community-based correctional facilities.
- The need to develop effective correction education programs for incarcerated offenders that integrate academic and vocational education with necessary supportive services to enable the offender to take best advantage of the education and training.
- The need to coordinate the resources of a variety of public and private agencies to provide services to offenders and ex-offenders.

OE invites promising applications that focus on effective strategies to respond to these areas of need in the field of correction education. At the same time OE seeks comment on whether it should limit the focus of the Correction Education Demonstration Program to one or more specific priority areas.

The authorization for appropriations is $5 million. However, there is a variety of other resources at the Federal, State, and local levels for correction education. For that reason the proposed rules strongly encourage that funds available under this new program be used in conjunction with other resources to bring about improved programs for offenders. Further, applicants must demonstrate coordination with other agencies in their requests for support.

The Commissioner believes it would not be desirable to concentrate funds in large comprehensive projects. Funds, however, could be used to support innovative components of these projects. These components could be part of either new or established projects.

Funds could be used for small projects providing intensive services for a short period of time. They could also be used to bring about more effective coordination of resources at the local level by involving and integrating support and services from a number of different agencies that work with populations of offenders.

Multi-year support of up to three years may be sought for a project.

These are demonstration projects and they must be set up to continue after Federal funding stops. A key consideration in planning for a project must be the assumption of funding at the end of the grant. In proposals for multi-year projects, the applicants must demonstrate increasing levels of local support after the first project year.

The program strategy is to seek out promising demonstration projects. Projects that receive multi-year funding will receive funds in the second or third continuation years for validation of effectiveness.

In each year of the program the Commissioner will bring staff of projects together for a national conference and workshop. The purpose of the national meeting is to facilitate sharing among projects, to provide resources for problem solving, and to provide staff development in areas of need. Where feasible, OE will provide technical assistance to the projects in the form of training flexible enough to respond to a variety of problem areas generated by local projects.

Issues in Developing the Regulations Were: Should OE Only Fund Projects Leading to Comprehensive Education Programs?

A fundamental issue is whether OE should *only* fund projects which will result in comprehensive programs or are parts comprehensive correction education programs including academic and vocational education with necessary supportive services—or—should OE *also* fund projects where only academic or only vocational education would be available. These proposed regulations emphasize the former and permit the Commissioner annually to reserve funds for them, but they do not preclude funding other outstanding projects.

Who Is the Target Population?

One issue considered in developing these regulations was the population to be served. The statute authorized correction education demonstration programs for "antisocial, aggressive or delinquent persons, including juvenile delinquents, youth offenders, and adult criminal offenders." The legislative history refers only to the offender categories.

The Commissioner proposes to interpret the population to be served as limited to offenders—persons who have been found guilty of having committed criminal offenses. Ex-offenders would also be eligible to participate.

The Commissioner believes this is the best interpretation because persons who have not been found guilty of a crime should not need "correction education," and thereby be labeled as offenders. However, the Commissioner seeks comments on this issue, especially on whether to include in the target population—

(a) Persons charged with crimes but diverted from prosecution on the condition they participate in an educational program;

(b) Persons detained in jails or other facilities prior to trail;

(c) Youths charged with status offenses—such as truancy—that would not be crimes if committed by adults; and

(d) Other "aggressive" or "anti-social" persons as determined by school officials.

May Postsecondary Level Courses by Funded?

The statute does not limit academic or vocational education to the elementary and secondary levels. Therefore, the Commissioner considers applications proposing postsecondary academic or vocational education projects.

What Is the Role of Staff Training in a Correction Eduction Project?

The Commissioner considers staff training to a crucial consideration in a correction education project. Training could address the following:

(1) Offender populations are overwhemingly minority populations. However, the staff who work with offenders, whether in prisons, community settings, schools, or institutions of higher education are predominantly non-minority. Correction education staff need training to make them sensitive to the backgrounds and needs of offenders and to equip them with the skills to work with offender populations.

(2) Correction education programs have failed in the past from lack of proper management. This indicates a need for training in management skills for improved delivery of services to offenders.

(3) The integration of academic and vocational education with supportive services appropriate to the needs of offenders is the core of every correction education project. Staff need training in the development of strategies and approaches to bring about this integration.

(4) There is a variety of resources at all levels—Federal, State, and local—that could focus on correction education. Correction education personnel need training in skills to identify, mobilize, and coordinate resources.

How Will Projects be Evaluated?

Projects must include an evaluation that determines whether a project met the special educational needs of the offender group served: whether the offenders learned a vocational skill, or obtained a job. OE will also be interested in any information relating to the reduction of recidivism.

When Must Private School Children be Allowed to Participate?

If an SEA or LEA receives a grant for a project, the project must provide for the comparable participation of members of the target population enrolled in private elementary and secondary schools located in the area served by the SEA or LEA, in accordance with section 902(b) of the Special Projects Act.
(20 U.S.C. 2942(b))

What Other Regulations Apply to This Program?

The proposed regulations for part 161j do not contain certain types of requirements. Those requirements are covered in EDGAR–The Education Division General Administrative Regulations—which will replace the General Provision for Office of Education Programs Regulations and which was published as a notice of proposed rulemaking (NPRM) on May 4, 1979 (44 FR 26308)

Anyone wanting to comment on those requirements should do so in response to the EDGAR NPRM, rather than to this NPRM.

The following items applicable to this program will now be among those covered generally in EDGAR.

How to apply for a grant.

How grants are made.

Certain conditions that must be met by a grantee.

The administrative responsibilities of a grantee.

The procedures the Office of Education uses to get compliance.

Reviewers should be aware that the first "selection criteria" for this program will become part of EDGAR and that those same criteria will apply to all OE direct grant programs, unless they are

specifically excepted on the basis of individual programs.

Summary of Regulations

The proposed rules for the Correction Education Demonstration Program are divided into five subparts.

Subpart A describes the purpose of the program, tells who is eligible to receive grants, notes other regulations that apply to the program, and defines a number of significant terms used in the legislation.

Subpart B provides information on proposed beneficiaries and on the types of projects the Office of Education assists under the program.

Subpart C gives application requirements and information on possible multi-year projects.

Subpart D describes the criteria the Commissioner applies in the evaluation of applications.

Subpart E describes the conditions that grantees must meet.

Invitation To Comment

A public meeting on this Notice of Proposed Rulemaking will be held in each of the ten Federal regions. Since we expect to schedule public meetings for several regulations on the same day, at the same place, we need to get an idea of how many persons are interested in speaking about these regulations. If you are interested in commenting at a public meeting, we encourage you to call the appropriate Regional Commissioner of Education, who will schedule a time for your comments. Persons who do not notify the Regional Commissioner of their intention to comment will be given an opportunity to speak. Those persons making presentations will be called upon according to their prearranged schedule, or if not prearranged, in the order of registration.

We expect that comments on these proposed regulations will be second on the agenda of the public meeting, after the Safe Schools regulations.

In addition, interested persons are invited to submit comments and recommendations regarding the proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before the 60th day after publication of this document will be considered in the development of the final regulations.

All comments submitted in response to this notice will be available for public inspection, both during and after the comment period, in Room 2047, FOB–6, 400 Maryland Avenue, S.W., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(These proposed regulations are isued under the authority of Sections 371–374 of ESEA, Pub. L. 95–561, 92 Stat. 2222 (20 U.S.C. 3031–3034))

(Catalog of Federal Domestic Assistance Number Not Yet Assigned)

Dated: March 6, 1979.

Ernest L. Boyer,

U.S. Commissioner of Education.

Approved: May 25, 1979.

Joseph A. Califano, Jr.,

Secretary of Health, Education, and Welfare.

Title 45 Code of Federal Regulations is amended to add Part 161j:

PART 161j—CORRECTION EDUCATION DEMONSTRATION PROGRAM

Subpart A—General

Sec.

161j.1 What is the Correction Education Demonstration Program?
161j.2 Who is eligible to apply for financial assistance?
161j.3 Regulations that apply to the Correction Education Demonstration Program.
161j.4 Definition in this part.

Subpart B—What Kind of Projects Does the Office of Education Assist Under This Program?

161j.10 What is a correction education demonstration project?
161j.11 What is the target population to be served by a project?
161j.12 Where may a project be located?
161j.13 Supportive services.
161j.14 Types of projects.

Subpart C—How To Apply for a Grant

161j.20 Application requirements.
161j.21 Duration of Federal support.

Subpart D—How Is a Grant Made?

161j.30 What selection criteria does the Commissioner use?
161j.31 Selection criterion: plan of operation.
161j.32 Selection criterion: quality of staff.
161j.33 Selection criterion: budget and cost effectiveness.
161j.34 Selection criterion: evaluation plan.
161j.35 Selection criterion: adequacy of resources.
161j.36 Selection criterion: likelihood of achieving results.
161j.37 Selection criterion: quality of dissemination.
161j.38 Selection criterion: coordination of resources.
161j.39 Selection criterion: capability to continue project.
161j.40 Geographic and offender population distribution.

Subpart E—What Conditions Must Be Met by a Grantee?

161j.50 Participation of private school children.
161j.51 Use of funds.

Authority: Secs. 371–374 of ESEA, Pub. L. 95–561, 92 Stat. 2222 (20 U.S.C. 3031–3034), unless otherwise noted.

Subpart A—General

§ 161j.1 What is the correction education demonstration program?

The program provides Federal assistance for demonstration projects relating to the academic and vocational education of juvenile delinquents, youth offenders, and adult criminal offenders.

(20 U.S.C. 3032)

161j.2 Who is eligible to apply for financial assistance?

Eligible applicants include—

(a) A State educational agency (SEA);

(b) A local educational agency (LEA);

(c) An institution of higher education;

(d) Any public agency; or

(e) A nonprofit private agency, organization, or institution.

(20 U.S.C. 3032)

§ 161j.3 Regulations that apply to the correction education demonstration program.

(a) *Regulations. The following regulations apply to the Correction Education Demonstration Program:*

(1) The Education Division General Administrative Regulations (EDGAR) in part 100a (Direct Grant Program) and part 100c (Definitions).

(2) The regulations in this part 161j.

(b) *How to use regulations; how to apply for funds.*

The "Introduction to Education Division Program" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(c) *Index to EDGAR.* The EDGAR include an index of the subjects they cover (appendix A to part 100c).

(d) *Definitions in EDGAR.* The following terms used in this part are defined in part 100c:

Applicant
Application
Award
Budget
Commissioner
Institutions of higher education
Local educational agency
Non-profit
Private
Project
Public

State
State educational agency
(20 U.S.C. 3032)

§ 161j.4 Definitions in this part.

As used in this part—

"Adult" means a person who has reached the age of majority under State law;

"Adult criminal offender"; means an adult who has been found by a court to have violated a criminal law;

"Comprehensive correction education program" means a program that integrates academic and vocational education, and supportive services;

"Juvenile delinquent" means a youth has been treated by a court as a youth and found by a court to have violated a criminal law;

"Sentence" means a term of alternate service, confinement, probation, or parole;

"Supportive services" means those services that prepare an offender to function effectively in society by providing the offender with decision-making skills, job interview skills, group and family living skills, interpersonal skills, problem-solving skills, communication skills, and support in other areas appropriate to the needs of the individual offender;

"Transitional services" means special educational or educationally related services provided for those released from institutions and reentering a non-institutional environment in the placement community. These services include pre-release programs and the necessary activities and supportive services to assist the person to reintegrate into the community;

"Youth" means a person under the age of majority as determined by State law; and

"Youth offender" means a youth who has been treated by a court as an adult and found to have violated a criminal law.

(20 U.S.C. 3032)

Subpart B—What Kinds of Projects Does the Office of Education Assist Under This Program?

§ 161j.10 What is a correction education demonstration project?

(a) A correction education demonstration project demonstrates an effective way of delivering academic or vocational education within the framework of a comprehensive correction education program to meet the special educational needs of an offender population. The education may be at the elementary, secondary, or postsecondary level.

(b) A correction education demonstration project may also be a coordinating project that effectively coordinates a variety of resources and agencies to bring about a comprehensive correction education program.

(20 U.S.C. 3032)

§ 161j.11 What is the target population to be served by a project?

A project must serve an offender population: persons who have received sentences as juvenile delinquents, youth offenders, or adult criminal offenders. A project may also serve ex-offenders.

(20 U.S.C. 3032)

§ 161j.12 Where may a project be located?

A project may deliver correction education in any setting appropriate to the offender population to be served, including:

(a) A prison or other closed institution;

(b) A day or residential community-based facility; or

(c) A school, college, or other training facility.

(20 U.S.C. 3032)

§ 161j.13 Supportive services.

A project must provide appropriate supportive services for the population to be served.

(20 U.S.C. 3032)

§ 161j.14 Types of projects.

Types of projects include:

(a) Projects that facilitate the development of effective community-based educational opportunities for juvenile delinquents, youth or adult offenders.

(b) Projects that facilitate offenders' transition between correctional institutions and the community and that offer access to community-based social and educational services.

(c) Projects that are designed to result in the greater involvement of educational systems—SEAs, LEAs, and institutions of higher education—in correction education.

(d) Projects that are designed to result in the development of comprehensive correction education projects to benefit incarcerated offenders.

(e) Projects that are designed to result in the coordination of multiple resources at the local level for the delivery of comprehensive educational services to offenders and ex-offenders.

(20 U.S.C. 3032)

Subpart C—How To Apply for a Grant

§ 161j.20 Applicant requirements.

An applicant shall submit the information required by the Commissioner in the Notice of Closing Date published in the Federal Register and in the application information package.

(20 U.S.C. 3032)

§ 161j.21 Duration of Federal support.

(a)(1) Each grant is for a period of up to one year.

(2) Projects may be designed for a multi-year period not to exceed three years.

(b) An applicant that proposes a multi-year project shall demonstrate—

(1) The need for the multi-year project;

(2) A detailed budget for the first budget period of the project; and

(3) A budget estimate for each budget period of the project after the first budget period.

(c) The Commissioner will review multi-year projects in the second and third continuation years for evidence that the grantee will provide other sources of support to continue the project after Federal funding terminates.

(20 U.S.C. 3032)

Subpart D—How is a Grant Made?

§ 161j.30 What selection criteria does the Commissioner use?

(a) The Commissioner evaluates an application and selects an application for support on the basis of the selection criteria used in 45 CFR part 100a.201–100a.206 (EDGAR) and the criteria contained in these regulations.

(b) The selection criteria in EDGAR constitute 75 possible points. Specific program criteria constitute 27 possible points. The maximum possible point score for each criterion indicates the relative importance assigned to that criterion by the Commissioner as follows:

(20 U.S.C. 3032)

§ 161j.31 Selection criterion: Plan of operation.

(a) The Commissioner reviews an application for information that shows the quality of the plan of operation for the project.

(b) The Commissioner looks for information that shows—

(1) High quality in the overall design for the proposed project; (10 points)

(2) An effective plan of management for the project; (5 points)

(3) An effective plan for training of staff members in needed skill areas; (5 points)

(4) A clear description of how the objectives of the project relate to the purposes of the Correction Education Demonstration Program; (2½ points) and

(5) The way the applicant plans to use its resources and staff to achieve each objective. (2½ points) (Total: 25 points)

(20 U.S.C. 3032)

§ 161j.32 Selection criterion: Quality of staff.

(a) The Commissioner reviews an application for information that shows the quality of the staff the applicant plans to use on the project.

(b) The Commissioner looks for information that shows—

(1) The Qualifications of the project director; (10 points)

(2) The qualifications of each of the following: (7 points)

(i) The professional staff;

(ii) Consultants; and

(3) The time that each person referred to in paragraphs (b) (1) and (2) of this section plans to commit to the proposed project.

(c) To determine the qualifications of the proposed staff the Commissioner considers the individual's professional training, experience, and competency in the field of correction education.

(d) The Commissioner also looks at proposed staff members and consultants in terms of their understanding of a sensitivity to the needs of the target population. (Total: 17 points)

(20 U.S.C. 3032)

§ 161j.33 Selection criterion: Budget and cost effectiveness.

(a) The Commissioner reviews an application for information that shows that the project has an adequate budget and is cost effective.

(b) The Commissioner looks for information that shows—

(1) An effective plan of financial management;

(2) An itemized statement of cost that justifies each line in the proposed budget and indicates that costs are reasonable in relation to the objectives of the project. (Total: 8 points)

(20 U.S.C. 3032)

§ 161j.34 Selection criterion: Evaluation plan.

(a) The Commissioner reviews an application for information that shows the quality of the evaluation plan for the project.

(b) The Commissioner looks for information that shows a quantifiable method to determine if the project achieves each of its objectives. (Total: 5 points)

(20 U.S.C. 3032)

§ 161j.35 Selection criterion: Adequacy of resources.

(a) The Commissioner reviews an application for information that shows that the applicant plans to devote adequate resources to the project.

(b) The Commissioner looks for information that shows that—

(1) The facilities the applicant plans to use to conduct the project are adequate;

(2) The equipment the applicant plans to use is adequate; and

(3) The support staff the applicant plans to use is adequate. (Total: 5 points)

(20 U.S.C. 3032)

§ 161j.36 Selection criterion: Likelihood of achieving results.

(a) The Commissioner reviews an application for information that shows the applicant is likely to achieve results and that these results further the purposes of the program.

(b) The Commissioner looks for information that shows that—

(1) The applicant has both the capability and commitment to achieve the objectives of the project; and

(2) The project, if successfully completed, furthers the purposes of the program. (Total: 10 points)

(20 U.S.C. 3032)

§ 161j.37 Selection criterion: Quality of dissemination.

The Commissioner reviews an application for information that shows the quality of the plan to disseminate information related to the project.

(b) The Commissioner looks for information that shows that—

(1) The applicant has a high quality plan to make information about the project available to the general public; and

(2) The applicant has a high quality plan to make the results of the project available to interested agencies and institutions. (Total: 3 points)

(20 U.S.C. 3032)

§ 161j.38 Selection criterion: Coordination of resources.

The Commissioner reviews an application for information that shows that the applicant agency has the capability to coordinate with or to coordinate other resources to bring about a comprehensive correction education program. Evidence of capability are letters of commitment from other agencies; documentation that planning the proposed project has involved other agencies; and evidence of sharing staff and facilities. (Total: 12 points)

(20 U.S.C. 3032)

§ 161j.39 Selection criterion: Capability to continue project.

The Commissioner reviews an application for information that shows that the applicant has the ability to continue to the project with its own resources after termination of Federal funding. The Commissioner will review multi-year applications for information that shows the likelihood the applicant will introduce local support in the second and third continuation years. (Total: 15 points)

(20 U.S.C. 3032)

§ 161j.40 Geographic and offender population distribution.

In awarding grants, the Commissioner funds a variety of differenct projects and seeks equitable geographic distribution of the projects across the country in a variety of urban, suburban, and rural settings.

(20 U.S.C. 3032)

Subpart E—What Conditions Must be Met by a Grantee?

§ 161j.50 Participation of private school children.

If an SEA or LEA receives a grant for a project, the project must provide for the comparable participation of members of the target population enrolled in private elementary and secondary schools located in the area served by the SEA or LEA, in accordance with section 302(b) of the Special Projects Act.

(20 U.S.C. 2942(b))

§ 161j.51 Use of funds.

(a) Funds may be used for all reasonable costs associated with the conduct of a project.

(b) Funds may be used for training and staff development. The primary objectives of training are to provide staff with skills to work more effectively with offender populations. These skills include problem identification, resource identification, resource mobilization, action planning, and program implementation. Management skills for improved program delivery are also a goal of training.

(c) Funds may be used to support the efforts of a coordinator to identify and to coordinate multiple resources that will result in a comprehensive correction education project.

(d) Funds may be used for consultants, conferences, and workshops.

(20 U.S.C. 3032)

[FR Doc. 79-17088 Filed 6-6-79; 8:45 am]
BILLING CODE 4110-02-M

Federal Register

Thursday
June 7, 1979

Part VI

Department of Health, Education, and Welfare

Office of Education

Proposed Rules for Safe Schools Program

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 161n]

Proposed Rules for Safe Schools Program

AGENCY: Office of Education, HEW.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commissioner proposes regulations for the Safe Schools Program enacted by the Education Amendments of 1978. These proposed regulations govern the awards of discretionary grants to assist 15 local educational agencies (LEAs) in developing and implementing projects designed—

(a) To prevent and reduce the incidence of crimes against school children, employees, and facilities; and

(b) To encourage the reporting of serious crimes to local law enforcement agencies.

DATES: All comments must be received on or before August 6, 1979. Public meetings will be held in each of the ten regions on July 11, 1979. The time for these meetings is —

9:00 a.m.–12:00 Noon.
1:00 p.m.–5:00 p.m.
7:00 p.m.–9:00 p.m.

ADDRESSES: Comments should be addressed to: Mr. Robert L. Thomas, U.S. Office of Education, 400 Maryland Avenue, S.W. (ROB–3, Room 3010), Washington, D.C. 20202.

The locations of the public meetings are—.

Region I—Boston—Bunker Hill Community College, Room C 202, Rutherford Avenue, Charlestown, Massachusetts.
Region II—New York—Norman Thomas High School, 111 East 33rd Street, New York City, New York.
Region III—Philadelphia—University City, Holiday Inn, 36th & Chestnut Streets, Philadelphia, Pennsylvania.
Region IV—Atlanta—Suite 2221, 101 Mariette Tower Bldg., Atlanta, Georgia.
Region V—Chicago—Center for Urban Education, 160 West Wendell Street (1050 North Wells), Chicago, Illinois.
Region VI—Dallas—North Lake Junior College, 2000 Walnut Hill Lane, Irving, Texas.
Region VII—Kansas City—Penn Valley Community Junior College, 3201 Southwest Trafficway, Room CC 503, Kansas City, Missouri.
Region VIII—Denver—George Washington High School, Lunch Room, 655 South Monaco Street, Denver, Colorado.
Region IX—San Francisco—Room 209, Federal Office Bldg., 50 United Nations Plaza, San Francisco, California.
Region X—Seattle—Room RC 1132 North Seattle Community College, 9600 College Way North, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Thomas, Division of State Educational Assistance Programs, U.S. Office of Education, Telephone (202) 245–2605.

FOR INFORMATION ON REGIONAL HEARINGS CONTACT: The appropriate Regional Commissioner for Educational Programs listed below:

Region I, Boston, Dr. Thomas J. Burns, (617) 223–7500.
Region II, New York, Dr. William D. Green, (212) 264–4370.
Region III, Philadelphia, Dr. Albert C. Crambert, (215) 596–1001.
Region IV, Atlanta, Dr. William L. Lewis, (404) 221–2063.
Region V, Chicago, Ms. Juliette Noone Lester, (312) 353–5215.
Region VI, Dallas, Mr. Edward J. Baca, (214) 767–3626.
Region VII, Kansas City, Dr. Harold Blackburn, (816) 374–2276.
Region VIII, Denver, Dr. John Runkel, (303) 837–3544.
Region IX, San Francisco, Dr. Caroline Gillin, (415) 556–4920.
Region X, Seattle, Mr. Allen Apodaca, (206) 442–0460.

SUPPLEMENTARY INFORMATION: The Commissioner is required by law to publish regulations for programs authorized by Congress. Please note that the Congress has not appropriated funds to operate this program in Fiscal Year 1979, and the President's budget does not request funds for Fiscal Year 1980.

The program statute requires the Commissioner to select the 15 eligible applicants for these grants within 180 days of the enactment of the Education Amendments of 1978. The 15 LEAs have been selected and notified. The selected LEAs are not listed in this NPRM.

The proposed regulations define terms, application procedures, and clarify funding criteria and suspension provisions for the 15 selected LEAs. The program encourages selected LEAs to develop comprehensive plans to eliminate violent crime committed in their schools. LEAs are encouraged both to adopt measures to control incidences of violent crime and to identify and eliminate the causes of violent crime in their school. The program also requires LEAs to adopt guidelines for the reporting of serious crimes to local police.

In developing the proposed regulations, the Commissioner cooperated with representatives from the Office of Juvenile Justice and Delinquency Prevention (OJJDP), as required by statute. The 15 selected LEAs for the Safe School program are encouraged to use the available resources of the OJJDP regional centers in developing and implementing their own projects, in addition to the technical assistance they will receive from the Office of Education.

The proposed regulations for part 161n do not contain certain types of requirements. Those requirements are covered in EDGAR—the Education Division General Administrative Regulations—which replace the General Provisions for Office of Education Program Regulations and which were published as a notice of proposed rulemaking (NPRM) on May 4, 1979 (44 FR 26308).

Anyone wanting to comment on those requirements should do so in response to the EDGAR NPRM, rather than to this NPRM.

The following items applicable to this program are now covered generally in EDGAR:

How to apply for a grant.
How grants are made.
Certain conditions that must be met by a grantee.
The administrative responsibilities of a grantee.
The procedures the Office of Education uses to get compliance.

Reviewers should be aware that the last five funding criteria for this program, listed in part 161n.30(i), will become part of EDGAR as selection criteria.

Invitation to Comment

A public meeting on this Notice of Proposed Rulemaking will be held in each of the ten Federal regions. Since we expect to schedule public meetings for several regulations on the same day, at the same place, we need to get an idea of how many persons are interested in speaking about these regulations. If you are interested in commenting at a public meeting, we encourage you to call the appropriate Regional Commissioner of Education, who will schedule a time for your comments. Persons who do not notify the Regional Commissioner of their intention to comment will be given an opportunity to speak. Those persons making presentations will be called upon according to their prearranged schedule, or if not prearranged, in the order of registration.

We expect that comments on these proposed regulations will be first on the agenda of the public meeting.

In addition, interested persons are invited to submit comments and recommendations regarding the proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before the 60th day after publication of this document will be

considered in the development of the final regulations.

All written comments submitted in response to this notice will be available for public inspection, both during and after the comment period, in Room 3010, ROB-3, 7th D Street SW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Citation of Legal Authority

As required by sec. 431(a) of the General Education Provisions Act (20 U.S.C. 1232(a)), a citation of statutory or other legal authority for each section of the regulations has been placed in parentheses on the line following the text of that section.

(Catalog of Federal Domestic Assistance No. not yet assigned)

Dated: April 20, 1979.

Ernest L. Boyer,

U.S. Commissioner of Education.

Approved: May 17, 1979.

Joseph A. Califano, Jr.,

Secretary of Health, Education, and Welfare.

Title 45 CFR is proposed to be amended by adding a new Part 161n to read as follows:

PART 161n—SAFE SCHOOLS PROGRAM

Subpart A—General

Sec.

161n.1 Description of Safe Schools Program.
161n.2 Eligible parties.
161n.3 Regulations that apply to the Safe Schools Program
161n.4 Program definitions.
161n.5–161n.9 [Reserved]

Subpart B—What Kinds of Projects Does the Office of Education Assist Under This Program?

161n.10 Types of projects assisted.
161n.11–161n.19 [Reserved]

Subpart C—How Does an LEA Apply for a Grant?

161n.20 Program requirements.
161n.21 Project and budget period.
161n.22–161n.29 [Reserved]

Subpart D—How is the Amount of a Grant Determined?

161n.30 Funding criteria.
161n.31 Funding procedure.
161n.32–161n.39 [Reserved]

Subpart E—What Conditions Must be Met by a Grantee?

161n.40 Supplement but not supplant with Federal funds.
161n.41 Limitation on use of funds for alterations of school facilities.
161n.42–161n.49 [Reserved]

Subpart F—What Compliance Procedures are Used by the Office of Education?

161n.50 Suspension of funding.
161n.51–161n.59 [Reserved]

Authority: Sec. 941–944, Title IX, Part D of the Elementary and Secondary Education Act of 1965, as amended by sec. 802 of Pub. L. 95-561, 92 Stat. 2301–2302 (20 U.S.C. 3351–3354), unless otherwise noted.

Subpart A—General

§ 161n.1 Description of safe schools program.

The Safe Schools Program:

(a) Provides funds to assist up to 15 local educational agencies (LEAs) in developing and implementing projects designed to prevent and to reduce the incidence of crimes committed against elementary and secondary school children, employees, and facilities; and

(b) Requires participating LEAs to develop administrative guidelines to encourage school staff to report to local police serious crimes committed against students, employees, and facilities.

(20 U.S.C. 3351, 3353(a))

§ 161n.2 Eligible parties

Only the 15 LEAs previously selected by the Commissioner under procedures published separately in the Federal Register are eligible to apply for a grant under this part.

(20 U.S.C. 3353(a))

§ 161n.3 Regulations that apply to the safe schools program.

(a) *Regulations.* The following regulations apply to the Safe Schools Program:

(1) The Education Division General Administrative Regulations (EDGAR) in Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 161n.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Education Division Programs" at the beginning of EDGAR includes general information to assist in:

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(c) *Index to EDGAR.* The EDGAR include an index of the subjects they cover (Appendix A to Part 100c).

(d) *Definitions in EDGAR.* The following terms used in this part are defined in Part 100c:

Acquisition.
Applicant.
Application.
Budget period.
Commissioner.
Equipment.
Facilities.
Minor remodeling.
Personal property.
Project.
Project period.
Real property.

(e) *Definitions in ESEA.* The following terms used in this part are defined in Sec. 1001 (General Provisions) of the Elementary and Secondary Education Act of 1965:

Local educational agency.
State educational agency.
State.

(f) *Definitions in Part 74.* The following terms used in this part are defined in Part 74:

Grant.
Grantee.
(20 U.S.C. 1221e–3)

§ 161n.4 Program definitions.

As used in this part:

"Act" means Title IX, Part D (Special Grants for Safe Schools) of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978.

"Crime" means an act of physical intrusion upon a non-consenting person or the destruction of real or personal property that, if committed by an adult, would carry a potential penalty or imprisonment under State or local law—for example, arson, assault, battery, homicide, larceny, rape, robbery, trespassing, or vandalism.

"Minor alteration" means minor remodeling as defined in Part 100c.

"School and school building" means any property, facility, vehicle, or area that an LEA designates to be used by school-related purposes; for example, athletic facilities, cafeterias, classroom buildings, playgrounds, school buses, and school parking lots.

"Serious crime" means crime as defined for the purposes of this part, that, if committed by an adult, would carry a potential penalty of imprisonment for six months or longer under State or local law.

(20 U.S.C. 3351–3354)

§§ 161n.5–161n.9 [Reserved]

Subpart B—What Kinds of Projects Does the Office of Education Assist Under This Program?

§ 161n.10 Types of projects assisted.

The Commissioner assists up to 15 LEAs to develop and implement projects designed to reduce crime in schools and to increase the safety and security of students, employees, schools, and school buildings. A project may include but is not restricted to components designed—

(a) To strengthen the leadership role of school principals in developing fair and consistent procedures that lead to a school climate conducive to learning;

(b) To increase the skills and effectiveness of classroom teachers through training in classroom management;

(c) To provide students an opportunity to participate in school governance;

(d) To involve students, parents, and the community in the solution of problems related to school crime;

(e) To hire, train, or retrain staff to prevent and reduce the incidence of crimes in schools through an awareness and understanding of the problems and potential solutions to crime;

(f) To identify and seek to eliminate those factors which may cause crime in the LEA.

(20 U.S.C. 3354)

§§ 161n.11–161n.19 [Reserved]

Subpart C—How Does an LEA Apply for a Grant?

§ 161n.20 Program requirements.

Each LEA must submit an application which:

(a) Includes a plan of up to five years to prevent and reduce the incidence of crimes in its schools;

(b) Meets the requirements of EDGAR §§ 100a.150–100a.154 (SEA approval);

(c) Includes a project component to develop and implement administrative guidelines to encourage school officials and staff to report serious crimes committed in schools or school buildings to local law enforcement agencies.

(20 U.S.C. 3354)

§ 161n.21 Project and budget period.

The project period for an approved application is up to five years. Each budget period, however, will be 12 months. Continuation awards will be made according to the procedures in EDGAR §§ 100a.251–100a.253.

(20 U.S.C. 3352, 3354)

§§ 161n.22–161n.29 [Reserved]

Subpart D—How Is the Amount of a Grant Determined?

§ 161n.30 Funding criteria.

The Commissioner reviews applications for grants on the basis of the criteria in this section and may award up to 100 points for the listed criteria. The number of points an applicant receives depends upon the extent to which its application demonstrates that:

(a) A high rate of school crime exists in the LEA as evidenced by public records of school crime maintained by local law enforcement or other agencies (11 points).

(b) The LEA has an effective ongoing program to reduce crime (10 points).

(c) The LEA has financial need as evidenced by factors such as loss of tax base, rising expenses, or unforeseen fiscal problems (9 points).

(d) The proposed plan to reduce crime extends beyond the financial and staff resources of the LEA (8 points).

(e) The quality of education available to students in the applicant LEA is deficient relative to that in other LEAs throughout the State, as evidenced by factors such as achievement scores, deficient physical plants, staff/student ratios, or the percentage of pupils in the applicant LEA below minimum performance standards in relation to State or national norms (7 points).

(f) The proposed project will be effective in reducing crime, as evidenced by factors such as previous research or successful pilot projects (6 points).

(g) The LEA has developed quality administrative guidelines to encourage the reporting of serious crimes to law enforcement agencies (5 points).

(h) School personnel are reporting serious crimes comitted in schools and school buildings to local law enforcement agencies, as evidenced by school and law enforcement crime data (4 points).

(i) The proposed plan satisfies the criteria in EDGAR §§ 100a.202–100a.206, with each criterion having the following weight:

(1) Plan of operation—15 points.

(2) Quality of key personnel—10 points.

(3) Budget and cost effectiveness—5 points.

(4) Evaluation plan—5 points.

(5) Adequacy of resources—5 points.

(20 U.S.C. 1221e–3(a)(1), 3353(b))

§ 161n.31 Funding procedures.

(a) In determining the amount of funds awarded to each applicant, the Commissioner gives priority consideration to each applicant according to the total number of points scorded on the funding criteria.

(b) An eligible LEA may apply for funds for projects in subsequent budget periods even though it did not apply for or receive funds for the prior budget period.

(20 U.S.C. 3353(b), 3354(a))

§§ 161n.32—161n.39 [Reserved]

Subpart E—What Conditions Must be Met by a Grantee?

§ 161n.40 Supplement but not supplant with Federal funds.

A grantee shall not substitute funds awarded under this program for local funds it would otherwise have expended for project-related activities.

(20 U.S.C. 3353(b)(2))

§ 161n.41 Limitation on the use of funds for alternations of school facilities.

A grantee may use no more than 10 percent of the funds awarded under this program for minor alternation of schools and school buildings, including the acquistion, installation, modernization, or replacement of equipment.

(20 U.S.C. 3354(b))

§§ 161n.42–161n.49 [Reserved]

Subpart F—What Compliance Procedures Are Used by the Office of Education?

§ 161n.50 Suspension of funding.

(a) The Commissioner suspends the funding of any grantee that fails to adopt the administrative guidelines for reporting serious crimes referred to in § 161n.10.

(b) Suspension procedures are outlined in EDGAR §§ 100a.901–100a.903.

(20 U.S.C. 3354(c))

§§ 161n.51–161n.59 [Reserved]

[FR Doc. 79–17875 Filed 6–6–79; 8:45 am]
BILLING CODE 4110–02–M

Federal Register

Thursday
June 7, 1979

Part VII

Department of Commerce

National Telecommunications and Information Administration

Public Telecommunications Facilities Program; Policy Statement

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Public Telecommunications Facilities Program Policy Statement

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Policy Statement.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, is announcing the policies which will goven its implementation of Section 392(f) of the Public Telecommunications Financing Act of 1978 (Pub. L. 95–567, 92 Stat. 2405). Section 392(f) requires that "special consideration" be given to grant applications which would foster the role of women and minorities in public telecommunications entities.

EFFECTIVE DATE: This policy Statement shall be effective June 7, 1979.

FOR FURTHER INFORMATION CONTACT: Dr. John Cameron, Chief, Public Telecommunications Facilities Division, NTIA, (202) 724–3307, or Kenneth Salomon, Assistant Chief Counsel, NTIA, (202) 395–5616, Room 703, 1800 G Street, N.W., Washington, D.C. 20504.

Policy Statement

Approved: June 4, 1979.

In the matter of Public Telecommunications Facilities Program, Docket No. 78–1.

1. The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, takes this opportunity to state the policies which will govern its implementation of Section 392(f)[1] of the Public Telecommunications Financing Act of 1978 (Pub. L. 95–567, 92 Stat. 2405) (Act). These policies follow the proposals outlined in paragraphs 17–22 of the *Notice of Proposed Rulemeking*, 44 FR 13262, published March 9, 1979, in this proceeding. A *Report and Order* adopting final regulations for the Public Telecommunications Facilities Program was published on May 29, 1979. 44 FR 30696–921. This policy Statement should be read in conjunction with that document and the *Notice*.

2. Before turning to the details of our implementation of Section 392(f), it is first necessary to state our conclusions on several preliminary matters. First, we have chosen to adopt the definition of "minority" contained in the Senate Report accompanying the legislation. Under this program, the following groups of citizens will be considered to be minorities: "American Indians or Alaska Native; Asian or Pacific Islander; Hispanic; and Blacks, not of Hispanic Origin." Sen Rep. No. 95–858, 95th Cong., 2nd Sess. 11 (1978).[2] (*Senate Report*). Second, Section 392(f) speaks in terms of fostering "ownership" of public telecommunications entities by minorities and women. During the course of our rulemaking proceeding, it was pointed out to us that the concept of "ownership" appeared to be inappropriate when dealing with public telecommunication entities. These organizations are public broadcast or noncommercial telecommunciations entities which disseminate public telecommunications service to the public. Section 397(12) of the Act. Since they are either governmental groups of one type or another or nonprofit private groups (Section 397(7)(A)), the concept of ownership in the commercial sense of the word is not fully appropriate. Accordingly, for the purposes of the PTFP, we interpret the words "ownership" (Section 392(f)) and "owned" (Section 390(2)) to mean "control" of an entity through the possession or exercise of the normal incidents of ownership, participation on the governing board, holding of corporate offices, etc.

3. A third and related matter concerns the phrase in Section 392(f) "participation in public telecommunications entities" by minorities and women. We interpret "participation" to include the holding of management and other positions in the entity, especially those concerned with programming decisions and day-to-day operation and management.[3] These categories of positions are not exclusive. They are designed to reflect our intent that all applications which will truly foster meaningful involvement of women and minorities in public telecommunications entities, and programming directed towards the needs and interests of those groups be given special consideration.

4. The major issue remaining is what level of control will trigger special consideration under Section 392(f). As indicated above, we must be assured that applicants requesting Section 392(f) status actually merit it and that women and minorities are not being used as fronts for applications which do not, in fact, merit special consideration. To this end, many urged us to adopt a strict numerical approach: Special consideration would be given only where 51 or more percent of the governing board of an entity consisted of women and/or minorities. We reject this approach since it would prohibit giving special consideration to a meritorious application which furthers the aims of Section 392(f) even though the majority of the applicant's governing body is not composed of minorities and women. Instead, we adopt a policy of giving special consideration where women and/or minorities are in either legal (*i.e.*, more than 50 percent) *or* actual control of the entity. We will consider the applicant's reported composition of its governing body and the individuals who hold management-level and policymaking positions in the organization. This approach will assure that entities receiving special consideration will legitimately merit that consideration and will, most importantly, provide an increase in educational, cultural and related programming responsive to the needs of these groups.[4]

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[1] Section 392(f) provides:

In establishing criteria for grants pursuant to section 393 and in establishing procedures relating to the order of priority established in subsection (e) in approving applications for grants, the Secretary shall give special consideration to applications which would increase minority and women's ownership of, operation of, and participation in public telecommunications entities. The Secretary shall take affirmative steps to inform minorities and women of the availability of funds under this subpart, and the localities where new public telecommunications facilities are needed, and to provide such other assistance and information as may be appropriate.

[2] Several groups urged that the definition of "minority" be expanded to include the handicapped and elderly. Our reading of the Act and its surrounding legislative history requires the conclusion that Congress intended to confer special consideration only on those groups identified in the *Senate Report*. *See generally*, the comments of Senators Hollings and Cranston during Senate debate on the Act. 140 *Cong. Rec.* S. 15432, S. 15454–455 (daily ed. Sept. 19, 1978). We are without authority to broaden that definition.

[3] The FCC and the courts have held, and we agree, that minority ownership and managerial participation are likely to result in programming directed towards minority audiences. *Garrett Broadcasting Service* v. *FCC*, 315 F. 2nd 1058, 1063 (D.C. Cir. 1975); *TV–9 Inc.*, v. *FCC*, 495 F. 2nd 929 (D.C. Cir. 1973); *cert denied*, 419 U.S. 986 (1974). *See also Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 FCC 2nd 979 (1978); and NTIA Petition for Issuance of Policy Statement or Notice of Inquiry, filed January 31, 1978 with the FCC.

[4] We emphasize, however, that the goal of the Act is to provide public telecommunications services to the public as a whole. Thus, while the Act does not prevent an applicant from proposing to "target a specific segment of the public for its programming" (*i.e.*, the New York City Black community) this does not mean that the funding priorities of the Act and the goals of public broadcasting are not relevant.

Only after the [Section 393(b)] priorities have been addressed * * * [should] the Secretary of Commerce give serious consideration to extending support to entities proposing to serve specific interests within the public at large. Even then these specific interests must closely fit with the general purposes and objectives of public broadcasting. *Senate Report* at 8–9.

5. Applications proposing substantial but less than controlling minority and women governing body memberships will also be granted favorable consideration. We will look with favor on applicants with substantial (20 percent or more) representation of women and minorities on their governing bodies, and with women and minorities in full-time managerial positions. The greater the percentages and number of decision-making program related positions, the stronger the applicant's advantage. *NTIA Petition for Issuance of Policy Statement or Notice of Inquiry*, filed January 31, 1978 with the FCC at 15–16.

6. It should be clear that we view Section 392(f) as a modifier of the statutory priorities listed in Section 393(b) of the Act and the list of funding priorities set forth in Appendix B of the *Report and Order*, 44 Fed. Reg. at 30920–921. Thus, if all other relevant factors were equal (for example, priority listing, cost efficiency, etc.) and we were able to award only one grant, we would fund the application that best fosters the role of minorities and women. It must be stressed, however, that applicants seeking the benefit of Section 392(f) must meet the eligibility requirements of the Act and Regulations. In other words, Section 392(f) does not relieve applicants of the basic background, planning and detail work required to create a public telecommunications entity and prepare a feasible, comprehensive and meaningful application.

7. Section 392(f) also imposes on the Department of Commerce an obligation to take "affirmative steps" to advise minorities and women of PTFP funds and localities where new facilities are needed. We have undertaken to advise relevant groups of the existence of Section 392(f) in a variety of ways. We have assembled a specialized mailing list of womens' and minority groups and have sent those on the list a notice outlining Section 392(f); all applicants on deferred status have also been advised of the provision and encouraged to determine their eligibility under it; a fact sheet on the Act in general and Section 392(f) in particular was prepared and sent to various communications and education trade journals and to publications which address the needs and interests of minorities and women. Moreover, a Special Concerns Branch has been created in NTIA's Public Telecommunications Facilities Division which has been specifically assigned responsibility under Section 392(f). The Chief of the Branch has attended and will continue to attend national and regional meetings of organizations representing these groups of citizens.

8. Additionally, Section 392(f) directs the Department to provide "such other assistance and information as may be appropriate" to minorities and women. Equal assistance and access to the program will be assured for all potential applicants. The PTFP staff will, therefore, be available to all applicants to explain regulations and application requirements, and to advise applicants on the completion of necessary forms. This assistance will not include an evaluation of the merits or comparative position of applications.

Henry Geller,

Administrator, National Telecommunications and Information Administration.

[FR Doc. 79-17784 Filed 6-6-79; 8:45 am]

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Thursday
June 7, 1979

Federal Register

Part VIII

Department of Health, Education, and Welfare

Office of Education

Preschool Partnership Program; Proposed Rule

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 161d]

Preschool Partnership Program

AGENCY: Office of Education, HEW.

ACTION: Proposed regulations.

SUMMARY: The Commissioner of Education proposes to amend Title 45 of the Code of Federal Regulations by adding a new Part 161d for the Preschool Partnership Program enacted by the Education Amendments of 1978. The proposed regulations—which were developed in consultation with the Assistant Secretary for Human Development—will govern the awarding of direct discretionary grants designed to establish programs of educational services for preschool children and their parents or other care-givers.

DATES: All comments on the proposed regulations must be received on or before August 6, 1979. Public meetings will be held in each of the ten regions on July 9, 1979. The time for these meetings is from 9 a.m.–12 Noon.

ADDRESSES: Comments should be addressed to Dr. Frances Yvonne Hicks, U.S. Office of Education, 400 Maryland Avenue, SW., (FOB–6) Room 2083, Washington, D.C. 20202. All written comments submitted will be available for public inspection at this address between 8:30 a.m. and 4 p.m., Mondays through Fridays, except for Federal holidays. The locations for the public meetings are:

Region I—Boston—Boston School Department, Administration Building, Boston Committee Hearing Room, 26 Court Street, Boston, Massachusetts.
Region II—New York—Public School 142, 100 Attorney Street, New York City, New York.
Region III—Philadelphia—University City, 36th & Chestnut Streets (Holiday Inn), Philadelphia, Pennsylvania.
Region IV—Atlanta—Suite 2221, 101 Mariette Tower Bldg., Atlanta, Georgia.
Region V—Chicago—Center for Urban Education, 180 West Wendell Street (1050 North Wells), Chicago, Illinois.
Region VI—Dallas—William Travis Elementary School, 3001 McKinney Avenue, Dallas, Texas.
Region VII—Kansas City—Board of Education Building Auditorium, 1211 McGee Street, Kansas City, Missouri.
Region VIII—Denver—George Washington High School, Lunch Room, 655 South Monaco Street, Denver, Colorado.
Region IX—San Francisco—Room 209, Federal Office Bldg., 50 United Nations Plaza, San Francisco, California.
Region X—Seattle—Auditorium Administrative & Service Center, Seattle School District, 815 Fourth Avenue North, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Dr. Frances Yvonne Hicks, (202) 245–8118.

FOR INFORMATION ON REGIONAL HEARINGS CONTACT: The appropriate Regional Commissioner for Educational Programs listed below:

Region I, Boston, Dr. Thomas J. Burns, (617) 223–7500.
Region II, New York, Dr. William D. Green, (212) 264–4370.
Region III, Philadelphia, Dr. Albert C. Cramberi, (215) 596–1001.
Region IV, Atlanta, Dr. William L. Lewis, (404) 221–2063.
Region V, Chicago, Ms. Juliette Noone Lester, (312) 353–5215.
Region VI, Dallas, Mr. Edward J. Baca, (214) 767–3626.
Region VII, Kansas City, Dr. Harold Blackburn, (816) 374–2276.
Region VIII, Denver, Dr. John Runkel, (303) 837–3544.
Region IX, San Francisco, Dr. Carolina Gillin, (415) 556–4920.
Region X, Seattle, Mr. Allen Apodaca, (206) 442–0460.

SUPPLEMENTARY INFORMATION:

A. No Funds

The Commissioner is required by law to publish regulations for programs authorized by Congress. Please note that the Congress has not appropriated funds to operate this program in Fiscal Year 1979, and the President's budget does not request funds for Fiscal Year 1980.

A–1. Background

The Preschool Partnership Program reflects a growing awareness that a child's initial learning experiences at home, and subsequent experiences in preschool group settings, contribute to future academic success. It recognizes the importance of parents as the child's first teachers. It emphasizes the role of schools and other community agencies in enabling parents, prospective parents, and child care-givers to develop the competencies with which to discharge their childrearing responsibilities in an effective manner.

The program will benefit from the long experience of Project Head Start in providing educational services for preschool children and their families. Because children from birth to three years of age are eligible for this program there is an opportunity to demonstrate the impact of these services to children younger than those participating at present, and to children not served under existing Head Start projects.

The partnership that is addressed by this program applies to several types of relationships that will be developed through the various projects. Home and school will be involved in instructional services and their evaluation. Community agencies will provide coordinated services to children and their families.

A working partnership will be established among the generations involved—not only between parents and children but also involving teachers and community members at various levels in the projects. This will be true of those projects enabling adolescents to learn about child growth and development and the responsibilities of child care through special courses linking secondary and early childhood education in a practicum experience.

University faculty members or researchers may also participate in the development of new curriculum materials for use in the home or in secondary school classes.

B. Overview of Major Provisions

The proposed regulations state the purpose of the Preschool Partnership Program, describe the nature of projects that the Commissioner funds, set forth the criteria for judging the quality of project applications, and stipulate the essential requirements for projects.

Nature of Projects

A variety of pilot projects to provide for an easier and more successful transition to formal schooling for certain preschool children are eligible for funding under this program. Two major categories of projects are (1) projects to encourage the transition of children from primarily low-income families to regular school projects, and (2) developmental projects in parent/early childhood and family education:

(a) *Transition projects for three- and four-year old children and their parents, families or guardians, primarily from low-income families.* These projects shall involve the cooperation of LEAs and local Head Start projects. During the first year they provide, to participating children and adults, educational services that include instruction, counseling, and testing primarily in their home. During the following year(s) and prior to formal schooling the project shall involve primarily school-based instruction, testing and evaluation. In those areas in which kindergarten is not available, a total three-year preschool program of educational services may be necessary. During the first two years of formal schooling the projects concentrate on assessing the achievement of children.

As provided in § 161d.7 of the proposed regulations, the applicant is eligible to apply for initial and continued funding for any subsequent fiscal year

only if the grantee begins a new participant group for that year and maintains educational services for all groups until each group has experienced the full program, including testing and assessment of achievement at the end of each of the first two years of formal schooling. The applicant agrees to these conditions in order to receive funding for the initial activity year. Funding for the subsequent year(s) will be at the initial level, if sufficient funds are available. Note that first year funding includes start-up costs which are not repeated in subsequent years of the project; therefore, it is anticipated that continued Federal funding of a project at the first year level will partially cover the costs of incorporating new participant groups. The remaining costs are assumed by the applicant. The Commissioner especially invites public comment on this provision.

(b) *Developmental projects in parent/early childhood and family education.* A broad variety of projects are eligible under this category. There are no income limitations for these projects. All must include a program of educational services for children and their parents, families, or guardians. These services may be developed and offered at various levels and types of institutions; for example—

(1) Home-based or center-based instruction, counseling, and testing for the parents, families or guardians of infants or toddlers;

(2) Secondary school courses for school-age parents, or courses in child development and parenthood education to acquaint students with child-care related careers or to prepare them for their own potential parenthood through programs involving instruction and practical experience;

(3) University-based projects to develop training courses or instructional materials for the parents of young children or for the staff of child-care centers, perhaps as part of an existing demonstration program in early childhood education; and

(4) Research studies and demonstration projects concerning early childhood, parenting practices, or techniques for the early identification and treatment of barriers to learning.

The Commissioner awards quality points to applicants who, in recognition of the need for services to exceptional children, include these children in their projects at least in proportion to their number in the community—as evidenced by valid surveys or other appropriate sources of data.

Participation of Non-Low-Income Children

The Commissioner seeks to improve the transition to formal schooling for children from low-income families by encouraging the inclusion of a limited number of non-low-income participants in Preschool Partnership Program projects. Because the statutory requirement directs the program to low-income children this participation is limited to 25 percent except when unusual circumstance may lead the Commissioner to approve an exemption. These circumstances include: (1) Evidence that a greater percentage of non-low-income participants further assist low-income children in making the transition to formal schooling, (2) evidence that a higher percentage of non-low-income participants does not reduce the quality and quantity of services provided to low-income children, and (3) the inability of the applicant or grantee to obtain 75 percent low-income participation. In no case does participation by non-low-income participants exceed 50 percent.

This approach is designed to enhance the flexibility of the program in meeting the needs of a variety of communities while meeting Congressional intent that this portion of the program focus primarily upon low-income students. The approach is also designed to allow the percentage of non-low-income participation to be at a higher level than Project Head Start (10 percent) for children of less than school year age and at a lower level than Follow Through (33 percent). The purpose is to provide flexibility though the Preschool Partnership Program for further interrelating Head Start and Follow Through activities. The Office of Education especially seeks comment on this provision.

Participation of Exceptional Children

The proposed regulation awards points for the participation of exceptional children. "Exceptional children" is defined broadly to include not only gifted, talented, and handicapped children but also "any other children needing a program of educational services substantially different from that required for the majority of preschool children." Examples of the latter might be slow learners, bilingual children or culturally deprived children, depending on the population of the area the project would serve. The Commissioner especially seeks comments on this broad definition.

Criteria for Reviewing Applications

The program encourages the development of projects that provide linkage among the various preschool programs in a community. Thus, the Commissioner's criteria for review of applications include special consideration for projects that involve cooperation with existing preschool programs within the project's service community.

This criterion also allows additional points for the extent to which each preschool partnership project is developed and operated in cooperation with appropriate SEAs and LEAs, as well as with other public and private organizations. National studies such as a Rand report (*Federal Programs Supporting Education Change*, Vol. IV; *The Findings in Review*) have shown that the involvement of SEAs and LEAs in the development and expansion of innovative projects substantially increases the likelihood that their findings and practices will be incorporated into continuing school programs.

Additional Requirements for Projects

The proposed regulations do not contain certain types of requirements. Those requirements will be covered in the Education Division's General Administrative Regulations (EDGAR), which will replace the General Provisions for Office of Education Program Regulations and which were published as a notice of proposed rulemaking (NPRM) on May 4, 1979 (44 FR 26308).

Anyone wanting to comment on these requirements should do so in response to the EDGAR NPRM, rather than to this NPRM.

The following items applicable to this program will now be among those covered generally in EDGAR:

How to apply for a grant.

How grants are made.

Certain conditions that must be met by a grantee.

The administrative responsibilities of a grantee.

The Office of Education's procedures to assure compliance.

Invitation To Comment

A public meeting on this Notice of Proposed Rulemaking will be held in each of the ten Federal regions. Since we expect to schedule public meetings for several regulations on the same day, at the same place, we need to get an idea of how many persons are interested in speaking about these regulations. If you are interested in commenting at a

public meeting, we encourage you to call the appropriate Regional Commissioner of Education, who will schedule a time for your comments. Persons who do not notify the Regional Commissioner of their intention to comment will be given an opportunity to speak. Those persons making presentations will be called upon according to their prearranged schedule, or if not prearranged, in the order of registration.

We expect that comments on these proposed regulations will be first on the agenda of the public meeting.

In addition, interested persons are invited to submit comments and recommendations regarding the proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before the 60th day after publication of this document will be considered in the development of the final regulations.

All written comments submitted in response to this notice will be available for public inspection, both during and after the comment period, in Room 2063, FOB-6, 400 Maryland Avenue, S.W., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

As required by Section 431(a) of the General Education Provisions Act (20 U.S.C. 1232(a)), a citation of statutory authority for each section of the proposed regulations has been placed in parentheses on the line following the text of the section. Reference in these citations of authority relate to sections of the Elementary and Secondary Education Act of 1965, as enacted by Pub. L. 95-561.

(Catalog of Federal Domestic Assistance No. has not yet been assigned to the Preschool Partnership Program)

Dated: May 3, 1979.

Ernest L. Boyer,

U.S. Commissioner of Education.

Approved: May 18, 1979.

Joseph A. Califano, Jr.,

Secretary of Health, Education, and Welfare.

It is proposed that Title 45 of the Code of Federal Regulations be amended by adding a new Part 161d, to read as follows:

PART 161D—PRESCHOOL PARTNERSHIP PROGRAM

Subpart A—General

Sec.
161d.1 Preschool Partnership Program.
161d.2 Eligible parties.
161d.3 Regulations that apply to the Preschool Partnership Program.
161d.4 Definitions.

Subpart B—Projects Assisted Under this Program

161d.5 Nature of projects.
161d.6 Participation of non-low-income children.
161d.7 Nature of cooperations.
161d.8. Project duration.
161d.9 Transition projects—conditions for initial funding and for continued funding at first-year-level.

Subpart C—How To Apply for a Grant

161d.10 Application requirements.

Subpart D—How a Grant is Made

161d.11 Criteria for review of applications.

Subpart E—Conditions To Be Met by a Grantee

161d.12 Allowable cost limitations.
161d.13 Participation by private school children.

Appendix D—The Legislation

Authority: Title III, Part D, Sec. 325, Elementary and Secondary Education Act of 1965, as enacted by Pub. L. 95-561.

Subpart A—General

§ 161d.1 Preschool partnership program.

The Preschool Partnership Program provides Federal Assistance for the establishment of pilot projects that will offer special educational services to the families of preschool children to help in the children's successful transition to formal schooling and thereby improve their long-term achievement.

(20 U.S.C. 2971)

§ 161d.2 Eligible parties.

The Commissioner may make grants to State and local educational agencies (SEAs and LEAs) and other public agencies and nonprofit private organizations or institutions, including Project Head Start grantees.

(20 U.S.C. 2942(a))

§ 161d.3 Regulations that apply to the preschool partnership program.

The following regulations are applicable to this program:

(a) *General regulations.* (1) The education Division General Administrative Regulations (EDGAR), Part 100a (Direct Grant Programs) and Part 100c (Definitions; Freedom of Information Act) apply to this program.

(2) The HEW grant regulations in Part 74 of this title.

(b) *Specific regulations.* The regulations in this part (45 CFR Part 161d).

(20 U.S.C. 1221e-3(a)(1))

§ 161d.4 Definitions.

(a) *General.* The following terms used in this part are defined in EDGAR, Part 100c:

Applicant
Application
Commissioner
Department
Elementary School
Local Educational Agency
Materials
Minor Remodeling
Nonprofit
Private
Project
Project Period
Public
Secondary School
State
State Educational Agency

(b) *Specific.* Terms used in this part are defined as follows:

"Acitivity year" means the year of involvement by a project participant.

"Exceptional children" means gifted and talented children, handicapped children, and any other children needing a program of educational services substantially different from that required for the majority and other preschool children.

"First two years of formal schooling" means the initial two-year period of general education for which a State commonly provides public support; either kindergarten and first grade, or first and second grade.

"Guardian" means a person, other than a parent or family member, who has substantial responsibility for a participating child.

"Parent" means a father, mother, foster parent, or adoptive parent.

"Preschool" means educational programs organized for children younger than those usually served by the first two years of formal schooling.

"Participant group" means eligible children and their parents or guardians and family members.

"Project Head Start" means local Project Head Start grantees and delegate agencies.

"Low-income families" means those families—

(a) Whose annual income falls at or below the State income poverty guidelines for determining eligibility for free meals or free milk under the National School Lunch Act;

(b) Who are receiving public assistance, or

(c) Who are eligible for participation in Project Head Start.

"Program of educational services" means instruction, counseling, testing, assessment of health status and needs, and referral for followup. It does not

include the provision of any needed medical, dental, nutritional, or social services. Instruction addresses the knowledge, language, physical, social and emotional development of children participating in the project, and enhancing child-care competencies of parents and other caregivers.

"Testing and assessment" means the collection, analysis, and reporting of information and other data relating to the accomplishment of project objectives.

(20 U.S.C. 2971; 20 U.S.C. 1221e-3(a)(1))

Subpart B—Projects Assisted Under This Program

§ 161d.5 Nature of projects.

(a) The Commissioner awards grants for the following types of pilot projects:

(1) *Transition projects for preschool children of low-income families.* Each of these projects, which shall be administered in cooperation with LEAs and Project Head Start and may involve cooperation with other preschool programs, must provide a continuous program including—

(i) In the initial activity year, a program of educational services to children of ages three or four, from primarily low-income families, and their parents, guardians, or family members. These services must be provided primarily in the home;

(ii) In subsequent activity year(s), an appropriate program of educational services to the adults and children who participated in the first year, to be conducted primarily on the premises of an elementary school and to continue until the first year of formal schooling; and

Note.—In those areas in which kindergarten is not available, a total three-year preschool program of educational services may be necessary.

(iii) At the end of each of the first two years of formal schooling the project activity concentrates on testing and assessment of the achievement of project children.

(2) *Development projects in parent/early childhood and family education.* These projects must provide a program of educational services to selected groups of children under kindergarten age and to parents, secondary school students in education for parenthood programs, family members, or guardians. The projects must develop model approaches to early childhood and family education and may involve research, materials development, staff training, or other related program development activities.

(b) Project components conducted primarily in a child's home, but not directed toward the child, concentrate on enhancing those competencies which will enable parents, family members, or guardians to foster the child's learning and development.

(20 U.S.C. 2971(a), (b) and (c))

§ 161d.6 Participation of non-low-income children.

(a) The Commissioner permits non-low-income children and their parents, guardians, or families to enroll in projects described in § 161d.5(a)(1) in numbers constituting up to 25 percent of any single participant group.

(b) The Commissioner may give prior approval for applicants or grantees to include more than 25 percent non-low-income participation only if the applicant or grantee demonstrates that—

(1) The presence of a higher percentage of non-low-income participants further assists low-income children in making the transition to formal schooling;

(2) It made a good faith effort to obtain 75 percent low-income participation but could not do so; and

(3) The inclusion of a higher percentage of non-low-income children does not reduce the quality and quantity of services provided to low-income children.

(c) In no case does non-low-income participation exceed 50 percent.

(20 U.S.C. 2971)

§ 161d.7 Nature of cooperation.

Any project designed under § 161d.5(a)(1) must include the cooperation of LEAs and Project Head Start and may include that of other preschools and community organizations. Cooperation includes the following activities:

(a) Planning a project with organizations and individuals having similar objectives and concerns, including appropriate private preschools and elementary schools.

(b) Sharing information, facilities, staff, services, or other resources.

(c) Developing a plan for referral to cooperating agencies for health care or other services required but not funded from the project grant.

(d) Obtaining agreement from other related programs on responsibility for specific activities that will increase the impact of funds available during and after the project period.

(20 U.S.C. 2971(a), (b), and (c))

§ 161d.8 Project duration.

(a) The Commissioner determines the duration of Federal assistance on a case-by-case basis. Under § 161d.5(a)(1) the Commissioner may approve funds for up to five years. Under § 161d.5(a)(2) the Commissioner generally awards funds for no more than three years, and in no case for more than five years.

(b) The Commissioner reviews an application for a multi-year project in accordance with EDGAR, §§ 100a.219 and 100a.220.

(20 U.S.C. 1221e-3(a)(1))

§ 161d.9 Transition projects—Condition for initial funding and for continued funding at first-year-level.

(a) This section applies to projects described in § 161d.5(a)(1). For these projects the grantee must enroll a new and comparable participant group for each year of Federal project support. Funding for each year of the grant will be at the first-year-level—if sufficient funds are available.

(b) The Commissioner approves funding an application only if the following conditions are met:

(1) The applicant develops a feasible plan and demonstrates the capacity to begin a new and comparable participant group for each year of Federal project support anticipated.

(2) The applicant demonstrates the capacity and intent to continue the proposed project activities through the first two years of formal schooling for each participant group it begins.

(c) The Commissioner approves continued funding only if the grantee—

(1) Enrolls a new participant group for each year of Federal project support; and

(2) Demonstrates that it is conducting the approved project activities through the first two years of formal schooling for each participant group previously enrolled during the period of Federal project support.

(d) The grantee must use whatever financial resources, in addition to the grant award, which are necessary for it to begin new participant groups after the first grant year and to complete the approved project activities for each participant group enrolled during the period of Federal project support.

(20 U.S.C. 2971(b))

Subpart C—How To Apply for a Grant

§ 161d.10 Application requirements.

The Commissioner considers making a grant to an eligible applicant only if the applicant prepares and submits an application according to—

(a) Regulations governing the Preschool Partnership Program (45 CFR Part 161d) in this part and the general provisions regulations in EDGAR.

(b) The procedures contained in the Notice of Closing Date for Receipt of Applications.

(c) The instructions and forms included in the application package.

(20 U.S.C. 1221e-3(a)(1); 1221e-3(b))

Subpart D—How a Grant is Made

§ 161d.11 Criteria for review of applications.

The Commissioner reviews applications for initial project grants on the basis of the criteria in this section. The maximum possible score for all criteria is 100 points. The maximum possible score for each criterion reflects the degree of importance assigned to that criterion by the Commissioner.

(a) *General criteria.* See EDGAR §§ 100a.201–206, for general criteria applicable to direct project grants under this part. However—

The Commissioner assigns to the quality of the proposed plan of operation a maximum of 20 points rather than the 10 assigned in EDGAR; and to the quality of the evaluation plan on project effectiveness, 10 points rather than the 5 points in EDGAR. The general criteria in EDGAR are therefore assigned a total of 50 possible points.

(b) *Specific criteria.* The Commissioner awards up to 50 points to the following criteria for the Preschool Partnership Program:

(1) The extent to which a project design indicates an effective rationale and set of procedures toward establishing one or more models that will contribute to the successful transition of eligible preschool children to formal schooling. This includes the likelihood that the results of the project will be of potential use to a variety of groups throughout the Nation. (20 points)

(2) The extent to which the applicant demonstrates the ability and develops a feasible plan to incorporate the results of the project into its continuing activities, or those of cooperating agencies, institutions, and organizations, after Federal funding ends. (10 points)

(3) The extent to which the project includes exceptional children—at least in proportion to their existence, as evidenced by valid surveys or other appropriate data sources, within the defined project service community—in project activities appropriate to their unique needs. (10 points)

(4) The extent to which the project is developed and operated in cooperation with—(10 points)

(i) Parents representing the program participants;

(ii) Appropriate SEAs and LEAs;

(iii) Other public and private organizations, including health and social service agencies, and existing preschool and private elementary school programs within the defined project service community; and

(iv) Project Head Start.

(20 U.S.C. 2971 (a), (b) and (c))

Subpart E—Conditions To Be Met by a Grantee

§ 161d.12 Allowable cost limitations.

(a) Cost for stipends, released time, or the employment of substitutes to enable educational personnel to participate in the project activities, and costs for minor remodeling are allowable in exceptional cases only with the approval of the Commissioner.

(b) The Commissioner approves these costs only—

(1) If the proposed project receives fifteen points in its plan for easing the transition of preschool children to formal school (§ 161d.9(b)(1));

(2) If the proposed project receives 4 points in its plan for budget and cost effectiveness (EDGAR § 100a.204) including consideration of the costs proposed for these purposes; and

(3) If not allowing these costs would tend to defeat the purposes of the Act.

(20 U.S.C. 2971; 20 U.S.C. 1221e-3(a)(1))

§ 161d.13 Participation by private school children.

Any grant is subject to the requirements in Section 302(b) of the Elementary and Secondary Education Act of 1965 concerning consultation with private school officials and participation by private school children.

(20 U.S.C. 2942(b))

Appendix—The Legislation

"Part D—Preschool Partnership Programs

"Establishment of Program

"Sec. 325. (a) The Commissioner is directed to establish, in cooperation with the Assistant Secretary for Human Development of the Department of Health, Education, and Welfare, a program of cooperative pilot projects between local educational agencies and Project Head Start, as authorized by the headstart-Follow Through Act, which will provide a smoother and more successful transition to formal schooling for certain preschool-aged children, and thereby improve their long-term achievement in elementary school.

"(b) Projects established under this program will be designed to achieve the purposes of subsection (a) by—

"(1) providing to a limited number of children aged three to four, inclusive, of low-income families and to their parents, families, or guardians a program of educational services including instruction, counseling, and testing, to be conducted primarily in the child's home;

"(2) providing to children and adults who have participated in the services described above, during the following year appropriate educational services, testing, and counseling, to be primarily conducted on the premises of an elementary school; and

"(3) providing a coordinated program of testing and assessment, along with such other evaluation procedures as the Commissioner and the Assistant Secretary shall deem appropriate, designed to assess the achievement of children during their participation in the program and subsequently at the end of each of the first two years of formal schooling.

"(c) Funds provided under this part may also be used to fund early childhood and family education programs for children below kindergarten age. Such programs may include—

"(1) the identification of potential barriers to learning;

"(2) education of parents in child development, including education of parenthood programs for secondary school students; and

"(3) home-based programs of early childhood and family education.

"(d) Not less than 10 percent of the funds made available for purposes of section 303 for each fiscal year shall be made available for purposes of this part.

[FR Doc. 79-17879 Filed 6-6-79; 8:45 am]
BILLING CODE 4110-02-M

Reader Aids

Federal Register

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Thursday, June 7, 1979

INFORMATION AND ASSISTANCE

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
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DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
CSA	MSPB*/OPM*		CSA	MSPB*/OPM*
	LABOR			LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

*NOTE: As of January 1, 1979, the Merit Systems Protection Board (MSPB) and the Office of Personnel Management (OPM) will publish on the Tuesday/Friday schedule. (MSPB and OPM are successor agencies to the Civil Service Commission.)

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.

Rules Going into Effect Today

ENERGY DEPARTMENT

Federal Energy Regulatory Commission—

28855 5-8-79 / Natural gas curtailment; essential agricultural users and high-priority users

NUCLEAR REGULATORY COMMISSION

28860 5-8-79 / General license requirements for any person possessing formula quantities of strategic special nuclear material in transit subject to certain requirements

List of Public Laws

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202-275-3030).

Last Listing May 31, 1979

H.R. 1787 / Pub. L. 96-16 To authorize a supplemental appropriation to the National Aeronautics and Space Administration for research and development. (Jun. 4, 1979; 93 Stat. 33) Price $.60.

H.R. 2529 / Pub. L. 96-17 To amend the National Ocean Pollution Research and Development and Monitoring Planning Act of 1978 to authorize appropriations to carry out the provisions of such Act for fiscal year 1980. (Jun. 4, 1979; 93 Stat. 34) Price $.60.

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6-8-79
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Pages 33041-33390

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Friday
June 8, 1979

Highlights

33389 **DC-10 Airplanes** DOT/FAA prohibits operation within airspace of United States; effective 6-6-79; comments by 8-3-79 (Part XII of this issue)

33069 **Fuel and Fuel Additives** EPA suspends enforcement of lead phase-down standard and proposes to amend lead phase-down schedule; comments by 7-20-79, hearing 6-20-79, requests to speak 6-10-79

33380 **Food Stamps** USDA/FNS amends rules and provides interpretations; effective 1-1-79 and 6-8-79, comments by 8-7-79, (Part XI of this issue)

33068 **Express Mail Metro Service** PS expands list to include four metropolitan areas affected by service; effective 6-18-79, commend period extended through 7-18-79

33052 **Crude Oil Price Ceilings** DOE/ERA issues Price Schedule No. 15 which provides for monthly increases for lower and upper tier oil; effective 6-1-79

33114 **Chlorofluorocarbon Propellants** HEW/FDA proposes essential uses; comments by 7-9-79

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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Highlights

33194 **Specialty Steel Quotas** Special Representative for Trade Negotiations Office reallocates shortfalls of certain quota categories; reductions effective 6-8-79, increases effective 6-11-79

33099 **Natural Gas Policy** DOE/FERC proposes rules and holds hearing on implementing the incremental pricing provisions; comments by 7-9-79, hearing 6-27-79, requests to speak 6-22-79

33332 **Improving Government Regulations** EPA publishes Semi-Annual Agenda of Significant Regulations, (Part V of this issue)

33238 **Foods For Human Use** HEW/FDA proposes current good manufacturing practices; comments by 12-31-79, (Part II of this issue)

33316 **Federal and Federally Assisted Construction** Labor/ESA publishes general wage determinations, (Part IV of this issue)

33076 **Telephone System Construction** USDA/REA proposes outside plant construction contract revision; comments by 8-7-79

33344 **Industrial Energy Conservation Program** DOE proposes rules for operation of program, and includes proposed final energy efficiency improvement targets, and holds hearings; comments by 8-7-79, hearings 7-23, 7-24, 7-25, 7-26 and 7-31-79, requests to speak by 7-13-79, (Part VI of this issue)

33046 **Affirmative Employment Programs** OPM changes date by which Federal Equal Opportunity Recruitment Program Plans must be developed for headquarters level of each Executive agency; effective 6-8-79

33046, 33048 **Milk Program** USDA/FNS establishes guidelines for program for free milk for children; effective 7-1-79, (2 documents)

33234 **Sunshine Act Meetings**

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33238 Part II, HEW/FDA
33250 Part III, Commerce/NOAA
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Rules and Regulations

Federal Register
Vol. 44, No. 112
Friday, June 8, 1979

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 294

Availability; Official Information

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: Part 294 is revised in its entirety to conform with applicable provisions of the Civil Service Reform Act of 1978 (Pub. L. 95–454), Reorganization Plan No. 1 of 1978 (43 FR 19807) and Reorganization Plan No. 2 of 1978 (943 FR 36037); to reflect the new organizational structure of the Office of Personnel Management; and to update the Part and make editorial changes where needed.

EFFECTIVE DATE: June 8, 1979.

FOR FURTHER INFORMATION CONTACT: Stuart D. Rick, Office of Management, Office of Personnel Management, 1900 E Street, NW, Washington, D.C. 20415, 202/632–4431.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management is expunging from its regulations implementing the Freedom of Information Act, 5 U.S.C. 552, matters which are now the responsibility of the Merit Systems Protection Board, the Special Counsel of the Merit Systems Protection Board, and the Equal Employment Opportunity Commission. Under Title II of the Civil Service Reform Act of 1978 (Pub. L. 95–454), which became effective January 11, 1979, and Section 202 of Reorganization Plan No. 2 of 1978 (43 FR 36037), the Merit Systems Protection Board handles most of the employee appeals which were handled by the Civil Service Commission. Among the responsibilities of the Special Counsel of the Merit Systems Protection Board, as set forth in Section 204(b) of Reorganization Plan No. 2 of 1978 and 5 U.S.C. 1206(e)(1)(c), is the investigation and prosecution of persons responsible for arbitrary and capricious withholding of information requested under the Freedom of Information Act, 5 U.S.C. 552(a)(4)(F). Under Reorganization Plan No. 1 of 1978 (43 FR 19807), Executive Order 12067 of June 30, 1978 (43 FR 28967), and Executive Order 12106 of December 28, 1978 (44 FR 1053), the Equal Employment Opportunity Commission and the Merit Systems Protection Board have authority for deciding Federal employee discrimination complaint appeals.

Subpart H of Part 294 has been modified, and Subpart L of Part 294 has been eliminated to conform with these changes. The Special Counsel of the Merit Systems Protection Board has published regulations (44 FR 6060) which deal with the investigation and prosecution of persons responsible for arbitrary and capricious withholding of information under the Freedom of Information Act.

In addition to these revisions, § 294.702(f) of Part 294 has been eliminated because the authority for disclosure discussed therein, Office of Management and Budget Circular No. A–28 revised, has been rescinded (40 FR 45484); § 294.703(a) of Part 294 has been eliminated because access by a person to his or her own Official Personnel folder is now controlled by Part 297 of Chapter I of this title; and § 294.1001 of Part 294 has been changed to show that Executive Order 11652 of March 8, 1972, as amended, and the National Security Council Directive of May 17, 1972, were revoked by Executive Order 12065 of June 28, 1978 (43 FR 28949).

Accordingly, 5 CFR Part 294 is amended to read as follows:

PART 294—AVAILABILITY OF OFFICIAL INFORMATION

Subpart A—General Provisions

Sec.
294.101 Purpose.
294.102 Definitions.
294.103 General policy.
294.104 Information available—Indexes; of certain records.
294.105 Places where information may be obtained.
294.106 Procedures for obtaining information.
294.107 Service charges for information.
294.108 Appeal of a denial of information.
294.109 Custody of information; subpoenas.
294.110 Deceased employees.

Subpart B—The Public Information Function

294.201 Public information policy.

Subpart C—Office Operations

294.301 Policy and interpretations.

Subpart D—Medical Information

294.401 Medical information.

Subpart E—Examinations and Related Subjects

294.501 Examinations.

Subpart F—Investigations

294.601 Investigative reports.

Subpart G—Official Personnel Folder

294.701 Coverage.
294.702 Availability of information.
294.703 Access to folder.

Subpart H—Appeals

294.801 Appeals.

Subpart I—Retirement

Sec.
294.901 Retirement.

Subpart J—Classified Information

294.1001 Classified information.

Subpart K—Leave Records

294.1101 Leave records

Authority: 5 U.S.C. 552, Freedom of Information Act, Pub. L. 93–502.

Subpart A—General Provisions

§ 294.101 Purpose.

The purpose of this part is to set forth the basic policies of the Office in regard to the availability or disclosure of information in the possession of or controlled by the Office.

§ 294.102 Definitions.

In this part: (a) "Information" means books, papers, manuals, records, photographs, and other documentary materials, regardless of physical forms or characteristics, made in or received by or under the control of the Office in pursuance of law or in connection with the discharge of official business;

(b) "Information available to the public" means information, including reasonably segregable nonexempt portions of information that may lawfully be withheld, which, on request, may be examined and copied, or of which copies may be obtained in accordance with this part by the public

regardless of interest and without specific justification; and

(c) "Disclose or disclosure" means making information available, on request, for examination and copying, or furnishing a copy of the information.

§ 294.103 General policy.

(a) When the Office receives requests for information under section 552 of title 5, United States Code, it will provide or disclose the requested information promptly, subject to the following conditions:

(1) The request reasonably describes the information sought.

(2) The request is filed according to the procedures specified in § 294.106.

(3) Any applicable fees for records search, copying, printed matter, or computer services have been paid or waived as specified in § 294.107.

(4) The requested material is not subject to one of the exemptions in section 552(b) of title 5, United States Code.

(b) If the requested information is subject to one of the exemptions, the Office may disclose it or may not, depending on the nature of the information. The Office shall not ordinarily disclose the following exempt materials:

(1) Material specifically authorized by an Executive Order to be kept secret in the interest of national defense or foreign policy and properly classified pursuant to criteria in such an Executive Order;

(2) Material related solely to the internal personnel rules and practices of the Office or another agency;

(3) Material specifically exempted from disclosure by statute;

(4) Commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intra-agency memoranda or letters which would not be available by law to a party in litigation with an agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy (except that such files will be disclosed to the individuals to whom they pertain as specified in §§ 294.703 and 831.106(a) of this chapter); and

(7) Investigatory records (except that such records will be disclosed to the individuals to whom they pertain under the conditions specified in § 294.601).

(c) If part of the requested information is exempt from disclosure and part is not, the Office will disclose reasonable segregable portions of the material after deleting exempt portions.

§ 294.104 Information available—indexes; of certain records.

(a) Indexes of materials published and offered for sale or available for public inspection and copying shall be maintained and revised at least quarterly.

(b) A copy of this index is available at no cost from:

Mail, Files, and Distribution Section, Office Services Division, Office of Management, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

Indexing of these materials is for the convenience of the public and does not constitute a determination that all of the materials listed are within the category of those required to be indexed by 5 U.S.C. 552(a)(2).

Group of office	Subject matter
Associate Director for Executive Personnel and Management Development.	Senior Executive Service Administrative Law Judge Program, selection, development, and training of Federal executives.
Associate Director for Staffing Services	Nationwide recruiting and job information, examining services for entry and promotion, selection methods, position classification standards, qualification standards, examination rating reviews, test scoring services, reduction in force, background investigations of Federal employees and applicants for Federal employment, student employment programs.
Associate Director for Compensation	Employee compensation: Pay, leave, retirement, insurance, and benefits; incentive and performance pay guidelines.
Associate Director for Workforce Effectiveness and Development.	Productivity and quality of work life; development of Governmentwide occupational health programs; employee relations, discipline, and performance evaluation; incentive awards; job related training, training information, and training available to Government employees.
Assistant Director for Agency Compliance and Evaluation, Agency Relations.	Evaluation of personnel management in agencies, delegation agreements, classification and job grading reviews, Governmentwide statistical personnel information.
Assistant Director for Intergovernmental Personnel Programs.	Grants to State and local governments, intergovernmental assignments, and other improvements to State and local government personnel systems.
Assistant Director for Affirmative Employment Programs.	Selection and advancement within the Federal service without regard to race, religion, color, national origin, sex, age, or handicapping condition.
Assistant Director for Labor-Management Relations.	Technical information and policy guidance concerning management and employee unions in the Federal service.
Director, Office of Government Ethics	Executive Branch policy relating to ethics and conflict of interest.

§ 294.105 Places where information may be obtained.

(a) A request for information which the requester believes is located in the Office headquarters in Washington, D.C., should be addressed to the Associate Director, Assistant Director, or other head of the office indicated in the list in paragraph (b) of this section. The address for all such requests is:

Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

(b) The following lists the groups and offices of the Office in Washington, D.C., and their principal areas of responsibility:

(c) A request for information which the requester believes is located in a regional office, area office, or post of duty of the Office should be addressed to the Director, Office of Personnel Management, Regional Office, at the appropriate address indicated in the following list:

Richard B. Russell Federal Building, 75 Spring Street SW, Atlanta, Georgia 30303.
John W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109.
Federal Office Building, 29th Floor, 230 South Dearborn Street, Chicago, Illinois 60604.
1100 Commerce Street, Dallas, Texas 75242.
Denver Federal Center, Building 20, Denver, Colorado 80225.
New Federal Building, 26 Federal Plaza, New York, New York 10007.
William J. Green Jr., Federal Building, 600 Arch Street, Philadelphia, Pennsylvania 19106.
1256 Federal Building 1520 Market Street, St. Louis, Missouri 63103.
525 Market Street, 23rd Floor, San Francisco, Califonia 94105.
Federal Office Building, 28th Floor 915 Second Avenue, Seattle, Washington 98174.

(d) if a request for information is made to an Office group or office that does not have possession of the information, that group or office will promptly forward the request to the appropriate group or office and will notify the requester that it has done so. However, for purposes of applying the time limits in section 552 of title 5, United States Code, the request will not be considered received until it arrives in the group or office having possession of the requested information.

(e) Information, and the office to be contacted for such information, published and offered for sale, or available to the public or examining and copying, for the convenience of the public or pursuant to section 552, title 5, United States Code, subsection (a), paragraph (2) is found in the Office's index required by that paragraph.

(f) A request for information on a subject matter not specifically referred to in this paragraph or in the index, should be directed to:

Management Support Division, Office of Management, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

§ 294.106 Procedures for obtaining information.

(a) A request for information under section 552 of title 5, United States Code, may be made personally or in writing. Requests may be made by letter directed to the groups and offices of the office in § 294.105 or in person at the addresses listed in that section during business hours on a regular business day.

(b) Each request for information under section 552 of title 5, United States Code, should be clearly and prominently identified by means of a legend on the first page, such as "Freedom of Information Request." In addition, if sent by mail or otherwise submitted in an envelope or other cover, the outside should be clearly and prominently marked "FOI" or "Freedom of Information."

(c) A request under this part should reasonably describe the information being requested by including relevant data such as name, number, date, subject, title of publication or other identifying particulars sufficient to enable the information to be identified and located. Requests for information contained in personnel records from persons other than the individual to whom the record pertains will be processed subject to §§ 294.103(b)(6) and 831.108(a).

(1) Requests for information from Official Personnel Folders and similar files should contain such information as: name, date of birth, Social Security Account Number, agency where employed, and, if not presently employed, approximate dates of the most recent Federal employment. If presently employed, requests should be directed to the employing agency.

(2) Requests for information from investigatory files should contain: name, date and place of birth, and Social Security Account Number.

(3) Requests for information concerning the results of examinations should include name, date of birth, Social Security Account Number, and identification number together with date, place, and time of examination.

(d) If a request is for materials that have been published and are offered for sale, e.g., by the Superintendent of Documents, the requester will be advised of the appropriate group or office in the office where the materials may be reviewed and the location where the materials may be purchased.

(e) The Office will, except in unusual circumstances, make a determination to disclose or deny the requested information within ten working days after receipt of the request (excluding Saturdays, Sundays, and holidays) and shall notify the requester immediately of its determination and the fees required, if any, prescribed by § 294.107.

§ 294.107 Service charges for information.

(a) Reasonable quantities of information that have been printed or otherwise reproduced by the Office for the purpose of making it available to the public without charge, shall be furnished to a member of the public free of charge.

(b) Information made available to the public, other than that described in paragraph (a) of this section, may be furnished subject to exaction of a fair fee. The fee shall be paid by check or money order made payable to the Office of Personnel Management.

(c) Schedule of Fees—When a request is made for information under section 552 of title 5, United States Code, the Office will charge fees for searching and duplicating the information at the rates shown in the following schedule:

Photocopies, per page	$0.10
Printed material, per 25 pages or fraction thereof	.25
Manual records search, per hour	5.00
Automated records search:	
Programming, per hour	14.00
Keypunching, per hour	8.75
Computer time, per hour	65.00
Duplication, per hour	47.00

(d) Unless the request specifically states that whatever cost is involved will be acceptable, or acceptable up to a specified amount which is sufficient to cover anticipated costs, a request that can reasonably be expected to involve assessed fees in excess of $5 will be deemed not received until the requester, after prompt notification of the anticipated cost of the request, agrees to bear it.

(e) When the anticipated fees exceed $50, a deposit of 20 percent of the amount anticipated must be made within 30 days after the requester is advised of that fact. Requested information will not be released until the deposit is received.

(f) Charges will be assessed in cases of unproductive or unsuccessful searches unless waived by the appropriate Office official. Services performed that are not required under the Freedom of Information Act, such as formal certification of records as true copies, may be subject to charges under the Federal User Charge Statute (31 U.S.C. 483a) or other applicable statutes, depending upon the services performed.

§ 294.108 Appeal of a denial of information.

(a) In the event of a disagreement concerning the availability or disclosure of information between a member of the public and an employee of the Office or an employee of another agency having custody of information controlled by the Office and authority to deny disclosure of such information, the requester may ask for reconsideration of the denial. The request shall be addressed to the General Counsel, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415, within ten working days after the requester receives notification of the denial. The General Counsel shall, except in unusual circumstances, notify the requester of the decision within 20 working days (excluding Saturdays, Sundays, and holidays) after receipt of the request for reconsideration. The request to the General Counsel is the only administrative appeal within the Office and the decision on appeal exhausts the administrative remedies within the Office. If the General Counsel upholds in whole or in part the denial of the request for records, the written notice shall inform the person making the request of the provisions for judicial review of that determination.

§ 294.109 Custody of information; subpenas.

(a) The Chief, Management Support Division, Office of Management, has official custody of the official records of the Office. A subpena or other judicial order for an official record from the Office should be served on the:

Chief, Management Support Division, Office of Management, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

(b) If a subpena or other judicial order for an official record is served on an employee of the Office other than the Chief, Management Support Division, Office of Management, the employee shall immediately inform the General Counsel of the Office who shall advise the employee accordingly.

(c)(1) If a subpena or other judicial order for information contained in an Official Personnel Folder in the physical custody of a Government agency other than the Office is served on a Government employee responsible for the Folder, the employee shall disclose such information as is allowed under this part. After producing the original documents for inspection by the court or counsel, the employee must not leave

them with the court, but must retain them, and obtain permission of the court to substitute certified or facsimile copies for the court record.

(2) In an unusual situation or a situation in which information not available under this part is sought, the Government employee who receives the subpena shall immediately forward it and the Official Personnel Folder containing the information sought to the:

General Counsel, Office of Personnel Management, Washington, D.C. 20415.

The Government employee shall inform the person who applied for the subpena that the subpena and the information sought have been sent to the Office pursuant to this subparagraph and, if necessary, request a postponement of the scheduled appearance.

§ 294.110 Deceased employees.

A right under this part to the disclosure of, and to control the disclosure of information personal to an employee, former employee, annuitant, or applicant passes after his death to the executor or administrator of his estate, or in the absence of an executor or administrator, to his next of kin.

Subpart B—The Public Information Function

§ 294.201 Public information policy.

(a) In addition to the basic policies of the Office relative to the disclosure of information when requested by a member of the public, the Office has an independent public information policy for bringing to the attention of the public through news releases, publications of the Office, or other methods, information concerning the functions of the Office as a Federal agency, and the programs administered by the Office.

(b) The Director, Office of Public Affairs, is responsible for the furtherance of the public information policy of the Office. In addition, each employee of the Office shall cooperate in carrying out this policy in accordance with the Administrative Manual.

Subpart C—Office Operations

§ 294.301 Policy and interpretations.

(a) Statements of Office policy and interpretations of the laws and regulations administered by the Office which have been adopted by the Office, whether or not published in the Federal Personnel Manual or the Federal Register, are information available to the public.

(b) Memoranda, correspondence, opinions, data, staff studies, information received in confidence, and similar documentary material, when prepared for the purpose of internal communication within the Office or between the Office and other agencies, organizations, or persons generally are not information available to the public.

Subpart D—Medical Information

§ 294.401 Medical information.

(a) Medical information about an applicant, employee, or annuitant is not made available to the public by the Office or other Government agency.

(b) Medical information about an applicant, employee, or annuitant may be disclosed by the Office or other Government agency to the applicant, employee, or annuitant, or a representative designated in writing, except that medical information concerning a mental or other condition of such a nature that a prudent physician would hesitate to inform a person suffering from it of its exact nature and probable outcome may be disclosed only to a licensed physician designated in writing for that purpose by the individual or his designated representative.

Subpart E—Examinations and Related Subjects

§ 294.501 Examinations.

(a) The Office makes information available to the public that will assist members of the public in understanding the purpose of, and in preparing for, civil service examinations. It makes information available to the public relative to the types of questions and the categories of knowledge or skill pertinent to a particular examination. The following materials are not available to the public: (1) Testing and examination materials used solely to determine individual qualifications; (2) test material, including test plans, item analysis data, criterion instruments, and other material the disclosure of which would compromise the objectivity of the testing process.

(b) Each employee entrusted with test material has a positive duty to protect the confidentiality of that material and to assure that it is released only as required to conduct an examination authorized by the Office.

(c) The applicant's answers in a written test may be reviewed by the applicant only in the presence of an employee of the Office in an appropriate office. The test booklet is not made available in connection with such review.

(d) Information concerning the results of examinations will be released only to the individual concerned, and to those parties explicitly designated by the individual.

(e) The names of applicants for civil service positions or eligibles on civil service registers, certificates, employment lists, or other lists of eligibles, or their ratings or relative standings are not information available to the public.

Subpart F—Investigations

§ 294.601 Investigative reports.

(a) The disclosure requirements of the Freedom of Information Act do not apply to matters that are specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and are in fact properly classified pursuant to such Executive Order.

(b) Investigatory records compiled for law enforcement purposes are exempt, but only to the extent that the production of such records would (1) interfere with enforcement proceedings, (2) deprive a person of a right to a fair trial or impartial adjudication, (3) constitute an unwarranted invasion of personal privacy, (4) disclose the identity of a confidential source, and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (5) disclose investigative techniques and procedures, or (6) endanger the life and physical safety of law enforcement personnel.

(c) All requests for investigative reports of investigations conducted by the Office of Personnel Management will be forwarded to the Deputy Associate Director for Personnel Investigations, Staffing Services, for processing. If the investigative file on the subject of investigation maintained by the Deputy Associate Director for Personnel Investigations contains investigatory information that originated in another agency, the Deputy Associate Director for Personnel Investigations will refer a copy of the subject's request to that agency for its decision concerning release of the investigatory information that originated in that agency. Copies of reports of investigation conducted by the Office of Personnel Management on the subject of investigation will be furnished upon request to the subject of investigation or to his or her representative designated in writing, with the exception of any

material that is exempt from disclosure under paragraphs (a) and (b) of this section.

(d) The Office or other Government agency will disclose to the parties concerned any report of investigation under its control, or an extract of the report, to the extent the report is involved in a proceeding under Part 771 of this chapter except when the disclosure would violate the proscription against the disclosure of medical information in § 294.401. For the purposes of this paragraph, the parties concerned means the Government employee involved in the proceeding, his or her representative designated in writing, and the representative of the agency involved in the proceeding.

(e) The Office in suitability rating actions under Part 731 of this chapter will disclose to an applicant, eligible, or appointee, or a representative designated in writing, such information from reports of investigation as the Office determines is sufficient to enable him or her to respond to an interrogatory or other question without revealing the source of information obtained under an expressed or implied pledge of confidence. The Office will furnish a report of investigation to the Government agency concerned.

(f) The Office or other Government agency does not make a report of investigation or information from a report under its control available to the public, to witnesses, or, except as provided in paragraphs (a), (b), (c), and (d) of this section, to the parties concerned in the investigation.

Subpart G—Official Personnel Folder

§ 294.701 Coverage.

This subpart applies to the disclosure of information contained in the Official Personnel Folder (or an automated equivalent) established under Subpart B of Part 293 of this chapter. Information disclosed under this subpart may be made available by the Office or a Federal agency having custody of the folder.

§ 294.702 Availability of information.

(a) The following information about most present and former government employees is available to the public:

(1) Name;

(2) Present and past position titles;

(3) Present and past grades;

(4) Present and past salaries;

(5) Present and past duty stations (which include room numbers, shop designations, or other identifying information regarding buildings or places of employment).

(b) Disclosure of this information will not be made where the information requested is a list of present or past position titles, grades, salaries, and/or duty stations of Government employees which as determined by the agency official responsible for custody of that information, is:

(1) Selected in such a way as to constitute a clearly unwarranted invasion of personal privacy because the nature of the request calls for a response that would reveal more about the employees on whom information is sought than the five enumerated items; or

(2) Would otherwise be protected from mandatory disclosure under an exemption of the Freedom of Information Act.

(c) In addition to the information that may be made available under paragraph (a) of this section, the following information may be made available to a prospective employer of a Government employee or former Government employee:

(1) Tenure of employment;

(2) Civil service status;

(3) Length of service in the agency and the Government; and

(4) When separated, the date and reason for separation shown on the Notification of Personnel Action, Standard Form 50.

(d) In addition to the information to be made available under paragraphs (a) and (b) of this section, the home address of an employee shall be made available to a police or court official on receipt of a proper request stating that an indictment has been returned against the employee or that complaint, information, accusation, or other writ involving nonsupport or a criminal offense has been filed against the employee and the employee's address is needed for service of a summons, warrant, subpena, or other legal process.

(e) The General Services Administration, National Archives and Records Service, may make information from the Official Personnel Folder of an employee separated from the service available to a person engaged in research for historical or educational purposes or for similar purposes when the person has written permission from the Office to receive such information. This permission may be requested in writing from:

Assistant Director for Agency Compliance and Evaluation, Agency Relations, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

Requests for this type of information should include identifying information as described in § 294.108(c)(1) of this part, and verification from a publisher, educational research, or other similarly recognized institution that the information is being sought for historical, educational, or other similar purposes. Except as provided in § 294.703(a) of this part, information made available under this paragraph shall be in the form of an abstract of the former employee's service in the Government and, when he has been separated at least five years, an abstract of his educational experience background as reflected in his application for employment with the Government. Information that is derogatory to the former employee shall not be made available under this paragraph.

(f) Except as provided in paragraphs (a) through (e) of this section, information required to be included in an Official Personnel Folder by the instructions of the Office is not available to the public.

§ 294.703 Access to folder.

(a) On official request, an Official Personnel Folder may be disclosed to a representative of a Congressional committee or subcommittee, or an official of the legislative or judicial branch, or of the Government of the District of Columbia. However, before disclosure, all material that relates to loyalty or security under Executive Order 9835 or 10450 or any other authority, and all information covered under paragraph (a) (1) through (3) of this section, shall be removed from the folder. If a specific request for loyalty or security information is made by a Congressional committee or subcommittee, or any source outside the executive branch, the request shall be forwarded to the General Counsel, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415, for consultation with the Department of Justice pursuant to the President's Memorandum of March 24, 1969.

(b) An Official Personnel Folder shall be disclosed to an official of the executive branch who has a need for the information in the performance of his official duties.

Subpart H—Appeals

§ 294.801 Appeals.

(a) The Office, upon a request which identifies the individual from whose file the information is sought, shall disclose the following information from an appeal file to a member of the public, except when the disclosure would

constitute a clearly unwarranted invasion of personal privacy:

(1) Confirmation of the name of the individual from whose file the information is sought and the names of the other parties concerned;

(2) The status of the case;

(3) The decision on the case;

(4) The nature of the action appealed; and

(5) With the consent of the parties concerned, other reasonably identified information from the file.

(b) The Office will disclose to the parties concerned the information contained in an appeal file in proceedings under Part 511 of this chapter, except when the disclosure would violate the proscription against the disclosure of medical information in § 294.401. For the purpose of this section, "the parties concerned" means the Applicant for Government Employment, Government employee, or former Government employee involved in the proceedings, his representative designated in writing, and the representative of the agency or the Office involved in the proceeding.

Subpart I—Retirement

§ 294.901 Retirement.

The Office will disclose information from retirement files and records in accordance with § 831.106 of this chapter.

Subpart J—Classified Information

§ 294.1001 Classified information.

The Office will not disclose information classified under Executive Order 12065 of June 28, 1978, or other Executive Order, except to individuals authorized access to it under terms of that authority.

Subpart K—Leave Records

§ 294.1101 Leave records.

The annual and sick leave record of an employee, or information from these records, is not made available to the public by the Office or other Government agency. However, the leave record, or information from it, shall be disclosed to the employee concerned or, with his written consent, to a representative of the employee or any other person that he authorizes to have the record.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 79-17965 Filed 6-7-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 720

Affirmative Employment Programs

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: This regulation changes the date by which Federal Equal Opportunity Recruitment Program Plans must be developed for the headquarters level of each Executive agency from July 1, 1979, to October 1, 1979. It also corrects the title of Subpart B as it appears in the table of contents for Part 720.

EFFECTIVE DATE: June 8, 1979.

FOR FURTHER INFORMATION CONTACT: Tom Dausch, Office of Affirmative Employment Programs, Office of Personnel Management, 1900 E Street NW., Washington, D.C. 20515, (202) 254-9470.

SUPPLEMENTARY INFORMATION: On April 13, 1979, the Office of Personnel Management issued final regulations to implement a Federal Equal Opportunity Recruitment Program (44 FR 22029 et seq.) pursuant to section 310 of the Civil Service Reform Act of 1978 and program guidelines established by the Equal Employment Opportunity Commission. Included in those regulations was a requirement for the headquarters level of each Executive agency to establish recruitment plans provided for in the regulations not later than July 1, 1979. That date was based on the Office of Personnel Management's plan to issue program guidance to agencies at the same time final regulations were published. Since there have been delays in obtaining needed data to include in the guidance material, the Office considers it unrealistic for most agencies to develop plans by July 1, 1979. Consequently, this amendment changes the deadline for development of headquarters level plans to October 1, 1979. There is no change with respect to component level plans which must still be developed no later October 1, 1979. Because this amendment constitutes a procedural rather than a substantive change, the Office deems it unnecessary to provide for a public comment period.

The amendment also changes the table of contents which had incorrectly carried over the title of Subpart B as it had appeared in proposed rules for the program, but which had been modified in the final regulations.

Accordingly, the Office of Personnel Management is amending 5 CFR Part 720 as set forth below:

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

The table of contents for Part 720 is amended to read as follows:

PART 720—FEDERAL EQUAL OPPORTUNITY RECRUITMENT PROGRAM

Subpart A—Principal Statutory Requirements

Sec.
720.101 Principal statutory requirements.

Subpart B—Federal Equal Opportunity Recruitment Program

720.201 Regulatory requirements.
720.202 Definitions.
720.203 Responsibilities of the Office of Personnel Management.
720.204 Agency programs.
720.205 Agency plans.
720.206 Selection guidelines.
720.207 Reports.

Appendix—Guidelines for the development of a Federal Recruitment Program to Implement 5 U.S.C. Section 7201, as amended.

Authority: 5 U.S.C. 7201; 42 U.S.C. 2000e.

Part 720, § 720.205, paragraph (g) is amended to read as follows:

§ 720.205 Agency plans.

* * * * *

(g) All plans required under this subpart must be developed not later than October 1, 1979.

[FR Doc. 79-17966 Filed 6-7-79; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 215

[Amendment 17]

Special Milk Program for Children; Free Milk Option in the Special Milk Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes guidelines under which School Food Authorities and child care institutions participating in the Special Milk Program shall implement their option to provide free milk to children meeting local eligibility criteria. It also makes a prototype free milk policy statement by a State for child care institutions an explicit regulatory requirement for States.

EFFECTIVE DATE: July 1, 1979.

FOR FURTHER INFORMATION CONTACT: Margaret O'K. Glavin, Director, School Programs Division, USDA–FNS, Washington, D.C. 20250, (202) 447–8130.

SUPPLEMENTARY INFORMATION: Section 5(a) of Public Law 95–627 amends section 3 of the Child Nutrition Act, authorizing the Special Milk Program, to provide the option to the School Food Authority to make free milk available to children eligible under local eligibility criteria. Since the Special Milk Program is also available to nonresidential child care institutions, it seems clear that it was the intent of Congress that this provision also be extended to them.

Previously, under the provisions of Public Law 95–166 and Amendment 16 to this part, schools and child care institutions were required to provide free milk to eligible children when the Special Milk Program operated at times other than meal services reimbursed by the Department or during such meal service periods to any child who elected not to take the free meal for which he or she was qualified.

This rule removes the requirements to serve free milk under these two circumstances and also removes time restrictions on service of free milk where the School Food Authority or institution has elected to provide this service.

The rule requires that, upon Program application and renewal, each School Food Authority and child care institution shall inform the State agency or FNSRO where applicable, of its decision whether or not to provide free milk. If electing to provide free milk, a School Food Authority or sponsoring institution must list the names of all schools and institutions participating in the Program who choose to serve free milk in their agreement with the State agency or FNSRO where applicable, and must submit an acceptable free milk policy statement. In such schools and institutions, free milk shall be made available to needy children at any time that milk under the Special Milk Program is made available to nonneedy children in the participating school or institution.

This rule also reflects a change made by section 5(a) of Pub. L. 95–627 in the price index used to calculate adjustments to milk reimbursement rates. Previously, these adjustments were based on the "series of food away from home" of the Consumer Price Index. This rule references the new index imposed by Pub. L. 95–627: the Producer Price Index for Fresh Processed Milk published by the Bureau of Labor Statistics of the Department of Labor. This legislatively mandated change was believed to be a more fair indicator to be used for annual reimbursement adjustments.

This rule also brings this part of the regulations into conformance with Part 245, Determining Eligibility for Free and Reduced Price Meals and Milk in Schools, by requiring States to issue a prototype free milk policy statement for participating child care institutions. This amendment is merely a technical change and imposes no new requirements on States.

The Department is issuing this amendment as a final rule because it is mandated by Pub. L. 95–627 and is nondiscretionary in that there are no alternatives to its implementation. This decision was made by Robert Greenstein, Acting Administrator, FNS.

Accordingly, Part 215 is amended as follows:

1. Section 215.1, the fifth and sixth sentences of section 3 of the Child Nutrition Act of 1966, as amended, are amended to read as follows:

§ 215.1 General purpose and scope.

* * * * *

Sec. 3 * * * Children who qualify for free lunches under the guidelines established by the Secretary shall, at the option of the school involved (or the local educational agency involved in the case of a public school) also be eligible for free milk upon their request. For the fiscal year ending June 30, 1975, and for subsequent school years, the minimum rate of reimbursement for a half-pint of milk served in schools and other eligible institutions shall not be less than 5 cents per half-pint served to eligible children, and such minimum rate of reimbursement shall be adjusted on an annual basis each school year thereafter to reflect changes in the Producer Price Index for Fresh Processed Milk published by the Bureau of Labor Statistics of the Department of Labor. * * *

2. In § 215.7, Requirements for participation, paragraphs (b) and (d–2) are amended to read as follows:

§ 215.7 Requirements for participation.

* * * * *

(b) Any School Food Authority or child care institution participating in the Program may elect to serve free milk to children eligible for free meals. Upon application for the Program and thereafter at least annually, each School Food Authority or child care institution (i) shall be required by the State agency, or FNSRO where applicable, to state whether or not it wishes to provide free milk in the schools or institutions participating under its jurisdiction and (ii) if it so wishes to provide free milk, shall also submit for approval a free milk policy statement which, if for a school, shall be in accordance with Part 245 of this Chapter or, if for a child care institution, shall be in accordance with §215.13a of this part.

(d) * * *

(1) * * *

(2) If electing to provide free milk (i) serve milk free to all eligible children, at times that milk is made available to nonneedy children under the Program; and (ii) make no discrimination against any needy child because of his inability to pay for the milk.

* * * * *

3. Section 215.8, paragraph (b), is amended to read as follows:

§ 215.8 Reimbursement payments.

* * * * *

(b)(1) The rate of reimbursement per half-pint of milk purchased and (i) served in nonpricing programs to all children; (ii) served to all children in pricing programs by institutions and School Food Authorities not electing to provide free milk; and (iii) served to children other than needy children in pricing programs by institutions and School Food Authorities electing to provide free milk shall be the rate announced by the Secretary for the applicable school year. However, in no event shall the reimbursement for each half-pint (236 ml.) of milk served to children exceed the cost of milk to the school or child care institution. (2) The rate of reimbursement for milk purchased and served free to needy children in pricing programs by institutions and School Food Authorities electing to provide free milk shall be the average cost of milk, i.e., the total cost of all milk purchased during the claim period, divided by the total number of purchased half-pints.

4. Section 215.13a, paragraphs (a), (b), (c), and (e) are amended to read as follows:

§ 215.13a Determining eligibility for free milk in child care institutions.

(a) *General.* Child care institutions which operate pricing programs may elect to make free milk available, as set forth in § 215.7(d)(2), to children who meet the approved eligibility criteria. Such child care institutions shall determine the children who are eligible for free milk and assure that there is no physical segregation of, or other discrimination against, or overt identification of, children unable to pay the full price for milk.

(b) *Action by State agencies and FNSROs.* Each State agency, or FNSRO where applicable, upon application for the program by a child care institution operating a pricing program, and

annually thereafter, shall require the institution to state whether or not it wishes to serve free milk to eligible children at times that milk is provided under the Program. It shall annually require each child care institution electing to provide free milk to submit a free milk policy statement and shall provide such institutions with a prototype free milk policy statement and a copy of the State's family-size income standards for determining eligibility for free meals and milk under the National School Lunch and School Breakfast Programs to assist the institutions in meeting its responsibilities.

(c) *Action by institutions.* Each child care institution which operates a pricing program shall inform the State agency, or FNSRO where applicable, at the time it applies for Program participation and at least annually thereafter, whether or not it wishes to provide free milk. Institutions electing to provide free milk shall annually submit a written free milk policy statement for determining free milk eligibility of children under their jurisdiction, which shall contain the items specified in (d) of this section. Such institutions shall not be approved for Program participation of their agreements renewed unless the free milk policy has been reviewed and approved. Pending approval or a revision of a policy statement, the existing policy shall remain in effect.

* * * * *

(e) *Public announcement of eligibility criteria.* Each child care institution which elects to make free milk available under the Program shall annually make a public announcement of the availability of free milk to children who meet the approved eligibility criteria to the information media serving the area from which its attendance is drawn. The public announcement must also state that milk is available to all children in attendance without regard to race, color, or national origin.

* * * * *

(Catalog of Federal Domestic Assistance No. 10.556)

A copy of the detailed impact statement for this final rule may be viewed at the office of the person identified in the "address" portion of the preamble during regular business hours (8:30 am to 5:00 pm, Monday through Friday), and a copy may be obtained from that person.

(Sec. 5, Pub. L. 95-627, 92 Stat. 3618 (42 U.S.C. 1779))

Dated: June 4, 1979.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 79-17985 Filed 6-7-79; 8:45 am]

BILLING CODE 3410-30-M

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7 CFR Part 245

[Amdt. 13]

Determining Eligibility for Free and Reduced Price Meals and Milk in Schools

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation amends the language of Part 245 referring to the responsibilities of schools in the Special Milk Program in order to conform to Section 5 of Pub. L. 95-627 which gives School Food Authorities participating in the program the option of providing free milk to eligible children at the child's request. Part 215 of Chapter II, governing the Special Milk Program, requires that eligibility for free milk in schools be based upon the provisions of this part.

This final rule also amends Part 245 to implement section 8(2) of Pub. L. 95-627. This amendment requires each State agency, or FNSRO where applicable, to prescribe family-size income standards for free meals and milk at 125% of the Secretary's Income Poverty Guidelines. Previously, State agencies, or FNSROs where applicable, had flexibility to vary free eligibility between 100% and 125% of the Secretary's Income Poverty Guidelines.

This rule also amends Part 245 to remove obsolete provisions relating to nonprofit private schools in § 245.9.

EFFECTIVE DATE: This final rule will become effective on July 1, 1979.

FOR FURTHER INFORMATION CONTACT: Margaret O'K. Glavin, Director, School Programs Division, USDA-FNS, Washington, D.C. 20250, (202)447-8930.

SUPPLEMENTARY INFORMATION:

Free Milk Option

Under previous law and regulations, School Food Authorities participating in the Special Milk Program and operating a pricing program were required, under certain circumstances, to provide free milk to children eligible for free meals. Section 5 of Pub. L. 95-627 makes service of free milk under the program optional. Part 215, Special Milk Program regulations, will be amended to reflect this option and will require School Food Authorities offering free milk to develop a free milk policy statement which shall be in accordance with Part 245 of this chapter. This regulation, therefore, amends Part 245 to conform to the changes in Part 215 required by Pub. L. 95-627.

Standardized Eligibility Criteria

Each State agency is required to prescribe income standards for both free and reduced price meals and free milk by family size, for use by School Food Authorities and institutions in the State in determining eligibility for such benefits. Prior to the enactment of Pub. L. 95-627, the State standards for free meals and for free milk could not be less than the applicable family size income level prescribed by the Secretary's Guidelines nor exceed these Guidelines by more than 25 percent. Section 8 of Pub. L. 95-627 removes this flexibility of States to vary free eligibility standards by requiring States to set free standards at 125 percent of the Secretary's Guidelines, that is, at 25 percent above the Guidelines.

This nondiscretionary provision of Pub. L. 95-627 is designed to standardize eligibility criteria for all States for free meals at the maximum level; that is, at 125 percent of the Secretary's Income Poverty Guidelines.

Pub. L. 94-105 standardized reduced price meal eligibility at the maximum level; that is, at 195 percent of the Secretary's Income Poverty Guidelines.

Section 245.9 provides that certain nonprofit private schools are exempt from serving reduced price meals. This provision is in conflict with Pub. L. 94-105 which mandates service of reduced price meals in all schools participating in the National School Lunch or School Breakfast Programs. The wording in this section is therefore revoked to remove obsolete provisions, and § 245.9 is reserved.

The Department is issuing this amendment as a final rule because it is mandated by Pub. L. 95-627 and is nondiscretionary in that there are no alternatives to its implementation. This decision was made by Robert Greenstein, Acting Administrator, FNS.

Accordingly, Part 245 is amended as follows: (1) The first three sentences of § 245.1(a) are deleted and amended to read as follows:

§ 245.1 General purpose and scope.

(a) Section 8 of the National School Lunch Act, as amended, and Section 4 of the Child Nutrition Act of 1966, as amended, requires that schools participating in the National School Lunch Program (7 CFR Part 210) and the School Breakfast Program (7 CFR Part 220) and other schools utilizing

commodities donated by the Department shall serve free meals to any child who is a member of a household which has an annual income not above the applicable family-size income level set forth in income poverty guidelines prescribed by the Secretary. Each State agency is required to prescribe family-size income standards, which will be 25 percent above the Secretary's income poverty guidelines, to be used by schools in the State during each fiscal year in determining which children in the State are eligible for free meals. Section 3 of the Child Nutrition Act of 1966, as amended, provides that schools participating in the Special Milk Program may, at the option of the School Food Authority, make free milk available to children eligible for free meals. * * *

(2) The third and fourth sentences of § 245.3(a) are deleted. The second sentence of paragraph (b) and paragraph (c) are amended to read as follows:

§ 245.3 Eligibility standards and criteria.

* * * * *

(b) * * * Such criteria shall:

(1) For all schools under the jurisdiction of the School Food Authority, specify the uniform family-size income criteria to be used for determining eligibility for free and reduced price meals in schools participating in the National School Lunch or School Breakfast Programs and in commodity-only schools, and for determining eligibility for free milk when the School Food Authority has chosen to serve free milk in its schools participating in the Special Milk Program; * * *

(c) Each School Food Authority shall serve free and reduced price meals and, if so electing, free milk in the respective programs to children eligible under its eligibility criteria. Family income used by a School Food Authority in determining eligibility of an applicant shall be income as defined in the Secretary's Income Poverty Guidelines including the adjustments for special hardship conditions. When a child is not a member of a family as defined in § 245.2(b), the child shall be considered a family of one. In any school which participates in more than one child nutrition program (National School Lunch Program, School Breakfast Program, or Special Milk Program) or is a commodity-only school which also participates in the School Breakfast Program or Special Milk Program (in which the School Food Authority has elected to provide free milk), the eligibility shall be applied uniformly so that eligible children receive the same benefits in each program. If a child transfers from one school to another school under the jurisdiction of the same School Food Authority, his eligibility for free or reduced price meals or for free milk, if previously established, shall be transferred to, and honored by, the receiving school if it participates in the National School Lunch Program, School Breakfast Program, Special Milk Program and the School Food Authority has elected to provide free milk, or is a commodity-only school.

* * * * *

§ 245.9 [Reserved]

3. Section 245.9 is revoked and reserved.

4. Section 245.10, paragraph (a), the first sentence is amended to read as follows:

§ 245.10 Action by School Food Authorities.

(a) Each School Food Authority of a school desiring to participate in the National School Lunch Program, School Breakfast Program, or to provide free milk under the Special Milk Program, or to become a commodity-only school shall submit for approval to the State agency a free and reduced price policy statement. * * *

(Catalog of Federal Domestic Assistance No. 10.555)

A copy of the detailed impact analysis statement for this final rule may be viewed at the office of the person identified in the "address" portion of the preamble during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday), and a copy may be obtained from that person.

(Sec. 3, Pub. L. 95-627, 92 Stat. 3623, (42 U.S.C. 1758); sec. 5, Pub. L. 95-627, 92 Stat. 3619, (42 U.S.C. 1772))

Dated: June 4, 1979.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 79-17302 Filed 6-7-79; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 282]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period June 10-16, 1979. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: June 10, 1979.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202-447-5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee, and upon other information. It is hereby found that this action will tend to effectuate the declared policy of the act. This regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

The committee met on June 5, 1979, to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons continues good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information become available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 910.502 Lemon Regulation 282.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period June 10, 1979, through June 16, 1979, is established at 300,000 cartons.

(b) As used in this section, "handled" and "carton(s)" mean the same as defined in the marketing order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: June 7, 1979.

D. S. Kuryloski,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-18180 Filed 6-7-79; 11:32 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1980

Business and Industrial Loan Programs; Processing of Clearances

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations pertaining to the Business and Industrial loan program. The intended effect of this action is to expedite the processing of clearances required in the program. This action results from internal administrative processing changes.

EFFECTIVE DATE: June 8, 1979.

FOR FURTHER INFORMATION CONTACT: Darryl H. Evans, Acting Director, Business Management and Development Division, telephone 202–447–4150.

SUPPLEMENTARY INFORMATION: Section 1980.451 Administrative B 3(c) of Subpart E of Part 1980, Chapter XVIII, Title 7, Code of Federal Regulations is amended to require submission of Form FmHA 449–4, "Statement of Personal History," by the State Director to the National Office for only those loans which the State Director believes a character evaluation check is advisable to protect the Government's interest. This action is necessitated by the fact that the Inspector General of U.S. Department of Agriculture does not have the staff to process all Forms FmHA 449–4 received and because increasing staff to process all of these statements is not cost effective. The State Director may process Form FmHA 449–4 for any project when he or she believes is in the best interest of the Government. Form FmHA 449–4 is still required to be completed by the applicant on all loans as part of the overall application package. The lender is responsible for assuring that Form FmHA 449–4 is completed accurately. This change will substantially reduce the processing workload and will reduce overall loan processing time.

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 533 with respect to such rules. This amendment, however, is not published for proposed rulemaking since it deals with the agency's management of loan procedures. Therefore, public participation is unnecessary. The official responsible for this determination is Darryl H. Evans.

Accordingly, Section 1980.451 Administrative B 3(c) of Subpart E of Part 1980 is amended to read as follows:

§ 1980.451 Filing and processing applications.

* * * * *

Administrative

* * * * *

B. *The State Director:*

* * * * *

3. * * *

* * * * *

(c) Form FmHA 449–4 (5 copies) only for those loans which the State Director believes a character evaluation check is advisable. Applicants should be advised that these clearances will take approximately 60 days to process and that the National Office will take no action to expedite such processing.

* * * * *

(Authority: 7 U.S.C. 1989; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary of Agriculture for Rural Development, 7 CFR 2.70)

Note.—This document has been reviewed in accordance with FmHA Instruction 1901–G, "Environmental Impact Statement." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required."

This regulation has not been determined significant under the USDA criteria implementing Executive Order 12044.

A copy of the Impact Analysis Statement is available at the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S.D.A., Room 6348, South Agriculture Building, Washington, D.C. 20250.

Dated: May 23, 1979.

Gordon Cavanaugh,
Administrator, Farmers Home Administration.

[FR Doc. 79-17827 Filed 6-7-79; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

9 CFR Part 82

Exotic Newcastle Disease; and Psittacosis or Ornithosis in Poultry; Areas Released From Quarantine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to release a portion of Starr County in Texas, from the areas quarantined because of exotic Newcastle disease. Surveillance activity indicates that exotic Newcastle disease no longer exists in the area released from quarantine. No areas in the State of Texas remain under quarantine.

EFFECTIVE DATE: June 1, 1979.

FOR FURTHER INFORMATION CONTACT: Dr. M. A. Mixson, USDA, APHIS, VS, Federal Building, Room 748, Hyattsville, MD 20782, 301–436–8073.

SUPPLEMENTARY INFORMATION: This amendment releases a portion of Starr County in Texas, from the areas quarantined because of exotic Newcastle disease under the regulations in 9 CFR Part 82, as amended. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in 9 CFR Part 82, as amended, will no longer apply to the area released.

PART 82—PSITTACOSIS OR ORNITHOSIS IN POULTRY

Accordingly, Part 82, Title 9, Code of Federal Regulations, is hereby amended in the following respect:

§ 82.3 [Amended]

In § 82.3(a), paragraph (6) relating to the State of Texas is deleted.

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; (21 U.S.C. 111–113, 115, 117, 120, 123–126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141.)

The amendment relieves certain restrictions no longer deemed necessary to prevent the spread of exotic Newcastle disease. It should be made effective immediately in order to permit affected persons to move poultry, mynah, psittacine birds, and birds of all other species under any form of confinement, and their carcasses and

parts thereof, and certain other articles, interstate from such area without unnecessary restrictions. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective on or before July 9, 1979.

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by J. K. Atwell, Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without opportunity for public comment or preparation of an impact analysis statement at this time.

This final rule implements the regulations in Part 82. It will be scheduled for review in conjunction with the periodic review of the regulations in that Part required under the provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C., this 1st day of June 1979.

Pierre A. Chaloux,

Deputy Administrator, Veterinary Services.

[FR Doc. 79-17887 Filed 6-7-79; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 113

Standard Requirements; Avian Pox Vaccine Safety Test; Revision

AGENCY: Animal and Plant Health Inspection Service (USDA).

ACTION: Final rule.

SUMMARY: This amendment revises the standard requirement for avian pox vaccines by adding a new safety test for vaccines that are recommended for use in birds 10 days of age or younger. Since issuance of the present standard requirement, new products have been developed that are recommended for use in birds as young as 1 day of age. This amendment updates the present standard by adding a safety test to evaluate these new products.

EFFECTIVE DATE: This amendment becomes effective July 9, 1979.

FOR FURTHER INFORMATION CONTACT: Dr. R. J. Price, Biologics Licensing and Standards Staff, USDA, APHIS, VS, Room 827, Federal Building, Hyattsville, MD 20782, 301-436-8245.

SUPPLEMENTARY INFORMATION: The safety test provided in the present standard requirement for avian pox vaccines in § 113.161 was designed for the testing of vaccine that is recommended for use in birds 6 to 8 weeks of age. Since the issuance of this standard, new avian pox vaccines have been developed that are recommended for use in birds as young as 1 day of age. The safety test in the present standard has been found to be unsatisfactory for use in the evaluation of these new products, since it does not make provision for occasional deaths that are not attributable to the product that occur when conducting tests in birds less than 5 days of age. As a result, retests are frequently required.

This amendment provides a new two-stage safety test for these new products that is designed to be conducted in birds less than 5 days of age. This test provides a valid evaluation of safety and will result in less retesting of product than is required by the present standard.

Some editing changes are also being made for clarity and consistency in the safety test for products recommended for use in older birds.

On October 20, 1978, a notice of the proposed amendment to Part 113 was published in the Federal Register at 43 FR 49013.

Comments on this proposal were solicited and two responses were received. One response was favorable to the proposal as written. The other response contained suggestions that were considered appropriate and constructive. These suggestions have been incorporated in this final rule and are explained in the discussion of changes below.

After due consideration of all relevant matters, including the proposal set forth in the aforesaid notice, and pursuant to the authority contained in the Virus-Serum-Toxin Act of March 4, 1913 (21 U.S.C. 151-158), the amendment of Part 113, Subchapter E, Chapter I, Title 9 of the Code of Federal Regulations, as contained in the aforesaid notice is hereby adopted with the following exceptions:

In paragraph (d)(1)(i), "Twenty-five susceptible birds" has been changed to "Each of 25 susceptible birds." This editorial change has been made to clarify that the intent of this amendment is that each bird be inoculated with 10 doses of vaccine.

Editorial changes have also been made in paragraph (d)(1) (iii and (iv) by changing "vaccinated as recommended on the label with the equivalent of 10 doses" to "vaccinated with the equivalent of 10 doses of vaccine by each of all routes recommended on the label." This change reflects the language used in the present standard requirement and will clarify the intended method of administering the product for the test.

In the table for interpretation of results in paragraph (d)(1)(ii), "6 or less" has been changed to "5 or less." This change corrects an error in the proposed table, which would have resulted in the product being judged both satisfactory and unsatisfactory if six birds demonstrated severe clinical signs or death during the test period.

A printing error has been corrected in the heading for § 113.161 by capitalizing the first letter of each word.

1. The first letter in each word of the heading for § 113.161 is to be capitalized.

2. Section 113.161 is amended by revising paragraph (d)(1) to read:

§ 113.161 Avian Pox Vaccine.

* * * * *

(d) * * *

(1) *Safety test.* Final container samples of completed product from each serial shall be tested. Vaccines recommended for use in birds 10 days of age or younger shall be tested in accordance with paragraphs (d)(1) (i), (ii), and (iii) of this section.

(i) Each of 25 susceptible birds 5 days of age or younger, properly identified and obtained from the same source and hatch, shall be vaccinated with the equivalent of 10 doses of vaccine by each of all routes recommended on the label and observed each day for 14 days. Severe clinical signs or death shall be counted as failures. Two-stage sequential testing may be conducted if the first test (which then becomes stage one) has three failures.

(ii) The results shall be evaluated according to the following table:

Cumulative Totals

Stage	Number of birds	Failures for satisfactory serials	Failures for unsatisfactory serials
1	25	2 or less	4 or more.
2	50	5 or less	6 or more.

(iii) If unfavorable reactions occur which are not attributable to the product, the test shall be declared inconclusive and may be repeated or, in lieu thereof, the serial declared unsatisfactory.

(iv) Vaccines not recommended for use in birds 10 days of age or younger shall be tested for safety as follows:

Each of twenty-five 2- to 5-week-old, fowl-pox susceptible birds shall be vaccinated with the equivalent of 10 doses of vaccine by each of all routes recommended on the label and observed each day for 14 days. If any of the birds show severe clinical signs of disease or death during the observation period due to causes attributable to the product, the serial is unsatisfactory. If unfavorable reactions occur which are not attributable to the product, the test shall be declared inconclusive and may be repeated or, in lieu thereof, the serial declared unsatisfactory.

* * * * *

(21 U.S.C. 151 and 154, 37 FR 28477, 28646; 38 FR 19141.)

Done at Washington, D.C., this 4th day of June 1979.

Note.—This rule has been reviewed under the USDA criteria established to implement E.O. 12044, "Improving Government Regulations." Under those criteria, this action has been designated for Agency oversight. A Final Impact Analysis Statement has been prepared and is available from USDA, APHIS, VS, Room 827, Federal Building, Hyattsville, MD 20782.

Pierre A. Chaloux,

Deputy Administrator, Veterinary Services.

[FR Doc. 79-17821 Filed 6-7-79; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 212

[ERA-R-77-16]

Mandatory Petroleum Price Regulations; Adjustments to Lower and Upper Tier Crude Oil Price Ceilings to Reflect Impact of Inflation

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby issues Crude Oil Price Schedule No. 15 which provides for monthly increases in the ceiling prices for lower tier and upper tier crude oil. These increases will result in estimated first sale prices for the months of June, July, and August 1979 of $5.90, $5.94, and $5.98 per barrel (lower tier) and $13.15, $13.24, and $13.33 per barrel (upper tier), respectively. This action is intended to permit price increases that take into account the impact of inflation.

EFFECTIVE DATE: June 1, 1979.

FOR FURTHER INFORMATION CONTACT:

William L. Webb (Office of Public Information), Economic Regulatory Administration, 2000 M Street, N.W., Room B110, Washington, D.C., 20461, 202-634-2170.

Charles P. Little (Crude Oil Pricing Branch), Economic Regulatory Administration, 2000 M Street, N.W., Room 6128, Washington, D.C. 20461, 202-254-6296.

Ben McRae (Office of General Counsel), Department of Energy, 1000 Independence Avenue, SW., Room 6A-127; Washington, D.C. 20585, 202-252-6739.

SUPPLEMENTARY INFORMATION:

A. *Introduction.*
B. *Crude Oil Price Schedule No. 15.*

A. Introduction.

On February 27, 1979, we issued Crude Oil Price Schedule No. 14 (44 FR 12399, March 1, 1979). That schedule set forth the last in a series of price increases designed to implement part of the crude oil pricing policy as proposed in the National Energy Plan (NEP) issued by the President on April 20, 1977. That policy was to permit the prices for lower tier and upper tier crude oil to increase at no more than the rate of inflation through May 1979. We have not decided at this time to depart from that policy. Therefore, we are today issuing Crude Oil Price Schedule No. 15 which establishes ceiling prices for lower tier and upper tier crude oil for the months of June, July and August 1979 on the basis of the current rate of inflation.

B. Crude Oil Price Schedule No. 15.

Under Crude Oil Price Schedule No. 15 the May 1979 lower tier ceiling price (the May 15, 1973 posted price plus $2.17 per barrel, resulting in an average first sale price of approximately $5.86 per barrel), and the May 1979 upper tier price (the September 30, 1975 posted price plus $.39, resulting in an average first sale price of approximately $13.06 per barrel), are adjusted for inflation for June, July, and August 1979, based on the first revision of the GNP deflator published on May 21, 1979, which reflects an annual rate of inflation of 8.8 percent.

1. *Lower Tier Ceiling Prices*

Adjustments to ceiling prices for lower tier crude oil and the approximate average first sale prices pursuant to those ceiling prices in June, July, and August 1979 are determined pursuant to the following methodology:

A. ERA has computed a monthly adjustment factor of .00705 which when applied over a twelve-month period yields an effective annual rate of adjustment of 8.8 percent.
B. June 1979 adjustment = ($5.86) (.00705) per barrel = $.041 per barrel rounded to $.04 per barrel
C. July 1979 adjustment = ($5.86 + .04) (.00705) per barrel = $.042 per barrel rounded to $.04 per barrel
D. August 1979 adjustment = ($5.86 + .04 + .04) (.00705) per barrel = $.042 per barrel rounded to $.04 per barrel

Based upon the monthly adjustments computed above, estimated average lower tier ceiling prices for the months of June, July, and August 1979 are computed as follows:

June 1979 = $5.86 + .04 = $5.90
July 1979 = $5.90 + .04 = $5.94
August 1979 = $5.94 + .04 = $5.98

Using an average highest posted field price on May 15, 1973 of $3.69 per barrel and the monthly adjustments as computed above, lower tier prices for the next 3 months have been determined as follows:

Month	Ceiling price	Price[1]
June 1979	May 15, 1973 highest posted field price plus $2.21.	$5.90
July 1979	May 15, 1973 highest posted field price plus $2.25.	5.94
August 1979	May 15, 1973 highest posted field price plus $2.29.	5.98

[1] Estimated average first sale price.

2. *Upper Tier Ceiling Prices*

Adjustments to ceiling prices for upper tier crude oil and the approximate average first sale prices pursuant to those ceiling prices in June, July, and August 1979 are determined pursuant to the following methodology:

A. Adjustment factor (explained above) = .00705
B. June 1979 adjustment = ($13.06) (.00705) per barrel = $.092 per barrel rounded to $.09 per barrel
C. July 1979 adjustment = ($13.06 + .09) (.00705) per barrel = $.093 per barrel rounded to $.09 per barrel
D. August 1979 adjustment = ($13.06 + .09 + .09) (.00705) per barrel = $.093 per barrel rounded to $.09 per barrel

Based upon monthly adjustments computed above, estimated average upper tier ceiling prices for the months of June, July, and August 1979 are computed as follows:

June 1979 = $13.06 + $.09 = $13.15
July 1979 = $13.15 + $.09 = $13.24
August 1979 = $13.24 + $.09 = $13.33

Using an average highest posted field price on September 30, 1975 of $12.67 per barrel and the monthly adjustments as computed above, upper tier prices for the next 3 months have been determined as follows:

Month	Ceiling price	Price [1]
June 1979	September 30, 1975 highest posted field price plus $0.48.	$13.15
July 1979	September 30, 1975 highest posted field price plus $0.57.	13.24
August 1979	September 30, 1975 highest posted field price plus $0.66.	13.33

[1] Estimated average first sale price.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, as amended, Pub. L. 93–511, Pub. L. 94–99, Pub. L. 94–133, Pub. L. 94–163, and Pub. L. 94–385; Federal Energy Administration Act of 1974, Pub. L. 93–275, as amended, Pub. L. 94–385; Energy Policy and Conservation Act, Pub. L. 94–163, as amended, Pub. L. 94–385; E.O. 11790, 39 FR 23185; Department of Energy Organization Act, Pub. L. 95–91; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, Part 212 of Chapter II of Title 10 of the Code of Federal Regulations is amended as set forth below, effective June 1, 1979.

Issued in Washington, D.C., June 1, 1979.

Richard B. Hersog,

Acting Administrator, Economic Regulatory Administration.

Section 212.77 is amended in the Appendix to add Schedule No. 15 of Monthly Price Adjustments, as follows:

§ 212.77 Adjustments to Ceiling Prices.

* * * * *

Appendix

* * * * *

Schedule No. 15 of Monthly Price Adjustments

[Effective June 1, 1979]

Month	Lower tier, May 15, 1973, posted price [1] (plus)	Upper tier, Sept. 30, 1975, posted price [2] (plus)
1976:		
February	1.35	−1.32
March	1.38	−1.25
April	1.41	−1.18
May	1.45	−1.11
June	1.48	−1.05
July	1.48	−1.05
August	1.48	−1.05
September	1.48	−1.05
October	1.48	−1.05
November	1.48	−1.05
December	1.48	−1.05
1977:		
January	1.48	−1.25
February	1.48	−1.25
March	1.48	−1.70
April	1.48	−1.70
May	1.48	−1.70
June	1.48	−1.70
July	1.48	−1.70
August	1.48	−1.70
September	1.51	−1.44
October	1.54	−1.18
November	1.57	−.92
December	1.59	−.67

Schedule No. 15 of Monthly Price Adjustments—Continued

[Effective June 1, 1979]

Month	Lower tier, May 15, 1973, posted price [1] (plus)	Upper tier, Sept. 30, 1975, posted price [2] (plus)
1978:		
January	1.81	−.62
February	1.83	−.77
March	1.86	−.71
April	1.89	−.65
May	1.72	−.59
June	1.75	−.52
July	1.78	−.45
August	1.81	−.39
September	1.86	−.26
October	1.91	−.17
November	1.96	−.09
December	1.99	.01
1979:		
January	2.02	.06
February	2.05	.15
March	2.09	.23
April	2.13	.31
May	2.17	.39
June	2.21	.48
July	2.25	.57
August	2.29	.66

[1] The price referred to in 10 CFR 212.73(c)(1) or in 212.73(c)(1), 212.73(c)(3), and 212.73(c)(4).
[2] The price referred to in 10 CFR 212.74(b)(1).

This schedule of monthly price adjustments was issued by the Economic Regulatory Administration on June 1, 1979, pursuant to 10 CFR 212.77. It restates without change the lower and upper tier price ceilings applicable to crude oil produced and sold in the months of February 1976 through May 1979, as determined under 10 CFR 212.73, 212.74, and 212.77. Both lower tier and upper tier ceiling prices, which were increased under Schedule No. 14 effective March 1, 1979, are further indicated in this schedule, effective June 1, 1979.

This schedule is effective only through August 31, 1979.

[FR Doc. 79-17844 Filed 6-5-79; 2:22 pm]

BILLING CODE 6450-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 207

[Regulation ER-1126, Amdt. 18; Docket 30654]

Charter Trips and Special Services; Elimination of Charter Tariffs

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., May 31, 1979.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB is eliminating charter tariff filing requirements. This is a conforming amendment to that rule, governing charter flights by U.S. airlines that have scheduled route authority.

DATES: Adopted: May 31, 1979. Effective: May 31, 1979.

Charter tariffs now on file with the Board may remain in effect until September 6, 1979.

FOR FURTHER INFORMATION CONTACT: Mark S. Kahan, Office of the General Counsel, Pricing and Entry Division, C.A.B., 1825 Connecticut Ave., N.W., Washington, D.C. 20428; 202–673–5205.

SUPPLEMENTARY INFORMATION: In ER–1125, also issued today, the Board is eliminating charter tariff filing requirements. Supplementary information is set out in that rule. Since this conforming amendment relieves a restriction and creates no additional burden, the Board finds that it may be effective immediately.

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 207, *Charter Trips and Special Services*, as follows:

1. The Table of Contents is amended by redesignating § 207.4, adding new §§ 207.18 and 207.19 and deleting and reserving § 207.51, *Terms of service*, to read:

Part 207—CHARTER TRIPS AND SPECIAL SERVICES

Subpart A—General Provisions

Sec.

* * * * *

207.4 Payments to persons receiving commissions.

* * * * *

207.18 Baggage liability.

207.19 Transportation of persons who may need help during aircraft evacuation.

* * * * *

Subpart C—Provisions Relating to Single Entity Charters

* * * * *

207.51 [Reserved]

* * * * *

2. Section 207.4 is amended to read:

§ 207.4 Payments to persons receiving commissions.

Payments for a U.S.-originating charter flight made to any person to whom the carrier, directly or indirectly, has paid a commission or has agreed to pay a commission for that flight shall be considered payments to the carrier.

§ 207.4a [Amended]

3. In § 207.4a, *Written contracts with charterers*, paragraph (b) is revoked and paragraphs (a) (1) through (a) (7) are redesignated as paragraphs (a) through (g).

§ 207.13 [Amended]

4. In § 207.13, *Terms of Service*, paragraph (a) is revoked and reserved.

5. A new § 207.18 is added, to read:

§ 207.18 Baggage liability.

Air carriers shall not limit their baggage liability for interstate and overseas charter flights except as set forth in the following Board orders and any subsequent amendments of them: Order 77–2–9, dated February 2, 1977; Order 77–4–94, dated April 20, 1977; and Order 77–9–80, dated September 20, 1977. The tariff-filing requirements of those orders shall not apply. The orders are obtainable on request from the Publications Services Division, Civil Aeronautics Board, Washington, D.C. 20428.

6. A new § 207.19 is added, to read:

§ 207.19 Transportation of persons who may need help during aircraft evacuation.

Except as set forth in Part 121 of the Federal Aviation Regulations (14 CFR Part 121), air carriers shall not limit the availability, upon reasonable request, of air transportation and related services to a person who may require help from another person in expeditiously moving to an emergency exit for evacuation of an aircraft.

7. In § 207.23 "as set forth in the carrier's charter tariff on file with the Board" is deleted, so that the section reads:

§ 207.23 Agent's commission.

The carrier shall not pay its agent a commission or any other benefits, directly or indirectly, in excess of 5 percent of the total charter price, or more than the commission related to charter flights paid to an agent by a carrier certificated to render regular service on the same route, whichever is greater. The carrier shall not pay any commission whatsoever to an agent if the agent receives a commission from the charterer for the same service.

§ 207.51 [Revoked and Reserved]

8. In Subpart C, § 207.51 is revoked and reserved.

9. In the Statement of Supporting Information appended to Part 207, item #5 of Part I is amended to read:

PART I—TO BE COMPLETED BY AIR CARRIER * * *

* * * * *

5. Total charter price————.

* * * * *

(Sections 102, 204, 403, and 416 of the Federal Aviation Act of 1958, as amended by Pub. L. 95–504, 72 Stat. 740, 743, 758, 771, 92 Stat. 1731, 1732; 49 U.S.C. 1302, 1324, 1373, and 1386.)

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-17918 Filed 6-7-79; 8:45 am]

BILLING CODE 6320-01-M

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14 CFR Part 208

[Regulation ER-1127; Amdt. 17, Docket 30664]

Terms, Conditions, and Limitations of Certificates To Engage in Charter Air Transportation; Elimination of Charter Tariffs

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. May 31, 1979.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB is eliminating charter tariff filing requirements. This is a conforming amendment to that rule, governing charter flights by U.S. charter air carriers.

DATES: Adopted: May 31, 1979. Effective: May 31, 1979. Charter tariffs now on file with the Board may remain in effect until September 6, 1979.

FOR FURTHER INFORMATION CONTACT: Mark S. Kahan, Office of the General Counsel, Pricing and Entry Division, C.A.B., 1825 Connecticut Ave., N.W., Washington, D.C. 20428; 202–673–5205.

SUPPLEMENTARY INFORMATION: In ER–1125, also issued today, the Board is eliminating charter tariff filing requirements. Supplementary information is set out in that rule. Since this conforming amendment relieves a restriction and creates no additional burden, the Board finds that it may be effective immediately.

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 208, *Terms, Conditions, and Limitations of Certificates to Engage in Supplemental Air Transportation*, as follows:

1. The Title and Table of Contents are amended by changing "Supplemental" to "Charter", by deleting "and Tariffs" from the third subheading of Subpart A, by adding new §§ 208.30 and 208.31, and by revising §§ 208.103 and 208.301, to read:

PART 208—TERMS, CONDITIONS, AND LIMITATIONS OF CERTIFICATES TO ENGAGE IN CHARTER AIR TRANSPORTATION

Subpart A—General Provisions

Sec.

* * * * *

Operations

208.30 Baggage liability.

208.31 Transportation of persons who may need help during aircraft evacuation.

* * * * *

Subpart B—Provisions Relating to Military Charters

* * * * *

208.103 Terms of service.

* * * * *

Subpart D—Provisions Relating to Single Entity Charters

* * * * *

208.301 Terms of service.

* * * * *

2. A new § 208.30 is added, to read:

§ 208.30 Baggage liability.

Air carriers shall not limit their baggage liability for interstate and overseas charter flights except as set forth in the following Board orders and any subsequent amendments of them: Order 77–2–9, dated February 2, 1977; Order 77–4–94, dated April 20, 1977; and Order 77–9–80, dated September 20, 1977. The tariff-filing requirements of those orders shall not apply. The orders are obtainable on request from the Publications Services Division, Civil Aeronautics Board, Washington, D.C. 20428.

3. A new § 208.31 is added, to read:

§ 208.31 Transportation of persons who may need help during aircraft evacuation.

Except as set forth in Part 121 of the Federal Aviation Regulations (14 CFR Part 121), air carriers shall not limit the availability, upon reasonable request, of air transportation and related services to a person who may require help from another person in expeditiously moving to an emergency exit for evacuation of an aircraft.

§ 208.31b [Amended]

4. In § 208.31b, *Written contract with charterers*, paragraph (b) is revoked and the designation "(a)" is removed from paragraph (a) so that that paragraph becomes the entire section.

5. In § 208.32, the title is amended, paragraphs (a) and (b) are revoked and reserved, and paragraph (c) is amended, to read:

§ 208.32 Terms of service.

(a) [Reserved]

(b) [Reserved]

(c) Payments for a U.S.-originating charter flight made to any person to whom the carrier, directly or indirectly, has paid a commission or has agreed to pay a commission for that flight shall be considered payments to the carrier.

* * * * *

6. In § 208.32a, the first sentence is replaced by two new sentences, to read:

§ 208.32a Flight delays and substitute air transportation (foreign).

Charter air carriers shall comply with the following requirements for passenger service in foreign air transportation. These requirements shall be without prejudice and in addition to any other rights or remedies of passengers under applicable law:

* * * * *

7. In § 208.33, the first sentence is replaced by two new sentences and paragraph (d) is amended to read:

§ 208.33 Flight delays and substitute air transportation (interstate and overseas).

Charter air carriers shall comply with the following requirements for passenger service in interstate and overseas transportation. These requirements shall be without prejudice and in addition to any other rights or remedies of passengers under applicable law:

* * * * *

(d) The requirements in paragraphs (a), (b), and (c) of this section for immediate refunds or alternative transportation shall not apply to the extent that there is an unavoidable delay due solely to weather.

8. In Subpart B, *Provisions Relating to Military Charters*, § 208.103 is amended to read:

§ 208.103 Terms of service.

The provisions of § 208.32(d) shall apply to charters under this subpart.

9. In § 208.202, "as set forth in the carrier's charter tariff on file with the Board" is deleted, so that the section reads:

§ 208.202 Agent's commission.

The carrier shall not pay its agent a commission or any other benefits, directly or indirectly, in excess of 5 percent of the total charter price, or more than the commission related to charter flights paid to an agent by a carrier certificated to render regular service on the same route, whichever is greater. The carrier shall not pay any commission whatsoever to an agent if the agent receives a commission from the charterer for the same service.

10. In Subpart D, *Provisions Relating to Single Entity Charters*, § 208.301 is amended to read:

§ 208.301 Terms of service.

The provisions of §§ 208.32(c) and (d) shall apply to charters under this subpart.

11. In the Statement of Supporting Information appended to Part 208, item #5 of Part I is amended to read:

Statement of Supporting Information

PART I—TO BE COMPLETED BY AIR CARRIER * * *

* * * * *

5. Total charter price ————.

* * * * *

(Sections 102, 204, 403, and 416 of the Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 740, 743, 758, and 771, 92 Stat. 1731, 1732; 49 U.S.C. 1302, 1324, 1373, and 1386)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-17917 Filed 6-7-79; 8:45 am]

BILLING CODE 6320-01-M

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14 CFR Part 212

[Regulation ER-1128; Amdt. 27; Docket 20054]

Charter Trips by Foreign Air Carriers; Elimination of Charter Tariffs

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. May 31, 1979.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The C.A.B. is eliminating charter tariff filing requirements. This is a conforming amendment to that rule, governing charter flights by foreign air carriers with route authority.

DATES: Adopted: May 31, 1979. Effective: May 31, 1979. Charter tariffs now on file with the Board may remain in effect until September 6, 1979.

FOR FURTHER INFORMATION CONTACT: Mark S. Kahan, Office of the General Counsel, Pricing and Entry Division, C.A.B., 1825 Connecticut Ave., N.W., Washington, D.C. 20428; 202-673-5205.

SUPPLEMENTARY INFORMATION: In ER-1125, also issued today, the Board is eliminating charter tariff filing requirements. Supplementary information is set out in that rule. Since this conforming amendment relieves a restriction and creates no additional burden, the Board finds that it may be effective immediately.

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 212, *Charter Trips by Foreign Air Carriers*, as follows:

1. The Table of Contents is amended by redesignating § 212.3 and deleting and reserving § 212.51, *Terms of service*, to read:

PART 212—CHARTER TRIPS BY FOREIGN AIR CARRIERS

Subpart A—General Provisions

Sec.

* * * * *

§ 212.3 Payments to persons receiving commissions.

* * * * *

Subpart C—Provisions Relating To Single Entity Charters

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212.51 [Reserved]

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2. Section 212.3 is amended to read:

§ 212.3 Payments to persons receiving commissions.

Payments for a U.S.-originating charter flight made to any person to whom the carrier, directly or indirectly, has paid a commission or has agreed to pay a commission for that flight shall be considered payments to the carrier.

§ 212.3a [Amended]

3. In § 212.3a, *Written contracts with charterers*, paragraph (b) is revoked and paragraphs (a)(1) through (a)(7) are redesignated as paragraphs (a) through (g).

§ 212.10 [Amended]

4. In § 212.10, *Terms of service*, paragraph (a) is revoked and reserved.

5. In § 212.23, "as set forth in the carrier's charter tariff on file with the Board" is deleted, so that the section reads:

§ 212.23 Agent's commission.

The carrier shall not pay its agent a commission or any other benefits directly or indirectly, in excess of 5 percent of the total charter price, or more than the commission related to charter flights paid to an agent by a carrier certificated to render regular service on the same route, whichever is greater. The carrier shall not pay any commission whatsoever to an agent if the agent receives a commission from the charterer for the same service.

§ 212.51 [Reserved]

6. In Subpart C, § 212.51, *Terms of service*, is revoked and reserved.

7. In the Statement of Supporting Information appended to Part 212, item #5 of Part I is amended to read:

Statement of Supporting Information

PART I—TO BE COMPLETED BY AIR CARRIER * * *

* * * * *

5. Total charter price ————.

* * * * *

(Sections 102, 204, 403, and 416 of the Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 740, 743, 758, and 771, 92 Stat. 1731, 1732; 49 U.S.C. 1302, 1324, 1373, and 1386)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-17618 Filed 6-7-79; 8:45 am]

BILLING CODE 6320-01-M

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14 CFR Part 214

[Regulation ER-1129; Amdt. 25; Docket 30654]

Terms, Conditions, and Limitations of Foreign Air Carrier Permits Authorizing Charter Transportation Only; Elimination of Charter Tariffs

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., May 31, 1979.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The C.A.B. is eliminating charter tariff filing requirements. This is a conforming amendment to that rule, governing charter flights by foreign charter-only carriers.

DATES: Adopted: May 31, 1979. Effective: May 31, 1979. Charter tariffs now on file with the Board may remain in effect until September 6, 1979.

FOR FURTHER INFORMATION CONTACT: Mark S. Kahan, Office of the General Counsel, Pricing and Entry Division, C.A.B., 1825 Connecticut Ave., N.W., Washington, D.C. 20428; 202-673-5205.

SUPPLEMENTARY INFORMATION: In ER-1125, also issued today, the Board is eliminating charter tariff filing requirements. Supplementary information is set out in that rule. Since this conforming amendment relieves a restriction and creates no additional burden, the Board finds that it may be effective immediately.

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 214, *Terms, Conditions, and Limitations of Foreign Air Carrier Permits Authorizing Charter Transportation Only*, as follows:

1. The Table of Contents is amended by revising § 214.13 and deleting and reserving § 214.41, *Terms of service*, to read:

PART 214—TERMS, CONDITIONS, AND LIMITATIONS OF FOREIGN AIR CARRIER PERMITS AUTHORIZING CHARTER TRANSPORTATION ONLY

Subpart A—General Provisions.

Sec.

* * * * *

214.13 Payments to persons receiving commissions.

* * * * *

Subpart B—Provisions Relating to Single Entity Charters

* * * * *

214.41 [Reserved]

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§ 214.6 [Amended]

2. In § 214.6, *Record retention*, paragraph (b) is revoked and reserved.

3. Section 214.13 is amended to read:

§ 214.13 Payments to persons receiving commissions.

Payments for a U.S.-originating charter flight made to any person to whom the carrier, directly or indirectly, has paid a commission or has agreed to pay a commission for that flight shall be considered payments to the carrier.

§ 214.13a [Amended]

4. In § 214.13a, *Written contracts with charterers*, paragraph (b) is revoked and paragraphs (a)(1) through (a)(7) are redesignated as paragraphs (a) through (g).

§ 214.14 [Amended]

5. In § 214.14, *Terms of service*, paragraph (a) is revoked and reserved.

6. In § 214.15, "as set forth in the carrier's charter tariff on file with the Board" is deleted, so that the section reads:

§ 214.15 Agent's commission.

The carrier shall not pay its agent a commission or any other benefits, directly or indirectly, in excess of 5 percent of the total charter price, or more than the commission related to charter flights paid to an agent by a carrier certificated to render regular service on the same route, whichever is greater. The carrier shall not pay any commission whatsoever to an agent if the agent receives a commission from the charterer for the same service.

§ 214.41 [Reserved]

7. In Subpart B, § 214.41, *Terms of service*, is revoked and reserved.

8. In the Statement of Supporting Information appended to Part 214, item #5 of Part I is amended to read:

Statement of Supporting Information

PART I—TO BE COMPLETED BY AIR CARRIER * * *

* * * * *

5. Total charter price ————————.

* * * * *

(Sections 102, 204, 403, and 416 of the Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 740, 743, 758, and 771, 92 Stat. 1731, 1732; 49 U.S.C. 1302, 1324, 1373 and 1386)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-17619 Filed 6-7-79; 8:45 am]

BILLING CODE 6320-01-M

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14 CFR Part 221

[Regulation ER-1125; Amendment No. 50; Docket 30654]

Construction, Publication, Filing and Posting of Tariffs of Air Carriers and Foreign Air Carriers; Elimination of Charter Tariffs

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., May 31, 1979.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: Air carriers and foreign air carriers must generally file tariffs with the CAB showing their rates, fares and charges (as well as practices affecting their rates, fares and charges). This rule exempts air carriers and foreign air carriers from having to file tariffs for their charter flights. It is in response to a petition for institution of a rulemaking filed by the National Air Carrier Association. The CAB is also keeping this docket open for answers on the question of eliminating the tariff filing requirement for operators or Overseas Military Personnel Charters.

DATES: Adopted: May 31, 1979. Effective: May 31, 1979. Charter tariffs now on file with the Board may remain in effect until September 6, 1979.

FOR FURTHER INFORMATION CONTACT: Mark S. Kahan, Office of the General Counsel, Pricing and Entry Division, C.A.B., 1825 Connecticut Ave., N.W., Washington, D.C. 20428; 202-673-5205.

SUPPLEMENTARY INFORMATION: In response to a petition by the National Air Carrier Association (NACA), the Board instituted this rulemaking to consider relieving air carriers from filing rates tariffs for their domestic and overseas charter flights, both passenger and cargo.[1] Concluding that it did not have legal authority to exempt foreign air carriers, the Board rejected NACA's request that the rule cover foreign charters as well.[2] The notice called for

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[1] EDR-502/SPDR-68, 42 FR 43169, August 26, 1977. NACA is acting as attorney-in-fact for: Evergreen International Airlines, Inc.; McCulloch International Airlines, Inc.; Overseas National Airways, Inc.; Trans International Airlines, Inc.; and World Airways, Inc.

[2] The Board feared that exempting air carriers from filing tariffs for their foreign charters would give them an unfair advantage over their foreign competitors.

comments on the nature of the charter market and the need for tariffs. In addition, it specifically invited comment on the need for filing charter rules tariffs.[3] Comments were received from NACA, the Board's former Office of the Consumer Advocate (OCA) and various scheduled air carrier's [4] and tour operators.[5]

The scheduled carriers, ALSG and Maritz, Inc., all opposed the rule. The principal legal argument raised by these parties is that elimination of the tariff filing requirement would make it impossible for the Board to enforce the prohibition in Section 404 of the Federal Aviation Act against unjust and discriminatory rates.[6] They also essentially agreed on the economics of the charter market. They argued that charterers and air carriers have grossly disparate bargaining power; and that the tariff filing requirement is the only tool that helps redress that imbalance. In the absence of tariffs, only the large charterers, offering the inducement of volume, would be able to negotiate favorable contracts. The industry would become concentrated in the hands of the large carriers and tour operators, with no benefits being passed on to the consumer. The claim made by proponents of the proposed rule—that barriers to entry are significantly lower in the charter, as compared to the scheduled market—simply is not true; a free competitive market is not the reality for either one. Southern claimed that the large carriers will offer below-cost contracts on their small craft, thereby driving the small carriers out of business, and make up the profit on their large planes. The carrier feared that an impending charter capacity shortage will permit the large carriers to take advantage of the situation to squeeze profits. Frontier contended that, without tariffs, the scheluled carriers will not be able to respond quickly to low charter rates offered over their routes; the consumer will thus lose the benefit of certain deep discount fares.

Proponents of the proposed rule rejected the above characterization of the charter market. They claimed that tariffs do virtually nothing to redress the economic imbalance between charterer and carrier; that the tariff merely memorializes the terms of a previously negotiated contract; and that the carrier in nearly all cases retains the right unilaterally to increase the contract price when it files the tariff. At the same time, the tariff impedes negotiating flexibility and prevents the parties from responding to a change in circumstances within thirty days of the scheduled date of departure. While producing an almost exclusively negative effect on the market, tariffs impose large financial and time burdens on both the carriers and the Board.

Not all those who supported the proposed rule agreed that rules tariffs should also be eliminated. OCA believed that the rules portion of the tariff is an important consumer protection device. Since the passenger has no part in the negotiations, charter contracts might fail to make provision for such individual concerns as carrier liability for baggage damage. Suntours also favored retention of tariff rules. Like the tour operators who opposed the rule in its entirety, Suntours' principal concern was that, absent regulation, carriers will use their superior bargaining position to negotiate "Draconian" cancellation penalties.

As a final matter, Davis Agency asked that we also exempt indirect air carriers from filing tariffs for overseas military personnel charters (OMPC'S). This is the only type of charter for which the operator must still file a tariff. Davis argued that this is an anomalous situation and that no one has demonstrated a sound basis for the difference in treatment.

Supplemental Notice

In response to a comment by NACA that the Board does have legal authority to exempt foreign air carriers, we issued a Supplemental Notice of Proposed Rulemaking.[7] We called for comments on our authority over foreign carriers and we proposed to eliminate rules tariffs. We asked for suggestions on how to maintain minimum levels of consumer protection in the absence of tariffs. We further stated: "Along this line, if we adopt this rule, we specifically propose to adopt a rule requiring charter carriers to comply with the baggage liability rules set forth in Docket 27589, the *Domestic Baggage Liability Rules Investigation.*" Comments on the supplemental notice were received from NACA; American; United; Maritz, Inc.; Davis Agency; Pan American World Airways; British Airways; International Aviation Services d/b/a IAS Cargo Airlines (IAS); and Japan Air Lines Company (JAL).[8]

American, United, Maritz, Inc. and Davis basically repeated their earlier positions, with Davis claiming that the expanded scope of the revised rule argues even more strongly for elimination of the OMPC tariff filing requirement. Pan Am, British Airways, JAL and IAS addressed themselves both to the legal issue of the Board's authority to exempt foreign carriers [9] and to the broader economic and policy questions involving the nature of the charter market. JAL argued that the proposed rule would help erase the distinction between charter and scheduled services; the result would be a price war which would hurt the consumer. British Airways agreed that the charter carriers are being given an unfair advantage—especially in the cargo market, where charter and scheduled carriers compete directly for business. IAS claimed that it is in the cargo area that the rule is most needed; the average cargo charterer is a sophisticated shipper, aware of the going rates in his market, who does not need the so-called protection of tariffs.

Pan Am stated that elimination of rules tariffs would lead to gross discrimination in the terms and liabilities incorporated in the various charter contracts. NACA reversed its earlier position and came to support retention of the rules portion of tariffs. It claimed that any alternative consumer protection device would impose as great a burden on the carriers. It asked the Board to make clear that cancellation penalties are rates-related and, therefore, would not be subject to tariff filing.

After considering the legal and policy arguments contained in the pleadings, we have decided to adopt the rule as set forth in our Supplemental Notice of Proposed Rulemaking. We will exempt carriers from any tariff filing requirements for all charter operations.

Legal Authority for Exemption

Our earlier concerns about the legal predicate for the proposed rule have been mooted by enactment of the Airline Deregulation Act of 1978.[10] Specifically, Section 416(b) of the Federal Aviation Act has been amended: (1) to eliminate the requirement of finding an undue burden

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[3] Rules tariffs describe the terms and conditions of transportation. They include such things as baggage liability, conditions for cancellation, and service of food and alcoholic beverages.

[4] Southern Airways; United Air Lines; Frontier Airlines; Northwest Airlines; and American Airlines.

[5] Suntours Limited; American Express Company; Davis Agency; Air Charter Tour Operators of America; Del E. Webb World Travel Company; United Buying Service Travel; The American Leadership Study Groups (ALSG); and Maritz, Inc.

[6] These parties made a second legal argument—*i.e.*, that there is no undue burden associated with filing tariffs such as would justify the use of the Board's exemption power. As will be discussed below, this argument is now moot.

[7] EDR-388A/SPDR-69A, 43 FR 20932, May 12, 1978.

[8] Of all these commenters, only NACA, Davis and IAS supported any part of the proposed rule.

[9] See *infra*, at p. 6.

[10] P.L. 95-504, October 24, 1978.

on an air carrier to justify the exemption; and (2) to extend the Board's exemption authority to all persons.[11] The new Section 416(b) reads as follows:

> Except as provided in paragraph (2) of this subsection, the Board, from time to time and to the extent necessary, may exempt from the requirements of this title or any provision thereof, . . . any person or class of persons if it finds that the exemption is consistent with the public interest.[12]

This new language makes clear that—once we have found the proposed exemption to be in the public interest—we may extend it to any class of carriers which fits our public interest analysis.

We have also considered the position that we cannot legally exempt carriers from their filing requirements under Section 403 of the Act without also abrogating our duty to enforce the Section 404 requirement that carriers charge just and reasonable rates. We do not find that argument persuasive. In *FPC* v. *Texaco*,[13] the Supreme Court stated that a regulatory agency is free to use indirect means of regulation, so long as statutory objectives are preserved. Tariff filing is not a legally indispensable element of rate regulation.

As we discussed in considering our new general rules for all-cargo carriers,[14] tariffs are not a very effective means of ferreting out unreasonable and discriminatory rates. In that context we stated:

> . . . as a practical matter, most investigations of discriminatory rates begin not as a result of our monitoring of the carriers' tariffs, but in response to complaints from disadvantaged shippers, or competing carriers, who have learned of the rates they wish to complain against by word-of-mouth, not be reviewing our tariff files.[15]

We also find that we will be able to maintain surveillance over rates through the mechanism of the charter prospectus. The Public Charter rule[16] requires the filing of a prospectus which includes the charter price. Similarly, all carriers performing charters must file quarterly reports showing revenues received for each flight.[17] By these means, we will be able continually to monitor the rates being charged for charter flights, and will be able to take whatever steps might be necessary to redress unreasonable or discriminatory charges.

It must be emphasized, as we pointed out in EDR–332, that the board has in the past intervened to suspend charter prices most infrequently, even during periods in which general fare regulation was at its most intrusive. This situation reflects a long-held perception, not seriously challenged by the comments, that the competitive posture of charter carriers, and particularly the need to keep their rates well below those of scheduled carriers which we do regulate pervasively, precludes excessive charges. Rates-of-return earned by charter operations in the past have not been excessive, nor are they now. Our surveillance over their financial results and condition will remain without change. These considerations suggest that our regulatory scheme for charters, even with the exemption requested here, is more protective of consumers' interests than the indirect regulation approved, in principle, in *FPC* v. *Texaco*, supra. It is, moreover, entirely consistent with our clear statutory mandate[18] to rely first and foremost on actual and potential competition to foster optimum price and service options.

Economic Need for Tariffs

After considering all the comments filed in response to our notices of proposed rulemaking, we have concluded that it is in the public interest to exempt carriers from filing charter tariffs. The exemption covers all passenger and cargo charter flights of both foreign and domestic carriers.

Our conclusion does not indicate a lack of concern for the alleged instability and concentration of the charter market which some have claimed will result from the proposed rule. It is, rather, that the opponents have not produced persuasive evidence that those threatened evils will materialize. There are hundreds of tour operators in the United States. No commenter has marshalled any data to show that the elimination of tariffs will concentrate the industry in the hands of a few powerful giants. The comments submitted disagree radically on the nature of the charter market; these disagreements exist not only between scheduled and charter carriers, but even among the various tour operators. On the other hand, the burden that tariffs impose on the carriers is clear. Absent convincing evidence that harm will result, we find it in the public interest to eliminate that burden.

We have, in numerous other contexts, discussed and rejected the position that deregulation will open the airline industry to destructive, predatory competition.[19] If anything, we find less merit in this argument when applied to the charter industry where barriers to entry are lower.[20] Even should we prove wrong, however, we still retain ample authority to deal with predation and other methods of unfair competition if and when they materialize.[21]

The recent passage of the Deregulation Act contributes to this conclusion. Under the terms of the Act, domestic tariffs will be abolished by 1983. We believe that the charter industry is a good place to begin the gradual deregulation that Congress has mandated. There is widespread sentiment that charter tariffs are unnecessary; the charter market is more competitive than its scheduled counterpart; and the direct consumers are not individuals, but knowledgeable businesses with the economic strength to engage in arm's-length bargaining with the carrier.[22]

Rules Tariffs

We have reached the same conclusion regarding the rules portion of charter tariffs. The same considerations of increasing flexibility and giving greater range to the negotiations of the parties involved have led us to this decision. Also, as the comments indicate, there is great disagreement about where the line between rates and rules tariffs actually exists. Elimination of all charter tariff filing requirements will give the charterers the flexibility they seek, without opening the door to future litigation over whether a particular provision is a rate or a rule.

We remain concerned about protecting the rights of the passenger-consumer. The comments which we received on this specific issue indicate that the principal area for concern is over liability for baggage damage. As no one has taken exception to the course of action proposed in EDR–332A,[23] we will make final our plan to require charter carriers to comply with the rules set

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[11] The predecessor section authorized the Board to exempt only domestic air carriers.

[12] 49 U.S.C. § 1386(b)(1). Paragraph (2) contains exceptions to the exemption power in the case of certain labor legislation.

[13] 417 U.S. 380 (1974).

[14] 14 CFR Part 291.

[15] EDR–308, 43 FR 33723, August 1, 1978.

[16] 14 CFR Part 380.

[17] 14 CFR Part 217 applies to foreign air carriers. Domestic air carriers are governed by 14 CFR 241 (Section 25, Schedule T–6).

[18] See Sections 102(a)(3) and (4) and 1002(e)(5) of the Act.

[19] *See, e.g., Transcontinental Low-Fare Route Proceeding*, Order 78–1–76; *Oakland Service Investigation*, Order 78–4–121, pp. 30–32; *Chicago-Midway Low-Fare Route Proceeding*, Order 78–7–40; Improved *Authority to Wichita Case*, Order 78–12–108; *Las Vegas-Dallas/Fort Worth Case*, Order 78–7–116; and *Philadelphia-Bermuda Nonstop Proceeding*, Order 78–12–122.

[20] See *Oakland Service Case*, supra, at p. 31.

[21] See, *e.g.*, Section 411 of the Federal Aviation Act and Section II of the Sherman Act. Order 78–1–101; Order 78–12–108; Order 78–7–116.

[22] See General Rules for All-Cargo Carrier, ER–1060, 43 FR 53929, November 18, 1978.

[23] See supra, at p. 1.

forth in the *Domestic Baggage Liability Rules Investigation*, Docket 27588.

Similarly, we do not intend the elimination of charter tariffs to affect carriers' duty to carry handicapped persons. Relevant aspects of Section 221.36(a)(8), which requires the filing of rules tariffs governing carriage of persons who may need assistance in moving to an emergency exit during an aircraft evacuation, are therefore also preserved in new sections that are being added to Parts 207 and 208. Section 221.36(a)(8) is not itself being deleted, however, because it continues to apply to tariffs for scheduled service.

Overseas Military Personnel Charters

We will not act on the Davis Agency's request to exempt charter operators from filing tariffs for OMPC's. Since its request was contained in a comment to which responses were not contemplated, there would be severe problems with notice and fairness in promulgating a final rule at this time. We have in the past found important distinctions between military and other charters; we would have to allow public comment before changing current regulations. We will, however, treat Davis's comment as a petition to institute a rulemaking and will keep this docket open for 30 days for the filing of answers in accordance with 14 CFR Section 302.38(a).

The Rule

This rule amends 14 CFR Part 221, the basic tariff regulation. Conforming amendments of Parts 207, 208, 212, 214, 372, and 380 are set out in ER–1125 through ER–1129 and SPR–159 through SPR–160. Those amendments are also adopted today.

Since this amendment relieves a restriction and creates no additional burden, the Board finds that it may be effective immediately. To ease the transition to a system without tariffs, however, carriers having charter tariffs on file with the Board will be allowed to maintain them in force until 90 days after publication of this rule. After that date, those charter rates and rules on file with the Board will not be effective as tariffs. During this transition period carriers may phase out their charter tariffs gradually.[24] Tariffs on file, however, must not mislead charterers or the public about their applicability or validity. Any carrier, therefore, intending to provide charter air transportation not in accordance with filed tariffs shall amend its tariff on file with the Board to indicate the extent to which that tariff is no longer in force, or to describe the exception that it wishes to make to that tariff.

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 221, *Construction, Publication, Filing and Posting of Tariffs of Air Carriers and Foreign Air Carriers*, as follows:

Part 221 [Amended]

1. The Table of Contents is amended by deleting § 221.64, *Charter rates and charges*, and deleting and reserving § 221.178, *Service of charter tariff publications on charterers*.

2. In § 221.3, paragraph (a) is amended by inserting "Except as set forth in paragraph (d) of this section" at the beginning of the first sentence, and a new paragraph (d) is added, to read:

§ 221.3 Carrier's duty.

(a) *Must file tariffs.* Except as set forth in paragraph (d) of this section, every air carrier and every foreign air carrier shall file with the Board, and print, and keep open to public inspection, tariffs showing all rates, fares, and charges for air transportation between points served by it, and between points served by it and points served by any other air carrier or foreign air carrier, when through service and through rates shall have been established, and showing to the extent required by regulations of the Board, all classifications, rules, regulations, practices, and services in connection with such air transportation. Tariffs shall be filed, posted, and published in such form and manner, and shall contain such information as the Board shall by regulation prescribe. Any tariff so filed which is not consistent with section 403 of the act and such regulations may be rejected. Any tariff so rejected shall be void.

* * * * *

(d) *Exemption for charter operations.* Air carriers and foreign air carriers are exempted from the requirement of section 403 of the Act and any requirement of this chapter to file tariffs for their charter operations.

3. In § 221.4, the definition of "rates" is amended by removing the reference to charters, so that it reads:

§ 221.4 Definitions.

* * * * *

"Rates" means the amount per unit stated in the applicable tariff for the transportation of property, and includes "charge" unless the context otherwise requires.

* * * * *

§ 221.21 [Amended]

4. In § 221.21, *Specifications applicable to all tariff publications*, paragraph (i)(1) is revoked and reserved.

5. In § 221.38, paragraph (a)(4) is amended to read:

§ 221.38 Rules and regulations.

(a) *Contents.* * * *

(4) All other provisions and charges which in any way increase or decrease the amount to be paid on any shipment or by any passenger, or which in any way increase or decrease the value of the services rendered to the shipper or passenger.

* * * * *

6. Also in § 221.38, paragraph (a)(10) is revoked and the third sentence of paragraph (e) is amended by deleting "or charterer".

7. § 221.55 is amended by deleting the proviso so that it reads:

§ 221.55 Time fares, rates, or charges.

Fares, rates, or charges for air transportation shall not be stated to apply per hour or any other unit of time.

§ 221.64 [Revoked]

8. Section 221.64, *Charter rates and charges*, is revoked.

§ 221.70 [Amended]

9. In § 221.70, *Definite unit of rate*, paragraph (a)(1) is revoked and reserved.

§ 221.178 [Reserved]

10. Section 221.178, *Service of tariff publications on charterers*, is revoked and reserved.

In § 221.179, paragraph (a) is amended to read:

§ 221.179 Transmission of tariff filings to subscribers.

(a) Each carrier required to file tariffs in accordance with this part shall make available to any person so requesting a subscription service as described in paragraph (b) of this section separately for its passenger tariffs and its freight

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[24] We recognize that some carriers, particularly those that have entered into contracts whose pricing provisions refer to filed tariffs, may wish to file new tariffs during the transition period to reflect changed costs of operation. In practice, such instances should be rare. Several carriers and charterers have already discontinued using such pricing terms in anticipation of our action today. Moreover, any such new tariffs would generally be filed on 60 days' notice and would therefore cover only a small portion of the transitional period. We would expect that the parties, in accordance with normal contractual principles, would re-negotiate such contracts as necessary. In order to expedite this shift to private contractual arrangements, and to avoid unnecessarily continuing the expiring tariff system during the 1979 summer season, we have decided that as of this date new charter tariff filings generally will not be accepted. If this approach threatens to work undue hardships on any parties, we will be prepared to deal with them on a case-by-case basis.

tariffs issued by it or by a publishing agent on its behalf.

* * * * *

(Sections 102, 204, 403, and 416 of the Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 740, 743, 758, and 771, 92 Stat. 1731, 1732; 49 U.S.C. 1302, 1324, 1373, and 1386)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-17913 Filed 6-7-79; 8:45 am]

BILLING CODE 6320-01-M

14 CFR Part 372

[Regulation SPR-159; Amendment No. 8; Docket 30654]

Overseas Military Personnel Charters; Elimination of Charter Tariffs

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. May 31, 1979.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The C.A.B. is eliminating charter tariff filing requirements. This is a conforming amendment to that rule, governing charter flights by foreign charter-only carriers.

DATES: Adopted: May 31, 1979. Effective: May 31, 1979. Charter tariffs now on file with the Board may remain in effect until September 6, 1979.

FOR FURTHER INFORMATION CONTACT: Mark S. Kahan, Office of the General Counsel, Pricing and Entry Division, C.A.B., 1825 Connecticut Ave., N.W., Washington, D.C. 20428; 202-673-05205.

SUPPLEMENTAY INFORMATION: In ER-1125, also issued today, the Board is eliminating charter tariff filing requirements. Supplementary information is set out in that rule. Since the conforming amendment relieves a restriction and creates no additional burden, the Board finds that it may be effective immediately.

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 372, *Overseas Military Personnel Charters*, as follows:

§ 372.26 [Reserved]

1. The Table of Contents is amended by deleting and reserving § 372.26.

2. Section 372.26, *Prohibition on operations unless tariffs are observed*, is revoked and reserved.

(Sections 102, 204, 403, and 416 of the Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 740, 743, 758, and 771, 92 Stat. 1731, 1732; 49 U.S.C. 1302, 1324, 1373, and 1386.)

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-17921 Filed 6-7-79; 8:45 am]

BILLING CODE 6320-01-M

14 CFR Part 380

[Regulation SPR-160; Amendment No. 4; Docket 30654]

Public Charters; Elimination of Charter Tariffs

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., May 31, 1979.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The C.A.B. is eliminating charter tariff filing requirements. This is a conforming amendment to the Public Charter Rule.

DATES: Adopted: May 31, 1979; Effective: May 31, 1979. Charter tariffs now on file with the Board may remain in effect until September 6, 1979.

FOR FURTHER INFORMATION CONTACT: Mark S. Kahan, Office of the General Counsel, Pricing and Entry Division, C.A.B., 1825 Connecticut Ave., N.W., Washington, D.C. 20428; 202-673-5205.

SUPPLEMENTARY INFORMATION: In ER-1125, also issued today, the Board is eliminating charter tariff filing requirements. Supplementary information is set out in that rule. Since this conforming amendment relieves a restriction and creates no additional burden, the Board finds that it may be effective immediately.

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 380, *Public Charters*, as follows:

1. The Table of Contents is amended by adding a new § 380.19 to Subpart B and by deleting and reserving § 380.41 of Subpart D, to read:

PART 380—PUBLIC CHARTERS

Sec.

* * * * *

Subpart B—General Conditions and Limitations

* * * * *

380.19 Old-rule charters.

* * * * *

Subpart D—Requirements Applicable to Direct Air Carriers

* * * * *

380.41 [Reserved]

* * * * *

2. A sentence is added at the end of § 380.1 so that the section reads:

§ 380.1 Applicability.

This part establishes the terms and conditions governing the furnishing of Public Charters in air transportation by direct air carriers and foreign air carriers and by Public Charter operators. This part also relieves such charter operators (other than foreign charter operators) from various provisions of title IV of the Federal Aviation Act of 1958, as amended, for the purpose of enabling them to provide Public Charters utilizing aircraft chartered from such direct carriers. It also contains a limited declination of exercise of jurisdiction over foreign charter operators. The provisions of this regulation shall not be construed as limiting any other authority to engage in air transportation issued by the Board. Nothing contained in this part shall be construed as repealing or amending any provisions of any of the Board's regulations, unless the context so requires. This part also applies to old-rule charters as set forth in § 380.19.

3. A new § 380.19 is added, to read:

§ 380.19 Old-rule charters.

(a) As used in this section, "old-rule charter" means a charter that is covered by a prospectus filed under Part 371, 378, or 378a of this title.

Note.—Those parts were revoked, effective January 1, 1979. The revocation specified that charters covered by prospectuses filed before that date could be performed on or after that date. 43 FR 36903-4, August 18, 1978.

(b) Direct air carriers performing old-rule charters are not required to have tariffs governing those charters on file with the Board.

4. In § 380.32, paragraph (b) is amended by deleting "as set forth in its tariffs" so that it reads:

§ 380.32 Specific requirements for operator-participant contracts.

Contracts between charter operators and charter participants shall state:

* * * * *

(b) The name of the direct air carrier, the dollar amounts of that carrier's liability limitations for participants' baggage, the type and capacity of the aircraft to be used for the flight, and the conditions governing aircraft-equipment substitutions.

§ 380.41 [Reserved]

5. Section 380.41, *Tariffs to be on file for charter trips*, is revoked and reserved.

(Secs. 101(3), 102, 204, 403, and 416 of the Federal Aviation Act of 1958, as amended by Pub. L. 95-504; 72 Stat. 737, 740, 743, 758, and 771; 92 Stat. 1731, 1732; 49 U.S.C. 1301, 1302, 1324, 1373, and 1386.)

By the Civil Aeronautics Board:
Phyllis T. Kaylor,
Secretary.
[FR Doc. 79-17920 Filed 6-7-79; 8:45 am]
BILLING CODE 6320-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 456

Advertising of Ophthalmic Goods and Services; Interpretation of Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Interpretation of Trade Regulation Rule.

SUMMARY: In response to a request by the Illinois Attorney General, the Federal Trade Commission has issued an interpretation of its trade regulation rule concerning the Advertising of Ophthalmic Goods and Services (16 CFR Part 456). The interpretation says that a state may impose on ophthalmic advertising the affirmative disclosures permitted by § 456.5(a) of the rule by any legislative, administrative or judicial means it chooses. The interpretation also says that states may enforce laws of general applicability against ophthalmic advertising as long as the laws are not enforced in a discriminatory manner.

EFFECTIVE DATE: May 18, 1979.

FOR FURTHER INFORMATION CONTACT: Scott P. Klurfeld, Federal Trade Commission, 6th and Pennsylvania Avenue, N.W., Room 281, Washington, D.C. 20580. 202-523-3420.

Federal Trade Commission

Interpretation of 16 CFR Part 456

An interpretation of § 456.5 of the Commission's rule on Advertising of Ophthalmic Goods and Services (16 CFR Part 456) was requested by the Attorney General of the State of Illinois on April 17, 1979. The Commission's interpretation is contained in a letter, reprinted below.

William J. Scott, Esq.,
Attorney General of Illinois, 160 North LaSalle Street, Room 850, Chicago, Illinois 60601.

Attention: Robert Orman, Esq.

Dear Mr. Scott: This letter is in response to your request of April 17, 1979, for an interpretation of the Commission's Trade Regulation Rule on the Advertising of Ophthalmic Goods and Services (16 CFR Part 456).

In your letter you inquire as to whether the Commission believes that the Illinois Consumer Fraud and Deceptive Business Practices Act, or the Uniform Deceptive Trade Practices Act is preempted by the Commission's trade regulation rule referenced above.

Section 456.5(a) of the Commission's rule provides that a state may require by "law, rule or regulation" that certain affirmative disclosures appear in any dissemination of information concerning ophthalmic goods and services. Among the disclosures which may be required are whether an advertised price for ophthalmic goods includes an eye examination (§ 456.5(a)(3)) and all dispensing fees (§ 456.5(a)(4)). It is the position of the Federal Trade Commission that the use of the terms "law, rule or regulation" were not intended to define or limit the kinds of procedures through which state or local governmental entities may impose the disclosures permitted in § 456.5(a) of the Commission's rule. In other words, the State of Illinois may impose such limitations on ophthalmic advertising by any legislative, administrative, or judicial means without violating the Commission's rule. This would include case determinations under statutes such as little FTC Acts. In the Statement of Basis and Purpose which accompanied the rule, the Commission clearly evidenced its intention that states remain free to employ their general fraud and deception laws, including little FTC Acts, to control instances of deceptive advertising of ophthalmic goods, services and eye examinations. *See* 43 FR 23997 (June 2, 1978).

It is important that the distinction between the requirements of §§ 456.5(a) and 456.5(b) be made clear. In promulgating its rule, it was not the purpose of the Commission to police *deceptive* ophthalmic advertising. It was, instead, the Commission's purpose simply to remove restraints upon nondeceptive ophthalmic advertising. In permitting state or local governments to impose, at their discretion, the specific affirmative disclosure requirements itemized in § 456.5(a), the Commission concluded that such specific affirmative disclosure requirements might reasonably be imposed as a means of limiting deception. The Commission rule itself does not speak one way or the other to the question of whether a given advertisement would be deceptive if it omits the disclosures that the rule permits states to impose. The rule rather defers to the judgment of a state or locality that the specified disclosures are necessary, by providing that where such disclosures are imposed they shall not be deemed an impermissible burden upon ophthalmic advertising.

In § 456.5(b) of the Commission's rule, the Commission explicity exempted from preemption by the Commission's rule, any state law which applies to all advertising of consumer goods and services. In adopting this provision, the Commission intended to place ophthalmic advertising on the same footing as other advertising in your jurisdiction. It was not the Commission's intention to exempt ophthalmic advertising from laws of general applicability governing advertising in the State of Illinois or any other state.

Thus, laws such as the Illinois Consumer Fraud and Deceptive Business Practices Act and the Uniform Deceptive Trade Practices Act may be enforced by the state against ophthalmic advertising, and suits by the state under such acts against ophthalmic advertisements are not prohibited by the Commission's rule. However, should such a law of general applicability be employed (other than in those areas set forth in § 456.5(a) of the rule) in a discriminatory manner with the intent to or the effect of stifling or limiting ophthalmic advertising (e.g., by bringing such suits only against ophthalmic advertisers or a disparate number against ophthalmic advertisers) the Commission might consider such activity to be a violation of the trade regulation rule.

As per your request, we have enclosed a copy of the letter from Aaron Cohen and William Voelker to the Commission's staff requesting an opinion regarding Weisser Optical's advertisements. We have also enclosed a copy of the response of the Commission's staff to that letter. In that response the Commission's staff indicated that an advertisement, absent one of the permissive disclosures set forth in § 456.5(a) of the rule, was not deceptive. This staff opinion is not inconsistent with the Commission's rule, because, as noted above, the rule does not speak one way or the other to the question of whether a given advertisement would be deceptive if it omits the disclosures that the rule permits states to impose. While the Commission's rule does not preclude states or localities from imposing the affirmative disclosures set forth in § 456.5(a) on an across the board basis, where a specific determination of "deception" is to be made it must necessarily depend upon an assessment of all the circumstances surrounding the advertisement in question. The Commission itself has made no determination with respect to the merits of the staff opinion.

By direction of the Commission.
Carol M. Thomas,
Secretary.
[FR Doc. 79-17909 Filed 6-7-79; 8:45 am]
BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB 30]

Interpretative Releases Relating to Accounting Matters; Staff Accounting Bulletin No. 30

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This bulletin contains a description of the circumstances which, in the staff's view, indicate that a divestiture has not taken place for accounting purposes in connection with a sale of a subsidiary or other business operation. It also discusses the

accounting and reporting consequences of such a transaction.

DATE: June 5, 1979.

FOR FURTHER INFORMATION CONTACT: Howard P. Hodges, Jr., (202) 755–1744, Division of Corporation Finance, or Ernest L. Ten Eyck, (202) 472–3782, Office of the Chief Accountant, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The statements in Staff Accounting Bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval; they represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

George A. Fitzsimmons,

Secretary.

June 5, 1979.

Staff Accounting Bulletin No. 30

The circumstances described below involve a situation in which, in the view of the staff, it is inappropriate to account for a "sale" of a business operation as divestiture.

In Accounting Series Release No. 95 (ASR 95) the Commission discussed the issue of recognition of profit for real estate transactions where circumstances indicated that profits were not earned at the time the transactions were recorded. In the case of real estate, the question of whether a "sale" has taken place for accounting purposes is normally part of the consideration of the propriety of profit recognition on the transaction. In the case of a disposal of an ongoing business, or a related group of business activities, the question of whether a disvestiture has taken place for accounting purposes has independent significance because elimination of the operating results of the business from the financial statements of the seller may be misleading if the risks of ownership have not, in substance, been transferred to the buyer.

Economic substance rather than legal form should determine the accounting and reporting for a transaction. Where the economic substance indicates that the seller has not been divorced from the usual risks of ownership, the transaction should not be recorded as a divestiture for accounting purposes.

Even when it can be reasonably determined that recording such a transaction as a divestiture is appropriate, gain should be recognized only if it is also reasonable to conclude that such gain will be realized.

Topic 5: Miscellaneous Accounting

* * * * *

M. Accounting for divestiture of subsidiary or other business operation.

Facts: Company X transferred certain operations (including several subsidiaries) to a group of former employees who had been responsible for managing those operations. Assets and liabilities with a net book value of approximately $8 million were transferred to a newly formed entity—Company Y—wholly owned by the former employees. The consideration received consisted of $1,000 in cash and interest bearing promissory notes for $10 million, payable in equal annual installments of $1 million each, plus interest, beginning two years from the date of the transaction. The former employees possessed insufficient assets to pay the notes and Company X expected the funds for payments to come exclusively from future operations of the transferred business.

Company X remained contingently liable for performance on existing contracts transferred and agreed to guarantee, at its discretion, performance on future contracts entered into the newly formed entity. Company X also acted as guarantor under a line of credit established by Company Y.

The nature of Company Y's business was such that Company X's guarantees were considered a necessary predicate to obtaining future contracts until such time as Company Y achieved profitable operations and substantial financial independence from Company X.

Question: Company X proposes to account for the transaction as a divestiture, but to defer recognition of gain until the owners of Company Y begin making payments on the promissory notes. Does this proposed accounting treatment reflect the economic substance of the transaction?

Answer: No. The circumstances are such that the risks of the business have not, in substance, been transferred to Company Y or its owners.

In assessing whether the legal transfer of ownership of one or more business operations has resulted in a divestiture for accounting purposes, the principal consideration must be an assessment of whether the risks and other incidents of ownership have been transferred to the buyer with sufficient certainty.

When the facts and circumstances are such that there is a continuing involvment by the seller in the business, recognition of the transaction as a divestiture for accounting purposes is called into serious question. Such continuing involvement may take the form of effective veto power over major contracts or customers, significant voting power on the board of directors, or other involvement in the continuing operations of the business entailing risks or managerial authority similar to that of ownership.

Other circumstances may also raise questions concerning whether the incidents of ownership have, in substance, been transferred to the buyer. These include:

Absence of significant financial investment in the business by the buyer, as evidenced, for instance, by a token payment.

Repayment of debt which constitutes the principal consideration in the transaction is dependent on future successful operations of the business.

The continued necessity for debt or contract performance guarantees on behalf of the business by the seller.

In the above transaction, the seller's continuing involvement in the business and the presence of certain of the other factors cited evidence the fact that the seller has not been divorced from the risks of ownership. Accounting for this proposed transaction as a divestiture—even with deferral of the "gain"—does not reflect its economic substance and therefore is not appropriate.

Question: If the transaction is not to be treated as a divestiture for accounting purposes, what is the proper accounting treatment?

Answer: If, in the circumstances surrounding a particular transaction, a determination is made that a legal transfer of business ownership should not be recognized as a divestiture for accounting purposes, an accounting treatment consistent with that determination is required. In this instance, the assets and liabilities of the business which were the subject of the transaction should be segregated in the balance sheet of the selling entity under captions such as: "Assets of business transferred under contractual arrangements (notes receivable)," and "Liabilities of business transferred" or similar captions which appropriately convey the distinction between the legal form of the transaction and its accounting treatment.

A note to the financial statements, referenced to this caption, should describe the nature of the legal arrangements, relevant financing and other details and the accounting treatment.

Where, as in this instance, realization of the sale price is wholly or principally dependent on the operating results of the business operations which were the subject of the transaction, the

uncertainty associated with such realization should be reflected in the financial statements of the seller. Thus, absent a deterioration in the business, any operating losses of the divested business should be considered the best evidence of a change in valuation of the business in a manner somewhat analogous to equity accounting for an investment in common stock.[1] If the business suffered a loss during its initial period of operations after the transaction, that loss should be reflected in the financial statements of the seller by recording a valuation allowance and a corresponding charge to income. The amount of the valuation allowance (absent unusual circumstances) would be at least the amount of the loss attributable to the business, unless such loss has been previously provided for in accordance with Accounting Principles Board Opinion No. 30. Other evidence, however, (such as a question as to the ability of the business to continue as a going concern) might require that a higher valuation allowance be established.

This accounting treatment should be continued for each reporting period until either:

1. The net assets of the business have been written down to zero (or a net liability recognized in accordance with generally accepted accounting principles); or

2. Circumstances have changed sufficiently that it has become appropriate to recognize the transaction as a divestiture.

In the latter instance, it would normally also be appropriate to recaption any asset balance remaining on the balance sheet of the seller in keeping with the changed circumstances, e.g., "Notes receivable."

In the case where the business reports net income, such net income should not be recorded by the former owner, because the rewards of ownership (but not the risks) have been passed to Company Y. Any payments received on obligations of the buyer arising out of the transaction should be treated as a reduction of the carrying value of the segregated assets of the business.

Question: Should Company X recognize interim (quarterly) losses of the business even if it is projected that it will have a profit for the full year?

Answer: Yes. However, for quarters for which the business has net income, such net income may be recognized by Company X to the extent of any cumulative quarterly losses within the same fiscal year. Similarly, quarterly losses of the business need not be recognized by Company X except to the extent that they exceed any cumulative quarterly net income within the same fiscal year. Disclosure of this accounting treatment should be made in the notes to Company X's interim financial statements.

Question: If the accounting treatment described above is applied to the transaction, when should a gain or loss on the transaction be recognized?

Answer: Whether or not the transaction is treated as a divestiture for accounting purposes, generally accepted accounting principles require that losses on such transactions be recognized.

When it is determined that no divestiture should be recognized for accounting purposes, it follows that gain should not be recognized until:

1. The circumstances precluding treatment of the transaction as a divestiture have changed sufficiently to permit such recognition; and,

2. Any major uncertainties as to ultimate realization of profit have been removed, that is, the consideration received in the transaction can be reasonably evaluated.

As the Commission indicated in ASR 96 (quoting from the authoritative accounting literature): Profit is deemed to be realized when a sale in the ordinary course of business is effected, unless the circumstances are such that the collection of the sale price is not reasonably assured.[2]

The considerations discussed above regarding recognition of a divestiture for accounting purposes are also of importance in reaching a determination as to whether or not collection of the sale price is reasonably assured and profit recognition is therefore appropriate. In addition, circumstances such as the following tend to raise questions as to the propriety of profit recognition at any given time subsequent to the transaction:

1. Evidence of financial weakness of the buyer.

2. Substantial uncertainty as to the amount of future costs and expenses to be incurred by the seller.

3. Substantial uncertainty as to the amount of proceeds to be realized because of the form of consideration received; e.g., non-recourse debt, notes with optional settlement provisions, purchaser's stock, or other non-monetary consideration which may be of indeterminable value.

(Where satisfaction of the buyer's obligations to the seller remains dependent on earnings of the business divested, it will frequently be appropriate for the seller to continue to measure the uncertainty of ultimate collection by the operating losses of the business.)

The degree of uncertainty surrounding ultimate realization of the consideration is a matter which must be evaluated in the light of the attendant circumstances each time realization is evaluated. The degree of uncertainty is enhanced, however, by the presence of any of the factors referred to above, and such factors must be considered in reaching a determination with respect to recognition of gain.

[FR Doc. 79-17303 Filed 6-7-79; 8:45 am]

BILLING CODE 8010-01-M

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[1] The staff recognizes that Accounting Principles Board Opinion No. 18 is specifically applicable only to the use of the equity method of accounting for investments in common stock. The principles enunciated in that Opinion are also relevant in these particular circumstances, however, notably paragraph 12, which states, in pertinent part:

The equity method tends to be most appropriate if an investment enables the investor to influence the operating or financial decisions of the investee. The investor then has a degree of responsibility for the return on its investment, and it is appropriate to include in the results of operations of the investor its share of the earnings or losses of the investee.

[2] Accounting Research Bulletin No. 43, Chapter 1, Section A. (American Institute of Certified Public Accountants, 1953).

This passage is also quoted in paragraph 12 of Accounting Principles Board Opinion No. 10 (American Institute of Certified Public Accountants, 1966), footnote 8, which states, in pertinent part:

The Board recognizes that there are exceptional cases where receivables are collectible over an extended period of time and, because of the terms of the transactions or other conditions, there is no reasonable basis for estimating the degree of collectibility. When such circumstances exist, and as long as they exist, either the installment method or the cost recovery method of accounting may be used.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 159

[T.D. 79-163]

Amendment of Waiver of Countervailing Duties—Certain Textiles and Textile Products from Brazil

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Amendment of Waiver of Countervailing Duties.

SUMMARY: This notice is to inform the public that the waiver of countervailing duties issued regarding imports of certain textiles and textile products from Brazil is being amended. This amendment affects only imports of certain leather wearing apparel which, until recently, were duty-free.

EFFECTIVE DATE: March 1, 1979.

FOR FURTHER INFORMATION CONTACT: Charles F. Goldsmith, Economist, Office of Tariff Affairs, Department of the Treasury, 15th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20220, telephone (202) 566–2323.

SUPPLEMETARY INFORMATION: On November 16, 1978, a notice of "Final Countervailing Duty Determination" (T.D. 78–446) regarding certain textiles and textile mill products from Brazil was published in the **Federal Register** (43 FR 53422). That notice advised the public that an investigation had determined that the Governement of Brazil pays or bestows bounties or grants under the countervailing duty law on the manufacture, production, or exportation of certain textiles and textile products. Concurrent with that determination, a "Waiver of Countervailing Duties" (T.D. 78–447, 43 FR 53425) was granted based on actions taken by the Government of Brazil to reduce substantially the adverse effects of the bounties or grants paid or bestowed and on satisfaction of the other criteria of section 303(d) of the Tariff Act of 1930, as amended by the Trade Act of 1974 (Pub. L. 93–618, January 3, 1975 (19 U.S.C. 1303(d)) (referred to as the "Act").

The Final Determination included leather wearing apparel imported under item number 791.76 of the Tariff Schedules of the United States Annotated (TSUSA). In accordance with section 303(a) (2) of the Act (19 U.S.C. 1303(a) (2)), because this merchandise was entered duty-free pursuant to the U.S. Generalized System of Preferences ("GSP") (authorized by Title V of the Trade Act of 1974, 19 U.S.C. 2461–2465), countervailing duties could be imposed only if the U.S. International Trade Commission (ITC) rendered an affirmative injury determination. Liquidation of the leather wearing apparel under consideration was suspended pending the determination of the ITC. At that time Treasury indicated that should the determination of the ITC be affirmative, it would then be appropriate to waive countervailing duties under section 303(d) of the Act.

On March 5, 1979, the ITC published its determination in the **Federal Register** that no injury resulted from the importation of the duty-free leather wearing apparel from Brazil ("Certain Leather Wearing Apparel from Colombia and Brazil," 44 FR 12113). Accordingly, the suspension of liquidation was to terminate and the liquidation of all entries of leather wearing apparel classified under TSUSA item number 791.76 entered on or after November 16, 1978, would have proceeded without regard to countervailing duties, but for the action taken by the President which removed leather wearing apparel classified under TSUSA item number 791.76 from the GSP. By Executive Order 12124, published in the **Federal Register** of March 2, 1979 (44 FR 11729), the duty-free status of leather wearing apparel classified under TSUSA item number 791.76 was thus terminated effective March 1, 1979.

As a result, imposition of countervailing duties on such leather wearing apparel from Brazil is no longer controlled by section 303(a)(2) of the Act. In the Final Determination of November 16, 1978 (cited above), the Department stated that if the ITC's determination of injury regarding such leather wearing apparel were affirmative, the collection of countervailing duties would be waived. Further, the reasons supporting the granting of the concurrent waiver (cited above) for then-dutiable textiles and textile products apply equally to the then-duty free leather wearing apparel classified under TSUSA item number 791.76. Indeed, had such leather wearing apparel been dutiable in November of 1978, it would have been included within the scope of the waiver then issued. Accordingly, I hereby amend the waiver with respect to Certain Textiles and Textile Products from Brazil to include the formerly duty-free leather wearing apparel classified under TSUSA item number 791.76.

§ 159.47 [Amended]

The table in § 159.47(f) of the Customs Regulations (19 CFR 159.47(f)), is amended by inserting after the entry from Brazil under "textiles", the number of this Treasury Decision in the column so headed and the words "amendment of waiver" in the column headed "action."

(R.S. 251, secs. 303, as amended, 624; 46 Stat. 687, 759, 88 Stat. 2051, 2052 (19 U.S.C. 66, 1303), as amended, 1624).

Robert H. Mundheim,

General Counsel of the Treasury.

[FR Doc. 79–17943 Filed 6–7–79; 8:45 am]

BILLING CODE 4810–22–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Chapter X

[Docket No. R–79–674]

Transfer of Federal Insurance Administration Regulations

AGENCY: U.S. Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: Reorganization Plan No. 3 of 1978 established the Federal Emergency Management Agency (FEMA). The plan was activated effective April 1, 1979, by Executive Order 12127 of March 31, 1979, "Federal Emergency Management Agency." The plan transfers to FEMA the functions of the Federal Insurance Administration which was a part of the U.S. Department of Housing and Urban Development. The existing regulations of the Federal Insurance Administration have been transferred to Title 44, Chapter I, Subchapter B of the Code of Federal Regulations. Therefore, Chapter X of Title 24 is hereby vacated.

EFFECTIVE DATE: June 28, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Burton Bloomberg, Director, Office of Regulations, Room 5218, U.S. Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410. Phone (202) 755–6207.

SUPPLEMENTARY INFORMATION: Establishment of the organization of FEMA, including delegation of authority to the position of Associate Director for Insurance and Hazard Mitigation, which also carries the Title of Federal Insurance Administrator, was published on April 6, 1979 (44 FR 20982).

Establishment of Title 44, Chapter I, Subchapter B, for the redesignated regulations, was published on Wednesday, May 2, 1979 (44 FR 25797).

The Federal Insurance Administration regulations were previously published under Title 24, Chapter X, Subchapters A, B, and C of Code of Federal Regulations, and have been redesignated as Title 44, Chapter I, Subchapter B of the Code of Federal Regulations. This redesignation was published in the May 31, 1979 edition of the **Federal Register** at 44 FR 31170.

Because this rule effects a change which is editorial in nature, it has been determined that a period for notice and comment is not necessary.

Transfer of Regulations

CHAPTER X [Vacated]

Regulations formerly appearing in 24 CFR Chapter X are transferred to 44 CFR Chapter I. Accordingly, Chapter X of Title 24 is hereby vacated.

Authority: Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367).

Issued at Washington, D.C., June 1, 1979.

Jay Janis,

Acting Secretary, Department of Housing and Urban Development.

[FR Doc. 79-17912 Filed 6-7-79; 8:45 am]

BILLING CODE 4210-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

24 CFR Part 1917

[Docket No. FI-4744]

Final Flood Elevation Determinations for the City of the Town of Los Altos Hills, Santa Clara County, Calif., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of the Town of Los Altos Hills, Santa Clara County, California.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the City of the Town of Los Altos Hills, California.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of the Town of Los Altos Hills, Santa Clara County, California, are available for review at Town Hall, 26379 Fremont Road, Los Altos Hills, California.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755-5581 or Toll Free Line (800) 424-8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of the Town of Los Altos Hills, California.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administration has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Adobe Creek	Edith Road	174
	Burke Road	192
	O'Keefe Lane	264
	Foothill College Road	307
	El Monte Avenue	288
	Rhus Ridge Drive	370
	Fremont Drive	421
Barron Creek	Fremont Road (downstream crossing)	146
	Ortega Drive	172
	Fremont Road (upstream crossing)	220
	La Paloma Road	245
	Todd Lane—20 feet upstream from centerline	
Purissima Creek	Purissima Road (downstream crossing)	252
	Vineyard Road	309
	Purissima Road (upstream crossing)	332
Matadero Creek	Old Page Mill Road	188
	Interstate 280	212
	Page Mill Road	244
	Moore Lane	270
	Lupine Road—20 feet upstream from centerline	296
Arastradero Creek	Page Mill Road	254
Hale Creek	Magdalena Avenue	321
	Dawnridge Drive	270
Concepcion Drainage	Fremont Road	297
	Alto Verde Lane	225
	Pablo Verano Lane	247

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963).

Issued: April 24, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-17909 Filed 6-7-79; 8:45 am]

BILLING CODE 4210-23-M

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24 CFR Part 1917

[Docket No. FI-5045]

Final Flood Elevation Determinations for Bingham County, Idaho, Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in Bingham County, Idaho.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for Bingham County, Idaho.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for Bingham County, Idaho, are available for review at Bingham County Courthouse, Blackfoot, Idaho.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755-5581 or Toll Free Line (800) 424-8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for Bingham County, Idaho.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90)

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[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 18, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 18, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Depth, in feet above ground
Sand Creek	1000 feet northwest of intersection of Wolverine Road and Bithell Lane.	2

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Snake River	U.S. Highway 26 Bridge—100 feet*.	4481
Aberdeen Wasteway	Central Avenue—50 feet*	4367
Twin Buttes Drainageway	Wearyrick Road—centerline	4439
	600 feet north of intersection of Union Pacific Railroad and 600 West Street.	4456
		4456
Blackfoot River	U.S. Highway 91 Bridge—50 feet*.	4490

*Upstream of centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963).

Issued: April 24, 1979.

Gloria M. Jimenez

Federal Insurance Administrator.

[FR Doc. 79-17870 Filed 6-7-79; 8:45 am]

BILLING CODE 4210-23-M

DEPARTMENT OF LABOR

Office of Labor-Management Standards Enforcement

29 CFR Part 451

Labor Organizations as Defined in the Labor-Management Reporting and Disclosure Act of 1959

AGENCY: Office of the Assistant Secretary for Labor-Management Relations.

ACTION: Final rule.

SUMMARY: A change in the language of 29 CFR 451.3(a)(4) is necessary to reflect the fact that labor organizations in the federal sector are now subject to the Civil Service Reform Act of 1978, which supersedes Executive Order 11491.

DATE: This change is effective on June 8, 1979.

FOR FURTHER INFORMATION CONTACT: Herb Raskin (202) 523–7373.

SUPPLEMENTARY INFORMATION: The standards of conduct provisions in Section 18 of E.O. 11491, as amended, have been replaced by the standards of conduct provisions in Section 7120 of the Civil Service Reform Act.

The standards of conduct provisions in the Civil Service Reform Act which prescribe procedures and principles required of labor organizations composed of federal government employees, are substantially the same as in E.O. 11491, as amended.

Since this amendment is necessary in order that 29 CFR 451.3(a)(4) be consistent with the change made by the passage of the Civil Service Reform Act, I find that it is unnecessary to issue a proposal and that there is good cause to make the amendment final and effective immediately. Section 451.3 is amended by deleting the fourth sentence in paragraph (a)(4) and adding the following:

§ 451.3 Requirements of Section 3(i).

(a) * * *

(4) * * * (A labor organization is subject to Title VII of the Civil Service Reform Act if it is composed entirely of employees of the agencies which are set forth in section 7103 of that Act. Those agencies include, with certain exceptions, all agencies of the Executive Branch as well as the Government Printing Office, the Library of Congress, and certain nonappropriated fund instrumentalities.) * * *

* * * * *

Signed in Washington, D.C., this 4th day of June 1979.

R. C. DeMarco,

Acting Assistant Secretary.

[FR Doc. 79-17944 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-29-M

Occupational Safety and Health Administration

29 CFR Part 1952

Approved State Plans for Enforcement of State Standards; Approval of Supplements to Utah Plan

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document brings Utah Occupational Safety and Health Regulations, Chapter A, Part 04, "Recordkeeping and Reporting Occupational Injuries and Illnesses", and Part 05, "Rules of Practice for Temporary and Permanent Variance . . ." into accord with OSHA regulations § 1904.3–9, 11–13, 20 and 21; § 1952.4(a), and § 1905.1, 2 and 10. The regulations in Part 04 implement Sections 35–9–6(3) and 35–9–17 of the Utah Code Annotated. The Rules of Practice in Part 05 set forth administrative procedures to grant variances and other relief under section 35–9–6 of the Act. General information pertaining to employer-employee rights, obligations and procedures are included.

EFFECTIVE DATE: June 8, 1979.

FOR FURTHER INFORMATION CONTACT: Charles Boyd, Project Officer, Office of State Programs, 2100 M Street N.W., Washington, D.C. 20210, (202) 653–5377.

SUPPLEMENTARY INFORMATION:

Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) for review of changes and progress in the development and implementation of State plans which have been approved under section 18(c) of the Act and 29 CFR Part 1902. On January 10, 1973, a notice was published in the Federal Register of the approval of the Utah plan and of the adoption of Subpart E of Part 1952 containing the decision (38 FR 1178). On April 7, 1978, the State of Utah submitted a supplement to the plan involving Federal Program changes to the plan (see subpart C of 29 CFR Part 1953).

Description of Supplements

Part 04 establishes regulations requiring that employers maintain a log of all occupational injuries and illnesses within its establishment, and post an annual summary of such injuries and illnesses. Part 04 also provides penalties for falsification of or failure to keep records, and directs the Administrator for the Utah Occupational Safety and Health Act to develop and maintain a statistical program consisting of periodic surveys of occupational injuries and illnesses.

Part 05 prescribes procedures governing the granting of variances. It sets forth rules for submission of applications, hearings, inspections, public notices, and revocation.

Location of Plan Supplements for Inspection and Copying

A copy of the plan and its supplements may be inspected and copied at the Technical Data Center, Occupational Safety and Health Administration, Department of Labor Building, 3rd St. and Constitution Ave., Washington, D.C. 20210; Occupational Safety and Health Administration, Room 15010, Federal Building, 1916 Stout Street, Denver, Colorado 80202; or, Utah Industrial Commission, 350 East Fifth South, Salt Lake City, Utah 54111.

Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary of Labor for Occupational Safety and Health may prescribe alternative procedures to expedite the review process of any other good cause which may be consistent with applicable law. The Assistant Secretary finds that good cause exists for not publishing Utah's revisions to the plan for public comments because the changes are generally identical to the Federal regulations.

Decision

After careful consideration, the Utah Plan supplements described above are hereby approved under Part 1953 of this chapter. This decision incorporates the requirements of the Act and the implementing regulations applicable to State plans generally.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Washington, D.C. this 30th day of May 1979.

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc. 79-16035 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-26-M

Mine Safety and Health Administration

30 CFR Part 11

Respiratory Protective Apparatus; Tests for Permissibility; Fees

AGENCY: Mine Safety and Health Administration (MSHA), Department of Labor, and National Institute for Occupational Safety and Health (NIOSH), Center for Disease Control, Public Health Service, Department of Health, Education, and Welfare.

ACTION: Final rule.

SUMMARY: This document extends the cut-off dates for use of certain self-contained breathing apparatus approved under the former Bureau of Mines approval program. This equipment has not been proven to be unsafe for continued use and many users have indicated that it would create an economic hardship for them to have to replace a major portion of their equipment by the current cut-off date.

EFFECTIVE DATE: June 8, 1979.

FOR FURTHER INFORMATION CONTACT: Dr. Alan D. Stevens, Chief, Testing and Certification Branch, Division of Safety Research, NIOSH, 944 Chestnut Ridge Road, Morgantown, WV, 26505. Phone: 304-599-7331 or FTS 923-7331.

SUPPLEMENTARY INFORMATION: Part 11 of Title 30, Code of Federal Regulations, provides for the testing of occupational respirators and the issuance of joint approvals for those meeting certain requirements for performance and respiratory protection. The joint approval program is conducted by the National Institute for Occupational Safety and Health (NIOSH), Center for Disease Control, Public Health Service, HEW, and the Mine Safety and Health Administration (MSHA), Department of Labor.

Prior to the promulgation of Part 11 in 1972, respirator approvals were issued by the Bureau of Mines (BOM), Department of the Interior. Under Part 11, dates were established which were designed to eliminate the older BOM-approved respirators from workplaces in an orderly and reasonable manner, to be replaced with respirators approved under Part 11. Self-contained breathing apparatus (SCBA) approved under BOM Approval Schedules 13 through 13E, inclusive, and purchased before June 30, 1975, were approved for use until March 31, 1978.

On October 13, 1978, a notice of proposed rulemaking was published in the Federal Register (43 FR 47212) to amend 30 CFR Part 11 by extending the approved use dates for certain BOM-approved SCBA, as follows:

(1) Schedules 13D and 13E devices equipped with a remaining service life indicator (low pressure warning) that does not require preadjustment by the wearer would be extended to March 31, 1982, and (2) certain listed Schedule 13 devices would be approved for use in mine rescue operations until further notice.

Discussion of Comments

A period of 30 days was given for the public to submit comments concerning the proposal. The majority of the comments were from fire service organizations and were in favor of the proposed extension. Many public fire and rescue organizations have been placed under severe budgetary restraints as a result of the current trend in tax reduction. They cited these restraints as the basis for continued use of existing equipment which has not been proven to be unsafe. A number of requests for a longer extension period also cited these budgetary restraints.

While most of the comments supported the extension, several criticized the proposal from the standpoint that there was insufficient justification for limiting the use of certain devices to mine rescue efforts only. Some comments claimed extensive experience (up to 30 years) with particular devices, in uses other than mine rescue, without indication of adverse effects on users.

The prospect of technological advances in occupational respirators in the near future, and the consequent obsolescence of newly acquired replacement equipment appeared in several comments favoring an extension.

Many comments asserted the impossibility of obtaining replacement equipment before April 1979. One comment urged an extension of only 1 year based on equipment availability.

The proposed extension requirement of an end-of-service-life indicator that does not require preadjustment by the wearer was intended to promote user safety and to eliminate SCBA which warn the user of low air supply by restricting the user's breathing. Such restriction may not be noticed under stress conditions. Comments indicated that there are devices in use in large numbers which effectively warn the wearer of the end of service life by means of an audible alarm, without restricting the wearer's breathing. NIOSH and MSHA do not have sufficient data to prove that SCBA equipped with audible end-of-service-life indicators are unsafe for use.

Based on the comments concerning the long life and safe use of BOM-approved SCBA, and because improved Part 11 performance requirements for respirators are under development, NIOSH and MSHA have decided to alter the proposed rule. Until further notice, those devices approved under BOM Approval Schedules 13 through 13E which are equipped with audible end-of-service-life indicators are approved for uses other than mine rescue. BOM Schedules 13 through 13E SCBA that are approved for continued use in mine rescue operations are listed by approval number (see table) and are the same as proposed. Meanwhile, NIOSH and MSHA will continue to review and evaluate BOM-approved equipment and institute revocation of the approval of

any equipment that does not protect the worker.

PART 11—RESPIRATORY PROTECTIVE APPARATUS; TESTS FOR PERMISSIBILITY; FEES

Accordingly, Part 11 of Title 30, Code of Federal Regulations, is amended as set forth below:

Dated: April 30, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

Dated: May 24, 1979.

Joseph A. Califano, Jr.,

Secretary of Health, Education, and Welfare.

1. Section 11.2 is revised to read as follows:

§ 11.2 Approved respirators and gas masks.

(a) Respirators, combinations of respirators, and gas masks shall be approved for use in hazardous atmospheres where they are maintained in an approved condition and are the same in all respects as those devices for which a certificate of approval has been issued under this part.

(b) Self-contained breathing apparatus, supplied-air respirators and gas masks approved under the former Bureau of Mines approved program shall continue to be accepted for use in hazardous atmospheres according to the schedule set forth below: *Provided* they (1) were fabricated, assembled or built under an approval or any modification thereof issued by the U.S. Bureau of Mines, Department of the Interior; and (2) were purchased on or before the date specified therein; and (3) are maintained in an approved condition according to this part.

Type of device	Use	Bureau of Mines approved devices	Purchased on or before	Approved for use until
Self-contained breathing apparatus	Mine rescue efforts only	Approval Nos. 1303, 1303S, 1307, 13D-14, 13D-15, 13D-16, 13E-25, and 13E-26.	June 30, 1975	Further notice.
	Other than mine rescue as permitted or required by regulation.	Schedule 13 through 13-E devices that are equipped with an audible end of service life indicator.	June 30, 1975	Further notice.
Supplied air respirators	As permitted or required by regulation.	Schedule 19B (dated April 19, 1955).	June 30, 1975	March 31, 1980.
Gas Masks	As permitted or required by regulation.	Schedule 14F (dated April 23, 1955).	At any time	Further notice.

§ 11.2-1 [Deleted]
§ 11.2-2 [Redesignated]

2. Section 11.2-1 is deleted from the Code of Federal Regulations and § 11.2-2 is redesignated as § 11.2-1.

[FR Doc. 79-18008 Filed 6-7-79; 8:45 am]
BILLING CODE 4510-43-M

POSTAL SERVICE

39 CFR Part 111

Express Mail Metro Service—Additional Metropolitan Areas

AGENCY: Postal Service.

ACTION: Notice and Partial Revision of interim regulations with comments invited for consideration in final rule making.

SUMMARY: Pursuant to prior notice in the Federal Register on April 19, 1979 (44 FR 23396), the Postal Service hereby gives notice that temporary implementation of Express Mail Metro Service will be expanded to include the metropolitan areas of Baltimore, Maryland, St. Louis, Missouri, San Francisco, and Los Angeles, California, and Washington, District of Columbia, on June 18, 1979. Minor changes to the interim regulations published in the Federal Register on April 27, 1979 (44 FR 24844), will be made to accommodate the additional metropolitan areas.

EFFECTIVE DATE: June 18, 1979, and until final regulations are issued. Comment Date: The "Comment Date" and procedures for comment cited in the Federal Register on April 27, 1979 (44 FR 24844), for interim regulations is extended through July 18, 1979. Written comments should be received on or before July 18, 1979.

ADDRESS: Written comments should be directed to the General Manager, Expedited Mail Services Division, Customer Services Department, Room 5986, 475 L'Enfant Plaza, SW., Washington, D.C. 20260. copies of all written comments received will be available for public inspection and photocopying between 9:00 a.m. and 4:00 p.m. Monday through Friday at the above location.

FOR FURTHER INFORMATION CONTACT: Walter (Cap) Neilson, 202/245-5624.

SUPPLEMENTARY INFORMATION: The revision to the interim regulations takes effect when the temporary implementation is expanded to the new metropolitan areas on June 18, 1979. Although exempt from the notice and comment requirement of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rule making by 39 U.S.C. 410(a), the Postal Service ordinarily invites comments from the public whenever it proposes a new or amended regulation such as this, which might eventually have a substantial effect on the public. In this case, however, publishing these rules as proposals, with a comment delay of 30 days would delay the very limited revision of these interim regulations.

Accordingly, the Postal Service finds it unnecessary and contrary to the public interest to follow its customary practice of publishing this change as a proposed rule for comment before it becomes effective. See 5 U.S.C. 553(d). However, we reiterate that comments are welcomed on the published rules, and that any proposed changes will be considered and acted upon as appropriate.

In view of the considerations discussed above, the Postal Service adopts the following revision to the interim regulations published on April 27, 1979 (44 FR 24844):

Part 182—Classification

Change 182.51 of the Postal Service Manual to read as follows:

182.5 Express Mail Metro Service.

.51 Availability of Service.

Express Mail Metro Service is available at designated retail postal facilities for same day and next day delivery within designated metropolitan areas. A metropolitan area consists of the city delivery area of one or more post offices. Names and locations of these designated facilities and post offices are in Notice 77, *Express Mail Metro Service Directory*, available at participating post offices. Service to or from post offices not listed is prohibited.

An appropriate amendment to 39 CFR 111.3 to reflect this change will be published if the Postal Service proposal

on Express Mail Metro Service is approved.

(39 U.S.C. 401, 403, 404, 3621, 3622, 3641)

W. Allen Sanders,

Acting Deputy General Counsel.

[FR Doc. 79-17982 Filed 6-7-79; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL 1245-1]

Regulation of Fuel and Fuel Additives; Lead Phase-Down Regulations

Cross Reference.—For a document suspending the enforcement of the 0.8 gram per gallon (gpg) lead phase-down standard (40 CFR 80.20(a)(1)(i)) for all refineries between June 8, 1979 and October 1, 1979, see FR Doc. 79-17971 appearing under the Environmental Protection Agency in the proposed rules section of this issue. Refer to the table of contents at the front of this issue under "Environmental Protection Agency" to find the correct page number.

BILLING CODE 6560-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

41 CFR Part 3-50

Incremental Funding of Cost-Reimbursement Type Contracts

AGENCY: Department of Health, Education, and Welfare

ACTION: Final rule.

SUMMARY: The Office of the Secretary, Department of Health, Education, and Welfare is amending the Departmental procurement regulations to incorporate a revised Subpart 3-50.6, Incremental Funding of Cost-Reimbursement Type Contracts.

The amendments are being made to expand the use of the incremental funding concept to cover other types of nonpersonal services such as studies, surveys, and socio-economic demonstration projects. The regulation is presently applicable only to research and development services.

Since the subpart was being revised to incorporate the amendments, the Department also reviewed it for simplicity and clarity. This resulted in the elimination of some portions of the subpart and a rewrite of other portions to present a more concise and comprehensive regulation.

EFFECTIVE DATE: June 8, 1979.

FOR FURTHER INFORMATION CONTACT: E. S. Lanham, Division of Procurement Policy and Regulations Development, Office of Grants and Procurement, OASMB-OS, HEW, Washington, D.C. 20201 (202-245-6347).

SUPPLEMENTARY INFORMATION: It is the general policy of the Department to allow time for interested parties to participate in the rulemaking process. However, since the amendments concern internal administrative procedures and, to the extent that portions pertain to the public, the simplification and clarification of existing regulations, the public rulemaking process was deemed unnecessary in this instance.

The provisions of these amendments are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

Therefore, 41 CFR Chapter 3 is amended as set forth below.

Dated: June 1, 1979.

E. T. Rhodes,

Deputy Assistant Secretary for Grants and Procurement.

Under Part 3-50, Administrative Matters, Subpart 3-50.6, Incremental Funding of Cost-Reimbursement, Research and Development Contracts, is cancelled in its entirety. In its place, the following Subpart 3-50.6, Incremental Funding of Cost-Reimbursement Type Contracts, is added. In addition, the table of contents for Part 3-50 is amended to add the following:

PART 3-50—ADMINISTRATIVE MATTERS

Subpart 3-50.6—Incremental Funding of Cost-Reimbursement Type Contracts

Sec.

3-50.600 Scope of subpart.
3-50.601 Applicability.
3-50.602 Definition.
3-50.603 Policy.
3-50.604 General.
3-50.605 Solicitation notification.
3-50.606 Contract clauses.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3-50.6—Incremental Funding of Cost-Reimbursement Type Contracts

§ 3-50.600 Scope of subpart.

This subpart provides policies and procedures for the use of incremental funding in cost-reimbursement type contracts.

§ 3-50.601 Applicability.

This subpart is applicable to cost-reimbursement type contracts for the procurement of research and development services and other types of nonpersonal services such as studies, surveys, and socio-economic demonstration projects. This subpart does not apply to construction services, architect-engineer services, or services subject to the Service Contract Act of 1965, as amended.

§ 3-50.602 Definition.

An incrementally funded cost-reimbursement contract is a contract in which the total work effort is to be performed over a multiple year period and funds are allotted, as they become available, to cover discernible phases or increments of performance. The incremental funding technique allows for contracts to be awarded for periods in excess of one year even though the total estimated amount of funds expected to be obligated for the contract are not available at the time of the contract award.

§ 3-50.603 Policy.

It is Departmental policy that contracts for projects of multiple year duration be fully funded, whenever possible, to cover the entire project. However, incrementally funded contracts may be used when:

(a) A project, which is part of an approved program, is anticipated to be of multiple year duration, but funds are not currently available to cover the entire project;

(b) The project represents a valid need of the fiscal year in which the contract is awarded and of the succeeding fiscal years of the project's duration, during which additional funds may be obligated by increasing the allotment to the contract;

(c) The project is so significant to the approved program that there is reasonable assurance that it will command a high priority for proposed appropriations to cover the entire multiple year duration; and

(d) The statement of work is specific and is defined by separate phases or increments so that, at the completion of each, progress can be effectively measured.

§ 3-50.604 General.

The following are general guidelines applicable to incrementally funded contracts:

(a) The estimated total cost of the project (all planned phases or increments) is to be taken into consideration when determining the

requirements which must be met before entering into the contract; i.e., justification for noncompetitive procurement, approval of award, etc. (See § 1–1.403).

(b) The RFP and resultant contract are to include a statement of work which describes the total project covering the proposed multiple year period of performance and indicating timetables consistent with planned phases or increments and corresponding allotments of funds.

(c) Offerors will be expected to respond to RFPs with technical and cost proposals for the entire project indicating distinct break-outs of the planned phases or increments.

(d) Negotiations will be conducted based upon the total project, including all planned phases or increments, and the multiple year period of performance.

(e) Sufficient funds must be obligated under the basic contract to cover no less than the first year of performance, unless the contracting officer determines it is advantageous to the Government to fund the contract for a lesser period. In that event, the contracting officer shall ensure that the obligated funds are sufficient to cover a complete phase or increment of performance representing a material and measurable part of the total project, and the contract period shall be reduced accordingly.

(f) Because of the magnitude of the scope of work and multiple year period of performance under an incrementally funded contract, there is a critical need for careful program planning. Program planning must provide for appropriate surveillance of the contractor's performance and adequate controls to ensure that projected funding will not impinge on program's ability to support, within anticipated appropriations, other equally important contract or grant programs.

(g) An incrementally funded contract must contain precise requirements for progress reports to enable the project officer to effectively monitor the contract. The project officer should be required to prepare periodic performance evaluation reports to facilitate program's ultimate decision to allot additional funds under the contract.

§ 3–50.605 Solicitation notification.

The request for proposals must inform prospective offerors of the Department's intention to enter into an incrementally funded contract. Therefore, the contracting officer shall include the following provision in the request for proposals whenever the use of incremental funding is contemplated:

Incremental Funding

(a) Sufficient funds are not presently available to cover the total cost of the complete multiple year project described in this solicitation. However, it is the Government's intention to negotiate and award a contract using the incremental funding concepts described in the clause entitled "Limitation of Funds." Under that clause, which will be included in the resultant contract, initial funds will be obligated under the contract to cover the first year of performance. Additional funds are intended to be allotted to the contract by contract modification, up to and including the full estimated cost of the contract, to accomplish the entire project. While it is the Government's intention to progressively fund this contract over the entire period of performance up to and including the full estimated cost, the Government will not be obligated to reimburse the Contractor for costs incurred in excess of the periodic allotments, nor will the Contractor be obligated to perform in excess of the amount allotted.

(b) The "Limitation of Funds" clause to be included in the resultant contract shall supersede the "Limitation of Cost" clause found in the General Provisions.

§ 3–50.606 Contract clauses.

(a) The contracting officer shall include the "Limitation of Funds" clause in § 1–7.202–3(b) in all solicitations and resultant contracts which will be, or are proposed to be, incrementally funded. (See §§ 1–7.202–3(c) and 1–7.402–2(c).) When using the "Limitation of Funds" clause in the solicitation and resultant contract, the contracting officer shall insert the following legend between the clause title and the clause text:

(This clause supersedes the "Limitation of Cost" clause found in the General Provisions of this contract.)

(b) The contracting officer shall include a clause reading substantially as follows in the Special Provisions of the resultant contract:

Consideration

Estimated Cost and Fixed Fee. (1) It is estimated that the total cost to the Government for full performance of this contract will be $———, of which the sum of $——— represents the estimated reimbursable costs and $——— represents the fixed fee.

(2) Total funds currently available for payment and allotted to this contract are $———, of which $——— represents the estimated reimbursable costs and $——— represents the fixed fee. For further provisions on funding, see the "Limitation of Funds" clause.

(3) It is estimated that the amount currently allotted will cover performance of Phase I which is scheduled to be completed by———(date).

(4) The Contracting Officer may allot additional funds to the contract without the concurrence of the Contractor.

[FR Doc. 79–17853 Filed 6–7–79; 8:45 am]
BILLING CODE 4110–12–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[FCC 79–328]

Radio Broadcast Services; Deletion of Rules Requiring Retention of Audio Recordings of Certain Public Affairs Programs

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: In accordance with a Court order, the Commission deletes the rules requiring retention of audio recordings of public affairs programs in which issues of public importance are discussed.

EFFECTIVE DATE: June 15, 1979.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Philip Cross, Steve Crane, John Reiser, Broadcast Bureau (202) 632–6660.

SUPPLEMENTARY INFORMATION:

Order

Adopted: May 29, 1979.
Released: June 1, 1979.

In the matter of amendment of Part 73 of the Commission's rules and regulations to delete §§ 73.127, 73.591 and 73.622.

1. Sections 73.127 (AM), 73.591 (NCE–FM) asnd 73.622 (TV) require the licensee of each such station which, after August 6, 1973, received assistance pursuant to Part IV of the Communications Act of 1934, as amended (Section 399(b)), to retain for 60 days an audio recording of each of its broadcasts of any public affairs program in which any issue of public importance is discussed.

2. Section 399(b) was held unconstitutional, and Commission rules promulgated thereunder were ordered vacated, in *Community Service Broadcasting of Mid-America, Inc., et al. v. F.C.C.*, D.C. Circuit No. 76–1081, opinion on rehearing *en banc*, issued August 25, 1978.

3. Therefore, it is ordered, That, pursuant to Sections 4 and 303 of the Communications Act of 1934, as amended, Part 73 of the Commission's rules and regulations is amended to

delete §§ 73.127, 73.591 and 73.622 in their entirety, effective June 15, 1979.

4. For further information on this *Order*, contact Philip Cross, Steve Crane or John Reiser, Broadcast Bureau, (202) 632–9660.

Federal Communications Commission.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; (47 U.S.C. 154, 303).).

William J. Tricarico,

Secretary.

[FR Doc. 79-17808 Filed 6-7-79; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 81

Station Identification of Alaska-Public Fixed Stations

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: The Commission is editorially amending Part 81 of its rules to insert a provision governing station identification of Alaska-public fixed stations. This rule section was inadvertently overlooked in a previous consolidation of the rules. The Field Operations Bureau requires this amendment to aid in its enforcement efforts.

EFFECTIVE DATE: June 15, 1979.

ADDRES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Penny Wells, Private Radio Bureau (202) 632–7175.

SUPPLEMENTARY INFORMATION:

Order

Adopted: May 30, 1979.

Released: June 5, 1979.

In the matter of editorial amendment of Subpart Q of Part 81 of the rules to provide for station identification of Alaska-Public Fixed Stations.

1. Part 81 of the Commission's rules is entitled "Stations on Land in the Maritime Services and Alaska-Public Fixed Stations," and is divided into subparts. Some subparts are devoted to delineation of the functions of different types of stations. One important provision of each of these subparts which is mandated by Article 19 of the International Radio Regulations concerns the authorized means of station identification. However, when the rules relating to Alaska-public fixed stations were transferred from Part 85 to Subpart Q of Part 81,[1] the section on station identification was inadvertently overlooked. The Field Operations Bureau, which relies upon accurate station identification to carry out its enforcement functions, recently noticed the deletion and suggested that a corrective rulemaking procedure be instituted.

2. The language to be added to Subpart Q closely parallels that of Section 81.310, Identification of Station, in the subpart relating to public coast stations operating by telephony.

3. Accordingly, the Commission's rules are being amended to insert a provision governing station identification of Alaska-public fixed stations. Authority for this amendment is contained in Sections 4(i) and 303(b) and (r) of the Communications Act of 1934, as amended. Since the amendment is essentially editorial in nature, the public notice, procedure and effective date provisions of 5 U.S.C. 553 do not apply.

4. In view of the above, it is ordered, that the rule addition set forth in the attached Appendix is adopted effective June 15, 1979.

Federal Communications Commission.

(Secs. 4, 303, 48 Stat., as amended, 6, 1082; (47 U.S.C. 154, 303).)

R. D. Lichtwardt,

Executive Director.

Appendix

Part 81 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA-PUBLIC FIXED STATIONS

Section 81.706, formerly Reserved, is added to read as follows:

§ 81.706 Station identification.

(a) All emissions from an Alaska-public fixed station shall be clearly identified:

(1) By voice transmission of the official call sign; or

(2) By voice transmission of the approximate geographic location of the station as approved by the Commission. The Commission will not approve duplicative geographic station identifiers.

(b) Station identification shall be made on completion of each communication with any other station and at the beginning and end of each transmission made for any other purpose.

[FR Doc. 79-17808 Filed 6-7-79; 8:45 am]

BILLING CODE 6712-01-M

[1] Parts 2 and 85 were also amended. See Docket No. 18612, released October 26, 1971, 32 FCC 2d 237 (1971).

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1307, 1310

[Ex Parte NO. MC-98 (Sub-No. 2)]

Detention of Motor Vehicles—Shipments of Uncrated New Furniture, Fixtures, and Appliances

AGENCY: Interstate Commerce Commission.

ACTION: Modification of final rule.

SUMMARY: Exemption from Existing Uniform Detention Rules granted for: shipments of uncrated or uncartoned new furniture, fixtures or applicances (whether or not moving in mixed trailerloads with cartoned or crated furniture, fixtures, or appliances) which require inside strapping, wrapping, bracing and other loading devices similar to those needed for household goods; provided that rates for uncartoned or uncrated lading are applicable to any mixed trailerload.

DATES: Exemption shall be effective on or before July 9, 1979.

FOR FURTHER INFORMATION CONTACT: Janice Rosenak or Harvey Gobetz, (202) 275–7693 or (202) 275–7656.

SUPPLEMENTARY INFORMATION: In our decision 126 M.C.C. 603 (1977) as modified in a decision served September 15, 1977 at 42 FR 51586, we adopted regulations providing for nationwide detention charges. Exemption from these regulations was made for shipments of household goods, among others. By order served August 31, 1977, we stayed the effect of these regulations with respect to shipments of uncrated, uncartoned new furniture, fixtures, and appliances requiring inside strapping, wrapping, bracing, and other loading devices similar to the household goods moving industry.

Evidence received indicates that transportation conditions of these shipments are similar to those for household goods. In addition, when the higher uncartoned rate for mixed trailerload of uncartoned and cartoned lading is applied the carrier is compensated for the required special handling and resulting delay. Accordingly, the regulations published at sections 1307.35(e) and 1310.15(f) are modified as follows:

1. In § 1307.5 the introductory portion of paragraph (e) is redesignated as paragraph (e)(1) and (e)(2) and revised. Present paragraphs (e)(1) and (e)(2) are redesignated as paragraphs (e)(3) and (e)(4) respectively.

§ 1307.35 Terminal and special services.

* * * * *

(e) *Detention of vehicles.* (1) The following rules apply to all shipments except:

(i) Shipments of household goods;

(ii) *Whole or mixed shipments of uncartoned or uncrated new furniture, fixtures, or applicances which require inside strapping, wrapping, bracing and other loading devices similar to those needed for household goods; provided that the uncrated trailerload rate applies;*

(iii) Commodities transported in bulk in tank truck, dump trucks, vehicles pneumatically unloaded and other self-unloading mechanized vehicles;

(iv) Heavy and specialized commodities or articles requiring special equipment or handling outside the scope of the certificates of general-commodities motor common carriers;

(v) Livestock other than ordinary;

(vi) Articles picked up or delivered to railroad care in railroad owned or leased equipment having prior subsequent transportation by rail;

(vii) Shipments to consignor and consignees of waterborne commerce at marine terminal facilities to the extent that the marine operator would be liable to the motor common for truck detention under any applicable detention rule promulgated pursuant to the authority of the Federal Maritime Commission.

(2) All common carriers of property by motor vehicle subject to Interstate Commerce Act excepting those specifically excluded, supra, shall publish the below rule entitled "Detention-Vehicles With Power Units" and all such carriers engaging in the practice of spotting shall also publish the below rule entitled "Detention-Vehicles Without Power Units." The wording of the following rules may not be varied except where clearly warranted by exceptional circumstances, and where appropriate, the word "rule" may be substituted for the word "item".

* * * * *

2. In § 1310.15, the introductory portion of paragraph (f) is redesignated as paragraph (f)(1) and (f)(2) and revised. Present paragraphs (f)(1) and (f)(2) are redesignated and new paragraphs (f)(3) and (f)(4) respectively.

§ 1310.15 Terminal and other services—changes and allowances (rule 15).

* * * * *

(f) The following rules apply to all shipments except: *Detention of vehicles.* (1) The following rules apply to all shipments except:

(i) Shipments of household goods;

(ii) *Whole or mixed shipments of uncartoned or uncrated new furniture, fixtures, or applicances which require inside strapping, wrapping, bracing and other loading devices similar to those needed for household goods; provided that the uncrated trailerload rate applies;*

(iii) Commodities transported in bulk in tank truck, dump trucks, vehicles pneumatically unloaded and other self-unloading mechanized vehicles;

(iv) Heavy and specialized commodities or articles requiring special equipment or handling outside the scope of the certificates of general-commodities motor common carriers;

(v) Livestock other than ordinary;

(vi) Articles picked up or delivered to railroad care in railroad owned or leased equipment having prior subsequent transportation by rail;

(vii) Shipments to consignor and consignees of waterborne commerce at marine terminal facilities to the extent that the marine operator would be liable to the motor common for truck detention under any applicable detention rule promulgated pursuant to the authority of the Federal Maritime Commission.

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* * * * *

Dated: May 25, 1979.

By the Commission, Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp, and Christian.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-17975 Filed 6-7-79; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

Opening of Waubay National Wildlife Refuge, South Dakota, To Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to hunting of Waubay National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: Gun: November 24, 1979, through December 2, 1979.

Archery: December 3, 1979, through December 31, 1979.

FOR FURTHER INFORMATION CONTACT: Robert R. Johnson, Waubay National Wildlife Refuge, Waubay, South Dakota 57273, Phone Number (605) 947-4995.

SUPPLEMENTARY INFORMATION:

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

Hunting is permitted on the Waubay National Wildlife Refuge, South Dakota, only on the areas designated by signs as being open to hunting. This area, comprising 4,591 acres, is delineated on maps available at the refuge headquarters. Hunting shall be in accordance with all applicable State regulations subject to the following conditions:

1. No hunting within the 60-acre safety zone surrounding refuge headquarters.

2. All refuge roads and trails within the open hunting area, other than public roads, will be closed to vehicles. All gates and trails, however, will be open to foot traffic.

3. Campfires are prohibited.

4. All deer taken on the area must be checked in at refuge checking station located at the old CCC camp site.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50 Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

Note.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

The Refuge Recreation Act of 1962 (16 U.S.C. 460K) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires (1) that any recreational use permitted will not interfere with the

primary purpose for which the area was established; and (2) that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

The recreational use authorized by these regulations will not interfere with the primary purposes for which the Waubay National Wildlife Refuge was established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

Dated: May 31, 1979.

Robert R. Johnson,

Refuge Manager.

[FR Doc. 79-17084 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 34

Participation of Local Governments in Revenue From Areas Administered by the United States Fish and Wildlife Service

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking provides the basis for making revenue sharing payments to counties for lands administered by the U.S. Fish and Wildlife Service under provisions of Pub. L. 95-469, approved October 17, 1978. This rule makes revenue sharing applicable to all Service administered lands; makes payments available for any governmental purpose; and provides for the computation for payments to county and local governments.

EFFECTIVE DATE: July 9, 1979.

FOR FURTHER INFORMATION CONTACT: Bernard J. Schaefer, Assistant Chief, Division of Realty, Telephone 202-343-4028.

SUPPLEMENTARY INFORMATION: Proposed rulemaking was published in the Federal Register on January 19, 1979, and provided for a 30-day comment period. Six comments were received from counties, three from townships and/or township associations, and one from a city. Three commentors asked for clarification as to which unit of local government is to receive the payment. Two commentors asked for clarification of the passthrough requirement in § 34.5(c), and one commentor asked for more latitude in making the passthrough determination and suggested that payments of $5,000 or less be exempt from the passthrough requirement. One commentor objected to "reserve area" payments being exempt from passthrough, based on the wording of the statute.

As to which unit of local government is eligible to receive the payment, the definition in § 34.3(c) provides the basis and has been expanded for clarity. The criteria is that entity of local government, which is the primary taxing authority, that levies and collects general purpose real property taxes in which areas administered by the Fish and Wildlife Service are located. This may be a county, parish, organized or unorganized borough, township, municipality, or other unit of local government depending on the circumstances in a particular State.

Section 34.5(c) relating to the passthrough requirement has been expanded so as to give counties more latitude and to provide examples as to how the passthrough payments may be determined. The statute does not specify that minimum amounts may be exempt from passthrough, therefore, the regulation is not changed in this regard. The Service agrees that reserve area payments should not be exempt from passthrough and this provision has, accordingly, been removed from the regulation. Editorial changes and corrections have been made as necessary.

The principal author of this final rulemaking is Richard E. Corthell, Division of Realty, Fish and Wildlife Service.

It is determined that the publication of this final rulemaking is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to Section 102(2)(c) of the National Environmental Protection Act of 1969 (42 U.S.C. 4332(2)(c)).

The Department of the Interior has determined that this document is not a significant regulatory action requiring the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR 14.

Accordingly, Part 34, Title 50, Code of Federal Regulations is revised as follows:

Sec.

34.1 Purpose.
34.2 Authority.
34.3 Definitions.
34.4 Eligibility of areas.
34.5 Distribution of revenues.
34.6 Schedule of appraisals.
34.7 Fair market value appraisals.
34.8 Appropriations authorized.
34.9 Protests.

Authority: 16 U.S.C. 715s, as amended.

§ 34.1 Purpose.

The purpose of the regulations contained in this part is to prescribe the procedures for making payments in lieu of taxes to counties for areas administered by the Secretary through the United States Fish and Wildlife Service in accordance with the Revenue Sharing Act.

§ 34.2 Authority.

(a) The Act of October 17, 1978, Public Law 95-469, amended the Act of June 15, 1935, as amended by the Act of August 30, 1964 (78 Stat. 701; 16 U.S.C. 715s), by revising the formula and extending the revenue sharing provisions to all fee and reserve areas that are administered solely or primarily by the Secretary through the United States Fish and Wildlife Service. Payments under this Act may be used for any governmental purpose.

(b) Pursuant to Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d), and the regulations issued pursuant thereto, which are contained in 43 CFR Part 17, counties must file an assurance with the Department, comply with the terms of the assurances, and comply with regulations contained in 43 CFR Part 17 in order to continue to receive this Federal financial assistance.

§ 34.3 Definitions.

(a) The term "fee area" means any area which was acquired in fee by the United States and is administered, either solely or primarily, by the Secretary through the Service.

(b) The term "reserve area" means any area of land withdrawn from the public domain and administered, either solely or primarily, by the Secretary through the Service. For the purpose of these regulations, reserve areas also include lands in Hawaii, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands, which were initially administered by the United States through Act of Congress, Executive Order, Public Land Order or Proclamation of the President and administered, either solely or primarily, by the Secretary through the Service.

(c) The term "county" means any county, parish, organized or unorganized borough, township or municipality, or other unit of local government that is the primary collector for general purpose real property taxes where fee areas and/or reserve areas are located. For the purpose of sharing revenues, the Commonwealth of Puerto Rico, Guam,

and the Virgin Islands shall each be treated as a county.

(d) The term "fund" means the revenues received by the Service from (1) the sale or disposition of animals, salmonoid carcasses and eggs, products of the soil (including, but not limited to, timber, hay, and grass), minerals, shells, sand, and gravel; (2) leases for public accommodations or facilities incidental to, but not in conflict with, the basic purpose of such areas; and (3) other privileges, including industrial leases at Crab Orchard National Wildlife Refuge, Illinois, as authorized by Section 8 of Pub. L. 95-616, approved October 27, 1978. The Service may pay from such fund any necessary expenses incurred in connection with the revenue producing and revenue sharing activity. The fund shall also include any appropriations authorized by the Act to make up any difference between the total amount of receipts after payments of expenses and the total amount of payments due the counties.

(e) The term "net receipts" means the amount of revenue collected by the Service from an area (including fee land and/or reserve land) after the deduction of necessary expenses incurred in producing the particular revenues.

(f) The term "fair market value" means the amount in terms of money for which in all probability a property would be sold if exposed for sale in the open market by a seller who is willing but not obligated to sell, allowing a reasonable time to find a buyer who is willing but not obligated to buy, both parties having full knowledge of all the uses to which the property is adapted, and for which it is capable of being used.

§ 34.4 Eligibility of areas.

In order to receive payments under the Act, a county must qualify under the definition in § 34.3(c) above and there must be located within the county, areas of land owned in fee title by the United States and administered by the Secretary of the Interior through the Fish and Wildlife Service, including wildlife refuges, waterfowl production areas, wildlife ranges, wildlife management areas, fish hatcheries, research centers or stations, and administrative sites, and these areas must be solely or primarily administered by the Service. In addition to this Act, reserve areas administered solely or primarily by the Service are entitlement lands under section 6(a) of the Act of October 29, 1976 (Pub. L. 94-565, 31 U.S.C. 1601-1607), for which regulations are published in Title 43, Part 1880, Code of Federal Regulations.

§ 34.5 Distribution of revenues.

The Act provides that the Secretary, at the end of each fiscal year, shall pay to each county out of the fund:

(a) For reserve areas, an amount equal to 25 per centum of the net receipts, collected by the Secretary in connection with the operation and management of such area, provided that when any such area is situated in more than one county, the distributive share to each from the aforesaid receipts shall be proportional to its acreage of such reserve area.

(b) For fee areas, whichever of the following is greater:

(1) An amount equal to 75¢ per acre for the total acreage of the fee area located within such county.

(2) An amount equal to three-fourths of one per centum of the fair market value, as determined by the Secretary, of that portion of the fee area (excluding any improvements thereto made after the date of Federal acquisition) which is located within such county. For those areas of fee land within the National Wildlife Refuge System as of September 30, 1977, the amount of payment based on fair market value will not be less than the amount paid on the adjusted cost basis as in effect at that time. Actual cost, or appraised value in case of donation, will be used for lands acquired during fiscal year 1978. For those areas of fee lands added to lands administered by the Service after September 30, 1978, by purchase, donation, or otherwise, fair market value shall be determined by appraisal as of the date said areas are administered by the Service.

(3) An amount equal to 25 per centum of the net receipts collected by the Secretary in connection with the operation and management of such fee area during such fiscal year; but if a fee area is located in two or more counties, the amount each such county is entitled to shall be the amount which bears to such 25 per centum, the same ratio as that portion of the fee area acreage which is within such county bears to the total acreage of such fee area.

(c) In accordance with section 5(A) of the act, each county which receives a payment under (a) and (b) above, with respect to any fee area or reserve area, shall distribute that payment to those units of local government which have incurred the loss or reduction of real property tax revenues because of the existence of such area in accordance with the following guidelines.

The local units of government entitled to this distribution will be those such as, but not limited to, cities, towns, townships, school districts, and the county itself in appropriate cases, which levy and collect real property taxes separately from the county or other primary taxing authority or those for which a tax is separately stated on a consolidated tax bill of the primary taxing authority in areas wherein eligible lands are located. The amount of distribution or passthrough to which each unit of local government shall be entitled shall be in the same proportion as its current tax loss bears to the current whole tax loss.

This proportion may be determined from representative tax bills for the area; by construction by using assessments and millage rates; or by other suitable methods to achieve an equitable result. An example using the representative tax bill method is:

Typical Tax Bill for the Area

County	$80 or	80%
School District	20 or	20%
Total	100 or	100%

The county would receive the total payment, keep 80 percent and pass through 20 percent to the school district. An example using the construction method is:

For a typical acre

Assessed value—		
$100 × 80 mills County	$8	80%
$100 × 20 mills School District	$2	20%
Total	$10	100%

Here again, the county would receive the total payment, keep 80 percent and pass through 20 percent to the school district.

Counties shall distribute the payment to eligible local units of government within 90 days from receipt of the payment. In the event a county cannot make the required distribution for reasons of State or local law, or otherwise, the Service will make the payments directly to local units of government upon return of the check and information upon which to make the payments.

(d) Each county which receives a payment under these regulations shall maintain a record for a period of three years as to how the payment was distributed to units of local government under (c) above. The record shall be available for inspection by the regional director, should a dispute arise as to the distribution of payments. See § 29.21-2(c) for a listing of the regional directors of the Service.

§ 34.6 Schedule of appraisals.

The Secretary shall make fair market value appraisals of areas administered by the Service within five years after October 17, 1978, beginning with areas established earliest. All areas for which payments were not authorized prior to fiscal year 1979 (i.e., fish hatcheries, administrative sites, and research

stations) shall be included in the areas appraised during the first fiscal year. Once appraised, areas shall be reappraised on a schedule of at least once every five years. Until areas are appraised, the fair market value for the purposes of this regulation shall be the adjusted cost as of September 30, 1978, except that fee lands added to such areas after that date shall be on the basis of fair market value.

§ 34.7 Fair market value appraisals.

Fee areas administered by the Service will be appraised in accordance with standard appraisal procedures in order to estimate the fair market value of each area as a whole. The evaluation will be premised on an appropriate determination of highest and best use in accordance with existing or potential zoning, the present condition of the land and the general economic situation in the vicinity. Standard appraisal techniques will involve a market data comparison of these areas with similar properties which have sold recently in the local market. These techniques may also include consideration of potential income and development of the cost approach for special use properties having limited marketability. An appropriate evaluation of these areas will also take into consideration a discount for size as recognized by the market for large properties where applicable. The appraisals will be accomplished by the regional director, using Service staff appraisers or private appraisers contracted by the Service.

The Act requires that improvements placed upon the land after the date of Federal Acquisition be excluded from the fair market value. The only structures that will be included in the appraisal are those that were present at the time of Federal acquisition and have not been the subject of substantial renovation or modification with Federal funds. Evaluation of improvements will be based on their contributory value to the area as determined by the highest and best use study. Lands occupied by improvements not subject to appraisal will be valued as though unimproved.

The appraisals will be reviewed by the Serivce's review appraisers and the determination of the regional director as to fair market value shall be final and conclusive and shall be the basis for computation of revenue sharing payments.

§ 34.8 Appropriations authorized.

The Act authorizes appropriations to the fund for any fiscal year when the aggregate amount of payments required to be made exceeds the net receipts in the fund.

§ 34.9 Protests.

(a) Computation of payments shall be based on Federal records concerning land, real property improvements, and accounting of net receipts from areas administered solely or primarily by the Service.

(b) Any affected county may protest the results of the computations of its payments to the regional director in charge of the State and county affected. See § 29.21–2(c) for a listing of the regional directors of the Service.

(c) Any protesting county shall submit sufficient evidence to show error in the computation or the data from which the computations are made.

(d) All protests to the regional director shall be filed within 90 days from the date of receipt of the payment.

(e) The regional director shall consult with the affected county to resolve conflicts in the computations and/or data. The regional director shall make a determination as to the correct payment, which determination shall be final and conclusive.

Dated: June 4, 1979.

Lynn A. Greenwalt,

Director, Fish and Wildlife Service.

[FR Doc. 79-17822 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 44, No. 112
Friday, June 8, 1979

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

[7 CFR Part 1701]

Telephone Outside Plant Construction Contract; Revision of Existing Contract and Specifications

AGENCY: Rural Electrification Administration.

ACTION: Proposed rule.

SUMMARY: REA proposes to revise REA Bulletin 381–2 to announce (1) A general revision of the Telephone System Construction Contract, Labor and Materials, REA Form 511, (2) changes in the contract's associated specifications, REA Forms 511a, 511d, 511f and 511g, and (3) the renumbering of the 511 forms to 515, 515a, 515c, 515d, 515f and 515g. The last revision of the contract and specifications was October 1973. Since that date, significant changes have been made in the telephone industry, in construction materials, engineering designs and procedures, testing requirements and construction methods. There is a need to revise the 511 forms to incorporate these changes into the REA outside plant construction contract and specifications. This action will make it possible for REA telephone borrowers to continue to provide their subscribers with the most modern and efficient telephone service.

DATE: Public comments must be received by REA no later than August 7, 1979.

ADDRESS: Submit written data, views or comments to the Director, Telephone Operations and Standards Division, rural Electrification Administration, Room 1355–S, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Peters, Chairman, Engineering Review Committee, telephone number 202–447–2525.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 USC 901 et seq.), REA proposes to issue a revision of REA Bulletin 381–2. Copies of the proposed revisions of Bulletin 381–2 and REA Forms 515, 515a, 515c, 515d, 515f and 515g may be secured in person or by written request from the Director, Telephone Operations and Standards Division, at the address above.

All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Director, Telephone Operations and Standards Division, during regular business hours, at the address above.

An impact analysis for this proposed action has been prepared and is available upon request.

The principal changes in the contract and specifications are:

A. REA Form 515, Telephone System Construction Contract (Labor and Materials):

1. Notice and Instructions to Bidders has been divided into two parts. The first part, Notice to Bidders, gives a general outline of the scope of the construction project, requires attendance at a Pre-bid Conference and requires the submission of Bidder qualifications. The second part, Instructions to Bidders, has been reworded to clearly outline the scope of the construction project and restates the requirement for attendance at the Pre-bid Conference.

2. Section 13 of the Contractor's Proposal has been reworded to exclude Saturdays and legal holidays as well as Sundays from the determination of the construction time limit.

3. Article II. Section 1, Paragraph (b) has been reworded to allow the sequence of construction to be designated by work sector numbers.

4. Article II, Section 2, Paragraph (a), has been reworded to require a construction superintendent to be present at the project during working hours when construction is being performed.

5. Article III, Section 1, Paragraph (a) has been changed to (1) allow for the payment of 95 percent of submitted invoices for completed Assembly units including cleanup, (2) pay 80 percent or $500,000, whichever is lesser, for cable and wire delivered to the project once cable placement begins and (3) pay up to 80 percent of the cable and wire material costs over $500,000 after $100,000 or more of cable and wire materials have been incorporated in the project.

6. Article III, Section 1, paragraph (d) and (e), changed to allow interest charges for late payment to be based on the prime rate at the Chase Manhattan Bank in New York.

7. Article V, *Engineering, Construction and Inspection Details*, has been added to include information in the contract that was formerly included in an attactment to the contract.

8. Article VII, Section 1, *Definitions*, has been expanded to include definitions of (1) Cleanup, (2) Work Sector, (3) Construction Corridor, (4) Reduced Construction Corridor, (5) Restricted Construction Corridor, (6) Unobtained Construction Corridor, and (7) Construction Sheets.

9. Table 3.2, *Schedule of Acceptance Tests and Measurements*, has been expanded to include a new test, Shield Ground for Single Jacketed Cables.

B. REA Form 515a, Specifications and Drawings for Construction of Direct Buried Plant.

1. Metric and English units are used.

2. New assembly units BC, BFC, BFCT, BM–76 and BM–90 have been added.

3. Assembly units BJ, BJF, BM–32, BM–40, BM–65, BM–70, BWF, BWL, HB and T have been deleted.

4. Section BA has been expanded to include sawn wood posts.

5. Sections BD and BDF have been combined into a new unit BD.

6. Sections BG and BGF have been combined into a new unit BG.

7. Part III, Section 4:

a. Paragraph 4.103 has been changed to require plows with removable gates.

b. Paragraph 4.107 defines when a ripping unit (BM–76) will be specified.

c. Paragraph 4.108 defines when a rock unit (BM–71) will be specified.

d. Paragraph 4.2 has been rewritten to clarify the handling of buried cable and wire.

e. Paragraph 4.3 has been expanded to permit alternate methods of achieving the minimum depth in rock.

f. Paragraph 4.4 has been expanded to require the electrical testing of all splices and terminations of cable and wire pairs in buried splice cases.

8. Under the *List of Construction Drawings and Plans* these changes were made:

a. Assembly units BM85–1 and BM85–3, and guide drawings 940, 942, 958 and 970 were deleted.

b. Guide drawings 1001, 1003, 1004, 1005, 1009, 1010, 1011 and 1012 were added.

C. REA Form 515c, Specifications and Drawings for Conduit and Manhole Construction:

1. There was no change made in this specification other than the renumbering of the form.

D. REA Form 515d, Specifications and Drawings for Underground Cable Installation:

1. Sections HC and HFC have been combined into a new Section HC.

2. Sections UG and UGF have been combined into a new Section UG.

E. REA Form 515f, Specifications and Drawings for Construction of Pole Lines, Aerial Cables and Wires:

1. New Assembly units CF, PC and PM–60 have been added.

2. The Bridged Tap Isolator, Building-Out Capacitor, and Junction Impedance Compensator Assembly Units have been deleted.

F. REA Form 515g:

1. Title changed to *Specifications and Drawings for Service Entrance and Station Protector Installations.*

2. Sections BKB, BKBF and K have been combined into a new Section SE.

3. The following Assembly Units Drawings and Plans have been deleted:

BM65–1, BM70, P1–1F, P1–1F2, P1–1F8, P1–7F, P1–7F2, and PM–30.

4. Section S has been deleted.

5. The following Drawings and Plans have been added:

816, 963–1, and 963–2.

The new REA Form 515 is to be used on all outside plant projects bid after January 1, 1980.

On issuance of revised REA Bulletin 381–2, Appendix A to Part 1701 will be modified accordingly.

Dated: May 30, 1979.

John H. Arnesen,

Acting Assistant Administrator—Telephone.

[FR Doc. 79-17489 Filed 6-7-79; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF ENERGY

[10 CFR Part 436]

Federal Photovoltaic Utilization Program

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking; cancellation of a public hearing.

SUMMARY: The Department of Energy (DOE) hereby cancels the public hearing scheduled for Thursday, June 14, 1979, in Washington, D.C., concerning DOE's proposed monitoring and assessment rules for the Federal Photovoltaic Utilization Program. This hearing is cancelled due to lack of any public interest in making oral presentations at the hearing. As stated in the notice of proposed rulemaking issued on May 2, 1979 (44 FR 27194, May 9, 1979), written comments on the proposed rules must be received by 4:30 p.m. on July 9, 1979.

FOR FURTHER INFORMATION CONTACT: Elaine Smith, Federal Photovoltaic Utilization Program Manager, Office of Conservation and Solar Applications, Department of Energy, Room 1210, 20 Massachusetts Avenue, N.W., Washington, D.C. 20545 (202) 376–5931.

Issued in Washington, D.C., June 6, 1979.

Kelly C. Sandy III,

Executive Director, Conservation & Solar Applications.

[FR Doc. 79-18091 Filed 6-7-79; 10:29 am]

BILLING CODE 6450-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

[12 CFR Part 335]

Securities of Insured Nonmember State Banks; Advance Notice of Proposed Rulemaking

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The proposal would amend the Federal Deposit Insurance Corporation's ("FDIC") securities disclosure regulations issued under the Securities Exchange Act of 1934 (15 U.S.C. 78l(i)) ("Act") in order to bring them into substantial similarity with those of the Securities and Exchange Commission ("SEC"). Section 12(i) of the Act requires that the FDIC issue substantially similar regulations to those of the SEC or publish its reasons for not doing so. This proposal is intended to comply with Section 12(i), to update the regulation, and to make the regulation more understandable. It covers the following: (1) Acquisition statements; (2) shareholder proposals; (3) stock appreciation rights; (4) form S–K simplification; (5) corporate governance; (6) management remuneration; (7) management indebtedness; (8) changes in independent accountants; and (9) auditor fees.

DATES: Comments must be received on or before August 7, 1979.

ADDRESS: Interested persons are invited to submit written data, views or arguments regarding the proposed regulations to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. All written comments will be made available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Gerald J. Gervino, Attorney, or Louis E. Wright, Financial Analyst, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429 (202) 389–4422 or 389–4651.

SUPPLEMENTARY INFORMATION: The FDIC would make the following changes:

A. Filing and Disclosure Requirements Relating to Beneficial Ownership

1. *Filings by previously exempt persons.*—The Domestic and Foreign Investment Disclosure Act of 1977, Pub. L. No. 95–213, Title II, 91 Stat. 1494 (1977), authorized the SEC to "close the gaps which exist in the present scheme for requiring disclosure of persons whose beneficial ownership exceeds 5 percent of a class of certain equity securities." SEC Rel. No. 34–15348, 43 FR 55751 (November 28, 1978). The SEC has adopted a new paragraph (c) to its Rule 13d–1 which requires filings by: (1) Those persons who acquired beneficial ownership of their securities prior to December 22, 1970, (2) those persons who acquired not more than 2 percent of a class of securities within a 12-month period, who are exempt from Rule 13d–1(a) by Section 13(d)(6)(B) of the Act, and (3) those persons who acquired securities through a stock-for-stock exchange registered under the Securities Act of 1933, 15 U.S.C. 77(a) *et seq.* (1970), who are exempt from Rule 13d–1(a) by Section 13(d)(6)(A) of the Act.

Rule 13d–1(c) also would require any person "otherwise" not required to report pursuant to Rule 13d–1(a) but who is a beneficial owner of more than 5 percent of a specified class of equity securities to report on Schedule 13G. A person could fall under this category if, for example, he acquired beneficial ownership of more than 5 percent of a class of securities which at the time of acquisition was not registered pursuant to Section 12(g) of the Act but which subsequently became registered. However, an exemption has been added to Rule 13d–1(c) to indicate that the "or otherwise" language does not cover issuers who acquire their own securities. This filing is to be made on a modified version of the SEC's "short form"

Schedule 13G previously available only to institutional shareholders.

The SEC was also required to tabulate and make available the information received concerning share ownership to the public. The SEC has added cover pages to its forms in order to obtain data in a form suitable for its computer system.

The FDIC feels that cover sheets are unnecessary for its purposes, since its staff can enter such information while reviewing the filings. The FDIC intends to make a tabulation of share ownership available to the public in the future.

The FDIC proposes to adopt this SEC change as an amendment to § 335.4(h)(2) of its regulations by revising paragraphs (i) and (ii) and by adding new paragraphs (iii), (iv) and (v). A new Form F-11A discussed below would include SEC modifications designed to fit this purpose.

2. *Short form acquisition notices and pledges.*—On April 21, 1978, the SEC adopted a new Schedule 13G to provide a new replacement short form schedule which sets forth disclosure requirements for reporting beneficial ownership and related information on certain equity securities by certain institutional investors. SEC Rel. No. 34-14692, 43 Fed. Reg. 18484 (April 28, 1978). Under the amended SEC rules, it is available as a short form for institutional investors, such as certain brokers, dealers, banks, investment companies, investment advisors, employee benefit plans, pension funds, parent holding companies, groups and insurance companies. As noted above, this schedule has subsequently been revised for use by other persons.

On June 30, 1978, the SEC amended the short form rules with respect to holding companies and revised the definition of "beneficial ownership" for Williams Act purposes with respect to pledges that are investment advisors. SEC. Rel. No. 34-14910, 43 FR 29767 (July 11, 1978).

The FDIC proposes to adopt these changes by appropriate amendments to § 335.4(h) of its regulations as set forth below.

B. Shareholder Proposals

On December 6, 1978, the SEC adopted an amendment to its shareholder proposal rule (17 CFR 240.14a-8) which would allow a shareholder proponent an opportunity to bring alleged false and misleading statements to the attention of management and the SEC where they are contained in a management statement opposing the shareholder's proposal. SEC Rel. No. 34-15384, 43 FR 58522 (December 14, 1978). The FDIC would adopt the amendment substantially in the form adopted by the SEC by amending § 335.5(k)(5) as set forth below.

C. Stock Appreciation Rights

On December 27, 1976, the SEC amended its Rule 16b-3 to provide an exemption from Sections 16(a) and 16(b) of the Act for certain transactions in stock appreciation rights. SEC Rel. No. 34-13097, 42 FR 758 (January 4, 1977). The SEC amended its rules on June 22, 1977. SEC Rel. No. 34-13659, 42 FR 33285 (June 30, 1977). The FDIC would adopt the rule substantially as last amended by the SEC by revising § 335.6(r) as set forth below.

D. Form S-K Simplification

On December 23, 1977, the SEC amended its new Regulation S-K which is designed to integrate the common requirements of its various forms into one source to which all the various forms were cross-referenced. Thus, a filing person would only need to be familiar with requirements for one type of item regardless of which form he is filing. SEC Rel. No. 5893, 42 Feg. Reg. 65554 (December 30, 1977). The regulation was amended on July 28, 1978, SEC Rel. No. 34-15006, 43 FR 34402 (August 3, 1978) and on December 4 and 19, 1978. SEC Rel. Nos. 34-15380 and 34-15418, 43 FR 58181, 60418 (December 13 and 27, 1978).

Rather than adopt a new separate form for the presentation of common disclosure items, the FDIC proposes that common items be contained in its Form F-5 and cross-referenced thereto from the other forms. Thus, the benefits of a common form may be obtained without the addition of another form.

In connecton with the adoption of Regulation S-K, the SEC made a number of modifications to its disclosure items. Those modifications which were found consistent with the banking industry are contained in this proposal. The FDIC would adopt the substance of Regulation S-K which appears applicable to the banking industry by amending §§ 335.41, 335.42, 335.43 and 335.51 of its regulations as set forth below.

E. Acquisition Statements

In connection with the SEC rulemaking set out in Section A above, the SEC amended its Schedule 13D and adopted a new Schedule 13G. The FDIC would amend its Form F-11 and adopt a new Form F-11A to conform its regulations with the SEC changes. Accordingly, § 335.47 would be amended and § 335.48 would be added as set out below.

F. Corporate Governance

On December 6, 1978, the SEC amended its regulations in order to provide shareholders with information to assist their more informed assessment of the structure, composition and functioning of issuers' boards of directors. It also required management to provide information about the terms of settlement of proxy contests. Specific improvements in information available to shareholders was sought concerning (1) the structure, composition and functioning of issuers' boards of directors; (2) resignation of directors; and (3) attendance at board and committee meetings. SEC Rel. No. 34-15384, 43 FR 58522 (December 14, 1978).

The SEC amendments are based upon a broad study which began in April of 1977 which included public hearings. SEC Rel. No. 14970 (July 18, 1978), 43 FR 31945 (July 24, 1978). The amendments require disclosure of certain significant economic and personal relationships which exist between a director, an issuer, and its officers including family relationships and business transactions. An issuer must disclose (1) whether it has a standing audit, compensation or nominating committee, (2) the functions its committees actually performed, (3) the number of committee meetings held during the issuer's last fiscal year, (4) the fact that a director attends fewer than 75 percent of the aggregate number of meetings of the board and of the committees on which he sits, and (5) disagreements with resigning or retiring directors, when requested by the director.

The FDIC would substantially adopt the above SEC amendments by amending §§ 335.51 and 335.43 and by reference §§ 335.41 and 335.42 as set forth below.

G. Management Remuneration

1. *The SEC Rule.*—On December 4, 1978, the SEC amended its rules with respect to management remuneration. SEC Rel. No. 34-15380, 43 FR 58181 (December 13, 1978).

Disclosure is now required for the five highest paid officers (rather than three highest paid officers). However, the disclosure floor has been raised by 25 percent from $40,000 to $50,000 in recognition of inflationary effects on remuneration. Thus, larger issuers will be required to disclose more information while smaller issuers will enjoy more privacy.

The SEC has expanded the tabular format to include all cash, cash-

equivalent and contingent forms of remuneration. Cash-equivalent remuneration includes the spread of below market price of securities acquired upon the exercise of an option or its equivalent, the cost of premiums for special officers of director insurance or the cost of special health benefits.

Also included are certain personal benefits which are not directly related to job performance including indirect benefits. These include, among others, issuer payments for: (1) Home repairs and improvements; (2) housing and other living expenses (including domestic service) provided at principal and/or vacation residences of management personnel; (3) personal use of company property, such as automobiles, planes, yachts, apartments, hunting lodges or company vacation houses; (4) personal travel expenses; (5) personal entertainment and related expenses; and (6) legal, accounting and other professional fees for matters unrelated to the business of the issuer. Other personal benefits which may be forms of remuneration are the following: the ability of management to obtain benefits from third parties, such as favorable bank loans and benefits from suppliers, because the corporation compensates, directly or indirectly, the bank or supplier for providing the loan or services to management; and the use of the corporate staff for personal purposes.

The SEC has adopted a conditional exclusion for certain personal benefits if an issuer cannot determine without unreasonable effort or expense the specific amount of personal benefits or the extent to which benefits are personal rather than business. If the issuer concludes such benefits do not exceed $10,000 and its board of directors concludes that their omission does not render the table materially misleading, they may be omitted. Footnote disclosure is required where personal benefits exceed 10 percent of an officer or director's remuneration or $25,000, whichever is less. Contingent remuneration is separated from cash and cash-equivalent remuneration in a separate column. This includes retirement and deferred compensation, incentive plans, stock purchase plans, profit sharing and thrift plans, and similar contingent plans.

2. *The FDIC Simplification.*—The FDIC's staff, along with the staff of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System, has simplified the instructions to the remuneration table in order to take into account the less complex remuneration provisions generally found in the banking industry and the relatively smaller staffs of publicly held issuer banks.

Thus, the more highly technical instructions have been shortened and put into more commonly used English. Seldom incurred provisions have been deleted or shortened.

The most important change relates to the inclusion of a $5,000 exemption for personal benefits in lieu of the SEC's $10,000 conditional exclusion. It is felt that a small clear exemption will promote more uniform disclosure among similar issuers. In addition, if a bank cannot determine the actual cost of personal benefits without unreasonable effort or expense, it must include a reasonable estimate of the cost to the bank. Where an allocation of the personal portion of a benefit cannot be made, the aggregate cost and an estimate of the percentage that is personal must be made. A statement of the bank's policies and practices regarding personal benefits must be provided.

In other respects not noted above, the FDIC proposal is substantially similar to the SEC requirements.

While the FDIC favors the approach described above, it is specifically inviting comments as to the advisability of adopting the SEC rule in substantially the form adopted by the SEC. Thus, references should be made to the above SEC release.

3. *Proposed Amendments.*—The FDIC would adopt the above changes by amending Items 7 (a) and (b) of § 335.51 of its regulations, as set forth below.

H. Indebtedness of Management

The FDIC proposes to amend its regulations concerning indebtedness of management to require that the percentage of equity capital accounts an officer or director's disclosed indebtedness represents be stated and also the percentage of all directors and officers. The FDIC feels this information represents a valuable addition to the absolute dollar amount in allowing shareholder evaluation of management indebtedness.

The list of enumerated conditions which must be met in order to determine whether an insider extension of credit is made on substantially the same terms as those prevailing for non-insiders has been expanded to include repayment terms. The FDIC feels that favorable repayment terms are a sufficiently important basis for preference to an insider that they should be included in the list. The collectability standard has been expanded to provide as examples, the fact of a delinquency or of a restructuring. The upper dollar exclusion has been lowered from $10 million to $5 million. The former exclusion is considered to be too high to allow meaningful disclosure.

The FDIC would amend Item 7(d) of § 335.51 to implement this proposal.

I. Changes in Independent Accountants

On May 26, 1978, the SEC amended its rules regarding the filing of current reports and proxy statements to require disclosure of whether a decision to change the independent accountant of the registrant was recommended or approved by the audit or similar committee of the board of directors. SEC Rel. No. 34-14808, 43 FR 24208 (June 5, 1978).

Currently, Item 10 of Form F-3, 12 CFR 335.43, requires an insured state nonmember bank to report changes in its independent accountant, including the date of change, reports of disagreements with the former accountant, descriptions of adverse opinions by the former accountant, and a letter from the former accountant commenting on the information submitted by the bank in response to Item 10. Item 8 of Form F-5, 12 CFR 335.51, requires the reporting bank to identify the accountant selected for the current year and, if different, for the fiscal year most recently completed, and to describe changes in accountants and disagreements with accountants that have occurred since the most recent annual meeting, including views of the accountant that conflict with the bank's view of the disagreement. In light of the Commission's action requiring disclosure of whether a change of independent accountant was recommended or approved by the audit or other committee of the Board of Directors, the FDIC has determined that similar amendments to §§ 335.43 and 335.51 of its regulations are appropriate and, accordingly, is proposing such amendments as set forth below.

J. Services and Fees of Independent Auditors

The SEC has adopted amendments to its rules requiring disclosure in proxy statements of (1) services provided during the last fiscal year by a principal independent accountant, the percentage relationship which the aggregate fees for all non-audit services bear to the audit fee and the percentage relationship that the fees for each non-audit service bear to the audit fees; and (2) whether the board of directors or its audit or similar committee has approved each such service. SEC Rel. No. 34-14994, 43 FR 29110 (July 6, 1978).

Currently, Item 8 of Form F–5, 12 CFR 335.51, does not specifically require the disclosure of information regarding the provision of and fees concerning non-financial services performed for an insured state nonmember bank by its independant accountants or the approval of such services by the bank's board of directors. In light of the SEC action requiring such disclosure by its registrants, the FDIC has determined that similar disclosures would be appropriate and that such information would be useful to investors in the stock of insured state nonmember banks.

In order to accomplish this, it is proposed that § 335.51 be amended by adding a new paragraph (f) to Item 8, as set forth below.

K. Other SEC Amendments

On March 3, 1978, the SEC adopted a proposal relating to industry segment reporting. SEC Rel. No. 34–14524, 43 FR 9599 (March 9, 1978). Since banking is a single industry and banks are generally not allowed to engage in non-banking activities, the FDIC finds this proposal unnecessary with respect to insured State nonmember banks.

The SEC periodically publishes a large number of changes througout its regulations. Many of these changes apply only to specific non-banking institutions such as insurance or extractive industries. Some relate to companies subject to other securities laws under which banks are exempted. Others impose requirements which obviously are not intended to apply to banking. The FDIC is not formally considering such amendments since they obviously should not be applicable to insured State nonmember bank issuers.

L. Competition and Costs

The FDIC requests comments concerning the inpact these amendments may have upon competition. It also requests comments upon any increase in cost or additional burden the amemdments may impose, which would not be outweighed by the benefits provided the bank, its shareholders and the public. The FDIC is specifically requesting information from banks concerning projected start-up costs and continuing costs. To the extent feasible, these estimates should be allocated among the various new areas of regulation.

Dated: June 4, 1979.
Federal Deposit Insurance Corporation
Hoyle L. Robinson,
Executive Secretary.

It is proposed to amend 12 CFR Part 335, as follows:

1. Section 335.4(h) would be amended by revising paragraphs (h)(2), (h)(3), (h)(5), (h)(6), (h)(7) and (h)(8) as follows:

§ 335.4 Registration statements and reports.

* * * * *

(h) * * *

(2)(i) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a bank of a class which is registered pursuant to Section 12 of the Act (except non-voting securities) is directly or indirectly the beneficial owner of more than five (5) percent of such class shall, within 10 days after such acquisition, send to the bank at its principal office, by registered or certified mail, and to each exchange where the security is traded, and file with the Corporation, a statement containing the information required by Form F–11. Six copies of the statement, including all exhibits, shall be filed with the Corporation.

(ii)(A) A person who would otherwise be obligated under paragraph (i) of this § 335.4(h)(2) to file a statement on Form F–11 may, in lieu thereof, file with the Corporation, within 45 days after the end of the calendar year in which such person became so obligated, six copies, including all exhibits, of a short form ownership statement on Form F–11A and send one copy each of such form to the bank at its principal office, by registered or certified mail, and to the principal national securities exchange where the security is traded: *Provided,* That it shall not be necessary to file a Form F–11A unless the percentage of the class of equity security beneficially owned as of the end of the calendar year is more than five (5) percent: *And provided further,* That

(*1*) Such person has acquired such securities in the ordinary course of his business and not with the purpose nor with the effect of changing or influencing the control of the bank, nor in conection with or as a participant in any transaction having such purpose or effect, including any transaction subject to § 335.4(h)(5)(ii); and

(*2*) Such person is

(*i*) A broker or dealer registered under Section 15 of the Act;

(*ii*) A bank as defined in Section 3(a)(6) of the Act;

(*iii*) An insurance company as defined in Section 3(a) (19) of the Act;

(*iv*) An investment company registered under Section 8 of the Investment Company Act of 1940;

(*v*) An investment adviser registered under Section 203 of the Investment Advisers Act of 1940;

(*vi*) An employee benefit plan, or pension fund which is subject to the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA") or an endowment fund;

(*vii*) A parent holding company: *Provided,* The aggregate amount held directly by the parent, and directly and indirectly by its subsidiaries which are not persons specified in paragraph (ii)(A)(*2*)(*i*) through (*vi*) of this § 335.4(h)(2), does not exceed one percent of the securities of the subject class;

(*viii*) A group, provided that all the members are persons specified in paragraph (ii)(A)(*2*)(*i*) through (*vii*) of this § 335.4(h)(2); and

(*3*) Such person has promptly notified any other person (or group within the meaning of Section 13(d)(3) of the Act) on whose behalf it holds, on a discretionary basis, securities exceeding five percent of the class, of any acquisition or transaction on behalf of such other person which might be reportable by the person under Section 13(d) of the Act. This paragraph only requires notice to the account owner of information which the filing person reasonably should be expected to know and which would advise the account owner of an obligation he may have to file a statement pursuant to Section 13(d) of the Act or an amendment thereto.

(B) Any person relying on § 335.4(h)(2)(ii)(A) and § 335.4(h)(3)(ii) shall, in addition to filing any statement required thereunder, file a statement on Form F–11A within ten days after the end of the first month in which such person's direct or indirect beneficial ownership exceeds ten percent of a class of equity securities specified in § 335.4(h)(2)(i) computed as of the last day of the month, and thereafter within ten days after the end of any month in which such person's beneficial ownership of securities of such class, computed as of the last day of the month, increased or decreased by more than five percent of such class of equity securities. Six copies of such statement, including all exhibits, shall be filed with the Corporation and one each sent, by registered or certified mail, to the bank at its principal office and to the principal national securities exchange where the security is traded. Once an amendment has been filed reflecting beneficial ownership of five percent or

less of the class of securities, no additional filings are required by this paragraph (ii)(B) unless the person thereafter becomes the beneficial owner of more than ten percent of the class and is required to file pursuant to this provision.

(C)(*1*) Notwithstanding paragraphs (ii)(A) to (ii)(B) of this § 335.4(h)(2) and § 335.4(h)(3)(ii), a person shall immediately become subject to § 335.3(h)(2)(i) and § 335.4(h)(3)(i) and shall promptly, but not more than 10 days later, file a statement on Form F–11 if such person:

(*i*) Has a reported that the person is the beneficial owner of more than five percent of a class of equity securities in a statement on Form F–11A pursuant to paragraph (ii)(A) or (ii)(B) of this § 335.4(h)(2), or is required to report such acquisition but has not yet filed the form;

(*ii*) Determines that the person no longer has required or holds such securities in the ordinary course of business or not with the purpose nor with the effect of changing or influencing the control of the bank, nor in connection with or as a participant in any transaction having such purpose or effect, including any transaction subject to § 335.4(h)(5)(ii); and (*iii*) Is at that time the beneficial owner of more than five percent of a class of equity securities described in § 335.4(h)(2)(i).

(*2*) For the ten-day period immediately following the date of the filing of a Form F–11 pursuant to this pursuant to this paragraph (ii)(C), such person shall not (*i*) Vote or direct the voting of the securities described in § 335.4(h)(2)(ii)(C)(*1*)(*i*); nor, (*ii*) Acquire an additional beneficial ownership interest in any equity securities of the bank, nor of any person controlling the bank.

(D) Any person who has reported an acquisition of securities in a statement of Form F–11A pursuant to paragraph (ii)(A) or (ii)(B) of this § 335.4(h)(2) and thereafter ceases to be a person specified in paragraph (ii)(A)(*2*) of this § 335.4(h)(2) shall immediately become subject to § 335.4(h)(2)(i) and § 335.4(h)(3)(i) and shall file, within ten days thereafter, a statement on Form F–11 in the event such person is a beneficial owner at that time of more than five percent of the class of equity securities.

(iii) Any person who, as of December 31, 1979, or as of the end of any calendar year thereafter, is directly or indirectly the beneficial owner of more than five percent of any equity security of a class specified in paragraph (h)(2)(iv) and who is not required to file a statement under paragraph (h)(2)(i) by virtue of the exemption provided by Section 13(d)(6)(A) or (B) of the Act, or because such beneficial ownership was acquired prior to December 20, 1970, or because such person otherwise (except for the exception provided by Section 13(d)(6)(C) of the Act) is not required to file such statement, shall, within 45 days after the end of the calendar year in which such person became obligated to report under this paragraph, send to the bank at its principal office, by registered or certified mail, and file with the Corporation, a statement containing the information required by Form F–11A. Six copies of the statement, including all exhibits, shall be filed with the Corporation.

(iv) For the purposes of Section 13(d) and 13(g), any person, in determining the amount of outstanding securities of a class of equity securities, may rely upon information set forth in the bank's most recent quarterly or annual report, and any current report subsequent thereto, filed with the Corporation pursuant to the Act, unless the person knows or has reason to believe that the information contained therein is inaccurate.

(v)(A) Whenever two or more persons are required to file a statement containing the information required by Form F–11 or Form F–11A with respect to the same securities, only one statement need be filed; *Provided*, That (*1*) Each person on whose behalf the statement is filed is individually eligible to use the form on which the information is filed;

(*2*) Each person on whose behalf the statement is filed is responsible for the timely filing of such statement and any amendments thereto, and for the completeness and accuracy of the information concerning such person contained therein; such person is not responsible for the completeness or accuracy of the information concerning the other persons making the filing, unless such person knows or has reason to believe that such information is inaccurate; and

(*3*) Such statement identifies all such persons, contains the required information with regard to each such person, indicates that such statement is filed on behalf of all such persons, and includes, as an exhibit, their agreement in writing that such statement is filed on behalf of each of them.

(B) A group's filing obligation may be satisfied either by a single joint filing or by each of the group's members making an individual filing. If the group's members elect to make their own filings, each filing should identify all members of the group but the information provided concerning the other persons making the filing need only reflect information which the filing person knows or has reason to know.

(3)(i) Form F–11.—If any material change occurs in the facts set forth in the statement required by § 335.4(h)(2)(i) including, but not limited to, any material increase or decrease in the percentage of the class beneficially owned, the person or persons who were required to file such statement shall promptly file or cause to be filed with the Corporation and send or cause to be sent to the bank at its principal office, by registered or certified mail, and to each exchange on which the security is traded, an amendment disclosing such change. An acquisition or disposition of beneficial ownership of securities in an amount equal to one percent or more of the class of securities shall be deemed "material" for purposes of this § 335.4(h)(3); acquisitions or dispositions of less than such amounts may be material, depending upon the facts and circumstances. The requirement that an amendment be filed with respect to an acquisition which materially increases the percentage of the class beneficially owned shall not apply if the acquisition is exempted by Section 13(d)(6)(B) of the Act. Six copies of such amendment shall be filed with the Corporation.

(ii) Form F–11A.—Notwithstanding paragraph (i) of this § 335.4(h)(3), and provided that the person or persons filing a statement pursuant to § 335.4(h)(2)(ii) continue to meet the requirements set forth therein, any person who has filed a short form statement on Form F–11A shall amend such statement within 45 days after the end of each calendar year to reflect, as of the end of the calendar year, any changes in the information reported in the previous filing on that form, or if there are no changes from the previous filing, a signed statement to that effect under cover of Form F–11A. Six copies of the amendment, including all exhibits, shall be filed with the Corporation and one each sent, by registered or certified mail, to the bank at its principal office and to the principal national securities exchange where the security is traded. Once an amendment has been filed reflecting beneficial ownership of five percent or less of the class of securities, no additional filings are required unless the person thereafter becomes the beneficial owner of more than five percent of the class and is required to file pursuant to § 335.4(h)(2).

Note.— For persons filing a short form statement pursuant to §335.4(h)(2)(ii), see also §§335.4(h)(2)(ii)(B), (C) and (D).

* * * * *

(5) * * *

(iv) * * *

(C) * * *

(1) * * *

(2) The pledgee is a person specified in § 335.4(h)(2)(ii)(A)*(2)*, including persons meeting the conditions set forth in paragraph *(vii)* thereof; and

* * * * *

(6)(i) A person who becomes a beneficial owner of securities shall be deemed to have acquired such securities for purposes of Section 13(d)(1) of the Act, whether such acquisition was through pruchase or otherwise. However, executors or administrators of a decedent's estate generally will be presumed not to have acquired beneficial ownership of the securities in the decedent's estate until such time as the executors or administrators are qualified under local law to perform their duties.

(ii)(A) When two or more persons agree to act together for the prupose of acquiring, holding, voting or disposing of equity securities of a bank, the group formed thereby shall be deemed to have acquired beneficial ownership, for purposes of Sections 13(d) and 13(g) of the Act, as of the date of such agreement, of all equity securities of that bank beneficially owned by any such person.

(B) Notwithstanding the previous paragraph, a group shall be deemed not to have acquired any equity securities beneficially owned by the other members of the group solely by virture of their concerted actions relating to the purchase of equity securities directly from a bank in a transaction not involving a public offering; *Provided,* That *(1)* All the members of the group are persons specified in § 335.4(h)(2)(ii)(A)*(2)*;

(2) The pruchase is in the ordinary course of each member's business and not with the prupose nor with the effect of changing or influencing control of the bank, nor in connection with or as a participant in any transaction having such purpose or effect, including any transaction subject to § 335.4(h)(5)(ii);

(3) There is no agreement among, or between any members of the group to act together with respect to the bank or its securities except for the purpose of facilitating the specific purpose involved; and

(4) The only actions among or between any members of the group with respect to the bank or its securities subsequent to the closing date of the non-public offering are those which are necessary to conclude ministerial matters directly related to the completion of the offer or sale of the securities.

(7) The acquisition of securities of a bank by a person who, prior to such acquisition, was a beneficial owner of more than five percent of the outstanding securities of the same class as those acquired shall be exempt from Section 13(d) of the Act: *Provided,* That (i) The acquisition is made pursuant to preemptive subscription rights in an offering made to all holders of securities of the class to which the preemptive subscription rights pertain;

(ii) Such person does not acquire additional securities except through the exercise of the person's pro rata share of the preemptive subscription rights; and

(iii) The acquisition is duly reported, if required, pursuant to Section 16(a) of the Act and the rules and regulations thereunder.

(8) Each bank having securities registered pursuant to section 12(g) of the Act, upon being notified by a national securities association registered pursuant to section 15A of the Act that a class of the bank's securities is to be quoted on an interdealer quotation system, which is sponsored and governed by the rules of such association, shall thereafter notify such association promptly of (i) any increase or decrease in the amount of securities of such class outstanding which exceeds five percent of the amount of such class last reported to the association and (ii) any change in the name of the bank. The obligation to report pursuant to this paragraph (h)(8) of this section shall continue until notification is received from the association that all classes of securities are no longer quoted on such interdealer quotation system.

* * * * *

2. In § 335.5, paragraph (c)(1), Note 2 would be amended by deleting the term "§335.7(d)." and inserting in its place the term "§ 335.7(f).".

3. In § 335.5, paragraph (k) would be amended by adding a new Subparagraph (5) as follows:

§ 335. Proxy statements and other solicitations under section 14 of the Act.

* * * * *

(k) * * *

(5) If the management intends to include in the proxy statement a statement in opposition to a proposal received from a proponent, it shall—not later than ten calendar days prior to the date the preliminary copies of the proxy statement and form of proxy are filed pursuant to § 335.5(f), or, in the event that the proposal must be revised to be includable, not later than five calendar days after receipt by the bank of the revised proposal—promptly forward to the proponent a copy of the statement in opposition to the proposal. In the event the proponent believes that the statement in opposition contains materially false or misleading statements within the meaning of § 335.5(h) and the proponent wishes to bring this matter to the attention of the Corporation, the proponent should promptly provide the staff with a letter setting forth the reasons for this view and at the same time promptly provide management with a copy of such letter.

4. Section 335.6 would be amended by revising paragraph (r) as follows:

§ 335.6 Reports of directors, officers, and principal stockholders.

* * * * * *

(r) *Exemption from Section 16(b) of the acquisitions of shares of stock and stock options and stock appreciation rights under certain stock incentive, stock option of similar plans.* Any acquisition of shares of stock (other than stock acquired upon the exercise of an option, warrant or right) pursuant to a plan as defined in Subparagraph (4)(i) hereof, or any acquisition, expiration, cancellation of surrender to the bank of a stock option or stock appreciation right pursuant to such a plan by a director or officer of the bank shall be exempt from the operation of Section 16(b) of the Act if the plan meets the following conditions:

(1) *Approval by security holders.* The plan has been approved, directly or indirectly

(i) By the affirmative votes of the holders of a majority of the securities of the bank present, or represented, and entitled to vote at a meeting duly held in accordance with the applicable laws of the State or other jurisdiction in which the bank was incorporated or

(ii) By the written consent of the holders of a majority of the securities of the bank entitled to vote: *Privided, however,* That if such vote or written consent was not solicited substantially in accordance with the rules and regulations, if any, in effect under section 14(a) of the Act at the time of such vote or written consent, the issuer shall furnish in writing to the holders of record of the securities entitled to vote for the plan substantially the same information concerning the plan which would be required by the rules and regulations in effect under Section 14(a) of the Act at the time such informaiton is furnished, if proxies to be voted with respect to the approval or disapproval of

the plan were then being solicited, on or prior to the date of the first annual meeting of security holders held subsequent to the later of

(A) The first registration of an equity security under Section 12 of the Act or

(B) The acquisition of an equity security for which exemption is claimed.

Such written information may be furnished by mail to the last known address of the security holders of record within 30 days prior to the date of the mailing. Six copies of such written information shall be filed with, or mailed for filing to, the Corporation not later than the date on which it is first sent or given to security holders of the bank. For the purposes of this paragraph, the term "bank" includes a predecessor corporation if the plan or obligations to participate thereunder were assumed by the bank in connection with the succession. In addition, any amendment to the plan shall be similarly approved if the amendment would

(*1*) Materially increase the benefits accruing to participants under the plan;

(*2*) Materially increase the number of securities which may be issued under the plan; or

(*3*) Materially modify the requirements as to eligibility for participation in the plan.

(2) *Disinterested administrators.* If the selection of any director or officer of the bank to whom stock may be allocated or to whom stock options or stock appreciation rights may be granted pursuant to the plan, or the determination of the number or maximum number of shares of stock which may be allocated to any such director or officer or which may be covered by stock option or stock appreciation rights granted to any such director or officer pursuant to the plan is subject to the discretion of any person, then such discretion shall be exercised only as follows:

(i) With respect to the participation of directors—

(A) By the board of directors of the bank, a majority of which board and a majority of the directors acting in the matter are disinterested persons;

(B) By, or only in accordance with the recommendation of, a committee of three or more persons having full authority to act in the matter, all of the members of which committee are disinterested persons; or

(C) Otherwise in accordance with the plan, if the plan

(*1*) Specifies the number or maximum number of shares of stock which directors may acquire or which may be subject to stock options or stock appreciation rights granted to directors pursuant to the plan and the terms upon which and the times at which, or the periods within which, such stock may be acquired or such options or rights may be acquired and exercised; or

(*2*) Sets forth, by formula or otherwise, effective and determinable limitations with respect to the foregoing based upon earnings of the bank, dividends paid, compensation received by participants, option prices, market value of shares, outstanding shares or percentages thereof outstanding from time to time or similar factors.

(ii) With respect to the participation of officers who are not directors:

(A) By the board of directors of the bank or a committee of three or more directors—

(B) By, or only in accordance with the recommendations of, a committee of three or more persons having full authority to act in the matter, all of the members of which committee are disinterested persons; or

(C) Otherwise in accordance with the plan, if the plan

(*1*) Specifies the number or maximum number of shares of stock which officers may acquire or which may be subject to stock options or stock appreciation rights granted to the officers pursuant to the plan and the terms upon which, and the times at which, or the period within which, such stock may be acquired or such options or rights may be acquired and exercised; or

(*2*) Sets forth, by formula or otherwise, effective and determinable limitations with respect to the foregoing based upon earnings of the bank, dividends paid, compensation received by participants, option prices, market value of shares, outstanding shares or percentages thereof outstanding from time to time or similar factors.

(iii) The provisions of this paragraph shall not apply with respect to any option or right granted, or other equity security acquired, prior to the date of the first registration of an equity security under Section 12 of the Act.

(3) *Plan limitations.* The plan effectively limits as to each participant or as to all participants the aggregate dollar amount of stock or the aggregate number of shares of stock which may be allocated, or which may be subject to stock options or stock appreciation rights issued pursuant to the plan. The limitations may be established on an annual basis or for the duration of the plan—whether or not the plan has a fixed termination date—and may be determined either by fixed or maximum dollar amounts; fixed or maximum number of shares; or by formulas based upon earnings of the bank, dividends paid, compensation received by participants, option prices, market value of shares, outstanding shares or percentages thereof outstanding from time to time, or similar factors which will result in an effective and determinable limitation. Such limitations may be subject to any provision for adjustment of the plan, of stock allocable, or options outstanding thereunder to prevent dilution or enlargement of rights.

(4) *Definitions.* Unless the context otherwise requires, all terms used in this § 335.6(r) shall have the same meaning as in the Act or elsewhere in this Part 335. In addition the following definitions apply:

(i) The term "plan" shall mean an option, bonus, appreciation, profit sharing, retirement, incentive, thrift, savings, or similar plan which meets the following conditions:

(A) The plan must be set forth in a written document describing the means or basis for determining the eligibility of individuals to participate and either the price at which the securities may be offered or the method by which the price or the amount of the award is to be determined; and

(B) The plan must provide with respect to any option or similar right (including a stock appreciation right) offered pursuant to the plan that such option or right is not transferable other than by will or the laws of descent and distribution and that it is exercisable during the employee's lifetime only by the person or by the person's guardian or legal representative.

(ii) The term "exercise of an option, warrant or right" contained in the parenthetical clause of the first paragraph of this § 335.6(r) shall not include

(A) The making of an election to receive under any plan, compensation in the form of stock or credits therefor, provided that such election is made either prior to the making of the award or prior to the fulfillment of all conditions to the receipt of the compensation and provided further, that such election is irrevocable until at least six months after termination of employment;

(B) The subsequent crediting of such stock;

(C) The making of any election as to the time for delivery of such stock after termination of employment, provided that such election is made at least six months prior to any such delivery;

(D) The fulfillment of any condition to the absolute right to receive such stock; or

(E) The acceptance of certificates for shares of such stock.

(iii) The term "disinterested person" used in paragraphs (2) and (5) of this § 335.6(r) shall mean an administrator of a plan who is not at the time he exercises discretion in administering the plan eligible and has not at any time within one year prior thereto been eligible for selection as a person to whom stock may be allocated or to whom stock options or stock appreciation rights may be granted pursuant to the plan or any other plan of the bank or any of its affiliates entitling the participants therein to acquire stock, stock options or stock appreciation rights of the bank or any of its affiliates.

(5) *Cash settlements of stock appreciation rights.* Any transaction involving the exercise and cancellation of a stock appreciation right issued pursuant to a plan (whether or not the transaction also involves the related surrender and cancellation of a stock option), and the receipt of cash in complete or partial settlement of that right, shall be exempt from the operation of Section 16(b) of the Act, as not comprehended within the purpose of that section, if all the following conditions are met:

(i) *Information about the bank.* (A) The issuer of the stock appreciation right has been subject to the reporting requirements of Section 13 of the Act for at least a year prior to the transaction and has filed all reports and statements required to be filed pursuant to that section during that year;

(B) The issuer of the stock appreciation right on a regular basis releases for publication quarterly and annual summary statements of operations. This condition shall be deemed satisfied if the specified financial data appears (*1*) on a wire service, (*2*) in a financial news service, (*3*) in a newspaper of general circulation, or (*4*) is otherwise made publicly available.

(ii) *Limitation on the right and any related option.* Neither the stock appreciation right nor any related stock option shall have been exercised during the first six months of their respective terms, except that this limitation shall not apply in the event death or disability of the grantee occurs prior to the expiration of the six-month period.

(iii) *Administration of the plan.* (A) the plan shall be administered by either the board of directors, a majority of which are disinterested persons and a majority of the directors acting on plan matters are disinterested persons, or by a committee of three or more persons, all of whom are disinterested persons;

(B) the board or committee shall have sole discretion either:

(*1*) To determine the form in which payment of the right will be made (i.e., cash, securities, or any combination thereof), or

(*2*) To consent to or disapprove the election of the participant to receive cash in full or partial settlement of the right. Such consent or disapproval may be given at any time after the election to which it relates;

(C) Any election by the participant to receive cash in full or partial settlement of the stock appreciation right, as well as any exercise by the participant of a stock appreciation right for such cash, shall be made during the period beginning on the third business day following the date of release of the financial data specified in paragraph (5)(i)(B) of this § 335.6(r) and ending on the twelfth business day following such date. This paragraph (5)(iii)(C), however, shall not apply to any execise by the participant of a stock appreciation right for cash where the date of exercise:

(*1*) Is automatic or fixed in advance under the plan;

(*2*) Is at least six months beyond the date of grant of the stock appreciation right; and

(*3*) Is outside the control of the participant.

(iv) *Compliance with other conditions of § 335.6(r).* The plan under which the stock appreciation rights and any related options are granted shall meet the conditions specified above in §§ 335.6(r) (1), (2), (3), and (4).

(v) *Limit of the exemption.* Nothing in this paragraph (5) provides an exemption from Section 16(b) for the acquisition of stock upon the exercise of a stock appreciation right or a stock option.

5. In § 335.6 paragraphs (r), (s), (t), and (u) would be redesignated as paragraphs (s), (t), (u), and (v).

6. In § 335.41, Items 5, 6, 7, 8, 9, and 10 would be amended by revising to read as follows:

§ 335.41. Form for registration of securities of a bank pursuant to section 12(b) or section 12(g) of the Securities Exchange Act of 1934 (form F–1).

* * * * *

Item 5—Security Ownership of Certain Beneficial Owners and Management. Set forth the same information as is required to be furnished by Items 5 (d), (e) and (g) of Form F–5 at § 335.51.

Note.—The information required by Item 5(e) of Form F–5 need not be included for any nominee for election as a director.

Item 6—Directors and Principal Officers. Set forth the same information as is required to be furnished by Items 6 (a), (b), (c), (d), (e) and (f) of Form F–5 at § 335.51.

Note.—The information required by Items 6 (a), (d), (e) and (f) of Form F–5 need not be included for any nominee for election of a director.

Item 7—Remuneration of Directors and Officers. Set forth the same information as is required to be furnished by Items 7 (a) and (b) of Form F–5 at § 335.51.

Item 8—Management Options To Purchase Securities. Set forth the same information as is required to be furnished by Item 7(c) of Form F–5 at § 335.51.

Item 9—Interest of Management and Others in Certain Transactions. (a) Set forth the same information, for the past three years, as is required to be furnished by Items 7 (d), (e) and (f) of Form F–5 at § 335.51.

Note.—The information required by Items 7 (d), (e) and (f) of Form F–5 need not be included for any nominee for election as a director.

(b) If the bank was organized within the past five years, furnish the following information:

(1) State the names of the promoters, the nature and amount of anything of value (including money, property, contracts, options or rights of any kind) received or to be received by each promoter directly or indirectly from the bank, and the nature and amount of any assets, services or other consideration therefor received or to be received by the bank.

(2) As to any assets acquired or to be acquired by the bank from a promoter, state the amount at which acquired or to be acquired and the principle followed, or to be followed in determining the amount. Identify the persons making the determination and state their relationship, if any, with the bank or any promoter. If the assets were acquired by the promoter within two years prior to their transfer to the bank, state the cost thereof to the promoter.

Item 10—Legal Proceedings. Briefly describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the bank or any of its subsidiaries is a party or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding and the relief sought. Include similar information as to any such proceedings known to be contemplated by governmental authorities.

Instructions. 1. Notwithstanding Instruction 2 to this item, administrative or judicial proceedings arising under Section 8 of the Federal Deposit Insurance Act shall be deemed material and shall be described.

2. No information need be given with respect to any proceeding which involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the equity capital accounts of the bank and its subsidiaries on a consolidated basis. However, if any proceeding presents in large degree the same

issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

3. Any material proceedings to which any director, officer or affiliate of the bank, any owner of record or beneficially of more than 5 percent of any class of voting securities of the bank, or any associate of any such director, officer or security holder is a party adverse to the bank or any of its subsidiaries or has a material interest adverse to the bank or any of its subsidiaries, also shall be described.

4. Notwithstanding the foregoing, if a receiver, fiscal agent or similar officer has been appointed for the bank or its parent, in a proceeding under the Bankruptcy Act or in any other proceeding under State or Federal law in which a court or governmental agency has assumed jurisdiction over substantially all of the assets or business of the bank or its parent, or if such jurisdiction has been assumed by leaving the existing directors and officers in possession but subject to the supervision and orders of a court or governmental body, identify the proceeding, the court or governmental body, the date jurisdiction was assumed, the identity of the receiver, fiscal agency or similar officer and the date of the person's appointment.

5. Discuss the extent of insurance coverage if appropriate to the type of proceeding.

* * * * *

7. In § 335.42, Items 5, 8, 12, 13, 14, 15 and 16 would be amended by revising to read as follows:

§ 335.42 Form for annual report of bank (Form F-2).

* * * * *

Item 5—Legal Proceedings. Briefly describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the bank or any of its subsidiaries is a party or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeedings and the relief sought. Include similar information as to any such proceedings known to be contemplated by governmental authorities.

Instructions. 1. Notwithstanding Instruction 2 to this item, administrative or judicial proceedings arising under Section 8 of the Federal Deposit Insurance Act shall be deemed material and shall be described.

2. No information need be given with respect to any proceeding which involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the equity capital accounts of the bank and its subsidiaries on a consolidated basis. However, if any proceedings presents in large degree the same issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

3. Any material proceedings to which any director, officer or affiliate of the bank, any owner of record or beneficially of more than 5 percent of any class of voting securities of the bank, or any associate of any such director, officer or security holder is a party adverse to the bank or any of its subsidiaries or has a material interest adverse to the bank or any of its subsidiaries, also shall be described.

4. Notwithstanding the foregoing, if a receiver, fiscal agent or similar officer has been appointed for the bank or its parent, in a proceeding under the Bankruptcy Act or in any other proceeding under State or Federal law in which a court or governmental agency has assumed jurisdiction over substantially all of the assets or business of the bank or its parent, or if such jurisdiction has been assumed by leaving the existing directors and officers in possession but subject to the supervision and orders of a court or governmental body, identify the proceeding, the court or governmental body, the date jurisdiction was assumed, the identity of the receiver, fiscal agent or similar officer and the date of the person's appointment.

5. Discuss the extent of insurance coverage if appropriate to the type of proceeding.

* * * * *

Item 8—Principal Officers of the Bank. Set forth the same information as is required to be furnished by 6(b), (c), (d), (e) and (f) of Form F-5 at § 335.51.

Note.—The information required by Items 6(e) and (f) of Form F-5 need not be included for directors or persons nominated or chosen to become a director.

* * * * *

Item 12—Security Ownership of Certain Beneficial Owners and Management. Set forth the same information as is required to be furnished by Items 5(d), (e) and (g) of Form F-5 at § 335.51.

Note.—The information required by Item 5(e) of Form F-5 need not be included for any nominee for election as a director.

Item 13—Directors of the Bank. Set forth the same information as is required to be furnished by items 6(a), (d), (e) and (f) of Form F-5 at § 335.51.

Note.—The information required by Items 6(e) and (f) of Form F-5 need not be included for principal officers.

Item 14—Remuneration of Directors and Officers. Set forth the same information as is required to be furnished by Items 7(a) and (b) of Form F-5 at § 335.51.

Item 15—Management Options to Purchase Securities. Set forth the same information as is required to be furnished by Item 7(c) of Form F-5 at § 335.51.

Item 16—Interest of Management and Others in Certain Transactions. Set forth the same information as is required to be furnished by Items 7(d), (e) and (f) of Form F-5 at § 335.51.

Note.—The information required by Items 7(d), (e) and (f) of form F-5 need not be included for any nominee for election as a director.

* * * * *

8. In § 335.43, Instruction 6 of Item 2, Item 3, Item 9(d), Item 10(e), Item 11, Item 12, Item 13 and Exhibits 7, 8, 9, and 10 would be amended by revising or adding as follows:

§ 335.43 Form for current report of a bank (form F-3).

* * * * *

Item 2— * * *

Instructions. * * *

6. Attention is directed to the requirements at the end of this form with respect to the filing of financial statements for businesses acquired and to the filing of copies of the plans of acquisition or disposition as exhibits to the report.

Item 3—Legal Proceedings. Briefly describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the bank or any of its subsidiaries is a part of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought. Include similar information as to any such proceedings known to be contemplated by governmental authorities.

Instructions. 1. Nothwithstanding Instruction 2 to this item, administrative or judicial proceedings arising under Section 8 of the Federal Deposit Insurance Act shall be deemed material and shall be described.

2. No information need be given with respect to any proceeding which involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the equity capital accounts of the bank and its subsidiaries on a consolidated basis. However, if any proceeding presents in large degree the same issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

3. Any material proceedings to which any director, officer of affiliate of the bank, any owner of record or beneficially of more than 5 percent of any class of voting securities of the bank, or any associate of any such director, officer or security holder is a party adverse to the bank or any of its subsidiaries or has a material interest adverse to the bank or any of its subsidiaries, also shall be described.

4. Notwithstanding the foregoing, if a reciever, fiscal agent or similar officer has been appointed for the bank or its parent, in a proceeding under the Bankruptcy Act or in any other proceeding under State of Federal law in which a court or governmental agency has assumed jurisdiction over substantially all of the assets or business of the bank or its parent, or if such jurisdiction has been assumed by leaving the existing directors and officers in possession but subject to the supervision and orders of a court or governmental body, identify the proceeding, the court or governmental body, the date jurisdiction was assumed, the identity of the receiver, fiscal agent or similar officer and the date of the person's appointment.

5. Discuss the extent of insurance coverage if appropriate to the type of proceeding.

* * * * *

Item 9— * * *

Describe the terms of any settlement between the bank and any other participant (as defined in § 335.5(j)) terminating any solicitation subject to § 335.5(i), including the cost or anticipated cost to the bank.

Instructions. * * *

5. If the bank has furnished to its security holders proxy soliciting material containing the information called for by paragraph (d), the paragraph may be answered by reference to the information contained in such material.

6. If the bank has published a report containing all of the information called for by this item, the item may be answered by a reference to the information contained in such report, provided copies of such report are filed as an exhibit to the report on this form.

Item 10— * *

(e) State whether the decision to change accountants was recommended or approved by

(1) Any audit or similar committee of the board of directors, if the bank has such a committee; or

(2) The board of directors, if the bank has no such committee.

Item 11—Resignations of Bank's Directors. (a) If a director has resigned or declined to stand for re-election to the board of directors since the date of the last annual meeting of shareholders because of a disagreement with the bank on any matter relating to the bank's operations, policies or practices, and if the director has furnished the bank with a letter describing such disagreement and requesting that the matter be disclosed, the bank shall state the date of such resignation or declination to stand for re-election and summarize the director's description of the disagreement.

(b) If the bank believes that the description provided by the director is incorrect or incomplete, it may include a brief statement presenting its views of the disagreement.

(c) The bank shall file a copy of the director's letter as an exhibit with all copies of this Form F–9.

Item 12—Other Materially Important Events. The bank shall, at its option, report under this item any events that it deems of material importance to security holders, even though information as to such events is not otherwise called for by this form.

Item 13—Financial Statements and Exhibits. List below the financial statements and exhibits, if any, filed as a part of this report.

(a) Financial statements.

(b) Exhibits.

Signatures

* * * * *

Exhibits * * *

7. Copies of the text of any proposal described in answer to Item 9.

8. Copies of any published report furnished in response to Item 9. (See Item 9, Instruction 6.)

9. Letters from the bank and the independent accountants furnished pursuant to Item 10.

10. Letters from directors furnished pursuant to Item 11.

* * * * *

9. In § 335.44, paragraph H(e) would be amended as follows:

§ 335.44 Form for quarterly report of bank (form F–4) to be filed pursuant to section 335.4(i).

* * * * *

H. *Financial statements.* * * *

(e) The financial information to be included in this report should be prepared in conformity with the accounting principles and practices reflected in the financial statement included in the annual report filed with the Corporation for the preceding fiscal year, except for any subsequent regulatory revisions and changes required to be reported by § 335.7(e)(8).

11. Section 335.47 would be amended as follows:

§ 335.47 Form for acquisition statement to be filed pursuant to § 335.4(h)(2)(i) and amendments thereto filed pursuant to § 335.4(h)(3)(i) of Part 335 (form F–11).

Federal Deposit Insurance Corporation

Washington, D.C. 20429

Form F–11

Acquisition statement to be filed pursuant to § 335.4(h)(2)(i) and amendments thereto filed pursuant to § 335.4(h)(3)(i) of Part 335 (Amendment No. —)

_____

(Name and address of issuing bank

_____

(Title of class of securities)

_____

(CUSIP Number)

_____

(Name, address and telephone number of person authorized to receive notices and communications)

(Date of event which requires filing of this statement)

If the filing person has previously filed a statement on Form F–11A to report the acquisition which is the subject of this Form F–11, and is filing this form because of § 335.4(h)(2)(ii)(C) or (D), check the following box [ ].

(Continuing on following pages)

Page 1 of — pages

Note.—Six copies of this form including all exhibits, should be filed with the Corporation. See § 335.4(h)(2)(i) for other parties to whom copies are to be sent.

Special Instructions for Complying With Form F–11

Under Sections 13(d) and 23 of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the Corporation is authorized to solicit the information required to be supplied by this form by certain security holders of certain banks.

Disclosure of the information specified in this form is mandatory, except for Social Security or I.R.S. identification numbers, disclosure of which is voluntary. The information will be used for the primary purpose of determining and disclosing the holdings of certain beneficial owners of certain equity securities. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Corporation can utilize it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statements or provisions. Social Security or I.R.S. identificatin numbers, if furnished, will assist the Corporation in identifying security holders and, therefore, in promptly processing statements of beneficial ownership of securities.

Failure to disclose the information requested by this form, except for Social Security or I.R.S. identification numbers, may result in civil or criminal action against the persons involved for violation of the Federal securities laws and rules promulgated thereunder.

General Instructions

A. The item numbers and captions of the items shall be included but the text of the items is to be omitted. The answers to the items shall be so prepared as to indicate clearly the coverage of the items without referring to the text of the items. Answer every item. If an item is inapplicable or the answer is in the negative, so state.

B. Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item or subitem of the statement unless it would render such answer incomplete, unclear or confusing. Matter incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement where the information is required.

C. If the statement is filed by a general or limited partnership, syndicate, or other group, the information called for by Items 2–6, inclusive, shall be given with respect to (i) each partner of such general partnership; (ii) each partner who is denominated as a general partner or who functions as a general partner of such limited partnership; (iii) each member of such syndicate or group; and (iv) each person controlling such partner or member. If the statement is filed by a corporation or if a person referred to in (i), (ii), (iii) or (iv) of this instruction is a corporation, the information called for by the above mentioned items shall be given with respect to (a) each executive officer and director of such corporation; (b) each person controlling such corporation; and (c) each executive officer and director of any corporation or other person ultimately in control of such corporation. Executive officer shall mean the president, secretary, treasurer, and any vice president in charge of a

principal business function (such as sales, administration or finance) and any other person who performs or has the power to perform similar policy making functions for the corporation.

Item 1—Security and Bank. State the title of the class of equity securities to which this statement relates and the name and address of the principal office of the bank.

Item 2—Identity and Background. If the person filing this statement or any person enumerated in Instruction C of this statment is a corporation, general partnership, limited partnership, syndicate or other group of persons, state its name, the state or other place of its organization, its principal business, the address of its principal business, the address of its principal office and the information required by (d) and (e) of this item. If the person filing this statement or any person enumerated in Instruction C is a natural person, provide the information specified in (a) through (f) of this Item with respect to such person(s).

(a) Name;

(b) Residence or business address;

(c) Present principal occupation or employment and the name, principal business and address of any corporation or other organization in which such employment is conducted;

(d) Whether or not, during the last five years, such person has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) and, if so, give the dates, nature of conviction, name and location of court, any penalty imposed, or other disposition of the case;

(e) Whether or not, during the last five years, such person was a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, Federal or State securities laws or finding any violation with respect to such laws; and, if so, identify and describe such proceedings and summarize the terms of such judgment, decree or final order; and

(f) Citizenship.

Item 3—Source and Amount of Funds or Other Consideration. State the source and the amount of funds or other consideration used or to be used in making the purchases, and if any part of the purchase price is or will be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, trading or voting the securities, a description of the transaction and the names of the parties thereto. Where material, such information should also be provided with respect to prior acquisitions not previously reported pursuant to this regulation. If the source of all or any part of the funds is a loan made in the ordinary course of business by a bank, as defined in Section 3(a)(6) of the Act, the name of the bank shall not be made available to the public if the person at the time of filing the statement so requests in writing and files such request, naming such bank, with the Corporation. If the securities were acquired other than by purchase, describe the method of acquisition.

Item 4—Purpose of Transaction. State the purpose or purposes of the acquisition of securities of the bank. Describe any plans or proposals which the reporting persons may have which related or would result in:

(a) The acquisition by any person of additional securities of the bank, or the disposition of securities of the bank;

(b) An extraordinary corporate transaction, such as a merger, reorganization or liquidation, involving the bank or any of its subsidiaries;

(c) A sale or transfer of a material amount of assets of the bank or of any of its subsidiaries;

(d) Any change in the present board of directors or management of the bank, including any plans or proposals to change the number or term of directors or to fill any existing vacancies on the board;

(e) Any material change in the present capitalization or dividend policy of the bank;

(f) Any other material change in the bank's business or corporate structure;

(g) Changes in the bank's charter, bylaws or instruments corresponding thereto or other actions which may impede the acquisition of control of the bank by any person;

(h) Causing a class of securities of the bank to be delisted from a national securities exchange or to cease to be authorized to be quoted in an inter-dealer quotation system of a registered national securities association;

(i) A class of equity securities of the bank becoming eligible for termination of registration pursuant to Section 12(g)(4) of the Act; or

(j) Any action similar to any of those enumerated above.

Item 5—Interest in Securities of the Bank. (a) State the aggregate number and percentage of the class of securities identified pursuant to Item 1 (which may be based on the number of securities outstanding as contained in the most recently available filing with the Corporation by the bank unless the filing person has reason to believe such information is not current) beneficially owned (identifying those shares which there is a right to acquire) by each person named in Item 2. The above mentioned information should also be furnished with respect to persons who, together with any of the persons named in Item 2, comprise a group within the meaning of Section 13(d)(3) of the Act.

(b) For each person named in response to Paragraph (a), indicate the number of shares as to which there is sole power to vote or to direct the vote, shared power to vote or to direct the vote, sole power to dispose or to direct the disposition, or shared power to dispose or to direct the disposition. Provide the applicable information required by Item 2 with respect to each person with whom the power to vote or to direct the vote or to dispose or direct the disposition is shared.

(c) Describe any transactions in the class of securities reported on that were effected during the past sixty days or since the most recent filing on Form F–11, whichever is less, by the persons named in response to paragraph (a).

Instruction. The description of a transaction required by Item 5(c) shall include, but not necessarily be limited to (1) the identify of the person covered by Item 5(c) who effected the transaction, (2) the date of the transaction, (3) the amount of securities involved, (4) the price per share or unit, and (5) where and how the transaction was effected.

(d) If any other person is known to have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, such securities, a statement to that effect should be included in response to this item and, if such interest relates to more than five percent of the class, such person should be identified. A listing of the shareholders of an investment company registered under the Investment Company Act of 1940 or the beneficiaries of an employee benefit plan, pension fund or endowment fund is not required.

(e) If applicable, state the date on which the reporting person ceased to be the beneficial owner of more than five percent of the class of securities.

Instruction. For computations regarding securities which represent a right to acquire an underlying security, see § 335.4(h)(5)(iv)(A)(*1*).

Item 6—Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Bank. Describe any contracts, arrangements, understandings or relationships (legal or otherwise) among the persons named in Item 2 and between such persons and any person with respect to any securities of the bank, including but not limited to transfer or voting of any of the securities, finder's fees, joint ventures, loan or option arrangements, puts or calls, guarantees of profits, division of profits or losses, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, understandings or relationships have been entered into. Include such information for any of the securities that are pledged or otherwise subject to a contingency the occurrence of which would give another person voting power or investment power over such securities except that disclosure of standard default and similar provisions contained in loan agreements need not be included.

Item 7—Material to be Filed as Exhibits. The following shall be filed as exhibits: Copies of written agreements relating to the filing of joint acquisition statements as required by § 335.4(h)(2)(v) and copies of all written agreements, contracts, arrangements, understandings, plans, or proposals relating to (1) The borrowing of funds to finance the acquisition as disclosed in Item 3; (2) the acquisition of bank control, liquidation, sale of assets, merger, or change in business or corporate structure, or any other matter as disclosed in Item 4; and (3) the transfer or voting of the securities, finder's fees, joint ventures, options, puts, calls, guarantees of loans, guarantees against loss or of profit, or the giving or withholding of any proxy as disclosed in Item 6.

Signature. After reasonable inquiry and to the best of my knowledge and belief, I certify

that the information set forth in this statement is true, complete, and correct.

Date

Signature

Name/Title

The original statement shall be signed by each person on whose behalf the statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the filing person), evidence of the representative's authority to sign on behalf of such person shall be filed with the statement, provided, however, that a power of attorney for this purpose which is already on file with the Corporation may be incorporated by reference. The name and any title of each person who signs the statement shall be typed or printed beneath the person's signature.

Attention: International misstatements or omissions of fact constitute Federal criminal violations (See 18 U.S.C. 1001).

12. A new § 335.4S would be added to read as follows:

§ 335.4S Short form ownership statement to be filed pursuant to § 335.4(h)(2)(ii) and amendments thereto filed pursuant to § 335.5(h)(3)(ii) of Part 335 (form F-11A).

Federal Deposit Insurance Corporation

Washington, D.C. 20429

Form F-11A

Short form ownership statement to be filed pursuant to § 335.4(h)(2)(ii) and amendments thereto filed pursuant to § 335.4(h)(3)(ii).

(Amendment No.)

(Name and address of issuing bank)

(Title of class of securites)

(CUSIP Number)

(Continued on following pages)

Page 1 of pages

Special Instructions for Complying With Form F-11A

Under Sections 13(d), 13(g) and 23 of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the Corporation is authorized to solicit the information required to be supplied by this schedule by certain security holders of certain banks.

Disclosure of the information specified in this schedule is mandatory, except for Social Security or I.R.S. identification numbers, disclosure of which is voluntary. The information will be used for the primary purpose of determining and disclosing the holdings of certain beneficial owners of certain equity securities. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Corporation can utilize it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statutes or provisions. Social Security or I.R.S. identification numbers, if furnished, will assist the Corporation in identifying security holders and, therefore, is promptly processing statements of beneficial ownership of securities.

Failure to disclose the information requested by this schedule, except for Social Security or I.R.S. identification numbers, may result in civil or criminal action against the persons involved for violation of the Federal securities laws and rules promulgated thereunder.

General Instructions

A. Statements containing the information required by this form shall be filed not later than February 14 following the calendar year covered by the statement or within the time specified in § 335.4(h)(2)(ii)(B), if applicable.

B. Information contained in a form which is required to be filed by the Securities and Exchange Commission's rules under Section 13(f) of the Act [15 U.S.C. 78m(f)] for the same calendar year as that covered by a statement on this form may be incorporated by reference in response to any of the items of this form. If such information is incorporated by reference in this form, copies of the relevant pages of such form shall be filed as an exhibit to this form.

C. The item numbers and captions of the items shall be included but the text of the items is to be omitted. The answers to the items shall be so prepared as to indicate clearly the coverage of the items without referring to the text of the items. Answer every item. If an item is inapplicable or the answer is in the negative, so state.

Item 1(a)—Name of the bank issuer:

Item 1(b)—Address of Bank's Principal Executive Offices:

Item 2(a)—Name of Person Filing:

Item 2(b)—Address of Principal Business Office, or if None, Residence:

Item 2(c)—Citizenship:

Item 2(d)—Title of Class of Securities:

Item 2(e)—CUSIP Number:

Item 3—If this statement is filed pursuant to § 335.4(h)(2)(i), or § 335.4(h)(3)(ii), check whether the person filing is a:

(a) [ ] Broker or Dealer registered under Section 15 of the Act

(b) [ ] Bank as defined in Section 3(a)(6) of the Act

(c) [ ] Insurance Company as defined in Section 3(a)(19) of the Act

(d) [ ] Investment Company registered under Section 8 of the Investment Company Act

(e) [ ] Investment Adviser registered under Section 203 of the Investment Advisers Act of 1940

(f) [ ] Employee Benefit Plan, Pension Fund which is subject to the provisions of the Employee Retirement Income Security Act of 1974 or Endowment Fund; see § 335.4(h)(2)(ii)(A)(*2*)(*vi*)

(g) [ ] Parent Holding Company, in accordance with § 335.4(h)(2)(ii)(A)(*2*)(*vii*) (Note: See Item 7)

(h) [ ] Group, in accordance with § 335.4(h)(2)(ii)(A)(*2*)(*viii*)

Item 4—Ownership:

If the percent of the class owned, as of December 31 of the year covered by the statement, or as of the last day of any month described in § 335.4(h)(2)(ii)(B), if applicable, exceeds five percent, provide the following information as of that date and identify those shares which there is a right to acquire.

(a) Amount Beneficially Owned:

(b) Percent of Class:

(c) Number of shares as to which such person has:

(i) sole power to vote or to direct the vote———

(ii) shared power to vote or to direct the vote———

(iii) sole power to dispose or to direct the disposition of———

(iv) shared power to dispose or to direct the disposition of———

Instruction: For computations regarding securities which represent a right to acquire an underlying security see § 335.4(h)(5)(iv)(A).

Item 5—Ownership of Five Percent or Less of a Class.

If this statement is being filed to report the fact that as of the date hereof the reporting person has ceased to be the beneficial owner of more than five percent of the class of securities, check the following [ ].

Instruction: Dissolution of a group requires a response to this item.

Item 6—Ownership of More than Five Percent on Behalf of Another Person.

If any other person is known to have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, such securities, a statement of that effect should be included in response to this item and, if such interest relates to more than five percent of the class, such person should be identified. A listing of the shareholders of an investment company registered under the Investment Company Act of 1940 or the beneficiaries of employee benefit plan, pension fund or endowment fund is not required.

Item 7—Identification and Classification of the Subsidiary Which Acquired the Security

Being Reported on By the Parent Holding Company.

If a parent holding company has filed this schedule, pursuant to § 335.4(h)(2)(ii)*(A)(2)(vii)* so indicate under Item 3(g) and attach an exhibit stating the identity and the Item 3 classification of the relevant subsidiary. If a parent holding company has filed this schedule pursuant to § 335.4(h)(2)(iii), attach an exhibit stating the identification of the relevant subsidiary.

Item 8—Identification and Classification of Members of the Group.

If a group has filed this schedule, pursuant to § 335.4(h)(2)(ii)*(A)(2)(viii)*, so indicate under Item 3(h) and attach an exhibit stating the identity and Item 3 classification of each member of the group. If a group has filed this schedule pursuant to § 335.5(h)(2)(iii), attach an exhibit stating the identity of each member of the group.

Item 9—Notice of Dissolution of Group.

Notice of dissolution of a group may be furnished as an exhibit stating the date of the dissolution and that all further filings with respect to transactions in the security reported on will be filed, if required, by members of the group, in their individual capacity. See Item 5.

Item 10—Certification.

The following certification shall be included if the statement is filed pursuant to § 335.4(h)(2)(ii):

By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were acquired in the ordinary course of business and were not acquired for the purpose of and do not have the effect of changing or influencing the control of the issuer of such securities and were not acquired in connection with or as a participant in any transactions having such purpose or effect.

Signature. After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete, and correct.

Date

Signature

Name/Title

The original statement shall be signed by each person on whose behalf the statement is filed or the person's authorized representative. If the statement is signed on behalf of a person by the person's authorized representative (other than an executive officer or general partner of the filing person), evidence of the representative's authority to sign on behalf of such person shall be filed with the statement, provided, however, that a power of attorney for this purpose which is already on file with the Commission may be incorporated by reference. The name and any title of each person who signs the statement shall be typed or printed beneath the person's signature.

Note.—Six copies of this statement, including all exhibits, should be filed with the Commission.

Attention: Intentional misstatements or omissions of fact constitute Federal criminal violations (See 18 U.S.C. 1001).

* * * * *

10. In § 335.51, Items 3(b), 5(d), 5(e), 5(f), 5(g), 6, 7, 8(e) and 8(f) would be amended by revising and adding as follows:

§ 335.51. Form for proxy statement; statement where management does not solicit proxies (Form F–5).

* * * * *

Item 3 * * *

(b) * * *

(6) If any such solicitation is terminated pursuant to a settlement between the bank and any other participant in such solicitation, describe the terms of such settlement, including the cost or anticipated cost thereof to the bank.

Instructions: 1. With respect to solicitations subject to § 335.5(i), costs and expenditures within the meaning of this Item 3 shall include fees for attorneys, accountants, public relations or financial advisers, solicitors, advertising, printing, transportation, litigation and other costs incidental to the solicitation, except that the bank may exclude the amount of such costs represented by the amount normally expended for a solicitation for an election of directors in the absence of a contest, and costs represented by salaries and wages of regular employees and officers, provided a statement to the effect is included in the proxy statement.

2. The information required pursuant to Paragraph (6) of Item 3(b) should be included in any amended or revised proxy statement or other soliciting materials relating to the same meeting or subject matter furnished to security holders by the bank subsequent to the date of settlement.

* * * * *

Item 5 * * *

(d) Furnish the following information to the extent known by the persons on whose behalf the solicitation is made, as of the most recent practicable date, in substantially the tabular form indicated, with respect to any person (including any "group" as that term is used in Section 13(d)(3) of the Securities Exchange Act of 1934) who is known to the bank to be the beneficial owner of more than five percent of any class of the bank's voting securities. Show in Column (3) the total number of shares beneficially owned and in Column (4) the percent of class so owned. Of the number of shares shown in Column (3), indicate by footnote or otherwise, the amount known to be shares with respect to which such listed beneficial owner has the right to acquire beneficial ownership, as specified in § 335.4(h)(5)(iv)(A).

(1) Title of Class	(2) Name and Address of Beneficial Owner	(3) Amount and Nature of Beneficial Ownership	(4) Percent of Class

(e) Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, as to each class of equity securities of the bank or any of its parents or subsidiaries other than directors qualifying shares, beneficially owned by all directors and nominees, naming them and directors and officers of the bank as a group, without naming them. Show in Column (2) the total number of shares beneficially owned and in Column (3) the percent of class so owned. Of the number of shares shown in Column (2), indicate, by footnote or otherwise, the amount of shares with respect to which such persons have the right to acquire beneficial ownership as specified in § 335.4(h)(5)(iv)(A).

(1) Title of Class	(2) Amount and nature of beneficial ownership	(3) Percent of class

(f) If, to the knowledge of the persons on whose behalf of solicitation is made, a change in control of the bank has occurred since the beginning of its last fiscal year, state the name of the person(s) who acquired such control, the amount and the source of the consideration used by such person or persons; the basis of the control, the date and a description of the transaction(s) which resulted in the change of control and the percentage of voting securities of the bank now beneficially owned directly or indirectly by the person(s) who acquired control; and the identity of the person(s) from whom control was assumed. If the source or any part of the consideration used is a loan made in the ordinary course of business by a bank as defined by Section 3(a)(6) of the Act, the identity of such bank shall be omitted provided a request for confidentiality has been made pursuant to Section 13(d)(1)(B) of the Act by the person(s) who acquired control. In lieu thereof, the material shall indicate that the identity of the bank has been so omitted and filed separately with the Corporation.

Instructions. 1. State the terms of any loans or pledges obtained by the new control group for the purpose of acquiring control, and the names of the lenders or pledgees.

2. Any arrangements or understandings among members of both the former and new control groups and their associates with respect to election of directors or other matters shall be described.

(g) Describe any arrangements, know to the bank including any pledge by any person of securities of the bank or any of its parents, the operation of which may at a subsequent date result in a change in control of the bank.

Instructions. 1. The percentages are to be calculated on the basis of the amount of outstanding securities, excluding securities held by or for the account of the bank or its subsidiaries, plus securities deemed outstanding pursuant to § 335.4(h)(5)(iv)(A).

2. For the purpose of this item, beneficial ownership shall be determined in accordance with § 335.4(h)(5). Include such additional subcolumns or other appropriate explanation of Column (3) necessary to reflect amounts as to which the beneficial owner has (1) sole voting power, (2) shared voting power, (3) sole investment power, (4) shared investment power.

3. The bank shall be deemed to know the contents of any statements filed with the Corporation pursuant to Section 13(d) of the Act. When applicable, a bank may rely upon information set forth in such statements unless the bank knows or has reason to believe that such information is not complete or accurate or that a statement or amendment should have been filed and was not.

4. For purposes of furnishing information pursuant to paragraph (a), the bank may indicate the source and date of such information.

5. Where more than one beneficial owner is known to be listed for the same securities, appropriate disclosure should be made to avoid confusion.

6. Paragraph (g) does not require a description of ordinary default provisions contained in the charter, trust indentures or other governing instruments relating to securities of the bank.

Item 6—Directors and Principal Officers. If action is to be taken with respect to election of directors, furnish the following information, in tabular form to the extent practicable, with respect to each person nominated for election as a director and each person whose term of office will continue after the meeting.

(a) *Identification of directors.* List the names and ages of all directors of the bank, and all persons nominated or chosen to become directors; indicate all positions and offices with the bank held by each such person; state the term of office as director and any period(s) during which the person has served as such; briefly describe any arrangement or understanding between the person and any other person or persons (naming such person(s)) pursuant to which the person was or is to be selected as a director or nominee.

Instructions. 1. Do not include arrangements or understandings with directors or officers of the bank acting solely in their capacities as such.

2. No nominee or person chosen to become a director or who has not consented to act as such should be named in response to this item. In this regard, see § 335.5(d).

3. No information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

4. In connection with action to be taken concerning the election of directors, if fewer nominees are named than the number fixed by or pursuant to the governing instruments, state the reasons for this procedure and that the proxies cannot be voted for a greater number of persons than the number of nominees named.

5. With regard to proxy statements in connection with action to be taken concerning the election of directors, if the solicitation is made by persons other than management, information should be given as to nominees of the persons making the solicitation. In all other instances, information should be given as to directors and persons nominated for election or chosen by management to become directors.

(b) *Identification of principal officers.* List the names and ages of all principal officers of the bank and all persons chosen to become principal officers; indicate all positions and offices with the bank held by each such person; state the person's term of office as officer and the period during which the person has served as such and briefly describe any arrangement or understanding between the person and any other person pursuant to which the person was selected as an officer.

Instructions. 1. Do not include arrangements or understandings with directors or officers of the bank acting solely in their capacities as such.

2. No person chosen to become a principal officer who has not consented to act as such should be named in response to this item.

(c) *Identification of certain significant employees.* Where the bank employs persons such as special consultants or attorneys who are not principal officers, but who make or are expected to make significant contributions to the business of the bank, such persons should be identified and their background disclosed to the same extent as in the case of principal officers.

(d) *Family relationships.* State the nature of any family relationship between any director, principal officer, or person nominated or chosen by the bank to become a director or principal officer.

Instruction. The term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

(e) *Business experience.* (1) Give a brief account of the business experience during the past five years of each director, person nominated or chosen to become a director or principal officer, and each person named in answer to paragraph (c), including the person's principal occupations and employment during that period and the name and principal business of any corporation or other organization in which such occupations and employment were carried on. When a principal officer or person named in response to paragraph (c) has been employed by the bank or a subsidiary of the bank for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in prior positions to provide adequate disclosure of his prior business experience. The requirement is information relating to the level of the person's professional competence which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

(2) *Directorships.* Indicate any other directorships held by each director or person nominated or chosen to become a director in any company with a class of securities registered pursuant to Section 12 of the Exchange Act.

(f) *Involvement in certain legal proceedings.* Describe any of the following events which occurred during the past five years and which are material to an evaluation of the ability or integrity of any director, person nominated to become a director or principal officer of the bank:

(1) A petition under the Bankruptcy Act or any State insolvency law was filed by or against, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of such person, or any partnership in which the person was a general partner at or within two years before the time of such filing, or any corporation or business association of which the person was a principal officer at or within two years before the time of such filing;

(2) The person was convicted in a criminal proceeding or is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses);

(3) The person was the subject of any order, judgment, or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction permanently or temporarily enjoining the person from, or otherwise limiting the following activities:

(i) Acting as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;

(ii) Engaging in any type of business practice; or

(iii) Engaging in any type of activity in connection with the purchase or sale of any security or in connection with any violation of Federal or State securities laws.

(4) Such person was the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any Federal or State authority barring, suspending or otherwise limiting for more than 60 days the right of such person to engage in any activity described in subparagraph (3), above, or to be associated with persons engaged in any such activity.

(5) Such person was found by a court of competent jurisdiction in a civil action or by a government authority to have violated any Federal or State securities law, and the judgment in such civil action or finding by the government authority has not been subsequently reversed, suspended, or vacated.

Instructions. 1. For purposes of computing the five year period referred to in this paragraph, the date of a reportable event shall be deemed the date on which the final order, judgment or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees have lapsed. With respect to bankruptcy petitions, the computation date shall be the date of filing for uncontested petitions or the date upon which approval of a contested petition became final.

2. If any event specified in this Subparagraph (f) has occurred and information in regard thereto is omitted on the ground that it is not material, the bank may furnish to the Corporation, at the time

preliminary materials are filed pursuant to § 335.5(f), as supplemental information and not as part of the proxy statement materials to which the omission relates, a description of the event and a statement of the reasons for the omission of information in regard thereto.

3. The bank is permitted to explain any mitigating circumstances associated with events reported pursuant to this paragraph.

4. No information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

(g) *Relationships with affiliates and others.* Describe any of the following relationships that exist:

(1) The nominee or director has during the past five years had a principal occupation or employment with any of the bank's parents, subsidiaries or other affiliates;

(2) The nominee or director is related to a principal officer of any of the bank's parents, subsidiaries or other affiliates by blood, marriage or adoption (except relationships more remote than first cousin);

(3) The nominee or director is, or has within the last two full fiscal years been, an officer, director or employee of, or owns, or has within the last two full fiscal year owned, directly or indirectly, in excess of one (1) percent equity interest in any firm, corporation or other business or professional entity;

(i) Which has made payments to the bank or its subsidiaries for property or services during the bank's last full fiscal year in excess of one (1) percent of the bank's consolidated gross revenues for its last full fiscal year;

(ii) Which proposes to make payments to the bank or its subsidiaries for property or services during the current fiscal year in excess of one (1) percent of the bank's consolidated gross revenues for its last full fiscal year;

(iii) To which the bank or its subsidiaries was indebted at any time during the bank's last fiscal year in an aggregate amount in excess of one (1) percent of the bank's total consolidated assets at the end of such fiscal year, or $5,000,000, whichever is less;

(iv) To which the bank or its subsidiaries has made payments for property or services during such entity's last fiscal year in excess of one (1) percent of such entity's gross revenues for its last full fiscal year;

(v) To which the bank or its subsidiaries proposes to make payments for property services during such entity's current fiscal year in excess of one (1) percent of such entity's consolidated gross revenues for its last full fiscal year;

(vi) In order to determine whether payments made or proposed to be made exceed one (1) percent of the consolidated gross revenues of any entity other than the bank for such entity's last full fiscal year, it is appropriate to rely on information provided by the nominee or director;

(vii) In calculating payments for property and services the following may be excluded:

(A) Payments where the rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a public utility at rates or charges fixed in conformity with law or governmental authority;

(B) Payments which arise solely from the ownership of securities of the issuer and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received;

(viii) In calculating indebtedness for purposes of Subparagraph (iii) above, debt securities which have been publicly offered, admitted to trading on a national securities exchange, or quoted on the automated quotation system of a registered securities association may be excluded.

(4) That the nominee or director is a member or employee of, or is associated with, a law firm which the issuer has retained in the last two full fiscal years or proposes to retain in the current fiscal year;

(5) That the nominee or director is a director, partner, officer or employee of any investment banking firm that has performed services for the bank other than as a participating underwriter in a syndicate in the last two full fiscal years or which the bank proposes to have perform services in the current year; or

(6) That the nominee or director is a control person of the bank other than solely as a director of the bank.

(7) In addition, the bank should disclose any other relationships it is aware of between the director or nominee and the bank or its management which are substantially similar in nature and scope to those relationships listed above.

Note.—In the Corporation's view, where significant business or personal relationships exist between the director or nominee and the bank or its management, including, but not limited to, those as to which disclosure would be required pursuant to this Item 6(g), characterization of a director or nominee by any "label" connoting a lack of relationship to the bank and its management may be materially misleading.

(h) *Committees.* (1) State whether or not the bank has standing audit, nominating and compensation committees of the board of directors, or committees performing similar functions. If the bank has such committees, however designated, identify each committee member, state the number of committee meetings held by each such committee during the last fiscal year and describe briefly the functions performed by such committees.

If the bank has a nominating or similar committee, state whether the Committee will consider nominees recommended by shareholders and, if so, describe the procedures to be followed by shareholders in submitting such recommendations.

(i) *Director attendance.* State the total number of meetings of the board of directors (including regularly scheduled and special meetings) which were held during the last full fiscal year. Name each incumbent director who during the last full fiscal year attended fewer than 75 percent of the aggregate of (1) the total number of meetings of the board of directors (held during the period for which he has been a director) and (2) the total number of meetings held by all committees of the board on which he served (during the periods that he served).

(j) *Director resignations.* If a director has resigned or declined to stand for re-election to the board of directors since the date of the last annual meeting of shareholders because of a disagreement with the bank on any matter relating to the bank's operations, policies or practices, and if the director has furnished the bank with a letter describing such disagreement and requesting that the matter be disclosed, the bank shall state the date of resignation or declination to stand for re-election and summarize the director's description of the disagreement.

If the bank believes that the description provided by the director is incorrect or incomplete, it may include a brief statement presenting its views of the disagreement.

Item 7—Remuneration and Other Transaction With Management and Others. Furnish the information called for by this item if action is to be taken with respect to (i) the election of directors, (ii) any bonus, profit sharing or other remuneration plan, contract or arrangement in which any director, nominee for election as a director, or officer of the bank will participate, (iii) any pension or retirement plan in which any such person will participate, or (iv) the granting or extension to any such person of any options, warrants or rights to purchase any securities, other than warrants or rights issued to security holders, as such, on a pro rata basis. However, if the solicitation is made on behalf of persons other than the management, the information required need be furnished only as to nominees for election as directors and as to their associates.

(a) *Current remuneration.* Furnish the information required in the table below in substantially the tabular form specified, concerning all remuneration of the following persons and groups for services in all capacities to the bank during the bank's last fiscal year:

(1) *Five principal officers or directors.* Each of the five most highly compensated principal officers or directors of the bank as to whom the total remuneration required to be disclosed in Columns C1 and C2 below would exceed $50,000, naming each such person; and

(2) *All principal officers and directors.* All principal officers and directors of the bank as a group, stating the number of persons in the group without naming them.

(3) *Specified tabular format: Remuneration table:*

(A) Name of individual or number of persons in group	(B) Capacities in which served	(C) Cash and cash equivalent forms of remuneration		(D) Aggregate of contingent forms of remuneration
		(C1) Salaries, fees, directors' fees, commissions, and bonuses	(C2) Securities or property insurance benefits or reimbursement, personal benefits	

Instructions to Item 7(a). 1. Columns A and B. Persons subject to this item.

(a) This item applies to any person who was a principal officer, or director of the bank at any time during the fiscal year. However, information need not be given for any portion of the period during which such person was not a principal officer, or director of the bank, provided a statement to that effect is made.

(b) The terms "principal officer" and "officer" of a bank are defined in § 335.2(s).

(c) For the purposes of this Item 7, the term "bank" shall include the bank and all its subsidiaries.

2. *Column C* (a) Column C1 shall include all cash remuneration distributed or accrued in the form of salaries, fees, directors' fees, commissions and bonuses.

(b) Column C2 should include the following: (i) *Securities or property.* Where any of the specified persons or group (A) exercises any option, right or similar election in connection with any contract, agreement, plan or arrangement, or (B) becomes entitled without further contingencies to retain securities or property, state the spread between the acquisition price, if any, and the fair market price of all securities or property acquired under any contract, agreement, plan or arrangement. The fair market price of any such securities or property shall be determined as of the date during the fiscal year that either of the events in (A) or (B) of this paragraph occurs, or if both events are contemplated, the date of the latter event.

(ii) *Personal benefits.* (A) The value of personal benefits which are not directly related to job performance, which are furnished by the bank directly or through third parties to each of the specified persons and group, or benefits furnished by the bank to other persons which directly benefit the specified persons. Such personal benefits shall include the cost of any premiums or benefits paid by the bank for any life or health insurance policy or health plan of which the bank is not the sole beneficiary. Such benefits shall be valued on the basis of the aggregate actual cost to the bank. Information need not be furnished for any such benefit provided by the bank which does not discriminate in favor of officers or directors and which is available generally to all salaried employees.

(B) No disclosure need be included as to any person named in the remuneration table if the aggregate amount of all personal benefits to such persons did not exceed $5,000. If disclosure of such amounts is not made, a statement to that effect should be added in a footnote to the table.

(C) If the bank cannot determine the actual cost of personal benefits for a specified person without unreasonable effort or expense, include a reasonable estimate of the cost of the personal benefit to the bank. If the bank cannot reasonably allocate the extent to which the benefit is personal, include the aggregate cost to the bank and estimate the percentage of cost attributable to personal use. If an estimate is made, disclose the factors upon which the estimate is based.

(D) Please provide in a statement following the table a description of the bank's policies and practices with respect to providing personal benefits to officers, directors or principal shareholders. Describe the type of benefits provided and the basis for selection of the recipients.

3. *Column D.* Column D shall include remuneration of the specified persons and group in whole or in part for services rendered during the fiscal year (including the forms of remuneration described in paragraphs (a) through (c) below) if the distribution of such remuneration or the unconditional vesting or measurement of benefits thereunder is subject to future events.

(a) *Pension or retirement plans; annuities; employment contracts; deferred compensation plans.* (i) As to each of the specified persons and group, the amount expensed for financial reporting purposes by the bank for the year which represents the contribution, payment or accrual for the account of any such person or group under any existing pension or retirement plans, annuity contracts, deferred compensation plans or any other similar arrangements. Such amounts should be reflected as remuneration for the fiscal year under all such plans or arrangements, including plans qualified under the Internal Revenue Code, unless, in the case of a defined benefit or actuarial plan, the amount of the contribution, payment or accrual in respect of a specified person is not and cannot readily be separately or individually calculated by the regular actuaries for the plan.

(ii) If amounts are excluded from the table pursuant to the previous provision, include a footnote to the table (A) stating such fact; (B) disclosing the percentage which the aggregate contributions to the plan bears to the total remuneration of plan participants covered by such plan; and (C) briefly describing the remuneration covered by the plan.

(b) *Incentive and compensation plans and arrangements.* (i) With respect to stock options, stock appreciation rights plans, phantom stock plans and any other incentive or compensation plan or arrangement pursuant to which the measure of benefits is based on objective standards or on the value of securities of the bank or another person, granted, awarded or entered into at any time in connection with services to the bank, include as remuneration of each of the specified persons and group any attributable amount expensed by the bank for financial reporting purposes for the fiscal year as remuneration for any such specified person or group.

(ii) Where amounts are expensed and reported in the remuneration table, and amounts are credited in a subsequent year in connection with the same plan or arrangement for any proper reason, including a decline in the market price of the securities, such credit may be reflected as a reduction of the remuneration reported in Column D. If amounts credited are reflected in the table, include a footnote stating the amount of the credit and briefly describe such treatment.

(iii) The term "Options" as used in this Item 7 includes all options, warrants or rights, other than those issued to security holders as such on a pro rata basis.

(c) *Stock purchase plans; profit sharing and thrift plans.* Include the amount of any contribution, payment or accrual for the account of each of the specified persons and group under any stock purchase, profit sharing, thrift or similar plan, which has been expensed during the fiscal year by the bank for financial reporting purposes. Amounts reflecting contributions under plans qualified under the Internal Revenue Code may not be excluded on a pro rata basis.

4. *Other permitted disclosure.* The bank may provide additional disclosure through a footnote to the table, through additional columns, or otherwise, describing the components of aggregate remuneration in such greater detail as is appropriate.

5. *Definition of "plan".* The term "plan" as used in this Part 335 includes all plans, contracts, authorizations, or arrangements, whether or not set forth in any formal document.

[End of Instructions to Item 7(a)]

(b) *Proposed remuneration.* Briefly describe all remuneration payments proposed to be made in the future, pursuant to any existing plan or arrangement to the persons and group specified in Item 7(a). As to defined benefit or actuarial plans, with respect to which amounts are not included in the table pursuant to Instruction 3(a) to Item 7(a), include a separate table showing the estimated annual benefits payable upon retirement to persons in specified remuneration and years-of-service classifications.

Instruction. Information need not be furnished with respect to any group life, health, hospitalization, or medical reimbursement plans which do not discriminate in favor of officers or directors of the bank and which are available generally to all salaried employees.

(c) *Options, warrants or rights.* Furnish the following information as to all options to purchase any securities from the bank which were granted to or exercised by the following

persons since the beginning of the bank's last fiscal year, and as to all options held by such persons as of the latest practicable date (i) each director or officer named in answer to paragraph (a)(1), naming each such person; and (ii) all directors and officers of the bank as a group, without naming them:

(1) As to options granted during the period specified state (i) the title and aggregate amount of securities called for: (ii) The average option price per share; and (iii) if the option price was less than 100 percent of the market value of the security on the date of grant, such fact and the market price on such date shall be disclosed.

(2) As to the options exercised during the period specified, state (1) the title and aggregate amount of securities purchased;

(ii) the aggregate purchase price; and (iii) the aggregate market value of the securities purchase on the date of purchase.

(3) As to all unexercised options held as of the latest practicable date (state date), regardless of when such options were granted, state (i) the title and aggregate amount of securities called for; and (ii) the average option price per share.

Instructions. 1. The term "options" as used in this paragraph (c) includes all options, warrants or rights, other than those issued to security holders as such on a pro rata basis. Where the average option price per share is called for, the weighted average price per share shall be given.

2. The extension, regranting or material amendment of options shall be deemed the granting of options within the meaning of this paragraph.

3. (i) Where the total market value on the granting dates of the securities called for by all options granting during the period specified does not exceed $10,000 for any officer or director named in answer to paragraph (a)(1), or $40,000 for all officers and directors as a group, this item need not be answered with respect to options granted to such person or group.

(ii) Where the total market value on the dates of purchases of all securities purchased through the exercise of options during the period specified does not exceed $10,000 for any such person or $40,000 for such group, this item need not be answered with respect to options exercised by such person or group.

(iii) Where the total market value as of the latest practicable date of the securities called for by all options held at such time does not exceed $10,000 for any such person or $40,000 for such group, this item need not be answered with respect to options held as of the specified date by such person or group.

4. If the options relate to more than one class of securities the information shall be given separately for each such class.

5. The information called for by this Item 7(c) may be furnished in the form of the table set forth in the Option Disclosure Instruction at the end of § 335.51.

(d) *Indebtedness of management.* (1) State as to each of the following specified persons ("specified persons"), who was indebted to the bank at any time since the beginning of its last fiscal year: (i) The largest aggregate amount of indebtedness (in dollar amounts and as a percentage of total equity capital accounts at the time), including extensions of credit or overdrafts, endorsements and guarantees outstanding at any time during such period; (ii) the nature of the indebtedness and of the transaction in which it was incurred; (iii) the amount thereof outstanding as of the latest practicable date; and (iv) the rate of interest paid or charged thereon:

(A) Each director or principal officer of the bank;

(B) Each nominee for election as a director;

(C) Each security holder who is known to the bank to own of record or beneficially more than five percent of any class of the bank's voting securities ("principal security holder"); and

(D) Each associate of any such director, principal officer or nominee or principal security holder.

Instructions. 1. Include the name of such person whose indebtedness is described and the nature of the relationship by reason of which the information is required to be given.

2. Generally, no information need be given under this Item 7(d) unless any of the following are present:

(a) The extension(s) of credit were not made on substantially the same terms, including interest rates, collateral and repayment terms as those prevailing at the time for comparable transactions with other than the specified persons.

(b) The extension(s) of credit were not made in the ordinary course of business.

(c) The extension(s) of credit have involved or presently involve more than a normal risk of collectibility or other unfavorable features including the restructuring of an extension of credit, or a delinquency as to payment of interest or principal.

(d) The aggregate amount of extensions of credit outstanding at any time from the beginning of the last fiscal year to date to a specified person together with his associates, exceeded 10% of the equity capital accounts of the bank at that time or $5 million, whichever is less.

(2) If aggregate extensions of credit to the specified persons as a group, exceeded 20 percent of the equity capital accounts of the bank at any time since the beginning of the last fiscal year, (i) the aggregate amount of such extensions of credit shall be disclosed, and (ii) a statement shall be included, to the extent applicable, that the bank has had and expects to have in the future, banking transactions in the ordinary course of its business with directors, officers, principal stockholders, and their associates, on the same terms, including interest rates and collateral on loans, as those prevailing at the same time for comparable transactions with others and did not involve more than the normal risk of collectibility or present other unfavorable features. For the purpose of determining "aggregate extensions of credit" in this paragraph, transactions which are exempted from disclosure pursuant to this item may be excluded.

(3) If any indebtedness required to be described arose under Section 16(b) of the Act and has had not been discharged by payment, state the amount of any profit realized, that such profit will inure to the benefit of the bank and whether suit will be brought or other steps taken to recover such profit. If in the opinion of counsel a question reasonably exists as to the recoverability of such profit, it will suffice to state all facts necessary to describe the transaction, including the prices and number of shares involved.

(e) *Transactions with management.* Describe briefly any transactions since the beginning of the bank's last fiscal year or any presently proposed transactions, to which the bank was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his relationship to the bank, the nature of his interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or principal officer of the bank;

(2) Any nominee for election as a director;

(3) Any security holder who is known to the bank to own of record or beneficially more than five percent of any class of the bank's voting securities; and

(4) Any associate of any of the foregoing persons.

Instructions. No information need be given in response to this Item 7(e) as to any remuneration or other transaction reported in response to Item 7(a), (b), (c), or (d), or as to any transaction with respect to which information may be omitted pursuant to Instruction 3(a)(i) to Item 7(a), the instruction to Item 7(b), Instruction 3 to Item 7(c) or Instruction 2 to Item 7(d).

2. No information need be given in answer to this Item 7(e) as to any transaction where:

(a) The rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

(b) The transaction involves services as a bank depositary of funds, transfer agent, registrar, trustee under a trust indenture, or similar services;

(c) The amount involved in the transaction or series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments, does not exceed $40,000; or

(d) The interest of the specified person arises solely from the ownership of securities of the bank and the specified person receives no extra or special benefit not shared on a pro rata basis by all holders of securities of the class.

(3) It should be noted that this item calls for disclosure of indirect, as well as direct, material interests in transaction. A person who has a position or relationship with a firm, corporation, or other entity, which engages in a transaction with the bank or its subsidiaries may have an indirect interest in such transaciton by reason of such position or relationship. However, a person shall be deemed not to have a material indirect interest in a transaction within the meaning of this Item 7(e) where:

(a) The interest arises only (i) from such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction, or (ii) from the direct or indirect ownership by such person and all other persons specified in subparagraphs (1) through (4) above, in the aggregate, of less than a 10 percent equity interest in another person (other than a partnership) which is a party to the transaction, or (iii) from both such position and ownership;

(b) The interest arises only from such person's position as a limited partner in a partnership in which he and all other persons specified in (1) through (4) above had an interest of less than 10 percent; or

(c) The interest of such person arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest), or a creditor interest in another person which is a party to the transaction with the bank or any of its subsidiaries and the transaction is not material to such other person.

4. The amount of the interest of any specified person shall be computed without regard to the amount of the profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be indicated.

5. In describing any transaction involving the purchase or sale of assets by or to the bank or any of its subsidiaries, otherwise than in the ordinary course of business, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction the cost thereof to the seller. Indicate the principle followed in determining the banks purchase or sale price and the name of the persons making such determination.

6. Include the name of each person whose interest in any transaction is described and the nature of the relationship by reason of which such interest is required to be described. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transactions shall be indicated.

7. Information shall be furnished in answer to this item with respect to transactions not excluded above which involve remuneration from the bank or its subsidiaries, directly or indirectly, to any of the specified persons for services in any capacity unless the interest of such persons arises solely from the ownership individually and in the aggregate of less than 10 percent of any class of equity securities of another corporation furnishing the services to the bank.

8. The foregoing instructions specify certain transactions and interests as to which information may be omitted in answering this item. There may be situations where, although the foregoing instructions do not expressly authorize nondisclosure, the interest of a specified person in the particular transaction or series of transactions is not a material interest. In that case, information regarding such interest and transaction is not required to be disclosed in response to this item. The materiality of any interest or transaction, is to be determined on the basis of the significance of the information to investors in light of all of the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction to each other and the amount involved in the transaction are among the factors to be considered in determining the significance of the information to investors.

(f) *Transactions with pension or similar plans.* Describe briefly any transactions since the beginning of the bank's last fiscal year or presently proposed transactions, to which any pension, retirement, savings or similar plan provided by the bank, or any of its parents or subsidiaries was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his relationship to the bank, the nature of his interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or principal officer of the bank;

(2) Any nominee for election as a director;

(3) Any security holder who is known to the bank to own of record or beneficially more than five (5) percent of the outstanding voting securities of the bank;

(4) Any associate of any of the foregoing persons; and

(5) The bank or any of its subsidiaries.

Instructions. 1. Instructions 2, 3, 4 and 5 to Item 7(e) shall apply to this Item 7(f).

2. Without limiting the general meaning of the term "transaction" there shall be included in answer to this Item 7(f) any remuneration received or any loans received or outstanding during the period, or proposed to be received.

3. No information need be given in answer to paragraph (f) with respect to

(a) Payments to the plan, or payments to beneficiaries, pursuant to the terms of the plan;

(b) Payment of remuneration for services not in excess of five (5) percent of the aggregate remuneration received by the specified person during the bank's last fiscal year from the bank; or

(c) Any interest of the bank which arises solely from its general interest in the success of the plan.

(g) *Legal proceedings.* Briefly describe any material legal proceeding to which any director, any nominee for election as a director, principal officer of the bank, any owner of record or beneficially of more than five (5) percent of any class of voting securities of the bank, or any associate of any such director, nominee, officer or security holder is a party adverse to the bank.

Item 8. * * *

(e) If any change in accountants has taken place since the date of the proxy statement for the most recent annual meeting of shareholders, state whether such change was recommended or approved by

(1) Any audit or similar committee of the board of directors, if the bank has such a committee; or

(2) The board of directors, if the bank has no such committee.

(f) For the fiscal year most recently completed, describe each professional service provided by the principal accountant and state the percentage relationship which the aggregate of the fees for all non-audit services bear to the audit fees, and, except as provided below, state the percentage relationship which the fee for each non-audit service bears to the audit fees. Indicate whether, before each professional service provided by the principal accountant was rendered, it was approved by, and the possible effect on the independence of the accountant was considered by, (1) any audit or similar committee of the board of directors and (2) for any service not approved by an audit or similar committee, the board of directors.

Instructions. 1. For purposes of this subsection, all fees for services provided in connection with the audit function [e.g., reviews of quarterly reports, filings with the corporation, and annual reports] may be computed as part of the audit fees. Indicate which services are reflected in the audit fees computation.

2. If the fee for any non-audit service is less than three (3) percent of the audit fees, the percentage relationship need not be disclosed.

3. Each service should be specifically described. Broad general categories such as "tax matters" or "management advisory services" are not sufficiently specific.

4. Describe the circumstances and give details of any services provided by the bank's independent accountant during the latest fiscal year that were furnished at rates or terms that were not customary.

5. Describe any existing direct or indirect understanding or agreement that places a limit on current or future years' audit fees, including fee arrangements that provide fixed limits on fees that are not subject to reconsideration if unexpected issues involving accounting or auditing are encountered. Disclosure of fee estimates is not required.

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[FR Doc. 79-17277 Filed 6-7-79; 8:45 am]

BILLING CODE 6714-01-M

NATIONAL CREDIT UNION ADMINISTRATION

[12 CFR Part 742]

Liquidity Reserves of Insured Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Proposed rule.

SUMMARY: The National Credit Union Administration proposes to simplify and broaden its liquidity reserve regulations because of significant declines in credit union liquidity. The National Credit Union Administration proposes to repeal the Share Draft Liquidity Reserve required under 12 CFR 701.34(c)(5)(xiv) and establish a general liquidity reserve requirement for federally insured credit unions. The proposed regulation would

require all federally insured credit unions to maintain liquid asset holdings in amounts not less than 5% of total member accounts and notes payable. The liquidity reserve could be held in interest earning forms and be depleted if share outflows necessitate. For almost all federally insured credit unions, the regulation would entail no significant asset adjustments and no special reporting or compliance requirements.

DATE: Comments must be received on or before July 25, 1979.

ADDRESS: Send comments to Robert S. Monheit, Senior Attorney, Office of General Counsel, National Credit Union Administration, 2025 M Street N.W., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Robert H. Dugger, Acting Director, Policy Analysis Office, 1375 K Street, NW., or Robert M. Fenner, Assistant General Counsel, Office of General Counsel, at the above address. Telephone: (202) 633–6775 (Mr. Dugger), (202) 632–4870 (Mr. Fenner).

SUPPLEMENTARY INFORMATION:

Introduction

The National Credit Union Administration (NCUA) proposes to repeal its regulation requiring Federal credit unions to maintain a specific liquidity reserve on share draft accounts. This action should not be interpreted as indicating that NCUA feels such reserves are not needed. On the contrary, NCUA encourages credit unions to continue to maintain such reserves to accommodate share draft outflows.

In the interest of flexibility and simplicity, and in view of a continuing decline in credit union liquidity, NCUA proposes a liquidity reserve regulation which would require all federally insured credit unions to maintain liquid asset holdings in amounts not less than 5% of total shares and notes payable. Reserve eligible assets would include any combination of: (a) cash, (b) shares or deposits with maturities of 6 months or less in corporate central credit unions or federally insured banks or savings and loan associations, (c) U.S. Government obligations with remaining maturities of one year or less, or (d) shares in the National Credit Union Administration Central Liquidity Facility. To enable credit unions to utilize these assets, the liquidity reserve could be depleted to meet share outflows. This Administration has concluded that the 5% reserving requirement is the minimum prudent level of liquidity in view of current economic conditions. However, the 5% requirement, if adopted, will be reviewed on a continuing basis and modified appropriately to reflect new economic circumstances.

The proposed regulation would involve no additional reporting burdens on credit unions. Compliance would be determined from current State and Federal reports and examinations.

The proposed regulation would be promulgated under sections 116(b) and 201(b)(6) of the Federal Credit Union Act (12 U.S.C. 1762(b), 1781(b)(6)). These provisions authorize the NCUA Administrator to require insured credit unions to maintain such reserves as may be necessary to protect the interests of their members.

Need for the Regulation

With the advent of Federal share insurance in 1970, the expansion of credit union powers in 1977, and the enactment of the Central Liquidity Facility in 1978, credit unions have probably experienced more change in the past nine years than any other type of financial institution. The turbulent economic events of the 1970's coupled with important changes in credit union operations have resulted in significant decreases in credit union liquidity and capitalization.

The need for adequate liquidity in credit unions is no different than in other financial institutions. Conceptually, liquidity represents an asset resource available to satisfy significant and, perhaps, unexpected outflows of funds. An analogous function is performed by loan loss and other equity capital accounts—they constitute a liability resource to accommodate reductions in asset values.

In a very important respect, capital and liquidity are tightly linked. To the extent that liquidity is available, outflows of share funds to meet member demands can be satisfied without liquidating valuable investment and loan assets. If it were not for liquidity, significant share outflows could force untimely sales of valuable assets possibly leading to insolvency and credit union failures. To the extent capital is available to absorb losses, member demands for funds can be satisfied by selling assets even after credit union liquidity has been exhausted.

Table 1 depicts the liquidity of federally insured credit unions expressed as a ratio of very liquid assets to total share accounts and to total liabilities since 1971. The same table also portrays the availability since 1971 of federally insured credit union capital, expressed as the ratio of loan loss reserves and retained earnings accounts to total assets. As the data show, liquidity and capital ratios were relatively steady until recent years when they began to decline markedly. These trends are likely to continue if current national economic patterns are maintained.

Considered alone, these trends and others discussed below should not be viewed with alarm. To a degree they represent acceptable adjustments to the changing nature of credit union operations and United States financial markets. Considered together, however, they suggest the need for action to assure an adequate degree of liquidity by preventing adjustment processes from going too far.

In Table 2 the borrowed funds/total assets ratio since 1971 is presented. This ratio depicts the amount of credit union assets supported by funds obtained from non-share account sources. In the same table, the volume of loans supported by share account funds is depicted. These ratios reflect somewhat different aspects of credit union dependence on outside funds. Rising trends in these ratios along with an average loan maturity increase from about 26 months at year-end 1976 to 33 months at year-end 1978 suggest declining credit union liquidity.

The public's increasing sensitivity to differences in interest rates paid on savings and transaction accounts is also of importance. This interest sensitivity, which used to be characteristic only of large share accounts, now pervades the accounts of moderate income households. For example, accounts with balances in excess of $5,000 were 28% of shares at the end of 1970. By yearend 1977, they had increased 558% and represented some 51% of total shares. This means that today the majority of savings in credit unions is interest sensitive. Such interest sensitivity has brought about Money Market Certificates for large account holders and several high yielding savings vehicles for small account holders and is the source of increasing share account volatility.

Growing interest sensitivity may lead to substantial erosion of Regulation Q constraints on the rates commercial banks and savings and loan associations can pay on savings and transaction accounts. To the extent this occurs, it will diminish a competitive advantage of credit unions—the freedom to pay more on regular share accounts than banks or savings and loan associations can pay on savings accounts. Such a trend could contribute significantly to further share account volatility.

Table 1.—*Liquid Asset and Capital to Asset Ratios at Federally-Insured Credit Unions, 1971–78*

Year	Narrow definitions [1]		Broad definitions [2]		Total capital [4] as a percent of total assets
	Liquid assets as a percent of—		Liquid assets as a percent of—		
	Total shares	Total liabilities [3]	Total shares	Total liabilities [3]	
1971	15.8	14.9	19.0	17.9	7.5
1972	15.6	14.7	20.7	19.6	7.2
1973	13.8	12.8	19.2	17.8	7.0
1974	14.5	13.4	19.0	17.5	7.0
1975	15.9	14.7	22.6	20.9	6.8
1976	14.1	13.0	22.0	20.3	6.3
1977	11.5	10.6	20.6	19.0	6.0
1978 [5]	8.3	7.5	15.1	13.8	5.7

[1] Under the Narrow Definition, liquid assets are defined as the sum of cash, shares, deposits and certificates in other credit unions and financial institutions, and common trust investments. This definition reflects the fact that a very high proportion of credit union government security holdings have long maturities and cannot be liquidated without significant losses.

[2] Under the Broad Definition, liquid assets includes the Narrow Definition plus total investments in U.S. Government and Federal Agency securities.

[3] Represents total shares plus notes payable and all other liabilities.

[4] Total capital represents the sum of total reserves and retained earnings.

[5] Preliminary.

Table 2.—*Loan-to-Share and Borrowed Funds Ratios of Federally-Insured Credit Unions, 1971–78*

Year	Loans outstanding as a percent of total shares	Borrowed funds as a percent of total assets
1971	86.1	2.8
1972	86.5	2.9
1973	89.1	3.7
1974	89.5	4.1
1975	86.0	3.9
1976	86.5	4.5
1977	90.9	5.5
1978 [1]	97.6	7.1

[1] Preliminary.

Explanation

The proposed liquidity reserve regulation would require each federally insured credit union to hold liquid assets totaling not less than five percent of the credit union's member accounts and notes payable. (Section 742.3) The five percent requirement is not intended to suggest that greater liquidity levels are excessive. On the contrary, five percent is regarded by NCUA as the minimum prudent level of liquidity.

The term "member account" as used in the regulation (§ 742.3) is defined in section 101(5) of the Federal Credit Union Act (12 U.S.C. 1752(5)) and encompasses share and share certificate accounts (including those of public units and other nonmembers) held by Federal credit unions, and such accounts or similar accounts held by federally insured state-chartered credit unions. Thus, the base for determining minimum liquidity requirements consists of the total of all share accounts and notes payable.

The term "liquid assets" includes cash, deposits in corporate central credit unions with remaining maturities of 6 months or less, deposits in federally insured banks and savings and loan associations with remaining maturities of 6 months or less, U.S. government obligations (of a type authorized for investment by Federal credit unions under 12 U.S.C. 1757(7)) with remaining maturities of 1 year or less and shares in the National Credit Union Administration Central Liquidity (§ 742.2(a)).

Shares in corporate central credit unions and the Central Liquidity Facility are included as reserve eligible assets because of the special roles these entities play in providing liquidity to the credit union system. The definition of a corporate central credit union, for this purpose, (Section 742.2(b)) is consistent with that contained in the recently proposed Central Liquidity Facility regulations (44 FR 28115).

Short term deposits in federally insured banks and savings and loan associations are included as reserve eligible assets because of their traditional function as liquidity sources. Excluding shares and deposits in insured credit unions (other than corporate centrals) may appear to be unfair. However, NCUA believes the exclusion is necessary, inasmuch as share holdings between insured credit unions do not contribute to the liquidity of the system as a whole.

The proposed maximum maturity limit of one year for U.S. Government obligations is based on NCUA's estimate of the maturity range of such securities which can be liquidated at any time without suffering losses due to market interest rate fluctuations.

The regulation would allow a credit union to deplete its liquidity reserve to satisfy share or deposit outflows. If its liquidity reserve falls below the 5% minimum, however, the credit union would be required to replenish its reserve within 60 days, unless an extension of time is granted by NCUA. (Section 742.4).

Reporting

The liquidity reserve regulation would impose no additional reporting burdens on credit unions. Credit union compliance with the regulation would be determined from current state and Federal reports and examinations.

Request for Comments

NCUA is providing a comment period of approximately 45 days for this proposal. Comments will be received until July 25, 1979. During that time, NCUA encourages written comment on all aspects of the proposal.

Regulatory Analysis

In accordance with NCUA's Report on Implementation of Executive Order 12044—Improving Government Regulations, a draft analysis of the liquidity reserve regulation is available upon request.

June 4, 1979.

(12 U.S.C. 1762(b), 12 U.S.C. 1766(a), 12 U.S.C. 1781(b)(6))

Lawrence Connell,
Administrator.

Accordingly, it is proposed that

§ 701.34 [Repealed]

1. 12 CFR 701.34(c)(5)(xiv) [Share Draft Liquidity Reserves) be repealed.

2. A new Part 742 (12 CFR Part 742) be added to read as follows:

PART 742—LIQUIDITY RESERVES OF INSURED CREDIT UNIONS

Sec.
742.1 Purpose.
742.2 Definitions.
742.3 Liquidity reserve.
742.4 Depletion and replenishment.

Authority: 12 U.S.C. 1762(b), 12 U.S.C. 1766(a), 12 U.S.C. 1781(b)(6).

PART 742—LIQUIDITY RESERVES OF INSURED CREDIT UNIONS

§ 742.1 Purpose.

The purpose of this part is to establish a liquidity reserve requirement that enhances the ability of insured credit unions to meet member demands for liquid funds and avoid asset losses.

§ 742.2 Definitions.

As used in this part:

(a) "Liquid assets" means the following unpledged assets:

(i) Cash on hand;

(ii) Share or deposit accounts with remaining maturities of 6 months or less maintained in corporate central credit unions or institutions insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation;

(iii) Investments in obligations of the United States or an agency thereof which are authorized for Federal credit unions under 12 U.S.C. 1757(7) and which have a remaining maturity of 1 year or less;

(iv) Shares in the National Credit Union Administration Central Liquidity Facility.

(b) "Corporate central credit union" means a credit union operated primarily to serve other credit unions and in which the total dollar amount of shares and deposits received from other credit unions plus loans to other credit unions exceeds 50 percent of the total dollar amount of all shares and deposits plus loans to members.

§ 742.3 Liquidity reserve.

Each credit union insured by the National Credit Union Share Insurance Fund shall maintain a daily reserve of liquid assets equalling, at a minimum, 5% of the total dollar value of its member accounts (as defined at 12 U.S.C. 1752(5)) and notes payable.

§ 742.4 Depletion and replenishment.

The liquidity reserve may be depleted below the level required by this Part only to meet outflows of shares or deposits. In the event of such depletion, the insured credit union shall immediately notify the appropriate National Credit Union Administration Regional Office and shall replenish its liquidity reserve to the required level within 60 days, unless an extension is approved by the Administration.

[FR Doc. 79-17723 Filed 6-7-79; 8:45 am]
BILLING CODE 7535-01-M

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[File No. 782 3032]

Korvette's, Inc.; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, accepted subject to final Commission approval, would require a New York City department store chain, among other things, to cease failing to provide its stores with statutorily required warranty material; and to make the terms of written warranties on consumer products available to prospective purchasers prior to sale. The firm would be further required to develop and implement a program to instruct its sales personnel about the availability and location of warranty information; and maintain adequate business records for a period of two years.

DATE: Comments must be received on or before August 7, 1979.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Leroy Richie, Director, 8R, New York Regional Office, Federal Trade Commission, 2243–EB Federal Bldg., 26 Federal Plaza, New York, N.Y. 10007. (212) 264–1207.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's rules of practice (16 CFR 4.9(b)(14)).

[File No. 782 3032]

Korvette's, Inc.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Korvette's, Inc., a corporation, and it now appearing that Korvette's, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Korvette's, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Korvette's, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 450 West 33rd Street, in the City of New York, State of New York.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives: (a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby and related material pursuant to Rule 2.34, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in

disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

The definitions of terms contained in Section 101 of the Magnuson-Moss Warranty Act, Pub. L. No. 93-637, 15 U.S.C. 2301 (Supp. 1975) and in Rule 702 (16 CFR 702.1) promulgated there under shall apply to the terms in this order.

I

It is ordered, That respondent Korvette's, Inc., a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or indirectly through any corporation, subsidiary, division or any other device in connection with its business as a seller and warrantor of consumer products distributed in commerce as "seller", "warrantor", and "consumer product" are defined in Rule 702 (16 CFR 702.1) of the Magnuson-Moss Warranty Act (15 U.S.C. 2301) do forthwith cease and desist from:

A. Failing, in the further course and conduct of its business as warrantor of consumer products actually costing more than $15.00, to provide its department stores with the warranty materials required by 16 CFR 702.3(b)(1) which are necessary for such stores to comply with requirements for sellers of consumer products, as set forth in 16 CFR 702.3(a).

B. Failing, in its course of business as a seller of consumer products, to make the terms of written warranties on consumer products actually costing more than $15.00 and manufactured on or after January 1, 1977, available to the consumer prior to sale through utilization of one or more means specified in 16 CFR 702.3(a)(1).

II

It is further ordered, That for those departments in which respondent chooses to use a binder system to comply with seller's duties under 16 CFR 702.3(a), respondent shall:

A. Maintain a permanently affixed binder system in each such department which provides the consumer with ready access; and either

B. Label and display such binders in a manner reasonably calculated to elicit the consumer's attention and accessible for consumer use without the assistance of store personnel; or

C. Place permanently affixed signs, not smaller than 6½ inches by 11 inches advising the consumer of the availability of the binders, in a prominent location in each such department. The content of these permanently affixed signs is included in this order as Appendix A.

III

It is further ordered, That respondent shall:

A. Deliver a copy of this order to cease and desist to all present regional and store managerial employees engaged in the sale of consumer products on behalf of respondent.

B. Instruct all present and future regional and store managerial employees engaged in the sale of consumer products on behalf of respondent as to their specific obligations and duties under the Magnuson-Moss Warranty Act (15 U.S.C. 2301) and under this order relating to the requirements about the availability and location of warranty information for customers.

C. Develop and implement a program to instruct its sales personnel about the availability and location of warranty information.

D. Maintain, for a period of not less than two (2) years from the effective date of the order, adequate business records to be furnished upon request to the staff of the Federal Trade Commission, relating to the manner and form of its continuing compliance with the terms and provisions of this order.

E. Notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

F. Within sixty (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

APPENDIX A— Compare Warranties Before You Buy!

There's a binder with warranties in this department. If you can't find the warranty binder, ask for it.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Korvette's, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint in this matter charges Korvette's with having engaged in unfair or deceptive practices in violation of the Magnuson-Moss Warranty Act, the Pre-Sale Availability Rule promulgated by the Commission thereunder, as well as the Federal Trade Commission Act, for failing to comply with this pre-sale availability rule regarding written warranty terms on consumer products.

It is alleged in the complaint that Korvette's as a "warrantor", which gives written warranties to consumers for products actually costing the consumer more than $15.00, failed to perform the requirements of the Pre-Sale Availability Rule. As a "warrantor" of warranted consumer products, Korvette's must provide its stores with warranty materials on all such products, in order that its stores may make such warranty terms available to prospective buyers for their review prior to sale.

It is further alleged that Korvette's as a "seller", which sells or offers for sale, for purposes other than resale or use in the ordinary course of the buyer's business consumer products actually costing the consumer more than $15.00, also failed to meet the requirements of Pre-Sale Availability Rule. As a "seller" of warranted consumer products, Korvette's must make such warranty materials available for prospective buyers' review prior to sale by one of more of the following methods:

(1) Clearly and conspicuously displaying the text of the written warranty in close conjunction with the product;

(2) Maintaining a binder system readily available to the consumer along with conspicuous signs noting the location of binders where the binders themselves are not in plain view;

(3) Displaying the warranty package in such a way that the text of the warranty is visible; and

(4) Placing a sign with the warranty terms in close proximity to the product.

The proposed order directs that Korvette's not only cease and desist from violations of these provisions but requires affirmative action on its part to foster and promote future compliance in this regard.

Carol M. Thomas,

Secretary.

[FR Doc. 79-17947 Filed 6-7-79; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[18 CFR Parts 154, 201, 204 and 282]

[Docket No. RM79-14]

Proposed Regulations Implementing the Incremental Pricing Provisions of the Natural Gas Policy Act of 1978

Issued June 5, 1979.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking and Opportunity for Written and Oral Presentations of Data, Views, and Arguments.

SUMMARY: The Federal Energy Regulatory Commission (FERC) hereby gives notice of a proposed rulemaking and public hearing for the purpose of implementing the incremental pricing provisions of the Natural Gas Policy Act of 1978. The regulations included in this proposal provide the regulatory framework for the calculation and billing of incremental pricing surcharges to non-exempt industrial boiler fuel facilities. The proposed regulations also set forth the procedures by which an industrial facility may obtain an exemption from the incremental pricing program.

DATES: Comments by July 9, 1979. Requests to speak by June 22, 1979. Hearing date: June 27, 1979, 10:00 a.m.

ADDRESSES: All comments and requests to speak to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 (Reference Docket No. RM79-14). *Hearing Location:* Federal Energy Regulatory Commission, Hearing Room A, 825 North Capitol Street, NE., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Norman A. Pedersen, Office of Commissioner George R. Hall, 825 North Capitol Street NE., Room 9006, Washington, D.C. 20426, (202) 275-4147.
Warren C. Edmunds, Office of Pipeline and Producer Regulations, 825 North Capitol Street NE., Room 7300, Washington, D.C. 20426, (202) 275-4415.
Nancy E. Williams, Office of General Counsel, 825 North Capitol Street NE., Room 8100 F, Washington, D.C. 20426, (202) 275-0422.

Notice of Proposed Rulemaking and Opportunity for Written and Oral Presentations of Data, Views, and Arguments—Background

Title II of the Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95-621) requires that interstate pipelines and local distribution companies pass through certain portions of their natural gas acquisition costs to industrial users in the form of surcharges. These surcharges may not, however, raise the ultimate cost of gas to the user above the cost of the fuel oil which could be used as an alternative to natural gas.

The incremental pricing program is to be implemented in two phases. The only facilities affected during the first phase will be those using natural gas as fuel for large industrial boilers. Title II requires that the regulations implementing this first phase be promulgated by November 9, 1979.

During the second phase of the program, incremental pricing may be extended to a broader class of industrial users than those affected by the first stage. The regulations implementing the second phase must be promulgated by May 8, 1980 and will be subject to Congressional review.

The Commission has determined that the regulations needed to implement the first phase of incremental pricing should be promulgated in two rulemaking dockets, Docket Nos. RM79-14 and RM79-21. Informal public conferences in these two dockets were held in February and April, 1979, to assist the Commission in the implementation of the incremental pricing program.

A Notice of Proposed Rulemaking and Opportunity for Written and Oral Presentations of Data, Views and Arguments was issued in Docket No. RM79-21 on May 11, 1979 (44 FR 29090, May 18, 1979). The Notice set forth proposed regulations for the determination of the alternative fuel price ceilings on incremental pricing surcharges. Public hearings on the proposal contained in the May 11th Notice will be held in several cities during the month of June.

The proposal contained in this Notice is intended to implement the provisions of Title II which were not addressed in the May 11th Notice in Docket No. RM79-21. Briefly, the regulations set forth below contain the regulatory provisions governing the actual calculation and billing of incremental pricing surcharges, as well as the accounting provisions necessary for the successful implementation of the program. Additionally, the proposed regulations establish procedures by which facilities can obtain exemptions from incremental pricing.

The regulatory set forth below are quite detailed. This preamble will highlight certain issues which received significant attention in the course of the informal conferences held in this docket in February and April.

The Commission has utilized a number of ideas from various proposals offered at the conferences. The Commission would again like to express its appreciation to all those who participated in the conferences. The discussions which took place were invaluable in the formulation of the proposals in this docket and in Docket No. RM79-21.

II. The Proposed Mechanism: The Reducing PGA Approach

The February, 1979 informal conference was called to discuss a proposal developed by Commission staff for the calculation and billing of the incremental pricing surcharges. That proposal was included in the January 12, 1979, Notice (44 FR 2833, January 31, 1979) convening the February conference.

The January proposal was criticized at the conference because, under it, incremental pricing surcharges would not be billed until 4 to 10 months after the actual incurrence of the costs which are to be passed through by way of surcharges. This would result in high carrying costs which would ultimately be borne by high-priority users as well as industrial users.

Several alternative proposals for the calculation and billing of incremental pricing surcharges were proposed at the February conference. The April conference in this docket was convened to discuss those proposals in more detail. The incremental pricing mechanism contained in the regulations set forth below is based on an approach suggested at the April conference by the United Distribution Companies (UDC), Northern Natural Gas Company (Northern) and Natural Gas Pipeline Company of America (Natural).

Under this approach, each interstate pipeline company which files purchased gas adjustment (PGA) rate changes would, prior to each PGA period, project its total gas acquisition costs for the period. That total would be reduced by the amount which the pipeline projects it will recover during the period through incremental pricing surcharges. The total projected gas acquisition cost, as reduced, would be used to derive the pipeline's PGA rate for the PGA period in the manner prescribed in the pipeline's PGA provision.

In order to project the costs which will be recovered through incremental pricing surcharges during a forthcoming PGA period, an interstate pipeline would estimate both the amount of incremental gas acquisition costs it

would incur during the period and the proportion of those costs which it could pass through to non-exempt industrial boiler fuel users in the form of incremental pricing surcharges.

For purposes of computing the projected gas acquisition costs, the Commission proposes to amend its current regulations to allow purchasers to take into account increased costs which are anticipated due to calling price increases permitted under the NGPA ceiling price regulations.

The estimation of the costs which could be passed through as incremental pricing surchanges would be derived from projections of the maximum surcharge absorption capability ("MSAC") of each non-exempt industrial boiler fuel facility ultimately served by the pipeline, either through direct sales or through sales-for-resale. Each natural gas supplier would estimate the MSAC of each industrial facility it serves directly, following the formula set forth in the regulations. The supplier would then determine, for each of the pipelines supplying it, its capability to absorb a surcharge from the pipeline and would report its surcharge absorption capability to the pipeline. This reporting would continue along a chain or resales until the most "upsteam" supplying pipeline had received reports from all of its customers.

That pipeline would add to the total MSAC reported to it the projected MSAC for its own direct sales. This total would then be compared to the pipeline's estimated incremental acquisition costs for the coming PGA period. The lesser figure would be used to reduce the total acquisition costs which the pipeline would otherwise include in its PGA filing with the Commission.

The reduced PGA rate of a pipeline would be used during the succeeding PGA period. Each month of the PGA period, the pipeline's customers would be billed this reduced PGA rate as well as an incremental pricing surcharge.

Surcharges would be based on actual usage, actual rates and actual alternative fuel price ceilings established for the month in question. The incremental pricing surcharge which would be collected by a pipeline from each of its sale for resale customers would be the MSAC of the sale for resale customer for the previous month, as reported by the customer, or, if less than the MSAC, the customer's pro rata share of the total incremental gas costs incurred by the pipeline during that month.

The incremental pricing surcharge to be billed to each non-exempt industrial boiler fuel facility directly served by a natural gas supplier would be, in turn, the MSAC of the facility for the previous billing month or, if less than the MSAC, the facility's pro rata share of the total incremental gas costs incurred by the natural gas supplier during the previous calendar month.

Under the proposed regulations, incremental pricing surcharges would be stated as a flat dollar amount rather than on an Mcf basis. Any amounts remaining in the unrecovered incremental gas costs account which could not be passed through as a surcharge would be cleared to account 191 for recovery in the pipeline's next PGA period.

The proposal set forth below incorporates the suggestion made by the Natural Gas Pipeline Company of America to allow distributors to bill non-exempt industrial boiler fuel facilities at the level of the alternative fuel price ceiling applicable to the facility. If a local distribution company elects to so bill such a facility, the supplier would, in a later billing, adjust for any overrecovery.

The Commission believes that the potentially greatest obstacle to the successful operation of the UDC/Northern/Natural method of incremental pricing is the very short time permitted for reporting MSAC's up a chain of sale for resale customers. In order to allow for additional time to complete all reporting, the Commission proposes that the billing month for a non-exempt industrial boiler fuel facility end on or about the 20th day of each month. The Commission specifically requests comments on this proposal and, especially, on whether the chain of reporting can be accomplished between the 20th day of a month and the date all information must be available in order to bill on the normal billing date the following month.

III. The Proposed Mechanism: An Alternative

The primary alternative to the "reduced PGA" approach would be to structure an incremental pricing mechanism along the lines suggested by the Interstate Natural Gas Association of America (INGAA) at the February and April conferences. The approach was described in detail in the appendix to the March 16, 1979, Notice convening the April conference. Briefly, under the INGAA approach, every month each interstate pipeline would: (1) bill all customers its normal PGA rate reflecting the full amount of its purchased gas costs, (2) bill non-exempt end users an incremental pricing surcharge, and (3) extend a pro rata credit to all exempt end users in the amount of the total incremental surcharges billed.

Incremental pricing surcharges would be computed each month on the basis of either: (1) the aggregate MSAC for the previous month (if the amount recorded in the incremental gas costs account at the beginning of the current month were greater than such aggregate MSAC) or (2) a pro-rata share of the amount recorded in the incremental gas costs account (if the amount charged to the incremental gas costs account at the beginning of the current month were less than the aggregate MSAC for the previous month).

The Commission, on the basis of the material presented to it, and its study and analysis, prefers the "reduced PGA" approach proposed by UDC, Northern and Natural. It is the Commission's view that such an approach has the advanage of being a less burdensome regulatory program for all affected parties.

The Commission notes, however, that it has given and will continue to give serious attention to the approach sponsored by INGAA. Those who believe that the Commission should adopt the INGAA approach in preference to the approach proposed here are invited to provide comments and arguments to that effect. Those who would advocate Commission adoption of still other alternatives are invited to present them in as much detail as possible.

IV. Exemptions

A. *Exemptions under §§ 206(a), (b) and (c) of the NGPA.*—Subsections 206(a), (b) and (c) of the NGPA provide that small existing industrial boiler fuel users, agricultural users, schools, hospitals and certain other facilities shall be exempt from incremental pricing. Section 282.204 of the proposed regulations would establish a procedure by which those exemptions could be obtained.

These regulations would be interim in nature for small boiler fuel facilities and agricultural users. Section 206 requires that by May 9, 1980, the Commission prescribe permanent exemption rules for these users. The permanent rules are to contain certain statutorily prescribed refinements of the interim rules.

Basically, under the proposed regulations, the exemptions permitted by subsections 206(a), (b) and (c) would be obtained by an industrial boiler fuel facility by filing an affidavit with the Commission and sending a copy to the facility's natural gas supplier. A copy of

the proposed Exemption Affidavit is attached to the regulations below as Appendix A.

The Commission believes that affidavits for exemption should be updated on a regular basis so that if a facility no longer uses gas for exempt purposes, the facility would lose its exemption from incremental pricing. The Commission requests comments on how this updating should be done. The proposed regulations would require that annual reaffirmations of an affidavit for exemption be filed with the Commission. Another possible approach would be to make exemptions expire automatically when a change of circumstances occurs with respect to the facility.

B. *Exemptions under section 206(d) of the NGPA.*—Under subsection 206(d) of the NGPA, the Commission may provide for the exemption of either individual industrial facilities or categories of such facilities which are not exempt from incremental pricing under subsections 206 (a), (b) and (c) of the Act. Any such action by the Commission is required to be submitted to the Congress for its review prior to the action taking effect. Either House of the Congress can veto a proposed exemption.

Section 282.206 of the proposed regulations would establish procedures whereby any interested person would be able to petition under subsection 206(d) of the NGPA for an exemption, in whole or in part, of any individual incrementally priced industrial facility or category of such facility.

During the informal conferences which were convened by staff in connection with the preparation of this Notice of Proposed Rulemaking, some participants suggested exemptions which the Commission could adopt under subsection 206(d). The suggestions generally fell into four categories:

An exemption for gas used in small boilers which have been constructed since November 9, 1978, and for gas used in boilers which were in existence on November 9, 1978, which used more than an average of 300 Mcf per day for boiler fuel during a calendar month of 1977, but which have used less than 300 Mcf per day since 1977;

A partial or complete exemption for gas used in industrial facilities which have the capabilities to use coal as an alternative fuel;

An exemption for gas used in industrial facilities which have the capability to use oil as an alternative fuel and which provide a load-balancing function on gas distribution systems; and

An exemption for gas used in industrial facilities in states where the prices of natural gas are at or above the FERC alternative fuel price ceilings on incremental pricing.

The Commission will, in several weeks, issue a Notice of Proposed Rulemaking in Docket No. RM79–48 regarding a new small boiler exemption. The Commission, at this time, does not intend to institute rulemakings with regard to the other three subsections 206(d) exemption proposals, however.

It is the Commission's view that an exemption for facilities which have the capability to burn coal rather than gas would have the effect of encouraging the consumption of gas rather than coal, and that such a result would be contrary to both national energy policy and the policies embodied in the National Energy Act of 1978.

It is also the Commission's view that an exemption for load-balancing customers which have the capability to burn oil is unnecessary. The Commission has proposed in Docket No. RM79–21 a method for determining alternative fuel price ceilings on incremental pricing that should minimize any load-shifting from gas to oil which otherwise might have occurred under incremental pricing. Thus, the benefits to a system of load-balancing customers who have the capability to burn oil will not be lost.

Finally, regarding the state-wide exemption proposal, the Commission believes it would be premature to attempt to determine at this stage whether any state can assure the Commission that it has a ratemaking program or procedure in effect which would accomplish the ends of incremental pricing as mandated by the NGPA. Any state program must be measured against the incremental pricing program established by this Commission, and particularly the alternative fuel price ceiling aspect of the program. Thus, only after final rules are adopted on, at least, the alternative fuel price ceiling will the Commission have established the point of comparison for state programs or plans which are described as satisfying the objectives of Title II of the NGPA.

As mentioned, comments regarding the coal exemption, the oil exemption and state-wide exemptions have, to this point, been made only in the highly informal context of the conferences convened prior to this Notice of Proposed Rulemaking. In order to provide interested persons with a further opportunity to present to the Commission their views regarding these three exemption proposals, the Commission will provide an opportunity for further comments to be filed on the question of whether or not the Commission should establish a rulemaking proceeding with respect to any one of them.

Comments on establishing a rulemaking on the coal exemption should be filed in Docket No. RM79–45. Comments on establishing a rulemaking on the oil exemption should be filed in Docket No. RM79–48. Comments will be due by August 1, 1979.

Comments urging the Commission to establish one or more rulemaking proceedings on statewide exemption proposals should be filed in Docket No. RM79–47. The final date for filing comments in this docket will be September 1, 1979, in order to permit the parties to have before them the final rules to be issued in Docket No. RM79–21 and this docket.

Issues regarding subsection 206(d) exemptions, aside from questions regarding the procedures set forth in the proposed § 282.206, will not be further considered by the Commission in this proceeding, Docket No. RM79–14.

V. Time Line

The following is a brief time-line of the events which would take place under the incremental pricing regulations contained in this proposal and the companion docket to this proposal, Docket No. RM79–21. Comments are requested on all aspects of this time-line. (Minor conforming changes to the regulations proposed in RM79–21 will have to be made to comport with this time-line.)

August 1, 1979—Commission issues final regulations.

September 1, 1979—Regulations become effective. Exemption affidavits and alternative fuel price ceiling affidavits available through the Office of Public Information.

September 14, 1979—Natural gas suppliers mail exemption affidavits and alternative fuel price ceiling affidavits to all industrial boiler fuel facilities which were not determined to be exempt from an examination of the natural gas supplier's own records.

October 1, 1979—In accordance with the natural gas suppliers' requests as contained in the suppliers' mailings of September 14, exemption affidavits are returned to natural gas suppliers by industrial boiler fuel facilities claiming an exemption in whole or in part.

October 15, 1979—Local distribution companies notify supplying pipelines of their projected MSAC's for the period commencing January 1, 1980.

November 1, 1979—Interstate pipelines file revised PGA provisions and incremental pricing surcharge provisions; pipelines determine projected MSAC's.

December 1, 1979—Interstate pipelines file reduced PGA tariff sheets and estimated incremental pricing surcharge tariff sheets for the period commencing January 1, 1980.

January 1, 1980—Effective date of tariff sheet filed December 1, 1979. Incremental gas acquisition costs begin to be booked by natural gas suppliers.

January 15, 1980—Natural gas suppliers file lists of non-exempt industrial boiler fuel facilities with the Federal Energy Regulatory Commission.

December 15, 1980—Natural gas suppliers mail exemption reaffirmation affidavits and alternative fuel price ceiling reaffirmation affidavits to exempt industrial boiler fuel facilities and non-exempt boiler fuel facilities.

December 31, 1980—Industrial boiler fuel facilities return exemption reaffirmation affidavits and alternative fuel price ceiling reaffirmation affidavits to the Commission and the natural gas supplier.

January 15, 1981—Updated lists of non-exempt industrial boiler fuel facilities are filed with the Commission.

VI. Direct Sales

The regulations set forth below propose the use of unregulated contract rates for the calculations of MSAC's of interstate pipelines' direct sale customers. The reason for this approach is that the Commission did not have jurisdiction over such sales under the Natural Gas Act,[1] and the Commission has found minimal support in the provisions of the NGPA to permit it to take jurisdiction with respect to such sales.

It can be argued, however, that the Congressional intent underlying Title II was not only to protect high priority consumers from increased gas acquisition costs, but to maximize that protection by, among other things, maximizing the surcharges to direct non-exempt customers. This Congressional intent could arguably establish a new basis for jurisdiction.

The regulations below, thus, reflect use of the contract rate merely for purposes of generating comments and further discussion. The proposal does not reflect a conclusion that the contract rate approach is the only one available to the Commission. There are several conceivable alternative approaches. In each approach, the higher determinant of the MSAC would be the established applicable alternative fuel price ceiling. The number which would be used for the lower determinant could be:

(1) The unit cost allocated to non-jurisdictional service in the pipeline's last rate proceeding;

(2) The sum of (i) the unit cost allocated to non-jurisdictional service in the pipeline's last rate proceeding and (ii) 50 percent of the difference between the allocated unit cost and the alternative fuel price ceiling;

(3) The sum of (i) the unit cost allocated to non-jurisdictional service in the pipeline's last rate proceeding and (ii) the difference existing on June 1, 1979, between the contract rate and that allocated unit cost;

(4) The contract rate, as determined under the terms of the existing contract as that contract was in efect on June 1, 1979; or

(5) The product of (i) the unit cost allocated to non-jurisdictional service in the pipeline's last rate proceeding and (ii) the ratio of the contract rate as of June 1, 1979, to the unit cost allocated to non-jurisdictional service in the pipeline's last rate proceeding prior to June 1, 1979.

Each of these possible approaches raises jurisdictional issues. As for the first approach, the outermost limit on interstate pipeline rates to direct sale customers is the cost of alternative fuels. Thus, defining direct sale MSAC's as the difference between the level of allocated costs and the level of the alternate fuel price would effectively dictate to a pipeline its markup in a direct sale.

Methods two through five above would at least allow the pipeline a range in which it could negotiate a retail price. In no case would the pipeline's potential markup over allocated costs be reduced to zero or would the retail rate be specifically determined.

Public comment is invited regarding the merits of all of the proposed methods for determining direct sale MSAC's. It is requested that comments address the jurisdictional implications of the proposed methods. As indicated above, the method of determining direct sale MSAC's on the basis of contract rates will be reviewed in light of the comments received, and may be revised as appropriate in light of those comments.

VII. Submetering

The January 12, 1979, staff proposal in this docket provided, in effect, that all natural gas used at a nonexempt industrial boiler fuel facility would be subject to incremental pricing unless the non-exempt boiler fuel usage was separately metered.

A number of commenters opposed the staff proposal. Several commenters contended that installing submeters would entail large capital expenditures to perform a task—quantifying volumes consumed for exempt or process uses in a non-exempt facility—which can be done by means not requiring new capital investment. Further, it was argued that such an expenditure may be rendered moot in whole or in part by the 18-month rule required by Section 202 of Title II. Lastly, it was claimed that the requisite number of meters could not be obtained and installed by the anticipated January 1, 1980, implementation date for incremental pricing.

A submetering requirement would also raise secondary questions as to who should bear the cost—the end user, the distributor, or the pipeline—inasmuch as the incremental pricing program is intended to benefit exempt users.

Several commenters acknowledged that submetering may be necessary, or would at least be preferable to the alternatives which were suggested. The most viable of these alternatives would be to utilize certified estimates in place of actual volume usage as recorded by meters.

The Commission has determined, based on all of the information available to it, that the original staff proposal on submetering, modified to a certain extent, should be retained in this proposal. The slight modification would permit either exempt (including process) or non-exempt uses to be metered, so long as a total volume of non-exempt usage is derivable from meter readings.

Based on the trade press,[2] and staff's study and observations, we believe that considerable in-plant submetering already is being done. In an era of ever-rising energy costs, many companies have determined that they want to know where and in what quantities energy (in any form) is being used.

Further, it appears that submeters can be purchased and installed at reasonable cost. For many industrial applications, a meter installation for loads up to 1000 Mcf per day, for example, would total less than $5000.[3] If such a meter enabled a non-exempt user to reduce its gas bill by as little as 10 cents per Mcf by having 1000 Mcf per day exempted from incremental pricing by submetering, the cost of the meter would be recovered in 50 days or less.

On the question of the availability of submeters, we request additional comment and statistical data on how widespread the use of submetering aleady is, on the numbers of meters that

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[1] *Panhandle Eastern Pipe Line Company* v. *Public Service Commission of Indiana*, 332 U.S. 507 (1947); *City of Hastings* v. *F.P.C.* 221 F. 2d 31 (D.C. Cir. 1954), *cert. denied*, 349 U.S. 920 (1955).

[2] *E.g., Modern Industrial Energy*, April 1978, p. 12, 13; *Energy User News*, Aug. 14, 1978, p. 1, 10, 11; *Plant Energy Management*, Sept/Oct 1978, p. 40, 42; *Gas Industries*, Sept. 1978, p. 22, Oct. 1977, p. 22, 23.

[3] For example, according to its May 1978 price list, an American Meter Company Model 11M, aluminum housing CVM positive displacement meter capable of measuring over 1100 Mcf per day at 50 psig line pressure would cost less than $2000, F.O.B. Erie, PA. Installation and shipping costs should not result in a drastically increased total cost.

would be needed, and the time required to obtain and install such meters.

For purposes of incremental pricing, it is immaterial whether the exempt or non-exempt volumes are directly measured. If one is measured, the other can be determined. Thus, comments on the number (and cost) of meters should consider the question in terms of accomplishing the metering task in the most efficient manner.

As to the ownership of the submeters, the Commission currently believes that the end user should bear the cost. The end-user is the potential beneficiary of submetering since it would thereby acquire an exemption for non-boiler fuel uses. End-user ownership of meters would avoid the problem of a utility having its property on the end-user's site and would avoid the myriad of regulatory problems inherent in utility ownership. End-user ownership should also tend to maximize the tax benefits generated by the purchase and installation of submeters.

As mentioned above, the most viable alternative to submetering for purposes of identifying volumes which should not be subject to an incremental pricing surcharge would be to use estimates of gas consumption. Some commenters suggested, however, that if used, estimates should be subjected to review by Data Verification Committees (DVC's). Proponents of DVC's cited their useful role in minimizing litigation and resolving disputes in pipeline curtailment cases. DVC opponents raised the spectre of the on-going cost and administrative burden of establishing and maintaining DVC's, in addition to the question of whether they could complete their tasks prior to the expected January 1, 1980, implementation date for the incremental pricing program.

The Commission does not currently view the use of estimates and DVC's as a viable long-term alternative to submetering. The ongoing commitment of professional talent for an indefinite period of time to accomplish the same task that can be—and in many cases already is being—done by meters, would appear to be an overly burdensome regulatory solution.

To the extent, however, that meters cannot be acquired and installed by January 1, 1980, some short-term use of estimates may be needed. One possible approach would be to permit estimates for the period January–March of 1980, based on actual meter readings for 30 days of continuous use at some point during calendar year 1979. Under this approach, a facility could utilize one meter to measure the usage of several boilers until such time as meters could be installed as needed on a permanent basis. Commenters are requested to describe, in as much detail as possible, whether and how a short-term estimating procedure should be implemented.

VIII. Environmental Issues

The staff has completed its environmental assessment of this proposed rulemaking. Staff has concluded, based on the information currently available, that the proposed regulations would not be a major Federal action significantly affecting the quality of the human environment.

This environmental assessment has been made part of the public record in this docket and in Docket No. RM79–21. It is available for inspection in the Commission's Office of Public Information.

The Commission requests comments on any environmental issues which are believed relevant to this rulemaking and on what is believed to be the scope of the Commission's responsibility in this area. Comments relating to environmental issues should, if possible, be substantiated with detailed analysis.

IX. Comments Requested

The Commission requested comments on all aspects of the proposed regulations set forth below. The Commission particularly invites comments on the issues identified above and on approaches to those issues other than the ones reflected in the regulations below.

X. Comment Procedures

A. *Written Comments*

Interested persons are invited to submit written comments, data, views, or arguments with respect to this proposal. Comments should be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, and should reference Docket No. RM79–14. An original and 14 copies should be filed. All comments received prior to 4:30 p.m. EDT, July 9, 1979, will be considered by the Commission prior to promulgation of final regulations. All written submissions will be placed in the public file which has been established in this docket and which is available for public inspection in the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C., during regular business hours.

B. *Public Hearing*

A public hearing concerning this proposal will be held in Washington, D.C. on June 27, 1979. The hearing will be held at the Federal Energy Regulatory Commission, Hearing Room "A", 825 North Capitol Street, N.E., Washington, D.C. 20426, and will begin at 10:00 a.m. Any person interested in this proceeding or representing a group or class of persons interested in this proceeding may make a presentation at this hearing provided that a written request to participate is submitted to the Secretary of the Commission at the address given above by June 22, 1979. Requests to participate should include a reference to Docket No. RM79–14, should indicate the amount of time desired, and should include a telephone number where the person making the request may be reached. A list of the participants in the hearing will be available in the Commission's Office of Public Information on June 25, 1979 and will be available at the site of the hearing on the morning of the hearing. The presiding officer is authorized to limit oral presentations at the hearing both as to length and as to substance. Participants should, if possible, bring 150 copies of their testimony to the hearing.

The hearing will not be a judicial or evidentiary-type hearing. There will be no cross-examination of persons making statements. The presiding officer will question such persons and any interested person may submit questions to the presiding officer to be asked of persons making statements. The presiding officer will determine whether the question is relevant and whether the time limitations permit it to be presented. Any further procedural rules will be announced by the presiding officer at the hearing. Transcripts of the hearing will be available in the public file for this proceeding, Docket No. RM79–14, in the Commission's Office of Public Information.

The Commission proposes to make these amendments, when adopted, effective on September 1, 1979. As noted above, Title II of the NGPA requires that final regulations be in place by November 9, 1979. In order that both the regulations set forth below and the regulations to be adopted in Docket No. RM79–21 can be implemented with the least disruption to currently followed reporting and accounting practices, the Commission proposes to adopt these regulations prior to the November 9th deadline.

(Natural Gas Act as amended, 15 U.S.C. 17 *et seq.*; the Natural Gas Policy Act of 1978, Pub.

L. 95–621, 92 Stat. 3350, 15 U.S.C. 3301, *et seq.*; the Department of Energy Organization Act, 42 U.S.C. 7101, *et seq.*; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, it is proposed to amend Title 18 of the Code of Federal Regulations in Parts 154, 201, 204 and by the addition of a new Part 282, to read, in part, as set forth below.

By Direction of the Commission.

Kenneth F. Plumb,

Secretary.

PART 154—RATE SCHEDULES AND TARIFFS

1. Section 154.38 is amended in paragraph (d) by revising subparagraph (1) and clause (iv) (*a*) of subparagraph (4) to read as follows:

§ 154.38 Composition of rate schedule.

* * * * *

(d) *Statement of rate.* (1) Except as permitted in §§ 154.52, 154.82, and Part 282, all rates shall be clearly stated in cents or in dollars and cents per unit. Only the rates and charges to be used in current billing shall be included in the rate schedules. * * *

(4) * * *

(iv)(*a*) Rate changes which reflects both the projected [2] cost of purchased gas and a revised surcharge to clear the amounts accrued in the deferred account for both producer and pipeline suppliers shall be computed and filed not more frequently than semi-annually.

* * * * *

PART 201—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR NATURAL GAS COMPANIES SUBJECT TO THE PROVISIONS OF THE NATURAL GAS ACT (CLASS A AND CLASS B)

2. Part 201, account 191 is amended in paragraph A to read as follows:

191 Unrecovered purchased gas costs.

A. This account shall include purchased gas costs related to Commission approved purchased gas adjustment clauses when such costs are not included in the utility's rate schedules on file with the Commission. This account shall also include such other costs as authorized by the Commission. Costs of purchased gas subject to passthrough under the incremental pricing requirements of the Commission shall be excluded from this account and included in account 192.1, Unrecovered Incremental Gas Costs.

* * * * *

[2] Pipeline companies may reflect in their rates during their normal PGA period monthly changes in the ceiling rates permitted producers of natural gas under the Natural Gas Policy Act of 1978.

3. Part 201 is amended to add a new account 192.1 to read as follows:

192.1 Unrecovered incremental gas costs.

A. This account shall include the unrecovered costs of purchased gas which are subject to passthrough by means of an incremental pricing surcharge. This account shall also include any other costs authorized by the Commission.

B. This account shall be debited and account 805.2, Incremental Gas Cost Adjustments, shall be credited for unrecovered costs of purchased gas subject to incremental pricing.

C. This account shall be credited and account 805.2 debited for those costs included in this account which are passed through by means of incremental pricing surcharges.

D. Those costs accumulated in this account for gas received during a calendar month which are not subject to passthrough by incremental pricing surcharges because of alternative fuel price ceilings shall be transferred to account 191, Unrecovered Purchased Gas Costs, no later than the end of the month in which the applicable surcharges are billed.

E. Separate subaccounts shall be maintained for the accumulation of incremental gas costs each calendar month and the passthrough or transfer of such costs so as to keep each period separate.

4. Part 201 is amended to add a new account 192.2 to read as follows:

192.2 Unrecovered incremental surcharges.

A. This account shall include any incremental pricing surcharges passed through to the company by pipeline suppliers.

B. This account shall be debited and account 805.2, Incremental Gas Cost Adjustments, shall be credited with the amount of each incremental pricing surcharge as incurred.

C. This account shall be credited and account 805.2 shall be debited with the amounts included in this account which are passed through to customers.

5. Part 201 is amended to add a new account 805.2 to read as follows:

§ 805.2 Incremental gas cost adjustments.

A. This account shall be credited with the costs of purchased gas which are subject to passthrough by means of incremental pricing surcharges.

B. This account shall also be credited with any incremental pricing surcharges passed through to the company by pipeline suppliers.

C. This account shall be debited with amounts from account 192.1, Unrecovered Incremental Surcharges, which are passed through by means of incremental pricing surcharges.

D. This account shall also be debited with amounts from account 192.2, Unrecovered Incremental Surcharges, which are passed through by means of incremental pricing surcharges.

PART 204—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR NATURAL GAS COMPANIES SUBJECT TO THE PROVISIONS OF THE NATURAL GAS ACT (CLASS C AND CLASS D)

6. Part 204, account 191 is amended in paragraph A to read as follows:

191 Unrecovered purchased gas costs.

A. This account shall include purchased gas costs related to Commission approved purchased adjustment clauses when such costs are not included in the utility's rate schedules on file with the Commission. This account shall also include such other costs as authorized by the Commission. Costs of purchased gas subject to passthrough under the incremental pricing requirements of the Commission shall be excluded from this account and included in account 192.1, Unrecovered Incremental Gas Costs.

* * * * *

7. Part 204 is amended to add a new account 192.1 to read as follows:

192.1 Unrecovered incremental gas costs.

A. This account shall include the unrecovered costs of purchased gas which are subject to passthrough by means of incremental pricing surcharges. This account shall also include any other costs authorized by the Commission.

B. This account shall be debited and account 731.2, Incremental Gas Cost Adjustments, shall be credited for unrecovered costs of purchased gas subject to incremental pricing.

C. This account shall be credited and account 731.2 debited for those costs included in this account which are passed through by means of incremental pricing surcharges.

D. Those costs accumulated in this account for gas received during a calendar month which are not subject to passthrough by incremental pricing surcharges because of alternative fuel price ceilings shall be transferred to account 191, Unrecovered Purchased Gas Costs, no later than the end of the month in which the applicable surcharges are billed.

E. Separate subaccounts shall be maintained for the accumulation of incremental gas costs each calendar month and the passthrough or transfer of such costs so as to keep each period separate.

8. Part 204 is amended to add a new account 192.2 to read as follows:

192.2 Unrecovered incremental surcharges.

A. This account shall include incremental pricing surcharges passed through to the company by its pipeline suppliers.

B. This account shall be debited and account 731.2, Incremental Gas Cost Adjustments, shall be credited with the amount of each incremental pricing surcharge as incurred.

C. This account shall be credited and account 731.2 shall be debited with the amounts included in this account which are passed through to customers.

9. Part 204 is amended to add a new account 731.2 to read as follows:

§ 731.2 Incremental gas cost adjustments.

A. This account shall be credited with the costs of purchases gas which are subject to passthrough by means of incremental pricing surcharges.

B. This account shall also be credited with any incremental pricing surcharges passed through to the company by its pipeline suppliers.

C. This account shall be debited with amounts from account 192.1, Unrecovered Incremental Gas Costs, which are passed through by means of incremental pricing surcharges.

D. This account shall also be debited with amounts from account 192.2, Unrecovered Incremental Surcharges, which are passed through by means of incremental pricing surcharges.

10. Subchapter I of Chapter 1 is amended by adding a new Part 282 to read as follows:

PART 282—INCREMENTAL PRICING

Subpart A—General Rules and Definitions

Sec.

282.101 Purpose.
282.102 Applicability and effective date.
282.103 Definitions.

Subpart B—Exemptions

282.201 General rule.
282.202 Definitions.
282.203 Exempt end-uses.
282.204 Obtaining an exemption.
282.205 Annual reinstatement of exemptions.
282.206 Petitions for exemptions under § 206(d).

Subpart C—Determination of Costs Subject to Incremental Pricing

282.301 Costs subject to incremental pricing.
282.302 Gas qualifying under more than one provision.
282.303 First sale acquisition cost.
282.304 Incremental pricing threshold.

Subpart D [Proposed in notice of proposed rulemaking issued May 11, 1979 (44 FR 28000, May 18, 1979)]

Subpart E—Incremental Pricing Accounts and Surcharges

282.501 General rule.
282.502 Accounting.
282.503 PGA reduction.
282.504 Incremental pricing surcharge.
282.505 Recovery of amounts in excess of maximum surcharge absorption capabilities.

Subpart F—Filing Requirements

282.601 FERC gas tariff provisions.
282.602 Tariff sheets.
282.603 Informational filings.

Authority: This part is issued under the Natural Gas Act, as amended, 15 U.S.C. 717 *et seq.*; the Natural Gas Policy Act of 1978, Pub. L. 95-621, 92 Stat. 3350, 15 U.S.C. 3301, *et seq.*; the Department of Energy Organization Act, 42 U.S.C. 7101, *et seq.*; E.O. 12009, 42 FR 46267.

Subpart A—General Rules and Definitions [1]

§ 282.101 Purpose.

The purpose of this part is to set forth an incremental pricing rule in accordance with Title II of the Natural Gas Policy Act of 1978. The rule requires that certain costs of acquiring natural gas be passed through as a surcharge on sales of natural gas used as specified in the rule.

§ 282.102 Applicability and effective date.

(a) *Uses.* Natural gas used as boiler fuel in industrial boiler fuel facilities on and after January 1, 1980, shall be subject to incremental pricing under this part.

(b) *Costs.* Costs described in Subpart C and incurred by natural gas suppliers on or after January 1, 1980 shall be subject to this part.

(c) *Natural gas suppliers.* Interstate pipelines and local distribution companies shall be subject to this part.

(d) *Effective date.* The provisions of this part shall be effective September 1, 1979.

§ 282.103 Definitions.

For purposes of this part:

(a) "Natural gas supplier" means an interstate pipeline or a local distribution company.

(b) "Industrial facility" means any facility which primarily changes raw or unfinished materials into another form or product.

(c) "Non-exempt industrial boiler fuel facility" means any industrial boiler fuel facility other than any such facility which has been exempted from the provisions of this part in accordance with Subpart B.

(d) "No. 2 fuel oil" means No. 2 oil as defined in the standard specification for fuel oils published by the American Society for Testing and Materials, ASTM D 396-78.

(e) "No. 6 fuel oil" means No. 6 oil as defined in the standard specification for fuel oils published by the American Society for Testing and Materials, ASTM D 396-78.

(f) "Low sulfur fuel oil" means any oil containing 1 percent (1%) or less sulfur content by weight.

(g) "High sulfur fuel oil" means any oil containing more than 1 percent (1%) sulfur content by weight.

(h) "British thermal unit" or "Btu" shall have the meaning set forth in § 270.102.

Subpart B—Exemptions

282.201 General rule.

(a) *Statutory exemptions.* Natural Gas used for purposes described in § 282.203 shall be exempt from incremental pricing as provided in subsections 206(a), (b) and (c) of the NGPA. Exemptions for such gas may be obtained in the manner prescribed in § 282.204. Adjustments under authority of subsection 502(c) of the NGPA as may be necessary to prevent special harship, inequity, or unfair distribution of burdens may be obtained as provided in § 1.41.

(b) *Discretionary exemptions.* Petitions for an exemption under authority of subsection 206(d) of the NGPA may be filed in the manner prescribed in § 282.206.

§ 282.202 Definitions.

For the purposes of this subpart:

(1) "Qualifying cogeneration facility" means a cogeneration facility which meets the requirements prescribed in § ——.

(2) "School" means a facility the primary function of which is the delivery of instruction to regularly enrolled students in attendance at such facility. Facilities used for both educational and non-educational activities are not included under this definition unless the

[1] For convenience of the reader, most of Subpart A as it appears here was included in the Notice of Proposed Rulemaking issued in Docket No. RM79-21 on May 11, 1979 (44 FR 28000, May 18, 1979). Commenters are asked to comment on Subpart A in this docket rather than in Docket No. RM79-21.

latter activities are merely incidental to the delivery of instruction.

(3) "Hospital" means a facility the primary function of which is the delivery of medical care to patients who remain at the facility. Outpatient clinics or doctor's offices are not included in this definition. Nursing homes and convalescent homes are included in this definition.

(4) "Similar institution" means a facility the primary function of which is the same as the primary function of the facility to which it is compared.

(5) "Agricultural use" means any use of natural gas which is certified by the Secretary of Agriculture under 7 CFR § 2900.3 as an "essential agricultural use" pursuant to section 401(c) of the NGPA.

§ 282.203 Exempt end-uses.

Natural gas used for the following purposes shall be exempt from incremental pricing under this part:

(a) All gas used for boiler fuel by an industrial boiler fuel facility which was:

(1) In existence on November 9, 1978; and

(2) Did not consume more than an average of 300 Mcf per day for boiler fuel during any calendar month of calendar year 1977;

(b) All gas used for an agricultural use;

(c) All gas used in a qualifying cogeneration facility;

(d) All gas used for the generation of electricity by an electric utility; and

(e) All gas used in a school, hospital, or similar institution.

§ 282.204 Obtaining an exemption.

(a) *General.* This section establishes procedures by which owners or operators of industril boiler fuel facilities may obtain an exemption for natural gas used for the purposes described in § 282.203.

(b) *Determination of industrial boiler fuel facilities.* On or before September 14, 1979, each natural gas supplier shall determine which facilities served directly by it are industrial boiler fuel facilities.

(c) *Exemption on the basis of company records.* (1) On or before September 14, 1979, each natural gas supplier shall determine from an examination of its records which industrial boiler fuel facilities, as identified under paragraph (b), were in existence on November 9, 1978, and either:

(i) Did not use more than an average of 300 Mcf per day during any calendar month of calendar year 1977; or

(ii) Did not use more than an average of 300 Mcf per day for boiler fuel during any calender month of calendar year 1977.

(2) Natural gas used by an industrial boiler fuel facility for which an affirmative determination is made under subparagraph (1) shall be exempt from incremental pricing under this part.

(d) *Exemption on the basis of affidavit.* (1) *Commission to provide exemption affidavits.* As of the effective date of this part, exemption affidavits as described in subparagraph (3) will be available to natural gas suppliers for purposes of subparagraph (2) and to any other interested person upon request from the Office of Public Information, Federal Energy Regulatory Commission, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426.

(2) *Availability of exemption affidavits from natural gas suppliers.* (i) *Initial service.* Not later than September 14, 1979, each natural gas supplier shall mail or otherwise supply an exemption affidavit, as described in subparagraph (3), to the owner or operator of each industrial boiler fuel facility on such natural gas supplier's system which the natural gas supplier did not determine to be exempt pursuant to paragraph (c).

(ii) *Response date.* Natural gas suppliers which supply exemption affidavits under clause (i) shall request that executed affidavits be filed on or before October 1, 1979, in accordance with subparagraph (4).

(iii) *Ongoing availability.* After September 14, 1979, natural gas suppliers shall make exemption affidavits available at their principal place of business on an ongoing basis during regular business hours.

(3) *Contents of exemption affidavit.* (i) The exemption affidavit will provide the owner or operator of an industrial boiler fuel facility with an opportunity to respond to the following questions:

(A) Did the customer's facility, on the basis of records, documents, or data in the customer's possession, consume no more than an average of 300 Mcf per day for boiler fuel during any calendar month of calendar year 1977?

(B) Is all of the natural gas consumed at the customer's facility used as boiler fuel for an agricultural use?

(C) Is the customer's facility, in its entirety, a qualifying cogeneration facility?

(D) Is the customer's facility, in its entirety, a school, hospital, or similar facility?

(E) Is the customer's facility, in its entirety, used for the generation of electricity by an electric utility?

(F) Is a portion, though not all, of the gas consumed at the customer's facility used as boiler fuel for an agricultural use?

(G) Is the customer's facility, in part but not in its entirety, a qualifying cogeneration facility?

(H) Is the customer's facility, in part but not in its entirety, a school, hospital, or similar facility?

(I) Is the customer's facility, in part but not in its entirety, used for the generation of electricity by an electric utility?

(ii) The exemption affidavit will notify the customer that, if he affirmatively responds to any of the questions (F) through (I), volumes of natural gas used in the customer's facility will be exempt from incremental pricing only to the extent that the customer maintains submeters and records as required by subparagraph (6).

(iii) The exemption affidavit will indicate the record retention obligation which may be incurred by the customer under subparagraph (6) of this paragraph.

(iv) The exemption affidavit will contain such other information as may be necessary for completion and return of the affidavit.

(4) *Filing of exemption affidavits.* In order to obtain an exemption from incremental pricing, an owner or operator of an industrial boiler fuel facility shall file an executed exemption affidavit, signed and dated by a responsible official, under oath, with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, and send a copy of the executed affidavit to the natural gas supplier serving the industrial boiler fuel facility.

(5) *Effect of filing an exemption affidavit.* (i) If the owner or operator of an industrial boiler fuel facility affirmatively responds to any of the questions (A) through (E), as set out in subparagraph (3), and files the affidavit in accordance with subparagraph (4), then natural gas used in the facility shall be exempt from incremental pricing under this part.

(ii) If the owner or operator of an industrial boiler fuel facility affirmatively responds to any of the questions (F) through (I) as set out in subparagraph (3), and files the affidavit in accordance with subparagraph (4), then natural gas used in the industrial boiler fuel facility shall be exempt from incremental pricing to the extent determined in accordance with the applicable provision of subparagraph (6).

(6) *Determination of extent of partial exemption.* (i) If the owner or operator of an industrial boiler fuel facility affirmatively responds to question (F) as set out in subparagraph (3), the volume of natural gas used in the facility which shall be exempt from incremental pricing shall be determined on the basis of and to the extent there are submeter reading records for each billing month, as signed under oath by a responsible company official, that show the extent to which gas is consumed for an agricultural use and that are made available to the facility's natural gas supplier as required by the supplier for billing purposes.

(ii) If the owner or operator of an industrial boiler fuel facility affirmatively responds to any of the questions (G) through (I), the volume of natural gas used in the facility which shall be exempt from incremental pricing shall be determined on the basis of and to the extent there are submeters which permit determination of the volume of exempt usage and which are available to be read by the facility's natural gas supplier as required for billing purposes.

(7) *Effective date of exemption.* (i) If the owner or operator of an industrial boiler fuel facility files an exemption affidavit with the Commission and sends a copy to the facility's natural gas supplier in accordance with subparagraph (4) on or before December 31, 1979, the facility shall be exempt from incremental pricing under this part as of January 1, 1980.

(ii) If the owner or operator of an industrial boiler fuel facility files an exemption affidavit with the Commission and sends a copy to the facility's natural gas supplier in accordance with subparagraph (4) on or after January 1, 1980, the facility shall be exempt from incremental pricing under this part as of the beginning of the first full billing month following the date the exemption affidavit is filed with the Commission and received by the facility's natural gas supplier.

(8) *Record retention.* If the owner or operator of an industrial boiler fuel facility obtains an exemption as a result of affirmatively responding to question (A) as set out in subparagraph (3), the owner or operator shall retain all records, documents or data which formed the basis of the response.

(e) *Public availability of exemption information.* (1) *Executed exemption affidavits.* (i) Copies of executed exemption affidavits which are filed with the Commission shall be available for public inspection at the Office of Public Information, Federal Energy Regulatory Commission, Room 1000, 825 North Capitol Street NE., Washington, D.C. 20426.

(ii) Each natural gas supplier shall maintain copies of all executed exemption affidavits which it has received and shall make such copies available for public inspection at its principal place of business during regular business hours.

(2) *Lists of non-exempt facilities.* (i) On or before January 15, 1980, each natural gas supplier shall file with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, a list of all industrial boiler fuel facilities on each supplier's system which did not qualify for an exemption under paragraph (c) or (d) as of December 31, 1979.

(ii) On or before January 15th of each year after 1980, each natural gas supplier shall file a revised list of the non-exempt industrial boiler fuel facilities on such supplier's system. A revised list shall indicate all additions to or deletions from the prior year's list and shall reflect determinations and reaffirmations made pursuant to § 282.205.

(iii) Lists of non-exempt facilities filed in accordance with clause (i) or (ii) shall be available for public inspection through the Office of Public Information, Federal Energy Regulatory Commission, Room 1000, 825 North Capitol Street NE., Washington, D.C. 20426.

(iv) Each natural gas supplier shall make lists filed in accordance with clause (i) or (ii) available for public inspection at its regular place of business during regular business hours.

(f) *Protests.* Any interested person may protest the exemption of an industrial boiler fuel facility form incremental pricing. The procedures set forth in § 1.10 shall govern the filing of such a protest.

§ 282.205 Annual reinstatement of exemptions.

(a) *Review of exemption determinations by natural gas suppliers.* On or before December 31, 1980, and December 31st of every year thereafter, each natural gas supplier shall review the determinations made by its pursuant to § 282.204(b) in order to ascertain whether all such determinations remain accurate.

(b) *Filing of reaffirmations of eligibility for exemption.* On or before December 31st of 1980 and of every year thereafter, the owner or operator of each industrial boiler fuel facility which has been exempted in part or in whole from the incremental pricing program during the immediately preceding calendar year through the filing of an exemption affidavit pursuant to § 282.204(d) or a reaffirmation of such affidavit, as set forth herein, shall, if appropriate, file a reaffirmation of eligibility for exemption from the incremental pricing program, signed and dated by a responsible official, under oath, with the Secretary, Federal Energy Regulatory Commission, Room 1000, 825 North Capitol Street NE., Washington, D.C. 20426, and send a copy of the executed reaffirmation affidavit to the natural gas supplier serving the industrial boiler fuel facility.

(c) *Effect of not filing a reaffirmation.* (1) If a natural gas supplier does not receive by December 31st of 1980 and every year thereafter a reaffirmation of eligibility with respect to an industrial boiler fuel facility which it has treated as a partially or wholly exempt facility during the immediately preceding calendar year, the natural gas supplier shall add the facility to the list of non-exempt industrial boiler fuel facilities which it files with the Commission under § 282.204(e)(2)(ii) and shall treat the facility as a non-exempt facility beginning with the next full billing month following the December 31 date.

(2) An industrial boiler fuel facility may file an entirely new exemption affidavit rather than a reaffirmation affidavit in order to reflect a change of circumstances in the operations of the facility.

(d) *Commission to provide reaffirmation affidavits.* Affidavits for the reaffirmation of eligibility for exemption from the incremental pricing program will be available to natural gas suppliers and to any other interested person upon request from the Office of Public Information, Federal Energy Regulatory Commission, Room 1000, 825 North Capitol Street NE., Washington, D.C. 20426.

(e) *Natural gas suppliers to make reaffirmation affidavits available.* (1) *Initial service.* On or before December 15, 1980 and December 15 of each following year, each natural gas supplier shall mail or otherwise supply a reaffirmation affidavit to the owner or operator of each industrial boiler fuel facility which has been exempted in whole or in part from the incremental pricing program during the immediately preceding calendar year through the filing of either an exemption affidavit pursuant to § 282.204(d) or a reaffirmation of eligibility affidavit pursuant to paragraph (b).

(2) *Ongoing availability.* Natural gas suppliers shall make reaffirmation affidavits available at their principal place of business on an ongoing basis during regular business hours.

§ 282.206 Petitions for exemptions under § 206(d).

(a) *General rule.* Any interested person may petition under authority of subsection 206(d) of the NGPA for the exemption, in whole or in part, of any non-exempt industrial boiler fuel facility or category thereof.

(b) *Filing requirements.* A petition for an exemption under authority of subsection 206(d) shall:

(1) Conform to the requirements of § 1.7;

(2) Contain sufficient information and data to permit review of the petition on the merits; and

(3) Provide an analysis of any environmental issues which are relevant to the request for an exemption.

(c) *Notice.* Public notice of the filing of a petition for an exemption under authority of subsection 206(d) shall be given with opportunity for comment by interested persons.

(d) *Denial without prejudice.* A petition for an exemption under authority of subsection 206(d) which is not acted upon within 60 days of the date for submission of comments shall be deemed denied without prejudice.

Subpart C—Determination of Costs Subject to Incremental Pricing

§ 282.301 Costs subject to incremental pricing.

The costs specified in this section are acquisition costs which shall be subject to the passthrough provisions of this part.

(a) *New natural gas.* In the case of new natural gas (as defined in section 102(c) of the NGPA), any portion of the first sale acquisition cost of such natural gas which exceeds the incremental pricing threshold applicable for the month in which the delivery of such natural gas occurs shall be subject to this part.

(b) *Natural gas under intrastate rollover contract.* In the case of natural gas delivered under a rollover contract which was not committed or dedicated to interstate commerce on November 8, 1978, any portion of the first sale acquisition cost of such natural gas which exceeds the incremental pricing threshold applicable for the month in which the delivery occurs shall be subject to this part.

(c) *New, onshore production well gas.* In the case of natural gas produced from any new, onshore production well (as defined in section 103(c) of the NGPA), any portion of the first sale acquisition cost of such natural gas which exceeds the incremental pricing threshold applicable for the month in which the delivery of such natural gas occurs shall be subject to this part.

(d) *LNG imports.* (1) Subject to the provisions in subparagraph (2), in the case of liquefied natural gas imported into the United States, any portion of the first sale acquisition cost of such natural gas (whether or not liquefied when acquired) which exceeds the incremental pricing threshold applicable for the month in which such liquefied natural gas enters the United States shall be subject to this part.

(2) Costs of liquefied natural gas imported into the United States shall not be subject to this part if:

(i) The importation of the liquefied natural gas was authorized under section 3 of the Natural Gas Act on or before May 1, 1978;

(ii) An application for such authority was pending under section 3 of the Natural Gas Act on such date, except as set forth in subparagraph (3) below; or

(iii) In connection with the granting of any authority under the Natural Gas Act to import such liquefied natural gas, the Secretary of the Department of Energy or the Commission, in accordance with the Department of Energy Organization Act (or any delegation or assignment thereunder), determines that a contract binding on the importer or other substantial financial commitment of the importer was made on or before such date, except as set forth in subparagraph (3) below.

(3) Clauses (ii) and (iii) of subparagraph (2) shall not apply with respect to any liquefied natural gas imports if, in connection with the granting of any authority under the Natural Gas Act to import such liquefied natural gas, the Secretary of the Department of Energy or the Commission, in accordance with the assignment of functions under the Department of Energy Organization Act, determines that the portion of the costs of such imports as described in subparagraph (1) shall be subject to this part.

(e) *Natural gas (other than LNG) imports.* (1) Subject to subparagraph (2), in the case of natural gas (other than liquefied natural gas) imported into the United States, any portion of the first sale acquisition cost of such imported natural gas which exceeds the maximum lawful price, per million Btu's, computed under section 102 of the NGPA (relating to new natural gas) for the month in which such natural gas enters the United States without regard to section 110 of the NGPA, shall be subject to this part.

(2) Subject to subparagraph (3), subparagraph (1) shall only apply to costs of volumes of natural gas (other than liquefied gas) imported into the United States which exceed both:

(i) The maximum delivery obligations for the month in which such delivery of natural gas occurs, as specified by contracts entered into on or before May 1, 1978 and in effect when such delivery occurs; and

(ii) The volume of natural gas imported into the United States by the interstate pipeline involved during the corresponding month of calendar year 1977.

(3) Subparagraph (2) notwithstanding, subparagraph (1) shall apply to the portion of first sale acquisition costs, as described in subparagraph (1), of volumes of natural gas (other than liquefied natural gas) imported into the United States which exceed the volume of natural gas imported into the United States by the interstate pipeline involved during calendar year 1977 if, in connection with the granting of any authority under the Natural Gas Act to import such natural gas, the Secretary of the Department of Energy or the Commission, in accordance with the assignment of functions under the Department of Energy Organization Act, determines that subparagraph (1) shall apply with respect to such natural gas imports.

(f) *Stripper well natural gas.* In the case of stripper well natural gas (as defined in section 108(b) of the NGPA) any portion of the first sale acquisition cost of such natural gas which exceeds the maximum lawful price, per million Btu's, computed under section 102 of the NGPA (relating to new natural gas) for the month in which the delivery of such gas occurs without regard to section 110 of the NGPA, shall be subject to this part.

(g) *High-cost natural gas.* In the case of high-cost natural gas (as defined in section 107(c) of the NGPA), any portion of the first sale acquisition cost of such natural gas which exceeds 130 percent of—

(1) The weighted average per barrel cost of No. 2 fuel oil landed in the greater New York City metropolitan area, as published by the energy Information Administration of the Department of Energy, during the month preceding the month in which delivery of such natural gas occurs, divided by,

(2) A Btu conversion factor of 5.8 million Btu's per barrel—shall be subject to this part.

(h) *Alaska Natural Gas Transportation System.* In the case of natural gas produced from the Prudhoe Bay Unit of Alaska (as defined in section 2 of the NGPA), and transported

through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976, the following amounts shall be subject to this part:

(1) Any portion of the first sale acquisition cost of natural gas which is not described in subparagraph (2) and which exceeds the maximum lawful price, per million Btu's computed under section 109 of the NGPA (relating to other categories of natural gas) for the month in which delivery of such natural gas occurs without regard to section 110 of the NGPA; and

(2) Any amount paid to any person (other than the producer of such natural gas or an affiliate of such producer) for, or attributable to, any compressing, gathering, processing, treating, liquefying, or transporting of such natural gas, or any similar service provided with respect to such natural gas, before the delivery of such natural gas to such system.

(i) *Increased state severance taxes.* (1) Subject to the provisions of subparagraph (2), any portion of the cost of natural gas at any first sale attributable to any increase in the amount of state severance taxes (as defined in section 110(c) of the NGPA) which results from a provision of state law enacted on or after December 1, 1977, shall be subject to this part.

(2) Subparagraph (1) shall not apply to any increase in state severance taxes resulting from a change in the method of computation of such tax by reason of any provision of state law enacted on or after December 1, 1977, if:

(i) As of the effective date of such change in method of computation, such increase does not result in an increase in the level of such tax, expressed as a percentage of the weighted average first sale price of natural gas produced in such state, above the percentage of such average first sale price which such tax constituted on the day before such effective date; and

(ii) Such provision of law is equally applicable to natural gas produced in the state and delivered to interstate commerce and to natural gas produced in the state and not so delivered.

(3) The price to be used in determining the weighted average first sale price for purposes of subparagraph (2) shall be the price paid at the first sale which is used by the State in administering such tax (or an imputed value, if the state uses an event other than a first sale in administering such tax).

(j) *Transactions under section 311(b) of the NGPA.* In the case of any sale under section 311(b) of the NGPA by an intrastate pipeline to an interstate pipeline or a local distribution company, any portion of the amount paid, per million Btu's, by the purchaser to the intrastate pipeline which exceeds the incremental pricing threshold for the month in which the acquisition of the natural gas occurs shall be subject to this part.

(k) *Pipeline produced gas.* (1) In the case of any natural gas produced by an interstate pipeline which is priced in its overall cost of service without regard to the cost of producing the gas, any portion of the first sale acquisition cost imputed under § 282.303 shall be subject to this part if it would have been subject to this part under paragraphs (a) through (h) had the gas been produced by an independent producer and purchased by the interstate pipeline at the imputed level.

(2) Gas produced by interstate pipelines which is treated, for rate purposes, on a cost of service basis shall not be subject to this part.

(3) Costs of gas produced by producers affiliated with interstate pipelines shall be treated as production by an independent producer and shall be subject to this part, except to the extent that different treatment has been found appropriate under the Natural Gas Act.

(l) *Surcharges paid to other pipelines.* The amount of any incremental pricing surcharge (described in § 282.504) paid by any interstate pipeline for natural gas acquired by such pipeline from another pipeline shall be subject to this part.

§ 282.302 Gas qualifying under more than one provision.

If natural gas qualifies under more than one paragraph of § 282.301, the paragraph which reflects a determination made in acordance with section 101(b)(5) of the NGPA and regulations promulgated thereunder shall be applicable for purposes of determining the portion of the first sale acquisition costs of such natural gas which shall be subject to passthrough under this part.

§ 282.303 First sale acquisition cost.

(a) *General rule.* For purposes of this part, the first sale acquisition cost of natural gas is:

(1) the price paid, per million Btu's, in any first sale of such natural gas, in the case of any natural gas produced in the United States and acquired in such first sale; or

(2) the price paid for such natural gas, per million Btu's, at the point of entry to the United States, in the case of natural gas or liquefied natural gas imported into the United States.

(b) *State severance taxes.* Any amount of state severance taxes paid at any first sale shall not be included in determining the price paid for purposes of paragraph (a).

(c) *Pipeline produced gas.* A first sale acquisition cost shall be imputed to gas produced by an interstate pipeline which is priced in its overall cost of service without regard to the cost of producing the gas. The imputed cost shall be the maximum lawful price which would have been paid under Title I of the NGPA if the gas had been produced by an independent producer. The determination of this maximum lawful price shall be made by the body which, by terms of the NGPA and the regulations promulgated thereunder, would have made the determination if the gas had been produced by an independent producer.

§ 282.304 Incremental pricing threshold.

(a) *General rule.* For purposes of this part, the incremental pricing threshold applicable for any month shall be:

(1) $1.48 per million Btu's in the case of March 1978; and

(2) in the case of any month thereafter, the amount, per million Btu's, determined under this section for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor (as defined in section 101(a) of the NGPA) applicable for such month.

(b) *Publication.* Not later than 5 days before the beginning of each month, commencing with January, 1980, the Commission shall issue the incremental pricing threshold applicable for such month. As soon as possible thereafter, such incremental pricing threshold shall be published in the Federal Register.

Subpart D [Proposed in notice of proposed rulemaking issued May 11, 1979 (44 FR 29090, May 18, 1979)]

Subpart E—Incremental Pricing Accounts and Surcharges

§ 282.501 General rule.

(a) Each natural gas supplier shall, on a monthly basis, accumulate in an unrecovered incremental gas costs account, as provided in § 282.502, the costs described in paragraph (a) through (k) of § 282.301 as being subject to passthrough under this part.

(b) Each interstate pipeline shall derive a reduced PGA rate for each PGA period, as provided in § 282.503.

(c) Each month, in accordance with § 282.504, each natural gas supplier shall bill incremental pricing surcharges to the sale for resale customers and the

non-exempt industrial boiler fuel facilities on the supplier's system.

(1) Surcharges shall be calculated to recover the lesser of the total incremental gas costs, as defined in § 282.504, which were incurred by the supplier during the prior month or an amount equivalent to the maximum surcharge absorption capability of the supplier's customers.

(2) The maximum surcharge absorption capability of a non-exempt industrial boiler fuel facility shall be the difference between the cost to the facility for its use of natural gas, calculated on the basis of the rates of its natural gas suppliers before inclusion of incremental pricing surcharges, and the cost of that same volume of natural gas priced at the alternative fuel price ceiling applicable to the facility.

(d) Each month, in accordance with § 282.505, the amount accumulated in the natural gas supplier's unrecovered incremental gas costs account which cannot be recovered by way of incremental pricing surcharges shall be transferred from that account to account 191, Unrecovered Purchased Gas Costs.

§ 282.502 Accounting.

(a) *General rule.* For purposes of incremental pricing, each natural gas supplier shall establish an unrecovered incremental gas costs account, an unrecovered incremental surcharges account and an incremental gas cost adjustments acoount.

(b) *Establishment of accounts.* (1) *Unrecovered incremental gas costs account.* Each natural gas supplier shall establish an unrecovered incremental gas costs account.

Such account shall be designated account 192.1, Unrecovered Incremental Gas Costs, for interstate pipeline following the Uniform System of Acounts, Parts 201 and 204 of this chapter. The underlying records of such account shall be maintained to permit identification of:

(i) Each purchase that gave rise to costs being charged to the account;

(ii) The paragraph of § 282.301 under which the costs associated with such purchase qualify for inclusion in the account; and

(iii) Any other charges to the account.

(2) *Unrecovered incremental surcharges account.* The unrecovered incremental surcharges account shall be designated account 192.2, Unrecovered Incremental Surcharges, for interstate pipelines following the Uniform System of Accounts, Parts 201 and 204 of this chapter. The underlying records of this account shall be maintained so as to permit identification of each incremental pricing surcharge debited to the account in accordance with paragraph (e).

(3) *Incremental gas cost adjustments account.* Each natual gas supplier shall establish an incremental gas cost adjustments account. Such account shall be designated account 805.2, Incremental Gas Cost Adjustments, for interstate pipelines following the Uniform System of Accounts, Part 201 of this chapter. Such account shall be designated account 731.2, Incremental Gas Cost Adjustments, for interstate pipelines following the Uniform System of Accounts, Part 204 of this chapter.

(c) *Debiting the unrecovered incremental gas costs account.* The unrecovered incremental gas costs account shall be debited and the incremental gas cost adjustment account shall be credited with:

(1) Costs described in paragraphs (a) through (k) of § 282.301 which are incurred during each calendar month; and

(2) Any other costs as permitted by order of the Commission.

(d) *Crediting the unrecovered incremental gas costs account.* (1) The unrecovered incremental gas costs account shall be credited and the incremental gas cost adjustments account shall be debited when costs included in the unrecovered incremental gas costs account are recovered by means of incremental pricing surcharges.

(2) The unrecovered incremental gas costs account shall be credited with any amount which was accumulated in the account for gas received during a calendar month but which, due to the alternative fuel price ceilings established pursuant to § 282.404, cannot be collected by way of incremental pricing surcharges to be billed during the subsequent month. Such amount may be transferred to account 191 immediately, but no later than the end of the month in which the applicable surcharges are billed.

(e) *Debiting the unrecovered incremental surcharges account.* A natural gas supplier's unrecovered incremental surcharges account shall be debited and the incremental gas cost adjustment account shall be credited with any incremental pricing surcharge which is billed to it by its supplier in accordance with a tariff sheet filed by such supplier in accordance with § 282.602.

(f) *Crediting the unrecovered incremental surcharges account.* The unrecovered incremental surcharges account shall be credited and the incremental gas cost adjustments account shall be debited for those amounts which are recovered by means of an incremental pricing surcharge.

§ 282.503 PGA reduction.

(a) *General rule.* (1) An interstate pipeline company which files purchased gas adjustment (PGA) rate changes with the Commission under authority of § 154.38(d) shall, each PGA period, reduce its total projected gas acquisition cost by the amount which it projects it will recover during the next PGA period through incremental pricing surcharges. The total projected gas acquisition cost, as reduced, shall be used to derive the pipeline's PGA rate for the coming PGA period in the manner prescribed in the pipeline's effective PGA provision.

(2) The amount which an interstate pipeline projects it will recover through incremental pricing surcharges during a PGA period shall be the lesser of:

(i) The costs subject to incremental pricing, as described in paragraphs (a) through (l) of § 282.301, which the pipeline projects it will incur during the coming PGA period; or

(ii) The total of the projected maximum surcharge absorption capabilities (MSAC) of each of the non-exempt industrial boiler fuel facilities directly served by the pipeline, as computed in accordance with paragraph (b), plus the total of the projected MSAC's of the pipeline's sale for resale customers, as determined by each of the customers in accordance with paragraph (c) and reported to the pipeline in accordance with paragraph (d).

(b) *Projected MSAC of a non-exempt industrial boiler fuel facility.* (1) The projected MSAC of a non-exempt industrial boiler fuel facility for a coming PGA period shall be calculated by a natural gas supplier in accordance with the following formula:

$$M = [(A_1 - R_1) V_1] + [(A_2 - R_2) V_2] + \ldots + [(A_n - R_n) V_n]$$

where:

M = Projected MSAC of the non-exempt industrial boiler fuel facility.

A = Projected alternative fuel price ceiling for the non-exempt industrial boiler fuel facility, plus taxes, as determined in accordance with subparagraph (2).

R = Projected rate per million Btu's (excluding any incremental pricing surcharge), plus taxes, at which the non-exempt industrial boiler fuel facility will purchase natural gas, as determined in accordance with subparagraph (3).

V = Projected volume of natural gas (at 1,000 Btu's per cubic foot) that the non-exempt industrial boiler fuel facility will purchase from the natural gas supplier and use for boiler fuel, as estimated for each of the months "1" through "n" of the PGA period.

n = Last month of the PGA period.

(2)(i) *As a value for "A"* for each of the months "1" through "n" of the coming PGA period, a natural gas supplier shall use the most recently established alternative fuel price ceiling applicable to the facility, plus taxes, unless the supplier elects to estimate the applicable alternative fuel price ceilings for each of the months of the PGA period. In that case, the estimated ceilings, plus taxes, may be used as values for "A".

(ii) If a local distribution company desires assistance in estimating applicable alternative fuel price ceilings for each of the months of the coming PGA period, the interstate pipeline which supplies the local distribution company shall provide such assistance.

(3)(i) *Local distribution company.* As a value for "R" for each of the months "1" through "n" of the coming PGA period, a local distribution company shall use its effective rate per million Btu's at the time of projection, plus taxes but exclusive of any incremental pricing surcharges, unless the local distribution company elects to adjust such rate to reflect general rate changes which it is known will occur during the PGA period under authority of a state or local regulatory body. If the local distribution company elects to adjust the rate, the values used for "R" may reflect the adjustments for the months of the PGA period for which the adjustments are appropriate.

(ii) *Interstate pipeline.* As a value for "R" for each of the months "1" through "n" of the coming PGA period, an interstate pipeline shall use its effective contract rate per million Btu's at the time of projection, plus taxes but exclusive of any incremental pricing surcharges, unless the pipeline elects to adjust such rate to reflect rate changes which it is known will occur during the PGA period.

(c) *Projected MSAC of a sale for resale customer.* With respect to each of its natural gas suppliers, the projected MSAC of a sale for resale customer shall be derived by adding the sum of the projected MSAC's of the non-exempt industrial boiler fuel facilities served directly by the sale for resale customer, as determined in accordance with paragraph (b), to the sum of the projected MSAC's of the customer's own sale for resale customers, as reported in accordance with paragraph (d), and multiplying the resulting total by the percentage reflecting the ratio between:

(i) The volume of natural gas (at 1,000 Btu's per cubic foot) which the customer estimates it will purchase from the supplier during the coming PGA period; and

(ii) The total of:

(A) The volume of natural gas (at 1,000 Btu's per cubic foot) which the customer estimates it will purchase from interstate pipelines;

(B) The volume of natural gas (at 1,000 Btu's per cubic foot) which is included in any of the categories specified in paragraphs (a) through (k) § 282.301 and which the customer estimates it will purchase from sources other than interstate pipelines; and

(C) If the sale for resale customer is an interstate pipeline, the estimated volume of pipeline produced natural gas (at 1,000 Btu's per cubic foot) to which a first sale acquisition cost will be imputed under paragraph (c) of § 282.303.

(d) *Reporting.*—(1) *Pipeline to request information.* Prior to the beginning of each of its PGA periods, each interstate pipeline shall request that each of its sale for resale customers report to it the customer's projected MSAC in a timely fashion.

(2) *Pipeline customers to report.* Each natural gas supplier shall respond to the requests of interstate pipelines for projected MSAC's for a coming PGA period in a timely fashion.

(iii) *Scheduling by the Commission.* In those instances where the Commission finds that natural gas suppliers have not arranged for the reporting of information in accordance with this section, the Commission shall prescribe by order an appropriate schedule for the expeditious transmission of the information necessary for interstate pipelines to make their regular PGA filings with the Commission.

§ 282.304 Incremental pricing surcharge.

(a) *General rule.* Each natural gas supplier shall include an incremental pricing surcharge, stated as a dollar amount, in its monthly bills to the non-exempt industrial boiler fuel facilities and sale for resale customers on its system. Surcharges billed to non-exempt industrial boiler fuel facilities shall be determined in accordance with paragraph (c). Surcharges billed to sale for resale customers shall be determined in accordance with paragraph (d). Such surcharges shall recover, subject to the limitation of the alternative fuel price ceilings described in § 282.404, the total incremental gas costs as defined in paragraph (b), which were incurred by the natural gas supplier during the previous month.

(b) *Definitions.* For purposes of this section:

(1) "Total incremental gas costs" means the sum of the following:

(i) the amount of the costs accumulated in a natural gas supplier's unrecovered incremental gas cost account for a period; and

(ii) any incremental pricing surcharges imposed on the natural gas supplier by its own supplier(s) for that period.

(2) "Billing month" means, for a non-exempt industrial boiler fuel facility, the period between the meter reading on or about the twentieth day of one month and the meter reading on or about the twentieth day of the following month, *provided that* for the month of January 1980, the billing month shall commence January 1, 1980.

(c) *Surcharges on non-exempt industrial boiler fuel facilities.* (1) *General rule.* The incremental pricing surcharge to be billed for the previous billing month by a natural gas supplier for each of the non-exempt industrial boiler fuel facilities which it directly serves shall, subject to subparagraph (4), be the lesser of:

(i) The MSAC of the non-exempt industrial boiler fuel facility for the previous billing month, as determined in the manner described in subparagraph (2); or

(ii) The non-exempt industrial boiler fuel facility's pro rata share of the total incremental gas costs incurred by its natural gas supplier during the previous calendar month, as determined in the manner described in subparagraph (3) of this paragraph.

(2) *MSAC of a non-exempt industrial boiler fuel facility.* (i) The MSAC of a non-exempt industrial boiler fuel facility for the previous billing month shall be determined in accordance with the following formula:

$$M = [[A - R][V]]$$

where:

M = MSAC of the non-exempt industrial boiler fuel facility.

A = Alternative fuel price ceiling applicable to the non-exempt industrial boiler fuel facility for the billing month, plus taxes.

R = Rate per million Btu's (excluding any incremental pricing surcharge), plus taxes, at which the non-exempt industrial boiler fuel facility purchased gas from the natural gas supplier during the billing month.

V = Volume of natural gas (at 1,000 Btu's per cubic foot) supplied by the natural gas supplier to the non-exempt industrial boiler fuel facility for boiler fuel use during the billing month, as determined in accordance with clause (ii).

(ii) The volume of natural gas supplied by a natural gas supplier to a non-exempt industrial boiler fuel facility for boiler fuel use during a billing month shall be deemed to be the total volume of natural gas supplied to the facility during the billing month, unless the

natural gas supplier serving the facility distinguishes the volumes used for boiler fuel from the volumes not so used on the basis of submeter readings. If volumes used for boiler fuel are so identified, such volumes shall be used for purposes of determining the MSAC of the non-exempt industrial boiler fuel facility in accordance with clause (i).

(3) *Pro rata share of total incremental gas costs.* A non-exempt industrial boiler fuel facility's pro rata share of the total incremental gas costs incurred by its natural gas supplier during the previous calendar month shall be determined by multiplying the total incremental gas costs by a percentage reflecting the ratio between:

(i) The MSAC of the non-exempt industrial boiler fuel facility for the previous billing month, as determined in accordance with subparagraph (2); and

(ii) The sum of the MSAC's of the non-exempt industrial boiler fuel facilities on the natural gas supplier's system, as determined for the previous billing month in accordance with subparagraph (2), plus the sum of MSAC's reported to the natural gas supplier by its sale for resale customers for the previous month.

(4) *Optional billing procedures for local distribution companies.* A local distribution company may elect to bill non-exempt industrial boiler fuel facilities served by it at the level of the alternative fuel price ceilings which are applicable to such facilities.

(i) If a local distribution company bills a non-exempt industrial boiler fuel facility at the level of the applicable alternative fuel price ceiling for service during the previous billing month and the MSAC of the non-exempt boiler fuel facility for such billing month exceeds the facility's pro rata share of the total incremental gas costs incurred by the local distribution company during the previous calendar month, then such local distribution company shall either refund the excess to the facility during the month after the bill was rendered or shall make such other disposition of such amount as may be ordered by a state or local regulatory authority having jurisdiction over the local distribution company.

(ii) An election made by a local distribution company in accordance with clause (i) shall be subject to review and action by a state or local regulatory authority which has jurisdiction over such company.

(d) *Surcharges on sale for resale customers.* (1) *General rule.* The incremental pricing surcharge to be collected by a natural gas supplier from each of its sale for resale customers shall be the lesser of:

(i) The MSAC of the sale for resale customer for the previous month, as determined by the customer in the manner described in subparagraph (2) of this paragraph and reported to the natural gas supplier pursuant to paragraph (e); or

(ii) The sale for resale customer's pro rata share of the total incremental gas costs incurred by its natural gas supplier during the previous month, such share being determined in the manner described in subparagraph (3) of this paragraph.

(2) *MSAC of a sale for resale customer.* With respect to each of its natural gas suppliers, the MSAC of a sale for resale customer shall be derived by adding the sum of the MSAC's of the non-exempt industrial boiler fuel facilities served directly by the sale for resale customer, as determined for the previous billing month in accordance with subparagraph (2) of paragraph (c), to the sum of the MSAC's of the customer's own sale for resale customers, as reported for the previous month in accordance with paragraph (e), and multiplying the resulting total by the percentage reflecting the ratio between:

(i) The volume of natural gas (at 1,000 Btu's per cubic foot) purchased by the customer from the natural gas supplier during the previous month; and

(ii) The total of:

(A) The volume of natural gas (at 1,000 Btu's per cubic foot) which the customer purchased from interstate pipelines during the previous month;

(B) The volume of natural gas (at 1,000 Btu's per cubic foot) which is included in any of the categories specified in paragraphs (a) through (k) of § 282.301 and which the customer purchased from sources other than interstate pipelines during the previous month; and

(C) If the sale for resale customer is an interstate pipeline, the volume of pipeline produced natural gas (at 1,000 Btu's per cubic foot) to which a first sale acquisition cost has been imputed under paragraph (c) of § 282.303.

(3) *Pro rata share of total incremental gas costs.* A sale for resale customer's pro rata share of the total incremental gas costs incurred by its natural gas supplier during the previous month shall be determined by the ratio between:

(i) The MSAC reported to the natural gas supplier by the sale for resale customer for the previous month in accordance with paragraph (e); and

(ii) The sum of the MSAC's of the non-exempt industrial boiler fuel facilities on the natural gas supplier's system, as determined for the previous billing month, in accordance with subparagraph (2) of paragraph (c), plus the sum of the MSAC's reported to the natural gas supplier by its sale for resale customers for the previous month in accordance with paragraph (e).

(e) *Reporting.*—(1) *Pipeline to request information.* Each interstate pipeline shall request that, each month, each of its sale for resale customers report its MSAC to the pipeline in a timely fashion for the monthly billing of incremental pricing surcharges.

(2) *Pipeline customers to report.* Each month each natural gas supplier shall respond to the requests of interstate pipelines for its MSAC.

(3) *Suppliers to customers.* Each month each natural gas supplier shall inform each of its sale for resale customers of the amount of the incremental pricing surcharge which will be billed to such customer. Such information shall be conveyed within sufficient time so as to enable the last customer in a chain of sale for resale customers to bill incremental pricing surcharges to its customers in a timely fashion.

(f) *Scheduling by the Commission.* In those instances where the Commission finds that natural gas suppliers have not arranged for the reporting of information in accordance with this section, the Commission will prescribe by order an appropriate schedule for the transmission of the information necessary for the monthly billing of incremental pricing surcharges.

§ 282.505 Recovery of amounts in excess of the maximum surcharge absorption capabilities.

(a) The amount accumulated in a natural gas supplier's unrecovered incremental gas costs account for gas received during a calendar month which, due to alternative fuel price ceilings, cannot be recovered through incremental pricing surcharges shall:

(1) In the case of interstate pipelines, be collected under the Commission's provisions governing recovery of unrecovered gas costs as set forth in § 154.38(d)(4); and

(2) In the case of local distribution companies, be recovered in the manner permitted by the appropriate state or local authority.

Subpart F—Filing Requirements

§ 282.601 FERC gas tariff provisions.

(a) *Incremental pricing surcharge provision.* Each interstate pipeline shall establish an incremental pricing surcharge provision in its FERC Gas Tariff. The incremental pricing surcharge provision shall provide for the

pass-through of costs in accordance with the requirements of this part.

(b) *Revised PGA provision.* Each interstate pipeline shall revise its PGA provision, as established in accord with § 154.38(d), to provide for a reduced PGA rate in accordance with the requirements of this part.

(c) *Filing dates.* The incremental pricing surcharge provision and revised PGA provision shall be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 and served on all parties by November 1, 1979. The provision shall become effective on December 1, 1979, unless disapproved in whole or in part by the Commission.

§ 282.602 Tariff sheets.

(a) *General rule.* (1) On or before December 1, 1979, for the period January 1, 1980 to the effective date of the pipeline's next normally scheduled PGA filing, each interstate pipeline shall file concurrently:

(i) A tariff sheet reflecting a reduced PGA rate as determined in accordance with § 282.502; and

(ii) For informational purposes only, and so labeled, a tariff sheet reflecting projected incremental pricing surcharges, as determined on the basis of data used in deriving the reduced PGA rates referenced in clause (i), for each of the non-exempt industrial boiler fuel facilities and sale for resale customers on the pipeline's system.

(2) Revisions to the tariff sheets filed pursuant to subparagraph (1) shall be filed in accordance with each interstate pipeline's normal PGA schedule, as necessary to revise the previously effective tariff sheets.

(b) *Form and filing requirements.* Any tariff sheet filed pursuant to paragraph (a) shall be subject to the provisions and requirements of Part 154 of this chapter.

(c) *Service.* The interstate pipeline which files tariff sheets pursuant to paragraph (a) shall concurrently serve copies on each sale for resale customers subject to the tariff sheets and each interested state commission.

(d) *Material to be submitted.* (1) Tariff sheets filed pursuant to paragraph (a) shall be accompanied by a report containing computations showing the derivation of the reduced PGA rate and the incremental pricing surcharges set forth in such tariff sheets.

(2) Tariff sheets filed pursuant to paragraph (a) shall be accompanied by a supplement to the statement of a pipeline's current cost of purchased gas as required by § 154.38(d).

(i) Such supplement shall identify, for the prior PGA period, each source of supply by API well identification number, contract date and FERC rate schedule number. Where multiple wells are metered through a common delivery point or where production from multiple wells is sold under a single contract, the supplement shall identify each well that produces gas which is subject to this part. Such supplement shall identify the price paid for gas from each well identified in accordance with this paragraph.

(ii) Such supplement shall show for account 192.1, for the prior PGA period:

(A) Total monthly debits to such account;

(B) Total monthly credits to such account resulting from the recovery of costs by means of incremental pricing surcharges; and

(C) The monthly amount credited to clear the account to account 191 and the date the clearing entry was made.

(iii) Such supplement shall show for account 192.2, for the prior PGA period:

(A) The incremental pricing surcharges debited to the account each month by the pipeline; and

(B) The total monthly credits to the account resulting from the recovery of costs by means of incremental pricing surcharges.

(e) *Additional information.* The Commission may, upon receipt of a tariff sheet filed pursuant to this section, require the submission of additional information as it deems necessary and appropriate.

§ 282.603 Informational filings.

(a) *General rule.* For informational purposes, each month commencing March 1, 1980, each interstate pipeline company shall tender to this Commission a statement setting forth the incremental pricing surcharge actually billed to each non-exempt industrial boiler fuel facility and sale for resale customer on its system in the preceding month.

(b) *Address.* The informational filings required by paragraph (a) shall be addressed to Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Appendix A

Federal Energy Regulatory Commission,
Washington, D.C. 20426.

Docket No. RM79-14

Exemptions From Incremental Pricing for Certain Categories of Industrial Boiler Fuel Use of Natural Gas

Participation is Voluntary.

Copies of executed exemption affidavits filed with the Commission shall be available through the Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Please Read Before Completing This Affidavit

Purpose

The Natural Gas Policy Act of 1978 (NGPA) provides that natural gas used as boiler fuel by any industrial boiler fuel facility will be subject to incremental pricing surcharges unless otherwise exempted. The statute also provides for certain exemptions from these incremental pricing surcharges. To be wholly or partially exempt from incremental pricing surcharges the boiler fuel must be consumed for one of the statutorily exempt uses. This affidavit serves the purpose of identifying those natural gas uses within your facility which are entitled to a full or partial statutory exemption from incremental pricing surcharges but which could not be identified as exempt through review of the records of your natural gas supplier. If a facility has not been identified as totally or partially exempt from incremental pricing surcharges through review of your natural gas supplier's records or through the filing of this affidavit in accordance with the general instructions below, all gas sold to the facility will be subject to incremental pricing surcharges.

General Instructions

If you claim an exemption from incremental pricing surcharges for all, or a portion, of the gas used by your facility which has been identified by your natural gas supplier as a potentially non-exempt industrial boiler fuel facility, this affidavit should be completed and signed, under oath, by a responsible official associated with the facility. A separate affidavit must be filed for each facility for which a total or partial exemption from incremental pricing surcharges is claimed.

The original and five copies of this affidavit should be submitted to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Also, one copy must be submitted to your natural gas supplier. Additionally, each industrial facility shall retain such records, documents and data which formed the basis for the exemption claimed on this affidavit. Definitions which may be helpful in completing this affidavit are provided below.

If you have any questions concerning this affidavit contact Mr. Warren Edmunds on (202) 275-4415.

Definitions

(1) "Natural gas supplier" means an interstate pipeline or a local distribution company.

(2) "Boiler fuel use" means the use of any fuel for the generation of steam or electricity.

(3) "Industrial facility" means any facility which primarily changes raw or unfinished materials into another form or product.

(4) "Non-exempt industrial boiler fuel facility" means any industrial boiler fuel facility other than any such facility which has been exempted from the provisions of this part in accordance with Part 292 of the Commission's rules and regulations.

(5) "Agricultural use" means any use of natural gas which is certified by the Secretary of Agriculture under 7 CFR 2900.3 as an "essential agricultural use" pursuant to section 401(c) of the NGPA.

(6) "Qualifying cogeneration facility" means a cogeneration facility which meets the requirements prescribed in § —— of the Commission's rules and regulations.

(7) "School" means a facility the primary function of which is the delivery of instruction to regularly enrolled students in attendance at such facility. Facilities used for both educational and non-educational acitivities are not included under this definition unless the latter activities are merely incidental to the delivery of instruction.

(8) "Hospital" means a facility the primary function of which is the delivery of medical care to patients who remain at the facility. Outpatient clinics or doctor's offices are not included in this definition. Nursing homes and convalescent homes are included in this definition.

(9) "Similar institution" means a facility the primary function of which is the same as the primary function of the facility to which it is compared.

1.0 Name of Company or Organization: ——

* * * * *

2.0 Name of Facility: ——

* * * * *

3.0 Address: ——

Number Street

City/Town County State Zip Code

* * * * *

4.0 Name of Natural Gas Supplier: ——

* * * * *

5.0 Did your facility, on the basis of records, documents or data in your possession, consume less than an average of 300 Mcf per day as boiler fuel during all calendar months during calendar year 1977?

(a) ☐ Yes.....Sign and return affidavit.
(b) ☐ No.....Continue to 6.0

* * * * *

6.0 Is all of the natural gas consumed as boiler fuel at your facility for an agricultural use?

(a) ☐ Yes.....Sign and return affidavit.
(b) ☐ No.....Continue to 7.0

* * * * *

7.0 Is your facility, in its entirety, any of the following:

(a) A qualifying co-generation facility?
☐ Yes ☐ No

(b) A school, hospital, or similar facility?
☐ Yes ☐ No

(c) Used for generation of electricity by an electric generation station owned by an electric utility?
☐ Yes ☐ No

If the answer is "yes" to any of the above, sign and return this affidavit. If the answer is "no", continue to 8.0.

* * * * *

8.0 Is a portion, though not all, of the gas consumed at your facility used as boiler fuel for an agricultural use?

(a) ☐ Yes.....See "NOTICE" below.
(b) ☐ No.....Continue to 9.0

* * * * *

9.0 Is your facility, in part, but not in its entirety, any of the following:

(a) A qualifying co-generation facility?
☐ Yes ☐ No

(b) A school, hospital, or similar facility?
☐ Yes ☐ No

(c) Used for the generation of electricity by an electric generation station owned by an electric utility?
☐ Yes ☐ No

If the answer is "yes" to any of the above, see "NOTICE" below, sign and return this affidavit. If the answer is "no" to all questions in items 5.0 through 9.0, you should not return this affidavit.

* * * * *

Notice

If you have responded affirmatively to question 8.0, the volume of natural gas used in your facility which shall be exempt from incremental pricing shall be determined on the basis of and to the extent there are submeter reading records for each billing month, as signed under oath by a responsible company official; which show the extent to which gas is consumed for an agricultural use and which are made available to the facility's natural gas supplier as required by the supplier.

If you have responded affirmatively to any part of question 9.0, the volume of natural gas which shall be exempt from incremental pricing shall be determined on the basis of and to the extent there are submeters which permit determination of the volume of exempt usage and which are available to be read by the facility's natural gas supplier.

Dated: ——

Person completed this affidavit:

Name

Title

Phone number

Subscribed and sworn to before me this ——day of ——.

Notary Public

Appendix B

Federal Energy Regulatory Commission, Washington, D.C. 20426.

Docket No. RM79–14

Reaffirmation of Eligibility for Exemption From Incremental Pricing Program

Name of Company or Organization: ——

Address: ——

—— hereby affirms that the Affidavit for Exemption filed on behalf of the above-named company on ——, —— remains accurate as of the date below.

Dated: ——

Authorized Official

Title

Phone number

Subscribed and sworn to before me this —— day of ——.

Notary Public

[FR Doc. 79-17720 Filed 6-7-79; 8:45 am]

BILLING CODE 6450-01

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 2]

[Docket No. 76N-0460]

Chlorofluorocarbon Propellants in Self-Pressurized Containers; Proposed Essential Uses

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This document proposes to add to the list of products containing a chlorofluorocarbon for an essential use a polymyxin B sulfate-zinc bacitracin-neomycin sulfate skin wound antibiotic for human use and a topical anesthetic drug for human use where a cannulae is used for application. The action is based upon two citizen petitions requesting that these products be added to the list of uses considered essential and establishing that the products provide unique health benefits unavilable without the use of the chlorofluorocarbon.

DATE: Comments by July 9, 1979.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Ed Farha, Bureau of Drugs (HFD-30), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6490.

SUPPLEMENTARY INFORMATION: In the Federal Register of March 17, 1978 (43 FR 11301), the Food and Drug Administration (FDA) issued a final rule (21 CFR 2.125) prohibiting nonessential uses of chlorofluorocarbons as propellants in self-pressurized containers in certain products subject to

the Federal Food, Drug, and Cosmetic Act. This action and an earlier action to require a warning statement on the labels of products containing chlorofluorocarbon propellants (published in the Federal Register of April 29, 1977 (42 FR 22018)) were taken in response to recent scientific research indicating that the release of chlorofluorocarbons may result in the depletion of stratospheric ozone. A reduction of stratospheric ozone would increase the amount of biologically damaging ultraviolet radiation reaching the earth and, as a result, might increase the incidence of skin cancer and produce other adverse effects. These two previous rulemaking actions contain a detailed discussion of the scientific issues pertaining to chlorofluorocarbon use.

Section 2.125 provides that any food, drug, device, or cosmetic in a self-pressurized container that contains a chlorofluorocarbon propellant is adulterated and/or misbranded in violation of the act and that any drug product for human or animal use in a self-pressurized container that contains a chlorofluorocarbon propellant is a new drug on new animal drug. The regulation exempts certain products containing chlorofluorocarbons in self-pressurized containers from the adulteration and misbranding provisions if FDA determines that the products provide a unique health benefit that would not be available without the use of a chlorofluorocarbon. These products are referred to in the regulation as essential uses of chlorofluorocarbon.

Under § 2.125(f), a person may petition the agency to request additions to the list of uses considered essential. To demonstrate that the use of a chlorofluorocarbon is essential, the petition must be supported by an adequate showing that (1) there are no technically feasible alternatives to the use of a chlorofluorocarbon in the product, (2) the product provides a substantial health, environmental, or other public benefit unobtainable without use of the chlorofluorocarbon, and (3) the use does not involve a significant release of chlorofluorocarbons into the atmosphere or, if it does, the release is warranted by the benefit conveyed.

Two petitions have been received requesting additions to the list of uses considered essential. These two petitions, submitted under § 2.125(f) and Part 10 (21 CFR Part 10) are on file and may be seen in the office of the Hearing Clerk, FDA, at the address above. One petition was submitted by the Borroughs Wellcome Company. It requests that § 2.125(e) be amended to include Neosporin Aerosol, a polymyxin B sulfate-zinc bacitracin-neomycin sulfate antibiotic powder for human use intended for the treatment of open skin wounds and burns, as an essential use of chlorofluorocarbon. The petition contains a detailed discussion supporting the position that there are no technically feasible alternatives to the use of chlorofluorocarbons in Neosporin Aerosol. It includes data showing that only a chlorofluorocarbon propellant can provide the safe delivery of pure, undiluted antibiotic in a dry state with the degree of fineness that is necessary in the topical treatment of an open wound or burn. Also, the petition states that the product provides a substantial health benefit that would not be obtainable without the use of the chlorofluorocarbon. In this regard, the petition contains data to support the use of this product in the treatment of an open wound and asserts that this form of treatment is superior to other forms because it provides uniform distribution on the wound and does not lead to maceration of the tissue. The petition also asserts that the use of this product would not involve a significant release of chlorofluorocarbons into the atmosphere because only 900 milligrams of chlorofluorocarbons would be released per 1-second spray.

The second petition was submitted on behalf of Cetylite Industries, Inc. This petition requests that § 2.125(e) be amended to include Cetacaine Aerosol, a topical anesthetic drug for human use containing benzocaine, tetracaine hydrochloride, and butyl aminobenzoate, as an essential use of chlorofluorocarbons. The petition contains a detailed discussion supporting the position that there are no technically feasible alternatives to the use of a chlorofluorocarbon propellant in Cetacaine Aerosol. It includes data showing why the compound FC–152(a), the only commercially available hydrofluorocarbon that may be used as an aerosol propellant, would increase the pressure in the container to such an extent that the delivery rate would be increased to an unacceptable level. In addition, FC–152(a) is much more flammable than the present propellant formulation. The petition also states that the product provides a substantial health benefit that could not be obtainable without the use of the chlorofluorocarbon. In this regard, the petition contains data to support the use of Cetacaine Aerosol as an anesthetic applied topically to the laryngeal and pharyngeal areas before the performance of diagnostic procedures, and contends that this method of delivery is presently superior to other methods such as swabs or bulb sprays. The petition also asserts that the use of Cetacaine Aerosol would not involve a significant release of chlorofluorocarbons into the atmosphere because each bottle contains approximately 32.5 grams of propellants and is sufficient for approximately 60 patient applications.

The agency tentatively agrees that the use of Neosporin Aerosol and Cetacaine Aerosol provides special benefits for patients in the treatment of skin wounds and for patients requiring a topical anesthetic to the laryngeal and pharyngeal areas, respectively. Further, the agency tentatively agrees that the benefits these two products provide would be unavailable without the use of chlorofluorocarbons. Therefore, the Commissioner proposes to amend § 2.125(e) to include a polymyxin B sulfate-zinc bacitracin-neomycin sulfate skin wound antibiotic powder for topical use on humans and anesthetic drugs for topical use on accessible mucous membranes of humans where a cannulae is used for application, as essential uses of chlorofluorocarbons.

The proposed OTC drug monograph for topical antibiotic products (published in the Federal Register of April 1, 1977 (42 FR 17642)) tentatively classified the combination of neomycin sulfate, polymyxin B sulfate, and zinc bacitracin as Category III. Neosporin Aerosol contains this combination of ingredients. The agency advises, therefore, that any finding as to Neosporin Aerosol's essentiality under § 2.125(e) will be a conditional one, pending final classification of the triple antibiotic combination.

Also, with respect to Cetacaine Aerosol, a request for a hearing about its effectiveness as a combination drug product is currently being reviewed by FDA. This request was made by Cetylite Industries, Inc., and was in response to a notice (DESI 8076 (Docket No. 75N–0203) published in the Federal Register of December 9, 1975 (40 FR 57379)) in which the agency offered an opportunity for a hearing on a proposal to withdraw approval of a combination drug product containing two of the three ingredients also contained in Cetacaine Aerosol. Therefore, until a final ruling is made on this request, any finding as to Cetacaine Aerosol's essentiality under § 2.125(e) will be conditional.

The agency recognized that final determination of this action would not be completed by the December 15, 1978 effective date of the final rule prohibiting the manufacture and

packaging of products containing chlorofluorocarbons for nonessential uses. Accordingly, the agency notified the petitioners by letter that the continued manufacture and packaging of their respective products will be permitted, at least until this rulemaking action is completed. This was done because the finding that the uses of these products are essential uses of chlorofluorocarbon is likely, and to have required cessation of manufacturing in the interim would have prematurely interrupted their availability.

The potential environmental effects of this action have been carefully considered, and FDA has concluded that the action will not significantly affect the quality of the human environment. This action is one of a type for which the agency has determined that the preparation of an environmental impact statement is not required, except in rare and unusual circumstances (see 21 CFR 25.1(f)(1)(i)). Thepreparation of an environmental impact analysis report for this action is not required pursuant to 21 CFR 25.1(g).

Accordingly, under the Federal Food, Drug, and Cosmetic Act (secs. 301, 501, 502, 505, 701(a), 52 Stat. 1042–1043 as amended, 1049–1053 as amended, 1055 (21 U.S.C. 331, 351, 352, 355, 371(a))) and the National Environmental Policy Act of 1969 (sec. 102(2), 83 Stat. 853 (42 U.S.C. 4332)) and under authority delegated to the Commissioner (21 CFR 5.1), it is proposed that Part 2 be amended in § 2.125 by adding new paragraph (e)(7) and (8) to read as follows:

§ 2.125 Use of chlorofluorocarbon propellants in self-pressurized containers.

* * * * *

(e) * * *

(7) Polymyxin B sulfate-zinc bacitracin-neomycin sulfate soluble antibiotic powder without excipients, for topical use on humans.

(8) Anesthetic drugs for topical use on accessible mucous membranes of humans where a cannulae is used for application.

* * * * *

Interested persons may, on or before July 9, 1979, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: May 29, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-17433 Filed 6-7-79; 8:45 am]

BILLING CODE 4110-03-M

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 1243-3]

Approval and Promulgation of State Implementation Plans; South Dakota

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This action proposes to approve a revision to the South Dakota State Implementation Plan (SIP) submitted by the Governor of South Dakota and received by EPA on April 16, 1979. The revision grants a variance to the existing coal-fired steam-heat generating facility located on the South Dakota State University (SDSU) campus. This variance is not expected to have any severe impacts on the ambient air based on the report by Briant L. Davis, et. al., from the Institute of Atmospheric Sciences, South Dakota School of Mines and Technology in Rapid City, South Dakota.

DATES: Comments must be received on or before July 9, 1979.

ADDRESSES: The proposed South Dakota revision is available for public inspection at the office of the South Dakota Department of Environmental Protection, Joe Foss Building, Pierre, South Dakota 57501. Copies of the revision, an evaluation of the revision and public comments will be available at the offices of the EPA listed below.

Environmental Protection Agency, Air Programs Branch, 1860 Lincoln Street, Denver, Colorado 80295.

Environmental Protection Agency, Public Informaiton Reference Unit, Room 2922 (EPA Library), 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: David Kircher, Chief, Planning & Operations Section, Air Programs Branch, U.S. Environmental Protection Agency, Region VIII, 1860 Lincoln Street, Denver, Colorado 80295.

SUPPLEMENTARY INFORMATION: The State of South Dakota is required by Section 110 of the Federal Clean Air Act (CAA), to have a SIP for the control of air pollution within its boundaries. At present the city of Brookings does not violate the National Ambient Air Quality Standards and a report by Briant L. Davis, et. al., entitled "Air Quality Measurements and Diffusion Modeling of the Heating Plant Plume at South Dakota State Unviersity, Brookings, South Dakota," concludes that the area will not be in violation in the future. As a result of this determination, the State granted to the south Dakota State University heating plant a variance to regulations ARSD 34:10:05:05, 34:10:03:01, and successor provisions setting a new emission limit at .8 lbs. particulate/MBTU.

The Administrator hereby issues this notice setting forth as proposed rulemaking, pursuant to approval of Section 110 of the Clean Air Act and 40 CFR Part 51 approval of the South Dakota revision received on April 16, 1979.

Authority: Section 110 of the Clean Air Act, as amended (42 U.S.C. 1857c–5); Section 301 as amended (42 U.S.C. 1857g).

Dated: May 31, 1979.

Alan Merson,

Regional Administrator.

[FR Doc. 79-17089 Filed 6-7-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Part 80]

[FRL 1243-1]

Regulation of Fuel and Fuel Additives; Lead Phase-Down Regulations

AGENCY: Environmental Protection Agency.

ACTION: Notice of Suspension of Enforcement and Notice of Proposed Rulemaking.

SUMMARY: EPA will suspend enforcement of the 0.8 gram per gallon (gpg) lead phase-down standard (40 CFR 80.20(a)(1)(i)) for all refineries between June 8, 1979 and October 1, 1979. In addition, EPA proposes to amend the lead phase-down schedule to give refiners an option of: (1) Meeting the 0.5 gpg standard on October 1, 1979, or (2) meeting a 0.8 gpg standard from October 1, 1979, to October 1, 1980, conditioned

upon producing an increased percentage of unleaded gasoline until October 1, 1980, and meeting a 0.5 gpg standard effective October 1, 1980.

DATES: Comments must be received by July 20, 1979. Hearing date will be June 20, 1979, at Washington, D.C. Requests to speak by June 10, 1979.

ADDRESSES: Send comments to Docket Number EN–79–14, EPA, Washington, D.C. 20460. Comments should be identified with the docket number EN–79–14. Comments will be available for public inspection at the Central Docket Section (Docket No. EN–79–14), Room 2903B, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, from 8:00 a.m. to 4:30 p.m. Monday through Friday. Requests to speak should be sent to Director, Mobile Source Enforcement Division (EN–340), EPA, 401 M Street, SW., Washington, D.C. 20460, or by calling Robert A. Weiseman at (202) 755–2610. Hearings will be held at the GSA Auditorium, 18th and F Streets NW., Washington, D.C., on June 20, 1979, at 9:30 a.m.

FOR FURTHER INFORMATION CONTACT: Robert A. Weiseman, Attorney, Mobile Source Enforcement Division, at (202) 755–2610.

SUPPLEMENTARY INFORMATION: On September 28, 1978, the Environmental Protection Agency (EPA) published amended regulations which postponed the dates by which gasoline manufacturers would be required to control the average lead content in gasoline produced at each refinery. The amended regulations provided for a lead content of 0.8 grams per gallon (gpg) effective January 1, 1978, and a lead content of 0.5 gpg effective October 1, 1979. The amendments were to permit sufficient time for refiners to install the equipment necessary to meet the reduced lead level without causing a gasoline shortage.

The regulations provided that the 0.8 gpg standard could be suspended if a refiner showed good faith efforts to achieve the 0.8 gpg standard at the earliest practicable date and the 0.5 gpg standard no later than October 1, 1979. Based on submission of compliance schedules detailing planned construction or blending component or feedstock process and exchange agreements, EPA granted suspensions to that portion of the refining industry producing over 75% of the nation's gasoline production.

Permitting the use of lead in excess of the standards will make it possible for refiners to make more leaded gasoline as well as more unleaded gasoline. The recent interruption of crude oil supplies from Iran and the tightness in gasoline supplies leads us to believe that further temporary relaxation of the lead phase-down standard is warranted. Therefore, EPA plans to suspend enforcement of the interim standard (40 CFR 80.20(a)(1)(i)), until October 1, 1979, and relax the 0.5 gpg standard to 0.8 gpg until October 1, 1980, for those refiners who produce increased percentages of unleaded gasoline.

EPA is particularly concerned that, if shortages of unleaded gasoline should occur, motorists might use leaded gasoline in vehicles requiring unleaded fuel. Use of leaded fuel in a vehicle requiring unleaded will deactivate emission control systems, causing an increase in automobile exhaust emissions. We continue to believe that a 0.5 gpg lead standard should be achieved as rapidly as possible for purposes of public health. However, a delay in imposing that standard will help offset the irreversible loss of billions of dollars worth of investment in emission control systems that would likely result from widespread fuel switching if shortages of unleaded gasoline were to occur. Many refiners are already allocating gasoline supplies to their customers, and some expect the situation to worsen.

For those refineries which are presently subject to the 0.8 gpg standard or which will be subject to that standard for some period of time prior to October 1, 1979, a suspension of enforcement is hereby granted by EPA. The suspension of enforcement is effective immediately and terminates on October 1, 1979. This will permit greater flexibility in the production of gasoline for this summer.

EPA proposes to amend the lead phase-down regulation to permit refiners to choose between two alternatives. A refiner, for any refinery not otherwise subject to relief as a small refinery, may elect to meet a lead standard of 0.5 gpg for each quarter beginning October 1, 1979 (Option 1). As the alternative, a refiner may register with EPA (for all or some refineries) an election to meet a 0.8 gpg standard each quarter from October 1, 1979, through September 30, 1980, and a 0.5 gpg standard each quarter beginning October 1, 1980 (Option 2).

To qualify for option 2 a refiner will be required, for those refineries registered for option 2, to: 1) state for each refinery gasoline production and octane by grade for each calendar quarter from January 1, 1978, through June 30, 1979, 2) state for each refinery projected gasoline production and octane by grade at compliance with a 0.8 gpg standard for each quarter from October 1, 1979, through September 30, 1980, 3) actually produce, on a quarterly basis for the total gasoline produced on an aggregate basis at those registered refineries, unleaded gasoline as a percentage of total gasoline equal to that percentage in the comparable quarter one year previous plus 8% or actually produce, on a quarterly basis, unleaded gasoline as a percentage of total gasoline greater than 45%, and 4) report, for each calendar quarter from July 1, 1979, through September 30, 1980, gasoline production and octane by grade.

It is the intent of EPA to allow the relaxation of the phase-down standard only where it will result in added percentage of unleaded gasoline. EPA may require that an adequate supply of unleaded gasoline be available based on EPA's authority to control the introduction into commerce of leaded gasoline, as found in *Amoco Oil Company* v. *EPA*, 501 F.2d 722 (D.C. Cir. 1974). Conditioning relaxation of the health based lead phase-down standard on a showing that greater production of unleaded gasoline will ensue is necessary to insure that additional supplies of unleaded gasoline will be produced, to help protect against increased fuel switching due to shortages of unleaded gasoline.

Refiners electing Option 2 for any refineries must submit a registration form as indicated in Format 1 in the Appendix. Unless otherwise notified by EPA within sixty days of submission of the registration form, the refiner will be considered bound by its election of the 0.8 gpg option. In that event, any noncompliance with either the 0.8 gpg interim standard or noncompliance with the production ratio requirements will be subject to civil penalties. EPA intends to publish penalty guidelines in the near future to address the extent of penalties that will be assessed for noncompliance with both the lead standards and the production requirements, and will take comments at that time on what factors should be considered in penalty mitigation.

Because this proposal results in a relaxation of an existing regulatory standard, EPA has determined that this document does not contain a major proposal requiring an Economic Impact Analysis under Executive Orders 11821, 11949, 12044, and section 317 of the Clean Air Act, as amended.

Comments

EPA solicits comments on the proposed rule allowing refiners to choose between two regulatory options. Comments should address the increases in ambient lead levels likely to result

from this proposed rule. Comments are also solicited on whether a refiner which registers refineries for the 0.8 gpg standard should have the opportunity to withdraw the registration and comply with the 0.5 gpg standard. (Sections 211 and 301 of the Clean Air Act, as amended, 42 U.S.C. 7545, 7602).

Dated June 4, 1979.

Douglas Costle,

Administrator.

It is proposed that 40 CFR Part 80 is amended as follows:

§ 80.20 [Amended]

1. In § 80.20, subparagraph (a)(1)(ii), by inserting the words "except as provided in paragraph (a)(6) of this section." immediately following the words "after October 1, 1979."

2. In § 80.20, adding new paragraphs (a)(6), (a)(7), (a)(8) and (a)(9) to read as follows:

§ 80.20 Controls applicable to gasoline refiners.

(a) * * *

* * * * *

(6) The provisions of subparagraph (a)(1)(ii) will not apply to any refinery for which a refiner submits, not later than August 1, 1979, a valid registration form indicating a commitment to achieve a 0.8 gram per gallon standard by October 1, 1979, and a 0.5 gram per gallon standard by October 1, 1980. The Administrator may, if the registration form is unclear, incomplete, or otherwise inadequate, notify the refinery that the registration is invalid. If the Administrator has not so notified the refinery within 60 days of receipt of the registration form, the registration will be deemed complete. A registration form must contain the following information to be considered valid:

(i) Name, location, and crude capacity in barrels per calendar day (as certified by the Department of Energy, Office of Refinery Operations) of each refinery owned or controlled by the refiner.

(ii) For each quarter January 1, 1978, through June 30, 1979, the following information for each refinery:

—Total gasoline production (bpcd)
—Unleaded gasoline production (bpcd) (all grades)
—Octane of unleaded gasoline (RON, AKI) (all grades)
—Clear pool octane (RON, AKI)

(iii) For each quarter October 1, 1979, through September 30, 1980, assuming compliance with a 0.8 gpg standard, the following information:

—Projected total gasoline production (bpcd)
—Projected unleaded gasoline production (bpcd) (all grades)
—Projected octane of unleaded gasoline (RON, AKI) (all grades)
—Projected clear pool octane (RON, AKI)

(7) In the manufacture of gasoline, no gasoline refiner who has submitted a valid registration form for refineries in accordance with paragraph (a)(6), shall in aggregate at those refineries produce unleaded gasoline as a percentage of total gasoline for each quarter, October 1, 1979, through September 30, 1980, that is less than that percentage in the comparable quarter October 1, 1978, through September 30, 1979, plus 8%, *unless* the production of unleaded gasoline as a percentage of total gasoline is greater than 45%.

(8) Each refiner who has submitted a valid registration form in accordance with paragraph (a)(6) shall for each quarter July 1, 1979, through September 30, 1980, submit to the Administrator a report showing the following information for each refinery:

—Total gasoline production (bpcd)
—Unleaded gasoline production (bpcd) (all grades)
—Unleaded gasoline production as a percentage of total gasoline production
—Octane of unleaded gasoline (RON, AKI) (all grades)
—Clear pool octane (RON, AKI).

Reports shall be submitted within 15 days after the close of the reporting period.

(9) In the manufacture of gasoline at any refinery for which a refiner has submitted a valid registration form in accordance with paragraph (a)(6), no gasoline refiner shall exceed the average lead content specified below for each 3-month period:

(i) 0.8 grams of lead per gallon after October 1, 1979,

(ii) 0.5 grams of lead per gallon after October 1, 1980.

BILLING CODE 6560-01-M

FORM I

REGISTRATION FORM
PROJECTIONS OF GASOLINE AND PETROCHEMICAL
FEEDSTOCK PRODUCTION

Name of Refiner
Name of Refinery
Location of Refinery
Crude Capacity of Refinery (bpcd as certified by Department of Energy, Office of Refinery Operations)

Name of Person to Contact
Telephone

I. Historical Production — Jan-Mar 1978 | Apr-June 1978 | July-Sept 1978 | Oct-Dec 1978 | Jan-Mar 1979 | Apr-June 1979

1. Total Gasoline Production (bpcd)
2. Unleaded Gasoline Production (bpcd)
3. Octane of Unleaded Gasoline (RON, AKI)
4. 2nd Grade of Unleaded Gasoline Production (bpcd)
5. Octane of 2nd Grade of Unleaded Gasoline (RON, AKI)
6. Clear Pool Octane (RON, AKI)
7. Unleaded Gasoline Production as a Percentage of Total Gasoline Production

II. Under Compliance with the 0.8 gpg Regulatory Lead Standard — Oct-Dec 1979 | Jan-Mar 1980 | Apr-June 1980 | July-Sept 1980

1. Total Gasoline Production (bpcd)
2. Unleaded Gasoline Production (bpcd)
3. Octane of Unleaded Gasoline (RON, AKI)
4. 2nd Grade Unleaded Gasoline Production (bpcd)
5. Octane of 2nd Grade Unleaded Gasoline (RON, AKI)
6. Clear Pool Octane (RON, AKI)
7. Unleaded Gasoline Production as a Percentage of Total Gasoline Production

Signature _____

Name _____

Title _____

The business may, if it desires, assert a business confidentiality claim covering part or all of the information submitted. If no such claim accompanies the information when it is received by EPA, it may be handled pursuant to 40 CFR Part 2.

[FR Doc. 79-17871 Filed 6-7-79; 8:45 am]
BILLING CODE 6560-01-C

FEDERAL COMMUNICATIONS COMMISSION
[47 CFR Part 73]
[BC Docket No. 79-130; RM-3132; RM-3167]

FM Broadcast Stations in Fort Neches, Tex., and Bridge City, Tex.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes the assignment of a Class A channel to Port Neches or Bridge City, Texas, in response to petitions filed by Ralph H. McBride and Harold D. and Linda Richardson. The proposed channel could provide for additional full-time local service in the area.

DATES: Comments must be filed on or before July 23, 1979, and reply comments must be filed on or before August 13,1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Louis C. Stephens, Broadcast Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Port Neches and Bridge City, Texas), BC Docket No. 79-130, RM-3132, RM-3167.

Adopted: May 23, 1979.
Released: May 31, 1979.

1. The Commission invites comments on proposals for the assignment of FM Channel 221A to Port Neches or Bridge City, Texas. Only seven miles apart, these cities are too close to permit the assignment of the same channel to both.

2. Ralph H. McBride, of Port Neches, asks that we assign Channel 221A to Port Neches, a city in Jefferson County, Texas. The 1970 U.S. Census reports Port Neches' population as 10,894 and Jefferson County's as 246,402. The only radio station assigned to Port Neches is KSUZ, which operates daytime-only on AM frequency 1150 kHz.

3. Harold D. and Linda Richardson propose that Channel 221A be assigned to Bridge City, Texas (1970 pop. 8,164), located in Orange County (1970 pop. 71,170). No radio station is now assigned to Bridge City.

4. Port Neches and Bridge City are both located in the "Golden Triangle" area lying between Beaumont, Orange and Port Arthur, which, petitioners state, has cultural, industrial, and other characteristics different from those nearby larger citites.

5. The proposed assignments would preclude use of Channel 221A in eleven other communities of greater than 1,000 population now lacking AM stations or FM channel assignments. Eight of these are part of the Port Arthur-Beaumont-Orange urbanized area which has a total of eight commercial FM stations. The remaining three, Newton, Texas, Merryville, Louisiana, and DeQuincy, Louisiana, are more than 32 kilometers (20 miles) from this or any other urbanized area. Petitioners should indicate what, if any, channels are available to those three communities.

6. We find in petitioners' submissions sufficient showing of probable need for additional full-time local radio service in the area to warrant the institution of these proceedings to invite comments as to whether the public interest would be seved by assigning FM Channel 221A to either Port Neches or Bridge City, Texas, and, if so, which assignment would be preferable.

7. Accordingly, we propose to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules to provide either as follows:

City	Channel No.	
	Present	Proposed
Port Neches, Texas		221A
or		
Bridge City, Texas		221A

8. Authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

9. Interested parties may file comments on or before July 23, 1979, and reply comments on or before August 13, 1979.

10. For further information concerning this proceeding, contact Louis C. Stephens, Broadcast Bureau, (202) 632-6302. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Philip L. Verveer,
Chief, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g), and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission' rules, it

is proposed to amend the FM table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rulemaking* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rulemaking to which this Appendix is attached. Proponent(s) will expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rulemaking which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rulemaking* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 79-17697 Filed 6-7-79; 8:45 am]
BILLING CODE 6712-01-M

[47 CFR Part 73]

[BC Docket No. 79-127; RM-3112]

Television Broadcast Station in High Point N.C.; Proposed changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes the assignment of UHF television Channel 67 to High Point, North Carolina, in response to a petition filed by Clyde Parker. The proposal would provide for a second commercial television station in High Point.

DATES: Comments must be filed on or before July 23, 1979, and reply comments on or before August 13, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mildred B. Neeterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: In the matter of amendment of § 73.606(b), *Table of Assignments*, Television Broadcast Stations. (High Point, North Carolina), BC Docket No. 79-127, RM-3112.

Adopted: May 23, 1979.
Released: May 31, 1979.

1. Before the Commission is a petition for rulemaking (Public Notice No. 1121, issued May 10, 1978), submitted by Clyde Parker ("petitioner"). The petition seeks amendment of § 73.606(b) of the Commission's rules, the Television Table of Assignments, by removing the reservation of Channel *32 at High Point, North Carolina, which limits it to noncommercial educational use only. Public Broadcasting Service ("PBS"), Corporation for Public Broadcasting ("CPB"), and Southern Broadcasting Company ("Southern"), licensee of Station WGHP-TV, High Point, North Carolina, opposed the proposal and petitioner responded.

2. High Point (pop. 63,204), in Guilford County (pop. 288,590) [1], is located in central North Carolina, and is part of the Greensboro-Winston-Salem-High Point television market. High Point is currently assigned Channel 8 (WGHP-TV) and Channel *32 (presently unoccupied and unapplied for); Greensboro is assigned Channel 2 (WFMY-TV) and Channels 48 and 61 (both unoccupied although both have applications on file); and Winston-Salem is assigned Channel 12 (WXII),

[1] Population figures are taken from the 1970 U.S. Census.

Channel *28 (WUNL–TV), and Channel 45 (CP granted for WGNN–TV).

3. Regarding the need for use of this channel by a commercial station, petitioner asserts that the commercial facilities in the Greensboro-Winston-Salem-High Point market only provide viewers with network programming from the three major networks. He notes that there is no independent television station licensed to the area and states that if Channel 32 is available for commercial use, he would use it to provide for a new and diversified source of television programming to a large area and population which would not otherwise receive such service.

4. Petitioner asserts that educational interests in the community have neither made constructive efforts to utilize Channel 32 in the past, nor does he believe that there is evidence of an indication to do so in the future. He claims that the apparent lack of interest in Channel 32 is due to the proliferation of educational television channels in the State of North Carolina. On this basis he asks us to proceed with deleting the reservation.

5. The opposing parties respond by stating that the underlying concept behind the reservation of channels was to make sure that the frequencies would be available in the future. This they think is important so that the unique programming which the Commission foresaw that public broadcasting would provide, could be made available to as much of the public as possible. They contend that these reservations should not be removed except in the most unusual circumstances.[2]

6. We believe that petitioner's proposal to bring a first independent television service to High Point is worth exploring. However, we do not believe the public interest would be served by deleting the educational reservation of the present assignment, especially since another channel can be assigned. Becausse of the availability of Channel 67 for assignment to High Point, there is no need to discuss further the dispute between the parties nor to consider a possible change in the vacant Greensboro channels to assign either of them to High Point.

7. Comments are invited on the following proposal to amend the Television Table of Assignments with regard to the city of High Point, North Carolina:

City	Channel No.	
	Present	Proposed
High Point, N.C.	8–, *32+	8–, *32+, 67+

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

9. Interested parties may file comments on or before July 23, 1979, and reply comments on or before August 13, 1979.

10. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau (202) 632–7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Philip L. Verveer,

Chief, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 79-17808 Filed 6-7-79; 8:45 am]

BILLING CODE 6712-01-M

[2] They suggested originally that petitioner apply for one of the vacant Greensboro channels (48 and 61), but both have applications on file and petitioner correctly points out that neither channel is available for use in High Point since the 15-mile rule makes this option available only to communities not listed in the Table of Assignments.

[47 CFR Part 73]

[BC Docket No. 79–129; RM–3276]

FM Broadcast Station in Bandera, Tex.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes the assignment of a Class A FM channel to Bandera, Texas, in response to a petition filed by Paloma Broadcasting Corporation. The proposed channel could provide for a first local aural broadcast service to Bandera.

DATES: Comments must be filed on or before July 23, 1979, and reply comments on or before August 13, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:
Mildred B. Neeterak, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Bandera, Texas), BC Docket No. 79–129, RM–3276.

Adopted: May 23, 1979.

Released: May 31, 1979.

1. *Petitioner, Proposal, Comments.* (a) A petition for rule making [1] was filed by Paloma Broadcasting Corporation ("petitioner"), proposing the assignment of Channel 252A to Bandera, Texas, as its first FM assignment. No responses to the petition were filed.

(b) The channel can be assigned in compliance with the minimum distance separation requirements provided the transmitter site is located at least 9 kilometers (6 miles) north of Bandera.

(c) Petitioner states that it will apply for the channel, if assigned.

2. *Community Data.*—(a) *Location.* Bandera, seat of Bandera County, is located approximately 74 kilometers (46 miles) northwest of San Antonio, Texas.

(b) *Population.* Bandera—891; Bandera County-4,747. [2]

(c) *Local Aural Broadcast Service.* There is no local aural broadcast service in Bandera.

3. *Economic Considerations.* Petitioner states that Bandera is a favorite hunting, fishing and recreational area for tourists in addition to having numerous dude ranches. It notes that Bandera County leads the State of Texas in goat and sheep raising and that over 95% of Bandera's $3.5 million grossed yearly has been in agricultural sales. Petitioner asserts that the proposed station will respond to the needs of the citizens of the community with regular weather reports, local discussion forums and broad coverage of local, state and national news.

4. Since Bandera is located within 320 kilometers (199 miles) of the U.S.-Mexico border, the proposed assignment of Channel 252A to Bandera requires coordination with the Mexican Government before it can be adopted.

5. In view of the apparent need for a first local aural broadcast service in Bandera, the Commission believes it appropriate to propose amending the FM Table of Assignments, § 73.202(b) of the Rules, as it pertains to Bandera, Texas, as follows:

[1] Public Notice of the petition was given on December 18, 1978, Report No. 1155.

[2] Population figures are taken from the 1970 U.S. Census.

City and Channel No.		
Bandera, Tex.:	Present: —;	Proposed: 252A.

6. Authority to institute rule making proceedings, showings required, cut-off procedures and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before July 23, 1979, and reply comments on or before August 13, 1979.

8. For further information concerning this proceeding, contact Mildred B. Neeterak, Broadcast Bureau, (202) 632–7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Philip L. Verveer,

Chief, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g), and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, Section 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission rules.—

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 79-17810 Filed 6-7-79; 8:45 am]

BILLING CODE 6712-01-M

[47 CFR Part 73]

[BC Docket No. 79–131; RM–3288]

FM Broadcast Station in Fordyce, Ark.; Proposed changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes the assignment of a Class A FM channel to Fordyce, Arkansas, in response to a petition filed by KBJT, Inc. The proposed channel could be used to provide a first full-time local aural broadcast service to Fordyce.

DATES: Comments must be filed on or before July 24, 1979, and reply comments must be filed on or before August 14, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:
Mildred B. Neslerak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: May 24, 1979.

Released: May 31, 1979.

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Fordyce, Arkansas), BC Docket No. 79-131, RM-3288.

1. The Commission has before it for consideration a petition for rule making,[1] filed by KBJT, Inc. ("petitioner"), requesting the assignment of FM Channel 288A to Fordyce, Arkansas, as that community's first FM assignment. No responses to the proposal have been received.

2. Fordyce (pop. 4,090), in Dallas County (pop. 10,022),[2] is located approximately 104 kilometers (65 miles) south of Little Rock, Arkansas. Fordyce is served locally by daytime-only AM Station KBJT. Channel 288A can be assigned to Fordyce in compliance with the minimum distance separation requirements. Petitioner informs us that it will apply for the channel, if asigned.

3. Petitioner states that the area's economy is based on forest products and allied industries. It notes that the Georgia-Pacific and Phelps-Dodge plants are located in Fordyce, each employing over 300 people. In support of its petition, petitioner has submitted detailed information with respect to the form of government, school system, housing and medical facilities. It claims that the proposed assignment would provide a three-county area with its first local nighttime aural service, bringing them local coverage of nighttime sporting events, election returns and severe weather warnings.

4. In light of the above information and the fact that the proposed FM channel could provide Fordyce with its first full-time local aural broadcast service, the Commission believes it appropriate to propose amending the FM Table of Assignments, § 73.202(b) of the Commission's rules, with respect to Fordyce, Arkansas, as follows:

City and Channel No.	
Fordyce, Ark.;	Present: —; Proposed: 288A.

5. Authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

[1] Public Notice of the petition was given on January 3, 1979, Report No. 1137.

[2] Population figures are taken from the 1970 U.S. Census.

Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or befoe July 24, 1979, and reply comments on or before August 14, 1979.

7. Further information concerning this proceeding may be obtained by contacting Mildred B. Nesterak, Broadcast Bureau, (202) 632—7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Philip L. Verveer,
Chief, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The Proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 79-17611 Filed 6-7-79; 8:45 am]

BILLING CODE 6712-01-M

[47 CFR Part 73]

[BC Docket No. 79-132; RM-3340]

FM Broadcast Station in Oakhurst, Calif.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes the assignment of a first Class A FM channel to Oakhurst, California. Petitioners, Randolph L. Johnston and James T. Dee, state the proposed channel could bring a first local aural broadcast service to Oakhurst and the surrounding area.

DATES: Comments must be filed on or before July 24, 1979, and reply comments on or before August 14, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:
Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: May 24, 1979.

Released: May 31, 1979.

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Oakhurst,

California), BC Docket No. 79-132, RM-3340.

1. *Petitioner, Proposal, Comments.* (a) Notice of Proposed Rule Making is given concerning amendment of the FM Table of Assignments (§ 73.202(b) of the Commission's rules) as it relates to Oakhurst, California.

(b) Petition for rulemaking [1] was filed on behalf of Randolph L. Johnston and James T. Dee ("petitioners"), seeking the assignment of Channel 296A to Oakhurst, California, as its first FM assignment. No responses to the petition were received.

(c) Channel 296A could be assigned to Oakhurst in conformity with the minimum distance separation requirements.

(d) Petitioners state they will promptly apply for and build a station if the channel is assigned.

2. *Community Data*—(a) *Location.* Oakhurst, an unincorporated community in Madera County, is located approximately 80 kilometers (50 miles) northeast of Fresno, California.

(b) *Population.* Oakhurst—5,500 [2]; Madera County—41,519.[3]

(c) *Local Aural Broadcast Service.* There is no local aural broadcast service in Oakhurst.

3. *Economic Data.* Petitioners state that approximately three-quarters of Madera County's 1970-1978 population growth [4] occurred in unincorporated areas of which Oakhurst is included. They claim that business has grown steadily the past 18 years with the taxable retail sales for the county in 1977 amounting to $151.9 million. Petitioners assert that the population growth in Oakhurst is attributed to an influx of people from other areas because of the community's mountain environment and recreational attractions.

4. *Other Considerations.* Petitioners state that because the town is located in a valley surrounded by mountains, radio reception is intermittent and FM reception is hampered by multipath distortion. They note that there are no radio stations in eastern Madera County, the nearest service coming from an FM station in adjacent Mariposa County, 40 kilometers (25 miles) to the northwest. Petitioners point out that the only radio service in Madera County is 80 kilometers (50 miles) to the southwest. They assert that an FM station in Oakhurst would provide a first local aural service in an area that has shown steady growth during the past several years.

5. We are willing to consider whether there is a need for a first local aural broadcast service in Oakhurst which could bring service to an area with few radio services. The proposal is being advanced for the purpose of determining whether such an assignment is warranted. There is a need for petitioners to submit additional information which would assist the Commission in determining whether the proposed channel assignment would be in the public interest. Petitioners are therefore requested to submit the following information:

(a) Information which demonstrates whether Oakhurst in fact is a community. This information should include a description of governmental structure, and social and economic activities.

(b) Information as to the permanent population of the unincorporated area in which petitioners claim Oakhurst is situated, the unofficial boundary of the community and the location of the community relative to any neighboring incorporated communities.

(c) Information which would indicate the need for a station at Oakhurst.

6. In view of the foregoing, the Commission proposes to amend the FM Table of Assignments (§ 73.202(b) of the rules), with respect to the community listed below:

City	Channel No.	
	Present	Proposed
Oakhurst, Calif.		296A

7. Authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—Showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

8. Interested parties may file comments on or before July 24, 1979, and reply comments must be filed on or before August 14, 1979.

9. For further information concerning this proceeding, contact Mildred B. Neshtrak, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Philip L. Verveer,

Chief, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. [Sec

[1] Public Notice of the petition was given on March 19, 1979, Report No. 1165.

[2] Petitioner's estimate. There is no Census figure listed for Oakhurst. Thus, its population must be under 1,000 as all communities over 1,000 are listed even if unincorporated.

[3] 1970 U.S. Census.

[4] Security Pacific Bank, Monthly Survey of Business Conditions, November 30, 1978.

§ 1.420 (a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 79-17812 Filed 6-7-79; 8:45 am]
BILLING CODE 6712-01-M

[47 CFR Part 73]

[BC Docket No. 79-128; RM-3277]

FM Broadcast Station in Haynesville, La.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes the assignment of a Class A FM channel to Haynesville, Louisiana. The proposed channel, which could provide the community with its first full-time local aural broadcast service, was requested in a petition filed by Robillard Communications, Inc.

DATES: Comments must be filed on or before July 23, 1979, and reply comments must be filed on or before August 13, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: May 23, 1979.

Released: May 31, 1979.

In the matter of amendment of § 73.202(b), *Table of Assignments,* FM Broadcast Stations. (Haynesville, Louisiana), BC Docket No. 79-128, RM-3277.

1. The Commission has under consideration a petition for rulemaking [1] seeking the amendment of § 73.202(b) of the Commission's rules, the Table of FM Assignments. The petition was filed on behalf of Robillard Communications, Inc. ("petitioner"), proposing the assignment of FM Channel 288A to Haynesville, Louisiana. The channel could be assigned in conformity with the minimum distance separation requirements without affecting the present assignments in the FM Table. Petitioner states that it will apply for the channel, if assigned.

2. Haynesville (pop. 3,055) in Claiborne Parish (pop. 17,024),[2] is located approximately 80 kilometers (50 miles) northeast of Shreveport, Louisiana. Haynesville is served locally by daytime-only AM Station KLUV.

3. In support of its proposal, petitioner asserts that Haynesville is the second largest community in the parish. We are told that the leading industry in Haynesville is oil and gas, with agriculture, dairy and the raising of beef cattle also contributing to the economy. Petitioner has submitted detailed demographic data with respect to Haynesville in order to demonstrate its need for a first FM assignment.

4. In view of the fact that the proposed FM channel assignment would provide Haynesville an opportunity to acquire a first full-time local aural broadcast service, the Commission believes it appropriate to propose amending the FM Table of Assignments, Section 73.202(b) of the Rules, with regard to the community listed below:

City	Channel No.	
	Present	Proposed
Haynesville, Louisiana		288A

5. Authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest is required before a channel will be assigned.

6. Interested parties may file comments on or before July 23, 1979, and reply comments on or before August 13, 1979.

7. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Phillip L. Verveer,

Chief, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Section 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission rules.

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for

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[1] Public Notice of the petition was given on December 18, 1978, Report No. 1155.

[2] Population figures are taken from the 1970 U.S. Census.

examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 79-17813 Filed 6-7-79; 8:45 am]
BILLING CODE 6715-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Part 410]

Public Hearings; Fish and Wildlife Coordination Act; Proposed Rulemaking

AGENCY: National Oceanic and Atmospheric Administration, Commerce Fish and Wildlife Service, Interior.

ACTION: Public Hearings.

SUMMARY: Proposed rules which would standardize agency procedures and interagency relationships in the analysis of the impacts of federal, or federally-approved, water-related projects upon fish and wildlife resources were published in the Federal Register at 44 FR 29300, May 18, 1979. This document announces public hearings to receive written and oral testimony on the proposed rules implementing the Fish and Wildlife Coordination Act. It is not to engage in a question/answer session or dialgue between the hearing panel and those who testify. Questions may be asked by members of the panel solely for the purpose of clarifying testimony by a witness.

Oral presentations should be limited to not more than 10 minutes. Written documents may be presented to the Hearing Officer for entry into the official record. Witnesses who submit written testimony in addition to making oral presentations should summarize the written testimony.

DATES: Hearings will be held:

June 26, 1979—San Francisco, California

June 27, 1979—Arlington, Texas

June 27, 1979—Twin Cities, Minnesota

June 27, 1979—Denver, Colorado

June 27, 1979—New Orleans, Louisiana

June 28, 1979—Washington, D.C.

ADDRESSES: These comments will be received at the following locations, dates and times:

June 26, 1979: San Francisco, California, Golden Gate National Recreation Area, Fort Mason, Building 201, Bay and Franklin Streets.

Starting time: 9:00 a.m.

Write: Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, Oregon 97232.

Telephone: (503) 231-6158.

June 27, 1979: Arlington, Texas—Quality Inn—Cibola, U.S. Highway 80, 1601 E. Division Street.

Starting time: 1:00 p.m.

Write: Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuqerque, New Mexico 87103.

Telephone: (505) 766-2914.

June 27, 1979: Twin Cities, Minnesota—Federal Building, Fort Snelling, Room 564-568.

Starting time: 1:00 p.m.

Write: Regional Director, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

Telephone: (612) 725-3510.

June 27, 1979: Denver, Colorado—Bureau of Reclamation Auditorium, Entrance W-1, Building 56, Denver Federal Center.

Starting time: 9:00 a.m.

Write: Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225.

Telephone: (303) 234-3990.

June 28, 1979: Washington, D.C.—Department of Commerce Auditorium, 14th at Constitution Ave., N.W.

Starting time: 9:00 a.m.

Write: Mr. E. Erdhein, Hearing Officer, Office of General Counsel, NOAA, 3300 Whitehaven St., N.W., Page Building II, Washington, D.C. 20235.

Telephone: (202) 634-4224.

June 27, 1979: New Orleans—Hotel Monteleone, 214 Royal St.

Starting time: 10:00 a.m.

Write: Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, N.E., P.O. Box 95067, Atlanta, Georgia 30347.

Telephone: (404) 881-4781.

FOR FURTHER INFORMATION CONTACT: Karl F. Stutzman, 202-343-4787.

Lynn A. Greenwalt,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 79-17881 Filed 6-7-79; 8:45 am]
BILLING CODE 4310-55-M

ENDANGERED SPECIES COMMITTEE

50 CFR Parts 450, 452 and 453

Interim Final Rules on Endangered Species Review Board and Endangered Species Committee

NOTE.—This document inadvertently appearing in the Proposed Rules section should have appeared in the Rules and Regulations section.

AGENCY: Endangered Species Committee.

ACTION: Interim Final Rules and Request for Public Comments.

SUMMARY: These regulations describe the functions and the procedures of Endangered Species review boards (review boards) and the Endangered Species Committee (the Committee) under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.* (the Act). According to section 7(a) of the Act, each Federal agency must, in consultation with the Secretary, insure that its actions do not jeopardize the continued existence of any endangered or threatened species, or result in the destruction or adverse modification of critical habitats. An exemption from these requirements may be granted by the Committee, however.

In accordance with section 7(g) of the Act, review boards are responsible for initially examining applications for exemption. If a review board makes certain threshold determinations, it is required to prepare and submit a report to the Committee. The Committee then makes the final determination whether or not to grant an exemption.

These rules cover the exemption application processing period from the appointment of a review board to the final determination by the Committee. Rules covering procedures for applying for an exemption and for initial review and handling of an exemption application, including appointment of a review board, have previously been proposed as 50 CFR Part 403. 44 FR 7777 (Feb. 7, 1979).

DATES: Effective date: June 8, 1979. Comments on these regulations must be submitted by September 4, 1979.

ADDRESS: Please send comments to the Chairman, Endangered Species Committee, c/o Office of Policy Analysis, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Raphaelle Semmes, Office of Policy Analysis, Department of the Interior, Room 4160, Interior Building, 18th & C

Streets, N.W., Washington, D.C. 20240, 202–343–5978.

SUPPLEMENTARY INFORMATION:

The Exemption Process

The Endangered Species Act Amendments of 1978 (Pub. L. 95–632), enacted on November 10, 1978, establish a procedure for obtaining exemptions from Section 7 of the Endangered Species Act of 1973 (now renumbered 7(a)). Section 7(a) requires Federal agencies to insure, in consultation with the Secretary of the Interior or Commerce, that their actions do not jeopardize the continued existence of endangered or threatened species or destroy or adversely modify critical habitats. Applications for exemption from this requirement may be made by a Federal agency, by the Governor of a State in which a proposed action would occur, or by a person whose permit or license application has been denied primarily because of section 7(a) considerations. An application is to be directed to the appropriate Secretary, who determines if it is properly presented. It is then evaluated by a review board and, if certain criteria are met, decided upon by the Endangered Species Committee.

These regulations implement section 7(g) paragraphs (4) to (12); section 7(e); and sections 7 (h) through (l) of the Act.

Review Boards. A review board is to be established for each exemption application. Review boards make threshold determinations on the application and develop a comprehensive record and report for the Endangered Species Committee. They consist of three members: one member appointed by the Secretary; one member (who shall be a resident of the State, if any, in which the agency action would be, or is being carried out) appointed by the President; and an Administrative Law Judge. Within 60 days of appointment, or a longer period mutually agreed upon by the exemption applicant and the Secretary, a review board must determine by majority vote:

(1) Whether any required biological assessment was conducted;

(2) Whether the Federal agency and permit or license applicant, if any, refrained from making any irreversible or irretrievable commitment of resources that forecloses any reasonable or prudent alternatives that would avoid an irresolvable conflict;

(3) Whether the Federal agency and permit or license applicant, if any, carried out consultation responsibilities in good faith, and have made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives that would have avoided an irresolvable conflict; and

(4) Whether the finding of an irresolvable conflict between the proposed action and the requirements of section 7(a) is supported by substantial evidence.

If a review board makes affirmative determinations on all four questions, the application will be forwarded to the Endangered Species Committee. If a review board determines that the application fails to meet these requirements and the deficiency is subsequently corrected, a new application can be made to the Secretary. Any determination by the review board that the exemption applicant has not met one of the threshold requirements is final agency action and may be appealed to Federal court.

If the review board determines that all four requirements are met, it must submit a report to the Committee within an additional 180 days, discussing:

(1) The availability of reasonable and prudent alternatives to the proposed action, and the nature and extent of the benefits of the agency action and of alternative courses of action consistent with conserving the species or the critical habitat;

(2) A summary of the evidence concerning whether or not the proposed action is in the public interest and is of national or regional significance; and

(3) Appropriate and reasonable mitigation and enhancement measures which should be considered by the Committee in granting an exemption.

Section 7(g) authorizes a review board to take testimony, receive evidence, request information, use the United States mails as a Federal agency, detail Federal agency personnel, and obtain administrative support services from the General Services Administration. It requires that any review board hearings be conducted in accordance with the adjudicatory procedures of the Administrative Procedure Act, to the extent practicable within the time limits and other constraints of the exemption process. It further requires all review board meetings and records to be open to the public.

Endangered Species Committee. Sections 7(e) and 7(h) require the Endangered Species Committee to review all applications submitted to it by a review board and to determine whether or not to grant exemptions. The Endangered Species Committee is composed of:

(1) The Secretary of the Interior, who is the Chairman;

(2) The Secretary of the Agriculture;

(3) The Secretary of the Army;

(4) The Chairman of the Council of Economic Advisors;

(5) The Administrator of the Environmental Protection Agency;

(6) The Administrator of the National Oceanic and Atmospheric Administration; and

(7) A person nominated by the Governor of each affected State, or if no State is affected an otherwise qualified individual, and appointed by the President, for each exemption application.

The Committee must determine whether or not to grant an exemption within 90 days after receiving the review board's report. An exemption requires an affirmative vote of five or more Committee members voting in person. To grant an exemption, the Committee must:

A. Determine that—

(1) There are no reasonable and prudent alternatives to the proposed action;

(2) The benefits of the action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat and the action is in the public interest;

(3) The action is of regional or national significance; and

B. Establish reasonable mitigation and enhancement measures that are necessary and appropriate to minimize the adverse effects of the agency action upon the species or critical habitat concerned.

Any final determination by the Committee on (A) and (B) is final agency action and subject to judicial review under Chapter 7 of title 5 of the United States Code.

If an exemption is granted by the Committee, the exemption applicant, in implementing the agency action, must carry out and pay for the mitigation and enhancement measures ordered by the Committee. The exemption applicant also must report to the Council on Environmental Quality annually until the mitigation and enhancement measures are completed.

Sections 7(e) and 7(h) authorize the Committee to hold hearings, take testimony, receive evidence, request information, use the United States mails as a Federal agency, detail Federal agency personnel, obtain administrative support services from the General Services Administration, promulgate and amend rules, regulations and procedures, issue and amend orders, and issue subpenas. All meetings and records of the Committee shall be open to the public.

Description of Rulemaking

The scope of these regulations is limited to procedures for the period between the submission of an application to a review board and the Committee's determination whether or not to grant an exemption. These regulations do not cover procedures for filing or initial review and handling of exemption applications, which are set out in proposed 50 CFR Part 403 (44 FR 7777 (Feb. 7, 1979).)

The regulations establish procedures for information gathering by review boards and by the Endangered Species Committee, including procedures for conduct of review board and Committee hearings. Procedures are also established for the review board and Committee decision process. Opportunities for public involvement, both before review boards and the Committee, are provided.

An issue which arose during drafting of these regulations on which comment is solicited concerns review board determinations of irresolvable conflicts.

Review boards are directed by section 7 (g) of the Act to determine that a proposed action involves an irresolvable conflict with section 7(a) of the Act before referring an exemption application to the Committee.

Ordinarily, the acting agency and the Fish and Wildlife Service or National Marine Fisheries Service will have developed a record on the jeopardy question during previous consultation on the proposed agency action. In some cases, usually involving permit or license applications, the acting agency will have held a full adversary hearing on the issue.

Because of the short time for review board consideration of the irresolvable conflict issue (60 days) * and because the statute provides that a review board use adjudicatory procedures only "to the extent practicable within the time required for action", the interim regulations anticipate that a board will ordinarily rely on the previously developed record on this issue. In particular, where there has been a previous adversary hearing on the issue, a review board will not conduct its own hearing, unless intervening circumstances require that the earlier record be supplemented. Comment is invited on the alternative of always limiting review to the agency record.

The regulations also provide that the review board will adopt the "substantial evidence" test of review, which shows considerable deference to the findings and judgment of the acting agency and the appropriate Service on the irresolvable conflict issue. This is consistent with the duty of those agencies to make the basic decision on the matter and reflects the deference which the findings would receive if subject to challenge in court. The Committee expects that, if a review board finds that an irresolvalbe conflict finding is not supported by substantial evidence, the acting agency and the appropriate Service will reinitiate consultation on the issue.

*The Environmental Protection Agency, as a member of the committee, adds: "If both the responsible agency and the review board were to assemble different records de novo on this question, severe procedural confusion would result. The responsible agency and the review board might reach different results, and it would be very difficult to assess which one was right because the records would be different. In addition, to generate two records on the same topic would be clearly inefficient."

Adoption and Request for Comments

These regulations are published as interim final regulations, and will remain in effect for 240 days from the date of publication. Permanent regulations will be published before the expiration of the 240-day period.

Because these regulations relate to agency procedure and practice, the Administrative Procedure Act does not require that they be subject to notice-and-comment rulemaking. Consistent with the Adminsitration's policy of encouraging public involvement, however, public comments on the interim regulations are requested. These comments must be submitted by September 4, 1979.

Because a review board will commence consideration of two exemption applications on or about June 4, 1979, there is a need for these regulations to be effective immediately. Good cause for waiver of the normal thirty-day period between publication and the effective date therefore exists.

It has been determined that this document does not contain a proposal which is required to be developed as a "significant rule" under criteria established by Executive Order 12044 (March 23, 1978) ("Improving Government Regulations").

The primary authors of these regulations are Jan Chrisman, Byron Swift and Deborah Williams, Office of the Solicitor, Department of the Interior.

These regulations are issued under the authority of the Endangered Species Act, as amended. 16 U.S.C. 1531 *et seq.* Accordingly, chapter IV of Title 50 is retitled "Joint Regulations (***); Endagered Species Committee Regulations" and is amended to designate present parts 401 and 402 as Subchapter A, reserve Subchapter B and add a Subchapter C with parts 450, 452 and 453 as set forth below:

Subchapter C—Endangered Species Exemption Process

PART 450—GENERAL PROVISIONS

Sec.
450.01 Definitions.

Authority: Endangered Species Act of 1973, 16 U.S.C. 1531, *et seq.*, as amended.

§ 450.01 Definitions.

The following definitions apply to terms used in this subchapter.

(1) "Act" means the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531, *et seq.*

(2) "Agency action" means all actions of any kind authorized, funded or carried out, in whole or in part, by Federal agencies.

(3) "Alternative courses of action" means all reasonable alternatives, including both no action and alternatives extending beyond original project objectives and acting agency jurisdiction.

(4) "Benefits" means all benefits of an agency action, both tangible and intangible, including but not limited to economic, environmental and cultural benefits.

(5) "Biological assessment" means the report prepared pursuant to section 7(c) of the Act, 16 U.S.C. 1536(c).

(6) "Biological opinion" means the written statement prepared pursuant to section 7(b) of the Act, 16 U.S.C. 1536(b).

(7) "Chairman" means the Chairman of the Endangered Species Committee, who shall be the Secretary of the Interior.

(8) "Committee" means the Endangered Species Committee established pursuant to section 7(e) of the Act, 16 U.S.C. 1536(e).

(9) "Critical Habitat" refers to those areas listed as Critical Habitat in 50 CFR Parts 17 and 226.

(10) "Destruction or adverse modification" is defined at 50 CFR 402.02.

(11) "Federal agency" means any department, agency or instrumentality of the United States.

(12) "Irresolvable conflict" means a situation in which a proposed agency action, together with any cumulative effects, would violate section 7(a) of the Act, 16 U.S.C. 1536(a).

(13) "Jeopardize the continued existence of" is defined at 50 CFR 402.02.

(14) "Mitigation and enhancement measures" means measures, including live propagation, transplantation and habitat acquisition and improvement, necessary and appropriate (i) to minimize the adverse effects of a proposed action on listed species or their critical habitats and/or (ii) to improve the conservation status of the species beyond that which would occur without the action. The measures must be likely to protect the listed species or the critical habitat, and be reasonable in their cost, the availability of the technology required to make them

effective, and other considerations deemed relevant by the Committee.

(15) "Permit or license applicant" means any person whose application to an agency for a permit or license has been denied primarily because of the application of section 7(a) of the Act, 16 U.S.C. 1536(a).

(16) "Person" means an individual, corporation, partnership, trust, association, or any other private entity, or any public body or officer, employee, agent, department, or instrumentality thereof.

(17) "Proposed action" means the action proposed by the Federal agency or by a permit or license applicant, for which exemption is sought.

(18) "Secretary" means the Secretary of the Interior or the Secretary of Commerce, or his or her delegate, depending upon which Secretary has responsibility for the affected species as determined pursuant to 50 CFR 402.01.

(19) "Service" means the United States Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate.

(20) "To the extent that such information is available to the applicant" means all pertinent information the applicant has on the subject matter at the time the application is submitted, and all other pertinent information obtainable from the appropriate Federal agency pursuant to a Freedom of Information Act request.

PART 452—ENDANGERED SPECIES REVIEW BOARDS

Sec.

452.01 Purpose and scope.
452.02 Definitions.
452.03 Threshold review and determinations.
452.04 Preparation and submission of informational report.
452.05 Review board hearings.
452.06 Other meetings.
452.07 Open meetings and records.
452.08 Parties and intervenors.
452.09 Separation of fuctions and ex parte communications.
452.10 Additional review board powers.

Authority: Endangered Species Act of 1973, 16 U.S.C. 1531, et seq., as amended.

§ 452.01 Purpose and scope.

This part prescribes the procedures to be used by endangered species review boards when examining applications for exemption from section 7(a) of the Endangered Species Act.

§ 452.02 Definitions.

Definitions applicable to this part are contained in 50 CFR 450.01.

§ 452.03 Threshold review and determinations.

(a) *Initiation of Review.* Upon receiving an exemption application, a review board shall promptly initiate its review of the application.

(b) *Notice.* Upon receiving an exemption application, a review board shall promptly publish a notice in the Federal Register containing: (1) a brief description of the exemption application; (2) the time and place for parties to file written submissions; (3) a date by which all motions to intervene must be filed; and (4) the time, place and location of planned review board meetings or hearings on its threshold determinations.

(c) *Threshold Determinations.* Within 60 days after its appointment, or a longer time agreed upon between the exemption applicant and the Secretary, the review board shall conclude its review and, by majority vote, determine:

(1) Whether any required biological assessment was conducted;

(2) Whether the Federal agency and permit or license applicant, if any, have refrained from making any irreversible or irretrievable commitment of resources which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative which will avoid jeopardizing the continued existence of an endangered or threatened species or result in the adverse modification or destruction of a critical habitat;

(3) Whether the Federal agency and permit or license applicant, if any, have carried out consultation responsibilities in good faith and have made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to the proposed action which will avoid jeopardizing the continued existence of an endangered or threatened species or result in the adverse modification or destruction of critical habitat;

(4) Whether the finding of irresolvable conflict which resulted in the exemption application is supported by substantial evidence.

(d) *Burden of Proof.* The exemption applicant has the burden of proof on its position on the threshold determinations.

(e) *Negative Finding.* If a review board makes a negative finding on any threshold determination, the review board shall notify the exemption applicant and all other parties in writing of its finding and grounds therefor. The exemption process shall terminate when the applicant receives such written notice. A negative finding by the review board shall constitute final agency action for purposes of judicial review under Chapter 7 of Title 5 of the United States Code.

(f) *Positive Finding.* If the review board makes a positive finding on each of the threshold determinations, it shall notify the exemption applicant and all other parties in writing that the application qualifies for consideration by the Endangered Species Committee.

(g) *Secretary of State Opinion.* The review board process shall terminate immediately if the Secretary of State, pursuant to section 7(i) of the Act, certifies in writing to the Committee that granting an exemption and carrying out the proposed action would violate an international treaty obligation or other international obligation of the United States.

§ 452.04 Preparation and submission of the information report.

(a) *Preparation of the Report.* If the review board has made a positive finding on each of the threshold determinations, it shall proceed to gather information according to procedures set out in 50 CFR 452.05 through .07 and prepare a report for the Endangered Species Committee;

(1) Discussing the availability of reasonable and prudent alternatives to the proposed action;

(2) Discussing the nature and extent of the benefits of the proposed action;

(3) Discussing the nature and extent of the benefits of alternative courses of action consistent with conserving the species or the critical habitat;

(4) Summarizing whether the proposed action is of national or regional significance;

(5) Summarizing whether the proposed action is in the public interest; and

(6) Discussing appropriate and reasonable mitigation and enhancement measures which should be considered by the Committee in granting an exemption.

(b) *Submission of Report.* The review board shall submit its report and the record of its proceedings to the Committee within 180 days after making its threshold determinations.

(c) *Applicant Responsibility.* In review board proceedings conducted pursuant to this section, the exemption applicant has the burden of going forward with evidence concerning the criteria for exemption.

§ 452.05 Review board hearings.

(a) *Hearings.* (1) A review board may hold such hearings as it determines are necessary in making its threshold determinations. If the issue of

irresolvable conflict has previously been the subject of a hearing required to be conducted under 5 U.S.C. 554, 556, and 557, however, the review board's determination of irresolvable conflict shall be based solely on a review of the record, unless the review board determines intervening circumstances require that the record be supplemented.

(2) A hearing shall be held to aid the review board in preparing its informational report under 50 CFR 452.04.

(b) *Prehearing conferences.* (1) The review board may, on its own motion or the motion of a party or intervenor, hold a prehearing conference to consider: (i) the possibility of obtaining stipulations, admissions of fact or law and agreement to the introduction of documents; (ii) the limitation of the number of witnesses; (iii) questions of law which may bear upon the course of the hearings; (iv) prehearing motions, including motions for discovery; and (v) any other matter which may aid in the disposition of the proceedings.

(2) The review board may issue a statement of the actions taken at the conference and the agreements made. Such statement shall control the subsequent course of the hearing unless modified for good cause by a subsequent statement.

(c) *Notice of Hearings.* Unless announced in the notice published upon receipt of an exemption application pursuant to 50 CFR 452.03(b), review board hearings and prehearing conferences will be announced by a notice in the **Federal Register** stating: (1) the time, place and nature of the hearing or prehearing conference; and (2) the matters of fact and law to be considered. Such notices will ordinarily be published at least 15 days before the scheduled hearing.

(d) *Conduct of Hearings.* (1) *General conduct.* To the extent practicable within the time required for action by the review board, and except to the extent inconsistent with requirement of section 7(g) of the Endangered Species Act, the conduct of all review board hearings shall be in accordance with 5 U.S.C. 554, 555 and 556 (other than section (b)(3) of section 556).

(2) *Presence of members.* Absent unforeseen circumstances, the review board members shall be physically present during the hearings.

(3) *Evidence.* (i) *Admissibility.* Relevant, material, and reliable evidence shall be admitted. Immaterial, irrelevant, unreliable, and unduly repetitious parts of an admissible document may be segregated and excluded so far as practicable.

(ii) *Official notice.* When a review board finding rests, in whole or in part, upon the taking of official notice of a material fact not appearing in evidence of record, opportunity to disprove such noticed fact shall be granted to any party making a timely motion.

(4) *Motions, objections, rebuttal and cross-examination.* Motions and objections may be filed with the review board, rebuttal evidence may be submitted, and cross-examination may be conducted, as required for a full and true disclosure of the facts, by parties, witnesses under subpena, and their respective counsel.

(i) *Objections.* Objections to evidence shall be timely, and the party making them may be required to state briefly the grounds relied upon.

(ii) *Offers of proof.* When an objection is sustained, the examining party may make a specific offer of proof and the review board may receive the evidence in full. Rejected exhibits, adequately marked for identification, shall be retained in the record for consideration by any reviewing authority.

(iii) *Motions.* Motions and petitions shall state the relief sought, the basis for relief and the authority relied upon. If made before or after the hearing itself, these matters shall be in writing and shall be filed and served on all parties. If made at the hearing, they may be stated and responded to orally; but the review board may require that they be reduced to writing. Oral argument on motions and deadlines by which to file responses to written motions will be at the discretion of the review board.

§452.06 Other meetings.

(a) In addition to hearings and prehearing conferences held pursuant to § 452.05, a review board may hold such other meetings as it determines are necessary.

(b) Unless announced in the notice published upon receipt of an exemption application pursuant to 50 CFR 452.02(b), such meetings shall be announced by a notice in the **Federal Register** stating: (1) the time and place of the meeting; and (2) the nature or purpose of the meeting. Such notices will ordinarily be published at least 15 days before the scheduled meeting.

§452.07 Open meetings and records.

All review board meetings and hearings and all review board records shall be open to the public.

§452.08 Parties and intervenors.

(a) *Parties.* The parties shall consist of the exemption applicant, the Federal agency responsible for the agency action in question, the Service, and intervenors whose motions to intervene have been granted.

(b) *Intervenors.* (1) A review board shall provide an opportunity for intervention in its proceedings. A motion to intervene must state the petitioner's name and address, identify its representative, if any, set forth the interest of the petitioner in the proceeding and show that the petitioner's participation will assist in the determination of the issues in question.

(2) A review board shall grant leave to intervene if it determines that an intervenor's participation would contribute to the fair determination of issues before the board. In making this determination, the review board may consider whether an intervenor represents a point of view not adequately represented by a party or another intervenor.

§ 452.09 Separation of functions and ex parte communications.

(a) *Separation of Functions.* A review board and its members shall not:

(1) Be responsible for or subject to the supervision or direction of any person engaged in the performance of the endangered species consultation at issue;

(2) Allow an agency employee or agent engaged in performance of the endangered species consultation at issue, or a factually related matter, to participate or advise in a determination under this part except as a witness or counsel in public proceedings.

(b) *Ex Parte Communications.* As provided in 5 U.S.C. 557(d), review board members and staff shall not communicate with parties or their respective counsel concerning the merits of issues before the review board without reasonable prior public notice and opportunity to participate.

§ 452.10 Additional review board powers.

(a) *Request assistance.* (1) The review board may request and receive:

(i) Administrative support services, on a reimbursable basis, from the Administrator of the General Services Administration;

(ii) Personnel, from any Federal agency, on a nonreimbursable basis, to assist the review board in carrying out its duties.

(2) The review board should minimize reliance on personnel provided on a reimbursable basis by the GSA and maximize use of personnel provided by heads of Federal agencies on a nonreimbursable basis.

(b) *Use of the mails.* A review board may use the United States mails in the same manner and under the same conditions as a Federal agency.

(c) *Request information.* Subject to the Privacy Act of 1974, a review board may request of any person information necessary to carry out review board duties. Any Federal agency or the exemption applicant shall furnish such information to the review board.

(d) *Request subpenas.* A review board may request the Committee to issue subpenas for the attendance and testimony of such witnesses, and the production of such relevant papers, books, and documents as are necessary for consideration of an exemption application.

(e) *Take depositions.* A review board may take depositions or have depositions taken as necessary to carry out its functions.

(f) *Delegate Functions.* A review board may delegate its functions under paragraphs (a) through (e) of this section to any member.

(g) *Consolidated and Joint Proceedings.* (1) When two or more exemption applications are referred to the same review borad, the board may consolidate proceedings on the application, if consolidation would expedite or simplify consideration of the issues.

(2) When two or more review boards are considering related exemption applications, the review boards may conduct joint proceedings, if joint proceedings would expedite or simplify consideration of the issues.

PART 453—ENDANGERED SPECIES COMMITTEE

Sec.
453.01 Purpose.
453.02 Definitions.
453.03 Committee review and final determinations.
453.04 Committee information gathering.
453.05 Committee meetings.
453.06 Additional committee powers.

Authority.—Endangered Species Act of 1973, 16 U.S.C. 1531, *et seq.*, as amended.

§ 453.01 Purpose.

This part prescribes the procedures to be used by the Endangered Species Committee when examining applications for exemption from section 7(a) of the Endangered Species Act of 1973, as amended.

§ 453.02 Definitions.

Definitions applicable to this part are contained in 50 CFR 450.01.

§ 453.03 Committee review and final determinations.

(a) *Initiation.* Upon receiving a review board's report and record, the Committee shall promptly initiate its review of the application.

(b) *Final Determinations.* Within 90 days of receiving a review board's report and record, the Committee shall grant an exemption from the requirements of section 7(a) of the Act for an agency action if, by a vote of not less than five of its members voting in person:

(1) It determines on the record, based on the report of the review board and on such other testimony or evidence as it may receive, that—

(i) There are no reasonable and prudent alternatives to the proposed action;

(ii) The benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest; and

(iii) The action is of regional or national significance; and

(2) It establishes such reasonable mitigation and enhancement measures as are necessary and appropriate to minimize the adverse effects of the proposed action upon the endangered species, threatened species, or critical habitat concerned.

(c) *Decision and Order.* The Committee's final determinations shall be written and shall be based on the whole public record of testimony, evidence and other written comments submitted to the Committee. If the Committee determines that an exemption should be granted, the Committee shall issue an order granting the exemption and specifying required mitigation and enhancement measures. The Committee shall publish its decisions in the Federal Register as soon as practicable.

(d) *Permanent Exemptions.* Under section 7(h)(2)(B) of the Act, an exemption granted by the Committee shall constitute a permanent exemption with respect to all endangered or threatened species for the purposes of completing such agency action, provided that a biological assessment has been conducted, unless the Secretary finds, based on the best scientific and commercial data available, that such exemption would result in the extinction of the species. If the Secretary so finds, the Committee shall determine within 30 days after such finding whether to continue the exemption for the agency action notwithstanding the Secretary's finding. During the 30 day period, the holder of the exemption shall refrain from any action which would result in extinction of the species.

(e) *Review by the Secretary of Defense.* If the Secretary of Defense certifies in writing that an exemption for the agency action is necessary for reasons of national security, the Committee shall grant the exemption, notwithstanding any other provision in this part.

§ 453.04 Committee information gathering.

(a) *Written Submissions.* When the Chairman or four Committee members decide that written submissions are necessary to enable the Committee to make its final determinations, the Chairman shall publish a notice in the Federal Register inviting written submissions from interested persons. The notice shall include: (1) the address to which such submissions are to be sent; (2) the deadline for such submissions; and (3) a statement of the type of information needed.

(b) *Information Gathering Proceedings.* (1) When the Chairman or four Committee members decide that oral presentations are necessary to enable the Committee to make its final determinations, an information gathering proceeding shall be held.

(2) The information gathering proceeding shall be conducted by (i) the Committee or (ii) a member of the Committee or other person, designated by the Chairman or by four members of the Committee.

(3) *Notice.* The Chairman shall publish in the Federal Register a general notice of an information gathering proceeding, stating: (1) the time, place and nature of the information gathering proceeding; and (2) the type of information needed. The Federal Register notice shall be published at least 15 days prior to the proceeding.

(4) *Procedure.* The information gathering proceedings shall be open to the public and conducted in an informal manner. All information relevant to the Committee's final determinations shall be admissible, subject to the imposition of reasonable time limitations on oral testimony.

(5) *Transcript.* Information gathering proceedings will be recorded verbatim and a transcript thereof will be available for public inspection. Any person may obtain a copy of the transcript upon payment of the actual cost of duplication.

§ 453.05 Committee meetings.

(a) The Committee shall meet at the call of the Chairman or five of its members.

(b) Five members of the Committee or their representatives shall constitute a quorum for the transaction of any function of the Committee, except that in no case shall any representative be considered in determining the existence of a quorum for the transaction of a Committee function which involves a vote by the Committee on the Committee's final determinations.

(c) All meetings and records of the Committee shall be open to the public.

(d) The Chairman shall publish a notice of all Committee meetings in the **Federal Register**. The notice will ordinarily be published at least 15 days prior to the meeting.

§ 453.06 Additional committee powers.

(a) *Request and receive assistance.* The Committee may request and receive:

(1) Administrative support services on a reimbursable basis, from the Administrator of the General Services Administration; and

(2) Personnel from any Federal agency on a nonreimbursable basis, to assist the Committee in carrying out its duties.

(b) *Use The Mails.* The Committee may use the mails in the same manner and under the same conditions as a Federal agency.

(c) *Secure Information.* Subject to the Privacy Act, the Committee may secure information directly from any Federal agency when necessary to enable it to carry out its duties.

(d) *Subpenas.* (1) For the purpose of obtaining information necessary for the consideration of an application for an exemption, the Committee may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents;

(2) The Chairman shall receive review board subpena requests and may issue the subpenas on behalf of the Committee to aid the review board.

(e) *Rules and orders.* The Committee may issue such rules and orders as are necessary to carry out its duties.

(f) *Delegate Authority.* The Committee may delegate its authority under paragraphs (a) through (d) of this section to any member.

Dated: June 2, 1979.

Cecil D. Andrus,

Secretary of the Interior and Chairman, Endangered Species Committee.

[FR Doc. 79-17940 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-10-M

Notices

Federal Register
Vol. 44, No. 112
Friday, June 8, 1979

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

Gypsy Moth Laboratory; Issuance of Negative Declaration

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of Availability of Environmental Analysis and Negative Declaration.

SUMMARY: This gives notice that Animal and Plant Health Inspection Service is not preparing an environmental impact statement concerning the continued use of Building 1398, on Otis Air Force Base, Massachusetts, as a Gypsy Moth Laboratory. The environmental assessment of this action indicates that the existing facility has not caused significant adverse local, regional, or national impacts on the environment in the past nor are there any adverse environmental impacts anticipated in the future. No significant controversy has been associated with this project. As a result of these findings, it has been determined that the preparation and review of an evironmental impact statement is not needed for this action.

ADDRESSES: A limited number of copies of the environmental analysis are available upon request from the Energy and Environmental Staff, Architectural Engineering Branch, Administrative Services Division, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 522, Presidential Building, 6525 Belcrest Road, Hyattsville, MD 20782.

Copies are available for public inspection during regular working hours at the following location: Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Building 1398, Otis Air Force Base, MA 02542.

FOR FURTHER INFORMATION: Contact Kenneth J. Dunn, Energy and Environmental Staff, (301) 436–8237.

SUPPLEMENTARY INFORMATION: Animal and Plant Health Inspection Service has been a tenant on Otis Air Force Base since 1960. Since 1976, the Gypsy Moth Laboratory, through a permit agreement with the Corps of Engineers, has occupied Building 1398 on the base. Prior to renewal of this permit, analyses of the environmental impacts of the existing facility are required. This negative declaration has been filed with the U.S. Environmental Protection Agency and with various Federal, State and local agencies.

No administrative action or implementation of permit renewal will be taken until June 25, 1979.

This notice has been reviewed under the U.S. Department of Agriculture criteria established to implement the EO 12044, Improving Government Regulations. A determination has been made that this notice should not be classified significant under those criteria. The environmental assessment referred to in the notice meets the requirements of EO 12044 and Secretary's Memorandum 1955 for an impact analysis statement. The environmental assessment is available from the Energy and Environmental Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Hyattsville, MD 20782.

Done at Washington, D.C., this 25th day of May, 1979.

Francis J. Mulhern,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 79-17439 Filed 6-7-79; 8:45 am]
BILLING CODE 3410-34-M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations

Notice is hereby given that, during the week ended CAB has received the applications listed below, which request the issuance, amendment, or renewal of certificates of public convenience and necessity for foreign air carrier permits under Subpart Q of 14 CFR Part 302.

Answers to foreign permit applications are due 28 days after the application is filed. Answers to certificate applications requesting restriction removal are due within 14 days of the filing of the application. Answers to conforming applications in a restriction removal proceeding are due 28 days after the filing of the original application. Answers to certificate applications (other than restriction removals) are due 28 days after the filing of the application. Answers to conforming applications or those filed in conjunction with a motion to modify scope are due within 42 days after the original application was filed. If you are in doubt as to the type of application which has been filed, contact the applicant, the Bureau of Pricing and Domestic Aviation (in interstate and overseas cases) or the Bureau of International Aviation (in foreign air transportation cases).

Subpart Q Applications

Date filed	Docket No.	Description
May 31, 1979	35715	Turks Air Limited, c/o Gerry Leventhal, Esq., Van Ness, Feldman & Sutcliffe, 1220 Nineteenth Street, NW., Suite 500, Washington, D.C. 20036. Application of Turks Air Limited requests the Board pursuant to Section 402 of the Act for renewal of its foreign air carrier permit authorizing it to engage in: (a) Non-scheduled foreign air transportation of property only between a point or points in the Turks and Caicos Islands on the one hand and Miami, Florida on the other; and (b) Property only all-route charter services. Answers due on June 28, 1979.
May 29, 1979	35660	United Air Lines, Inc., O'Hare International Airport, P.O. Box 66100, Chicago, Illinois 60666. Application of United Air Lines, Inc. requests the Board pursuant to Section 401(d)(7) of the Act and Subpart Q to reissue its certificate of public convenience and necessity for Route 81 without restriction (14) or in the alternative, amend said certificate so as to remove restriction (14) therefrom. Answers due on June 12, 1979.

Subpart Q Applications—Continued

Date filed	Docket No.	Description
June 4, 1979	35741	Ozark Air Lines, Inc., Lambert-St. Louis International Airport, St. Louis, Missouri 63145. Application of Ozark Air Lines, Inc. requests the Board pursuant to Section 401 of the Act for amendment of its certificate of public convenience and necessity for Route 107 so as to authorize it to engage in nonstop scheduled air transportation of persons, property, and mail and between Dallas/Fort Worth, on the one hand, and Honolulu and Hilo, Hawaii, on the other hand. Answers due on June 15, 1979.

Phillis T. Kaylor,
Secretary.

[FR Doc. 79-17587 Filed 6-7-79; 8:45 am]
BILLING CODE 6320-01-M

[Docket No. 33363]

Former Large Irregular Air Service Investigation; Cancellation of Hearing

The hearing on the application of Land-Air Corp., heretofore set for July 13, 1979 in the Federal Office Building and Court House, Room 5417, 200 N.W. 4th Street, Oklahoma City, Oklahoma (44 FR 27225, 9 May 1979) is cancelled.

Dated at Washington, D.C., June 4, 1979.

Rudolf Sobernheim,
Administrative Law Judge.

[FR Doc. 79-17589 Filed 6-7-79; 8:45 am]
BILLING CODE 6320-01-M

[Docket No. 33361]

Former Large Irregular Air Service Investigation (Application of Air Specialties Corp., Formerly Totem Air Service, Inc.); Rescheduled Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that the hearing in the above-entitled proceeding previously scheduled to be held on June 6, 1979 (44 FR 26858, May 8, 1979), will, upon request of the applicant, be held instead on June 26, 1979, at 9:30 a.m. (local time), in Hearing Room 1003B, Universal Building North, 1875 Connecticut Avenue, N.W., Washington, D.C., before me.

For information concerning the issues involved and other details in this proceeding, interested persons are referred to the prehearing conference report served November 2, 1978, and other documents which are in the docket of this proceeding on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., June 1, 1979.

Marvin H. Morse,
Administrative Law Judge.

[FR Doc. 79-17590 Filed 6-7-79; 8:45 am]
BILLING CODE 6320-01-M

[Docket No. 33363]

Former Large Irregular Air Service Investigation; Continuance of Hearing

The hearing on the application of Galaxy Airlines, Inc., heretofore set for June 6, 1979 (44 FR 24333, 25 April 1979), is continued to and will be held on June 12, 1979, commencing at 9:00 AM at the place heretofore set.

Dated at Washington, D.C., June 6, 1979.

Rudolf Sobernheim,
Administrative Law Judge.

[FR Doc. 79-17591 Filed 6-7-79; 8:45 am]
BILLING CODE 6320-01-M

[Order No. 79-5-235; Docket No. 35178]

Houston-Brownsville & Texas International Airlines; Order To Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause (79-5-235).

SUMMARY: The Board is proposing to grant Houston-Brownsville authority to Texas International Airlines (Docket 35178) and any other fit, willing and able applicant the fitness of which can be established by officially noticeable material. The complete text of this order is available as noted below.

DATES: All interested persons having objections to the Board issuing an order making final the tentative findings and conclusions shall file, by July 5, 1979, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections. Such filings shall be served upon all parties listed below.

ADDRESSES: Objections to the issuance of a final order should be filed in the Dockets Section, Civil Aeronautics Board, Washington, D.C., 20428, in Docket 35707, which we have entitled the *Houston-Brownsville Show Cause Proceeding.*

In addition, copies of such filings should be served on Texas International Airlines.

FOR FURTHER INFORMATION CONTACT: Charles Stohr, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C., 20428, (202) 673-5348.

SUPPLEMENTARY INFORMATION: The complete text of Order 79-5-235 is available from the Distribution Section, Room 516, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 79-5-235 to that address.

By the Civil Aeronautics Board, May 31, 1979.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 79-17588 Filed 6-7-79; 8:45 am]
BILLING CODE 6320-01-M

[Order No. 79-5-243; Docket No. 34803]

Oneida County Aviation, Inc.; Order To Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 79-5-243, Docket 34803.

SUMMARY: The Board is proposing to grant the application of Oneida County Aviation, Inc. d/b/a/ Empire Airlines, for a certificate of public convenience and necessity for authority between Utica/Rome, N.Y. on the one hand, and Buffalo, Washington, D.C., New York city, Newark, N.J. and Boston on the other, between Utica, Syracuse, Albany and Hartford, Ct., and between Syracuse and New York City. The grant would be contingent upon a finding that Empire is fit, willing and able to perform properly the proposed transportation and to conform with the provisions of the Act and the applicable rules and regulations of the Board. Empire is not a certificated carrier, and is currently flying these routes under exemption or unused authority.

DATES: All persons having objections to the Board's proposed action should file, and serve upon all parties, a statement of objections, together with a summary of the testimony, statistical data and other material expected to be relied upon to support the stated objections:

(a) Where the objections are on grounds other than fitness, no later than July 9, 1979;

(b) Where objections are on fitness grounds, by such time as shall be designated by the Administrative Law Judge assigned to the case. Responses to the evidence request set forth below shall be filed no later than June 22, 1979.

ADDRESSES: All objections should be filed in Docket 34803, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Mark W. Atwood, B–72, Bureau of Pricing and Domestic Aviation, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428 (202) 673–5333.

SUPPLEMENTARY INFORMATION: Objections should be served upon Empire Airlines.

The complete text of Order 79–5–243 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 79–5–243 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

Evidence To Be Submitted Before Hearing

The applicant is to supply the following information to the extent that it has not been supplied in the exhibits to its Petition for an Order To Show Cause. To the extent that such information has been supplied, the response to this request should be crossreferenced to the corresponding exhibit.

A. Identity, Citizenship, and Relationships

1. Name and address.

2. Type of organization and the name of the state under the laws of which it is organized.

3. Statement that the applicant is a citizen of the United States as defined in section 101(16) of the Federal Aviation Act.

4. List the names and addresses and brifly indicate the expertise and responsibilities of all directors, officers and key management personnel of the applicant.

(a) Is each a U.S. citizen? If not, give citizenship;

(b) Set forth for each, the amount of applicant's stock held by class, the number of options and warrants held, including value and the exercise dates and price;

(c) Each should submit a statement describing the shares of stock (if 5 percent or more of total voting stock is owned), officerships and directorships, or other interests held in any (1) air carrier, (2) foreign air carrier, (3) person substantially engaged in the business of aeronautics, (4) common carrier, or (5) person whose principal business (in purpose or in fact) is the holding of a stock in or control of (1), (2), (3) or (4).

5. State the name, address, citizenship and principal business of each person holding 5 percent or more of applicant's total voting stock, together with the amount and percentages held, and the name, address, citizenship and principal business of any person for whose account, if other than the holder, such interest is held; if any of these people are related by blood or marriage, include the relationship;

(a) Is any person or is any subsidiary [1] of any person listed in 5, (1) an air carrier, (2) foreign air carrier, (3) person substantially engaged in the business of aeronautics, (4) common carrier, (5) officer or director of (1)–(4)? If so, describe.

6. List any person included in 4 or 5 above, who has the power to substantially influence the management of the applicant.

7. List all subsidiaries of the applicant, briefly describing the relationship to the applicant and principal business.

8. Describe the shares of stock or other interests the applicant or any of its subsidiaries holds in any (1) air carrier, (2) foreign air carrier, (3) person substantially engaged in the business of aeronautics, (4) common carrier, or (5) person whose principal business (in purpose or in fact) is the holding of stock in or control of (1)–(4).

B. Financial Information

1. Supply copies of 10K reports filed with the SEC for the past two years, if such reports were filed.

2. To the extent not supplied under B.1, supply for the most recent twelve-month period and the preceding calendar year (audited if possible, otherwise notarized), separating out for (b) and (c) transport and nontransport activities;

(a) balance sheet;

(b) profit and loss statement;

(c) cash flow statement.

C. Operational Information

1. Provide a brief chronological narrative of the ownership and operations, including:

(a) CAB, State, and FAA authority under which the applicant has conducted operations;

(b) For the past three calendar years, total aircraft hours, aircraft miles, revenue passenger-miles, and revenue ton-miles flown;

(c) Types of aircraft used, types of service performed, and major (*e.g.*10) markets served.

2. Provide a list of aircraft currently operated indicating aircraft type, capacity, and whether owned or leased.

3. Describe equipment (other than aircraft), ground facilities, and personnel currently utilized.

D. Proposed Operations

1. Describe plans for acquisition or lease of additional aircraft to be used in proposed operations, including number and type of aircraft, and financial plans contemplated for the acquisition or lease of such aircraft.

2. Provide for the first normalized year of operations an illustrative traffic forecast indicating, in the aggregate, estimated revenue hours and revenue miles by type of aircraft, number of passengers and number of tons of cargo carrier, and major markets in which above traffic will be generated.

3. Provide for the first normalized year of operations an illustrative pro-forma balance sheet (as at the end of the period), profit and loss statement on a fully-allocated cost basis, and statement of sources and uses of funds. Provide, to the extent practical, derivation of unit costs used in estimating operating expenses.

4. Describe any assistance agreements the applicant will rely upon for managerial or technical expertise.

E. Compliance Disposition

1. Provide a description of each formal or docketed complaint lodged against the applicant, any predecessor or affiliate thereof (or against any other transportation company over which the applicant or predecessor exercises or has ever exercised control) in the past five years regarding compliance with the Federal Aviation Act or the rules, regulations and requirements issued under that Act. Indicate the final disposition, if any, of the matters.

2. State whether any of the persons and/or companies listed in Item A above, either as a partner, officer, director or stockholder has been affiliated with, controlled, or participated in control of any air carrier which during such association, was found to have committed knowing, willful violations of the Act, or of any order, rule, or regulation issued under

[1] As used in this request, a subsidiary means any business of which the applicant owns 10 percent or more of the total voting stock, and any subsidiaries of the applicant's subsidiary.

the Act. If so, list the orders covering the period from ten years ago to date.

3. Indicate any action taken by the FAA under 14 CFR 13.15 (involving civil penalities of $250 or more per violation), 13.17, 13.19, and 13.23 and the disposition of each.

4. Has the applicant, any predecessor, or any of the persons listed in A.4, 5, or 6 ever been convicted of a felony, anti-trust violation, or fraud (criminal or civil) within the past ten years or is such an action pending? If so, identify the proceeding and provide a description, including current status or final disposition.

5. Provide a description of any civil actions brought against the applicant, or any predecessor or affiliate thereof (or against any other transportation company over which the applicant or predecessor exercised or has ever exercised control) arising out of its air transportation operations. Describe the current status or final disposition.

By the Civil Aeronautics Board, May 31, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-17626 Filed 6-7-79; 8:45 am]

BILLING CODE 6320-01-M

COMMISSION ON CIVIL RIGHTS

Massachusetts Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Massachusetts Advisory Committee (SAC) of the Commission will convene at 4 p.m. and will end at 6 p.m., on July 18, 1979, at 34½ Beacon Street, Boston, Massachusetts.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the New England Regional Office, c/o 26 Federal Plaza, Room 1639, New York, New York 10007.

The purpose of this meeting is to discuss program planning.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., June 5, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-17601 Filed 6-7-79; 8:45 am]

BILLING CODE 6335-01-M

Oklahoma Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Oklahoma Advisory Committee (SAC) of the Commission will convene at 9:30 am and will end at 5:30 pm, on July 12, 1979, at the Hilton Inn (West) Room 201, 401 S. Meridian, Oklahoma City, Oklahoma 73108.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Southwestern Regional Office of the Commission, Heritage Plaza, 418 South Main, San Antonio, Texas 78204.

The purpose of this meeting is to discuss planning and orientation meeting for the full Oklahoma Advisory Committee.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., June 5, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-17602 Filed 6-7-79; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Economic Development Administration

Environmental Impact Statement for the City of Little Rock, Ark., Civic/Convention Center

On April 17, 1979, the Economic Development Administration (EDA) published in the Federal Register (44 FR 22797) a Notice of Intent to prepare an Environmental Impact Statement for a Civic/Convention Center which was proposed to be constructed in Little Rock, Arkansas. EDA was to be the "lead" agency in the preparation of the Environmental Impact Statement.

The City of Little Rock, Arkansas has withdrawn its request for EDA grant assistance for construction of the Civic/Convention Center. EDA will, therefore, not prepare an Environmental Impact Statement on the proposed Civic/Convention Center, and the public is now informed that EDA is no longer financially involved with the Civic/Convention Center proposal.

Dated: June 4, 1979.

Robert T. Hall,

Assistant Secretary for Economic Development.

[FR Doc. 79-17625 Filed 6-7-79; 8:45 am]

BILLING CODE 3510-24-M

Notice of Petitions by 11 Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing from eleven firms: (1) The Atlas Company, 17 East Queen Street, Ephrata, Pennsylvania 17522, a producer of women's and children's pants (accepted May 23, 1979); (2) Newark Boneless Meat Products, Inc., 26 Coventry Road, Livingston, New Jersey 07039, a processor or meat (accepted May 23, 1979); (3) Bordentown Industries, Inc., 1 Reiner Place, Englewood Cliffs, New Jersey 07632, a producer of women's coats and jackets (acepted May 24, 1979); (4) Crawfton Coat Company, Inc., 1453 75th Street, North Bergen, New Jersey 07047, a producer of women's coats (accepted May 24, 1979); (5) Merit Enterprises, Inc., 140 Thomas Street, Newark, New Jersey 07114, a producer of small electric appliances (accepted May 24, 1979); (6) Hahn, Inc., 1625 N. Garvin Street, Evansville, Indiana 47711, a producer of lawn mowers, garden tillers, and other equipment (accepted May 29, 1979); (7) Imperial Reading Corporation, 1920 Atherholt Road, Lynchburg, Virginia 24501, a producer of children's jeans, shirts and tops (accepted May 29, 1979); (8) United Canning Corporation, 12505 South Avenue Extension, P. O. Box 158, North Lima, Ohio 44452, a producer of canned mushrooms (accepted May 29, 1979); (9) Oldani Enterprises, Inc., 1015 Locust Street, St. Louis, Missouri 63101, a producer of women's shirts, slacks, blouses and dresses (accepted May 31, 1979); (10) Acme Garment Company, 5th and Elm Streets, Wentzville, Missouri 63385, a producer of women's skirts, pants, shorts, blouses, jackets and vests (accepted May 31, 1979); and (11) Fearing Manufacturing Company, 490 E. Villaume, South Saint Paul, Minnesota 55075, a producer of livestock identification tags and crayons, and calf nursing bottles (accepted June 1, 1979).

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93-618) and Section 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315).

Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than June 18, 1979.

Jack W. Osburn, Jr.,

Chief, Trade Act Certification Division, Office of Eligibility and Industry Studies.

[FR Doc. 79-17741 Filed 6-7-79; 8:45 am]

BILLING CODE 3510-24-M

Industry and Trade Administration

Massachusetts Institute of Technology; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. at 666 11th Street NW., Room 735, Washington, D.C.

Docket Number: 79-00113. Applicant: Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, MA 02139. Article: Double-Flash Photographic System. Manufacturer: University of Sheffield, United Kingdom. Intended use of article: The article is intended to be used to investigate the rate of fuel nitrogen emission under atmospheres of varying temperature, composition and relative velocity. The experiments will be conducted to determine the size and velocity of an atomized liquid fuel under pyrolysis and combustion conditions and their relationship to nitrogen oxide pollution. The article will also be used for educational purposes in the courses Graduate Thesis (10 ThG), Graduate Research Project(10.91).

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides the abilities to (1) create an image of sufficient magnification to be accurately measured for observing particles of sizes of the order of 10 microns; (2) precisely set the time interval between two successive sparks within the time interval 20 μs to 3 ms; (3) delay initiation of timing for as much as 200 μs after the shutter has opened; (4) delay the first spark after initiation for as much as 100 μs; (5) independently time inter-spark time interval and observe spark output intensity; (6) differentiate between images formed by the two sparks; (7) generate point source spark sources for ease of collimation; (8) align both light sources upon the same axis in order to illuminate an object observable with restricted access; and (9) differentiate by a narrow field of focus, a chosen plane of observation. The National Bureau of Standards advises in its memorandum dated May 15, 1979 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus or combination of domestic instruments of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 79-17765 Filed 6-7-79; 8:45 am]

BILLING CODE 3510-25-M

Medical College of Wisconsin; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5 p.m. at 666 11th Street N.W. (Room 735), Washington, D.C.

Docket Number: 79-00104. Applicant: The Medical College of Wisconsin, Inc., 8701 Watertown Plank Road, P.O. Box 26509, Milwaukee, WI 53226. Article: Jasco Model 500C Automatic Recording Spectropolarimeter. Manufacturer: Japan Spectroscopic Co., Ltd., Japan. Intended use of Article: The article is intended to be used for circular dichroism spectroscopy of the following systems, and the changes therein induced by alterations in experimental parameters:

(a) The conformational attributes of proteins and synthetic polypeptides;

(b) The structure and function of heme proteins; and

(c) Complexes between drugs and nucleic acids.

The experimental approaches for each project are, respectively, (a) induction of the order-disorder transformations, (b) ligation and redox processes of the heme groups, and (c) characterization of the stability and specificity of drug-nuclei acid interactions. The article will also be used in the course Biochemistry 222, Protein Chemistry for training of Ph.D. candidates.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article can provide circular dichroism spectoscopy in the 180–1000 nanometer range. The Department of Health, Education, and Welfare advises in its memorandum dated April 19, 1979 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 79-17766 Filed 6-7-79; 8:45 am]

BILLING CODE 3510-25-M

Northwestern University; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. at 666 11th Street, N.W. (Room 735) Washington, D.C.

Docket Number: 79–00111. Applicant: Northwestern University, 619 Clark Street, Evanston, Illinois 60201. Article: High Resolution Fourier Transform Multinuclear Magnetic Resonance Spectrometer System, Model JNM/FX–90Q and Accessories. Manufacturer: JEOL Ltd., Japan. Intended Use of Article: The article is intended to be used for a variety of chemistry studies including the following:

(1) Studies of inorganic complexes by multinuclear NMR spectroscopy,
(2) Investigation of metalloporphyrins in which the metals are iron, cobalt manganese, and chromium,
(3) Actinide Organometallic Chemistry,
(4) Syntheses of uranium hexamethyoxide and mixed methoxy uranium (VI) fluorides from uranium hexafluoride,
(5) Magnetic resonance spectra of metal nucleic in transition metal cluster complexes,
(6) Biorganic applications, i.e., study of the environment of transition metal ions in porphyrins and related systems,
(7) Determination of imidzole pK_a'S in different polymer matrices,
(8) Structure-function studies in mitochondrial cytochrome *c*,
(9) Effect of inversional motion on spin-lattice relaxation,
(10) Nitrogen-15 relaxation by Spin (Internal Rotation), and
(11) Kinetics of Processes with Long Correlation times.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States at the time the foreign article was ordered.

Reasons: The foreign article provides the capability for measuring $T_{1\rho}$, the spin-lattice relaxation time in the rotating frame. The National Bureau of Standards advises in its memorandum dated May 10, 1979 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 79-17787 Filed 6-7-79; 8:45 am]

BILLING CODE 3510-25-M

George C. Marshall Space Flight Center, Ala., et al; Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs Staff, Bureau of Trade Regulation, U.S. Department of Commerce, Washington, D.C 20230, on or before June 28, 1979.

Regulations (15 CFR 301.9) issued under the cited Act prescribe the requirements for comment.

A copy of each application is on file, and may be examined between 8:30 A.M. and 5:00 P.M., Monday through Friday, at 666–11th Street, N.W. (Room 735), Washington, D.C.

Docket number: 79–00242. Applicant: George C. Marshall Space Flight Center—National Aeronautics and Space Administration, Alabama 35812. Article: Spacelab. Manufacturer: European Space Agency (ESA), (ERNO) West Germany. Intended use of article: The article is a reusable general-purpose laboratory which will be flown to and from space in the cargo bay of the Orbiter and remains attached to the Orbiter during all phases of the mission. The space missions will involve the disciplines of space processing, advanced technology, earth viewing, life sciences, astronomy, astrophysics, solar physics, and terrestrial physics. In addition, the article will be used to fly experiments specifically for high school students from both the U.S. and Europe. Application received by Commissioner of Customs: April 4, 1979.

Docket number: 79–00264. Applicant: Utah State University, Department of Range Science, UMC 52, Logan, Utah 84322. Article: CO^2 Infrared Gas Analyzer. Manufacturer: Analytical Development Co., United Kingdom. Intended use of article: The article is intended to be used for photosynthetic studies of arid land plants, particularly in the field under natural environmental conditions. These experiments will involve measurement of net photosynthesis and respiration of plants as a function of various environmental factors as well as the different species of plants which will be assayed. Measurements of photosynthesis and respiration involve determinations of the changes in concentrations of carbon dioxide in a small chamber surrounding the plant. In addition to the primary use of the article in research, some use of the article will also be made in teaching of an advanced graduate course Plant Ecophysiology (Range Science 621). Application received by Commissioner of Customs: May 7, 1979.

Docket number: 79–00265. Applicant: Letterman Army Medical Center—Department of Pathology, Building 1100, Presidio of San Francisco, San Francisco, CA 94120. Article: Electron Microscope, Model EM 10A and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article will be used to study human tissues removed surgically or at autopsy. Research will involve studying ultrastructurally all unusual tumors and many other pathologic states. In addition, the article will be used for post doctoral training of ten residents in the medical specialty of pathology. Application received by Commissioner of customs: May 7, 1979.

Docket number: 79–00266. Applicant: The University of Texas Health Science Center at Houston—Medical School, P.O. Box 20036, 6431 Fannin Street, Houston, Texas 77025. Article: Temperature-Jump Spectrometer and Accessories. Manufacturer: Messanlagen Studien-gesellschaft mbH, West Germany. Intended use of article: The article is intended for investigation of the kinetics of the folding-unfolding reactions of globular proteins. These are large, biologically important polymers of amino acids which fold into different types of three dimensional structures depending on the sequence of the amino acids in the particular protein under study. Kinetic methods (stopped flow and fast temperature jumps) will be

used to study the rates a which particular steps infolding (unfolding) take place. It is hoped that these studies will lead to an understanding of how sequence is related to folding. Application received by Commissioner of Customs: May 7, 1979.

Docket number: 79-00268. Applicant: U.C.L.A., Department of Biology, Los Angeles, CA 90024. article: CED Model 509 Dual 308K Byte Floppy Disc Systems and Accessories. Manufacturer: Cambridge Electronic Design (CED), United Kingdom. Intended use of article: The article will be used in conjunction with a CAI Alpha minicomputer to control stimuli, acquire and analyze data during acute studies of the auditory system in lower vertebrates. It will be used in the study of neural mechanisms involved in processing species-specific sounds for the purpose of understanding normal auditory function; this in turn, may serve as baseline data for studies of auditory pathology, including deafness of cochlear origin, tinnitus, etc. The preparation used will be the anesthetized frog, in which the electrical activity of the auditory nerve is recorded and stored on the floppy disc system for subsequent analysis. The disc, then will form an integral part of the recording and analyzing appartus. Application received by Commissioner of Customs: May 7, 1979.

Docket Number: 79-00269. Applicant: University of Southern California, Electrical Engineering Dept., University Park, Los Angeles, CA 9007. Article: Pulsed CO2 TEA Laser, Model TEA 103. Manfacturer: Lumonics Ltd., Canada. Intended Use of Article: the article is intended to be used to optically pump molecules in order to create population inversions between energy states of the pumped molecules. The article will be used by graduate students in order to carry out the original research required for the Ph.D. degree. Application received by Commissioner of Customs: May 7, 1979.

Docket Number: 79-00271. Applicant: University of Florida—College of Pharmacy, Box J-4, JHMHC, Gainesville, Fla. 32610. Article: Dianorm R-4-Equilibrium Dialysis Apparatus and Accessories. Manufacturer: Diachema AG, Switzerland. Intended use of Article: The article is intended to be used for studies of enzymes, proteins and nucleic acids. The quantitative aspects of the interaction of the macromolecules will be investigated, as a function of concentration, pH, ionic strength, etc. The objectives of the investigations are to understand the mechanism of binding of the drugs to the molecules and to correlate the observations with in vivo data obtained from animals and humans. The article will also be used by graduate students, satisfying the research requirements for their Ph.D. degree and by post doctoral fellows in their research program. Application Received by Commissioner of Customs: May 1979.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 79-17288 Filed 6-7-79; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Availability of Evaluation Findings for the Massachusetts, Rhode Island, and Wisconsin Coastal Management Programs

Section 312 of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.) requires that the Office of Coastal Zone Management (OCZM) conduct a continuing evaluation of the performance of each coastal State under its Federally approved coastal management program.

On-site evaluations of the Massachusetts, Rhode Island and Wisconsin programs were conducted by Office of Coastal Zone Management in February, 1979.

All three States were found to be adhering to their management programs as a result of which positive results are occurring with respect to resource protection, management of development, increased recreational access and permit simplification.

Notice is hereby given of the availability of these evaluation findings to interested parties. A copy of the written findings made by the Assistant Administrator for Coastal Zone Management for each of these States may be obtained on request from: Carol Sondheimer, Chief, Policy and Program Evaluation, Office of Coastal Zone Management, Page Building 1, 3300 Whitehaven Street, N.W., Washington, D.C. 20235, telephone (202) 634-4245.

Dated: June 4, 1979.

Robert L. Cernahan,

Acting Assistant Administrator for Administration.

[FR Doc. 79-17289 Filed 6-7-79; 8:45 am]

BILLING CODE 3510-12-M

Mid-Atlantic Fishery Management Council's Bluefish Subpanel; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Mid-Atlantic Fishery Management Council was established by section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), and the Council has established a Bluefish Subpanel (AP) which will meet to discuss the Bluefish Fishery Management Plan (FMP).

DATES: The meeting will convene on Friday, June 29, 1979, at 10 a.m. and will adjourn at approximately 3 p.m. The meeting is open to the public.

ADDRESS: The meeting will take place at the Best Western Airport Motel, Philadelphia International Airport, Route No. 291, Philadelphia, Pennsylvania (215) 365-7000.

FOR FURTHER INFORMATION CONTACT: Mid-Atlantic Fishery Management Council, North and New Streets, Room 2115, Federal Building, Dover, Delaware 19901, Telephone: (302) 674-2331.

Dated: June 5, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-17287 Filed 6-7-79; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council and Scientific and Statistical Committee and Advisory Panel; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The North Pacific Fishery Management Council was established by Section 302 of the Fishery Conservation and Management Act (FCMA) of 1976 (Public Law 94-265), and the Council has established a Scientific and Statistical Committee (SSC) and an Advisory Panel (AP) to hold joint and separate meetings, June 26-29, 1979.

DATES: The Council meeting will convene on Thursday, June 28, 1979, at 8:30 a.m. and will adjourn on Friday, June 29, 1979, at 5 p.m. at the Elks Lodge, Homer, Alaska. The SSC meeting will convene on Tuesday and Wednesday, June 26 and 27, 1979, at 9 a.m. and will adjourn at 5 p.m. on both days at the Land's End, Homer, Alaska. The AP meeting will convene on Wednesday, June 27, 1979, at 9:30 a.m. and will adjourn at 5 p.m. at the Elks Lodge, Homer, Alaska. The SSC and AP will

meet jointly, as necessary, on Thursday, June 28, 1979. The meetings may be lengthened or shortened depending on progress on the agenda. The meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: North Pacific Fishery Management Council, P.O. Box 3136DT, Anchorage, Alaska 99510, Telephone: (907) 274–4563.

PROPOSED AGENDAS:

Council

(1) Consider amendment to the Fishery Management Plan (FMP) for Groundfish in the Gulf of Alaska to close some areas to joint venture operations; (2) First Council consideration of changes in definitions of fishery management units for all FMP's in the Gulf of Alaska and the Bering Sea; (3) Consideration of an amendment to the FMP for Groundfish in the Bering Sea/Aleutian Islands closing an area in the central Bering Sea to foreign trawling to protect herring and salmon; (4) Develop recommendations to National Marine Fisheries Service (NMFS) for release of groundfish reserves in the Gulf of Alaska; (5) Hear a report on the Tanner crab fishery in the Bering Sea with the possibility that some action may be required to amend the FMP for Tanner Crab off Alaska if resource conditions warrant; (6) Develop final recommendations for changes to the FCMA of 1976; (7) Review an application from the Soviet Processor/Trawler PRIAMURYE for a permit to support American fishermen in the Gulf of Alaska groundfish fishery; (8) Discussion of the concept of optimum yield (OY) as developed by the Pacific Fishery Management Council; (9) Report from the Working Group on Socio-economic Data Needs in the North Pacific Council fishery FMP's; (10) Report from the Working Group developing guidelines for estimating Domestic Annual Harvesting (DAH) and Processing capacity; (11) Internal audit review report; (12) First consideration of 1980 operating budget for the North Pacific Council; (13) Reports of ongoing fisheries and management problems from NMFS, Alaska Department of Fish and Game (ADF&G), United States Coast Guard (USCG), the AP, and the SSC; (14) A preliminary report from the Council Working Group on Incidental Species on the use of a fourth category of species for FMP's, those species that are unutilized or unwanted and occur as an incidental catch in other fisheries; (15) Report on the Council Chairmen's Meeting of June 19th and 20th; (16) Preliminary report from the Limited Entry Work Group; (17) Council recommendation for reduction of amount of Groundfish (Pollock, Pacific Cod, etc.) set aside for U.S. harvest in 1979, based on the latest survey of U.S. processing intent; and (18) Hold a public comment period on June 28, 1979, at 3:30 p.m.

Scientific and Statistical Committee

(1) Discussion of possible herring/salmon savings trawl closures; (2) Consideration and nomination of a new SSC member; (3) Discussion of State/Federal Regulations; (4) Proposed FCMA changes; (5) Discussion of OY Decision Paper; (6) Discussion on Limited Entry; (7) Review of report on Socio-economic Data Needs Committee; and (8) Discussion of King Crab FMP.

Advisory Panel

(1) Discussion of amendment to the FMP for Groundfish in the Gulf of Alaska to close some areas to joint venture operations; (2) Discussion of an amendment to the FMP for Groundfish in the Bering Sea/Aleutian Islands closing an area in the central Bering Sea to foreign trawling to protect herring and salmon; (3) Discussion on release of groundfish reserves in the Gulf of Alaska; (4) Report from the Working Group developing guidelines for estimating DAH and Processing Capacity; (5) Report from the Working Group on Socio-economic Data Needs in the North Pacific Council FMP's; (6) A preliminary report from the Council Working Group on Incidental Species on the use of a fourth category or species for FMP's, those species that are unutilized or unwanted and occur as an incidental catch in other fisheries.

Dated: June 5, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-17666 Filed 6-7-79; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council's Pink Shrimp Subpanel; Public Meeting

AGENCY: National Marine fisheries Service, NOAA.

SUMMARY: The Pacific Fishery Management Council was established by Section 302 of the Fishery Conservation and Management Act of 1976 (Public Law 94–265), and the Council has established a Pink Shrimp Subpanel which will meet to review sections of the second draft of the Pink Shrimp Fishery Management Plan (FMP).

DATES: The meeting will convene on Monday, June 25, 1979, at 1 p.m.; Tuesday, June 26, 1979, at 8 a.m. and will adjourn at approximately 5 p.m. on both days. The meeting is open to the public.

ADDRESS: The meeting will take place at the Oregon Department of Fish and Wildlife, 506 S.W. Mill Street, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Pacific Fishery Management Council, 526 S.W. Mill Street, Second Floor, Portland, Oregon 97201, Telephone: (503) 221–6352.

Dated: June 5, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-17665 Filed 6-7-79; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1979; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1979 commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: June 8, 1979.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher (703) 557–1145.

SUPPLEMENTARY INFORMATION: On April 16, 1979 the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (44 FR 22504) of proposed addition to Procurement List 1979, November 15, 1978 (43 FR 53151).

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77.

Accordingly, the following commodities are hereby added to procurement List 1979:

Class 5120

Screwdriver, Flat-tip, 5120-00-278-1269, 5120-00-269-6062, 5120-00-287-2504, 5120-00-287-2505, 5120-00-278-1267, 5120-00-541-3004, 5120-00-286-7803, 5120-00-236-2127, 5120-00-278-1270, 5120-00-227-7356, 5120-00-260-4637, 5120-00-227-7334, 5120-00-278-1268, 5120-00-293-0314, 5120-00-837-2465, 5120-00-540-0563, 5120-00-180-0708, 5120-00-222-8666, 5120-00-596-6502, 5120-00-278-1273, 5120-00-062-0613, 5120-00-293-3311, 5120-00-222-8662, 5120-00-596-6364, 5120-00-293-0315, 5120-00-293-3309, 5120-00-227-7377, 5120-00-180-3490, 5120-00-236-2140, 5120-00-062-8454, 5120-00-720-4969.

E. R. Alley, Jr.,
Acting Executive Director.

[FR Doc. 79-17818 Filed 6-7-79; 8:45 am]
BILLING CODE 6820-33-M

Procurement List 1979; Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Deletion from Procurement List.

SUMMARY: This action deletes from Procurement List 1979 a service provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: June 8, 1979.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher (703) 557-1145.

SUPPLEMENTARY INFORMATION: On April 20, 1979 the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (44 FR 23555) of proposed deletion from Procurement List 1979, November 15, 1978 (43 FR 53151).

After consideration of the relevant matter presented, the Committee has determined that the service listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

Accordingly, the following service is hereby deleted from Procurement List 1979:

SIC 7399

Packaging Service, Portsmouth Naval Shipyard, Portsmouth, New Hampshire.

E. R. Alley, Jr.,
Acting Executive Director.

[FR Doc. 79-17819 Filed 6-7-79; 8:45 am]
BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Determinations of Active Military Service and Discharge: Civilian or Contractual Personnel (Signal Corps Female Telephone Operators Unit (WW I))

Correction

In FR Doc. 17241, appearing at page 32019, in the issue of Monday June 4, 1979, on page 32020, 21st line, "evidence of membership and character" should read "evidence of membership and character of"

BILLING CODE 1505-01-M

Department of the Army

Intent To Prepare Draft Environmental Impact Statement for a Proposed Flood Control Project, Mingo Creek, Tulsa, Okla.

AGENCY: U.S. Army Corps of Engineers, DOD, Tulsa District.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS)

SUMMARY: 1. The primary purpose for this project is to provide 100-year flood protection on 2,200 acres of urban land in the city of Tulsa, Oklahoma.

2. Reasonable Alternatives. The alternatives evaluated include: no action, flood plain acquisition, flood proofing, channelization, levees, detention, and combination of alternatives.

3. Scoping Process.

a. Public Involvement. A comprehensive public involvement program was developed as a means of disseminating information and soliciting public views. A variety of techniques including formal public meetings, informal public information sessions, committees, the newsletter, "Waterlogue", and periodic statements to the local news media were employed to involve organizations, Federal, State, and local agencies, citizen committees, and the interested public in the planning studies.

b. Significant Issues Requiring Indepth Analysis. None.

c. Assignments. U.S. Fish and Wildlife Service prepared a Coordination Act Report dated 23 March 1979.

d. Environmental Review and Consultation Requirements. The draft statement will be circulated for review, and all comments will be incorporated into the final environmental statement.

4. Scoping meeting will not be held.

5. Estimated date when the DEIS will be available. July 1979.

ADDRESS: Mr. Buell G. Atkins, Chief, Environmental Resources Branch, U.S. Army Corps of Engineers, Tulsa District, P.O. Box 61, Tulsa, OK 74121, (918) 581-7857.

Dated: May 30, 1979.

Robert G. Essing,
Colonel, CE, District Engineer.

[FR Doc. 79-17820 Filed 6-7-79; 8:45 am]
BILLING CODE 3710-03-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Albert B. Alkek Consent Order; Extension of Comment Period

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Extension of Comment Period for Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby extends to June 15, 1979 the comment period on the Consent Order executed between Albert B. Alkek of Victoria, Texas, and the Office of Enforcement (ERA). The original notice of action taken was published in 44 FR 24913 (April 27, 1979).

DATES: Comments by June 15, 1979.

ADDRESS: Send comments to: Thomas M. Holleran, Chief, Crude Oil Branch, Office of Enforcement Policy & Planning, 2000 M Street, N.W., Room 5128, Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT: Thomas M. Holleran, Chief, Crude Oil Branch, Office of Enforcement Policy & Planning, 2000 M Street, N.W., Room 5128, Washington, D.C. 20461 (202-254-8580).

Issued in Washington, D.C. on the 1st day of June 1979.

Barton Isaacson,
Assistant Administrator for Enforcement, Economic Regulatory Administration.

[FR Doc. 79-17821 Filed 6-7-79; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP79-19]

Montana-Dakota Utilities Co.; Protest and Petition for Relief

June 4, 1979.

Take notice that on May 16, 1979, Holly Sugar Corporation (Holly), P.O. Box 1052, Colorado Springs, Colorado

80901, filed in Docket No. GP79–19 a protest of the actions of Montana-Dakota Utilities Co. (MDU) and petition for relief pursuant to Sections 1.6 and 1.7 of the Commission's Rules of Practice and Procedure (18 CFR 1.6 and 1.7) and Section 281.119 of the Interim Curtailment Rule issued pursuant to the Natural Gas Policy Act of 1978 (NGPA), all as more fully set forth in the protest and petition which are on file with the Commission and open to public inspection.

Holly is a manufacturer of sugar, operating several plants at which sugar is processed from sugarbeets, among them one situated near the Town of Worland, Washakie County, Wyoming, and one near Sidney, Richland County, Montana. Holly states that MDU has furnished natural gas at the Sidney and Worland plants under negotiated industrial interruptible contracts and that until 1978, it used natural gas at said plants as its sole energy source except for negligible quantities of oil, the required stand-by fuel, during peak load interruptions.

In 1976 MDU instituted an allocation plan (the Plan) and Holly alleges that at MDU's instance, several of MDU's major customers, including Holly, entered into a stipulation and agreement, approving the Plan, by the terms of which an order of priority was established and customers with lowest priority (4) agreed to a program the effect of which would be to reduce their annual consumption each year thereafter by 20 percent cumulatively. Standard contracts thereafter were offered such customers on a fiscal year July 1–June 30 basis. By agreement, dated June 1, 1978, for the term July 1, 1978–June 30, 1979, Holly states that it was restricted to 40 percent of its base year (1976) consumption of priority 4 usage as defined in the Plan. The plan is pending before the Commission.

Holly asserts that in comments filed April 2, 1979, pursuant to a conference in Docket No. RP76–91 to consider the effect of the NGPA upon current curtailment plans, MDU stated:

> Since the volumetric limitations under the present contracts serve as a cap through June 30, 1979, MDU believes it is in harmonny with the intent of the Commission's interim rule to maintain the same "cap" for the remaining four months during which the Interim Curtailment Rule is to be in effect—*i.e.*, July 1, 1979 through October 31, 1979.
>
> Consequently, new contracts embracing the period July 1, 1979 through October 31, 1979 will establish volumetric limitations at the present level, which is 40 percent of requirements, that is during that four-month period, the contract volume will be 4/12 of 40 percent of Base Period Requirements.

Holly states that reflecting such intention, MDU wrote Holly on April 30, 1979, as follows:

> Section 2.2(a) of our FERC Gas Tariff, First Revised Volume No. 1, requires that Montana-Dakota Utilities Co. shall notify all customers whose base period requirements cannot by completely met, of the percent of service which such customer will receive during the following Supply Year. In compliance with that requirement, we wish to advise you that for the Supply Year 1979–80 (beginning July 1, 1979, and ending June 30, 1980), the curtailment rate will be eighty percent (80%) of your Priority 4 Base Period Requirements as contained in the tariff. You will, therefore, be allotted twenty percent (20%) of the Priority 4 base period requirement volume plus one hundred percent (100%) of the Priority 2 base period requirement for the 1979–80 Supply Year.
>
> A new contract covering the 1979–80 Supply Year, setting forth the new volumes allotted to your plant, will be prepared and submitted to you in the near future. The new contract will incorporate the effect of exemptions or special conditions legally imposed by regulatory bodies, if any, which may affet the volumes applicable to your plant.

Holly alleges that, as an agricultural producer, it is entitled to priority 2 treatment under the U.S. Department of Agriculture's Interim Rule issued pursuant to Section 401 of the NGPA, but that, in reaching a contrary conclusion on April 2, 1979, that its present contract represents a "cap," MDU reasoned as follows:

> Section 281.107(c)(1) provides that MDU's supply obligation is:
>
> "* * * the *lesser* of:
>
> "(i) the volume certified by the Secretary of Agriculture as essential agricultural volumetric requirements and calculated under 7 C.F.R. § 2900.4";
>
> "(ii) the volume which may be delivered by the interstate pipeline to the direct sale customer without causing the interstate pipeline to exceed any volumetric limitations set out in the contract between the interstate pipeline and such direct sale customer (without regard to any contract provision which would otherwise restrict delivery because of supply or capacity shortage of the interstate pipeline)."
>
> Again, it is clear that the volumetric requirements calculated under Agriculture's rule exceed the volumetric limitations under the present contracts (*i.e.*, 40 percent of Base Period Requirements). Hence, under the Commission's rule, the volumetric limitations set forth in the contracts are a "cap" on MDU's supply obligation to essential agricultural use establishments. Accordingly, there is no authority for or requirement under the Commission's rule that "adjustments" exceed such limitation.

Holly contends that the problem with the above reasoning is that Section 281.107(c)(1) refers only to "the contract" (emphasis added). And that *the* contract between it and MDU expires June 30, 1979. Holly maintains that after that, there is no reason for denying it the right to seek priority 2 volumetric entitlement unless Holly has subjected itself to some further contractual limitation by MDU in the meantime, which Holly states it has not and will not do. Holly asserts that without executing such a contract, it may get no gas and that either it must abandon its rights to full entitlement under Section 401 of the NGPA by signing a new restrictive agreement for the coming season with a 20 percent "cap" or it must abandon its rights to service altogether.

Holly protests MDU's action in offering it, as of July 1, 1979, either a contract restricting it to 20 percent of its priority 4 usage or nothing at all, as either (or both) a misconstruction of the Interim Rules or an abandonment of its facilities servicing Holly without requisite approval of the Commission as mandated by Section 7(b) of the Natural Gas Act.

Holly prays that the Commission issue a declaratory order clarifying the following issues:

(1) regarding the aforementioned reference to "the contact," in the Interim Rule, whether such reference refers to unsigned future as well as currently effective contracts between supplier and customer or to currently effective curtailment plans regardless of the existence of individual contracts between supplier and customer;

(2) whether MDU's Plan, aforementioned, is a currently effective curtailment plan;

(3) whether MDU's Plan aforementioned, represents "the contract" referred to in the Interim Rule;

(4) whether MDU's action in offering Holly only a contract as of July 1, 1979 containing volumetric limitations in accordance with the Plan represents an abandonment under Section 7(b) of the Natural Gas Act; and

(5) whether MDU is authorized by Section 401 of the NGPA and the Interim Rule to offer Holly a new contract allowing it only 20 percent of its base period entitlement or whether MDU should offer Holly a contract containing the full volumetric limits to which it would have been entitled had the Plan not been instituted.

Based on the Commission's clarification of the foregoing, Holly prays that the Commission issue its order to MDU, requiring MDU to offer

Holly, as of July 1, 1979, contracts at both its Worland and Sidney plants with volumetric limits of natural gas no less than its full base year entitlement.

Any person desiring to be heard or to make any protest with reference to said petition should on or before June 15, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-17748 Filed 6-7-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. GP79-21]

Montana-Dakota Utilities Co.; Petition for Declaratory Order

June 4, 1979.

Take notice that on May 16, 1979, The Great Western Sugar Company (Great Western), 1530 16th Street, Denver, Colorado 80217, filed in Docket No. GP79-21 a petition pursuant to Section 1.7(c) of the Commission's Rules of Practice and Procedure (18 CFR 1.7(c)) for a declaratory order with regard to the interpretation by Montana-Dakota Utilities Co. (MDU) of Section 281.107(c)(1)(ii) of the Commission's Interim Curtailment Rule issued pursuant to the Natural Gas Policy Act of 1978 (NGPA) and stating that a pipeline's supply obligation to a direct essential agricultural user under Section 281.107(c)(1)(ii) is determined by the full contractural volumes without regard to any limitation thereon resulting from curtailment, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Great Western owns and operates two factories, one located in Billings, Montana, and the other in Lovell, Wyoming, which use natural gas furnished by MDU in connection with the processing of sugar beets into refined sugar and dried beet pulp for use as a livestock feed. As such, Great Western asserts, it qualifies as an essential agricultural user of natural gas under the regulations issued by the Secretary of Agriculture pursuant to the authority delegated under Section 401 of the NGPA.

Great Western states that MDU has filed tariff sheets as part of its FERC Gas Tariff to provide on an interim basis a plan for the delivery of natural gas for essential agricultural and high priority uses in accordance with Section 401 of the NGPA and that Section 281.107(c)(1) as incorporated into MDU's tariff provides as follows:

"(c) *Essential agricultural supply obligation.*

"(1) *Direct essential agricultural supply obligation.*

"The direct essential agricultural supply obligation of an interstate pipeline for a particular curtailment period with respect to an essential agricultural user which is a direct sale customer of the interstate pipeline is the lesser of:

"(i) The volume certified by the Secretary of Agriculture as essential agricultural volumetric requirements and calculated under 7 CFR § 2900.4; or

"(ii) The volume which may be delivered by the interstate pipeline to the direct sale customer without causing the interstate pipeline to exceed any volumetric limitations set out in the contract between the interstate pipeline and such direct sale customer (without regard to any contract provisions which would otherwise restrict delivery because of supply or capacity shortage of the interstate pipeline)."

Great Western asserts that in comments on the impact of NGPA submitted in Docket No. RP76-91, MDU noted that one of the Commission criteria for determining the volumetric entitlement of large direct essential agricultural users was the volumes certified by the Secretary of Agriculture and that MDU observed that under the Secretary's rule:

"* * * the volumetric requirements certified are the *higher* of (1) the highest volume of gas actually used during the most recent three years (corrected to include amounts of process (fn. omitted) and feedstock gas not used because of curtailment or plant shutdown) or (2) the maximum volume the customer would be entitled to purchase under MDU's curtailment plan *in effect on February 28, 1979.* Because of the large volume * * * customers had, during the past three years, contracts representing various reduced levels of service (*i.e.*, below full 'Base Period Requirements' as set forth in the Tariff), it is apparent that the actual volumes of gas used (corrected for feedstock and process gas not used because of curtailment) will produce the higher calculation of requirements under Agriculture's rule, *i.e.*, the requirements calculated under (1) will exceed the volulmetric limitations specified in the contracts in effect February 28, 1979." (Emphasis in original) (App., p. 5)

Great Western then indicates that further quoting the provision of Section 281.107(c)(1)(ii) set out *supra*, p. 2, MDU then went on to state (App., p. 6):

* * * it is clear that the volumetric requirements calculated under Agriculture's rule exceed the volumetric limitations under the present contracts (*i.e.*, 40 percent of Base Period Requirements). Hence, under the Commission's rule, the volumetric limitations set forth in the contracts are a 'cap' on MDU's supply obligation to essential agricultural use establishments. Accordingly, there is no authority for or requirement under the Commission's rule that 'adjustments' exceed such limitation.

Since the volumetric limitations under the present contracts serve as a cap through June 30, 1979, MDU believes it is in harmony with the intent of the Commission's interim rule to maintain the same 'cap' for the remaining four months during which the Interim Curtailment Rule is to be in effect—*i.e.*, July 1, 1979 through October 31, 1979.

Consequently, new contracts embracing the period July 1, 1979 through October 31, 1979 will establish volumetric limitations at the present level, which is 40 percent of requirements, that is during that four-month period the contract volume will be 4/12s of 40 percent of Base Period Regulations.[1]

Great Western submits that MDU's interpretation of Section 281.107(c)(1)(ii) as imposing a "cap" limiting its obligations to essential agricultural users to 40 percent of base period requirements grossly misconstrues the force and thrust of that provision. Great Western further submits that there is no basis for MDU's position that the volumetric limitations of 40 percent of base period requirements contained in its present contracts would continue in effect for the four months remaining after June 1979 that the Commission's Interim Rule is to be effective; to the contrary, Great Western alleges, the present contracts expire June 30, 1979, and new contracts are required for the post-June 30 period. Similarly unjustified, Great Western contends, is MDU's asserted belief that maintenance of the same "cap" for the post-June 30 period would be "in harmony with the intent of the Interim Rule," since there is nothing in the Interim Rule suggesting a Commission purpose that the same volumetric limitation levels be maintained from period to period within the time frame covered by the Rule. In any case, Great Western contends, assuming *arguendo* that, as MDU urges, the Commission intends the post-June 30 period to be treated the same as the prior period, MDU's conclusion that the

[1] The 40 percent calculation applies only to the Base Period Requirements in the category being curtailed, namely, Priority 4.

40 percent base period requirement operates as a volumetric limitation upon its obligations to direct essential agricultural users such as Great Western is belied by the parenthetical phrase in Section 281.107(c)(1)(ii) "without regard to any other provision which would otherwise restrict delivery because of supply or capacity shortage of the interstate pipeline."

Great Western states that in line with certain curtailment provisions in MDU's tariff, the contracts which MDU's customers enter into with MDU annually expressly provide the level of curtailment which MDU determines for the oncoming year beginning July 1, and, thus, MDU's annual contracts with Great Western not only make clear that they were being entered into in a curtailment context, but the total volumes specifically provided were patently a predetermined percentage of Great Western's agreed-upon base period requirements. Great Western submits that since the 40 percent of base period requirements provided in MDU's contracts with its category 4 customers is an integral part of MDU's curtailment plan purported based on the gas supply shortage on the MDU system, it is clear that under the parenthetical phrase in Section 281.107(c)(1)(ii) the 40 percent limitation is to be disregarded in determining volumetric limitations for the purpose of that Section.

Accordingly, Great Western petitions the Commission to issue an order declaring that a pipeline supply obligation to a direct essential agricultural user under Section 281.107(c)(1)(ii) is determined by the full contractual volumes without regard to any limitation resulting from curtailment.

Any person desiring to be heard or to make any protest with reference to said petition should on or before June 15, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules or Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-17787 Filed 6-7-79; 8:45 am]
BILLING CODE 6450-01-M

Thermodynamics Conference

Notice is hereby given that a conference to discuss the current state-of-the-art and technology and to delineate logical steps in the construciton of a program of thermodynamic research useful in fulfilling the mission of Fossil Fuel Extraction Division will be held June 14–15, 1979, at the Hilton Hotel, Tulsa, Oklahoma. The conference will be open to the public and begin at 8:00 a.m.

The Chairman is Dr. Herman L. Finke, Department of Energy, Fossil Energy, Fossil Fuel Extraction Division, Washington, D.C. The Chairman is empowered to conduct the meeting in a manner that in his judgment will facilitate the orderly conduct of business.

Seating will be made available on a first-come, first-served basis.

Copies of the proceedings of the conference will be made available following their certification by the Chairman and Program Director/Fossil Energy at the Department of Energy's Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, upon payment of appropriate charges.

Issued in Washington, D.C. on June 5, 1979.

Donald M. Kerr,
Acting Assistant Secretary for Energy Technology.

[FR Doc. 79-17852 Filed 6-7-79; 8:45 am]
BILLING CODE 6450-01-M

Environmental Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given that the Ad Hoc Subcommittee of the Environmental Advisory Committee will meet Monday, June 25, 1979, at 9:00 a.m., Room 4222C, Department of Energy, 20 Massachusetts Avenue NW., Washington, D.C. If Subcommittee business is not concluded by the afternoon of June 25, the meeting will continue on June 26, 1979, at 9:00 a.m., Room 4234, 20 Massachusetts Avenue NW., Washington, D.C.

The purpose of the Environmental Advisory Committee is to advise the Department of Energy on the overall activities which pertain to the goals of restoring, protecting and enhancing environmental quality and assuring public health and safety.

The subcommittee will address the use and significance of demand projections in the formulation of national energy policy.

The meeting is open to the public. The Chairwoman of the Subcommittee is empowered to conduct the meeting in a fashion that will, in her judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to the meeting should inform the Advisory Committee Management Office, (202) 252-5187, at least 5 days prior to the meeting and reasonable provision will be made to include their presentation on the agenda.

Transcripts of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, Room GA-152, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. In addition, any person may purchase a copy of the transcript from the reporter.

Issued at Washington, D.C., on June 4, 1979.

Georgia Hildreth,
Director, Advisory Committee Management.

[FR Doc. 79-17818 Filed 6-7-79; 8:45 am]
BILLING CODE 6450-01-M

Southeastern Power Administration

Intent to Revise Rates and Charges

AGENCY: Southeastern Power Administration (SEPA), Department of Energy.

ACTION: Proposed rate revision.

SUMMARY: SEPA proposes to revise its rate schedule applicable to the sale of energy from the Jim Woodruff Project to the Florida Power Corporation, continuing in effect the present rate schedule applicable to the sale of capacity and energy to preference customers. A decrease in revenue of approximately 13 percent is proposed for the period beginning with approval and ending August 10, 1982. It is the purpose of this Notice to (1) invite interested persons to submit written comments, and to (2) advise that a public comment forum will be held to permit interested persons the

opportunity to present views, data or arguments in oral and/or written form regarding the proposed rates.

DATES: Written comments are due on or before July 2, 1979. The public comment forum will be held in Tallahassee, Florida, on June 26, 1979.

ADDRESSES: Five copies of written comments should be submitted to: Administrator, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635.

The public comment forum will be held beginning at 10:00 a.m., June 26, 1979, in Room 41 at the U.S. Courthouse, 110 East Park Avenue, Tallahassee, Florida 32301.

FOR FURTHER INFORMATION CONTACT: Curtis H. Bell, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635, 404–283–3261.

SUPPLEMENTARY INFORMATION: Revision in the rate to Florida Power Corporation is appropriate for reasons of equity and the reduced revenue level is appropriate in order that payout may be accomplished throughout the entire 50-year repayment period. Proposed monthly rates applicable to customers purchasing power from the Jim Woodruff Project are as follows:

Preference Customers

Capacity/kw	$1.50
Energy/kwh (mils)	4.50

Florida Power Corporation

Energy: a rate equal to 60 percent of the calculated saving in the cost of fuel per kwh to the Company determined as follows:

Energy Rate = 60% × Fm/Sm (Computed to the nearest $0.00001 (1/100 mil) per kwh)

Where: Fm = Company fuel cost in the current period as defined in Federal Power Commission Order 517 issued November 13, 1974, Docket No. R–479.

Sm = Company sales in the current period reflecting only losses associated with wholesale sales for resale. Sale shall be equated to the sum of (a) generation, (b) purchases, (c) interchange-in, less (d) intersystem sales, less estimated wholesale losses (based on average transmission loss percentage for preceding calendar year).

Method of Application: The energy rate applied during the current billing month will be based on costs and equated sales for the second month preceding the billing month.

Copies of proposed rate schedules are available upon request and studies and other information used in developing the proposed rates are available for inspection and/or copying at the headquarters' offices of Southeastern Power Administration.

Additionally, a finding has been made based upon an Environmental Review that the proposed revised rates will not have a significant effect upon the quality of the human environment. The Environmental Review is likewise available for inspection and/or copying at SEPA headquarters.

The public comment forum will not be adjudicative in nature. A SEPA designated official will preside, SEPA representatives will give background information and explanations supporting the proposed revised rates and charges and answer questions relevant thereto, and those making oral presentations may be questioned by the presiding official and other participating SEPA representatives. Any further procedural rules needed for the proper conduct of the forum will be announced prior to the forum by the presiding official. Forum proceedings will be transcribed. Copies of the transcript may be purchased from the reporter. Written comments, written answers to questions, and any other documents submitted to SEPA and not included in the forum transcript will be available for inspection and/or copying at the SEPA headquarters' offices in Elberton, Ga., between the hours of 8 a.m. and 5 p.m., Monday through Friday. The forum transcript will likewise be available for inspection at the SEPA headquarters' offices. Issued in Elberton, Ga., May 23, 1979.

Kenelm E. Rucker,

Acting Administrator.

[FR Doc. 79-17817 Filed 6-7-79; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1243–7]

Availability of Environmental Impact Statements

AGENCY: Office of Environmental Review, Environmental Protection Agency.

PURPOSE: This Notice lists the Environmental Impact Statements which have been officially filed with the EPA and distributed to Federal Agencies and interested groups, organizations and individuals for review pursuant to the Council on Environmental Quality's Regulations (40 CFR Part 1506.9).

PERIOD COVERED: This Notice includes EIS's filed during the week of May 28 to June 1, 1979.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this Notice is calculated from June 8, 1979 and will end on July 23, 1979. The 30-day wait period for final EIS's will be computed from the date of receipt by EPA and commenting parties.

EIS AVAILABILITY: To obtain a copy of an EIS listed in this Notice you should contact the Federal agency which prepared the EIS. This Notice will give a contact person for each Federal agency which has filed an EIS during the period covered by the Notice. If a Federal agency does not have the EIS available upon request you may contact the Office of Environmental Review, EPA for further information.

BACK COPIES OF EIS'S: Copies of EIS's previously filed with EPA or CEQ which are no longer available from the originating agency are available from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Kathi Weaver Wilson, Office of Environmental Review A–104, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 755–0780.

SUMMARY OF NOTICE: Appendix I sets forth a list of EIS's filed with EPA during the week of May 28 to June 1, 1979 the Federal agency filing the EIS, the name, address, and telephone number of the Federal agency contact for copies of the EIS, the filing status of the EIS, the actual date the EIS was filed with EPA, the title of the EIS, the State(s) and County(ies) of the proposed action and a brief summary of the proposed Federal action and the Federal agency EIS number if available. Commenting entities on draft EIS's are listed for final EIS's.

Appendix II sets forth the EIS's which agencies have granted an extended review period or a waiver from the prescribed review period. The Appendix II includes the Federal agency responsible for the EIS, the name, address, and telephone number of the Federal agency contact, the title, State(s) and County(ies) of the EIS, the date EPA announced availability of the EIS in the Federal Register and the extended date for comments.

Appendix III sets forth a list of EIS's which have been withdrawn by a Federal agency.

Appendix IV sets forth a list of EIS retractions concerning previous Notices of Availability which have been made because of procedural noncompliance with NEPA or the CEQ regulations by the originating Federal agencies.

Appendix V sets forth a list of reports or additional supplemental information on previously filed EIS's which have

been made available to EPA by Federal agencies.

Appendix VI sets forth official corrections which have been called to EPA's attention.

Dated: June 5, 1979.

William N. Hedeman, Jr.,

Director, Office of Environmental Review.

APPENDIX I

EIS's Filed With EPA During the Week of May 28 to June 1, 1979

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Coordinator, Environmental Quality Activities, Office of the Secretary, U.S. Department of Agriculture, Room 412A, Washington, D.C. 20250, (202) 447–3965.

Forest Service

Draft

Elk Wild and Scenic River Study, Routt County, Colo., May 30: Proposed is the inclusion of 35 miles of the Elk River and 7,400 acres of adjacent land of the Routt National Forest in Routt County, Colorado, in the National Wild and Scenic Rivers System, of the area recommended for inclusion 17 miles of river and 3,800 acres will be classified as wild; 12 miles of river and 2,700 acres will be classified as scenic; and 6 miles of river and 900 acres will be classified as recreational. (DES–80–11–79–03–LEG) (EIS Order No. 80541.)

Final

Mammoth-Mono Planning Unit, Inyo NF, Mono, Madera, Fresno Counties, Calif., May 29: The proposed action involves the selection of a management plan for the Mammoth-Mono Planning Unit (MMPU) of the Inyo National Forest. The plan will replace or continue the multiple use management plan, which will be in effect until the unit plan is selected. The proposed action does not involve the planning of private lands. The project purpose is to resolve management problems and to respond to physical biological, social, and economic changes that have occurred since the multiple use management plan was approved in 1970. The entire MMPU is within the counties of Mono, Madera and Fresno, California. (USDA–FS–R5–FES(ADM)–05–04–78–07) Comments made by: EPA, DOI, COE, DOT, DOE, HEW, AHP, DLAB, State and local agencies, individuals and businesses. (EIS Order No. 80534.)

U.S. ARMY CORPS OF ENGINEERS

Contact: Mr. Richard Makinen, Office of Environmental Policy, Attn: DAEN–CWR–P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 20 Massachusetts Avenue NW., Washington, D.C. 20314, (202) 272–0121.

Final

Texas City and Vicinity Hurricane Flood Protection, Galveston County, Tex., May 29: The proposed action is the completion of the authorized Texas City and Vicinity Hurricane-Flood Protection Project, Galveston County, Texas. Completion of the system involves incorporating 4.8 miles of reservoir and canal containment levees into the project at the northwest terminus and incorporating, by enlargement and extension, a locally constructed levee at the southwest terminus of the project. (Galveston District) Comments made by: EPA, DOI, DOC, AHP, USDA, HUD, DOE, DOT, State and local agencies. (EIS Order No. 80532.)

Jarvis Creek Navigation Improvements, Northumberland County, Va., May 31: Proposed is the improvement of navigation at Jarvis Creek by dredging a channel about 2,000 feet long with a bottom width of 80 feet and total depth of 10 feet. Approximately 57,000 cubic yards of highly organic marine silts and clay will be removed by hydraulic pipeline dredge and disposed of in a 10-acre confined upland site. The alternatives considered include: maintenance of emergency channel; reduced dimensions; relocation of processing facilities and vessels; truck hauling of seafood; and a deepwater pier with rehandling to existing processing facilities. This project is locatd in Northumberland County, Virginia. (Norfolk District) Comments made by: DOC, EPA, DOI, USDA, HUD, State Agencies. (EIS Order No. 80540.)

Draft Supplement

Shidler Lake, Salt Creek, Section 404, (DS–1), Osage County, Tex., May 31: This statement supplements final EIS, No. 51080, filed 11–13–75 concerning the construction of Shidler Dam, a multipurpose project on Salt Creek, Osage County, Oklahoma. This supplement is an evaluation of the effects of discharge of dredged or fill material into the waters of Salt Creek during the construction of an earthern dam and the relocation of a section of a county road. (Tulsa District) (EIS Order No. 80542.)

DEPARTMENT OF COMMERCE

Contact: Dr. Sidney R. Galler, Deputy Assistant Secretary, Environmental Affairs, Department of Commerce, Washington, D.C. 20230, (202) 377–4335.

Economic Development Administration

Draft

National Public Works and Economic Development Act, Legislative, May 29: Proposed is the National Public Works and Economic Development Act (NPWEDA) of 1979. It is proposed that the programs of the Public Works and Economic Development Act of 1965, which expires in September 1979, be combined with additional economic development tools which would be exercised by EDA. Assistance under NPWEDA would be targeted at urban and rural areas which have not shared in the National economic growth. The legislation will provide: planning capabilities to enable areas to realize their potentials; essential public services and facilities to supply the infrastructure to support economic development; and financial incentives to attract new private investment. (EIS order No. 80539.)

Nat'l Oceanic and Atmospheric Admin.

Final

Alaska Coastal Zone Management Program (CZM), Alaska, May 30: proposed is a coastal zone management plan for the State of Alaska. The program will develop new coastal policies, rules, responsibilities, obligations and relationships with an established approach of shared local and State coastal management responsibility. Some features of the program include: 1) protection of coastal lands and water habitats; 2) a common basis for coastal decisions; 3) definition of division of responsibility; 4) specific management for areas of extraordinary coastal values; and 5) overall attention for energy, timber, mining, and commerce resources. Comments made by: DOI, COE, USN, EPA, HUD, AHP, DOT, NRC, FERC, State and local agencies, groups and individuals. (EIS order No. 80543.)

DEPARTMENT OF DEFENSE, AIR FORCE

Contact: Dr. Carlos Stern, Deputy for Environment and Safety, Department of the Air Force, Room 4C885, Pentagon, Washington, D.C. 20330, (202) 697–9227.

Draft

Bold Eagle 80, Joint Readiness Exercise, Santa Rosa, Okaloosa, Walton Counties, Fla., May 31: Proposed is the fifth annual large scale JCS coordinated joint readiness exercise, Bold Eagle 80, at Eglin AFB located in Santa Rosa, Okaloosa, and Walton Counties, Florida. Exercise elements will include approximately 20,000 troops, 200 aircraft (and helicopter), 3000 self-propelled wheeled vehicles and 195 tracked vehicles. The action is designed to exercise selected organizations in large unit deployment and in the procedures and tactics to be used as part of a joint force. A portion of the Blackwater River State Forest is also proposed for uncoventional warfare activities. (EIS order No. 80549.)

Final

Pave Paws Radar System Operation, Otis AFB, Barnstable County, Mass., May 31: Proposed is the operation of the Pave Paws Radar System located at Otis Air Force Base, Barnstable County, Massachusetts. Pave Paws is a new surveillance and tracking radar and its primary purpose is to detect, track and provide early warning of sea-launched ballistic missiles. Also, Pave Paws will be used to assist the USAF Space Track System to track objects orbiting the earth. With Pave Paws in operation, older radar systems located in Maine and North Carolina will be retired. (HQ–AFSC–TR–79–04–Part 1) Comments made by: DOT, DOE, HEW, DOC, DOI, HUD, EPA, State and local agencies, groups, individuals and businesses. (EIS order No. 80545.)

GENERAL SERVICES ADMINISTRATION

Contact: Mr. Carl W. Penland, Acting Director, Environmental Affairs Division, General Services Administration, 18th and F Streets NW., Washington, D.C. 20405, (202) 566–1416.

Final

Customs Services Cargo Inspection Facility, Detroit, Wayne County, Mich., May 29: The proposed action is to acquire and convert an existing truck terminal warehouse facility into a United States customs service cargo inspection facility at the Ambassador Bridge border station, Detroit, Wayne County, Michigan. The facility will provide space for approximately 20 customs service employees on a site to be acquired. The facility will include approximately 5,350 square feet of office space, a truck dock inspection warehouse of approximately 14,100 square feet and parking for a minimum of 40 trucks and a minimum of 24 other vehicles. The site area will be approximately 172,000 square feet. (EMI78002) Comments made by: FERC, USDA, COE, DOI, TREA, EPA, State and local agencies, businesses. (EIS order No. 90537.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256 Interior Bldg., Department of the Interior, Washington, D.C. 20240, (202) 343–3891.

Fish and Wildlife Service

Final

Canaan Valley National Wildlife Refuge, Tucker County, W. Va., May 30: The U.S. Fish and Wildlife Service proposed to acquire approximately 28,000 acres of mixed wetlands, upland and farmland habitat for the purpose of preserving and maintaining a unique natural ecosystem in Tucker County, West Virginia. The area, generally known as the Canaan Valley, would become a unit of the National Wildlife Refuge System to be acquired under the existing authority of the Fish and Wildlife Act of 1956. (FES–79–22) Comments made by: FERC, DOT, DOI, EPA, State agencies, groups. (EIS order No. 90544.)

Bureau of Land Management

Draft

Jackson and Klamath Units, Timber Management Plan, Jackson, Josephine, Klamath, Oreg., May 30: Proposed is a ten-year timber management plan for the 488,258 acres of public land in the Jackson and Klamath sustained yield units of the Medford district in the counties of Jackson, Josephine and Klamath, Oregon. The proposed annual timber harvest is 20.55 million cubic feet. Treatments specified by the proposal include road construction harvest by two-stage shelterwood, clearcut, and single tree selection methods; slash disposal; site preparation; planting of trees; herbicide application; precommercial thinning; fertilization; and commercial thinning. (DES–79–29). (EIS order No. 90540.)

NUCLEAR REGULATORY COMMISSION

Contact: Mr. Voss A. Moore, Assistant Director for Environmental Projects, Nuclear Regulatory Commission, P–518, Washington, D.C. 20555, (301) 492–8440.

Draft

New Engalnd Power Units 1 & 2, Construction Permit, Washington County, Rhode Island, May 31: Proposed is the issuance of a construction permit for the New England Power Units 1 and 2 located near Block Island Sound in Charleston, Washington County, Rhode Island. The units will employ two pressurized-water reactors rated at 3411 MWT per unit. Each steam turbine generator will have a rating of 1164 MWE of electric power capacity. The net electrical output is about 1150 MWE per unit. The exhaust steam will be cooled by once-through flow of water obtained from and discharged to Block Island Sound. (NUREG–0529). (EIS order No. 90547.)

Final Supplement

Pilgrim Nuclear Station, Unit 2, Alternative Sites, Plymouth County, Mass., May 29: This statment supplements a final EIS (No. 41534), filed 10–7–74. The purpose of this supplement is to comply with the Atomic Safety and Licensing Appeal Board which concluded that the analysis of alternative sites for the generating station was inadequate under NEPA. The proposed action is the issuance of a construction permit to Boston Edison Company for the construction of Pilgrim Nuclear Power Station, Unit 2, located in Plymouth County, Massachusetts. (NUREG–0549) Comments made by: USDA, HEW, DOC, EPA, FERC, DOI, State agencies. (EIS order No. 90536.)

OHIO RIVER BASIN COMMISSION

Contact: Mr. Fred J. Krumholtz, Chairman, Suite 208–20, Ohio River Basin Commission, 36 East Fourth Street, Cincinnati, Ohio 45202, (513) 684–3831.

Final d

Water and Land Resource Plan, Ohio River Basin, several counties, May 29; Proposed is a regional water and land resource plan for the Ohio River Basin in the States of Illinois, North Carolina, Indiana, Kentucky, New York, Maryland, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia. The plan consists of: 1) 1,233, PL–566 and RC&D projects; 2) 3 navigation projects; 3) 7 reservoir projects; 4) 45 local flood protection projects; 5) 793 municipal water quality control measures; 6) 107 recreation areas; 7) 9 State wild and scenic rivers; 8) 101 natural areas; 9) 69 fish and wildlife areas; 10)2 hydroelectric power projects, 11) nine state wild and scenic rivers, and 12) 102 natural areas. Comments made by: USDA, USA, DOC, EPA, HEW, HUD, DOI, DOT, State and local agencies. (EIS order No. 90535.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street SW., Washington, D.C. 20590, (202) 426–4357.

Federal Highway Administration

Draft

Alton Beltline Extension, IL–140 to Broadway Blvd., Madison County, Ill., May 30: Proposed is the construction, on a new alignment, of the Alton Beltline Extension (FAP Route 788 S) located in Madison County, Illinois, the project will extend for two miles from the Alton Beltline Highway's present terminus at College Avenue (IL–140) in northeast Alton to Broadway in southeast Alton, near the city's common corporate boundary with east Alton. Project features include the reconstruction of the "Thousand Island" intersection, replacement of the present two-lane Milton Road bridge over Wood River Creek, and relocation of Milton Road over come-in place. (FHWA–IL–EIS–79–02–D) (EIS order No. 90542.)

Final

FAP 412, I–80 to U.S. 51, Illinois River Crossing, LaSalle, McLean Counties, Ill., May 31: Proposed is the construction of a portion of FAP Route 412, between I–55 near Normal, McLean County to I–80, LaSalle County, Illinois. The total length of the project is approximately 30 miles and includes a major river crossing at the Illinois River. All proposed construction is on a new alignment. This statement finalizes a portion of the project proposed in the draft EIS, No. 40635, filed 4–22–74, titled F.A. 412, LaSalle and Lee Counties. A separate final EIS will be issued pending further analysis of the effect on farm lands. (FHWA–IL–EIS–76–02–F) Comments made by: AHP, USDA, DOC, COE, HEW, DOI, EPA, DOT, State and local agencies, individuals. (EIS order No. 90551.)

Final

IL–143 (FAP Route 50), Relocation/Reconstruction, Madison County, Ill., May 29: Proposed is the relocation of IL–143 within the urban area of Wood River, and the reconstruction of IL–143 in rural areas between Wood River and Edwardsville in Madison County, Illinois, from the intersection of IL–3 and FAP 155, a distance of approximately six miles. The two basic alternatives considered in the study were: 1) no build and 2) construction of a four–lane highway within the approved corridor. (FHWA–ILL–EIS–77–03–F) Comments made by: DOI, DOT, EPA, USDA, State agencies. (EIS order No. 90533.)

Urban Mass Transportation Administration

Draft

Transit System Improvements, Los Angeles, Los Angeles County, Calif., June 1: Proposed are improvements to the Los Angeles regional core transit system in Los Angeles County, California. In addition to no build, improvements which are considered fall into two categories of five alternatives each. The first category, rapid rail, consists of alternatives for a line-haul rail rapid transit facility supplemented by a network of feeder buses. The second category, all bus, consisting of line haul and feeder buses, has alternatives ranging from an exclusive grade separated aerial to simple incremental improvements. (EIS order No. 90553.)

North Shore Transit Improvements, Boston, Suffolk County, Mass., May 29: Proposed is the North Shore Transit Improvement Project in the city of Boston, Suffolk County, Massachusetts. Six alternatives are considered. The first alternative concerns no action other than certain improvements already planned, and includes the sub-alternative of upgrading of the local bus system. The remaining alternatives are: 1)

Upgrading of the Wonderland to Lynn Center, 2) extension of the Blue Line from Wonderland to Lynn Center, 3) upgrade the Commuter Rail System, and 4) upgrade the Line-Haul Bus. (UMTA-MA-29-0001) (EIS order No. 90538.)

VETERANS ADMINISTRATION

Contact: Mr. Willard Sitler, Director, Environmental Affairs Office (66), Veterans Administration, 810 Vermont Avenue, Washington, D.C. 20420, (202) 389-2526.

Draft

VA Medical Center, Hospital Replacement, Portland, Multnomah County, Oreg., June 1: Proposed is the construction of a replacement hospital for the VA Medical Center located in Portland, Multnomah County, Oregon. The plan is to construct a new 600-bed facility either at the existing site adjacent to a university medical school or at a nearby site adjacent to a private hospital. The proposed expansion would double the size of the existing facility and increase the number of beds to 600. The sites considered are at Marquam Hill or adjacent to Emanuel Hill. (EIS order No. 90552.)

EIS's Filed During the Week of May 28 to June 1, 1979

[Statement Title Index—by State and County]

State	County	Status	Statement title	Accession No.	Date filed	Originating agency No.
Alaska		Final	Alaska Coastal Zone Management program (CZM)	90548	05-30-79	DOC
California	Fresno	Final	Mammoth-Mono Planning Unit, Inyo NF	90534	05-29-79	USDA
	Los Angeles	Draft	Transit System Improvements Los Angeles	90553	06-01-79	DOT
	Madera	Final	Mammoth-Mono Planning Unit, Inyo NF	90534	05-29-79	USDA
	Mono	Final	Mammoth-Mono Planning Unit, Inyo NF	90534	05-29-79	USDA
Colorado	Routt	Draft	Elk Wild and Scenic River Study	90541	05-30-79	USDA
Florida	Okaloosa	Draft	Bold Eagle 80, Joint Readiness Exercise	90549	05-31-79	USAF
	Santa Rosa	Draft	Bold Eagle 80, Joint Readiness Exercise	90549	05-31-79	USAF
	Walton	Draft	Bold Eagle 80, Joint Readiness Exercise	90549	05-31-79	USAF
Illinois	La Salle	Final	FAP 412, I-80 to U.S. 51, Illinois River Crossing	90551	05-31-79	DOT
	Madison	Draft	Alton Beltline Extension, IL-140 to Broadway Blvd	90542	05-30-79	DOT
		Final	IL-143 (FAP Route 50), Relocation/Reconstruction	90535	05-29-79	DOT
	McLean	Final	FAP 412, I-80 to U.S. 51, Illinois River Crossing	90551	05-31-79	DOT
Massachusetts	Barnstable	Final	Pave Paws Radar System Operation, Otis AFB	90545	05-31-79	USAF
	Suffolk	Draft	North Shore Transit Improvements, Boston	90539	05-29-79	DOT
	Plymouth	Supple	Pilgrim Nuclear Station, Unit 2, Alternative Sites	90536	05-29-79	NRC
Michigan	Wayne	Final	Customs Service Cargo Inspection Facility, Detroit	90537	05-29-79	GSA
Legislative		Draft	National Public Works and Economic Development Act.	90550	05-29-79	DOC
Oklahoma	Osage	Supple	Skiatook Lake, Salt Creek, Section 404, (DS-1)	90548	05-31-79	COE
Oregon	Jackson	Draft	Jackson and Klamath Units, Timber Management Plan.	90540	05-30-79	DOI
	Josephine	Draft	Jackson and Klamath Units, Timber Management Plan.	90540	05-30-79	DOI
	Klamath	Draft	Jackson and Klamath Units, Timber Management Plan.	90540	05-30-79	DOI
	Multnomah	Draft	VA Medical Center, Hospital Replacement, Portland	90552	06-01-79	VA
Rhode Island	Washington	Draft	New England Power Units 1 and 2, Construction Permit.	90547	05-31-79	NRC
Several	Several	Final	Water and Land Resource Plan, Ohio River Basin	90535	05-29-79	OWRC
Texas	Galveston	Final	Texas City and Vicinity Hurricane Flood Protection	90532	05-29-79	COE
Virginia	Northumberland	Final	Jarvis Creek Navigation Improvements	90546	05-31-79	COE
West Virginia	Tucker	Final	Canaan Valley National Wildlife Refuge	90544	05-30-79	DOI

Appendix II.—Extension/Waiver of Review Periods on EIS's Filed With EPA

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Waiver/ extension	Date review terminates
U.S. DEPARTMENT OF AGRICULTURE					
Mr. Barry Flamm, Coordinator, Environmental Quality Activities, Office of the Secretary, U.S. Department of Agriculture, Room 412A, Washington, D.C. 20250, (202) 447-3965.	Elk River Wild and Scenic, River Study, Colorado.	Draft 90541	06/06/79. See Appendix I.	Extension	08/20/79
NUCLEAR REGULATORY COMMISSION					
Mr. Voss A. Moore, Assistant Director for Environmental Projects, Nuclear Regulatory Commission, P-518, Washington, D.C. 20555, (301) 492-8448.	New England Power Units, 1 and 2.	Draft 90547	06/06/79. See Appendix I.	Extension	08/06/79

Appendix III.—EIS's Filed EPA Which Have Been Officially Withdrawn by the Originating Agency

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Date of withdrawal
None.				

Appendix IV.—*Notice of Official Retraction*

Federal agency contact	Title of EIS	Status/number	Date notice published in "Federal Register"	Reason for retraction
None.				

Appendix V.—*Availability of Reports/Additional Information Relating to EIS's Previously Filed with EPA*

Federal agency contact	Title of Report	Date made available to EPA	Accession No.
GENERAL SERVICES ADMINISTRATION			
Mr. Carl W. Penland, Acting Director, Environmental Affairs Division, General Services Administration, 18th and F Streets, NW, Washington, D.C. 20405, (202) 566-1416.	Historic Assessment for Three Possible Sites for the Proposed Federal Building and Parking Structure, Savannah, Georgia.	05/31/79	80580

Appendix VI.—*Official Correction*

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Correction
None.				

[FR Doc. 79-17080 Filed 6-7-79; 8:45 am]
BILLING CODE 6560-01-M

[FRL 1242-7; PP 8G2066/T207]

Pesticide Programs; Extension of a Temporary Tolerance for Ethephon

The Environmental Protection Agency (EPA) in response to a pesticide petition (PP 8G2066) submitted to the Agency by Union Carbide Agricultural Products Co., Inc., Brookside Ave., Ambler, PA 19002, established a temporary tolerance for residues of the plant regulator ethephon ((2-chloroethyl)phosponic acid) in or on the raw agricultural commodity cottonseed at 0.5 part per million (ppm). This temporary tolerance is scheduled to expire July 14, 1979.

Union Carbide Agricultural Products Co., Inc., requested a one-year extension of this temporary tolerance both to permit continued testing to obtain additional data and to permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of an experimental use permit (264-EUP-55) that has been extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that an extension of the temporary tolerance would protect the public health. Therefore, the temporary tolerance has been extended on condition that the pesticide is used in accordance with the experimental use permit with the following provisions.

1. The total amount of the pesticide to be used must not exceed the quantity authorized by the experimental use permit.

2. Union Carbide Agricultural Products Co., Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The firm must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary tolerance expires June 15, 1980. Residues not in excess of 0.5 ppm remaining in or on cottonseed after this expiration date will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the experimental use permit and temporary tolerance. This temporary tolerance may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicate such revocation is necessary to protect the public health. Inquiries concerning this notice may be directed to Mr. Robert Taylor, Product Manager 25, Registration Division (TS-767), Office of Pesticide Programs, 401 M St., SW, Washington, DC 20460 (202/755-7013).

(Section 408(j) of the Federal Food, and Cosmetic Act [21 U.S.C. 346a(j)])

Dated: May 29, 1979.

Douglas D. Campt,

Director, Registration Division.

[FR Doc. 79-17073 Filed 6-7-79; 8:45 am]
BILLING CODE 6560-01-M

[FRL 1242-6; OPP-180296]

Idaho and Washington State Departments of Agriculture; Issuance of Specific Exemptions To Use Dinoseb To Control Broadleaf Weeds in Lentils

AGENCY: Environmental Protection Agency (EPA), Office of Pesticide Programs.

ACTION: Issuance of specific exemptions.

SUMMARY: EPA has granted specific exemptions to the Idaho and Washington State Departments of Agriculture to use dinoseb for the control of various broadleaf weeds on 40,000 acres of lentils in the northern counties of Idaho and 70,000 acres of lentils in Spokane and Whitman Counties, Washington. The specific exemptions expire on June 15, 1979.

FOR FURTHER INFORMATION CONTACT: Emergency Response Section,

Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, S.W., Room: E-124, Washington, D.C. 20460, Telephone: 202/426-2601. It is suggested that interested persons telephone before visiting EPA Headquarters so that the appropriate files may be made conveniently available for review purposes.

SUPPLEMENTARY INFORMATION: According to Idaho and Washington, the broadleaf weeds, mustard, lambsquarter, borage, and nightshade are the major problems threatening lentil production. Lack of weed control in lentils not only reduces yield, but also increases weed problems in succeeding rotational crops. Idaho and Washington state that herbicide treatment must be made within a few days after planting and before crop emergence.

There are currently no EPA-registered herbicides for pre-emergence control of broadleaf weeds in lentils. Dinoseb (2-sec-butyl-4-6-dinitrophenol), alkanolamine salts of the ethanol series, is currently registered as a pre-emergence treatment for control of broadleaf weeds in peas, potatoes, strawberries, and other crops at rates of up to nine pounds active ingredient (a.i.) per acre. Idaho and Washington proposed to use one application of a product called Premerge 3 (EPA Reg. No. 464-490) at the rate of three pounds a.i. per acre in at least twenty gallons of water. This application will be made to 40,000 acres of lentils in the northern counties of Idaho and 70,000 acres in Whitman and Spokane Counties, Washington, by State-licensed commercial applicators or qualified growers.

The tolerance petition to establish residue levels for the use of dinoseb on lentils has not been granted pending resolution of the nitrosamine question. However, EPA has estimated that the maximum concentration for the nitrosamine impurity DENA available for public exposure from the proposed use is 0.028 part per billion based on the proposed tolerance of 0.1 part per million (ppm) and assuming that the impurity is absorbed and stored in the same ratio as dinoseb. This maximum quantity is an unmeasurable quantity which would not pose a quantifiable risk to human health. The maximum concentration for the nitrosamine impurity DENA available for applicator hazard is estimated to be an acceptable risk situation provided the applicators wear protective clothing.

No unreasonable adverse risk to the environment is expected to result from this use of dinoseb.

Idaho and Washington estimated that a potential loss in yield of twenty-five percent is expected if the weeds are not controlled; this amounts to a loss in yield of 350 pounds per acre. The dollar loss could be as high as $5,600,000 in Idaho and $9,800,000 in Washington, according to the two States.

After reviewing the application and other available information, EPA has determined that (a) pest outbreaks of various broadleaf weeds have occurred or are about to occur; (b) there is no pesticide presently registered and available for pre-emergence use to control these weeds in lentils in Idaho and Washington State; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the weeds are not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, Idaho and Washington have been granted specific exemptions to use the pesticide noted above until June 15, 1979 to the extent and in the manner set forth in the applications. The specific exemptions are also subject to the following conditions:

1. The product Premerge 3 Dinitro Amine Herbicide [dinoseb (2-sec-butyl-4,6-dinitrophenol) as the alkanol salts (of the ethanol series)], EPA Reg. No. 464-490, manufactured by Dow Chemical, is authorized;

2. Application shall be made by ground at a rate of one gallon Premerge 3 in at least twenty gallons of water per acre (three pounds a.i./acre);

3. A maximum of 40,000 acres of lentil crop in Idaho and 70,000 acres in Washington in the areas named above may be treated;

4. A maximum of 40,000 gallons Premerge 3 (120,000 lbs. a.i. dinoseb) may be applied in Idaho. In Washington, a maximum of 70,000 gallons Premerge 3 (210,000 lbs. a.i. dinoseb) may be applied;

5. One application of Premerge 3 shall be made after planting but before emergence of the lentils;

6. Application shall be made by State-licensed commercial applicators or State-certified growers. In Idaho, University of Idaho personnel, and in Washington, Washington State University Extension Service personnel shall make all recommendations of pesticide applications and apprise applicaters and growers of dosages and other program criteria;

7. A residue level of dinoseb not exceeding 0.1 ppm in or on lentils, lentil hay, or lentil forage has been evaluated as adequate to protect the public health;

8. Idaho and Washington are not to graze or feed treated crops to livestock unless at least 8 weeks have elapsed from the time of pesticide application;

9. All label precautions shall be followed;

10. The EPA shall be informed immediately of any adverse effects to man or the environment resulting from this program;

11. Idaho and Washington shall each be responsible for insuring that all provisions of its specific exemption are followed;

12. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been advised of this action; and

13. Final reports summarizing the results of these programs shall be submitted to EPA by December 31, 1979.

(Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).)

Dated: June 4, 1979.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 79-17874 Filed 6-5-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1243-2]

Pesticides and Toxic Substances Enforcement

On September 30, 1978, the President signed into law S. 1678, the Federal Pesticide Act of 1978 (Pub. L. 95-396, 92 Stat. 819; hereafter "FPA"), which amends the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (Pub. L. 92-516, 86 Stat. 973; Pub. L. 94-140, 89 Stat. 751; 7 USC 136 *et seq;* hereafter referred to as "FIFRA"). As a result of the new amendments, certain of the Pesticide Enforcement Policy Statements (PEPS), which established an administrative mechanism to permit certain pesticide uses which otherwise would have been in violation of FIFRA, are no longer necessary. The purpose of this Notice is to announce the rescission of the affected PEPS and to discuss some of the amendments in the FPA that affect pesticide enforcement policy.

(1) Rescission of Pesticide Enforcement Policy Statements (PEPS) Nos. 1, 2, 5, and 7

On May 5, 1975, the Environmental Protection Agency (EPA) published in the Federal Register a document entitled "Institution of Pesticide Enforcement

Policy Statements" (40 *Fed. Reg.* 19528 (1975)). It was the Agency's purpose in instituting this series of Pesticide Enforcement Policy Statements (PEPS) to inform the general public and persons engaged in the formulation, distribution, sale, application or other use of pesticides, of the policies adopted by the Agency in the enforcement of the provisions of the FIFRA. The PEPS were prepared and published by EPA's Office of Enforcement.

Federal regulation of the use of pesticides was established for the first time with the enactment of the 1972 amendments, specifically through the provisions of FIFRA section 3(d)(1), section 4 and section 12(a)(2)(G). Section 12(a)(2)(G) made it unlawful for any person to use a registered pesticide in a manner inconsistent with its labeling. However, as set forth in the legislative history, Congress intended that EPA enforce the prohibition of section 12(a)(2)(G) in a "common sense manner" and left open in many instances exactly what constituted a "use inconsistent with [a pesticide's] labeling."

The FPA broadens the construction of section 12(a)(2)(G) of FIFRA by adding a new subsection 2(ee) which for the first time defines the term "to use any registered pesticide in a manner inconsistent with its labeling." According to the language of the new subsection, it is a violation of section 12(a)(2)(G) to use a registered pesticide "in a manner not permitted by the labeling" with the exception of four specific areas. The areas specifically excluded from enforcement under § 12(a)(2)(G) include: (a) the use of a pesticide at less than label dosage (PEPS 1) [1]; (b) the use of a pesticide for the control of target pests not named on the labeling, if still consistent with site included on the labeling (PEPS 2 and 5); and, (c) the use of any application method not prohibited by labeling (PEPS 7).[2]

Thus, the new section 2(ee) defines by law certain uses which will not be considered inconsistent with labeling that previously were defined by PEPS. The new definition provides exemptions from the strict label language for users/applicators only. Persons who distribute or sell pesticides still may not make oral or written claims for a product which substantially differ from any claims made for the product as a part of the statement required in connection with its registration under section 3 of FIFRA (eg., claims for use not listed on the labeling), or they will be subject to enforcement action under section 12(a)(1)(B).

(2) Actions affecting pesticide users; rescission of PEPS No. 6

The Office of Enforcement issued a policy statement on March 25, 1976 which stated that pesticide applicators who supply and apply registered pesticides in the course of performing pest control services (hereafter "for hire applicators") were considered sellers and distributors of pesticides. Section 2(e)(1) of the FIFRA has been amended so as to generally exclude "for hire applicators" from being considered sellers or distributors of pesticides where they provide the service of controlling pests without delivering any unapplied pesticide to any person so served. "For hire applicators" are no longer considered sellers or distributors (and thus subject to the higher civil penalties in § 14(a)(1)) unless: (a) they hold or apply an unregistered pesticide, or (b) they deliver any unapplied pesticide to the customer. In either of the above situations a "for hire applicator" would be considered a seller or distributor for any violation of FIFRA, and subject to the higher penalties set forth in sections 14(a)(1) and 14(b)(1). Because of the Congressionally mandated change in the status of "for hire applicators," PEPS No. 6, "Use and Labeling of Service Containers for the Transportation or Temporary Storage of Pesticides" is no longer applicable to the activities of the "for hire applicator."

(3) Continuation of Pesticide Enforcement Policy Statements (PEPS) Nos. 3 and 4

Two of the existing PEPS are not affected by the amendments in the FPA and, therefore, are not rescinded by this Notice. They are PEPS No. 3, entitled "Certain Enforcement Policies To Be Followed During the Phased Implementation of FIFRA Section 3" (41 *Fed. Reg.* 13964 (1976)), and PEPS No. 4, entitled "Preventive Pest Control Treatments in the Absence of Target Pests" (41 FR 28005 (1976)).

(4) Commercial Applicators

The FPA also amends the definition of "commercial applicator" in section 2(e)(3) of FIFRA. The new definition provides that the term "commercial applicator" means any applicator (except a private applicator) who uses or supervises the use of a restricted use pesticide, whether or not that applicator is certified. Such persons who violate FIFRA while using *restricted* use pesticides are considered commercial applicators and subject to the higher penalties of section 14(a)(1) and 14(b)(1). On the other hand, any person (excluding those persons subject to the penalty provisions of section 14(a)(1)), as described in section 2 of this Notice) who holds or applies a pesticide registered for *general* use, or a dilution of a pesticide registered for general use and who violates FIFRA, would be subject to the lower penalties as set forth in sections 14(a)(2) and 14(b)(2) of FIFRA.

(5) Definition of "Producer"

The FPA amends the definition of "producer" to add the following:

The dilution by individuals of formulated pesticides for their own use and according to the directions on registered labels shall not of itself result in such individuals being included in the definition of "producer" for the purposes of this Act.

This amendment makes statutory the Agency's long-standing policy of not considering persons who dilute pesticides as producers unless they engage in the sale and/or distribution of the pesticide.

This notice hereby rescinds PEPS Nos. 1, 2, 5, 6, and 7.

Dated: June 4, 1979.

Jeffrey G. Miller,

Acting Assistant Administrator for Enforcement.

[FR Doc. 79-17970 Filed 6-7-79; 8:45 am]
BILLING CODE 6560-01-M

[1] While PEPS No. 1 excluded certain products which could not be used at less than label dosage—viz, rodenticides, termite control products, and sanitizer/disinfectants—the new definition of section 12(a)(2)(G) does not.

[2] It should be noted that while the FPA amends existing Federal law concerning pesticide misuse, it does not affect State laws. Therefore, before proceeding with any pesticide use in accordance with the exceptions now allowed by the new amendments, pesticide users and applicators should make certain that they will not be in violation of State law.

FEDERAL COMMUNICATIONS COMMISSION

Major Matters Report Available

The Federal Communications Commission prepares an annual report on "Major Matters Before the Commission" to help keep the Congress, the public, and members of the FCC staff apprised of pending proceedings which the Commission considers to be of major significance.

The FCC's 1978 report on major matters, sent to the Congress on April 11, 1979, has been reproduced for distribution to members of the public.

The 1978 report was prepared in a more "plain English" format to make the document more useful to Congress and the public. The report provides a discussion portion, a list of relevant references, and the names of staff

contact persons for each of 87 Commission proceedings.

Copies of the report may be picked up from the Commission's Press Distribution Room (Room 207), 1919 M Street, N.W., Washington, D.C. 20554. Copies may also be requested by writing to or telephoning the Commission's Office of Public Affairs, 1919 M Street, N.W., Room 202, telephone (202) 632-7260.

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 79-17780 Filed 6-7-79; 8:45 am]
BILLING CODE 6712-01-M

National Industry Advisory Committee, Amateur Radio Services Subcommittee; Meeting

Pursuant to the provisions of Public Law 92-463, announcement is made of a public meeting of the Amateur Radio Services Subcommittee of the National Industry Advisory Committee to be held Monday, June 25, 1979. The Subcommittee will meet at the Federal Communications Commission Annex Building, Room A-110, 1229 20th Street, N.W., Washington, D.C. at 9:00 AM.

Purpose: To consider emergency communications matters.

Agenda: As follows:

Items:

1. Chairman's opening remarks.
2. Consideration of prototype Amateur Radio Service communications plan for assistance to local government during emergencies.
   a. Review.
   b. Recommendation to the Commission.
3. Consideration of the Connecticut Emergency Broadcast System Amateur Radio Service Interface Plan as a prototype for use by other states.
   a. Review.
   b. Recommendation to the Commission.
4. Objectives, organization and structure of the Amateur Radio Services Subcommittee.
5. Old business.
6. New business.
7. Adjournment.

Any member of the general public may attend or file a written statement with the Committee either before or after the meeting. Any member of the public wishing to make an oral statement must consult with the Committee prior to the meeting. Those desiring more specific information about the meeting may telephone the Emergency Communications Division, FCC, (202) 632-7232.

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 79-17781 6-7-79; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1178]

Petitions for Reconsideration of Actions in Rulemaking Proceedings Filed

June 4, 1979.

Docket or RM No.	Rule No.	Subject	Date received
21082, RM-3516, RM-3561	73.606(b)	Amendment of Section 73.606(b), Table of Assignments, Television Broadcast Stations. (Lexington, Kentucky, and Portsmouth, Ohio). Filed by G. Jay Saraff and James A. Koerner, Attorneys for Cincinnati Christian Communications, Inc.	May 29, 1979.
		Filed by William P. Barton, Attorney for Frederic Gregg, Jr.	May 29, 1979.

NOTE.—Oppositions to petitions for reconsideration must be filed on or before June 25, 1979. Replies to an opposition must be filed within 10 days after time for filing oppositions has expired.

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 79-17782 Filed 6-7-79; 8:45 am]
BILLING CODE 6712-01-M

[FCC 79-322]

1980 Composite Week Dates for AM and FM Licensees for Program Log Analysis

June 4, 1979.

The following date will constitute the composite week for use in the preparation of: (1) program log analysis submitted with renewal applications for commercial AM and FM station licenses which have expiration dates in calendar year 1980; and (2) assignment of license and transfer of control applications for AM and FM stations which are filed in calendar year 1980.

Sunday July 2, 1978
Monday April 23, 1979
Tuesday September 26, 1978
Wednesday February 7, 1979
Thursday November 9, 1978
Friday January 26, 1979
Saturday March 24, 1979

Commercial television licensees and permittees with license expiraton dates of February 1 and April 1, 1980 will use, in answering Questions 5, 11 and 12 of revised Section IV of FCC Form 303, the composite week dates previously used in preparing the 1978 Annual Programming Report. Stations whose licenses expire on June 1 and thereafter during calendar year 1980 will use a composite week that will be issued in November, 1979. The composite week dates to be used in the preperation of the 1979 Annual Programming Report (FCC Form 303-A), required to be filed February 1, 1980 will also be issued in November, 1979.

Action by the Commission May 29, 1979. Commissioners Ferris (Chairman), Lee, Quello, Washburn, Fogarty, Brown and Jones.

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 79-17783 Filed 6-7-79; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[79-332]

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming consumer exchange meeting to be chaired by Frederick R. Carlson, District Director, Newark District Office, East Orange, New Jersey.

DATE: The meeting will be held 1:30 p.m., Wednesday, June 27, 1979.

ADDRESS: The meeting will be held at the Food and Drug Administration, 20 Evergreen Place, 2nd Floor, East Orange, NJ 07018.

FOR FURTHER INFORMATION CONTACT: Lillie Dortch-Wright, Consumer Affairs Officer, Food and Drug Administration, 20 Evergreen Place, East Orange, NJ 07018, 201-645-3285 or 201-645-6365.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's Newark District Office, and to contribute to the agency's policymaking decisions on vital issues.

Dated: May 31, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-17615 Filed 6-7-79; 8:45 am]

BILLING CODE 4110-03-M

[79-341]

Consumer Participation Open Meeting

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The food and Drug Administration (FDA) announces a forthcoming consumer exchange meeting to be chaired by E. Pitt Smith, District Director, Buffalo District Office, Buffalo, NY.

DATE: The meeting will be held at 1:30 p.m., Thursday, June 14, 1979.

ADDRESS: The meeting will be held at the U.S. Courthouse and Federal Building, 100 S. Clinton St., Syracuse, NY 13260.

FOR FURTHER INFORMATION CONTACT: Lois M. Meyer, Consumer Affairs Officer, Buffalo District, Food and Drug Administration, 599 Delaware Ave., Buffalo, NY 14202, 716-846-4483.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's Buffalo District Office, and to contribute to the agency's policymaking decisions on vital issues.

Dated: May 31, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-17617 Filed 6-7-79; 8:45 am]

BILLING CODE 4110-03-M

[79-339]

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming consumer exchange meeting to be chaired by E. Pitt Smith, District Director, Buffalo District Office, Buffalo, NY.

DATE: The meeting will be held at 10 a.m., Tuesday, June 12, 1979.

ADDRESS: The meeting will be held at the Federal Building & Courthouse, 100 State St., Rochester, NY 14014.

FOR FURTHER INFORMATION CONTACT: Lois M. Meyer, Consumer Affairs Officer, Buffalo District Office, Food and Drug Administration, 599 Delaware Ave., Buffalo, NY 14202, 716-846-4483.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's Buffalo District Office, and to contribute to the agency's policymaking decisions on vital issues.

Dated: May 31, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-17618 Filed 6-7-79; 8:45 am]

BILLING CODE 4110-03-M

[79-340]

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming consumer exchange meeting to be chaired by E. Pitt Smith, District Director, Buffalo District Office, Buffalo, NY.

DATE: The meeting will be held at 10 a.m., Wednesday, June 13, 1979.

ADDRESS: The meeting will be held at Federal Building, Huron and Delaware Ave., Buffalo, NY 14202.

FOR FURTHER INFORMATION CONTACT: Lois M. Meyer, Consumer Affairs Officer, Buffalo District, Food and Drug Administration, 599 Delaware Ave., Buffalo, NY 14202, 716-846-4483.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's Buffalo District Office, and to contribute to the agency's policymaking decisions on vital issues.

Dated: May 31, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-17619 Filed 6-7-79; 8:45 am]

BILLING CODE 4110-03-M

[79-342]

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming consumer exchange meeting to be chaired by E. Pitt Smith, District Director, Buffalo District Office, Buffalo, NY.

DATE: The meeting will be held at 10 a.m., Thursday, June 28, 1979.

ADDRESS: The meeting will be held at the U.S. Federal Building and Courthouse, Mezzanine Conference Room, 15 Henry St., Binghamton, NY 13902.

FOR FURTHER INFORMATION CONTACT: Lois M. Meyer, Consumer Affairs Officer, Buffalo District, Food and Drug Administration, 599 Delaware Ave., Buffalo, NY 14202, 716-846-4483.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's Buffalo District Office, and to contribute to the agency's policymaking decisions on vital issues.

Dated: May 31, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-17631 Filed 6-7-79; 8:45 am]

BILLING CODE 4110-03-M

[79-336]

Miscellaneous External Drug Products Panel; Meeting Change

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Miscellaneous External Drug Products Panel meeting, announced by notice in the Federal Register of May 22, 1979 (44 FR 29727), for June 10 and 11, 1979, has been changed to August 3 and 4, at 9 a.m. in Conference Rm. B, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

FOR FURTHER INFORMATION CONTACT: John T. McElroy, Bureau of Drugs (HFD-510), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1430.

Dated: May 31, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-17629 Filed 6-7-79; 8:45 am]

BILLING CODE 4110-03-M

Office of the Assistant Secretary for Health

University of Arizona; Notice of Intent To Grant Exclusive Patent License

Pursuant to section 6.3, 45 CFR, Part 6, and 41 CFR 101-4, notice is hereby given of an intent to grant to The University of Arizona an exclusive license to manufacture, use, and sell an invention of Thomas C. Cetas, Ph.D., entitled "Birefringent Crystal Thermometer." A copy of U.S. patent application Serial Number 794,142, which was filed on the invention on May 5, 1977, may be obtained upon written request to the Acting Chief, Patent Branch, Department of Health, Education, and Welfare, 5A03 Westwood Building, National Institutes of Health, Bethesda, Maryland 20205.

The proposed license will have a duration of five (5) years, will not be royalty-bearing, and will contain other terms and conditions to be negotiated by the parties in accordance with Department of Health, Education, and Welfare (HEW) patent regulations. HEW will grant the license unless, within sixty (60) days of this Notice, the Acting Chief of the Patent Branch, named hereinabove, receives in writing any of the following, together with supporting documents:

(1) A statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed license; or

(2) An application for a nonexclusive license to manufacture, use, or sell the invention in the United States is submitted in accordance with 41 CFR 101-4-104-2, and the applicant states that he has already brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The Assistant Secretary for Health of the Department of Health, Education, and Welfare will review all written responses to this Notice.

Authority: 45 CFR 6.3 and 41 CFR 101-4.

Dated: June 1, 1979.

Charles Miller,

Acting Assistant Secretary for Health.

[FR Doc. 79-17630 Filed 6-7-79; 8:45 am]

BILLING CODE 4110-03-M

Office of the Secretary

Office of the General Counsel; Delegation of Authority To Certify True Copies

Under the authority delegated by the Secretary to the Assistant Secretary for Management and Budget (43 FR 58670) and redelegated to me by the Assistant Secretary for Management and Budget (44 FR 1473):

1. I hereby redelegate to the following the authority to certify true copies of any books, records, papers or other documents on file within the Department, or extracts from such, to certify that true copies are true copies of the entire file of the Department, to certify the complete original record, or to certify the nonexistence of records on file within the Department, and to cause the Seal of the Department to be affixed to such certifications.

These same officials are authorized to cause the Seal to be affixed to agreements, awards, citations, diplomas, and similar documents.

To whom delegated:

Deputy General Counsel.

Assistant General Counsel, Division of Business and Administrative Law.

Executive Assistant to the General Counsel.

The Regional Attorneys.

Secretary to the General Counsel.

Secretary to the Deputy General Counsel

Legal Administrative Aide, Immediate Office of the General Counsel.

2. The above redelegations supersede the redelegations made under previous authority (35 FR 822 dated 1/22/70 and 38 FR 22967 dated 8/23/73).

These authorities may not be redelegated.

Dated: May 31, 1979.

F. Peter Libassi,

General Counsel.

[FR Doc. 79-17632 Filed 6-7-79; 8:45 am]

BILLING CODE 4110-12-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Alaska Native Claims Selection

Correction

In FR Doc. 79-10547, published at page 20600, on Friday, April 6, 1979, make the following corrections:

1. On page 20600, in the third column, in the paragraph beginning "T. 30 N., R. 79 W.", in between the 22nd and 23rd lines add: "Sec. 21 and 22, excluding Yukon River (Kwikluak Pass).";

2. On page 20601, in the third column, in the first paragraph beginning "T. 31 N., R. 82 W.", in the 33rd line, "Secs. 20 and 23, . . ." should be corrected to read "Secs. 20 to 23, . . .".

BILLING CODE 1505-01-M

[AA-23130]

Alaska; Proposed Withdrawal of Lands

Notice of proposed withdrawal and reservation of lands, appearing in the Federal Register of December 5, 1978, at pages 57134 through 57137, F.R. Doc. No. 34051, is hereby amended as follows:

1. The following described lands are hereby added to the Department of Agriculture's Notice of Proposed Withdrawal of Lands:

College Fiord—Prince William Sound—Nellie Juan Area

Seward Meridian

T. 2 N., R. 3 W., all lands within the national forest boundary,
T. 9 N., R. 13 E.,
T. 10 N., Rs. 13 and 14 E.

Copper River Meridian

T. 5 S., R. 7 W., all lands south of the hydrographic divide,
T. 11 S., R. 9 W.,

Russell Fiord—Yakutat Forelands Area

Copper River Meridian

T. 24 S., R. 30 E., all land in Nunatak Fiord Drainage.

Admiralty Island Area

Copper River Meridian

T. 40 S., R. 64 E., all land southwest of Saginaw Channel.

West Chichagof—Yakobi

Copper River Meridian

T. 45 S., R. 55 E.

Admiralty Island Area

Copper River Meridian

T. 49 S., Rs. 67 through 70 E.

Stikine—Leconte Area

Copper River Meridian

T. 61 S., Rs. 62 and 63 E., all land except Kadin and Rynda Islands.

Tebenkof Bay Area

Copper River Meridian

T. 62 S., Rs. 71 and 72 E.
T. 62 S., R. 73 E., all land in Tebenkof Bay drainage.

Coronation Island—Warren Island—Maurille Island Area

Copper River Meridian

T. 69 S., Rs. 72 through 75 E.

Copper River Area

Copper River Meridian

T. 13 S., R. 1 W., all lands within the national forest south of the hydrographic divide,
T. 14 S., R. 1 W.,
T. 14 S., R. 2 W., all land south and east of hydrographic divide between Mt. Kelly and the ridgetop north of Humpback Creek and extending into Saltwater,
T. 15 S., Rs. 1 and 2 W.,
T. 15 S., R. 3 W., all land south and east of the hydrographic divide in Orca Inlet,
T. 16 S., Rs. 1 through 3 W.,
T. 16 S., R. 4 W., all land on the mainland including land on Mummy Island,
T. 17 S., Rs. 1 through 4 W.,
T. 18 S., Rs. 1 and 2 W.,
T. 19 S., R. 1 W.,
T. 13 S., R. 1 E., all land within the national forest boundary,
T. 14 S., Rs. 1 and 2 E., all lands within the national forest boundary,
T. 15 S., Rs. 1 through 9 E., all lands within the national forest boundary,
T. 16 S., Rs. 1 through 8 E.,
T. 16 S., R. 9 E., all land within the national forest boundary,
T. 17 S., Rs. 1 through 8 E.,
T. 17 S., R. 9 E., all land within the national forest boundary,
T. 18 S., Rs. 1 through 8 E.,
T. 18 S., R. 9 E., all land within the national forest boundary,
T. 19 S., Rs. 1 through 8 E.,
T. 19 S., R. 9 E., all land within the national forest boundary,
T. 20 S., Rs. 4 through 8 E.,
T. 20 S., R. 9 E., all land within the national forest boundary,
T. 21 S., Rs. 6 through 8 E.,
T. 21 S., R. 9 E., all land within the national forest boundary,
T. 22 S., Rs. 5 through 9 E.,
T. 23 S., Rs. 5 and 6 E.,
T. 24 S., Rs. 4 and 5 E.,

South Baranof Area

Copper River Meridian

T. 57 S., R. 65 E., all land located south of the hydrographic divide south of Lake Irina,
T. 57 S., R. 66 E., all land south of the hydrographic divide just north of Lake Diana,
T. 57 S., R. 67 E., all land south of the hydrographic divide extending southerly to Mt. Race, thence northeasterly,
T. 57 S., R. 68 E., all land south of the hydrographic divide just north of Long Lake and easterly from that hydrographic divide to saltwater,
T. 58 S., R. 64 E., all land east of a line beginning at a point on the south line of T. 58 S., R. 64 E., midway between President Bay and Seven Fathom Bay, thence northeasterly to Mt. Sharp, thence easterly along the hydrographic divide to the east line of T. 58 S., R. 64 E.,
T. 58 S., R. 65 E., all land east of hydrographic divide west of West Crawfish Inlet,
T. 58 S., Rs. 66 through 68 E.,
T. 59 S., R. 64 E., all land except the islands west of the main channel leading into West Crawfish Inlet,
T. 59 S., Rs. 65 through 68 E.,
T. 60 S., Rs. 64 through 68 E.,
T. 61 S., Rs. 66 and 67 E.,
T. 61 S., R. 68 E., all land west and north of the hydrographic divide dividing the Rezanof Lake and Deep Cover watersheds and all land east of the hydrographic divide dividing the Deep Cove and Banner Lake Watersheds,
T. 61 S., R. 69 E., all land north of the hydrographic divide between the Deep Cove and Patterson Bay drainages,
T. 62 S., R. 66 E.,
T. 62 S., R. 67 E., all land west of the hydrographic divide just west of Snipe Bay,
T. 62 S., R. 68 E., all land west of the hydrographic divide northwest of Antipatr Lake.

Petersburg Creek-Duncan Canal Area

Copper River Meridian

T. 57 S., R. 76 E., S½, all lands in Duncan Canal drainage.
T. 57 S., R. 77 E., S½,
T. 57 S., R. 78 E., all land in Petersburg Creek drainage,
T. 58 S., R. 76 E., all lands in Duncan Canal drainage,
T. 58 S., R. 77 E.,
T. 58 S., Rs. 78 and 79 E., all land in Petersburg Creek drainage,
T. 59 S., R. 76 E., all land in Duncan Canal drainage,
T. 59 S., R. 77 E.,
T. 59 S., R. 78 E., all land west of Radio Tower Peak,
T. 60 S., R. 76 E., all lands in Duncan Canal drainage,
T. 60 S., R. 77 E.,
T. 60 S., R. 78 E., Sections 30 and 31,
T. 61 S., Rs. 77 and 78 E., all lands in Duncan Canal drainage.

Boundary Spires Area

Copper River Meridian

T. 52 S., Rs. 79 through 81 E., all lands south of the hydrographic divide,
T. 53 S., R. 79 E., all lands east of the hydrographic divide north of North Beird Glacier,
T. 53 S., Rs. 80 through 83 E.,
T. 54 S., R. 79 E., all lands east of the hydrographic divide,
T. 54 S., Rs. 80 through 83 E.,
T. 55 S., Rs. 79 and 80 E., all lands in Scenery Cove drainage,
T. 55 S., R. 81 E.,
T. 55 S., R. 82 E., all lands west of a protracted line drawn between Devils Thumb on the international divide and the national forest boundary and the south boundary of T. 56 S., R. 82 E.,
T. 56 S., Rs. 79 through 81 E., except those lands in Thomas Bay drainage,
T. 56 S., R. 82 E., all lands west of a protracted line drawn between Devils Thumb on the international boundary and the point of the intersection of the national forest boundary and the south boundary of this township,
T. 57 S., R. 81 E., all land east of a line beginning on a ridge running south from Patterson Peak approximately 2 miles east of the west boundary of the township; thence southerly to a prominent point in the approximate center of said township; thence southeasterly to a ridge extending west from Rogers Peak; thence along said ridge to Rogers Peak,
T. 57 S., R. 82 E., W½,
T. 58 S., R. 82 E., W½, all land north of the hydrographic divide north of Le Conte Bay.

Devilpaw-Tonki Cape Areas

Seward Meridian

T. 20 S., R. 17 W.,
T. 20 S., R. 20 W., Sections 21, 22, 27, 28, 29, 31, 32, 33, and 34,
T. 20 S., R. 21 W., Sections 35 and 36, and all land on Devilpaw Mountain peninsula including Teck, Hogg, Bear, and Grassy Islands and all lands west except Alligator Island,
T. 20 S., R. 22 W., all land except unnamed island approximately three miles off shore,
T. 21 S., Rs. 16 and 17 W., all land except Sealion Rks.,
T. 21 S., R. 18 W., all land in Tonki Bay drainage,
T. 21 S., R. 20 W., Section 4, W½, Secs. 5 through 8, Sec. 9 W½, Sec. 16 NW¼, Secs. 17 through 20, 30, 31, and 32,
T. 21 S., Rs. 21 and 22 W.,
T. 22 S., R. 16 W., all land west of Marmot Strait,
T. 22 S., R. 17 W.,
T. 22 S., R. 18 W., all land in Tonki Bay drainage and unnamed drainage in SW¼ draining into Izhut Bay,
T. 23 S., R. 17 W.,
T. 23 S., R. 18 W., all land east of Izhut Bay.

Corrections

2. In F.R. Doc. No. 34051 appearing at page 57134 in the issue for Tuesday, December 5, 1978, under "Collete Fiord-Prince William Sound-Nellie Juan Area-Copper River Meridian," the description "T. 10 W., Rs. 10 and 11 W.," is corrected to read "T. 10 S., Rs. 10 and 11 W."

In F.R. Doc. No. 34051 appearing at page 57134 in the issue for Tuesday, December 5, 1978, under "College Fiord-Prince William Sound-Nellie Juan Area-Copper River Meridian," the description "T. 11 S., R. 10 and 11 W.," is corrected to read "T. 11 S., R. 11 W."

In F.R. Doc. No. 34051 appearing at page 57136 in the issue for Tuesday, December 5, 1978, under "Russell Fiord-Yakutat Forelands Area Copper River Meridian," the description "T. 23 S., R. 38 E., all land south and west of the hydrographic divide" is corrected to read "T. 23 S., R. 38 E."

In F.R. Doc. No. 34051 appearing on page 57135 in the issue for Tuesday, December 5, 1978, the description under:

Endicott

Copper River Meridian

"T. 37 S., R. 60 E., all land east of Glacier Bay National Monument in the Endicott River drainage.," is corrected to read "T. 37 S., Rs. 60 and 61 E., all land east of Glacier Bay National Monument in the Endicott River drainage."

West Chichagof—Yakobi

Copper River Meridian

"T. 43 S., R. 54 S.," is corrected to read "T. 43 S., R. 54 E."

"T. 45 S., R. 56 E., all land south and west of the center line of Lisianski Inlet," is corrected to read "T. 45 S., Rs. 56 and 57 E., all land south and west of the center line of Lisianski Inlet."

Karta Area

Copper River Meridian

"T. 72 E., R. 82 E.," is corrected to read "T. 72 S., R. 82 E."

The title "TRACY ARM—FIORDS TERROR" is corrected to read "TRACY ARM—FORD'S TERROR".

3. Areas described in F.R. Doc. No. 34051 appearing at pages 57134 through 57136 in the issue for Tuesday, December 5, 1978, are more clearly redescribed as follows:

Russell Fiord—Yakutat Forelands Area

Copper River Meridian

T. 22 S., R. 34 E., description should read: T. 22 S., R. 34 E., all lands southeast of Disenchantment Bay,

T. 22 S., R. 37 E., description should read: T. 22 S., R.37 E., all lands in S½ west of the hydrographic divide,

T. 24 S., R. 38 E., description should read: T. 24 S., R. 38 E., all land in Nunatak Fiord drainage,

T. 25 S., Rs. 37 through 39 E., description should read: T. 25 S., Rs. 37 through 39 E., all land in Russell and Nunatak Fiord drainages,

T. 26 S., R. 39 E., description should read: T. 26 S., R. 39 E., Sections 6, 7, 18, 19, 30, and 31,

T. 29 S., R. 41 E., description should read: T. 29 S., R. 41 E., Section 31,

T. 31 S., R. 43 E., description should read: T. 31 S., R. 43 E., Sections 29 through 32,

T. 32 S., R. 41 E., description should read: T. 32 S., R. 41 E., all land on the north side of Dry Bay,

T. 43 S., R. 58 E., description should read: T. 43 S., R. 58 E., all land northwest of the hydrographic divide between Mud Bay and Neka River.

West Chichagof—Yakobi

Copper River Meridian

T. 52 S., R. 60 E., description should read: T. 52 S., R. 60 E., all land north of the line through the center of Salisbury Sound and Kakul Narrows,

Kaku Strait (Rocky Pass) Area

Copper River Meridian

T. 58 S., R. 75 E., description should read: T. 58 S., R. 75 E., all land west of a line running from Hamilton Creek in Section 6 to a high point in the SE corner of Section 32,

T. 60 S., R. 75 E., description should read: T. 60 S., R. 75 E., all lands west of a line running from the north boundary southerly through the forks of Kaku Creek to a prominent point in Section 20, thence easterly, through prominent points in Sections 22 and 28, thence south to the SE corner of Section 33.

Stikine—Leconte

Copper River Meridian

T. 62 S., R. 86 E., description should read: T. 62 S., R. 86 E., Sections 1 through 6,

T. 62 S., R. 87 E., description should read: T. 62 S., R. 87 E., Sections 3 through 9.

Coronation Island-Warren Island-Maurille Island

Copper River Meridian

T. 68 S., Rs. 72 through 75 E., description should read: T. 68 S., Rs. 72 through 75 E., all land except Spanish Islands and Kosciusko Island.

4. The following described lands are deleted from the Notice of Proposed Withdrawal of Lands appearing in the December 5, 1978, Federal Register at pages 57134 and 57136 under:

Russell Fjord-Yakutat Forelands Area

Copper River Meridian

T. 24 S., R. 39 E., W½SW¼.

T. 32 S., R. 42 E., a one-mile-strip along the north boundary of the township.

T. 32 S., R. 43 E., NW¼NW¼.

Stikine-Leconte

Copper River Meridian

T. 60 S., R. 83 E., all land on Kadin Island and Rynda Island.

South Prince of Wales Area

Copper River Meridian

Tps. 78, 79, 80 S., R. 85 E.

Tps. 81 and 82 S., Rs. 84 and 85 E.

T. 83 S., Rs. 86 and 87 E.

5. Areas described in F.R. Doc. 34051 at page 57136 in the issue for Tuesday, December 5, 1978, under "South Prince of Wales Area," are deleted and redescribed as follows:

South Prince of Wales Area

Copper River Meridian

Tps. 78 and 79 S., Rs. 86 and 87 E., all lands in Klakas Inlet drainage.

T. 80 S., Rs. 86 through 88 E., all lands in Klakas Inlet drainage and west of Prince of Wales hydrographic divide.

Tps. 81 and 82 S., R. 86 E., all lands on the east side of Cordova Bay.

T. 81 S., Rs. 87 through 89 E., all lands west of the hydrographic divide between Cordova Bay and Clarence Strait.

T. 82 S., R. 87 E.

T. 82 S., Rs. 88 and 89 E., all lands west of the hydrographic divide west of Nichols Bay.

T. 83 S., R. 88 E.

T. 83 S., R. 89 E., all lands west of the major hydrographic divide west of Nichols Bay.

6. Lands added, corrected, or more clearly redescribed by this amendment are subject to the terms and conditions specified in the Notice of Proposed Withdrawal published in the Federal Register of December 5, 1978, at pages 57134 through 57137, F.R. Doc. 34051.

By letter dated April 9, 1979, the U.S. Department of Agriculture requested the addition, correction, and redescription of certain land described in the December 5, 1978, Federal Register. The deleted lands will be relieved of their segregative effect by this amendment upon publication in the Federal Register. However, these lands remain subject to any other existing withdrawals or reservations.

Arnold E. Petty,

Acting Associate Director.

May 31, 1979.

[FR Doc. 79-17880 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-84

[AA-6660-A through AA-6660-G]

Alaska Native Claims Selections

On December 24, 1968, the State filed general purposes grant selection applications pursuant to section 6(b) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 340; 48 U.S.C. Ch. 2, section 6(b) (1970)) for certain lands in the Bristol Bay area. Applications AA-5148,

AA–5150, AA–5153 and AA–5154 selected lands in Ts. 24 and 25 S., Rs. 49 and 50 W., Seward Meridian. On January 12 and June 16, 1972, each application was amended to include all lands in the townships, excluding patented lands.

The Bureau of Indian Affairs filed an application on December 12, 1968, to withdraw all unreserved public lands in Alaska for the determination and protection of the rights of the Alaska Natives. Subsequently, on January 17, 1969, Public Land Order 4582 was issued to affirm the withdrawal of all unreserved lands in Alaska from all forms of appropriation and disposition under the public land laws except locations for metalliferous minerals. Public Land Order 4582 further provided that applications filed by the State of Alaska after December 12, 1968, and prior to January 4, 1969, must be embraced in leases, licenses, permits, or contracts issued pursuant to the Mineral Leasing Act of 1920 or the Coal Leasing Act of 1914 in order to be a valid selection application.

Since the lands selected in State selection applications AA–5149, AA–5150, AA–5153 and AA–5154 filed on December 24, 1968 were not entirely within lands embraced in leases, etc., these applications must be and are hereby rejected as to the following described lands:

Seward Meridian, Alaska (Unsurveyed)

State Selection AA–5149

T. 25 S., R. 50 W.
Secs. 10 to 15, inclusive, all;
Secs. 22 to 27, inclusive, all;
Secs. 34, 35 and 36, all.
Containing approximately 9,735 acres.

State Selection AA–5150

T. 25 S., R. 49 W.
Sec. 7, all;
Secs. 18 and 19, all;
Secs. 30 and 31, all.
Containing approximately 3,066 acres.

State Selection AA–5153

T. 24 S., R. 50 W.
Secs. 1, 2 and 3, all;
Secs. 10 to 15, inclusive, all;
Secs. 22 to 28, inclusive, all;
Secs. 33 to 36, inclusive, all.
Containing approximately 12,800 acres.

State Selection AA–5154

T. 24 S., R. 49 W.
Secs. 6 and 7, all;
Secs. 18 and 19, all;
Secs. 30 and 31, all.
Containing approximately 3,812 acres.
Aggregating approximately 29,433 acres.

The State selected lands rejected above were not valid selections and will not be charged against the village corporation as State selected lands.

Section 11(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 696; 43 U.S.C. 1601, 1610(a) (1976)] (ANCSA), withdrew the lands surrounding the Native village of Egegik, including lands in the subject State selection applications for Native selection. Becharof Corporation filed selection applications AA–6660–A on January 15, 1974 and AA–6660–B through AA–6660–G on November 1, 1974, under the provisions of Sec. 12 of the Alaska Native Claims Settlement Act for lands within the subject State selections.

Section 12(a)(1) of the Alaska Native Claims Settlement Act provides that village selections shall be made from lands withdrawn by Sec. 11(a).

Section 11(a)(2) further withdrew for possible selection by the Native corporation those lands within the townships described in Sec. 11(a)(1) that have been selected by, or tentatively approved to, but not yet patented to the State under the Alaska Statehood Act.

Section 12(a) further provided, however, that no village corporation may select more than 69,120 acres from lands withdrawn by Sec. 11(a)(2).

The lands described below were properly selected by Becharof Corporation in village selection application AA–6660–C; accordingly, State selection application AA–5149, is hereby rejected, as to the following described lands:

Seward Meridian, Alaska (Unsurveyed)

State Selection AA–5149

T. 25 S., R. 50 W.,
Sec. 9, all;
Secs. 16 and 17, all;
Secs. 20 and 21, all;
Secs. 28 and 29, all;
Secs. 32 and 33, all.
Containing approximately 5,805 acres.

The total amount of State selected lands rejected to permit the conveyance hereafter given totals approximately 5,805 acres, which is less than the 69,120 acres permitted by Sec. 12(a)(1) of the Alaska Native Claims Settlement Act. Further action on the subject State selection applications as to those lands not rejected herein will be taken at a later date.

As to the lands described below, the applications submitted by Becharof Corporation, as amended, are properly filed, and meet the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquistion of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 12(a), aggregating approximately 88,649 acres, is considered proper for acquisition by Becharof Corporation and is hereby approved for conveyance pursuant to Sec. 14(a) of the Alaska Native Claims Settlement Act:

Seward Meridian, Alaska (Unsurveyed)

T. 24 S., R. 47 W.,
Secs. 1 and 2, all;
Secs. 3 to 11, inclusive, excluding Egegik River;
Sec. 12, all;
Secs. 13 and 14, excluding Egegik River;
Sec. 16, excluding Egegik River;
Secs. 17 to 20, inclusive, all;
Secs. 21 to 24, inclusive, excluding Egegik River;
Sec. 25, excluding Native allotment A–054671 and Egegik River;
Secs. 26 and 27, excluding Egegik River;
Secs. 28 to 35, inclusive, all;
Sec. 36, excluding Egegik River;
Containing approximately 17,947 acres.

T. 25 S., R. 47 W.,
Secs. 11 to 14, inclusive, all;
Secs. 23, 24 and 25, all.
Containing approximately 4,570 acres.

T. 23 S., R. 49 W.,
Sec. 1, inclusive, excluding Egegik River;
Sec. 2, excluding U.S. Survey 554 and Egegik River;
Secs. 3 and 4, excluding Egegik River;
Sec. 5, excluding U.S. Survey 548 and Egegik River;
Sec. 6, excluding U.S. Survey 485, U.S. Survey 551, U.S. Survey 2367, U.S. Survey 4900, U.S. Survey 4941 and Egegik River;
Sec. 7, excluding U.S. Survey 4900;
Sec. 8, all;
Secs. 9 to 12, inclusive, excluding Egegik River;
Sec. 13, all;
Secs. 14 and 15, excluding Egegik River;
Secs. 16 to 36, inclusive, all.
Containing approximately 19,992 acres.

T. 24 S., R. 49 W.,
Secs. 6 and 7, all;
Secs. 18 and 19, all;
Secs. 30 and 31, all.
Containing approximately 3,812 acres.

T. 25 S., R. 49 W.,
Secs. 7 and 18, all;
Sec. 19, all;
Secs. 30 and 31, all.
Containing approximately 3,066 acres.

T. 23 S., R. 50 W.,
Sec. 1 (fractional), excluding U.S. Survey 485, U.S. Survey 551, U.S. Survey 892, U.S. Survey 2822, U.S. Survey 2366, U.S. Survey 4900, U.S. Survey 4941 and Native allotment A–051875;
Sec. 2 (fractional), excluding U.S. Survey 5305 Lot 1 and Native allotment A–058973;
Sec. 3 (fractional), excluding U.S. Survey 549, U.S. Survey 550, U.S. Survey 4907, U.S. Survey 5246 Lots 1 and 2, and Native allotment A–058973;
Sec. 4 (fractional), excluding U.S. Survey 550 and U.S. Survey 5246 Lot 2;
Sec. 7 (fractional), all;
Sec. 12 (fractional), excluding U.S. Survey 2482 and U.S. Survey 4900;
Secs. 13 and 14 (fractional), all;

Secs. 18 and 19 (fractional), all;
Secs. 21, 22 and 23 (fractional), all;
Secs. 24 to 36, inclusive, all.
Containing approximately 10,902 acres.
T. 24 S., R. 50 W.,
Secs. 1, 2 and 3, all;
Secs. 10 to 15, inclusive, all;
Secs. 22 to 26, inclusive, all;
Secs. 35 to 36, inclusive, all.
Containing approximately 12,800 acres.
T. 25 S., R. 50 W.,
Secs. 9 to 17, inclusive, all;
Secs. 20 to 29, inclusive, all;
Secs. 32 to 36, inclusive, all.
Containing approximately 15,540 acres.
Aggregating approximately 88,849 acres.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(f) (1976)); and

2. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 706; 43 U.S.C. 1601, 1616(b) (1976)), the following public easements, referenced by easement maps attached to this document, copies of which will be found in case file AA-6660-EE, are reserved to the United States. All easements are subject to applicable Federal, State, or municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

25 Foot Trail—The uses allowed on a 25 foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs. Gross Vehicle Weight (GVW)).

50 Foot Trail—The uses allowed on a 50 foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles, small and large all-terrain vehicles, track vehicles and four-wheel drive vehicles.

a. (EIN 1 C3, D1, D9) An easement for an existing access trail twenty-five (25) feet in width from Egegik Bay parallel to the shoreline of Bristol Bay and Egegik Bay in Sec. 1, T. 23 S., R. 50 W., Seward Meridian, southwesterly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

b. (EIN 1a C3, D1) An easement for an existing access trail fifty (50) feet in width from Egegik in Sec. 1, T. 23 S., R. 50 W., Seward Meridian, southeasterly roughly parallel to the left bank of the Egegik River to Becharof Lake. The uses allowed are those listed above for a fifty (50) foot wide trail easement.

The grant of lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g) (1970))), contract, permit, right-of-way or easement, and the right of the lessee, contractee, permittee or grantee to the complete enjoyment of all rights, privileges and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of ANCSA, any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law;

3. Those rights for water pipeline purposes as have been granted to the New England Fish Company, its successors or assigns, by right-of-way, A-012179, located in Secs. 1 and 12, T. 23 S., R. 50 W., Seward Meridian, under the Act of February 15, 1901 (31 Stat. 790; 43 U.S.C. 959); and

4. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 703; 43 U.S.C. 1601, 1613(c) (1976)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section.

Becharof Corporation is entitled to conveyance of 92,160 acres of land selcted pursuant to Sec. 12(a) of the Alaska Native Claims Settlement Act. To date, approximately 88,649 acres of this entitlement have been approved for conveyance; the remaining entitlement of approximately 3,511 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of the Alaska Native Claims Settlement Act, conveyance to the subsurface estate of the lands described above shall be granted to Bristol Bay Native Corporation when conveyance is granted to Becharof Corporation for the surface estate, and shall be subject to the ame conditons as the surface conveyance.

Only the following inland water body, within the described lands, is considered to be navigable:

Egegik River.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the Federal Register and once a week, for four (4) consecutive weeks in the ANCHORAGE TIMES. Any party claiming a property interest in lands affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510 with a copy served upon both the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501, also:

1. Any party receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to sign the return receipt shall have until July 9, 1979 to file an appeal.

3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the adverse parties to be served are:

Becharof Corporation, Egegik, Alaska 99579.
Bristol Bay Native Corporation, P. O. Box 198, Dillingham, Alaska 99576.
State of Alaska, Division of Lands, 323 East Fourth Avenue, Anchorage, Alaska 99501.

Ann Johnson,
Acting Chief, Branch of Adjudication.

[FR Doc. 79-17691 Filed 6-7-79; 8:45 am]
BILLING CODE 4310-84-M

[F-14858-A]

Alaska Native Claims Selection; Correction

The purpose of this Notice is to correct the language in paragraph 2 of the decision dated April 6, 1979, as published in the Federal Register issue for Friday, April 6, 1979 (FR Vol. 44, at page 20802, column 2), which now reads as follows:

2. "Pursuant to section 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688), temporary camping, loading, or unloading shall be limited to 24 hours." Paragraph 2 is hereby corrected to read as follows:

2. Pursuant to section 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 706; 43 U.S.C. 1601, 1616(b) (Supp. V, 1975)), the following public easements, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in case file F–14856–EE, are reserved to the United States. All easements are subject to applicable Federal, State, or municipal corporation regulation. The following is a listing of uses allowed for each type of easement identified. Any uses which are not specifically listed are prohibited.

25 Foot Trail—The uses allowed on a twenty-five (25) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs. Gross Vehicle Weight (GVW).

One Acre Site—The uses allowed for a site easement are: vehicle parking (e.g., aircraft, boats, ATV's, snowmobiles, cars, trucks), temporary camping, and loading or unloading. Temporary camping, loading, or unloading shall be limited to 24 hours.

All other terms and conditions of the April 6, 1979 decision remain unchanged.

Arnold E. Petty,

Acting Associate Director.

May 31, 1979.

[FR Doc. 79–17600 Filed 6–7–79; 8:45 am]

BILLING CODE 4310–84–M

Las Cruces District Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Pub. L. 94–579, that a meeting of the Las Cruces District Grazing Advisory Board will be held on Thursday, July 12, 1979.

The meeting will begin at 10 a.m. in the Varsity Room of Howard Johnson's Los Pueblos Motel at 2600 S. Valley Drive, in Las Cruces, New Mexico.

The agenda for the meeting will include: (1) Election of board members. (2) Scope and responsibilities of the Board, (3) Policy regarding use of range improvement funds, (4) Current and proposed use of range improvement funds, (5) Arrangements for the next meeting.

The meeting will be open to the public and interested persons may make oral statements to the Board during the allotted time period between 2 and 2:30 p.m., or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 1705 N. Valley, Las Cruces, New Mexico 88001, by July 10, 1979. The district manager may establish a time limit for oral statements depending on the number of persons wishing to make statements.

Summary minutes of the Board meeting will be maintained in the Las Cruces BLM District Office and be available for public inspection and reproduction (during regular business hours) for 30 days following the meeting.

Dated: June 1, 1979.

Daniel C. B. Rathbun,

District Manager.

[FR Doc. 79–17256 Filed 6–7–79; 8:45 am]

BILLING CODE 4310–84–M

Fish and Wildlife Service

[INT–FES–79–22]

Canaan Valley National Wildlife Refuge, Tucker County, W. Va.; Availability of Final Environmental Statement

Correction

In FR Doc. 79–17256, appearing on page 32047 in the issue for Monday, June 4, 1979, the docket number given, "INT–DES–79–22," is incorrect. The correct docket number appears in the heading above.

BILLING CODE 1505–01–M

Categorical Exclusions

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice.

SUMMARY: This notice establishes interim categorical exclusions for compliance with the National Envionmental Policy Act (NEPA) and the regulations issued by the Council on Environmental Quality (CEQ) on November 29, 1978 (43 FR 55978). These exclusions are limited to the determination of project activities under the Federal Aid in Fish and Wildlife Restoration programs.

EFFECTIVE DATE: June 8, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Charles K. Phenicie, Chief, Division of Federal Aid, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone 703–235–1526.

SUPPLEMENTARY INFORMATION: In the Federal Register of March 22, 1979 (44 FR 17598), a notice of proposed categorical exclusions was published and pulic comment was requested. A total of 50 responses were received during the period allowed for comment. All comments were given due consideration. As a result of comments received, the following changes are made:

1. The general statement is revised to:

(a). Clarify that the exclusions are applicable to projects or project components.

(b). Provide Regional Directors the latitude to require preparation of environmental assessments or statements for otherwise excluded actions when considered necessary or desirable.

2. Routine maintenance is revised to clarify that the exclusion is limited to activities which do not alter or expand existing capacity, use or purpose, or result in changes in the vegetative community. also, project activities which are designed to maintain existing habitat or vegetative communities are not excluded.

3. The exclusion for planning projects was rewritten to clarify that no statement or assessment was required to approve a planning activity but that the NEPA process would be followed in plan development and approval.

AUTHORSHIP: The author of the original proposal was Mr. William H. Massmann, Division of Federal Aid, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone 703–235–1526. The revisions were authored by Dr. Robert J. Sousa at the same address and telephone.

Categorical Exclusions

Notice is hereby given that the following actions conducted by the States under the Federal Aid in Fish and Wildlife Restoration programs individually or cumulatively have no significant impact on the quality of the human environment. Therefore, under provisions of Sections 1507.3 and 1508.4 of the regulations for implementing the procedural provisions of the National Environmental Policy Act (40 CFR Parts 1500–1508), the following actions are excluded from the requirement for preparation of an environmental assessment or statement. These exclusions will apply until superseded.

The classes of actions excluded are applicable to projects or components of projects carried out under the Federal Aid in Fish Restoration Act (16 U.S.C. 777 et seq.) and the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669 et seq.). However, Regional Directors of the U.S. Fish and Wildlife Service may require environmental assessments or statements on excluded actions if, in their view, environmental review and analysis prior to decision is in the best

interests of the Service in carrying out the National Environmental Policy Act.

1. Surveys and Inventories

The purpose of surveys and inventories is to determine periodically the numbers and conditions of fish and wildlife and their habitats, or the harvest or other uses of these resources. Surveys range from direct observation of animals or measures of habitat conditions to indirect determinations relying on sampling procedures. Surveys of wildlife users determine their desires and needs, and may further show economic, sociological, esthetic, or scientific values.

While most surveys rely on direct or indirect counts of fish or wildlife, some may require their capture for more complete identification or examination for age, condition, productivity, health, and general fitness. Population estimates may require the tagging of some animals. Where fish or wildlife are taken into possession for the purposes stated above, and either released into the wild or killed, individual animals are affected. The numbers affected are so small that there is no effect on the population or species, either in the contiguous area or broader areas of the range; therefore, the effect is not major or significant in terms of NEPA.

Habitat surveys may require sampling plots of vegetation, brose plants, soils, minerals, or the ground surface for animal signs. In streams or lakes, the physical or chemical constituents of the water are measures. The identification of detrimental conditions in habitats is often a vital element in habitat surveys. For economic reasons, sample sizes and numbers are kept small and to a minimum by statistical means and have no major or significant effects on the environment.

The data acquired from surveys and inventories generally form the basis for management recommendations. Depending on the purpose and nature of the surveys, recommendations may pertain to programs which provide public recreation or other benefits, or they may specify measures to provide needed stimulation or restraint of population growth for the benefit of the habitat or of other species. Deteriorating or adverse habitat conditions may be alleviated or corrected, and lethal conditions may be eliminated. User surveys may suggest that a redirection of efforts between species or habitats would be helpful.

2. Routine Maintenance

Routine maintenace is the repair, renovation, and upkeep of facilities and improvements at the same location for the same purpose. Excluded activities include work on existing drainage ditches, roads, bridges, small dams, dikes, and levees unless such activities would alter or expand the existing capacity, use, or purpose or result in changes in the existing vegetative community. Also excluded are maintenance of parking lots, buildings target ranges, picnic and camping areas, fences, signs, trails, boat ramps, nesting structures and major equipment items.

Routine maintenance does not include "maintenance" of a habitat type or vegetative community requiring activities such as forestry and farming operations, grazing, or land treatment activities to control natural plant succession.

3. Hunter Education

The purpose of the hunter education program is to provide public instruction for the safe and ethical conduct of fish and wildlife recreation. This includes developing a respect for and understanding of property (both public and private), wildlife management, legal and moral obligations in the harvest of wildlife, and training in the safe and proficient use of sporting firearms and archery equipment. Hunter education is performed either in the classroom or at indoor and outdoor target ranges.

As discussed in the Environmental Impact Statement for the Federal Aid Program (page III–44), target ranges are subject to occupational Safety and Health Administration regulations to protect public health and safety. Neither classroom nor target range instruction affects the quality of the human environment.

Acquisition of land, target range construction, and construction of auxiliary structures are not covered by this exclusion.

4. Coordination

Coordination projects provide for administrative and clerical services over the States' Federal Aid projects. This administrative function involves the development of work plans and provisions for technical direction of program employees, correlating Federal Aid financed activities with other State operations, and maintaining records essential to the program. Coordination activities do not affect the quality of the human environment since they are administrative projects.

5. Research Studies

With the exception of developmental technologies, animal sacrifice, environmental disruption, and public health or safety, research studies are not major Federal actions and will not significantly affect the quality of the human environment.

Research—the acquisition of facts needed for most effective conservation and management of fish and wildlife—covers a broad spectrum of activities. For example, one project may monitor the intercontinental migrations of birds while another may examine the intracellular effects of a virus on fish. Under the Federal Aid program, research and surveys are often treated together since they are so similar in many respects. A major distinction is that research seeks new knowledge concerning an objective which is generally obtainable in a single study. In contrast, surveys apply established methodologies in a routine manner, often repeated at intervals, to fill a recurring need for information. Research provides data on fish or wildlife concerning ecological needs, nutritional problems, diseases and parasites, effects of land management practices, population dynamics, behavioral activities, movements, and information on a host of other subjects.

The research studies that may affect the quality of the human environment and which, therefore, will require an environmental assessment or statement are:

(a) Studies aimed at developing new technologies which, if applied, could significantly affect the environment. Examples of such studies would be the development of specific farm cultural practices for wide application to benefit wildlife. The development of water management practices for wide application in the conservation or augmentation of stream flows is another;

(b) Studies which involve significant mortality of animals or the introduction of nonindigenous animals on an experimental basis. Examples of such studies include investigations of animal diseases in which the pathological effects of the illness must be studied on a large number of wild specimens in order to understand the diseases and to develop treatments. The experimental introduction of African Nile perch into heated reservoirs to determine their ability to control overpopulations of carp and gizzard shad is another example;

(c) Studies that would require a significant disruption of the physical environment or the introduction of toxicants into the environment. Examples of such studies would include the experimental plantings of loblolly pines to determine the most desirable

habitat for the red-cockaded woodpecker or the experimental treatment of portion of a reservoir with fish toxicant to obtain an estimate of the total fish population; and

(d) Studies which could affect public health or safety. The use of radioisotopes to mark animals or trace a certain food item could create a health problem if not carefully done, and the use of certain animal traps or snares would require special precautions to prevent human accidents. Such studies would require environmental assessments or statements.

The four exceptions to the exclusion do not include fish or wildlife taken into possession for banding, radio tagging, marking, aging, or other types of examination before releasing them into the wild. They also do not include minor sacrifice of animals essential to research. Minor as used here means that the sacrifice will have no measurable effect on any wild population from which the individual(s) is taken or on the population of any associated species.

6. Technical Guidance

Some projects are for the purpose of providing consultation or guidance to other agencies, corporations, political entities, or to individuals for the purpose of improving fish or wildlife resources. Such consultations often involve assisting others in planning future developments in ways to minimize destruction of wildlife habitat or to benefit fish or wildlife. The consultations would not affect the human environment. In those cases where a substantial development is planned, the project itself would be the subject of an environmental assessment or statement.

7. Migratory Bird Banding Projects

Under their Federal Aid programs, many of the States cooperate with the Fish and Wildlife Service in obtaining vital information on waterfowl and other migratory birds. Some of this information is obtained by banding predetermined quotas of birds. Although occasional mortalities may occur during bird banding operations, these are not significant in that the mortalities will have no effect on overall populations.

8. Planning Projects

A project designed to authorize Federal assistance for planning does not affect the quality of the human environment. States may participate in the Federal Aid programs on the basis of an approved comprehensive fish and wildlife management plan. Plans of lesser scope are also prepared which range from groups of animals and users such as fish and fishermen to management plans for individual fish or wildlife areas. The latter group does not serve the legislated option for program participation but serves to facilitate program administration.

The NEPA process shall be integrated early into the planning process, including public involvement in decisions which affect the quality of the human environment, and identification and assessment of reasonable alternatives to proposed actions. As a plan is submitted for adoption by State decisionmakers and for approval by Federal officials, the program proposed by the plan must be accompanied by an appropriate NEPA document.

Dated: June 4, 1979.

Lynn A. Greenwalt,

Director, Fish and Wildlife Service.

[FR Doc. 79-17826 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-55-M

Heritage Conservation and Recreation Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before June 8, 1979. Pursuant to § 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, Office of Archeology and Historic Preservation, U.S. Department of the Interior, Washington, DC 20243. Written comments or a request for additional time to prepare comments should be submitted by June 18, 1979.

Charles A. Herrington,

Acting Keeper of the National Register.

MICHIGAN

Wayne County

Detroit, *Dunbar Hospital,* 580 Frederick Ave.

[FR Doc. 79-17611 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-03-M

National Park Service

Mining Plan of Operations at Denali National Monument; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Bill Snyder has filed a plan of operations in support of proposed mining activities on lands embracing his Mining Claim Group within the Denali National Monument. This plan is available for public inspection during normal business hours at the Alaska Area Office, National Park Service, 540 West 5th Avenue, Anchorage, Alaska.

Dated: May 9, 1979.

James J. Berens,

Acting Area Director, Alaska Area Office.

[FR Doc. 79-17749 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Denali National Monument; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Gary B. Golay has filed a plan of operations in support of proposed mining activities on lands embracing his Mining Claim Group within the Denali National Monument. This plan is available for public inspection during normal business hours at the Alaska Area Office, National Park Service, 540 West 5th Avenue, Anchorage, Alaska.

Dated: May 4, 1979.

Howard R. Wagner,

Acting Area Director, Alaska Area Office.

[FR Doc. 79-17750 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Denali National Monument; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Larry Goolsberg and David Anstett have filed a plan of operations in support of proposed mining activities on lands embracing their Mining Claim Group within the Denali National Monument. This plan is available for public inspection during normal business hours at the Alaska Area Office, National Park Service, 540 West 5th Avenue, Anchorage, Alaska.

Dated: May 4, 1979.

Howard R. Wagner,

Acting Area Director, Alaska Area Office.

[FR Doc. 79-17751 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Denali National Monument; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Jim Dale has filed plan of operations in support of proposed mining activities on lands embracing his Mining Claim Group within the Denali National Monument. This plan is available for public inspection during normal business hours at the Alaska Area Office, National Park Service, 540 West 5th Avenue, Anchorage, Alaska.

Dated: April 18, 1979.

Howard R. Wagner,

Acting Area Director, Alaska Area Office.

[FR Doc. 79-17721 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Denali National Monument; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Eric Wisler has filed plan of operations in support of proposed mining activities on lands embracing his Mining Claim Group within the Denali National Monument. This plan is available for public inspection during normal business hours at the Alaska Area Office, National Park Service, 540 West 5th Avenue, Anchorage, Alaska.

Dated: April 18, 1979.

Howard R. Wagner,

Acting Area Director, Alaska Area Office.

[FR Doc. 79-17719 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Denali National Monument; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Sam Koppenberg has filed plan of operations in support of proposed mining activities on lands embracing his Mining Claim Group within the Denali National Monument. This plan is available for public inspection during normal business hours at the Alaska Area Office, National Park Service, 540 West 5th Avenue, Anchorage, Alaska.

Dated: April 18, 1979.

Howard R. Wagner,

Acting Area Director, Alaska Area Office.

[FR Doc. 79-17722 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Denali National Monument; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Jon T. Millhouse has filed plan of operations in support of proposed mining activities on lands embracing his Mining Claim Group within the Denali National Monument. This plan is available for public inspection during normal business hours at the Alaska Area Office, National Park Service, 540 West 5th Avenue, Anchorage, Alaska.

Dated: April 18, 1979.

Howard R. Wagner,

Acting Area Director, Alaska Area Office.

[FR Doc. 79-17723 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Denali National Monument; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Forrest Charlton has filed plan of operations in support of proposed mining activities on lands embracing his Mining Claim Group within the Denali National Monument. The plan is available for public inspection during normal business hours at the Alaska Area Office, National Park Service, 540 West 5th Avenue, Anchorage, Alaska.

Dated: April 18, 1979.

Howard R. Wagner,

Acting Area Director, Alaska Area Office.

[FR Doc. 79-17727 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Denali National Monument; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, George Bailey has filed plan of operations in support of proposed mining activities on lands embracing his Mining Claim Group within the Denali National Monument. This plan is available for public inspection during normal business hours at the Alaska Area Office, National Park Service, 540 West 5th Avenue, Anchorage, Alaska.

Dated: April 18, 1979.

Howard R. Wagner,

Acting Area Director, Alaska Area Office.

[FR Doc. 79-17724 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Denali National Monument; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Richard C. Reynders has filed plan of operations in support of proposed mining activities on lands embracing his Mining Claim Group within the Denali National Monument. This plan is available for public inspection during normal business hours at the Alaska Area Office, National Park Service, 540 West 5th Avenue, Anchorage, Alaska.

Dated: April 18, 1979.

Howard R. Wagner,

Acting Area Director, Alaska Area Office.

[FR Doc. 79-17725 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Denali National Monument; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Cemco, Inc. has filed plan of operations in support of proposed mining activities on lands embracing his Mining Claim Group within the Denali National Monument. This plan is available for public inspection during normal business hours at the Alaska Area Office, National Park Service, 540 West 5th Avenue, Anchorage, Alaska.

Dated: April 18, 1979.

Howard R. Wagner,

Acting Area Director, Alaska Area Office.

[FR Doc. 79-17726 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Wrangell-St. Elias National Monument; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Jo and Harley King and Russell Welborn

have filed a plan of operations in support of mining activities on lands embracing their Mining Claim Group within the Wrangell-St. Elias National Monument. This plan is available for public inspection during normal business hours at the Alaska Area Office, National Park Service, 540 West 5th Avenue, Anchorage, Alaska.

Dated: May 9, 1979.

James J. Berens,

Acting Area Director, Alaska Area Office.

[FR Doc. 79-17761 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Wrangell-St. Elias National Monument; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, William McFarland has filed a plan of operations in support of proposed mining activities on lands embracing his Mining Claim Group within the Wrangell-St. Elias National Monument. This plan is available for public inspection during normal business hours at the Alaska Area Office, National Park Service, 540 West 5th Avenue, Anchorage, Alaska.

Dated: May 9, 1979.

James J. Berens,

Acting Area Director, Alaska Area Office.

[FR Doc. 79-17762 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Wrangell-St. Elias National Monument; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Tim Jacobson has filed a plan of operations in support of proposed mining activities on lands embracing his Mining Claim Group within the Wrangell-St. Elias National Monument. This plan is available for public inspection during normal business hours at the Alaska Area Office, National Park Service, 540 West 5th Avenue, Anchorage, Alaska.

Dated: May 4, 1979.

Howard R. Wagner,

Acting Area Director, Alaska Area Office.

[FR Doc. 79-17763 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Wrangell-St. Elias National Monument; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Melvin N. Barry has filed plan of operations in support of proposed mining activities on lands embracing his Mining Claim Group within the Wrangell-St. Elias National Monument. This plan is available for public inspection during normal business hours at the Alaska Area Office, National Park Service, 540 West 5th Avenue, Anchorage, Alaska.

Dated: April 18, 1979.

Howard R. Wagner,

Acting Area Director, Alaska Area Office.

[FR Doc. 79-17764 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Reclamation

Negotiation of a Coordinated Operations Agreement With the State of California; Intent to Initiate Negotiations for a Coordinated Operations Agreement, Central Valley Project, Calif.

The Department of the Interior, through the Bureau of Reclamation, and the State of California, through the Department of Water Resources, intend to initiate negotiations of a new coordinated operations agreement for the Federal Central Valley Project (CVP) and the State Water Project (SWP). The coordinated operations agreement will be entered into pursuant to the Reclamation Act of 1902 (32 Stat. 388).

The initial features of the CVP were authorized under the provisions of the Reclamation Act of December 5, 1924, which was approved on December 2, 1935, by the President of the United States. Congressional reauthorization of the project under Reclamation law was provided in section 2 of the Rivers and Harbors Act of August 26, 1937 (50 Stat. 859), and by the Rivers and Harbors Act of October 17, 1940 (54 Stat. 1198). Congress further reauthorized the project by the Act of October 14, 1949 (63 Stat. 852) and the Act of September 26, 1950 (64 Stat. 1036). Additional units were authorized by the Congress as integral parts of the project by the Acts of August 12, 1955 (69 Stat. 719); June 3, 1960 (74 Stat. 156); September 2, 1965 (79 Stat. 615); August 19, 1967 (81 Stat. 167); and August 27, 1967 (81 Stat. 173). The SWP was authorized for construction by passage of the Porter-Cologne Act in the State general election of 1960.

In 1959, the Bureau of Reclamation and the Department of Water Resources entered into negotiations for an agreement concerning coordinated operations of the two projects in an attempt to resolve CVP-SWP Sacramento Valley and Sacramento-San Joaquin Delta water right issues. These negotiations resulted in an agreement dated May 16, 1960, entitled "Agreement Between the United States of America and the Department of Water Resources of the State of California for the Coordinated Operation of the Federal Central Valley Project and the State Feather River and Delta Diversion Projects." The objective of this agreement was for the Department of Water Resources and the United States to dedicate and utilize their respective existing and future water conservation facilities to provide the maximum benefits to the people of California and the Nation. The coordinated and cooperative operation of the SWP and the CVP facilities is essential to maximizing these benefits.

Between 1960 and 1971, additional negotiating sessions where held with exchanges of proposals and counterproposals being made which led to a draft of the Supplemental Coordinated Operating Agreement in 1971. This agreement, as yet unsigned, was prompted by article 16 of the May 16, 1960, Agreement, which specifically recognized the need for additional criteria for the actual operation of the two projects on a coordinated basis.

Because there have been many changes in critical areas since 1960 which affect the operations of the two projects, there is a need to renegotiate the previous agreements. Meetings for this purpose are expected to begin in June 1979. The public is invited to attend these meetings as observers. Written comments on the form of a proposed agreement may be submitted not later than 30 days after the draft is declared available to the public.

For further information about scheduled meetings and copies of the proposed coordinated operations agreement, please contact Mr. James N. Moore, Repayment Branch, Division of Water and Power Resources Management, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, telephone No. (916) 484-4660. All meetings scheduled by the Bureau of Reclamation with the State of California for the purpose of negotiating terms and conditions of a proposed coordinated operations agreement shall be open to the public as observers. Advance notice of such meetings shall be furnished only to those parties having

previously furnished a written request for such notice to the office identified above at least one week prior to any meeting. All written correspondence concerning the proposed coordinated operations agreement shall be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

Dated: June 6, 1979.

R. Keith Higginson,

Commissioner of Reclamation.

[FR Doc. 79-18080 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Corps; Proposed Expansion of Job Corps Center at Turner Air Force Base, Albany, Ga.; Determination of Negative Environmental Impact

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice-Finding of Negative Environmental Impact.

SUMMARY: The purpose of this notice is to announce a determination by the Department under the National Environmental Policy Act and 40 CFR Part 1500 that the proposed expansion of the Job Corps center at Turner Air Force Base, Albany, Georgia, with the addition of 57 acres and 34 buildings, does not constitute a major Federal action which will significantly affect the environment.

FOR FURTHER INFORMATION CONTACT: Raymond E. Young, Director, Job Corps, Room 6100, Patrick Henry Building, 601 D Street, N.W., Washington, D.C. 20213, Telephone: (202) 376-6905.

SUPPLEMENTARY INFORMATION: Title IV, Part B of the Comprehensive Employment and Training Act (CETA), as amended, 29 U.S.C. § 923 *et seq.*, directs the Secretary of Labor to establish Job Corps centers to provide occupational training to disadvantaged youths 16 through 21 years of age. Regulations pertaining to the Job Corps program are published at 29 CFR Part 97a. Pursuant to his authority the Secretary is expanding the Job Corps center at the Turner Air Force Base Complex.

Pursuant to 40 CFR Part 1500, the Department of Labor has conducted an environmental assessment as part of a site utilization study and has determined that preparation of an environmental impact statement is not required since the establishment of this Job Corps center is not a major Federal action which will significantly effect the quality of the human environment within the meaning of 40 CFR Section 1500.6(c). The established Turner Job Corps center, a training center with residential, nonresidential and educational facilities for approximately 700 disadvantaged youth, men, and women, ages 16 through 21, who need and can benefit from intensive employment-related services will be expanded to 1200. The function of the center and the expanded staff of approximately 350 will be to provide skill training in selected vocational courses and continuing and/or remedial education in academic subjects.

It is intended that the additional facilities be used for essentially the same purposes as used by the previous occupant, specifically residential living and instruction.

The center will remain a self-contained facility located off of Turner Field Road, approximately 4½ miles northwest of downtown Albany, Georgia. The additional property to be utilized consists of approximately 57 acres of land consisting of 34 buildings, of which approximately 20 buildings will be occupied for the program.

Domestic water and sewage collection systems to all existing buildings are provided through the base utility systmes. These utility systems, provided by the City of Albany, to the site, are adequate to meet the load capacity and standards for the proposed site utilization.

The proposed Job Corps center will be operated in compliance with the Job Corps Environmental Standards published at 29 CFR 97a.116, and with applicable Federal, State and local regulations concerning environmental health.

The established Job Corps center and the proposed expansion will be compliance with the water quality and related standards of the State and local government, and with the standards established pursuant to the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*, with Executive Order 11752, and with regulations and guidelines of the United States Environmental Protection Agency.

The center installation will be maintained so as to conform to Federal air quality standards, including those found in Executive Order 11752.

My determination is that the continued operation of the center with the addition of 34 buildings will have no adverse impact upon traffic, transportation systems, pedestrian or vehicular congestion, police protection services, fire protection services, public safety, legal services, or upon the aesthetics or residential quality of the nearby area. I further determine that the aforementioned expansion of the Center will have no adverse effects upon ecological systems, population distribution, air or water pollution, municipal services, or health or life support systems. Accordingly, I hereby determine that the expansion of such Job Corps center will not have a significant adverse impact upon the quality of the human environment of the nearby area, or the greater Albany community.

The Job Corps center will be operated with the pass-leave procedures required by Job Corps Regulations and operational procedures. I find that in light of the increase in enrollment level and utilization of the pass-leave procedures, that congestion in the area will not increase.

There will be no material impact upon transportation or traffic within the area.

It is further determined that the expansion of the Center is not likely to have a significant adverse impact upon use of police services or the public safety. Adequate provisions are planned to carefully screen prospective enrollees so as to minimize the possibility of disciplinary problems or Center related public safety problems.

Adequate staffing personnel and protection will be provided at the Albany Job Corps center in accordance with Job Corps' operating procedures and regulations.

I further find that fire protection services in the area will not be adversely affected and that systems in the facilities will be upgraded to further reduce risk of fire from the present risk level.

Additionally, local health services will not be adversely affected because basic dental, medical and other health related services will be provided on site with Job Corps' own facilities and personnel.

In conclusion, it is my determination, after careful review and consideration of the nature of Job Corps' proposed action, in light of Job Corps' purposes, objectives and operational procedures, that the impact upon the surrounding community, of the establishment of the Center at the site will not be significant. It is my careful determination that the environmental assessment conducted by the Department of Labor, pursuant to 40 CFR Part 1500, clearly indicates that preparation of an environmental impact statement is not required since the expansion of the Job Corps center is not a mjaor Federal action which will

significantly affect the quality of the human environment within the meaning of 40 CFR Section 1500.6(c).

Signed at Washington, D.C. this 17th day of April 1979.

Raymond E. Young,
Director, Office of Job Corps and Young Adult Conservation Corps.

[FR Doc. 79-17044 Filed 6-7-79; 8:45 am]
BILLING CODE 4510-30-M

Reallocation of Funds Under the Comprehensive Employment and Training Act

AGENCY: Employment and Training Administration, Labor.

ACTION: Thirty-Day Notice of Intent to Reallocate Funds Under Title II–D of the Comprehensive Employment and Training Act (CETA).

SUMMARY: Pursuant to 20 CFR 676.47, the Secretary announces the intent of the Department to reallocate $913,618 in CETA Title II–D funds from the Lafayette Parish, Louisiana, CETA prime sponsor. The Secretary invites all interested parties to submit comments regarding this proposed action. Comments are due on or before July 9, 1979.

COMMENTS SHOULD BE SUBMITTED TO: Mr. Robert Anderson, Administrator, Office of Comprehensive Employment Development, Employment and Training Administration, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213, Attention: TDCR.

SUPPLEMENTARY INFORMATION: The Department has determined that the prime sponsor has not utilized the available funds and that it does not have current plans which call for the effective use of these funds within a reasonable period of time.

Robert Anderson,
Administrator, Office of Comprehensive Employment Development.

[FR Doc. 79-17040 Filed 6-7-79; 8:45 am]
BILLING CODE 4510-30-M

Extended Benefits; Ending of Extended Benefit Period in the State of Idaho

This notice announces the ending of the Extended Benefit Period in the State of Idaho, effective on June 9, 1979.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (Title II of the Employment Security Amendments of 1970, Public Law 91–373; 26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State or the nation, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular unemployment benefits under permanent State and Federal unemployment compensation laws. This Act is impelemtned by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Extended Benefits are payable in a State during an Extended Benefit Period, which is triggered "on" when unemployment in the State or in all States collectively reaches the high levels set in the Act. During an Extended Benefit Period individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when unemployment in the State is no longer at the high levels set in the Act. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator.

An Extended Benefit Period commended in the State of Idaho on February 25, 1979, and has now triggered off.

Determination of "Off" Indicator

The head of the employment security agency of the State of Idaho has determined, in accordance with the State law and 20 CFR § 615.12(e), that the average rate of insured unemployment in the State for the period consisting of the week ending on May 19, 1979, and the immediately preceding twelve weeks, has decreased so that for that week there was an "off" indicator in that State. Therefore, the Extended Benefit Period in that State terminates with the week ending on June 9, 1979.

Information for Claimants

Persons who wish information about their rights to Extended Benefits in the State of Idaho should contact the nearest local office of the Idaho Department of Employment.

Signed at Washington, D.C., on June 5, 1979.

Ernest G. Green,
Assistant Secretary for Employment and Training.

[FR Doc. 79-17045 Filed 6-7-79; 8:45 am]
BILLING CODE 4510-30-M

Extended Benefits; Ending of Extended Benefit Period in the State of Pennsylvania

This notice announces the ending of the Extended Benefit Period in the State of Pennsylvania, effective on June 9, 1979.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (Title II of the Employment Security Amendments of 1970, Public Law 91–373; 26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State or the nation, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular unemployment benefits under permanent State and Federal unemployment compensation laws. This Act is implemented by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Extended Benefits are payable in a State during an Extended Benefit Period, which is triggered "on" when unemployment in the State or in all States collectively reaches the high levels set in the Act. During an Extended Benefit Period individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "Off" when unemployment in the State is no longer at the high levels set in the Act. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator.

An Extended Benefit Period commenced in the State of Pennsylvania on March 11, 1979, and has now triggered off.

Determination of "off" Indicator

The head of the employment security agency of the State of Pennsylvania has determined, in accordance with the State law and 20 CFR § 615.12(e), that the average rate of insured

unemployment in the State for the period consisting of the week ending on May 19, 1979, and the immediately preceding twelve weeks, has decreased so that for that week there was an "off" indicator in that State. Therefore, the Extended Benefit Period in that State terminates with the week ending on June 9, 1979.

Information for Claimants

Persons who wish information about their rights to Extended Benefits in the State of Pennsylvania should contact the nearest local office of the State Department of Labor and Industry.

Signed at Washington, D.C., on June 5, 1979.

Ernest G. Green,

Assistant Secretary for Employment and Training.

[FR Doc. 79-17508 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Hawaii State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator-OSHA) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 4, 1974, notice was published in the Federal Register (39 FR 1010) of the approval of the Hawaii plan and the adoption of Subpart Y to Part 1952 containing the decision.

The Hawaii plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. State standards comparable to Federal standard changes and State initiated standards continue to be adopted. Accordingly Hawaii has revised these standards and promulgated them in accordance with applicable State procedures.

Section 1952.310(a) of Subpart Y sets forth the State's procedure for the adoption of at least as effective state standards. By a letter dated January 19, 1979 from Joshua C. Agsalud, Director—Department of Industrial Relations, to Gabriel J. Gillotti, Regional Administrator—OSHA Region IX; and a letter dated April 3, 1979 from Harold W. Barka, Manager Technical and Office Services—Hawaii DOSH, to W. E. (Bill) Stock, Senior Technical Specialist—OSHA Region IX, and incorporated as part of the Plan, the State submitted proof documents concerning the adoption of Federal standard changes, and State initiated changes to 29 CFR Part 1910. These changes include a group of standard revocations, and the promulgation of the permanent standard for 1,2-Dibromo-3-Chloropropane (DBCP).

These standard changes, which are contained in Hawaii Occupational Safety and Health Standards—Rules and Regulations—Revision #4, were promulgated by the State after public hearings.

2. *Decision.* The State submission has been reviewed with the comparable Federal standards. It has been determined that the State standards are at least as effective as the related Federal standards. The detailed standards comparison is available for review at the locations indicated below.

3. *Location of Supplement for Inspection and Copying.* A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 450 Golden Gate Avenue, Room 9470, San Francisco 94102; and the offices of the Department of Labor and Industrial Relations, Room 306, 825 Mililani Street, Honolulu, Hawaii 96813; and the Technical Data Center, Room N2439R; 3rd and Constitution Avenue N.W., Washington, D.C. 20210.

4. *Public Participation.* Under § 1953.2(c) of this chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Hawaii plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason.

The standards were adopted in accordance with the procedural requirements of State law which included public comment and further public participation would be repetitious.

This decision is effective June 8, 1979.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at San Francisco, California this 11th day of May, 1979.

Gabriel J. Gillotti,

Regional Administrator.

[FR Doc. 79-17507 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-26-M

Iowa State Standards; Approval

1. Background. Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On July 20, 1973, notice was published in the Federal Register (38 FR 19363) of the approval of the Iowa plan and the adoption of Subpart J to Part 1952 containing the decision.

The Iowa plan provides for the adoption of Federal standards as State standards (by reference or after comments and public hearing). Section 1952.183 of Subpart J sets forth the State's schedule for the adoption of Federal standards. By letter dated November 29, 1978, from Walter Johnson, Deputy Commissioner of Labor, to Vernon A. Strahm, Regional Administrator for Occupational Safety and Health Administration and incorporated as part of the plan, the State submitted State standards comparable to 1) 29 CFR 1910.401, 402, 410, 411, 420, 421, 422, 423, 424, 425, 426, 427, 430, 440, and 441 as published in Federal Register (42 FR 37668) dated July 22, 1977; 2) 29 CFR 1910.1044 as published in Federal Register (43 FR 11527) dated March 17, 1978; 3) 29 CFR 1910.19(e), 1910.1000, and 1910.1018 as published in the Federal Register (43 FR 19624) dated May 5, 1978; 4) 29 CFR 1910.1046(a) as published in Federal Register (43 FR 27434) dated June 23, 1978; 5) 29 CFR 1910.19(f), 1910.1000, and 1910.1043 as published in the Federal Register (43 FR 27394) dated June 23, 1978; 6) 29 CFR 1910.1018, 1910.19, 1910.1043, and 1910.1046 as published in Federal Register (43 FR 28472–28473) dated June 30, 1978; 7) 29 CFR 1910.20 as published in Federal Register (43 FR

31330) dated July 21, 1978; 8) Miscellaneous Corrections as published in Federal Register (43 FR 53032) dated August 8, 1978; 9) 29 CFR 1928.605(e) as published in Federal Register (43 FR 37668) dated July 22, 1977; 10) 29 CFR 1928.21(b) as published in Federal Register (42 FR 37668) dated July 22, 1977; 11) 29 CFR 1928.21(b) as published in Federal Register (42 FR 38569) dated July 29, 1977; 12) 29 CFR 1928.21(a)(5) as published in Federal Register (43 FR 27463) dated June 23, 1978; 13) 29 CFR 1928.21 and 1928.113 as published in Federal Register (43 FR 28474) dated June 30, 1978; 14) Miscellaneous Corrections as published in Federal Register (43 FR 35036) dated August 8, 1978. These standards, which are contained in Chapter 88 of the Code of Iowa (1975), were promulgated after public comment requested on September 1, 1978, hearings held on October 25, 1978, resolution adopted by Iowa Bureau of Labor on November 3, 1978, pursuant to Chapter 17a of the Code. The standards will be effective on January 18, 1978, and were published by the State on November 29, 1978.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards it has been determined that the State standards are identical to the Federal standards.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Associate Assistant Secretary for Regional Programs, OSHA, Room N3606, 200 Constitution Avenue NW., Washington, D.C. 20210; Technical Data Center, OSHA, Room N2439, 200 Constitution Avenue, NW., Washington, D.C. 20210; Office of the Regional Administrator, OSHA, Room 3000 Federal Office Building, 911 Walnut Street, Kansas City, Missouri 64106; and Iowa Bureau of Labor, 307 E. Seventh Street, Second Floor, Des Moines, Iowa 50319.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Iowa State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards and are therefore deemed to be at least as effective.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective June 8, 1979. (Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Kansas City, Missouri this 14th day of May 1979.

Vernon A. Strahm,

Regional Administrator.

[FR Doc. 79-17880 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-26-M

Utah State Standards; Approval

1. *Background.* Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (Hereinafter called the Regional Administrator) under the delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On January 10, 1973, notice was published in the Federal Register (38 FR 1178) of the approval of the Utah Plan and the adoption of Subpart E to Part 1952 containing the decision.

The Utah Plan provides for the adoption of Federal Standards as State Standards by:

1. Advisory Committee recommendation.

2. Publication in newspapers of general/major circulation with a 30-day waiting period for public comment and hearing(s).

3. Commission order adopting the standards and designating an effective date.

4. Providing certified copies of Rules and Regulations or Standards to the Office of the State Archivist.

Section 1952.113 of Subpart E sets forth the State's schedule for adoption of Federal Standards. By letter dated March 3, 1979, from Ronald L. Joseph, Administrator, Utah Occupational Safety and Health Division, to Curtis A. Foster, Regional Administrator, and incorporated as part of the Plan, the State submitted rules and regulations concering 29 CFR 1910.1045 Occupational Exposure to Acrylonitrile (Vinyl Cyanide); 29 CFR 1910.19, Special Provisions for Air Contaminants; Paragraph (c) Acrylonitrile Section 1910.1045 and 29 CFR 1910.1000, Air Contaminants, Table Z-1, deleting the line "Acrylonitrile—20—60 from table Z-1, (43 FR 45510) Tuesday, October 3, 1978. These standards, which are contained in the Utah Occupational Safety and Health Rules and Regulations for General Industry, were promulgated per the requirements of Utah Code annontated 1953, Title 63-46-1, and in addition, published in newspapers of general/major circulation throughtout the State. No public comment was received and no hearings held.

The Standards for 29 CFR 1910.1045 Occupational Exposure to Acrylonitrile (Vinyl Cyanide); 29 CFR 1910.19, Special Provisions for Air Contaminants; Paragraph (c) Acrylonitrile Section 1910.1045 and 29 CFR 1910.1000, Air Contaminants, Table Z-1, deleting the line "Acrylonitrile—20—50 from table Z-1, were adopted by the Industrial Commission of Utah, Archives File Nuber 3137 on January 26, 1979, pursuant to Title 35-9-6 Utah code annotated 1953.

2. *Decision.* The State submission having been reviewed in comparison with the Federal Standards, it has been determined that the State Standards are idential to the Federal Standards and accordingly should be approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Room 1554, Federal Office Building, 1961 Stout Street, Denver, Colorado 80294; Utah State Industrial Commission, UOSHA Offices at 448 South 400 East, Salt Lake City, Utah 84111; and the Technical Data Center, Room N2439R, 3rd Constitution Avenue, NW., Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Utah State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

The Standards were adopted in accordance with the procedural requirements of State law which permitted public comments, and further public participation would be repetitious.

This decision is effective June 8, 1979.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Denver, Colorado, this 26th day of March 1979.

Curtis A. Foster,

Regional Administrator.

[FR Doc. 79-17881 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

Office of the Secretary

Steel Tripartite Committee; Meeting

The Steel Tripartite Committee was established under the Federal Advisory Committee Act, 5 U.S.C. App. (1976) to advise the Secretary of Labor and Secretary of Commerce on international and domestic issues affecting the U.S. Steel industry and labor.

Notice is hereby given that the Steel Tripartite Committee will meet at 2:00 p.m. on June 25, 1979, in the Secretary's Conference Room S-2508, U.S. Department of Labor, 200 Constitution Avenue, Washington, D.C. 20210.

Items to be discussed are the impact of the Multilateral Trade Negotiations on the U.S. steel industry and labor, the status of the recommendations of the Interagency Steel Task Force, and the future work of the Steel Tripartite Committee. The public is invited to attend. A limited number of seats will be available to the public on a first-come basis.

For additional information contact: Mr. David L. Mallino, Executive Secretary, Steel Tripartite Committee, Labor Management Services Administration, U.S. Department of Labor, Washington, D.C. 20210, Telephone (202) 523-7461 or Mr. A. M. Brueckmann, Director, Iron and Steel Division, Office of Basic Industries and Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, Telephone (202) 377-4412.

Official records of the meeting will be available for public inspection at N5653, U.S. Department of Labor, Washington, D.C., 20210.

Signed at Washington, D.C., this 8th day of June 1979.

Howard D. Samuel,

Deputy Under Secretary For International Affairs, U.S. Department of Labor.

[FR Doc. 79-17868 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-3994]

American Heat Reclaiming Corp., Lykins, Pa.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on March 30, 1979 in response to a worker petition received on March 30, 1979 which was filed by the International Union of Electrical, Radio, and Machine Workers on behalf of workers and former workers producing spiral heat exchangers, place heat exchangers and welding sheet steel. The investigation revealed that the plant produces welding sheet steel for internal use only. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The ratio of imports to shipments of all heat exchangers has remained under 1 percent since 1974. Imports of spiral heat exchangers were negligible during that time.

Since American heat and its parent company hold the patent on the design and sale of spiral heat exchangers, decreases in company sales of this type of exchanger are attributable to customer demand declines.

Following the transfer of production of plate heat exchangers from American Heat to a corporate affiliate in March 1978, quantity of corporate sales of this type of exchanger increased during the period March 1978 through February 1979 as compared to the period March 1977 through February 1978.

As a result of this transfer of production, employment at American Heat is on the decline, while employment at the corporate affiliate is currently increasing.

Conclusion

After careful review, I determine that all workers of American Heat Reclaiming Corporation, Lykins, Pennsylvania are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 29th day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17882 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

Appalachian Resources Co.; Charleston, W. Va.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to

begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 18, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 18, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 4th day of June 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Appalachian Resources Co. (workers)	Charleston, W. Va	5/29/79	5/24/79	TA-W-5,497	Mining of coal.
Brownsville Manufacturing Co. (I.L.G.W.U.)	Brownsville, W. Va	5/29/79	5/17/79	TA-W-5,498	Ladies sportwear (blouses, vests . . .).
CSE Mine Service (workers)	Beckley, W. Va	5/29/79	5/16/79	TA-W-5,499	Repair and distribute health and safety equipment for coal mining industry.
E.A. Coal Co. Inc., (U.M.W.A.)	Raleigh County, W. Va	5/29/79	5/15/79	TA-W-5,500	Coal used for steel making and coke.
Eastern Associated Coal Corp., Keystone #4 Mine (U.M.W.A.).	Sophia, W. Va	5/29/79	5/17/79	TA-W-5,501	Mining of coal.
Eastern Associated Coal Corp., Keystone Preparation Plant (U.M.W.A.).	Sophia, W. Va	5/29/79	5/17/79	TA-W-5,502	Cleaning of coal.
Geneseo Inc. Airebrooke Division (I.L.G.W.U.)	Florence, Ala	5/29/79	5/22/79	TA-W-5,503	Knitted fabrics.
Georgia Pacific Corp., Woodland Division, Pulp and Paper Mill (U.P.W.I.U.).	Woodland, Maine	5/29/79	5/16/79	TA-W-5,504	High grade pulp and quality specialty paper.
Glen Allen Manufacturing Co. Inc. (A.C.T.W.U.).	Glen Allen, Ala	5/29/79	5/17/79	TA-W-5,505	Men's pants.
McAllen IND's Inc. (A.C.T.W.U.)	Glen Allen, Ala	5/29/79	5/17/79	TA-W-5,506	Men's and boys' trousers.
McIndustries Inc. (A.C.T.W.U.)	Brilliant, Ala	5/29/79	5/17/79	TA-W-5,507	Men's pants.
Mullins Coal Co. Inc. (workers)	Chapmanville, W. Va	5/29/79	5/18/79	TA-W-5,508	Mining of coal.
Poole Silver Co. (workers)	Fall River, Mass	5/29/79	5/24/79	TA-W-5,509	Silver-plated hollowware.

[FR Doc. 79-17853 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5303]

Arco Auto Carriers, Inc., Little Ferry-Ridgefield, N.J.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 26, 1979, in response to a worker petition received on April 12, 1979, which was filed by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America on behalf of workers and former workers of Arco Auto Carriers, Ridgefield, New Jersey, engaged in delivering cars to the metropolitan areas. The investigation revealed that the legal title of the firm is Arco Auto Carriers, Incorporated, and that the proper location of the firm is Little Ferry-Ridgefield, New Jersey.

Arco Auto Carriers, Incorporated, Little Ferry-Ridgefield, New Jersey is engaged primarily in providing the service of transporting automobiles and utility vehicles from railheads to nearby automobile dealers.

Thus, workers of Arco Auto Carriers, Incorporated, Little Ferry-Ridgefield, New Jersey do not produce an article within the meaning of section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Arco Auto Carriers, Incorporated by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Arco Auto Carriers, Incorporated and its customers have no controlling interest in one another. The subject firm, although affiliated with the Troyler Corporation, a producer of trailers, rarely transports the products of that company.

All workers engaged in transporting automobiles and utility vehicles at Arco Auto Carriers, Incorporated, Little Ferry-Ridgefield, New Jersey are employed by that firm. All personnel actions and payroll transactions are controlled by Arco Auto Carriers, Incorporated. All employee benefits, are provided and maintained by Arco Auto Carriers, Incorporated. Workers are not, at any time, under employment or supervision by customers of Arco Auto Carriers, Incorporated. Thus, Arco Auto Carriers, Incorporated, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of Arco Auto Carriers, Incorporated, Little Ferry-Ridgefield, New Jersey are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 31st day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17854 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5145]

Avtex Fibers, Inc., Aston, Pa.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment

assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 5, 1979 in response to a worker petition received on April 3, 1979 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing rayon fibers at the Aston, Pennsylvania plant of Avtex Fibers, Incorporated. The investigation revealed that the plant produces predominantly fabricated glass tubing and metal spinnerettes used in the production of rayon staple fiber and yarn. The investigation also revealed that the intention of the petitioner is to confine the investigation to workers employed in the glass department. It is concluded that all of the requirements have been met with respect to fabricated glass tubing.

There are two production departments at the Aston, Pennsylvania plant of Avtex Fibers, one producing fabricated glass tubing, and the other producing spinnerettes. There have not been any employment declines in the spinnerette department.

Imports of rayon and acetate staple fibers and yarns increased in 1977 to 82 million compared to 69 million pounds in 1976.

All of the glass tubing produced at the Aston plant is transferred to the Front Royal, Virginia or Nitro, West Virginia plants of Avtex Fibers. Most of the fabricated glass tubing produced at the Aston plant is used in the production of rayon tire yarn at the Front Royal, Virginia plant.

Workers at the Nitro, West Virginia and Front Royal, Virginia plants of Avtex Fibers, Incorporated have been certified eligible to apply for adjustment assistance: Nitro, West Virginia (TA-W-2845) on May 10, 1978 and Front Royal, Virginia (TA-W-4184) on January 12, 1979.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with rayon staple fiber and yarn produced at the Nitro, West Virginia and Front Royal, Virginia plants of Avtex Fibers, Incorporated contributed importantly to the decline in sales or production and to the total or partial separation of workers engaged in employment related to the production of fabricated glass tubing at the Aston, Pennsylvania plant of Avtex Fibers, Incorporated. In accordance with the provisions of the Act, I make the following certification:

"All workers of the Aston, Pennsylvania plant of Avtex Fibers, Incorporated engaged in the production of fabricated glass tubing who became totally or partially separated from employment on or after September 1, 1978 and before December 31, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974. All workers who became separated after December 31, 1978 are denied eligibility to apply for adjustment assistance."

Signed at Washington, D.C. this 31st day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17088 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5113]

BBC Coal Co., McDowell County, W. Va.; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974 (19 U.S.C. 2273), an investigation was initiated on April 5, 1979 in response to a worker petition received on April 2, 1979 which was filed by the United Mine Workers of America on behalf of workers and former workers mining coal at the BBC Coal Company, BBC Truck Mine, McDowell County, West Virginia.

During the course of the investigation, it was revealed that the correct name of the company is the BBC Coal Company and that it mines metallurgical coal.

The Notice of Investigation was published in the Federal Register on April 13, 1979 (44 FR 22206). No public hearing was requested and none was held.

The BBC Coal Company began mining coal during July, 1978. Due to the short term of BBC Coal's operation and to the difficulties associated with starting up a new mine, there is not sufficient information in this case upon which to base a determination. In addition, worker qualifying requirements in section 231 of the Act may not be met at this time. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 1st day of June, 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-17089 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5043]

Bellmore Coats, Lindenhurst, N.Y.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on March 28, 1979 in response to a worker petition received on March 22, 1979 which was filed on behalf of workers and former workers producing women's sportswear, raincoats and coats at Bellmore Coats, Lindenhurst, New York. The investigation revealed that the plant produces ladies' jackets and coats. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivisions have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

A Departmental survey was conducted with manufacturers for whom Bellmore Coats produced ladies' coats and jackets. The survey revealed that only one of Bellmore's manufacturers increased its purchases of ladies' coats and jackets from foreign sources. This manufacturer, however, also increased its contract work with Bellmore during 1978 and in the first quarter of 1979 as compared to the first quarter of 1978. Several manufacturers, who ceased doing business with Bellmore Coats in 1978, indicated that they will be meeting their needs for coat and jacket production from domestic sources.

Conclusion

After careful review, I determine that all workers of Bellmore Coats, Lindenhurst, New York are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 25th day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17857 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4540]

Bergen Knitting Mills, Inc., Union City, N.J.; Revised Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Adjustment Assistance on Februry 22, 1979, applicable to workers and former workers of Bergen Knitting Mills, Inc., Union City, New Jersey. The Notice of Certification was published in the Federal Register on March 2, 1979, (44 FR 11864).

On the basis of additional information, the Office of Trade Adjustment Assistance, on its own motion, reviewed the Department's determination with regard to the petition filed on behalf of workers and former workers at Bergen Knitting Mills, Inc. The original certification applies to the workers producing men's, ladies' and children's sweaters at Bergen Knitting Mills. The eligibility to apply for adjustment assistance of the workers of William Two Sweaters, Ltd., Union City, New Jersey, a direct selling office of Bergen Knitting Mills, was not specifically addressed in the Department's Notice of Determination. William Two Sweaters is affiliated with Bergen Knitting Mills by virtue of common ownership, and the fact that sales and employment at William Two are closely tied to production at Bergen. It is concluded that the two entities constitute a single firm for purposes of section 222 of the Trade Act of 1974 and 29 CFR 90.2.

The certification is revised to cover all workers at Bergen Knitting Mills and William Two Sweaters who were adversely affected by the decline in sales and employment resulting from increased import competition.

The revised certification applicable to TA-W-4540 is hereby issued as follows:

All workers of Bergen Knitting Mills, Inc., Union City, New Jersey, and William Two Sweaters, Ltd., New York, New York, who became totally or partially separated from employment on or after August 19, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 31st day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17856 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5196]

Berkshire Leather Corp., Gloversville, N.Y.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 10, 1979 in response to a worker petition received on April 6, 1979 which was filed on behalf of workers and former workers inspecting, packaging and shipping sport gloves at the Berkshire Leather Corporation, Gloversville, New York. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Berkshire Leather Corporation is in the business of inspecting, packaging and shipping leather gloves imported from a Philippine company of which Berkshire owns 100 percent stock. The workers at Berkshire have never been engaged in producing these gloves. Some workers are involved in cut and sew operations of glove samples; however, activity at Gloversville is related primarily to the final stages of processing the imported gloves. Therefore, increasing imports of gloves are not a factor in any declines in employment at Berkshire.

Conclusion

After careful review, I determine that all workers of Berkshire Leather Corporation, Gloversville, New York are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 30th day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17858 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5066]

Bethlehem Steel Corp., Bethlehem, Pa.; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974 (19 U.S.C. 2273), an investigation was initiated on March 30, 1979 in response to a worker petition received on March 28, 1979 which was filed on behalf of a group of workers and former workers at the general offices of Bethlehem Steel Corporation in Bethlehem, Pennsylvania.

During the course of the investigation, it was established that all workers at the general offices of Bethlehem Steel Corporation in Bethlehem, Pennsylvania and New York, New York were previously certified as eligible to apply for adjustment assistance under TA-W-4275. The notice of revised certification was issued on May 29, 1979.

Since all workers separated, totally or partially, from the general offices of Bethlehem Steel Corporation on or after October 10, 1977 (impact date) and before May 29, 1981 (expiration date of the revised certification) are covered, a new investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 30th day of May 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-17860 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5117 and TA-W-5131]

Blue Mt. Mining Co., Inc., and Kencoal Mining Corp., McDowell County, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 5, 1979 in response to a worker petition received on April 2, 1979 which was filed by the United Mine Workers of America on behalf of workers and former workers mining coal at the Blue Mt. Mine of Blue Mt. Mining Company, Incorporated, McDowell County, West Virginia and the Kencoal Mine of Kencoal Mining Corporation, McDowell County, West Virginia. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Evidence developed during the course of the investigation revealed that Blue Mt. Mining Company, Inc. which closed in June 1978 was, and Kencoal Mining Corporation which succeeded it in July 1978 is an exclusive contractor for Hawley Coal Mining Corporation. All metallurgical coal mined by and for Hawley Coal Mining Corporation is exported to France. Hawley Coal Mining Corporation has not domestic customers.

Conclusion

After careful review, I determine that all workers of Blue Mt. Mining Company, Incorporated, McDowell County, West Virginia and Kencoal Mining Corporation, McDowell County, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 21st day of May 1979.

James F. Taylor,
Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17881 Filed 6-7-79; 8:45 am]
BILLING CODE 4510-28-M

[TA-W-5206-5207]

Burroughs Corp., Plymouth, Mich., et. al.; Negative Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 10, 1979 in response to a worker petition received on April 9, 1979 which was filed by the United Automobile, Aerospace and Agricultural Implement Workers on behalf of workers and former workers producing computers at the Plymouth, Michigan plant, printers at the Detroit (Tireman Avenue), Michigan plant and sorters at the Wayne, Michigan plant of Burroughs Corporation. The investigation revealed that the Plymouth plant producers mini-computers, the Tireman Avenue plant produces printers and sorters and the Wayne plant produces encoders. In the following determinations, without regard to whether any of the other criteria have been met for workers at the Plymouth, Michigan plant (TA-W-5206) the Detroit (Tireman Avenue), Michigan plant (TA-W-5206) and the Wayne, Michigan plant (TA-W-5207), the following criterion was not met.

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The petitions allege that imports by the Burroughs Corporation of wire harnesses, PC cards and other parts contributed importantly to employment and production declines at the Plymouth and Wayne plants. The Burroughs Corporation transferred wire harness production from the petitioning plants to an offshore corporate facility during the period from 1969 to 1975; all production transfers occurred by 1975.

Section 223 (b)(1) of the Trade Act of 1974 states that a certification under this section shall not apply to any worker whose last total or partial separation from the subject firm occurred more than twelve months prior to the date of filing under Title II, Chapter 2 of the Trade Act of 1974. The date of the petition is April 5, 1979. Therefore, workers laid off prior to April 5, 1978 are not eligible for program benefits under Title II, Chapter 2, Subchapter B of the Trade Act of 1974.

Burroughs Corporation does not import any other component parts which are or have been produced at the Plymouth or Wayne plants nor does Burroughs import any minicomputers, encoders, sorters or printers.

Employment declines at the Plymouth plant occurred as a result of labor-saving technological developments in the company's minicomputer designs. Plant production of minicomputers increased from 1977 to 1978 and increased in the first quarter of 1979 compared to the first quarter of 1978.

Employment declines at the Wayne plant are attributable to labor-saving technological developments in the company's encoder designs and to product line problems with new model encoder production. Plant production of encoders increased from 1977 to 1978. Scheduled production for the first quarter of 1979 was substantially higher than actual production in the first quarter of 1978.

Production and sales of printers and sorters at the Tireman Avenue plant increased from 1977 to 1978 and increased in the first quarter of 1979 compared to the first quarter of 1978. Production worker employment levels increased over this same period of time. Any declines in production at the plant were from quarter to quarter and were the result of normal business fluctuations.

Conclusion

After careful review, I determine that all workers of the Plymouth, Michigan plant, the Detroit (Tireman Avenue), Michigan plant and the Wayne, Michigan plant of the Burroughs Corporation are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 30th day of May 1979.

James F. Taylor,
Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17882 Filed 6-7-79; 8:45 am]
BILLING CODE 4510-28-M

[TA-W-4825]

Chein Industries, Inc., Burlington, N.J.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on March 13, 1979 in response to a worker petition received on March 8, 1979 which was filed by the United Steelworkers of America on behalf of workers and former workers producing

pressed and stamped metal products such as housewares at Chein Industries, Incorporated, Burlington, New Jersey. The investigation revealed that the corporate title is Chein Industries, Incorporated. The investigation further revealed that the plant primarily produces housewares (cannister sets, bread boxes, straight-sided wastebaskets, nostalgia tins, and step-on cans), and toy trap drum sets. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Sales of all housewares by Chein Industries, Incorporated increased in 1978 compared with 1977. Customers who were surveyed indicated that they did not purchase imported housewares in 1977, 1978, or during the first two months of 1979.

Customers who were surveyed indicated that they did not purchase imported toy trap drum sets in 1977, 1978, or during the first quarter of 1979.

Conclusion

After careful review, I determine that all workers of Chein Industries, Incorporated, Burlington, New Jersey are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 31st day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17865 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5121]

Eleets Development Corp., Raleigh County, W. Va.; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was inititated on April 5, 1979, in response to a worker petition received on April 2, 1979, which was filed by the United Mine Workers of America on behalf of workers and former workers mining coal at the Eleets Development Corporation, Raleigh County, West Virginia.

Due to the short term of operation of Eleets Development Corporation, there is not sufficient information in this case upon which to base a determination. In addition, worker qualfying requirements in section 231 of the Act may not be met by any employee of Eleets Development Corporation. Consequently, the inviestigation has been terminated.

Signed at Washington, D.C. this 30th day of May 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-17864 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5066 and TA-W-5067]

The Great Six Co., Minneapolis, Minn., et al.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on March 29, 1979 in response to a worker petition received on March 22, 1979 which was filed on behalf of workers and former workers producing women's dress coats at The Great Six Company, Minneapolis, Minnesota and North Country Outerwear, Brainerd, Minnesota. The investigation revealed that the plants produced women's coats, raincoats and jackets. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses' and children's coats and jackets increased absolutely and relative to domestic production in each year from 1974 through 1977. U.S. imports increased absolutely in 1978 compared to 1977.

U.S. imports of women's, girls' and infants' raincoats increased absolutely in 1977 compared to 1976 and in 1978 compared to 1977.

A Department of Commerce survey of the customers of The Great Six Company and North Country Outerwear indicated that several customers increased their reliance on imported women's coats, raincoats and jackets and decreased their purchases from The Great Six Company and North Country Outerwear.

All production employees of The Great Six Company, Minneapolis, Minnesota were permanently dismissed by March 31, 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's coats, raincoats and jackets produced at The Great Six Company, Minneapolis, Minnesota and North Country Outerwear, Brainerd, Minnesota contributed importantly to the decline in sales or production and to the total or partial separation of workers of those firms. In accordance with the provisions of the Act, I make the following certification:

All workers of The Great Six Company, Minneapolis, Minnesota who became totally or partially separated from employment on or after March 19, 1978 and before April 30, 1978 and all workers of North Country Outerwear, Brainerd, Minnesota who became totally or partially separated from employment on or after March 19, 1978 and before January 20, 1979 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 25th day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17865 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5073]

Gulton Industries, Inc., Piezo Products Division, Metuchen, N.J.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on March 29, 1979 in response to a worker petition received on March 28, 1979 which was filed by the International Union of Electrical, Radio and Machine Workers on behalf of workers and former workers producing miniature chassis used in watches, and elements used in phonographs, citizens band radios and burglar alarms at Gulton Industries, Inc., Piezo Products Division, Metuchen, New Jersey. Without regard to whether any of the other criteria have

been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the abeolute decline in sales or production.

Evidence developed during the course of the investigation revealed that sales, which are based on orders received, and employment within the Piezoelectric Ceramic Element and Hybrid Microcircuit Departments increased in 1978 compared to 1977 and in the first quarter of 1979 compared to the same period in 1978.

The petition was filed on behalf of workers producing miniature chassis used in watches (produced by the Hybrid Microcircuit Department) and elements used in phonographs, CB radios and burglar alarms (produced by the Piezoelectric Ceramic Element Department).

Production of watch chassis by the Hybrid Microcircuit Department was discontinued by December 1977 (more than one year prior to the date of the petition). Since that time the Department has produced printheads. Compared to the same quarter of the previous year, sales and employment within the Hybrid Microcircuit Department increased in three consecutive quarters from the third quarter of 1978 through the first quarter of 1979.

Compared to the same quarter of the previous year, sales and employment within the Piezoelectric Ceramic Element Department increased in four consecutive quarters from the second quarter of 1978 through the first quarter of 1979.

Conclusion

After careful review, I determine that all workers of the Piezo Products Division of Gul'on Industries, Inc., Metuchen, New Jersey are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 25th day of May 1979.

James F. Taylor,

Director, Office of Management, Administraton, and Planning.

[FR Doc. 79-17686 Filed 6-7-79; 8:45 am]
BILLING CODE 4510-28-M

[TA-W-5123—5126]

Hawley Coal Mining Corp. et al., McDowell County, W. Va., Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 5, 1979 in response to a worker petition received on April 2, 1979 which was filed by the United Mine Workers of America on behalf of workers and former workers mining coal at the Pocahontas Empire Bottom Creek Mine (TA-W-5123), Blue Boy No. 6 Mine (TA-W-5125), and No. 10 Bradshaw Mine (TA-W-5126), and cleaning coal at the Pocahontas Empire Preparation Plant (TA-W-5124) of Hawley Coal Mining Corporation, McDowell County, West Virginia. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Evidence developed in the course of the investigation revealed that Hawley Coal Mining Corporation was sold by Belco Petroleum Corporation in 1976. Since that time, all metallurgical coal mined by the three mines of Hawley Coal Mining Corporation and its four contractors has been exported to France. Hawley Coal Mining Corporation has no domestic customers.

Conclusion

After careful review, I determine that all workers of the Pocahontas Empire (Bottom Creek) Mine and Preparation Plant, the Blue Boy No. 6 Mine and No. 10 Bradshaw Mine of Hawley Coal Mining Corporation, McDowell County, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 31st day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17687 Filed 6-7-79; 8:45 am]
BILLING CODE 4510-28-M

[TA-W-5106]

Irving Tanning Co., Leather Division of the Seagrave Corp., Hartland, Maine; Certification Regarding Eligibility To Apply for Worker Adjusement Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjstment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 4, 1979 in response to a worker petition received on April 2, 1979 which was filed on behalf of workers and former workers tanning leather for shoes and accessories at the Irving Tanning Company, Leather Division of the Seagrave Corporation, Hartland, Maine. It is concluded that all of the requirements have been met.

U.S. Imports of tanned cattle hides decreased both absolutely and relatively in 1977 compared to 1976 and increased both absolutely and relatively in 1978 compared to 1977.

The Department conducted a survey of customers who decreased purchases from the Irving Tanning Company. Customers responding to the survey accounted for a marjority of the subject firm's decline in sales from 1977 to 1978. Customers representing a significant proportion of the subject firm's sales decline increased purchases of imported leather.

In the first quarter of 1979 customers continued to decrease purchases from the subject firm while increasing purchases of imports.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with leather for shoes and accessories produced at the Irving Tanning Company, Leather Division of the Seagrave Corporation, Hartland, Maine contributed importantly to the decline in sales or

production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of the Irving Tanning Company, Leather Division of the Seagrave Corportation, Hartland, Maine who became totally or partially separated from employment on or after March 28, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 30th day of May 1979.

James F. Taylor,
Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17868 Filed 6-7-79; 8:45 am]
BILLING CODE 4510-28-M

[TA-W-5361]

Jacobs Brothers Industries, Inc., Moonachie, N.J.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on May 8, 1979 in response to a worker petition received on May 3, 1979 which was filed by the Amalgamated Clothing and Textile Workers' Union on behalf of workers and former workers producing children's and women's outerwear at Jacobs Brothers Industries, Incorporated, Moonachie, New Jersey. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses' and children's coats and jackets increased from 2,252 thousand dozen in 1976 to 2,723 thousand dozen in 1977. Imports increased again in 1978 to 3,036 thousand dozen. The ratio of imports to domestic production increased from 48.3 percent in 1976 to 54.9 percent in 1977.

U.S. imports of women's, girls' and infants' raincoats increased from 242 thousand dozen in 1977 to 465 thousand dozen in 1978.

A survey of some of the customers purchasing children's and women's ski jackets, pants coats and raincoats from Jacobs Brothers Industries, Incorporated revealed that several of the customers had reduced purchases from Jacobs Brothers and increased purchases of imports from 1977 to 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's and children's outerwear including ski jackets, pants coats and raincoats produced at Jacobs Brothers Industries, Incorporated, Moonachie New Jersey contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Jacobs Brothers Industris, Incorporated, Moonachie, New Jersey who became totally or partially separated from employment on or after June 1, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 30th day of May 1979.

James F. Taylor,
Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17869 Filed 6-7-79; 8:45 am]
BILLING CODE 4510-28-M

Jay Lind Veal Corp.; New York, N.Y.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the addres shown below, not later than June 18, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 18, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 29th day of May 1979.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Jay Lind Veal Corp. (workers)	New York, N.Y.	5/21/79	5/16/79	TA-W-5,466	Lamb and veal products.

[FR Doc. 79-17870 Filed 6-7-79; 8:45 am]
BILLING CODE 4510-28-M

[TA-W-5100]

Lannom Manufacturing Co., Inc., Ball Division, Tullahoma, Tenn.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigtion was initiated on March 30, 1979 in response to a worker petition received on March 29, 1979 which was filed on behalf of workers and former workers producing baseballs and softballs at Worth Sports Company, Tullahoma, Tennessee. The investigation revealed that Worth Sports Company is the sales and marketing division of Lannom Manufacturing Company and that the petition was filed on behalf of workers and former workers producing baseballs and softballs at the Ball Division of Lannom Manufacturing Company, Incorporated, Tullahoma, Tennessee. It is concluded that all of the requirements have been met.

U.S. imports of baseballs and softballs increased in absolute terms each year from 1975 through 1978. Imports exceeded domestic production by sevenfold in 1977.

Lannom Manufacturing Company is one of the few baseball and softball manufacturers which continues to maintain some domestic production operations (cores, slugs, and covers). A customer survey revealed several major customes who increased purchases of baseballs and softballs manufactured entirely offshore while decreasing purchases from the subject firm.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the baseballs and softballs produced at the Ball Division of Lannom Manufacturing Company, Incorporated, Tullahoma, Tennessee contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act I make the following certification:

All workers of the Ball Division, Lannom Manufacturing Company, Incorporated, Tullahoma, Tennessee who became totally or partially separated from employment on or after March 4, 1979 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 29th day of May 1979.

James F. Taylor,
Director, Office of Management, Administration, and Planning.

FR Doc. 79-17071 Filed 6-7-79; 8:45 am]
BILLING CODE 4510-28-M

[TA-W-5212]

Long-Airdox Co., Inc., Oak Hill, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 10, 1979 in response to a worker petition received on April 9, 1979 which was filed by Local 772 of the United Auto Workers Union on behalf of workers and former workers producing underground mining machinery at the Long-Airdox Company, Incorporated, Oak Hill, West Virginia. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Mining machinery cannot be considered to be like or directly competitive with coke as alleged on the petition. Imports of mining machinery must be considered in determining import injury to workers producing mining machinery at the Long-Airdox Company, Oak Hill, West Virginia.

United States imports of mining machinery declined both absolutely and relative to domestic production in 1978 compared to 1977. In 1978, the value of exports exceeded that of imports by over four and one half times. Sales and production also increased in 1978 compared to 1977 and in the first quarter of 1979 compared to the first quarter of 1978.

Conclusion

After careful review, I determine that all workers of the Long-Airdox Company, Incorporated, Oak Hill, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 21st day of May 1979.

James F. Taylor,
Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17072 Filed 6-7-79; 8:45 am]
BILLING CODE 4510-28-M

H. E. McLean & Sons, Inc., et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of

Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 18, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 18, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 31st day of May 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
H. E. McLeane & Sons, Inc. (company)	St. Louis, Mo	5/24/79	5/9/79	TA-W-5,487	Materials, colors and adhesives for men, women and children's shoes.
McNeil Garment Corp. (workers)	Mansfield, La	5/24/79	5/21/79	TA-W-5,488	Blue jeans and other fashion jeans for misses and juniors.
Meyer D. Mehrman & Son (company)	Allentown, Pa	5/24/79	5/21/79	TA-W-5,489	Manufacturers of men's and ladies' tailored garments.
National Tanning & Trading Corp. (company)	Peabody, Mass	5/25/79	5/22/79	TA-W-5,490	Tanning and finishing of leather hides.
Polplast (company)	Lawrence, Mass	5/25/79	5/17/79	TA-W-5,491	Molding and finishing work in shoe bottoms.
Sheldon Hall Clothes, Inc. (company)	Allentown Pa	5/24/79	5/21/79	TA-W-5,492	Contractors of men's and ladies' tailored garments.
Universal Shirt Co., Inc. (A.C.T.W.U.)	Elizabeth, N.J	5/23/79	5/18/79	TA-W-5,493	Girls' and children's tops and shirts.
Universal Sportswear (A.C.T.W.U.)	Elizabeth, N.J	5/23/79	5/18/79	TA-W-5,494	Men's and boy's outerwear.
Venable & Stilupe Corp., Perry Branch Mine #1 (workers).	Chapmanville, W. Va	5/25/79	5/21/79	TA-W-5,495	Mining of coal.
WEW Coal Co., Inc. (workers)	Fayetteville, W. Va	5/25/79	5/5/79	TA-W-5,496	Mining of coal.

[FR Doc. 79-17873 Filed 6-7-79; 8:45 am]
BILLING CODE 4510-28-M

[TA-W-5259]

Mercer Rubber Co., Hamilton Square, N.J.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 18, 1979 in response to a worker petition received on April 12, 1979, which was filed by the Independent Rubber Workers Union on behalf of workers and former workers producing conveyor belts, hand made hoses, and rubber expasion joints at Mercer Rubber Company, Hamilton Square, New Jersey.

The Notice of Investigation was published in the Federal Register (44 FR 24947–8). No public hearing was requested and none was held.

A representative for the petitioner requested withdrawal of the petition. On the basis of the withdrawal, continuing the investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 1st day of May 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-17874 Filed 6-7-79; 8:45 am]
BILLING CODE 4510-28-M

[TA-W-5290]

Mirando Manufacturing Co., Inc., Elizabeth, N.J.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 25, 1979 in response to a worker petition received on April 23, 1979 which was filed by the Amalgamated Clothing and Textile Workers' Union on behalf of workers and former workers producing men's leather jackets at Mirando Manufacturing Company, Incorporated, Elizabeth, New Jersey. It is concluded that all of the requirements have been met.

Imports of men's, boys', women's, misses', juniors', and children's leather coats and jackets increased absolutely and relative to domestic production in 1978 compared to 1977.

Mirando's only customer (manufacturer) increased purchases of imports during 1978 compared to 1977 and in the first quarter of 1979 compared to the same period of 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's leather jackets produced at Mirando Manufacturing Company, Incorporated, Elizabeth, New Jersey contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Mirando Manufacturing Company, Incorporated, Elizabeth, New Jersey who became totally or partially separated from employment on or after April 16, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 31st day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17875 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5048]

Mr. J's Sportswear, Ltd., Brooklyn, N.Y.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on March 28, 1979 in response to a worker petition received on March 7, 1979 which was filed on behalf of workers and former workers producing women's sportswear, coats and suits at Mr. J's Sportswear, Limited, Brooklyn, New York. The investigation revealed that the company produced women's coats, jackets and women's suit jackets. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses', and children's coats and jackets increased absolutely and relative to domestic production each year from 1974 through 1977. U.S. imports increased absolutely in 1978 compared to 1977.

U.S. imports of women's, misses', and children's suits increased absolutely in 1978 compared to 1977.

A Departmental survey of the customers of Mr. J's Sportswear, Limited indicated that several customers increased their reliance on imported women's, misses' and children's coats and jackets and decreased their purchases from Mr. J's Sportswear, Limited in 1978 compared to 1977.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's coats, jackets and suit jackets produced at Mr. J's Sportswear, Limited, Brooklyn, New York contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Mr. J's Sportswear, Limited, Brooklyn, New York who became totally or partially separated from employment on or after September 28, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 25th day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17876 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5143]

The Paul Yates Mining Co., Nancy Key Mine, Mercer County, W. Va.; Termination of Investigation

Pursuant to section 223 of the Trade Act of 1974, an investigaton was initiated on April 5, 1979, in response to a worker petition received on April 2, 1979, which was filed by the United Mine Workers of America on behalf of workers and former workers mining coal at the Nancy Key Mine of the Paul Yates Mining Company, Mercer County, West Virginia.

The Paul Yates Mining Company had been in actual operation less than ten months, and the company's Nancy Key Mine had been in operation less than five months at the time of the investigation. Due to the short term of operation of the Paul Yates Mining Company and of its Nancy Key Mine, it is not possible to determine trends of sales and production and to statistically measure the impact of imports. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 31st day of May 1979.

Marvin M. Fooks,

Director, Office of Adjustment Assistance.

[FR Doc. 79-17877 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5054-5065]

Schick, Inc., Lancaster, Pa., et al.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on March 29, 1979, in response to worker petitions which were filed on behalf of workers and former workers engaged in employment related to the production of hair dryers, curling irons, hair curlers sets, facial saunas and electric shavers at locations of Schick, Incorporated listed in the Appendix to this document.

The investigation revealed that the plant produces primarily hair dryers, curling irons, and hair curlers sets. It is concluded that all of the requirements have been met.

U.S. imports of electric hair setters increased absolutely and relatively from 1976 to 1977 and from 1977 to 1978.

U.S. imports of electric hair dryers increased absolutely and relatively from 1976 to 1977 and from 1977 to 1978.

U.S. imports of electric hair appliances, which includes curling irons, increased absolutely and relatively from 1976 to 1977 and then declined absolutely and relatively from 1977 to 1978.

A Department survey of Schick Incorporated customers indicated increasing reliance on imported hair dryers, curling irons and hair curler sets by respondents. The survey revealed that customers representing a significant proportion of Schick's sales of hair dryers, curling irons and hair curler sets in 1977 and 1978 decreased purchases from the subject firm from 1977 to 1978 and in the first quarter of 1979 compared to the first quarter of 1978 and increased purchases of imported hair dryers, curling irons and hair curler sets during the same time period.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with hair dryers, curling irons and hair curler sets produced by Schick, Incorporated contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of the locations of Schick, Incorporated listed in the Appendix, who became totally or partially separated from employment on or after March 28, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 29th day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

Appendix

Case Number, and Schick, Inc., Facility Location

TA-W-5054, Lancaster, PA
TA-W-5055, Philadelphia, PA
TA-W-5056, Los Angeles, CA
TA-W-5057, Hempstead, L.I., NY
TA-W-5058, Chicago, IL
TA-W-5059, Dallas, TX
TA-W-5060, North Attleboro, MA
TA-W-5061, Decatur, GA
TA-W-5062, Oak Brook, IL
TA-W-5063, Overland Park, KS
TA-W-5064, Lafayette, CA
TA-W-5065, Laguna Niguel, CA

[FR Doc. 79-17878 Filed 6-7-79; 8:45 am]
BILLING CODE 4510-28-M

[TA-W-5168]

Sugar Corp. of Puerto Rico, Central Aguirre, Aguirre, P.R.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 6, 1979 in response to a worker petition received on April 3, 1979 which was filed by three workers on behalf of workers and former workers producing raw sugar at Central Aguirre, Puerto Rico. The investigation is expanded to include Taller Aguirre. Taller Aguirre (tractor maintenance shop) is part of the Central Aguirre and together with Taller Reunion, Deseada, Isidora and Destino form part of a unit of support equipment for the mill. It is concluded that all of the requirements have been met.

Imports of cane and beet sugar increased in 1977 from 1976 decreased in 1978 from 1977 and increased in the first 5 months of 1979 compared with similar period in 1978.

During 1978 the Sugar Corporaton of Puerto Rico sold raw sugar at the going U.S. Market price, which is lower than the Corporation's cost of production.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with raw sugar produced at the Sugar Corporation of Puerto Rico, Central Aguirre, Aguirre, Puerto Rico, contributed importantly to the decline in sales or production and to the total or partial separation of workers of that mill. In accordance with the provisions of the Act, I make the following certification:

All workers of the Sugar Corporation of Puerto Rico, Central Aguirre, and Taller Aguirre, Aguirre, Puerto Rico, who become totally or partially separated from employment on or after March 23, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 31st day of May 1979.

James S. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17879 Filed 6-7-79; 8:45 am]
BILLING CODE 4510-28-M

[TA-W-5265, et. al.]

Sunday's Workclothes, Inc. et al.; Hauppauge, N.Y.; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974 (19 U.S.C. 2273), investigations were initiated on April 18, 1979 in response to worker petitions received on April 11, 1979 and April 16, 1979 which were filed on behalf of workers and former workers producing ladies' and juniors' sportswear at the Hauppauge, New York facility of Sundays's Workclothes, Inc. (TA-W-5265); Headline Sportswear, Inc. (TA-W-5269); and Arrived Sportswear, Inc. (TA-W-5267)

The Department's investigation revealed that Sunday's Workclothes, Headline Sportswear, and Arrived Sportswear were established in the fourth quarter of 1977 as subsidiaries of Going On Sportswear, an apparel manufacturer. These subsidiaries were established for the purpose of importing ladies' sportswear. Sunday's Workclothes, Headline Sportswear and Arrived Sportswear have no employees. In essence, employees of the three subsidiaries (Sunday's Workclothes, Headline Sportswear, and Arrived Sportswear) and Going On Sportswear were identical. Only the names of the firms were different. Workers at Going On Sportswear are covered under an existing investigation (TA-W-5268) which was instituted in response to a petition received on April 10, 1979. Since Sunday's Workclothes, Headline Sportswear and Arrived Sportswear have no employees, and utilize workers of Going On Sportswear who are covered by an existing petition, these investigations have been terminated.

Signed at Washington, D.C. this 1st day of June 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc 79-17880 Filed 6-7-79; 8:45 am]
BILLING CODE 4510-28-M

[TA-W-5279]

T & R Auto Handling Corp., Mahwah, N.J.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 23, 1979, in response to a worker petition received on April 12, 1979, which was filed by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America on behalf of workers and former workers of T & R Auto Handling Corporation, Mahwah, New Jersey, engaged in loading cars on railcars.

T & R Auto Handling Corporation, Mahwah, New Jersey is engaged in providing the service of loading and unloading motor vehicles on and off railroad cars. The company is partially owned by Freight Consolidation Services, Incorporated.

Thus, workers of T & R Auto Handling Corporation, Mahwah, New Jersey do not produce an article within the meaning of Section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to T & R Auto Handling Corporation by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and

that reduction must directly relate to the product impacted by imports.

T & R Auto Handling Corporation and its customers have no controlling interest in one another. Freight Consolidation Services, Incorporated, with which T & R Auto Handling Corporation, is affiliated, does not produce an article.

All workers engaged in loading and unloading motor vehicles on and off railroad cars at T & R Auto Handling Corporation, Mahwah, New Jersey are employed by that firm. All personnel actions and payroll transactions are controlled by T & R Auto Handling Corporation. All employee benefits are provided and maintained by T & R Auto Handling Corporation. Workers are not, at any time, under employment or supervision by customers of T & R Auto Handling Corporation. Thus, T & R Auto Handling Corporation, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of T & R Auto Handling Corporation, Mahwah, New Jersey are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 31st day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17681 Filed 6-7-79; 8:45 am]
BILLING CODE 4510-28-M

[TA-W-5329]

T & R Auto Handling Corp., Newark, N.J.; Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 30, 1979, in response to a worker petition received on April 12, 1979, which was filed by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America on behalf of workers and former workers of T & R Handling Corporation, Newark, New Jersey, engaged in the unloading of motor vehicles. The investigation revealed that the legal title of the company is T & R Auto Handling Corporation.

T & R Auto Handling Corporation, Newark, New Jersey is engaged in unloading motor vehicles from railroad cars. The subject firm is partially owned by Freight Consolidated Services, Incorporated.

Thus, workers of T & R Auto Handling Corporation, Newark, New Jersey do not produce an article within the meaning of section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to T & R Auto Handling Corporation by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

T & R Auto Handling Corporation and its customers have no controlling interest in one another. Freight Consolidation Services, Incorporated, with which T & R Auto Handling Corporation is affiliated, does not produce an article.

All workers engaged in unloading motor vehicles from railroad cars at T & R Auto Handling Corporation, Newark, New Jersey are employed by that firm. All personnel actions and payroll transactions are controlled by T & R Auto Handling Corporation. All employee benefits are provided and maintained by T & R Auto Handling Corporation. Workers are not, at any time, under employment or supervision by customers of T & R Auto Handling Corporation. Thus, T & R Auto Handling Corporation, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of T & R Auto Handling Corporation, Newark, New Jersey are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 31st day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17682 Filed 6-7-79; 8:45 am]
BILLING CODE 4510-28-M

[TA-W-2329, et al.]

United States Steel Corp., Canisteo District, Coleraine, Minn., et al.; Negative Determination Regarding Application for Reconsideration

By letters of September 14, 1978, and February 2, 1979, the petitioning union requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of all workers engaged in the mining and beneficiation of iron ore at the U.S. Steel Corporation's Minnesota Ore Operations at the Canisteo District, Coleraine, Minnesota; Virginia-Eveleth District, Virginia, Minnesota; and the Hibbing-Chisholm District, Hibbing, Minnesota. The determination was published in the Federal Register on August 25, 1978, (43 FR 38134).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) if it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) if, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The petitioning union supported by their local U.S. Congressmen from Minnesota claims that imports of iron ore from Canada increased at U.S. Steel facilities at Chicago's South Works, Gary, Indiana, and Lorain, Ohio, in 1977 and especially in the first quarter of 1978 thereby preventing the recall of its workers after the strike ended in December 1977. The affected workers were not called back to work until the Canadian iron ore strike which began in March 1978. The petitioner also claimed that the denial is inconsistent with the Department's certification of Erie Mining Company workers (TA-W-2794 and 2795). Lastly, the petitioning union claims that the Department's use of the ore depletion rationale in its denial notice is specious since U.S. Steel has every intention of utilizing the natural ore mines in the future.

The Department's review of its original determination revealed that the import criterion of the Trade Act of 1974 was not met by the workers. While imports of iron ore, pellets and sinter declined absolutely in 1977 compared to 1976, they increased relative to domestic production. However, this was primarily

due to a strike within the domestic mining industry in 1977 which seriously affected domestic production. Declines in employment and production at the petitioning mining districts were found to have come about as a result of the depletion of the ore in these mines. As the production of natural ore at these mines decreased, U.S. Steel has increased employment in taconite production at its nearby Minntac facility.

The Department does not consider as valid the petitioning union's claim of increased Canadian exports of iron ore to U.S. Steel facilities especially during 1977 and the first quarter of 1978 thereby preventing the miners from returning to work after their strike (August 1, 1977, to December 16, 1977). Canadian iron ore shipments to the U.S. Steel plants in question have actually decreased each year since 1976. There were no Canadian ore exports to the South Works in Chicago, Gary and Lorain facilities in the first quarter of 1978.

The Department's further investigation has shown that in those U.S. Steel works using Minnesota natural ore, there has been an increasing switch to pellets from U.S. Steel's Minntac pellet plant. Pellets from Minntac in 1978 were replacing Minnesota natural ore at U.S. Steel facilities in Illinois, Ohio and Indiana and also in the Monogahela Valley.

The Department's negative determination in the subject case in not inconsistent with the one made in the case of a petition filed on behalf of workers at the Erie Mining Company, Hoyt Lakes, Minnesota, TA-W-2794 and 2795. The Department's review revealed that the Erie Mining Company's declines in employment and in the production and sales of iron ore pellets in 1976 and 1977 were the result of increased imports of iron ore pellets by a major customer which reduced the need for iron ore pellets produced by the Erie Mining Company. In the subject case, there is no element of a switch to imports but rather a switch to iron ore pellets from the natural ore which supports the Department's basis for its initial denial because of the increasing economic exhaustion of the natural ore.

The Department does not agree with the petitioning union's claim that the ore depletion rationale, mentioned in the Department's initial denial, is specious since the combined iron ore shipments from the three natural ore districts have decreased from 1975 through 1978 while the taconite pellet shipments from Mintac have increased. Similarly, average annual employment at the three petitioning mining districts declined each year since 1976, even excluding the strike period, while it increased each year at Minntac. Officials from the company and the U.S. Bureau of Mines have also indicated that most of the high grade natural ore has been extracted from the Mesabi Iron Ore Range.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 31st day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17883 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5137—5140B]

Mining Division Vecillio and Grogan, Inc., Beckley, W. Va.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

Whitby Strip Mine, Raleigh County, West Virginia (TA-W-5137)
Whitby Auger Mine, Raleigh County, West Virginia (TA-W-5138)
Sullivan Mine #1, Raleigh County, West Virginia (TA-W-5139)
Sullivan Mine #2, Raleigh County, West Virginia (TA-W-5140)
Mining Division Office, Beckley, West Virginia (TA-W-5140A)
Mining Division Field Office, Stoco, West Virginia (TA-W-5140B)

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 5, 1979 in response to a worker petition received on April 2, 1979 which was filed by the United Mine Workers of America on behalf of workers and former workers producing metallurgical coal at the following facilities of Vecillio and Grogan, Incorporated Mining Division: Whitby Strip Mine, Whitby Auger Mine, Sullivan Mine #1, and Sullivan Mine #2, all located in Raleigh County, West Virginia. The investigation was expanded to include the Mining Division's main office in Beckley, West Virginia and field office in Stoco, West Virginia. It is concluded that all of the requirements have been met.

U.S. imports of metallurgical coal are negligible. However, coke is metallurgical coal in a later stage of processing, and is therefore "directly competitive" with metallurgical coal. U.S. imports of coke increased on an absolute basis and relative to domestic production in 1977 as compared to 1976 and in 1978 as compared to 1977.

The Department of Labor conducted a survey of customers of the major coal distributor which bought and resold Vecillio and Grogan's metallurgical coal. From 1977 to 1978 some major customers surveyed decreased purchases of metallurgical coal from that distributor and increased purchases of imported coke.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with metallurgical coal produced at Vecillio and Grogan, Incorporated, Mining Division contributed importantly to the decline in sales or production and to the total or partial separation of workers of that division. In accordance with the provisions of the Act, I make the following certification:

All workers of the Whitby Strip Mine, Raleigh County, West Virginia; the Whitby Auger Mine, Raleigh County, West Virginia; the Sullivan Mine #1, Raleigh County, West Virginia; the Sullivan Mine #2, Raleigh County, West Virginia, and the Beckley and Stoco, West Virginia offices of the Mining Division of Vecillio and Grogan, Incorporated who became totally or partially separated from employment on or after March 28, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 31th day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17891 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4718]

Westforth Manufacturing Co., Inc., Williamsport, Pa.; Revised Notice of Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

On May 17, 1979, the Department made an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of Westforth Manufacturing Company, Inc., Williamsport, Pennsylvania. This determination was published in the Federal Register on May —, 1979, (44 FR——

On the basis of new information supplied by the management of Peters Sportswear Company, Inc., Philadelphia, Pennsylvania, a further investigation was made by the Director of the Office of Trade Adjustment Assistance. The investigation revealed that a worker group included in the Department's denial of Westforth Manufacturing in fact performed function separate from those of the remainder of the plant.

Westforth Manufacturing is a wholly-owned subsidiary of Peters Sportswear. On March 16, 1979, the Department denied eligibility to apply for adjustment assistance to the workers of Westforth Manufacturing and certified the workers of Peters Sportswear. The basis for the denial of Westforth Manufacturing was that sales and production at the firm had increased absolutely from 1976 through 1978.

The workers in the shipping and contract inspection departments in the warehouse of Westforth Manufacturing produced exclusively for Peters Sportswear. They did not participate in contracts Westforth Manufacturing had with companies other than Peters Sportswear. Production and employment in these two departments were dependent upon conditions at Peters Sportswear.

Conclusion

In view of the above, it is concluded that imports of articles like or directly competitive with men's and boys' outercoats and jackets and leather coats and jackets produced by Peters Sportswear Company, Inc., contributed importantly to the separations of workers and to the decline in sales in the shipping and contract inspection departments of Westforth Manufacturing Company, Inc., Williamsport, Pennsylvania.

The revised notice of determination applicable to TA-W-4718 is hereby issued as follows:

All workers engaged in shipping and contract inspection at the Westforth Manufacturing Company, Inc., Williamsport Pennsylvania, who became totally or partially separated from employment on or after August 18, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 30th day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc 79-17892 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5119]

Weyenberg Shoe Manufacturing Co., Waterloo, Wis.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 4, 1979 in response to a worker petition received on April 3, 1979 which was filed by the Boot and Shoe Workers Union on behalf of workers and former workers producing men's shoes at the Waterloo, Wisconsin plant of the Weyenberg Shoe Manufacturing Company. It is concluded that all of the requirements have been met.

U.S. imports of men's dress and casual footwear increased absolutely and relative to domestic production in 1977 compared to 1976 and increased relative to domestic production in 1978 compared to 1977. Imports as a percentage of production exceeded 75 percent in 1976, 1977, and 1978.

Weyenberg owns and operates two men's footwear plants abroad in Ireland. Weyenberg increased imports of men's footwear in 1978 compared to 1977 and in the first quarter of 1979 compared to the first quarter of 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's shoes produced at the Waterloo, Wisconsin plant of the Weyenberg Shoe Manufacturing Company contribute importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of the Waterloo, Wisconsin plant of the Weyenberg Shoe Manufacturing Company who became totally or partially separated from employment on or after March 9, 1979 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 31th day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17893 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5161]

Whitehall Manufacturing Corp., Whitehall, N.Y.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 5, 1979 in response to a worker petition received on March 28, 1979 which was filed on behalf of workers and former workers producing men's shirts at the Whitehall, New York plant of Whitehall Manufacturing Corporation. The investigation revealed that the correct name of the subject firm is Whitehall Manufacturing Corporation and that the plant is located in Whitehall, New York. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have

contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Department of Labor conducted a survey of the manufacturer for whom Whitehall Manufacturing performed contract sewing of shirts and of most of Whitehall Manufacturing's own customers. The survey revealed that the manufacturer did not employ foreign contractors or purchase imported men's shirts, and that most of Whitehall Manufacturing's own customers who were surveyed did not increase purchases of imported men's shirts during a period in which they decreased purchases from Whitehall. Those customers that did reduce purchases from Whitehall and increase purchases of imports represented an insignificant proportion of total company sales.

Conclusion

After careful review, I determine that all workers at the Whitehall, New York plant of Whitehall Manufacturing Corporation are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 31st day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17087 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5191]

Winston Coal Co., Davy, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 6, 1979 in response to a worker petition received on April 2, 1979 which was filed by the United Mine Workers of America on behalf of workers and former workers mining coal at the Winston Coal Company, Davy, West Virginia. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Winston Coal Company produces metallurgical coal exclusively for its parent company. The parent company's total sales of metallurgical coal increased in terms of quantity in 1978 compared with 1977 and in the first quarter of 1979 compared with the like quarter of 1977. A United Mine Worker's Mine Worker's strike in the first quarter of 1978 precludes the use of this period for comparison. The parent company's production of metallurgical coal at company-operated mines increased in terms of quantity in 1978 compared with 1977 and in the first two months of 1979 compared with the like period of 1977.

Most of the coal sold by the parent company in 1978 and the first quarter of 1979 was exported.

Conclusion

After careful review, I determine that all workers of Winston Coal Company, Davy, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 31st day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17088 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

LEGAL SERVICES CORPORATION

Grants and Contracts

June 6, 1979.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least 30 days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly . . . such grant, contract or project."

The Legal Services Corporation hereby announces publicly that it is considering the grant application submitted by:

Southern Arizona Legal Aid in Tucson, Arizona to serve Native Americans on or near the Ak-Chin, Fort McDowell, Gila River and Salt River Reservations.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the Regional Office of the Legal Services Corporation at:

Legal Services Corporation, Denver Regional Office, 1726 Champa Street, Suite 500, Denver, CO 80202.

Dan J. Bradley,

President.

[FR Doc. 79-17016 Filed 6-7-79; 8:45 am]

BILLING CODE 6820-35-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (79-68)]

NASA Advisory Council (NAC)-Space and Terrestrial Applications Advisory Committee (STAAC) Meeting

The ad hoc Informal Advisory Subcommittee on Materials Processing in Space (MPS) of the NAC-STAAC will meet in Room 226A of NASA Headquarters, 600 Independence Avenue, SW., Washington, D.C., from 9:00 a.m. to 3:00 p.m. on June 22, 1979. The morning session of the meeting is open to the public. Members of the public will be admitted to the meeting on a first-come, first-served basis up to the room's seating capacity of 15 persons, and will be required to sign a visitors' register.

From 9:00 a.m. to 12:00 noon, the Subcommittee will review plans and progress in the MPS program's Floating Zone Experiment System project and will discuss the program's Five Year Plan for 1981-85. The approved agenda for this part of the meeting is as follows:

June 22, 1979

Time and Topic

9:00 a.m.—Introductory Remarks.
9:30 a.m.—Presentation on the Floating Zone Experiment System.
10:30 a.m.—Presentation of MPS Program Five Year Plan.
11:30 a.m.—Discussion.
12:00 noon—Adjourn.

At 1:00 p.m., the Subcommittee will reconvene to recommend candidates for membership on an ad hoc peer review panel to perform scientific evaluations of technical proposals received by the MPS program, taking account of the discipline areas covered in the program's plans, the areas of expertise of the candidates considered, and the need to avoid conflicts of interest on the part of investigators who are known to be preparing proposals. Public

discussion of the professional qualifications of candidates for membership in the panel would invade the privacy of these scientists and other individuals associated with their research. Since the afternoon session of the Subcommittee meeting will be concerned throughout with matters listed in 5 U.S.C. 552b(c)(6) as described above, it has been determined that this session should be closed to the public.

The STAAC ad hoc Informal Advisory Subcommittee was established to advise NASA on the Materials Processing in Space program's accomplishments, ongoing research and long range plans. The Subcommittee has six members representing the scientific and industrial communites and is chaired by Dr. Martin Glicksman. For further information, contact Dr. James H. Bredt, Executive Secretary of the NAC–STAAC ad hoc Informal Advisory Subcommittee on Materials Processing in Space, Code EM–7, NASA Headquarters, Washington, D.C., 20546 (202/755–8573).

Arnold W. Frutkin,

Associate Administrator for External Affairs.

June 5, 1979.

[FR Doc. 79-17615 Filed 6-7-79; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL CAPITAL PLANNING COMMISSION

Proposed Revised Policies and Procedures for the Protection and Enhancement of Environmental Quality in the National Capital Region

The National Capital Planning Commission will consider, at its June 28, 1979 meeting, the adoption of the following proposed revised Environmental Policies and Procedures.

Interested organizations, agencies, and citizens are requested to submit their views in writing to the Commission prior to June 26, 1979, addressed to:

Daniel H. Shear, Secretary, National Capital Planning Commission, Washington, D.C. 20576.

Sec. 1. Purpose

All Federal agencies must direct, to the fullest extent possible their policies, plans, and programs to protect and enhance environmental quality. In view of the unique Federal presence at the seat of government, a special effort should be made by the Federal and District of Columbia governments in the National Capital Region to implement the National Environmental Policy Act, as amended (NEPA). These procedures supplement the Council on Environmental Quality's regulations for implementing the procedural provisions of NEPA and describe the way the National Capital Planning Commission, beginning at the earliest possible point, considers the environmental aspects of proposed actions. The Commission's goal is to avoid or minimize adverse environmental effects.

Sec. 2. Definitions

Underlined words are defined as follows:

"Commission" means the National Capital Planning Commission created by the *Planning Act.*

"Comprehensive Plan" means the Comprehensive Plan for the National Capital prepared and adopted pursuant to the *Planning Act.*

"Council" means the Council of the District of Columbia, as defined in Section 103 of the *Home Rule Act.*

"EIS" means environmental impact statement prepared pursuant to Section 102(2)(C) of *NEPA.*

"Environmental assessment" means a document that briefly discusses the environmental consequences of a proposed action and alternatives prepared for the purposes set forth in 40 CFR 1508.9.

"Environs" means the territory surrounding the District of Columbia within the Region.

"EPA" means the United States Environmental Protection Agency.

"Executive Director" means the director employed by the *Commission* pursuant to Section 2(c) of the *Planning Act.*

"Home Rule Act" means the District of Columbia Self-Government and Governmental Reorganization Act (December 24, 1973, 87 Stat. 774).

"Mayor" means the Mayor of the District of Columbia, as defined in Section 103 of the *Home Rule Act.*

"NEPA" means the National Environmental Policy Act, as amended (42 U.S.C. 4321, et seq.).

"Planning Act" means the National Capital Planning Act of 1952, as amended (40 U.S.C. 71–71i, 72, 73, 74; D.C. Code, secs. 1–1001 to 1–1013).

"Redevelopment Act" means the District of Columbia Redevelopment Act of 1945, as amended (D.C. Code, secs. 5–701 to 5–719).

"Region" means the National Capital Region as defined in Section 1(b) of the *Planning Act.*

"Zoning Act" means the Act of June 20, 1938, 52 Stat. 797, as amended (D.C. Code, secs. 5–413 to 5–428).

"Zoning Commission" means the Zoning Commission created by Section 1 of the Act of March 1, 1920, 41 Stat. 500, as amended (D.C. Code, sec. 5–412).

"Zoning Regulations" means the regulations, including the maps, and amendments thereto, promulgated by the *Zoning Commission* pursuant to the *Zoning Act.*

Sec. 3. Principal Functions—Major Decision Points

This section describes the major decision points for the *Commission's* principal functions. It does not contain an exhaustive list of the *Commission's* functions.

A. Federal Elements of the Comprehensive Plan

The *Commission's* comprehensive planning process begins when the Commission staff starts to prepare a specific Federal element (e.g. Federal land use, Federal employment, foreign missions and international agencies). The *NEPA* process usually starts with the preparation of a study or planning report on the proposed element and a related environmental analysis. The degree of specificity of the report varies depending on the subject matter of the element and on the *Commission's* direction to the staff. The report is circulated for agency and public review and comment. Generally the major decision points on a Federal element of the *Comprehensive Plan* are:

1. *First major decision point.*—In the case of a study report, after analyzing alternative policies and comments, the *Commission* selects, from among the alternative policies, that alternative for which the staff should prepare a draft proposed element.

2. *Second major decision point.*—After the staff has prepared a draft proposed element and related planning report, the *Executive Director* determines the type of environmental document to be prepared on the proposed element.

3. *Third major decision point.*—When the staff has prepared the appropriate environmental document, the draft proposed element is presented to the *Commission.* When satisfactory to the Commission, it authorizes the proposed element (accompanied by the planning report and the environmental document) to be circulated for agency and public review and comment.

4. *Fourth major decision point.*— After the circulation period has ended and comments analyzed, the proposed element is presented to the *Commission* for adoption. If an *EIS* is required, the proposed element is presented to the *Commission* for adoption not earlier than thirty days after the filing with *EPA* of the final *EIS.*

B. *District Elements of the Comprehensive Plan*

The District of Columbia government shall submit to the *Commission* an *environmental assessment* on each District element. It should be submitted as early as possible in the District's planning process, not later than the submission by the *Mayor* of the proposed element to the *Council*.

1. *First major decision point.*—When the *Mayor* submits the proposed element and *environmental assessment*, the *Executive Director* shall determine the appropriate environmental document required for Commission action. If the *Executive Director* determines that an *EIS* is required for *Commission* action on the proposed element, the District government, with *Commission* cooperation, shall provide the information set forth in Appendix B necessary to assist the *Commission* in the preparation of an *EIS*.

2. *Second major decision point.*—After the element has been adopted by the *Council* and submitted to the *Commission* pursuant to Section 2(a)(3) of the *Planning Act*, the *Commission* reviews the element with regard to its impact on the interests or functions of the Federal Establishment in the National Capital and may take such action or actions as it deems appropriate pursuant to Section 2(a)(4) of the *Planning Act*. The environmental document submitted for the first major decision point may be used for the second major decision point if no substantial changes have been made in the element. If substantial changes have been made, the appropriate environmental information will be supplemented or amended by the District government. If an *EIS* is required, the *Commission* shall not take action pursuant to Section 2(a)(4) of the *Planning Act* earlier than thirty days after the filing with *EPA* of the final *EIS*. The element shall not be deemed to have been submitted to the *Commission* until thirty days after the filing with *EPA* of the final *EIS*.

C. *Federal, Federally Assisted, and District of Columbia Projects*

1. *Federal developments and projects requiring Commission approval.*—A Federal agency shall consult with the *Commission* at the earliest possible time with respect to a plan for a development or a project requiring *Commission* review and approval as set forth in Sec. 7 of these procedures and shall permit the *Commission* to participate with it in determining the appropriate environmental document for such development or project. For each action listed under Sec. 7, the sponsoring agency's submission to the *Commission* must include an *EIS* or an *environmental assessment*. Prior to *Commission* action on an agency's submission, the *Commission* shall take responsibility for the scope and contents of the environmental document.

For all actions listed under Sec. 7, the following are major decision points:

a. *First major decision point.*—At the time of initial consultation with the *Commission* by the sponsoring agency, the *Executive Director* and the sponsoring agency shall determine the appropriate environmental document required for *Commission* action. If the determination is made that an *EIS* is required, the sponsoring agency, with Commission cooperation, will be required to prepare an EIS.

b. *Other major decision points.*—The number and nature of other major decision points depend on the type of submission by the sponsoring agency (e.g., master plan, location and program, development concepts, preliminary site and building plans) in accordance with the *Commission's* Site and Building Plan Requirements. Some decisions can be accomplished in one step while others can only be accomplished in a series of steps. In each instance, the appropriate environmental document must be completed prior to *Commission* action. The environmental document submitted for the first major decision point may be used for other major decision points if sufficient for such other major decision points and no substantial changes have been made in the proposal. If substantial changes have been made, the appropriate environmental document will be supplemented or amended by the sponsoring agency.

2. *Non-Federal developments and projects requiring Commission approval.*—Non-Federal agencies shall consult with the *Commission* at the earliest possible time as to the environmental document necessary with respect to a plan for a development or a project requiring *Commission* review and approval as set forth in Sec. 7 of these procedures. For each action listed under Sec. 7, the sponsoring agency's submission to the *Commission* must include an *environmental assessment* generally in the format set forth in the "Outline for Preparation of Environmental Assessments" (Appendix A) or in the format set forth in the "Outline for Information Necessary for the Preparation of Environmental Impact Statements" (Appendix B), as determined by the *Commission*.

For all actions listed under Sec. 7, the following are decision points:

a. *First major decision point.*—At the time of the initial submission by the sponsoring agency, the *Executive Director* shall determine the appropriate environmental document required for *Commission* action. If the Executive Director determines that the environmental information submitted is not sufficient for the making of a determination, more information will be requested from the agency. If the *Executive Director* determines that an *EIS* is required for *Commission* action, the *Commission* will prepare an *EIS* based on the environmental document submitted by the agency.

b. *Other major decisions points.*—The number and nature of other major decision points depend on the type of submission by the sponsoring agency (e.g., master plan, location and program, development concepts, preliminary site and building plans, Capper-Cramton Act general development plans, urban renewal plans) in accordance with the *Commission's* Site and Building Plan Requirements or Urban Renewal Requirements, as the case may be. Some decisions can be accomplished in one step while others can only be accomplished in a series of steps. In each instance, the appropriate environmental document must be completed prior to *Commission* action. The environmental document submitted for the first major decision point may be used for other major decision points if sufficient for such other major decison points and no substantial changes have been made in the proposal. If substantial changes have been made, the appropriate environmental document will be supplemented or amended by the sponsoring agency.

3. *Federal and non-Federal developments and projects requiring Commission review and comment.*—The *Commission* shall require that the sponsoring agency include, as part of its submission, and *EIS* or *environmental assessment* of the development or project.

Sec. 4. Federal Involvement

The *Commission* shall consult with appropriate Federal and non-Federal agencies and with interested private persons and organizations when its involvement is reasonably foreseeable. Sponsoring agencies are urged to contact the *Commission* staff at the earliest possible time in the preparation of District elements of the *Comprehensive Plan* and in the siting and initial planning and design of proposed new developments within the *Region*. The *Commission* staff is available at all times to advise and

consult with sponsoring agencies prior to formal submission of plans for *Commission* review. The Environmental Affairs Office of the *Commission* is available to advise agencies of studies or other information foreseeably required for later *Commission* action.

Sec. 5. Delegations to Executive Director

In conjunction with carrying out these procedures, the *Commission* delegates to the *Executive Director* the functions of:

(1) Determining whether to prepare and *EIS* or make a "Finding of No Significant Impact";

(2) Obtaining the information required for the preparation of a draft *EIS* or an *environmental assessment;*

(3) Preparing a draft *EIS;*

(4) Circulating a draft *EIS* for review and comment to *EPA*, affected and interested public agencies, and the general public;

(5) Integrating agency and public comments, where appropriate, into and preparing the final *EIS;* and

(6) Distributing the final *EIS* to *EPA* and all agencies and individuals who commented on the draft *EIS.*

Sec. 6. Actions Which Normally Required Commission Preparation of Environmental Impact Statements

There are no actions which the Commission has determined always require an *EIS.* However, with respect to plans for developments or projects for which a Federal agency has determined always require an *EIS*, the *Commission* will take responsibility for the scope and contents of such EISs.

Sec. 7. Actions Which Normally Require Environmental Assessments But Not Necessarily Environmental Impact Statements

Based on a review of the typical classes of actions it undertakes, the Commission has determined those actions which will normally require an *environmental assessment* but not necessarily and *EIS* prior to its action. For the following actions, the Executive Director will use the environmental document prepared pursuant to Sec. 3C of these procedures to determine whether an *EIS* should be prepared:

a. certify to the *Council,* together with findings and recommendations, whether a District element of the *Comprehensive Plan,* or amendment thereto, adopted by the *Council* pursuant to Section 2(a)(3) of the *Planning Act,* has a negative impact on the interests or functions of the Federal Establishment in the National Capital pursuant to Section 2(a)(4)(A) of the *Planning Act;*

b. determine whether a modification, submitted by the *Council* pursuant to Section 2(a)(4)(B) of the *Planning Act,* to the District element of the *Comprehensive Plan,* or amendment thereto, as to which the *Commission* has certified a negative impact on the interests or functions of the Federal Establishment in the National Capital pursuant to Section 2 (a)(4)(A) of the *Planning Act,* has been made in accordance with the *Commission's* findings and recommendations;

c. determine whether a modified element of, or amendment to, the Comprehensive Plan, submitted by the Council pursuant to Section 2(a)(4)(C) of *Planning Act,* has a negative impact on the interests or functions of the Federal Establishment in the National Capital;

d. adopt Federal elements of the *Comprehensive Plan* and amendments thereto pursuant to Section 4(a) of the *Planning Act;*

e. approve the location, height, bulk, number of stories, and size, and the provision for open space in and around District of Columbia public buildings in the central area of the District as concurrently defined by the *Commission* and *Council,* pursuant to Section 5(c) of the *Planning Act;* [1]

f. acquire lands in the District of Columbia and adjacent areas in Maryland and Virginia for the National Capital park, parkway, and playground systems pursuant to Section 11 of the *Planning Act* and, in connection with acquisitions in Maryland and Virginia, make agreements with State officials as to the arrangements for such acquisitions;

g. make a comprehensive or general plan of the District of Columbia pursuant to Section 6(a) of the *Redevelopment Act;*

h. adopt the boundaries of urban renewal areas pursuant to Section 6(b)(1) of the *Redevelopment Act;*

i. adopt urban renewal plans for urban renewal areas pursuant to Section 6(b)(2) of the *Redevelopment Act;*

j. adopt modifications to urban renewal plans pursuant to Section 12 of the *Redevelopment Act;*

k. approve the location, height, bulk, number of stories, and size of Federal public buildings in the District of Columbia and the provision for open space in and around the same, pursuant to Section 10 of the *Zoning Act* (D.C. Code, sec. 5–426);

l. adopt, or alter and adopt, sections of the plan for the extension of a permanent system of highways prepared by the *Mayor,* pursuant to Section 2 of the Act of March 2, 1893, 27 Stat. 532 (D.C. Code, sec. 7–109);

m. approve plats adjusting the permanent system of highways to provide ground for educational, religious, or similar institutions, pursuant to Section 3 of the Act of June 28, 1898, 30 Stat. 520 (D.C. Code, sec. 7–113);

n. approve new highway plans for portions of the District of Columbia prepared by the *Mayor,* pursuant to the Act of March 4, 1913, 37 Stat. 949 (D.C. Code, sec. 7–122);

o. approve the sale of real estate owned in fee simple by the District of Columbia for municipal use which the *Council* and *Commission* find to be no longer required for public purposes, pursuant to Section 1 of the Act of August 5, 1939, 53 Stat. 1211 (40 U.S.C. 72c; D.C. Code, sec. 9–301);

p. approve the sale by the Secretary of the Interior of real estate held by the United States in the District of Columbia under the jurisdiction of the National Park Service which may be no longer needed for public purposes, pursuant to Section 4 of the Act of August 5, 1939, 53 Stat. 1211 (40 U.S.C. 74a; D.C. Code, sec. 9–304);

q. approve the exchange of District-owned land, or part thereof, for an abutting lot or parcel of land, or part thereof, pursuant to the Act of August 1, 1951, 65 Stat. 150 (D.C. Code, sec. 9–401);

r. approve plans for replatting and/or method of condemnation with respect to the acquisition of property under the District of Columbia Alley Dwelling Act (June 12, 1934, 48 Stat. 930, as amended; D.C. Code, secs. 5–103 to 5–112);

s. approve settlements for the purpose of establishing and making clear the title of the United States in lands and water in, under, and adjacent to the Potomac River, the Anacostia River, or Eastern Branch, and Rock Creek, pursuant to the Act of June 4, 1934, 48 Stat. 836 (D.C. Code, sec. 6–104);

t. approve the location and construction in the District of Columbia of bathing pools or beaches by the Director of the National Park Service, pursuant to the Act of May 4, 1926, 44 Stat. 394, as amended (D.C. Code, sec. 8–169);

u. approve harbor regulations made by the *Council* which affect the interests and rights of the *Commission,* pursuant to Section 805 of the Act of March 3, 1901, 31 Stat. 1335, as amended (D.C. Code, sec. 22–1701);

v. approve the location of court buildings on portions of Judiciary Square or within the area bounded by

[1] The central area has been concurrently defined by the *Commission* and *Council* pursuant to Section 5(c) of the *Planning Act* to include the Shaw School and Downtown Urban Renewal Areas.

4th and 5th Streets, D and G Streets, N.W., pursuant to Section 1 of the Act of June 25, 1934, 48 Stat. 1215, as amended (D.C. Code, sec. 9–204); and

w. approve plans showing the location, height, bulk, number of stories, and size of, and the provisions for open space and off street parking in and around, buildings for foreign governments and international organizations on land sold or leased by the Secretary of State in the northwest section of the District of Columbia bounded by Connecticut Avenue, Van Ness Street, Reno Road, and Tilden Street, pursuant to Section 4 of the Act of October 8, 1968 (Public Law 90–553); and

x. approve transfers of jurisdiction over properties within the District of Columbia owned by the United States or the District among or between Federal and District authorities, pursuant to Section 1 of the Act of May 20, 1932, 47 Stat. 161, as amended (40 U.S.C. 122; D.C. Code, sec. 9–115) except where such transfers of jurisdiction conform to master plans or site and building plans approved by the *Commission* pursuant to Section 5(a) of the *Planning Act* or to urban renewal plans and modifications thereof adopted by the *Commission* and approved by the *Council* pursuant to Sections 6 and 12 of the *Redevelopment Act*.

Sec. 8. Actions Which Normally Do Not Require Either Commission Preparation of Environment Impact Statements or Environmental Assessments

The *Commission* has determined that administrative, personnel, and procedural actions, and the following actions of an advisory nature only normally do not require *Commission* preparation of either an EIS or an *environmental assessment*:

a. make a preliminary report and recommendations to Federal agencies on plans and programs submitted to the Commission pursuant to Section 5(a) of the *Planning Act*;

b. submit a final report a Federal agency which does not concur in the *Commission's* preliminary report and recommendations and which has so advised the *Commission* with its reasons therefor, pursuant to Section 5(a) of the *Planning Act*;

c. recommend a six-year program of public works projects for the Federal government pursuant to Section 7(a) of the *Planning Act*; and

d. comment on capital budget estimates of Federal agencies pursuant to Office of Management and Budget Circular No. A–11.

Any of the actions listed above may, in extraordinary circumstances, have a significant environmental effect. If the *Executive Director* makes such a determination, the appropriate environmental document will be prepared and made available to the *Commission* prior to its taking action on the item.

Sec. 9. Categorical Exclusions

The Commission has determined that the following are categorical exclusions within the meaning of 40 CFR 1508.4:

a. make a preliminary report and recommendations to District of Columbia agencies on plans and programs submitted to the Commission pursuant to Section 5(a) of the *Planning Act*;

b. submit a final report to a District of Columbia agency which does not concur in the *Commission's* preliminary report and recommendations and which has so advised the *Commission* with its reasons therefor, pursuant to Section 5(a) of the *Planning Act*;

c. advise and consult with appropriate planning agencies having jurisdiction over the affected part of the *environs* with respect to general plans for proposed Federal and District developments and projects within the *environs* and with respect to plans for proposed developments or projects submitted pursuant to Section 5(a) of the *Planning Act* involving a major change in the character or intensity of an existing use in the *environs*, pursuant to Section 5(d) of the *Planning Act*;

d. comment upon the multi-year capital improvements plan for the District developed by the *Mayor* under Section 444 of the *Home Rule Act*, pursuant to Section 7(b) of the *Planning Act*;

e. make a report and recommendation, including a final report, to the *Council* on any proposed change in or addition to the regulations or general orders regulating the platting and subdividing of lands and grounds in the District of Columbia, pursuant to Section 8(d) of the *Planning Act*;

f. make recommendations to the *Mayor* concerning the acquisition of areas for, or the establishment upon property not acquired under the authority of the Act of, public parking facilities pursuant to Section 3 of the District of Columbia Motor Vehicle Parking Facility Act of 1942 (February 16, 1942, 56 Stat. 91, as amended; D.C. Code, sec. 40–304);

g. consult with the *Mayor* on the development plan for the Pennsylvania Avenue development area submitted for approval to the *Mayor* by the Pennsylvania Avenue Development Corporation pursuant to Section 5 of the Pennsylvania Avenue Development Corporation Act of 1972 (October 27, 1972, 86 Stat. 1266; 40 U.S.C. 874);

h. submit to the *Zoning Commission* proposed amendments or general revisions to the *Zoning Regulations*, pursuant to Section 8(a) of the *Planning Act*;

i. make recommendations to the *Council* on proposed closings of streets, roads, highways, and alleys, or parts thereof, pursuant to Section 1 of the Street Readjustment Act of the District of Columbia (December 15, 1932, 47 Stat. 747, as amended; D.C. Code, sec. 7–401);

j. make a report and recommendations to the *Zoning Commission*, as provided in Section 5 of the *Zoning Act*, on proposed amendment to the *Zoning Regulations*, pursuant to Section 8(a) of the *Planning Act*; and

k. comment on state and local undertakings reviewed pursuant to Attachment A to Office of Management and Budget Circular No. A–95 (Revised).

Sec. 10. Environmental Data and Analysis Available to Commission

The alternatives considered by the *Commission* shall be encompassed by the range of alternatives discussed in the relevant environmental documents. All relevant environmental documents, comments, and responses shall accompany the proposal through the *Commission's* approval process.

Sec. 11. Public Information

Interested persons can obtain information or status reports on *EISs* and other elements of the NEPA process from the *Commission's* Office of Public Affairs, 1325 G Street NW., Washington, D.C. 20576, telephone (202) 724–0174.

Sec. 12. Supercession

The Commission's environmental policies and procedures published at 36 FR 23706, 37 FR 3010, 37 FR 4930, 37 FR 11196, and 37 FR 16039 are superceded.

Sec. 13. Authority

These procedures are adopted pursuant to the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.*, and the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (43 FR 55978–56007).

APPENDICES

Appendix A

Outline for Preparation of Environmental Assessments

The environmental assessment should contain *brief* discussions of the following:

I. Purpose of and need for the proposal.

II. Alternatives, including the *No Action* alternative.

III. Environmental effects of the proposed action and alternative.

The most important or significant environmental consequences of the areas listed below should be discussed. Only those areas which are relevant to the proposal should be addressed in as much detail as is necessary to allow an analysis of the alternatives and the proposal. The areas to be considered are the following:

1. Natural/ecological features (such as flood plains, wetlands, coastal zones, wildlife refuges and endangered species);
2. Air quality;
3. Sound levels;
4. Water supply, wastewater treatment and storm water runoff;
5. Energy requirements and conservation;
6. Solid waste;
7. Transportation;
8. Community facilities and services;
9. Social and economic; and
10. Historic and aesthetic.

IV. Listing of agencies and persons consulted in preparation of the assessment.

Appendix B

Outline of Information Necessary for Preparation of Environmental Impact Statements

I. Description of the Proposal

A. *Purpose of and Need for Action.* In discussing the purpose of and need for the action, this section should include a *brief* description of the proposal, its size and location, and any appropriate maps and/or diagrams. Where applicable, Comprehensive Plan modifications (as a related proposed action) should also be identified.

B. *Affected Environment.* Identification and succint description of the geographic area(s) affected by the proposed action and the alternatives considered including: other activities in the area affected by or related to the proposed action (if any). The CEQ Regulations advise that "the description shall no longer than is necessary to understand the effects of the alternatives. Data and analysis in a statement shall be commensurate with the importance of the impact with the less important material summarized, consolidated, or simply referenced". (Sec. 1502.15 of the CEQ Regulations.)

II. Environmental Consequences

This section should include discussions of the following:

A. *Environmental Effects of the Alternatives and the Proposed Action.*[1]

In this discussion, consideration should be given to the following factors where needed to reflect the most significant or important effects for analysis of the alternatives:

1. *Physical-Biological*

a. *Natural/Ecological Features*—This should include a discussion of effects on topographic, hydrology, soils, flora, fauna, floodplains, wetlands, coastal zones, endangered species, etc.

b. *Air Quality*—This discussion should focus on effects on the particular site/area affected by stationary, mobile and/or demolition/construction sources, if any, related to the proposed action and alternatives within the context of overall air quality goals/objectives.

c. *Sound Levels*—This discussion should focus on potential sound level effects associated with the proposed action and alternatives, such as demolition/construction, stationary (mechanical equipment) and mobile (transportation) sources on-site and in the surrounding areas, within the context of existing and relevant knowledge of noise effects, mitigation measures, and any existing or proposed noise standards/controls. Any unusual noise generation from the proposed action must be addressed.

d. *Site and Surrounding Area Land Uses, Plans, Policies and Controls*—This discussion should focus on the effects of the proposed action and alternatives on such things as street layouts and traffic movement/circulation patterns; setback and siting relationships; vehicular/pedestrian access; proposed Federal, State, local, and regional land use plans, policies and controls; etc.

2. *Urban Systems*

a. *Water Supply, Wastewater Treatment and Storm Water Runoff*—This discussion should focus on the effects on availability and capacity of the existing water supply, wastewater treatment and storm water systems (with any planned changes/expansions accounted for) to serve the proposed action(s), and alternatives based on documentation and evaluation of the anticipated water supply needs, and wastewater treatment and storm water demands, recognizing any unusual requirements, within the framework of applicable federal, regional and local regulations and standards. Any potential impacts on specific bodies of water (such as Rock Creek, the Potomac and Anacostia Rivers, etc.) should be addressed.

b. *Public Utilities, Energy Requirements and Conservation*—This discussion should focus on: (1) off-site effects of the proposed action, including anticipated insufficient capacity, delivery, and service level problems (Example: the inability of an off-site central heating facility to service a new project); (2) any on-site problems, such as effects on air quality from on-site plants; and (3) energy requirements and conservation measures related to proposed action and alternatives, and mitigation measures for each.

c. *Solid Waste*—This discussion should focus on the effects on the availability and capacity of disposal systems to serve the project and alternatives (with any timely changes or expansions accounted for), based on the anticipated amount and type of solid waste generation, including and unusual or special disposal requirements, methods for handling them, and recycling applicability.

d. *Community Facilities and Services*—This discussion should focus on the effects of the proposed action and alternatives on such facilities as police, fire, recreation/parks, schools, libraries, etc.

e. *Housing*—(Optional, depending upon the nature of the proposed action, as it may effect jurisdictional or regional housing markets and requirements (aggregate demand, type, location, size, etc.)).

f. *Transportation*—This discussion should focus on the effects on such things as transit systems capacities and constraints, vehicular congestion, safety considerations, mobile source levels, etc.

3. *Socio-Cultural and Economic Environments*

a. *Socio—cultural*—This discussion should fous on effects on the existing population patterns and characteristics, (number, age, sex, race, family structure, etc.) any relevant demographic trends, and any related changes in land use, water and public services of the area(s) involved. The scope of this discussion is dependant upon the nature and extent of the proposed action (i.e. a large-scale federal employment change could be expected to have a regional focus).

b. *Economic*—Effects on local and/or regional economic changes should be addressed, as available or able to be projected (employment changes, abeolute/relative income changes, expenditure patterns, property value and tax changes, and direct and induced changes in development/construction patterns, business relocation, etc.).

4. *Historic and Aesthetic Values*—Any effects on historic properties or districts, unique features (architectural styles, vistas), etc., should be discussed, as well as compliance with Section 106 of the National Historic Preservation Act of 1966.

B. *Probable Adverse Environmental Effects Which Cannot Be Avoided.*

This should be a brief section summarizing in one place those effects discussed above that are adverse and unavoidable under the proposed action.

C. *The Relationship Between Local Short-Term Uses of Man's Environment and the Maintanence and Enhancement of Long-Term Productivity*

This section should briefly discuss tradeoff involved between short-term environmental gains at the expense of long-term losses, or vice versa, if any of the proposed action.

D. *Irreversible and Irretrievable Commitment of Resources*

This section requires a discussion of the irreversible and irretrievable commitments of resources that would be involved in the implementation of the proposed action. These could include land, labor, finance, public services and facilities, cultural and natural resources, etc.

[1] Each of the factors listed should address *direct* and *indirect* effects and their significance and any appropriate means to mitigate adverse environmental impacts.

III. Alternatives Including Proposed Action

As advised by the CEQ Regulation, this section ". . . should present the environmental impacts of the proposed action and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options . . ." (sec. 1502.14)

All reasonable alternatives should be addressed, including ones not within the jurisdiction of the responsible agency, and the *no action* alternative. Also included should be a brief explanation of the reasons for eliminating other alternatives which were considered. This section should provide enough detail so that the comparative merits of each alternative can be evaluated.

IV. List of Preparers

According to the CEQ Regulations, this should include the "names and qualifications of persons primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement".

V. List of Agencies, Organizations, and Persons Receiving Copies of the Statement

VI. Index

VII. Appendix (if any)

According to section 1502.18 of the CEQ Regulations, the Appendix shall: "(a) consist of material prepared in connection with an environmental impact statement (as distinct from material which is incorporated by reference); (b) normally consist of material which substantiates any analysis fundamental to the impact statement; (c) normally be analytical and relevant to the decision to be made; and (d) be circulated with the environmental impact statement or be readily available on request.

Daniel H. Shear,

Secretary.

June 4, 1979

[FR Doc. 79-17773 Filed 6-7-79; 8:45 am]

BILLING CODE 7535-01-M

NATIONAL SCIENCE FOUNDATION

Subcommittee for Applied Social and Behavioral Sciences of the Advisory Committee for Applied Science and Research Applications Policy; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee for Applied Social and Behavioral Sciences of the Advisory Committee for Applied Science and Research Applications Policy.

Date and time: June 25-26, 1979—9 a.m. to 5 p.m. each day.

Place: Room 540, National Science Foundation, 1800 G Street, NW, Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. L. Vaughn Blankenship, Director, Division of Applied Research, Room 1126, National Science Foundation, Washington, D.C. 20550. Telephone: (202) 634-6260.

Purpose of subcommittee: To provide advice and recommendations concerning support for applied research in the social and behavioral sciences.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

M. Rebecca Winkler,

Committee Management Coordinator.

June 4, 1979.

[FR Doc. 79-17839 Filed 6-7-79; 8:45 am]

BILLING CODE 7555-01-M

Subcommittee for Applied Physical, Mathematical, and Biological Sciences and Engineering Sciences of the Advisory Committee for Applied Science and Research Applications; Meetings

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee for Applied Physical, Mathematical, and Biological Sciences and Engineering Sciences of the Advisory Committee for Applied Science and Research Applications.

Date and Time: June 28-29, 1979—9 a.m. to 5 p.m. each day.

Place: Room 1242, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Type of Meeting: Closed.

Contact Person: Dr. L. Vaughn Blankenship, Director, Division of Applied Research, Room 1126, National Science Foundation, Washington, D.C. 20550. Telephone (202) 634-6260.

Purpose of Subcommittee: To provide advice and recommendations concerning support for applied research in the social and behavioral sciences.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of P.L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

M. Rebecca Winkler,

Committee Management Coordinator.

June 4, 1979.

[FR Doc. 79-17838 Filed 6-7-79; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-245]

Northeast Nuclear Energy Co. et al.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 61 to Provisional Operating License No. DPR-21, issued to Northeast Nuclear Energy Company, The Hartford Electric Light Company, Western Massachusetts Electric Company, and Connecticut Light and Power Company (the licensees), which revised the Technical Specifications for operation of the Millstone Nuclear Power Station, Unit No. 1 (the facility) located in Waterford, Connecticut. The amendment is effective as of its date of issuance.

The amendment revises the provisions of the Appendix A Technical Specifications to (1) authorize use of 148 8x8R type fuel assemblies, (2) change the safety limit Minimum Critical Power Ratio (MCPR) from 1.06 to 1.07, (3) change the Cycle 7 (Reload 6) operating limit MCPRs for various transients, (4) change the Maximum Average Planar Linear Heat Generation Rate Limits, (5) delete the dropped control rod reactivity worth in Specification 3.3.B.3, and (6) revise the stepoint, maintenance, and surveillance requirements on the safety-relief valves.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations 10 CFR Chapter I, which are set forth in the

license amendment. Notice of Proposed Issuance of Amendment to Provisional Operating License in connection with this action was published in the Federal Register on April 13, 1979 (44 FR 22229). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated March 5, 1979, (2) Amendment No. 61 to License No. DPR-21, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut 06385. A single copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland this 29th day of May, 1979.

For the Nuclear Regulatory Commission.

Dennis L. Ziemann,

Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 79-17631 Filed 6-7-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. STN 50-485]

Stone & Webster Engineering Corp. Reference Safety Analysis Report, Issuance of Amendment To Preliminary Design Approval

Notice is hereby given that the staff of the Nuclear Regulatory Commission has issued Amendment No. 3 to Preliminary Design Approval No. PDA-4, dated June 1, 1979, for the reference system design of a balance-of-plant portion of a pressurized water reactor nuclear power plant utilizing the Westinghouse RESAR-41 nuclear steam supply system design, and as described in the application by Stone & Webster Engineering Corporation (SWESSAR-P1). Preliminary Design Approval No. PDA-4 was issued by the staff of the Nuclear Regulatory Commission on May 5, 1976.

The amendment extends the expiration date for Preliminary Design Approval No. PDA-4 from June 5, 1979 to August 18, 1979. This change was made as a result of the Nuclear Regulatory Commission's policy statement on standardization of nuclear power plants which provided for an extension to five years of the effective terms for preliminary design approvals for reference system designs issued prior to the August 1978 policy statement. The August 1978 policy statement identified certain types of safety matters that PDA holders would be required to address prior to the granting of PDA extensions. The policy statement requested prospective applicants for extension to submit their responses to the safety matters identified to them early enough ". . . so that staff review can be completed prior to the expiration date of the existing PDA or as soon thereafter as is practical."

The safety matters were identified in the NRC staff letter to the Stone & Webster Engineering Corporation, R. Boyd to W. J. L. Kennedy, dated January 24, 1979. By letter dated May 3, 1979, W. J. L. Kennedy to R. Boyd, the Stone & Webster Engineering Corporation submitted material addressing each of these matters. The staff concluded that the time required to conduct a completeness review of the applicant's submittal would exceed the remaining time to the then current PDA-4 expiration date of May 5, 1979. The staff issued an interim administrative extension (Amendment 2) of PDA-4 to June 5, 1979, in order to complete its initial review of the PDA extension matters prior to a decision on further extension of PDA-4 in accordance with the Commission's August 1978 policy statement.

As a result of the nuclear power reactor accident at the Three Mile Island power plant in Pennsylvania, unforeseen high priority demands on NRC staff resources have precluded completion of planned work on the extension review for PDA-4. The staff has concluded that a second interim administrative extension of PDA-4, to August 18, 1979, is appropriate and warranted.

Amendment No. 3 to PDA-4 is effective as of its date of issuance and shall expire on August 18, 1979 unless extended by the NRC staff. The expiration of PDA-4 as amended, should not affect use of PDA-4, Amendment No. 3 for reference in any construction permit application filed prior to such date.

A copy of Preliminary Design Approval No. PDA-4, Amendment No. 3 dated June 1, 1979 is available for public inspection at the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555.

Dated at Bethesda, Maryland, this 1st day of June 1979.

For the Nuclear Regulatory Commission.

C. J. Heltemes, Jr.,

Chief, Standardization Branch, Division of Project Management Office of Nuclear Reactor Regulation.

[FR Doc. 79-17632 Filed 6-7-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-327 and 50-328]

Tennessee Valley Authority (TVA), Sequoyah Nuclear Plant, Units 1 and 2; Issuance of Environmental Impact Appraisal and Negative Declaration

The U. S. Nuclear Regulatory Commission (the Commission), as required under the National Environmental Policy Act (NEPA) and the NRC licensing procedure, has assessed anticipated changes affecting environmental impact of the Sequoyah Nuclear Plant since issuance of the Final Environmental Statement in February 1974.

The Tennessee Valley Authority (permittee) presently holds provisional construction permits for the Sequoyah Nuclear Plant, Units 1 and 2 (CPPR-72 and CPPR-73) located near Daisy in Hamilton County, Tennessee and now seeks an operating license for these units.

The Commission's staff has reviewed and assessed changes of environmental consequence as submitted by TVA to the staff on October 30, 1978, and an environmental impact appraisal relative to the changes has been prepared. Based upon this appraisal, the staff has concluded that all previously unreviewed issues of potential environmental consequence are amenable to acceptable impact control and have been appropriately addressed by the EPA in their drafting of the NPDES permit for operation of the Sequoyah plant. The staff has worked closely with EPA, Region IV, in the development and preparation of the draft NPDES permit and presently views the conditions and requirements of the permit to be adequate to minimize environmental impact.

With incorporation of at least the conditions and limitations presently proposed by EPA for the NPDES permit and TVA's acceptance of those conditions and limitations, the staff has

determined based on its review that operation of the Sequoyah plant will have no significant adverse impact on the environment beyond that described in the Final Environmental Statement prepared by the TVA in July 1974. The staff therefore concludes that the appropriate action is issuance of the operating license for the Sequoyah Nuclear Plant, and that no additional environmental impact statement for the proposed acton need be prepared.

The environmental impact appraisal is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555, and at the Chattanooga—Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, TN 37402.

Dated at Bethesda, Maryland, this 31st day of May 1979.

For the Nuclear Regulatory Commission.

Ronald L. Ballard,

Chief, Environmental Projects Branch 1, Division of Site Safety and Environmental Analysis.

[FR Doc. 79-17833 Filed 6-7-79; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-346]

Toledo Edison Co. and the Cleveland Electric Illuminating Co., Davis-Besse Nuclear Power Station, Unit No. 1; Request for Action Under 10 CFR 2.206

Notice is hereby given that by petition dated April 24, 1979, the Toledo Coalition for Safe Energy requested that an order be issued that the Davis-Besse Nuclear Power Station, Unit No. 1, not be restarted until certain actions are taken concerning emergency and evacuation procedures and public hearings have been held. This petition is being treated as a request for action under 10 CFR 2.206 of the Commission's regulations, and accordingly, action will be taken on the petition within a reasonable time.

Copies of the petition are available for inspection in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555 and in the local public document room at the Ida Rupp Public Library, 310 Madison Street, Port Clinton, Ohio 43452.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland, this 1st day of June 1979.

Harold R. Denton,

Director Office of Nuclear Reactor Regulation.

[FR Doc. 79-17834 Filed 6-7-79; 8:45 am]
BILLING CODE 7590-01-M

Regulatory Guide; Issuance and Availability

The Nuclear Regulatory Commission has issued a revision to two guides in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.84, Revision 15, "Design and Fabrication Code Case Acceptability—ASME Section III Division 1," and Regulatory Guide 1.85, Revision 15, "Materials Code Case Acceptability—ASME Section III Division 1," list those code cases that are generally acceptable to the NRC staff for implementation in the licensing of light-water-cooled nuclear power plants. These two guides were revised to update the listings of acceptable code cases and to reflect public comment and additional staff review.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of the latest revision of issued guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C 552(a))

Dated at Rockville, Maryland this 30th day of May 1979.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Standards Development.

[FR Doc. 79-17835 Filed 6-7-79; 8:45 am]
BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Privacy Act: Notice of New Systems

The purpose of this notice is to give members of the public an opportunity to comment on Federal agency proposals to establish or alter personal data systems subject to the Privacy Act of 1974.

The Act states that "each agency shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect on such proposal on the privacy and other personal or property rights of individuals * * *."

OMB policies implementing this provision require agencies to submit reports on proposed new or altered systems to Congress and OMB 60 days prior to the issuance of any data collection forms or instructions, 60 days before entering any personal information into the new or altered systems, or 60 days prior to the issuance of any requests for proposals for computer and communications systems or services to support such systems—whichever is earlier.

The following reports on new or altered systems were received by OMB between May 14, 1979 and May 25, 1979. Inquiries or comments on the proposed new systems or changes to existing systems should be directed to the designated agency point-of-contact and a copy of any written comments provided to OMB. The 60 day advance notice period begins on the report date indicated.

Department of the Treasury

System Name: Document Delivery Control System.

Report Date: May 3, 1979.

Point-of-Contact: Mr. Floyd Sandlin, Office of Administrative Programs, Department of the Treasury, Washington, D.C. 20220.

Summary: This is the proposed revision of a system previously reported as "Library Circulation Control

Records." The system, maintained by the Office of the Secretary, is used to control the distribution of news publications and the loan of books and periodicals to library users. The addition of distribution control for current news publications is an addition of records and uses of the system.

Department of Agriculture

System Name: YCC Long-Term Benefit Evaluation

Report Date: May 16, 1979.

Point-of-Contact: Mr. Hoyt L. Abney, Room 0320 South Building, Forest Service, P.O. Box 2117, Washington, D.C. 20013.

Summary: The Forest Service proposes this new system of records as a means of identifying the possible long-term (five years) benefits of the Youth Conservation Corps. The study will be performed and funded in conjunction with the Department of the Interior, which runs the Youth Conservation Corps.

Office of Personnel Management

System Names: (1) *Internal System of Records:*

Defense Mobilization Emergency Cadre Records.
Confidential Statements of Employment and Financial Interest.
Negotiated Grievance Procedure Records.
Security Office Control Cards.
Employee Occupational Health Program Records.
Pay, Leave, and Travel Records.
Appeal and Administrative Review Records.
Complaints and Inquiries Records.
Applicants for Employment Records.
Pre-Employment Inquiry Records.
Intergovernmental Personnel Act Assignment Records.
Employee Incentive Award and Recognition Files.
Employee Assistance Program Records.
Federal Executive Development Program Records.
Employee Locator Card Files.
Employee Production Records.
Investigator Performance Records.
Speaker Resume and Clearance Records.
Motor Vehicle Operator and Accident Report Records.
Training Records.
Performance Evaluation/Rating Records.
Intern Program and Upward Mobility Program Records.

(2) *Central Systems of Records:*

Confidential Statements of Employment and Financial Interest.
Complaints and Position Classification or Retained Rate of Pay Appeals Records.
Personnel Research Test Validation Records.
Civil Service Retirement and Insurance Records.
Federal Executive Development Program Records.
Executive Assignment and Inventory Records.
Intergovernmental Personnel Act Assignment Records.
Administrative Law Judge Application Records.
Litigation and Claims Records.
Privacy Act/Freedom of Information Act Case Files.
Personnel Investigations Records.
Directory of Federal Executive Institution Alumni.
Presidential Management Intern Program Records.
Federal Automated Career System (FACS) Records.

(3) *Government-wide System of Records:*

General Personnel Records.
Records of Adverse Actions and Actions Based on Unacceptable Performance.
Ethics in Government Financial Disclosure Records.*
Recruiting, Examining and Placement Records.

Point-of-Contact: Mr. Robert J. Drummond, Assistant Director for Agency Compliance and Evaluation, Office of Personnel Management, Washington, D.C.

Summary: The Office of Personnel Management has completely revised its systems of records and descriptive notices in order to implement Reorganization Plans Nos. 1 and 2, February 23, and May 23, 1978, respectively. These plans transferred responsibility for Federal EEO programs from the Civil Service Commission to the Equal Employment opportunity Commission, and established the Office of Personnel management and the Merit Systems Protection Board. OPM also prepared and submitted for review proposed new Privacy Act regulations.

The systems of records reports include the same types of records which were maintained by the Civil Service Commission. They pertain to—

(1) CSC employees who have been transferred to OPM;

(20 Applicants for CSC positions and former CSC employees whose records have been transferred to OPM;

(3) Applicants for employment with OPM;

(4) Current and former employees of CSC, OPM, or other Federal agencies whose records are maintained only at OPM;

(5) Applicants for Federal employment where OPM maintains the records for all Federal agencies; and

(6) Current and former Federal employees whose records are maintained by all agencies for OPM and for which OPM has retained Privacy Act responsibilities.

OPM has categorized its systems as "internal", "central", and "government-wide". The records in (1)–(3) above are OPM internal, (4) and (5) are OPM central, and (6) are OPM government-wide.

Waiver Request: OMB procedures permit a waiver of the advance notice requirement when the agency can show that the delay caused by the 60 day advance notice would not be in the public interest. It should be noted that a waiver of the 60 day advance notice period does not relieve an agency of the obligation to publish notice describing the system and to allow 30 days for public comment on the proposed routine uses of the personal information to be collected. A waiver of the 60 day advance notice provision was requested by agencies for the following reports received between May 14, 1979 and May 25, 1979. Public inquiries or comments on the proposed new or altered systems should be directed to the designated agency point-of-contact and a copy of any written comments provided to OMB. Comments on the operation of the waiver procedure should be directed to OMB.

Department of Defense

System Name: Application for Pentagon Parking Permit; Pentagon Carpool Locator.

Report Date: May 18, 1979.

Point-of-Contact: Mr. William Cavaney, Department of Defense, Washington, D.C. 20301.

Summary: These systems of records, maintained by the Office of Secretary of Defense, will be expanded to include all DOD Pentagon employees and to reflect organizational changes. The changes are being made to carry out the President's directive to agencies, that they carry out energy conservation and pollution control programs.

Waiver Status: No action as of May 30.

Department of Health, Education, and Welfare

System Name: Epidemiological Research Studies of the Bureau of Radiological health.

*This system was the subject of a Report on New Systems and Federal Register notice earlier this year. It is listed here only to provide a full list of OPM systems of records.

Report Date: May 22, 1979.

Point-of-Contact: Mr. Gerald H. Deighton, FDA Privacy Act Coordinator, Department of Health, Education, and Welfare, Washington, D.C. 20201.

Summary: The Food and Drug Administration proposes this new system to provide a data base for determining and evaluating possible harmful effects of exposure to low-level radiation, including three previously unreported thyroid studies. The data base will include records of the three earlier studies, as well as persons exposed to radiation from medical, environmental, or environmental sources, patients with cancer, birth defects, or other diseases or conditions resulting from radiation exposure; and unexposed persons against whom comparisons can be made.

Waiver Status: No action as of May 29, 1979.

Department of the Treasury

System Name: Treasury Emergency Preparedness Information Program System.

Report Date: May 23, 1979.

Point-of-Contact: Mr. Floyd Sandlin, Office of Administrative Programs, Department of the Treasury, Washington, D.C. 20220.

Summary: The Office of the Secretary of the Treasury proposes to alter this existing system of records by computerizing the records. The system is used by "key Treasury officials" to assign personnel to Emergency Executive Teams.

Waiver Status: No action, as of May 29, 1979.

Velma N. Baldwin,

Assistant to the Director for Administration.

[FR Doc. 79-17909 Filed 6-7-79; 8:45 am]

BILLING CODE 3110-01-M

OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

Reallocation of Specialty Steel Quotas

AGENCY: Office of the Special Representative for Trade Negotiations.

ACTION: Notice of Shortfall Reallocation for Specialty Steel Quotas.

SUMMARY: The Special Representative for Trade Negotiations hereby reallocates shortfalls of certain specialty steel quota categories as set forth below.

This action modifies certain quota quantities of the third restraint period, June 14, 1978–June 13, 1979. Quota quantities are reduced for certain suppliers who are not likely to export the quantity of steel which would fill the quotas assigned to them. The quota quantities for other suppliers who are able to supply additional steel are increased.

EFFECTIVE DATES: The reallocations which result in a reduction of a quota quantity shall be effective on June 8, 1979. Reallocations which increase a quota quantity shall be effective on June 11, 1979.

FOR FURTHER INFORMATION CONTACT: Karen Alleman, Office of the Special Representative for Trade Negotiations, Washington, D.C. 20506 (202–395–7203).

SUPPLEMENTARY INFORMATION: Pursuant to subparagraph (c) of headnote 2, subpart A, part 2 of the Appendix to the Tariff Schedules of the United States (TSUS) the Special Representative is authorized to modify the quota quantities to reallocate shortfalls as defined by subparagraph (c). I have determined that shortfalls are likely to occur in items 923.20 and 923.21, TSUS, in the third restraint period (June 14, 1978–June 13, 1979) as follows:

Item	Article	Supplier	Shortfall (in short tons)
923.20	Stainless Steel and Strip	Canada	1,174
923.21	Stainless Steel sheet Plate	Sweden	200

Accordingly, subpart A, part 2, of the Appendix to the TSUS is amended to substitute new quota quantities for the third restraint period (June 14, 1978–June 13, 1979) for articles provided for in items 923.20 and 923.21, TSUS, as set forth below:

A. For item 923.20 (stainless steel and strip):

1. By changing the quota quantity for the European Economic Community from "17,500" to "18,174";

2. By changing the quota quantity for Canada from "7,900" to "6,726";

3. By changing the quota quantity for Sweden from "7,600" to "7,850";

4. By changing the quota quantity for other countries entitled to the rate of duty in rates of duty column numbered 1 from "3,102.8365" to "3,352.8365";

B. For item 923.21 (stainless steel plate);

1. By changing the quota quantity for Sweden from "1,975" to "1,775";

2. By changing the quota quantity for other countries entitled to the rate of duty in rates of duty column numbered 1 from "800" to "1,000".

William B. Kelly, Jr.,

Chairman, Trade Policy Staff Committee.

[FR Doc. 79-17837 Filed 6-7-79; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-15894; File No. SR-NYSE-79-22]

New York Stock Exchange, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s (b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on May 15, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Exchange's Statement of the Terms of Substance of the Proposed Rule Change

The amendment provides for the election by the Board of Directors of the New York Stock Exchange, Inc. of more than one vice chairman.

Purpose of Proposed Rule Change

The ability for the Board of Directors of the New York Stock Exchange, Inc. to elect more than one vice chairman would give the Board maximum flexibility in selecting its officers. The vice chairman plays a substantial role in the decision making process at the Exchange and the ability to elect more than one vice chairman would permit broader representation in that decision making process.

Basis Under the Act

The proposed constitutional amendments are consistent with Section 6(b)(1) of the Act as follows:

(i) The proposed constitutional amendments relate to the organization of the Exchange and the capacity of the Exchange to be able to carry out the purposes of the Securities Exchange Act of 1934 as amended.

(ii) Inapplicable

(iii) Inapplicable

(iv) Inapplicable

(v) Inapplicable
(vi) Inapplicable
(vii) Inapplicable
(viii) Inapplicable

Comments Received From Members, Participants or Others

No comments were solicited or received with respect to the proposed constitutional amendments.

Burden on Competition

There will be no burden on competition.

Basis for Rule Change Being Put Into Effect Pursuant to Section 19)b)(3)

In accordance with Section 19(b)(3)(A)(iii) the proposed amendments take effect immediately, as they are concerned solely with the administration of the New York Stock Exchange, Inc.

At any time within sixty days of the date of filing of these proposed rule changes, the Commission summarily may abrogate the change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments covering the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal offices of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted within 21 days of the date of this publication.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

Article III

The Board of Directors

Sec. 3. At its annual meeting the Board of Directors, by the affirmative vote of a majority of the Directors then in office, shall elect the Chairman of the Board and, from among its members [who are members or allied members of the Exchange], [the] *one or more* Vice [Chairman] *Chairmen* of the Board, *as the Board may deem appropriate* [each] *such Chairman and Vice Chairmen* to serve until the next annual meeting of the Board and until [his] *their* successors [has] *have* been elected and take[s] office. *At least one Vice Chairman shall be a Director who is a member or allied member of the Exchange.*

* * * * *

Sec. 9. In the event of the refusal or failure of the Chairman of the Board, [the] *any* Vice Chairman of the Board, any other officer of the Exchange, a Director of the Exchange, or a Trustee of the Gratuity Fund to discharge [his] *their* duties, or for any cause deemed sufficient by the Board of Directors, the Board may, by the affirmative vote of a majority of the entire Board, (1) remove any such officer or Director and declare [his] *that* office or position to be vacant, (2) remove any such Trustee who shall have been elected by the Board and declare [his] *that* office to be vacant, or (3) suspend any such Trustee who shall have been elected by the members of the Exchange from authority to act as such Trustee.

* * * * *

Article IV

Chairman of the Board of Directors

Sec. 2. Subject to the approval of the Board of Directors, the Chairman of the Board may appoint a President, one or more Vice Presidents, a Treasurer, a Secretary and such other officers of the Exchange, other than [the] *any* Vice Chairman of the Board, as [he] *the Chairman* from time to time may determine are required for the efficient management and operation of the Exchange and fix the duties, responsibilities, terms and conditions of employment of such officers and, subject to like approval, [he] *the Chairman* may terminate their employment at any time. All such officers shall be responsible to the Chairman of the Board for the proper performance of their duties.

* * * * *

Sec. 8. In case of the absence or inability to act of the Chairman of the Board, such other person as the Board of Directors may designate shall assume all the functions and discharge all the duties of the Chairman of the Board, other than those which shall devolve upon [the] *any* Vice Chairman of the Board as provided in Article V. In the absence of such designation by the Board, the President, if there be one, or, if there is no President or in [his] *the* absence or inability to act of *the President*, the senior available Vice President shall assume all such functions and discharge all such duties of the Chairman of the Board.

* * * * *

Article V

Vice Chairmen of the Board of Directors

Sec. 1. The Vice Chairman of the Board *and, if there are two or more Vice Chairmen of the Board, the Vice Chairman designated by the Board of Directors, shall* in case of the absence or inability to act of the Chairman of the Board, or in case of a vacancy in the office of Chairman of the Board, [shall] exercise the powers and discharge the duties of the Chairman of the Board in calling and presiding at meetings of the Board of Directors and of members of the Exchange. [The] *Any* Vice Chairman of the Board shall have such other functions and responsibilities as the Board of Directors may from time to time assign. [to him.]

Sec. 2. In case of the absence or inability to act of both the Chairman of the Board and the Vice Chairmen of the Board *who is authorized to exercise the powers and discharge the duties of the Chairman of the Board as provided in Section 1 of this Article, the other Vice Chairman of the Board if there be one and if there be more than one other Vice Chairman, then the other Vice Chairmen in such order or priority as the Board may designate, and, if there is no other Vice Chairman of the Board,* the members of the Board of Directors who are members or allied members of the Exchange, and in such order of priority as the Board may designate, or, in the absence of such designation, the senior available member of the Board of Directors who is a member or allied member of the Exchange, shall exercise the powers and discharge the duties of the Chairman of the Board in calling and presiding at meetings of the Board of Directors and of members of the Exchange.

Sec. 3. In case a vacancy shall occur in the office of *any* Vice Chairman of the Board, the Board, by the affirmative vote of a majority of the Directors then in office, shall fill such vacancy by the election to such office of a Director who [is a member or allied member of the Exchange] *meets the qualifications of the Vice Chairman whose office has become vacant.*

* * * * *

Article VII

Elections—Exchange Meetings

Sec. 13. At any meeting of the members of the Exchange, if neither the Chairman of the Board nor [the] *any* Vice Chairman of the Board nor a member of the Board of Directors authorized to act for the Chairman of the Board under Section 2 of Article V shall be present, the members present, in person and by proxy, shall appoint a presiding officer for the meeting.

* * * * *

Article XVIII

Emergency Committee

Sec. 2. The Emergency Committee shall, at the inception of the Period of Emergency, be composed of the following five Directors who are available and able to meet together—the Chairman of the Board of Director, [the] *each* Vice Chairman of the Board [of Directors and] *then in office and, if there is one Vice Chairman then in office,* the three *senior* members of the Board of Directors who are members or allied members of the Exchange *and if there are two or more Vice Chairmen then in office, such number of the senior members of the Board who are members or allied members of the Exchange as are necessary to bring the Committee up to its full complement of five. . . .*

New language italicized.
Deleted language in brackets [ ].

[FR Doc. 79-17788 Filed 6-7-79; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-15828; File No. SR-Amex-79-5]

American Stock Exchange, Inc.; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on May 7, 1979 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Exchange's Statement of Terms of Substance of the Proposed Rule Change

Proposed amendments to Rules 234 and 235 provide that, subject to specified dollar limitations, the Exchange will assume responsibility for losses incurred by members resulting from certain errors or omissions of Exchange employees responsible for processing and handling orders transmitted through the Exchange's ITS facility.

Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change is as follows:

ITS is an electronic communications facility which enables a member physically located on the floor of one exchange to execute an order in another market center by means of an intermarket "commitment to trade".

ITS is a key element in the formulation of the national market system, and, as such, it is important that the system attract sufficient member participation to ensure its continued growth and success.

The purpose of the amendments is to enable the Exchange to assume liability to its members, subject to certain specified limits and conditions, for those losses incurred by members in their use of the ITS system which result from errors or omissions of Exchange employees responsible for operating ITS transmission stations.

The proposed rule is authorized under Article IV, Section 1(e) of the Exchange Constitution, which provides that the Exchange shall not be liable to any member for losses arising out of use of Exchange facilities for the conduct of business, except as may be specifically provided by rule with regard to Exchange facilities for the electronic transmission of orders.

The proposed rule change is designed to provide for an equitable allocation of losses arising out of members' use of ITS and thereby to encourage the use of this facility, which will tend to enhance competition and facilitate development of a national market system. Therefore, the proposed amendments are consistent with Section 6(b) of the Act.

Comments Received From Members, Participants or Others on Proposed Rule Change

No comments were solicited or received from members, participants or others on the proposed amendments.

Burden on Competition

The Amex has determined that no burden on competition will be imposed by the proposed rule change.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before July 2, 1979.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.
May 15, 1979.

Exhibit A.—American Stock Exchange, Inc.

1. Rule 234 is redesignated as Rule 235, and is amended to read as follows:

Rule [234] *235* Transmission and Reception of System Messages;

Exchange Liability

(a) For the convenience of members on the Floor, the Exchange shall furnish employees ("ITS Clerks") who shall, on behalf of such members, send and receive through the System commitments and obligations to trade, pre-opening notifications and responses thereto. The Exchange shall not be liable for any loss, expense or damage resulting from or claimed to have resulted from the errors or omissions of its ITS Clerks *except in accordance with the provisions of and subject to the limitations set forth in this Rule 235.*

(b) All errors and omissions made by one or more ITS Clerks with respect to any single System trade or proposed System trade shall give rise to a single claim against the Exchange by the on-Floor member who instructed the ITS Clerk or Clerks who made the errors or omissions for all loss, cost, damage or expense (hereinafter called "loss") suffered by such member, or any other member organization for which he acted, as a result of such errors and omissions, but only to the extent and as provided in this Rule 235, and the Exchange shall be free to assert any defense to such claim it may have.

(c) *(i)* A member is responsible for communicating instructions to the ITS Clerk as to the message he desires to have transmitted through the System in a clear and accurate manner, on such forms as the Exchange may provide for that purpose. Such member (the "instructing member") shall be responsible for ensuring that his message is entered into the System correctly and for discovering and correcting any error or omission in entry of the message. *No claim shall arise as to errors or omissions which are found to have resulted from any failure by a member (whether or not such member is a party to the claim against the Exchange pursuant to this Rule 235) to place or cancel a message clearly and accurately with the ITS Clerk on a timely basis, in writing on such form or forms as the Exchange may provide for such purpose, and containing such information as may be required by the Exchange from time to time in connection with such message.*

Note.—*Italics* indicate material to be added; [Brackets] indicate material to be deleted.

(ii) It shall be the responsibility of the instructing member to keep abreast of the status of the message. The ITS Clerk shall not be responsible for keeping the instructing member advised as to the status of his message, except that the

ITS Clerk shall be responsible for responding as promptly as possible to the instructing member's inquiry concerning his message.

(iii) No claim shall be allowed if, in the opinion of the arbitration panel provided for in subparagraph (e) of this Rule 235, the member making such claim did not, promptly on discovery of the error or omission, take all proper steps to correct such error or omission and to establish and mitigate the loss resulting therefrom.

(d) Any claim for loss arising from errors or omissions of an ITS Clerk or Clerks shall be presented in writing to the Exchange no later than the opening of trading on the next business day following the day on which the error or omission giving rise to the loss occurred or within such longer period as the Exchange shall consider equitable under the circumstances.

(e) All disputed claims shall be referred for binding arbitration to an arbitration panel and the decision of a majority of the arbitrators selected to hear and determine the controversy shall be final and there shall be no appeal to the Board of Governors from the decision of such panel. The arbitration panel shall be composed of an odd number of panelists. Each of the parties to the dispute shall select one member or allied member to serve as panelist on the arbitration panel. The panelists so selected shall then select one or more additional panelist(s); provided that the additional panelist(s) so selected are either members or allied members of the Exchange, and provided further that no member of the arbitration panel may have any direct or indirect financial interest in the claim. In the event that the initial panelists selected by the parties to the dispute cannot agree on the selection of the additional panelist(s), such additional panelist(s) shall be appointed by a Floor Official, selected by lot from a roster of Floor officials having no direct or indirect financial interest in the claim. Each party to the dispute may make oral and written submissions and present witnesses to the arbitration panel. To the extent not inconsistent with the provisions of this Rule 235 the provisions governing arbitration contained in Article VIII of the Constitution and Rules 600 through 610 shall apply to proceedings under this subparagraph (e).

(f) The Exchange shall not be liable for any loss, resulting from or claimed to have resulted from the errors or omissions of its ITS Clerks *except with respect to claims against it under this Rule and to the extent provided in this subparagraph (f).*

(i) As to any single claim, the Exchange shall not be liable in excess of the larger of $10,000 or the amount of the recovery obtained by the Exchange as a result of the errors or omissions giving rise to such claim under any applicable insurance maintained by the Exchange; or

(ii) As to any number of single claims by any one or more members growing out of errors or omissions made by any one or more, or all, ITS Clerks, in the aggregate, on a single trading day, the Exchange shall not be liable in excess of the larger of $50,000 or the amount of the recovery obtained by the Exchange as a result of the errors or omissions giving rise to all such claims under any applicable insurance maintained by the Exchange.

(iii) As to any number of single claims by any one or more members growing out of errors or omissions made by any one or more, or all, ITS Clerks, in the aggregate, during a single calendar month, the Exchange shall not be liable in excess of the larger of $100,000 or the amount of the recovery obtained by the Exchange as a result of the errors or omissions giving rise to such claim under any applicable insurance maintained by the Exchange.

If the number of claims growing out of errors or omissions made by any one or more, or all, ITS Clerks, in the aggregate, during a single calendar month, cannot be fully satisfied because any single claim or all such claims in the aggregate exceed the maximum amount of liability provided for in subparagraph (iii) above, then such maximum amount shall be allocated among all such claims based upon the proportion that each such claim bears to the sum of all such claims. Thereafter, if all claims arising on a single trading day (reduced to reflect any allocation made in accordance with the preceding sentence) cannot be fully satisfied because any single claim or all such claims in the aggregate exceed the maximum amount of liability provided for in subparagraph (ii) above, then such maximum amount shall be allocated among all such claims based upon the proportion that each such claim bears to the sum of all such claims.

2. Rule 235 is redesignated Rule 234, and is amended to read as follows:

Rule [235] *234* Clearing of System Transactions

(a) *As used in this Rule 234 and Rule 235* the term "System trade" shall mean any purchase or sale of a security which results from the acceptance of a commitment or obligation to trade received on the Floor through ITS or the Pre-Opening Application or from the acceptance in another market of a commitment or obligation to trade sent from the Floor through ITS or the Pre-Opening Application.

(b) Each System trade shall be reported on the clearing tape generated by the System at the end of each trading day. Such tape shall also identify one or more clearing members who will clear and settle each System trade. The *member on the Floor who instructed the ITS Clerk (defined in Rule 235) to issue or accept the commitment or obligation to trade which resulted in the System trade reported on the clearing tape* ("instructing member") [(as defined in Rule 234) for each System trade] shall *also* be identified in Exchange records.

(c) Clearing members shall report each day's System trades to the agency through which they clear, along with all other trade input for that trade date. The participating market center which supplied the contra side of the System trade shall be designated by the clearing member as the contra party to the trade.

(d)(1) Whenever any System trade as reported by the clearing tape continues to be unresolved at the close of the second business day following the trade date, notwithstanding the routine comparison procedures employed by the clearing agency to which such system trade was reported, the Exchange shall be notified of the uncompared System trade so as to be able to conduct appropriate inquires on the Floor. The instructing member shall cooperate with the Exchange in the course of its on-Floor inquires and shall comply with such procedures as the Exchange may from time to time prescribe in an attempt to identify the member or member organization who knows the uncompared System trade. If the on-Floor inquiries conducted by the Exchange fail to identify the member or member organization who knows the uncompared System trade, but the inquires confirm to the satisfaction of the Exchange that Exchange records were accurate in their identification of the instructing member, and that the instructing member did instruct the [Exchange employee referred to in Rule 234 ("] ITS Clerk [")] to issue or accept the commitment or obligation to trade which resulted in the uncompared System trade as included on the clearing tape, then the instructing member shall accept and honor the trade or shall cause a member organization to do so in his behalf.

(2) If the on-Floor inquiries conducted by the Exchange identify to the satisfaction of the Exchange a member, other than the member indicated on Exchange records as the instructing member, as the person who instructed the ITS Clerk to issue or accept the commitment *or obligation* to trade which resulted in the uncompared System trade as included on the clearing tape, then such other member shall accept and honor the trade or shall cause a member organization to do so in his behalf.

(3) If the on-Floor inquiries conducted by the Exchange fail to identify the member or member organization who knows the uncompared System trade, and also fail to satisfy the Exchange as to the identify of the member who instructed the [Exchange employee] *ITS Clerk* to issue or accept the commitment or obligation to trade which resulted in the uncompared System trade as included on the clearing tape, then the Exchange shall, for its own account, accept and honor the uncompared System trade and may take such action in the market to close out or offset its position as it may deem appropriate.

(e) Whenever a clearing agency to which a System trade has been reported excludes such System trade from the clearance procedures conducted by such agency, either because such agency ceases to act (either with respect to transactions generally or as to a particular transaction) for a member or member organization, or because of the insolvency of such member or member organization, the Exchange may, but shall not be obligated to, assume and honor any one or more or all of such excluded System trades for the account of and on behalf of the member or member organization for which the clearing agency ceased to act or which is insolvent and the Exchange may take such action in the market to close out or offset its position as it may deem appropriate. In any such case, the Exchange shall have a claim against such member or member organization in the amount of the loss incurred by the Exchange as a result of such assumption of such excluded System trades. The Exchange may assert such claim against such member or member organization in any appropriate forum and, without limiting the generality of the foregoing, in connection with the transfer or any membership by such member, or by any member who is associated with such member organization, such claim shall be entitled to priority in payment as a sum due the Exchange under the provisions of Section 4(e) of Article IV of the Constitution.

[FR Doc. 79-17784 Filed 6-7-79; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 15882]

Bradford National Clearing Corp., et al.; Extension of Comment Period

May 30, 1979.

The Commission today announced that it has extended until July 27, 1979 the comment period on the two issues remanded for further study and explication by the United States Court of Appeals for the District of Columbia Circuit in the *Bradford* case. [1] Those issues were National Securities Clearing Corporation's ("NSCC") use of the pricing policy known as geographic price mutualization ("GPM") and NSCC's selection, without competitive bidding, of the Securities Industry Automation Corporation ("SIAC") as facilities manager of its consolidated system. The Commission had requested comment on those two issues in Securities Exchange Act Release No. 15640 (March 14, 1979).

In Release No. 15640, the Commission also included the text of a letter to Jack Nelson, President of NSCC, requesting (i) that NSCC submit written statements of its views and arguments concerning the two issues remanded by the court and (ii) that NSCC respond to certain other specific questions set forth in that letter relating to those two issues. The Commission also indicated that NSCC's two reports would be placed in a public file and that interested persons were encouraged to examine those reports and to comment on them. Finally, the release indicated that the comment period would be open for 45 days. [2]

On April 20, 1979, the Commission received a letter from NSCC containing a report on one of those issues, geographic price mutualization. That report was placed in Public File No. 600–15 and also issued as a Commission release. [3] Subsequent to that letter, NSCC orally requested that the Commission extend the time for submission by NSCC of its report on competitive bidding until June 15, 1979.

The Commission also has received a written request from the National Association of Securities Dealers, Inc. (the "NASD") and oral requests from Stock Clearing Corporation of Philadelphia ("SCCP"), Midwest Clearing Corporation ("MCC") and Bradford Securities Processing Services, Inc. ("BSPS") that the comment period on the two issues remanded in the *Bradford* litigation be extended.

The Commission believes it is important that interested persons have a meaningful opportunity to examine and comment upon NSCC's two reports. Accordingly, the Commission has extended the comment period on the two issues remanded in the *Bradford* litigation until July 27, 1979, which is approximately 30 days after the anticipated receipt and publication of NSCC's report on competitive bidding.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-17789 Filed 6-7-79; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 21078; (70-6320)]

Central & South West Fuels, Inc. et al.; Proposed Indemnity Agreements With Insurance Company Concerning Fuels Subsidiary's Mining Activities

June 1, 1979.

In the matter of Central and South West Fuels, Inc., P.O. Box 10773, Golden, Colorado 80401; Central Power and Light Company, P.O. Box 2121, Corpus Christi, Texas 78403; Public Service Company of Oklahoma, 212 East 6th Street, Tulsa, Oklahoma 74119; Southwestern Electric Power Company, P.O. Box 21106, Shreveport, Louisiana 71156; and West Texas Utilities Company, P.O. Box 841, Abilene, Texas 79604.

Notice is hereby given that Central Power and Light Company ("CPL"), Public Service Company of Oklahoma ("PSO"), Southwestern Electric Power Company ("SWEPCO"), and West Texas Utilities Company ("WTU"), each an electric utility subsidiary of Central and South West Corporation, a registered holding company, together with Central and South West Fuels, Inc. ("CSWF"), a fuel subsidiary of CPL, PSO, SWEPCO and WTU, have filed with this Commission a declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 12(b) of the Act and Rules 45(b), 90 and 91 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

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[1] *Bradford National Clearing Corporation et al.* v. *Securities and Exchange Commission et al.*, 590 F. 2d 1085 (D.C. Cir. 1978).

[2] To date, the Commission has received written comments from The Depository Trust Company, Pershing & Company and Merrill Lynch, Pierce, Fenner & Smith, Inc.

[3] Securities Exchange Act Release No. 15760 (April 24, 1979).

By order dated August 2, 1978 (HCAR No. 20658), this Commission authorized the creation of CSWF, with CPL, PSO and SWEPCO each owning 30% of CSWF's Common stock and WTU owning the remaining 10%. CSWF conducts nonpetroleum fuel exploration, acquisition and development activities as agent for its owners pursuant to orders issued in File No. 70-6235. As part of this fuel exploration and development program, CSWF contemplates engaging in mining activity in a number of States which require, as a prerequisite to the commencement of such activity, the posting by CSWF of a bond indemnifying the State against potential losses due to CSWF's failure to restore any mined property to its original condition. To avoid the unnecessary expense involved in obtaining a separate bond for each property it plans to develop, CSWF plans to procure a master bond which will cover mining operations in multiple locations.

CSWF has negotiated the terms of such a master bond with St. Paul Fire and Marine Insurance Company ("St. Paul"). As a condition to its acting as surety thereon, St. Paul requires that each of CSWF's owners indemnify it against any default on CSWF's obligations under the bond. Such indemnification would be in proportion to each company's ownership interest in CSWF. CPL, PSO, SWEPCO and WTU seek authorization to enter into separate general agreements indemnifying St. Paul for 30%, 30%, 30% and 10%, respectively, of the total of any liability incurred by St. Paul in its position as surety for CSWF under the master bond.

The authorization given in connection with the fuel exploration, acquisition and development activities in File No. 70-6235 provides that the costs incurred by CSWF in the development of a given property be apportioned among its owners not on the basis of their ownership interest in CSWF, but rather on the basis of their ownership interests in that one property. Accordingly, should the owners be called upon to fulfill their obligations under the proposed general indemnity agreements with St. Paul (under which agreements their liability would be proportionate to their ownership interests in CSWF), CPL, PSO, SWEPCO and WTU would reimburse each other as necessary to render each company's loss in connection with a particular mining operation proportionate to its ownership interest in that mining operation.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $2,700, including legal fees of $500. It is stated that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than June 22, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 79-17709 Filed 6-7-79; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 15992; (SR-CBOE-79-3)]

Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

June 1, 1979.

On April 16, 1979, the Chicago Board Options Exchange, Incorporated filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which establishes the basis for the determination of maximum bid/ask differentials for market makers as the last preceding bid for an option contract, rather than the last sale.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-15754, April 23, 1979) and by publication in the Federal Register (44 FR 25547, May 1, 1979). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 79-17701 Filed 6-7-79; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 21072 (70-6186)]

Connecticut Yankee Atomic Power Co.; Post-Effective Amendment Regarding Issuance and Sale of Short-Term Notes to Banks and a Dealer in Commercial Paper and Exception From Competitive Bidding

June 1, 1979.

In the matter of Connecticut Yankee Atomic Power Company, P.O. Box 270, Hartford, Connecticut 06101.

NOTICE IS HEREBY GIVEN that Connecticut Yankee Atomic Power Company ("Connecticut Yankee"), an electric utility subsidiary company of Northeast Utilities and New England Electric System, both of which are registered holding companies, has filed with this Commission a post-effective amendment to the declaration in this proceeding pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) promulgated thereunder regarding the following proposed transactions. All

interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

By order in this proceeding dated June 28, 1978 (HCAR No. 20607), Connecticut Yankee was authorized, during the period ending June 30, 1979, to issue and sell short-term notes to banks and commercial paper to a commercial paper dealer in an aggregate amount at any time outstanding not to exceed $30,000,000. The notes and commercial paper were to be issued and renewed from time to time as funds were required prior to June 30, 1979, provided no such notes or commercial paper would nature after March 31, 1981.

Connecticut Yankee now proposes to (a) extend the period for the short-term borrowings to June 30, 1980, (b) provide for the latest maturity for the borrowings to be March 31, 1981, and (c) revise the list of banks which will participate in the company's short-term borrowing program. The aggregate amount of short-term borrowings to be outstanding at any one time, whether issued to banks or to a dealer in commercial paper, will not exceed $30,000,000.

As of March 31, 1979, Connecticut Yankee's outstanding short-term debt was $17,525,000, all of which was represented by commercial paper. The short-term debt at June 30, 1979, is estimated to be $13,000,000. It is stated that the funds to be derived from the issuance and sale of the bank notes and commercial paper will be applied by the company (i) to repay $13,000,000 of commercial paper outstanding at June 30, 1979, (ii) to provide funds for construction, and (iii) to provide a portion of the funds required for the purchase of additional nuclear fuel through June 30, 1980. The company's estimated construction and nuclear fuel programs for 1979 are $8,900,000 and $25,000,000, respectively, and for 1980 are $16,000,000 and $18,700,000, respectively.

The bank notes to be issued by Connecticut Yankee will each be dated the date of issue, will have maximum naturity dates of nine months, and will bear interest at the prime rate. The bank notes will be issued no later than June 30, 1980, and will be subject to prepayment at any time at the company's option without premium. Connecticut Yankee proposes to make such borrowings from The Chase Manhattan Bank, New York, N.Y., and Bankers Trust Company, New York, N.Y., in a maximum principal amount at any one time outstanding from each bank of $15,000,000 and $5,000,000, respectively. Compensating balance requirements will be 5% of the credit line plus 15% on any funds borrowed. Connecticut Yankee calculates that the effective cost of such borrowings will be 14.69% per annum based on a prime interest rate of 11¾%. No closing costs are required in connection with the proposed bank borrowings.

The commercial paper will be issued in the form of short-term promissory notes in denominations of not less than $50,000 and not more than $1,000,000, of varying maturities, with no maturity more than 270 days after the date of issue, and will not be repayable prior to maturity. The commercial paper will be sold directly to a commercial paper dealer at the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and of the particular maturity. No commercial paper shall be issued having a maturity of more than 90 days at an effective interest cost to the company in excess of the effective bank interest rate at which the company could obtain loans from banks in an amount at least equal to the principal amount of such commercial paper. No commission or fee will be payable in connection with the issuance and sale of the commercial paper. The purchasing dealer, as principal, will reoffer the commercial paper to institutional investors at a discount of not more than ⅛ of 1% per annum less than the prevailing discount rate to Connecticut Yankee.

The commercial paper will be reoffered to not more than 200 identified and designated customers in a list (nonpublic) prepared for Connecticut Yankee in advance by the purchasing dealer. No additions will be made to this customer list. It is anticipated that the commercial paper will be held by customers to maturity, but if such customers desire to resell prior to maturity, the purchasing dealer, pursuant to a verbal repurchase agreement, will repurchase the commercial paper and reoffer the same to others in the group of 200 customers.

Expenses to be incurred in connection with the proposed transactions are estimated at $500. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Connecticut Yankee has requested that the issuance and sale of commercial paper be excepted from the competitive bidding requirements of Rule 50 pursuant to paragraph (a)(5)(B) thereof on the ground that it is not practicable to invite competitive bids for commercial paper and that current rates for commercial paper of prime borrowers such as Connecticut Yankee are published daily in financial publications. Connecticut Yankee has also requested that time for filing certificates of notification pursuant to Rule 24 be extended to allow for filing on a quarterly basis.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 28, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact of law raised by the post-effective amendment which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as now amended or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 79-17782 Filed 6-7-79; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 21673; (70-6226)]

Louisiana Power & Light Co.; Post-Effective Amendment Regarding Increase of Short-Term Borrowing

June 1, 1979.

In the matter of Louisiana Power & Light Co., 142 Delaronde Street, New Orleans, Louisiana 70174.

Notice is hereby given that Louisiana Power and Light Company ("Louisiana"), a wholly-owned subsidiary of Middle South Utilities, Inc., a registered holding company, has filed

with this Commission a first post-effective amendment to the declaration in this proceeding pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transactions. All interested persons are referred to the amended declaration, which is summarized below, for a complete statement of the proposed transactions.

By orders in this proceeding dated December 15, 1978 and January 5, 1979 (HCAR Nos. 20832 and 20873), Louisiana was authorized to issue and sell, from time to time until December 31, 1979, notes to banks and commercial paper to a dealer in an aggregate principal amount of all such borrowings at any one time outstanding not exceeding $120,000,000, the presently effective loan commitments from such banks terminating on December 31, 1979, with loans thereunder maturing not later than December 31, 1979, and proposing further that no bank loans under any extensions or renewals of such loan commitments and no sales of Louisiana's commercial paper would be made after June 30, 1980 or having a maturity date after June 30, 1980 without further authorization from the Commission on the basis of a further filing by Louisiana. As of May 18, 1979, the aggregate principal amount of short-term borrowings by means of bank loans and the sale of its commercial paper which Louisiana has outstanding, as authorized by this proceeding, is $93,007,500.

Louisiana now proposes that the maximum aggregate principal amount of all such borrowings that it is permitted to have outstanding at any one time through December 31, 1979, be increased to $130,000,000; and in such connection it has obtained from a new and additional participant, Jefferson Bank and Trust Company, Metairie, Louisiana, a loan commitment terminating on and providing for loan maturities not later than December 31, 1979, under which the maximum principal amount at any one time outstanding which may be borrowed by Louisiana from such new participant during such period is $1,000,000, and has obtained increases in the presently effective loan commitments from three of the presently participating banks, whereby the respective maximum principal amounts at any one time outstanding which may be borrowed by Louisiana from these three banks has been increased as follows: The Chase Manhattan Bank, increased from $54,000,000 to $59,000,000, Irving Trust Company, increased from $12,000,000 to $15,000,000, and Manufacturers Hanover Trust Company, increased from $8,000,000 to $10,000,000.

All of the other statements previously set forth in the amende declaration in this proceeding with respect to the Louisiana banks and the loans to be made therefrom and the non-Louisiana banks and the loans to be made therefrom, remain unchanged and apply, respectively, to the Louisiana bank and to the three non-Louisiana banks mentioned above.

Louisiana's construction program contemplates expenditures of approximately $268,600,000 in 1979. Louisiana estimates that it will require approximately $145,000,000 of additional funds from external sources in order to finance the balance of this 1979 construction program. As part of its financing program, Louisiana is presently contemplating the sale in July of 1979 of not to exceed $60,000,000 in aggregate per values of preferred stock. However, in the event that this preferred stock sale is not effected and completed before the end of July, Louisiana believes that it will become necesary for it to make and have outstanding by or before the end of July 1979 short term borrowings of the nature aforesaid aggregating more than the $120,000,000 principal amount presently authorized in this proceeding.

It is stated that no special or separate expenses are anticipated in connection with the proposed transactions and that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than June 29, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the post-effective amendment which he desires to controvert; or he may request that he be notified in the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as amended or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 79-17788 Filed 6-7-79; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 15690; SR-MSE-79-6]

Midwest Stock Exchange, Inc.; Order Approving Proposed Rule Change

May 31, 1979

In the matter of Midwest Stock Exchange, Inc., 120 South LaSalle Street, Chicago, Illinois 60603.

On April 2, 1979, the Midwest Stock Exchange, Inc. (the "MSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which amended Article XX, Rule 25 of the MSE Rules, and added a new Rule 13 to Article IX of the MSE Rules. The purpose of the proposal is to conform the MSE rules to the requirements of Section 11(a)(1) of the Act. On March 26, 1979, the MSE filed with the Commission Amendment No. 1 to SR-MSE-79-6. As amended, the proposal would require that MSE members clearly announce to the trading crowd that they are representing orders to be executed pursuant to Section 11(a)(1)(G) of the Act and Rule 11a1-1(T) thereunder, and that such orders yield priority, parity, and precedence to any order which is not for the account of a member, member organization or associated person thereof. Additionally, orders to be executed pursuant to Section 11(a)(1)(G) of the Act and Rule 11a1-1(T) thereunder must be marked in such a manner as to alert the executing member that the order is subject to those provisions.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission release (Securities Exchange Act Release No. 34-15690, April 2, 1979) and by publication in the Federal Register (44 FR 21102, April 9, 1979). No comments

were received with respect to the proposed rule filing.[2]

The Commission finds that the proposed rule change is consistent with the requirements of the act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Sections 6 and 11(a), and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-17794 Filed 6-7-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 15889; SR-MSE-79-6]

Midwest Stock Exchange, Inc.; Order Approving Proposal Rule Change

May 31, 1979.

In the matter of Midwest Stock Exchange, Inc., 120 South La Salle Street, Chicago, Illinois 60603.

On April 2, 1979, the Midwest Stock Exchange, Inc. (the "MSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed change to Article XXI, Rule 19 of the MSE Rules. On April 13, 1979 the MSE filed with the Commission Amendment No. 1 to SR-MSE-79-6. As amended, the proposal would require that members effecting on-floor proprietary transactions pursuant to Section 11(a)(1)(G) of the Act and Rule 11a1-1(T) thereunder, yield priority, parity and precedence to all orders originating off the floor, other than off floor orders to be executed pursuant to Section 11(a)(1)(G) of the Act and Rule 11a1-1(T) thereunder.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-15745, April 18, 1979) and by publication in the Federal Register (44 FR 24670, April 26, 1979). No comments were received with respect to the proposed rule filing.[1]

[1] On April 30, 1979, the MSE filed with the Commission Amendment No. 2 to SR-MSE-79-6, indicating final approval of the proposal by the MSE Board of Governors on April 19, 1979.

[1] On April 30, 1979, the MSE filed with the Commission Amendment No. 2 to SR-MSE-79-6, indicating final approval of the proposal by the MSE Board of Governors on April 19, 1979.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Sections 6 and 11(a), and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-17795 Filed 6-7-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-15893; File No. SR-MSE-79-14]

Midwest Stock Exchange, Inc.; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975) (the "Act"), notice is hereby given that on May 29, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Change

Article XXXI, Rules 6 and 10 of the Midwest Stock Exchange, Incorporated (the "MSE") are hereby amended as follows:

Additions Italicized—[Deletions Bracketed]

ARTICLE XXXI

Dealer Required to Purcahse All Odd Lots Offered

Rule 6. In any security in which he or it is registered as such, an odd-lot dealer shall be required to purchase all odd lots offered to him or it by any member or member organization of the Exchange and he or it shall be required to sell to any member or member organization of the Exchange any odd lots bid for by such member or member organization.

[A market order shall be executed at the next proper full-lot transaction, plus if a sale or minus if a purchase, the designated odd-lot differential, except where an order exceeds a full lot or a multiple of a full lot, such excess portion shall be filled on the execution of the first full lot.

Stop orders to buy shall become market orders when a round-lot transaction takes place at or above the stop price. The order shall be filled at the price of the next transaction plus the designated odd-lot differential.

Stop orders to sell shall become market orders when a round lot transaction takes place at or below the stop price. The order shall be filled at the price of the next transaction minus the odd-lot differential.

Odd-lot executions shall not be made on "seller" or "cash" trades. Odd-lot "seller" orders shall be executed on the regular designated differential up to an including "seller 7 days"; for longer periods, an additional one-quarter (¼) of a point shall be charged by the odd-lot dealer.]

ARTICLE XXXI

Execution of Odd Lot Orders

Rule 10. (a) No change in text.

(b) No change in text.

(c) General. A market order shall be executed at the proper full lot transaction, plus or minus a differential, if one is to be charged, except where an order exceeds a full lot or a multiple of a full lot, such excess portion shall be filled on the execution of the first full lot.

(i) Stop orders to buy shall become market orders when a round-lot transaction takes place at or above the stop price. The order shall be filled at the price of the next transaction plus an odd-lot differential if one is to be charged.

(ii) Stop orders to sell shall become market orders when a round-lot transaction takes place at or below the stop price. The order shall be filled at the price of the next transaction minus an odd-lot differential if one is to be charged.

(iii) Odd-lot transactions shall not be made on "seller" or "cash" trades.

(iv) Buy Limited Orders. The effective transaction for a limited order to buy shall be the first round-lot transaction which is below the specified limit by the amount of any differential or by a greater amount. The order shall be filled at the price of the effective transaction, plus any differential.

(v) Sell Limited Orders, Marked "Long". The effective transaction for a limited order to sell marked "long" shall be the first round-lot transaction which is above the specified limit by the amount of any differential or by a greater amount. The order shall be filled at the price of the effective transaction, minus any differential.

Statement of Basis and Purpose

The MSE states that the purposes of the proposed changes in Rule 6 of Article XXXI are to delete duplicate provisions also reflected in Rule 10 of Article XXXI, and to delete the provision of Rule 6 of Article XXXI that was revised by the previous adoption of the provisions of paragraph (b) of Rule 10 of Article XXXI.

Further, the MSE states that the purpose of the additions to Rule 10 of Article XXXI is to reflect the fact that odd-lost limit orders must be filled at a price that is better than the limited price at least by the amount of any differential charged.

The basis under the Act for this proposed rule change is Section 6(b)(5) which requires, among other things, that the rules of the exchange be designed to promote just and equitable principles of trade.

Comments Received From Members, Participants or Others on the Proposed Rule Change

The MSE has neither solicited nor recieved any comments on this proposed rule change.

Burden on Competition

The MSE believes that no burdens will be imposed on competition as a consequence of the effectiveness of this proposed rule change.

The foregoing proposed rule change has become effective, pursuant to Section 19(b)(3) of the Act. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be availble for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before June 25, 1979.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

June 1, 1979.

[FR Doc. 79-17788 Filed 6-7-79; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 15883; File No. SR-NASD-78-16]

National Association of Securities Dealers, Inc., Order Approving Proposed Rule Change

May 30, 1979.

In the matter of National Association of Securities Dealers, Inc., 1735 K Street, N.W., Washington, D.C. 20006.

On October 11, 1978, the National Association of Securities Dealers, Inc. (the "NASD") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder, copies of a proposal to amend Schedule C under Article I, Section 2 of its By-Laws to revise its requirements for registration and qualification of principals associated with member broker-dealer firms.[1] In particular, the proposal would create several new categories of "limited principal" registration [2] and would establish specialized qualification examinations for certain of those categories to be administered in connection with a pilot computerized examination program.

Notice of the filing, together with its terms of substance, was given by publication of a Commission Release (Securities Exchange Act Release No. 15263, October 27, 1978) and by publication in the Federal Register (43 FR 51154, November 2, 1978). On December 27, 1978, the initial proposal was revised to redefine one limited principal category, to incorporate into this proposal certain provisions governing registered options principals, and to add certain administrative and technical provisions. Notice of the filing of this amendment was given by publication of a Commission Release (Securities Exchange Act Release No. 15498, January 16, 1979) and by publication in the Federal Register (44 FR 5036, January 24, 1979). Although public comments were solicited on the proposed rule change as initially submitted and as amended in December, none were received. A final clarifying amendment to the proposal was submitted on May 8, 1979.

Currently, Schedule C of the NASD By-Laws specifies three categories of principal registration: Principal, Registered Options Principal, and Financial Principal. The proposed amendment to Schedule C would retain these categories, with the modifications discussed below, and would create two totally new limited principal categories: Limited Principal—Investment Company and Variable Contracts Products, and Limited Principal—Direct Participation Programs.

Under the proposed rule change, the existing "Principal" category would be recaptioned "General Securities Principal." Qualification requirements would remain the same, and all existing Principals would be redesignated General Securities Principals. The "Registered Options Principal" qualification requirements similarly would be unchanged, except for certain technical provisions.[3]

A category of "Limited Principal—Financial and Operations," which defines in detail the types of responsibilities requiring principal registration, would replace the existing Financial Principal category. Persons seeking qualification in this category would be required only to complete a specialized financial and operations examination and would not also need to qualify as General Securities Principals. As a result, unlike existing Financial Principals, persons qualifying only in the new limited category could not function as principals beyond the financial and operations areas.

The new "Limited Principal—Investment Company and Variable Contracts Products" category would permit, but would not require, persons whose supervisory activities are limited solely to transactions involving these products and insurance premium refunding programs to qualify as limited principals by passing a specialized examination relating primarily to these areas of business. Similarly, under the new "Limited Principal—Direct Participation Programs" category, persons could take a specialized examination and qualify as limited

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[1] A "principal" is an individual actively engaged in the management of a member firm's investment banking or securities business, including the supervision, solicitation or conduct of business, or training of persons associated with the firm.

[2] A "limited principal" is an individual whose supervisory activities would be restricted to certain specialized types of business and who registers to function as a principal in these areas alone. A limited principal could qualify as such by passing an examination dealing primarily with the specialized area of business.

[3] The provisions in Schedule C of the NASD By-Laws for Registered Options Principals became effective on February 1, 1979, as part of the NASD's rules to regulate options activities of member firms. *See* Securities Exchange Act Release No. 15332 (November 15, 1978).

principals if their activities are restricted solely to such programs.[4]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations applicable to registered national securities associations, and in particular, with the requirements of Sections 15(b) and 15A of the Act and the rules and regulations thereunder.[5] The Commission believes the activities of limited principals in the proposed categories are sufficiently specialized to make it unnecessary for them to qualify as principals in unrelated areas of the securities industry. By providing for the registration of limited principals, the Commission believes that the NASD may provide greater opportunities for persons to register as brokers and dealers and become members of the NASD or to become associated with a member firm. In addition, the Commission believes the NASD proposal accomplishes these results in a manner which is not designed to permit unfair discrimination between brokers and dealers and which will assist the NASD in enforcing compliance by its members, and persons associated with its members, with the provisions of the Act, rules thereunder, and the rules of the NASD.

The proposed rule change also would amend the following provisions in Schedule C, which are incidental to the creation of categories of limited principal registration.

Schedule C currently requires firms applying for NASD membership to have two persons qualified to become registered as principals. The purpose of this provision is to ensure that a firm losing one principal can continue to have another associated person qualified to manage it. To eliminate any ambiguities arising from the creation of categories of limited principal registration, this provision has been amended to require applicants to have two persons qualified to be registered as principals "with respect to each aspect of the applicant's investment banking and securities business." Exceptions to this general provision would permit a firm to have only one qualified Limited Principal—Financial and Operations,[6] and if the firm engages in option transactions, one qualified Registered Options Principal. These exceptions reflect current requirements in Schedule C.

Schedule C currently provides that a registered representative whose duties are changed so as to require registration as a principal will be allowed "a reasonable period of time" to pass a qualification examination for principals. The proposed rule change, as amended, would require a registered representative to pass the appropriate principal qualification examination within 90 calendar days following the change in his duties. Similarly, an individual new to the industry or new to a firm would have 90 days to qualify as a principal, after first satisfying any necessary prerequisites. If an applicant fails the examination or does not take it within the 90 days, a new application form and examination fee would be required.[7] The Commission believes this provision is reasonable as a means of assuring the timely qualification of individuals as principals and as an aid to efficient administration of the qualification examinations.

In addition to the examination fee, the proposed rule change would provide for the assessment of a $10 "service charge" as to each individual who, having made an appointment for an examination administered by computer, failed timely to appear for the examination or cancel the appointment. This provision would simply pass through a charge assessed against the NASD for persons failing to appear for scheduled examinations.

Copies of the proposed rule change, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, which were filed with the Commission, and of all written communications relating to the proposed rule change as amended between the Commission and any person were considered and are available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. (File No. SR–NASD–78–16).[8]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-17708 Filed 6-7-79; 8:45 am]

BILLING CODE 8010-01-M

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[4] The Commission has also approved a proposed rule change (SR–NASD–79–3) by the NASD containing the plans and specifications for the two new categories of limited principal registration: Limited Principal—Investment Company and Variable Contracts Products, and Limited Principal—Direct Participation Programs. The NASD intends to administer these limited principal examinations through its pilot computerized examination system. Securities Exchange Act Release No. 15894 (May 30, 1979).

[5] The Commission currently is considering issues relating to the qualification of principals in connection with its review of proposed Securities Exchange Act Rule 15b7–1, which was published for comment in Securities Exchange Act Release No. 13679 (June 27, 1977), 43 FR 34338 (July 8, 1977). This rule, as proposed, includes the same categories of limited principals approved today by the Commission as part of the NASD's rule change proposal.

[6] To codify an existing policy of the NASD, another provision of the proposed rule change would provide that firms exempt from certain provisions of Securities Exchange Act Rule 15c3–1 could, upon written request to the NASD, also be exempted from the requirement to have a Limited Principal—Financial and Operations.

[7] As originally filed, the proposed rule change, by its terms, applied only to registered representatives seeking elevation to principal status as a result of changed duties. The NASD filed an amendment on May 8, 1979, to clarify that the provision applied to all applicants for principal status.

[8] The Commission also considered public comments on proposed Securities Exchange Act Rule 15b7–1 (File No. S7–709) and public information submitted in connection with a pending rule change proposal of the NASD to amend Schedule C of its By-Laws (File No. SR–NASD–78–6). Both of these proposals included the limited principal categories being approved by the Commission.

[Release No. 15884; SR–NASD–79–3]

National Association of Securities Dealers, Inc.; Filing of Proposed Rule Change and Order Approving Proposed Rule Change

May 30, 1979.

In the matter of National Association of Securities Dealers, Inc., 1735 K Street, N.W., Washington, DC 20006.

On May 4, 1979, the National Association of Securities Dealers, Inc. (the "NASD") filed with the Commission, pursuant to Section 19(b) of the Securities Exchange Act of 1934 (the "Act"), and Rule 19b–4 thereunder, copies of a proposal to adopt plans and specifications[1] for two limited principal examinations which were pending approval by the Commission in a related proposed rule change (File No. SR–NASD–78–16).[2] That proposed rule change would, among other things, authorize the establishment of the categories of Limited Principal—Investment Company and Variable Contracts Products, and Limited Principal—Direct Participation Programs. According to the NASD, the purpose of the proposed rule change is

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[1] The filing received from the NASD included the following materials: copies of two letters from Frank J. McAuliffe, Director of the NASD's Qualifications Department, to Janet R. Zimmer, Chief of the Branch of Over-the-Counter Regulation of the Division of Market Regulation, dated May 4, 1979, concerning the two proposed limited principal examinations; study outlines prepared by the NASD for each of the limited principal examinations; specifications describing the examinations' area and sectional weightings; and relevant portions of an agreement between the NASD and Control Data Corporation, the organization providing the computer facilities which will be used by the NASD for the administration of the qualification examinations.

[2] Proposed NASD Rule 3B–NASD–79–29 was also today approved by the Commission. See Securities Exchange Act Release No. 15883 (May 30, 1979).

to provide question banks for those limited principal examinations.

Interested persons are invited to submit written data, views and arguments concerning the submission within 30 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, DC 20549. Reference should be made to File No. SR–NASD–79–3.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A of the Act and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change before the thirtieth day after the publication of notice of filing thereof. The proposed rule and change imposes no additional restrictions on brokers and dealers or their associated persons. Further, by enabling such persons, to the extent their activities are limited solely to transactions involving securities in a limited category, to take a limited principal examination in lieu of the General Securities Principal examination, the proposed rule change may relieve a substantive regulatory burden. The proposed limited principal examinations will be administered by the NASD through a pilot automated test administration system. Permitting these new limited principal examinations to become effective without delay will permit further experimentation with this pilot system. The Commission believes that the public interest would be served by the NASD's prompt implementation of the proposed new limited principal qualification examinations.

It therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.[8]

[8] Although the individual questions which comprise the question banks for the two proposed limited principal qualification examinations have not been specifically approved by the Commission, the NASD has represented that the question banks, and each examination drawn from the question banks, will conform to the plans and specifications herein approved. The NASD has further represented that it will update the question banks periodically in accordance with the outlines and procedures specified in its submission and that the question banks, and each examination drawn from the question banks, will continue to conform to the plans and specifications herein approved notwithstanding the revision or replacement of individual questions. New or revised questions will not necessarily be provided to the Commission for its review prior to their use. The NASD could not, however, revise the plans and specifications for either of the proposed limited principal qualification examinations without prior Commission approval.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-17787 Filed 6-7-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-15900; File No. SR-NASD-79-4]

National Association of Securities Dealers, Inc.; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94–29, 16 (June 4, 1975), notice is hereby given that on May 14, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

The NASD's Statment of the Terms of Substance of the Proposed Rule Change

Text of Proposed Rule Change

The following is the full text of the proposed amendment to Paragraph B of Part II of Schedule D under Article XVI of the By-Laws of the National Association of Securities Dealers, Inc. (Deleted material is bracketed, proposed new material is in italics.)

[2. A new issue shall be eligible to be an authorized security on the day that its registration statement is effective with the Securities and Exchange Commission provided that the total assets of the issuer shall reach or are expected to reach as a result of the offering, $1,000,000 and provided that all other applicable criteria contained herein are met. An authorization under this paragraph 2. shall automatically terminate 120 days after the last day of the issuer's fiscal year during which the registration statement became effective.]

2. Notwithstanding the provisions of Section B. 1. above, a new issue shall be eligible to be an authorized security, if:

a. i. the issue is being publicly offered pursuant to a registration statement declared effective by the Securities and Exchange Commission, or

ii. the issue is being publicly offered pursuant to an exemption from registration under Regulation A of Securities Act of 1933 and the issuer has provided the Corporation with financial statements which comply with the applicable minimum requirements for registration under the Securities Act of 1933 and has undertaken to file with the Corporation the same quarterly and annual reports required to be filed by issuers registered with the Securities and Exchange Commission; and

b. as a result of the offering, the issuer expects to comply with the criteria for securities not yet authorized contained in Section B.3. below.

c. This authorization shall terminate 120 days after the last day of the issuer's fiscal year during which the offering was made.

The NASD's Statement on the Purpose of the Proposed Rule Change

The proposed change to Schedule D will permit the inclusion in the NASDAQ System of certain companies engaged in offerings exempt from registration under the Securities Act of 1933 pursuant to Regulation A. The proposed amendment would permit inclusion of such companies on the condition that they provide the Association with certified financial statements consistent with those that would be required had the company registered with the Commission pursuant to the Securities Act of 1933. In addition, the proposed rule requires these companies to undertake to provide the NASD with quarterly and annual financial statements equivalent to those required to be filed by issuers registered with the Commission.

The NASD's Statment on the Basis Under the Act for the Proposed Rule Change

Section 15A(b)(11) provides that an association of brokers and dealers shall not be registered as a national securities association unless the Commission determines that the rules of the Association contain provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange, which may be distributed or published by any member or other persons associated with a member, and the persons to whom such quotations may be supplied. Such rules relating to quotations shall be designed to produce fair and informative quotations to prevent fictitious or misleading quotations and to promote orderly

procedures for collecting, distributing and publishing quotations.

The NASD's Statement on the Comments Received From Members, Participants or Others on the Proposed Rule Change

Article XVI of the NASD By-Laws provides that the Board of Governors may amend Schedule D without recourse to the membership. Comments of the membership were neither solicited nor received.

The NASD's Statement on the Burden on Competition

Since the proposed rule change would permit access to the NASDAQ System by companies that have not previously been authorized securities, it is believed that the proposed rule change will enhance competition among dealers in these securities and provide better markets for investors in these securities. Any burdens on competition caused by the reporting requirements contained in the rule change are consistent with the purposes of the Act in that these reports shall insure that issuers continue to comply with the NASDAQ qualification requirements.

On or before July 16, 1979, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six (6) copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before June 25, 1979.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

June 1, 1979.

[FR Doc. 79-17[illegible] Filed 6-7-79; 8:45 am]

BILLING CODE [illegible]

[Release 34-15891; File No. SR-NASD-79-5]

National Association of Securities Dealers, Inc.; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 19 (June 4, 1975) notice is hereby given that on May 14, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

The NASD's Statement of the Terms of Substance of the Proposed Rule Change

Text of Proposed Rule Change

The following is the full text of proposed Section 37 of Article III, of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. Brackets ([ ]) indicate deletions; italics indicate new material.

RULES OF FAIR PRACTICE

Article III

Section 1

(The Interpretation of the Board of Governors entitled "Advertising Interpretation (Advertising, Sales Literature, Market Letters and Recruiting of Sales Personnel)" is deleted in its entirety.)

* * * * *

Section 33

(Section 23 of Appendix E to Article III, Section 33 of the Rules of Fair Practice, entitled "Advertisements and Sales Literature" is deleted in its entirety.)

* * * * *

Section 37

Communications With the Public

(a) Definitions. (1) Advertisement—For purposes of this Section 37 and any interpretation thereof, the term "advertisement" means material published, or designed for use in, a newspaper, magazine or other periodical, radio, television, telephone or tape recording videotape display, signs or billboards, motion pictures, telephone directories (other than routine listings), or other public media.

(2) Sales Literature—For purposes of this Section 37 and any interpretation thereof, sales literature means any notice, circular, report (including research reports), newsletter (including market letters), form letter, or reprint or excerpt of the foregoing or of any published article, or any other promotional literature designed for use with the public, which material does not meet the foregoing definition of "advertisement." For purposes of this subsection, a form letter shall include one of a series of identical letters, or individually typed or prepared letters which contain essentially identical statements or repeat the same basic theme and which are sent to 25 or more persons.

(b) Approval and Recordkeeping. (1) Each item of advertising and sales literature shall be approved by signature or initial, prior to use, by a registered principal (or his designee) of the member. In the case of advertising or sales literature pertaining to options, the approval must be by the senior registered options principal or his designee.

(2) A separate file of all advertisements and sales literature, including the name(s) of the person(s) who prepared them and/or approved their use shall be maintained for a period of three years from the date of each use.

(c) Filing Requirements and Review Procedures. (1) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) shall be filed with the Association's Advertising Department by any member preparing it, or who has such material prepared, within three business days after first use or publication. Dealers need not file material prepared and filed by sponsors or underwriters unless a change in content or format is contemplated. Filing of such material in advance of use is permitted and encouraged but is not required.

(2) Advertisements pertaining to options shall be submitted to the Association's Advertising Department for review at least ten days prior to use (or such shorter period as the Department may allow in exceptional circumstances), unless such advertisement is submitted to and approved by a registered securities exchange or other regulatory body having substantially the same standards with respect to options advertising as set forth in this Section 37.

(3)(A) Each member of the Association which has not previously filed advertisements with the Association for with a registered securities exchange having standards comparable to those contained in this Section 37) shall file its initial advertisement with the Association's Advertising Department at least ten days prior to use and shall continue to file its advertisements at least ten days prior to use for a period of one year.

(B) Each member which, on the effective date of this Section 37, had been filing advertisements with the Association (or with a registered securities exchange having standards comparable to those contained in this Section 37) for a period of less than one year shall continue to file its advertisements, at least ten days prior to use, until the completion of one year from the date the first advertisement was filed with the Association or such exchange.

(C) Except for advertisements related to direct participation programs or to investment company securities, members subject to the requirements of subsection (a) or (b) above may, in lieu of filing with the Association, file advertisements on the same basis, and for the same time periods specified in those subsections, with any registered securities exchange having standards comparable to those contained in this Section 37.

(4) Notwithstanding the foregoing provisions, any District Business Conduct Committee of the Association, upon review of a member's advertising and/or sales literature, and after determining that the member has departed and there is a reasonable likelihood that the member will again depart from the standards of this Section 37, may require that such member file all advertising and/or sales literature, or the portion of such member's material which is related to any specific types or classes of securities or services, with the Association's Advertising Department and/or the District Committee, at least ten days prior to use.

The Committee shall notify the member in writing of the types of material to be filed and the length of time such requirement is to be in effect. The requirement shall not exceed one year, however, and shall not take effect until 30 days after the member receives the written notice, during which time the member may request a hearing before the District Business Conduct Committee, and any such hearing shall be held in reasonable conformity with the hearing and appeal procedures of the Code of Procedure for Handling Trade Practice Complaints.

(5) In addition to the foregoing requirements, every member's advertising and sales literature shall be subject to a routine spot-check procedure. Upon written request from the Association's Advertising Department, each member shall promptly submit the material requested. Members will not be required to submit material under this procedure which has been previously submitted pursuant to one of the foregoing requirements and the procedure will not be applied to members who have been, within the preceding calendar year, subjected to a spot-check by a registered securities exchange or other self-regulatory organization utilizing comparable procedures.

Explanation: While the procedures may vary with experience, it is the Association's current intention to request a one month's sample of material from each member annually.

(6) The following types of material are excluded from the foregoing filing requirements and spot-check procedures:

(A) advertisements or sales literature solely related to changes in a member's name, personnel, location, ownership, offices, business structure, officers or partners, telephone or teletype numbers, or concerning a merger with, or acquisition by, another member;

(B) advertisements or sales literature which do not more than identify the NASDAQ symbol of the member and/or of a security in which the member is a NASDAQ registered market maker;

(C) advertisements or sales literature which do not more than identify the member and/or offer a specific security at a stated price;

(D) material sent to branch offices or other internal material that is not distributed to the public;

(E) prospectuses, preliminary prospectuses, offering circulars and similar documents used in connection with an offering of securities which has been registered or filed with the Securities and Exchange Commission or any state, or which is exempt from such registration;

(F) advertisements prepared in accordance with Section 2(10)(b) of the Securities Act of 1933, as amended, or any rule thereunder, such as Rule 134, unless such advertisements are related to options, direct participation programs or securities issued by registered investment companies.

(d) Standards Applicable to Communications with the Public. All member communications with the public shall be based on principles of fair dealing and good faith and should provide a sound basis for evaluating the facts in regard to any particular security or securities or type of security, industry discussed, or service offered. No material fact or qualification may be omitted if the omission, in the light of the context of the material presented, would cause the advertising or sales literature to be misleading.

Exaggerated, unwarranted or misleading statements or claims are prohibited in all public communications of members. In preparing such literature, members must bear in mind that inherent in investment are the risks of fluctuating prices and the uncertainty of dividends, rates of return and yield, and no member shall, directly or indirectly, publish, circulate or distribute any public communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

When sponsoring or participating in a seminar, forum, radio or television interview, or when otherwise engaged in public appearances or speaking activities which may not constitute advertisements, members and persons associated with members shall nevertheless follow the standards of this subsection 37(d).

In addition to the foregoing general standard, the following specific standards apply:

(1) Necessary Data: Advertisements and sales literature shall contain the name of the member, the person or firm preparing the material, if other than the member, and the date on which it is first published, circulated or distributed (except, that in advertisements, only the name of the member need be stated; and except also that in any so-called "blind" advertisement used for recruiting personnel, the name of the member may be omitted). If the information in the material is not current, this fact should be stated.

(2) Recommendations: In making a recommendation, whether or not labeled as such, a member must have a reasonable basis for the recommendation and must disclose the price at the time the recommendation is made, as well as any of the following situations which are applicable:

(A) that the member usually makes a market in the securities being recommended;

(B) that the member and/or its officers or partners own options, rights or warrants to purchase any of the securities of the issuer whose securities

are recommended, unless the extent of such ownership in nominal;

(C) that that member was manager or co-manager of a public offering of any securities of the recommended issuer within the last 3 years.

The member shall also provide, or offer to furnish upon request, available investment information supporting the recommendations.

A member may use material referring to past recommendations if it sets forth all recommendations as to the same type, kind, grade, or classification of securities made by a member within the last year. Longer periods of years may be covered if they are consecutive and include the most recent year. Such material must also name each security recommended, and give the date and nature of each recommendation (e.g., whether to buy or sell), the price at the time of the recommendation, the price at which or the price range within which the recommendation was to be acted upon, and the fact that the period was one of generally rising markets, if such was the case.

Also permitted is material which does not make any specific recomendation but which offers to furnish a list of all recommendations made by a member within the past year or over longer periods of consecutive years, including the most recent year, if this list contains all the information specified in the previous paragraph.

(3) Claims and Opinions: Communications with the public must not contain promises of specific results, exaggerated or unwarranted claims or unwarranted superlatives, opinions for which there is no reasonable basis, or forecasts of future events which are unwarranted, or which are not clearly labeled as forecasts. Nor may references to past specific recommendations state or imply that the recommendations were or would have been profitable to any person and that they are indicative of the general quality of a member's recommendations.

(4) Testimonials: Testimonial material concerning the member or concerning any advice, analysis, report or other investment or related service rendered by the member must make clear that such experience is not necessarily indicative of future performance or results obtained by others. Testimonials must also disclose that compensation has been paid to the maker directly or indirectly, if applicable, and if they imply an experienced or specialized opinion, the qualifications of the maker of the testimonial should be given.

(5) Offers of Free Service: Any statement to the effect that any report, analysis, or other service will be furnished free or without any charge must not be made unless such report, analysis or other service actually is or will be furnished entirely free an without condition or obligation.

(6) Claims for Research Facilities: No claim or implication may be made for research or other facilities beyond those which the member dctually possese or has reasonable capacity to provide.

(7) Hedge Clauses: No cautionary statements or caveats, often called hedge clauses, may be used if they are misleading or are inconsistent with the content of the material.

(8) Recruiting Advertising: Advertisements in connection with the recruitment of sales personnel must not contain exaggerated or unwarranted claims or statements about opportunities in the investment banking or securities business and should not refer to specific earnings figures or ranges which are not reasonable under the circumstances.

(9) Periodic Investment Plans: Communications with the public should not discuss or portray any type of continuous or periodic investment plan without disclosing that such a plan does not assure a profit and does not protect against loss indeclining markets. In addition, if the material deals specifically with the principles of dollar-cost-averaging, it should point out that since such a plan involves continuous investment in securities regardless of fluctuating price levels of such securities, the investor should consider his financial ability to continue his purchases through periods of low price levels.

(10) References to Regulatory Organizations: Communications with the public shall not make any reference to membership in the Association or to registration or regulation of the securities being offered, or of the underwriter, sponsor, or any member or associated person, which reference could imply endorsement or approval by the Association or any federal or state regulatory body.

Reference to membership in the Association or Securities Investors Protection Corporation shall comply with all applicable By-Laws and Rules pertaining thereto.

(11) Identification of Sources: Statistical tables, charts, graphs or other illustrations used by members in advertising or sales literature should disclose the source of the information if not prepared by the member.

(e) Standards Applicable to Investment Company-Related Communications

In addition to the provisions of Paragraph D of this Section, members' public communications concerning investment company securities shall conform to all applicable rules of the SEC, as in effect at the time the material is used.

(f) Standards Applicable to Options-Related Communications

In addition to the provisions of Paragraph D of this Section, members' public communications concerning options shall conform to the following provisions:

(1) As there may be special risks attendant to some options transactions and certain options transactions involve complex investment strategies, these factors should be reflected in any communication which includes any discussion of the uses or advantages of options. Therefore, any statement referring to the opportunities or advantages presented by options should be balanced by a statement of the corresponding risks. The risk statement should reflect the same degree of specificity as the statement of opportunities, and board generalities should be avoided. Thus, a statement such as, "by purchasing options, an investor has an opportunity to earn profits while limiting his risk of loss," should be balanced by a statement such as, "Of course, an options investor may lose the entire amount committed to options in a relatively short period of time."

(2) It should not be suggested that speculative option strategies are suitable for most investors, or for small investors.

(3) Options issued by the Options Clearing Corporation (OCC Options) are securities registered under the Securities Act of 1933, and they are the subject of a currently effective registration statement. Section 5 of the Securities Act prohibits the use of any written material or radio or television advertisements (or other material constituting a "prospectus" as defined in the Act) relating to a registered security unless certain conditions are met. With respect to communications concerning OCC Options, the following rules shall apply:

(A) except as provided in paragraph (b) below, no written material with respect to OCC Options may be sent to any person unless prior to or at the same time with the written material a current OCC Options Prospectus is sent to such person.

(B) advertisements may be used (and copies of the advertisements may be sent to persons who have not received a Prospectus) if the material meets the requirements of Rule 134 under the Securities Act of 1933, as that Rule has been interpreted as applying to OCC Options. Under Rule 134, advertisements are limited to general descriptions of the security being offered and of its issuer. In the case of OCC Options, advertisements under this Rule must have the following characteristics: (i) The advertisement should state the name and address of the person from whom a current OCC Options Prospectus may be obtained (this would usually be the member sponsoring the advertisement); (ii) The text of the advertisement may contain a brief description of OCC options, including a statement that the issuer of every OCC Option is the Options Clearing Corporation. The text may also contain a brief description of the general attributes and method of operation of the Options Clearing Corporation and/or a description of any of the options traded in different markets, including a discussion of how the price of an option is determined; (iii) The advertisement may include any statement or legend required by any state law or administrative authority; (iv) Advertising designs and devices including borders, scrolls, arrows, pointers, multiple combined logos and unusual type faces and lettering as well as attention-getting headlines and photographs and other graphics may be used, provided such material is not misleading.

* * * * *

Paragraph 8301 of the NASD Manual is amended as follows:

Investment Company Securities

Introduction

This section of the Association Manual is devoted to standards governing preparation and use of sales literature and advertising about investment company securities, together with some of the important ethical requirements relating specifically to sales practices of underwriters and dealers in offering such securities to the public.

It must be read in conjunction with and as supplemental to Sections 1, 2, 10, 19(a), 25, 26, [and] 27, and *37* of Article III of the Rules of Fair Practice.

[Members should feel free to submit proposed sales literature or questions regarding its preparation and use to the Advertising Department of the National Association of Securities Dealers, Inc., in Washington, D.C.]

Sales Literature

[All of paragraph 8302 is deleted in order to remove all reference to the Commission's Statement of Policy which has been withdrawn and to remove the reference to the sales literature filing requirement which has been incorporated in § 37.]

The NASD's Statement on the Purpose of Proposed Rule Change

The Association has reviewed the action taken by the New York Stock Exchange to eliminate its requirements for prior approval of member advertising, and the American Stock Exchange's similar action with respect to advertising for all securities other than options. After careful consideration, the Board of Governors decided to eliminate its general after-the-fact requirement and adopt a new spot-check procedure similar to that used by some of the exchanges. In addition, however, the Board believed that the separate requirements for investment company material should be retained and that new advance filing requirements should be instituted in certain limited areas. The Board has also taken this opportunity to codify some of its existing interpretations into rule form, and to consolidate various requirements into one place which are now contained in different sections of the NASD Manual. The rule also applies advance filing requirements to all new members for one year and, in addition, District Business Conduct Committees are specifically authorized to direct a member to file advertising or sales literature in advance for a period not exceeding one year. This latter provision is designed to provide District Committees with added flexibility to deal with situations where a member appears to be having difficulty in designing advertising or sales literature in accordance with applicable standards, but the Committee does not feel that the situation warrants formal disciplinary proceedings. The procedure would not displace the Formal Complaint procedure or the Admission, Waiver and Consent Procedure and the District Committees could still utilize these procedures where appropriate. A member who desired further consideration of the requirement imposed by the District Committee could request a hearing on the matter.

Both of these latter two new provisions result from the Association's belief that, except for the special product areas mentioned, difficulties experienced with the content of members' advertising tend to be concentrated in a relatively small number of firms. Often the members experiencing difficulties are new members or members who have not advertised in the past. Occasionally, however, problems are experienced by other than new members, due to a change in personnel or other factors. These two new provisions are intended to focus the Association's regulatory effort on the likely problem areas, while lifting a substantial compliance burden from the majority of members. This consideration has resulted in an expansion of the types of material exempted from our filing requirements and spot-check procedures. The Association will, of course, continue to review and comment on members' material which is voluntarily submitted.

The NASD's Statement on the Basis Under the Act for Proposed Rule Change

The NASD has the authority to enact this new rule under § 15A(b)(6) of the Securities Exchange Act of 1934, as amended (15 USC § 78o-3(b)(6)), and Article VII of the Association's By-Laws.

the Association believes that this new rule will better effectuate the role of the NASD in regulating and monitoring its members' advertising and sales literature. Such monitoring is necessary "to remove impediments to and perfect the mechanism of a free and open market . . . and, in general, to protect investors and the public interest. . . ." Article VII of the NASD's By-Laws is the Association's enabling provision which allows it to adopt necessary rules to carry out its purposes.

The NASD's Statement on the Comments Received From Members, Participants, or Others on Proposed Rule Change

Comments were received from members of the NASD and other industry organizations, both in the initial request for comments on the appropriate course the Association should take with respect to existing filing requirements (March 31, 1977), and on the proposed rule (October 6, 1977).

As to the initial for comments, one response suggested replacing the mandatory filing requirement with a spot check enforcement mechanism. Two commentators suggested that the NASD should refrain from any filing requirement that creates dual requirements on members of exchanges.

The Securities Industry Association agreed with pre-publication filing requirements concerning investment company securities. It also suggested

that the NASD coordinate its rules with those of the NYSE and AMEX.

As to the request for comments on the actual proposed rule, one commentator suggested that "the whole section be abolished and replaced with the statement that no false or misleading advertising may be done, and that spot checks will be made to control the use of advertising." The same comment suggested that "if the heavy verbiage is retained, then . . . surely there should be a difference in advertising individual issues over mutal funds and variable annuities . . . " Another commentator suggested that certain subsections of the rule were unclear as written and suggested clearer language.

The SIA submitted a letter enthusiastically endorsing most of the proposed changes. Another comment was in "wholehearted agreement" with the changes. Another commentator suggested that the definition of public or non-public, and "exempt from registration" should be clarified. He also made certain suggestions as to the standards applicable to advertising and sales literature.

Finally, another comment agreed with the proposed changes, except it disagreed "with the Association's apparent position that, solely with respect to registered investment company products, increased procedures are necessary and no reduction in compliance is warranted." The letter then addressed particular areas of the rule wherein it believed an unnecessary requirement was placed on members selling investment company securities.

The proposed rule reflects most of the favorable comments on the elimination of the after-the-fact filing requirement and the adoption of a new spot-check procedure similar to that used by some of the exchanges. However, the rule does retain separate requirements for investment company material. As to those comments regarding the clarity of particular sections of the rule, they have been incorporated herein where deemed appropriate.

The NASD's Statment on the Burden on Competition

The purpose of the proposed rule is to better enable the Association to regulate all of its members' advertising. The substitution of a spot check for filing requirements eliminates the immediate filing burden previously imposed on most members. The retention of the filing requirements for investment company advertising and options advertising, the one-year advance filing requirement for new members, and those directed to do so by a District Business Conduct Committee, do impose a burden on certain members. These special requirements reflect the experience of the NASD that difficulties experienced with the content of members' advertising tend to be concentrated in a relatively small number of firms. Thus, these new provisions are intended to focus the Association's regulatory effort on the likely problem areas, while lifting a substantial compliance burden from the majority of members. The Association believes that the proposed rule change does not impose burdens on competition not necessary or appropriate in furtherance of the purposes of the Act.

On or before July 16, 1979, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available for inspection ad copying at the principal office of the above-mentioned self-regulatory organization.

All submissions should refer to the file number referenced in the caption above and should be submitted on or before July 9, 1979.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

June 1, 1979.

[FR Doc. 79-17787 Filed 6-7-79; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 21079; 70-6317]

New England Power Co., et al.; Proposed Contribution by Holding Company to Subsidiary

May 31, 1979.

In the matter of New England Power Company, New England Electric System, 20 Turnpike Road, Westborough, Mass. 01581.

Notice is hereby given that New England Electric System ("NEES"), a registered holding company, and New England Power Company ("NEPCO"), one of NEES' electric utility subsidiary companies, have filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 9(a), 10 and 12 of the Act and Rules 42(a) and 45 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

NEES proposes to make a capital contribution to NEPCO of $20,000,000. NEPCO will use such contribution towards the payment of a like amount of its short-term promissory notes issued to pay for capitalizable expenditures, or to reimburse the treasury therefor. As of March 31, 1979, NEPCO has no outstanding short-term indebtedness, but it is anticipated that at the time of the proposed capital contribution, such indebtedness will aggregate $37,000,000.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $2,500, including $500 of incidental services to be performed at cost by New England Power Service Company, an affiliate of NEES. It is stated that no state commission, and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than June 26, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission,

Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-17708 Filed 6-7-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21074; 70617]

Northeast Utilities, Western Massachusetts Electric Co., et al.; Post-Effective Amendment Regarding Issuance and Sale of Short-Term Notes to Banks and Commercial Paper to Dealer, Exception From Competitive Bidding, and Capital Contributions and Open Account Advances by Holding Company to Subsidiaries

June 1, 1979.

In the matter of Northeast Utilities, Western Massachusetts Electric Company, 174 Brush Hill Avenue, West Springfield, Massachusetts 01089; The Connecticut Light and Power Company, The Hartford Electric Light Company, Selden Street, Berlin, Connecticut 06037; Holyoke Water Power Company, One Canal Street, Holyoke, Massachusetts.

Notice is hereby given that Northeast Utilities ("NU"), a registered holding company, and The Connecticut Light and Power Company ("CL&P"), The Hartford Electric Light Company ("HELCO"), Western Massachusetts Electric Company ("WMECO"), and Holyoke Water Power Company ("HWP"), public-utility subsidiary companies of NU, have filed with this Commission a post-effective amendment to the declaration in this proceeding pursuant to Sections 6(a), 7, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45 and 50(a)(5) promulgated thereunder regarding the following proposed transactions. All interested persons are referred to the amended declaration, which is summarized below, for a complete statement of the proposed transactions.

By order in this proceeding dated June 28, 1978 (HCAR No. 20601), the declarants were authorized, during the period ending June 30, 1979, to issue and sell short-term notes to banks and commercial paper to a commercial paper dealer in aggregate amounts outstanding at any one time not to exceed $15,000,000 in the case of NU and in the cases of CL&P, HELCO, WMECO, and HWP, $150,000,000, $35,000,000, $40,000,000, and $6,000,000, respectively. The notes and commercial paper were to be issued and renewed from time to time as funds were required prior to June 30, 1979, provided no such notes or commercial paper would mature after March 31, 1980.

It is now proposed (a) to extend the period for the short-term borrowings to June 30, 1980, (b) to provide for the latest maturity date for the borrowings to be March 31, 1981, and (c) to revise the maximum amount of bank notes and commercial paper outstanding at any one time to $20,000,000 in the case of NU and $150,000,000, $70,000,000, $55,000,000, and $6,000,000, respectively, in the case of CL&P, HELCO, WMECO, and HWP. CL&P, HELCO, and WMECO each have authorization from the holders of their respective preferred shares to issue securities representing unsecured indebtedness up to a maximum of 20% of their respective capitalizations not later than March 31, 1984, in the case of CL&P and HELCO and February 10, 1984, in the case of WMECO.

The outstanding short-term debt of the applicants as of March 31, 1979, the amount anticipated to be outstanding as of June 30, 1979, and the maximum aggregate amount of such short-term borrowings to be outstanding at any one time at or prior to June 30, 1980, are as follows:

[In thousands]

	Commercial paper (3/31/79)	Bank notes (3/31/79)	Total (3/31/79)	Anticipated 6/30/79	Proposed maximum outstanding at any one time 7/1/79–6/30/80
NU	0	0	0	$1,000	$20,000
CL&P	$18,900	$900	$19,400	$5,000	150,000
HELCO	5,000	0	5,000	22,000	70,000
WMECO	14,250	600	14,850	32,000	55,000
HWP	0	0	0	1,000	6,000

The notes issued to banks by the declarants will each be dated the date of issue, will have maximum maturity dates of nine months with right of renewal, will bear interest at the prime rate or at the prime rate plus a fraction thereof, will be issed no later than June 30, 1980, and will be subject to prepayment at any time at the applicant's option without premium. The companies have credit lines with a number of banks subject in some cases to commitment fees and/or compensating balance requirements. The bank credit lines expire at various times in 1979 and 1980 and their continued availability is subject to continuing review by the banks involved. The effective rate of interest on the bank note ranges from 13.18% to 14.09% per annum, assuming a prime rate of 11¾%.

Commercial paper will be issued by the declarants in the form of short-term promissory notes in denominations of not less than $50,000 and not more than $1,000,000, of varying maturities, with no maturity more than 270 days after the date of issue, and will not be repayable prior to maturity. The commercial paper will be sold directly to a dealer in commercial paper at the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and of the particular maturity. No commercial paper shall be issued having a maturity of more than 90 days at an effective interest cost to the declarant in excess of the effective bank interest rate at which the company could obtain loans from banks in an amount at least equal to the principal amount of such commercial paper. No commission or fee will be payable in connection with the issuance and sale of the commercial paper. The purchasing dealer, as principal, will reoffer the commercial paper to institutional

investors at a discount of not more than ⅛ of 1% per annum less than the prevailing discount rate to the applicant.

The commercial paper will be reoffered to not more than 200 identified and designated customers in a list (nonpublic) prepared for each applicant in advance by the purchasing dealer. No additions will be made to this customer list. It is anticipated that the commercial paper will be held by customers to maturity, but if such customers desire to resell prior to maturity, the purchasing dealer, pursuant to a verbal repurchase agreement, will repurchase the commercial paper and reoffer the same to others in the group of 200 customers.

The new funds to be derived by NU from the issuance and sale of the bank notes and the commercial paper will be applied during the period from July 1, 1979, to June 30, 1980, (1) to make a capital contribution and/or open account advances to WMECO and HWP in an amount not to exceed $10,000,000 and $3,000,000, respectively, (2) to make open account advances to The Quinnehtuk Company, a wholly-owned subsidiary of NU, in an amount not to exceed in the aggregate $1,000,000, and (3) to supply funds as needed to other subsidiary companies as heretofore or hereafter authorized by this Commission. All capital contributions to subsidiaries will be credited to their capital surplus accounts. The funds to be derived by CL&P, HELCO, WMECO, and HWP from the issuance and sale of the bank notes and the commercial paper will be applied, together with other funds available to these companies, to finance their respective 1979 and 1980 construction and nuclear fuel programs.

Declarants request exception from the competitive bidding requirements of Rule 50 for the proposed issue and sale of the commercial paper pursuant to paragraph (a)(5) thereof on the grounds that it is not practicable to invite competitive bids for commercial paper and that current rates for commercial paper for borrowers such as declarants are published daily in financial publications. Declarants also request authority to file certificates of notification under Rule 24 with respect to the issuance and sale of commercial paper within 30 days after the end of each calendar quarter.

It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions. There are no fees or expenses other than the filing fee paid to this Commission, to be incurred in connection with the proposed transactions except charges for incidental services estimated at $500 in the case of each declarant to be performed at cost by Northeast Utilities Service Company, the system service company.

Notice is further given that any interested person may, not later than June 26, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the post-effective amendment which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above-stated addresses, and proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as now amended or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

Georgel A. Fitzsimmons,

Secretary.

[FR Doc. 79-17789 Filed 6-7-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21077; Administrative Proceeding, File No. 3-5749; 70-6111; 31-606]

Northern States Power Co.; Notice of and Order for Hearing Regarding Acquisition by Exempt Holding Company of Common Stock of Nonassociate Company

June 1, 1979.

In the matter of Northern States Power Co., 414 Nicollet Mall, Minneapolis, Minnesota 55401.

On January 19, 1978, Northern States Power Company ("Northern States"), filed an application with this Commission pursuant to Section 10 of the Public Utility Holding Company Act of 1935 ("Act") regarding a proposed offer to exchange shares of its common stock for the outstanding shares of the common stock of Lake Superior District Power Company ("Lake Superior"), a nonassociate public-utility company.

Northern States, a Minnesota corporation, is a utility company and also a holding company. Northern States is presently an exempt holding company pursuant to an order of this Commission under Section 3(a)(2) of the Act. *In the Matter of Northern States Power Company*, 36 S.E.C. 1 (1954).

Northern States is engaged predominantly in the generation, transmission, distribution and sale of electricity in the States of Minnesota, North Dakota and South Dakota and in the distribution and sale at retail of natural gas in the States of Minnesota and North Dakota. Its wholly-owned subsidiary which is incorporated in the State of Wisconsin and which has the same name as the parent, Northern States Power Company ("Northern States Wisconsin"), provides similar utility services in the State of Wisconsin. In addition Northern States has two wholly-owned nonutility subsidiaries, Cormorant Corporation, a Montana corporation, which holds interests in fuel resources, and United Power and Land Company, a Minnesota corporation, which holds nonutility properties of a relatively nominal value. Together, Northern States and Northern States Wisconsin furnish electric service in a 40,000 square mile service area to approximately 900,000 customers in 631 communities, and gas service to 248,000 customers in 78 communities located in the same general territory. Their consolidated assets at December 31, 1978, were $2.4 billion and utility revenues were $980 million.

Lake Superior, a Wisconsin corporation, is engaged primarily in the generation, transmission, distribution and sale of electric energy and in the distribution and sale at retail of natural gas in northern Wisconsin and the Upper Peninsula of Michigan. Lake Superior serves a territory with a population of about 125,000 in an 8,000 square mile area. It furnishes electric service to 37,000 customers in 15 counties in Wisconsin and Michigan, gas service to about 8,000 customers in 22 communities in the same area, and water service in one community in Wisconsin. Its assets at December 31, 1978, were $54.4 million and revenues were $31.8 million.

Lake Superior and Northern States, along with 21 other electric utilities, including two public power districts, eight cooperatives and one Federal

system are parties to the Mid-Continent Area Power Pool Agreement ("MAPP Agreement"). Parties to the MAPP Agreement may exchange power and energy for various purposes, including improved operations, emergency and economy. The MAPP Agreement was filed with the Federal Power Commission, now the Federal Energy Regulatory Commission, in July 1972.

At the present time, Lake Superior's major source of bulk electric power supply, in addition to its own generation facilities, is Minnesota Power and Light Company, under an agreement which expires in November 1980. Lake Superior is contemplating the construction of transmission facilities for additional interconnections with major bulk transmission facilities in northern and central Wisconsin. Lake Superior also has plans to participate in certain jointly-owned generation units. One such undertaking involves the agreement dated June 30, 1977, as subsequently amended, (the "Tyrone Agreement") between Lake Superior, Northern States Wisconsin, Cooperative Power Association ("CPA"), a Minnesota corporation, and Dairyland Power Cooperative, a Wisconsin corporation with a service area which includes portions of Illinois, (collectively, the "Tyrone Participants") to construct a jointly-owned 1100 MW nuclear power plant (the "Tyrone Project") in Dunn County, Wisconsin. The Tyrone Agreement provides, among other things, for the joint ownership, licensing, construction and operation of the Tyrone Project. On June 14, 1978, the Tyrone Participants filed an application with the Public Service Commission of Wisconsin ("Wisconsin Commission") seeking a certificate of convenience and necessity to commence construction of the Tyrone Project. On March 6, 1979, the Wisconsin Commission issued an order denying the application, finding that applicants failed to show the need for the facility. On April 5, 1979, the Tyrone Participants filed an appeal of this order in the Eau Claire County Circuit Court. That appeal is still pending.

Northern States and Lake Superior have entered into an agreement dated December 28, 1977, (the "Acquisition Agreement") which provides for an offer to exchange 0.46 shares of Northern States common stock, for each share of Lake Superior common stock. Under the terms of the Acquisition Agreement, the exchange offer will be made during an initial period of approximately 20 days, subject to extension by Northern States for an additional period or periods. Northern States will not extend the exchange offer beyond 80 days from the initial date without approval of the Commission. The deposits of shares of Lake Superior Common Stock will be irrevocable during the initial period and any authorized extension or extensions thereof. Northern States will declare the exchange offer effective when shares of Lake Superior Common Stock equal to 80% of all of the voting securities of all Lake Superior stock outstanding are tendered prior to the expiration of the offer period and if all other conditions of the proposed exchange have been met. The offer is also subject to other conditions, among them, a favorable tax ruling and all necessary regulatory approvals.

Northern States recognizes that if it does not acquire all of the outstanding common stock of Lake Superior the resulting publicly-held minority interest in such stock will create an unduly or unnecessarily complicated corporate structure or an inequitable distribution of voting power, contrary to the standards of Section 11(b)(2) of the Act. If less than all shares of Lake Superior common stock are acquired pursuant to the exchange offer, Northern States will register with the Commission in accordance with Section 5(a) of the Act for the limited purpose of promptly submitting a plan to eliminate the minority publicly-held shares of Lake Superior common stock.

Northern States represents that it intends to operate Lake Superior as a separate unit, and that its present intention is to retain all personnel currently employed by Lake Superior. Northern States expects that substantially all officers and all but one of the directors of Lake Superior will remain in their current positions. The application states that the acquisition of Lake Superior will permit improved coordination of planning, construction, operation and maintenance of electric facilities and a reduction in administrative costs associated with generation and transmission facilities.

The proposed acquisition of Lake Superior was duly noticed on May 1, 1978, (HCAR No. 20527). In response to the notice of filing, a joint request for hearing was filed by Citizens for Tomorrow, Inc. ("Citizens") and Northern Thunder, Inc. ("Thunder"), nonprofit Wisconsin corporations organized for the purposes of protecting the environment and opposing construction of the Tyrone Project. Subsequent to the expiration of the comment period specified in the notice, Badger Safe Energy Alliance, Inc. ("Badger") filed its "intervention" in the joint request for hearing previously filed by Citizens and Thunder. Badger is also a nonprofit Wisconsin corporation organized for the purposes of protecting the environment, promoting safe alternatives to nuclear energy, opposing construction of Tyrone and the high voltage transmission lines associated therewith and opposing radioactive waste storage facilities. Among the members of Thunder and Badger are stockholders of Northern States and Lake Superior and consumers of Lake Superior, Northern States and Northern States Wisconsin.

Citizens, Thunder and Badger ("Petitioners") request that Northern States' application to acquire the common stock of Lake Superior be denied and that Northern States' exemption under Section 3(a)(2) of the Act be terminated regardless of whether we approve or disapprove the proposed acquisition. In opposing the proposed acquisition, Petitioners allege failure to comply with the requirements of Section 10 of the Act stating, among other things, that the acquisition would tend toward interlocking relations and concentration of control of public utility companies; would unduly complicate the holding company system and would be detrimental to the interests of investors and consumers and to the proper functioning of the system; would not be based upon a reasonable or fair consideration; would tend toward the uneconomical and inefficient over extension of the system; and would not comply with applicable State law. Petitioners also assert that the proposed acquisition will tend to reduce competition in bulk electric power supply to several small privately-owned utilities in northwest Wisconsin and several municipally-owned utilities in northwest Wisconsin and the Upper Peninsula of Michigan, and that the acquisition will have other anticompetitive effects and will violate the Sherman and Clayton Acts. In addition, Petitioners allege that the application before us cannot be approved without the preparation by the Commission of an Environmental Impact Statement ("EIS").

In objecting to Northern States' exemption, Petitioners state that upon acquisition of Lake Superior, Northern States will no longer meet the requirements for exemption under Section 3(a)(2) because the Northern States system would extend into Michigan, a State which is not contiguous to Minnesota, the State in which Northern States is incorporated and because the system would become more complex and far-flung, less economically sound and less susceptible

to effective State regulation. They conclude the exemption would no longer be in the interests of the public, investors or consumers. They contend that even if the proposed acquisition is not approved, Northern States' present exemption should be revoked because continuation is detrimental to the interests of the public, investors, or consumers. They also assert that the MAPP and Tyrone Agreements create a holding company relationship between Northern States and other parties to those agreements and that the resulting enlarged system does not qualify for the exemption provided by the Act.

It appears that an evidentiary hearing will be required to consider certain of the objections raised by the Petitioners. But that hearing must be limited to matters which are both relevant to the issues raised under the Act by the proposed acquisition, and whose resolution involves material factual disputes. During the hearing, the following matters and questions should be considered:

(1) Whether the proposed acquisition will serve the public interest by tending towards the economical and efficient development of an integrated public utility system;

(2) Whether the proposed acquisition is detrimental to the carrying out of the provisions of Section 11;

(3) Whether the proposed acquisition will tend towards the concentration of control of public-utility companies, of a kind or to an extent detrimental to the public interest or the interest of investors or consumers;

(4) Whether the proposed acquisition will be based upon a consideration which is reasonable and bears a fair relation to the utility assets underlying the securities to be acquired;

(5) Whether the proposed acquisition will unduly complicate the captial structure of the system or will be detrimental to the public interest or the interest of investors or consumers;

(6) If the acquisition is authorized, whether Northern States continues to be entitled to exemption under Section 3(a)(2) of the Act and what conditions, if any, would be required;

(7) Whether there has been compliance with applicable state laws.

The Nuclear Regulatory Commission and the Wisconsin Public Service Commission have primary jurisdiction over the proposed Tyrone plant. If authorized by those Commissions, its construction by the parties to the Tyrone Agreement is not conditioned on the stock acquisition which is the subject of this proceeding. Evidence as to the Tyrone plant shall not be introduced or considered except that the Tyrone Agreement itself, as an existing contractual relationship, shall be included in the record. With respect to the plans of Northern States, Lake Superior and other parties to the MAPP Agreement for construction or interconnections, the hearing shall be limited to the examination of such plans insofar as they relate to the issues as heretofore specified. It shall not extend to alternatives for supplying regional energy requirements and the environmental impact of these plans. After the hearing, briefs that will or may be filed may be directed, in accordance with the Rules of Practice, to the issues specified above as well as to the relevance of any matter raised by petitioners in their requests for a hearing but excluded from hearing as directed by this order.

It appearing to the Commission that it is appropriate in the public interest and in the interest of investors and consumers that a public hearing he held with respect to the proposed transactions; that all interested persons be afforded an opportunity to be heard; and that the pending proposal should not be authorized or approved except pursuant to further order of the Commission.

It is ordered, accordingly, that a hearing be held at a time and place to be designated by further order in accordance with the Rules of Practice.

It is further ordered that jurisdiction be, and hereby is, reserved to separate, in whole or in part, either for hearing or for disposition, any issues or questions which may arise in these proceedings and to take such other action as may appear conducive to an orderly, prompt, and ecnonmical disposition of the matters involved.

It is further ordered that an Administrative Law Judge, hereafter to be designated, shall preside at said hearing. The officer so designated is hereby authorized to exercise all powers granted to the Commission under Section 18(c) of the Act and to the hearing officer under the Commission's Rules of Practice.

It is further ordered that the Secretary of the Commission shall serve a copy of this order by certified mail upon the applicants herein, and upon those who have filed requests for a hearing. Notification to all other interested persons shall be given by the general release of the Commission and by publication of this order in the Federal Register.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-17329 Filed 6-7-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21092; 70-6310]

Piedmont-Forrest Corp.; Proposed Transactions Related to Construction of New Office Building Complex

May 31, 1979.

In the matter of Piedmont-Forrest Corporation, 270 Peachtree Street NW., Atlanta, Georgia 30302.

Notice is hereby given that Piedmont-Forrest Corporation ("Property Company"), a wholly-owned subsidiary of Georgia Power Company ("Georgia"), which, itself, is a wholly-owned electric utility subsidiary of The Southern Company, a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 9(a) and 10 of the Act as applicable to the following proposed transactions. All interested persons are referred the application, which is summarized below, for a complete statement of the proposed transactions.

Property Company is engaged in the acquisition, ownership, maintenance, and disposition of property in connection with and incidental to the utility operations of Georgia. In order to provide for the construction of a new office building complex ("Improvements") for Georgia in the Bedford-Pine Urban Redevelopment Area ("Area") of downtown Atlanta, Georgia (see File No. 70-6135), Property Company proposes to enter into a Construction Loan Commitment pursuant to which Property Company will be committed to make a construction loan ("Construction Loan") in a currently estimated amount of $57,019,340, to One Atlanta Associates, a special-purpose limited partnership ("Improvements Owner"), which is to own the Improvements and lease them to Georgia under a long-term net lease ("Prime Lease"). Improvements Owner will use the proceeds of such loan to purchase the partially completed Improvements from Property Company and complete construction thereof. In exchange for the Construction Loan, Property Company proposes to acquire a note ("Construction Note") from Improvements Owner to evidence the indebtedness under the Construction Loan.

The Construction Loan will comprise 98% of the presently budgeted cost

($58,183,000) of constructing the Improvements, the remaining 2% to be contributed by the Improvements Owner as disbursements are made for construction. The principal amount of the Construction Loan is subject to increase or decrease by a maximum of 5% but will not exceed $59,870,307. Disbursements will be made by Property Company from time to time as needed and as requested by the borrower until substantial completion of the Improvements, presently expected to be on or before November 1, 1980, but not later than March 31, 1981. The Construction Loan will bear interest at a variable rate equal to the greater of the cost of money to Property Company or 9.75% per annum, payable as each disbursement is made thereunder, each such disbursement to include an amount equal to 98% of each such interest payment.

The Construction Note will be without recourse against Improvements Owner and will be secured by a first priority lien and security title in the Improvements, express assignments of the Improvements Owner's positions as lessee under a Ground Lease and as lessor under the Prime Lease, and a collateral assignment to Property Company of certain construction and architectural contracts. No payment of principal will be required under the Construction Note during the period of construction.

Pursuant to Commission authorization (see File No. 70-6135), Georgia will make advances from time to time as needed to Property Company to enable it to fund the Construction Loan. The Trustees of the General Electric Pension Trust ("GEPT") have issued a commitment to provide permanent financing for the Improvements by purchasing the Construction Note upon the earlier of substantial completion of the Improvements or March 1, 1981, at which time the Property Company will repay such advances to Georgia.

The proposed Construction Loan and acquisition of the Construction Note are part of a contemplated overall series of transactions to provide for the construction, financing, sale and leaseback of the Improvements, the real property (approximately 5.87 acres) which comprises the building site, and certain rights with respect to parking and other facilities (such real property and such rights are hereinafter collectively referred to as the "Land"). Such contemplated transactions are outlined in a "Letter Agreement" with attached "New Outline", dated April 17, 1979, among Georgia, Property Company, and Winthrop Financial Company, Inc. (acting on behalf of itself, GEPT, R.H. Cashman Associates, Inc., Damon Raike & Company and Wells Fargo Mortgage Company, all of which are hereinafter collectively referred to as the "Winthrop Group").

The Letter Agreement and New Outline contemplate that on or before August 31, 1979 ("First Closing"), Property Company will grant an option to Improvements Owner to purchase the Land ("Land Option") for $8,600,000 ("Land Cost"), which represents Property Company's cost for the Land. On or before the First Closing, Improvements Owner will assign the Land Option to GEPT which, at the First Closing, will exercise the Land Option and purchase the Land from Property Company. Simultaneously, GEPT will enter into a "Ground Lease" with Improvements Owner pursuant to which the Improvements Owner will lease the Land. The Ground Lease will have an initial term of forty years at an annual rental of 9.75% per annum of the Land Cost, three renewal terms of ten years each at an annual rental of 14.625% per annum of the Land Cost, and one renewal term of twenty-five years at an annual rental of 14.625% per annum of the greater of the Land Cost or the then appraised fair market value of the Land.

Also, at the First Closing, GEPT will enter into a "Buy-Sell Agreement" with Property Company, Georgia, and Improvements Owner, which will be a binding obligation on the part of GEPT to purchase the Construction Note from the Property Company, in the amount of the Construction Loan, upon the earlier of substantial completion of the Improvements or March 1, 1981.

At the First Closing, Georgia will enter into the Prime Lease with Improvements Owner pursuant to which Georgia will lease the Improvements and sublease the Land. The Prime Lease will have an initial term of forty years with three renewal terms of ten years each. Base rent payments under the Prime Lease will commence upon substantial completion of construction of the Improvements and issuance of certain certificates of completion or March 1, 1981, whichever is earlier, provided that Improvements Owner is not in material default under the Construction Loan. During the initial term of the Prime Lease, base rent will be a function of the "Completion Cost" which is defined as the total of the amount budgeted at the First Closing for construction of the Improvements (subject to a variance, plus or minus, of 5%) and Land Cost. Completion Cost is currently estimated to be $68,760,000.

The base rent will be calculated over the entire forty-year initial term to a rent cost constant to Georgia of 9.75% per annum of Completion Cost. In the early years of the initial term, base rent payments will be substantially smaller than in the later years of such term and will be payable monthly in arrears, with each installment to be in an amount equal to 1/12 of: (i) 1.226271% of Completion Cost (exclusive of Land Cost) and 9.75% of Land Cost during the first three years of the initial term; (ii) 5.559641% of Completion Cost (exclusive of Land Cost) and 9.75% of Land Cost during the fourth year of the initial term; (iii) 6.75000% of Completion Cost (exclusive of Land Cost) and 9.75% of Land Cost during the fifth and sixth years of the initial term; (iv) 12.122230% of Completion Cost (exclusive of Land Cost) and 9.75% of Land Cost during the next fourteen years of the initial term; and (v) 14.151697% of Completion Cost (exclusive of Land Cost) and 9.75% of Land Cost for the balance of the initial term. Based on the above percentages, it is estimated that the annual rental cost to Georgia during the initial term will be as follows: $100,600 for year 1–3; $4,073,200 for year 4; $4,765,683 for year 5–6; $7,891,594 for year 7–20; and $9,672,220 for year 21–40. During any renewal term of the Prime Lease, annual base rent will be 7.5% of Completion Cost.

The Prime Lease will be absolutely net, and Georgia will be required to pay the base rent without offset or diminution and will be responsible for all costs and expenses associated with the use and occupancy of the Improvements and Land. In the event that the amount required to complete construction of the Improvements exceeds the maximum Completion Cost contemplated by the documents ($61,082,150, exclusive of Land Cost), Georgia will thereupon be required to take possession of the Improvements and complete construction thereof, with such additional expenditures to be at Georgia's own expense and for its own account. Under the Prime Lease, it is contemplated that Georgia will be treated as the purchaser of "new Section 38 property" pursuant to Internal Revenue Code Section 48(d) in order that the investment tax credit be available to Georgia.

At all times during the initial term and any renewal term of the Prime Lease, Georgia will have a right of first refusal to Purchase the Land and/or the Improvements. At the end of the initial term of the Prime Lease or any renewal term, Georgia will have the right to purchase the Land and Improvements at

their then appraised fair market value. If at any time during or after the twentieth year of the Prime Lease, Georgia is required by regulatory authorities to account for the Prime Lease for rate making purposes in a manner adverse to Georgia's ability to take lease costs into account in its asset or expense base, Georgia will have the continuing right to offer to purchase the Improvements.

The application states that Georgia distributed bid request for both mortgage debt and sale/leaseback financing proposals to twenty-nine major real estate lenders and approximately fifty financial intermediaries, that it received over forty responses, and that after analyzing such responses (with lowest effective interest cost being the primary consideration) Georgia determined that the proposal submitted by the Winthrop Group was the most attractive. Georgia estimates that the effective interest cost of the Prime Lease will be 8.27% per annum and that the effective interest cost of the next-most-attractive proposal would have been 8.76% per annum.

On December 12, 1978, Georgia applied to the Georgia Public Service Commission ("GPSC") for authority to enter into the Prime Lease and to account for the Prime Lease for retail ratemaking purposes by capitalizing it in accordance with Financial Accounting Standards Board Statement No. 13 and expensing interest and depreciation expenses as they accrue, which would be on a levelized basis throughout the term of the Prime Lease, rather than on the staggered basis that the actual lease payments will be made. After hearings, GPSC authorized Georgia, by order effective February 23, 1979, to enter into the Prime Lease, but ordered that for such ratemaking purposes, Georgia should not capitalize the Prime Lease and should charge to expense the actual lease payments. Over the initial term of the Prime Lease, Georgia will expense the entire amount of lease payments to be made during such term to lease expense.

The fees and expenses to be incurred in connection with the proposed transactions are to be filed by amendment. It is stated that Property Company's issuance of the Construction Loan and acquisition of the Construction Note are not subject to the jurisdiction of any state or federal commission other than this Commission; that Georgia's entry into the Prime Lease may be subject to the jurisdiction of the Georgia Public Service Commission, and that the Land Owner and Improvements Owner will require the approval of the Housing Authority of the City of Atlanta and its governing authority, the United States Department of Housing and Urban Development, as "redevelopers" in order to effect the proposed transactions. It is represented that no other state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than June 26, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-17801 Filed 6-7-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21075; 70-5912]

Western Massachusetts Electric Co.; Post-Effective Amendment Regarding the Issuance and Sale of Unsecured Promissory Notes to Banks

June 1, 1979.

In the matter of Western Massachusetts Electric Company, 174 brush Hill Avenue, West Springfield, Massachusetts 01089.

Notice is hereby given that Western Massachusetts Electric Company ("WMECO"), an electric utility subsidiary company of Northeast Utilities, a registered holding company, has filed with this Commission a post-effective amendment to the application-declaration in this proceeding pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transactions. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transactions.

By order in this proceeding dated November 9, 1978 (HCAR No. 19750), WMECO was authorized to issue and sell its unsecured promissory notes equally to Chemical Bank and Citibank, N.A. in the aggregate principal amount of $20,000,000, maturing in four equal semiannual installments commencing in 1980, the final installment being payable November 10, 1981, and bearing interest at a rate per annum of (i) 116% of the prevailing prime rate of Chemical Bank during the first year, (ii) 120% of the prime rate during the second year, (iii) 122% of the prime rate during the third year and (iv) 124% of the prime rate thereafter. Subsequently, the interest rate was changed to 114% of the prime rate effective one year from the date of the notes and continuing thereafter. The proceeds of the notes were used to repay a portion of WMECO's short-term borrowings outstanding at that time.

In view of current high interest rates and dividend rates on mortgage bonds and preferred stock, WMECO has negotiated and requests authorization of an amendment to its bank loan agreement to provide for (i) an extension of the maturity of the notes to March 30, 1984, (ii) elimination of the installment pay back, (iii) changing the interest rate to 105% of the prime rate effective April 1, 1979, and (iv) substitution of new notes to the banks to reflect the changes in terms.

WMECO's short-term borrowings were $14,650,000 at February 28, 1979, and are estimated to be about $40,000,000 at December 31, 1979. The company's construction and nuclear fuel program is expected to total about $41,500,000 in 1979. WMECO states that it will require additional long-term financing (first mortgage bonds and/or preferred stock) in 1980.

It is stated that the amendment to the bank loan agreement will require the approval of the Department of Public Utilities of the Commonwealth of Massachusetts and of the Connecticut Division of Public Utility Control.

Notice is further given that any interested person may, not later than June 25, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for

such request, and the issues of fact or law raised by said post-effective amendment to the application-declaration which he desires to controvert; or he may request that he be notified should the Commission order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application declaration, as now amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regualtions promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-17822 Filed 6-7-79; 8:45 am]

BILLING CODE 8010-01-M.

[Rel. No. 21079; 70-6319]

New England Electric System; Proposed Issue and Sale of Unissued Common Stock Pursuant to a Proposed Employee Share Ownership Plan and Request for Exemption From Competitive Bidding

June 4, 1979.

Notice is hereby given that New England Electric System ("NEES"), a registered holding company, 20 Turnpike Road, Westborough, Massachusetts 01581, has filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 6(a) and 7 of the Act and Rule 50(a)(5) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

By order dated September 14, 1977 (HCAR No. 20173), NEES was authorized to issue and sell through December 31, 1979 a maximum of 300,000 shares of its authorized but unissued common shares, $1 par value through a NEES Companies' Employees' Share Ownership Plan. NEES now proposes to issue and sell from time to time through December 31, 1983, up to 675,000 shares of its authorized but unissued common stock, $1 par value, through NEES' amended Companies' Employees' Share Ownership Plan ("Plan"). The proceeds of the sale will be used for investment in NEES' subsidiaries, for payment of NEES' indebtedness or for general purposes.

Each employee of NEES and its direct and indirect subsidiaries, Granite State Electric Company, Massachusetts Electric Company, Narragansett Electric Company, New England Energy Incorporated, New England Power Company and New England Power Service Company ("Employers") who has completed at least one year of service as of January 1, 1979, will participate in the Plan as of that date. Each other employee will become a participant on the first day of the Plan year in which he completes one year of service. Participation in the Plan will terminate when employment terminates.

The Employers will contribute to a trust ("Trust") in each year an amount equal to the additional one percent investment tax credit allowed for the Plan year under Section 46(a)(2)(E)(i) of the Internal Revenue Code ("Code"). In addition, if an appropriate election is made on the consolidated federal income tax return and to the extent matched by participant contributions, the Employers will contribute to the Trust in each Plan year an amount not in excess of an additional one-half of one percent investment tax credit under Section 46(a)(2)(E)(ii) of the Code. Contributions to the Trust by the Employers will be made for each Plan year on the due date (unless extended) for filing the consolidated federal income tax return for the corresponding tax year. The trustee, The First National Bank of Boston, will purchase common shares of NEES on or before the thirtieth day following the date of the contribution. However, if the full amount of the investment credit is not utilized for a plan year because the credit limited on the basis of the tax payable for the year, that portion of the additional credit not so utilized shall be contributed to the Trust at the time when such portion is so utilized.

Participants shall not be required to make contributions to the Trust. However, if elected by NEES on its consolidated federal income tax return, participants may make contributions in an aggregate amount not in excess of an additional one-half of one percent investment credit, which contributions will be matched on a like amount by the Employers. The amount of the contributions to be made by a participant for a Plan year will be based on the ratio of his compensation for the Plan year to the total compensation of all participants making matching contributions. Participant contributions shall be invested by the trustee in NEES' common shares within thirty days of payment.

Shares purchased under the Plan will normally come from the authorized but unissued common shares. However, NEES proposes that it shall reserve the right to instruct the trustee for the Plan to purchase shares for participants on the open market. Such market purchases may be made on such terms as to price, delivery and other matters as the trustee may determine. NEES states that the decision to purchase shares on the open market will take into account NEES' need for common equity, general market conditions and the relationship between the purchase price and the book value per share.

The value of common shares purchased from NEES with Employer contributions will be based on the average of the closing prices on the New York Stock Exchange—composite transactions as reported in *The Wall Street Journal* for the twenty consecutive trading days immediately preceding the purchase date. The value of common shares purchased from NEES with participants' contributions and reinvested dividends wil be based on the average of the high and low sale prices on the New York Stock Exchange—composite transactions as reported in *The Wall Street Journal* for each of the last 5 trading days preceding the purchase date. When shares are purchased on the open market, shares will be priced for each participant's account at the average purchase price of all shares purchased.

A separate account for each participant, reflecting the number of common shares credited thereto, will be established and maintained by the trustee. If participant contributions are made to the trust, two accounts shall be maintained for each participant, one for Employer contributions and the other for participant contributions. Contributions to the Trust by the Employers of an amount determined pursuant to Section 46(a)(2)(E)(i) of the Code, less an amount equal to the expenses of the Plan but not

in excess of statutory limitations, shall be combined and allocated to the account for each participant based on the ratio of the participant's compensation for the Plan year for which the contribution is made to the total compensation of all participants for such Plan year. Contributions to the Trust by the Employers of an amount determined pursuant to Section 46(a)(2)(E)(ii) of the Code shall be combined and allocated to the contributions of each participant.

Cash dividends received on common shares held by the trustee, less an amount necessary to pay expenses of administering the Plan but not in excess of statutory limitations, will be invested by the trustee in common shares as soon as practicable. Common shares so purchased will be allocated to each participant's account or accounts based on the ratio of the common shares in each account to the total common shares in all participant's accounts.

As soon as practicable after the end of each Plan year, each participant will be furnished with a statement showing the status of his account or accounts at the beginning and end of each Plan year, any changes in his account or accounts during the Plan year, and other information that may be pertinent.

A participant's account or accounts shall become distributable to him (or, in the event of his death, to the beneficiary designated by him) upon the termination of his participation. A participant may, subject to certain restrictions, prior to termination of employment apply for a distribution of a portion or all of the balance in his account or accounts, if such portion or balance has been allocated to his account or accounts for a period of at least eighty-four months beginning after the month in which the allocation was made.

Distributions shall be made in cash or in whole common shares, at the participant's option. Any fraction of a common share allocated to a participant's account shall be paid in cash. A participant shall at all times have a fully vested and nonforfeitable right to the common shares credited or creditable to his account or accounts.

The Board of Directors of New England Power Service Company shall have the sole authority to appoint and remove the trustee. The trustee shall have the sole responsibility for administration of the Trust and the management of Plan assets held under the Trust, as and to the extent set forth in the Trust. The trustee will accept and hold in the Trust contributions made by the Employers or participants pursuant to the Plan.

Pending the purchase of common shares pursuant to the Plan, the trustee may temporarily retain uninvested cash or may invest all or any part thereof in short-term investments, if such action is prudent under all the facts and circumstances then prevailing.

A committee ("ESOP Committee") shall be the named fiduciary, which shall have authority to control and manage the operation and administration of the Plan. Among other duties, the ESOP Committee will deliver or cause to be delivered to each participant proxy statements and other communications which are distributed to owners of NEES common shares. Each participant shall have the right to direct the trustee to exercise the voting rights with respect to all the whole and fractions of common shares allocated to his account.

No amendment of the Plan may be made which will (1) deprive any participant or beneficiary of any part of an account existing on the date of such amendment; (2) result in the reversion to an Employer of any part of the funds contrary to the provisions of the Plan; or (3) increase the duties or liabilities of the trustee without its written consent. Any Employer, with the written consent or vote of the board of directors of each other Employer, may terminate the Plan at any time.

NEES requests an exemption from the competitive bidding requirements of Rule 50 under Rule 50(a)(5) for the proposed issuance and sale of common stock to the Plan.

The fees and expenses to be incurred in connection with the proposed sale of the common shares are estimated at $130,000 through 1983. Pursuant to Internal Revenue Service regulations, these fees and expenses will be paid from the Trust. Included in such estimate are fees, in an amount to be specified by amendment, for services to be performed, at cost, by New England Power Service Company (an affiliate of NEES). It is stated that no state commisson and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than June 29, 1979, request in writing that a hearing be held on such matters, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-17960 Filed 6-7-79; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 01/01-0300]

ESLO Capital Corp.; Issuance of License To Operate as a Small Business Investment Company

On March 26, 1979, a notice was published in the Federal Register (44 FR 18128) stating that ESLO Capital Corporation, 133 Washington Street, Morristown, New Jersey 07960 had filed an Application with the Small Business Administration, pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1979)), for a License to operate as a small business investment company.

Interested parties were given until the close of business on April 10, 1979, to submit written comments on the Application to the SBA.

Notice is hereby given that no written comments were received, an having considered the Application and all other pertinent information, the SBA approved the issuance of License No. 01/01-0300 on May 31, 1979, to ESLO Capital Corporation pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended.

(Catalogue of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies)

Dated: June 4, 1979.

Peter F. McNeish,

Deputy Associate Administrator for Finance and Investment.

[FR Doc. 79-17920 Filed 6-7-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1041]

West Virginia; Declaration of Disaster Loan Area

Harrison County and adjacent counties within the State of West Virginia constitutes a disaster area as a result of damage caused by heavy rains and flooding which occurred on May 11-12, 1979. Applications will be processed under the provisions of Pub. L. 94-305. Interest rate is 7% percent. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business July 30, 1979, and for economic injury until the close of business on February 29, 1980, at: Small Business Administration, District Office, 109 North Third Street, Clarksburg, West Virginia 26301 or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 29, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-17921 Filed 6-7-79; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. 79-23]

Study of Factors Affecting Transportation Operations; Request for Public Comments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: Section 166 of the Surface Transportation Assistance Act of 1978 requires the Department of Transportation to conduct a study of the factors affecting the safe and efficient operation of bridges, tunnels, and roads within the United States. The purpose of this notice is to advise the public of this study and to invite comments from interested parties for use in designing the format and content of the study.

DATES: Comments must be received on or before August 7, 1979.

ADDRESS: FHWA Docket No. 79-23, Federal Highway Administration, HCC-10, Room 4205, 400 Seventh Street, SW., Washington, D.C. 20590. All responses to this notice will be available for examination at the above address between 7:45 a.m. and 4:15 p.m., eastern time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Caldwell, Office of Program and Policy Planning, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590, 202-426-0228. Office hours are Monday through Friday, 7:45 a.m. to 4:15 p.m., eastern time.

SUPPLEMENTARY INFORMATION: Section 166 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95-599, 92 Stat. 2722) reads as follows:

"The Secretary of Transportation shall make a full and complete investigation and study of all those factors affecting the safe and efficient operation of bridges, tunnels, and roads within the United States, including, but not limited to, structural, operational, environmental, and civil disturbance factors."

The August 11, 1978 report of the House Committee on Public Works and Transportation indicates that the study "should be aimed primarily at toll facilities and should include an identification, analysis, and evaluation of the risk factors, risk control programs, and risk transfer and financing programs." Both the House Report and the Joint Explanatory Statement of the Committee on Conference dated October 14, 1978, indicate that the study is to concentrate on the insurance problems affecting the operation of these transportation facilities. Accordingly, the study will address questions of risk management of toll facilities and their financial capacities.

A study design will be prepared by September 30, 1979, and the study will be conducted in fiscal year 1980. The results of the study will form the basis for a report to Congress.

The purpose of this notice is to advise the public of this study and to invite suggestions on the format and content of the study design from all interested groups and individuals. All responses to this notice will be available for examination by any interested person at the above address both before and after the closing date for comments.

Issued on: June 4, 1979.

John S. Hassell, Jr.,

Deputy Administrator.

[FR Doc. 79-17771 Filed 6-7-79; 8:45 am]

BILLING CODE 4910-22-M

INTERSTATE COMMERCE COMMISSION

[Decision Volume No. 54]

Permanent Authority Applications; Decision-Notice

Correction

In FR Doc. 78-35066, published at page 59197, on Tuesday, December 19, 1978, on page 59209, in the second column, in the first paragraph beginning "MC-135070 . . .", in the 20th line, "RI, VT, WV . . ." should be corrected to read "RI, VT, VA, WV . . ."

BILLING CODE 1505-01-M

[Decision Volume No. 55]

Permanent Authority Application; Decision-Notice

Correction

In FR Doc. 78-35362, published at page 59584, on Thursday, December 21, 1978, on page 59592, in the middle column, the paragraph reading "MC 13420 . . ." should be corrected to read "MC 134201 . . ."

BILLING CODE 1505-01-M

[Finance Docket Nos. 28482 and 28483 (Sub-No. 2)]

Auto-Train Corp.; Petition for Modification

Auto-Train Corporation, operation rail passenger and automobile transport service between Alexandria, VA, and Sanford, FL. Petitioner Auto-Train Corporation, 1801 K Street, N.W., Washington, DC 20006, represented by Robert G. Seaks, 1729 H Street, N.W., Washington, DC 20006, holds authority as a railroad (1) for combined rail passenger-automobile transport service between Alexandria, Virginia, and Sanford, Florida, and (2) for the transportation between the same points of automobiles only, unaccompanied by their owner or driver, when the transportation is performed under a point booking whereby Auto-Train transports an automobile and an airline transports its owner or driver between substantially the same points at substantially the same time.

Petitioner seeks modification of its authority under (2) above to permit it to

transport unaccompanied automobiles tendered to it by Central Florida Coach Lines, Inc. (d/b/a Auto-Bus) when the tendering carrier is transporting at substantially the same time the owners or drivers of such automobiles between Florida points and northern points.

Any interested person or persons desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition on or before July 9, 1979.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-17620 Filed 6-7-79; 8:45 am]
BILLING CODE 7035-01-M

[Exception No. 2 To Corrected Second Revised S.O. No. 1301]

Burlington Northern Inc.

To: Burlington Northern Inc.

Pursuant to the authority vested in me by Section (a)(4) of Corrected Second Revised Service Order No. 1301, Burlington Northern Inc. is authorized to use forty-foot narrow-door plain boxcars owned by Canadian National Railways or by CP Rail from stations in the State of Montana destined to Seattle, Washington, subject to the following conditions.

1. Cars must be used in compliance with United States Customs regulations.

2. Cars must be used in compliance with Car Service Rules 1 and 2 adopted by the Commission in Docket Ex Parte No. 241.

3. Car Relocation Directives and Car Assistance Directives issued by the Car Service Division, Association of American Railroads, applicale to such cars remain fully in effect.

Effective May 24, 1979.
Expires August 31, 1979.
Issued at Washington, D.C., May 24, 1979.

Joel E. Burns,
Director, Bureau of Operations.

[FR Doc. 79-17621 Filed 6-7-79; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 29057 F]

Brillion & Forest Junction Railroad Co., Inc.—Operation Over a Line of Railroad Between Brillion and Forest Junction in Calumet County, Wis.

Brillion & Forest Junction Railroad Company, Inc., P.O. Box 111, Algoma, WI 54201, represented by Clinton Jones, Jr., Chief Executive Officer, Brillion & Forest Junction Railroad Company, P.O. Box 111, Algoma, WI 54201, hereby give notice that on the 22nd day of May, 1979, it filed with the Interstate Commerce Commission at Washington, DC, an application pursuant to 49 U.S.C. § 10901 (formerly Section 1(18) of the Interstate Commerce Act), for a decision approving and authorizing the operation of a line of railroad extending from milepost 98.5 to milepost 105.2, between Brillion and Forest Junction, WI.

The line is located in Calumet County, WI. Approximately 300 feet of spur or industry trackage is in Manitowoc County, WI. The line Applicant operates extends from milepost 98.5 at Brillion westerly to milepost 105.2 at Forest Junction, approximately 6.7 miles of route. The line Applicant operates includes a 6.7 mile main line with an additional 1.3 miles of spurs, sidings, etc., for a total of approximately 8 track miles of line.

The line of railroad was formerly owned and operated by the Chicago and North Western Transportation Company (C&NW) as a portion of a branch line of C&NW, which was authorized for abandonment and/or sale by the Commission in docket No. AB-1 (Sub-No. 52), decided May 9, 1978. A private organization composed of freight shippers accordingly purchased the line of railroad from C&NW.

In accordance with the Commission's requirements (49 CFR 1108.8) in Ex Parte No. 55 (Sub-No. 4), *Implementation—National Environmental Policy Act, 1969*, 352 I.C.C. 451 (1976), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. See *Implementation—National Environmental Policy Act, 1969, supra* at p. 487.

Pursuant to the provisions of the Interstate Commerce Act, as amended, the proceeding will be handled without public hearings unless comments in support or opposition on such application are filed with the Secretary, Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, DC 20423, and the aforementioned counsel for Applicant, within 30 days after the date of first publication in a newspaper of general circulation. Any interested person is entitled to recommend to the Commission that it approve, disapprove, or take any other specified action with respect to such application.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-17623 Filed 6-7-79; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-204 (Sub-No. 3)]

Cape Fear Railways, Inc., Abandonment Between Skibo and Fort Junction in Cumberland County, N.C.; Findings

Notice is hereby given pursuant to 49 U.S.C. § 10903 (formerly Section 1a of the Interstate Commerce Act) that by a Certificate and Decision decided May 17, 1979, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, the present and future public convenience and necessity permits abandonment of 4.290 miles of track owned and operated by Cape Fear and cessation of operations over 5.910 miles of track under lease from the United States Government and operated by Cape Fear, Cumberland County, NC, the total line extending from Skibo, NC, milepost 10, to Fort Junction, NC, milepost 0, a distance of 10 miles, provided, however, that Cape Fear shall keep intact all of its righ-of-way underlying the track, including all of the bridges and culverts for a period of 120 days from the effective date of this certificate and decision to permit any state or local government agency or other interested party to negotiate the acquisition for public use of all or any portion of the right-of-way. A certificate of public convenience and necessity permitting the abandonment was issued to Cape Fear Railways, Inc. Since no investigation was instituted, the requirement of § 1121.38(a) of the Regulations that publication of notice of abandonment decisions in the Federal Register be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I [§ 1121.45 of the Regulations]. Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed and served on or before June 25, 1979. The offer, as filed, shall contain information required pursuant to § 1121.38(b) (2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and

necessity authorizing abandonment shall become effective on July 23, 1979.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-17699 Filed 6-7-79; 8:45 am]
BILLING CODE 7035-01-M

[Ex Parte No. 241, Rule 19, Exemption No. 157]

Mandatory Car Service Rules Exemption

To all railroads:

The railroads named below own numerous open hopper cars for the purpose of transporting substantial volumes of coal and other bulk freight originating on their lines and destined to points on other lines. There are no significant volumes of traffic transported in similar cars originating on other lines and terminating on these lines which would provide a source of empty hopper cars for return loading. These lines have agreed to refrain from loading hopper cars owned by other lines without the express consent of the car owners even though such use might otherwise be authorized by Car Service Rules 1 and 2. Under these conditions it is imperative that open hopper cars owned by these railroads be returned to the owning railroad empty unless their use is authorized by the car owner.

It is ordered, That pursuant to the authority vested in my by Car Service Rule 19:

(a) Hopper cars listed under the heading "Class 'H' Hopper Car Type" in the Official Railway Equipment Register, ICC RER 6410–A, issued by W. J. Trezise, or successive issues thereof, and owned by the railroads named in section (c) below, are exempt from the provisions of Car Service Rules 1(a), 2(a) and 2(b). These cars must be returned empty to the car owner unless their use has been authorized by the car owner.

(b) Railroads named in section (c) below are prohibited from using hopper cars foreign to their line unless their use has been authorized by the car owner.

(c) List of railroads and car reporting marks:

The Baltimore and Ohio Railroad Company
Reporting Marks: B&O
Bessemer and Lake Erie Railroad Company
Reporting Marks: B&LE
Carolina, Clinchfield and Ohio Railway
Reporting Marks: CRR
The Chesapeake and Ohio Railway Company
Reporting Marks: C&O
Consolidated Rail Corporation
Reporting Marks: BA–BWC–CNJ–CR–DLAW–EL–ERIE–LV–NH–NYC–PC–P&E–PRR–RDG–TOC
Illinois Central Gulf Railroad Company
Reporting Marks: GM&O–IC–ICG
Louisville and Nashville Railroad Company
Reporting Marks: L&N–NC–MON
*Montour Railroad Company
Reporting Marks: MTR
Norfolk and Western Railroad Company
Reporting Marks: ACY–N&W–NKP–P&WV–VGN–WAB
St. Louis-San Francisco Railway Company
Reporting Marks: SLSF
Southern Railway System
Reporting Marks: CG–INT–NS–SOU
The Pittsburgh and Lake Erie Railroad Company
Reporting Marks: P&LE
Western Maryland Railway Company
Reporting Marks: WM

(d) For the purpose of improving car utilization and the efficiency of railroad operations, or alleviating inequities or hardships, modifications may be authorized by the Chief Transportation Officer of the car owner, or by the Director or Assistant Director of the Bureau of Operations, Interstate Commerce Commission. Modifications authorized by the car owner must be confirmed in writing to W. H. Van Slyke, Chairman, Car Service Division, Association of American Railroads, Washington, D.C., for submission to the Director or Assistant Director.

(e) No common carrier by railroad subject to the Interstate Commerce Act shall accept from shipper any loaded hopper car, described in this exemption, contrary to the provisions of the exemption.

(f) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

Effective May 22, 1979, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., May 18, 1979.

Interstate Commerce Commission.
Joel E. Burns,
Agent.

[FR Doc. 79-17701 Filed 6-7-79; 8:45 am]
BILLING CODE 7035-01-M

[Ex Parte No. 241, Rule 19, Exemption No. 90]

Mandatory Car Service Rules Exemption

To All Railroads:

It appearing, That the railroads named below own numerous 50–ft. plain boxcars; that under present conditions there are substantial surpluses of these cars on their lines; that return of these cars to the owners would result in their being stored idle; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of these cars, resulting in unnecessary loss of utilization of such cars.

It is ordered, That pursuant to the authority vested in me by Car Service Rule 19, 50–ft. plain boxcars described in the Official Railway Equipment Register, ICC RER 6410–A, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM," and bearing reporting marks assigned to the railroads named below, shall be exempt from provisions of Car Service Rules 1, 2(a), and 2(b).

Aberdeen and Rockfish Railroad Company
Reporting Marks: AR
Bath and Hammondsport Railroad Company
Reporting Marks: BH
Camino, Placerville & Lake Tahoe Railroad Company
Reporting Marks: CPLT
City of Prineville
Reporting Marks: COP
Duluth, Missabe and Iron Range Railway Company
Reporting Marks: DMIR
East Camden & Highland Railroad Company
Reporting Marks: ECH
Genesee and Wyoming Railway Company
Reporting Marks: GNWR
Greenville and Northern Railway Company
Reporting Marks: GRN
The Hutchinson and Northern Railway Company
Reporting Marks: HN
Indiana Eastern Railroad and Transportation, Inc. D/B/A The Hoosier Connection
Reporting Marks: HOSC
Lake Superior & Ishpeming Railroad Company
Reporting Marks: LSI
Lenawee County Railroad Company, Inc.
Reporting Marks: LCRC
Louisiana Midland Railway Company
Reporting Marks: LOAM
Louisville and Wadley Railway Company
Reporting Marks: LW
Louisville, New Albany & Corydon Railroad Company
Reporting Marks: LNAC
Manufacturers Railway Company
Reporting Marks: MRS
Middletown and New Jersey Railway Company, Inc.
Reporting Marks: MNJ
Missouri-Kansas-Texas Railroad Company
Reporting Marks: MKT-BKTY
New Orleans Public Belt Railroad
Reporting Marks: NOPB
Pearl River Valley Railroad Company
Reporting Marks: PRV
Peninsula Terminal Company
Reporting Marks: PT
*Providence and Worcester Company
Reporting Marks: PW
Raritan River Rail Road Company
Reporting Marks: RR
Sacramento Northern Railway
Reporting Marks: SN
St. Lawrence Railroad
Reporting Marks: NRL

*Addition.

Savannah State Docks Railroad Company
Reporting Marks: SSDK
Sierra Railroad Company
Reporting Marks: SERA
Terminal Railway, Alabama State Docks
Reporting Marks: TASD
The Texas Mexican Railway Company
Reporting Marks: TN
Tidewater Southern Railway Company
Reporting Marks: TS
Toledo, Peoria & Western Railroad Company
Reporting Marks: TPW
Vermont Railway, Inc.
Reporting Marks: VTR
WCTU Railway Company
Reporting Marks: WCTR
Youngstown & Southern Railway Company
Reporting Marks: YS
Yreka Western Railroad Company
Reporting Marks: YW

Effective June 1, 1979, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., May 24, 1979.

Interstate Commerce Commission.

Joel E. Burns,

Agent.

[FR Doc. 79-17883 Filed 6-7-79; 8:45 am]

BILLING CODE 7035-01

[Ex Parte No. 241, Rule 19, Exemption No. 166]

Mandatory Car Service Rules Exemption

There is an emergency movement of military supplies from Crane, Indiana, to Savanna, Oklahoma. The originating carrier has insufficient system cars of suitable dimensions immediately available for loading with this traffic. Sufficient cars of other ownerships having suitable dimensions are available on the lines of the originating carrier and on its connections, and compliance with Car Service Rules 1 and 2 would prevent the timely assembly and use of such cars.

It is ordered, That pursuant to the authority vested in me by Car Service Rule 19, the Car Service Division of the Association of American Railroads is authorized to direct the movement to the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee), the railroads designated by the Car Service Division are authorized to move to, and the Milwaukee is authorized to accept, assemble, and load not to exceed 100 empty plain boxcars with military supplies from Crane, Indiana, to Savanna, Oklahoma, regardless of the provisions of Car Service Rules 1 and 2.

Effective May 25, 1979.
Expires August 31, 1979.

Interstate Commerce Commission.

Joel E. Burns,

Agent.

[FR Doc. 79-17885 Filed 6-7-79; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Board Transfer Proceedings

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under section 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application.

Protests against approval of the application, which may include request for oral hearing, must be filed with the Commission on or before July 9, 1979. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicants' representative(s), or applicants (if no such representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopses form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

H. G. Homme, Jr.,

Secretary.

MC-FC-78029, filed February 2, 1979. Transferee: CHRISTIE & LARRY HILL, doing business as ST. MARIES BUS LINE, 487 Fourth St. Milltown, St. Maries, ID 83861. Transferor: JOHN FRANKLIN CURTIS, doing business as INLAND EMPIRE COURIER, 1808 Hastings, Coeur d'Alene, ID 83861. Representative: Christie & Larry Hill, 487 Fourth St. Milltown, St. Maries, ID 83861. By decision of June 1, 1979, the Commission, Motor Carrier Board, granted authority for the transfer to transferee of the operating rights of transferor as set forth in Certificate No. MC-111480, issued August 27, 1976, as follows: (A) *Passengers and their baggage, and express, mail, and newspapers* in the same vehicle with passengers, over specified regular routes serving all intermediate points, (1) between Spokane and Tekoa, WA, and (2) between junction U.S. Hwy 95 and unnumbered highway northwest of Worley, ID, and Moscow, ID. (B) *Passengers and their baggage, and express* in the same vehicle with passengers, over specified regular routes, serving all intermediate points, (1) between Spokane, WA and Worley, ID, and (2) between Plumber and St. Maries, ID., and (C) *passengers and their baggage, express, and newspapers* in the same vehicle with passengers, over specified regular routes serving all intermediate points, between Tekoa, WA and Tensed, ID. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under 49 U.S.C. 11349. Petitions for reconsideration may be filed by any interested person on or before June 28, 1979.

By the Commission.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-17825 Filed 6-7-79; 8:45 am]

BILLING CODE 7035-01-M

[Permanent Authority Decisions Vol. No. 54]

Permanent Authority Applications; Decision-Notice

Decided: May 11, 1979.

The following applications filed on or before February 28, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR § 1100.247). For applications filed before March 1, 1979, these rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the application is published in the Federal Register. Failure to file a protest, within 30 days, will be considered as a waiver of opposition to the application. A protest under these rules should comply with Rule 247(e)(3) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (as specifically noted below), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations

phrased generally. A protestant should include a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describe in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named. If the protest includes a request for oral hearing, such request shall meet the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

On cases filed on or after March 1, 1979, petitions for intervention either with or without leave are appropriate.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If applicant has introduced rates as an issue it is noted. Upon request an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. § 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a protestant, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. § 10101 subject to the right of the Commission, which is expressly reserved, to impose such conditions as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. § 10930(a) [formerly section 210 of the Interstate Commerce Act].

In the absence of legally sufficient protests, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 2, Members Boyle, Eaton, and Liberman.

H. G. Homme, Jr.,
Secretary.

MC 340 (Sub-55F), filed February 22, 1979. Applicant: QUERNER TRUCK LINES, INC., 1131-33 Austin Street, San Antonio, TX 78296. Representative: M. Ward Bailey, 2412 Continental Life Bldg., Fort Worth, TX 76102. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs*, from Fond du Lac, WI, to points in AZ, TX, LA, MS, and FL. (Hearing site: Dallas or San Antonio, TX.)

MC 441 (Sub-7F), filed February 21, 1979. Applicant: HINTON MOTOR SERVICE, INC., 1410 Gardner Expressway, Quincy, IL 62301. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *paper and paper products*, from Quincy, IL, to points in the United States (except AK, AR, AL, GA, HI, KY, MS, MI, MN, NY, NC, PA, TX, TN, VA, WV, and WI); and (2) *waste paper*, from points in the United States (except AK, AR, AL, GA, HI, IN, KY, MS, MI, MN, NY, NC, PA, TX, TN, VA, WV, and WI), to Quincy, IL, under continuing contract(s) in (1) and (2) above with The Celotex Corporation, of Tampa, FL. (Hearing site: St. Louis, MO, or Chicago, IL.)

MC 531 (Sub-374F), filed February 22, 1979. Applicant: YOUNGER BROTHERS, INC., 4904 Griggs Road, P.O. Box 14048, Houston, TX 77021. Representative: Wray E. Hughes (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *chemicals*, in bulk, in tank vehicles, from Salisbury, NC to points in CA. (Hearing site: Washington, DC.)

MC 730 (Sub-432F), filed February 23, 1979. Applicant: PACIFIC INTERMOUNTAIN EXPRESS CO., a corporation, 25 North Via Monte, Walnut Creek, CA 94598. Representative: A. G. Krebs (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Magma Copper Co., at or near San Manuel, AZ, as an off-route point in connection with carrier's otherwise authorized regular-route operations. Condition: To the extent any certificate to be issued in this proceeding authorizes classes A and B explosives, it shall be limited to a term expiring 5 years from its date of issue. (Hearing site: Phoenix, AZ, or San Francisco, CA.)

MC 3161 (Sub-22F), filed February 15, 1979. Applicant: BENDER & LOUDON MOTOR FREIGHT, INC., 3024 Brecksville Road, Richfield, OH 44286. Representative: George Wilkinson (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives,

household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of the General Motors Corporation, at or near Constantine, MI, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Detroit, MI, or Washington, DC.)

MC 33641 (Sub-143F), filed February 12, 1979. Applicant: IML FREIGHT, INC., P.O. Box 30277, Salt Lake City, UT 84125. Representative: Thomas A. Scott (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving Milan, MI, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Detroit, MI, or Washington, DC.)

MC 35320 (Sub-200F), filed February 9, 1979. Applicant: T.I.M.E.-DC, INC., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, ammunition, ammunition parts, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of The Ithaca Textile Co., at or near (a) Cairo, GA, and (b) Chadbourn, Wilkesboro, and Gastonia, NC, as off-route points in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Greensboro, NC, or Washington, DC.)

MC 35320 (Sub-206F), filed February 15, 1979. Applicant: T.I.M.E.-DC, INC., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, ammunition, ammunition parts, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Shaller-Globe Corporation, Leece-Neville Division, at or near Gainesville, GA, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Atlanta, GA, or Washington, DC.)

MC 35320 (Sub-207F), filed February 15, 1979. Applicant: T.I.M.E.-DC, INC., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transportation *general commodities* (except those of unusual value, classes A and B explosives, ammunition, ammunition parts, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of The General Tire and Rubber Company, at or near Columbus, MS, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Memphis, TN, or Washington, DC.)

MC 35320 (Sub-213F), filed February 21, 1979. Applicant: T.I.M.E.-DC, INC., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transportation *general commodities* (except those of unusual value, classes A and B explosives, ammunition, ammunition parts, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of King Plastics, Inc., at or near (a) Denison, TX, (b) Waseca, MN, and (c) Mt. Sterling, IL, as off-route points in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Los Angeles or Orange, CA.)

MC 38170 (Sub-30F), filed February 8, 1979. Applicant: WHITE STAR TRUCKING, INC., 1750 Southfield Road, Lincoln Park, MI 48146. Representative: Wilhelmina Boersma, 1600 First Federal Building, Detroit, MI 48226. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, and classes A and B explosives), in cargo containers, between Detriot, MI, and Toledo, Cleveland, and East Liverpool, OH, on the one hand, and, on the other, points in IL, IN, MI, OH, and PA. (Hearing site: Detriot, MI, or Chicago, IL.)

MC 41961 (Sub-38F), filed February 26, 1979. Applicant: WHEATLEY TRUCKING INC., P.O. Box 458, Cambridge, MD 21613. Representative: Gary E. Thompson, 4304 East-West Highway, Washington, DC 20014. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transportation *frozen peppers*, from the facilities of RJR Foods Warehouses, Inc., at Kansas City, KS, to Cambridge, MD, and Jackson, OH. (Hearing site: Washington, DC or Cambridge, MD.)

MC 52861 (Sub-50F), filed February 23, 1979. Applicant: WILLS TRUCKING, INC., 4500 Rockside Road, Cleveland, OH 44131. Representative: Paul F. Beery, 275 E. State Street, Columbus, OH 43215. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *ammonium sulphate*, from Cleveland, OH, to points in IN and MI. (Hearing site: Columbus, OH.)

MC 59150 (Sub-148F), filed February 5, 1979. Applicant: PLOOF TRUCK LINES, INC., 1414 Lindrose Street, Jacksonville, FL 32206. Representative: Martin Sack, Jr., 1754 Gulf Life Tower, Jacksonville, FL 32207. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *plastic pipe and fittings*, from points in Mecklenburg and Union Counties, NC, and York County, SC, to points in AL, FL, GA, SC, LA, MS, and TN; and (2) *equipment, materials, and supplies* used in the manufacture or distribution of plastic pipe and fittings, in the reverse direction. (Hearing site: Charlotte, NC.)

MC 65580 (Sub-25F), filed December 11, 1978. Applicant: MUSHROOM TRANSPORTATION CO., INC., 845 East Hunting Park Ave., Philadelphia, PA 19124. Representative: A. David Millner, P.O. box 1409, 167 Fairfield Road, Fairfield, NJ 07006. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Bethlehem and Irwin, PA, from Bethlehem over Interstate Hwy 78 to junction Interstate Hwy 81, then over Interstate Hwy 81 to junction Interstate Hwy 76, then over Interstate Hwy 76 to Irwin, and return over the same route, serving no intermediate points, (2) between Philadelphia, PA, and junction Interstate Hwys 76 and 81, at or near Middlesex, PA, (a) from Philadelphia over U.S. Hwy 1 to junction Interstate Hwy 276, then over Interstate Hwy 276 to junction Interstate Hwys 76 and 81, and return over the same route, serving

no intermediate points, and serving junction Interstate Hwys 76 and 81 for purpose of joinder only, (b) from Philadelphia over U.S. Hwy 30 to junction PA Hwy 283, then over PA Hwy 283 to junction Interstate Hwy 76, and return over the same route, serving no intermediate points, and serving junction Interstate Hwys 283 and 76 for purpose of joinder only, (3) between York and Irwin, PA, over U.S. Hwy 30, (4) between Kennett Square and York, PA, from Kennett Square over PA Hwy 82 to junction U.S. Hwy 30, then over U.S. Hwy 30 to York, and return over the same route, serving no intermediate points, and serving York for purpose of joinder only, (5) between Kenneth Square, PA and junction U.S. Hwy 30 and PA Hwy 41, at or near Gap, PA, from Kennett Square over U.S. Hwy 1 to junction PA Hwy 41, then over PA Hwy 41 to junction U.S. Hwy 30, and return over the same route, serving junction U.S. Hwy 30 and PA Hwy 41, for purpose of joinder only, (6) Between Allentown, and Phillipsburg, PA, from Allentown over PA Hwy 309 to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction PA Hwy 579, then over PA Hwy 579 to junction U.S. Hwy 322, then over U.S. Hwy 322 to Phillipsburg, and return over the same route, serving no intermediate points, (7) between Harrisburg, PA, and Hagerstown, MD, over Interstate Hwy 81. (Hearing site: Philadelphia, PA.)

MC 94350 (Sub-423F), filed February 21, 1979. Applicant: TRANSIT HOMES, INC., P.O. Box 1828, Greenville, SC 29602. Representative: Mitchell King, Jr. (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *travel trailers*, in initial movements, in truckaway service, from the facilities of Skyline Corporation, at or near Dewey, OK, to points in AR, CO, IA, KS, MO, NE, OK, and SD. (Hearing site: St. Louis, MO.)

MC 95540 (Sub-1064F), filed February 22, 1979. Applicant: WATKINS MOTOR LINES, INC. 1144 West Griffin Road, P.O. Box 1636, Lakeland, FL 33802. Representative: Benjy W. Fincher (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except hides and commodities in bulk), from Cazenia, NY, to Mason City, IA. (Hearing Site: Des Moines, IA, or Washington, DC.)

MC 95540 (Sub-1065F), filed February 22, 1979. Applicant: WATKINS MOTOR LINES, INC. 1144 West Griffin Road, P.O. Box 1636, Lakeland, FL 33802. Representative: Benjy W. Fincher (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs* (except commodities in bulk, in tank vehicles), in vehicles equipped with mechanical refrigeration, from the facilities of M & M/Mars, Division of Mars, Inc., at or near Cleveland, TN, to points in FL, GA, TX, IA, NE, KS, WI, MN, IL, CO, OK, MS, LA, NJ, NY, PA, MA, CT, and RI, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing Site: New York, NY, or Washington, DC.)

MC 95540 (Sub-1067F), filed February 23, 1979. Applicant: WATKINS MOTOR LINES, INC. 1144 West Griffin Road, P.O. Box 1636, Lakeland, FL 33802. Representative: Benjy W. Fincher (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs*, from Louisville, KY, to points in FL. (Hearing Site: Tampa or Orlando, FL.)

MC 106120 (Sub-18F), filed February 14, 1979. Applicant: FREIGHTWAYS EXPRESS, INC., 2700 Sterick Building, Memphis, TN 38103. Representative: James N. Clay, III (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between the facilities of American Greetings Corp., at Harrisburg, Osceola, and McCrory, AR, on the one hand, and, on the other, Jonesboro, Forest City, and Wynne, AR. (Hearing site: Memphis, TN.)

Note.—Applicant can presently serve the named facilites at McCrory, Harrisburg, and Osceola. It intends to tack this authority with its current regular-route authority at these points to provide service to points on its regular routes in MS, TN, AR, MO, IL, and KY.

MC 106301 (Sub-94F), filed February 27, 1979. Applicant: TERMINAL WAREHOUSE COMPANY, a corporation, 1951 Radisson Road N.E., Blaine, MN 55434. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *beverages*, (except commodities in bulk, in tank vehicles), from Minneapolis, MN, to points in IA, MT, ND, SD, and WI. (Hearing site: Chicago, IL, or Minneapolis, MN.)

Note.—Dual operations may be involved.

MC 106361 (Sub-134F), filed February 12, 1979. Applicant: MOSS TRUCKING COMPANY, INC., 3027 N. Tryon St., P.O. Box 26125, Charlotte, NC 28213. Representative: Morton E. Kiel, Suite 6120, 5 World Trade Center, New York, NY 10048. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *machinery and machine parts*, from the facilities of Ward Machinery Company, at or near Cockeysville, MD, to those points in the United States in and east of MN, IA, MO, AR, and LA. (Hearing site: Washington, DC.)

MC 110420 (Sub-603F), filed February 16, 1979. Applicant: QUALITY CARRIERS, INC., P.O. Box 186, Pleasant Prairie, WI 53158. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425—13th Street NW., Washington, DC 20004. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *chemicals*, in bulk, in tank vehicles, from Wichita, KS, to Danbury, CT, and Deepwater, NJ. (Hearing site: Chicago, IL, or Washington, DC.)

MC 111231 (Sub-230F), filed February 22, 1979. Applicant: JONES TRUCK LINES, INC., 610 East Emma Ave., Springdale, AR 72764. Representative: John C. Everett, P.O. Box A, 140 East Buchanan, Prairie Grove, AR 72753. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *conveyor belting and rubber packing*, from the facilities of American Biltrite, Inc., at or near Paragould, AR, on the one hand, and, on the other, those points in the United States on and west of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, then northward along the western boundaries of Itasca and Koochiching Counties, MN, to the international boundary line between the United States and Canada (except AK and HI). (Hearing site: Paragould or Little Rock, AR)

MC 111231 (Sub-232F), filed November 29, 1978, previously noticed in the

Federal Register issue of February 20, 1979. Applicant: JONES TRUCK LINES, INC., 610 East Emma Ave., Springdale, AR 72764. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Ave., Washington, DC 20014. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (3) between junction Interstate Hwy 29 and IA Hwy 2, and Lincoln, NE: From junction Interstate Hwy 29 and IA Hwy 2 over IA Hwy 2 to junction NE Hwy 2, then over NE Hwy 2 to Lincoln, and return over the same route, serving no immediate points, and (4) between Kansas City, MO, and junction Interstate Hwy 29 and IA Hwy 2, over Interstate Hwy 29, serving no intermediate points, and serving the junction of Interstate Hwy 29 and IA Hwy 2 for purposes of joinder only. (Hearing Site: Little Rock, AR, or Washington, DC)

Note.—This partial republication states parts (3) and (4), previously inadvertently omitted. The remainder of the application remains as previously published.

MC 115331 (Sub-466F), filed February 9, 1979. Applicant: TRUCK TRANSPORT INCORPORATED, 29 Clayton Hills Lane, St. Louis, MO 63131. Representative: J. R. Ferris, 230 St. Clair Avenue, East St. Louis, IL 62201. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *such commodities* as are dealt in by grocery and food business houses; and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) above, between the facilities of Ralston Purina Co., at or near Clinton and Davenport, IA, on the one hand, and, on the other, points in IN, MI, OH, MO, and WI. (Hearing Site: St. Louis, MO)

MC 115730 (Sub-67F), filed February 22, 1979. Applicant: THE MICKOW CORP., P.O. Box 1774, 531 S.W. Sixth St., Des Moines, IA 50306. Representative: Cecil L. Goettsch, 1100 Des Moines Bldg., Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, from St. Louis, MO, to points in IA. (Hearing site: St. Louis, MO, or Washington, DC)

MC 115841 (Sub-662F), filed February 14, 1979. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., 9041 Executive Park Drive, Suite 110, Building 100, Knoxville, TN 37919. Representative: D. R. Beeler (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *petroleum and petroleum products* (except commodities in bulk), from the facilities of Texaco, Inc., in Jefferson County, TX, to points in AL, AR, CO, FL, GA, IL, IN, IA, KS, KY, MI, MN, MS, MO, NE, NM, NY, NC, OH, PA, SC, TN, VA, WI, and WV. (Hearing site: Houston or Dallas, TX.)

MC 119741 (Sub-146F), filed February 21, 1979. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., 1515 Third Avenue, NW., P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except hides, and commodities in bulk, in tank vehicles), from the facilities of Theis Packing Company, at Great Bend, Topeka, and Wichita, KS, to points in AR, CT, DE, IL, IN, IA, KY, MD, MA, MI, MN, MO, NE, NJ, NY, OH, PA, RI, VA, WV, WI, and DC. (Hearing site: Wichita, KS.)

MC 119741 (Sub-149F), filed February 22, 1979. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., 1515 Third Ave., NW., P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except hides, and commodities in bulk, in tank vehicles), from Ames and Webster City, IA, to points in KS, MN, MO, NE, and WI, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Des Moines, IA.)

MC 123091 (Sub-28F), filed February 12, 1979. Applicant: NICK STRIMBU, INC., 3500 Parkway Road, Brookfield, OH 44403. Representative: James Duvall, Post Office Box 97, 220 West Bridge Street, Dublin, OH 43017. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles, pipe, and accessories* for pipe, from Brookfield, OH, to points in CT, ME, MD, MA, NH, NJ, NY, PA, RI, and VT. (Hearing site: Washington, DC.)

MC 124170 (Sub-113F), filed February 21, 1979. Applicant: FROSTWAYS, INC., 3000 Chrysler Service Dr., Detroit, MI 48207. Representative: William J. Boyd, 600 Enterprise Dr., Suite 222, Oak Brook, IL 60521. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as described in Appendix I to the Report in *Descriptions in Motor Carriers Certificates*, 61 M.C.C. 209 and 766, (except hides and commodities in bulk), from New York, NY, to points in IL, IN, and OH. (Hearing site: New York, NY, or Washington, DC)

MC 124211 (Sub-346F), filed February 7, 1979. Applicant: HILT TRUCK LINE, INC., P.O. Box 988, D.T.S., Omaha, NE 68101. Representative: Thomas L. Hilt (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *malt beverages*, from points in Jefferson County, CO, to points in AZ, CA, IA, NE, and WA; and (2) *empty used beverage containers* for recycling, and such commodities as are used by breweries, from points in AZ, CA, IA, NE, and WA, to points in Jefferson County, CO.

Note.—Dual operations may be involved. (Hearing site: Denver, CO)

MC 124711 (Sub-82F), filed February 16, 1979. Applicant: BECKER CORPORATION, P.O. Box 1050, El Dorado, KS 67042. Representative: Norman A. Cooper (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *chemicals*, in bulk, from the facilities of Vulcan Materials Company, at or near Wichita, KS, to points in the United States (except AK and HI). (Hearing site: Wichita, KS)

MC 133591 (Sub-62F), filed February 14, 1979. Applicant: WAYNE DANIEL TRUCK, INC., Post Office Box 303, Mount Vernon, MO 65712. Representative: Harry Ross, 58 S. Main Street, Winchester, KY 40391. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *confectionery*, from points in Marion and Washington Counties, IL,

to points in NM, CO, WY, MT, ID, UT, AZ, NV, OR, WA, and CA. (Hearing site: St. Louis, MO)

MC 134501 (Sub-44F), filed February 12, 1979. Applicant: INCORPORATED CARRIERS, LTD., P.O. Box 3128, Irving, TX 75061. Representative: T. M. Brown, P.O. Box 1540, Edmond, OK 73034. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *floor coverings, wall coverings, doors, furniture, and fixtures;* and (2) *parts* for the commodities named in (1) above, from Overland, MO, Forest City, IA, Salt Lake City, UT, Knoxville, TN, Houston, TX, Richmond, VA, Atlanta, GA, Cincinnati, OH, New Hartford, CT, and Jacksonville, FL, to points in the United States (except AK and HI). (Hearing Site: St. Louis, MO, or Chicago, IL.)

MC 134501 (Sub-47F), filed February 22, 1979. Applicant: INCORPORATED CARRIERS, LTD., P.O. Box 3128, Irving, TX 75061. Representative: T. M. Brown, P.O. Box 1540, Edmond, OK 73034. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *new kitchen furniture, kitchen fixtures, and kitchen equipment*, from Hagerstown, MD, to points in the United States (except AK and HI). (Hearing site: Washington, DC.)

MC 135170 (Sub-33F), filed February 12, 1979. Applicant: TRI-STATE ASSOCIATES, INC., P.O. Box 188, Federalsburg, MD 21632. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *paper bags, plastic bags, plastic film, and plastic sheeting*, from New Philadelphia, OH, to points in DE, MD, NJ, NY, NC, PA, VA, and DC, under continuing contract(s) with Great Plains Bag Corp., of New Philadelphia, OH. (Hearing Site: Washington, DC, or Columbus, OH.)

MC 135410 (Sub-46F), filed February 22, 1979. Applicant: COURTNEY J. MUNSON, doing business as, MUNSON TRUCKING, North 6th Street Road, P.O. Box 266, Monmouth, IL 61462. Representative: Stephen H. Loeb, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *salt* (except in bulk), from the facilities of Morton Salt Company, at Manistee and Marysville, MI, to points in IL, IN, IA, MO, and WI. (Hearing site: Chicago, IL.)

MC 135410 (Sub-50F), filed February 22, 1979. Applicant: COURTNEY J. MUNSON, doing business as MUNSON TRUCKING, P.O. Box 266, Monmouth, IL 61462. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except hides and commodities in bulk), from the facilities of Wilson Foods Corporation, at Monmouth, IL, to points in IA, MN, MO, and WI, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Dallas, TX, or Kansas City, MO.)

MC 135410 (Sub-51F), filed February 22, 1979. Applicant: COURTNEY J. MUNSON, doing business as MUNSON TRUCKING, P.O. Box 266, Monmouth, IL 61462. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except hides and commodities in bulk), from the facilities of Wilson Foods Corporation, at (a) Marshall, MO, and (b) Cherokee, IA, to points in IL, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Dallas, TX, or Kansas City, MO.)

MC 141450 (Sub-12F), filed February 12, 1979. Applicant: OLIN WOOTEN TRANSPORT CO., INC., P.O. Box 731, Hazlehurst, GA 31539. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *materials and supplies* used in the manufacture of paint (except commodities in bulk), between those points in the United States in and east of ND, SD, NE, KS, OK, and TX, under continuing contract(s) with Martin Trading Corporation, of Ft. Lauderdale, FL. (Hearing site: Jacksonville, FL, or Atlanta, GA.)

MC 141921 (Sub-44F), filed February 12, 1979. Applicant: SAV-ON TRANSPORTATION, INC., 143 Frontage Road, Manchester, NH 03108. Representative: John A. Sykas (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *paint and paint products* (except commodities in bulk, in tank vehicles), from the facilities of Parks Corporation, at or near Somerset, MA, to points in PA, WV, KY, OH, MI, IN, IL, WI, MN, IA, MO, KS, NE, SD, CO, ND, OK, TX, OR, CA, AR, LA, TN, MS, AL, GA, SC, NC, FL, ID, UT, NV, WY, WA, and MT. (Hearing site: Concord, NH, or Boston, MA.)

Note.—Dual operations may be involved.

MC 142431 (Sub-7F), filed February 14, 1979. Applicant: WAYMAR TRANSPORT CORP., 1755 S.E. 106th Street, Runnells, IA 50237. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Swift & Company, at (a) Des Moines and Marshalltown, IA, and (b) Rochelle, IL, to points in CT, DE, ME, MD, MA, NH, NJ, NY, OH, PA, RI, VT, VA, and DC. (Hearing site: Chicago, IL.)

MC 142831 (Sub-13F), filed February 22, 1979. Applicant: HAMRIC TRANSPORTATION, INC., 3515 E. Jefferson St., Grand Prairie, TX 75051. Representative: Lawrence A. Winkle, P.O. Box 45538, Dallas, TX 75245. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *unassembled electrical transmission towers*, from the facilities of Anchor Metals, at Hurst, TX, to points in AZ and NM. (Hearing site: Dallas or San Antonio, TX.)

MC 142941 (Sub-36F), filed February 7, 1979. Applicant: SCARBOROUGH TRUCK LINES, INC., 1313 N. 25th Ave., Phoenix, AZ 85009. Representative: Lewis P. Ames, 111 W. Monroe, 10th Floor, Phoenix, AZ 85003. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *paper, paper products, and plastic articles;* and (2) *filters, holders, dispensers, and racks*, for the commodities named in (1)

above, from the facilities of American Convenience Products, Inc., at Milwaukee, WI, to points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, and WY. (Hearing site: Milwaukee, WI, or Chicago, IL.)

MC 143331 (Sub-6F), filed February 22, 1979. Applicant: FREIGHT TRAIN TRUCKING, INC., 4906 E. Compton Blvd., P.O. Box 817, Paramount, CA 90723. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *dried noodles and dehydrated soups*, from Gardena, CA, to Phoenix, AZ, Denver, CO, Kansas City, MO, Oklahoma City, OK, Dallas, Houston, and San Antonio, TX, and Salt Lake City, UT, under continuing contract(s) with Nissin Foods (USA) Co., Inc., of Gardena, CA. (Hearing site: Los Angeles, CA.)

MC 144740 (Sub-7F), filed February 23, 1979. Applicant: L. G. DEWITT, INC., P.O. Box 70, Ellerbe, NC 28338. Representative: Terrence D. Jones, 2033 K Street, N.W., Suite 300, Washington, DC 20006. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs* from the facilities of or used by Foodways National, Inc., at (a) Wethersfield and Hartford, CT, and (b) New Paltz, NY, to points in CA, FL, GA, ID, IL, KS, PA, NY, MI, MN, MO, OH, OR, TX, and WI, under continuing contract(s) with Foodways National, Inc., of Wethersfield, CT. (Hearing site: Washington, DC.)

MC 145340 (Sub-2F), filed January 16, 1979. Applicant: BILLY R. BURGESS, Rt. 1, Box 250, Shirley, AR 72153. Representative: Thomas J. Presson, Lot 27, Riverbend Estates, Redfield, AR 72132. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *wood pallets, pallet parts, and wooden packaging products*, from Concord, AR, to points in IA, IL, MO, NE, OH, TN, and TX, under continuing contract(s) with Martin Lumber Company, Inc., of Concord, AR. (Hearing site: Little Rock, AR, or Memphis, TN.)

MC 145560 (Sub-6F), filed February 21, 1979. Applicant: NORTH ALABAMA TRANSPORTATION, INC., P.O. Box 38, Ider, AL 35981. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *carpeting and flooring*, from Dalton and Calhoun, GA, Nashville, TN, and Center, TX, to points in ID, MT, OR, UT, and WA, under continuing contract(s) with Wanke Panel Company, of Portland, OR. (Hearing site: Washington, DC.)

MC 145900 (Sub-2F), filed February 23, 1979. Applicant: THREE RIVERS TRUCKING, INC., Legionville Road, Ambridge, PA 15003. Representative: John A. Pillar, 1500 Bank Tower, 307 Fourth Avenue, Pittsburgh, PA 15222. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, (except commodities in bulk), between the facilities of The Levinson Steel Company, at Pittsburgh and Ambridge, PA, on the one hand, and, on the other, those points in WV on and north of U.S. Hwy 50, and those points in OH on and east of a line beginning at the OH-KY State line and extending along U.S. Hwy 23 to junction OH Hwy 4, then along OH Hwy 4 to Sandusky, OH. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 146091 (Sub-2F), filed February 22, 1979. Applicant: JOHN E. HOTH and BOBBIE J. HOTH, d.b.a. W. I. EXPRESS, Box 43, Garnavillo, IA 52049. Representative: Carl E. Munson, 469 Fisher Bldg., Dubuque, IA 52001. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as defined in sections A and C to Appendix I to the Report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Wilson Foods Corporation, at (a) Cedar Rapids, IA, and (b) Albert Lea, MN, to points in AL, AR, GA, KY, and TN, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. NOTE: The person or persons who appear to be engaged in common control of applicant and another carrier subject to regulation by this Commission must either file an application under 49 U.S.C. 11343(a) (formerly section 5(2) of the Interstate Commerce Act), or submit an affidavit indicating why such approval is unnecessary. (Hearing site: Oklahoma City, OK, or Chicago, IL.)

MC 146290 (Sub-1F), filed February 16, 1979. Applicant: DON THREDE, an individual doing business as DON THREDE TRUCKING COMPANY, 1777 Arnold Industrial Highway, Concord, CA 94520. Representative: Eldon M. Johnson, 650 California Street, Suite 2808, San Francisco, CA 94108. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *flat glass*, from the facilities of PPG Industries, Inc., at Fresno, CA, to points in AZ and NV, under continuing contract(s) with PPG Industries, Inc., of Pittsburgh, PA. (Hearing site: San Francisco or Fresno, CA.)

MC 146341F, filed February 8, 1979. Applicant: RIGHT-O-WAY, INC., 566 Valley Street, Orange, NJ 07050. Representative: Ronald I. Shapss, 450 Seventh Avenue, New York, NY 10001. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Rouses Point, NY, on the one hand, and, on the other, points in AL, AZ, AR, CA, CO, FL, GA, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, SC, SD, TN, TX, UT, VA, WA, WV, WI, and WY, under continuing contract(s) with the Champlain Valley International Shippers and Receivers Inc., of Rouses Point, NY. (Hearing site: New York or Rouses Point, NY.)

Broker Authority

MC 130281 (Sub-3F), filed February 8, 1979. Applicant: HOLIDAY TRAVEL, INC., 2842 London Square Mall, Eau Claire, WI 54701. Representative: Douglas P. Stoffers (same address as applicant). To engage in operations, in interstate or foreign commerce, as a *broker*, at Eau Claire, WI, and Davenport, IA, in arranging for the transportation, by motor vehicle, of *passengers and their baggage*, in special and charter operations, in one-way and round-trip tours, between points in the United States (including AK and HI). (Hearing site: Eau Claire, WI.)

MC 130561F, filed January 12, 1979. Applicant: WORLD TRAVEL SERVICE, INC., 30 West Church Ave., Roanoke, VA 24011. Representative: L. C. Major, Jr., Suite 400, Overlook Bldg., 6121 Lincolnia Rd., P.O. Box 11278, Alexandria, VA 22312. To engage in operations, in interstate or foreign commerce, as a *broker*, at Roanoke and Blacksburg, VA, in arranging for the transportation, by motor vehicle of *passengers and their baggage*, in the same vehicle with passengers, in round-trip special and charter operations, beginning and ending at points in

Roanoke and Franklin Counties, VA, and extending to points in the United States (including AK, but excluding HI). (Hearing site: Roanoke, VA.)

Note.—Applicant is cautioned that arrangements for charter parties or groups should be made in conformity with the requirements set forth in *Tauck Tours, Inc., Extension—New York, N.Y.* 54 M.C.C. 291 (1952).

[FR Doc. 79-17924 Filed 6-7-79; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-32 (Sub-No. 3F)]

Robert W. Meserve and Benjamin H. Lacy, Trustees of the Property of Boston & Maine Corp., Debtor, Abandonment Near Bennington and Hillsborough in Hillsborough County, N.H.; Findings

Notice is hereby pursuant to 49 U.S.C. § 10903 (formerly Section 1a of the Interstate Commerce Act) that by a Certificate and Decision decided May 21, 1979, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in AB-36 (Sub-No. 2), *Oregon Short Line R. Co.—Abandonment Goshen,* —— I.C.C. ——, decided February 9, 1979, and further that B&M shall keep intact all of the right-of-way underlying the track, including all of the bridges and culverts for a period of 120 days from the effective date of this certificate and decision to permit any state or local government agency or other interested party to negotiate the acquisition for public use of all or any portion of the right-of-way, the present and future public convenience and necessity permit the abandonment by Robert W. Meserve and Benjamin H. Lacy, Trustees of the Property of Boston and Maine Corporation of a segment of a line of railroad known as the Hillsboro Branch extending from railroad milepost W 62.0 in Bennington to the end at railroad milepost W 70.4 in Hillsborough, a distance of 8.40 miles in Hillsborough County, NH. A certificate of public convenience and necessity permitting the abandonment was issued to Robert W. Meserve and Benjamin H. Lacy, Trustees of the Property of Boston and Maine Corporation. Since no investigation was instituted, the requirement of § 1121.38(a) of the Regulations that publication of notice of abandonment decisions in the Federal Register be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (Section 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed and served no later than June 25, 1979. The offer, as filed, shall contain information required pursuant to § 1121.38(b) (2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective on July 23, 1979.

H. G. Homme, Jr.,
Secretary

[FR Doc. 79-17927 6-7-79; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-32 (Sub-No. 4F)]

Robert W. Meserve and Benjamin H. Lacy, Trustees of the Property of Boston & Maine Corp., Debtor, Abandonment Near Townsend, Mass., and Greenville, N.H., in Worcester County, Mass., and Hillsborough County, N.H.; Findings

Notice is hereby given pursuant to 49 U.S.C. § 10903 (formerly section 1a of the Interstate Commerce Act) that by a Certificate and Decision decided May 29, 1979, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in AB-36 (Sub-No. 2), *Oregon Short Line R. Co.—Abandoment Goshen,* —— I.C.C. ——, decided February 9, 1979, and further that B&M shall keep intact all of the right-of-way underlying the track, including all of the bridges and culverts for a period of 120 days from the effective date of this certificate and decision to permit any state or local government agency or other interested party to negotiate the acquisition for public use of all or any portion of the right-of-way, the present and future public convenience and necessity permit the abandonment by Robert W. Meserve and Benjamin H. Lacy, Trustees of the Property of Boston and Maine Corporation, of a segment of a line of railroad known as the Greenville Branch extending from railroad milepost B 46.85 in Townsend, MA to the end of the line at railroad milepost B 59.76 in Greenville, NH, a distance of 12.91 miles in Worcester County, MA and Hillsborough County, NH. A certificate of public convenience and necessity permitting the abandonment was issued to Robert W. Meserve and Benjamin H. Lacy, Trustees of the Property of Boston and Maine Corporation. Since no investigation was instituted, the requirement of § 1121.38(a) of the regulations that publication of notice of abandonment decisions in the Federal Register be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (§ 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed and served on or before June 25, 1979. The offer, as filed, shall contain information required pursuant to § 1121.38(b) (2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective on July 23, 1979.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-17926 Filed 6-7-79; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-32 (Sub-No. 5F)]

Robert W. Meserve and Benjamin H. Lacy, Trustees of the Property of Boston & Maine Corp., Debtor, Abandonment in Somerville and Cambridge, Middlesex County, Mass.; Findings

Notice is hereby given pursuant to 49 U.S.C. § 10903 (formerly section 1a of the Interstate Commerce Act) that by a Certificate and Decision decided May 21, 1979, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in AB-36 (Sub-No. 2), *Oregon Short Line R. Co.—Abandonment Goshen,* —— I.C.C. ——, decided February 9, 1979, the present and future public convenience and necessity permit the abandonment by Robert W. Meserve and Benjamin H. Lacy, Trustees of the Property of Boston and Maine Corporation of a segment of a line of railroad known as the Fitchburg Freight Cut-off extending from railroad milepost B 3.36 in Somerville to railroad milepost B 4.64 in Cambridge, a distance of distance of 1.28 miles in Middlesex County, MA. A certificate of public

convenience and necessity permitting the abandonment was issued to Robert W. Meserve and Benjamin H. Lacy, Trustees of the Property of Boston and Maine Corporation. Since no investigation was instituted, the requirement of § 1121.38(a) of the Regulations that publication of notice of abandonment decisions in the Federal Register be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (§ 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed and served on or before June 25, 1979. The offer, as filed, shall contain information required pursuant to § 1121.38(b) (2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective on July 23, 1979.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-17[illegible] Filed 6-[illegible]; 8:45 am]

BILLING CODE 7035-01-M

[Amdt. No. 1 TO I.C.C. Order No. 40 Under S.O. No. 1344]

Rerouting Traffic

To: All Railroads:

Upon further consideration of I.C.C. Order No. 40 and good cause appearing therefor:

It is ordered: I.C.C. Order No. 40 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., June 8, 1979, unless otherwise modified, changed or suspended.

Effective date. This amendment shall become effective at 11:59 p.m., May 25, 1979.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this amendment shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., May 24, 1979.

Interstate Commerce Commission.

Joel E. Burns,

Agent.

[FR Doc. 79-17[illegible] Filed 6-7-79; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. 55 (Sub-No. 28F)]

Seaboard Coast Line Railroad Co. Abandonment Near Creedmoor and Joyland in Granville and Durham Counties, N.C.

Notice is hereby given pursuant to 49 U.S.C. § 10903 (formerly Section 1a of the Interstate Commerce Act) that by a Certificate and Decision decided May 21, 1979, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in AB-36 (Sub-No. 2), *Oregon Short Line R. Co.—Abandonment Goshen,* ——*I.C.C.* ——, decided February 9, 1979, the present and future public convenience and necessity permit the abandonment by the Seaboard Coast Line Railroad Company of a portion of a line of railroad known as the Durham Subdivision, extending from railroad milepost SB-139.00, near Creedmoor, NC, to milepost SB-150.00, near Joyland, NC, a distance of 11.00 miles, in Granville and Durham Counties, NC. A certificate of public convenience and necessity permitting the abandonment was issued to the Seaboard Coast Line Railroad Company. Since no investigation was instituted, the requirement of § 1121.38(a) of the Regulations that publication of notice of abandonment decisions in the Federal Register be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (§ 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed and served on or before June 25, 1979. The offer, as filed, shall contain information required pursuant to § 1121.38(b) (2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective on July 23, 1979.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-17[illegible] Filed 6-7-79; 8:45 am]

BILLING CODE 7035-01-M

[Decision Ex Parte No. 311]

Expedited Procedures for Recovery of Fuel Costs

Decided: June 1, 1979.

In a decision served April 20, 1979, in the above-entitled proceeding, the Commission implemented Special Permission No. 76-350 to provide a mechanism whereby regulated carriers could attempt to reflect rapidly increasing fuel costs in the rate structure as quickly as possible. (44 FR 25664, May 1, 1979).

In addition, comments were requested as to possible modifications of the X-311 procedures, and to the question of the authorization of a fuel-based surcharge and guaranteed pass-through provision to those actually incurring increased fuel charges. On the question of the surcharge, several petitions were held in abeyance pending comments. Comments were also requested on possible modification of the 10-working day notice requirement, and the use of the one-percent rate increase triggering mechanism, absent special justification.

Since the April 20 decision there have been a number of X-311 rate increase filings including industry-wide requests by the railroads, bus, and household goods' carriers. There are indications, however, that the fuel situation with regard to owner-operators is deteriorating. Whether this is due to certain motor common carriers which use owner-operators not filing for increases, or that the owner-operators are not receiving adequate compensation for increased fuel expenses despite X-311 increases is not clear. However, there have been reports of job slowdowns, and the possibility of major walkouts appears to exist.

The requested comments have been received. All contentions have been evaluated and considered in leading to our conclusions discussed below.

The nature of the emergency dictates that a fuel-based surcharge be the appropriate method of implementing future X-311 rate increases as of the date of this decision. It appears that, as a general rule, this would be the best and most efficient manner for carriers, owner-operators and/or other parties bearing the increased fuel charges, and the shipping public to determine how

much of any given shipment is attributable to added fuel expense. It would facilitate tariff publication, and would clearly show especially with regard to owner-operators and/or other parties bearing increased fuel charges, how much such parties are entitled to be reimbursed. Carriers whose earlier surcharges have been rejected under the prior rule are invited to refile immediately.

Several other parties suggested various types of surcharges (mileage, weight, revenue-based, etc.). Given the urgency of the energy emergency for all modes, and the myriad types of rate structures, especially among motor carriers, we are not recommending that a proposed fuel surcharge be in any particular form. Thus, a carrier, in its discretion, could choose a mileage surcharge or any other surcharge method it deemed appropriate for its circumstances. However, the following conditions are to be attached to the use of a surcharge: each surcharge must have a provision for a 100 percent pass-through [1] to those parties actually incurring the increased fuel charges; and, the surcharge must have an expiration date of no later than October 31, 1979, which may not be extended or canceled except upon specific authorization of the Commission. Extension of the expiration date for the surcharge will be dependent upon the continuation of the fuel emergency. We state strongly that any surcharges approved should be replaced at the earliest opportunity by general increase proposals or other appropriate tariff adjustments on statutory notice in order that the Commission can consider whether the person actually responsible for the payment of the fuel costs will continue to receive the benefit of the fuel adjustment.

The possible use of a "Fuel Increase Schedule", such as that proposed in Appendix A of the April 20 decision, or the future use of any specific Commission-imposed surcharge formula is not being discarded. The Commission will closely monitor fuel price increases with the various monitoring systems available to it. If the emergency worsens, or the Commission deems it warranted, a specific schedule or formula could be implemented.

In addition, increases already granted or pending under the provisions of Ex Parte No. 311 implemented in the April 20 decision would remain as changes in the rate structure. Subsequent to the date of the present decision, all fuel-related increases filed under the provisions of Ex Parte No. 311 will be in the form of a surcharge, except where special justification to deviate is shown.

It should be stressed that the overall issue of revenue need is not being considered in Ex Parte No. 311 increases. However, revenue increases as a result of escalating fuel prices will of necessity be reflected in revenue/cost relationships in subsequent general increase proceedings. Such comparisons will be evaluated in future general rate increase proposals where the issue of overall revenue need will be considered.

In the April 20 decision, the Commission established the base period as January, 1979. Many comments were received requesting that the base period be changed to September, 1978. Several other base period dates were also suggested in individual proceedings. Most of the comments stated that fuel price increases were occurring prior to January, 1979, and should be included in any X–311 requests. The September, 1978, base period was also suggested so as to be in conformity with the program year of the Council of Wage and Price Stability (COWPS) which began October 1, 1978.

We find that the January, 1979 base period should be retained. Based on the best evidence of record, it appears that the extremely rapid rise in fuel prices began during this month. Any increased fuel expenses not covered by an X–311 increase could be examined in future general rate increase proposals.

In addition, some comments posed the question of whether the Commission's change to a January, 1979 base period eliminated the "floating base period" established in the decision served February 24, 1978. In that decision, the Commission modified the original X–311 procedures to insure that carriers seeking a first or second X–311 increase have not duplicated increased fuel costs used as justification in prior general rate increase proceedings. We find that while the January, 1979 base period will be retained, those carriers seeking a second X–311 increase can use the floating base period concept outlined in the February 24, 1978 decision. It should be emphasized again, however, that a second surcharge must have an expiration date of October 31, 1979, and that any subsequent surcharge should be replaced by general rate increase proposals at the earliest opportunity.

The present procedures require that X–311 increases be published on not less than 10 working days' notice, with protests due no later than 5 days before the effective date. Some shippers complained that this period is not long enough, while a few carriers wanted less notice. We find that the 10-day notice should not be reduced. However, in individual situations, this period can be shortened if absolutely necessary.

Under the present procedures, in the absence of special justification, increases of less than 1 percent shall not be requested. Several comments requested that this trigger mechanism be lowered. We agree, and find that, in the absence of special justification, increases of less than .5 percent shall not be requested.

The freight forwarders have filed a petition asking for implementation of Special Permission No. 76–280 which set out the special procedures for this mode in seeking fuel-based rate increases. This was also included in the original X–311 decision, 330 I.C.C. 583, 592 (1975). However, the Commission decision of April 20 did not take any action with regard to forwarders. We find that Special Permission No. 76–280 should be activated, and that freight forwarders also be authorized to use the surcharge method.

COWPS submitted a statement contending that fuel prices should not be considered as an isolated element in setting rate increases. It is stated that such a policy encourages inefficiency, will allow unjustified revenue to accrue to certain carriers which could otherwise absorb some fuel cost increases, and will contribute to the nation's high inflation rate.

Given the nature of the emergency, the Commission feels there is a strong basis for the existence of expedited procedures for the recovery of rapid fuel price increases. We assure the Council that the Commission will exercise its duty in determining that any surcharge is fully cost justified.

At the same time, we repeat that it is our intention to consider inflationary effects when determining the lawfulness of the surcharges to be filed. If possible, the carriers, when filing X–311 increases, should also submit data that the Commission can place into the Council's current price guideline formulas.[2] The Council should also be aware that we are reviewing its proposals to increase efficiency of the transportation system, such as eliminating backhaul restrictions.

Finally, the question was raised of how to protect owner-operators and/or the person bearing the increased fuel charges when the carriers they work for refuse to file a surcharge. The

[1] Overhead and other expenses associated with the pass-through requirement may be recouped by the certificated carrier by normal tariff procedures.

[2] We urge the carriers and their representatives to discuss their proposals for fuel cost increases with the Council prior to filing the tariff publications with the Commission.

Commission does not have a solution to this potential problem, and invites comments from interested parties on this issue no later than 20 days from the date of service of this decision.

Special Permission No. 79–2620 Emergency Fuel Surcharge for Line-Haul Transportation Charges and Other Charges-Expedited Procedure

In a decision served April 20, 1979, the Commission implemented Special Permission No. 76–350 to provide a mechanism where regulated carriers could attempt to reflect rapidly increasing fuel costs in the rate structure as quickly as possible. Because of the increasing fuel emergency, and because the prior authority does not entirely meet the immediate need of certain carriers and/or persons bearing the increased fuel charges, further relief is warranted.

It is ordered: 1. All regulated carriers, including freight forwarders, or their authorized publishing agents that have tariffs or schedules on file with this Commission, or those carriers or agents that may in the future file tariffs or schedules with this Commission, are authorized to depart from the terms of the governing tariff circulars to file and post on not less than 10 working days' notice to this Commission and the public, an increase in passenger fares and freight charges for line-haul transportation and charges for other services which consume fuel, such as pickup and delivery, which must be specified in the tariffs, by means of a percentage surcharge. Increases already granted or pending under Special Permission No. 76–350 would remain as changes in the rate structure. As of the date of this decision, all fuel-related increases must be filed under the terms of Special Permission No. 79–2620 using the surcharge method, except where special justification to deviate is shown and approved by the Commission.

2. The Commission shall analyze the impact of fuel expenses on a month-to-month basis to determine whether there is justification for modifications of this decision; if conditions warrant, this decision will be amended accordingly.

3. The surcharge filed and posted under the authority of this permission may take the form of master tariff of increase, or as a supplement to the affected tariffs. If the master tariff form of publication is to be employed, reference will be made by connecting link supplement to each tariff (to be made subject to the master tariff), connecting such tariff with the master. Such supplements may be blanket supplements (a common supplement issued to two or more tariffs), provided each copy officially filed is hand marked in the tariff it supplements.

4. The person actually responsible for the payment of fuel charges, by contract or otherwise, is to receive the full increase in revenue derived from surcharges published hereunder. Each publication containing the surcharge shall contain whichever of the following certifications is appropriate:

This is to certify that each carrier party to this publication has been notified that:

Special Permission No. 79–2620 requires that the person actually responsible, by contract or otherwise, for the payment of fuel charges is to receive the full increase in revenue derived from surcharges published thereunder, and that a carrier's participation in a publication filed thereunder constitutes an undertaking to comply with that requirement.

or

This is to certify that the person actually responsible, by contract or otherwise, for the payment of fuel charges will receive the full increase in freight revenue to be derived from the proposed surcharge.

5. All surcharges filed under this special permission must have an expiration date of no later than October 31, 1979. Special Permission No. 79–2620 will remain in effect until October 31, 1979, unless extended by further order of the Commission.

6. Publications issued and filed hereunder shall be exempt from the supplemental and volume limitations of the tariff circulars, shall contain no other matter and shall bear the following notation:

"Issued on ten days' notice, I.C.C. permission No. 79–2620"

7. The carriers, individually, or by tariff publishing bureaus, as appropriate, shall submit with the schedules of proposed surcharges based on fuel costs, an original and 2 copies of an executed "Verified Statement of Fuel Expenses and Data in Support of Requested Fuel Rate Increase" in the form and manner provided for in Appendix II to the report in Ex Parte No. 311, 350 I.C.C. 563, 575–76 (1975), as amended by decisions served February 24, 1976 and April 20, 1979. Railroads when filing jointly and motor carrier rate bureaus subject to Ex Parte No. MC–82 when filing on behalf of substantially all their members, should submit 20 copies of the Appendix II data.

8. Indicate the percent (to 1 decimal) of the requested fuel surcharge based on the increase in fuel expenses, including taxes, current period over base period. This percent should not exceed the percent shown on line 15 of Appendix II. In the absence of special justification, increases of less than .5 percent shall not be requested.

9. Only one surcharge as to a tariff may be in effect at one time, and any surcharge filed under authority of this special permission shall not provide for any exceptions (non-application) with respect to any particular traffic.

10. The surcharge provisions must include a rule for disposition of fractions of one cent or other stated amounts, or refer to a conversion table of increased charges or fares.

11. In the situation where a proposed surcharge is on a mileage basis, the carrier or agent must include in the tariff a clear method of determination of mileage. Also, there must be included in the tariff a method of pro-rating any mileage surcharge on a per truck basis for situations where LTL or truckload shipments involve more than one shipper.

12. All outstanding orders of the Commission are modified to the extent necessary to permit the filing of the tariffs authorized herein. Increases filed under this Special Permission shall not be deemed general increases or general adjustments as defined in section 1102.1 and 1104.1(a) of Chapter X of Title 49 of the Code of Federal Regulations.

13. The requirement of following rate bureau procedures provided in agreements approved by this Commission under section 10706 of the Act (formerly sections 5a and 5b) is waived to the extent necessary to permit the filing of the tariffs authorized herein.

14. Protests are due no later than 5 days before the effective date of the tariff.

15. All carriers are hereby notified that they are expected to update their tariff by incorporating the increase published under authority of this Special Permission as soon as practicable, and that the surcharges be replaced at the earliest opportunity by general increase proposals.

16. Notice of this Special Permission shall be given to the general public by mailing a copy of this decision to the Governor of each State and to the Public Utilities Commissions or Boards of each State having jurisdiction over transportation, by depositing a copy in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., for public inspection, and by delivering a copy to the Director, Office of the Federal Register, for publication therein.

It is further ordered: Special Permission No. 79–360 is implemented for use by freight forwarders. However, the forwarders are advised that in publishing proposals they are to use the surcharge method in Special Permission No. 79–2620 based on all the requirements therein, unless special justification is granted to use another form.

Interested parties may file comments no later than 20 days from the date of service of this decision to the question of how to protect the person actually bearing the increased fuel charges when the carriers they work for refuse to file a surcharge under this Special Permission.

By the Commission, Chairman O'Neal, Vice-Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian. Commissioner Christian absent and not participating.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79–18032 Filed 6–7–79; 8:45 am]
BILLING CODE 7035–01–M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 112
Friday, June 8, 1979

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMISSION ON CIVIL RIGHTS.

DATE AND TIME: Monday, June 11, 1979, 10:30 a.m.–12:30 p.m.—1:30 p.m.–3:30 p.m.

PLACE: Marina Conference Center, Holiday Inn, 801 Calhoun Street, Houston, Texas.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda.
II. Approval of Minutes of Last Meeting.
III. Staff Director's Report:
A. Status of Funds.
B. Personnel Report.
C. Office Directors' Reports.
D. Correspondence:
1. Letter from OMB Director McIntyre on Housing Report.
2. Letter from Delores Young.
IV. Report on Civil Rights Developments in the Rocky Mountain Region.
V. State Advisory Committee Re Charters:
A. Alabama.
B. California.
C. Indiana.
D. Florida (Interim Appointment).
VI. Title IX Recommendation.
VII. Battered Women Study Contract.
VIII. Review of Health Insurance Research Design.
IX. Status Report on SBA Set-Aside Provision.
X. Recommendation Re Policy on SAC Chairperson Criteria.
XI. Follow-up Re Kansas Committee Statement on School Desegregation in Topeka.
XII. Action Re Race Relations in Cooper County, Missouri—1978.

CONTACT PERSON FOR MORE INFORMATION: Barbara Brooks, Office of Congressional and Public Liaison, (202) 254–6697.

[S-1139-79 Filed 6-16-79; 11:45 am]
BILLING CODE 6335-01-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m. (Eastern Time), Tuesday, June 12, 1979.

PLACE: Commission Conference Room, No. 5240, on the fifth floor of the Columbia Plaza Office Building, 2401 E Street N.W., Washington, DC 20506.

STATUS: Part will be open to the public and part will be closed to the public.

Open to the Public

1. Proposed Modifications of Various State and Local Agency fiscal year 1979 Charge Resolution Contracts.
2. Proposed Annual Report to President and Congress on Implementation of Executive Order 12067.
3. Report on Status of Consultation with Office of Federal Contract Compliance Programs on its Compliance Manual.
4. Proposed Revised Regulations Establishing Time Limits for Federal Sector Appeals.
5. Report by Vice Chair Leach on Religious Accommodation and the Postal Service.
6. Report on Court Decision in EDOC v. St. Louis Diecasting Corp.
7. Report on the Commission operations by the Executive Director.

Closed to the Public

1. Litigation Authorization; General Counsel Recommendations
2. Proposed Decision in Charge TN03–1711
3. Proposed Reconsideration of Decision in Charge 052–77–0749.

This matter, consideration of which was postponed from the meeting of June 5, was incorrectly identified as Charge 052–77–1668 in the original announcement.

Note.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION: Marie D. Wilson, Executive Officer, Executive Secretariat, at (202) 634–6748.

This Notice Issued June 5, 1979.

[S-1148-79 Filed 6-6-79; 10:11 am]
BILLING CODE 6570-06-M

3

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, June 7, 1979.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Open Commission meeting.

CHANGES IN THE MEETING: The following item has been deleted:

Agenda, Item No., and Subject

General—4—FOIA request by James Reston, Jr., to inspect records and tapes of Amateur Radio transmission of The People's Temple. FOIA Control No. 8–80.

Additional information concerning this item may be obtained from the FCC Public Affairs Office, telephone number (202) 632–7260.

Issued: June 4, 1979.

[S-1153-79 Filed 6-6-79; 2:57 pm]
BILLING CODE 6712-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, June 4, 1979, the Corporation's Board of directors determined, on motion of Chairman Irvine H. Sprague, seconded by director John G. Heimann (Comptroller of the Currency), concurred in by Director William M. Isaac (Appointive), that Corporation business required the withdrawal of the following matter from the agenda for consideration at the meeting, on less than seven days' notice to the public:

Memorandum proposing a sublease of space for the New York Regional Office.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: June 4, 1979.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1149-79 Filed 6-6-79; 9:57 am]
BILLING CODE 6714-01-M

5

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)),

notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, June 4, 1979, the Corporation's Board of Directors determined, on motion of Chairman Irvine H. Sprague, seconded by Director John G. Heimann (Comptroller of the Currency), concurred in by Director William M. Isaac (Appointive), that Corporation business required its addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a recommendation regarding the liquidation of assets acquired by the Corporation from United States National Bank, San Diego, California (Case No. 43,941–NR).

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter was eligible for consideration in a closed meeting by authority of subsections (c)(4), (c)(6), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), and (c)(9)(B)).

Dated: June 4, 1979.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1144-79 Filed 6-6-79; 9:57 am]

BILLING CODE 6714-01-M

6

FEDERAL MARITIME COMMISSION.

TIME AND DATE: June 12, 1979, 10 a.m.

PLACE: Room 12126, 1100 L Street, NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions Open to the Public

1. Agreement No. 10230–1: Modification of a cargo revenue pooling and sailing arrangement in the trade from Brazil to the United States Gulf to provide for participation of nonnational flag lines.

2. Proposal to initiate a nonadjudicatory fact-finding investigation into neutral container leasing systems.

3. ACE Lines, Limited—Section 19 Petition concerning the New Zealand Wool Board's Circular No. 58 governing the movement of wool from New Zealand to U.S. East and West Coast ports.

4. Application of United States Cruises, Inc. for a Certificate of Financial Responsibility for Idemnification of Passengers for Nonperformance of Transportation Covering the SS UNITED STATES.

5. Workpaper availability in domestic offshore rate proceedings.

6. Docket No. 79–67: Sea-Land Service, Inc.—Proposed Five Percent General Rate Increase in Six Puerto Rico and Virgin Islands Trades—Petition of Government of Virgin Islands for reconsideration of order of investigation.

7. Docket No. 79–48: Trailer Marine Transport Corporation—Proposed General Increase in Rates—Petition of Government of Virgin Islands for reconsideration of order of investigation.

8. Docket No. 76–63: Filing of Agreements by Common Carriers and Other Persons; supporting Statements and Evidence—Proposed rules.

Portion Closed to the Public

1. Activities of Richmond Transfer and Storage Company.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary, (202) 523–5725.

[S-1176-79 Filed 6-6-79; 2:57 pm]

BILLING CODE 6730-01-M

7

FEDERAL RESERVE SYSTEM, (BOARD OF GOVERNORS.)

TIME AND DATE: 10 a.m., Wednesday, June 13, 1979.

PLACE: 20th Street Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed purchase of a communication system for the Federal Reserve Bank of Philadelphia.

Discussion Agenda

1. Proposed recommendations to the Congress on whether Edge Corporations should be permitted to become members of the Federal Reserve System.

2. Proposed revised amendments to Regulation H (Membership of State Banking Institutions in the Federal Reserve System) to require that State member banks that effect certain securities transactions for customers provide confirmation and maintain certain records with respect to such transactions. (Proposed earlier for public comment; docket no. R–0142).

3. Proposed statement to be presented to the Senate Governmental Affairs Committee regarding S. 445, the "Regulatory Reform Act of 1979".

4. Proposal to conduct a Special Survey of Deposits Held by U.S. Residents in Caribbean Branches (FR 3010).

5. Proposed 1980 budget objective for the Federal Reserve Banks.

6. (Tentative) Board statement before the Senate Committee on Banking, Housing, and Urban Affairs on legislation dealing with interest on deposits.

7. Any agenda items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452–3204.

Dated: June 6, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[S-1149-79 Filed 6-6-79; 11:26 am]

BILLING CODE 6210-01-M

8

[USITC SE–79–22B/22C]

INTERNATIONAL TRADE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 31367 (May 31, 1979).

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Thursday, June 7, 1979.

CHANGES IN THE MEETING: The following item, previously scheduled for the meeting of Thursday, June 7, 1979, has been rescheduled and added to the agenda for the meeting on Tuesday, June 12, 1979:

4. Petitions and complaints, if necessary:
c. Coke (Docket No. 554)—discussion (partially closed; partially open) and vote on institution (in open session).

By action jacket approved June 5, 1979, Commissioners Parker, Alberger, Moore, Bedell, and Stern determined that Commission business requires the change in subject matter and affirmed that no earlier announcement of the changes to the agenda was possible, and directed the issuance of this notice at the earliest practicable time.

Pursuant to the specific exemptions of 5 U.S.C. 552b(c)(4) and in conformity with 19 C.F.R. 201.36(b)(4), Commissioners Parker, Alberger, Moore, Bedell, and Stern voted, by action jacket approved June 4, 1979, to close only that portion of the discussion which involved confidential business information.

A majority of the entire membership of the Commission felt that this portion of the meeting should be closed to the public since the information discussed in such portion would be likely to disclose confidential business information.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

[S–1149–79 Filed 6–6–79; 9:57 am]

BILLING CODE 7020–02–M

9

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: June 5 and 7, 1979.

PLACE: Commissioners' Conference Room, 1717 H St., N.W., Washington, D.C.

STATUS: Open (Additional items).

MATTERS TO BE CONSIDERED:

Tuesday, June 5, 2:55 p.m.

Affirmation Session (Approximately 10 minutes—Public meeting)

Additional item.

Clearance for Presidential Commission Investigating the Three Mile Island Accident.

Thursday, June 7, 11 a.m. (Additional item)

Discussion of Emergency Planning (Approximately 1 hour—Public meeting)

CONTACT PERSON FOR MORE INFORMATION: Walter Magee, (202) 634–1410

Roger M. Tweed,

Office of the Secretary.

June 6, 1979.

[S–1151–79 Filed 6–6–79; 2:10 pm]

BILLING CODE 7590–01–M

10

RAILROAD RETIREMENT BOARD.

TIME AND DATE: 1 p.m., June 15, 1979.

PLACE: Board's meeting room on the 8th floor of its headquarters building at 844 Rush Street, Chicago, Illinois 60611.

STATUS: Part of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion Open to the Public

(1) Questionnaire on employer status of certain companies.

Portions Closed to the Public

(2) Appeal from referee's denial of application for "period of disability", Billie L. Brown.

(3) Appeal from referee's denial of disability annuity application, Ira L. Crain.

(4) Appeal from referee's denial of application for "period of disability", Eduardo R. Tovar.

(5) Appeal from referee's denial of disability annuity application, William A. Huffman, Sr.

(6) Appeal from referee's denial of disability annuity application, Alfonso M. Reynoso.

(7) Appeal of Robert D. Sunden under the Railroad Unemployment Insurance Act.

(8) Appeal from referee's denial of annuity application, Esther H. Bechtel.

CONTACT PERSON FOR MORE INFORMATION: R. F. Butler, Secretary of the Board, COM No. 312–751–4920, FTS No. 387–4920.

[S–1151–79 Filed 6–6–79; 11:55 am]

BILLING CODE 7905–01–M

11

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of June 11, 1979, in Room 825, 500 North Capitol Street, Washington, D.C.

Closed meetings will be held on Tuesday, June 12, 1979, at 10 a.m. and on Wednesday, June 13, 1979, immediately following the 10 a.m. and 2:45 p.m. open meeting. Open meetings will be held on Wednesday, June 13, 1979, at 10 a.m. and 2:45 p.m.

The Commissioners, their legal assistant, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendered matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402 (a)(8)(9)(i) and (10).

Chairman Williams and Commissioners Loomis, Evans, Pollack and Karmel determined to hold the aforesaid meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, June 12, 1979, at 10 a.m., will be:

Formal orders of investigation.

Settlement of administrative proceedings of an enforcement nature.

Settlement of injunctive action.

Institution of injunctive action.

The subject matter of the closed meeting scheduled for Wednesday, June 13, 1979, immediately following the 10 a.m. open meeting, will be:

Settlement of administrative proceedings of an enforcement nature.

The subject matter of the closed meeting scheduled for Wednesday, June 13, 1979, immediately following the 2:45 p.m. open meeting, will be:

Post oral argument discussion.

The subject matter of the open meeting scheduled for Wednesday, June 13, 1979, at 10 a.m., will be:

1. Consideration of a release for the purpose of stating the Commission's views concerning certain factors which should be considered (i) by independent accountants, both individuals and firms, in assessing the possible effects of performing certain nonaudit services for audit clients on accountants' independence, in fact or in appearance, or on their professional image, and thus on the credibility and usefulness of their reports, and (ii) by audit committees, boards of directors and managements in determining whether to engage their independent accountants to perform nonaudit services. For further information, please contact Clarence M. Staubs at (202) 755–0222 or Edmund Coulson at (202) 472–2782.

2. Consideration of a report proposed to be sent to Congress on the accounting profession and the Commission's oversight role. For further information, please contact Clarence M. Staubs at (202) 755–0222 or Edmund Coulson at (202) 472–2782.

3. Consideration of whether to amend Rule 10f–3 and Form N–1Q under the Investment Company Act of 1940 to modify the conditions pursuant to which an investment company may purchase securities from an underwriting syndicate in which certain affiliated persons participate as syndicate members. For further information, please contact Mark B. Goldfus at (202) 755–0260.

4. Consideration of whether to propose for comment a rule under the Investment Advisers Act of 1940 ("Advisers Act") which would permit certain registered investment advisers to business development companies to be compensated based on a share of net capital gains upon, or net capital appreciation of, the funds, or any portion of the funds, of a business development company. Such means of compensation is currently prohibited by the Advisers Act. For further information, please contact Kathleen McGann at (202) 755–0214.

5. Consideration of the Eighth Annual Report of the Securities Investor Protection Corporation ("SIPC"). Pursuant to the Securities Investor Protection Act of 1970, SIPC has submitted its Annual Report to the Commission which, in turn, is required to transmit the report to the President and Congress with such comment as the Commission deems appropriate. For further information, please contact Michael J. Simon at (202) 755–8767.

The subject matter of the open meeting scheduled for Wednesday, June 13, 1979, at 2:45 p.m., will be:

Oral argument on appeals by Raymond L. Dirks, a security analyst, and the Division of Enforcement from the initial decision of an administrative law judge. The law judge concluded that Dirks should be suspended from association with any broker or dealer for sixty days. For further information, please contact R. Mosche Simon at (202) 755–1800.

FOR FURTHER INFORMATION AND TO ASCERTAIN WHAT, IF ANY, MATTERS HAVE BEEN ADDED, DELETED OR POSTPONED, PLEASE CONTACT: Mike Rogan at (202) 755–1638.

June 4, 1979.

[S–1145–79 Filed 6–6–79; 9:57 am]

BILLING CODE 8010–01–M

Federal Register

Friday
June 8, 1979

Part II

Department of Health, Education, and Welfare

Food and Drug Administration

Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding Human Food

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Parts 20 and 110]

[Docket No. 78N-0296]

Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding Human Food

AGENCY: Food and Drug Administration.

ACTION: Proposal

SUMMARY: The Food and Drug Administration is proposing to revise the current good manufacturing practice (CGMP) regulations for the manufacturing, processing, packing, and holding of human foods. this document would establish new, updated, or more detailed CGMP provisions concerning food industry personnel; plants and grounds; sanitary facilities, controls and operations; equipment and utensils; processes and controls; product coding; warehousing and distribution; recordkeeping; and natural or unavoidable defect levels. As revised by this proposal, the CGTMP regulations would be more directly applicable to the problems associated with foods for which specific CGMP regulations have not been promulgated, and thus would better ensure the production of save and sanitary food. The agency is planning to hold public hearings on this proposal in the fall of 1979. A notice giving specific information about these hearings will be published in the Federal Register on or about June 15, 1979.

DATES: Comments by December 31, 1979; the agency proposes that the final regulation based on this proposal be effective on or before December 5, 1979.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Bureau of Foods (HFF–414), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202–245–1164.

SUPPLEMENTARY INFORMATION: Passage of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) in 1938 gave the Food and Drug Administration (FDA) for the first time the authority to establish and impose reasonable sanitation standards on the production of foods, drugs, and cosmetics. For foods, these applicable statutory provisions are found in section 402(a) (3) and (4) of the act (21 U.S.C. 342(a) (3) and (4)), which, among other concerns, defines conditions under which a food is deemed to be adulterated. The legislative history of the act explains that these new provisions were added to expand the agency's bases for initiating enforcement proceedings conducted under the Pure Food and Drug Act of 1906 and, more specifically, to provide control mechanisms against insanitary and otherwise contaminated foods (Ref. 1). Furthermore, Congress granted FDA authority in section 704 of the act (21 U.S.C. 374) to inspect factories, warehouses, and other establishments in which foods are manufactured, processed, packed, or held, and to inspect their facilities, equipment, and materials.

Historically, FDA has used its inspection authority to trigger the legal sanctions provided by the act (1) to prevent the introduction or delivery for introduction into interstate commerce of adulterated food or (2) to prevent adulteration of food while it is being held for sale after shipment in interstate commerce. Under section 402(a)(3) of the act, the food is adulterated if it actually consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for food. Moreover, under section 402(a)(4) of the act, food is adulterated if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health. In sum, then, food need not be shown to contain filth or other contaminants to be adulterated; a showing that the food is prepared, packed, or held under conditions whereby it may become so is legally sufficient to prove adulteration.

On the basis of evidence gathered during inspections, FDA then uses its legal authority to go to court to seize the adulterated food, to seek to enjoin its shipment or sale, or to have the persons adulterating the food criminally prosecuted. The number of inspections and court actions instituted by FDA has varied over the years, in part because of the vast number of products and parties regulated by FDA. For example, FDA's 1977 annual report estimates the overall number of food processing, manufacturing, and warehouse facilities regulated by the agency at 77,000, and FDA conducts approximately 19,000 food establishment inspections annually (Ref. 9). As a result of the vast industry that the agency must regulate, FDA ceased relying exclusively on case-by-case litigation in the late 1960's and adopted a combined policy of promulgating regulations, relying on self-regulation by the industry, and, within the limits of available resources, enforcing regulations when the industry fails to comply with them.

In 1967, based on its experience in regulating the food industry, FDA proposed regulations to establish CGMP criteria for the manufacturing, processing, packing, or holding of food, to bring about compliance with section 402(a)(4) of the act (see the Federal Register of December 15, 1967 (32 FR 17980)). Because comments resulted in significant changes in the proposal, the agency reproposed the regulations in the Federal Register of December 20, 1968 (33 FR 19023) and issued the final regulations in the Federal Register of April 26, 1969 (34 FR 6977). At the request of the General Accounting Office (GAO) in 1971, FDA inspected 97 food manufacturing plants of all types, which were selected at random from some 4,500 food manufacturing and processing plants located in 6 FDA districts. Insanitary conditions having the potential for or having already caused product adulteration were observed in many facilities. The results of the survey appear in the GAO report, "Dimensions of Insanitary Conditions in the Food Manufacturing Industry" (Ref. 11).

The agency initiated a series of actions to improve conditions in the food industry. In addition to its normal inspection programs, FDA held several meetings with representatives of various segments of the food industry to exchange ideas and gather information helpful for developing improved good manufacturing practices in the industry. Based on these discussions, FDA proposed CGMP regulations for cacao products and confectionaries (hereinafter referred to as the candy CGMP's) in the Federal Register of November 20, 1973 (38 FR 32554) and issued the final candy CGMP's in the Federal Register of June 4, 1975 (40 FR 24162); it also proposed analogous regulations for bakery foods in the Federal Register of February 12, 1976 (41 FR 6456) and tree nuts and peanuts in the Federal Register of June 30, 1976 (41 FR 27000). The agency selected these segments of the food industry as the first subjects of specific CGMP regulations due to the cooperation of the representatives of those segments. They also represent an approximate cross section of the food industry. The CGMP regulations for the specific segments of the food industry were proposed as merely complementary provisions to the CGMP regulations for the overall food

industry (21 CFR Part 110, the so-called umbrella CGMP's).

The agency's experience in regulating the food industry in general, including drafting CGMP proposals for other particular segments of the food industry and reviewing the comments on the outstanding CGMP proposals, has shown that problems to be addressed by those CGMP regulations are common throughout all segments of the food industry, e.g., personnel, plant construction, and sanitation. Accordingly, the agency believes that the most efficient way to proceed now is to revise the umbrella CGMP regulations rather than repetitively to propose identical regulations for numerous segments of the industry. Therefore, the agency is staying the rulemaking proceedings on the CGMP proposals for bakery foods and tree nuts and peanuts pending an evaluation of the comments on this proposal. After the comments are evaluated, the agency will determine what action to take with respect to the stayed rulemaking proceedings and will consider whether all or part of the candy CGMP's should continue in effect.

The CGMP regulations already in effect detail the practices to be followed to ensure (1) that food is manufactured, processed, packed, and held under conditions that are sanitary, and (2) that such food is safe, clean, and wholesome. In general, this notice proposes to revise and update the requirements for plant personnel; plant design and construction; sanitary operations, facilities, and controls; equipment and utensils; regulating and recording controls; processing operations; and coding and recordkeeping. Preliminary drafts of this proposal were reviewed by the Food Safety and Quality Service, United States Department of Agriculture, and the National Marine Fisheries Service, National Oceanographic and Atmospheric Administration, United States Department of Commerce. The agency has carefully considered the suggestions received from these two agencies and has incorporated them, where appropriate, into the proposal. Copies of the correspondence are on file with the Hearing Clerk, FDA (Refs. 12 and 13). The following is a section-by-section analysis of the proposal:

Definitions

Section 110.3 (21 CFR 110.3) includes definitions of new terms and revised definitions of previously used terms that have uniform applicability. To eliminate any possible misunderstanding, the agency is also revising the definitions to ensure that they are consistent with the other regulations in this subchapter. These definitions are based on the agency's experience in regulating foods, common usage in the regulated industry, and, in the case of new § 110.3 (l) and (p), the material in Refs. 14 and 15.

Current Good Manufacturing Practices

Section 110.5 (21 CFR 110.5) emphasizes that the CGMP regulations identify the applicable criteria for implementing the requirements of section 402(a) (3) and (4) of the act. Moreover, this section explains that foods covered by specific CGMP regulations in the subchapter are still subject to the requirements imposed by this part.

Under section 701(a) of the act (21 U.S.C. 371(a)), FDA has the authority to promulgate regulations for the efficient enforcement of the act, and such regulations have been held to have the force and effect of law. See *National Nutritional Foods Ass'n* v. *Weinberger*, 512 F. 2d 688, 695–698 (2d Cir., 1975). The courts have also expressly held that FDA has the authority to promulgate substantive regulations defining current good manufacturing practices for the food industry *National Confectioners Ass'n* v. *Califano*, 569 F. 2d 690 (D.C. Cir., 1978). See *Nova Scotia Food Products Corp.* v. *U.S.*, 568 F. 2d 240, 245–248 (2d Cir., 1978). Furthermore, since the promulgation of the CGMP regulations in 1969, the Secretary of Health, Education, and Welfare has delegated authority to exercise the functions vested in the Secretary under section 361 of the Public Health Service Act (42 U.S.C. 264) to the Commissioner of Food and Drugs (see 35 FR 606 (January 16, 1970), corrected at 35 FR 3001 (February 13, 1970), codified at 21 CFR 5.1(a)(4)). Under this provision, the Commissioner is authorized to issue and enforce regulations for any measures that, in the Commissioner's judgment, are necessary to prevent the introduction, transmission, or spread of food-borne communicable diseases from one State to another. Because this authority is designed to eliminate the introduction of diseases such as typhus from one State to another, this authority must of necessity be exercised upon the disease-causing substance within the State where the food is manufactured, processed, or held. Due to the nationwide, interrelated structure of the food industry, communicable diseases may, without proper intrastate food controls, easily spread interstate, as the annual Center for Disease Control reports on food-borne Salmonellosis show (Refs. 16 and 17). The Commissioner therefore assumes authority to promulgate regulations under the Public Health Service Act to assure that foods are manufactured, processed, packed, or held under sanitary conditions so as to be safe, wholesome, and otherwise fit for food. Regulations promulgated under that statute also have the force and effect of law. See *State of Louisiana* v. *Mathews*, 427 F. Supp. 174 (D. La., 1977).

Personnel

Section 110.10 (21 CFR 110.10) summarizes the responsibilities imposed on the plant management to take reasonable measures and precautions to satisfy the articulated criteria for disease control, cleanliness, and education and training. These standards and criteria will help to prevent the spread of disease among the workers and from the workers to the food processing area and the food itself.

Exclusions

Section 110.19 (21 CFR 110.19) codifies FDA's historical exemption from the "umbrella" CGMP regulations of establishments that are engaged in the harvesting, storage, or distribution of one or more raw agricultural commodities that are ordinarily cleaned, prepared, treated, or otherwise processed before being marketed to the consuming public. Subsequent handlers of the commodities would be subject to the CGMP regulations, and food from those commodities is thus brought into compliance with the act at the later stages of the manufacturing, processing, packing, or holding. The Commissioner, however, will issue special regulations when necessary to encompass any excluded operation.

Plants and Grounds

Section 110.20 (21 CFR 110.20) describes the general principles of plant design and construction that are necessary to protect food from insanitary conditions and unwholesomeness and also to prevent the spread of disease-causing microorganisms through food. The proposal includes a new subparagraph to explain ways to reduce the possibility of microorganism, chemical, filth, or other contamination of end products, raw materials, and packaging materials. It recommends separating each step in the operation, from receiving the raw materials, to packing and shipping the end product, to cleaning, sanitizing, and maintaining the operations. Several mechanisms of separating the operations are set out in the regulation: location, partition, air flow, enclosed systems, or any other effective means

that will separate the systems and prevent their contamination.

These requirements were adopted in the candy CGMP's, and FDA has found them useful in that area. Comments received in response to the candy CGMP proposal and proposals for bakery foods and tree nuts and peanuts CGMP regulations, which also included these provisions, interpreted them as requiring the affected parties to separate each step in their operations by partitions. The agency advises that the use of partitions is only one method of separating operations, and that other means are acceptable. However, the operations should be separated so as to ensure that no contamination occurs. Additionally, the new subparagraph recommends that the design of the plant permit management to take precautions to protect products in out-door bulk fermentation vessels from insanitary conditions.

Sanitary Operations

Section 110.35 (21 CFR 110.35) sets out the basic rules for sanitation and cleanliness of buildings, fixtures, and other physical facilities, equipment, and utensils. The rules describe the requirements for general maintenance, control of animals and vermin, sanitation of equipment and utensils, and storage and handling of cleaned equipment and utensils. This section has been expanded to emphasize and describe proper use of cleaning compounds, sanitizing agents, and pesticide chemicals to protect raw material, packaging material, and finished food from contamination.

Sanitary Facilities and Controls

Section 110.37 (21 CFR 110.37) lists and describes the minimally acceptable adequate sanitary facilities and accommodations for all the food-handling operations. These include, but are not limited to, water supply, plumbing, sewage disposal, toilet facilities, hand-washing facilities, and rubbish and offal disposal.

A new subparagraph added to paragraph (b) prohibits backflow or cross connection between piping systems that carry water for food processing use and piping systems that discharge waste water or sewage. This prohibition is necessary to prevent spread of filth or disease-causing microorganisms through the sanitation facilities. In addition, paragraph (e) is revised to describe better the requirements for hand-washing facilities and has adopted the paragraph used in the candy CGMP's, which the agency believes is applicable for all food handling operations.

Equipment and Utensils

Section 110.40 (21 CFR 110.40) describes the general rules for cleanliness and maintenance of equipment and utensils, which must be designed and constructed so that they can be cleaned and maintained to prevent adulteration of the food. To prevent problems that can arise in this area, the agency had added the following requirements:

(a) Food-contact surfaces must be corrosion free when in contact with food.

(b) Seams in food-contact surfaces must be smoothly bonded or maintained to minimize the accumulation of food particles. Surfaces such as stainless steel are not required; other surface materials also can be maintained to prevent microbial contamination.

(c) Surfaces of equipment that do not come in contact with food are to be constructed so that they can be kept clean by maintenance in accordance with the other provisions of the regulations.

(d) Systems that hold, convey, and process ingredients and products must be designed and constructed so that they also can be kept clean.

(e) Temperature-controlling, -re - cording, and -measuring devices on equipment used to control and prevent the growth of microorganisms must be accurate and effective for their designated use. Because killing the microorganisms is critical, the devices must ensure that the food is adequately processed.

(f) Freezer and cold storage compartments used for holding materials capable of supporting the growth of microorganisms must be fitted with suitable temperature-indicating or -recording devices.

(g) Instruments used for measuring or regulating conditions that control or prevent undesirable microbial growth in foods must be properly maintained (e.g., compressed air introduced into foods must be clean). Food-contact surfaces and gases, in addition to compressed air, must comply with the requirements of section 409 of the act (21 U.S.C. 348). Any pesticides used must be used in accordance with section 408 of the act (21 U.S.C. 346a) and the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 note).

(h) Although most former industrial uses of polychlorinated biphenyls (PCB's) have been curtailed, if not eliminated, the agency believes that it is necessary to retain a restricted uses paragraph for PCB's in the proposed regulation for the following reasons: PCB's represent a class of toxic industrial chemicals manufactured and sold under a variety of trade names, including: Aroclor (United States); Phenoclor (France); Colphen (Germany); and Kanaclor (Japan). PCB's are highly stable, heat resistant, nonflammable chemicals. Industrial uses of PCB's include, or did include in the past, their use as electrical transformer and capacitor fluids, heat transfer fluids, hydraulic fluids and plasticizers, and in formulations of lubricants, coatings, and inks. Their unique physical and chemical properties and widespread, uncontrolled industrial applications have caused PCB's to be a persistent and ubiquitous contaminant in the environment and to contaminate certain foods. In addition, incidents have occurred in which PCB's have directly contaminated animal feeds as a result of industrial accidents (leakage or spillage of PCB fluids from plant equipment). These accidents in turn cause the contamination of food intended for human consumption (meat, milk, and eggs). Because PCB's are toxic chemcials, the PCB contamination of food as a result of these accidents represents a hazard to human health. It is therefore necessary to place certain restrictions on the industrial uses of PCB's in food plants.

Processes and Controls

Section 110.80 (21 CFR 110.80) adds a quality control operation to ensure that all operations in the receiving, inspecting, transporting, packaging, segregating, preparing, processing, and storing of food are conducted in accordance with adequate sanitation principles. This program requirement is based on FDA's experience in conducting approximately 19,000 food establishment inspections annually. Most operations have control procedures of this nature, and quality control procedures of this type help to ensure that raw materials and finished products are fit for food, that packaging materials are safe and suitable, and that all are in compliance with the act.

The agency is also proposing to amend the paragraph on raw materials to establish new subparagraphs addressing the issue of the fitness of raw materials. These materials must comply with the act. They must be held under proper storage conditions, and they must not contain microorganisms that can produce food poisoning or other disease in humans, or they must be properly treated to destroy such microorganisms.

The agency has reexamined the requirement in the candy CGMP's (21 CFR 110.80(b)(1), and (4)(i), and (c)(1)) that such foods be held at temperatures below 40°F (4.4°C). As the refrigeration temperature rises, the shelf life of foods is generally shortened. Although some pathogenic bacteria can reproduce at temperatures between 40°F (4.4°C) and 45°F (7.2°C), growth is slow (Refs. 18 through 26). The agency has reviewed the added risk of allowing a maximum storage temperature of such foods of 45°F (7.2°C) rather than 40°F (4.4°C) and concludes that this risk is minimal.

On the other hand, the agency believes the added expenditure of energy and cost of maintaining foods at 40°F (4.4°C) versus 45°F (7.2°C) is significant. A refrigerator operating at an ambient air temperature of 70°F (21.1°C) requires 20 percent more energy to operate at a temperature of 40°F (4.4°C) than to operate at a temperature of 45°F (7.2°C) (Refs. 27 and 28). Therefore, the agency is proposing to require that materials capable of supporting rapid microbial growth be stored at a temperature of 45°F (7.2°C) or below.

The agency is also expanding paragraphs concerning processing operations by proposing to require that: (a) foods that can support the rapid growth of microorganisms be held so that the risk of such growth is minimized; (b) measures taken to destroy or prevent the growth of microorganisms of public health significance be adequate under the conditions of manufacture; (c) raw materials, work-in-process, rework, finished foods, and refuse be handled so that the risk of having a contaminated food is minimized; (d) measures be taken to prevent the inclusion of extraneous material in finished products; (e) adulterated materials be properly disposed of or, if it is feasible, be reconditioned; (f) mechanical processing be performed so as not to contaminate raw materials, ingredients, or finished products; (g) batters, breadings, sauces, and other preparations be treated or maintained so that they are free of contamination; (h) the filling, assembling, and packaging of food be performed so as not to contaminate the finished food products; (i) foods relying on low water activity for preventing the growth of most microorganisms be processed to, and maintained at, a safe moisture level; and (j) foods relying on low pH for preventing the growth of microorganisms of public health significance be maintained at a pH of 4.6 or below.

Coding

To emphasize the importance of this provision, new § 110.91 (21 CFR 110.91) deals expressly with product coding. In § 110.80(j) of the current umbrella GMP regulations, which this proposal would supersede, the agency suggests that meaningful coding of products should be used to enable positive lot identification. Positive lot identification facilitates identification and segregation of contaminated products or products that may be otherwise unfit for their intended use. The current regulations also recommend that records be retained for a period that exceeds the shelf life of the product, but for no more than 2 years.

In the past decade, voluntary product recalls by manufacturers have become one of FDA's most useful regulatory tools, and the agency has promulgated guidelines describing the policies and procedures that FDA follows and guidelines that firms should follow in the conduct of product recalls (see the Federal Register of June 16, 1978 (43 FR 26202)). In fiscal year 1975 there were 133 recalls of food products, including misbranding violations, and 163 in fiscal year 1978 (Ref. 6). These experiences have shown that product coding is an essential element of this regulatory tool. Congress has recognized the utility of product coding, as have many members of the food industry, who have developed guidelines for their segments of the industry (Ref. 34). Furthermore, the United States Court of Appeals for the District of Columbia Circuit recognized the self-evident rationality of this procedure in its opinion upholding the coding provision in the candy CGMP's. See *National Confectioners Ass'n v. Califano*, 569 F.2d 690, 695 (D.C. Cir., 1978).

Many companies are already coding products (Ref. 34), and, based upon coding's recognized utility and accepted use in many segments of the food industry, the agency believes product coding should be mandatory for all foods. Accordingly, the agency is proposing, except where specifically exempt, to require permanently legible marks at a readily visible location on each finished food package delivered or displayed to purchasers (except for over-the-counter retail sales at the site of manufacture), so that the code marks can be easily seen on the unopened package. The marks must identify at least the plant where the product was packed and the product lot or packaging lot. It is recognized that a packaging lot may contain food manufactured on more than 1 day but packaged on a single day.

The agency is proposing to exempt the following products from the requirement that code marks be placed on each finished food package: (a) individually wrapped confectionery, each piece weighing ⅛ ounce or less, subject to § 1.24(a)(4); (b) food received in bulk containers at a retail establishment, and subject to § 101.100(a)(2), and (c) food repackaged at a retail establishment subject to § 101.100(b) provided that the package in which the food item is shipped to the retailer shall bear a code mark. The agency is willing to consider other similar exemptions if they are considered necessary and if such exemptions will allow the easy recall of food items from the retailers, institutions, manufacturers, or repackers to whom the products are shipped.

This proposed coding requirement is somewhat more stringent than the coding provision in the candy CGMP's in that it does not, as a general rule, give the manufacturer the option of placing the code mark on the shipping container rather than on the individual finished food package. The agency believes, however, that the proposed requirement is consistent with the coding practices now used by much of the food industry and that it will facilitate identification of recalled products.

Warehousing and Distribution

Revised § 110.93 (21 CFR 110.93) describes and establishes the requirement that storage and transportation of finished foods be conducted under conditions that will prevent physical, chemical, and microbiological contamination.

Records

Section 110.100 (21 CFR 110.100) lists current recordkeeping requirements, amended to conform to those promulgated and upheld in the candy CGMP's. These recordkeeping requirements are correlated with the other CGMP requirements and require the affected parties to maintain (a) records on the results of examinations or copies of supplier guarantees or certifications verifying that the raw materials comply with the basic act and other FDA regulations under proposed § 110.80(a); (b) records of processes that are specified in proposed § 110.80(b) and are intended to destroy or prevent the growth of microorganisms of public health significance in the foods; and (c) distribution records that identify initial distribution of finished food under proposed § 110.93 to facilitate recalls. The agency proposes that these records

be kept for 2 years or for the shelf life of the product, whichever is shorter.

Natural or Unavoidable Defects

Section 110.110 (21 CFR 110.110) alerts all affected parties that current action levels for natural or unavoidable defects in food for human use that present no human health hazard are publicly available. Because the action levels for these defects are subject to revision, it is impractical to include them in the regulation, but they are available from FDA on request, and the regulation identifie show this information can be obtained.

For editorial consistency, the agency also proposes to revise § 20.100(c)(8) (21 CFR 20.100(c)(8)) to reflect a cross reference to proposed § 110.110(e), which contains cross-referenced action level provisions now located in § 110.99(e) (21 CFR 110.99(e)).

The agency plans to hold public hearings for the purpose of receiving information and views regarding the issues raised by this proposal and the impact the proposed regulations will have on the food industry, especially small businesses. The hearings will be held in Chicago, IL, on September 11, 1979; San Francisco, CA, on October 3, 1979; and Atlanta, GA, on October 24, 1979. Representatives of small businesses will be encouraged to participate. Specific information about these hearings will be published in the Federal Register on or about June 15, 1979.

The agency proposes that the final regulations based on this proposal be effective 180 days after the date of publication of the final regulations in the Federal Register.

The agency has carefully considered the environmental effects of the proposed regulation and, because the proposed action will not significantly affect the quality of the human environment, has concluded that an environmental impact statement is not required. A copy of the environmental impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

References and Material Consulted

1. Memo on Legislative History of section 404 (21 U.S.C. 344) of the Federal Food, Drug, and Cosmetic Act.

2. S. Rep. No. 493, 73d Cong., 2d Sess. (1934).

3. S. Rep. No. 361, 74th Cong., 1st Sess. (1935).

4. S. Rep. No. 646, 74th Cong., 1st Sess. (1935).

5. H.R. Rep. No. 2755, 74th Cong., 2d Sess. (1936).

6. S. Rep. No. 152, 75th Cong., 1st Sess. (1937).

7. S. Rep. No. 91, 75th Cong., 1st Sess. (1937).

8. H.R. Rep. No. 2139, 75th Cong., 3d Sess. (1937).

9. 1977 Food and Drug Administration Annual Report.

10. Memoranda summarizing FDA's food regulatory actions since 1950.

11. General Accounting Office Report, "Dimensions of Insanitary Conditions in the Food Manufacturing Industry."

12. Letter dated November 4, 1977, from Dr. Robert Angelotti, Administrator, Food Safety and Quality Service, USDA, to Dr. Howard R. Roberts, Acting Director, Bureau of Foods, FDA, containing FSQS comments on preliminary draft of GMP proposal and FDA reply dated May 31, 1979.

13. Letter dated November 8, 1977, from Joseph W. Slavin, Assistant Director for Fisheries Development, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Dept. of Commerce, to Dr. Howard R. Roberts, Acting Director, Bureau of Foods, FDA, containing NMFS comments on preliminary draft of GMP proposal and FDA reply dated May 31, 1979.

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25. Wiedeman, K., M. A. Watson, J. Neill, and W. G. Walter, "Effect of Holding time on Bacteria in Chicken Casserole," *Journal of the American Dietetic Association*, 33:37–41, 1957.

26. Weideman, K., M. A. Watson, H. L. Mayfield, and W. C. Walter, "Effect of Delayed Cooking on Bacteria in Meat Loaf," *Journal of the American Dietetic Association*," 32:935–940, 1956.

27. American Society of Heating, Refrigerating and Air Conditioning Engineers, 1963, "ASHRAE Guide and Data Book, Fundamentals and Equipment," Published by ASHRAE, New York, NY, p. 782.

28. Private communication from R. W. Dickerson, Jr., January 4, 1978.

29. Food Services Sanitation Manual including A Model Food Service Sanitation Ordinance (1940, 1943, 1962; revision published, 1976).

30. Draft Retail Food Store Sanitation Ordinance (1978).

31. The Vending of Food and Beverages including A Model Sanitation Ordinance (1965, revised 1978).

32. Grade A Pasteurized Milk Ordinance . 1965 Recommendation of the United States Public Health Service (being revised, 1979).

33. Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products (7 CFR Part 58).

34. Proposed Amendments to the Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act to authorize a Uniform System of Coding for Packaged Food: Hearings on S. 3012—Amendment No. 1838, Before the Subcommittee for Consumers of the Senate Committee on Commerce, 93d Cong., 2d Sess. (1974).

Copies of the items listed above, except for items 2 through 8, are on file with the Hearing Clerk, FDA.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 302, 303, 304, 402(a), 701(a), 52 Stat. 1043–1046 as amended, 1055 (21 U.S.C. 332, 333, 334, 342(a), 371(a))), and the Public Health Service Act (sec. 361, 58 Stat. 703 (42 U.S.C. 264)), and the authority delegated to the Commissioner (21 CFR 5.1), it is proposed that Chapter I of Title 21 of the Code of Federal Regulations be amended as follows:

1. In Part 20, § 20.100 is amended by revising paragraph (c)(8) to read as follows:

§ 20.100 Applicability; cross-reference to other regulations.

* * * * *

(c) * * *

(8) Action levels for natural and unavoidable defects in food for human use, in § 110.110(e) of this chapter.

* * * * *

2. By revising Part 110 to read as follows:

PART 110—CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PROCESSING, PACKING, OR HOLDING HUMAN FOOD

Subpart A—General Provisions

Sec.
110.3 Definitions.
110.5 Current good manufacturing practice.
110.10 Personnel.
110.19 Exclusions.

Subpart B—Buildings and Facilities

110.20 Plants and grounds.
110.35 Sanitary operations.
110.37 Sanitary facilities and controls.

Subpart C—Equipment

110.40 Equipment and utensils.

Subpart D [Reserved]

Subpart E—Production and Process Controls

110.80 Processes and controls.
110.91 Coding.
110.93 Warehousing and distribution.

Subpart F—Records and Reports

110.100 Records.

Subpart G—Defect Action Levels

110.110 Natural or unavoidable defects in food for human use that present no health hazard.

Authority: Secs. 302, 303, 304, 402(a), 701(a), 52 Stat. 1040–1046 as amended, 1055 (21 U.S.C. 332, 333, 334, 342(a), 371(a)); sec. 361, 58 Stat. 703 (42 U.S.C. 264)).

Subpart A—General Provisions

§ 110.3 Definitions.

The definitions and interpretations of terms in section 201 of the Federal Food, Drug, and Cosmetic Act are applicable to such terms when used in this part. The following definitions shall also apply:

(a) "Acid foods or acidified foods" means foods that have an equilibrium pH of 4.6 or below.

(b) "Adequate" means that which is needed to accomplish the intended purpose in keeping with good public health practice.

(c) "Batter" means a semifluid substance, usually composed of flour and other ingredients, in which principal components of food are dipped or with which they are coated.

(d) "Blanching" means a hot water or steam direct-scalding treatment of foodstuffs for a sufficient time and at a sufficient temperature to inactivate the naturally occurring enzymes.

(e) "Corrosion-free" as it applies to food-contact surfaces means that the surface material is free of corrosion that may cause contamination of the food.

(f) "Critical control point" means a point in a food process where lack of control may cause, allow, or contribute to adulteration of the final product or any raw materials used therein.

(g) "Food-contact surfaces" are those surfaces that contact food and those surfaces from which drainage onto foods or onto surfaces that contact food ordinarily occurs during the normal course of operations.

(h) "Lot" means a collection of primary containers or units of the same size, type, and style containing a finished product produced under conditions as nearly uniform as possible and designated by a common container code or marking; and, in any event, "lot" means no more than a day's production.

(i) "Plant" means the building or facility or parts thereof, used for or in connection with the manufacturing, processing, packaging, labeling, or holding of human food.

(j) "Quality control operation" means a planned and systematic procedure for all actions necessary to ensure that the food is free from adulteration.

(k) "Rework" means clean, unadulterated product, removed from processing, that is suitable for reprocessing and for use as food.

(l) "Safe-moisture level" is a level of moisture low enough to prevent the growth of microorganisms in the finished product. The maximum safe moisture level for a food is based on its water activity (a_w). An a_w will be considered safe for a food if adequate data are provided that demonstrate that the food at or below the given a_w will not support the growth of microorganisms.

(m) "Sanitize" means adequate treatment of surfaces by a process that is effective in destroying vegetative cells of microorganisms of public health significance and in substantially reducing numbers of other microorganisms. Such treatment shall not adversely affect the product and shall be safe for the consumer.

(n) "Shall" is used to state mandatory requirements.

(o) "Should" is used to state recommended or advisory procedures or to identify recommended equipment.

(p) "Water activity" (a_w) is a measure of the free moisture in a product and is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature.

§ 110.5 Current good manufacturing practice.

(a) The criteria and definitions in this part shall apply in determining whether a food is adulterated (1) within the meaning of section 402(a)(3) of the act in that the food has been manufactured under such conditions that it is unfit as food; or (2) within the meaning of section 402(a)(4) of the act in that the food has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

(b) Foods covered by specific current good manufacturing practice regulations also are subject to the requirements of those regulations. Compliance with the criteria and definitions in this part is necessary for the prevention and control of communicable diseases under section 361 of the Public Health Service Act [42 U.S.C. 264].

§ 110.10 Personnel.

The plant management shall take all reasonable measures and precautions to ensure the following:

(a) *Disease control.* No person, while affected by disease in a communicable form, or while a carrier of such disease, or while affected with boils, sores, infected wounds, or other abnormal sources of microbiological contamination, shall work in a food plant in any capacity in which there is a reasonable possibility of food or food ingredients becoming contaminated by that person, or of disease being transmitted by that person to other individuals.

(b) *Cleanliness.* All persons, while working in direct contact with food preparation, food ingredients, or food-contact surfaces shall conform to hygienic practices while those persons are on duty, to the extent necessary to prevent contamination of food products. The methods for maintaining cleanliness include, but are not limited to:

(1) Wearing proper outer garments in a manner that prevents the contamination of food.

(2) Maintaining a high degree of personal cleanliness.

(3) Washing hands thoroughly (and sanitizing if necessary to prevent contamination by undesirable microorganisms) in an adequate hand-washing facility before starting work, after each absence from the work station, and at any other time when the hands may have become soiled or contaminated.

(4) Removing all insecure jewelry and, during periods in which food is manipulated by hand, removing from hands any jewelry that cannot be adequately sanitized.

(5) If gloves are used in food handling, maintaining them in an intact, clean, and sanitary condition. The gloves should be of an impermeable material

except where their usage would be inappropriate or incompatible with the work involved.

(6) Wearing hair nets, headbands, caps, beard covers, or other effective hair restraints in an effective manner.

(7) Not storing clothing or other personal belongings in areas where food or food ingredients are exposed or in areas used for washing equipment or utensils.

(8) Not eating food, drinking beverages, or using tobacco in areas where food or food ingredients are exposed or in areas for washing equipment or utensils.

(9) Taking any other necessary precautions to prevent contamination of foods with microorganisms or foreign substances including, but not limited to, perspiration, hair, cosmetics, tobacco, chemicals, and medicants.

(c) *Education and training.* Personnel responsible for identifying sanitation failures or food contamination should have a background of education or experience, or a combination thereof, to provide a level of competency necessary for production of clean and safe food. Food handlers and supervisors should receive appropriate training in proper food handling techniques and food-protection principles and should be cognizant of the danger of poor personal hygiene and insanitary practices.

(d) *Supervision.* Responsibility for assuring compliance by all personnel with all requirements of this part shall be clearly assigned to competent supervisory personnel.

§ 110.19 Exclusions.

The following operations are excluded from coverage under these general regulations. The Commissioner, however, will issue special regulations when necessary to cover these excluded operations: Establishments engaged solely in the harvesting, storage, or distribution of one or more "raw agricultural commodities," as defined in section 201(r) of the act, which are ordinarily cleaned, prepared, treated, or otherwise processed before being marketed to the consuming public.

Subpart B—Buildings and Facilities

110.20 Plant and grounds.

(a) *Grounds.* The grounds about a food plant under the control of the operator shall be kept in a condition that will not cause food to be contaminated. The methods for adequate maintenance of grounds include, but are not limited to:

(1) Properly storing equipment, removing litter and waste, and cutting weeds or grass within the immediate vicinity of the plant buildings or structures that may constitute an attractant, breeding place, or harborage for rodents, insects, or other pests.

(2) Maintaining roads, yards, and parking lots so that they do not constitute a source of contamination in areas where food is exposed.

(3) Adequately draining areas that may contribute contamination to food products by seepage, by foot-borne filth, or by providing a breeding place for rodents, insects, or other pests.

If the plant grounds are bordered by grounds not under the operator's control and not maintained in the manner described in subparagraphs (1) through (3) of this paragraph, care shall be exercised in the plant by inspection, extermination, or other means to effect exclusion of pests, dirt, and other filth that may be a source of food contamination.

(b) *Plant construction and design.* Plant buildings and structures shall be suitable in size, construction, and design to facilitate maintenance and sanitary operations for food-processing purposes. The plant and facilities shall:

(1) Provide sufficient space for such placement of equipment and storage of materials as is necessary for sanitary operations and production of safe food.

(2) Permit the taking of proper precautions to reduce the potential for contamination of end products, raw materials, or food-packaging materials with microorganisms, chemicals, filth, or other extraneous material. The potential for contamination may be reduced by any effective means including the separation, by location, partition, air flow, enclosed systems, or other effective means, of the following operations:

(i) Receiving.

(ii) Raw material storage.

(iii) Food preparation and processing operations.

(iv) Weighing, wrapping, packaging, and packing.

(v) Finished product storage and shipping.

(vi) Portable equipment and utensil cleaning and sanitizing.

(vii) Equipment and vehicle maintenance.

(3) Permit the taking of proper precautions to protect products in outdoor bulk fermentation vessels. This may be accomplished by an effective means, including:

(i) Using protective coverings.

(ii) Controlling areas over and around the vessels to eliminate harborages for birds and rodents.

(iii) Checking on a regular basis for insect infestation.

(iv) Skimming the fermentation vessels frequently.

(4) Provide floors, walls, and ceilings that are of such construction as to be adequately cleanable and that shall be kept clean and in good repair. Fixtures, ducts, and pipes shall be installed in such a manner that drip or condensate does not contaminate foods, raw materials, or food-contact surfaces. Aisles or working spaces between equipment and walls shall be unobstructed and of sufficient width to permit employees to perform their duties without contamination of food or food-contact surfaces with clothing or personal contact.

(5) Provide adequate lighting in hand-washing areas, dressing and locker rooms, and toilet rooms and in all areas where food or food ingredients are examined, processed, or stored and where equipment and utensils are cleaned. Light bulbs, fixtures, skylights, or other glass suspended over exposed food in any step of preparation shall be of the safety type or otherwise protected to prevent food contamination in case of breakage.

(6) Provide adequate ventilation or control equipment to minimize odors and noxious fumes or vapors (including steam) in areas where they may contaminate food. Fans and other air-blowing equipment shall be located and operated in a manner that does not cause contamination of raw materials, work-in-process, rework, finished foods, food-packaging materials, and food-contact surfaces.

(7) Provide, where necessary, effective screening or other protection against birds, animals, and vermin (including, but not limited to, insects and rodents).

§ 110.35 Sanitary operations.

(a) *General maintenance.* Buildings, fixtures, and other physical facilities of the plant shall be kept in good repair and shall be maintained in a sanitary condition. Cleaning and sanitizing of utensils and equipment shall be carried out in a manner that prevents contamination of raw material, food-packaging material, or finished food. Detergents, sanitizers, and other supplies employed in cleaning and sanitizing procedures shall be free of significant microbiological contamination and shall be safe and effective for their intended uses. Only those toxic materials that are required to maintain sanitary conditions, for use in laboratory testing procedures, for plant and equipment maintenance and operation, or in manufacturing or

processing operations shall be used or stored in the plant. Poisonous or dangerous cleaning compounds, sanitizing agents, and pesticide chemicals shall be applied, stored, and held in a manner that prevents food or food-packaging material contamination. These materials shall be identified and used only in a manner and under conditions that will be safe for their intended use. All applicable regulations promulgated by the Environmental Protection Agency for the application, use, or holding of these materials shall be followed.

(b) *Animal and vermin control.* No animals or birds, other than those essential as raw materials, shall be allowed in any area of a food plant. Effective measures shall be taken to exclude pests from the processing areas and to protect against the contamination of foods in or on the premises by animals, birds, and vermin (including, but not limited to, rodents and insects). The use of insecticides or rodenticides is permitted only under precautions and restrictions that will prevent the contamination of food and food-packaging materials with illegal residues.

(c) *Sanitation of equipment and utensils.* All utensils and food-contact surfaces of equipment shall be cleaned as frequently as necessary to prevent contamination of food and food products.

(1) Food-contact surfaces of equipment used for processing or holding low-moisture raw materials or foods shall be in a dry, sanitary condition at the time of use. When the surfaces are wet-cleaned, they shall be sanitized when necessary and thoroughly dried before subsequent use.

(2) In wet processing, when cleaning is necessary to prevent the introduction of undesirable microorganisms into food products, all utensils and food-contact surfaces of equipment used in the plant shall be cleaned and sanitized before use and after any interruption during which the utensils and contact surfaces may have become contaminated. Where the equipment and utensils are used in a continuous production operation, the contact surfaces of the equipment and utensils shall be cleaned and sanitized on a predetermined schedule using adequate methods for cleaning and sanitizing.

(3) Non-food-contact surfaces of equipment used in the operation of food plants should be cleaned as frequently as necessary to minimize accumulation of dust, dirt, food particles, and other debris.

(4) Single-service articles (such as utensils intended for one-time use, paper cups, paper towels, etc.) should be stored in appropriate containers and shall be handled, dispensed, used, and disposed of in a manner that prevents contamination of food or food-contact surfaces.

(5) Sanitizing agents shall be effective and safe under conditions of use. Any facility, procedure, machine, or device is acceptable for cleaning and sanitizing equipment and utensils if it is established that the facility, procedure, machine, or device will routinely render equipment and utensils clean and provide adequate sanitizing treatment.

(d) *Storage and handling of cleaned portable equipment and utensils.* Cleaned and sanitized portable equipment and utensils with food-contact surfaces should be stored in a location and manner that protects food-contact surfaces from splash, dust, and other contamination.

§ 110.37 Sanitary facilities and controls.

Each plant shall be equipped with adequate sanitary facilities and accommodations including, but not limited to:

(a) *Water supply.* The water supply shall be sufficient for the operations intended and shall be derived from an adequate source. Any water that contacts foods or food-contact surfaces shall be safe and of adequate sanitary quality. Running water at a suitable temperature and under pressure as needed shall be provided in all areas where required for the processing of food, the cleaning of equipment, utensils, or containers, or for employee sanitary facilities.

(b) *Plumbing.* Plumbing shall be of adequate size and design and adequately installed and maintained to:

(1) Carry sufficient quantities of water to required locations throughout the plant.

(2) Properly convey sewage and liquid disposable waste from the plant.

(3) Neither constitute a source of contamination to foods, food products or ingredients, water supplies, equipment or utensils nor create an unsanitary condition.

(4) Provide adequate floor drainage in all areas where floors are subject to flooding-type cleaning or where normal operations release or discharge water or other liquid waste on the floor.

(5) Ensure that there is not backflow from, or crossconnection between, piping systems that carry water for food or food-processing use and piping systems that discharge waste water or sewage.

(c) *Sewage disposal.* Sewage disposal shall be made into an adequate sewerage system or disposed of through other adequate means.

(d) *Toilet facilities.* Each plant shall provide its employees with adequate toilet and associated hand-washing facilities within the plant. The facilities shall be maintained in a sanitary condition and kept in good repair at all times. Doors to toilet rooms shall be self-closing and shall not open directly into areas where food is exposed to airborne contamination, except where alternate means have been taken to prevent such contamination (such as double doors, positive air-flow systems, etc.).

(e) *Hand-washing facilities.* Adequate and readily accessible hand-washing and, if necessary, sanitizing facilities shall be provided in the plant for employees who may handle unprotected food, unprotected packaging materials, and food-contact surfaces. Such facilities shall be furnished with running water at a suitable temperature for hand washing, effective hand-cleaning and sanitizing preparations, sanitary towel service or suitable drying services, and, if necessary, sanitizing preparations. These facilities should be equipped with water control valves so designed and constructed as to prevent recontamination of clean, sanitized hands. Readily understandable signs directing employees handling unprotected food, unprotected food-packaging materials, or food-contact surfaces to wash their hands before they start work, after each absence from post of duty, and when their hands may have become soiled or contaminated, shall be conspicuously posted in the processing room(s) and in all other areas where employees may handle such food, materials, or surfaces. Where appropriate, such signs shall also direct employees to sanitize their hands. Refuse receptacles that are constructed and maintained in a manner that precludes contamination of the products shall be used where appropriate.

(f) *Rubbish and offal disposal.* Rubbish and any offal shall be so conveyed, stored, and disposed of as to minimize the development of odor, prevent waste from becoming an attractant and harborage or breeding place for vermin, and prevent contamination of food, food-contact surfaces, ground surfaces, and water supplies.

Subpart C—Equipment

§ 110.40 Equipment and utensils.

(a) All plant equipment and utensils shall be so designed and of such material and workmanship as to be adequately cleanable, and shall be properly maintained. The design, construction, and use of equipment and utensils shall preclude the adulteration of food with lubricants, fuel, metal fragments, contaminated water, or any other contaminants. All equipment should be so installed and maintained as to facilitate the cleaning of the equipment and of all adjacent spaces. Food-contact surfaces shall be corrosion free when in contact with food. They shall be made of nontoxic material that will withstand the environment of its intended use and the action of food ingredients, cleaning compounds, and sanitizing agents. All food-contact surfaces shall be maintained to prevent product contamination and shall be in compliance with section 409 of the act.

(b) Seams on food-contact surfaces shall be smoothly bonded or maintained so as to minimize accumulation of food particles or to prevent microbiological contamination in places where dirt or organic material might accumulate.

(c) Equipment that is in the processing or food-handling area and that does not come into contact with food shall be so constructed that it can be kept in a clean condition.

(d) Ingredient and product-holding, conveying, and processing systems that include, but are not limited to, gravimetric, pneumatic, closed, and automated systems shall be of a design and construction that enables them to be cleaned.

(e) Regulating and recording controls, thermometers, other temperature-measuring devices, and temperature-recording devices on equipment used to sterilize, pasteurize, or otherwise control or prevent growth of microorganisms in raw materials or products shall be accurate, effective, and adequate in number for their designated uses.

(f) Each freezer and cold storage compartment used for storing and holding raw materials or products capable of supporting growth of microorganisms shall be fitted with an indicating thermometer, temperature-measuring device, or temperature-recording device so installed as to show the temperature accurately within the compartment, and should be fitted with an automatic control for regulating temperature or with an automatic alarm system to indicate a significant temperature change in a manual operation.

(g) Instruments used for measuring or regulating pH, acidity, water activity, or other conditions that control or prevent undesirable microbial growth in foods shall be precise and properly maintained.

(h) All compressed air or other gases mechanically introduced into foods or used to clean food-contact surfaces or equipment shall be properly filtered or washed, shall be free of oil and other extraneous material that might contaminate the foods, and shall be in compliance with section 409 of the act.

(i) Restrictions on the industrial uses of polychlorinated biphenyls (PCB's) provided in § 109.15 of this chapter shall also be applicable to the industrial uses of PCB's in the production, handling, and storage of food. Equipment, utensils, and machinery for handling or processing food in or around a food plant shall not contain PCB's, except for electrical transformers and condensers containing PCB's in sealed containers.

Subpart D [Reserved]

Subpart E—Production and Process Controls

§ 110.80 Processes and controls.

All operations in the receiving, inspecting, transporting, packaging, segregating, preparing, processing, and storing of food shall be conducted in accordance with adequate sanitation principles. Appropriate quality control operations shall be employed to ensure that raw materials and finished products are fit for food, that food-packaging materials are safe and suitable, and that all of the foregoing materials are in compliance with the Federal Food, Drug, and Cosmetic Act. Overall sanitation of the plant shall be under the supervision of an individual assigned responsibility for this function. All reasonable precautions shall be taken to ensure that production procedures do not contribute contamination such as filth, harmful chemicals, undesirable microorganisms, or any other objectionable material to the processed food. Chemical, microbiological, or extraneous-material testing procedures shall be utilized where necessary to identify sanitation failures or food contamination, and all foods and ingredients that have become contaminated shall be rejected or treated or processed to eliminate the contamination.

(a) *Raw materials and ingredients.* (1) Raw materials and ingredients shall be inspected and segregated as necessary to ensure that they are clean and fit for processing into human food and shall be stored under conditions that will protect against contamination and minimize deterioration. Raw materials shall be washed or cleaned as required to remove soil or other contamination. Water used for washing, rinsing, or conveying of food products shall be of adequate quality, and water shall not be reused for washing, rinsing, or conveying products in a manner that may result in contamination of food products. Containers and carriers of raw ingredients should be inspected on receipt to ensure that their condition has not contributed to the contamination or deterioration of the products.

(2) Raw materials and ingredients shall not contain levels of microorganisms that may produce food poisoning or other disease in humans, or they shall be pasteurized or otherwise treated during processing operations to destroy such microorganisms.

(3) Raw materials susceptible to contamination with aflatoxin or other natural toxins shall be examined, sorted, or treated to ensure that the finished foods comply with current Food and Drug Administration requirements, guidelines, and action levels for poisonous or deleterious substances before these materials are incorporated into finished products. Compliance with this requirement may be accomplished by purchasing these materials under a supplier's guarantee or certification, or may be verified by analyzing these materials for aflatoxins and other natural toxins.

(4) Raw materials and rework susceptible to contamination or infestation by animals, birds, vermin, microorganisms, or extraneous material shall comply with current Food and Drug Administration regulations, guidelines, and action levels for natural or unavoidable defects before these materials are incorporated into finished products. Compliance with this requirement may be verified by any effective means, including examination of these materials for infestation and contamination.

(5) Raw materials shall be held in containers so designed and constructed as to prevent their contamination and shall be held at such temperature and relative humidity and in such a manner as to prevent their adulteration.

(6) Frozen raw materials shall be kept frozen except for the period of time actually required for processing and shall be defrosted in a manner that does not adversely affect their use as food.

(7) Liquid or dry ingredients received and stored in bulk form shall be held in a manner that prevents any direct or indirect contamination.

(b) *Processing operations.* (1) Processing equipment and utensils and finished product containers shall be maintained in a sanitary condition through frequent cleaning with appropriate cleaning agents, and by sanitization where indicated. Insofar as necessary, equipment shall be taken apart for thorough cleaning.

(2) All food processing, including packaging and storage, shall be conducted under such conditions and controls as are necessary to minimize the potential for undesirable bacterial or other microbiological growth, toxin formation, or deterioration or contamination of the processed product or ingredients. Compliance with this requirement may require careful monitoring of such physical factors as time, temperature, humidity, a_w, pH, pressure, flow rate, and such processing operations as freezing, dehydration, heat processing, acidification, and refrigeration to ensure that mechanical breakdowns, time delays, temperature fluctuations, and other factors do not contribute to the decomposition or contamination of the processed products.

(3) Foods that can support the rapid growth of microorganisms of public health significance or that are subject to decomposition as a result of microbial multiplication shall be held in a manner that minimizes the growth of those microorganisms. Compliance with this requirement may be accomplished by any effective means, including:

(i) Maintaining refrigerated foods at 45° F (7.2° C) or below as appropriate for the particular food involved.

(ii) Maintaining frozen foods at 0° F (−17.8° C) or below.

(iii) Maintaining hot foods at 140° F (60° C) or above.

(iv) Heat treating acid or acidified foods to destroy mesophilic microorganisms when those foods are to be held in hermetically sealed containers at ambient temperatures.

(4) Measures such as sterilizing, pasteurizing, freezing, refrigerating, controlling pH or controlling a_w that are taken to destroy or prevent the growth of microorganisms of public health significance shall be adequate under the conditions of manufacture for a given food to ensure destruction or the prevention of growth of those microorganisms.

(5) Rework shall be held in properly identified containers, shall be handled and stored as raw material, and shall meet raw material requirements before reprocessing.

(6) Work-in-process shall be handled in a manner that prevents its contamination.

(7) Effective measures shall be taken to prevent cross contamination between raw materials and finished foods, or between rework and these materials. When any of these materials are unprotected, they shall not be handled simultaneously in a receiving, loading, or shipping area if that handling could result in a contaminated product. Materials and products transported by conveyor shall be protected against contamination from extraneous material.

(8) Equipment, containers, and utensils used to convey, process, hold, or store raw materials, work-in-process, rework, or finished foods shall be constructed, handled, and maintained during processing or storage in a manner that prevents the contamination of raw materials, rework, or finished foods.

(9) Effective measures shall be taken to prevent the inclusion of metal or other extraneous material in the finished foods. Compliance with this requirement may be accomplished by using sieves, magnets, electronic metal detectors, or other suitable effective means.

(10) Adulterated materials shall be disposed of in a manner that prevents the contamination of raw materials, rework, or finished foods. If the adulterated product is reconditioned, it shall be reexamined and found to be free from adulteration before being incorporated into finished foods.

(11) Mechanical processing steps such as washing, peeling, trimming, cutting, sorting and inspecting, mashing, dewatering, cooling, shredding, extruding, drying, whipping, defatting, and forming shall be performed so as not to contaminate raw materials, ingredients, or finished foods. Compliance with this requirement may be accomplished by providing adequate physical protection of raw materials, ingredients, and food products from contaminants that may drip, drain, or be drawn into the food product, by adequate cleaning and sanitizing of all food-contact surfaces and by using time and temperature controls at and between each step in the process.

(12) Heat blanching, when required in the preparation of food, should be effected by heating the food to the required temperature, holding it at this temperature for the required time, and then either rapidly cooling the food or passing it to subsequent processing without delay. Thermophilic growth and contamination in blanchers should be minimized by the use of adequate operating temperatures and by cleaning. Where the blanched food is washed prior to filling, water used shall be safe and of adequate sanitary quality.

(13) Batters, breading, sauces, gravies, dressings, and other preparations shall be treated or maintained in such a manner that they are free of contamination. Compliance with this requirement may be accomplished by any effective means, including one or more of the following:

(i) Using ingredients free of contamination.

(ii) Employing adequate heat processes where applicable.

(iii) Using adequate time and temperature controls.

(iv) Providing adequate physical protection of components from contaminants that may drip, drain, or be drawn into them.

(v) Cooling to an adequate temperature during processing.

(vi) Disposing of batters at the end of each working day, or more frequently if required, to prevent significant microbial multiplication.

(14) Filling, assembling, and packaging and other operations shall be performed so as not to contaminate the finished food product. Compliance with this requirement may by accomplished by any effective means, including:

(i) Use of a quality control operation in which the critical control points within the food process are identified and controlled.

(ii) Adequate cleaning and sanitizing of all food-contact surfaces and food containers.

(iii) Using materials for food containers and food-packaging materials that are safe and suitable, as defined in § 130.3(d) of this chapter.

(iv) Providing physical protection from airborne contamination.

(v) Requiring the use of sanitary handling procedures by employees.

(15) Foods such as, but not limited to, dry mixes, nuts, intermediate moisture foods, and dehydrated foods, that rely on the control of a_w for preventing the growth of of microorganisms shall be processed to and maintained at a safe moisture level. Compliance with this requirement may be accomplished by any effective means, including employment of one or more of the following practices:

(i) Monitoring the a_w of ingredients and finished products.

(ii) Controlling the soluble solids-water ratio in finished products.

(iii) Protecting finished foods from moisture pickup, by use of a moisture barrier or by other means, so that the a_w of the product does not increase to an unsafe level.

(16) Food such as, but not limited to, acid and acidified foods, that rely on the control of pH for preventing the growth of microorganisms shall be monitored and maintained at a pH of 4.6 or below. Compliance with this requirement may be accomplished by any effective means, including employment of one or more of the following practices:

(i) Monitoring the pH of raw foods, ingredients, and finished products.

(ii) Controlling the amount of acid or acidified foods added to low-acid ingredients.

(17) When ice is used in contact with food products, it shall be made from water that is safe and of adequate sanitary quality, and shall be used only if it has been manufactured in accordance with adequate standards and stored, transported, and handled in a sanitary manner.

(18) Food-processing areas and equipment used for processing human food should not be used to process nonhuman food-grade animal feed or inedible products, unless there is no reasonable possibility for the contamination of the human food.

§ 110.91 Coding.

Permanently legible code marks shall be placed at a readily visible location on each finished food package delivered or displayed to purchasers so that the code marks can be readily seen on the unopened package. The marks shall identify at least the plant where the food was packed and the lot or packaging lot. This requirement does not apply to over-the-counter retail sales at the site of manufacture. The following foods are exempt from the requirement that coding marks be placed on each finished food package provided that the bulk containers received by the retail establishment contain code marks complying with this section:

(a) Individually wrapped pieces of "penny candy" and other confectionery entitled to exemption under § 1.24(a)(4) of this chapter.

(b) Foods entitled to exemption under § 101.100(a)(2) of this chapter.

(c) Foods entitled to exemption under § 101.100(b) of this chapter.

§ 110.93 Warehousing and distribution.

Storage and transportation of finished foods shall be under conditions that will prevent physical, chemical, and microbial contamination and will protect against undesirable deterioration of the food and the container. This deterioration includes, but is not limited to, contamination from insects, rodents and other vermin, toxic chemicals, pesticides, and the development of microorganisms of public health significance.

Subpart F—Records and Reports

§ 110.100 Records.

(a) Records of results of examinations and/or copies of suppliers' guarantees or certifications that verify compliance with Food and Drug Administration regulations, guidelines, or action levels of raw materials, food-packaging materials, and finished foods, shall be maintained.

(b) Processing and production records of processes intended to pasteurize or otherwise treat materials to destroy, prevent, or control the growth of microorganisms of public health significance shall be maintained, and shall contain sufficient information to permit a public health evaluation of the processed food.

(c) Distribution records shall be maintained to identify the initial distribution, except for over-the-counter retail sales at the site of manufacture, of the finished food to facilitate, when necessary, the segregation and recall of specific lots that may have become contaminated or otherwise unfit for their intended use.

(d) The records required by paragraphs (a), (b), and (c) of this section shall be retained for a period of time that exceeds the shelf life of the finished product, except that they need not be retained for more than 2 years from the date of manufacture.

Subpart G—Defect Action Levels

§ 110.110 Natural or unavoidable defects in food for human use that present no health hazard.

(a) Some foods, even when produced under current good manufacturing and/or processing practices, contain natural or unavoidable defects at lower levels that are not hazardous to health. The Food and Drug Administration establishes maximum levels for these defects in foods produced under good manufacturing and processing practices and uses these levels for recommending regulatory actions.

(b) Defect action levels are established for products whenever it is necessary and feasible to do so. These levels are subject to change upon the development of new technology or the availability of new information.

(c) Compliance with defect action levels does not excuse failure to observe either the requirement in section 402(a)(4) of the Federal Food, Drug, and Cosmetic Act that food may not be prepared, packed, or held under insanitary conditions or the other requirements in this part that food manufacturers shall observe current good manufacturing practices. Evidence obtained through factory inspection indicating such a violation renders the food unlawful, even though the amounts of natural or unavoidable defects are lower than the currently established action levels. The manufacturer of food shall at all times utilize quality control operations that will reduce natural or unavoidable defects to the lowest level currently feasible.

(d) The mixing of a food containing defects above the current defect action level with another lot of food is not permitted and renders the final food unlawful, regardless of the defect level of the final food.

(e) A compilation of the current action levels for natural and unavoidable defects in food for human use that present no health hazard may be obtained upon request from the Food and Drug Administration, Bureau of Foods, Industry Guidance Branch (HFF-342), Rm. 5425, 200 C St. SW., Washington, DC 20204.

Interested persons may, on or before December 31, 1979, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four Copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executeive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is a on file with the Hearing Clerk, Food and Drug Administration.

Dated: May 29, 1979.

Sherwin Gardner,

Acting Commissioner of Food and Drugs.

[FR Doc. 79-17432 Filed 6-7-79; 8:45 am]

BILLING CODE 4110-03-M

Friday
June 8, 1979

Federal Register

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

Fishery Management Plan For High Seas Salmon

Alaska

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 674

Fishery Management Plan for the High Seas Salmon; Fishery Off the Coast of Alaska

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Publication of FMP for Salmon off Coast of Alaska.

SUMMARY: On May 18, 1979, the National Marine Fisheries Services published interim emergency regulations implementing the approved portion of the Fishery Management Plan (FMP) for the Alaska Salmon Fishery. Due to an inadvertance, the FMP was not published at that time. The FMP is set forth below in its entirety.

DATES: Nonapplicable.

FOR FURTHER INFORMATION CONTACT: Mr. Harry L. Rietze, Director, Alaska Region, National Marine Fisheries Service, (907) 586–7221.

Signed at Washington, D.C. this 31st day of May, 1979

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

Authority: 16 USC 1801 *et seq.*

Summary, High Seas Salmon Fishery off the Coast of Alaska, East of 175° East Longitude

North Pacific Fishery Management Council

The salmon troll fishery off the coast of Alaska has historically been conducted from the U.S./Canada boundary (Dixon Entrance) to Middleton Island in the Gulf of Alaska, with intermittent efforts to the west as far as the Kodiak Island region.

The troll fishery is the only major U.S. fishery on salmon currently conducted in the Fishery Conservation Zone (see exceptions as noted in Sec. 8.2). Many vessels engaged in the offshore troll fishery participate in other types of fishing for salmon in State of Alaska waters, and for halibut, crab, etc., both in Alaska waters and the Fishery Conservation Zone (FCZ).

This fishery management plan is designed to promote conservation of the ocean salmon resource while allowing utilization of its stocks for food production.

Target species in the troll fishery are chinook *(Oncorhynchus tshawytscha)* and coho *(O. kisutch)* salmon. Pink salmon *(O. gorbuscha)*, sockeye *(O. nerka)*, and chum *(O. keta)* salmon are caught in insignificant numbers compared to the commercial harvest of chinook and coho.

A recreational fishery is conducted almost entirely within inshore and coastal waters of the State of Alaska.

The most concentrated effort on troll salmon is conducted on the Fairweather Grounds, a congregating place for salmon from both Alaskan and non-Alaskan areas. The migratory nature of the salmon and the mixture of stocks makes the management of this fishery complex.

There is a lack of biological information concerning the salmon in the troll fishery off the coast of Alaska; all information, however, indicates that stocks of wild chinook from Alaska are depressed and that the conduct of the troll fishery offshore is thought to be detrimental to remaining Alaska wild chinook stocks. This same effect is likewise detrimental to stocks of wild chinook entering the fishery from outside Alaska, but the nonselective nature of fishing in a mixed-stock fishery such as this is unavoidable.

It has been determined that controlling the catch is necessary for the future well-being of the stocks in this fishery.

There has been a prohibition on net fishing in offshore waters off the coast of Alaska since 1952. It is the intention of this plan to continue that prohibition.

The plan is designed to allow only a directed troll and recreational fishing effort for salmon in the offshore waters. Salmon present in these waters are the object also of intensive fishing in inshore areas. The offshore catch is but a fraction of the total annual coastwide catch.

Chinook spawn in the larger rivers of the Alaska mainland, with 33 populations identified in Southeastern Alaska east of Cape Suckling. West of Cape Suckling, and not included in the area managed for the salmon troll fishery, chinook spawn in similar river systems including the Copper, Cook Inlet system, Nushagak, Kuskokwim, and Yuokon Rivers. The contribution to the troll fishery of fish from these areas appears to be insignificant.

Important contributions of stocks to the troll fishery originate in the Columbia and Fraser River systems as well as in some Oregon and Washington coastal streams.

Coho in this fishery are primarily of Alaskan origin, with coho populations occurring in most of the 2,000-plus freshwater streams in Southeastern Alaska east of Cape Suckling. Again, the contribution of coho to the troll fishery from areas west of Cape Suckling appears to be insignificant.

A major concern of fishery specialists is the addition of significant numbers of hatchery fish to waters hosting native stocks. The problem is to avoid creating a dependency on hatchery fish to the detriment of the wild fish. There are indications that increased open ocean fishing pressure stimulated by successful hatchery programs may have affected adversely wild coho stocks in Oregon.

Foreign troll effort (all Canadian) was regulated by a Reciprocal Fisheries Agreement (1977) and occurred outside the U.S. 12-mile zone.

Total ex-vessel value of the commercial troll salmon landings in Southeastern Alaska (1975–76) was $14.5 million.

The plan addresses all salmon in the offshore waters off the coast of Alaska east of 175 degrees east longitude to Dixon Entrance. This area, encompassing more than 2,000 miles of straight-line coast, includes stocks of all five species of Pacific salmon. The fishing area managed by specific reference in the plan is small in proportion to the total ocean area. Management of the region west of the longitude of Cape Suckling and outside the limits of the troll fishery has been through successive restrictions and prohibitions on net fishing (since 1952) and trolling (since 1973). These prohibitions effectively restrict offshore fishing to a troll fishery east of the longitude of Cape Suckling.

Life history features of all salmon are included in the plan and maximum sustainable yield estimates have been developed solely from past catch data for all species of salmon off the coast of Alaska, with further MSY calculations for the area in which the troll fishery is conducted. Those values are (Nos. of fish):

MSY east and west of Cape Suckling

Chinooka (West)—247–267,000 (East)—296–316,000
Sockeye (West)—4,549–12,142,000 (East)—806–894,000
Coho (West)—602–662,000 (East)—959–1,115,000
Pink (West)—12,236–15,314,000 (East)—9,164–11,604,000
Chum (West)—3,662–4,180 (East)—1,822–2,201

Provisions for enforcement, cooperative research and permit and financing requirements for participants are also included in this plan.

The number of boats involved in the troll fishery increased from the early 1900s to 1974, when the State of Alaska passed legislation (Limited Entry) setting a limit of 900 units of power gear in the troll fishery.

The record year in the troll fishery was 1957 when 848,000 chinook were landed. There has since been a general decline which leveled off in 1965; the fishery is now reasonably stable with annual catches of 250–350,000 chinook.

The record coho catch was in 1951 when two million fish were landed. The catch has fluctuated between 300,000 and one million fish yearly since the late 1950s. From 1971 through 1976 an average of only 15.8 percent of chinook and 0.4 percent of coho taken in Southeast Alaska were reported taken in offshore waters.

Regulations for the offshore troll fishery have been basically the same since the 1950s. Prior to Alaskan statehood in 1959, it was managed by the U.S. Fish and Wildlife Service; since 1959, regulation has been by the State of Alaska through enforcement of its landing laws. A minimum length of 28 inches for chinook salmon was set in 1977; waters inside the surfline are open year-round with local exceptions designed to provide individual stock protection; a maximum of four lines may be fished within the three-mile limit (no similar restriction in offshore waters) and, since 1957, outside waters have been closed to all species from November 1 to April 14.

Catch statistics show that of the approximately 2,000 boats landing fish in 1976 in Southeastern Alaska, boats over 27' in length (970) accounted for 85 percent of the salmon caught by trolling.

The troll fishery for coho is closed from September 30 to June 14. There is no minimum size limit. Since 1973, all waters west of the longitude of Cape Suckling have been closed to salmon troll fishing. The June 15 opening is considered unrestrictive as coho do not show in the fishery in any numbers until mid-July.

The limited entry provision proposed for this fishery is one management concept used to control participation.

Finally, there is a statement of intent and the method for review of the plan following approval by the Secretary of Commerce.

Proposed Management Regime

Objectives

(1) Control expansion of the salmon troll fishery in the Fishery Conservation Zone.

(2) Allocate the salmon resource among user groups without disrupting present social and economic structures.

(3) Regulate the catch of salmon to assure adequate escapement for spawning.

(4) Reduce the catch of salmon with potential growth to increase the poundage yield from the troll fishery.

(5) Make cost effective the public investment in the high-seas salmon fishery.

(6) Promote the eventual development of a Pacific coast salmon fishery management plan.

Measures

Proposed measures for the conduct of the salmon troll fishery include size, sex, area, seasons, and gear regulations which are complementary with existing State of Alaska regulations.

Limited entry will be used as a method of meeting the objective of controlling expansion of this fishery.

Seasons—(1) All waters open for chinook, chum, sockeye, and pink salmon between April 15 and October 31 with the following exception: ALL WATERS WEST OF THE LONGITUDE OF CAPE SUCKLING HAVE NO OPEN SEASON. (2) Coho season is open between June 15 and September 20 except: ALL WATERS WEST OF THE LONGITUDE OF CAPE SUCKLING HAVE NO OPEN SEASON.

Gear—(1) Fishing with nets for salmon is not permitted in the Fishery Conservation Zone east of Cape Suckling. West of Cape Suckling, existing small-scale net fisheries conducted at False Pass (South Peninsula), Cook Inlet, and the Copper River Delta will be allowed under this plan. (2) Commercial fishing is allowed only by troll in the Fishery Conservation Zone. (3) Sport fishing is to be conducted with only a single, hand-held or closely attended rod with not more than one artificial lure or two flies or two single hooks attached.

Area—Trolling for salmon is permitted east of the longitude of Cape Suckling to Dixon Entrance on the U.S./Canadian border and within the described Fishery Conservation Zone.

Size—(1) Chinook salmon must be at least 28 inches in length overall (28 inches measured from the mid-point of the clavithral arch if headed). (2) All fin-clipped salmon must be landed head-on. (3) All other salmon no length restriction.

Sex—No restrictions.

Limited Entry—Limited entry for the offshore troll fishery is proposed as outlined in the regulations section.

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2.0 Introduction

This plan is a management regime for ocean salmon off the coast of Alaska in response to the requirements of the Fishery Conservation and Management Act of 1976 (U.S. Public Law 94–265). It was developed at the direction of the North Pacific Fishery Management Council by a multi-agency team composed of members of the Alaska Department of Fish and Game (lead agency), the Washington Department of Fisheries, National Marine Fisheries Service, Alaska Commercial Fisheries Entry Commission, and industry.

2.1 *Goals and Objectives for Management Plan*

The Fishery Conservation and Management Act (FCMA) of 1976 sets forth in Section 2, Findings, Purposes and Policy, and Section 301, National Standards for Fishery Conservation and Management, a series of guidelines and principles which govern the development of fishery management plans for fisheries in the Conservation Zone. The Act calls for ". . . achieving, on a continuing basis, the optimum yield from each fishery" ((Sec. 301. (a)(1))). In Section 3., Definitions, optimum yield is defined as ". . . the amount of fish—(A) which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities; and (B) which is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor."

Thus defined, optimum yield management, along with the clarifying language in Sections 2 and 301 of the Act, requires consideration of a multiplicity of biological, economic, social, and ecological objectives. This is in essence the difficult task of defining a social function for fisheries management. It is however, a crucial factor in the development of a management plan, for there is no way in which the concept of optimum yield can be given any meaning without a clear specification of the relevant biological, social,and economic objectives to be served.

The management objectives of the High Seas Salmon Plan are:

(1) Control the expansion of the salmon troll fishery in the Fishery Conservation Zone.

(2) Allocate the salmon resource among user groups without disrupting present social and economic structures.

(3) Regulate the catch of salmon to assure adequate escapement for spawning.

(4) Reduce the catch of salmon with potential growth to increase the poundage yield from the troll fishery.

(5) Make cost effective the public investment in the high seas salmon fishery.

(6) Promote the eventual development of a Pacific Coast salmon fishery management plan.

It must be pointed out that these objectives cannot be totally accomplished by any plan for the FCZ alone and represent the Council's contribution to a set of total objectives for the fishery to be accomplished in concert with actions taken by the State of Alaska in their waters.

To that end this plan is formally considered by the Council an interim plan with a fully integrated 0–200 mile FMP planned for writing and development for the 1980 fishery.

2.2 *Operational Definitions of Terms Used*

A. *Determinants of Catch Levels.* 1. *Maximum Sustainable Yield* (MSY) is an average, over a reasonable period of time, of the largest catch which can be taken continuously by the *fishery* under current environmental conditions. It should normally be presented with a range of values around its point estimate.

The term *fishery* means:

a. One or more *stocks of fish* which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics.

b. Any fishing for such stocks.

The term "stock of fish" means a species, subspecies, geographical grouping, or other category of fish capable of management as a unit.

Where sufficient scientific data as to the biological characteristics of the stock do not exist, or the period of exploitation or investigation has not been long enough for adequate understanding of stock dynamics, the MSY will be estimated from the best information available.

2. *Acceptable Biological Catch* (ABC) is a seasonally determined catch that may differ from MSY for biological reasons. It may be lower or higher than MSY in some years for species with fluctuating recruitment. It may be set lower than MSY in order to rebuild overfished stocks.

3. *Optimum Yield* (OY) may be obtained by a plus or minus deviation from ABC for purposes of promoting economic, social, or ecological objectives as established by law and public participation processes. Ecological objectives, where they relate primarily to biological purposes and factors, are included in the determination of ABC. Where ecological objectives relate to resolving conflicts and accommodating competing uses and values, they are included as appropriate with economic and/or social objectives.

OY may be set higher than ABC in order to produce higher yields from other more desirable species in a multispecies fishery. It might be set lower than ABC in order to provide larger individuals or a higher average catch-per-unit of effort.

B. *Determination of Domestic Annual Fishing Capacity and Expected Harvest.* 1. *Domestic Annual Fishing Capacity* (DAC) is the total potential physical capacity of the fleets modified by

logistic factors. The components of the concept are:

a. An inventory of total potential physical capacity defined in terms of appropriate vessel and gear characteristics (e.g., size, horsepower, hold capacity, gear design, etc.).

b. Logistic factors determining total annual fishing capacity (e.g., variations in vessel and gear performance, trip length between fishing locations and landing points, weather constraints, etc.).

2. *Expected Domestic Annual Fishing Harvest* (DAH) is the domestic annual fishing capacity modified by other factors which will determine estimates of what the fleets will harvest (e.g., how fishermen will respond to price changes in the subject species and other species, etc.).

These concepts should be placed in a dynamic context of past trends and future projections. For example, physical fleet capacity should not simply be last season's inventory of vessels and hold measurements (although this is appropriate for present interim planning), but also next year's projected movement into and out of the fishery. Vessels under construction should be included and an estimate of attrition made.

The determination of domestic annual fishing capacity and expected harvest should be made on the best available information.

C. *Determination of Foreign Allowable Catch* (FAC) The foreign allowable catch is determined by deducting the domestic annual expected harvest from the optimum yield (OY—DAH=FAC).

D. *Determination of Areas Fished.* 1. *Offshore Waters:* Those waters seaward of the three-mile territorial jurisdiction.

2. *Coastal Waters:* Those waters under State control from the surfline to the three-mile territorial limit.

3. *Inshore Waters:* Those waters inside the surfline including all bays, sounds and straits.

E. *Other.* 1. *Troll:* A method of fishing in which a line with hook attached is drawn through the water behind a moving boat.

2. *Fishery Conservation Zone (FCZ):* A zone contiguous to the territorial sea of the United States, the inner boundary of which is the territorial sea boundary (3 nautical miles) and the outer boundary of which is a line drawn 200 nautical miles from the baseline from which the territorial sea is measured.

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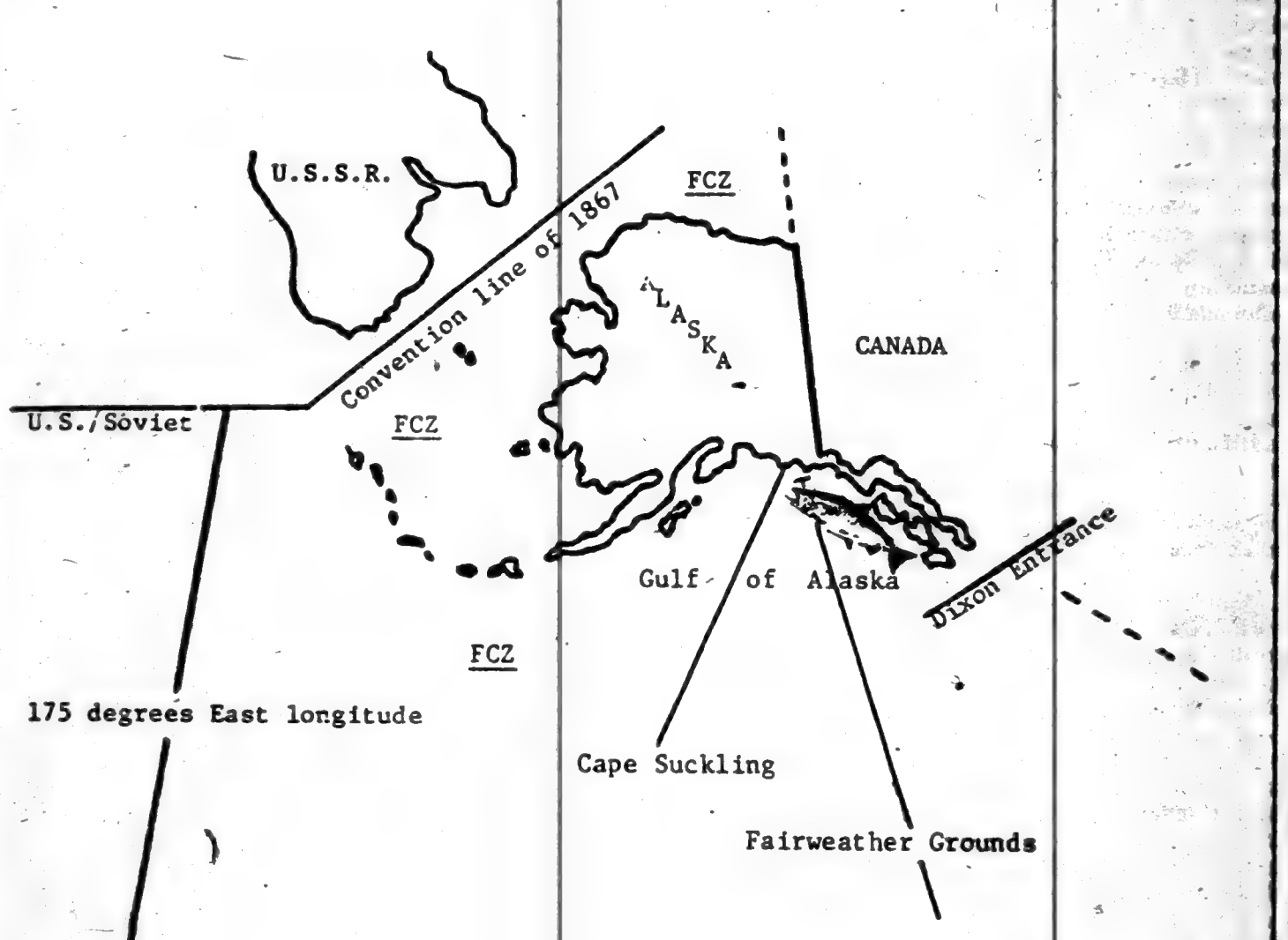
THE SALMON TROLL FISHERY OFF THE COAST OF ALASKA



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3.0 Description of Fishery

3.1 *Areas and Stocks Involved* (See Appendix 3.0 for additional material)

The ocean area for this fishery management plan is the water off the coast of Alaska east of 175° East longitude within the 200-mile Fishery Conservation Zone.

Fishing effort in the FCZ west of 175° east longitude is the subject of a separate international fisheries agreement between the United States, Canada, and Japan.

State of Alaska fishery management areas contiguous to the Fishery Conservation Zone in these waters are the Arctic-Yukon-Kuskokwim, Bristol Bay, Chignik/Alaska Peninsula (Aleutian), Kodiak, Cook Inlet, Prince William Sound, northern Southeastern, and Southeastern Alaska.

The specific fishery addressed in this FMP is the salmon troll fishery conducted east of the longitude of Cape Suckling off Southeastern Alaska. Special reference is made to the Fairweather Grounds portion of that fishery. This area is a mixed-stock fishery for Alaskan and non-Alaskan salmon, of which chinook and coho salmon are the target species.

All five species of Pacific salmon are present in the troll fishery, but pink, chum and sockeye are caught in insignificant amounts compared to the numbers of chinook and coho taken commercially.

In Southeastern Alaska, native chinook and coho salmon occur from Cape Suckling to Dixon Entrance. The chinook spawn in the larger rivers of the mainland and their tributaries. The Taku, Stikine, Alsek, Unuk, Situk, and Chickamin Rivers host important spawning populations. Other river systems are known to produce chinook. Coho populations occur in most of the 2,000-plus anadromous fish streams in Southeastern Alaska. Fish from these areas are present in the troll fishery. Stocks of King salmon of non-Alaskan origin known to be present in the troll fishery include those from the Columbia River and Oregon-Washington coastal streams.

West of the longitude of Cape Suckling, chinook spawn in several major river systems including the Copper, Susitna, Kvichak, Togiak, Kuskokwim, and Yukon. As in southeastern Alaska, coho are found in numerous stream and river systems. (Catalog of Salmon Spawning Rivers, ADF&G, Rev., 1975.)

3.2 *History of Exploitation*

3.2.1 *Domestic Fishery*

3.2.1.1 *Description of User Groups*

East of Cape Suckling the troll fishery is the only domestic salmon fishery in the offshore area. Net fishing of all types has been prohibited in this area since 1952 (International North Pacific Fisheries Convention 1952; North Pacific Fisheries Act of 1954) [16 USC1021–1032] and with specific exceptions off the remainder of the Pacific Coast (including Canada) since 1958. Chinook are harvested mostly by the troll fishery, with small numbers taken by gillnets, purse seines, and the recreational fishery. Coho are caught in inshore waters by nets and trolling in nearly the same proportion. Recreational coho catches are relatively small and are mostly taken in the territorial waters. Pink, chum, and sockeye salmon are harvested by the same user groups; the bulk is taken by net fisheries inshore.

3.2.1.2 *General Description of Fishing Effort*

The number of boats in the Alaska troll fishery has generally been increasing since the early 1900s. The clear and protected waters of Southeast Alaska are conducive to trolling for chinook and coho. Trolling is not feasible in areas north and west due to lack of fish, murky waters, or the use of nets, the combination of factors preventing the growth of the fishery in those areas. After the 1973 season, the Alaska Board of Fish and Game made trolling illegal in all areas of the State of Alaska except east of Cape Suckling.

The early troll effort was conducted in inshore waters closer to spawning streams of the fish. As the number of fish decreased and the amount of effort increased, gear conflicts occurred; fishing effort gradually moved outward to coastal and offshore areas and it was during this expansion of area that, in 1952, several fishermen from the Pelican area caught fish on the offshore Fairweather Grounds. After a lapse of several years, during which good runs of salmon in inshore areas made it unnecessary to prospect offshore, fishermen again ranged offshore to the Fairweather Grounds and the fishery became established.

Effort in the troll fishery increased steadily until 1974 when the State of Alaska passed limited entry legislation holding effort to 960 units of power troll gear.

Based on the existing data, 187 individual boats fished the offshore troll fishery during the three-year period 1975–1977; the most that were on the grounds in any one year during that period was 118.

3.2.1.3. *Catch Trends*

The greatest recorded catch of chinook in Alaska was in 1937 when 846,000 fish were landed. From 1937 to the early 1960s there was a general decline in chinook catches. Since 1965 the catch has been reasonably stable between 250,000 and 350,000 fish per season (Figs. 12 and 13, Appendix 4.0).

The record catch of coho was in 1951 when 2.0 million fish were landed. Since the late 1950s the coho catch has fluctuated between 300,000 and 1,000,000 fish annually. In 1976 there were 220,000 chinook and 510,000 coho caught by troll gear.

In 1977 there were 272,000 chinook and 507,000 coho caught by troll gear. Table 1 shows that, respectively, 18.5, 1.8, and 1.6 percent of troll caught chinook, coho, and pink were taken in Council waters. These figures are equivalent to 8 percent for chinook, 0.5 percent for coho, and .02 percent for pink of the state total caught by all gear types (Table 2).

Table 3 shows the 10-year statistics for the 3 major species by troll gear and all gear types. Figure 1 depicts the trends of troll catches for these species.

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TABLE 1

NUMBER OF TROLL SALMON CAUGHT IN STATE AND COUNCIL WATERS—1977

Species	State Waters		Council Waters		Total
	NO.	(%)	NO.	(%)	
Chinook	221,508	(81.5)	50,251	(18.5)	271,759
Coho	497,680	(98.2)	9,155	(1.8)	506,835
Pink	276,733	(98.4)	4,455	(1.6)	281,188
Red	5,391	(94.5)	313	(5.5)	5,704
Chum	11,032	(94.5)	648	(5.5)	11,680
Total	1,012,344	(94.0)	64,822	(6.0)	1,077,166

Source: Prel. ADF&G Statistics, 1977

TABLE 2

NUMBER OF SALMON CAUGHT IN ALASKA BY SPECIES—1977

Species	All Gear State	Troll Gear State Water	(%)	Council Water	(%)	Total Troll	(%)
Chinook	626,723	221,508	(35.34)	50,251	(8.02)**	271,759	(43.36)
Coho	1,815,167	497,680	(27.42)	9,155	(.50)	506,835	(27.92)
Pink	28,582,428	276,733	(.97)	4,455	(.02)	281,188	(.99)
Red	13,717,737	5,391	(.04)	313	(*)	5,704	(.04)
Chum	6,204,094	11,032	(.18)	648	(.01)	11,680	(.19)
Total	50,946,149	1,012,344	(1.99)	64,822	(.13)	1,077,166	(2.11)

*0.0022 percent ** 8.02 = (50,215/626,723)(100)

Numbers in () represent the percent of fish to the total of fish caught by all gear.

Source: Prel. ADF&G Statistics, 1977

TABLE 3

CATCHES OF CHINOOK, COHO, AND PINK SALMON IN THE SOUTHEASTERN REGION AND ALL ALASKAN WATERS *

Year	Species	Troll Gear Southeastern No.	Troll Gear Southeastern Lbs.	All Gear Southeastern No.	All Gear Southeastern Lbs.	All Gear All Alaska No.	All Gear All Alaska Lbs.
1968	Chinook	304	4,932	332	5,372	611	11,246
	Coho	780	6,158	1,543	12,190	2,751	20,968
	Pink	126	417	25,085	82,782	44,727	148,446
1969	Chinook	290	3,915	314	4,236	639	10,746
	Coho	389	2,836	596	4,354	1,133	8,034
	Pink	84	351	4,870	20,453	25,767	105,967
1970	Chinook	304	4,352	322	4,589	646	11,547
	Coho	267	1,899	759	5,823	1,527	11,898
	Pink	70	251	10,657	41,442	31,147	117,718
1971	Chinook	311	4,215	334	4,529	662	11,972
	Coho	391	2,674	914	7,137	1,448	11,459
	Pink	105	352	9,345	34,414	23,528	86,260
1972	Chinook	242	2,852	287	3,376	553	9,973
	Coho	792	4,891	1,509	10,586	1,831	13,035
	Pink	167	535	12,400	38,468	15,921	59,969
1973	Chinook	308	4,283	344	4,749	551	8,917
	Coho	540	3,806	836	6,161	1,457	9,837
	Pink	135	448	6,455	23,424	9,802	36,610
1974	Chinook	322	4,377	347	4,744	558	9,290
	Coho	846	5,722	1,278	9,413	1,861	12,820
	Pink	263	950	4,889	19,271	9,859	40,072
1975	Chinook	287	3,792	301	3,974	455	7,165
	Coho	214	1,295	427	3,084	1,014	7,745
	Pink	77	249	4,027	15,552	12,984	49,969
1976	Chinook	231	2,954	242	3,099	533	8,601
	Coho	525	3,671	824	6,355	1,432	10,644
	Pink	194	720	5,329	23,351	24,751	102,401
1977	Chinook	272	3,979	291	4,199	627	12,071
	Coho	507	4,158	945	8,247	1,815	15,362
	Pink	281	1,195	13,838	67,865	28,582	129,529

*Note: Numbers and Pounds are in thousands.

Source: ADF&G Catch Statistics. 1968-1977

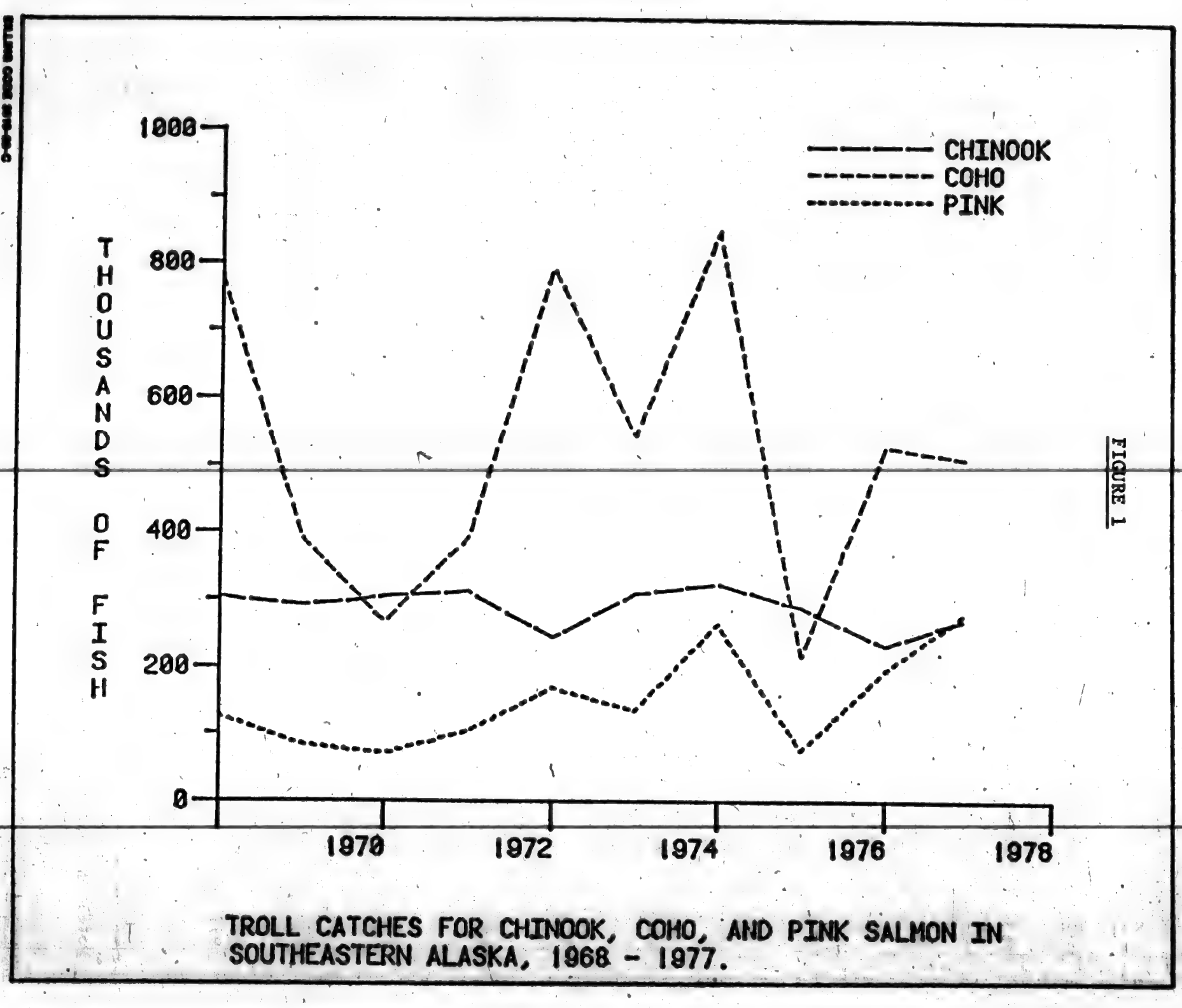

FIGURE 1

TROLL CATCHES FOR CHINOOK, COHO, AND PINK SALMON IN SOUTHEASTERN ALASKA, 1968 - 1977.

3.2.1.4 *Description of Vessels and Gear Employed*

Commercial trolling in Southeastern Alaska commenced in Ketchikan around the turn of the century with mechanically powered vessels entering the fishery in 1910. Power gurdies came into use in the early 1920's and later, the use of ice and refrigeration to maintain quality of unprocessed catch over extended periods of time lengthened the amount of time a commercial troller could spend fishing before returning to port.

The 2,076 commercial trolling vessels that landed fish in 1976 (power troll, 801; hand troll, 1,275) may be divided into two categories by size and area fished. The 1,106 boats under 27 feet in length do not fish in outside waters; the total troll catch by these fishermen is about 15 percent of the total.

The remainder of the catch was landed by 970 boats over 27 feet in length; the majority are power trollers which can fish for 10–14 days before delivering to a buyer. These boats are often highly mobile, fully equipped electronically, and very seaworthy.

There is no standardization of vessel types in this fishery; an endless variety of small, medium, and large size vessels participate.

3.2.2 *History of Foreign Exploitation* (3.2.2.1.–4.)

The foreign troll effort in the waters off Alaska has historically been Canadian. In some years of predicted large runs of albacore tuna *(Thunnas alalunga)* or salmon elsewhere on the coast, the Canadian effort off Alaska is minimal. In other years as many as 30 Canadian boats have fished in the offshore waters. In 1966 a total of 18,168 chinook, 1,732 coho, and 853 pinks was taken by Canadian boats that spent 1,048 boat days off Alaska. In 1976 there was no reported catch by Canadian trollers off Alaska (Annual Summary of British Columbia Catch Statistics 1976). This is thought to be in error on the basis of confirmed sightings of Canadian vessels on the Alaska fishing grounds by American fishermen.

3.3 *History of Management*

3.3.1 *Management Institutions, Policies, Jurisdiction*

Prior to statehood in 1959, management of salmon within 3 miles of the coast and all inshore waters of Southeast Alaska was under jurisdiction of the U.S. Fish and Wildlife Service. Regulations were established for the territorial waters in Washington, D.C., primarily to comply with Pacific coast states and Canadian regulations. Since statehood the Alaska Board of Fish and Game (now the Board of Fisheries) has set policy and regulations in accordance with proposals by the Alaska Department of Fish and Game, local advisory boards, and individuals. The Department of Fish and Game is responsible for in-season management, research, and implementation of regulations. The State and the Board of Fisheries exercise de-facto jurisdiction in the Pacific ocean waters beyond 3 miles under the terms of landing laws and other licensing requirements of U.S. Nationals. Due to disparities in regulations between the U.S. and Canada enforcement of Alaskan regulations pertaining to Canadian vessels in the contiguous zone has been generally ineffective.

Recognition of the coastwide nature of the management problems of chinook and coho led to the consideration of possible solutions initially under the auspices of the Pacific Marine Fisheries Commission (PMFC). The forum for coordinating both research efforts and ocean salmon fishery management regulations has been the PMFC Salmon-Steelhead Committee. This committee consists of fishery scientists from each member state (California, Oregon, Washington, Idaho, and Alaska).

3.3.2 *Domestic*

3.3.2.1 *Measures Employed to Regulate Fishery*

Regulations for the troll fishery have remained basically the same since the 1930's. In 1977, a 28-inch minimum total length size limit for chinook was imposed. Coastal and offshore waters are open to trolling from April 15 to October 31. Waters inside the surfline are open to trolling year-round with local exceptions to provide individual stock protection and conform to gillnet seasons (Alaska Commercial Fishing Regulations Finfish 1977). A maximum of four lines may be fished inside the 3-mile territorial limit. Beyond the 3-mile limit there is no restriction on the number of lines used.

The troll fishery is open to the taking of coho from June 15 to September 20. There is no minimum size limit for coho. In some years area closures are necessary to comply with gillnet closures for local stock protection.

3.3.2.2. *Purpose of Measures*

The 28-inch total length minimum size limit and the winter closure of offshore and coastal waters are intended to restrict the harvest of immature stocks of chinook salmon that have remaining growth potential. The offshore and coastal winter closure is basically of little or no consequence as weather conditions are more restrictive than the regulatory season. The coho season is unrestrictive because coho usually do not appear in the troll catch in substantial numbers prior to July 15 or after September 20. The four-line limit for troll vessels is imposed only in Alaska waters. Elsewhere on the coast the line limit is six lines; in some jurisdictions there is no line limit. Many Alaska resident trollers have more than four lines on board their boats and will fish with all their lines when outside State jurisdiction.

The purpose of limited entry as a management tool is to promote the conservation and sustained yield management of the fishery resource and the economic health and stability of commercial fishing. Without limited entry levels of participation many fisheries have impaired or threatened to impair the economic welfare of the fisheries, the overall efficiency of the harvest, and the sustained yield management of the fishery resources.

3.3.3 *Foreign* (3.3.3.1, 3.3.3.2)

The foreign salmon troll effort in this fishery has been Canadian, has been regulated by a Reciprocal Fisheries Agreement, and occurred outside 12 nautical miles.

3.3.4 *Effectiveness of Management Measures*

Ideally, the management of any fishery should be focused on optimum escapement and yield from the resource. While inshore and coastal regulations have decreased the take of chinook salmon in inside areas, the effort in offshore waters has increased, thereby partially nullifying any intended benefits from inshore and coastal troll or net fishery curtailment. The 28-inch minimum size limit was intended to restrict the take of immature chinook salmon that have reared in the ocean for only two years under the concept that these fish would then be available for harvest in subsequent years. However, the increased effort in areas where small fish predominate has reduced the intended benefits of the minimum size limits because of the release and subsequent mortality of undersized chinook (shakers) that are inadvertently caught by troll fishermen.

This history of size restrictions in the troll fishery shows that prior to 1971, the legal length limit for chinook was 26 inches (fork length); fork length was changed to total length commencing with the 1972 season and remained at 28

inches total length until the 1977 season when the 28-inch total length (head-on) measurement was adopted.

The minimum size limit was increased to 28 inches for the 1977 season to provide further protection of immature chinook.

4.0 Biological Descriptors

4.1 *Life History Features*

Five species of Pacific salmon are off Alaska—pink, chinook, coho, chum and sockeye—and all have somewhat similar life histories. They spawn in fresh water from late summer to late autumn and die soon after. The eggs are deposited in gravel and remain until they emerge as fry in late winter or early spring. The fry of some species go to sea almost immediately, but in other species the freshwater period may vary from a few weeks to one or more years.

The ocean life is one of feeding and rapid growth. During the ocean residence the color is metallic blue on the top, with black spots or specklings, and silvery on the undersurfaces.

As the fish enter fresh water a red color appears on the chinook, sockeye, and coho; chum salmon acquire a "calico" banding and pink salmon turn a mottled brown. Males of all species develop a distinctive "kype" or elongated nose.

The salmon are placed in the genus *Oncorhynchus* and are characterized by a comparatively large anal fin with 13–19 rays. (By comparison, trout and char have 8–12 rays.)

Approximately one-third and two-thirds of Southeastern Alaska coho salmon, respectively, have 3- and 4-year life cycles. The 3-year old fish spend 1 year and the 4-year old spend 2 years in freshwater. Both migrate to sea as smolts in the spring; the 3-year old fish migrate as age 1+ smolts at the beginning of their second year and the 4-year old fish migrate as age 2+ smolts at the beginning of their third year. A small percentage of Southeastern Alaska coho are 5-year old fish having spent 3 years in freshwater and migrating to sea as age 3+ smolts at the beginning of their fourth year. Ecological characteristics of freshwater nursery areas that influence growth of fry and fingerlings apparently determine if seaward migration occurs in the second, third, or fourth year of life (Crone and Bond, 1976). In 1969 and 1970 age determinations on a 5,406 fish sample of adult coho from purse seine, troll, and gillnet fisheries in Southeastern Alaska revealed that 27, 64, and 9 percent respectively, were 3-, 4-, and 5-year-old fish (Marriot and Gray, 1970).

Regardless of their total age, coho are generally available to the troll fishery only in their final year of life as they approach maturity. This is during the summer and early fall after spending one winter in ocean nurseries.

Ninety-five percent of Southeastern Alaska chinook salmon smolts migrate seaward after rearing in freshwater for one year. The remainder migrate after two years. Alaska male chinook salmon mature after 1 to 5 years at sea, while females mature after 3 or 4 ocean years (Kissner, 1977). Chinook are available to various troll fisheries for up to 5 years but cannot be legally landed until the latter part of their second ocean year when they exceed 28 inches total length. Discrete migration patterns of fish after leaving the freshwater environment are unknown.

Adult sockeye migrate in early summer from salt water back to their freshwater stream of origin. While at sea the sockeye is bright and silvery; upon entering freshwater, the adult acquires the characteristic red coloration. The maturation process takes from one to two months. After spawning, the eggs develop and the fry will spend one or more years in freshwater before migrating to sea as smolts. After two to four years in saltwater, mature fish will weigh from four to eight pounds. In the fourth, fifth or sixth year, the mature fish will return to freshwater to spawn.

Pink salmon mature at two years of age. Following the freshwater spawning and incubation and growth to fry stage, the outmigration occurs during early spring and the fish spends one winter in saltwater, returning as the smallest of Pacific salmon with an average weight of some three pounds. It is the most abundant salmon in Alaska, and the most affected by natural, cyclic fluctuations.

Chum salmon exhibit similar spawning and early life stage characteristics similar to pink salmon. The principal difference occurs after outmigration of fry to the ocean environment where they spend three to four years before returning to spawn.

4.2 *Stock Units*

For purposes of management in terms of the Council's jurisdiction in waters where intermingling of both Alaskan and non-Alaskan chinook and coho occurs, these stocks must be considered as a unit because present knowledge is not sufficient for the management of discrete stocks throughout their range.

In general, native and hatchery chinook from the following areas are known to make contributions to the Alaska troll fishery: California, Columbia River, Washington, and Oregon coastal streams, Puget Sound, northern and southern British Columbia including Vancouver Island, and Southeastern Alaska.

Fish from all areas intermingle and constitute the fishery against which the troll effort is directed. Nearly 99 percent of the chinook troll landings from the offshore area come from the Fairweather Grounds (Table 13, Appendix 4.0).

This averages 15.8% of the total Alaska troll landings in numbers of fish (Table 12, Appendix 4.0).

Troll landings of coho in Council waters average only 6.4 percent of the total Alaska coho troll catch.

4.3 *Catch and Effort Data Sources*

Prior to statehood, catch and effort data recorded for the troll fishery was lacking in detail necessary for effective management. Since statehood, concerted efforts have been made to improve all data gathering functions of the Alaska Department of Fish and Game. At present, the available data includes numbers of boats and landings, and catch (in numbers and pounds) by species, statistical area, and week. In addition, effort in numbers of boats by statistical area is recorded by Department of Fish and Game personnel during overflights along the outside coast from Cape Muzon to Lituya Bay.

4.4 *Survey and Sampling Data*

From 1971 to 1974 a troll logbook program was conducted under the auspices of the Alaska Department of Fish and Game's Ocean Troll Fishery Project to determine catch by fishing location, hours fished per day, and number of undersized chinook caught by time and area. In 1976, the Alaska Trollers Association re-established a troll logbook program. In 1973, a port sampling program was initiated in three major ports of landing: Sitka, Pelican, and Craig. Information has been gathered concerning age-class structure of the troll catch, stock contributions from hatcheries, migration routes of maturing salmon, and relative frequency of stock contributions under mark-sampling programs funded by the National Marine Fisheries Service's Columbia River Fisheries Program and the North Pacific Fisheries Management Council.

Attempts have been made to establish escapement trends for the major chinook and coho streams in Southeastern Alaska. Because of variable water conditions (turbidity, etc.) as well as the inaccessibility of

many of the rivers, some of the survey results are not comparable. However, surveys of river systems for which data are comparable clearly demonstrate the decline in Southeastern Alaska chinook stocks (Table AI–4). Because of the dynamic nature of the stocks in the troll fishery it is necessary that these programs be continued and refined in order to achieve effective management.

4.5 *Habitat*

Because of the anadromous nature of salmon, it is essential that freshwater and estuarine habitat protection be given primary consideration in any plan designed to achieve sustained yield. The loss in potential production from the destruction of spawning environment through the construction of dams, industrial development, and poor logging practices cannot be completely offset by fishery restrictions or artificial production. The decline of the chinook catch in the Alaskan ocean troll fishery since the 1930's has been correlated with hydroelectric dam construction on the Columbia River; some upriver stocks in that system have been lost completely (Pacific Fisheries Management Council 1977). The decline in natural fish together with a relatively stable troll fishery demonstrated an increased reliance on hatchery-produced chinook.

The loss of spawning and rearing habitat through poor logging practices, urbanization, and industrial pollution in Southeastern Alaska will jeopardize sustained yield from coho. Some streams that presently support coho will undoubtedly suffer adverse effects from continued misuse of the environment. Information on specific streams or particular habitat problem areas currently is limited. There are studies being conducted by the Alaska Department of Fish and Game that should provide useful data in this regard. They are currently cataloging Southeastern Alaska streams to advise the U.S. Forest Service during development of their comprehensive land use plans. There are a large number of streams involved and these assessments are not yet complete. Also, ADF&G intends to closely monitor the effect on the Keta River of the access road that will be constructed by U.S. Borax for the proposed molybdenum mine.

Further development of land use-oriented industries in the States of Washington and Oregon and in the Province of British Columbia may cause further reduction in the numbers of chinook available to Alaskan fishermen. However, the present status of these stocks cannot be solely attributed to lost environment and, as with the Southeastern Alaska native chinook stocks, can be attributed as well to the fisheries which intercept these stocks.

4.6 *Ecological Relationships*

The ecological relationships of principal concern to salmon off Alaska are embedded in food chain relationships: i.e., marine mammals (sea lions) eat salmon which eat herring (or krill or needlefish) which eat plankton which need nutrient energy, etc. Direct food chain relationships involving salmon are poorly understood. Several applied research projects address (to a degree) "ecological relationships and salmon" but none present a very clear understanding of the total picture.

A troll logbook program being conducted under a cooperative agreement between the Alaska Trollers Association, the Alaska Department of Fish & Game, the Alaska Sea Grant Program, the University of Alaska, and the National Marine Fisheries Service, NPFMC should eventually result in better information regarding feed abundance and type. Preliminary data indicates that salmon feed primarily on needlefish and krill in the FCZ and on herring in inside waters. Several forage fish studies have been conducted off Alaska which deal with the distribution, abundance, and biology of herring, capelin, euchelon, candlefish, and krill. As an example, the ADF&G conducts continuing studies of herring abundance and although these studies relate specifically to the herring fishery, they should be useful in assessing some food chain relationship of salmon.

The Outer Continental Shelf/ Environmental Assessment Program (OCSEAP) has also conducted forage fish studies off Alaska, but primarily for the area north and west of Cape Suckling and principally with little conclusive data regarding salmon.

The Marine Mammal Protection Act of 1972 (Pub. L. 92–522) imposed a moratorium on the taking of marine mammals and further preempted State management authority over marine mammals in favor of Federal management. The Sea lion population has increased substantially since that moratorium went into effect. Sea lions prey on salmon and this has an effect on salmon stocks. Sea lions also physically interfere with some salmon fishing operations.

4.7 *Quality of Data*

The domestic catch in numbers and pounds of fish by grade and species is recorded by the processors at the time of delivery. The boat identification number, the fisherman's name, and his limited entry permit number are also recorded at the time of sale. A standard form called a "fish ticket" is completed with the above information for each delivery (Fig. 9, App. 4.0) and is forwarded to the Alaska Department of Fish and Game. Summaries and analyses of catch are calculated from this basic fish ticket form. In addition, spot checks are conducted by the ADF&G to verify fish ticket information.

Data concerning species composition, relative native stock contributions, and discrete stock distribution by time and area are of poor quality, or in some cases, nonexistent. Data available from earlier studies may not be applicable to the present situation because of changing stock characteristics (declining natural runs and increasing hatchery production).

In general, the quality of catch data by gear, time, and area is good in the aggregate. Logbook summaries to determine areas of shaker* incidence are considered adequate but because of the dynamic nature of the troll fishery and chinook stocks involved, several more years of data will be required to differentiate all areas of shaker abundance in Southeastern Alaska. Data concerning age class structure of the troll catch and size frequency by age class are considered adequate. Spawning ground surveys and escapement counts are considered adequate to exemplify declining stock strengths. Tag recovery data on chinook of non-Alaskan origin is adequate to determine contribution of these stocks to the Alaskan troll fishery. Native chinook tagging began in 1977 and results have not yet been determined.

Catch by Canadians is reported by the Canadian government in the *Annual Summary of British Columbia Catch Statistics*. The catch data are reported in numbers of fish and pounds by species.

4.8 *Current Status of Stocks* (See Appendix 4.0 for additional information)

Native spring chinook salmon stocks are at a low level along the entire Pacific Coast.

Southeastern Alaska chinook stocks (all "spring" type) are also at a low level in most chinook systems monitored annually (Appendix, Table A, 1–4). While some cause for the decline of chinook in the Pacific Northwest can be attributed to loss or deterioration of spawning grounds and freshwater rearing areas such as mainstem and

*A "shaker" is a salmon of less than legal length that a fisherman releases (shakes off) from the hook.

tributary dams, industrialization and urbanization of rivers, and extensive watershed logging, none of these factors have significantly influenced the decline of Southeastern Alaska chinook. *All data indicate a major reason for population declines in Southeastern Alaska chinook is due to overharvest.* The chinook is the only species which is available to sport and commercial troll fisheries for three or four years, and in addition is often subjected to net fisheries near their river of origin.

Southeastern Alaska coho are below historic catch levels. Coho catches by all gear in Southeastern Alaska averaged 1.6 million fish per year during the thirty years from 1926–1955. This compares to about one million fish per year from 1960 to 1975 and about 800,000 fish per year from 1973 to 1975 (Alaska Salmon Fisheries Plan, 1976).

4.8 *Maximum Sustainable Yield (MSY)*

MSY is an average over a reasonable length of time of the catch which can be taken annually from a stock under current environmental conditions. MSY, as it applies to salmon management, is difficult, if not impossible, to evaluate in terms of any measurement of data other than past catches. The MSY for salmon is discussed in terms of total catch of salmon taken in the fisheries east and west of the longitude of Cape Suckling (for rationale see Section 8.3.1). While MSY is calculated as an average for each of the two areas, it is important that the complexity of the problems and importance or lack of importance of a single river system versus multiple river systems is understood.

Under ordinary management procedures using MSY, where recruitment requirements determine escapement goals for individual populations or groups of stocks, harvest levels should be based on surplus fish above recruitment requirements. Restrictions on terminal fisheries are therefore used to help achieve the proper balance between total catches and escapement.

The Alaska offshore troll fishery contributes to the total catch of salmon east of the longitude of Cape Suckling but is based on variable harvest levels of mixed stocks before the relative strength of individual runs are known. This fishery is based on salmon taken during an active growth period when natural mortality rates are low and when the high death rate of released undersized salmon increase the difficulty of justifying the fishery.

Achieving maximum poundage yields require eliminating harvests of salmon with remaining significant growth potential. The high-seas troll fishery creates a net effect of a major loss of salmon production in poundage yields as compared to the same fish taken closer to their natal streams.

The MSY figures (for five species of salmon, east of the longitude of Cape Suckling to Dixon Entrance and west of the longitude of Cape Suckling to 175° east longitude) are calculated from annual catches in all waters, State and Federal, off Alaska from 1953–1977.

The mean catch of chinook during an equal time period (25 years) prior to 1953 is statistically higher than the 25-year period used in the determination of MSY (see Table 4). The 1953–1977 period more accurately reflects current environmental conditions.

The MSY ranges are the average catches minus and plus one standard error.

4.8.2 *Acceptable Biological Catch (ABC)*

Acceptable Biological Catch (ABC) is a seasonally determined figure that may differ from MSY for biological reasons. The principles of salmon managment require ABC calculations to be made on the basis of the surplus assumed to prevail in any mix of river systems involved in the fishery.

In dealing with a mixed-stock fishery, in which diverse stocks mingle at different levels of abundance, and a fishery in which those diverse stocks consist of wild and hatchery fish from widely separated geographic areas, there are stocks which can be safely harvested but which cannot be separated from stocks within the fishery which should not be harvested.

If a fishery is allowed in a mixed-stock situation where certain stocks require protection, the inevitable consequence is that some from these stocks will be caught.

The offshore and coastal troll fishery in the FCZ (east of Cape Suckling) and Alaskan State waters is an example of such a situation. Wild Alaskan stocks of chinook are critically depressed and should not be harvested but are mixed with other stocks having a harvestable surplus.

The overall management of the five species of salmon off Alaska (east and west of Cape Suckling) requires an estimate of ABC be calculated from past annual catches (1971–1977) in all waters in and off Alaska. A range of ABC for each species is presented as a mean catch plus or minus one standard error (Table 5).

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TABLE 4

Average Annual Catch (MSY) From 1953-1977 Taken
East and West of Cape Suckling

	Pounds (in thousands)	Numbers of salmon (in thousands)
Chinook		
West	5,133 - 5,548	247 - 267
East	5,130 - 5,476	296 - 316
Sockeye		
West	26,384 - 70,424	4,549 - 12,142
East	4,775 - 5,284	808 - 894
Coho		
West	4,780 - 5,415	602 - 682
East	8,362 - 9,723	959 - 1,115
Pink		
West	44,784 - 56,049	12,236 - 15,314
East	36,289 - 45,952	9,164 - 11,604
Chum		
West	27,320 - 31,016	3,682 - 4,180
East	17,218 - 20,799	1,822 - 2,201

TABLE 5

Mean Annual Catch (1971-1977) Expressed as an ABC Range
For Salmon East and West of Cape Suckling

	Pounds	Numbers (of fish in thousands)
Chinook		
West	5,063 - 6,390	225 - 284
East	4,424 - 4,950	286 - 320
Sockeye		
West	43,531 - 65,811	6,697 - 9,817
East	3,566 - 4,717	669 - 885
Coho		
West	3,636 - 4,600	505 - 631
East	7,420 - 9,053	841 - 1,100
Pink		
West	29,972 - 45,599	7,382 - 11,051
East	25,716 - 37,489	6,494 - 9,467
Chum		
West	30,288 - 35,687	4,071 - 4,796
East	12,232 - 17,813	1,292 - 1,883

The years 1971–1977 were used for this derivation of ABC because (1) the use of recent catch data (7 years as opposed to 25 years) is essential in understanding changes and trends which occur in biological systems over time and (2) a seven-year period takes into account a recent full cycle of spawning for major chinook and coho stocks. Additionally, 1971 was the initiation of the first reliable fish ticket information which clarified landings by area for the first time.

Cape Suckling is an established boundary for management and statistical areas and separates Southeastern Alaska waters from the remainder of Alaskan waters. There is no known information which shows a significant mixing of stocks originating west and east of Cape Suckling.

4.9 *Estimates of Future Stock Conditions*

The future status of salmon in the offshore Alaska troll fishery is unclear. Non-Alaska fall chinook in the fishery presently are strongly supported by West Coast hatchery production. The future condition of these stocks will be closely tied to existing hatchery programs and the success of new coast-wide rehabilitation and enhancement programs. *Hatcheries for spring chinook have generally been financially unsuccessful. Until this problem is solved, maintaining spring chinook stocks will depend largely on natural production.* Reversing the severely depressed status of Southeastern Alaska chinook can only be achieved by stern conservation efforts that eliminate or restrict further harvest of these fish. Efforts are underway in Southeastern Alaska to develop spring chinook brood stocks for artificial propagation programs. However, these efforts will remain small until successful techniques are established. *Until that time, conserving these stocks with an ABC approaching zero is vitally important.*

Prospects for enhancement of coho production in Southeastern Alaska, in addition to conventional hatchery programs, include several different approaches to artifically recruiting smolts to ocean nurseries. These include utilizing estuarine and freshwater culture in net pens, floating raceways, and unused natural rearing areas. There may be a significant number of unused freshwater nurseries for coho production in Southeastern Alaska that are not accessible to natural runs due to geologic features of the area. Active research on these approaches is underway at several locations. Caution should guide their use and development, especially in relation to simultaneously maintaining viable native stocks in adjacent areas (Heard, in press).

4.10 *Non-target Species Mortality Other Than Salmon*

This is not a serious problem with the ocean salmon fishery. Although species such as the Pacific halibut (*Hippoglossus stenolepsis*), rockfish (genus *Sebastes*), and lingcod (*Ophiodon elongatus*) may be caught, the total catch is minor.

5.0 Catch and Capacity Descriptors

5.1 *Data and Analytical Approaches (5.1.1., 5.1.2.)*

There is insufficient data to quantitatively define capacities. Harvesting characteristics (section 3.5.2) and catch trends (section 3.2.1.3) substantiate the values for DAC and DAH discussed below.

5.2 *Domestic Annual Capacity (DAC)*

Capacity of the power troll fishery to harvest salmon is exceedingly difficult to estimate. In 1978, approximately 100 vessels with a mean keel length of 41 feet made landings from offshore waters. Because of the increased efficiency of the vessels in the fishery, due to technological advances in electronic gear and increased hold capacity, it is estimated that the DAC is substantially greater than the largest catch that could be realized from the offshore fishery.

Provisions of limited entry will restrict the number of fishermen who could conceivably fish; this does not necessarily limit fishing effort.

Larger boats and increased experience on the part of the fishermen plus increasing sophisticated electronic gear is the means by which effort can increase without numbers of fishermen increasing.

5.3 *Expected Domestic Annual Harvest (DAH)*

Based upon past performance of the troll fleet and market trends, the DAH for chinook and coho is expected to be equivalent to OY.

5.4 *Domestic Annual Processing Capacity*

Domestic processors have in the past been able to process the entire domestic harvest of troll-caught salmon, and it is expected that they will be able to process the harvest of salmon allowed by this plan.

6.0 Optimum Yield (OY)

Optimum Yield (OY) may be obtained by a plus or minus deviation from ABC because of economic, social, or ecological objectives as established by law and the public participation processes. Ecological objectives where they relate primarily to biological purposes and factors are included in the determination of ABC. Where ecological objectives relate to resolving conflicts and accommodating competing uses and values, they are included as appropriate with economic and social objectives in the determination of OY.

The optimum yield for all species in all areas is based on the acceptable biological catch for the years 1971–1977 modified by social and economic considerations. The OYs are expressed as ranges determined from past mean catches plus and minus one standard error.

It is necessary to take into consideration MSY, ABC, and OY based on all species, all areas, for purposes of management. The plan, however, is subdivided and deals primarily with the one active fishery in the FCZ off Southeast (east of Suckling) as this is the area of council jurisdiction as addressed by the FCMA.

Catches of pink, chum, and sockeye salmon are relatively insignificant in the troll fishery. The 1971–1977 average annual combined catch of pink, chum, and sockeye is less than five percent of the total offshore troll salmon harvest (Table 13, Appendix 4.0). Pink, chum, and sockeye salmon caught in the offshore are not considered significant in the overall optimum yield determination. Any catch likely to be realized in the troll fishery will be an acceptable by-catch.

Alternatives Considered

Two other concepts of optimum yield were considered in the development of this plan: (1) a greatly restricted OY essentially prohibiting trolling in the FCZ by certain time and area closures and (2) allowing OY and effort to expand according to current trends in the fishery (see also EIS, Section 12.5). The argument to greatly restrict and reduce the OY was considered unacceptable given the basic definitions of OY which mandates a consideration of relevant socio-economic factors. The preponderance of public testimony and socio-economic data did support this conclusion by showing the grave social and economic dislocation and hardships that would occur in several geographic areas and villages in Southeast Alaska. Likewise any expansion of effort or greatly increased catch or catch potential was not consistent with a principle management objective of controlling the expansion of the fishery. Neither was this alternative considered optimal in terms of the carefully considered balance of social and economic values and the biological principles of mixed stock management.

West of Cape Suckling: The optimum yield for waters west of Cape Suckling addressed by this plan is fully utilized by existing inshore net fisheries. (Table 6).

East of Cape Suckling: The optimum yield for salmon east of Cape Suckling is set equal to ABC (See Table 6).

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TABLE 6

OPTIMUM YIELD

For Salmon East and West of Cape Suckling

	Pounds	Numbers
	(of fish in thousands)	
Chinook		
West	5,063 - 6,390	225 - 284
East	4,424 - 4,950	286 - 320
Sockeye		
West	43,531 - 65,811	6,697 - 9,817
East	3,566 - 4,717	669 - 885
Coho		
West	3,636 - 4,600	505 - 631
East	7,420 - 9,053	841 - 1,100
Pink		
West	29,972 - 45,599	7,382 - 11,051
East	25,716 - 37,489	6,494 - 9,467
Chum		
West	30,288 - 35,687	4,071 - 4,796
East	12,232 - 17,813	1,292 - 1,883

7.0 Total Allowable Level of Foreign Fishery (TALFF)

The amount of U.S. Pacific Coast salmon available to the Alaskan Troll fishery will vary from year to year. At the highest conceivable level of abundance, it can be completely harvested by U.S. domestic fisheries. Therefore, in compliance with PL 94–265 there is no allowable foreign catch except as proposed by a Reciprocal Fishing Agreement with Canada, or as a temporary Japanese salmon fishery might be allowed under terms of the Protocol Amending the International North Pacific Fisheries Convention signed April 25, 1978, which requires approval of all parties to the convention before such fishery can occur.

8.0 Management Regime

8.1 *Objectives*

(1) Control the expansion of the salmon troll fishery in the Fishery Conservation Zone.

(2) Allocate the salmon resource among user groups without disrupting present social and economic structures.

(3) Regulate the catch of salmon to assure adequate escapement for spawning.

(4) Reduce the catch of salmon with potential growth to increase the poundage yield from the troll fishery.

(5) Make cost effective the public investment in the high-seas salmon fishery.

(6) Promote the eventual development of a Pacific Coast salmon fishery management plan.

8.2 *Areas, Fisheries, and Stocks Involved*

This plan covers salmon off the coast of Alaska east of 175° East longitude.

Two management units are established: the waters west of Cape Suckling and the waters east of Cape Suckling to Dixon Entrance.

There are presently no offshore salmon fisheries west of Cape Suckling in the FCZ with the exception of those historical fisheries managed by the State (North Pacific Act). These are the False Pass (South Peninsula), Cook Inlet, and Copper River net fisheries. These fisheries are technically in the FCZ, but are conducted and managed by the State of Alaska as inside fisheries. Thus, no fishery is discussed for the FCZ west of Cape Suckling.

Within the FCZ, the only offshore salmon fishery east of Cape Suckling is the troll fishery. Historically, this fishery has been and presently is conducted without regard to the FCZ-State jurisdictional boundary line. If this line is interpreted as a management boundary line, it artificially divides the historical fishing pattern and management of the power troll fishery. This causes a situation which ignores the mobility of the fishery and the stock distribution of the resource, and fails to recognize practical problems of enforcement and monitoring.

Stocks involved in this fishery include all five species of Pacific salmon, however, chinook and coho are the target species. Chinook originate from rivers in Southeast Alaska, British Columbia, and Washington/Oregon/California. The latter two groups are the predominant stocks. Most coho originate from Southeastern Alaska with a minor contribution from British Columbia.

8.3 *Management Measures*

Proposed measures for the conduct of the salmon troll fishery include size, sex, area, seasons and gear regulations which are complementary with existing State of Alaska regulations.

The use of limited entry is proposed as a method of meeting the objective of curtailing expansion of this fishery.

In-season monitoring of the catch remains the primary technique available for management of the fishery. The Alaska Department of Fish & Game presently has an in-season catch monitoring and reporting system. This system should serve as the basis for in-season management of the offshore fishery. Refinement of this system of monitoring and reporting through the regulations suggested in this section should satisfy the critical data needs necessary for management of the troll fishery. As landings are made outside Alaska these data will be transmitted to the Council.

The Council intends that if any of the following management measures be disapproved, the balance of the plan should still be implemented.

8.3.1 *Domestic*

8.3.1.1 *Season, Gear, and Area Restrictions*

A. Seasons: 1. All waters east of the longitude of Cape Suckling are open to troll fishing for chinook, chum, sockeye, and pink salmon between April 15 and October 31.

All waters west of the longitude of Cape Suckling have no open season.

2. All waters east of the longitude of Cape Suckling are open to the troll fishery for coho between June 15 and September 20.

All waters west of the longitude of Cape Suckling have no open season.

3. All waters are open to sport fishing year-around.

Rationale. Alaskan inshore and coastal waters are open to chinook troll fishing by regulation from April 15 through October 31. This period corresponds with seasonally mild weather. Little fishing effort occurs beyond three miles during the coastal and inshore closure because of prohibitive weather. Effort in the offshore area increases from the April 15 opening of the coastal and inshore waters until it peaks in late July. After July, much of the effort shifts to the inshore and coastal areas.

The coho season inside 3 miles is presently June 15 through September 20. June 15 is approximately the date when coho appear in coastal and inshore waters in fishable numbers. The major catches usually occur after July 15, but by the September trolling date most trollers have quit fishing.

Regulatory seasons for the troll fishery are considered unrestrictive. The relatively long season allows distribution of catch during the entire migration of the many stocks and does not key fishing by time to specific stocks. It does, however, allow some chinook stocks to be fished during more than one year.

State waters west of the longitude of Cape Suckling have been closed to commercial troll fishing since 1973. Proposals have been made by commercial troll groups to re-open these waters to trolling, but the Alaska Board of Fisheries has ruled against such openings on the grounds that the troll fishing effort would be directed toward chinook salmon stocks that are already fully harvested in inshore fisheries. For these reasons, it is recommended that the waters west of Cape Suckling remain closed to troll fishing.

Cape Suckling was adopted as a boundary line for this plan because (1) of historical precedence, (2) of compatibility requirements with existing contiguous state management areas, and (3) certain concepts of stock separation.

Cape Suckling is a well known landmark that has traditionally been regarded as the northern and western boundary of the Southeast Alaska Region. It also provides a reasonable separation between areas in which the troll fleet has and has not consistently operated. Although exact areas of stock separation are not known (if indeed exact areas exist) it is known that the farther north one proceeds the higher the portion of northern salmon stocks, i.e. Prince William Sound, Cook Inlet and Bristol Bay, are encountered. Very few salmon tagged in Southeast Alaska

have been recovered west of Cape Suckling and vice versa.

The inability to predict stock run strength makes it impractical to adjust the opening dates of chinook season or to establish a mid-season closure prior to the beginning of the seasons.

The ideal conduct of the offshore fishery requires that uniform regulations for seasons and areas be adopted for the Fishery Conservation Zone and state waters.

Sport fishing regulations adopt State of Alaska (S.E. Region) regulations.

B. Gear: 1. Fishing with nets for salmon is not permitted in the area covered by this plan except as discussed under Section 8.2.

2. Commercial fishing is allowed only by trolling gear in the FCZ east of Cape Suckling.

3. Sport fishing is to be done only with a single line held in the hand or attached to a hand-held or closely attended rod. The line may not have more than one artificial lure or two flies or two single hooks attached.

Rationale. The ban on net fishing in offshore waters has been in effect since the mid-1950's by consent of the coastal fishery states and international agreement (see Sec. 3.2.1.1.).

The line limit and method for sport fishermen adopt the present State of Alaska regulations for Southeast Alaska.

8.3.1.2 Size and Sex Restrictions and Landing Requirements

A. Size: 1. Chinook salmon—28-inch minimum total length limit (with head on), 23 inches from the midpoint of cleithral (gill) arch to the tip of the tail (with head off).

2. All other species—None.

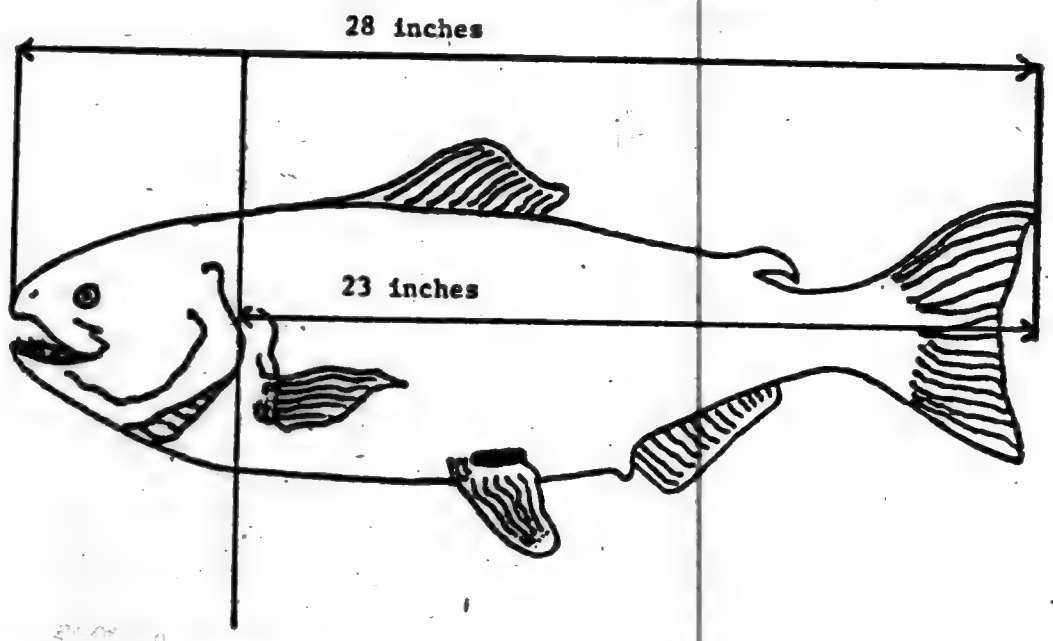
B. Sex: None.

C. Landing Requirements: Fin-clipped salmon must be landed with the head on.

D. Sport Bag Limit: Daily bag and possession limit of six (6) salmon, only three (3) of which may be chinook salmon.

Rationale. Chinook harvested by the troll fishery in Alaska do not attain maturity before two years of ocean residence. The average size of chinook with one and two years ocean residence is usually less than 28 inches (total length); most of these fish would be available to the troll fisheries and possible other fisheries in subsequent years if they were not harvested or if there were no mortality due to hooking and releasing.

The minimum size for chinook in Council waters is 28 inches total length, except that fish landed with the head off must measure at least 23 inches from the mid-point of the cleithral (gill) arch to the tip of the tail. (This regulation, while specific for the Fishery Conservation Zone (3–200 miles) is the same in State waters (0–3 miles).



Legal length—chinook salmon

No minimum size restriction is proposed for coho because coho harvested by the troll fishery in Alaska are available only during the second and last year of ocean residence. There is little preseason incidental catch of coho and weights for landings after that date average in excess of five pounds dressed.

Pink salmon caught in the Alaska troll fishery are also in their final year of life and are sufficiently large so that no size limit is necessary.

Chum and sockeye salmon are caught in insignificant quantities in the Alaska troll fishery. No size restrictions are recommended for these two species.

All troll-caught salmon landed fresh are dressed, head on. In recent years, freezing the catch at sea has become more common. The heads of all salmon are generally removed at sea before the fish is frozen. This process assures maximum quality and minimum handling by buyers.

A method of tagging salmon has been developed by implanting a micro-wire tag in the snout and clipping the adipose fin. At present there are several million salmon tagged in this manner at liberty in the Pacific Ocean. If landing tagged salmon with heads removed is allowed, valuable scientific information on migration patterns and hatchery contributions to the fishery will be lost. Tagged fish have the adipose fin removed; therefore, requiring these fish to be landed with head attached allows retrieval of the tag.

The sport fishery daily and possession bag limit matches that adopted for the S.E. Alaska coastal area by the Alaska Board of Fisheries.

8.3.1.3 *Limited Entry*

Council Findings as to Limited Entry

1. That limited entry or limited access into the Alaska power troll fishery in the FCZ is necessary to maintain present levels of effort and catch.

2. That the use of other management techniques in conjunction with a limited access system will help promote sound conservation and management practices and provide flexibility to deal with fluctuating biological and ecological factors, since other management techniques will operate more efficiently and with better results when used in conjunction with this limited access system;

3. That an ocean salmon management plan without a limited access system will in all probability result in increased effort by power troll fishermen who have so far fished exclusively in State waters, by fishermen excluded from fisheries by the limited entry program of the State of Alaska, and by fishermen from the State of Washington and elsewhere who are adversely affected by Federal Court decisions on resource allocation in their present fisheries.

4. That limited entry for the FCZ is necessary because alternative management measures, i.e., a ban on all trolling in the FCZ or a separate FCZ catch quota, are either too disruptive of present social and economic structure or too costly to administer and enforce.

General

Limited access into the power troll fishery in the Fishery Conservation Zone (FCZ) is important as one of the management tools needed to carry out the North Pacific Fishery Management Council's intention to stabilize at present levels the rate of interception of mixed stocks of salmon by stabilizing effort in that fishery.

The North Pacific Fishery Management Council recognizes that the implementation of limited entry as a management tool cannot by itself stabilize the rate of interception. It will help to achieve that goal most effectively in conjunction with other techniques, such as some form of quota, and/or restrictions on time, area, gear, size, etc. In this context, stabilizing the harvest may include the amount of harvest, the average size and weight of fish, species composition, and other considerations. This may mean that future phases of the limited access system being initiated could be tied to effort.

No greater qualification toward the initial issuance of a Federal entry permit will be gained by fishing after December 31, 1977.

Adopted Limited Entry Program

Any person who currently holds a valid State of Alaska Commercial Fisheries Entry Commission (CFEC) Power Troll Permit may fish in the FCZ off Alaska. This permit retains its original status relating to all of the restrictions and conditions placed on the permit and the bearer by the CFEC.

The Council has examined the methods and criteria utilized by the State of Alaska when it enacted the limited entry system that resulted in 950 power troll entry permits. Of particular significance to the Council is the fact that the State system was adopted after considering participation by fishermen throughout the troll fishery, including what is now the federally managed FCZ. The Council believes that Alaska's limited entry system and the data upon which it is based most accurately reflect the extent of present participation in and economic dependence on the entire troll fishery.

While it is not possible at this time to state conclusively that the optimum number of permits for the power troll fishery is 950, it is clearly not in excess of the number. Adopting the State scheme will thus establish an upward limit on the number of vessels which, while not an absolute limit on all additional effort, since upgrading is not prohibited, will help promote conservation.

In addition any power troll fisherman who (a) has fished in the FCZ off Alaska in any one of the base years 1975, 1976, or 1977 but (b) did not or does not have a State of Alaska CFEC Power Troll Permit and (c) does not fish or land fish in State waters, and (d) upon proof of said fishing during 1975, 1976, or 1977 (e) is entitled to a Federal Limited Entry Permit which is nontransferable and upon specific retirement for any reason that permit is retired from the fishery.

Data from 1977 indicate that a half dozen power trollers fished off Alaska in the FCZ. Insofar as these vessels fish only in the FCZ (as evidenced by Washington fish tickets and an absence of an Alaskan CFEC permit), their economic dependence can be said to be completely within the FCZ. Additionally, those power trollers have historically fished in the FCZ for the past several years.

This action is intended to maintain a fishing privilege gained by these power troll fishers, but is not designed or intended to create a new privilege (i.e., a State limited entry permit) or a transferable property right.

For exact regulations, restrictions, conditions and procedures see 50 CFR Part 674, Domestic Regulations. For a further discussion of the rationale and data base used to implement the CFEC and hence the Council's limited entry program (see Appendix 8.3.1.3).

8.3.1.4 *In-Season Adjustments*

In-season adjustment of time and area management of shellfish and finfish by fisheries by the State of Alaska in recent years compares favorably with the management of most other fisheries in the United States and elsewhere. The success of this management program may be attributed largely to the deliberate flexibility built into the governing system by State law and the resultant ability of the Board of Fisheries and the Department of Fish and Game to make timely changes in the regulations to meet changing conditions and needs. This flexibility, which has been realized through annual revision of the regulations by the Alaska Board of Fisheries, together with emergency orders and regulations issued inseason by the Board and the Department, has resulted in many benefits:

(a) New information and data relating to resource management (e.g. assessments of actual resource conditions) can be immediately incorporated into the management program, even when the fishery is in progress.

(b) Unanticipated resource conditions can be reacted to immediately to prevent overharvest or wasteful underutilization.

(c) Unexpected developments with respect to economic and social factors (natural disaster, changes in marketing conditions, cannery fires) can be accommodated so the resources are distributed and allocated in a manner which maximizes overall public benefits.

(d) Management philosophies and policies formulated through legislative and administrative processes may be carried out in the field by personnel familiar with local conditions.

(e) Management approaches which are proving unworkable or which are imposing undue hardships may be changed at once.

(f) Necessary inseason refinements in management programs can be accomplished primarily in the field with the advice and assistance of the users most directly affected.

8.3.1.5 *The Issuance of Field Orders*

A. The Council finds that the Optimum Yields in this plan, which are based upon historic performance of the fishery, economic, and other conditions in advance of the actual conduct of the fishery, may be found to be misspecified in light of unpredicted and unanticipated adverse or favorable stock conditions which are revealed inseason. Under such circumstances, the Council further finds it appropriate for conservation and management purposes, that the Regional Director of the National Marine Fisheries Service, Alaska Region, or his designee, in close coordination with the Commissioner of the Alaska Department of Fish and Game, take immediate action by issuing field orders adjusting time and/or area restrictions; therefore, this plan provides that seasons and areas shall be subject to inseason adjustment by the Regional Director of the National Marine Fisheries Service. The Regional Director or his designee may adjust season opening and closing dates based upon the following considerations:

1. The effect of overall fishing effort within a major statistical area;

2. Catch per unit effort and rate of harvest;

3. Relative abundance of stocks within an area in comparison with preseason expectation;

4. The proportion of sublegal fish to legal fish being caught;

5. General information on the condition of stocks within the area;

6. Information pertaining to the optimum yield for stocks within the statistical area; or

7. Any other factors necessary for the conservation and management of the offshore salmon troll fishery.

B. In order to assume effective management of the salmon troll fishery resource as a unit through its range, inseason adjustments made by the Regional Director must be coordinated with similar actions taken by the State regarding waters under State jurisdiction. It is necessary that the Regional Director, to the extent possible, act in conjunction with the Alaska Department of Fish and Game in order to effect uniformity of management in State waters and the Fishery Conservation Zone. As a result, any changes proposed by the Regional Director will be accompanied by advance notice to allow for opportunity to maintain such uniformity. In most cases, the Regional Director will exercise his authority on the basis of recommendations received from the Department, and will rely on the Department for season data, reports, and assessments necessary to make a determination as to the advisability of any action contemplated. In all cases, continuous consultation between ADF&G and the Regional Director will be maintained.

It is expected that the actual opening and/or closing dates for the seasons prescribed in this plan will be adjusted by the Regional Director pursuant to the authority described in this section. Such action is not considered emergency action that would require amendment of the plan; adjusting the season opening and closing dates is meant to be an inherent part of the seasons themselves. For this reason, any adjustment made by the Regional Director or his designee will be effected by the issuance of a field order and announcement in the manner currently utilized by the State of Alaska.

Any inseason amendment of the plan's season or area or other implementing regulations beyond the scope of the above authority will be accomplished by emergency regulation, as provided by Section (305e) of the Act, in accordance with the recommendation of the Regional Director following consultation with the Commissioner of the Department of Fish and Game. It is understood that time will often be of the essence in making effective the aforementioned adjustment and changes.

8.3.1.6 *Troll Fishery Managed From Surfline to 200 Miles*

A management unit for the power troll fishery will encompass all the waters east of Cape Suckling between the coastline and the 200-mile limit. The Council is responsible for the FCZ (3–200 miles) and the State maintains responsibility for the coastal waters (0–3 miles). However, the management objectives and resulting management regime is similar in both waters since the fishery is considered continuous from 0–200 miles and handled by cooperative agreement.

8.3.2 *Foreign* (8.3.2.1–4)

As has been previously stated (Section 7.0) it is proposed that there be no foreign fishing allowed in Council waters except as provided by international bilateral agreements or reciprocal fishing agreement.

8.3.3 *Relationship of the Recommended Measures to Existing Applicable Laws and Policies*

It is the intent of this plan to promulgate regulations for waters under Council jurisdiction that will, to the extent possible, be compatible with existing Alaska State, Federal, and other Fishery Management Council regulations.

8.3.3.1 *Other Fishery Management Plans Prepared by a Council or the Secretary*

All preliminary fishery management plans and all Council fishery management plans address salmon as a prohibited species to all foreign fishing and to all domestic fisheries not specifically addressed by this plan. These plans include the following:

PMP—Snail Fishery of the Eastern Bering Sea
PMP—Trawl and Herring Gillnet Fishery of the Bering Sea and Aleutian Islands
PMP—Sablefish Fishery of the Eastern Bering Sea and Northeast Pacific
PMP—Shrimp of the Eastern Bering Sea and Gulf of Alaska
FMP—Commercial Tanner Crab Fishery off the Coast of Alaska
FMP—Gulf of Alaska Groundfish Fishery
FMP—Groundfish Fishery for the Bering Sea and Aleutian Islands Area.

An FMP adopted by the Pacific Fishery Management Council for salmon has some bearing on the North Pacific Council's FMP. The following compares the regulatory measures of the North Pacific Council Fishery Management Plan and the Pacific Council Fishery Management Plan.

Management Plan:

1. *Seasons*

NPFMC—April 15 through October 31 for chinook.
—June 15 through September 20 for coho.
PFMC—May 1 through June 14 for all species *except* coho north of the Oregon/California border.
—April 15 through May 14 for all species *except* coho south of the Oregon/California border.
—July 1 through September 15 for all species north of Point Grenville.
—July 1 through October 31 for all species from Point Grenville to Cape Falcon.
—June 15 through October 31 for all species from Cape Falcon to the Oregon/California border.
—May 14 through September 20 for all species south of the Oregon/California border.

2. *Gear*

NPFMC—power troll and sport gear.
PFMC—power troll gear, hand troll gear, and sport gear allowed (varies with management areas).
—single and barbless hooks except bait hooks and salmon plugs may be barbed only during all early seasons denoted by prohibition against landing coho.

3. *Area Restrictions*

NPFMC—all waters west of the longitude of Cape Suckling closed to commercial troll fishing.
PFMC—waters north of Cape Falcon closed to commercial troll fishing June 15–30.

4. *Size*

NPFMC—28-inch minimum length for chinook; all fin-clipped salmon to be landed head-on; no length restriction for other species.
PFMC—28-inch minimum length for chinook north of Cape Falcon; 26-inch minimum length for chinook south of Cape Falcon; 16½-inch minimum length for coho north of Oregon/California border; 22-inch minimum length for chinook south of Oregon/California border; no length restriction for other species.

8.3.3.2 *Federal Laws and Policies*

In Council waters there are no existing troll fishery policies promulgated by the United States Federal Government (see Section 3.2.1.1).

8.3.3.3 *State Laws and Policies* (8.3.3.4)

The proposed regulations recognize that all State laws pertaining to vessels registered under the laws of the State, including State landing laws, will continue to apply to fisheries addressed in these regulations.

8.4 *Enforcement Requirements*

Enforcement of fishery regulations in Council waters will be the responsibility

of the U.S. Coast Guard and the National Marine Fisheries Service. Enforcement of regulations in State waters, including landing laws for salmon caught in Council waters, will be the responsibility of the Alaska Department of Public Safety in accordance with P.L. 94–265 and Alaska Statute Title 16, 5 AAC, of the Fish and Game code.

8.5 *Reporting Requirements*

Reporting requirements by domestic fishermen and processors are identical to existing State requirements as set forth in Alaska Statutes Title 16.

Fishermen intending to land fish outside the State of Alaska must forward to the Regional Director, National Marine Fisheries Service, the following: name and permit number, vessel name, total number of salmon by species, catch area statistical number, number of lines used, and port of landing. The report must be made within 72 hours of the sale by way of a completed fish ticket or other document of the State where landed.

Since little recreational fishery exists in the waters under Council jurisdiction, no reporting requirements are presently provided for under this plan.

Reporting catches by statistical area will be done in accordance with the redefined statistical area designations as issued by the Alaska Board of Fisheries. (See following)

8.5.1 Data Standards

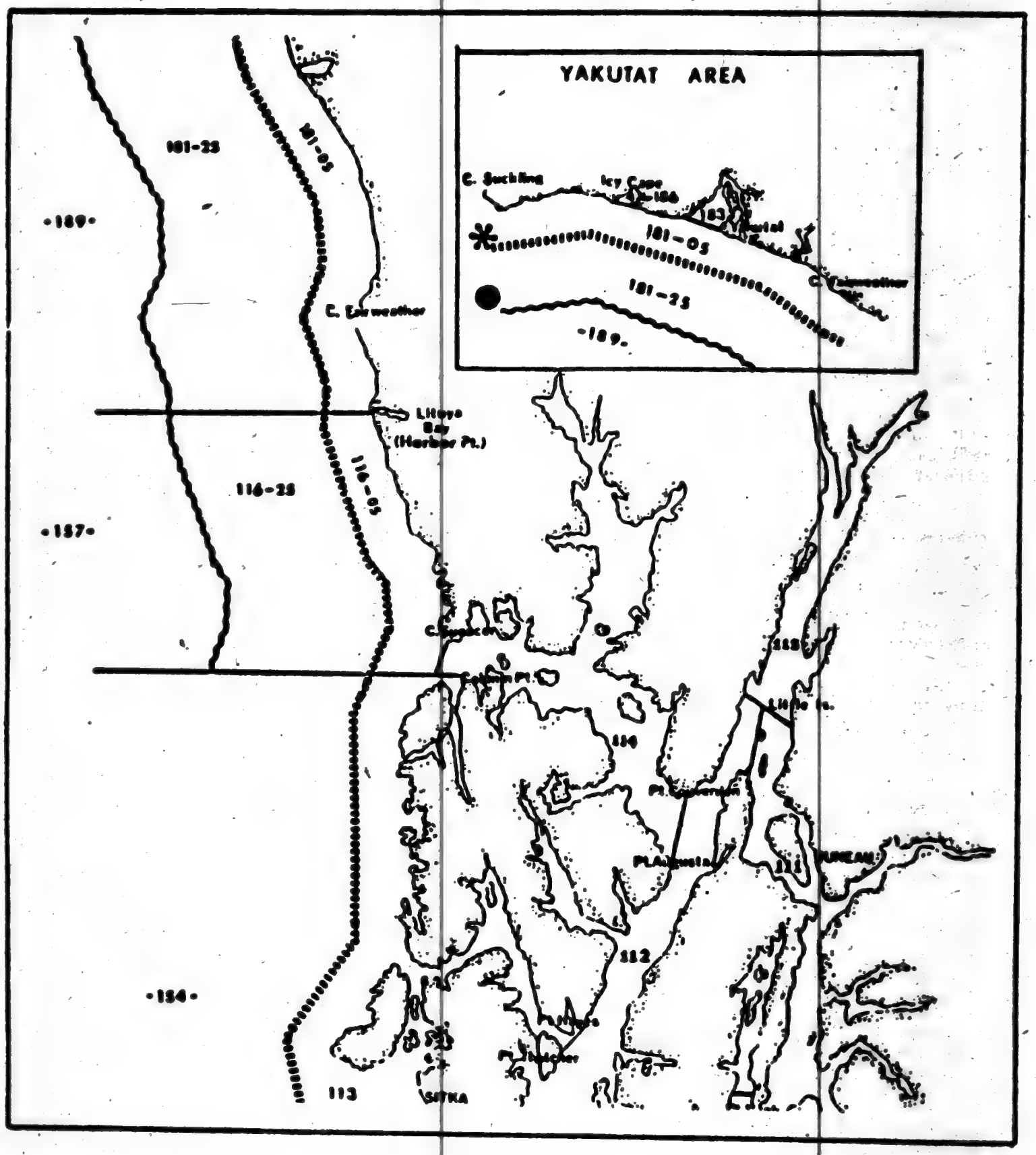
All data will be reported in accordance with the U.S. system (i.e., in pounds and inches).

8.5.2 *Time and Place of Reporting.*

Landings from the Alaska offshore troll fishery in numbers of fish, pounds, and species will be recorded by the processors at the time of delivery. The boat identification number, fisherman's name, limited entry permit number and additional information as required will also be recorded at the time of sale. A standard form (fish ticket) will be completed with each delivery and forwarded to the Alaska Department of Fish and Game (Section 4.6). Alaska Department of Fish and Game requires that an "intent to operate" form be filed prior to any commercial buying or processing operation for fishery resources. Further, an annual report is also required from all commercial operators. This includes the type of operation (buyer/processor, shorebased/floater, fish-frozen/cured/canned), the peak month employment, the pounds and price by species paid to fishermen, and the pounds and value by product form of all processing.

BILLING CODE 3510-22-M

SOUTHEASTERN ALASKA STATISTICAL AREAS (Northern part)



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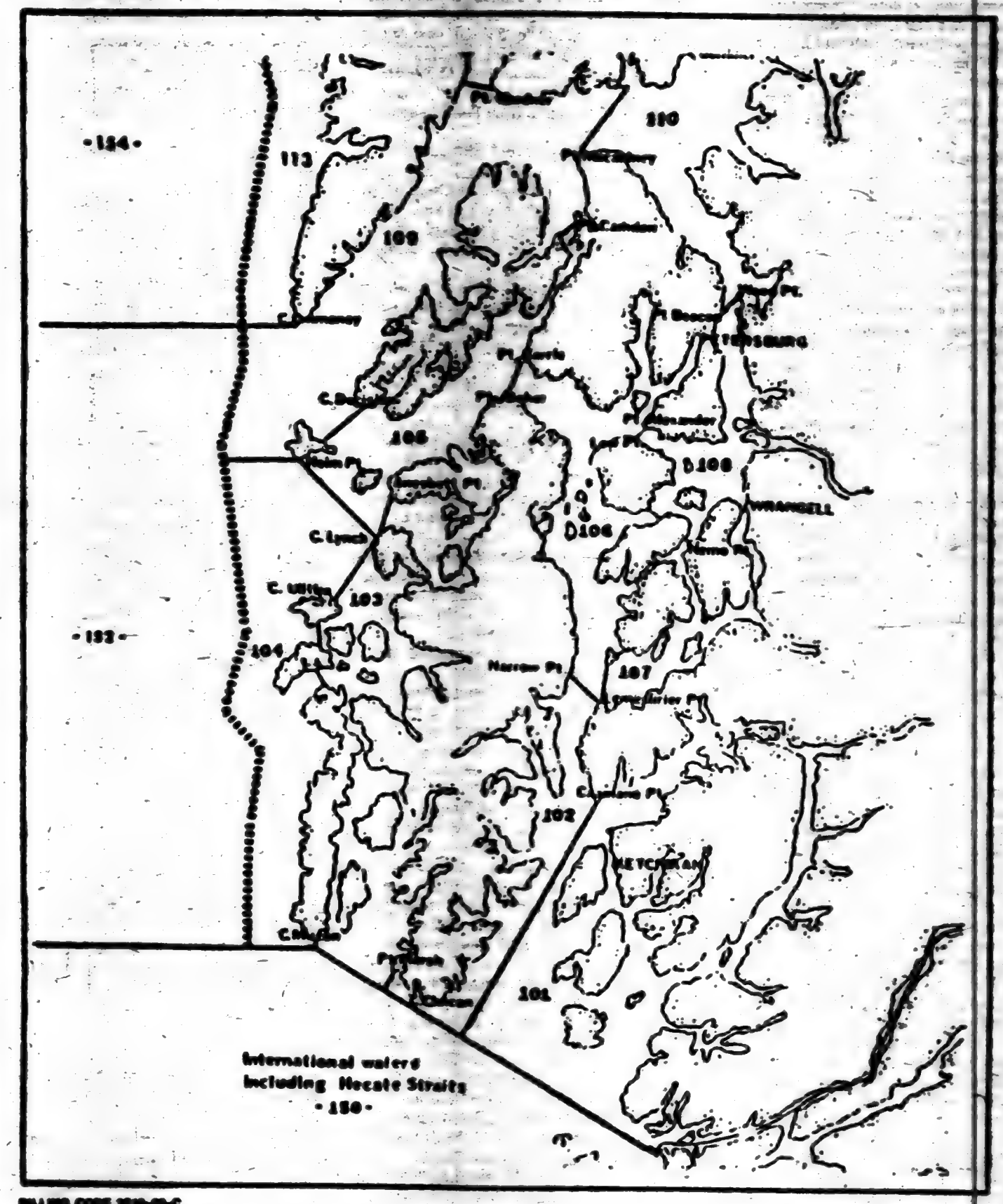
SOUTHEASTERN ALASKA STATISTICAL AREAS (Southern part)



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Statistical Areas in Southeastern Alaska for Reporting Troll Catches on Fish Tickets

101—All contiguous waters of Alaska east and north of a line from Caamano Point to a point on the International Boundary at 131°45' W. longitude.

102—All waters south of a line from Narrow Point to Lemesurier Point, west of Area 101 to a line from Point Marsh light to 132°17'30" W. longitude on the International Boundary.

103—All waters north of a line from Point Marsh light to 132°17'30" W. longitude on the International Boundary to Cape Muzon, and east of a line beginning at Eagle Point on Dall Island and passing successively through Point Arboleda, Point San Roque, Cape Ulitka, Cape Lynch to the southwest entrance point of Halibut Harbor on Kosciusko Island, and south of the latitude of Aneskett Point.

104—All waters (within Alaska's three mile limit) north of the latitude of Cape Muzon, 54°39'50" N., west of Area 103, south of the latitude of Helm Point, 55°49'30" N., and south of a line from Helm Point on Coronation Island to Cape Lynch.

105—Waters of Sumner Strait, north and east of a line from Cape Decision to Helm Point to Cape Lynch to the southwest entrance point of Halibut Harbor, and north of the latitude of Aneskett Point, west of a line from Point Baker to Point Barrie, and south of a line from Point Camden to Salt Point light in Keku Strait.

106—All waters of Clarence Strait north of a line from Narrow Point to Lemesurier Point to Ernest Point to the most southerly point on Etolin Island, Stikine Strait south of the latitude of Round Point, Sumner Strait west of a line from Point Alexander to Low Point, and east of a line from Point Baker to Point Barrie, Wrangell Narrows, south and west of a line from Prolewy Point to the northern tip of Mitkof Island, and all waters of Duncan Canal.

107—All contiguous waters of Ernest Sound and Bradfield Canal east of a line from Lemesurier Point to Ernest Point to the most southerly point of Etolin Island, Zimovia Strait south of the latitude of Nemo Point, and Eastern Passage and Blake Channel south of a line from Babbler Point to Hour Point.

108—Waters of Frederick Sound south of a line from Wood Point to Beacon Point (excluding Wrangell Narrows), Stikine Strait, Sumner Strait, Zimovia Strait and Eastern Passage inside a line from Point Alexander to Low Point to Round Point to Nemo Point to Hour Point to Babbler Point.

109—All waters of Frederick Sound and Chatham Strait south of the latitude of Point Gardner, south of the latitude of Elliott Island and west of a line from Elliott Island to Point Macartney, north and west of a line from Point Camden to Salt Point light, north of a line from Cape Decision to Helm Point, and all waters (within Alaska's three mile limit) north of the latitude of Helm Point, 55°49'30" N., and south of the latitude of Cape Ommaney, 56°10'00" N.

110—Frederick Sound, Stevens Passage and contiguous waters north of a line from Beacon Point to Wood Point, east of a line from Point Macartney to Elliott Island, north of the latitude of Elliott, Seymour Canal south of 57°37' N. latitude and south of a line from Point League to Point Hugh.

111—Stephens Passage and contiguous waters north of a line from Point League to Point Hugh and Seymour Canal north to 57°37' N. latitude, south of the latitude of Little Island Light and east of a line from Little Island Light to Point Retreat Light.

112—All waters of Lynn Canal and Chatham Strait south of the latitude of Little Island Light to the latitude of Point Gardner, west of a line from Little Island Light to Point Retreat Light, east of a line from Point Couverden to Point Augusta, and east of a line from Point Hayes to Point Thatcher.

113—All waters (within Alaska's three-mile limit) between the latitude of Cape Ommaney, 56°07'15" N., and the latitude of Column Point, 58°07'15" N., and west of a line from Point Hayes to Point Thatcher.

114—All waters of Icy Strait west of a line from Point Couverden to Point Augusta, east of the longitude of Cape Spencer, 136°39'30" W., and north of the latitude of Column Point, 58°07'15" N.

115—All waters of Lynn Canal north of the latitude of Little Island Light.

116—All waters (inside twelve miles) north of the latitude of Column Point, 58°07'15" N., west of the longitude of Cape Spencer, 136°39'30" W., and south of the latitude of Harbor Point, 58°36'45" N., at the southern entrance of Lituya Bay [Includes the P.D. GROUNDS]

116–05—All waters of Area 116 inside Alaska's three-mile limit.

116–25—All waters of Area 116 offshore between three and twelve miles.

152—All waters (outside Alaska's three-mile limit) north of the latitude of Cape Muzon, 54°39'50" N., and south of the latitude of Cape Ommaney, 56°10'00" N.

154—All waters (outside Alaska's three-mile limit) north of the latitude of Cape Ommaney, 56°07'00" N., and south of the latitude of Column Point, 58°07'15" N.

157—All waters (outside twelve miles offshore) north of the latitude of Column Point, 58°07'15" N., and south of the latitude of Harbor Point, 58°36'45" N. [The FAIRWEATHER GROUNDS; West Bank, East Bank, and Ham Bone]

181—All waters (inside twelve miles) north of the latitude of Harbor Point, 58°36'45" N., at the southern entrance of Lituya Bay and east of the longitude of Cape Suckling, 143°53'00" W.

118–05—All waters of Area 181 inside Alaska's three-mile limit.

118–25—All waters of Area 181 offshore between three and twelve miles.

189—All waters (outside twelve miles offshore) north of the latitude of Harbor Point, 58°36'45" N., and east of the longitude of Cape Suckling, 143°53'00" W.

8.6 *Research requirements*

The data base upon which this Fishery Management Plan is formulated requires refinement and expansion; the following areas are identified as needing further research:

1. Origin(s) and sizes of stocks (coho and chinook),

2. Migration and timing of runs (coho and chinook),

3. Foreign and domestic interception rates (chinook and coho),

4. Fleet participation and catch-per-unit-effort (coho and chinook),

5. Interaction between user groups; gear conflicts (coho and chinook),

6. Escapement requirements (coho and chinook), and

7. Economic data base.

In regards to items 1 and 2 there is an urgent need to establish the magnitude of the chinook stock contributions of the Situk, Alsek, Stikine, Taku, Chickamin, and Unuk Rivers to the troll fishery in both Council and Alaska State waters. There is presently no stock size or catch rate information for the management of these stocks and the protection of their escapement requirements.

8.7 *Permit Requirements*

Domestic requirements are covered in Section 8.3.1.4. Possible foreign fishery activities would involve Canada only through a bilateral agreement; no individual fishery permits would therefore be required.

8.8 *Financing Requirements* (8.8.1, 8.8.2)

The economic value of salmon resources and the complexities of their management make salmon research and management priority budget items for the Alaska Department of Fish and Game. Additional management requirements will necessitate additional funding.

Presently the only new direct cost will be for the continued operation of the salmon management planning team. This team will be responsible for continuing evaluation and revision of the plan as circumstances dictate.

Enforcement of regulations under this Plan will be a cooperative effort among the State, National Marine Fisheries Service, and Coast Guard. It is expected these additional enforcement duties will require some increase in enforcement staffs. The National Marine Fisheries Service and the U.S. Coast Guard anticipate increases in their appropriations and staff to

accommodate the new extended jurisdiction law (200-mile limit).

Revenues are expected to approximate the previous year (see Section 3.7, Appendix 3.0).

9.0 Statement of Council Intentions To Review This Plan After Approval by the Secretary

The North Pacific Fishery Management Council will, after approval and implementation of this plan by the Secretary, maintain a continuing review of the fisheries managed under this plan by the following methods.

1. Promote the development of a Fishery Management Plan for all salmon off Alaska to deal with the management regimes and resource in the State's waters and the FCZ.

2. Maintain close liaison with the management agencies involved, usually the Alaska Department of Fish and Game and the National Marine Fisheries Service, to monitor the development of the fisheries and the activity in the fisheries.

3. Promote research to increase its knowledge of the fishery and the resource, either through Council funding or by recommending research projects to other agencies.

4. Conduct public hearings at appropriate times and in appropriate locations, usually at the close of a fishing season and in those areas where a fishery is concentrated, to hear testimony on the effectiveness of the management plans and requests for changes.

5. Consideration of all information gained from the above activities and development, if necessary, of amendments to the management plan. The Council will also hold public hearings on proposed amendments prior to forwarding them to the Secretary for possible adoption.

10.0 References

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11.0 Appendices

11.1 *Appendix I—Supportive Data*

Note.—Appendix I, consisting of Tables AI–1 through AI–5 and Figures AI–1 and AI–2 is referenced but not included here. This material consists of catch statistics detailing gear, week, number of boats, landings, and catch (both in number of fish and pounds, by species and area). Appendix I material is on file with the North Pacific Fishery Management Council and may be obtained from either the council or from the Alaska Department of Fish & Game, Commercial Fisheries Division.

11.2 *Appendix II*

Regulatory-Definitions

1. *Act* means the Fishery Conservation and Management Act of 1976, Public Law 94–265 (16 U.S.C. 1801–1882).

2. *Authorized Officer* means: a. Any commissioned, warrant, or petty officer of the Coast Guard;

b. Any enforcement agent of the National Marine Fisheries Service;

c. Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce or the Commandant of the Coast Guard to enforce the provisions of the Act;

d. Any Coast Guard personnel accompanying and acting under the direction of any person described in subparagraph (a) of this paragraph.

3. *Commercial fishing* means fishing for the purpose of sale or barter.

4. *Fishing* means: a. The catching, taking, or harvesting of fish;

b. The attempted catching, taking, or harvesting of fish; or

c. Any other activity which can reasonably be excepted to result in the catching, taking or harvesting of fish.

5. *Fishing vessel* means any boat, ship, or other craft.

6. *Landing* means bringing fish to shore or off-loading fish from a fishing vessel.

7. *Salmon* means any anadromous species of the family *Salmonidae*, genus *Oncorhynchus*, commonly known as salmon, including but not limited to: Chinook (or King) salmon—*Oncorhynchus tshawytscha;* Coho (or Silver) salmon—*O. kisutch;* Pink (or Humpback) salmon—*O. gorbuscha;* Sockeye (or Red) salmon—*O. nerka;* and Chum (or Dog) salmon—*O. keta.*

8. *Salmon length* means the shortest distance between the tip of the snout or jaw (whichever extends farther) and the

tip of the longest lobe of the tail, measured while the salmon is lying on its side, without resort to any force (including squeezing the tail) or mutilation of the salmon.

9. *Power Troll Gear* means equipment used for commercial fishing which consists of one or more lines used to drag lures behind a moving vessel, which lines originate from a powered spool or receptacle fastened to the vessel, and the extension or retraction of which is directly to the spool or receptable without disengaging any gurdy or outboard arm from its fixed position on the vessel.

11.3 *Appendix III*

Management Areas: The North Pacific Council Management Area includes the entire Fishery Conservation Zone in the Arctic Ocean, Bering Sea, and North Pacific Ocean within the following boundaries:

a. All waters east of the northern U.S.–U.S.S.R. Convention Line of 1867, thence southeast to 175° east longitude, thence east to the longitude of Cape Suckling;

b. All waters east of the longitude of Cape Suckling to the U.S.-Canada International Boundary at Dixon Entrance.

General Restrictions: a. No person shall use nets to fish for solmon other than in those areas permitted under the provisions of this plan.

b. No person shall take any species of salmon:

1. Which is less than the minimum size (measured in terms of the salmon's length as defined in Section 8.3.1.2) specified in these regulations;

2. During closed seasons or in closed areas specified in these regulations;

3. By means of gear or methods prohibited by these regulations.

c. No person shall possess, have custody, control, ship, transport, offer for sale, sell, purchase, import, or export any species of salmon or part which was taken in violation of the Act, these regulations, or any other regulation issued under the Act.

d. No person shall possess, while in the North Pacific Council Management Area, any salmon taken in the North Pacific Council Management Area for which a size limit is set forth in these regulations, in such condition that its size cannot be determined.

e. No person shall fish for salmon while on a vessel which has aboard:

1. Any salmon which is less than the minimum length for that species in the Management Area where the fishing is taking place; or

2. Any species of salmon for which the season is closed in the Management Area where the fishing is taking place; or

3. Any salmon in such condition that its size cannot be determined.

f. No person, while on board a fishing vessel, shall mutilate or otherwise disfigure a salmon in a manner which extends its length to conform to any minimum size requirements specified in these regulations.

g. No person shall land any salmon taken in violation of the Act, these regulations, or any other regulations issued under the Act.

h. No person shall:

1. Refuse to permit an Authorized Officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this Act, these regulations, or any other regulation issued under the Act;

2. Forcibly assault, resist, oppose, impede, intimidate or interfere with any Authorized Officer in the conduct of any search or inspection described in subparagraph (1) of this paragraph;

3. Resist a lawful arrest for any act prohibited by these regulations; or

4. Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person knowing that such other person has committed any act prohibited by these regulations.

Penalties. Any person or vessel found to be in violation of these regulations will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Act.

Emergency regulations. The Secretary may issue emergency regulations, if and when needed, under 305(e) of the Act, announced by publication of a notice in the Federal Register.

Open seasons and areas. All open seasons shall begin at 0001 hours and terminate at 2400 hours on the dates specified herein. Unless otherwise specified, Pacific Daylight Time will apply.

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2. Stocks of all species of salmon throughout Alaska were being fully utilized by fishermen in existing in-shore fisheries. This contention has been supported in International North Pacific Fisheries Commission publications: Bulletin 10, (1962); Predin, et al. (1973). These documents successfully supported the United States case for maintaining the abstention principle relative to salmon fisheries by the Japanese on the high seas. This principle in effect stated that Japanese fishing for North American salmon stocks east of 175 west longitude would be prohibited if the United States could show that the stocks were being fully utilized by the domestic fisheries and were the subject of an on-going research and management program.

3. Statewide salmon populations including coho and chinook salmon stocks in many areas have declined since the early years of the fishery. This decline coupled with an increase in the total fishing effort being expended to harvest salmon stocks has insured that any surpluses in excess of broodstock requirements are not surplus to the needs of the existing fisheries. This is particularly true in the case of chinook and coho salmon where recreational fisheries have become a significant portion of the total harvest allocation within the last ten years. The Cook Inlet area has one of the largest stocks of chinook salmon north of Cape Spencer and south of the Bering Sea. The commercial harvest of this species has declined from a high of 187,000 fish in 1951 to a harvest in the 17 to 30,000 range in late 1950's and early 1960's. The commercial fishery on the major part of these stocks was closed in 1964. A total closure on commercial and recreational fishing for the major stocks was instituted in 1972. This closure is still in effect. Coho salmon in both Cook Inlet and Prince William Sound have experienced declines in the past 15 to 20 years and are the subject of intensive net fisheries.

4. The major concentration of chinook and coho salmon north of Cape Spencer is in Western Alaska. The Bristol Bay fishery is prosecuted by a large fleet of drift and set gillnetters in conjunction with the harvest of the predominant sockeye salmon. Harvest in the Yukon and Kuskokwim is carried out by the large fleet of primarily local residents fishing within the mouths of these major rivers. During the past 15 years to 20 years there has been a significant increase in the levels of effort for all salmon net fisheries in Alaska. These levels have recently been stabilized by the adoption of the State law that limits new entry into these heavily developed fisheries. Nevertheless, this new program has not resulted in any surplus fish availability beyond the legitimate and established needs of the existing fisheries.

5. Sound conservation practices demand that insofar as possible harvests be taken from specific stocks in relationship to their ability to sustain different levels of harvest on an annual basis. The State management program has attempted to accomplish this by fishing generally in the vicinity of the mouths of major spawning rivers or at least close to aggregrates of these rivers. The additional pressure of any offshore troll fishery catching mixed stocks of undetermined origin; harvesting immature fish that have not obtained maximum growth and confounding any attempts by the State to manage stocks based on escapement requirements, particularly when these stocks are already being used to their allowable maximum by carefully regulated inshore fisheries, would be contrary to rational management practices.

3.3.2.1 *Measures Employed To Regulate the Fishery*

Examination of regulations adopted over the last 80 years indicates that troll fleet harvests have been affected to a minor degree only. The first major regulation to control commercial fishing effort in saltwater occurred by an Act of Congress on June 26, 1906. This legislation provided for a 36-hour per week closure in all waters of Alaska. Rich and Ball (1933) state that, "they (the troll fleet) fished for years without the slightest regard for the fishery laws and regulations, assuming that line fishing was not subject to provisions of the law of 1906. In 1923 certain trollers were convicted for fishing during the weekly closed season, and since then this type of fishing has conformed in general to the usual regulations."

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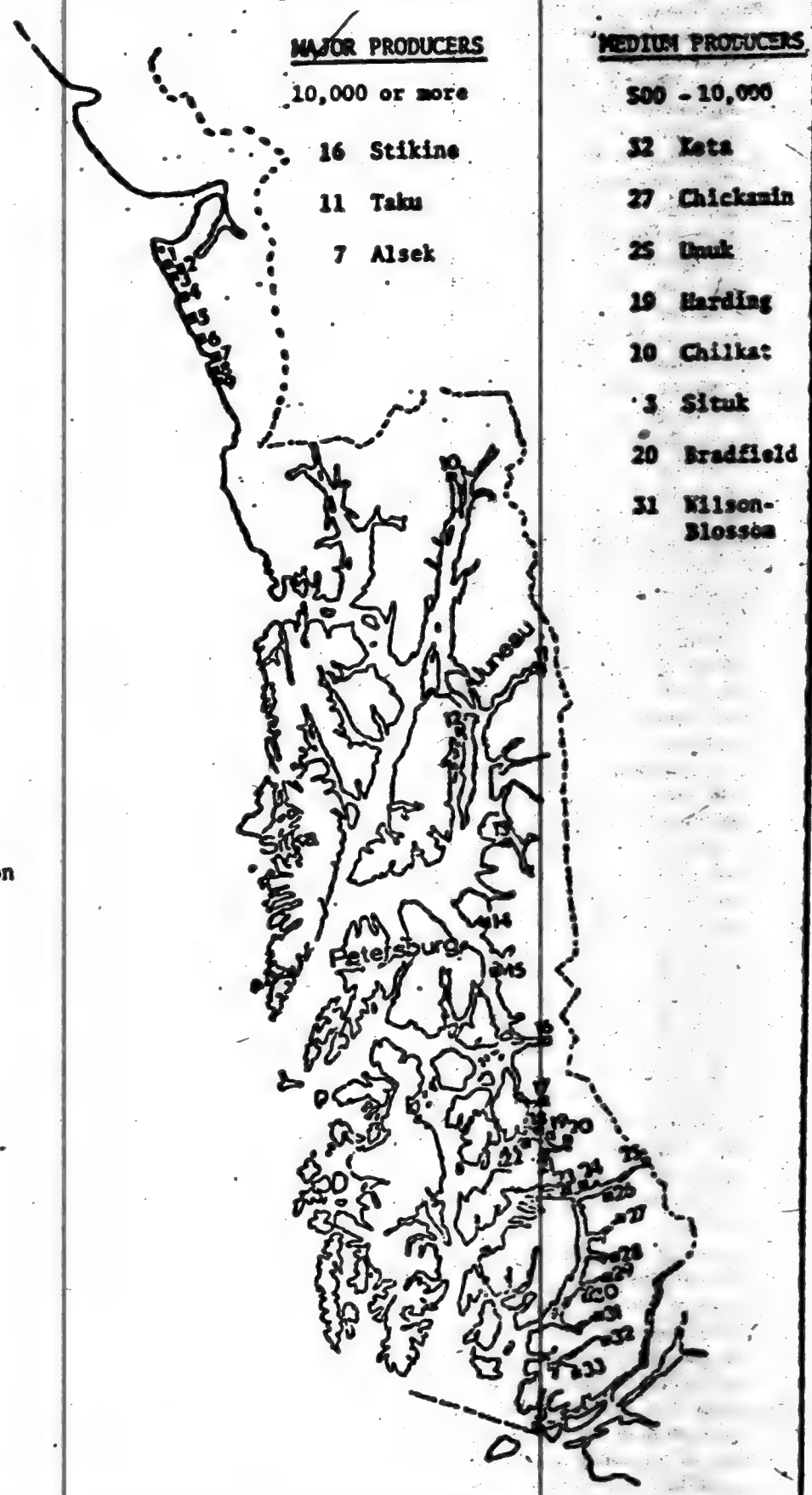
FIGURE 1

MINOR PRODUCERS	
500 or less	
33	Martin
30	Big Goat
29	Rudyard
28	Walker
26	Klahine
24	Grant
23	Herman
22	Anan
21	Eagle
18	Tom
17	Aaron
15	Muddy
14	Farragut
13	Chuck
12	King Salmon
9	Dohn
8	East
6	Akwe
5	Italio
4	Dangerous
2	Lost
1	Ankau

MAJOR PRODUCERS	
10,000 or more	
16	Stikine
11	Taku
7	Alsek

MEDIUM PRODUCERS	
500 - 10,000	
32	Keta
27	Chickamin
25	Unuk
19	Harding
10	Chilkat
3	Situk
20	Bradfield
31	Nilson-Blossom



Chinook Salmon River Systems in Southeastern Alaska.

Appendix 3.0—Description of Fishery

3.1 *Areas and Stocks Involved*

The ocean salmon troll fishery is a mobile fishery which presently extends from the U.S.-Canada International Boundary (Dixon Entrance) to Cape Suckling in the Gulf of Alaska. Many of the vessels also participate in other fisheries, such as the longline fishery for halibut and bottomfish, the albacore tuna fishery and the crab fishery. Some vessels also participate in other types of salmon fisheries, i.e., purse seining and gillnetting.

The mobility of ocean troll fishing fleets, mixtures of stocks, presence of several age-maturity classes, and the migratory nature of the various stocks involved make the management of the ocean salmon fishery extremely complex. These characteristics result in both the fishing fleet and the resource crossing interstate and international boundaries. The management of the salmon resource is further complicated by multiple gear utilization of many of the stocks.

Tagging conducted in the outside waters of Southeastern Alaska from west of Cape Fairweather to Dixon Entrance by the Alaska Department of Fisheries between 1950 and 1952 indicates that the outside troll fleet is highly dependent on chinook stocks that originate to the south. Of fish tagged in outside waters, 80 percent of the tag recoveries were made in non-Alaskan waters and over 53 percent of the river recoveries were made in the Columbia River, mostly from the fall run. It seems reasonable to assume that during the 1930s, when peak catches were made in Southeastern Alaska, the Columbia River stocks contributed to a greater degree than when the tagging program was conducted (see section 4.5).

Parker and Kirkness (1956) point out that direct application of results in "calculating the contributions of these rivers to the Southeastern Alaska troll catch should be made with discretion." They point out that factors such as varying recovery effort and application of tagging results to years other than those in which the experiments were conducted could cause errors in interpretation. Not having the necessary information to correct the errors the authors drew the conclusions that the Columbia and Fraser rivers were the two most important contributors to the *offshore chinook troll fishery* and other streams from southern Oregon to Southeastern Alaska contributed to a lesser degree.

The importance of the Columbia River to the offshore troll fishery had been established previously by the U.S. Bureau of Fisheries in a 1927 tagging operation on the west coast of Baranof Island. A total of 362 chinook were tagged and of the 36 recaptures, 22 were taken entering the Columbia River (Rich and Ball, 1933).

It appears that the decline of the chinook salmon stocks of the Columbia River have contributed greatly to the reduced troll harvest in Southeastern Alaska (Parker and Kirkness 1956; Ken Henry, NMFS, personal communication).

The contribution of chinook from western and central Alaska to the ocean salmon fishery appears to be insignificant to the present ocean salmon fishery.

Tagging studies indicate that coho and pink salmon harvested by the ocean troll fishery are primarily of Alaskan origin, although Washington State and Canadian coho do contribute to a small degree.

Recent tag recoveries of hatchery produced chinook have indicated a significant contribution to the Alaska troll fishery from Washington, Oregon and California.

3.2.1.2 *General Description of Fishing Effort*

The Alaska Board of Fish and Game in 1973 adopted regulations to prohibit trolling in State waters of Alaska west of Cape Suckling. The decision to close those waters was based on several factors:

1. Troll harvest in those waters had been relatively insignificant compared to other fisheries. For some years, no troll harvest was recorded. There was, however, an indicated interest to expand troll fisheries even to the Kodiak and Western Alaska areas.

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FIGURE 2

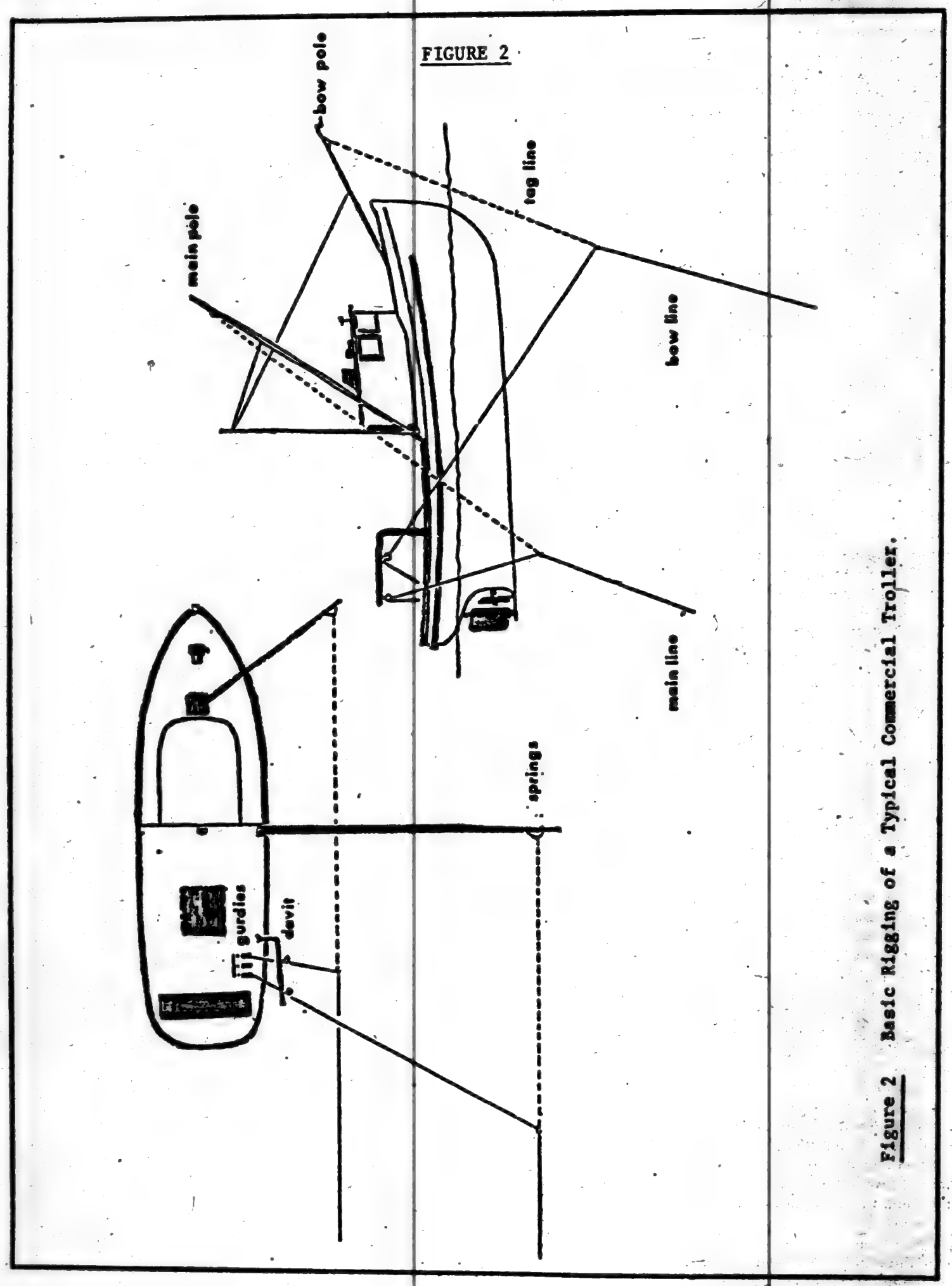

Figure 2 Basic Rigging of a Typical Commercial Troller.

The White Act, passed in 1924, stated that "there shall be allowed an escapement of not less than 50 per centum of the total number thereof. In such waters the taking of more than 50 per centum of the run of such fish is hereby prohibited." This law had no effect on the taking of chinook or coho as the size of the total run was impossible to predict or enumerate. In 1957 a coastwide regulation was adopted that closed the coastal and offshore troll fishery in Alaska from November 1 to April 14, imposed a limit of four lines and a 28-inch (fork length) minimum size for chinook. Net fishing in international waters was also prohibited by this time (see section 3.2.1.1). The winter closure was probably not effective in curtailing catches because inclement weather allows little effort during this time period. The effects of the 28-inch minimum are difficult to assess as fish buyers often refused to buy small chinook.

The troll season was restricted in inside waters in areas with concentrations of immature and maturing chinook are protected. The 28-inch fork length minimum size also applied to inside trolling.

Regulation of the amount of fishing effort in Alaska's commercial salmon fisheries was recognized as a necessity in the early 1900's. Many attempts failed due to the unconstitutionality of trying to restrict nonresident fishermen. The 1973 legislature created the Commercial Fisheries Entry Commission and began a new era in fisheries management. In 1974, that Commission began stabilizing effort levels in the already overcrowded salmon fisheries. All commercial fisheries are now monitored and limitations are being imposed for each fishery as optimal effort levels are reached.

In the power troll fishery, entry permits were originally issued to individual fishermen on the basis of the amount of participation in the fishery and the economic dependence on it. Once issued the permits are property of the permit holder and are freely transferable to anyone. The law withstood a constitutionality test up to the State Supreme Court level in *Isakson v. Rickey*. 550 P. 2d 359 (Alaska 1976). An initiative petition attempt to repeal the program was defeated in the 1976 general election. Alaska's limited entry program was the first such program of its kind in the U.S.

3.4 *History of Research* (3.4.1, 3.4.2)

Because of the coastwide movement of vessels and the salmon species they pursue, most research has been coastwide. The first ocean salmon research results that had significant coastal management implications were published in 1928. This work on salmon in Washington coastal waters revealed the rapid growth of coho in their final summer of life and the advantages of delaying their capture (Smith 1928).

Although tagging salmon at sea to study migration patterns was attempted in the early 1920's, it was not until the late 1930's and early 1940's that significant information regarding ocean salmon movements was available.

In 1950 the Alaska Department of Fisheries began research on stock origin, as well as biological descriptors of chinook and coho. However, it was not until 1970 that research was begun dealing specifically with the troll fisheries. The research included: life history studies of chinook and coho salmon; a logbook survey of troll fishery effort and catch rates; a sampling program to recover marked chinook and coho; collection of age data and information on numbers of undersized fish; and vessel distribution surveys.

Compilation of catch statistics in the troll fishery began in the early 1900's. However, accurate reporting of weekly landings by area and gear type did not begin until 1960. Further refinements in data processing since 1970 have produced timely catch statistics detailing gear, week, numbers of boats and landings, and catch, both in numbers of fish and pounds, by species and area (Appendix Table AI–2 and AI–3). These data reflect troll catches by area for inshore, coastal, and offshore waters.

There is a long history of cooperative research between the U.S. and Canada on salmon problems, as well as an exchange of statistical data. Catches landed in foreign countries are reported to the Department of Fish and Game in various agencies' technical reports, usually on an annual basis (i.e., annual Summary of British columbia Catch Statistics 1976).

In the early 1960's an informal committee on chinook and coho salmon and a technical working group were established between the two countries' research staffs providing an accessible route for exchange of data. Canadian research in the Fishery Conservation Zone off Alaska has been in the form of cooperative studies of a coastwide nature (e.g. the coastwide mark-recovery program).

3.5 *Socio-Economic Characteristics*

3.5.1 *Output of Subject Domestic Commercial Fishery*

In 1977, the statewide catches (all gear) of chinook, coho, and pink were 626,723, 1,815,167 and 28,582,428 fish, respectively. Catch trends for these species by troll and all gear types are addressed in Section 3.2.1.3.

In Southeastern Alaska, the salmon catches (all gear) for chinook, coho and pink salmon in 1977 were 290,386, 944,611 and 13,688,497 fish, respectively, of which 93.4, 53.7, and 2.0 percent, respectively, were caught by troll gear. Table 1 reveals these relationships. Figures 3 and 4 show a 10-year trend for Southeastern troll vs Alaska (all gear) chinook and coho catches.

3.5.1.1 *Value of Catch (Ex-vessel)*

Total ex-vessel value of the commercial troll salmon landings in Southeastern Alaska in 1975 and 1976 was $4,594,000 and $9,956,000, respectively, of which 13 and 15 percent, respectively, were taken by hand trollers. Totals by species and type of gear for 1975 and 1976 are shown in Table 2.

The average prices per pound paid to fishermen for salmon in 1976 are shown in Table 3. The highest *average* price of $1.60 per pound was for troll-caught king salmon in Sitka. This table shows that troll-caught salmon bring higher prices than salmon caught by other means.

3.5.1.2 *Description and Value of Product (Wholesale)*

The latest year is 1976 for which complete salmon production and wholesale value data are available. Table 4 shows production and value statistics for king, coho, and pink salmon by product form in Southeastern Alaska and all Alaskan waters.

Separate production statistics are not kept for troll caught salmon. However, since 94 percent of all southeastern king salmon are troll caught (Table 5), most of the production and value of king salmon in Southeastern Alaska can be attributed to trolling. In 1976, 2,653,000 pounds of king salmon were processed at a value of $5,945,000. Almost 100 percent of this production was in the fresh/frozen form.

Of all the coho caught in Southeastern Alaska, 54 percent were caught by troll gear. Assuming the wholesale production value of troll-caught coho was comparable to coho caught by other gear (95 percent of all the southeastern coho production was fresh/frozen form), the wholesale value of Southeastern Alaska troll-caught coho was $7,057,000.

The contribution of troll-caught pink salmon was only $399,000 in 1976.

3.5.1.3 *Markets, Domestic & Export*

Since the most recent domestic market data are from the Analysis of the Distribution System for Northwest-Originated Fresh and Frozen Salmon (Schary et. al., 1969), any conclusions as to the distribution by destination of products must be highly tentative.

Estimates from the above analysis are from a total Northwest catch of 66 million pounds of chinook and coho salmon in 1968. Approximately 37.4 million pounds were available for distribution in fresh and frozen product form with 9.1 million pounds coming from Alaska (see Fig. 5). To this was added 4.9 million pounds of imported salmon from British Columbia. Of this total, West Coast consumption was approximately 15.1 million pounds and that of the Midwest and East Coast was 12 million pounds. Export and East Coast markets were significant receiving areas for salmon products.

Although the two largest markets for exports in 1968 were France and the United Kingdom with 4.9 million pounds and 4 million pounds, respectively, the major export markets for the U.S. fresh and frozen salmon in 1977 were Japan, France, Canada, Sweden, and the United Kingdom with 31.9, 12.9, 5.5, 3.9, and 3.6 million pounds, respectively. The overall exports of the U.S. fresh and frozen salmon in 1977 were 65.6 million pounds valued a $117.5 million, up 71 percent in quantity and 70 percent in value from the previous year. These increased exports in 1977, when compared to those in 1968, reflected declines in the 1977 catch of salmon by other salmon importing countries.

In 1976, 22 million pounds (3 major species) were available for distribution in fresh/frozen, cured, and canned forms from Southeastern Alaska with a wholesale value of $34 million. These comprised 31 percent in quantity and 33 percent in wholesale value of Alaska total. The composition of wholesale value for these species in Southeastern Alaska by product form shows that 56 percent was in fresh/frozen, 44 percent in canned, and only 0.01 percent in cured forms in 1976. Adequate information dealing with domestic market channels are not available.

3.5.2 *Domestic Commercial Harvesting Characteristics*

In 1976, 2,683 licenses were issued for the troll fishery by the Department of Revenue. However, 4,281 entry permits were issued of which 956 were power troll and 3,325 were hand troll. The number of vessels for which actual landings were made was 2,076 of which 801 were power troll and 1,275 were hand troll. The mean keel length of power and hand troll vessels was 35 and 22 feet, respectively. The net mean tonnage of power and hand troll vessels was 11 and 2 tons, respectively. Similar data for 1977 are not available. Figures 6 and 7 show the distribution of vessels by weight and length.

3.5.2.1. *Total Gross Income of Fleet (Subject Fishery and all Other Fisheries)*

Total gross income is equivalent to the total ex-vessel value from all fisheries (troll salmon, net salmon, crab, halibut, etc.) in which the troll fleet participated. In 1976, $13.9 million was the total gross income from all fisheries for power trollers of which 60 percent ($8.4 million) was from power troll-caught salmon.

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TABLE 1

SALMON CATCHES IN SOUTHEASTERN ALASKA BY SPECIES, 1977

Species	All Gear No.	All Gear Lbs	Troll Gear No.	Troll Gear (%)	Troll Gear Lbs.	Troll Gear (%)
Chinook	290,886	4,198,644	271,759	(93.4)	3,979,496	(94.8)
Coho	944,611	8,246,658	506,835	(53.7)	4,158,400	(50.4)
Pink	13,838,497	67,864,799	281,188	(2.0)	1,194,728	(1.8)
Red	1,085,148	7,555,206	5,704	(0.5)	37,473	(0.5)
Chum	738,720	7,509,394	11,680	(1.6)	97,931	(1.3)
Total	16,897,862	95,374,701	1,077,166	(6.4)	9,468,028	(9.9)

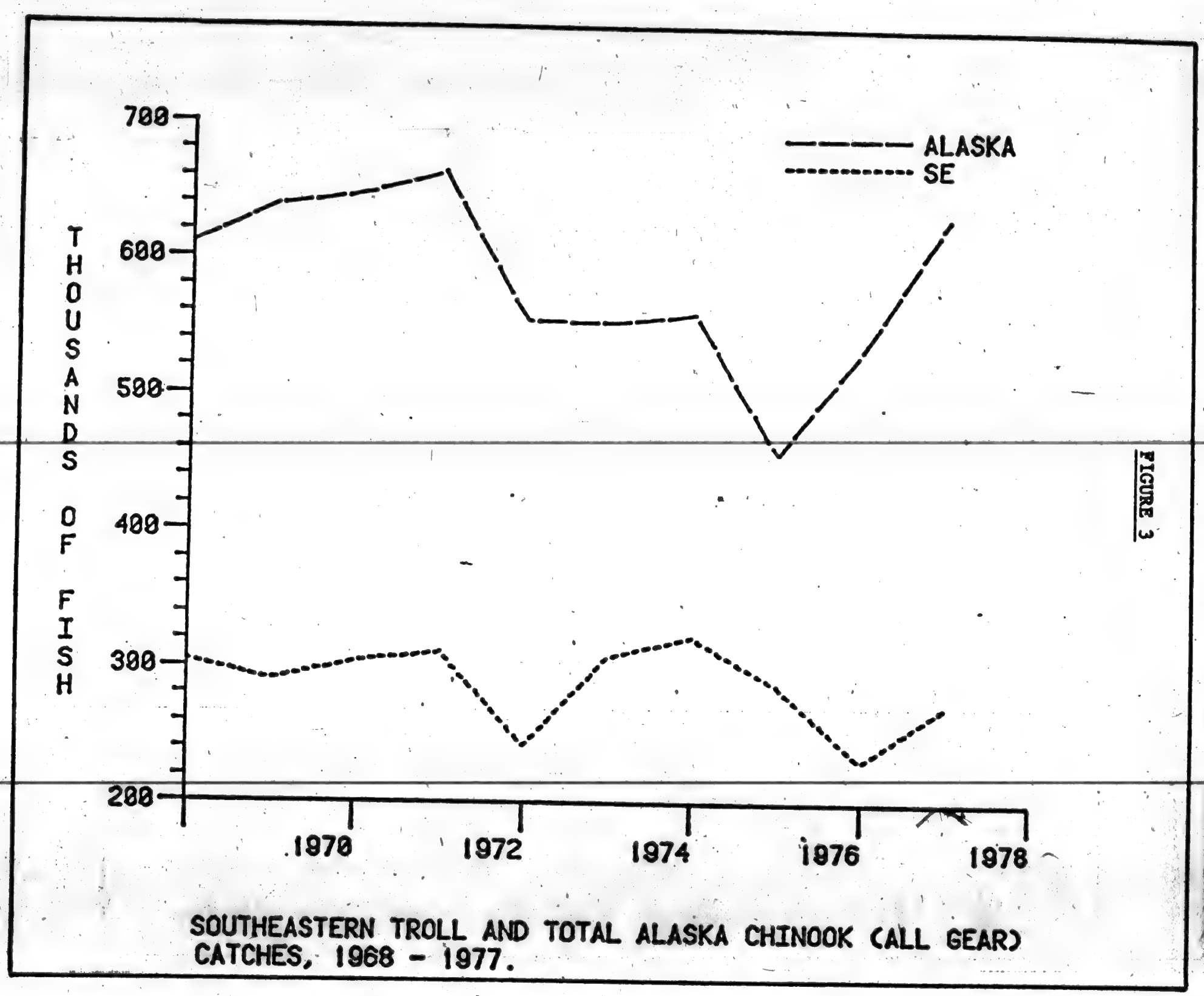


FIGURE 3

SOUTHEASTERN TROLL AND TOTAL ALASKA CHINOOK (ALL GEAR) CATCHES, 1968 - 1977.

SOUTHEASTERN TROLL AND TOTAL ALASKA CHINOOK (ALL GEAR) CATCHES, 1968 - 1977.

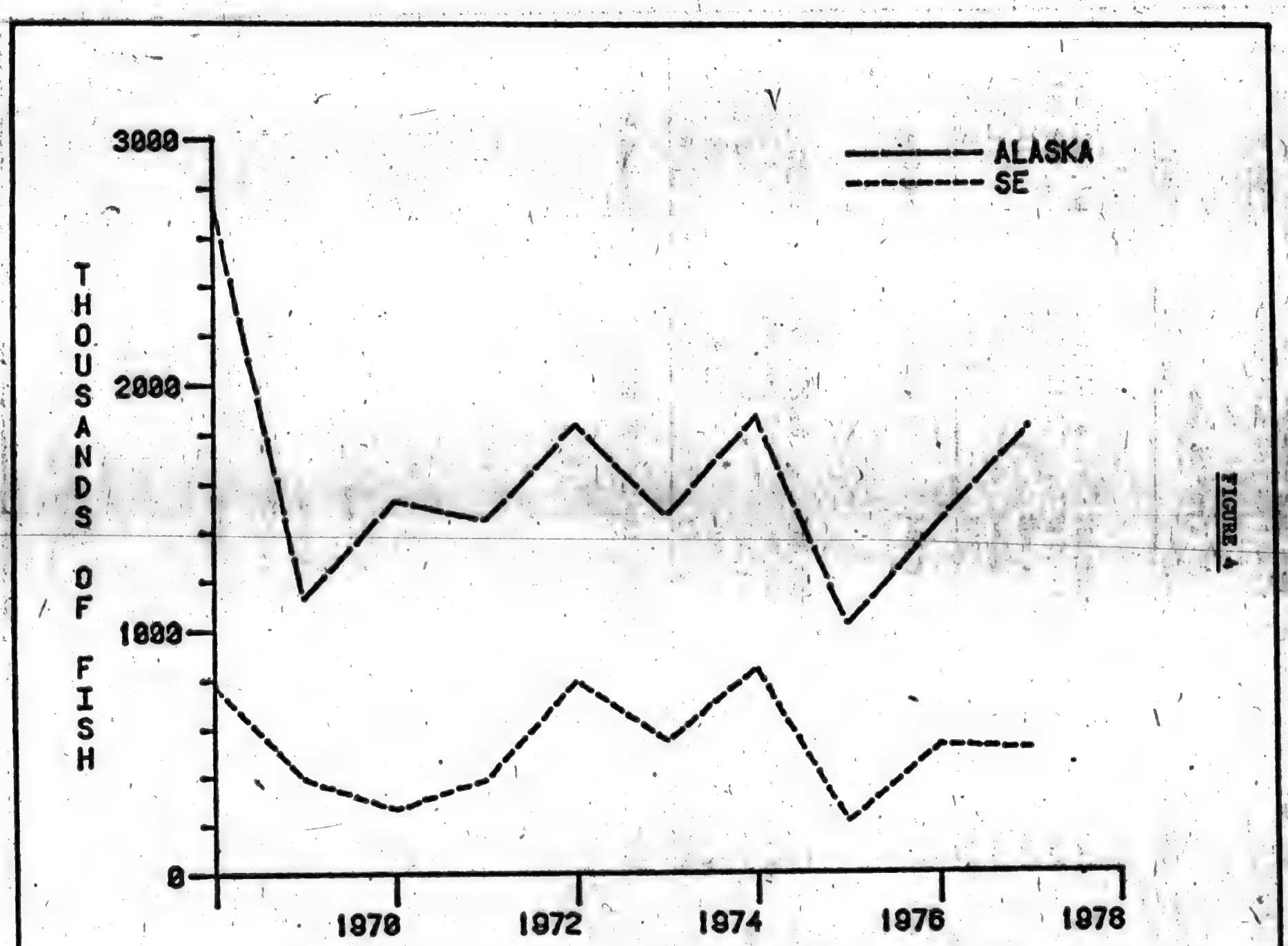


FIGURE 4

SOUTHEASTERN TROLL AND TOTAL ALASKA COHO (ALL GEAR) CATCHES, 1968 - 1977.

Table 2. Value of Troll Salmon Catch by Species and Type of Gear in Southeastern Alaska, 1975 and 1976.

Year	Species	Type of Gear Hand	Power	Total
1975	Coho	$188,231	$ 813,861	$1,002,092
	King	346,747	3,111,290	3,458,037
	Pink	43,703	73,369	117,072
	Chum	2,268	9,372	11,640
	Red	355	4,898	5,253
	TOTAL	$581,304	$4,012,790	$4,594,094
1976	Coho	$ 890,388	$4,244,507	$5,134,895
	King	516,387	3,856,264	4,372,651
	Pink	91,451	325,150	416,601
	Chum	13,025	12,119	25,144
	Red	2,262	4,318	6,580
	TOTAL	$1,513,513	$8,442,358	$9,955,871

Table 3 . Average Price Paid Per Pound to Fishermen in 1976.

AREA	Species	Gear	Price	AREA	Species	Gear	Price
KETCHIKAN	Kings:	Seine	$ .50	SITKA	Kings:	Seine	$ .00
		Gill Net	.95			Gill Net	1.47
		Troll	1.44			Troll	1.60
	Reds:	Seine	.63		Reds:	Seine:	.00
		Gill Net	.78			Gill Net	.95
		Troll	.86			Troll	.75
	Coho:	Seine:	.56		Coho	Seine	.00
		Gill Net	1.05			Gill Net	1.21
		Troll	1.25			Troll	1.36
	Pinks:	Seine:	.32		Pinks:	Seine:	.43
		Gill Net:	.41			Gill Net:	.51
		Troll:	.57			Troll:	.56
	Chums:	Seine	.51		Chums:	Seine	.00
		Gill Net	.63			Gill Net	.76
		Troll	.63			Troll	.61
Petersburg/ Wrangell	Kings:	Seine	1.09	Juneau/ Yakutat	Kings	Seine	.42
		Gill Net	1.26			Gill Net	.85
		Troll	1.52			Troll	1.56
	Reds:	Seine	.74		Reds:	Seine	.61
		Gill Net	.79			Gill Net	.86
		Troll	.90			Troll	.72
	Coho:	Seine	.89		Coho:	Seine	.62
		Gill Net	.99			Gill Net	.90
		Troll	1.42			Troll	1.32
	Pinks:	Seine	.38		Pinks:	Seine	.32
		Gill Net	.42			Gill Net	.35
		Troll	.54			Troll	.56
	Chums:	Seine	.59		Chums:	Seine	.56
		Gill Net	.66			Gill Net	.67
		Troll	.71			Troll	.72

Source: Alaska Department of Fish and Game Catch and Production Leaflet 1976.

Prices include an Estimate of Bonuses Paid to Fishermen.

1975 PRODUCTION AND WHOLESALE VALUE OF KING, COHO, AND PINK SALMON IN THE SOUTHEASTERN REGION AND ALL ALASKAN WATERS (ALL GEAR TYPES)

Region & Species	CURED Production 10^3 lbs*	CURED Value 10^3 $*	CANNED Production 10^3 lbs	CANNED Value 10^3 $	FRESH/FROZEN Production 10^3 lbs	FRESH/FROZEN Value 10^3 $	TOTAL Production 10^3 lbs	TOTAL Value 10^3 $
Southeast								
King**	0.4	0.5	14.	22.	2,733.	4,225.	2,747.	4,247.
Coho	---	---	179.	281.	2,238.	2,760.	2,417.	3,041.
Pink	---	---	8,935.	12,350.	1,495.	1,185.	10,430.	13,535.
TOTALS	0.4	0.5	9,128.	12,653.	6,466	8,170.	15,594.	20,823.
All Alaskan Waters								
King	130.0	106.0	384.	696.	4,541.	6,663.	5,055.	7,465.
Coho	22.0	35.0	2,355.	3,294.	5,332.	5,628.	7,709.	8,957.
Pink	0.4	1.5	26,524.	36,176.	2,407.	2,116.	28,931.	38,294.
TOTALS	152.4	142.6	29,263.	40,166.	12,280.	14,407	41,695.	54,716.

SOURCE: Alaska Department of Fish and Game Catch and Production Leaflet, 1975, Juneau, Alaska.

* 10^3 means that the values are in thousands of pounds or dollars.

** King is the same as a chinook salmon.

TABLE 4

TABLE 5

Percentages by Species For Alaskan Salmon Troll Catches

Species	Percent of Total S.E. Catch (all gear)	Percent of S.E. Troll Catch	Percent of Species Catch in S.E. Caught by Troll Gear	Percent of Species Catch in All Alaskan Waters Caught By Troll Gear
Chinook	13	71	95	55
Coho	10	24	42	18
Pink	51	5	2	*
Chum	21	*	*	*
Sockeye	5	*	*	*

* Less than one percent

Source: ADF&G Catch and Production Leaflet, 1975. Juneau, Alaska.

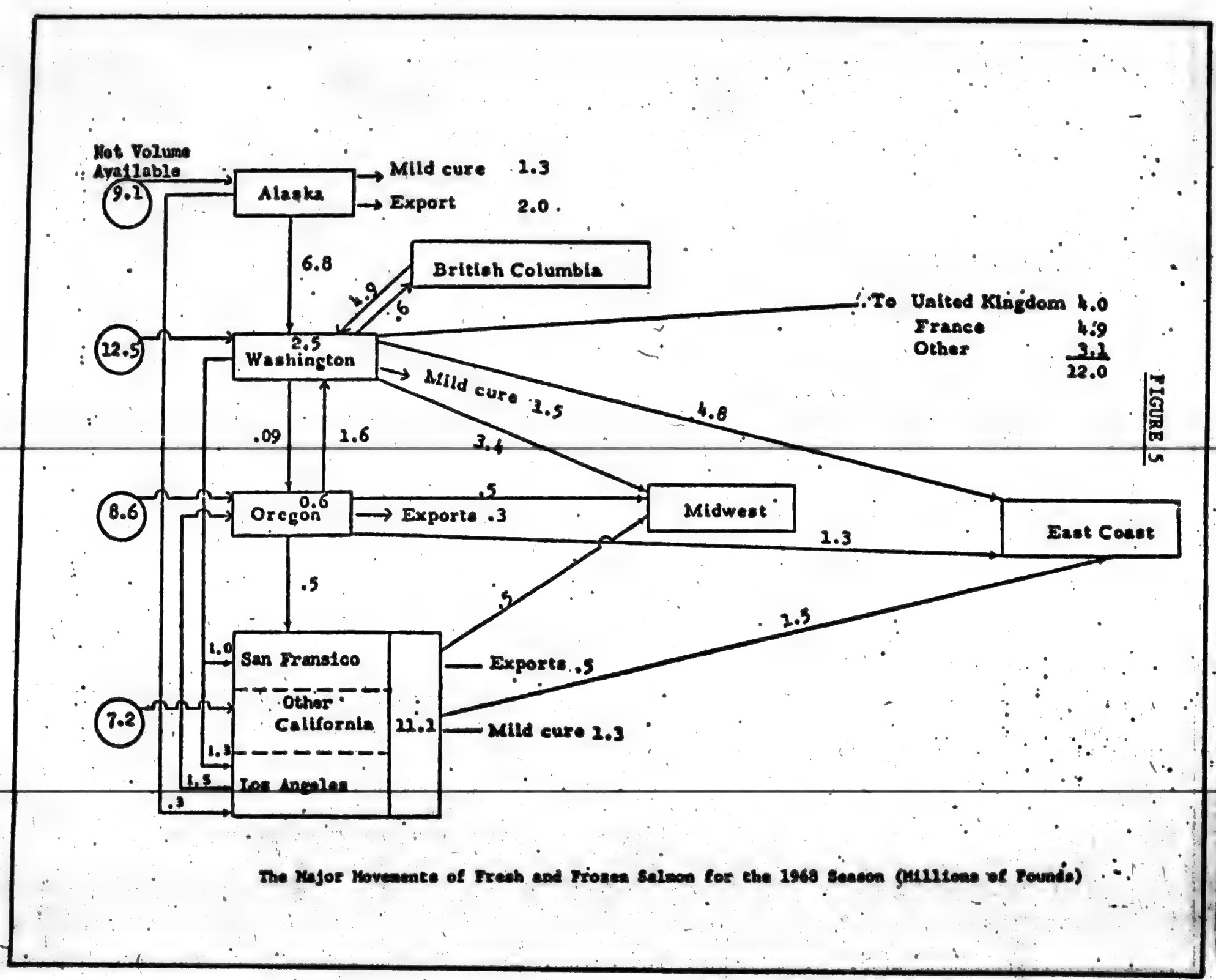
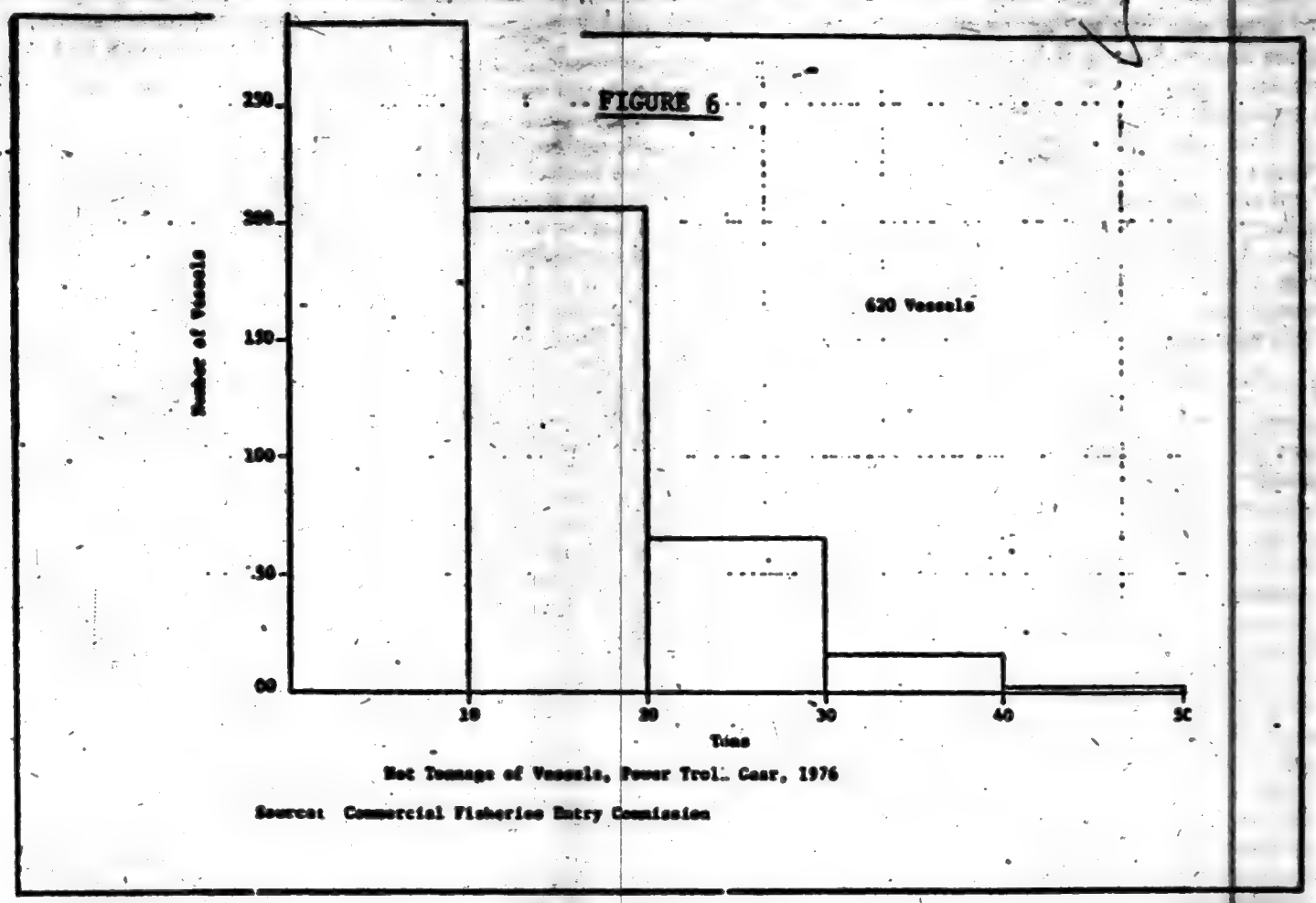


FIGURE 5

The Major Movements of Fresh and Frozen Salmon for the 1968 Season (Millions of Pounds)

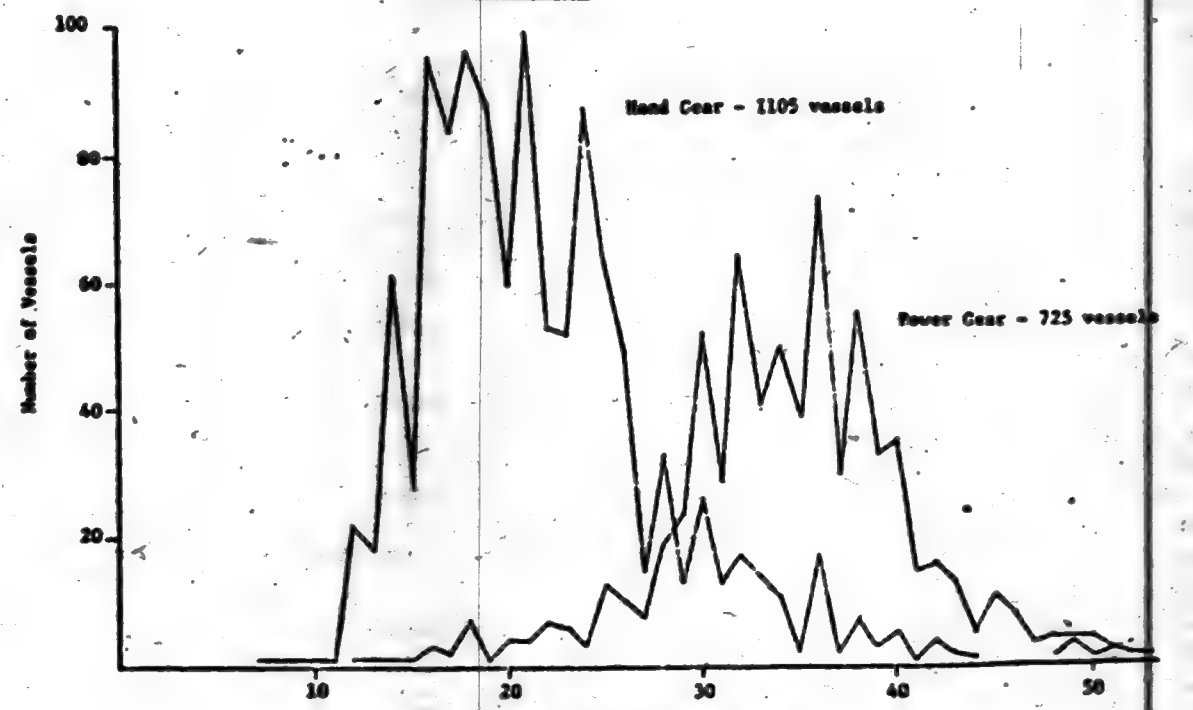
FIGURE 6



Net Tonnage of Vessels, Power Troll Gear, 1976

Source: Commercial Fisheries Entry Commission

FIGURE 7



Keel Length of Vessels, 1976

Source: Commercial Fisheries Entry Commission

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In the same year, $5.3 million was the total gross income from all fisheries (halibut, crab, etc.) for hand trollers of which 28 percent ($1.5 million) was from hand troll-caught salmon. The remaining 72 percent is attributed predominantly to halibut and net-caught salmon. These figures suggest hand trolling serves as a secondary fishery, on the average. However, this masks the true picture that many hand trollers are small operators who only hand troll.

3.5.2.2 *Investment in Vessels and Gear*

The investment in vessel and gear indicates the size and importance of the fishing segment. There are 2 ways in estimating investment; one estimate is the average purchase price paid by the present owners, and the other estimate is the average cost to replace the vessels, gear, and equipment. Some vessels were purchased as used and others were purchased as new.

No Study has been done for estimation of investments in vessels and gear (total and average per fleet/gear unit) for the troll vessels. However, in 1977, a survey was made by Alaska Trollers' Association, Ketchikan, by sending questionnaires to all power troll permit holders (approximately 900). They received 130 responses and found out that an average estimated market value for power troll vessel and gear was $74,500.

3.5.2.3 *Annual Participation in Subject Fishery*

Landing ticket summaries show that 872 power troll and 1,936 hand troll vessels made 14,320 and 21,635 landings, respectively, during 1977 (see Table 6 for number of vessels and landings by species).

3.5.2.4 *Total Manpower Employed and Labor Payments*

Statistics for employment in the troll salmon harvesting sector are not available. There is currently no State of Alaska or Federal agency collecting employment data on an annual basis which is discrete enough to break out employment by fishery. The Alaska Department of Labor does publish employment statistics quarterly by major industrial classification. However, the source of this information is employer's contribution reports for unemployment insurance, and therefore does not reflect total employment since significant segments such as self-employed persons, their spouses and children under 21 are excluded.

3.5.2.5 *Economic Viability*

To specify the economic condition of this fishery as an average net return over the whole fleet, or by appropriate subcategories of vessels within the fleet, several kinds of data are required. In addition to the gross income from this fishery and all other fisheries in which these vessels participate (most are multiproduct firms), cost of production information is required as well as the development of an analysis of the production function. Further, in order to determine how efficient the firms are, estimates of least cost production and maximum potential net returns must be derived and compared with current earnings. This requires estimating maximum sustainable economic yield (MSEY). To estimate MSEY requires a biological yield function, product demand curves, production function analysis, and input costs. Most of this information is not available.

3.5.3 *Domestic Commercial Processing Characteristics*

In 1976, 38 plants (36 companies) and 2,050 employees processed over 50 million pounds of seafood in Southeastern Alaska. In terms of salmon, 20 plants handled fresh/frozen production and 9 plants dealt with canned production.

3.5.3.1 *Total Gross Income In Area Processors*

Fig. 8 shows gross income since 1969 for Southeastern Alaska processors at the first wholesale level. Salmon production dominates the seafood industry in this area. Since 1969, 20–50 percent of the salmon production has been in the fresh/frozen form and is indicative of the troll industry.

3.5.3.2 *Investment in Plant and Equipment*

Investment figures for plant and equipment are necessary for cost analysis and can be used as a management tool for short and long-run decisions. Presently no capital investment data are available on this subject.

3.5.3.3 *Total Employment and Labor Income*

No statistics on total annual employment and labor income relating to processing of troll salmon are available.

3.5.3.4 *Economic Viability*

There is no single source of information on economic viability of processing troll salmon. Data required to address this question are similar to that needed for the harvesting sector.

3.5.4 *Recreational Fishing Characteristics*

Recreational (sport) fishing for salmon in Southeastern Alaska is presently conducted entirely within inshore and coastal waters and, as such, is managed by the State of Alaska.

3.5.5 *Subsistence Fishing Characteristics*

All salmon species taken for subsistence in Southeastern Alaska are captured entirely within inshore and coastal waters and are taken in insignificant quantities when compared to the commercial harvest.

3.5.6 *Indian Treaty Fishing Characteristics*

Under the terms of the Alaska Native Land Claims Settlement Act of 1971 Alaska Natives waived all aboriginal and/or treaty rights pertaining to the harvest of salmon in Alaskan waters. There are no Alaskan Indian treaties pertaining to the harvest of salmon in Alaskan waters.

On the Annette Islands Reserve, near Ketchikan, however, President Woodrow Wilson on April 28, 1916, established for the Metlakatla Indians, an exclusive fishing zone of 3,000 feet, extending outward from the shoreline (at mean low tide) and completely surrounding the reserve. Catches by inhabitants of the reserve include all five species of Pacific salmon taken by trap, troll, seine and gillnet gear. The reserve operates up to four traps annually (the only legal salmon traps remaining in Alaska) to support a reserve-owned canning industry. Pink salmon constituted 96 percent of the trap catch in 1976. The gillnet, seine, and troll fisheries operating within the perimeter fishery caught proportionally larger numbers of salmon species other than pink salmon (primarily sockeye salmon). The catch of chinook and coho salmon by the Indians is considered insignificant when compared to the entire District 1 salmon catch for the two species.

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TABLE 6

SOUTHEASTERN ALASKA TROLL SALMON CATCH BY SPECIES, 1977

Item	No. of Vessels	No. of Landings	Species	No. of Fish	Pounds
Hand troll	1,938	21,635			
			Chinook	33,156	481,661
			Coho	155,694	1,292,514
			Pink	116,777	483,303
			Red	1,741	11,545
			Chum	4,140	34,138
			Total	311,508	2,303,161
Power Troll	872	14,320			
			Chinook	238,603	3,497,835
			Coho	351,141	2,865,886
			Pink	164,411	711,425
			Red	3,963	25,928
			Chum	7,540	63,793
			Total	765,658	7,164,867
Total troll	2,810	35,955			
			Chinook	271,759	3,979,496
			Coho	506,835	4,158,400
			Pink	281,188	1,194,728
			Red	5,704	37,473
			Chum	11,680	97,931
			Total	1,077,166	9,468,028

Source: ADF&G

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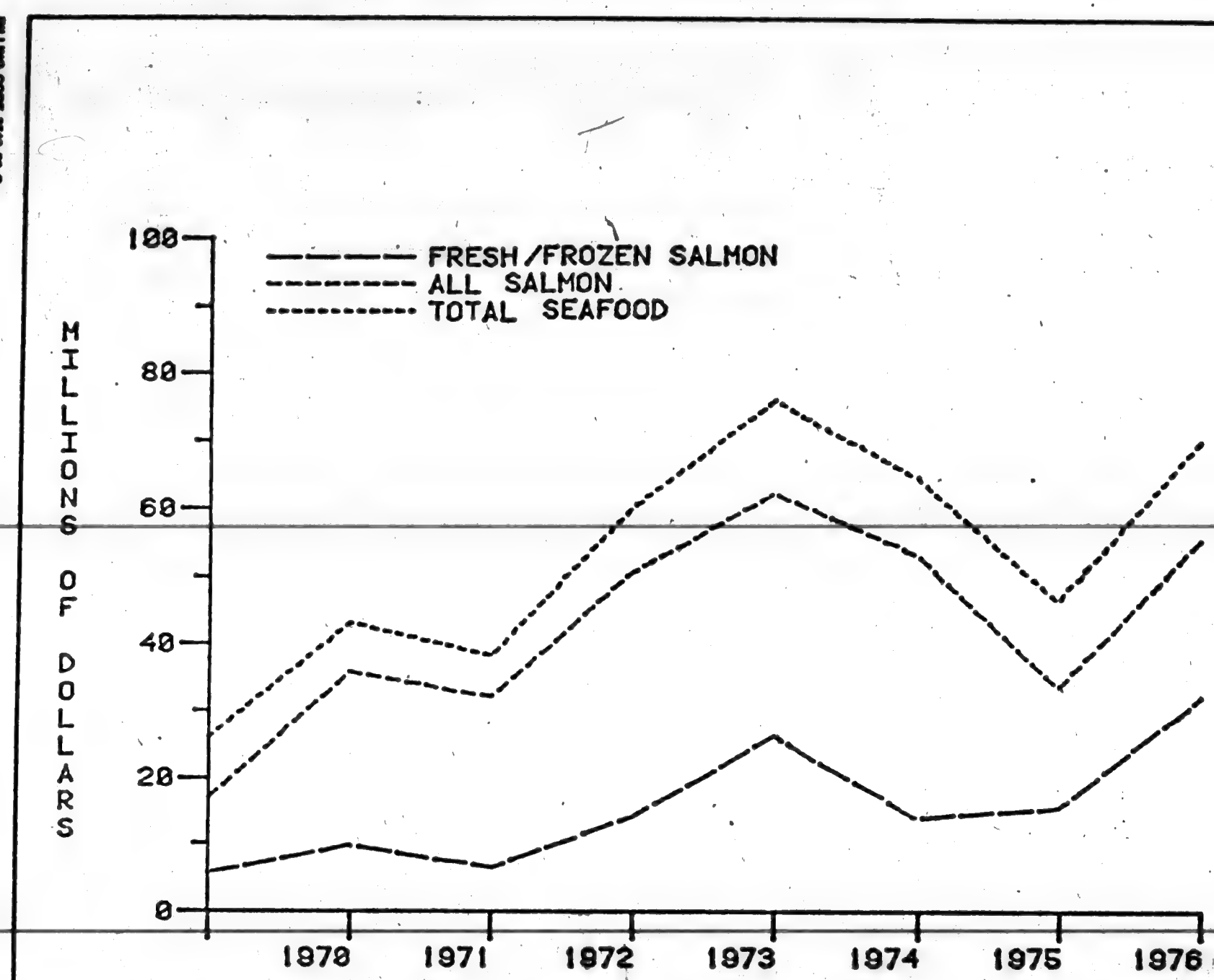

FIGURE 8

FIRST WHOLESALE VALUE OF SOUTHEASTERN ALASKA SEAFOOD PRODUCTS.

3.5.7 *Area Community Characteristics*

3.5.7.1 *Total Population*

Alaska's 1977 population statistics show the State as having a population of 411,211 with 53,162 residing in Southeastern Alaska (13 percent—Department of Labor, 1978). Table 7 provides population estimates for areas within the Southeast Region.

3.5.7.2 *Total Employment*

The Alaska Department of Labor [1] publishes a "Statistical Quarterly" that provides primary employment data that are by products of administration of the Alaska Employment Security Act. The principal sources of these data are the quarterly report of employers subject to the State unemployment insurance law and quarterly reports of Federal agencies made in connection with the State administered program for unemployment of Federal workers. Significant excluded segments are unpaid family help, domestic, self-employed persons and most persons engaged in agriculture.

The data are identified by industry inconformity with the Standard Industrial Classification Manual [2] which provides for numerical classification of establishments on the basis of the principal activity conducted.

Data pertaining to fish harvesting are not presented here since a significant amount of the persons engaged in the harvested sector are self-employed (an excluded segment of the data base unless the person receives a wage instead of a profit share).

Table 8 shows these Statement employment and payroll data for all industries the whole distribution of fish and seafood grocers, ship building and repair, frozen and canned fish and seafood production.

In the first quarter of 1977, total employment stood at 155,000 per month for all industries within the State. Total payroll for the 3-month period was $826 million.

Fresh/frozen seafood processing sector employed a monthly average of 1,204 persons which is 1 percent of the statewide total. These employees received an average monthly wage of $1,053. This wage is about 60 percent of the statewide average of $1,772. Their quarterly wage of a little more than $3.8 million is less than one half of one percent of the quarterly total statewide wage ($826 million).

Table 9 shows similar data for Southeastern Alaska. An average monthly employment in fresh/frozen seafood processing was 248 persons and their total quarterly wage was $705,000. These figures were equivalent to 1.2 percent for average monthly employment and .8 percent for total quarterly wage of the total Southeastern industries.

3.5.7.3 *Total Work Force*

In 1977, Southeastern Alaska had an annual average labor force of 21,558 of which 19,290 were employed and 2,268 were unemployed. This labor force attributes to 12.4 percent of the State total. Unemployment rates of this region was 10.5 percent, higher than statewide average (9.4 percent).

Among the 9 census divisions in Southeastern Alaska, Juneau division showed the lowest unemployment rate of 8.0 percent with the highest labor force of 7,180. Haines Division had the highest unemployment rate of 15.7 percent with labor force of 906. Table 10 shows more detailed information.

3.6 *Interaction Between and Among User Groups*

The present Canadian fishery in offshore waters is minimal (Section 3.2.2). Therefore, it is assumed there would be little change in domestic fisheries should Canadian efforts be curtailed.

Sport, commercial and subsistence fisheries are present on some maturing chinook stocks in Canadian watersheds of transboundary rivers.

On the Klukshu River, a major chinook spawning tributary of Alsek River, a subsistence trap is operated. The Tatshenshini River is developing an increasing sport fishery for chinook.

Maturing chinook are caught in increasing numbers annually by expanding Canadian sport fisheries in major spawning tributaries of the Taku River.

Chinook are also taken by commercial and subsistence fishermen on the Stikine River near Telegraph Creek, B.C.

The impact of the domestic offshore fishery on the inshore and coastal fisheries is not known, however, the offshore troll fishery will directly affect the inshore and coastal catches. The greater the magnitude of the offshore catch, the smaller the available run to coastal and inshore fisheries. The inshore and coastal fisheries affect the magnitude of the offshore catch by catching immature chinook salmon before they are available to the offshore fishery and by directly affecting escapement of both chinook and coho adults to individual streams.

Gear conflicts between user groups in future years are undeniable. As numbers and efficiency of gear increase among the unlimited sport and hand troll fleets the subsequent reallocation of catch to these user groups from the offshore fisheries will occur unless other allocation measures are adopted. Likewise, the power troll fleet is increasing in efficiency with larger boats and more sophisticated electronic equipment.

3.7 *Federal and State Revenues Derived from Fishery*

Information on revenues derived by the State of Alaska from fish taxes and the sale of permits and licenses from 1969 to 1976 is shown in Table 11. However, only the Commercial Fisheries Entry Commission's permits and troll line permits are specific to the troll fishery. The processor taxes are an approximation for the troll salmon industry. The processor, commercial fish, and vessel licenses are applicable to multiple fisheries.

Revenues derived from other taxes, such as personal Federal and State income taxes associated with net earnings in the salmon fishery, are not available.

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[1] Employment Security Division, Research and Analysis Section.

[2] U.S. Bureau of the Budget, 1972 Edition.

TABLE 7

RESIDENT POPULATION (CIVILIAN AND MILITARY) BY AREA AND YEAR

	60	70	71	72	73	74	75	76	77
Angoon	540	503	482	481	402	481	481	494	559
Haines	875	1,504	1,637	1,765	1,902	2,054	2,069	1,850	1,500
Juneau	9,745	13,556	14,478	14,979	16,593	17,195	17,714	18,760	18,886
Ketchikan	8,794	10,041	10,046	10,488	10,587	11,522	11,311	11,394	12,496
Outer Ketchikan	1,276	1,676	1,622	1,649	1,641	1,703	1,764	1,761	2,019
Petersburg/Wrangell	4,181	4,913	4,956	4,927	5,085	5,848	5,270	5,218	5,236
Prince of Wales	1,772	2,105	1,781	2,035	1,992	2,525	2,502	1,761	2,639
Sitka	6,150	6,109	5,942	6,029	6,010	6,428	6,595	6,883	7,053
Yakutat	2,070	2,157	2,144	2,121	2,205	2,476	2,732	2,812	2,774
Total SE	35,403	42,565	43,088	44,475	46,417	50,232	50,438	51,172	53,162
Total Alaska	226,167	302,361	311,070	322,115	330,365	351,159	404,634	413,289	411,211

Source: Alaska Department of Labor, Employment Security Division

TABLE 6

Employment and payroll statistics for selected industries in State of Alaska

Year/Qtr.	Industry[1]	Number of Firms	Monthly Employment			Average Monthly Employment	Percent of Total Employment	Average Monthly Wage (dollars)	Quarterly Total Wage (thousand dollars)	Percent Total Wage
	Canned Fish	90	5,001	5,214	4,203	4,806	3	1,226	17,676	2
	Frozen Fish	48	2,803	2,970	2,373	2,715	2	935	7,622	1
1976/3	Ship Building & Repair	9	37	29	37	34	*	992	102	*
	Wholesale Distr.	21	127	163	53	114	*	748	287	*
	All Industries	11,032	171,781	162,916	154,451	163,049	100	2,079	1,016,957	100
	Canned Fish	89	2,171	1,846	1,688	1,902	1	1,106	6,313	1
	Frozen Fish	53	2,015	1,812	1,723	1,850	1	907	5,038	1
1976/4	Ship Building & Repair	8	31	31	32	31	*	1,183	111	*
	Wholesale Distr.	21	51	39	43	44	*	1,896	212	*
	All Industries	11,097	188,754	192,505	187,397	189,552	100	2,081	1,183,496	100
	Canned Fish	90	1,620	1,758	1,926	1,768	1	882	4,820	1
	Frozen Fish	52	1,090	1,241	1,280	1,204	1	1,053	3,804	1
1977/1	Ship Building & Repair	9	34	30	30	31	*	1,104	104	*
	Wholesale Distr.	17	29	28	29	29	*	2,404	207	*
	All Industries	10,921	152,414	155,048	158,756	155,406	100	1,772	826,323	100
	Canned Fish	93	1,799	2,351	3,439	2,530	-	1,018	7,738	-
	Frozen Fish	54	2,221	2,186	2,925	2,444	-	918	6,721	-
1977/2	Ship Building & Repair	9	40	39	39	39	-	1,368	161	-
	Wholesale Distr.	15	63	176	217	152	-	649	296	-
	All Industries	N.A.	-	-	-	-	-	-	-	-

* Significantly less than 1%

1/ Canned and frozen fish and seafood production wholesale distribution of fish and seafood groceries

TABLE 9

Employment and payroll statistics by area for selected industries in Alaska.

SOUTHEAST

Year/Qtr.	Industry[1]	Number of Firms	Monthly Employment			Average Monthly Employment	Percent of Total Employment	Average Monthly Wage (dollars)	Quarterly Total Wage (thousand dollars)	Percent of Total Wages
	Canned Fish	20	887	999	1,109	998	4	728	2,178	2
	Frozen Fish	11	355	512	555	474	2	948	1,349	1
1976/3	Ship Building & Repair	5	27	26	33	29	*	1,020	89	*
	Wholesale Distr.	6	6	6	8	7	*	676	14	*
	All Industries	1,909	24,739	25,660	26,998	25,499	100	1,367	104,553	100
	Canned Fish	20	452	371	308	377	2	520	588	1
	Frozen Fish	10	245	185	163	198	1	1,018	602	1
1976/4	Ship Building & Repair	5	27	28	31	29	*	1,205	104	*
	Wholesale Distr.	6	5	6	5	5	*	1,777	28	*
	All Industries	1,904	22,507	21,641	20,667	21,605	100	1,484	96,218	100
	Canned Fish	19	214	220	235	223	1	676	452	1
	Frozen Fish	11	215	276	254	248	1	947	705	1
1977/1	Ship Building & Repair	5	29	25	26	27	*	1,154	92	*
	Wholesale Distr.	3	- confidential -			-	-	-	-	-
	All Industries	1,863	20,166	20,888	21,761	20,938	100	1,345	84,458	100
	Canned Fish	17	372	446	665	494	-	387	1,241	-
	Frozen Fish	11	448	353	427	409	-	860	1,055	-
1977/2	Ship Building & Repair	5	30	26	27	28	-	1,496	184	-
	Wholesale Distr.	3	19	17	22	19	-	748	43	-
	All Industries	-. not available -			-	-	-	-	-	-

* Significantly less than 1%

1/ Canned and frozen fish and seafood production wholesale distribution of fish and seafood groceries

1977 AVERAGE POPULATION, EMPLOYMENT, AND UNEMPLOYMENT

TABLE 10

1977 AVERAGE POPULATION, EMPLOYMENT, AND UNEMPLOYMENT
FOR SOUTHEASTERN ALASKA

	Total 1/ Resident Population	Labor Force	Employment	Unemployment	Unemployment Rate (%)
Statewide	411,211	174,000	158,000	16,000	9.4
Southeastern	53,162	21,558	19,290	2,268	10.5
Angoon	559	350	303	47	13.4
Haines	1,500	908	765	143	15.7
Juneau	18,886	7,180	6,605	575	8.0
Ketchikan	12,496	4,545	4,022	523	11.5
Outer Ketchikan	2,019	757	662	95	12.5
Prince of Wales	2,639	1,260	1,122	138	11.0
Sitka	7,053	2,899	2,634	265	9.1
Skagway-Yakutat	2,774	1,153	1,006	147	12.7
Wrangell-Petersburg	5,236	2,506	2,171	335	13.4

1/ As of July 1, 1977

Source: Alaska Department of Labor

TABLE 11

State Revenues Related to Ocean Troll Salmon

	1969	1970	1971	1972	1973	1974	1975	1976
1/ C.F.E.C. Permits	$					74,900	63,000	74,000
2/ Processor Taxes	$ 79,500	59,500	57,100	67,400	115,900	128,500	81,900	N/A
3/ Troll Line Permits	$ 42,740	48,450	42,965	43,185	56,910	59,780	49,920	47,835
4/ Processor Licenses	$ 450	600	525	650	675	625	650	?
5/ Com. Fish Licenses	$315,630	375,240	334,400	346,520	358,130	325,020	334,510	391,550
6/ Vessel Licenses	$146,898	161,863	156,490	156,624	164,194	152,486	158,704	163,180

Source: Alaska Dept. of Revenue; except C.F.E.C. permits are from Commercial Fisheries Entry Commission

1/ Commercial Fisheries Entry Commission - hand or power troll - $20 except for poverty income - dollars.
2/ Taxes are an approximation of the troll salmon industry
salmon canneries -- 2% of raw salmon value
salmon diverted for purposes other than canning -- 1% of value on fresh fish market.
shore-based fish processors -- 1% of raw fish value
floating fish processors -- 4% of raw fish value
3/ Hand or power gurdy -- $15 resident, $45 nonresident
4/ All salmon processors (not necessarily troll salmon) -- $25. per facility
5/ & 6/ Values apply to all fisheries (ie not specific to troll salmon)
$10 resident, $30 nonresident

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Appendix 4.0—Biological Descriptors

4.8 *Current Status of Stocks*
4.8.1 *Maximum Sustained Yield (MSY)*
4.8.1.1 *Equilibrium Yield (EY)*

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11 Percent Age Composition of Washington's Ocean Sport-Caught Chinook, etc.
12 Chinook Catch—Troll Gear vs All Gear
13 Coho Catch—Troll Gear vs All Gear

4.8 *Current Status of Stocks*

In some areas declining population levels are partially associated with losses of habitat. Examples include impounding or damming of flow on the Columbia and Sacramento Rivers which have destroyed both spawning areas and rearing habitat and in some cases have blocked access and thereby eliminated certain stocks. In the lower Columbia River and in coastal areas of Washington and Oregon native fall chinook are also depressed, however, large scale hatchery programs are providing support for these fish. Spring chinook hatcheries have been less successful than fall chinook hatcheries. British Columbia fall chinook hatcheries, while not as old or an extensive as those in the Pacific Northwest states, are also contributing to some fisheries.

The Taku River, which is one of the most important chinook systems in Southeastern Alaska, was closed to spring gillnetting and sport and commercial trolling by the Board of Fisheries in the fall of 1975 to protect the severely depleted spawner returns. Comparative escapement data and CPUE in the Taku inlet drift gillnet fishery indicated weakness in most of the year classes.

Because over 50 percent of the immature chinook harvested during 1973 and 1974 in the Juneau area were of Alaskan origin additional closures and bag reductions were made to protect future spawning runs (Kissner 1974, 1975).

The Alsek and Stikine Rivers, which are the other two major chinook systems in Southeastern Alaska, have had strictly curtailed chinook fisheries to protect weak spawner returns (Kissner 1977).

In the vicinity of Behm Canal sport and commercial closures and bag reductions were made by the Board of Fisheries in 1976 to protect declining spawning runs to the Unuk, Chickamin, Keta and Blossom Rivers.

A matter of coastwide concern from California to Southeastern Alaska is the long-term downward shift in size and age of chinook. Chinook populations have shifted towards younger mean ages at maturity and smaller mean sizes within given age groups. In stocks where comparative data exist, older and larger 5- and 6-year-old chinook are less common. The populations today consist of young and smaller 3- and 4-year-old fish. In Washington, for example, both ocean troll-caught and ocean sport-caught chinook salmon show this trend (Figs. 10 and 11). The larger 60 to 90-pound class chinook common along the coast at the turn of the century are rare in present stocks. Some stocks strongly disposed toward older ages and larger fish such as the upper Columbia summer run stocks are now extinct. The Canadian scientist W. E. Ricker attributes the trend toward younger age classes (personal communication) to long-term effects caused by selection pressures of fisheries and the continuous removal from chinook populations of older, larger fish. The troll fishery, by its nature, is well suited to provide such pressure. By fishing during active feeding and rapid growth periods over sequential years of the fish's life more of the older and larger fish are caught before they reach maturity than is the case with the younger and smaller fish. Specific year classes of some stocks are now known to remain in the same ocean nursery area and be caught by troll fisheries at several ages in the same vicinity (Davis 1976; Davis and Selin 1977).

Alaskan chinook stocks have declined precipitously during the past 20 years, a period during which the Alaska troll catch for this species has been relatively stable. Between 1956 and 1975 Alaska troll catches of chinook have ranged from 175,000 to 330,000 (Fig. 12) and have averaged 271,000 fish per year over that period. Although in many cases escapement data for Alaskan chinook that may be contributing to the troll fishery are incomplete and of varying quality, all indications point to severe declines ranging from a minimum of 40 percent to a maximum in some cases approaching 100 percent (Appendix Table AI–4). Many smaller chinook stock units in Southeastern Alaska may already be extinct since escapements in them have not been observed in recent years.

Chinook salmon are harvested in Southeast Alaska by line, gillnet, seine and trap. In most years over 85 percent of the harvest is by troll gear. Harvest by gillnets is associated with maturing local stocks near their river of origin while harvest by the other gear types is associated with mixed stocks.

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FIGURE 9

PLACE WRAPAROUND COVER UNDER GOLDENROD COPY

DISTRIBUTION: WHITE - PURCHASER YELLOW - FISH & GAME PINK - SELLER GOLDENROD - PURCHASER

PURCHASER J517560

ALASKA DEPARTMENT OF FISH & GAME
FRESH FISH TICKET *

SECTION I

SECTION II
IF PERMIT CARD NOT AVAILABLE COMPLETE THIS SECTION

CHECK TYPE OF GEAR USED

1 ☐ PURSE SEINE 5 ☐ TROLL 10 ☐ HAND PICKED
2 ☐ BEACH SEINE 6 ☐ SKATES 91 ☐ POTS-REEL OVER 50 FT.
3 ☐ DRIFT NET 99 ☐ POTS-REEL TO AND 50 FT.
4 ☐ SET NET 11 ☐ HERRING PURSE SEINE Other ☐ _____

Name
Permit Number
ADF & G Number
Company
Street
DATE
AREA CAUGHT _____ STAT. CHART NO.
SHOW NEAREST BAY OR HEADLAND

SECTION III

SPECIES	CODE	COLUMN 1 NO. OF FISH	COLUMN 2 POUNDS	PRICE	SPECIES	CODE	COLUMN 1 NO. OF FISH	COLUMN 2 POUNDS	PRICE	AMOUNT
HALIBUT					SALMON					
10 - 20 lbs	200				Lg. Pre Kings	410				
20 - 40 lbs	200									
40 - 60 lbs	200				Med. Red Kings	410				
Total Medium	200									
					Sml. Red Kings	410				
60 - 80 lbs	200									
80 - 100 lbs	200				Lg. Silver Kings	410				
100 - 150 lbs	200									
Over 150 lbs	200				Sml. Silver Kings	410				
Total Large	200									
					TOTAL KINGS	410				
No. 2 s Med	200									
No. 2 s Lg	200				KIBS (DOCKED)	420				
Chicken	200									
					Lg Cohos	430				
Total Halibut	200									
					Med. Cohos	430				
MISCELLANEOUS										
Lg Sablefish	710				Sml. Cohos	430				
Sml Sablefish	710									
Total Sablefish	710				TOTAL COHOS	430				
Lingcod	130				PINKS	440				
Rockfish/Red Snapper	140									
Herring	220				BRITE CHUMS	450				
Herring Eggs on Kelp	231									
					DARK CHUMS	450				
Steelhead	540									
					TOTAL					

Fisherman's Signature * _____ Fish Received by _____

* I certify that I HAVE PAID OR WILL PAY IN COMPLIANCE WITH STATE LICENSING LAWS AND REGULATIONS

* ADF & G requirements require completion of all of Sections I and II, and Column 2 for salmon and Columns 1 for other fish in Section III. Section II is not required if Permit Card

NOT NEGOTIABLE

Sample of ADF&G Fresh Fish Ticket

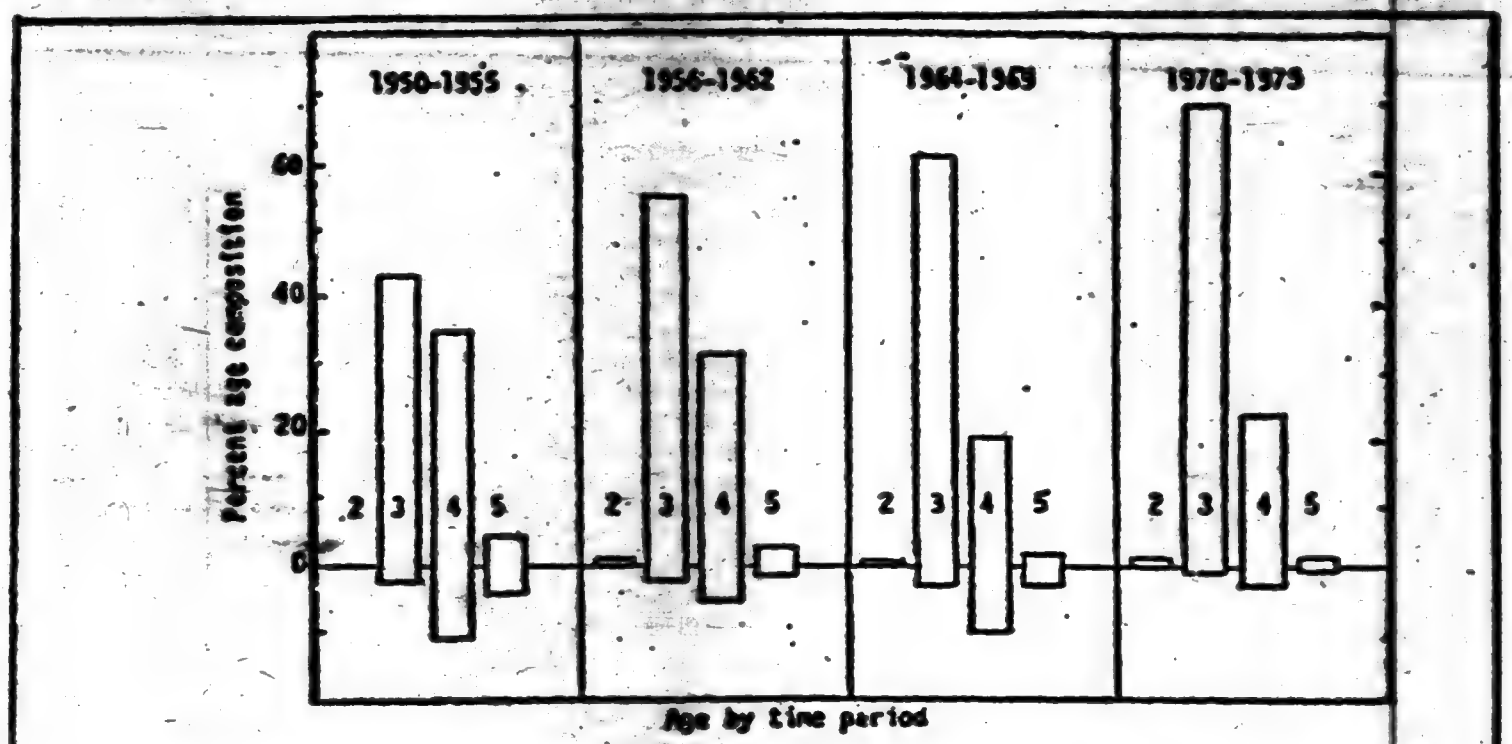


Figure 10. Percent age composition of Washington's troll-caught chinook salmon for the four consecutively reported time periods 1950-1975, by sub-type (fall run-type above and spring run-type below axis).

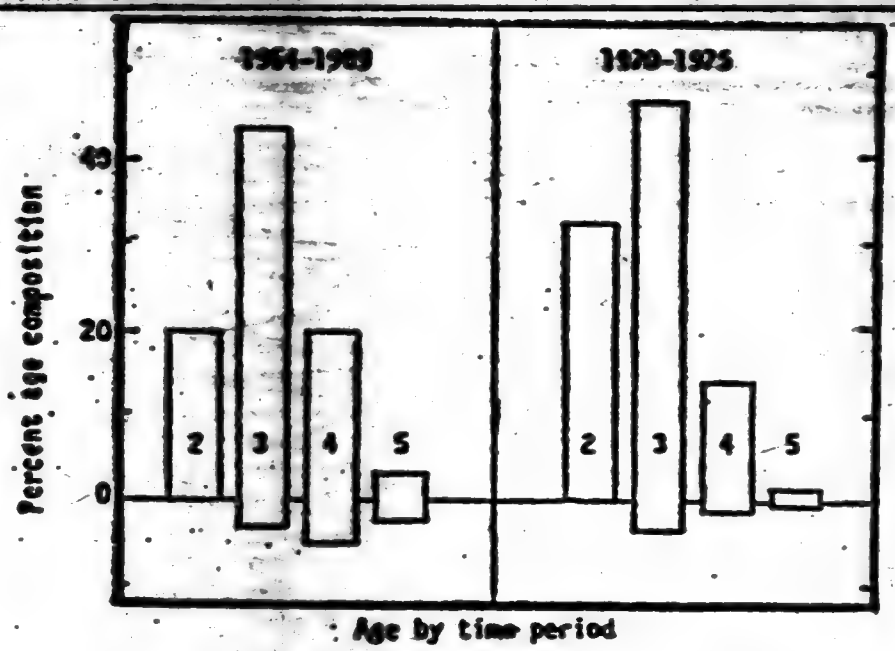
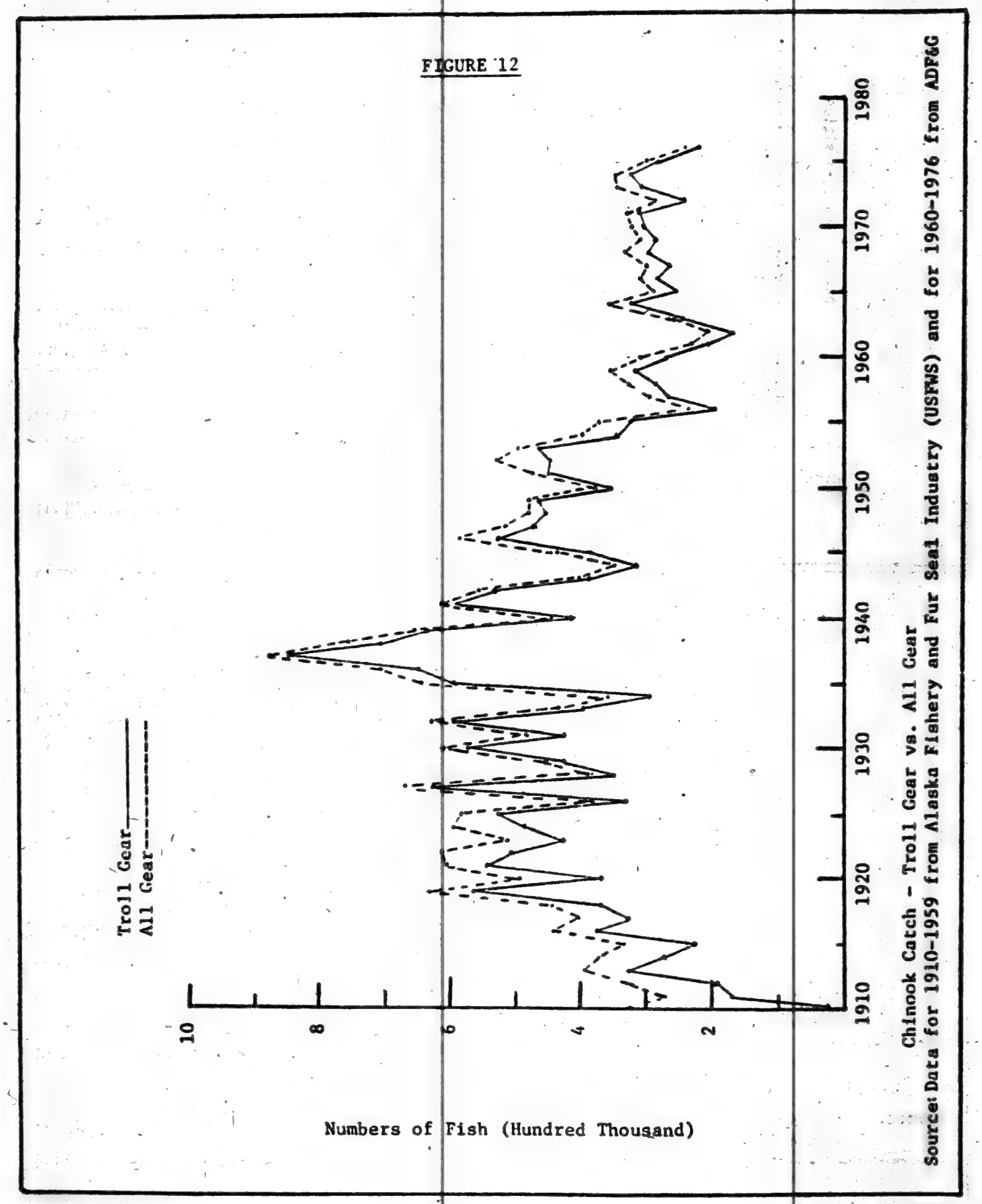


Figure 11. Percent age composition of Washington's ocean sport-caught chinook for 1954-1959 and 1970-1975, by sub-type (fall run-type above and spring run-type below axis).

Source: Miller, M.C. (in press). Size and age characteristics of coastal commercial troll and sport-caught chinook salmon of Washington, 1970-1975. Washington Dept. of Fish. Tech. Rept.

FIGURE 12



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Since 1920 the annual commercial chinook catch for Southeastern Alaska has varied between 879,000 (1937) and 202,000 (1962). The catch peaked during the 1920's and 1930's when an average of over one half million chinook were harvested annually. From 1940 to 1970 the 10-year average annual harvest has declined about 100,000 chinook per decade (Appendix Table AI–5). Since 1970 the annual catch has varied between 286,000 and 346,000 and has averaged 322,000.

When these factors are considered against the background of the known heavy contribution of non-Alaska chinook to the troll fishery and of the increasingly successful production from Pacific Northwest hatcheries (particularly fall chinook), a potential adverse relationship between native Alaskan and hatchery fish develops. In this instance the hatcheries are located long distances from the impacted native fish and the fishery itself has been reasonably stable. What nominally has been considered an asset to the Alaska troll fishery—"first chance at Pacific Northwest chinook hatchery production"—may in fact be a serious liability to the perpetuation of native chinook from Southeastern Alaska. This paradox develops from the fact that successful hatchery programs can sustain much higher harvest rates than can most native stocks. The hatchery protection and high survival during egg, fry, and fingerling life stages requires less brood fish or escapement to maintain the cultured population than a similar size natural run. Therefore in a mixed stock fishery with both native and hatchery runs, it is possible to overharvest native fish and simultaneously underharvest hatchery fish.

The coho of Southeastern Alaska consist of hundreds of spawning populations using inner and outer island streams as well as mainland streams. These fish, many of which produce only a few hundred adults annually, spawn in streams and rear to smolt stage in streams, backwater sloughs, small ponds and lakes. Some larger river systems have spawning escapements of several thousand fish. Specific causes for this long-range decline in coho catches are not known but are probably related to overharvest. During the last 20 years, troll landings of coho have ranged from 267,000 fish in 1970 to 646,000 fish in 1974 with an annual average of 557,000 fish. Escapement data for specific populations is limited because coho spawn in September and October when fall rains increase stream flows make spawner counts difficult.

In addition to the troll fishery, Southeastern Alaska coho stocks make important contributions to inside purse seine, gillnet and recreational fisheries (Fig. 13).

Because coho commonly spawn and rear in small streams in heavily forested areas, logging is a major threat to long-term stock stability. Abuses of accepted logging practices destroy coho spawning and rearing habitat.

Unless specific stock components are overfished or major losses to the present high quality of the spawning and rearing habitats occur, Southeastern Alaska coho stocks can be expected to continue producing sustained yield at or near the levels of recent years. There is concern that full gillnet fisheries may over-exploit mainland coho in northern Southeastern Alaska. Studies are underway to define the status of these coho and to measure the effects on them of various fisheries.

Southeastern Alaska coho production also holds promise of significant increases through various hatchery and artificial enhancement measures. However, an issue of vital importance is the relationship between coho production from native and hatchery stocks. These two sources of coho must be recognized and managed to avoid developing dependency on hatchery fish to the detriment of native fish. There are indications that increased ocean fishing pressure stimulated by successful hatchery programs may have adversely affected native coho in Oregon (Oregon Department of Fish and Wildlife 1978).

The troll fisheries in waters under Council jurisdiction occur primarily in the area known as the Fairweather Grounds. Approximately 89 percent of the chinook troll landings from offshore waters since 1971 came from the Fairweather Grounds (Table 13). While chinook troll landings (numbers) for Council waters have averaged about 15 percent of the total Alaska troll landings for the period 1971–1977 (Table 12), they have ranged annually from about 9 to 25 percent during the same period. Troll landings (numbers) of coho in Council waters during this time have averaged 6 percent of the total Alaska coho troll catch.

Some stocks of chinook salmon involved in this fishery originate in Alaska streams, but based on large numbers of recent recoveries of fish marked with coded wire tags as juveniles and recovered as immature and mature adults in the Alaska troll fishery they originate primarily in British Columbia mainland streams, Vancouver Island streams, Washington coastal streams, Puget Sound, the Columbia River, Oregon coastal streams, and to a lesser degree the streams of Idaho and California (Davis 1976; Davis and Selin 1977).

These stocks intermingle to an unknown degree in the offshore and coastal areas of Southeastern Alaska where an extensive troll fishery has developed to harvest them. Changes in fishing effort in offshore waters will have an effect on fish destined for the coastal and inshore waters. *Based on recent recovery patterns of coded wire tagged fish, all groups of marked chinook caught on the Fairweather Grounds are also caught in coastal or inshore waters.*

Intermingling of chinooks contributes to problems of managing the offshore fishery. Analysis of catch statistics indicates that the average weight of chinook salmon caught in area 157 (Fairweather Grounds) in May and June is generally greater than the average weight of chinook from that area in August. The average weight in this area early in the season (May–June) is often greater than 15 pounds dressed weight for chinook while late in the season (August–September) the average weight is often only 10–12 pounds (See Appendix Figures AI–1 and AI–2, and Appendix Table AI–2). These data indicate that the Fairweather Grounds are a primary ocean nursery area for many chinook stocks. Each year new broods of young immature chinook migrate northward to the Fairweather Grounds, while older year classes of mature fish migrate southward toward natal streams. The timing of arrival and departure of these groups of chinook is important in developing fishery management strategies for the area.

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Table 12 Average annual landings, numbers, pounds (dressed), and percent of chinook and coho salmon caught in offshore, coastal, and inshore Alaska troll fish management areas[1/] during the 6-year period 1971-1976.

	Landings[2/]	Chinook		Coho	
		number	pounds	number	pounds
Offshore					
Area 150	2	143	1,666	521	2,976
Area 152	1	82	1,067	24	160
Area 154	6	439	5,506	959	7,439
Area 157	290	40,338	504,626	29,397	199,896
Area 189	2	191	2,215	171	877
Area 199[3/]					
Subtotal	301	41,193	515,080	31,072	211,348
Percent	1.6	15.8	14.9	6.4	6.4
Coastal					
Area 104	2,678	44,317	657,131	85,654	630,331
Area 113	2,480	60,027	870,697	70,820	475,342
Area 116	609	11,385	133,822	45,540	319,498
Area 181	5	730	6,526	138	860
Area 184	2	225	2,467	37	284
Area 191	8	1,298	14,880	221	1,503
Subtotal	5,782	117,982	1,685,523	202,410	1,527,818
Percent	30.7	45.3	48.6	41.5	40.2
Inshore					
Area 101	1,103	20,360	226,159	44,919	270,114
Area 102	432	5,553	58,845	10,366	60,789
Area 103	1,811	16,262	230,238	46,447	280,204
Area 105	243	4,398	60,899	7,345	47,744
Area 106	984	7,401	89,551	14,716	102,238
Area 107	334	4,173	55,004	3,015	21,606
Area 108	316	2,387	33,170	1,656	11,974
Area 109	858	4,149	59,858	18,522	117,454
Area 110	429	9,104	116,372	11,194	73,502
Area 111	2,130	5,607	59,874	19,806	153,157
Area 112	273	1,820	25,008	2,536	19,097
Area 114	3,716	17,300	220,264	70,768	584,478
Area 115	34	674	9,854	1,372	12,042
Area 183	87	1,913	21,199	1,878	14,287
Subtotal	12,750	101,101	1,266,295	254,540	1,765,686
Percent	67.7	38.8	36.5	52.1	53.4
All Areas					
Grand total	18,833	260,276	3,466,898	488,022	3,504,852
Percent	100	99.9	100	100	100

1/ Management areas are shown in Figure 1; Offshore, Coastal, and Inshore designations are defined in section 2.2.

2/ Annual landings were not made in all areas in each of the 6 years. Averages are based only on those years in which landings were made.

3/ No reported landings.

Source: Derived from Appendex Table AI-3

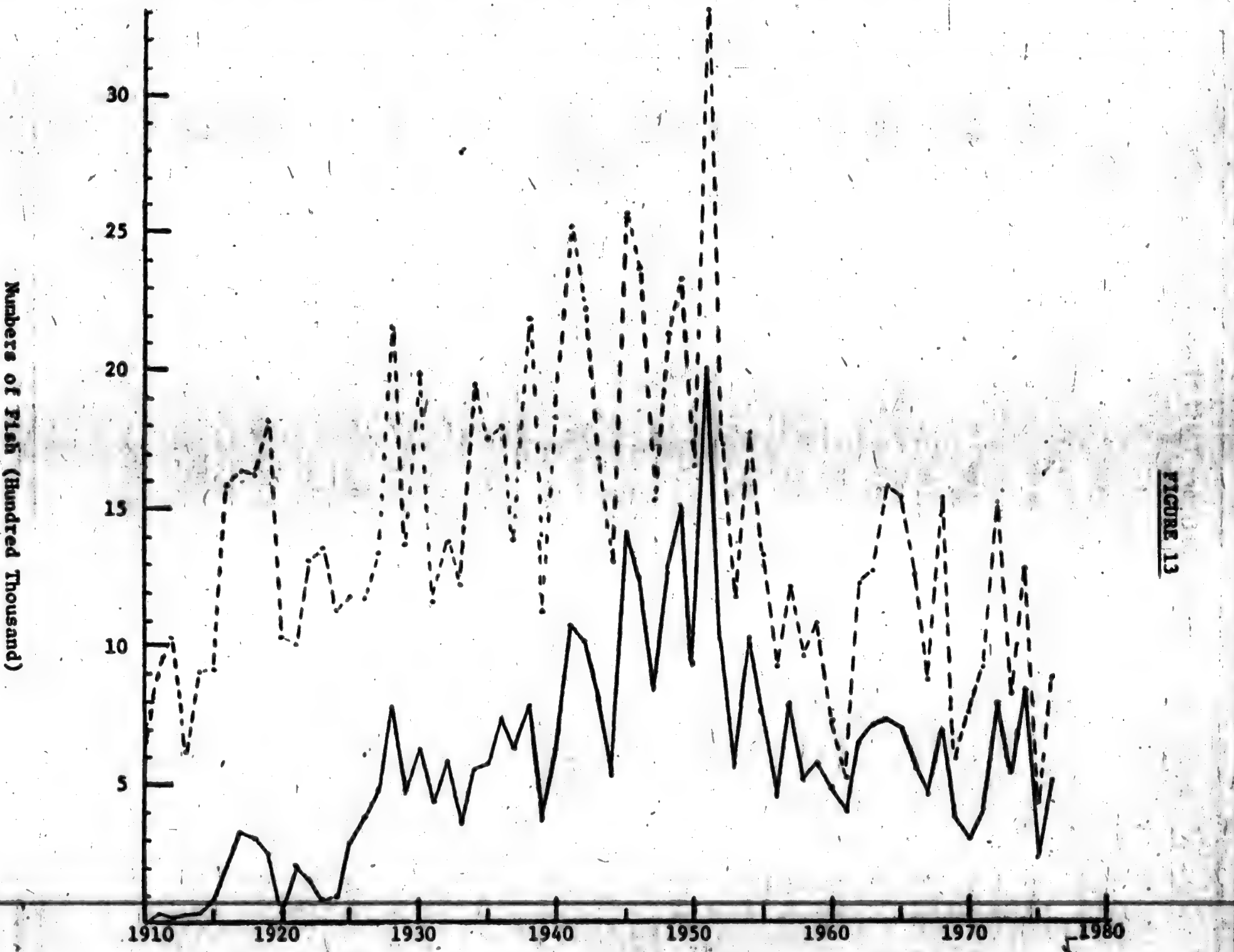

FIGURE 13

Coho Catch - Troll Gear vs. All Gear
Source: Data for 1910-1959 from Alaska Fishery and Fur Seal Industry (USFWS) and for 1960-1976 from ADF&G

Table 13 Number and Percent of Offshore Troll Caught Chinook and Coho Salmon in Area 157 (Fairweather Grounds), 1971 to 1976.

Year	CHINOOK Offshore area 157 (Fairweather Grounds)	Other Offshore Areas	Total Offshore Catch	Percent from Area 157
1971	17,270	822	18,092	95
1972	25,106	1,149	26,255	96
1973	84,088	0	84,088	100
1974	46,192	65	46,257	99
1975	39,969	218	40,187	99
1976	28,488	963	29,451	98
TOTAL	241,113	3,217	244,330	99

Year	COHO Offshore area 157 (Fairweather Grounds)	Other Offshore Areas	Total Offshore Catch	Percent from Area 157
1971	6,848	785	7,633	90
1972	40,931	1,075	42,006	97
1973	34,649	92	34,741	99
1974	38,962	955	39,917	98
1975	7,134	276	7,410	96
1976	47,867	5,622	53,479	90
TOTAL	176,381	11,805	185,186	95

Source: Alaska Department of Fish and Game unpublished catch reports 1971-1976, Juneau.

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Tagging of troll-caught chinook from Cape Spencer to Cape Fairweather (both immature and mature fish) by Parker and Kirkness (1956) also demonstrated that this area is a primary nursery ground for immature fish. Based on subsequent recovery of fish tagged from this area and from two other more southerly areas along the Southeastern Alaska coastline (Cross Sound to Sitka and Warren Island to Cape Felix) they estimated that 80 percent of the chinook north of Cape Spencer with 4 years or less of ocean residence were immature fish. Conversely they found the opposite relationship for fish tagged in the two more southerly areas; fish for all of the size groups commonly encountered were largely mature.

Voluntary logbook information gathered between 1971 and 1974 has shown a sublegal (shaker) to legal sized chinook ratio of 1:1 or greater when the average landed weight for an area approaches 10 pounds (ADF&G unpublished data 1971–1974). Considering an estimated shaker mortality of one fish killed for every two that are boated in the troll fishery (Ricker 1976), losses from such a fishery are high. Additional losses in production occur when the chinook landed have not attained maximum growth potential. For Canadian, Washington and Oregon chinook, any harvest of less than 28-inch (total length) results in a loss of potential annual growth (Ricker 1976). These fish, whether of spring or fall run variety, would be available to the troll fishery in subsequent years (ADF&G unpublished data 1974–1976). For Alaskan chinook, which are spring run only, any fishing which occurs after July results in a loss of potential growth as fish caught after July 1 would not mature at least until the following spring.

Coho harvested by the troll fishery are primarily of Alaskan origin. Marking studies conducted by the Alaska Department of Fish and Game in 1972 have shown catch rates of 35.7 to 40.3 percent for the Taku River and Lynn Canal coho stocks by the troll fishery in statistical areas 157, 116, 114, and 113 (ADF&G unpublished data 1974). Catches from these areas show that coho from inshore mainland streams in northern Southeastern Alaska are sequentially harvested from offshore areas to near their natal streams by the troll fishery. Tag recoveries from coho tagged at artificial rearing facilities at Crystal Lake hatchery in Petersburg, Starrigavan Bay near Sitka, the Mendenhall ponds and Fish Creek pens near Juneau, and the NMFS facility at Little Port Walter have indicated southerly migration routes of adult coho from areas north of Cape Spencer.

The fishery in statistical area 157.00 (Fairweather Grounds) harvests on the average about 6.4 percent of all coho landed in the Southeastern Alaska troll fishery (Table 12). Coho caught in this area originate from various parts of northern Southeastern Alaska based on recent marking studies of juvenile coho from both native and hatchery fish. No marking studies on juvenile coho from stocks in southern Southeastern Alaska have been conducted and it is not known if coho from this region also use ocean waters north of Cape Spencer as nursery areas.

The status of sockeye, chum and pink salmon in *Southeastern Alaska* ranges from present low levels of abundance for chum salmon to seriously depleted sockeye stocks. Pink salmon constitute 74 percent of the Southeastern Alaska salmon catch, but stocks are merely a fraction of historic high catch periods. (In 1941, 60 million pinks were taken; the 1960–75 average catch figure for all of Southeastern Alaska was 5.5 million.)

In *Prince William Sound*, the commercial effort is primarily with purse seines for pink and chum salmon; pink salmon catches for the 1960–75 period are half (3.2 million) of historic catch levels. Chum salmon are considered in good condition. Sockeye and coho are thought to be in good condition with recent low coho catches considered short term and environmentally induced. Chinook harvests are of minor importance in this salmon management area.

All salmon species are at historic low levels in the *Cook Inlet* management area, with chinook stocks seriously depleted.

The *Kodiak* region pink and chum salmon are in healthy condition; sockeye are seriously depleted. Chinook and coho are of minor importance and taken only incidentally.

Alaska Peninsula/Chignik area is predominantly a pink salmon area and those stocks are depressed considerably from historic levels. The same is true of chum salmon. Coho and chinook are insignificant in this fishery (one percent of the total catch) while sockeye, although second in importance in this fishery are in decline. (Chignik sockeye rank first in economic importance in that region.)

Bristol Bay chum and chinook salmon are in sound condition with recent catch averages near or above historic levels; pink salmon are in fair shape and appear to be in the process of recovery. Sockeye (80 percent of the commercial catch) catches in the period 1960–75 were slightly more than half the historical high average of 14.7 million. Coho are of minor importance in this commercial fishery.

Chum salmon (70 percent) and chinook (20 percent) comprise the bulk of species taken in the *Arctic-Yukon-Kuskokwim* area, but the status of stocks in this region is not known. Chinook have declined substantially in recent years; chum are apparently in good condition. The biological status of coho is virtually unknown and sockeye occur only in small numbers. Pink salmon are caught incidentally in this fishery, with harvestable surpluses apparently available.

4.8.1 *Maximum Sustained Yield (MSY)*

Under ordinary management procedures using MSY, where recruitment requirements determine escapement goals for individual populations or groups of stocks, harvest levels should be based only on surplus fish above recruitment needs. The Alaska offshore troll fishery, however, is based on variable harvest levels of mixed stocks before the relative strengths of individual runs are known. There is no practical mechanism for evaluating troll fishing rates on chinook while the fishery is in progress. The only case of in-season, real-time management action regulating the Alaska ocean troll fishery was the 1975 areawide closure of all commercial coho fisheries from August 15–31. Greatly reduced coho landings had indicated severely depressed Alaskan coho runs.

Achieving maximum yield levels in pounds requires eliminating harvests of any salmon with remaining significant growth potential when the rate of growth exceeds the rate of natural mortality. Achieving MSY would therefore necessitate closing the ocean troll fishery since it is based on salmon taken during an active growth period when natural mortality rates are low. Shaker losses of undersized fish increase the difficulty of justifying ocean troll fisheries. Recent estimates of the growth rate for coho and chinook during their last growing season are 20 percent per month for coho and 6 percent per month for chinook (fifth year) while estimates of mortality rate during the same period are considerably lower, averaging 1.3 percent per month for both species.

Recent shaker loss estimates for troll fishing are one fish lost for every two fish landed (Ricker 1976). Earlier, Wright (1970) in reviewing the results of 35 separate studies on hooking losses found that mortality estimates on chinook ranged from 2.5 to 71.9 percent.

Shaker mortalities are a function not just of injury to the fish but are also due to subsequent effects of stress and physiological shock—in effect a delayed mortality. Muscle fatigue and a buildup of high blood levels of lactic acid have been associated with delayed hooking mortalities where mechanical injuries were judged to be minimal (Black 1958; Parker and Black 1959). Hence, it is not thought that hook type (e.g. barbed or barbless) significantly influences shaker mortality rates.

The net effect of maintaining an ocean troll fishery is a major loss of chinook and coho salmon production annually as compared to catching the same fish closer to its natal streams. The ratio of loss to potential yield is less for coho than for chinook since almost all coho are harvested in their last year of life and closer to their maximum size than many troll caught chinook.

The extent of this loss for Alaskan chinook is not clear because of the unknown contribution of these stocks to the troll fishery. An estimate has been made for Columbia River chinook which contributes significantly to the Alaska troll fishery. This estimate (Ricker 1976) projects an increase in yield (weight) ranging from 63 to 98 percent of present levels by discontinuing ocean trolling and correspondingly increasing the river fishery. Applying these percentages to the current Alaska troll fishery catch of chinook would increase the average annual yield of 3.5 million pounds to 5.7–6.9 million pounds.

4.8.1.1 *Equilibrium Yield (EY)*

Equilibrium yield, the seasonal annual harvest that maintains the resource at approximately the same level of abundance in subsequent years is, like MSY, difficult to relate to the Alaska troll fishery. Major shifts in the number of fish from the diverse populations which make up the complex mixture of chinook would accordingly change the harvest composition. If this occurred, for example, with major increases in Pacific Northwest hatchery production concomitant with further declines in Alaska chinook, the troll fishery catch could be maintained at approximately the same level, achieving EY, but with disasterous consequences for native Alaskan chinooks. EY for non-Alaskan chinook in the offshore troll fishery may be equal to the average catch of these fish in recent years. There is however, a distinct possibility that endemic nonhatchery fish from other geographic areas may, like native Alaskan fish, be adversely impacted by any harvest in the Alaskan troll fishery.

A tentative EY for chinook taken by the troll fishery off Southeastern Alaska cannot be calculated because of the complex mixture of stocks involved and because of the unknown proportion of depressed Alaskan stocks in this mixed-stock fishery. To set even an arbitrary EY value for the troll fishery for chinook would imply the resource (chinook stocks that collectively make up the resource) could maintain approximately the same level of abundance. Present indications suggest that any level of harvest on depressed Alaskan stocks would push these same stocks to even lower levels of abundance and that under current conditions no equilibrium yield is possible.

New research involving detailed marking studies of juvenile chinook from known Southeastern Alaskan stocks is critically needed to define the distribution and contribution of these stocks, not only in the offshore troll fishery but also in the coastal and inshore troll fishery and all other fisheries that catch these fish.

Test Appendix Index

6.0 *Optimum Yield (OY)*
6.1–3 *Optimum Yield (OY)*

List of Tables

Table 14 Number of Vessels per Category of: Income From all Troll Fishing by Percent of the Income that was Caught North of Cape Spencer. 99 Vessels for 1976.

Appendix 6.0—Optimum Yield (OY)

6.1–3 *Optimum Yield (OY0*

In terms of total pounds caught, troll fishing in offshore areas north of Cape Spencer is more important than other troll areas in Council waters, i.e. about 98 percent of all chinook and 95 percent of the coho caught in the offshore troll fishery are caught north of Cape Spencer (6-year average, 1971–76). This offshore fishery constitutes 10 percent of all troll caught chinook and coho in Southeastern Alaska.

In 1976, 99 vessels (1 hand and 98 power trollers) fished the waters north of Cape Spencer, which is only 12 percent of the 801 power vessels that made landings in Alaska ("freezer"-type vessels fishing offshore Alaska and making landings out of State jurisdiction are not monitored or included in these figures).

The 1976 total income (based on average prices reported by the Fisheries Market News Service) from all fisheries (troll salmon, net salmon, halibut, etc.) for these 99 vessels was $2,858,000 with 75 percent ($2,152,000) coming from troll fishing. 45 percent of this ($969,000) came from the offshore areas north of Cape Spencer. This was only 12 percent of the total value of the troll fishery in Southeastern Alaska (see section 3.5.2.1).

The 1976 average income per vessel from troll salmon fishing (for the 99 vessels offshore north of Cape Spencer) was $22,000 with 45 percent ($9,900) attributed to the offshore waters north of Cape Spencer.

Table 14 shows the distribution of these 99 vessels into categories of: vessel's income from all troll fishing versus percent of that income which was caught offshore north of Cape Spencer.

The columns (labeled across the top increments of 5 thousand) represent categories of income from troll fishing in all areas (not just offshore north of Cape Spencer). The rows represent categories (labeled on the left side by 10 percent increments) for the percent of the vessel's total troll income that was caught in offshore waters north of Cape Spencer.

BILLING CODE 3510-22-M

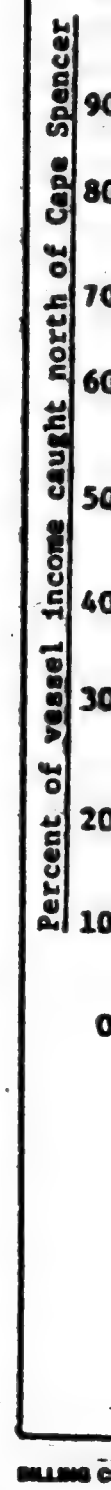

TABLE 14

VESSEL'S INCOME FROM SALMON TROLLING - ALL AREAS

(thousand dollars)

Percent of vessel income caught north of Cape Spencer	5	10	15	20	25	30	35	40	45	50	55	60	Row Totals
100	1		4	3	1	1							10
90		2	2			2	1				1		8
80	1		1	1	2	1	1				2	1	10
70	1		2	2	1	1	1			1			9
60	1	2		4	1		1	2					11
50		3	1	1		1		1	1				8
40		2		3	1		1	1		1			9
30		2	2	1			1	1					7
20	2	1	2	1			2	2					10
10			3	4	2	2	3	2		1			17
0	6	12	17	20	8	8	11	9	1	3	3	1	99

Column totals

Number of vessels per category of: Income from all troll fishing by percent of income caught north of Cape Spencer. (99 vessels for 1976)

Compiled by CFEC

BILLING CODE 3510-22-C

The values within the squares are the number of vessels whose total income and percent income from the offshore waters north of Cape Spencer fall within the specific categories. For example, there is one vessel (in the heavily outlined square) represented by a 50–55 thousand dollars total income from trolling (11th column from left) with 80–90 percent of this income coming from the offshore waters north of Cape Spencer (2nd row down from the top).

This vessel happens to have caught the greatest value in offshore waters north of Cape Spencer ($53,000 total troll income times 83 percent from offshore equals $43,000 income from offshore).

One half of these 99 vessels (48) made more than 50 percent of their income in the offshore waters north of Cape Spencer. This is less than 6 percent of the total power troll fleet that made landings in Alaska.

Obviously, the vessels fishing the offshore waters consider their efforts to be worth the costs and risks of fishing the open ocean. This ability is reflected by their average vessel length of 42 feet which is 7 feet longer than the average length for the entire power troll fleet (801 vessels). This ability also means that they are quite capable of fishing the coastal and inshore waters, which in fact, 94 percent of them do.

Text Appendix Index

7.0 Total allowable level of foreign fishery (TALFF)

Appendix 7.0—Total Allowable Level of Foreign Fishery (TALFF)

7.0 *TALFF*

U.S. and Canadian salmon intermingle to a significant degree, especially off southern Southeastern Alaska, and ocean fisheries off the coasts of either country exploit fish destined for the other. Catches in the ocean have a direct bearing on both countries' management of "inside" net and recreational fisheries for the same fish. Proper overall management of these salmon will require joint efforts by the two countries.

Data on the incidence of chinook caught by the Japanese trawl fleet off Alaska are available only for the months of March, April and May (1976 observer data). The incidence (number chinook per metric ton of groundfish catch) ranged from 0 to 0.555; the average incidence for all months/areas was 0.1335. If we apply this average incidence to the Japanese catch in 1975 (the latest year for which data are available) during March, April and May, we obtain an estimated catch of 1,917 chinook salmon (coho were not observed). In applying the average incidence to the total Japanese catch in 1975 (assuming the incidence is comparable for other months) we obtain an estimated catch of 7,422 chinook for the year (French and Miller 1976).

Precise information on the incidental catch rate of trawl caught salmon is not available for the U.S.S.R. fishery (French and Miller 1976).

There are occasional unconfirmed reports of illegal foreign gillnet fishing in the eastern Gulf of Alaska. In addition, commercial troll fishermen in recent years have reported the occurrence of gillnet marks on chinook and coho landed from offshore and coastal troll fisheries. ADF&G port samplers recorded the occurrence of these marks; from 1973 to 1975 gillnet marks on troll caught salmon ranged from 0.2 to 0.7 percent of the fish sampled (Davis 1976). Quantities of foreign monofilament gillnet material have also been found floating offshore and on coastal beaches in Southeastern Alaska. It is not known, however, if the material originated from illegal fishing in the Gulf of Alaska or legal high seas gillnet fishing farther westward. With enactment of Pub. L. 94–265 and subsequent increased ocean surveillance, any illegal high seas gillnet fishing that might impact the Alaskan troll fisheries presumably will be reduced or eliminated.

Appendix 8.3.1.3—History and Development of Alaska's Commercial Fisheries Entry Commission

Discussion of Considerations

The State of Alaska, prior to the FCMA, historically managed the inshore and offshore troll fishery as a unit; the salmon stocks move inside and outside the three-mile line as does the fleet of troll vessels operating on those stocks. Alaska acted to protect troll salmon stocks whether they were found within or beyond territorial waters.

The State of Alaska passed limited entry enabling legislation in April of 1973. Pursuant to the Act, the Commercial Fisheries Entry Commission was formed to write and implement regulations limiting entry into those fisheries which, in the Commission's judgment, required limitation.

In 1974, after considering the available biological data, consulting with fishery management personnel, conducting an economic study of the fishery and holding public hearings in communities throughout southeast Alaska, the Commission decided to limit entry into the power troll fishery, effective with the 1975 season. At the same time the Commission limited entry into all the salmon net fisheries from Bristol Bay south and eastward. The remaining salmon net fisheries in the north were limited in the following year. Due to intense political pressure, the hand troll fishery was and still is the only salmon fishery not subject to limited entry.

In accordance with past management practices in treating inside and outside waters as a unit, the State limited entry into the power troll fishery based upon fishermen's participation both inside and outside territorial waters.

Application of the limited entry system to waters beyond the limits of Alaska territorial jurisdiction was effected through a regulation which prohibited possession of fish aboard a fishing vessel without a valid interim-use or entry permit for that type of fish and gear.

The Entry Commission's decision to limit entry into the power troll fishery was based on a spectrum of reason. The number of vessels participating in the fishery had been increasing, harvesting capacity of the fleet was also increasing and the existing fleet was more than adequate to take any expected returns. Resource levels were greatly depressed, with some stocks at all-time low levels, due in part to the efficiency of the power troll fleet; many direct and indirect regulatory efforts had failed, with others resulting in only minor effect on the fishery; and stern conservation and management measures were necessary to reverse the trend of depression in the fishery stocks (4.8). The Commission thus opted for a conservative decision in acting to halt the growth of the power troll fleet operating on those stocks.

The following discussion of various aspects of the limited entry system is illustrative of the Council's consideration of the existence of Alaska's functioning program and its impact on and potential for the limited entry system in the FCZ. Since the existing Alaska system is intended to play a partnership role with the limited entry system for the FCZ, it is advisable to set forth in some detail the history of the Alaska system.

Title 16 of the Alaska Statutes was amended, effective 27 April 1973, by adding Chapter 43, entitled "Regulation of Entry Into Alaska Commercial Fisheries." This law created the Alaska Commercial Fisheries Entry Commission and, effective 21 December 1973, regulations adopted by the Commission required all persons who wanted to participate in this fishery to hold valid interim-use permits pending the establishment of a system for issuing entry permits. Interim-use permits for this fishery are distinguishable from

entry permits in that interim-use permits are temporary and may be transferred only on a temporary basis in case of an emergency, whereas entry permits are permanent and freely transferable.

On 18 December 1974, Commission regulations went into effect which required all participants in the power troll fishery to hold entry permits, established a point system for the issuance of those permits and set the guidelines under which the Commission would function and permits would be issued. These regulations are found in Title 20 of the Alaska Administrative Code in Chapter 05.

Having determined that a need existed to limit access to the Alaska power troll fishery in 1975, it became necessary to determine how many entry permits should be issued.

Alaska law required that all power troll fishermen who qualified for 20 or more points must be issued a permit at the outset. This group of fishermen included those who were characterized as those who would suffer "significant economic hardship" if denied an entry permit at the outset of the program. The State determined that unless accommodating those in this category required a greater number, the existing size of the power troll fleet should not be exceeded. This determination was based upon the fact that even with the present fleet size, limited entry was necessary for conservation and management, and social/economic reasons.

The State further determined that substantial social and economic dislocation could occur if the number of entry permits issued at the beginning of the program was less than the approximate size of the fleet as of the date of the passage of the law in early 1973. By not reducing the size of the fleet at the outset, the State nevertheless prevented any further unwarranted growth which could only result in continued deterioration of the native Alaska stocks.

The current fleet size was determined to be 950 units of gear (i.e., boats). Thus, entry was limited at the outset to a fleet of the approximate current size, the maximum number of permits being 950, with the overriding requirement that all who would suffer "significant economic hardship" be issued a permit even if 950 must be exceeded.

It was not intended that the 950 units of gear represent the optimum size for the power troll fleet. This number simply represents a restraint on further growth, with the determination of the actual optimum number yet to be made.

The Council is in accord with the Alaska Commercial Fisheries Entry Commission's finding that a system of limited entry is necessary and appropriate for the management of the power troll fishery. The considerations which prompted the Commission's decision in 1974 were valid. Other information which has become available since 1974 reaffirms that conclusion.

During the period from 1969 to 1977, when increases in the fleet occurred, they correlated with increased catch and with smaller average catches per gear operator. The increases in catch were undesirable from a biological management point of view and the smaller average catches per gear operator suggests a decline in salmon. Lower average catches per boat, moreover, were undesirable from the standpoint of economic efficiency and social stability. The reduction of the fleet from its 1974 high level effected by limited entry resulted in a trend towards larger average catches per gear operator.

The Council further argues that Alaska's decision to limit the power troll fleet to its pre-1973 level was appropriate. Although adequate information was not available from which to determine the optimum number of catching units for the fishery, the need for prompt action was evident. Taking into consideration the requirement for protecting the resource, and on the other hand, the importance of avoiding economic hardship and social disruption for those dependent upon the fishery, the decision on the fleet size was a necessary first step to achieve valid State and Federal concerns.

The point system used by Alaska to issue permits under Commission regulations gives consideration to a broad range of factors: number of years in the fishery; kind of participation (crew member or gear license holder); consistency of participation; income percentage derived from the fishery; reliance on alternative occupation; vessel and gear, and unavoidable and special circumstances that precluded participation or precluded a realistic representation of the points that should be awarded. The system is built around participation in and economic dependence upon the fishery and is designed to insure that those applicants get entry permits who would suffer the greater degree of hardship if excluded from the fishery, and as stated earlier, the entire power troll fishery, including that which is now in the FCZ, was subject to the point system.

The Council concurs that the optimum number of power troll permits for the whole fishery is not in excess of 950. The Council also believes that these 950 permits are, (due to the breadth of factors initially accounted for by the State) indicative of those persons who are presently participating in the entire fishery, including the FCZ.

[redacted]

TABLE 8

Permit status of gear operators who fished in the FCZ from 1975-1977.

Alaska Power Troll Permit Status Type--	No. of Cases
Original issuees who still hold permits	123
Original issuees who have transferred permits away	13
Transferees who now hold permits	36*
Transferees who have transferred permits away	2
Interim-use permits still held in 1978	3
OTHER:	
Estates	1
Hand Trollers	5
No permit, possible fish ticket error	1
TOTAL	184

*Of these, 3 are people who still have unsettled permit applications, but went ahead and acquired a permanent entry permit.

Compiled by CFEC

(Last Page of High-Seas Salmon FMP)

[FR Doc. 79-17321 filed 6-7-79; 8:45 am]
BILLING CODE 3510-22-C

Friday
June 8, 1979

Federal Register

Part IV

Department of Labor

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions and Corrections to Previous Document

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 224–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General Wage Determination Decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and Supersedeas Decisions to General Wage Determination Decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the Modifications and Supersedeas Decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 224–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing General Wage Determination Decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and Supersedeas Decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage & Hour Division, Office of Government Contract Wage Standards, Division of Construction Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Wage Determination Decision.

New General Wage Determination Decisions

Kentucky.—KY79–1099.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the Federal Register are listed with each State.

Alabama:	
AL79–1065	Apr. 13, 1979.
Connecticut:	
CT79–2010; CT79–2011	Apr. 6, 1979.
Kentucky:	
KY78–1111	Oct. 1, 1978.
New Jersey:	
NJ77–3092	Oct. 7, 1977.
Ohio:	
OH79–2048	May 4, 1979.
OH79–2047; OH79–2046; OH79–2049; OH79–2050	May 11, 1979.
Pennsylvania:	
PA78–3017	May 5, 1978.
PA78–3066	Sept. 22, 1978.
PA78–3068	Sept. 29, 1978.
PA79–3004	Mar. 16, 1979.
PA79–3008	Apr. 27, 1979.
Virginia:	
VA78–3074	Nov. 3, 1978.
West Virginia:	
WV78–3018	June 9, 1978.

Cancellation of General Wage Determination Decisions

None.

Signed at Washington, D.C., this 1st day of June 1979.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

[FR Doc. 79-17514 Filed 6-7-79; 8:45 am]
BILLING CODE 4510-27-M

NEW DECISION

STATE: KENTUCKY
COUNTIES: BOYD, CARTER, ELLIOTT, FLEMING, GREENUP, JOHNSON, LAWRENCE, LEWIS, MARTIN, MORGAN, ROWAN.
DECISION NUMBER: KY79-1099 DATE: DATE OF PUBLICATION
DESCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION PROJECTS - includes single family homes and garden type apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
AIR CONDITIONING & HEATING MECHANICS	$ 5.50				
BRICKLAYERS	7.35				
CARPENTERS	5.92				
CEMENT MASONS	5.99				
DRYWALL FINISHERS	6.21				
DRYWALL HANGERS	6.00				
ELECTRICIANS	6.00				
INSULATION INSTALLERS	4.00				
LABORERS:					
Unskilled	3.50				
Mason tenders	4.00				
PAINTERS	5.74				
PLUMBERS & PIPEFITTERS	6.25				
ROOFERS	5.00				
SHEET METAL WORKERS	5.50				
SOFT FLOOR LAYERS	5.00				
TILE SETTERS	5.00				
TRUCK DRIVERS	3.50				
WELDERS - Rate for craft.					
POWER EQUIPMENT OPERATORS:					
Backhoe	8.25				
Bulldozer	8.25				

MODIFICATIONS P. 1

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. AL79-1065 - Mod. #1 (44 FR 22305 - April 13, 1979) Colbert and Lauderdale Counties, Alabama					
Change:					
Electricians:					
Electricians	11.30	.50	3%+.50		12
Cable Splicers	11.55	.50	3%+.50		12
DECISION NO. CT79-2010 - MOD #4 (44 FR 20913 - April 6, 1979) Fairfield, Litchfield and Windham Counties, Connecticut					
CHANGE:					
PAINTERS:					
Fairfield Co.: Bethel, Brookfield, Danbury, New Fairfield, Newton, Redding, Richfield, Sandy Hook & Shepaug; Litchfield Co.: New Milford					
Brush, Paperhangers, Tapers	$11.60	.50	.50	*	
Steel	12.90	.50	.50	*	
Epoxy	14.00	.50	.50	*	
Residential	9.85	.50	.50	*	
Spray	17.40	.50	.50	*	
DECISION NO. CT79-2011 - MOD #4 (44 FR 20921 - April 6, 1979) Hartford, Middlesex, New Haven, New London and Tolland Counties Connecticut					
CHANGE:					
PAINTERS:					
Hartford Co.: Avon, Bloomfield, Broad Brook, Canton, E. Granby E. Hartford, E. Windsor, Enfield, Farmington, Glastonbury Granby, Hartford, Manchester, Marlborough, Poquonock, Rocky Hill, Simsbury, S. Windsor, Suffield, S. Manchester, W. Hartford, W. Simsbury, Wetherfield, Windsor & Windsor Locks; Tolland Co.: Andover, Ashford, Bolton, Columbia, Coventry, Ellington, Hebron, Mansfield, Rockville, Stafford, Somers, Tolland, Union, Vernon & Wellington					
Brush; Tapers	$10.60	1.10	.85		

DECISION NO. CT79-2011 - MOD #4 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
PAINTERS: (Cont'd)					
Paperhangers	$11.10	1.10	.85		
Riding Steel; Steam Cleaning; Sandblasting; Tank; Towers; Spray	11.18	1.10	.85		
	13.60	1.10	.85		
Hartford Co.: Berlin, Bristol, Burlington, E. Berlin, Forestville, Hartland, Kensington, Milldale, New Britain, Newington, Plainville, Plantsville, Southington and Unionville; New Haven Co.: Cheshire, Guilford, Madison, Meriden, & Wallingford; Middlesex Co.: Chester, Clinton, Cromwell, Deep River, Durham, E. Haddam, E. Hampton, Essex, Haddam, Higganum, Ivoryton, Killingworth, Middlefield, Middletown, Moodus, Norfolk, Portland, Saybrook & Westbrook					
Brush; Roller; Taping	10.25	.90	.60		
Spray	12.90	.90	.60		
Epoxy	10.45	.90	.60		
Paperhanging	10.75	.90	.60		
Work over 60 ft. & Boatswain chair; Open Steel	15.38	.90	.60		
Swing Stage 40-60 ft.	11.25	.90	.60		
DECISION NO. KY76-1111 - Mod. #1 (41 FR 43456 - October 1, 1976) Carter, Elliott, Fleming, Lewis, Mason, Nicholas, Robertson, and Rowan Counties, Kentucky					
ADD THE FOLLOWING COUNTIES:					
Carter, Elliott, Fleming, & Lewis					

DECISION #NJ77-3092 - Mod. #8
(42 FR 54726 - October 7, 1977)
Bergen, Essex, Hudson, & Passaic Counties, New Jersey

Change:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers, Stonemasons, Cement Masons, & Plasterers:					
Area 1	11.75	.92	.90		.05
Area 2	10.50	1.97	.95		.05
Area 3	12.10	.84	.90		.02
Area 4					
Cement Masons	11.70	.75	1.00		
Plasterers	11.70	.75	1.00		.05
Carpenters, Insulators, & Millwrights:					
Area 1					
Carpenters & Insulators	12.13	8%	7%		1%
Millwrights	12.38	8%	7%		1%
Electricians & Cable Splicer:					
Other Residential Construction:					
Essex County	13.75	9%	12%		
Passaic County	14.25	7%	3%+7%		
Glaziers:					
Bergen & Passaic Counties	11.17	.80	2.00	1.25	.03
Essex & Hudson Counties	12.45	1.00	2.00		.05
Laborers:					
Area 1					
Group 1	8.40	.85	.85		.07
Area 3					
Group 1	9.25	.45	.55		.07
Group 2	9.50	.45	.55		.07
Area 4					
Unskilled laborer	8.80	.80	.90		.07
Area 5					
Unskilled laborers	8.50	.75	.85		.07
Area 7					
Unskilled laborers	8.15	.80	1.20		.07
Line Construction:					
Essex County:					
Linemen, Cable Splicers, Line Equipment Operators, Line Truck Operators & Groundmen	13.75	9%	12%		3/4%
Passaic County:					
Linemen & Equipment Operators	14.25	7%	10%		3/4%
Cable Splicers	15.32	7%	10%		3/4%
Groundmen	9.975	7%	10%		3/4%
Pipefitters:					
Bergen & Hudson County and the city of Passaic in Passaic Co.	12.00	1.00	1.90	1.00	.25

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DECISION #NJ77-3092 - Mod. #8

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Plumbers:					
Area 1	13.60	1.00	1.35		.25
Area 2	13.60	1.00	1.35		.25
Area 3	13.60	1.00	1.35		.25
Area 4	13.60	1.00	1.35		.25
Plumbers & Pipefitters:					
Area 2					
Plumbers	13.60	1.00	1.35		.25
Pipefitters	12.00	1.00	1.90	1.00	.25
Sheet Metal Workers:					
Essex & Passaic Counties	11.75	4%+.67	4%+.46	8%	.01

DECISION NO. OH79-2043 - MOD #2
(44 FR 26504 - May 4, 1979)
Statewide, Ohio

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
ELECTRICIANS:					
Holmes & Stark Counties, the remainder of Carroll and Tuscarawas Counties, Columbiana County (Knox Twp.), Mahoning County (Smith Twp.) and Wayne County (south of Baughman, Chester, Green and Wayne Twps.)	13.35	.55	3%+.60		.3%
Summit County, the remainder of Medina & Wayne Counties & Portage County (excluding Twps. of Charlestown, Edinburg, Freedom, Hiram, Palmyra, Paris and Windham)	13.66	.74	3%+.65		.2%
PAINTERS:					
Ashtabula, Cuyahoga, Geauga & Lake Counties, Lorain (North East Part) and Portage & Summit Counties (North of the Ohio Turnpike):					
Brush	12.96	.82	1.00		.05
Bridge and Open Steel; Closed Steel Over 55'	13.66	.82	1.00		.05
Closed Steel Below 55'; Spray	13.36	.82	1.00		.05
Erie, Hancock, Huron, Sandusky, Seneca and Wyandot Counties					
Brush	11.80	.70	.70		50.00p/yr
Structural Steel and Bridges	11.25	.70	.70		50.00p/yr
LINE CONSTRUCTION:					
Carroll (N ½ incl. Fox, Harrison, Rose & Washington Twps.), Columbiana (Knox Twp.), Holmes, Mahoning (Smith Twp.), Stark, Tuscarawas (N. of Auburn, Clay, Rush, & York Twps.) & Wayne (S. of Baughman, Chester, Green & Wayne Twps.) Cos.:					
Cable Splicers; Linemen	13.35	.55	3%+.60		.3%
Line Equipment Ops.	11.60	.55	3%+.60		.3%
Groundmen; Truck Drivers	7.95	.55	3%+.60		.3%

MODIFICATIONS P. 6

DECISION NO. OH79-2043 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
LINE CONSTRUCTION (Cont'd)					
Medina (Brunswick, Chatham, Granger, Guilford, Harrisville, Hinckley, Homer, Lafayette, Medina, Montville, Sharon, Spencer, Wadsworth, Westfield, & York Twps.), Portage (Atwater, Aurora, Brimfield, Deerfield, Franklin, Mantua, Randolph, Ravenna, Rootstown, Shalersville, Streetsboro & Suffield Twps.), Summit & Wayne (Northern ½ of Co.) Cos.:					
Linemen	$13.66	.74	3%+.65		½%
Cable Splicers	14.46	.74	3%+.65		½%
Equipment Ops.	10.25	.74	3%+.65		½%
Truck Drivers; Groundman	6.83	.74	3%+.65		½%
DECISION NO. OH79-2047 - MOD #2 (44 FR 27889 - May 11, 1979) Adams, Brown, Butler, Champaign, Clark, Clermont, Clinton, Darke, Delaware, Fairfield, Fayette, Franklin, Gallia, Geauga, Greene, Hamilton, Highland, Lawrence, Licking, Madison, Meigs, Miami, Montgomery, Muskingum, Perry, Pickaway, Pike, Preble, Ross, Scioto, Shelby, Union and Warren Counties, Ohio					
CHANGE:					
ASBESTOS WORKERS:					
Butler (Middletown & Vic), Champaign, Clark, Clinton, Darke, Greene, Miami, Montgomery, Preble, Shelby, & Warren (Twps. of Clear Creek, Franklin, Massie, Turtle Creek & Wayne) Cos.	12.87	.55	1.50		.02

MODIFICATIONS P. 7

DECISION NO. OH79-2047 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
ELECTRICIANS:					
Geauga Co. (Bainbridge, Chester & Russell Twps.)	$14.62	.90	3%+.51		.02
IRONWORKERS:					
Geauga Co.	13.97	1.05	1.20		.03
MARBLE SETTERS' FINISHERS:					
Terrazzo Workers' Finishers;					
Tile Setters' Finishers:					
Champaign, Clark, Darke, Greene, Miami, Montgomery, Preble & Shelby Cos.	9.99				
PAINTERS:					
Geauga Co.:					
Brush; Paperhangers; Rollers	12.96	.82	1.00		.05
Swing Stage; Windowjack & Bos'n Chair	13.26	.82	1.00		.05
Spray	13.36	.82	1.00		.05
Tapers	13.66	.82	1.00		.05
DECISION NO. OH79-2048 - MOD #2 (44 FR 27901 - May 11, 1979) Ashtabula, Cuyahoga, Lake, Lorain, Portage, Stark & Summit Counties, Ohio					
CHANGE:					
ELECTRICIANS:					
Cuyahoga & Lorain (Twp. of Columbia) Cos.	14.62	.90	3%+.51		.02
Portage (Twps. of Atwater, Aurora, Brimfield, Deerfield, Franklin, Mantua, Randolph, Ravenna, Rootstown, Shelbyville, Streetsboro & Suffield) & Summit Cos.:					
Commercial Construction	13.66	.74	3%+.65		.2%
Residential Construction	8.48	.74	3%+.20		.2%
Stark County:					
Commercial Construction	13.35	.55	3%+.60		.3%
Residential Construction	8.95	.50	3%+.40		.3%

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MODIFICATIONS P. 9

DECISION NO. OH79-2048 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
IRONWORKERS:					
Ashtabula (except NE ¼ of Co.), Cuyahoga, Lake, Lorain, Portage (excluding Ravenna Ordnance Depot), & Summit Cos.	$13.97	1.05	1.20		.03
LINE CONSTRUCTION:					
Portage (Twps. of Atwater, Aurora, Brimfield, Deerfield, Franklin, Mantua, Randolph, Ravenna, Rootstown, Shalersville, Streetsboro, & Suffield) & Summit Cos.:					
Linemen	13.66	.74	3%+.65		¼%
Cable Splicers	14.46	.74	3%+.65		¼%
Groundmen; Truck Drivers	6.83	.74	3%+.65		¼%
Equipment Operators	10.25	.74	3%+.65		¼%
Stark Co.:					
Cable Splicers; Lineman	13.35	.55	3%+.60		.3%
Truck Drivers; Groundmen	7.95	.55	3%+.60		.3%
Line Equipment Ops.	11.60	.55	3%+.60		.3%
PAINTERS:					
Ashtabula, Cuyahoga, Lake, Portage (No. of East West Turnpike) & Summit (No. of East West Turnpike), Lorain (NE part):					
Brush; Rollers; Paperhangers	12.96	.82	1.00		.05
Swing Stage; Window Jack Tapers	13.26	.82	1.00		.05
	13.66	.82	1.00		.05

DECISION NO. OH79-2049 - MOD #2
(44 FR 27906 - May 11, 1979)
Ashland, Carroll, Columbiana, Coshocton, Holmes, Medina, Tuscarawas & Wayne Counties, Ohio

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
ELECTRICIANS:					
Carroll (N ½ incl. Fox, Harrison, Rose & Washington Twps.) Columbiana (Knox Twp.), Holmes Tuscarawas (N. of Auburn, Clay Rush, & York Twps.), & Wayne (S. of Baughman, Chester, Green, & Wayne Twps.) Cos.	$13.35	.35	3%+.60		.3%
Medina (Rem. of Co.), & Wayne (N ½ of Co.)	13.66	.74	3%+.65		.2%
IRONWORKERS:					
Medina Co.	13.97	1.05	1.20		.03
LINE CONSTRUCTION:					
Carroll (Rem. of Co.), Columbiana (Knox Twp.), Holmes, Tuscarawas (N. of Auburn, Clay, Rush, & York Twps.) & Wayne (S. of Baughman, Chester, Green & Wayne Twps.) Cos.:					
Cable Splicers; Linemen	13.35	.35	3%+.60		.3%
Line Equipment Operators	11.60	.55	3%+.60		.3%
Groundmen; Truck Drivers	7.95	.55	3%+.60		.3%
Medina (Rem. of Co.) and Wayne (N ½ of County):					
Linemen	13.66	.74	3%+.65		¼%
Cable Splicer	14.46	.74	3%+.65		¼%
Truck Drivers; Groundmen	6.83	.74	3%+.65		¼%
Equipment Operators	10.25	.74	3%+.65		¼%
ADD:					
GLAZIERS:					
Ashland Co.:					
Outside replacement	10.55	.50			.01
Outside all other work	10.82	.50			.01

MODIFICATIONS P. 10

DECISION NO. OH79-2050 - MOD #2
(44 FR 27913 - May 11, 1979)
Allen, Auglaize, Crawford, Defiance, Erie, Hancock, Hardin, Henry, Huron, Knox, Logan, Marion, Mercer, Morrow, Ottawa, Paulding, Putnam, Richland, Sandusky, Seneca, Van Wert, Williams, Wood, & Wyandot Counties, Ohio

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
ASBESTOS WORKERS:					
Auglaize & Logan Cos.	$12.87	.55	1.50		.02
IRONWORKERS:					
Defiance, Paulding, Putnam, Van Wert & Williams Cos.	12.35	1.00	1.70		.02
Erie, & Huron Cos.	13.97	1.05	1.20		.03
MARBLE SETTERS' FINISHERS; Terrazzo Workers' Finishers; & Tile Setters' Finishers:					
Auglaize, Hardin, Logan & Mercer Cos.	9.99				
PAINTERS:					
Erie, Hancock, Huron, Sandusky, Seneca & Wyandot Cos.:					
Old Commercial					
Brush; Roller; Wash; Clean Drywall; Paperhanging; 30' to 60'	9.90	.70	.70		50.00p/yr
60' or over	10.15	.70	.70		50.00p/yr
Sandblasting; Spray; Swing Stage; Boatswain Chair; Needle Beam	11.00	.70	.70		50.00p/yr
Hazardous Work & Material; Stacks, Tanks, Towers over 40' in ht.	10.40	.70	.70		50.00p/yr
New Commercial	10.90	.70	.70		50.00p/yr
Brush; Roller, Wash; Clean	10.80	.70	.70		50.00p/yr
Drywall; Paperhanging	11.05	.70	.70		50.00p/yr
Structural Steel; 30' to 60'	11.25	.70	.70		50.00p/yr
60' & over	11.65	.70	.70		50.00p/yr
Sandblast; Spray; Swing Stage; Needlebeam; Boatswain Chair	11.30	.70	.70		50.00p/yr
Hazardous Work & Material; Stacks, Tanks, & Towers over 40' in ht.	11.80	.70	.70		50.00p/yr
ADD:					
GLAZIERS:					
Crawford, Huron (S. part), Knox, Marion, Richland, Wyandot (Eastern part), Cos.:					
Outside replacement	$10.55	.50			.01
Outside all other work	10.82	.50			.01

MODIFICATIONS P. 11

DECISION No. PA78-3017 - Mod. #10
(43 Fr 19547 - May 5, 1978)
Carbon, Monroe County, including Tobyhanna Army Depot, and Pike County, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Bricklayers & Stonemasons:					
Zone 2	$11.40	.60	.75		
Zone 3	11.35	.90	1.00		.01
Zone 4	11.01	.85	.40		
Carpenters					
Zone 1	11.30	.64	.72		.05
Zone 2	10.92	.55	.65		.05
Cement mason					
Zone 2	10.91	.85	.40		
Zone 3	11.55				
Laborers:					
Zone 1					
Class 1	9.30	.57	1.00		
Class 2	9.45	.57	1.00		
Class 3	9.70	.57	1.00		
Zone 2					
Class 1	8.09	.62	.59		
Class 2	8.34	.62	.59		
Class 3	8.49	.62	.59		
Class 4	9.11	.62	.59		
Class 5	8.84	.62	.59		
Roofers:					
Zone 2					
Composition & Kettleman	10.65	.90	.85		
Sheet metal workers	11.52	.70	.76		.02
Soft floor layers	9.60	.55	.65		.05
Tile Setters					
Zone 3	9.93	.85	.40		
Terrazzo workers					
Zone 1	9.90	1.00	1.15		
Zone 2	9.45	.35	.50		
Marble Setters:					
Zone 1	9.65	1.00	1.15		
Zone 3	10.18	.85	.40		
Millwrights					
Zone 3	11.70	.64	.72		.05

MODIFICATIONS P. 12

DECISION No. PA78-3017 - Mod. # 10, Cont'd.
MODIFICATIONS P. 13

DECISION NO. PA78-3017 - Mod. # 10
Cont'd.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Painters:					
Zone 1					
Brush	$9.95	.75	.50		.10
Tapers	10.21	.75	.50		.10
"All open structural steel, bridges, water tank towers, interiors and exteriors of tanks, smoke stacks, radio and transmission towers, powers, drive-in theater screens and framing, tin roofing, pits or wells, disposal plants and their equipment, sandblasting, steamcleaning, spray painting, work with epoxy paints or materials similar with highly toxi fumes, use of window jacks, window belts, swing scaffolds or bosun's chair on structure of more then two stories high or twenty-five feet, work requiring crawling or climbing without support of a scaffold from the ground floor, rolling steel scaffold towers in the interior or exterior of buildings with work platform twenty-five feet or over in height which are not tied in"	11.21	.75	.50		.10
POWER EQUIPMENT OPERATORS: Monroe County, including Tobyhanna Army Depot, and Pike County					
GROUP 1	12.81	7%	10.3%	a	1.8%
GROUP 2	12.52	7%	10.3%	a	1.8%
GROUP 3	11.64	7%	10.3%	a	1.8%
GROUP 4	10.87	7%	10.3%	a	1.8%
GROUP 5	10.39	7%	10.3%	a	1.8%

DECISION No. PA78-3017 - Mod. # 10,
Cont'd.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS: Monroe County, including Tobyhanna Army Depot, and Pike County					
GROUP 6	9.47	7%	10.3%	a	1.8%
GROUP 7	13.06	7%	10.3%	a	1.8%
GROUP 7-A	13.31	7%	10.3	a	1.8%
GROUP 7-B	13.56	7%	10.3%	a	1.8%
POWER EQUIPMENT OPERATORS: REMAINDER OF COUNTY					
GROUP 1	12.86	7%	10.3%	a	1.8%
GROUP 2	12.57	7%	10.3%	a	1.8%
GROUP 3	11.70	7%	10.3%	a	1.8%
GROUP 4	10.99	7%	10.3%	a	1.8%
GROUP 5	10.46	7%	10.3%	a	1.8%
GROUP 6	9.55	7%	10.3%	a	1.8%
GROUP 7	13.11	7%	10.3%	a	1.8%
GROUP 7-A	13.36	7%	10.3%	a	1.8%
GROUP 7-B	13.60	7%	10.3%	a	1.8%
Plasterers					
Zone 4	10.70	.85	.40		
DECISION NO. PA78-3066 - Mod. # 8 (43 FR 43228 - September 22, 1978) Columbia, Montour, Snyder Counties, Pennsylvania					
Add:					
Laborers:					
Zone 3					
Mason tenders, machine mixers, Motorized stockers, scaffold builders (masonry), mortar pump, convsyors, mechanical cleaners, and sandblasting for masonry and masonry equipment	$8.97	.35	.40		
DECISION NO. PA78-3068 - Mod. # 6 (43 FR 45160 - September 29, 1978) Lebanon County, Pennsylvania					
Change:					
Electricians:					
Lawn, East Hanover, and Indiantown Gap Military Reservation	13.36	.65	3%+.67		4 of 1%
Line Construction:					
Linemen & cable splicer	12.05	.45	3%		3/8 of 1%
Groundmen	7.23	.45	3%		3/8 of 1%
Winch truck operator	8.43	.45	3%		3/8 of 1%
Sheet metal workers	11.06	1.42	1.18		.14

MODIFICATIONS P. 14

DECISION NO. PA79-3004 - Mod. # 3
(44 FR 16319 - March 16, 1979)
Northumberland County, Pennsylvania.

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Add:					
Laborers:					
South of the Susquehanna River: Mason tenders, machine mixers; Motorized stockers, scaffold builders (masonry), mortar pump, conveyors, mechanical cleaners, and sandblasting for masonry and masonry equipment	$8.97	.35	.40		

DECISION NO. PA79-3008 - Mod. #2
(44 FR 25124 - April 27, 1979)
Cumberland, Dauphin, Perry, Juniata, New Cumberland Depot in York County, Pennsylvania

Changes:					
Electricians	11.36	.65	3%+.67		1/4 of 1%
Line Construction:					
Linemen	12.05	.45	3%		3/8 of 1%
Groundmen	7.23	.45	3%		3/8 of 1%
Winch truck operator	8.43	.45	3%		3/8 of 1%
Sheet metal workers	11.06	1.42	1.18		.14
Add:					
Laborers:					
Mason tenders, machine mixers, motorized stockers, scaffold builders (masonry), mortar pump, conveyors, mechanical cleaners, and sand basting for masonry and masonry equipment	8.97	.35	.40		

DECISION #VA78-3074- Mod. #2
(43 FR 51588- November 3,1978)
Henrico and the Independent City of Richmond, Virginia

CHANGE:					
Asbestos Workers	$9.93	.80	.85		.01

MODIFICATIONS P. 15

DECISION #WV78-3018 - Mod. #6
(43 FR 25278 - June 9, 1978)
State of West Virginia excluding the Counties of Berkeley, Jefferson, & Morgan

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Asbestos Workers:					
Area 3	14.15	.50	.70		.03
Carpenters & Piledrivermen:					
Area 2					
Carpenters	11.37	.50	.60		.02
Piledrivermen	11.67	.50	.60		.02
Electricians:					
Jackson, Pleasants, Ritchie, Tyler, Wirt, & Wood Counties					
Wiremen	11.10	.50	3%+1.25	1.50	.04
Cable Splicers	11.35	.50	3%+1.25	1.50	.04
Brooke (Buffalo Twp. Only), Marshall, Ohio, & Wetzel Counties:					
Wiremen	12.60	.50	3%+.35	1.00	.04
Cable Splicers	12.85	.50	3%+.35	1.00	.04
Barbour, Doddridge, Harrison, Lewis, Randolph, & Upshur Counties:					
Wiremen	10.95	.50	3%+.52	2.02	.03
Cable Splicers	12.045	.50	3%+.52	2.02	.03
Marion, Monongalia, Taylor, Preston, & Tucker Counties:					
Contracts under $12,000:					
Wiremen	6.15	.50	3%+1.02	1.52	.02
Contracts over $12,000:					
Wiremen	11.35	.50	3%+1.02	1.52	.02
Cable Splicers	11.50	.50	3%+1.02	1.52	.02
Line Construction:					
Brooke (Buffalo Twp. only), Marshall, Ohio, & Wetzel Counties:					
Linemen & Equipment Operators	12.60	.50	3%+.35	1.00	.04
Cable Splicers	12.85	.50	3%+.35	1.00	.04
Groundmen	10.08	.50	3%+.35	1.00	.04
Jackson, Pleasants, Ritchie, Tyler, Wirt, & Wood Counties:					
Linemen & Equipment Operators	11.65	.60	3%+1.25	1.52	3%
Cable Splicers	12.82	.60	3%+1.25	1.52	3%
Groundmen	9.38	.60	3%+1.25	1.52	3%

MODIFICATIONS P. 16

DECISION #WV78-3018 - Mod. #6

Line Construction (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Marion, Monongalia, Preston, Taylor, & Tucker Counties:					
Linemen & Equipment Operators	11.35	.50	3%+1.02	1.52	4%
Cable Splicers	12.485	.50	3%+1.02	1.52	4%
Groundmen & Truck Drivers	9.08	.50	3%+1.02	1.52	4%
Barbour, Harrison, Lewis, Randolph, Doddridge, & Upshur Counties:					
Linemen & Equipment Operators	10.95	.50	3%+.52	2.02	4%
Cable Splicers	12.045	.50	3%+.52	2.02	4%
Groundmen & Truck Drivers	8.76	.50	3%+.52	2.02	4%
Ironworkers: Structural, Ornamental, & Reinforcing:					
Area 2	11.93	.80	1.15		.03
Area 5	10.55	.80	.85		.03
Sheet Metal Workers:					
Area 2	12.56	1.20	.825		.095
Truck Drivers:					
Area 2					
Group 1	9.20	"	"		
Group 2	9.30	"	"		
Group 3	9.45	"	"		
Group 4	9.60	"	"		
Group 5	9.85	"	"		
Group 6	9.95	"	"		
Area 7					
Group 1	8.53	.90	1.15		
Group 2	8.68	.90	1.15		
Group 3	8.88	.90	1.15		
Group 4	9.07	.90	1.15		
Group 5	9.31	.90	1.15		

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

Corrections

In FR Doc. 79-16606 appearing at page 31818 in the issue for Friday, June 1, 1979, pages 31820-31822 are hereby deleted in their entirety and the following tables are inserted immediately after p. 31837.

BILLING CODE 1505-01-M

MODIFICATIONS P. 28

MODIFICATIONS P. 27

DECISION No. PA79-3000 & Mod. #3
(44 FR 5625 - January 25, 1979)

DECISION No. PA79-3000 & Mod. # 3
(44 FR 5625 - January 25, 1979)
Butler, Cambria, Erie, Fayette, Mercer, Washington, Westmoreland, Lawrence, Somerset, Allegheny, Beaver, Armstrong, Blair, Cameron, Centre, Clarion, Clearfield, Crawford, Forest, Greene, Indiana, McKean, Venango, Warren, Bedford, Jefferson, Clinton, Elk, Franklin, Fulton, Huntington, Mifflin & Potter Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Ironworkers: Structural, Ornamental & Reinforcing Zone 2	$12.105	1.14	1.35		.03

DECISION No. PA79-3006 - Mod. # 2
(44 FR 16069 - March 30, 1979)
Franklin County, Pennsylvania

Change:					
Bricklayers	10.57	.60	.37		.08
Ironworkers	12.105	1.14	1.35		.03
Plumbers	11.55	.85	.90		.15

DECISION NO. TX78-4090 - Mod. #6 (43 FR 31364 - September 15, 1978) Bowie County, Texas	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Electricians	$11.17	.60	3%+.35		1/4%
DECISION NO. TX79-4002 - Mod. #6 (44 FR 1671 - January 5, 1979) Brazos County, Texas					
Change:					
Cement masons	11.50	.68	.72		.09
DECISION NO. TX79-4004 - Mod. #6 (44 FR 1673 - January 5, 1979) El Paso County, Texas					
Add:					
Glaziers	7.29	.30	.10		.02
Roofers	8.30	.35			
DECISION NO. TX79-4010 - Mod. #5 (44 FR 1681 - January 5, 1979) Wichita County, Texas					
Change:					
Electricians:					
Electricians	11.10	.50	3%		1/10%
Cable splicers	11.35	.50	3%		1/10%
Line Construction:					
Lineman; Lineman operator	11.10	.50	3%		1/10%
Cable splicer	11.35	.50	3%		1/10%
Groundman, 1st 6 months	50%JR	.50	3%		1/10%
Groundman, 2nd 6 months	60%JR	.50	3%		1/10%
Groundman, 1 year & over	70%JR	.50	3%		1/10%
DECISION NO. TX79-4011 - Mod. #6 (44 FR 1683 - January 5, 1979) Galveston & Harris Cos., Texas					
Change:					
Cement masons - Galveston Co.	11.50	.68	.72		.08
Harris Co.	11.80	.68	.72		
Marble masons-Galveston Co.	10.95				
Terrazzo workers-Galveston Co.	10.95				
Tile setters-Galveston Co.	10.95				

MODIFICATIONS P. 29

DECISION NO. TX79-4033 - Mod. #2 (44 FR 16326 - March 16, 1979) Jefferson & Orange Cos., Texas	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Bricklayers & stonemasons	$13.29	.63	.60		.04
Tile setters	11.78	.63	.60		.04
DECISION NO. TX79-4048 - Mod. #2 (44 FR 16330 - March 16, 1979) Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Counties, Texas					
Change:					
Electricians:					
Zone 1 - Electricians	11.28	.60	3%+.50		1/2%
Cable splicers	12.41	.60	3%+.50		1/2%
Zone 2 - Electricians	11.10	.50	3%		1/10%
Cable splicers	11.35	.50	3%		1/10%
Line construction:					
Zone 1:					
Lineman; Operator	11.10	.50	3%		1/2%
Cable splicers	11.35	.50	3%		1/2%
Groundman - 1st 6 months	50%JR	.50	3%		1/2%
Groundman - 2nd 6 months	60%JR				
Groundman - 1 year & over	70%JR				
Zone 2:					
Lineman	11.28	.60	3%+.50		1/2%
Cable splicers	12.41	.60	3%+.50		1/2%
Groundman:					
More than 1 yr. experience	7.44	.60	3%+.50		1/2%
Less than 1 yr. experience	6.52	.60	3%+.50		1/2%
Op.-hole digger, line truck	8.65	.60	3%+.50		1/2%
Flat bed truck drivers	6.52	.60	3%+.50		1/2%
DECISION NO. TX79-4051 - Mod. #1 (44 FR 26535 - May 4, 1979) Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Counties, Texas					
Change:					
Laborers:					
~~Zone 2 - Group 1~~	~~$ 6.40~~	~~.30~~	~~.40~~		~~.02~~
Group 2	6.64	.30	.40		.02
Group 3	6.74	.30	.40		.02
Group 4	6.89	.30	.40		.02

SUPERSEDEAS DECISION

STATE: Florida
DECISION NUMBER: FL79-1094
COUNTY: Dade
DATE: Date of Publication
Supersedes Decision No. FL76-1102 dated September 17, 1976 in 41 FR 40365.
DESCRIPTION OF WORK: Heavy Construction Projects (excluding Storm, Sanitary, Sewer Line and Water Line Projects)

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS	$10.55	.60	.54		.04
CARPENTERS	10.00	.80	.55		.02
CEMENT MASONS	10.55	.60	.54		.04
ELECTRICIANS	11.25	.51	.34	.96	
IRONWORKERS	10.00	.75	.83		.04
LABORERS:					
Unskilled	4.97				
Pipelayers	5.97				
MILLWRIGHTS	9.42	.55	.70		.08
PAINTERS	8.80	.55	.50	.12	.02
PILEDRIVERS	8.46	.55	.70		.02
PLUMBERS; PIPEFITTERS	10.42	.92	1.30		.09
STEAMFITTERS	11.03	1.08	1.00	.50	.09
TRUCK DRIVERS	4.65				
WELDERS - Rate for craft.					
POWER EQUIPMENT OPERATORS:					
Backhoes	8.26	.50	.45		.05
Combination Operators	8.26	.50	.45		.05
Cranes	9.30	.50	.45		.05
Draglines	6.51				
Front end loaders	7.96	.50	.45		.05
Graders	8.26	.50	.45		.05
Mechanics	6.94				
Oilers	5.49	.63	.30		7%
Rollers	7.06	.50	.45		.05
Scrapers	7.36	.50	.45		.05
Trenching Machines	7.36	.50	.45		.05

SUPERSEDEAS DECISION

DECISION NO MO79-4065

Page 2

STATE: Kansas & Missouri

COUNTIES: Cass, Clay, Jackson, Platte, Ray, Henry, Johnson & Lafayette Counties, Missouri;

SUPERSEDEAS DECISION

STATE: Kansas & Missouri

COUNTIES: Cass, Clay, Jackson, Platte, Ray, Henry, Johnson & Lafayette Counties, Missouri; Johnson & Wyandotte Counties, Kansas.

DECISION NO: MO79-4065

DATE: Date of Publication

Supersedes Decision No. MO78-4047, dated May 5, 1978 in 43 FR 19550

DESCRIPTION OF WORK: Building Construction Projects, (does not include single family homes and garden type apartments up to and including 4 stories) and heavy and highway construction in Johnson and Wyandotte Counties, Kansas only.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$12.67	.60	1.55		.05
BOILERMAKERS	12.00	1.15	1.00		.03
BRICKLAYERS AND STONEMASONS	11.025	.80	.35	1.00	
CARPENTERS:					
Zone 1 - Cass, Clay, Jackson, Lafayette, Platte and Ray Counties, Missouri; Johnson and Wyandotte Counties, Kansas					
Carpenter, Millwrights and Piledrivermen	11.00	.50	.30		.05
Zone 2 - Henry and Johnson Counties, Missouri					
Carpenters	10.625	.50	.30		.05
Millwrights and Piledrivermen	11.00	.50	.30		.05
CEMENT MASONS (Building Construction)					
Zone 1 - Cass, Clay, Jackson, Lafayette, Platte and Ray Counties, Missouri; Johnson and Wyandotte Counties, Kansas					
Cement masons	11.675	.65	.50		
Zone 2 - Henry and Johnson Counties, Missouri	10.13				
CEMENT MASONS (Heavy and Highway Construction): Johnson & Wyandotte Counties, Kansas	12.50	.65	.50		
ELECTRICIANS:					
Zone 1 - Western half of Clay and Jackson Counties, Missouri not including Blue Springs; Northern half of Platte County, Missouri; Northwestern portion of Cass County, Missouri not including Pleasant Hill:					
Electricians	12.77	.84	3%+.51	.95	.10
Zone 2 - Henry, Johnson and Lafayette Counties, Missouri and remainder of Clay, Jackson, Platte and Cass Counties, Missouri					
Electricians (contracts exceeding 2000 man hours	12.77	.84	3%+.51	.95	.10

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS - Zone 2 CONTD:					
Electricians (contracts not exceeding 2000 man hours	11.77	.54	3%+.51	.95	.10
Zone 3 - Ray County, Missouri;					
Electricians (contracts exceeding 2000 man hours	12.77	.54	3%+.51	.95	.10
Electricians (contracts not exceeding 2000 man hours	11.17	.54	3%+.51	.95	.10
Zone 4 - Johnson and Wyandotte Counties, Kansas	12.77	.54	3%+.51	.95	.10
ELEVATOR CONSTRUCTORS	11.97	.745	.56	3%+a	.025
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.745	.56	3%+a	.025
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR				

FOOTNOTES: - a-Employer contributes 8% of basic hourly rate for over 5 years of service and 6% of basic hourly rate for 6 months to 5 years service as Vacation Pay Credit. Also 6 paid holidays.

GLAZIERS	10.72	.61	.89	18.7%	.04
IRONWORKERS	11.60	.75	1.40	1.00	.05
LABORERS:					
Building Construction					
Zone 1 - Cass, Clay, Jackson and Platte Counties, Missouri; Johnson and Wyandotte Counties, Kansas					
GROUP 1	9.65	.45	.40	.50	.10
GROUP II	9.80	.45	.40	.50	.10
GROUP III	9.95	.45	.40	.50	.10
Zone 2 - Lafayette and Ray Counties, Missouri					
GROUP I	9.35	.45	.40	.50	.10
GROUP II	9.50	.45	.40	.50	.10
GROUP III	9.65	.45	.40	.50	.10

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Friday
June 8, 1979

Federal Register

Part V

Environmental Protection Agency

Agenda of Regulations

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Ch. I]

[FRL 1222-2]

Agenda of Regulations

AGENCY: Environmental Protection Agency.

ACTION: Agenda of Regulations.

SUMMARY: Several times a year the Agency publishes an agenda summarizing significant regulations under development. Its purpose is to help assure that interested parties have an early opportunity to participate in shaping these regulations.

FOR FURTHER INFORMATION: For information regarding a particular regulation listed in the Agenda, please contact the Agency official identified with that item.

Suggestions: If you have suggestions as to how we can make this publication more useful to you, please write Philip Schwartz, (PM–223), Environmental Protection Agency, Washington, D.C., 20460.

Mailing List: If you want your name on the mailing list for the Agenda of Regulations please write Allie Little, Environmental Protection Agency, PM–223, Washington, D.C., 20460.

SUPPLEMENTAL INFORMATION:

Background

On March 23, 1978, President Carter signed Executive Order 12044, *Improving Government Regulations*, which directs all executive agencies to adopt practices to improve their regulations. One of these practices prescribes that each agency publish, at least twice a year, an agenda of its significant regulations that are under development or review. EPA's most recent *Agenda of Regulations* was published on November 30, 1978.

Regulations Covered in the Agenda

We have tried to include all significant regulations which we expect to publish within the next year. Also listed are a few major policy actions which will be issued as EPA guidelines or Presidential guidance rather than regulations. Thirty significant proposed and final regulations were published since the last Agenda. Appearance or nonappearance of an item in the Agenda carriers no legal significance. Information in the Agenda is accurate as of May 1, 1979.

Executive Order 12044 gives general guidelines to determine those regulations that are significant and also directs each agency to develop its own specific criteria for this purpose. EPA's criteria are described in *Improving Environmental Regulations* published in the Federal Register, May 29, 1979, (44 FR 30988).

Organization

The Agenda lists prospective regulatory actions by program area according to the following format:

AIR—*The Clean Air Act as amended* (CAA). *The Motor Vehicle Information and Cost Savings Act* (MVICSA).

DRINKING WATER—*The Safe Drinking Water Act* (SDWA).

NOISE—*The Noise Control Act* (NCA).

PESTICIDES—*The Federal Insecticide, Fungicide, and Rodenticide Act as amended* (FIFRA).

RADIATION—*The Atomic Energy Act* (AEA). *The Public Health Service Act* (PHSA). *Uranium Mill Tailings Radiation Control Act* (UMTCRA).

SOLID WASTE—*The Resource Conservation and Recovery Act* (RCRA).

TOXIC SUBSTANCES—*The Toxic Substances Control Act* (TSCA).

WATER—*The Federal Water Pollution Control Act as amended by the Clean Water Act* (CWA). *The Marine Protection, Research, and Sanctuaries Act* (MPRSA).

JOINT PROGRAMS—(Regulations with Multiple Statutory Authorities).

The first column of the Agenda lists for each regulation an Agenda identification number (*e.g.*, 1122); title (*italicized*); statutory authority; (*e.g.*, CWA 303); and expected location in the Code of Federal Regulation (*e.g.*, 40 CFR 130.17). In most instances, a *brief* description of the regulation follows. Prospective regulations which may have economic consequences large enough to require a regulatory analysis are identified by an asterisk (*) after the Agenda identification number. Regulations for which we are preparing Urban Impact Statements in accordance with Executive Order 12044 are identified by a bullet (•) preceding the title.

The second and third columns list either actual or projected publication dates, if available, of the proposed regulation and of the final regulation in the Federal Register.

The fourth column provides the name, EPA mail code address and telephone number (including FTS number, if different than commercial number) of an Agency official to contact for further information.

Henry E. Beal,

Director, Standards and Regulations Evaluation Division.

May 4, 1979.

SIGNIFICANT EPA REGULATIONS UNDER CONSIDERATION

NAME AND DESCRIPTION OF REGULATION	PROPOSAL DATE IN FEDERAL REGISTER	FINAL DATE IN FEDERAL REGISTER	CONTACT PERSON AND ADDRESS
AIR			

We have already or are now developing the following five items under the authority of Sections 108 and 109 of the CAA, which direct the Administrator to establish National Ambient Air Quality Standards (NAAQS). To write a NAAQS for a pollutant, we first prepare a criteria document, which contains the latest scientific knowledge on the kind and extent of public health and welfare problems caused by the pollutant in the air. If we revise the criteria document, we may find it necessary to change the NAAQS. We are noting the date we expect to decide to reaffirm or to change the NAAQS.

A National Primary Ambient Air Quality Standard defines the maximum amount of an air pollutant which the Administrator of EPA determines is compatible with an adequate margin of safety to protect the public health. A National Secondary Ambient Air Quality Standard defines levels of air quality which the Administrator judges necessary to protect the public welfare from any known or anticipated adverse effects of a pollutant.

No. 1000 **Review of NAAQS for Photochemical Oxidants.* CAA 108. 40 CFR 50. The proposed regulation would change the existing primary, health-based standard to 0.10 ppm for a one-hour average from the existing 0.08 ppm standard. The secondary, welfare-based standard would remain at 0.08 ppm for a one-hour average. The pollutant we control would be changed from photochemical oxidants to ozone, which is the principal measurable ingredient in photochemical oxidants.	June 22, 1978	February 8, 1979	Joe Padgett (MD-12). Environmental Protection Agency, Research Triangle Park, N.C. 27711, 919-541-5204, FTS 9-629-5204.
No. 1001 ● **Review of NAAQS for Carbon Monoxide.* CAA 108. 40 CFR 50. The health basis for control of this pollutant will be reviewed. This task requires preparation of an updated criteria document and analysis of whether or not NAAQS should be revised.	September 1979	February 1980	Do.
No. 1002 ● **Review of NAAQS for Sulfur Oxides.* CAA 108. 40 CFR 50. A review of the health basis for control of this pollutant will require preparation of an updated criteria document and analysis of whether or not NAAQS should be revised.	May 1980	December 1980	Do.
No. 1003 ● **Review of NAAQS for Particulates.* CAA 108. 40 CFR 50. A review of the health basis for control of this pollutant will require preparation of an updated criteria document and analysis of whether or not NAAQS should be revised.	May 1980	December 1980	Do.
No. 1004 ● **Review of Long Term NAAQS for Nitrogen Dioxide.* CAA 108. 40 CFR 50. The NAAQS for nitrogen dioxide is undergoing review. Under the CAA amendments, the criteria and the decision to revise the standard must address both the short- and long-term effects of NO2 and other nitrogen species in the air, particularly nitrates and nitric acid aerosol.	October 1979	February 1980	Do.

We are developing performance standards to control emissions from the following industries under Section 111(b) of the CAA. This section requires that the Administrator develop and periodically update New Source Performance Standards (NSPS) for stationary sources which significantly contribute to air pollution. The NSPS are based on the best systems demonstrated to continually reduce emissions, taking into account costs and energy requirements. The standards will apply to both new sources and existing sources which are modified after approval of the regulation.

No. 1005 **NSPS—Fossil Fuel Steam Generators (Revision).* CAA 111. 40 CFR 60. Revised standards are proposed for utility boilers to control SO2, NOx, and particles. The revised NSPS will apply to any fossil-fueled utility boiler with a heat input of 250 million BTU/hour or greater. The NSPS will require that a certain percent of sulfur dioxide be removed and will include an emission ceiling and an emission floor.	September 18, 1978	June 1979	Don Goodwin (MD-13). Environmental Protection Agency, Research Triangle Park, N.C. 27711, 919-541-5271, FTS 9-629-5271.
No. 1006 *NSPS—Petroleum Liquid Storage Vessels.* CAA 111.40 CFR 60. This is a revision of 1974 NSPS. The revised standard will propose the use of double seals rather than single seals on floating roofs. The standard, as currently being developed, will essentially eliminate one of two types of seals currently in use.	May 18, 1978	September 1979	Do.
No. 1007 *NSPS—Glass Manufacturing.* CAA 111. 40 CFR 60.This regulation addresses the problem of emissions from new glass manufacturing furnaces. The Governor of New Jersey requested that EPA develop national standards.	June 1979	March 1980	Do.
No. 1008 *NSPS—Internal Combustion Engines.* CAA 111. 40 CFR 60.These regulations will require the application of best demonstrated technology to control emissions from stationary internal combustion engines. It will also require States to act under Section 111(d) to regulate these compounds from existing sources.	June 1979	April 1980	Do.
No. 1009 *NSPS—Non-Metallic Minerals.* CAA 111. 40 CFR 60. Particulate emissions from quarrying operations and related facilities will be controlled.	July 1979	June 1980	Do.
No. 1010 *NSPS—Organic Solvent Metal Cleaning.* CAA 111. 40 CFR 60. This rule will control evaporative emissions from metal cleaning and degreasing operations.	July 1979	June 1980	Do.
No. 1111 *NSPS—Surface Coating Operations for Auto Assembly Plants.* CAA 111. 40 CFR 60. Evaporative emissions from coating operations in the auto and light truck industry will be controlled.	September 1979	July 1980	Do.
No. 1112 *NSPS—Synthetic Organic Chemical Manufacturing.* CAA 111. 40 CFR 60. This regulation will establish the degree of emission control required in the manufacture of over 100 major organic chemicals.	January 1980	November 1980	Do.
No. 1113 *NSPS—Can Coating.* CAA 111. 40 CFR 60. This regulation will establish emission standards for volatile organic emissions from can-coating operations.	June 1980	September 1981	Do.
No. 1114 *NSPS—Pressure Sensitive Tapes and Labels Coating.* CAA 111. 40 CFR 60. This regulation will establish emission standards for volatile organic emissions from pressure-sensitive tapes and label operations.	February 1980	December 1980	Do.

SIGNIFICANT EPA REGULATIONS UNDER CONSIDERATION—Continued

NAME AND DESCRIPTION OF REGULATION	PROPOSAL DATE IN FEDERAL REGISTER	FINAL DATE IN FEDERAL REGISTER	CONTACT PERSON AND ADDRESS
AIR—Continued			
No. 1115 *NSPS—Metal Furniture Surface Coating.* CAA 111. 40 CFR 60. This regulation will establish emission standards for volatile organic emissions from metal furniture operations.	March 1980	January 1981	Do.
No. 1116 *NSPS—Lead Battery Manufacturing.* CAA 111. 40 CFR 60. This regulation will establish standards for lead emissions from lead battery manufacturing facilities.	June 1979	April 1980	Do.
No. 1117 *NSPS—Gas Turbines.* CAA 111. 40 CFR 60. This regulation will establish limitations on oxides of nitrogen emitted from stationary gas turbines.	October 3, 1977	May 1979	Do.
No. 1118 *NSPS—Phosphoric Acid.* CAA 111. 40 CFR 60. This regulation will control the emission of particulate matter.	June 1979	April 1980	Do.
No. 1119 *NSPS—Dry Cleaning.* CAA 111. 40 CFR 60	October 1979	August 1980	Do.
No. 1120 *NSPS—Graphic Arts.* CAA 111. 40 CFR 60	February 1980	December 1980	Do
No. 1121 *Aluminum Plant Fluoride Control—Existing Plants.* CAA 111(d). 40 CFR 60. These are guidelines for State control of fluoride emissions from existing aluminum plants.	April 11, 1979	January 1980	Do.
No. 1122 *Guidelines for Existing Kraft Pulp Mills.* CAA 111(d). 40 CFR 60. These guidelines to control sulfur (odors) from existing kraft pulp mills will allow States flexibility in establishing control.	February 23, 1979	May 23, 1979	Do.
No. 1123 *List of New Source Performance Standards.* CAA 111(b). 40 CFR 60. The 1977 Clean Air Act requires the Administrator to list the categories of major stationary sources that are not already controlled by NSPS. He must then issue standards for these categories within four years.	August 31, 1978	June 1979	Do.
We are developing emission standards for hazardous air pollutants under Section 112 of the CAA. This section requires that the Administrator develop National Emission Standards for Hazardous Air Pollutants (NESHAPS) for emissions that cause or contribute to air pollution which results in an increase in mortality or in serious or incapacitating illness. The standards will apply to both new sources and existing sources.			
No. 1124 *NESHAPS: Asbestos-Iron Ore Beneficiation.* CAA 112. 40 CFR 61. This regulation will establish limits on asbestos emissions from iron ore beneficiation facilities.	September 1979	July 1980	Do.
No. 1125 *NESHAPS: Vinyl Chloride Amendments.* CAA 112. 40 CFR 61. The proposed regulations call for increased control of existing sources, stringent control of new sources, and a goal of complete control of emissions.	June 7, 1977	Pending	Do.
No. 1126 *NESHAPS: Refinery Sources.* CAA 112. 40 CFR 61. This regulation will control the emission of benzene from point sources, fugitive sources (pumps, valves, etc.), and waste disposal.	February 1980	January 1981	Do.
No. 1127 *NESHAPS—Maleic Anhydride.* CAA 112. 40 CFR 61. This regulation will control the emission of benzene in the manufacture of maleic anhydride.	June 1979	April 1980	Do.
No. 1128 *NESHAPS—Ethyl Benzene.* CAA 112. 40 CFR 61. This regulation will control the emission of benzene in the manufacture of ethyl benzene.	February 1980	December 1980	Do.
No. 1129 *NESHAPS—Styrene.* CAA 112. 40 CFR 61. This regulation will control the emission of benzene in the manufacture of styrene.	June 1979	April 1980	Do.
No. 1200 *NESHAPS: Arsenic.* CAA 112. 40 CFR 61. A health risk assessment of arsenic emissions is being conducted. If it is determined that these emissions (primarily from copper smelters) are hazardous, then emission standards will be proposed.	December 1979	February 1980	Joe Padgett (MD–12). Environmental Protection Agency, Research Triangle Park, N.C. 27711, 919–541–6204, FTS 8–629–6204.
No. 1301 *Primary Nonferrous Smelter Orders.* CAA 119. 40 CFR 57. These regulations will establish the substantive requirements of initial primary nonferrous smelter orders (NSO's) and the procedures to be used in issuing them. NSO's will allow certain copper, lead, and zinc smelters to delay compliance with the requirements for constant control of sulfur dioxide emissions and let them use tall stacks and supplementary control systems to meet ambient standards.	January 31, 1979	July 1979	Judith Lamson (EN–341). Environmental Protection Agency, Washington, D.C. 20460, 202–755–0809.
No. 1302 *Noncompliance Penalties.* CAA 120. 40 CFR 66. EPA is required to establish a penalty program to collect money from polluters after mid-1979 in an amount equal to the money the polluter saves by failing to obey the law.	March 21, 1979	July 1979	Bob Hanlick (EN–341). Environmental Protection Agency, Washington, D.C. 20460, 202–755–0840.
No. 1303 *Tall Stack Regulation.* CAA 123. 40 CFR 51. The regulations specify stack heights acceptable for credit under State implementation plans.	January 12, 1979	September 1979	Dick Rhoads (MD–16). Environmental Protection Agency, Research Triangle Park, N.C. 27711, 919–541–5251, FTS 8–629–5251.
No. 1304 *Regulations Providing for State/Local Consultation.* CAA 121. 40 CFR 51. The regulations will ask the States to provide a satisfactory process of consultation for local governments, elected officials, and Federal land managers. The regulations will also require the States to choose a lead planning organization to coordinate the State Implementation Plan revisions for oxidants (smog) and carbon monoxide.	May 18, 1979	June 1979	John Hidinger (AW–445). Environmental Protection Agency, Washington, D.C. 20460, 202–755–0180.
No. 1305 *1979 Listing of Radioactive Pollutants.* CAA 122. We will determine whether radioactive pollutants shall be classified as 108, 111 or 112 pollutants, or none of these categories.	August 1980		William A. Mills (AW–459). Environmental Protection Agency, Washington, D.C. 20460, 703–557–8704.

SIGNIFICANT EPA REGULATIONS UNDER CONSIDERATION—Continued

NAME AND DESCRIPTION OF REGULATION	PROPOSAL DATE IN FEDERAL REGISTER	FINAL DATE IN FEDERAL REGISTER	CONTACT PERSON AND ADDRESS
Still—Continued			
No. 1306 *Prevention of Significant Deterioration (PSD).* Sec 8, CAA 160, 40 CFR 51/52. These regulations will insure that areas which are in compliance with hydrocarbon, carbon monoxide, photochemical oxidant, and nitrogen oxide standards will remain in compliance.	December 1979	September 1980	Dick Rhoads (MD-15), Environmental Protection Agency, Research Triangle Park, N.C. 27711, 919-541-5264, FTS 8-629-5251.
No. 1307 *Visibility Protection.* CAA 167(a); 40 CFR 51/52. EPA is required to prepare a report to Congress and guidelines which require SIP's to address visibility problems.	October 1979	August 1980	Joe Padgett, Environmental Protection Agency, Research Triangle Park, N.C. 27711, 919-541-5264, FTS 8-629-5264.
No. 1308 *Requirements to Build Demonstration Cars Meeting 0.4 Grams/Mile NOx Standard.* CAA 202, 40 CFR 86. All manufacturers with at least a 0.5% share of the U.S. passenger car market will have to build research vehicles which will not emit more than 0.4 grams nitrogen dioxide per mile. This regulation will be published in interim-final form for 1979 model year and in final form for the 1980 model year.	February 7, 1979	November 1979	Karl Hellman, Emission Control Technology Div., Environmental Protection Agency, Ann Arbor, Michigan 48105, 313-668-4349, FTS 8-374-4349.
No. 1309* *Light-Duty Diesel Particulate Standards.* CAA 202, 40 CFR 86. EPA is required to set particulate standards for mobile sources starting in 1981. The regulation will contain 1981 standards (0.60 grams per mile) and more stringent standards for 1983 and later model years (0.20 grams per mile).	February 1, 1979	October 1979	Merrill Korth, Emission Control Technology Div., Environmental Protection Agency, Ann Arbor, Michigan 48105, 313-668-4349, FTS 8-374-4349.
No. 1310 *Heavy-Duty Diesel Particulate Standards.* CAA 202, 40 CFR 86. Although these standards are required by CAA for 1981 models, there is no test procedure available that can be used as the basis for a standard. A 1983 model year is targeted.	May 1980	October 1980	Do.
No. 1311 *Test Procedures for Measuring Heavy Duty Evaporative Emissions.* CAA 206(a), 40 CFR 86. The Clean Air Act requires that a test procedure be promulgated to require measurement of evaporative emission from vehicles. EPA will promulgate test procedure and standards.	July 1979	March 1980	Mike Lathouse, Environmental Protection Agency, Ann Arbor, Michigan 48105, 313-668-4271, FTS 8-374-4271.
No. 1312 *Heavy-Duty Evaporative Emission Standards.* CAA 206(a), 40 CFR 86. These standards for heavy-duty gasoline vehicles will regulate fuel evaporative emissions beginning in model year 1981.	July 1979	March 1980	Do.
No. 1313* *Light-Duty Truck Emission Standards (Up to 6,000 lbs. Gross Vehicle Weight Rating—GVWR).* CAA 202(a), 40 CFR 86. CAA requires standards for 6,000-8,500 lb trucks that represent a 90% reduction in HC and CO from baseline by 1983 and a 75% reduction of NOx emissions from baseline by 1985 model year. The same standards will also be applied to trucks under 6,000 lbs GVWR.	July 1979	January 1980	William Hoshmann, Environmental Protection Agency, Ann Arbor, Michigan 48105, 313-668-4272, FTS 8-374-4272.
No. 1314* *HC and CO Emission Standards for Heavy Duty Vehicles (Over 8500 Pounds).* CAA 202(a)(3), 40 CFR 86. The CAA requires EPA to establish engine emission standards for heavy duty vehicles over 8,500 pounds. Standards for HC and CO are 50% reductions from baseline emissions by the 1983 model year. EPA is developing a new test procedure to measure exhaust emissions and baseline emissions. Provisions for assembly line testing and a non-conformance penalty system are also included in the regulations.	February 22, 1979	December 1979	Chet Parnes, Environmental Protection Agency, Ann Arbor, Michigan 48105, 313-668-4265, FTS 8-374-4265.
No. 1315* *NOx Emission Standard for Heavy Duty Vehicles (Over 8,500 Pounds).* CAA 202(a)(3), 40 CFR 86. The CAA requires EPA to establish emission standards for heavy-duty vehicles (over 8,500 lbs. GVWR). A 75% reduction for NOx beginning with 1985 model year is scheduled. EPA is developing a new test procedure for measuring exhaust emissions which will be used to measure baseline emissions.	May 1981	December 1981	Do.
No. 1316 *Interim High Altitude Requirements.* CAA 202(a), (b), 40 CFR 86. The regulations set requirements for cars to meet high altitude standards for 1981–1983.	May 11, 1979	September 1979	William Hoshmann, Environmental Protection Agency, Ann Arbor, Michigan 48105, 313-668-4272, FTS 8-374-4272.
No. 1317 *Importation of Motor Vehicles and Motor Vehicle Engines.* CAA 203, 40 CFR 85. The regulation attempts to improve the effectiveness and administration of EPA's program to prevent importation of vehicles and engines which fail to conform to Federal emission standards.	June 1979	December 1979	Tom Preston (EN-340), Environmental Protection Agency, Washington, D.C. 20460, 202-755-0344.
No. 1318 *Regulations Setting Certificate of Conformity.* CAA 206(a), 40 CFR 86. The regulations identify certain components and specifications required for motor vehicle certification; the parameters of allowable deviation of parts and the specifications for the certification tests.	December 28, 1974	June 1979	Do.
No. 1319 *Selective Enforcement Auditing of Motorcycles.* CAA 206(b), 40 CFR 86. The regulation establishes a program to test motorcycles at the assembly line for compliance with emission standards.	March 1980		Frank Stavinsky (EN-340), Environmental Protection Agency, Washington, D.C. 20460, 202-755-0262.
No. 1321 *Engine Parameter Adjustment Regulations.* CAA 203(a), 40 CFR 86. This regulation limits the adjustment parameters of emissions controls. It is intended to prevent dealerships and service stations from misadjusting controls in order to improve driveability at the cost of increased emissions.	October 21 1977	January 12, 1979	Ron Rhota, Environmental Protection Agency, Ann Arbor, Michigan 48105, 313-668-4247.
No. 1322 *1984 High Altitude Standards.* CAA 202(a), 40 CFR 86. These regulations require all vehicles to meet standards at all altitudes beginning with 1984 models.	May 1981	May 1982	Chris Rosenberg (EN-340), Environmental Protection Agency, Washington, D.C. 20460, 202-755-0260.

SIGNIFICANT EPA REGULATIONS UNDER CONSIDERATION—Continued

NAME AND DESCRIPTION OF REGULATION	PROPOSAL DATE IN FEDERAL REGISTER	FINAL DATE IN FEDERAL REGISTER	CONTACT PERSON AND ADDRESS
AIR —Continued			
No. 1324 *Emissions Design and Defect Warranty.* CAA 207(a)(1). 40 CFR 86. The regulations will clarify the rights and responsibilities of consumers and vehicle manufacturers concerning the required design and defect warranty.	July 1979	October 1979	Rick Friedman (EN-340). Environmental Protection Agency, Washington, D.C. 20460, 202-755-0437.
No. 1325 *Aftermarket Parts Certification.* CAA 207(a)(2). 40 CFR 86. The regulation establishes a procedure whereby parts manufacturers can certify that use of their parts will not increase vehicle emissions.	July 1979	September 1979	David Feldman (EN-340). Environmental Protection Agency, Washington, D.C. 20460, 202-755-0297.
No. 1326 *Short Test for Emission Warranties.* CAA 207(b). 40 CFR 86. The regulation establishes procedures to test emissions from light-duty trucks and light-duty vehicles in conjunction with inspection/maintenance programs.	May 25, 1977	August 1979	Dick Nash. Environmental Protection Agency, Ann Arbor, Michigan 48105, 313-668-4412, FTS 8-374-8412.
No. 1327 *Emission Control (Performance) Warranty.* CAA 207(b)(2). 40 CFR 86. This regulation requires vehicle manufacturers to warrant the in-use emission performance of their vehicles. Warranty would be an inspection/maintenance program.	May 16, 1976 proposed; April 20, 1979 (reproposed).	August 1979	David Feldman (EN-340). Environmental Protection Agency, Washington, D.C. 20460, 202-755-0297.
No. 1328 *Fuels and Fuel Additives Protocols for Testing.* CAA 211. 40 CFR 79.6. These protocols will help determine effects of fuel and fuel additives on public health and emission control devices.	July 1979	October 1979	Matt Bills (RD-680). Environmental Protection Agency, Washington, D.C. 20460, 202-426-4452.
No. 1329 *High Altitude Performance Adjustments.* CAA 215. 40 CFR 86. EPA is required to set procedures for approval of manufacturers' adjustments to cars for high-altitude operation.	February 1980		Ernie Rosenberg (AW-455). Environmental Protection Agency, Washington, D.C. 20460, 202-755-0596.
No. 1330 *Turbine Aircraft Gaseous Emissions Retrofit and Modification of 1979 Standards.* CAA 231. 40 CFR 86. This regulation proposes new emission standards for large aircraft to reduce HC, NOx, and CO.	March 24, 1978	November 1979	William Houtmann. Environmental Protection Agency, Ann Arbor, Michigan 48105, 313-668-4272, FTS 8-374-8272.
No. 1331 *Regional Consistency.* CAA 301. 40 CFR 56. EPA is required to provide for consistent implementation of the Clean Air Act by the various EPA Regional Offices.	March 9, 1979	October 1979	Darryl Tyler (MD-13). Environmental Protection Agency, Research Triangle Park, N.C. 27711, 919-541-5251, FTS 8-629-5425.
No. 1332 *Monitoring Regulations.* CAA 319. 40 CFR 52/53/58/60. These regulations revise the State and local air pollution monitoring requirements for State implementation plans and for reporting air quality and emission data to EPA.	August 7, 1978	May 10, 1979	Robert Neligan (MD-14). Environmental Protection Agency, Research Triangle Park, N.C. 27711, 919-541-5447, FTS 8-629-5447.
No. 1333 *Testing Retrofit Devices for Fuel Economy Performance.* MVICSA 511. 40 CFR 85. The regulation provides for EPA evaluation of a fuel economy retrofit device produced by a manufacturer.	August 10, 1977	June 1979	Ernie Rosenberg (AW-455). Environmental Protection Agency, Washington, D.C. 20460, 202-755-0596.
DRINKING WATER			
No. 1201 **Control of Organic Chemical Contaminants in Drinking Water.* SDWA 1412. 40 CFR 141. The first part of the proposed regulation sets a maximum contaminant level for total trihalomethanes; the second part proposes a required treatment technique for synthetic organic chemicals.	February 9, 1978	July 1979	Joe Cotruvo (WH-550). Environmental Protection Agency, Washington, D.C. 20460, 202-472-5016.
No. 1202 *Technical Amendments to the National Interim-Primary Drinking Water Regulations.* SDWA 1412. 40 CFR 141. These proposed regulations adjust the previously published National Interim-Primary Drinking Water regulations.	June 1979	November 1979	Do.
No. 1203 *National Secondary Drinking Water.* SDWA 1412(C). 40 CFR 143. These regulations are nonenforceable guidelines on esthetic drinking water quality.	March 31, 1977	June 1979	Frank Bell (WH-550). Environmental Protection Agency, Washington, D.C. 20460, 202-472-5020.
No. 1205 *Underground Water Source Protection Program.* SDWA 1421(a). 40 CFR 146. Underground injection of fluids is practiced mainly in the oil and gas industry. These regulations are intended to protect groundwater drinking supplies from contamination caused by improper injection procedures. States can apply for primary enforcement authority if they meet the minimum criteria specified in the regulations. The regulations can require a permit program to ensure that a case-by-case determination is made.	August 31, 1978 (proposed); April 20, 1979 (reproposed).	January 1980	Do.
NOISE			
No. 1170 *Buses.* NCA 5/8. 40 CFR 205. This regulation sets noise emission standards for new interstate, city, and school buses.	September 12, 1977	October 1979	William Ropes (ANR-490). Environmental Protection Agency, Washington, D.C. 20460, 703-557-7747.
No. 1171 *Truckmounted Solid Waste Compactor.* NCA 5/8. 40 CFR 204. The regulation sets noise emission standards for solid waste compactors.	August 26, 1977	June 1979	Kenneth Feith (AW-490). Environmental Protection Agency, Washington, D.C. 20460, 703-557-2710.
No. 1172 *Wheel and Crawler Tractors.* NCA 5/8. 40 CFR 204. The regulation sets a noise emission standard for new wheel and crawler tractors.	July 11, 1977	January 1980	Henry Thomas (AW-490). Environmental Protection Agency, Washington, D.C. 20460, 703-557-7743.
No. 1173 *Motorcycles.* NCA 5/8. 40 CFR 205. This regulation sets noise emission standards for motorcycles and replacement exhaust systems.	February 15, 1978	February 1980	William Ropes (AW-490). Environmental Protection Agency, Washington, D.C. 20460, 703-557-7747.
No. 1174 *Labeling: Hearing Protectors.* NCA 8. 40 CFR 211. The regulation requires the labeling of hearing protectors.	June 22, 1977	July 1979	Henry Thomas (AW-490). Environmental Protection Agency, Washington, D.C. 20460, 703-557-7743.

SIGNIFICANT EPA REGULATIONS UNDER CONSIDERATION—Continued

NAME AND DESCRIPTION OF REGULATION	PROPOSAL DATE IN FEDERAL REGISTER	FINAL DATE IN FEDERAL REGISTER	CONTACT PERSON AND ADDRESS
NOISE—Continued			
No. 1175 *Labeling: General.* NCA 6. 40 CFR 211. The regulation establishes general labeling provisions.	June 22, 1977	July 1979	Do.
No. 1176 *Administrative Hearing Procedures.* NCA 11. 40 CFR 210. Procedures are established for hearings to issue remedial orders under Section 11(e) of the Act. As mandated, these are adjudicatory hearings under the Administrative Procedure Act, 5 U.S.C. 554.	August 3, 1978	August 1979	Jim Kerr (EN-557), Environmental Protection Agency, Washington, D.C. 20460, 703-557-7419.
No. 1177 *Low Noise Emission Products.* NCA 15. 40 CFR 203. If a product is determined to have low emission, it may be suitable for special consideration in Federal purchasing. This regulation establishes guidelines for such determination.	May 27, 1977	June 1979	Henry Thomas (AW-466), Environmental Protection Agency, Washington, D.C. 20460, 703-557-7749.
No. 1178 *Importation of Noise Emitting Products.* NCA 9. The standards will be concurrent with the Customs Department/EPA regulations governing the importation of regulated products.	January 1980		Rich Kozlowski (EN-557), Environmental Protection Agency, Washington, D.C. 20460, 703-557-7470.
No. 1179 *Interstate Rail Carriers.* NCA 17. 40 CFR 205. This regulation sets noise emission standards for railroad facilities. EPA prepared this regulation after a successful law suit by the Association of American Railroads, which said EPA's noise emission standards for locomotives and cars failed to address the problem of noise from facilities such as railroad yards. The Court ordered EPA to adopt final regulations controlling railroad facilities.	April 17, 1978	July 1979	William Regan (AW-466), Environmental Protection Agency, Washington, D.C. 20460, 703-557-7747.
No. 1180 *Special Local Conditions.* NCA 17(c)(2)(B)(ii). 40 CFR 201. The regulation establishes procedures for a State to adopt otherwise pre-empted State and local rail and motor carrier noise regulations when necessitated by special local conditions.	November 23, 1976	Late 1980	Henry Thomas (AW-466), Environmental Protection Agency, Washington, D.C. 20460, 703-557-7749.
PESTICIDES			
Pesticide Registration Guidelines. 40 CFR 163. These guidelines specify the test data standards and reporting and labeling requirements to support registration applications for pesticide products.			
No. 1141. *Introduction.* FIFRA 3. Subpart B (will become A) includes the general purposes of all of the guidelines, degree of flexibility in requirements and in interim data usage, definition of terms used throughout the guidelines, and requirements for retention of data and test samples at laboratories.	July 10, 1978	August 1979	Bill Preston (TS-769), Environmental Protection Agency, Washington, D.C. 20460, 703-557-7351.
No. 1142 *Experimental Use Permits.* FIFRA 3. Subpart A (will become Subpart C) specifies that data and labeling must be submitted in support of an application for an experimental use permit, and the procedures which must be followed to obtain a permit.	August 1978	April 1980	Do.
No. 1143 *Chemistry Requirements.* FIFRA 3. Subpart D covers requirements for data on chemistry of active ingredients, formulation components, manufacturing impurities, and environmental fate of pesticides.	July 10, 1978	August 1979	Do.
No. 1144 *Hazard Evaluation: Wildlife & Aquatic Organisms.* FIFRA 3. Subpart E covers data requirements for studies of pesticide effects on birds, wild mammals, fish, and other aquatic animals.	July 10, 1978	August 1979	Do.
No. 1145 *Hazard Evaluation: Humans & Domestic Animals.* FIFRA 3. Subpart F specifies data requirements for studies of pesticide effects in laboratory animals.	August 22, 1978	December 1979	Do.
No. 1146 *Product Performance.* FIFRA 3. Subpart G specifies the data that registrants must submit to demonstrate that pesticide products will control pests as specified in label claims.	August 1978	August 1980	Do.
No. 1147 *Label Development.* FIFRA 3. Subpart H describes all essential parts of a pesticide product label.	August 1978	August 1980	Do.
No. 1148 *Hazard Evaluation: Non-Target Plants and Microorganisms.* Subpart J covers data required to evaluate adverse effects on nontarget areas; it also provides guidance to submit data on spray drift and phytotoxicity.	August 1978	April 1980	Do.
No. 1149 *Pesticide Use Restrictions.* FIFRA 3. 40 CFR 162. This regulation classifies restricted uses of pesticides.	January 9, 1978	July 1979	Walt Waldrop (TS-770), Environmental Protection Agency, Washington, D.C. 20460, 202-755-7014.
No. 1150 *Conditional Registration Regulation.* FIFRA 3(c)(7)(A) and (B). 40 CFR 162. This interim/final regulation establishes procedures for conditional registration of: (1) pesticide products which are identical or substantially similar to those currently registered and (2) new uses of existing pesticide products.	May 11, 1978		Bob Rose (TS-767), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2510.
No. 1151 *Registration Data Compensation.* FIFRA 3(C)(1)(D). 40 CFR 162. These rules provide for compensation when one pesticide registrant relies on test data generated by another registrant.	June 21, 1977	May 11, 1979	Ed Gray (A-132), Environmental Protection Agency, Washington, D.C. 20460, 202-755-0046.
No. 1152 *State Experimental Use Permits.* FIFRA (3). 40 CFR 172. This regulation defines the scope of State jurisdiction to allow experimental uses of pesticides.	September 3, 1975, Interim final.	June 1979	Phil Gray (TS-770), Environmental Protection Agency, Washington, D.C. 20460, 202-755-7014.
No. 1153 *State Registration to Meet Special Local Needs.* FIFRA 24(c). 40 CFR 162. This regulation defines the scope of State jurisdiction to register pesticides for use not covered by Federal registrations.	September 3, 1975	June 1979	Do.

SIGNIFICANT EPA REGULATIONS UNDER CONSIDERATION—Continued

NAME AND DESCRIPTION OF REGULATION	PROPOSAL DATE IN FEDERAL REGISTER	FINAL DATE IN FEDERAL REGISTER	CONTACT PERSON AND ADDRESS
	PESTICIDES—Continued		
No. 1154 *Pesticide Special Packaging Regulations.* FIFRA 25. 40 CFR 162. This rule prescribes requirements for child-proof packaging.	February 16, 1977	March 9, 1979.	Maureen Grimmer (TS-766). Environmental Protection Agency, Washington, D.C. 20460, 202-755-8030.
No. 1155 *Exemption of New Human Drugs.* FIFRA 25(c)(2). 40 CFR 162. This part exempts from FIFRA pesticides that are also new drugs regulated by FDA.	October 13, 1978	June 1979	Herbert Harrison (TS-767). Environmental Protection Agency, Washington, D.C. 20460, 202-426-4110.
	RADIATION		
No. 1160 *Protective Action Guidelines for Nuclear Emergencies.* AEA 274(h). This is guidance for emergency response plans in the event of a nuclear accident, i.e. effluent release from a nuclear reactor.	September 1979	February 1980	Jim Hardin (AW-460). Environmental Protection Agency, Washington, D.C. 20460, 703-557-8610.
No. 1161 *Guidance for Occupational Radiation Exposure.* AEA 274(h). This guidance updates existing (1960) radiation occupational exposure limits for workers at Federal facilities and those facilities inspected by Federal agencies.	June 1979	December 1979	Luis Garcia (AW-460). Environmental Protection Agency, Washington, D.C. 20460, 703-557-8224.
No. 1162 *Transuranic Elements.* AEA 274(h). This guidance to Federal agencies establishes dose rate limits for persons exposed to transuranic elements in the general environment. The final guidance is to be signed by the President.	November 3, 1977	June 1979	Gordon Burley (AW-460). Environmental Protection Agency, Washington, D.C. 20460, 703-557-8610.
No. 1163 * *Environmental Standards for High-Level Radioactive Wastes.* AEA 274(h). The regulation will set standards for release of radioactivity to the environment as a result of storage of waste isotopes.	August 1979	March 1980	Stan Lichtman (AW-460). Environmental Protection Agency, Washington, D.C. 20460, 703-557-8927.
No. 1164 *Environmental Criteria for Radioactive Wastes.* AEA 274(h). The criteria are general guidance as to what constitutes radioactive waste and factors to be considered in evaluating disposal modes and sites.	November 15, 1978	June 1979	Harry Pettengill (AW-460). Environmental Protection Agency, Washington, D.C. 20460, 703-8927.
No. 1165 *Florida Phosphate Tailings.* PHSA 301. A 1975 commitment to the Governor of Florida by the Administrator requires EPA to establish guidelines as to what to do (1) about existing houses on radium "contaminated" land; (2) about new construction on such land.	June 1979	September 1979	Joe Fitzgerald (AW-460). Environmental Protection Agency, Washington, D.C. 20460, 703-557-8224.
No. 1166 * *Environmental Standard for Inactive Uranium Mill Tailings.* UMTRCA 206(a). The purpose of this standard is to execute the Agency's responsibilities under the Uranium Mill Tailings Radiation Control Act of 1978. In brief, these are: (a) to set generally applicable radiological and non-radiological standards for uranium mill tailing at inactive and active mill sites; (b) to advise the Dept. of Energy on public health considerations applicable to setting priorities for remedial actions at the inactive sites; (c) to consult with other Federal agencies concerning certain responsibilities they are given under the Act; (d) to prepare a report to Congress on health, safety and environmental hazards of uranium mine waste, with recommendations, if any, for a program to eliminate the hazards. The portion of the program regarding inactive sites provides the criteria according to which the Dept. of Energy will conduct remedial actions at the sites. The standards for active sites will be implemented in the regulatory program of the Nuclear Regulatory Commission for Uranium Mills.	August 1979	November 1979	Stan Lichtman (ANR-458). Environmental Protection Agency, Washington, D.C. 20460, 703-557-8927.
	SOLID WASTE		
No. 1191 *Hazardous Waste Criteria—Identification and Listing.* RCRA 3001. 40 CFR 250. These regulations define wastes that will be controlled under the nationwide hazardous waste management program. Criteria are provided to identify characteristics of hazardous wastes, based on ignitability, corrosiveness, reactivity, and toxicity. Also included are testing procedures to determine whether a waste meets the described characteristics. The regulation also lists certain hazardous wastes and processes which are presumed to generate hazardous wastes. Also, means are provided for demonstration of noninclusion in the Subtitle C system.	December 18, 1978	December 1979	Alan Corson (WH-565). Environmental Protection Agency, Washington, D.C. 20460, 202-755-9187.
No. 1192 * *Standards for Generators of Hazardous Wastes.* RCRA 3002. 40 CFR 250. This regulation establishes national standards for generators of hazardous wastes, covering such items as recordkeeping, containerization, and labeling, waste identification, and reporting. This regulation also contains provisions for a hazardous waste manifest system.	December 18, 1978	December 1979	Harry Trask (WH-565). Environmental Protection Agency, Washington, D.C. 20460, 202-755-9187.
No. 1193 *Standards for Transporters of Hazardous Wastes.* RCRA 3003. 40 CFR 250. These national standards require transporters of hazardous waste to ship only properly labeled containers and only to permitted facilities.	April 28, 1978	December 1979	Do.
No. 1194 * *Standards for Hazardous Waste Treatment, Storage, and Disposal Facilities.* RCRA 3004. 40 CFR 250. Hazardous waste management facilities will be required to meet certain technical performance standards regarding operating practices, location, and design. These standards contain provisions to protect surface-water, groundwater, and air quality.	December 18, 1978	December 1979	Timothy Fields (WH-565). Environmental Protection Agency, Washington, D.C. 20460, 202-755-9208.
No. 1195 *Permit Regulations for Hazardous Waste Treatment, Storage, and Disposal Facilities.* RCRA 3005. 40 CFR 250. This regulation establishes a permit program to assure uniform State (or EPA) control of hazardous waste management facilities.	July 1979	October 1979	Sam Morekas (WH-565). Environmental Protection Agency, Washington, D.C. 20460, 202-755-9190.

SIGNIFICANT EPA REGULATIONS UNDER CONSIDERATION—Continued

NAME AND DESCRIPTION OF REGULATION	PROPOSAL DATE IN FEDERAL REGISTER	FINAL DATE IN FEDERAL REGISTER	CONTACT PERSON AND ADDRESS
SOLID WASTE—Continued			
No. 1186 *Guidelines for State Hazardous Waste Programs.* RCRA 3006. 40 CFR 260. These guidelines are to assist States in developing their own hazardous waste regulatory programs. The guidelines also specify minimum requirements States must meet in order to be authorized by EPA to implement these programs.	February 1, 1978 (proposed); May 1979 (reproposed).	October 1979	Dan Dorkin (WH-565), Environmental Protection Agency, Washington, D.C. 20460, 202-755-9100.
No. 1187 *Notification System for Hazardous Waste Generators, Transporters, Storers, Treaters, and Disposers.* RCRA 3010. 40 CFR 250. The regulation describes the one-time notification requirement for generators, transporters, storers, treaters, and disposers of hazardous waste.	July 11, 1978	August 1979	Tony Kalms (WH-565), Environmental Protection Agency, Washington, D.C. 20460, 202-755-9255.
No. 1188 *Guidelines for State Solid Waste Programs.* RCRA 4002(b). 40 CFR 256. These guidelines are to assist States in the development and implementation of solid waste management programs.	August 28, 1978	June 1979	George Garland (WH-563), Environmental Protection Agency, Washington, D.C. 20460, 202-755-9185.
No. 1189 *Criteria for Classification of Solid Waste and Disposal Facilities.* RCRA 4004(a). 40 CFR 257. These criteria provide a basis to determine whether solid waste-land disposal facilities pose a threat to health or the environment.	February 6, 1978	July 1979	Kenneth Shuster (WH-563), Environmental Protection Agency, Washington, D.C. 20460, 202-755-9116.
No. 1200 *Guidelines for Federal Procurement Practices.* RCRA 6002(a). These guidelines are to assist Federal agencies to comply with the RCRA's requirement that procured materials be composed of the highest percentage of recovered materials practicable:			John Hutzelinger (WH-563), Environmental Protection Agency, Washington, D.C. 20460, 202-755-9145.
Utilization of Fly Ash and Slag	November 1979		
Use of Recycled Paper in Paper Products	November 1979		
Use of Waste in Construction Products	November 1979		
TOXIC SUBSTANCES			
Under section 4 of the Toxic Substances Control Act (TSCA), the Agency will develop a series of standards for the development of test data and a series of rules requiring the testing of specific chemical substances and mixtures.			
No. 1159 *Test Rules for Chemical Substances and Mixtures.* TSCA 4. 40 CFR 770. This regulation establishes general provisions and requirements.	December 1979		Sandra Gabel (TS-792), Environmental Protection Agency, Washington, D.C. 20460, 202-755-4551.
No. 1161 *Test Rules for Chemical Substances and Mixtures.* TSCA 4. 40 CFR 771. This regulation establishes requirements for testing of specific chemical substances and mixtures.			Do.
No. 1162 *Standards for Development of Chronic Test Data.* TSCA 4. 40 CFR 772. This regulation establishes standards for oncogenic and noncarcinogenic chronic effects testing and for Good Laboratory Practices (GLP) for health effects standards.	May 9, 1979	February 1980	Do.
No. 1461 *Standards for Development of Test Data.* TSCA 4. 40 CFR 772. This regulation will establish standards for acute and subchronic toxicity, mutagenicity, teratogenicity, reproductive effects, and other health effects testing.			Do.
No. 1462 *Standards for Development of Test Data.* TSCA 4. 40 CFR 772. This regulation will establish standards for physical and chemical properties, environmental fate, and ecological effects testing.			Do.
No. 1135 *Premanufacture Testing Guidance.* TSCA 5. Not a rule-making. Guidance to help manufacturers of new chemicals decide whether to perform testing, what types of testing to perform, and how to conduct tests.	Late 1979		Ron Cohen (TS-792), Environmental Protection Agency, Washington, D.C. 20460, 202-472-3562.
No. 1134 *Premanufacture Notification.* TSCA 5. 40 CFR 720. This rule establishes procedures and forms to notify EPA of intent to manufacture new chemicals.	January 10, 1979	September 1979	Blake Bliss (TS-794), Environmental Protection Agency, Washington, D.C. 20460, 202-755-5402.
No. 1135 *PCB's Manufacture and Distribution.* TSCA 6. 40 CFR 761. This regulation implements the statutory ban on manufacture, processing, distribution, and use of PCBs in other than a totally enclosed manner.	June 7, 1978	May 31, 1979	Hal Snyder (TS-794), Environmental Protection Agency, Washington, D.C. 20460, 202-755-9023.
No. 1136 *Chlorofluorocarbon Emissions.* TSCA 6. 40 CFR 789. This regulation may control certain nonaerosol uses of CFCs, depending on the results of a study now in progress. Timetable to be determined.			Postal Bishop (TS-794), Environmental Protection Agency Washington, D.C. 20460, 202-755-9023.
No. 1137 *Reporting and Recordkeeping.* TSCA 8. 40 CFR 711. A rule is being developed under section 8(a) to require submittal of certain data for preliminary assessment of health and environmental hazards of specific chemicals or chemical groups. Additional 8(a) rules will follow.	August 1978	April 1980	Jeanette Wiltse (TS-792), Environmental Protection Agency, Washington, D.C. 20460, 202-755-2547.
No. 1138 *Reporting and Recordkeeping.* TSCA 8. 40 CFR 717. This regulation, which is being developed under section 8(d), will require recording and reporting allegations of adverse health and environmental reactions to chemicals.	September 1979	March 1980	Do.
No. 1139 *Reporting and Recordkeeping.* TSCA 8. 40 CFR 790. This rule, which is being developed under section (4), will establish policies and procedures for submittal of health and safety studies related to specific chemicals. This rule may serve as a model, and through additional rulemaking, these requirements would be applied to additional chemicals or chemical groups.	July 1979	January 1980	Do.

SIGNIFICANT EPA REGULATIONS UNDER CONSIDERATION—Continued

NAME AND DESCRIPTION OF REGULATION	PROPOSAL DATE IN FEDERAL REGISTER	FINAL DATE IN FEDERAL REGISTER	CONTACT PERSON AND ADDRESS
WATER			
No. 1400 *Water Quality Management Regulations.* CWA 106, 208, 303(e). 40 CFR 35. These regulations revise and update the water quality management regulations previously under 40 CFR 130 and 131.	September 12, 1979	May 23, 1979	Linda Schwiller (WH-554). Environmental Protection Agency, Washington, D.C. 20460, 202-755-0965.
No. 1401 *State 208 Regulatory Programs for Dredge and Fill Materials.* CWA 208(b)(4). 40 CFR 35.15. These regulations authorize States to establish regulatory programs for the discharge of dredge and fill material to supplement State 404 permit programs.	June 1979	November 1979	Joe Kivak. Environmental Protection Agency, Washington, D.C. 20460, 202-755-7099.
No. 1402 *Modification of Secondary Treatment Requirements for Marine Dischargers.* CWA 301(h). 40 CFR 125. The 1977 amendments of the Clean Water Act allow EPA to modify the treatment requirements for Publicly-Owned Treatment Works (POTW's) discharging waste to the ocean. Subject to modification is the degree of required control of Biological Oxygen Demand (BOD), Total Suspended Solids (TSS), and pH. Applicants are required to meet eight specific 301(h) criteria in addition to any other applicable criteria of the Act. The receipt of a modification will not relieve a POTW from compliance with performance standards which EPA will publish later to reflect Best Practicable Wastewater Treatment Technology (BPWTT). This rule establishes the criteria which EPA will apply and the procedures it will follow in its evaluation of applications for a modification.	April 25, 1978	June 1979	Tom O'Farrell (WH-551). Environmental Protection Agency, Washington, D.C. 20460, 202-[illegible]-6978.

To comply with the Clean Water Act and a court order mandating control of certain toxic substances in industrial effluents, we are developing effluent guidelines representing best available treatment technology, new source performance standards, and pretreatment standards for the following industries. CWA sections 301, 304, 306, and 307.

No. 1405 *Iron and Steel Manufacturing.* 40 CFR 420	November 1979	June 1980	Ernst Hall (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-[illegible]-2576.
No. 1406 *Petroleum Refining.* 40 CFR 435	July 1979	January 1980	John Cunningham (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-[illegible]-7770.
No. 1407 *Timber Products Processing.* 40 CFR 429	July 1979	January 1980	John Riley (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-[illegible]-8554.
No. 1408 *Steam Electric Power Plants.* 40 CFR 423	June 1979	January 1980	John Lum (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-[illegible]-7770.
No. 1409 *Leather Tanning and Finishing.* 40 CFR 425	June 1979	November 1979	Don Anderson (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-[illegible]-8449.
No. 1410 *Nonferrous Metals Manufacturing.* 40 CFR 421	August 1979	March 1980	Patricia Williams (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-[illegible]-8552.
No. 1411 *Paint and Ink Formulation.* 40 CFR 46	October 1979	May 1980	William Thompson (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-[illegible]-7797.
No. 1412 *Printing and Publishing Services.* 40 CFR 448	November 1979	June 1980	Carl Kesselman (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-[illegible]-7797.
No. 1413 *Ore Mining and Dressing.* 40 CFR 434	December 1979	July 1980	Gail Could (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-[illegible]-2552.
No. 1414 *Coal Mining.* 40 CFR 414	December 1979	July 1980	William Telliard (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-[illegible]-2726.
No. 1415 ● *Organic Chemicals Manufacturing.* 40 CFR 415	October 1979	September 1980	Paul Fahrenthold (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-[illegible]-8457.
No. 1416 *Inorganic Chemicals Manufacturing.* 40 CFR 415	October 1979	September 1980	Elwood Martin (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-[illegible]-8552.
No. 1417 *Textile Mills.* 40 CFR 410	June 1979	December 1979	James Gallup (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-[illegible]-8554.
No. 1418 *Plastics and Synthetic Material.* 40 CFR 416	February 1980	September 1980	Paul Fahrenthold (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-[illegible]-8457.
No. 1419 *Pulp and Paper.* 40 CFR 430	February 1980	September 1980	Bob Dellinger (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-[illegible]-8554.

SIGNIFICANT EPA REGULATIONS UNDER CONSIDERATION—Continued

NAME AND DESCRIPTION OF REGULATION	FEDERAL DATE IN FEDERAL REGISTER	FINAL DATE IN FEDERAL REGISTER	CONTACT PERSON AND ADDRESS
WATER —Continued			
No. 1420 *Rubber Processing*, 40 CFR 428	July 1979	February 1980	Juanita Hillman (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2607.
No. 1421 *Soap and Detergents Manufacturing*, 40 CFR 417	July 1980	July 1981	Sammy Ng (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2560.
No. 1422 *Auto and Other Laundries*, 40 CFR 444	December 1979	July 1980	Richard Gigger (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2560.
No. 1423 *Miscellaneous Chemicals—Adhesives and Sealants*, 40 CFR 458.	February 1980	September 1980	Elwood Pawlit (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2707.
No. 1424 *Miscellaneous Chemicals—Explosives Manufacturing*, 40 CFR 457.	January 1980	August 1980	Chester Ribela (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-4017.
No. 1425 *Miscellaneous Chemicals—Gum and Wood*, 40 CFR 454	September 1979	April 1980	James Gallup (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2554.
No. 1426 *Miscellaneous Chemicals—Pesticides*, 40 CFR 455	April 1980	November 1980	George Jett (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2497.
No. 1427 *Miscellaneous Chemicals—Pharmaceuticals*, 40 CFR 439	January 1980	August 1980	Joe Vitello (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2497.
No. 1428 ● *Electroplating*, 40 CFR 413	April 1980	September 1980	Bill Hanson (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-755-1091.
No. 1429 *Machinery and Mechanical Products—Photographic Equipment and Supplies*, 40 CFR 459.	February 1980	August 1980	Ernst Hall (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2576.
No. 1430 *Machinery and Mechanical Products—Mechanical Products*, 40 CFR 433.	August 1980	March 1981	Richard Klimb (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-4017.
No. 1431 *Machinery and Mechanical Products—Electrical and Electronic Components*, 40 CFR 469.	March 1980	October 1980	Do.
No. 1432 *Machinery and Mechanical Products—Foundry Operations*, 40 CFR 464.	November 1979	June 1980	Ernst Hall (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2576.
No. 1433 *Machinery and Mechanical Products—Copper and Copper Alloy Products*, 40 CFR 468.	April 1980	November 1980	Do.
No. 1434 *Machinery and Mechanical Products—Battery Manufacturing*, 40 CFR 461.	April 1980	November 1980	Do.
No. 1435 *Machinery and Mechanical Products—Coil Coating*, 40 CFR 465.	September 1979	March 1980	Do.
No. 1436 *Machinery and Mechanical Products—Plastics Processing*, 40 CFR 463.	October 1980	May 1981	Do.
No. 1437 *Machinery and Mechanical Products—Porcelain*	October 1979	May 1980	Do.
No. 1438 *Machinery and Mechanical Products—Aluminum Forming*, 40 CFR 467.	March 1980	October 1980	Do.
No. 1441 **Revision of Water Quality Standards Regulation*, CWA 303, 40 CFR 130.17. This regulation may require States to adopt Water Quality Standards for some toxic pollutants covered by national ambient water quality criteria. One effect of this will be that dischargers (both municipal and industrial) may have to install treatment technology beyond that required by Best Available Wastewater Treatment Technology (BPWTT) or Best Available Technology (BAT) guidelines.	August 1979		Ken Machalenko (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-755-0100.
No. 1442 *Quality Criteria for Water: Volume II*, CWA 304(a). Ambient water quality criteria will be established for 65 pollutants.	March 15, 1979, 27 pollutants; July 1979, 38 pollutants.	September 1979, 27 pollutants; December 1979, 38 pollutants.	Do.
No. 1443 *Secondary Industry Review*: CWA 304(g), 40 CFR 409 to 460. This regulation promulgates Best Practicable Control Technology (BCT) for certain subcategories of the "secondary industries" not covered by the NRDC Settlement Agreement. For other subcategories, Best Available Technology (BAT) limits will be suspended. The methodology applied to BCT for secondary industries will also be applied to BCT for primary industries when BAT regulations are established.	August 30, 1979	July 1979	Emily Hartnet (WH-552), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2704.

SIGNIFICANT EPA REGULATIONS UNDER CONSIDERATION—Continued

NAME AND DESCRIPTION OF REGULATION	PROPOSAL DATE IN FEDERAL REGISTER	FINAL DATE IN FEDERAL REGISTER	CONTACT PERSON AND ADDRESS
WATER—Continued			
No. 1446 *Revision of Hazardous Substances Discharge Regulations.* CWA 311. 40 CFR 117. As a result of amendments of Section 311, parts 117 and 119 will be withdrawn and part 116 revised, principally to clarify which dischargers will be subject to the provisions of Section 311.	February 16, 1979	July 1979	Ken Machenthen (WH-585). Environmental Protection Agency, Washington, D.C. 20460, 202-755-0100.
No. 1447 *Oil Spill Liability.* CWA 311(q). 40 CFR 118. This rule establishes maximum limits of liability for fixed non-transportation-related facilities faced with cleanup liabilities under Section 311.	September 1979	June 1980	Joseph Lewis (WH-585). Environmental Protection Agency, Washington, D.C. 20460, 202-245-0561.
No. 1448 *Marine Sanitation Devices.* CWA 312. 40 CFR 140. These rules establish secondary treatment or equivalent requirements for commercial vessels navigating the Great Lakes.	Late 1980		Jonathan Ameen (WH-585). Environmental Protection Agency, Washington, D.C. 20460, 202-245-3036.
No. 1449 *Drinking Water Intake Zone Exemptions.* CWA 312. 40 CFR 140. This regulation establishes the procedures and criteria for defining water intake zones. The regulation will prohibit discharges from vessels in waters so defined.	July 1979	December 1979	Do.
No. 1450. *Clean Lakes.* CWA 314. 40 CFR 35. These rules establish procedures to administer State grants for restoring lakes.	July 1979	August 1979	Robert Johnson (WH-585). Environmental Protection Agency, Washington, D.C. 20460, 202-472-3400.
No. 1451 *Hazardous Substances Pollution Prevention for Facilities Subject to Permitting Requirements.* CWA 402. 40 CFR 151. This regulation sets forth requirements for the Spill Prevention Control and Countermeasure Plans of nontransportation-related facilities which handle hazardous substances and are subject to NPDES permits.	September 1, 1978	November 1979	Thomas J. Charlton (WH-548). Environmental Protection Agency, Washington, D.C. 20460, 202-245-3045.
No. 1454 *Ocean Discharge Criteria.* CWA 403(c). 40 CFR 231. They are intended to help prevent environmental degradation of the territorial seas, the contiguous zone, and the oceans.	December 1979		Tom O'Farrell (WH-551). Environmental Protection Agency, Washington, D.C. 20460, 202-426-9676.
No. 1455 *Guidelines To Protect the Aquatic Environment, Including Wetlands, From the Discharge of Dredged or Fill Material.* CWA 404(b)(1). 40 CFR 230. These guidelines must be considered in the preparation of individual and general permit applications, in the preparation of Environmental Impact Statements (EIS's) for Federal activities specifically authorized by the Congress, and in the preparation of Best Management Practices (BMP's) under the State 208(4)(B) program. Failure to comply with these guidelines justifies denial of permit and return of State permit programs to the Corps of Engineers. September 5, 1975, interim-final guidelines are being revised and expanded by this effort.	June 1979		John Crowder (WH-585). Environmental Protection Agency, Washington, D.C. 20460, 202-472-3400.
No. 1456 ● *Sewage Sludge Disposal.* CWA 405 and RCRA 4004. 40 CFR 258. These regulations are to assure that municipal sludge is managed in a manner that will protect public health and the environment and that valuable resources are conserved through beneficial utilization where practicable.	July 1979	August 1980	Bruce Weddle (WH-564). Environmental Protection Agency, Washington, D.C. 20460, 202-755-9120.
The following five regulations will be incorporated into the National Pollution Discharge Elimination System (NPDES) Permits Program regulations 40 CFR 121 to 125 in June 1979.			
No. 1403 *Extension of Pollution Control Deadlines for Publicly-Owned Treatment Works and Other Point Sources Planning to Discharge to Those Publicly-Owned Treatment Works.* CWA 301(i). 40 CFR 124. This regulation establishes criteria which EPA and NPDES States will use in reviewing requests for 301(i) extensions from the July 1, 1977, treatment requirements.	May 16, 1978, interim final		Ed Kramer (EN-336). Environmental Protection Agency, Washington, D.C. 20460, 202-755-0750.
No. 1404 *Requirements for Application for 301(c) and (g) Variances.* CWA 301(j)(1)(B). 40 CFR 125. These regulations require dischargers desiring 301(c) and (g) variances to fill initial applications by September 25, 1978, or 270 days after promulgation of BAT limitations, whichever is later.	September 13, 1978, interim final		Do.
No. 1444 *Criteria and Standards for Imposing Best Management Practices for Ancillary Industrial Activities.* CWA 304(e) This regulation will indicate how "best management practices" for on-site industrial activities may be imposed in NPDES permits to prevent release of toxic and hazardous pollutants to surface waters.	September 1, 1978		Do.
No. 1452 *NPDES Program.* CWA 402. This regulation revises, updates, clarifies, and reorganizes existing NPDES regulations.	August 21, 1978	June 7, 1979	Do.
No. 1453 *Second Round Permits.* CWA 402. 40 CFR 124. This regulation establishes the use of short-term permits as the preferred mechanism to assure compliance with NRDC Consent Decree.	May 23, 1978	December 9, 1979	Do.
JOINT PROGRAMS			
No.1140 *Consolidated Rules of Practice Governing the Assessment of Civil Penalties.* TSCA 16, FIFRA 14, RCRA 3008, MPRSA 105, CAA 211. 40 CFR 22. This regulation provides a common set of procedural rules for several programs in order to reduce paperwork, inconsistency, and burden on regulated persons.	August 4, 1978, interim final	October 1979	Terrell Hunt (EN-342). Environmental Protection Agency, Washington, D.C. 20460, 202-755-0970.

[FR Doc. 79-17980 Filed 6-7-79; 8:45 am]

BILLING CODE 6560-01-M

federal register

Friday
June 8, 1979

Part VI

Department of Energy

Industrial Energy Conservation Program Including Proposed Voluntary Recovered Materials Utilization Targets; Proposed Rule and Announcement of Public Hearings

DEPARTMENT OF ENERGY

[10 CFR Part 445]

[Docket No. CAS-RM-79-301]

Industrial Energy Conservation Program Including Proposed Voluntary Recovered Materials Utilization Targets; Proposed Rulemaking and Public Hearings

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) is proposing regulations for the operation of its Industrial Energy Conservation Program (program). The program was established by the Energy Policy and Conservation Act (EPCA). The Federal Energy Administration and its successor, DOE, implemented the program through a series of notices published in the **Federal Register.** With the enactment of amendments to the EPCA in the National Energy Conservation Policy Act (NECPA), DOE is proposing to issue comprehensive regulations which will codify all aspects of the program, including criteria and procedures for the identification of certain manufacturing corporations for reporting purposes, the various reporting requirements of the program, and criteria and procedures for exemptions from reporting directly to DOE. DOE is including in the proposed program rule the final industrial energy efficiency improvement targets which were established by FEA as required by the EPCA. The proposed comprehensive regulations are intended to allow DOE to carry out more effectively its responsibilities for the program.

DOE also is proposing, as part of the comprehensive regulations, targets for the increased utilization of recovered materials (targets) for four industries, as required by the NECPA. The industries are metals and metal products, paper and allied products, textile mill products, and rubber. Information on public access to the support documents for the proposed targets is provided. Extensive public review and comment on this aspect of the proposed program rule are encouraged.

DATES: Written comments must be received by 4:30 p.m., e.d.t., August 7, 1979. A public hearing on all aspects of the proposed rule, other than the proposed targets, will be held on July 31. Four public hearings will be held on the proposed targets. Requests to speak at any hearing must be received by 4:30 p.m., e.d.t., July 13, 1979. The dates of the four hearings on targets are as follows:

Hearing on proposed targets for:	Hearing date
1. Textile mill products	July 23, 1979
2. Metals and metal products	July 24, 1979
3. Paper and allied products	July 25, 1979
4. Rubber	July 26, 1979

ADDRESSES: Send written comments, requests to speak at the hearings, and written statements to: Margaret Sibley, Docket No. CAS-RM-79-301, Office of Conservation and Solar Applications, U.S. Department of Energy, 20 Massachusetts Avenue, NW., Washington, D.C. 20585. The public hearings will be held at 9:30 a.m., e.d.t., each appointed day in Room 3000A, 12th & Pennsylvania Avenue, NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Lewis S. Newman, Office of Industrial Programs, U.S. Department of Energy, 20 Massachusetts Avenue, NW., Washington, D.C. 20585, (202) 376-4803, 376-4804, 376-4805

Pamela M. Pelcovits, Office of General Counsel, U.S. Department of Energy, 20 Massachusetts Avenue, NW., Washington, D.C. 20585, (202) 376-9469.

SUPPLEMENTARY INFORMATION:

I. Background.
A. Introduction.
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I. Background.

A. *Introduction*

On November 9, 1978, President Carter signed the National Energy Conservation Policy Act (Pub. L. 95-619) (NECPA). Section 441 of the NECPA redesignated sections 371-376 of the Energy Policy and Conservation Act (42 U.S.C. 6341-6346) (EPCA) as Part E of Title III. Sections 461 and 601 of the NECPA further amended sections 371-376 of the EPCA, pursuant to which the Federal Energy Adminsitration (FEA) and, pursuant to the Department of Energy Organization Act (Pub. L. 95-91) (DOE Act), its successor, the Department of Energy (DOE), had implemented the Industrial Energy Conservation Program (program). This Background section describes voluntary industrial evergy conservation initatiatives, the program as developed in response to the EPCA, the changes in the program mandated by the recent enactment of the NECPA, and other matters relevant to the development of this proposed program rule.

B. *Voluntary Industrial Energy Conservation Initiatives.*

Since 1974, FEA and other federal agencies have encouraged industrial energy efficiency reporting as a means of promoting energy conservation by industry. The effort began prior to the enactment of the EPCA with a joint FEA and Department of Commerce (DOC) program, in cooperation with several energy intensive industries. Sections 301 and 308 of the DOE Act (42 U.S.C. 7151, 7157), in part, transferred authority for administering such voluntary initiatives to DOE. At present, 50 trade organizations report to DOE either as a part of the EPCA program or through this voluntary effort.

The information supplied by this voluntary cooperation is intended to provide both DOE and industry with an awareness of the opportunities for energy conservation and an indication of industry's conservation progress, and to assist in removing further constraints to conservation.

C. *The Program under the EPCA*

In enacting the EPCA in December 1975, Congress directed the FEA, in section 372 of Part D of Title III, to establish a program "(1) to promote increased energy efficiency by American industry, and (2) to establish voluntary energy efficency improvement targets for at least the ten most energy-consumptive major energy-consuming industries." In response, FEA issued requirements for the program through a series of notices published in the **Federal Register.**

FEA identified and ranked 20 two-digit Standard Industrial Classification (SIC) codes in the manufacturing division as the major energy-consuming industries in the United States in accordance with the provisions of section 373 of the EPCA (41 FR 7992, February 23, 1976; 41 FR 12766, March 26, 1976). Subsequently, FEA requested information from certain corporations on energy consumption in calendar year 1975 (41 FR 36838, September 1, 1976; 41 FR 47285, October 28, 1976; 42 FR 62422, December 12, 1977) and used this

information to identify, pursuant to section 373, the 50 most energy-consumptive corporations in each of the ten most energy-consumptive industries for which industrial energy efficiency improvement targets (efficiency targets) were to be established (41 FR 54977, December 16, 1976). The efficiency targets were established as required by section 374(a) (41 FR 46160, November 2, 1976; 42 FR 29642, June 9, 1977) for the following SIC codes: food and kindred products (SIC 20), textile mill products (SIC 22), paper and allied products (SIC 26), chemicals and allied products (SIC 28), petroleum and coal products (SIC 29), stone, clay and glass products (SIC 32), primary metals (SIC 33), fabricated metals (SIC 34), machinery, except electrical (SIC 35), and transportation equipment (SIC 37).

As part of the implementation of the requirement of section 375 that the 50 most energy-consumptive corporations in each of the ten industries report on improving energy efficiency, FEA developed and issued Form FEA U524–P–O (42 FR 22581, May 4, 1977; 42 FR 32831, June 28, 1977) for use by those corporations reporting directly to DOE.

Section 375 also provided that a corporation would be exempt from reporting directly to DOE if "* * * such corporation is in an industry which has an adequate voluntary reporting program (as defined by section 376 (g))." Section 376(g) further stated the following requirements for the exemption of a corporation through participation in an "adequate voluntary program".

(1) The Administrator shall exempt a corporation from the requirements of section 375(a) if such corporation is in an industry which has an adequate voluntary reporting program, as determined by the Administrator annually after notice and opportunity for interested persons to comment. An industry's voluntary reporting program shall be determined to be adequate only if—

(A) each corporation within such industry which is identified under section 373 fully participates in such program;

(B) all information deemed necessary by the Administrator for purposes of evaluating the progress made by such industry in achieving the industry energy efficiency improvement target set forth under section 374 is provided to the Administrator; and

(C) reports made to a trade association or other person, in connection with such program, are retained for a reasonable period of time and are available to the Administrator.

(2) If the Administrator determines that an industry's voluntary reporting program is not adequate solely on the basis that any corporation within such industry is not fully participating in such program, he shall exempt from the requirements of section 375(a) only those corporations which fully participate in such program.

The criteria for such indirect reporting were an important element of the program, and FEA developed criteria for exemption based on its determination that the existing voluntary reporting initiatives offered the most appropriate method of implementing the requirements of section 376(g). FEA proposed the criteria for indirect reporting for public comment (41 FR 36319, September 13, 1976). Following a review of 60 comments received in response, final criteria were published (41 FR 51866, November 24, 1976). Pursuant to the criteria, FEA exempted certain corporations from the direct reporting requirement (42 FR 15731, March 23, 1977; 42 FR 23536, May 9, 1977).

Accordingly, many corporations were exempt from direct reporting based on their participation in the existing reporting programs which were determined by FEA to be "adequate" for purposes of section 376(g). Since the direct and indirect reporting requirements were somewhat different, inconsistencies between the direct and indirect reports arose in the program.

With the publication of the direct reporting form and the exemption of corporations from the direct reporting requirement, the procedures for monitoring industrial energy efficiency improvements, as required by the EPCA, were complete. Identified corporations submitted semiannual reports to FEA, and then DOE, on progress in improving energy efficiency, either on Form FEA U524–P–O or through the reports of adequate voluntary reporting programs. DOE submitted to Congress an annual report in June 1978, based on data received from identified corporations covering energy consumption in 1976 and the first half of 1977. The preface to the Annual Report states, in part:

"The Department of Energy (DOE) will continue to work to improve the industrial energy efficiency data to ensure that the reported information enables DOE, to the greatest extent possible under EPCA, to measure progress toward meeting the energy efficiency improvement targets. This will include revisions in reporting requirements, and increased follow-up and verification, to improve the quality of the data received from industry and to minimize potential inaccuracies in charting progress."

In Chapter III, "Program Improvement Elements," of the Annual Report—Volume I, DOE outlined certain areas for possible program improvements, including reporting and progress measurement.

Identified corporations have continued to submit the semiannual reports on energy consumption through 1978, and DOE will submit an annual report to Congress in 1979 based on this additional data. Monitoring of and reporting on industrial energy efficiency improvement after 1978 will be accomplished through the procedures proposed in these regulations.

D. *The NECPA Amendments to the Program*

In enacting the NECPA, Congress mandated several changes and additions to the program as established by the EPCA. These are described in this section.

1. *Corporate Identification.* Section 601 of the NECPA, among other things, amended the EPCA by striking a portion of section 373, redesignating the remaining part of that section as 373(a), and adding a new subsection (b). Section 373(b) requires DOE to identify, within ninety days of the enactment of the subsection, "each corporation which consumes at least one trillion British thermal units (Btu's) of energy per year and which is within a major energy-consuming industry identified under subsection (a)." This amendment expands the universe of corporations to be identified in each major energy-consuming industry from the fifty most energy-consuming corporations to all corporations which consume at least one trillion Btu's.

To implement this requirement, DOE, in a January 8, 1979 Federal Register notice (44 FR 1770), corrected by a January 10, 1979 notice (44 FR 4006), required all corporations which consumed at least one trillion Btu's of energy in calendar year 1977 in any of the 20 major energy-consuming industries identified by DOE to file a certified statement to that effect with DOE. The deadline for filing such a report with DOE was January 29, 1979. Based on the reports filed in response to this requirement, DOE identified corporations in Federal Register notices issued February 7, 1979 (44 FR 9045, February 12, 1979) and May 9, 1979 (44 FR 26750, May 16, 1979).

2. *Industrial Energy Efficiency Reporting.* Section 601 of the NECPA amended section 375 of the EPCA, which contains the requirements for mandatory reporting by identified corporations on progress in improving energy efficiency.

a. *Corporate Reporting.* The amendment to section 375(a) removes the language limiting reporting to identified corporations in the ten industries for which industrial energy

efficiency improvement targets had been established. While section 375(a) still requires reports to include information with which DOE can measure progress of industry in achieving the efficiency targets, it now also requires each corporation identified under section 373 to report on progress in improving its energy efficiency.

b. *Plant Reporting.* Sections 375(b) and (c) now require that the corporate reports made pursuant to section 375(a) include data aggregated to SIC codes from plant reporting forms, which each plant of an identified corporation shall periodically file with its corporate headquarters. Further, DOE is to prepare, publish, and make available forms for use in complying with the reporting requirements of section 375.

c. *Comment on Exemption Criteria.* While section 601 of the NECPA made significant changes to the reporting requirements of the program, no changes were made to the provisions for exemptions from the direct reporting requirements, as set forth in sections 375(a) and 376(g). However, in the Conference Report to the NECPA (Senate Report 95–1294), the section-by-section explanation of section 601 (amending sections 372, 373, and 375 of the EPCA) concludes as follows:

> "Finally, the conferees agreed not to change the language of the voluntary reporting exemption. However, it was agreed that the Secretary had not sufficiently defined 'adequate voluntary reporting program' within the guidelines provided in Sec. 376(g), and that the Secretary should set more explicit criteria for the determination of whether a voluntary program is adequate."

DOE had previously identified the exemption criteria as a potential area for improvement in its 1978 annual report. The exemption criteria and procedures proposed today result from DOE's own evaluation of the program, the statement in the Conference Report, and the views expressed in the workshops described below.

3. *Recovered Materials Targets and Reporting.* Section 461 of the NECPA adds a new section 374A to the EPCA. This new section requires DOE, within a year after the enactment of the NECPA, to establish targets for the increased utilization of energy-saving recovered materials (recovered materials targets) for each of four industries-metals and metal products, paper and allied products, textile mill products, and rubber. The term "energy-saving recovered materials" (recovered materials) is defined in section 374A(a) as "aluminum, copper, lead, zinc, iron, steel paper and allied paper products, textiles and rubber, recovered from solid waste, as defined in the Solid Waste Disposal Act."

Pursuant to section 374A(b), the recovered materials targets are to be: (1) Based on the best available information and (2) established at levels which represent the maximum feasible increase in the utilization of recovered materials which each such industry can achieve progressively by January 1, 1987. The technological and economic ability of each industry to increase its utilization of recovered materials must be considered, and DOE is also required to consider "all actions taken or which before such date could be taken by each such industry, or by Federal, State or local governments to increase that industry's utilization of energy-saving recovered materials."

Section 374A(e) requires each corporation in the four industries listed above which is "a major energy consumer (within the meaning of section 373)" to report to DOE on its use of recovered materials. The initial submission is to report on the volume of recovered materials which the corporation is using in each of its manufacturing operations in the United States and its plans, if any, to increase the utilization of such materials in those operations in each of the next ten years. Each appropriate corporation must also report annually on the progress it has made to increase its use of recovered materials.

In the February 12 and May 16 identification notices, DOE notified corporations identified under section 373 within four major energy-consuming industries—textile mill products (SIC 22), paper and allied products (SIC 26), rubber and miscellaneous plastics (SIC 30) and primary metals (SIC 33)—of these reporting requirements. DOE has issued Form CS–153 for preparing the initial report described above. Annual reporting on the use of recovered materials will be implemented through the procedures of this proposed program rule.

Pursuant to section 374A(f), DOE must also include information on the recovered materials aspects of the program in its annual report to Congress and the President under section 375(e).

4. *Conforming Amendments.* In addition to the substantive additions and modifications to the program discussed above, sections 461 and 601 of the NECPA contain several other provisions. These include a definition of "plant" for purposes of plant reporting under section 375 and a revised definition of "United States." The amendments to section 376 include: In subsection (b), extending the legal authorities available to DOE in obtaining data for implementing section 374A on the use of recovered materials; in subsection (c), requiring an opportunity for public comment before establishing the recovered materials targets; and in subsection (f), stating that "no liability shall attach and no civil or criminal penalties may be imposed for any failure to meet * * * any (recovered materials) target."

E. *Public Workshops on the Program.* Because of its interest in improving the administration and effectiveness of the program, DOE held public workshops between November 6, 1978 and February 23, 1979 at six major cities across the country, to obtain the views of the participants in the existing program, and the public in general, on industrial energy conservation reporting. The workshops were announced to the public in the Federal Register (43 FR 48682, October 19, 1978). Each workshop provided an opportunity to: (1) Focus the attention and expertise of the participants on improving the present reporting system to make it more useful to DOE and the industrial participants, while providing reliable and useful information on industrial energy conservation and (2) solicit viewpoints and suggestions regarding other approaches which might be developed for promoting and monitoring industrial energy conservation. DOE is preparing a report on the workshops which will be made available to the public. The points of view expressed and suggestions received at the workshops have been helpful in developing the program rule proposed today.

II. Discussion of Proposed Program Rule

A. *Introduction.* After considering its experience in administering the program, the requirements of NECPA, and the suggestions received through the workshops, DOE is proposing comprehensive regulations for the administration of the program. These regulations were developed by the Office of Industrial Programs, under the Assistant Secretary for Conservation and Solar Applications, which has the responsibility for management of the program. A major purpose of this program rule is to provide the necessary framework for the collection and reporting to DOE of data on industrial energy efficiency improvement and recovered materials utilization. DOE will use this data to prepare and submit reports to the President and the Congress on the progress being made in improving industrial energy efficiency and increasing recovered materials utilization.

The program set out in the proposed regulations will follow the approximate annual timetable indicated below. This allows for corporate reporting on manufacturing activities for the same year on which the identification of a corporation is based. DOE would implement this schedule beginning in January, 1980 for reports on calendar year 1979 energy efficiency improvement and recovered materials utilization.

January 1

Federal Register notice reminding corporations of the requirement, under Subpart B, to file information on energy consumption during the previous year.

February 28

Deadline for receipt by DOE of information for identification.

March 15—

Federal Register notice of identified corporations, with a reminder to those corporations which desire exemptions from reporting directly to DOE, and sponsors which desire to have their reporting programs determined adequate, to submit the requests required by Subpart D.

April 15—

Deadline for receipt by DOE of requests for exemption and for determination of adequacy, under Subpart D.

May 1—

Federal Register notice proposing for comment: (1) The sponsors which have adequate reporting programs and (2) the corporations exempt from reporting directly to DOE.

June 1—

Deadline for comments on May 1 Federal Register notice.

June 15—

Federal Register notice of final determination of: (1) Sponsors with adequate reporting programs and (2) corporations exempt from reporting directly to DOE.

July 15—

Deadline for receipt by DOE of reports from corporations and sponsors on energy efficiency improvement and, if appropriate, recovered materials utilization during the previous year, as required under Subpart C.

DOE is preparing and will issue for public comment the various reporting forms required by the NECPA and referred to in Subpart C of the proposed program rule. The proposed program rule also includes, in Subpart E, the energy efficiency improvement targets, as required by the EPCA and established by FEA, and the proposed recovered materials utilization targets, as required by the NECPA.

Comments are requested on the proposed program rule as it implements the objectives of the program, including: (1) Improved energy efficiency and increased utilization of recovered materials by U.S. manufacturing industry; (2) removal of constraints to improved industrial energy efficiency and appropriate utilization of recovered materials; and (3) accurate and useful reporting of energy efficiency improvement and recovered materials utilization. The following paragraphs explain the major provisions of this proposed rule and highlight other areas in which DOE is particularly interested in receiving public comment.

B. *General Provisions.*—1. *Definitions.* Some of the terms defined in § 445.2 such as "control," "commercial quality production" and "manufacturing" have previously been used by FEA and DOE in the implementation of the program under the EPCA. Other terms such as "energy type" and "manufacturing operation" are new. As required by section 371(5) of the EPCA, DOE is proposing a definition of "plant" for purposes of plant reporting. DOE's determination with respect to "major energy-consuming industries" is discussed below. DOE is interested in any comments on the validity and clarity of the definitions provided and on the need for any other definitions.

2. *Handling of Information Submitted Under the Program.* Section 376(c) of the EPCA states that DOE may not disclose information obtained under the program "which is a trade secret or other matter described in section 552(b)(4) of Title 5, United States Code, disclosure of which may cause significant competitive damage; except to committees of Congress upon request of such committees." In addition, section 375(c) now requires that plant report forms which are to be filed at corporate headquarters will be available to DOE for verification, but shall not be released to the public.

In the implementation of the program under the EPCA, FEA provided that, at least five days prior to disclosing any information which it determined was not information described in 5 U.S.C. 552(b)(4), it would notify the provider of the information for which a claim of confidentiality had been made.

The most common basis for the release of information is a request under the provisions of the Freedom of Information Act (FOIA) 5 U.S.C. 552, Pub. L. 89–487, as amended by Pub. L. 93–502, 88 Stat. 1561, and Pub. L. 94–409, 90 Stat. 1241. DOE has recently issued its own regulations implementing the requirements of the FOIA, 10 CFR Part 1004 (44 FR 1909, January 8, 1979). These regulations, in 10 CFR 1004.11, provide for notifying the person providing information, who has claimed that information is privileged or confidential under 5 U.S.C. 552(b)(4), of a determination to release such information at least seven days before the proposed release, and contain other requirements for the handling of proprietary information. DOE is proposing in § 445.4(a) that the handling of information submitted under the program will generally be governed by DOE's own FOIA regulations, which would provide seven days' notice before release, in response to an FOIA request, of information claimed by the corporation to be confidential.

As further permitted by DOE's FOIA regulations, 10 CFR 1004.11(a), DOE is proposing in § 445.4(c) to require corporations which submit information to DOE under the program to make any claims of confidentiality at the time of submitting the information. This will ensure that DOE can review such claims in a timely manner consistent with the needs of the program.

In addition to responding to requests under the FOIA, FEA and DOE in the past have published information received under the program. This includes the publication in the Federal Register of identified corporations and of corporations exempt from reporting directly to DOE. DOE is proposing in § 445.4(d) to provide at least seven days' notice prior to releasing information for which a claim of confidentiality has been made.

3. *Major Energy-Consuming Industries.*—a. *Identification of Major Energy-Consuming Industries.* Section 371(4) of the EPCA defines major energy-consuming industry as "* * * a two-digit classification, within the manufacturing division of economic activity set forth in the Standard Industrial Classification (SIC) Manual by a code number, which the * * * (Secretary) * * * determines is suited to the purposes of this part." As described above, FEA previously identified and ranked twenty major energy-consuming industries, but only required reporting by corporations in the ten industries for which industrial energy efficiency improvement targets were established. DOE is hereby proposing, in § 445.5(a), the 20 two-digit

SIC manufacturing classifications as the major energy-consuming industries. Each of those industries contains one or more corporations which consumed at least one trillion Btu's in 1977.

DOE recognizes, however, that the number of identified corporations in several industries is very small and that designating these industries as "major energy-consuming industries" might result in monitoring of industry progress in improving energy efficiency based on a relatively small percentage of an industry. DOE is, therefore, interested in comments on its proposal to include all of the twenty manufacturing industries as major energy-consuming industries, since all identified corporations in these industries are subject to the reporting requirements of the program.

b. *Major Energy-Consuming Industries for Recovered Materials Reporting.* The enumeration in section 374A(b) of the EPCA of the four industries for which recovered materials targets are to be established is not explicitly related to the SIC classification system. However, in section 374A(e) of the EPCA, each identified corporation which is within one of the four industries for recovered materials purposes is required to report on its use of recovered materials. DOE is, therefore, proposing in § 445.5(b) that the identified corporations in the following major energy-consuming industries be required to report pursuant to section 374A(e):

Industry	SIC code
Textile mill products	22
Paper and allied products	26
Rubber and miscellaneous plastics	30
Primary metal industries	33

DOE is interested in comments on its use of two-digit SIC codes for purposes of reporting on the use of recovered materials. For example, DOE is concerned if the use of two-digit SIC codes could result in reporting by corporations which could not possibly use any of the recovered materials listed in section 374A(a). Comments on this section should also consider DOE's determinations concerning industry boundaries and other matters in the proposed recovered materials targets, as discussed in section II.F.

C. *Identification of Corporations*

1. *Annual Identification.* As part of its one-time identification of corporations required to report on improving energy efficiency, FEA provided procedures for (1) requesting modification of the identification of a corporation on the grounds of technical or clerical error; (2) appealing the denial of such a modification request and appealing on any other grounds to FEA's Office of Exceptions and Appeals; and (3) requesting modification of a corporation's participation in the program based on a showing of "changed circumstances" by application to the Office of Exceptions and Appeals.

FEA's and DOE's experience in administering the program has been that an identification process which led to the processing of a large number of applications for modifications and appeals, particularly on the grounds of "changed circumstances," was administratively cumbersome and detrimental to the purposes of the program. Accordingly, DOE is proposing in Subpart B of Part 445 procedures for the annual identification of those corporations which consumed at least one trillion Btu's in any major energy-consuming industry in a calendar year. Using the same year's energy consumption both for the identification of corporations and for reporting is intended to streamline program management. At the same time, it will ensure that the corporations which are required to report are those that consumed at least one trillion Btu's during the reporting period.

Section 445.12(a) requires that any corporation which consumes at least one trillion Btu's in a major energy-consuming industry during a given year must file a statement to that effect with DOE after the close of the year. To minimize the burden of this information filing requirement, § 445.12(b) requires no action from identified corporations which continue to consume a trillion or more Btu's annually. However, DOE is proposing in § 445.12(c) that an identified corporation which consumes less than one trillion Btu's in a given year must file a statement to that effect with DOE.

2. *Energy to be Included for Identification Purposes.* Section 445.13 specifies what energy is to be included and excluded for identification purposes. For example, feedstocks, as defined in § 445.2, are to be included, while waste used as fuel is to be excluded. DOE believes that the inclusion of feedstocks in determining energy consumption is appropriate for identification purposes regardless of whether the reporting aspects of the program require the submission of information on feedstocks. What is to be included for reporting purposes will be addressed by DOE when it proposes the reporting forms. Comments are invited here with respect to the energy to be included and excluded for identification purposes.

3. *Additional Provisions.* The requirements for the content of a report on energy consumption filed pursuant to § 445.12 (a) or (c) are proposed in § 445.14. The procedures for the identification by DOE of corporations for reporting purposes are proposed in § 445.15. DOE is providing in § 445.16 procedures for modification requests based on clerical or technical error and is providing in § 445.6 procedures for appeals from DOE's response to these requests. However, DOE believes that the annual identification procedures should substantially reduce the volume of requests for modifications and appeals.

D. *Reporting Requirements*

In Subpart C of Part 445, DOE is proposing the reporting requirements of the program. Reporting on energy efficiency by each plant of an identified corporation to its corporate headquarters is proposed in § 445.21. Reporting by identified corporations on energy efficiency and, where appropriate, the use of recovered materials, is proposed in § 445.22. The corporate reports are to be submitted either directly to DOE or, if the corporation is exempt from reporting directly to DOE pursuant to the provisions of Subpart D of Part 445, to the sponsor of the adequate reporting program in which the corporation participates. Reporting by sponsors of adequate reporting programs is proposed in § 445.23.

These requirements are proposed to implement the changes in the program mandated by the NECPA, as well as to improve the consistency of the data from those corporations which report through sponsors with the data from corporations which report directly to DOE.

1. *Information to be Reported.* In response to the need to ensure the receipt by DOE of data which can be meaningfully aggregated, DOE is proposing in § 445.22c(2) and § 445.23 that the information obtained from corporations reporting through sponsors must be exactly the same, except aggregated, as that obtained from corporations reporting directly to DOE. This is a significant program modification, and comments are specifically invited on this point. The actual information to be reported will be contained in the report forms to be proposed by DOE.

Sponsors may include in a report information submitted by non-identified corporations. However, information

from such corporations must be aggregated separately from information submitted by identified corporations. DOE continues to encourage all non-identified corporations to participate in voluntary programs which promote energy efficiency.

2. *Annual Reporting.* DOE is proposing an annual submission, by July 15 of each year, of reports either directly from identified corporations or from sponsors. This timing is consistent with the proposed annual identification process and will serve to reduce the administrative burden of reporting. The reporting period will be the entire calendar year for which each corporation covered by the report is an identified corporation. DOE believes that nearly all corporations can report on a calendar year basis without significant modification to their internal procedures. Sponsors and corporations may require reporting more frequently from corporations and plants, respectively, for their own management purposes.

3. *Reporting Formats and Forms.* DOE proposes that plant reports, corporate reports to sponsors and sponsor reports may all be submitted on forms to be published and supplied by DOE or on alternative forms if these forms provide identical information. DOE feels that some flexibility in format is desirable to meet the needs of both DOE and the industrial participants in the program.

DOE recognizes the existence of programs by many corporations and sponsors to collect and aggregate data which can provide, in a similar but not identical format, the information required to be provided to DOE. Hence, DOE is proposing not to require the exclusive use of DOE reporting forms but to allow use of forms which provide identical information and which are completely cross-referenced to all the items on the DOE forms. DOE is proposing, however, that those corporations which report directly be required to report using a DOE form. DOE is not proposing the flexibility of using alternative forms for direct corporate reporting because there is no precedent in the program for such use and because DOE believes that the increased burden to DOE to process such alternative forms is not justified. DOE is interested in comments on its proposal for allowing the use of forms other than the DOE forms for reporting.

The DOE reporting forms mentioned above are being developed and will be proposed in the near future for public comment, as required by section 376(c) of the EPCA. It is DOE's intent to have the final forms available before requiring any corporation to submit a request for exemption or any sponsor of a reporting program to submit a request for a determination that its reporting program is adequate.

4. *Data Retention.* DOE is proposing in § 445.26 data retention requirements for all identified corporations and sponsors of adequate reporting programs. The retention of plant reporting forms is required by section 375(c) of the EPCA, and the retention of corporate reports to sponsors is required by section 376(g).

DOE is proposing in § 445.26(b) that all exempt corporations must retain the corporate reports filed with sponsors for at least five years. Copies of such reports may also be retained by the sponsors. All reports which are retained must be made available to DOE upon request. This will provide DOE with the opportunity for efficient verification.

E. Exemption Criteria and Procedures

1. *Criteria.* In order to eliminate inconsistencies between direct corporate reports and sponsor reports, and to take into account the program changes required by the NECPA, DOE is proposing in Subpart D revised criteria and procedures for the annual exemption of identified corporations from reporting directly to DOE. The proposed criteria are intended to ensure that the information obtained from identified corporations through the reports of sponsors is identical to the information obtained from identified corporations which report directly to DOE. DOE believes that corporations and sponsors are supportive of the need for consistency in the data supplied to DOE.

DOE is proposing in § 445.32 the criteria for the exemption of corporations. In order to be exempted, a corporation must file a timely and complete request to be exempt, must participate in a reporting program which is adequate and, if previously exempted, must have met the reporting requirements for an exempt corporation. DOE is proposing in § 445.33 the criteria for the adequacy of a reporting program. In order for its reporting program to be determined adequate, a sponsor must file a timely and complete request to be a sponsor of an adequate reporting program and, if previously determined to be adequate, must have met the reporting requirements for an adequate reporting program and have provided each exempt corporation participating in its program with (1) specific written guidance for preparing and submitting corporate reports and (2) a copy of the report which the sponsor filed with DOE. DOE wishes to receive comments on its proposed criteria.

2. *Procedures for Requesting Corporate Exemption and Adequacy of a Reporting Program.* In order to seek an exemption, an identified corporation is required to submit a request to DOE under § 445.34. This request must identify the sponsor to which the corporation intends to report and must include a copy of any report form, other than the appropriate DOE form, it will submit to the sponsor. Any alternative form must be appropriately indexed. The corporation must also submit a statement that it will meet the requirements for reporting by exempt corporations and the applicable data retention requirements. DOE is proposing in paragraph (c) of this section that corporations exempted from direct reporting for one year need not refile to be exempt for the next year, if all information contained in its previous request remains the same.

As proposed in § 445.35, in order to seek to have its reporting program determined to be adequate, a sponsor must submit a request which includes: A list of each major energy-consuming industry which is covered by its reporting program and any report form, other than the appropriate DOE form, which it intends to submit to DOE. Any alternative report form must be appropriately indexed. The request must state whether the sponsor will retain copies of corporate reports and will make such copies available to DOE, pursuant to § 445.26(b), and include additional statements that the sponsor will: (1) Meet the sponsor reporting requirements and the applicable data retention requirements, (2) provide each identified corporation which participates in the program with a copy of the sponsor's report to DOE under § 445.23, and (3) provide written guidance for preparing and submitting a corporate report to the sponsor. DOE proposes in § 445.35(c) that a sponsor with an adequate reporting program in one year can file in the next year a certification that its program is unchanged, instead of the complete request required by § 445.35(a) and (b).

DOE is interested in comments on the appropriateness of these requirements and suggestions for any additional criteria or procedures which could be useful in improving adequate reporting programs.

3. *Determination by DOE.* DOE is proposing in § 445.37 the procedures for determining the corporations and sponsors which meet the criteria in § 445.32 and § 445.33. In the case of a first-time request for exemption or

determination of adequacy, DOE will accept a timely and complete request, including certification that all criteria will be met, as meeting the criteria. Annually, DOE will publish its proposal to exempt corporations and to determine the adequate reporting programs in the Federal Register for public comment, as required by section 376(g) of the EPCA. After considering public comment, DOE will exempt corporations and determine the adequate reporting programs and will publish a list of exempt corporations and adequate reporting programs in the Federal Register.

4. *Timeliness of Reports by Exempt Corporations and Sponsors.* DOE is proposing in § 445.38 that, if a sponsor does not report to DOE by the deadline provided in § 445.25, all exempt corporations intending to report through that sponsor will be required to report directly to DOE. This section also proposes that, if a sponsor determines that an exempt corporation has failed to file its report, the sponsor should report to DOE based on the reports received from the other exempt corporations which participate in the program. Any exempt corporation which does not file a report with a sponsor will be required to report directly to DOE. DOE believes that these provisions are necessary to enable it to prepare a complete and timely annual report.

F. Voluntary Energy Efficiency and Recovered Materials Targets

1. *Industrial Energy Efficiency Improvement Targets.* DOE has included in § 445.42 the ten energy efficiency improvement targets, in order to set forth all parts of the program in the Code of Federal Regulations. As required by section 376(c) of the EPCA, these targets were proposed for public comment (41 FR 48109, November 2, 1976). The final targets were published in the Federal Register (42 FR 29842, June 9, 1977), together with a statement of the basis and justification for each of the targets.

2. *Recovered Materials Utilization Targets—a. Legislative Requirements.* DOE is proposing for comment in § 445.44 recovered materials utilization targets (targets) for each of the following industries—metals and metal products, paper and allied products, textile mill products and rubber. DOE is required to set such targets within one year of the enactment of the NECPA, i.e., by November 1979. Section 376(c) of the EPCA requires DOE to afford interested persons an opportunity to submit written and oral data, views and arguments prior to establishing the final targets.

Pursuant to Section 374A of the EPCA, the targets must be based on the best available information. In establishing the targets, DOE is required to consider the technological and economic ability of each of the four industries progressively to increase its use of recovered materials by the target year, as well as actions taken or which could be taken before the target year by the industries, Federal, State or local governments to increase the use of recovered materials. DOE has implemented these requirements in developing the targets.

In developing the proposed targets, DOE has consulted with the Environmental Protection Agency and with representatives from each of the industries for which targets are proposed.

The targets must be established at levels which represent the maximum feasible increase in the use of recovered materials that the appropriate industry can achieve progressively by January 1, 1987. Numerically, each proposed target represents, for an appropriate "subdivision" of an industry, a level expressed as a percentage of recovered materials from prompt industrial and obsolete scrap which can be used per unit of production (input or output) in manufacturing operations by the target year of 1987. The corresponding percentage of recovered materials used per unit of production in the latest year for which data are available (1976, 1977 or 1978) is also provided. The difference between the two numbers indicates the maximum feasible increase, if any, in the utilization of recovered materials between the reference year and the target year.

b. *Target Methodology.* In developing the targets for each of the four industries, DOE followed, in general, the methodology described below. The detailed analyses and assumptions varied, however, reflecting differences among the industries in structure, economics, previous history of recovered materials use and other factors, and reflecting the special characteristics of each recovered material as it is supplied to, processed in and, where appropriate, marketed by an industry.

The description of the general methodology in this preamble provides a basis for an understanding of how the levels were determined for the proposed targets. The use of this methodology in the development of each target, along with the particular set of basic assumptions, relationships and supporting rationale for each proposed target, is contained in the target support documents, which are available as stated in section III. Reference to these documents is necessary for a complete understanding of the establishment of the proposed targets.

i. *Selection of Appropriate Industry Subdivisions.* Each of the four industries was analyzed to determine how it should be subdivided to allow for the reasonable analysis of technological and economic ability to utilize recovered materials. In general, the result was to subdivide each industry according to process technologies, recovered materials input and/or product types. Factors such as the following were considered in selecting subdivisions: (a) Historical and current levels of use of recovered materials, (b) sales volumes of industry subdivisions, (c) energy consumption levels, and (d) potential for use of recovered materials. Once the appropriate subdivisions were selected, the subdivisions were reviewed to determine which should receive relatively more attention.

ii. *Selection of Sources of Recovered Materials.* Potential sources of recovered materials for each subdivision in each industry were then identified. Factors taken into account in selecting such sources included: (a) Quality of waste, (b) quantity of waste, and (c) dispersion of waste. Under this methodology, potential sources of recovered materials were deemed to include any waste containing one or more substances listed in the legislative definition of recovered materials. In general, sources of waste were categorized as obsolete scrap, prompt industrial scrap and self-generated scrap. Wastes generated outside the United States were considered to be potential sources of recovered materials.

iii. *Analysis of Technological Ability.* Determinations were made of present and future technological limits on the ability of each industry subdivision to use recovered materials from each potential source. These limits could be dictated by one or a number of different considerations including, for example, types of processes employed in the industry and minimum product quality standards. In establishing these technological limits on the use of recovered materials, attempts were made to discover proven and potential processes and equipment which could, if further utilized, affect the use of recovered materials. Once the technological limits were established for each industry subdivision, the ability of waste sources to provide sufficient recovered materials was assessed. If there was a limited supply of potential recovered materials, then the

technological limit was adjusted accordingly.

iv. *Analysis of Economic Ability.* Economic ability analyses were keyed to the technological limitations on the use of recovered materials. For example, economic criteria, such as industry growth rates and the availability of capital, were studied to determine the prospects for investment in equipment, processes and/or plants capable of increased recovered materials utilization. Other important factors considered include the projected cost of supply of recovered materials and the impact on these of alternative uses of recoverable wastes. For example, waste paper may be burned or waste rubber may be used in asphalt. Such alternative uses may affect the avaflability and price of recovered materials. As it is not possible to analyze all actions which could affect the target levels, major and potentially significant actions were specified and analyzed relative to each industry.

c. *Significance of Recovered Materials Utilization Targets.* DOE is proposing to establish recovered materials targets for each of the four industries by setting targets for industry subdivisions. Section 374A(a) does not require an aggregate target for each of four industries and DOE believes, because of the substantial differences among subdivisions, that the aggregation of these targets into a single target for a given industry would not be useful.

The proposed targets, as required by the EPCA, are intended as the best projection of maximum attainable utilization of recovered materials in the target year that is both economically and technologically feasible. Since these targets are not required to be established on the basis of minimum national energy use, a higher target may be consistent with a reduction in total energy consumption, but not necessarily with the requirement to reflect economic feasibility. On the other hand, a lower target might be associated with reduced energy consumption, if more recovered materials were to be burned for fuel rather than recycled to replace virgin materials. The support documentation addresses these relationships.

Three targets are proposed to be set at levels which reflect, between the reference year and the target year, a decrease per unit of production in the utilization of recovered materials. While this result may be contrary to an expectation that each target would show a percentage increase, the technological and economic feasibility analyses in the support documents set forth the reasons for decreased levels.

While the reporting of information on the use of recovered materials is required from certain corporations under the program, the targets themselves are not directed at individual corporations. Rather they are voluntary industry targets, and no sanctions attach for failure to meet them.

Each of the targets was derived by taking into account the various factors, assumptions and requirements mentioned above and their relationship to each other. The target-support documentation sets forth the extremely complex framework and analysis which determined the proposed target levels. To the extent that the documentation has oversimplified the actual process, made unwarranted assumptions or has other shortcomings, comments are requested.

Under § 445.45, any target established by DOE may be modified if DOE determines that the target cannot reasonably be attained or that it should require greater use of recovered materials.

d. *Significant Issues.* The attention of the public is particularly directed to the following issues, each of which is important in the establishment of the proposed recovered materials targets.

i. *Use of Waste as a Fuel.* DOE considered whether to include the direct combustion of waste for its energy content as utilization of a recovered material for purposes of the targets. DOE determined that it should not and, therefore, such use of waste is not included in the proposed targets. Whenever it is technically possible and environmentally acceptable, the use of waste as a fuel through direct combustion is encouraged by DOE. It is expected, however, that such use will be accounted for and reflected in energy efficiency improvement reporting.

ii. *Definition of Industry Boundaries.* DOE has made several determinations regarding the use of the Standard Industrial Classification (SIC) system to bound the four industries described in section 374A. For example, more than one two-digit SIC industry produces metals and metal products, including primary metals (SIC 33) and fabricated metal products (SIC 34). DOE has determined that only SIC 33 should be used for target-setting purposes, because SIC 34 has virtually no capability to utilize recovered materials. DOE has determined to exclude the plastic component of SIC 30, rubber and miscellaneous plastics, from the targets in the rubber industry, since plastic is not a recovered material for purposes of the program. DOE also determined that tire retreading and repair operations, classified as SIC 7534, which utilize substantial amounts of recovered rubber, should be included in the targets for the rubber industry. DOE recognizes that reporting on progress to reach the targets for the rubber industry will not contribute to monitoring progress toward the target for retreading, since SIC 7534 is not within a major energy-consuming industry as proposed in § 445.5(a). Comments are requested on the inclusion and exclusion of various industry components in setting the proposed targets.

iii. *Intermediate Targets.* DOE is interested in any comments on whether meaningful targets for increased use of recovered materials can or should be established for years before 1987.

iv. *Types of Waste Included.* Section 374A of EPCA, as amended, lists the recovered materials covered by the program. For purposes of the analytic effort required to set the targets, it is important to characterize properly by type the sources of these recovered materials. For analytic convenience and the different potential contribution to increased utilization each could make, any recovered material may be categorized as either self-generated, prompt industrial or obsolete scrap. The public is invited to comment on the definitions of prompt industrial and obsolete scrap as they appear in § 445.2 of the proposed rule. For purposes of target-setting, self-generated scrap was defined to mean recovered materials generated by a manufacturing operation and used as input to the same manufacturing operation. Examples include metal drosses and off-specification products returned to the manufacturing operation. Comments are requested on this definition, as it applies to target-setting.

Use of obsolete scrap in place of virgin raw material clearly reduces solid waste and conserves virgin material. It also generally conserves energy, and its inclusion as a type of recovered material was considered to be crucial. This category of scrap is expected to contribute most heavily to the potential for increased utilization between now and 1987.

Next in importance in terms of potential for increased utilization is prompt industrial scrap. It is currently being used to varying extents by the four specified industries. Its use in certain industries can be expected to increase significantly. It should be noted that more efficient fabricating methods lead to declining availability of this

category of scrap. For example, recent and projected improvements in can manufacturing are expected to reduce the amount of stamping waste which is returned to the supplier of the metal for remelting.

Self-generated scrap is the most complex category to analyze. However, DOE believes that virtually 100% of self-generated scrap is recovered in actual practice and that the potential for increased utilization is insignificant. Use of self-generated scrap was therefore not included in the development of the targets.

v. *Forest Residues.* In developing the targets for recovered materials utilization, DOE recognized that the paper and allied products industry recovers significant quantities of forest residue and other wood waste in its manufacturing operations. However, DOE believes that the definition of recovered materials in section 374A(a) of EPCA does not include such wastes. Accordingly, the targets proposed for the paper and allied products industry do not include increased use of forest residues and other wood wastes as sources of recovered materials. The use of wood waste is, however, addressed in the paper and allied products support documentation.

vi. *Data Used in Target Setting.* DOE believes it has used the best available data in setting the targets. Data sources are indexed in the support documents. DOE is interested in comments on the data it has used and on whether there is important information in either published or unpublished sources which was overlooked in the development of these documents. DOE is also interested in receiving comment on any actions which could be taken by Federal, State or local governments to increase the use of recovered materials in the four target industries.

As discussed above, DOE has recently required certain corporations to report on their current use of recovered materials and their plans, if any, to increase such use in the next ten years. DOE may use information from the reports in establishing final targets. If the additional information may materially affect the target values, DOE may make relevant data available to the public in order to allow comments on such data, if appropriate.

vii. *Target Universe and Reporting Universe.* The proposed targets represent levels of recovered materials utilization to be achieved by an industry subdivision and have been established from industry-wide data. DOE will measure progress toward such targets by an industry, based on data from corporations required to report to DOE under section 374A(e) of the EPCA. While these corporations do not comprise the entire industry, the EPCA contemplates that the largest corporate energy usage in an industry should be monitored to measure industry-wide progress. DOE believes that establishing the recovered materials targets based solely on data from the reporting universe would be a very complex process and is not required by section 374A. DOE is, however, interested in any comments on this matter.

III. Access To Support Documents for the Proposed Recovered Materials Targets

Copies of the detailed studies upon which each of the proposed targets is based are available for inspection at the DOE Freedom of Information Office, Forrestal Building, Independence Avenue and L'Enfant Plaza, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, and at each DOE Regional Office as follows:

Region	Address	Hours
I	Anslen Bldg., DOE Library 150 Causeway Street Boston, Mass. 02114.	8:30 to 5
II	Room 3206, 26 Federal Plaza New York, N.Y. 10007.	8:30 to 5
III	Room 1011, 1421 Cherry Street Philadelphia, Pa. 19102.	8 to 4:30
IV	8th Floor, 1655 Peachtree St., NE Atlanta, Ga. 30309.	8 to 4:30
V	Room 4-333, 175 West Jackson Blvd., Chicago, Ill. 60604.	8 to 4:30
VI	Room 200, 2626 West Mockingbird Lane, Dallas, Tex. 75235.	8 to 4:30
VII	324 East 11th Street Kansas City, Mo. 64106.	7:30 to 4
VIII	Room 256, 1075 South Yukon St., Lakewood, Colo. 80226.	7:30 to 4:30
IX	Third Floor Reading Room, 111 Pine Street, San Francisco, Calif. 94111.	7:30 to 3
X	Room 1992, 915 Second Ave., Seattle, Wash. 98174.	8 to 4

Copies of the studies will, wherever possible, be made available for duplication after regular business hours. Persons wishing to reserve a copy for this purpose shall contact DOE in advance.

IV. Opportunities for Public Comment

A. *Written Comment Procedures*

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposal set forth in this notice to Margaret Sibley, Office of Conservation and Solar Applications, Department of Energy, Docket Number CAS-RM-79-301, 20 Massachusetts Avenue, NW., Washington, D.C. 20585.

Comments on all parts of the rule other than the recovered materials targets should be identified on the outside of the envelope and on documents with the designation "Industrial Energy Conservation Program." Comments on the recovered materials targets proposed in § 445.44 should be identified on the outside of the envelope and on documents with the designation "Proposed Recovered Materials Targets-Industry." Twenty-five copies should be sumitted. All comments received by August 7, 1979, before 4:30 p.m. e.d.t., and all other relevant information, will be considered by DOE before final action is taken regarding the proposed rule.

Pursuant to the provisions of 10 CFR 1004.11 (44 FR 1908, January 8, 1979), any person submitting information which he or she believes to be confidential and which may be exempt by law from public disclosure should submit one complete copy, and twenty-five copies from which information claimed to be confidential has been deleted. In accordance with the procedures established at 10 CFR 1004.11, DOE shall make its own determination with regard to any claim that information submitted by exempt from public disclosure.

B. *Public Hearings*

DOE has determined to have one public hearing on all aspects of the proposed rule, other than the proposed recovered materials targets. This hearing will be held at 9:30 a.m., e.d.t., on July 31, 1979, in Room 3000A, 12th & Pennsylvania Avenue, NW., Washington, D.C. 20461.

DOE has determined that a public hearing will be held on the proposed recovered materials targets for each of the four industries for which such targets are to be established. Each of the four hearings will be held in Room 3000A, 12th & Pennsylvania Avenue, NW., Washington, D.C., on the following dates:

Proposed targets for:	Date
1. Textile mill products	July 23, 1979
2. Metals and metal products	July 24, 1979
3. Paper and allied products	July 25, 1979
4. Rubber	July 26, 1979

Any person who has an interest in these proceedings or who is a representative of a group of persons that has an interest in these proceedings may make a written request for an opportunity to make an oral presentation. All such requests should be directed to DOE at the address given at the beginning of this preamble, and must be received before 4:30 p.m., e.d.t., July 13, 1979. A request may be hand delivered between the hours of 8:00 a.m.,

and 4:30 p.m., Monday through Friday. Requests should be marked, as for written comments, with the additional notation, "Request to Speak."

The person making the request should briefly describe the interest concerned, if appropriate, state why she or he is a proper representative of a group of persons that has such an interest, and give a concise summary of the proposed oral presentation and a phone number where he or she may be contacted. Each person selected to be heard will be notified by DOE before 4:30 p.m., e.d.t. local time, July 16, 1979. Each person selected to be heard must submit twenty-five copies of his or her statement to the address given for written comments before 4:30 p.m., e.d.t., July 20, 1979. In the event any person wishing to testify cannot provide twenty-five copies, alternate arrangements can be made in advance of the hearing by so indicating in the letter requesting an oral presentation or by calling Ms. Margaret Sibley at 202–376–1651.

C. *Conduct of Hearings*

DOE reserves the right to select the persons to be heard at the hearings, to schedule their respective presentations and to establish the procedures governing the conduct of the hearings. The length of each presentation may be limited, based on the number of persons requesting to be heard.

A DOE official will be designated to preside at each hearing. These will not be judicial or evidentiary type hearings. Questions may be asked of speakers only by those conducting a hearing, and there will be no cross-examination of persons presenting statements. Any decision made by DOE with respect to the subject matter of a hearing will be based on all information available to DOE. At the conclusion of all initial oral statements at each hearing, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person may submit questions to be asked, by those conducting a hearing, of any person making a statement. Questions should be received at the address given for written comments before 4:30 p.m., e.d.t., July 20, 1979. DOE will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any person making an oral statement who wishes to ask a question at a hearing may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of each hearing will be announced by the presiding officer.

A transcript of each hearing will be made and the entire record of each hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Office, Forrestal Building, Independence Avenue and L'Enfant Plaza, S.W., Washington, D.C. between the hours of 8:00 a.m., and 4:30 p.m., Monday through Friday. Any person may purchase a copy of a transcript from the reporter.

V. Environmental Review, Regulatory Review, Urban Impact Review, Consultation With Other Federal Agencies and Major Industries

A. *Environmental Review*

The National Environmental Policy Act of 1969 as amended, 42 U.S.C. 4321 *et seq.*, (NEPA) requires that Federal Agencies, to the fullest extent possible, execute their responsibilities in accordance with the policies set forth in the NEPA, and prepare a detailed statement concerning "major Federal actions significantly affecting the quality of the human environment." While reporting by an identified corporation is mandatory under the program, the achievement of the industrial energy efficiency improvement and recovered materials utilization targets is strictly voluntary. Therefore, while it is true that the goal of the program is to improve industrial energy efficiency and increase recovered materials utilization, which may reduce environmental residuals, any actual savings with resulting changes in environmental effects will occur solely as a result of, and in a manner determined by, private, rather than Federal, actions. The proposed rule is therefore not a "major Federal action significantly affecting the quality of the human environment" and does not require further environmental review.

As required by section 7(a)(1) of the Federal Energy Administration Act of 1974, as amended (15 U.S.C. 766), a copy of this proposed rulemaking was submitted to the Administrator of the Environmental Protection Agency for his comments concerning the impact of this proposal on the quality of the environment. The Administrator had no comments.

B. *Regulatory Review*

DOE has determined that this proposed rulemaking is significant, as that term is used in Executive Order 12044 "Improving Government Regulations" and amplified in DOE Order 2030 "Procedures for the Development and Analysis of Regulations, Standards, and Guidelines." This is considered a significant proposal because it proposes the recovered materials targets and the criteria and procedures for mandatory reporting on industrial energy efficiency and utilization of recovered materials which will result in improved reporting of such information by DOE to the Congress, the President, and the public.

DOE has further determined that the proposed rulemaking is not likely to have a major impact, as defined by Executive Order 12044 and amplified in DOE Order 2030, because it is not likely to impose a gross economic annual cost of $100 million or more and is not likely to have any of the other impacts which are defined as major in DOE Order 2030. Accordingly no regulatory analysis will be performed.

As further required by DOE Order 2030, a draft regulatory evaluation plan has been prepared for the proposed rulemaking.

C. *Urban Impact Analysis*

The proposed rulemaking has been reviewed in accordance with OMB Circular A–116 to assess the impact on urban centers and communities. In accordance with DOE's finding that the proposed rulemaking is not likely to have a major impact, DOE has determined that no community and urban impact analysis of this proposed rulemaking is necessary, pursuant to section 3(a) of Circular A–116.

D. *Consultation With Other Federal Agencies and Major Industries*

Pursuant to section 372 of the EPCA, DOE has consulted with the Secretary of Commerce on this proposed rule. The Department of Commerce has expressed its interest in the rulemaking and may submit comments during the public comment period.

As required by section 374A(c), in developing the proposed targets for the increased utilization of recovered materials DOE has consulted with the Administrator of the Environmental Protection Agency and each of the major industries subject to the provisions of section 374A.

(Energy Policy and Conservation Act (Pub. L. 94–163), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619);

Federal Energy Administration Act of 1974 (Pub. L. 93-275), as amended; E. O. 11790 (39 F.R. 23185); The Department of Energy Organization Act (Pub. L. 95-91); E.O. 12009 (42 FR 46267))

In consideration of the foregoing, the Department of Energy proposes establishing Part 445 of Chapter II of Title 10 of the Code of Federal Regulations, as set forth below.

Issued in Washington, D.C., June 1, 1979.

Maxine Savitz,

Deputy Assistant Secretary, Conservation and Solar Applications.

PART 445—INDUSTRIAL ENERGY CONSERVATION PROGRAM

Subpart A—General Provisions

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Authority: Secs., 5, 7, 13, Pub. L. 93-275, 88 Stat. 97 (15 U.S.C. 764, 766, 772); secs 371-376, Pub. L. 94-163, 89 Stat. 871 (42 U.S.C. 6341-6346), as amended by Pub. L. 95-619, 92 Stat. 3207; secs. 301, 308, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7151, 7158); E. O. 11790 (39 FR 23185); E. O. 12009 (42 FR 46267).

Subpart A—General Provisions

§ 445.1 Purpose and scope.

This part sets forth the regulations for the Industrial Energy Conservation Program established under Part I of Title III of the Act. It includes criteria and procedures for the identification of reporting corporations, reporting requirements, criteria and procedures for exemption from filing reports directly with DOE, voluntary industrial energy efficiency improvement targets and voluntary recovered materials utilization targets. The purpose of the program is to promote increased energy conservation by American industry and, as it relates to the use of recovered materials, to conserve valuable energy and scarce natural resources.

§ 445.2 Definitions.

For the purposes of this part—

"Act" means the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871), as amended by the National Energy Conservation Policy Act (Pub. L. 95-619, 92 Stat. 3207).

"Btu" means British thermal unit.

"Chief executive officer" means, within a corporation or a sponsor, the chief executive officer or other individual who is in charge of the corporation or sponsor.

"Commercial quality production" means the manufacture of products suitable for shipment and/or sale.

"Control" means the ability to direct or cause the direction of the management and policies of a corporation. Whether control is present involves a question of fact to be determined from such criteria as degree of ownership (especially of voting shares), contractual arrangements, and other means of influence, such as ability to appoint a majority of a corporation's board of directors, whether by sufficient stock ownership or other means.

"Corporation" means a person as defined in Section 3(2)(B) of the Act (any corporation, company, association, firm, partnership, society, trust, joint venture or joint stock company) and includes any person which controls, is controlled by, or is under common control with such person.

"DOE" means the Department of Energy.

"Energy efficiency" means the amount of energy consumed per unit of production.

"Energy type" means electricity, purchased steam, natural gas, bituminous coal, anthracite, coke, ethane, propane, LPG, natural gasoline, gasoline (including aviation), special naphtha, kerosene, distillate fuel oil (including diesel), still gas, petroleum coke, residual fuel oil, crude oil, and any other material consumed as a fuel in manufacturing.

"Exempt corporation" means an identified corporation which DOE determines, pursuant to § 445.37, is not required to report directly to DOE.

"Feedstock" means petroleum products, natural gas or coal used as a raw material which is processed to become a part of the chemical composition of a product other than an energy type.

"Identified corporation" means a corporation identified by DOE in accordance with § 445.15. A corporation is an identified corporation for the year in which it consumed, in accordance with § 445.13, at least one trillion Btu's.

"Major energy-consuming industry" is an industry listed in § 445.5(a).

"Manufacturing" means the mechanical or chemical transformation of materials or substances into new products, as described on page 57 of the Office of Management and Budget Standard Industrial Classification Manual (1972).

"Manufacturing operation" means the mechanical or chemical transformation of materials or substances into a product classified within SIC codes 22, 26, 30, or 33; which is measured in a single unit of production. Manufacturing operations include, but are not limited to, the production of iron, steel, aluminum, copper, lead, zinc, wood pulp, paper, spun textile goods, woven textile goods, felt textile goods, non-woven textile goods, tires and tire products, rubber footwear, and industrial rubber products.

"Obsolete scrap" means recovered materials created by the use and subsequent discard of a product. Examples are discarded tires, automobiles, and newspapers. This includes recovered materials from outside the United States which are used in manufacturing operations in the United States.

"Plant" means an economic unit of a corporation at a single physical location where manufacturing is performed.

"Product" means an item or grouping of items (separate parts of, or all of a product line) that is the production of a manufacturing corporation that is

classified within a major energy-consuming industry.

"Production" means the quantity of a corporation's product output, throughput, or activity.

"Program" means the Industrial Energy Conservation Program of DOE.

"Prompt industrial scrap" means recovered materials generated by an industrial process and used as input to a manufacturing operation other than the industrial process which generated it. An example is metal fabrication stamping waste which is used in manufacturing steel. This includes recovered materials from outside the United States which are used in manufacturing operations in the United States.

"Recovered materials" mean any of the following energy-saving recovered materials: Aluminum, copper, lead, zinc, iron, steel, paper and allied paper products, textiles, and rubber, recovered from solid waste.

"SIC" means the Standard Industrial Classification system described in the Office of Management and Budget Standard Industrial Classification Manual (1972).

"Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities; but does not include, solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation flows, or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

"Sponsor" means a trade association or other person which operates, or intends to operate, a reporting program which collects data from one or more corporations.

"United States" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

§ 445.3 Management of the program.

The Office of Industrial Programs, Office of the Assistant Secretary for Conservation and Solar Applications, Department of Energy, will implement and manage the program.

§ 445.4 Handling of information submitted under the program.

(a) Except as otherwise provided in this section, the handling of information submitted to DOE under this part will be governed by DOE's Freedom of Information regulations, 10 CFR Part 1004.

(b) DOE will not disclose any information obtained under this part which it determines is a trade secret or other matter described in 5 U.S.C. 552(b)(4), disclosure of which may cause significant competitive harm, except to committees of Congress upon request of such committees; and information from plant reporting forms made avaliable to DOE for verification purposes under § 445.26(a) shall not be released to the public.

(c) A corporation which claims that information provided to DOE under this part is a trade secret or commercial or financial information that is privileged or confidential within the meaning of 5 U.S.C. 552(b)(4), and that disclosure of this information would cause significant corporate competitive damage, must so inform DOE by providing at the time of the submission of the information a detailed item-by-item explanation of whether the information is customarily treated as confidential by the corporation and the industry, and a detailed explanation of the anticipated competitive damage which would result from public disclosure.

(d) Prior to disclosing any information other than in response to a request made under 10 CFR Part 1004, DOE will grant any person who submitted information in accordance with paragraph (c) of this section an opportunity to comment on the proposed disclosure by providing at least seven days' notice of DOE's determination to disclose such information. For purposes of this paragraph, notice is deemed to be given when mailed to the person who provided the information.

(e) Any information submitted to DOE by a corporation under this part shall not be considered energy information, as defined by section 11(e)(1) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 796), for purposes of any verification examination authorized to be conducted by the Comptroller General under section 501 of the Act.

§ 445.5 Major energy-consuming industries.

(a) For purposes of this part, the following 2-digit SIC manufacturing industries are the major energy-consuming industries:

(1) SIC 20—Food and kindred products;
(2) SIC 21—Tobacco products;
(3) SIC 22—Textile mill products;
(4) SIC 23—Apparel and other textile products;
(5) SIC 24—Lumber and wood products;
(6) SIC 25—Furniture and fixtures;
(7) SIC 26—Paper and allied products;
(8) SIC 27—Printing and publishing;
(9) SIC 28—Chemicals and allied products;
(10) SIC 29—Petroleum and coal products;
(11) SIC 30—Rubber and miscellaneous plastic products;
(12) SIC 31—Leather and leather products;
(13) SIC 32—Stone, clay and glass products;
(14) SIC 33—Primary metal industries;
(15) SIC 34—Fabricated metal products;
(16) SIC 35—Machinery, except electrical;
(17) SIC 36—Electric, electronic equipment;
(18) SIC 37—Transportation equipment;
(19) SIC 38—Instruments and related products; and
(20) SIC 39—Miscellaneous manufacturing industries.

(b) The following major energy-consuming industries are the industries for which reporting on the use of recovered materials is required under § 445.22(b):

(1) SIC 22 Textile mail products;
(2) SIC 26 Paper and allied products;
(3) SIC 30 Rubber and miscellaneous plastic products; and
(4) SIC 33 Primary metal industries.

§ 445.6 Procedures for appeals.

Any appeal of a determination by DOE pursuant to any provision of this part shall be filed with the Office of Hearings and Appeals, U.S. Department of Energy, Washington, D.C. 20461, within 30 days of the date of that determination, pursuant to the procedures for such an appeal stated in 10 CFR Part 205, Subpart H. A person has not exhausted its administrative remedies until an appeal has been filed under that subpart, and an order granting or denying the appeal has been issued.

§ 445.7 General information-gathering authority.

In addition to the exercise of authority under Part E of Title III of the Act, DOE may execise any authority available under any other provision of law to obtain such information with respect to

industrial energy efficiency and industrial recovered materials use which it determines is necessary or appropriate to the attainment of the objectives of the program. Nothing in this part shall limit the authority of DOE to require reports of energy information under any other law.

Subpart B—Identification of Corporations

§ 445.11 Scope.

This subpart contains the criteria and procedures for the annual identification of corporations.

§ 445.12 Requirement for corporations to file a report on energy consumption.

(a) Except as provided by paragraph (b) of this section, a corporation which consumed, as determined according to § 445.13, at least one trillion Btu's of energy in a calendar year within a major energy-consuming industry shall file a report on that energy consumption with DOE as provided in section § 445.14.

(b) Any corporation which was identified by DOE under § 445.15 within a major energy-consuming industry for a calendar year and which consumed, as determined according to § 445.13, at least one trillion Btu's of energy within the same major energy-consuming industry in the next calendar year, need not file a new report of its energy consumption in that industry.

(c) Any corporation which was identified by DOE under § 445.15 within a major energy-consuming industry for a calendar year and which consumed, as determined according to § 445.13, less than one trillion Btu's of energy within the same major energy-consuming industry in the next calendar year shall file a report on its energy consumption in that industry as provided by § 445.14. The failure of a corporation described in this paragraph to file a report may result in the continued identification of the corporation by DOE under § 445.15.

§ 445.13 Computation of energy consumption.

(a) For purposes of this subpart, energy consumed is the sum of the Btu contents of all energy types consumed by a corporation in a manufacturing industry within the United States and includes energy used for—

(1) Direct manufacturing activities;

(2) Thermal self-generation of electricity;

(3) Heating, ventilating and air conditioning of manufacturing buildings and plant offices, as well as manufacturing services such as shops, cafeteria, other plant personnel services, and plant chemical and analytical laboratories;

(4) In-plant transportation, such as lift trucks, conveyors, cranes, and railroads;

(5) Transportation to manufacturing facilities from mining operations owned by the manufacturer;

(6) Raw material storage;

(7) Services for finished product warehouses within a plant fence if directly related to manufacturing activities; and

(8) Feedstocks.

(b) For purposes of this subpart, energy consumed does not include (where such use is metered separatly or can otherwise be identified)—

(1) All uses of electricity self-generated by thermal means;

(2) Services for corporate and divisional offices not contiguous to a plant;

(3) Services for basic research not contiguous to a plant;

(4) Services for regional distribution centers;

(5) Fuel for corporate aircraft, salesmen's cars and over-the-highway trucks;

(6) By-product fuels sold and shipped, or stored for sale;

(7) Facility start-up energy (to point of commercial quality production);

(8) Waste used as fuel;

(9) Transport of intermediate product to another producer for finishing within the same two-digit industry; and

(10) Fuels received for storage for later disposition.

(c) For purposes of this section, where energy is consumed in manufacturing in one major energy-consuming industry for purposes of manufacturing an end product in another major energy-consuming industry and such energy is not separately metered or cannot otherwise be identified, the energy is consumed in the major energy-consuming industry of the end product.

(d) To avoid double-counting in the case of thermally self-generated electricity, a corporation's electricity consumption shall be comprised only of purchased electricity and self-generated hydropower. For example, where a corporation consumes coal in the thermal generation of electricity for its own use, the Btu's of the coal, but not the Btu's of the electricity, shall be included.

(e) Where an energy type (except electricity) was purchased according to, or with knowledge of, its actual Btu content, and such Btu content can be documented, energy consumed must be determined by reference to the actual Btu content. Where the energy type was not purchased according to, or with knowledge of, its actual Btu content and in the case of electricity, the following conversion factors (Btu's/energy unit) must be used:

(1) Electricity—3,412/kwh.;

(2) Natural gas—1,020/cu. ft.;

(3) Bituminous coal—22,565,000/short ton;

(4) Anthracite—25,400,000/short ton;

(5) Coke—26,000,000/short ton;

(6) Ethane—3,082,000/bbl.;

(7) Propane—3,848,000/bbl.;

(8) LPG—4,011,000/bbl.;

(9) Natural gasoline—4,620,000/bbl.;

(10) Gasoline (including aviation)—5,248,000/bbl.;

(11) Special naphtha—5,248,000/bbl.;

(12) Kerosene—5,670,000/bbl.;

(13) Distillate fuel oil (including diesel)—5,825,000/bbl.;

(14) Still gas—6,000,000/bbl.;

(15) Petroleum coke—6,024,000/bbl.;

(16) Residual fuel oil—6,287,000/bbl.;

(17) Crude oil—5,800,000/bbl.; and

(18) Other energy types (including purchased steam)—(to be determined by calorimetric measurement or engineering standard as appropriate for consuming corporation).

§ 445.14 Report on energy consumption.

(a) The reports required by § 445.12(a) and (c) must include the following information:

(1) The name, title, address and phone number of the individual responsible for reporting energy data for the corporation;

(2) The Internal Revenue Service "Employer Identification Number" (EIN) for the corporation; and

(3) The following statement, completed as appropriate:

(name of corporation)

consumed at least one trillion Btu's of energy in calendar year —— in SIC(s) ——— [for only those corporations filing pursuant to § 445.12(c), substitute or add the completed phrase: (and) consumed less than one trillion Btu's of energy in calendar year —— in SIC(s) ———], as determined according to 10 CFR 445.13. I certify that all the information in this report is true and accurate to the best of my knowledge.

(Signature of Chief Executive Officer or officer designated by such officer)

Date of Submission

(b) Reports required by § 445.12 must be received by DOE by the February 28 following the close of the calendar year for which the corporation is required to report and must be sent to the following address: Office of Industrial Programs,

U.S. Department of Energy, room 5103, 20 Massachusets Avenue, N.W., Washington, D.C. 20585. The deadline and address for submission of the report may be changed by DOE by the publication of a notice of the change in the Federal Register.

(c) Where a corporation controls, is controlled by or is under common control with another corporation, the corporation required to file the report is the corporation which controls.

(1) Where a corporation controls a joint venture, that corporation shall include the energy consumed by the joint venture in its energy consumption. Where more than one corporation controls a joint venture, each controlling corporation shall include in its energy consumption an equal percentage of the energy consumed by the joint venture during the calendar year for which the report is filed.

(2) Where a corporation is under common control, each controlling corporation shall include in its energy consumption an equal percentage of the energy consumed by the corporation under common control.

(3) A corporation shall supply to DOE, upon request, any material which DOE may require to verify control.

(d) All data used by a corporation in determining its energy consumption must be retained by the corporation for at least five years.

§ 445.15 Identification of corporations by DOE.

(a) Annually, after reviewing the information filed pursuant to § 445.12, and any other information on corporate energy consumption available to it, DOE will identify each corporation which consumed at least one trillion Btu's of energy within a major energy-consuming industry in the previous year, pursuant to the procedures set forth in paragraph (b) of this section.

(b) DOE will publish in the Federal Register a list identifying corporations. If this list must be supplemented, DOE may publish an updated list or may notify a corporation of its identification by certified mail.

§ 445.16 Request for modification.

(a) A corporation may file a request with DOE to modify its identification pursuant to § 445.15 on the grounds of clerical or technical error.

(b) Notwithstanding the provisions of § 445.6, the request must be filed with DOE within 30 days of the identification of the corporation, at the Office of Industrial Programs, U.S. Department of Energy, Room 5103, 20 Massachusetts Avenue, N.W., Washington, D.C. 20585. and marked "Industrial Energy Conservation Program: Request for Modification." DOE may change the address for the submission of such requests by the publication of a notice of such change in the Federal Register.

(c) 10 CFR 205.131 and 205.134 provide the format for such a request.

(d) The request must adequately explain how the corporation erred in its report of energy consumption or how DOE erred in identifying the corporation.

(e) DOE shall respond to the request by granting or denying it within 20 days of the receipt of the request by the Office of Industrial Programs.

Subpart C—Reporting Requirements

§ 445.21 Plant reporting requirements.

(a) Each plant of an identified corporation shall report to the corporation at its headquarters in the United States on the progress the plant has made during the reporting period in improving its energy efficiency in each major energy-consuming industry within which the corporation is identified.

(b) The reports required under paragraph (a) of this section must be submitted on a plant reporting form which has been—

(1) Published and made available for this purpose by DOE, or

(2) Provided by the identified corporation, together with a complete index referencing each and every item on the DOE form to the appropriate identical item on the form submitted.

(c) The reports required under paragraph (a) of this section must be received by the identified corporation in a manner sufficiently timely to permit the data from such reports to be aggregated in the corporation's report required by § 445.22.

§ 445.22 Corporate reporting requirements.

(a) The chief executive officer (or officer designated by such officer) of each identified corporation shall report by the date specified in § 445.25 on the progress the corporation has made in improving its energy efficiency in each major energy-consuming industry within which the corporation is identified, including data aggregated from plant reports required under § 445.21.

(b) The chief executive officer (or officer designated by such officer) of each corporation identified within any of SIC(s) 20, 26, 30 or 33 also shall report by the date specified in § 445.25 on the progress the corporation has made to increase its utilization of recovered materials in each of these four industries within which the corporation is identified.

(c) The information required under paragraphs (a) and (b) of this section must be submitted—

(1) To DOE, on a corporate reporting form which has been published and made available for this purpose by DOE; or

(2) For an exempt corporation, to a sponsor of an adequate reporting program on a corporate reporting form—

(i) Described in paragraph (c)(1) of this section; or

(ii) Previously supplied by the corporation to DOE in its submission under § 445.34, accompanied by a complete index referencing each and every item on the DOE form to the corresponding identical item on the form submitted and the certification required by the DOE form.

§ 445.23 Sponsor reporting requirements.

(a) The chief executive officer (or officer designated by such officer) of each sponsor of an adequate reporting program, as determined pursuant to § 445.37, shall report by the date specified in § 445.25 to DOE, as follows:

(1) For each major energy-consuming industry for which the sponsor has an adequate reporting program, on the progress the exempt corporations which participate in the adequate reporting program have made in improving their energy efficiency in that major energy-consuming industry; and

(2) For each of SIC(s) 20, 26, 30 and 33 for which the sponsor has an adequate reporting program, on the progress the exempt corporations which participate in the adequate reporting program and which are identified in such SIC code have made to increase their utilization of recovered materials.

(b) The information required under paragraph (a) of this section must be submitted to DOE on a sponsor reporting form which has been—

(1) Published and made available for this purpose by DOE; or

(2) Previously supplied by the sponsor to DOE in its submission under § 445.35, accompanied by the certification required by the DOE form.

§ 445.24 Reporting period.

The reporting period for each report required by this subpart is the calendar year for which each corporation covered by the report is an identified corporation.

§ 445.25 Reporting date and address.

All reports submitted to DOE under this subpart must be received by DOE by the July 15 following the end of the

reporting period and must be sent to the address provided in the instructions to the appropriate DOE form. This deadline and address may be changed by DOE by a notice published in the Federal Register.

§ 445.26 Data retention.

(a) All data used by an identified corporation in preparing reports under § 445.22, including the reports submitted to the corporation under § 445.21, must be retained by the corporation for at least five years from the filing date and must be made available to DOE promptly upon request for verification.

(b) All reports submitted by an exempt corporation to a sponsor under § 445.22(c)(2) must be retained by the exempt corporation for at least five years from the filing date. Upon request for verification the reports must be made promptly available to DOE by the corporation, and by the sponsor if copies of the reports are retained by the sponsor.

(c) All data, other than reports described in paragraph (b), used in preparing reports submitted to DOE by a sponsor under § 445.23 must be retained by the sponsor for at least five years from the filing date and must be made available to DOE promptly upon request for verification.

Subpart D—Exemption Criteria and Procedures

§ 445.31 Scope.

This subpart contains the criteria and procedures for the exemption of identified corporations from the requirement of filing corporate reporting forms directly with DOE.

§ 445.32 Criteria for the exemption of corporations.

In order for an identified corporation to be exempt from filing the corporate report required by § 445.22 directly with DOE, pursuant to § 445.37, the corporation must—

(a) File a timely and complete request to be an exempt corporation, pursuant to § 445.34;

(b) Participate in an adequate reporting program; and

(c) If it was previously determined to be an exempt corporation, have met the requirements of § 445.22 (a), (b) and (c)(2) for the period it has been exempt.

§ 445.33 Criteria for adequate reporting programs.

In order for a reporting program of a sponsor to be determined an adequate reporting program for a major energy-consuming industry, pursuant to § 445.37, the sponsor must—

(a) File a timely and complete request to be a sponsor with an adequate reporting program, pursuant to § 445.35;

(b) If its program previously was determined to be adequate, have met the requirements of § 445.23 and have provided each identified corporation which participated in the reporting program with (1) specific written guidance for preparing and submitting the corporate report under § 445.22(c)(2) to the sponsor; and (2) a copy of the report which the sponsor filed with DOE under § 445.23.

§ 445.34 Request to be an exempt corporation.

(a) An identified corporation may seek an exemption by submitting a request to DOE describing its participation in an adequate reporting program.

(b) This request must include the following information:

(1) The name and address of the identified corporation;

(2) The name and telephone number of the person responsible for preparing the report required by § 445.22 on behalf of the corporation;

(3) The name, address, and telephone number of the sponsor in whose reporting program the corporation has arranged to participate, together with the enumeration of all major energy-consuming industries for which the corporation will submit reports to the sponsor;

(4) A statement that it will meet the requirements of § 445.22 (a), (b) and (c)(2) and § 445.28 (a) and (b);

(5) A statement of how the corporation will report to the sponsor, either—

(i) On the DOE corporate reporting form: or

(ii) On some other reporting form, designated by the corporation;

(6) If the corporation designates some other form, a copy of the form, together with a complete index referencing each and every item on the DOE form to the corresponding identical item on the form submitted; and

(7) A certification by the chief executive officer (or other officer designated by such officer) of the corporation as follows: "I certify that all information provided in this request is true and accurate to the best of my knowledge."

(c) Notwithstanding the provisions of paragraph (a) of this section, any corporation which was exempt under § 445.37 for a calendar year and for which all information required by paragraph (b) of this section is unchanged, need not refile a request for the next year.

§ 445.35 Request to be a sponsor with an adequate reporting program.

(a) A sponsor may seek to have its reporting program determined to be adequate by submitting a request to DOE describing its reporting program.

(b) This request must include the following information:

(1) The name and address of the sponsor;

(2) The name and telephone number of the person responsible for preparing the report required by § 445.23 on behalf of the sponsor;

(3) A listing of each major energy-consuming industry covered by its reporting program;

(4) A statement that the sponsor will meet the requirements of § 445.23 and § 445.28(c);

(5) A statement of how the sponsor will submit the reports required by § 445.23 to DOE, either—

(i) On the DOE sponsor reporting form; or

(ii) On some other reporting form, designated by the sponsor;

(6) If the sponsor designates some other form, a copy of the form, together with an index referencing each and every item on the DOE form to the corresponding identical item on the form submitted;

(7) A statement that the sponsor will provide each identified corporation which participates in the reporting program with—

(i) Specific written guidance for preparing and submitting the corporate report under § 445.22(c)(2) to the sponsor; and

(ii) A copy of the report which the sponsor files with DOE under § 445.23;

(8) A statement of whether the sponsor will retain copies of corporate reports and, if so, a statement that it will meet the requirements of § 445.28(b); and

(9) A certification signed by the chief executive officer (or other officer designated by such officer) as follows: "I certify that all information provided in this request is true and accurate to the best of my knowledge."

(c) Notwithstanding the provision of paragraph (a) of this section, a sponsor which was determined to have an adequate reporting program for a calendar year and for which all information required by paragraph (b) of this section is unchanged, need not refile a request for the next year, provided its chief executive officer (or other officer designated by such officer) submits a certification that all items in the request

filed the previous year are still true and accurate to the best of his knowledge.

§ 445.36 Filing deadline and address.

The requests made pursuant to § 445.34 and § 445.35 must be received by DOE by the April 15 of each year and must be sent to the following address: Office of Industrial Programs, U.S. Department of Energy, Room 5103, 20 Massachusetts Avenue, N.W., Washington, D.C. 20585. DOE may change the deadline and address for submission of such requests by publishing a notice of such change in the Federal Register.

§ 445.37 Determination of exempt corporations and adequate reporting programs.

(a) Annually, in accordance with the criteria set forth in § 445.32 and § 445.33, DOE will exempt corporations and determine the adequacy of the reporting programs in which they participate, pursuant to the procedures set forth in paragraph (b) of this section.

(b) DOE will publish in the Federal Register for public comment its proposal to exempt corporations and to determine as adequate the reporting programs in which they participate. After considering comment from interested persons, DOE will exempt corporations and determine the adequacy of the reporting programs in which they participate by publishing a list of corporations and sponsors of programs in the Federal Register.

§ 445.38 Failure to report.

(a) If a sponsor with an adequate reporting program fails to submit the report required by § 445.23 by the deadline established in § 445.25, DOE may, by notice to the sponsor and to the corporations which participate in its program, revoke its determination that the sponsor has an adequate reporting program. Within 30 days after the notice is mailed, each such corporation must submit a corporate report directly to DOE as provided in § 445.22(c)(1).

(b) If a sponsor determines that an exempt corporation has failed to file its corporate report as required by § 445.22(c)(2), it should submit a report as required by § 445.23 only on those exempt corporations which filed the corporate report with the sponsor. If an exempt corporation does not file the report required by § 445.22 with a sponsor, it must file the report required by § 445.22 directly with DOE.

Subpart E—Voluntary Energy Efficiency Improvement Targets and Voluntary Recovered Materials Utilization Targets

§ 445.41 Purpose and scope.

(a) This subpart contains the energy efficiency improvement targets and the recovered materials utilization targets established by DOE pursuant to sections 374 and 374A of the Act.

(b) No liability shall attach to, and no civil or criminal penalties shall be imposed on, any corporation for any failure to meet any energy efficiency improvement target or any recovered materials utilizatoin target contained in this subpart.

§ 445.42 Energy effeciency improvement targets.

(a) Each energy efficiency improvement target is a percentage figure which represents, for a major energy-consuming industry, the percentage reduction in energy consumed per unit of production which DOE has determined that such industry can achieve between calendar year 1972 and January 1, 1980, as established in 42 FR 29642, June 9, 1977, "Final Industrial Energy Efficiency Improvement Targets." Each target is set at a level which represents the maximum feasible improvement in energy efficiency that each industry can achieve.

(b) The energy efficiency improvement targets are set forth in Table I.

Table I

Major energy-consuming industry		Target
SIC Code:		
20	Food and kindred products	12
22	Textile mill products	22
26	Paper and allied products	20
28	Chemicals and allied products	14
29	Petroleum and coal products	12
32	Stone, clay and glass products	16
33	Primary metal industries	9
34	Fabricated metal products	24
35	Machinery except electrical	15
37	Transportation equipment	16

§ 445.43 Modification of energy efficiency improvement targets.

Any energy efficiency improvement target in § 445.42 may be modified at any time if DOE—

(a) Determines that such target cannot reasonable be attained or could reasonably be made more stringent; and

(b) Publishes such determination in the Federal Register together with a statement of the basis and justification for the modification after providing an opportunity for public comment on any proposed modification.

§ 445.44 Recovered materials utilization targets.

(a) Recovered materials utilization targets are established for each of the following industries—textile mill products, paper and allied products, metals and metal products, and rubber.

(b) Each recovered materials utilization target is a percentage figure which represents, for each industry subdivision listed in paragraph (c) of this section, the amount of recovered materials from prompt industrial and obsolete scrap which DOE has determined can be used per unit of production by calendar year 1987. Each target is set at a level which represents the maximum feasible increase in the utilization of recovered materials which the industry can achieve progressively by January 1, 1987.

(c) The recovered materials utilization targets are set forth in Tables II, III, IV, and V.

Table II.—*Textile Mill Products*

Industry subdivision	Recovered materials utilization target	Recovered materials utilization in reference year 1976
Broad woven fabric mills, wool	19	19
Yarn mills, wool	13	13
Felt goods, except woven felt hats	80	89
Padding and upholstery filling	83	83
Non-woven fabrics	16	17
Cordage and twine	22	22
All other textile mill products subdivisions analyzed for establishing targets	0	0

Table III.—*Paper and Allied Products*

Industry subdivision	Recovered materials utilization target	Recovered materials utilization in reference year 1977
Newsprint	16	14
Tissue	36	28
Printing and writing paper	8	7
Packaging and industrial converting papers	4	4
Paperboard	37	36
Construction paper and board	31	33

Table IV.—*Rubber*

Industry subdivision	Recovered materials utilization target	Recovered materials utilization in reference year 1977
Tires and inner tubes	5	2
Industrial products	6	8
Rubber footwear	15	0
Tire retreading and repair shops	12	9

Table V.—*Metals and Metal Products*

Industry subdivision	Recovered materials utilization target	Recovered materials utilization in reference year 1976
Ferrous	41	38
Aluminum	35	32
Copper	50	47
Lead	60	61
Zinc	36	33

§ 445.45 Modification of recovered materials utilization targets.

Any recovered materials utilization target in § 445.44 may be modified if DOE—

(a) Determines that such target cannot reasonably be attained, or that it should require greater use of recovered materials; and

(b) Publishes such determination in the Federal Register together with a basis and justification for the modification, after providing an opportunity for public comment on the proposed modification.

[FR Doc. 79-17663 Filed 6-6-79; 2:23 pm]
BILLING CODE 6450-01-M

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Part VII

Securities and Exchange Commission

General Rules and Regulations, Securities Act of 1933, and Forms Prescribed Under the Securities Act of 1933; Small Offering Exemption

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 239

[Release No. 33-6075]

General Rules and Regulations, Securities Act of 1933, and Forms Prescribed Under the Securities Act of 1933; Small Offering Exemption

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting amendments to its small offering exemptive rule to permit the use of a preliminary offering circular between the date of filing of a notification relating to an underwritten public offering of securities in reliance upon this exemptive rule and the date on which the securities may be sold. As adopted, the rule permits the use prior to the date on which the securites may be sold of a preliminary offering circular in an offering which is to be sold by or through one or more underwriters who are broker-dealers registered under Section 15 of the Securities Exchange Act of 1934.

EFFECTIVE DATE: June 8, 1979.

FOR FURTHER INFORMATION CONTACT: Spencer I. Browne, Special Counsel, Ruth D. Appleton, Chief, Office of Tender Offers, Acquisitions and Small Issues, or Paul Belvin, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202-376-2976) or (202-755-1290).

SUPPLEMENTARY INFORMATION: On November 16, 1978, the Commission proposed for comment an amendment to Regulation A (17 CFR 230.251-.264), a regulation adopted pursuant to Section 3(b) of the Securities Act of 1933 ("1933 Act") [15 U.S.C. 77a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)]. Securities Act Release No. 33-5997 (43 FR 55254) invited comments on the proposed amendment which would, generally, have made available the use of a preliminary offering circular between the date of filing a notification relating to a firm commitment public offering of securities in reliance upon this exemptive rule and the date on which the securities could be sold. In addition, the use of the preliminary offering circular would have been restricted to those offerings where the aggregate price of the securities being offered for sale was equal to or in excess of $500,000.

After careful consideration of the comments received on the proposed amendments, the Commission has decided to expand the availability of the use of a preliminary offering circular to all offerings which are to be sold by or through one or more underwriters who are broker-dealers registered under Section 15 of the Securities Exchange Act of 1934 ("1934 Act") and to delete the $500,000 minimum aggregate offering requirement. The Commission is also adopting an amendment to the Consent And Certification By Underwriter required by Form 1-A(17 CFR 239.90).

This release contains a general discussion of the background and purpose of the amendments proposed in Securities Act Release No. 33-5997, the comments received [1] and the Commission's response to those comments.

Background and Purpose

The amendments to Regulation A adopted today represent another step in the Commission's ongoing initiatives to reduce the burdens of the federal securities acts on small businesses whenever possible consistent with the protection of investors. In 1978, the Commission held extensive hearings concerning the effects of its rules and regulations on the ability of small businesses to raise capital and the impact on small businesses of the disclosure requirements under the securities acts. In response to the comments received at these hearings, the Commission has recently adopted rule and form amendments designed to facilitate the small business capital formation process.[2]

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[1] *See* comments collected at File No. S7-762.

[2] A summary of these amendments is set forth in Securities Act Release No. 33-6-49 (April 3, 1979) [44 FR 21562, April 10, 1979].

The proposal set forth in Release No. 33-5997 was a response to statements from the investment banking community in testimony before the Commission in its hearings on small business capital formation that Regulation A was not suited for underwritten distributions of securities, particularly those on a firm commitment basis. As more fully explained in Release No. 33-5997, the inability of an underwriter to circulate a preliminary offering document prior to the date on which the securities could be sold adversely affected the feasibility of an underwriter making the distribution on a firm commitment basis. Thus, it was stated, an underwriter agreeing to effect the distribution on a firm commitment basis would insist that the underwriting compensation be increased. This increase would compensate the underwriter for his increased risk, because he could not ascertain potential investor interest in the offering prior to the time that sales could be made.

As proposed, the use of a preliminary offering circular in the form filed with a Regulation A notification on Form 1-A (17 CFR 239.90) would have been permitted if the following conditions were met:

1. The offering circular contained substantially the information required by Regulation A, or contained substantially that information except for certain data dependent upon the offering price.

2. The preliminary offering circular was clearly designated as such and bore a legend comparable to that required on the cover of a Preliminary Prospectus.

3. The aggregate offering price of the securities being offered pursuant to the Regulation A exemption was equal to or in excess of $500,000.

4. The offering related solely to a firm commitment underwritten public offering of securities.

5. A definitive offering circular other than one designated as a "Preliminary Offering Circular" and which contained all of the information required by Form 1-A accompanied or preceded the confirmation of sale sent to each person who had been furnished the preliminary offering circular.

The amendment as proposed was based upon Rule 433 (17 CFR 230.433) which sets forth the terms and conditions governing the use of a

preliminary prospectus in connection with a registered public offering under the 1933 Act. The proposed amendment would, however, have differed from Rule 433 in two important respects: (1) the aggregate offering price of the securities being offered pursuant to the Regulation A exemption would have had to have been equal to or in excess of $500,000; and (2) the offering would have had to relate solely to a firm commitment underwritten public offering of securities.

The Commission has given careful consideration to the 21 letters of comment on the proposed amendment, most of which addressed both of the above proposed restrictions. Based upon the Commission's review of these letters, its experience in administering Regulation A and statements by witnesses from the investment banking community testifying before the Commission in its hearings on small business capital formation, the Commission has adopted final amendments to Regulation A as discussed below.

Requirement of a Legend on the Outside Front Cover Page of the Preliminary Offering Circular

As proposed, the outside front cover page of a preliminary offering circular was to bear a legend, in ink of a color other than red and different from that used elsewhere in the offering circular, which would be similar to the legend required on a preliminary propectus. The use of a color other than red ink was to distinguish a preliminary offering circular from a preliminary propectus.

While only one commentator commented on the additional cost of such a requirement, the Commission has decided not to require that the legend be printed in ink of a color other than red or than otherwise used in the preliminary offering circular. The Commission notes that its experience in connection with offerings based upon Regulation A has indicated that a substantial number of such offering circulars are mimeographed and not printed. To require that the legend appear as originally proposed may have caused additional unnecessary expense. Accordingly, the Commission has concluded that the required legend may be printed in the same color ink as the other portions of the preliminary offering circular so long as it appears perpendicular to the text and runs along the left hand margin of the outside front cover page of the preliminary offering circular. In addition the legend must be in boldface type at least as large as the type used in the body of the prospectus.

$500,000 Aggregate Offering Price

As set forth in the proposed amendment, the use of a preliminary offering circular would have been limited to offerings where the aggregate offering price of securities being offered pursuant to the Regulation A exemption was equal to or in excess of $500,000. Release No. 33–5997 noted that this proposed requirement was intended to assure that the preliminary offering circular was of reasonably good quality.

Most commentators believed, however, that the quality of a preliminary offering circular is not determined by the size of an offering. In addition, it was felt that such a restriction could have the effect of denying the use of a preliminary offering circular in a substantial number of potential offerings in reliance upon Regulation A which may be less than $500,000.

The Commission has considered the views of the commentators and has decided not to adopt the proposed eligibility standard based on the size of the offering. The Commission agrees that the size of an offering may not be substantially related to the quality of a preliminary offering circular, and therefore adoption of this standard would not appear warranted. The Commission also believes that the presence of an underwriter will tend to assure that the disclosures in the preliminary offering circular will be of reasonably good quality.

Requirement That the Offering Be Underwritten

While most of the commentators were in agreement that permitting the use of a preliminary offering circular in offerings to be made on a firm commitment basis would expand the use of offerings made in reliance upon Regulation A, a substantial majority believed that its use should be expanded to include public offerings underwritten on a best efforts basis. In support of their views, the commentators indicated that the reasons cited by the Commission as necessary to facilitate offerings made on a firm commitment basis are, with the exception of the underwriter's commitment to purchase the shares prior to the actual sale of securities, equally applicable to facilitating an offering made on a best efforts basis. In addition, many of the commentators were of the opinion that most offerings made in reliance upon Regulation A were underwritten by smaller regional underwriters. Because such underwriters may have only limited capital, they would in all likelihood continue to underwrite offerings on a best efforts basis so as not to tie up all of their net capital on one offering. Thus, in order to extend the benefits of the use of a preliminary offering circular to a significant number of issuers, its use should be available to offerings underwritten on a best efforts as well as firm commitment basis.

The Commission has considered the statements of the commentators and has determined to expand the use of a preliminary offering circular to all underwritten public offerings of securities made in reliance upon Regulation A. This decision was based on the Commission's conclusion that the participation of an underwriter, on a firm commitment basis or otherwise, will tend to assure that the disclosures in the preliminary offering circular will be of reasonably good quality. Expanding the availability of the use of a preliminary offering circular to all Regulation A offerings which are to be sold by or through one or more underwriters who are broker-dealers registered under Section 15 of the 1934 Act reflects the Commission's view that underwriters should and will carefully review, prior to their distribution, the disclosures in preliminary offering circulars for completeness and accuracy.

Requirement for Redistribution of the Preliminary Offering Circular

A majority of the commentators, in urging the Commission to expand the availability of a preliminary offering circular to all underwritten offerings, also noted that, where the original preliminary offering circular is deficient, the staff has the ability to require redistribution of a revised preliminary offering circular to correct any inaccurate statements. In order to make it clear that redistribution may be required, the Commission, in adopting amendments to Regulation A, has revised proposed paragraph (f) of Rule 256 and has adopted an amendment to the Consent and Certification by Underwriter, which must be signed by each underwriter and filed as an exhibit to the Notification required to be filed pursuant to Rule 255(a). Where a preliminary offering circular will be distributed, paragraph (i) of Rule 256 and paragraph 3 of the Consent and Certification by Underwriter require that, if the preliminary offering circular is inaccurate or incomplete in any material respect, each person to whom the securities are to be sold shall be furnished a copy of either a revised preliminary or the final offering circular 48 hours prior to the mailing of confirmation of the sale or shall be sent

such offering circular under circumstances that it would normally be received by them 48 hours prior to their receipt of confirmation of the sale. The Commission is of the view that this requirement will give potential investors sufficient time to consider the effect of revised disclosures on their investment decision. While either a revised preliminary or the final offering circular may be furnished or sent, where a revised preliminary offering circular is used to meet this requirement the final offering circular as specified in Rule 256(i)(4) would have to be furnished or sent prior to or with confirmation of the sale. In order to assure that each person to whom the securities are to be sold receives the revised or final offering circular as specified, the amended Consent and Certification by Underwriter also requires that the underwriter keep an accurate and complete record of the name and address of each person who was furnished a preliminary offering circular.

Issuers and underwriters should also be aware that, where a preliminary offering circular which is inaccurate or inadequate in any material respect has been distributed, the staff may require as a condition to acceleration of the 10 day waiting period for sales contemplated by relevant rules that a revised preliminary or the final offering circular be accompanied by a memorandum specifying the changes from the original preliminary offering circular as well as requiring in particularly serious cases a "cooling-off" period prior to the date on which the securities may be sold. These practices are intended to parallel substantially similar practices available under the 1933 Act and are designed to draw particular attention to revised disclosures and to lessen the impact of prior misleading statements.[3] The Commission does, however, recognize that, where required, redistribution may involve an additional cost which may be a substantial burden on smaller issuers. In order to avoid this cost, issuers may wish to delay distribution of the preliminary offering circular until comments, if any, have been received from the staff of the Regional Offices.[4]

The Commission emphasizes that the decision to adopt amendments expanding the availability of a preliminary offering circular is in the nature of an experiment. The Commission reminds issuers, underwriters, and their counsel that it will closely monitor the quality of disclosure in preliminary offering circulars and will not hesitate to utilize all of its enforcement remedies if the use of preliminary offering circulars is abused. These remedies include suspension of the Regulation A exemption prior to effectiveness of the offering based on disclosures in the preliminary offering circular.[5] Underwriters in particular are reminded that participation in an offering in which the Regulation A exemption is later suspended serves as a bar under Rule 252(e)(2) from the underwriting of any other Regulation A offering for a period of five years.

Amendment of Paragraphs (a) and (d) of Rule 255

Prior to the adoption of this amendment, Regulation A did not permit (unless authorized by the Commission or its staff pursuant to delegated authority) the offer of a security during the 10-day waiting period between the filing of the Notification and the date on which the offering commenced. Since an offer of the security could not be made, a sale of the security was, by implication, likewise prohibited. However, where a preliminary offering circular is used prior to the expiration of the 10-day waiting period, as permitted by paragraph (i) of Rule 256, the offering of the security, defined in Section 2(3) of the 1933 Act, commences immediately upon the distribution of the preliminary offering circular. Since the purpose of this amendment is to facilitate underwritten offerings pursuant to Regulation A by allowing the distribution of an offering circular prior to the date on which the securities may be sold, in order to make clear that sales of the security continue to be prohibited during the 10-day waiting period provided in paragraphs (a) and (d) of Rule 255 and paragraph (f) of Rule 256, additional language has been added to paragraphs (a) and (d) of Rule 255 so as to specifically prohibit sales during that period unless otherwise authorized by the Commission or its staff pursuant to delegated authority.

Operation of the Amendments

The amendments as adopted today provide that a preliminary offering circular meeting the requirements of paragraph (i) of Rule 256 may be distributed as soon as the Notification, of which the preliminary offering circular is an exhibit, has been filed with the Commission as required by Rule 255(a).[6] After distribution of the preliminary offering circular, oral offers of the security based on the preliminary offering circular can be made;[7] however, a sale of the security is not permitted.[8] If the issuer of the security is required to file reports pursuant to Section 13(a) or 15(d) of the 1934 Act and the preliminary offering circular is not inaccurate or inadequate in any material respect, a confirmation of the sale, accompanied or preceded by the final offering circular as provided in Rule 256(i)(4), could be sent to each purchaser of the security. However, where the issuer is not a "reporting company," the distribution of the preliminary offering circular would permit the mailing of confirmation of the sale which must also be accompanied by the final offering circular, as provided in Rule 256(i)(4), only to those persons who had received the preliminary offering circular 48 hours prior to their receipt of confirmation of the sale. It should be noted that in each instance, paragraph (i)(4) of Rule 256 requires that confirmation of the sale be accompanied or preceded by the final offering circular containing all of the information required by Schedule I or Form 1–A.[9]

If the preliminary offering circular as originally distributed was inaccurate or inadequate in any material respect, a revised preliminary or the final offering circular must be furnished to all persons to whom the securities are to be sold 48 hours prior to the mailing of any confirmation of the sale or sent to such persons under circumstances that it would normally be received by them 48 hours prior to their receipt of

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[3] *See* Securities Act Release No. 4968 (April 14, 1969).

[4] The average period of time currently required to review Regulation A notifications and issue comments has been 16 days.

[5] Pursuant to Rule 261(a)(3) the Commission has the authority to enter an order temporarily suspending the Regulation A exemption, if it has reason to believe that the offering is being made in violation of Section 17 of the 1933 Act.

[6] As adopted, Rule 256(i)(1) requires: (1) that the preliminary offering circular contain substantially all of the information required by Schedule I of Form 1–A, except for the omission of certain specified information relating to the offering price and underwriters' compensation; and (2) where an issuer is not subject to the reporting provisions of the 1934 Act, the outside front cover page should include a bona fide estimate of the range of the maximum offering price and maximum number of shares or other units of securities to be offered or should include a bona fide estimate of the principal amount of debt securities to be offered.

[7] The use of sales literature continues to be prohibited by paragraph (e)(1) of Rule 256 until the final offering circular is delivered in accordance with paragraphs (a)(2) or (i)(4) of Rule 256.

[8] The distribution of the preliminary offering circular would satisfy the provisions of Rule 256(a)(1); however, paragraphs (a) and (d) of Rule 255 as amended prohibit the sale of the security during the 10-day waiting period provided therein, unless the Commission, and its staff pursuant to delegated authority, authorize, upon written request, sales of the securities prior to expiration of the 10-day waiting period.

[9] Sales to persons who did not receive a preliminary offering circular could only be made pursuant to Rule 256(a)(2).

confirmation of the sale. The requirement that a revised preliminary or final offering circular must be furnished or sent 48 hours prior to the mailing of confirmation of the sale is intended to parallel current staff procedures with respect to requiring redistribution of an amended preliminary prospectus as a condition to acceleration of effectiveness of an offering under the 1933 Act.

Text of the Amendments

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. Paragraphs (a) and (d) of § 230.255 are amended as follows:

§ 230.255 Filing of notification on form 1–A.

(a) At least 10 days (Saturdays, Sundays and holidays excluded) prior to the date on which the initial offering or sale of any securities is to be made under this regulation, there shall be filed with the Regional Office of the Commission specified below four copies of a notification on Form 1–A. The Commission may, however, in its discretion, authorize the commencement of the offering or sale prior to the expiration of such 10 day period upon a written request for such authorization.

* * * * *

(d) Any amendment to the notification shall be signed in the same manner as the original notification. Four copies of such amendment shall be filed with the same Regional Office as the original notification at least 10 days prior to any offering or sale of the securities subsequent to the filing of such amendment, or such shorter period as the Commission, in its discretion, may authorize upon a written request for such authorization.

* * * * *

2. Paragraph (a) is amended and paragraph (i) added to § 230.256 as follows:

§ 230.256 Filing and use of the offering circular.

(a) Except as provided in paragraphs (c) or (i) of this section and in § 230.257 —

* * * * *

(i) An offering circular filed pursuant to paragraph (f) may be distributed prior to the expiration of the 10-day waiting periods for offerings provided for in § 230.255(a) and (d) and paragraph (f) of this section and such distribution may be accompanied or followed by oral offers related thereto, provided the conditions in subparagraphs (1) through (4) are met. For the purposes of this section, any offering circular distributed prior to the expiration of the ten day waiting period is called a Preliminary Offering Circular. Such Preliminary Offering Circular may be used to meet the requirements of paragraph (a)(2) of § 230.256; Provided, That if a Preliminary Offering Circular is inaccurate or inadequate in any material respect, a revised Preliminary Offering Circular or an offering circular of the type referred to in subparagraph (4) shall be furnished to all persons to whom the securities are to be sold at least 48 hours prior to the mailing of any confirmation of sale to such persons, or shall be sent to such persons under such circumstances that it would normally be received by them 48 hours prior to their receipt of confirmation of the sale.

(1) Such Preliminary Offering Circular contains substantially the information required by this section to be included in an offering circular, or contains substantially that information except for the omission of information with respect to the offering price, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds, conversion rates, call prices, or other matters dependent upon the offering price. For issuers not subject to the reporting provisions under Section 13(a) or 15(d) of the Securities Exchange Act of 1934, the disclosure on the outside front cover page of the Preliminary Offering Circular should include a bona fide estimate of the range of the maximum offering price and maximum number of shares or other units of securities to be offered, or should include a bona fide estimate of the principal amount of debt securities to be offered.

(2) The outside front cover page of the Preliminary Offering Circular shall bear the caption "Preliminary Offering Circular," the date of its issuance, and the following statement which shall run along the left hand margin of the page and printed perpendicular to the text, in boldface type at least as large as that used generally in the body of such offering circular:

A notification pursuant to Regulation A relating to these securities has been filed with the Securities and Exchange Commission. Information contained in this Preliminary Offering Circular is subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted prior to the time an offering circular which is not designated as a Preliminary Offering Circular is delivered. This Preliminary Offering Circular shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sales of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state.

(3) The Preliminary Offering Circular relates to a proposed public offering of securities which is to be sold by or through one or more underwriters who are broker-dealers registered under Section 15 of the Securities Exchange Act of 1934, each of whom has furnished a signed Consent and Certification in the form prescribed as a condition to the use of such offering circular;

(4) An offering circular which contains all of the information specified in Schedule I of Form 1–A (17 CFR 239.90) and which is not designated as a Preliminary Offering Circular is furnished with or prior to delivery of the confirmation of sale to any person who has been furnished with a Preliminary Offering Circular pursuant to this paragraph.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

Section 239.90 is amended by revising paragraph (c) to Item 11.

§ 239.90 [Amended]

* * * * *

Item 11. Exhibits

(No change from present Item 11 except to revise paragraph (c) to add undertaking number 3 to the Consent and Certification by Underwriter as follows:)

* * * * *

Consent and Certification by Underwriter

1. (No change)
2. (No change)
3. If a Preliminary Offering Circular will be distributed as permitted by Rule 256(i), the Consent and Certification by Underwriter shall include the following additional paragraph:

The undersigned hereby undertakes, in connection with any distribution of the Preliminary Offering Circular as permitted by Rule 256(i), (a) to keep an accurate and complete record of the name and address of each person furnished such Preliminary Offering Circular and (b) if such Preliminary Offering Circular is inaccurate or inadequate in any material respect, to furnish a revised Preliminary Offering Circular or an offering circular of the type referred to in Rule 256(i)(4) to all persons to whom the securities are to be sold at least 48 hours prior to the mailing of any confirmation of sale to such persons, or to send such a circular to such persons under circumstances that it would normally be received by them 48

hours prior to their receipt of confirmation of the sale.

* * * * *

Effective Date

This amendment to Regulation A is effective June 8, 1979. [Secs. 3(b), 19(a), 48 Stat. 75, 85; sec. 209, 48 Stat. 908; 59 Stat. 167, Pub. L. 91-565, 84 Stat. 1480; sec. 308(a)(1)(2)(3), 90 Stat. 56, 57; Pub. L. 95-283, sec. 18, 92 Stat. 275; Pub. L. 95-425, sec. 2, 92 Stat. 962; 15 U.S.C. 77c(b), 77s(a)].

Statutory Authority

This Amendment to Regulation A is adopted pursuant to Sections 3(b) and 19(a) of the Securities Act of 1933.

The Commission finds that any changes in the amended provisions from those published in Securities Act Release No. 33-5997 have already been generally subject to comment and are either technical in nature or less burdensome than previous proposals so that further notice and rulemaking procedures pursuant to the Administrative Procedure Act (5 U.S.C. 553) are not necessary.

By the Commission.

George A. Fitzsimmons,

Secretary.

June 1, 1979.

[FR Doc. 79-17779 Filed 6-7-79; 8:45 am]

BILLING CODE 8010-01-M

Friday
June 8, 1979

Part VIII

Federal Election Commission

Freedom of Information Act; Implementation Procedures

federal register

FEDERAL ELECTION COMMISSION

11 CFR Part 4

Public Records and Freedom of Information Act

AGENCY: Federal Election Commission.

ACTION: Final rule.

SUMMARY: This notice contains the final Federal Election Commission regulations setting forth procedures to implement the Freedom of Information Act (5 USC § 552) and creates a new part, Part 4, to be added to 11 CFR, Chapter 1.

EFFECTIVE DATE: June 8, 1979.

FOR FURTHER INFORMATION CONTACT: Frederick S. Eiland, Public Information Officer, (202) 523–4065.

SUPPLEMENTARY INFORMATION: The proposed regulation was published on November 22, 1977, at 42 FR 59944. A comment period was specified and a single party commented. The Commission adopted one of the suggestions made by that commentator and revised proposed 11 CFR 4.5(a)(3) to reflect a two-pong test for determining whether information is specifically exempted from disclosure by statute.

In addition, the Commission made several other changes to the proposed regulations. With the exception of the change to 11 CFR 4.4(a)(4) which was revised to provide for the availability of transcripts made from tapes of Commission meetings, all changes were minor.

Only minor changes have been made from the proposed rule and comments were received from only one party. The Commission at present has no FOIA regulations in effect. There is therefore good cause to dispense with the 30 day waiting period before the regulations may become effective. Pursuant to 5 USC 553(d)(3), the regulations are made effective upon publication.

Dated: June 4, 1979.

Robert O. Tiernan,

Chairman, Federal Election Commission.

Chapter I of Title 11, Code of Federal Regulations, is amended by the addition of the following new part:

PART 4—PUBLIC RECORDS AND THE FREEDOM OF INFORMATION ACT

Sec.

4.1 Definitions.
4.2 Policy of disclosure of records.
4.3 Scope.
4.4 Availability of records.
4.5 Categories of exemptions.
4.6 Discretionary release of exempt records.
4.7 Requests for records.
4.8 Appeal of denial.
4.9 Fees.

AUTHORITY: 5 U.S.C. 552

§ 4.1 Definitions.

As used in this part:

(a) "Commission" means the Federal Election Commission, established by the Federal Election Campaign Act of 1971, as amended.

(b) "Commissioner" means one of the six appointees confirmed by the Senate who is a voting member of the Commission.

(c) "Request" means to seek the release of records under 5 U.S.C. 552.

(d) "Requestor" is any person who submits a request to the Commission.

(e) "Act" means the Federal Election Campaign Act of 1971, as amended by the Federal Election Campaign Act Amendments of 1974, and 1976, and unless specifically excluded, includes Chapters 95 and 96 of the Internal Revenue Code of 1954 relating to public financing of Federal elections.

§ 4.2 Policy on disclosure of records.

(a) The Commission will make the fullest possible disclosure of records to the public, consistent with the rights of individuals to privacy, the rights of persons contracting with the Commission with respect to trade secret and commercial or financial information entitled to confidential treatment, and the need for the Commission to promote free internal policy deliberations and to pursue its official activities without undue disruption.

(b) All Commission records shall be available to the public unless they are specifically exempt under this part.

(c) To carry out this policy, the Commission shall designate a Freedom of Information Act Officer.

§ 4.3 Scope.

(a) The regulations in this part implement the provisions of the Freedom of Information Act, 5 U.S.C. 552, with respect to the availability of records for inspection and copying.

(b) The regulations in this part do not apply to release of the following records:

(1) Reports of receipts and expenditures, designations of campaign depositories, statements of organization candidate designations of campaign committees; and the indexes compiled from the filings therein.

(2) Requests for advisory opinions, written comments submitted thereto and responses issued by the Commission;

(3) With respect to enforcement matters under the provisions of 2 U.S.C. 437g, the results of any conciliation attempt, including any conciliation agreement entered into by the Commission; and any determination by the Commission that no violation of the Act has occurred.

(4) Copies of studies published pursuant to the Commission's duty to serve as a national clearinghouse on election law administration.

(c) Release of the records identified in subsection (b)(1)–(4) above (11 CFR 4.3(b)(1)–(4)) are governed by the provisions of 2 U.S.C. 438(a)(5), 437f(c), 437g(a)(6)(C) and 438(b) and are available to the public from the Office of Public Records located on the first floor at 1325 K Street, Northwest, Washington, D.C. This office is open Monday through Friday from 9:00 a.m. to 5:00 p.m. except legal holidays.

§ 4.4 Availability of records.

(a) In accordance with 5 U.S.C. 552 (a)(2) and (a)(3) the Commission shall make the following materials available for public inspection and copying:

(1) Statements of policy and interpretation which have been adopted by the Commission;

(2) Administrative staff manuals and instructions to staff that affect a member of the public;

(3) Opinions of Commissioners rendered in enforcement cases and General Counsel reports and 2 U.S.C. 437g investigatory materials in enforcement files 60 days after the Commission has voted to close a case and to take no further action; provided that no civil action under 2 U.S.C. 437g (a)(9) has been filed to compel the Commission to take further action. In the event that such civil action is filed, if the court sustains the Commission's action in closing the case, the materials will be made available thereupon. If the Court orders the Commission to take further action, the materials will be made available when the case is again closed;

(4) Letter requests for guidance and responses thereto;

(5) The minutes of Commission meetings and transcripts made from tapes of Commission meetings;

(6) Material routinely prepared for public distribution, e.g. campaign guidelines, FEC Record, press releases, speeches, notices to candidates and committees.

(7) Proposals submitted in response to a request for proposals formulated pursuant to the Federal Procurement Regulations. 41 CFR 1–1.001 *et seq.*

(8) Contracts for services and supplies entered into by the Commission.

(9) Statements and certifications (with respect to closing meetings) as required

by the Government in the Sunshine Act, 5 U.S.C. 552b.

(b) The Commission shall maintain and make available current indexes and supplements providing identifying information regarding any matter issued, adopted or promulgated after April 15, 1975 as required by 5 U.S.C. 552(a)(2)(c). These indexes and supplements shall be published and made available on at least a quarterly basis for public distribution unless the Commission determines by Notice in the Federal Register that publication would be unnecessary, impracticable, or not feasible due to budgetary considerations. Nevertheless, copies of any index or supplement shall be made available upon request at a cost not to exceed the direct cost of duplication.

(c) The Freedom of Information Act and the provisions of this part apply only to existing records; they do not require the creation of new records.

(d) If documents or files contain both disclosable and nondisclosable information, the nondisclosable information will be deleted and the disclosable information released unless the disclosable portions cannot be reasonably segregated from the other portions in a manner which will allow meaningful information to be disclosed.

(e) All records created in the process of implementing provisions of 5 U.S.C. 552 will maintained by the Commission in accordance with the authority granted by General Records Schedule 14, approved by the National Archives and Records Service of the General Services Administration.

§ 4.5 Categories of exemptions.

(a) 5 U.S.C. 552(b) establishes nine categories of matters which are exempt from the mandatory disclosure requirements of 5 U.S.C. 552(a). No requests under 5 U.S.C. 552 shall be denied release unless the record contains, or its disclosure would reveal, matters that are:

(1) Specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of the Commission;

(3) Specifically exempted from disclosure by statute , provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person which are privileged or confidential. Such information includes confidential business information which concerns or relates to the trade secrets, processes, operations, style of works, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount of source of income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, if the disclosure is likely to have the effect of either impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions, or causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained, unless the Commission is required by law to disclose such information. These procedures shall be used for submitting business information in confidence:

(i) A request for confidential treatment shall be addressed to the FOIA officer, Federal Election Commission, 1325 K Street, Northwest, Washington, D.C. 20463, and shall indicate clearly on the envelope that it is a request for confidential treatment.

(ii) With each submission of, or offer to submit, business information which a submitter desires to be treated as confidential under paragraph (a)(4) of this section, the submitter shall provide the following, which may be disclosed to the public: (A) A written description of the nature of the subject information, and a justification for the request for its confidential treatment, and (B) a certification in writing under oath that substantially identical information is not available to the public.

(iii) Approval or denial of requests shall be made only by the FOIA officer or his or her designees. A denial shall be in writing, shall specify the reason therefore, and shall advise the submitter of the right to appeal to the Commission.

(iv) For good cause shown, the Commission may grant an appeal from a denial by the FOIA Officer or his or her designee if the appeal is filed within fifteen (15) days after receipt of the denial. An appeal shall be addressed to the FOIA Officer, Federal Election Commission, 1325 K Street, Northwest, Washington, D.C. 20463 and shall clearly indicate that it is a confidential submission appeal. An appeal will be decided within twenty (20) days after its receipt (excluding Saturdays, Sundays and legal holidays) unless an extension, stated in writing with the reasons therefore, has been provided the person making the appeal.

(v) Any business information submitted in confidence and determined to be entitled to confidential treatment shall be maintained in confidence by the Commission and not disclosed except as required by law. In the event that any business information submitted to the Commission is not entitled to confidential treatment, the submitter will be permitted to withdraw the tender unless it is the subject of a request under the Freedom of Information Act or of judicial discovery proceedings.

(vi) Since enforcement actions under 2 U.S.C. 437g are confidential by statute, the procedures outlined in § 4.5(a)(4) (i) thru (v) are not applicable.

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party in litigation with the Commission.

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel.

(b) Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt.

(c) If a requested record is one of another government agency or deals with subject matter to which a government agency other than the Commission has exclusive or primary responsibility, the request for such a record shall be promptly referred by the Commission to that agency for disposition or guidance as to disposition.

(d) Nothing in this part authorizes withholding of information or limiting the availability of records to the public, except as specifically provided in this

part; nor is this part authority to withhold information from Congress.

§ 4.6 Discretionary release of exempt records.

The Commission may, in its discretion, release requested records despite the applicability of the exemptions in § 4.5(a), if it determines that it is in the public interest and that the rights of third parties would not be prejudiced.

§ 4.7 Requests for records.

(a) A request to inspect or copy Commission public records as described in § 4.3(b) may be made in person or by mail. The Public Records Office is open Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m. and is located on the first floor, 1325 K Street, Northwest, Washington, D.C. 20463.

(b) Oral or written requests for copies of records not available in the Public Records Office shall be addressed to FOIA Officer, Federal Election Commission, 1325 K Street, Northwest, Washington, D.C. 20463. The request shall reasonably describe the records sought with sufficient specificity with respect to names, dates and subject matter to permit the records to be located. A requestor will be promptly advised if the records cannot be located on the basis of the description given and that further identifying information must be provided before the request can be satisfied.

(c) Records or copies thereof will normally be made available either immediately upon receipt of a request or within ten working days thereafter, or twenty working days in the case of an appeal, unless in unusual circumstances the time is extended. In the latter event, the requestor shall be notified of the reasons for the extension and the date on which a determination is expected to be made, but in no case shall the extended time exceed ten working days. An extension may be made if it is (1) necessary to locate records or transfer them from physically separate facilities; or (2) necessary to search for, collect, and appropriately examine a large quantity of separate and distinct records which are the subject of a single request; or (3) necessary for consultation with another agency which has a substantial interest in the determination of the request, or with two or more components of the Commission which have a substantial subject matter interest therein.

(d) Any person denied access to records by the Commission shall be notified immediately giving reasons therefore, and notified of the right of such person to appeal such adverse determination to the Commission.

(e) The date of receipt of a request under this part shall be the date on which the FOIA Officer actually receives the request.

§ 4.8 Appeal of denial.

(a) Any person who has been notified pursuant to § 4.6(d) of this part that his/her request for inspection of a record or for a copy has been denied, or who has received no response within ten working days (or within such extended period as is permitted under § 4.7(c) of this part) after the request has been received by the Commission, may appeal the adverse determination or the failure to respond by requesting the Commission to direct that the record be made available.

(b) The appeal request shall be in writing, shall clearly and prominently state on the envelope or other cover and at the top of the first page "FOIA Appeal", and shall identify the record in the form in which it was originally requested.

(c) The appeal request should be delivered or addressed to the FOIA Officer, Federal Election Commission, 1325 K Street, Northwest, Washington, D.C. 20463.

(d) The requestor may state facts and cite legal or other authorities as he/she deems appropriate in support of the appeal request.

(e) For good cause shown, the Commission may disclose a record which is subject to one of the exemptions listed in § 4.5 of this part.

(f) The Commission will make a determination with respect to any appeal within twenty days (excluding Saturdays, Sundays and legal holidays) after receipt of the appeal (or within such extended period as is permitted under § 4.7(c) of this part). If on appeal, the denial of the request for a record or a copy is in whole or in part upheld, the Commission shall advise the requestor of the denial and shall notify him/her of the provisions for judicial review of that determination as set forth in 5 U.S.C. 552(a)(4).

(g) Because of the risk of misunderstanding inherent in oral communications, the Commission will not entertain any appeal from an alleged denial or failure to comply with an oral request. Any person who has orally requested a copy of a record that he/she believes to have been improperly denied should resubmit the request in writing as set forth in § 4.7.

§ 4.9 Fees.

(a) Fees will be charged for copies of records which are furnished a requestor under this part and for time spent in locating and reproducing them in accordance with the fee schedule below:

Record search time—1st ½ hour free; each additional ½ hour	$2.00
Reproduction of documents, per page	.10
Transcript of tape-recorded matter, per page	3.00

(b) In the event fees for pending requests under this part from the same requestor exceed $25.00, such records will not be searched for or made available, nor copies furnished, unless the requestor first pays or make acceptable arrangements to pay the total amount due, or if the fee is not precisely ascertainable, the approximate amount due upon the completion of the Commission's search and/or copying. In the event an advance payment hereunder shall differ from the actual fees due, an appropriate adjustment will be made at the time the copies are delivered or made available or a denial of same is notified.

(c) The Commission may reduce or waive payments of fees hereunder if such reduction or waiver would be in the public interest.

[FR Doc. 79-17870 Filed 6-7-79; 8:45 am]
BILLING CODE 6715-01-M

Friday,
June 8, 1979

Federal Register

Part IX

Department of Housing and Urban Development

Office of Assistant Secretary for Community Planning and Development

Urban Development Action Grants; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-79-667]

Community Development Block Grants; Urban Development Action Grants

AGENCY: Department of Housing and Urban Development.

ACTION: Interim rule.

SUMMARY: This rule deletes the Urban Development Action Grant minimum standards of physical and economic distress established for fiscal year 1978 for small cities. It provides a method to revise the minimum standards for small cities when more recent data become available.

EFFECTIVE DATE: June 28, 1979.

COMMENTS DUE: August 7, 1979.

ADDRESSES: Send comments to Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Each person submitting a comment should include his/her name and address, refer to the document by the docket number indicated by the headings, and give the reasons for any recommendation. Copies of all written comments received will be available for examination by interested persons in the Office of the Rules Docket Clerk, at the address listed above. The proposal may be changed in light of the comments received.

FOR FURTHER INFORMATION CONTACT: Catherine Hare or Jane Hildt, Office of Action Grants, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, 202-472-3960.

SUPPLEMENTARY INFORMATION: On January 10, 1978 (43 FR 1602), the Department published final regulations governing the Urban Development Action Grant program which established eligibility requirements for metropolitan cities and urban counties. These regulations were amended March 29, 1978 (43 FR 13340) to set forth the eligibility requirements for small cities. On October 30, 1978 (43 FR 50668), an interim rule was published to delete the reference to minimum standards of physical and economic distress in fiscal year 1978 for metropolitan cities, other cities over 50,000, and urban counties and to provide for the publication in Notice form of the current minimum standards based on the most recent data from the Census Bureau.

In anticipation of the availability of more recent data for small cities, § 570.452(b)(2) is being amended to omit the specified minimum standards of physical and economic distress originally established for small cities for fiscal year 1978. In order to avoid constant changes in the regulations, the Department will publish, from time to time, in Notice form the exact standards which small cities must meet as new data become available. The separate designation for those small cities of less than 2500 population has been deleted as this size class must meet the same standards as those cities which have populations ranging from 2500 to 25,000. This redesignation does not represent a change in the requirements for small cities under 2500. In addition, it should be noted that the paragraph formerly designated (b)(2)(i) has been omitted and thus cities of less than 2500 population are no longer required to demonstrate capacity to successfully conduct an Action Grant project.

Furthermore, the Department wishes to call to the attention of all small cities the interim rule published October 30, 1978 (43 FR 50668). Section 570.452(c) added a provision allowing those cities and urban counties which become ineligible due to changes in the data to submit an Action Grant application during the two quarters following the announcement of a change in the data used to establish minimum standards of distress.

The administration of the program for this fiscal year depends upon the immediate effect of this rule, since the use of current data is necessary to meet the statutory intent in determining physical and economic distress for the Action Grant program. Accordingly, the Assistant Secretary for Community Planning and Development has determined that it is impracticable to follow notice of proposed rulemaking procedures and that good cause exists for making this rule effective June 28, 1979. However, interested persons are invited to participate in the making of the final rule by providing written comments. All comments received by August 7, 1979 will be considered in the development of the final rule. Such comments should be filed with the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. Copies of comments received will be available for inspection and copying at that address. The Department has determined that an environmental impact statement is not required with respect to this rule. A copy of the Finding of Inapplicability is available for inspection in the Office of the Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

Accordingly, § 570.452(b)(2) is being amended to read as follows:

§ 570.452 Eligible applicants.

(a) * * *

(b) Minimum Standards of physical and economic distress—

(1) *Metropolitan cities, other cities over 50,000 and urban counties.* (i) * * *

(ii) * * *

(2) *Small Cities.* In order to qualify as applicants, small cities must meet the minimum standards of physical and economic distress for the categories appropriate to their size class as outlined below. Two size classes are used, based on the most recent population data estimated by the Bureau of the Census. One is for cities whose population is estimated to be at least 25,000 but not more than 50,000. The other is for cities whose estimated population is less than 25,000. From time to time, HUD will issue and publish in the Federal Register notice of the exact standards which small cities must meet for each distress category. All standards are based on data for the Community as a whole.

(i) Cities of less than 25,000 population whose percentage of poverty is at least one-half of the HUD established standard must meet minimum standards in three of the following four areas:

(A) Age of housing.

(B) Per capita income.

(C) Poverty.

(D) Population lag/decline.

(ii) Cities of less than 25,000 population whose poverty level is twice the HUD established standard must meet only one other minimum standard listed in paragraph (b)(2)(i) of this section.

(iii) Cities of less than 25,000 population whose percentage of year round housing units constructed prior to 1940 is twice the HUD established standard must meet only the poverty standard.

(iv) Cities of 25,000 population but not greater than 50,000 population must meet the minimum standards in three of the following five areas:

(A) Age of housing.

(B) Per capita income.

(C) Poverty.

(D) Population lag/decline.

(E) Job lag/decline.

(v) Cities of 25,000 population but not greater than 50,000 population whose percentage of poverty is twice the HUD established standard must meet only one other minimum standard in the categories listed in paragraph (b)(2)(iv) of this section.

(vi) Cities of 25,000 population but not greater than 50,000 population whose percentage of poverty is less than one-half of the HUD established standard must meet all four other minimum standards in the categories listed in paragraph (b)(2)(iv) of this section.

(vii) Cities of 25,000 population but not greater than 50,000 population whose percentage of year round housing units constructed prior to 1940 is twice the HUD established standard must meet only the poverty standard.

(Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*); Title I Housing and Community Development Act of 1977 (Pub. L. 95–128); and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Issued at Washington, D.C., May 10, 1979.

Robert C. Embry, Jr.,

Assistant Secretary for Community Planning and Development.

[FR Doc. 79-17813 Filed 6-7-79; 8:45 am]

BILLING CODE 4210-01-M

Friday
June 8, 1979

Part X

Department of Labor

Employment and Training Administration

Comprehensive Employment and Training Act; Procedures for Waivers of Time Limitations on Public Service Employment

DEPARTMENT OF LABOR

Employment and Training Administration

[20 CFR Part 676]

Comprehensive Employment and Training Act; Procedures for Waivers of Time Limitations on Public Service Employment

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rules.

SUMMARY: The Comprehensive Employment and Training Act (CETA) places limitations on the length of time a person may participate in public service employment (PSE) under the Act. The Secretary of Labor, upon the application of a "prime sponsor" (generally, the State or local government which employs the participant), may grant a waiver of the time limitations under certain conditions. The purpose of this document is to propose new rules governing the application for, and the granting of, waivers.

DATES: Comments due by June 25, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Anderson, Administrator, Office of Comprehensive Employment Development, Employment and Training Administration, U.S. Department of Labor, Room 5002, 601 "D" Street NW., Washington, D.C. 20213; Telephone: (202) 376-6254.

SUPPLEMENTARY INFORMATION: On April 3, 1979, at 44 FR 19990, the Department published final regulations for prime sponsor programs under Titles I, II, VI and VII of the Comprehensive Employment and Training Act. Included in that document were regulations, to be codified at 20 CFR 676.30, containing procedures for the granting of waivers of the time limitations on public service employment participation. Since the regulations were published, the Department has been made aware of the need for a further elaboration and explanation of these procedures. Absent the granting of waivers, many thousands of public service employment participants will reach the end of their participation period on September 30, 1979. In order to properly plan for Fiscal Year 1980, many local governments have a need for more definitive guidance on the waiver procedures. In addition, the public service employment participants themselves have a need for a clearer indication of the circumstances regarding continued participation after September 30. The purpose of this document is to give such guidance.

Ordinarily, under Executive Order 12044, a 60-day comment period is to be afforded for proposed rules. In addition, under Section 126 of CETA, final rules become effective 30 days after their publication. Thus, if 60 days were allowed for comment, it would be mid-September before the proposed rules in this document could become effective. This would be much too late to give the necessary guidance in a timely fashion, and thereafter, to prepare, submit, and process the waiver applications. Consequently, only a 17-day comment period is being afforded. Accordingly, it is proposed to amend 20 CFR 676.30 by revising paragraphs (h)–(k) and adding new paragraphs (l)–(o) to read as follows:

§ 676.30 Termination conditions; participant limitations.

* * * * *

(h) A temporary waiver of the 78 week limitation may be granted by the Department to a prime sponsor for a limited number of PSE participants hired prior to October 1, 1978, if the prime sponsor demonstrates that it has faced unusually severe hardships in its efforts to transition PSE participants to regular public or private employment not supported under the Act (sec. 122(h)(4)(A)). The 30 month limitation for total CETA participation shall be considered as waived as long as a PSE participant, who is covered by this waiver, is in the PSE position.

(i) A temporary waiver of the 78 week limitation may be granted by the Department to a prime sponsor for PSE participants hired on or after October 1, 1978 if the prime sponsor demonstrates that it, or that a unit of general local government, at the time of the waiver request:

(1) Has an unemployment rate of at least 7 percent; and

(2) Has faced unusually severe hardship in its efforts to transition PSE participants into regular public or private employment not supported under the Act (sec. 122(h)(4)(B)).

(j) The Department shall provide waivers, conditioned on transition plans, to prime sponsors, which shall be only for the purpose of affording additional time to transition, transfer, or otherwise terminate a limited number of the individuals who are anticipated to reach the limit of their PSE participation. No specific individual shall be entitled to a waiver, or to a waiver of a specific period of time.

(k) A prime sponsor desiring a waiver of the 78 week limitation on PSE participation for itself or for any unit of general local government within its jurisdiction shall submit a written waiver request to the RA not more than 90, nor less than 60, days prior to the first day of the quarter during which the participants are anticipated to reach the 78 week limit except that, for participants anticipated to terminate on September 30, 1979, or during the first quarter of fiscal year 1980, the waiver request shall be submitted by August 15, 1979. Waiver requests covering participants reaching the 78 week limit on or after October 1, 1979 must be in a separate submission from waiver requests covering participants reaching the 78 week limit by September 30, 1979. Every waiver request shall include:

(1) A description of the unusually severe hardships experienced by the prime sponsor in transitioning PSE participants;

(2) The unemployment rate, for the most recent three consecutive months for which data is available;

(3) The employment growth rate, over the most recent 12 months for which data is available;

(4) Local hiring patterns in the last 12 months, broken down by occupational categories;

(5) A description of transition efforts over the past year;

(6) A description of the efforts which will be made to transition as many participants as possible by the scheduled termination date;

(7) A transition plan which specifies the number of participants, broken down by groups, who are covered by the waiver for each quarter, that is, who are to be transitioned, transferred or otherwise terminated during each three month period. The waivers will be granted for 3, 6, 9, or 12 months as set forth in the transition plan. For the purpose of transitioning participants by quarter, a prime sponsor shall group participants based on occupational or other categories determined on the basis of the difficulty of transitioning those groups of participants into unsubsidized employment. The transition plan shall assure that if the prime sponsor is unable to meet the terms of the plan, for a particular quarter, through transition and transfer efforts and normal attrition, then it will terminate participants from those groups specified in the plan. Except for waivers described in paragraph (o), the plan shall show no more than 35 percent of all participants covered by the waiver remaining at the end of the third quarter and shall not show any such participants remaining at the end of 12 months. The plan shall describe the continuing efforts that will

be undertaken to transition all the participants covered by the waiver as soon as possible;

(8) A description of consultation with appropriate labor organizations.

(l) *Comment and Publication.* (1) Ten days prior to submission of the waiver request to the RA, the prime sponsor shall submit the waiver request to its planning council for review and comment. Simultaneously, the prime sponsor, at a minimum, shall publish in a newspaper or newpapers of general circulation in the prime sponsor's area (including minority newspapers, where appropriate) a statement indicating the following information:

(i) The number of participants to be covered by the waiver;

(ii) The schedule for transitioning participants covered by the waiver;

(iii) The reason(s) for the waiver request;

(iv) The groups of participants to be covered by the waiver; and

(v) The location and hours where the complete waiver request can be reviewed and the address and phone number to which questions and comments may be directed.

(2) Copies of the comments of the planning council and appropriate labor organizations shall be submitted to the RA along with the waiver request, or, if the comments are received after the submission of the request, they may be sent separately to the RA.

(m) The RA, within 30 days of receipt of the waiver request, shall notify the prime sponsor in writing of the Department's approval or disapproval and specific reasons for any disapproval. Any waiver approvals will include a written condition that the prime sponsor is subject to disallowance of costs under its grant for non-compliance with terms of its approved waiver. All waiver approvals will also state that the prime sponsor must make continuing transition efforts on behalf of all participants. All waiver approvals shall be incorporated into the Annual Plan as a modification to the Annual Plan. No waiver request shall be approved for the total number of PSE participants anticipated to terminate.

(n)(1) Within 30 days of the date of the written notification of approval pursuant to paragraph (m) of this section, the prime sponsor shall provide to the RA:

(i) A list of the names of the PSE participants covered by the waiver;

(ii) The original termination date of the participant; and

(iii) A breakdown by significant segments of both the participants for whom a waiver is requested and those to be terminated without a waiver.

(2) As an addendum to the Quarterly Program Status Summary, the prime sponsor shall furnish the total number, the names, and the group (i.e. as described in the waiver request) of each participant transitioned, transferred, or otherwise terminated at the end of each quarter.

(o) *Subsequent waivers.*

(1) The Department will consider granting subsequent waivers of up to 6 months beyond the initial waiver period only if:

(i) The waiver covers only PSE participants hired prior to October 1, 1978; and

(ii) The prime sponsor demonstrates extraordinarily difficult transition problems in its request for a subsequent waiver, based on a consideration of criteria such as the following:

(A) The unemployment rate in the jurisdiction for each of the most recent 3 months for which data are available is at least 8 percent;

(B) The employment growth rate is significantly lower than the national average;

(C) The projected economic conditions and transition circumstances indicate a stagnant or worsening situation during the next 12 months;

(D) There is extreme difficulty in transitioning groups of participants being considered for subsequent waiver;

(E) There has been a good faith and full effort to transition participants;

(F) At least 65 percent of the persons receiving an initial waiver have been transitioned, transferred or otherwise terminated; and

(G) Any other factors indicating extraordinarily severe transition difficulties.

(2) The subsequent waiver request shall be submitted between 60 and 90 days prior to the end of the initial waiver request period.

(3) The Department shall not grant a subsequent waiver for more than a limited number of the participants covered by the initial waiver request.

(4) The subsequent waiver request shall include the information required in paragraph (k) of this section. The comment and publication procedures of paragraph (1) and the reporting requirements of paragraph (n) shall also be applicable.

Signed at Washington, D.C., this 6th day of June 1979.

Ray Marshall,

Secretary of Labor.

[FR Doc. 79-18001 Filed 6-7-79; 8:45 am]

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June 8, 1979

Part XI

Department of Agriculture

Food and Nutrition Service

Food Stamps; Miscellaneous Amendments and Interpretations

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273, 274, 276

[Amdt. 132]

Food Stamp Act of 1977; Miscellaneous Amendments

AGENCY: Food and Nutrition Service, USDA.

ACTION: Emergency rulemaking.

SUMMARY: This rulemaking amends the regulations, published October 17, 1978 (43 FR 47846), which implement the Food Stamp Act of 1977. The amendements correct oversights in the original rulemaking or provide interpretations of the intent of the October 17 rules. None of these amendments significantly affect program eligibility or level of benefits to food stamp households. In addition, the Department is publishing rules for determination of negligence by State agencies and an administrative review procedure for claims against a State agency which are effective immediately but which will also be published shortly for public comment. Both of these procedures are mandated by the Act.

DATES:

EFFECTIVE DATE: Amendment to § 273.9, January 1, 1979. All other provisions, June 8, 1979. Comments must be received on or before August 7, 1979 to be assured of consideration.

ADDRESS: Comments on the amendments to §§ 273.8, 273.9, 273.10, 273.15(i), (r) and (s), 276.3 and 276.6 should be submitted to: Claire Lipsman, Director, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, Washington, D.C. 20250. A final rulemaking will be issued after considering the comments. All written comments, suggestions or objections will be open to public inspection at the office of the Food and Nutrition Service, USDA, during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 500 12th Street SW., Washington, D.C., Room 658. An Impact Analysis has been prepared and approved, and is available from Director Lipsman. A copy will also be open for public inspection at the offices shown above.

FOR FURTHER INFORMATION CONTACT: Claire Lipsman, Director, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, Washington, D.C., 20250 202–447–8325.

SUPPLEMENTARY INFORMATION:

Introduction

On October 17, 1978 (43 FR 47846), the Department published final rules concerning major aspects of the Food Stamp Act of 1977. After these rules were published, the Food and Nutrition Service undertook efforts to assist State agencies in converting to the new program. Based on inquiries from State agencies and public interest groups, and other considerations, there are several sections of the regulations which need to be changed to correct oversights in the original rulemaking or provide interpretations of the intent of the October 17 rules. The Department is publishing these as well as corrections to printing errors in the October 17 rulemaking as a final rule. However, changes to §§ 273.8, 273.9, 273.10, 273.15(i), (r) and (s), 276.3 and 276.6 represent substantive changes which are being published as emergency rulemaking. With one exception, these provisions are effective June 8, 1979. The amendment to § 273.9 is being published with an effective date of January 1, 1979, in order to make clear that all households receiving VISTA payments under current contracts at the time of conversion to the new program standards are entitled to an exclusion in the amount of those payments, regardless of when the State agency converted to the new standards, and that retroactive benefits may be necessary in some instances to afford the benefit of this exclusion to all such households. Although effective on publication or earlier, these substantive changes are subject to public comment and will be repromulgated in final form following the end of the comment period.

Amendments

The Department is amending the definition of "State" in the General Information and Definitions section of the regulations. The Northern Mariana Islands are added to the list that qualify as States.

The Department has discovered that there was some confusion about the basis for determining if bilingual certification materials and staff are needed for individual certification offices. The preamble to the October 17, 1978, rulemaking on page 47879 clearly states that the State agency should arrive at an estimate of low-income households that are a single language minority from the entire service area. However, the language of the actual rule can be interpreted to draw the estimate from a list of participating households. As a result, the Department is amending this language to state that the estimate must be based on the service area. In addition to amending the bilingual rule, the Department has added a phrase in the training requirements to emphasize that training in outreach techniques is part of the overall training for outreach workers.

In the application processing section, language was inadvertently omitted that would have permitted households to leave an application with any certification office within a project area. When an application is received at the wrong office, households shall have the option of having the application mailed to the appropriate office the same day or the household can take it directly to the appropriate office. The processing standards begin the day the application is filed at the appropriate office.

The Department is amending the rules for SSI cash-out States by adding California. The Cranston-Corman Act, (Pub. L. 95–458) reinstated California as an SSI cash-out State.

The resource eligibility rules are amended in three sections. The resource exclusion for earned income tax credits is revised to take into account Pub. L. 95–600, the Revenue Act of 1978, the legislative citation for youth employment and training programs under CETA has been updated and a resource exclusion was added for payments received from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94–540). In addition, the paragraph on handling excluded funds has been amended to clarify the handling of student and self-employment income which has been prorated. While the intent was never to count these payments as a resource, the rules on handling an excluded resource in a commingled account appeared to apply. As a result, the Department is specifying that prorated student and self-employment income is exempt as a resource as long as a portion is still being counted as income.

The preamble to the October 17, 1978 regulations discusses the income exclusion under Title I (VISTA) mandated by the Domestic Volunteer Service Act of 1973 (43 FR 47865). Section 404(g) of that Act states: "Notwithstanding any other provision of law except as may be provided expressly in limitation of this subsection, payment to volunteers under this chapter shall not in any way reduce or eliminate the level of eligibility for assistance or service any such volunteer may be receiving under any government program." (42 U.S.C. 5044(g))

It is clear under the quoted language that if the volunteer is already receiving a given level of food stamp benefits at the time of the first VISTA payment, that level shall not be affected by receipt of the VISTA payment. While it

is the Department's interpretation, as stated in the October 17, 1978 rulemaking (43 FR 47885), that this exclusion applies only to VISTA payments made to persons already receiving food stamps or public assistance at the time they became VISTA volunteers, all VISTA payments had been excluded under the previous policy. With regard to the ongoing food stamp caseload, the Department would be applying the income exclusion, as limited to those receiving food stamps or public assistance prescribed in the October regulations, for the first time as households are converted to the 1977 Food Stamp Act standards. These households are in fact receiving food stamps at the time the limited exclusion is initially applied to them.

In order to clarify the standing of households which were already receiving the income exclusion at the time they are converted to the new program, the Department is amending the regulations to specifically authorize a continued exclusion for the length of the VISTA contract in force at the time of conversion. The Department believes that, in addition to being in conformance with the above rationale, this new position is also the most equitable. A continued exclusion would prevent persons from being harmed who entered volunteer service on the understanding that the subsistence allowance would not affect food stamp eligibility.

The Department is aware that conversion timetables to implement the new program vary among State agencies and that some households with a VISTA member may have had the allowance counted as income prior to implementation of this rulemaking. In order to treat all households equitably, the Department is requiring State agencies to restore benefits to these households as far back as the first month of conversion, even though the household was correctly certified at that time.

Households which were not receiving food stamps or public assistance at the time a household member joined VISTA or households whose VISTA contract in force at the time of conversion has expired shall have their subsistence allowance included as earned income.

The Department is adding three income exclusions based on additional information which has become available since the October publication. One exemption is the income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540). The other exemptions are earned income tax credits received as a result of Pub. L. 95-600, the Revenue Act of 1978 and payments from certain CETA Youth Employment and Training Programs which are extended by Pub. L. 95-524. The Revenue Act continues the disregard of earned income tax credits for determining assistance payments until January 1, 1980. The Revenue Act also authorizes advance payment of earned income credits by the employer in accordance with tables prescribed by IRS. Until January 1, 1980, the statutory exclusion applies to advance payments of the credit as well as to any payment at the end of the tax year. Assuming that the January 1980 expiration date remains in effect, the advance payments will be counted as earned income after that date. However, the payment at the end of the tax year will continue to be an income exclusion because it is a lump sum payment.

In order to avoid confusion over the difference between an advance on wages to cover travel costs of a new employee and a travel advance that is not an advance on wages, the Department is amending the paragraph in the destitute accounting procedure dealing with advances. The change will define an advance on wages as a payment which by written contract stipulates that it will be subtracted from wages later earned by the employer. All other travel advances will be disregarded as a reimbursement to the extent that travel expenses are actually incurred. This will allow State agencies to make a clear distinction between a wage advance which is based on a written contract and a travel advance. A wage advance that is based on a written contract will be included as income but not as a new source of income for destitute accounting purposes.

The special accounting procedures for self-employment that represents the household's annual income are amended. Several State agencies requested authority to continue the procedure contained in FNS(FS) Instruction 732-1, which allowed a household's income to be averaged over 12 months for eligibility but prorated unevenly for level of benefits. Since this was inadvertently omitted in the October 17 rulemaking, the Department is allowing State agencies to elect to provide households the option to prorate self-employment income unevenly, provided that the net income assigned in any month cannot exceed the maximum monthly income eligibility standards for the household's size.

Due to an oversight, the section on residents of addict or alcoholic treatment and rehabilitation programs limited eligibility to residents of centers authorized by FNS as a meal service. This restriction is not supported by the Act, which states that residents of a center shall not be considered residents of an institution. This amendment corrects the original oversight and limits the requirement for FNS authorization to those centers that wish to act as a meal service as well as authorized representative. The procedures for providing benefits to residents who leave a center has also been amended to require centers to provide the departing resident with any untransacted ATP's in addition to the procedure for providing stamps.

The Department has added an exemption from the notice of adverse action for reported changes which increase a household's allotment but revert to the original benefit level for lack of verification. The intent of the October 17 regulations was clearly to authorize such an exemption because the original adjustment is made pending verification and the household is advised at the time benefits are increased that verification must be presented by the next issuance. The amendment cross references the change reporting and notice of adverse action rules and continues the statement that the State agency shall use a notice of adverse action if the household is being terminated for refusal to cooperate in verifying a change which increases benefits.

In the fair hearing rules, there were some questions posed about the time period for requesting a hearing. The October 17 regulations limited requests for hearings to those which are based on an act by the State agency or loss of benefits which occurred in the prior 90 days. However, the rules did not clearly define an action by the State agency. Language is added which includes as an action by the State agency any denial of a request for restoration of benefits even though the action which caused the loss of benefits occurred more than 90 days prior to the request for a hearing. However, if the State agency has denied a request for the restoration of benefits lost more than a year ago, that action will not be considered grounds for a fair hearing request.

The Department is concerned that certain households, such as migrant farmworkers, may be entitled to a restoration of benefits based on a fair hearing decision, but, because the household has left the project area, these restored benefits are not available to the household. As a result, fair hearing regulations are amended to require that State agencies process these households faster than others if necessary to receive a decision and to

restore benefits to households which are awarded benefits before the household leaves the project area. If, despite expedited processing of the hearing, the household has left the project area before the State agency can act, the State agency shall forward an authorization either directly to the household or to the new project area, if the household has left a forwarding address. The State agency can modify form FNS-286, Certification of Transfer of Household Benefits to forward the authorization or send an award notice. The new project area is required to honor a restoration of benefits notice and issue the appropriate benefits whether the notice is presented by the household or received directly from another project area.

The nonfraud claims section is revised to emphasize that collection action can be postponed to refer the overissuance for possible prosecution or for a fraud hearing. While this was the intent of the nonfraud claim rule, the number of questions the Department received indicated that a clarification was necessary.

In the issuance section of the October 17 regulations, the Department inadvertently continued the rule that a household must be currently certified to receive expedited issuance service for emergency replacement of ATPs. The Department intended to include a more specific statement that the State agency must determine if the household was properly issued the ATP which was reported lost. As a result, this oversight is corrected. In addition, issuance regulations are revised to authorize State agencies to round allotments of $1, $3, or $5 which restore lost benefits to even dollar amounts. The $1, $3, or $5 values are the only whole dollar values that coupon books cannot match. Only in very rare cases would a household receive an allotment that would come to these figures. For accounting purposes, it would be simpler to issue the household a dollar more in coupons rather than tearing out a coupon and then issuing a $2 book. Therefore, in those very few cases, the household will be issued $2, $4, or $6 in coupons.

The Food Stamp Act of 1977 provides that "If the Secretary determines that there has been negligence or fraud on the part of the State agency in the certification of applicant households, the State shall, upon request of the Secretary, deposit into the Treasury of the United States, a sum equal to the face value of any coupon or coupons issued as a result of such negligence or fraud." Section 11(h), 91 Stat. 973, 7 U.S.C. 2020(h). The major difference in this provision from the current law is that the term "gross negligence" has been changed to "negligence." The *House Report* indicates that by reducing "gross negligence" to "negligence", FNS should be able to collect an increased number of program losses. House *Report* p. 398. When determining losses, the Department intends to use the negligence provision when an actual loss has been documented, or when the loss of funds has been determined through the use of a statistically valid projection. The regulations cite three circumstances in which FNS would impose a negligence billing.

The first circumstance would occur when the State agency disregards any food stamp program requirement contained in the Food Stamp Act of 1977, regulations issued pursuant to the Act, or the State agency's FNS-approved State Plan of Operation and the action or failure to take action results in a loss of Federal funds. The Department intends this provision to include actions in which the State agency negligently disregards a requirement or fails to fulfill a requirement. An example is a State agency which does not implement the new resource requirement on licensed vehicles, or does not establish claims against households which have been overissued benefits.

The second action that would lead FNS to use the negligence billings is an instance where a State agency implements a procedure which deviates from FNS requirements without obtaining prior FNS approval and the procedure results in a loss of Federal funds. As an example, if a State agency which used an inflated and unapproved standard utility allowance and households were thereby overissued benefits, FNS could proceed with a negligence billing to recover the value of the overissuance of coupons.

The third general action which could result in a negligence billing would be a State agency's failure to implement and maintain proper controls over the certification of households and issuance of coupons and such failure results in a loss of Federal funds. Examples of this failure include but are not limited to: instances where State agencies fail to maintain proper computer controls; fail to adequately supervise certification procedures or fail to provide security and control over accountable documents.

The Department may establish negligence billings when an identifiable loss of Federal funds occurs as a result of circumstances noted above and the loss is not an absolute State agency liability. While the regulations reflect the legislative change from gross negligence to negligence, the Department does not intend to establish a negligence billing for all losses of Federal funds. Consideration would be given to the circumstances causing the loss and the steps the State agency took to prevent the loss from recurring before determining negligence. However, the right to make a negligence determination is reserved solely to the Department. FNS may also process negligence billings concurrently with sanctions against State agencies affecting administrative funds.

The regulations also set forth a definition of fraud for use in connection with State agency liability. The definition is a standard legal definition of the term adapted to the food stamp context.

If a State agency fails to implement or maintain a required control and the failure results in a loss of Federal funds, FNS may also issue warnings and initiate the sanction process. The Department intends that failure by the State agency to remit payment on demand by FNS may result in offsets to the Letter of Credit.

The Department is providing an administrative review process by which State agencies, aggrieved by a claim asserted against them by FNS, may appeal the case to the Secretary and be afforded a review by a designee of the Secretary.

The review authority selected by the Secretary can be a different official for each case, and the authority does not necessarily have to be an official without prior knowledge of the case being reviewed. Claims against States may be as a result of direct liability billing, negligence charges, and disallowance of Federal funds. The Regulations provide that after FNS has notified the State agency of a claim, the State agency shall have 10 days to request an appeal. Upon receipt of the request by the Secretary, FNS shall acknowledge the request and inform the State agency of the name and address of the official who shall review the case and the time period allowed for presenting information in support of the case. After the administrative review, State agencies aggrieved by the final determination may obtain judicial review.

The Department is also instituting a procedure for State agencies to receive a review of certain claims through a hearing in person. These claims are negligence billings and disallowances based on a failure to meet an FNS approved corrective action plan. The Department believes that negligence

claims and disallowance for failure to meet the corrective action plan may require a more detailed review of the circumstances with an opportunity for the State agency to respond to allegations of deficiencies. The claims may be more satisfactorily resolved if a State agency representative is entitled to present a case in person. In this way, the Department would be able to make a sound decision about a claim based on potentially complex circumstances. The Department is not proposing to allow a hearing based on all claims because this would require a significant commitment of manpower to hear claims that are more readily resolved by written factual information. Additional opportunity for hearings may also cause delays in the claim process.

Since the Department may be in a position of taking sanctions for delays in implementation of the 1977 Act and subsequent regulations, the Department believes this process should be immediately established. However, public comment is solicited. Therefore, the process may be amended in the future.

Robert Greenstein, Acting Administrator of the Food and Nutrition Service, has determined that amendments to §§ 273.8, 273.9, 273.10, 273.15(l), (r), and (s), 276.2 and 276.6 should be published as an emergency rulemaking. This is being done for several reasons. Many of the above provisions are technical modifications of the October 17, 1978 final rules. Since States are now in the process of converting caseloads to the October 17 rules, these modifications need to be instituted as soon as possible. In addition, some provisions primarily affect migrant farmworker households in the migrant stream. Failure to institute these rules now would cause delays beyond this year's migrant work season. Such delays would adversely affect migrant farmworker households. Concerning the appeal procedures for States agencies, no such procedures now exist. The Department believes that the Act mandates a State's right to such appeal and that this opportunity should be immediately available. Finally, the Department believes that it is in the interest of the efficient and effective operation of the Food Stamp Program to institute the negligence and fraud provisions of the 1977 Act without delay. Moreover, any claims made under such provisions can be appealed under the new administrative appeal procedures contained in this rulemaking. For these reasons, delays in promulgating this rulemaking would be contrary to the public interest. In addition, the Department will accept comments for 60 days from the date of this publication and consider all comments prior to publication of a final rulemaking.

Therefore, Parts 271, 272, 273, 274, and 276 are amended to read as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

§ 271.2 [Amended]

1. In § 271.2, Definitions, "State" is amended by adding "Northern Mariana Islands" after the word "Guam" and before the words "and the Virgin Islands of the United States."

* * * * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.4, paragraph (c)(3)(i) is amended and a new sentence is added to the end of paragraph (e)(1)(v). The amended subparagraph reads as follows:

§ 272.4 Program administration and personnel requirements.

* * * * *

(c) *Bilingual requirements.* * * *

(3) * * *

(i) In each individual certification office that provides service to an area containing approximately 100 single-language minority low-income households; and

* * * * *

(e) *Training.* * * *

(1) *Minimum requirements.* * * *

(v) * * * In addition to training in food stamp policy and procedures, State and local outreach workers shall be provided with training in outreach techniques.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.2, paragraph (c)(2)(ii) is amended and reads as follows:

§ 273.2 Application processing.

* * * * *

(c) *Filing an application.* * * *

(2) *Contacting the food stamp office.* * * *

(ii) Where a project area has designated certification offices to serve specific geographic areas, households may contact an office other than the one designated to service the area in which they reside. When a household contacts the wrong certification office within a project area in person or by telephone, the certification office shall, in addition to meeting the requirements in paragraph (c)(2)(i) of this section, give the household the address and telephone number of the appropriate office. The certification office shall also offer to forward the household's application to the appropriate office that same day if the household has completed enough information on the application to file. The household shall be informed that its application will not be considered filed and the processing standards shall not begin until the application is received by the appropriate office. If the household has mailed its application to the wrong office within a project area, the certification office shall mail the application to the appropriate office on the same day.

* * * * *

§ 273.8 [Amended]

4. In § 273.8, paragraphs (e)–(c) are revised to add the word "California" after the word "Massachusetts" and before the words "or Wisconsin."

5. In § 273.8, paragraph (e)(11) is amended to delete the word "inhabitability" after the words "illness or" and before the word "caused" and replace it with the word "uninhabitability". Paragraphs (e)(11)(v) and (e)(11)(vi) are amended, a new paragraph (e)(11)(vii) is added and paragraph (f) is amended. The amended paragraph, the new paragraph and the amended paragraph read as follows:

§ 273.8 Resource eligibility standards.

* * * * *

(e) *Exclusions from resources.* * * *

* * * * *

(11) * * *

* * * * *

(v) Earned income tax credits received before January 1, 1980, as a result of Pub. L. 95-600, the Revenue Act of 1978.

(vi) Payments received from the youth incentive entitlement pilot projects, the youth community conservation and improvement projects, and the youth employment and training programs under Title IV of the Comprehensive Employment and Training Act Amendments of 1978 (Pub. L. 95-524).

(vii) Payments received from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540).

* * * * *

(f) *Handling of excluded funds.* Excluded funds that are kept in a separate account, and that are not commingled in an account with nonexcluded funds, shall retain their resource exclusion for an unlimited period of time. The resources of students and self-employment households which are excluded as provided in paragraph

(e)(9) of this section and are commingled in an account with nonexcluded funds shall retain their exclusion for the period of time over which they have been prorated as income. All other excluded moneys which are commingled in an account with nonexcluded funds shall retain their exemption for six months from the date they are commingled. After six months from the date of commingling, all funds in the commingled account shall be counted as a resource.

* * * * *

6. In § 273.9, paragraph (c)(10)(iii) and (vi) are amended and new paragraphs (c)(10)(vii) and (viii) are added and read as follows:

§ 273.9 Income and deductions.

* * * * *

(c) *Income exclusions.* * * *

* * * * *

(10) * * *

* * * * *

(iii) Any payment to volunteers under title II (RSVP, Foster Grandparents and Others) and Title III (SCORE and ACE) of the Domestic Volunteer Services Act of 1973 (Pub. L. 93–113) as amended. Payments under Title I (VISTA) to volunteers shall be excluded for those individuals receiving food stamps or public assistance at the time they joined the Title I program, except that households which are receiving an income exclusion for a VISTA or other Title I subsistence allowance at the time of conversion to the Food Stamp Act of 1977 shall continue to receive an income exclusion for VISTA for the length of their volunteer contract in effect at the time of conversion. Temporary interruptions in food stamp participation shall not alter the exclusion once an initial determination has been made. New applicants who are not receiving public assistance or food stamps at the time they joined VISTA shall have these volunteer payments included as earned income.

* * * * *

(vi) Payments received from the youth incentive entitlement pilot projects, the youth community conservation and improvement projects, and the youth employment and training programs under Title IV of the Comprehensive Employment and Training Act Amendments of 1978 (Pub. L. 95–524).

* * * * *

(vii) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94–540).

* * * * *

(viii) Earned income tax credits received as a result of Pub. L. 95–600, the Revenue Act of 1978 which are received before January 1, 1980.

* * * * *

7. In § 273.10, subparagraph (e)(3)(v) is amended to read as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(e) *Calculating net income and benefit levels.* * * *

(3) Destitute households. * * *

* * * * *

(v) Some employers provide travel advances to cover the travel costs of new employees who must journey to the location of their new employment. To the extent that these payments are excluded as reimbursements, receipt of travel advances will not affect the determination of when a household is destitute. However, if the travel advance is by written contract an advance of wages that will be subtracted from wages later earned by the employee, rather than a reimbursement, the wage advance shall count as income. In addition, the receipt of a wage advance for travel costs of a new employee shall not affect the determination of whether subsequent payments from the employer are from a new source of income, nor whether a household shall be considered destitute. For example, if a household applies on May 10, has received a $50 advance for travel from its new employer, on May 1 which by written contract is an advance on wages, but will not receive any other wages from the employer until May 30, the household shall be considered destitute. The May 30 payment shall be disregarded, but the wage advance received prior to the date of application shall be counted as income.

* * * * *

8. In § 273.11, paragraph (a)(2) is amended by adding a new subdivision (iv); the first sentence in paragraph (e)(1) is amended by deleting the words "FNS-authorized"; and the first sentence in paragraph (e)(5) is amended and a new sentence is added after the first sentence. The new subparagraph, the amended sentences and the new sentence read as follows:

§ 273.11 Action on households with special circumstances.

(a) *Self-employment income.* * * *

* * * * *

(2) *Determining monthly income from self-employment.* * * *

(iv) If a State agency determines that a household is eligible based on its monthly net income, the State may elect to offer the household an option to determine the benefit level by using either the same net income which was used to determine eligibility, or by unevenly prorating the household's total net income over the period for which the household's self-employment income was averaged to more closely approximate the time when the income is actually received. If income is prorated, the net income assigned in any month cannot exceed the maximum monthly income eligibility standards for the household's size.

* * * * *

(e) *Residents of drug/alcoholic treatment and rehabilitation programs.* (1) Narcotics addicts or alcoholics who regularly participate in drug or alcoholic treatment and rehabilitation programs on a resident basis may voluntarily apply for the Food Stamp Program. * * *

* * * * *

(5) The treatment center shall provide resident addicts or alcoholics with their ID card and any untransacted ATP cards issued for the household when the household leaves the treatment and rehabilitation program. If the ATP card has already been transacted and the household leaves the treatment and rehabilitation program prior to the 16th day of the month, the treatment center shall provide the household with one-half of its monthly coupon allotment. * * *

* * * * *

9. In § 273.12, paragraph (c) and paragraph (c)(1)(iii) are amended to read as follows:

§ 273.12 Reporting changes.

* * * * *

(c) *State agency action on changes.* The State agency shall take prompt action on all changes to determine if the change affects the household's eligibility or allotment. Even if there is no change in the allotment, the State agency shall document the reported change in the casefile, provide another change report form to the household, and notify the household of the receipt of the change report. If the reported change affects the household's eligibility or level of benefits, the adjustment shall also be reported to the household. The State agency shall also advise the household of additional verification requirements, if any, and state that failure to provide verification shall result in increased benefits reverting to the original allotment. The State agency shall document the date a change is reported, which shall be the date the State agency receives a report form or is advised of the change over the telephone or by a

personal visit. Restoration of lost benefits shall be provided to any household if the State agency fails to take action on a change which increases benefits within the time limits specified in paragraph (c)(1) of this section.

(1) *Increase in benefits.* * * *

(iii) Verification which is required by § 273.2(f)(9)(ii) must be obtained prior to the issuance of the second normal monthly allotment after the change is reported. If the household does not provide verification, the household's benefits will revert to the original benefit level without a notice of adverse action. In cases where the State agency has determined that a household has refused to cooperate as determined in § 273.2(d), the State agency shall terminate the household's eligibility following the notice of adverse action.

* * * * *

10. In § 273.13 paragraph (b)(10) is amended to read as follows:

§ 273.13 Notice of adverse action.

* * * * *

(b) *Exemptions from notice.* * * *

* * * * *

(10) The State agency must change the household's benefits back to the original benefit level as required in § 273.12(c)(1)(iii).

* * * * *

11. In § 273.15, paragraph (g), paragraphs (i)(2), (r)(2) and (s)(1) are amended and read as follows:

§ 273.15 Fair hearings.

* * * * *

(g) *Time period for requesting hearing.* A household shall be allowed to request a hearing on any action by the State agency or loss of benefits which occurred in the prior 90 days. Action by the State agency shall include a denial of a request for restoration of any benefits lost more than 90 days but less than a year prior to the request. In addition, at any time within a certification period a household may request a fair hearing to dispute its current level of benefits.

* * * * *

(i) *State agency responsibilities on hearing requests.* * * *

(2) The State agency shall expedite hearing requests from households, such as migrant farmworkers, that plan to move from the jurisdiction of the hearing official before the hearing decision would normally be reached. Hearing requests from these households shall be processed faster than others if necessary to enable them to receive a decision and a restoration of benefits if the decision so indicates before they leave the area.

* * * * *

(r) *Implementation of local level hearing decision.* * * *

(2) In the event the local hearing authority decides in favor of the household, benefits to the household shall begin or be reinstated, as required by the decision, within the 45 day time limit allowed for local hearing procedures. Any lost benefits due to the household shall be issued as soon as administratively feasible. The State agency shall restore benefits to households which are leaving the project area before the departure whenever possible. If benefits are not restored prior to the household's departure, the State agency shall forward an authorization to the benefits to the household or to the new project area if this information is known. The new project area shall accept an authorization and issue the appropriate benefits whether the notice is presented by the household or received directly from another project area.

* * * * *

(s) *Implementation of final State agency decisions.* * * *

* * * * *

(1) When the hearing authority determines that a household has been improperly denied program benefits or has been issued a lesser allotment than was due, lost benefits shall be provided to the household in accordance with § 273.17. The State agency shall restore benefits to households which are leaving the project area before the departure whenever possible. If benefits are not restored prior to the household's departure, the State agency shall forward an authorization to the benefits to the household or to the new project area if this information is known. The new project area shall accept an authorization and issue the appropriate benefits whether the notice is presented by the household or received directly from another project area.

* * * * *

12. In § 273.18, a new sentence is added to the end of paragraph (b)(3)(ii). The new sentence reads as follows:

§ 273.18 Claims against households.

* * * * *

(b) *Nonfraud claims.* * * *

* * * * *

(3) *Collecting nonfraud claims.* * * *

(ii) * * * The State agency may postpone collection action on nonfraud claims in cases where an overissuance is being referred for possible prosecution or for a fraud hearing and the State agency is advised in writing that collection action will prejudice the case.

* * * * *

PART 274—ISSUANCE AND USE OF FOOD COUPONS

13. In § 274.2, the fourth sentence of paragraph (f)(3), the phrase "and present the statement and the household" is added after the word "household" and before the word "ID". Paragraph (g)(3)(i)(A) and paragraph (h) are amended to read as follows:

§ 274.2 Issuance systems.

* * * * *

(g) *Expedited service.* * * *

(3) * * *

(i) * * *

(A) The household was properly issued the ATP which was reported lost.

* * * * *

(h) *Issuance of coupons to households.* The State agency shall issue coupon books in accordance with a table for coupon book issuance provided by FNS. The table provides participants with an efficient and economical distribution of the available coupons and coupon book types and assists FNS in maintaining proper inventory levels. The State agency may deviate from the table if the specified coupon books are unavailable. Exceptions from the table are authorized for blind and visually handicapped participants who request that all coupons be of one denomination. In very rare cases, allotments may have a value of $1, $3, or $5. Since coupon books cannot be issued in these values, the State agency shall authorize an issuance for the next higher coupon book value so that a whole book may be issued. The State agency shall issue the coupon books in consecutive serial number order whenever possible, starting with the lowest serial number in each coupon book denomination. The household member whose name appears on the ID card shall sign the coupon books.

* * * * *

PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

14. Section 276.3 and 276.6 are added to read as follows:

§ 276.3 Negligence.

(a) *General.* If FNS determines that there has been negligence or fraud on the part of the State agency in the certification of applicant households, the State agency shall, on demand by FNS, pay to FNS a sum equal to the amount of

coupons issued as a result of such negligence or fraud.

(b) *Negligence provisions.* (1) FNS may consider negligence on the part of the State agency when:

(i) The State agency disregards Food Stamp Program requirements contained in the Food Stamp Act, regulations issued pursuant to the Act, or the FNS-approved State Plan of Operation and a loss of Federal funds results;

(ii) The State agency takes action to implement procedures which deviate from FNS requirements without obtaining prior FNS approval and the implementation of such procedures results in a loss of Federal funds.

(iii) The State agency fails to implement and maintain proper controls over the certification of households and issuance of coupons and such failure results in a loss of Federal funds.

(2) In computing amounts of losses of Federal funds, FNS may use actual documented amounts or amounts which have been determined through the use of a statistically valid projection.

(3) FNS shall use all information available in determining negligence on the part of a State agency. Management information sources include but are not limited to:

(i) State and Federal Performance Reporting System reviews;

(ii) State and Federal Audits and Investigations;

(iii) Financial Management Reviews;

(iv) State Corrective Action Plans;

(v) Any of the required Food Stamp Program reports.

(4) Failure by the State agency to remit payment on demand by FNS may result in offsets to the Letter of Credit in accordance with § 277.16(c).

(c) *Fraud provisions.* For purposes of this subsection, the term fraud shall mean the wrongful acquisition or issuance of food coupons by the State agency or its officers, employees or agents, including issuance agents, through false representation or concealment of material facts. State agencies shall be liable to FNS for the amount of loss of Federal funds as a result of fraud. Failure by the State agency to remit payment on demand by FNS may result in offsets to the Letter of Credit in accordance with § 277.16(c).

§ 276.8 Administrative Review Process.

When FNS asserts a claim against a State agency, the State agency may appeal the case and be afforded a review by a designee of the Secretary. FNS claims against State agencies may be as a result of financial losses involved in the acceptance, storage, and issuance of coupons, charges of negligence, and disallowance of Federal funds for State agency failure to comply with the Act, regulations or the FNS-approved State Plan of Operation. A State agency aggrieved by a claim as a result of a negligence charge or the disallowance of Federal funds under § 276.4 shall have the option of requesting a hearing before a designee of the Secretary's to present its position or accepting a review of the record including any written submission to be presented by the State agency. Administrative review of all other claims shall be through a review of the record, including written submissions.

(a) FNS shall provide a notice by certified mail or personal service when asserting claims against State agencies. The notice shall specify whether or not the State agency may request a personal hearing.

(b) Any State agency aggrieved by claims asserted against it may file a written request with the Secretary, U.S. Department of Agriculture, Washington, D.C. 20250, for a review and an opportunity to submit information in support of its position within ten days of the date of delivery of the notice. If the State agency does not request a review within ten days of delivery of the notice, or submit information in support of its position after filing a request, the administrative determination on the claim shall be final.

(c) Upon receipt by the Secretary of a request for review, FNS shall make written acknowledgement of the request.

(1) The acknowledgement shall include the name and address of the official designated by the Secretary to review the claim;

(2) The acknowledgement shall also notify the State agency that within ten days of receipt of the acknowledgement, the State agency shall submit information in support of its position.

(d) If the State agency requests a hearing pursuant to notification by FNS under paragraph (a) of this section that it may do so, FNS shall have 60 days from receipt of the request to schedule, and complete the hearing and shall advise the State agency of the time, date and location of the hearing at least ten days in advance of the hearing.

(e) When the State agency requests a hearing as provided above, the official designated by the Secretary shall make a final determination within 30 days after the hearing, and the final determination shall take effect 30 days after the date of the delivery or service of the notice of this final determination to the State agency.

(f) If a hearing is to be held, the official designated by the Secretary shall review the record, including information presented by the State agency and make a final determination within 30 days after the receipt of the State agency's information. The final determination shall take effect 30 days after the date of delivery or service of the notice of this final determination to the State agency.

(g) A State agency aggrieved by the final determination may obtain judicial review by filing a complaint against the United States in the United States District Court for the district in which the State capital is located within 30 days after the date of delivery or service of the final notice of determination requesting the court to set aside the final determination.

(h) The administrative final determination shall remain in effect during the period the judicial review is pending unless the court temporarily stays such administrative action pending disposition of trial or appeal.

16. At the end of the October 17, 1978 rulemaking a note is added after the note on compliance with Executive Order 11821 and OMB circular A–107 and before the Catalog of Federal Domestic Assistance Programs number as follows:

Note.—The reporting and/or record keeping requirements anticipated in Amendment 132 and in subsequent provisions implementing the Food Stamp Act of 1977 will be forwarded to the Office of Management and Budget for approval in accordance with the Federal Reports Act of 1942.

(91 Stat. 958 (7 U.S.C. 2011–2027))

Note.—The Food and Nutrition Service has prepared an impact statement which is available from Claire Lipsman, Director Program Development Division, Family Nutrition Service, United States Department of Agriculture, Washington, D.C. 20250.

(Catalog of Federal Domestic Assistance Programs No. 10.551, Food Stamps)

Dated: June 1, 1979.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 79-17988 Filed 6-7-79; 8:45 am]

BILLING CODE 3410-30-M

Federal Register

Friday
June 8, 1979

Part XII

Department of Transportation

Federal Aviation Administration

Special Federal Aviation Regulation No. 40; Operation of Model DC-10 Airplanes in United States Prohibited

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 129

[Docket No. 19238; SFAR 40]

Special Federal Aviation Regulation No. 40; Operation of Model DC-10 Airplanes in United States Prohibited

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This special regulation prohibits the operation of any Model DC-10 airplane within the airspace of the United States. This emergency regulation is necessary to provide adequately for safety in air commerce within the United States.

DATES: Effective date: June 6, 1979, at 6 p.m. EDT.

Comments by: August 3, 1979.

ADDRESS: Send Comments to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket, AGC-24, 800 Independence Ave., S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Sullivan, Safety Regulations Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591, telephone (202) 755-8716.

SUPPLEMENTARY INFORMATION:

Background

On or about May 25, 1979, an accident occurred involving a McDonnell Douglas DC-10 series airplane at Chicago, Illinois. Subsequent to the accident the FAA issued several airworthiness directives applicable to all DC-10 series airplanes. As a result of the inspections required by the airworthiness directives, the FAA continued to be advised of the existence of cracks in the pylon mounting assemblies of certain airplanes and it appeared that the Model DC-10 airplane might not meet the applicable certification criteria of Part 25 of the Federal Aviation Regulations. Furthermore, the preliminary findings of an FAA post audit of the airplane type certification data indicated that it might not comply with the type certification basis set forth in § 25.571 of the Federal Aviation Regulations. As a consequence, there was reason to believe the Model DC-10 series airplane might not meet the requirements of section 603(a) of the Federal Aviation Act for a Type Certificate in that it might not be of proper design, material, specification, construction, and performance for safe operation, or meet the minimum standards, rules and regulations prescribed by the Administrator.

Therefore, on June 6, 1979, the Administrator of the FAA issued an emergency order suspending the Type Certificate issued for the Model DC-10 airplane. Notification of the Order was given to all known owners and operators of the airplane.

However, the FAA Order does not apply to or prohibit the operation of any Model DC-10 airplane that is not registered in the United States. In view of the serious safety problems currently involving operation of that airplane, the Administrator finds that a safety emergency exists which justifies adoption of a special regulation prohibiting operation in the United States of all Model DC-10 airplanes, including those on foreign registries.

Since a safety emergency exists which requires immediate action in the interest of ensuring safety in air commerce and air transportation, the Administrator finds that notice and public procedure are impractical and contrary to the public interest and that good cause exists for making this amendment effective in less than 30 days.

Interested persons are invited to submit such written data, views, or arguments as they may desire regarding the SFAR. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue, S.W., Washington, D.C. 20591. All communications received on or before August 3, 1979, will be considered by the Administrator and this SFAR may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Adoption of the Amendment

Accordingly, the following Special Federal Aviation Regulations is adopted, effective immediately:

Section 1. Contrary provisions of Parts 91, 121 and 129 of the Federal Aviation Regulations notwithstanding, no person may land or takeoff any Model DC-10 airplane within the United States, except as authorized under Section 2 or otherwise authorized by the Administrator.

Section 2. This regulation does not apply to a foreign registered Model DC-10 airplane which, at the time this regulation takes effect, is enroute to a place in the United States or is at a place within the United States. These airplanes may depart from the airport at which they are located, or at which they arrive, for a place outside the United States, using the most direct, feasible route, and without passengers or cargo on board.

This Special Federal Aviation Regulation is effective until amended or terminated by the Administrator.

(Secs. 313(a), 307, 601 and 603 of the Federal Aviation Act of 1958 (49 U.S.C. Sections 1354, 1348, 1421 and 1423); and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. Section 1655(c)).)

Note.—The FAA has determined that this document involves a regulation which is significant under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this document is being issued as an emergency regulation, in accordance with DOT Policies and Procedures, an evaluation will be prepared and placed in the public docket as soon as possible.

Issued in Washington, D.C., on June 6, 1979 at 6:00 p.m. EDT.

Langhorne Bond,

Administrator.

[FR Doc. 79-18120 Filed 6-7-79; 8:33 am]

BILLING CODE 4910-13-M

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
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Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

*NOTE: As of January 1, 1979, the Merit Systems Protection Board (MSPB) and the Office of Personnel Management (OPM) will publish on the Tuesday/Friday schedule. (MSPB and OPM are successor agencies to the Civil Service Commission.)

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.

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PRIVACY ACT ISSUANCES, 1978 COMPILATION

Quantity	Volume	Price	Amount
_____	Volume I (Agriculture; Commerce; Defense (Part I))	$11.00	$_____
_____	Volume II (Defense (Part II); Health, Education, and Welfare; Housing and Urban Development; Interior)	10.25	_____
_____	Volume III (Justice; Labor; State; Transportation; Treasury; independent agencies (A–C))*	10.25	_____
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6-11-79
Vol. 44 No. 113
Pages 33361-33662

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Monday
June 11, 1979

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33396 **Model DC-10 Airplane** DOT/FAA issues special regulation prohibiting operation within U.S. airspace; effective 6-6-79

33441-33444 **Motor Vehicle Safety** DOT/NHTSA proposes amending standard for side door strength and considers amending standard on fuel system integrity; comments by 7-26 and 9-11-79; applications by 7-11-79 (2 documents)

33410 **Electric Utilities** DOE/FERC proposes rules on methods of calculating cash working capital allowance when filing rate schedule changes; comments by 7-9, 7-24, and 6-6-79

33396 **Magazine, Paperback or Record Sales** Treasury/IRS issues income tax regulations regarding procedure for electing to adopt special accounting method; effective after 9-30-79

33510 **Written Tax Determinations** Treasury/IRS announces intent to make open to public inspection; inquiries by 6-26-79

33632 **Secret and Confidential Restricted Data** DOE proposes revising rules on requirements for safeguarding and transmission; comments by 7-11-79 (Part IV of this issue)

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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Area Code 202-523-5240

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33496 **Migrant Education Program** HEW/OE invites applications for grants by State educational agencies, applications by 7-1-79

33626 **Surface Coal Mining and Reclamation** Interior/SMRE proposes amending certain initial regulations regarding operations conducted on prime farmland; comments by 7-27-79; hearings on 7-27-79 (Part III of this issue)

33640-33655 **Regulation of Coal Mining on Federal Lands** Interior/SMRE & GS adopt rules on Federal cooperative agreements with States of Montana, Utah, and Wyoming; effective 6-11-79 (3 documents) (Part V of this issue)

33473 **Clean Air** EPA and DOT outline policy and procedures for meeting Federal assistance limitations in areas where transportation control measures are needed; comments by 7-11-79

33580 **Certain Electric Utility Steam Generating Units** EPA establishes performance standards to limit emissions of sulfur dioxide particulate matter and nitrogen oxides and a new reference method for determining compliance; effective 6-11-79 (Part II of this issue)

33433 **Uranium** EPA requests information on hazards of mining wastes and standards for public health, safety, and environmental protection from hazards of residual materials; information by 7-30-79

33404 **Telecommunications Emergency Preparedness** Office of Science and Technology Policy adopt rules on policy and planning precepts and delegated responsibilities; effective 6-11-79

33496 **Guaranteed Student Loan Program** HEW/OE announces special allowance to qualified holders for quarter ending 3-31-79

33496 **Health Education Assistance Loan Program** HEW/OE announces variable interest rate on loans for quarter ending 6-30-79

33402 **Saint Lawrence Seaway** DOT/SLS adopt rules on navigation season closing procedures; effective 6-11-79

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Rules and Regulations

Federal Register
Vol. 44, No. 118
Monday, June 11, 1979

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

Potatoes Grown in Colorado Area No. 3; Expenses and Rate of Assessment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation authorizes expenses for the functioning of the Colorado Area No. 3 Potato Committee for the fiscal period beginning July 1, 1979. It enables the committee to collect assessments from first handlers on assessable potatoes and to use the resulting funds for its expenses.

EFFECTIVE DATE: July 1, 1979.

FOR FURTHER INFORMATION CONTACT: Donald S. Kuryloski, Acting Deputy Director, Fruit and Vegetable Division, AMS, U. S. Department of Agriculture, Washington, D. C. 20250. Telephone: (202) 447-6393.

SUPPLEMENTARY INFORMATION: *Findings.* Pursuant to Marketing Order No. 948, as amended (7 CFR Part 948), regulating the handling of potatoes grown in Colorado, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon other information, it is found that the expenses and rate of assessment which follows will tend to effectuate the declared policy of the act.

It is further found that it is impracticable and contrary to the public interest to provide 60 days for interested persons to file comments, engage in public rulemaking procedure, and that good cause exists for not postponing the effective date of this section until 30 days after publication in the Federal Register (5 U.S.C. 553) as the order requires that the rate of assessment for a particular period shall apply to all assessable potatoes from the beginning of such period. Handlers and other interested persons were given an opportunity to submit information and views on the expenses and assessment rate at an open public meeting of the committee held May 18, 1979, in Greeley, Colorado. It is necessary to effectuate the declared purposes of the act to make these provisions effective as specified.

The budget and rate of assessment have not been determined significant under the USDA criteria for implementing Executive Order 12044.

7 CFR Part 948 is amended by adding a new § 948.231 as follows:

§ 948.231 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred during the fiscal period July 1, 1979, through June 30, 1980, by the Area No. 3 committee for its maintenance and functioning and for such purposes as the Secretary determines to be appropriate will amount to $1,765.

(b) The rate of assessment to be paid by each handler in accordance with this part shall be one-half cent ($0.005) per hundredweight or equivalent quantity of assessable potatoes handled by each first handler during the fiscal period except seed potatoes and potatoes for canning, freezing and "other processing" as defined in the act shall be exempt.

(c) Unexpended income in excess of expenses for the fiscal period ending June 30, 1980, may be carried over as a reserve to the extent authorized in § 948.78.

(d) Terms used in this section have the same meaning as when used in the marketing agreement and this part.

(Secs. 1–18, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

Dated: June 6, 1979.

D. S. Kuryloski,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-17628 Filed 6-8-79; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1207

Potato Research and Promotion Plan; Expenses and Rate of Assessment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation authorizes expenses for the functioning of the National Potato Promotion Board for the 1979–80 fiscal period. It enables the Board to collect assessments from designated handlers on assessable potatoes and to use the resulting funds for its expenses.

EFFECTIVE DATE: July 1, 1979.

FOR FURTHER INFORMATION CONTACT: Donald S. Kuryloski, Acting Deputy Director, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone (202) 447-6393.

SUPPLEMENTARY INFORMATION: The Potato Board is the administrative agency established under the Potato Research and Promotion Plan (7 CFR 1207). This program is effective under the Potato Research and Promotion Act (7 U.S.C. 2611–2627).

Notice was published in the May 4 Federal Register (44 FR 26113) regarding the proposals. It afforded interested persons an opportunity to submit written comments not later than June 2, 1979. None was received.

The budget and rate of assessment have not been determined significant under the USDA criteria for implementing Executive Order 12044. They should be approved prior to the Board's July 1, 1979, fiscal period as the program requires that the rate of assessment should apply to all assessable potatoes from the beginning of such period.

After consideration of all relevant matters, including the proposal in the notice, it is found that the following expenses and rate of assessment should be approved.

It is further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the Federal Register (5 U.S.C. 553) because this part requires that the rate of assessment for a particular period apply to all assessable potatoes from the beginning of such period.

Amend 7 CFR Part 1207 by adding § 1207.408 to read as follows:

§ 1207.408 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred during the fiscal period beginning July 1, 1979, and ending June 30, 1980, by the National Potato Promotion Board for its maintenance and functioning and for such purposes as the Secretary determines to be appropriate will amount to $2,178,000.

(b) The rate of assessment to be paid by each designated handler in accordance with the provisions of the Plan shall be one cent ($0.01) per hundredweight of assessable potatoes handled by such person during said fiscal period.

(c) Unexpended income in excess of expenses for the fiscal period may be carried over as an operating monetary reserve.

(d) Terms used in this section have the same meaning as when used in the Potato Research and Promotion Plan.

(Title III of P.L. 91-670; 84 Stat. 2041; (7 U.S.C. 2611-2627.))

Dated June 5, 1979 to become effective July 1, 1979.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 79-18023 Filed 6-8-79; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 19065, Amdt. 39-3489]

Airworthiness Directives; Dornier Model Do 28 D-2 Skyservant Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that requires an inspection of the engine fire extinguishing system of Dornier GmbH Model Do 28 D-2 airplanes for corrosion and chafing of pipelines, and modification of the system if necessary. The AD is prompted by reports of failures of the engine fire extinguishing system which could result in the inability to extinguish an engine fire.

DATES: Effective July 11, 1979. Compliance schedule—As prescribed in body of AD.

ADDRESSES: The applicable service bulletin may be obtained from: Dornier GmbH, Vertrieb U. Kundendienst, Sales and Service Department, D-8000 Munchen 66, POB 2160, Federal Republic of Germany. A copy of the service bulletin is contained in the rules docket for this Amendment in Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: D. C. Jacobsen, Chief, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Region, Federal Aviation Administration, c/o American Embassy, Brussels, Belgium, Telephone: 513.38.30, or C. Christie, Chief, Technical Standards Branch, AFS-110, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591, Telephone: 202-426-8374.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring an inspection of the engine fire extinguishing system of Dornier GmbH Model Do 28 D-2 airplanes for corrosion and chafing of pipelines, and modification of the system as necessary, was published in the **Federal Register** at 43 FR 27556.

The proposal was prompted by reports of failures of the engine fire extinguishing system of Dornier Model Do 28 D-2 airplanes attributable to corrosion caused by the entrance of water into the system pipelines. In addition, it has been determined that the pipelines of the engine fire extinguishing system are prone to chafing. This condition also could result in failure of the engine fire extinguishing system.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No comments were received. Accordingly, the proposal is adopted without change.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Dornier GmbH. Applies to Model Do 28 D-2 Skyservant airplanes, serial numbers 4050 and 4301 through 4307, certificated in all categories.

Compliance required as indicated, unless already accomplished.

To detect and eliminate corrosion and chafing of the engine fire extinguishing system pipelines, accomplish the following in accordance with Dornier Service Bulletin No. 2062-2828, dated April 1, 1977, or an FAA-approved equivalent:

(a) Within the next 25 hours time in service after the effective date of this AD, inspect the engine fire extinguishing system for corrosion, accumulation of water, and pipeline chafing.

(b) If corrosion or water accumulation is found during the inspection required by paragraph (a), before further flight, except as provided in paragraph (d) of this AD, modify the system by—

(1) Installing a pipeline seal;

(2) Incorporating pipeline water drainage holes;

(3) Installing a drain valve; and

(4) Replacing corrosion-prone pipelines with stainless steel pipelines between the engine fire extinguisher bottle and frame 6020.

(c) If pipeline chafing is found during the inspection required by paragraph (a), before further flight, except as provided in paragraph (d), modify the system by—

(1) Incorporating anti-abrasive protection; and

(2) Installing a pipeline securing clamp.

(d) Airplanes may be flown in accordance with FAR 21.197 and 21.199 to a base where the modifications required by paragraphs (b) and (c) of this can be performed.

This amendment becomes effective July 11, 1979.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C.1655(c)); 14 CFR 11.89).

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by writing to C. Christie, Chief, Technical Standards Branch, AFS-110, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591.

Issued in Washington, D.C., on June 1, 1979.

James M. Vines,

Acting Director, Flight Standards Service.

[FR Doc. 79-18008 Filed 6-8-79; 8:45 am]

BILLING CODE 4910-13-M

[Docket No. 79-CE-11-AD; Amdt. 39-3488]

14 CFR Part 39

Airworthiness Directives; Gates Learjet Models 24 and 25 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Gates Learjet Models 24 and 25 airplanes equipped with Century III wings. The AD requires the

immediate incorporation of temporary revisions to the FAA-Approved Airplane Flight Manual which provide needed instructions when ice and/or turbulence are encountered and revisions to the airplane operating limitations. The AD further requires adjusting the stall warning system in accordance with Gates Learjet Service Bulletin SB 24/25-294. This AD is necessary to assure that proper operating instructions are provided to the pilot and that required stick pusher/shaker action occurs prior to aerodynamic stall of the airplane. Failure to operate the airplane in accordance with the revised instructions or to achieve proper stick pusher/shaker action could result in aerodynamic stall of the airplane with ensuing unsafe wing roll.

EFFECTIVE DATE: June 18, 1979.

COMPLIANCE: As prescribed in the body of the AD.

ADDRESSES: Gates Learjet Service Bulletin SB 24/25-294, dated May 25, 1979, applicable to this AD, may be obtained from Gates Learjet Corporation, Mid-Continent Airport, P.O. Box 7707, Wichita, Kansas 67277, Telephone Number (316) 946-2000. A copy of the Service Bulletin is contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106 and at Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Robert L. Klapprott, Aerospace Engineer, Engineering and Manufacturing, District Office Number 43, Room 238, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 942-4281/4282.

SUPPLEMENTARY INFORMATION: As a result of a recent accident study program involving Century III Learjet Model 25 airplanes, the following items were identified: (1) Under certain flap settings there may be insufficient margin between aerodynamic stall speed and the stick pusher speed; (2) the aerodynamic stall speed may bedcome higher with minor damage to the wing leading edge and/or when the aircraft encounters inflight turbulence, or wing ice accumulation, and (3) maintenance accomplished on the airplane may also affect the stall speed.

To avoid the possibility of an unsafe wing roll that may occur at aerodynamic stall, the FAA has determined that AD action is warranted to assure that proper margin between aerodynamic stall speed and stall warning is provided. This AD includes temporary flight manual revisions which provide procedures needed to assure safe operation of the airplane and requirements to adjust and test the stall warning system. When developed by the manufacturer and approved by FAA, permanent Airplane Flight Manual Revisions may be used to replace the temporary revisions provided by this AD.

The airplane manufacturer is currently developing revisions for the airplane maintenance manual which identifies various maintenance items which must be followed by a flight evaluation of the stall warning system. Also, the airplane manufacturer is developing a means of inspecting for the accumulation of wing leading edge ice during night operations. It is anticipated that the FAA will take additional AD action to require the use of the revised maintenance manual and the installation of the means to inspect for ice accumulation when their development is completed.

Since an unsafe condition is likely to develop in the operation of other airplanes of the same type design, an AD is being issued applicable to Century III Learjet Models 24 and 25 which requires immediate incorporation of a provided temporary revision to the FAA-Approved Flight Manual and makes compliance with the procedures provided in Gates Learjet Service Bulletin SB-24/25-294 mandatory.

The FAA has determined that there is an immediate need for a regulation to assure safe operation of the affected airplanes. Therefore, notice and public procedure under 5 U.S.C. 553(b) is impracticable and contrary to the public interest and good cause exists for making the amendment effective in less than thirty (30) days after the date of publication in the Federal Register

Adoption of the Amendment

Accordingly, and pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD.

Learjet: Applies to Model 24 (Serial Numbers 24-100 through 24-328 on which "Reduced Approach Speed System Kit" AAK 76-4 has been installed, and 24-329 through 24-357), and Model 25 (Serial Numbers 25-003 through 25-205 on which "Reduced Approach Speed System Kit" AAK 76-4 has been installed, and 25-206 through 25-278).

Compliance: Required as indicated, unless already accomplished.

(A) Effective immediately, temporarily insert the following information in the FAA-Approved Airplane Flight Manual and operate the airplane in accordance with these insertions:

1. In Section 1, adjacent to the heading STALL WARNING SYSTEM Limitation, add the following:

Both stall warning systems must be ON and operating for all Normal Flight Operations. The systems may be turned off for Emergency Operations per Airplane Flight Manual Section III Procedures and for stall warning system maintenance per the Maintenance Manual Procedures.

NOTE: Warning lights for both stall warning systems are inoperative when the generator and battery switches are OFF.

To assure proper stall warning system operation, the BEFORE STARTING and AFTER TAKEOFF stall warning system operational and comparison checks in Section II of this Airplane Flight Manual must be completed on each flight.

2. In Section II, under the heading BEFORE LANDING, add the following:

Landing Approach in Turbulence

Landing Approach Speed—Computed and bug set. Refer to Section IV.

NOTE: It is recommended that if turbulence is anticipated due to gusty winds, wake turbulence, or wind shear, the approach speed be increased. For gusty wind conditions, an increase in approach speed of one-half of the gust factor is recommended.

3. In Section II, under the heading ANTI-ICE SYSTEM, add the following:

Anti-Ice System Normal Operations

Observe Airplane Flight Manual's recommendations for normal use of all anti-ice systems.

WARNING: Even *small* accumulations of ice on the wing leading edges can cause aerodynamic stall prior to activation of the stick shaker and/or pusher.

4. In Section II, under the heading AFTER TAKEOFF, add the following:

Stall Warning Systems Comparison Check

As a final step in the AFTER TAKEOFF procedures, the following stall warning system comparison shall be observed:

ANGLE-OF-ATTACK Indicators—Cross-check pilot's and copilot's indicators for agreement.

5. In Section II, adjacent to the ICE DETECTION procedures, add the following:

Visual Ice Detection

A visual inspection may be used to check for ice accumulations on the wing leading edges. For night operation, the optional wing inspection light located on the right side of the fuselage may be turned on by setting the WING INSPECTION switch ON and checking for ice accumulations on the wing. It should be noted that the wing inspection light in itself is inadequate for detecting the presence of ice near the wing tips.

If the presence of wing leading edge ice is suspected during operations at night, in atmospheric conditions conducive to icing, the normal approach speeds must be increased per the APPROACH AND LANDING WITH ICE ON WING LEADING EDGES procedures in Section II of the Airplane's Flight Manual.

6. In Section III, under the heading ANTI-ICE SYSTEM FAILURE, add the following:

Approach and Landing With Ice on Wing Leading Edges

WARNING: Even *small* accumulations of ice on the wing leading edges can cause aerodynamic stall prior to activation of the stick shaker and/or pusher.

If approach and landing must be made with any ice (or suspected ice during night operations) on the wing leading edges:

1. Final Approach Speed—15 knots above normal;

2. Touchdown Speed—15 knots above normal; and

3. Landing distance—Increase by 20% Anti-Skid ON or OFF.

7. In Section IV, adjacent to the heading TAKEOFF DISTANCE, FLAPS 8° add the following:

Increase all chart Takeoff Distances by:

Model 24 with Century III wings + 4%; and

Model 25 with Century III wings + 6%.

8. In Section IV, adjacent to the heading CRITICAL ENGINE FAILURE SPEED, V_1, FLAPS – 8°; ROTATION SPEED, V_R, FLAPS – T.O. – 8°; AND ENGINE OUT SAFETY SPEED V_2 FLAPS – T.O.—8° charts, add the following:

Increase all chart V_1 V_R and V_2 speeds by:

Model 24 with Century III wings + 2 KNOTS INDICATED AIRSPEED; and

Model 25 with Century III wing + 3 KNOTS INDICATED AIRSPEED.

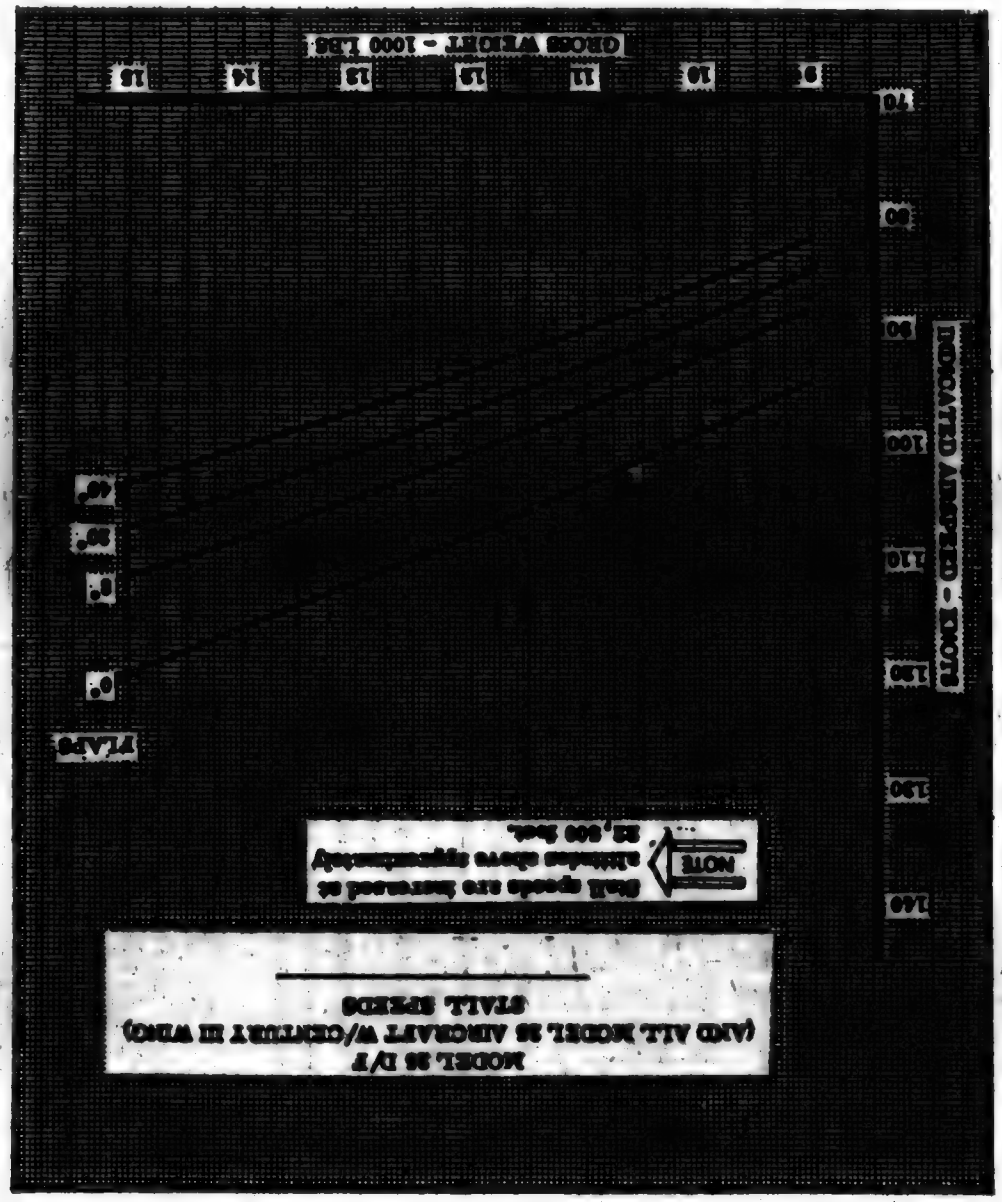
9. In Section IV, adjacent to the LANDING APPROACH SPEEDS chart, add the following:

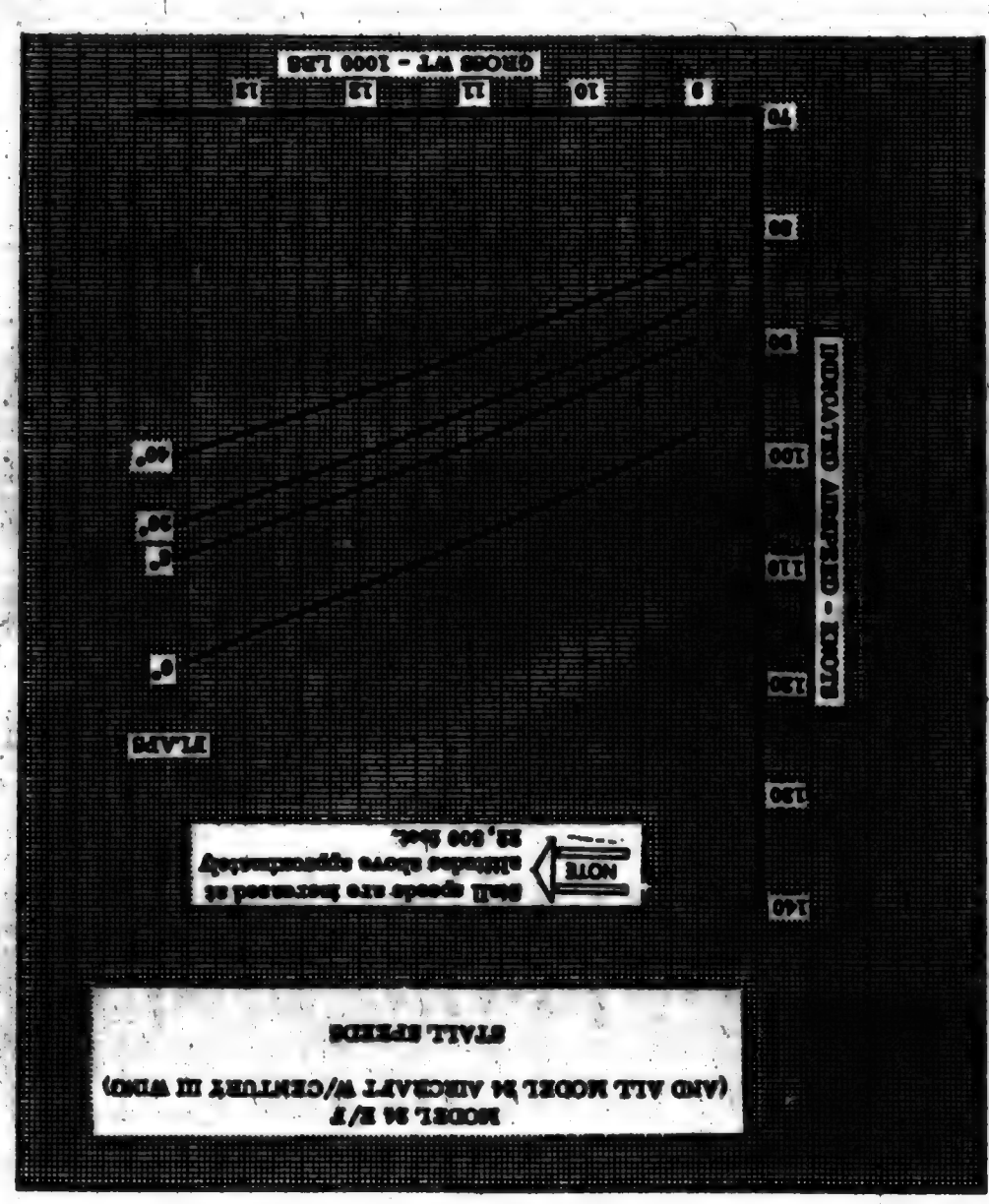
Increase all chart Landing Approach Speeds (V REF) by: + 6 KNOTS INDICATED AIRSPEED.

10. In Section IV, adjacent to the LANDING DISTANCE chart add the following:

Increase all Chart *Actual* and *Scheduled and Alternate Stops Field Lengths* by: + 8%.

11. In Section IV in place of the current STALL SPEEDS file the following charts:


GROSS WEIGHT - 1000 LBS
12 13 14 15 16 17 18
FLAPS
0°
15°
30°
40°
KNOTS CALIBRATED AIRSPEED - KCAS
100 110 120 130 140 150
NOTE
Stall speeds are increased at altitudes above approximately 22,000 feet.
MODEL 36 E/F
(AND ALL MODEL 36 AIRCRAFT W/CENTURY III WING)
STALL SPEEDS


GROSS WEIGHT - 1000 LBS
12 13 14 15 16 17 18
FLAPS
0°
15°
30°
40°
KNOTS CALIBRATED AIRSPEED - KCAS
100 110 120 130 140 150
NOTE
Stall speeds are increased at altitudes above approximately 22,000 feet.
MODEL 36 E/F
(AND ALL MODEL 36 AIRCRAFT W/CENTURY III WING)
STALL SPEEDS

(B) Within the next 300 hours time-in-service after the effective date of this AD, or December 15, 1979, whichever occurs first, adjust the stall warning system and inspect the systems and components that may affect aircraft stall speed in accordance with the procedures provided by Gates Learjet Service Bulletin SB 24/25-294 dated May 25, 1979.

(C) Any equivalent method of compliance with this AD must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Central Region.

Note.—This Airworthiness Directive, or a duplicate thereof, may be used as a temporary amendment to the Airplane Flight Manual and carried in the aircraft as a part of the Airplane Flight Manual until replaced by the permanent revisions to the Airplane Flight Manual provided by the manufacturer and approved by the FAA.

This Amendment becomes effective June 18, 1979.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421, 1423); sec 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and Sec. 11.89 of the Federal Aviation Regulations (14 CFR 11.89).

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing Earsa L. Tankesley, Aerospace Engineer, Engineering and Manufacturing Branch, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-3446.

Issued in Kansas City, Missouri on June 1, 1979.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 79-18037 Filed 6-8-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 91, 121, 129

[Docket No. 19238; SFAR 40]

Special Federal Aviation Regulation No. 40; Operation of Model DC-10 Airplanes in United States Prohibited

Note.—This document originally appeared in the Federal Register for Friday, June 8, 1979. It is reprinted in this issue to meet the Monday/Thursday publication schedule assigned to the Federal Aviation Administration.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This special regulation prohibits the operation of any Model DC-10 airplane within the airspace of the United States. This emergency regulation is necessary to provide adequately for safety in air commerce within the United States.

DATES: Effective date: June 6, 1979, at 6:00 p.m. EDT.

Comments by: August 3, 1979.

ADDRESS: Send comments to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket, AGC-24, 800 Independence Ave., SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Sullivan, Safety Regulations Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone (202) 755-8716.

SUPPLEMENTARY INFORMATION:

Background

On or about May 25, 1979, an accident occurred involving a McDonnell Douglas DC-10 series airplane at Chicago, Illinois. Subsequent to the accident the FAA issued several airworthiness directives applicable to all DC-10 series airplanes. As a result of the inspections required by the airworthiness directives, the FAA continued to be advised of the existence of cracks in the pylon mounting assemblies of certain airplanes and it appeared that the Model DC-10 airplane might not meet the applicable certification criteria of Part 25 of the Federal Aviation Regulations. Furthermore, the preliminary findings of an FAA post audit of the airplane type certification data indicated that it might not comply with the type certification basis set forth in § 25.571 of the Federal Aviation Regulations. As a consequence, there was reason to believe the Model DC-10 series airplane might not meet the requirements of section 603(a) of the Federal Aviation Act for a Type Certificate in that it might not be of proper design, material, specification, construction, and performance for safe operation, or meet the minimum standards, rules and regulations prescribed by the Administrator.

Therefore, on June 6, 1979, the Administrator of the FAA issued an emergency order suspending the Type Certificate issued for the Model DC-10 airplane. Notification of the Order was given to all known owners and operators of the airplane.

However, the FAA Order does not apply to or prohibit the operation of any Model DC-10 airplane that is not registered in the United States. In view of the serious safety problems currently involving operation of that airplane, the Administrator finds that a safety emergency exists which justifies adoption of a special regulation prohibiting operation in the United States of all Model DC-10 airplanes, including those on foreign registries.

Since a safety emergency exists which requires immediate action in the interest of ensuring safety in air commerce and air transportation, the Administrator finds that notice and public procedure are impractical and contrary to the public interest and that good cause exists for making this amendment effective in less than 30 days.

Interested persons are invited to submit such written data, views, or arguments as they may desire regarding the SFAR. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue, SW., Washington, D.C. 20591. All communications received on or before August 3, 1979, will be considered by the Administrator and this SFAR may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Adoption of the Amendment

Accordingly, the following Special Federal Aviation Regulations is adopted, effective immediately:

Section 1. Contrary provisions of Parts 91, 121 and 129 of the Federal Aviation Regulations notwithstanding, no person may land or takeoff any Model DC-10 airplane within the United States, except as authorized under § 2 or otherwise authorized by the Administrator.

Section 2. This regulation does not apply to a foreign registered Model DC-10 airplane which, at the time this regulation takes effect, is en route to a place in the United States or is at a place within the United States. These airplanes may depart from the airport at which they are located, or at which they arrive, for a place outside the United States, using the most direct, feasible route, and without passengers or cargo on board.

This Special Federal Aviation Regulation is effective until amended or terminated by the Administrator.

(Secs. 313(a), 307, 601, 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354, 1348, 1421 and 1423); and sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Note.—The FAA has determined that this document involves a regulation which is significant under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this document is being issued as an emergency regulation, in accordance with DOT Policies and Procedures, an evaluation will be prepared and placed in the public docket as soon as possible.

Issued in Washington, D.C., on June 6, 1979 at 6:00 P.M. EDT.

Langhorne Bond,
Administrator.

[FR Doc. 79-18130 Filed 6-7-79; 9:22 am]
BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

14 CFR Part 323

[Regulation PR-207; Amdt. 1]

Terminations, Suspensions, and Reductions of Service; Approval by the General Accounting Office

June 6, 1979.

AGENCY: Civil Aeronautics Board.

ACTION: Final Rule.

SUMMARY: This final rule gives notice that the General Accounting Office has approved the reporting requirements contained in a regulation which governs (1) notices of terminations, suspensions, and reductions of air transportation by air carriers, and (2) transportation (PR-200, 44 FR 20635, April 6, 1979). This approval is required under the Federal Reports Act, and was transmitted to the Civil Aeronautics Board by letter dated May 29, 1979.

DATES: Adopted: June 6, 1979. Effective: June 6, 1979.

FOR FURTHER INFORMATION CONTACT: Clifford M. Rand, Chief, Data Requirements Division, Office of Economic Analysis, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-6044.

Accordingly, the Civil Aeronautics Board amends Part 323 of its Procedural Regulations (14 CFR 323) by adding the following note at the end of Part 323:

Note.—The reporting requirements contained in sections 323.4, 323.9, 323.11, 323.14 and 323.15 have been approved by the U.S. General Accounting Office under B-180226 (RO833).

This amendment is issued by the undersigned pursuant to the delegation of authority from the Board to the Secretary in 14 CFR sec. 385.24(b).

(Sec. 204 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; U.S.C. 1324).

By the Civil Aeronautics Board.
Phyllis T. Kaylor
Secretary.

[FR Doc. 79-18114 Filed 6-8-79; 8:45 am]
BILLING CODE 6320-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

24 CFR Part 1915

[Docket No. 5496]

Communities With Minimal Flood Hazard Areas for the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Final Rule.

SUMMARY: The Federal Insurance Administrator, after consultation with local officials of the communities listed below, has determined, based upon analysis of existing conditions in the communities, that these communities' Special Flood Hazard Areas are small in size, with minimal flooding problems. Because existing conditions indicate that the area is unlikely to be developed in the foreseeable future, there is no immidiate need to use the existing detailed study methodology to determine the base flood elevations for the Special Flood Hazard Areas.

Therefore, the Administrator is converting the communities listed below to the Regular Program of the National Flood Insurance Program (NFIP) without determining base flood elevations.

EFFECTIVE DATE: Date listed in fourth column of List of Communities with Minimal Flood Hazard Areas.

FOR FURTHER INFORMATION CONTACT: Mr. Richard W. Krimm, National Flood Insurance Program (202) 755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh St., S.W., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: In these communities, the full limits of flood insurance coverage are available at actuarial, non-subsidized rates. The rates will vary according to the zone designation of the particular area of the community.

Flood insurance for contents, as well as structures, is available. The maximum coverage available under the Regular Program is significantly greater than that available under the Emergency Program.

Flood insurance coverage for property located in the communities listed can be purchased from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program. The effective date of conversion to the Regular Program will not appear in the Code of Federal Regulations except for the page number of this entry in the Federal Register.

The entry reads as follows:

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

§ 1915.9 List of communities with minimal flood hazard areas.

State	County	Community name	Date of conversion to regular program
Indiana	Howard	Town of Russiaville	June 1, 1979.
Michigan	Cass	Village of Cassopolis	June 1, 1979.
Ohio	Cuyahoga	City of Berea	June 1, 1979.
Ohio	Cuyahoga	City of Brooklyn	June 1, 1979.
Ohio	Cuyahoga	City of Brook Park	June 1, 1979.
Ohio	Cuyahoga	City of Highland Heights	June 1, 1979.
Ohio	Cuyahoga	Village of Moreland Hills	June 1, 1979.
Ohio	Cuyahoga	Village of Newburgh Heights	June 1, 1979.
Ohio	Cuyahoga	City of Olmsted Falls	June 1, 1979.
Ohio	Cuyahoga	City of Seven Hills	June 1, 1979.
Pennsylvania	Blair	Borough of Bellwood	June 1, 1979.
Pennsylvania	Luzerne	Borough of Courtdale	June 1, 1979.
Pennsylvania	York	Borough of Cross Roads	June 1, 1979.
Pennsylvania	Luzerne	Township of Fairview	June 1, 1979.
Pennsylvania	Fayette	Township of Jefferson	June 1, 1979.
Pennsylvania	Adams	Township of Latimore	June 1, 1979.
Pennsylvania	Adams	Borough of York Springs	June 1, 1979.
New York	Genesee	Village of Bergen	June 8, 1979.
New Jersey	Cumberland	Township of Stow Creek	June 15, 1979.
New Jersey	Salem	Town of Alloway	June 15, 1979.
New Jersey	Burlington	Township of Shamong	June 15, 1979.
New York	Cayuga	Town of Cato	June 22, 1979.
New York	Cayuga	Town of Sennett	June 22, 1979.
New Jersey	Atlantic	Town of Buena Vista	June 22, 1979.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.)

Issued: May 31, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-17689 Filed 6-8-79; 8:45 am]

BILLING CODE 4210-23-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7628]

Election to Account for Qualified Sales of Magazines, Paperbacks, or Records

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations in order to provide guidance to the public as to the manner in which an election is made to adopt a special method of accounting with respect to the sales of magazines, paperbacks, and records. Changes to the applicable law were made by the Revenue Act of 1978. These regulations affect all taxpayers who wish to adopt this special method of accounting.

EFFECTIVE DATE: The regulations are effective for taxable years beginning after September 30, 1979.

FOR FURTHER INFORMATION CONTACT: Robert Katcher of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T, 202–566–3432, not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

This document contains an amendment to the Income Tax Regulations (26 CFR Part 1) to provide regulations under section 458 of the Internal Revenue Code of 1954. This amendment provides rules relating to the manner in which taxpayers elect to have section 458 apply to them. Because this regulation is nonsubstantive and essentially procedural, it is found unnecessary to issue this Treasury decision with notice and public procedure. For the same reasons, this regulation is not a significant regulation under paragraph 8 of the Treasury Directive appearing in the Federal Register for November 8, 1978 (43 FR 52120).

Manner of and Time for Making Election

Generally, in order to have section 458 apply, a taxpayer must make an election for each trade or business in connection with which the taxpayer has qualified sales of magazines, paperbacks, or records. The election is made by filing a Form 3115 containing the required information with the taxpayer's income tax return for the first taxable year for which the election is made. The election does not require the prior consent of the Internal Revenue Service. However, the prior consent of the Internal Revenue Service is required in order to revoke the election

Drafting Information

The principal author of this regulation was Robert Katcher of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows: Section 1.458–10 is added to read as follows:

§ 1.458–10 Manner of and time for making election.

(a) *Scope.* For taxable years beginning after September 30, 1979, section 458 provides a special method of accounting for taxpayers who account for sales of magazines, paperbacks, or records using an accrual method of accounting. In order to use the special method of accounting under section 458, a taxpayer must make an election in the manner prescribed in this section. The election does not require the prior consent of the Internal Revenue Service. The election is effective for the taxable year for which it is made and for all subsequent taxable years, unless the taxpayer secures the prior consent of the Internal Revenue Service to revoke such election.

(b) *Separate election for each trade or business.* An election is made with respect to each trade or business of a taxpayer in connection with which qualified sales (as defined in section 458(b)(5)) of a category of merchandise were made. Magazines, paperbacks, and records are each treated as a separate category of merchandise. If qualified sales of two or more categories of merchandise are made in connection with the same trade or business, then solely for purposes of section 458, each category is treated as a separate trade or business. For example, if a taxpayer makes qualified sales of both magazines and paperbacks in the same trade or business, then solely for purposes of section 458, the qualified sales relating to magazines are considered one trade or business and the qualified sales relating to paperbacks are considered a separate trade or business. Thus, if the taxpayer wishes to account under section 458 for the qualified sales of both magazines and paperbacks, such taxpayer must make a separate election for each category.

(c) *Manner of, and time for, making election.* An election is made under section 458 and this section by filing a statement of election containing the information described in paragraph (d) of this section with the taxpayer's income tax return for first taxable year for which the election is made. The election must be made no later than the time prescribed by law (including extensions) for filing the income tax return for the first taxable year for which the election is made. Thus, the election may not be filed with an amended income tax return after the prescribed date (including extensions) for filing the original return for such year.

(d) *Required information.* The statement of election required by paragraph (c) of this section must indicate that an election is being made under section 458(c) and must set forth the following information:

(1) The taxpayer's name, address, and identification number;

(2) A description of each trade or business for which an election is made;

(3) The first taxable year for which an election is made for each trade or business;

(4) The merchandise return period (as defined in section 458(b)(7)) for each trade or business for which an election is made;

(5) With respect to an election that applies to magazines, the amount of the adjustment computed under section 481(a) resulting from the change to the method of accounting described in section 458; and

(6) With respect to an election that applies to paperbacks or records, the initial opening balance (computed in accordance with section 458(e)) in the suspense account for each trade or business for which an election is made.

The statement of election should be made on a Form 3115 which need contain no information other than that required by this paragraph.

Because the amendment contained in the Treasury decision is concerned with procedural matters, it is found unnecessary to issue it with a notice and public procedure thereon under section 553(b) of Title 5 of the United States Code.

This Treasury decision is issued under the authority contained in sections 458 and 7805 of the Internal Revenue Code of 1954 (92 Stat. 2860 and 68A Stat. 917; 26 U.S.C. 458 and 26 U.S.C. 7805).

Jerome Kurtz,
Commissioner of Internal Revenue.

Approved: June 1, 1979.

Donald C. Lubick,
Assistant Secretary of the Treasury.

[FR Doc. 79-18018 Filed 6-8-79; 8:45 am]
BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 14

[Order No. 834-79]

Regulating Action on Approved Administrative Claims Under Federal Tort Claims Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order abolishes the requirement that a request for the payment of any award, compromise, or settlement in excess of $100,000 under section 2672 of Title 28, United States Code, relating to the settlement of Federal tort claims, must be forwarded to the Bureau of Accounts, Department of the Treasury. The amendment brings 28 CFR 14.10(a) into line with the provisions of 31 U.S.C. § 724a, as amended.

EFFECTIVE DATE: May 29, 1979.

FOR FURTHER INFORMATION CONTACT: Jeffrey Axelrad, Director, Torts Branch, Civil Division, U.S. Department of Justice, Washington, D.C. 20530, (202) 724-6810.

PART 14—ADMINISTRATIVE CLAIMS UNDER FEDERAL TORT CLAIMS ACT

By virtue of the authority vested in me by 28 U.S.C. § 2672, Title 28, Code of Federal Regulations, is amended by revising § 14.10(a), to provide:

§ 14.10 Action on approved claims.

(a) Any award, compromise, or settlement in an amount of $2,500 or less made pursuant to the provisions of section 2672 of Title 28, United States Code, shall be paid by the head of the Federal agency concerned out of the appropriations available to that agency. Payment of an award, compromise, or settlement in excess of $2,500 shall be obtained by the agency by forwarding Standard Form 1145 to the Claims Division, General Accounting Office. When an award is in excess of $25,000, Standard Form 1145 must be accompanied by evidence that the award, compromise, or settlement has been approved by the Attorney General or his designee. When the use of Standard Form 1145 is required, it shall be executed by the claimant or it shall be accompanied by either a claims settlement agreement or a Standard Form 95 executed by the claimant. When a claimant is represented by an attorney, the voucher for payment shall designate both the claimant and his attorney as payees; the check shall be delivered to the attorney, whose address shall appear on the voucher.

* * * * *

Dated: May 29, 1979.

Benjamin R. Civiletti,
Acting Attorney General.

[FR Doc. 79-18027 Filed 6-8-79; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 68, 195a, and 263

Deletion of Parts

AGENCY: Office of the Secretary of Defense.

ACTION: Final rule.

SUMMARY: The Office of the Secretary of Defense continuously reviews its DoD Directives and DoD Instructions to ensure their currency, canceling those that have served their purpose and are no longer valid. Three such documents concerning reserve forces and configuration management that were published in the Code of Federal Regulations have been canceled. Consequently, this rule deletes these 3 Parts whose source documents have been canceled.

EFFECTIVE DATE: May 23, 1979.

FOR FURTHER INFORMATION CONTACT: Mrs. Margarete S. Healy, Chief, Directives Division, OSD/WHS, Pentagon, Washington, D.C. 20301, telephone 202-697-4111.

SUPPLEMENTARY INFORMATION: Part 68 (DoD Directive 1200.10, "Determination of Manpower Available for Reserve Units in Specified Areas," July 14, 1970) was canceled by DoD Directive 1200.1, "Allocation of Reserve Forces Units to and Determination of Manpower in Local Communities," which was reissued April 21, 1978, and will appear in the Federal Register as a revised Part 67 in June 1979. Part 195a (DoD Instruction 5010.21, "Configuration Management Implementation Guidance," August 6, 1968) was canceled by DoD Directive 5010.19, "Configuration Management," which was reissued May 1, 1979 and will appear in the Federal Register as a revised Part 195 on May 30, 1979 (44 FR 31177). Part 263 (DoD Directive 5500.5, "Natural Resources—Conservation and Management," May 24, 1963) was canceled by DoD Directive 4700.1, "Natural Resources—Conservation and Management," which was reissued November 6, 1978.

Accordingly, 32 CFR Chapter I is amended by revoking the following Parts:

(a) Subchapter B—Personnel, Military and Civilian

PART 68 [REVOKED]

(b) Subchapter M—Miscellaneous

PARTS 195A AND 263 [REVOKED]

Authority: 10 U.S.C. 136.

H. E. Lofdahl,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

May 30, 1979.

[FR Doc. 79-17988 Filed 6-8-79; 8:45 am]
BILLING CODE 3810-70-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 3

[CGD 79-011]

Realignment of MIO/COTP Boundaries, Second and Ninth Coast Guard Districts

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: These amendments realign the boundaries of the Marine Inspection Zones and Captain of the Port Zones in the Second and Ninth Coast Guard Districts. These amendments also create

new Marine Inspection Offices in Milwaukee and Sturgeon Bay, Wisconsin; a new Captain of the Port Office in Sturgeon Bay; and reflect the moving of the Marine Inspection Office and Captain of the Port Office from Dubuque, Iowa to Minneapolis/St. Paul, Minnesota. These changes will facilitate more effective use of Coast Guard resources and enable the Second and Ninth Districts to accomplish their marine safety missions more efficiently.

EFFECTIVE DATE: These amendments are effective on June 25, 1979.

FOR FURTHER INFORMATION CONTACT: Lieutenant (jg) George W. Molessa, Jr., Office of Marine Environment and Systems (G-WLE-4/73), Room 7315, Department of Transportation, Nassif Building, Washington, D.C. 20590, (202) 426-4958.

SUPPLEMENTARY INFORMATION: Since these amendments are related to agency organization, they are exempt from the notice of proposed rulemaking requirements in 5 U.S.C. 553(b)(3)(A). Since these amendments are not substantive they may be made effective in less than 30 days after publication in the Federal Register under 5 U.S.C. 553(d)(2).

The Coast Guard has determined that, in accordance with the Department of Transportation's notice entitled "Improving Government Regulations" (44 FR 11034), these amendments are not significant and do not warrant a full evaluation. This determination is predicated upon the fact that the boundary changes impose no additional burdens or substantive requirements upon the general public. They merely unify and consolidate areas of Coast Guard jurisdiction so as to eliminate confusion and allow the Coast Guard to more effectively serve the public.

Drafting Information

The principal persons involved in the drafting of this regulation are: Lieutenant (jg) George W. Molessa, Jr., Project Manager, Office of Marine Environment and Systems, and Lieutenant Jack Orchard, Project Attorney, Office of the Chief Counsel.

PART 3—COAST GUARD AREAS, DISTRICTS, MARINE INSPECTION ZONES, AND CAPTAIN OF THE PORT ZONES

In consideration of the foregoing, Part 3 of Chapter I, Title 33 of the Code of Federal Regulations is amended as follows:

1. Section 3.10-10 is amended to read as follows:

§ 3.10-10 St. Louis Marine Inspection Zone and Captain of the Port Zone.

(a) The St. Louis Marine Inspection Office and the St. Louis Captain of the Port Office are located in St. Louis, Missouri.

(b) The St. Louis Marine Inspection Zone and the St. Louis Captain of the Port Zone are comprised of: Wyoming; Colorado; Kansas; Nebraska; in South Dakota: Gregory, Charles Mix, Douglas, Hutchinson, Bon Homme, Yankton, Turner, Clay, Lincoln, and Union Counties; in Arkansas: Boone, Imarion, Baxter, and Fulton Counties; all of Missouri except for Scotland, Clark, Cape Girardeau, Bollinger, Scott, Stoddard, Mississippi, New Madrid, Dunklin, and Pemiscot Counties; that part of Iowa west of Emmet, Palo Alto, Pocahontas, Calhoun, Greene, Guthrie, Adair, Union, and Ringgold Counties; and that part of Illinois north of Union and Johnson Counties, west of Saline, Hamilton, Wayne, Clay, Jasper, Cumberland, Coles, Douglas, Champaign, and Ford Counties, and south of 41° N. latitude, excluding Warren and Henderson Counties and that part of Hancock County north of 40°15′ N. latitude (but including all of Knox County).

2. Section 3.10-15 is amended to read as follows:

§ 3.10-15 Paducah Marine Inspection Zone and Captain of the Port Zone.

(a) The Paducah Marine Inspection Office and the Paducah Captain of the Port Office are located in Paducah, Kentucky.

(b) The Paducah Marine Inspection Zone and the Paducah Captain of the Port Zone are comprised of: In Missouri: Cape Girardeau, Bollinger, Scott, Stoddard, Mississippi, New Madrid, Dunklin, and Pemiscot Counties; in Illinois: Union, Johnson, Pope, Hardin, Alexander, Pulaski, and Massac Counties; in Kentucky: Fulton, Hickman, Carlisle, Ballard, McCracken, Graves, Calloway, Marshall, Livingston, Lyon, Trigg, Crittenden, Caldwell, and Christian Counties, and that part of Union County south of a line drawn from the point of intersection of Gallatin and Hardin Counties and the Ohio River to the point of intersection of Union, Webster, and Henderson Counties; and in Tennessee: Lake Obion, Weakley, Henry, Stewart, and Gibson Counties, and that part of Dyer County north of 36° N. latitude.

3. Section 3.10-20 is amended to read as follows:

§ 3.10-20 Cincinnati Marine Inspection Zone and Captain of the Port Zone.

(a) The Cincinnati Marine Inspection Office and the Cincinnati Captain of the Port Office are located in Cincinnati, Ohio.

(b) The Cincinnati Marine Inspection Zone and the Cincinnati Captain of the Port Zone are comprised of: In Indiana: Ranklin, Ripley, Dearborn, Ohio, and Switzerland Counties; in Kentucky: Montgomery, Bath, Rowan, Bourbon, Nicholas, Fleming, Harrison, Robertson, Mason, Grant, Pendleton, Bracken, Gallatin, Boone, Kenton, and Campbell Counties, that part of Lewis County south and west of a line drawn from the point of intersection of Scioto and Adams Counties and the Ohio River to the point of intersection of Carter, Greenup, and Lewis Counties, and that part of Carroll County east of a line drawn from the point of intersection of Jefferson and Switzerland Counties and the Ohio River to the point of intersection of Carroll, Owen, and Henry Counties; and that part of Ohio south of 41° N. latitude and west of Ashland, Knox, Licking, Fairfield, Pickaway, Ross, Pike, and Scioto Counties.

4. Section 3.10-25 is amended to read as follows:

§ 3.10-25 Minneapolis/St. Paul Marine Inspection Zone and Captain of the Port Zone.

(a) The Minneapolis/St. Paul Marine Inspection Office and the Minneapolis/St. Paul Captain of the Port Office are located in St. Paul, Minnesota.

(b) The Minneapolis/St. Paul Marine Inspection Zone and the Minneapolis/St. Paul Captain of the Port Zone are comprised of: North Dakota; all of South Dakota except for Gregory, Charles Mix, Douglas, Hutchinson, Bon Homme, Yankton, Turner, Clay, Lincoln, and Union Counties; that part of Minnesota south of 46°20′ N. latitude; that part of Wisconsin south of 46°20′ N. latitude and west of 90° W. longitude; that part of Iowa east of Dickinson, Clay, Buena Vista, Sac, Carroll, Audubon, Cass, Adams, and Taylor Counties; in Missouri: Scotland and Clark Counties; and that part of Illinois north of 40°15′ N. latitude and west of 90° W. longitude, excluding Knox, Fulton, McDonough, Schuyler, and Mason Counties.

5. Section 3.10-30 is amended to read as follows:

§ 3.10-30 Huntington Marine Inspection Zone and Captain of the Port Zone.

(a) The Huntington Marine Inspection Office and the Huntington Captain of

the Port Office are located in Huntington, West Virginia.

(b) The Huntington Marine Inspection Zone and the Huntington Captain of the Port Zone are comprised of: All of West Virginia except for Preston, Monongalia, Marion, Marshall, Ohio, Brooke, and Hancock Counties; in Ohio: Wayne, Holmes, Knox, Cushocton, Licking, Muskingum, Guernsey, Noble, Fairfield, Perry, Morgan, Pickaway, Ross, Hocking, Vinton, Athens, Washington, Pike, Jackson, Gallia, Meigs, Scioto, and Lawrence Counties, those parts of Ashland and Medina Counties south of 41° N. latitude, and that part of Monroe County south and west of a line drawn from the point of intersection of Marshall and Wetzel Counties and the Ohio River to the point of intersection of Belmont, Noble, and Monroe Counties; and in Kentucky: Letcher, Perry, Owsley, Breathitt, Knott, Pike, Floyd, Magoffin, Wolfe, Menifee, Morgan, Johnson, Martin, Lawrence, Elliott, Boyd, Carter, and Greenup Counties, and that part of Lewis County north and east of a line drawn from the point of intersection of Scioto and Adams Counties and the Ohio River to the point of intersection of Carter, Greenup, and Lewis Counties.

6. Section 3.10–35 is amended to read as follows:

§ 3.10–35 Louisville Marine Inspection Zone and Captain of the Port Zone.

(a) The Louisville Marine Inspection Office and the Louisville Captain of the Port Office are located in Louisville, Kentucky.

(b) The Louisville Marine Inspection Zone and the Louisville Captain of the Port Zone are comprised of: that part of Indiana south of 41° N. latitude, except of Ranklin, Ripley, Dearborn, Ohio, and Switzerland Counties; that part of Illinois north of Pope and Hardin Counties, east of Williamson, Franklin, Jefferson, Marion, Fayette, Effingham, Shelby, Moultrie, Piatt, McLean, and Livingston Counties, and south of 41° N. latitude; and in Kentucky: Todd, Logan, Simpson, Allen, Warren, Barren, Metcalfe, Muhlenberg, Butler, Edmonson, Hart, Green, Taylor, Adair, Casey, Lincoln, Webster, Hopkins, McLean, Ohio, Grayson, Henderson, Daviess, Hancock, Breckinridge, Meade, Hardin, Larue, Nelson, Washington, Marion, Anderson, Mercer, Boyle, Woodford, Jessamine, Garrard, Fayette, Clark, Madison, Estill, Powell, Lee, Bullitt, Spencer, Jefferson, Shelby, Franklin, Scott, Oldham, Henry, Owen, and Trimble Counties, that part of Carroll County west of a line drawn from the point of intersection of Jefferson and Switzerland Counties and the Ohio River to the point of intersection of Carroll, Owen, and Henry Counties, and that part of Union County north of a line drawn from the point of intersection of Gallatin and Hardin Counties and the Ohio River to the point of intersection of Union, Webster, and Henderson Counties.

7. Section 3.10–40 is amended to read as follows:

§ 3.10–40 Memphis Marine Inspection Zone and Captain of the Port Zone.

(a) The Memphis Marine Inspection Office and the Memphis Captain of the Port Office are located in Memphis, Tennessee.

(b) The Memphis Marine Inspection Zone and the Memphis Captain of the Port Zone are comprised of: Oklahoma; all of Arkansas except for Boone, Imarion, Baxter, and Fulton Counties; in Tennessee: Shelby, Fayette, Hardeman, Tipton, Haywood, Lauderdale, and Crockett Counties, and that part of Dyer County south of 36° N. latitude; and in Mississippi: DeSoto, Marshall, Benton, Tippah, Tunica, Tate, Coahoma, Quitman, Panola, Lafayette, Union, Pontotoc, Lee, Bolivar, Washington, Sunflower, Tallahatchie, Leflore, Yalobusha, Grenada, Calhoun, and Chickasaw Counties.

8. Section 3.10–45 is amended to read as follows:

§ 3.10–45 Nashville Marine Inspection Zone and Captain of the Port Zone.

(a) The Nashville Marine Inspection Office and the Nashville Captain of the Port Office are located in Nashville, Tennessee.

(b) The Nashville Marine Inspection Zone and the Nashville Captain of the Port Zone are comprised of: That part of Alabama north of 34° N. latitude; in Kentucky: Monroe, Cumberland, Clinton, Russell, Wayne, McCleary, Pulaski, Whitley, Laurel, Rockcastle, Bell, Knox, Jackson, Clay, Leslie, and Harlan Counties; all of Tennessee except for Stewart, Henry, Weakley, Obion, Lake, Dyer, Gibson, Crockett, Lauderdale, Haywood, Tipton, Hardeman, Fayette, and Shelby Counties; and in Mississippi: Alcorn, Prentiss, and Tishomingo Counties except for that portion of the Tennessee-Tombigbee Waterway south of the Bay Springs Lock and Dam.

9. Section 3.10–50 is amended to read as follows:

§ 3.10–50 Pittsburgh Marine Inspection Zone and Captain of the Port Zone.

(a) The Pittsburgh Marine Inspection Office and the Pittsburgh Captain of the Port Office are located in Pittsburgh, Pennsylvania.

(b) The Pittsburgh Marine Inspection Zone and the Pittsburgh Captain of the Port Zone are comprised of: that part of Pennsylvania south of 41° N. latitude and west of 79° W. longitude; in West Virginia: Preston, Monongalia, Marion, Marshall, Ohio, Brooke, and Hancock Counties; and in Ohio: Stark, Columbiana, Tuscarawas, Carroll, Harrison, Jefferson, and Belmont Counties, those parts of Summit, Portage, and Mahoning Counties south of 41° N. latitude, and that part of Monroe County north and east of a line drawn from the point of intersection of Marshall and Wetzel Counties and the Ohio River to the point of intersection of Belmont, Nobile, and Monroe Counties.

§§ 3.10–55, 3.10–60, 3.10–65, 3.10–70, 3.10–75, 3.10–80, 3.10–85, 3.10–90, 3.10–95 [Deleted]

10. Sections 3.10–55, 3.10–60, 3.10–65, 3.10–70, 3.10–75, 3.10–80, 3.10–85, 3.10–90 and 3.10–95 are deleted.

11. Section 3.45–5 is amended to read as follows:

§ 3.45–5 Cleveland Marine Inspection Zone and Captain of the Port Zone.

(a) The Cleveland Marine Inspection Office and the Cleveland Captain of the Port Office are located in Cleveland, Ohio.

(b) The Cleveland Marine Inspection Zone and Captain of the Port Zone include all navigable waters of the United States and contiguous land areas within the following boundaries: From the international boundary in Lake Erie at longitude 82° 25' W.; thence due south to latitude 41° N.; thence due east longitude 81° W.; thence due north to the international boundary; thence southwesterly along the international boundary to the starting point.

(c) Notwithstanding paragraph (b) of this section and § 3.10–50(b), factory inspections at the towns of Alliance and Sebring, Ohio, are conducted by marine inspectors from the Cleveland Marine Inspection Office rather than from the Pittsburgh Marine Inspection Office.

12. Section 3.45–10 is amended to read as follows:

§ 3.45–10 Buffalo Marine Inspection Zone and Captain of the Port Zone.

(a) The buffalo Marine Inspection Office and the Buffalo Captain of the Port Office are located in Buffalo, New York.

(b) The Buffalo Marine Inspection Zone and Captain of the Port Zone include all navigable waters of the United States and contiguous land areas

within the following boundaries: From the international boundary in Lake Erie at longitude 81° W.; thence due south to latitude 41° N.; thence due east to longitude 78° 55′ W.; thence due north to latitude 42° N.; thence due east to longitude 74° 39′ W.; thence due north to the international boundary; thence southeasterly along the international boundary to the starting point.

13. Section 3.45–15 is amended to read as follows:

§ 3.45–15 Chicago Marine Inspection Zone.

(a) The Chicago Marine Inspection Office is located in Chicago, Illinois.

(b) The Chicago Marine Inspection Zone includes those parts of Michigan, Indiana, Ohio, and Illinois within the following boundaries: From the Illinois-Wisconsin boundary at longitude 90° W.; thence due east to longitude 87° W.; thence due north to latitude 44°15′ N.; thence northeasterly to latitude 44°43′ N., longitude 86°40′ W.; thence due east to longitude 84°30′ W.; thence due south to latitude 41° N.; thence due west to longitude 90° W.; thence due north to the starting point.

14. Section 3.45–20 is amended to read as follows:

§ 3.45–20 Detroit Marine Inspection Zone and Captain of the Port Zone.

(a) The Detroit Marine Inspection Office and the Detroit Captain of the Port Office are located in Detroit, Michigan.

(b) The Detroit Marine Inspection Zone and Captain of the Port Zone include all navigable waters of the United States and contiguous land areas within the following boundaries: From latitdue 42° N., longitude 84°30′W.; thence due east to the international boundary; thence northerly along the international boundaries to latitude 44°43′ N.; thence due west to longitude 84°30′ W.; thence due south to the starting point.

15. Section 3.45–25 is amended to read as follows:

§ 3.45–25 Duluth Marine Inspection Zone and Captain of Port Zone.

(a) The Duluth Marine Inspection Office and the Duluth Captain of the Port Office are located in Duluth, Minnesota.

(b) The boundary of the Duluth Marine Inspection Zone and Captain of the Port Zone starts at the intersection of the Minnesota-North Dakota boundary and the international boundary; thence southerly along the Minnesota-North Dakota boundary to latitude 46°20′ N.; thence due east to longitude 88°30′ W.; thence northeasterly to the shore of Lake Superior at longitude 87°45′ W.; thence northerly to Manitou Island Light, located at latitude 47°25′ N., longitude 87°35′ W.;thence due north to the international boundary at longitude 87°35′ W.; thence westerly along the international boundary to the starting point.

16. Section 3.45–30 is added to read as follows:

§ 3.45–30 Milwaukee Marine Inspection Zone and Captain of the Port Zone.

(a) The Milwaukee Marine Inspection Office and the Milwaukee Captain of the Port Office are located in Milwaukee, Wisconsin.

(b) The boundary of the Milwaukee Marine Inspection Zone and Captain of the Port Zone starts at the Illinois-Wisconsin boundary at longitude 90° W.; thence due east to longitude 87° W.; thence due north to latitude 43°52′36″ N.; thence due west to longitude 88°02′24″ W.; thence due north to latitude 44°16′20″ N.; thence due west to longitude 90° W.; thence due south to the starting point.

17. Section 3.45–35 is added to read as follows:

§ 3.45–35 Sturgeon Bay Marine Inspection Zone and Captain of the Port Zone.

(a) The Sturgeon Bay Marine Inspection Office and the Sturgeon Bay Captain of the Port Office are located in Sturgeon Bay, Wisconsin.

(b) The boundary of the Sturgeon Bay Marine Inspection Zone and Captain of the Port Zone starts at latitude 46°20′ N.; longitude 90° W.; thence due south to latitude 44°16′20″ N.; thence due east to longitude 88°02′24″ W.; thence due south to latitude 43°52′36″ N.; thence due east to longitude 87° W.; thence due north to latitude 44°15′ N.; thence northeasterly to latitude 44°43′ N., longitude 86°40′ W.; thence due north to latitude 45°27′ N.; thence due west to longitude 88°30′ W.; thence due north to latitude 46°20′ N.; thence due west to the starting point.

18. Section 3.45–45 is amended to read as follows:

§ 3.45–45 St. Ignace Marine Inspection Zone and Sault Ste. Marie Captain of the Port Zone.

(a) The St. Ignace Marine Inspection Office is located in St. Ignace, Michigan. The Sault Ste. Marie Captain of the Port Office is located in Sault Ste. Marie, Michigan.

(b) The boundary of the St. Ignace Marine Inspection Zone and the Sault Ste. Marie Captain of the Port Zone starts at the international boundary at latitude 44°43′ N.; thence due west to longitude 86°40′ W.; thence due north to latitude 45°27′ N.; thence due west to longitude 88°30′ W.; thence due north to latitude 46°20′ N.; thence northeasterly to the shore of Lake superior at longitude 87°45′ W.; thence northerly to Manitou Island Light, located at latitude 47°25′ N., longitude 87°35′ W.; thence due north to the international boundary at longitude 87°35′ W.; thence southeasterly along the international boundary to the starting point.

19. Section 3.45–50 is amended to read as follows:

§ 3.45–50 Toledo Marine Inspection Zone and Captain of the Port Zone.

(a) The Toledo Marine Inspection Office and the Toledo Captain of the Port Office are located in Toledo, Ohio.

(b) the Toledo Marine Inspection Zone and Captain of the Port Zone include all navigable waters of the United states and contiguous land areas within the following boundaries: From latitude 42° N.; longitude 84°30′ W.; thence due south to latitude 41° N.; thence due east to longitude 82°25′ W.; thence due north to the international boundary in Lake Erie; thence northwesterly along the international boundary to latitude 42° N.; thence due west to the starting point.

§§ 3.45–55, 3.45–65, 3.45–70, 3.45–75, 3.45–85, 3.45–95 and 3.45–97 [Deleted]

20. Sections 3.45–55, 3.45–65, 3.45–70, 3.45–75, 3.45–85, 3.45–95, and 3.45–97 are deleted.

(5 U.S.C. 552; 14 U.S.C. 633; 80 Stat. 937 (49 U.S.C. 1655(b)(1)); 49 CFR 1.46)

Dated: June 4, 1979.

R. H. Scarborough,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

[FR Doc. 79-18115 Filed 6-8-79; 8:45 am]

BILLING CODE 4910-14-M

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

Seaway Regulations; Navigation Season Closing Procedures

AGENCY: Saint Lawrence Seaway Development Corporation.

ACTION: Final rule.

SUMMARY: The Saint Lawrence Seaway Development Corporation and its counterpart Canadian agency the St. Lawrence Seaway Authority in an effort to prevent a recurrence of vessel traffic congestion conditions which in past years have occurred during the closing

of the navigation season on the Montreal-Lake Ontario section of the St. Lawrence Seaway formalize exiting procedures designed to encourage the timely and orderly exit of vessels prior to the close of navigation. In the United States, this will be accomplished by the addition of two new sections to subpart A of 33 CFR Part 401.

EFFECTIVE DATE: June 11, 1979.

FOR FURTHER INFORMATION CONTACT: Frederick A. Bush, General Counsel, Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York 13662.

SUPPLEMENTARY INFORMATION:

Background

On March 5, 1979, the Saint Lawrence Seaway Development Corporation published in the **Federal Register** (44 FR 12065) proposed additional sections of the Seaway Regulations which would incorporate into those regulations existing navigation season closing procedures and requested public comment on the proposed sections. These procedures were developed during the 1978 navigation season in conjunction with the Canadian Seaway Authority and representatives of affected segments of the shipping industry. These procedures were implemented for 1978 by means of Seaway Notice Affecting Navigation, No. 20 of 1978 which was distributed to mariners beginning August 1, 1978 and published in the October 30, 1978 **Federal Register** (43 FR 50530).

Comments

Only four comments were received in response to the notice of proposed rulemaking; two from the United States and two from Canada.

Both of the comments from the United States were from parties to whom the proposed regulations would not be directly applicable. One comment fully endorsed the proposed regulations and urged a specific date as that which should be designated by the Seaway entities as the 1979 clearance date. The other objected in principle to the procedures but offered no alternative means of effectively addressing the problem of vessels which elect to ignore established clearance dates.

The two Canadian commentors both supported the proposed regulations but offered specific comments on particular sections. The extent to which these comments and others which were communicated to the Canadian Seaway Authority were incorporated into the final regulations is reflected in the Explanation of Changes detailed below.

Other changes which were suggested were considered by the Seaway entities but not adopted. It was felt that these changes would for the most part complicate the closing procedures without contributing significantly to their effectiveness.

Explanation of Changes

Section 401.95(c) The word "upbound" has been dropped from the first sentence of this definition so that it clearly applies to all vessels as was originally intended.

Section 401.96(b) This section was modified slightly to provide that the date upon which vessels are to begin reporting changes in destinations will be designated annually by the Seaway Corporation and the Canadian Seaway Authority.

Section 401.96(e)(3) This is a new subsection which was added as the result of comments which raised questions about the actual payment of the operational surcharge in those cases where post-clearance date transit may be permitted. The new subsection specifies that the surcharge must be furnished when the vessel is accepted for transit and that the surcharge will be calculated as of that time.

Section 401.96(f) In direct response to the comments received, the Seaway entities agreed to amend the regulations to provide that minimum power and draft requirements would be announced at least thirty days prior to the beginning of the closing period rather than 24 hours prior to such requirements becoming effective. The final regulations provide that further restrictions may be imposed upon 24 hours notice should conditions warrant.

Section 401.96(g) This section was added at the request of the vessel industry to establish clearly that in the event of extreme circumstances the Seaway entities may modify or waive the established closing procedures. It is emphasized that this will not take place on a vessel-by-vessel basis.

The Seaway Corporation has determined that the formalization of existing joint U.S.-Canadian navigation season closing procedures should not result in any added cost to or impact on the private sector, consumers, or Federal, State and local governments. The expected impact of this regulation is therefore such that it is not considered significant for the purposes of the Department of Transportation's Regulatory Policies and Procedures (44 FR 11034).

As these amendments will not require any immediate action by interested parties but do require the preparation and distribution of advisory notices to mariners by the Seaway Corporation and the Canadian Seaway Authority, good cause exists for making them effective upon publication. Therefore Part 401 Chapter IV of Title 33, Code of Federal Regulations is amended to include the following new §§ 401.95 and 401.96:

§ 401.95 Definitions.

In § 401.96:

(a) "Closing date" means that date and time when facilities are closed to commercial vessels at the end of the navigation period;

(b) "Closing period" means a period immediately preceding the closing date;

(c) "Clearance date" means that date and time designated annually by the Authority and the Corporation by which vessels must report for final transit in the Montreal-Lake Ontario section of the Seaway. Upbound vessels must report at Cape St. Michel and downbound vessels must report at Cape Vincent;

(d) "Montreal-Lake Ontario section of the Seaway" means that portion of the Seaway between the Port of Montreal and mid-Lake Ontario which includes traffic control sector numbers 1 through 4.

401.96 Closing procedures.

During the closing period prior to the closing date, the following procedures shall be followed by and be applicable to all vessels transiting the Montreal-Lake Ontario section of the Seaway:

(a) A clearance date will be jointly designated annually by the Authority and the Corporation for the Montreal-Lake Ontario section of the Seaway. This clearance date will specify the date and time that both upbound and downbound vessels must have reported at the designated call-in points set forth in paragraph (d) of this section.

(b) Each vessel, upon entering the Montreal-Lake Ontario section of the Seaway or departing upbound from a port, dock, wharf or anchorage in this section of the Seaway, will report to the appropriate vessel traffic control center the furthermost destination of its voyage along with all intermediate destinations within the Montreal-Lake Ontario section of the Seaway. Each vessel will immediately advise the nearest vessel traffic control center of any change in the reported destinations. The date to commence reporting will be annually designated by the Authority and the Corporation.

(c) No upbound vessels will transit the Montreal-Lake Ontario section of the Seaway after a date designated annually prior to the clearance date if its

final upbound destination is further upbound than Port Colborne unless it offers assurances satisfactory to both the Authority and the Corporation that it will not present itself for downbound transit through the Montreal-Lake Ontario section of the Seaway during the remainder of the navigation period.

(d) Upbound vessels which have reported at Cape St. Michel by the clearance date and downbound vessels which have reported at Cape Vincent by the clearance date will be cleared through the system, operational conditions permitting.

(e)(1) Vessels which have not reported at the call-in points designated above by the clearance date may be allowed to transit if, in the judgment of the Authority and the Corporation, such transits can be permitted. Each vessel which is permitted such post-clearance date transit will pay an operational surcharge as follows:

(i) Vessels reporting during the 24 hour period immediately following the clearance date: $20,000

(ii) Vessels reporting more than 24 hours late, but less than 48 hours after the clearance date: $40,000

(iii) Vessels reporting more than 48 hours late, but less than 72 hours after the clearance date: $60,000

(iv) Vessels reporting more than 72 hours late: $80,000

(2) Assessed operational surcharges will be prorated on a per lock basis. Surcharges representing transit through U.S. locks will be for the account of the Corporation and payable in U.S. funds and surcharges representing transit through Canadian locks will be for the account of the Authority and payable in Canadian funds.

(3) Vessels which are allowed either upbound or downbound transit privileges in the Montreal-Lake Ontario section of the Seaway after the clearance date must furnish the applicable surcharge before being accepted for such transit. If a vessel is accepted for post-clearance date transit, the applicable surcharge will be calculated from the clearance date to the time the vessel is accepted for such transit.

(f) Because of the unique ice conditions frequently encountered in the St. Lamber-Iroquois segment of the Montreal-Lake Ontario section of the Seaway, minimum vessel power and draft requirements will be in effect during the closing period. The effective date and the requirements will be announced as early as practical but in no case later than 30 days prior to the beginning of the closing period. However, should conditions warrant, further restrictions may be imposed upon 24 hours notice.

(g) The provisions in paragraphs (a) through (f) of this section will not be adjusted or waived except as a result of extreme circumstances over which the Seaway entities have no control and which could not have reasonably been foreseen at the time applicable dates were established. Inclement weather, pilotage delays and vessels queues which occur at the end of the navigation period do not meet the requirements of this section. In any event, adjustments will not be made on a vessel-by-vessel basis.

(68 Stat. 92-97, 33 USC 981-990, as amended and Sec. 104, P.L. 95-474, Sec. 2, 92 Stat. 1472)

Issued at Washington, D.C. on June 1, 1979.

Saint Lawrence Seaway Development Corporation.

D. W. Oberlin,

Administrator.

[FR Doc. 79-17770 Filed 6-8-79; 8:45 am]

BILLING CODE 4910-61-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY AND NATIONAL SECURITY COUNCIL

47 CFR Parts 201 and 202

Telecommunications Emergency Preparedness

AGENCY: Office of Science and Technology Policy.

ACTION: Codification of Telecommunications Preparedness Policy and Planning Precepts.

SUMMARY: Executive Order 12046 (43 FR 13349 *et seq*, March 27, 1978) transferred certain functions with respect to telecommunications emergency preparedness to the National Security Council (NSC) and the Office of Science and Technology Policy (OSTP). Parts 201 and 202 to Chapter II, 47 CFR codify Executive policy and planning precepts and delegated responsibilities with respect to telecommunications emergency preparedness.

EFFECTIVE DATE: June 11, 1979.

FOR FURTHER INFORMATION CONTACT: Wayne G. Kay, 395-3272.

1. Part 201 is added to Chapter II of Title 47 to read as set forth below:

PART 201—EXECUTIVE POLICY AND RESPONSIBILITIES

Sec.

201.0 Background.
201.1 Authority.
201.2 Definitions.
201.3 Policy.
201.4 Responsibilities.

Authority: The provisions of this Part 201 issued under 61 Stat. 496, 69 Stat. 579 and E.O. 12046, 43 FR 13369, 50 U.S.C. 401 et seq.

§ 201.0 Background.

(a) National policy with respect to the conservation, allocation, and use of the Nation's resources during a general war emergency, including nuclear attack upon the United States (hereinafter referred to as a national emergency), is set forth in the National Plan for Emergency Preparedness, developed within the Executive Office of the President in 1963 and revised in 1964. Successor Administrations have retained and endorsed the plan as the basic official national policy document.

(b) Chapter 7 of the plan (Telecommunications) sets forth substantive policy guidance for Federal, State, and local government emergency preparedness planning and establishes the interrelationship of levels of government with respect to development and execution of emergency preparedness plans.

(c) Following parts of this chapter will address specific responsibilities with respect to management of telecommunications resources and related procedures which bear upon provision, restoration, and continuity of communications services during a national emergency.

§ 201.1 Authority.

(a) Authorities and responsibilities related to and bearing upon national security and emergency preparedness telecommunications matters are set forth in:

(1) The Communications Act of 1934 (48 Stat. 1104, 47 CFR 606), as amended.

(2) The National Security Act of 1947 (61 Stat. 496, 50 CFR 402), as amended by the National Security Act Amendments of 1949 (63 Stat. 579, 50 CFR 401 et seq.)

(3) The Presidential Memorandum of August 21, 1963, "Establishment of a National Communications System" (28 FR 9413, 3 CFR 1959-1963 comp., page 858).

(4) The Disaster Relief Act of 1974 (42 CFR 5121 et seq.)

(5) The National Science and Technology Policy, Organization, and Priorities Act of 1976 (90 Stat. 463, 42 CFR 6611).

(6) Executive Order 12046, "Relating to the Transfer of Telecommunications Functions," March 27, 1978, (43 FR 13349 et seq.)

(b) Authorities to be exercised in the execution and performance of emergency functions are subject to the

provisions of the National Emergencies Act of 1976 (90 Stat. 1255, 50 CFR 1601).

§ 201.2 Definitions.

The following definitions apply herein:

(a) "Telecommunications" means any transmission, emission, or reception of signs, signals, writing, images, graphics, and sounds or intelligence of any nature by wire, radio, optical, or other electromagnetic systems.

(b) "Telecommunications resources" include telecommunications personnel, equipment, material, facilities, systems, and services, public and private, wheresoever located within the jurisdiction of the United States.

(c) "Communications common carrier", "specialized carrier", or "carrier" means any individual, partnership, association, joint stock company, trust, or corporation subject to Federal or State regulation engaged in provided telecommunications facilities or services, for use by the public, for hire.

(d) "Government" means Federal, State, county, municipal, and other local government authority. Specific qualification will be provided whenever reference to a particular level of government is intended.

(e) "Private sector" means those sectors of nongovernment entities engaged in private enterprise, public services, and the general public, as users of telecommunications services.

(f) "National priorities" means those essential actions and activities in which the government and the private sector must become engaged in the interests of national survival and recovery.

(g) "The National Communications System (NCS)" means that system which was established by Presidential Memorandum of August 21, 1963, "Establishment of a National Communications System." It is a confederative arrangement in which certain Federal agencies participate with their owned and leased telecommunications assets to provide necessary communications services for the Federal Government, under all conditions, including nuclear war.

§ 201.3 Policy.

(a) The Federal Government is basically responsible for resources mobilization, including determination of the need for and the extent of mobilization necessary in all national emergencies.

(b) In an immediate postattack period all decisions regarding the use of resources will be directed to the objective of national survival and recovery. In order to achieve this objective, postattack resources will be assigned to activities concerned with the maintenance and saving of lives, immediate military defense, and economic activities essential to continued economic survival and recovery.

(c) The President is authorized, if he finds it necessary in the interest of national defense and security, to direct that such telecommunications, as in his judgment may be essential, shall have precedence or priority with any carrier subject to the Communications Act of 1934, as amended. The President may give these directions at and for such times as he may determine, and may modify, change, suspend, or annul them, and for any such purpose, is authorized to issue orders directly, or through such person or persons designated for the purpose, or through the Federal Communications Commission.

(d) Federal, State, and local governments are to share the responsibility for conservation of the Nation's telecommunications resources. Although the President has responsibility for establishing national objectives, local conditions and relative urgency would determine the order and level of precedence within priorities.

(1) The achievement of survival and recovery would establish an unavoidable interdependence between and among Federal, State, and local authorities; therefore, there should be no barriers between these levels of authorities which would impede, obstruct, or otherwise hinder effective conservation and equitable allocation of resource and services to the needs of the Nation.

(2) The Federal Government will rely upon State governments and their telecommunications management organizations for management or control of intrastate carrier services and continuity of interconnectivity with interstate carriers to assure that national objectives and priorities are properly served.

(e) There will be a central authority within the Federal Government to control, coordinate, and direct the activities of the Nation's telecommunications facilities, systems, and services.

(f) Telecommunications resources of the Federal Government will be employed, as required, to best serve the continuity of government and national interests.

(g) A system of communications services priorities will be established which will facilitate early restoration of services considered vital to national interests.

(h) There will be a precedence system for the expeditious handling of telephone calls, messages, and data transmission via government and public correspondence facilites.

(i) Federal agencies will, in the development of emergency operational plans, minimize, to the extent feasible, dependence upon telecommunications services for continuity of essential operations.

§ 201.4 Responsibilities.

Executive responsibilities with respect to emergency preparedness and readiness in telecommunications matters are established and assigned as follows:

(a) The National Security Council (NSC).

(1) Coordinating the development of policy, plans, programs, and standards for the mobilization and use of the Nation's telecommunications resources in any emergency.

(2) Preparation of Presidential policy options concerning the development of the National Communications System (NCS).

(b) The Director, Office of Science and Technology Policy (OSTP).

(1) Preparation of Presidential policy options with respect to the evaluation of existing and planned communications systems to meet national security and emergency preparedness requirements in the provision of essential communications services.

2. Part 202 is added to Chapter II of Title 47 to read as set forth below:

PART 202—EMERGENCY PREPAREDNESS PLANNING AND EXECUTION

Sec.
202.0 Objectives.
202.1 Policies.
202.2 Criteria and guidance.
202.3 Plans preparation and execution.

Authority.— The provisions of this Part 202 issued under 61 Stat. 496, 63 Stat. 579 and E.O. 12046, 43 FR 13353, 50 U.S.C. 401 et seq.

§ 202.0 Objectives.

In the event of a general war and attack upon the Nation a national telecommunications services capability must exist to support critical needs and functions with respect to national security, survival, and recovery. Emergency preparedness must provide for, among other things:

(a) A radio and television broadcasting capability for the President to address the people of the Nation and for State and local authorities to inform,

instruct, and direct jurisdictional populaces in civil defense matters.

(b) A central mechanism to control, coordinate, and direct the activities of the various telecommunications facilities, systems, and services.

(c) Emergency programs for the most efficient use of surviving telecommunications resources and plans for establishing or activating vital emergency telecommunications facilities, systems, and services with minimum delay.

(d) Procedures for management of telecommunications resources including controlled restoration of services to assure that most vital and critical services are afforded precedence.

(e) A central mechanism to guide and assist in long range planning for reconstitution of the Nation's telecommunications systems in the postattack period.

(f) Survivability of essential telecommunications feasible within the constraints of justifiable costs.

(g) A capability to accomplish rapid damage assessment and decision making with respect to residual resources.

(h) Technical compatibility of signaling methods, transmission modes, switching facilities, and terminal devices to permit interexchange of communications over the surviving media of all systems, government or commerical.

(i) Plans for succession of positions of authority throughout government and industry.

§ 202.1 Policies.

(a) The telecommunications resources of the Nation will be available for use government during a national emergency and to satisfy the needs of public welfare and safety. There will be a single point of authority within the Federal Government with respect to the allocation and use of suviving resources in support of national objectives enunciated by the President. Authority may be redelegated as necessary and when it can be exercised within boundaries established by Presidential authority.

(b) Facilities management will remain decentralized to the extent feasible to assure continued flexibility of operational response to critical needs, subject to the management direction and overriding authority of those officials delegated to act for and with the consent of the central point of authority within the Federal Government.

(1) Federally owned, leased, and/or operated telecommunications facilities, systems, and networks will be managed during an emergency by the agency normally controlling the facility, system, or network except that all operations will be subject to the management direction and authority of the officials delegated overall management responsibility for Federal Government systems.

(2) Facilities other than those of the Federal Government, with the exception of radio stations in the Aviation Services and certain classes of radio stations in the Maritime Services, will be managed by the common carrier licensee or other person owning and operating such facilities, subject to Federal Communications Commission (FCC) guidance and direction or in accordance with State or local plans if an intrastate licensee.

(3) Radio stations in the Aviation Services and those aboard vessels in the Maritime Service will be subject to the control of the Secretary of Defense during a national emergency.

(c) Radio frequency utilization during a national emergency will be in accordance with authorizations, assignments, and mobilization plans in existence at the onset of the emergency subject to the overriding control of the central point of authority in the Federal Government for telecommunications matters.

(d) Radio stations are subject to closure if considered a threat to national security.

(e) Section 606 of the Communications Act of 1934, as amended, confers authority to the President in the matter of suspension of all rules and regulations pertaining to the use and operation of telecommunications facilities, public or private. That authority would be exercised only if such action were clearly required by national interest and after all reasonable alternatives had been examined and deemed inadequate.

§ 202.2 Criteria and guidance.

Emergency preparedness planning in government and industry with respect to effective conservation and use of surviving telecommunications resources in a postattack period must provide for orderly and uninhibited restoration of intercity services by the carriers and authoritative control of services allocation which will assure that precedence will be afforded the most critical needs of government and the private sector with respect to these objectives.

(a) The preservation of the integrity of characteristics and capabilities of the Nation's telecommunications systems and networks during a national emergency is of the utmost importance. This can best be accomplished by centralized policy development, planning, and broad direction. Detailed operations management will remain decentralized in order to retain flexibility in the use of individual systems in responding to the needs of national security, survival, and recovery. Each Federal agency responsible for telecommunications systems operations, and the carriers, are responsible for planning with respect to emergency operations. Guidance in this matter has been issued from a number of sources and contained in:

(1) Annex C–XI (Telecommunications), Federal Emergency Plan D (Classified).

(2) The Federal Communications Commission (FCC) Industrial Communications Emergency Plan (ICEP) Basic.

(3) The National Communications System Management Plan for Annex C–XI (Telecommunications) Federal Emergency Plan D (Classified).

(b) The continuity of essential communications services will be maintained through the use of controls and operational procedures to assure that precedence is given to vital services. Emergency preparedness with respect to telecommunications services will provide for, but is not limited to:

(1) A precedence system for public correspondence services.

(2) A circuit restoration priority system.

(3) Preemption authority.

(4) Control of access to common user networks, public and private.

(5) Allocation of private line services and channel time by competent authority.

(c) The Nation's telecommunications systems facilities are vulnerable to physical and radiological damage. Planning factors with respect to the resumption of intercity services in a postattack period must consider the probable loss of facilities which formerly provided direct and/or alternate intercity services between surviving population centers. Since surviving areas and population centers would serve as the sources of support to crippled areas of the Nation, the resumption of intercity services between and among surviving metropolitan areas will be of the highest priority with the carriers. The order of precedence of actions to effect intercity services restoration set forth in the following will not be modified except upon direction of the central point of authority in telecommunications matters.

(1) Establishment of coordination circuits between carrier offices.

(2) Restoration of multichannel intercity links.

(3) Restoration of vital private line services to government and the private sector.

(4) Reestablishment of public correspondence (toll) service to the extent that it will not interfere with essential private line services.

§ 202.3 Plans preparation and execution.

National objectives and interests with respect to security, survival, and recovery during a national emergency may subjugate proprietary interests in any telecommunications facility, system, or network. Therefore, emergency preparedness resources management planning is oriented to a perceived need for purposeful and authoritative control of surviving resources. Federal authority, substantive provisions, and functional responsibilities set forth in the planning documents identified in § 202.2, preceding, are summarized in the following:

(a) Central Federal authority with respect to telecommunications resource management has been delegated, by Executive Order, to the Director, Office of Science and Technology Policy (OSTP). In this functional role, the Director:

(1) Will prepare to exercise the emergency war powers of the President granted by Sec 606 (a), (c), and (d) of the Communications Act of 1934, as amended.

(2) Will prepare to execute, if necessary, the emergency authorities which may be delegated by the Director, Office of Defense Resources (ODR).

(3) Will report direct to the President, or his designated representive, on the status of telecommunications and provide recommendations with respect to telecommunications and national priorities.

(4) Will provide general or specific guidance to Federal agencies and State governments with respect to the use of telecommunications in civil defense and for other purposes of common interest to Federal and State governments.

(b) Performance of essential government and public services during a national emergency will require a means for communications between government and the people, communications essential to operations of elements of the national economy, and communications for national defense and civil defense purposes. The needs of the private sector and those of government should be properly coordinated to ensure that responses to each of these communities of interest, government and private sector, are appropriately balanced. For this reason, the Director, Office of Science and Technology Policy (OSTP), has delegated the responsibility for the private sector to the Chairman, Federal Communications Commission (FCC), and responsibility for the needs of government to the Executive Agent, National Communications System (NCS). A parity of level of authority of these officials is established. They will coordinate and negotiate telecommunications conflicts with respect to the allocation and use of the Nation's telecommunications resources, reporting to the Director on unresolved issues which are within the domain of their respective responsibilities and authorities.

(1) The Chairman, Federal Communications Commission (FCC), functioning within his assigned responsibilities and authorities is responsible for:

(i) The provision of services by the common carriers, broadcast facilities, and safety and special radio services of the private sector.

(ii) Assignment and control of radio frequencies to Commission licensees.

(iii) Facilities protection and reduction of vulnerability.

(iv) Maintenance and restoration of facilities.

(v) Restoration of vital and essential intercity services.

(vi) Closure of radio stations as may be directed by the Director, Office of Science and Technology Policy (OSTP).

(vii) Enforcement of pertinent law and regulations as required in the interest of national security during a national emergency.

(2) The Executive Agent, National Communications System (NCS), or the Manager, NCS, as empowered and directed and functioning within delegated responsibilities and authority, will:

(i) Develop policy, plans, and procedures with respect to the use of telecommunications resources within and by the Federal Government.

(ii) Establish rules and procedures with respect to priorities and precedence in the provision of communications services to agencies of the Federal Government.

(iii) Establish rules and procedures with respect to the control of procurement of new or additional telecommunications services from the carriers during a national emergency.

(iv) Develop, with the assistance of appropriate Federal agencies, a decentralized, regionally oriented management organization structure capable of functioning independently in support of regional Directors of the Office of Defense Resources (ODR) within the terms and guidelines for emergency management established by the Manager, National Communications System (NCS).

(v) Coordinate Federal and State government emergency preparedness telecommunications planning to assure that planning of respective governments is mutually supportive and interrelationships and prerogatives are clearly defined.

(vi) Upon direction, implement without delay a structured system of emergency practices and procedures.

(vii) Establish and maintain control of the allocation of Federal telecommunications resources and services to the needs of the Federal Government to assure that most vital needs are afforded precedence.

(viii) In coordination with the Federal Communications Commission (FCC) assist and advise the Director, Office of Science and Technology Policy (OSTP), in the execution of emergency telecommunications management during a national emergency.

(c) Heads of other Federal agencies have related or collateral responsibilities in assisting the Director, Office of Science and Technology Policy (OSTP), in his role as the Nation's telecommunications resource manager during a national emergency.

(1) The Secretary of Commerce will assist the Director, Office of Science and Technology Policy (OSTP), in:

(i) Development of policy with respect to Federal and State government interrelationships and prerogatives regarding the continuity of interconnectivity of interstate and intrastate telecommunications systems and the control of facilities which are common to both classes of systems.

(ii) Development of policy, plans, and procedures for emergency acquistion or construction of and contracting for telecommunications facilities.

(iii) Development of emergency plans for control and allocation of frequency assignments in those parts of the electromagnetic spectrum assigned to the U.S. Government.

(2) The Secretary of Defense is responsible for development and execution of emergency plans with respect to:

(i) Control over radio facilities and stations aboard vessels in the Maritime Service and coordinating all necessary activities pertaining to other radio stations and facilities in the Maritime

Service with the Chairman, Federal Communications Commission (FCC).

(ii) Control over radio facilities and stations aboard aircraft in the Aviation Services, and coordinating all necessary activities pertaining to other radio facilities and stations in the Aviation Services with the Chairman, Federal Communications Commission (FCC).

(3) The Secretary of the Interior is responsible for development and execution of emergency plans with respect to the administration of telecommunications activities in the territorial and trusteeship areas under the jurisdiction of the United States and within the responsibility previously assigned to him by appropriate laws and other authority.

(4) All Federal agencies with responsibility for management or operation of telecommunications facilities, systems, or networks are responsible for preparation and execution of emergency operational plans which will ensure that resources under their operational control will be capable of responding to the needs of the Government and the Nation in event of a national emergency.

Dated: June 5, 1979.

Frank Press,

Director, Office of Science and Technology Policy.

[FR Doc. 79-18822 Filed 6-8-79; 8:45 am]

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Proposed Rules

Federal Register
Vol. 44, No. 113
Monday, June 11, 1979

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Ch. I]

Expansion of Detroit-Group II Terminal Control Area; Meeting

AGENCY: Federal Aviation Administration.

ACTION: Informal Airspace Meeting #10—June 26, 1979.

SUMMARY: The Federal Aviation Administration (FAA) will hold an informal airspace meeting in Detroit, Michigan for the purpose of discussing a plan by the FAA to raise the ceiling of the Detroit Terminal Control Area (TCA) from the existing 8,000 feet AMSL to 12,500 feet AMSL. This alteration will also require expansion of the TCA upper level from 25 NM to approximately 40 NM radius of Detroit Metro Airport. Changes to the present TCA floor are also anticipated in order to accommodate the recently commissioned new Runway 3R/21L.

DATE: June 26, 1979, 7:00 p.m. Local Time.

ADDRESS: Management Conference Room, Ford World H.Q., American Road, (Corner Southfield and Michigan Avenue), Dearborn, Michigan.

For further information contact: Mr. Doyle W. Hegland, Airspace and Procedures Branch (AGL-530), Air Traffic Division, Great Lakes Region—FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018, Telephone: (312) 694-4500, extension 456 or 360.

SUPPLEMENTARY INFORMATION: The purpose of this informal airspace meeting is to offer all persons likely to be affected by this alteration the opportunity to present their views, and to assist FAA in the preparation of an airspace docket that will accomplish the improved safety objectives with the least possible impact on the airspace users.

No formal minutes or transcripts will be taken. However, anyone may submit written comments before or during the meeting which will be made a matter of record if they so desire. This action will not prevent interested persons from submitting comments later in response to a Notice of Proposed Rule Making (NPRM) in the event the item is formally proposed.

Raymond C. Fisher,
Chief, Airspace and Procedures Branch.

[FR Doc 79-18094 Filed 6-8-79; 8:45 am]
BILLING CODE 4910-13-M

[14 CFR Ch. I]

Expansion of Chicago-Group I Terminal Control Area; Meeting

AGENCY: Federal Aviation Administration (FAA).

ACTION: Informal Airspace Meeting No. 11—June 28, 1979.

SUMMARY: The Federal Aviation Administration (FAA) will hold an informal airspace meeting near Chicago, Illinois for the purpose of discussing a plan by the FAA to raise the ceiling of the Chicago Terminal Control Area (TCA) from the existing 7,000 feet AMSL to 12,500 feet AMSL. This alteration will also require expansion of the TCA upper level from 25 NM to approximately 40 NM radius of Chicago O'Hare Airport. No changes to the present TCA floor are anticipated.

DATE: June 28, 1979, 7:30 p.m, Local Time.

ADDRESS: Main Township West High School, 1755 South Wolf Road, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Mr. Doyle W. Hegland, Airspace and Procedures Branch (AGL-530), Air Traffic Division, Great Lakes Region—FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018, Telephone: (312) 694-4500, extension 456 or 360.

SUPPLEMENTARY INFORMATION: The purpose of this informal airspace meeting is to offer all persons likely to be affected by this alteration the opportunity to present their views, and to assist FAA in the preparation of an airspace docket that will accomplish the improved safety objectives with the least possible impact on the airspace users.

No formal minutes or transcripts will be taken. However, anyone may submit written comments before or during the meeting which will be made a matter of record if they so desire. This action will not prevent interested persons from submitting comments later in response to a Notice of Proposed Rule Making (NPRM) in the event the item is formally proposed.

Raymond C. Fisher,
Chief, Airspace and Procedures Branch.

[FR Doc. 79-18095 Filed 6-8-79; 8:45 am]
BILLING CODE 4910-13-M

[14 CFR Ch. I]

Proposed Alteration of New York, N.Y., Terminal Control Area; Meeting

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice of Informal Airspace Meetings.

DATE: June 26, 1979 and June 28, 1979 at 7:00 p.m.

ADDRESS:

August Martin High School, 156-10 Baisley Blvd, Jamaica, N.Y. 11434, June 26, 1979 at 7:00 p.m.

Woodbridge Jr. High School, Barron Avenue, Woodbridge, N.J. 07095, June 28, 1979 at 7:00 p.m.

SUMMARY: This notice announces informal airspace meeting to be held at 7:00 p.m. at August Martin High School, 156-10 Baisley Boulevard, Jamaica, New York 11434, on June 26, 1979, and Woodbridge Junior High School, Barron Avenue, Woodbridge, New Jersey 07095, on June 28, 1979, on the proposed alteration of the New York, N.Y. Terminal Control Area (TCA) Docket No. 18805-AEA-8-N.Y.

FOR FURTHER INFORMATION: Mr. Russell W. Shedd, Chief, New York Common IFR Room, Federal Aviation Administration, Hangar 11, John F. Kennedy International Airport, Jamaica, New York 11430. Telephone: 212/995-9540. Office hours are 8:00 a.m. to 4:30 p.m. Monday through Friday.

SUPPLEMENTARY INFORMATION: These informal airspace meetings are to give interested persons a chance to submit such written data, views, or arguments as they may desire to discuss the proposed alteration of the New York, N.Y. TCA. The information obtained

from these informal airspace meetings will be given consideration during the composition of the Notice of Proposed Rule Making (NPRM). All interested individuals and groups are invited to attend but limited to space available.

Issued on: May 29, 1979.

Walter H. Mitchell,

Chief, Airspace and Procedures Branch.

[FR Doc. 79-18060 Filed 6-8-79; 8:45 am]

BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

[14 CFR Part 252]

[EDR-377A; Docket No. 29044]

Proposed Restrictions on Smoking Aboard Aircraft; Correction

June 5, 1979.

AGENCY: Civil Aeronautics Board.

ACTION: Editorial correction of notice of proposed rulemaking.

SUMMARY: This editorial correction reflects the change made by ER-1124, May 17, 1979, which extended the application of the CAB's regulation about smoking on aircraft to air taxis operating aircraft with a passenger capacity of more than 30 seats.

DATES: Initial comments: August 20, 1979. Reply comments: September 19, 1979. Comments and other relevant information received after these dates will be considered by the Board only to the extent practicable. Requests to be put on the Service List: June 11, 1979. Docket Section prepares the Service List and sends it to each person listed, who then serves his comments on others on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket 29044, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 714, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Richard B. Dyson, Associate General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; 202-673-5444.

SUPPLEMENTARY INFORMATION: In EDR-377, 44 FR 29486, May 21, 1979, the Board proposed to amend its rules on smoking aboard aircraft. In that notice the Board stated that a proposed ban on cigar and pipe smoking and other smoking prohibitions conditioned on the type of aircraft (for example, banning smoking on planes with 30 or fewer seats), which had originally been proposed in EDR-306, 41 FR 44424, October 8, 1976, remained live options for final rule action. Another action, ER-1124, 44 FR 30080, May 24, 1979, expanded the applicability of Part 252 to include commuter air carriers using aircraft with a passenger capacity of more than 30 seats, as well as section 401 carriers. The reference in ER-1124, to "commuter air carriers" rather than air taxi operators was inadvertent, and will be corrected shortly in a separate editorial amendment.

The application section of the proposed rule of EDR-377 was, also inadvertently, made applicable only to section 401 certificated carriers while engaged in the transportation of persons. This editorial amendment conforms the text proposed in EDR-377 to the intent of that proposal by making it applicable to Part 298 carriers as well as certificated carriers.

This editorial correction is issued pursuant to the delegation of authority from the Board to the General Counsel in 14 CFR 385.19. Accordingly, the Civil Aeronautics Board corrects the proposal to amend 14 CFR Part 252, *Provision of Designated "No-Smoking" Areas Aboard Aircraft Operated by Certificated Air Carriers*, published as EDR-377, 44 FR 29486, May 21, 1979, by changing proposed § 252.1 to read:

§ 252.1 Applicability.

This part established rules for the smoking of tobacco aboard aircraft. It applies to each direct air carrier that holds a certificate of public convenience and necessity authorizing the transportation of persons, issued pursuant to Section 401 of the Act, and to air taxi operators that transport persons and are registered under Part 298 of this chapter. Nothing in this regulation shall be deemed to require such carrier to permit the smoking of tobacco aboard aircraft.

* * * * *

(Sec. 204(a), 404(a), 407, Federal Aviation Act of 1958, as amended, 72 Stat. 743, 760, 766, 49 U.S.C. 1324, 1374, 1377)

By the Civil Aeronautics Board.

Gary J. Edles,

Acting General Counsel.

[FR Doc. 79-18102 Filed 6-8-79; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[18 CFR Part 35]

[Docket No. RM79-49]

Calculation of Cash Working Capital Allowance for Electric Utilities

June 7, 1979.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing to amend its regulations under the Federal Power Act by adding a new § 35.24. The new section sets forth the methods by which a utility filing a change in rate schedule under § 35.13 must calculate the cash working capital allowance.

DATES: Written comments must be filed by July 9, 1979. Reply comments must be filed by July 24, 1979. Replies to any Commission Staff comments must be filed by August 8, 1979.

ADDRESSES: All filings should reference Docket No. RM79-49 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Michael A. Coleman, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (202) 275-4728.

Bonnie Cord, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, D.C. 20426 (202) 275-4285.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission (Commission) is proposing to add a new § 35.24 to its regulations relating to the filing of rate schedules under the Federal Power Act (18 CFR Part 35). The new section would establish the formula to be used to calculate the cash working capital allowance for electric utilities.

A. Background

Cash working capital as it relates to this rule is the amount of cash needed by an electric utility to meet its operating expenses for the period during which the utility has provided services to its customers and has not yet been paid for those services. The cash working capital allowance is the amount of cash working capital which the Commission allows a utility to include in its rate base. To determine the proper cash working capital allowance for a particular utility, the Commission must

determine the time period between the utility's payment of expenses incurred in the rendition of service and its receipt of payment for the service by its customers.

The Federal Power Commission, and now Federal Energy Regulatory Commission, has traditionally made this determination by application of the 45-day convention, the term given to the customary practice under which a utility is allowed one-eighth (one-eighth of a year equaling 45 days) of the utility's annual operation and maintenance expense minus purchased power expense as its cash working capital allowance. The rationale behind the 45-day convention is given in the earliest published Federal Power Commission decision employing the convention:

> Electric energy furnished by the company during the current month is billed to the customer as of the first of the succeeding month with a fifteen-day discount period. The full period between the dates of rendition of service and the payment was adopted as the period of lag and the working capital required for this period (exclusive of fuel and other supplies) was determined to be 45/365 of operating costs, * * *. (*Interstate Power Co.*, 2 FPC 71, 85 (1939).)

The 45-day convention is simple and inexpensive to apply; however, studies which have recently been submitted to the Commission by utilities and their customers have indicated that the 45-day convention may not accurately reflect individual utilities' actual cash working capital needs. Although at the time the convention was developed it appeared to reasonably reflect actual business practices, those practices have changed in the ensuing years (*e.g.*, computerization and other improvements in billing procedures reduce the time necessary for billing and payment). Therefore, the application of the 45-day convention under current business practices may result in utilities' including in their rate bases more working cash than actually needed to meet operating expenses, thus unfairly burdening the utilities' customers.

The Commission and its staff have investigated appropriate methods for calculation of the cash working capital allowance in light of current business practices. One possible method of making the calculation is a lead-lag study. such a study takes into account all factors relating to cash working capital and determines for each the average time between the utility's payment of expenses and its receipt of revenue from its customers. Hence, such a study, if fully developed, can provide a relatively accurate picture of a utility's cash working capital requirements. However, lead-lag studies are expensive and time-consuming to perform. Thus, the Commission has determined that requiring such a study to be performed by each utility seeking a change in rate schedule would be unduly burdensome.

In its search for a reasonably accurate, yet comparatively simple, method of calculating the cash working capital allowance, the Commission recognizes that such a method will be an approximation of the actual working cash needs of individual electric utilities. However, the establishment of a rule requiring that the allowance be calculated by such a method will avoid the necessity to litigate this issue in rate proceedings, thus eliminating a great cost to ratepayers and resulting in more timely Commission decisions. Accordingly, the Commission is herein proposing to add to its regulations a new § 35.24 which would establish a formula to calculate an allowance for cash working capital to be used by any electric utility required to file cost of service statements to accompany a filing for a change in rate schedule under § 35.13(b)(4). The Commission believes that the formula is an improvement over the 45-day convention in that it takes account of current business practices and in that it makes allowances for the differing working cash needs of individual utilities. Thus, the formula provides sufficient specificity and accuracy, while eliminating the need for parties to rate proceedings to bear the time and expense burdens associated with litigation of the working cash issue.

B. Summary of the Proposed Regulation

Paragraph (a) of new § 35.24 states the general rule for the calculation of the cash working capital allowance. Subparagraph (1) provides that if an electric utility is required to file cost of service statements to accompany a filing for a change in rate schedule under § 35.13(b)(4), then the utility must calculate the cash working capital allowance according to the formulas set forth in paragraph (c). Subparagraph (2) of paragraph (a) provides that no party to a proceeding arising from a filing for a change in rate schedule under § 35.13(b)(4) may, for purposes of that proceeding, calculate the cash working capital allowance except in accordance with the formulas under paragraph (c) as required by this section.

Subparagraph (1) of paragraph (c) states that the cash working capital allowance is the average daily uncollected revenue attributable to cash expenditures for service rendered minus the average daily unpaid amounts of cash-basis expenses incurred for the service rendered. This subparagraph sets forth the general cash working capital formula, as follows:

CWC=REV—EXP,

where CWC is the cash working capital allowance, REV is the result obtained from application of the revenue formula under subparagraph (2), and EXP is the result obtained from application of the expense formula under subparagraph (3).

Subparagraphs (2) and (3) of paragraph (c) set forth the revenue and expense formulas, as follows:

$$REV = \frac{40}{360}\left(F + L + M + AVT + RT + ITP\right), \text{ and}$$

$$EXP = \left(\frac{A}{360}\right)F + \left(\frac{10}{360}\right)L + \left(\frac{25}{360}\right)M + \left(\frac{B}{360}\right)AVT + \left(\frac{C}{360}\right)RT + \left(\frac{90}{360}\right)ITP.$$

The following discussion of the formulas is divided into three segments: (1) A general description of the formulas; (2) a discussion of the expense items that are included in the formulas and days lag applied to each expense item; and (3) a discussion of items (such as purchased power, payroll tax, depreciation, bond interest, and bank balances) that were excluded from the formulas.

1. *General description of the formulas.* The REV and EXP formulas are basically the sum of six annual expenses (F, L, M, AVT, RT, ITP), which expenses have been multiplied by that fraction of the year for which: (1) Revenue to compensate the utility for incurring each expense in the rendition of service is uncollected; and (2) each expense is unpaid. Thus, the REV formula yields an average amount of cash which is uncollected by the utility between the time it provides service to its customers and the time at which it

receives payment for that service. That amount is uncollected because utilities do not receive payment from customers simultaneously with the rendition of service.

The EXP formula yields an average amount of cash which is not needed by the utility during the time between rendition of service and payment of the expenses attributable to such service, but which would otherwise be needed to pay expenses simultaneously with the incurrence of the expenses in providing service. That amount is not immediately needed because utilities generally pay for expenses incurred in the rendition of service to their customers at dates after the incurrence of the expenses.

To ensure comparability of the formulas, the formula amounts are stated to reflect uncollected revenue and unpaid expenses from the same point in time; that is, the formulas are referenced to a common benchmark, the rendition of service by the utility, so that the resultant net effect of uncollected revenue and unpaid expenses can be calculated. Hence the dollar amount resulting from application of the REV formula minus the dollar amount resulting from the application of the EXP formula gives CWC, the average amount of cash working capital needed by the utility to pay for expenses before it receives payment from its customers. Should the utility pay for expenses after it receives payment from customers, the application of the REV and EXP formulas will result in a negative CWC amount; that is, such pattern of revenue collection and expense payment provides a source of cash working capital to the utility.

2. *Expense items included in the formula and the days lag applied to each.* The commission has analyzed working cash requirements in light of all operating expenses (not limited to operation and maintenance expenses as in the present 45-day convention) and has determined that six cash-basis expenses have a significant impact upon working cash needs. The six expenses are fossil fuel, labor, other operation and maintenance, ad valorem taxes, revenue taxes and income taxes payable. In the formulas, these expenses are annual figures for the test period (as defined in § 35.13(b)(4)(iii)) and are represented by F, L, M, AVT, RT, and ITP, respectively. As discussed above, each of these annual expense figures is multiplied by that franction of the year during which the expense is unpaid or revenue to compensate the utility for incurring the expense is uncollected.

With respect to the REV formula, since customers make one payment per billing cycle which includes payment for the six expenses in the formulas, the fraction of the year during which the revenue to compensate the utility for incurring the expenses is uncollected is the same for all six expenses, and thus each of the six annual expenses is multiplied by the same fraction. That fraction is 40/360 and is derived from the following analysis.

The fraction of the year during which revenue is uncollected, the revenue lag, is the time period from the midpoint of the serivce period to the average date of payment by the customer. "Service period" is the time interval for which the utility customarily measures the service rendered to its customers and is considered to be 30 days on the average. For purposes of analysis, the revenue lag may be broken down into three periods: rendition of service, bill preparation and bill payment. Assuming a constant rendition of electric service during a 30-day billing cycle, service is provided, on the average, 15 days prior to the end of the service period. The revenue lag, therefore, consists of this 15-day period plus allowances for bill preparation and bill payment.

In determining reasonable time periods for bill preparation and bill payment, the Commission has considered the great amount of control a utility exercises over the time taken by these two activities, by virtue of the fact that utility management determines the timing of meter readings, bill preparation and presentation, and the establishment of the date by which bills must be paid. The Commission has determined that a time allowance of 10 days for meter reading, bill preparation, and mailing is reasonable, with a 15-day period thereafter for bill payment. The Commission believes that shorter time allowances would impose difficulties on utility workload management and would be burdensome to wholesale customers; while larger time allowances, resulting in an increase in working cash requirements, are not necessary in view of billing procedure options available to a utility.

Therefore, the revenue lag is 40 days (15 days to the midpoint of the service period, plus 10 days for bill preparation, plus 15 days for bill payment). Accordingly, each annual expense in the REV formula is multiplied by 40/360.

With respect to the EXP formula, each of the six expenses must be multiplied by a different fraction, because the utility's payment pattern is different for each expense. Each expense is discussed separately below. For purposes of calculation of the cash working capital allowance, the expense lag is the time period between the date on which the utility provides service (giving rise to the expenses) and the date on which it pays the expense.

a. *Fossil fuel (F).* Due to its large share of total operating expenses, payment for fossil fuel purchases has a significant impact upon cash working capital needs. The expense lag associated with the fossil fuel expense is dependent upon billing and payment procedures employed by the fuel suppliers, with considerable variation to be anticipated, depending on such factors as quantities purchased, frequency of deliveries, available on-site storage facilities for each type of fuel used, and type of purchase (contract or spot). The expense lag is also dependent upon the fuel mix used for generating purposes, which varies from utility to utility. Accordingly, an analysis of fossil fuel purchases and payment patterns is needed for each utility in order to obtain a reasonably accurate measure of working cash needs resulting from fossil fuel purchases. Since utilities have readily available data with respect to their fuel purchases, the expense lag, A, for the fossil fuel expense is to be determined by the utility in accordance with paragraph (d) or (e) of the proposed rule, as discussed below. Thus, in the EXP formula, the annual fossil fuel expense is multiplied by the fraction A/360.

b. *Labor expenses (L).* The effect of the payment pattern for wages and salaries on cash working capital requirements is expected to vary little from utility to utility. While the actual combination of weekly, semi-monthly and monthly wage and salary payments may vary among utilities, the expense lag is not significantly different, as illustrated in the following examples. (Weekly wages are generally paid one week after the end of a pay period. Semi-monthly salaries are generally paid at mid-month and the last day of the month. Monthly salaries are usually paid on the last day of the month.)

	(1) Percent employees	(2) Expense lag	(3) Weighted expense lag ((1) × (2))
Example 1:			
Weekly	75	10.5	7.875
Semimonthly	25	7.5	1.875
Monthly	0	15.0	0.000
Total	100		[1] 9.750
Example 2:			
Weekly	60	10.5	6.30
Semimonthly	30	7.5	2.25
Monthly	10	15.0	1.50
Total	100		[1] 10.05

[1] Average expense lag.

Accordingly, the Commission believes that 10 days is a reasonable expense lag for labor expense. Thus, in the EXP formula, the fraction by which the annual labor expense is to be multiplied is 10/360.

c. *Other operation and maintenance expenses (M).* Other operation and maintenance expenses includes all operation and maintenance expenses except fuel, purchased power and labor expenses. Although the other operation and maintenance expense category includes a variety of items, operation and maintenance supplies are usually the predominant expense amounts. Major maintenance tends to be seasonal, which suggests that the expense lag for the required materials and supplies should be determined for the 12-month test year, rather than on an average monthly basis. However, since the total amount of dollars in this expense category is typically less than 20% of the total of all categories, and since there is a wide variety of items other than materials and supplies in this category, the Commission believes that an expense lag of 25 days will yield a reasonable result. Twenty-five days is twice-monthly expense invoicing, resulting in a 7.5 day average lag at invoice date, plus 15 to 20 days for invoice preparation and expense payment. Therefore, in the EXP formula, the fraction by which the annual other operation and maintenance expense as multiplied is 25/360.

d. *Ad valorem taxes (AVT) and revenue taxes (RT).* Ad valorem taxes are those taxes which are based upon an assessment or valuation of property (tangible and intangible) owned by a utility (*e.g.*, property taxes). Revenue taxes are those taxes which are based upon the level of revenue earned by a utility (*e.g.*, gross receipts taxes). Ad valorem taxes are typically less than 10% of total operating expenses. Revenue taxes are applicable only in certain jurisdictions, and, where present, they are not usually a large component of operating expenses. These facts might suggest that these taxes are not a significant consideration in cash working captial evaluation; however, tax payment schedules frequently involve lengthy lag periods, thereby giving the taxes added weight in determining average cash availability for working capital.

The payment lag for ad valorem taxes and revenue taxes fluctuates widely from utility to utility because each company is subject to localized assessments and payment schedules. Some expenses are paid in advance while others are paid at varying lagging intervals. A wide range of payment dates within an individual utility's tax items in these categories may occur due to the difference in the taxes assessed among sectors of the service territory of the utility. Therefore, in order that suitable expense lags for ad valorem and revenue taxes be calculated, the expense lag for these items is to be determined by the utility in accordance with paragraph (d) or (e) of the proposed rule, as discussed below. Thus, in the EXP formula, the annual ad valorem tax expense and the annual revenue tax expense are multiplied by the fractions B/360 and C/360, respectively.

e. *Income taxes payable (ITP).* The final expense item included in the formulas is income tax payable, which is income tax allowable under § 35.13(b)(4)(iii) (Statement J) less any deferred taxes. Income taxes payable is considered to be the appropriate amount for which working cash requirements are to be analyzed, because income tax allowable includes deferred taxes which do not require a cash outlay during the test period. Income taxes payable would include state as well as federal income taxes, because state income tax payment procedures generally reflect payment patterns for federal income taxes. It is noted that state income tax expense is a relatively small portion of total operating expenses.

A reduction in the amount of working cash allowed is necessary to reflect the availability of funds resulting from receipt of revenues earmarked for income taxes in advance of the payment of the taxes. Payments of estimated federal income taxes in the amount of 25% of the calculated estimated taxes for the year are due on the fifteenth day of the fourth, sixth, ninth and twelfth months of the current tax year. I.R.C. § 6154. However, the total of the estimated taxes paid by a utility during the current tax year may be as little as 80% of the total taxes payable for the taxable year without an underpayment penalty being assessed against the company. I.R.C. § 6655 (d) and (e). Under such a payment procedure, the remaining 20% of taxes due may be paid in equal installments on the fifteenth day of the third and sixth months following the end of the taxable year.

The Commission believes that utility companies attempt to conform their income tax payments with these latter provisions. Such a payment schedule results in the payment of 20% of total income taxes payable on each of the four estimated tax payment dates during the taxable year and the payment of 10% of the total income taxes payable on each of the two dates during the succeeding year. From such a payment schedule, illustrated in the following table, an expense lag of ninety days has been calculated.

Date paid	Percent paid	Days before year-end	Average weighted days before year-end
Month, Day, and Year:			
4 15 current	20	256	51.0
6 15 current	20	196	39.0
9 15 current	20	106	21.0
12 15 current	20	15	3.0
3 15 following	10	−75	−7.5
6 15 following	10	−165	−16.5
Total	100		90.0

(Average number of days from midpoint of each service period to year-end) − (average weighted days before year-end) = (average days lag from the midpoint of each service period):

180 − 90 = 90

Therefore, the Commission believes that a ninety-day expense lag for income taxes payable is appropriate. Accordingly, the fraction in the EXP formula by which the annual income tax payable expense is multiplied is 90/360.

3. *Items excluded from the formulas.* Several other items have been considered for inclusion in the REV and EXP formulas, but for reasons discussed below have not been included.

a. *Purchased power expense.* Historically, purchased power expense has been excluded from the calculation of a utility's working cash requirement. This exclusion has been based upon the assumption that lags in payment for purchased power transactions by the utility to the supplier of the power were equal to the lag in revenue receipt by the utility.

The purchase of electric power by one utility from another is similar in nature to receipt of electric service by wholesale customers from a utility.

Therefore, billing and payment procedures associated with purchased power transactions should conform closely to those associated with the rendition of electric service to wholesale customers. In recognizing that providing electric service and purchasing electric power and energy are but the selling and buying positions related to the exchange of a homogeneous commodity, the components of an expense lag associated with purchased power transactions (service period, bill preparation period, and bill payment period) should equal the components comprising the revenue lag assigned to the rendition of service.

Since the Commission is proposing to establish forty days as the appropriate revenue lag associated with the rendition of electric service, purchased power expense will be assigned a forty-day expense lag. The assignment of equal revenue and expense lags to purchased power expense eliminates the need to include this expense item in the formula reflecting the effects of purchased power expense on working cash needs. Therefore, the Commission is proposing to exclude purchased power expense from the cash working capital formulas.

b. *Payroll tax.* Payroll tax has not been included in the formulas because the Commission believes that this expense does not have a significant impact upon cash working capital. In addition, payroll taxes are not incurred throughout the entire year since such taxes are assessed up to certain employee income levels and, therefore, impact less upon working cash needs as the year progresses.

c. *Depreciation and amortization.* Depreciation and amortization expenses (including nuclear fuel expense Account 518), although operating expense components, represent recoveries of investments not requiring a current outlay of cash. Therefore, such items need not be included in a calculation of cash working capital requirements.

d. *Bond interest and preferred stock dividends.* The Commission considered reductions to the cash working capital allowance to reflect the availability of funds for payment of bond interest and preferred stock dividends as sources of working cash. In this connection, the Commission observes that common and preferred equity return are due the utility when service is rendered; however, the proposed rule does not provide for a cash allowance to recognize that the equity and preferred return components of revenue are not received until forty days after service is rendered. Consistent with this treatment, the proposed rule does not require the utility to utilize the interest component of return as working cash, even though the interest may not be paid to the bondholders until after the related revenue is received by the utility. Further, since as stated above both common and preferred equity return belong to the company when service is rendered, the related revenues subsequently received are not available as working cash.

e. *Minimum balances and compensating balances.* Minimum balances are bank balances which may be required to secure bank account services. The Commission does not believe that such minimum balances are properly considered to be part of cash flow requirements for day-to-day operations. If in fact a utility is required to maintain minimum bank balances under terms of written agreements, the utility may make a separate claim for a rate base allowance therefor. Such claims will be considered as they arise in cases which come before the Commission.

Compensating bank balances are balances which may be required to compensate a lending institution for extending a line of credit necessary to provide for short-term loans. The Commission has previously indicated that any need for compensating balances is more appropriately considered either in the rate of return allowance or in a decision fixing the proper accrual rate for allowance for funds used during construction. (*Carolina Power and Light Company*, Opinion No. 19, Docket No. ER76-495, issued August 2, 1978). Therefore, neither minimum balances nor compensating balances are included in the cash working capital formulas.

Calculation of Expense Lags To Be Determined by the Utility

Paragraphs (d) and (e) of the proposed rule set forth the methods for determining the expense lags for fossil fuel, ad valorem tax, and revenue tax expenses. Consistent with the method used by the Commission to derive the fixed expense lags for the other expense items included in the formulas, the determination of expense lags for fossil fuel, ad valorem tax and revenue tax expenses must be correlated with the same reference point used to determine the revenue lag for those expenses (*i.e.*, the midpoint of the service period), so that both the expense lag and the revenue lag reflect intervals from the same point in time. If this method is not applied, the net effect of the lags on the cash working capital calculation would be distorted.

Paragraph (d) provides that for goods or services received, or taxes assessed, at intervals of one service period or less, the expense lag is the weighted average of the number of days which the expense item is paid after the end of the service period, plus 15 days. The 15 days is added to the weighted average number of days calculated to express the length of the expense lag from the midpoint of the service period (the point of commonality with the revenue lag). This method for calculating the expense lag is actually a shortened and simplified version of the method described in paragraph (e) and is applicable only to items which are received continuously or at very short intervals.

Paragraph (e) sets forth the method of calculating the expense lag for goods and services received, or taxes assessed, at intervals, not necessarily uniform, greater than one service period, which therefore must be averaged over the entire test year. In this case the expense lag is the test period weighted average of the number of days before year-end that payment is made for such expense items, subtracted from 180 days. The 180 days represents the average number of days from the midpoint of each of the twelve monthly service periods to year-end. The subtraction of the weighted average number of days before year-end from 180 days relates the expense lag to the midpoint of each service period (*i.e.*, the point of commonality with the corresponding revenue lag for that period).

If Period II is the test period in accordance with § 35.13(b)(4)(iii), and if Period II data are inadequate for purposes of calculating the average days lag in payment of expenses under paragraph (d) or (e), then paragraph (f) provides that Period I data are to be used to calculate the expense lag under paragraph (d) or (e). Paragraph (f) further provides that, if Period I data are used under this paragraph, the utility must submit a statement explaining why the Period II data are inadequate for purposes of calculation under paragraph (d) or (e).

C. Waiver of the Rule

The Commission feels that the proposed formula for the cash working capital allowance provides sufficient flexibility to adequately reflect the cash working capital needs of individual utilities, and thus expects that the formula would be used in all cases. However, in order to provide for the

possibility that a particular utility or its customers may suffer undue hardship as a result of application of the formula, the Commission notes that waiver of the rule may be requested in accordance with § 1.7 of the Commission's rules of practice and procedure. The Commission specifically requests comments as to the standards that should be applied to determine if a waiver should be granted.

D. Impact of the Rule

In order to aid the Commission in determining the impact of the proposed rule on the industry, the Commission requests utilities, their customers, and other members of the public to comment on the expected impact of the rule.

Specifically, comments should indicate the estimated reduction in costs incurred by parties to a rate proceeding, which reduction would result from the elimination of the cash working capital allowance as an issue to be litigated in such a proceeding. Individual utilities are also requested to specify the amount and percentage of increase or decrease in the utility's jurisdictional rate base and revenue requirements which would result from application of the proposed rule to a recent, recorded twelve-month period, as compared to: (1) Application of the historical 45-day convention (one-eighth of operation and maintenance expenses exclusive of purchased power expenses); and (2) no cash working capital allowance. Additionally, the Commission requests that individual utilities specify the increase or decrease in administrative costs which would be incurred by the utility as a result of application of the proposed rule, as compared to: (1) The historical 45-day convention; and (2) a fully developed and reliable lead-lag study.

E. Alternative to the Proposed Rule

As an alternative to the formulas proposed in this rule and discussed above, the Commission specifically requests comments on the establishment of a cash working capital formula reflecting a fixed number of days allowance similar to the 45-day allowance historically used in the 45-day convention. Such comments should address: (1) The appropriate number of days allowance and the expense base to which such figure is to be applied; (2) the advantages and disadvantages of using a formula reflecting a fixed number of days allowance, in terms of resources dedicated to the calculation of working cash requirements; and (3) whether the distortion of cash working capital needs calculated under a fixed number of days allowance, when compared to actual working cash requirements, has a significant impact upon a utility's revenue requirement.

F. Public Comment Procedures

Interested persons may participate in this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before July 9, 1979. Because of the complexity and importance of the issues presented by the rulemaking, the Commission intends that those participating in this proceeding should be able to examine and reply to initial comments made in response to this notice. Such reply comments must be submitted on or before July 24, 1979. The Commission Staff may submit comments, which shall be available to the public on or before July 24, 1979. If Staff submits comments, notice will be given, and interested persons may reply to the Staff comments on or before August 8, 1979.

Each person submitting a comment should include his or her name and address, identify the notice (Docket No. RM79-48) and give reasons for any recommendations. Comments should also indicate the name, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and fourteen conformed copies should be filed with the Secretary of the Commission. Written comments will be placed in the Commission's public files and will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426, during regular business hours.

(Federal Power Act, as amended, 16 U.S.C. 791, *et seq.*, Department of Energy Organization Act, 42 U.S.C. 7101, *et seq.*, E.O. 12009, 42 FR 46267)

In consideration of the foregoing, the Commission proposes to amend Chapter I of Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

1. Part 35, Subchapter B, Chapter I of Title 18, Code of Federal Regulations, is amended in the table of contents by adding in the appropriate numerical order a new section number and heading to read as follows:

PART 35—FILING OF RATE SCHEDULES

Sec.

* * * * *

35.24 Calculation of cash working capital.

* * * * *

2. Part 35, Subchapter B, Chapter I of Title 18, Code of Federal Regulations, is amended by adding a new § 35.24 to read as follows:

§ 35.24 Calculation of cash working capital.

(a) *General rule.*—(1) *In a filing for change in rate schedule.* Any electric utility which is required to file cost of service statements to accompany a filing for a change in a rate schedule under § 35.13(b)(4) must calculate the cash working capital allowance by applying the formulas under paragraph (c) of this section to the specified test period expenses submitted by the utility.

(2) *In a proceeding arising from a filing of change in rate schedule.* No party to a proceeding arising from a filing for a change in rate schedule under § 35.13(b)(4) may calculate the cash working capital allowance, for purposes of that proceeding, except in accordance with the formulas under paragraph (c) of this section as required by this section.

(b) *Definitions.* For purposes of this section:

(1) "Test period" means either Period I or Period II in accordance with the requirements of § 35.13(b)(4)(iii);

(2) "Service period" means the time interval for which the utility customarily measures the service to be rendered to its customers under the proposed rates (*e.g.*, 30 days for service rendered monthly).

(c) *Formulas.*—(1) *Cash working capital.* The cash working capital allowance is the average daily uncollected revenue attributable to cash expenditures for service rendered minus the average daily unpaid amounts of cash-basis expenses incurred for service rendered. The cash working capital allowance (CWC) is computed by subtracting the result obtained from application of the expense formula under subparagraph (3) from the result obtained from application of the revenue formula under subparagraph (2). Cash working capital is represented by the formula:

CWC = REV − EXP.

(2) *Revenue formula.* The average daily uncollected revenue attributable to cash expenditures for service rendered is one-ninth (1/9th) of the sum of specified components of test period revenue (which components are

specified in the following formula), and is represented by:

$$REV = \frac{40}{360}(F + L + M + AVT + RT + ITP),$$

where

REV = the average daily uncollected revenue attributable to specified cash expenditures for service rendered,
F = test period fossil fuel expense,
L = test period wages and salaries (labor) expense,
M = test period operation and maintenance expenses other than fuel, purchased power and labor expenses,
AVT = test period ad valorem taxes,
RT = test period revenue taxes, and
ITP = test period income taxes payable (based on proposed return on rate base).

(3) *Expense formula.* The average daily unpaid amounts of cash-basis expenses incurred for service rendered is the sum of specified items of test period expense (which items are specified in the following formula), each item multiplied by the ratio to 360 days of the average time in days between rendition of electric service by the utility and payment of the expense item amounts attributable to such service, and is represented by:

$$EXP = \left(\frac{A}{360}\right)F + \left(\frac{10}{360}\right)L + \left(\frac{25}{360}\right)M + \left(\frac{B}{360}\right)AVT + \left(\frac{C}{360}\right)RT + \left(\frac{90}{360}\right)ITP,$$

where

F, L, M, AVT, RT and ITP are defined as in subparagraph (2),
EXP = the average daily unpaid amounts of specfied cash-basis expenses incurred for service rendered,
Q = average days lag in payment for fossil fuel purchases, computed in accordance with paragraph (d) or (e) of this section, whichever is appropriate,
B = average days lag in payment of ad valorem taxes, computed in accordance with paragraph (d) or (e) of this section, whichever is appropriate,
C = average days lag in payment of revenue taxes, computed in accordance with paragraph (d) or (e) of this section, whichever is appropriate.

(d) *Days lag relating to one service period.* Except as provided in paragraph (f) of this section, for goods or services received, or taxes assessed, at intervals of one service period or less, the average days lag in payment of expenses is the test period weighted average of the number of days after the end of the service in which receipt occurred or assessment was made to the date of cash disbursement in payment for such expenses, plus 15 days.

(e) *Days lag relating to more than one service period.* Except as provided in paragraph (f) of this section, for goods or services received, or taxes assessed, at intervals greater than one service period, the average days lag in payment of expense is the test period weighted average of the number of days before year-end that cash disbursement is made in payment for such expenses, subtracted from 180 days.

(f) *Days lag data.* If Period II is the test period in accordance with § 35.13(b)(4)(iii), and if Period II data are inadequate for purposes of calculating the average days lag in payment of expenses under paragraph (d) or (e) of this section, then Period I data shall be used in the calculation under paragraph (d) or (e) of this section. Any utility which calculates average days lag in payment of expenses in accordance with this paragraph shall also file with the Commission a statement giving the reasons why the Period II data are inadequate for purposes of calculation under paragraph (d) or (e) of this section.

[FR Doc 79-18043 Filed 6-8-79; 8:45 am]
BILLING CODE 6450-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[24 CFR Part 1917]

[Docket No. FI-5497]

Proposed Flood Elevation Determinations for the City of Valdez, Unorganized Borough, Alaska, Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Valdez, Unorganized Borough, Alaska. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, Pioneer Drive, Valdez, Alaska. Send comments to: Honorable L. F. MacDonald, Mayor, City of Valdez, P.O. Box 307, Valdez, Alaska 99686.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755-5581 or Toll-Free Line (800) 424-8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Valdez, Alaska, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Lowe River	Dayville Road (100 feet) [1]	22
	Dayville Road (110 feet) [2]	27
	Pipeline Access Road (100 feet) [1]	47

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	Pipeline Access Road (1st foot) [1]	33
Valdez Glacier Stream	Intersection of Mineral Creek Road and Richardson Highway.	4
	Intersection of Valdez Airport Road and Richardson Highway.	4
	Pavement Cover at Northernmost Runway At Valdez Airport.	8
	Approximately 13,000 feet southeast along New Valdez Glacier Road from its intersection with Richardson Highway.	11
Port Valdez	1400 feet downstream (at southern face of Dayville Road) bridge over Allyson Creek.	11
	Intersection of Hanbett Avenue and North Harbor Drive.	11
Robe Lake	At confluence of Robe River.	36
Robe River	Approximately 2000 feet southeast along Richardson Highway from its intersection with New Valdez Glacier Road.	2
	Southwest side of Richardson Highway, 400 feet northwest of its intersection with Dayville Road.	8

[1] Downstream from centerline.
[2] Upstream from centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.)

Issued: June 1, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[FR Doc. 79-17585 Filed 6-8-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-6496]

Proposed Flood Elevation Determinations for the City of Globe, Gila County, Ariz., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Globe, Gila County, Arizona. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 150 North Pine Street, Globe, Arizona. Send comments to: Mr. John Burleson, City Manager, City of Globe, City Hall, 150 North Pine Street, Globe, Arizona 85501.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Globe, Arizona, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Pinal Creek	Downstream side of Crossing of U.S. Highway 60–70 [1]	2448
	Broad Street [1]	2462
	Cottonwood Street [1]	2503
	Jesse Hayes Street [1]	2527

[1] Centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[FR Doc. 79-17586 Filed 6-8-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-6498]

Proposed Flood Elevation Determinations for The Town of Miami, Gila County, Ariz., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Miami, Gila County, Arizona. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Office of the town Manager, Town Hall, 890 Sullivan, Miami, Arizona. Send comments to:

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 18, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

Honorable Katy Weimer, Mayor, Town of Miami, town Hall, 500 Sullivan, Miami, Arizona 85539.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Town of Miami, Arizona, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Bloody Tanks Wash	Downstream crossing of Southern Pacific Railroad [1]	3396
	Glass Canyon Street [1]	3416
	Reppy Avenue [1]	3428
	Upstream crossing of Southern Pacific Railroad (30 feet [2])	3444

[1] At centerline.
[2] Upstream from centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[FR Doc. 79-17902 Filed 6-8-79; 8:45 am]
BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI–5500]

Proposed Flood Elevation Determinations for the City of Cupertino, Santa Clara County, Calif., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Cupertino, Santa Clara County, California.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Planning Department, City Hall, 10300 Torre, Cupertino, California. Send comments to: Mr. Robert Quinlan, City Manager, City of Cupertino, City Hall, 10300 Torre, Cupertino, California 95014.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Cupertino, California, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Calabazas Creek	Interstate Highway 280—70 feet [1]	108
	Miller Avenue—50 feet [1]	201
Stevens Creek	Homestead Road—120 feet [1]	249
	Stevens Creek Boulevard—100 feet [1]	295
	McClellan Road—80 feet [1]	341
	Upstream Corporate Limits	422

[1] Upstream from centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[FR Doc. 79-17903 Filed 6-8-79; 8:45 am]
BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI–5501]

Proposed Flood Elevation Determinations for the City of Santa Rosa, Sonoma County, Calif., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly

Footnotes continued on next page

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Santa Rosa, Sonoma County, California. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, Santa Rosa, California. Send comments to: Mr Ken Blackman, City Manager, City of Santa Rosa, City Hall, P.O. Box 1678, Santa Rosa, California 95402.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Santa Rosa, California, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Mount Hood Creek	Most Downstream Corporate Limits (50 feet) [2]	468
	State Route 12 (100 feet) [1]	484
	State Route 12 (50 feet) [1]	487
	Pythian Road (50 feet) [1]	522
Spring Creek	Doyle Park Drive (50 feet) [1]	175
	Pierroutia Avenue (500 feet) [1]	201
	Mayette Avenue (50 feet) [1]	214

[1] Upstream from centerline.
[2] Downstream from centerline.

(National flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[FR Doc. 79-17891 Filed 6-6-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5602]

Proposed Flood Elevation Determinations for Sonoma County, Calif., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in Sonoma County, California. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Sonoma County Water Agency, 2555 Mendocino, Room 114A, Santa Rosa, California. Send comments to: Mr. Leonard Wharton, County Administrator, Sonoma County, County Administration Center, Santa Rosa, California 95401.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for Sonoma County, California, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Sonoma Creek	Basin Point Road—100 feet [1]	7
	State Route 121—50 feet [1]	12
	Watmaugh Road—50 feet [1]	43
	At confluence with Dowdell Creek.	56
	Verano Avenue—100 feet [1]	95
	Agua Caliente Road—50 feet [1]	123
	Madrone Road—50 feet [1]	163

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established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	Arnold Drive (upstream crossing)—50 feet [1]	256
	Warm Springs Road (upstream crossing)—100 feet [1]	315
	Lawndale Road—	
	100 feet [2]	365
	500 feet [1]	373
	State Route 12—50 feet [1]	445
Nuthouse Creek	Sprude Road—10 feet [1]	22
	Lovell Valley Road—50 feet [1]	112
Arroyo Seco	At confluence with Schell Creek.	12
	Napa Road—75 feet [1]	63
	East MacArthur Street—50 feet [1]	84
	Lovell Valley Road—	
	50 feet [2]	117
	90 feet [1]	129
Fowler Creek	At confluence with Rodgers Creek.	16
	Watmaugh Road—10 feet [1]	40
Rodgers Creek	At confluence with Fowler Creek.	16
	Arnold Drive (downstream crossing)—50 feet [1]	41
	Watmaugh Road—50 feet [1]	69
Champlin Creek	At confluence with Rodgers Creek.	43
	Donnell Road—50 feet [1]	85
	Petaluma Road (State Route 116)—10 feet [1]	161
Schell Creek	State Routes 12 and 121—20 feet [1]	10
	Sprude Road—20 feet [1]	22
	Napa Road [2]	47
North Kenwood Creek	Marvin Avenue—20 feet [1]	401
	State Route 12—25 feet [1]	416
Austin Creek	State Highway 116—20 feet [1]	36
	Casadero Highway—	
	25 feet [2]	97
	25 feet [1]	102
	Austin Creek Road (upstream crossing)—50 feet [1]	117
	At confluence with Austin Creek.	70
Dutch Bill Creek	Fir Street—20 feet [1]	46
	Tyrone Road—50 feet [1]	53
	Westminster Woods Bridge—50 feet [1]	155
	Redwood Alliance Bridge—75 feet [1]	177
Russian River	Moscow Road—10 feet [1]	28
	Hacienda Bridge—10 feet [1]	72
	Highway 101 Bridge—10 feet [1]	89
	State Highway 128—10 feet [1]	178
	Geyserville Bridge—100 feet [1]	212
	Preston Bridge—50 feet [1]	329
Mount Hood Creek	Lawndale Road—20 feet [1]	430
	Pythian Road [2]	520
Dry Creek	Westside Road—10 feet [1]	100
Flte Creek	Laughlin Road—10 feet [1]	61
	Watson Road—50 feet [1]	74
Petaluma River	U.S. Highway 101—10 feet [1]	7
	New Corona Road—50 feet [1]	25
	Alberti Road [2]	33
San Pablo Bay	At intersection of Sears Point Road and Lakeville Road.	7
Sonoma Creek	At the intersection of Freemont Road and State Route 12.	3

[1] Upstream from centerline.

[2] Downstream from centerline.

[3] At centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-17886 Filed 6-8-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-6503]

Proposed Flood Elevation Determinations for the City of Blountstown, Calhoun County, Fla., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Blountstown, Calhoun County, Florida.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 125 West Central Avenue, Blountstown, Florida. Send comments to: Mr. Dennis Kelly, City Manager, City of Blountstown, City Hall, 125 West Central Avenue, Blountstown, Florida 32424.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Blountstown, Florida, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation, in feet, national geodetic vertical datum
Apalachicola River	Intersection of Ray Avenue and Palm Street.	55
Sutton Creek	State Highway 71 [1]	54
	Charley E. Johns Street (10 feet) [1]	89
Ponding	Intersection of Lambert Avenue and Church Street.	66
	50 Feet Northwest of the Intersection of State Highway 71 and Church Street.	64

[1] Centerline.

[2] Downstream from centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.)

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-17885 Filed 6-8-79; 8:45 am]

BILLING CODE 4210-23-M

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 18, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

[24 CFR Part 1917]

[Docket No. FI-6804]

Proposed Flood Elevation Determinations for the City of Lake Mary, Seminole County, Fla., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Lake Mary, Seminole County, Florida.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 185 East Crystal Lake Avenue, Lake Mary, Florida.

Send comments to: Mayor Walter A. Sorenson, P.O. Box 725, Lake Mary, Florida 32746.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Lake Mary, Seminole County, Florida.

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Lake Singhen	Entire Shoreline	44
Lake Mich	Northern corporate limits	45
Sawyer Lake	Entire Shoreline	45
Island Lake	Entire Shoreline	45
Lake Marietta	Entire Shoreline	45
Lake Como	Entire Shoreline	45
Dawson Lake	Entire Shoreline	45
Crystal Lake	At Goodbeart Avenue	45
Little Crystal Lake	Eastern corporate limits	45
Big Lake Mary	At Evansdale Road	45
Little Lake Mary	Eastern corporate limits	45
Lake Emma	Entire Shoreline	47
Lake 1	Entire Shoreline	45
Lake 2	Entire Shoreline	45
Lake 3	Entire Shoreline	45
Lake 4	Entire Shoreline	47
Lake 5	Entire Shoreline	47
Lake 6	Entire Shoreline	47
Lake 7	Entire Shoreline	47
Soldier Creek	Just upstream of Wagon Wheel Road.	35
	Just upstream of Wood Street.	40

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963.)

In accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)). 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-17687 Filed 6-8-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-6805]

Proposed Flood Elevation Determinations for the City of Longwood, Seminole County, Fla., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Longwood, Seminole County, Florida. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 175 West Warren Avenue, Longwood, Florida. Send comments to: Mayor June Lormann, City Hall, 175 West Warren Avenue, Longwood, Florida 32750

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll-Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Longwood, Seminole County, Florida.

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 18, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Lake Wilkmere	Entire shoreline	62
Fairy Lake	Entire shoreline	58
East Lake	Entire shoreline	66
West Lake	Entire shoreline	66
Lake Searcy	Entire shoreline	67
Lake Winsor	Entire shoreline	66
Mud Lake	Entire shoreline	65
Prairie Lake	Entire shoreline	65
Island Lake	Entire shoreline	65
Rock Lake	Entire shoreline	61
Lake Ruth	Entire shoreline	64
Lake Fairy Drainage Canal.	Just upstream of Marvin Avenue.	76
	Just upstream of Wildmere Avenue.	78
Canal connecting Lake Wildmere and Fairy Lake.	Just upstream of overstreet extended.	69

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.)

In accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-17886 Filed 6-8-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5506]

Proposed Flood Elevation Determinations for the Town of Orange Park, Clay County, Fla., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Orange Park, Clay County, Florida.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule is a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Town Hall, 2042 Park Avenue, Orange Park, Florida.

Send comments to: Mayor Dennis Frick or Mr. Richard Fellows, Town Manager, 2042 Park Avenue, P.O. Box 428, Orange Park, Florida 32072.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW, Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Town of Orange Park, Clay County, Florida.

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Dubley Branch	200 feet upstream of Nelson Drive.	6
	Just downstream of Kingsley Avenue.	7
	Just upstream of Morgan Street.	9
Doctors Lake Tributary No. 1.	100 feet upstream of Dogwood Lane.	8
	100 feet upstream of SCL R.R. Bridge.	10
St. Johns River	At the southern corporate limits.	6
Johnson Slough	At U.S. 17	6
	Just upstream of Nelson Drive South.	6

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963.)

In accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-17887 Filed 6-8-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5507]

Proposed Flood Elevation Determinations for the City of Palm Bay, Brevard County, Fla., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Palm Bay, Brevard County, Florida.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Building Department, City Hall, 175 N.W. Palm Bay Road, Palm Bay, Florida.

Send comments to: Mayor Franklin DeGroodt or Mr. Harold Butler, Director

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

of Public Works, 175 N.W. Palm Bay Road, Palm Bay, Florida 32905.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Palm Bay, Brevard County, Florida.

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Turkey Creek	Just upstream of U.S. Highway 1.	7
	Approximately 200 feet upstream of Port Malabar Boulevard.	16
	Just upstream of Interstate 95.	21
Turkey Run	Just upstream of Troutman Boulevard.	13
	Approximately 600 feet upstream of Hewitt Road.	18
Indian River	Port Malabar Boulevard (Extended).	7
Channel C	Approximately 200 feet east of the intersection of Port Malabar Boulevard and Pebble Beach Avenue.	24
St. John River	Nonamer Drive	24
	Garvey Road	24

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963.)

In accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

Issued: June 1, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[FR Doc. 79-17599 Filed 6-8-79; 8:45 am]
BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-6826]

Proposed Flood Elevation Determinations for the Village of Downers Grove, Du Page County, Ill., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Village of Downers Grove, Du Page County, Illinois.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the lobby of the Village Hall, Downers Grove, Illinois.

Send comments to: Hon. Jon Council, Mayor of Downers Grove, 801 Burlington Avenue, Downers Grove, Illinois 60515.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW, Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Village of Downers Grove, Du Page County, Illinois in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
East Branch DuPage River.	Downstream Corporate Limits.	673
	Confluence of Kenky Creek	676
	Upstream Corporate Limits	680
Prentiss Creek	Downstream Corporate Limits.	709
	Fuller Road (Upstream)	712
	Woodward Avenue (Upstream).	722
	Prentiss Drive (Upstream)	728
	Springside Avenue (Upstream).	739
	Durham Road (Upstream)	744
St. Joseph Creek	Downstream Corporate Limits.	689
	Walnut Avenue (Upstream)	691
	Curtiss Street (Upstream)	695
	Belmont Road (Upstream)	694
	Lee Street (Upstream)	697
	Prentiss Drive (Upstream)	697
	Jacqueline Avenue (Upstream).	699
	Brookbank Road (Upstream)	709
	Maple Street (Upstream)	708
	Confluence of North Branch St. Joseph Creek.	709
	Rodgers Avenue (Upstream) and Hill Street.	710
	10th Street (Upstream)	710
	Fairview Avenue (Upstream)	709
	Dewpath Road (Upstream)	709
	Burlington Northern Railroad (Downstream).	709
	Burlington Northern Railroad (Upstream).	710
	Outlet of Culvert 370; downstream of Douglas Road (Downstream).	710
	Rogers Street (Upstream)	709
	Austin Street (Upstream)	709
	Fairview Avenue (Upstream)	709
	Hummer Park Drive (Upstream).	709
	Florence Avenue (Upstream)	725
	Upstream Corporate Limits	727
North Branch St. Joseph Creek.		

[1] The functions of the Federal Insurance Administration Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 18, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
South Branch St. Joseph Creek.	Confluence with St. Joseph Creek.	718
	Fairmont Avenue (Upstream).	719
	Lyman Avenue (Upstream).....	724
	Washington Street (Upstream).	727
	Webster Avenue (Upstream)..	731
	Main Street (Upstream)	739
	Carpenter Street (Upstream)..	746
	59th Street (Upstream)	748
	Middaugh Street (Upstream)..	748
Lacey Creek.....	Confluence with East Branch DuPage River.	675
	Confluence of One Mile Creek.	676
	Private Drive (Upstream)	680
	Finley Road (Upstream).....	689
	East-West Tollway (Downstream).	690
	East-West Tollway (Upstream).	692
	Downers Drive (Upstream)....	692
	Venard Road (Upstream).....	695
	Saratoga Avenue (Upstream)	697
	Highland Avenue (Upstream).	697
	Williams College Private Road (Upstream).	697
	Fairview Avenue (Upstream Corporate Limits).	702
One Mile Creek.....	Confluence with Lacey Creek	676
	Farm Road (Upstream).....	700
	2,270' upstream of Farm Road.	736

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969) 33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-17901 Filed 6-8-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5509]

Proposed Flood Elevation Determinations for the Township of Franklin, Somerset County, N.J., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Township of Franklin, Somerset County, New Jersey.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Township Hall, 207 Berger Street, Somerset, New Jersey.

Send comments to: Honorable Charles Durand, Mayor, Township of Franklin, Township Hall, 207 Berger Street, Somerset, New Jersey 08873.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Township of Franklin, New Jersey, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Raritan River.....	Corporate Limits [1].....	18
	Foot of De Mott Lane (100 feet [2]).	23
	Fieldville Dam (100 feet [2])....	30
	Calco Dam (100 feet [2])	36
Millstone River.....	Dam upstream from confluence with Raritan River (100 feet [2]).	40
	Dam at Manville Causeway (100 feet [2]).	41
	Amwell Road (100 feet [2])	44
	U.S. Geological Survey Gaging Station Weir at Blackwell Mills Causeway (100 feet [2]).	46
	Griggstown Causeway (100 feet [2]).	48
	Route 518 (100 feet [2])	52
Simonson Brook.....	Delaware and Raritan Canal (100 feet [2]).	49
	Mulhern Lake Dam (100 feet [2]).	89
Tennis Run.....	Canal Road (100 feet [2])	47
	Butler Road (100 feet [2])	69

[1] At centerline.
[2] Upstream from centerline.
[3] Downstream from centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-17902 Filed 6-8-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5510]

Proposed Flood Elevation Determinations for the Town of Harrison, Westchester County, N.Y., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Harrison, Westchester County, New York.

These base (100-year) flood elevations are the basis for the flood plain management measures that the

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Town Hall, Westchester County, New York.

Send comments to: Mr. John Pasciderno, Town Supervisor of Harrison, 1 Hill Side Avenue, Harrison, New York 10528.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755-5581 or Toll Free Line (800) 424-8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Town of Harrison, Westchester County, New York in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)], 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.5 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of Flooding	Location	Elevation in feet, national geodetic vertical datum
Blind Brook	Downstream Corporate Limits.	91
	Purchase Street	93
	Cross Westchester Expressway.	96
	Downstream side of Rye City Dam.	97
	Upstream side of Rye City Dam.	91
	Bowman Avenue	65
	Westchester Avenue	76
	Private Drive approximately 1,000' upstream of Westchester Avenue.	86
	Private Drive approximately 2,400' downstream of Westledgh Road.	98
	Westledgh Road	110
	Lincoln Avenue	120
	Brookside Way	126
	Confluence of Tributary A	128
	Hutchinson River Parkway downstream of confluence of Tributary B.	140
	Confluence of Tributary B	160
	Hutchinson River Parkway 3rd crossing upstream of confluence of Tributary B.	162
	Downstream side of Rye Blind Brook Country Club Dam.	190
	Upstream side of New Blind Brook Country Club Dam.	216
	Downstream side of Old Blind Brook Country Club Dam.	232
	Upstream side of Old Blind Brook Country Club Dam.	240
	Downstream side of Anderson Hill Road.	840
	Upstream side of Anderson Hill Road.	845
	Approximately 2,300' upstream of Anderson Hill Road.	295
	Approximately 2,000' downstream of College Road.	280
	Approximately 1,000' downstream of College Road.	291
	Downstream side of College Road.	336
	Upstream side of College Road.	346
	Lincoln Avenue	360
	Approximately 2,500' upstream of Lincoln Avenue.	367
Mamaroneck River	Downstream Corporate Limits.	32
	New England Thruway	39
	Downstream side Winfield Avenue.	37
	Upstream side Winfield Avenue.	40
	Downstream side Water Works Dam.	41
Mamaroneck River East Branch.	Confluence with Mamaroneck River.	136
	Anderson Hill Road	139
	Downstream side of Dam Spillway.	145
	Upstream side of Dam Spillway.	156
	Approximately 1,800' upstream of Dam Spillway.	162
	Approximately 2,300' upstream of.	177
	Approximately 3,400' upstream of.	187
	Approximately 3,900' upstream of.	197
	Approximately 2,000' downstream of confluence of Tributary A.	207

Source of Flooding	Location	Elevation in feet, national geodetic vertical datum
	Confluence of Tributary 1	214
	Barnes Lake	222
	Downstream side of New Lake Boulevard.	227
	Upstream side of New Lake Boulevard.	235
	Old Lake Street	239
	Downstream side of Forest Lake Dam.	239
	Upstream side of Forest Lake Dam.	244
	Approximately 200' upstream of Forest Lake Dam.	245
Beaver Swamp Brook Section 1.	Downstream Corporate Limits.	32
	Bradford Avenue Limits	34
	Osborn Road	35
	County Road	38
	Upstream Corporate Limits	40
Beaver Swamp Section 2.	Downstream Corporate Limits.	44
	Private Golf Course Road	51
	Downstream side of spillway.	53
	Upstream side of spillway.	55
	Downstream side of dam spillway.	68
	Upstream side of dam spillway.	70
	Park Drive	77
Brentwood Brook	Confluence with Beaver Swamp Brook—Section 1.	32
	Downstream side of Harrison Avenue.	39
	Upstream side of Harrison Avenue.	46
	Beacon Place	49
	Halsey Avenue	54
	Halstead Avenue	59
	Holland Street	66
	New England Thruway	66
	Allen Place	67
Brentwood Brook Tributary.	Confluence with Brentwood Brook.	65
	Crystal Street	66
	Approximately 600' upstream of confluence with Brentwood Brook.	67

[National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.)

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-17855 Filed 6-8-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5511]

Proposed Flood Elevation Determinations for Gaston County, N.C., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR

Footnotes continued on next page

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in Gaston County, North Carolina.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program, (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at County Courthouse, Gastonia, North Carolina.

Send comments to: Mr. David Huncher, County Manager, Gaston County, P.O. Box 1578, Gastonia, North Carolina 28052.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for Gaston County, North Carolina, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Catawba Creek	North Carolina State Route 2439 (100 feet) [1].	615
	At Confluence with Forest Brook Branch.	627
Crowders Creek	North Carolina State Route 1307 (75 feet) [1].	692
Curtis Branch	At Confluence with South Fork Catawba River.	570
	North Carolina State Route 2539 (20 feet) [1].	615
	Julia Avenue (20 feet) [1]	636
	North Carolina State Route 2636 [1].	660
Duharts Creek	North Carolina State Route 2209 (50 feet) [1].	614
	North Carolina State Route 2439 (75 feet) [1].	649
Dutchmans Creek	At Mount Holly corporate limits (100 feet) [1].	592
Files Creek	North Carolina State Route 2041 (10 feet) [1].	620
	North Carolina State Route 2040 (50 feet) [1].	634
Forest Branch Brook	North Carolina State Route 2445 (70 feet) [1].	631
	North Carolina State Route 2445 (10 feet) [1].	636
	North Carolina State Route 2444 (20 feet) [1].	676
	Dam (20 feet) [2]	715
	Dam (20 feet) [1]	726
	North Carolina State Route 2719 (10 feet) [1].	788
	North Carolina State Route 2732 (10 feet) [1].	810
Kitty's Branch	Southern Railway (100 feet) [2]	572
	Southern Railway (10 feet) [1]	588
Little Long Creek	At confluence with Long Creek.	651
	North Carolina State Route 275 (50 feet) [1].	686
	North Carolina State Route 1001 [2].	719
	U.S. Highway 321 (50 feet) [1]	729
Long Creek	North Carolina State Route 2003, (20 feet) [1].	648
	North Carolina State Route 275 (50 feet) [1].	702
	North Carolina State Route 1448 (50 feet) [1].	746
	North Carolina State Route 1443 (10 feet) [1].	766
	North Carolina State Route 274 (10 feet) [1].	773
Nancy Hanks Branch	Southern Railway (140 feet) [2]	572
	Southern Railway (100 feet) [1]	580
Smyre Tributary	North Carolina State Route 2230 (50 feet) [2].	724
	North Carolina State Route 2230 (50 feet) [1].	732
	At Limit of Detailed Study	743
South Fork Catawba Creek.	Lower Armstrong Bridge [3]	570
	Seaboard Coast Line Railway [2].	599
	North Carolina State Route 275 [2].	656
	North Carolina State Route 1607 [2].	677
	Confluence with Beaverdam Creek.	716
Stowe Branch	Southern Railway (100 feet) [2]	572
	Southern Railway (10 feet) [1]	578
	Stowe Thread Road [1]	595
Stowe Tributary	Confluence with Stowe Branch.	579
	At Belmont Corporate Limits	631

[1] Upstream from centerline.
[2] Centerline.
[3] Downstream from centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[FR Doc. 79-17804 Filed 6-8-79; 8:45 am]
BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5512]

Proposed Flood Elevation Determinations for the City of Athens, Athens County, Ohio, Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Athens, Athens County, Ohio.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the City Building, East Washington Street, Athens, Ohio.

Send comments to: The Honorable Donald Barrett, Mayor, City of Athens, City Building, East Washington Street, Athens, Ohio 45701.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives

Footnotes continued from last page
41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

notice of the proposed determination of base (100-year) flood elevations for the City of Athens, Athens County, Ohio, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Hocking River	At downstream corporate limits.	636
	Just upstream of Stimson Avenue.	640
	About 750 feet downstream of Whites Mill Dam.	646
	Just upstream of Whites Mill Dam.	646
	Just upstream of State Route 56.	648
	About 250 feet upstream of Margaret Creek.	650
	Just downstream of Chessie System.	652
	About 1,000 feet upstream of Chessie System.	656
	At upstream corporate limits.	659
Coates Run	At barricaded bridge (Unnamed Road).	641
	About 650 feet upstream of U.S. Route 33 which is located about 1,200 feet upstream of State Route 682.	646
	Just upstream of footbridge located about 370 feet downstream of Carriage Hill Drive.	651
	Just upstream of Unnamed Road located 3,600 feet upstream of State Route 682.	656
	About 1,200 feet downstream of U.S. Route 33 which is located about 5,600 feet upstream of State Route 682.	660
	About 670 feet downstream of U.S. Route 33 which is located about 5,600 feet upstream of State Route 682.	666
	About 280 feet downstream of U.S. Route 33 which is located about 5,000 feet upstream of State Route 682.	670
	About 180 feet upstream of Pomeroy Road (U.S. Route 33).	676

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 26, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963.)

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-17205 Filed 6-6-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-6513]

Proposed Flood Elevation Determinations for the City of Del City, Oklahoma County, Okla., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Del City, Oklahoma County, Oklahoma.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Office of the City Planner, City Hall, 4517 S.E. 29th Street, Del City, Oklahoma 73115.

Send comments to: Mayor James H. Nolen or Mr. Gene Holmes, City Planner, City Hall, 4517 S.E. 29th Street, Del City, Oklahoma 73115.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755-5581 or Toll Free Line (800) 424-8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Del City, Oklahoma County, Oklahoma, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by Section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Crutcho Creek Tributary A.	Approximately 50 feet upstream of S.E. 29th Street.	1192
Crutcho Creek Tributary B.	Just downstream of S.E. 29th Street.	1205
	Just downstream of Woodview Drive.	1211
Crutcho Creek	Just downstream of Sooner Road.	1171
	Just downstream of Vista Drive.	1178
	Just downstream of S.E. 15th Street.	1180
North Canadian River	Just downstream of N.E. 10th Street.	1162
	Just upstream of N.E. 10th Street.	1166
Crooked Oak Creek	Just upstream of Reno Avenue.	1172
	Grand Boulevard	1157

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 20, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Cherry Creek	Just upstream of N.E. 4th Street.	1157
	Just upstream of Piano Avenue.	1176
	Just upstream of Dell Road	1208
	Just upstream of Poplewood Circle.	1221
Branch Creek	Just upstream of St. Louis-San Francisco Railroad Yard.	1168
	Just upstream of Piano Avenue.	1181

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.)

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-17589 Filed 6-8-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-8514]

Proposed Flood Elevation Determinations for the Township of Liverpool, Perry County, Pa., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Township of Liverpool, Perry County, Pennsylvania.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Buffalo Township Municipal Building.

Send comments to: Mr. M. E. Brookhart, Township Secretary of Liverpool, R.D. 1, Box 44, Liverpool, Pennsylvania 17045.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Township of Liverpool, Perry County, Pennsylvania in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Susquehanna River	Downstream Corporate Limits.	395
	Upstream Corporate Limits	408
Bergers Run	Downstream Corporate Limits.	407
	Private Drive	420
	L. R. 50028	443
	Abandoned Road	443
	Private Drive	453
	Township Route 542	469
	Downstream Private Drive	479
	Upstream Private Drive	482
	Private Drive	494
	Private Drive	494
	Private Drive (Downstream)	497
	L.R. 50048	508
	L.R. 50091	519

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	[illegible]	395
Pinola Run	[illegible]	449
	[illegible]	459
	[illegible]	462
	[illegible]	476
	[illegible]	500

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-17587 Filed 6-8-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-8515]

Proposed Flood Elevation Determinations for the Township of West Hanover, Dauphin County, Pa., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Township of West Hanover, Dauphin County, Pennsylvania.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

[1] The functions of the Federal Insurance Administration Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Municipal Building, West Hanover, Pennsylvania.

Send comments to: Mr. Robert Landon, Chairman of the Township, of West Hanover, 7171 Allentown Boulevard, Harrisburg, Pennsylvania 17112.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Township of West Hanover, Dauphin County, Pennsylvania in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Beaver Creek	State Route 39 (Upstream Side).	422
	Fiestown Road (Upstream Side).	427
	Rockridge Avenue (Upstream Side).	415
	Jonestown Road	402
	Cloverdale Heights Road	398
Tributary A to Beaver Creek.	6,200 feet upstream of confluence with Beaver Creek.	409
	2,600 feet upstream of confluence with Beaver Creek.	446
	600 feet upstream of confluence with Beaver Creek.	454
Fishing Creek	Fishing Creek Elementary School Road (Upstream Side).	572
	State Route 443 (Upstream Side).	547
	Downstream Corporate Limits.	550
Manada Creek	Upstream Corporate Limits	409
	Downstream Corporate Limits.	404
Tributary to Manada Creek.	2,000 feet upstream of Corporate Limits.	576
	Corporate Limits	559

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963)

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-17888 Filed 6-8-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-6516]

Proposed Flood Elevation Determinations for the city of Charleston, Bradley County, Tenn., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Charleston, Bradley County, Tennessee.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified or participation in the National Flood Insurance Program (NFIP).

DATES: The period for comments will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Manager's Office, City Hall, Charleston, Tennessee.

Send comments to: Mayor J. P. Walker or Mr. Steve Keesler, City Manager, City Hall, Charleston, Tennessee 37310.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Charleston, Bradley County, Tennessee, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by Section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Hiwassee River	Just downstream of US Highway 11.	668
	Just downstream of County Road 4011.	669

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 18, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Unnamed Tributary to Hoquiam River.	Just downstream of Cass Street.	999
	Just downstream of West Street.	999
	Just downstream of Market Street.	999

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963)

Issued: June 1, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[FR Doc. 79-17789 Filed 6-8-79; 8:45 am]
BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-8517]

Proposed Flood Elevation Determinations for the City of Buckley, Pierce County, Wash., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA. [1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Buckley, Pierce county, Washington.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, Buckley, Washington.

Send comments to: Honorable Earl Hill, Mayor, City of Buckley, City Hall, P.O. Box D, Buckley, Washington 98321.

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 18, 1978) and Executive Order 12127 (44 Fr 19367, April 3, 1979).

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Buckley, Washington, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
White River	State Route 410 (25 feet) [1]	629
	Burlington Northern Railroad [2]	631
	Puget Power Diversion Dam [2]	868

[1] Upstream From Centerline.
[2] Centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[FR Doc. 79-17790 Filed 6-8-79; 8:45 am]
BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-8516]

Proposed Flood Elevation Determinations for Franklin County, Wash., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA. [1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in Franklin County, Washington.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood/prone areas and the proposed base (100/year) flood elevations are available for review at County Courthouse, 1014 North 4th, Pasco, Washington.

Send comments to: Mr. James Rogers, Chairman, Board of County Commissioners, Franklin County, County Courthouse, 1014 North 4th, Pasco, Washington 99362.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program (202) 755-5581 or Toll Free Line (800) 424-8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for Franklin County, Washington, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 18, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed based (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Esquatzel Coulee at Peace Sump.	County Road 930*.	424
	Ralph Landing Road (105 feet)**.	466
	Ralph Landing Road*.	479
Esquatzel Coulee at Ellepia.	Ellepia-West Road (100 feet)**.	557
	Burlington Northern Railroad (25 feet) from upstream crossing***.	583
Esquatzel Coulee at Connell.	State Highway 260 (50 feet)***.	632
	Upstream corporate limits of Town of Connell.	647
Kahlotus Creek.	Spokane Avenue (25 feet)***	902
	Upstream corporate limits of Town of Kahlotus.	907

*Centerline.
**Downstream From Centerline.
***Upstream From Centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 26, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-17911 Filed 6-8-79; 8:45 am]

BILLING CODE 4210-23-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 117]

[CGD 79-079]

Drawbridge Operation Regulations; Delaware River (Back Channel), N.J.

AGENCY: Coast Guard, DOT.

ACTION: Proposed Rule.

SUMMARY: At the request of the Consolidated Rail Corporation (CONRAIL), the Coast Guard is considering revising the operation regulation for the CONRAIL bridge across Back Channel, mile 108.2, Delaware River, Camden, New Jersey, to provide that the draw need not open. This proposal is being made because no requests have been made to open the draw for at least 15 years. This action will relieve the bridge owner of the requirement to maintain the machinery in an operable condition and of having a person available to open the draw.

DATE: Comments must be received on or before July 13, 1979.

ADDRESS: Comments should be submitted to and are available for examination at the office of the Commander (oan), Third Coast Guard District, Governors Island, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: Frank L. Teuton, Jr. Chief, Drawbridge Regulations Branch (G-WBR/73), Room 7300, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-0942).

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

The Commander, Third Coast Guard District, will forward any comments received with his recommendations to the Chief, Office of Marine Environment and Systems, U.S. Coast Guard Headquarters, Washington, D.C., who will evaluate all communications received and recommend a course of final action to the Commandant on this proposal. The proposed regulations may be changed in the light of comments received.

Drafting Information

The principal persons involved in drafting this proposal are: Frank L. Teuton, Jr., Project Manager, Office of Marine Environment and Systems, and Coleman Sachs, Project Attorney, Office of Chief Counsel.

Discussion of the Proposed Regulations

There are two factors that the Coast Guard feels are worthy of consideration. First is the unsubstantiated claim by the bridge owner that no openings have been made since at least 1963. The second factor is the easy availability of alternate access routes to navigation.

These proposed regulations are issued to solicit comments from those who may be affected or who may have an interest in them.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations be amended by revising § 117.225(f)(18) to read as follows:

§ 117.225 Navigable waters in the State of New Jersey; bridges where constant attendance of draw tenders is not required.

* * * * * *

(f) * * *

(18) Delaware River (Back Channel): CONRAIL bridge between Petty Island and Camden. The draw need not open and paragraphs (b) through (e) of this section shall not apply to this bridge.

* * * * * *

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5))

Dated: June 5, 1979.

R. H. Scarborough,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

[FR Doc. 79-18110 Filed 6-8-79; 8:45 am]

BILLING CODE 4910-14-M

[33 CFR Part 117]

[CGD 79-019]

Drawbridge Operation Regulations; Greens Bayou, Tex.

AGENCY: Coast Guard, DOT.

ACTION: Proposed Rule.

SUMMARY: At the request of the Port of Houston Authority, the Coast Guard is considering establishing operation regulations for the draw of a railroad bridge across Greens Bayou, mile 2.8, scheduled to be operational by 30 June 1979, to require at least four hours notice for an opening, except for certain return trips. This is being considered because of limited activity above this bridge. This action will relieve the bridge owner of the burden of having a person available to open the draw at all times.

DATE: Comments must be received on or before July 10, 1979. **ADDRESS:** Comments should be submitted to and are available for examination at the office of the Commander (obr), Eight Coast Guard District, Hale Boggs Federal Building, 500 Camp Street, New Orleans, Louisiana 70130.

FOR FURTHER INFORMATION CONTACT: Frank L. Teuton, Jr. Chief, Drawbridge Regulations Branch (G-WBR/73), Room 7300, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-0942).

SUPPLEMENTARY INFORMATION:
Interested persons are invited to participate in this proposed rule making by submitting written views, comments, data or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

The Commander, Eigth Coast Guard District, will forward any comments received with his recommendations to the Chief, Office of Marine Environment and Systems, U.S. Coast Guard Headquarters, Washington, D.C., who will evaluate all communications received and recommend a course of final action to the Commandant on this proposal. The proposed regulations may be changed in the light of comments received.

Drafting Information

The principal persons involved in drafting this proposal are: Frank L. Teuton, Jr., Project Manager, Office of Marine Environment and Systems, and Coleman Sachs, Project Attorney, Office of Chief Counsel.

Discussion of the Proposed Regulations

The Port of Houston Authority is converting the fixed bridge across Greens Bayou, mile 2.8, into a vertical lift bridge. The regulation would be implemented upon completion of the construction. The Port Terminal Railroad Association (PTRA) will provide the bridge operators. The draw will open for the passage of a vessel after four hours notice is given to PTRA. If the opening is for an upbound vessel, the bridge operator will remain on the bridge up to a maximum of three hours to provide an opening for the vessel's downbound passage. If there is more than a three-hour delay before the return passage, a new four-hour notice will be required.

Presently, two commercial facilities, which use the waterway, are located upstream of the bridge. A third facility is new to the area but may use the waterway in the future. The bridge owner has coordinated the proposed operating procedure with these companies and received no objections.

A total of 544 barge trips were made past the bridge in 1977 (latest year of record). The proposed bridge conversion is not expected to generate a significant increase in the number of vessel trips past the bridge.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations be amended by adding a new § 117.245(j)(32) immediately after § 117.245(j)(31) to read as follows:

§ 117.245 Navigable waters discharging into the Atlantic Ocean south of an including Chesapeake Bay and into the Gulf of Mexico, except the Mississippi River and its tributaries and outlets; bridges where constant attendance of draw tenders is not required.

* * * * *

(j) * * *

(32) Greens Bayou, Texas; Port Terminal Railroad Association, mile 2.8. The draw shall open on signal if at least four notices is given and on signal for three hours thereafter if the opening is for returning vessels.

* * * * *

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5))

Dated: May 31, 1979.

R. H. Scarborough,
Vice Admiral, U.S. Coast Guard, Acting Commandant.

[FR Doc. 79-18117 Filed 6-8-79; 8:45 am]
BILLING CODE 4910-14-M

[33 CFR Part 164]

[CGD 77-196]

Navigation Safety Regulations

AGENCY: U.S. Coast Guard, DOT.

ACTION: Extension of comment period for proposed rules.

SUMMARY: This notice extends the deadline for comments on the proposed rules designating "confined or congested waters". The notice of proposed rulemaking was published in the **Federal Register** on April 16, 1979, at 44 FR 22686.

DATES: The deadline for comments has been extended from June 1, 1979, to July 1, 1979. Written comments must be received on or before this date.

ADDRESSES: Comments should be submitted to the Commandant (G-CMC/81), (CGD 77-196), U.S. Coast Guard, Washington, DC 20590. Comments will be available for examination at the Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:
Mr. Chris Llana, Office of Marine Environment and Systems (G-WLE-4/73), Room 7315, Department of Transportation, Nassif Building, Washington, DC 20590, (202) 426-4958.

SUPPLEMENTARY INFORMATION:
Interested persons are invited to participate in this rulemaking by submitting written data, views or arguments. Written comments should include the docket number (CGD 77-196), the name and address of the person submitting the comments, and the specific section of the proposal to which each is addressed. All comments received will be considered before final action is taken on this proposal. No hearings are contemplated, but one or more may be held at times and places set out in a later notice in the **Federal Register**, if requested by a person or organization desiring to comment orally at a public hearing and raising a genuine issue.

Drafting Information

The principal persons involved in drafting this proposal are Chris Llana, Project Manager, Office of Marine Environment and Systems, and Michael Mervin, Project Attorney, Office of Chief Counsel.

Discussion of Comment Deadline Extension

The notice of proposed rulemaking designating confined or congested waters (33 CFR 164.10) in which vessels must observe certain precautionary requirements (specified in 33 CFR 164.15) was published in the **Federal Register** on April 16, 1979, at 44 FR 22686. The deadline for written comments was June 1, 1979.

We have received a request for an extension of this deadline from the International Shipmasters' Association of the Great Lakes. The request was made in order to give the Shipmasters' Association and the Pilots' Association sufficient time to solicit and coordinate the comments of their members.

The Coast Guard considers this to be a valid request and is therefore extending the comment deadline one month.

Dated: June 4, 1979.

R. H. Scarborough,
Vice Admiral, U.S. Coast Guard, Acting Commandant.

[FR Doc. 79-18119 Filed 6-8-79; 8:45 am]
BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY:

[40 CFR Ch. I]

[FRL 1268-7]

Development of Standards for Uranium Mill Tailings and Report on Uranium Mining Wastes; Call for Information and Data

AGENCY: Environmental Protection Agency.

ACTION: Request for Information and Data Relevant to Development of Standards and a Report to Congress.

SUMMARY: The Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) requires EPA to promulgate standards for the protection of public health, safety, and the environment from hazards associated with residual materials ("tailings") located at inactive and active uranium mill tailings sites and depository sites for such materials. A report to Congress on the hazards of uranium mining wastes is also required. In this notice, EPA requests the public to submit information and data relevant to the development of these standards and the report on uranium mining wastes.

DATES: In order to be considered, written information should be received by July 26, 1979.

ADDRESS: Information should be submitted to Director, Criteria and Standards Division, Office of Radiation Programs (ANR-460), U.S. Environmental Protection Agency, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Dr. Stanley Lichtman, Office of Radiation Programs (ANR-460), U.S. Environmental Protection Agency, Washington, D.C. 20460, Telephone 703-557-8927

SUPPLEMENTARY INFORMATION: Under the Uranium Mill Tailings Radiation Control Act of 1978, the Environmental Protection Agency is required to promulgate generally applicable environmental standards (Sec. 206) for:

1. Inactive uranium mill tailings sites by November 8, 1979, and
2. Active uranium mill tailings sites by May 8, 1983.

A report is due to Congress by January 1, 1980, identifying the location and potential health, safety, and environmental hazards of uranium mine wastes, together with recommendations, if any, for a program to eliminate the hazards (Sec. 114(c)).

In developing its standards for uranium mill tailings, EPA will rely primarily on existing information. Materials recently developed for the Nuclear Regulatory Commission's draft Generic Environmental Impact Statement for Uranium Mills will be major sources of general information. The studies performed for the Department of Energy of the 22 specific inactive sites named in the UMTRCA will also be very useful. Additional substantial information is available from EPA and other public agencies, and from industrial and academic sources.

A literature search is also being made to assess the hazards associated with both radioactive and nonradioactive constituents of uranium mining wastes. The major effort will be devoted to open pit and underground uranium mining. No major new evaluations of health, scientific or technological issues will be performed. Available resource material from the Nuclear Regulatory Commission, Department of Energy, Department of Interior (Bureau of Mines), EPA, and the state health agencies of uranium producing states will form the basis of this assessment.

In carrying out the provisions of UMTRCA, the Administrator of EPA has been encouraged to invite public participation (Sec. 111). Thus, the Agency invites the public and other Government agencies to contribute relevant information regarding the hazards of uranium mining and milling wastes, and the availability, effectiveness, and costs of hazard control technology.

Dated: June 6, 1979.

David G. Hawkins,

Assistant Administrator for Air, Noise and Radiation (ANR-443).

[FR Doc. 79-18441 Filed 6-8-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Part 52]

[FRL 1243-6]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan, Revision of Maricopa County Nonattainment Area Plan for Carbon Monoxide and Photochemical Oxidants

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Revisions to the Arizona State Implementation Plan (SIP) have been submitted to the Environmental Protection Agency (EPA) by the Governor's designee. The intended effect of the revisions is to meet the requirements of Part D of the Clean Air Act, as amended in 1977, "Plan Requirements for Nonattainment Areas." This Notice provides a description of the proposed SIP revisions, summarizes the Part D requirements, compares the revisions to these requirements, indentifies major issues in the proposed revisions, and suggests corrections. On April 4, 1979 (44 FR 20372) EPA published a General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas. The general preamble supplements this proposal by identifying the major considerations that will guide EPA's evaluation of the submittal. The EPA invites public comments on these revisions, the identified issues, the suggested corrections, and whether the revisions should be approved or disapproved, especially with respect to the requirements of Part D of the Clean Air Act.

DATES: Comments may be submitted on or before July 11, 1979.

ADDRESSES: Comments may be sent to: Regional Administrator, Attn: Air & Hazardous Materials Division, Air Technical Branch, Regulatory Section (A-4), Environmental Protection Agency, Region IX, 215 Fremont Street San Francisco CA 94105.

Copies of the Proposed Revisions/Nonattainment Area Plan and EPA's associated Evaluation Report are contained in document file No. MAP-AZ-1 and are available for public inspection during normal business hours at the EPA Region IX Library at the above address and at the following locations:

Maricopa Association of Governments, 1820 West Washington, Phoenix AZ 85007.
Arizona Department of Health Services, State Health Building, 1740 West Adams Street, Phoenix AZ 85007.
Public Information Reference Unit, Room 2922 (EPA Library), 401 "M" Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Douglas Grano, Chief, Regulatory Section, Air Technical Branch, Air & Hazardous Materials Division, Environmental Protection Agency, Region IX, (415) 556-2098.

SUPPLEMENTARY INFORMATION:

Background

New provisions of the Clean Air Act enacted in August 1977, Public Law No. 95-95, require states to revise their SIPs for all areas that do not attain the National Ambient Air Quality Standards (NAAQS). The amendments required each state to submit to the Administrator a list of the NAAQS attainment status for all areas within the state. The Administrator promulgated these lists, with certain modifications, on March 3, 1978 (43 FR 8962). State and

local governments were required to develop, adopt, and submit to EPA revisions to their SIP for these designated nonattainment areas by January 1, 1979 which meet the requirements of Part D of the Clean Air Act and which provide for the attainment of the NAAQS as expeditiously as practicable.

EPA had promulgated the designations for Arizona listed in the March 3, 1978 **Federal Register** notice since the State did not submit its attainment status designations in time to comply with the requirements of Section 107(d) of the Clean Air Act. The March 3, 1978 notice designated Maricopa County as nonattainment for particulate matter, photochemical oxidants (ozone), and carbon monoxide. The State subsequently submitted designations on August 15, 1978, and as a result, two **Federal Register** notices have been published amending the attainment status designations in Arizona.

On March 19, 1979 (44 FR 16388), the carbon monoxide and photochemical oxidants (ozone) nonattainment area in Maricopa County was redesignated from a county-wide basis to the Maricopa Association of Governments' Urban Planning Area (defined by given geographical coordinates).

On April 10, 1979 (44 FR 21261), Maricopa County's previous county-wide nonattainment designation for particulate matter was revised to include only the Maricopa County Urban Planning Area. Consequently, the recent nonattainment designations described above are the areas for which EPA will evaluate Maricopa County's nonattainment area plans. More detailed information about the Arizona attainment status redesignations may be obtained from the **Federal Register** notices cited above.

The nonattainment area plan for particulate matter for Maricopa County has not yet been received, and will therefore, be the subject of a separate **Federal Register** notice.

Description of Proposed SIP Revisions

On February 23, 1979 the Governor's designee submitted the Nonattainment Area Plan for Carbon Monoxide and Photochemical Oxidants for the Maricopa County Urban Planning Area to EPA as a revision to the Arizona SIP. Preparation of the proposed SIP revision was coordinated by the Maricopa Association of Governments which was designated by the Governor as the air quality planning organization for the Maricopa County Nonattainment Area. The nonattainment area plan for the Maricopa area, addressed in this notice, consists of the following major components:

—a basic description of the nonattainment area including topography, air monitoring network, and air quality standards;
—an emission inventory identifying emission source categories and their estimated present and projected emissions;
—an identification of possible control strategies including a description and analysis of the strategies and their process of selection;
—a discussion of the specific control strategies used in the plan including their description, cost, implementation, and impact;
—a discussion of the reasonably available control measures including transportation control measures and stationary source controls;
—an identification of resources as they apply to the control strategies; and
—a discussion of public participation, intergovernmental consultation, and a description of the continuing planning process.

In addition, the Governor's designee submitted Maricopa County Air Pollution Control Rule 33, *Storage and Handling of Petroleum Products* on January 18, 1979 as an official SIP revision. This rule contains requirements for gasoline vapor recovery at service stations, gasoline bulk plants, gasoline bulk terminals, and fixed-roof storage tanks. The requirements of Rule 33 are reflected in the control strategies in the plan.

The nonattainment area plan identifies two mandatory control strategies which are necessary to attain the NAAQS. Inclusion of these strategies indicates the attainment of the carbon monoxide standard in 1982 and the 0.08 ppm photochemical oxidants (ozone) standard in 1985, and maintenance of these standards through the year 2000. These mandatory strategies are:

1. continuation of the existing vehicle inspection/maintenance program along with a strengthening of the emission inspection standards (the specific provisions of this program are described in a separate **Federal Register** notice concerning revisions to Arizona's inspection/maintenance program submitted to EPA on March 21, 1979); and

2. control requirements on the storage and handling of petroleum products, Rule 33 (Stage I).

3. The plan also lists Stage II vapor recovery as a mandatory control strategy to be implemented by December 31, 1982 provided a prior period of determination establishes the actual need and feasibility.

In addition, the plan discusses two voluntary control strategies, carpooling and modified work schedules, which are included on the basis that they will have a positive impact on air quality. These measures are not part of the adopted control strategy insofar as no emission reduction credit is claimed for them. The plan also discusses the basic ongoing programs of traffic system improvements, mass transit improvements, and regional development planning as parts of the plan only for purposes of projections of future transportation emissions.

Criteria for Approval

The following list summarizes the basic requirements for Nonattainment Area Plans.

1. An accurate inventory of existing emissions.

2. A provision for expeditious attainment of the standards.

3. A determination of the level of control needed to attain by 1982 and, in the case of an extension request, by 1987.

4. Adoption in legally enforceable form of all measures necessary to provide for attainment or, where adoption by 1979 is not possible, a schedule for development, adoption, submittal, and implementation of these measures.

5. Emission reduction estimates for each adopted control measure.

6. Provisions for reasonable further progress as defined in Section 171 of the Clean Air Act.

7. An identification of an emissions growth increment.

8. Provisions for annual reporting with respect to items (4) and (6) above.

9. A permit program for major new or modified sources consistent with Section 173 of the Clean Air Act.

10. An identification of and commitment to the resources necessary to carry out the plan.

11. Evidence of public, local government, and state involvement and consultation.

12. Evidence that the proposed SIP revisions were adopted by the state after reasonable notice and public hearing.

13. For carbon monoxide and photochemical oxidants (ozone), SIP revisions that provide for attainment of the primary standards later than 1982:

a. A permit program for major new or modified sources requiring an evaluation of alternative sites and

consideration of environmental and social costs.

b. In addition, in urbanized areas:

(1) An Inspection/Maintenance program or schedule for development, adoption, and implementation of such a program.

(2) A provision for implementation of reasonably available control measures for mobile sources.

(3) A commitment to establish, expand, or improve public transportation measures.

14. For photochemical oxidants (ozone) nonattainment areas requiring an extension beyond 1982, the revision must provide for adoption of legally enforceable regulations to reflect the application of reasonably available control technology (RACT) to those stationary sources for which EPA has published a Control Techniques Guideline by January, 1978 and a commitment to adopt RACT regulations for additional sources to be covered by future guidelines. For rural areas, only large sources (more than 100 tons/year potential emissions) must be so regulated.

Issues

This section discusses whether the plan elements of the Maricopa Nonattainment Area Plan for Carbon Monoxide and Photochemical Oxidants satisfy the basic criteria for approval. The paragraph numbers correspond to the preceding section, Criteria for Approval. Where a significant plan discrepancy is identified, recommendations for revision of the plan may be specified. The citations in the comments refer to Section 110, and Part D, Section 171 to 178, of the Clean Air Act, as amended.

1. *Emission Inventory.* The plan included a reasonably accurate, comprehensive and current emission inventory for hydrocarbons and carbon monoxide identifying emission source categories and present and future emissions. Stationary, mobile, and area and source estimates which comprise the inventory are primarily based on emission factors cited in EPA's "Compilation of Air Pollutant Emission Factors" (AP–42), which was available at the time the plan's inventory was developed. Although the computer program Mobile I, EPA's most recent mobile source emission factor methodology, was not available during the preparation of the inventory, subsequent updates to the inventory must include mobile source emission calculations based on Mobile I.

2. *Attainment Provision.*

Ozone

The plan addresses the national standard for photochemical oxidants of 0.08 ppm, which was superseded on February 8, 1979 (44 FR 8202) by the promulgation of a revised standard for ozone of 0.12 ppm. This revision to the standard may provide the opportunity to amend the plan, including changes in the control tactics and the attainment date. The design value used in the plan for control strategy evaluation is acceptable. However, in the future, should the State decide to revise the plan with respect to the new ozone standard of 0.12 ppm, the design value must be reevaluated by statistical methods (40 CFR 50, Appendix H; 44 FR 8220). Upon receipt of an official SIP revision, EPA will consider the proposed changes. The present plan indicates attainment of the oxidant (ozone) standard by 1985 through a control strategy consisting of vehicular inspection/maintenance, gasoline vapor recovery regulations, voluntary carpooling and voluntary modified work schedules. The plan does not include adequate justification for an extension beyond the 1982 deadline since no demonstration has been provided that the 0.08 ppm oxidant (ozone) standard cannot be achieved despite the expeditious implementation of reasonably available control measures.

Carbon Monoxide

The plan provides for the attainment of the carbon monoxide standards by 1982 through reductions in emissions relying primarily on the inspection/maintenance control tactic. For purposes of this demonstration the more stringent 8-hour standard was used.

3. *Level of Control/Modeling.*

Ozone

The reductions needed to reach attainment status have been calculated by linear rollback modeling. The rollback model is an acceptable technique for the evaluation of control strategies necessary to demonstrate attainment of the ozone NAAQS for the January 1979 SIP revision.

Carbon Monoxide

The calibrated APRAC model, which conforms to EPA guidelines in essential respects, was used to project future air quality with current rules and regulations and to estimate area-wide allowable carbon monoxide emissions. A modified rollback analysis was then used to evaluate which control tactics would achieve attainment. The Maricopa County modified rollback analysis is considered a reasonable modeling technique for the evaluation of control strategies necessary to demonstrate attainment of the carbon monoxide NAAQS for the January 1979 SIP revision. However, spatial and temporal differences in emissions cannot be accounted for with this type of analysis. A validated APRAC model with updated emission factors should be used to re-evaluate the adopted control tactics contained in the plan and the results addressed in the next annual update. The localized carbon monoxide levels associated with the annual State Fair should continue to be assessed. If future ambient monitoring in the planning area does not show that air quality values are reduced in proportion to emission reductions that should occur as a result of the existing control strategy, it will be necessary to perform a "hot spot" analysis for those monitoring sites in future SIP revisions.

4. *Legally Adopted Measures/ Schedules.*

Ozone

The SIP revision does not indicate that all necessary control measures have been adopted at the State or local level, as required by Sections 172(b)(2), 172(b)(8), and 172(b)(10). Specifically, the plan fails to show adoption of legally enforceable regulations that provide for reasonably available control technology. Schedules and commitments for analysis, development, adoption, submittal, and implementation of reasonably available transportation control measures must also be provided.

As described under criteria 6 and 13 below, the plan must include adopted legally enforceable regulations reflecting reasonably available control technology for all stationary source categories for which EPA has published a Control Techniques Guideline (CTG) document by January, 1978 (Category I). Transportation measures which account for necessary hydrocarbon emission reductions must be supported by evidence that agencies with transportation planning and implementing authority have (1) adopted an emissions reduction target for the transportation sector, and (2) clearly acknowledged and accepted responsibility for the implementation of the transportation control measures presented in and to be added to the plan on a schedule consistent with the requirements of reasonable further progress.

Carbon Monoxide

The SIP revision indicates that all necessary control measures have been adopted at the State or local level, as

required by Sections 172(b)(2), 172(b)(8), and 172(b)(10). The State has an existing inspection/maintenance program which is the primary control tactic for the control of carbon monoxide emissions. The State submitted amended inspection/maintenance regulations on March 21, 1979 as an SIP revision. This revision strengthens the program by increasing the stringency factor for motor vehicle emissions inspection. The March 21, 1979 SIP revision will be the subject of a separate Notice of Proposed Rulemaking.

5. *Emission Reduction Estimates.* The State used acceptable techniques for deriving the area, stationary, and mobile source emission reduction estimates. It is recognized that reduction estimates may change as measures are more fully analyzed and implemented. As such estimates change, appropriate responses will be required to insure that the plan remains adequate to provide for attainment and for reasonable further progress.

6. *Reasonable Further Progress.* The showing of planned emission reductions for hydrocarbons (ozone precursor) and carbon monoxide appears to be consistent with the requirements of Section 172(b)(3) and the definition of reasonable further progess in Section 171(1). The schedule represents regular incremental reductions needed for attainment of the carbon monoxide standard by 1982. The schedule represents regular incremental reductions needed for attainment of 0.08 oxidant standard by 1985 with the application of control regulations on four of the Category I CTG stationary source categories. However, as described in criteria 13 below, RACT regulations must be adopted for an additional five stationary source categories of volatile organic compounds (VOC). These additional stationary source regulations are necessary to insure expeditious ozone standard attainment and must be submitted as SIP revisions. The schedule should be supported and further quantified by estimated emission reductions from the implementation of regulations for all applicable Category I CTG categories.

7. *Emissions Growth.* The adopted plan does not provide an emission growth increment for the construction or modification of new major stationary sources. The provisions of Section 172(b)(5) would be satisfied when EPA receives and approves regulations from the State and Maricopa County requiring emissions offsets and/or conformity with an identified emission growth increment.

8. *Annual Reporting.* The plan contains a commitment to submit annual reports of reasonable further progress, including an updated emission inventory. These reports are to be supplemented by interim progress reports every six months to identify the status of the air quality-related transportation programs. This commitment should be further supplemented by additional specific commitments from all participating agencies to develop and describe in the SIP:

(1) procedures for determination of conformity between transportation programs and projects and the SIP;

(2) programs to monitor and report on actual field effectiveness of each transportation control measure for which emission reduction credit is claimed in the control strategy.

9. *Permit Program.* The plan does not contain regulations for a preconstruction review permit program for major new or modified stationary sources conforming to the provisions of Section 173. Due to the State jurisdictional provisions both the State and Maricopa County must submit regulations for a permit program satisfying the Part D provisions.

10. *Resources.* The plan identifies the financial and manpower resources necessary for plan implementation and provides commitments on the part of all implementing agencies in fulfillment of Sections 110(a)(2)(F) and 172(b)(7).

11. *Public and Government Involvement.* The plan provides evidence of public, local government, and State involvement and consultation in the planning process, and includes a summary of public comments. In addition, the plan identifies air quality, health, welfare, economic, energy, and social effects of the plan provisions. The plan also documents the process used in designating responsible entities for preparing and implementing the revised SIP. All requirements of Section 172(b)(9) appear to be satisfied.

12. *Public Hearing.* The plan conforms to Section 172(b)(1) and 40 CFR 51.4 since it includes evidence that the SIP was adopted by the State after reasonable notice and public hearing.

13. *Extension Requirements.* Since the State has requested an extension of the attainment date beyond 1982 for photochemical oxidants (ozone), the plan must meet the requirements of Section 172(b)(11)(A). Both the State and Maricopa County must submit as part of the new source review permit program a requirement for an analysis of alternative sites, sizes, processes, and controls, and a demonstration that the benefits of a major emitting facility outweigh environmental costs. Upon EPA's receipt of this regulation from the State and approval by EPA as an SIP revision, the requirements of Section 172(b)(11)(A) would be satisfied.

The plan must also include a vehicle emission control inspection and maintenance program or specific schedule for adoption and implementation of such a program. The requirement of Section 172(b)(11)(B) is satisfied by EPA's approval of an existing program on August 4, 1978 (43 FR 34470). As noted above, the State submitted additional inspection/maintenance regulations on March 21, 1979 which will be addressed in a separate Federal Register notice.

The plan identifies other measures, which are not now reasonably available, that may be necessary to provide for the attainment of the NAAQS as expeditiously as practicable. The requirements of Section 172(b)(11)(C) may be met if additional documentation is submitted specifying (1) planning activities that are expected to result in the evaluation, adoption, and implementation of these other measures; and (2) emission reductions attributable to these other measures.

The provisions of Section 110(a)(3)(D) and 110(c)(5)(B) are not met since the plan for attaining the oxidant (ozone) standard does not contain adequate commitments by agencies with legal authority to establish, expand, or improve public transportation to meet basic transportation needs. These basic transportation needs must be met as expeditiously as practicable using all available Federal grants and State and local funds to implement public transportation programs. Explicit commitments and schedules must be provided by agencies with transportation planning and implementing authority to conduct the necessary studies to determine basic transportation needs in the Maricopa County ozone nonattainment area, and to develop and implement the public transportation measures necessary to meet those needs. Further commitments must be provided to use all available funding for the purpose of implementing the necessary measures to meet basic transportation needs as expeditiously as practicable.

The plan for attaining the ozone standard fails to provide adequate commitments to undertake additional comprehensive technical analysis of reasonably available transportation control measures listed in Section 108(f).

14. *Extension Requirements for RACT.* The Nonattainment Area Plan indicates that attainment of the 0.08 ppm

oxidant standard is not possible by December, 1982. Therefore, the plan must contain adopted, legally enforceable regulations which reflect the application of reasonably available control technology (RACT) for those stationary source categories which exist within the Maricopa County Urban Planning Area for which EPA has published a CTG document by January, 1978. In addition, a commitment to adopt RACT regulations for source categories to be covered by future CTG documents, must be made. The revision of the NAAQS for ozone may provide the opportunity to show attainment of the standard by December 31, 1982. Upon EPA's receipt and approval of an SIP revision making such a demonstration and using rollback modeling, the RACT requirements would only be required for major stationary sources.

The plan submitted by the State indicates that, of the eleven source categories for which adopted regulations are required, only nine exist in the nonattainment area (there are no petroleum refineries or manufacturers of magnet wire insulators). Jurisdiction for the control of the remaining nine source categories is shared between the Arizona Department of Health Services (ADHS) and the Maricopa County Bureau of Air Pollution Control.

Maricopa County Bureau of Air Pollution Control regulations (Rule 33) for gasoline vapor recovery at service stations, gasoline bulk plants, gasoline bulk terminals, and fixed-roof tanks have been submitted to EPA (January 18, 1979) for inclusion in the SIP. These regulations appear to be approvable as revisions to the SIP, since they require an acceptable level of control for these source categories. However, those portions of Rule 33 which are not immediately effective should be revised to include compliance schedules.

ADHS regulations (R9–3–510) for fixed-roof tanks have also been submitted (January 4, 1979) for inclusion in the SIP. These regulations appear to be approvable as revisions to the SIP since they require enforceable controls considered to be RACT. Revised ADHS regulations for gasoline vapor recovery at service stations, gasoline bulk plants, and gasoline bulk terminals have been submitted for inclusion in the SIP. These regulations apply statewide to sources under State jurisdiction. These regulations do not, however, fully conform to RACT for any of these source categories. Revisions are necessary to require adequate vapor recovery systems for these three source categories if there are any such existing sources under State jurisdiction in the nonattainment area.

There is currently a Maricopa County solvent metal cleaning (degreasing) regulation that is part of the SIP. That regulation does not require controls considered to be RACT for degreasing. The regulation should be revised to also control cold cleaning, and to include expanded equipment requirements and operating procedures. Additionally, if there are any degreasing sources in the nonattainment area under State jurisdiction, the State must develop and submit an acceptable regulation for degreasing.

Neither ADHS nor Maricopa County Bureau of Air Pollution Control regulations for can coating, cutback asphalt paving, large appliance manufacturers, or metal furniture manufacturers have been developed and submitted to EPA for inclusion in the SIP. ADHS regulations are only required if there are any sources in the nonattainment area under State jurisdiction.

In addition, a commitment to adopt RACT regulations for additional source categories, to be covered by future CTG documents, must be made. EPA published an additional ten CTG's in 1978 for which regulations are required by January, 1980.

Public Comments

Under Section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove revisions to the SIP submitted by the State. The Regional Administrator hereby issues this notice setting forth the revisions described above as proposed rulemaking and advises the public that interested persons may participate by submitting written comments to the Region IX Office during the 30 day public comment period. Comments received will be available for public inspection at the EPA Region IX Library and at the loctions listed in the Addressees Section of this notice. EPA believes the available period for comments is adequate because:

(1) The SIP has been available for inspection and comment since May 1, 1979.

(2) EPA's notice published in the May 1, 1979 **Federal Register** indicated that the comment period would be 30 days; and

(3) EPA has a responsibility under the Act to take final action by July 1, 1979, if possible, on that portion of the SIP that addresses the requirements of Part D. A longer period for public comments would make that deadline difficult to meet.

The Administrator's decision to approve or disapprove the proposed revision will be based on the comments received and on a determination whether the revisions meet the requirements of Section 110 and Part D of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans. Under Executive Order 12044 EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specilized development procedures. EPA labels these other regulations "specialized." EPA has reviewed the regulations being acted upon in this notice and determined that they are specialized regulations not subject to the procedural requirements of Executive Order 12044.

Authority: Sections 110, 129, 171 to 178, and 301(a) of the Clean Air Act, as amended (42 U.S.C. §§ 7410, 7429, 7501 to 7508, and 7601(a)).

Dated: May 11, 1979.

Paul De Falco, Jr.,

Regional Administrator.

[FR Doc. 79-18118 Filed 6-8-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Part 52]

[FRL 1244–4]

State Implementation Plan; Notice of Receipt, Delaware

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability of State Implementation Plan.

SUMMARY: On March 3, 1978 (43 FR 8962 (1978)), September 11, 1978 (43 FR 40412 (1978)), and September 12, 1978 (43 FR 40502 (1978)), pursuant to the requirements of Section 107 of the Clean Air Act, as amended in 1977, EPA designated areas in each State as nonattainment with respect to the criteria air pollutants.

Part D of the Clean Air Act, as amended, required each State to revise its State Implementation Plan (SIP) to meet specific requirements in the areas designated as nonattainment. These SIP revisions were due on January 1, 1979, and must demonstrate attainment of the national ambient air quality standards as expeditiously as practicable, but no later than December 31, 1982, or in

limited instances for carbon monoxide and oxidants, no later than December 31, 1987.

ADDRESSES: On May 3, 1979, Delaware submitted a revised SIP to EPA. Interested persons are invited to inspect the revised SIP submittal at one of the following locations:

U.S. Environmental Protection Agency, Region III, Curtis Building, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, Attn: Ms. Patricia Sheridan.
Delaware Department of Natural Resources, Division of Environmental Control, Tatnall Building, 150 East Water Street, Dover, Delaware 19901, Attn: Mr. Robert French.
Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Patricia Sheridan 215–597–8176.

SUPPLEMENTARY INFORMATION: In Delaware, the only area designated as nonattainment is New Castle County. It is nonattainment for ozone (O_3).

Dated: May 31, 1979.

Jack J. Schramm,
Regional Administrator.

[FR Doc. 79-18113 Filed 6-8-79; 8:45 am]
BILLING CODE 6560-01-M

[40 CFR Part 52]

[FRL 1244–5]

State Implementation Plan; Notice of Receipt, Pennsylvania

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability of State Implementation Plan.

SUMMARY: On March 3, 1978 (43 FR 8962 (1978)), September 11, 1978 (43 FR 40412 (1978)), and September 12, 1978 (43 FR 40502 (1978)), pursuant to the requirements of Section 107 of the Clean Air Act, as amended in 1977, EPA designated areas in each State as nonattainment with respect to the criteria air pollutants.

Part D of the Clean Air Act, as amended, required each State to revise its State Implementation Plan (SIP) to meet specific requirements in the areas designated as nonattainment. These SIP revisions were due on January 1, 1979, and must demonstrate attainment of the national ambient air quality standards as expeditiously as practicable, but no later than December 31, 1982, or in limited instances for carbon monoxide and oxidants, no later than December 31, 1987.

All portions of the Pennsylvania SIP have been received except for the following:

1. Final transportation plans for six urban areas. (Draft presented for public hearings are available for all areas.)
2. Final revision to the plan for particulate matter for all nonattainment areas. (Draft presented for public hearing available.)
3. Final revision to the plans for particulate matter, sulfur dioxide and ozone that provides for an emission offset policy. (Draft presented for public hearing available.)
4. Final revision to the plan for particulate matter for sampling stack emissions. (Draft presented for public hearing available.)
5. Summaries of Base Year Particulate Emissions for Each Nonattainment Area. (Appendix F)
6. Summaries of Projected 1982 Particulate Emissions for Each Nonattainment Area. (Appendix H)
7. Commitment letter for I/M program in Allentown-Bethlehem-Eastern and Scranton-Wilkes-Barre.

ADDRESSES: On April 24, 1979, Pennsylvania submitted portions of a revised SIP to EPA. Interested persons are invited to inspect the revised SIP submittal at one of the following locations:

U.S. Environmental Protection Agency, Region III, Curtis Building, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, attn: Ms. Patricia Sheridan.
Pennsylvania Department of Environmental Resources, Bureau of Air Quality & Noise Control, 200 North 3rd Street, Harrisburg, PA 17120, attn: Mr. James Hambright.
Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Patricia Sheridan 215–597–8176.

SUPPLEMENTARY INFORMATION: In Pennsylvania, the areas designated as nonattainment are:

	TSP Pri. Std.	TSP Sec. Std.	SO_2 Pri. Std.	SO_2 Sec. Std.	O_3	CO
Entire State					x	
Metropolitan Philadelphia Interstate AQCR						
Certain Designated Areas	x(1)	x(2)	x			x
Other Designated Areas						
Northeast PA Interstate and South Central PA Intrastate AQCR's						
Certain Designated Areas	x	x(3)				
Other Designated Areas						
Central PA Intrastate AQCR						
Certain Designated Areas	x	x(3)	x	x		
Other Designated Areas						
Southeast PA Intrastate AQCR						
Certain Designated Areas	x		x			x
Northeast PA Interstate AQCR						
Certain Designated Areas	x		x			

(1) Being proposed to secondary nonattainment
(2) Being proposed for some additional portions
(3) Being proposed for some portions

Dated: May 31, 1979.
William T. Wiselowski,
Acting Regional Administrator.
[FR Doc. 79-18285 Filed 6-8-79; 8:45 am]
BILLING CODE 6560-01-M

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[BC Docket No. 79-134; RM-3184]

FM Broadcast Station in East Wenatchee, Wash.; Proposed changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rule Making.

SUMMARY: Action taken herein proposes the assignment of a Class A FM channel to East Wenatchee, Washington, in response to a petition filed by Wenatchee Wireless Works which states that the proposes assignment would provide a first local aural broadcast service in East Wenatchee.

DATES: Comments must be filed on or before July 30, 1979, and reply comments must be filed on or before August 20, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mildred B. Neeterak, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION: In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (East Wenatchee, Washington), BC Docket No. 79-134, RM-3184.

Adopted: May 31, 1979.
Released: June 6, 1979.

1. The Commission has before it for consideration a petition for rule making[1] filed on behalf of Wenatchee Wireless Works ("petitioner"), licensee of daytime-only AM Station KUEN, Wenatchee, Washington, proposing the assignment of FM Channel 249A to East Wenatchee, Washington. The proposed channel could be assigned to the community in conformity with the minimum distance separation requirements without affecting the present assignments in the FM Table. Petitioner states that it will apply for the channel, if assigned. No opposition was filed to the proposal.

2. East Wenatchee (pop. 913), in Douglas County (pop. 16,787)[2], is located in the center of Washington State, approximately 161 kilometers (100 miles) east of Seattle. There is no local aural broadcast service in East Wenatchee. It is served by AM Stations KPQ, KUEN and KWWW, and FM Stations KPQ (Channel 271) and KIAM-FM (Channel 285A), Wenatchee, Washington, and AM Station KXLE and Station KCLE-FM (Channel 237A), Ellensburg, Washington.

3. In support of its proposal, petitioner states that East Wenatchee has had a 75% increase in population between 1970 and 1977, and is the second largest city in Douglas County. It asserts that East Wenatchee is the commercial core of a much larger area locally referred to as "Greater East Wenatchee" whose population, petitioner claims, will comprise 75% of the total population of Douglas County by 1980. The petitioner has indicated that East Wenatchee has assumed an identity uniquely its own and independent of its sister city, Wenatchee, located across the Columbia River. Petitioner points out that besides the Hanna Mining Company, the major employers in East Wenatchee are the Douglas County Public Utility District and a variety of food processing and retail concerns. It notes that the taxable sales for all industries in Douglas County in 1976 amounted to $54,003,554. Petitioner states that in a plan developed by the Douglas County Regional Planning commission, the majority of commercial development is for the city of East Wenatchee, and adds that the decreasing availability of land on the Wenatchee side of the Columbia River promises an additional incentive to commercial growth in East Wenatchee. Petitioner asserts that since there is no local aural broadcast service in East Wenatchee or elsewhere in Douglas County, assignment of the proposed channel would serve an important public need by providing a first transmission service.

4. *Preclusion Considerations:* Preclusion would occur only on the co-channel. All adjacent channels are precluded by existing assignments. Seven communities[3] with populations greater than 1,000 would be precluded as a result of the proposed assignment. Of these seven, two (Wenatchee and Ellensburg) have AM and FM stations. A staff study shows that Channel 257A could be assigned to Leavenworth, Cashmere or Cle Elum. In the case of Cle Elum or Cashmere this would entail use of a site outside the community. Petitioner is requested to indicate whether alternate FM channels are available for assignment to Roslyn and West Wenatchee.

5. Since East Wenatchee is located within 402 kilometers (250 miles) of the U.S.-Canada border, the proposed assignment of Channel 249A to East Wenatchee, Washington, requires coordination with the Canadian Government.

6. In light of the foregoing, and the fact that the proposed assignment could bring a first local aural broadcast service to East Wenatchee and Douglas County, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the rules, with respect to the community listed below:

City	Channel No.	
	Present	Proposed
East Wenatchee, Wash.		249A

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

8. Interested parties may file comments on or before July 30, 1979, and reply comments on or before August 20, 1979.

9. For further information concerning this proceeding, contact Mildred B. Neeterak, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are

[1] Public Notice of the petition was given on August 28, 1978, Report No. 1137.

[2] Population figures are taken from the 1970 U.S. Census.

[3] *Washington:* Leavenworth (pop. 1,222), Cashmere (1,878), West Wenatchee (2,124), Wenatchee (16,912), Roslyn (1,021), Cle Elum (1,725) and Ellensburg (12,582).

prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Philip L. Verveer,

Chief, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b), and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, Northwest, Washington, D.C.

[FR Doc. 79-18082 Filed 6-8-79; 8:45 am]

BILLING CODE 6712-01-M

[47 CFR Part 73]

[BC Docket No. 79-135; RM-3290]

FM Broadcast Station in Osage, Kans.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rule Making.

SUMMARY: Action taken herein proposes the assignment of a Class A FM channel to Osage City, Kansas. The proposal was made in a petition filed by William P. Turney who states that the proposed station could be used to provide a first local aural broadcast service to the communtiy.

DATES: Comments must be filed on or before July 30, 1979, and reply comments must be filed on or before August 20, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: May 31, 1979.

Released: June 6, 1979.

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Osage City, Kansas), BC Docket No. 79-135, RM-3290.

1. *Petitioner, Proposal, Comments.* (a) A petition for rule making was filed on December 4, 1978,[1] by William P. Turney ("petitioner"), proposing the assignment of FM Channel 224A to Osage City, Kansas, as a first FM assignment to that community.

(b) The channel can be assigned in conformity with the minimum distance separation requirements.

(c) Petitioner states he will file an application for the channel, if assigned.

2. *Community Data*—(a) *Location.* Osage City, in Osage County, is located approximately 48 kilometers (30 miles) south of Topeka, Kansas.

(b) *Population.* Osage City—2,600; Osage County—19,352.[2]

(c) *Economic Considerations.* Petitioner states that Osage City is the largest city in Osage County, deriving its main source of income from agriculture, retail business, industry and tourism. Petitioner asserts that the proposed channel could provide a number of services to Osage City and the surrounding area, such as local news and information, sports activities, farm information, and weather reports. Petitioner has submitted detailed demographic data in order to demonstrate a need for a first FM assignment in Osage City.

4. In view of the apparent need for a first local aural broadcast service in Osage City, Kansas, the Commission believes it appropriate to propose amending the FM Tabel of Assignments § 73.202(b) of the rules, with respect to the community listed below:

City	Channel No.	
	Present	Proposed
Osage City, Kansas	———	224A

5. Authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before July 30, 1979, and reply comments on or before August 20, 1979.

7. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the mater is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

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[1] Public Notice of the petition was given on January 3, 1979, Report No. 1157.

[2] Population figures are taken from the 1970 U.S. Census.

Federal Communications Commission.

Philip L. Verveer,

Chief, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 79-18000 Filed 6-8-79; 8:45 am]

BILLING CODE 6712-01-M

[47 CFR Part 90]

[PR Docket No. 79-106]

Changing the Co-Channel Mileage Separation and Frequency Loading Standard for Conventional Land Mobile Radio Systems in the Bands 806–821 and 851–866 MHz; Correction

AGENCY: Federal Communications Commission.

ACTION: Erratum.

SUMMARY: The FCC corrects its proposed rule concerning the co-channel mileage separation and frequency loading standards for conventional land mobile radios systems in the bands 806–821 and 851–866 MHz. (44 FR 31675, June 1, 1979.)

DATES: Comments must be received on or before July 2, 1979 and Reply Comments must be received on or before July 16, 1979.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Lewis H. Goldman, Private Radio Bureau, Room 5120, (202) 632-6497.

In the matter of amendment of §§ 90.305 and 90.377 of the Commission's rules to change the co-channel mileage separation and frequency loading standards for conventional land mobile radio systems in the bands 806–821 and 851–866 MHz, PR Docket No. 79–106.

Released: June 5, 1979.

Paragraph 4(a)(3) of the Notice of Proposed Rule Making (FCC 79–282; Released May 23, 1979) page 31675, Federal Register of June 1, 1979, is corrected to read as follows:

(3) From 120 or 130 miles to 105 miles for stations operating on four transmitter sites on very high ground near Los Angeles, California.

* * * * *

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 79-18079 Filed 6-8-79; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[49 CFR Part 571]

[Docket No. 79-20; Notice 11]

Federal Motor Vehicle Safety Standards: Fuel System Integrity; Plastic Fuel Tanks

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The purpose of this notice is to discuss the possible amendment of Safety Standard No. 301–75, *Fuel System Integrity*, to include performance requirements related directly to non-metallic fuel tanks. The notice is based on a petition for rulemaking submitted by Ford Motor Company to amend the standard to incorporate the essence of the performance requirements for plastic fuel tanks of the Economic Commission for Europe regulations. The Ford petition stated that there should be a generally accepted criteria for non-metallic fuel tanks prior to their large-scale product application. This notice discusses possible requirements to ensure the integrity of non-metallic fuel tanks, particularly when exposed to external fire sources, and seeks public comments on the merits of such requirements.

DATES: Comment closing date: September 11, 1979. Deadline for filing applications for financial assistance: July 11, 1979.

ADDRESSES: Comments should refer to the docket number and notice number and be submitted to: Docket Section, Room 5108, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Applications for financial assistance should be submitted in writing to: Ms. Jeannette Feldman, Public Affairs and Consumer Participation, Room 5442, 400 Seventh Street, S.W., Washington, D.C. 20590 (202–426–0670).

FOR FURTHER INFORMATION CONTACT: Robert Williams, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, Washington, D.C. 20590 (202–426–2264).

SUPPLEMENTARY INFORMATION: Ford Motor Company has petitioned for Safety Standard No. 301–75, *Fuel System Integrity* (49 CFR 571.301–75), to be amended to incorporate the essence of the performance requirements of the Economic Commission for Europe (ECE) Regulation No. 34, Annex 5, "Testing of Fuel Tanks Made of a Plastic Material,"

for application to passenger cars, multi-purpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less.

Safety Standard No. 301–75 currently specifies performance requirements for fuel systems of vehicles based on dynamic crash tests and static rollover tests. Under these requirements, no part of a vehicle's entire fuel system can have fuel spillage beyond certain specified amounts. Specific performance requirements for individual components of the fuel system, such as the fuel tank, are not currently included in the standard. With the advent of high density polyethylene (plastic) fuel tanks, however, the current broad performance requirements might not be sufficient to ensure the integrity of vehicle fuel systems.

Ford's petition stated that the number of plastic fuel tanks will greatly increase in the future and that an identifiable and acceptable level of non-metallic fuel tank integrity when exposed to fires from external sources should be established. Use of plastic fuel tanks is anticipated because of fuel economy considerations and other desirable attributes of polyethylene materials. The petition listed several of these attributes: (1) impact and puncture resistance properties of high density polyethylene in tank application are excellent, (2) plastic material can be shaped to achieve maximum utilization of limited space within complex under-body surface contours, and (3) the weight savings achievable by the use of plastic fuel tanks is significant. Additionally, plastic fuel tanks would eliminate the problems of rust often associated with metallic tanks.

The greatest problem with non-metallics such as fiberglass or high density polyethylene is the fact that these materials will burn. In fact, most formulations of these materials will soften and melt prior to or upon ignition. At that point, the contents of the gas tank would be spilled. In contrast, gasoline is often recovered in substantial quantities from metallic fuel tanks of vehicles that have been totally consumed by fire. Thus, although plastic tanks may possibly perform as well or better than metallic tanks in terms of puncture resistance in crash situations, there are potential hazards associated with plastic tanks that are not associated with metallic tanks. Specifically, non-metallic tanks may be particularly vulnerable to fires fed by sources external to the vehicle. The Current requirements of Safety Standard No. 301–75 may not adequately address this problem.

Two organizations, the Fire Marshall's Association of North America and the Institutional and Municipal Parking Congress, have voiced concerns about the possible problems associated with plastic fuel tanks. Of primary concern is the possibility of a fire "holocaust" that could result from a small incidental fire in a densely occupied parking building through the "domino effect" of many vehicles equipped with non-metallic fuel tanks that could not withstand external fire exposure. Also, there is concern that the proximity of heat sources such as catalytic converters or exhaust pipes could melt or deform plastic tanks, either directly or through conductance of other metal parts such as bolts or straps.

Ford's petition requests that ECE Regulation 34, Annex 5, be incorporated in Standard No. 301–75. That regulation requires an open flame test which exposes non-metallic fuel tanks to two minutes of continuous flame and heat. During that time, the fuel in the tank must be retained there. The ECE test utilizes a shallow-sided fire pan that simulates the manner spilled fuel might burn beneath an automobile. Additionally, the regulation includes tests for impact and puncture resistance, mechanical strength, fuel permeability, resistance to fuel, and resistance to high temperatures. The Ford petition stated that current technology is available to satisfy all the ECE requirements.

Ford has verified the properties of high density polyethylene tanks to resist impacts and puncutures, both in engineering laboratory tests and in crash tests under the procedures of Standard No. 301–75. These laboratory tests included the test specifications in ECE Regulation No. 34. (A copy of Ford's summary of its investigation and a copy of ECE Regulation No. 34, Annex 5, have been placed in the NHTSA docket.)

Federal Motor Carrier Safety Regulations (FMCSR), governing vehicles engaged in interstate or foreign commerce, currently include a safety venting system test for vehicle fuel tanks (49 CFR 393.67(d)). Unlike the broad fuel system integrity performance requirements of Safety Standard No. 301–75, the FMCS regulation includes an open-flame venting test of the fuel tank. This safety venting system test was developed to preclude the possibility of pressure build-up and possible explosion of the large metallic fuel tanks used on heavy commercial vehicles. With this test, the fuel tank is exposed to open flames and the required safety venting system must activate to release fuel vapor pressure before the internal pressure in the tank exceeds 50 pounds per square inch. Due to the open flame requirement of the test, plastic fuel tanks are generally unable to comply since they melt or burn completely before the pressure limits specified in the standard are reached and venting occurs. In response to a petition by a manufacturer of plastic fuel tanks (Barry Plastic Industries, Inc.), the Federal Highway Administration on November 30, 1976, proposed an alternative fire resistance test for non-metallic fuel tanks (41 FR 52500). That proposed test limited the exposure of the tank to open flames to three minutes and limited the temperature to which the fuel in the tank was to be heated.

Following a review of comments and an analysis of tests conducted with plastic fuel tanks, however, that notice of proposed rulemaking was withdrawn on January 28, 1978. The agency determined that the proposed performance requirements were not sufficient to ensure an adequate level of safety to occupants of commercial vehicles equipped with non-metallic tanks. The withdrawal notice cited tests conducted by the Industrial Testing Laboratory in which two plastic fuel tanks totally burned and released their fuel contents in less than 2½ minutes after exposure to open flames. The agency also noted that ECE Regulation No. 34 imposes higher performance requirements for non-metallic fuel tanks than those specified in the FMCS proposal, but added that even Regulation 34 does not go far enough in the area of fire resistance to assure a level of safety equivalent to that now afforded by commercial fuel tanks complying with FMCS Regulation § 393.67. As noted earlier, the ECE regulation requires a 2-minute flame test. The agency did note that the ECE regulation is only applicable to passenger cars, and pointed out that large commercial tanks carry much more fuel and therefore pose much greater dangers.

In light of the above considerations, the agency is considering rulemaking to amend Safety Standard No. 301–75 to specify performance requirements for non-metallic fuel tanks on passenger cars and on multipurpose passenger vehicles, trucks and buses having GVWR's of 10,000 pounds or less. The agency seeks public comments concerning the merits of such rulemaking. The agency solicits technical information concerning the advantages and disadvantages of non-metallic fuel tanks and information concerning appropriate performance requirements. This notice solicits the views of all interested persons on the following specific questions relating to

the need for and nature of such new requirements:

1. What is the current population of light-weight vehicles having non-metallic fuel tanks (i.e., vehicles with GVWR's under 10,000 pounds)? What is the projected population of such vehicles in 1985? 1990?

2. What kinds of performance requirements are necessary for light-weight vehicles to ensure the integrity of non-metallic fuel tanks in crash, post crash and external fire exposure situations? Would varying performance requirements be necessary for different types of non-metallic tanks (fiberglass, high density polyethylene, etc.)? If so, explain what variations would be necessary and explain the necessity for them.

3. What data are available concerning the performance of non-metallic fuel tanks in the following areas: age hardening, stress cracking, permeability, reduced strength at high temperatures, elongation, swell, increased brittleness at low temperatures, and interaction with fuel and other chemicals?

4. Do the current performance requirements of Safety Standard No. 301–75 adequately ensure the integrity of a fuel system that includes a non-metallic fuel tank, in crash, post crash and external fire exposure situations?

5. Are the performance requirements specified in ECE Regulation 34, Annex 5, sufficient to ensure the integrity of non-metallic fuel tanks in passenger cars in crash and post crash situations and in situations of exposure to external sources of fire? Is the regulation sufficient to ensure the intergity of non-metallic tanks installed in lightweight trucks and vans (GVWR of 10,000 lbs. and under) in those situations? Are separate performance requirements needed for passenger cars and for these other light-weight vehicles, since trucks and vans generally carry more fuel than passenger cars?

6. Should a performance requirement similar to the safety venting test of FMCS Regulation 393.67(d) be incorporated in Safety Standard No. 301–75? Would the FMCS regulation be unduly stringent for passenger cars and light-weight trucks and vans?

Please note that this is an advance notice of proposed rulemaking discussing possible new requirements for Safety Standard No. 301–75. Any future rulemaking on this subject would include further notice and opportunity to comment.

Applications for Financial Assistance

NHTSA invites all qualified individuals and organizations financially unable to participate in this proceeding to apply for financial assistance. All applications submitted before the deadline specified at the beginning of this notice will be examined by an evaluation board, composed of NHTSA and other Department of Transportation officials, to determine whether each applicant is eligible to receive funding. Consideration of late applications is at the discretion of the evaluation board.

In general, an applicant is eligible if its participation would contribute substantially to a full and fair determination of the issues involved in the proceeding, taking into consideration the novelty, complexity, and significance of the ideas advanced and the ability of the applicant to represent the interests it espouses competently. Additionally, it must be demonstrated that the applicant does not have sufficient resources available to participate effectively in the proceeding in the absence of an award under this program.

If more than one applicant representing the same or similar interest is deemed eligible, the board will either select the applicant which can make the strongest presentation or select more than one applicant if justified. Compensation is to the extent the agency's budget for this purpose will permit. Payment is made as soon as possible after the selected applicant has completed its work and submitted a claim, but not later than 60 days after a completed claim is submitted.

Each applicant should specify in its application which rulemaking actions and issues it proposes to address if its application for funding is approved, and the nature of its proposed work product. Applicants must submit as part of their application all information required by § 5.49 of the recently revised DOT regulations governing this financial assistance program (44 FR 4675; January 23, 1979). Failure to submit the required information may result in delays in evaluation and possible disqualification of the application.

The engineer and lawyer primarily responsible for the development of this notice are Robert Williams and Hugh Oates, respectively.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a succinct and concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. Any claim of confidentiality must be supported by a statement demonstrating that the information falls within 5 U.S.C. section 552(b)(4), and that disclosure of the information is likely to result in substantial competitive damage; specifying the period during which the information must be withheld to avoid that damage; and showing that earlier disclosure would result in that damage. In addition, the commenter or, in the case of a corporation, a responsible corporate official authorized to speak for the corporation must certify in writing that each item for which confidential treatment is requested is in fact confidential within the meaning of section 552(b)(4) and that a diligent search has been conducted by the commenter or its employees to assure that none of the specified items has previously been disclosed or otherwise become available to the public.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, ad comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

(Secs. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on June 2, 1979.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 79–17879 Filed 6–6–79; 4:58 pm]

BILLING CODE 4910–59–M

[49 CFR Part 571]

[Docket No. 2-6; Notice 5]

Federal Motor Vehicle Safety Standards; Side Door Strength

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The purpose of this notice is to propose the amendment of Safety Standard No. 214, *Side Door Strength*, to allow manufacturers the option of leaving the seats in the vehicle during the tests specified in the standard. The proposed amendment is in response to a petition for rulemaking from Volvo of America Corporation, and is intended to give manufacturers broader design capabilities for improving the safety of vehicle occupants involved in side impact collisions.

DATES: Comments must be received on or before July 28, 1979. Proposed effective date: Upon publication of a final rule.

ADDRESSES: Comments should refer to the docket and notice numbers specified above and be submitted to Room 5108, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. William Brubaker, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, Washington, D.C. (202-426-2242)

SUPPLEMENTARY INFORMATION: Safety Standard No. 214, *Side Door Strength*, (49 CFR 571.214) specifies performance requirements for the side doors of passenger cars to minimize the safety hazard caused by intrusion into the passenger compartment in a side impact accident. The standard specifies three static crush tests to measure the crush resistance of the side doors. Under the peak crush test, a force of 7000 pounds must be applied before the vehicle door is deformed more than 18 inches inward.

Early studies concerning side impact protection demonstrated that serious and fatal injuries increase sharply as the maximum depth of penetration of the vehicle door increases, and that in fatal side collisions most occupants die from the door structures collapsing inward on them. To protect occupants from this hazard, it was determined that a strong door structure is required (in conjunction with effective restraint systems and energy-absorbing padding on the vehicle interior). Therefore, the static crush resistance tests were specified in the standard. It was also recognized at the time the standard was issued that proper seat design can also reduce the amount of intrusion of side door structures into the occupant compartment. However, the agency determined that retention of vehicle seats during the crush tests would produce a great variability in test results due to the wide variety of seat designs. Consequently, the standard specifies that vehicle seats are to be removed during the crush resistance tests so that side door strength alone can be determined.

Since the standard became effective in 1973, manufacturers have incorporated various types of beams in the outer door panels to provide crush resistance. However, last year Volvo of America Corporation petitioned the agency for rulemaking to allow manufacturers the option of leaving the seats in the vehicle during the crush resistance tests. Volvo stated that it is developing an advanced side impact protection system that incorporates the vehicle seats as an essential component. Volvo's data indicate that its system provides side impact protection that is equal to or greater than that provided by existing production designs. The Volvo design can meet high performance levels without the use of door beams if the vehicle seats are left in during testing.

The agency has determined that manufacturers should be encouraged to develop innovative designs for improving side impact protection, particularly designs that will also improve vehicle fuel economy because of reduced weight. Therefore, to allow broader design alternatives for manufacturers, this notice proposes optional compliance levels for vehicles tested with the seats remaining in the vehicle.

Though not asked for in Volvo's petition, the proposed alternative requirements would establish higher levels of crush resistance for vehicles tested with their seats. The criteria were set at levels intended to assure an equivalent of greater level of protection compared to the existing requirements. The proposed performance requirements would specify a peak crush resistance of 16,000 pounds. This specification is based on data submitted by Volvo and on tests conducted by the NHTSA involving current production models. It was determined that the seats of some current models add 4 to 5 thousand pounds of crush resistance in side impacts, and the doors themselves provide greater crush resistance than required by the standard. Thus, the 16,000-pound peak requirement will ensure that the level of crush resistance currently being obtained will not be degraded, while at the same time allowing manufacturers to develop designs using the seats as an integral part of the side impact protection system. Data concerning the performance levels specified in this notice are included in an Explanation of Rulemaking which discusses the tests conducted by the agency and other information that has been obtained. This paper has been placed in the public docket.

The agency is particularly interested in comments concerning the effect modifications to side door structures may have on vehicle integrity in frontal crashes. Specifically, information is requested concerning the effect of removing the existing types of door beams in frontal, offset collisions.

Comments are also requested concerning which seat adjustments should be specified in the proposed alternative requirements. Volvo's petition requested that the mid-horizontal seat adjustment position be specified. This proposal specifies that the vehicle is to comply with the seat located in any horizontal or vertical position to which it can be adjusted. However, the proposal should be considered as leaving this question open.

The agency's preliminary evaluation has determined that the proposed amendment would have no significant economic or environmental impact, since it would only afford manufacturers an alternative method of compliance with the standard.

The engineer and lawyer primarily responsible for the development of this notice are William Brubaker and Hugh Oates, respectively.

In consideration of the foregoing, it is proposed that Safety Standard No. 214, *Side Door Strength* (49 CFR 571.214) be amended as set forth below.

Section S3 (S3 through S3.2) would be amended to read as set forth below and the first sentence of subparagraph S6(a) would be deleted.

§ 571.214 Standard No. 214; Side door strength.

* * * * *

S3. *Requirements.* Each vehicle shall be able to meet the requirements of either, at the manufacturer's option, S3.1 or S3.2 when any of its side doors that can be used for occupant egress are tested according to S4.

S3.1 With any seats that may affect load upon or deflection of the side of the vehicle removed from the vehicle, each vehicle must be able to meet the requirements of S3.1.1 through S3.1.3.

S3.1.1 *Initial Crush Resistance.* The initial crush resistance shall not be less than 2,250 pounds.

S3.1.2 *Intermediate Crush Resistance.* The intermediate crush resistance shall not be less than 3,500 pounds.

S3.1.3 *Peak Crush Resistance.* The peak crush resistance shall not be less than two times the curb weight of the vehicle or 7,000 pounds, whichever is less.

S3.2 With seats installed in the vehicle, and located in any horizontal or vertical position to which they can be adjusted and at any seat back angle to which they can be adjusted, each vehicle must be able to meet the requirements of S3.2.1 through S3.2.3.

S3.2.1 *Initial Crush Resistance.* The initial crush resistance shall not be less than 2,250 pounds.

S3.2.2 *Intermediate Crush Resistance.* The intermediate crush resistance shall not be less than two times the curb weight of the vehicle or 7,000 pounds, whichever is less.

S3.2.3 *Peak Crush Resistance.* The peak crush resistance shall not be less than five times the curb weight of the vehicle or 16,000 pounds, whichever is less.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a succinct and concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. Any claim of confidentiality must be supported by a statement demonstrating that the information falls within 5 U.S.C. section 552(b)(4), and that disclosure of the information is likely to result in substantial competitive damage; specifying the period during which the information must be withheld to avoid that damage; and showing that earlier disclosure would result in that damage. In addition, the commenter or, in the case of a corporation, a responsible corporate official authorized to speak for the corporation must certify in writing that each item for which confidential treatment is requested is in fact confidential within the meaning of section 552(b)(4) and that a diligent search has been conducted by the commenter or its employees to assure that none of the specifed items has previously been disclosed or otherwise become available to the public.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Commenters wishing acknowledgment of receipt of their submissions by the NHTSA should enclose a self-addressed, stamped postcard, which will be marked with the date of receipt and returned immediately.

(Sec. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 501.8.)

Issued on June 2, 1979.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 79-17979 Filed 6-8-79; 4:58 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 44, No. 113
Monday, June 11, 1979

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

AuSable Wild and Scenic River Draft Study Report and Environmental Impact Statement; Public Hearing

Notice is hereby given that three public hearings will be held on a proposal to include 91 miles of the AuSable River into the National Wild and Scenic Rivers System. The proposed river corridor lies partially within the Huron National Forest in Crawford, Oscoda and Alcona Counties, Michigan. The hearings will be held according to the following schedule:

July 18, 1979—7:30 p.m., Holiday Inn-East, 28 Street and East Beltline Intersection, Grand Rapids, Michigan.
July 19, 1979—7:30 p.m., Holiday Inn-Farmington, Interstate 96 and Grand River Road Intersection, Farmington, Michigan.
July 20, 1979—7:30 p.m., Grayling High School Auditorium, North on Old Highway 27, Grayling, Michigan.

Information about the proposal may be obtained either by writing to the Forest Supervisor, Huron-Manistee National Forests, 421 South Mitchell Street, Cadillac, Michigan 49601, or by phoning Carl F. Gebhardt, River Planner, at 616–775–2421.

Individuals and organizations may express their views by appearing at the hearings or may submit written comments for inclusion in the official record to the Forest Supervisor by August 31, 1979. Those persons wishing to present oral testimony at the hearing should notify the Forest Supervisor prior to July 11, 1979.

R. Max Peterson,
Acting Chief, Forest Service.
June 5, 1979.
[FR Doc. 79-18028 Filed 6-8-79; 8:45 am]
BILLING CODE 3410-11-M

Main Bay Aquaculture Site; Intent To Prepare an Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190), Department of Agriculture Policy in Proposed CFR 36:219 and Forest Service Manual Section 1950, the Forest Service, Department of Agriculture will prepare an Environmental Statement for the Main Bay Aquaculture Site.

The Alaska Department of Fish and Game has applied for a Hatchery Site at Main Bay, Prince William Sound, Alaska for the purpose of incubating sixty-two million salmonid eggs to enhance salmon runs to Main Bay.

An interdisciplinary team made a preliminary review of the area and their concerns were reflected in the decision to prepare an Environmental Statement.

Soils scientists were concerned about the limited mantle of topsoil to support revegetation of disturbed areas and felt there could be some difficulty in construction due to the topography.

Because of the extent of the proposed development the visual impacts which would result in landform alterations should be assessed.

The area is within the boundaries of the Administratively endorsed Nellie Juan Wilderness Study Area. Because of the extent and probable significance of the development, it has been decided to prepare an Environmental Statement.

Clay Beal, the Forest Supervisor, is the responsible official, and Maynard Nuss, the Lands Forester, will be the team leader for the Environmental Assessment and Statement.

The Statement will be prepared in cooperation with the Alaska Department of Fish and Game.

It is anticipated that the draft statement will be completed by June 1979 since most of the assessment data was collected during last field season. A two month review period will be provided.

The Final Environmental Statement is scheduled for filing by October 1979.

Comments or questions on the Notice of Intent or on the project should be sent to Clay Beal, Forest Supervisor, Chugach National Forest, Pouch 6606, Anchorage, Alaska 99502.

Dated: May 15, 1979.
Clay G. Beal,
Forest Supervisor.
[FR Doc. 79-18029 Filed 6-8-79; 8:45 am]
BILLING CODE 3410-11-M

CIVIL AERONAUTICS BOARD

[Order 79-6-22]

Charter Carrier Certificate; Air California

AGENCY: Civil Aeronautics Board.
ACTION: Notice of Order 79-6-22.

SUMMARY: The Board proposes to issue to Air California a charter carrier certificate authorizing it to perform interstate charter air transportation except for points in Alaska and Hawaii (Docket 33344). (The complete text of this order is available as noted below).

DATES: All interested persons having objections to the Board's issuing an order making final the tentative findings and conclusions or to the issuance of the proposed charter carrier certificate shall file with the Board and serve on Air California and all U.S. certificated air carriers by July 9, 1979 a statement of objections together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections. Replies to objections may be filed no later than July 18, 1979.

ADDRESSES: Objections and replies should be filed in Docket 33344, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Curtis B. Maloy, Bureau of Pricing and Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, 202–673–5084.

SUPPLEMENTARY INFORMATION: In the event no objections are filed, the Board may enter an order making final its tentative findings and conclusions.

The complete text of Order 79-6-22 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 79-6-22 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board, June 5, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-18255 Filed 6-8-79; 8:45 am]

BILLING CODE 6320-01-M

[Order 79-6-28]

Nonstop Authority; San Antonio-San Diego

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 79-6-28, San Diego-San Antonio Show-Cause Proceeding, Docket 35748.

SUMMARY: The Board is proposing to grant San Antonio-San Diego nonstop authority to Braniff Airways, Western Air Lines, National Airlines, Ozark Air Lines, Hughes Airwest and any other fit, willing and able applicant whose fitness can be established by officially noticeable data. The complete text of this order is available as noted below.

DATES: Objections: All interested persons having objections to the Board issuing the proposed authority shall file, and serve upon all persons listed below, no later than July 9, 1979, a statement of objections, together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections.

Additional Data: All existing and would-be applicants who have not filed (a) illustrative service proposals, (b) environmental evaluations, and (c) an estimate of fuel to be consumed in the first year are directed to do so no later than————.

ADDRESSES: Objections or Additional Data should be filed in Docket 35748, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Donna Kaylor, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, Washington, D.C. 20428, (202) 674-5360.

SUPPLEMENTARY INFORMATION: Objections should be served upon the following persons: Braniff Airways, Western Airlines, American Airlines, Ozark Air Lines, Hughes Airwest and National Airlines.

The complete text of Order 79-6-28 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 79-6-28 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board, June 5, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-18256 Filed 6-8-79; 8:45 am]

BILLING CODE 6320-01-M

[Order No. 79-6-21]

Grant to Fill-Up Authority; New York and Washington

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 79-6-21.

SUMMARY: The Board is proposing to grant fill-up authority between New York and Washington, on the one hand, and Miami, on the other, to Braniff Airways on all foreign flights. The complete text of this order is available as noted below.

DATES: Objections: All interested persons having objections to the Board issuing the proposed authority shall file, and serve upon all persons listed below, no later than June 28, 1979, a statement of objections, together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections.

ADDRESSES: Objections should be filed in Docket 34211, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Gary M. Sidell, B-72, Bureau of Pricing and Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, 202-673-5382.

SUPPLEMENTARY INFORMATION: Objections should be served upon Braniff Airways.

The complete text of Order 79-6-21 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, N.W. Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 79-6-21 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board, June 5, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-18257 Filed 6-8-79; 8:45 am]

BILLING CODE 6320-01-M

[Order No. 79-6-18]

Granting Applicants Operating Authority

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 79-6-18, Pacific Northwest-St. Louis-East Show-Cause Proceeding, Docket 35744.

SUMMARY: The Board is proposing to grant the applications of all fit, willing and able applicants whose fitness can be established by officially noticeable material to the extent that they request operating authority between Seattle-Atlanta/Columbus, Ohio/Indianapolis/Memphis/New Orlean/Philadelphia/Pittsburgh/Portland/St., Louis/Salt Lake City; St. Louis-Atlanta/Columbia, Ohio/Indianapolis/Memphis/New Orlean/Philadelphia/Pittsburgh/Salt Lake City; Portland-Atlanta/Columbus, Ohio/Indianapolis/Memphis/New Orleans/Philadelphia/Pittsburgh/St. Louis/Salt Lake City; Salt Lake City-Atlanta/Columbus, Ohio/Indianapolis/Memphis/New Orleans/Philadelphia/Pittsburgh; Atlanta-Memphis.

DATES: Objections: All interested persons having objections to the Board issuing the proposed authority shall file, and serve upon all persons listed below, no later than July 12, 1979, a statement of objections, together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections.

Additional Data; All existing and would-be applicants who have not filed (a) illustrative service proposals, (b) environmental evaluations, and (c) an estimate of fuel to be consumed in the first year are directed to do so no later than July 23, 1979.

ADDRESSES: Objections or Additional Data should be filed in Docket 35744, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Bernard A. Calure, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Ave., Washington, D.C., 20428, (202) 673-5354.

SUPPLEMENTARY INFORMATION: Objections should be served upon the following persons: Allegheny Airlines, American Airlines, Braniff Airways, Delta Air Lines, Eastern Air Lines, Northwest Airlines, Ozark Air Lines, Piedmont Aviation, Southern Airways, Trans World Airlines, Western Airlines.

The complete text of Order 79-6-18 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 79-6-18 to the Distribution Section, Civil Aeronautics Board, Washington, D.C., 20428.

By the Civil Aeronautics Board, June 5, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-18068 Filed 6-8-79; 8:45 am]
BILLING CODE 6320-01-M

[Order 79-6-42; Dockets 35752, 25908]

Wild Card Route Case; Transatlantic Route Proceeding; Order Instituting Investigation

June 5, 1979.

The United States-United Kingdom Air Services Agreement (Bermuda II) names 14 points that may receive nonstop service by U.S. carriers to London.[1] It also authorizes the United States to select one additional gateway that may receive nonstop service from a U.S carrier to London after July 23, 1980.[2] In the *Transatlantic Route Proceeding*, (Docket 25908) the Board added 11 new points to the transatlantic route map, including the following eight cities not specifically designated for scheduled service in the Bermuda II Agreement: Cleveland, Denver, Kansas City, Minneapolis/St. Paul, New Orleans, Pittsburgh, St. Louis and Tampa.[3] The Board said in its *Transatlantic* decision that one of these cities would be selected as the so-called "wild card" city. See Order 78-1-118, p. 30. It also said that if Minneapolis/St. Paul were chosen as the new gateway point, carrier designation would be between the two applicants—Trans World Airlines or Western Airlines. The Board invited interested persons to comment on the choice of a "wild card" city.

Comments in response to Order 78-1-118 were filed by each of the named wild card city candidates, numerous state and civic parties, and TWA, Western, National Airlines, Inc. and Northwest Airlines, Inc. Each wild card city urges that it be selected based on various geographic, demographic and economic factors that give it preference over its contenders, except Denver, which endorsed Minneapolis/St. Paul as the new gateway. The North Dakota Aeronautics Commission, the Utah parties,[4] and the Arizona parties[5] also recommended selection of Minneapolis/St. Paul.[6] Las Vegas, which was previously rejected by the Board as a candidate, requested reconsideration of its candidacy and urged enlargement of this proceeding to consider additional cities for wild card status.

Among the carriers, TWA requests designation if any of the six city candidates on it certificates is selected; Western supports the Minneapolis/St. Paul candidacy and proposes authority from Minneapolis/St. Paul to London; Northwest urges the Board receive new low-fare carrier proposals and requests an oral hearing; and National requests designation if either Tampa or New Orleans become the chosen point and calls for renegotiation of the bilateral.[7]

Tampa believes that all eight of the original "wild card" cities should be designated as U.S. gateways to London because we found that each of these cities requires nonstop service to Europe in the *Transatlantic Case, supra.* Recognizing, however, that Bermuda II now precludes this result, Tampa urges that we recommend to the President that he open negotiations with the United Kingdom to amend Bermuda II to permit nonstop service to London from all eight cities.[8] It further argues that if only one of these cities can be designated for London service, that city should be Tampa. Tampa lists a number of factors which should be considered in picking a gateway and asks for further procedures if it is necessary to decide this question.

Finally, Minneapolis/St. Paul requests that the Board permit carriers in addition to Western and TWA to apply for Minneapolis/St. Paul-London authority.

Based on the pleadings and all relevant facts, we have decided to institute the *Wild Card Route Case* and to set it for oral evidentiary hearing before an administrative law judge. We agree with the Las Vegas parties[9] that the scope of the proceeding should be expanded to include more than the eight cities we previously selected for candidacy. For reasons discussed below, we have added Honolulu, Ft. Lauderdale, Phoenix, San Diego, Las Vegas, Orlando, and Portland to our list of wild card cities. We also agree with Minneapolis/St. Paul that carriers other than TWA and Western should be allowed to apply for Minneapolis authority. Furthermore, since we see no reason for treating any of the other original wild card candidates differently, and since we have decided to consider London services to seven additional points, we also invite air carriers that are not now parties to this case to apply for the authority at issue.

We have previously noted our dissatisfaction with the anticompetitive provisions of Bermuda II,[10] as these restrictions are inconsistent with our international aviation policy that places principal reliance on actual and potential competition. Obviously nonstop service from any U.S. point and multiple carrier authority is our preference—but such operations are prohibited by international agreement. Yet, the agreement still provides a valuable economic benefit to consumers and carriers which should be exploited.[11] Moreover, competitive constraints should not be allowed to impede advancement of our international aviation objectives. Where they exist, alternative, innovative measures must be created to foster a competitive environment in which the traveling public is offered a variety of price and service alternatives.

Consequently, the *Wild Card Route Case* will have its prime focus on providing consumers with innovative low-fare service. The potential gateway cities will include the eight cities listed as the gateway candidates in Order 78-1-118 plus seven other U.S. cities. They are not specifically named as scheduled gateways in Bermuda II, and are now among the top 25 U.S. domestic traffic-

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[1] The following cities can receive nonstop service to London: Dallas/Ft. Worth, Atlanta, Miami, Detroit, Los Angeles, New York, San Francisco, Seattle, Washington/Baltimore, Boston, Chicago, Philadelphia, Anchorage, and Houston.

[2] U.S. Route 1 of the Bermuda II Route Schedule conditions the U.S. city selection upon acceptance by the United Kingdom.

[3] The Board previously concluded in its July 13, 1976 Recommended Decision. (See Order 77-1-66, January 6, 1977, Appendix.) that San Diego, Las Vegas, Phoenix, and Hartford did not exhibit sufficient traffic potential to warrant nonstop transatlantic service to Europe at that time.

[4] Utah parties: Salt Lake City Corportation; Utah Department of Transportation; Salt Lake Area Chamber of Commerce.

[5] Arizona parties: Arizona Department of Transportation; City of Phoenix; Phoenix Metropolitan Chamber of Commerce.

[6] The Port of San Diego also seems to favor selection of Minneapolis/St. Paul as the new U.S. gateway. (See Docket 25908, Correspondence.) The Governor of Nebraska also supports selection of Minneapolis/St. Paul. (See Exhibit MSP-29.)

[7] TWA currently holds U.S.-London authority from the following points not described in the Bermuda II Route Schedule: Cleveland, Denver, Kansas City, Minneapolis/St. Paul, Pittsburgh and St. Louis. National holds U.S.-London authority from New Orleans and Tampa which are not included in the Bermuda II Route Schedule. Northwest holds no U.S.-London authority but has certificate authority to provide U.S.-Glasgow service from the following points: Boston, Chicago, Detroit, Los Angeles, New York, Seattle, Washington/Baltimore, and Minneapolis/St. Paul.

[8] Tampa argues that Bermuda II is illegal and points out that it is now challenging that international agreement in the courts. *Greater Tampa Chamber of Commerce et. al. v. Brock Adams et. al.* No. 78-0617 (D. D.C.) Dismissed. *appeal docketed* No. 79-1123 (D.C. Cir. November 29, 1978).

[9] Las Vegas parties: Clark County; Greater Las Vegas Chamber of Commerce; City of Las Vegas; Nevada Resort Association; Las Vegas Convention/Visitors Authority.

[10] *See, e.g.*, Order 78-8-140, May 24, 1978.

[11] It should be eminently clear to all parties that selection of one point for U.S.-U.K. nonstop service does not alter the Board's public convenience and necessity finding in the *Transatlantic* case regarding the remaining points.

generating cities.[13] We realize this is a departure from our previous conclusion to limit the pool of gateway candidates to those points already determined to require nonstop transatlantic service; however, changing events and experience have caused us to reassess our initial decision. First, the ranking and composition of the top 25 cities have changed since we first instituted the *Transatlantic* proceeding. As noted in Appendix A, several cities that now appear in the top 25 list were below the cut-off mark when we first selected the city pool for that case.[14] It would be unsound to exclude cities from consideration that today represent important traffic centers. Second, the passage of the Airline Deregulation Act of 1978 vastly increases carriers' facility to rearrange and develop their domestic route system. The expansion of the wild card pool adds to the flexibility of carriers to create an international route system which best integrates with its domestic system. Indeed, the desire to open all U.S. cities for potential gateway status is tempered only by our recognition that the prospect for finding a successful contender among less traveled points is extremely small, and by the necessity to expedite the processing of this case. Accordingly, we have limited the wild card pool to 15 cities.

Since we will accept applications from all carriers for any of the points in issue, this case must also necessarily consider the termination or suspension of TWA's authority to operate nonstop between Cleveland, Denver, Kansas City, Minneapolis/St. Paul, Pittsburgh and St. Louis, on the one hand, and London on the other, and also the termination or suspension of National's authority to operate nonstop between New Orleans and Tampa, on the one hand, and London on the other. We shall also consider certificating additional applicants without modifying the certificate to TWA or National and then make recommendations about which applicant should be designated for nonstop service. However, we take no position on the merits of such a policy at this time.[15]

Similar to our awards in other international proceedings, we will grant the designated carrier fill-up rights for every flight operated pursuant to authority granted here. This should enhance the viability of the new low-fare transatlantic services.[16]

Considering the primary focus of this case, and the need to engage in carrier selection, the offer or failure to offer lower prices will be taken into account in determining whether the public convenience and necessity require the award of new or additional authority and if so, which carrier should be selected. Service benefits as well as an overall competitive market structure constitute important considerations. The administrative law judge should select a city and carrier for recommendation to the Board and also a primary and secondary back-up carrier from that city. Additionally, both the parties and administrative law judge should consider whether temporary or experimental authority should be issued to the selected carrier. As we stated in the *Anchorage-London* instituting order, we wish to devise a fair and effective way to maximize carrier incentives to perform efficiently and offer an optimum array of price and service options to the consumer. We also want to explore ways to replace the selected carrier should it not perform in that manner.

We wish to reduce the delay and costs of the evidentiary burdens typically associated with traditional carrier selection cases. Accordingly, we invite the judge and parties to explore ways to reduce the quantity of required exhibit material, eliminate duplication and excessive detail, standardize methodology and focus on significant facts and assumptions. Ultimately we leave the resolution of these matters to the administrative law judge.

The President has already urged expedition in finalizing the authority granted in Bermuda II. The agreement permits a U.S. carrier to inaugurate services on the new route on July 23, 1980. We want our carrier poised to exploit this right on that date. Accordingly, we have set a Board target date of January, 1980 for our decision. We request the parties, staff, and administrative law judge to move this case along with due speed to insure we can attain our designated dates.

Applications, petitions from interested parties, and motions to consolidate shall be filed with 10 days after the service date of this order. Petitions for reconsideration shall be filed within 10 days after service date of this order and responsive answers shall be filed within 7 days thereafter, including any weekend days. In addition, we will provide that petitions for review of the ALJ's Recommended Decision must be filed 14 days after its service date, given that we will have about two months after its issuance to reach our decision.

The carrier applicants must file environmental evaluations pursuant to Part 312 of the Board's regulations (14 CFR Part 312) and energy information pursuant to Part 313 of the Board's regulations (14 CFR Part 313) within 30 days of the date of service of this order.

Accordingly, it is ordered that:

1. The *Wild Card Route Case*, Docket 35732, be instituted and set for hearing before an administrative law judge of the Board at a time and place to be designated;

2. The proceeding instituted by paragraph 1 shall include consideration of the following issues:

a. Do the public convenience and necessity require the certification of one or more U.S. air carriers to engage in foreign air transportation between London, England and the following U.S. points: Honolulu, Hawaii; Denver, Colorado; Ft. Lauderdale, Florida; Phoenix, Arizona; Minneapolis/St. Paul, Minnesota; San Diego, California; Las Vegas, Nevada; Tampa, Florida; St. Louis, Missouri; Orlando, Florida; Portland, Oregon; New Orleans, Louisiana; Cleveland, Ohio; Pittsburgh, Pennsylvania; and Kansas City, Missouri;

b. If the answer to [a] is affirmative in whole or in part, which city should be selected for U.S.-London service and which primary plus back-up carriers should be selected for that city;[17]

c. For the air carrier or carriers authorized to engage in this service what terms, conditions, or limitations, if any, should be attached to that authority;

d. Do the public convenience and necessity require the suspension or termination or termination of certificate authority of Trans World Airlines, Inc. to operate between Cleveland, Denver, Kansas City, Minneapolis/St. Paul,

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[13] We have used this standard to define the scope of our proceedings in both the *Transpacific Route Investigation* (Docket 16342) and the *Transatlantic Route Investigation* (Docket 25908).

[14] The pre-selection of cities considered for transatlantic service in the *Transatlantic* proceeding was predicated on the top 25 cities ranked according to domestic revenue passenger miles as of December 31, 1971.

[15] In considering the possible grant of nonstop — authority rights to carriers other than TWA and National, we note that neither carrier has been able to institute nonstop service to London from the cities enumerated in its certificate because of Bermuda II restrictions. Also, the Board stated in granting TWA Minneapolis/St. Paul-London authority that such grant would not preclude potentially more valuable service by another carrier in the future. This consideration is similarly applicable to other markets.

[16] We will not hear all-cargo applications since no provision exists in Bermuda II to permit all-cargo service from the wild card point; however, we shall not proscribe this type of operation in the certificates awarded in this case.

[17] In the interest of providing the Board with a full record for decision, the Judge should also discuss several other cities that may be next in rank, along with the carriers he considers the leading applicants at such cities.

Pittsburgh, and St. Louis on the one hand and London on the other;

e. Do the public convenience and necessity require the suspension or termination of certificate authority of National Air Lines, Inc. to operate between New Orleans and Tampa, on the one hand, and London on the other;

3. Applications, petitions from interested parties, motions to consolidate, and petitions for reconsideration of this order shall be filed no later than June 18, 1979, and answers shall be filed no later than June 25, 1979.

4. Petitions for reconsideration of the Administrative Law Judge's Recommended Decision shall be filed 14 days after service date of that Recommended Decision.

5. All applicants shall file environmental evaluations pursuant to Part 312 of the Board's Regulations and energy statements pursuant to Part 313 of the Board's Regulations no later than July 8, 1979.

We shall publish this order in the Federal Register.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

All Members concurred.

Appendix A.—*Rankings of U.S. Cities by Domestic Revenue Passenger Miles*

1971	1978
1. New York/Newark	New York/Newark
2. Los Angeles	Los Angeles
3. Chicago	Chicago
4. San Francisco	San Francisco
5. Miami	Honolulu
6. Honolulu	D.C.
7. D.C.	Miami
8. Boston	Boston
9. Seattle	Denver
10. Philadelphia	Dallas/Ft. Worth
11. Dallas/Ft. Worth	Seattle
12. Detroit	Philadelphia
13. Denver	Houston
14. Atlanta	Atlanta
15. Houston	Detroit
16. Minneapolis/St. Paul	Ft. Lauderdale
17. St. Louis	Phoenix
18. Phoenix	Minneapolis/St. Paul
19. Las Vegas	San Diego
20. Cleveland	Las Vegas
21. San Diego	Tampa
22. Tampa	St. Louis
23. Pittsburgh	Orlando
24. Kansas City	Portland
25. New Orleans	New Orleans
26. Portland	Cleveland
27. Ft. Lauderdale	Pittsburgh
28. Baltimore	Kansas City
29. Hartford	Hartford
30. San Antonio	Baltimore

[FR Doc. 79-18087 Filed 6-8-79; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Industry and Trade Administration

Advisory Committee on East-West Trade; Partially Closed Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Advisory Committee on East-West Trade will be held on Wednesday, June 27, 1979, at 9:30 a.m., in Room 6802, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

The Committee was established on February 11, 1974 to advise the Department, through the Deputy Assistant Secretary for East-West Trade on ways to further its mission to promote and encourage the orderly expansion of commercial and economic relations between the United States and the communist countries. The Committee currently has 16 members.

The Committee meeting agenda has two parts:

General Session, Room 6802

Morning 9:30 a.m.–1 p.m.

(1) Welcome and Opening Remarks by Jerome Ottmar and Kempton B. Jenkins, Deputy Assistant Secretary for East-West Trade.
(2) Report on Secretary Kreps' Trip to China.
(3) Discussion of U.S.-P.R.C. Trade and Other Economic Agreements.
(4) Review of the U.S.-Soviet Summit Meeting and Implications for East-West Trade.
(5) Committee Recommendations on the U.S. Government Role in Protection of Industrial Property Rights.

Executive Session, Room 6802

Afternoon 2 p.m.–3 p.m.

(6) Committee Recommendations on Policies for U.S.-Soviet Commercial Relations in the 1980's.

The General Session of the meeting will be open to public observation. Approximately 50 seats will be available (including 5 seats reserved for media representatives) on a first-come first-served basis.

A period will be set aside for oral comments or questions by the public which do not exceed ten minutes each. More extensive questions or comments may be submitted in writing at any time before or after the meeting.

With respect to agenda item (6), the Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formally determined on pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government in the Sunshine Act P.L. 94–409, that the matters to be discussed under agenda item (6) should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because it will be concerned with matters listed in 5 U.S.C. 552b(c)(9)(B), *i.e.*, premature disclosure would be likely to significantly frustrate implementation of a proposed agency action.

Copies of minutes of the open portion of the meeting will be available 30 days after the meeting upon written request addressed to the Industry and Trade Administration, Freedom of Information Officer, Freedom of Information Control Desk, Room 3012, U.S. Department of Commerce, Washington, D.C. 20230.

For further information, contact Ms. JeNelle Matheson, Committee Control Officer, Office of East-West Policy and Planning, Bureau of East-West Trade, Industry and Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone (202) 377-2498.

The complete Notice of Determination to close the aforementioned portion of the June 27 meeting of the Advisory Committee on East-West Trade is hereby published.

Dated: June 6, 1979.

Kempton B. Jenkins,

Deputy Assistant Secretary for East-West Trade.

Office of the Assistant Secretary for Administration, Advisory Committee on East-West Trade; Determination

The Secretary of Commerce, having determined that it is in the public interest in connection with the duties imposed on the Department by law, initially established the Advisory Committee on East-West Trade ("the Committee") on February 11, 1974, pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. (1976). In December 1976, with the concurrence of the General Services Administration, the Committee's charter was renewed until December 5, 1980. Authorized membership of the Committee is approximately 20, with a current membership of 16.

The Committee provides advice on ways to promote, facilitate and coordinate the expansion of two-way trade with the Soviet Union, Poland, Hungary, Czechoslovakia, Romania, Bulgaria, the People's Republic of China, and certain other areas of the world with similar economic/political structures, so as to contribute materially to a more positive balance of trade and payments situation.

The Committee may identify and make recommendations concerning current and proposed government policies and programs relating to the promotion and expansion of such trade; advise on the development of future government plans and actions directed at promoting and increasing such trade and improving trading relations; advise on ways U.S. firms could enter this trade or expand existing trade programs and activities; advise on problems encountered by U.S. business in pursuing such trade and recommend solutions; and provide a forum for business, the academic community and government to discuss problems and issues in the field of East-West trade.

The Committee's activities are conducted pursuant to the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), and Office of Management and Budget Circular A-63 (Revised), Advisory Committee Management, effective May 1, 1974. Section 10 of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government in the Sunshine Act, P.L. 94-409, provides, among other things, that the meetings of advisory committees are to be open to the public, and to public participation, unless the President, or the head of the agency to which the advisory committee reports, determines that such meetings or portions thereof may be closed to the public in accordance with 5 U.S.C. 552b(c).

Portions of the September 28, 1977, September 27, 1978, December 13, 1978 and April 18, 1979 meetings have previously been closed to the public in accordance with 5 U.S.C. 552b(c)(9)(B) to discuss U.S. Government negotiating positions on (1) the CSCE Review of Basket II provisions of the Helsinki Final Act, (2) future U.S.-Soviet trade in light of validated licensing controls imposed on exports of oil- and gas-related equipment to the U.S.S.R., and (3) U.S.-P.R.C. Trade and Economic Agreements. In addition, 5 U.S.C. 552b(c)(1) was cited as authority for closing a portion of the December 13, 1978 meeting because discussion centered on CSCE matters properly classified by an Executive Order to be kept secret in the interest of U.S. foreign policy.

5 U.S.C. 552b(c)(9)(B) provides that agency meetings or portions thereof may be closed to the public where the premature disclosure of information discussed at such meetings is likely to significantly frustrate implementation of a proposed agency action.

The U.S.-U.S.S.R. Summit Meeting is expected to take place in June. The U.S. Government is currently developing its negotiating positions on specific issues in U.S.-Soviet commercial relations. Although discussion of these issues will probably take place at the Summit, it is likely that they will be resolved only in subsequent negotiations. In order to provide advice to the Department under the terms of its charter, on June 27, 1979 from 2 p.m.–3 p.m. the Advisory Committee on East-West Trade will make recommendations on key issues in U.S.-Soviet commercial relations to be resolved in negotiations following the Summit meeting. Public disclosure of information and advice furnished by the Committee is likely to compromise the U.S. position because Soviet and other communist country representatives regularly attend the Committee meetings.

Accordingly, I hereby determine, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government in the Sunshine Act, P.L. 94-409, that the portion of the Committee meeting scheduled from 2 p.m.–3 p.m. on June 27, 1979, which will address matters discussed in the preceding paragraph, shall be exempt from the provisions of Section 10 (a)(1) and (a)(3) relating to open meetings and public participation therein, because the aforementioned Committee discussions will be concerned with matters listed in 5 U.S.C. 552b(c)(9)(B). Remaining portions of the meeting will be open to the public.

Dated: June 4, 1979.

Guy W. Chamberlin,

Acting Assistant Secretary for Administration.

Dated: May 31, 1979.

Alfred Meisner,

Assistant General Counsel for Administration.

[FR Doc. 79-18079 Filed 6-6-79; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Mid-Atlantic Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), will meet to discuss: (1) Fluke Fishery Management Plan (FMP); (2) Butterfish and Bluefish FMP's; (3) Status of other FMP's; and (4) Conduct other business.

DATES: The meeting will convene on Wednesday, July 11, 1979, at 1 p.m. and will adjourn on Friday, July 13, 1979, at approximately 1 p.m. The meeting is open to the public.

ADDRESS: The meeting will take place at the Best Western Airport Motel, Philadelphia International Airport, Route #291, Philadelphia, Pennsylvania 19153. Telephone: (215) 365-7000.

FOR FURTHER INFORMATION CONTACT: Mid-Atlantic Fishery Management Council, North and New Streets, Room 2115, Federal Building, Dover, Delaware 19901, Telephone: (302) 674-2331.

Dated: June 5, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-18080 Filed 6-6-79; 8:45 am]

BILLING CODE 3510-22-M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The New England Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), will meet to discuss: Fishery Management Plan (FMP) Development, Groundfish proposed revisions, inclusion of other species, Demersel finfish management plan; United States-Canadian Treaty-Council discussion; Task force on Multi-species Management Review; Georges Bank Marine Sanctuary; Logbooks; Foreign Fishing; and Other Business.

DATES: The meeting will convene on Wednesday, June 27, 1979, at approximately 10 a.m. and will adjourn on Thursday, June 28, 1979, at approximately 5 p.m. The meeting is open to the public.

ADDRESS: The meeting will take place at the Howard Johnson's Motor Lodge, Route 1 North, Danvers, Massachusetts.

FOR FURTHER INFORMATION CONTACT: New England Fishery Management Council, Peabody Office Building, One Newbury Street, Peabody, Massachusetts 01960, Telephone: (617) 535-5450.

Dated: June 6, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-18082 Filed 6-6-79; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Publication of and Request for Comment on Proposed Rules Having Major Economic Significance; Amendments to the Random Length Lumber Contract of the Chicago Mercantile Exchange

The Commodity Futures Trading Commission, in accordance with section 5a(12) of the Commodity Exchange Act ("Act"), 7 U.S.C. 7a(12) (1976), as amended by the Futures Trading Act of 1978, Pub. L. No. 95-405, section 12, 92 Stat. 871 (1978), has determined that the following amendments to the random length lumber contract, submitted by the Chicago Mercantile Exchange, are of major economic significance and is therefore publishing these rules, as amended, for public comment. These amendments were submitted to the Commission on April 25, 1979.

The rules, as amended, are printed below showing deletions in brackets and additions underscored:

1700. Scope of Chapter.—This chapter is limited in application to futures trading of [Kiln Dried and Air Dried Hem-Fir] *"S-Dry" random length lumber.* The procedures for trading, clearing, inspection, delivery, settlement and other matters not specifically covered herein shall be governed by the *other* rules of the Exchange.

1701. Commodity Specifications.—Each delivery unit shall consist of nominal 2x4's of random lengths from 8 feet to 20 feet [,]. *Each delivery unit shall consist of and be grade stamped CONSTRUCTION and STANDARD, STANDARD AND BETTER, or #1 and #2; however, in no case may the quantity of Standard grade or #2 grade exceed 50%. Each delivery unit shall be* manufactured in California, Idaho, Montana, Nevada, Oregon, Washington, *Wyoming or Alberta or* British Columbia, Canada, *and contain lumber produced from and grade stamped Alpine Fir, Englemann Spruce, Hem-Fir, Lodgepole Pine and/or Spruce Pine Fir.*

1702. Futures Call.—

A. Trading Months and Hours.

Futures contracts shall be scheduled for trading and delivery during such hours and in such months as may be determined by the Board.

B. Trading Unit.—The unit of trading shall be [100,000] *130,000* board feet. ["Board feet" equals the product of the nominal thickness (in inches) times nominal width (in feet) times nominal length (in feet).]

C. Price Increments.—Minimum price fluctuations shall be in multiples of $.10 per thousand board feet.

D. Daily Price Limits. There shall be no trading at a price more than $5.00 per thousand board feet above or below the previous day's settlement price.

E. Position Limits.—A person shall not own or control more than 1,000 contracts, with a mixmum of 300 contracts in any one contract month. [except that in no event shall he own more than 100 contracts in the spot month.]

F. Accumulation of Positions.—For purpposes of [this] *Rule 1702.E.*, the positions of all accounts owned or controlled by a person or persons acting in concert or in which such person or persons have a proprietary or beneficial interest shall be cumulated. *The total position of each account in which a person has more than a nominal interest shall also be cumulated and added to any other positions attributable to that person.*

G. Bona Fide Hedges.—The foregoing limits shall not apply to bona fide hedging transactions complying with the rules of the Exchange.

H. Termination of Trading.—Trading shall terminate on the business day immediately preceding the 16th calendar day of the contract month.

I. Contract Modification.—Specifications shall be fixed as of the first day of trading of a contract except that all deliveries must conform to government regulations in force at the time of delivery. If any federal agency issues an order, ruling, directive, or law that conflicts with the requirements of these rules, such order, ruling, directive, or law shall be construed to take procedence and become part of these rules, and all open and new contracts shall be subject to such government orders.

1703. Delivery Procedures.—In addition to the procedures and requirements of Chapter 7, the following shall specifically apply to the delivery of *random length* lumber.

A. Notice of Intent to Deliver Seller shall give his Notice of Intent to Deliver to the Clearing House prior to 7:00 a.m. *(Chicago time)* on any business day after termination of trading in the contract month, except that on the last business day of the month, the Notice shall be given prior to 12:00 noon.

B. Buyer's Duties.—The clearing member assigned the "Notice of Intent" shall deposit with the Clearing House no later than 10:00 [o'clock] a.m. *(Chicago time)* on the following business day a certified or cashiers check in an amount sufficient to meet the cost of delivery; that is, the product of [100] *130* times the settlement price *on the last day of trading in the contract month* [at the close of trading].

The buyer shall, [have the option, which must be exercised] within two business days of receipt of the "Notice of Intent," [to] submit *to the Clearing* House shipping instructions [including] *to include routing acceptable to the orignating carrier and the* point of destination [, carrier and routing, to the Clearing House].

C. Seller's Duties.—If the buyer's designated destination is east of the western boundaries of North Dakota, South Dakota, Nebraska, Kansas, Texas, and Oklahoma [and within the continental United States], and the western boundary of Manitoba, Canada, the seller shall follow the buyer's shipping instructions within seven (7) business days after receipt of such instructions.*[,] In addition, the seller shall* prepay *the actual* frieght charges and bill the buyer through the Clearing House on the *weight* basis of *1,000 pounds per thousand board feet and* the *rate basis of either the* lowest published freight rate, *in the rate class available to the shipping mill,* from Portland, Oregon, to the buyer's destination [based on association weights] *or the actual freight rate prepaid by the seller, whichever is lower.*

If, however, the buyer's destination is outside of the aforementioned area, the seller shall follow the same procedure except that the freight charge shall be negotiated between the buyer and seller in accordance with industry practice.

If within two (2) business days of the receipt of the *"Notice of* Intent" the buyer has not designated a destination, or if during that time the buyer and seller fail to agree on a negotiated freight charge, the seller may treat the destination as Chicago, Illinois. If the buyer does not designate a carrier or routing, the seller shall select same according to normal trade practices. Seller shall protect the lowest freight rate or load cars to the full visible capacity.

To effectuate delivery, the seller must deposit with the Clearing House, a uniform straight bill of lading and [[an authorized mill grader's]] *a* shipper's manifest showing grade, a tally of pieces of each length, [[bundles,]] board feet by sizes and total board feet. All of the foregoing documents must be received by the Clearing House *postmarked* within [[7]] *fourteen (14)* business days of the date of [shipment] *receipt of shipping instructions.* [[Failure to deliver these documents in the prescribed time shall result in a penalty of $2.00 per

1,000 board feet per day, to be assessed to the seller.]]

In addition, within one (1) business day after acceptance by the railroad, the [[CME Inspection Department]] *Clearing House* must receive a telegram, *telex, or telephone call* from the seller giving car numbers, piece count by length, *unit size, total board footage* and date of acceptance.

*If the seller fails to fulfill any of the aforementioned duties within the prescribed time, penalties will be assessed by the Clearing House Manager in accordance with the current penalty schedule.**

D. Payment.—Upon the seller's fulfillment of the delivery, the Clearing House shall transfer to him the amount due, payment to be made in U.S. dollars. Any government duties, fees and charges from Canada shall be the responsibility of the shipper. Title shall pass to the buyer at the shipping point upon acceptance by the railroad, evidenced by signed and stamped bills of lading of the loaded [, sealed, and tallied boxcars] *railcars* which are being shipped in satisfaction of the delivery.

1704. Par Delivery. [And substitutions.]—

A. Par Delivery Unit.—Delivery shall be made [in the states of California, Idaho, Montana, Nevada, Oregon and Washington or in the Province of British Columbia. The seller shall deliver the lumber loaded on track and either unitized in double-door box cars or, at no additional cost shall be individually paper wrapped and loaded on flat cars. Price shall be net, net] *on track at the producing mill. The lumber shall be paper-wrapped and loaded on flat cars.* [All] *Cars* [are to] *shall* be packed as close to equal as possible [with separate tally sheets presented with each car in accordance with accepted industry practice].

1. Size—A delivery unit shall be [100,000] *130,000* board feet of random length 2 x 4's [of which 5% to 10% (940–1880) of the 100,000 feet shall be 8' lengths, 5% to 10% (750–1500) 10' lengths, 10% to 15% (1250–1875) 12' lengths, 15% to 20% (1610–2145) 14' lengths, 50% to 60% (4700–5630) 16', 18', or 20' lengths, provided that 16' lengths shall be not less than 35% (3285) of the entire lot, and 0 to 15% (0–1250 18' lengths and 0–1125 20' lenghts) over 16' lengths. Piece counts as shown in the parenthesis are based on a 100,000 board foot contract with tolerance)] *provided the tally is within the following limits:*

Length in feet	Percent*
8	5 to 10
10	4 to 12
12	10 to 20
14	10 to 24
16	35 to 60
18	0 to 15
20	0 to 15
16+18+20	45 to 60

*Total board feet delivered.

The lumber shall be double end trimmed, surfaced four sides, eased edge and of minimum dressed dimensions, as specified in Voluntary Product Standard 20–70, *American Softwood Lumber Standard,* published by the United States Department of Commerce (hereinafter referred to as PS 20–70).

2. Packaging—The lumber shall be unitized; that is, steel banded. In addition, all units shall contain lumber of equal lengths, except 18 foot and 20 foot lengths which may be banded together. The units shall be individually wrapped.

[2.] *3.* Quality—The lumber shall meet the requirements of PS 20–70 and shall comply with the requirements for inspection and reinspection of [the Western Wood Products Association (hereinafter referred to as WWPA) or West Coast Lumber Inspection Bureau (hereinafter referred to as WCLIB) and estimated shipping weights as set forth in the manual for "Terms and Conditions of Quotation and Sale" of the WWPA] *an agency recognized by the American Lumber Standards Committee and/or Canadian Lumber Standards Committee.*

[The lumber shall be in sound condition, shall be properly cared for and adequately protected, and show no evidence of mishandling, deterioration or other damage.]

[3.] *4.* Moisture Content—The mositure content of [at least 95%] *each* [of the] piece[s] shall not exceed 19% as determined by moisture meter reading in accordance with the "Standard Methods of Tests for Moisture Content of Wood," Section 9, Method B of the American Society for Testing Material Standard, D2016–65.

[4.] *5.* [Packaging and] Marking—[At least 95% of the] *All* pieces shall be grade marked with registered symbol of [WWPA, WCLIB, Pacific Lumber Inspection Bureau (hereinafter referred to as PLIB) or other grade symbols recoginzed by WWPA] *an agency recognized by the American Lumber Standards Committee and/or Canadian Lumber Standards Committee.* [At least 95% of the] *All* pieces shall be marked with the mill name and/or association identification number, grade, seasoning and species according to the stamping requirements of the Certified Inspection Agency, and shall meet all other requirements of State and Federal law. [The lumber shall be steel-banded whether delivered unitized or paper wrapped and loaded on flat cars.]

B. Variations in Quantity.—Variations in quantity of the delivery unit [not in excess of 5% of 100,000] *between 120,000 and 140,000* board feet shall be permitted [at the time of delivery] without penalty, but payment shall be made on the basis of the exact quantity delivered.

1705. Inspection Procedures and Standards.—Inspection shall conform to [Section 7] PS 20–70 and any other requirements that may thereafter be promulgated under PS 20–70. Inspection service and compliance shall be subject to the customary lumber industry practice, as provided in PS 20–70 [and Bulletin A–27, "Terms and Conditions of Quotation and Sale—WWPA].

In case of claim on grade, moisture content, tally, or manufacture, the buyer [may] *shall* demand reinspection through the Clearing House [, to the WWPA or WCLIB] *to an agency recognized by the American Lumber Standards Committee and/or Canadian Lumber Standards Committee* as provided for under the rules of *those organizations and* PS 20–70. Findings of the reinspection shall be final and binding upon the buyer and seller.

[Reinspection will be made upon request of members only and in the order of applications filed except precedence shall be given to examinations relating to transactions made on the Exchange.]

1706. Exchange Certificate.—[The Exchange Certificate shall conform and be valid in accordance with the inspection made by the inspecting agency.] *The Exchange shall issue and Exchange Certificate which shall conform to the provisions of Rule 707.*

1707. Costs of Inspection and Demurrage.—The costs of all original grading and marking, documentation and related service shall be borne by the seller. The cost of reinspection shall be assessed as provided by [WWPA and WCLIB] *the agency performing reinspection.*

The seller shall assume demurrage charges up to the date of shipment. The buyer shall be responsible for any demurrage and diversion charges after shipment. The buyer shall be entitled to one reconsignment [at the through rate published by the WWPA].

Any person interested in submitting written data, views, or arguments on these rules should send his comments by July 11, 1979, to Ms. Jane Stuckey, Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW, Washington, D.C. 20581.

Issued in Washington, D.C. on June 5, 1979.
James M. Stone,
Chairman.
[FR Doc. 79-18098 Filed 6-8-79; 8:45 am]
BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

Advisory Committees; Invitation for Membership Application

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of Advisory Committee vacancies and invitation to apply for membership.

SUMMARY: The purpose of this notice is to invite application for membership on three advisory committees of the Consumer Product Safety Commission for vacancies that will occur in July 1979. The advisory committees are: (1) the Product Safety Advisory Council, (2) the National Advisory Committee for the Flammable Fabrics Act, and (3) the Technical Advisory Committee on Poison Prevention Packaging. These appointments are for two-year terms. This notice contains information on the function and composition of the advisory committees; the number and representational category of the vacancies occurring on each committee in July 1979; the representational categories and expertise of members remaining on the committees; general criteria for selection of members on Consumer Product Safety Commission advisory committees; and procedures for making application or nomination of candidates for membership.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Catherine Bolger, Office of the Secretary, Suite 300, 1111 18th Street, NW, Washington, DC 20207, 202-634-7700.

CLOSING DATE: July 11, 1979. Applications received after that date will not be considered for July 1979 vacancies.

SUPPLEMENTARY INFORMATION:

Product Safety Advisory Council

Section 28 of the Consumer Product Safety Act (15 U.S.C. 2077) provides that the Commission shall establish a 15-member Product Safety Advisory Council to be composed of: (1) five members selected from governmental agencies including Federal, State and local governments; (2) five members selected from consumer product industries including at least one representative of small business; and (3) five members selected from among consumer organizations, community organizations, and recognized consumer leaders.

The Council functions in an advisory capacity providing the Commission with diverse viewpoints on major policy issues, proposed rulemaking, and approaches to special problems and issues in implementing the Commission's legislative mandate to protect the public against unreasonable risks of injury associated with consumer products. The Council may propose safety rules for the Commission's consideration.

The Commission anticipates eight (8) vacancies in July 1979: three (3) in the consumer category, three (3) in the government category and two (2) in the industry category.

The seven (7) members remaining on the Product Safety Advisory Council are: Consumer Category: A consumer advocate affiliated with the Seminole Employment Economic Development Corporation, Florida, and a homemaker and former South Carolina State legislator; Industry Category: The president of the National Mass Retailing Institute in New York, a former executive of the RCA Service Company now residing in Philadelphia, Pennsylvania, and the Executive Director of the Independent Business Association, Bellevue, Washington; Government Category: A Commissioner of Consumer Protection for the State of Connecticut, and the coordinator of the Bureau of Maternal and Child Health, New York State Health Department.

The Commission is seeking individuals who will provide additional diversity of qualifications, experience, and background to the advisory council.

National Advisory Committee for the Flammable Fabrics Act

The National Advisory Committee for the Flammable Fabrics Act was established in 1968 by the Department of Commerce under Section 17 of the Flammable Fabrics Act, as amended (Pub. L. 83-88, U.S.C. 1204). Functions under the Act, including administration of the National Advisory Committee, were transferred, effective May 14, 1973, to the Commission by Section 30(b) of the Consumer Product Safety Act (15 U.S.C. 2079(b)).

The National Advisory Committee provides the Commission with advice, opinions, and recommendations on its proposed regulations or other programs to reduce the frequency and severity of burn injuries involving flammable fabrics. The Flammable Fabrics Act provides that the Commission shall consult with the Committee before prescribing flammability standards pursuant to the Act.

The National Advisory Committee for the Flammable Fabrics Act is composed of 20 members, ten (10) of whom are representative of the consuming public and ten (10) of whom are representative of manufacturers and distributors, with manufacturers to include the natural fiber producing industry, the man-made fiber producing industry, and manufacturers of fabrics, related materials, apparel or interior furnishings.

Eleven (11) vacancies are anticipated in July 1979 on the National Advisory Committee: six (6) in the consumer category and five (5) in the industry category.

The nine (9) members remaining on the National Advisory Committee include among the consumer representatives two academicians: a professor of home economics at Norfolk State College in Virginia and an associate professor of textiles, clothing and design at the University of Nebraska. The other consumer members include a consumer specialist and president of a consulting firm on consumer specialist and president of a consulting firm on consumer affairs in the District of Columbia, and the Executive director of the New England Regional Burn Program in Boston, Massachusetts.

The remaining industry members on the National Advisory Committee are the manager of the economic and market research activities of the National Cotton Council of America, the director of manufacturing services for the Southern Furniture Manufacturers Association, the Marketing Technical Director of the American Enka Company, a man-made fiber producer, the president of a research laboratory, and the president of the Shirey Company, a manufacturer of children's sleepwear/lingerie.

The Commission is seeking individuals who will provide additional diversity of qualification, experience and background to the committee.

Technical Advisory Committee on Poison Prevention Packaging

The Technical Advisory Committee on Poison Prevention Packaging was first established in 1971 by the Department of Health, Education and Welfare under the Poison Prevention Packaging Act of 1970 (Pub. L. 91-601; 15 U.S.C. 1471, *et seq.*). Functions under this Act including administration of the Technical Advisory Committee on Poison Prevention Packaging, were transferred, effective May 14, 1973, to

the Commission by Section 30(a) of the Consumer Product Safety Act (15 U.S.C. 2079(a).

The Technical Advisory Committee provides advice and recommendations to the Commission on the establishment of packaging standards to protect children from serious personal injury or illness resulting from handling, using or ingesting household substances. Further, an important function of the Technical Advisory Committee is to review and evaluate petitions requesting exemption from Poison Prevention Packaging regulations. The Poison Prevention Packaging Act provides that the Commission shall consult with the committee in making findings and in establishing standards pursuant to the Act.

The Poison Prevention Packaging Act specifies that the Technical Advisory Committee shall be composed of not more than 16 members who are representatives of (1) the Department of Health, Education and Welfare, (2) the Department of Commerce, (3) manufacturers of household substances subject to the Act, (4) scientists with expertise related to the Act and licensed practitioners in the medical field, (5) consumers, and (6) manufacturers of packages and closures for household substances. In order to achieve maximum balance of views on the committee, the Commission by regulation established that, excepting the two specified government representatives, the remaining 16 members of the committee are equally divided among consumer and industry interests, with scientists and medical practitioners included in either the consumer or industry category depending upon their employment affiliation.

The Commission anticipates eight (8) vacancies on the Technical Advisory Committee: five (5) representatives of the consuming public; and three (3) representatives of industry interest.

The eight (8) members remaining on the committee, in addition to the representatives from DHEW and DOC, include among the consumers a medical student at the University of Arizona College of Medicine, the director of the Duke Poison Control Center in Durham, North Carolina, and a homemaker with previous experience in emergency room care and as a chemical analyst. The industry members remaining on the Technical Advisory Committee are a manager of closure research and development at ALCOA, Richmond, Indiana, the manager of product safety and quality control for the Kerr Glass Manufacturing Company, Lancaster, Pennsylvania, an executive of the Van Blarcom Closures, Inc., Brooklyn, New York, a technical expert in package testing at Lehn & Fink Products Co., Montvale, New Jersey, a manufacturer of pharmaceuticals and chemicals, and a packaging development engineer at Travenol Laboratories, Round Lake, Illinois, a manufacturer of pharmaceuticals.

The Commission is seeking individuals who will provide additional diversity of qualifications, experience, and background to the committee.

Membership Criteria

The membership of the Commission's advisory committees shall be, insofar as practicable, fairly balanced in terms of geographic location, age, sex, and race. Further, within the representational categories specifically mandated by law, the Commission seeks to select members to ensure advisory committees with the widest possible diversity of experience, expertise, background, and interests. Examples of such diversity are provided below for each of the advisory committees.

Product Safety Advisory Council. For consumer representatives, such diversity would include past or current involvement in the areas of consumer protection and consumer information; activities directed to the special needs of children, the handicapped, minorities, low-income, elderly, etc.; teaching and/or research in safety of consumer products; public interest law; and educational programs for consumers. Diversity among industry representatives would include occupational responsibilities such as quality control, product testing, product engineering and design, marketing; voluntary standards development; trade association experience; corporate policy-making; import/export of products, etc. For government representatives, such diversity would include involvement in activities at the Federal, State, or local level related to product safety regulatory activities; community group and/or program involvement; product-related research and/or testing, etc.

National Advisory Committee for the Flammable Fabrics Act. For consumers on this committee, such diversity would include past or current involvement in burn treatment programs; fire prevention programs; teaching and/or research relating to textiles and home furnishings; consumer organization or local citizen group activities relating to flammability, public interest law, homemaking, etc. Diversity among industry representatives within the basic categories provided for by law would include past or current activities related to voluntary standards development in the area of fabric/textile flammability, fire-prevention programs, trade associations, research and/or teaching, occupational responsibilities such as quality control, product testing, product engineering export/import of consumer products, etc.

Technical Advisory Committee on Poison Prevention Packaging. Diversity among consumer representatives would include past or current involvement in activities related to poison control centers, data gathering research and analysis of incidents of poisoning in children, pediatrics, public interest law, home accident prevention efforts, teaching and/or research relating to household substances and drugs, homemaking, childrearing, etc. Diversity among industry representatives within the basic categories provided for by law would relate to specific types of products dealt with; past or current occupational responsibilities such as quality control, product testing, product engineering and design, marketing; voluntary standards development; practicing pharmacists; medical practitioners and scientists with industry employment affiliation; etc.

Privacy Act Notice

In accordance with the requirements of "The Privacy Act of 1974" (Pub. L. 93-579), persons from whom personal information is collected by a Federal agency are to be advised of the authority which authorizes the solicitation of information, whether disclosure is mandatory or voluntary, the principal purpose for which the information is collected and the routine use to which it will be put, and the effects, if any, of not providing all or any part of the requested information. Accordingly, applicants for membership on the Consumer Product Safety Commission's advisory committees are advised of the following: (1) the authority for collecting the requested information is the Consumer Product Safety Act, sections 28, 30(a) and 30(b), (15 U.S.C. 2077, 2079(a) and 2079(b)), the Flammable Fabrics Act, section 17 (15 U.S.C. 1204) and the Poison Prevention Packaging Act of 1970, section 6 (15 U.S.C. 1475). The submission of applications for advisory committee membership is on a voluntary basis, (2) the purpose for which the requested information is collected and the routine use to which it will be put is to evaluate and select candidates for filling vacancies on advisory committees, (3) the effect of not providing the requested

information is to preclude the Commission from properly evaluating a candidate for membership on an advisory committee.

Application Procedure

Interested persons may apply for committee membership by submitting the information requested below on or before July 11, 1979. Persons wishing to nominate another individual to serve on an advisory committee should submit the same information on the nominee for consideration and should include a statement that the person nominated has agreed to serve if selected by the Commission.

Application Format

Note.—Submission of the information listed below will constitute an application. There is no separate application form. Résumés may be substituted for the recommended application format as long as they are accompanied by an attachment which completes all of the application format questions. Applications which do not provide all of the requested information will be considered incomplete and will be disqualified. If applying for more than one CPSC Advisory Committee, please submit a separate application for each Committee. Please use typewriter or print in ink to prepare application.

1. Name of advisory committee for which application is submitted: Product Safety Advisory Council.

Application Procedure

Interested persons may apply for committee membership by submitting the requested information below on or before July 11, 1979. Persons wishing to nominate another individual to serve on an advisory committee should submit the same information on the nominee for consideration and should include a statement that the person nominated has agreed to serve if selected by the Commission.

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1. Name of advisory committee for which application is submitted: Product Safety Advisory Council.

National Advisory Committee for the Flammable Fabrics Act

Technical Advisory Committee on Poison Prevention Packaging

2. Name of applicant

3. Home address and telephone number (include Area Code)

4. Employment affiliation:

a. Current position and description of duties.

b. Employer's name, address, and telephone number (include Area Code).

c. Category of Representation (specify product):

☐ Industry
1. Manufacturer
2. Importer
3. Distributor
4. Retailer
5. Small business
6. Self-employed
7. Trade association
8. Other (specify)

☐ Government
1. Federal
2. State
3. Local

☐ Consumer: Specify membership and/or involvement in national or local consumer groups, public interest groups, community service groups, etc. or other activities indicating consumer participation and interst.

☐ Scientist/Medical practitioner: Indicate specialty. Applicants in this category may be representatives of industry or consumers depending on employment affilation.

☐ Not currently employed:
1. Homemaker
2. Retired
3. Student
4. Other (specify)

d. Do you perform consulting work? If yes, specify kind of consulting work, for whom, and if paid or volunteer.

e. Are you involved in the performance of work under a contract of grant awarded by CPSC? If yes, specify contract title and number and describe your involvment.

f. Are you, or your organization, involved in any proceeding or matter presently pending before the Commission. If yes, please explain.

g. Are you, or your organization, presently involved in the development, or the proposal to develop, a safety standard or regulation under any of the Acts administered by the Commission? If yes, please explain.

5. Experience/Expertise: Specify and describe education, experience or extracurricular activites related to product safety generally and the activities of the advisory committee for which you are applying.

Check applicable areas and provide descriptive comments for each area checked.

☐ Product safety regulatory activities
☐ Hazardous substances
☐ Flammable fabrics
☐ Poison prevention packaging
☐ Voluntary standards development
☐ Burn treatment programs
☐ Fire prevention programs
☐ Poison control centers
☐ Trade association
☐ Product design
☐ Product testing
☐ Product-related research
☐ Quality control
☐ Accidents in the home
☐ Problems of elderly or handicapped
☐ Public interest law
☐ Import/export activities
☐ Consumer education/information
☐ Consumer protection
☐ Teaching
☐ Marketing
☐ Corporate policy development
☐ Health/safety programs
☐ Other relevant experience/expertise

6. Interest Questions:

a. Why are you interested in serving on the Committee?

b. What contribution do you believe you can make?

c. Would you be able to attend approximately four two-day sessions annually in Washington, DC? Travel expenses are reimbursable in accordance with Federal Regulations.

7. Other affiliations. Without restating information given above, specify all affiliations, past and current, either paid or as a volunteer, that bear any relationship to the subject area of product safety or to membership on the Advisory Committee for which you are applying.

8. Signature of Applicant (if self-application).

9. Signature of Person Making Nomination if application submitted by other than the Applicant. Include statement that nominee has agreed to serve if selected.

Applications should be submitted not later than July 11, 1979 to the Committee Management Officer, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

Dated: June 6, 1979.

Sadye E. Dunn,

Secretary.

[FR Doc. 79-18088 Filed 6-8-79; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Beach Erosion Control and Hurricane Protection Project, Folly Beach, S.C.

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: 1. Description of proposed action. The proposed project provides for beach restoration, erosion control, and improvement of recreational beach along the ocean shoreline of Folly Beach, South Carolina. The plan of improvement provides for restoration and periodic renourishment of a continuous reach of beach in the center

section of the Folly Island ocean shoreline for a total project length of 16,800 feet. The plan would require 684,000 cubic yards of sandy fill material. Borrow areas selected as a source of fill sand are shoal areas in Lighthouse and Stono Inlets.

2. Description of alternatives. Structural alternatives evaluated included beach restoration with varied berm widths and different length of shoreline protected. Three sizes of dunes were considered as supplemental features to beach restoration to provide additional protection from wave damage during hurricane and lesser storms. While beach restoration was found to be economically justified, the cost of adding the dunes would not provide commensurate benefits. Beach revetment and seawalls were considered but were rejected because they would not provide any additional beach area for recreational use. Additions to the existing groin system and construction of offshore breakwaters were also considered. These were rejected because of high cost.

Non-structural alternatives were also considered. Investigations of local ordinance and emergency programs indicated that the City of Folly Beach is participating in the Federal Flood Insurance program and this program involves mandatory flood plain regulatory zoning and reasonable building codes which are non-structural methods of protection. Such actions are desirable in order to preclude possible future development that would be subjected to much damage from flooding, storm waves and from beach erosion. Analysis of permanent or temporary evacuation, and relocations of buildings in the active erosion zones indicated that these non-structural measures would be of little benefit.

3. a. Public and private participation in the DEIS process. Two Beach Erosion Control and Hurricane Protection Public Meetings were held at Folly Beach on November 29, 1977 and December 1, 1978. Full participation by interested Federal, state and local agencies as well as other interested private organizations and parties was invited. Subsequent meetings and correspondence with aforementioned agencies and parties have occurred in the formulation of the DEIS.

b. Significant issues to be discussed in the DEIS include:

(1) Project Purpose, Location and Description of Action.

(2) Environmental Setting Without the Proposed Project.

(a) Biotic Communities.

(b) Fish and Wildlife Resources.

(c) Endangered Wildlife.

(d) Recreational Values.

(e) Cultural Resources.

(f) Social and Economic Conditions.

(3) Relationship of the Proposed Action to Landuse Plans.

(4) Probable Impact of the Proposed Action on the Environment.

(a) Water Quality.

(b) Biological Resources.

(5) Alternatives to the Proposed Action.

c. Environmental Review. Environmental review of the DEIS and EIS as well as consultations will be made with the U.S. Fish and Wildlife Service, Environmental Protection Agency, National Marine Fisheries Service, South Carolina Coastal Council, South Carolina Department of Health and Environmental Control, and South Carolina Wildlife and Marine Resources Department.

4. A scoping meeting will not be held as a result of near completion of the DEIS.

5. The Draft Environmental Impact Statement *Beach Erosion Control* and *Hurricane Protection Folly Beach, South Carolina* will be made available to the public about June 1, 1979.

6. Questions about the proposed action and DEIS can be answered by: John Carothers, Chief, Environmental Resources Branch, U.S. Army Corps of Engineers, Charleston District, Box 919, Charleston, South Carolina 29402.

Dated: May 14, 1979.

William W. Brown,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 79-18035 Filed 6-8-79; 8:45 am]

BILLING CODE 3710-AC-M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meeting

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (Pub. L. 94–163), notice is hereby provided of the following meeting:

A meeting of the Industry Working Party (IWP) to the International Energy Agency (IEA) will be held on June 28, 1979, at the offices of British Petroleum Company Ltd., Britannic House, Moor Land, London, England, beginning at 9:30 a.m. The agenda is as follows:

1. Status of Standing Group on the Oil Market (SOM) and Industry Working Party (IWP) activities and arrangements for future meetings.

2. Report on the IWP meeting with SOM on April 26th.

3. Review of gravity adjustment for crude oil cost and price data and whether other quality adjustments for this date are necessary.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, this meeting will not be open to the public.

Issued in Washington, D. C., May 30, 1979.

Robert C. Goodwin, Jr.,

Assistant General Counsel, International Trade and Emergency Preparedness.

[FR Doc. 79-18035 Filed 6-8-79; 8:45 am]

BILLING CODE 6450-01-M

Office of Competition

Subsidization of Motor Fuel Marketing: A Hearing Related to Title III of the Petroleum Marketing Practices Act

AGENCY: Office of Competition, Department of Energy.

ACTION: Notice of Public Hearing and Opportunity for Written Comments.

SUMMARY: The Office of Competition of the Department of Energy gives notice of a public hearing and opportunity for submission of written comments concerning the study required by Title III of the Petroleum Marketing Practices Act (Pub. L. 95–297). An Outline of this study was published in the Federal Register January 17, 1979. The outline indicated that a series of regional hearings would be held across the nation. The general purpose of these hearings is to present interested parties with an opportunity to present their views regarding subsidization of motor fuel marketing in their specific market area.

DATES: Requests to speak on or before July 9th at 4:30 p.m. Oral statements due on July 17th at 8:00 a.m. Hearing on July 17th at 9:30 a.m. Written comments due on or before July 26th at 4:30 p.m.

ADDRESSES: Send requests to speak to: Department of Energy, 111 Pine Street, Third Floor, Attention: Robert Lassel, San Francisco, California, 94111; Bring oral statements to hearing location. Send written comments to: Office of Public Hearing Management, Department of Energy, Room 2313, Box XE, 2000 M St. NW. Washington, D.C. 20461. Hearing location: New Otani Hotel, 120 South Los Angeles Street, Ballroom No. 2, Los Angeles, California 90012.

FOR FURTHER INFORMATION CONTACT:

James Delaney, Robert Fanili, Office of Competition, Department of Energy, 12th &

Pennsylvania Avenue, NW., Room 4115, Washington D.C. 20461, 202–633–9191.

Robert C. Gillette, Hearing Procedures, Department of Energy, 2000 M St. NW., Room 2214B, Washington, D.C. 20461, 202–254–5201.

SUPPLEMENTARY INFORMATION:

I. *Background*
II. *Specific Comments Requested*
III. *Public Hearing and Comment Procedure*
A. Written Comments
B. Public Hearing

I. Background

On January 17, 1979, in the **Federal Register**, the Office of Competition indicated that it would adopt a regional approach to the Title III Study on subsidization in the marketing of motor fuel. A multifaceted plan was outlined in that notice. The plan included a retail outlet survey of five selected areas, a refiner and wholesaler survey, a functional profitability survey of major refiners and a subpoena of internal planning and marketing documents of nine companies. Since January 1979, staff members of the Office of Competition have met with various participants in the five regional markets.

As part of its effort to afford interested parties an opportunity to present written and oral data, views, and arguments concerning the study, the Office of Competition will conduct a series of regional hearings. These hearings will supplement the statistical analysis mentioned above. In addition, to this Los Angeles hearing, seven to nine other hearings will likely be scheduled throughout the year.

II. Specific Comments Requested

The Office of Competition is interested in receiving comments on the interrelated issues of subsidization of motor fuel sales, profitability of marketing at wholesale and retail, and the competitive viability of various groups in the Los Angeles regional market. In particular, we would like to receive comments on the following matters:

(1) The extent of subsidization in the area, including documentation, if possible.

(2) The effect of subsidization on competition in the area;

(3) The role of refiner- and wholesaler-operations at retail and the impact of DOE regulations, or other important institutional factors, on competition in the area; and

(4) Proposed remedies, if any, for insuring the long-term consumer interests as related to motor fuel marketing.

III. Public Hearing and Comment Procedures

A. *Written Comments.* You are invited to submit written views, data, or arguments with respect to the areas listed above. Comments should be submitted to the address indicated in the ADDRESSES section of this notice and should be identified on the outside envelope with the designation "Title III Study". Fifteen copies should be submitted. All comments received will be available for public inspection in the DOE Reading Room, Room 2107, Federal Building, 12th & Pennsylvania Avenue, NW., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

Identify separately any information or data you consider to be confidential and submit it in writing, one copy only. The DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

B. *Public Hearing.* 1. Request Procedure: The time and place of the public hearing are indicated in the DATES and ADDRESSES sections of this notice. If necessary to present all testimony, the hearing will be continued to 9:30 a.m. of the day following the date of the hearing. You may make an oral presentation at the hearing. Since it may be necessary to limit the number of persons making such presentations, you should be prepared to describe your interest in this proceeding, if appropriate, why you are a proper representative of a group or class of persons that has such an interest, and to give a concise summary of your proposed oral presentation.

The DOE will notify each person selected to be heard before 4:30 p.m. on July 12th. Persons selected to be heard should submit 100 copies of their statement to the address indicated in the ADDRESSES section of this notice before 9:00 a.m., July 17th.

2. Conduct of the Hearing: The Office of Competition reserves the right to select the persons to be heard at this hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

A DOE official will be designated to preside at the hearing. Representatives of the Federal Trade Commission and the Attorney General have been invited to be members of the hearing panel. This will not be a judicial or evidentiary type hearing. Only those conducting the hearing may ask questions, and there will be no cross-examination of persons presenting statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

You may submit questions to be asked of any person making a statement at the hearing to the address indicated above for requests to speak before 4:30 p.m. on July 13th. You may also submit any questions in writing, to the presiding officer at the time of the hearing. The Office of Competition or, if the question is submitted at the hearing, the presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made, and the DOE will retain the entire record of the hearings, including the transcript, which will be made available for inspection at the Freedom of Information Office, Room 2107, Federal Building, 12th & Pennsylvania Avenue NW., Washington, D.C. between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday. You may purchase a copy of the transcript from the reporter.

In the event that it becomes necessary for the DOE to cancel the hearing, every effort will be made to publish advance notice in the **Federal Register** of such cancellation. Moreover, DOE will notify all persons scheduled to testify at the hearing. However, it is not possible for DOE to give actual notice of cancellations or changes to persons not identified to DOE as a participant. Accordingly, if you wish to attend the hearing, you should contact the DOE on the last working day preceding the date of the hearing to confirm that it will be held as scheduled.

Issued in Washington, D.C., June 5, 1979.

Leslie J. Goldman,

Acting Assistant Secretary Policy and Evaluation.

[FR Doc. 79-18082 Filed 6-8-79; 8:45 am]
BILLING CODE 6450-01-M

Economic Regulatory Administration

Issuance of Proposed Remedial Order to Maurice L. Brown Co.

Notice is hereby given that on May 31, 1979, the Proposed Remedial Order (PRO) summarized below was issued by the Central Enforcement District of the

Economic Regulatory Administration (ERA) of the Department of Energy to Maurice L. Brown Company (Brown), 9229 Ward Parkway, Kansas City, Missouri 64114.

The PRO includes findings that Brown, a crude oil producer, overcharged $968,043.38 in sales of crude oil during the period September 1973 through December 1976.

The reason for the overcharges were a result of Brown (1) erroneously including injection wells as producing wells in the computation of average daily production for purposes of determining the eligibility of properties for the stripper well exemption, (2) incorrectly computing the amount of new and released crude oil, and (3) not considering down days in the computation of average daily production for purposes of determining the eligibility of properties for the stripper well exemption.

The Office of Enforcement of the ERA has proposed in the PRO that Brown be required to refund the full amount of overcharges (plus interest) found with respect to each property as the Department of Energy shall direct. Refunds shall be made over a period of time which is equal to the number of months during which overcharges have been found with respect to each property.

A copy of the PRO, with any confidential information deleted, may be obtained from the ERA at the following address:

Manager, Program Branch, Central Enforcement District, Economic Regulatory Administration, Department of Energy, 324 East 11th Street, Kansas City, Missouri 64106.

Any aggrieved person may, on or before June 26, 1979, file a Notice of Objection with the Office of Hearings and Appeals in accordance with 10 CFR § 205.193. Pursuant to 10 CFR § 25.193, a Notice of Objection must be filed in duplicate, shall briefly describe how the person would be aggrieved by issuance of the PRO as a final Remedial Order, and shall state the person's intention to file a Statement of Objections pursuant to 10 CFR § 205.196. No confidential information shall be included in a Notice of Objection. A Notice of Objection must be filed at the following address:

Office of Hearings and Appeals, Department of Energy, 2000 M Street, N.W., Washington, D.C. 20461.

In addition, a copy of each filing must be submitted to the ERA Central Enforcement District office at the address set forth herein, and to:

Assistant General Counsel for Administrative Litigation, Office of General Counsel, Department of Energy, Room 7148, 12th & Pennsylvania Avenue, N.W., Washington, D.C. 20461.

Issued this 31st day of May, 1979 in Kansas City, Missouri.

Robert D. Gerring,

District Manager, Central Enforcement District.

[FR Doc. 79-17722 Filed 6-8-79; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 78-002-NG, et al., FERC Docket No. CP78-237]

Northern Natural Gas Co., Great Lakes Transmission Co.

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice granting rehearing and reconsideration for review of second supplement to application for importation of Canadian synthetic natural gas (SNG); and invitation to submit petitions to intervene.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of its granting an application by Northern Natural Gas Company (Northern) and Great Lakes Gas Transmission Company (Great Lakes) for rehearing and reconsideration of "DOE/ERA Opinion and Order Number Five" (hereafter "Opinion Number Five") issued March 8, 1979, in ERA Docket No. 78-002, *et al.*

In DOE/ERA Opinion Number Five, the ERA denied, without prejudice, Northern's proposal to import 75,000 cubic feet (Mcf) per day of SNG by displacement from Canada. In the same Order, ERA denied, without prejudice, the related application of Great Lakes requesting authority to amend its current import authorizations in FERC Docket No. CP66-110 *et al.*, to permit deliveries of the gas, proposed to be imported by Northern, in Minnesota and Michigan.

The second supplement filed by the applicants is a restructed project which includes a new contracted import price. Thus, a determination must be made as to whether the restructured project is in the national interest. This application, as supplemented and amended, is filed with ERA pursuant to Section 3 of the Natural Gas Act and the Department of Energy Delegation Order No. 0204-25.

Petitions to intervene are invited.

DATES: Petitions to intervene: to be filed on or before June 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Finn K. Neilsen, Director, Import/Export Division, 2000 M Street, N.W., Room 6318, Washington, D.C. 20461, Telephone (202) 254-9730.

Mr. Martin S. Kaufman, Office of General Counsel, 12th and Pennsylvania Avenue, N.W., Room 5116, Washington, D.C. 20461, Telephone (202) 633-8380.

SUPPLEMENTARY INFORMATION: DOE/ERA's Opinion and Order Number Five, "Opinion and Order on Application to Import SNG from Canada by Displacement by Northern Natural Gas Company and Great Lakes Gas Transmission Company" (Opinion), issued March 8, 1979, denied without prejudice that application, primarily because the proposed SNG import price was too high and, in addition, because Northern had not adequately determined regional need for this gas. In its verified application for rehearing, Northern stated that it had restructured the Gas Service Agreement with its supplier Union Gas Limited, Canada, to adopt a different and substantially lower contract price which would be equitable to U.S. consumers. Consequently, on May 2, 1979 DOE/ERA issued an order granting the application for rehearing for purposes of reviewing the restructured contract.

Specifically, the second supplement of Northern's verified application states that the price to be paid by Northern to Union shall be the U.S.A.-Canadian border export price plus 56¢ per MMBtu representing a storage charge which will remain constant throughout the four-year life of the contract.

In addition, Northern asserts that the proposed border price of $2.86 for the SNG ($2.30 as announced by the Privy Council of the Government of Canada on March 28, 1979, and effective May 1, 1979, plus 56¢ storage charge) compares favorably with Northern's current cost of "traditional area" new gas delivered into Northern's market area. The "traditional area," according to Northern refers to new gas purchased off-shore, from wells located in Kansas, Oklahoma, Texas, New Mexico, off-shore Louisiana, and off-shore Texas.

The ERA invites comments and petitions for intervention in this proceeding. Such petitions for intervention will be accepted for consideration if filed no later than 4:30 p.m., on June 26, 1979.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing which may be convened herein must file a petition to intervene. Any person desiring to make any comment or protest with reference to the petition should file with the ERA in the same manner as indicated above

for petitions to intervene. All comments or protests filed with ERA will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants party to the proceeding.

A formal hearing will not be held unless a motion for such hearing is made by any party or intervener and is granted by ERA, or if the ERA on its own motion believes that such a hearing is required. If such hearing is required, due notice will be given.

A copy of Northern's application as amended or supplemented, is available for public inspection and copying in Room B–110, 2000 M Street, N.W., Washington, D.C. 20461, between the hors of 8:00 a.m., and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., June 1, 1979.

Doris J. Dewton,

Acting Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-18884 Filed 6-8-79; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP79–319]

Consolidated Gas Supply Corp.; Application

June 1, 1979.

Take notice that on May 21, 1979, Consolidated Gas Supply Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP79–319 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the limited-term sale of natural gas to Texas Gas Transmission Corporation (Texas Gas), all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant requests authorization to sell an average daily quantity of 100,000 dekathern (dt) equivalent of natural gas or an annual quantity of 36,500,000 dt to Texas Gas pursuant to the terms of a limited-term surplus gas sales agreement dated May 17, 1979, between Applicant and Texas Gas. The gas to be sold to Texas Gas is to be taken from the volumes which Applicant is now or would be authorized to purchase from independent producers in the South Louisiana area, it is stated. It is estimated that more than 8 percent of the volumes of gas to be sold to Texas Gas would be purchased by Applicant from its affiliate, CNG Producing Company, it is said. Applicant states that in order to facilitate the delivery of the annual quantity and to accommodate fluctuations in Texas Gas' requirements, the agreement provides for a 25 percent increase or decrease in daily deliveries from the quanitity of 100,000 dt.

Applicant states that it would deliver the gas to Texas Gas or for Texas Gas' account at (1) the existing measuring and regulating station at the northern terminus of the Blue Water pipeline system near Egan, Louisiana, where the Blue Water facilities interconnect with the facilitites of Texas Gas and (2) the northern terminus of the High Island Offshore System (HIOS) at the West Cameron Block 167 platform where the HIOS facilities interconnect with the facilities of Michigan Wisconsin Pipeline Company. It is indicated that there would be an alternate delivery point at the northern terminus of the U–T Offshore System (U–TOS) facilities near Cameron Meadows in Cameron Parish, Louisiana, which alternate point is to be utilized only if Texas Gas is unable to accept deliveries at the primary delivery points.

Applicant states that the term of such Surplus Gas Sales Agreement is for a 30-month period from the date of initial deliveries. Applicant further states that the rate which Texas Gas would pay Applicant for the gas is to be $1.89 per dt until July 1, 1979, when the rate would be increased by 7.0 cents per dt as of that date and by an additional 7.0 cents upon each January 1 and July 1 there after during the term of the agreement.

It is asserted that Texas Gas would utilized the volumes of gas purchased from Applicant as general system supply and not for delivery to any particular customer.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 25, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in a subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary

[FR Doc. 79-17084 Filed 6-8-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP77–326]

Columbia Gulf Transmission Co.; Petition To Amend

June 1, 1979.

Take notice that on May 14, 1979, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP77–326 a petition to amend the order of August 5, 1977, issued in said docket pursuant to section 7(c) of the Natural Gas Act so as to permit Columbia Gulf to increase the volume of gas to be transported on behalf of Sea Robin Pipeline Company (Sea Robin) from 50,000 Mcf per day to 100,000 Mcf per day, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.[1]

Columbia Gulf has entered into a gas transportation agreement with Sea Robin, dated March 15, 1977, which provides that Columbia Gulf would accept and receive up to 50,000 Mcf of natural gas per day and that Sea Robin, at its election, had the right to have transported to it, an additional 50,000 Mcf of gas per day, it is stated. It is indicated that the Commission in Docket No. CP77–326, *et al.*, authorized Columbia to commence transportation of up to 50,000 Mcf per day of gas to Sea Robin with the provision that Sea Robin

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

has the option of increasing its transported volume by an additional 50,000 Mcf per day of gas, to be exercised within 24 months from the completion of the necessary facilities by Columbia Gulf.

Columbia Gulf states that an amendment to the transportation agreement, dated March 21, 1979, provides that Columbia Gulf would transport for Sea Robin an additional volume of 50,000 Mcf of gas per day which Sea Robin has available from West Cameron Blocks 609 and 617, offshore Louisiana, to Egan, Louisiana through facilities authorized in Docket Nos. CP75–262 and CP75–359 and through the Blue Water Project, which was constructed under authorizations granted in Docket Nos. CP68–231, CP74–180, CP75–297, CP76–349 and CP77–65. Columbia Gulf further states that at Egan, Louisiana, the gas would be retained in Columbia Gulf's pipeline with a thermally equivalent volume of gas being delivered to Sea Robin at Erath, Louisiana at the terminus of Sea Robin's offshore pipeline.

It is asserted that Columbia Gulf has agreed to a reduction in the contract demand by 10,000 Mcf per day of gas or any multiple thereof, to no less than a total contract demand of 60,000 Mcf per day, with no reduction being effective prior to the expiration of twelve months from the last reduction. Columbia Gulf states that such reductions would be at Sea Robin's election and was granted in view of the possibility that the deliveries to Sea Robin from West Cameron Blocks 609 and 617 would decline in the foreseeable future.

It is stated that the amendment to the agreement changes Section 2.1 of the agreement to delete language not now applicable and Section 9.1 to set forth the full understanding of Columbia Gulf and Sea Robin regarding curtailments of the contract demand.

Any person desiring to be heard or to make any protest with reference to said petition should on or before June 25, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79–17699 Filed 6–8–79; 8:45 am]

BILLING CODE 6450–01–M

Davis Oil Co. et al.; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

June 1, 1979.

On May 16, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

Department of Interior Geological Survey

FERC Control Number: JD79–5745
API Well Number: 49–037–20767
Section of NGPA: 102
Operator: Davis Oil Company
Well Name: Hay Reservoir Unit 1
Field: Hay Reservoir
County: Sweetwater
Purchaser: Panhandle Eastern Pipe Line Company
Volume: 270 MMcf.

FERC Control Number: JD79–5746
API Well Number: 49–037–20651
Section of NGPA: 102
Operator: Davis Oil Company
Well Name: Hay Reservoir Unit 3
Field: Hay Reservoir
County: Sweetwater
Purchaser: Colorado Interstate Gas Company
Volume: 730 MMcf.

FERC Control Number: JD79–5747
API Well Number: 49–037–20901
Section of NGPA: 102
Operator: Davis Oil Company
Well Name: Great Divide Unit #1
Field: Great Divide
County: Sweetwater
Purchaser: Panhandle Eastern Pipe Line Company
Volume: 90 MMcf.

FERC Control Number: JD79–5748
API Well Number: 49–037–20659
Section of NGPA: 102
Operator: Davis Oil Company
Well Name: Hay Reservoir Unit 5
Field: Hay Reservoir
County: Sweetwater
Purchaser: Panhandle Eastern Pipe Line Company
Volume: NA

FERC Control Number: JD79–5749
API Well Number: 49–037–20661
Section of NGPA: 102
Operator: Davis Oil Company
Well Name: Hay Reservoir Unit 4
Field: Hay Reservoir
County: Sweetwater
Purchaser: Panhandle Eastern Pipe Line Company
Volume: 90 MMcf.

FERC Control Number: JD79–5750
API Well Number: 49–037–20652
Section of NGPA: 102
Operator: Davis Oil Company
Well Name: Fair Federal #1
Field: Wildcat
County: Sweetwater
Purchaser: Panhandle Eastern Pipe Line Company
Volume: 90 MMcf.

FERC Control Number: JD79–5751
API Well Number: 49–037–20650
Section of NGPA: 102
Operator: Davis Oil Company
Well Name: Hay Reservoir Unit 2
Field: Hay Reservoir
County: Sweetwater
Purchaser: Panhandle Eastern Pipe Line Company
Volume: 270 MMcf.

FERC Control Number: JD79–5752
API Well Number: 49–037–20928
Section of NGPA: 107
Operator: Champlin Petroleum Company
Well Name: #5 Higgins 23–22
Field: Higgins
County: Sweetwater
Purchaser: Colo. Int. Gas Co.
Volume: 2800 MMcf.

FERC Control Number: JD79–5753
API Well Number: 25–071–21549
Section of NGPA: 102
Operator: Midlands Gas Corporation
Well Name: 0661 USA Midlands & Miami Federal 1–6
Field: Bowdoin
County: Phillips
Purchaser: Kansas-Nebraska Natural Gas Co., Inc.
Volume: 84 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 26, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79–17700 Filed 6–8–79; 8:45 am]

BILLING CODE 6450–01–M

El Paso Natural Gas Co. et al.; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

June 1, 1979.

On May 18, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

U.S. Geological Survey, Conservation Div., Albuquerque, N. Mex.

FERC Control Number: JD79-6012
API Well Number: 30039078400000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: San Juan 30-4 Unit #1
Field: Blanco, East Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 7 MMcf.

FERC Control Number: JD79-6013
API Well Number: 30039061780000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit #25
Field: Blanco, South Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 10.0 MMcf.

FERC Control Number: JD79-6014
API Well Number: 30-039-21787
Section of NGPA: 103
Operator: Northwest Pipeline Corporation
Well Name: San Juan 29-5 Unit #90
Field: Basin Dakota
County: Rio Arriba
Purchaser: Northwest Pipeline Corporation
Volume: 107 MMcf.

FERC Control Number: JD79-6015
API Well Number: 30-039-21786
Section of NGPA: 103
Operator: Northwest Pipeline Corporation
Well Name: San Juan 29-5 Unit #91
Field: Basin Dakota
County: Rio Arriba
Purchaser: Northwest Pipeline Corporation
Volume: 191 MMcf.

FERC Control Number: JD79-6016
API Well Number: 30-045-22536
Section of NGPA: 103
Operator: Northwest Pipeline Corporation
Well Name: Cox Canyon Unit #24 Part
Field: Blanco PC
County: San Juan
Purchaser: Northwest Pipeline Corporation
Volume: 78 MMcf.

FERC Control Number: JD79-6017
API Well Number: 30-039-21807
Section of NGPA: 103
Operator: Northwest Pipeline Corporation
Well Name: S/J 29-6 #26A
Field: Blanco MV
County: Rio Arriba
Purchaser: Northwest Pipeline Corporation
Volume: 62 MMcf.

FERC Control Number: JD79-6018
API Well Number: 30-039-21412
Section of NGPA: 103
Operator: Northwest Pipeline Corporation
Well Name: San Juan 29-6 #27A
Field: Blanco MV
County: Rio Arriba
Purchaser: Northwest Pipeline Corporation
Volume: 88 MMcf.

FERC Control Number: JD79-6019
API Well Number: 30-039-21493
Section of NGPA: 103
Operator: Northwest Pipeline Corporation
Well Name: San Juan 30-5 #60
Field: Blanco MV
County: Rio Arriba
Purchaser: Northwest Pipeline Corporation
Volume: 127 MMcf.

FERC Control Number: JD79-6020
API Well Number: 30-039-21440
Section of NGPA: 103
Operator: Northwest Pipeline Corporation
Well Name: San Juan 29-6 #110
Field: Blanco PC
County: Rio Arriba
Purchaser: Northwest Pipeline Corporation
Volume: 42 MMcf.

FERC Control Number: JD79-6021
API Well Number: 30-039-21494
Section of NGPA: 103
Operator: Northwest Pipeline Corporation
Well Name: San Juan 30-5 Unit #62
Field: Blanco MV
County: Rio Arriba
Purchaser: Northwest Pipeline Corporation
Volume: 127 MMcf.

FERC Control Number: JD79-6022
API Well Number: 30-039-21498
Section of NGPA: 103
Operator: Consolidated Oil & Gas, Inc.
Well Name: Tribal "C" 3-A
Field: Blanco Mesaverde
County: Rio Arriba
Purchaser: Northwest Pipeline Corp.
Volume: 80,300 MMcf.

FERC Control Number: JD79-6023
API Well Number: 30-039-21499
Section of NGPA: 103
Operator: Consolidated Oil & Gas, Inc.
Well Name: Tribal "C" 9-A
Field: Blanco Mesaverde
County: Rio Arriba
Purchaser: Northwest Pipeline Corp.
Volume: 34,675 MMcf.

FERC Control Number: JD79-6024
API Well Number: 30-039-21510
Section of NGPA: 103
Operator: Consolidated Oil & Gas, Inc.
Well Name: Tribal "C" 11-A
Field: Blanco Mesaverde
County: Rio Arriba
Purchaser: Northwest Pipeline Corp.
Volume: 29,200 MMcf.

FERC Control Number: JD79-6025
API Well Number: 30-039-21377
Section of NGPA: 103
Operator: Consolidated Oil & Gas, Inc.
Well Name: Tribal "C" 2-A-6
Field: Blanco Mesaverde
County: Rio Arriba
Purchaser: Northwest Pipeline Corp.
Volume: 219,000 MMcf.

FERC Control Number: JD79-6026
API Well Number: 30039211730000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit #280
Field: Blanco, South Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 10.0 MMcf.

FERC Control Number: JD79-6027
API Well Number: 30039067400000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Rincon Unit 13
Field: Blanco, South Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 13.1 MMcf.

FERC Control Number: JD79-6028
API Well Number: 30039209310000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit #270
Field: Ballard Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 14.0 MMcf.

FERC Control Number: JD79-6029
API Well Number: 30039207290000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit #195
Field: Ballard Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 5.0 MMcf.

FERC Control Number: JD79-6030
API Well Number: 30039209620000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit #287
Field: Ballard Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company Volume: 9.1 MMcf.

FERC Control Number: JD79-6031
API Well Number: 30039207890000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit #209
Field: Ballard Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 6.0 MMcf.

FERC Control Number: JD79-6032
API Well Number: 30039207800000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit #210
Field: Ballard Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 15.0 MMcf.

FERC Control Number: JD79-6033
API Well Number: 30039208690000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit #263
Field: Ballard Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 8.4 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection,

except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 26, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-17981 Filed 6-8-79; 8:45 am]

BILLING CODE 6450-01-M

Exxon Corp. et al.; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

June 1, 1979.

On May 2, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

Railroad Commission of Texas

FERC Control Number: JD79-4982
API Well Number: 42 251 30233
Section of NGPA: 108
Operator: Exxon Corporation
Well Name: MRS, S. K. East Well No. 86-D 77139
Field: Rita (7-E, II)
County: Kenedy
Purchaser: Natural Gas Pipeline Company
Volume: 183 MMcf.

FERC Control Number: JD79-4983
API Well Number: 177126000300D1
Section of NGPA: 102
Operator: Mobil Oil Corporation
Well Name: South Pelto Block 10 9A
Field: NA
County: NA
Purchaser: Transcontinental Gas P/L Corp.
Volume: 3,650 MMcf.

FERC Control Number: JD79-4984
API Well Number: 177104071D1
Section of NGPA: 102
Operator: Continental Oil Company
Well Name: Eugene Island 307, A-7
Field: NA
County: NA
Purchaser: Michigan-Wisconsin Pipeline
Volume: 1,900 MMcf.

FERC Control Number: JD79-4985
API Well Number: 177126013300D2
Section of NGPA: 102
Operator: CNG Producing Company
Well Name: A-15D2
Field: NA
County: NA
Purchaser: Consolidated Gas Supply Corp.
Volume: 765 CNG WI MMcf. 1550 Gross
FERC Control Number: JD79-4986
API Well Number: 25 071 21570
Section of NGPA: 108
Operator: Midlands Gas Corporation
Well Name: 2961 1-29 SOC EtAL Federal
Field: Bowdoin
County: Phillips
Purchaser: Kansas-Nebraska Natural Gas Co., Inc.
Volume: 60 MMcf.

FERC Control Number: JD79-4987
API Well Number: 43-043-30063
Section of NGPA: 103
Operator: American Quasar Petroleum Co.
Well Name: Pineview 4-4S
Field: 3-2N-7E 908.1 FSL 823.5 FEL
County: Summit
Purchaser: Mountain Fuel Supply Co.
Volume: 180 MMcf.

FERC Control Number: JD79-4988
API Well Number: 05-103-6009
Section of NGPA: 103
Operator: Chancellor & Ridgeway
Well Name: #32-1 Federal
Field: Cathedral NW SE SEC. 32-T2S-R101W
County: Rio Blanco
Purchaser: Western Slope Gas Company
Volume: 200 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 26, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-17982 Filed 6-8-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket Nos. CI79-226, et al.]

Getty Oil Co., et al.; Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates[1]

June 1, 1979.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before June 8, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and Location	Price per 1,000 ft.³	Pressure base
CI79-256, C, Mar. 19, 1979	Getty Oil Co., P.O. Box 1404, Houston, Tex. 77001.	United Gas Pipe Line Co., South Timbalier block 148, offshore Louisiana.	(1)	16.025
CI79-401, E, Apr. 3, 1979	Multistate Oil Properties, N.V. (successor in interest to the Shenandoah Oil Corp.) P.O. Box 2511, Houston, Tex. 77001.	Zenith Gas System, Inc., Astra Gas Area, Barber County, Tex.	(1)	14.65

[1] Applicant is filing under contract dated 10-1-77, amended by Amendatory Agreement dated 1-3-79.
[2] Multistate is acquiring this property from Shenandoah as of 3-26-79 and requests that both temporary and permanent certificates be effective as of 3-26-79, to continue the service previously rendered by Shenandoah under Docket No. CS71-354.

Filing code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 79-18002 Filed 6-8-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-306]

Iowa-Illinois Gas & Electric Co.; Application

May 29, 1979.

Take notice that on May 15, 1979, Iowa-Illinois Gas and Electric Company (Applicant), 206 East Second Street, P.O. Box 4350, Davenport, Iowa 52808, filed in Docket No. CP79-306 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to construct and operate approximately 0.17 mile of six-inch replacement pipeline within the City of Iowa City, Iowa and for permission and approval to abandon in place approximately 0.16 mile of four-inch pipeline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to abandon in place approximately 0.16 mile of four-inch pipeline which is a portion of approximately 1.40 miles of predominently four-inch pipeline heretofore certificated by the Commission in Docket No. G-303 and constructed in 1933 to supply Applicant's Benton Street Station located within the boundaries of Iowa City, Iowa. It is stated that the facilities to be abandoned would be mechanically cut from the remaining facilities, purged and capped, meeting the requirements of the U.S. Department of Transportation, Office of Pipeline Safety.

It is indicated that Applicant also proposes to construct approximately 0.17 mile of six-inch replacement pipeline within Iowa City, Iowa. The replacement pipeline would be constructed within the same private and adjacent public street right-of-way as the facilities proposed to be physically abandoned, it is stated. Applicant states that after installation of the replacement pipeline, 15,120 Mcf per day of natural gas would be transported, an increase in capacity of 720 Mcf per day over the 14,400 Mcf per day capability of the existing pipeline. Applicant indicates that the proposal herein is necessitated by residential development along Benton Street which over time has so changed the grade that the facilitites may be of a depth insufficient for prudent and reliable service. Increased flow capability and pressure level maintenance at this location would be required to meet future load and to provide adequate are reliable service in this section of Iowa City, it is asserted.

Applicant estimates that the cost of the proposed pipeline is $19,869 which would be financed from funds now on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 20, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-17985 Filed 6-8-79; 8:45 am]

BILLING CODE 6450-01-M

James F. Scott; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

June 1, 1979.

On May 15, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

West Virginia Department of Mines, Oil and Gas Division

FERC Control Number: JD79-4889
API Well Number: 47-033-1243
Section of NGPA: 103
Operator: James F. Scott
Well Name: Louisa C. Robinson No. 1
Field: Eagle
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 20.1 MMcf.

FERC Control Number: JD79-4890
API Well Number: 47-033-1100
Section of NGPA: 103
Operator: James F. Scott
Well Name: IRA Frittro No. 2
Field: Coal
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 18.8 MMcf.

FERC Control Number: JD79-4891
API Well Number: 47-033-1155
Section of NGPA: 103
Operator: James F. Scott
Well Name: Flowers Lindsey
Field: Sardis
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 71.2 MMcf.

FERC Control Number: JD79-4892
API Well Number: 47-033-1154
Section of NGPA: 103
Operator: James F. Scott
Well Name: Consolidation Coal Co.
Field: Coal
County: Harrison

Purchaser: Consolidated Gas Supply Corp.
Volume: 27.9 MMcf.

FERC Control Number: JD79-4903
API Well Number: 47-033-1153
Section of NGPA: 108
Operator: James F. Scott
Well Name: Joseph Hammond No. 2
Field: Eagle
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 25.7 MMcf.

FERC Control Number: JD79-4904
API Well Number: 47-033-1150
Section of NGPA: 108
Operator: James F. Scott
Well Name: Southern No. 2
Field: Sardis
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 40.7 MMcf.

FERC Control Number: JD79-4905
API Well Number: 47-033-1145
Section of NGPA: 108
Operator: James F. Scott
Well Name: M. Morrison No. 1
Field: Coal District
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 47.7 MMcf.

FERC Control Number: JD79-4906
API Well Number: 47-033-1144
Section of NGPA: 108
Operator: James F. Scott
Well Name: M. Morrison No. 2
Field: Coal District
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 18.2 MMcf.

FERC Control Number: JD79-4907
API Well Number: 47-033-1234
Section of NGPA: 108
Operator: James F. Scott
Well Name: E. Southern No. 3
Field: Sardis District
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 52.7 MMcf.

FERC Control Number: JD79-4908
API Well Number: 47-033-1131
Section of NGPA: 108
Operator: James F. Scott
Well Name: S. Southern No. 1
Field: Sardis District
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 25.8 MMcf.

FERC Control Number: JD79-4909
API Well Number: 47-033-1136
Section of NGPA: 108
Operator: James F. Scott
Well Name: J. T. Williams No. 3
Field: Coal District
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 28.7 MMcf.

FERC Control Number: JD79-4900
API Well Number: 47-041-2528
Section of NGPA: 108
Operator: James F. Scott
Well Name: I. P. Simmons
Field: Freemans Creek District
County: Lewis
Purchaser: Consolidated Gas Supply Corp.
Volume: 30 MMcf.

FERC Control Number: JD79-4901
API Well Number: 47-041-2523
Section of NGPA: 108
Operator: James F. Scott
Well Name: A. P. White
Field: Freemans Creek District
County: Lewis
Purchaser: Consolidated Gas Supply Corp.
Volume: 3.8 MMcf.

FERC Control Number: JD79-4902
API Well Number: 47-041-2526
Section of NGPA: 108
Operator: James F. Scott
Well Name: Hornbeck
Field: Hackers Creek District
County: Lewis
Purchaser: Consolidated Gas Supply Corp.
Volume: 1.1 MMcf.

FERC Control Number: JD79-4903
API Well Number: 47-033-1954
Section of NGPA: 103
Operator: James F. Scott
Well Name: W. A. Morrison
Field: Hardis
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 25. MMcf.

FERC Control Number: JD79-4904
API Well Number: 47-033-1948
Section of NGPA: 108
Operator: James F. Scott
Well Name: James H. Williams
Field: Eagle District
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 20. MMcf.

FERC Control Number: JD79-4905
API Well Number: 49-033-1667
Section of NGPA: 108
Operator: James F. Scott
Well Name: Frances Coffman
Field: Eagle District
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 7.4 MMcf.

FERC Control Number: JD79-4906
API Well Number: 47-033-1244
Section of NGPA: 108
Operator: James F. Scott
Well Name: J. A. Swiger No. 1
Field: Eagle District
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 33.4 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 26, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-17909 Filed 6-8-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. CI79-609]

The Louisiana Land & Exploration Co.; Application for Certificate of Public Convenience and Necessity

June 1, 1979.

On April 16, 1979, The Louisiana Land and Exploration Company (Applicant) filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce to Transco Gas Supply Company. This sale will be from Applicant's interest in gas produced from acreage located in Ship Shoal Area, Block 272 Field Gulf of Mexico. Applicant proposes to sell the subject gas at $2.116 per Mcf at 15.025 psia. Additionally Applicant seeks pre-granted abandonment from the requested certificate for all gas qualifying for deregulation under the Natural Gas Policy Act of 1978. Applicant's application is on file with the Commission and available for public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 26, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure a hearing will be held without further notice before the Commission on this application if no petitions to intervene are filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificate or the authorization for the

proposed abandonment is required by public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecesary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-17909 Filed 6-8-79; 8:45 am]

BILLING CODE 6450-01-M

Marion Gas Co., et al.; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

June 1, 1979.

On May 15, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

West Virginia Department of Mines, Oil and Gas Division

FERC Control Number: JD79-4907
API Well Number: 47-035-1004
Section of NGPA: 108
Operator: Marion Gas Company
Well Name: Casto No. 1
Field: Ripley
County: Jackson
Purchaser: Consolidated Gas and Supply Co.
Volume: 13 MMcf.

FERC Control Number: JD79-4908
API Well Number: 47-035-1020
Section of NGPA: 108
Operator: Marion Gas Company
Well Name: Sokolow No. 1
Field: Ripley
County: Jackson
Purchaser: Consolidated Gas and Supply Co.
Volume: MMcf.

FERC Control Number: JD79-4909
API Well Number: 47-035-0905
Section of NGPA: 108
Operator: Shinn Gas Company
Well Name: Shinn No. 1
Field: NA
County: NA
Purchaser: Consolidated Gas and Supply Co.
Volume: 6 MMcf.

FERC Control Number: JD79-4910
API Well Number: 47-035-097
Section of NGPA: 108
Operator: Shinn Gas Company
Well Name: Shinn No. 2
Field: Ripley
County: Jackson
Purchaser: Consolidated Gas and Supply Co.
Volume: 5 MMcf.

FERC Control Number: JD79-4911
API Well Number: 47-035-0047
Section of NGPA: 108
Operator: Phillips Gas Company
Well Name: Phillips No. 1
Field: Ripley
County: Jackson
Purchaser: Consolidated Gas and Supply Co.
Volume: 5 MMcf.

FERC Control Number: JD79-4912
API Well Number: 47-035-891
Section of NGPA: 108
Operator: Phillips Gas Company
Well Name: Phillips No. 2
Field: Ripley
County: Jackson
Purchaser: Consolidated Gas and Supply Co.
Volume: 5 MMcf.

FERC Control Number: JD79-4913
API Well Number: 47-059-0674
Section of NGPA: 108
Operator: C. F. Shewey
Well Name: George Dempsey Well No. 1
Field: Tug River
County: Mingo
Purchaser: Columbia Gas Transmission Corp.
Volume: 6.495 MMcf.

FERC Control Number: JD79-4914
API Well Number: 47-059-0066
Section of NGPA: 108
Operator: C. F. Shewey
Well Name: Naugatuck Lease, M. Collier
Field: Tug River
County: Mingo
Purchaser: Columbia Gas Transmission Corp.
Volume: 4.624 MMcf.

FERC Control Number: JD79-4915
API Well Number: 47-059-0773
Section of NGPA: 108
Operator: C. F. Shewey
Well Name: Mt Sterling Well
Field: Tug River
County: Mingo
Purchaser: Columbia Gas Transmission Corp.
Volume: 7.369 MMcf.

FERC Control Number: JD79-4916
API Well Number: 47-033-1096
Section of NGPA: 103
Operator: James F. Scott
Well Name: J. Gerrard
Field: Sardis District
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 94.0 MMcf.

FERC Control Number: JD79-4917
API Well Number: 47-033-1101
Section of NGPA: 103
Operator: James F. Scott
Well Name: Ira Frittro No. 1
Field: Coal District
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 153.2 MMcf.

FERC Control Number: JD79-4918
API Well Number: 47-033-1108
Section of NGPA: 103
Operator: James F. Scott
Well Name: T. P. Reynolds No. 1
Field: Coal District
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 43.6 MMcf.

FERC Control Number: JD79-4919
API Well Number: 47-033-1109
Section of NGPA: 103
Operator: James F. Scott
Well Name: T. P. Reynolds No. 2
Field: Coal District
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 66.9 MMcf.

FERC Control Number: JD79-4920
API Well Number: 47-033-1110
Section of NGPA: 103
Operator: James F. Scott
Well Name: T. P. Reynolds No. 3
Field: Coal District
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 34.3 MMcf.

FERC Control Number: JD79-4921
API Well Number: 47-033-1113
Section of NGPA: 103
Operator: James F. Scott
Well Name: T. P. Reynolds No. 4
Field: Coal District
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 42.6 MMcf.

FERC Control Number: JD79-4922
API Well Number: 47-033-1123
Section of NGPA: 103
Operator: James F. Scott
Well Name: M. H. Alfred No. 2
Field: Coal District
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 15.9 MMcf.

FERC Control Number: JD79-4923
API Well Number: 47-033-1129
Section of NGPA: 103
Operator: James F. Scott
Well Name: M. H. Alfred No. 1
Field: Coal District
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 70.7 MMcf.

FERC Control Number: JD79-4924
API Well Number: 47-033-1130
Section of NGPA: 103
Operator: James F. Scott
Well Name: Gore Corporation
Field: Coal District
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 75.0 MMcf.

FERC Control Number: JD79-4925
API Well Number: 47-033-1094
Section of NGPA: 103
Operator: James F. Scott
Well Name: A. J. Hammond
Field: Sardis District
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 119.6 MMcf.

FERC Control Number: JD79-4926
API Well Number: 47-033-1069
Section of NGPA: 103
Operator: James F. Scott
Well Name: W. C. Morrison No. 1
Field: Coal District
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 45.7 MMcf.

FERC Control Number: JD79-4927
API Well Number: 47-033-1074
Section of NGPA: 103
Operator: James F. Scott
Well Name: Tilton T. Carter No. 1
Field: Clark District

County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 25.4 MMcf.

FERC Control Number: JD79-4928
API Well Number: 47-033-1075
Section of NGPA: 103
Operator: James F. Scott
Well Name: Tilton T. Carter No. 2
Field: Clark District
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 25.4 MMcf.

FERC Control Number: JD79-4929
API Well Number: 47-033-1080
Section of NGPA: 103
Operator: James E. Scott
Well Name: P. Hornor
Field: Coal District
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 71.8 MMcf.

FERC Control Number: JD79-4930
API Well Number: 47-033-1085
Section of NGPA: 103
Operator: James F. Scott
Well Name: B. Brown
Field: Coal District
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 48.9 MMcf.

FERC Control Number: JD79-4931
API Well Number: 47-033-1141
Section of NGPA: 103
Operator: James F. Scott
Well Name: Joseph Hammond No. 1
Field: Eagle District
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 25.7 MMcf.

FERC Control Number: JD79-4932
API Well Number: 47-033-1143
Section of NGPA: 103
Operator: James F. Scott
Well Name: S. Boggess No. 1
Field: Coal District
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 33.7 MMcf.

FERC Control Number: JD79-4933
API Well Number: 47-033-1203
Section of NGPA: 103
Operator: James F. Scott
Well Name: C. T. Lively
Field: Coal District
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 71.4 MMcf.

FERC Control Number: JD79-4934
API Well Number: 47-033-1185
Section of NGPA: 103
Operator: James F. Scott
Well Name: J. H. Mines No. A-1
Field: Coal District
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: MMcf.

FERC Control Number: JD79-4935
API Well Number: 47-033-1161
Section of NGPA: 103
Operator: James F. Scott
Well Name: N. R. Morrison
Field: Coal District
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 64.4 MMcf.

FERC Control Number: JD79-4936
API Well Number: 47-017-1855
Section of NGPA: 103
Operator: Pittsburg Tube Company
Well Name: C. Underwood No. 2
Field: Grant District
County: Doddridge
Purchaser: Consolidated Gas Supply Corp.
Volume: 29.2 MMcf.

FERC Control Number: JD79-4937
API Well Number: 47-033-1051
Section of NGPA: 103
Operator: James F. Scott
Well Name: John Williams No. 2
Field: Coal District
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 47.3 MMcf.

FERC Control Number: JD79-4938
API Well Number: 47-033-1039
Section of NGPA: 103
Operator: James F. Scott
Well Name: John Williams No. 1
Field: Coal District
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 47.3 MMcf.

FERC Control Number: JD79-4939
API Well Number: 47-033-1054
Section of NGPA: 103
Operator: James F. Scott
Well Name: Ellen Bates
Field: Sardis District
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 79.0 MMcf.

FERC Control Number: JD79-4940
API Well Number: 47-033-1103
Section of NGPA: 103
Operator: James F. Scott
Well Name: William G. Plant
Field: Sardis District
County: Harrison
Purchaser: Consolidated Gas Supply Corp.
Volume: 19.1 MMcf.

FERC Control Number: JD79-4941
API Well Number: 47-013-2-1735-0000
Section of NGPA: 108
Operator: William L. Heeter
Well Name: A. Gberke No. 1
Field: Sycamore Millstone
County: Calhoun
Purchaser: Consolidated Gas Supply Corp.
Volume: 3.436 MMcf.

FERC Control Number: JD79-4942
API Well Number: 47-007-1064
Section of NGPA: 108
Operator: Braxton Oil and Gas Corporation
Well Name: Carrie Posey No. 1
Field: Heaterss
County: Braxton
Purchaser: Equitable Gas Company
Volume: 3.1 MMcf.

FERC Control Number: JD79-4943
API Well Number: 47-067-2-0966-0000
Section of NGPA: 108
Operator: William L. Heeter
Well Name: T. Morris, Parot No. 2
Field: Clover Rush Run
County: Roane
Purchaser: H. C. Boggs Natural Gas Co.
Volume: 3.123 MMcf.

FERC Control Number: JD79-4944
API Well Number: 47-013-2-2071-0000
Section of NGPA: 108
Operator: William L. Heeter
Well Name: Woodrow Knotts No. 2
Field: Orma
County: Calhoun
Purchaser: Consolidated Gas Supply Corp.
Volume: 8.928 MMcf.

FERC Control Number: JD79-4945
API Well Number: 47-013-2-1393-0000
Section of NGPA: 108
Operator: William L. Heeter
Well Name: D. O. Chenoweth No. 2
Field: Orma
County: Calhoun
Purchaser: Consolidated Gas Supply Corp.
Volume: 6.920 MMcf.

FERC Control Number: JD79-4946
API Well Number: 47-007-1041
Section of NGPA: 108
Operator: Braxton Oil and Gas Corp.
Well Name: Jamison No. 1
Field: Chapel German
County: Braxton
Purchaser: Consolidated Gas Supply Corp.
Volume: 4 MMcf.

FERC Control Number: JD79-4947
API Well Number: 47-013-2-1790-0000
Section of NGPA: 108
Operator: William L. Heeter
Well Name: J. D. Kendall No. 1
Field: Sycamore Millstone
County: Calhoun
Purchaser: Consolidated Gas Supply Corp.
Volume: 4,607 MMcf.

FERC Control Number: JD79-4948
API Well Number: 47-013-2-1393-0000
Section of NGPA: 108
Operator: William L. Heeter
Well Name: W. A. Downey No. 2
Field: Orma
County: Calhoun
Purchaser: Consolidated Gas Supply Corp.
Volume: 10.289 MMcf.

FERC Control Number: JD79-4949
API Well Number: 47-013-0-1355-0000
Section of NGPA: 108
Operator: William L. Heeter
Well Name: John R. Lockney No. 1
Field: Sycamore Millstone
County: Calhoun
Purchaser: Consolidated Gas Supply Corp.
Volume: 2.450 MMcf.

FERC Control Number: JD79-4950
API Well Number: 47-013-2-2037-0000
Section of NGPA: 108
Operator: William L. Heeter
Well Name: Downey Lockney No. 3
Field: Orma
County: Calhoun
Purchaser: Consolidated Gas Supply Corp.
Volume: 8.897 MMcf.

The applications for determinations in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of

Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 26, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-17084 Filed 6-8-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP73-81]

McCulloch Interstate Gas Corp.; Filing of Material Supplementing PGA Filing

May 31, 1979.

Take notice that McCulloch Interstate Gas Corporation tendered for filing proposed changes in its F.P.C. Gas Tariff, Original Volume No. 1. The proposed changes ar to:

(1) Tariff Sheet No. 28 of McCulloch Interstate's F.E.R.C. Gas Tariff Original Volume No. 1, amending it to reflect new effective dates of May 1 and November 1, established for McCulloch Interstate by F.E.R.C. Order Nos. 13 and 13–A;

(2) Original Sheet No. 31A, F.P.C. Gas Tariff Original Volume No. 1, adopting and setting forth within McCulloch Interstate's P.G.A.C. a provision reflecting McCulloch Interstate's treatment of carrying charges in conformance with F.E.R.C. Order No. 13–A; and

(3) Seventeenth Revised Sheet No. 32 adjusting the 144.30¢ tariff rate previously filed for on March 30, 1979, herein to reflect a carrying charge increase of .72¢ and a Currently Effective Tariff Rate of 145.02¢ in accordance with the provisions of F.E.R.C. Order No. 13–A. Appended thereto and, by reference, incorporated therein was filed by McCulloch, Table VI. (MuCulloch Interstate Gas Corporation Calculation of Carrying Charge Applicable to Account 191, Unrecovered Purchased Gas Costs.)

The proposed changes are made in response to communications with the Commission's Staff advising McCulloch Interstate that its PGA filing, to be effective May 1, 1979, required supplementation.

Copies of the filing were served upon McCulloch Interstate's jurisdictional customer by mailing copies of documents to Colorado Interstate Gas Company.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protests with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 15, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-17086 Filed 6-8-79; 8:45 am]

BILLING CODE 6450-01-M

Mesa Petroleum Co.; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

June 1, 1979.

On May 18, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

U.S. Department of the Interior Geological Survey

FERC Control Number: JD79–6247
API Well Number: 30–045–22980
Section of NGPA: 103
Operator: Mesa Petroleum Company
Well Name: Federal 16A
Field: Blanco Mesaverde
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 91 MMcf.

FERC Control Number: JD79–6248
API Well Number: 30–045–22589
Section of NGPA: 103
Operator: Mesa Petroleum Company
Well Name: State Com No. 41
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 66 MMcf.

FERC Control Number: JD79–6249
API Well Number: 30–045–22202
Section of NGPA: 103
Operator: Mesa Petroleum Company
Well Name: Sater Com No. 5
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 219 MMcf.

FERC Control Number: JD79–6250
API Well Number: 30–045–21508
Section of NGPA: 103
Operator: Mesa Petroleum Company
Well Name: Otero Federal No. 5
Field: Basin Dakota
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 90 MMcf.

FERC Control Number: JD79–6251
API Well Number: 30–015–22366
Section of NGPA: 103
Operator: Mesa Petroleum Company
Well Name: White City Fed "10" Com No. 1
Field: White City (Penn)
County: Eddy
Purchaser: El Paso Natural Gas Company
Volume: 11,000 MMcf.

FERC Control Number: JD79–6252
API Well Number: 30–045–22207
Section of NGPA: 108
Operator: Dugan Production Corp.
Well Name: Ben Franklin No. 2
Field: Gallegos Fruitland South
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 4.8 MMcf.

FERC Control Number: JD79–6253
API Well Number: 30–045–22921
Section of NGPA: 103
Operator: Blackwood and Nichols Co., Ltd.
Well Name: Northeast Blanco Unit No. 66
Field: Blanco Mesaverde
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 250 MMcf.

FERC Control Number: JD79–6254
API Well Number: 02–001–20226
Section of NGPA: 108
Operator: Energy Reserves Group, Inc.
Well Name: Navajo Tribal "O" No. 5
Field: Teec Nos Pos
County: Apache County
Purchaser: El Paso Natural Gas Company
Volume: 21 MMcf.

FERC Control Number: JD79–6255
API Well Number: 30–015–22149
Section of NGPA: 103
Operator: Yates Petroleum Corporation
Well Name: Brainerd IO Fed. No. 1
Field: Wildcat Cisco
County: Eddy
Purchaser: El Paso Natural Gas Company
Volume: 24,110 MMcf.

FERC Control Number: JD79–6256
API Well Number: 30–045–09178
Section of NGPA: 108
Operator: Dugan Production Corporation
Well Name: Carpenter No. 1
Field: Basin DK
County: San Juan
Purchaser: Northwest Pipeline Corp.
Volume: 6.0 MMcf.

FERC Control Number: JD79–6257
API Well Number: 30–045–21736
Section of NGPA: 108
Operator: Dugan Production Corporation
Well Name: Chaco Plant No. 1
Field: WaW Fruitland PC
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 8.2 MMcf.

FERC Control Number: JD79–6258
API Well Number: 30–045–08881
Section of NGPA: 108
Operator: Dugan Production Corporation
Well Name: Federal I No. 3

Field: Basin DK
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 1.9 MMcf.

FERC Control Number: JD79-6259
API Well Number: 30-015-22127
Section of NGPA: 103
Operator: Yates Petroleum Corporation
Well Name: Federal AB Com No. 2
Field: Eagle Creek Permo Penn
County: Eddy
Purchaser: El Paso Natural Gas Company
Volume: 130.320 MMcf.

FERC Control Number: JD79-6260
API Well Number: 30-015-22300
Section of NGPA: 103
Operator: Yates Petroleum Corporation
Well Name: Federal AB Com No. 4
Field: Undesignated Morrow
County: Eddy
Purchaser: El Paso Natural Gas Company
Volume: 810.790 MMcf.

FERC Control Number: JD79-6261
API Well Number:
Section of NGPA: 108
Operator: Energy Reserves Group, Inc.
Well Name: Gallegos Canyon Unit P. C. No. 61
Field: W. Kutz P. C.
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 7 MMcf.

FERC Control Number: JD79-6262
API Well Number:
Section of NGPA: 108
Operator: Energy Reserves Group, Inc.
Well Name: Gallegos Canyon Unit P. C. No. 56
Field: W. Kutz P. C.
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 9 MMcf.

FERC Control Number: JD79-6263
API Well Number: 30-045-07026
Section of NGPA: 108
Operator: Energy Reserves Group, Inc.
Well Name: Gallegos Canyon Unit P. C. No. 31
Field: W. Kutz P. C.
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 7 MMcf.

FERC Control Number: JD79-6264
API Well Number:
Section of NGPA: 108
Operator: Energy Reserves Group, Inc.
Well Name: Gallegos Canyon Unit P. C. No. 10
Field: W. Kutz P. C.
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 15 MMcf.

FERC Control Number: JD79-6265
API Well Number: 30-045-07089
Section of NGPA: 108
Operator: Energy Reserves Group, Inc.
Well Name: Gallegos Canyon Unit P. C. No. 12
Field: W. Kutz P. C.
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 12 MMcf.

FERC Control Number: JD79-6266
API Well Number: 30-045-07045
Section of NGPA: 108
Operator: Energy Reserves Group, Inc.
Well Name: Gallegos Canyon Unit P. C. No. 4
Field: W. Kutz P. C.
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 19 MMcf.

FERC Control Number: JD79-6267
API Well Number: 30-039-21485
Section of NGPA: 103
Operator: Consolidated Oil and Gas, Inc.
Well Name: Champlin 5-A
Field: Blanco Mesa Verde
County: Rio Arriba
Purchaser: Northwest Pipeline Corporation
Volume: 35.098 MMcf.

FERC Control Number: JD79-6268
API Well Number: 30-039-21389
Section of NGPA: 103
Operator: Consolidated Oil and Gas, Inc.
Well Name: Champlin 2-A-5
Field: Blanco Mesa Verde
County: Rio Arriba
Purchaser: Northwest Pipeline Corporation
Volume: 104.025 MMcf.

FERC Control Number: JD79-6269
API Well Number: 30-045-13250
Section of NGPA: 108
Operator: R & G Drilling Company
Well Name: Phillips No. 27
Field: Kutz Farmington
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 8.9 MMcf.

FERC Control Number: JD79-6270
API Well Number:
Section of NGPA: 108
Operator: R & G Drilling Company
Well Name: Graham No. 35
Field: South Blanco PC
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 11.9 MMcf.

FERC Control Number: JD79-6271
API Well Number:
Section of NGPA: 108
Operator: R & G Drilling Company
Well Name: Hammond No. 37
Field: South Blanco PC
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 9.5 MMcf.

FERC Control Number: JD79-6272
API Well Number: 30-045-22885
Section of NGPA: 108
Operator: R & G Drilling Company
Well Name: Schlosser No. 66
Field: Kutz Farmington
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 86.2 MMcf.

FERC Control Number: JD79-6273
API Well Number: 30-045-22850
Section of NGPA: 103
Operator: R & G Drilling Company
Well Name: Krause No. 65
Field: Kutz Fruitland
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 32.9 MMcf.

FERC Control Number: JD79-6274
API Well Number: 30-045-22920
Section of NGPA: 108
Operator: R & G Drilling Company
Well Name: Hardie No. 66
Field: Fulcher Kutz Pictured Cliffs
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 11.5 MMcf.

FERC Control Number: JD79-6275
API Well Number: 30-045-22825
Section of NGPA: 103
Operator: R & G Drilling Company
Well Name: Schlosser No. 63
Field: Kutz Fruitland
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 87.0 MMcf.

FERC Control Number: JD79-6276
API Well Number: 30-045-13365
Section of NGPA: 108
Operator: Benson Montin Greer Drilling Corp.
Well Name: Foster Riddle No. 7
Field: Ballard Pictured Cliffs
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 17 MMcf.

FERC Control Number: JD79-6277
API Well Number: 30-045-05420
Section of NGPA: 108
Operator: Benson Montin Greer Drilling Corp.
Well Name: Foster Riddle No. 3
Field: Ballard Pictured Cliffs
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 8 MMcf.

FERC Control Number: JD79-6278
API Well Number: 30-045-05421
Section of NGPA: 108
Operator: Benson Montin Greer Drilling Corp.
Well Name: Foster Riddle No. 1
Field: Ballard Pictured Cliffs
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 15 MMcf.

FERC Control Number: JD79-6279
API Well Number: 30-045-22866
Section of NGPA: 103
Operator: R & G Drilling Company
Well Name: Krause No. 64
Field: Kutz Fruitland
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 6.9 MMcf.

FERC Control Number: JD79-6280
API Well Number: 30-045-21284
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Russell 11
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 10.8 MMcf.

FERC Control Number: JD79-6281
API Well Number: 30-045-11087
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Mudge 22
Field: Basin Dakota Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 10.0 MMcf.

FERC Control Number: JD79-6282
API Well Number: 30-045-10849
Section of NGPA: 108

Operator: El Paso Natural Gas Company
Well Name: Judge 16
Field: Basin Dakota Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 3.0 MMcf.
FERC Control Number: JD79-6283
API Well Number: 30-045-10577
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Mudge 17
Field: Basin Dakota Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 19.3 MMcf.
FERC Control Number: JD79-6284
API Well Number: 30-039-21138
Section of NGPA: 108
Operator: John D. Schalk
Well Name: Schalk 29-4 No. 3
Field: Gobernador Pictured Cliffs
County: Rio Arriba
Purchaser: Northwest Pipeline Corporation
Volume: MMcf.

The applications for determination in these procedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 26, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-17982 Filed 6-6-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. CP75-82]

Michigan Wisconsin Pipe Line Co. and Columbia Gas Transmission Corp.; Joint Petition To Amend

June 1, 1979.

Take notice that on April 20, 1979, Michigan Wisconsin Pipe Line Company (Mich Wisc), One Woodward Avenue, Detroit, Michigan 48226 and Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP75-82 a joint petition to amend the order of January 17, 1975, issued in said docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize an increase in the quantity of natural gas from Vermilion Area Block 182, offshore Louisiana, which Mich Wisc would exchange with Columbia, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.[1]

Mich Wisc was authorized by the Commission in an order issued on January 17, 1975 to deliver a maximum daily volume of 5,000 Mcf of natural gas to Sea Robin Pipeline Company (Sea Robin) for the account of Columbia at a point of receipt in East Cameron Area Block 181, offshore Louisiana. The deliveries made by Mich Wisc at the Block 181 receipt point are attributable to gas supplies purchased by Mich Wisc from the Vermilion Area Block 182 field, offshore Louisiana.

It is asserted that in order to provide for the increased deliverability attributable to the development program for the Block 182 field, Mich Wisc and Columbia have entered into an amendment to the exchange agreement, dated February 8, 1979, which provides for an increase in the maximum daily quantity of gas which Mich Wisc can deliver to Sea Robin for the account of Columbia from 5,000 Mcf to 15,000 Mcf, an increase of 10,000 Mcf per day.

Petitioners state that as consideration for exchanging gas with Columbia, Mich Wisc would reimburse Columbia for its *pro rata* share of the transportation charges which Columbia is obligated to pay Sea Robin under the transportation agreement between the parties which are attributable to the deliveries made by Mich Wisc to Sea Robin for the account of Columbia at the Block 181 receipt point. In the event Columbia is given a credit under the transportation agreement for underruns occurring in any month which are attributable to deliveries made at the Block 181 receipt point, Columbia would credit Mich Wisc's account on an allocated basis.

Any person desiring to be heard or to make any protest with reference to said petition should on or before June 26, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing herein must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-17987 Filed 6-6-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. RP79-70]

Oklahoma Natural Gas Gathering Corp.; Pipeline Rates: Order Accepting for Filing and Suspending Proposed Rate Increase, Granting Waiver, Granting Intervention, and Establishing Procedures

Issued May 31, 1979.

Before Commissioners: Don S. Smith, Acting Chairman; Georgiana Sheldon, and Matthew Holden, Jr.

On May 1, 1979, Oklahoma Natural Gas Gathering Corporation (Gathering Corporation) tendered for filing proposed changes in its F.E.R.C. tariffs.[1] The proposed changes would increase the level of its jurisdictional rates by 6.71 cents per Mcf, which would provide an increase of $635,864 in revenues from jurisdictional sales based on the actual data for the 12-month period ending December 31, 1978, adjusted for known and measurable changes in costs and revenues for the 9-month period ending September 30, 1979. Gathering Corporation states that the increased rates are necessary because of increased cost in operation and maintenance expenses and declining sales volumes.

Public notice of the filing was issued on May 4, 1979, providing for protests or petitions to intervene to be filed on or before May 18, 1979. A timely petition to intervene was filed by Cities Service Gas Company on May 17, 1979. The Commission finds that the petitioner has demonstrated an interest in this proceeding warranting its participation, and the petition shall therefore be granted.

Based on a review of Gathering Corporation's filing the Commission finds that the proposed tariff sheets have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, we shall suspend the effectiveness of the proposed rates for one day, until June 2, 1979, at which time they will be permitted to go into effect upon motion made pursuant to the Natural Gas Act. We shall also set the matter for hearing.

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[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

[1] Original Volume No. 1: Seventeenth Revised Sheet PGA-1, Fifth Revised Sheet No. 4, and Fifth Revised Sheet No. 88.

Gathering Corporation has not submitted with its filing an Opinion of an Independent Public Accountant as required under § 154.63(e)(6) of the Commission's Regulations. Since the test year for the rate filing is the same period contained in Gathering Corporation's annual report, Gathering Corporation requests that the Accountant's Opinion in the annual report be incorporated and the requirement of § 154.63(e)(6) be waived. The Commission finds that good cause exists for granting such waiver and accordingly grants Gathering Corporation's request for waiver of § 154.63(e)(6).

The Commission Orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 8, and 15 thereof, and the Commission's rules and regulations, a public hearing shall be held concerning the lawfulness of the increased rates proposed by Gathering Corporation.

(B) Pending hearing and decision, Gathering Corporation's Seventeenth Revised Sheet PGA–1, Fifth Revised Sheet No. 4, and Fifth Revised Sheet No. 59 to Original Volume No. 1 are accepted for filing and suspended for one day until June 2, 1979, when they shall be permitted to become effective subject to refund, upon motion filed by Gathering Corporation in accordance with the provisions of the Natural Gas Act.

(C) For good cause shown, Gathering Corporation's request for waiver of § 154.63(e)(6) is granted.

(D) Cities Service Gas Company is permitted to intervene in this proceeding subject to the rules and regulations of the Commission: *Provided, however,* That the participation of Cities Service Gas Company shall be limited to matters affecting asserted rights and interests as specifically set forth in its petition to intervene; and, *Provided, further,* that the admission of Cities Service Gas Company shall not be construed as recognition by the Commission that they might be aggrieved because of any order of the Commission entered in this proceeding.

(E) The Commission Staff shall prepare and serve top sheets on all parties on or before September 4, 1979.

(F) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose (18 C.F.R. 3.5(d)), shall convene a settlement conference in this proceeding to be held within 10 days after the service of top sheets by the Staff, in a hearing or conference room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. The Presiding Administrative Law Judge is authorized to establish such further procedural dates as may be necessary, and to rule upon all motions (except motions to consolidate, sever, or dismiss), as provided for in the rules of practice and procedure.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-17589 Filed 6-8-79; 8:45 am]

BILLING CODE 6450-01-M

Shell Oil Co.; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

June 1, 1979.

On May 18, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of Louisiana, Department of Natural Resources, Office of Conservation

FERC Control Number: JD79–6034
API Well Number: 1772120304
Section of NGPA: 102
Operator: Shell Oil Co.
Well Name: SPB 27 94 RA SU; SL 1007 No. B–10
Field: South Pass Block
County: Plaquemines
Purchaser: Tennessee Gas Pipeline Co.
Volume: 70 MMcf.

FERC Control Number: JD79–6035
API Well Number: 1707522315
Section of NGPA: 102
Operator: Transco Exploration Company
Well Name: LLAE No. 1
Field: Lake Washington
County: Plaquemines Parish
Purchaser: Transcontinental Gas Pipe Line Corp.
Volume: 4.960 MMcf.

FERC Control Number: JD79–6036
API Well Number: 1772120299
Section of NGPA: 102
Operator: Shell Oil Co.
Well Name: SL 1007 No. 20
Field: South Pass Block 24
County: Plaquemines
Purchaser: Tennessee Gas Pipeline Co.
Volume: 70 MMcf.

FERC Control Number: JD79–6037
API Well Number: 1707522447
Section of NGPA: 102
Operator: Shell Oil Co.
Well Name: SL 1260 No. 22
Field: South Pass Block 24
County: Plaquemines
Purchaser: Tennessee Gas Pipeline Co.
Volume: 20 MMcf.

FERC Control Number: JD79–6038
API Well Number: 1772120321
Section of NGPA: 102
Operator: Shell Oil Co.
Well Name: VUC; State O'Brien U C No. 18
Field: South Pass Block 24
County: Plaquemines
Purchaser: Tennessee Gas Pipeline Co.
Volume: 30 MMcf.

FERC Control Number: JD79–6039
API Well Number: 1772120289
Section of NGPA: 103
Operator: Shell Oil Co.
Well Name: SL 1012 No. 284
Field: South Pass Block 27
County: Plaquemines
Purchaser: Tennessee Gas Pipeline Co.
Volume: 150 MMcf.

FERC Control Number: JD79–6040
API Well Number: 1772120302
Section of NGPA: 102
Operator: Shell Oil Co.
Well Name: SPB 24 T, RC SU; SL 1008 No. 139
Field: South Pass Block 24
County: Plaquemines
Purchaser: Tennessee Gas Pipeline Co.
Volume: 250 MMcf.

FERC Control Number: JD79–6041
API Well Number: NA
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Union Producing #11
Field: Monroe Gas Field
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 8.0 MMcf.

FERC Control Number: JD79–6042
API Well Number: NA
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Union Production #12
Field: Monroe Gas Field
County: Union
Purchaser: Mid Louisiana Company
Volume: 4.0 MMcf.

FERC Control Number: JD79–6043
API Well Number: 1708720109
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Tensas Delta #F–
Field: Monroe Gas Field
County: Morehouse
Purchaser: Mid Louisiana Gas Company
Volume: 6.0 MMcf.

FERC Control Number: JD79–6044
API Well Number: 1708720098
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Tensas Delta Fee #
Field: Monroe Gas Field
County: Morehouse
Purchaser: Mid Louisiana Gas Company
Volume: 3.3 MMcf.

FERC Control Number: JD79–6045
API Well Number: 1708720104
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Tensas Delta #F–
Field: Monroe Gas Field
County: Morehouse
Purchaser: Mid Louisiana Gas Company
Volume: 4.0 MMcf.

FERC Control Number: JD79–6046
API Well Number: 1708720320
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Tensas Delta # FEE 42

Field: Monroe gas Field
County: Morehouse
Purchaser: Mid Louisiana Gas Company
Volume: 2.2 MMcf.

FERC Control Number: JD79-6047
API Well Number: 1706700435
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Tensas Delta #47
Field: Monroe Gas Field
County: Morehouse
Purchaser: Mid Louisiana Gas Company
Volume: 6.2 MMcf.

FERC Control Number: JD79-6048
API Well Number: 1706720153
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Tensas Delta #F-78
Field: Monroe Gas Field
County: Morehouse
Purchaser: Mid Louisiana Gas Company
Volume: 18.6 MMcf.

FERC Control Number: JD79-6049
API Well Number: 1706720182
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name:
Field: Monroe Gas Field
County: Morehouse
Purchaser: Mid Louisiana Gas Company
Volume: 9.5 MMcf.

FERC Control Number: JD79-6050
API Well Number: 1706720183
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Tensas Delta #F-81
Field: Monroe Gas Field
County: Morehouse
Purchaser: Mid Louisiana Gas Company
Volume: 8.8 MMcf.

FERC Control Number: JD79-6051
API Well Number: 1706720211
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Tensas Delta #F-89
Field: Monroe Gas Field
County: Morehouse
Purchaser: Mid Louisiana Gas Company
Volume: 12.4 MMcf.

FERC Control Number: JD79-6052
API Well Number: 1706720212
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Tensas Delta #F-90
Field: Monroe Gas Field
County: Morehouse
Purchaser: Mid Louisiana Gas Company
Volume: 9.5 MMcf.

FERC Control Number: JD79-6053
API Well Number: 1706720214
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Tensas Delta #F-92
Field: Monroe Gas Field
County: Morehouse
Purchaser: Mid Louisiana Gas Company
Volume: 4.4 MMcf.

FERC Control Number: JD79-6054
API Well Number: 1706720235
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Tensas Delta F-98
Field: Monroe Gas Field
County: Morehouse
Purchaser: Mid Louisiana Gas Company
Volume: 11.3 MMcf.

FERC Control Number: JD79-6055
API Well Number: 1711100411
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Union Producing #1
Field: Monroe Gas Field
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: .7 MMcf.

FERC Control Number: JD79-6056
API Well Number: 1711100435
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Union Producing #2
Field: Monroe Gas Field
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 7.3 MMcf.

FERC Control Number: JD79-6057
API Well Number: 1711100434
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Union Producing #3
Field: Monroe Gas Field
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 6.2 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 26, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-17980 Filed 6-8-79; 8:45 am]
BILLING CODE 6450-01-M

[Project No. 199; Docket No. E-9110]

South Carolina Public Service Authority; Offer of Settlement

May 31, 1979.

Take notice that on March 16, 1979, South Carolina Public Service Authority (SCPSA) filed an offer of settlement concerning SCPSA's application relating to three canals constructed by Mr. Henry Rickenbaker. The offer of settlement was certified to the Commission by the Presiding Administrative Law Judge on March 29, 1979.

If accepted and approved by the Commission, the offer of settlement would resolve all of the outstanding issues in this proceeding. This settlement was reached after evidentiary hearings were held.

In its offer of settlement, SCPSA proposes to ensure that certain measures are undertaken to protect the environmental resources of the affected project lands and waters. A water quality monitoring study and a shoreline erosion control plan at the Rickenbaker canals will also be undertaken. Residential development of lands outside the project boundary will also occur along the canals except for the upper twenty five percent of Canal No. 2.

Anyone desiring to be heard or to make any protest about this offer of settlement should file his comments with the Federal Energy Regulatory Commission on or before June 28, 1979. In determining the appropriate action to take, the Commission will consider all comments and protests filed. The Commission's address is: 825 N. Capitol Street, N.E., Washington, D.C. 20426.

The offer of settlement is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-17988 Filed 6-8-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. CP79-469]

United Gas Pipe Line Co.; Petition To Amend

June 1, 1979.

Take notice that on May 17, 1979, United Gas Pipe Line Company (Petitioner), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP79-469 a petition to amend the order of October 10, 1978 [1] in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize the transportation of additional volumes of gas for Sea Robin Pipeline Company (Sea Robin), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is indicated that pursuant to the order of October 10, 1978, in the instant docket, Petitioner was granted authorization to transport 15,200 Mcf of natural gas per day for Sea Robin produced in West Cameron Block 586, offshore Louisiana, and 4,700 Mcf of natural gas per day from the West

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 [10 CFR 1000.1], it was transferred to the Commission.

Cameron 532/533 reserves. Petitioner states that since that time, the reserves in Blocks 281 East Cameron and 532/533 West Cameron Areas have been unitized by the United States Geological Survey.

The petition states that Sea Robin has acquired the right to purchase volumes of natural gas produced from West Cameron Block 563 (West Cameron Reserves), offshore Louisiana, and that in order for Sea Robin to receive this supply of natural gas into its system for redelivery to its customers, Petitioner and Southern Natural Gas Company, Sea Robin has requested Petitioner to establish new delivery points at Block 281 East Cameron Area and Block 550 West Cameron Area in order to transport, on a firm basis, up to 56,100 Mcf per day from the West Cameron reserves and 4,700 Mcf per day from the East Cameron reserves. Petitioner requests authorization to transport this 60,800 Mcf of natural gas per day pursuant to an amendment dated April 10, 1979, to two previous gas transportation agreements between Petitioner and Sea Robin, from points of receipt [1] on Stingray Pipeline Company's (Stingray) existing offshore pipeline system in Block 281 East Cameron Area and Blocks 533, 595 and 550 West Cameron Area. Natural Gas Pipeline Company of America (Natural) would redeliver equal volumes to Petitioner for Sea Robin's account at the Henry Delivery Point, Vermilion Parish, Louisiana.

Petitioner states that for the subject transportation services Sea Robin would pay Petitioner a monthly transportation charge, which would be the contract demand times the sum of (i) the unit transportation rate payable by contract and (ii) the rate payable by Petitioner to Natural pursuant to Article III.1 (a)(ii) and (iii) of the Natural agreement, and all charges in the amount heretofore and which may hereafter be made effective pursuant to the Natural Gas Act,

[1] It is indicated that Sea Robin would deliver or cause the subject gas to be delivered to Stingray for Petitioner's account at one of the following points:

(i) Stingray's line in Block 595 West Cameron Area, offshore Louisiana, for delivery of a total maximum daily volume of 9,100 Mcf,

(ii) Stingray's line in Block 550 West Cameron Area, offshore Louisiana, for delivery of a total maximum daily volume of 20,000 Mcf,

(iii) On producers' platforms in Block 281 East Cameron and Block 563 West Cameron Areas, offshore Louisiana, for a delivery of a total maximum daily volume of 4,700 Mcf, and

(iv) In order to enable Sea Robin to utilize fully its Contract Demand, at such other mutually agreeable points as Petitioner's may from time to time have the right to have gas transported by Stingray under the Stingray Contract, in addition to such volumes, if any, which Petitioner may otherwise stipulate for delivery at such points.

attributable to the Contract Demand, Article IV.A of the Stingray Contract and Article III.3 and 4 of the Natural Agreement.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before June 25, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-17807 Filed 6-8-79; 8:45 am]
BILLING CODE 6450-01-M

[Project No. 2545]

The Washington Water Power Co.; Partial Settlement Agreement

May 31, 1979.

Take notice that a Partial Settlement Agreement was submitted for certification to the Commission by joint motion of all parties dated March 12, 1979. The parties to the Partial Settlement Agreement include: Washington Water Power Company, Coeur d'Alene Indian Tribe, Secretary of the Interior and Commission Staff Counsel. The Partial Settlement Agreement was certified to the Commission on March 22, 1979 by Presiding Administrative Law Judge Michael Levant.

Under the Partial Settlement Agreement, the Washington Water Power Company agrees, *inter alia*, to submit an application to include its Post Falls development (Coeur d'Alene Lake) within the license for Project No. 2545. The remaining issues in the proceeding will be adjudicated pursuant to hearings set by the Presiding Administrative Law Judge's order of March 22, 1979.

Any person desiring to be heard or to protest said settlement agreement should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before June 20, 1979. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this agreement are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-18030 Filed 6-8-79; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

DEPARTMENT OF TRANSPORTATION

[FRL 1242-8]

Federal Assistance Limitation Required by Notice of Proposed Policy and Procedures

AGENCIES: Environmental Protection Agency and Department of Transportation.

ACTION: Notice of proposed policy and procedures memorandum.

SUMMARY: The purpose of this document is to set forth policy and procedures for meeting the Federal assistance limitations in Section 176(a) of the Clean Air Act. The procedures are to be applied to certain EPA and DOT activities in nonattainment areas or portions thereof, as designated under Section 107(d) of the Clean Air Act, where transportation control measures are needed to attain the primary national ambient air quality standards.

DATE: Written comments are due on or before July 11, 1979.

ADDRESSES: Submit written comments, preferably in triplicate, to:

FHWA Docket No. 79-20, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh St. SW., Washington, D.C. 20590, and

Office of Transportation and Land Use Policy (ANR-445), Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

All comments received will be avilable for examination by any interested person at the above addresses.

FOR FURTHER INFORMATION CONTACT: Ali Sevin, Urban Planning Division, Federal Highway Administration, (202) 426-0215; Reid Alsop, Office of Chief Counsel, Federal Highway Administration, (202) 426-0830; or John O. Hidinger, Director, Office of Transportation and Land Use Policy, Environmental Protection Agency, (202) 755-0480. Office hours for FHWA are 7:45 a.m. to 4:15 p.m., ET, Monday through Friday. Office hours for EPA are

8:00 a.m. to 4:30 p.m., ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: This notice issues for public review and comment proposed Federal policy and procedures and decisions limiting Federal assistance for activities eligible for funding under the Clean Air Act, 42 U.S.C. 7401, *et seq.*, and for transportation-related activities under Title 23, U.S.C., Highways. The policy seeks to establish consistent procedures for insuring that the requirements in Section 176(a) of the Clean Air Act are met in nonattainment areas where transportation control measures are needed to attain national primary ambient air quality standards.

The proposed procedures give recognition to the respective roles and responsibilities of the Department of Transportation (DOT) and Environmental Protection Agency (EPA) in applying the funding and project approval limitations under Section 176(a) of the Act for failure to submit, or make reasonable efforts toward submitting, a revised State Implementation Plan (SIP).

In order to insure that final action on this proposed policy and procedural memorandum can be taken by July 1, 1979, EPA and DOT have determined that a 30-day public comment period is warranted.

Issued on: June 5, 1979.

John J. Fearnsides,

Assistant Secretary for Policy and International Affairs, Department of Transportation.

David G. Hawkins,

Assistant and Administrator for Air, Noise and Radiation, Environmental Protection Agency.

The proposed policy and procedures memorandum follows:

EPA/DOT Proposed Policy

Subject: Policy and Procedures for Applying Federal Assistance Limitations in Section 176(a) of the Clean Air Act.

From: David G. Hawkins, Assistant Administrator for Air, Noise and Radiation, Environmental Protection Agency. Karl S. Bowers, Federal Highway Administrator, Department of Transportation.

Memo to: EPA Regional Administrators, Regions I–X, Regional Federal Highway Administrators, Regions 1–10.

Purpose of Memorandum

The purpose of this memorandum is to outline policy and procedures which will be used for applying the Federal assistance limitations in Section 176(a) of the Clean Air Act in nonattainment areas where transportation control measures are needed to attain primary national ambient air quality standards. This memorandum outlines minimum policy and procedural requirements and allows regional offices some discretion and flexibility to develop, in consultation with affected agencies, more specific procedures for review and resolution of issues at the regional level.

Section 176(a) of the Clean Air Act requires that project approvals and grants authorized by the Clean Air Act and Title 23, United States Code, must be withheld from air quality control regions where transportation control measures are necessary to attain national ambient air quality standards if the EPA Administrator finds after July 1, 1979 (and after July 1, 1982, in cases where an extension of the attainment deadline has been authorized) that a Governor has not submitted a plan which considers each of the elements required by Section 172 of the Act, or is not making reasonable efforts to submit such a plan. The only exception to this Federal assistance limitation is that safety, mass transit and transportation improvement projects related to air quality attainment or maintenance may be approved and funded.

Applicability of the Federal Assistance Limitation

The policy established under Section 176(a) applies in all air quality control regions containing nonattainment areas where transportation control measures are needed to attain air quality standards. Within these areas, the finding authorized by Section 176(a) must be made with respect to all State Implementation Plan (SIP) revisions for transportation-related pollutants.

The EPA Administrator's finding authorized by Section 176(a) initially must be made after July 1, 1979, for all SIPs to be submitted and revised as part of the January 1979 SIP submittal. The limitation on Federal assistance will only apply if the Administrator finds that the stipulation in Section 176(a) has not been met, that is, that the Governor has not submitted a plan which considers each of the required elements or is not making reasonable efforts to submit such a plan. If the Administrator initially finds that reasonable efforts are being made, that finding may be reversed if the Governor ceases or delays efforts to submit the SIP in an expeditious manner. If a need for extension of the attainment deadline beyond 1982 has been demonstrated and authorized under Section 172(a)(2), another finding may be made after July 1, 1982.

EPA must promulgate SIPs for nonattainment areas which fail to submit an approvable plan. However, since Section 176(a) specifies that the Governor must submit a plan, an existing or new EPA promulgation for transportation-related pollutants will not satisfy this requirement. The Federal assistance limitation may be avoided if the Governor either: (1) Certifies that he adopts the EPA promulgation and submits the written evidence required by Sections 172(b)(7) and 172(b)(10); or (2) certifies that the State will revise the SIP to satisfy the requirement in Section 176(a) and demonstrates continuing, good faith efforts toward submittal.

The limitation on Federal assistance required by Section 176(a) will be applied to the geographic areas under the control of the government agency directly responsible for the failure to comply with this section and with authority to remedy the failure. Generally, the area affected will be the air quality control region (AQCR). However, EPA will consider applying the Federal assistance limitations to portions of an AQCR or only to specific agencies if the purpose of the limitation would be better served through more selective application.

Criteria for Determining Whether the Federal Assistance Limitation Is Applicable

The language of Section 176(a) and its legislative history indicate that the limitation will not be imposed if a reasonable program which considers each of the elements in Section 172 is submitted or good faith efforts to submit such a plan are demonstrated.

The EPA Administrator is the person charged with responsibility for determining whether the plan submitted considers each of the required elements or if good faith efforts are being made. In his February 24, 1978 memorandum entitled, "Criteria for Approval of 1979 SIP Revisions," (43 FR 21673–21677, May 19, 1978; See also, EPA General Preamble for Proposed Rulemaking, 44 FR 20372–20380, April 4, 1979), the Administrator outlined the procedural and substantive requirements under Section 172. The finding authorized in Section 176(a)(3) will be based on these criteria and other guidance issued by EPA clarifying these criteria (e.g., Transportation-Air Quality Planning Guidelines, SIP Checklists, etc. For a complete listing of EPA guidance, see 44 FR 8311, February 9, 1979).

Adequate consideration of all the required elements in Section 172 includes an affirmative duty to establish a transportation-air quality planning process, to investigate and compile data on the required elements, including data

on control strategies needed to attain air quality standards, and a further duty to incorporate that data into a reasoned analysis of the requirements. The scope of the analysis must be commensurate with the scope and severity of the air quality problem. If the SIP submitted evidences a good faith effort to consider and incorporate the required elements in a manner consistent with the intent and purpose of the Act, no funds or project approvals will be withheld under Section 176(a).

The EPA Administrator may approve a schedule for implementing an inspection and maintenance program as part of the 1979 SIP revision. In addition, the Administrator may approve work programs or schedules for analyzing other transportation control measures, including milestones for completing additional studies and incorporating selected control strategies into the SIP (e.g., work program for completing alternatives analysis and developing implementation schedules for selected measures) as part of the 1979 SIP revision. In such cases, if the Administrator finds that the responsible State and local agencies are not complying with work programs and milestones, or reasonable efforts to comply are not being made, then the Federal assistance limitation will be applied.

In cases where a finding is made that the plan does not adequately consider the required elements, or where no plan is submitted, the question of whether good faith efforts are being made will need to be examined. This decision will be made on a case-by-case basis and rely on evidence submitted by the Governor demonstrating that he is moving toward submittal of an adequate plan in an orderly and expeditious manner.

Procedures for Applying Federal Assistance Limitations

The EPA Regional Administrator will be responsible for making the initial determination that the SIP submitted or efforts being made to submit the SIP satisfy the requirements in Section 176(a). Where the EPA Regional Administrator finds that reasonable efforts are not being made, EPA has agreed to coordinate with the Federal Highway Administration (FHWA) of the Department of Transportation (DOT) using the following procedures for applying the Federal assistance limitations:

1. After July 1, 1979, the EPA Regional Administrator will compile a proposed list of those areas where a SIP revision considering each of the Section 172 elements has not been submitted or where reasonable efforts toward submittal are not being made. This list will include the boundaries of areas where the Federal assistance limitations are to be imposed.

2. The proposed list will be sent to the appropriate FHWA Regional Office for review and comment. EPA will notify affected agencies. The EPA Regional Administrator will meet with appropriate State and local agencies to discuss the reasons for failure to make the requisite good faith efforts. DOT (generally, FHWA and Urban Mass Transportation Administration) Regional/Divisional representatives will be asked to participate. If a satisfactory agreement to correct the situation cannot be reached within one month from the beginning of negotiations, the EPA Regional Administrator will send the proposed list, with supporting rationale and documentation, to the EPA Headquarters' offices in the form of a Federal Register package (special action). Negotiations may continue at the local level or expand to the national level.

3. EPA will publish proposed initial section 176(a) findings in the Federal Register between September 1 and October 31, 1979. A docket will be established under section 307(d) of the Clean Air Act and a 30 day public comment period will be provided.

4. As of the date of publication of the proposed findings in the Federal Register, the FHWA will not approve programs or award grants (i.e., issue authorizations to proceed with work on projects) other than for safety, mass transit and transportation improvement projects related to air quality improvement or maintenance for those areas included in the proposed notice. Similarly, the EPA Regional Administrator will, under 40 CFR Part 30, withhold or suspend EPA air grant awards (except for those potential excepted activities identified below).

5. Final Section 176(a) findings will be promulgated within one month after the end of the comment period. These findings will be binding in subsequent EPA individual grant appeal hearings under 40 CFR 30.1100.

6. After publication of the proposed Section 176(a) findings, FHWA Division Administrators will provide FHWA and EPA Regional Administrators with information on those exempt projects advanced in areas affected by the Federal assistance limitation. Procedures for this notification will be jointly negotiated by EPA and FHWA Regional/Divisional Administrators.

7. Removal from the promulgated list shall be by Federal Register notice (special action initiated by EPA Regional Administrator) and a 30-day public comment period will be provided prior to final action. Normally, this can be done at the same time EPA proposes approval of the SIP. Although it can also be done when reasonable efforts have been demonstrated, absent an approvable SIP submittal, removal on this basis should be done only in rare cases. Funding limitations shall remain in effect until such time as the EPA Regional Administrator notifies DOT that the funding limitation is no longer applicable.

8. If EPA initially found that reasonable efforts to submit a plan were being made, the procedures outlined above will apply whenever the EPA Regional Administrator finds that reasonable efforts to submit a plan are no longer being made. Similarly, where a SIP has been approved which includes schedules or work programs for completing additional planning or analytical studies and incorporating selected control strategies into the SIP, the procedures outlined above will apply whenever the EPA Regional Administrator finds that reasonable efforts to comply with these schedules in a timely manner are not being made.

9. The procedures outlined above will also apply to any finding made by EPA after July 1, 1982, with respect to the 1982 SIP revision required in areas unable to attain air quality standards by 1982.

10. Whenever EPA grants are limited under Section 176(a), an escrow account will be established in the name(s) of the applicant(s) and an amount equal to the funds being withheld will be deposited in that account. These funds shall not be allocated to any other applicant, but will be disbursed to the original applicant(s) when the EPA Regional Administrator finds that efforts to comply with the requirements in Section 176(a) are being made. If such efforts have not commenced within one year of the date of the final finding, the funds will be made available for general disbursement. However, if the applicant has appealed the denial or suspension of funds under this section, the funds must be held in escrow until completion of administrative or legal proceedings.

Scope of the Federal Assistance Limitation

The following definitions, which have been developed jointly by EPA and DOT, are provided to guide determining which projects may be approved or

grants awarded under Title 23, U.S.C., in an area under a funding limitation:

1. *Safety Projects* are those which are proposed for construction to correct existing safety hazards, to replace bridges or to eliminate high hazard locations and roadside obstacles. These improvements include such items as intersection channelization, increasing sight distance, widening narrow pavements, shoulder improvements, adding medians, skid treatments, widening or reconstructing bridges, changes in vertical or horizontal alignment, railroad highway crossing warning devices, traffic signals, guardrails, median barriers, crash cushions, and emergency relief projects authorized under 23 U.S.C. 125. Typically, these projects require little or no additional right-of-way and are highly cost-effective when construction costs are compared to savings in accident costs.

2. *Mass Transit Projects* are those projects which provide funds for planning assistance, operating assistance, or capital assistance for mass transit services, equipment and facilities, and include related facilities and services such as fringe parking lots and high occupancy vehicle lanes.

3. *Transportation Improvement Projects Related to Air Quality Improvement or Maintenance* are transportation and air quality planning and research studies carried out under Section 134 and 307, Title 23, U.S.C.; those projects which have been included in an approved transportation control portion of an SIP; or those projects which are specifically identified as transportation measures related to air quality improvement or maintenance in an annual element of a current Transportation Improvement Program which has been reviewed by EPA under the EPA/DOT Memorandum of Understanding (June 1978) and EPA has not submitted negative comments on the transportation measures to DOT.

The Section 176(a) funding limitations are not applicable to transportation projects administered by UMTA under Title 49, U.S.C. Similarly, the EPA Regional Administrator has discretion to continue to award grants available under the Clean Air Act to State and local air quality control agencies if he finds such grants are necessary for immediate air quality benefits or development of SIP revisions.

Exemption of a transportation project from the Section 176(a) Federal assistance limitation does not waive any applicable requirements under the National Environmental Policy Act (e.g., Environmental Impact Statement) or Section 176(c) of the Clean Air Act (conformity requirement).

[FR Doc. 79-17879 Filed 6-8-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1244-1]

Ambient Air Monitoring Reference and Equivalent Methods; Receipt of Application for Reference or Equivalent Method Determination

Notice is hereby given that on April 20, 1979, the Environmental Protection Agency received an application from Monitor Labs, Inc., San Diego, CA, to determine if its Model 8310 Carbon Monoxide Analyzer should be designated by the Administrator of the EPA as a reference method under 40 CFR Part 53, promulgated February 18, 1975 (40 FR 7044) and amended December 1, 1976 (41 FR 52692). If, after appropriate technical study, the Administrator determines that this method should be so designated, notice thereof will be given in a subsequent issue of the Federal Register.

Tom Murphy,

Acting Assistant Administrator for Research and Development.

June 5, 1979.

[FR Doc. 79-18150 Filed 6-8-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1244-2]

Ambient Air Monitoring Reference and Equivalent Methods; Amendment to Equivalent Method for SO_2

Notice is hereby given that EPA, in accordance with 40 CFR Part 53 (40 FR 7044, February 18, 1975), has approved an amendment to SO_2 equivalent method number EQSA-0876-013 (Federal Register Vol. 41, page 36245, August 27, 1976). While the designation number of the method remains the same, the method identification is amended to read as follows:

EQSA-0876-013, "Monitor Labs Model 8450 Sulfur Monitor", operated on a range of either 0-0.5 ppm or 0-1.0 ppm, a 5 second time constant, a model 8740 hydrogen sulfide scrubber in the sample line, with or without any of the following options:

BP—Bipolar Signal Processor
V—Zero/Span Valves
VT—Zero/Span Valves and Timer
TF—TFE Sample Particulate Filter
IZS—Internal Zero/Span Module
CLO—Current Loop Output
DO—Status Remote Interface

This method is available from Monitor Labs, Incorporated, 10180 Scripps Ranch Blvd., San Diego, California 92131.

This change is made in accordance with 40 CFR 53.14, based on additional information submitted by the applicant subsequent to the original designation (41 FR 36245, August 27, 1976). As an equivalent method, this method is acceptable for use by States and other control agencies for purposes of section 51.17(a) of 40 CFR Part 51 ("Requirements for Preparation, Adoption, and Submittal of Implementation Plans") as amended on February 18, 1975, (40 FR 7042).

Additional information concerning the use of this designated method may be obtained from the original Notice of Designation (41 FR 36245) or by writing to: Director, Environmental Monitoring and Support Laboratory, Department E (MD-77), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711. Technical questions concerning the method should be directed to the manufacturer.

June 5, 1979.

Tom Murphy

Acting Assistant Administrator for Research and Development.

[FR Doc. 79-18152 Filed 6-8-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1243-8; OPP-180288]

Arkansas State Plant Board and Oregon Department of Agriculture; Specific Exemptions To Use Triforine To Control Mummyberry on Blueberries

AGENCY: Environmental Protection Agency (EPA), Office of Pesticide Programs.

ACTION: Issuance of specific exemptions.

SUMMARY: EPA has issued specific exemptions to the Arkansas State Plant Board and the Oregon Department of Agriculture (hereafter referred to by State individually or as the "Applicants" collectively) to use triforine (Funginex EC) to control mummyberry on two acres of blueberries in Arkansas and 500 acres in Oregon. The specific exemptions end on July 30, 1979.

FOR FURTHER INFORMATION CONTACT: Emergency Response Section, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, S.W., Room: E-124, Washington, D.C. 20460, Telephone: 202/426-2691. It is suggested that interested persons telephone before visiting EPA Headquarters, so that the appropriate files may be made conveniently available for review purposes.

SUPPLEMENTARY INFORMATION: Mummyberry is caused

by the fungus *Monilinia vaccinii corymbosi*. Primary infection by ascospores takes place early in the spring just as the leaf and flower buds begin to grow. These ascospores are released from spore cups that develop from mummified fruit. Spore cup emergence coincides with the emergence of the young susceptible tissues of the plant.

Mummies are a result of the disease from the previous crop and have overwintered on or near the surface of the soil beneath the bushes. Infected blossoms and leaves turn brown and wither as a result of these primary infections. The fungus then produces a second spore type on these infected tissues. These are blown onto remaining blossoms where secondary infection takes place on the developing pistil of the flowers. These flower infections remain undetected until the fruit begins to enlarge. The infected fruit turns off-color and usually drops to the ground before healthy berries mature. These mummified fruits persist through the winter and act as a source of the fungus for the primary infection the following spring.

Currently there are four fungicides registered for the control of the primary infection stage: benomyl, captan, ferbam, and ziram. The Applicants referred to data which indicated that these fungicides are relatively ineffective in controlling primary infections of this disease. Cultural practices have also not been successful in comercial planting. However, triforine (N,N-[1,4-piperazinediylbis (2,2,2-trichloroethylidene)]-bis[formamide]) appeared to be efficacious in suppressing this pathogen. Triforine is registered in the United States under the trade name Funginex EC. Arkansas stated that the major benefit to blueberry growers would be the eradication of mummyberry to prevent its spread to other plantings. Arkansas claimed that losses from the two-acre planting could be as much as $4,000. Oregon claimed that losses could reach a value of $375,000 in that State, if an effective fungicide was not available this growing season.

Arkansas proposed to use Funginex EC at a maximum rate of 20 fluid ounces of formulation per application for a maximum of five applications. Oregon proposed four applications at a rate of 24 fluid ounces of formulation each and a fifth, if needed, at the rate of 16 fluid ounces of formulation. EPA has determined that residues of triforine from this use should not exceed 0.1 part per million (ppm). This level has been deemed adequate to protect the public health. Based on the low toxicity, short half-life, and low application rate, no serious hazards to fish and wildlife are expected.

After reviewing the applications and other available information, EPA has determined that (a) a pest outbreak of *Monilinia* mummyberry is likely to occur this year on blueberries in Arkansas and Oregon; (b) there is no effective pesticide presently registered and available for use to control this pest in these States; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the pest is not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicants have been granted specific exemptions to use the pesticide noted above until July 30, 1979, to the extent and in the manner set forth in the applications. The specific exemptions are subject to the following conditions:

1. The product Funginex EC, EPA Reg. No. 21137–4, may be applied;

2. The total acreage treated in Arkansas will not exceed two acres. The total acreage treated in Oregon will not exceed 500 acres;

3. Ground application may be made in Arkansas. In Oregon, ground or aerial application may be made. In Arkansas, triforine will be applied at a rate of 16–20 ounces per acre. In Oregon, triforine will be applied at a maximum rate of 24 ounces of formulation per acre.

4. A maximum of five applications may be made. The first application may be made at bud break. Thereafter, applications may be made at seven- to ten-day intervals, with the last application at full bloom;

5. In Arkansas, a maximum of 200 fluid ounces of Funginex may be used. In Oregon, a maximum of 469 gallons of product may be used;

6. A minimum of 60 days will elapse between the last application of triforine and harvest;

7. Applications of this pesticide will be made by State-licensed commercial applicators or, in Oregon, by State-certified private applicators. Information pertaining to timing, rates, and procedures will be made available to the applicators through the Arkansas Extension specialists and the Oregon State University Extension Service;

8. Harvested blueberries with a triforine residue level not exceeding 0.1 ppm may enter into interstate commerce. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been advised of this action;

9. All applicable directions, restrictions, and precautions on the product label must be followed;

10. The EPA will be immediately informed of any adverse effects resulting from the use of triforine in connection with these exemptions; and

11. Arkansas and Oregon are each responsible for assuring that all of the provisions of its specific exemption are met and must submit a report summarizing the results of its program by October 30, 1979

(Sec. 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136))

Dated: June 4, 1979.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs

[FR Doc. 79-18107 Filed 6-8-79 8:45 am]

BILLING CODE 6560-01-M

[FRL 1244-8; OPP-00097]

Pesticide Programs; Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel; Open Meeting

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel from 9 a.m. to 4:30 p.m. on Friday, June 29, 1979. The meeting will be held in Salon F, Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Va., and will be open to the public.

FOR FURTHER INFORMATION CONTACT: Dr. H. Wade Fowler, Jr., Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS–766). Room 803, Crystal Mall, Building No. 2, 1921 Jefferson Davis Highway, Arlington, Va., Telephone: 703/557–7560.

SUPPLEMENTARY INFORMATION: In accordance with section 25(d) of the amended FIFRA, the Scientific Advisory Panel will comment on the impact of regulatory actions under section 6(b) and 25(a) on health and the environment prior to implementation. On the agenda for this meeting are:

1. Completion of Panel review of Agency's position to cancel uses of pesticide products containing dibromochloropropane (DBCP); and

2. In addition, the Agency may present status reports on other ongoing

programs of the Office of Pesticide Programs.

Copies of Agency documents may be obtained by contacting Mr. Jeff Kempter, Special Pesticides Review Division (TS-791), Room 711, Crystal Mall, Building No. 2, at the address given above (Telephone: 703/557-7973).

Any member of the public wishing to attend or submit a paper should contact Dr. H. Wade Fowler, Jr., at the address or phone number listed above to be sure that the meeting is still scheduled and to confirm the agenda items. Interested persons are permitted to file written statements before or after the meeting, and may, upon advance notice to the Executive Secretary, present oral statements to the extent that time permits. Written or oral statements will be taken into consideration by the Panel in formulating comments or in deciding to waive comments. Persons desirous of making oral statements must notify the Executive Secretary and submit the required number of copies of a summary no later than June 27, 1979.

Individuals who wish to file written statements are advised to contact the Executive Secretary in a timely manner to be instructed on the format and the number of copies to submit to ensure appropriate consideration by the Panel.

The tentative date for the next Scientific Advisory Panel meeting is July 19-20, 1979.

(Sec. 25(d) of FIFRA, as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136) and Sec. 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770).)

Dated: June 6, 1979.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 79-18105 Filed 6-8-79; 8:45 am]
BILLING CODE 6560-01-M

[FRL 1243-5; OPP-180303]

Rhode Island Department of Environmental Management; Specific Exemption To Use Triforine To Control Mummyberry on Blueberries

AGENCY: Environmental Protection Agency (EPA), Office of Pesticide Programs.

ACTION: Issuance of a specific exemption.

SUMMARY: EPA has issued a specific exemption to the Rhode Island Department of Agriculture (hereafter referred to as the "Applicant") to use triforine (Funginex EC) to control mummyberry on 45 acres of blueberries in Rhode Island. The specific exemption ends on July 30, 1979.

FOR FURTHER INFORMATION CONTACT: Emergency Response Section, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, S.W., Room: E-124, Washington, D.C. 20460, Telephone: 202/426-2601. It is suggested that interested persons telephone before coming to EPA Headquarters so that the appropriate files may be made conveniently available for review purposes.

SUPPLEMENTARY INFORMATION: Mummyberry is caused by the fungus *Monilinia vaccinii corymbosi*. Primary infection by ascospores takes place early in the spring just as the leaf and flower buds begin to grow. These ascospores are released from spore cups that develop from mummified fruit. Spore cup emergence coincides with the emergence of the young susceptible tissues of the plant.

Mummies are a result of the disease from the previous crop and have overwintered on or near the surface of the soil beneath the bushes. Infected blossoms and leaves turn brown and wither as a result of these primary infection. The fungus then produces a second spore type on these infected tissues. These are blown onto remaining blossoms where secondary infection takes place on the developing pistils of the flowers. These flower infections remain undetected until the fruits begin to enlarge. The infected fruits turn off-color and usually drop to the ground before healthy berries mature. These mummified fruits persist through the winter and act as a source of the fungus for the primary infection the following spring.

Currently there are four fungicides registered for the control of the primary infection stage: benomyl, captan, ferbam, and ziram. Data indicate that these fungicides are relatively ineffective in controlling primary infections of this disease. Cultural practices have also not been successful in commercial planting. However, triforine (N,N-[1,4-piperazine-diylbis (2,2,2-trichloroethylidene)]-bis-[formamide]) appeared to be efficacious in suppressing this pathogen. Triforine is registered in the United States under the trade name Funginex EC. It was estimated by Rhode Island that the economic loss might be as much as three-quarters of the State's crop valued at $50,625, if an effective fungicide was not available this growing season.

The Applicant proposed to use Funginex EC at a maximum rate of 0.3 pound active ingredient (a.i.) per acre, in a maximum of three applications. EPA has determined that residues of triforine from this use should not exceed 0.1 part per million (ppm). This level has been deemed adequate to protect the public health. Based on the low toxicity, short half-life, and low application rate, no serious hazards to fish and wildlife are expected.

After reviewing the application and other available information, EPA has determined that (a) a pest outbreak of *Monilinia* mummyberry has occurred or is likely to occur this year on blueberries in Rhode Island; (b) there is no effective pesticide presently registered and available for use to control this pest in Rhode Island; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the pest is not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until July 30, 1979, to the extent and in the manner set forth in the application. The specific exemption is subject to the following conditons:

1. The product Funginex EC, EPA Reg. No. 21137-4, may be applied;
2. A maximum of 45 acres may be treated with ground equipment;
3. Triforine will be applied at a rate of 0.3 pound a.i. in 20 to 50 gallons of water per acre;
4. A maximum of three applications may be made. The first may be applied at first shootgrowth. Thereafter, application may be made at seven- to ten-day intervals;
5. A minimum of 60 days will elapse between the last application of triforine and harvest;
6. Applications of this pesticide will be made by State-licensed commercial applicators or State-certified private applicators.
7. Harvested blueberries with a triforine residue level not exceeding 0.1 ppm may enter into interstate commerce. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been advised of this action;
8. All applicable directions, restrictions, and precautions on the product label must be followed;
9. The EPA will be immediately informed of any adverse effects resulting from the use of triforine in connection with these exemptions and;
10. The Applicant is responsible for assuring that all of the provisions of this specific exemption are met and must submit a report summarizing the results of this program by November 30, 1979.

(Sec. 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136.)

Dated: June 4, 1979.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 79-18108 Filed 6-8-79; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL MARITIME COMMISSION

Agreement Filed

Correction

In FR Doc. 79-17090, appearing on page 31711, in the issue of Friday, June 1, 1979, change the date appearing in the 14th line of the second paragraph which presently reads "June 13, 1979", to read "June 11, 1979".

BILLING CODE 1505-01-M

Independent Ocean Freight Forwarder Licenses; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916, (Stat. 422 and 46 U.S.C. 841(b)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

GSC Shipping Corporation, 200 Vanderbilt Avenue, Brentwood, NY 11717, Officer: Porfirio Delacruz, President.

Walter J. Trainor, 837-2nd Avenue, Massepequa Park, N.Y. 11762.

Lam Forwarding (Margaret O'Hallorans, d.b.a.), 330 East 49th Street, Apt. 9H, New York, NY 10017.

Dated: June 6, 1979.

By the Federal Maritime Commission.

Francis C. Hurney

Secretary.

[FR Doc. 79-18087 Filed 6-8-79; 8:45 am]

BILLING CODE 6730-01-M

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10423 or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before July 2, 1979. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No. 161-35.

Filing party: Patricia E. Byrne, Esq., Suite 727, 17 Battery Place, New York, New York 10004.

Summary: Agreement No. 161-35 modifies the basic agreement of the Gulf/United Kingdom Conference to conform to the requirements of General Order 7, Revised.

Agreement No. 10140-9.

Filing party: Patricia E. Byrne, Esq., Suite 727, 17 Battery Place, New York, New York 10004.

Summary: Agreement No. 10140-9 modifies the basic agreement of the Gulf-United Kingdom Rate Agreement to provide enabling authority for the parties to subscribe to the Memorandum of Agreement of the Gulf Associated Freight Conferences, FMC No. 189.

Agreement No. 10140-10.

Filing party: Patricia E. Byrne, Esq., Suite 727, 17 Battery Place, New York, New York 10004.

Summary: Agreement No. 10140-10 modifies the basic agreement of the Gulf-United Kingdom Rate Agreement to conform to the requirements of General Order 7, Revised.

Agreement No. 10182-4.

Filing Party: Patricia E. Byrne, Esq., Suite 727, 17 Battery Place, New York, New York 10004.

Summary: Agreement No. 10182-4 modifies the basic agreement of the Eurogulf Self-Policing Agreement (1) to conform to the requirements of General Order 7, Revised; (2) to provide for the right of independent action by parties with respect to stipulated self-policing and related matters; and (3) to provide the optional authority of the parties to employ one or more neutral bodies to provide relevant self-policing and related services.

Agreement No. 10270-1.

Filing Party: Patricia E. Byrne, Esq., Suite 727, 17 Battery Place, New York, New York 10004.

Summary: Agreement No. 10270-1 modifies the basic agreement of the Gulf-European Freight Association to conform to the requirements of General Order 7, Revised.

Agreement No.: T-3808.

Filing Party: Robert W. Parkin, City Attorney, city of Long Beach, Harbor Administration Building, P.O. Box 570, Long Beach, California 90801.

Summary: Agreement No. T-3808 between the City of Long Beach (City) and Pacific Coast Cement Corporation (Corp.) provides for the 40-year lease of a certain parcel of land by the City to the Corp. as a site for construction of storage silos and other facilities for the receipt, handling, storage, and distribution of bulk cement, and for a nonexclusive preferential assignment of the remainder of said premises for the construction of a traveling ship unloader. By Order of the Federal Maritime Commission.

Dated: June 6, 1979.

Francis C. Hurney,

Secretary.

[FR Doc. 79-18088 Filed 6-8-79; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and section 225.4(b)(1) of the Board's Regulation Y (12 C.F.R. § 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their

views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts or interest, or unsound banking practices." any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than July 2, 1979.

A. *Federal Reserve Bank of New York*, 33 Liberty Street, New York, New York 10045:

Citicorp. New York, New York (finance and insurance activities; California and Colorado): to engage, through its subsidiary, Citicorp Person-to-Person, Financial Center, Inc., in soliciting and making consumer installment personal loans (the "Ready Credit" program; formerly known as "Executive Loan Program") and the sale of credit life and accident and health insurance directly related to extensions of credit by Applicant's subsidiary. These activities would be conducted from offices at 707 Wilshire Blvd., Suite 5250, Los Angeles, California 90017, and #1 Market Tower, 3033 South Parker Road, Aurora, Colorado 80014, and the geographic area to be served is California.

B. *Federal Reserve Bank of Richmond*, 701 East Byrd Street, Richmond, Virginia 23261:

Southern Bankshares, Richmond, Virginia (data processing activities; Virginia): to engage, through its subsidiary, Charter Services, Inc., in data processing activities for the N.B. Bank of Richmond, located in Richmond, Virginia. These activities will include the processing of demand deposits, including overdraft protection, savings certificates of deposit, installment and commercial loans and general ledger. This will further include both batch and on-line processing. Such activities will be conducted at the offices of Charter Services, Inc., located at 3201 West Cary Street, Richmond, Virginia, 23221, and the geographic area to be served is the Richmond, Virginia area.

C. *Federal Reserve Bank of Chicago*, 230 South LaSalle Street, Chicago, Illinois 60690:

Harris Bankcorp, Inc., Chicago, Illinois (mortgage banking and insurance activities; Illinois): to engage, through its subsidiary, Harriscorp Finance, Inc., in mortgage banking activities, including making of acquiring for its own account first mortgage residential real estate loans, secured and unsecured installment loans and other extensions of credit (including through acceptance of drafts), primarily to individuals, and selling participation in (but not acting as underwriter, agent or broker with respect thereto) group mortgage and credit life and group mortgage and credit health and accident insurance coverage directly relating to such loans and other extensions of credit. These activities will be conducted from offices located at Harlem-Irving Plaza, 4216 N. Harlem Ave., Norridge, Illinois, and Ford City Office Plaza, 7801, S. Kostner Ave., Chicago, Illinois, and the geographic area to be served is the southwest and northwest quadrants of the six-county Chicago, Illinois Standard Metropolitan Statistical Area.

D. *Federal Reserve Bank of Kansas City*, 925 Grand Avenue, Kansas City, Missouri 64198:

1. Torrington National Company, Torrington, Wyoming (insurance activities; Wyoming): to engage in the sale of life and accident and health insurance directly related to the extensions of credit made by First National Bank, torrington, Wyoming. These activities would be conducted on the bank's premises and the geographic area to be served is Goshen County, Wyoming.

2. Lenexa Bancshares, Lenexa, Kansas (personal property leasing activities; Kansas): to engage in personal property and equipment leasing activities, including leases of computer equipment, construction equipment, office furniture and fixtures, interconnect phone equipment, medical equipment and other business equipment, in transactions complying with the Board's Regulation Y. These activities would be conducted at an office at 12345 W. 95th St., Lenexa, Kansas 66215, and the geographic area to be served is the area within a radius of approximately 200 miles of Kansas City, Missouri.

E. *Other Federal reserve Banks:* None.

Board of Governors of the Federal Reserve System, May 31, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-18071 Filed 6-8-79; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1943(c)(8)) and section 225.4(b)(1) of the Board's Regulation Y (12 C.F.R. § 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than July 2, 1979.

A. *Federal Reserve Bank of Kansas City*, 925 Grand Avenue, Kansas City, Missouri 64198:

First Union Corporation, Stillwater, Oklahoma (mortgage banking; Oklahoma): to engage, through its subsidiary, Consolidated Venture Capital, in the following activities: making or acquiring, for its own account, or for the account of others, loans and other extensions of credit (including issuing letters of credit and

accepting drafts), secured by liens on real property, including the servicing thereof, in the same manner as made and serviced by mortgage companies. These activities will be conducted from an office located at 808 South Maine, Stillwater, Oklahoma, and the geographic area to be served consists of Lincoln, Logan, Nobel, Pawnee, and Payne Counties, Oklahoma.

B. *Federal Reserve Bank of San Francisco*, 400 Sansome Street, San Francisco, California 94120:

1. Bankamerica Corporation, San Francisco, California (finance and insurance activities; California): to engage, through its subsidiary FinanceAmerica Corporation, in making or acquiring for its own account loans and other extensions of credit such as would be made or acquired by a finance company and servicing loans and other extensions of credit. Such activities will include but not be limited to making consumer installment loans, purchasing installment sales finance contracts, making loans and other extensions of credit to small businesses, and making loans secured by real and personal property; and the offering of credit-related life, credit-related accident and disability insurance, and credit-related property insurance, in connection with extensions of credit made or acquired by FinanceAmerica Corporation. These activities will be conducted at an office at 2730 Bechelli Lane, Redding, California, and the geographic area to be served is California.

2. Bankamerica Corporation, San Francisco, California (finance and insurance activities; Louisiana): to engage, in the activities described in the preceding paragraph through the subsidiary there identified. These activities would be conducted from an office in Houma, Louisiana, and the geographic area to be served is Louisiana.

C. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, May 31, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-18002 Filed 6-8-79; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and section 225.4(b)(1) of the Board's Regulation Y (12 C.F.R. § 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than June 29, 1979.

A. *Federal Reserve Bank of New York*, 33 Liberty Street, New York, New York 10045:

Chemical New York Corporation, New York, New York (finance and insurance activities; Georgia): to engage, through its subsidiary Sunamerica Financial Corporation, in making direct loans, purchasing installment sales finance contracts, and acting as agent or broker for the sale of credit-related insurance. These activities will be conducted at 855 Sunset Drive, Athens, Georgia, and the geographic area to be served is Athens, Georgia and its environs. This application is for the relocation of an established office within the same city and does not involve the commencement of a new activity.

B. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, May 31, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-18003 Filed 6-8-79; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and section 225.4(b)(1) of the Board's Regulation Y (12 CFR § 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than July 5, 1979.

A. *Federal Reserve Bank of New York*, 33 Liberty Street, New York, New York 10045:

Manufacturers Hanover Corporation, New York, New York (finance and insurance activities; North Carolina): to engage, through its subsidiary Ritter Finance Company, Inc., of North Carolina, in arranging, making or acquiring for its own account or for the account of others, loans and other extensions of credit such as would be made by a consumer finance company; making or acquiring for its own account or for the account of others, loans and other extensions of credit, including purchasing installment sales finance contracts, such as would be made by a sales finance company; servicing any such loans and other extensions of

credit for any persons; acting as agent or broker for the sale of credit life insurance and credit accident and health insurance directly related to extensions of credit made by Ritter Finance Company, Inc., of North Carolina; acting as agent or broker for property damage and liability insurance insuring collateral securing loans and other extensions of credit made directly by Ritter Finance Company, Inc., of North Carolina; and reinsurance, through Ritter Life Insurance Company, of credit life and credit accident and health insurance which is directly related to extensions of credit made by Ritter Finance Company, Inc., of North Carolina. These activities will be conducted at offices located at 216 Ninth St., North Wilkesboo, North Carolina 28659, and 1720 Horner Blvd., Sanford, North Carolina 27330. The geographic area to be served consists of Alexander, Chatham, Harnett, Lee, Moore, Wilkes, and Yadkin Counties, North Carolina. This application is for the relocation of two established offices each within the same city and does not involve the commencement of a new activity.

B. *Federal Reserve Bank of Cleveland*, 1455 East Sixth Street, Cleveland, Ohio 44101:

Mellon National Corporation, Pittsburh, Pennsylvania (finance and insurance activities; Washington): to engage, through is subsidiary, Freedom Financial Services Corporation, Oak Brook, Illinois, in general consumer finance activities, including acting as insurance agent with respect to the sales of credit life insurance and credit accident and health insurace and credit property insurance directly related to extensions of credit made by freedom Financial Services Corporation. These activities will be conducted at Suite B, 2627 Ninth Avenue, S.W., Olympia, Washington 98502. The geographic area to be served is Olympia, Washington.

C. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, June 4, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-18094 Filed 6-8-79; 8:45 am]

BILLING CODE 6210-01-M

Barnett Banks of Florida, Inc.; Acquisition of Telecheck Atlanta, Inc.

Barnett Banks of Florida, Inc., Jacksonville, Florida, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR § 225.4(b)(2)), for permission to acquire through its wholly-owned subsidiary, Verifications Inc., Jacksonville, Florida, the assets of Telecheck Atlanta, Inc., Bethesda, Maryland.

Applicant proposes to engage, through Verifications, in the personal check verification business pursuant to a franchise agreement with Telecheck Services, Inc., Honolulu, Hawaii. In consideration for fees paid by a subscribing merchant, Verifications will authorize the merchant to accept certain personal checks tendered by customers in payment of goods and services. If a properly authorized check is subsequently dishonored, Verifications will be obligated to purchase the check from the merchant at face value.

These activities would be performed from an office of Applicant's subsidiary to be located in Tucker, Dekalb County, Georgia. The geographic areas to be served are Chambers County, Alabama, Aiken and Edgefield Counties, South Carolina, and most of the Northern and Central Counties of the State of Georgia. Verifications already performs these activities in Florida and in the counties on the Georgia-Florida border under a similar franchise agreement. Such activities have been determined by the Board by order to be closely related to banking.

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically and questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than June 30, 1979.

Board of Governors of the Federal Reserve System, May 30, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-18090 Filed 6-8-79; 8:45 am]

BILLING CODE 6210-01-M

Dauphin Deposit Corp.; Proposed Acquisition of Dauphin Life Insurance Co., Phoenix, Ariz.

Dauphin Deposit Corporation, Harrisburg, Pennsylvania, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR § 225.4(b)(2)), for permission to acquire voting shares of Dauphin Life Insurance Company, Phoenix, Arizona.

Applicant states that the proposed subsidiary would engage *de novo* in the activities of underwriting, as reinsurer, credit life and credit accident and health insurance directly related to extensions of credit by Applicant's subsidiary, Dauphin Deposit Bank & Trust Company, Harrisburg, Pennsylvania. These activities would be performed from offices located in Phoenix, Arizona, and the geographic areas to be served are the south central Pennsylvania SMSA and the Lebanon, Pennsylvania area. Such activities have been specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices". Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Philadelphia.

Any views or requests for hearing should be submitted in writing and

received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than July 5, 1979.

Board of Governors of the Federal Reserve System, June 4, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-[illegible] Filed 6-8-79; 8:45 am]

BILLING CODE 6210-01-M

First Railroad & Banking Co. of Georgia; Proposed Acquisition of Blount Financial Services, Inc.

First Railroad and Banking Company of Georgia, Augusta, Georgia has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR § 225.4(b)(2)), for permission to acquire certain assets and receivables of Blount Financial Services, Inc., Maryville, Tennessee.

Applicant states that the proposed subsidiary would engage in the following activities: making and purchasing consumer installment loans, making mortage loans, selling credit life, credit accident and health insurance, and property insurance directly related to the making and purchasing of consumer installment loans and reinsuring such credit life, credit accident and health insurance, and property insurance policies. These activities would be performed from offices of Applicant's subsidiary in Clinton, Newport, Sevierville, and Lenior City, and Maryville, Tennessee, and the geographic areas to be served are Anderson, Loudon, Blount, Sevier, and Cocke Counties in east-central Tennessee. Such activities have been specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than June 29, 1979.

Board of Governors of the Federal Reserve System, May 31, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-[illegible] Filed 6-8-79; 8:45 am]

BILLING CODE 6210-01-M

Fredericksburg Holding Co.; Formation of Bank Holding Company

Fredericksburg Holding Company, Fort Worth, Texas, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 92 per cent or more of the voting shares (less directors' qualifying shares) of Fredericksburg National Bank, Fredericksburg, Texas. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than June 29, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, May 29, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-[illegible] Filed 6-8-79; 8:45 am]

BILLING CODE 6210-01-M

First United Bancorporation, Inc.; Acquisition of Bank

First United Bancorporation, Inc., Fort Worth, Texas, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(3)) to acquire 92.26 per cent of the voting shares of University Bank, Fort Worth, Texas. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than June 29, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, May 30, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-[illegible] Filed 6-8-79; 8:45 am]

BILLING CODE 6210-01-M

Kupka's, Inc.; Acquisition of Bank

Kupka's, Inc., Traer, Iowa, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(3)) to acquire 80.2 percent or more of the voting shares of First Community Bank & Trust, Traer, Iowa. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than July 3, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, June 4, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-[illegible] Filed 6-8-79; 8:45 am]

BILLING CODE 6210-01-M

Swift County Financial Corp.; Proposed Acquisition of Swift County Agricultural Credit Association

Swift County Financial Corporation, Benson, Minnesota, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR § 225.4(b)(2)), for permission to acquire voting shares of Swift County Agricultural Credit Association, Benson, Minnesota.

Applicant states that the proposed subsidiary would engage in the activities of making loans and extensions of credit for agricultural purposes and discounting the loans at the Federal Intermediate Credit Bank. These activities would be performed from offices of Applicant's subsidiary in Benson, Minnesota, and the geographic area to be served is a fifteen mile radius from Benson, Minnesota. Such activities have been specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than June 30, 1979.

Board of Governors of the Federal Reserve System, May 29, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-18100 Filed 6-8-79; 8:45 am]

BILLING CODE 6210-01-M

Texas American Bancshares Inc.; Acquisition of Bank

Texas American Bancshares Inc., Fort Worth, Texas, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(3)) to acquire 100 percent of the voting shares of Fredricksburg Financial Corporation, Fredricksburg, Texas, and thereby acquire 92% or more of the voting shares (less directors' qualifying shares) of Fredricksburg National Bank, Fredricksburg, Texas. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. §1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than June 29, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, May 29, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-18101 Filed 6-8-79; 8:45 am]

BILLING CODE 6210-01-M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report Proposals

The following request for clearance of reports intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on June 5, 1979. See 44 U.S.C. 3512(c) and (d). The purpose of publishing this notice in the Federal Register is to inform the public of such receipt.

The notice includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed FMC requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before June 29, 1979, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5108, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

Federal Maritime Commission

The FMC requests clearance of a material revision to 46 CFR Part 531 (General Order 36). The rules covering the filing of tariffs in the domestic offshore trade of the United States are being amended to require that ocean carrier tariffs contain provisions informing shippers of the right to file overcharge claims and of the time and method to be used by the carriers in response to such claims. The amendment also clarifies the statute of limitation period and brings it into conformance with statutory language contained in section 22 of the Shipping Act of 1916 (46 U.S.C. 821). The FMC estimates that approximately 282 carriers in the domestic trades with 200 tariffs on file will require 2 hours to amend each tariff.

The FMC requests clearance of a material revision to 46 CFR Part 536 (General Order 13). The rules covering the filing of tariffs in the foreign commerce of the United States are being amended to require that ocean carrier tariffs contain provisions informing shippers of the right to file overcharge claims and of the time and method to be used by the carriers in response to such claims. The amendment also clarifies the statute of limitation period and brings it into conformance with statutory language contained in Section 22 of the Shipping Act of 1916 (46 U.S.C. 821). The FMC estimates that approximately 1,015 carriers in the foreign commerce with approximately 2,500 tariffs on file will require 2 hours to amend each tariff.

FMC Reconsideration of Final Rule which was served on April 27, 1979, promulgated the revisions which have been incorporated in 46 CFR Part 531 (General Order 36) and 46 CFR Part 536 (General Order 13). Although the Reconsideration of Final Rule specified that the revisions become effective on

July 15, 1979, this effective date is contingent upon FMC's compliance with 44 U.S.C. 3512 which precludes the collection of information from ten or more persons until the Comptroller General has had the opportunity to advise that the information is not presently available from other Federal sources and that the proposed requirements are consistent with the provisions of section 3512. This notice represents the beginning of our review.

John M. Lovelady,

Assistant Director, Regulatory Reports Review.

[FR Doc. 79-18078 Filed 6-8-79; 8:45 am]

BILLING CODE 1610-01-M

GENERAL SERVICES ADMINISTRATION

Public Building Service

[GSA Order ADM 1095.1C]

Environmental Considerations in Decisionmaking

AGENCY: General Services Administration, Public Buildings Service.

ACTION: Proposed agency implementing procedures.

SUMMARY: This notice proposes internal agency procedures to be followed in implementing the requirements of section 102(2) of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321, *et seq.*); Executive Order 11514 of March 5, 1970, entitled "Protection and Enhancement of Environmental Quality"; and the Regulations issued by the Council on Environmental Quality (43 FR 55978).

DATE: Comments must be received on or before July 11, 1979.

ADDRESS: Comments should be addressed to General Services Administration (PRE), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Carl W. Penland, Acting Director, Environmental Affairs Division, Office of Space Management, Public Building Service, General Services Administration, Washington, DC 20405.

Dated: June 4, 1979.

Robert L. Jones,

Acting Commissioner, Public Buildings Service.

GSA Order, Subject: Environmental Considerations in Decisionmaking

1. *Purpose.* This order provides for uniform procedures to be followed in implementing the laws, Executive orders, and directives concerning all major GSA actions that significantly affect the quality of the human environment, consistent with the basis statutory responsibilities governing GSA program operations. This order also provides a basis for the publication, by the Public Buildings Service, the Federal Property Resources Service and when required, of other service and staff office orders and instructions explicitly directed toward the particular functions, activities, and personnal of each organization.

2. *Cancellation.* ADM 1095.1B is canceled.

3. *Background.*

a. The laws, Executive orders, and directives to be implemented include the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.), hereinafter referred to as NEPA; Executive Order 11514 of March 5, 1970, entitled "Protection and Enhancement of Environmental Quality," as amended by Executive Order 11991 of May 24, 1977; the GSA Policy Manual, ch. 2–11 (ADM P 1000.2B) the GSA Delegations of Authority Manual, ch. 2–29 (ADM P 5450.39A) and the regulations issued by the Council on Environmental Quality (CEQ) for implementing section 102(2) of NEPA, hereinafter referred to as the Regulations, published in the Federal Register, November 29, 1978, 43 FR 55978.

b. Section 102 of NEPA directs all Federal agencies to the fullest extent possible (1) to utilize a systematic, interdisciplinary approach to ensure the integrated use of the natural and social sciences and the environmental design arts in planning and decisionmaking which may have an impact on the human environment; (2) to identify and develop methods and procedures which will ensure that presently unquantified environmental amenties and values may be given appropriate consideration in decisionmaking along with economic and technical considerations; (3) to include in every recommendation or report on proposals for legislation, and other major Federal actions significantly affecting the quality of the human environment, a detailed environmental impact statement by the responsible official, and to integrate the NEPA process with agency planning to fully comply with Section 102(2)(A thru I).

4. *Nature of revision.* This order reflects the expanded requirements of the new Regulations. It contains much material that was in the canceled order and omits material that will be incorporated in the revised service orders.

5. *Responsibilities.*

a. *Commissioner, Public Building Service (P).* The Commissioner, as head of the GSA lead environmental service, acts for the Administrator on environmental matters, except those relating to the Federal Property Resources Service, to develop agency policy, review service procedures, and reconcile differences between reviewing officials and program officials regarding the need for environmental impact statements (EIS) or for more environmental information. The Commissioner may also require the preparation of, or revision to, EIS's if he or she determines it to be necessary and may instruct a service or staff office to prepare EIS's on legislative proposals.

(1) *Assistant Commissioner, Office of Space Management (PR).* The Assistant Commissioner is responsible for the initiation and direction of GSA's environmental program policy, except for that relating to the Federal Property Resources Service. The Assistant Commissioner has review responsibility on environmental documents and procedures and responsibility for dealing with entities outside the agency on environmental policy matters.

(2) *Director, Environmental Affairs Division, Office of Space Management (PRE).* The Director coordinates, implements, and monitors the GSA environmental program and serves as the official GSA liaison officer with the Council on Environmental Quality and the Environmental Protection Agency (EPA). For example, the Director consults with EPA to resolve questions of lead agency, to shorten EIS review periods, and to establish review periods for supplementary EIS's. The Director also coordinates GSA's review of EIS's prepared by other agencies.

b. *Commissioner, Federal Property Resources Service (D).* The Commissioner acts for the Administrator on environmental matters related to the Federal Property Resources Service. The Commissioner implements GSA environmental policy within the FPRS by the establishment of service policy and procedures and the issuance of service orders. The Commissioner consults with the EPA, CEQ, and other agencies in regard to FPRS actions.

c. *General Counsel.* The General Counsel has responsibility for interpreting statutes, Executive orders, guidelines, and regulations, and for reviewing and commenting on the legal sufficiency of environmental assessments, findings of no significant impact, and draft and final EIS's.

d. *Responsible official.* The responsible official is the Head of a Service or Staff Office or Regional Administrator under whose jurisdiction the action is being planned.

e. *Decisionmaker.* The decisionmaker, a term used in the Regulations, is for the purpose of this order, the Administrator of General Services or the Administrator's designee.

f. *Other.*

(1) Responsibilities within the services and staff offices shall be delineated in their corresponding orders. (See par. 6.)

(2) Although the Regulations (43 FR 55978, Nov. 29, 1978) are not transmitted by this order, GSA employees responsible for implementing this order and corresponding service orders shall be familiar with and comply with the Regulations.

6. *Service orders.*

a. The head of each major program area within GSA which takes actions have a significant impact on the human environment shall develop and implement orders (and handbooks, as appropriate) consistent with this order and the Regulations.

b. The service orders shall provide, among other things, the following:

(1) The responsible official shall forward the environmental assessment (EA) and finding of no significant impact (FONSI) or recommendation for a FONSI to the appropriate Central Office program official for review and comment. Copies shall then be forwarded to the Office of General Counsel (L) and, except for FPRS actions, the Assistant Commissioner (PR) for review, unless the action is a class of action exempted from this procedure by approved service or staff office orders. All Central Office review periods shall run for a period of 10 workdays from the date of receipt. The 10-workday review period may be extended if necessary. Any requests for additional time, information, or revision shall be directed to the appropriate service or staff office program official. All comments shall be forwarded to the Central Office program official for preparation of a consolidated response to the responsible official. The Commissioner, PBS or FPRS shall reconcile any differences concerning the need for additional information or revision that may arise between the program officials and other reviewing officials, except that final approval for legal sufficiency shall be the responsibility of the General Counsel or the General Counsel's designee. Unless otherwise notified within the review period, the responsible official shall assume the EA and FONSI are adequate and may proceed with the action.

(2) The review procedures for draft EIS's (DEIS), final EIS's (FEIS), and supplements to draft and final EIS's shall be the same as in (1), above, except that the review period shall be for 15 workdays. Service orders shall identify the individual to whom the public can go to obtain information or status reports reports on EIS's and other elements of the NEPA process.

(3) For regional actions the Regional Administrator shall retain the nondelegable authority for final approval of FONSI's, DEIS's and FEIS's. Further, the Regional Administrator shall retain the responsibility for transmitting DEIS's and FEIS's to EPA, heads of Federal agencies, Governors, Senators, and Members of Congress.

7. *Role of the environmental assessment (EA) and the environmental impact statement (EIS) process in GSA.* It is GSA's practice to analyze alternatives and all environmental factors directly or indirectly to a proposed action and to use that analysis at every level of the decision-making process. The assessment of the environmental effects of a proposed action and its alternatives must begin with the inception of the proposed action and continue throughout the planning, action development, operation, and disposal stages. The assessment process shall provide for complete public disclosure of proposed GSA actions and a means of ensuring that all reasonable alternatives have been seriously considered and analyzed. All the alternatives available to and considered by the decisionmaker shall be encompassed in relevant environmental documents. The relevant environmental documents shall accompany other decision documents as they proceed through the decisionmaking process. By using the assessment process it is the goal of GSA to avoid or minimize potential adverse environmental impacts.

8. *Applicability.* GSA actions and activities which are covered by NEPA include, but are not limited to:

a. Major actions which would result from recommendations or favorable reports on legislation, including requests for appropriations, originating both within and outside the agency when GSA has primary responsiblity for implementing legislation;

b. Major new and continuing actions by GSA, including real property acquisition by Federal construction, purchase, or lease; disposal of any interest in surplus real property to non-Federal public or private parties, personal property disposal, public buildings alteration, procurement actions, and stockpile management, acquisition, and disposal actions, and

c. Major actions which would result from establishment or modification of rules, regulations and procedures, and policies.

9. *Early notice system.* Each service and staff office and regional office shall keep available for public inspection a current list of its contemplated actions for which (a) EIS's are being prepared, (b) EIS's are planned for preparation, and (c) FONSI's have been approved. As required by the Regulations (Sec. 1501.7) a notice shall be placed in the Federal Register notifying the public of GSA's intent to prepare an EIS.

10. *Classes of actions.* Typical classes of actions (par. 1501.4(a) of the Regulations) for PBS appear in attachment A; for FPRS appear in attachment B; for FSS in attachment C; and for TPUS appear in attachment D.

11. *Decision points.* The designation of major decision points (par. 1505.1(b) of the Regulations) for PBS appear in attachment E; for FPRS appear in attachment F; for FSS appear in attachment G; and for TPUS appear in attachment H.

12. *Effective date.* Every effort shall be made to immediately implement the provisions of the regulations and this order. The Regulations and this order do not apply to an EIS or supplement, if the draft EIS was filed before July 30, 1979.

Attachment A

1. *Classes of actions.* Classes of PBS actions and indicators of significance are listed below. The indicators of significance shall be used as a part of the assessment process to determine the significance of a proposed action and if an environmental impact statement is needed for an action.

2. *Class I., Actions which normally do not require either an EIS or an environmental assessment (EA).* The actions in subpars. a thru f, below are categorically excluded from the requirement to prepare an EIS or an EA under normal circumstances. However, the responsible official shall be alert to unusual conditions that would require an EIS or an EA. They are categorically excluded because they normally do not meet any of the indicators of significance and they (1) are routine, (2) will not create greater demands or loads on environmental impact areas, (3) allow the current agency action to continue, or (4) do not alter physical conditions.

a. Repair to or replacement of equipment (e.g., electrical distribution

and HVAC systems) of GSA-controlled facilities.

b. Repair to or replacement in kind of components (e.g., windows, door, roof) of GSA-controlled facilities.

c. Acquisition of less than 20,000 square feet of occupiable space in a structure that was completed prior to the solicitation for offers.

d. Acquisition of between 20,000 square feet and 40,000 square feet if it constitutes less than 40 percent of the occupiable space in a structure that completed prior to the solicitation for offers.

e. Lease extensions, renewals, or succeeding leases.

f. Federal construction or lease construction of 10,000 square feet or less of occupiable space.

g. Relocation of employees into existing owned or currently leased office space.

h. Individual personnel actions, administrative actions, collective bargaining with employee unions, ministerial actions, and routine activities normally conducted to protect and maintain GSA controlled properties.

3. *Class II., Actions which normally require an EIS.* The actions in subpars. a thru d, below, normally require the preparation of an EIS because they meet the indicators of significance, they may create greater demands or loads on environmental impact areas, and they may alter physical conditions.

a. Master plans for federally-owned property.

b. Space acquisition programs projected for a given geographical area for a 3- to 5-years period.

c. Federal construction of lease construction projects in excess of 275,000 square feet of occupiable general-purpose space.

d. Actions in a coastal zone that do not comply with an approved Coastal Zone Management Plan.

4. *Class III., Actions which normally require EA's but not EIS's.* An EA must normally be prepared for these actions to determine if an EIS is necessary. This order does not arbitrarily establish the number of indicators of significance that must be exceeded before an EIS is required on an action, as the actions must be evaluated on a case-by-case basis. However, normally if two or more of the thresholds are exceeded an EIS is required.

a. Federal construction or lease construction of general-purpose office space between 10,000 and 275,000 square feet of occupiable space including those undertaken for another Federal agency.

b. Major leases for new space existing buildings where an environmental controversy has been identified.

c. Repair and alteration projects which:

(1) Have not be categorically excluded.

(2) Affect those characteristics which quality a property or object as historically or culturally significant.

(3) Are for acquistion and/or alteration of space for a laboratory which will use dangerous or hazardous chemicals, drugs, or radioactive materials.

d. Construction of a prison facility where GSA is the lead agency.

e. Construction of special-purpose space.

5. *Indicators of significance.* Classes I and II were established based on the following indicators of significance. The determination of whether Class III actions require the preparation of a finding of no significant impact (FONSI) or an EIS shall be made based on these indicators.

a. Traffic generated by the action would represent a 10-percent increase in average daily traffic volume on the access roads to the site or the major arteries in the delineated area, and peak-hour congestion occurs daily on the access road to the site or on the major arteries in the delineated area.

b. May lead to a violation of Federal, State or local law or requirements imposed for the protection of the environment. For example if the action is expected to increase emissions resulting in the violation or air quality standards or contruction traffic or project noise will definitely be in violation of GSA, OSHA, State, or local noise standards, and one or more types of sensitive receptors would definitely be at risk.

c. The GSA project, its contractors, and its final solid waste disposal site(s) will not be in compliance with the EPA's "Solid Waste Management Guidelines" for thermal processing and land disposal, storage and collection, source separation, and resource recovery facilities; or with any other Federal, State or local regulations, standards or health codes. The final disposal site(s) will not have adequate capacity for the solid waste from the GSA project.

d. Public utilities have insufficient capacity to provide reliable service to the project and to ensure delivery of required flow for average and peak periods.

e. The action is located on or near an active geological fault or unique geological features.

f. Wastewater generated by the new facility will represent more than 5 percent of the average daily flow to a public treatment plant.

g. The proposed project will not be compatible with the present zoning of the specific site and/or delineated area.

h. The proposed project will not conform with official local and regional plans.

i. The proposal may adversely effect an endangered or threatened species or its habitat.

j. The proposal may adversely effect parklands, prime farmlands, floodplains, wetlands, wild and scenic rivers or ecologically critical areas.

k. The proposal will result in the use of a significant amount (defined as an amount that if spillage occurs it will result in a health hazard or damage to the ecosystem; or if accidentally dumped into the sewage system will damage treatment facilities or contaminate rivers or streams) of dangerous, hazardous, or radioactive materials.

l. Will result in a 5-percent change in the permanent labor force of the SMSA or if not in an SMSA, of the political jurisdiction.

m. Cultural resources on the National Register, eligible for the National Register, and those eligible for the Registar, but as yet unstudied or unidentified, will be effected by the proposed action.

n. Local community service administrators indicate that one or more community services will be inadequate to serve the project.

o. The proposed project will permanently alter an area that has been formally recommended for protection by Federal, State, regional, or local government agencies as part of a land use or development plan.

GSA Order, Attachment B, Federal Property Resources Service

Classes of Action

1. *General.* This attachment lists the Classes of Action and Indicators of Significance for actions sponsored by the Federal Property Resources Service (FPRS).

2. *Classes of Action.* In accordance with Paragraph 1501.4(a) of the CEQ regulations, FPRS actions are classified as follows:

a. *Class I.*—Actions which normally do not require either an environmental impact statement (EIS) or environmental assessment (EA).

(1) The actions listed below, under normal circumstances, are categorically excluded from the requirement to

prepare an EIS or an EA. However, FPRS officals shall be alert to any unusual circumstances which would require an EIS or an EA. These actions are catergorically excluded since they normally do not meet any of the indicators of significance and they:

(a) have minimal or no effect on the environment,

(b) do not significantly change existing physical conditions,

(c) have social or economic effects only, and

(d) are similar to actions previously assessed and found to have no significant environmental impact.

(2) Class I actions (Categorical Exclusions) are:

(a) Federal Real Property Utilization Surveys in Accordance with Executive Order 11954.

(b) Real Property Inspections for Compliance with Deed Restrictions.

(c) Disposition of Excess or Surplus Real Property as follows:

(i) 5 acres or less of unimproved land in a rural area.

(ii) 1 acre or less of unimproved land in an urban area.

(iii) 1 multiple unit dwelling with 10 or less units on 1 acre or less.

(iv) 5 or fewer separate individual residential units, except where land associated with a unit could be subdivided into 2 or more building lots.

(v) Line-of-site, utility, avigation, flight clearance, and right-of-way easements.

(vi) Permits, licenses, or leases for 1 year term or less.

(vii) Unimproved land for conveyance to state or local conservation agencies where development is prohibited.

(d) Stockpile acquisitions or disposals of:

(1) Metals: aluminum, gold, platinum group, silver, and tin:

(ii) Agricultural products: Opium and its derivatives, castor oil and its derivatives, quinine and its derivatives; and

(iii) Other: Diamonds, jewel bearings, quartz, mica, synthetic sapphire and ruby.

(e) Rehabilitation, transfer, donation and sales of federally owned personal property.

b. *Class II Actions which normally require an EIS.*—(1) The actions listed below under normal conditions require the preparation of an EIS since the actions normally meet some of the indicators of significance and

(a) have potential for significant degradation of the environment.

(b) have potential for a hazard to the public,

(c) are similar to action which previously were found to require an EIS, and/or,

(d) tend to be controversial with respect to environmental impact.

(2) Class II actions are:

(a) Disposal of Surplus Real Property as follows:

(i) Property where complex multiple-use options are contemplated.

(ii) Property formerly used as, or proposed for use as, a Hazardous Waste Disposal Site.

(iii) Property considered to be environmentally contaminated so as to restrict future use.

(b) Stockpile actions which result in:

(i) Opening of new mines (green field sites);

(ii) Reopening of abandoned mines; and

(iii) Placing into a 100 year floodplain a commodity which would cause a public health, safety, or environmental problem in an aquatic environment

Class III Actions which normally require EA's but not EIS's.—(1) The actions listed below cannot be readily placed in Class I or II and require the preparation of an EA prior to the decision as to whether or not to prepare an EIS.

(2) Class III actions are:

(a) Disposal of surplus real property actions not covered in Class I or II.

(b) Stockpile actions for:

(i) Transportation of hazardous material;

(ii) Rotation or upgrading of current inventories;

(iii) Disposal of materials which have become contaminated or unstable while in storage;

(iv) Relocation of stockpiled materials.

3. *Indicators of Significance.* a. The indicators of significance are intended to assist FPRS personnel determine the necessity to prepare an EA or EIS. The indicators point out unusual or sensitive conditions or issues which may require the preparation of an EA, for an otherwise categorically excluded action, or an EIS for an action which normally require only an EA.

b. FPRS indicators are:

(1) For real property actions, the property—

(a) Is in a: 100 year Floodplain, Wetland, Prime or Unique Farmland, Ecologically critical area, Endangered species habitat, Parkland or Active Geological Fault Area;

(b) Is not/will not be operated/utilized in consonance with local zoning regulations or land use plans;

(c) Will most likely not continue in its present or a similar use;

(d) Is itself, or is located close to, a historical or cultural, or archeological resource;

(e) Is in a coastal zone and will be utilized contrary to the Coastal Zone Management Plan;

(f) Is environmentally contaminated so as to restrict use;

(g) Is subject to significant controversy with respect to the environmental impact of the disposal.

(2) For actions involving acquisition or disposal of stockpile materials, the action:

(a) May lead to a violation of Federal, State or local environmental law or regulations;

(b) May adversely affect an endangered or threatened species or its habitat;

(c) May adversely affect parklands, prime farmlands, floodplains, wetlands, wild and scenic rivers or ecologically critical areas;

(d) Will result in the transportation, handling, or storage of a significant amount of dangerous, hazardous, or radioactive materials, the significance to be determined on a case by case basis;

(e) May adversely impact cultural resources on the National Register, or eligible for the National Register;

(f) Will permanently alter an area that has been formally recommended for protection by Federal, State, regional, or local government agencies as part of a land use or development plan;

(g) Will result in an increase of normal stockpile depot traffic flow greater than 10 percent;

(h) Will entail material classified as hazardous, or toxic by DOT, EPA or OSHA;

(i) Will entail movement of material in containers not conforming to standard industrial requirements;

(j) May result in air or water pollution by production facilities exceeding Federal or State threshold limit values;

(k) May adversely affect ambient air quality by raising level of nuisance particulates beyond the boundaries of the loading area; and

(l) May entail a 5 percent change in the labor force of the industry producing the material.

(3) For the rehabilitation and transfer, donation, or sales of personal property, the property:

(a) is a hazardous or toxic material which has not been rendered innocuous or otherwise safeguarded,

(b) the use of which, would violate a safety, health, or environmental regulation.

Attachment C

1. *Classes of actions.* Classes of FSS actions and indicators of significance are listed below. The indicators of significance shall be used as a part of the assessment process to determine the significance of a proposed action and if an environmental impact statement is needed for an action.

2. *Class I.,* Actions which normally do not require either an EIS or and Environmental Assessment (EA). The actions in subparas. a thru d, below are categorically excluded from the requirement to prepare an EIS or an EA under normal circumstances. However, the responsible official shall be alert to unusual conditions that would require an EIS or an EA. They are categorically excluded because they normally do not meet any of the indicators of significance and they (1) are routine, (2) will not create greater demands or loads on environmental impact areas, (3) allow the current agency action to continue, or (4) do not alter physical conditions.

a. Acquisition of products, materials, and services for Government agencies to meet normal requirements.

b. Preparation of specifications and purchase descriptions for products, materials and services for the normal requirements of Government agencies.

c. Inspection of products, materials, and services to meet normal requirements.

d. Distribution of products and materials to meet normal requirements of agencies.

3. *Class II.,* Actions which normally require an EIS. Because they meet the indicators of significance, they may create greater demands or loads on environmental impact areas, and they may alter physical conditions. None.

4. *Class III.,* Actions which normally require EA's but not EIS's. An EA must normally be prepared for these actions to determine if an EIS is necessary. This order does not arbitrarily establish the number of indicators of significance that must be exceeded before an EIS is required on an action, as the actions must be evaluated on a case-by-case basis.

a. Acquisition of products and materials representing a significant percentage of the total market for products and materials with known toxic or hazardous ingredients.

b. Distribution of such products and materials.

c. Acquisition of products or materials whose manufacture may have a significant impact on the environment and where our purchases represent a significant portion of the total market production.

5. *Indicators of significance.* Classes I and II were established based on the following indicators of significance. The determination of whether Class III actions require the preparation of a finding of no significant impact (FONSI) or and EIS shall be made based on these indicators.

a. Where our purchases exceed 10 percent of the sales of the products.

b. Where stocking points for toxic and hazardous materials may be within or adjacent to densely populated areas and storage of such materials amounts to more than 10 percent of the total space utilized for all products and materials.

c. Where decisions on stocking patterns or warehouse locations will results in 5 percent change in the permanent SMSA labor force.

Attachment D

1. *Classes of actions.* Classes of TPUS actions and indicators of significance are listed below. The indicators of significance shall be used as a part of the assessment process to determine the significance of a proposed action and if an environmental impact statement is needed for an action.

2. *Class I.* Actions which normally do not require either an EIS or an environmental assessment (EA). The actions in subparagraphs a through f below are categorically excluded from the requirement to prepare an EIS or an EA under normal circumstances. However, the responsible official shall be alert to unusual conditions that would require an EIS or an EA. They are categorically excluded because they normally do not meet any of the indicators of significance and they (1) are routine, (2) will not create greater demands or loads on environmental impact areas, (3) allow the current agency action to continue, or (4) do not alter physical conditions.

a. Assists Federal agencies in improving transportation management and practices.

b. Negotiates transportation rates and provides expert testimony before transportation regulatory bodies.

c. Audits Federal transportation documents.

d. Provides Federal fleet management and assists in energy conservation in the Federal vehicle fleet.

e. Assists Federal agencies in public utilities management (excluding communications); negotiates for public utility services on behalf of Federal agencies; and provides expert testimony before public utility regulatory bodies.

f. Provides motor vehicle support to Federal executive, legislative, and judicial activities through a nationwide system of motor pools.

3. *Class II.* Actions which normally require an EIS because they meet the indicators of significance; they may create greater demands or loads on environmental impact areas, and they may alter physical conditions. None.

4. *Class III.* Actions which normally require EA's but not EIS's. An EA must normally be prepared for these actions to determine if an EIS is necessary. None.

5. *Indicators of significance.* Class I was established based upon the conclusion that none of the activities conducted by TPUS fall within Classes II or III. However, under unusual circumstances an assessment of the need for an EA may be required by TPUS officials based upon the following criteria.

a. Traffic generated by the action would represent a 10-percent increase in average daily traffic volume on the access roads to the site or the major arteries in the delineated area, and peak-hour congestion occurs daily on the access road to the site or on the major arteries in the delineated area.

b. May lead to a violation of Federal, State or local law or requirements imposed for the protection of the environment. For example, if the action is expected to increase emissions resulting in the violation of air quality standards or construction traffic or project noise will definitely be in violation of GSA, OSHA, State or local noise standards, and one or more types of sensitive receptors would definitely be at risk.

c. The GSA project, its contractors, and its final solid waste disposal site(s) will not be in compliance with the EPA's "Solid Waste Management Guidelines" for thermal processing and land disposal, storage and collection, source separation, and resource recovery facilities; or with any other Federal, State or local regulations, standards or health costs. The final disposal site(s) will not have adequate capacity for the solid waste from the GSA project.

d. Public utilities have insufficient capacity to provide reliable service to the project and to ensure delivery of required flow for average and peak periods.

e. The action is located on or near an active geological fault or unique geological features.

f. Wastewater generated by the new facility will represent more than 5 percent of the average daily flow to a public treatment plant.

g. The proposed project will not be compatible with the present zoning of the specific site and/or delineated area.

h. The proposed project will not conform with official local and regional plans.

i. The proposal may adversely affect an endangered or threatened species or its habitat.

j. The proposal may adversely affect parklands, prime farmlands, floodplains, wetlands, wild and scenic rivers or ecologically critical areas.

k. The proposal will result in the use of a significant amount (defined as an amount that if spillage occurs it will result in a health hazard or damage to the ecosystem; or if accidentally dumped into the sewage system will damage treatment facilities or contaminate rivers or streams) of dangerous, hazardous, or radioactive materials.

l. Will result in a 5-percent change in the permanent labor force of the SMSA or if not in an SMSA, of the political jurisdiction.

m. Cultural resources on the National Register, eligible for the National Register, and those eligible for the Register, but as yet unstudied or unidentified, will be effected by the proposed action.

n. Local community service administrators indicate that one or more community services will be inadequate to serve the project.

o. The proposed project will permanently alter an area that has been formaly recommended for protection by Federal, State, regional, or local government agencies as part of a land use or development plan.

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ATTACHMENT E

SPACE ACQUISITION ACTIONS

ACTION	Consecutive Steps: Non-Prospectus Lease	Prospectus Lease	Prospectus Action Other Than Lease	OFFICIAL	AVAILABLE ENVIRONMENTAL ACTIONS
Determine space needs exists	•	•	•	Reg. PG and/or Reg. Dir. SMD	Begin gathering information
Select method	•	•	•	" " " " "	Preliminary environmental analysis
Determine delineated area	•	•	•	" " " " "	Preliminary environmental analysis
Transmit prospectus to OMB		•	•	Administrator	Draft EIS or FONSI
Approve prospectus		•	•	OMB	Draft EIS or FONSI
Request offers for space	•			Reg. Dir. SMD	Draft EIS or FONSI
Accept lessor's offer	•			Reg. Dir. SMD/Reg. Comm. P	Final EIS or FONSI
Transmit prospectus to PWC		•	•	Administrator	Final EIS or FONSI
Approve prospectus		•	•	PWC	Final EIS or FONSI
Site selection		•	•	Reg. Dir. SMD	Final EIS or FONSI
Request offers for space		•		" " "	Draft EIS or FONSI
Accept lessor's offer		•		Reg. Dir. SMD/Reg. Comm. P	Final EIS or FONSI

REPAIR & ALTERATION ACTIONS

ACTION	OFFICIAL: Initial Space Alteration	Reimbursable Request	Alteration & Repair	AVAILABLE ENVIRONMENTAL DATA
Determine need for R&A Project (initial space alteration; reimbursable; alteration and repair)	Reg. Dir. SMD	Agency	Reg. Chief, R&A R&A Branch	Begin gathering information
Select extent of alterations	"	"	Reg. Comm. PBS	Preliminary environmental analysis
Approval of prospectus to:				
1. OMB		Administrator		Draft EIS or FONSI
2. Congress		Administrator		Final EIS or FONSI
OMB approves prospectus		OMB		Draft EIS or FONSI
PWC approves prospectus		PWC		Final EIS or FONSI
Approve design (R&A and new construction)	Regional Construction Management Division			Final EIS or FONSI

BILLING CODE 6820-23-C

Attachment F, Federal Property Resources Service, Decision Points

1. *General.*—In accordance with paragraph 1505.1(b) of the CEQ regulations, this attachment designates the major decision points for actions sponsored by FPRS and provides the corresponding environmental data available to the decision maker.

2. *FPRS Principle Programs.*—Discussed in this attachment are as follows:

a. Disposal of Real Property—Appendix A.

b. Acquisition and Disposal of Strategic and Critical Materials—Appendix B.

c. Disposal of Personal Property—Appendix C.

Federal Property Resources Service—Disposal of Real Property; Decision Points

Action	Official	Available environmental data
1. GSA receives a report of excess real property from a Federal holding agency and notifies other Federal agencies of the availability of such property for further Federal utilization.	Regional Administrator*	Begin to gather environmental information.
2a. If Federal agency desires property, and GSA approves, property is transferred to Federal Agency.	Commissioner, FPRS* or Regional Administrator*.	Preliminary environmental analysis.**
b. If no Federal agency desires property or if GSA disapproves request, GSA determines the property surplus and notifies State and local governments of the availability of the property for local public use.	Regional Administrator*	Preliminary environmental analysis.
3. GSA reviews State and local public agency or nonprofit institution requests to acquire the property as well as the comments of other Federal agencies sponsoring such requests, and considers public sale potential.	Regional Administrator* or Commissioner, FPRS*.	Environmental assessment with a FONSI or recommendation for DEIS.
4. GSA Central Office reviews regional office recommendation for FONSI or DEIS and advises regional office only if Central Office disagrees with regional office.	Commissioner, FPRS*	Environmental assessment with a FONSI or recommendation for DEIS.
5. GSA regional office maintains FONSI or initiates DEIS	Regional Administrator*	Environmental assessment with a FONSI or recommendation for a DEIS.
6. GSA Central Office advises Regional Administrator of final disposal determination in cases where Central Office approval is required.	Commissioner, FPRS*	Final EIS or FONSI.
7. GSA regional office disposes of property	Regional Administrator*	FONSI or final EIS.

*Or his designee.
**At this point the requesting Federal agency will be responsible for NEPA implementation.

Federal Property Resources Service—Acquisition and Disposal of Strategic and Critical Materials; Decision Points

Action	Official	Environmental action
1. FPRS receives directive from Federal Preparedness Agency (FPA) to acquire or dispose of strategic and critical materials.	Commissioner, FPRS	Tasks Offices of Property Management and Stockpile Disposal to initiate action and identify potential adverse environmental impacts.
2. Preparation of legislative proposal	Commissioner, FPRS Assistant Commissioner, Office of Stockpile Disposal.	Tasks environmental team to develop Environmental Checklist (EC) on case by case basis; if EC indicates potential adverse impact, tasks team to prepare Environmental Assessment (EA) or Environmental Impact Statement (EIS).
3. Submission of legislative proposal	Commissioner, FPRS	Submission of draft EIS or finding of no significant impact (FONSI) and EA.
4. Implementation of legislation	Commissioner, FPRS Assistant Commissioners, Office of Stockpile Disposal and Property.	Final EIS or FONSI and EA.

Federal Property Resources Service—Rehabilitation, Transfer, Donation, and Sales of Federally Owned Personal Property; Decision Points

Action	Official	Available environmental data
1. GSA rehabilitates and transfers, donates, or sells personal property.	Administrator or his designee	Preliminary environmental analysis.*

*GSA regulations require than any personal property that meets the indicators of significance is not to be accepted by GSA for rehabilitation and transfer, donation, or sales.

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ATTACHMENT G
PRODUCT/MATERIAL ACQUISITION ACTIONS

ATTACHMENT G

PRODUCT/MATERIAL ACQUISITION ACTIONS

ACTION	Consecutive Steps: Negotiated Contract	Formally Advertised Contract/Fact	Formally Advertised Contract/Direct Delivery	OFFICIAL	AVAILABLE ENVIRONMENTAL ACTIONS
Determine agency needs and requirements	o	o	o	Dir., Programs and Requirements (FR)	Begin gathering information
Review alternative method of acquisition and supply	o	o	o	" " "	Preliminary environmental analysis
Select method of acquisition and supply	o	o	o	" " "	Draft EIS or FONSI
Prepare and approve technical description	o	o	o	" " "	" " "
Determine stocking pattern	o	o		Dir., Office of Supply (FS)	" " "
Approve/issue solicitation	o	o	o	Dir., Office of Contracts (FC)	" " "
Contract award	o	o	o	Commissioner, FSS (F)	Final EIS or FONSI

[FR Doc. 79-17772 Filed 6-8-79; 8:45 am]

BILLING CODE 6820-23-C

Regional Public Advisory Panel on Architectural and Engineering Services; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Regional Public Advisory Panel on Architectural and Engineering Services on June 25, 1979, from 9:30 a.m., to 4:00 p.m., in Room 7071 of the GSA Regional Office Building, Seventh and D Streets, S.W., Washington, D.C. The meeting will be devoted to reviewing design concepts of the architect-engineer firm of Metcalf/KCF (Joint Venture) chosen to furnish professional services for Design Services of the Smithsonian Museum Support Center, Suitland, Maryland (GS–03B–99021). The meeting will be open to the public. In order to meet the schedule requirements of the full committee, it will be necessary to hold the meeting on the specified date.

Dated: June 7, 1979.

Walter V. Kallaur,

Regional Administrator of General Services.

[FR Doc. 79-18184 Filed 6-8-79; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health

Allergy and Clinical Immunology Research Committee; Amended Notice of Meeting

Notice is hereby given of the change in the meeting place of the Allergy and Clinical Immunology Research Committee on June 12, 1979, National Institute of Allergy and Infectious Diseases, which was published in the Federal Register on June 4, 1979 (44 FR 32045).

The Committee was to have met in the Federal Building, Room 6C–01, but has been changed to meet in the Westwood Building, Room 740.

(Catalog of Federal Domestic Assistance Program No. 13.855, National Institutes of Health.)

Dated: June 5, 1979.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 79-18008 Filed 6-8-79; 8:45 am]

BILLING CODE 4110-08-M

Communicative Disorders Review Committee; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Communicative Disorders Review Committee, June 10–11, 1979, in the Sonesta Hotel, 5 Cambridge Parkway, Cambridge, MA 02142, which was published in the Federal Register on April 24, 1979 (44 FR 24238). The time of the open portion of the meeing will be changed from 9:00 a.m.–11:00 a.m. on June 10th, to 6:00 p.m.–7:00 p.m. The meeting will be closed to the public on June 10th from 7:00 p.m. until the conclusion of the meeting on June 11th, for review, discussion and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: June 5, 1979.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 79-18007 Filed 6-8-79; 8:45 am]

BILLING CODE 4110-08-M

Mental Retardation Research Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Mental Retardation Research Committee, National Institute of Child Health and Human Development, on July 18–19, 1979, in the Landow Building, Room A, 1st floor, 7910 Woodmont Avenue, Bethesda, Maryland.

This meeting will be open to the public on July 18 from 9:00 a.m. to 11:00 a.m. to discuss items relative to the Committee's activities including announcements by the Director, Deputy Director, Associate Director for Review and the Chief of the Mental Retardation and Developmental Disabilities Branch and the Executive Secretary of the Committee.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on July 18 from 11:00 a.m. to adjournment on July 19 for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Marjorie Neff, Committee Management Officer, NICHD, Building 31, Room 2A–04, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1848, will provide a summary of the meeting and roster of committee members. Dr. Stanley L. Slater, Executive Secretary, Mental Retardation Research Committee, NICHD, Landow Building, Room 7C16, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1696, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, National Institutes of Health)

Dated: June 4, 1979.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 79-18012 Filed 6-8-79; 8:45 am]

BILLING CODE 4110-08-M

National Advisory Neurological and Communicative Disorders and Stroke Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Neurological and Communicative Disorders and Stroke Council, National Institutes of Health, July 30, 1979, at 9 a.m. in Building 31–C, Conference Room 6, Bethesda, Maryland 20205. The meeting will be open to the public from 9 a.m. until 9:30 a.m. on July 30, 1979, to discuss program planning and program accomplishments. Attendance by the public will be limited to space available. In accordance with the provisions set forth in Sections 552b(c)(4), and 552b(c)(6) of Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 9:30 a.m. on July 30, 1979, until the conclusion of the meeting that day for review, discussion and evaluation of research grant applications. The portion of the meeting being closed involves the review, discussion, and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Chief, Office of Scientific and Health Reports, Miss Sylvia Shaffer, Building 31, Room 8A06, NIH, NINCDS, Bethesda, Maryland 20205, telephone (301) 496–5751, will furnish summaries of

the meeting and rosters of committee members.

Dr. John C. Dalton, Executive Secretary, Federal Building, Room 1016, Bethesda, Maryland 20205, Telephone (301) 496–9245, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.851, 13.852, 13.853, 13.854, National Institutes of Health.)

Dated: June 4, 1979.

Suzanne L. Fremeau,

Committee Management Officer, National Institutes of Health.

[FR Doc. 79-18013 Filed 6-8-79; 8:45 am]

BILLING CODE 4110-08-M

National Cancer Institute Meeting To Review Papers on Health Effects of Radiation Exposure

At his press conference on February 27, 1979, Secretary Joseph A. Califano indicated that the Director, NIH, would request outside scientific experts to review the previously unpublished HEW papers on health effects of radiation exposure which may have been associated with the atmospheric testing of nuclear weapons and recommend any additional research needs identified in this review.

Notice is hereby given of the second meeting of the scientific experts to review the content of HEW papers, June 18–20, 1979 at the Marriott Hotel, Dulles International Airport, Virginia. The entire meeting will be open to the public from 8:30 a.m. to 5:00 p.m. Attendance by the public will be limited to space available.

Dr. Victor H. Zeve, Special Assistant to the Deputy Director, National Cancer Institute, Building 31, Room 10A34, Bethesda, Maryland 20205 (301/496–5515) will provide additional information.

Dated: June 5, 1979.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 79-18012 Filed 6-8-79; 8:45 am]

BILLING CODE 4110-08-M

Organ Site Subcommittee of the National Cancer Advisory Board; Cancelled Meeting

Notice is hereby given of the cancellation of the meeting of the Organ Site Subcommittee of the National Cancer Advisory Board, June 20, 1979, Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20015, which was published in the Federal Register on May 23, 1979 (44 FR 29974). For further information, please contact Dr. Andrew Chiarodo, Executive Secretary, Westwood Building, Room 550, National Institutes of Health, Bethesda, Maryland 20205 (301/496–7194).

Dated: June 5, 1979.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 79-18011 Filed 6-8-79; 8:45 am]

BILLING CODE 4110-08-M

Transplantation Biology and Immunology Committee; Amended Notice of Meeting

Notice is hereby given of the change in the meeting place of the Transplantation Biology and Immunology Committee on June 15, 1979, National Institute of Allergy and Infectious Diseases, which was published in the Federal Register on June 4, 1979 (44 FR 32046).

The Committee was to have met in the Federal Building, Room 6C–01, but has been changed to meet in the Westwood Building, Room 740.

(Catalog of Federal Domestic Assistance Program No. 13.855, National Institutes of Health.)

Dated: June 5, 1979.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 79-18010 Filed 6-8-79; 8:45 am]

BILLING CODE 4110-08-M

Office of Education

Grants to State Educational Agencies To Meet the Special Educational Needs of Migratory Children; Intent To Compromise Claim

AGENCY: Office of Education, HEW.

ACTION: Notice of Intent to Compromise Claim.

SUMMARY: Notice is given that under section 452(f) of the General Education Provisions Act (GEPA), the Commissioner intends to compromise a claim against the North Carolina State Department of Public Instruction now pending before the Department's Title I Audit Hearing Board, docket no. 12–(27)–78.

SUPPLEMENTARY INFORMATION: As described in the Federal Register Notice of October 27, 1972, 37 FR 23002, which established the Title I Audit Hearing Board, the purpose of the Board is to review and hear audit disputes arising from the Office of Education's administration of Title I of the Elementary and Secondary Education Act (ESEA). The procedures of the Title I Audit Hearing Board were amended in the Federal Register on July 12, 1978, 43 FR 29868. On April 20, 1979, the Commissioner delegated the authority to compromise claims under section 452(f) GEPA to the Executive Deputy Commissioner for Resources and Operations.

Section 141 of title I, ESEA authorizes grants to States to conduct supplementary projects designed to meet the special educational needs of migratory children of migratory agricultural workers or of migratory fishermen. The regulations governing the title I, Migrant program are presently found in 45 CFR Part 116d, and were published in the Federal Register on November 13, 1978, 43 FR 52676.

The claim in dispute arose out of the North Carolina State Department of Public Instruction's administration of its fiscal year 1971 title I, Migrant program. On June 14, 1976, the Office of Education informed the North Carolina State Department of Public Instruction that due to its alleged violations of the title I statute and regulations, it would be necessary to refund $25,516.00. The North Carolina State Department of Public Instruction appealed to the title I Audit Hearing Board on July 1, 1976. This appeal was announced in the Federal Register on September 2, 1977, 42 FR 44272. The title I Audit Hearing Board, with the agreement of the parties, subsequently reduced the amount at issue to $16,376.48 to reflect the applicable statute of limitations, 20 U.S.C. 884, and other matters.

As part of its fiscal year 1971 title I, Migrant summer project the North Carolina State Department of Public Instruction provided services to migratory persons over the age of 21 years. The principal issue that remains in dispute is whether these persons were eligible to participate in the title I, Migrant project.

The Commissioner proposes to compromise this claim for $6,000. The Commissioner believes that it would not be in the public interest to continue this proceeding, given the cost of the appeal process and the fact that the current title I regulations, 45 CFR 116.2, clearly prohibit the practice of providing title I services to migrant persons over the age of 21. The proposed compromise will not affect any other audit proceeding before the title I Audit Hearing Board.

The public is specifically invited to comment upon the Commissioner's intent to compromise this claim for $6,000. Interested persons may express their opinions during the 45 day period that follows publication of this notice by submitting written data, views, or

arguments. Additional information may be obtained by writing to: Mr. Jack Kristy, Attorney, Education Division, Office of the General Counsel, Department of Health, Education, and Welfare, 400 Maryland Avenue, S.W., (Room 4095, FOB-6), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Kristy, telephone (202) 245-8955.

(20 U.S.C. 1234a(f) and 2761)

Dated: May 23, 1979.

James Pickman,

Executive Deputy Commissioner for Resources and Operations.

[FR Doc. 79-17147 Filed 6-8-79; 8:45 am]

BILLING CODE 4110-02-M

Guaranteed Student Loan Program; Special Allowance for Quarter Ending March 31, 1979

The Commissioner announces that for the three-month period ending March 31, 1979, and under the statutory formula of section 438(b) of the Higher Education Act of 1965, a special allowance at an *annual rate* of six and one-quarter percent will be paid to holders of eligible loans in the Guaranteed Student Loan Program.

Using the statutory formula, the special allowance for this *three-month* period was computed by determining the average of the bond equivalent rates of the 91-day Treasury bills for this period (9.72 percent), by subtracting 3.5 percent from this average, by rounding the resultant percent (6.22) upward to the nearest one-eighth of one percent (6.25), and by dividing the resultant percent by four (1.5625 percent). Thus, the special allowance to be paid for this period will be 1.5625 percent of the average unpaid balance of principal (not including unearned interest added to principal) of all eligible loans held by lenders.

Although the statutory formula provides that the special allowance for any twelve-month period shall not exeed five percent, the special allowance for any individual quarter may exceed the annual rate of five percent.

(20 U.C. 1087-1(b))

Ernest L. Boyer,

Commissioner of Education.

[FR Doc. 79-18089 Filed 6-8-79; 8:45 am]

BILLING CODE 4110-02-M

Health Education Assistance Loan Program; Variable Interest Rate for Quarter Ending June 30, 1979

The Commissioner announces that for the 3-month period ending June 30, 1979, the variable interest rate on loans in the Health Education Assistance Loan (HEAL) Program shall be at the annual rate of 13¼ percent.

Using the regulatory formula (45 CFR 126.13(a)(2) and (3)), the Commissioner computed the variable rate for this three month period by adding the fixed annual rate (7 percent) plus a variable component which is calculated by determining the average of the bond equivalent rates of the 91-day Treasury bills for the preceding calendar quarter (9.72 percent), by subtracting 3.5 percent from that average, and by rounding the resultant percent (6.22) upward to the nearest one-eighth of one percent (6.25).

Although the regulatory fomula provides that the variable interest rate shall not exceed 12 percent per year, the interest rate for any individual quarter may exceed the annual rate of 12 percent.

Ernest L. Boyer,

Commissioner of Education.

[FR Doc. 79-18090 Filed 6-8-79; 8:45 am]

BILLING CODE 4110-02-M

Migrant Education Program—Closing Date for Transmittal of Applications, Fiscal Year 1980

Applications are invited for grants under the Migrant Education Program of Title I of the Elementary and Secondary Education Act.

Authority for this program is contained in sections 141-143 of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561.

Eligible applicants are State educational agencies (SEAs).

The purpose of this program is to provide grants to SEAs to establish or improve programs designed to meet the special educational needs of migratory children of migratory agricultural workers or migratory fishers.

Closing Date for Transmittal of Applications: Applications for grants must be mailed or hand-delivered by July 1, 1979, unless, in response to a specific request, the U.S. Office of Education extends this closing date for a particular applicant.

The U.S. Office of Education may grant an extension if the applicant SEA can show that the July 1 closing date creates difficulties for that State because the State has already planned its application development and submittal according to a different schedule. If an applicant SEA needs an extension of the July 1, 1979, closing date, it should request one in writing immediately.

Applications Delivered by Mail: An application sent by mail must be addressed to Mr. Vidal A. Rivera, Jr., Chief, Migrant Education Branch, Office of Compensatory Educational Programs, U.S. Office of Education, 400 Maryland Avenue, S.W. (FOB #6, Room 2031), Washington, D.C. 20202.

Proof of mailing may consist of a legible U.S. Postal Service dated postmark or a legible mail receipt with the date of mailing stamped by the U.S. Postal Service. Private metered postmarks or mail receipts will not be accepted without a legible date stamped by the U.S. Postal Service.

Note.—The U.S. Postal Service does not uniformly provide a dated postmark. Applicant should check with their local post office before relying on this method.

Applicants are encouraged to use registered or at least first class mail.

Applications Delivered by Hand: An application that is hand delivered must be taken to the U.S. Office of Education, Migrant Education Branch, Office of Compensatory Educational Programs, Room 2031, Federal Office Building 6, 400 Maryland Avenue, S.W., Washington, D.C. The Migrant Education Branch will accept hand delivered applications between 8:00 a.m. and 4:00 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays. Applications that are hand delivered will not be accepted after 4:00 p.m. on the closing date.

Program Information: Grants are made to SEAs to establish or improve programs designed to meet the special educational needs of migratory children of migratory agricultural workers or migratory fishers. The State programs are conducted under the provisions of Pub. L. 89-10, as amended through Pub. L. 95-561, and the program regulations, as revised in Fiscal Year 1979 (45 CFR Part 116d, November 13, 1978). An applicant SEA must submit a State Program Plan covering a period of one year (to be published in accordance with section 435 of the General Education Provisions Act) and a State Monitoring and Enforcement Plan for a period of from one to three years.

Application Forms: Application forms and instructions were mailed to all eligible SEAs on January 11, 1979. Additional forms and instructions may be obtained by writing to the U.S. Office of Education, Migrant Education Branch, Office of Compensatory Educational

Programs, 400 Maryland Avenue, S.W. (FOB #6, Room 2031), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program application package.

Applicable Regulations. The regulations applicable to this program are—

(a) Office of Education General Provisions for Programs Regulations (45 CFR Parts 100 and 100b),

(b) Title I General Provisions Regulations (45 CFR Part 116), and

(c) Migrant Education Program Regulations, as revised in Fiscal Year 1979 (45 CFR Part 116d).

Further Information: For further information, contact Mr. Vidal A. Rivera, Jr., Chief, Migrant Education Branch, Office of Compensatory Educational Programs, U.S. Office of Education, 400 Maryland Avenue, S.W. (FOB #6, Room 2031), Washington, D.C. 20202. Telephone (202) 245-2222.

(20 U.S.C. 2761, 2762, 2763)

(Catalog of Federal Domestic Assistance No. 13.428, Educationally Deprived Children—Migrants)

Dated: May 22, 1979.

Ernest L. Boyer,

Commissioner of Education.

[FR Doc. 79-16691 Filed 6-8-79; 8:45 am]

BILLING CODE 4110-02-M

Office of the Assistant Secretary for Health

National Council on Health Care Technology; Meeting

Pursuant to the Federal Advisory Act (P.L. 92-463) notice is hereby given that the first meeting of the National Council on Health Care Technology, established pursuant to the Health Services Research, Health Statistics, and Health Care Technology Act of 1978 (P.L. 95-623) which advises the Secretary and the Director of the National Center for Health Care Technology on the activities of the Center will convene on Wednesday, July 11, 1979, at 9:30 a.m. and Thursday, July 12, 1979, at 9 a.m. in Room 800 of the Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201. Principal consideration and discussion will be devoted to an overview of the Department's efforts in the technology assessment area; selected briefings by HEW agencies concerning technology related issues; and future priorities. In addition to the newly appointed members being sworn in, a portion of the meeting will be reserved to elect a chairperson, as stipulated in the law. These meetings are open for public observation and participation.

Further information regarding the Council may be obtained by contacting Marilyn McCarroll, Office of Health Research, Statistics, and Technology, Room 721H, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201, telephone (202) 472-6343.

Dated: June 5, 1979.

Marilyn McCarroll,

Executive Secretary, Office of Health Research, Statistics, and Technology.

[FR Doc. 79-18077 Filed 6-8-79; 8:45 am]

BILLING CODE 4110-99-M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Contract Negotiations With the Lower Yellowstone Irrigation Districts No. 1 and No. 2; Negotiate Rehabilitation and Betterment Loan Repayment Contracts

In accordance with procedures established by the Department of the Interior concerning public participation in water service and repayment negotiations, the Bureau of Reclamation intends to initiate negotiations with the Lower Yellowstone Irrigation Districts No. 1 and No. 2 for repayment of a loan covering the cost of rehabilitation and betterment program to be performed on the Lower Yellowstone Project in Montana and North Dakota.

The Lower Yellowstone Project was constructed near the convergence of the Yellowstone and Missouri Rivers between 1905 and 1908. The project was designed to serve approximately 58,000 acres of irrigable land and is operated and maintained by the Lower Yellowstone Irrigation Districts No. 1 and No. 2. The project contains numerous obsolete and deteriorating facilities. This situation has resulted in system failures, excessive water losses, and high operation and maintenance costs.

The proposed program would include lining of canals and laterals, replacing open laterals with underground pipe, stabilizing canal banks, and replacing other project structures. The program is estimated to cost $12,600,000 which is proposed to be financed by Federal loans issued pursuant to the Rehabilitation and Betterment Act of 1949 (63 Stat. 726), as amended. The districts will repay all loan funds to the United States. The terms and conditions of the proposed contracts are ultimately dependent upon the Commissioner of Reclamation's approval of the districts' application for the loans and the Secretary's approval of the form of the proposed contract.

All meetings scheduled by the Bureau of Reclamation with the districts for the purpose of discussing terms and conditions of the proposed repayment contracts shall be open to the general public as observers. Advance notice of meetings shall be furnished only to those parties having previously furnished a written request for such notice at least one week prior to any meeting. Requests should be addressed to: Regional Director, Bureau of Reclamation, Attention Code 440, P.O. Box 2553, Billings, Montana 59103. All written correspondence concerning the proposed contract shall be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

The public is invited to submit written comments on the terms of the proposed contracts not later than 30 days after the completed contract drafts are declared to be available to the public. The Commissioner of Reclamation will review comments submitted and based on the number, source, and nature of the comments, he will decide whether to hold a public hearing.

For further information on scheduled contract negotiating sessions and copies of the proposed contract form, please contact Mr. Gary Anderson, Agricultural Economist, Division of Water and Land, at the address stated above, telephone No. (406) 657-6424.

Dated: June 1, 1979.

Orrin Ferris,

Acting Commissioner of Reclamation.

[FR Doc. 79-17605 Filed 6-8-79; 8:45]

BILLING CODE 4310-09-M

Water Sevice Contract Negotiations With Mohave County, Ariz.; Intent To Negotiate a Water Service Contract

The Department of the Interior, through the Bureau of Reclamation, intends to negotiate a water service contract with Mohave County, Arizona, to provide for the delivery of not to exceed 10,000 acre-feet of Colorado River water per year for use in the vicinity of Bullhead City, Arizona. The proposed contract will be drafted pursuant to the provisions of the Boulder Canyon Project Act and, as provided in that act, will be for permanent water service. The county will make the water

available by subcontract to water user organizations in the area.

The proposed rate to be charged the county for each acre-foot of Colorado River water delivered is $0.25 as established by the 1944 contract with the State of Arizona.

The public is invited to observe the negotiating sessions and to submit written comments on the form of the proposed contract not later than 30 days after the completed contract is declared to be available to the public.

For further information about scheduled negotiations and copies of the proposed contract, please contact Mr. George Blake, Chief, Contracts and Repayment Branch, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, telephone No. (702) 293–8536. All meetings scheduled by the Bureau of Reclamation with a potential contractor for the purpose of discussing terms and conditions of a proposed contract shall be open to the general public as observers. Advance notice of such meetings shall be furnished only to those parties having previously furnished a written request for such notice to the office identified above at least 1 week prior to any meetings. All written correspondence concerning the proposed contract shall be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

Dated: June 1, 1979.

Orrin Ferris,

Acting Commissioner of Reclamation.

[FR Doc. 79-17887 Filed 6-8-79; 8:45 am]

BILLING CODE 4310-09-M

National Park Service

Chiricahua National Monument: Boundary Study; Notice of Intent

Notice is hereby given that the National Park Service will hold a series of four public meetings on Chiricahua National Monument's boundary study in mid-July, 1979, in Arizona.

Each meeting will begin at 8 p.m. The schedule of meetings is as follows:

July 9—Tucson, University of Arizona BioScience Laboratory, Room 301.
July 10—Portal, Portal School.
July 11—Willcox, Elks Club, 247 East Stewart Street
July 12—Douglas, Douglas High School, 1550 15th Street.

These meetings are a part of the public involvement process which seeks the views of interested parties. A Boundary Analysis booklet has been prepared that outlines the area resources, management concerns and possible boundary revisions for discussion purposes.

Interested individuals, representatives of organizations and public officials are encouraged and invited to express their views at these public meetings. Those unable to appear in person may submit written statements to the Superintendent, Chiricahua National Monument, Dos Cabezas Star Route, Willcox, Arizona 85643, until thirty days after the last meeting for inclusion in the public record.

Those who wish to provide oral comments for the record will be requested to register at the door. The number of people and time limitations may make it necessary to limit the lengths of oral presentations. An oral statement, however, may be supplemented by a more complete written statement which also will be made a part of the record.

Anyone wishing copies of the Boundary Analysis booklet, which are available until the supply is exhausted, additional information on the public meetings or the National Park Service planning process may write to the Superintendent, Chiricahua National Monument at the above address.

Dated: June 1, 1979.

John H. Davis,

Acting Regional Director, Western Region, National Park Service.

[FR Doc. 79-18008 Filed 6-8-79; 8:45 am]

BILLING CODE 4310-70-M

Office of the Secretary

[INT DES 79-30]

Proposed Grazing Management Program for the East Roswell Environmental Statement Area, Roswell, N. Mex.; Availability of Draft Environmental Statement and Hearing

In accordance with Section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) has prepared a Draft Environmental Statement on a proposed grazing management program that is designed to improve rangeland vegetation conditions, to provide a continuing supply of forage for livestock and wildlife consistent with multiple use management, and to construct range developments.

The statement addresses an improved livestock grazing management program on approximately 1,595,000 acres of public land. The proposed action includes grazing treatment designed to enhance the vegetation resources, improve range conditions, reduce erosion, improve water quality, provide quality habitat for wildlife, protect archaeological and historical sites, and provide a continuous supply of livestock and wildlife forage. Mechanical and herbicide treatments are proposed to reduce the density of mesquite and creosote brush that has invaded these grasslands. Adjustments in livestock grazing use, construction of water developments and fencing are also proposed.

Copies of the draft environmental statement are available at the Roswell District Office, 1717 West Second Street, Featherstone Farms Bldg., Roswell, New Mexico 88201, Telephone (505) 622–7670.

Copies are available for inspection at the BLM District Office, 1717 W. Second, Roswell, New Mexico, and the BLM State Office, Federal Building, Santa Fe, New Mexico.

In addition to the above locations, reading copies are available at public and/or university libraries in Roswell, Carlsbad, Hobbs, Las Cruces, and Albuquerque, New Mexico.

Written comments will be accepted until July 29, 1979, which is the close of the 45-day public comment period. Comments should be addressed to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

Public hearings will be held in Roswell on July 17, 1979, from 7 to 10 p.m. at the Roswell Inn and in Carlsbad on July 18, 1979 from 7 to 10 p.m. at the Holiday Inn.

The hearing will provide the BLM, under Section 102(2)(C) of the National Environmental Policy Act of 1969, with the opportunity to receive additional comments and views of interested State and local agencies and the public.

Interested individuals, representatives of organizations, and public officials wishing to testify are requested to contact Tom Kiddoo, Public Affairs Specialist, at the BLM District Office in Roswell by July 11, 1979, phone (505) 622–7670. Written requests to testify should identify the organization represented, be signed by the prospective witness, and state a phone number for contact purposes. Because of time constraints, oral testimony will be limited to 10 minutes unless additional time is requested in advance.

Oral testimony can be supplemented with written statements at the time oral testimony is presented. Also, speakers with prepared speeches may file their text with the presiding officer whether or not they have been able to finish oral delivery in the allotted time. If time permits, following oral testimony by those who have given advance notice,

the hearings officer will give others an opportunity to be heard.

Dated: June 6, 1979.

Heather L. Ross,

Deputy Assistant Secretary.

[FR Doc. 79-18093 Filed 6-8-79; 8:45 am]

BILLING CODE 4310-84-M

[INT DES 79-32]

Proposed Grazing Management Program for the Three Corners Planning Unit, Vernal, Utah; Availibility of Three Corners Grazing Management Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a draft environmental statement for proposed grazing management of the Three Corners Planning Unit, located in the northeast corner of Utah approximately 20 miles north of Vernal, Utah. The planning unit includes a total of 190,536 acres of public land administered by the Bureau of Land Management, 34,230 of which are in Colorado.

The proposed action is to initially allocate the following animal unit months (AUMs) of forage: 15,788 for cattle; 3,655 for sheep; 9,684 for deer; 4,838 for elk; and 378 for antelope. In 15 to 20 years the proposed allocation of AUM's would be: 16,174 for cattle; 3,259 for sheep; 10,299 for deer; 6,091 for elk; and 380 for antelope.

The 50 existing allotments in the Three Corners Planning Unit are proposed to be combined into 39 allotments. The proposed action for these 39 allotments would include reserving one allotment for big game. Present allotment wide grazing is proposed to continue on 17 allotments and present improved management is proposed to continue on four allotments with existing management plans. The proposal includes the implementation of improved grazing management on 17 allotments.

Developments proposed for the Three Corners Planning Unit include 3.5 miles of stream bank fencing, 26.6 miles of division and allotment boundary fencing, and 52 water developments. Sage brush control is proposed on 1,620 acres.

The Bureau of Land Management invites written comments on the draft statement to be submitted by July 30, 1979, to the District Manager, Vernal District, Bureau of Land Management, 170 South 500 East, Vernal, Utah 84078.

Copies of the draft environmental statement are available at the Vernal District Office, Bureau of Land Management, 170 South 500 East, Vernal, Utah 84078. Telephone (801) 789-1362.

A copy of the statement may be reviewed at the following locations:

Office of Public Affairs, Bureau of Land Management, Interior Building, 18th and C Streets, N.W., Washington, D.C. 20240.
Richfield District Office, 150 East 900 North Street, Richfield, Utah 84701.
Harold B. Lee Library, Brigham Young University, Provo, Utah 84601.
Utah State Office, Bureau of Land Management, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111.
Vernal District Office, 170 South 500 East, Vernal, Utah 84078.
Uintah County Library, Courthouse, Vernal, Utah 84078.

Notice is also given that oral and/or written comments will be recieved at a formal public hearing to be held on July 12 at the following location:

Uintah County Courthouse, Courtroom, Vernal, Utah, at 1 p.m. and at 7 p.m.

Witnesses presenting oral comment should limit their testimony to ten (10) minutes. Written requests to testify orally should be submitted to the District Manager, Vernal District, Bureau of Land Management, 170 South 500 East, Vernal, Utah 84078, prior to the close of business, July 10, 1979.

Comments on the draft statement, whether written or oral, will receive equal consideration in the preparation of a final environmental statement.

Dated: June 6, 1979.

Heather L. Ross,

Deputy Assistant Secretary.

[FR Doc. 79-18095 Filed 6-8-79; 8:45 am]

BILLING CODE 4310-84-M

[INT DES 79-31]

Proposed Grazing Management Program for the Randolph Environmental Statement Area, Rich County, Utah; Availability of Draft Environmental Statement and Public Hearing

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 and a 1975 Federal court order, the Bureau of Land Management (BLM) has prepared a draft environmental statement for the proposed Randolph Grazing Management Program in Rich County, Utah.

The proposal consists of an initial action that would allocate 22,350 AUMs of livestock forage. The long-term action proposes an increase in the availability of livestock forage to 35,241 AUMs. Vegetation treatments, range developments, such as fences and water developments, and prescribed grazing treatments would be needed to facilitate this action. The objective of the proposal is to provide land use management on the basis of multiple use and long-term sustained yield of the natural resources on 140,296 acres of public land.

The Bureau of Land Management invites written comments on the draft statement to be submitted before July 30, 1979, to the District Manager, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah 84119.

A limited number of copies are available upon request to the District Manager at the above address. Public reading copies will be available for review at the following locations:

Office of Public Affairs, Bureau of Land Management, Interior Building, 18th and C Streets NW, Washington, D.C. 20240, Telephone (202) 343-5717.
Salt Lake City District Office, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah 84119, Telephone (801) 524-5348.
Utah State Office, Bureau of Land Management, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111, Telephone (801) 524-4257.

Notice is hereby given that oral and/or written comments will be received at public hearings to be held at Randolph, Utah on July 18, 1979 at the Rich County Courthouse beginning at 1:00 p.m. and 7:00 p.m.

Written and oral comments on the draft environmental statement will receive consideration in preparation of the final environmental statement.

Dated: June 6, 1979.

Heather L. Ross,

Secretary.

[FR Doc. 79-18094 Filed 6-8-79; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

Advisory Committee of the National Institute of Law Enforcement and Criminal Justice; Meeting

Notice is hereby given that the Advisory Committee of the National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, will meet on June 28, 1979 from 9:00 a.m. to 5:00 p.m. and on June 29, 1979 from 9:00 a.m. to 12:00 p.m. at the Holiday Inn, 480 King Street, Old Towne, Alexandria, Virginia.

The major topics of discussion will concern the Task Force on the National Institute of Justice, data utilization and access issues, and the unsolicited research program.

For further information, please contact Harry Bratt, National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U.S. Department of Justice, Washington, D.C. 20531 (301/492-9108).

H. Bratt,

Institute of Law Enforcement and Criminal Justice.

[FR Doc. 79-18060 Filed 6-8-79; 8:45 am]
BILLING CODE 4410-18-M

Law Enforcement Education Program; Fund Availability

The availability of institutional applications for participation in the Law Enforcement Education Program (LEEP) for academic year 1979-80, was announced in Volume 43, Number 243 of the **Federal Register** on Monday, December 18, 1978, 43 FR 58874. The President's fiscal year 80 budget request for LEAA to Congress has not included an appropriation for LEEP.

In the event that no money is appropriated for the 1980-81 academic year, it is the intention of LEAA to restrict funding of LEEP for the 1979-80 academic year to the $25 million authorized by Congress during FY 1979. This amount should be sufficient to satisfy the needs of returning and transfer students currently funded by the program, but is not sufficient to fund new students or new institutional admissions to the program.

For further information, please call 301/492-9040 and ask for the LEEP Coordinator responsible for your state.

Dated: June 1, 1979.

J. Price Foster,

Director, Office of Criminal Justice Education and Training.

[FR Doc. 79-18041 Filed 6-8-79; 8:45 am]
BILLING CODE 4410-18-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 79-60]

NASA Wage Committee; Meeting

Pursuant to the provisions of Section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the NASA Wage Committee is scheduled for June 26, 1979, from 1:20 p.m. to 4:30 p.m. The meeting will be held in Room 226-B 600 Independence Avenue SW, Washington, DC 20546.

The Committee's primary responsibility is to consider and make recommendations to the NASA Director of Personnel on all matters involved in the development and authorization of a Wage Schedule for the Cleveland, Ohio, wage area pursuant to Pub. L. 92-392.

The approved agenda of the Committee provides that it will consider wage survey data, local reports, recommendations, and statistical analyses and proposed schedule review therefrom.

Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(4), it has been determined that this meeting will be closed to the public.

However, members of the public who may wish to do so, are invited to submit material in writing to the Chairperson concerning matters felt to be deserving of the Committee's attention. Additional information concerning this meeting may be obtained by contacting the Chairperson, NASA Wage Committee, Lewis Research Center, NASA, 21000 Brookpark Road, Cleveland, Ohio 44135.

Arnold W. Frutkin,

Associate Administrator for External Relations.

June 5, 1979.

[FR Doc. 79-18064 Filed 6-8-79; 8:45 am]
BILLING CODE 7510-01-M

NATIONAL ENDOWMENT FOR THE HUMANITIES

Humanities Panel; Notice of Meeting

June 5, 1979.

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, as amended), notice is hereby given the following meetings of the Humanities Panel will be held at 806 15th Street, N.W., Washington, D.C. 20506:

1. Date and time: June 28 and 29, 1979; 9:00 a.m. to 5:00 p.m.
Room: 1023.
Purpose: To review applications for the development of humanities Special Program formats submitted to the National Endowment for the Humanities for projects beginning after October 1, 1979.
2. Date and time: June 28 and 29, 1979; 9:00 a.m. to 5:00 p.m.
Room: 807
Purpose: To review Museums and Historical Organizations applications submitted to the National Endowment for the Humanities for projects beginning after July 1, 1979.
3. Date and time: July 6, 1979; 9:00 a.m. to 5:30 p.m.
Room: 807
Purpose: To review applications submitted to the Public Library Program of the National Endowment for the Humanities for projects beginning after October 1, 1980.
4. Date and time: July 9 and 10, 1979; 9:00 a.m. to 5:30 p.m.
Room: 807
Purpose: To review applications submitted to the Museums and Historical Organizations Program of the National Endowment for the Humanities for projects beginning after July 1, 1979.
5. Date and time: July 9 and 10, 1979; 9:00 a.m. to 5:30 p.m.
Room: 1023
Purpose: To review applications submitted to the Division of State Programs of the National Endowment for the Humanities for projects beginning after September 1, 1979.
6. Date and time: July 11 and 12, 1979; 8:30 a.m. to 5:30 p.m.
Room: 807
Purpose: To review media grant applications in all the fields of the humanities submitted to the National Endowment for the Humanities for projects beginning after October 1, 1979.
7. Date and time: July 16 and 17, 1979; 9:00 a.m. to 5:30 p.m.
Room: 807
Purpose: To review applications submitted to the Museums and Historical Organizations Program of the National Endowment for the Humanities for projects beginning after July 1, 1979.

Because the proposed meetings will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meetings would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close these meetings to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street, N.W., Washington, D.C. 20506, or call 202-724-0367.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 79-18058 Filed 6-8-79; 8:45 am]
BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Improved Safety Systems Subcommittee; Meeting

The ACRS Improved Safety Systems Subcommittee will hold an open meeting on June 28, 1979, in Room 1046, 1717 H Street, N.W., Washington, DC 20555. Notice of this meeting was published on May 24, 1979 (44 FR 30177).

In accordance with the procedures outlined in the Federal Register on October 4, 1978, (43 FR 45926), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

Tuesday, June 26, 1979.—The meeting will commence at 8:30 a.m.

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full Committee.

At the conclusion of the Executive Session, the Subcommittee will hold discussions with representatives of the NRC Staff and the Department of Energy (DOE), and their consultants, regarding their program plans for research to improve the light-water reactor safety systems, and expected changes in these programs due to the March 28, 1979 Three Mile Island, Unit 2 Accident. The Subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time alloted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Dr. Thomas G. McCreless, (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EDT.

Dated: June 4, 1979.

John C. Hoyle,

Advisory Committee, Management Officer.

[FR Doc. 79-17629 Filed 6-8-79; 8:45 am]

BILLING CODE 7590-01-M

Applications for Licenses To Export Nuclear Facilities or Materials

Pursuant to 10 CFR 110.40, "Public Notice of Receipt of an Application," please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. A copy of each application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW, Washington, D.C.

Dated this day June 1, 1979, at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Gerald G. Ophinger,

Assistant Director, Export/Import and International Safeguards, Office of International Programs.

Name of applicant, date of application, date received, application number	Material type	Material in kilograms: Total element	Material in kilograms: Total isotope	End-use	Country of destination
Marubeni America Corp., 05/07/79, 05/09/79, XSNM01510	12.19% enriched uranium	660.000	75.516	For use in "Joyoo" experimental fast breeder reactor.	Japan.
Mitsui and Company, 05/01/79, 05/07/79, XSNM01517	3.95% enriched uranium	30.451	842	Reload fuel for Fukushima, unit 3.	Japan.
Transnuclear, Inc., 05/03/79, 05/04/79, XU09491	Depleted uranium	125.000		Used for ballast purposes and metallurgical alloy tests.	France.
General Electric, 05/07/79, 05/10/79, XCOM0250	Six traversing incore probe detector assemblies for tarapur, value $112,000.				India.
Rhone-Poulenc, Inc., 05/8/79, 05/14/79, XM09462	Thorium	107,502.80		Monazite sand for extraction of yttrium to be resold commercially—uranium will be stored.	France.
	Uranium	10,886.33			

[FR Doc. 79-18095 Filed 6-8-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-313]

Arkansas Power & Light Co.; Authorization To Resume Operation

The United States Nuclear Regulatory Commission issued an Order on May 17, 1979 (44 FR 29997), May 23, 1979), to Arkansas Power & Light Company (the licensee), holder of Facility Operating License No. DPR-51 for Arkansas Nuclear One, Unit No. 1 (ANO-1), confirming that the licensee accomplish a series of actions, both immediate and long term, to increase the capability and reliability of ANO-1 to respond to various transient events. In addition, the Order confirmed that the licensee would maintain ANO-1 in a shutdown condition until the following actions had been satisfactorily completed:

(a) Upgrade of the timeliness and reliability of the Emergency Feedwater (EFW) System by performing the items specified in Enclosure 1 of the licensee's letter of May 11, 1979. Provide changes in design for NRC review.

(b) Develop and implement operating procedures for initiating and controlling EFW independent of Integrated Control System control.

(c) Implement a hard-wired control-grade reactor trip that would be actuated on loss of main feedwater and/or on turbine trip.

(d) Complete analyses for potential small breaks and deveop and implement operating instructions to define operator action.

(e) Assign at least one Licensed Operator who has had Three Mile Island Unit No. 2 training on the Babcock & Wilcox simulator to the control room (one each shift).

By submittal of May 17, 1979, as supplemented by letters dated May 21 and 22, 1979, the licensee has documented the actions taken in response to the May 17, Order. Notice is hereby given that the Director of Nuclear Reactor Regulation (the

Director) has reviewed this submittal and has concluded that the licensee has satisifactorily completed the actions prescribed in items (a) through (e) of paragraph (1) of Section IV of the Order, that the specified modifications and analyses are acceptable and the specified implementing procedures are appropriate. Accordingly, by letter dated May 31, 1979, the Director has authorized the licensee to resume operation of ANO–1. The bases for the Director's conclusions are more fully set forth in a Safety Evaluation dated May 31, 1979.

Copies of (1) the licensee's letters dated May 17, 21 and 22, 1979, (2) the Director's letter dated May 31, 1979, and (3) the Safety Evaluation dated May 31, 1979 are available for inspection at the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. 20555, and are being placed in the Commission's local public document room at the Arkansas Polytechnic College, Russellville, Arkansas. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 31st day of May 1979.

For the Nuclear Regulatory Commission.

Robert W. Reid,

Chief, Operating Reactors Branch #4, Division of Operating Reactors.

[FR Doc. 79-[illegible] Filed 6-8-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-471]

Boston Edison Co. (Pilgram Nuclear Generating Station, Unit 2); Order for Resumption of Evidentiary Hearing

The evidentiary hearing in this matter shall resume on Monday, June 11, 1979, at 1:00 p.m., at the Memorial Hall, Blue Room, 83 Court Street, Plymouth, Massachusetts. If necessary, the hearing will continue at that same place through Friday, June 15, 1979.

So ordered.

Dated at Bethesda, Maryland, this 4th day of June, 1979.

For the Atomic Safety and Licensing Board.

Edward Luton,

Chairman.

[FR Doc. 79-18045 Filed 6-8-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-358 OL]

Cincinnati Gas & Electric Co., et al., (William H. Zimmer Nuclear Station); Location of Evidentiary Hearing

As provided in the Licensing Board's Order of June 4, 1979, the evidentiary hearing in this proceeding, which is to commence at 9:30 a.m. on Tuesday, June 19, 1979 (see Notice of Evidentiary Hearing, published at 44 FR 29182 (May 18, 1979)), will be held at the U.S. District Court (Room 805), U.S. Post Office and Courthouse, 5th and Walnut Streets, Cincinnati, OH 45202. Limited appearance statements will be taken on the morning of June 19 (after preliminary matters and the opening statements of the parties) and on Wednesday evening, June 20, 1979, from 7 p.m. to 9 p.m.

Dated at Bethesda, Maryland, this 5th day of June, 1979.

The Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman

[FR Doc. 79-18043 Filed 6-8-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-295 and 50-304]

Commonwealth Edison Co. (Zion Station, Units 1 and 2); Hearing

This Order changes only the time of day for the start of the evidentiary hearing session beginning on June 11, 1979.

Instead of 9:00 a.m., the hearing is hereby set to begin at 2:00 p.m. on Monday, June 11, 1979.

The place of hearing remains unchanged: Holiday Inn Beach Resort, the Lincoln Ballroom, Sheridan and Wadsworth Roads, Lake Front, Zion, Illinois.

So ordered.

Dated at Bethesda, Maryland, this 4th day of June, 1979.

For the Atomic Safety and Licensing Board.

Edward Luton,

Chairman.

[FR Doc. 79-18044 Filed 6-8-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-295-SP and 50-304-SP]

Commonwealth Edison Co. (Zion Station, Units 1 and 2); Reconstitution of Board

Edward Luton, Esq., was Chairman of the Atomic Safety and Licensing Board for the above proceeding. Because he is transferring to another Federal Agency, where he will serve as an Administrative Law Judge, Mr. Luton is unable to continue his service on this Board.

Accordingly, John F. Wolf, Esq., whose address is 3409 Shepherd Street, Chevy Chase, Maryland 20015, is appointed Chairman of this Board. Reconstitution of the Board in this manner is in accordance with Section 2.721 of the Commission's Rules of Practice, as amended.

Dated at Bethesda, Maryland this 5th day of June 1979.

Robert M. Lazo,

Acting Chairman, Atomic Safety and Licensing Board Panel.

[FR Doc. 79-18050 Filed 6-8-79; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance and Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, SC 705-4, is entitled "Ultrasonic Testing of Reactor Vessel Welds During Inservice Examination" and is intended for Division 1, "Power Reactors. It describes ultrasonic testing procedures acceptable to the NRC staff for implementing the Commission's regulations with regard to the preservice and inservice examination of reactor vessel welds in light-water-cooled nuclear power plants.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review, have not been reviewed by the NRC Regulatory Requirements Review Committee, and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Comments on both drafts should be sent

to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, by August 6, 1979.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of draft guides or the latest revision of published guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future guides or draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 4th day of June 1979.

For the Nuclear Regulatory Commission.

Guy A. Arlotta,

Director, Division of Engineering Standards, Office of Standards Development.

[FR Doc. 79-18084 Filed 6-8-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-1308]

General Electric Co.; Establishment of Atomic Safety and Licensing Board To Preside in Proceeding

Pursuant to delegation by the Commission dated December 29, 1972, published in the Federal Register (37 FR 28710) and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

General Electric Co.

(GE Morris Operation Fuel Storage Installation) Material License No. SNM-1265

This action is in reference to a notice published by the Commission on April 25, 1979, in the Federal Register (44 FR 24354) entitled "General Electric Co.; Consideration of renewal of Materials License No. SNM-1265 issued to GE Morris Operation Fuel Storage Installation".

The Chairman of this Board and his address is as follows:

Andrew C. Goodhope, Esq., 3329 Estelle Terrace, Wheaton, Maryland 20906.

The other Members of the Board and their addresses are as follows:

Dr. Linda W. Little, 5000 Hermitage Drive, Raleigh, North Carolina 27612.

Dr. Forrest J. Remick, 305 E. Hamilton Avenue, State College, Pennsylvania 16801.

Dated at Bethesda, Maryland this 5th day of June 1979.

Robert M. Lazo,

Acting Chairman, Atomic Safety and Licensing Board Panel.

[FR Doc. 79-18085 Filed 6-8-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-286]

Power Authority of the State of New York; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 20 to Facility Operating License No. DPR-64 issued to the Power Authority of the State of New York (the licensee), which revised Technical Specifications for operation of the Indian Point Nuclear Generating Unit No. 3 (the facility) located in Buchanan, Westchester County, New York. The amendment is effective as of the date of issuance.

The amendment revises the Technical Specifications to require actuation of safety injection based on 2 out of 3 channels of low pressurizer pressure.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4), and environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated April 26, 1979, (2) Amendment No. 20 to License No. DPR-64, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's public Document Room, 1717 H Street, NW, Washington, D.C. and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York. A single copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 31st day of May, 1979.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 79-18081 Filed 6-8-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-272]

Public Service Electric & Gas Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 16 to Facility Operating License No. DPR-70, issued to Public Service Electric and Gas Company, Philadelphia Electric Co., Delmarva Power & Light Co., and Atlantic City Electric Co. (the licensee), which revise the Technical Specifications for the Salem Nuclear Generating Station, Unit No. 1 located in Salem County, New Jersey. The amendment is effective as of its date of issuance.

This amendment (1) clarifies the moderator temperature coefficient specification, (2) reduces the required range of the condenser outlet temperature detectors, (3) revises the requirements for Type C containment isolation valve leakage tests, (4) conforms the containment structural integrity surveillance to CFR 50 Appendix J requirements, (5) authorizes the removal of the part-length control rods and (6) includes various administrative changes.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate

findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, negative declaration or environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the applications for amendment dated June 29, September 25, 1978, February 16 and March 1, April 19 and 24, 1979, (2) Amendment No. 16 to License No. DPR-70 and (3) the Commission's related Safety Evaluations. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 1st day of June, 1979.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Operating Reactors Branch #1, Division of Operating Reactors.

[FR Doc. 79-18082 Filed 6-8-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-305, License No. DPR-43]

Wisconsin Public Service Corp. (Kewaunee Nuclear Power Plant); Order for Prehearing Conference

A prehearing conference will be held beginning at 2:00 p.m., June 21, 1979 in the conference room of the Atomic Safety and Licensing Board Panel, Room 415, Fourth Floor, East West Towers, 4350 East West Highway, Bethesda, Maryland, to consider the items set forth in 10 CFR 2.752, including simplification and specification of the issues, the desirability of amending the pleadings, the possibility of obtaining stipulations and admissions, identification of witnesses, the setting of a hearing schedule, and such other matters as may aid in the orderly disposition of the proceeding. The parties or their counsel are directed to attend.

Dated at Bethesda, Maryland this 5th day of June 1979.

Ivan W. Smith,

Administrative Law Judge.

[FR Doc. 79-18083 Filed 6-8-79; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Agency Forms Under Review

Background

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Federal Reports Act (44 USC, Chapter 35). Departments and agencies use a number of techniques including public hearings to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibility under the Act also considers comments on the forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

Every Monday and Thursday, OMB publishes a list of the agency forms received for review since the last list was published. The list has all the entries for one agency together and grouped into new forms, revisions, or extensions. Each entry contains the following information:

The name and telephone number of the agency clearance officer;

The office of the agency issuing this form;

The title of the form;

The agency form number, if applicable;

How often the form must be filled out;

Who will be required or asked to report;

An estimate of the number of forms that will be filled out;

An estimate of the total number of hours needed to fill out the form; and

The name and telephone number of the person or office responsible for OMB review.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. In addition, most repetitive reporting requirements or forms that require one-half hour or less to complete and a total of 20,000 hours or less annually will be approved ten business days after this notice is published unless specific issues are raised; such forms are identified in the list by an asterisk (*).

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. Comments and questions about the items on this list should be directed to the OMB reviewer or office listed at the end of each entry.

If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer of your intent as early as possible.

The timing and format of this notice have been changed to make the publication of the notice predictable and to give a clearer explanation of this process to the public. If you have comments and suggestions for further improvements to this notice, please send them to Stanley E. Morris, Deputy Associate Director for Regulatory Policy and Reports Management, Office of Management and Budget, 726 Jackson Place, Northwest, Washington, D.C. 20503

DEPARTMENT OF AGRICULTURE

Agency Clearance Officer—Donald W. Barrowman—447-6282

New Forms

Food and Nutrition Service
*Food Stamp/SSI Elderly Cash-Out Demonstration
Other (See SF-83)
15 State welfare agencies, 15 responses; 8 hours
Charles A. Filett, 395-5080

Revisions

Economics, Statistics, and Cooperatives Service
Prices Paid by Farmers Surveys
Semi-annually
Farmers, ranchers, dealers selling farm prod. inputs, 136,800 responses; 27,360 hours
Off. of Federal Statistical Policy and Standard, 673-7974

Extensions

Food and Nutrition Service
Annual Report of Participation by Charitable Institutions
Semi-annually
State agencies responsible for USDA food distribution, 55 responses; 55 hours
Charles A. Filett, 395-5080

DEPARTMENT OF ENERGY

AGENCY CLEARANCE OFFICER—ALBERT B. LEIDEN—252-6177

New Forms

Minority Energy Technical Assistance Program (METAP)
CS–130
Single time
5,147 elected officials, 5,147 responses; 2,574 hours
Jefferson B. Hill, 395–5867

Application for a No-action Determination (Properly Treated as a Stripper Well Property by a producer)
ERA–102
Single time
230 Dom. crude oil prod. 10,000 bar. of Oil or less/yr, 230 responses; 1,150 hours
Jefferson B. Hill, 395–5867

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Agency Clearance Officer—Peter Gnoss—245-7488

New Forms

Center for Disease Control
Census Enumeration Within 5 mile Radius of Three Mile Island,[1] Pennsylvania
Single time
Households within 5 mile radius of Three Mile Island, 15,000 responses; 7,500 hours
Richard Eisinger, 395–3214

Social Security Administration
Disability Experience Under Private Pension Plans
SSA–4669
Single time
3,500 Persons under private pension plans
Barbara F. Young, 395–6132

Revisions

Health Care Financing Administration (Medicaid)
Quarterly Showing
HCFA–41
Quarterly
State medicaid agencies, 212 responses; 9,964 hours
Richard Eisinger, 395–3214

Extensions

Alcohol, Drug Abuse and Mental Health Administration
Annual Census of Patient Characteristics—1978 State and County Mental Hospital Inpatient Service
ADM 85–1
Annually
State and county mental hospitals, 300 responses; 900 hours
Off. of Federal Statistical Policy and Standard, 673-7974

Social Security Administration
Vocational survey form
HA–625
On occasion
551 Persons eligible for disability insurance, 120 responses; 240 hours
Barbara F. Young, 395–6132

[1] This report is likely to be approved within a few days because of the urgent need to begin collecting information in the Three Mile Island area.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Agency Clearance Officer—John T. Murphy—755-5120

New Forms

Administration (office of ass't sec'y)
HUD Section 202 Minority Participation Survey
Single time
800 Persons from nonprofit minority organizations, 800 responses; 400 hours
Arnold Strasser, 395–5080

Housing Management
Urban Inititiatives Anti-Crime Program Notices
H 79–10 (PHA) and H 79–11 (PHA)
Single time
All public housing agencies eligible, 200 responses; 3,600 hours
Arnold Strasser, 395–5080

Extensions

Housing Production and Mortgage Credit
Supplement to Application for an Insured Improvement Loan
FHA 2004C–1
On occasion
FHA-approved mortgagee, 500 responses; 500 hours
Arnold Strasser, 395–5080

DEPARTMENT OF LABOR

Agency Clearance Officer—Philip M. Oliver—523–6341

New Forms

Employment Standards Administration
Affirmative Action Obligations of Contractors and Subcontractors for Disabled Veterans and Veterans of the Vietnam Era
CC–5
On occasion
Government contractors
Arnold Strasser, 395–5080

AGENCY FOR INTERNATIONAL DEVELOPMENT

Agency Clearance Officer—Lawrence A. Rhodes—632-9026

Extensions

Management Consultant Questionnaire
AID 1420–6
On occasion
Management consultants, 500 responses; 2,500 hours
Marsha D. Traynham, 395–6140

A.I.D. Urban and Regional Planner Consultant Questionnaire
AID 1420–19
On occasion
Urban and regional planner consultants, 100 responses; 400 hours
Marsha D. Traynham, 395–6140

Investor's Report
AID 1520–10
Monthly
Investors in aid housing guaranty loans, 1,000 responses; 1,000 hours
Marsha D. Traynham, 395–6140

RAILROAD RETIREMENT BOARD

Agency Clearance Officer—Pauline Lohens—312–751–4693

Extensions

Request for Payment by Qualified Organizations
G–740B
On occasion
Railroad hosp. associations and physicians, 40,000 responses; 2,000 hours
Barbara F. Young, 395–6132

SMALL BUSINESS ADMINISTRATION

Agency Clearance Officer—John Reidy—653-6091

Extensions

Business Loan Application
SBA Form 4 SBA Form 4–I
On occasion
Sm. Bus. request. SBA assist. Elig. for 7(A) bal loans, 80,000 responses; 175,000 hours
Richard Sheppard, 395–3211

Stanley E. Morris,
Deputy Associate Director for Regulatory Policy and Reports Management.

[FR Doc. 79-17700 Filed 6-8-79; 8:45 am]
BILLING CODE 3110-01-M

Agency Forms Under Review; Background

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Federal Reports Act (44 U.S.C., Chapter 35).

Departments and agencies use a number of techniques including public hearings to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibility under the Act also considers comments on the forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

Every Monday and Thursday OMB publishes a list of the agency forms received for review since the last list was published. The list has all the entries for one agency together and grouped into new forms, revisions, or extensions. Each entry contains the following information:

The name and telephone number of the agency clearance officer;

The office of the agency issuing this form;

The title of the form;

The agency form number, if applicable;

How often the form must be filled out;

Who will be required or asked to report;

An estimate of the number of forms that will be filled out;

An estimate of the total number of hours needed to fill out the form; and

The name and telephone number of the person or office responsible for OMB review.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. In addition, most repetitive reporting requirements or forms that require one half hour or less to complete and a total of 20,000 hours or less annually will be approved ten business days after this notice is published unless specific issues are raised; such forms are identified in the list by an asterisk(*).

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. Comments and questions about the items on this list should be directed to the OMB reviewer or office listed at the end of each entry.

If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer of your intent as early as possible.

The timing and format of this notice have been changed to make the publication of the notice predictable and to give a clearer explanation of this process to the public. If you have comments and suggestions for further improvements to this notice, please send them to Stanley F. Morris, Deputy Associate Director for Regulatory Policy and Reports Management, Office of Management and Budget, 726 Jackson Place, Northwest, Washington, D.C. 20503.

DEPARTMENT OF ENERGY

(Agency Clearance Officer—John Gross—252-5214)

New Forms

Natural Gas Policy Survey
EIA-149
Single time
Natural gas pipelines distributors and large endusers, 5,000 responses, 250,000 hours
Jefferson B. Hill, 395-5867

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

(Agency Clearance Officer—Peter Gness—245-7488)

New Forms

Alcohol, Drug Abuse and Mental Health Administration
Women's Occupational Alcoholism Project
Single time
Company employees and treatment programs, 16,652 responses, 3,440 hours
Richard Eisinger, 395-3214
Food and Drug Administration
Utilization, Quality Assurance, and Training Practices of Computed Tomography Facilities
Single time
Medical X-ray facilities
Richard Eisinger, 395-3214
National Institutes of Health
Sex Role Development and the Single Child Family
Single time
No description from the agency
Office of Federal Statistical Policy and Standard, 673-7974

Revisions

Alcohol, Drug Abuse and Mental Health Administration
Study of Evaluation in Drug Abuse Treatment Programs
Single time
Management personnel, 563 responses, 237 hours
Office of Federal Statistical Policy and Standard, 673-7974
Office of Human Development
* Quarterly Estimates of Expenditures Under Approved Child Welfare Services Plan and Request for Grant Award
CWS-10
Quarterly
State public welfare agencies, 220 responses, 66 hours
Barbara F. Young, 395-6132
Office of Human Development
* Annual Budget for Child Welfare Services
CWS-2
Annually
State public welfare agencies, 55 responses, 26 hours
Barbara F. Young, 395-6132

Extensions

Health Care Financing Administration (Departmental)
Summary of Utilization at Different Levels of Care
HCFA-L-70T
Single Time
105 PSRO's That Have Implemented Review by 12-78, 105 responses; 26 hours
Richard Eisinger 395-3214

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

(Agency Clearance Officer—John T. Murphy—755-5190)

New Forms

Housing Management
Report on Families Moving into Low-Rent Housing and Report on Regular Reexamination of Families in Low-Rent Housing
HUD-51227, HUD-51245
Single time
Public Housing Agencies, 2,800 responses; 4,200 hours
Arnold Strasser, 395-5080

Revisions

Policy Development and Research
Annual Housing Survey—National Sample
AHS-1, 2, 3, 4(I1), 4(I2), & 6
Annually
Households in 461 PSU Design, 80,000 responses; 40,000 hours
Policy Development and Research
*Board of Commissioners Survey Instrument
PH-6
Annually
Chairpersons of PHA Boards of Commissioners, 16 responses; 8 hours
Off. of Federal Statistical Policy & Standard, 673-7974
Policy Development and Research
*Project Staff Survey Instrument
PH-2
Annually
Employees of PHA Housing Project, 80 responses; 40 hours
Policy Development and Research
Household Survey Instrument

PH–1
Annually
Residents of PHA Housing Projects, 500 responses; 500 hours
Policy Development and Research
Project Manager Survey Instrument
PH–3
Annually
Project Managers of PHA Housing Projects, 16 responses; 32 hours
Policy Development and Research
*Housing Authority Staff Survey Instrument
PH–4
Annually
Employees of PHA Central Offices, 320 responses; 160 hours
Policy Development and Research
Executive Director Survey Instrument
PH–5
Annually
Executive Directors of Public Housing Agencies, 16 responses; 16 hours

DEPARTMENT OF JUSTICE

(Agency Clearance Officer—Donald E. Larue—633–3526)

Revisions

Law Enforcement Assistance Administration
Survey of Inmates of State Correctional Facilities
LEAA 3400
Single Time
Inmates in State Correctional Facilities, 12,000 responses; 10,000 hours
Off. of Federal Statistical Policy & Standard, 673–7974

DEPARTMENT OF LABOR

(Agency Clearance Officer—Philip M. Oliver—523–6341)

New Forms

Labor Management and Service Administration
Survey Instrument to Collect Data on Private Pension Plan Benefits
LMSA 92T
Single time
Private Pension Plan Administrators, 1,500 responses; 7,800 hours
Arnold Strasser, 395–5080

Revisions

Bureau of Labor Statistics
Occupational Wage Survey Program; Authorization to Release Data; Wage and Salary Survey (Form 552)
BLS 2751A, 2752A 2752B, 2753F, 2753G, 275AF, St. of Calif. form 552
On occasion
Establishments in Specified SIC's & SMSA's, 30,800 responses; 92,400 hours
Off. of Federal Statistical Policy & Standard, 673–7974
Employment and Training Administration
Targeted Jobs Tax Credit (TJTC) Report forms
ETA 8468 thru ETA 8473
On occasion
SESAS & Other Participating Agencies, 15,001,560 responses; 1,250,390 hours
Arnold Strasser, 395–5080

DEPARTMENT OF TRANSPORTATION

(Agency Clearance Officer—Bruce H. Allen—426–1887)

New Forms

Federal Highway Administration
Journey-to-Work Supplement to the 1979 National Annual Housing Survey
Single time
Households in 461 PSU Design, 62,000 responses; 1,033 hours
Susan B. Geiger, 395–5867

Stanley E. Morris,
Deputy Associate Director for Regulatory Policy and Reports Management.

[FR Doc. 79-18113 Filed 6-8-79; 8:45 am]
BILLING CODE 3110-01-M

PRESIDENT'S COMMISSION ON THE ACCIDENT AT THREE MILE ISLAND

Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following meeting:

Name: President's Commission on the Accident at Three Mile Island
Place: 2100 M Street, N.W.
Time: Wednesday, June 13 and Thursday, June 14, 1979 at 9:30 a.m.

Proposed Agenda:

I Discussion of Staff Personnel and Procedures; and
II Discussion of Issuance of *subpoenas ad testificandum* and *duces tecum*.

The Commission was established by Executive Order 12130 on April 11, 1979, to conduct a comprehensive study and investigation of the accident involving the nuclear power facility on Three Mile Island in Pennsylvania. The June 13 and 14 meetings of the Commission were announced in the Federal Register of May 17, 1979 (44 FR 28903).

Due to the nature of the items to be discussed, the Commission's desire to avoid the invasion of personal privacy, and the premature discussion of persons or entities to be subpoenaed, the meeting is closed to the public. The Commission voted 8–0 to change the meeting, time and format, as originally announced. Inquiries should be addressed to Barbara Jorgenson (202) 653–7677.

Dated: June 6, 1979.
Barbara Jorgenson,
Public Information Director.

[FR Doc. 79-18097 Filed 6-7-79; 8:45 am]
BILLING CODE 6320-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Waiver Petition Docket HS–79–8]

Algers, Winslow & Western Railroad Co.; Petition for Exemption From the Hours of Service Act

In accordance with 49 CFR 211.41 and 211.9, notice is hereby given that the Algers, Winslow & Western Railroad (AWW) has petitioned the Federal Railroad Administration (FRA) for an exemption from the Hours of Service Act (83 Stat. 464, Pub. L. 91–169, 45 U.S.C. 64a(e)). That petition requests that the AWW be granted authority to permit certain employees to continuously remain on duty for in excess of twelve hours.

The Hours of Service Act currently makes it unlawful for a railroad to require or permit specified employees to continuously remain on duty for a period in excess of twelve hours. However, the Hours of Service Act contains a provision that permits a railroad, which employs no more than fifteen employees who are subject to the statute, to seek an exemption from this twelve hour limitation.

The AWW seeks this exemption so that it can permit certain employees to remain continuously on duty for periods not to exceed sixteen hours. The petitioner indicates that granting this exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs no more than fifteen employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in this proceeding by submitting written views or comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning this proceeding should identify the Docket Number, Docket Number HS079–8, and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Trans Point Building, 2100 Second Street, SW., Washington, D.C. 20590. Communications received before July 16, 1979, will be considered by the FRA before final action is taken. Comments received after that date will be

considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 4406, Trans Point Building, 2100 Second Street, SW., Washington, D.C. 20590.

(Sec. 5, Hours of Service Act of 1969 (45 U.S.C. 64a), 1.49(d) of the regulations of the Office of the Secretary, 49 CFR 1.49(d))

Issued in Washington, D.C., on June 1, 1979.

J. W. Walsh,

Chairman, Railroad Safety Board.

[FR Doc. 79-18015 Filed 6-8-79; 8:45 am]

BILLING CODE 4910-06-M

[FRA Waiver Petition Docket HS-79-7]

Camino, Placerville & Lake Tahoe Railroad Co.; Petition for Exemption From the Hours of Service Act

In accordance with 49 CFR 211.41 and 211.9, notice is hereby given that the Camino, Placerville & Lake Tahoe Railroad (CPLT) has petitioned the Federal Railroad Administration (FRA) for an exemption from the Hours of Service Act (83 Stat. 464, Pub. L. 91-169, 45 U.S.C. 64a(e)). That petition requests that the CPLT be granted authority to permit certain employees to continuously remain on duty for in excess of twelve hours.

The Hours of Service Act currently makes it unlawful for a railroad to require or permit specified employees to continuously remain on duty for a period in excess of twelve hours. However, the Hours of Service Act contains a provision that permits a railroad, which employs no more than fifteen employees who are subject to the statute, to seek an exemption from this twelve hour limitation.

The CPLT seeks this exemption so that it can permit certain employees to remain continuously on duty for periods not to exceed sixteen hours. The petitioner indicates that granting this exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs no more than fifteen employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in this proceeding by submitting written views or comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning this proceeding should identify the Docket Number, Docket Number HS-79-7, and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Trans Point Building, 2100 Second Street SW., Washington, D.C. 20590. Communications received before July 16, 1979, will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 4406, Trans Point Building, 2100 Second Street SW., Washington, D.C. 20590.

(Sec. 5, Hours of Service Act of 1969 (45 U.S.C. 64a), 1.49(d) of the regulations of the Office of the Secretary, 49 CFR 1.49(d))

Issued in Washington, D.C., on June 1, 1979.

J. W. Walsh,

Chairman, Railroad Safety Board.

[FR Doc. 79-18014 Filed 6-8-79; 8:45 am]

BILLING CODE 4910-06-M

[FRA Waiver Petition Docket HS-79-6]

Green Mountain Railroad Co.; Petition for Exemption From the Hours of Service Act

In accordance with 49 CFR 211.41 and 211.9, notice is hereby given that the Green Mountain Railroad (GMRC) has petitioned the Federal Railroad Administration (FRA) for an exemption from the Hours of Service Act (83 Stat. 464, Pub. L. 91-169, 45 U.S.C. 64a(e)). That petition requests that the GMRC be granted authority to permit certain employees to continuously remain on duty for in excess of twelve hours.

The Hours of Service Act currently makes it unlawful for a railroad to require or permit specified employees to continuously remain on duty for a period in excess of twelve hours. However, the Hours of Service Act contains a provision that permits a railroad, which employs no more than fifteen employees who are subject to the statute, to seek an exemption from this twelve hour limitation.

The GMRC seeks this exemption so that it can permit certain employees to remain continuously on duty for periods not to exceed sixteen hours. The petitioner indicates that granting this exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs no more than fifteen employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in this proceeding by submitting written views or comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning this proceeding should identify the Docket Number, Docket Number HS-79-6, and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Trans Point Building, 2100 Second Street, SW., Washington, D.C. 20590. Communications received before July 16, 1979, will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 4406, Trans Point Building, 2100 Second Street, SW., Washington, D.C. 20590.

(Sec. 5, Hours of Service Act of 1969 (45 U.S.C. 64a), 1.49(d) of the regulations of the Office of the Secretary, 49 CFR 1.49(d))

Issued in Washington, D.C., on June 1, 1979.

J. W. Walsh,

Chairman, Railroad Safety Board.

[FR Doc. 79-18016 Filed 6-8-79; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 178]

Authority To Obligate Funds for Payment to Third Parties Who Request Reimbursement for Cost of Complying With a Summons; Delegation

AGENCY: Internal Revenue Service.

ACTION: Delegation of Authority.

SUMMARY: The authority of the Commissioner of Internal Revenue to obligate funds for payment to third parties who request reimbursement for the costs of complying with summonses is being delegated to certain officials of the Internal Revenue Service. The text of the delegation order appears below.

EFFECTIVE DATE: June 5, 1979.

FOR FURTHER INFORMATION CONTACT: Charles H. Jenkins, Jr. RM:FS, 1111 Constitution Avenue NW., Washington, DC 20224. (202) 566-6851 (Not Toll Free).

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the Federal

Register for Wednesday, November 8, 1978.

Joseph F. Kump,

Fiscal Management Officer.

1. The authority granted to the Commissioner of Internal Revenue by Treasury Department Order No. 150–37, in accordance with authority provided to the Internal Revenue Service in Comptroller General B–156610 (October 22, 1976) 56 Comp. Gen. 36 (1976) and (effective after February 28, 1977) in the Internal Revenue Code of 1954, Section 7610, as enacted by the Tax Reform Act of 1976 (Public Law 94–455, Section 1205, 90 Stat. 1699, 1702 (as amended)), to obligate appropriated funds for payment of search costs, reproduction costs and transportation costs in connection with third party summonses issued under the Internal Revenue laws, is delegated to the officials specified in paragraphs 2, 3, and 4 of this Order.

2. The Assistant Commissioner (Inspection).

a. This authority may be redelegated to the Director, Internal Security Division, with respect to any such obligation not exceeding $1,000 for payment of such costs associated with any one summons.

b. This authority may also be redelegated to Regional Inspectors, Assistant Regional Inspectors (Internal Security) and Chiefs, Investigations Branches, with respect to any such obligation not exceeding $500 for payment of such costs associated with any one summons.

3. Regional Commissioners, who will obtain the concurrence of appropriate Assistant Commissioners through the Fiscal Management Officer, National Office, before obligating over $5,000 for payment of such costs associated with any one summons. This authority may not be redelegated.

4. District Directors and the Director of International Operations may obligate up to $5,000 for payment of such costs associated with any one summons.

a. This authority may be redelegated to Chiefs of Divisions with respect to any such obligation not exceeding $2,500, except this authority in streamlined districts is limited to the District Director.

b. This authority may also be redelegated to the officers and employees listed in (1) through (5), below, with respect to any such obligation not exceeding $1,000.

(1) International Operations: Internal Revenue Agents; Attorneys, Estate Tax; Estate Tax Examiners; Special Agents; Revenue Service and Assistant Revenue Service Representatives; Tax Auditors; and Revenue Officers, GS–9 and above.

(2) District Criminal Investigation: Special Agents.

(3) District Collection: Revenue Officers, GS–9 and above.

(4) District Examination: Internal Revenue Agents; Tax Auditors; Attorneys, Estate Tax; and Estate Tax Examiners.

(5) District Employee Plans and Exempt Organizations: Internal Revenue Agents; Tax Law Specialists; and Tax Auditors.

5. The authority delegated herein may not be redelegated except as provided in paragraphs 2 and 4.

Jerome Kurtz,

Commissioner.

[FR Doc. 79-18018 Filed 6-8-79; 8:45 am]

BILLING CODE 4830-01-M

[Delegation Order No. 179]

Coordination of Certain Issues Before Approval of Settlement or Other Disposition Appeals; Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of Authority.

SUMMARY: This Delegation Order grants authority to the Director, Appeals Division, to designate certain Regional Directors of Appeals to coordinate Appeals Coordinated Issues. It further grants authority to the designated Regional Director of Appeals to concur in the proposed disposition of the Appeals Coordinated Issue. The text of the Delegation Order appears below.

EFFECTIVE DATE: July 2, 1979.

FOR FURTHER INFORMATION CONTACT: B. H. Oetjen CP:AP, 1111 Constitution Ave NW., Rm. 2313, Washington, D.C. 20224, Telephone: 202–566–4795 (Not a toll-free telephone number).

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the Federal Register for Wednesday, November 8, 1978.

Bernard H. Oetjen,

Chief, Special Services Branch, Appeals Division.

The authority vested in the Commissioner of Internal Revenue by IRC 7802 and Treasury Department Order No. 150–37 is delegated as follows:

1. The Director, Appeals Division, is authorized to designate certain Regional Directors of Appeals to coordinate Appeals Coordinated Issues, as defined in paragraph 3.

2. The Regional Director of Appeals of a designated region is authorized to concur in the disposition of an Appeals Coordinated Issue as proposed by the Appeals Office having jurisdiction over a case containing such Appeals Coordinated Issue.

3. An Appeals Coordinated Issue is an issue of wide impact or importance frequently involving an entire industry or occupational group, large groups of partners, shareholders, creditors, beneficiaries, employees, contractors, or other parties, which the Director, Appeals Division, identifies for coordination because of the need or desirability for consistent treatment by the Internal Revenue Service.

4. Upon identification by the Director, Appeals Division, of the Appeals Coordinated Issue(s), and notification thereof to the affected Appeals Offices, the designated Regional Director of Appeals shall assist, guide, and advise the Appeals Office having jurisdiction over such Appeals Coordinated Issue toward effecting proper disposition thereof.

5. The authority delegated in paragraph 1, above, may not be redelegated.

6. The authority delegated in paragraphs 2 and 4, above, may be redelegated to an Appeals Office Chief.

Jerome Kurtz,

Commissioner.

[FR Doc. 79-18021 Filed 6-8-79; 8:45 am]

BILLING CODE 4830-01-M

[Delegation Order 86 (Rev. 9); (Chief Counsel's Order 1031.2c)]

Delegation of Authority of Regional Director of Appeals in Protested Tax Court Cases

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of Authority.

SUMMARY: The delegation of authority to the Chief and Associate Chief to determine tax liability is limited in certain coordinated issue cases. The text of the delegation order appears below.

EFFECTIVE DATE: July 2, 1979.

FOR FURTHER INFORMATION CONTACT: B. H. Oetjen, CP:AP, 1111 Constitution Ave. NW., Rm. 2313, Washington, D.C. 20224, Telephone: 202–566–4795 (Not a toll-free telephone number).

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the Federal

Register for Wednesday, November 8, 1978.

B. H. Oetjen,

Chief, Special Services Branch, Appeals Division.

The authority vested in the Commissioner of Internal Revenue by 26 CFR 301.6020-1, 26 CFR 301.6201-1, 26 CFR 302.7701-9 and Treasury Department Order No. 150-37, is hereby delegated as follows:

1. (a) In each region the Regional Commissioner and the Regional Director of Appeals are authorized and each Chief and Associate Chief, Appeals Office are authorized to represent the Commissioner in determining liability, qualification, exempt status or foundation classification for the following types of cases not docketed in the United States Tax Court when the taxpayer does not agree with the determination made by the District Director or by the Director of International Operations and requests consideration by the Regional Director of Appeals:

(1) Except as excluded under paragraph 5 of this Order, liability for excise, employment, income, profits, estate (including extensions for paying estate tax under Internal Revenue Code Section 6161(a)(2)) and gift taxes including additions to tax, additional amounts and assessable penalties under Chapter 68 of Subtitle F of the Internal Revenue Code of 1954 or corresponding provisions of the Internal Revenue Code of 1939;

(2) Initial or continuing qualification under Subchapter D of Chapter 1 of the Internal Revenue Code of 1954 and initial or continuing exempt status and foundation classification, *except* when a National Office ruling on the case with respect to exempt status or foundation classification, or National Office Technical Advice, with respect to qualification, exempt status or foundation classification, has been issued. In certain instances such as cases arising from the Examination Division or cases in which a National Office Technical Advice covers only a portion of the qualification issue of an employee plan, Appeals officials will have jurisdiction over the *proposed action* where a National Office ruling on the case with respect to exempt status or foundation classification or a National Office Technical Advice, with respect to qualification, exempt status or foundation classification has been issued. If the Appeals proposed disposition is contrary to the National Office ruling on the case with respect to exempt status or foundation classification or the National Office Technical Advice with respect to qualification, exempt status or foundation classification, the Assistant Commissioner (Employee Plans and Exempt organizations) or the Assistant Commissioner (Technical), in Internal Revenue Code Section 521 cases, will make the final decision.

(b) The authorities delegated in this paragraph are subject to the exceptions set forth in paragraph 3 of this Order and they may not be redelegated, except, the authority with respect to appeals of assessed penalties may be redelegated by the Regional Director of Appeals to Appeals Officers.

2. (a) In conformity with the provisions of Delegation Order No. 60 (as revised), in each income, excise, profits, estate, and gift tax case docketed in the United States Tax Court, the Regional Director of Appeals is authorized and each Chief and Associate Chief, Appeals Office, is authorized to perform those functions delegated to the Regional Commissioner in that joint Order.

(b) The authorities delegated in this paragraph are subject to the exceptions set forth in paragraph 3 of this Order and may not be redelegated.

3. (a) The authorities delegated to the regional officials do not include authority to:

(1) Eliminate the ad valorem fraud penalty in any case in which the penalty has been determined by the district office or service center office in connection with a tax year or period, or which is related to or affects such year or period, for which criminal prosecution against the taxpayer (or related taxpayer involving the same transaction) has been recommended to the Department of Justice for willful attempt to evade or defeat tax, or for willful failure to file a return, except upon the recommendation or concurrence of Counsel; or

(2) Act in any case in which a recommendation for criminal prosecution is pending, except with the concurrence of Counsel.

(b) If the coordinating official has not concurred in any case referred to in paragraphs 1 and 2 of this Order involving an Appeals Coordinated Issue, except in the event of a final decision made by the Assistant Commissioner (Employee Plans and Exempt Organizations) or the Assistant Commissioner (Technical) as referred to in paragraph 1(a)(2) of this Order, the Regional Director of Appeals in the region having jurisdiction over the case makes the final determination as to the disposition of the Appeals Coordinated Issue. This authority may not be redelegated.

4. In any case not docketed in the Tax Court in which a statutory notice was issued by the office of a District Director, by a Service Center Director or by the Director of International Operations, the Regional Director of Appeals may relinquish the requested jurisdiction by waiver to the office of that Director. No such waiver shall be made in any case in which criminal prosecution has been recommended and not finally disposed of; nor in any case in which the determination in the statutory notice includes the ad valorem fraud penalty. Notwithstanding any such waiver, upon filing of a petition with the Tax Court, jurisdiction shall revest in the Regional Director of Appeals.

5. The excise and employment taxes subject to the provisions of this Order include any Federal excise or employment tax under the Internal Revenue Code of 1954, except any tax imposed by the following provisions or corresponding provisions of the Internal Revenue Code of 1939:

(a) Subtitle E; or

(b) Subchapter D, Chapter 78 of Subtitle F, insofar as it relates to taxes imposed under Subtitle E.

6. The authority to make and subscribe to a return under provisions of Code section 6020 is delegated to Appeals Officers.

7. The authorities contained in this Order are intended to supplement the authorities contained in Delegation Order No. 60 (as revised).

8. This Order supersedes Commissioner's Delegation Order No. 86 (Rev. 8) and Chief Counsel's Order No. 1031.2B, dated October 1, 1978.

Jerome Kurtz,

Commissioner.

[FR Doc. 79-18030 Filed 6-8-79; 8:45 am]

BILLING CODE 4830-01-M

Public Inspection of Written Determinations; Notice of Intention To Disclose

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of intention to Disclose.

SUMMARY: This document provides notice that the Service intends to make open to public inspection certain written determinations. This notice also explains how any person may determine whether any of the described written determinations pertain to that person, and explains the procedures that person may follow if there is disagreement regarding the proposed deletions. This

document does not meet the criteria for significant regulations set forth in paragraph eight of the Treasury Directive appearing in the Federal Register for Wednesday, November 8, 1978.

DATES: Persons wanting to find out whether their particular written determinations are among those to be made open to public inspection pursuant to this notice are requested to contact the Service by June 26, 1979.

Requests for additional deletions must be submitted by July 16, 1979. A petition in the United States Tax Court must be filed by August 27, 1979. Except for the disputed portion of any document that is the subject of an action brought in the United States Tax Court, the written determinations described in this notice will be made open to public inspection on September 28, 1979.

ADDRESS: Any questions or correspondence regarding this notice should be sent to: Internal Revenue Service, Attention: T:FP:R, Ben Franklin Station, Post Office Box 7604, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: George E. Freeland of the Rulings Disclosure Branch, Tax Forms and Publications Division, Office of the Assistant Commisioner, Technical; 202-566-4376 or 202-566-6272.

SUPPLEMENTARY INFORMATION: Section 6110(h) of the Internal Revenue Code of 1954 provides that certain written determinations (letter rulings and technical advice memoranda) issued in response to requests submitted before November 1, 1976, shall be open to public inspection. Accordingly, the Service is preparing to open to public inspection reference written determinations issued before January 1, 1954, by the Bureau of Internal Revenue.

Deletions

Section 6110(c) of the Code requires the Internal Revenue Service to delete certain information from the documents described in this notice. The Service intends to delete names, addresses, and taxpayer identifying numbers, and will also attempt to recognize and delete other identifying details, trade secrets, and the other information described in section 6110(c), before making the written determination open to public inspection.

Persons to whom the written determinations described in this notice pertain (or successors in interest, executors, or authorized representatives of these persons) may contact the Internal Revenue Service to find out whether their particular written determinations are among those to be made open to public inspection pursuant to this notice. These persons may request a copy of their written determinations with proposed deletions indicated. Such requests should be submitted by June 26, 1979. Such requests must indicate the specific name of the party to which the written determination pertains, for example, a corporation acting on behalf of one or more subsidiaries must indicate the name of such subsidiary or subsidiaries. If such a person disagrees with the proposed deletions, that person may indicate any additional information that person believes should deleted. Any request for additional deletions must be submitted by July 16, 1979, and must include a statement indicating which of the exemptions provided in section 6110(c) of the Code is applicable to each additional deletion requested. If the Service feels it cannot make any or all of the additional deletions requested, the Service will so advise the requester. The requester will then have the right to file a petition in the United States Tax Court. This petition must be filed by August 27, 1979.

Additional Disclosure

After the deleted copy of a written determination is made open to public inspection in the National Office Reading Room, any person may request the Service to make additional portions of the written determination open to public inspection. If the Service receives a request that involves disclosure of names, addresses, or taxpayer identifying numbers, the Service will deny the request. If the request involves disclosure of anything other than names, addresses, or taxpayer identifying numbers, the Service will contact the person to whom the written determination pertains before further action is taken.

Background File Documents

After the deleted copy of a written determination is made open to public inspection, any person may request copies of related background file documents. Notice will be provided to the person to whom the written determination pertains if a request for related background file documents is received.

Any notice regarding background file documents or requests for additional disclosure and any other correspondence relating to public inspection of written determinations, will be mailed to the latest address in the Service's written determination file, unless a later address is provided to the Service in connection with these matters.

The written determinations described in this notice will be made open to public inspection by being placed in the National Office Reading Room, Room 1564, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, D.C. on September 28, 1979. However, the disputed portion of any document that is the subject of an action brought in the United States Tax Court shall not be made available until after a court determination regarding such portion is made.

Jerome Kurtz,
Commissioner of Internal Revenue.

[FR Doc. 79-18038 Filed 6-8-79; 8:45 am]
BILLING CODE 4830-01-M

INTERSTATE COMMERCE COMMISSION

Permanent Authority Applications; Decision-Notice

Correction

In FR Doc. 79-14241, published at page 26827, on Monday, May 7, 1979, on page 26830, in the third column, in the first paragraph beginning "MC 115826 . . .", in the 12th line, ". . . AK, HI, ME, . . ." should be corrected to read ". . . AK, HI, IN, ME, . . ."

BILLING CODE 1505-01-M

Permanent Authority Decisions; Decision-Notice

Correction

In FR Doc 79-10000, published at page 19577, on Tuesday, April 3, 1979, on page 19580, in the middle column, in the first paragraph beginning "MC 140717 . . .", in the 20th line, ". . . AL, GA, and TN," should be corrected to read ". . . AL, AR, GA, and TN,".

BILLING CODE 1505-01-M

[Notice No. 67]

Motor Carrier Temporary Authority Applications

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. One

copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

MC 21866 (Sub-117TA), filed March 30, 1979. Applicant: WEST MOTOR FREIGHT, INC., 740 S. Reading Ave. Boyertown, PA 19512. Representative: Alan Kahn, 1290 Two Penn Center Plaza, Phila., PA 19102. *Automotive parts and materials and supplies* used in the manufacture of automotive parts (except commodities in bulk), between facilities of Ford Motor Co. at points in MI and OH, on the one hand, and, on the other, points in NJ and VA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ford Motor Co., One Parklane Blvd., Parklane Towers East, Suite 200, Dearborn, MI 48126. Send protests to: T. M. Esposito, Trans. Asst., 101 S. 7th St., Room 620, Phila., PA 19106.

MC 21866 (Sub-118TA), filed March 30, 1979. Applicant: WEST MOTOR FREIGHT, INC., 740 S. Reading Ave., Boyertown, PA 19512. Representative: Alan Kahn, 1920 Two Penn Center Plaza, Phila., PA 19102 *Automotive parts, and materials and supplies* used in the manufacture of automotive parts (except commodities in bulk), from facilities of Ford Motor Co. at Chicago, IL to facilities of Ford Motor Co. at Mahwah, NJ, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ford Motor Co., One Parkland Blvd., Parklane Towers E., Suite 200, Dearborn, MI 48126. Send protests to: T. M. Esposito, Trans. Asst., 101 S. 7th St., Room 620, Phila., PA 19106.

MC 21866 (Sub-119TA), filed April 3, 1979. Applicant: WEST MOTOR FREIGHT, INC., 740 S. Reading Ave., Boyertown, PA 19512. Representative: Alan Kahn, 1920 Two Penn Center Plaza, Phila., PA 19102 *Plastic pellets,* except in bulk, from the facilities of Texapol Corp. in or near Bethlehem, PA to Lindstrom, MN; Chicago, IL and Detroit, MI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Texapol Corp., 500 Ronca Commerical Park, Bethlehem, PA 18017. Send protests to: T. M. Esposito, Trans, Asst., 101 S. 7th St., Room 620, Phila., PA 19106.

MC 31389 (Sub-32TA), filed April 30, 1979. Applicant: H. F. CAMPBELL & SON, INC., P.O. Box 260, Millerstown, PA 17062. Representative: John M. Musselman, 410 N. Third St., Harrisburg, PA 17108. Foods and food products, and materials, supplies and equipment used in the production, storage and distribution of foods and food products, in refrigerated vehicles, between the facilities of Empire Kosher Poultry, Inc. at Mifflintown, Bird-in-Hand, and Kistler, PA, on the one hand, and, on the other, points in CT, DE, FL, GA, IL, IN, KY, MA, MD, ME, MI, MO, NC, NJ, NY, OH, RI, SC, VA, VT, WV, and DC for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Empier Kosher Poultry, Inc., P.O. Box 165, Mifflington, PA 17159. Send protests to: ICC, Federal Reserve Bank Bldg., 101 No. Seventh St., Room 620, Phila., PA 19106.

MC 35227 (Sub-10TA), filed April 27, 1979. Applicant: EDSON EXPRESS, INC., 1270 Boston Ave., P.O. Box 925, Longmont, CO 80501. Representative: Richard P. Kissinger, 50 South Steele St., Suite 330, Denver, CO 80209. *Common* carrier; *regular* route: *General Commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) between Denver, CO and Sheridan, WY serving the intermediate points of Cheyenne, Douglas, Casper, and Buffalo, WY, and serving all points in Campbell, County, WY as intermediate and off-route points, over the following described routes: from Denver over U.S. Hwy 87 and Interstate Hwy. 25 to Sheridan, and return over the same route; from Denver over U.S. Hwy 87 and Interstate Hwy. 25 to junction WY Hwy. 59, then over WY Hwy. 59 to junction Interstate Hwy. 90, then over Interstate Hwy. 90 to Sheridan and return over the same route; from Denver over U.S. Hwy. 87 and Interstate Hwy. 25 to junction U.S. Hwy. 87 with WY Hwy. 387 (near Midwest, WY), then over WY Hwy. 387 to junction WY Hwy. 387 with WY Hwy. 59, then over WY Hwy. 59 to junction Interstate Hwy. 90, then over Interstate Hwy. 90 to Sheridan, and return over the same routes; this authority sought includes authority to serve the commerical zones of each of the service points involved in the application, for 180 days. Underlying ETA filed requesting 90 days authority. Supporting shipper: Over 100 shipper statements available for inspection at the Denver field office or in Washington, D.C. headquarters. Send protests to: D/S Roger L. Buchanan, ICC, 492 U.S. Customs House, 721 19th St., Denver, CO 80202. Supporting shipper(s): Over 100 statements. Send protests to: D/S Roger L. Buchanan, Interstate Commerce Commission, 721 19th St., 492 U.S. Customs House, Denver, CO 80202.

MC 39167 (Sub-16TA), filed April 17, 1979. Applicant: C. J. ROGERS TRANS. CO., 2947 Greenfield Road, Melvindale, MI 38122. Representative: Robert D. Schuler, 100 West Long Lake Road, Suite 102, Bloomfield Hills, MI 48013. *Iron and Steel articles,* (1) from the facilities of Republic Steel Corporation at Chicago, IL and Gary, IN to points in MI and OH; and (2) from the facilities of Republic Steel Corporation at Canton, Cleveland, Elyria, Massillon, Niles, Warren, and Youngstown, OH to points in IL and IN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Republic Steel Corporation, P.O. Box 6778, Cleveland, OH 44101. Send protests to: C. R. Flemming, D/S, I.C.C., 225 Federal Building, Lansing, MI 48933.

MC 41406 (Sub-141TA), filed March 26, 1979. Applicant: ARTIM TRANSPORTATION SYSTEM, INC., 7105 Kennedy Avenue, P.O. Box 2178, Hammond, IN 46323. Representative: Wade H. Bourdon, 7105 Kennedy Ave., Hammond, IN 46323. *Agricultural, Construction* & industrial machinery, engines and equipment and merchandise as is dealt in or used by lawn, garden and leisure product dealers, for 180 days. Supporting shipper(s): Allis-Chalmers Corp., P.O. Box 512, Milwaukee, WI 53201. Send protests to: T/A Annie Booker, Room 1386, 219 S. Dearborn, Chicago, IL 60604.

MC 41406 (Sub-142TA), filed April 27, 1979. Applicant: ARTIM

TRANSPORTATION SYSTEM, INC., 7105 Kennedy Avenue, Hammond, IN 46323. Representative: Wade H. Bourdon, same address as applicant. *Aluminum sheet,* from the facilities of Alcan Aluminum Corporation at Oswego, NY to Hastings and Lincoln Park, MI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Alcan Aluminum Corporation, 100 Erieview Plaza, Cleveland, OH 44114. Send protests to: Annie Booker, TA, ICC, 1386 Dirksen Bldg., 219 S. Dearborn St., Chicago, IL 60604.

MC 42487 (Sub-913TA), filed April 27, 1979. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. *Common carrier:* regular routes: General commodities, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment, (1) between Lansing, MI and Muskegon, MI, serving the intermediate point of Grand Rapids, MI: From Lansing over Business Interstate Hwy 96 to junction Interstate Hwy 96, then over Interstate Hwy 96 to junction Business Interstate Hwy 96 near Muskegon Heights, MI, then over Business Interstate Hwy 96 to Muskegon, and return over the same route. (2) Between Battle Creek, MI and Muskegon, MI, serving the intermediate points of Holland and Grand Haven, MI: From Battle Creek over MI Hwy 89 to Allegan, MI, then over MI Hwy 40 to Holland, MI, then over U.S. Hwy 31 to Muskegon, and return over the same route. (3) Between Kalamazoo, MI and Grand Rapids, MI: From Kalamazoo over U.S. Hwy 131 to Grand Rapids; and return over the same route. (4) Between Grand Rapids, MI and Holland, MI: From Grand Rapids over Interstate Hwy 196 to junction Business Interstate Hwy 196, then over Business Interstate Hwy 196 to Holland, and return over the same route. (5) Between junction U.S. Hwy 20 and Interstate Hwy 94 (near Michigan City, IN) and Holland, MI: From junction U.S. Hwy 20 and Interstate Hwy 94 (near Michigan City, IN) over Interstate Hwy 94 to junction Interstate Hwy 196, then over Interstate Hwy 196 to junction Business Interstate Hwy 196, then over Business Interstate Hwy 196 to Holland, MI, and return over the same route. (6) Between Battle Creek, MI and Grand Rapids, MI: From Battle Creek over MI Hwy 37 to Grand Rapids, and return over the same route. Serving all intermediate and off-route points in Allegan, Barry, Ionia, Kent, Montcalm, Muskegon, Newaygo, Oceana, and Ottawa Counties, MI in connection with routes (1) through (6) described above. Applicant seeks to serve all points in the Commercial Zones of Grand Haven, Grand Rapids, Holland and Muskegon, MI. Applicant intends to tack; for 180 days. Supporting shipper(s): There are 38 supporting shippers to this application. Send protests to: District Supervisor, 211 Main, Suite 500, San Francisco, CA 94105.

(Sub-914TA), filed May 3, 1979. CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linefield Dr., Menlo Park, CA 94025. Representative: H. P. Strong, P.O. Box 3062, Portland, OR 97208. *General commodities,* except those of unusual value, classes A and B explosives, household goods as defined by the commission, commodities in bulk, and commodities requiring special equipment. (1) Between Omaha, NE and Lincoln, NE, serving the intermediate point of Greenwood, and all intermediate points in Douglas, Lancaster and Sarpy Counties, NE, for joinder only: From Omaha over U.S. Hwy. 6 to Lincoln, and return over the same route. (2) Between Omaha, NE and Beatrice, NE serving all intermediate points, for joinder only: From Omaha, over U.S. Hwy. 6 to junction U.S. Hwy. 77, then over U.S. Hwy. 77 to Beatrice, and return over the same route. (3) Between Omaha, NE and Hastings, NE, serving all intermediate points in Adams, Lancaster and Saline Counties, NE, for joinder only: From Omaha over U.S. Hwy. 6 to junction U.S. Hwy. 281, then over U.S. Hwy. 281 to Hastings, and return over the same route. (4) Between Omaha, NE and Lexington, NE, serving all intermediate points in Buffalo, Dawson, Hall, Hamilton, Lancaster, Seward and York Counties, NE, for joinder only: From Omaha over U.S. Hwy. 6 to junction U.S. Hwy. 34, then over U.S. Hwy. 34 to junction U.S. Hwy. 281, then over U.S. Hwy. 281 to junction U.S. Hwy. 30, then over U.S. Hwy. 30 to Lexington and return over the same route. (5) Between Omaha, NE and junction U.S. Hwy. 281 and U.S. Hwy. 34, near Grand Island, NE serving all intermediate points, for joinder only: From Omaha over U.S. Hwy. 6 to junction U.S. Hwy. 281 then over U.S. 281 to junction U.S. Hwy. 281 and U.S. Hwy. 34, near Grand Island, and return over the same route. (6) Between Omaha, NE and Beatrice, NE, serving all intermediate points in Gage County, NE for joinder only: From Omaha over U.S. Hwy. 275 to junction U.S. Hwy. 136 near Rockport, MO, then over U.S. Hwy. 136 to Beatrice, and return over the same route. (7) Between Lexington, NE and Cheyenne, WY, serving all intermediate points in Buffalo and Dawson Counties, NE and serving the junction U.S. 30 and U.S. Hwy. 26 at Ogallala, NE for joinder only: From Lexington over U.S. 30 to Cheyenne, and return over the same route. (8) Between junction U.S. Hwy. 30 and U.S. Hwy. 26 at Ogallala, NE and Casper, WY, serving no intermediate points for joinder only: From junction U.S. Hwy. 30 and U.S. Hwy. 26 at Ogallala, over U.S. Hwy. 26 to junction NE Hwy. 92, then over NE Hwy. 92 to junction NE Hwy. 79E, then over NE Hwy. 79E to junction U.S. Hwy. 26 near Minatare, NE, then over U.S. Hwy. 26 to Casper, and return over the same route. Serving all other points in Adams, Dawson, Douglas, Gage, Hall, Hamilton, Jefferson, Kearney, Lancaster, Saline, Sarpy, Seward and York Counties, NE as off route points in connection with the routes described above.

Note.—Applicant intends to tack.

Applicant intends to tack the proposed authority with its present authority at Cheyenne, WY; Casper, WY and Omaha, NE. Present authority to serve Cheyenne and Casper, WY is found in applicants Docket No. MC 42487 Sub 431. The authority to serve Omaha, NE is held pursuant to authority granted in Docket No. MC-F-13340, Consolidated Freightways Corporation of Delaware Purchase—(portion) Ringsby Truck Lines, Inc. A sub number has not been issued by the Commission, at this time. Applicant proposes to interline traffic with its present connecting carriers at authorizes interline points throughout the United States as provided in Tariffs on file with the Interstate Commerce Commission for 180 days. Supporting shipper(s): There are 63 supporting shippers to this application. Send protests to: District Supervisor, 211 Main, Suite 500, San Francisco, CA 94105.

MC 42487 (Sub-915TA), filed May 1, 1979. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: H. P. Strong, P.O. Box 3062, Portland, OR 97208. *Common carrier: regular routes;* General commodities, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment, between Lake Charles, LA and Leesville, LA serving the intermediate point of De Ridder, LA and

the off-route point of Fort Polk, LA for the purpose of joinder only: From Lake Charles, over U.S. Hwy 171 to Leesville, and return over the same route for 180 days. Supporting shipper(s): Ampacet Corporation, c/o Tariff, P.O. Box 375, Hazlet, NJ 07730 and Westvaco Corporation, 299 Park Ave., New York, NY. Send protests to: District Supervisor, 211 Main, Suite 500, San Francisco, CA 94105. Supporting shipper(s): Ampacet Corporation, c/o Tariff, P.O. Box 375, Hazlett, NJ 07730, Westvaco Corporation, 299 Park Ave., New York, NY. Send protests to: District Supervisor, 211 Main, Suite 500, San Francisco, CA 94105.

Note.—Applicant proposes to Tack the authority sought here at Lake Charles, LA with its existing operating authority.

MC 51146 (Sub-690TA), filed May 7, 1979. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John R. Patterson, 2480 E. Commercial Blvd., Ft. Lauderdale, FL 33308. *Metal containers* from facilities of Jos. Schlitz Brewing Co. at Oak Creek, WI to Michigan City and LaPorte, IN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): National Can Corp., 8101 W. Higgins Rd., Chicago, IL 60631. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 51146 (Sub-691TA), filed May 10, 1979. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John Patterson, 2480 E. Commercial Blvd., Ft. Lauderdale, FL 33308. *Containers and container closures* from facilities of The Continental Group, Inc. at or near Perry & Atlanta, GA to St. Louis, MO; Quincy, IL; Columbus & Washington, OH; Indianapolis, IN; St. Joseph, Benton Harbor, Shoreham and Holland, MI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The Continental Group, Inc., 5401 W. 65th St., Chicago, IL 60638. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 59457 (Sub-44TA), filed May 7, 1979. Applicant: SORENSEN TRANSPORTATION CO., INC., 6 Old Amity Road, Bethany, CT 06525. Representative: Gerald A. Joseloff, 60 State Street, Hartford, CT 06103: *Printed matter and equipment, materials and supplies* used at the facilities of manufacturers and distributors of printed matter, between (a) Atlanta, GA on the one hand, and, on the other, Washington, DC, Lancaster, PA, Bethany, Bristol and Old Saybrook, CT, and (b) from Norwalk, CT to Atlanta, GA, for 180 days. Supporting shipper(s): Time, Incorporated, Time & Life Building, Rockefeller Center, New York, NY 10020. Modern Printing & Lithography, Inc., 10 Pearl Street, Norwalk, CT 06852. Send protests to: J. D. Perry, Jr., DC, ICC, 135 High Street, Hartford, CT 06103.

MC 59957 (Sub-54TA) filed May 3, 1979. Applicant: MOTOR FREIGHT EXPRESS, Arsenal Rd. & Toronita St., York, PA 17402. Representative: William A. Chesnutt, 1776 "F" St., N.W., Washington, D.C. 20006. *General commodities* (except articles of unusual value, and except dangerous explosives, livestock, commodities in bulk, and commodities requiring special equipment), Between Waukegan, IL and Milwaukee, WI, serving all intermediate points in Wisconsin: From Waukegan, IL over IL Hwy. 42 to the Illinois-Wisconsin State line,then over WI Hwy. 32 to junction WI Hwy. 100, then over WI Hwy. 100 to junction WI Hwy. 59, and then over WI Hwy. 59 to Milwaukee, and return over the same route; From Waukegan, IL over IL Hwy. 42 to the Illinois-Wisconsin State line, then over WI Hwy. 32 to junction WI Hwy. 100, then over WI Hwy. 100 to junction Milwaukee County Hwy. H, and then over Milwaukee County Hwy. H to Milwaukee, and return over the same route. Serving Fox Point, Greendale, Shorewood, Wauwatosa, and Whitefish Bay, WI as off-route points in connection with carrier's regular-route operations to and from Milwaukee, WI. Between Waukegan, IL and Milwaukee, WI, serving Kenosha and Racine, WI as off-route points: From Waukegan, IL over IL Hwy. 42 to junction IL Hwy. 132, then over IL Hwy. 132 to junction U.S. Hwy. 41, then over U.S. Hwy. 41 to Milwaukee and return over the same route; From Waukegan, IL over IL Hwy. 42 to junction IL Hwy. 132, then over IL Hwy. 132 to junction I–94, then over I–94 to Milwaukee, and return over the same route. Serving the junction of I–94 and IL Hwy. 132 for purposes of joinder only. Between junction WI Hwy. 32 and WI Hwy. 100, and Milwaukee, WI, serving all intermediate points: From junction WI Hwy. 32 and WI Hwy. 100, over WI Hwy. 32 to Milwaukee, and return over the same route. Serving the commercial zones of all named and authorized intermediate points. Restriction: The service authorized to and from Milwaukee and intermediate points in WI is restricted to traffic moving to and from points on said carrier's authorized routes other than points in the Chicago, IL Commercial Zone as defined by the Commission. Supporting shipper(s): 91 supporting shippers. Send protests to: ICC, Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 61977 (Sub-17TA), filed April 27, 1979. Applicant: ZERKLE TRUCKING COMPANY, 2400 Eighth Ave., Huntington, WV 25703. Representative: John M. Friedman, 2930 Putnam Ave., Hurricane, WV 25526. *Such commodities as are dealt in by wholesale, retail, grocery and drug stores and/or warehouses,* and *materials, equipment* and *supplies* on return (except commodities in bulk), between Cincinnati, OH, on the one hand, and on the other, points in VA, PA and WV, for 180 days. Supporting shipper(s): The Proctor & Gamble Distributing Company, P.O. Box 599, Cincinnati, OH 45201. Send protests to: J. A. Niggemyer, DS, 416 Old P. O. Bldg., Wheeling, WV 26003.

MC 63417 (Sub-206TA), filed May 2, 1979. Applicant: BLUE RIDGE TRANSFER COMPANY, INCORPORATED, P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain, same address as above. *Glass pressware,* from Somerset, KY to Rochester, NY for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): General Electric Company, Noble Road, Nela Park, Cleveland, OH 44112. Send protests to: Charles F. Myers, DS, ICC, Room 10–502 Federal Bldg., 400 North 8th St., Richmond, VA 23240.

MC 63417 (Sub-207TA) filed April 26, 1979. Applicant: BLUE RIDGE TRANSFER COMPANY, INCORPORATED, P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain, same address as above. *Plumbers goods, vanities, vanity cabinets,* from Ford City, PA and Salem, OH to points in AL, GA, NC, SC, TN and VA, for 180 days. Supporting shipper(s): Eljer Plumbingware, Div. Wallace Murray Corp., #3 Gateway Center, Pittsburgh, PA 15222. Send protests to: Charles F. Myers, DS, ICC, Room 10–502 Federal Bldg., 400 North Eighth Street, Richmond, VA 23240.

MC 63417 (Sub-208TA), filed May 4, 1979. Applicant: BLUE RIDGE TRANSFER COMPANY, INCORPORATED, P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain, same address as applicant. (1) *Glass bulbs and packaging materials* (2) *Glass pressware;* (1) between Lexington, KY and St. Marys, PA; (2) from Somerset, KY to Hendersonville, NC for 180 days.

Supporting shipper(s): General Electric Company, Cleveland, OH 44112. Send protests to: Charles F. Myers, DS, ICC, Room 10–502 Federal Bldg., 400 North 8th Street, Richmond, VA 23240.

MC 64806 (Sub-12TA), filed April 23, 1979. Applicant: R. P. THOMAS TRUCKING COMPANY, INCORPORATED, 807 W. Fayette Street, Martinsville, VA 24112. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168. (1) *New furniture* from points in Henry county, VA to points in FL; IL; IN; KY; NY; OH; and TN; and (2) *Returned shipments of new furniture* from points in the destination states in (1) above to points in Henry county, VA, and; (3) *Materials and supplies used or useful in the manufacture of new furniture* from points in IN; MD; MI; OH; PA; and TN to points in Henry county, VA for 180 days. Supporting shipper(s): Hooker Furniture Corp., E. Church Street, Martinsville, VA 24112, Virginia Mirror Company, 305 Moss Street, Martinsville, VA 24112. Send protests to: Charles F. Myers, DS, ICC, Room 10–502 Federal Bldg., 400 N. 8th St., Richmond, VA 23240.

MC 65697 (Sub-56TA), filed April 16, 1979. Applicant: THEATRES SERVICE COMPANY, 830 Willoughby Way, N.E., Atlanta, GA 30312. Representative: Max G. Morgan, P.O. Box 1540, Edmond, OK 73034. *General commodities (except classes A and B explosives) moving in express service* (1) between Vicksburg, MS and Macon, GA; over US Hwy 80; (2) between Vicksburg, MS and Toomsuba, MS over Interstate Hwy 20; (3) between the AL–MS State line, near Cuba, AL and Bristol, TN (a) from the AL–MS State line, near Cuba, AL thence over US Hwy 11 to Knoxville, TN then over US Hwy 11–E to Bristol, TN and (b) from the AL–MS State line near Cuba, AL over Interstate Hwy 59 to Chattanooga, TN, then over Interstate Hwy 75 to Knoxville, then over Interstate Hwy 81 to Bristol, TN (4) between Knoxville and Bristol, TN, over US Hwy 11–W (5) between Montgomery, AL and Opp, AL, over US Hwy 331 (6) between Dothan, AL and Westmoreland, TN, over US Hwy 231 (7) between Andalusia, AL and Hartwell, GA, over US Hwy 29 (8) between Tuskege, AL and Atlanta, GA (9) between Andalusia, AL and Thomasville, GA, over US Hwy 84 (10) between Opp, AL and Albany, GA, from Opp over AL Hwy 52 to the AL–GA State line, then over GA Hwy 62 to junction GA Hwy 91, then over GA Hwy 91 to Albany (11) between Dothan, AL and Nashville, TN and Nashville, TN, over US Hwy 431 (12) between Greenville, AL and Westmoreland, TN, from Greenville over US Hwy 31 to Nashville, then over US Hwy 31–E to Westmoreland (13) between Greenville, AL and Nashville, TN, over Interstate Hwy 65 (14) between Pulaski, TN and Nashville, TN, over US Hwy 31–A (15) between Reform, AL and Sylvester, GA, over US Hwy 82 (16) between Birmingham, AL and Americus, GA, over US Hwy 280 (17) between Sylacauga, AL and Piedmont, AL, from Sylacauga over US Hwy Alternate 231 to Talledega, AL, then over AL Hwy 21 to Piedmont (18) between Hamilton, AL and Athens, GA, over US Hwy 78 (19) between Birmingham, AL and Atlanta, GA, over Interstate Hwy 20 (20) between Florence, AL and Aliceville, AL, from Florence over US Hwy 43 to Hamilton, AL then over AL Hwy 17 to Aliceville (21) between Red Bay, AL and Decatur, AL, over AL Hwy 24 (22) between Florence, AL and Kimball, TN, from Florence over US Hwy 72 to junction US Hwy 41 near Kimball, TN (23) between Huntsville, AL and Tuscumbia, AL, over US Hwy Alternate 72 (24) between Springfield, TN and Macon, GA, over US Hwy 41 (25) between Nashville, TN and Macon, GA, from Nashville over Interstate Hwy 24 to Chattanooga, TN, then over Interstate Hwy 75 to Macon (26) between Nashville, TN and Newport, TN, from Nashville over Interstate Hwy 40 (US Hwy 70 and 70–N) to Newport, TN (27) between Leanon, TN and Crab Orchard, TN, over US Hwy 70 (28) between Lebanon, TN and Monterey, TN, over US Hwy 70–N (29) between Westmoreland, TN and Livingston, TN, over TN Hwy 52 (30) between Murfreesboro, TN and Livingston, TN, from Murfreesboro over US Hwy 70–S to junction TN Hwy 42, then over TN Hwy 42 to Livingston (31) between Chestnut Mount, TN and Celina, TN, over TN Hwy 53 (32) between Nashville, TN and Monteagle, TN, over US Hwy 41–A (33) between Fayetteville, TN and McMinnville, TN, from Fayetteville over TN Hwy 50 to junction TN Hwy 55, then over TN Hwy 55 to McMinnville, TN (34) between Oneida, TN and Bainbridge, GA, over US Hwy 2 (35) between Carrollton, GA and Columbus, GA, over US Hwy Alternate 27 (36) between Newport, TN and the TN–KY State line, over US Hwy 25–W (37) between Elizabethton, TN and Leeds, AL, from Elizabethton over US Hwy 321 to Johnson City, then over US Hwy 411 to Leeds (38) between Thomasville, GA and Murphy, NC, over US Hwy 19 (39) between Morgan, GA and Manchester, GA, over GA Hwy 41 (40) between Mountrie, GA and Brundidge, AL, from Moultrie over GA Hwy 37 to the GA–AL State line, then over AL Hwy 10 to Brundidge (41) between Thomasville, GA and Sylvester, GA, from Thomasville over US Hwy 319 to Moultrie, then over GA Hwy 33 to Sylvester (42) between Manchester, GA and Atlanta, GA, over GA Hwy 85 (43) between McCaysville, GA and the juntion of GA Hwy 5 and US Hwy 41 near Marietta, GA, over GA Hwy 5 (44) between Dalton, GA and Clayton, GA, over US Hwy 76 (45) between Murphy, NC and Hayesville, NC, over US Hwy 64 (46) between Madison, GA and Clayton, GA, over US Hwy 441 (47) between Atlanta, GA and the GA–SC State line, from Atlanta over US Hwy 23 to Cornelia, GA then over US Hwy 123 to the GA–SC State line (48) between Covington, GA and Commerce, GA, from Covington over US Hwy 278 to junction GA Hwy 11, then over GA Hwy 11 to Jefferson, GA, then over GA Hwy 15 to Commerce (49) between Athens, GA and the GA–SC State line, over GA Hwy 72 (50) between Knoxville, TN and Murphy, NC, over US Hwy 129 (51) between Athens, GA and the junction of GA Hwy 75 and US Hwy 76 near Hiawassee, GA, from Athens over US Hwy 129 to Cleveland, GA, then over GA Hwy 75 to junction US Hwy 76 (52) between Gallatin, TN, and Lafayette, TN, from Gallatin over TN Hwy 25 to junction TN Hwy 10, then over TN Hwy 10 to Lafayette (53) between Nashville, TN and Bowling Green, KY, from Nashville over US Hwy Alternate 41 to Clarksville, TN, then over US Hwy 79 to Russellville, KY, then over US Hwy 68 to Bowling Green, KY (54) between Bowling Green, KY and Goodlettsville, TN, over US Hwy 31–W (55) between Demopolis, AL and junction US Hwy 43 and AL Hwy 13 near Spruce Pine, AL, over US Hwy 43 (56) between Luverne, AL and Greenville, AL, over AL Hwy 10 (57) between Knoxville, TN and Wartburg, TN, over TN Hwy 62 (58) between Etowah, TN and Dayton, TN, over TN Hwy 30 (59) between Harpersville, AL and Centreville, AL, over AL Hwy 25 (60) between Kingsport, TN and Erwin, TN, over US Hwy 23 (61) between Helen, GA and Elberton, GA over GA Hwy 17 (62) between Heflin, AL and Atlanta, GA, from Heflin over AL Hwy 46 to junction GA Hwy 166, then over GA Hwy 166 to Atlanta (63) between junction US Hwy 31 and AL Hwy 22 near Verbena, AL and Peachtree City, GA, from junction US Hwy 31 and AL Hwy 22 over AL Hwy 22 to junction GA Hwy 34, then over GA Hwy 34 to Peachtree City (64) between Hamilton, AL and Augusta, GA, over US Hwy 278 and (65) between Atlanta, GA and

Augusta, GA, over Interstate Hwy 20 and return over all the foregoing routes, as pertinent, serving all intermediate points in (3) through (65) above, inclusive, and in (1) and (2) above, serving the intermediate points of Jackson and Meridian, MS and all intermediate points in AL and GA, restricted in (1) and (2) above against performing local service between Nashville, TN, on the one hand, and points in MS, on the other, and restricted in (64) above when moving between Union Point and Augusta, GA, against the transportation of shipments having a prior or subsequent movement by air and against motion picture film and supplies when moving to or from places of exhibition, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): There are 52 shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St. N.W., Rm. 300, Atlanta, GA 30309.

MC 69116 (Sub-235TA), filed April 24, 1979. Applicant: SPECTOR INDUSTRIES, INC., d.b.a. SPECTOR FREIGHT SYSTEM, 1050 Kingery Highway, Bensenville, IL 60106. Representative: Donald B. Levine, 39 South LaSalle St., Chicago, IL 60603. *(1) Metal roofing and siding and fabricated metal products and (2) materials, equipment and supplies used in the manufacture of metal roofing and fabricated metal products,* between the facilities of Fabral, Alcan Building Products Division, Alcan Aluminum Corporation at or near Lancaster, PA; Jackson, GA; Gridley, IL; and Idabel, OK, on the one hand, and, on the other, points in AL, AR, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, VT, VA, WV, WI, and DC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Fabral, Alcan Building Products, Division of Alcan Aluminum Corporation, P.O. Box 6977, Cleveland, OH 44101. Send protests to: Annie Booker, TA, ICC, 1386 Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 69116 (Sub-234TA), filed April 24, 1979. Applicant: SPECTOR INDUSTRIES, INC., d.b.a. SPECTOR FREIGHT SYSTEM, 1050 Kingery Highway, Bensenville, IL 60106. Representative: Joel H. Steiner, 39 South LaSalle St., Chicago, IL 60603. *Plasterboard joint system, plasterboard joint or topping cement or compound, and materials, equipment and supplies used in the manufacture, distribution and installation of plasterboard joint system, plasterboard joint or topping cement or compound,* from Milford, VA to points in CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT, VA, WV and DC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Georgia-Pacific Corporation, 1062 Lancaster Ave., Rosemont, PA 19010. Send protests to: Annie Booker, TA, ICC, 1386 Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 66397 (Sub-57TA), filed April 26, 1979. Applicant: JAMES H. HARTMAN & SON, INC., P.O. Box 85, Pocomoke City, MD 21851. Representative Wilmer B. Hill, Suite 805, McLachlen Bank Bldg., 666 Eleventh Street, N.W., Washington, D.C. 20001. *Building or insulating material, and accessories and supplies used in the installation thereof (except commodities in bulk),* between the facilities of Masonite Corp., at or near Towanda, PA, on the one hand, and, on the other, points in CT, DE, ME, MD, MA, NH, NJ, NY, NC, OH, RI, SC, VT, VA, WV, and DC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Masonite Corporation, P.O. Box 311, Towanda, PA 18848. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Philadephia., PA 19106.

MC 70477 (Sub-4TA), filed March 30, 1979. Applicant: M. J. SEIWERT CARTAGE CO., 2029 W. Hubbard St., Chicago, IL 60612. Representative: Themis Anastos, 120 W. Madison St., Chicago, IL 60602. *General commodities, requiring protective service (except commodities in bulk, those of unusual value, Classes A and B explosives, household goods as defined by the Commission and commodities requiring special equipment),* from points in the Chicago, IL commercial zone to points in the Detroit, MI commercial zone, for 180 days. Supporting shipper(s): Allied Shippers & Receivers, 2029 W. Hubbard St., Chicago, IL 60612. Send protests to: Annie Booker, TA, ICC, 1386 Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 70557 (Sub-8TA), filed May 9, 1979. Applicant: NIELSON BROS. CARTAGE CO., INC., 4619 West Homer St., Chicago, IL 60639. Representative: Carl L. Steiner, 39 S. LaSalle St., Chicago, IL 60604. *Canned and preserved foodstuffs,* from the facilities of Heinz USA Div. of H.J. Heinz Co. at or near Greenville, SC, to points in AL, MS, TN, New Orleans, LA and points in Florida on and west of Florida 79 for a period of 180 days. An ETA has been granted for 90 days. Supporting shipper(s): Heinz USA, Division of H.J. Heinz Company, P.O. Box 57, Pittsburgh, PA 15230. Send protests to: David Hunt, Transportation Assistant, 219 S. Dearborn St. Room 1386, Chicago IL 60604.

MC 70557 (Sub-9TA), filed May 8, 1979. Applicant: NIELSON BROS. CARTAGE CO., INC., 4619 West Homer St., Chicago, IL 60639. Representative: Carl L. Steiner, 39 LaSalle St., Chicago, IL 60604. *Paper and paper products, casual furniture, wood pulp, electric lighting fixtures, and equipment, materials, and supplies used in connection with paper and paper products, casual furniture, wood pulp and electric lighting fixtures,* between the facilities of Scott Paper Company located in AL, AR, FL, GA, KY, LA, MS, NC, OK, SC, TN and TX on the one hand, and on the other, points in AL, AR, FL, GA, KY, LA, MS, NC, OK, SC, TN and TX for a period of 180 days. An ETA has been granted for 90 days. Supporting shipper(s): Scott Paper Company, Scott Plaza I, Philadelphia, PA 19113. Send protests to: David Hunt, Transportation Assistant, 219 S. Dearborn St., Room 1386, Chicago, IL 60604.

MC 71296 (Sub-4TA), filed May 11, 1979. Applicant: FORT TRANSPORTATION & SERVICE CO., INC., 1600 Janesville Ave., Ft. Atkinson, WI 53538. Representative: Michael Wyngaard, 150 E. Gilman St., Madison, WI 53703. Common carrier; Regular routes; *General commodities,* except those of unusual value, Classes A & B exploives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment. (1) Between Edgerton, WI and Milton, WI: From Edgerton, WI over W.S. Hwy. 59 to Milton, WI and return over the same route, serving all intermediate points; (2) Between Milton, WI and Ft. Atkinson, WI: From Milton, WI over W.S. Hwy. 26 to Ft. Atkinson, WI and return over the same route, serving all intermediate points, for 180 days. Applicant requests permission to tack and interline this authority. An underlying ETA seeks 90 days authority. Supporting shipper(s): O. C. Electronics, Inc., Rt. 2, Milton, WI 53563 and The Burdick Corp., Milton, WI 53563 and Tomah Products, 1012 Terra Dr., Milton, WI 53563. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 102567 (Sub-22TA), filed April 27, 1979. Applicant: McNAIR TRANSPORT, INC., P.O. Drawer 5357, Bossier City, LA 71111. Representative: Joe C. Day, 13403 N.W. Fwy., Suite 130, Houston, TX 77040. *Petroleum products, in bulk, in*

tank vehicles, from points in Sebastian County, AR to points in Le Flore, Haskell, McIntosh, McCurtain, Sequoyah, Muscogee, Latimer, Adair, and Pushmataha Counties, OK, for 180 days. Applicant has filed an underlying ETA for 90 days. Supporting shipper(s): Arkhola Sand & Gravel Co., P.O. Box 1627, Fort Smith, AR 72902. Champlin Petroleum Company, P.O. Box 552, Enid, OK 73701. Stites Oil Co., P.O. Box 506, Sallisaw, OK 74955. Tony's Gas & Chemical Houst, Inc., Box 1245, McAlester, OK 74501. Maddow Oil Company, Box 236, Clayton, OK 74536. Poteau Petroleum Products, Inc., P.O. Box 590, Poteau, OK 74953. Send protests to: Robert J. Kirspel, DS, ICC, T-9038 Federal Bldg., 701 Loyola Ave., New Orleans, LA 70113.

MC 102616 (Sub-996TA), filed April 30, 1979. Applicant: COASTAL TANK LINES, INC., 250 N. Cleveland-Massillon Rd., P.O. Box 5555, Akron, OH 44313. Representative: David McAllister (same address as applicant). *Chemicals and acids*, in bulk, in tank vehicles, from the facilities of Mobay Chemical Corporation at or near Baytown, TX, to points in CT, GA, IL, MA, MI, MO, NH, NJ, OH and WV. Supporting shipper(s): Mobay Chemical Corp., Penn Lincoln Parkway West, Pittsburgh, PA 15205. Send protests to: Mary Wehner, D/S, ICC, 731 Federal Bldg., Cleveland, OH 44199.

MC 105007 (Sub-56TA), filed April 30, 1979. Applicant: MATSON TRUCK LINE, INC., 1407 St. John Avenue, Albert Lea, MN 56007. Representative: Robert S. Lee, 1000 First National Bank, Minneapolis, MN 55402. *Paper* from Madisonville, KY to Cresco, IA, for 180 days. Supporting shipper(s): Southern Specialty, P.O. Box 606, Madisonville, KY 42431. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building, 110 South 4th Street, Minneapolis, MN 55401.

MC 105566 (Sub-190TA), filed May 11, 1979. Applicant: SAM TANKSLEY TRUCKING, INC., P.O. Box 1120, Cape Girardeau, MO 63701. Representative: Thomas F. Kilroy, Suite 406, 6901 Old Keene Mill Rd., Springfield, VA 22150. *Laminated plastic sheets, tubes and rods* from Coshocton, OH to all points in AZ, CA, CO, ID, MT, NE, NM, OR, TX, UT, WA and WY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): General Electric, 3350 S. 2nd St., Coshocton, OH 43812. Send protests to: P. E. Binder, DS, ICC, Rm. 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 107498 (Sub-1213TA), filed May 10, 1979. Applicant: RUAN TRANSPORT CORPORATION, 666 Grand Ave., Des Moines, IA 50309. Representative: E. Check (same as applicant). *Bentonite clay, in bulk, in tank vehicles*, from Belle Fourche, SD and Upton, WY to IL, IN, MI, MN, NY, PA, OH for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): American Colloid Company, P.O. Box 228, Skokie, IL 60077. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 107498 (Sub-1214TA), filed May 3, 1979. Applicant: RUAN TRANSPORT CORPORATION, 666 Grand Ave., Des Moines, IA 50309. Representative: E. Check (same as applicant). *Petroleum resins, in bulk, in tank vehicles* from Burlington, IA to Memphis, TN for 180 days. Supporting shipper(s): Freeman Chemical Corporation, P.O. Box 247, Port Washington, WI 53074. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 108207 (Sub-507TA), filed April 10, 1979. Applicant: FROZEN FOOD EXPRESS, INC., P.O. Box 225888, Dallas, TX 75265. Representative; M. W. Smith, (address same as above). *(a) Such commodities as are dealt in by wholesale, retail, chain grocery, and food business houses (except in bulk); and (b) meats, meat products, meat by-products, and articles distributed by meat packinghouses (except hides and commodities in bulk), as defined in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certifications, 61 M.C.C. 209 and 766*, From Byhalia, MS, to points in AZ, AR, CA, IL, IN, IA, KS, KY, LA, MI, MN, MO, NE, NM, OH, OK, TN, TX, and WI for 180 days. Underlying ETA for 90 days filed. Supporting shipper(s): Gem, Incorporated, One Gem Boulevard, Byhalia, MS 38611. Send protests to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, 1100 Commerce Street, Room 13C12 Dallas, TX 75242.

MC 108247 (Sub-5TA), filed May 7, 1979. Applicant: WESTCHESTER MOTOR LINES, INC., Furniture Division, 35 Edgemere Road, New Haven, Connecticut 06512. Representative: Maxwell A. Howell, 1100 Investment Building, 1511 K Street, NW., Washington, DC 20005. *New furniture, cabinets, and accessories thereto*, between Milford, CT on the one hand, and, on the other, points in ME and NH, for 180 days. Supporting shipper(s): Steelcase, Inc., P.O. Box 1967, Grand Rapids, MI 49501. All Steel Equipment Co., P.O. Box 871, Aurora, IL. Chatham County Furniture, A Division of U.S. Furniture Industries, P.O. Box 2127, High Point, NC. G. F. Business Equipment, Inc., Youngstown, OH. Send protests to: J. D. Perry, Jr., DS, ICC, 135 High Street, Hartford, CT 06103.

MC 109126 (Sub-14TA), filed May 2, 1979. Applicant: LA SALLE TRUCKING COMPANY, 600 Anita Street, Chula Vista, CA 92011. Representative: Fred H. Mackensen, c/o Murchison & Davis, 9454 Wilshire Blvd., Suite 400, Beverly Hills, CA 90212. *Beer*, from the United States-Mexico Border Crossing point at Tecate, CA to the warehouse of Wisdom Import Sales Company, Inc., at or near S. San Francisco, CA, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Wisdom Import Sales Company, Inc., 17401 Eastman Avenue, Irvine, CA 92714. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, P.O. Box 1551, Los Angeles, CA 90053.

MC 109647 (Sub-30TA), filed April 19, 1979. Applicant: BOSS-LINCO LINES, INC., 3009 Genesee Street, Cheektowaga, NY 14225. Representative: Harold G. Hernly, Jr., Esq., 110 South Columbus Street, Alexandria, VA 22314. Common carrier-regular routes. *General Commodities (except those of unusual value, Classes A & B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment)*, as follows: (1) Between Marietta, OH and Washington DC serving all intermediate points in the states of WV and the junction point of Interstate Hwy 81 and U.S. Hwy 50 at Winchester, VA for the purposes of joinder only: From Marietta, OH over Interstate Hwy 77 to its junction with U.S. Hwy 50 at Parkersburg, WV, thence over the U.S. Hwy 50 to Washington, DC and return over the same route. (2) Between the junction point of Interstate Hwy 81 and U.S. Hwy 50 at Winchester, VA and Baltimore, MD: From the junction point of Interstate Hwy 81 and U.S. Hwy 50 at Winchester, VA over Virginia Hwy 7 to its junction with U.S. Hwy. 340, thence over U.S. Hwy 340 to its junction with U.S. Hwy 15, thence over U.S. Hwy 15 to its junction with Interstate Hwy 70N at Frederick, MD, thence over Interstate Hwy 70N to Baltimore, MD and return over the same route. (3) Between Pittsburgh, PA and Philadephia, PA serving the junction point of Interstate Hwys 76 and 70 at Breezewood, PA and the junction point of Interstate Hwys 76 and 81 for purposes of joinder only: From Pittsburgh, PA over U.S. Hwy 22 to its junction with Interstate Hwy 76, thence over Interstate Hwy 76 to Philadephia, PA and return over the same route. (4) Between junction point

of Interstate Hwys 76 and 70 at Breezewood, PA and Baltimore, MD: From the junction point of Interstate Hwys 76 and 70 at Breezewood, PA over Interstate Hwy 70 to Frederick, MD, thence over Interstate Hwy 70N to Baltimore, MD and return over the same route. (5) Between junction point of Interstate Hwys 76 and 70 at Breezewood, PA and Washington, DC: From the junction point of Interstate Hwys 76 and 70 at Breezewood, PA, over Interstate Hwy 70 to Frederick, MD, thence over Interstate Hwy 70S to its junction with Interstate Hwy 495, thence over Interstate Hwy 495 to its junction with U.S. Hwy 1, thence over U.S. Hwy 1 to Washington, DC and return over the same route. (6) Between the junction point of U.S. Hwy 50 and Interstate Hwy 81 at Winchester, VA and Newark, NJ serving the intermediate points of Allentown, PA; Bethlehem, PA, and Easton, PA, and the junction point of Interstate Hwys 81 and 76 at Harrisburg, PA for the purpose of joinder only: From the junction point of U.S. Hwy 50 and Interstate Hwy 81 at Winchester, VA over Interstate Hwy 81 to its junction with Interstate Hwy 78 at or near Hamlin, PA, thence over Interstate Hwy 78 to Elizabeth, NJ, and thence over U.S. Hwy 22 to Newark, NJ and return over the same route. (7) Between Pittsburgh, PA and Cleveland, OH from Pittsburgh over U.S. Hwy 22/30 to junction Pennsylvania Hwy 60, then over Pennsylvania Hwy 60 to junction Pennsylvania Hwy 51, then over Pennsylvania Hwy 51 to junction Ohio Hwy 14, then over Ohio Hwy 14 to junction Interstate Hwy 480, then over Interstate Hwy 480 to Cleveland, and return over the same route, serving all intermediate points. (8) Between Cleveland, OH and New York City, NY, over Interstate Hwy 80 as an alternate route for operating convenience only. (9) Between Pittsburgh, PA and New York City: From Pittsburgh, PA over Interstate Hwy 79 to the junction of Interstate Hwy 79 and Interstate Hwy 80, thence over Interstate Hwy 80 to New York, NY, and return over the same route. Applicant requests 180 days. An underlying ETA seeks 90 days authority. Supporting Shippers: There are 26 statements in support attached to this application which may be examined in the field office listed below and Headquarters. Send protests to: Richard H. Cattadoris, DS, ICC, 910 Federal Bldg., 111 W. Huron Street, Buffalo, NY 14202.

Note.—Applicant seeks to serve the commercial zones of all named points to include the commercial zones of all named intermediate and off-route points.

MC 109397 (Sub-461TA), filed April 23, 1979. Applicant: TRI-STATE MOTOR TRANSIT CO., Post Office Box 113, Joplin, MO 64801. Representative: A. N. Jacobs (same address as applicant). *Clay*, from Thomas County, GA to points in the United States, except AK and HI, for 180 days. SUPPORTING SHIPPER: Waverly Mineral Products Co., 3018 Market St. Philadelphia, PA 19104. SEND PROTESTS TO: John V. Barry, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106. Supporting Shipper(s): Waverly Mineral Products Co., 3018 Market St., Philadelphia, PA 19104. Send protests to: John V. Barry, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 113106 (Sub-73TA), filed May 11, 1979. Applicant: THE BLUE DIAMOND COMPANY 4401 E. Fairmount Ave., Baltimore, MD 21224. Representative: Chester A. Zyblut, 1030—15th St., N.W., Washington, DC 20005. *Paper and paper products* from Union Camp Corporation plant sites at or near Richmond, VA to points in DE, MD, NJ, NY, OH, PA, WV and DC, for 90 days. An underlying ETA seeks 90 days. Supporting Shipper(s): Roger L. Schoening, Union Camp Corporation, 1600 Valley Road, Wayne, NJ 07470. Send protest to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore, MD 21201.

MC 114457 (Sub-503TA), filed April 11, 1979. Applicant: DART TRANSIT COMPANY, 2102 University Avenue, St. Paul, MN 55114. Representative: James C. Hardman, 33 North LaSalle Street, Chicago, IL 60602. *Containers and container closures* from Denver and Golden, CO to points in NE, IA, MN, MO, WI, IL, IN, MI, OH, TN and KY, for 180 days. Supporting Shipper(s): The Continental Group, Inc., Area Manager-Traffic & Distribution, 5401 West 65th Street, Chicago, IL 60638. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 114457 (Sub-505TA), filed May 2, 1979. Applicant: DART TRANSIT COMPANY, 2102 University Avenue, St. Paul, MN 55114. Representative: James H. Wills (same address as applicant). *Plastic containers* from Green Bay, WI to Oklahoma City, OK, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Midway Can Company, 2941 Hampden Avenue, St. Paul, MN 55114. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building 110 South 4th Street, Minneapolis, MN 55401.

MC 114457 (Sub-506TA), filed May 7, 1979. Applicant: DART TRANSIT COMPANY, 2102 University Avenue, St. Paul, MN 55114. Representative: James H. Wills (same address as applicant). *Aluminum ingots and zinc alloy ingots* from the facilities of Aluminum Smelting and Refining Company, Inc., and/or Certified Alloys Company located at Maple Heights, OH, Clinton, IA, Minneapolis, MN and Waukesha, WI to points in IL, for 180 days. An Underlying ETA seeks 90 days authority. Supporting Shipper(s): Aluminum Smelting & Refining Co., 5463 Dunham Road, Maple Heights, OH 44137. Send protests to: Delores A. Poe, TA, ICC 414 Federal Building 110 South 4th Street, Minneapolis, MN 55401.

MC 114457 (Sub-507TA), filed May 7, 1979. Applicant: DART TRANSIT COMPANY, 2102 University Avenue, St. Paul, MN 55114. Representative: James H. Wills (same address as applicant). *(1) Fibreboard boxes, other than corrugated, KDF, from Stone Mountain, GA to Mehoopany, PA, ringgold, VA, and the facilities of Proctor & Gamble at or near Neely's Landing, MO; and (2) Pulpboard boxes, not corrugated, from Chattanooga, TN to Cincinnati, OH, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Container Corporation of America, 5853 East Ponce De Leon Avenue, P.O. Box 1225, Stone Mountain, GA 30086. Send protests to: Delores A. Poe, TA, ICC 414 Federal Building, 110 South 4th Street, Minneapolis, MN 55401.*

MC 114457 (Sub-508TA), filed May 3, 1979. Applicant: DART TRANSIT COMPANY, 2102 University Avenue, St. Paul, MN 55114. Representative: James H. Wills (same address as applicant). *Paper, paper products, cellulose and textile softeners and related articles* from the facilities of The Proctor & Gamble Company located at or near Neely's Landing, MO and Green Bay, WI to points in the U.S. in and east of ND, SD, NE, KS, OK and TX (except FL, SC, VA, WV, DC, DE, CT, RI, NH, VT and ME), for 180 days. An Underlying ETA seeks 90 days authority. Supporting Shipper(s): The Proctor and Gamble Company, P.O. Box 599, Cincinnati, OH 45201. Send protests to: Delores A. Poe, TA, ICC 414 Federal Building 110 South 4th Street, Minneapolis, MN 55401.

MC 114457 (Sub-509TA), filed May 8, 1979. Applicant: DART TRANSIT COMPANY, 2102 University Avenue, St. Paul, MN 55114. Representative: James H. Wills (same address as applicant). *Container closures* from the facilities of Continental Group, Inc., at or near Perry, GA and Atlanta, GA to St. Louis, MO, Quincy, IL, Columbus and Worthington, OH, Indianapolis, IN, St. Joseph, Benton

Harbor, Shoreham and Holland, MI, for 180 days. An Underlying ETA seeks 90 days authority. Supporting Shipper(s): The Continental Group, Inc., 5401 W. 65th St., Chicago, IL 60638. Send protests to: Delores A. Poe, TA, ICC 414 Federal Building 110 South 4th Street, Minneapolis, MN 55401.

MC 114457 (Sub-510TA), filed May 7, 1979. Applicant: DART TRANSIT COMPANY, 2102 University Avenue, St. Paul, MN 55114. Representative: James H. Wills (same address as applicant). *Dental, hospital, hygienic, medical or surgical supplies and other related articles* from Argonne, IL to points in MN, for 180 days. Supporting shipper(s): Johnson & Johnson Products, Inc., 4949 West 65th Street, Chicago, IL 60638. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building, 110 South 4th Street, Minneapolis, MN 55401.

MC 115826 (Sub-458TA), filed April 9, 1979. Applicant: W. J. DIGBY, INC., 6015 East 58th Avenue, Commerce City, CO 80022. Representative: Howard Gore (same address as above). *Meats, meat products, meat by-products, and articles distributed by meat packinghouses,* as described in Sec. A & C of Appendix I to report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from facilities of Morgan Colorado Beef at Fort Morgan, CO, to facilities of Iowa Beef Processors, Inc., at Dakota City, NE, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Iowa Beef Processors, Inc., Dakota City, NE 68731. Send protests to: Herbert C. Ruoff, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 115826 (Sub-459TA), filed April 11, 1979. Applicant: W. J. DIGBY, INC., 6015 East 58th Avenue, Commerce City, CO 80022. Representative: Howard Gore (same address as above). *Frozen Foods,* from Plover, WI to points in AL, AR, CT, DE, FL, GA, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MS, MO, NC, NH, NJ, NY, OH, PA, RI, SC, TN, VT, VA, WV, and DC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ore-Ida Foods, Inc., P.O. Box 10, Boise, ID 83707. Send protests to: Herbert C. Ruoff, District Supervisor, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 115826 (Sub-460TA), filed April 9, 1979. Applicant: W. J. DIGBY, INC., 6015 East 58th Avenue, Commerce City, CO 80022. Representative: Howard Gore (same address as above). *Meat,* from Oakland, San Leandro and San Francisco, CA to points in TX and GA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Lemoine Phillips Land & Cattle, 1616 Doolittle, San Leandro, CA 94577. Send protests to: Herbert C. Ruoff, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 115826 (Sub-464TA), filed May 3, 1979. Applicant: W. J. DIGBY, INC., 6015 East 58th Avenue, Commerce City, CO 80022. Representative: Howard Gore (same address as above). *Agricultural insecticides, weed killing compounds and pest control products,* from Alton, IA to points in CA, CO, NE, KS, OK, PA, VA, TX, OH, MN, MO, ND, SD, IL, AR and LA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Silex Corporation, Alton, IA 51003. Send protests to: District Supervisor Herbert C. Ruoff, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 115826 (Sub-465TA), filed May 3, 1979. Applicant: W. J. DIGBY, INC., 6015 East 58th Avenue, Commerce City, CO 80022. Representative: Howard Gore (same address as above). *Suitcases, travel bags, briefcases and carrying cases,* from Denver, CO and its commercial zone to points east of the Mississippi River, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Samsonite Corporation, 11200 East 45th Avenue, Denver, CO 80239. Send protests to: District Supervisor Herbert C. Ruoff, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 116077 (Sub-413TA). Applicant: DSI TRANSPORTS, INC., 4550 One Post Oak Place/Suite 300, Houston, TX 77027. Representative: J. C. Browder, 4550 One Post Oak Place/Suite 300, Houston, TX 77027. Common carrier over irregular routes. *Limestone, clay, boric acid, sodium sulphate, silica flour, in bulk, in tank vehicles* from Boron Trona and San Francisco, CA; Pacific and Mosher, MO; to Sandersville, Augusta, Macon and Hephzibah, GA and to Langely and Columbia, SC; Mill Creek, OK and Crab Orchard, TN and Berkeley Springs, WV seeking 180 days authority. Supporting shipper(s) Certain-teed Corporation, P.O. Box CT, Wichita Falls, TX 76307. Send protests to: John F. Mensing, Interstate Commerce Commission, 8610 Federal Bldg., 515 Rusk Ave., Houston, TX 77002.

MC 116967 (Sub-24TA), filed April 9, 1979. Applicant: WONDAAL TRUCKING CO., INC., 2857 Ridge Road, Lansing, IL 60438. Representative: Samuel Ruff, 2109 Broadway, East Chicago, IN 46312. *Contract carrier:* irregular routes: *Face and common building brick,* between Chicago, IL and points in OH, WI, MO, MI, IA, and IN, for the account of W. E. Olsen Co., for 180 days. Supporting shipper(s): W. E. Olsen Co., 536 Busse Highway, Park Ridge, IL 60068. Send protests to: Annie Booker, TA, ICC, 1386 Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 116967 (Sub-25TA), filed April 9, 1979. Applicant: WONDAAL TRUCKING CO., INC., 2857 Ridge Road, Lansing, IL 60438. Representative: Samuel Ruff, 2109 Broadway, East Chicago, IN 46312. *Contract carrier;* irregular routes: *Face and common building brick,* between Chicago, IL and points in OH, MI, MO, WI, IA, and IN, for the account of American Brick Company, for 180 days. Supporting shipper(s): American Brick Company, 6558 W. Fullerton, Chicago, IL. Send protests to: Annie Booker, TA, ICC, 1386 Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 117666 (Sub-205TA), filed May 2, 1979. Applicant: HIRSCHBACH MOTOR LINES, INC., 5000 South Lewis Blvd., P.O. Box 417, Sioux City, IA 51102. Representative: George L. Hirschbach (same address as above). *Chain saws, snow-throwers and garden, lawn, turf and golf course care equipment,* from the facilities of The Toro Company at or near Minneapolis, MN and its commercial zone to points in AL, AR, FL, GA, KY, LA, MS, NC, SC, and TN, for 180 days. Restrict underlying ETA seeks 90 days authority. Supporting shipper(s): The Toro Company, 8111 Lyndale Avenue, Minneapolis, MN 55420. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 117666 (Sub-206TA), filed April 18, 1979. Applicant: HIRSCHBACH MOTOR LINES, INC., 5000 So. Lewis Blvd., P.O. Box 417, Sioux City, IA 51102. Representative: George L. Hirschbach (same address as applicant). *Bananas and agricultural commodities exempt from regulation under Section 10526 of the Interstate Commerce Act when transported in mixed loads with bananas,* from the facilities of Del Monte Banana Co. at Port Hueneme, CA to points in IA, MN, ND, and SD for 180 days. Restricted to the transportation of traffic having a prior movement by water. An underlying ETA seeks 90 days authority. Supporting shipper(s): Del Monte Banana Company, 1201 Brickell Avenue, Miami, FL 33101. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 117666 (Sub-207TA), filed May 9, 1979. Applicant: HIRSCHBACH MOTOR LINES, INC., 5000 South Lewis Blvd., P.O. Box 417, Sioux City, IA 51102.

Representative: George L. Hirschbach (same address as applicant). *Canned and preserved foodstuffs,* from the facilities of Heinz USA, Division of H. J. Heinz Company at or near Iowa City and Muscatine, IA to points in MN, ND, and SD, for 180 days. Restricted to traffic originating at the above named facilities and destined to the above-named destination points. An underlying ETA seeks 90 days authority. Supporting shipper(s): Heinz USA, Division of H. J. Heinz Company, P.O. Box 57, Pittsburgh, PA. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 117786 (Sub-54TA), filed May 3, 1979. Applicant: RILEY WHITTLE, INC., P.O. Box 19038, Phoenix, AZ 85005. Representative: A. Michael Bernstein, 1441 E. Thomas Rd., Phoenix, AZ 85014. *Kitchen cabinets and cabinet hardware,* from Longview, WA to Phoenix, AZ and Albuquerque, NM, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): DAR Distributing Co., 2525 W. Cypress, Phoenix, AZ 85009. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025.

MC 119557 (Sub-9TA), filed May 10, 1979. Applicant: KENNETH L. STURART, d.b.a. K & S TANKLINE, P.O. Drawer R, Copperhill, TN 37317. Representative: Kim G. Meyer, P.O. Box 56387, Atlanta, GA 30343. *Sulphur dioxide, in bulk, in tank vehicles,* from Copperhill, TN to points in KY, IL, IN, OH, TX, AR, MI, IA, KS, VA, LA (except Bastrop and Bogalusa), NC (except Canton and Sylvia) and St. Louis, MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Cities Service Company, 3445 Peachtree Road, NE., Atlanta, GA 30326. Send protests to: Glenda Kuss, TA, ICC, Suite A–422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 121496 (Sub-21TA). Applicant: CANGO CORPORATION, 1100 Milam St., Houston, TX 77002. Representative: Tom E. Davis, 1100 Milam St., Houston, TX 77002. Common carrier over irregular routes. *Chemicals,* in bulk, in tank vehicles between Lake Charles, LA on the one hand, and, on the other, points in Texas seeks 180 days authority. An underlying ETA seeks 90 days authority. Supporting shipper(s): Continental Oil Company, P.O. Box 2197, Houston, TX 77001. Send protests to: John F. Mensing, Interstate Commerce Commission, 515 Rusk Ave. #8610, Houston, TX 77002.

MC 121496 (Sub-22TA). Applicant: CANGO CORPORATION, 1100 Milam St., Houston, TX 77002. Representative: Tom E. Davis, 1100 Milam St., Houston, TX 77002. Common carrier over irregular routes. *Liquid chemicals, in bulk, in tank vehicles,* from the plant site of Union Carbide Corporation near Taft, LA to all points in TX for 180 days authority. An underlying ETA seeks 90 days authority. Supporting shipper(s): Union Carbide Corporation, 270 Park Ave., New York, NY 10017. Send protests to: John F. Mensing, Interstate Commerce Commission, 515 Rusk Ave. #8610, Houston, TX 77002.

MC 121496 (Sub-26TA). Applicant: CANGO CORPORATION, 1100 Milam St., Houston, TX 77002. Representative: Tom E. Davis, 1100 Milam St., Houston, TX. 77002. Common carrier over irregular routes. *NEUTRAL CALCIUM SULFONATE,* in bulk, in tank vehicles from Gretna, LA to Port Arthur, TX for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Texaco, Inc., 4800 Fournace Pl., Houston, TX 77401. Send protest to: John F. Mensing, District Supervisor, Interstate Commerce Commission, 515 Rusk Ave. No. 8610, Houston, TX 77002.

MC 123387 (Sub-16TA), filed May 9, 1979. Applicant: E. E. Henry, 1128 South Military Highway, Chesapeake, Virginia 23320. Representative: William P. Jackson, Jr., 3426 N. Washington, Blvd., P.O. Box 1240, Arlington, VA 22210 *Malt beverages, in containers, and related advertising material,* from Pabst, GA, to points in NC, SC, VA, MD, DE, DC, PA, NJ, and FL for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Warner Paris, Traffic Manager, Pabst Brewing Company, P.O. Box 1013, Perry, GA 31069. Send protest to: Paul D. Collins, DS, ICC, Room 10–502 Federal Bldg., 40 North 8th Street, Richmond, VA 23240.

MC 123387 (Sub-17TA), filed May 3, 1979. Applicant: E. E. HENRY, 1923 Sparrow Road, Chesapeake, VA 23320. Representative: Dwight L. Koerber, Jr., 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, D.C. 20001. *Malt Beverages,* from Utica, NY to Macon, GA and empty containers on return, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Bill Laite Distributing Company, 1998 Waterville Road, Macon, GA 31206. Send protest to: Paul D. Collins, DS, ICC, Room 10–502 Federal Bldg., 400 North 8th Street, Richmond, VA 23240.

MC 123407 (Sub-574TA), filed March 26, 1979. Applicant: SAWYER TRANSPORT, INC., Sawyer Center, Rt. 1, Chesterton, IN 47304. Representative: H. E. Miller, Jr. (same address as applicant). *Lumber, Lumber Products, and wood products,* from points in IL, IN, IA, MI, MO, and OH to points in CO, MT, OR, UT, WA and WY. 180 days. Supporting shipper(s): Intermountain Orient, Inc., P.O. Box 4297, Boise, ID 83704. Send protest to: T/A Annie Booker, Room 1386, 219 S. Dearborn, Chicago, IL 60604.

MC 123407 (Sub-577TA), filed April 27, 1979. Applicant: SAWYER TRANSPORT, INC., Sawyer Center, Route 1, Chesterton, IN 46304. Representative: H. E. Miller, Jr. (same address as applicant). *Roofing, roofing products, or roofing material, or material used in the installation or manufacture thereof,* between Brunswick, OH, on the one hand, and, on the other, points in PA, WV, KY, NY, IN, MI and MD, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Owens-Corning Fiberglas Corporation, Fiberglas Tower, Toledo, OH 43659. Send protests to: Annie Booker, TA, ICC, 1386 Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 123407 (Sub-578TA), filed April 30, 1979. Applicant: SAWYER TRANSPORT, INC., Sawyer Center, Route 1, Chesterton, IN 46304. Representative: H. E. Miller, Jr. (same address as applicant). *Glass and glass glazing units,* from Chicago, IL to points in NJ, NY, WI, NC, SC and MO, for 180 days. Supporting shipper(s): Therm-A-Shield, 15461 South LaSalle, South Holland, IL 60473. Send protests to: Annie Booker, TA, ICC, 1386 Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 123407 (Sub-579TA), filed May 8, 1979. Applicant: SAWYER TRANSPORT, INC., Sawyer Center, Route 1, Chesterton, IN 46304. Representative: H. E. Miller, Jr. (same address as applicant). *Iron and steel articles,* from Schaumburg and Chicago, IL; Detroit, MI; Cleveland and Youngstown, OH; Pittsburgh, PA; Andrews, SC, to points in the United States in and east of ND, SD, NE, KS, OK and TX for 180 days. An ETA has been granted for 90 days. Supporting shipper(s): Parker Steel Company, 4239–41 Monroe St., Toledo, OH 43606. Send protests to: David Hunt, Transportation Assistant, 219 S. Dearborn St., Room 1386, Chicago, IL 60604.

MC 123407 (Sub-580TA), filed May 8, 1979. Applicant: SAWYER TRANSPORT, INC., Sawyer Center, Route 1, Chesterton, IN 46304. Representative: H. E. Miller, Jr. (same address as applicant). *Wallboard, fiberboard, pulpboard or strawboard with not more than two coats of paint, enamel or lacquer,* from the facilities of

Boise Cascade Corporation located at or near Cicero, IL, to points in the United States in and east of MI, IN, KY, TN, and MS for 180 days. An ETA has been granted for 30 days. Supporting shipper(s): Boise Cascade Corporation, P.O. Box 2885, Portland, OR 97208. Send protests to: David Hunt, Transportation Assistant, 219 S. Dearborn St., Room 1386, Chicago, IL 60604.

MC 124306 (Sub-60TA), filed May 2, 1979. Applicant: KENAN TRANSPORT COMPANY, INCORPORATED, P.O. Box 2729, Chapel Hill, NC 27514. Representative: W. David Fesperman (same address as applicant). *Terephthalic acid, in bulk, in tank vehicles,* from Decatur, AL to Darlington, SC for 180 days. An underlying ETA has been filed seeking 90 days authority. Supporting shipper(s): Fiber Industries, Inc., P.O. Box 32414, Charlotte, NC 28232. Send protests to: Archie W. Andrews, D/S, ICC, P.O. Box 26896, Raleigh, NC 27611.

MC 124306 (Sub-61TA), filed May 10, 1979. Applicant: KENAN TRANSPORT COMPANY, INCORPORATED, P.O. Box 2729, Chapel Hill, NC 27514. Representative: W. David Fesperman (same address as applicant). *Spent ethylene glycol, in bulk, in tank vehicles,* from New Bern, NC to Wilmington, NC for 180 days. An underlying ETA has been filed seeking 90 days authority. Supporting shipper(s): PPG Industries, Inc., One Gateway Center, Pittsburgh, PA 15222. Send protests to: Archie W. Andrews, D/S, ICC, P.O. Box 26896, Raleigh, NC 27611.

MC 124947 (Sub-130TA), filed April 13, 1979. Applicant: MACHINERY TRANSPORTS, INC., 1945 South Redwood Road, Salt Lake City, UT 84105. Representative: John B. Anderson (same address as applicant). (1) Electrical storage batteries and parts thereof, battery fluid, battery boxes, battery covers and battery vents and (2) equipment, materials and supplies used in the production of (1) above, between points in the United States (except AK and HI), for 180 days. Restricted to traffic originating at or destined to the facilities of Gould, Inc., located at City of Industry, CA; Dallas, TX; Dunmore, PA; Leavenworth, LA; Zanesville, OH; Denver, CO; Atlanta, GA and Phoenix, AZ. An underlying ETA requests 90 days authority. Supporting shipper(s): Gould, Inc., P.O. Box 8140, St. Paul, MN 55165. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 126736 (Sub-119TA), filed April 23, 1979. Applicant: FLORIDA ROCK AND TANK LINES, INC., 155 East 21st Street, P.O. Box 1500, Jacksonville, FL 32201. Representative: L. H. Blow (same address as applicant). *Phosphate, phosphate products, and phosphate by-products, in bulk, in dump vehicles,* from Occidental, FL to Harrisonburg, VA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Hooker Chemical Corporation, P.O. Box 4280, Houston, TX. Send protests to: G. H. Fauss, Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 129086 (Sub-3TA), filed April 30, 1979. Applicant: STOVER BROS. TRUCKING CO., Box 790, Elburn, IL 60119. Representative: Michael W. O'Hara, 300 Reisch Building, Springfield, IL 62701. *Dry and liquid fertilizer,* from Madison, Whitewater, East Troy and Milwaukee, WI to Elburn, IL, for 180 days. Supporting shipper(s): Elburn Cooperative Company, Box U, Elburn, IL 60119. Send protests to: Annie Booker, TA, ICC, 1386 Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 133937 (Sub-33TA), filed April 9, 1979. Applicant: CAROLINA CARTAGE COMPANY, INC., 1636 East Vesta Ave, College Park, GA 30337. Representative: Henry P. Willimon, P.O. Box 1075, Greenville, SC 29602. *Such commodities as are dealt in by catalog and retail department stores, and materials, supplies, and equipment, including garments on hangers* between points and places in GA, AL, NC, SC, Chicago, IL, St. Louis, MO, Cincinnati and Columbus, OH, and Hudson County, NJ for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Venture Stores, Inc., 615 Northwest Plaza, St. Ann, MO 63074; Shillito's, 5121 Fishwick Drive, Cincinnati, OH 45216. Send protests to: Sara K. Davis, TA, ICC, 1252 W. Peachtree St., NW., Room 300, Atlanta, GA 30309.

MC 134286 (Sub-106TA), filed April 23, 1979. Applicant: ILLINI EXPRESS, INC., P.O. Box 1564, Sioux City, IA 51102. Representative: Julie Humbert (same address as above). *Ferrous sulphate, fertilizer and feed grade, other than USP grade, except commodities in bulk,* from the facilities utilized by the Cosmin Corporation located at or near Baltimore, MD, to points in CO, IA, IL, IN, KS, MI, MO, MN, NE, OH, and WI for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Cosmin Corporation, 1835 NE Loop 410, Suite 910, San Antonio, TX. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 134286 (Sub-109TA), filed April 17, 1979. Applicant: ILLINI EXPRESS, INC., P.O. Box 1564, Sioux City, IA 51102. Representative: Julie Humbert, (same address as above). *Washing, cleaning, and scouring compounds; soap products; toilet preparations; mouthwash, food items such as nos. nonmedicated syrup, oleo, margarine, vegetable oil, compound aerated cream,* from the facilities of Lever Brothers Company located at St. Louis, MO, to points in NE, IA, and Kansas City, MO and its commercial zone, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Lever Brothers Company, 1400 North Pennsylvania, St. Louis, MO 63133. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 134367 (Sub-66TA), filed May 2, 1979. Applicant: BLACKBURN TRUCK LINES, INC., 4998 Branyon Avenue, South Gate, CA 90280. Representative: Patricia M. Schnegg, Knapp, Grossman & Marsh, 707 Wilshire Blvd., Suite 1800, Los Angeles, CA 90017. *Plastic containers,* from Tacoma, WA to Fort Worth, TX and Salinas, CA, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Agri-tainer Corporation, P.O. Box 2004, Wenatchee, WA 98801. Send protests to: Irene Carlos, TA, ICC, P.O. Box 1551, Los Angeles, CA 90053.

MC 134678 (Sub-7TA), filed May 1, 1979. Applicant: H. H. MOORE, JR., P.O. Box 477, Appomattox, VA 24533. Representative: Richard J. Lee, Suite 1222, 700 E. Main Street, Richmond, VA 23219. (1) *Iron and steel products,* from OH, PA, WV, and MD to the plantsite of N. B. Handy, Co., at or near Lynchburg, VA (2) *Ground level steel reservoirs, materials, supplies, and equipment* used in the manufacturing thereof, between the plantsits of Flippo's and Company, at or near Powhatan, VA, on the one hand, and on the other, points in the U.S. (except points in GA; NC; PA; NJ; TN; OH; NY; MD; DE; IN; and SC, for 180 days. Supporting shipper(s): N. B. Handy Co., P.O. Box 3305, Richmond, VA 23235. Send protests to: Charles F. Myers, DS, ICC, Room 10-502 Federal Bldg., 400 N. 8th St., Richmond, VA 23240.

MC 135328 (Sub-15TA), filed May 4, 1979. Applicant: SOUTHERN GULF TRANSPORT, INC., P.O. Box 7950, Shreveport, LA 71107. Representative J. D. Haynes (same address as applicant). *Post, poles and pilings,* from the plantsite of International Paper Company at or near DeRidder, LA to points in AR, OK, and TX, for 180 days. Applicant has filed an underlying ETA for 90 days. Supporting shipper(s): International Paper Company, P.O. Box 160707, Mobile, LA 36616. Send protests to: Robert J. Kirspel, DS, ICC, T-9038

Federal Bldg., 701 Loyola Ave., New Orleans, LA 70113.

MC 135797 (Sub-213TA), filed April 20, 1979. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant, (same as applicant.) *Bentonite clay, lignite coal and foundation water impedance boards,* (1) From Butte County, SD to points in CA and King County, WA, and (2) From Big Horn County, WY and Bowman County, ND to points in CA, LA, OK and TX, for 180 days as a common carrier over irregular routes. Supporting shipper(s): American Colloid Company, 5100 Suffield Court, Skokie, IL 60076. Send protests to: William H. Land, Jr., DS, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 136247 (Sub-18TA), filed April 25, 1979. Applicant: WRIGHT TRUCKING, INC., 409 17th Street S.W., P.O. Box 346, Jamestown, ND 58401. Representative: Richard P. Anderson, 502 First National Bank Bldg., Fargo, ND 58126. *Non-alcoholic beverages* (except in bulk, in tank vehicles), from the facilities of Coca-Cola Bottling Co., Jamestown, ND to LaCrosse, WI and St. Cloud, MN, restricted to traffic originating at and destined to the named points, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Coca-Cola Bottling Co., 1016 10th Street S.E., Jamestown, ND 58401. Send protests to: DS, ICC, Bureau of Operations, Room 268 Fed. Bldg. & U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

MC 136126 (Sub-37TA), filed April 25, 1979. Applicant: WILLIAMS REFRIGERATED EXPRESS, INC., P.O. Box 47, Old Denton Rd., Federalsburg, MD 21632. Representative: Chester A. Zyblut, 1030 15th St., N.W., Washington, DC 20005. (1) *Petroleum and petroleum products, vehicle body sealers and deadener compounds (except commodities in bulk) and* (2) *related advertising materials, empty cartons and containers,* when moving in mixed shipments with the commodities in (1) above, from the facilities of Pennzoil Company in Oil City and Rouseville, PA to points in DE, MD and VA, restricted against the transportation of petroleum products, in containers, in foreign commerce to Baltimore, MD. Supporting shipper(s): John A. Wagner, Jr., TM, Pennzoil Company, P.O. Box 808, Oil City, PA 16301. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore, MD 21201.

MC 138157 (Sub-145TA), filed May 9, 1979. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC. d.b.a. SOUTHWEST MOTOR FREIGHT, 2931 South Market St., Chattanooga, TN 37410. Representative: Patrick E. Quinn, same address as applicant. *Wheels and parts thereof,* from the facilities of United Industries at Huntington Beach, CA to points in the United States in and east of ND, SD, NE, KS, OK and TX, for 180 days. Supporting shipper(s): United Industries, 15281 Graham St., Huntington Beach, CA 92649. Send protests to: Glenda Kuss, T/A ICC, Suite A–422 U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 138627 (Sub-64TA), filed April 13, 1979. Applicant: SMITHWAY MOTOR EXPRESS, INC., P.O. Box 404, Fort Dodge, IA 50501. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Rd., Omaha, NE 68106. *Iron and steel articles* from the facilities of Armco, Inc. at Ashland, KY and Middletown, OH to AR, IA, KS, MN, MO, NE, OK, and TX for 180 days. (Restricted to traffic originating at the above named facilities). An underlying ETA seeks 90 days authority. Supporting shipper(s): ARMCO, Inc., 703 Curtis St., Middletown, OH 45043. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 138627 (Sub-65TA), filed May 10, 1979. Applicant: SMITHWAY MOTOR XPRESS, INC., P.O. Box 404, Fort Dodge, IA 50501. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Rd., Omaha, NE 68106. (1) *Material handling and material storage equipment* from Stevens Points and New London, WI to points in IA, IL, IN, OH, and MI, and (2) *Materials and supplies used in the production and manufacture of (1) above,* from IL, IN, and MI to Stevens Points and New London, WI for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Steel King Industries, Inc., 2700 Chember St., Stevens Point, WI 54481. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Building , Des Moines, IA 50309.

MC 138627 (Sub-66TA), filed May 10, 1979. Applicant: SMITHWAY MOTOR XPRESS, INC., P.O. Box 404, Fort Dodge, IA 50501. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Rd., Omaha, NE 68106. *Precast concrete products and accessories* from Oshkosh, WI to points in AR, IL, IN, IA, KS, KY, MI, MN, MO, NE, ND, OH, OK, SD, and TN for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Duwe Precast Concrete Products, Inc., P.O. Box 2068, Oshkosh, WI 54903. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 138956 (Sub-13TA), filed April 10, 1979. Applicant: ERGON TRUCKING, INC., 202 E. Pearl St., Jackson, MS 39201. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205. *Petroleum crude oil and petroleum crude oil condensates,* in bulk, in tank vehicles, from points in Louisiana to facilites of Ergon Refining, Inc. at or near Vicksburg, MS, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Ergon Refining Co., P.O. Drawer 639, Jackson, MS 39205. Send protests to: Alan Tarrant, D/S, ICC, Rm. 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 139577 (Sub-41TA), filed May 1, 1979. Applicant: ADAMS TRANSIT, INC., P.O. Box 338, Friesland, WI 53935. Representative: Wayne W. Wilson, 150 East Gilman Street, Madison, WI 53703. *Containers, container ends, and closures* from the facilities of RJR Foods Inc. at Plymouth, IN to Ortonville, MN. Authority sought for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): RJR Foods, Inc., P.O. Box 3037, Winston-Salem, NC 27102. Send protests to: John E. Ryden, DS, ICC, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 139767 (Sub-4TA), filed May 7, 1979. Applicant: FAIRWAY TRANSIT, INC., N 10 W 24730 Hwy. TJ, Pewaukee, WI 53072. Representative: Richard Westley, 4506 Regent St., Suite 100, Madison, WI 53705. (1) *Commodities used in the installation of chain link or wire woven fences* (2) *Materials, equipment and supplies used in the installation of highway signs, guard rails, and other highway safety devices;* and (3) *Materials, equipment and supplies used in connection with the striping of public highways,* between the facilities of Century Fence Company located at or near Waukesha, WI on the one hand, and on the other hand, points in IL, IA, NE & MN, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Century Fence Co., P.O. Box 466, Waukesha, WI 53186. Send protests to: Gail Daugherty, IA, ICC, 517 E. Wisconsin ave., Rm. 619, Milwaukee, WI 53202.

MC 139906 (Sub-50TA), filed April 17, 1979. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, 2156 West 2200 South P.O. Box 30303, Salt Lake City, UT 84125. Representative: Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501. *Wearing apparel* (1) from the facilities of K-Mart Apparel Corp. at North Bergen, NJ to Carson CA, Alsip, IL, Forest Park, GA, Detroit, MI, and Grand Rapids, MI; and (2) from the facilities of K-Mart Apparel Corp. at Carson, DA to Alsip, IL and Forest Park,

GA, for 180 days. An underlying ETA requests 90 days authority. Supporting Shipper(s): K-Mart Apparel Corp, 7373 West Side Avenue, North Bergen, MJ 07047. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 140826 (Sub-3TA), filed April 9, 1979. Applicant: STEVE LARSSON HOMER d.b.a. MAR-AIR BUS CO., P.O. Box 422, Haines, AK 99827. Representative: L. B. Jacobson, P.O. Box 1211, Juneau, AK 99802. *Passengers* and their baggage in the same vehicle, between skagway, AK and the Port of Entry on the U.S. - Canada boundary line near mile 14.5 on the Skagway, AK - Carcross Highway, serving all intermediate points during such period said road shall be open to traffic. Applicant intends to tack authority applied for with that held under MC-140826 (Sub No. 1). An underlying ETA seeks 90 days. authority. Supporting Shipper(s): NORA E. WARNER, WHITE HOUSE APTS., P.O. Box 422, Skagway, AK 99840. GARY MORAN, NORTHERN LIGHT CAFE, Box 273, Skagway, AK 99840. Send protest to: Hugh H. Chaffee, D/S, ICC, 858 Federal Bldg., Seattle, WA 98174.

MC 140986 (Sub-10TA), filed May 7, 1979. Applicant: GREAT NORTHERN TRUCK LINES, INC., Bank Street, Netcong, NJ 07. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. Contract irregular. Insulating materials, and materials and supplies used in connection therewith, except in bulk, from Cloquet, MN; Greenville, MS; Plainfield, IL; and Gypsum and Newark, OH to Brooklyn, NY for 180 days, under a continuing contract or contracts with Kamco Supply Corp. Supporting Shipper(s): Kamco Supply Corp., 1465–38th St., Brooklyn, Ny 11218. Send protests to: Joel Morrows, D/S, ICC, 9 Clinton St., Newark, NJ 07102.

MC 141076 (Sub-24TA), filed May 7, 1979. Applicant: ROGERS MOTOR LINES, INC., RD #2, P.O. Box 388, D2, Hackettstown, NJ 07848. Representative: Eugene M. Malkin, Suite 6193—5 World Trade Center, New York, NY 10048. (1) Foodstuffs (except in bulk), from the facilities of American Home Foods Division of American Home products Corp., at or near Milton, PA to points in CT, NJ, and NY, and (2) *materials, equipment, and supplies*, (except in bulk) used in the manufacture, packaging and distribution of the commodities in (1) above, in the reverse direction for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): American Home Foods Division of American Home Products Corporation, 685 Third Avenue, New York, NY 10017. Send protests to: Joel Morrows, D/S, ICC, 9 Clinton St., Newark, NJ.

MC 141197 (Sub-35TA), filed May 1, 1979. Applicant: FLEMING-BABCOCK, INC., 4108 Mattox Road, Riverside, MO 64151. Representative: Tom B. Kretsinger, Kretsinger & Kretsinger, 20 East Franklin, Liberty, MO 64068. *Coke*, in dump type vehicles, from Kansas City, MO to West Des Moines, IA, for 180 days. Supporting shipper: Maryland Coal and Coke Co., 21 Station Rd., Haverford, PA 19041. Send protests to: V. V. Coble, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106. An underlying ETA seeks 90 days authority. Supporting shipper(s): Maryland Coal and Coke Co., 21 Station Rd., Haverford, PA 19041. Send protests to: V. V. Coble, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 142477R (Sub-1TA), filed May 8, 1979. Applicant: EARL PIPPIN, d.b.a. EARL PIPPIN TRANSPORTER, 211 Kornegay Street, Goldsboro, NC 27530. Representative: Terrell C. Clark, P.O. Box 25, Lee Road, Stanleytown, VA 24168. *Repossessed motor vehicles, boats and trailers, in driveaway operations*, between points in the U.S. except AK and HA, for 180 days. An underlying ETA seeking 90 days authority has been filed. Supporting shipper(s): There are 9 supporting shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: Mr. Archie W. Andrews, D/S, ICC, P.O. Box 26896, Raleigh, NC 27611.

MC 142866 (Sub-14TA), filed April 27, 1979. Applicant: Mid-Western Transport, Inc., a California corporation, 10506 South Shoemaker, Santa Fe Springs, CA 90670. Representative: Miles L. Kavaller, Mandel & Kavaller, Attorneys-at-Law, 315 S. Beverly Dr., Suite 315, Beverly Hills, CA 90212. *CONTRACT:* Irregular: *Brass, bronze and copper rod, sheet and tube, materials and supplies used in the manufacture thereof*, from the facilities of Anaconda Brass Division in the city of Paramount in Los Angeles County, CA to Denver, CO, Delaware City, DE, Jacksonville, Orlando and Tampa, FL, Lewiston, ID, Jersey City, NJ, Albuquerque, NM, Oswego and Syracuse, NY, Las Vegas, NV, Columbus and Warren, OH, Oklahoma City and Tulsa, OK, Portland, OR, King of Prussia, Philadelphia and Willow Grove, PA, Dallas, Ft. Worth and Houston (Richardson), TX, Salt Lake City, UT, Newport News, Norfolk and Portsmouth, VA and Bremerton, Seattle and Walla Walla, WA. Also between Paramount, CA on the one hand, and on the other hand, Buffalo, NY; Amarillo, TX; Butte, MT; and Carterette, NJ, for 180 days, an underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Anaconda Brass Division, 14900 Garfield Avenue, Paramount, CA 90723. Send protests to: Irene Carlos, TA, ICC, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 143127 (Sub-37TA), filed May 4, 1979. Applicant: K. J. TRANSPORTATION, INC., 1000 Jefferson Road, Rochester, NY 14623. Representative: S. Michael Richards, P.O. Box 225, Webster, NY 14580. *Empty glass bottles (one gallon or less)*, from the plantsite of National Bottle Co. at Joliet, IL to points in NJ, NY, OH, PA and WV, for 180 days. ETA for 90 days was granted under R-22 with effective date of April 24, 1979. Supporting shipper(s): National Bottle Co., Richard Moreland, Mgr. of Distribution, 1 Bala-Cynwyd Plaza, Bala-Cynwyd, PA 19004. Send protests to: Interstate Commerce Commission, 910 Federal Building, 111 West Huron Street, Buffalo, NY 14202.

MC 143267 (Sub-69TA), filed April 26, 1979. Applicant: CARLTON ENTERPRISES, INC., P.O. Box 520, Mantua, OH 44255. Representative: Neal A. Jackson, 1155 15th St., NW, Washington, DC 20005. *Plywood, hardboard, particleboard, gypsumboard, molding and accessories used in the installation thereof*, from the facilities of Weyerhaeuser Company located at Chesapeake, VA, to points in OH, PA (on and west of State Highway 219), and WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Weyerhaeuser Company, 100 South Wacker Dr., Chicago, IL 60606. Send protests to: Mary Wehner, D/S, ICC, 731 Federal Bldg., Cleveland, OH 44199.

MC 143287 (Sub-70TA), filed April 23, 1979. Applicant: CARLTON ENTERPRISES, INC., P.O. Box 520, Mantua, OH 44255. Representative: Neal A. Jackson, Esq., 1155 15th St., NW, Washington, DC 20005. *Roofing, building and insulating materials, and equipment and supplies* used in the installation thereof from the facilities of GAF Corporation at or near Joliet, IL, to points in MI and OH, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): GAF Corporation, 1361 Alps Rd., Wayne, NJ 07470. Send protests to: Mary Wehner, D/S, I.C.C., 731 Federal Bldg., Cleveland, OH 44199.

MC 143287 (Sub-71TA), filed April 23, 1979. Applicant: CARLTON ENTERPRISES, INC., P.O. Box 520, Mantua, OH 44255. Representative: Neal A. Jackson, Esq., 1155 15th St., NW, Washington, DC 20005. *Such articles as are dealt in or used by agricultural equipment, industrial equipment, and motor vehicle manufacturers or dealers* (except items in bulk) in truckload quantities between the facilities of or used by International Harvester Company in IL, KY, TN, WI, and Shadyside and Springfield, OH, to points in CT, DE, IL, IN, KY, ME, MD, MA, MI, MO, NH, NJ, NY, NC, OH, PA, RI, TN VT, VA, WV, and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): International Harvester Company, 401 N. Michigan Ave., Chicago, IL 60611. Send protests to: Mary Wehner, D/S, ICC, 731 Federal Bldg., Cleveland, OH 44199.

MC 143276 (Sub-12TA), filed May 7, 1979. Applicant: WEAVER TRANSPORTATION COMPANY, 5452 Oakdale Road, Smyrna, GA 30080. Representative James L. Brazee, Jr., 3355 Lenox Road, #795, Atlanta, GA 30326. *Building paper, prepared roofing, prepared shingles, roofing asphalt, roofing cement and roofing paper, in straight or mixed shipments, roofing materials and dry felt* from the facilities of Tamko Asphalt Products, Inc. located in Tuscaloosa, AL to points in KY, TN, NC, SC and GA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Tamko Asphalt Products, Inc., 220 W. 4th, Joplin, MO. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., NW, Rm. 300, Atlanta, GA 30309.

MC 143276 (Sub-13TA), filed May 3, 1979. Applicant: WEAVER TRANSPORTATION COMPANY, 5452 Oakdale Road, Smyrna, GA 30080. Representative James L. Brazee, Jr., 3355 Lenox Road, Suite 795, Atlanta, GA 30326. *Equipment, raw materials, supplies and machines used in the manufacture and packaging of roofing materials and products,* between the plant facility of Owens-Corning Fiberglas Corp., Atlanta, GA on the one hand, and, all points and places in the states of AL, NC, SC and TN on the other, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Owens-Corning Fiberglas Corp., Fiberglas Tower, Toledo, OH 43659. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

MC 143346 (Sub-7TA), filed April 18, 1979. Applicant: BILLY JACK HOLLINGSWORTH d.b.a. HOLLINGSWORTH GRAIN & TRUCKING, P.O. Box 384, Sanger, TX 76266. Representative Harry F. Horak, 5001 Brentwood Stair Rd., Suite 115, Fort Worth, TX 76112. *Motor fuels, heating fuels, and furnace oil,* in bulk in tank vehicles from points in OK to points in AZ, CO, NM and TX, and from points in TX to points in OK, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): B M H Oil Company, Inc., P.O. Box 5365, Wichita Falls, TX 76307. Send protests to: James H. Berry, ROD, ICC, Room 9A27 Federal Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 143846 (Sub-7TA), filed May 4, 1979. Applicant: P. POSA, INC., 50 Van Kueren Avenue, Jersey City, NJ 07306. Representative Arthur J. Piken, Esq., Piken & Piken, Esqs., One Lefrak City Plaza, Flushing, NY 11368. *Such commodities as are dealt in or used by retail department stores (except commodities in bulk).* Between New York, NY and its commercial zone, on the one hand, and, on the other, Miami and Tampa, FL; Chicago and Oak Brook, IL; Indianapolis, IN; Troy, MI; Minneapolis, MN; Nashville, TN; Dallas, Houston and San Antonio, TX; and Seattle, WA and points in their respective commercial cones, and points in Suffolk County, NY for 180 days. Supporting shipper(s): Allied Stores Marketing Corp., 1114 Avenue of the Americas, New York, NY 10036. Send protests to: Robert E. Johnston, D/S, ICC, 9 Clinton St., Rm 618, Newark, NJ 07102.

MC 144416 (Sub-3TA), filed April 13, 1979. Applicant: C. F. McGRAW, P.O. Box 498, Garden City, KS 67846. Representative: Herbert Alan Dubin, Sullivan & Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. *Plastic cord and twine,* from facilities of Exxon Chemical Co., U.S.A., at or near Kingman, KS to points in and west of ND, SD, NE, KS, OK and TX (except Kansas intrastate points), 180 days, common, irregular; ETA filed simultaneously. SUPPORTING SHIPPER: Exxon Chemical Co. U.S.A., Kingman, KS.; SEND PROTESTS TO: M. E. Taylor, DS, ICC, 101 Litwin Bldg., Wichita, KS 67202. Supporting shipper(s): Exxon Chemical Co., U.S.A., 100 South Penalossa Street, P.O. Box 517, Kingman, KS 67068. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 101 Litwin Bldg., Wichita, KS 67202.

MC 144846 (Sub-9TA), filed April 27, 1979. Applicant: TRANSTATES, INC., 3216 E. Westminster, Santa Ana, CA 92703. Representative: Patricia M. Schnegg, Knapp, Grossman & Marsh, 707 Wilshire Blvd., Suite 1800, Los Angeles, CA 90017. Common, Irregular: *Fiberglass, woven roving, polyester resins and materials, supplies and equipment used in the manufacture of fiberglass,* from Los Angeles, Orange and Ventura Counties, CA to points in CO, NM, TX, OK, KS, NE, IA, MO, AR, LA, MS, AL, TN, KY, and IL, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Fiberglass, Inc., 3340 Ribelin Way, Garland, TX 75042. Send protests to: Irene Carlos, TA, ICC, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 145506 (Sub-2TA), filed April 30, 1979. Applicant: ODOM TRUCKING CO., INC., Route 4, Box 165, Eufaula, AL 36027. Representative: William K. Martin, P.O. Box 2069, Montgomery, AL 36103. *Bananas,* from the facilities of The Best Banana Company, Inc., at or near Norfolk, VA, to all points and places in and east of MN, IA, MO, AR, and AL (except LA, MS, FL, ME, NH, RI or VT) for 180 days. Supporting shipper(s): The Best Banana Co., Inc., 3616 East Virginia Beach Blvd., Norfolk, VA 23502. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616—2121 Building, Birmingham, AL 35203.

MC 146416 (Sub-6TA), filed April 27, 1979. Applicant: HERITAGE TRANSPORTATION COMPANY, 155 North Eucla Avenue (P.O. Box 478), San Dimas, CA 91773. Representative: R. Y. Schureman, 1545 Wilshire Blvd., Los Angeles, CA 90017. Common, Irregular: *Drugs or medicines and toilet preparations,* from Union and Kenilworth, NJ, and points in their commercial zones, to points in CA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Schering Corporation, 1011 Morris Avenue, Union, NJ 07083. Send protests to: Irene Carlos, TA, ICC, P.O. Box 1551, Los Angeles, CA 90053.

MC 146416 (Sub-9TA), filed May 8, 1979. Applicant: HERITAGE TRANSPORTATION COMPANY, 155 North Eucla Avenue (P.O. Box 478), San Dimas, CA 91773. Representative: R. Y. Schureman, Attorney-at-Law, 1545 Wilshire Boulevard, Los Angeles, CA 90017. *Dressed hogs,* from La Junta, Colorado and York, Nebraska, and points in their commercial zones, to points in California, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Hoffman Bros. Packing Co., Inc., 2731 So. Soto Street, Los Angeles,

CA 90023. Send protests to: Irene Carlos, P. O. Box 1551, Los Angeles, CA 90053.

MC 146416 (Sub-10TA), filed April 17, 1979. Applicant: HERITAGE TRANSPORTATION COMPANY, 155 No. Eucla Avenue, P.O. Box 476, San Dimas, CA 91773. Representative: R. Y. Schureman, 1545 Wilshire Blvd., Los Angeles, CA 90017. *Meats, meat products, and meat by-products, and articles distributed by meat packing houses, as described in Sections A and C of Appendix I to the report in Descriptions of Motor Carrier Certificates, 61 M.C.C. 209 & 766 (except commodities in bulk, in tank vehicles),* from Sterling, CO to points in IL, WI, MI, OH, PA, NY, NH, NJ, CT, CA, UT, DC and MD, for 180 days. An underlying ETA seeks up to 90 days operating authority. *Restricted to shipments originating at the plantsite of Sterling Colorado Beef Company, Sterling, CO.* Supporting shipper(s): Sterling Colorado Beef Company, Right of Way Road, Sterling, CO. Send protests to: Irene Carlos, TA, ICC, P.O. Box 1551, Los Angeles, CA 90053.

MC 146597 (Sub-1TA), filed May 4, 1979. Applicant: NEW JERSEY DELIVERY SERVICE, INC., P.O. Box 341, Clifton, NJ 07011. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Contract irregular. *Packages, not exceeding more than five pounds per package,* between Paterson, NJ on the one hand, and on the other, Nyack, Haverstraw, New City, Monroe, Newburgh, Montgomery, Middletown, and Port Jervis, NY; and Sussex, NJ. Under a continuing contract or contracts with the A & P Tea Company, Paterson, NJ for 180 days. An underlying ETA seeks 90 days authority. Restriction: Restricted to shipments originating at and destined to the facilities of the A & P Tea Co. and picked up and delivered within twenty-four hours. Supporting shipper(s): A & P Tea Co., 90 Delaware Avenue, Paterson, NJ. Send protests to: Joel Morrows, D/S, ICC, 9 Clinton St., Room 618, Newark, NJ 07102.

MC 146656 (Sub-2TA), filed May 7, 1979. Applicant: KEY WAY TRANSPORT, INC., 820 S. Oldham St., Baltimore, MD 21224. Representative: Gerald K. Gimmel, Suite 145, 4 Professional Dr., Gaithersburg, MD 20760. *Contract* carrier; irregular routes: *Automotive Frames* from the facilities of the Budd Company at or near Philadelphia, PA to Key Warehouse Services, Baltimore, MD, under a continuing contract with Jeep International, Div. of American Motors Company, restricted to traffic having a subsequent movement in foreign commerce, for 90 days. An underlying ETA seeks 90 days. Supporting shipper(s): Don Fedoronko, Traffic Manager, Jeep International, Div. of American Motors Corp., 14250 Plymouth, Detroit, MI 48227. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore, MD 21201.

MC 146716 (Sub-1TA), filed April 19, 1979. Applicant: LEVELLAND TRUCKING CO., P.O. Box 1375, Levelland, TX 79336. Representative: Richard Hubbert, P.O. Box 10236, Lubbock, TX 79408. *Dry fertilizer,* in bags or in bulk, from Littlefield, TX to Albuquerque, Lovington, and Deming, NM, for 180 days. An underlying ETA seeks up to 90 days authority. Supporting Shipper(s): W. R. Grace, 7018 Red Barn Road, Freeport, TX 77541. Send protests to: Haskell E. Ballard, DS, ICC, Box F–13206 Federal Building, Amarillo, TX 79101.

MC 146756 (Sub-1TA), filed April 9, 1979. Applicant: WAGNER TRUCKING, 6585 Dawn Way, Inver Grove, MN 55075. Representative: Stanley C. Olsen, Jr., 4601 Excelsior Boulevard, Minneapolis, MN 55416. *Precast concrete* from Rosemount, MN to Ames, IA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Nilcon Minnesota Inc., Dispatcher, 15305 Clayton Avenue, Rosemount, MN 55068. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 146817 (Sub-1TA), filed April 17, 1979. Applicant: GEORGE CAVES, P.O. Box 144, Benedict, NE, 68316. Representative: William B. Barker, 641 Harrision Street, Topeka, KS, 66603. *Meats, meat products, meat by-products and articles distributed by meat packinghouses,* as described in Sections A and C of Appendix I to the *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities utilized by Farmland Foods, Inc., at or near Carroll, Denison, Iowa Falls, Cherokee, Sioux City, Ft. Dodge and Des Moines, IA; Crete, Lincoln and Omaha, NE, to points in CT, DE, DC, KY, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI, VT, VA, and WV. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Farmland Foods, Inc., P.O. Box 403, Denison, IA 51442. Send protests to: Max H. Johnston, DS, ICC, 285 Federal Building, 100 Centennial Mall North, Lincoln, NE 68508.

MC 146837 (Sub-1 TA), filed April 19, 1979. Applicant: SOUTHERN MINNESOTA GROCERY COMPANY, 202 Southwest Second, Waseca, MN 56093. Representative: Andrew R. Clark, 1000 First National Bank Building, Minneapolis, MN 55402. *Flour* from Winona, MN to Hutchinson, KS, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Kelly Milling Company, P.O. Box 1637, Hutchinson, KS 67501. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building, 110 South 4th Street, Minneapolis, MN 55401.

MC 146866 (Sub-1TA), filed April 26, 1979. Applicant: CONLAN TRUCK LINES, INC., 11400 W. Abbott Ave., Hales Corners, WI 53130. Representative: Richard Westley, 4506 Regent St., Suite 100, Madison, WI 53705. *Health care products, beauty products, personal care products and home cleaning products,* (1) from the facilities of Shaklee Corp. located in Chicago, IL to points in WI and the UP of MI and (2) from Minneapolis, MN to points in MN, restricted to traffic having a prior movement in interstate commerce from Chicago, IL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Shaklee Corp., 9860 S. Dorchester, Chicago, IL 60628. Send protests to: Gail Daugherty, TA, Interstate Commerce Commission, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 146866 (Sub-2TA), filed April 30, 1979. Applicant: ROLLAND RILEY d.b.a. R. L. RILEY TRUCKING, 1331 North Union, Fremont, NE 68025. Representative: Rolland Riley, same address as above. *Lawn mowers, motor bikes, go-carts and parts and accessories used in the manufacturing thereof,* (1) from New Holstein, WI to Fremont, NE; and (2) from Fremont, NE to North Wilkesboro, NC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Bird Engineering Co., RR #1, Fremont, NE 68025. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 146877 (Sub-1TA), filed May 10, 1979. Applicant: REAMES FOODS, INC., 8614 Harbach, Clive, IA 50063. Representative: Vernon L. Coiles (same as applicant). *Shortening, salad oils, coconut oil, flavored syrups, pizza dough, and cheeses, except in bulk,* from Chicago, IL and its commercial zone to the facilities of Mel-O-Gold, Des Moines, IA for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Mel-O-Gold, 327 E. Edison Ave., Des Moines, IA. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 146867 (Sub-1TA), filed May 10, 1979. Applicant: RINALDI MOTOR TRANSPORT, INC., P.O. Box 679, South San Francisco, CA 94080. Representative: R. Chauvel, 100 Pine St., Suite 2550, San Francisco, CA 94111. *Paint, paint products, and paint ingredients and paco materials,* from the plantsite of Kelly Moore at or near San Carlos, CA, to points in the Reno, NV commercial zone, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Kelly Moore Paint Company, 1015 Commercial, San Carlos, CA 94070. Send protests to: District Supervisor, 211 Main, Suite 500, San Francisco, CA 94105.

MC 146957 (Sub-1TA), filed April 26, 1979. Applicant: DACIANO A. SANTOS, d.b.a. CONNECTICUT AIRPORT SERVICE, 17 Fairfield Avenue, Danbury, CT 06810. Representative: John E. Fay, Esquire, 630 Oakwood Avenue, West Hartford, CT 06110. Passengers and their baggage, between Bethel, Bridgewater, Brookfield, New Fairfield, Newtown, Redding, Ridgefield, Weston, Danbury, Naugatuck, Waterbury, and Bridgeport, CT, on the one hand, and LaGuardia and John F. Kennedy Airports, NY, and Newark International Airport, NJ, on the other hand, for 180 days. Supporting Shipper(s): Adriano Seabra Veiga, 1389 W. Main Street, Waterbury, CT 06708 Lopes Travel Agency, Inc., 53 Liberty Street, Danbury, CT 06810; Luso Travel Agency, 157 Rubber Avenue, Naugatuck, CT 06770; Luso Travel Agency, 58 W. Wooster Street, Danbury, CT 06810. Send protest to: J. D. Perry, Jr., DS, ICC, 135 High Street, Hartford, CT 06103.

MC 146996 (Sub-2TA), filed May 9, 1979. Applicant: PAUL R. CHENEY, d.b.a. CHENEY TRUCKING COMPANY, Route 1—Artesian St., Lemont, IL 60439. Representative: Patrick H. Smyth, Suite 521, 19 South LaSalle St., Chicago, IL 60603. *Contract carrier: irregular routes:* (1) *Rolled paper mill products, except in bulk,* from the facilities of Prairie State Paper Mills located at Joliet, IL, to points in IN, IA, KY, MI, MN, OH and WI, and (2) *Materials, supplies and equipment used in manufacture and distribution of rolled paper mill products,* from points in IN, IA, KY, MI, MN, OH and WI, to Joliet, IL for the account of Prairie State Paper Mills for 180 days. Supporting Shipper(s): Prairie State Paper Mills, Division of Chippewa Paper Products Company, 292 Logan Ave., Joliet, IL 60434. Send protests to: David Hunt, Transportation Assistant, 219 S. Dearborn St., Room 1386, Chicago, IL 60604.

MC 146998 (Sub-2TA), filed April 4, 1979. Applicant: WALT'S DRIVE-AWAY SERVICE, INC., Frank Hitchcock Road, Cairo, New York 12413. Representative: Neil D. Breslin, Esq., 600 Broadway, Albany, New York 12207. *Contract carrier;* Irregular route; *Truck bodies on chassis,* Between Athens, NY on the one hand and all points in the following States: AL; CT; DC; FL; GA; ME; MD; MA; NH; NJ; CN; OH; PA; RI; SC; VT; VA; and NY. Supporting Shipper: Olson Bodies, Inc., Schoharie Turnpike, Athens, NY 12015. Send protests to: Robert A. Radler, District Supervisor, Interstate Commerce Commission, P.O. Box 1167, Albany, New York 12201. Supporting Shipper(s): Olson Bodies, Inc., Schoharie Turnpike, Athens, N.Y. 12015. Send protests to: Robert A. Radler, District Supervisor, Interstate Commerce Commission, Post Office Box 1167, Albany, N.Y. 12201.

MC 146997 (Sub-1TA), filed May 3, 1979. Applicant: EARL WEVER, an individual, Route 2, Box 59, Madill, Oklahoma 73446. Representative: G. Timothy Armstrong, 200 No. Choctaw, El Reno, Oklahoma 73036. *Meat, meat products and meat by-products* and *articles distributed by meat-packing houses,* as described in Sections A and C of appendix I in Descriptions in Motor Carrier Certificates (except hides and commodities in bulk) from Detroit and Quincy, MI, Chicago, IL and Council Bluffs, Debuque and Sioux City, IA to Ft. Smith, Little Rock and West Memphis, AR, Los Angeles and San Francisco, CA; Oklahoma City and Tulsa, OK; Portland, OR; Dallas, Ft. Worth and Houston, TX; and Seattle, WA. For 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Star Meat Co., 23660 Sherwood, Warren, Michigan 48041. Send protests to: Connie Stanley, TA, ICC, Room 24, Old Post Office Bldg., 215 N.W. Third Street, Oklahoma City, Oklahoma 73102.

MC 147007 (Sub-1TA), filed May 1, 1979. Applicant: EVERFRESH TRANSPORTATION COMPANY, 64311 East Palmer, Detroit, MI 48221. Representative: John S. Barbour, 2711 East Jefferson, Suite 203, Detroit, MI 48207. *Contract carrier;* irregular routes; *Juice and juice concentrates, pulp, sugar and other components necessary in the manufacture, sale or distribution of bottled fruit juices, raw and finished products, fresh and frozen, packaging, containers and boxes;* (1) between points in FL, on and North of Hwy 80 commencing at Fort Myers then Easterly to junction with US 441, then easterly to Palm Beach, FL, on the one hand, and on the other, points in the Detroit, MI commercial zone and the Chicago, IL commercial zone; (2) between the Chicago, IL commercial zone and the Detroit, MI commercial zone; (3) between the Detroit, MI commercial zone and points in AZ, CA, CT, DE, DC, IL, NJ, NY, IN, ME, MD, MA, OH, PA, RI, SC, VT, VA & WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Home Juice Company, 15th and Bloomingdale, Melrose Park, IL 60160; Everfresh Juice Company, 64311 East Palmer, Detroit, MI 48221. Send protests to: C. R. Flemming, DS, ICC, 225 Federal Building, Lansing, MI 48933.

MC 147016 (Sub-1TA), filed May 1, 1979. Applicant: C & K TRUCKING, INC., 5193 Cresser Avenue, Memphis, TN 38116. Representative: R. Connor Wiggins, Jr., Attorney, Suite 900, 100 North Main Bldg., Memphis, TN 38103. *Sand or gravel,* in dump vehicles, from points in Shelby County, TN to points in MS on and north of U.S. Highway 82, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): (1) Clyde Owens Sand and Gravel, Inc., P.O. Box 190, Collierville, TN 38017; (2) Maharrey Houston Construction Co., 548 Pear, Memphis, TN 38107. Send protests to: Floyd A. Johnson, D/S, ICC, Suite 2006, 100 North Main Street, Memphis TN 38103.

MC 147037 (Sub-1TA), filed April 18, 1979. Applicant: FOREST TRANSPORT LIMITED, P.O. Box 3170, Thunder Bay, Ontario, Canada P7B 5G8. Representative: John B. Van de North, Jr., Briggs and Morgan, 2200 First National Bank Building, St. Paul, MN 55101. *Contract carrier;* irregular routes: *Lumber* from ports of entry on the international boundary line between the United States and Canada to points in MN, WI, IA, IL, IN, MI, ND, SD, NE, KS, OH, KY, MO, NY, PA, CO and OK, under a continuing contract or contracts with Great West Timber Limited, for 180 days. Supporting shipper(s): Great West Timber Limited, P.O. Box 3170, Thunder Bay, Ontario, Canada P7B 5G8. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building, 110 South 4th Street, Minneapolis, MN 55401.

MC 14706 (Sub-1TA), filed May 3, 1979. Applicant: SUNRISE DAIRY, INC., 1440 S.E. Cortina Dr., Ankeny, IA 50021. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. *Paper bags, plastic bags and bags made of paper and plastic and poly sheeting,* from the facilities of Great Plains Bags Corporation at Des Moines, IA to points in WI and MN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Great Plains Bag Co., 2201 Bell, Des Moines, IA. Send protests to: Herbert W. Allen,

DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 147087 (Sub-1TA), filed May 8, 1979. Applicant: CHESAPEAKE TRANSPORTATION COMPANY, 320 John St., Havre de Grace, MD 21078. Representative Edell D. Hall (same as above). *Contract carrier:* irregular routes: *Train crews and their baggage,* between points in MD, DC, DE, VA, PA and NJ, under a continuing contract with Consolidated Rail Corporation, Baltimore, MD, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Mr. F. L. Doebber, Asst. Superintendent, Consolidated Rail Corporation, 1501 N. Charles St., Baltimore, MD 21201. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore, MD 21201.

MC 147077 (Sub-1TA), filed May 10, 1979. Applicant: Q. T. TUGGLE, d.b.a. CALIFORNIA WESTERN, 3325 Linden Avenue, Long Beach, CA 90807. Representative Milton W. Flack, 4311 Wilshire Blvd., Suite 300, Los angeles, CA 90010. *Contract:* irregular: *Solar hot water heaters, solar collectors, solar energy systems, and mounting frames for solar heaters and collectors,* from the facilities of Global Energy Systems located at Long Beach, CA and Crescent Engineering located at Gardena, CA to Phoenix and Tucson, AZ and Las Vegas, NV, for 180 days, under a continuing contract with Global Energy Systems of Long Beach, CA. An underlying ETA seeks 90 days operating authority. Supporting shipper(s): Global Energy Systems, 2115 E. Spring Street, Long Beach, CA 90806. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, P.O. Box 1551, Los Angeles, CA 90053.

MC 147128 (Sub-TA), filed April 23, 1979. Applicant: LARRY ESTES, d.b.a. LARRY ESTES BODY SHOP, 720 Graham Road, Emporia, KS 66801. Representative Clyde N. Christey, Kansas Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. Wrecked and Disabled or Repossessed Vehicles and Replacement Vehicles and Trailers, for such wrecked and disabled vehicles, between points and places within an 80-mile radius of Emporia, KS on the one hand, and points and places in the United States (except Alaska and Hawaii), on the other hand, for 180 days. Restricted to transport no trailers designed to be drawn by passenger automobiles, nor mobile homes, nor buildings in sections, travelling on their own or removable undercarriages, unless they are wrecked. Supporting shipper(s): Goodwill Tours, Inc., Box 236, 222 S. Main St., Erie, KS 66733.

Graves Truck Line, Inc., 2130 South Ohio, Salina, KS 67401. Stover Lines, Inc., 5630 NW 17th St., Topeka, KS 66618. Interstate Brands, Inc., 1525 Industrial Rd., Emporia, KS 66801. John North Ford, Inc., 3002 W. Hwy 50, Emporia, KS. Tom Wilson, Inc., 2126 W Hwy 50, Emporia, KS. Dick Handy Chevrolet-Oldsmobile, Inc., 3012 W Hwy 50, Emporia, KS. Send protests to: Thomas P. O'Hara, DS, ICC, 256 Federal Bldg., 444 SE Quincy, Topeka, KS 66683.

MC 147127 (Sub-1TA), filed April 16, 1979. Applicant: McLAURIN TRUCKING COMPANY, P.O. Box 28500, Charlotte, NC 28213. Representative: Donald J. Balaley, Jr., 1747 Pennsylvania Ave., NW., Suite 1050, Washington, DC 20006. *General commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* from points and places in Mecklenburg County, NC to points and places in SC; and from points and places in SC to points and places in Mecklenburg County, NC. *General commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* between points and places in Chatham County, GA, on the one hand, and, on the other, points and places in NC and SC; and between points and places in New Hanover County, NC, on the one hand, and, on the other, points and places in NC and VA. *Petroleum and petroleum products (except in bulk)* from points and places in SC to points and places in NC and VA, for 180 days. Supporting shipper(s): There are approximately 7 shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: District Supervisor Terrell Price, 800 Briar Creek Rd-Rm CC516, Mart Office Building, Charlotte, NC 28205.

MC 147148 (Sub-1TA). Applicant: LANG TRANSPORTATION, INC., Red Gate Lane, Meredith, NH 03253. Representative: Kenneth R. Lang (same address as applicant). *Contract carrier:* irregular routes: *Building materials,* between points in CT, ME, MA, NH, RI, and VT, for 180 days. Supporting shipper(s): Gerrity Lumber Company, Inc., P.O. Box 698, Meredith, NH 03253. Send protests to: Ross J. Seymour, DS, ICC, Rm 3, 6 Loudon Rd, Concord, NH 03301.

MC 147187 (Sub-TA), filed April 23, 1979. Applicant: RICHARD L. KUSKE, d.b.a. R. L. Kuske Trucking, P.O. Box 29, New England, ND 58647. Representative: Charles E. Johnson, 418 East Rosser Avenue, P.O. Box 1982, Bismarck, ND 58501. *Contract carrier:* over irregular routes: (1) *Iron and steel articles,* from Minneapolis, MN, Chicago, IL, and their commercial zones, to New England, ND, under contract with Koffler Mfg., Inc., and (2) *Hardwood lumber,* from Bangor, WI, and Lake Elmo, MN, to Dickinson, ND, under contract with Steffes Church Furniture Manufacturing, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Koffler Mfg., Inc., New England, ND 58647. Steffes Church Furniture Manufacturing, P.O. Box 286, Dickinson, ND 58601. Send protests to: DS, ICC, Room 268 Fed. Bldg., 657 2nd Avenue North, Fargo, ND 58102.

By the Commission.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-17332 Filed 6-8-79; 8:45 am]
BILLING CODE 7035-01-M

[Notice 92]

Assignment of Hearings

June 5, 1979.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 115276 (Sub-6F), Charles O. Ingmire, Inc., application is dismissed.

MC 111906 (Sub-25F), Paschall Truck Lines, Inc., application is dismissed.

MC 113651 (Sub-287F), Indiana Refrigerated Lines, Inc., now assigned for hearing on June 11, 1979 (1 day), is canceled and application is dismissed.

MC-C-10149, O.N.C. Freight Systems and Altruk Freight Systems, Inc., V. Oak Harbor Freight Lines, Inc., and Wholesale Delivery Service (1972) LTD V. now assigned for hearing on June 6, 1979 (1 day), at Seattle, Wa., is canceled and application is dismissed.

MC 138875 (Sub-112), Shoemaker Trucking Company, transferred to Modified Procedure.

MC 2900 (Sub-342F), Ryder Truck Lines, Inc., now assigned for continued hearing on July

9, 1979 (3 days), at Birmingham, AL, in a hearing room to be later designated.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-18071 Filed 6-8-79; 8:45 am]
BILLING CODE 7035-01-M

[Ex Parte No. 334F (Sub-No. 2)]

Chicago & Northwestern Transportation Co—Petition for Institution of Rulemaking Proceeding To Update Allocation Factors and Ratios of Expenses Within the Car Hire Compensation Formula; Declining To Institute Proceeding

AGENCY: Interstate Commerce Commission.

ACTION: Notice declining to institute rulemaking proceeding.

SUMMARY: Chicago & Northwestern Transportation Company filed a petition to institute a rulemaking proceeding under 49 U.S.C. 10326 to revise and update the allocation factors used to assess per diem rates for the use of railroad-owned freight cars when on the lines of non-owning roads on the basis that they are inaccurate due to passage of time and changes in operating conditions. Petition for rulemaking judged premature. In addition, petitioner's proposal to revise repair cost component to reflect age of car fleet found to be without merit.

By order served concurrently with this publication, the Commission has denied petitioner's request to institute a rulemaking proceeding.

FOR FURTHER INFORMATION CONTACT: Janice M. Rosenak, or Harvey Gobetz, Interstate Commerce Commission, Washington, D.C. 20423 (202–275–7693).

Copies of the decision being issued concurrently with the notice may be obtained by calling 800–424–9312.

Issued in Washington, D.C., June 1, 1979.

By the Commission, Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian. Commissioner Christian absent and not participating.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-18072 Filed 6-8-79; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-No. 19)]

Louisville & Nashville Railroad Co. Abandonment Between Kane and Greenburg, Ky.; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 (formerly Section 1a of the Interstate Commerce Act) that by a decision decided August 28, 1978, and the decision of the Commission, Division 1, served March 20, 1979, adopted the decision of the Administrative Law Judge, which is administratively final, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in AB–36 (Sub-No. 2), Oregon Short Line R. Co.-Abandonment Goshen I.C.C. decided February 9, 1979, the present and future public convenience and necessity permit abandonment by the Louisville and Nashville Railroad Company of a portion of its railroad extending 10.55 miles between Kane, Taylor County, KY, and Greensburg, Green County, KY. A certificate of abandonment will be issued to the Louisville and Nashville Railroad Company based on the above-described finding of abandonment, 30 days after publication of this notice, unless within 30 days from the date of publication, the Commission further finds that:

(1) a financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(2) it is likely that such proffered assistance would:

(a) Cover the diffenence between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the Federal Register on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978, at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-18073 Filed 6-8-79; 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier Costs; Calculation by Computerized Programs

The Interstate Commerce Commission has developed a computerized program to calculate motor carrier costs at the variable and fully allocated levels. The program is designed to operate on the DEC system-10 computer and is written in the FORTRAN–10 language.

To use the program, the user must specify the weight of the shipment, the mileage, and the cost regions involved. Costs may be calculated for any size shipment.

The following costs, as appropriate, will be calculated for each shipment:

- line-haul cost per hundredweight (cwt)
- pickup and delivery cost at origin and destination per hundredweight
- billing and collecting costs at origin and destination per hundredweight
- platform handling costs at origin and destination per hundredweight
- cargo or equipment interchange cost per hundredweight
- total variable costs per hundredweight
- total fully allocted costs per hundredweight
- total variable costs per shipment.

To purchase the program, a blank reel of magnetic tape must be provided. The tape should be 9 channel, 800 B.P.I. and odd parity. The charge for this service is $25.00. Purchase requests and questions concerning the program should be directed to: Alden E. Luke, Chief, Section of Systems Development, Office of the Managing Director, Interstate Commerce Commission, 12th Street & Constitution Avenue, NW., Washington, D.C. 20423.

Inquiries concerning the costing procedures may be directed to:

William T. Bono, Chief, Section of Cost Development, Room 6331, Bureau of Accounts, Interstate Commerce Commission, 12th Street & Constitution Avenue, NW., Washington, D.C. 20423 (202) 275–7354.

Virginia Levin, Economist, Office of Policy and Analysis, Room 7261, Interstate Commerce Commission, 12th Street & Constitution Avenue, NW., Washington, D.C. 20423 (202) 275–7139.

A "Motor Carrier Computerized Costing Program" instruction manual, designated as Statement 2E4–79, is available free from the Publications

Room, Office of the Secretary, Room 2229, Interstate Commerce Commission, Washington, D.C. 20423.

H. Gordon Hannaa,

Secretary.

[FR Doc. 79-18371 Filed 6-8-79; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. 19]

Petitions, Applications, Finance Matters (including Temporary Authorities), Alternate Route Deviations, and Intrastate Applications.

May 31, 1979.

Petitions for Modification, Interpretation or Reinstatement of Operating Rights Authority

The following petitions seek modification or interpretation of existing operating rights authority, or reinstatement of terminated operating rights authority.

All pleadings and documents must clearly specify the suffix (e.g. M1 F, M2 F) numbers where the docket is so identified in this notice.

An original and one copy of protests to the granting of the requested authority must be filed with the Commission within 30 days after the date of this notice. Such protests shall comply with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247) [1] and shall include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities. Verified statements in opposition should not be tendered at this time. A copy of the protest shall be served concurrently upon petitioner's representative, or petitioner if no representative is named.

W-1289 [Sub-1M1F] (Notice of Filing of Petition To Modify Certificate), filed August 28, 1978. Petitioner: YACHTS-O-FUN CRUISES, INC., 1130 N. Jantzen, Portland, OR 97217. Representative: Nick I. Goyak, 555 Benjamin Franklin Plaza, One Southwest Columbia, Portland, OR 97258. Petitioner holds motor *common carrier* authority in W-1289 Sub 1, issued May 25, 1977, authorizing the transportation by self-propelled vessels of *passengers* in charter operations (1) between ports and points along the Columbia River in WA and OR extending from the mouth of the Columbia River at the Pacific Ocean to a point twenty miles upstream from Pasco, WA; (2) between ports and points along the Willamette River in OR extending from the conflux of the Willamette and Columbia Rivers near Portland, OR to Salem, OR; and (3) between ports and points along the Snake River in ID and WA extending from the conflux of the Snake and Columbia Rivers near Burbank, WA to Lewiston, ID. By the instant petition, petitioner seeks to modify the authority to include special operations as well as charter operations.

MC-135370 [Sub-7M2F] (Notice of Filing of Petition To Modify Permit), filed February 14, 1979. Petitioner: EASTERN TRANSPORT, INC., 320 Stiles St., Linden, NJ 07036. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Petitioner holds motor *contract carrier* permit in MC-135370 Sub 7, issued June 24, 1977, authorizing the transportation, over irregular routes, of *such merchandise* as is dealt in by wholesale, retail, chain, grocery, department stores, and food business houses (except glass containers and commodities in bulk), and in connection therewith, *equipment, materials and supplies* used in the conduct of such business (except glass containers and commodities in bulk), between points in CT, DE, MD, MA, NH, NJ, NY, PA, RI, VA, NC, SC, WV, GA, FL, AL, LA, MS, TN, and DC. Restriction: The authority granted herein is limited to a transportation service to be performed under a continuing contract, or contracts with Food Fair Stores, Inc., Ideal Shoe Co., and J. M. Fields, Inc. By the instant petition, petitioner seeks to modify the authority by adding Lever Brothers Company, of New York, NY, as a contracting shipper.

MC-136828 (Sub-16M1F) (Notice of Filing of Petition To Modify Certificate), filed, February 26, 1979. Petitioner: COOK TRANSPORT, INC., 214 South Tenth St., Birmingham, AL 35233. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. Petitioner holds motor *common carrier* certificate in MC-136828 Sub 16, issued May 24, 1978, authorizing the transportation, over irregular routes, of (1) *fans, fanwheels, and pollution control equipment*, from the plant sites and other facilities utilized by Barron Industry, Inc., and Air System Division of Zurn Industries, Inc., in AL to those points in that part of the United States in and east of AZ, UT, WY, and MT, (2) *fans, fanwheels, and materials and supplies* used in the manufacture and distribution of the commodities named above (except commodities in bulk), from those points in that part of the United States in and east of AZ, UT, WY, and MT to the plant sites of Barron Industry, Inc., at Anniston, Guntersville, and Leeds, AL, and (3) *iron and steel articles*, from points in IL, PA, OH, and NE to the plant sites of Air System Division of Zurn Industries, Inc., in Birmingham, Cullman, Helena, Huntsville, Oakman, Opelika, Warrior, and Winfield, AL. By this instant petition, petitioner seeks to modify the authority by eliminating the plant sites and other facilities utilized by Barron Industry, Inc., and Air System, Division of Zurn Industries, Inc., in Parts (1), (2), and (3).

MC-139112 (Sub-11M1F) (Notice of Filing of Petition To Modify Certificate), filed February 7, 1979. Petitioner: CALEX EXPRESS, INC., 169 Warden Avenue, Trucksville, PA 18708. Representative: Joseph F. Hoary, 121 South Main Street, Taylor, PA 18517. Petitioner holds motor *common carrier* Certificate in MC-139112 Sub 11 issued July 25, 1978, authorizing transportation, over irregular routes of *above-ground swimming pools and plastic toys*, from Wilkes-Barre, PA, to points in the United States (except AK and HI). By the instant petition, petitioner seeks to modify the authority as follows: Delete the word *plastic* in the commodity description.

MC 139979 [M1F and Sub-1 M1F] (Notice of Filing of Petition To Modify), filed December 4, 1978. Petitioner: American Colloid Carrier Corporation, P.O. Box 951, Scottsbluff, NE 69361. Representative: James P. Beck, 717 17th St., Suite 2600, Denver, CO 80202. Petitioner holds motor *contract carrier* permits in MC 139979 issued January 27, 1977 and Sub 1 originally issued September 19, 1978 and reissued as corrected on April 23, 1979. MC 139979 authorizes transportation, over irregular routes, of (1) *Bentonite clay, processed clay, foundry moulding sand treating compounds, lignite, water impedance boards, and farm supplies*, between points in AR, CO, IL, IA, KS, LA, MN, MO, MT, NE, NM, ND, OK, SD, TX, UT, WI and WY. Restriction: The operations authorized above are restricted to traffic originating at or destined to the plantsites and facilities of American Colloid Company. (2) *Bentonite clay, processed clay, foundry moulding sand treating compounds, lignite, water impedence boards, and farm supplies* (except commodities in bulk, in tank vehicles, between points in AR, CO, IL, IA, KS, LA, MN, MO, MT, NE, NM, ND, OK, SD, TX, UT, WI and WY. (3) *Construction materials*, between points in CO, IA, MN, MT, NE, NM, ND, SD, UT, WI, and WY. Restriction: The operations authorized in part (3) above are restricted to traffic originating at or

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[1] Copies of Special Rule 247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

destined to the plantsite and facilities of American Colloid Company. (4) *Construction materials* (except commodities in bulk, in tank vehicles), between points in CO, IA, MN, MT, NE, NM, ND, SD, UT, WI and WY. (5) *Materials, supplies and equipment* used in the manufacture, processing, and distribution of the commodities set forth in (1) and (3) above, between points in AR, CO, IL, IA, KS, LA, MN, MO, MT, NE, NM, ND, OK, SD, TX, UT, WI, and WY. Restriction: The operations authorized in part (5) above are restricted to the transportation of traffic origniating at or destined to the plantsites and facilities of American Colloid Company. Restriction: The operations authorized herein are limited to a transportation service to be performed under a continuing contract, or contracts with American Colloid Company of Skokie, IL. The authority granted in parts (1) and (3) duplicates authority granted in parts (2) and (4) respectively, it and the authority duplicated shall not be construed as conferring more than one operating right. Sub 1 authorizes transportation, over irregular routes, of (1) *Bentonite clay, processed clay, foundry moulding sand treating compounds, lignite, water impedence boards, and farm supplies,* (a) between points in MI and OH, (b) between points in MI and OH on the one hand, and, on the other, points in AR, CO, IL, IA, KS, LA, MN, MO, MT, NE, NM, ND, OK, SD, TX, UT, WI and WY. Restriction: Operations under part (1) are restricted to traffic originating at or destined to the plantsites and facilities of American Colloid Company; (2) *Bentonite clay, processed clay, foundry moulding sand treating compounds, lignite, impedence boards, and farm supplies* (except commodities in bulk, in tank vehicles), (a) between points in MI and OH, (b) between points in MI and OH on the one hand, and, on the other, points in AR, CO, IL, IA, KS, LA, MN, MO, MT, NE, NM, ND, OK, SD, TX, UT, WI, and WY. (3) *Construction materials,* (a) between points in MI and OH, (b) between points in MI and OH on the one hand, and, on the other, points in CO, IA, MN, MT, NE, NM, ND, SD, UT, WI and WY. Restriction: Operations under part (3) are restricted to traffic originating at or destined to the plantsite and facilities of American Colloid Company; (4) *Construction materials* (except commodities in bulk, in tank vehicles), (a) between points in MI and OH, (b) between points in MI and OH on the one hand, and, on the other, points in CO, IA, MN, MT, NE, NM, ND, SD, UT, WI and WY. (5) *Materials, supplies and equipment used in the manufacturing, processing, and distribution of the commodities set forth in (1) and (3) above,* (a) between points in MI and OH, (b) between points in MI and OH on the one hand, and, on the other, points in AR, CO, IL, IA, KS, LA, MN, MO, MT, NE, NM, ND, OK, SD, TX, UT, WI, and WY. Restriction: Operations under part (5) are restricted to traffic originating at or destined to the plantsites and facilities of American Colloid Company; Restriction: Restricted to a transportation service to be performed under a continuing contract, or contracts, with American Colloid Company of Skokie, IL. The authority granted in parts (1) and (3) duplicates authority granted in parts (2) and (4), respectively, it and the authority duplicated shall not be construed as conferring more than a single operating right. By the instant petition, petitioner seeks to modify the above permits by adding *salt* as an authorized commodity under parts (1) and (2) of each permit.

Motor Carrier, Broker, Water Carrier and Freight Forwarder Operating Rights Applications

The following applications are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date of notice of filing of the application is published in the Federal Register. Failure to seasonably file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with Section 247(e) (3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use a such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protests not in reasonable compliance with the requirements of the rules may be rejected.

MC 114457 (Sub–512), filed May 29, 1979. Applicant: DART TRANSIT COMPANY, a corporation, 2102 University Avenue, St. Paul, MN 55114. Representative: James H. Wills (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in by home improvement centers, (except commodities in bulk), between points in the United States (except AK and HI). (Hearing site: Washington, DC.)

MC 134922 (Sub–287F), filed March 21, 1979. Applicant: B. J. McADAMS, INC., Route 6, Box 15, North Little Rock, AR 72118. Representative: Bob McAdams (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting acids and chemicals, (except commodities in bulk), from points in NJ, DE, and PA, to points in CA and TX. (Hearing site: Philadelphia, PA, or Washington, DC).

Note.—Applicant states the purpose of this application is to replace interline service it is presently providing in conjunction with other carriers.

MC 142998 (Sub–4F), filed March 19, 1979. Applicant: LAUGHLIN LINES, INC., P.O. Box 11686, Reno, NV 89510. Representative: Harley E. Laughlin, Suite 284 Airport Plaza, 1755 E. Plumb Lane, Reno, NV 89502. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting *such commodities* as are used by and/or dealt in public and/or private consolidation/distribution centers and/or warehouses, physical distribution management services, and *agricultural commodities* the transportation of which is normally exempt from economic regulation when co-mingled with shipments of the above described commodities between the facilities of Hub West, Inc., at Longshot, NV on the one hand, and points in the United States including AK and DC on the other hand, except HI. (Restricted to traffic originating at or destined to the facilities of the supporting shipper, Hub West, Inc., at Longshot, NV.) (Hearing site: Reno, NV)

Republications of Grants of Operating Rights Authority Prior To Certification

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the Federal Register.

An original and one copy of a petition for leave to intervene in the proceeding must be filed with the Commission on or before July 11, 1979. Such pleading shall comply with Special Rule 247(e) of the Commission's *General Rules of Practice*

(49 CFR 1100.247) addressing specifically the issue(s) indicated as the purpose for republication, and including copies of intervenor's conflicting authorities and a concise statement of intervenor's interest in the proceeding setting forth in detail the precise manner in which it has been prejudiced by lack of notice of the authority granted. A copy of the pleading shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

MC 45626 (Sub-71F) (republication), filed April 14, 1978, published in the **Federal Register** August 10, 1978, and republished this issue. Applicant: VERMONT TRANSIT CO., INC., 135 St. Paul Street, Burlington, VT 05401. Representative: John J. Dwyer (same address as applicant). A Decision of the Commission, Review Board No. 2, decided February 28, 1979, and served March 30, 1979, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, transporting *passengers and their baggage*, in the same vehicle with passengers, in special operations, (1) between Greenfield, Northfield and Mount Hermon, MA, on the one hand, and, on the other, points in the United States, including AK, but excluding HI, (2) in round-trip sightseeing and pleasure tours, beginning and ending at points in Clinton County, NY, and those in Franklin County, NY, on and north of U.S. Hwy 11, and extending to points in the United States, including AK, but excluding HI), and (3) in one-way sightseeing and pleasure tours, between points in Clinton County, NY, and those in Franklin County, NY, on and north of U.S. Hwy 11, on the one hand, and, on the other, points in the United States, including AK, but excluding HI), that applicant is fit, willing and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to delete restrictions.

MC 115826 (Sub-319F) (Republication), filed June 5, 1978, published in the **Federal Register** July 18, 1978, and republished this issue. Applicant: W. J. DIGBY, INC., 1960 31st Street, Denver, CO 80217. Representative: Howard Gore (same address as applicant). A decision of the Commission, Review Board No. 1, decided March 21, 1979, and served March 30, 1979, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *chemicals and chemical products* (except in bulk); (2) *high pressure washer units;* and (3) *materials, equipment, and supplies* (except in bulk) used in the manufacture, distribution, and installation of high pressure washer units, from points in CA, to points in CO, that applicant is fit, willing and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to modify the commodity description.

MC 121437 (Sub-6F) (Republication), filed April 14, 1978, published in the **Federal Register** August 3, 1978, and republished this issue. Applicant: CARROLL E. FLYNN, d.b.a. A–1 MOBILE HOMES MOVERS, 2923 West Montebello, Phoenix, AZ 85017. Representative: Phil B. Hammond, 10th Floor, 111 West Monroe, Phoenix, AZ 85003. A Decision of the Commission, Review Board No. 2, decided February 27, 1979, and served March 30, 1979, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *trailers* designed to be drawn by passenger automobiles (except travel and camping trailers) and *buildings*, in sections, mounted on wheeled undercarriages, and *equipment* with hitchball connectors, in secondary movements, between points in AZ, NV, NM, TX, CA, UT, and CO; and (2) *trailers* designed to be drawn by passenger automobiles (except travel and camping trailers) and *buildings* in sections, mounted on wheeled undercarriages, and *equipment* with hitchball connectors, in initial movements, from Murray, and Brigham City, UT, to points in AZ, NV, and NM, that applicant is fit, willing and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to modify the commodity and territorial description.

MC 126356 (Sub-No. 14F) (Republication), filed April 3, 1978, published in the **Federal Register** issue of June 22, 1978, and republished this issue. Applicant: BENNETT TRUCKING CO., a corporation, P.O. Box 526, Hawkinsville, GA 31036. Representative: Paul M. Daniell, P.O. Box 872, Atlanta, GA 30301. A decision of the Commission, Review Board Number 3, decided March 19, 1979, and served April 6, 1979, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of *lumber* (except plywood and veneer), from points in Peach and Crawford Counties, GA, to points in AL, FL, GA, MS, NC, SC, TN, and VA, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to indicate applicant's actual grant of authority.

MC 144626 (Republication), filed April 12, 1978, published in the **Federal Register** July 20, 1978, and republished this issue. Applicant: TRANS NATIONAL EXPRESS, INC., 520 Otter Hole Road, West Milford, NJ 07480. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. A decision of the Commission, Review Board Number 2, decided March 20, 1979, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *motor vehicles* (except trucks, automobiles, and motor homes, and except new tractors and chasis, in secondary movements, in driveway service), *hardware, conveyors, furniture, lawn mowers, power equipment, and wheel goods;* (2) *parts, attachments and accessories* for the commodities in (1) above; and (3) *materials, equipment and supplies* used in the manufacture and sale of the commodities in (1) and (2) above, (except commodities in bulk), (a) between the facilities of MTD Products, Inc., at or near (i) Westfield, MA, (ii) Cleveland, Strongsville, Shelby, and Willard, OH, and (iii) Indianola, MS, and (b) between the facilities specified in (a) above, on the one hand, and, on the other, points in NM, TX, CA, AZ, NV, WA, OR, ID, UT, and LA, that applicant is fit, willing and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to modify the territorial description.

Finance Applications

The following applications seek approval to consolidate, purchase, merge, lease operating rights and

properties, or acquire control through ownership of stock, of rail carriers or motor carriers pursuant to Sections 11343 (formerly Section 5(2)) or 11349 (formerly Section 210a(b)) of the Interstate Commerce Act.

An original and one copy of protests against the granting of the requested authority must be filed with the Commission on or before July 11, 1979. Such protest shall comply with Special Rules 240(c) or 240(d) of the Commission's *General Rules of Practice* (49 CFR 1100.240) and shall include a concise statement of protestant's interest in the proceeding. A copy of the protest shall be served concurrently upon applicant's representative, or applicant, if no representative is named.

Each applicant states that approval of its application will not significantly affect the quality of the human environment nor involve a major regulatory action under the Energy Policy and Conversation Act of 1975.

MC-F-13887F. Applicant: GENERAL FREIGHTS, INC., P.O. Box 1946, Hagerstown, MD 21740. Representative: Edward N. Button, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740. Authority sought for control by General Freights, Inc., P.O. Box 1946, Hagerstown, MD 21740, of Alexandria Trucking Co., Inc., Rt. #6, Box 49, Front Royal Rd., Winchester, VA 22601. Operating rights sought to be controlled: regular routes: general commodities, except those of unusual value, Classes A and B explosives, household goods, as defined by the Commission, commodities requiring special equipment, and those injurious or contaminating to other lading, between Front Royal, VA, and Washington, D.C., serving the intermediate and off-route points within two miles of Front Royal, VA, and the off-route points of Sperryville, Washington, Flint Hill, and Riverton, VA.: from Front Royal over VA Hwy 55 to junction U.S. Hwy 211, near Gainesville, VA, thence over U.S. Hwy 211 to Washington, D.C., and return over the same route. Irregular routes: general commodities except those of unusual value, Classes A and B explosives, household goods, as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between Front Royal, VA, on the one hand, and, on the other, points in that part of VA within 25 miles of Front Royal. Irregular routes: building materials, coal, coke, wood, pitch tar, paint, machinery, contractors' tools and equipment, between Alexandria, VA, and points in VA within 10 miles of Alexandria, on the one hand, and, on the other, Washington, D.C., and points in MD within 40 miles of Washington, D.C.; Cement, from Washington, D.C., to points in MD and VA within 25 miles of Washington, with no transportation for compensation on return except as otherwise authorized; structural steel, from Phoenixville, PA, to Alexandria, VA, with no transportation for compensation on return except as otherwise authorized. Vendee is authorized to operate as a common carrier in MD, PA, VA, MA, CT, RI, NY, NJ, DE, WV, NC, SC, GA, FL, and DC. An application has been filed for temporary control under 210a(b).

Authority sought by McLEAN TRUCKING COMPANY, P.O. Box 213, Winston-Salem, NC 27102, to purchase (1) a portion of the motor carrier operating rights of O.N.C. Freight Systems, O.N.C. Freight Systems of Oklahoma, Inc., and Ameri-Con Cartage, (2) the freight forwarder permits of O.N.C. Forwarding and American Consolidators, and (3) certain carrier operating properties of ROCOR International and its subsidiaries. The address of Transferors is P.O. Box 10280, Palo Alto, CA 94303. Applicant's Representatives: David G. Macdonald, Suite 502, Solar Building, 1000-16th Street, N.W., Washington, DC 20036 and David F. Eshelman, P.O. Box 213, Winston-Salem, NC 27102, for Transferee; Roland Rice, Suite 618, Perpetual Building, 1111 E Street, N.W., Washington, DC 20004, for Transferors. The motor carrier operating rights to be transferred consist principally of the following: (1) common carrier rights, of general commodities, with exceptions, and contract carrier rights, of specific commodities, of O.N.C. Freight System (a) issued in MC-71459 Subs 88, 67 and 69; (b) issued in MC-71459, Sub 72, except authority to be retained consisting of authority therein to transport classes A and B explosives, commodities in bulk and commodities requiring the use of special equipment; (c) to be issued as acquired from Interocean Service Corp. in MC-17006, pursuant to MC-F-17534; (d) to be issued when approved in MC-71459, Subs 55, 65, 68F, 70F, 71F, in MC-116999, Sub 4, MC-128879, Sub 25, and MC-6714, Sub 10; (e) to be issued in pending acquisition proceedings; (f) and authorities issued in MC-26739, Sub Nos. E-1, E-2 and E-4; (2) Common carrier rights, of general commodities, with exceptions, of O.N.C. Freight Systems of Oklahoma, Inc., formerly Caddo Express, issued in No. MC-134308, Sub Nos. 2, 3, 6, 8, 11, and 12, control approved in MC-F-12218 February 9, 1978, subject to prior sale to Altruk Freight Systems, Inc., pursuant to MC-F-13761 (Fed. Reg. Oct. 26, 1978) of "commodities moving in mechanically refrigerated equipment"; (3) common carrier rights, of general commodities, with exceptions, of Ameri-Con Cartage to be issued in No. MC-22967 and subs as authorized in No. MC-F-12875, which rights authorize motor carrier service over numerous routes and at numerous points in NY, NJ, CT, RI, MA, NH, PA, OH, IN, IL, IA, KS, NE, MN, MO, CO, WY, TX, OK, NM, AZ, UT, NV, WA, OR, and CA. The operating rights to be acquired generally contain the following restrictions: General commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, livestock, commodities in bulk, those requiring special equipment, and commodities moving in mechanically refrigerated equipment). In No. MC-F-12875 (February 24, 1977), O.N.C. Freight Systems-Control-Rocor Truck Lines and ROCOR International-Control Altruk Freight Systems, Tractor, Inc., and Ameri-Con Cartage, (the "Rocor Reorganization case"), a division of operating rights of numerous carriers then controlled by ROCOR into O.N.C. Freight Systems, Altruk Freight Systems, VanGo and Tractor, Inc., (now Alfarm Freight Systems) was authorized subject to a restriction, to appear in No. MC-71459, Sub 72 as follows: "The authority quoted in this certificate, to the extent that it duplicates the operating rights held by carriers under the common ownership of ROCOR International, may not hereafter be severed from such common ownership by sale or otherwise, nor do any duplications confer more than one operating right." As a matter directly related to the application, ROCOR and applicants have petitioned for relief from that restriction so as to permit consummation of the proposed transaction. The freight forwarder permits of O.N.C. Forwarding and American Consolidators are sought to be transferred pursuant to section 10926 of the Interstate Commerce Act to M.T. Forwarding Company, a wholly-owned subsidiary of Transferee. This notice does not purport to be a complete description of all of the operating rights of O.N.C. Freight Systems, O.N.C. Freight Systems of Oklahoma, Inc., Ameri-Con Cartage, O.N.C. Forwarding and American Consolidators but is believed sufficient for purpose of public notice regarding the nature and extent of these carriers' operating rights without stating in full the entirety thereof. Transferee McLean Trucking Company is authorized to operate pursuant to

Certificate No. MC–31389 and subs as a common carrier of general commodities, with the usual exceptions, over primarily regular routes between points in the States of AR, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, OH, PA, RI, SC, TN, TX, VT, VA, WV and WI and the District of Columbia. Transferors regular route authority may be tacked with that of transferee in IL, MO, KS, NE, TX, MN, NY, NJ, CT, and MA. Transferee will seek authority to tack irregular route portions of its authority with irregular-route portions of Transferors' authorities. There may be an issue presented under section 10930 of the Act. Application has been filed for authority under section 11349 of the Act.

Authority sought for purchase by AFFILIATED VAN LINES, INC., 2124 Washington Street, Box 204, Lawton, OK 73502, of a portion of the operating rights of KINGS VAN & STORAGE, INC., 814 First National Center, Oklahoma City, OK 73102, and for acquisition by Terry Bell, 2124 Washington Street, Box 204, Lawton, OK 73502, of control of such rights through the transaction. Transferee's attorney: Charles J. Kimball, 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. Transferor's attorney: V. Burns Hargis, 2808 First National Center, Oklahoma City, OK 73102. Operating rights sought to be purchased: Household Goods as defined in Practices of Motor Common Carriers of Household Goods, 17 M.C.C. 467, over irregular routes, between Oklahoma City, OK, and points and places in OK within 200 miles of Oklahoma City, on the one hand, and, on the other, points and places in MT and WY; and new furniture, mirrors, and furniture parts, crated, between Oklahoma City, Trumann, AR, Toccoa, GA, and Selma, AL, from Oklahoma City, OK and Trumann, AR to points in NE, CO, NM, KS, OK, TX, MN, IA, MO, AR, WI, IL, CA, AZ, ND, and SD, from Toccoa, GA, Selma, AL, and Trumann, AR to points in ME, NH, VT, MA, CT, and RI, from Trumann, AR to points in NC, LA, MS, MI, IN, KY, TN, AL, VA, FL, GA, MD, NJ, and DE. Vendee is authorized to operate as a common carrier under Certificate No. MC–141364 and subs thereto, in the states of OK, KS, AR, CO, IL, IA, LA, MO, NE, NM, and TX. Application has been filed for temporary authority under section 210a(b). Hearing site: Oklahoma City, OK.

Authority sought for purchase by BAYVIEW TRUCKING, INC., 7060 Florin-Perkins Road, Sacramento, CA 95828, of all of the operating rights of UNIVERSAL DEVELOPMENT, INC., P.O. Box 568, York, NE 68467 and for acquisition by Frank Hayashida, 7328 So. Land Park Dr., Sacramento, CA 95831, of control of such rights through the purchase. Transferor's attorney: Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106. Operating rights to be purchased: Meats, meat products, meat by-products and articles distributed by meat packinghouses (except hides and commodities in bulk), from the facilities of Sunflower Beef Packers, Inc. at York, NE, to points in WA, OR, ID, and MT, restricted to transportation of shipments originating at the named origin and destined to the indicated destinations. Transferee is a common carrier by motor vehicle authorized to conduct operations in AZ, CA, CO, ID, MT, NE, NV, NM, OR, WA, and WY. Application has been filed for temporary authority under Section 210a(b). (Hearing site: Omaha, NE.)

MC–F–14020F Authority sought for the purchase by Coast Express, Inc., 2422 South Peck Road, Whittier, California, 90609, a portion of the operating rights of Cox Refrigerated Express, Inc., 10606 Good night Lane, Dallas, Texas, 75220, and for acquisition by James Cardwell, 2422 South Peck Road, Whittier, California, 90609, of control of such rights through the purchase. Applicant's attorney: D. Paul Stafford, Suite 1125, Exchange Park, Dallas, Texas, 75245. Operating rights sought to be purchased: *Candy and confectionery items and desert preparations*, from the plant site and warehouse facilities of Queen Anne Candy Company located at or near Hammond, Indiana, to points in Arizona, California, Colorado, Idaho, Kansas, Montana, Nevada, New Mexico, Oklahoma, Oregon, Texas, Utah, Washington, and Wyoming, with no transportation for compensation on return except as otherwise authorized. Coast Express, Inc. is authorized to operate as a contract carrier in the States of AR, GA, IL, IN, IA, KT, MI, MO, NB, OH, RI, TN, TX, UT, WI, AZ, ID, OR, WA, CA, KS, NJ, PA, NV, NM, CO, WY, and MT. Application has been filed for temporary authority under section 210a(b).

MC–F–14024F. Authority sought for purchase by Bilkays Express Co., 830 Old Corlies Avenue, Neptune, NJ 07753 (Vendee) a portion of the operating rights of M & M Transportation Co., Debtor in Possession, 750 Third Avenue, New York, NY 10017 contained in MC 69275 and for control by Robert A. Kortenhaus and William J. Kortenhause through purchase. Vendees attorneys Edward M. Alfano and John L. Alfano, 550 Mamaroneck Avenue, Harrison, NY 10528, Vendor's attorney Herbert Burstein, One World Trade Center, New York, NY 10048. Operating rights sought to be purchased: General commodities, with exception, as a common carrier, over regular routes between Boston, MA and Philadelphia, PA as more fully described in certificate MC 69275 subject to the following: Restricted against transportation of traffic (1) between points in CT, (2) between points in MA, and (3) between New York, NY and Philadelphia, PA. Vendee is authorized to operate pursuant to certificate No. MC 73618 and subs as a common carrier, over irregular routes, in the states of CT, NY, and NJ. Application has been filed for temporary authority under Section 210a(b). (Hearing site: New York, NY.)

MC–F–14026F. Authority sought for purchase by CENTRAL TRANSPORT, INC., 34200 Mound Road, Sterling Heights, MI 48077, of all of the operating rights of NORTHERN ILLINOIS TRUCKLINES, INC., 1001 South Laramie Ave., Chicago, IL 60644, and for acquisition of control of such rights by CenTra, Inc., and in turn, control of such rights by T. J. Moroun and M. J. Moroun, all of 34200 Mound Road, Sterling Heights, MI 48077, through the purchase. Applicants' Attorneys: R. W. Lech, Executive Vice President, Central Transport, Inc., Agent for Transferee, and Themis N. Anastos, 120 West Madison St., Chicago, IL 60602, Attorney for Transferor. Operating rights sought to be transferred are contained in Certificate of Registration MC 99585 (Sub-1), authorizing the transportation of Household Goods, Coal, wood, pianos, office and store furniture and fixtures, merchandise within a 50-mile radius of 4131 North Western Ave., Chicago, IL, and to transport such property to or from any point outside of such area; also, household goods, pianos, office furniture and fixtures to or from any point or points within the State of IL. Vendee is authorized to operate as a common carrier in IL, IN, KY, MI, OH, MI, PA, WV and WI. Application has been filed for temporary authority under Section 210a(b) and a conversion application has been filed under Section 207.

Motor Carrier Intrastate Application(s) Notice

The following application(s) for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to Section 10931 (formerly Section

206(a)(6)) of the Interstate Commerce Act. These applications are governed by Special Rule 245 of the Commission's *General Rules of Practice* (49 CFR 1100.245), which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, and any other related matters shall be directed to the State Commission with which the application is filed and shall *not* be addressed to or filed with the Interstate Commerce Commission.

Texas Docket 002339A3A (Correction), filed September 29, 1978. Applicant: ALAMO EXPRESS, INC., 6013 Rittiman Plaza, San Antonio, TX 78218. Representative: Damon R. Capps, Suite 1230, Capital National Bank Building, Houston, TX 77002. Certificate of Public Convenience and Necessity sought to operate a freight service, as follows: Transportation of: *General commodities,* over regular routes, (1) Between Dallas, TX and San Antonio, TX, as follows: From Dallas, TX over Interstate Hwy 35E to the intersection of Interstate Hwy 35E and Interstate Hwy 35 thence over Interstate Hwy 35 to San Antonio, TX and return serving no intermediate points and joining, tacking and coordinating the proposed service with all services authorized in intrastate commerce pursuant to Certificate 002339 and in interstate and foreign commerce pursuant to all services authorized under Docket MC 107727 and subs thereunder with the exception that no service is sought for traffic originating at or destined to San Antonio, TX. (2) Between Fort Worth, TX and San Antonio, TX as follows: From Fort Worth, TX over Interstate Hwy 35W to the intersection of Interstate Hwy 35W and Interstate Hwy 35, thence over Interstate Hwy 35 to San Antonio, TX, and return serving no intermediate points and joining, tacking and coordinating the proposed service with all services authorized in intrastate commerce pursuant to Certificate 002339 and in interstate and foreign commerce pursuant to all services authorized under Docket MC 107727 and subs thereunder with the exception that no service is sought for traffic originating at or destined to San Antonio, TX. (3) Between Dallas, TX and Houston, TX as follows: From Dallas, TX over Interstate Hwy 45 to Houston, TX and return serving no intermediate points and joining, tacking and coordinating the proposed service with all services authorized in intrastate commerce pursuant to all services authorized under Certificate 002339 and in interstate and foreign commerce pursuant to all services authorized under Docket MC 107727 and subs thereunder with the exception that no service is sought for traffic originating at or destined to Houston, TX. (4) Between Fort Worth, TX and Houston, TX as follows: From Forth Worth, TX over U.S. Hwy 287 to intersection of U.S. Hwy 287 and Interstate Hwy 45 thence over interstate Hwy 45 to Houston, TX and return serving no intermediate points and joining, tacking and coordinating the proposed service with all services authorized in intrastate commerce pursuant to all services authorized under Certificate 002339 and in interstate and foreign commerce pursuant to services authorized under Docket MC 107727 and subs thereunder with the exception that no service is sought for traffic originating or destined to Houston, TX. (5) Between Fort Worth, TX and Houston, TX as follows: From Fort Worth, TX over U.S. Hwy 80 to the intersection of U.S. Hwy 80 and Interstate Hwy 45 thence over Interstate Hwy 45 to Houston, TX and return serving no intermediate points and joining, tacking and coordinating the proposed service with all services authorized in intrastate commerce pursuant to all services authorized under Certificate 002339 and in interstate and foreign commerce pursuant to services authorized under Docket MC 107727 and subs thereunder with the exception that no service is sought for traffic originating at or destined to Houston, TX. (6) Between Fort Worth, TX and Victoria, TX as follows: From Fort Worth, TX over Interstate Hwy 35W to the intersection of Interstate Hwy 35W and Interstate Hwy 35 thence over Interstate Hwy 35 to the intersection of Interstate Hwy 35 and U.S. Hwy 77 thence over U.S. Hwy 77 to Victoria, TX and return serving no intermediate points and joining, tacking and coordinating the proposed service with all services authorized in intrastate commerce pursuant to all services authorized under Certificate 002339 and in interstate and foreign commerce pursuant to all services authorized in interstate and foreign commerce under Docket MC 107727 and subs thereunder. (7) Between Dallas, TX and Victoria, TX as follows: From Dallas, TX over Interstate Hwy 35E to the intersection of Interstate 35E and Interstate 35 thence over Interstate Hwy 35 to the intersection of Interstate Hwy 35 and U.S. Hwy 77 thence over U.S. Hwy 77 to Victoria, TX and return serving no intermediate points and joining, tacking and coordinating the proposed service with all services authorized in intrastate commerce pursuant to all services authorized under Certificate 002339 and in interstate and foreign commerce pursuant to all services authorized in interstate and foreign commerce under Docket MC 107727 and subs thereunder. (8) Between Forth Worth and Houston, TX as follows: From Fort Worth, TX over the Dallas-Fort Worth Turnpike (IN 30) to the intersection of the IN 30 and IH 45 thence over IH 45 to Houston, TX and return serving no intermediate points and joining, tacking and coordinating the proposed service with all services authorized in intrastate commerce pursuant to all services authorized under Certificate 002339 and in interstate and foreign commerce under Docket MC 107727 and subs thereunder with the exception that no service is sought for traffic destined to or originating at Houston, TX. Intrastate, Interstate and Foreign commerce authority sought. HEARING: July 9, 1979 to August 10, 1979, times and places not yet fixed. Requests for procedural information should be addressed to Texas Railroad Commission, P.O. Drawer 12967, Capitol Station, Austin, TX 78711, and should not be directed to the Interstate Commerce Commission.

Transportation of Used Household Goods in Connection With a Pack-and-Crate Operation on Behalf of the Department of Defense

Special Certificate Letter Notice(s)

The following letter notices request participation in a Special Certificate of Public Convenience and Necessity for the transportation of used household goods, for the account of the United States Government, incident to the performance of a pack-and-crate service on behalf of the Department of Defense under the Direct Procurement Method or the Through Government Bill of Lading Method under the Commission's regulations (49 CFR 1056.40) promulgated in "Pack-and-Crate" operations in Ex Parte No. MC–115, 131 M.C.C. 20 (1978).

An original and one copy of verified statement in opposition (limited to argument and evidence concerning applicant's fitness) may be filed with the Interstate Commerce Commission on or before July 2, 1979. A copy must also be served upon applicant or its representative. Opposition to the applicant's participation will not operate to stay commencement of the proposed operation.

If applicant is not otherwise informed by the Commission, operations may commence *within 30 days* of the date of

its notice in the Federal Register, subject to its tariff publication effective date.

HG–5–79 (Special Certificate—Used Household Goods), filed April 29, 1979. Applicant: EIGHMIE MOVING & STORAGE CO., INC., Route 9W, Milton, NY 12547. Representative: Alvin Altman, 888 Seventh Ave., New York, NY 10019. Authority sought: Between points in Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, and Westchester Counties, NY, and Fairfield County, CT, serving the United States Military Academy, West Point, NY.

HG–6–79 (Special Certificate—Used Household Goods), filed May 4, 1979. Applicant: NAUM MOVING & STORAGE CO., INC., 5994 Wilbur Road, East Syracuse, NY 13057. Representative: Gingold & Gingold, 624 University Bldg., Syracuse, NY 13202. Authority sought: Between points in Onandaga, Madison, Oswego, Cortland, Cayuga, Oneida, Lewis, Jefferson, and St. Lawrence Counties, NY, serving Hancock Air Force Base, Syracuse, NY, and Griffis Air Force Base, Rome, NY.

HG–7–79 (Special Certificate—Used Household Goods), filed May 8, 1979. Applicant: SECURITY WAREHOUSES, INC., 40 Robert Pitt Drive, Monsey Drive, NY 10952. Representative: Alvin Altman, 888 Seventh Ave., New York, NY 10019. Authority Sought: Between points in Dutchess, Orange, Putnam, Rockland, Ulster, and Westchester Counties, NY, and Fairfield County, GT, serving the United States Military Academy, West Point, NY.

HG–8–79 (Special Certificate—Used Household Goods), filed May 17, 1979. Applicant: UNITED MOVING AND STORAGE, INC. OF DAYTON, 1728 Troy St., Dayton, OH 45404. Representative: Earl N. Merwin, 85 East Gay St., Columbus, OH 43215. Authority Sought: (1) Between points in Allen, Auglaise, Butler, Champaign, Clark, Clinton, Darke, Defiance, Fayette, Fulton, Greene, Hancock, Highland, Harden, Henry, Logan, Mercer, Miami, Montgomery, Paulding, Preble, Putnam, Shelby, Van Wert, Warren, and Williams Counties, OH, serving Wright-Patterson Air Force Base, OH, and (2) between points in Adams, Brown, Clermont, and Hamilton Counties, OH, and Anderson, Bath, Bell, Boone, Burbon, Boyd, Boyle, Bracken, Breathitt, Campbell, Carter, Clark, Clay, Elliott, Estill, Fayette, Fleming, Floyd, Franklin, Gallitan, Garrard, Grant, Greenup, Harlan, Harrison, Jackson, Jessamine, Johnson, Kenton, Knott, Knox, Laurel, Lawrence, Lee Leslie, Letcher, Lewis, Lincoln, McCreary, Madison, Magoffin, Martin, Mason, Menifee, Mercer, Montgomery, Morgan, Nicholas, Owen, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Scott, Whitely, Wolfe, and Woodford Counties, KY, serving Red River Army Depot, Texarkana, TX.

By the Commission.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-18075 Filed 6-8-79; 8:45 am]

BILLING CODE 7035-01-M

[Notice No. 85]

Motor Carrier Temporary Authority Applications

May 22, 1979.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

MC 3854 (Sub-49TA), filed April 17, 1979. Applicant: BURTON LINES, INC., P.O. Box 11306 East Durham Station, Durham, NC 27703. Representative: G.E. Martin, Jr., 615 Ellis Road, Durham, NC 27703. *Composition board, insulating boards and building materials* from the facilities of Celotex Corporation at Pennsauken, NJ to points in AL, FL, GA, KY, NC, SC, TN, and WV for 180 days. An underlying ETA seeking 90 days authority has been filed. Supporting shipper(s): Jim Walter Corporation 1500 North Dale Mabry Highway, Tampa, FL 33607. Send protests to: Mr. Archie W. Andrews, District Supervisor, ICC, P.O. Box 26896, Raleigh, NC 27611.

MC 14215 (Sub-35TA), filed April 13, 1979. Applicant: SMITH TRUCK SERVICE, INC., P.O. Box 1320, Steubenville, OH 43952. Representative: John L. Alden, 1396 W. Fifth Ave., Columbus, OH 43212. *Iron and steel and iron and steel articles,* from Beaver Falls, PA to points in CT, GA, IN, IL, KY, NC, NJ, OH, SC, TN, VA, and the lower peninsula of MI, for 180 days. Supporting shipper(s): Moltrup Steel Products Company, P.O. Box 331, Beaver Falls, PA 15010. Send protests to: J. A. Niggemyer, DS, 416 Old P.O. Bldg., Wheeling, WV 26003.

MC 59655 (Sub-21TA), filed April 23, 1979. Applicant: SHEEHAN CARRIERS, INC., 62 Lime Kiln Road, Suffern, NY 10901. Representative: George A. Olsen, POB 357, Gladstone, NJ 07934. *(1) Glass containers and (2) materials, equipment and supplies used in the manufacture and distribution of containers, container ends and closures (except commodities in bulk),* between points in ME, NH, VT, MA, CT, RI, NY, NJ, PA, DE, MD, VA, WV, and DC. Restricted to the transportation of traffic originating at or destined to the facilities and warehouse sites of National Bottle Company located in the above-described territory, for 180 days. Supporting shipper(s): National Bottle Company, One Bala Cynwyd Plaza, Bala Cynwyd, PA 19004. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

MC 99614 (Sub-6TA), filed April 2, 1979. Applicant: ARKANSAS TRANSPORT COMPANY, P.O. Box 702, Little Rock, AR 72203. Representative: Roland M. Lowell, 618 United American Bank Bldg., Nashville, TN 37219. Petroleum and petroleum products, in bulk, from Union, Ouachita, and Calhoun Counties, AR to points in LA (except New Orleans and its commercial zone) for 180 days. An underlying ETA

seeks 90 days authority. Supporting shipper(s): Gasoline Marketers, Inc., 6301 Centennial Blvd., Nashville, TN 37202; Southern Farmers Association, P.O. Box 5489, North Little Rock, AR 72119. Send protests to: William H. Land, Jr., District Supervisor, 3106 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 107295 (Sub-917TA), filed April 11, 1979. Applicant: PRE-FAB TRANSIT CO., P.O. Box 146, Farmer City, IL 61842. Representative: Richard Vollmer, (same address as applicant). Common Irregular: *Commodities* (except in bulk) used in the manufacture and distribution of building materials as described in Appendix VI of the report in Descriptions in Motor Carrier Certificates 61 MCC 209, and wall board, hardboard, insulation and padding and cushioning materials, mulch firewood, and nonwoven fibers from points in AL, AK, FL, GA, IL, IN, KS, LA, MI, MS, MO, NE, NC, OH, OK, SC, TN, TX, WI to the plantsite of Conwed Corporation at Cloquet, MN, for 180 days. An underlying ETA seeks 90 day authority. Supporting shipper(s): Conwed Corporation, Cloquet, MN 55720. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, Room 414, Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

MC 107515 (Sub-1228TA), filed March 21, 1979. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby & Richard M. Tettelbaum, Serby & Mitchell, Fifth Floor, Lenox Towers South, 3390 Peachtree Rd., NE., Atlanta, GA 30326. *Such commodities as are dealt in by drug stores and cosmetic dealers (except commodities in bulk), in vehicles equipped with mechanical refrigeration,* from facilities of Clairol, Inc., at or near Stamford, CT, to Camarillo and LaMirada, CA; Atlanta, GA; Chicago, IL; Indianapolis, IN; Portland, OR; and Dallas, TX, and points in their respective commercial zones, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Clairol, Inc., One Blachley Rd., Stamford, CT 06901. Send protests to: Sara K. Davis, TA, ICC, 1252 W. Peachtree St., NW, room 300, Atlanta, GA 30309.

MC 107515 (Sub-1229TA), filed March 22, 1979. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby & Richard M. Tettelbaum, Fifth Floor, Lenox Towers South, 3390 Peachtree Road, NE., Atlanta, GA 30326. *Canned foodstuffs, in mechanically refrigerated equipment,* from facilities of Glorietta Foods, at or near Hollister, Oakland and San Jose, CA to points in IL, IN, IA, KS, MN, MO, NE, NY, OH, PA and WI for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Glorietta Foods, P.O. Box 5040, San Jose, CA 95150. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St. NW., Rm. 300, Atlanta, GA 30309.

MC 107515 (Sub-1230TA), filed April 5, 1979. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Richard M. Tettelbaum, Serby & Mitchell, 3390 Peachtree Rd., NE., Suite 520, Atlanta, GA 30326. *Meat, meat products, meat by-products and articles distributed by meat packinghouses (except commodities in bulk) as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 when moving in mechanically refrigerated vehicles* from the facilities of or utilized by Oscar Mayer & Co., Inc. at Madison, WI to Los Angeles, CA and points in its Commercial Zone, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Oscar Mayer & Co., Inc., P.O. Box 7188, Madison, WI 53707. Send protests to: Sara K. Davis, TA, ICC, 1252 W. Peachtree St. NW., Rm. 300, Atlanta, GA 30309.

MC 111274 (Sub-41TA), filed April 18, 1979. Applicant: SCHMIDGALL TRANSFER, INC., P.O. Box 356, RR No. 2, Morton, IL 61550. Representative: Elmer C. Schmidgall (same address as applicant). Contract irregular: *Milk and milk products and containers* for same (except in bulk, in tank vehicles) between Peoria, IL and Logansport, IN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Producers Dairy Division of Prairie Farms Dairy, Inc., 2000 North University, Peoria, IL 61601. Send Protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, Room 414 Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

MC 115654 (Sub-143TA), filed April 12, 1979. Applicant: TENNESSEE CARTAGE CO., INC., P.O. Box 23193, Nashville, TN 37202. Representative: Hank Seaton, 929 Pennsylvania Bldg., 425 Thirteenth St. NW., Washington, DC 20004. *Foodstuffs, and materials, supplies, ingredients, and equipment used in the manufacture of frozen foods,* between the facilities of Morton Frozen Foods, at or near Russellville and Searcy, AR on the one hand, and, on the other, points in AL, GA, IL, IN, KY, MI, MS, OH, TN, and LA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Morton Frozen Foods Division, ITT Continental Baking Co., Inc., One Morton Drive, Charlottesville, VA 22906. Send protests to: Glenda Kuss, TA, ICC, Suite A-422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 117815 (Sub-297TA), filed April 5, 1979. Applicant: PULLEY FREIGHT LINES, INC., 405 S.E. Twentieth St., Des Moines, IA 50317. Representative: Jack H. Blanshan, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. (1) *Meats, meat products, meat by-products, and articles distributed by meat packing houses* as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk) and (2) *Foodstuffs* when moving mixed loads with articles listed in (1) above, from the facilities of Oscar Mayer & Co. at or near Madison, WI to Goodlettsville, TN for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Oscar Mayer & Co. Inc., P.O. Box 7188, Madison, WI 53707. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 117815 (Sub-298TA), filed April 6, 1979. Applicant: PULLEY FREIGHT LINES, INC., 405 S.E. 20th St., Des Moines, IA 50309. Representative: Jack H. Blanshan, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. *Materials, equipment and supplies used by canning factories and frozen food manufacturers* (except commodities in bulk), from points in IL, IN, IA, KS, MI, MO, NE, and WI and Memphis, TN and Fargo, ND and points in their respective commercial zones to the facilities of Jeno's, Inc. at Duluth, MN and its commercial zone for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Jeno's, Inc., 525 Lake Ave. South, Duluth, MN 55801. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 117815 (Sub-299TA), filed April 6, 1979. Applicant: PULLEY FREIGHT LINES, INC., 405 S.E. 20th St., Des Moines, IA 50317. Representative: Jack H. Blanshan, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. *Such commodities as are dealt in by wholesale and retail food and drug outlets* (except commodities in bulk), from the facilities of Procter & Gamble Distributing Company at Iowa City and Riverdale, IA and their respective commercial zones to Kansas City and

Topeka, KS and their respective commercial zones, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Procter & Gamble Distributing Company, P.O. Box 599, Cincinnati, OH 45201. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 117815 (Sub-300TA), filed April 13, 1979. Applicant: PULLEY FREIGHT LINES, INC., 405 S.E. 20th St., Des Moines, IA 50317. Representative: Jack H. Blanshan, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. *Paper, paper products, cellulose products, and textile softeners* (except commodities in bulk) from the facilities of Procter & Gamble Paper Products at Green Bay, WI and its commercial zone to IL, IN, IA, KS, MI, MN, MO and NE for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Procter & Gamble Paper Products Company, P.O. Box 599, Cincinnati, OH 45201. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 117815 (Sub-301), filed April 20, 1979. Applicant: PULLEY FREIGHT LINES, INC., 405 S.E. 20th St., Des Moines, IA 50317. Representative: Jack H. Blanshan, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. *Paper and paper products* from the facilities of Samson-Midamerica located at Indianapolis, IN and its commercial zone to points in IA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Samson-Midamerica, 8111 Zionsville, Indianapolis, IN 46268. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 120924 (Sub-8TA), filed March 16, 1979. Applicant: B & W CARTAGE CO., 2932 West 79th Street, Chicago, IL 60652. Representative: Hamlin A. Smith, 2932 West 79th Street, Chicago, IL 60652. *Auto parts*, NOI, between Chicago, IL and Detroit, MI for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Chrysler Corporation, P.O. Box 1976, Detroit, MI 48288. Send protests to: Annie Booker, Transportation Assistant, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 121664 (Sub-71TA), filed April 11, 1979. Applicant: HORNADY TRUCK LINE, INC., P.O. Box 846, Monroeville, AL 36460. Representative: W. E. Grant, 1702 First Avenue South, Birmingham, AL 35201. *Roofing and roofing materials*, from Holt, Al, and its commercial zone, to points in MS, TN, KY, GA, NC, SC, FL, AL, LA, AR, VA, MO, IL, and IN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Warrior Roofing Manufacturing Co., Inc., P.O. Box 3101, Tuscaloosa, AL 35401. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 123115 (Sub-21TA), filed April 26, 1979. Applicant: PACKER TRANSPORTATION CO., 405 South Rock Boulevard, Sparks, NV 89431. Representative: Robert G. Harrison, 4299 James Drive, Carson City, NV 89701. *Fiberglass Ceiling Tile* from the facilities of Owens-Corning Fiberglas Corp. at St. Helens, OR to points in NV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Owens-Corning Fiberglas Corp., Fiberglas Tower, Toledo, OH 43659. Send protests to: W. J. Huetig, D.S., I.C.C. 203 Federal Building, 705 North Plaza St., Carson City, NV 89701.

MC 123255 (Sub-294 TA), filed February 27, 1979. Applicant: B & L MOTOR FREIGHT, INC., 1984 Coffman Road, Newark, Ohio 43055. Representative: C. F. Schnee, Jr., 1984 Coffman Road, Newark, Ohio 43055. *Kitchen cabinets, vanities and related articles used in the installation thereof* from the facilities of Delmar Corporation a division of Triangle Pacific Corporation at or near Union City, IN to points in CT, DE, ME, MD, MA, NH, NJ, NY, OH, PA, RI, VT, VA, WV, and the District of Columbia for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Delmar Corporation, a Division of Triangle Pacific Corporation, 4255 LBJ Freeway, Dallas, Texas 75234. Send protests to: Frank L. Calvary, District Supervisor, Interstate Commerce Commission, 220 Federal Building and U.S. Courthouse, 85 Marconi Boulevard, Columbus, Ohio 43215.

MC 123255 (Sub-295 TA), filed March 6, 1979. Applicant: B & L MOTOR FREIGHT, INC., 1984 Coffman Road, Newark, Ohio 43055. Representative: C. F. Schnee, Jr., 1984 Coffman Road, Newark, Ohio 43055. *Paper and paper products (except commodities in bulk)* from the facilities of The Mead Corporation located at or near Kingsport and Gray, TN to points in CT, ME, MA, NH, NJ, NY, PA, RI, and VT for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The Mead Corporation, Courthouse Plaza, Northeast, Dayton, Ohio 45463. Send protests to: Frank L. Calvary, District Supervisor, Interstate Commerce Commission, 220 Federal Building and U.S. Courthouse, 85 Marconi Boulevard, Columbus, Ohio 43215.

MC 123255 (Sub-296 TA), filed March 20, 1979. Applicant: B & L MOTOR FREIGHT, INC., 1984 Coffman Road, Newark, Ohio 43055. Representative: C. F. Schnee, Jr., 1984 Coffman Road, Newark, Ohio 43055. *Mineral wool* (clay, rock, slag, or glass wool) from the facilities of Guardian Insulation Division of Guardian Industries, Inc. at or near Albion, MI to points in IL, IN, IA, MI, MN, NY, OH, PA, and WI for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Guardian Insulation Division Guardian Industries, 701 N. Broadway, Huntington, IN 46750. Send protests to: ICC Wm. J. Green, Jr. Federal Bldg., 600 Arch Street, Rm. 3238, Philadelphia, PA 19106.

MC 123255 (Sub-297 TA), filed March 30, 1979. Applicant: B & L MOTOR FREIGHT, INC., 1984 Coffman Road, Newark, Ohio 43055. Representative: C. F. Schnee, Jr., 1984 Coffman Road, Newark, Ohio 43055. *Glass containers and closures therefor* from Muncie, IN to Gloucester City, NJ. for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ball Coprporation, 345 Sought High Street, Muncie, IN 47302. Send protests to: ICC Wm. J. Green, Jr. Federal Bldg., 600 Arch Street, Philadelphia, PA 19106.

MC 123255 (Sub-298TA), filed March 30, 1979. Applicant: B & L MOTOR FREIGHT, INC., 1984 Coffman Road, Newark, Ohio 43055. Representative: C. F. Schnee, Jr., 1984 Coffman Road, Newark, Ohio 43055. *(1) Containers, container ends and closures (2) commodities manufactured or distributed by manufacturers and distributors of containers when moving in mixed loads with containers, (3) materials, equipment and supplies used in the manufacture and distribution of containers, container ends and closures* (except commodities in bulk) between Lexington KY on the one hand and on the other points in the States of IL, IN, MI and OH, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): American Can Company, American Lane, Greenwich, CT 06830. Send protests to: ICC, Wm. J. Green, Jr., Federal Bldg., 600 Arch Street, Philadelphia, PA 19106.

MC 123375 (Sub-17TA), filed April 24, 1979. Applicant: KIRK TRUCKING SERVICE, INC., 3100 Braun Avenue, Murrysville, PA 15668. Representative: A. Charles Tell, 100 East Broad Street, Columbus, OH 43215. *Gypsum products* from Buchanan, NY to all points in CT, MA, NJ, PA and RI for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Georgia-Pacific

Corporation, 1062 Lancaster Avenue, Rosemont, PA 19010. Send protests to: J. J. England, DS, ICC, 2111 Fed. Bldg., Pittsburgh, PA 15222.

MC 124174 (Sub-145TA), filed April 3, 1979. Applicant: MOMSEN TRUCKING CO., 13811 L St., Omaha, NE 68137. Representative: Karl E. Momsen (same address as applicant). *Castings and forgings,* from points in WI, IN, and MI to Omaha, NE; Joplin, MO; and Searcy, AR, for 180 days. Supporting shipper(s): L. J. Frederick, Sperry Vickers, 6600 North 72nd St., Omaha, NE 68122. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 123885 (Sub-30TA), filed April 25, 1979. Applicant: C & R TRANSFER CO., P.O. Box 1010, Rapid City, SD 57709. Representative: Floyd E. Archer, P.O. Box 1794, Sioux Falls, SD 57101. *Machinery, and commodities which by reason of their size or weight require the use of special equipment or special handling,* from Sioux Falls, SD, to Denver and Colorado Springs, CO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Kolman Division Athey Products Corp., P.O. Box 806, Sioux Falls, SD 57101. Send protests to: J. L. Hammond, DS, ICC, Room 455, Federal Bldg., Pierre, SD 57501.

MC 124174 (Sub-146TA), filed April 5, 1979. Applicant: MOMSEN TRUCKING CO., 13811 L St., Omaha, NE 68137. Representative: Karl E. Momsen (Same address as applicant). *Tile, facing or flooring concrete, or terrazzo tile,* from Laredo, TX to Mishawaka, IN; W. Mifflin, PA; Port Richey, Miami, and Leesburg, Fl; Minot, ND; Sioux City, IA; Denver and Colorado Springs, CO; Huntington, WV; and Fredericksburg, VA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): (1) Royce E. Manning, Boiardi Products Corp., 1525 Fairfield Ave., Cleveland, OH 44113; (2) David Morris, Rheinschmidt Contracting Co., 1100 Agency St., Burlington, IA 52601. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 124174 (Sub-147TA), filed April 18, 1979. Applicant: MOMSEN TRUCKING CO., 13811 L St., Omaha, NE 68137. Representative: Karl E. Momsen (Same address as applicant). *Iron and steel paving joints for roadway construction purposes,* from Maquoketa, to points, in KY, OH, NC, WV, IA, IL, MO, MD, WI, IN, TX, and MI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wady Industries, 510 E. Grove, Maquoketa, IA 52060. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 124554 (Sub-34TA), filed April 4, 1979. Applicant: LANG CARTAGE CORP., 1308 S. West Ave., Waukesha, WI 53187. Representative: Richard Alexander, 710 N. Plankinton Ave., Milwaukee, WI 53203. Contract carrier; irregular routes; *Merchandise, equipment and supplies used or distributed by manufacturers of household products,* from LaCrosse, WI to points in Aitkin, Benton, Big Stone, Carlton, Chippewa, Chisago, Crow Wing, Douglas, Hennepin, Isanti, Kanabec, Lac Qui Parle, Lincoln, Lyon, Mille Lacs, Morrison, Murray, Nobles, Pine, Pipestone, Ramsey, Rock, Sherburne, St. Louis, Stevens, Swift, Todd, Washington, and Yellow Medicine Counties, MN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Fuller Brush Co., P.O. Box 729, Great Bend, KS 67503. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 124554 (Sub-35TA), filed April 26, 1979. Applicant: LANG CARTAGE CORP., P.O. Box 1465, Waukesha, WI 53187. Representative: Richard Alexander, 710 N. Plankinton Ave., Milwaukee, WI 53203. Contract carrier; irregular routes; *Paper and paper products* from facilities of Bemiss-Jason Corp. at Chicago, IL to points in WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Bemiss-Jason Corp., 1100 W. Cermak Rd., Chicago, IL 60608. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 125335 (Sub-59TA), filed April 23, 1979. Applicant: GOODWAY TRANSPORT, INC., P.O. Box 2283, York, PA 17405. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501. *Such merchandise as is dealt in by wholesale and retail paint stores and supply houses,* from Chicago, IL, to points in KS, FL, MO, IA, MN, NE, ND and SD, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Standard T Chemical Co., Inc., 10th & Washington, Chicago Heights, IL 60411. Send protests to: Interstate Commerce Commission, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 126514 (Sub-53TA), filed April 4, 1979. Applicant: SCHAEFFER TRUCKING, INC., 5200 W. Bethany Home Rd., Glendale, AZ 85301. Representative: Leonard R. Kofkin, 39 S. LaSalle St., Chicago, IL 60603. *Photographic apparatus, equipment, material, supplies and products used for photographic application, manufacturing or processing (except commodities in bulk),* from Rochester, NY to San Ramon, Whittier and Hollywood, CA and Dallas, TX. (2) from Windsor, CO to San Ramon and Whittier, CA, and (3) between Windsor, CO and Rochester, NY, restricted to the transportation of shipments originating at and destined to the facilities of Eastman Kodak Company at the origins and destinations named above, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Eastman Kodak Company, 2400 Mt. Read Blvd., Rochester, NY 14650. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025.

MC 124775 (Sub-11TA), filed April 3, 1979. Applicant: HRIBAR TRUCKING, INC., 1521 Waukesha Rd., Caledonia, WI 53108. Representative: Leo Hribar, same address as applicant. *Crushed stone, in bulk, in dump vehicles,* from 3M Co., Wausau, WI to Chicago, Chicago Heights, and Waukegan, IL and Whiting, IN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Minnesota Mining & Mfg. Co., 3M Center, St. Paul, MN 55101. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 126305 (Sub-117TA), filed April 24, 1979. Applicant: BOYD BROTHERS TRANSPORTATION COMPANY, INC., RFD 1, Box 18, Clayton, AL 36016. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Carpenters molding, door frames and/or inside trim work with shellac in addition to prime.* Between the facilities of Hampton Hardwood Corporation, at or near Hampton and Newport News, VA, on the one hand, and, on the other, points in and east of MN, IA, NE, OK and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Hampton Hardwood Corportation, 2100 56th Street, Hampton, VA; Hampton Hardwood Corporation, P.O. Box 5109, Parkview Station, Newport News, VA 23605. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 126514 (Sub-54TA), filed April 4, 1979. Applicant: SCHAEFFER

TRUCKING, INC., 5200 W. Bethany Home Rd., Glendale, AZ 85301. Representative: Leonard R. Kofkin, 39 S. LaSalle St., Chicago, IL 60603. *Foodstuffs (except frozen foodstuffs and commodities in bulk) and materials, supplies and equipment used in the manufacture and sale thereof (except commodities in bulk),* between the facilities of Ragu Foods, Inc. at Merced, CA and Rochester, NY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ragu Foods, Inc., 33 Benedict Place, Greenwich CT 06830. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025.

MC 126305 (Sub-118TA), filed April 12, 1979. Applicant: BOYD BROTHERS TRANSPORTATION CO., INC., RFD 1, Box 18, Clayton, AL 36016. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Lumber and wood products,* surfaced but not primed or finished, from Warren, AR, and El Paso, TX, to points in VA, for 180 days. Supporting shipper(s): Rawles, Aden Lumber Corporation, River Street, P.O. Box 269, Petersburg, VA 23803. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 128205 (Sub-74TA), filed March 23, 1979. Applicant: BULKMATIC TRANSPORT COMPANY, 12000 South Doty Avenue, Chicago, IL 60628. Representative: Arnold L. Burke, 180 North LaSalle Street, Chicago, IL 60601. *Cereal food products in bulk:* from Battle Creek, MI to Delavan, MI, for 180 days. An underlying ETA was granted for 90 days authority. Supporting shipper(s): Peterson Company, P.O. Box 60, Battle Creek, MI 49016. Send protests to: Annie Booker, TA, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 126514 (Sub-55TA), filed April 9, 1979. Applicant: SCHAEFFER TRUCKING, INC., 5200 W. Bethany Home Rd., Glendale AZ 85301. Representative: Leonard R. Kofkin, 39 S. LaSalle St., Chicago, IL 60603. *(1) Such merchandise, materials, equipment and supplies as are used, manufactured or dealt in by manufacturers and distributors of paper and film products and (2) photographic materials and reproduction and duplicating products and supplies,* from S. Hadley and Holyoke, MA to Chicago, IL, Oklahoma City and Tulsa, OK and points in CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): James River Graphics, Inc., 28 Gaylord St., So. Hadley, MA 01075. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave. Phoenix, AZ 85025.

MC 126514 (Sub-56TA), filed April 13, 1979. Applicant: SCHAEFFER TRUCKING, INC., 5200 W. Bethany Home Rd., Glendale, AZ 85301. Representative: Leonard R. Kofkin, 39 S. LaSalle St., Chicago, IL 60603. *Plastic liquid, plastic film and sheeting, chemicals, cleaning and scouring compounds, defoaming compounds, laminating machinery or parts, ink, solvents, pallets, and empty containers,* between the facilities of Thiokol/Dynachem Corp. in Orange County, CA on the one hand, and, on the other, Elmhurst, IL, Indianapolis and Terre Haute, IN, Woburn and South Hadley Falls, MA, Kearny, NJ, Farmingdale, NY, Matthews and Charlotte, NC, and Herndon, VA, restricted against the transportation of commodities in bulk, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Thiokol/Dynachem Corp. P.O. Box 12047, Santa Ana, CA 92711. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025.

MC 126844 (Sub-82TA), filed April 2, 1979. Applicant: R.D.S. TRUCKING CO., INC., 1713 North Main Road, Vineland, NJ 08360. Representative: Kenneth F. Dudley, 611 Church Street, P.O. Box 279, Ottumwa, Iowa 52501. *Physical fitness apparatus,* (1) from Pennsauken, NJ to points in AR, CO, GA, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, NY, NC, OH, OK, PA, SC, TN, VA, WV, and WI, and (2) from Seabrook, NJ to Edgewater Park and Pennsauken, NJ, for 180 days. Supporting shipper(s): General Home Products Corp., Suckle & National Highway, Pennsauken, NJ 08110. Send protests to: District Supervisor, ICC, 428 East State Street, Room 204, Trenton, NJ 08608.

MC 127524 (Sub-18TA), filed April 2, 1979. Applicant: QUADREL BROS. TRUCKING COMPANY, INC., 1603 Hart Street, Rahway, NJ 07065. Representative: John L Alfano, Esq. (Alfano & Alfano, P.C.), 550 Mamaroneck Avenue, Harrison, NY 10528. *Mineral oil, in bulk,* from Bayonne and Bayway, NJ to Baltimore, MD, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Johnson & Johnson Baby Products, 220 Centennial Avenue, Piscataway, NJ 08854. Send protests to: Robert E. Johnston, D/S, ICC, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 127524 (Sub-1TA), filed April 2, 1979. Applicant: QUADREL BROS. TRUCKING COMPANY, INC., 1603 Hart Street, Rahway, NJ 07065. Representative: John L. Alfano, Esq. (Alfano & Alfano, P.C.), 550 Mamaroneck Avenue, Harrison, NY 10528. *Chemicals, in bulk in marinized tankwagons,* from Newark, NJ to Baltimore, MD for 180 days. Restricted to shipments having a prior or subsequent movement by water. An underlying ETA seeks 90 days authority. Supporting shipper(s): Celanese Chemical, Incorporated, 1250 West Mockingbird Lane, Dallas, TX 75247. Send protests to: Robert E. Johnston, D/S, ICC, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 127524 (Sub-20TA), filed April 9, 1979. Applicant: QUADREL BROS. TRUCKING COMPANY, INC., 1603 Hart Street, Rahway, NJ 07065. Representative: John L. Alfano and Roy A. Jacobs, Esqs., 550 Mamaroneck Avenue, Harrison, NY 10528. Plastic pellets, in bulk, in tank vehicles. From Edison, NJ to Avon and Cortland, NY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Allied Chemical Corporation, P.O. Box 1087R, Morristown, NJ 07960. Send protests to: Robert E. Johnston, DS, ICC, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 127974 (Sub-16TA), filed April 17, 1979. Applicant: P. LIEDTKA TRUCKING, INC., 110 Patterson Avenue, Trenton, N.J. 08610. Representative: Alan Kahn, Esquire, 1920 Two Penn Center Plaza, Philadelphia, Pa. 19102. *Iron and steel articles,* from the facilities of United States Steel Corporation in Allegheny and Westmoreland Counties, PA to points in NJ, for 150 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): United States Steel Corporation, 600 Grant Street, Pittsburgh, Pa. 15230. Send protests to: District Supervisor, ICC, 428 East State Street, Room 204, Trenton, N.J. 08608.

MC 133315 (Sub-4TA), filed April 25, 1979. Applicant: ASBURY SYSTEM, 222 East 38th Street, Vernon, CA 90058. Representative: Howard D. Clark, same address as applicant. *Petroleum products, in bulk, in tank vehicles,* from South Gate and Carson, CA to Phoenix, AZ, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): ARCO Petroleum Products Company, A Division of Atlantic Richfield Company, 505 So. Flower Street, Los Angeles, CA 90071. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, P.O. Box 1551, Los Angeles, CA 90053.

MC 133485 (Sub-28TA), filed April 6, 1979. Applicant: INTERNATIONAL DETECTIVE SERVICE, INC., 1828 Westminister Street, Providence, RI 02909. Representative: Morris J. Levin, 1050 Seventeenth Street, N.W., Washington, DC 20036. *Cobalt metal, escorted by armed guards,* between New York, NY and Muskegon, MI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Phillip Brothers, 1221 Avenue of the Americas, New York, NY 10020. Send protests to: Gerald H. Curry, District Supervisor, 24 Weybosset Street, Room 102, Providence, RI 02903.

MC 133655 (Sub-150TA), filed April 11, 1979. Applicant: TRANS-NATIONAL TRUCK, INC., P.O. Box 31300, Amarillo, TX 79120. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. (1) *Paper and paper products* (except commodities in bulk); and (2) *equipment materials, and supplies* used in the manufacture and distribution of paper and paper products (except commodities in bulk) between Azusa, Monrovia, Whittier, and Cucamonga, CA; Gainesville, GA; North Brunswick, NJ; Cleveland, Cincinnati, Painesville, and Willoughby, OH; Elmhurst, IL; Philadelphia and Quakertown, PA; Charlotte and Greensboro, NC; and Schereville, IN on the one hand, and, on the other, points in the United States, for 180 days. Supporting shipper(s): Fasson Products, 316 Highway 74, South, Peachtree City, GA 30269. Send protests to: Haskell E. Ballard, Box F-13206 Federal Building, Interstate Commerce Commission—Bureau of Operations, Amarillo, TX 79101.

MC 133975 (Sub-8TA), filed April 6, 1979. Applicant: FLAMINGO TRANSPORTATION, INC., 11405 N.W. 36th Ave., Miami, FL 33167. Representative: Richard B. Austin, 5255 N.W. 87th Ave., Miami, FL 33178. *General commodities* (except articles of unusual value, classes A & B explosives, household goods as defined by the Commission, commodities in bulk, those requiring special equipment, and mobile homes) between points in Escambia, Leon, and Duval Counties, FL, on the one hand, and, on the other points in Escambia, Santa Rosa, Okaloosa, Walton, Holmes, Washington, Bay, Jackson, Calhoun, Liberty, Gulf, Gadsden, Franklin, Wakulla, Leon, Jefferson, Madison, Taylor, Hamilton, Suwannee, Lafayette, Dixie, Levy, Gilchrist, Columbia, Baker, Union, Bradford, Alachua, Putnam, Flagler, St. Johns, Clay, Duval and Nassau Counties, FL restricted to traffic having an immediately prior or subsequent handling by freight forwarder for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Florida-Texas Freight, Inc., 11405 N.W. 36th Ave., Miami, FL 33167. Send protests to: Donna M. Jones, TA, ICC-BOp, Monterey Bldg., Suite 101, 8410 N.W. 53rd Ter., Miami, FL 33166.

MC 134405 (Sub-71TA), filed April 18, 1979. Applicant: BACON TRANSPORT COMPANY, P.O. Box 1134, Ardmore, OK 73401. Representative: Wilburn L. Williamson, Suite 615-East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. *Anhydrous ammonia,* in bulk, in tank vehicles, from Ft. Madison, IA, to points in IL and MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Swift Agricultural Chemicals Corporation, 30 N. LaSalle, Chicago, IL 60602. Send protests to: District Supervisor, Interstate Commerce Commission, Room 240, Old Post Office & Court House Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 134405 (Sub-72TA), filed April 9, 1979. Applicant: BACON TRANSPORT COMPANY, P.O. Box 1134, Ardmore, OK 73401. Representative: Wilburn L. Williamson, Suite 615-East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. *Rubber,* from the Port of Muskogee, OK, to Ardmore, OK, restricted to the transportation of traffic having a prior movement by water, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Uniroyal Corporation, Box 1867, Ardmore, OK 73401. Send protests to: District Supervisor, Interstate Commerce Commission, Room 240, Old Post Office & Court House Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 134405 (Sub-73TA), filed April 11, 1979. Applicant: BACON TRANSPORT COMPANY, P.O. Box 1134, Ardmore, Oklahoma 73401. Representative: Willburn L. Williamson, Suite 615-East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, Oklahoma 73112. *Anhydrous ammonia, in bulk, in tank vehicles* from Lake Charles, LA, to Pasadena, TX for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Fertilizer Company of Texas, Inc., P.O. Box 3444, Pasadena, Texas 77501. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office Bldg., 215 N.W. Third Street, Oklahoma City, Oklahoma 73102.

MC 135185 (Sub-39TA), filed April 25, 1979. Applicant: COLUMBINE CARRIERS, INC., P.O. Box 15246, 1720 East Garry Avenue, Santa Ana, CA 92705. Representative: Charles J. Kimball, Kimball, Williams & Wolfe, P.C., 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. *Contract:* irregular: *Paints, stains, varnishes and polyurethane finishings (except in bulk),* from the facilities of Sterling Drug, Inc., at or near Flora, IL, to the facilities of Lehn and Fink Products Co., a Division of Sterling Drug, Inc., at or near Belle Mead, NJ, for 180 days. Restricted to a transportation service to be performed under a continuing contract(s) with Lehn and Fink Products Co., a Division of Sterling Drug, Inc. An underlying ETA seeking up to 90 days operating authority has been filed. Supporting shipper(s): Lehn & Fink Products Co., A Division of Sterling Drug, Inc., 225 Summit Avenue, Montvale, NJ 07645. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, P.O. Box 1551, Los Angeles, CA 90053.

MC 135185 (Sub-40TA), filed April 25, 1979. Applicant: COLUMBINE CARRIERS, INC., P.O. Box 15246, 1720 East Garry Avenue, Santa Ana, CA 92705. Representative: Charles J. Kimball, Kimball, Williams & Wolfe, P.C., 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. *Contract:* irregular: *(1) Disinfectants and deodorant compounds (except in bulk),* from the facilities of Production Control, Inc., at or near Chicago, IL and the facilities of Cadillac Packaging at or near North Chicago, IL, to points in WA, CA, TX, NJ, FL, and OH; *(2) Canisters,* from the facilities of Milton Can at or near Cranbury, NJ, to the facilities of Production Control, Inc., at or near Chicago, IL and the facilities of Cadillac Packaging at or near North Chicago, IL; and *(3) Sodium sulfate, in bags,* (a) from the facilities of International Salt at or near Lowland, TN, and (b) from the facilities of Prior Chemical, at or near Kings Mountain and Bessemer City, NC, to the facilities of Production Control, Inc., at or near Chicago, IL and the facilities of Cadillac Packaging at or near North Chicago, IL, restricted in parts (1), (2), and (3) to a transportation service to be performed under a continuing contract or contracts with Lehn & Fink Products Co., a Division of Sterling Drug, Inc., for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Lehn & Fink Products Co., A Division of Sterling Drug, Inc., 225 Summit Avenue, Montvale, NJ 07645. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, P.O. Box 1551, Los Angeles, CA 90053.

MC 135524 (Sub-24TA), filed April 5, 1979. Applicant: G. F. TRUCKING COMPANY, 1028 West Rayen Avenue, Youngstown, OH 44501. Representative: George Fedorisin, 914 Salt Springs Road, Youngstown, OH 44509. *Lumber, lumber mill products, and wood products,* from the facilities of Potlatch Corporation located at or near Coeur d' Alene, St. Maries, Potlatch, Lewiston, Kamiah, Spalding, Jaype (near Pierce), Santa and Post Falls, ID, to all points in IN, MI, MO, and OH, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Potlatch Corporation, P.O. Box 1016, Lewiston, ID 83501. Send protests to: Mary Wehner, D/S, ICC, 731 Federal Bldg., Cleveland, OH 44199.

MC 135684 (Sub-92TA), filed April 17, 1979. Applicant: BASS TRANSPORTATION CO., INC., P.O. Box 391, Old Croton Road, Flemington, N.J. 08822 Representative: Ronald L. Knorowski (same address as applicant). *Starch and chemicals* (except in bulk), from the facilities of National Starch and Chemical Corp., at or near Indianapolis, IN to points in CT, MA, ME, MD, NJ, NY, PA, RI and VA, for 180 days. An underlying ETA seeks 90 days authority Supporting shipper(s): National Starch & Chemical Corp., P.O. Box 6500, Bridgewater, N.J. 08807. Send protests to: District Supervisor, ICC, 428 East State Street, Room 204, Trenton, N.J. 08608.

MC 135874 (Sub-165TA), filed April 4, 1979. Applicant: LTL PERISHABLES, INC., 550 East 5th Street South, South St. Paul, MN 55075. Representative: Paul Nelson (same address as applicant). *Fertilizer, aluminum ladders and oak barrels (all except in bulk)* from Milwaukee, WI, Warsaw, IN, and Louisville, KY to the facilities of Warner Hardware in the Minneapolis, MN Commercial Zone, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Warners, Marketing Manager, 2745 South Lexington Avenue, St. Paul, MN 55121. Send protests to: Delores A. Poe, TA ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 135874 (Sub-166TA), filed April 4, 1979. Applicant: LTL PERISHABLES, INC., 550 East 5th Street South, South St. Paul, MN 55075. Representative: Paul Nelson (same address as applicant). *Frozen foods, (except commodites in bulk),* from the facilities of the Pillsbury Company in the Minneapolis, MN Commercial Zone to points in IN, OH, MI, IL, MO, KY, PA and NY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The Pillsbury Co., Frozen Foods Division, Traffic Manager, 606 2nd Avenue South, Minneapolis, MN 55402. Send protests to: Delores A. Poe, TA ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 135874 (Sub-167TA), filed April 4, 1979. Applicant: LTL PERISHABLES, INC., 550 East 5th Street South, South St. Paul, MN 55075. Representative: Paul Nelson (same address as applicant). *Kitchen cabinets, bathroom vanities, dehumidifiers and microwave ovens (all except in bulk)* from Sellersburg, IN, Albion, MI and Little Fern, NJ to the facilities of Menard's, Inc. at Cedar Rapids, IA, Rochester, Belgrade and St. Cloud, MN and the Minneapolis, MN Commercial Zone, and Eau Claire, LaCrosse and Wausaw, WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Menard's, Inc., Merchandise Manager, Route 2, Eau Claire, WI 54701. Send protests to: Delores A. Poe, TA ICC, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 135895 (Sub-37TA), filed February 22, 1979. Applicant: B & R DRAYAGE, INC., P.O. Box 8534, Battlefield Station, Jackson, MS 39204. Representative: Douglas C. Wynn, P.O. Box 1295, Greenvile, MS 38701. *Paper and paper products and equipment, materials and supplies* used in the conversion, manufacture and distribution of paper and paper products (except commodities in bulk) between the facilities of Olinkraft, Inc. at or near Monroe and West Monroe, LA, on the one hand, and, on the other, points in AL, AR, GA, FL, MS, TN, and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Olinkraft, Inc., P.O. Box 488, West Monroe, LA 71291. Send protests to: Alan Tarrant, D/S, ICC, Rm. 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 135895 (Sub-38TA), filed February 23, 1979. Applicant: B & R DRAYAGE, INC., P.O. Box 8534, Battlefield Station, Jackson, MS 39204. Representative: Douglas C. Wynn, P.O. Box 1295, Greenville, MS 38701. *Plastic granules, pellets and powder, and ethanolmines,* in containers (except commodities in bulk and commodities requiring special equipment) from the facilities of Dow Chemical Corp. at or near Baton Rouge and Plaquemine, LA to points in AL, AR, FL, GA, LA, MS, NC, OK, SC, TN and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Dow Chemical Corp., P.O. Box 150, Plaquemine, LA 70764. Send protests to: Alan Tarrant, D/S, ICC, Rm. 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 135924 (Sub-6TA), filed April 24, 1979. Applicant: SIMONS TRUCKING CO., INC., 3851 River Road, Grand Rapids, MN 55744. Representative: Samuel Rubenstein/David Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. *Composition board* from the facilities of Abitibi Corporation, Chicago, IL to points in MN, ND, SD, IA and NE, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Abitibi Corporation, 3250 West Big Beaver Road, Troy, MI 48084. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 136315 (Sub-70TA), filed April 24, 1979. Applicant: OLEN BURRAGE TRUCKING, INC., Rt. 9, Box 22-A, Philadelphia, MS 39350. Representative: Fred W. Johnson, Jr., 1500 Deposit Guaranty Plaza, Jackson, MS 39205. *Freight and passenger elevators, parts and attachments therefor* (1) between the facilities of Dover Corp./Elevator Div. DeSoto County, MS, on the one hand, and, on the other, the facilities of Dover Corp./Elevator Div., Hardeman County, TN; (2) from the facilities of Dover Corp./Elevator Div., DeSoto County, MS, and Hardeman County, TN to points in IL, IN, OH, MI, WI, IA, and MN, and (3) *materials, equipment and supplies* in the reverse direction in (2) above, (Restricted against the transportation of commodities in bulk and commodities which because of size and weight require the use of special equipment) for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Dover Corp Elevator Div., P.O. Box 2177, Memphis, TN 38101. Send protests to: Alan Tarrant, D/S, ICC, Rm. 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 136315 (Sub-71TA), filed April 24, 1979. Applicant: OLEN BURRAGE TRUCKING, INC., Rt. 9, Box 22-A, Philadelphia, MS 39350. Representative: Fred W. Johnson, Jr., P.O. Box 22628, Jackson, MS 39205. *Iron and steel articles* from the facilities of Jones and Laughlin Steel Corporation located in Putnam County, Illinois to points in AR, MS, OK, TN, Kansas City, KS and Kansas City, MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Jones and Laughlin Steel Corp., Hennepin, IL 61527. Send protests to: Alan Tarrant, D/S, ICC, Rm. 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 136315 (Sub-72TA), filed April 3, 1979. Applicant: OLEN BURRAGE TRUCKING, INC., Rt. 9, Box 22–A, Philadelphia, MS 39350. Representative: Fred W. Johnson, Jr., 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205. *Adhesives,* except in bulk, from facilities of General Adhesives & Chemical Co., Davidson County, TN to points in AL, AR, GA, LA, MS, OK, and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): General Adhesives & Chemical Co., 6100 Centennial Blvd., Nashville, TN 37202. Send protests to: Alan Tarrant, D/S, ICC, Rm. 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 136384 (Sub-16TA), filed April 6, 1979. Applicant: PALMER MOTOR EXPRESS, INC., P.O. Box 103, Savannah, GA 31402. Representative: W. W. Palmer, Jr. (same as applicant). *Foodstuffs and such other commodities as are dealt in by wholesale and retail chain and grocery houses, and in connection therewith, equipment, materials, and supplies used in the conduct of such business, restricted against the transportation of commodities in bulk and against the transportation of shipments in vehicles equipped with mechanical refrigeration* between the facilities of Savannah Foods and Industries, Inc., and Transales Corporation, in Chatham County, GA, on the one hand, and, on the other, points in FL and GA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Transales Corporation, P.O. Box 9177, Savannah, GA 31412. Send protests to: G. H. Fauss, Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL.

MC 136484 (Sub-17TA), filed April 3, 1979. Applicant: PALMER MOTOR EXPRESS, INC., P.O. Box 103, Savannah, GA 31402. Representative: W. W. Palmer, Jr. (same as applicant). 111. (a) Regular routes: *General commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), 1. Between Vidalia and Atlanta, Georgia; From Vidalia over U.S. Highway 280 to Mc Rae, thence over U.S. Highway 280 to its intersection with U.S. Highway 441, thence over U.S. Highway 441 to Madison, Georgia, thence over U.S. Highway 278 to Atlanta, Georgia, and return over the same route serving all intermediate points and the off route points of Social Circle, Porterdale, and Milstead. 2. Between Athens and Atlanta, Georgia; From Athens over U.S. Highway 29 to Atlanta and return over the same route serving all intermediate points, and the off route point of Watkinsville, Ga. 3. Between Winder and Athens, Georgia; from Winder over Georgia Highway 11 to Jefferson, thence over Georgia Highway 15 to Commerce, thence over U.S. Highway 441 to Athens, Georgia and return serving all intermediate points. 4. Between Dublin and Atlanta, Georgia; serving no intermediate points and for operating convenience only. From Dublin over Georgia Highway 257 to its intersection with Interstate 16, thence over Interstate 16 to its intersection with Interstate 75, at or near Macon, Ga., thence over Interstate 75 to Atlanta, Georgia. 5. Between Madison and Athens, Georgia, serving no intermediate points and for operating convenience only. From Madison over U.S. Highway 441 to Athens, Georgia. For 180 days. Supporting shipper(s): There are 50 supporting shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: G. H. Fauss, Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 136545 (Sub-20TA), filed April 17, 1979. Applicant: NUSSBERGER BROS. TRUCKING CO., INC., 929 Railroad St., Prentice, WI 54556. Representative: Richard Westley, 4506 Regent St., Suite 100, Madison, WI 53705. *Flatbed and dropdeck trailers designed to be drawn by semi-tractors in initial movements* from Birmingham, AL; Lufkin, TX and Elizabeth, WV to the facilities of Dalke Trailer Sales at or near New Brighton, MN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Vulcan Trailer Mfg. Co., 1321 Third St. Ensley, Birmingham, AL 35214, and Dalke Trailer Sales, 1155 Old Hwy. 8, New Brighton, MN 55112. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 136545 (Sub-21TA), filed April 2, 1979. Applicant: NUSSBERGER BROS. TRUCKING CO., INC., 929 Railroad St., Prentice, WI 54556. Representative: Richard Westley, 4506 Regent St., Suite 100, Madison, WI 53705. *Structural steel tubing* from the facilities of Welded Tube Co. of America in Chicago, IL to points in the Minneapolis-St. Paul, MN Commercial Zone, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Welded Tube Co. of America, 1855 E. 122nd St., Chicago, IL 60633. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 136545 (Sub-22TA), filed April 13, 1979. Applicant: NUSSBERGER BROS. TRUCKING CO., INC., 929 Railroad St., Prentice, WI 54556. Representative: Richard Westley, 4506 Regent St., Suite 100, Madison, WI 53705. *Materials, equipment and supplies used in the manufacture and distribution of in-plant handling and processing equipment* from points in IL, IN, MI, MN, & OH to the facilities of Marquip, Inc. located at or near Phillips, WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Marquip, Inc., N. Airport Rd., Phillips, WI 54555. Send protests to: Gail Daugherty, Transportation Asst., ICC, Bureau of Operations, U.S. Federal Bldg & Courthouse, 517 East Wisconsin Ave., Rm 619, Milwaukee, WI 53202.

MC 136605 (Sub-102TA), filed April 24, 1979. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (same address as Applicant). *Iron, steel and aluminum articles* from the facilities of A. M. Castle & Co. located at or near Franklin Park, IL to the facilities of A. M. Castle & Co. located at or near Los Angeles, San Francisco, and Fresno, CA and Salt Lake City, UT, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): A. M. Castle & Co., 3400 N. Wolf Rd., Franklin Park, IL 60131. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 136605 (Sub-104TA), filed April 18, 1979. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (same address as Applicant). *Iron and steel articles* from the facilities of Jones and Laughlin Steel Corporation located in Hammond, IN and in the Chicago Commercial Zone in IN and IL to points in the States of WA, OR and CA, restricted to traffic originating at the named origin points, for 180 days. Supporting shipper(s): Jones and Laughlin Steel Corporation, 141 West 141st Street, Hammond, IN 46325. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 138104 (Sub-78TA), filed April 16, 1979. Applicant: MOORE TRANSPORTATION CO., INC., 3509 N. Grove Street, Fort Worth, TX 76106. Representative: Bernard H. English, 6270 Firth Road, Fort Worth, TX 76116. *Clay fines,* in bulk, in tank vehicles, from points in Saline and Pulaski Counties,

AR to points in Ellis County, TX, for 180 days. An underlyitng ETA seeks 90 days authority. Supporting shipper(s): Texas Industries, P.O. Box 400, Arlington, TX 76011. Send protests to: James H. Berry, ROD, ICC, Room 9A27, Federal Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 136144 (Sub-50TA), filed April 5, 1979. Applicant: FRED OLSON CO., INC., 6022 West State Street, Milwaukee, WI 53213. Representative: William D. Brejcha, 10 South LaSalle Street, Chicago, IL 60603. *Plastic pipe and accessories used in the installation thereof,* from the facilities of Johns-Manville Sales Corporation, Wilton, IA to points in IL, IN, MI, MO and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Johns-Manville Sales Corporation, 2222 Kensington Court, Oak Brook, IL 60521. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 138465 (Sub-6TA), filed March 29, 1979. Applicant: PHIL TOWNSEND, JR., Route 1, Box 19, Live Oak, FL 33630. Representative: Dan R. Schwartz, 1729 Gulf Life Tower, Jacksonville, FL 32207. (1) *Agricultural limestone,* in bulk, in dump vehicles, from points in Citrus and Taylor Counties, FL to points in GA on and south of U.S. Highway 280; (2) *Wet Gypsum,* in bulk, in dump vehicles, from points in Hamilton County, FL to points in GA on and south of U.S. Highway 280 and in Coffee, Covington, Dale, Geneva, Henry, and Houston Counties, AL; (3) *Superphosphate, including triple superphosphate, ammoniated and potassiated phosphate other than feed grade, but including diammonium phosphate, in bulk, in dump-type vehicles,* from points in Hamilton, Hillsborough, Manatee, and Polk Counties, FL to points in GA on and south of U.S. Highway 280 and in Coffee, Covington, Dale, Geneva, Henry, and Houston Counties, AL for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): There are 8 shippers. Their statments may be examined at the office listed below and Headquarters. Send protests to: G. H. Fauss, Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL #2202.

MC 139274 (Sub-6TA), filed April 2, 1979. Applicant: THE DANIEL COMPANY OF SPRINGFIELD, 419 E. Kearney, Springfield, Missouri 65803. Representative: Turner White, 910 Plaza Towers, Springfield, Missouri 65804. Contract, irregular. *Plastic jugs,* from Centralia, IL to Fresno, CA, for 180 days. An underlying ETA seeks 90 days authority. Restriction: Service to be performed under a continuing contract or contracts with the R. T. French Company of Rochester, NY. Supporting shipper(s): R. T. French Company, 4455 East Mustard Way, Rochester, New York. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, Missouri 64106.

MC 139395 (Sub-4TA), filed April 6, 1979. Applicant: BULK TRANSIT CORPORATION, 2040 North Wilson Road, Columbus, Ohio 43228. Representative: Andrew Jay Burkholder, 275 East State St., Columbus, Ohio 43215. *Lime* in bulk in tank vehicles from Knox County, TN to Carrollton, KY from Knox County, TN to points in OH south of U.S. Highway 30, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Williams Lime Mfg., Inc., Knoxville, TN. Send protests to: ICC, WM Jr. Green, Jr. Federal Bldg., 600 Arch Street, Philadelphia, PA 19106.

MC 139495 (Sub-17TA), filed April 12, 1979. Applicant: TRANS CONTINENTAL CARRIERS, 169 East Liberty Avenue, Anaheim, CA 92803. Representative: David P. Christianson, Kenpp, Greenman & Marsh, 707 Wilshire Blvd., Suite 1800, Los Angeles, CA 90017. *Contract: irregular: (1) Foods, foodstuffs, food treating compounds; chemicals and additives (except in bulk); and advertising paraphernalia; materials, equipment, and supplies used in the manufacture, preparation, sale and distribution of commodities listed above; and (2) Commodities, the transportation of which is exempt from regulation under provisions of Section 10526 (a), (b), and (c) of the Interstate Commerce Act, in mixed loads with the commodities described in (1) above,* between the facilities used by McCormick & Company, Inc., and its subsidiaries in the United States, on the one hand, and, on the other, points in the United States, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): McCormick & Company, Inc., 414 Light Street, Baltimore, MD 21202. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, P.O. Box 1551, Los Angeles, California 90053.

MC 140024 (Sub-147TA), filed April 5, 1979. Applicant: J. B. MONTGOMERY, INC., 5565 East 52nd Ave., Commerce City, CO 80022. Representative: Don Bryce (same as applicant). *Iron and Steel articles* from Farrell, PA to Clinton, Ottumwa, Des Moines and Dubuque, IA; St. Louis and St. Joseph, MO; DeWitt, NE; Paola, KS; Denver, Commerce City, Longmont, Simla and Loveland, CO for 180 days. Underlying ETA filed seeking 90 days authority. Supporting shipper: Sharon Steel Corp. P.O. Box 591, Sharon, PA 16146. Send protests to: D/S Roger L. Buchanan, ICC, 721 19th St., 492 U.S. Customs House, Denver, CO 80202.

MC 140024 (Sub-148TA), filed April 12, 1979. Applicant: J. B. MONTGOMERY, INC., 5565 East 52nd Ave., Commerce City, CO 80022. Representative: Don L. Bryce (same as applicant). *Foodstuffs (except in bulk),* in mechanically refrigerated vehicles from Brockport and Holley, NY to points in IL, IN, IA, MI, OH, and PA, for 180 days. Underlying ETA seeks 90 days authority. Supporting shipper: Curtice Burns, Inc., Lent Avenue, LeRoy, NY 14482. Send protests to: Roger L. Buchanan, ICC, 492 U.S. Customs House 721 19th St., Denver, CO 80202.

MC 141205 (Sub-14TA), filed April 27, 1979. Applicant: HUSKY OIL TRANSPORTATION COMPANY, 600 South Cherry Street, Denver, CO 80222. Representative: F. Robert Reeder and James M. E'egante, P.O. Box 11898, Salt Lake City, UT 84147. Contract—irregular route. *Crude oil, scrubber oil and condensate,* from Richland, Roosevelt, McCone, Prairie and Wibaux Counties, MT to Reserve Station of Portal Pipeline near Plentywood, MT, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Husky Oil Company, 600 South Cherry Street, Denver, CO 80222. Send protests to: District Supervisor, Herbert C. Ruoff, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 140484 (Sub-41 TA), filed April 6, 1979. Applicant: LESTER COGGINS TRUCKING, INC., 2671 E. Edison Ave., P.O. Box 69, Fort Myers, FL 33902. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St. NW. Washington, D.C. 20005. *Transformers and parts and accessories* (except those commodities which because of size or weight require the use of special equipment) (a) from Zanesville, OH to points in FL, GA, AL and TX and (b) from Nacogdoches, TX to points in AL, GA and FL for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): McGraw Edison, Power Systems Dvsn., P.O. Box 440, Canonsburg, PA 15317. Send protests to: Donna M. Jones, TA, ICC, BOp, Monterey Bldg., Suite 101, 8410 N.W. 53rd Terr., Miami, FL 33166.

MC 140484 (Sub-421 TA), filed April 12, 1979. Applicant: LESTER COGGINS TRUCKING, INC., 2671 E. Edison Ave., P.O. Box 69, Fort Myers, FL 33902. Representative: Frank T. Day (same address as applicant). *Malt beverages* (except in bulk, in tank vehicles) from Eden, NC, Ft. Worth, TX, and Albany, GA, on the one hand, and, on the other, Ft. Myers, FL for 180 days. Supporting shipper(s): Sunset Distributors, Inc., 3404 Cargo St., Fort Myers, FL 33901. Send protests to: Donna M. Jones, T/A, Interstate Commerce Commission, Monterey Bldg., Suite 101, 8410 N.W. 53rd Terr., Miami, FL 33166.

MC 140615 (Sub-67 TA), filed April 5, 1979. Applicant: DAIRYLAND TRANSPORT, INC. P.O. Box 1116, Wisconsin Rapids, WI 54494. Representative: Terrence Jones, 2033 K St. NW., Washington, DC 20006. *Foodstuffs* from the facilities of Campbell Soup Co. at Napoleon, OH to points in KY, NY, PA, TN, VA, WI & WV and Chicago, IL and Camden, NJ, for 180 days. Supporting shipper(s): Campbell Soup Co., E. Maumee Ave. Napoleon, OH 43545. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Ave., Rm 619, Milwaukee, WI 53202.

MC 140615 (Sub-38 TA), filed April 5, 1979. Applicant: DAIRYLAND TRANSPORT, INC. P.O. Box 1116, Wisconsin Rapids, WI 54494. Representative: Terrence D. Jones, 2033 K St. NW., Washington, DC 20006. *Cheese* from Cabot, VT to Wisconsin Rapids, WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Brooke Bond Cheez Co., Inc., 2321 Jefferson St., Wisconsin Rapids, WI 54494. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Ave., Rm 619, Milwaukee, WI 53202.

MC 140615 (Sub-39TA), filed April 5, 1979. Applicant: DAIRYLAND TRANSPORT, INC., P.O. Box 1116, Wisconsin Rapids, WI 54494. Representative: Dennis Brown (same address as applicant). *Canned goods* from Arlington, Augusta, Bear Creek, Belgium, Cambria, Cleveland, Clymar Durand Eagle River, Eden, Fairwater, Fond du Lac, Galesville, Gillette, Green Bay, Lodi, Lomira, Loyal, Manitowoc, Markesan, Marshfield, Mondovi, New Richmond, Oakfield Pickett, Plover, Poynette, Pulaski, Random Lake, Reedsburg, Sauk City, Seymour, Susse, Theresa, WI to points in AL, CT, DE, GA, IL, IN, IA, KS, KY, MD, MA MI, MN, MO, NE, NJ, NY, NC, OH, OK, PA, RI, SC, TN, VA & WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): American Farms Cooperative, Inc., P.O. Box 311, Waupun, WI 53963. Send protests to: Gail Daugherty, TA, ICC, Bureau of Operations, U.S. Federal Bldg & Courthouse, 517 East Wisconsin Ave., Rm 619, Milwaukee, WI 53202.

MC 140615 (Sub-40TA), filed April 13, 1979. Applicant: DAIRYLAND TRANSPORT, INC., P.O. Box 1116, Wisconsin Rapids, WI 54494. Representative: Terrence Jones, 2033 K St., NW., Washington, DC 20006. *Lighting fixtures, and parts and accessories of lighting fixtures,* (1) from the facilities of Keystone Lighting Corp., at Bristol, PA to the commercial zones of Chicago, IL; Indianapolis, IN; Kansas City, KS; Detroit, MI; Minneapolis, MN; St. Louis, MO; Omaha, NE; Cleveland, OH and Milwaukee, WI; and (2) from the Chicago, IL commercial zone to the facilities of Keystone Lighting Corp. at Bristol, PA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Keystone Lighting Corp., Beaver St. & Rt. 13, Bristol, PA 19007. Send protests to: Gail Daugherty, TA, ICC, Bureau of Operations, U.S. Federal Bldg & Courthouse, 517 East Wisconsin Ave., Rm 619, Milwaukee WI 53202.

MC 141205 (Sub-15TA), filed April 26, 1979. Applicant: HUSKY OIL TRANSPORTATION COMPANY, 600 South Cherry Street, Denver, CO 80222. Representative: F. Robert Reeder and James M. Elegante, P.O. Box 11898, Salt Lake City, UT 84147. *Contract-irregular-Crude oil, Scrubber oil and condensate,* from Grand County, Utah, to Chevron Pipeline injection station at Rangely, CO and the Gary Western Refinery, Fruita, CO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Husky Oil Company, 600 South Cherry Street, Denver, CO 80222. Send protests to: Herbert C. Ruoff, District Supervisory, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 141205 (Sub.16TA), filed April 26, 1979. Applicant: HUSKY OIL TRANSPORTATION COMPANY, 600 South Cherry Street, Denver, CO 80222. Representative: F. Robert Reeder and James M. Elegante, P.O. Box 11898, Salt Lake City, Utah 84147. *Contract-irregular-Crude oil, scrubber oil and condensate,* from Clay Basin, Daggett County, UT, to delivery point at North Baxter pipeline station, Rock Springs, WY, for 180 days. Supporting shipper(s): Husky Oil Company, 600 South Cherry Street, Denver, Colorado 80222. Send protests to: District Supervisor Herbert C. Ruoff, 492 U.S. Customs House, 721 19th Street, Denver, Colorado 80202.

MC 141774 (Sub-23TA), filed April 25, 1979. Applicant: R & L TRUCKING CO., INC., 105 Rocket Avenue, Opelika, AL 36801. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. *(1) Charcoal, charcoal briquets, vermiculite, active carbon, and hickory chip charcoal lighter fluid, and charcoal grills and accessories* between points in the States of MS, KY, AL, FL, TN, GA, NC, SC, and MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Husky Industries, Inc., 62 Perimeter Center, East, Atlanta, GA 30346. Send protests to: Mabel Holston, T/A, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 141804 (Sub-215TA), filed April 16, 1979. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman, P.O. Box 3488, Ontario, CA 91761. *Batteries, scrap batteries, parts, attachments, accessories and supplies used in connection with batteries, and equipment, materials and supplies used in the manufacture or distribution of batteries,* between the facilities of Chloride Company, Inc., located at or near Florence, MS; Columbus, GA; Raleigh, NC; Tampa, FL; and Beaverton, OR on the one hand, and, on the other, points in the United States, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Chloride Incorporated, 3507 South 50th Street, Tampa, FL 33601. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, P.O. Box 1551, Los Angeles, CA 90053.

MC 141914 (Sub-56TA), filed April 19, 1979. Applicant: FRANKS AND SON, INC., Route 1, Box 108A, Big Cabin, OK 74332. Representative: Kathrena J. Franks, (same address as applicant). *Fruit juice concentrates or fruit juices, frozen or chilled,* (except in bulk), in vehicles equipped with mechanical refrigeration, from Ontario, CA, to points in OH, MN, IA, MO, MI, GA, AL, IL, MA, MD, VA, NC, LA, & TX, for 180 days. Supporting shipper(s): Green Spot Company, division of Capitol Food Industries, Inc., 520 Mission St., So., Pasadena, CA 91030. Send protests to: District Supervisor, Interstate Commerce Commission, Room 240 Old Post Office & Court House Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 142715 (Sub-41TA), filed April 25, 1979. Applicant: LENERTZ, INC., P.O. Box 141, South St. Paul, MN 55075. Representative: K. O. Petrick (same address as applicant). *(1) Such merchandise as is dealt in by department stores; and (2) Foodstuffs in mixed loads with commodities described in (1) above (except commodities in bulk)* from points in the U.S. in and east of ND, SD, NE, CO, NM, and TX (except WI) to Green Bay, WI, restricted to traffic destined to the facilities of Shopko Stores, Inc., Green Bay, WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Shopko Stores, Inc., 2800 South Ashland, Green Bay, WI 54303. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 142715 (Sub-42TA), filed April 10, 1979. Applicant: LENERTZ, INC., P.O. Box 141, South St. Paul, MN 55075. Representative: K. O. Petrick (same address as applicant). *Foodstuffs (except commodities in bulk)* from (1) Minneapolis and New Hope, MN to points in WI, MO, IL, IN, MI, OH, NY, PA, NJ, NC, SC, GA, AL, TN, LA and TX, restricted to traffic originating at the facilities of the Creamette Company at New Hope and Minneapolis, MN and destined to points in the named states; and (2) Fairlawn, NJ and Carnegie, PA to Minneapolis, and New Hope, MN, restricted to traffic originating at Fairlawn, NJ and Carnegie, PA and destined to the facilities of the Creamette Company at Minneapolis and New Hope, MN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The Creamette Company, Assistant Traffic Manager, 7300 36th Avenue, New Hope, MN. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 142715 (Sub-43TA), filed April 16, 1979. Applicant: LENERTZ, INC., P.O. Box 141, South St. Paul, MN 55075. Representative: K. O. Petrick, P.O. Box 141, South St. Paul, MN 55075. *Meat, meat products, meat by-products, articles distributed by meat packinghouses* (except hides and commodities in bulk) and *materials and supplies* used by meat packers in the conduct of their business (except commodities in bulk) between the facilities of Lauridsen Foods, Inc. at or near Britt, IA and the facilities of Armour and Company at Mason City, IA, on the one hand, and on the other, points in the U.S. in and east of ND, SD, NE, CO, OK and TX. Restricted to transportation of shipments originating at or destined to the facilities of Lauridsen Foods, Inc., at Britt, IA and the facilities of Armour and Company at Mason City, IA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Armour and Company, Greyhound Tower, Phoenix, AZ 85077. Send protests to: Delores A. Poe, ICC, T/A, 414 Federal Building, U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 142864 (Sub-16TA), filed April 12, 1979. Applicant: RAY E. BROWN TRUCKING, INC., P.O. Box 501, Massillon, Ohio 44646. Representative: Jerry B. Sellman, 50 West Broad Street, Columbus, Ohio 43215. *Ice cream, ice cream confections, ice confections, dairy products and supplies, packaging and ingredients* used therein between Dunkirk, NY and Coshocton, OH, and from Dunkirk, NY to Detroit, MI, Ft. Wayne, IN and Pittsburgh, PA, for 180 days. An underlying ETA seeks 90 day authority. Supporting shipper(s): Dunkirk Ice Cream Company, Inc., 810 Main Street, Dunkirk, NY 14048. Send protests to: ICC, WM Jr. Green Jr. Federal Bldg., 600 Arch Street, Philadelphia, PA 19106.

MC 142935 (Sub-3TA), filed April 18, 1979. Applicant: PLASTIC EXPRESS, 2999 La Jolla Street, Anaheim, CA 92806. Representative: Richard C. Celio, 1415 West Garvey Avenue, Suite 102, West Covina, CA 91790. *Molybdenum concentrate, ferro molybdenum, copper crystals and fertilizer,* from the Sierrita and Esperanza mine sites of the Duval Corporation at or near Sahuarita, AZ to points in Los Angeles County, CA and Houston, TX, for 180 days. An underlying ETA seeks up to 90 days authority. Supporting shipper(s): Duval Corporation, P.O. Box 2967, Houston, TX 77001. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, P.O. Box 1551, Los Angeles, CA 90053.

MC 142974 (Sub-3TA), filed April 9, 1979. Applicant: SURE TRANSPORT, INC., Industrial Center—P.O. Box G, Lincoln, RI 02865. Representative: David M. Marshall, 101 State Street, Suite 304, Springfield, MA 01103. Contract-irregular, *Toilet preparations, drugs, medicines, hospital supplies* and *such commodities as are dealt in by a manufacturer of health and beauty products,* and *materials and supplies used in the manufacture and distribution of such commodities,* between the facilities of Chesebrough-Pond's at Clinton, CT, on the one hand, and, on the other, the facilities of Chesebrough-Pond's Inc., located at Stone Mountain, GA, Los Angeles, CA, Houston, TX, Monticello and Lafayette, IN, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Chesebrough-Pond's Inc., John Street, Clinton, CT 06413. Send protests to: Gerald H. Curry, District Supervisor, 24 Weybosset Street, Room 102, Providence, RI 02903.

MC 143594 (Sub-7TA), filed April 12, 1979. Applicant: NATIONAL BULK TRANSPORT, INC., P.O. Box 5078, Atlanta, GA 30302. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. *Liquid chemicals, in bulk, in tank vehicles* between the facilities of Callaway Chemical Company at Columbus, GA on the one hand, and, on the other, points in AR, KY, LA, MS, NC, SC, TN, and VA for 180 days. Supporting Shipper(s): Callaway Chemical Company, P.O. Box 2335, Columbus, GA 31902. Send protests to: Sara K. Davis TA, ICC 1252 W. Peachtree St., N.W., Room 300, Atlanta, GA 30309.

MC 143895 (Sub-16TA), filed April 12, 1979. Applicant: SLOAN TRANSPORTATION, INC., 6522 W. River Drive, Davenport, IA 52802. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Contract authority. *Materials, ingredients and supplies* used in the manufacture, distribution and sale of such merchandise as is dealt in by wholesale, retail and chain grocery and feed business houses, from points in IL, IN, MO and OH, to Clinton and Davenport, IA, (except in bulk) under continuing contracts with Ralston Purina Company. Restricted to traffic originating at or destined to the facilities of Ralston Purina Company for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Ralston Purina Company, Checkerboard Square, St. Louis, MO 63188. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 143594 (Sub-8TA), filed April 16, 1979. Applicant: NATIONAL BULK TRANSPORT, INC., P.O. Box 5078, Atlanta, GA 30302. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. *Chemicals, in bulk, in tank vehicles* from the facilities of Georgia Pacific Corporation at or near Plaquemine, LA to Crossett, El Dorado, Little Rock, Malvern, and Ashdown, AR; Lufkin, TX; Memphis, TN; Taylorsville and Louisville, MS; Valliant, OK; Russellville, SC; Conway, NC; Brewton, AL; and Palatka, FL, for 180 days. Supporting Shipper(s): Georgia Pacific

Corporation, P.O. Box 629, Plaquemine, LA 70764. Send protests to: Sara K. Davis TA, ICC, 1252 W. Peachtree St., N.W., Room 300, Atlanta, GA 30309.

MC 144234 (Sub-3TA), filed April 12, 1979. Applicant: PDV CARTAGE, INC., Minonk, IL 61760. Representative: Douglas G. Brown, The INB Center—Suite 555, Springfield, IL 62701. *Sulphuric acid*, from the plant site at Swift & Co., in Calumet City, IL to points and places in MI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): American Cyanamid Co., Berdan Avenue, Wayne, NJ. Send Protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, Leland Office Building—Rm. 414, 527 E. Capitol Ave., Springfield, IL 62701.

MC 146794 (Sub-1TA), filed April 20, 1979. Applicant: PACIFIC NORTHWEST CONTRACT CARRIERS, INC., 3010 N. Jackson Highway, Sheffield, AL 35660. Representative: Nick I. Goyak, 555 Benjamin Franklin Plaza, 1 SW Columbia, Portland, OR 97258. Contract, irregular: *Trailer axles, and parts, suspensions, landing gears, fifth wheels, hitches, and parts thereof, and mechanical refrigeration units*, from Detroit, Lansing and Holland, MI; Chicago, IL; Winamac and Lebanon, IN; Siloam Springs, AR; Montgomery, AL; Denmark, SC; Louisville, GA and Springfield, MO; to Billings, MT; Powell, WY; Salt Lake City, UT; Wilbur, Redmond, Bend and Portland, OR; Seattle, Moses Lake, Spokane and Wilbur, WA and Boise and Buhl, ID, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Standard Parts & Equipment Co., 5251 SE McLoughlin Blvd., Portland, OR 97202. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616 – 2121 Building, Birmingham, AL 35203.

MC 146954 (Sub-1TA), filed April 16, 1979. Applicant: EDGAR'S GARDEN CENTER, INC., Route 38, Mount Holly, N. J. 08060. Representative: Robert M. Dangel, One Centennial Square, E. Euclid Avenue, Haddonfield, N. J. 08033. *Contract carrier:* irregular routes: *Paint trays/sets; can ends; composite cans*, from Lumberton, NJ to points in PA, NJ and NY, for 180 days. Supporting Shipper(s): Burlington Metal Products, Inc., P.O. Box 146, Lumberton, N. J. 08048. Send protests to: District Supervisor, ICC, 428 East State Street, Room 204, Trenton, N. J. 08608.

MC 147125TA, filed March 19, 1979. Applicant: FRONTIER TRANSPORT, INC., P.O. Box 15751, Salt Lake City, UT 84115. Representative: Byron Thomas (same address as applicant). Contract carrier, irregular route, *Iron or steel grinding balls*, in bulk, from the facilities of CF&I Steel Corporatioin at or near Pueblo, CO to Kennecott Copper Corporation, Magna, UT, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Kennecott Copper Corporation, P.O. Box 16600, Salt Lake City, UT 84116. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 147134TA), filed March 21, 1979. Applicant: CHARLES JOINER, 104 South Central, Tennille, GA 31087. Representative: Clyde W. Carver, Attorney, P.O. Box 720434, Atlanta, GA 30328. *Contract carrier, irregular routes, insulators and parts* from Sandersville, GA, to all points in the United States, under a continuing contract with Lapp Insulator Division of Interpace Corporation, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Lapp Insulator Division of Interpace Corporation, P.O. Box 776, Sandersville, GA 31082. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

MC 147145TA), filed April 27, 1979. Applicant: James R. Anderson d.b.a., ANDERSON & SONS TRUCKING, 3395 Indian Lane, Reno, NV 89506. Representative: James R. Anderson, Jr. (same as applicant). *General Commodities* (except commodities in bulk, in tank vehicles) between Reno and Sparks, NV on the one hand and on the other, San Francisco, San Mateo, Santa Clara, Contra Costa, Alameda and Sacramento Counties, CA., for 180 days. Supporting shipper(s): There are 6 shippers. Their statements may be examined at the office listed below and headquarters. Send protests to: W. J. Huetig, D.S., I.C.C., 203 Federal Building, 705 N. Plaza St., Carson City, NV 89701.

MC 142114 (Sub-6TA), filed February 27, 1979, and published in **Federal Register** issue of April 9, 1979, and republished as corrected this issue. Applicant: Retail Express, Inc., 9 Stuart Road, Chelmsford, MA 01824. Representative: Francis J. Ortman, 7101 Wisconsin Avenue, Suite 605, Washington, D.C. 20014. Contract irregular: Such commodities as are dealt in by retail department stores (except commodities in bulk and frozen foodstuffs), between points in CT, DE, IN, KY, ME, MD, MA, NH, NJ, NY, NC, OH, PA, RI, TN, and VA, for 180 days. Supporting shipper(s): King's Department Stores, Inc., 150 California Street, Newton, MA 02158. Send protests to: Glenn Eady, ICC, 150 Causeway Street, Room 501, Boston, MA 02114. The purpose of this republication is to show applicant's authority as contract.

MC 144075 (Sub-4TA), filed January 18, 1979, published in the **Federal Register** issue of March 6, 1979, and republished this issue. Applicant: INDUSTRIAL TRANSPORT, INC., 2301 East 65th Street, Cleveland, OH 44104. Representative: Brian S. Stern, Esq., 2425 Wilson Blvd., Arlington, VA 22201. The Motor Carrier Board granted authority in this proceeding on May 4, 1979, to operate as a common carrier by motor vehicle, over irregular routes, transporting: *Aluminum and aluminum articles*, from the facilities of Kaiser Aluminum & Chemical Corporation at or near Ravenswood, WV, to points in AL, AR, CT, DE, FL, GA, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, TX, VT, VA, WV, WI, and the District of Columbia. This grant of authority is broader than that reflected in the **Federal Register** on March 6, 1979, which showed that applicant was seeking authority to transport these commodities at or near Ravenswood, WV to points in 32 States and the District of Columbia. This republication adds Florida as another destination State. The Board grant is in accordance with supporting shipper's statement.

By the Commission.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-18076 Filed 6-8-79; 8:45 am]
BILLING CODE 7035-01-M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 113
Monday, June 11, 1979

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

[M-226, Amdt. 7]

CIVIL AERONAUTICS BOARD.

Notice of addition of items to the June 5, 1979, meeting agenda.

TIME AND DATE: 9:30 a.m., June 5, 1979.

PLACE: Room 1027 (Open); Room 1011 (Closed); 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

SUBJECT:

1b. Proposed order to require American, TWA and United to file data on the number of seats sold at supercoach fares and total load factors in NYC-LAX/SFO markets, to file copies of advertisements of these fares, and to withhold this information from public disclosure until normal release of equivalent data. (Memo 6660, BCP)

1c. Dockets 35731 and 35660; United Air Lines $106 Transcontinental Fare—Extension of fare until July 1, 1979. (BDA)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

SUPPLEMENTARY INFORMATION: The sudden introduction of new capacity-controlled fares raises potential for abuse. The information required to be filed by this proposed order will help the Board discover the carriers' true practices in marketing these fares. It is essential that this information be obtained from the beginning of the new fares and immediately so that the Board can take protective measures, if they are necessary. Since these matters only became apparent the end of last week, it was not possible to prepare the proposed order earlier. A delay until the next meeting, June 20, 1979, would restrict the Board's ability to correct speedily any abuses that might occur from the start of the marketing of these new fares provided for in Item 1b. Complaints to this fare were filed on Friday, June 1, 1979. The fare expires on June 17, 1979. Since no Board meeting will be held prior to the expiration date of the fare, agency business requires that the Board discuss the extension of the subject fare provided for in Item 1c at the June 5, 1979 meeting. Accordingly, the following Members have voted that agency business requires the addition of Items 1b and 1c to the June 5, 1979 agenda and that no earlier announcement was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-1138-79 Filed 6-7-79; 8:59 am]

BILLING CODE 6320-01-M

2

FEDERAL ELECTION COMMISSION.

"FEDERAL REGISTER" NO. FR-S-1138.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 14, 1979 at 10 a.m.

CHANGE IN MEETING: The following items have been added to the open portion of the meeting:

AO 1979-25 Les Aspin, U.S. House of Representatives.
AO 1979-27 John R. White, Treasurer, Committee for Agricultural Political Education (C-TAPE).
Financial Control and Compliance Manual for Presidential Candidates.

The following item has been deleted from the open portion of the meeting: Budget Execution Report.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred S. Eiland, Public Information Officer, telephone 202-523-4065.

Marjorie W. Emmons,
Secretary to the Commission.

[S-1139-79 Filed 6-7-79; 2:10 pm]

BILLING CODE 6715-01-M

3

June 6, 1979

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 10 a.m., June 13, 1979.

PLACE: 825 North Capitol St., N.E. Washington, D.C. 20426, Hearing Room A.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, telephone (202) 275-4166.

This is list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Office of Public Information.

Power Agenda—286th Meeting, June 13, 1979, Regular Meeting (10 a.m.)

CAP-1. Project No. 1280, Red Bluff Water Power Control District.
CAP-2. Docket No. ER79-328, Central Area Power Coordination Group Pool.
CAP-3. Docket No. E-9566, *Town of Massena, New York* v. *Niagara Mohawk Power Corporation and Power Authority of the State of New York.*
CAP-4. Project No. 1904, New England Power Co.
CAP-5. Project No. 2047, Niagara Mohawk Power Co.
CAP-6. Docket Nos. ER-77-67, et al., and ER78-78, et al., New England Power Co.
CAP-7. Docket Nos. E-9911 and ER77-532, Gulf Power Co.
CAP-8. Docket Nos. ER78-168, EL78-40, EL78-42 and ER 79-22, Georgia Power Co.
CAP-9. Docket No. ER78-283, South Carolina Electric and Gas Co.
CAP-10. Docket No. ER78-463, Montaup Electric Co.

Gas Agenda—286th Meeting, June 13, 1979, Regular Meeting

CAG-1. Docket Nos. RP71-107 and RP72-127 (PGA79-2), Northern Natural Gas Co.
CAG-2. Docket Nos. RP-79-6 and RP72-32, (PGA 79-1 and 79-1A), Kansas Nebraska Natural Gas Company, Inc.
CAG-3. Docket No. RP79-2, Michigan Wisconsin Pipe Line Co.
CAG-4. Docket No. RP77-60, Michigan Wisconsin Pipe Line Co.
CAG-5. Docket Nos. RP72-122 and RP79-1 (PGA79-1A), Colorado Interstate Gas Co.
CAG-6. Docket Nos. RP72-8 and RP76-36 (Storage), El Paso Natural Gas Co.
Docket Nos. CP76-67, CP77-289 and CP78-172 (J & R Issues), El Paso Natural Gas Co.
CAG-7. Docket Nos. CI79-282, CI-79-284 and CI79-285, Tenneco Exploration, Ltd.
Docket No. CI79-283, Tenneco Exploration II, Ltd.
Docket No. CI79-286, Tenneco Oil Co.

CAG–8. Docket No. CI78–627, Columbia Gas Developement Corp.
CAG–9. Docket No. AR64–2, Texaco, Inc. and Tennessee Gas Pipeline Co., A Division of Tenneco Inc.
CAG–10. Docket No. CI66–615, Phillips Petroleum Co.
CAG–11. Docket No. CI78–1005, Phillips Petroleum Co.
CAG–12. Docket No. CI78–1030, The Superior Oil Co.
CAG–13. Docket Nos. CI78–561, et al., Transco Exploration Co. et al.
CAG–14. Docket No. CP8–128, Colorado Interstate Gas Co.
CAG–15. Docket No. CI79–264, Bruce Calder, Inc.
CAG–16 Texas Eastern Transmission Corp.
CAG–17. Docket No. CP78–262, Sea Robin Pipeline Co., United Gas Pipe Line Co., Southern Natural Gas Co. and Natural Gas Pipeline Co. of America
CAG–18. Docket No. CP79–219, Transcontinental Gas Pipe Line Corp.
CAG–19. Docket No. CP79–155, El Paso Natural Gas Co; Docket No. CP79–243, Arkansas Louisiana Gas Co.
CAG–20. Docket No. CP78–55 Consolidated Gas Supply Corp.
CAG–21. Docket No. CP72–9, Arkansas Louisiana Gas Co; Docket No. CP72–15, Cities Service Gas Co.
CAG–22. Docket No. CP79–238, Texas Eastern Transmission Corp.

Miscellaneous Agenda—296th Meeting, June 13, 1979, Regular Meeting

CAM–1. 404 Referral—Notice of Proposed Withdrawal by DOE from General Public Sale of the Isotope Lithium-7 in the Lithium Hydroxide Monohydrate, Enriched to an Isotopic Purity of 99.9% or Greater.
CAM–2. 404 Referral—Notice of Proposed Increase in the Price of Americium-241.
CAM–3. Docket No. OR78–11 (ICC Docket No. 36553), *Kerr-McGee Refining Corporation* v. *Texoma Pipe Line Company, et al.*
CAM–4. Docket No. RM79– , Removal of Chapter X From 18 CFR Administrator, Emergency Natural Gas Act.
CAM–5. Docket No. RA79–26, Stephens & Cass.
CAM–6. Consolidated Gas Supply Corp.

Power Agenda—296th Meeting, June 13, 1979, Regular Meeting

I. Licensed Project Matters

P–1. Project No. 2218, Power Authority of the State of New York.

II, Electric Rate Matters

ER–1. Docket Nos. E–7796 and E–7777 (Phase II), Pacific Gas and Electric Co.
ER–2. Docket Nos. ER76–90 and ER76–445, Boston Edison Co.
ER–3. Docket No. EL79–15, Kentucky Utilities Co.
ER–4. Docket Nos. ER76–149 and E–9537, Public Service Co. of Indiana.

Miscellaneous Agenda—296th Meeting, June 13, 1979, Regular Meeting

M–1. Reserved.
M–2. Reserved.
M–3. Proposed Amendment to DOE Procedural Regulations Regarding Stays.
M–4. Docket No. RM79– , Delegation of the Commission's Authority to Various Office Directors.
M–5. Docket No. RM79–3, Final Regulations Implementing the Natural Gas Policy Act of 1978.
M–6. Notice of Well Category Determination by State of Louisiana (JD79–3446 and JD79–3449).
M–7. Notice of Well Category Determination by Louisiana State Office on Conservation (JD79–3485).
M–8. Docket No. RA79–7, McCulloch Gas Processing Corp.
M–9. Docket No. OR79–1, Williams Pipeline Co.

Gas Agenda—296th Meeting, June 13, 1979, Regular Meeting

I. Pipeline Rate Matters

RP–1. Docket No. RP75–74, Transwestern Pipeline Co.
RP–2. Docket No. RP72–133 (PGA 77–2), United Gas Pipe Line Co.
RP–3. Docket Nos. RP72–154 (PGA 78–1), RP76–115 (AP 78–1) and RP72–74 (DCA 78–1), Northwest Pipeline Corporation
RP–4. Docket No. RP74–97 (PGA 78–1), Montana-Dakota Utilities Company
RP–5. Docket No. RP78–12, East Tennessee Natural Gas Company

II. Producer Matters

CI–1. Docket No. RP77–13, Arkansas Louisiana Gas Co.
CI–2. Docket Nos., AR64–2, et al., Ginter, Warren & Co. (Texas Gulf Coast Area).

III. Pipeline Certificate Matters

CP–1. Docket Nos. CP76–492 and CP77–644, National Fuel Gas Supply Corp. and National Gas Storage Corp. Docket Nos. CP77–569, CP77–570 and CP77–571, Tennessee Gas Pipeline Company, a division of Tenneco, Inc.
CP–2. Docket Nos. CP77–421, CP79–15, CP79–44, CP79–49, CP79–51 and CP79–69, Transcontinental Gas Pipe Line Corporation. Docket Nos. CP77–324, CP77–548 and CP78–117, Texas Eastern Transmission Company. Docket Nos. CP77–321, CP78–243 and CP79–73, Southern Natural Gas Company. Docket Nos. CP77–566, Transcontinental Gas Pipe Line Corporation and Michigan Wisconsin Pipe Line Company. Docket Nos. CP77–592 and CP77–639, Trunkline Gas Company. Docket No. CP78–246, Texas Gas Transmission Company. Docket No. CP78–66, Florida Gas Transmission Company.
CP–3. Docket No. CP77–287, Mid-Louisiana Gas Co. and Transcontinental Gas Pipe Line Corp.
CP–4. Docket No. CP79–133, ONG Western Inc.
CP–5. Docket Nos. CP75–140, et al., Pacific Alaska LNG Co., et al. Docket Nos. CP74–160, et al., Pacific Indonesia LNG Co., et al. Docket No. CI78–453, Pacific Lighting Gas Development Co. Docket No. CI79–452, Pacific Simpco Partnership.

Kenneth F. Plumb,
Secretary.

[S–1156–79 Filed 6–7–79; 11:34 am]
BILLING CODE 6740–02–M

4

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 9:30 a.m., June 14, 1979.

PLACE: 1700 G Street, N.W., Sixth Floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Franklin O. Bolling (202–377–6677).

MATTERS TO BE CONSIDERED:

Application for Bank Membership and Insurance of Accounts—Tokay Savings & Loan Association, Lodi, California.
Branch Office Application—Midwest Federal Savings & Loan Association, Minot, North Dakota.
Consideration of Designation of Roger Williams as Supervisory Agent.
Application for Bank Membership and Insurance of Accounts—Farmers Savings & Loan Association, Dixon, California.
Consideration of Request for a Commitment to Insure Accounts—Dale Hollow Savings & Loan, Livingston, Tennessee.
Application for Bank Membership and Insurance of Accounts—San Marino Savings & Loan Association, San Marino, California.
Branch Office Application—Beverly Hills Federal Savings & Loan Association, Beverly Hills, California.
Change of Name Application—Home Federal Savings & Loan Association of LaFayette, LaFayette, Alabama.
Preliminary Application for Conversion into a Federal Mutual Association—Wilkes Savings & Loan Association, Wilkesboro, North Carolina.
Branch Office Application—First Federal Savings & Loan Association of Wooster, Wooster, Ohio.
Preliminary Application for Conversion to Federal Mutual Charter—Home Savings & Loan Association, Greenville, North Carolina.
Limited Facility Application—State Federal Savings & Loan Association, Beatrice, Nebraska.
Consideration of Rules and Regulations and Related Forms To Implement the Bank Board's Authority To Charter, Examine and Regulate Mutual Savings Banks.
Consideration of Revision and Simplification of the Branch Office Regulations.
Consideration of Regulation Regarding 100-Mile Restriction on Branching.
Consideration of Regulation Regarding Washington, D.C. SMSA Branching.
Consideration of Regulations Regarding 3–4 Family 90 percent Loans.
Consideration of Proposed Policy for Coordination of Resources To Implement CRA.

Consideration of Regulations Regarding Reduction in Reporting Requirements.
Consideration of Regulations Regarding Transactions with Affiliated Persons.

[S-1197-79 Filed 6-7-79 2:02 pm]
BILLING CODE 6720-01-M

5

June 7, 1979.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 10 a.m., June 14, 1979.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

Southern Ohio Coal Co., VINC 79-66. (Petition for Interlocutory Review.)
Local Union No. 5249, *UMWA* v. *Consolidation Coal Co.*, MORG 79-13.
Consolidation Coal Co., HOPE 76-208, IBMA No. 76-94. (Request for voluntary dismissal of appeals.)
Karst-Robbins Coal Co., BARB 74-378-P, IBMA No. 76-66. (Request for voluntary dismissal of appeal.)
Mathies Coal Co., PITT 77-13-P, IBMA No. 77-29. (Request for voluntary dismissal of appeal.)
Helen Mining Co., PITT 77-5 and 77-6, IBMA No. 77-31. (Request for voluntary dismissal of appeal.)
Harman Coal Co., PITT 76X283, IBMA No. 77-55. (Request for voluntary dismissal of appeal.)
Consolidation Coal Co., VINC 77-65 and 77-66, IBMA No. 77-59. (Request for voluntary dismissal of appeal.)

CONTACT PERSON FOR MORE INFORMATION: Joanne Kelley, 202-653-5632.

[S-1190-79 Filed 6-7-79; 2:25 pm]
BILLING CODE 6820-12-M

6

INTERNATIONAL TRADE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 32336 (6/5/79).

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Tuesday, June 12, 1979.

CHANGES IN THE MEETING: In deliberations held June 7, 1979, the Commission, by unanimous consent, voted to change the schedule with respect to items 7 and 8 as follows:

7. Multicellular plastic film (Inv. 337-TA-54)—Briefing (in the morning session) and vote (at 2 p.m.).
8. Carbon steel plate from Poland (Inv. AA1921-203)—Briefing (in the morning session) and vote (at 2 p.m.).

Commissioners Alberger, Moore, Bedell, and Stern determined by unanimous consent that Commission business requires the change in the schedule for these agenda items, and affirmed that no earlier announcement of the change to the agenda was possible, and directed the issuance of this notice at the earliest practicable time. Commissioner Parker was not present for the vote.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, 202-523-0161.

[S-1198-79 Filed 6-7-79; 3:02 pm]
BILLING CODE 7020-02-M

7

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENTS: 44 FR 31799, June 1, 1979/to be published.

STATUS: Closed meeting; open meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATES PREVIOUSLY ANNOUNCED: Tuesday May 29, 1979/Friday, June 1, 1979.

CHANGES IN THE MEETING: Rescheduling; Deletion; Addition.

The closed meeting to be held on Tuesday, June 5, 1979, after the 10 a.m. open meeting has been rescheduled for Wednesday, June 6, 1979 at 9 a.m.

The following items were not considered at a closed meeting scheduled for Wednesday, June 6, 1979 at 9 a.m. and has been rescheduled for Tuesday, June 12, 1979, at 10 a.m.:

Institution of injunctive actions.
Settlement of administrative proceedings of an enforcement nature.

The following item will not be considered at an open meeting scheduled on Wednesday, June 6, 1979, at 2:30 p.m.:

Oral argument on application for review by Cook & Co., Inc., L. Howard Cook, and Edmund C. H. Hyun of adverse decisions by the National Association of Securities Dealers, Inc. For further information, please contact R. Moshe Simon at (202) 755-1530.

The following item will not be considered at a closed meeting scheduled on Wednesday, June 6, 1979 after the 2:30 p.m. open meeting:

Post oral argument discussion.

The following additional item will be considered at a closed meeting scheduled on Wednesday, June 13, 1979, after the 10 a.m. open meeting:

Institution of administrative proceedings of an enforcement nature.
Administrative proceedings of an enforcement nature.
Regulatory matter bearing enforcement implications.

The following item will be considered at an open meeting to be held on Thursday, June 14, 1979, at 2:30 p.m.:

Presentation and discussion with representatives of the Securities Industry Association regarding proposed legislation to amend the Glass-Steagall Act to permit commercial banks to underwrite state and municipal revenue bonds. For further information, please contact Michael Rogan at (202) 755-1638.

Commissioners Loomis, Evans, and Karmel determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Mike Rogan at (202) 755-1638.

June 6, 1979.

[S-1195-79 Filed 6-7-79; 10:17 am]
BILLING CODE 8010-01-M

8

TENNESSEE VALLEY AUTHORITY.

TIME AND DATE: 9:30 a.m., June 14, 1979 (Meeting No. 1220).

PLACE: The University of North Carolina-Asheville, Student Center Auditorium, University Hights, Asheville, North Carolina.

STATUS: Open.

MATTERS FOR ACTION:

Old Business

1. Final rate review.

New Business

Personnel Actions

1. Change of status for Donald W. Cramer from Acting Director of Management Systems to Director of Management Systems, Office of Management Services, Knoxville, Tennessee.*
2. Change of status for Ernest A. Belvin, Jr., from Chief, Radiological Hygiene Branch, to Acting Director, Division of Occupational Health and Safety, Office of Management Services, Muscele Shoals, Alabama.*

Consulting and Personal Services Contracts

1. Renewal of personal service contract with Kenneth D. McCasland, Knoxville, Tennessee—Appeals Officer under standard disputes clause of TVA procurement contracts.
2. Renewal of personal service contract with Kenneth L. Penegar, Knoxville,

*These items were approved by individual Board members. This would give formal ratification to the Board's action.

Tennessee—Appeals Officer under standard disputes clause of TVA procurement contracts.

3. Renewal of personal service contract with Richard S. Wirtz, Knoxville, Tennessee—Appeals Officer under standard disputes clause of TVA procurement contracts.

Purchase Awards

1. Negotiation for procurement of an atmospheric fluidized bed combustion pilot plant in lieu of formal advertising.

2. Req. No. 624662—Indefinite quantity term contract for pipe, fittings, flanges, tubing, and accessories for Yellow Creek Nuclear Plant.

3. Req. No. 106234—Galvanized structural tower steel for various transmission lines.

4. Req. No. 106204—Construction of a 24.4-mile section of the West Point-Miller 500-kV Transmission Line.

5. Req. No. 569654—Indefinite quantity term contract for welding electrodes for any TVA nuclear plant.

6. Sales Invitation No. 4048—Sale by TVA of scrap metal and scrap admiralty tubing located at Bellefonte Nuclear Plant and Power Stores, Gallatin Steam Plant.

Project Authorizations

1. No. 3430—Installation of coal ignition and load supplement system at Bull Run Steam Plant.

2. No. 3150.2—Amendment to Ionizer Project at Shawnee Steam Plant (in collaboration with Electric Power Research Institute and Air Pollution Systems).

3. No. 3441—Power System Load Research Program to determine hourly load characteristics of residential, commercial, and industrial consumers at five geographic locations in the TVA power service area.

4. No. 3293.3—Amendment to solar energy research, development, and demonstration in the TVA area.

Power Items

1. Lease and Amendatory Agreement with the city of Amory, Mississippi—TVA's Amory District Substation.

2. Letter Agreement with Alabama Power Co. for Probable Delay in Completing the West Point 500-kV Interconnection at West Point, Mississippi.

3. Supplement to Memorandum Governing Power Supply to the Office of Agricultural and Chemical Development at Wilson Dam.

Real Property Transactions

1. Filing of condemnation suits.

2. Sale of spur railroad track easement affecting approximately 0.37 acre of the Gallatin Steam Plant Access railroad property in Sumner County, Tennessee—Tract XGSPRR-1RR.

3. Grant of permanent highway easement to the city of Soddy-Daisy affecting TVA's Sequoyah Nuclear Plant fee-owned temporary access road and railroad right of way in Hamilton County, Tennessee—Tract XSNPRR-3H.

Unclassified

1. Settlement of litigation brought by Webster County Coal Corp. against TVA and the Louisville & Nashville Railroad Co.*

2. Settlement of *Tennessee Valley Authority* v. *Westinghouse Electric Corporation* (Uranium Contracts Litigation).*

3. Letter agreement with Loudon County, Tennessee, covering arrangements for settlement of claims for repairs to Davis School Road necessitated by construction of Tellico Parkway.

4. Designation of Mary R. Hartman as Certifying Officer.

5. Memorandum of agreement between Tennessee Valley Authority and U.S. Environmental Protection Agency covering arrangement for coordination of environmental improvement programs.*

6. Establishment of Office of Small and Disadvantaged Business Utilization and designation of director to be responsible for implementation and execution of TVA's Small Business Program.*

7. Interagency agreement with U.S. Department of Energy for assessment of electric and magnetic field effects of 500-kV lines.

Dated: June 7, 1979.

CONTACT PERSON FOR MORE INFORMATION: James L. Bentley, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office, (202) 566-1401.

[S-1161-79 Filed 6-7-79; 3:41 pm]

BILLING CODE 8120-01-M

Monday
June 11, 1979

Federal Register

Part II

Environmental Protection Agency

New Stationary Sources Performance Standards; Electric Utility Steam Generating Units

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL 1240-7]

New Stationary Sources Performance Standards; Electric Utility Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: These standards of performance limit emissions of sulfur dioxide (SO_2), particulate matter, and nitrogen oxides (NO_x) from new, modified, and reconstructed electric utility steam generating units capable of combusting more than 73 megawatts (MW) heat input (250 million Btu/hour) of fossil fuel. A new reference method for determining continuous compliance with SO_2 and NO_x standards is also established. The Clean Air Act Amendments of 1977 require EPA to revise the current standards of performance for fossil-fuel-fired stationary sources. The intended effect of this regulation is to require new, modified, and reconstructed electric utility steam generating units to use the best demonstrated technological system of continuous emission reduction and to satisfy the requirements of the Clean Air Act Amendments of 1977.

DATES: The effective date of this regulation is June 11, 1979.

ADDRESSES: A Background Information Document (BID; EPA 450/3-79-021) has been prepared for the final standard. Copies of the BID may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, N.C. 27711, telephone 919-541-2777. In addition, a copy is available for inspection in the Office of Public Affairs in each Regional Office, and in EPA's Central Docket Section in Washington, D.C. The BID contains (1) a summary of all the public comments made on the proposed regulation; (2) a summary of the data EPA has obtained since proposal on SO_2, particulate matter, and NO_x emissions; and (3) the final Environmental Impact Statement which summarizes the impacts of the regulation.

Docket No. OAQPS-78-1 containing all supporting information used by EPA in developing the standards is available for public inspection and copying between 8 a.m. and 4 p.m., ge a11jn0.005Monday through Friday, at EPA's Central Docket Section, room 2903B, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460.

The docket is an organized and complete file of all the information submitted to or otherwise considered by the Administrator in the development of this rulemaking. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the promulgated rule and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review [section 107(d)(a)].

FOR FURTHER INFORMATION CONTACT: Don R. Goodwin, Director, Emission Standards and Engineering Division (MD-13), Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone 919-541-5271.

SUPPLEMENTARY INFORMATION: This preamble contains a detailed discussion of this rulemaking under the following headings: SUMMARY OF STANDARDS, RATIONALE, BACKGROUND, APPLICABILITY, COMMENTS ON PROPOSAL, REGULATORY ANALYSIS, PERFORMANCE TESTING, MISCELLANEOUS.

Summary of Standards

Applicability

The standards apply to electric utility steam generating units capable of firing more than 73 MW (250 million Btu/hour) heat input of fossil fuel, for which construction is commenced after September 18, 1978. Industrial cogeneration facilities that sell less than 25 MW of electricity, or less than one-third of their potential electrical output capacity, are not covered. For electric utility combined cycle gas turbines, applicability of the standards is determined on the basis of the fossil-fuel fired to the steam generator exclusive of the heat input and electrical power contribution of the gas turbine.

SO_2 Standards

The SO_2 standards are as follows:

(1) Solid and solid-derived fuels (except solid solvent refined coal): SO_2 emissions to the atmosphere are limited to 520 ng/J (1.20 lb/million Btu) heat input, and a 90 percent reduction in potential SO_2 emissions is required at all times except when emissions to the atmosphere are less than 260 ng/J (0.60 lb/million Btu) heat input. When SO_2 emissions are less than 260 mg/J (0.60 lb/million Btu) heat input, a 70 percent reduction in potential emissions is required. Compliance with the emission limit and percent reduction requirements is determined on a continuous basis by using continuous monitors to obtain a 30-day rolling average. The percent reduction is computed on the basis of overall SO_2 removed by all types of SO_2 and sulfur removal technology, including flue gas desulfurization (FGD) systems and fuel pretreatment systems (such as coal cleaning, coal gasification, and coal liquefaction). Sulfur removed by a coal pulverizer or in bottom ash and fly ash may be included in the computation.

(2) Gaseous and liquid fuels not derived from solid fuels: SO_2 emissions into the atmosphere are limited to 340 ng/J (0.80 lb/million Btu) heat input, and a 90 percent reduction in potential SO_2 emissions is required. The percent reduction requirement does not apply if SO_2 emissions into the atmosphere are less than 86 ng/J (0.20 lb/million Btu) heat input. Compliance with the SO_2 emission limitation and percent reduction is determined on a continuous basis by using continuous monitors to obtain a 30-day rolling average.

(3) Anthracite coal: Electric utility steam generating units firing anthracite coal alone are exempt from the percentage reduction requirement of the SO_2 standard but are subject to the 520 ng/J (1.20 lb/million Btu) heat input emission limit on a 30-day rolling average, and all other provisions of the regulations including the particulate matter and NO_x standards.

(4) Noncontinental areas: Electric utility steam generating units located in noncontinental areas (State of Hawaii, the Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, and the Northern Mariana Islands) are exempt from the percentage reduction requirement of the SO_2 standard but are subject to the applicable SO_2 emission limitation and all other provisions of the regulations including the particulate matter and NO_x standards.

(5) Resource recovery facilities: Resource recovery facilities that fire less than 25 percent fossil-fuel on a quarterly (90-day) heat input basis are not subject to the percentage reduction requirements but are subject to the 520 ng/J (1.20 lb/million Btu) heat input emission limit. Compliance with the emission limit is determined on a continuous basis using continuous monitoring to obtain a 30-day rolling average. In addition, such facilities must monitor and report their heat input by fuel type.

(6) Solid solvent refined coal: Electric utility steam generating units firing solid solvent refined coal (SRC I) are subject

to the 520 ng/J (1.20 lb/million Btu) heat input emission limit (30-day rolling average) and all requirements under the NO_x and particulate matter standards. Compliance with the emission limit is determined on a continuous basis using a continuous monitor to obtain a 30-day rolling average. The percentage reduction requirement for SRC I, which is to be obtained at the refining facility itself, is 85 percent reduction in potential SO_2 emissions on a 24-hour (daily) averaging basis. Compliance is to be determined by Method 19. Initial full scale demonstration facilities may be granted a commercial demonstration permit establishing a requirement of 80 percent reduction in potential emissions on a 24-hour (daily) basis.

Particulate Matter Standards

The particulate matter standard limits emissions to 13 ng/J (0.03 lb/million Btu) heat input. The opacity standard limits the opacity of emission to 20 percent (6-minute average). The standards are based on the performance of a well-designed and operated baghouse or electostatic precipitator (ESP).

NO_x Standards

The NO_x standards are based on combustion modification and vary according to the fuel type. The standards are:

(1) 86 ng/J (0.20 lb/million Btu) heat input from the combustion of any gaseous fuel, except gaseous fuel derived from coal;

(2) 130 ng/J (0.30 lb/million Btu) heat input from the combustion of any liquid fuel, except shale oil and liquid fuel derived from coal;

(3) 210 ng/J (0.50 lb/million Btu) heat input from the combustion of subbituminous coal, shale oil, or any solid, liquid, or gaseous fuel derived from coal;

(4) 340 ng/J (0.80 lb/million Btu) heat input from the combustion in a slag tap furnace of any fuel containing more than 25 percent, by weight, lignite which has been mined in North Dakota, South Dakota, or Montana;

(5) Combustion of a fuel containing more than 25 percent, by weight, coal refuse is exempt from the NO_x standards and monitoring requirements; and

(6) 260 ng/J (0.60 lb/million Btu) heat input from the combustion of any solid fuel not specified under (3), (4), or (5).

Continuous compliance with the NO_x standards is required, based on a 30-day rolling average. Also, percent reductions in uncontrolled NO_x emission levels are required. The percent reductions are not controlling, however, and compliance with the NO_x emission limits will assure compliance with the percent reduction requirements.

Emerging Technologies

The standards include provisions which allow the Administrator to grant commercial demonstration permits to allow less stringent requirements for the initial full-scale demonstration plants of certain technologies. The standards include the following provisions:

(1) Facilities using SRC I would be subject to an emission limitation of 520 ng/J (1.20 lb/million Btu) heat input, based on a 30-day rolling average, and an emission reduction requirement of 85 percent, based on a 24-hour average. However, the percentage reduction allowed under a commercial demonstration permit for the initial full-scale demonstration plants, using SRC I would be 80 percent (based on a 24-hour average). The plant producing the SRC I would monitor to insure that the required percentage reduction (24-hour average) is achieved and the power plant using the SRC I would monitor to insure that the 520 ng/J heat input limit (30-day rolling average) is achieved.

(2) Facilities using fluidized bed combustion (FBC) or coal liquefaction would be subject to the emission limitation and percentage reduction requirement of the SO_2 standard and to the particulate matter and NO_x standards. However, the reduction in potential SO_2 emissions allowed under a commercial demonstration permit for the initial full-scale demonstration plants using FBC would be 85 percent (based on a 30-day rolling average). The NO_x emission limitation allowed under a commercial demonstration permit for the initial full-scale demonstration plants using coal liquefaction would be 300 ng/J (0.70 lb/million Btu) heat input, based on a 30-day rolling average.

(3) No more than 15,000 MW equivalent electrical capacity would be allotted for the purpose of commercial demonstration permits. The capacity will be allocated as follows:

Technology	Pollutant	Equivalent electrical capacity MW
Solid solvent-refined coal	SO_2	5,000–10,000
Fluidized bed combustion (atmospheric)	SO_2	400–3,000
Fluidized bed combustion (pressurized)	SO_2	200–1,200
Coal liquefaction	NO_x	750–10,000

Compliance Provisions

Continuous compliance with the SO_2 and NO_x standards is required and is to be determined with continuous emission monitors. Reference methods or other approved procedures must be used to supplement the emission data when the continuous emission monitors malfunction, to provide emissions data for at least 18 hours of each day for at least 22 days out of any 30 successive days of boiler operation.

A malfunctioning FGD system may be bypassed under emergency conditions. Compliance with the particulate standard is determined through performance tests. Continuous monitors are required to measure and record the opacity of emissions. This data is to be used to identify excess emissions to insure that the particulate matter control system is being properly operated and maintained.

Rationale

SO_2 Standards

Under section 111(a) of the Act, a standard of performance for a fossil-fuel-fired stationary source must reflect the degree of emission limitation and percentage reduction achievable through the application of the best technological system of continuous emission reduction taking into consideration cost and any nonair quality health and environmental impacts and energy requirements. In addition, credit may be given for any cleaning of the fuel, or reduction in pollutant characteristics of the fuel, after mining and prior to combustion.

In the 1977 amendments to the Clean Air Act, Congress was severely critical of the current standard of performance for power plants, and especially of the fact that it could be met by the use of untreated low-sulfur coal. The House, in particular, felt that the current standard failed to meet six of the purposes of section 111. The six purposes are (H. Rept. at 184–186):

1. The standards must not give a competitive advantage to one State over another in attracting industry.

2. The standards must maximize the potential for long-term economic growth by reducing emissions as much as practicable. This would increase the amount of industrial growth possible within the limits set by the air quality standards.

3. The standards must to the extent practical force the installation of all the control technology that will ever be necessary on new plants at the time of construction when it is cheaper to install, thereby minimizing the need for retrofit in the future when air quality standards begin to set limits to growth.

4 and 5. The standards to the extent practical must force new sources to burn high-sulfur fuel thus freeing low-sulfur fuel for use in existing sources where it

is harder to control emissions and where low-sulfur fuel is needed for compliance. This will (1) allow old sources to operate longer and (2) expand environmentally acceptable energy supplies.

6. The standards should be stringent in order to force the development of improved technology.

To deal with these perceived deficiences, the House initiated revisions to section 111 as follows:

1. New source performance standards must be based on the "best technological" control system that has been "adequately demonstrated," taking cost and other factors such as energy into account. The insertion of the word "technological" precludes a new source performance standard based solely on the use of low-sulfur fuels.

2. New source performance standards for fossil-fuel-fired sources (e.g., power plants) must require a "percentage reduction" in emissions, compared to the emissions that would result from burning untreated fuels.

The Conference Committee generally followed the House bill. As a result, the 1977 amendments substantially changed the criteria for regulating new power plants by requiring the application of technological methods of control to minimize SO_2 emissions and to maximize the use of locally available coals. Under the statute, these goals are to be achieved through revision of the standards of performance for new fossil-fuel-fired stationary sources to specify (1) an emission limitation and (2) a percentage reduction requirement. According to legislative history accompanying the amendments, the percentage reduction requirement should be applied uniformly on a nationwide basis, unless the Administrator finds that varying requirements applied to fuels of differing characteristics will not undermine the objectives of the house bill and other Act provisions.

The principal issue throughout this rulemaking has been whether a plant burning low-sulfur coal should be required to achieve the same percentage reduction in potential SO_2 emissions as those burning higher sulfur coal. The public comments on the proposed rules and subsequent analyses performed by the Office of Air, Noise and Radiation of EPA served to bring into focus several other issues as well.

These issues included performance capabilities of SO_2 control technology, the averaging period for determining compliance, and the potential adverse impact of the emission ceiling on high-sulfur coal reserves.

Prior to framing the final SO_2 standards, the EPA staff carried out extensive analyses of a range of alternative SO_2 standards using an econometric model of the utility sector. As part of this effort, a joint working group comprised of representatives from EPA, the Department of Energy, the Council of Economic Advisors, the Council on Wage and Price Stability, and others reviewed the underlying assumptions used in the model. The results of these analyses served to identify environmental, economic, and energy impacts associated with each of the alternatives considered at the national and regional levels. In addition, supplemental analyses were performed to assess impacts of alternative emission ceilings on specific coal reserves, to verify performance characteristics of alternative SO_2 scrubbing technologies, and to assess the sulfur reduction potential of coal preparation techniques.

Based on the public record and additional analyses performed, the Administrator concluded that a 90 percent reduction in potential SO_2 emissions (30-day rolling average) has been adequately demonstrated for high-sulfur coals. This level can be achieved at the individual plant level even under the most demanding conditions through the application of flue gas desulfurization (FGD) systems together with sulfur reductions achieved by currently practiced coal preparation techniques. Reductions achieved in the fly ash and bottom ash are also applicable. In reaching this finding, the Administrator considered the performance of currently operating FGD systems (scrubbers) and found that performance could be upgraded to achieve the recommended level with better design, maintenance, and operating practices. A more stringent requirement based on the levels of scrubber performance specified for lower sulfur coals in a number of prevention of significant deterioration permits was not adopted since experience with scrubbers operating with such performance levels on high-sulfur coals is limited. In selecting a 30-day rolling average as the basis for determining compliance, the Administrator took into consideration effects of coal sulfur variability on scrubber performance as well as potential adverse impacts that a shorter averaging period may have on the ability of small plants to comply.

With respect to lower sulfur coals, the EPA staff examined whether a uniform or variable application of the percent reduction requirement would best satisfy the statutory requirements of section 111 of the Act and the supporting legislative history. The Conference Report for the Clean Air Act Amendments of 1977 says in the pertinent part:

> In establishing a national percent reduction for new fossil fuel-fired sources, the conferees agreed that the Administrator may, in his discretion, set a range of pollutant reduction that reflects varying fuel characteristics. Any departure from the uniform national percentage reduction requirement, however, must be accompanied by a finding that such a departure does not undermine the basic purposes of the House provision and other provisions of the act, such as maximizing the use of locally available fuels.

In the face of such language, it is clear that Congress established a presumption in favor of a uniform application of the percentage reduction requirement and that any departure would require careful analysis of objectives set forth in the House bill and the Conference Report.

This question was made more complex by the emergence of dry SO_2 control systems. As a result of public comments on the discussion of dry SO_2 control technology in the proposal, the EPA staff examined the potential of this technology in greater detail. It was found that the development of dry SO_2 controls has progressed rapidly during the past 12 months. Three full scale systems are being installed on utility boilers with scheduled start up in the 1981–1982 period. These already contracted systems have design efficiencies ranging from 50 to 85 percent SO_2 removal, long term average. In addition, it was determined that bids are currently being sought for five more dry control systems (70 to 90 percent reduction range) for utility applications.

Activity in the dry SO_2 control field is being stimulated by several factors. First, dry control systems are less complex than wet technology. These simplified designs offer the prospect of greater reliability at substantially lower costs than their wet counterparts. Second, dry systems use less water than wet scrubbers, which is an important consideration in the Western part of the United States. Third, the amount of energy required to operate dry systems is less than that required for wet systems. Finally, the resulting waste product is more easily disposed of than wet sludge.

The applicability of dry control technology, however, appears limited to low-sulfur coals. At coal sulfur contents greater than about 1290 ng/J (3 pounds SO_2/million Btu), or about 1.5 percent sulfur coal, available data indicate that

it probably will be more economical to employ a wet scrubber than a dry control system.

Faced with these findings, the Administrator had to determine what effect the structure of the final regulation would have on the continuing development and application of this technology. A thorough engineering review of the available data indicated that a requirement of 90 percent reduction in potential SO_2 emissions would be likely to constrain the full development of this technology by limiting its potential applicability to high alkaline content, low-sulfur coals. For non-alkaline, low-sulfur coals, the certainty of economically achieving a 90 percent reduction level is markedly reduced. In the face of this finding, it would be unlikely that the technology would be vigorously pursued for these low alkaline fuels which comprise approximately one half of the Nation's low-sulfur coal reserves. In view of this, the Administrator sought a percentage reduction requirement that would provide an opportunity for dry SO_2 technology to be developed for all low-sulfur coal reserves and yet would be sufficiently stringent to assure that the technology was developed to its fullest potential. The Administrator concluded that a variable control approach with a minimum requirement of 70 percent reduction potential in SO_2 emissions (30-day rolling average) for low-sulfur coals would fulfill this objective. This will be discussed in more detail later in the preamble. Less stringent, sliding scale requirements such as those offered by the utility industry and the Department of Energy were rejected since they would have higher associated emissions, would not be significantly less costly, and would not serve to encourage development of this technology.

In addition to promoting the development of dry SO_2 systems, a variable approach offers several other advantages often cited by the utility industry. For example, if a source chose to employ wet technology, a 70 percent reduction requirement serves to substantially reduce the energy impact of operating wet scrubbers in low-sulfur coals. At this level of wet scrubber control, a portion of the untested flue gas could be used for plume reheat so as to increase plume buoyancy, thus reducing if not eliminating the need to expend energy for flue gas reheat. Further, by establishing a range of percent reductions, a variable approach would allow a source some flexibility particularly when selecting intermediate sulfur content coals. Finally, under a variable approach, a source could move to a lower sulfur content coal to achieve compliance if its control equipment failed to meet design expectations. While these points alone would not be sufficient to warrant adoption of a variable standard, they do serve to supplement the benefits associated with permitting the use of dry technology.

Regarding the maximum emission limitation, the Administrator had to determine a level that was appropriate when a 90 percent reduction in potential emissions was applied to high-sulfur coals. Toward this end, detailed assessments of the potential impacts of a wide range of emission limitations on high-sulfur coal reserves were performed. The results revealed that a significant portion (up to 30 percent) of the high-sulfur coal reserves in the East, Midwest and portions of the Northern Appalachia coal regions would require more than a 90 percent reduction if the emission limitation were established below 520 ng/J (1.2 lb/million Btu) heat input on a 30-day rolling average basis. Although higher levels of control are technically feasible, conservatism in utility perceptions of scrubber performance could create a significant disincentive against the use of these coals and disrupt the coal markets in these regions. Accordingly, the Administrator concluded the emission limitation should be maintained at 520 ng/J (1.2 lb/million Btu) heat input on a 30-day rolling average basis. A more stringent emission limit would be counter to one of the purposes of the 1977 Amendments, that is, encouraging the use of higher sulfur coals.

Having determined an appropriate emission limitation and that a variable percent reduction requirement should be established, the Administrator directed his attention to specifying the final form of the standard. In doing so, he sought to achieve the best balance in control requirements. This was accomplished by specifying a 520 ng/J (1.2 lb/million Btu) heat input emission limitation with a 90 percent reduction in potential SO_2 emissions except when emissions to the atmosphere were reduced below 260 ng/J (0.6 lb/million Btu) heat input (30-day rolling average), when only a 70 percent reduction in potential SO_2 emissions would apply. Compliance with each of the requirements would be determined on the basis of a 30-day rolling average. Under this approach, plants firing high-sulfur coals would be required to achieve a 90 percent reduction in potential emissions in order to comply with the emission limitation. Those using intermediate- or low-sulfur content coals would be permitted to achieve between 70 and 90 percent reduction, provided their emissions were less than 260 ng/J (0.6 lb/million Btu). The 260 ng/J (0.6 lb/million Btu) level was selected to provide for a smooth transition of the percentage reduction requirement from high- to low-sulfur coals. Other transition points were examined but not adopted since they tended to place certain types of coal at a disadvantage.

By fashioning the SO_2 standard in this manner, the Administrator believes he has satisfied both the statutory language of section 111 and the pertinent part of the Conference Report. The standard reflects a balance in environmental, economic, and energy considerations by being sufficiently stringent to bring about substantial reductions in SO_2 emissions (3 million tons in 1995) yet does so at reasonable costs without significant energy penalties. When compared to a uniform 90 percent reduction, the standard achieves the same emission reductions at the national level. More importantly, by providing an opportunity for full development of dry SO_2 technology the standard offers potential for further emission reductions (100 to 200 thousand tons per year), cost savings (over $1 billion per year), and a reduction in oil consumption (200 thousand barrels per day) when compared to a uniform standard. The standard through its balance and recognition of varying coal characteristics, serves to expand environmentally acceptable energy supplies without conveying a competitive advantage to any one coal producing region. The maintenance of the emission limitation at 520 ng/J (1.2 lb SO_2/million Btu) will serve to encourage the use of locally available high-sulfur coals. By providing for a range of percent reductions, the standard offers flexibility in regard to burning of intermediate sulfur content coals. By placing a minimum requirement of 70 percent on low-sulfur coals, the final rule encourages the full development and application of dry SO_2 control systems on a range of coals. At the same time, the minimum requirement is sufficiently stringent to reduce the amount of low-sulfur coal that moves eastward when compared to the current standard. Admittedly, a uniform 90 percent requirement would reduce such movements further, but in the Administrator's opinion, such gains would be of marginal value when compared to expected increases in high-sulfur coal production. By achieving a balanced coal demand within the utility sector and by promoting the development of less expensive SO_2 control technology, the final standard

will expand environmentally acceptable energy supplies to existing power plants and industrial sources.

By substantially reducing SO_2 emissions, the standard will enhance the potential for long term economic growth at both the national and regional levels. While more restrictive requirements may have resulted in marginal air quality improvements locally, their higher costs may well have served to retard rather than promote air quality improvement nationally by delaying the retirement of older, poorly controlled plants.

The standard must also be viewed within the broad context of the Clean Air Act Amendments of 1977. It serves as a minimum requirement for both prevention of significant deterioration and non-attainment considerations. When warranted by local conditions, ample authority exists to impose more restrictive requirements through the case-by-case new source review process. When exercised in conjunction with the standard, these authorities will assure that our pristine areas and national parks are adequately protected. Similarly, in those areas where the attainment and maintenance of the ambient air quality standard is threatened, more restrictive requirements will be imposed.

The standard limits SO_2 emissions from facilities firing gaseous or liquid fuels to 340 ng/J (0.80 lb/million Btu) heat input and requires 90 percent reduction in potential emissions on a 30-day rolling average basis. The percent reduction does not apply when emissions are less than 86 ng/J (0.20 lb/million Btu) heat input on a 30-day rolling average basis. This reflects a change to the proposed standards in that the time for compliance is changed from the proposed 24-hour basis to a 30-day rolling average. This change is necessary to make the compliance times consistent for all fuels. Enforcement of the standards would be complicated by different averaging times, particularly when more than one fuel is used.

Particulate Matter Standard

The standard for particulate matter limits the emissions to 13 ng/J (0.03 lb/million Btu) heat input and requires a 99 percent reduction in uncontrolled emissions for solid fuels and a 70 percent reduction for liquid fuels. No particulate matter control is necessary for units firing gaseous fuels alone, and a percent reduction is not required. The percent reduction requirements for solid and liquid fuels are not controlling, and compliance with the particulate matter emission limit will assure compliance with the percent reduction requirements.

A 20 percent (6-minute average) opacity limit is included in this standard. The opacity limit is included to insure proper operation and maintenance of the emission control system. If an affected facility were to comply with all applicable standards except opacity, the owner or operator may request that the Administrator, under 40 CFR 60.11(e), establish a source-specific opacity limit for that affected facility.

The standard is based on the performance of a well designed, operated and maintained electrostatic precipitator (ESP) or baghouse control system. The Administrator has determined that these control systems are the best adequately demonstrated technological systems of continuous emission reduction (taking into consideration the cost of achieving such emission reduction, and nonair quality health and environmental impacts and energy requirements).

Electrostatic Precipitators

EPA collected emission data from 21 ESP-equipped steam generating units which were firing low-sulfur coals (0.4–1.9 percent). EPA evaluated emission levels from units burning relatively low-sulfur coal because it is more difficult for an ESP to collect particulate matter emissions generated by the combustion of low-sulfur coal than high-sulfur coal. None of the ESP control systems at the 21 coal-fired steam generators tested were designed to achieve a 13 ng/J (0.03 lb/million Btu) heat input emission level, however, emission levels at 9 of the 21 units were below the standard. All of the units that were firing coal with a sulfur content between 1.0 and 1.9 percent and which had emission levels below the standard had either a hot-side ESP (an ESP located before the combustion air preheater) with a specific collection area greater than 89 square meters per actual cubic meter per second (452 ft^2/1,000 ACFM), or a cold-side ESP (an ESP located after the combustion air preheater) with a specific collection area greater than 85 square meters per actual cubic meter per second (435 ft^2/1,000 ACFM).

ESP's require a larger specific collection area when applied to units burning low-sulfur coal than to units burning high-sulfur coal because the electrical resistivity of the fly ash is higher with low-sulfur coal. Based on an examination of the emission data in the record, it is the Administrator's judgment that when low-sulfur coal is being fired an ESP must have a specific collection area from about 130 (hot side) to 200 (cold side) square meters per actual cubic meter per second (660 to 1,000 ft^2 per 1,000 ACFM) to comply with the standard. When high-sulfur coal (greater than 3.5 percent sulfur) is being fired an ESP must have a specific collection area of about 72 (cold side) square meters per actual cubic meter per second (360 ft^2 per 1,000 ACFM) to comply with the standard.

Cold-side ESP's have traditionally been used to control particulate matter emissions from power plants. The problem of ESP collection of high-electrical-resistivity fly ash from low-sulfur coal can be reduced by using a hot-side ESP. Higher fly ash collection temperatures result in better ESP performance by reducing fly ash resistivity for most types of low-sulfur coal. Reducing fly ash resistivity in itself would decrease the ESP collection plate area needed to meet the standard; however, for a hot-side ESP this benefit is reduced by the increased flue gas volume resulting from the higher flue gas temperature. Although a smaller collection area is required for a hot-side ESP than for a cold side ESP, this benefit is offset by greater construction costs due to the higher quality of materials, thicker insulation, and special design provisions to accommodate the expansion and warping potential of the collection plates.

Baghouses

The Administrator has evaluated data from more than 50 emission test runs conducted at 8 baghouse-equipped coal-fired steam generating units. Although none of these baghouse-controlled units were designed to achieve a 13 Ng/J (0.03 lb/million Btu) heat input emission level, 48 of the test results achieved this level and only 1 test at each of 2 units exceeded 13 Ng/J (0.03 lb/million Btu) heat input. The emission levels at the two units with emission levels above 13 Ng/J (0.03 lb/million Btu) heat input could conceivably be reduced below that level through an improved maintenance program. It is the Administrator's judgment that baghouses with an air-to-cloth ratio of 0.6 actual cubic meter per minute per square meter (2 ACFM/ft^2) will achieve the standard at a pressure drop of less than 1.25 kilopascals (5 in. H_2O). The Administrator has concluded that this air/cloth ratio and pressure drop are reasonable when considering cost, energy, and nonair quality impacts.

When an owner or operator must choose between an ESP and a baghouse to meet the standard, it is the Administrator's judgment that

baghouses have an advantage for low-sulfur coal applications and ESP's have an advantage for high-sulfur coal applications. Available data indicate that for low-sulfur coals, ESP's (hot-side or cold-side) require a large collection area and thus ESP control system costs will be higher than baghouse control system costs. For high-sulfur coals, large collection areas are not required for ESP's, and ESP control systems offer cost savings over baghouse control systems.

Baghouses have not traditionally been used at utility power plants. At the time these regulations were proposed, the largest baghouse-controlled coal-fired steam generator for which EPA had particulate matter emission test data had an electrical output of 44 MW. Several larger baghouse installations were under construction and two larger units were initiating operation. Since the date of proposal of these standards, EPA has tested one of the new units. It has an electrical output capacity of 350 MW and is fired with pulverized, subbituminous coal containing 0.3 percent sulfur. The baghouse control system for this facility is designed to achieve a 43 Ng/J (0.01 lb/million Btu) heat input emission limit. This unit has achieved emission levels below 13 Ng/J (0.03 lb/million Btu) heat input. The baghouse control system was designed with an air-to-cloth ratio of 1.0 actual cubic meter per minute per square meter (3.32 ACFM/ft^2) and a pressure drop of 1.25 kilopascals (5 in. H_2O). Although some operating problems have been encountered, the unit is being operated within its design emission limit and the level of the standard. During the testing the power plant operated in excess of 300 MW electrical output. Work is continuing on the control system to improve its performance. Regardless of type, large emission control systems generally require a period of time for the establishment of cleaning, maintenance, and operational procedures that are best suited for the particular application.

Baghouses are designed and constructed in modules rather than as one large unit. The baghouse control system for the new 350 MW power plant has 28 baghouse modules, each of which services 12.5 MW of generating capacity. As of May 1979, at least 26 baghouse-equipped coal-fired utility steam generators were operating, and an additional 28 utility units are planned to start operation by the end of 1982. About two-thirds of the 30 planned baghouse-controlled power generation systems will have an electrical output capacity greater than 150 MW, and more than one-third of these power plants will be fired with coal containing more than 3 percent sulfur. The Administrator has concluded that baghouse control systems have been adequately demonstrated for full-sized utility application.

Scrubbers

EPA collected emission test data from seven coal-fired steam generators controlled by wet particulate matter scrubbers. Emissions from five of the seven scrubber-equipped power plants were less than 21 Ng/J (0.05 lb/million Btu) heat input. Only one of the seven units had emission test results less than 13 Ng/J (0.03 lb/million Btu) heat input. Scrubber pressure drop can be increased to improve scrubber particulate matter removal efficiencies; however, because of cost and energy considerations, the Administrator believes that wet particulate matter scrubbers will only be used in special situations and generally will not be selected to comply with the standards.

Performance Testing

When the standards were proposed, the Administrator recognized that there is a potential for both FGD sulfate carryover and sulfuric acid mist to affect particulate matter performance testing downstream of an FGD system. Data available at the time of proposal indicated that overall particulate matter emissions, including sulfate carryover, are not increased by a properly designed, constructed, maintained, and operated FGD system. No additional information has been received to alter this finding.

The data available at proposal indicated that sulfuric acid mist (H_2SO_4) interaction with Methods 5 or 17 would not be a problem when firing low-sulfur coal, but may be a problem when firing high-sulfur coals. Limited data obtained since proposal indicate that when high-sulfur coal is being fired, there is a potential for sulfuric acid mist to form after an FGD system and to introduce errors in the performance testing results when Methods 5 or 17 are used. EPA has obtained particulate matter emission test data from two power plants that were fired with coals having more than 3 percent sulfur and that were equipped with both an ESP and FGD system. The particulate matter test data collected after the FGD system were not conclusive in assessing the acid mist problem. The first facility tested appeared to experience a problem with acid mist interaction. The second facility did not appear to experience a problem with acid mist, and emissions after the ESP/FGD system were less than 13 ng/J (0.03 lb/million Btu) heat input. The tests at both facilities were conducted using Method 5, but different methods were used for measuring the filter temperature. EPA has initiated a review of Methods 5 and 17 to determine what modifications may be necessary to avoid acid mist interaction problems. Until these studies are completed the Administrator is approving as an optional test procedure the use of Method 5 (or 17) for performance testing before FGD systems. Performance testing is discussed in more detail in the PERFORMANCE TESTING section of this preamble.

The particulate matter emission limit and opacity limit apply at all times, except during periods of startup, shutdown, or malfunction. Compliance with the particulate matter emission limit is determined through performance tests using Methods 5 or 17. Compliance with the opacity limit is determined by the use of Method 9. A continuous monitoring system to measure opacity is required to assure proper operation and maintenance of the emission control system but is not used for continuous compliance determinations. Data from the continuous monitoring system indicating opacity levels higher than the standard are reported to EPA quarterly as excess emissions and not as violations of the opacity standard.

The environmental impacts of the revised particulate matter standards were estimated by using an economic model of the coal and electric utility industries (see discussion under REGULATORY ANALYSIS). This projection took into consideration the combined effect of complying with the revised SO_2, particulate matter, and NO_x standards on the construction and operation of both new and existing capacity. Particulate matter emissions from power plants were 3.0 million tons in 1975. Under continuation of the current standards, these emissions are predicted to decrease to 1.4 million tons by 1995. The primary reason for this decrease in emissions is the assumption that existing power plants will come into compliance with current state emission regulations. Under these standards, 1995 emissions are predicted to decrease another 400 thousand tons (30 percent).

NO_x Standards

The NO_x emission standards are based on emission levels achievable with a properly designed and operated boiler that incorporates combustion modification techniques to reduce NO_x formation. The levels to which NO_x emissions can be reduced with

combustion modification depend not only upon boiler operating practice, but also upon the type of fuel burned. Consequently, the Administrator has developed fuel-specific NO_x standards. The standards are presented in this preamble under Summary of Standards.

Continuous compliance with the NO_x standards is required, based on a 30-day rolling average. Also, percent reductions in uncontrolled NO_x emission levels are required. The percent reductions are not controlling, however, and compliance with the NO_x emission limits will assure compliance with the percent reduction requirements.

One change has been made to the proposed NO_x standards. The proposed standards would have required compliance to be based on a 24-hour averaging period, whereas the final standards require compliance to be based on a 30-day rolling average. This change was made because several of the comments received, one of which included emission data, indicated that more flexibility in boiler operation on a day-to-day basis is needed to accommodate slagging and other boiler problems that may influence NO_x emissions when coal is burned. The averaging period for determining compliance with the NO_x limitations for gaseous and liquid fuels has been changed from the proposed 24-hour to a 30-day rolling average. This change is necessary to make the compliance times consistent for all fuels. Enforcement of the standards would be complicated by different averaging times, particularly where more than one fuel is used. More details on the selection of the averaging period for coal appear in this preamble under Comments on Proposal.

The proposed standards for coal combustion were based principally on the results of EPA testing performed at six electric utility boilers, all of which are considered to represent modern boiler designs. One of the boilers was manufactured by the Babcock and Wilcox Company (B&W) and was retrofitted with low-emission burners. Four of the boilers were Combustion Engineering, Inc. (CE) designs originally equipped with overfire air, and one boiler was a CE design retrofitted with overfire air. The six boilers burned a variety of bituminous and subbituminous coals. Conclusions drawn from the EPA studies of the boilers were that the most effective combustion modification techniques for reducing NO_x emitted from utility boilers are staged combustion, low excess air, and reduced heat release rate. Low-emission burners were also effective in reducing NO_x levels during the EPA studies.

In developing the proposed standards for coal, the Administrator also considered the following: (1) data obtained from the boiler manufacturers on 11 CE, three B&W, and three Foster Wheeler Energy Corporation (FW) utility boilers; (2) the results of tests performed twice daily over 30-day periods at three well-controlled utility boilers manufactured by CE; (3) a total of six months of continuously monitored NO_x emission data from two CE boilers located at the Colstrip plant of the Montana Power Company; (4) plans underway at B&W, FW, and the Riley Stoker Corporation (RS) to develop low-emission burners and furnace designs; (5) correspondence from CE indicating that it would guarantee its new boilers to achieve, without adverse side-effects, emission limits essentially the same as those proposed; and (6) guarantees made by B&W and FW that their new boilers would achieve the State of New Mexico's NO_x emission limit of 190 ng/J (0.45 lb/million Btu) heat input.

Since proposal of the standards, the following new information has become available and has been considered by the Administrator: (1) additional data from the boiler manufacturers on four B&W and four RS utility boilers; (2) a total of 18 months of continuously monitored NO_x data from the two CE utility boilers at the Colstrip plant; (3) approximately 10 months of continuously monitored NO_x data from five other CE boilers; (4) recent performance test results for a CE and a RS utility boiler; and (5) recent guarantees offered by CE and FW to achieve an NO_x emission limit of 190 ng/J (0.45 lb/million Btu) heat input in the State of California. This and other new information is discussed in "Electric Utility Steam Generating Units, Background Information for Promulgated Emission Standards" (EPA 450/3–79–021).

The data available before and after proposal indicate that NO_x emission levels below 210 ng/J (0.50 lb/million Btu) heat input are achievable with a variety of coals burned in boilers made by all four of the major boiler manufacturers. Lower emission levels are theoretically achievable with catalytic ammonia injection, as noted by several commenters. However, these systems have not been adequately demonstrated at this time on full-size electric utility boilers that burn coal.

Continuously monitored NO_x emission data from coal-fired CE boilers indicate that emission variability during day-to-day operation is such that low NO_x levels can be maintained if emissions are averaged over 30-day periods. Although the Administrator has not been able to obtain continuously monitored data from boilers made by the other boiler manufacturers, the Administrator believes that the emission variability exhibited by CE boilers over long periods of time is also characteristic of B&W, FW, and RS boilers. This is because the Administrator expects B&W, FW, and RS boilers to experience operational conditions which are similar to CE boilers (e.g., slagging, variations in fuel quality, and load reductions) when burning similar fuel. Thus, the Administrator believes the 30-day averaging time is appropriate for coal-fired boilers made by all four manufacturers.

Prior to proposal of the standards several electric utilities and boiler manufacturers expressed concern over the potential for accelerated boiler tube wastage (i.e., corrosion) during low-NO_x operation of a coal-fired boiler. The severity of tube wastage is believed to vary with several factors, but especially with the sulfur content of the coal burned. For example, the combustion of high-sulfur bituminous coal appears to aggravate tube wastage, particularly if it is burned in a reducing atmosphere. A reducing atmosphere is sometimes associated with low-NO_x operation.

The EPA studies of one B&W and five CE utility boilers concluded that tube wastage rates did not significantly increase during low-NO_x operation. The significance of these results is limited, however, in that the tube wastage tests were conducted over relatively short periods of time (30 days or 300 hours). Also, only CE and B&W boilers were studied, and the B&W boiler was not a recent design, but was an old-style unit retrofitted with experimental low-emission burners. Thus, some concern still exists over potentially greater tube wastage during low-NO_x operation when high-sulfur coals are burned. Since bituminous coals often have high sulfur contents, the Administrator has established a special emission limit for bituminous coals to reduce the potential for increased tube wastage during low-NO_x operation.

Based on discussions with the boiler manufacturers and on an evaluation of all available tube wastage information, the Administrator has established an NO_x emission limit of 260 ng/J (0.60 lb/million Btu) heat imput for the combustion of bituminous coal. The Administrator believes this is a safe level at which tube wastage will not be accelerated by low-NO_x operation. In

support of this belief, CE has stated that it would guarantee its new boilers, when equipped with overfire air, to achieve the 220 ng/J (0.80 lb/million Btu) heat input limit without increased tube wastage rates when Eastern bituminous coals are burned. In addition, B&W has noted in several recent technical papers that its low-emission burners allow the furnace to be maintained in an oxidizing atmosphere, thereby reducing the potential for tube wastage when high-sulfur bituminous coals are burned. The other boiler manufacturers have also developed techniques that reduce the potential for tube wastage during low-NO_x operation. Although the amount of tube wastage data available to the Administrator on B&W, FW, and RS boilers is very limited, it is the Administrator's judgement that all three of these manufacturers are capable of designing boilers which would not experience increased tube wastage rates as a result of compliance with the NO_x standards.

Since the potential for increased tube wastage during low-NO_x operation appears to be small when low-sulfur subbituminous coals are burned, the Administrator has established a lower NO_x emission limit of 210 ng/J (0.50 lb/million Btu) heat input for boilers burning subbituminous coal. This limit is consistent with emission data from boilers representing all four manufacturers. Furthermore, CE has stated that it would guarantee its modern boilers to achieve an NO_x limit of 210 ng/J (0.50 lb/million Btu) heat input, without increased tube wastage rates, when subbituminous coals are burned.

The emission limits for electric utility power plants that burn liquid and gaseous fuels are at the same levels as the emission limits originally promulgated in 1971 under 40 CFR Part 60, Subpart D for large steam generators. It was decided that a new study of combustion modification or NO_x flue-gas treatment for oil- or gas-fired electric utility steam generators would not be appropriate because few, if any, of these kinds of power plants are expected to be built in the future.

Several studies indicate that NO_x emissions from the combustion of fuels derived from coal, such as liquid solvent-refined coal (SRC II) and low-Btu synthetic gas, may be higher than those from petroleum oil or natural gas. This is because coal-derived fuels have fuel-bound nitrogen contents that approach the levels found in coal rather than those found in petroleum oil and natural gas. Based on limited emission data from pilot-scale facilities and on the known emission characteristics of coal, the Administrator believes that an achievable emission limit for solid, liquid, and gaseous fuels derived from coal is 210 ng/J (0.50 lb/million Btu) heat input. Tube wastage and other boiler problems are not expected to occur from boiler operation at levels as low as 210 ng/J when firing these fuels because of their low sulfur and ash contents.

NO_x emission limits for lignite combustion were promulgated in 1978 (43 FR 8276) as amendments to the original standards under 40 CFR Part 60, Subpart D. Since no new information on NO_x emission rates from lignite combustion has become available, the emission limits have not been changed for these standards. Also, these emission limits are the same as the proposed.

Little is known about the emission characteristics of shale oil. However, since shale oil typically has a higher fuel-bound nitrogen content than petroleum oil, it may be impossible for a well-controlled unit burning shale oil to achieve the NO_x emission limit for liquid fuels. Shale oil does have a similar nitrogen content to coal, and it is reasonable to expect that the emission control techniques used for coal could also be used to limit NO_x emissions from shale oil combustion. Consequently, the Administrator has limited NO_x emissions from units burning shale oil to 210 ng/J (0.50 lb/million Btu) heat input, the same limit applicable to subbituminous coal, which is the same as proposed. There is no evidence that tube wastage or other boiler problems would result from operation of a boiler at 210 ng/J when shale oil is burned.

The combustion of coal refuse was exempted from the original steam generator standards under 40 CFR Part 60, Subpart D because the only furnace design believed capable of burning certain kinds of coal refuse, the slag tap furnace, inherently produces NO_x emissions in excess of the NO_x standard. Unlike lignite, virtually no NO_x emission data are available for the combustion of coal refuse in slag tap furnaces. The Administrator has decided to continue the coal refuse exemption under the standards promulgated here because no new information on coal refuse combustion has become available since the exemption under Subpart D was established.

The environmental impacts of the revised NO_x standards were estimated by using an economic model of the coal and electric utility industries (see discussion under REGULATORY ANALYSIS). This projection took into considerations the combined effect of complying with the revised SO_2, particulate matter, and NO_x standards on the construction and operation of both new and existing capacity. National NO_x emissions from power plants were 6.8 million tons in 1975 and are predicted to increase to 9.3 million tons by 1995 under the current standards. These standards are projected to reduce 1995 emissions by 600 thousand tons (6 percent).

Background

In December 1971, under section 111 of the Clean Air Act, the Administrator issued standards of performance to limit emissions of SO_2, particulate matter, and NO_x from new, modified, and reconstructed fossil-fuel-fired steam generators (40 CFR 60.40 et seq.). Since that time, the technology for controlling emissions from this source category has improved, but emissions of SO_2, particulate matter, and NO_x continue to be a national problem. In 1978, steam electric generating units contributed 24 percent of the particulate matter, 65 percent of the SO_2, and 29 percent of the NO_x emissions on a national basis.

The utility industry is expected to have continued and significant growth. The capacity is expected to increase by about 50 percent with approximate 300 new fossil-fuel-fired power plant boilers to begin operation within the next 10 years. Associated with utility growth is the continued long-term increase in utility coal consumption from some 400 million tons/year in 1975 to about 1250 million tons/year in 1995. Under the current performance standards for power plants, national SO_2 emissions are projected to increase approximately 17 percent between 1975 and 1995.

Impacts will be more dramatic on a regional basis. For example, in the absence of more stringent controls, utility SO_2 emissions are expected to increase 1300 percent by 1995 in the West South Central region of the country (Texas, Oklahoma, Arkansas, and Louisiana).

EPA was petitioned on August 6, 1976, by the Sierra Club and the Ojato and Red Mesa Chapters of the Navaho Tribe to revise the SO_2 standard so as to require a 90 percent reduction in SO_2 emissions from all new coal-fired power plants. The petition claimed that advances in technology since 1971 justified a revision of the standard. As a result of the petition, EPA agreed to investigate the matter thoroughly. On January 27, 1977 (42 FR 5121), EPA announced that it had initiated a study to review the technological, economic, and other factors needed to determine to

what extent the SO_2 standard for fossil-fuel-fired steam generators should be revised.

On August 7, 1977, President Carter signed into law the Clean Air Act Amendments of 1977. The provisions under section 111(b)(6) of the Act, as amended, required EPA to revise the standards of performance for fossil-fuel-fired electric utility steam generators within 1 year after enactment.

After the Sierra Club petition of August 1976, EPA initiated studies to review the advancement made on pollution control systems at power plants. These studies were continued following the amendment of the Clean Air Act. In order to meet the schedule established by the Act, a preliminary assessment of the ongoing studies was made in late 1977. A National Air Pollution Control Techniques Advisory Committee meeting was held on December 13 and 14, 1977, to present EPA preliminary data. The meeting was open to the public and comments were solicited.

The Clean Air Act Amendments of 1977 required the standards to be revised by August 7, 1978. When it appeared that the Administrator would not meet this schedule, the Sierra Club filed a complaint on July 14, 1978, with the U.S. District Court for the District of Columbia requesting injunctive relief to require, among other things, that the Administrator propose the revised standards by August 7, 1978 (Sierra Club v. Costle, No. 78–1297). The Court approved a stipulation requiring the Administrator to (1) deliver proposed regulations to the Office of the Federal Register by September 12, 1978, and (2) promulgate the final regulations within 6 months after proposal (i.e., by March 19, 1979).

The Administrator delivered the proposal package to the Office of the Federal Register by September 12, 1978, and the proposed regulations were published September 19, 1978 (43 FR 42154). Public comments on the proposal were requested by December 15, and a public hearing was held December 12 and 13, the record of which was held open until January 15, 1979. More than 625 comment letters were received on the proposal. The comments were carefully considered, however, the issues could not be sufficiently evaluated in time to promulgate the standards by March 19, 1979. On that date the Administrator and the other parties in Sierra Club v. Costle filed with the Court a stipulation whereby the Administrator would sign and deliver the final standards to the Federal Register on or before June 1, 1979.

The Administrator's conclusions and responses to the major issues are presented in this preamble. These regulations represent the Administrator's response to the petition of the Navaho Tribe and Sierra Club and fulfill the rulemaking requirements under section 111(b)(6) of the Act.

Applicability

General

These standards apply to electric utility steam generating units capable of firing more than 73 MW (250 million Btu/hour) heat input of fossil fuel, for which construction is commenced after September 18, 1978. This is principally the same as the proposal. Some minor changes and clarification in the applicability requirements for cogeneration facilities and resource recovery facilities have been made.

On December 23, 1971, the Administrator promulgated, under Subpart D of 40 CFR Part 60, standards of performance for fossil-fuel-fired steam generators used in electric utility and large industrial applications. The standards adopted herein do not apply to electric utility steam generating units originally subject to those standards (Subpart D) unless the affected facilities are modified or reconstructed as defined under 40 CFR 60 Subpart A and this subpart. Similarly, units constructed prior to December 23, 1971, are not subject to either performance standard (Subpart D or Da) unless they are modified or reconstructed.

Electric Utility Steam Generating Units

An electric utility steam generating unit is defined as any steam electric generating unit that is physically connected to a utility power distribution system and is constructed for the purpose of selling more than 25 MW electrical output and more than one third of its potential electrical output capacity. Any steam that is sold and ultimately used to produce electrical power for sale through the utility power distribution system is also included under the standard. The term "potential electrical generating capacity" has been added since proposal and is defined as 33 percent of the heat input rate at the facility. The applicability requirement of selling more than 25 MW electrical output capacity has also been added since proposal.

These standards cover industrial steam electric generating units or cogeneration units (producing steam for both electrical generation and process heat) that are capable of firing more than 73 MW (250 million Btu/hr) heat input of fossil fuel and are constructed for the purpose of selling through a utility power distribution system more than 25 MW electrical output and more than one-third of their potential electrical output capacity (or steam generating capacity ultimately used to produce electricity for sale). Facilities with a heat input rate in excess of 73 MW (250 million Btu/hour) that produce only industrial steam or that generate electricity but sell less than 25 MW electrical output through the utility power distribution system or sell less than one-third of their potential electric output capacity through the utility power distribution system are not covered by these standards, but will continue to be covered under Subpart D, if applicable.

Resource recovery units incorporating steam electric generating units that would meet the applicability requirements but that combust less than 25 percent fossil fuel on a quarterly (90-day) heat-input basis are not covered by the SO_2 percent reduction requirements under this standard. These facilities are subject to the SO_2 emission limitation and all other provisions of the regulation. They are also required to monitor their heat input by fuel type and to monitor SO_2 emissions. If more than 25 percent fossil fuel is fired on a quarterly heat input basis, the facility will be subject to the SO_2 percent reduction requirements. This represents a change from the proposal which did not include such provisions.

These standards cover steam generator emissions from electric utility combined-cycle gas turbines that are capable of being fired with more than 73 MW (250 million Btu/hr) heat input of fossil fuel and meet the other applicability requirements. Electric utility combined-cycle gas turbines that use only turbine exhaust gas to provide heat to a steam generator (waste heat boiler) or that incorporate steam generators that are not capable of being fired with more than 73 MW (250 million Btu/hr) of fossil fuel are not covered by the standards.

Modification/Reconstruction

Existing facilities are only covered by these standards if they are modified or reconstructed as defined under Subpart A of 40 CFR Part 60 and this standard (Subpart Da).

Few, if any, existing facilities that change fuels, replace burners, etc. will be covered by these standards as a result of the modification/reconstruction provisions. In particular, the standards do not apply to existing facilities that are modified to fire nonfossil fuels or to

existing facilities that were designed to fire gas or oil fuels and that are modified to fire shale oil, coal/oil mixtures, coal/oil/water mixtures, solvent refined coal, liquified coal, gasified coal, or any other coal-derived fuel. These provisions were included in the proposal but have been clarified in the final standard.

Comments on Proposal

Electric Utility Steam Generating Units

The applicability requirements are basically the same as those in the proposal; electric utility steam generating units capable of firing greater than 73 MW (250 million Btu/hour) heat input of fossil fuel for which construction is commenced after September 18, 1978, are covered. Since proposal, changes have been made to specific applicability requirements for industrial cogeneration facilities, resource recovery facilities, and anthracite coal-fired facilities. These revisions are discussed later in this preamble.

Only a limited number of comments were received on the general applicability provisions. Some commenters expressed the opinion that the standards should apply to both industrial boilers and electric utility steam generating units. Industrial boilers are not covered by these standards because there are significant differences between the economic structure of utilities and the industrial sector. EPA is currently developing standards for industrial boilers and plans to propose them in 1980.

Cogeneration Facilities

Cogeneration facilities are covered under these standards if they have the capability of firing more than 73 MW (250 million Btu/hour) heat input of fossil fuel and are constructed for the purpose of selling more than 25 MW of electricity and more than one-third of their potential electrical output capacity. This reflects a change from the proposed standards under which facilities selling less than 25 MW of electricity through the utility power distribution system may have been covered.

A number of commenters suggested that industrial cogeneration facilities are expected to be highly efficient and that their construction could be discouraged if the proposed standards were adopted. The commenters pointed out that industrial cogeneration facilities are unusual in that a small capacity (10 MW electric output capacity, for example) steam-electric generating set may be matched with a much larger industrial steam generator (larger than 250 million Btu/hr for example). The Administrator intended that the proposed standards cover only electric generation sets that would sell more than 25 MW electrical output on the utility power distribution system. The final standards allow the sale of up to 25 MW electrical output capacity before a facility is covered. Since most industrial cogeneration units are expected to be less than 25 MW electrical output capacity, few, if any, new industrial cogeneration units will be covered by these standards. The standards do cover large electric utility cogeneration facilities because such units are fundamentally electric utility steam generating units.

Comments suggested clarifying what was meant in the proposal by the sale of more than one-third of its "maximum electrical generating capacity". Under the final standard the term "potential electric output capacity" is used in place of "maximum electrical generating capacity" and is defined as 33 percent of the steam generator heat input capacity. Thus, a steam generator with a 500 MW (1,760 million Btu/hr) heat input capacity would have a 165 MW potential electrical output capacity and could sell up to one-third of this potential output capacity on the grid (55 MW electrical output) before being covered under the standard. Under the proposal, it was unclear if the standard allowed the sale of up to one-third of the actual electric generating capacity of a facility or one-third of the potential generating capacity before being covered under the standards. The Administrator has clarified his intentions in these standards. Without this clarification the standards may have discouraged some industrial cogeneration facilities that have low in-house electrical demand.

A number of commenters suggested that emission credits should be allowed for improvements in cycle efficiency at new electric utility power plants. The commenters suggested that the use of electrical cogeneration technology and other technologies with high cycle efficiencies could result in less overall fuel consumption, which in turn could reduce overall environmental impacts through lower air emissions and less solid waste generation. The final standards do not give credit for increases in cycle efficiency because the different technologies covered by the standards and available for commercial application at this time are based on the use of conventional steam generating units which have very similar cycle efficiencies, and credits for improved cycle efficiency would not provide measurable benefits. Although the final standards do not address cycle efficiency, this approach will not discourage the application of more efficient technologies.

If a facility that is planned for construction will incorporate an innovative control technology (including electrical generation technologies with inherently low emissions or high electrical generation efficiencies) the owner or operator may apply to the Administrator under section 111(j) of the Act for an innovative technology waiver which will allow for (1) up to four years of operation or (2) up to seven years after issuance of a waiver prior to performance testing. The technology would have to have a substantial likelihood of achieving greater continuous emission reduction or achieve equivalent reductions at low cost in terms of energy, economics, or nonair quality impacts before a waiver would be issued.

Resource Recovery Facilities

Electric utility steam generating units incorporated into resource recovery facilities are exempt from the SO_2 percent reduction requirements when less than 25 percent of the heat input is from fossil fuel on a quarterly heat input basis. Such facilities are subject to all other requirements of this standard. This represents a change from the proposed regulation, under which any steam electric generating unit that combusts non-fossil fuels such as wood residue, sewage sludge, waste material, or municipal refuse would have been covered if the facility were capable of firing more than 75 MW (250 million Btu/hr) of fossil fuel.

A number of comments indicated that the proposed standard could discourage the construction of resource recovery facilities that generate electricity because of the SO_2 percentage reduction requirement. One commenter suggested that most new resource recovery facilities will process municipal refuse and other wastes into a dry fuel with a low-sulfur content that can be stored and subsequently fired. The commenter suggested that when firing processed refuse fuel, little if any fossil fuel will be necessary for combustion stabilization over the long term; however, fossil fuel will be necessary for startup. When a cold unit is started, 100 percent fossil fuel (oil or gas) may be fired for a few hours prior to firing 100 percent processed refuse.

Other commenters suggested that resource recovery facilities would in many cases be owned and operated by a municipality and the electricity and

steam generated would be sold by contract to offset operating costs. Under such an arrangement, commenters suggested that there may be a need to fire fossil fuel on a short-term basis when refuse is not readily available in order to generate a reliable supply of steam for the contract customer.

The Administrator accepts these suggestions and does not wish to discourage the construction of resource recovery facilities that generate electricity and/or industrial steam. For resource recovery facilities, the Administrator believes that less than 25 percent heat input from fossil fuels will be required on a long-term basis; even though 100 percent fossil fuel firing [greater than 73 MW (250 million Btu/hour)] may be necessary for startup or intermittent periods when refuse is not available. During startup such units are allowed to fire 100 percent fossil fuel because periods of startup are exempt from the standards under 40 CFR 60.8(c). If a reliable source of refuse is not available and 100 percent fossil fuel is to be fired more than 25 percent of the time, the Administrator believes it is reasonable to require such units to meet the SO_2 percent reduction requirements. This will allow resource recovery facilities to operate with fossil fuel up to 25 percent of the time without having to install and operate an FGD system.

Anthracite

These standards exempt facilities that burn anthracite alone from the percentage reduction requirements of the SO_2 standard but cover them under the 520 ng/J (1.2 lb/million Btu) heat input emission limitation and all requirements of the particulate matter and NO_x standards. The proposed regulations would have covered anthracite in the same maner as all other coals. Since the Administrator recognized that there were arguments in favor of less stringent requirements for anthracite, this issue was discussed in the preamble to the proposed regulations.

Over 30 individuals or organizations commented on the anthracite issue. Almost all of the commenters favored exempting anthracite from the SO_2 percentage reduction requirement. Some of the reasons cited to justify exemption were: (1) the sulfur content of anthracite is low; (2) anthracite is more expensive to mine and burn than bituminous and will not be used unless it is cost competitive; and (3) reopening the anthracite mines will result in improvement of acid-mine-water conditions, elimination of old mining scars on the topography, eradication of dangerous fires in deep mines and culm banks, and creation of new jobs. One commenter pointed out that the average sulfur content of anthracite is 1.09 percent. Other commenters indicated that anthracite will be cleaned, which will reduce the sulfur content. One commenter opposed exempting anthracite, because it would result in more SO_2 emissions. Another commenter said all coal-fired power plants including anthracite-fired units should have scrubbers.

After evaluating all of the comments, the Administrator has decided to exempt facilities that burn anthracite alone from the percentage reduction requirements of the SO_2 standard. These facilities will be subject to all other requirements of this regulation, including the particulate matter and NO_x standards, and the 520 ng/J (1.2 lb/million Btu) heat imput emission limitation under the SO_2 standard.

In 10 Northeastern Pennsylvania counties, where about 95 percent of the nation's anthracite coal reserves are located, approximately 40,000 acres of land have been despoiled from previous anthracite mining. The recently enacted Federal Surface Mining Control and Reclamation Act was passed to provide for the reclamation of areas like this. Under this Act, each ton of coal mined is taxed at 35 cents for strip mining and 15 cents for deep mining operations. One-half of the amount taxed is automatically returned to the State where the coal mined and one-half is to be distributed by the Department of Interior. This tax is expected to lead eventually to the reclamation of the anthracite region, but restoration will require many years. The reclamation will occur sooner if culm piles are used for fuel, the abandoned mines are reopened, and the expense of reclamation is born directly by the mine operator.

The Federal Surface Mining Control and Reclamation Act and a similar Pennsylvania law also provide for the establishment of programs to regulate anthracite mining. The State of Pennsylvania has assured EPA that total reclamation will occur if anthracite mining activity increases. They are actively pursuing with private industry the development of one area involving 12,000 to 19,000 acres of despoiled land.

In Summary, the Administrator concludes that the higher SO_2 emissions resulting from the use of anthracite without a flue gas desulfurization system is acceptable because of the other environmental improvements that will result. The impact of facilities using anthracite on ambient air quality will be minimized, because they will have to be reviewed to assure compliance with the prevention of significant deterioration provisions under the Act.

Alaskan Coal

The final standards are the same as the proposed; facilities fired with Alaskan coal are covered in the same manner as facilities fired with other coals.

Commenters suggested that problems unique to Alaska justify special provisions for facilities located in Alaska and firing Alaskan coal. Reasons cited as justification for less stringent standards by commenters on the proposal were freezing conditions, problems with sludge disposal, adverse impact of FGD on the reliability of plant operation, low-sulfur content of the coal, and cost impact on the consumer. The Administrator has examined these factors and has concluded that technically and economically feasible means are available to overcome these problems; therefore special regulatory provisions are not justified.

In reaching this conclusion the Administrator considered whether these factors demonstrated that the standards posed a substantially greater burden unique to Alaska. In other northern States where severe freezing conditions are common, plants are enclosed in buildings and insulated vessels and piping provide protection from freezing, both for scrubber operation and for liquid sludge dewatering. For an equivalent electrical generating capacity, the disposal sites for Alaskan plants could be smaller than those for most plants in the contiguous 48 States because of the lower sulfur content of Alaskan coal. Burying pipes carrying sludge to waste ponds below the frost line is feasible, except possibly in permafrost areas. The Administrator expects that future steam generators cannot be sited in permafrost areas because fly ash as well as scrubber sludge could not be properly disposed of in accordance with requirements of the Resource Recovery and Reclamation Act. In permafrost areas, turbines or other non-waste-producing processes are used or electricity is transmitted from other locations.

One commenter pointed out that failures of the FGD system would have an adverse impact on the ability to supply customers with reliable electric service, since there are no extensive interconnections with other utility companies. The Administrator has provided relief from the standards under emergency conditions that would require a choice between meeting a

power demand or complying with the standards. These emergency provisions are discussed in a subsequent section of this preamble.

Concern was expressed by the commenters that the cost impact of the standard would be excessive and that the benefits do not justify the cost, especially since Alaskan coal is among the lowest sulfur-content coal in the country. The Administrator agrees that for comparable sulfur-content coals, scrubber operating costs are slightly higher in Alaska because of the transportation costs of required materials such as lime. However, the operating costs are lower than the typical costs of FGD units controlling emissions from higher sulfur coals in the contiguous 48 States.

The Administrator considered applying a less stringent SO_2 standard to Alaskan coal-fired units, but concluded that there is insufficient distinction between conditions in Alaska and conditions in the northern part of the contiguous 48 States to justify such action. The Administrator has concluded that Alaskan coal-fired units should be controlled in the same manner as other facilities firing low-sulfur coal.

Noncontinental Areas

Facilities in noncontinental areas (State of Hawaii, the Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, and the Northern Mariana Islands) are exempt from the SO_2 percentage reduction requirements. Such facilities are required, however, to meet the SO_2 emission limitations of 520 ng/J (1.2 lb/million Btu) heat input (30-day rolling average) for coal and 340 ng/J (0.8 lb/million Btu) heat input (30-day rolling average) for oil, in addition to all requirements under the NO_x and particulate matter standards. This is the same as the proposed standards.

Although this provision was identified as an issue in the preamble to the proposed standards, very few comments were received on it. In general, the comments supported the proposal. The main question raised is whether Puerto Rico has adequate land available for sludge disposal.

After evaluating the comments and available information, the Administrator has concluded that noncontinental areas, including Puerto Rico, are unique and should be exempt from the SO_2 percentage reduction requirements.

The impact of new power plants in noncontinental areas on ambient air quality will be minimized because each will have to undergo a review to assure compliance with the prevention of significant deterioration provisions under the Clean Air Act. The Administrator does not intend to rule out the possibility that an individual BACT or LAER determination for a power plant in a noncontinental area may require scrubbing.

Emerging Technology

The final regulations for emerging technologies are summarized earlier in this preamble under SUMMARY OF STANDARDS and are very similar to the proposed regulations.

In general, the comments received on the proposed regulations were supportive, although a few commenters suggested some changes. A few commenters indicated that section 111(j) of the Act provides EPA with authority to handle innovative technologies. Some commenters pointed out that the proposed standards did not address certain technologies such as dry scrubbers for SO_2 control. One commenter suggested that SRC I should be included under the solvent refined coal rather than coal liquefaction category for purposes of allocating the 15,000 MW equivalent electrical capacity.

On the basis of the comments and public record, the Administrator believes the need still exists to provide a regulatory mechanism to allow a less stringent standard to the initial full-scale demonstration facilities of certain emerging technologies. At the time the standards were proposed, the Administrator recognized that the innovative technology waiver provisions under section 111(j) of the Act are not adequate to encourage certain capital-intensive, front-end control technologies. Under the innovative technology provisions, the Administrator may grant waivers for a period of up to 7 years from the date of issuance of a waiver or up to 4 years from the start of operation of a facility, whichever is less. Although this amount of time may be sufficient to amortize the cost of tail-gas control devices that do not achieve their design control level, it does not appear to be sufficient for amortization of high-capital-cost, front-end control technologies. The proposed provisions were designed to mitigate the potential impact on emerging front-end technologies and insure that the standards do not preclude the development of such technologies.

Changes have been made to the proposed regulations for emerging technologies relative to averaging time in order to make them consistent with the final NO_x and SO_2 standards; however, a 24-hour averaging period has been retained for SRC–I because it has relatively uniform emission rates, which makes a 24-hour averaging period more appropriate than a 30-day rolling average.

Commercial demonstration permits establish less stringent requirements for the SO_2 or NO_x standards, but do not exempt facilities with these permits from any other requirements of these standards.

Under the final regulations, the Administrator (in consultation with the Department of Energy) will issue commercial demonstration permits for the initial full-scale demonstration facilities of each specified technology. These technologies have been shown to have the potential to achieve the standards established for commercial facilities. If, in implementing these provisions, the Administrator finds that a given emerging technology cannot achieve the standards for commercial facilities, but it offers superior overall environmental performance (taking into consideration all areas of environmental impact, including air, water, solid waste, toxics, and land use) alternative standards can be established.

It should be noted that these permits will only apply to the application of this standard and will not supersede the new source review procedures and prevention of significant deterioration requirements under other provisions of the Act.

Modification/Reconstruction

The impact of the modification/reconstruction provisions is the same for the final standard as it was for the proposed standard; existing facilities are only covered by the final standards if the facilities are modified or reconstructed as defined under 40 CFR 60.14, 60.15, or 60.40a. Many types of fuel switches are expressly exempt from modification/reconstruction provisions under section 111 of the Act.

Few, if any, existing steam generators that change fuels, replace burners, etc., are expected to qualify under the modification/reconstruction provisions; thus, few, if any, existing electric utility steam generating units will become subject to these standards.

The preamble to the proposed regulations did not provide a detailed discussion of the modification/reconstruction provisions, and the comments received indicated that these provisions were not well understood by the commenters. The general modification/reconstruction provisions under 40 CFR 60.14 and 60.15 apply to all source categories covered under Part 60. Any source-specific modification/

reconstruction provisions are defined in more detail under the applicable subpart (60.40a for this standard).

A number of commenters expressly requested that fuel switching provisions be more clearly addressed by the standard. In response, the Administrator has clarified the fuel switching provisions by including them in the final standards. Under these provisions existing facilities that are converted to nonfossil fuels are not considered to have undergone modification. Similarly, existing facilities designed to fire gas or oil and that are converted to shale oil, coal/oil mixtures, coal/oil/water mixtures, solvent refined coal, liquified coal, gasified coal, or any other coal-derived fuel are not considered to have undergone modification. This was the Administrator's intention under the proposal and was mentioned in the Federal Register preamble for the proposal.

SO_2 Standards

SO_2 Control Technology—The final SO_2 standards are based on the performance of a properly designed, installed, operated and maintained FGD system. Although the standards are based on lime and limestone FGD systems, other commercially available FGD systems (e.g., Wellman-Lord, double alkali and magnesium oxide) are also capable of achieving the final standard. In addition, when specifying the form of the final standards, the Administrator considered the potential of dry SO_2 control systems as discussed later in this section.

Since the standards were proposed, EPA has continued to collect SO_2 data with continuous monitors at two sites and initiated data gathering at two additional sites. At the Conesville No. 5 plant of Columbus and Southern Ohio Electric company, EPA gathered continuous SO_2 data from July to December 1978. The Conesville No. 5 FGD unit is a turbulent contact absorber (TCA) scrubber using thiosorbic lime as the scrubbing medium. Two parallel modules handle the gas flow from a 411-MW boiler firing run-of-mine 4.5 percent sulfur Ohio coal. During the test period, data for only thirty-four 24-hour averaging periods were gathered because of frequent boiler and scrubber outages. The Conesville system averaged 88.6 percent SO_2 removal, and outlet SO_2 emissions averaged 0.80 lb/million Btu. Monitoring of the Wellman-Lord FGD unit at Northern Indiana Public Service Company's Mitchell station during 1978 included one 41-day continuous period of operation. Data from this period were combined with previous data and analyzed. Results indicated 0.61 lb SO_2/million Btu and 89.2 percent SO_2 removal for fifty-six 24-hour periods.

From December 1978 to February 1979, EPA gathered SO_2 data with continuous monitors at the 10-MW prototype unit (using a TCA absorber with lime) at Tennessee Valley Authority's (TVA) Shawnee station and the Lawrence No. 4 FGD unit (using limestone) of Kansas Power and Light Company. During the Shawnee test, data were obtained for forty-two 24-hour periods in which 3.0 percent sulfur coal was fired. Sulfur dioxide removal averaged 88.6 percent. Lawrence No. 4 consists of a 125-MW boiler controlled by a spray tower limestone FGD unit. In January and February 1979, during twenty-two 24-hour periods of operation with 0.5 percent sulfur coal, the average SO_2 removal was 96.6 percent. The Shawnee and Lawrence tests also demonstrated that SO_2 monitors can function with reliabilities above 80 percent. A summary of the recent EPA-acquired SO_2 monitored data follows:

Site	Scrubber	Coal sulfur, pct.	No. of 24-hour periods	Average SO_2 removal, pct.
Conesville No. 5	Thiosorbic lime/TCA	4.5	34	88.2
NIPSCO	Wellman-Lord	3.5	56	89.2
Shawnee	Lime/TCA	3.0	42	88.6
Lawrence No. 4	Limestone/spray tower	0.5	22	96.6

Since proposing the standards, EPA has prepared a report that updates information in the earlier PEDCo report on FGD systems. The report includes listings of several new closed-loop systems.

A variety of comments were received concerning SO_2 control technology. Several comments were concerned with the use of data from FGD systems operating in Japan. These comments suggested that the Japanese experience shows that technology exists to obtain greater than 90 percent SO_2 removal. The commenters pointed out that attitudes of the plant operators, the skill of the FGD system operators, the close surveillance of power plant emissions by the Japanese Government, and technical differences in the mode of scrubber operation were primary factors in the higher FGD reliabilities and efficiencies for Japanese systems. These commenters stated that the Japanese experience is directly applicable to U.S. facilities. Other comments stated that the Japanese systems cannot be used to support standards for power plants in the U.S. because of the possible differences in factors such as the degree of closed-loop versus open-loop operation, the impact of trace constituents such as chlorides, the differences in inlet SO_2 concentrations, SO_2 uptake per volume of slurry, Japanese production of gypsum instead of sludge, coal blending and the amount of maintenance.

The comments on closed-loop operation of Japanese systems inferred that larger quantities of water are purged from these systems than from their U.S. counterparts. A closed-loop system is one where the only water leaving the system is by: (1) evaporative water losses in the scrubber, and (2) the water associated with the sludge. The administrator found by investigating the systems referred to in the comments that six of ten Japanese systems listed by one commenter and two of four coal-fired Japanese systems are operated within the above definition of closed-loop. The closed-loop operation of Japanese scrubbers was also attested to in an Interagencey Task Force Report, "Sulfur Oxides Control Technology in Japan" (June 30, 1978) prepared for Honorable Henry M. Jackson, Chairman, Senate Committee on Energy and Natural Resources. It is also important to note that several of these successful Japanese systems were designed by U.S. vendors.

After evaluating all the comments, the Administrator has concluded that the experience with systems in Japan is applicable to U.S. power plants and can be used as support to show that the final standards are achievable.

A few commenters stated that closed-loop operation of an FGD system could not be accomplished, especially at utilities burning high-sulfur coal and located in areas where rainfall into the sludge disposal pond exceeds evaporation from the pond. It is important to note that neither the proposed nor final standards require

closed-loop operation of the FGD. The commenters are primarily concerned that future water pollution regulations will require closed-loop operation. Several of these commenters ignored the large amount of water that is evaporated by the hot exhaust gases in the scrubber and the water that is combined with and goes to disposal with the sludge in a typical ponding system. If necessary, the sludge can be dewatered by use of a mechanical clarifier, filter, or centrifuge and then sludge disposed of in a landfill designed to minimize rainwater collection. The sludge could also be physically or chemically stabilized.

Most U.S. systems operate open-loop (i.e., have some water discharge from their sludge pond) because they are not required to do otherwise. In a recent report "Electric Utility Steam Generating Units—Flue Gas Desulfurization Capabilities as of October 1978" (EPA–450/3–79–001), PEDCo reported that several utilities burning both low- and high-sulfur coal have reported that they are operating closed-loop FGD systems. As discussed earlier, systems in Japan are operating closed-loop if pond disposal is included in the system. Also, experiments at the Shawnee test facility have shown that highly reliable operation can be achieved with high sulfur coal (containing moderate to high levels of chloride) during closed-loop operation. The Administrator continues to believe that although not required, closed-loop operation is technically and economically feasible if the FGD and disposal system are properly designed. If a water purge is necessary to control chloride buildup, this stream can be treated prior to disposal using commercially available water treatment methods, as discussed in the report "Controlling SO_2 Emissions from Coal-Fired Steam-Electric Generators: Water Pollution Impact" (EPA–600/7–78–045b).

Two comments endorsed coal cleaning as an SO_2 emission control technique. One commenter encouraged EPA to study the potential of coal cleaning, and another endorsed coal cleaning in preference to FGD. The Administrator investigated coal cleaning and the relative economics of FGD and coal cleaning and the results are presented in the report "Physical Coal Cleaning for Utility Boiler SO_2 Emission Control" (EPA–600/7–78–034). The Administrator does not consider coal cleaning alone as representing the best demonstrated system for SO_2 emission reduction. Coal cleaning does offer the following benefits when used in conjuction with an FGD system: (1) the SO_2 concentrations entering the FGD system are lower and less variable than would occur without coal cleaning, (2) percent removal credit is allowed toward complying with the SO_2 standard percent removal requirement, and (3) the SO_2 emission limit can be achieved when using a coal having a sulfur content above that which would be needed when coal cleaning is not practiced. The amount of sulfur that can be removed from coal by physical coal cleaning was investigated by the U.S. Department of the Interior ("Sulfur Reduction Potential of the Coals of the United States," Bureau of Mines Report of Investigations/1976, RI–8118). Coal cleaning principally removes pyritic sulfur from coal by crushing it to a maximum top size and then separating the pyrites and other rock impurities from the coal. In order to prevent coal cleaning processes from developing into undesirable sources of energy waste, the amount of crushing and the separation bath's specific gravity must be limited to reasonable levels. The Administrator has concluded that crushing to 1.5 inches topsize and separation at 1.6 specific gravity represents common practice. At this level, the sulfur reduction potential of coal cleaning for the Eastern Midwest (Illinois, Indiana, and Western Kentucky) and the Northern Appalachian Coal (Pennsylvania, Ohio, and West Virginia) regions averages approximately 30 percent. The washability of specific coal seams will be less than or more than the average.

Some comments state that FGD systems do not work on specific coals, such as high-sulfur Illinois-Indiana coal, high-chloride Illinois coal, and Southern Appalachian coals. After review of the comments and data, the Administrator concluded that FGD application is not limited by coal properties. Two reports, "Controlling SO_2 Emissions from Coal-Fired Steam-Electric Generators: Water Pollution Impact" (EPS–600/7–78–045b) and "Flue Gas Desulfurization Systems: Design and Operating Considerations" (EPA–600/7–78–030b) acknowledge that coals with high sulfur or -chloride content may present problems. Chlorides in flue gas replace active calcium, magnesium, or sodium alkalis in the FGD system solution and cause stress corrosion in susceptible materials. Prescrubbing of flue gas to absorb chlorides upstream of the FGD or the use of alloy materials and protective coatings are solutions to high-chloride coal applications. Two reports, "Flue Gas Desulfurization System Capabilities for Coal-Fired Steam Generators" (EPA–600/7–78–032b) and "Flue Gas Desulfurization Systems: Design and Operating Considerations" (EPA –600/7–7–78–030b) also acknowledge that 90 percent SO_2 removal (or any given level) is more difficult when burning high-sulfur coal than when burning low-sulfur coal because the mass of SO_2 that must be removed is greater when high-sulfur coal is burned. The increased load results in larger and more complex FGD systems (requiring higher liquid-to-gas ratios, larger pumps, etc). Operation of current FGD installations such as LaCygne with over 5 percent sulfur coal, Cane Run No. 4 on high-sulfur midwestern coal, and Kentucky Utilities Green River on 4 percent sulfur coal provides evidence that complex systems can be operated successfully on high-sulfur coal. Recent experience at TVA, Widows Creek No. 8 shows that FGD systems can operate successfully at high SO_2 removal efficiencies when Southern Appalachian coals are burned.

Coal blending was the subject of two comments: (1) that blending could reduce, but not eliminate, sulfur variability; and (2) that coal blending was a relatively inexpensive way to meet more relaxed standards. The Administrator believes that coal blending, by itself, does not reduce the average sulfur content of coal but reduces the variability of the sulfur content. Coal blending is not considered representative of the best demonstrated system for SO_2 emission reduction. Coal blending, like coal cleaning, can be beneficial to the operation of an FGD system by reducing the variability of sulfur loading in the inlet flue gas. Coal blending may also be useful in reducing short-term peak SO_2 concentrations where ambient SO_2 levels are a problem.

Several comments were concerned with the dependability of FGD systems and problems encountered in operating them. The commenters suggested that FGD equipment is a high-risk investment, and there has been limited "successful" operating experience. They expressed the belief that utilities will experience increased maintenance requirements and that the possibility of forced outages due to scaling and corrosion would be greater as a result of the standards.

One commenter took issue with a statement that exhaust stack liner problems can be solved by using more expensive materials. The commenter also argued that EPA has no data supporting the assumption that scrubbers have been demonstrated at or near 90 percent reliability with one spare module. The Administrator has considered these comments and has concluded that properly designed and operated FGD systems can perform

reliably. An FGD system is a chemical process which must be designed (1) to include materials that will withstand corrosive/erosive conditions, (2) with instruments to monitor process chemistry and (3) with spare capacity to allow for planned downtime for routine maintenance. As with any chemical process, a startup or shakedown period is required before steady, reliable operation can be achieved.

The Administrator has continued to follow the progress of the FGD systems cited in the supporting documents published in conjunction with the proposed regulations in September 1978. Availability of the FGD system at Kansas City Power and Light Company's LaCygne Unit No. 1 has steadily improved. No FGD-related forced outages were reported from September 1977 to September 1978. Availability from January to September 1978 averaged 93 percent. Outages reported were a result of boiler and turbine problems but not FGD system problems. LaCygne Unit No. 1 burns high-sulfur (5 percent) coal, uses one of the earlier FGD's installed in the U.S., and reduces SO_2 emissions by 80 percent with a limestone system at greater than 90 percent availability. Northern States Power Company's Sherburne Units Numbers 1 and 2 on the other hand operate on low-sulfur coal (0.8 percent). Sherburne No. 1, which began operating early in 1976, had 93 percent availability in both 1977 and 1978. Sherburne No. 2, which began operation in late 1976 had availabilities of 93 percent in 1977 and 94 percent in 1978. Both of these systems include spare modules to maintain these high availabilities.

Several comments were received expressing concern over the increased water use necessary to operate FGD systems at utilities located in arid regions. The Administrator believes that water availability is a factor that limits power plant siting but since an FGD system uses less than 10 percent of the water consumed at a power plant, FGD will not be the controlling factor in the siting of new utility plants.

A few commenters criticized EPA for not considering amendments to the Federal Water Pollution Control Act (now the Clean Water Act), the Resource Conservation and Recovery Act, or the Toxic Substances Control Act when analyzing the water pollution and solid waste impacts of FGD systems. To the extent possible, the Administrator believes that the impacts of these Acts have been taken into consideration in this rule-making. The economic impacts were estimated on the basis of requirements anticipated for power plants under these Acts.

Various comments were received regarding the SO_2 removal efficiency achievable with FGD technology. One comment from a major utility system stated that they agreed with the standards, as proposed. Many comments stated that technology for better than 90 percent SO_2 removal exists. One comment was received stating that 95 percent SO_2 removal should be required. The Administrator concludes that higher SO_2 removals are achievable for low-sulfur coal which was the basis of this comment. While 95 percent SO_2 removal may be obtainable on high-sulfur coals with dual alkali or regenerable FGD systems, long-term data to support this level are not available and the Administrator has concluded that the demand for dual alkali/regenerable systems would far exceed vendor capabilities. When the uncertainties of extrapolating performance from 90 to 95 percent for high-sulfur coal, or from 95 percent on low-sulfur coal to high-sulfur coal, were considered, the Administrator concluded that 95 percent SO_2 removal for lime/limestone based systems on high-sulfur coal could not be reasonably expected at this time.

Another comment stated that all FGD systems except lime and limestone were not demonstrated or not universally applicable. The proposed SO_2 standards were based upon the conclusion that they were achievable with a well designed, operated, and maintained FGD system. At the time of proposal, the Administrator believed that lime and limestone FGD systems would be the choice of most utilities in the near future but, in some instances, utilities would choose the more reactive dual alkali or regenerable systems. The use of additives such as magnesium oxides was not considered to be necessary for attainment of the standard, but could be used at the option of the utility. Available data show that greater than 90 percent SO_2 removal has been achieved at full scale U.S. facilities for short-term periods when high-sulfur coal is being combusted, and for long-term periods at facilities when low-sulfur coal is burned. In addition, greater than 90 percent SO_2 removal has been demonstrated over long-term operating periods at FGD facilities when operating on low- and medium-sulfur coals in Japan.

Other commenters questioned the exclusion of dry scrubbing techniques from consideration. Dry scrubbing was considered in EPA's background documents and was not excluded from consideration. Five commercial dry SO_2 control systems are currently on order; three for utility boilers (400-MW, 455-MW, and 550-MW) and two for industrial applications. The utility units are designed to achieve 50 to 85 percent reduction on a long-term average basis and are scheduled to commence operation in 1981–1982. The design basis for these units is to comply with applicable State emission limitations. In addition, dry SO_2 control systems for six other utility boilers are out for bid. However, no full scale dry scrubbers are presently in operation at utility plants so information available to EPA and presented in the background document dealt with prototype units. Pilot scale data and estimated costs of full-scale dry scrubbing systems offer promise of moderately high (70–85 percent) SO_2 removal at costs of three-fourths or less of a comparable lime or limestone FGD system. Dry control system and wet control system costs are approximately equal for a 2-percent-sulfur coal. With lower-sulfur coals, dry controls are particularly attractive, not only because they would be less costly than wet systems, but also because they are expected to require less maintenance and operating staff, have greater turndown capabilities, require less energy consumption for operation, and produce a dry solid waste material that can be more easily disposed of than wet scrubber sludge.

Tests done at the Hoot Lake Station (a 53-MW boiler) in Minnesota demonstrated the performance capability of a spray dryer-baghouse dry control system. The exhaust gas concentrations before the control systems were 800 ppm SO_2 and an average of 2 gr/acf particulate matter. With lime as the sorbent, the control system removed over 86 percent SO_2 and 99.96 percent particulate matter at a stoichiometric ratio of 2.1 moles of lime absorbent per inlet mole of SO_2. When the spent lime dust was recirculated from the bag filter to the lime slurry feed tank, SO_2 removal efficiencies up to 90 percent ware obtained at stoichiometric ratios of 1.3–1.5. With the lime recirculation process, SO_2 removal efficiencies of 70–80 percent were demonstrated at a more economical stoichiometric ratio (about 0.75). Similar tests were performed at the Leland Olds Station using commercial grade lime.

Based upon the available information, the Administrator has concluded that 70 percent SO_2 removal using lime as the reactant is technically feasible and economically attractive in comparison to wet scrubbing when coals containing less than 1.5 percent sulfur are being

combusted. The coal reserves which contain 1.5 percent sulfur or less represent approximately 90 percent of the total Western U.S. reserves.

The standards specify a percentage reduction and an emission limit but do not specify technologies which must be used. The Administrator specifically took into consideration the potential of dry SO_2 scrubbing techniques when specifying the final form of the standard in order to provide an opportunity for their development on low-sulfur coals.

Averaging Time

Compliance with the final SO_2 standards is based on a 30-day rolling average. Compliance with the proposed standards was based on a 24-hour average.

Several comments state that the proposed SO_2 percent reduction requirement is attainable using currently available control equipment. One utility company commented upon their experience with operating pilot and prototype scrubbers and a full-scale limestone FGD system on a 550-MW plant. They stated that the FGD state of the art is sufficiently developed to support the proposed standards. Based on their analysis of scrubber operating variability and coal quality variability, they indicated that to achieve an 85 percent reduction in SO_2 emissions 90 percent of the time on a daily basis, the 30-day average scrubber efficiency would have to be at least 88 to 90 percent.

Other comments stated that EPA contractors did not consider SO_2 removal in context with averaging time, that vendor guarantees were not based on specific averaging times, and that quoted SO_2 removal efficiencies were based on testing modules. EPA found through a survey of vendors that many would offer 90–95 percent SO_2 removal guarantees based upon their usual acceptance test criteria. However, the averaging time was not specified. The Industrial Gas Cleaning Institute (IGCI), which represents control equipment vendors, commented that the control equipment industry has the present capability to design, manufacture, and install FGD control systems that have the capability of attaining the proposed SO_2 standards (a continuous 24-hour average basis). Concern was expressed, however, about the proposed 24-hour averaging requirement, and this commenter recommended the adoption of 30-day averaging. Since minute-to-minute variations in factors affecting FGD efficiency cannot be compensated for instantaneously, 24-hour averaging is an impracticably short period for implementing effective correction or for creating offsetting favorable higher efficiency periods.

Numerous other comments were received recommending that the proposed 24-hour averaging period be changed to 30 days. A utility company stated that their experience with operating full scale FGD systems at 500- and 400-MW stations indicates that variations in FGD operation make it extremely difficult, if not impossible, to maintain SO_2 removal efficiencies in compliance with the proposed percent reduction on a continual daily basis. A commenter representing the industry stated that it is clear from EPA's data that the averaging time could be no shorter than 24 hours, but that neither they nor EPA have data at this time to permit a reasonable determination of what the appropriate averaging time should be.

The Administrator has thoroughly reviewed the available data on FGD performance and all of the comments received. Based on this review, he has concluded that to alleviate this concern over coal sulfur variability, particularly its effect on small plant operations, and to allow greater flexibility in operating FGD units, the final SO_2 standard should be based on a 30-day rolling average rather than a 24-hour average as proposed. A rolling average has been adopted because it allows the Administrator to enforce the standard on a daily basis. A 30-day average is used because it better describes the typical performance of an FGD system, allows adequate time for owners or operators to respond to operating problems affecting FGD efficiency, permits greater flexibility in procedures necessary to operate FGD systems in compliance with the standard, and can reduce the effects of coal sulfur variability on maintaining compliance with the final SO_2 standards without the application of coal blending systems. Coal blending systems may be required in some cases, however, to provide for the attainment and maintenance of the National Ambient Air Quality Standards for SO_2.

Emission Limitation

In the September proposal, a 520 ng/J (1.20 lb/million Btu) heat input emission limit, except for 3 days per month, was specified for solid fuels. Compliance was to be determined on a 24-hour averaging basis.

Following the September proposal, the joint working group comprised of EPA, The Department of Energy, the Council of Economic Advisors, the Council on Wage and Price Stability, and others investigated ceilings lower than the proposal. In looking at these alternatives, the intent was to take full advantage of the cost effectiveness benefits of a joint coal washing/scrubbing strategy on high-sulfur coal. The cost of washing is relatively inexpensive; therefore, the group anticipated that a low emission ceiling, which would require coal washing and 90 percent scrubbing, could substantially reduce emissions in the East and Midwest at a relatively low cost. Since coal washing is now a widespread practice, it was thought that Eastern coal production would not be seriously impacted by the lower emission limit. Analyses using an econometric model of the utility sector confirmed these conclusions and the results were published in the Federal Register on December 8, 1978 (43 FR 57834).

Recognizing certain inherent limitations in the model when assessing impacts at disaggregated levels, the Administrator undertook a more detailed analysis of regional coal production impacts in February using Bureau of Mines reports which provided seam-by-seam data on the sulfur content of coal reserves and the coal washing potential of those reserves. The analysis identified the amount of reserves that would require more than 90 percent scrubbing of washed coal in order to meet designated ceilings. To determine the sulfur reduction from coal washing, the Administrator assumed two levels of coal preparation technology, which were thought to represent state-of-the-art coal preparation (crushing to 1.5-inch top size with separation at 1.6 specific gravity, and ¾-inch top size with separation at 1.6 specific gravity). The amount of sulfur reduction was determined according to chemical characteristics of coals in the reserve base. This assessment was made using a model developed by EPA's Office of Research and Development.

As a result of concerns expressed by the National Coal Association, a meeting was called for April 5, 1979, in order for EPA and the National Coal Association to present their respective findings as they pertained to potential impacts of lower emission limits on high-sulfur coal reserves in the Eastern Midwest (Illinois, Indiana, and Western Kentucky) and the Northern Appalachian (Ohio, West Virginia, and Pennsylvania) coal regions. Recognizing the importance of discussion, the Administrator invited representatives from the Sierra Club, the Natural Resources Defense Council, the Environmental Defense Fund, the Utility

Air Regulatory Group, and the United Mine Workers of America, as well as other interested parties to attend.

At the April 5 meeting, EPA presented its analysis of the Eastern Midwest and Northern Appalachian coal regions. The analysis showed that at a 240 ng/J (0.55 lb/million Btu) annual emission limit more than 90 percent scrubbing would be required on between 5 and 10 percent of Northern Appalachian reserves and on 12 to 25 percent of the Eastern Midwest reserves. At a 340 ng/J (0.80 lb/million Btu) limit, less than 5 percent of the reserves in each of these regions would require greater than 90 percent scrubbing. At that same meeting, the National Coal Association presented data on the sulfur content and washability of reserves which are currently held by member companies. While the reported National Coal Association reserves represent a very small portion of the total reserve base, they indicate reserves which are planned to be developed in the near future and provide a detailed property-by-property data base with which to compare EPA analytical results. Despite the differences in data base sizes, the National Coal Association's study served to confirm the results of the EPA analysis. Since the National Coal Association results were within 5 percentage points of EPA's estimates, the Administrator concluded that the Office of Research and Development model would provide a widely-accepted basis for studying coal reserve impacts. In addition, as a result of discussions at this meeting the Administrator revised his assessment of state-of-the-art coal cleaning technology. The National Coal Association acknowledged that crushing to 1.5-inch top size with separation at 1.6 specific gravity was common practice in industry, but that crushing to smaller top sizes would create unmanageable coal handling problems and great expense.

In order to explore further the potential for dislocations in regional coal markets, the Administrator concluded that actual buying practices of utilities rather than the mere technical usability of coals should be considered. This additional analysis identified coals that might not be used because of conservative utility attitudes toward scrubbing and the degree of risk that a utility would be willing to take in buying coal to meet the emission limit. This analysis was performed in a similar manner to the analysis described above except that two additional assumptions were made: (1) utilities would purchase coal that would provide about a 10 percent margin below the emission limit in order to minimize risk, and (2) utilities would purchase coal that would meet the emission limit (with margin) with a 90 percent reduction in potential SO_2 emissions. This assumption reflects utility preference for buying washed coal for which only 85 percent scrubbing is needed to meet both the percent reduction and the emission limit as compared to the previous assumption that utilities would do 90 percent scrubbing on washed coal (resulting in more than 90 percent reduction in potential SO_2 emissions). This analysis was performed using EPA data at 430 ng/J (1.0 lb/million Btu) and 520 ng/J (1.20 lb/million Btu) monthly emission limits. The results revealed that a significant portion (up to 22 percent) of the high-sulfur coal reserves in the Eastern Midwest and portions of Northern Appalachian coal regions would require more than a 90 percent reduction if the emission limitation was established below 520 ng/J (1.20 lb/million Btu) on a 30-day rolling average basis. Although higher levels of control are technically feasible, conservatism in utility perceptions of scrubber performance could create a significant disincentive against the use of these coals and disrupt the coal markets in these regions. Accordingly, the Administrator concluded the emission limitation should be maintained at 520 ng/J (1.20 lb/million Btu) on a 30-day rolling average basis. A more stringent emission limit would be counter to one of the basic purposes of the 1977 Amendments, that is, encouraging the use of higher sulfur coals.

Full Versus Partial Control

In September 1978, the Administrator proposed a full or uniform control alternative and set forth other partial or variable control options as well for public comment. At that time, the Administrator made it clear that a decision as to the form of the final standard would not be made until the public comments were evaluated and additional analyses were completed. The analytical results are discussed later under Regulatory Analysis.

This issue focuses on whether power plants firing lower-sulfur coals should be required to achieve the same percentage reduction in potential SO_2 emissions as those burning higher-sulfur coals. When addressing this issue, the public commenters relied heavily on the statutory language and legislative history of Section 111 of the Clean Air Act Amendments of 1977 to bolster their arguments. Particular attention was directed to the Conference Report which says in the pertinent part:

> In establishing a national percent reduction for new fossil fuel-fired sources, the conferees agreed that the Administrator may, in his discretion, set a range of pollutant reduction that reflects varying fuel characteristics. Any departure from the uniform national percentage reduction requirement, however, must be accompanied by a finding that such a departure does not undermine the basic purposes of the House provision and other provisions of the act, such as maximizing the use of locally available fuels.

Comments Favoring Full or Uniform Control. Commenters in favor of full control relied heavily on the statutory presumption in favor of a uniform application of the percentage reduction requirement. They argued that the Conference Report language, ". . . the Administrator may, in his discretion, set a range of pollutant reduction that reflects varying fuel characteristics. . . ." merely reflects the contention of certain conferees that low-sulfur coals may be more difficult to treat than high-sulfur coals. This contention, they assert, is not borne out by EPA's technical documentation nor by utility applications for prevention of significant deterioration permits which clearly show that high removal efficiencies can be attained on low-sulfur coals. In the face of this, they maintain there is no basis for applying a lower percent reduction for such coals.

These commenters further maintain that a uniform application of the percent reduction requirement is needed to protect pristine areas and national parks, particularly in the West. In doing so, they note that emissions may be up to seven times higher at the individual plant level under a partial approach than under uniform control. In the face of this, they maintain that partial control cannot be considered to reflect best available control technology. They also contend that the adoption of a partial approach may serve to undermine the more stringent State requirements currently in place in the West.

Turning to national impacts, commenters favoring a uniform approach note that it will result in lower emissions. They maintain that these lower emissions are significant in terms of public health and that such reductions should be maximized, particularly in light of the Nation's commitment to greater coal use. They also assert that a uniform standard is clearly affordable. They point out that the incremental increase in costs associated with a uniform standard is small when compared to total utility expenditures and will have a minimal impact at the consumer level. They further maintain that EPA has inflated

the costs of scrubber technology and has failed to consider factors that should result in lower costs in future years.

With respect to the oil impacts associated with a uniform standard, these same commenters are critical of the oil prices used in the EPA analyses and add that if a higher oil price had been assumed the supposed oil impact would not have materialized.

They also maintain that the adoption of a partial approach would serve to perpetuate the advantage that areas producing low-sulfur coal enjoyed under the current standard, which would be counter to one of the basic purposes of the House bill. On the other hand, they argue, a uniform standard would not only reduce the movement of low-sulfur coals eastward but would serve to maximize the use of local high-sulfur coals.

Finally, one of the commenters specified a more stringent full control option than had been analyzed by EPA. It called for a 95 percent reduction in potential SO_2 emissions with about a 280 ng/J (0.65 lb/million Btu) emission limit on a monthly basis. In addition, this alternative reflected higher oil prices and declining scrubber costs with time. The results were presented at the December 12 and 13 public hearing on the proposed standards.

Comments Favoring Partial or Variable Control. Those commenters advocating a partial or variable approach focused their arguments on the statutory language of Section 111. They maintained that the standard must be based on the "best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated." They also asserted that the Conference Report language clearly gives the Administrator authority to establish a variable standard based on varying fuel characteristics, i.e., coal sulfur content.

Their principal argument is that a variable approach would achieve virtually the same emission reductions at the national level as a uniform approach but at substantially lower costs and without incurring a significant oil penalty. In view of this, they maintain that a variable approach best satisfies the statutory language of Section 111.

In support of variable control they also note that the revised NSPS will serve as a minimum requirement for prevention of significant deterioration and non-attainment considerations, and that ample authority exists to impose more stringent requirements on a case-by-case basis. They contend that these authorities should be sufficient to protect pristine areas and national parks in the West and to assure the attainment and maintenance of the health-related ambient air quality standards. Finally, they note that the NSPS is technology-based and not directly related to protection of the Nation's public health.

In addition, they argue that a variable control option would provide a better opportunity for the development of innovative technologies. Several commenters noted that, in particular, a uniform requirement would not provide an opportunity for the development of dry SO_2 control systems which they felt held considerable promise for bringing about SO_2 emission reductions at lower costs and in a more reliable manner.

Commenters favoring variable control also advanced the arguments that a standard based on a range of percent reductions would provide needed flexibility, particularly when selecting intermediate sulfur content coals. Further, if a control system failed to meet design expectations, a variable approach would allow a source to move to lower-sulfur coal to achieve compliance. In addition, for low-sulfur coal applications, a variable option would substantially reduce the energy penalty of operating wet scrubbers since a portion of the flue gas could be used for plume reheat.

To support their advocacy of a variable approach, two commenters, the Department of Energy and the Utility Air Regulatory Group (UARG, representing a number of utilities), presented detailed results of analyses that had been conducted for them. UARG analyzed a standard that required a minimum reduction of 20 percent with 520 ng/J (1.20 lb/million Btu) monthly emission limit. The Department of Energy specified a partial control option that required a 33 percent minimum requirement with a 430 ng/J (1.0 lb/million Btu) monthly emission limit.

Faced with these comments, the Administrator determined the final analyses that should be performed. He concluded that analyses should be conducted on a range of alternative emission limits and percent reduction requirements in order to determine the approach which best satisfies the statutory language and legislative history of section 111. For these analyses, the Administrator specified a uniform or full control option, a partial control option reflecting the Department of Energy's recommendation for a 33 percent minimum control requirement, and a variable control option which specified a 520 ng/J (1.20 lb/million Btu) emission limitation with a 90 percent reduction in potential SO_2 emissions except when emissions to the atmosphere were reduced below 260 ng/J (0.60 lb/million Btu), when only a 70 percent reduction in potential SO_2 emissions would apply. Under the variable approach, plants firing high-sulfur coals would be required to achieve a 90 percent reduction in potential emissions in order to comply with the emission limitation. Those using intermediate and low-sulfur content coals would be permitted to achieve between 70 and 90 percent, provided their emissions were less than 260 ng/J (0.60 lb/million BTU).

In rejecting the minimum requirement of 20 percent advocated by UARG, the Administrator found that it not only resulted in the highest emissions, but that it was also the least cost effective of the variable control options considered. The more stringent full control option presented in the comments was rejected because it required a 95 percent reduction in potential emissions which may not be within the capabilities of demonstrated technology for high-sulfur coals in all cases.

Emergency Conditions

The final standards allow an owner or operator to bypass uncontrolled flue gases around a malfunctioning FGD system provided (1) the FGD system has been constructed with a spare FGD module, (2) FGD modules are not available in sufficent numbers to treat the entire quantity of flue gas generated, and (3) all available electric generating capacity is being utilized in a power pool or network consisting of the generating capacity of the affected utility company (except for the capacity of the largest single generating unit in the company), and the amount of power that could be purchased from neighboring interconnected utility companies. The final standards are essentially the same as those proposed. The revisions involve wording changes to clarify the Administrator's intent and revisions to address potential load management and operating problems. None of the comments received by EPA disputed the need for the emergency condition provisions or objected to their intent.

The intent of the final standards is to encourage power plant owners and operators to install the best available FGD systems and to implement effective

operation and maintenance procedures but not to create power supply disruptions. FGD systems with spare FGD modules and FGD modules with spare equipment components have greater capability of reliable operation than systems without spares. Effective control and operation of FGD systems by engineering supervisory personnel experienced in chemical process operations and properly trained FGD system operators and maintenance staff are also important in attaining reliable FGD system operation. While the standards do not require these equipment and staffing features, the Administrator believes that their use will make compliance with the standards easier. Malfunctioning FGD systems are not exempt from the SO_2 standards except during infrequent power supply emergency periods. Since the exemption does not apply unless a spare module has been installed (and operated), a spare module is required for the exemption to apply. Because of the disproportionate cost of installing a spare module on steam generators having a generating capacity of 125 MW or less, the standards do not require them to have spare modules before the emergency conditions exemption applies.

The proposed standards included the requirement that the emergency condition exemption apply only to those facilities which have installed a spare FGD system module or which have 125 MW or less of output capacity. However, they did not contain procedures for demonstrating spare module capability. This capability can be easily determined once the facility commences operation. To specify how this determination is to be performed, provisions have been added to the regulations. This determination is not required unless the owner or operator of the affected facility wishes to claim spare module capability for the purpose of availing himself of the emergency condition exemption. Should the Administrator require a demonstration of spare module capability, the owner or operator would schedule a test within 60 days for any period of operation lasting from 24 hours to 30 days to demonstrate that he can attain the appropriate SO_2 emission control requirements when the facility is operated at a maximum rate without using one of its FGD system modules. The test can start at any time of day and modules may be rotated in and out of service, but at all times in the test period one module (but not necessarily the same module) must not be operated to demonstrate spare module capability.

Although it is within the Administrator's discretion to require the spare module capability demonstration test, the owner or operator of the facility has the option to schedule the specific date and duration of the test. A minimum of only 24 hours of operation are required during the test period because this period of time is adequate to demonstrate spare module capability and it may be unreasonable in all circumstances to require a longer (e.g., 30 days) period of operation at the facility's maximum heat input rate. Because the owner or operator has the flexibility to schedule the test, 24 hours of operation at maximum rate will not impose a significant burden on the facility

The Administrator believes that the standards will not cause supply disruption because (1) well designed and operated FGD systems can attain high operating availability, (2) a spare FGD module can be used to rotate other modules out of service for periodic maintenance or to replace a malfunctioning module, (3) load shifting of electric generation to another generating unit can normally be used if a part or all of the FGD system were to malfunction, and (4) during abnormal power supply emergency periods, the bypassing exemption ensures that the regulations would not require a unit to stand idle if its operation were needed to protect the reliability of electric service. The Administrator believes that this exemption will not result in extensive bypassing because the probability of a major FGD malfunction and power supply emergency occurring simultaneously is small.

A commenter asked that the definition of system capacity be revised to ensure that the plant's capability rather than plant rated capacity be used because the full rated capacity is not always operable. The Administrator agrees with this comment because a component failure (e.g., the failure of one coal pulverizer) could prevent a boiler from being operated at its rated capacity, but would not cause the unit to be entirely shut down. The definition has been revised to allow use of the plant's capability when determining the net system capacity.

One commenter asked that the definition of system capacity be revised to include firm contractual purchases and to exclude firm contractual sales. Because power obtained through contractual purchases helps to satisfy load demand and power sold under contract affects the net electric generating capacity available in the system, the Administrator agrees with this request and has included power purchases in the definition of net system capacity and has excluded sales by adding them to the definition of system load.

A commenter asked that the ownership basis for proration of electric capacity in several definitions be modified when there are other contractual arrangements. The Administrator agrees with this comment and has revised the definitions accordingly.

One commenter asked that definitions describing "all electric generating equipment owned by the utility company" specifically include hydroelectric plants. The proposed definitions did include these plants, but the Administrator agrees with the clarification requested, and the definitions have been revised.

A commenter asked that the word "steam" be removed from the definition of system emergency reserves to clarify that nuclear units are included. The Administrator agrees with the comment and has revised the definition.

Several commenters asked that some type of modification be made to the emergency condition provisions that would consider projected system load increases within the next calendar day. One commenter asked that emergency conditions apply based on a projection of the next day's load. The Administrator does not agree with the suggestion of using a projected load, which may or may not materialize, as a criterion to allow bypassing of SO_2 emissions, because the load on a generating unit with a malfunctioning FGD system should be reduced whenever there is other available system capacity.

A commenter recommended that a unit removed from service be allowed to return to service if such action were necessary to maintain or reestablish system emergency reserves. The Administrator agrees that it would be impractical to take a large steam generating unit entirely out of service whenever load demand is expected to later increase to the level where there would be no other unit available to meet the demand or to maintain system emergency reserves. To address the problem of reducing load and later returning the load to the unit, the Administrator has revised the proposed emergency condition provisions to give an owner or operator of a unit with a malfunctioning FGD system the option of keeping (or bringing) the unit into spinning reserve when the unit is needed to maintain (or reestablish) system emergency reserves. During this

period, emissions must be controlled to the extent that capability exists within the FGD system, but bypassing emissions would be allowed when the capability of a partially or completely failed FGD system is inadequate. This procedure will allow the unit to operate in spinning reserve rather than being entirely shut down and will ensure that a unit can be quickly restored to service. The final emergency condition provisions permit bypassing of emissions from a unit kept in spinning reserve, but only (1) when the unit is the last one available for maintaining system emergency reserves, (2) when it is operated at the minimum load consistent with keeping the unit in spinning reserve, and (3) has inadequate operational FGD capability at the minimum load to completely control SO_2 emissions. This revision will still normally require load on a malfunctioning unit to be reduced to a minimum level, even if load demand is anticipated to increase later; but it does prevent having to take the unit entirely out of operation and keep it available in spinning reserve to assume load should an emergency arise or as load increases the following day. Because emergency condition periods are a small percentage of total operating hours, this revision to allow bypassing of SO_2 emissions from a unit held in spinning reserve with reduced output is expected to have minor impact on the amount of SO_2 emitted.

One commenter stated that the proposed provisions would not reduce the necessity for additional plant capacity to compensate for lower net reliability. The Administrator does not agree with this comment because the emergency condition provisions allow operation of a unit with a failed FGD system whenever no other generating capacity is available for operation and thereby protects the reliability of electric service. When electric load is shifted from a new steam-electric generating unit to another electric generating unit, there would be no net change in reserves within the power system. Thus, the emergency condition provisions prevent a failed FGD system from impacting upon the utility company's ability to generate electric power and prevents an impact upon reserves needed by the power system to maintain reliable electric service.

A commenter asked that the definition of available system capacity be clarified because (1) some utilities have certain localized areas or zones that, because of system operating parameters, cannot be served by all of the electric generating units which constitute the utility's system capacity, and (2) an affected facility may be the only source of supply for a zone or area. Almost all electric utility generating units in the United States are electrically interconnected through power transmission lines and switching stations. A few isolated units in the U.S. are not interconnected to at least one other electric generating unit and it is possible that a new unit could also be constructed in an isolated area where interconnections would not be practical. For a single, isolated unit where it is not practical to construct interconnections, the emergency condition provisions would apply whenever an FGD malfunction occurred because there would be no other available system capacity to which load could be shifted. It is also possible that two or three units could be interconnected, but not interconnected with a larger power network (e.g., Alaska and Hawaii). To clarify this situation, the definitions of net system capacity, system load, and system emergency reserves have been revised to include only that electric power or capacity interconnected by a network of power transmission facilities. Few units will not be interconnected into a network encompassing the principal and neighboring utility companies. Power plants, including those without FGD systems, are expected to experience electric generating malfunctions and power systems are planned with reserve generating capacity and interconnecting electric transmission lines to provide means of obtaining electricity from alternative generating facilities to meet demand when these occasions arise. Arrangements for an affected facility would typically include an interconnection to a power transmission network even when it is geographically located away from the bulk of the utility company's power system to allow purchase of power from a neighboring utility for those localized service areas when necessary to maintain service reliability. Contract arrangements can provide for trades of power in which a localized zone served by the principal company owning or operating the affected facility is supplied by a neighboring company. The power bought by the principal company can, if desired by the neighboring company, be replaced by operation of other available units in the principal company even if these units are located at a distance from the localized service zone. The proposed definition of emergency condition was contingent upon the purchase of power from another electrical generation facility. To further clarify this relationship, the Administrator has revised the proposed definitions to define the relationship between the principal company (the utility company that owns the generating unit with the malfunctioning FGD system) and the neighboring power companies for the purpose of determining when emergency conditions exist.

A commenter requested that the proposed compliance provisions be revised so that they could not be interpreted to force a utility to operate a partially functional FGD module when extensive damage to the FGD module would occur. For example, a severely vibrating fan must be shut down to prevent damage even though the FGD system may be otherwise functional. The Administrator agrees with this comment and has revised the compliance provisions not to require FGD operation when significant damage to equipment would result.

One commenter asked that the definition of system emergency reserves account for not only the capacity of the single largest generating unit, but also for reserves needed for system load-frequency regulation. Regulation of power frequency can be a problem when the mix of capacitive and reactive loads shift. For example, at night capacitive load of industrial plants can adversely affect power factors. The Administrator disagrees that additional capacity should be kept independent of the load shifting requirements. Under the definition for system emergency reserves, capacity equivalent to the largest single unit in the system was set aside for load management. If frequency regulation has been a particular problem, extra reserve margins would have been maintained by the utility company even if an FGD system were not installed. Reserve capacity need not be maintained within a single generating unit. The utility company can regulate system load-frequency by distributing their system reserves throughout the electric power system as needed. In the Administrator's judgment, these regulations do not impact upon the reserves maintained by the utility company for the purpose of maintaining power system integrity, because the emergency condition provisions do not restrict the utility company's freedom in distributing their reserves and do not require construction of additional reserves.

A commenter asked that utility operators be given the option to ignore the loss of SO_2 removal efficiency due to FGD malfunctions by reducing the level of electric generation from an affected unit. This would control the amount of

SO_2 emitted on a pounds per hour basis, but would also allow and exemption from the percentage of SO_2 removal specified by the SO_2 standards. The Administrator believes that allowing this exemption is not necessary because load can usually be shifted to other electric generating units. This procedure provides an incentive to the owner or operator to properly maintain and operate FGD systems. Under the procedures suggested by the commenter, neglect of the FGD system would be encouraged because an exemption would allow routine operation at reduced percentages of SO_2 removal. Steam generating units are often operated at less than rated capacity and a fully operational FGD system would not be required for compliance during these periods if this exemption were allowed. The procedure suggested by the commenter is also not necessary because FGD modules can be designed and constructed with separate equipment components so that they are routinely capable of independent operation whenever another module of the steam generating unit's FGD system is not available. Thus, reducing the level of electric generation and removing the failed FGD module for servicing would not affect the remainder of the FGD system and would permit the utility to maintain compliance with the standards without having to take the generating unit entirely out of operation. Each module should have the capability of attaining the same percentage reduction of SO_2 from the flue gas it treats regardless of the operability of the other modules in the system to maintain compliance with the standards. Although the efficiency of more than one FGD module may occasionally be affected by certain equipment malfunctions, a properly designed FGD system has no routine need for an exemption from the SO_2 percentage reduction requirement when the unit is operated at reduced load. The Administrator has concluded that the final regulations provide sufficient flexibility for addressing FGD malfunctions and that an exemption from the percentage SO_2 removal requirement is not necessary to protect electric service reliability or to maintain compliance with these SO_2 standards.

Particulate Matter Standard

The final standard limits particulate matter emissions to 13 ng/J (0.03 lb/million Btu) heat input and is based on the application of ESP or baghouse control technology. The final standard is the same as the proposed. The Administrator has concluded that ESP and baghouse control systems are the best demonstrated systems of continuous emission reduction (taking into consideration the cost of achieving such emission reduction, and nonair quality health and enviornmental impacts, and energy requirements) and that 13 ng/J (0.03 lb/million Btu) heat input represents the emission level achievable through the application of these control systems.

One group of commenters indicated that they did not support the proposed standard because in their opinion it would be too expensive for the benefits obtained; and they suggested that the final standard limit emissions to 43 ng/J (0.10 lb/million Btu) heat input which is the same as the current standard under 40 CFR Part 60 Subpart D. The Administrator disagrees with the commenters because the available data clearly indicate that ESP and baghouse control systems are capable of performing at the 13 ng/J (0.03 lb/million Btu) heat input emission level, and the economic impact evaluation indicates that the costs and economic impacts of installing these systems are reasonable.

The number of commenters expressed the opinion that the proposed standard was to strict, particularly for power plants firing low-sulfur coal, because baghouse control systems have not been adequately demonstrated on full-size power plants. The commenters suggested that extrapolation of test data from small scale baghhouse control systems, such as those used to support the proposed standard, to full-size utility applications is not reasonable.

The Administrator believes that baghouse control systems are demonstrated for all sizes of power plants. At the time the standards were proposed, the Administrator concluded that since baghouses are designed and constructed in modules rather than as one large unit, there should be no technological barriers to designing and constructing utility-sized facilities. The largest baghouse-controlled, coal-fired power plant for which EPA had emission test data to support the proposed standard was 44 MW. Since the standards were proposed, additional information has become available which supports the Administrator's position that baghouses are demonstrated for all sizes of power plants. Two large baghouse-controlled, coal-fired power plants have recently initiated operations. EPA has obtained emission data for one of these units. This unit has achieved particulate matter emission levels below 13 ng/J (0.03 lb/million Btu) heat input. The baghouse system for this facility has 28 modules rated at 12.5 MW capacity per module. This supports the Administrator's conclusion that baghouses are designed and constructed in modules rather than as one large unit, and there should be no technological barriers to designing and constructing utility-sized facilities.

One commenter indicated that baghouse control systems are not demonstrated for large utility application at this time and recommended that EPA gather one year of data from 1000 MW of baghouse installations to demonstrate that baghouses can operate reliably and achieve 13 ng/J (0.03 lb/million Btu) heat input. The standard would remain at 21 to 34 ng/J (0.05 to 0.08 lb/million Btu) heat input until such demonstration. The Administrator does not believe this approach is necessary because baghouse control systems have been adequately demonstrated for large utility applications.

One group of commenters supported the proposed standard of 13 ng/J (0.03 lb/million Btu) heat input. They indicated that in their opinion the proposed standard attained the proper balance of cost, energy and environmental factors and was necessary in consideration of expected growth in coal-fired power plant capacity.

Another group of commenters which included the trade association of emission control system manufacturers indicated that 13 ng/J (0.03 lb/million Btu) is technically achievable. The trade association further indicated the proposed standard is technically achievable for either high- or low-sulfur coals, through the use of baghouses, ESPs, or wet scrubbers.

A number of commenters recommended that the proposed standard be lowered to 4 ng/J (0.01 lb/million Btu) heat input. This group of commenters presented additional emission data for utility baghouse control systems to support their recommendation. The data submitted by the commenters were not available at the time of proposal and were for utility units of less than 100 MW electrical output capacity. The commenters suggested that a 4 ng/J (0.01 lb/million Btu) heat input standard is achievable based on baghouse technology, and they suggested that a standard based on baghouse technology would be consistent with the technology-forcing nature of section 111 of the Act. The Administrator believes that the available data base for baghouse performance supports a standard of 13 ng/J (0.03 lb/million Btu) heat input but

does not support a lower standard such as 4 ng/J (0.01 lb/million Btu) heat input.

One commenter suggested that the standard should be set at 26 ng/J (0.06 lb/million Btu) heat input so that particulate matter control systems would not be necessary for oil-fired utility steam generators. Although it is expected that few oil-fired utility boilers will be constructed, the ESP performance data which is contained in the "Electric Utility Steam Generating Units, Background Information for Promulgated Emission Standards" (EPA 450/3-79-021), supports the conclusion that ESPs are applicable to both oil firing and coal firing. The Administrator believes that emissions from oil-fired utility boilers should be controlled to the same level as coal-fired boilers.

NO_x Standard

The NO_x standards limit emissions to 210 ng/J (0.50 lb/million Btu) heat input from the combustion of subbituminous coal and 260 ng/J (0.60 lb/million Btu) heat input from the combustion of bituminous coal, based on a 30-day rolling average. In addition, emission limits have been established for other solid, liquid, and gaseous fuels, as discussed in the rational section of this preamble. The final standards differ from the proposed standards only in that the final averaging time for determining compliance with the standards is based on a 30-day rolling average, whereas a 24-hour average was proposed. All comments received during the public comment period were considered in developing the final NO_x standards. The major issues raised during the comment period are discussed below.

One issue concerned the possibility that the proposed 24-hour averaging period for coal might seriously restrict the flexibility boiler operators need during day-to-day operation. For example, several commenters noted that on some boilers the control of boiler tube slagging may periodically require increased excess air levels, which, in turn, would increase NO_x emissions. One commenter submitted data indicating that two modern Combustion Engineering (CE) boilers at the Colstrip, Montana plant of the Montana Power Company do not consistently achieve the proposed NO_x level of 210 ng/J (0.50 lb/million Btu) heat input on a 24-hour basis. The Colstrip boilers burn subbituminous coal and are required to comply with the NO_x standard under 40 CFR Part 60, Subpart D of 300 ng/J (0.70 lb/million Btu) heat input. Several other commenters recommended that the 24-hour averaging period be extended to 30 days to allow for greater operational flexibility.

As an aid in evaluating the operational flexibility question, the Administrator has reviewed a total of 24 months of continuously monitored NO_x data from the two Colstrip boilers. Six months of these data were available to the Administrator before proposal of these standards, and two months were submitted by a commenter. The commenter also submitted a summary of 28 months of Colstrip data indicating the number of 24-hour averages per month above 210 ng/J (0.50 lb/million Btu) heat input. The remaining Colstrip data were obtained by the Administrator from the State of Montana after proposal. In addition to the Colstrip data, the Administrator has reviewed approximately 10 months of continuously monitored NO_x data from five modern CE utility boilers. Three of the boilers burn subbituminous coal, two burn bituminous coal, and all five have monitors that have passed certification tests. These data were obtained from electric utility companies after proposal. A summary of all of the continuously monitored NO_x data that the Administrator has considered appears in "Electric Utility Steam Generating Units, Background Information for Promulgated Emission Standards" (EPA 450/3-79-021).

The usefulness of these continuously monitored data in evaluating the ability of modern utility boilers to continuously achieve the NO_x emission limits of 210 and 260 ng/J (0.50 and 0.60 lb/million Btu) heat input is somewhat limited. This is because the boilers were required to comply with a higher NO_x level of 300 ng/J (0.70 lb/million Btu) heat input. Nevertheless some conclusions can be drawn, as follows:

(1) Nearly all of the continuously monitored NO_x data are in compliance with the boiler design limit of 300 ng/J (0.70 lb/million Btu) heat input on the basis of a 24-hour average.

(2) Most of the continuously monitored NO_x data would be in compliance with limits of 260 ng/J (0.60 lb/million Btu) heat input for bituminous coal ov 210 ng/J (0.50 lb/million Btu) heat input for subbituminous coal when averaged over a 30-day period. Some of the data would be out of compliance based on a 24-hour average.

(3) The volume of continuously monitored NO_x emission data evaluated by the Administrator (34 months from seven large coal-fired boilers) is sufficient to indicate the emission variability expected during day-to-day operation of a utility-size boiler. In the Administrator's judgment, this emission variability adequately represents slagging conditions, coal variability, load changes, and other factors that may influence the level of NO_x emissions.

(4) The variability of continuously monitored NO_x data is sufficient to cause some concern over the ability of a utility boiler that burns solid fuel to consistently achieve a NO_x boiler design limit, whether 300, 260, or 210 ng/J (0.70, 0.60, or 0.50 lb/million Btu) heat input, based on 24-hour averages. In contrast, it appears that there would be no difficulty in achieving the boiler design limit based on 30-day periods.

Based on these conclusions, the Administrator has decided to require compliance with the final standards for solid fuels to be based on a 30-day rolling average. The Administrator believes that the 30-day rolling average will allow boilers made by all four major boiler manufacturers to achieve the standards while giving boiler operators the flexibility needed to handle conditions encountered during normal operation.

Although the Administrator has not evaluated continuously monitored NO_x data from boilers manufactured by companies other than CE, the data from CE boilers are considered representative of the other boiler manufacturers. This is because the boilers of all four manufacturers are capable of achieving the same NO_x design limit, and because the conditions that occur during normal operation of a boiler (e.g., slagging, variations in fuel quality, and load reductions) are similar for all four manufacturer designs. These conditions, the Administrator believes, lead to similar emission variability and require essentially the same degree of operational flexibility.

Some commenters have question the validity of the Colstrip data because the Colstrip continuous NO_x monitors have not passed certification tests. In April and June of 1978 EPA conducted a detailed evaluation of these monitors. The evaluation led the Administrator to conclude that the monitors were probably biased high, but by less than 21 ng/J (0.50 lb/million Btu) heat input. Since this error is so small (less than 10 percent), the Administrator considers the data appropriate to use in developing the standards.

A number of commenters expressed concern over the ability of as many as three of the four major boiler manufacturer designs to achieve the proposed standards. Although most of the available NO_x test data are from CE boilers, the Administrator believes that all four of the boiler manufacturers will be able to supply boilers capable of

achieving the standards. This conclusion is supported with (1) emission test results from 14 CE, seven Babcock and Wilcox (B&W), three Foster Wheeler (FW), and four Riley Stoker (RS) utility boilers; (2) 34 months of continuously monitored NO_x emission data from seven CE boilers; and (3) an evaluation of plans under way at B&W, FW, and RS to develop low-emission burners and furnace designs. Full-scale tests of these burners and furnace designs have proven their effectiveness in reducing NO_x emissions without apparent long-term adverse side effects.

Another issue raised by commenters concerned the effect that variations in the nitrogen content of coal may have on achieving the NO_x standards. The Adminstrator recognizes that NO_x levels are sensitive to the nitrogen content of the coal burned and that the combustion of high-nitrogen-content coals might be expected to result in higher NO_x emissions than those from coals with low nitrogen contents. However, the Administrator also recognizes that other factors contribute to NO_x levels, including moisture in the coal, boiler design, and boiler operating practice. In the Administrator's judgment, the emission limits for NO_x are achievable with properly designed and operated boilers burning any coal, regardless of its nitrogen content. As evidence of this, three of the six boilers tested by EPA burned coals with nitrogen contents above average, and yet exhibited NO_x emission levels well below the standards. The three boilers that burned coals with lower nitrogen contents also exhibited emission levels below the standards. The Administrator believes this is evidence that at NO_x levels near 210 and 260 ng/J (0.50 and 0.60 lb/million Btu) heat input, factors other than fuel-nitrogen-content predominate in determining final emission levels.

A number of commenters expressed concern over the potential for accelerated tube wastage (i.e., corrosion) during operation of a boiler in compliance with the proposed standards. Almost all of the 300-hour and 30-day coupon corrosion tests conducted during the EPA-sponsored low-NO_x studies indicate that corrosion rates decrease or remain stable during operation of boilers at NO_x levels as low as those required by the standards. In the few instances where corrosion rates increased during low-NO_x operation, the increases were considered minor. Also, CE has guaranteed that its new boilers will achieve the NO_x emission limits without increased tube corrosion rates. Another boiler manufacturer, B&W, has developed new low-emission burners that minimize corrosion by surrounding the flame in an oxygen-rich atmosphere. The other boiler manufacturers have also developed techniques to reduce the potential for corrosion during low-NO_x operation. The Administrator has received no contrasting information to the effect that boiler tube corrosion rates would significantly increase as a result of compliance with the standards.

Several commenters stated that according to a survey of utility boilers subject to the 300 ng/J (0.70 lb/million Btu) heat input standard under 40 CFR Part 60, Subpart D, none of the boilers can achieve the standard promulgated here of 260 ng/J (0.60 lb/million Btu) heat input on a range of bituminous coals. Three of the six utility boilers tested by EPA burned bituminous coal. (Two of these boilers were manufactured by CE and one by B&W.) In addition, the Administrator has reviewed continuously monitored NO_x data from two CE boilers that burn bituminous coal. Finally, the Administrator has examined NO_x emission data obtained by the boiler manufacturers on seven CE, four B&W, three FW, and three RS modern boilers, all of which burn bituminous coal. Nearly all of these data are below the 260 ng/J (0.60 lb/million Btu) heat input standard. The Administrator believes that these data provide adequate evidence that the final NO_x standard for bituminous coal is achievable by all four boiler manufacturer designs.

An issue raised by several commenters concerned the use of catalytic ammonia injection and advanced low-emission burners to achieve NO_x emission levels as low as 15 ng/J (0.034 lb/million Btu) heat input. Since these controls are not yet available, the commenters recommended that new utility boilers be designed with sufficient space to allow for the installation of ammonia injection and advanced burners in the future. In the meantime the commenters recommended that NO_x emissions be limited to 190 ng/J (0.45 lb/million Btu) heat input. The Administrator believes that the technology needed to achieve NO_x levels as low as 15 ng/J (0.034 lb/million Btu) heat input has not been adequately demonstrated at this time. Although a pilot-scale catalytic-ammonia-injection system has successfully achieved 90 percent NO_x removal at a coal-fired utility power plant in Japan, operation of a full-scale ammonia-injection system has not yet been demonstrated on a large coal-fired boiler. Since the Clean Air Act requires that emission control technology for new source performance standards be adequately demonstrated, the Administrator cannot justify establishing a low NO_x standard based on unproven technology. Similarly, the Administrator cannot justify requiring boiler designs to provide for possible future installation of unproven technology.

The recommendation that NO_x emissions be limited to 190 ng/J (0.45 lb/million Btu) heat input is based on boiler manufacturer guarantees in California. (No such utility boilers have been built as yet.) Although manufacturer guarantees are appropriate to consider when establishing emission limits, they cannot always be used as a basis for a standard. As several commenters have noted, manufacturers do not always achieve their performance guarantees. The standard is not established at this level, because emission test data are not available which demonstrate that a level of 190 ng/J (0.45 lb/million Btu) heat input can be continuously achieved without adverse side effects when a wide variety of coals are burned.

Regulatory Analysis

Executive Order 12044 (March 24, 1978), whose objective is to improve Government regulations, requires executive branch agencies to prepare regulatory analyses for regulations that may have major economic consequences. EPA has extensively analyzed the costs and other impacts of these regulations. These analyses, which meet the criteria for preparation of a regulatory analysis, are contained within the preamble to the proposed regulations (43 FR 42154), the background documentation made available to the public at the time of proposal (see STUDIES, 43 FR 42171), this preamble, and the additional background information document accompanying this action ("Electric Utility Steam Generating Units, Background Information for Promulgated Emission Standards," EPA-450/3-79-021). Due to the volume of this material and its continual development over a period of 2–3 years, it is not practical to consolidate all analyses into a single document. The following discussion gives a summary of the most significant alternatives considered. The rationale for the action taken for each pollutant being regulated is given in a previous section.

In order to determine the appropriate form and level of control for the standards, EPA has performed extensive analysis of the potential national impacts associated with the alternative standards. EPA employed economic models to forecast the structure and

operating characteristics of the utility industry in future years. These models project the environmental, economic, and energy impacts of alternative standards for the electric utility industry. The major analytical efforts took place in three phases as described below.

Phase 1. The initial effort comprised a preliminary analysis completed in April 1978 and a revised assessment completed in August 1978. These analyses were presented in the September 18, 1978 Federal Register proposal (43 FR 42154). Corrections to the September proposal package and additional information was published on November 27, 1978 (43 FR 55256). Further details of the analyses can be found in "Background Information for Proposed SO_2 Emission Standards—Supplement," EPA 450/2-78-007a-1.

Phase 2. Following the September 18 proposal, the EPA staff conducted additional analysis of the economic, environmental, and energy impacts associated with various alternative sulfur dioxide standards. As part of this effort, the EPA staff met with representatives of the Department of Energy, Council of Economic Advisors, Council on Wage and Price Stability, and others for the purpose of reexamining the assumptions used for the August analysis and to develop alternative forms of the standard for analysis. As a result, certain assumptions were changed and a number of new regulatory alternatives were defined. The EPA staff again employed the economic model that was used in August to project the national and regional impacts associated with each alternative considered.

The results of the phase 2 analysis were presented and discussed at the public hearings in December and were published in the Federal Register on December 8, 1978 (43 FR 7834).

Phase 3. Following the public hearings, the EPA staff continued to analyze the impacts of alternative sulfur dioxide standards. There were two primary reasons for the continuing analysis. First, the detailed analysis (separate from the economic modeling) of regional coal production impacts pointed to a need to investigate a range of higher emission limits.

Secondly, several comments were received from the public regarding the potential of dry sulfur dioxide scrubbing systems. The phase 1 and phase 2 analyses had assumed that utilities would use wet scrubbers only. Since dry scrubbing costs substantially less then wet scrubbing, adoption of the dry technology would substantially change the economic, energy, and environmental impacts of alternative sulfur dioxide standards. Hence, the phase 3 analysis focused on the impacts of alternative standards under a range of emission ceilings assuming both wet technology and the adoption of dry scrubbing for applications in which it is technically and economically feasible.

Impacts Analyzed

The environmental impacts of the alternative standards were examined by projecting pollutant emissions. The emissions were estimated nationally and by geographic region for each plant type, fuel type, and age category. The EPA staff also evaluated the waste products that would be generated under alternative standards.

The economic and financial effects of the alternatives were examined. This assessment included an estimation of the utility capital expenditures for new plant and pollution control equipment as well as the fuel costs and operating and maintenance expenses associated with the plant and equipment. These costs were examined in terms of annualized costs and annual revenue requirements. The impact on consumers was determined by analyzing the effect of the alternatives on average consumer costs and residential electric bills. The alternatives were also examined in terms of cost per ton of SO_2 removal. Finally, the present value costs of the alternatives were calculated.

The effects of the alternative proposals on energy production and consumption were also analyzed. National coal use was projected and broken down in terms of production and consumption by geographic region. The amount of western coal shipped to the Midwest and East was also estimated. In addition, utility consumption of oil and natural gas was analyzed.

Major Assumptions

Two types of assumptions have an important effect on the results of the analyses. The first group involves the model structure and characteristics. The second group includes the assumptions used to specify future economic conditions.

The utility model selected for this analysis can be characterized as a cost minimizing economic model. In meeting demand, it determines the most economic mix of plant capacity and electric generation for the utility system, based on a consideration of construction and operating costs for new plants and variable costs for existing plants. It also determines the optimum operating level for new and existing plants. This economic-based decision criteria should be kept in mind when analyzing the model results. These criteria imply, for example, that all utilities base decisions on lowest costs and that neutral risk is associated with alternative choices.

Such assumptions may not represent the utility decision making process in all cases. For example, the model assumes that a utility bases supply decisions on the cost of constructing and operating new capacity versus the cost of operating existing capacity. Environmentally, this implies a tradeoff between emissions from new and old sources. The cost minimization assumption implies that in meeting the standard a new power plant will fully scrub high-sulfur coal if this option is cheaper than fully or partially scrubbing low-sulfur coal. Often the model will have to make such a decision, especially in the Midwest where utilities can choose between burning local high-sulfur or imported western low-sulfur coal. The assumption of risk neutrality implies that a utility will always choose the low-cost option. Utilities, however, may perceive full scrubbing as involving more risks and pay a premium to be able to partially scrub the coal. On the other hand, they may perceive risks associated with long-range transportation of coal, and thus opt for full control even though partial control is less costly.

The assumptions used in the analyses to represent economic conditions in a given year have a significant impact on the final results reached. The major assumptions used in the analyses are shown in Table 1 and the significance of these parameters is summarized below.

The growth rate in demand for electric power is very important since this rate determines the amount of new capacity which will be needed and thus directly affects the emission estimates and the projections of pollution control costs. A high electric demand growth rate results in a larger emission reduction associated with the proposed standards and also results in higher costs.

The nuclear capacity assumed to be installed in a given year is also important to the analysis. Because nuclear power is less expensive, the model will predict construction of new nuclear plants rather than new coal plants. Hence, the nuclear capacity assumption affects the amount of new coal capacity which will be required to meet a given electric demand level. In practice, there are a number of constraints which limit the amount of nuclear capacity which can be constructed, but for this study, nuclear capacity was specified approximately

equal to the moderate growth projections of the Department of Energy.

The oil price assumption has a major impact on the amount of predicted new coal capacity, emissions, and oil consumption. Since the model makes generation decisions based on cost, a low oil price relative to the cost of building and operating a new coal plant will result in more oil-fired generation and less coal utilization. This results in less new coal capacity which reduces capital costs but increases oil consumption and fuel costs because oil is more expensive per Btu than coal. This shift in capacity utilization also affects emissions, since an existing oil plant generally has a higher emission rate than a new coal plant even when only partial control is allowed on the new plant.

Coal transportation and mine labor rates both affect the delivered price of coal. The assumed transportation rate is generally more important to the predicted consumption of low-sulfur coal (relative to high-sulfur coal), since that is the coal type which is most often shipped long distances. The assumed mining labor cost is more important to eastern coal costs and production estimates since this coal production is generally much more labor intensive than western coal.

Because of the uncertainty involved in predicting future economic conditions, the Administrator anticipated a large number of comments from the public regarding the modeling assumptions. While the Administrator would have liked to analyze each scenario under a range of assumptions for each critical parameter, the number of modeling inputs made such an approach impractical. To decide on the best assumptions and to limit the number of sensitivity runs, a joint working group was formed. The group was comprised of representatives from the Department of Energy, Council of Economic Advisors, Council on Wage and Price Stability, and others. The group reviewed model results to date, identified the key inputs, specified the assumptions, and identified the critical parameters for which the degree of uncertainty was such that sensitivity analyses should be performed. Three months of study resulted in a number of changes which are reflected in Table 1 and discussed below. These assumptions were used in both the phase 2 and phase 3 analyses.

After more evaluation, the joint working group concluded that the oil prices assumed in the phase 1 analysis were too high. On the other hand, no firm guidance was available as to what oil prices should be used. In view of this, the working group decided that the best course of action was to use two sets of oil prices which reflect the best estimates of those governmental entities concerned with projecting oil prices. The oil price sensitivity analysis was part of the phase 2 analysis which was distributed at the public hearing. Further details are available in the draft report, "Still Further Analysis of Alternative New Source Performance Standards for New Coal-Fired Power Plants (docket number IV–A–5)." The analysis showed that while the variation in oil price affected the magnitude of emissions, costs, and energy impacts, price variation had little effect on the relative impacts of the various NSPS alternatives tested. Based on this conclusion, the higher oil price was selected for modeling purposes since it paralleled more closely the middle range projections by the Department of Energy.

Reassessment of the assumptions made in the phase 1 analysis also revealed that the impact of the coal washing credit had not been considered in the modeling analysis. Other credits allowed by the September proposal, such as sulfur removed by the pulverizers or in bottom ash and flyash, were determined not to be significant when viewed at the national and regional levels. The coal washing credit, on the other hand, was found to have a significant effect on predicted emissions levels and, therefore, was factored into the analysis.

As a result of this reassessment, refinements also were made in the fuel gas desulfurization (FGD) costs assumed. These refinements include changes in sludge disposal costs, energy penalties calculated for reheat, and module sizing. In addition, an error was corrected in the calculation of partial scrubbing costs. These changes have resulted in relatively higher partial scrubbing costs when compared to full scrubbing.

Changes were made in the FGD availability assumption also. The phase 1 analysis assumed 100 percent availability of FGD systems. This assumption, however, was in conflict with EPA's estimates on module availability. In view of this, several alternatives in the phase 2 analysis were modeled at lower system availabilities. The assumed availability was consistent with a 90 percent availability for individual modules when the system is equipped with one spare. The analysis also took into consideration the emergency by-pass provisions of the proposed regulation. The analysis showed that lower reliabilities would result in somewhat higher emissions and costs for both the partial and full control cases. Total coal capacity was slightly lower under full control and slightly higher under partial control. While it was postulated that the lower reliability assumption would produce greater adverse impacts on full control than on partial control options, the relative differences in impacts were found to be insignificant. Hence, the working group discarded the reliability issue as a major consideration in the analyzing of national impacts of full and partial control options. The Administrator still believes that the newer approach better reflects the performance of well designed, operated, and maintained FGD systems. However, in order to expedite the analyses, all subsequent alternatives were analyzed with an assumed system reliability of 100 percent.

Another adjustment to the analysis was the incorporation of dry SO_2 scrubbing systems. Dry scrubbers were assumed to be available for both new and retrofit applications. The costs of these systems were estimated by EPA's Office of Research and Development based on pilot plant studies and contract prices for systems currently under construction. Based on economic analysis, the use of dry scrubbers was assumed for low-sulfur coal (less than 1290 ng/J or 3 lb SO_2/million Btu) applications in which the control requirement was 70 percent or less. For higher sulfur content coals, wet scrubbers were assumed to be more economical. Hence, the scenarios characterized as using "dry" costs contain a mix of wet and dry technology whereas the "wet" scenarios assume wet scrubbing technology only.

Additional refinements included a change in the capital charge rate for pollution control equipment to conform to the Federal tax laws on depreciation, and the addition of 100 billion tons of coal reserves not previously accounted for in the model.

Finally, a number of less significant adjustments were made. These included adjustments in nuclear capacity to reflect a cancellation of a plant, consideration of oil consumption in transporting coal, and the adjustment of costs to 1978 dollars rather than 1975 dollars. It should be understood that all reported costs include the costs of complying with the proposed particulate matter standard and NO_x standards, as well as the sulfur dioxide alternatives. The model does not incorporate the Agency's PSD regulations nor

forthcoming requirements to protect visibility.

Public Comments

Following the September proposal, a number of comments were received on the impact analysis. A great number focused on the model inputs, which were reviewed in detail by the joint working group. Members of the joint working group represented a spectrum of expertise (energy, jobs, environment, inflation, commerce). The following paragraphs discuss only those comments addressed to parts of the analysis which were not discussed in the preceding section.

One commenter suggested that the costs of complying with State Implementation Plan (SIP) regulations and prevention of significant deterioration requirements should not be charged to the standards. These costs are not charged to the standards in the analyses. Control requirements under PSD are based on site specific, case-by-case decisions for which the standards serves as a minimum level of control. Since these judgments cannot be forecasted accurately, no additional control was assumed by the model beyond the requirements of these standards. In addition, the cost of meeting the various SIP regulations was included as a base cost in all the scenarios modeled. Thus, any forecasted cost differences among alternative standards reflect differences in utility expenditures attributable to changes in the standards only.

Another commenter believed that the time horizon for the analysis (1990/1995) was too short since most plants on line at that time will not be subject to the revised standard. Beyond 1995, our data show that many of the power plants on line today will be approaching retirement age. As utilization of older capacity declines, demand will be picked up by newer, better controlled plants. As this replacement occurs, national SO_2 emissions will begin to decline. Based on this projection, the Administrator believes that the 1990–1995 time frame will represent the peak years for SO_2 emissions and is, therefore, the relevant time frame for this analysis.

Use of a higher general inflation rate was suggested by one commenter. A distinction must be made between general inflation rates and real cost escalation. Recognizing the uncertainty of future inflation rates, the EPA staff conducted the economic analysis in a manner that minimized reliance on this assumption. All construction, operating, and fuel costs were expressed as constant year dollars and therefore the analysis is not affected by the inflation rate. Only real cost escalation was included in the economic analysis. The inflation rates will have an impact on the present value discount rate chosen since this factor equals the inflation rate plus the real discount rate. However, this impact is constant across all scenarios and will have little impact on the conclusions of the analysis.

Another commenter opposed the presentation of economic impacts in terms of monthly residential electric bills, since this treatment neglects the impact of higher energy costs to industry. The Administrator agrees with this comment and has included indirect consumer impacts in the analysis. Based on results of previous analysis of the electric utility industry, about half of the total costs due to pollution control are felt as direct increases in residential electric bills. The increased costs also flow into the commercial and industrial sectors where they appear as increased costs of consumer goods. Since the Administrator is unaware of any evidence of a multiplier effect on these costs, straight cost pass through was assumed. Based on this analysis, the indirect consumer impacts (Table 5) were considered to be equal to the monthly residential bills ("Economic and Financial Impacts of Federal Air and Water Pollution Controls on the Electric Utility Industry," EPA–230/3–76/013, May 1976).

One utility company commented that the model did not adequately simulate utility operation since it did not carry out hour-by-hour dispatch of generating units. The model dispatches by means of load duration curves which were developed for each of 35 demand regions across the United States. Development of these curves took into consideration representative daily load curves, traditional utility reserve margins, seasonal demand variations, and historical generation data. The Administrator believes that this approach is adequate for forecasting long-term impacts since it plans for meeting short-term peak demand requirements.

Summary of Results

The final results of the analyses are presented in Tables 2 through 5 and discussed below. For the three alternative standards presented, emission limits and percent reduction requirements are 30-day rolling averages, and each standard was analyzed with a particulate standard of 13 ng/J (0.03 lb/million Btu) and the proposed NO_x standards. The full control option was specified as a 520 ng/J (1.2 lb/million Btu) emission limit with a 90 percent reduction in potential SO_2 emissions. The other options are the same as full control except when the emissions to the atmosphere are reduced below 260 ng/J (0.6 lb/million Btu) in which case the minimum percent reduction requirement is reduced. The variable control option requires a 70 percent minimum reduction and the partial control option has a 33 percent minimum reduction requirement. The impacts of each option were forecast first assuming the use of wet scrubbers only and then assuming introduction of dry scrubbing technology. In contrast to the September proposal which focused on 1990 impacts, the analytical results presented today are for the year 1995. The Administrator believes that 1995 better represents the differences among alternatives since more new plants subject to the standard will be on line by 1995. Results of the 1990 analyses are available in the public record.

Wet Scrubbing Results

The projected SO_2 emissions from utility boilers are shown by plant type and geographic region in Tables 2 and 3. Table 2 details the 1995 national SO_2 emissions resulting from different plant types and age groups. These standards will reduce 1995 SO_2 emissions by about 3 million tons per year (13 percent) as compared to the current standards. The emissions from new plants directly affected by the standards are reduced by up to 55 percent. The emission reduction from new plants is due in part to lower emission rates and in part to reduced coal consumption predicted by the model. The reduced coal consumption in new plants results from the increased cost of constructing and operating new coal plants due to pollution controls. With these increased costs, the model predicts delays in construction of new plants and changes in the utilization of these plants after start-up. Reduced coal consumption by new plants is accompanied by higher utilization of existing plants and combustion turbines. This shift causes increased emissions from existing coal- and oil-fired plants, which partially offsets the emission reductions achieved by new plants subject to the standard.

Projections of 1995 regional SO_2 emissions are summarized in Table 3. Emissions in the East are reduced by about 10 to 13 percent as compared to predictions under the current standards, whereas Midwestern emissions are reduced only slightly. The smaller reductions in the Midwest are due to a slow growth of new coal-fired capacity.

In general, introductions of coal-fired capacity tends to reduce emissions since new coal plants replace old coal- and oil-fired units which have higher emission rates. The greatest emission reduction occurs in the West and West South Central regions where significant growth is expected and today's emissions are relatively low. For these two regions combined, the full control option reduces emissions by 40 percent from emission levels under the current standards, while the partial and variable options produce reductions of about 30 percent.

Table 4 illustrates the effect of the proposed standards on 1995 coal production, western coal shipped east, and utility oil and gas consumption. National coal production is predicted to triple by 1995 under all the alternative standards. This increased demand raises production in all regions of the country as compared to 1975 levels. Considering these major increases in national production, the small production variations among the alternatives are not large. Compared to production under the current standards, production is down somewhat in the West, Northern Great Plains, and Appalachia, while production is up in the Midwest. These shifts occur because of the reduced economic advantage of low-sulfur coals under the revised standards. While three times higher than 1975 levels, western coal shipped east is lower under all options than under the current standards.

Oil consumption in 1975 was 1.4 million barrels per day. The 3.1 million barrels per day figure for 1975 consumption in Table 4 includes utility natural gas consumption (equivalent of 1.7 million barrels per day) which the analysis assumed would be phased out by 1990. Hence, in 1995, the 1.4 million barrel per day projection under current standards reflects retirement of existing oil capacity and offsetting increases in consumption due to gas-to-oil conversions.

Oil consumption by utilities is predicted to increase under all the options. Compared to the current standards, increased consumption is 200,000 barrels per day under the partial and variable options and 400,000 barrels per day under full control. Oil consumption differences are due to the higher costs of new coal plants under these standards, which causes a shift to more generation from existing oil plants and combustion turbines. This shift in generation mix has important implications for the decision-making process, since the only assumed constraint to utility oil use was the price. For example, if national energy policy imposes other constraints which phase out or stabilize oil use for electric power generation, then the differences in both oil consumption and oil plant emissions (Table 2) across the various standards will be mitigated. Constraining oil consumption, however, will spread cost differences among standards.

The economic effects in 1995 are shown in Table 5. Utility capital expenditures increase under all options as compared to the $770 billion estimated to be required through 1995 in the absence of a change in the standard. The capital estimates in Table 5 are increments over the expenditures under the current standard and include both plant capital (for new capacity) and pollution control expenditures. As shown in Table 2, the model estimates total industry coal capacity to be about 17 GW (3 percent) greater under the non-uniform control options. The cost of this extra capacity makes the total utility capital expenditures higher under the partial and variable options, than under the full control option, even though pollution control capital is lower.

Annualized cost includes levelized capital charges, fuel costs, and operation and maintenance costs associated with utility equipment. All of the options cause an increase in annualized cost over the current standards. This increase ranges from a low of $3.2 billion for partial control to $4.1 billion for full control, compared to the total utility annualized costs of about $175 billion.

The average monthly bill is determined by estimating utility revenue requirements which are a function of capital expenditures, fuel costs, and operation and maintenance costs. The average bill is predicted to increase only slightly under any of the options, up to a maximum 3-percent increase shown for full control. Over half of the large total increase in the average monthly bill over 1975 levels ($25.50 per month) is due to a significant increase in the amount of electricity used by each customer. Pollution control expenditures, including those to meet the current standards, account for about 15 percent of the increase in the cost per kilowatt-hour while the remainder of the cost increase is due to capital intensive capacity expansion and real escalations in construction and fuel cost.

Indirect consumer impacts range from $1.10 to $1.60 per month depending on the alternative selected. Indirect consumer impacts reflect increases in consumer prices due to the increased energy costs in the commercial and industrial sectors.

The incremental costs per ton of SO_2 removal are also shown in Table 5. The figures are determined by dividing the change in annualized cost by the change in annual emissions, as compared to the current standards. These ratios are a measure of the cost effectiveness of the options, where lower ratios represent a more efficient resource allocation. All the options result in higher cost per ton than the current standards with the full control option being the most expensive.

Another measure of cost effectiveness is the average dollar-per-ton cost at the plant level. This figure compares total pollution control cost with total SO_2 emission reduction for a model plant. This average removal cost varies depending on the level of control and the coal sulfur content. The range for full control is from $325 per ton on high-sulfur coal to $1,700 per ton on low-sulfur coal. On low-sulfur coals, the partial control cost is $2,000 per ton, and the variable cost is $1,700 per ton.

The economic analyses also estimated the net present value cost of each option. Present value facilitates comparison of the options by reducing the streams of capital, fuel, and operation and maintenance expenses to one number. A present value estimate allows expenditures occurring at different times to be evaluated on a similar basis by discounting the expenditures back to a fixed year. The costs chosen for the present value analysis were the incremental utility revenue requirements relative to the current NSPS. These revenue requirements most closely represent the costs faced by consumers. Table 5 shows that the present value increment for 1995 capacity is $41 billion for full control, $37 billion for variable control, and $32 billion for partial control.

Dry Scrubbing Results

Tables 2 through 5 also show the impacts of the options under the assumption that dry SO_2 scrubbing systems penetrate the pollution control market. These analyses assume that utilities will install dry scrubbing systems for all applications where they are technologically feasible and less costly than wet systems. (See earlier discussion of assumptions.)

The projected SO_2 emissions from utility boilers are shown by plan type and geographic region in Tables 2 and 3. National emission projections are similar to the wet scrubbing results. Under the dry control assumption, however, the variable control option is predicted to have the lowest national

emissions primarily due to lower oil plant emissions relative to the full control option. Partial control produces more emissions than variable control because of higher emissions from new plants. Compared to the current standards, regional emission impacts are also similar to the wet scrubbing projections. Full control results in the lowest emissions in the West, while variable control results in the lowest emissions in the East. Emissions in the Midwest and West South Central are relatively unaffected by the options.

Inspection of Tables 2 and 3 shows that with the dry control assumption the current standard, full control, and partial control cases produce slightly higher emissions than the corresponding wet control cases. This is due to several factors, the most important of which is a shift in the generation mix. This shift occurs because dry scrubbers have lower capital costs and higher variable costs than wet scrubbers and, therefor, the two systems have different effects on the plant utilization rates. The higher variable costs are due primarily to transportation charges on intermediate to low sulfur coal which must be used with dry scrubbers. The increased variable cost of dry controls alters the dispatch order of existing plants so that older, uncontrolled plants operate at relatively higher capacity factors than would occur under the wet scrubbing assumption, hence increasing total emissions. Another factor affecting emissions is utility coal selection which may be altered by differences in pollution control costs.

Table 4 shows the effect to the proposed standards on fuels in 1995. National coal production remains essentially the same whether dry or wet controls are assumed. However, the use of dry controls causes a slight reallocation in regional coal production, except under a full control option where dry controls cannot be applied to new plants. Under the variable and partial options Appalachian production increases somewhat due to greater demand for intermediate sulfur coals while Midwestern coal production declines slightly. The non-uniform options also result in a small shifting in the western regions with Northern Great Plains production declining and production in the rest of West increasing. The amount of western coal shipped east under the current standard is reduced from 122 million to 99 million tons (20% decrease) due to the increased use of eastern intermediate sulfur coals for dry scrubbing applications. Western coal shipped east is reduced further by the revised standards, to a low of 55 million tons under full control. Oil impacts under the dry control assumption are identical to the wet control cases, with full control resulting in increased consumption of 200 thousand barrels per day relative to the partial and variable options.

The 1995 economic effects of these standards are presented in Table 5. In general, the dry control assumption results in lower costs. However, when comparing the dry control costs to the wet control figures it must be kept in mind that the cost base for comparison, the current standards, is different under the dry control and wet control assumptions. Thus, while the uncremental costs of full control are higher under the dry scrubber assumption the total costs of meeting the standard is lower than if wet controls were used.

The economic impact figures show that when dry controls are assumed the cost savings associated with the variable and partial options is significantly increased over the wet control cases. Relative to full control the partial control option nets a savings of $1.4 billion in annualized costs which equals a $14 billion net present value savings. Variable control results in a $1.1 billion annualized cost savings which is a savings of $12 billion in net present value. These changes in utility costs affect the average residential bill only slightly, with partial control resulting in a savings of $.50 per month and variable control savings of $.40 per month on the average bill, relative to full control.

Conclusions

One finding that has been clearly demonstrated by the two years of analysis is that lower emission standards on new plants do not necessarily result in lower national SO_2 emissions when total emissions from the entire utility system are considered. There are two reasons for this finding. First, the lowest emissions tend to result from strategies that encourage the construction of new coal capacity. This capacity, almost regardless of the alternative analyzed, will be less polluting than the existing coal- or oil-fired capacity that it replaces. Second, the higher cost of operating the new capacity (due to higher pollution costs) may cause the newer, cleaner plants to be utilized less than they would be under a less stringent alternative. These situations are demonstrated by the analyses presented here.

The variable control option produces emissions that are equal to or lower than the other options under both the wet and dry scrubbing assumptions. Compared to full control, variable control is predicted to result in 12 GW to 17 GW more coal capacity. This additional capacity replaces dirtier existing plants and compensates for the slight increase in emissions from new plants subject to the standards, hence causing emissions to be less than or equal to full control emissions depending on scrubbing cost assumption (i.e., wet or dry). Partial control and variable control produce about the same coal capacity, but the additional 300 thousand ton emission reduction from new plants causes lower total emissions under the variable option. Regionally, all the options produce about the same emissions in the Midwest and West South Central regions. Full control produces 200 thousands tons less emissions in the West than the variable option and 300 thousand tons less than partial control. But the variable and partial options produce between 200 and 300 thousand tons less emissions in the East.

The variable and partial control options have a clear advantage over full control with respect to costs under both the wet and dry scrubbing assumptions. Under the dry assumption, which the Administrator believes represents the best prediction of utility behavior, variable control saves about $1.1 billion per year relative to full control and partial control saves an additional $0.3 billion.

All the options have similar impacts on coal production especially when considering the large increase predicted over 1975 production levels. With respect to oil consumption, however, the full control option causes a 200,000 barrel per day increase as compared to both the partial and variable options.

Based on these analyses, the Administrator has concluded that a non-uniform control strategy is best considering the environmental, energy, and economic impacts at both national and regional levels. Compared to other options analyzed, the variable control standard presented above achieves the lowest emissions in an efficient manner and will not disrupt local or regional coal markets. Moreover, this option avoids the 200 thousand barrel per day oil penalty which has been predicted under a number of control options. For these reasons, the Administrator believes that the variable control option provides the best balance of national environmental, energy, and economic objectives.

Table 1.—*Key Modeling Assumptions*

Assumption	
Growth rates	1975–1985: 4.8%/yr. 1985–1995: 4.0%.
Nuclear capacity	1985: 97 GW. 1990: 165. 1995: 228.
Oil prices (\$ 1975)	1985: \$12.90/bbl. 1990: \$16.40. 1995: \$21.00.
Coal transportation	1% per year real increase.
Coal mining labor costs	U.M.W. settlement and 1% real increase thereafter.
Capital charge rate	12.5% for pollution control expenditures.
Cost reporting basis	1978 dollars.
FGD costs	No change from phase 2 analysis except for the addition of dry scrubbing systems for certain applications.
Coal cleaning credit	5%–35% SO_2 reduction assumed for high sulfur bituminous coals only.
Bottom ash and fly ash content	No credit assumed.

Table 2.—*National 1995 SO_2 Emissions From Utility Boilers* [a]

[Million tons]

Plant category	1975 actual	Level of control [b]: Current standards		Full control		Partial control 33% minimum		Variable control 70% minimum	
		Wet [d]	*Dry* [e]	*Wet*	*Dry*	*Wet*	*Dry*	*Wet*	*Dry*
SIP/NSPS Plants [c]		15.5	15.8	16.0	16.2	15.9	16.2	16.0	16.1
New Plants [f]		7.1	7.0	3.1	3.1	3.6	3.4	3.3	3.1
Oil Plants		1.0	1.0	1.4	1.4	1.3	1.2	1.3	1.2
Total National Emissions	18.6	23.7	23.8	20.6	20.7	20.8	20.9	20.6	20.5
Total Coal Capacity (GW)	205	552	554	521	520	534	537	533	537
Sludge generated (million tons dry)		23	27	56	56	43	38	80	41

[a] Results of joint EPA/DOE analyses completed in May 1979 based on oil prices of \$12.90, \$16.40, and \$21.00/bbl in the years 1985, 1990, and 1995, respectively.
[b] With 520 ng/J maximum emission limit.
[c] Plants subject to existing State regulations or the current NSPS of 1.2 lb SO_2/million BTU.
[d] Based on wet SO_2 scrubbing costs.
[e] Based on dry SO_2 scrubbing costs where applicable.
[f] Plants subject to the revised standards.

Table 3.—*Regional 1995 SO_2 Emissions From Utility Boilers* [a]

[Million tons]

	1975 actual	Level of control [b]: Current standards		Full control		Partial control 33% minimum		Variable control 70% minimum	
		Wet [c]	*Dry* [d]	*Wet*	*Dry*	*Wet*	*Dry*	*Wet*	*Dry*
Total National Emissions	18.6	23.7	23.8	20.6	20.7	20.8	20.9	20.6	20.5
Regional Emissions:									
East [e]		11.2	11.2	10.1	10.1	9.8	9.8	9.8	9.7
Midwest [f]		8.1	8.3	7.9	7.9	7.9	8.0	7.8	8.0
West South Central [g]		2.6	2.6	1.7	1.7	1.8	1.8	1.8	1.7
West [h]		1.7	1.7	0.9	0.9	1.2	1.2	1.1	1.1
Total Coal Capacity (GW)	205	552	554	521	520	534	537	533	537

[a] Results of joint EPA/DOE analyses completed in May 1979 based on oil prices of \$12.90, \$16.40, and \$21.00/bbl in the years 1985, 1990, and 1995, respectively.
[b] With 520 ng/J maximum emission limit.
[c] Based on wet SO_2 scrubbing costs.
[d] Based on dry SO_2 scrubbing costs where applicable.
[e] New England, Middle Atlantic, South Atlantic, and East South Central Census Regions.
[f] East North Central and West North Central Census Regions.
[g] West South Central Census Region.
[h] Mountain and Pacific Census Regions.

Performance Testing

Particulate Matter

The final regulations require that Method 5 or 17 under 40 CFR Part 60, Appendix A, be used to determine compliance with the particulate matter emission limit. Particulate matter may be collected with Method 5 at an outstack filter temperature up to 160 C (320 F); Method 17 may be used when stack temperatures are less than 160 C (320 F). Compliance with the opacity standard in the final regulation is determined by means of Method 9, under 40 CFR Part 60, Appendix A. A transmissometer that meets Performance Specification 1 under 40 CFR Part 60, Appendix B is required.

Several comments were received which questioned the accuracy of Methods 5 and 17 when used to measure particulate matter at the level of the standard. The accuracy of Methods 5 and 17 is dependent on the amount of sample collected and not the concentration in the gas stream. To maintain an accuracy comparable to the accuracy obtained when testing for mass emission rates higher than the standard, it is necessary to sample for longer times. For this reason, the regulation requires a minimum sampling time of 120 minutes and a minimum sampling volume of 1.7 dscm (60 dscf).

Three comments raised the issue of potential interference of acid mist with the measurement of particulate matter. The Administrator recognized this issue prior to proposal of the regulations. In the preamble to the proposed regulations, the Administrator indicated that investigations would continue to determine the extent of the problem. A series of tests at an FGD-equipped facility burning 3-percent-sulfur coal indicate that the amount of sample collected using Method 5 procedures is temperature sensitive over the range of filter temperatures used (250° F to 320° F), with reduced weights at higher temperatures. Presumably, the decreased weight at higher filter temperatures reflect vaporization of acid mist. Recently received particulate emission data using Method 5 at 32° F for a second coal-fired power plant equipped with an electrostatic precipitator and an FGD system apparently conflicts with the data generated by EPA. For this plant, particulate matter was measured at 0.02 lbs/million Btu. It is not known what portion of this particulate matter, if any was attributable to sulfuric acid mist.

The intent of the particulate matter standard is to insure the installation, operation, and maintenance of a good

Table 4—*Impacts on Fuels in 1995*[a]

	Level of control[b]								
	1975 actual	Current standards		Full control		Partial control 93% minimum		Variable control 70% minimum	
		Wet[c]	Dry[d]	Wet	Dry	Wet	Dry	Wet	Dry
U.S. Coal Production (million tons):									
Appalachia	396	469	524	463	465	475	486	470	484
Midwest	151	404	391	467	466	456	452	465	460
Northern Great Plains	54	655	630	633	628	622	576	632	602
West	46	230	222	182	180	212	228	203	217
Total	647	1,778	1,767	1,765	1,761	1,765	1,742	1,770	1,752
Western Coal Shipped East (million tons)	21	122	99	59	55	66	59	71	70
Oil Consumption by Power Plants (million bbl/day):									
Power Plants		1.2	1.2	1.8	1.8	1.4	1.4	1.4	1.4
Coal Transportation		0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2
Total	3.1	1.4	1.4	1.8	1.8	1.6	1.6	1.8	1.8

[a] Results of EPA analyses completed in May 1979 based on oil prices of $12.60, $16.40, and $21.00/bbl in the years 1985, 1990, and 1995, respectively.
[b] With 520ng/J maximum emission limit.
[c] Based on wet SO_2 scrubbing costs.
[d] Based on dry SO_2 scrubbing where applicable.

Table 5.—*1995 Economic Impacts*[a]

[1976 dollars]

	Level of control[b]							
	Current standards		Full control		Partial control 93% minimum		Variable control 70% minimum	
	Wet[c]	Dry[d]	Wet	Dry	Wet	Dry	Wet	Dry
Average Monthly Residential Bills ($/month)	$53.00	$52.85	$54.50	$54.45	$54.15	$53.85	$54.30	$54.05
Indirect Consumer Impacts ($/month)			1.50	1.80	1.15	1.10	1.30	1.20
Incremental Utility Capital Expenditures, Cumulative 1976–1995 ($ billions)			4	5	6	−3	10	−1
Incremental Annualized Cost ($ billions)			4.1	4.4	3.2	3.0	3.6	3.3
Present Value of Incremental Utility Revenue Requirements ($ billions)			41	46	32	31	37	33
Incremental Cost of SO_2 Reduction ($/ton)			1,222	1,429	1,004	1,012	1,163	1,096

[a] Results of EPA analyses completed in May 1979 based on oil prices of $12.60, $16.40, and $21.00/bbl in the years 1985, 1990, and 1995, respectively.
[b] With 520 ng/J maximum emission limit.
[c] Based on wet SO_2 scrubbing costs.
[d] Based on dry SO_2 scrubbing costs where applicable.

emission control system. Since technology is not available for the control of sulfuric acid mist, which is condensed in the FGD system, the Administrator does not believe the particulate matter sample should include condensed acid mist. The final regulation, therefore, allows particulate matter testing for compliance between the outlet of the particulate matter control device and the inlet of a wet FGD system. EPA will continue to investigate revised procedures to minimize the measurement of acid mist by Methods 5 or 17 when used to measure particulate matter after the FGD system. Since technology is available to control particulate sulfate carryover from an FGD system, and the Administrator believes good mist eliminators should be included with all FGD systems, the regulations will be amended to require particulate matter measurement after the FGD system when revised procedures for Methods 5 or 17 are available.

SO_2 and NO_x

The final regulation requires that compliance with the sulfur dioxide and nitrogen oxides standards be determined by using continuous monitoring systems (CMS) meeting Performance Specifications 2 and 3, under 40 CFR Part 60, Appendix B. Data from the CMS are used to calculate a 30-day rolling average emission rate and percentage reduction (sulfur dioxide only) for the initial performance test required under 40 CFR 60.8. At the end of each boiler operating day after the initial performance test a new 30-day rolling average emission rate for sulfur dioxide and nitrogen oxides and an average percent reduction for sulfur dioxide are determined. The final regulations specify the minimum amount of data that must be obtained for each 30 successive boiler operating days but requires the calculation of the average emission rate and percentage reduction based on all available data. The minimum data requirements can be satisfied by using the Reference Methods or other approved alternative methods when the CMS, or components of the system, are inoperative.

The final regulation requires operation of the continuous monitors at all times, including periods of startup, shutdown, malfunction (NO_x only), and emergency conditions (SO_2 only), except for those periods when the CMS is inoperative because of malfunctions, calibration or span checks.

The proposed regulations would have required that compliance be based on the emission rate and percent reduction

(sulfur dioxide only) for each 24-hour period of operation. Continual determination of compliance with the proposed standard would have necessitated that each source owner or operator install redundant CMS or conduct manual testing in the event of CMS malfunction.

Comments on the proposed testing requirements for sulfur dioxide and nitrogen oxides indicated that CMS could not operate without malfunctions; therefore, every facility would require redundant CMS. One commenter calculated that seven CMS would be needed to provide the required data. Comments also questioned the practicality and feasibility of obtaining around-the-clock emissions data by means of manual testing in the event of CMS malfunction. The commenter stated that the need for immediate backup testing using manual methods would require a stand-by test team at all times and that extreme weather conditions or other circumstances could often make it impossible for the test team to obtain the required data. The Administrator agrees with these comments and has redefined the data requirements to reflect the performance that can be achieved with one well-maintained CMS. The final requirements are designed to eliminate the need for redundant CMS and minimize the possibility that manual testing will be necessary, while assuring acquisition of sufficient data to document compliance.

Compliance with the emission limitations for sulfur dioxide and nitrogen oxides and the percentage reduction for sulfur dioxide is determined from all available hourly averages, except for periods of startup, shutdown, malfunction or emergency conditions for each 30 successive boiler operating days. Minimum data requirements have been established for hourly averages, for 24-hour periods, and for the 30 successive boiler operating days. These minimum requirements eliminate the need for redundant CMS and minimize the need for testing using manual sampling techniques. The minimum requirements apply separately to inlet and outlet monitoring systems.

The regulation allows calculation of hourly averages for the CMS using two or more of the required four data points. This provision was added to accommodate those monitors for which span and calibration checks and minor repairs might require more than 15 minutes.

For any 24-hour period, emissions data must be obtained for a minimum of 75 percent of the hours during which the affected facility is operated (including startup, shutdown, malfunctions or emergency conditions). This provision was added to allow additional time for CMS calibrations and to correct minor CMS problems, such as a lamp failure, a plugged probe, or a soiled lens. Statistical analyses of data obtained by EPA show that there is no significant difference (at the 95 percent confidence interval) between 24-hour means based on 75 percent of the data and those based on the full data set.

To provide time to correct major CMS malfunctions and minimize the possibility that supplemental testing will be needed, a provision has been added which allows the source owner or operator to demonstrate compliance if the minimum data for each 24-hour period has been obtained for 22 of the 30 successive boiler operating days. This provision is based on EPA studies that have shown that a single pair of CMS pollutant and diluent monitors can be made available in excess of 75 percent of the time and several comments showing CMS availability in excess of 90 percent of the time.

In the event a CMS malfunction would prevent the source owner or operator from meeting the minimum data requirements, the regulation requires that the reference methods or other procedures approved by the Administrator be used to supplement the data. The Administrator believes, however, that a single properly designed, maintained, and operated CMS with trained personnel and an appropriate inventory of spare parts can achieve the monitoring requirements with currently available CMS equipment. In the event that an owner or operator fails to meet the minimum data requirements, a procedure is provided which may be used by the Administrator to determine compliance with the SO_2 and NO_x standards. The procedure is provided to reduce potential problems that might arise if an owner or operation is unable to meet the minimum data requirements or attempts to manipulate the acquisition of data so as to avoid the demonstration of noncompliance. The Administrator believes that an owner or operator should not be able to avoid a finding of noncompliance with the emission standards solely by noncompliance with the minimum data requirements. Penalties related only to failure to meet the minimum data requirements may be less than those for failure to meet the emission standards and may not provide as great an incentive to maintain compliance with the regulations.

The procedure involves the calculation of standard deviations for the available inlet SO_2 monitoring data and the available outlet SO_2 and NO_x monitoring data and assumes the data are normally distributed. The standard deviation of the inlet monitoring data for SO_2 is used to calculate the upper confidence limit of the inlet emission rate at the 95 percent confidence interval. The upper confidence limit of the inlet emission rate is used to determine the potential combustion concentration and the allowable emission rate. The standard deviation of the outlet monitoring data for SO_2 and NO_x are used to calculate the lower confidence limit of the outlet emission rates at the 95 percent confidence interval. The lower confidence limit of the outlet emission rate is compared with the allowable emission rate to determine compliance. If the lower confidence limit of the outlet emission rate is greater than the allowable emission rate for the reporting period, the Administrator will conclude that noncompliance has occurred.

The regulations require the source owner or operator who fails to meet the minimum data requirements to perform the calculations required by the added procedure, and to report the results of the calculations in the quarterly report. The Administrator may use this information for determining the compliance status of the affected facility.

It is emphasized that while the regulations permit a determination of the compliance status of a facility in the absence of data reflecting some periods of operation, an owner and operator is required by 40 CFR 60.11(d) to continue to operate the facility at all times so as to minimize emissions consistent with good engineering practice. Also, the added procedure which allows for a determination of compliance when less than the minimum monitoring data have been obtained does not exempt the source owner or operator from the minimum data requirements. Exemption from the minimum data requirements could allow the source owner to circumvent the standard, since the added procedure assumes random variations in emission rates.

One commenter suggested that operating data be used in place of CMS data to demonstrate compliance. The Administrator does not believe, however, that the demonstration of compliance can be based on operating data alone. Consideration was given to the reporting of operating parameters during those periods when emissions data have not been obtained. This

alternative was rejected because it would mean that the source owner or operator would need to record the operating parameters at all times, and would impose an administrative burden on source owners or operators in compliance with the emission monitoring requirements. The regulation requires the owner or operator to certify that the emission control systems have been kept in operation during periods when emissions data have not been obtained.

Several commenters indicated that CMS were not sufficiently accurate to allow for a determination of compliance. One commenter provided calculations showing that the CMS could report an FGD efficiency ranging from 77.5 to 90 percent, with the scrubber operating at an efficiency of 85 percent. The analysis submitted by the commenter is theoretically possible for any single data point generated by the CMS. For the 30-day averaging periods, however, random variations in individual data points are not significant. The criterion of importance in showing compliance for this longer averaging time is the difference between the mean values measured by the CMS and the reference methods. EPA is developing quality assurance procedures, which will require a periodic demonstration that the mean emission rates measured by the CMS demonstrates a consistent and reproducible relationship with the mean emission rates measured by the reference methods or acceptable modifications of these methods.

A specific comment received on the monitoring requirements questioned the need to respan the CMS for sulfur dioxide when the sulfur content of the fuel changed by 0.5 percent. The intent of this requirement was to assure that a change in fuel sulfur content would not result in emissions exceeding the range of the CMS. This requirement has been deleted on the premise that the source owner or operator will initiate his own procedures to protect himself against loss of data.

Several comments were also received concerning detailed technical items contained in Performance Specifications 2 and 3. One comment, for example, suggested that a single "relative accuracy" specification be used for the entire CMS, as opposed to separate values for the pollutant and diluent monitors. Another comment questioned the performance specification on instrument response time, while still other comments raised questions on calibration procedures. EPA is in the process of revising Performance Specifications 2 and 3 to respond to these, and other questions. The current performance specifications, however, are adequate for the determination of compliance.

Fuel Pretreatment

The final regulation allows credit for fuel pretreatment to remove sulfur or increase heat content. Fuel pretreatment credits are determined in accordance with Method 19. This means that coal or oil may be treated before firing and the sulfur removed may be credited toward meeting the SO_2 percentage reduction requirement. The final fuel pretreatment provisions are the same as those proposed.

Most all commenters on this issue supported the fuel pretreatment crediting procedures proposed by EPA. Several commenters requested that credit also be given for sulfur removed in the coal bottom ash and fly ash. This is allowed under the final regulation and was also allowed under the proposal in the optional "as-fired" fuel sampling procedures under the SO_2 emission monitoring requirements. By monitoring SO_2 emissions (ng/J, lb/million Btu) with an as-fired fuel sampling system located upstream of coal pulverizers and with an in-stack continuous SO_2 monitoring system downstream of the FGD system, sulfur removal credits are combined for the coal pulverizer, bottom ash, fly ash and FGD system into one removal efficiency. Other alternative sampling procedures may also be submitted to the Administrator for approval.

Several commenters indicated that they did not understand the proposed fuel pretreatment crediting procedure for refined fuel oil. The Administrator intended to allow fuel pretreatment credits for all fuel oil desulfurization processes used in preparation of utility boiler fuels. Thus, the input and output from oil desulfurization processes (e.g., hydrotreatment units) that are used to pretreat utility boiler fuels used in determining pretreatment credits. If desulfurized oil is blended with undesulfurized oil, fuel pretreatment credits are prorated based on heat input of oils blended. The Administrator believes that the oil input to the desulfurizer should be considered the input for credit determination and not the well head crude oil or input oil to the refinery. Refining of crude oil results in the separation of the base stock into various density fractions which range from lighter products such as naphtha and distillate oils. Most of the sulfur from the crude oil is bound to the heavier residual oils which may have a sulfur content of twice the input crude oil. The residual oils can be upgraded to a lower sulfur utility steam generator fuel through the use of desulfurization technology (such as hydrodesulfurization). The Administrator believes that it is appropriate to give full fuel pretreatment credit for hydrotreatment units and not to penalize hydrodesulfurization units which are used to process high-sulfur residual oils. Thus, the input to the hydrodesulfurization unit is used to determine oil pretreatment credits and not the lower sulfur refinery input crude. This procedure will allow full credit for residual oil hydrodesulfurization units.

In relation to fuel pretreatment credits for coal, commenters requested that sampling be allowed prior to the initial coal breaker. Under the final standards, coal sampling may be conducted at any location (either before or after the initial coal breaker). It is desirable to sample coal after the initial breaker because the smaller coal volume and coal size will reduce sampling requirements under Method 19. If sampling were conducted before the initial breaker, rock removed by the coal breaker would not result in any additional sulfur removal credit. Coal samples are analyzed to determine potential SO_2 emissions in ng/J (lb/million Btu) and any removal of rock or other similar reject material will not change the potential SO_2 emission rate (ng/J; lb/million Btu).

An owner or operator of an affected facility who elects to use fuel pretreatment credits is responsible for insuring that the EPA Method 19 procedures are followed in determining SO_2 removal credit for pretreatment equipment.

Miscellaneous

Establishment of standards of performance for electric utility steam generating units was preceded by the Administrator's determination that these sources contribute significantly to air pollution which causes or contributes to the endangerment of public health or welfare (36 FR 5931), and by proposal of regulations on September 16, 1978 (43 FR 42154). In addition, a preproposal public hearing (May 25–26, 1977) and a postproposal public hearing (December 12–13, 1978) was held after notification was given in the Federal Register. Under section 117 of the Act, publication of these regulations was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

Standards of performance for new fossil-fuel-fired stationary sources established under section 111 of the Clean Air Act reflect:

Application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. [section 111(a)(1)]

Although there may be emission control technology available that can reduce emissions below those levels required to comply with standards of performance, this technology might not be selected as the basis of standards of performance due to costs associated with its use. Accordingly, standards of performance should not be viewed as the ultimate in achievable emission control. In fact, the Act requires (or has potential for requiring) the imposition of a more stringent emission standard in several situations.

For example, applicable costs do not play as prominent a role in determining the "lowest achievable emission rate" for new or modified sources located in nonattainment areas, i.e., those areas where statutorily-mandated health and welfare standards are being violated. In this respect, section 173 of the Act requires that a new or modified source constructed in an area that exceeds the National Ambient Air Quality Standard (NAAQS) must reduce emissions to the level that reflects the "lowest achievable emission rate" (LAER), as defined in section 171(3), for such source category. The statute defines LAER as that rate of emission which reflects:

(A) The most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or

(B) The most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent.

In no event can the emission rate exceed any applicable new source performance standard [section 171(3)].

A similar situation may arise under the prevention of significant deterioration of air quality provisions of the Act (Part C). These provisions require that certain sources [referred to in section 169(1)] employ "best available control technology" [as defined in section 169(3)] for all pollutants regulated under the Act. Best available control technology (BACT) must be determined on a case-by-case basis, taking energy, environmental and economic impacts, and other costs into account. In no event may the application of BACT result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to section 111 (or 112) of the Act.

In all events, State implementation plans (SIP's) approved or promulgated under section 110 of the Act must provide for the attainment and maintenance of National Ambient Air Quality Standards designed to protect public health and welfare. For this purpose, SIP's must in some cases require greater emission reductions than those required by standards of performance for new sources.

Finally, States are free under section 116 of the Act to establish even more stringent emission limits than those established under section 111 or those necessary to attain or maintain the NAAQS under section 110. Accordingly, new sources may in some cases be subject to limitations more stringent than EPA's standards of performance under section 111, and prospective owners and operators of new sources should be aware of this possibility in planning for such facilities.

Under EPA's sunset policy for reporting requirements in regulations, the reporting requirements in this regulation will automatically expire five years from the date of promulgation unless the Administrator takes affirmative action to extend them. Within the five year period, the Administrator will review these requirements.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for revisions determined by the Administrator to be substantial. The Administrator has determined that these revisions are substantial and has prepared an economic impact assessment and included the required information in the background information documents.

Dated: June 1, 1979.

Douglas M. Costle,

Administrator.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

In 40 CFR Part 60, § 60.8 of Subpart A is revised, the heading and § 60.40 of Subpart D are revised, a new Subpart Da is added, and a new reference method is added to Appendix A as follows:

1. Section 60.8(d) and § 60.8(f) are revised as follows:

§ 60.8 Performance tests.

* * * * *

(d) The owner or operator of an affected facility shall provide the Administrator at least 30 days prior notice of any performance test, except as specified under other subparts, to afford the Administrator the opportunity to have an observer present.

* * * * *

(f) Unless otherwise specified in the applicable subpart, each performance test shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions specified in the applicable standard. For the purpose of determining compliance with an applicable standard, the arithmetic means of results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances, beyond the owner or operator's control, compliance may, upon the Administrator's approval, be determined using the arithmetic mean of the results of the two other runs.

2. The heading for Subpart D is revised to read as follows:

Subpart D—Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction is Commenced After August 17, 1971

3. Section 60.40 is amended by adding paragraph (d) as follows:

§ 60.40 Applicability and designation of affected facility.

* * * * *

(d) Any facility covered under Subpart Da is not covered under This Subpart.

(Sec. 111, 301(a) of the Clean Air Act as amended (42 U.S.C. 7411, 7601(a)).)

4. A new Subpart Da is added as follows:

Subpart Da—Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978

Sec.

60.40a Applicability and designation of affected facility.
60.41a Definitions.
60.42a Standard for particulate matter.
60.43a Standard for sulfur dioxide.
60.44a Standard for nitrogen oxides.
60.45a Commercial demonstration permit.
60.46a Compliance provisions.
60.47a Emission monitoring.
60.48a Compliance determination procedures and methods.
60.49a Reporting requirements.

Authority: Sec. 111, 301(a) of the Clean Air Act as amended (42 U.S.C. 7411, 7601(a)), and additional authority as noted below.

Subpart Da—Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978

§ 60.40a Applicability and designation of affected facility.

(a) The affected facility to which this subpart applies is each electric utility steam generating unit:

(1) That is capable of combusting more than 73 megawatts (250 million Btu/hour) heat input of fossil fuel (either alone or in combination with any other fuel); and

(2) For which construction or modification is commenced after September 18, 1978.

(b) This subpart applies to electric utility combined cycle gas turbines that are capable of combusting more than 73 megawatts (250 million Btu/hour) heat input of fossil fuel in the steam generator. Only emissions resulting from combustion of fuels in the steam generating unit are subject to this subpart. (The gas turbine emissions are subject to Subpart GG.)

(c) Any change to an existing fossil-fuel-fired steam generating unit to accommodate the use of combustible materials, other than fossil fuels, shall not bring that unit under the applicability of this subpart.

(d) Any change to an existing steam generating unit originally designed to fire gaseous or liquid fossil fuels, to accommodate the use of any other fuel (fossil or nonfossil) shall not bring that unit under the applicability of this subpart.

§ 60.41a Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act and in subpart A of this part.

"Steam generating unit" means any furnace, boiler, or other device used for combusting fuel for the purpose of producing steam (including fossil-fuel-fired steam generators associated with combined cycle gas turbines; nuclear steam generators are not included).

"Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Fossil fuel" means natural gas, petroleum, coal, and any form of solid, liquid, or gaseous fuel derived from such material for the purpose of creating useful heat.

"Subbituminous coal" means coal that is classified as subbituminous A, B, or C according to the American Society of Testing and Materials' (ASTM) Standard Specification for Classification of Coals by Rank D388-66.

"Lignite" means coal that is classified as lignite A or B according to the American Society of Testing and Materials' (ASTM) Standard Specification for Classification of Coals by Rank D388-66.

"Coal refuse" means waste products of coal mining, physical coal cleaning, and coal preparation operations (e.g. culm, gob, etc.) containing coal, matrix material, clay, and other organic and inorganic material.

"Potential combustion concentration" means the theoretical emissions (ng/J, lb/million Btu heat input) that would result from combustion of a fuel in an uncleaned state (without emission control systems) and:

(a) For particulate matter is:

(1) 3,000 ng/J (7.0 lb/million Btu) heat input for solid fuel; and

(2) 75 ng/J (0.17 lb/million Btu) heat input for liquid fuels.

(b) For sulfur dioxide is determined under § 60.43a(b).

(c) For nitrogen oxides is:

(1) 290 ng/J (0.67 lb/million Btu) heat input for gaseous fuels;

(2) 310 ng/J (0.72 lb/million Btu) heat input for liquid fuels; and

(3) 990 ng/J (2.30 lb/million Btu) heat input for solid fuels.

"Combined cycle gas turbine" means a stationary turbine combustion system where heat from the turbine exhaust gases is recovered by a steam generating unit.

"Interconnected" means that two or more electric generating units are electrically tied together by a network of power transmission lines, and other power transmission equipment.

"Electric utility company" means the largest interconnected organization, business, or governmental entity that generates electric power for sale (e.g., a holding company with operating subsidiary companies).

"Principal company" means the electric utility company or companies which own the affected facility.

"Neighboring company" means any one of those electric utility companies with one or more electric power interconnections to the principal company and which have geographically adjoining service areas.

"Net system capacity" means the sum of the net electric generating capability (not necessarily equal to rated capacity) of all electric generating equipment owned by an electric utility company (including steam generating units, internal combustion engines, gas turbines, nuclear units, hydroelectric units, and all other electric generating equipment) plus firm contractual purchases that are interconnected to the affected facility that has the malfunctioning flue gas desulfurization system. The electric generating capability of equipment under multiple ownership is prorated based on ownership unless the proportional entitlement to electric output is otherwise established by contractual arrangement.

"System load" means the entire electric demand of an electric utility company's service area interconnected with the affected facility that has the malfunctioning flue gas desulfurization system plus firm contractual sales to other electric utility companies. Sales to other electric utility companies (e.g., emergency power) not on a firm contractual basis may also be included in the system load when no available system capacity exists in the electric utility company to which the power is supplied for sale.

"System emergency reserves" means an amount of electric generating capacity equivalent to the rated capacity of the single largest electric generating unit in the electric utility company (including steam generating units, internal combustion engines, gas turbines, nuclear units, hydroelectric units, and all other electric generating equipment) which is interconnected with the affected facility that has the malfunctioning flue gas desulfurization system. The electric generating capability of equipment under multiple ownership is prorated based on ownership unless the proportional entitlement to electric output is otherwise established by contractual arrangement.

"Available system capacity" means the capacity determined by subtracting the system load and the system emergency reserves from the net system capacity.

"Spinning reserve" means the sum of the unutilized net generating capability of all units of the electric utility company that are synchronized to the power distribution system and that are capable of immediately accepting

additional load. The electric generating capability of equipment under multiple ownership is prorated based on ownership unless the proportional entitlement to electric output is otherwise established by contractual arrangement.

"Available purchase power" means the lesser of the following:

(a) The sum of available system capacity in all neighboring companies.

(b) The sum of the rated capacities of the power interconnection devices between the principal company and all neighboring companies, minus the sum of the electric power load on these interconnections.

(c) The rated capacity of the power transmission lines between the power interconnection devices and the electric generating units (the unit in the principal company that has the malfunctioning flue gas desulfurization system and the unit(s) in the neighboring company supplying replacement electrical power) less the electric power load on these transmission lines.

"Spare flue gas desulfurization system module" means a separate system of sulfur dioxide emission control equipment capable of treating an amount of flue gas equal to the total amount of flue gas generated by an affected facility when operated at maximum capacity divided by the total number of nonspare flue gas desulfurization modules in the system.

"Emergency condition" means that period of time when:

(a) The electric generation output of an affected facility with a malfunctioning flue gas desulfurization system cannot be reduced or electrical output must be increased because:

(1) All available system capacity in the principal company interconnected with the affected facility is being operated, and

(2) All available purchase power interconnected with the affected facility is being obtained, or

(b) The electric generation demand is being shifted as quickly as possible from an affected facility with a malfunctioning flue gas desulfurization system to one or more electrical generating units held in reserve by the principal company or by a neighboring company, or

(c) An affected facility with a malfunctioning flue gas desulfurization system becomes the only available unit to maintain a part or all of the principal company's system emergency reserves and the unit is operated in spinning reserve at the lowest practical electric generation load consistent with not causing significant physical damage to the unit. If the unit is operated at a higher load to meet load demand, an emergency condition would not exist unless the conditions under (a) of this definition apply.

"Electric utility combined cycle gas turbine" means any combined cycle gas turbine used for electric generation that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam distribution system that is constructed for the purpose of providing steam to a steam electric generator that would produce electrical power for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Potential electrical output capacity" is defined as 33 percent of the maximum design heat input capacity of the steam generating unit (e.g., a steam generating unit with a 100–MW (340 million Btu/hr) fossil-fuel heat input capacity would have a 33–MW potential electrical output capacity). For electric utility combined cycle gas turbines the potential electrical output capacity is determined on the basis of the fossil-fuel firing capacity of the steam generator exclusive of the heat input and electrical power contribution by the gas turbine.

"Anthracite" means coal that is classified as anthracite according to the American Society of Testing and Materials' (ASTM) Standard Specification for Classification of Coals by Rank D388–66.

"Solid-derived fuel" means any solid, liquid, or gaseous fuel derived from solid fuel for the purpose of creating useful heat and includes, but is not limited to, solvent refined coal, liquified coal, and gasified coal.

"24-hour period" means the period of time between 12:01 a.m. and 12:00 midnight.

"Resource recovery unit" means a facility that combusts more than 75 percent non-fossil fuel on a quarterly (calendar) heat input basis.

"Noncontinental area" means the State of Hawaii, the Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, or the Northern Mariana Islands.

"Boiler operating day" means a 24-hour period during which fossil fuel is combusted in a steam generating unit for the entire 24 hours.

§ 60.42a Standard for particulate matter.

(a) On and after the date on which the performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility any gases which contain particulate matter in excess of:

(1) 13 ng/J (0.03 lb/million Btu) heat input derived from the combustion of solid, liquid, or gaseous fuel;

(2) 1 percent of the potential combustion concentration (99 percent reduction) when combusting solid fuel; and

(3) 30 percent of potential combustion concentration (70 percent reduction) when combusting liquid fuel.

(b) On and after the date the particulate matter performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility any gases which exhibit greater than 20 percent opacity (6-minute average), except for one 6-minute period per hour of not more than 27 percent opacity.

§ 60.43a Standard for sulfur dioxide.

(a) On and after the date on which the initial performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility which combusts solid fuel or solid-derived fuel, except as provided under paragraphs (c), (d), (f) or (h) of this section, any gases which contain sulfur dioxide in excess of:

(1) 520 ng/J (1.20 lb/million Btu) heat input and 10 percent of the potential combustion concentration (90 percent reduction), or

(2) 30 percent of the potential combustion concentration (70 percent reduction), when emissions are less than 260 ng/J (0.60 lb/million Btu) heat input.

(b) On and after the date on which the initial performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility which combusts liquid or gaseous fuels (except for liquid or gaseous fuels derived from solid fuels and as provided under paragraphs (e) or (h) of this section), any gases which contain sulfur dioxide in excess of:

(1) 340 ng/J (0.80 lb/million Btu) heat input and 10 percent of the potential combustion concentration (90 percent reduction), or

(2) 100 percent of the potential combustion concentration (zero percent reduction) when emissions are less than 86 ng/J (0.20 lb/million Btu) heat input.

(c) On and after the date on which the initial performance test required to be

conducted under § 60.8 is complete, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility which combusts solid solvent refined coal (SRC–I) any gases which contain sulfur dioxide in excess of 520 ng/J (1.20 lb/million Btu) heat input and 15 percent of the potential combustion concentration (85 percent reduction) except as provided under paragraph (f) of this section; compliance with the emission limitation is determined on a 30-day rolling average basis and compliance with the percent reduction requirement is determined on a 24-hour basis.

(d) Sulfur dioxide emissions are limited to 520 ng/J (1.20 lb/million Btu) heat input from any affected facility which:

(1) Combusts 100 percent anthracite,

(2) Is classified as a resource recovery facility, or

(3) Is located in a noncontinental area and combusts solid fuel or solid-derived fuel.

(e) Sulfur dioxide emissions are limited to 340 ng/J (0.80 lb/million Btu) heat input from any affected facility which is located in a noncontinental area and combusts liquid or gaseous fuels (excluding solid-derived fuels).

(f) The emission reduction requirements under this section do not apply to any affected facility that is operated under an SO_2 commercial demonstration permit issued by the Administrator in accordance with the provisions of § 60.45a.

(g) Compliance with the emission limitation and percent reduction requirements under this section are both determined on a 30-day rolling average basis except as provided under paragraph (c) of this section.

(h) When different fuels are combusted simultaneously, the applicable standard is determined by proration using the following formula:

(1) If emissions of sulfur dioxide to the atmosphere are greater than 260 ng/J (0.60 lb/million Btu) heat input

$E_{so_2} = [340\,x + 520\,y]/100$ and
$P_{so_2} = 10$ percent

(2) If emissions of sulfur dioxide to the atmosphere are equal to or less than 260 ng/J (0.60 lb/million Btu) heat input:

$E_{so_2} = [340\,x + 520\,y]/100$ and
$P_{so_2} = [90\,x + 70\,y]/100$

where:

E_{so_2} is the prorated sulfur dioxide emission limit (ng/J heat input).

P_{so_2} is the percentage of potential sulfur dioxide emission allowed (percent reduction required = $100 - P_{so_2}$).

x is the percentage of total heat input derived from the combustion of liquid or gaseous fuels (excluding solid-derived fuels)

y is the percentage of total heat input derived from the combustion of solid fuel (including solid-derived fuels)

§ 60.44a Standard for nitrogen oxides.

(a) On and after the date on which the initial performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility, except as provided under paragraph (b) of this section, any gases which contain nitrogen oxides in excess of the following emission limits, based on a 30-day rolling average.

(1) NO_x Emission Limits—

Fuel type	Emission limit ng/J (lb/million Btu) heat input	
Gaseous Fuels:		
Coal-derived fuels	210	(0.50)
All other fuels	86	(0.20)
Liquid Fuels:		
Coal-derived fuels	210	(0.50)
Shale oil	210	(0.50)
All other fuels	130	(0.30)
Solid Fuels:		
Coal-derived fuels	210	(0.50)
Any fuel containing more than 25%, by weight, coal refuse	Exempt from NO_x standards and NO_x monitoring requirements	
Any fuel containing more than 25%, by weight, lignite if the lignite is mined in North Dakota, South Dakota, or Montana, and is combusted in a slag tap furnace	340	(0.80)
Lignite not subject to the 340 ng/J heat input emission limit	260	(0.60)
Subbituminous coal	210	(0.50)
Bituminous coal	260	(0.60)
Anthracite coal	260	(0.60)
All other fuels	260	(0.60)

(2) NO_x reduction requirements—

Fuel type	Percent reduction of potential combustion concentration
Gaseous fuels	25%
Liquid fuels	30%
Solid fuels	65%

(b) The emission limitations under paragraph (a) of this section do not apply to any affected facility which is combusting coal-derived liquid fuel and is operating under a commercial demonstration permit issued by the Administrator in accordance with the provisions of § 60.45a.

(c) When two or more fuels are combusted simultaneously, the applicable standard is determined by proration using the following formula:

$E_{so_2} = [86\,w + 130\,x + 210\,y + 260\,z]/100$

where:

E_{so_2} is the applicable standard for nitrogen oxides when multiple fuels are combusted simultaneously (ng/J heat input);

w is the percentage of total heat input derived from the combustion of fuels subject to the 86 ng/J heat input standard;

x is the percentage of total heat input derived from the combustion of fuels subject to the 130 ng/J heat input standard;

y is the percentage of total heat input derived from the combustion of fuels subject to the 210 ng/J heat input standard; and

z is the percentage of total heat input derived from the combustion of fuels subject to the 260 ng/J heat input standard.

§ 60.45a Commercial demonstration permit.

(a) An owner or operator of an affected facility proposing to demonstrate an emerging technology may apply to the Administrator for a commercial demonstration permit. The Administrator will issue a commercial demonstration permit in accordance with paragraph (e) of this section. Commercial demonstration permits may be issued only by the Administrator, and this authority will not be delegated.

(b) An owner or operator of an affected facility that combusts solid solvent refined coal (SRC–I) and who is issued a commercial demonstration permit by the Administrator is not subject to the SO_2 emission reduction requirements under § 60.43a(c) but must, as a minimum, reduce SO_2 emissions to 20 percent of the potential combustion concentration (80 percent reduction) for each 24-hour period of steam generator operation and to less than 520 ng/J (1.20 lb/million Btu) heat input on a 30-day rolling average basis.

(c) An owner or operator of a fluidized bed combustion electric utility steam generator (atmospheric or pressurized) who is issued a commercial demonstration permit by the Administrator is not subject to the SO_2 emission reduction requirements under § 60.43a(a) but must, as a minimum, reduce SO_2 emissions to 15 percent of the potential combustion concentration (85 percent reduction) on a 30-day rolling average basis and to less than 520 ng/J (1.20 lb/million Btu) heat input on a 30-day rolling average basis.

(d) The owner or operator of an affected facility that combusts coal-derived liquid fuel and who is issued a commercial demonstration permit by the Administrator is not subject to the applicable NO_x emission limitation and percent reduction under § 60.44a(a) but must, as a minimum, reduce emissions to less than 300 ng/J (0.70 lb/million Btu)

heat input on a 30-day rolling average basis.

(e) Commercial demonstration permits may not exceed the following equivalent MW electrical generation capacity for any one technology category, and the total equivalent MW electrical generation capacity for all commercial demonstration plants may not exceed 15,000 MW.

Technology	Pollutant	Equivalent electrical capacity (MW electrical output)
Solid solvent refined coal (SRC I)	SO_2	6,000–10,000
Fluidized bed combustion (atmospheric)	SO_2	400–3,000
Fluidized bed combustion (pressurized)	SO_2	400–1,200
Coal liquefaction	NO_x	750–10,000
Total allowable for all technologies		15,000

§ 60.46a Compliance provisions.

(a) Compliance with the particulate matter emission limitation under § 60.42a(a)(1) constitutes compliance with the percent reduction requirements for particulate matter under § 60.42a(a)(2) and (3).

(b) Compliance with the nitrogen oxides emission limitation under § 60.44a(a) constitutes compliance with the percent reduction requirements under § 60.44a(a)(2).

(c) The particulate matter emission standards under § 60.42a and the nitrogen oxides emission standards under § 60.44a apply at all times except during periods of startup, shutdown, or malfunction. The sulfur dioxide emission standards under § 60.43a apply at all times except during periods of startup, shutdown, or when both emergency conditions exist and the procedures under paragraph (d) of this section are implemented.

(d) During emergency conditions in the principal company, an affected facility with a malfunctioning flue gas desulfurization system may be operated if sulfur dioxide emissions are minimized by:

(1) Operating all operable flue gas desulfurization system modules, and bringing back into operation any malfunctioned module as soon as repairs are completed,

(2) Bypassing flue gases around only those flue gas desulfurization system modules that have been taken out of operation because they were incapable of any sulfur dioxide emission reduction or which would have suffered significant physical damage if they had remained in operation, and

(3) Designing, constructing, and operating a spare flue gas desulfurization system module for an affected facility larger than 365 MW (1,250 million Btu/hr) heat input (approximately 125 MW electrical output capacity). The Administrator may at his discretion require the owner or operator within 60 days of notification to demonstrate spare module capability. To demonstrate this capability, the owner or operator must demonstrate compliance with the appropriate requirements under paragraph (a), (b), (d), (e), and (i) under § 60.43a for any period of operation lasting from 24 hours to 30 days when:

(i) Any one flue gas desulfurization module is not operated,

(ii) The affected facility is operating at the maximum heat input rate,

(iii) The fuel fired during the 24-hour to 30-day period is representative of the type and average sulfur content of fuel used over a typical 30-day period, and

(iv) The owner or operator has given the Administrator at least 30 days notice of the date and period of time over which the demonstration will be performed.

(e) After the initial performance test required under § 60.8, compliance with the sulfur dioxide emission limitations and percentage reduction requirements under § 60.43a and the nitrogen oxides emission limitations under § 60.44a is based on the average emission rate for 30 successive boiler operating days. A separate performance test is completed at the end of each boiler operating day after the initial performance test, and a new 30 day average emission rate for both sulfur dioxide and nitrogen oxides and a new percent reduction for sulfur dioxide are calculated to show compliance with the standards.

(f) For the initial performance test required under § 60.8, compliance with the sulfur dioxide emission limitations and percent reduction requirements under § 60.43a and the nitrogen oxides emission limitation under § 60.44a is based on the average emission rates for sulfur dioxide, nitrogen oxides, and percent reduction for sulfur dioxide for the first 30 successive boiler operating days. The initial performance test is the only test in which at least 30 days prior notice is required unless otherwise specified by the Administrator. The initial performance test is to be scheduled so that the first boiler operating day of the 30 successive boiler operating days is completed within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of the facility.

(g) Compliance is determined by calculating the arithmetic average of all hourly emission rates for SO_2 and NO_x for the 30 successive boiler operating days, except for data obtained during startup, shutdown, malfunction (NO_x only), or emergency conditions (SO_2 only). Compliance with the percentage reduction requirement for SO_2 is determined based on the average inlet and average outlet SO_2 emission rates for the 30 successive boiler operating days.

(h) If an owner or operator has not obtained the minimum quantity of emission data as required under § 60.47a of this subpart, compliance of the affected facility with the emission requirements under §§ 60.43a and 60.44a of this subpart for the day on which the 30-day period ends may be determined by the Administrator by following the applicable procedures in sections 6.0 and 7.0 of Reference Method 19 (Appendix A).

§ 60.47a Emission monitoring.

(a) The owner or operator of an affected facility shall install, calibrate, maintain, and operate a continuous monitoring system, and record the output of the system, for measuring the opacity of emissions discharged to the atmosphere, except where gaseous fuel is the only fuel combusted. If opacity interference due to water droplets exists in the stack (for example, from the use of an FGD system), the opacity is monitored upstream of the interference (at the inlet to the FGD system). If opacity interference is experienced at all locations (both at the inlet and outlet of the sulfur dioxide control system), alternate parameters indicative of the particulate matter control system's performance are monitored (subject to the approval of the Administrator).

(b) The owner or operator of an affected facility shall install, calibrate, maintain, and operate a continuous monitoring system, and record the output of the system, for measuring sulfur dioxide emissions, except where natural gas is the only fuel combusted, as follows:

(1) Sulfur dioxide emissions are monitored at both the inlet and outlet of the sulfur dioxide control device.

(2) For a facility which qualifies under the provisions of § 60.43a(d), sulfur dioxide emissions are only monitored as discharged to the atmosphere.

(3) An "as fired" fuel monitoring system (upstream of coal pulverizers) meeting the requirements of Method 19 (Appendix A) may be used to determine

potential sulfur dioxide emissions in place of a continuous sulfur dioxide emission monitor at the inlet to the sulfur dioxide control device as required under paragraph (b)(1) of this section.

(c) The owner or operator of an affected facility shall install, calibrate, maintain, and operate a continuous monitoring system, and record the output of the system, for measuring nitrogen oxides emissions discharged to the atmosphere.

(d) The owner or operator of an affected facility shall install, calibrate, maintain, and operate a continuous monitoring system, and record the output of the system, for measuring the oxygen or carbon dioxide content of the flue gases at each location where sulfur dioxide or nitrogen oxides emissions are monitored.

(e) The continuous monitoring systems under paragraphs (b), (c), and (d) of this section are operated and data recorded during all periods of operation of the affected facility including periods of startup, shutdown, malfunction or emergency conditions, except for continuous monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments.

(f) When emission data are not obtained because of continuous monitoring system breakdowns, repairs, calibration checks and zero and span adjustments, emission data will be obtained by using other monitoring systems as approved by the Administrator or the reference methods as described in paragraph (h) of this section to provide emission data for a minimum of 18 hours in at least 22 out of 30 successive boiler operating days.

(g) The 1-hour averages required under paragraph § 60.13(h) are expressed in ng/J (lbs/million Btu) heat input and used to calculate the average emission rates under § 60.46a. The 1-hour averages are calculated using the data points required under § 60.13(b). At least two data points must be used to calculate the 1-hour averages.

(h) Reference methods used to supplement continuous monitoring system data to meet the minimum data requirements in paragraph § 60.47a(f) will be used as specified below or otherwise approved by the Administrator.

(1) Reference Methods 3, 6, and 7, as applicable, are used. The sampling location(s) are the same as those used for the continuous monitoring system.

(2) For Method 6, the minimum sampling time is 20 minutes and the minimum sampling volume is 0.02 dscm (0.71 dscf) for each sample. Samples are taken at approximately 60-minute intervals. Each sample represents a 1-hour average.

(3) For Method 7, samples are taken at approximately 30-minute intervals. The arithmetic average of these two consective samples represent a 1-hour average.

(4) For Method 3, the oxygen or carbon dioxide sample is to be taken for each hour when continuous SO_2 and NO_x data are taken or when Methods 6 and 7 are required. Each sample shall be taken for a minimum of 30 minutes in each hour using the integrated bag method specified in Method 3. Each sample represents a 1-hour average.

(5) For each 1-hour average, the emissions expressed in ng/J (lb/million Btu) heat input are determined and used as needed to achieve the minimum data requirements of paragraph (f) of this section.

(i) The following procedures are used to conduct monitoring system performance evaluations under § 60.13(c) and calibration checks under § 60.13(d).

(1) Reference method 6 or 7, as applicable, is used for conducting performance evaluations of sulfur dioxide and nitrogen oxides continuous monitoring systems.

(2) Sulfur dioxide or nitrogen oxides, as applicable, is used for preparing calibration gas mixtures under performance specification 2 of appendix B to this part.

(3) For affected facilities burning only fossil fuel, the span value for a continuous monitoring system for measuring opacity is between 60 and 80 percent and for a continuous monitoring system measuring nitrogen oxides is determined as follows:

Fossil fuel	Span value for nitrogen oxides (ppm)
Gas	500
Liquid	500
Solid	1,000
Combination	500 (x+y)+1,000z

where:
x is the fraction of total heat input derived from gaseous fossil fuel,
y is the fraction of total heat input derived from liquid fossil fuel, and
z is the fraction of total heat input derived from solid fossil fuel.

(4) All span values computed under paragraph (b)(3) of this section for burning combinations of fossil fuels are rounded to the nearest 500 ppm.

(5) For affected facilities burning fossil fuel, alone or in combination with non-fossil fuel, the span value of the sulfur dioxide continuous monitoring system at the inlet to the sulfur dioxide control device is 125 percent of the maximum estimated hourly potential emissions of the fuel fired, and the outlet of the sulfur dioxide control device is 50 percent of maximum estimated hourly potential emissions of the fuel fired.

(Sec. 114, Clean Air Act as amended (42 U.S.C. 7414).)

§ 60.46a Compliance determination procedures and methods.

(a) The following procedures and reference methods are used to determine compliance with the standards for particulate matter under § 60.42a.

(1) Method 3 is used for gas analysis when applying method 5 or method 17.

(2) Method 5 is used for determining particulate matter emissions and associated moisture content. Method 17 may be used for stack gas temperatures less than 160 C (320 F).

(3) For Methods 5 or 17, Method 1 is used to select the sampling site and the number of traverse sampling points. The sampling time for each run is at least 120 minutes and the minimum sampling volume is 1.7 dscm (60 dscf) except that smaller sampling times or volumes, when necessitated by process variables or other factors, may be approved by the Administrator.

(4) For Method 5, the probe and filter holder heating system in the sampling train is set to provide a gas temperature no greater than 160°C (320°F).

(5) For determination of particulate emissions, the oxygen or carbon-dioxide sample is obtained simultaneously with each run of Methods 5 or 17 by traversing the duct at the same sampling location. Method 1 is used for selection of the number of traverse points except that no more than 12 sample points are required.

(6) For each run using Methods 5 or 17, the emission rate expressed in ng/J heat input is determined using the oxygen or carbon-dioxide measurements and particulate matter measurements obtained under this section, the dry basis F_c-factor and the dry basis emission rate calculation procedure contained in Method 19 (Appendix A).

(7) Prior to the Administrator's issuance of a particulate matter reference method that does not experience sulfuric acid mist interference problems, particulate matter emissions may be sampled prior to a wet flue gas desulfurization system.

(b) The following procedures and methods are used to determine compliance with the sulfur dioxide standards under § 60.43a.

(1) Determine the percent of potential combustion concentration (percent PCC) emitted to the atmosphere as follows:

(i) *Fuel Pretreatment (% R_f):* Determine the percent reduction achieved by any fuel pretreatment using the procedures in Method 19 (Appendix A). Calculate the average percent reduction for fuel pretreatment on a quarterly basis using fuel analysis data. The determination of percent R_f to calculate the percent of potential combustion concentration emitted to the atmosphere is optional. For purposes of determining compliance with any percent reduction requirements under § 60.43a, any reduction in potential SO_2 emissions resulting from the following processes may be credited:

(A) Fuel pretreatment (physical coal cleaning, hydrodesulfurization of fuel oil, etc.),

(B) Coal pulverizers, and

(C) Bottom and flyash interactions.

(ii) *Sulfur Dioxide Control System (% R_g):* Determine the percent sulfur dioxide reduction achieved by any sulfur dioxide control system using emission rates measured before and after the control system, following the procedures in Method 19 (Appendix A); or, a combination of an "as fired" fuel monitor and emission rates measured after the control system, following the procedures in Method 19 (Appendix A). When the "as fired" fuel monitor is used, the percent reduction is calculated using the average emission rate from the sulfur dioxide control device and the average SO_2 input rate from the "as fired" fuel analysis for 30 successive boiler operating days.

(iii) *Overall percent reduction (% R_o):* Determine the overall percent reduction using the results obtained in paragraphs (b)(1) (i) and (ii) of this section following the procedures in Method 19 (Appendix A). Results are calculated for each 30-day period using the quarterly average percent sulfur reduction determined for fuel pretreatment from the previous quarter and the sulfur dioxide reduction achieved by a sulfur dioxide control system for each 30-day period in the current quarter.

(iv) *Percent emitted (% PCC):* Calculate the percent of potential combustion concentration emitted to the atmosphere using the following equation: Percent PCC = 100 − Percent R_o.

(2) Determine the sulfur dioxide emission rates following the procedures in Method 19 (Appendix A).

(c) The procedures and methods outlined in Method 19 (Appendix A) are used in conjunction with the 30-day nitrogen-oxides emission data collected under § 60.47a to determine compliance with the applicable nitrogen oxides standard under § 60.44.

(d) Electric utility combined cycle gas turbines are performance tested for particulate matter, sulfur dioxide, and nitrogen oxides using the procedures of Method 19 (Appendix A). The sulfur dioxide and nitrogen oxides emission rates from the gas turbine used in Method 19 (Appendix A) calculations are determined when the gas turbine is performance tested under subpart GG. The potential uncontrolled particulate matter emission rate from a gas turbine is defined as 17 ng/J (0.04 lb/million Btu) heat input.

§ 60.49a Reporting requirements.

(a) For sulfur dioxide, nitrogen oxides, and particulate matter emissions, the performance test data from the initial performance test and from the performance evaluation of the continuous monitors (including the transmissometer) are submitted to the Administrator.

(b) For sulfur dioxide and nitrogen oxides the following information is reported to the Administrator for each 24-hour period.

(1) Calendar date.

(2) The average sulfur dioxide and nitrogen oxide emission rates (ng/J or lb/million Btu) for each 30 successive boiler operating days, ending with the last 30-day period in the quarter; reasons for non-compliance with the emission standards; and, description of corrective actions taken.

(3) Percent reduction of the potential combustion concentration of sulfur dioxide for each 30 successive boiler operating days, ending with the last 30-day period in the quarter; reasons for non-compliance with the standard; and, description of corrective actions taken.

(4) Identification of the boiler operating days for which pollutant or dilutent data have not been obtained by an approved method for at least 18 hours of operation of the facility; justification for not obtaining sufficient data; and description of corrective actions taken.

(5) Identification of the times when emissions data have been excluded from the calculation of average emission rates because of startup, shutdown, malfunction (NO_x only), emergency conditions (SO_2 only), or other reasons, and justification for excluding data for reasons other than startup, shutdown, malfunction, or emergency conditions.

(6) Identification of "F" factor used for calculations, method of determination, and type of fuel combusted.

(7) Identification of times when hourly averages have been obtained based on manual sampling methods.

(8) Identification of the times when the pollutant concentration exceeded full span of the continuous monitoring system.

(9) Description of any modifications to the continuous monitoring system which could affect the ability of the continuous monitoring system to comply with Performance Specifications 2 or 3.

(c) If the minimum quantity of emission data as required by § 60.47a is not obtained for any 30 successive boiler operating days, the following information obtained under the requirements of § 60.46a(h) is reported to the Administrator for that 30-day period:

(1) The number of hourly averages available for outlet emission rates (n_o) and inlet emission rates (n_i) as applicable.

(2) The standard deviation of hourly averages for outlet emission rates (s_o) and inlet emission rates (s_i) as applicable.

(3) The lower confidence limit for the mean outlet emission rate (E_o^*) and the upper confidence limit for the mean inlet emission rate (E_i^*) as applicable.

(4) The applicable potential combustion concentration.

(5) The ratio of the upper confidence limit for the mean outlet emission rate (E_o^*) and the allowable emission rate (E_{std}) as applicable.

(d) If any standards under § 60.43a are exceeded during emergency conditions because of control system malfunction, the owner or operator of the affected facility shall submit a signed statement:

(1) Indicating if emergency conditions existed and requirements under § 60.46a(d) were met during each period, and

(2) Listing the following information:

(i) Time periods the emergency condition existed;

(ii) Electrical output and demand on the owner or operator's electric utility system and the affected facility;

(iii) Amount of power purchased from interconnected neighboring utility companies during the emergency period;

(iv) Percent reduction in emissions achieved;

(v) Atmospheric emission rate (ng/J) of the pollutant discharged; and

(vi) Actions taken to correct control system malfunction.

(e) If fuel pretreatment credit toward the sulfur dioxide emission standard under § 60.43a is claimed, the owner or operator of the affected facility shall submit a signed statement:

(1) Indicating what percentage cleaning credit was taken for the calendar quarter, and whether the credit was determined in accordance with the

provisions of § 60.43a and Method 19 (Appendix A); and

(2) Listing the quantity, heat content, and date each pretreated fuel shipment was received during the previous quarter; the name and location of the fuel pretreatment facility; and the total quantity and total heat content of all fuels received at the affected facility during the previous quarter.

(f) For any periods for which opacity, sulfur dioxide or nitrogen oxides emissions data are not available, the owner or operator of the affected facility shall submit a signed statement indicating if any changes were made in operation of the emission control system during the period of data unavailability. Operations of the control system and affected facility during periods of data unavailability are to be compared with operation of the control system and affected facility before and following the period of data unavailability.

(g) The owner or operator of the affected facility shall submit a signed statement indicating whether:

(1) The required continuous monitoring system calibration, span, and drift checks or other periodic audits have or have not been performed as specified.

(2) The data used to show compliance was or was not obtained in accordance with approved methods and procedures of this part and is representative of plant performance.

(3) The minimum data requirements have or have not been met; or, the minimum data requirements have not been met for errors that were unavoidable.

(4) Compliance with the standards has or has not been achieved during the reporting period.

(h) For the purposes of the reports required under § 60.7, periods of excess emissions are defined as all 6-minute periods during which the average opacity exceeds the applicable opacity standards under § 60.42a(b). Opacity levels in excess of the applicable opacity standard and the date of such excesses are to be submitted to the Administrator each calendar quarter.

(i) The owner or operator of an affected facility shall submit the written reports required under this section and subpart A to the Administrator for every calendar quarter. All quarterly reports shall be postmarked by the 30th day following the end of each calendar quarter.

(Sec. 114, Clean Air Act as amended (42 U.S.C. 7414).)

4. Appendix A to part 60 is amended by adding new reference Method 19 as follows:

Appendix A—Reference Methods

* * * * *

Method 19. Determination of Sulfur Dioxide Removal Efficiency and Particulate, Sulfur Dioxide and Nitrogen Oxides Emission Rates From Electric Utility Steam Generators

1. *Principle and Applicability*

1.1 *Principle.*

1.1.1 Fuel samples from before and after fuel pretreatment systems are collected and analyzed for sulfur and heat content, and the percent sulfur dioxide (ng/joule, lb/million Btu) reduction is calculated on a dry basis. (Optional Procedure.)

1.1.2 Sulfur dioxide and oxygen or carbon dioxide concentration data obtained from sampling emissions upstream and downstream of sulfur dioxide control devices are used to calculate sulfur dioxide removal efficiencies. (Minimum Requirement.) As an alternative to sulfur dioxide monitoring upstream of sulfur dioxide control devices, fuel samples may be collected in an as-fired condition and analyzed for sulfur and heat content. (Optional Procedure.)

1.1.3 An overall sulfur dioxide emission reduction efficiency is calculated from the efficiency of fuel pretreatment systems and the efficiency of sulfur dioxide control devices.

1.1.4 Particulate, sulfur dioxide, nitrogen oxides, and oxygen or carbon dioxide concentration data obtained from sampling emissions downstream from sulfur dioxide control devices are used along with F factors to calculate particulate, sulfur dioxide, and nitrogen oxides emission rates. F factors are values relating combustion gas volume to the heat content of fuels.

1.2 *Applicability.* This method is applicable for determining sulfur removal efficiencies of fuel pretreatment and sulfur dioxide control devices and the overall reduction of potential sulfur dioxide emissions from electric utility steam generators. This method is also applicable for the determination of particulate, sulfur dioxide, and nitrogen oxides emission rates.

2. *Determination of Sulfur Dioxide Removal Efficiency of Fuel Pretreatment Systems*

2.1 *Solid Fossil Fuel.*

2.1.1 *Sample Increment Collection.* Use ASTM D 2234 [1], Type I, conditions A, B, or C, and systematic spacing. Determine the number and weight of increments required per gross sample representing each coal lot according to Table 2 or Paragraph 7.1.5.2 of ASTM D 2234 [1]. Collect one gross sample for each raw coal lot and one gross sample for each product coal lot.

2.1.2 *ASTM Lot Size.* For the purpose of Section 2.1.1, the product coal lot size is defined as the weight of product coal produced from one type of raw coal. The raw coal lot size is the weight of raw coal used to produce one product coal lot. Typically, the lot size is the weight of coal processed in a 1-day (24 hours) period. If more than one type of coal is treated and produced in 1 day, then gross samples must be collected and analyzed for each type of coal. A coal lot size equaling the 90-day quarterly fuel quantity for a specific power plant may be used if representative sampling can be conducted for the raw coal and product coal.

Note.—Alternate definitions of fuel lot sizes may be specified subject to prior approval of the Administrator.

2.1.3 *Gross Sample Analysis.* Determine the percent sulfur content (%S) and gross calorific value (GCV) of the solid fuel on a dry basis for each gross sample. Use ASTM 2013 [1] for sample preparation, ASTM D 3177 [1] for sulfur analysis, and ASTM D 3173 [1] for moisture analysis. Use ASTM D 3178 [1] for gross calorific value determination.

2.2 *Liquid Fossil Fuel.*

2.2.1 *Sample Collection.* Use ASTM D 270 [1] following the practices outlined for continuous sampling for each gross sample representing each fuel lot.

2.2.2 *Lot Size.* For the purposes of Section 2.2.1, the weight of product fuel from one pretreatment facility and intended as one shipment (ship load, barge load, etc.) is defined as one product fuel lot. The weight of each crude liquid fuel type used to produce one product fuel lot is defined as one inlet fuel lot.

Note.— Alternate definitions of fuel lot sizes may be specified subject to prior approval of the Administrator.

Note.— For the purposes of this method, raw or inlet fuel (coal or oil) is defined as the fuel delivered to the desulfurization pretreatment facility or to the steam generating plant. For pretreated oil the input oil to the oil desulfurization process (e.g. hydrotreatment emitted) is sampled.

2.2.3 *Sample Analysis.* Determine the percent sulfur content (%S) and gross calorific value (GCV). Use ASTM D 240 [1] for the sample analysis. This value can be assumed to be on a dry basis.

[1] Use the most recent revision or designation of the ASTM procedure specified.

[1] Use the most recent revision or designation of the ASTM procedure specified.

2.3 *Calculation of Sulfur Dioxide Removal Efficiency Due to Fuel Pretreatment.* Calculate the percent sulfur dioxide reduction due to fuel pretreatment using the following equation:

$$\%R_f = 100\left[1 - \frac{\%S_o/GCV_o}{\%S_i/GCV_i}\right]$$

Where:

$\%R_f$ = Sulfur dioxide removal efficiency due pretreatment; percent.
$\%S_o$ = Sulfur content of the product fuel lot on a dry basis; weight percent.
$\%S_i$ = Sulfur content of the inlet fuel lot on a dry basis; weight percent.
GCV_o = Gross calorific value for the outlet fuel lot on a dry basis; kJ/kg (Btu/lb).
GCV_i = Gross calorific value for the inlet fuel lot on a dry basis; kJ/kg (Btu/lb).

Note.—If more than one fuel type is used to produce the product fuel, use the following equation to calculate the sulfur contents per unit of heat content of the total fuel lot, %S/GCV:

$$\%S/GCV = \sum_{k=1}^{n} Y_k(\%S_k/GCV_k)$$

Where:

Y_k = The fraction of total mass input derived from each type, k, of fuel.
$\%S_k$ = Sulfur content of each fuel type, k, on a dry basis; weight percent.
GCV_k = Gross calorific value for each fuel type, k, on a dry basis; kJ/kg (Btu/lb).
n = The number of different types of fuels.

3. *Determination of Sulfur Removal Efficiency of the Sulfur Dioxide Control Device*

3.1 *Sampling.* Determine SO_2 emission rates at the inlet and outlet of the sulfur dioxide control system according to methods specified in the applicable subpart of the regulations and the procedures specified in Section 5. The inlet sulfur dioxide emission rate may be determined through fuel analysis (Optional, see Section 3.3.)

3.2. *Calculation.* Calculate the percent removal efficiency using the following equation:

$$\%R_{g(s)} = 100 \times (1.0 - \frac{E_{SO_2o}}{E_{SO_2i}})$$

Where:

$\%R_g$ = Sulfur dioxide removal efficiency of the sulfur dioxide control system using inlet and outlet monitoring data; percent.
$E_{so\ o}$ = Sulfur dioxide emission rate from the outlet of the sulfur dioxide control system; ng/J (lb/million Btu).
$E_{so\ i}$ = Sulfur dioxide emission rate to the outlet of the sulfur dioxide control system; ng/J (lb/million Btu).

3.3 *As-fired Fuel Analysis (Optional Procedure).* If the owner or operator of an electric utility steam generator chooses to determine the sulfur dioxide imput rate at the inlet to the sulfur dioxide control device through an as-fired fuel analysis in lieu of data from a sulfur dioxide control system inlet gas monitor, fuel samples must be collected in accordance with applicable paragraph in Section 2. The sampling can be conducted upstream of any fuel processing, e.g., plant coal pulverization. For the purposes of this section, a fuel lot size is defined as the weight of fuel consumed in 1 day (24 hours) and is directly related to the exhaust gas monitoring data at the outlet of the sulfur dioxide control system.

3.3.1 *Fuel Analysis.* Fuel samples must be analyzed for sulfur content and gross calorific value. The ASTM procedures for determining sulfur content are defined in the applicable paragraphs of Section 2.

3.3.2 *Calculation of Sulfur Dioxide Input Rate.* The sulfur dioxide imput rate determined from fuel analysis is calculated by:

$$I_s = \frac{2.0(\%S_f)}{GCV} \times 10^7 \quad \text{for S. I. units.}$$

$$I_s = \frac{2.0(\%S_f)}{GCV} \times 10^4 \quad \text{for English units.}$$

Where:

I_s = Sulfur dioxide input rate from as-fired fuel analysis, ng/J (lb/million Btu).
$\%S_f$ = Sulfur content of as-fired fuel, on a dry basis; weight percent.
GCV = Gross calorific value for as-fired fuel, on a dry basis; kJ/kg (Btu/lb).

3.3.3 *Calculation of Sulfur Dioxide Emission Reduction Using As-fired Fuel Analysis.* The sulfur dioxide emission reduction efficiency is calculated using the sulfur input rate from paragraph 3.3.2 and the sulfur dioxide emission rate, E_{so_2}, determined in the applicable paragraph of Section 5.3. The equation for sulfur dioxide emission reduction efficiency is:

$$\%R_{g(f)} = 100 \times (1.0 - \frac{E_{SO_2}}{I_s})$$

Where:

$\%R_{g(f)}$ = Sulfur dioxide removal efficiency of the sulfur dioxide control system using as-fired fuel analysis data; percent.
E_{SO_2} = Sulfur dioxide emission rate from sulfur dioxide control system; ng/J (lb/million Btu).
I_s = Sulfur dioxide input rate from as-fired fuel analysis; ng/J (lb/million Btu).

4. *Calculation of Overall Reduction in Potential Sulfur Dioxide Emission*

4.1 The overall percent sulfur dioxide reduction calculation uses the sulfur dioxide concentration at the inlet to the sulfur dioxide control device as the base value. Any sulfur reduction realized through fuel cleaning is introduced into the equation as an average percent reduction, $\%R_f$.

4.2 Calculate the overall percent sulfur reduction as:

$$\%R_o = 100[1.0 - (1.0 - \frac{\%R_f}{100})(1.0 - \frac{\%R_g}{100})]$$

Where:

$\%R_o$ = Overall sulfur dioxide reduction; percent.

$\%R_f$ = Sulfur dioxide removal efficiency of fuel pretreatment from Section 2; percent. Refer to applicable subpart for definition of applicable averaging period.

$\%R_g$ = Sulfur dioxide removal efficiency of sulfur dioxide control device either O_2 or CO_2 - based calculation or calculated from fuel analysis and emission data, from Section 3; percent. Refer to applicable subpart for definition of applicable averaging period.

5. *Calculation of Particulate, Sulfur Dioxide, and Nitrogen Oxides Emission Rates*

5.1 *Sampling.* Use the outlet SO_2 or O_2 or CO_2 concentrations data obtained in Section 3.1. Determine the particulate, NO_x, and O_2 or CO_2 concentrations according to methods specified in an applicable subpart of the regulations.

5.2 *Determination of an F Factor.* Select an average F factor (Section 5.2.1) or calculate an applicable F factor (Section 5.2.2.). If combined fuels are fired, the selected or calculated F factors are prorated using the procedures in Section 5.2.3. F factors are ratios of the gas volume released during combustion of a fuel divided by the heat content of the fuel. A dry F factor (F_d) is the ratio of the volume of dry flue gases generated to the calorific value of the fuel combusted; a wet F factor (F_w) is the ratio of the volume of wet flue gases generated to the calorific value of the fuel combusted; and the carbon F factor (F_c) is the ratio of the volume of carbon dioxide generated to the calorific value of the fuel combusted. When pollutant and oxygen concentrations have been determined in Section 5.1, wet or dry F factors are used. (F_w) factors and associated emission calculation procedures are not applicable and may not be used after wet scrubbers; (F_d) or (F_c) factors and associated emission calculation procedures are used after wet scrubbers.) When pollutant and carbon dioxide concentrations have been determined in Section 5.1, F_c factors are used.

5.2.1 *Average F Factors.* Table 1 shows average F_d, F_w, and F_c factors (scm/J, scf/million Btu) determined for commonly used fuels. For fuels not listed in Table 1, the F factors are calculated according to the procedures outlined in Section 5.2.2 of this section.

5.2.2 *Calculating an F Factor.* If the fuel burned is not listed in Table 1 or if the owner or operator chooses to determine an F factor rather than use the tabulated data, F factors are calculated using the equations below. The sampling and analysis procedures followed in obtaining data for these calculations are subject to the approval of the Administrator and the Administrator should be consulted prior to data collection.

For SI Units:

$$F_d = \frac{227.0(\%H) + 95.7(\%C) + 35.4(\%S) + 8.6(\%N) - 28.5(\%O)}{GCV}$$

$$F_w = \frac{347.4(\%H)+95.7(\%C)+35.4(\%S)+8.6(\%N)-28.5(\%O)+13.0(\%H_2O)^{**}}{GCV_w}$$

$$F_c = \frac{20.0(\%C)}{GCV}$$

For English Units:

$$F_d = \frac{10^6[5.57(\%H) + 1.53(\%C) + 0.57(\%S) + 0.14(\%N) - 0.46(\%O)]}{GCV}$$

$$F_w = \frac{10^6[5.57(\%H)+1.53(\%C)+0.57(\%S)+0.14(\%N)-0.46(\%O)+0.21(\%H_2O)^{**}]}{GCV_w}$$

$$F_c = \frac{10^6[0.321(\%C)]}{GCV}$$

**The $\%H_2O$ term may be omitted if %H and %O include the unavailable hydrogen and oxygen in the form of H_2O.

Where:

F_o, F_w, and F_c have the units of scm/J, or scf/million Btu; %H, %C, %S, %N, %O, and $\%H_2O$ are the concentrations by weight (expressed in percent) of hydrogen, carbon, sulfur, nitrogen, oxygen, and water from an ultimate analysis of the fuel; and GCV is the gross calorific value of the fuel in kJ/kg or Btu/lb and consistent with the ultimate analysis. Follow ASTM D 2015* for solid fuels, D 240* for liquid fuels, and D 1826* for gaseous fuels as applicable in determining GCV.

5.2.3 *Combined Fuel Firing F Factor.* For affected facilities firing combinations of fossil fuels or fossil fuels and wood residue, the F_o, F_w, or F_c factors determined by Sections 5.2.1 or 5.2.2 of this section shall be prorated in accordance with applicable formula as follows:

$$F_d = \sum_{k=1}^{n} x_k F_{dk} \quad \text{or}$$

$$F_w = \sum_{k=1}^{n} x_k F_{wk} \quad \text{or}$$

$$F_c = \sum_{k=1}^{n} x_k F_{ck}$$

Where:

x_k = The fraction of total heat input derived from each type of fuel, K.

n = The number of fuels being burned in combination.

5.3 *Calculation of Emission Rate.* Select from the following paragraphs the applicable calculation procedure and calculate the particulate, SO_2, and NO_x emission rate. The values in the equations are defined as:

E = Pollutant emission rate, ng/J (lb/million Btu).

C = Pollutant concentration, ng/scm (lb/scf).

Note.—It is necessary in some cases to convert measured concentration units to other units for these calculations.

Use the following table for such conversions:

Conversion Factors for Concentration

From—	To—	Multiply by—
g/scm	ng/scm	10^9
mg/scm	ng/scm	10^6
lb/scf	ng/scm	1.602×10^{11}
ppm(SO_2)	ng/scm	2.660×10^6
ppm(NO_2)	ng/scm	1.912×10^6
ppm/(SO_2)	lb/scf	1.660×10^{-7}
ppm/(NO_2)	lb/scf	1.194×10^{-7}

5.3.1 *Oxygen-Based F Factor Procedure.*

5.3.1.1 *Dry Basis.* When both percent oxygen ($\%O_{2d}$) and the pollutant concentration (C_d) are measured in the flue gas on a dry basis, the following equation is applicable:

$$E = C_d F_d \left[\frac{20.9}{20.9 - \%O_{2d}}\right]$$

5.3.1.2 *Wet Basis.* When both the percent oxygen ($\%O_{2w}$) and the pollutant concentration (C_w) are measured in the flue gas on a wet basis, the following equations are applicable: (Note: F_w factors are not applicable after wet scrubbers.)

(a) $$E = C_w F_w \left[\frac{20.9}{20.9(1 - B_{ws}) - \%O_{2w}}\right]$$

Where:

B_{ws} = Proportion by volume of water vapor in the ambient air.

In lieu of actual measurement, B_{ws} may be estimated as follows:

Note.—The following estimating factors are selected to assure that any negative error introduced in the term:

$$\left(\frac{20.9}{20.9(1 - B_{ws}) - \%O_{2w}}\right)$$

will not be larger than −1.5 percent. However, positive errors, or overestimation of emissions, of as much as 5 percent may be introduced depending upon the geographic location of the facility and the associated range of ambient moisture.

(i) B_{ws} = 0.027. This factor may be used as a constant value at any location.

(ii) B_{ws} = Highest monthly average of B_{ws} which occurred within a calendar year at the nearest Weather Service Station.

(iii) B_{ws} = Highest daily average of B_{ws} which occurred within a calendar month at the nearest Weather Service Station, calculated from the data for the past 3 years. This factor shall be calculated for each month and may be used as an estimating factor for the respective calendar month.

(b) $$E = C_w F_d \left[\frac{20.9}{20.9(1 - B_{ws}) - \%O_{2w}}\right]$$

Where:

B_{ws} = Proportion by volume of water vapor in the stack gas.

5.3.1.3 *Dry/Wet Basis.* When the pollutant concentration (C_w) is measured on a wet basis and the oxygen concentration ($\%O_{2d}$) or measured on a dry basis, the following equation is applicable:

$$E = \left[\frac{C_w F_d}{(1 - B_{ws})}\right] \left[\frac{20.9}{20.9 - \%O_{2d}}\right]$$

When the pollutant concentration (C_d) is measured on a dry basis and the oxygen concentration ($\%O_{2w}$) is measured on a wet basis, the following equation is applicable:

$$E = C_d F_d \frac{20.9}{\%O_{2w}}$$

$$20.9 - \left[(1 - B_{ws})\right]$$

5.3.2 *Carbon Dioxide-Based F Factor Procedure.*

5.3.2.1 *Dry Basis.* When both the percent carbon dioxide ($\%CO_{2d}$) and the pollutant concentration (C_d) are measured in the flue gas on a dry basis, the following equation is applicable:

$$E = C_d F_c \left(\frac{100}{\%CO_{2d}}\right)$$

5.3.2.2 *Wet Basis.* When both the percent carbon dioxide ($\%CO_{2w}$) and the pollutant concentration (C_w) are measured on a wet basis, the following equation is applicable:

$$E = C_w F_c \left(\frac{100}{\%CO_{2w}}\right)$$

5.3.2.3 *Dry/Wet Basis.* When the pollutant concentration (C_w) is measured on a wet basis and the percent carbon dioxide ($\%CO_{2d}$) is measured on a dry basis, the following equation is applicable:

$$E = \left[\frac{C_w F_c}{(1 - B_{ws})}\right] \left[\frac{100}{\%CO_{2d}}\right]$$

When the pollutant concentration (C_d) is measured on a dry basis and the precent carbon dioxide ($\%CO_{2w}$) is measured on a wet basis, the following equation is applicable:

$$E = C_d (1 - B_{ws}) F_c \left(\frac{100}{\%CO_{2w}}\right)$$

5.4 *Calculation of Emission Rate from Combined Cycle-Gas Turbine Systems.* For gas turbine-steam generator combined cycle systems, the emissions from supplemental fuel fired to the steam generator or the percentage reduction in potential (SO_2) emissions cannot be determined directly. Using measurements from the gas turbine exhaust (performance test, subpart GG) and the combined exhaust gases from the steam generator, calculate the emission rates for these two points following the appropriate paragraphs in Section 5.3.

Note.—F_w factors shall not be used to determine emission rates from gas turbines because of the injection of steam nor to calculate emission rates after wet scrubbers; F_o or F_c factor and associated calculation procedures are used to combine effluent emissions according to the procedure in Paragraph 5.2.3.

The emission rate from the steam generator is calculated as:

$$E_{sg} = \frac{E_c - X_{gt} E_{gt}}{X_{sg}}$$

Where:

E_{sg} = Pollutant emission rate from steam generator effluent, ng/J (lb/million Btu).
E_c = Pollutant emission rate in combined cycle effluent; ng/J (lb/million Btu).
E_{gt} = Pollutant emission rate from gas turbine effluent; ng/J (lb/million Btu).
X_{sg} = Fraction of total heat input from supplemental fuel fired to the steam generator.
X_{gt} = Fraction of total heat input from gas turbine exhaust gases.

Note.—The total heat input to the steam generator is the sum of the heat input from supplemental fuel fired to the steam generator and the heat input to the steam generator from the exhaust gases from the gas turbine.

5.5 *Effect of Wet Scrubber Exhaust, Direct-Fired Reheat Fuel Burning.* Some wet scrubber systems require that the temperature of the exhaust gas be raised above the moisture dew-point prior to the gas entering the stack. One method used to accomplish this is direct firing of an auxiliary burner into the exhaust gas. The heat required for such burners is from 1 to 2 percent of total heat input of the steam generating plant. The effect of this fuel burning on the exhaust gas components will be less than ±1.0 percent and will have a similar effect on emission rate calculations. Because of this small effect, a determination of effluent gas constituents from direct-fired reheat burners for correction of stack gas concentrations is not necessary.

Table 19-1.—*F Factors for Various Fuels*[a]

Fuel type	F_d dscm/J	F_d dscf/10^6 Btu	F_w wscm/J	F_w wscf/10^6 Btu	F_c scm/J	F_c scf/10^6 Btu
Coal:						
Anthracite[b]	2.71×10^{-7}	(10100)	2.83×10^{-7}	(10540)	0.530×10^{-7}	(1970)
Bituminous[b]	2.63×10^{-7}	(9780)	2.86×10^{-7}	(10640)	0.484×10^{-7}	(1800)
Lignite	2.65×10^{-7}	(9860)	3.21×10^{-7}	(11950)	0.513×10^{-7}	(1910)
Oil[b]	2.47×10^{-7}	(9190)	2.77×10^{-7}	(10320)	0.383×10^{-7}	(1420)
Gas:						
Natural	2.43×10^{-7}	(8710)	2.85×10^{-7}	(10610)	0.287×10^{-7}	(1040)
Propane	2.34×10^{-7}	(8710)	2.74×10^{-7}	(10200)	0.321×10^{-7}	(1160)
Butane	2.34×10^{-7}	(8710)	2.79×10^{-7}	(10390)	0.337×10^{-7}	(1250)
Wood	2.48×10^{-7}	(9240)	———	———	0.492×10^{-7}	(1830)
Wood Bark	2.58×10^{-7}	(9600)	———	———	0.497×10^{-7}	(1600)

[a] As classified according to ASTM D 388-66.
[b] Crude, residual, or distillate.
[c] Determined at standard conditions: 20° C (68° F) and 760 mm Hg (29.92 in. Hg).

6. *Calculation of Confidence Limits for Inlet and Outlet Monitoring Data*

6.1 *Mean Emission Rates.* Calculate the mean emission rates using hourly averages in ng/J (lb/million Btu) for SO_2 and NO_x outlet data and, if applicable, SO_2 inlet data using the following equations:

$$E_o = \frac{\Sigma x_o}{n_o}$$

$$E_i = \frac{\Sigma x_i}{n_i}$$

Where:

E_o = Mean outlet emission rate; ng/J (lb/million Btu).
E_i = Mean inlet emission rate; ng/J (lb/million Btu).
x_o = Hourly average outlet emission rate; ng/J (lb/million Btu).
x_i = Hourly average inlet emission rate; ng/J (lb/million Btu).
n_o = Number of outlet hourly averages available for the reporting period.
n_i = Number of inlet hourly averages available for reporting period.

6.2 *Standard Deviation of Hourly Emission Rates.* Calculate the standard deviation of the available outlet hourly average emission rates for SO_2 and NO_x and, if applicable, the available inlet hourly average emission rates for SO_2 using the following equations:

$$s_o = \left(\sqrt{\frac{1}{n_o - 720}}\right)\left(\sqrt{\frac{\Sigma (E_o - x_o)^2}{n_o - 1}}\right)$$

$$s_i = \left(\sqrt{\frac{1}{n_i - 720}}\right)\left(\sqrt{\frac{\Sigma (E_i - x_i)^2}{n_i - 1}}\right)$$

Where:

s_o = Standard deviation of the average outlet hourly average emission rates for the reporting period; ng/J (lb/million Btu).
s_i = Standard deviation of the average inlet hourly average emission rates for the reporting period; ng/J (lb/million Btu).

6.3 *Confidence Limits.* Calculate the lower confidence limit for the mean outlet emission rates for SO_2 and NO_x and, if applicable, the upper confidence limit for the mean inlet emission rate for SO_2 using the following equations:

$$E_o^* = E_o - t_{0.\alpha} s_o$$

$$E_i^* = E_i + t_{0.\alpha} s_i$$

Where:

E_o^* = The lower confidence limit for the mean outlet emission rates; ng/J (lb/million Btu).
E_i^* = The upper confidence limit for the mean inlet emission rate; ng/J (lb/million Btu).
$t_{0.\alpha}$ = Values shown below for the indicated number of available data points (n):

n	Values for $t_{0.\alpha}$	$t_{0.\alpha}$
2		6.31
3		2.42
4		2.35
5		2.13
6		2.02
7		1.94
8		1.89
9		1.86
10		1.83
11		1.81
12-16		1.77
17-21		1.73
22-26		1.71
27-31		1.70
32-61		1.68
62-91		1.67
92-181		1.66
182 or more		1.65

The values of this table are corrected for n-1 degrees of freedom. Use n equal to the number of hourly average data points.

7. *Calculation to Demonstrate Compliance When Available Monitoring Data Are Less Than the Required Minimum*

7.1 *Determine Potential Combustion Concentration (PCC) for SO_2.*

7.1.1 When the removal efficiency due to fuel pretreatment (% R_f) is included in the overall reduction in potential sulfur dioxide emissions (% R_o) and the "as-fired" fuel analysis is not used, the potential combustion concentration (PCC) is determined as follows:

$$PCC = E_i^* + 2\left(\frac{\%\ S_i}{GCV_i} - \frac{\%\ S_o}{GCV_o}\right) 10^7;\ ng/J$$

$$PCC = E_i^* + 2\left(\frac{\%\ S_i}{GCV_i} - \frac{\%\ S_o}{GCV_o}\right) 10^4;\ lb/million\ Btu.$$

Where:

$\left(\frac{\%\ S_i}{GCV_i} - \frac{\%\ S_o}{GCV_o}\right)$ = Potential emissions removed by the pretreatment process, using the fuel parameters defined in section 2.3; ng/J (lb/million Btu).

7.1.2 When the "as-fired" fuel analysis is used and the removal efficiency due to fuel pretreatment (% R_f) is not included in the overall reduction in potential sulfur dioxide emissions (% R_o), the potential combustion concentration (PCC) is determined as follows:

$PCC = I_s$

$$PCC = I_s + 2\left(\frac{\%\ S_f}{GCV_f} - \frac{\%\ S_o}{GCV_o}\right)10^7;\ ng/J$$

$$PCC = I_s + 2\left(\frac{\%\ S_f}{GCV_f} - \frac{\%\ S_o}{GCV_o}\right)10^4;\ lb/million\ Btu.$$

Where:

I_s = The sulfur dioxide input rate as defined in section 8.3

7.1.3 When the "as-fired" fuel analysis is used and the removal efficiency due to fuel pretreatment (% R_f) is included in the overall reduction (% R_o), the potential combustion concentration (PCC) is determined as follows:

$PCC = E_s^*$

Where:

E_s^* = The upper confidence limit of the mean inlet emission rate, as determined in section 6.3.

7.1.4 When inlet monitoring data are used and the removal efficiency due to fuel pretreatment (% R_f) is not included in the overall reduction in potential sulfur dioxide emissions (% R_o), the potential combustion concentration (PCC) is determined as follows:

$PCC = E_s^*$

Where:

E_s^* = The upper confidence limit of the mean inlet emission rate, as determined in section 6.3.

7.2 *Determine Allowable Emission Rates* (E_{std}).

7.2.1 *NO_x.* Use the allowable emission rates for NO_x as directly defined by the applicable standard in terms of ng/J (lb/million Btu).

7.2.2 *SO_2.* Use the potential combustion concentration (PCC) for SO_2 as determined in section 7.1, to determine the applicable emission standard. If the applicable standard is an allowable emission rate in ng/J (lb/million Btu), the allowable emission rate is used as E_{std}. If the applicable standard is an allowable percent emission, calculate the allowable emission rate (E_{std}) using the following equation:

$E_{std} = \%\ PCC/100$

Where:

% PCC = Allowable percent emission as defined by the applicable standard; percent.

7.3 *Calculate E_o^*/E_{std}.* To determine compliance for the reporting period calculate the ratio:

E_o^*/E_{std}

Where:

E_o^* = The lower confidence limit for the mean outlet emission rates, as defined in section 6.3; ng/J (lb/million Btu).

E_{std} = Allowable emission rate as defined in section 7.2; ng/J (lb/million Btu).

If E_o^*/E_{std} is equal to or less than 1.0, the facility is in compliance; if E_o^*/E_{std} is greater than 1.0, the facility is not in compliance for the reporting period.

[FR Doc. 79-17607 Filed 6-8-79; 8:45 am]
BILLING CODE 6560-01-M

Federal Register

Monday
June 11, 1979

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Prime Farmland; Initial Regulatory Program

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[30 CFR Part 716]

Prime Farmland; Initial Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Department of the Interior.

ACTION: Proposed Rule and Notice of Public Hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (the Office) proposes to amend portions of its initial regulatory program (42 FR 62639–62716, December 13, 1977) relating to prime farmland. The proposed changes and the basis and purpose of the proposal are further discussed below. The Office is required to effect these changes primarily as a result of the decisions of the United States District Court in *In re Surface Mining Regualtion Litigation*, 452 F. Supp. 327 (D. D.C. 1978) and 456 F. Supp. 1301 (D. D.C. 1978). The Office is also proposing changes which are not the direct result of the court's decisions. The proposed regulations are intended to replace those portions of the prime farmland regulations which the court enjoined and remanded to the Secretary of the Interior for reconsideration, to clarify some provisions of the regulations, and to make the Office's initial regulations with respect to prime farmland more analogous to the permanent regulatory program on prime farmland.

DATES: The comment period on the proposed rules will extend until July 27, 1979. All written comments must be received at the address given below under "ADDRESS" by 5 p.m. on July 27, 1979.

Public hearings on the proposed regulations will be held on June 27, 1979, beginning at 9:30 a.m. local time at each location.

Washington— Department of the Interior Auditorium, 18th & C Sreets, N.W., Washington, D.G.

Indianapolis—Indiana World War Memorial Auditorium, 431 North Meridian Street, Indianapolis, Indiana.

Kansas City—New Federal Building, Room 147/148, 601 East 12th Street, Kansas City, Missouri 64106.

Person wishing to testify at the public hearings on the proposed regulations should contact the appropriate person listed below under "PUBLIC MEETINGS".

Individuals testifying at these hearings will be limited to 15 minutes. The hearing will be transcribed. Filing of a written statement at the time of giving oral testimony would be helpful and facilitate the job of the court reporter. Submission of written statements to the persons identified below, under "SUPPLEMENTAL INFORMATION," for these hearings, in advance of the hearing date whenever possible, would greatly assist Office officials who will attend the hearings. Advance submission will give these officials an opportunity to consider appropriate questions which could be asked to clarify or elicit more specific information from the person testifying. The record will remain open until July 27, 1979, for comments on the proposed regulations.

The public hearings will continue on the day identified above until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak and wish to do so will be heard at the end of the scheduled speakers. The hearings will end after all people scheduled to testify and persons present in the audience who wish to speak have been heard. Persons not scheduled to testify, but who wish to do so, assume the risk of having the public hearing adjourned unless they are present in the audience at the time all scheduled speakers have been heard.

ADDRESSES: Written comments must be mailed or hand delivered to the Office of Surface Mining, Administrative Record Office, Room 120, South Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, telephone 202–343–4728. All comments received and the transcript of the public hearing will be available for further inspection at the same address.

FOR FURTHER INFORMATION CONTACT: Dr. David R. Maneval, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, Washington, D.C. 20240, Telephone: 202–343–4264.

SUPPLEMENTARY INFORMATION:

Background

On December 13, 1977 (42 FR 62639–62716), the Office promulgated final initial regulations (30 CFR Chapter VII) as required by Section 501(a) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. Section 1251(a), (SMCRA or the Act). Section 716.7 of the initial regulations pertains to surface coal mining and reclamation operations conducted on prime farmland. (42 FR 62693–95 (1977).)

The validity of § 716.7 was challenged in *In re Surface Mining Regulation Litigation*, 452 F. Supp. 327 (D. D.C. 1978) and 456 F. Supp. 1301 (D. D.C. 1978). The court's opinions in these cases as they relate to prime farmland will be discussed below in greater detail under the headings "HISTORICAL USE CLAUSE" and "GRANDFATHER EXEMPTION." The regulations which are discussed under those headings are intended primarily to replace those portions of the initial prime farmland regulations which the court enjoined and remanded to the Secretary of the Interior for reconsideration. When promulgated in final form, after public hearing and analysis of comments, these rules together with the unaffected portion of § 716.7 of the initial regulations will constitute the initial regulations of the Office with regard to surface coal mining and reclamation operations on prime farmland.

Public Participation

Procedures for filing written comments are described above under the heading "ADDRESSES." Public hearings will be held on June 27, 1979, beginning at 9:30 a.m. in the locations listed above under "DATES."

Public Comments

Written and oral comments should be as specific as possible. The Office will appreciate any and all comments, but those most useful and likely to influence decisions on these regulations will be those which include references to source material, including legislative history, technical data and research, and other material which provides a basis for any given recommendation. An explanation of the rationale for each recommendation should also be given. The preamble to the final regulations will reflect consideration of comments received on the proposed rules.

Public Meetings

Representatives of the Office will be available to meet between June 15, 1979, and July 27, 1979, at the request of members of the public, State representatives, industry officials, labor representatives, and environmental organizations to receive their advice and recommendations concerning the content of the proposed regulations.

Persons wishing to meet with representatives of the Office during this time period may request to meet with Office officials at the Washington Office or the two Regional Offices. Persons to contact to schedule such meetings are as follows:

Indianapolis—Norma Dailey (317) 269-2600.
Kansas City—Kerry Cartier (816) 374-2618.
Washington—Arlo Dalrymple (202) 343-5261.

The Office will be available for such meetings between 9:00 a.m. and noon and 1:00 p.m. and 4:00 p.m. local time, Monday through Friday, excluding holidays at these locations.

Availability of Copies

Copies of the proposed regulations are available for inspection and copies may be obtained at the following offices:

OSM Headquarters, Department of the Interior, Room 120, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, 202-343-4278.
OSM Region I, 1st Floor, Thomas Hill Building, 950 Kanawha Boulevard, East, Charleston, West Virginia 25301, 304-342-8125.
OSM Region II, 530 Gay Street, S.W., Suite 500, Knoxville, Tennessee 37902, 615-637-8060.
OSM Region III, Room 502, Federal Building, U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204, 317-269-2600.
OSM Region IV, New Federal Building, Room 147/148, Kansas City, Missouri, 816-758-2193.
OSM Region V, Old Post Office—Downtown, 1823 Stout Street, Denver, Colorado, 303-837-5511.

Historical Use Clause

Sections 501(d) and 515(b)(7) of the Act provide for special environmental protection during the mining and reclamation process for lands classified as "prime farmland." Section 701(20) of the Act defines prime farmland as having the same meaning as that previously prescribed and published by the Secretary of Agriculture and lists several factors which shall be the components of that definition.

In addition, Section 701(20) requires that land meeting the technical criteria of the Department of Agriculture must also have been historically used for intensive agricultural purposes. (30 U.S.C. Section 1291(20).)

The statutory definition of prime farmland was implemented in the initial regulations of the Office in § 716.7 (a) and (b). (42 FR 62693-95 (1977).) The technical criteria which had previously been published by the Secretary of Agriculture were referenced in Section 716.7(b) and the pertinent portion of the technical criteria was reproduced for the convenience of the reader. (42 FR 62694 (1977).) Section 716.7(b) was not challenged in the litigation and thus was not an issue in the district court's opinion. The proposed amendments also incorporate but do not reproduce the technical criteria of the Secretary of Agriculture in the definition of prime farmland. (See proposed § 716.7(b).)

Section 716.7(a)(1) of the initial regulations further defined the concept of historic use for intensive agricultural purposes by specifying the historical use period (the period of time the land must have been in crop production) as at least 5 years out of the 20 years preceding the date of the permit application. (42 FR 62693 (1977).) The district court enjoined this part of the initial regulations because the regulation was not explained or supported in the preamble and the regulation as written was overly broad. (*See In re Surface Mining Regulation Litigation*, 456 F. Supp. at 1312 (D. D.C. 1978).)

It has been estimated that there are about 250 million acres of soils which could be classified as prime farmland and which have a demonstrated cropland use. (H.R. Rep. No. 95-218, 95th Cong. 1st Sess. 105 (1977).) The total acreage of the five cropland classes has remained relatively constant since 1949, a peak cropland year. (U.S. Department of Agriculture, 1978 Handbook of Agricultural Charts, Agriculture Handbook 551, p. 27.) It is, therefore, assumed that nearly all prime farmland with a cropland history would have been in crop production for some amount of time since 1949. As a result, the historical use period need not extend back before that year.

The Office considered the following alternatives for the historical use period: (1) Choose a time frame of 20 years or less and a specified number of years within that time (e.g., 5 in 20, 14 in 20, 4 years prior, 10-year history, 5 in 10, 7 in 10, 1 in 2, anytime, etc.); (2) allow for substantial flexibility by leaving the precise definition to the regulatory authority or other State, Federal, or land management agencies; and (3) make no change (i.e., use 5 in 20).

The Office believes the third alternative is not a reasonable approach since making no change would result in only a partial implementation of the Act's prime farmland provisions and would be in violation of the court's order.

The Office believes the second alternative is accommodated through the proposed uniform standard which also affords flexibility for regulatory authorities to take local conditions and practices into account.

A historical use period of 10 years was suggested by many commenters in the Office's permanent regulatory program rulemaking. (44 FR 14931, March 13, 1979.) The Office believes that an established use period to 10 years is adequate to determine historical uses. Further, the Office believes that the cropland record for this period of time is readily available from local sources. A period of 10 years should be sufficient in the majority of cases to identify prime farmland soils which have a demonstrated cropland use and to reflect modern agricultural practices such as placement of land in land banks or other deferment status. A period of less than 10 years was not chosen because the Office believes that a land use history of less than 10 years would not establish a true land use history.

Prime farmland used as cropland for 50 percent or more of the historical use period will be considered as prime farmland historically used as cropland. Fifty percent or more was chosen because this represents the predominant land use in the historical period. As a result, the proposed regulation provides that a predominant land use in the historical period has been established and the land qualifies as having been historically used for cropland if the land in question has been used as cropland for 5 or more years of the 10-year period. (See proposed §§ 716.7(b) and 716.7(d)(1).)

Grandfather Clause

Section 510(d)(2) of the Act, 30 U.S.C. Section 1260(d)(2), sets forth a grandfather exemption with respect to some surface coal mining and reclamation operations as follows:

> Nothing in this Subsection shall apply to any permit issued prior to the date of enactment of this Act, or to any revisions or renewals thereof, or to any existing surface mining operations for which a permit was issued prior to the date of enactment of this Act.

The grandfather clause was implemented in the initial regulations of the Office as Section 716.7(a)(2). (See 42 FR 62693 (1977).)

The District Court held that this Section was generally a reasonable exercise of the Secretary's discretion in implementing the Act and properly limited the areas which are exempt from the prime farmland provision of the initial regulations. (*See In re Surface Mining Regulation Litigation*, 452 F. Supp. at 340 (D. D.C. 1978). However, to the extent that § 716.7(a)(2) as originally promulgated attempted to limit the effect of the grandfather exemption to the permit application requirements of Section 510(d)(1) of the Act, the court found that the regulation was an incorrect application of the statute. The court found that the exemption stated in Section 510(d)(2) of the Act specifically applies to the prime farmland performance standards of Section

515(b)(7), 30 U.S.C. Section 1265(b)(7), as well as to the permit application requirements of Section 510(d)(1) of the Act. The court then enjoined enforcement of the provisions of § 716.7 to the extent they imposed performance standards on operations exempt from those requirements under Section 510(d)(2) of the Act. Thus, the grandfather clause, as a result of the court's opinion, should be construed as exempting surface coal mining and reclamation operations operating under permits issued prior to August 3, 1977, or renewals or revisions thereof, from both the prime farmland permit application requirements and performance standards. The Office proposes to amend § 716.7 to reflect this judicial construction of the Act. (See proposed § 716.7(a)(2).) The proposed amendment does not relieve an operator from compliance with all other applicable performance standards of the initial program for those surface coal mining and reclamation operations in areas which, but for application of the grandfather clause, would qualify for classification as prime farmland.

Other Changes

The Office proposes to make other changes in § 716.7 to clarify its requirements and to make the prime farmland regulations of the initial program more analogous to the prime farmland regulations of the permanent regulatory program. These proposed changes are described below.

As noted above, the Act defines prime farmland as lands which meet certain technical criteria and which have been historically used for intensive agricultural purposes. (Section 701(20) of the Act.) For purposes of the initial regulations, "intensive agricultural purposes" was defined as "cultivated crops." (See §§ 716.7(a)(1) and 716.7(d)(1), 42 FR 62693 and 62694 (1977) respectively.) The Office proposes to amend § 716.7 (b) and (d)(1) to substitute "cropland" for "cultivated crops" because cropland is a term with a long history of use by the Department of Agriculture and is a basis for collection of statistical data on crop production and land use. "Cropland" is the term used in the Office's permanent regulatory program and the Office intends that the definition and scope of the term be the same in the initial and permanent programs. (See 44 FR 14926 March 13, 1979).)

The initial regulations now provide that the date from which the historical use period must be measured is the date of the permit application. (See 42 FR 62693 (December 1977).) The Office is proposing to establish a different date for calculation of the use period. Among the alternatives considered were the date of (1) the Act, (2) the initial regulations, (3) the permit application, and (4) the acquisition of land for the purpose of mining. The dates of the Act, regulations, or permit application have not been proposed because they may not truly represent the land use history of the land. The Office believes that the period of time prior to the date of acquisition of the land for mining purposes is more representative because that time period is less likely to be influenced by the proposed mining activity. Accordingly, the Office proposes to amend §§ 716.7(b) and 716.7(d)(1) to reflect this change.

During the recently concluded permanent program relemaking, the Office received comments stating that local farming conditions vary considerably from region to region and are heavily dependent on the local economy, market conditions, and governmental structure and regulation. As a result, the Office's permanent program regulations relating to prime farmland include provision for the regulatory authority to have flexibility to classify as prime farmland those lands important to the State or local economy. (See 44 FR 15318 (March 13, 1979).) The Office believes this flexibility is also appropriate for the initial regulatory program and proposes to amend § 716.7(b) accordingly. Under this Section, the regulatory authority may only increase and not decrease prime farmland acreage.

Finally, the Office proposes to amend § 716.7(b) to include within the category of prime farmland those lands which are taken out of cropland use for more than 5 years in 10 due to ownership circumstances which do not relate to the capability of the land to produce crops (e.g., retirement, litigation, death). Such land may be prime farmland in a temporarily inactive state and should be entitled to protection against loss of productivity under the Act. As in the case of the above-described language affording flexibility to the regulatory authority, this proposed language is similar to the definition of prime farmland in the permanent program and, the Office believes, is appropriate for addition to the initial program.

Drafting Information

The principal authors of these proposed regulations are as follows:

1. Arlo Dalrymple (202) 343–5261
2. Lee de Moulin (202) 343–5261
3. Donald Smith (317) 331–2073

Statements of Significance and Environmental Impact

The department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14. Section 702(d) of the Act (30 U.S.C. Section 1292(d)) exempts this action from the environmental impact statement reguirement of the National Environmental Policy Act.

Dated: June 4, 1979.

Joan M. Davenport

Assistant Secretary—Energy and minerals.

In consideration of the foregoing, it is proposed to amend § 716.7 (42 FR 62693–95, December 13, 1977) (to be codified in 30 CFR § 716.7), as follows:

By revising § 716.7(a)(1) and (2), (b) and (d)(1) to read:

§ 716.7 Prime farmland.

(a) *Applicability.* (1) Permittees of surface coal mining and reclamation operations conducted on prime farmland shall comply with the general performance standards of Part 715 of this chapter in addition to the special requirements of this section.

(2) The requirements of this Section are applicable to any permit issued on or after August 3, 1977. Permits issued before that date and revisions or renewals of those permits need not conform to the provisions of this Section. Permit renewals or revisions shall include only those areas that —

(i) were in the original permit area or in a mining plan approved prior to August 3, 1977; or

(ii) are contiguous and under State regulation or practice would have normally been considered as a renewal or revision of a previously approved plan.

(b) *Definitions.* For purposes of this Section, the following definitions are applicable.

(1) *Prime farmland* means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 and which have been historically used for cropland.

(2) *Historically used for cropland.* means (i) lands that have been used for cropland for any 5 years or more out of the 10 years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease, or option the conduct of surface coal mining and reclamation operations; (ii) lands that the regulatory authority determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration,

that the permit area is clearly cropland but falls outside the specific 5-years-in-10 criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be protected, or (iii) lands that would likely have been used as cropland for any 5 out of the last 10 years, immediately preceding such acquisition but for some fact of ownership or control of the land unrelated to the productivity of the land.

(3) *Cropland* means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar speciality crops.

* * * * *

(d) * * *

(1) lands within the proposed permit boundaries have not been historically used for cropland.

* * * * *

[FR Doc. 79-17981 Filed 6-8-79; 8:45 am]
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Federal Register

Monday
June 11, 1979

Part IV

Department of Energy

Office of the Secretary

Safeguarding of Restricted Data

DEPARTMENT OF ENERGY

Office of the Secretary

[10 CFR Part 795]

Safeguarding of Restricted Data

AGENCY: Department of Energy (DOE).

ACTION: Proposed Rule.

SUMMARY: The Department of Energy proposes a revision of 10 CFR Part 795 which concerns the requirements for the safeguarding and transmission of Secret and Confidential Restricted Data. Part 795 is applicable to all persons who receive or generate Restricted Data under an Access Permit issued pursuant to the regulations in Part 725 "Permits for access to Restricted Data" of 10 CFR, Chapter III.

Continual upgrading of security procedures by DOE, both for DOE held Restricted Data and that data held by DOE contractors, has left a considerable gap between these procedures and Part 795. In addition, areas such as automatic data processing systems are not within the scope of the present Part 795. In an effort to update and upgrade Part 795, this revision is proposed.

The changes vary in complexity and relate in general to the following matters: new definitions; submission of procedures by access permit holders; protection of Restricted Data in storage; establishment of security areas; qualification of protective personnel; certification of DOD and NASA personnel; preparation and transmission of classified documents; shipment of classified material; security of automatic data processing systems; and reports on foreign travel.

DATES: Comments must be received on or before July 11, 1979.

ADDRESSES: Comments should be sent to George Weisz, Director, Office of Safeguards and Security, Department of Energy, 20 Massachusetts Avenue, NW, Washington, D.C. 20545, (301) 353–5106.

FOR FURTHER INFORMATION CONTACT: W. E. Gilbert, Jr., Chief, Programs and Policy Branch, Office of Safeguards and Security, U.S. Department of Energy, Washington, D.C. 20545, 301/353–5690.

SUPPLEMENTARY INFORMATION: Significant changes to 10 CFR Part 795 which would be effected by the proposed revision are as follows:

1. "ERDA" and the titles of former ERDA officials would be changed to "DOE" and the titles of comparable DOE officials throughout the Part.

2. Definitions of the following terms would be added for clarity of the succeeding text.

§ 795.3(c) Automatic data processing system
(d) Authorized derivative classifier
(e) Data
(j) General Counsel
(k) Guard
(l) Information
(n) Material
(o) Matter
(s) Protective Personnel
(x) Security container
(y) Security inspector

3. The requirements of § 795.21(a) and 795.21(b) for protection of Restricted Data in storage would be upgraded for comparability with DOE standards established under the authority of the Atomic Energy Act of 1954, as amended.

4. New § 795.21(f) and 795.21(g) would provide additional procedural guidance for the selection and administrative control of lock combinations.

5. New § 795.21(h), 795.21(i), and 795.21(j) would provide additional procedural guidance for the surveillance and protection of unattended security repositories.

6. New § 795.25(c) and 795.25(e) would provide qualification standards for security inspectors employed for the protection of Restricted Data.

7. Section 795.31 would be revised to provide amplified guidance for the control of access to Restricted Data by employees of the DOD or NASA.

8. Sections 795.32(c), 795.32(d), and 795.32(e) would be revised to provide amplified guidance for the classification marking of Restricted Data documents, including drafts and letters of transmittal.

9. Section 795.33(d) would be revised to delete methods of transportation no longer available, to add additional authorized alternate methods of transportation, and to provide additional guidance for the protection of Restricted Data in transit.

10. New § 795.38 would add the requirement that ADP systems used for processing of Restricted Data must be approved by DOE.

11. New § 795.43(c) would require reports to DOE of travel to Soviet-bloc countries by Access Permittee employees who have had access to C–24 category of information.

Interested persons are invited to submit written comments with respect to the proposed regulations to the address provided above. Comments should be identified on the outside of the envelope and on the documents submitted to DOE with the designation "Safeguarding of Restricted Data." Fifteen (15) copies should be received by DOE by the deadline specified, in order to ensure consideration.

In accordance with section 501(c)(1) of the Department of Energy Organization Act, DOE has determined that these regulations present no substantial issue of fact or law, and are unlikely to have a substantial impact on the economy or large numbers of individuals or businesses. Accordingly, no public hearing is required.

Since this document is unlikely to have any significant effect on the environment, DOE has determined that the provisions of section 7(a)(2) of the Federal Energy Administration Act, as amended, requiring that proposals having such effect be submitted to the Environmental Protection Agency for review and comment, does not apply.

DOE has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A–107.

(Atomic Energy Act of 1954, as amended, Section 161.i., 68 Stat. 948, 42 U.S.C. 2201; Energy Reorganization Act of 1974, Section 104, 88 Stat. 1237, 42 U.S.C. 5814 and Section 105, 88 Stat. 1238, 42 U.S.C. 5815; Department of Energy Organization Act, Section 301, 91 Stat. 577, 42 U.S.C. 7140 and Section 641, 91 Stat. 598, 42 U.S.C. 7251)

Dated at Washington, D.C. this 14, of May 1979.

Duane C. Sewell,
Assistant Secretary for Defense Programs.

In accordance with the foregoing, it is proposed that Part 795 of 10 CFR Chapter III, be revised as set forth below.

PART 795—SAFEGUARDING OF RESTRICTED DATA

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Authority: The provisions of Part 795 are issued under the Atomic Energy Act of 1954, as amended, section 161.i., 68 Stat. 948, 42 U.S.C. 2201; Energy Reorganization Act of 1974, section 104, 88 Stat. 1237, 42 U.S.C. 5814 and section 105, 88 Stat. 1238, 42 U.S.C. 5815; Department of Energy Organization Act, section 301, 91 Stat. 577, 42 U.S.C. 7140 and section 641, 91 Stat. 598, 42 U.S.C. 7251).

General Provisions

§ 795.1 Purpose.

The regulations in this part establish requirements for the safeguarding of Secret and Confidential Restricted Data received or developed under an Access Permit. This part does not apply to other categories of classified information.

§ 795.2 Scope.

The regulations in this part apply to persons who receive access to Restricted Data or develop Restricted Data under an Access Permit issued in accordance with the regulations in Part 725 of this chapter.

§ 795.3 Definitions.

(a) "Access authorization" means an administrative determination by DOE that an employee of DOE, a DOE contractor or subcontractor, an employee of a contractor or subcontractor of another Federal agency, an Access Permittee, or an employee of an Access Permittee is eligible for access to Restricted Data.

(b) "Act" means the Atomic Energy Act of 1954 (68 Stat. 919), including any amendments thereto.

(c) "Automatic data processing" means data processing largely performed by an automatic system of electronic or electrical machines including input, processing, and output operations.

(d) "Authorized Derivative Classifier" means an individual who has been designated and authorized by competent Department of Energy (DOE) authority to classify information, work projects, documents, and other materials as Secret or Confidential Restricted Data.

(e) "Data" means all information and material containing Restricted Data, including any such facts or concepts set forth by an ADP system.

(f) "Document" means any piece of recorded information regardless of its physical form or characteristics.

(g) "DOD" means the Department of Defense or its duly authorized representatives.

(h) "DOE" means the Department of Energy or its duly authorized representatives.

(i) "DOE approved" means approved by the responsible DOE safeguards and security office.

(j) "General Counsel" is the principal Attorney of the Department of Energy.

(k) "Guard" means an individual, not necessarily uniformed, who is employed for, and charged with, the protection of classified matter or Government property. Guards shall be armed with non-lethal weapons such as billy-club, "Stun-Gun", or aerosol irritants.

(l) "Information", when automatic data processing is involved, means a representation of facts or concepts producted by an ADP system.

(m) "L(X) access authorization" means a determination by DOE that an individual is eligible for access to Confidential Restricted Data under an Access permit.

(n) "Material" means chemical substances, fabricated items, assemblies, machinery, or equipment.

(o) "Matter" means documents or material.

(p) "NASA" means the National Aeronautics and Space Administration or its duly authorized representatives.

(q) "Permittee" means the holder of an Access Permit issued pursuant to the regulations in part 725 of this chapter.

(r) "Person" means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than DOE, any State or any political subdivision of, or any political entity within a State, or other entity; and (2) any legal successor, representative, representative, agent or agency of the foregoing.

(s) "Protective personnel" means guards or security inspectors.

(t) "Q(X) access authorization" means a determination by DOE that an individual is eligible for access to Secret and Confidential Restricted Data under an Access Permit.

(u) "Restricted Data" means all data concerning (1) design, manufacture or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Act.

(v) "Security area" means a physically defined space containing classified matter and subject to physical protection and personel access controls.

(w) "Security clearance" means an administrative determination by DOE that an employee of another Federal government (as opposed to state and local) agency is eligible for access to Restricted Data.

(x) "Security container" means any of the following repositories:

(1) *A security filing cabinet*—a metal security container of a type approved by the General Services Administration for the storage of classified matter and marked "General Services Administration Approved Security Container". This container meets the Class 1 standards of Federal Specification AA–F–357, the Class 5 standards of Federal Specification AA–F–358, or the Class 5 standards of Federal Specification AA–F–363.

(2) *A safe*—a metal security container of a type approved by the General Services Administration for the storage of classified matter and marked "General Services Administration Approved Security Container", this container meets the standards of Federal Specification AA–S–1518A.

(3) *A vault*—a penetration-resistant, windowless enclosure which: (i) has walls, floor, and ceiling substantially constructed of materials which afford a forced penetration resistance at least equivalent to that of 8 inch thick reinforced concrete; (ii) has any openings greater than 96 square inches in area and over 6 inches in the smallest dimension protected by imbedded steel bars at least ⅝ inches in diameter on 6 inch centers both horizontally and vertically; (iii) has a built-in combination locked steel door which in existing structures is at least 1" thick exclusive of bolt work and locking devices and which for new structures at least meets the class 5 standards of Federal Specification AA–D–600B.

(4) *A security room*—one having combination-locked door(s) and protected by a DOE-approved intrusion alarm system actuated by any penetration of walls, floor, ceiling or openings, or by motion within the room.

(y) "Security inspector" means a uniformed individual who is authorized under appropriate state or local authority to carry firearms and who is

employed for, and charged with, the protection of classified matter.

(z) "United States" when used in geographical sense, includes all Territories and Possessions of the United States, the Canal Zone and Puerto Rico.

§ 795.4 Communications.

Communications concerning rule making, i.e., petition to change Part 795, should be addressed to the Assistant Secretary for Defense Programs, U.S. Department of Energy, Washington, D.C. 20545. All other communications concerning the regulations in this part should be addressed to the Department of Energy at the USDOE Operations Office (listed in Appendix "B" of 10 CFR Part 725) administering access permits for the geographical area.

§ 795.5 Submission of procedures by Access Permit holder.

A Permittee is granted access to Restricted Data only after:

(a) submission to the Department of Energy field office administering the permit of a copy of his procedures for the safeguarding of Restricted Data and for the safeguards and security education of his employees, and

(b) Determination by the Manager of the Field Office or his designee and advice in writing to the Permittee that the procedures for the safeguarding of Restricted Data comply with the regulations in this part and the procedures for the safeguards and security education of employees assure that all employees who will have access to Restricted Data will be informed about and understand the regulations in this part.

§ 795.6 Specific waivers.

DOE may, upon application of any interested party, grant such waivers from the requirements of this part as it determines are authorized by law and will not constitute and undue risk to the common defense and security.

§ 795.7 Interpretation.

Except as specifically authorized by DOE in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of DOE other than a written interpretation by the General Counsel will be recognized to be binding upon DOE.

Physical Security

§ 795.21 Protection of restricted data in storage.

(a) Persons shall store Secret Restricted Data documents or material received under an Access Permit, while unattended or not in use, by one of the following methods:

(1) When not located within a security area:

(i) In a security container under either DOE-approved alarm protection or protective personnel (security inspector or guard) patrols no less frequent than once each 8-hour shift during non-working hours, or

(ii) In a dual-key bank safe deposit box, provided that the lock and keys to the box are changed immediately prior to such use and the customer's keys are furnished only to persons cleared for and authorized acess to the Restricted Data in the box.

(2) When located within a security area:

(i) In a security container or a commercial-type steel filing cabinet equipped with a built-in combination lock, provided the container or the cabinet is equipped with a DOE-approved alarm system or is under protective personnel patrol no less frequent than once every 8 hours during non-working hours.

(ii) In unlocked cabinets or open storage in a DOE-approved vault or security room.

(b) Confidential Restricted Data documents or material while unattended or not in use shall be stored:

(1) Under any of the methods used for Secret Restricted Data documents or material as set forth in paragraph (a) of this section, or

(2) In unlocked cabinets or open storage in a locked room equipped with a DOE-approved alarm system.

(c) *Changes of combinations.* (1) Combinations of locks of repositories containing Restricted Data shall be known only to those persons cleared for and otherwise authorized access to the category of Restricted Data stored therein.

(2) Each Permittee shall change the combination on the lock of a repository:

(i) Whenever the repository is placed in use;

(ii) Whenever a person knowing the combination no longer requires access to a repository. This may be as a result of a change in duties or location in the permittee's organization or termination of employment with the permittee;

(iii) Whenever the combination may have been subjected to compromise; and

(iv) In any event at least once a year.

(d) The record of the combination of a lock on a repository shall be controlled and afforded the same level of security protection required for the highest classification of the matter authorized to be stored in the repository.

(e) *Selection of combinations.* Each combination must require the use of three different numbers. In selecting combinations, multiples and a simple arithmetical ascending or descending series shall be avoided.

(f) *Cautions regarding combinations.* (1) Only a minimum number of persons should possess combinations to repositories.

(2) Combinations should be committed to memory insofar as practicable to reduce possibility of inadvertent compromise.

(3) When closing a combination lock, the dial must be turned at least four times in the same direction.

(4) Combinations shall be changed only by persons authorized access to Secret or Confidential Restricted Data depending upon the matter authorized to be stored in the repository.

(g) *Posted information.* (1) The names, addresses, and telephone numbers of custodians having knowledge of the combination shall be posted on the outside of each repository containing Restricted Data. A record of the date of last change of combination of each repository shall be maintained on each repository.

(2) A monitor sheet shall be posted on the security container approved for the storage of Restricted Data. In any situation when one monitor sheet includes several security containers located in a particular space or room, it shall be posted in an easily viewed place within, or at the entrance to, the room or space involved. The monitor sheet shall contain space for the date and initials of the persons locking and checking the container to assure it is secured. It shall be initialed at the end of each work day by the person locking the container(s) and except when not feasible, by one other person who has physically checked the lock(s), locked drawer(s), or door(s) and all exposed drawers to assure proper security of the container(s).

(h) *Unattended repository found open.* In the event that an unattended repository containing Restricted Data is found unlocked, one of the custodians shall be notified immediately, the repository shall be secured by a designated person (e.g., a security inspector or guard) and the contents shall be checked not later than the next workday.

(i) *Security Container Checks.* Whenever protective personnel are required by §§795.21 or 795.23, they shall, as soon as possible after the close of each normal work day, and, thereafter, at least once every 24 hours of a nonworking period exceeding one

day, physically check each approved security container to assure it is properly secured.

§ 795.22 Protection while in use.

While in use, documents and material containing Restricted Data shall be under the direct control of an appropriately cleared individual and the Restricted Data shall be protected from visual access by unathorized persons.

§ 795.23 Establishment of security areas.

(a) When, because of their nature, size, revealing characteristics, sensitivity or importance, documents or material containing Restricted Data cannot otherwise be effectively controlled in accordance with the provisions of §§ 795.21 and 795.22, a security area to protect such documents and material shall be established.

(b) The following controls shall apply to security areas:

(1) Security areas shall be separated from adjacent areas by a physical barrier designed to prevent entrance into such areas, and access to the Restricted Data within the areas, by unauthorized individuals.

(2) During working hours, admittance shall be controlled by designated appropriately cleared security inspectors, guards, receptionists or other persons assigned for that purpose at each unlocked entrance. Remote identification by television, or coded key card system, may be used where positive identification and access control is assured.

(3) During non-working hours, security areas shall be protected by protective personnel conducting patrols at such frequency, not less than once every 8 hours, as the responsible field office manager deems necessary, or by a DOE-approved alarm system.

(4) Each individual authorized to enter a security area shall be issued a distinctive badge or pass when the number of employees assigned to the area exceeds thirty.

§ 795.24 Special kinds of classified material.

When the Restricted Data contained in material is not ascertainable by observation or examination at the place where the material is located and when the material is not readily removable because of size, weight, radioactivity, or similar factors, DOE may authorize the Permittee to provide such lesser protection than is otherwise required by §§ 795.21 to 795.23, inclusive, as DOE determines to be commensurate with the difficulty of removing the material.

§ 795.25 Protective personnel.

Whenever protective personnel are required by §§ 795.21 or 795.22, they shall:

(a) Possess a "Q", "Q(X)", "L" or "L(X)" access authorization if the Restricted Data being protected is classified Confidential.

(b) Possess a "Q" or "Q(X)" access authorization if the Restricted Data being protected is classified Secret.

(c) Be mentally and physically alert, capable of exercising good judgment, and fully instructed in their duties.

(d) Security inspectors should be armed with side arms of not less than .38 caliber.

(e) Security inspectors shall be initially trained, and refresher trained at least annually, in the safe handling and proficient use of the type of handgun with which they are armed while on duty, and to the extent of their legal authority to act in the protection of classified matter. Records of such training shall be maintained during the tenure of the individual.

Control of Information

§ 795.31 Access to restricted data.

(a) Except as DOE may authorize, no person subject to the regulations in this part shall receive or shall permit any individual to have access to Secret or Confidential Restricted Data in his possession, unless the individual has a "Q" or "Q(X)" access authorization, in the case of Secret Restricted Data, "Q", "QX", or "L" or "LX" access authorization in the case of Confidential Restricted Data and:

(1) The individual is authorized by an Access Permit to receive Restriced Data in the categories and at the classification levels involved.

(2) In the case of a DOE or DOE contractor or subcontractor employee, the individual needs access to the Secret or Confidential Restricted Data in connection with his duties.

(b) As an alternative to DOE access authorization, Department of Defense (DOD) and National Aeronautics and Space Administration (NASA) personnel, officers or employees of one of the services, officers or employees of DOD, NASA, or service contractors or subcontractors, or members of the Armed Forces may be granted access if a request set forth in paragraph (c) of this section is received from DOD or NASA. As an exception, DOE access authorization is required for access by NASA personnel to Restricted Data other than that associated with space or aeronautical programs or activities.

(c) Prior to granting access to individuals referenced in paragraph (b) of this section, a Request for Visit or Access Approval (Form DOE-277), NASA Form 405, or a memorandum or teletype containing the same information, signed by an authorized certifying official will be forwarded for approval to the field office manager who will coordinate with other offices as necessary.

(d) Inquires concerning the security clearance or access authorization status of individuals, the scope of Access Permits, or the nature of contracts should be addressed to the field office administering the Access Permit or the contract.

§ 795.32 Classification and preparation of documents.

(a) *Classification.* Restricted Data originated by an Access Permit holder must be appropriately classified. "Guide to the Unclassified fields of Research," and other appropriate guides issued by the U.S. DOE Office of Classification, will be furnished each Permittee. In the event an Access Permit holder originates information within the definition of Restricted Data (§ 795.3(u)) or information which he is not positive is not within that definition and the guide does not provide positive classification guidance for such information, he shall mark and handle the information as Confidential Restricted Data and request classification guidance from DOE through the Classification Officer at the Operations Office administering the Permit, who will refer the request to the Director, Office of Classification, U.S. Department of Energy, Washington, D.C. 20545, if he does not have authority to provide the guidance.

(b) *Classification consistent with content.* Each document containing Restricted Data shall be classified Secret or Confidential according to its own content.

(c) *Classification markings.* The highest classification marking assigned to any portion of a document shall be placed in letters not less than one-quarter inch in height at the top and bottom of the outside of the front covers, on title pages, if any, the first page, the back page and on the outside of the back cover, if any.

(d) The balance of the pages shall be marked at the top and bottom either with:

(1) the highest classification marking assigned to the document, or

(2) the classification marking required by their individual content, or

(3) the marking UNCLASSIFIED if they have no classified content.

(e) The document shall bear the following additional marking on the first page and on the front cover:

Restricted Data

This document contains Restricted Data as defined in the Atomic Energy Act of 1954. Unauthorized disclosure subject to Administrative and Criminal Sanctions.

(f) Where the originator of the document is not an authorized derivative classifier, or is not responsible for the classification, the words "DERIVATIVELY CLASSIFIED BY" shall be typed on the face of the document followed by the name, title of position, and organization employing the authorized derivative classifier. The authorized derivative classifier shall sign when feasible.

(g) *Documentation.*

(1) All Secret Restricted Data documents shall bear on the first page a properly completed documentation stamp such as the following:

This document consists of —— pages.
Copy No. —— of —— Series ——.

(2) The series designation for finished copy shall be a capital letter beginning with the letter "A" designating the original set of copies prepared. Each subsequent set of copies of the same document shall be identified by the succeeding letter of the alphabet. The series designation for draft copies shall be identified in progressive numerical sequence, as "Draft 1", "Draft 2", etc.

(h) *Letter of transmittal.* (1) A transmittal letter containing no Restricted Data or other Classified information should be marked with the following markings:

(i) "Restricted Data transmittal" or "Document transmitted herewith contains Restricted Data",

(ii) With a classification at least as high as its highest classified enclosure, and

(iii) A stamp or marking such as the following:

When separated from enclosures handle this document as unclassified.

(2) A transmittal letter containing Restricted Data should be marked as follows:

(i) "Restricted Data" on its first page.

(ii) A classification at least as high as its highest classified enclosure or the classification of the letter itself, whichever is higher.

(iii) When the contents of the letter of transmittal warrant a lower classification, a stamp or marking such as the following:

"When separated from enclosure handle this document as (*lower classification*).

§ 795.33 External transmission of documents and material.

(a) *Restrictions.* (1) Documents and material containing Restricted Data shall be transmitted only to persons who possess appropriate security clearances or access authorization and are otherwise eligible for access under the requirements of § 795.31.

(2) In addition, such documents and material shall be transmitted only to persons who possess DOE-approved facilities for their physical security consistent with this part. Any person subject to the regulations in this part who transmits such documents or material shall have fulfilled his obligations under this subparagraph by securing a written certification from the responsible DOE safeguards and security office that the prospective recipient possesses DOE-approved facilities for physical security thereof consistent with this Part.

(3) Documents and material containing Restricted Data shall not be exported from the United States without prior authorization of DOE.

(b) *Preparation of documents.* Documents containing Restricted Data shall be prepared for transmission outside an individual installation in accordance with the following:

(1) They shall be enclosed in two sealed opaque envelopes or wrappers.

(2) The inner envelope or wrapper shall be addressed in the ordinary manner and sealed with tape. The appropriate classification and the Restricted Data marking referred to in § 795.32(e) shall be placed on both sides of the inner envelope.

(3) The outer envelope or wrapper shall be addressed in the ordinary manner. No classification, additional marking or other notation shall be affixed which indicates that the document enclosed therein contains classified information or Restricted Data.

(4) A receipt, which identifies the document, the date of transfer, the recipient and the person transferring the document shall accompany the document and shall be signed by the recipient and returned to the sender whenever the custody of a Secret document is transferred.

(c) *Preparation of material.* Material, other than documents, containing Restricted Data shall be prepared for shipment outside an individual installation in accordance with the following:

(1) The material shall be so packaged that the classified characteristics will not be revealed.

(2) A receipt which identifies the material, the date of shipment, the recipient, and the person transferring the material shall accompany the material and the recipient shall sign such receipt and return it to the sender whenever the custody of Secret Restricted Data is transferred.

(d) *Methods of transportation.* (1) Documents and material containing Secret Restricted Data shall be transported only by one of the following methods:

(i) U.S. registered mail.

(ii) Individuals possessing appropriate DOE security clearance or access authorization who have been given written authority by their employers, in cases of operational necessity when U.S. registered mail or classified messenger service is not available or sufficiently timely. The office of departure shall keep a record of the classified matter so transported until the matter has been returned or a classified matter receipt has been received from a consignee.

(iii) Aircraft under DOE contract with pilots holding "Q" access authorization, or U.S. Government aircraft with pilots holding DOE "Q" access authorization or DOD final type Secret clearance, and who maintain continuous custody of the matter entrusted to them.

(iv) Motor vehicles in sealed van service.

(v) Common carrier (rail, truck, or air) approved by the responsible field office manager and meeting the requirements of paragraph (d)(3)(xi) of this section.

(2) Documents and material containing confidential Restricted Data shall be transported by one of the methods set forth in paragraph (d)(1) of this section or by one of the following methods:

(i) U.S. first class or certified mail, if approved by the Field Office Manager administering the permit. Certified or first class mail may not be used in any transmission of Confidential documents to Alaska, Hawaii, the Canal Zone, Puerto Rico, or any United States territory or possession.

(ii) Aircraft under DOE contract, or U.S. Government aircraft, with pilots holding DOE "L" access authorization or DOD final type Secret clearance.

(iii) Common carrier service (rail, truck, or air) as approved by the field office manager and meeting the requirements of subparagraph (3)(xi) below.

(3) Approved means of shipment for Restricted Data are subject to the

following additional general conditions as appropriate:

(i) Contents shall be securely packaged, and as required containers shall meet appropriate Department of Transportation regulations as to structural strength and materials.

(ii) Contents shall be so packaged that attempted openings or unauthorized inspection will be readily detected en route or upon arrival at destination.

(iii) Contents shall be checked against shipping papers as promptly as practicable after arrival and any unresolved discrepancy shall be reported immediately to the responsible DOE safeguards and security office.

(iv) Additionally, any suspected criminal violations of federal laws or loss of Secret or confidential material outside a security area or loss within a security area if there is no immediate explanation to account for the loss shall be reported to the responsible DOE security office and the Federal Bureau of Investigation.

(v) The classification of the contents shall be indicated inside the package or container to preclude errors in handling and storage after delivery.

(vi) Seals shall be used whenever practicable and shall be placed on cars or van doors, containers, or other positive fastening devices by, or in the presence of a DOE, DOE contractor representative or security cleared permittee employee. Seals shall be serially numbered or distinctively designed and appropriate entry shall be made in bills of lading or other shipping papers. Seal numbers shall be verified by the consignee upon arrival.

(vii) Combination or key padlocks shall be used whenever practicable on shipping containers in addition to seals.

(viii) Receipts, listings, and other papers revealing classified information shall be appropriately marked and wrapped.

(ix) shipping or transfer documents which could reveal classified weights or quantities of material shall be appropriately marked.

(x) Notification of Secret or Confidential Restricted Data shipments, other than packages sent by mail, shall be transmitted prior to departure either to the consignee or to the DOE office exercising administrative jurisdiction over the consignee, with sufficient information to enable proper handling at destination.

(xi) Common carriers shall provide all of the following security procedures:

(A) Surveillance by an authorized carrier employee when the material is outside of the vehicle.

(B) A hand-to-hand signature receipt system which traces the movement of the classified matter from the time it is shipped until the time it is received.

(C) When storage is required, Restricted Data must be stored in an alarmed or guarded storage area with immediate response by a carrier employee, commercial guard, or police.

(D) Verification of the identity and authorization of persons who pick up material.

(E) Pick-up and delivery in a closed, locked van.

(e) Electrical Transmission of Information. Restricted Data shall not be transmitted electrically unless a system approved by DOE is used.

(f) Telephone Conversations. No discussion of classified information is permitted during a telephone conversation except over secure telephone systems approved by DOE.

§ 795.34 Accountability for matter comprising restricted data.

Each Permittee possessing matter containing Secret Restricted Data shall establish an accountability procedure and shall maintain for a period of 5 years records to clearly show the identification and disposition of all such matter which has been in his custody at any time.

§ 795.35 Authority to reproduce.

Nothing in this part shall be deemed to prohibit any person possessing documents containing Restricted Data from reproducing any Confidential documents, or any Secret documents originated by the Access Permittee by whom he is employed. He shall not reproduce any external generated documents containing Secret Restricted Data without prior authorization from DOE or from the originator of the document.

§ 795.36 Changes in classification.

(a) Documents containing Restricted Data shall not be downgraded to a lower classification or declassified except as authorized by DOE. Requests for downgrading or declassification shall be submitted to the DOE Operations Office administering the Permit, or U.S. Department of Energy, Washington, D.C. 20545, Attention: Office of Classification. If the Department approves a change of classification or declassification, the previous classification marking shall be canceled and the following statement, properly completed, shall be placed on the first page of the document.

Classification canceled (or changed to)_____(Insert appropriate classification) by authority of_____(Person authorizing change in classification)
by_____(Signature of person making change and date thereof).

(b) Any person making a change in classification or receiving notice of such a change shall forward notice of the change in classification to holders of all copies as shown on his records.

§ 795.37 Destruction of documents or material containing restricted data.

(a) Documents containing Restricted Data may be destroyed only by shredding and burning, pulping, or by any other method that assures complete destruction of the information which they contain. If the document contains Secret Restricted Data, a record of the subject, title and report number of the document, if any, its date of preparation, its series designation and copy number, and the date of destruction shall be signed by the person destroying the document and shall be maintained in the office of the last custodian for a period of 5 years after the date of destruction.

(b) Restricted Data contained in material, other than documents, may be destroyed only by a method that assures complete obliteration, removal, or destruction of the Restricted Data. A record of destruction of Secret material destroyed shall be maintained for 5 years after the date of destruction of the material.

§ 795.38 Security of automatic data processing systems.

Restricted Data shall not be processed or produced on an ADP system unless the system has been approved by DOE.

§ 795.39 Suspension or revocation of access authorization.

In any case where the access authorization of an individual subject to the regulations in this part is suspended or revoked in accordance with the procedures set forth in Part 710 of this chapter, such individual shall, upon due notice from DOE of such suspension or revocation and demand by DOE deliver to DOE any and all documents or material in his possession containing Restricted Data for safekeeping and such further disposition as DOE determines to be just and proper.

§ 795.40 Expiration, suspension or revocation of access permit.

(a) Upon expiration of an Access Permit, the person to whom such Permit has been issued may, except as provided in paragraph (b) of this section shall:

(1) deliver all documents or material in his possession containing Restricted

Data to DOE or to a person authorized to receive them and file with DOE a certificate of non-possession of Restricted Data; or

(2) destroy them, and file with DOE a certificate of nonpossession, or

(3) file with DOE a certified inventory of Restricted Data attached to a request for approval of retention of such data. A person retaining Restricted Data must maintain an active Access Permit unless otherwise authorized by DOE.

(b) In any case where an Access Permit has expired or has been suspended or revoked and DOE has determined that further possession by the former Access Permit holder of documents or materials containing Restricted Data would endanger the common defense and security, such former Access Permit holder shall upon due notice from DOE of such expiration, suspension, or revocation and of such determination, deliver to DOE any and all documents and material in his possession containing Restricted Data for safekeeping and such further disposition as DOE determines to be just and proper.

§ 795.41 Termination of employment or change of duties.

Each Permittee shall furnish promptly to DOE written notification of the termination of employment of each individual who possesses an access authorization under his Permit or whose duties are changed so that access to Restricted Data is no longer needed. Upon such notification, DOE may:

(a) terminate the individual's access authorization, or

(b) transfer the individual's access authorization to the new employer of the individual to allow continued access to Restricted Data where authorized pursuant to DOE regulations.

§ 795.42 Continued applicability of the regulations in this part.

The expiration, suspension, revocation or other termination of security clearance or access authorization or Access Permit shall not relieve any person from compliance with the regulations in this part.

§ 795.43 Reports.

Each Permittee shall report promptly to the DOE office administering the Access Permit:

(a) All losses of Restricted Data documents or material.

(b) Statutory violations, i.e., any alleged or suspected violation of the Atomic Energy Act or the Espionage Act. An immediate report shall also be made to the nearest office of the Federal Bureau of Investigation.

(c) Proposed foreign travel to Soviet-bloc countries, at least 30 days in advance of proposed travel by any of their employees, who has had access to C–24 information, and inform the same office when the employee returns.

§ 795.44 Inspection.

DOE may make such inspection of the premises, activities, records, and procedures of any person subject to the regulations in this part as DOE deems necessary to effectuate the purposes of the Act.

§ 795.45 Violations.

An injunction or other court order may be obtained prohibiting any violation of any provision of the Act or any regulation or order issued thereunder. Any person who willfully violates, attempts to violate or conspires to violate any provision of the Act or any regulation or order issued thereunder, including the provisions of this part, may be guilty of a crime and upon conviction may be punished by fine or imprisonment, or both, as provided by law.

[FR Doc. 79-18038 Filed 6-8-79; 8:45 am]
BILLING CODE 6450-01-M

Monday
June 11, 1979

Federal Register

Part V

Department of the Interior

Office of Surface Mining, Reclamation and Enforcement, and Geological Survey

Regulation of Coal Mining on Federal Lands in Montana, Utah, and Wyoming; Federal/State Cooperative Agreement

DEPARTMENT OF INTERIOR

Office of Surface Mining, Reclamation and Enforcement, and Geological Survey

30 CFR Part 211

Regulation of Coal Mining on Federal Lands in Montana; Federal/State Cooperative Agreement

AGENCY: Office of Surface Mining Reclamation and Enforcement and Geological Survey, Interior.

ACTION: Final rule.

SUMMARY: This final rule completes the approval and promulgation of a Federal/State cooperative agreement between the Department of Interior and the State of Montana for the regulation of surface coal mining and reclamation operations on Federal lands in Montana.

EFFECTIVE DATE: June 11, 1979.

FOR FURTHER INFORMATION CONTACT: Donald Crane, Regional Director, Region V, Office of Surface Mining, 1823 Stout Street, Denver, Colorado 80202, (303) 837–5421.

SUPPLEMENTARY INFORMATION: The cooperative agreement modifies the prior cooperative agreement (30 CFR 211.77(e)) in accordance with the requirements of section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (P.L. 95–87), "Surface Mining Act," and § 211.75 (b) and (c) of Title 30 CFR. This cooperative agreement was published as a proposed rule on March 5, 1979 (44 FR 12058). The purpose of the agreement is to establish conditions for State regulation of surface coal mining and reclamation operations on Federal lands, and requirements for such operations on Federal lands, including but not limited to (1) the adoption of State statutes and amended regulations containing new environmental protection standards and reclamation requirements applicable to surface coal mining and reclamation operations as substantive Federal law enforceable by the State and the United States; (2) a requirement that the State Regulatory Authority exercise State enforcement powers on Federal lands so as to achieve results consistent with those which would be achieved by Federal enforcement pursuant to section 521 of the Surface Mining Act; (3) establishing procedures for the cooperative review and approval of integrated mining and reclamation plans for surface coal mining and reclamation operations on Federal lands or which include both State-regulated lands and Federal lands; (4) provide for the termination of such agreement; and (5) requirements for the joint Federal and State approval and release of performance bonds for surface coal mining and reclamation operations which include Federal lands.

. In response to the proposed rulemaking, one comment was received. The comment raised three issues.

1. The commenter objects to the provision of Article VII which requires that performance bonds for operations which include Federal lands be payable to both the State and the United States. The objection is grounded on a fear that if both agencies forfeit on the bond, the surety would be subject to double liability. It is not the intent of the State or the Secretary to create double liability. Our intent rather is to relieve the operator of the burden of filing separate bonds with both the State and the United States while assuring that each agency retains the legal authority to forfeit on the bond. This procedure allows the Secretary adequate authority to insure the completion of reclamation obligations on Federal lands or adjacent lands which might adversely affect reclamation on Federal lands and preserves the State's authority to ensure reclamation as required under State law. Double liability is not created by the terms of the cooperative agreement. If necessary, clarification regarding this question can be achieved in the bond instrument.

2. The second objection requests clarification of what will happen if the agencies do not mutually consent to the release of a performance bond. The answer is no different than if there were a single obligee and release were denied. Whatever remedy which would be available to the operator to seek or compel release by an agency which refused release, would also be available against that same agency if it were the sole party refusing to allow release of the bond under the cooperative agreement.

3. The final objection requests that differences of opinion between the State and the Secretary regarding the requirements of a mining plan being reviewed under the Protocol, be communicated to the operator/applicant. The Secretary rejects this request as being an unnecessary restriction on his discretion in such circumstances. Communciations regarding mining plans and permits under review will be made as determined appropriate by the agencies.

Other Information

1. Significance. The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14. The "Determination of Significance" document prepared by the Office of Surface Mining concludes that because a State/Federal cooperative agreement between the State of Montana and the Department has been in effect for quite some time, the modified agreement in question does not incorporate any changes or revisions which would impose a major social, economic, or reordkeeping burden on any level of Federal, State, or local government or upon industry. This document is available for public inspection in the Director's Office, Office of Surface Mining, Room 233, South Interior Building, 1951 Constitution Ave., NW., Washington, D.C. 20240.

2. Pursuant to section 702(d) of the Surface Mining Act, adoption of this rule is part of the Secretary's implementation of the Federal Lands Program and is, therefore, exempt from the requirement to prepare a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

3. Because of the delay in the publication of this rule and the necessity to implement the provisions of the cooperative agreement, the Department has determined that good cause exists to make the rule effective upon the date of publication.

Dated: June 6, 1979.

Cecil D. Andrus,

Secretary.

1. Accordingly, Title 30 CFR 211.10(e)(5) is amended as follows:

§ 211.10 Exploration and mining plans.

* * * * *

(e) * * *

(5) *Montana.* A Federal coal lessee in the State of Montana who must submit a mining plan under both State and Federal law shall submit to both the State Regulatory Authority and the Denver Regional Office, Office of Surface Mining, in lieu of the submission required in this section, a mining plan or revision or modification to an approved plan containing the information required by or necessary for the State Regulatory Authority and the Secretary to determine compliance with the statutory, regulatory and other requirements identified in paragraph B1 of Article IV of the modified Cooperative Agreement, the statement required by paragraph B2 of Article IV of the modified Cooperative Agreement

and the requirements of 30 CFR 211.10(c).

§ 211.76–1 [Deleted]

2. Title 30 CFR 211.76–1 is deleted in its entirety.

3. Title 30 CFR 211.77(e) is amended as follows:

§ 211.77 States with cooperative agreements.

* * * * *

(e) *Montana.* The administration and enforcement of reclamation requirements of Federal coal leases in Montana, subject to this Part, shall be done according to the cooperative agreement between the State of Montana and the Department which became effective June 10, 1977, as modified on October 18, 1978 and published on June 11, 1979.

4. The State of Montana and the Department enter into a modified Cooperative Agreement to designate the State of Montana as the principal party to administer surface coal mine reclamation operations on Federal leases in Montana to read as follows:

Cooperative Agreement Between the U.S. Department of the Interior and the State of Montana under section 523(c) of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95–87 (hereinafter referred to as the "Act") 30 U.S.C. 1273(c), between the State of Montana, acting by and through Thomas L. Judge, Governor (hereinafter referred to as the Governor) and the United States Department of the Interior, acting by and through the Secretary of the Interior (referred to as the Secretary).

Article I. Purpose

This Cooperative Agreement provides for a cooperative program between the United States Department of the Interior and the State of Montana with respect to regulation of surface coal mining and reclamation operations on Federal lands within the State of Montana. The basic purpose of this Agreement is to reduce duality of administration and enforcement of surface reclamation requirements by providing for state review and approval of mining and reclamation plans for operations on federal lands, subject to the Secretary's authority to approve mine and reclamation plans on federal lands and state regulation of surface coal mining and reclamation operations on Federal lands within the State.

Article II. Effective Date

This Cooperative Agreement is effective following signing by the Secretary and the Governor, approval by the Montana Department of State Lands, and upon final publication as rulemaking in the Federal Register. This Cooperative Agreement shall remain in effect until terminated as provided in Article IX. This Cooperative Agreement constitutes a modification to, and extension of, and supercedes that Cooperative Agreement effective June 10, 1977, 30 CFR § 211.77(e).

Article III. Requirements for Cooperative Agreement

The Governor and the Secretary affirm that they will comply with all of the provisions of this Cooperative Agreement and will continue to meet all the conditions and requirements specified in this Article.

A. *Responsible Administrative Agency.* The Montana Department of State Lands (hereinafter referred to as the "State Regulatory Authority") is, and shall continue to be, the sole agency responsible for administering this Cooperative Agreement on behalf of the Governor on Federal lands throughout the State.

B. *Authority of State Agency.* The State Regulatory Authority designated in paragraph A of this Article has, and shall continue to have, authority under State law to carry out this Cooperative Agreement.

C. *State Reclamation Law.* Enforcement of the environmental performance standards and reclamation requirements of the Montana Strip and Underground Mine Reclamation Act and the regulations promulgated pursuant thereto as set forth in Appendix A of this Cooperative Agreement will provide protection of the environment at least as stringent as would occur under the exclusive application of the standards and procedures set forth in the Act, and the regulations promulgated thereunder.

D. *Effectiveness of State Procedures.* The procedures of the State for enforcing the requirements contained in Appendix A are and shall continue to be as effective as the procedures of the Department of the Interior.

E. *Inspection of Mines.* The Governor affirms that the State will inspect all surface coal mining operations on Federal lands located in the State, in accordance with the minimum schedules in Article V.

F. *Enforcement.* The State affirms that it will enforce the requirements contained in Appendix A in a manner that ensures effective protection of the environment and public health and safety consistent with the requirements of Article VI of this Agreement.

G. *Funds.* The State has devoted and will continue to devote, adequate funds to the administration and enforcement of the requirements contained in Appendix A of this Cooperative Agreement. If the State Regulatory Authority complies with the terms of this Agreement, and if necessary funds have been appropriated, the Secretary shall reimburse the State as provided in Section 705(c) of the Act, for costs associated with carrying out responsibilities under this Cooperative Agreement. Reimbursement grants shall be made at least on an annual basis. The Secretary shall advise the State Regulatory Authority within a reasonable period of time after the effective date of this modification of the amount the Federal Government would have expended if the State had not entered into this Cooperative Agreement.

H. *Reports and Records.* The State Regulatory Authority shall make reports to the Secretary containing information respecting its compliance with the terms of this Cooperative Agreement, as the Secretary shall from time to time require. The State Regulatory Authority and the Secretary shall exchange, upon request, information developed under the Cooperative Agreement.

I. *Personnel.* The State Regulatory Authority shall have the necessary personnel to fully implement this Cooperative Agreement in accordance with the provisions of the Act.

J. *Equipment and Laboratories.* The State Regulatory Authority shall have equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses, can be performed or determined, and which are necessary to carry out the requirements of the Cooperative Agreement, or have access to such facilities and personnel.

Article IV. Mining and Reclamation Plans

A. State and Federal laws and regulations require the operator on Federal lands leased, permitted, or licensed for surface coal mining operations to receive approval from the State Regulatory Authority and the Secretary of a mining plan and permit prior to conducting operations.

B. *Contents of Mining Plans and Permits.* The Governor and the Secretary agree, and hereby require that an operator on Federal lands shall submit an identical mining and reclamation plan and state permit application to the state and the Secretary which plan and permit application shall be in the form required by the State Regulatory Authority and include any supplemental forms

required by the Secretary. Such plan and application shall include the following information:

1. The information required by, or necessary for the State Regulatory Authority and the Secretary to make a determination of compliance with:

a. The Revised Code of Montana 50-1039 R.C.M. 1977.

b. Administrative Rules of Montana 26-2.10(10)-S10310.

c. The Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201 *et seq.*; 91 Stat. 445) and the regulations promulgated pursuant thereto, to the extent it is not otherwise required by 1(a) and (b) above.

d. The Minteral Leasing Act of 1920, as amended, 30 U.S.C. § 181 *et seq.*

e. The requirements of 30 CFR Section 211.10.

f. Applicable terms and conditions of the lease unless such conditions would be contrary to the requirements of the Act.

g. Applicable requirements of other Federal laws.

2. A statement certifying that identical copies of the mining and reclamation plan and permit application have been given to both the State Regulatory Authority and the Secretary.

C. The State Regulatory Authority and the Office of Surface Mining on behalf of the Secretary shall review and act upon each mining and reclamation plan and permit application, or modifications or revisions thereto, in accordance with the Protocol for Cooperative Review of Mining and Reclamation Plans, attached hereto and incorporated as a part of this Cooperative Agreement. The parties may review and mutually revise said Protocol as deemed necessary in accordance with the terms of the Protocol, Article XI of this Agreement to the contrary notwithstanding. Any revisions to the Protocol shall become effective upon notice published in the Federal Register.

D. When acting upon mining and reclamation plans and permits, or modifications or revisions thereto, the State Regulatory Authority and the Secretary agree that lack of them will not approve any plan and permit, or modification or revision thereto, which fails to comply with the requirements of the laws and regulations listed in paragraph 1 of this Article. The State Regulatory Authority shall promptly notify the Secretary of such action and the applicant of its action on the application. If the application is disapproved, a notice shall be sent to the applicant along with a statement of findings and conclusions in support of the action. The State Regulatory Authority shall in any approved plan, permit, or amendment, reserve the right to amend or rescind its action to conform with action taken or with terms or conditions imposed by the Secretary, and agreed to by the State Regulatory Authority, as a basis of his approval. The Secretary shall not delete any requirements included in the State Regulatory Authority's approval without the consent of the State. Prior to the Secretary disapproving the mining and reclamation plan, permit or request for amendment, in whole or in part, the Secretary shall consult with the State Regulatory Authority for the purpose of reaching agreement on revisions to the plan, permit, or amendment, to the extent allowable under State and Federal law.

E. When acting on a mine plan, the Secretary reserves the right to impose such additional conditions or requirements not required by the Act or Appendix A of this Cooperative Agreement which are authorized or required by law or by his general authority to supervise the activities of persons on Federal lands.

Article V. Inspections

A. The State Regulatory Authority shall inspect without prior notice to the operator, as authorized by Montana state law as frequently as necessary, but at least quarterly, the area of operations as defined by the approved mining and reclamation plan, the permit area of the applicable state permit, and any other areas outside the area of operations which are or may be affected by the surface coal mining and reclamation operations on Federal lands. Such inspections shall be conducted for the purpose of determining whether the operator has complied with all applicable requirements of the Act and Appendix A hereof, and all environmental and reclamation requirements of appoved mining and reclamation plans or permits, but not to determine compliance with development or diligent production requirements established under the Mineral Leasing Act, as amended, or to regulate other activities on Federal lands not subject to the Act.

B. The State Regulatory Authority will, subsequent to conducting any inspection, prepare a report adequately describing (1) the general conditions of the lands under lease, permit or license, (2) the manner in which the operations are being conducted, and (3) whether the operator is complying with applicable performance and reclamation requirements. A copy of this inspection report shall be furnished to the Secretary in accordance with regulations adopted pursuant to the Surface Mining Control and Reclamation Act. A copy of this report shall be furnished to the operator, upon request, and shall be made available for public inspection during normal business hours at the offices of the State Regulatory Authority and the Office of Surface Mining.

C. For the purpose of evaluating the manner in which this Cooperative Agreement is being carried out and to insure that performance and reclamation standards are being met, the Secretary may conduct inspections of surface coal mining and reclamation operations on Federal lands, and shall provide the State Regulatory Authority with a copy of the report. Inspections by the Secretary may be made in association with regular inspections by the State.

D. The Secretary may also conduct inspections to determine whether the operator is complying with requirements that are unrelated to environmental protection and reclamation.

E. Personnel of the State and representatives of the Secretary shall be mutually available to serve as witnesses in enforcement actions taken by either party.

Article VI. Enforcement

A. If the State Regulatory Authority finds any conditions or practices, or violations of the Act, the requirements of Appendix A hereof, or of an approved mining and reclamation plan or permit, which would authorize the issuance of an order of cessation under § 521(a)(2) of the Act, the State Regulatory Authority shall immediately exercise the discretion authorized by 50-1050 R.C.M. 1947 of the Revised Code of Montana to suspend the license of an operator.

B. (1) When, during any inspection, any representative of the State Regulatory Authority determines that any operator is in violation of the Act, any requirement of Appendix A, or any requirement of an approved mining and reclamation plan or permit, but such violation would not require an action in accordance with paragraph A of this Article, the representative shall issue a notice and abatement schedule to the operator pursuant to 50-1050 R.C.M. 1947 of the Revised Code of Montana which shall be consistent with the requirements of § 521(a)(3) of the Act.

(2) When a notice of violation has been issued under B(1) of this Article and a representative of the State Regulatory Authority determines that the operator has failed to abate the violation within the time fixed or

subsequently extended consistent with § 521(a)(3) of the Act, the representative shall immediately exercise the discretion authorized by 50-1050 R.C.M. 1947 of the Revised Code of Montana to suspend the permit of an operator until the violation has been abated.

C. The State shall promptly notify the Secretary of all violations of applicable laws, regulations, orders, approved mining and reclamation plans and permits subject to this Agreement and of all actions taken with respect to such violations.

D. This Agreement does not limit the Secretary's authority to seek cancellation of a federal coal lease under federal laws and regulations, or prevent the Secretary from taking appropriate legal or other actions to correct conditions or practices that violate any requirement under federal law or Appendix A incorporated into federal law as a part of this Cooperative Agreement, or to suspend or revoke the right to mine in accordance with 30 CFR § 211.72 or assess civil penalties in accordance with 30 CFR § 211.73.

E. Failure of the State Regulatory Authority to enforce approved mining and reclamation plans, permits and applicable laws and standards and regulations in accordance with this Agreement, shall be grounds for termination of this Cooperative Agreement.

Article VII. Bonds

A. *Amount and Responsibility.* The State Regulatory Authority and the Secretary shall require all operators on federal lands to submit a single bond payable to both the United States and the State Regulatory Authority. Such bond shall be of sufficient amount to comply with the requirements of both state and federal law and shall be conditional upon compliance with all applicable requirements of federal law and Appendix A hereof.

B. *Notification.* Prior to releasing the operator from his obligations under the bond required by State law for federal lands, the State Regulatory Authority shall consult with and obtain the advice and consent of the Secretary.

C. *Release of Bond.* The State Regulatory Authority shall hold the operator responsible and liable for successful reclamation as required by State law.

D. Either the State Regulatory Authority or the Secretary may forfeit the bond under state or federal law.

Article VIII. Opportunity To Comply With Cooperative Agreement

The Secretary may, in his sole discretion, and without instituting or commencing proceedings for withdrawal of approval of the Cooperative Agreement, notify the State Agency that it has failed to comply with the provisions of the Cooperative Agreement. The Secretary shall specify how the State has failed to comply and shall specify and state the period of time within which the defects in administration shall be remedied and satisfactory evidence presented to him that the State remedied the defects in administration and is in compliance with and has met the requirements of the Secretary. The period of time specified shall not be less than 30 days. Upon failure of the State Agency to meet the requirements of the Secretary within the time specified, the Secretary may institute proceedings for withdrawal of approval of the Cooperative Agreement as set forth in Article IX.

Article IX. Termination of Cooperative Agreement

This Cooperative Agreement may be terminated as follows:

A. *Termination by the State.* The Cooperative Agreement may be terminated by the State upon written notice to the Secretary, specifying the date upon which the Cooperative Agreement shall be terminated, but which date of termination shall not be less than 90 days from the date of the notice.

B. *Termination by the Secretary.* The Cooperative Agreement may be terminated by the Secretary pursuant to paragraphs D, E, and F of this Article whenever the Secretary finds, after giving due notice to the State Regulatory Authority and affording the State Regulatory Authority an opportunity for a hearing:

1. That the State Regulatory Authority has failed to comply substantially with a provision of this Cooperative Agreement; or

2. That the State Regulatory Authority has failed to comply with any assurance given by the State upon which this Cooperative Agreement is based, or any condition or requirement which is specified in Article III.

3. Following promulgation of a federal lands program pursuant to Section 523(a) of the Act in the event the Secretary determines in writing that Montana lacks the necessary personnel, legal authority, or funding to fully implement the federal lands program in accordance with the provisions of the Act.

C. *Termination by Operation of Law.* This Cooperative Agreement shall terminate by operation of law under any of the following circumstances:

1. When no longer authorized by Federal laws and regulations or Montana laws and regulations;

2. When a permanent State program is finally disapproved and the State has failed to remedy the deficiencies within the time allowed by Section 503(c) of the Act.

3. Within 120 days of the approval of a permanent State program pursuant to § 503 of the Act.

D. *Notice of Proposed Termination.* Whenever the Secretary proposes to terminate the Cooperative Agreement he shall:

1. Give written notice to the Governor and to the State Regulatory Authority specified in Article III.

2. Specify and set out in the written notice the grounds upon which he proposes to terminate this Cooperative Agreement.

3. The Secretary shall also publish a notice in the Federal Register containing items 1 and 2 of this paragraph, and specifying a minimum 30 days for comment by interested persons.

E. *Opportunity for Hearing.* Whenever the Secretary proposes to terminate this Cooperative Agreement pursuant to paragraph B hereof, in addition to the notice required by paragraph D, he shall:

1. Specify in the notices required by paragraph D the date and place where the State will be afforded an opportunity for hearing and to show cause why this Cooperative Agreement should not be terminated by the Secretary. The date of such hearing shall be not less than 30 days from the date of the publication in the Federal Register, and the place shall be in the State.

2. Within thirty (30) days of the written notice specifying the date of the hearing, the State shall file a written notice with the Secretary stating whether or not it will appear and participate in the hearing. The notice shall specify the issues and grounds specified by the Secretary for termination which the State will oppose or contest and a statement of its reasons and grounds for opposing or contesting. Failure to file a written notice in the Office of the Secretary within thirty (30) days shall constitute a waiver of the opportunity for hearing, but the State may present or submit before the time fixed for the hearing written arguments and reasons why the Cooperative Agreement should not be terminated, and within the discretion of the

Secretary may be permitted to appear and confer in person and present oral or written statements, and other documents relative to the proposed termination.

3. The hearing will be conducted by the Secretary. A record shall be made of the hearing and the State shall be entitled to obtain a copy of the transcript. The State shall be entitled to have legal and technical and other representatives present at the hearing or conference, and may present, either orally or in writing, evidence, information, testimony, documents, records, and materials as may be relevant and material to the issues involved.

F. Notice of Withdrawal of Approval of Cooperative Agreement.

1. After a hearing has been held with respect to a proposed termination of this Agreement under paragraph B of this Article, or the right to a hearing has been waived or forfeited by the State, the Secretary, after consideration of the evidence, information, testimony, and arguments presented to him shall advise the State of his decision. If the Secretary determines to withdraw approval of this Cooperative Agreement, he shall notify the State Regulatory Authority of his intended withdrawal of approval of the Cooperative Agreement, and afford the State an opportunity to present evidence satisfactory to the Secretary that the State has remedied the specified defects in its administration of this Cooperative Agreement. The Secretary shall state the period of time within which the defects in administration shall be remedied and satisfactory evidence presented to him, and upon failure of the State to do so within the time stated, the Secretary may thereupon withdraw his approval of the Cooperative Agreement without any further opportunity afforded to the State for a hearing.

2. After the close of the comment period required by paragraph D. 3. of this Article with respect to a proposal to terminate this Cooperative Agreement pursuant to paragraph C of this Article, the Secretary shall consider the comments received and after a review of the questions of law presented, shall publish notice of final action, either terminating the Cooperative Agreement or withdrawing the proposed termination, and stating the reasons therefor.

G. Nothing in this Article shall be construed as a waiver of any right the State Regulatory Authority may have to seek judicial review of any decision by the Secretary to terminate this Cooperative Agreement.

Article X. Reinstatement of Cooperative Agreement

If this Cooperative Agreement has been terminated, it may be reinstated upon application by the State and upon giving evidence satisfactory to the Secretary that the State can and will comply with all the provisions of the Cooperative Agreement, and has remedied all defects in administration for which this Cooperative Agreement was terminated.

Article XI. Amendments of Cooperative Agreement

This Cooperative Agreement may be amended by mutual agreement of the Governor and Secretary. An amendment proposed by one party shall be submitted to the other with a statement of the reasons for such proposed amendment. The amendment shall be adopted after rulemaking and the party to whom the proposed amendment is submitted shall signify its acceptance or rejection of the proposed amendment, and if rejected shall state the reasons for rejection.

Article XII. Changes in State or Federal Standards

The Secretary of the Interior and/or the State Regulatory Authority may from time to time revise and promulgate new or revised performance or reclamation requirements or enforcement and administration procedures. The Secretary and the Governor shall immediately inform the other of any final changes in their respective laws or regulations. Each party shall, if it determines it to be necessary to keep this Cooperative Agreement in force, change or revise its respective laws or regulations. If changes which are necessary for the State to have authority to administer and enforce Federal requirements are not made, then the termination provision of Article IX, paragraph C, may be invoked, provided, however, that the State shall be given reasonable and necessary time to make the required changes.

Article XIII. Conflict of Interest

The State Regulatory Authority shall require its employees to comply with the requirements of 30 CFR 705.

Article XIV. Exchange of Information

A. *Organizational and Functional Statement.* The State Regulatory Authority and the Secretary shall advise each other of the organization, structure, functions, and duties of the offices, departments, divisions, and persons within their organizations. Each shall promptly advise the other in writing of changes in personnel, officials, heads of a department or division, or a change in the functions or duties of persons occupying the principal offices within the organization. The State Regulatory Authority and the Secretary shall advise each other in writing of the location of its various offices, addresses, telephone numbers, and the names, location, telephone numbers of their respective mine inspectors and the area within the State for which such inspectors are responsible, and of any changes in such.

B. *Laws, Rules and Regulations.* The State Regulatory Authority and the Secretary shall provide each other with copies of their respective laws, rules and regulations and standards pertaining to the enforcement and administration of this Cooperative Agreement and promptly furnish copies of any final revision of such laws, rules, regulations and standards when the revision becomes effective.

Article XV. Reservation of Rights

This Cooperative Agreement shall not be construed as waiving or preventing the assertion of any rights the Governor and the Secretary may have under the Mineral Leasing Act, as amended, the Mineral Leasing Act for Acquired Lands, the Federal Land Policy and Management Act of 1976, the Surface Mining Control and Reclamation Act of 1977, the Constitution of the United States, the Constitution of the State or State laws, nor shall this Agreement be construed so as to result in the transfer of the Secretary's duties under sections 2(a), 2(b), and 2(a)(3) of the Federal Mineral Leasing Act, as amended, or his duty to approve mine plans, or his responsibilities with respect to the designation of Federal lands as unsuitable for mining in accordance with Section 522 of the Act, or to regulate other activities taking place on Federal lands.

Article XVI. Definitions

Terms and phrases used in this Agreement which are defined in 30 CFR Part 700 or Part 710 shall be given the meanings set forth in said definitions.

Thomas L. Judge,
Governor of Montana.
Leo Berry,
Commissioner, Department of State Lands.
Cecil D. Andrus,
Secretary of the Interior.

Protocol for Cooperative Review of Mining and Reclamation Plans for Surface Coal Mining and Reclamation Operations on Federal Lands

I. Purpose

This Protocol is intended by the Montana Department of State Lands (hereinafter the "State Regulatory Authority") and the Secretary to establish procedures governing the conduct of the respective interior agencies and the State Regulatory Authority regarding the coordinated review of mining and reclamation plans, or modifications or revisions thereto for surface coal mining and reclamation operations on federal lands pursuant to the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87 (hereinafter referred to as the "Act"). These procedures are intended to implement the requirements of Article IV of the State/Federal Cooperative Agreement (hereinafter referred to as "Cooperative Agreement") between the Governor and the Secretary dated , 1978, and are incorporated therein and made a part thereof.

II. Procedures

1. Operators shall be required to submit identical copies of mining and reclamation plans and permit applications, or modifications or revisions thereto, to both the State Regulatory Authority and the Regional Director, Denver Region, Office of Surface Mining. The number of copies submitted to the State Regulatory Authority and the Regional Director shall be specified by regulation by each agency and may be changed according to need.

2. The State Regulatory Authority will be the point of contact for operators regarding matters subject to the requirements of the Act and Appendix A of the Cooperative Agreement. Following the initial submission of the mining plan and permit application, all correspondence from the State Regulatory Authority and the Secretary regarding matters subject to the requirements of the Act and Appendix A of the Cooperative Agreement will be coordinated and sent from the State Regulatory Authority on behalf of both. Interior agencies will not independently initiate contacts with operators regarding the completeness or deficiencies of plans and applications with respect to matters which are properly within the jurisdiction of a State Regulatory Authority under the Act, provided that any matters of concern raised on behalf of the Secretary are adequately addressed by the State Regulatory Authority in accordance with the provisions of this Protocol.

3. The Office of Surface Mining will coordinate all activities including coal conservation and postmining land use, relative to the review of mining plans and permit applications for all concerned Interior agencies and will act as the point of contact for communications between the State Regulatory Authority and the Department of the Interior.

4. Review and evaluation of each mining plan and permit application, or modifications or revisions thereto, and the data or documentation submitted in support thereof, will be conducted independently, but concurrently, by the State Regulatory Authority and the respective Interior agencies having responsibility for review of mine plans. During such review and evaluation, the staffs of the State Regulatory Authority and each Interior agency will coordinate their respective activities through the Office of Surface Mining by informal contacts as appropriate. When detailed review is deemed to be necessary, Interior agencies may conduct a detailed review of all aspects of the plan and application, or modifications or revisions thereof, but as the program develops, Interior's review will be concentrated on major functions such as hydrology and revegetation, or where special attention is deemed to be necessary.

5. Based upon the coordinated review, the State Regulatory Authority will draft a response letter to the operator outlining the status of the completeness and deficiencies of the plan and application with respect to the requirements of the Act and Appendix A to the Cooperative Agreement. Such draft letter will be sent to the Denver regional office, Office of Surface Mining. It will be the goal of the State Regulatory Authority to send such letter within 60 days of receipt of the plan and application. The Office of Surface Mining will coordinate review of the draft letter on behalf of Interior agencies. It will be the goal of the Office of Surface Mining to communicate to the State Regulatory Authority within 20 days any proposed additions or modifications to the letter. If any such proposed additions or modifications are objected to by the State Regulatory Authority, a meeting will be held between the Regional Director, Office of Surface Mining, and the State Regulatory Authority to resolve the specified objections. If the Regional Director and the State Regulatory Authority cannot resolve such objections, the State Regulatory Authority and the Regional Director shall summarize their disagreement in writing and request a meeting with the Director, Office of Surface Mining, and such other representative of the Secretary as may be appropriate, to discuss a resolution of such objections. Following the resolution of such objections or in the absence of any such objections, the draft letter will be revised to incorporate the language proposed by the Office of Surface Mining and sent to the operator by the State Regulatory Authority, with a copy to the Regional Director, Office of Surface Mining.

6. The Secretary may at his discretion incorporate into the draft letter any matters related to mining plan review and approval which are not within the jurisdiction of the State Regulatory Authority and which the Secretary is required to address under any federal statute or regulation other than the Act. The State Regulatory Authority agrees to incorporate such matters into the draft at the Secretary's request. Failure to incorporate such matters into the draft letter shall not deprive the Secretary of the right to contact an operator directly regarding such matters. Whenever written communications regarding such matters are made directly between an Interior agency and an operator, the State Regulatory Authority shall be supplied with a copy.

7. The Secretary, acting by and through the Office of Surface Mining, will be given an opportunity to review and propose additions or modifications to all substantive written correspondence regarding an operator's mining and reclamation plan from the State Regulatory Authority in accordance with paragraph 5 hereof.

8. Copies of all written communciations, data, documents, or other information pertinent to a mining permit or permit application will be forwarded to the Office of Surface Mining by the State Regulatory Authority or sent directly to the Office of Surface Mining by the operator when requested to do so by the State Regulatory Authority.

9. The Secretary and the State Regulatory Authority agree to inform each other of any communications received from the operator regarding any matter subject to this Protocol.

10. Either the Secretary or the State Regulatory Authority may request and schedule meetings with the Operator or

site inspections. No meeting with the operator or site inspection will be scheduled by either the Secretary or the State Regulatory Authority without adequate advance notice.

11. Upon receipt of a mining and reclamation plan and permit application, or major modification or revision thereto, the State Regulatory Authority and the Office of Surface Mining will, when appropriate, cooperate so that one Environmental Assessment and Environmental Review will be produced. When an Environmental Impact Statement is necessary, the State Regulatory Authority and the Office of Surface Mining will designate, when appropriate, one Environmental Impact Statement team to produce an EIS which will comply with the National Environmental Policy Act and the Montana Environmental Policy Act.

12. Upon completion of review and evaluation of the plan and application, or modifications or revisions thereto, by the State Regulatory Authority, the State Regulatory Authority shall notify the Regional Director, Office of Surface Mining, of any proposed action to be taken regarding approval or disapproval, including any proposed special conditions or stipulations. Following notification of the Regional Director of the proposed action, the Regional Director will inform the State Regulatory Authority of concurrence or disagreement with the proposed action. If the Regional Director and the State Regulatory Authority cannot agree upon the proposed action, the State Regulatory Authority and the Regional Director shall summarize their disagreement in writing and request a meeting with the Director, Office of Surface Mining, and such other representative of the Secretary as may be appropriate, to discuss what final action may be appropriate under the circumstances of the case. The parties shall make reasonable efforts to resolve the differences and to reach a mutually agreeable decision on the proposed action.

III. Interpretation

(a) This Protocol shall be construed so as to give effect to the intent of the parties as set out in the Cooperative Agreement of which this is a part. Any words or phrases used in this protocol shall be defined in accordance with Article XVI of said Agreement.

(b) If any question of legal interpretation is raised by either party with respect to any matter subject to this Protocol, both the State Regulatory Authority and the Secretary shall defer to the opinion of the State Attorney General where interpretations of State law or regulations are involved, and to opinions of the solicitor of the Department of Interior where interpretations of Federal law or regulations are involved. This provision shall not be interpreted to prevent either party from challenging in court any opinion or interpretation of the State Attorney General with regard to state law or regulation or solicitor with regard to federal law or regulations.

IV. Revisions to Protocol

As a part of the Cooperative Agreement referenced in Part I hereof, this Protocol may be revised at any time during the duration of said Cooperative Agreement with the consent of the appropriate officer of the State Regulatory Authority and the Regional Director. Such revision shall become effective upon publication in the **Federal Register.**

Thomas L. Judge,
Governor of Montana.
Leo Berry, Commissioner,
Department of State Lands.
Cecil D. Andrus,
Secretary of the Interior.

Appendix A

This Appendix A identifies the laws of the State of Montana and the regulations of the State Regulatory Authority which are incorporated into the 1978 Federal-State Cooperative Agreement between the State of Montana and the Secretary of the Interior pursuant to Article III. C. of said Cooperative Agreement. This Appendix is approved as part of the Cooperative Agreement. The requirements contained in the laws and regulations identified in this Appendix shall be applicable to surface coal mining and reclamation operations on Federal lands in accordance with the terms of the Cooperative Agreement. Included in this Appendix are:

1. Laws of the State of Montana:

(a) The provisions of the Montana Strip and Underground Mine Reclamation Act Title 50 Chapter 10 of the Revised Codes of Montana 1947, as amended, which are specifically identified in

(i)–(xxii) hereof:

(i) § 50–1034.

(ii) § 50–1035.

(iii) § 50–1036; provided, however, that in paragraph (1) the words "and uranium" shall not be included in this Appendix A.

(iv) § 50–1037.

(v) § 50–1039, provided, however, that with respect to subsection (8)(a), the phrase "not more than twenty-five hundred dollars ($2,500)" is not included in Appendix A and shall not apply to Federal lands, and provided further that any bond applicable to the performance of duties on or affecting Federal lands shall conform to the requirements of Article VII of this Cooperative Agreement in addition to the requirements of State law.

(vi) § 50–1039.1, except that this section shall not apply where the surface owner is the United States in which case the laws of the United States shall exclusively apply.

(vii) § 50–1040.

(viii) § 50–1042.

(ix) § 50–1043.

(x) § 50–1044, provided, however, that with respect to subsection (5), any bond applicable to the performance of duties on or affecting federal lands may be released only on consent of the Secretary in accordance with Article VII of this Cooperative Agreement.

(xi) § 50–1045.

(xii) § 50–1046.

(xiii) § 50–1047, provided, however, that with respect to subsection (3), any bond applicable to the performance of duties on or affecting federal lands may be released only on consent of the Secretary in accordance with Article VII of this Cooperative Agreement.

(xiv) § 50–1048.

(xv) § 50–1050.

(xvi) § 50–1051.

(xvii) § 50–1052.

(xviii) § 50–1053.

(xix) § 50–1054, provided, however, that the bond may also be forfeited by the Secretary under federal law pursuant to Article VII of this Cooperative Agreement.

(xx) § 50–1055, provided, however, that subsections (1) and (2) shall not be construed as applying to any federal officer.

(xxi) § 50–1056, provided, however, that the imposition of a civil or criminal penalty by the state pursuant to this section shall not be construed as barring the Secretary from assessing a civil penalty pursuant to 30 CFR 211.78 or from requesting criminal prosecutions under applicable federal law.

(xxii) § 50–1057, provided, however, that this section shall be limited to actions taken by the state under state law in accordance with this Cooperative Agreement, and nothing in this section or this Cooperative Agreement shall be construed so as to create jurisdiction in a state court over actions taken by the Secretary, including the denial or approval of mining plans.

2. Regulations of the Montana Department of State Lands, including

the amendments adopted by the State Board of Land Commissioners on July 17, 1978, except: (i) § 20-2.10-8 10270(6).

[FR Doc. 79-18331 Filed 6-8-79; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 211

Regulation of Coal Mining on Federal Lands in Utah; Federal/State Cooperative Agreement

AGENCY: Office of Surface Mining Reclamation and Enforcement and Geological Survey, Interior.

ACTION: Final rule.

SUMMARY: This final rule completes the approval and promulgation of a Federal/State cooperative agreement between the Department of the Interior and the State of Utah for the regulation of surface coal mining and reclamation operations on Federal lands in Utah.

EFFECTIVE DATE: June 11, 1979.

FOR FURTHER INFORMATION CONTACT: Donald Crane, Regional Director, Region V, Office of Surface Mining, 1823 Stout Street, Denver, Colorado 80202, (303) 837-5421.

SUPPLEMENTARY INFORMATION: This cooperative agreement modifies the prior cooperative agreement (30 CFR 211.77(b)) in accordance with the requirements of section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87), "Surface Mining Act," and §-211.75 (b) and (c) of Title 30 CFR. This cooperative agreement was published as a proposed rule on March 5, 1979 (44 FR 12046). The agreement establishes conditions for State regulation of surface coal mining and reclamation operations on Federal lands, and requirements for such operations on Federal lands, including but not limited to (1) the adoption of amended State statutes and regulations containing new or modified enforcement procedures, environmental protection standards, and reclamation requirements applicable to surface coal mining and reclamation operations as substantive Federal law; (2) a requirement that the State regulatory authority exercise State enforcement powers on Federal lands so as to achieve results consistent with those which would be achieved by Federal enforcement pursuant to section 521 of the Surface Mining Act; (3) clarification of the procedures for the cooperative review and approval of mining and reclamation operations on Federal lands; and (4) provisions for the termination of such agreement.

In response to the proposed rulemaking, three comments were received. The comments raised six issues.

1. One comment was an objection to Utah's designation of the Utah Division of Oil, Gas and Mining, as the State regulatory authority responsible for administering the cooperative agreement. The commenter contends that this administrative arm of Utah's government is controlled by the mining and mineral interests. This, asserts the commenter, appears to be in violation of the Federal Act (Surface Mining Act), which prohibits any conflict of interest by employees, boards or commissions. The commenter provides no other substantive support for his argument, but does suggest that the (Utah) Division of State Lands or Department of Agriculture in cooperation with the Soil Conservation Service would be a more logical State regulatory authority designee.

The Office has no authority under the Surface Mining Act or regulations promulgated pursuant to the Act to designate a specific State agency as the regulatory authority. On the contrary, the Office believes that Congress intended to reserve such authority to the State. The Office, therefore, takes no position for or against the commenter's preferred State regulatory authority designee.

With respect to assertions concerning conflict of interest, the Surface Mining Act does prohibit conflict of interest by employees serving in certain capacities within the State regulatory authority. However, under § 705.5 members of advisory boards or commissions established in accordance with State law or regulations to represent multiple interests are not considered to be employees. As required by 30 CFR 705.11(a), employees covered by the regulations are required to file a statement of employment and financial interest. These filings are required periodically and are subject to thorough review. Irregularities must be corrected and, where warranted, criminal penalties may be imposed under Section 517(g) of the Surface Mining Act. Refusal of a State to enforce the required regulations concerning restrictions of financial interests of State employees (30 CFR Part 705) may be considered grounds for nullifying a State's eligibility for grants or financial reimbursement under the Act or continued responsibility as the primary regulatory authority over surface coal mining operations in the State. For these reasons, the Office believes that the public interest is adequately protected.

2. Another comment suggested that Article IV of the Agreement, which required the submission of identical mining and reclamation plans and permit applications, modifications or revisions to the State regulatory authority and Regional Director, implies that each regulatory authority shall conduct its own review and analysis of the permit application. The commenter suggests it would be more appropriate for the State regulatory authority to conduct a detailed review and analysis, while the Regional Director conducts a general overview of the State regulatory authority review.

The exact procedures and level of detail used by the Office to conduct an independent but concurrent review of a mine plan will be discretionary with the Regional Director. The level of the Federal analysis will depend upon the particular size, location, and complexity of the individual mine plan. In making a concurrent mine plan review, the Regional Director must also insure that the mine plan meets the requirements of the Mineral Leasing Act of 1920, the National Environmental Policy Act of 1969, the Endangered Species Act, the Historic Preservation Act and the provisions of other appropriate Federal laws. These requirements, along with the approval or disapproval of a mine plan, cannot be delegated by the Secretary pursuant to section 523(c) of the Act.

3. A third comment indicated that paragraph 6 of the Protocol, which requires the State regulatory authority to incorporate "matters into the draft letter at the Secretary's request * * *", tends to suggest that the Regional Director will review all draft letters from the State regulatory authority. This apparent requirement, asserts the commenter, will lead to delay in the permitting process. The commenter, therefore, recommends that all communications between the State regulatory authority and the operator be copied to the Regional Director, rather than having the Regional Director conduct a review of any or all draft communications.

The draft letter referred to in paragraph 6 of the Protocol, pertains only to new mining plans and permit applications, or modifications or revisions thereto. The requirement that such draft letter be forwarded to the Regional Director is to assure that matters needing further attention by the State or OSM, as determined in the independent but concurrent mine plan review, are accurately reflected in the letter prior to forwarding to the operator for necessary action. This procedure also insures that certain matters

required of the Secretary relating to responsibilities under the Mineral Leasing Act or other Federal statutes, but not the State regulatory authority, are included in the letter. In this way, the Secretary is assured that his nondelegable responsibility for mine plan approval or disapproval is not compromised. For these reasons, the Office elected not to adopt the commenter's suggested revision.

4. A fourth issue raised in the comments suggested that paragraph 11 of the Protocol suggests that an environmental impact statement or assessment would be required for every mine plan or major modification or revision thereof. The commenter asserts this is neither the intent of NEPA nor of the Office of Surface Mining, and suggests that paragraph 11 be reworded to give the designated environmental impact statement team discretionary authority, consistent with applicable State and Federal law, to determine the significance of the action and the need for an environmental impact statement or environmental assessment.

The Office has reviewed the regulations published by the Council on Environmental Quality and has determined that the proposed surface coal mine operations (mine plans) or major modifications or revisions thereof do not qualify as a categorical exclusion under 40 CFR 1508.4. Therefore, it will be necessary to prepare, as a minimum, an environmental assessment on all mine plan submissions or major modifications or revisions thereto. Paragraph 11 is intended to assure compliance with the requirements of the National Environmental Policy Act of 1969. For this reason, the Office did not adopt the commenter's suggestion to revise paragraph 11 of the Protocol.

5. One commenter suggested that the proposed Utah interim cooperative agreement is deficient because Utah has not met the preconditions for formulation of a cooperative agreement. Specifically, the commenter asserts that agreement provisions in Article VI paragraphs B and C delegating Federal Enforcement authority to State inspectors by the Secretary is neither legal nor effective. The commenter asserts that it will be challenged when the State inspectors seek to use their "federal authority".

The Office believes that the Secretary does have legal authority to delegate Federal enforcement responsibility to State inspectors. Through the cooperative agreement, the State agency responsible for administering and enforcing the terms of the agreement is acting as an authorized representative of the Secretary to regulate surface coal mining operations on Federal lands. This includes mine inspections. Section 521(a)(3) of the Act clearly states, "when, on the basis of a Federal inspection * * * the Secretary *or his authorized representative* determines * * * the Secretary or his *authorized representative* shall issue a notice to the permittee * * *." (emphasis added). If the authorized representative issues a notice or order consistent with and pursuant to section 523(a)(3) and the permittee fails to comply, under the terms of Article VI (E) of the agreement the State shall report the failure to comply to the Secretary, and under Article VI (F) the Secretary may take appropriate legal action to correct conditions that violate Federal law or to suspend the right to conduct surface coal mining and reclamation operations. For these reasons, the Office believes that delegation of inspection and enforcement responsibilities to State inspectors is in full compliance with the Act, and the authority in Article VI (F) provides an effective enforcement tool to require compliance with a State inspector's orders.

Notwithstanding the Secretary's authority to delegate Federal enforcement authority to State inspectors, on March 9, 1979, the State of Utah enacted new legislation which authorizes the State regulatory authority to issue notices and orders so that Federal delegation of enforcement authority will no longer be necessary. The cooperative agreement will be amended shortly to reflect the new State authority.

6. A final comment cites four sections of the Utah code which are believed inadequate to permit full compliance with and enforcement of the interim program. Specifically, sections 40–8–7; 40–8–16; 40–8–18; and 40–8–23 of the Utah code, asserts one commenter, contain certain statutory restrictions and, therefore, the State is without the legal authority to require an operator of an existing mine to comply with the rules or regulations implemented to meet the requirements of the Act. The commenter points out that the Office of Surface Mining has requested and the State has obtained waivers from the mining industry on the statutory restrictions preventing the retroactive application of new rules and regulations. However, the commenter contends that there is no guarantee that this action is legally binding or enforceable. The commenter further contends that until the State of Utah enacts legislation that allows full compliance with the requirements of the Federal Act, the Department should not enter into a cooperative agreement on Federal lands.

Concerning the commenter's assertion that Utah's code does not provide sufficient legal authority for administering the Act, the Office points out that Section 40–10–22 of the new Chapter 10 of Title 40, Utah Code Annotated 1953, specifically permits the issuance of cessation orders. Additionally, the statutory restrictions cited by the commenter as limiting the State's control over certain mining activities and functions have been replaced under the new Utah code. Sections 40–10–6(3), 40–10–6(4), 40–10–12(3), and 40–10–9 of the new law effectively deal with the commenter's concerns regarding the retroactive effect of regulations on reclamation plans. These sections provide for the establishment of a permit system which gives the responsible State agency much broader authority to review and, if necessary, revoke permits and require that all operators must submit permit applications for surface coal mining operations.

The State and the Secretary have mutually agreed that following publication of this final rule, the State/Federal cooperative agreement with the State of Utah, including Appendix A and all references thereto, will be amended to reflect the provisions, as appropriate, of Chapter 10 of Title 40, Utah Code Annotated. The Office believes that the passage of Utah's Act relating to the regulation of coal mining and reclamation operations and the subsequent amendment of the final modified State/Federal cooperative agreement with Utah is responsive to the commenter's concern that "Until the State of Utah enacts legislation that allows full compliance with the requirements of the Federal Act, the Department should not enter into a cooperative agreement on Federal lands."

Other Information

1. *Significance.* The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14. This "Determination of Significance" document prepared by the Office of Surface Mining concludes that because a State/Federal cooperative agreement between the State of Utah and the Department has been in effect for quite some time, the modified agreement in question does not incorporate any changes or revisions which would impose a major social,

economic, or recordkeeping burden on any level of Federal, State, or local government or upon industry. This document is available for public inspection in the Director's Office, Office of Surface Mining, Room 233, South Interior Building, 1951 Constitution Ave., NW., Washington, D.C. 20240.

2. Pursuant to section 702(d) of the Surface Mining Act, adoption of this rule is a part of the Secretary's implementation of the Federal Lands Program and is, therefore, exempt from the requirement to prepare a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

3. Because of the delay in the publication of this rule and the necessity to implement the provisions of the cooperative agreement, the Department has determined that good cause exists to make the rule effective upon the date of publication.

Dated: June 6, 1979.

Cecil D. Andrus,

Secretary.

1. Accordingly, Title 30 CFR 211.10(e)(2) is amended as follows:

§ 211.10 Exploration and mining plans.

* * * * *

(e) States with § 211.75(c) agreements.* * *

(2) *Utah.* A Federal coal lessee in the State of Utah who must submit a mining plan or permit under both State and Federal law shall submit to both the State Regulatory Authority and the Denver Regional Office, Office of Surface Mining, in lieu of the submission required in this section, a mining plan or revision or modification to an approved plan containing the information required by or necessary for the State Regulatory Authority and the Secretary to determine compliance with the statutory, regulatory and other requirements identified in paragraph B1 of Article IV of the modified Cooperative Agreement, the statement required by paragraph B2 of Article IV of the modified Cooperative Agreement, and the information required by:

(i) Utah Code Ann. 1953, as amended, section 40–8–13;

(ii) Rule M–3 of the Utah Division of Oil, Gas and Mining, except the paragraph following (h) due to the confidentiality provision which is not in conformity with the Surface Mining Control and Reclamation Act of 1977; and

(iii) 30 CFR 211.10(c); and

(iv) Any final action by the State Regulatory Authority or the Secretary with respect to a mining plan or revision or modification submitted for approval shall be in accordance with Article IV of the modified Cooperative Agreement.

* * * * *

2. 30 CFR 211.77(b) is amended as follows:

§ 211.77 States with cooperative agreement.

* * * * *

(b) Utah. The administration and enforcement of reclamation requirements of Federal coal leases in Utah, subject to this Part, shall be done according to the cooperative agreement between the State of Utah and the Department which became effective June 10, 1977, as modified on October 18, 1978, and published on June 11, 1979.

3. The State of Utah and the Department enter into a modified Cooperative Agreement to designate the State of Utah as the principal party to administer surface coal mining and reclamation operations on Federal leases in Utah to read as follows:

Cooperative Agreement Between the United States Department of the Interior and the State of Utah under Section 523(c) of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95–87 (hereinafter referred to as the "Act"), 30 U.S.C. 1273(c), between the State of Utah, acting by and through Scott M. Matheson, Governor (hereinafter referred to as the Governor), and the United States Department of the Interior, acting by and through the Secretary of the Interior (referred to as the Secretary).

Article I. Purpose

This Cooperative Agreement provides for a cooperative program between the United States Department of the Interior and the State of Utah with respect to regulation of surface coal mining and reclamation operations on Federal lands within the State of Utah. The basic purpose of this Agreement is to reduce duality of administration and enforcement of surface reclamation requirements by providing for state regulation of surface coal mining and reclamation operations on Federal lands within the State.

Article II. Effective Date

This Cooperative Agreement is effective following signing by the Secretary and the Governor, approval by the Division of Oil, Gas, and Mining of the Utah Department of Natural Resources, and upon final publication as rulemaking in the Federal Register. This Cooperative Agreement shall remain in effect until terminated as provided in Article IX. This Cooperative Agreement constitutes a modification to, an extension of, and supercedes that Cooperative Agreement published at 42 FR 18068, effective April 5, 1977, 30 CFR 211.77(b).

Article III. Requirements for Cooperative Agreement

The State of Utah and the Secretary affirm that they will comply with all of the provisions of this Cooperative Agreement and will continue to meet all the conditions and requirements specified in this Article.

A. *Responsible Administrative Agency.* The Utah Division of Oil, Gas, and Mining (hereinafter referred to as the "State Regulatory Authority") is, and shall continue to be, the sole agency responsible for administering this Cooperative Agreement on behalf of the Governor on Federal lands throughout the State.

B. *Authority of State Agency.* The State Regulatory Authority designated in paragraph A of this Article has, and shall continue to have, authority under State law to carry out this Cooperative Agreement.

C. *State Reclamation Law.* Enforcement of the environmental performance standards and reclamation requirements of Title 40 Chapter 8 Utah Code Annotated 1953 (as amended), and the regulations promulgated pursuant thereto as set forth in Appendix A of this Cooperative Agreement, will provide protection of the environment at least as stringent as would occur under the exclusive application of the standards and procedures set forth in the Act, and the regulations promulgated thereunder.

D. *Effectiveness of State Procedures.* The procedures of the State for enforcing the requirements contained in Appendix A are and shall continue to be as effective as the procedures of the Department of the Interior.

E. *Inspection of Mines.* The Governor affirms that the State will inspect all surface coal mining operations on Federal lands located in the State, in accordance with the minimum schedules in Article V.

F. *Enforcement.* The State affirms that it will enforce the requirements contained in Appendix A in a manner that ensures effective protection of the environment and public health and safety consistent with the requirements of Article VI of this Agreement.

G. *Funds.* The State has devoted and will continue to devote, adequate funds to the administration and enforcement of the requirements contained in Appendix A of this Cooperative

Agreement. If the State Regulatory Authority complies with the terms of this Agreement, and if necessary funds have been appropriated, the Secretary shall reimburse the State as provided in Section 705(c) of the Act, for costs associated with carrying out responsibilities under this Cooperative Agreement. Reimbursement grants shall be made at least on an annual basis. The Secretary shall advise the State Regulatory Authority within a reasonable period of time after the effective date of this modification of the amount the Federal Government would have expended if the State had not entered into this Cooperative Agreement.

H. *Reports and Records.* The State Regulatory Authority shall make reports to the Secretary containing information respecting its compliance with the terms of this Cooperative Agreement, as the Secretary shall from time to time require. The State Regulatory Authority and the Secretary shall exchange, upon request, information developed under the Cooperative Agreement.

I. *Personnel.* The State Regulatory Authority shall have the necessary personnel to fully implement this Cooperative Agreement in accordance with the provisions of the Act.

J. *Equipment and Laboratories.* The State Regulatory Authority shall have equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses, can be performed or determined, and which are necessary to carry out the requirements of the Cooperative Agreement, or have access to such facilities and personnel.

Article IV. Mining and Reclamation Plans

A. State and Federal laws and regulations require the operator on Federal lands leased, permitted, or licensed for surface coal mining operations to receive approval from the State Regulatory Authority and the Secretary of a mining plan and permit prior to conducting operations.

B. *Contents of Mining Plans and Permits.* The State of Utah by its Governor and the Secretary agree, and hereby require that an operator on Federal lands shall submit an identical federal mining and reclamation plan and state permit application which shall be in the form required by the State Regulatory Authority and include any supplemental forms required by the Secretary. Such plan and application shall include the following information:

1. The information required by, or necessary for the State Regulatory Authority and the Secretary to make a determination of compliance with:

a. Utah Code Annotated 1953 as amended.

b. Mined Land Reclamation General Rules and Regulations and Rules of Practice and Procedure, M–3, and coal mining regulations MC–715 *et seq.*

c. The Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201, *et seq.*; 91 Stat 445) and the regulations promulgated pursuant thereto, to the extent it is not otherwise required by 1 (a) and (b) above.

d. The Mineral Leasing Act of 1920, as amended, 30 U.S.C. 181 *et seq.*, to the extent it is not otherwise required by 1(a), 1(b), and 1(c) above.

e. The requirements of 30 CFR 211.10.

f. Applicable terms and conditions of the lease or license.

g. Applicable requirements of other Federal laws.

2. A statement certifying that identical copies of the mining and reclamation plan and permit application have been given to both the State Regulatory Authority and the Secretary.

3. The State Regulatory Authority and the Office of Surface Mining on behalf of the Secretary shall jointly review and act upon each mining and reclamation plan and permit application, or modifications or revisions thereto, in accordance with the Protocol attached hereto and incorporated as a part of this Cooperative Agreement. The parties may review and mutually revise said Protocol as deemed necessary in accordance with the terms of the Protocol, Article XI of this Agreement to the contrary notwithstanding. Any revisions to the Protocol shall become effective upon notice published in the Federal Register.

4. Any final approval of a mining and reclamation plan and permit application, or modifications or revisions thereto, by the State Regulatory Authority or the Secretary which would create a right of appeal by an aggrieved person shall be mutually acceptable to the State Regulatory Authority and the Secretary, and shall be concurrent. When acting upon mining and reclamation plans and permits, or modification or revisions thereto, the State Regulatory Authority and the Secretary agree that each of them will not approve any plan and permit, or modification or revision thereto, which fails to comply with the requirements of the laws and regulations listed in paragraph 1 of this Article.

5. When acting upon a mine plan, the Secretary reserves the right to impose such additional conditions or requirements not required by the Act or Appendix A of this Cooperative Agreement which are authorized or required by law or by his general authority to supervise the activities of persons on Federal lands.

Article V. Inspections

A. The State Regulatory Authority shall inspect without prior notice to the operator, as authorized by Utah state law as frequently as necessary, but at least quarterly, the area of operations as defined by the approved mining and reclamation plan, the permit area of the applicable state permit, and any other areas outside the area of operations which are or may be affected by the surface coal mining and reclamation operation on Federal lands. Such inspections shall be conducted for the purpose of determining whether the operator has complied with all applicable requirements of the Act and Appendix A hereof, and all environmental and reclamation requirements of approved mining and reclamation plans or permits, but not to determine compliance with development, diligent production and resource recovery requirements established under the Mineral Leasing Act, as amended, or to regulate other activities on Federal lands not subject to the Act.

B. The State Regulatory Authority will, subsequent to conducting any inspection, file with the Secretary a report adequately describing (1) the general conditions of the lands under lease, permit or license, (2) the manner in which the operations are being conducted, and (3) whether the operator is complying with applicable performance and reclamation requirements. A copy of this inspection report shall be furnished to the Secretary in accordance with regulations adopted pursuant to the Surface Mining Control and Reclamation Act. A copy of this report shall be furnished to the operator, upon request, and shall be made available for public inspection during normal business hours at the offices of the State Regulatory Authority and the Office of Surface Mining.

C. For the purpose of evaluating the manner in which this Coopertive Agreement is being carried out and to insure that performance and reclamation standards are being met, the Secretary may conduct inspections of surface coal mining and reclamation operations on Federal lands, and shall provide the State Regulatory Authority with a copy of the report. Inspections by the Secretary may be made in

association with regular inspections by the State.

D. The Secretary may also conduct inspections to determine whether the operator is complying with requirements which are unrelated to environmental protection and reclamation.

E. Personnel of the State and representatives of the Secretary shall be mutually available to serve as witnesses in enforcement actions taken by either party.

Article VI. Enforcement

A. If the State Regulatory Authority finds any conditions or practices, or violations of the Act, the requirements of Appendix A hereof, or of an approved mining and reclamation plan or permit which would authorize the issuance of an order of cessation under Section 521(a)(2) of the Act, the State Regulatory Authority shall immediately exercise the discretion authorized by Section 40-8-8 of the Utah Code Annotated 1953, as amended, to suspend the license of an operator.

B. (1) When, during any inspection, any representative of the State Regulatory Authority determines that any operator is in violation of the Act, any requirement of Appendix A, or any requirement of an approved mining and reclamation plan or permit, but such violation would not require an action in accordance with paragraph A of this Article, the representative shall issue a notice and abatement schedule to the operator consistent with and pursuant to Section 521(a)(3) of the Act.

(2) When a notice and abatement schedule have been issued under B(1)(b) of this Article and a representative of the State Regulatory Authority determines that the operator has failed to abate the violation within the time fixed or subsequently extended consistent with Section 521(a)(3) of the Act, the representative shall immediately issue an order consistent with and pursuant to Section 521(a)(3) of the Act.

C. For the purposes of implementing paragraphs B (1) and (2) of this Article, the Secretary delegates his authority to issue notices and orders pursuant to § 521(a)(3) of the Act to representatives of the State Regulatory Authority who shall each be identified by a letter of authorization signed by the Director of the Office of Surface Mining. Such letters of authorization shall be rendered null and void upon the termination of this Agreement or upon revocation by the Director.

D. Appeals or requests for relief from any action taken by an authorized representative of the Secretary acting in his capacity as the Secretary's representative pursuant to paragraphs B (1) or (2) of this Article shall be filed in accordance with the rules of procedure adopted by the Secretary (43 CFR Part 4).

E. The State shall promptly notify the Secretary of all violations of applicable laws, regulations, orders, approved mining and reclamation plans and permits subject to the Agreement and of all actions taken with respect to such violations.

F. This Agreement does not limit the Secretary's authority to seek cancellation of a federal coal lease under federal laws and regulations, or prevent the Secretary from taking appropriate legal or other actions to correct conditions or practices that violate federal law or Appendix A incorporated into federal law as a part of this Cooperative Agreement, or to suspend or revoke the right to conduct surface coal mining operations on federal lands in accordance with 30 CFR 211.72 or assess civil penalties in accordance with 30 CFR 211.78.

G. Failure of the State Regulatory Authority to enforce approved mining and reclamation plans, permits, and applicable laws and standards and regulations in accordance with this Agreement, shall be grounds for termination of this Cooperative Agreement.

Article VII. Bonds

A. *Amount and Responsibility.* The State Regulatory Authority and the Secretary shall require all operators on Federal lands to submit a single bond payable to both the United States and the State Regulatory Authority. Such bond shall be of sufficient amount to comply with the requirements of both State and Federal law and shall be conditioned upon compliance with all applicable requirements of Federal law and Appendix A hereof.

B. *Notification.* Prior to releasing the operator from his obligations under the bond required by State law for federal lands, the State Regulatory Authority shall consult with and obtain the advice and consent of the Secretary.

C. *Release of Bond.* The State Regulatory Authority shall hold the operator responsible and liable for successful reclamation as required by the State law.

D. Either the State Regulatory Authority or the Secretary may forfeit the bond under State or Federal law.

Article VIII. Opportunity To Comply With Cooperative Agreement

The Secretary may, in his sole discretion, and without instituting or commencing proceedings for withdrawal of approval of the Cooperative Agreement, notify the State Regulatory Authority that it has failed to comply with the provisions of the Cooperative Agreement. The Secretary shall specify how the State has failed to comply and shall specify and state the period of time within which the defects in administration shall be remedied and satisfactory evidence presented to him that the State remedied the defects in administration and is in compliance with and has met the requirements of the Secretary. The period of time specified shall not be less than 30 days. Upon failure of the State Regulatory Authority to meet the requirements of the Secretary within the time specified, the Secretary may institute proceedings for withdrawal of approval of the Cooperative Agreement as set forth in Article IX.

Article IX. Termination of Cooperative Agreement

This Cooperative Agreement may be terminated as follows:

A. *Termination by the State.* The Cooperative Agreement may be terminated by the State upon written notice to the Secretary, specifying the date upon which the Cooperative Agreement shall be terminated, but which date of termination shall not be less than 90 days from the date of the notice.

B. *Termination by the Secretary.* The Cooperative Agreement may be terminated by the Secretary pursuant to paragraphs D, E, and F of this Article whenever the Secretary finds, after giving due notice to the State Regulatory Authority and affording the State Regulatory Authority an opportunity for a hearing:

1. That the State Regulatory Authority has failed to comply substantially with a provision of this Cooperative Agreement; or

2. That the State Regulatory Authority has failed to comply with any assurance given by the State upon which this Cooperative Agreement is based, or any condition or requirement which is specified in Article III.

C. *Termination by Operation of Law.* This Cooperative Agreement shall terminate by operation of law under any of the following circumstances:

1. When no longer authorized by Federal laws and regulations or Utah laws and regulations;

2. When a State program is finally disapproved, pursuant to Section 503 of the Act.

3. Within 120 days of the approval of a permanent State program pursuant to § 503 of the Act.

4. Following promulgation of a Federal lands program pursuant to Section 523(a) of the Act in the event the Secretary determines in writing that the State Regulatory Authority lacks the necessary personnel, legal authority, or funding to fully implement the Federal lands program in accordance with the provisions of the Act.

D. *Notice of Proposed Termination.* Whenever the Secretary proposes to terminate the Cooperative Agreement he shall:

1. Give written notice to the Governor and to the State Regulatory Authority specified in Article III.

2. Specify and set out in the written notice the grounds upon which he proposes to terminate this Cooperative Agreement.

3. The Secretary shall also publish a notice in the **Federal Register** containing items 1 and 2 of this paragraph, and specifying a minimum 30 days for comment by interested persons.

E. *Opportunity for Hearing.* Whenever the Secretary proposes to terminate this Cooperative Agreement pursuant to paragraph B hereof, in addition to the notice required by paragraph D, he shall:

1. Specify in the notices required by paragraph D the date and place where the State will be afforded an opportunity for hearing and to show cause why this Cooperative Agreement should not be terminated by the Secretary. The date of such hearing shall be not less than 30 days from the date of the publication in the **Federal Register**, and the place shall be in the State.

2. Within thirty (30) days of the date of the written notice specifying the date of the hearing, the State shall file a written notice with the Secretary stating whether or not it will appear and participate in the hearing. The notice shall specify the issues and grounds specified by the Secretary for termination which the State will oppose or contest and a statement of its reasons and grounds for opposing or contesting. Failure to file a written notice in the Office of the Secretary within thirty (30) days shall constitute a waiver of the opportunity for hearing, but the State may present or submit before the time fixed for the hearing written arguments and reasons why the Cooperative Agreement should not be terminated, and within the discretion of the Secretary may be permitted to appear and confer in person and present oral or written statements, and other documents relative to the proposed termination.

3. The hearing will be conducted by the Secretary. A record shall be made of the hearing and the State shall be entitled to obtain a copy of the transcript. The State shall be entitled to have legal and technical and other representatives present at the hearing or conference, and may present, either orally or in writing, evidence, information, testimony, documents, records, and materials as may be relevant and material to the issues involved.

F. *Notice of Withdrawal of Approval of Cooperative Agreement.*

1. After a hearing has been held with respect to a proposed termination of this Agreement under paragraph B of this Article, or the right to a hearing has been waived or forfeited by the State, the Secretary, after consideration of the evidence, information, testimony, and arguments presented to him shall advise the State of his decision. If the Secretary determines to withdraw approval of this Cooperative Agreement, he shall notify the State Regulatory Authority of his intended withdrawal of approval of the Cooperative Agreement, and afford the State an opportunity to present evidence satisfactory to the Secretary that the State has remedied the specified defects in its administration of this Cooperative Agreement. The Secretary shall state the period of time within which the defects in administration shall be remedied and satisfactory evidence presented to him, and upon failure of the State to do so within the time stated, the Secretary may thereupon withdraw his approval of the Cooperative Agreement without any further opportunity afforded to the State for a hearing.

2. After the close of the comment period required by paragraph D. 3. of this Article with respect to a proposal to terminate this Cooperative Agreement pursuant to paragraph C of this Article, the Secretary shall consider the comments received and after a review of the questions of law presented, shall publish notice of final action, either terminating the Cooperative Agreement or withdrawing the proposed termination, and stating his reasons therefor.

G. Nothing in this Article shall be construed as a waiver of any right the State Regulatory Authority may have to seek judicial review of any decision by the Secretary to terminate this Cooperative Agreement.

Article X. Reinstatement of Cooperative Agreement

If this Cooperative Agreement has been terminated, it may be reinstated upon application by the State and upon giving evidence satisfactory to the Secretary that the State can and will comply with all the provisions of the Cooperative Agreement, and has remedied all defects in administration for which this Cooperative Agreement was terminated.

Article XI. Amendments of Cooperative Agreement

This Cooperative Agreement may be amended by mutual agreement of the Governor and Secretary. An amendment proposed by one party shall be submitted to the other with a statement of the reasons for such proposed amendment. The party to whom the proposed amendment is submitted shall signify its acceptance or rejection of the proposed amendment, and if rejected shall state the reasons for rejection. If accepted, the amendment shall be adopted after rulemaking.

Article XII. Changes in State or Federal Standards

The Secretary of the Interior and/or the State of Utah may from time to time revise and promulgate new or revised performance or reclamation requirements or enforcement and administration procedures. The Secretary and the Governor shall immediately inform the other of any final changes in their respective laws or regulations. Each party shall, if it determines it to be necessary to keep this Cooperative Agreement in force, change or revise its respective laws or regulations. For changes which may be accomplished by rulemaking, each party shall have 6 months in which to make such changes. For changes which require legislative authorization, the State has until the close of its next legislative session at which such legislation can be considered in which to make the changes. If changes which are necessary for the State to have authority to administer and enforce Federal requirements are not made, then the termination provision of Article IX may be invoked.

Article XIII. Conflict of Interest

The State Regulatory Authority shall require its employees to comply with the requirements of 30 CFR 705.

Article XIV. Exchange of Information

A. *Organizational and Functional Statement.* The State Regulatory Authority and the Secretary shall advise

each other of the organization, structure, functions, and duties of the offices, departments, divisions, and persons within their organizations. Each shall promptly advise the other in writing of changes in personnel, officials, heads of a department or division, or a change in the functions or duties of persons occupying the principal offices within the organization. The State Regulatory Authority and the Secretary shall advise each other in writing of the location of its various offices, telephone numbers, addresses, and the names, location, telephone numbers of their respective mine inspectors and the area within the State for which such inspectors are responsible, and of any changes in such.

B. *Laws, Rules and Regulations.* The State Regulatory Authority and the Secretary shall provide each other with copies of their respective laws, rules and regulations and standards pertaining to the enforcement and administration of this Cooperative Agreement and promptly furnish copies of any final revision of such laws, rules, regulations and standards when the revision becomes effective.

Article XV. Reservation of Rights

This Cooperative Agreement shall not be construed as waiving or preventing the assertion of any rights the State of Utah and the Secretary may have under the Mineral Leasing Act, as amended, the Mineral Leasing Act for Acquired Lands, the Federal Land Policy and Management Act of 1976, the Surface Mining Control and Reclamation Act of 1977, the Constitution of the United States, the Constitution of the State or State laws, nor shall this Agreement be construed so as to result in the transfer of the Secretary's duties under sections 2(a), 2(b), and 2(a)(B) of the Federal Mineral Leasing Act, as amended, or his duty to approve mine plans, or his responsibilities with respect to the designation of Federal lands as unsuitable for mining in accordance with Section 522 of the Act, or to regulate other activities taking place on Federal lands.

Article XVI. Definitions

Terms and phrases used in this Agreement which are defined in 30 CFR Part 710 shall be given the meanings set forth in said definitions.

Dated: October 30, 1978.

Scott M. Matheson
Governor of Utah.

Dated: October 30, 1978.

Cleon Feight,
Director, Division of Oil, Gas, and Mining.

Dated: October 18, 1978.

Cecil D. Andrus,
Secretary of the Interior.

Appendix A

This Appendix A identifies the laws of the State of Utah and the regulations of the State Regulatory Authority which are incorporated into the 1978 Federal-State Cooperative Agreement between the State of Utah and the Secretary of the Interior pursuant to Article III. C. of said Cooperative Agreement. This Appendix is approved as part of the Cooperative Agreement. The requirements contained in the laws and regulations identified in this Appendix shall be applicable to surface coal mining and reclamation operations on Federal lands in accordance with the terms of the Cooperative Agreement. Included in this Appendix are:

1. Laws of the State of Utah:

(a) The provisions of the Utah Mined Land Reclamation Act Title 40, Chapter 8, Utah Code Annotated, 1953, as amended, which are specifically identified in (i)–(xxiii) hereof:

(i) § 40–8–1.
(ii) § 40–8–2.
(iii) § 40–8–3.
(iv) § 40–8–4, provided, however, that the 500-ton per year exclusion contained in the definition of "mining operations" shall not be included in Appendix A and shall not apply on Federal lands.
(v) § 40–8–5.
(vi) § 40–8–6, provided, however, that the 500-ton per year exclusion contained in the definition of "mining operations" shall not be included in Appendix A and shall not apply on Federal lands.
(vii) § 40–8–7(1), provided, however, that with respect to the application of subsection (1)(e) any bond applicable to the performance of duties on or affecting Federal lands shall conform to the requirements of Article VII of this Cooperative Agreement in addition to the requirements of state law.
(viii) § 40–8–8(1), (2), and (3).
(ix) § 40–8–9, provided, however, that this section shall be limited to actions taken by the State Regulatory Authority under state law pursuant to this Cooperative Agreement and nothing in this section or in this Cooperative Agreement shall be construed so as to create jurisdiction in a state court over actions taken by or pursuant to authority delegated by the Secretary, including the denial or approval of mining plans.
(x) § 40–8–10, provided, however that this section shall be limited to actions taken by the State Regulatory Authority under state law pursuant to this Cooperative Agreement and nothing in this section or in this Cooperative Agreement shall be construed so as to govern actions taken by or pursuant to authority delegated by the Secretary, including the denial or approval of mining plans.
(xi) § 40–8–11.
(xii) § 40–8–12.
(xiii) § 40–8–13(1), (3), (4), provided, however, that the "one time only" publication requirement relating to a "tentative decision" on a proposed agency action to approve a mining operation is not incorporated into this Appendix and shall not apply to Federal lands.
(xiv) § 40–8–14, provided, however, that any cash or securities posted in lieu of bond under this section conform to the requirements of Article VII of this Cooperative Agreement and applicable requirements of federal law; and provided, further that any bond applicable to the performance of duties on or affecting federal lands may be released only on consent of the Secretary in accordance with Article VII of this Cooperative Agreement; and also provided further that the bond may also be forfeited by the Secretary under federal law pursuant to Article VII of this Cooperative Agreement.
(xv) § 40–8–15.
(xvi) § 40–8–16(2), (3), and (4).
(xvii) § 40–8–17.
(xviii) § 40–8–18.
(xix) § 40–8–19.
(xx) § 40–8–20.
(xxi) § 40–8–21.
(xxii) § 40–8–22.
(xxiii) § 40–8–23.

2. Rules and Regulations of the Utah Board of Oil, Gas, and Mining, Division of Oil, Gas, and Mining including the amendments approved as Surface Mining Reclamation and Enforcement Provisions for coal adopted on May 25, 1978, except:

(i) The preamble of the rules pp. 66–67.
(ii) M–3 The paragraph following (h) due to the confidentiality portion which is not in conformity with the Act.
(iii) M–4.

Protocol for Cooperative Review of Mining and Reclamation Plans for Surface Coal Mining and Reclamation Operations on Federal Lands

I. *Purpose.* This Protocol is intended by the Utah Division of Oil, Gas, and Mining (hereinafter the "State

Regulatory Authority") and the Secretary to establish procedures governing the conduct of the respective Interior agencies and the State Regulatory Authority regarding the coordinated review of mining and reclamation plans, or modifications or revisions thereto for surface coal mining and reclamation operations on Federal lands pursuant to the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87 (hereinafter referred to as the "Act"). These procedures are intended to implement the requirements of Article IV of the State/Federal Cooperative Agreement (hereinafter referred to as "Cooperative Agreement") between the State of Utah by its Governor and the Secretary dated , 1978, and are incorporated therein and made a part thereof.

II. *Procedures.* 1. Operators shall be required to submit identical copies of mining and reclamation plans and permit applications, or modifications or revisions thereto, to both the State Regulatory Authority and the Regional Director, Denver Region, Office of Surface Mining. The number of copies submitted to the State Regulatory Authority and the Regional Director shall be specified by regulation by each agency and may be changed according to need.

2. The State Regulatory Authority will be the point of contact for operators regarding matters subject to the requirements of the Act and Appendix A of the Cooperative Agreement. Following the initial submission of the mining plan and permit application, all correspondence from the State Regulatory Authority and the Secretary regarding matters subject to the requirements of the Act and Appendix A of the Cooperative Agreement will be coordinated and sent from the State Regulatory Authority on behalf of both. Interior agencies will not independently initiate contacts with operators regarding the completeness or deficiencies of plans and applications with respect to matters which are properly within the jurisdiction of a State Regulatory Authority under the Act, provided that any matters of concern raised on behalf of the Secretary are adequately addressed by the State Regulatory Authority in accordance with the provisions of this Protocol.

3. The Office of Surface Mining will coordinate all activities relative to the review of mining plans and permit applications for all concerned Interior agencies and will act as the point of contact for communications between the State Regulatory Authority and the Department of the Interior.

4. Review and evaluation of each mining plan and permit application, or modifications or revisions thereto, and the data or documentation submitted in support thereof, will be conducted independently, but concurrently, by the State Regulatory Authority and the respective Interior agencies having responsibility for review of mine plans. During such review and evaluation, the staffs of the State Regulatory Authority and each Interior agency will coordinate their respective activities through the Office of Surface Mining by informal contacts as appropriate.

5. Based upon the coordinated review, the State Regulatory Authority will draft a response letter to the operator outlining the status of the completeness and deficiencies of the plan and application with respect to the requirements of the Act and Appendix A to the Cooperative Agreement. Such draft letter will be sent to the Denver regional office, Office of Surface Mining, within 60 days of receipt of the plan and application. The Office of Surface Mining will coordinate review of the draft letter on behalf of Interior agencies. The Office of Surface Mining will communicate to the State Regulatory Authority within a reasonable time any proposed additions or modifications to the letter. If any such proposed additions or modifications are objected to by the State Regulatory Authority, a meeting will be held between the Regional Director, Office of Surface Mining, and the State Regulatory Authority to resolve the specified objections. If the Regional Director and the State Regulatory Authority cannot resolve such objections, the State Regulatory Authority and the Regional Director shall summarize their disagreement in writing and request a meeting with the Director, Office of Surface Mining, and such other representative of the Secretary as may be appropriate, to discuss a resolution of such objections. Following the resolution of such objections or in the absence of any such objections, the draft letter will be revised to incorporate the language proposed by the Office of Surface Mining and sent to the operator by the State Regulatory Authority, with a copy to the Regional Director, Office of Surface Mining.

6. The Secretary may at his discretion incorporate into the draft letter any matters related to mining plan review and approval which are not within the jurisdiction of the State Regulatory Authority and which the Secretary is required to address under any federal statute or regulation other than the Act. The State Regulatory Authority agrees to incorporate such matters into the draft at the Secretary's request. Failure to incorporate such matters into the draft letter shall not deprive the Secretary of the right to contact an operator directly regarding such matters. Whenever written communications regarding such matters are made directly between an Interior agency and an operator, the State Regulatory Authority shall be supplied with a copy.

7. The Secretary, acting by and through the Office of Surface Mining, will be given an opportunity to review and propose additions or modifications to all substantive written correspondence from the State Regulatory Authority in accordance with paragraph 5 hereof.

8. Copies of all written communications, data, documents, or other information received by the State Regulatory Authority from operators will be forwarded to the Office of Surface Mining by the State Regulatory Authority or sent directly to the Office of Surface Mining by the operator when requested to do so by the State Regulatory Authority.

9. The Secretary and the State Regulatory Authority agree to inform each other of any communciations received from the operator regarding any matter subject to this Protocol.

10. Either the Secretary or the State Regulatory Authority may request and schedule meetings with the operator or site inspections. No meeting with the operator or site inspection will be scheduled by either the Secretary or the State Regulatory Authority without adequate advance notice to the other party and an opportunity to participate.

11. Upon receipt of a mining and reclamation plan and permit application, or major modification or revision thereto, the State Regulatory Authority and the Office of Surface Mining will designate an Environmental Impact Statement team and coordinate the drafting of an Environmental Assessment or Environmental Impact Statement which will comply with the National Environmental Policy Act and any applicable requirements of State law. It is understood and agreed by the parties that no formal, final action regarding approval or disapproval of any pending plan and permit may be taken by either party until said requirement of law is met. In addition, the State Regulatory Authority shall take action as is necessary to prevent approval of the application by default under State law.

12. Upon completion of review and evaluation of the plan and application, or modifications or revisions thereto, by the State Regulatory Authority, the State Regulatory Authority shall notify the Regional Director, Office of Surface Mining, of any proposed action to be taken regarding approval or disapproval, including any proposed special conditions or stipulations. After receipt of concurrence with any such action from the respective Interior agencies with responsibilities for the review of mining plans under any Federal statute or regulation other than the Act, and upon concurrence with any such action by the Regional Director for the Office of Surface Mining, and following completion of any procedures referenced in paragraph 11 hereof, a joint recommendation by the Regional Director, Office of Surface Mining, on behalf of all Interior agencies and the State Regulatory Authority will be forwarded to the Secretary or his authorized delegee for final action. If the Regional Director and the State Regulatory Authority cannot agree upon such a recommendation, the State Regulatory Authority and the Regional Director shall summarize their disagreement in writing and request a meeting with the Director, Office of Surface Mining, and such other representatives of the Secretary as may be appropriate, to discuss what final action may be appropriate under the circumstances of the case. If the State Regulatory Authority approves the mining and reclamation plan or permit or request for amendment in whole or in part, it shall condition any approval on obtaining approval of the plan, permit or amendment from the Secretary so that mining cannot commence on Federal lands until the Secretary approves the mining and reclamation plan.

13. Any final approval of the mining plan and permit, or modifications or revisions thereto, by the parties which will create a right of appeal by any aggrieved person shall not be complete until the document recording such action is signed by both the Secretary (or his authorized delegee) and the authorized representative of the State Regulatory Authority.

III. *Interpretation.* (a) This Protocol shall be construed so as to give effect to the intent of the parties as set out in the Cooperative Agreement of which this is a part. Any words or phrases used in this protocol shall be defined in accordance with Article XVI of said Agreement.

(b) If any question of legal interpretation is raised by either party with respect to any matter subject to this Protocol, both the State Regulatory Authority and the Secretary shall defer to the opinion of the State Attorney General where interpretations of State law or regulations are involved, and to opinions of the Solicitor of the Department of Interior where interpretations of Federal law or regulations are involved.

IV. *Revisions to Protocol.* As a part of the Cooperative Agreement referenced in Part I hereof, this Protocol may be revised at any time during the duration of said Cooperative Agreement with the consent of the appropriate officer of the State Regulatory Authority and the Regional Director. Such revision shall become effective upon publication in the **Federal Register.**

Dated: October 20, 1978.

Scott M. Matheson,

Governor of Utah.

Dated: October 20, 1978.

Cleon Feight,

Director, Division of Oil, Gas, and Mining.

Dated: October 18, 1978.

Cecil D. Andrus,

Secretary of the Interior.

[FR Doc. 79-18122 Filed 6-8-79; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 211

Regulation of Coal Mining on Federal Lands in Wyoming; Federal/State Cooperative Agreement

AGENCY: Office of Surface Mining Reclamation and Enforcement and Geological Survey, Interior.

ACTION: Final rule.

SUMMARY: This final rule completes the approval and promulgation of a Federal/State cooperative agreement between the Department of the Interior and the State of Wyoming for the regulation of surface coal mining and reclamation operations on Federal lands in Wyoming.

EFFECTIVE DATE: June 11, 1979.

FOR FURTHER INFORMATION CONTACT: Donald Crane, Regional Director, Region V, Office of Surface Mining, 1823 Stout Street, Denver, Colorado 80202, (303) 837–5421.

SUPPLEMENTARY INFORMATION: This cooperative agreement modifies the prior cooperative agreement (30 CFR 211.77(a)) in accordance with the requirements of section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95–87), "Surface Mining Act," and § 211.75(b) and (c) of Title 30 CFR. This cooperative agreement was published as a proposed rule on March 5, 1979 (44 FR 12052). This agreement establishes conditions for State regulation of surface coal mining and reclamation operations on Federal lands, and requirements for such operations on Federal lands including but not limited to (1) the adoption of State statutes and amended regulations containing new environmental protection standards and reclamation requirements applicable to surface coal mining and reclamation operations as substantive Federal law enforceable by the State and the United States; (2) the requirement that the State Regulatory authority exercise State enforcement powers on Federal lands so as to achieve results consistent with those which would be achieved by Federal enforcement pursuant to section 521 of the Surface Mining Act; (3) the creation of procedures for the cooperative review and approval of integrated mining and reclamation plans for surface coal mining and reclamation operations on federal lands or on commingled State and/or private lands and Federal lands; (4) the termination of such agreement in the event the State does not implement the permanent Federal lands program or receive approval of a permanent regulatory program under section 503 of the Surface Mining Act; and (5) the creation of requirements for joint Federal and State approval and release of performance bonds for surface coal mining and reclamation operations which include Federal lands.

Three comments were received in response to the proposed rulemaking. Two of the comments raised a similar issue:

The commenters object to the provision of Article IX that allows the proposed interim program agreement to become the permanent program agreement without any action by the Secretary. The commenters argue that the provision is inconsistent with Section 523(c) of the Surface Mining Act and Part 745 of 30 CFR. One of the commenters suggested alternate language for the agreement that would provide for automatic termination 120 days after the approval of a permanent State program unless the Secretary does not notify the State of inadequacies in the proposed permanent State program.

The objections appear to be grounded in a concern that the interim program agreement will become the permanent program agreement following approval of a permanent State program for Wyoming without the benefit of Secretarial and public review as set forth in 30 CFR Part 745.

The Secretary believes that the agreement is consistent with Section 523

of the Act. The commenters choose to read the first sentence of Section 523(c) as calling for creation of a new cooperative agreement following approval of a State program, starting with a *tabula rasa* regardless of whether a cooperative agreement was in existence in that State for the initial regulatory program. And yet the language of the first sentence merely states that a "State with an approved State program *may elect* to enter into a cooperative agreement * * *" (emphasis added). This is a general sentence which is silent as to how the election is to be implemented.

Assuming that under the more specific language of the second sentence in section 523(c), a cooperative agreement could be modified in such a fashion as to comply fully with not only the initial program requirements, but also the permanent program requirements, the commenters reading of Section 523(c), would attribute to Congress the imposition of a superfluous requirement, i.e., that an adequate agreement be terminated and a new one negotiated. Rather than attribute such a result to Congress, the Secretary has interpreted Section 523(c) in a more pragmatic fashion.

The language of Section 523(c) is silent as to the consequences of State program approval on an existing cooperative agreement. Rather than starting as the commenters do, from the assumption that an existing cooperative agreement must automatically be discarded upon approval of a State program regardless of the adequacy of that existing agreement, the Secretary has chosen to reserve that determination until State program approval. If, at that time, a State with an existing cooperative agreement elects to continue regulation of surface coal mining operations on Federal lands, the Secretary will determine whether the existing cooperative agreement remains adequate. If he determines the existing cooperative agreement is inadequate, the provisions of Article IX and XI will apply, as will 30 CFR Part 745. Should the Secretary determine that the agreement remains adequate, its termination consistent with the commenter's reading of Section 523(c) would be contrary to principles of good management and administrative efficiency.

Although the Secretary appreciates the commenter's concerns on this issue, for the reasons given, he believes the language of the cooperative agreement is consistent with Section 523(c) of the Act.

The third commenter states the proposed agreement is unacceptable because it:

a. will perpetuate the interim regulatory program;

b. was initiated prematurely;

c. fails to comply with Section 523(c) of SMCRA;

d. lacks correpondence (sic) with Section 521 (Enforcement);

e. is not supported by evidence of compliance with or capacity to comply with assurances upon which the agreement depends, including adequate State funding of the State Regulatory Agency.

As pointed out in the response to the first comment, the cooperative agreement will be reexamined when the permanent State program is approved. It will be revised or continued as appropriate for the permanent program. The interim program will not be perpetuated as suggested by the commenter's first argument. With regard to argument "b," the commenter appears to be confused between the modification of an existing agreement and the development of a permanent program agreement. Modification of existing agreements prior to the permanent program is clearly authorized by Section 523(c). Point "c" is covered by the response to the first comment and by the reply to "b."

Argument "d" appears to refer to the delegation of Federal authority to State inspectors to issue notices and orders. The Office believes that the Secretary has legal authority to delegate Federal enforcement responsibility to State inspectors. Through the cooperative agreement, the State agency responsible for administering and enforcing the terms of the agreement is acting as an authorized representative of the Secretary to regulate surface coal mining operations on Federal lands. This includes mine inspections. Section 521(a)(3) of the Act clearly states, "when, on the basis of a Federal inspection * * * the Secretary *or his authorized representative* determines * * * the Secretary or his *authorized representative* shall issue a notice to the permittee * * *." (emphasis added). If the authorized representative issues a notice or order consistent with an pursuant to Section 521(a)(3) and the permittee fails to comply, under the terms of Article VI (E) of the agreement the State shall report the failure to comply to the Secretary, and under Article VI (F) the Secretary may take appropriate legal action to correct conditions that violate Federal law or to suspend the right to conduct surface coal mining and reclamation operations. For these reasons, the Office believes that delegation of inspection and enforcement responsibilities to State inspectors is in full compliance with the Act, and the authority in Article VI (F) provides an effective enforcement tool to require compliance with a State inspector's orders.

Finally, with regard to point "e," through the award of grants to the State, OSM has determined that the State has adequate capacity and funds to comply with the agreement.

Other Information:

1. *Significance.* The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14. This "Determination of Significance" document prepared by the Office of Surface Mining concludes that because a State/Federal cooperative agreement between the State of Wyoming and the Department has been in effect for quite some time, the modified agreement in question does not incorporate any changes or revisions which would impose a major social, economic, or recordkeeping burden on any level of Federal, State, or local government or upon industry. This document is available for public inspection in the Director's Office, Office of Surface Mining, Room 233, South Interior Building, 1951 Constitution Ave., NW., Washington, D.C. 20240.

2. Pursuant to Section 702(d) of the Surface Mining Act, adoption of this rule is part of the Secretary's implementation of the Federal Lands Program and is therefore exempt from the requirement to prepare a detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

3. Because of the delay in the publication of this rule and the necessity to implement the provisions of the cooperative agreement, the Department has determined that good cause exists to make the rule effective upon the date of publication.

Dated: June 6, 1979.

Cecil D. Andrus,

Secretary.

1. Accordingly, Title 30 CFR 211.10(e)(1) is amended as follows:

§ 211.10 Exploration and mining plans.

* * * * *

(e) States with § 211.75(c) agreements.

* * *

(1) Wyoming. A federal coal lessee in the State of Wyoming who must submit

a mining plan under both State and Federal law shall submit to both the State Regulatory Authority and the Denver Regional Office, Office of Surface Mining, in lieu of the submission required in this Section, a mining plan or revision or modification to an approved plan containing the information required by or necessary for the State Regulatory Authority and the Secretary to determine compliance with the statutory, regulatory and other requirements identified in paragraph B1 of Article IV of the modified Cooperative Agreement, the statement required by paragraph B2 of Article IV of the modified Cooperative Agreement and the requirements of 30 CFR 211.10(c).

* * * * *

§ 211.76 [Deleted]

2. Title 30 CFR 211.76 is deleted in its entirety.

3. Title 30 CFR 211.77 is amended as follows:

§ 211.77 States with cooperative agreements.

(a) Wyoming. The administration and enforcement of reclamation requirements of Federal coal leases in Wyoming, subject to this Part, shall be done according to the cooperative agreement between the State of Wyoming and the Department which became effective February 1, 1977, as modified on October 26, 1978, and published on June 11, 1979.

4. The State of Wyoming and the Department enter into a modified Cooperative Agreement to designate the State of Wyoming as the principal party to administer surface coal mine reclamation operations on Federal leases in Wyoming to read as follows:

Cooperative agreement between the U.S. Department of the Interior and the State of Wyoming under section 523(c) of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87 (hereinafter referred to as the "Act") 30 U.S.C. 1273(c), between the State of Wyoming, acting by and through Ed Herschler, Governor (hereinafter referred to as the Governor) and the United States Department of the Interior, acting by and through the Secretary of the Interior (referred to as the Secretary).

Article I. Purpose

This Cooperative Agreement provides for a cooperative program between the United States Department of the Interior and the State of Wyoming with respect to regulation of surface coal mining and reclamation operations on Federal lands within the State of Wyoming. The basic purpose of this Agreement is to prevent duality of administration and enforcement of mining and reclamation requirements by providing for state regulation of surface coal mining and reclamation operations on Federal lands within the State.

Article II. Effective Date

This Cooperative Agreement is effective upon signing by the Secretary and the Governor and upon publication as rulemaking in the Federal Register, and shall remain in effect until terminated as provided in Article IX. This Cooperative Agreement constitutes a modification to, an extension of, and supersedes that Cooperative Agreement effective February 1, 1977, 42 FR 3644 (1977), 30 CFR 211.77(a).

Article III. Requirements for Cooperative Agreement

The Governor and the Secretary affirm that they will comply with all of the provisions of this Cooperative Agreement and will continue to meet all the conditions and requirements specified in this Article.

A. *Responsible Administrative Agency.* The Wyoming Department of Environmental Quality and the Environmental Quality Council (hereinafter referred to together as the "State Regulatory Authority"), is, and shall continue to be, the sole agency responsible for administering this Cooperative Agreement on behalf of the Governor on Federal lands throughout the State.

B. *Authority of State Agency.* The State Regulatory Authority designated in paragraph A of this Article has, and shall continue to have, authority to carry out this Cooperative Agreement.

C. *State Reclamation Law.* Enforcement of the environmental performance standards and reclamation requirements of Wyoming listed in Appendix A, will provide protection of the environment at least as stringent as would occur under the exclusive application of the standards and procedures set forth in the Act, and the regulations promulgated thereunder.

D. *Effectiveness of State Procedures.* The procedures of the State for enforcing the requirements listed in Appendix A, are and shall continue to be as effective as the procedures of the Department of the Interior.

E. *Inspection of Mines.* The State Regulatory Authority agrees that the State will inspect all surface and mining operations on Federal lands located in the State, in accordance with the minimum schedules in Article V.

F. *Enforcement.* The State affirms that it will enforce the requirements contained in Appendix A, in a manner that ensures effective protection of the environment and public health and safety consistent with the requirements of Article VI of this Agreement.

G. *Funds.* The State has devoted and will continue to devote, adequate funds to the administration and enforcement of the requirements listed in Appendix A. If this Cooperative Agreement has been carried out to the satisfaction of the Secretary, and if necessary funds have been appropriated, the Secretary shall reimburse the State of Wyoming as provided in Section 705(c) of the Act, for costs associated with carrying out responsibilities under the Cooperative Agreement. Reimbursement shall be in the form of annual grants and applications for said grants shall be processed and awarded in a timely and prompt manner. The Secretary shall advise the State of Wyoming within a reasonable period of time after the effective date of this modification of this Cooperative Agreement of the amount the Federal Government would have expended if the State had not entered into this Cooperative Agreement.

H. *Reports and Records.* The State Regulatory Authority shall make reports to the Secretary containing information respecting its compliance with the terms of this Cooperative Agreement, as the Secretary shall from time to time require. The State Regulatory Authority and the Secretary shall exchange, upon request, information developed under this Cooperative Agreement.

I. *Personnel.* The State Regulatory Authority shall have the necessary personnel to fully implement this Cooperative Agreement in accordance with the provisions of the Act.

J. *Equipment and Laboratories.* The State Regulatory Authority shall have equipment, laboratories, and facilities with which all inspections, investigations, studies, tests and analyses can be performed or determined, and which are necessary to carry out the requirements of this Cooperative Agreement, or have access to such facilities and personnel.

K. *Variances.* In accordance with § 35-11-112 of the Wyoming Environmental Quality Act, the State Regulatory Authority shall not grant any request for variances from any rule, regulation, standard, or permit if such variance would render any State requirement less stringent than a similar requirement contained in sections 502(c), 510(d), and 516 of the Act, and regulations promulgated thereunder or

any environmental protection and regulation provision of 30 CFR Part 211.

Article IV. Mining and Reclamation Plans and Permit Applications

A. State and Federal laws and regulations require the operator on Federal lands leased, permitted, or licensed for coal mining to receive approval from the State Regulatory Authority and the Secretary of a mining and reclamation plan and permit application, or amendment to an existing plan or permit (hereinafter referred to as the "application"), prior to conducting operations.

B. *Contents of Mining and Reclamation Plans and Permit Applications.* The Governor, the State Regulatory Authority, and the Secretary agree, and hereby require that an operator on Federal lands must submit a single application, which application must be submitted in the form required by the State Regulatory Authority along with any supplemental forms required by the Secretary and must include the following information:

1. The information required by, or necessary for the State Regulatory Authority and the Secretary to make a determination of compliance with:

a. Wyoming State Statutes sections 35–11–406 (a), (b)(i)–(ix), and (xiii)–(xviii), and (c).

b. Wyoming Land Quality Rules and Regulations.

c. The Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.;* 91 Stat. 445) and the regulations promulgated pursuant thereto.

d. The Mineral Leasing Act of 1920, as amended, 30 U.S.C. 181 *et seq.*

e. The environmental protection and regulation requirements, and resource conservation requirements of 30 CFR Part 211.

f. Applicable conditions of the lease or license unless such conditions would be contrary to the requirements of the Act.

g. The information required by applicable requirements of other federal laws.

2. A statement certifying that identical copies of the application have been given to both the State Regulatory Authority and the Secretary.

3. Upon receipt of each application the Office of Surface Mining shall designate a single contact person as its representative on all matters concerning that application and all communications concerning review of and final action on that application by either the State Regulatory Authority or the Secretary shall be conducted with or through this representative or with the Secretary.

4. If the State Regulatory Authority requires the operator to submit additional information, the operator shall submit the information to the State Regulatory Authority and to the Secretary. If the Secretary requires additional information, such request shall be directed to the operator through the State Regulatory Authority, and the operator shall submit the information to the State Regulatory Authority and the Secretary.

5. The State Regulatory Authority and the Secretary shall review the application concurrently and shall promptly notify each other of their proposed action on the application, including proposed conditions and stipulations if approval of the application is proposed. Upon receipt of notice of the proposed action of the Secretary, the State Regulatory Authority shall modify its proposed action on the application to include those matters and conditions in the Secretary's proposed action which were not included in the proposed action of the State Regulatory Authority, and shall consult with the Secretary's contact person for the purpose of agreeing to the final actions to be taken by the Secretary and the State Regulatory Authority on the application.

6. Any final approval of an application, or modifications or revisions thereto, by the State Regulatory Authority or the Secretary which would create a right of appeal by an aggrieved person shall be mutually acceptable to the State Regulatory Authority and the Secretary, and shall be concurrent. The State Regulatory Authority and the Secretary agree that each of them will not take final action approving an application which fails to comply with the requirements of the laws and regulations listed in paragraph B of this Article. The Secretary agrees that he will not take final action approving an application which fails to comply with an environmental protection requirement of the State which is more stringent than the requirements of Federal law.

7. In the event the State Regulatory Authority and the Secretary's contact person cannot agree to the final actions to be taken by the State Regulatory Authority and the Secretary on the application, the matter shall be referred to the Governor and the Secretary for resolution.

8. When acting on a mine plan, the Secretary reserves the right to impose such additional conditions or requirements not required by the Act or Appendix A of this Cooperative Agreement which are authorized or required by law or by his general authority to supervise the activities of persons on Federal lands.

Article V. Inspections

A. The State Regulatory Authority shall inspect without prior notice to the operator, as authorized by Wyoming state law as frequently as necessary, but at least quarterly, the area of operations as defined by the approved mining plan and state permit, and any other areas outside the area of operations which are or may be affected by the surface coal mining and reclamation operations on Federal lands. Such inspections shall be conducted for the purpose of determining whether the operator has complied with all applicable requirements of the Act and Appendix A hereof, all environmental and reclamation requirements of the approved mining plans or permits, but not to determine compliance with the development, diligent production, and resource recovery requirements established under the Mineral Leasing Act, as amended, or to regulate other activities on Federal lands not subject to the Act.

B. The State Regulatory Authority shall, subsequent to conducting any inspection, file with the Secretary a report adequately describing (1) the general conditions of the lands under lease, permit and license; (2) the manner in which the operations are being conducted; and (3) whether the operator is complying with applicable performance and reclamation requirements. A copy of this inspection report shall be furnished to the Secretary in accordance with regulations adopted pursuant to the Surface Mining Control and Reclamation Act. A copy of this report shall be furnished to the operator upon request, and shall be made available for public inspection during normal business hours at the office of the State Regulatory Authority and the Office of Surface Mining.

C. For the purpose of evaluating the manner in which this Cooperative Agreement is being carried out and to insure that performance and reclamation standards are being met, the Secretary shall conduct inspections of surface coal mining and reclamation operations on Federal lands, and shall provide the State Regulatory Authority with a copy of the report. Inspections by the Secretary may be in association with regular inspections by the State.

D. The Secretary may also conduct inspections to determine whether the operator is complying with requirements

that are unrelated to environmental protection and reclamation.

E. Personnel of the State and representatives of the Secretary shall be mutually available to serve as witnesses in enforcement actions taken by either party.

Article VI. Enforcement

A. If the State Regulatory Authority finds any conditions or practices, or violations of the requirments of Appendix A hereof or of an approved mining plan or permit which would authorize the issuance of an order of cessation under section 521(a)(2) of the Act, the State Regulatory Authority shall immediately exercise the discretion authorized by section 35–11–412 of the Wyoming Environmental Quality Act to suspend or revoke the license of an operator.

B. 1. When, during any inspection, any representative of the State Regulatory Authority who has been designated an authorized representative of the Secretary determines that any operator is in violation of the Act, any requirement of Appendix A, or any requirement of an approved mining plan or permit, but such violation would not require an action in accordance with paragraph A of this Article, the representative shall:

a. Report such violation(s) to the Administrator of the Land Quality Division, Wyoming Department of Environmental Quality (DEQ) and to the Director of the DEQ, who shall issue an order and Notice of Violation pursuant to W.S. 35–11–701; and

b. Issue a notice and abatement schedule to the operator consistent with and pursuant to section 521(a)(3) of the Act. Nothing in this Agreement prohibits the issuance of an order and Notice of Violation under Wyoming law concurrent with the action required by this paragraph.

2. When a notice and abatement schedule have been issued under B(1)(b) of this Article and a representative of the State Regulatory Authority who has been designated an authorized representative of the Secretary determines that the operator has failed to abate the violation within the time fixed or subsequently extended consistent with section 521(a)(3) of the Act, the representative shall immediately issue an order consistent with and pursuant to section 521(a)(3) of the Act.

C. For the purposes of implementing paragraphs B (1) and (2) of this Article, the Secretary delegates his authority to issue notices and orders pursuant to section 521(a)(3) of the Act to representatives of the State Regulatory Authority who shall each be identified by a letter of authorization signed by the Director of the Office of Surface Mining. Such letters of authorization shall be rendered null and void upon the termination of this Agreement or upon revocation by the Director.

D. The State shall promptly notify the Secretary of all violations of applicable laws, regulations, orders, approved mining and reclamation plans and permits subject to the Agreement and of all actions taken with respect to such violations.

E. Appeals or requests for relief from any action taken by an authorized representative of the Secretary acting in his capacity as the Secretary's representative pursuant to paragraphs B (1) and (2) of this Article shall be filed in accordance with the rules of procedures adopted by the Secretary (43 CFR Part 4).

F. This Agreement does not limit the Secretary's authority to seek cancellation of a federal coal lease under federal laws and regulations, or prevent the Secretary from taking appropriate legal or other actions to correct conditions or practices that violate federal law or Appendix A incorporated into federal law as a part of this Cooperative Agreement, or to suspend or revoke the right to conduct surface coal mining operations on federal lands in accordance with 30 CFR 211.72 or assess civil penalties in accordance with 30 CFR 211.78.

G. Failure of the State Regulatory Authority to enforce approved mining and reclamation plans, permits, and applicable laws and standards and regulations in accordance with this Agreement, shall be grounds for termination of this Cooperative Agreement.

Article VII. Bonds

A. *Amount and Responsibility.* The State Regulatory Authority and the Secretary shall require all operators on federal lands to submit a single bond payable to both the United States and the State Regulatory Authority. Such bond shall be of sufficient amount to comply with the requirements of both state and federal law and shall be conditioned upon compliance with all applicable requirements of federal law and Appendix A hereof.

B. *Notification.* Prior to releasing the operator from his obligations under the bond required by State law for federal lands, the State Regulatory Authority shall consult with and obtain the advice and consent of the Secretary.

C. *Release of Bond.* The State Regulatory Authority shall hold the operator responsible and liable for successful reclamation as required by State law.

D. Either the State Regulatory Authority or the Secretary may forfeit the bond under state or federal law.

Article VIII. Opportunity To Comply With Cooperative Agreement

The Secretary may, in his sole discretion, and without instituting or commencing proceedings for withdrawal of approval of the Cooperative Agreement, notify the State Regulatory Authority that it has failed to comply with the provisions of the Cooperative Agreement. The Secretary shall specify how the State has failed to comply and shall specify and state the period of time within which the defects in administration shall be remedied and satisfactory evidence presented to him that the State remedied the defects in administration and is in compliance with and has met the requirements of the Secretary. The period of time specified shall not be less than 30 days. Upon failure of the State Regulatory Authority to meet the requirements of the Secretary within the time specified, the Secretary may institute proceedings for withdrawal of approval of the Cooperative Agreement as set forth in Article IX.

Article IX. Termination of Cooperative Agreement

This Cooperative Agreement may be terminated as follows:

A. *Termination by the State.* The Cooperative Agreement may be terminated by the State upon written notice to the Secretary, specifying the date upon which the Cooperative Agreement shall be terminated, but which date of termination shall not be less than 90 days from the date of the notice.

B. *Termination by the Secretary.* The Cooperative Agreement may be terminated by the Secretary pursuant to paragraphs D, E, and F of this Article whenever the Secretary finds, after giving due notice to the State Regulatory Authority and affording the State Regulatory Authority an opportunity for a hearing:

1. That the State Regulatory Authority has failed to comply substantially with a provision of this Cooperative Agreement; or

2. That the State Regulatory Authority has failed to comply with any assurance given by the State upon which this Cooperative Agreement is based, or any

condition or requirement which is specified in Article III.

C. *Termination by Operation of Law.* This Cooperative Agreement shall terminate by operation of law under any of the following circumstances:

1. When no longer authorized by Federal laws and regulations or Wyoming laws and regulations;

2. When a State program is finally disapproved, pursuant to Section 503 of this Act, or an approved State program is suspended or revoked pursuant to the Act or regulations promulgated pursuant thereto. Provided further that upon suspension of an approved State Program this Cooperative Agreement shall be suspended for the same period of time and shall be deemed reinstated upon reinstatement of the State Program.

3. If the Secretary determines that this Cooperative Agreement is not adequate for the purpose of implementing the permanent regulatory program requirements after approval of a State Program pursuant to § 503 of the Act. Notice of this determination shall be given in writing to the State Regulatory Authority and shall specify the inadequacies of this Agreement. This Cooperative Agreement shall terminate within 120 days of said notice unless amended by mutual agreement of the State Regulatory Authority and the Secretary to remedy the inadequacies identified by the Secretary in his notice.

4. Following promulgation of a federal lands program pursuant to Section 523(a) of the Act in the event the Secretary determines in writing that Wyoming lacks the necessary personnel, legal authority, or funding to fully implement the federal lands program in accordance with the provisions of the Act.

D. *Notice of Proposed Termination.* Whenever the Secretary proposes to terminate the Cooperative Agreement he shall:

1. Give written notice to the Governor and to the State Regulatory Authority specified in Article III.

2. Specify and set out in the written notice the grounds upon which he proposes to terminate this Cooperative Agreement.

3. The Secretary shall also publish a notice in the **Federal Register** containing items 1 and 2 of this paragraph, and specifying a minimum 30 days for comment by interested persons.

E. *Opportunity for Hearing.* Whenever the Secretary proposes to terminate this Cooperative Agreement pursuant to paragraph B hereof, in addition to the notice required by paragraph D, he shall:

1. Specify in the notices required by paragraph D the date and place where the State will be afforded an opportunity for hearing and to show cause why this Cooperative Agreement should not be terminated by the Secretary. The date of such hearing shall be not less than 30 days from the date of the publication in the **Federal Register**, and the place shall be in the State.

2. Within thirty (30) days of the date of the written notice specifying the date of the hearing, the State shall file a written notice with the Secretary stating whether or not it will appear and participate in the hearing. The notice shall specify the issues and grounds specified by the Secretary for termination which the State will oppose or contest and a statement of its reasons and grounds for opposing or contesting. Failure to file a written notice in the Office of the Secretary within thirty (30) days shall constitute a waiver of the opportunity for hearing, but the State may present or submit before the time fixed for the hearing written arguments and reasons why the Cooperative Agreement should not be terminated, and within the discretion of the Secretary may be permitted to appear and confer in person and present oral or written statements, and other documents relative to the proposed termination.

3. The hearing will be conducted by the Secretary. A record shall be made of the hearing and the State shall be entitled to obtain a copy of the transcript. The State shall be entitled to have legal and technical and other representatives present at the hearing or conference, and may present, either orally or in writing, evidence, information, testimony, documents, records, and materials as may be relevant and material to the issues involved.

F. *Notice of Withdrawal of Approval of Cooperative Agreement.* 1. After a hearing has been held with respect to a proposed termination of this Agreement under paragraph B of this Article, or the right to a hearing has been waived or forfeited by the State, the Secretary, after consideration of the evidence, information, testimony, and arguments presented to him shall advise the State of his decision. If the Secretary determines to withdraw approval of this Cooperative Agreement, he shall notify the State Regulatory Authority of his intended withdrawal of approval of the Cooperative Agreement, and afford the State an opportunity to present evidence satisfactory to the Secretary that the State has remedied the specified defects in its administration of this Cooperative Agreement. The Secretary shall state the period of time within which the defects in administration shall be remedied and satisfactory evidence presented to him, and upon failure of the State to do so within the time stated, the Secretary may thereupon withdraw his approval of the Cooperative Agreement without any further opportunity afforded to the State for a hearing.

2. After the close of the comment period required by paragraph D. 3. of this Article with respect to a proposal to terminate this Cooperative Agreement pursuant to paragraph C of this Article, the Secretary shall consider the comments received and after a review of the questions of law presented, shall publish notice of final action, either terminating the Cooperative Agreement or withdrawing the proposed termination, and stating his reasons therefor.

G. Nothing in this Article shall be construed as a waiver of any right the State Regulatory Authority may have to seek judicial review of any decision by the Secretary to terminate this Cooperative Agreement.

Article X. Reinstatement of Cooperative Agreement

If this Cooperative Agreement has been terminated, it may be reinstated upon application by the State and upon giving evidence satisfactory to the Secretary that the State can and will comply with all the provisions of the Cooperative Agreement, and has remedied all defects in administration or law for which this cooperative Agreement was terminated.

Article XI. Amendments of Cooperative Agreement

This Cooperative Agreement may be amended by mutual agreement of the Governor and Secretary. An amendment proposed by one party shall be submitted to the other with a statement of the reasons for such proposed amendment. The amendment shall be adopted after rulemaking and the party to whom the proposed amendment is submitted shall signify its acceptance or rejection of the proposed amendment, and if rejected shall state the reasons for rejection.

Article XII. Changes in State or Federal Standards

The Secretary of the Interior and/or the State of Wyoming may from time to time revise and promulgate new or revised performance or reclamation requirements or enforcement and administration procedures. The Secretary and the Governor shall

immediately inform the other of any final changes in their respective laws or regulations. Each party shall, if it determines it to be necessary to keep this Cooperative Agreement in force, change or revise its respective laws or regulations. For changes which may be accomplished by rulemaking, each party shall have six months in which to make such changes. For changes which require legislative authorization, the State has until the close of its next legislative session at which such legislation can be considered in which to make the changes. If changes which are necessary for the State to have authority to administer and enforce Federal requirements are not made, then the termination provision of Article IX may be invoked.

Article XIII. Conflict of Interest

The State Regulatory Authority shall require its employees to comply with the requirements of 30 CFR 705.

Article XIV. Exchange of Information

A. *Organizational and Functional Statement.* The State Regulatory Authority and the Secretary shall advise each other of the organization, structure, functions, and duties of the offices, departments, divisions, and persons within their organizations. Each shall promptly advise the other in writing of changes in personnel, officials, heads of a department or division, or a change in the functions or duties of persons occupying the principal offices within the organization. The State Regulatory Authority and the Secretary shall advise each other in writing of the location of its various offices, addresses, telephone numbers, and the names, location and telephone numbers of their respective mine inspectors and the area within the State for which such inspectors are responsible, and of any changes in such.

B. *Laws, Rules, and Regulations.* The State Regulatory Authority and the Secretary shall provide each other with copies of their respective laws, rules and regulations and standards pertaining to the enforcement and administration of this Cooperative Agreement and promptly furnish copies of any final revision of such laws, rules, regulations, and standards when the revision becomes effective.

Article XV. Reservation of Rights

This Cooperative Agreement shall not be construed as waiving or preventing the assertion of any rights the Governor and the Secretary may have under the Mineral Leasing Act, as amended, the Mineral Leasing Act for Acquired Lands, the Surface Mining Control and Reclamation Act of 1977, the Federal Land Policy and Management Act, the Constitution of the United States, the Constitution of the State or State laws, nor shall this Agreement be construed so as to result in the transfer of the Secretary's duties under sections 2(a), 2(b), and 2(a)(3) of the Federal Mineral Leasing Act, as amended, or his responsibilities for designation of Federal lands as unsuitable for mining in accordance with Section 522(b) of the Act, or to regulate other activities taking place on Federal lands.

Article XVI. Definitions

Terms and phrases used in this agreement which are defined in 30 CFR Part 700 or Part 710 shall be given the meanings set forth in said definitions.

Dated: October 26, 1978.

Ed Herschler,

Governor of Wyoming.

Dated: October 26, 1978.

Robert E. Sundin,

Director, Department of Environmental Quality.

Dated: October 26, 1978.

Cecil D. Andrus,

Secretary of the Interior.

Appendix A

This Appendix A indentifies the laws of the State of Wyoming and the regulations of the State Regulatory Authority which are incorporated into the 1978 Federal-State Cooperative Agreement between the State of Wyoming and the Secretary of the Interior pursuant to Article III. C. of said Cooperative Agreement. This Appendix is approved as part of the Cooperative Agreement. The requirements contained in the laws and regulations identified in this Appendix shall be applicable to surface coal mining and reclamation operations on federal lands in accordance with the terms of the Cooperative Agreement. Included in this Appendix are:

1. Laws of the State of Wyoming:

(a) The provisons of the Wyoming Environmental Quality Act, W.S. § 35–11–101 to § 35–11–1104 (1977), as amended, including Enrolled Act No. 31, House of Representatives, 44th Legislature of the State of Wyoming, 1978 Session, which are specifically identified in (i)–(xxx) hereof:

(i) § 35–11–103(e)(i)–(xx).

(ii) § 35–11–109.

(iii) § 35–11–110.

(iv) § 35–11–112, provided, however, that subsection (a)(v) is not included in this Appendix and shall not be applicable to federal lands.

(v) § 35–11–406(a)(i)–(vi).

(vi) § 35–11–406.

(vii) § 35–11–406 (a), (d), (f), and (g).

(viii) § 35–11–406 (a), (b)(i)–(ix), (xiii)–(xix), (c) and (h).

(ix) § 35–11–407.

(x) § 35–11–408.

(xi) § 35–11–409.

(xii) § 35–11–410.

(xiii) § 35–11–411.

(xiv) § 35–11–412.

(xv) § 35–11–415.

(xvi) § 35–11–416, except that this section shall not apply where the surface owner is the United States in which case the laws of the United States shall exclusively apply.

(xvii) § 35–11–417, provided, however, that any bond applicable to the performance of duties on or affecting federal lands shall conform to the requirements of Article VII of this Cooperative Agreement in addition to the requirements of state laws.

(xviii) § 35–11–418, provided, however, that any cash or securities posted in lieu of bond under this section conform to the requirements of Article VII of this Cooperative Agreement and applicable requirements of federal law.

(xix) § 35–11–419.

(xx) § 35–11–420.

(xxi) § 35–11–421, provided, however, that the bond may also be forfeited by the Secretary under federal law pursuant to Article VII of this Cooperative Agreement.

(xxii) § 35–11–422.

(xxiii) § 35–11–423, provided, however, that any bond applicable to the performance of duties on or affecting federal lands may be released only on consent of the Secretary in accordance with Article VII of this Cooperative Agreement.

(xxiv) § 35–11–601, provided, however, that this section shall not apply to permits and mining plans applicable to federal lands approved by the Secretary, but shall only apply to Wyoming rules, regulations, or standards incorporated into this Appendix A which are determined by the Secretary pursuant to 30 CFR § 211.75(a) to be more stringent than the federal standard(s) which address the same subject matter. Any variance granted pursuant to this section with respect to such more stringent standards shall comply with the requirements of Article III. K. of this Cooperative Agreement.

(xxv) § 35–11–801, provided, however, that this section shall be limited to actions taken by the State Regulatory Authority pursuant to this Cooperative Agreement and nothing in this section or in this Cooperative Agreement shall be construed so as to create jurisdiction in

the Wyoming Quality Council over actions taken by the Secretary, including the denial or approval of mining plans.

(xxvi) § 35–11–802.

(xxvii) § 35–11–901, provided, however, that the imposition of a penalty by the State pursuant to this section shall not be construed as barring the Secretary from assessing a penalty pursuant to 30 CFR 211.78.

(xxviii) § 35–11–902.

(xxix) § 35–11–1001(a), provided, however, that this section shall be limited to actions taken by the State Regulatory Authority pursuant to this Cooperative Agreement and nothing in this section or in this Cooperative Agreement shall be construed so as to create jurisdiction in a state court over actions taken by the Secretary, including the denial or approval of mining plans.

(xxx) § 35–11–1101.

2. Regulations of the Wyoming Department of Environmental Quality, Land Quality Division, including the amendments approved by the Environmental Quality Council and filed with the Wyoming Secretary of State on September 5, 1978, except:

(i) Section 2. Definitions.

(32) *Subirrigation.* The second sentence of the Wyoming definitions shall not be included in this Appendix A. For the purposes of implementing this Cooperative Agreement only the first sentence shall apply on federal lands: "Irrigation of plants with water delivered to the roots from underneath."

[FR Doc. 79-18123 Filed 6-8-79; 8:45 am]
BILLING CODE 4310-05-M

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Federal Register

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Monday, June 11, 1979

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
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DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
CSA	MSPB*/OPM*		CSA	MSPB*/OPM*
	LABOR			LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

*NOTE: As of January 1, 1979, the Merit Systems Protection Board (MSPB) and the Office of Personnel Management (OPM) will publish on the Tuesday/Friday schedule. (MSPB and OPM are successor agencies to the Civil Service Commission.)

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.

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Interstate Land Sales Registration Office—

21442 4-10-79 / Registration, advertising, sales practices and posting of notices of suspension regulations
[Effective date corrected at 44 FR 22069, 4-13-79]

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27391 5-10-79 / St. Johns River, Fla.; drawbridge operations

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27397 5-10-79 / New pneumatic tires for passenger cars

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27088 5-9-79 / Employment taxes; advance payments of earned income credit

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Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

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Briefings on How to Use the Federal Register—For details on briefings in Washington, D.C.; Boston, Mass.; Los Angeles, and San Francisco, Calif., see announcement in the Reader Aids Section at the end of this issue.

33663 **Office of the Inspector General for the Alaska Natural Gas Transportation System** Reorganization plan.

33766 **Age Discrimination** HEW releases final rule for administrators of Federal financial assistance programs; effective 7-1-79 (Part III of this issue)

33757 **Energy Conservation Study** DOT/Secy conducts examination on bicycle transportation; comments by 8-1-79

33690 **Savings Accounts** FHLBB proposes to make exemptions from early withdrawal penalties mandatory in the event of death of an account owner; comments by 7-9-79

33669 **Savings Accounts** FHLBB adopts amendments which are intented to provide additional returns to savers; effective 7-1-79

33762 **Food Stamp Program** USDA/FNS publishes emergency rulemaking in the event of reduced or cancelled allotments; effective 6-12-79; comments by 8-13-79 (Part II of this issue)

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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33679 **Housing** HUD requires that payments on 312 loans be applied first to accrued interest and then to outstanding principal; effective 7-12-79

33804 **New Construction Program** HUD/FHC proposes to revise its regulations to produce clarity, completeness, and coordination; comments by 8-13-79 (Part VII of this issue)

33695 **Narcotic Raw Materials** Justice/DEA request comments on advanced notice of proposed rulemaking on limiting importation; comments by 7-12-79

33746 **Migrant and Seasonal Farmworker Programs** Labor/ETA extends acceptance period for preapplication to 6-25-79 if postmarked by original deadline of 6-1-79

33697 **Redwood Employes Protection** Labor/Secy proposes that Labor Management Services Administration has responsibility for all provisions concerning affected employee benefits; comments by 8-16-79

33708 **Employee Retirement Income Security** Labor proposes exemption from reporting and disclosure requirements of the Act of 1974; comments by 8-21-79

33711 **Public Participation Procedures** USDA/FS extends comment period to 7-9-79 on formulation of standards, criteria and guidelines

33679 **Uniformed Services Benefits** DOD/Secy clarifies position of "last pay" for Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)

33601 **Animal Shipping Containers** USDA/APHIS issues request for information relative to minimum ventilation standards; comments by 8-13-79 (Part VI of this issue)

33797 **Multicandidate Political Committees** FEC announces availability of comprehensive index (Part V of this issue)

33760 **Sunshine Act Meetings**

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Tuesday, June 12, 1979

Presidential Documents

Title 3—

The President

REORGANIZATION PLAN NO. 1 OF 1979

Prepared by the President and transmitted to the Senate and House of Representatives in Congress assembled, April 2, 1979, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

Office of the Federal Inspector for Construction of the Alaska Natural Gas Transportation System

Part I. Office of the Federal Inspector and Transfer of Functions

Section 101. *Establishment of the Office of Federal Inspector for the Alaska Natural Gas Transportation System*

(a) There is hereby established as an independent establishment in the executive branch, the Office of the Federal Inspector for the Alaska Natural Gas Transportation System (the "Office").

(b) The Office shall be headed by a Federal Inspector for the Alaska Natural Gas Transportation System (the "Federal Inspector") who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter prescribed by law for Level III of the Executive Schedule, and who shall serve at the pleasure of the President.

(c) Each Federal agency having statutory responsibilities over any aspect of the Alaska Natural Gas Transportation System shall appoint an Agency Authorized Officer to represent that authority on all matters pertaining to preconstruction, construction, and initial operation of the system.

Section 102. *Transfer of Functions to the Federal Inspector*

Subject to the provisions of Sections 201, 202, and 203 of this Plan, all functions insofar as they relate to enforcement of Federal statutes or regulations and to enforcement of terms, conditions, and stipulations of grants, certificates, permits and other authorizations issued by Federal agencies with respect to pre-construction, construction, and initial operation of an "approved transportation system" for transport of Canadian natural gas and "Alaskan natural gas," as such terms are defined in the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 *et seq.*), hereinafter called the "Act", are hereby transferred to the Federal Inspector. This transfer shall vest in the Federal Inspector exclusive responsibility for enforcement of all Federal statutes relevant in any manner to pre-construction, construction, and initial operation. With respect to each of the statutory authorities cited below, the transferred functions include all enforcement functions of the given agencies or their officials under the statutes as may be related to the enforcement of such terms, conditions, and stipulations, including but not limited to the specific sections of the statute cited. "Enforcement", for purposes of this transfer of functions, includes monitoring and any other compliance or oversight activities reasonably related to the enforcement process. These transferred functions include:

(a) Such enforcement functions of the Administrator or other appropriate official or entity in the Environmental Protection Agency related to compliance with: national pollutant discharge elimination system permits provided for in Section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342); spill prevention, containment and countermeasure plans in Section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321); review of the Corps of Engineers' dredged and fill material permits issued under Section 404 of the

Federal Water Pollution Control Act (33 U.S.C. 1344); new source performance standards in Section 111 of the Clean Air Act, as amended by the Clean Air Act Amendments of 1977 (42 U.S.C. 7411); prevention of significant deterioration review and approval in Sections 160–169 of the Clean Air Act, as amended by the Clean Air Amendments of 1977 (42 U.S.C. 7470 *et seq.*); and the resource conservation and recovery permits issued under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 *et seq.*);

(b) Such enforcement functions of the Secretary of the Army, the Chief of Engineers, or other appropriate officer or entity in the Corps of Engineers of the United States Army related to compliance with: dredged and fill material permits issued under Section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344); and permits for structures in navigable waters, issued under Section 10 of the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 403);

(c) Such enforcement functions of the Secretary or other appropriate officer or entity in the Department of Transportation related to compliance with: the Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1671, *et seq.*) and the gas pipeline safety regulations issued thereunder; the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*) and authorizations and regulations issued thereunder; and permits for bridges across navigable waters, issued under Section 9 of the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 401);

(d) Such enforcement functions of the Secretary or other appropriate officer or entity in the Department of Energy and such enforcement functions of the Commission, Commissioners, or other appropriate officer or entity in the Federal Energy Regulatory Commission related to compliance with: the certificates of public convenience and necessity, issued under Section 7 of the Natural Gas Act, as amended (15 U.S.C. 717f); and authorizations for importation of natural gas from Alberta as predeliveries of Alaskan gas issued under Section 3 of the Natural Gas Act, as amended (15 U.S.C. 717b);

(e) Such enforcement functions of the Secretary or other appropriate officer or entity in the Department of the Interior related to compliance with: grants of rights-of-way and temporary use permits for Federal land, issued under Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185); land use permits for temporary use of public lands and other associated land uses, issued under Sections 302, 501, and 503–511 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1761, and 1763–1771); materials sales contracts under the Materials Act of 1947 (30 U.S.C. 601–603); rights-of-way across Indian lands, issued under the Rights of Way Through Indian Lands Act (25 U.S.C. 321, *et seq.*); removal permits issued under the Materials Act of 1947 (30 U.S.C. 601–603); approval to cross national wildlife refuges, National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668jj) and the Upper Mississippi River Wildlife and Fish Refuge Act (16 U.S.C. 721–731); wildlife consultation in the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*); protection of certain birds in the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*); Bald and Golden Eagles Protection Act (16 U.S.C. 668–668d); review of Corps of Engineers dredged and fill material permits issued under Section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344); rights-of-way across recreation lands issued under the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 4601–4–4601–11); historic preservation under the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470–470f); permits issued under the Antiquities Act of 1906 (16 U.S.C. 432, 433); and system activities requiring coordination and approval under general authorities of the National Trails System Act, as amended (16 U.S.C. 1241–1249), the Wilderness Act, as amended (16 U.S.C. 1131–1136), the Wild and Scenic Rivers Act, as amended (16 U.S.C. 1271–1287), the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the Act of April 27, 1935 (prevention of soil erosion) (16 U.S.C. 590a–f), and an Act to Provide for the Preservation of Historical and Archeological Data, as amended (16 U.S.C. 469–469c);

(f) Such enforcement functions of the Secretary or other appropriate officer or entity in the Department of Agriculture, insofar as they involve lands and programs under the jurisdiction of that Department, related to compliance with: associated land use permits authorized for and in conjunction with grants of rights-of-way across Federal lands issued under Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185); land use permits for other associated land uses issued under Sections 501 and 503–511 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761, 1763–1771), under the Organic Administration Act of June 4, 1897, as amended (16 U.S.C. 473, 474–482, 551), and under Title III of the Bankhead-Jones Farm Tenant Act of 1937, as amended (7 U.S.C. 1010–1012); removal of materials under the Materials Act of 1947 (30 U.S.C. 601–603) and objects of antiquity under the Antiquities Act of 1906 (16 U.S.C. 432, 433); construction and utilization of national forest roads under the Roads and Trails System Act of 1964 (16 U.S.C. 532–536); and system activities requiring coordination and approval under general authorities of the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*); the Multiple Use-Sustained-Yield Act of 1960 (16 U.S.C. 528–531); the Forest and Rangelands Renewable Resources Planning Act of 1974 (16 U.S.C. 1601–1610); the National Trails System Act, as amended (16 U.S.C. 1241–1249); the Wilderness Act, as amended (16 U.S.C. 1131–1136); the Wild and Scenic Rivers Act, as amended (16 U.S.C. 1271–1287); the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 460 *et seq.*); the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1151 *et seq.*); the Fish and Wildlife Coordination Act and Fish and Game Sanctuaries Act (16 U.S.C. 661 *et seq.* and 694, 694a–b, respectively); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470–470f); an Act to Provide for the Preservation of Historical and Archeological Data, as amended (16 U.S.C. 469–469c); the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*); the Watershed Protection and Flood Prevention Act, as amended (16 U.S.C. 1001 *et seq.*); the Soil and Water Conservation Act of 1977 (16 U.S.C. 2001 *et seq.*); and the Act of April 27, 1935 (prevention of soil erosion) (16 U.S.C. 590a–f);

(g) Such enforcement functions of the Secretary or other appropriate officer or entity in the Department of the Treasury related to compliance with permits for interstate transport of explosives and compliance with regulations for the storage of explosives, Title XI of the Organized Crime Control Act of 1970 (18 U.S.C. 841–848);

(h) (1) The enforcement functions authorized by, and supplemental enforcement authority created by the Act (15 U.S.C. 719 *et seq.*);

(2) All functions assigned to the person or board to be appointed by the President under Section 7(a)(5) of the Act (15 U.S.C. 719e); and

(3) Pursuant to Section 7(a)(6) of the Act (15 U.S.C. 719e), enforcement of the terms and conditions described in Section 5 of the *Decision and Report to the Congress on the Alaska Natural Gas Transportation System,* as approved by the Congress pursuant to Public Law 95–158 (91 Stat. 1268), November 2, 1977, (hereinafter the "*Decision*").

Part II. Other Provisions

Section 201. *Executive Policy Board*

The Executive Policy Board for the Alaska Natural Gas Transportation System, hereinafter the "Executive Policy Board", which shall be established by executive order, shall advise the Federal Inspector on the performance of the Inspector's functions. All other functions assigned, or which could be assigned pursuant to the *Decision,* to the Executive Policy Board are hereby transferred to the Federal Inspector.

Section 202. *Federal Inspector and Agency Authorized Officers*

(a) The Agency Authorized Officers shall be detailed to and located within the Office. The Federal Inspector shall delegate to each Agency Authorized Officer the authority to enforce the terms, conditions, and stipulations of each

grant, permit, or other authorization issued by the Federal agency which appointed the Agency Authorized Officer. In the exercise of these enforcement functions, the Agency Authorized Officers shall be subject to the supervision and direction of the Federal Inspector, whose decision on enforcement matters shall constitute "action" for purposes of Section 10 of the Act (15 U.S.C. 719h).

(b) The Federal Inspector shall be responsible for coordinating the expeditious discharge of nonenforcement activities by Federal agencies and coordinating the compliance by all the Federal agencies with Section 9 of the Act (15 U.S.C. 719g). Such coordination shall include requiring submission of scheduling plans for all permits, certificates, grants or other necessary authorizations, and coordinating scheduling of system-related agency activities. Such coordination may include serving as the "one window" point for filing for and issuance of all necessary permits, certificates, grants or other authorizations, and, consistent with law, Federal government requests for data or information related to any application for a permit, certificate, grant or other authorization. Upon agreement between the Federal Inspector and the head of any agency, that agency may delegate to the Federal Inspector any statutory function vested in such agency related to the functions of the Federal Inspector.

(c) The Federal Inspector and Agency Authorized Officers in implementing the enforcement authorities herein transferred shall carry out the enforcement policies and procedures established by the Federal agencies which nominally administer these authorities, except where the Federal Inspector determines that such policies and procedures would require action inconsistent with Section 9 of the Act (15 U.S.C. 719g).

(d) Under the authority of Section 15 of the Act (15 U.S.C. 719m), the Federal Inspector will undertake to obtain appropriations for all aspects of the Federal Inspector's operations. Such undertaking shall include appropriations for all of the functions specified in the Act and in the general terms and conditions of the *Decision* as well as for the enforcement activities of the Federal Inspector. The Federal Inspector will consult with the various Federal agencies as to resource requirements for enforcing their respective permits and other authorizations in preparing a unified budget for the Office. The budget shall be reviewed by the Executive Policy Board.

Section 203. *Subsequent Transfer Provision*

(a) Effective upon the first anniversary of the date of initial operation of the Alaska Natural Gas Transportation System, the functions transferred by Section 102 of this Plan shall be transferred to the agency which performed the functions on the date prior to date the provisions of Section 102 of this Plan were made effective pursuant to Section 205 of this Plan.

(b) Upon the issuance of the final determination order by the Director of the Office of Management and Budget for the transfers provided for by subsection (a) of this section, the Office and the position of Federal Inspector shall, effective on the date of that order, stand abolished.

Section 204. *Incidental Transfers*

So much of the personnel, property, records and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this Plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate agency or component at such time or times as the Director of the Office of Management and Budget shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for the terminating of the affairs of the Office and the Federal Inspector upon their abolition pursuant to this Plan and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of this Plan.

Section 205. *Effective Date*

This Plan shall become effective at such time or times as the President shall specify, but not sooner than the earliest time allowable under Section 906 of Title 5 of the United States Code, except that the provisions of Section 203 shall occur as provided by the terms of that Section.

Jimmy Carter

[FR Doc. 79-18507
Filed 6-11-79; 11:31 am]
Billing code 3195-01-M

LEGISLATIVE HISTORY:

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS:

Vol. 15, No. 14: Apr. 2, Presidential message transmitting Reorganization Plan No. 1 of 1979 to Congress. (Also printed as House Document No. 83.)

HOUSE REPORT No. 96-222 accompanying H. Res. 199 (Comm. on Government Operations).

SENATE REPORT No. 96-191 accompanying S. Res. 126 (Comm. on Governmental Affairs).

CONGRESSIONAL RECORD, Vol. 125 (1979):

Apr. 2,	H. Res. 199,	resolution of disapproval, introduced in House and referred to Committee on Government Operations.
Apr. 4,	S. Res. 126,	resolution of disapproval, introduced in Senate and referred to Committee on Governmental Affairs.
May 23,	S. Res. 126,	rejected by Senate.
May 31,	H. Res. 199,	rejected by House.

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Rules and Regulations

Federal Register
Vol. 44, No. 114
Tuesday, June 12, 1979

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 526, 531, 545, 563

[No. 79-304]

Federal Home Loan Bank System, Federal Savings and Loan System, Federal Savings and Loan Insurance Corporation; Revised Rates on Savings Accounts

May 30, 1979.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Bank Board has adopted the following amendments which are intended to provide additional returns to savers:

(1) Authorization of a maximum rate on regular (passbook) accounts of 5.5%.

(2) Creation of a new savings account category with a 4-year minimum maturity and a maximum rate of return one percent below the average 4-year rate based on the yield curve for United States Treasury Securities as determined by the U.S. Department of the Treasury.

(3) Elimination of prescribed minimum amounts on all certificate accounts except the money market certificate.

(4) Adoption of a new prescribed penalty for withdrawal prior to maturity applicable to all certificate accounts including money market certificates. On certificate accounts with a maturity of one year or less, the penalty is forfeiture of three months earnings on amounts withdrawn. On accounts with a maturity greater than one year, the penalty is forfeiture of six months earnings on amounts withdrawn.

(5) Adoption of a new Bank Board Policy Statement which would permit member institutions, in certain circumstances, to accept pooled funds.

In addition, the Bank Board has adopted a Policy Statement reaffirming that member institutions are prohibited from offering repurchase-type agreements to consumers.

EFFECTIVE DATE: July 1, 1979.

FOR FURTHER INFORMATION CONTACT: John R. Hall, Attorney, or Kathleen E. Topelius, Attorney, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552, (202-377-6445 or 202-377-6414).

SUPPLEMENTARY INFORMATION: The Federal Home Loan Bank Board, by Resolution No. 79-223, dated April 3, 1979, proposed alternative amendments to Part 526 of the Regulations for the Federal Home Loan Bank System (12 CFR Part 526) to provide incentives to savers. The proposed alternatives were published in the Federal Register on April 7, 1979 (44 FR 21027-21029) with an invitation for public comment until May 4, 1979. In addition, the Bank Board by Resolution No. 79-237, published in the Federal Register on April 16, 1979, (44 FR 24299-24300), proposed to hold an informal public hearing on the proposed alternatives. Based on comments and testimony received, and on all other information available to it, and after consultation with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the National Credit Union Administration, and the Department of the Treasury, the Bank Board has determined to adopt two of the proposed alternatives, with certain modifications, and to make certain other amendments consistent with the purposes of the proposal.

The four alternatives originally proposed are summarized as follows:

(1) Creation of a new savings account category (a variable ceiling account) with a $500 minimum amount and a 5-year maturity. Member institutions would be authorized to pay interest on this account up to a maximum rate of one percent below the average 5-year rate based on the yield curve for United States Treasury securities as determined by the U.S. Department of the Treasury. The penalty required to be imposed upon withdrawal of funds from this account prior to maturity would be forfeiture of six months interest on the amount withdrawn.

(2) Authorizing member institutions to pay a lump sum interest bonus of up to one-half of one percent on the minimum balance on deposit in a regular (passbook) account during a designated 12-month period.

(3) Elimination of the minimum amount requirements currently imposed on savings certificates with maturities under 4 years and reduction of the minimum amount for other certificate accounts to $500. No change was proposed to the $10,000 minimum requirement on the 26-week (182 day) account tied to the U.S. Treasury Bill auction average on a discount basis (money market certificate).

(4) Creation of a new $500 minimum, 8-year rising rate certificate account with an increasing rate of interest during the period the account remains outstanding.

The Bank Board has determined to adopt proposed alternatives (1) and (3) with the following modifications:

Alternative 1: The variable ceiling account

The variable ceiling account has a minimum maturity of 4 years rather than 5 years, as proposed, and no minimum rather than the $500 minimum proposed. Beginning the first day of every month, a member institution will be permitted to pay interest at a ceiling rate of one per cent below the average 4-year yield as announced by the U.S. Treasury Department.

This ceiling rate will remain in effect until the first day of the next month, when a new ceiling rate will go into effect. The rate of return established at the time of issue will not change during the term of the account. The average 4-year yield will be announced three business days prior to the first day of the month and will represent an average of the 4-year yields for the preceding five business days. Thus, the ceiling rate that will be in effect beginning July 2 will be announced by the Treasury on June 27, based on the average daily yields on 4-year Treasury securities for June 20 through June 26.

The required penalty for early withdrawal on this certificate is, as proposed, forfeiture of six months earnings on amounts withdrawn prior to maturity.

Alternative 3: Elimination of minimums

Minimum amount requirements are eliminated for all certificate accounts, except the 10,000 minimum on the 26-week (182 day) account tied to the U.S. Treasury Bill auction average on a discount basis (money market certificates).

Additional revisions:

Early withdrawal penalties

As part of the Bank Board's proposal, comment was solicited regarding revision to existing penalty provisions. Based on comments received, the Bank Board has determined to modify the interest forfeiture penalty as follows:

(a) The minimum penalty for early withdrawal on accounts with a maturity of one year or less issued, renewed, or extended after July 1 is forfeiture of three months earnings on amounts withdrawn prior to maturity. If the amount withdrawn has remained on deposit for 3 months or less, all earnings shall be forfeited.

(b) The minimum penalty for early withdrawal on accounts with a maturity of greater than one year issued, renewed, or extended after July 1 is forfeiture of six months earnings on amounts withdrawn prior to maturity. If the amount withdrawn has remained on deposit for 6 months or less, all earnings shall be forfeited.

The Bank Board believes these penalty provisions will be simple and equitable, and will provide sufficient incentive for savers to maintain accounts until maturity.

Increase in passbook rate

In lieu of the proposed bonus on regular (passbook) accounts, the Bank Board has determined to raise the maximum authorized rate on passbook accounts to 5.5%. The Bank Board believes that adoption of this amendment will benefit savers without imposing additional administrative burdens on member institutions.

The ceiling rate on NOW accounts in New England and New York will remain at 5 percent.

New policy on pooling of accounts

The Bank Board has also determined to adopt a new Statement of Policy regarding pooled savings. Under that policy, member institutions may accept funds that have been pooled for the purpose of taking advantage of higher rates on large accounts. However, a member institution may not pool savers' funds or solicit pooled funds.

Reaffirmation of Bank Board policy regarding transfer and repurchase of government securities

The use of repurchase-type agreements is not intended to provide member institutions with a method of offering small denomination accounts to consumers, in avoidance of existing interest rate ceiling restrictions.

Therefore, the Bank Board has adopted a policy statement reaffirming that member institutions are prohibited from offering repurchase-type agreements to consumers, by requiring a $100,000 minimum on such agreements unless purchased by an insured financial institution or by a broker or dealer registered with the Securities and Exchange Commission.

The Bank Board has determined not to adopt the proposed 8-year rising rate account.

Comment Summary

The final amendments are based on the Bank Board's careful consideration of the various concerns expressed in the more than 1400 comments received on the proposed alternatives and on the testimony of 45 participants in the "small savers" hearing, May 1, 1979. A complete summary of comments and testimony is included under appropriate subheadings below. The Bank Board believes the final amendments will provide additional savings incentives to savers without necessitating a significant increase in mortgage rates.

General Comments

The two most frequent comments regarding the proposal as a whole were that the alternatives would be too confusing or too expensive. Commenters believe that, because of the large number of account alternatives currently offered, additional account types would lead to extreme customer confusion. They stated that additional alternatives would require extensive and costly training of savings institution personnel and that, even with such training, mistakes would increase, along with customer dissatisfaction. Commenters stated that the proposals would increase savings institutions' costs significantly and that such increases could have serious consequences. Commenters emphasized that simplicity should be a prime consideration.

Commenters noted that increased costs and expenses would come from either institution earnings or increased home mortgage rates. Because the cost of money market certificates has already reduced the spread between institutions' lending and savings rates, commenters contended that additional costs and erosion of profit may push some institutions into insolvency. They note that this problem would be particularly acute in states with usury ceilings which prohibit lending rate increases sufficient to offset rising savings costs.

In states in which mortgage rates are permitted to rise, borrowers would subsidize the increased earnings of savers, many commenters contended. One commenter noted that small savers tend to be large borrowers and that an increase in return on savings may produce a net loss for saver-borrowers.

Response. Because only one additional account classification is adopted, the Bank Board believes customer education and personnel training can be accomplished with a reasonable expenditure of resources. Furthermore, because most commenters assumed that all four alternatives would be adopted, their estimates for implementation expenses and increased average cost of funds exceed the anticipated cost of implementing the final amendments.

Many commenters argued that if savings rates are increased, the increase should be accompanied by national legislation to relieve institutions from state usury restrictions. Furthermore, others contended, institutions must be given additional authority to improve the asset side of their business. A large number of respondents favored nationwide authority for alternative mortgage instruments, particularly VRM's. Some commenters advocated a roll-over type mortgage, particularly as a means to offset the proposed variable ceiling savings account. Others stated that such changes in asset structure must come well before savings rate changes, because of institutions' present long term mortgage structure. However, other commenters opposed any expansion of VRM authority on the ground that risk of rising interest rates shifts to the borrower if the mortgage rate is allowed to fluctuate.

Response. The Bank Board believes the suggestions regarding changes in the asset structure of thrift institutions encompass issues that are beyond the scope of these amendments.

Several commenters recommended that changes be limited to providing a higher rate of return for longer term deposits because rates should be in reverse proportion to liquidity of savers' funds.

Response. The new 4-year account provides incentive for long term saving.

Most individual consumers commenting indicated that anything

done to increase the return to small savers would be beneficial. Some commenters favored the proposed alternatives on the basis that they would represent a step toward either (a) even greater return on small accounts or (b) total deregulation of savings account rates.

Response. The Bank Board believes the final amendments, as adopted, will provide greater opportunities for savers to receive an equitable return on their savings.

For the following reasons, many commenters argued that the proposed alternatives would have little effect on the income of small savers. First, they noted that small savers' primary need is liquidity and that any plan involving long term deposits will be of little benefit. If early withdrawal penalties apply, small savers, with greater account activity, may actually receive less earnings than from passbook accounts. Second, most passbook savings deposits could be earning a greater rate under the present account structure, but savers have chosen availability over return. Commenters noted that not all small accounts are held by small savers, and that the concept of the small saver is elusive. Third, the amount of earnings increase is minimal on small accounts. Increased rates would provide windfall earnings for large savers, while small savers could expect increased earnings of only a few dollars a year. The larger the account, the greater would be the benefit from the proposed alternatives.

Response. The Bank Board believes the amendments will be particularly beneficial to small savers because they provide for a greater return on small savings accounts with a liberalized provision for early withdrawal.

Among comments most frequently repeated were the following: (1) Implementation of any new accounts should be delayed, and if several are adopted, they should be authorized over a period of time sufficient to permit computer programming, training of personnel, printing of new information material, and advertising to the public; (2) the one-fourth of one percent differential should be maintained for any new account, and, (3) compounding should be retained and left to the discretion of the institution.

Response. (1) Because the scope of the final amendments is more limited than the proposal, the Bank Board does not believe institutions will have difficulty implementing them; (2) the differential has been maintained; (3) the final amendments do not change institutions' authority regarding compounding.

Reduction of Minimum Amount Requirements

The proposed alternative most uniformly approved was the reduction of minimum amount requirements for currently approved certificate accounts. Commenters differed on the amount of reduction, but even many commenters who strongly opposed all of the proposed new certificate classifications found reduced minimums desirable or unobjectionable. They believe that this alternative would be simple and marketable, that it would be easiest and least expensive to initiate, and that it would have the least effect on cost of savings. Commenters most often recommended a $100 minimum deposit on all certificate accounts. Some recommended $500 as a minimum, or simply that the minimum amounts be uniform. Others recommended different amounts for different terms. Suggestions included minimums of $500 for certificates with terms 4 years or over and $100 for certificates with terms under 4 years; minimums of $1000 for terms of 4 years and over, and $500 for terms under 4 years; and as proposed, a $500 minimum for terms 4 years and over and no minimum for terms under 4 years. Other commenters recommended total elimination of minimum amount requirements.

Many commenters, however, objected to any reduction in account minimums. They found the present requirements reasonable and argued that any amount less than $1000 does not belong in a certificate account. They noted that with a small amount in a certificate, the penalty for early withdrawal is an insufficient deterrent to withdrawal, and churning of certificates is encouraged. This, they contended, is particularly true for account holders with low reserves who are likely to require their funds before the term expires. Others argued that because small savers' primary requirement is liquidity, reduction in minimum amounts would have little effect. Commenters who considered the cost to institutions generally recognized that small accounts are less economical to maintain than larger accounts, but they did not suggest a definite minimum. Some of the commenters who recommended that passbook rates be increased found that such action would be a less expensive alternative than reduction of minimums on certificate accounts.

Most commenters who favored reduction of minimum certificate amounts specifically excluded money market certificates and strongly objected to any action regarding those certificates.

Response. The Bank Board believes that no minimum amounts, other than for money market certificates, should be prescribed by regulations. With no prescribed minimums, all savers will have an equal opportunity to choose from a full range of certificate accounts. While some institutions may find it prudent, based on their operating costs, to prescribe minimum amounts, the Bank Board believes that such determination should be left to individual institutions.

Five Year Variable Ceiling Account

Of the two proposed new accounts, the five year fixed rate, variable ceiling account was more often favored by commenters who expressed any preference. Often the preference was expressed in terms of "the least objectionable account."

Some argued that the account could reduce disintermediation in times of high interest rates with greater stability than money market certificates. Approval of the certificate was sometimes tied to authority for variable rate mortgages or elimination of fixed rate certificates—possibly replacing present certificates with a series of variable ceiling accounts with various maturities. Some commenters recommended this certificate as a replacement for the money market certificate. Many commenters observed that the account would be attractive to the consumer only in times of high interest rates. When interest rates are lower, consumers would receive an equal or better return on currently authorized certificates. Therefore, the account would create a floor for institutions' savings costs no lower than present certificate rates. Commenters argued that adoption of this certificate would raise the average cost of savings as much as 30–50 basis points depending on assumptions used in the calculation. Many found the cost increase unacceptable and stated that mortgage interest rates would rise to a similar extent.

Opponents of this account cited the increased cost of funds, administrative difficulties and expenses, the complexity of the rate setting mechanism, and merchandising problems, as grounds for disapproval. Commenters noted that as many as 60 rates could be outstanding on such accounts at any given time, causing extreme computer problems. Furthermore, it was argued, the esoteric nature of the rate setting mechanism would require extensive personnel training costs and increased time spent

explaining deposit options to savers. Commenters stated that a changing rate might be confusing for less sophisticated savers who might become angry if rates increase soon after they have committed for a five year term. Many commenters argued that the account would be difficult to sell to the public. Because of the 100 basis point differential, savers would prefer the Treasury instruments to which the rate would be tied. If compounding were permitted, the differential would be partially offset, but the lack of state tax on Treasury instruments would weigh against the proposed account. For less sophisticated savers, marketing efforts would serve to educate the consumer to alternative investments and encourage disintermediation. Some commenters suggested that if the account is adopted the rate should be the same as the Treasury instrument rate to which it is tied. Others objected to the entire concept of indexed rates. They argued that indexing would be inflationary, and that institutions would be unable to predict future costs of savings which are necessary to effective financial planning. Some commenters saw this certificate as a step toward elimination of rate control. Commenters were divided on the issue of whether a floating rate account would be a workable alternative. It was recognized that floating savings rates would necessarily be tied to similarly indexed floating rate mortgages.

While most commenters objected to this account generally, they commented as follows on specific aspects:

(a) Establishment of a rate monthly was generally found preferable to weekly or quarterly. Weekly was considered administratively difficult, while quarterly would permit too much interest rate shopping while institutions' rates are set and market rates fluctuate. Commenters preferred the ease of administration of establishing rates less often.

(b) The $500 minimum was generally acceptable, although higher and lower minimums were also suggested.

(c) A five-year term was generally considered acceptable but one-year and three-year terms were also suggested. Many commenters believe that small savers cannot commit funds for a five-year period. Allowing the institution to set the term was also suggested.

(d) The proposed index was found satisfactory, although indexing to one-year Treasury instruments, or to mortgage interest rates, was also suggested.

(e) Most commenters favored the rate of 1% below the index, but because of marketing problems discussed above, some commenters suggested a rate of ½% below the index. Others found the rate higher than necessary to attract savings.

(f) Commenters divided on whether compounding should be permitted on such accounts. Some believe that without compounding the rate would not be competitive, while others believe the rate would be high enough without compounding. As mentioned above, some commenters object to compounding on any account.

(g) The anticipated effect on savings flows varied, with more commenters anticipating little long-term effect.

Response. The Bank Board believes that this account will provide a means for the saver to receive a reasonable return on savings during periods of high interest rates. Although a term of 5 years was proposed for this account, the Bank Board believes a 4 year term will better serve the needs of small savers, who typically are unable to tie up their funds for extremely long periods. Present 4, 6, and 8 year certificate accounts continue to be authorized because the Bank Board believes these accounts will be attractive to savers during periods when the yield on the variable ceiling account declines.

While recognizing that institutions' average cost of savings may be increased by issuing such accounts in periods of high interest rates, the Bank Board believes that institutions will benefit from the stability of 4-year deposits attracted and retained during such periods.

Early Withdrawal Penalty

Commenters were divided approximately equally regarding the six month early withdrawal penalty proposed for the five year variable ceiling account. However, a large majority favored the simplicity of a single penalty provision for all accounts. Those favoring a six month penalty for early withdrawal from a variable ceiling account generally favored that penalty for all accounts. They believe that such a penalty would provide sufficient disincentive to early withdrawal, while providing relief from the hardship of the standard penalty during the late stages of the account term. Those favoring the present standard penalty noted that: (1) customers are already familiar with the present penalty, and (2) it has worked well in preventing early withdrawals. They also point out that the severity of the present penalty is somewhat mitigated by the saver's option to take a low interest share loan for the remaining period to maturity.

Commenters looking primarily for simplicity recommended that a 3 month penalty with no reversion to the passbook rate, as proposed for the 8-year rising rate certificate, be made applicable to all accounts. Those most concerned with strong disincentive to early withdrawal favored a penalty stronger than the present standard penalty—even a 100 percent penalty. They argued that lenient penalties encourage disintermediation in times of high interest rates. This would be a particular problem with respect to the 8-year rising rate account, as discussed below. Many commenters stressed that all certificate accounts should have early withdrawal penalties. To provide relief for withdrawals made late in the certificate term, some commenters recommended a penalty which would decrease over the term of the certificate. Another suggestion was to pay a rate equal to the rate the account would have received if it had been for a term expiring at the time of withdrawal. Other suggestions included: (1) leave the penalty provision to the institution's discretion; (2) have a penalty equal to a percentage of all accrued earnings; (3) have a 3-month penalty for certificates of 4 years or under, and a 6-month penalty for certificates over 4 years; and, (4) exempt elderly savers from withdrawal penalties in emergency situations.

Response. The Bank Board believes the new penalty for early withdrawal adopted by these amendments (1) is more easily understood and applied; (2) effectively inhibits disintermediation; and, (3) is fairer to savers who must make withdrawals during the final months of the certificate term. Furthermore, uniform application of the exemption from penalty for withdrawals made upon the death of the owner of the account is particularly beneficial to elderly savers who might otherwise be unwilling to commit funds for an extended term to achieve a higher return.

Eight Year Rising Rate Certificate

Most commenters objected to the proposed rising rate certificate (RRC) because of the administrative problems it would create and because of its lack of an early withdrawal penalty after the first year. Commenters stated that, due to the certificate's complexity, it would be difficult to explain to savers and to advertise. Furthermore, the account would require extensive computer changes.

Commenters did not view the RRC as advantageous to small savers. They noted that, except for the lenient penalty

provision, the certificate has no advantage over currently authorized certificate accounts. However, because of the lack of penalty, it would be an ideal repository for large sums presently held in passbook accounts for purposes of liquidity. A saver, with a large passbook account balance, could open an RRC with the minimum amount and maintain that amount for nearly a year. At the end of the year, the saver could take advantage of the provision for unlimited additions during the first year to greatly increase the amount. The account would then be, in effect, a high rate passbook account. If interest rates rise, the saver has the option of withdrawal and reinvestment in a high-rate, short-term certificate or other investment. Commenters anticipated that funds for RRC's would come primarily from existing accounts. One commenter estimated a 37 basis point rise in average cost of savings, with a ¾%–1½% rise in mortgage rates, based on projected transfers from passbooks to RRC's. Commenters generally believe adoption of this account would cause mortgage rates to rise.

Commenters who viewed this certificate favorably generally recommended that some early withdrawal penalty be applicable throughout the term of the certificate, or at least during the first five years while the rate is rising. They also offered other suggestions as follows:

(a) Allow no additions to the account, for the reason discussed above. However, it was noted that such a restriction is bad for small savers because many tend to accumulate small amounts of capital over an extended period of time;

(b) Simplify the structure to have a uniform rise in rate on an annual basis;

(c) Have rates rise on regular distribution dates;

(d) Permit withdrawal without penalty only for limited periods at each anniversary of the account;

(e) Do not end the term at 8 years. Allow the rate to continue at the maximum or to continue to rise, rather than reverting to the initial low rate;

(f) Have a rate based on a rising percentage of Treasury bill yields;

(g) To discourage disintermeditation, make the rise retroactive only after each year expires;

(h) Allow a "year" to be extended to the end of the month or quarter; and,

(i) If this certificate is adopted without a penalty provision, eliminate other long term certificates because they would be of little further use.

The eight year maturity was generally found acceptable, but longer and shorter terms were also suggested. Several commenters found the proposed term too long to be advantageous to small savers.

Bonus

Most commenters found the proposed ½% bonus provision too difficult to administer and without sufficient benefit to the saver. They argued that the bonus would be very difficult to program, that errors would be numerous, and the bonus would be difficult to explain to savers. One commenter predicted that it would take a year to implement the proposed bonus plan, at a cost of $500,000. Once implemented, the institution would have to make daily account reviews. Many commenters noted that the account would provide no greater return to the saver than the present 90 day notice account and that the notice account is not widely accepted by savers. They argue that, particularly with this account, the benefits to the large saver would be much greater than to the small saver.

Commenters noted that most passbook savings would be eligible for a bonus and the institution's cost would rise without any action or commitment by the saver. The account would have to be treated as withdrawable and would be, effectively, a 5.75% passbook. Estimates of increased cost ranged between 7 and 32 basis points, with 10 basis points as a typical figure. One commenter anticipated a 10 basis point rise in average cost of savings for the bonus account, compared with a 12–15 basis point rise for a 5.75% passbook.

Another problem anticipated by commenters was a proliferation of accounts. Because the bonus would be payable on the minimum amount for the year, there would be no incentive to add to a bonus account. Savers might open a series of small accounts and, rather than withdraw funds and lose the bonus, take share loans on the accounts. It was suggested that the rate on share loans be based on the bonus rate rather than the base account rate.

Institutions noted that they would be unable to accurately predict their liabilities until the end of the year. Several institutions believe that limiting the bonus to individuals and nonprofit organizations would be an unnecessary problem. They stated that, while commercial banks are so limited regarding certain accounts, the limitation is largely ignored.

Commenters made the following recommendations concerning adoption of this alternative.

(a) Set dates in the regulation which will determine the year, and pay the bonus on funds held for a year from those dates, e.g., quarterly, on January 1, on regular distribution dates, or on tax reporting dates;

(b) Pay the bonus yearly (a minority favored more frequent payment);

(c) Do not increase the bonus rate on funds held more than a year (a minority favored such an increase); and,

(d) Pay a bonus on the actual interest earned for the year.

Commenters divided approximately evenly on whether a bonus should be paid on an account eligible for other services, transfers, etc. Commenters did not believe adoption of the proposed bonus would have significant effect on savings flows.

Response. After considering the comments on the proposed 8-year rising rate certificate and on the proposed bonus plan, and in view of the anticipated complexity and cost of these plans, the Bank Board has determined that the benefits of these alternatives are not sufficient to justify their adoption. As stated above, the Bank Board believes that the increased rate on passbook accounts provides a simpler means to increase the return to savers than the proposed bonus.

Suggested Alternatives

The most frequently recommended alternative to the proposals was a tax incentive for saving. That concept was favored by both industry and consumer commenters. Exclusion of various amounts of savings was suggested, as well as limiting exclusion to certain types of accounts or classes of individuals.

Another frequent suggestion was to increase the passbook rate. Many commenters considered this a simple means to most directly increase the return to small savers. Suggested passbook rates ranged from 6.5% to 7.5%, with most suggestions falling between 5.5% and 6%. Some commenters recommended eliminating some of the currently approved certificates and raising rates on those remaining. Others recommended that institutions be permitted greater flexibility in setting rates within prescribed limits. Commenters suggested shorter terms for present certificates or $100 additions to accounts without extension of maturity. Another recommendation was payment of 6% only on funds withdrawn on quarterly distribution dates. Indexing with quarterly adjustment of the passbook rate was also suggested.

While many commenters recommended elimination of money market certificates, it was also suggested that the money market

certificate rate be based on the amount of the deposit or the term of the certificate, i.e., a greater amount or a longer term would receive a larger percentage of the Treasury Bill rate.

Another alternative often recommended was payment of higher rates to systematic savers. Commenters argued that such a plan is particularly beneficial for wage earners who are able to accumulate savings over an extended period of time.

Commenters recommended various ways to make funds available to pay earnings on savings accounts. They recommended revision of the liquidity, FIR, and net worth requirements. National VRM's and NOW accounts were suggested. A more lenient view toward due-on-sale clauses was also recommended.

Other recommendations were as follows:

(a) Prescribe methods of computation and compounding;

(b) Place a $1,000 maximum rate on money market certificates;

(c) Permit early withdrawal of 20% of a certificate account without penalty; and,

(d) Authorize a step-increase bonus account.

Response. The recommendation that the passbook account rate be increased is adopted. The Bank Board believes that the amendments that are being adopted represent alternatives which will provide a reasonable return to savers without necessitating a significant increase in mortgage rates.

Accordingly, the Bank Board hereby amends Parts 526 and 531 of the Regulations for the Federal Home Loan Bank System, Part 545 of the Rules and Regulations for the Federal Savings and Loan System, and Part 563 of the Rules and Regulations for Insurance of Accounts, as follows:

1. Amend § 526.2(b)(2) to read as follows:

§ 526.2 Maximum rate of return.

* * * * *

(b) *Exceptions.* Notwithstanding any reduction in such maximum prescribed rates, a member may pay a return on any savings account outstanding on the date of such reduction, as follows:

* * * * *

(2) *Certificate account.* At the rate specified in the certificate, for such period, including any renewal period, as the account remains outstanding (except that six month (26 weeks) certificate accounts may not be renewed at any rate in excess of the applicable maximum rate provided for under § 526.3(a)(6) and four year variable rate accounts may not be renewed at a rate in excess of the applicable maximum rate provided for under § 526.3(a)(5)(ii)).

* * * * *

2. Amend § 526.3(a) by revising paragraphs (1) and (5) thereof, to read as follows:

§ 526.3 Maximum rates of return payable by members on savings accounts.

(a) Except as provided in § 526.3–1 for certificate accounts of $100,000 or more, no member may pay an annual rate of return on a savings account exceeding the applicable maximum percentage, as follows:

(1) 5.50%—regular accounts.

* * * * *

(5)(i) 7.50%—certificate accounts with a term or qualifying period of 4 years or more

(ii) 1% below the average four year rate based on the yield curve for United States Treasury securities as determined by the U.S. Department of the Treasury immediately prior to the first day of the month—certificate accounts with a term or qualifying period of 4 years or more issued on or after the first day of the month

* * * * *

3. Further amend § 526.3(a) by deleting from each of paragraphs (3), (4), (6), and (7) the phrase "of $1,000 or more."

4. Amend § 526.3 (b) and (c), to read as follows:

§ 526.3 Maximum rates of return payable by members on savings accounts.

* * * * *

(b) A member may pay a rate of return as permitted by paragraph (a) of this section on certificate accounts issued under a plan providing for payment of a bonus if the account holder makes at least 12 regular monthly payments.

(c) *Exceptions as to terms or qualifying periods.* A member may pay a rate of return not exceeding the highest rate permitted under paragraph (a) of this section on (1) a public unit account which is a certificate account with a maturity of 30 days or more or a notice account, or (2) a certificate account which qualifies as a retirement account under subsections 401(d) or 408(a) of the Internal Revenue Code of 1954 and has a term of 3 years; *provided,* that such accounts under subdivision (a)(5)(ii) of this section must meet the maturity requirement, and accounts under subparagraph (a)(8) of this section must meet the minimum amount and maturity requirements, prescribed in those provisions.

5. Revise § 526.7(a) to read as follows:

§ 526.7 Penalty for early withdrawal.

(a) For any certificate account issued, extended, or renewed after June 30, 1979, a member shall impose (except as paragraph (b) of this section provides) the following conditions on any withdrawal before the end of the term or qualifying period:

(1) if the term or qualifying period is one year or less, the account holder shall pay a penalty on the amount withdrawn of at least 90 days (3 months) interest or dividends on the account. If the amount withdrawn has remained on deposit for 3 months or less, all interest or dividends shall be forfeited.

(2) if the term or qualifying period is more than one year, the account holder shall pay a penalty on the amount withdrawn of at least 180 days (6 months) interest or dividends on the account. If the amount withdrawn has remained on deposit for 6 months or less, all interest or dividends shall be forfeited.

* * * * *

6. Amend Part 531 by adding new §§ 531.11 and 531.12, to read as follows:

§ 531.11 Accepting pooled accounts.

A member institution may not pool or participate in pooling funds, or solicit, or promote pooled accounts. However, a member institution is authorized to accept pooled funds from existing or potential account holders who have pooled their funds in order to meet any prescribed minimum amount under this Part or to aggregate $100,000 or more.

§ 531.12 Transfer and repurchase of government securities.

A member institution may not issue obligations in denominations under $100,000 evidencing an indebtedness arising from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency thereof that a member institution is obligated to repurchase, unless such obligations are issued to financial institutions the accounts of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or to a broker or dealer registered with the Securities and Exchange Commission.

7. Revise § 545.1–4(f)(1) and subdivisions (i) and (ii) thereof, to read as follows:

§ 545.1–4 Other savings accounts.

* * * * *

(f) *Withdrawal prior to expiration of term.*

(1) For any certificate account issued, extended, or renewed after June 30, 1979, a member shall impose (except as subparagraph (f)(4) of this section provides) the following conditions on any withdrawal before the end of the term or qualifying period:

(i) if the term or qualifying period is one year or less, the account holder shall pay a penalty on the amount withdrawn of at least 90 days (3 months) interest on the account. If the amount withdrawn has remained on deposit for 3 months or less, all interest shall be forfeited.

(ii) if the term or qualifying period is more than one year, the account holder shall pay a penalty on the amount withdrawn of at least 180 days (6 months) interest on the account. If the amount withdrawn has remained on deposit for 6 months or less, all interest shall be forfeited.

* * * * *

§ 545.3 [Amended]

8. Amend § 545.3(b) by deleting the words "such minimum amount, not less than $1,000."

9. Revise §545.3(b)(4) to read as follows:

§ 545.3 Bonus on monthly-payment and fixed-balance accounts.

* * * * *

(b) *Fixed balance accounts.*

* * * * *

(4) For any such bonus account issued, extended, or renewed after June 30, 1979, a member shall impose the following conditions on any withdrawal before the end of the term or qualifying period:

(i) if the term or qualifying period is one year or less, the account holder shall pay a penalty on the amount withdrawn of at least 90 days (3 months) earnings on the account. If the amount withdrawn has remained on deposit for 3 months or less, all earnings shall be forfeited.

(ii) if the term or qualifying period is more than one year, the account holder shall pay a penalty on the amount withdrawn of at least 180 days (6 months) earnings on the account. If the amount withdrawn has remained on deposit for 6 months or less, all earnings shall be forfeited.

(iii) if any earnings have been distributed to the account holder prior to such withdrawal, a deduction shall be made from the amount withdrawn to adjust for the penalty applicable to such earnings.

* * * * *

10. Revise § 545.3–1(c)(3), and subdivisions (i) and (ii) thereof, to read as follows:

§ 545.3–1 Distribution of earnings at variable rates.

* * * * *

(c) *Form of certificate.*

* * * * *

(3) For any certificate account issued, extended, or renewed after June 30, 1979, a member shall impose (except as subparagraph (c)(6) of this section provides), the following conditions on any withdrawal before the end of the term or qualifying period:

(i) if the term or qualifying period is one year or less, the account holder shall pay a penalty on the amount withdrawn of at least 90 days (3 months) earnings on the account. If the amount withdrawn has remained on deposit for 3 months or less, all earnings shall be forfeited.

(ii) if the term or qualifying period is more than one year, the account holder shall pay a penalty on the amount withdrawn of at least 180 days (6 months) earnings on the account. If the amount withdrawn has remained on deposit for 6 months or less, all earnings shall be forfeited.

* * * * *

11. Amend § 563.3–1(d)(1) and subdivisions (i) and (ii) thereof, to read as follows:

§ 563.3–1 Fixed-rate, fixed-term accounts.

* * * * *

(d) *Withdrawal prior to expiration of term.*

(1) Each certificate issued, extended, or renewed by an insured institution, other than an insured institution whose principal office is located on Guam, for a fixed-rate, fixed-term account shall provide that, in the event of withdrawal of all or any portion of such account prior to the expiration of its term, the following minimum penalty shall apply:

(i) if the term or qualifying period is one year or less, the account holder shall pay a penalty on the amount withdrawn of at least 90 days (3 months) interest on the account. If the amount withdrawn has remained on deposit for 3 months or less, all interest shall be forfeited.

(ii) if the term or qualifying period is more than one year, the account holder shall pay a penalty on the amount withdrawn of at least 180 days (6 months) interest on the account. If the amount withdrawn has remained on deposit for 6 months or less, all interest shall be forfeited.

* * * * *

12. Amend § 563.3–2(d)(1), and subdivisions (i) and (ii) thereof, to read as follows:

§ 563.3–2 Certificates evidencing other accounts.

* * * * *

(d) *Provisions relating to early withdrawal.*

(1) Each certificate issued by an insured institution, other than an insured institution whose principal office is located on Guam, for a certificate account shall provide that, in the event of withdrawal of all or any portion of such account prior to completion of its time eligibility period, the following minimum penalty shall apply:

(i) if the term or qualifying period is one year or less, the account holder shall pay a penalty on the amount withdrawn of at least 90 days (3 months) earnings on the account. If the amount withdrawn has remained on deposit for 3 months or less, all earnings shall be forfeited.

(ii) if the term or qualifying period is more than one year, the account holder shall pay a penalty on the amount withdrawn of at least 180 days (6 months) earnings on the account. If the amount withdrawn has remained on deposit for 6 months or less, all earnings shall be forfeited.

* * * * *

(Sec. 4, 80 Stat. 824 (12 U.S.C. § 1425 b); Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1943–48 Comp., p. 1071; Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. § 1464, Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1947 Supp.; secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended; 12 U.S.C. 1725, 1726, 1730.)

By the Federal Home Loan Bank Board.

J. J. Finn,
Secretary.

[FR Doc. 79-18229 Filed 6-11-79; 8:45 am]
BILLING CODE 6720-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 700 through 760

Final Rule; Terminology Change; Substitution of the "Board" for the "Administrator" and General Organization

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Final Rules.

SUMMARY: In accordance with the restructuring of the agency by Pub. L. 95–630, NCUA amends Title 12, Chapter VII as follows:

(1) Parts 700–760 are amended to provide that the term "Board" be substituted for the term "Administrator" wherever the term Administrator is used to refer to the Administrator of NCUA and the term Board is to be used to refer to the newly created National Credit Union Administration Board;

(2) Section 720.2(a) is amended to delete references to the abolished National Credit Union Board; and

(3) Part 722 is repealed and reserved for future use.

EFFECTIVE DATE: Effective June 12, 1979.

ADDRESS: National Credit Union Administration, 2025 M Street, NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Beatrix D. Fields, Staff Attorney, Office of General Counsel, at the above address or telephone (202) 632–4870.

SUPPLEMENTAL INFORMATION: Effective March 10, 1979, pursuant to Title V of the Financial Institutions Regulatory and Interest Rate Control Act of 1978, Pub. L. 95–630, the Federal Credit Union Act (12 U.S.C. 1751 et al., the "FCU Act") was amended to provide for the restructuring of NCUA from management by a single Administrator to management by a three member Board. The members of the newly created National Credit Union Administration Board (the "Board") must be appointed by the President and confirmed by the Senate before taking office. Until the new Board members have taken office, Section 509 of Pub. L. 95–630 provides that the present Administrator shall continue to perform the functions of the Administrator as set forth in the FCU Act prior to the effectiveness of Pub. L. 95–630.

Consistent with the restructuring amendment to the FCU Act, the NCUA Rules and Regulations must be changed to reflect this amendment. Throughout the Rules and Regulations, the term "Administrator" shall be struck and the term "Board" inserted in lieu thereof. Additionally, the personal pronouns referring to the Administrator as "he," "him," and "his" shall be struck and "it," "them," and "its" inserted in their place when referring to the Board. NCUA will not reprint its publication of NCUA Rules and Regulations (NCUA Publication No. 8006) to reflect these terminology changes. Rather, these and other terminology changes resulting from Pub. L. 95–630 will be reflected in each affected regulation as it is updated or revised.

Previously, Section 102 of the FCU Act (12 U.S.C. 1752a) established an advisory board to the Administrator, i.e. the National Credit Union Board. Part 722 of the NCUA Rules and Regulations has implemented that provision. Section 501 of Pub. L. 95–630 amended Section 102 of the FCU Act by, among other things, eliminating the statutory authority for the advisory board. Accordingly, Part 722 is being repealed. In addition, § 720.2(a) which describes the general organization of the agency is being amended to eliminate references to the abolished advisory board and to distinguish the new three member Board from the former advisory board. After the new Board has taken office, it is anticipated that other amendments will be made to Part 720 to reflect changes in the central organization of the agency as a result of the restructuring of the agency.

These procedural amendments to the regulations are being made effective upon publication. Since these changes are merely technical in nature, reflecting amendments to the FCU Act presently in effect, and only affect agency organization and procedure in a non-substantive manner, NCUA hereby finds that the public notice and the delayed effective date requirements of 5 U.S.C. 553 are impracticable and unnecessary. Similarly, the procedures set forth in NCUA's Final Report "In Response to E.O. 12044: Improving Government Regulations" are not applicable. The official responsible for the decision to waive the Final Report procedures is Robert M. Fenner, Assistant General Counsel.

Lawrence Connell,
Administrator.
June 6, 1979.

(Sec. 120, 73 Stat. 635 (12 U.S.C. 1766), sec. 209, 84 Stat. 1014 (12 U.S.C. 1789), and secs. 501 and 502, 92 Stat. 3681, Pub. L. 95–630.)

PARTS 700–760 [Amended]

1. 12 CFR Parts 700 to 760 are amended as follows:

In each provision, the term "Administrator" is changed to the term "Board," and the personal pronouns, "he," "him," or "his," when referring to the Administrator of NCUA, are changed to "it," "them," and "its" respectively when referring to the National Credit Union Administration Board.

2. 12 CFR 720.2(a) is amended to read as follows:

§ 720.2(a) General organization.

The National Credit Union Administration (hereinafter referred to as the "Administration") is composed of the National Credit Union Administration Board (hereinafter referred to as the "Board"), with a central office in Washington, D.C. and six regional offices. The Board consists of three Members appointed by the President, with the advice and consent of the Senate, for six year terms except for two of the initial Members who will serve staggered two and four year terms. One Board member is designated by the President to be Chairman of the Board.

PART 722—[Reserved]

3. 12 CFR Part 722 is hereby repealed and reserved for future use.

[FR Doc. 79-18265 Filed 6-11-79; 8:45 am]
BILLING CODE 7535-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR 140

Delegation of Authority to the Secretary of the Commission

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commission is announcing that it has determined to delegate to the Secretary of the Commission, or the Secretary's designee, the ministerial duty of signing on behalf of the Commission documents embodying Commission decisions or other actions, including, but not limited to, rules, regulations and orders.

EFFECTIVE DATE: June 7, 1979.

FOR FURTHER INFORMATION CONTACT: Mark N. Rae, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, telephone (202) 254–7285.

SUPPLEMENTARY INFORMATION: After the Commission has formally reached a decision or taken other action on a matter, including agreement upon the language of a document which embodies the Commission decision or other action, and directed that the document be issued, the Secretary of the Commission, or a person designated in writing by the Secretary, shall, under this delegation, sign the document on the Commission's behalf. The Commission declares that signature by the Secretary shall be a ministerial function and shall not be discretionary.

Delegation to the Secretary of the authority to sign documents on behalf of the Commission will not affect any other delegations which the Commission has already made, or may yet make, that authorize other officers or employees of the Commission to take action and to sign documents on the Commission's

behalf.[1] The Commission has also reserved to itself the authority to provide for signature on its behalf by the Chairman or any other member of the Commission in particular circumstances.

The foregoing rule shall become effective immediately. The Commission finds that this rule relates solely to agency practice and procedure and that compliance with the pre-adoption notice and public participation procedures, and the post-adoption publication prior to effective date requirement, of the Administrative Procedure Act, as codified, 5 U.S.C. § 553, are not, therefore, required.

In consideration of the foregoing, the Commission, pursuant to the authority contained in Section 2(a)(11) of the Commodity Exchange Act, 7 U.S.C. § 4a(j) (1976), hereby amends Part 140 of Chapter I of Title 17 of the Code of Federal Regulations by adding a new § 140.14 as follows:

§ 140.14 Delegation of authority to the Secretary of the Commission.

After the Commission has formally reached a decision or taken other action on a matter, has agreed upon the language of the document which embodies the Commission decision or other action, including, but not limited to, a rule, regulation or order, and has directed that the document be issued, the Secretary of the Commission (or a person designated in writing by the Secretary) shall sign the document on behalf of the Commission. Signature by the Secretary shall be a ministerial function and shall not be discretionary. The delegation to the Secretary of the authority to sign documents on the Commission's behalf shall not affect any other delegation which the Commission has made, or may make, which authorizes any other officer or employee of the Commission to take action and to sign documents on the Commission's behalf. In addition, the Commission reserves the authority to provide for signature on its behalf by the Chairman or any other member of the Commission in particular circumstances.

Issued in Washington, D.C., on June 7, 1979, by the Commission.

James M. Stone,

Chairman, Commodity Futures Trading Commission.

[FR Doc. 79-18226 Filed 6-11-79; 8:45 am]

BILLING CODE 6351-01-M

[1] See, *e.g.*, Commission rule 1.10e(d)(1), 43 FR 58340, 58342-58343 (December 28, 1978), which delegates to the Commission's Executive Director in certain circumstances the authority to determine an initial applicant's fitness for registration and to "issue" orders granting or refusing registration with the Commission.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 276

[Docket RM79-30]

Order Amending Final Regulations and Promulgating FERC Forms 122, 123, and 124 and Accompanying Affidavits and Instructions; Correction

AGENCY: Federal Energy Regulatory Commission.

ACTION: Errata Notice.

SUMMARY: This notice contains a correction to the preamble to the Commission's order issued March 23, 1979 (44 FR 18647, March 29, 1979). References to § 271.101 and § 271.101(b) in the sixth line of the first full paragraph on page 18650 shall be corrected to read § 276.101 and § 276.101(b) respectively.

FOR FURTHER INFORMATION CONTACT: Scott E. Kovas, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426, (202) 275-4806.

SUPPLEMENTARY INFORMATION: Please note that the following correction should be made to the preamble to the Commission's order issued March 23, 1979 in Docket No. RM79-30 (44 FR 18647, March 29, 1979): in the sixth line of the first full paragraph on page 18650 "§ 271.101" and "§ 271.101(b)" should be changed to read "§ 276.101" and "§ 276.101(b)" respectively, so that the paragraph reads as follows:

We also received several comments via the Commission's "Hotline" that expressed confusion as to the interrelationship between the exceptions created in paragraphs (b)(1) and (b)(2) in § 276.101. We have revised § 276.101(b) to make it clear that the exception in paragraph (b)(1) only applies in the case of a sale to someone other than a pipeline.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18230 Filed 6-11-79; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

21 CFR Parts 314 and 430

[Docket No. 78N-0379]

New Drug Applications and Antibiotic Drugs—General; Separation of Functions in Evaluating Requests for Hearing

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the drug regulations to eliminate the requirement of separation of functions before issuance of a notice of hearing in cases in which a bureau recommends granting a request for hearing on the proposed denial or withdrawal of drug product marketing approval. The rule permits the Bureau of Drugs and the Office of the Commissioner to communicate regarding issues on which a hearing is requested and thus expedites the agency's response to hearing requests.

EFFECTIVE DATE: July 12, 1979.

FOR FURTHER INFORMATION CONTACT: Thomas Scarlett, Office of the General Counsel (GCF-1), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1345.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 19, 1978 (43 FR 59095), FDA proposed to revise the separation of functions requirements that apply when a bureau evaluates a request for hearing on a proposed denial or withdrawal of drug marketing approval. The reason for the proposed change was to expedite the handling of hearing requests in cases where the bureau intends to recommend that a hearing be granted. Under the regulations as then written, separation of functions commenced with the receipt of a request for hearing and did not terminate until the matter was finally disposed of, either by an evidentiary hearing or by an order denying a request for hearing. Maintaining separation of functions before a notice of hearing is published serves a useful purpose if the bureau is considering denying a request for hearing. Denial of a hearing request is final agency action, and it is therefor appropriate for the Office of the Commissioner to evaluate the bureau's reasons for recommending that action from an independent point of view.

When, however, the bureau's recommendation is that the hearing request be granted, the next step is not final agency action, but an evidentiary hearing, during which the record for decision by the Office of the Commissioner is developed. The Office of the Commissioner then reviews the record without consulting the bureau involved in the hearing.

Thus, when a hearing is to be held, the reasons for maintaining separation of functions during the time period preceding the hearing are greatly diminished. In fact, there is often a need for consultation between the bureau and the Office of the Commissioner about the content and wording of the notice of hearing. Elimination of the separation of functions requirement in the period before a notice of hearing is issued will permit necessary communication between the parts of the agency responsible for initiating the hearing.

One comment was received in response to the proposal. The comment, which is unclearly written, apparently takes the position that the purpose of permitting the Office of the Commissioner to consult with the bureau before a notice of hearing is published is to avoid situations in which a hearing is held despite the absence of a substantial issue of fact. The comment asks FDA to make a comparison between the time involved in evaluating bureau recommendations and the time involved in holding hearings that are later found to be unnecessary because they involve no substantial issue of fact.

Without a more comprehensible explanation of the concerns addressed in the comment, the agency is unable to respond to the specific questions raised. In any case, the premise of the comment, that the purpose of eliminating separation of functions is to reduce the number of hearings that are held in the mistaken belief that there is an issue of fact, is wrong. The purpose of eliminating separation of functions before publishing a notice of hearing is to expedite the handling of hearing requests and notices of hearing. Accordingly, the final regulation is published as proposed, except that the following technical changes are incorporated in the text of the regulation:

1. A sentence is added to clarify that, when a bureau has recommended that a hearing be granted, the Commissioner may change the text of the issues proposed by the bureau but may not deny a hearing on those issues. This restriction was discussed in the preamble to the proposed regulation. See 43 FR 59097, column 1.

2. The regulation is revised to clarify that when a bureau recommends that a hearing be granted as to some issues and denied as to others, the Commissioner will not evaluate or rule upon the bureau's recommendation that a hearing be denied. The preamble to the proposed regulation discussed this point. See 43 FR 59097, column 1.

3. The regulation is revised to clarify that the presiding officer's ruling on whether to include in a hearing an issue with respect to which the bureau recommended that a hearing be denied is subject to interlocutory review by the Commissioner in accordance with the procedure that applies to all decisions by a presiding officer to add or delete an issue.

4. Minor editorial changes have been made in the text of the regulation.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 506, 507, 701(a), 52 Stat. 1052–1053 as amended, 1055, 59 Stat. 463 as amended (21 U.S.C. 355, 357, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Parts 314 and 430 are amended as follows:

1. Part 314 is amended in § 314.200 by revising paragraph (f) to read as follows:

§ 314.200 Notice of opportunity for hearing; notice of participation and request for hearing; grant or denial of hearing.

* * * * *

(f) Separation of functions commences upon receipt of a request for hearing. The Director of the Bureau of Drugs will prepare an analysis of the request and a proposed order ruling on the matter. The analysis and proposed order, the request for hearing, and any proposed order denying a hearing and response under paragraph (g) (2) or (3) of this section will be submitted to the Office of the Commissioner for review and decision. When the Bureau recommends denial of a hearing on all issues on which a hearing is requested, no representative of the Bureau will participate or advise in the review and decision by the Commissioner. When the Bureau recommends that a hearing be granted on one or more issues on which a hearing is requested, separation of functions terminates as to those issues, and representatives of the Bureau may participate or advise in the review and decision by the Commissioner on those issues. The Commissioner may modify the text of the issues, but may not deny a hearing on those issues. Separation of functions continues with respect to issues on which the Bureau has recommended denial of a hearing. The Bureau's recommendation on such issues will not be evaluated or ruled on by the Commissioner, and such issues will not be included in the notice of hearing. Participants in the hearing may make a motion to the presiding officer for the inclusion of any such issue in the hearing. The ruling on such a motion is subject to review in accordance with § 12.35(b) of this chapter. Failure to so move constitutes a waiver of the right to a hearing on such an issue. Separation of functions on all issues resumes upon issuance of a notice of hearing. The Office of the General Counsel will observe the same separation of functions.

* * * * *

2. Part 430 is amended in § 430.20 by revising paragraph (b)(7) to read as follows:

§ 430.20 Procedure for the issuance, amendment, or repeal of regulations.

* * * * *

(b) * * *

(7) Separation of functions commences upon receipt of a request for hearing. The Director of the Bureau of Drugs will prepare an analysis of the request and a proposed order ruling on the matter. The analysis and proposed order, the request for hearing, and any proposed order denying a hearing and response under paragraph (b)(8) (ii) or (iii) of this section will be submitted to the Office of the Commissioner for review and decision. When the Bureau recommends denial of a hearing on all issues on which a hearing is requested, no representative of the Bureau will participate or advise in the review and decision by the Commissioner. When the Bureau recommends that a hearing be granted on one or more issues on which a hearing is requested, separation of functions terminates as to those issues, and representatives of the Bureau may participate or advise in the review and decision by the Commissioner on those issues. The Commissioner may modify the text of the issues, but may not deny a hearing on those issues. Separation of functions continues with respect to issues on which the Bureau has recommended denial of a hearing. The Bureau's recommendation on such issues will not be evaluated or ruled on by the Commissioner, and such issues will not be included in the notice of hearing. Participants in the hearing may make a motion to the presiding officer for the inclusion of any such issue in the hearing. The ruling on such a motion is subject to review in accordance with § 12.35(b) of this chapter. Failure to so move constitutes a waiver of the right to a hearing on such an issue. Separation of functions on all issues resumes upon

issuance of a notice of hearing. The Office of the General Counsel will observe the same separation of functions.

* * * * *

Effective date. This regulation is effective July 12, 1979.

(Secs. 505, 507, 701(a), 52 Stat. 1062–1063 as amended, 1055, 59 Stat. 463 as amended (21 U.S.C. 355, 357, 371(a)))

Dated: June 5, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-17888 Filed 6-11-79; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 445

[Docket No. R-79-691]

Application of Payments on (Section 312) Rehabilitation Housing Loans

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: This rule amends 24 CFR Part 445 to require that payments on 312 loans serviced by HUD shall be applied first to accrued interest and then to the outstanding principal. This rule is necessary because the current practice reduces the effective rate below an acceptable three percent (3%) and results in a lower effective interest rate for borrowers who default, than for borrowers who remain current in payment.

EFFECTIVE DATE: July 12, 1979.

FOR FURTHER INFORMATION CONTACT: John L. Brady, Director, Title I Insured and 312 Loan Servicing Division, Room 9172, 451 7th Street, SW., Washington, D.C. 20410, (202) 755-6681. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On December 27, 1978, the Department published a Notice of Proposed Rulemaking (at 43 FR 60301) to amend 24 CFR Part 445. Part 445 now requires that all receipts on 312 accounts serviced by HUD be applied first to the reduction of the principal. Interest is not computed until the principal has been paid in full. This reduces the effective rate below an acceptable three percent (3%) level to as low as two and one-fifth percent (2⅕%). This practice is contrary to customary commercial practice and, in effect, gives more favored treatment to borrowers who default than to borrowers who maintain payment on a current basis. This amended rule will eliminate the disparate treatment and remove any incentives for defaulting which may exist. Comments on the proposed rule were invited until January 28, 1978. Only one comment was received. It supported the amendment; therefore, no changes are being made to the proposed rule.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this Finding is available for public inspection during regular working hours at the Office of the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

Accordingly, the Department is amending Title 24, CFR Part 445 by revising § 445.1 as follows:

§ 445.1 Application of payments.

When a debt is paid in installments and interest is collected for a Section 312 loan, the installment payments will first be applied to the payment of accrued interest and then to principal as prescribed in Section 102.10 of the Joint Regulations of the General Accounting Office and the Department of Justice. (4 CFR 102.10)

(Sec. 7(d), Department of HUD Act; (42 U.S.C. 3535(d)). (38 FR 27218 October 1, 1973.) Sec. 312 of the Housing Act of 1964, (42 U.S.C. 1452b).)

Issued at Washington, D.C., June 5, 1979.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 79-18158 Filed 6-11-79; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Clarification of CHAMPUS Last Pay Status

AGENCY: Office of the Secretary.

ACTION: Addendum to rule.

SUMMARY: The purpose of this addendum to 32 CFR Part 199 is to clarify DoD's position of "last pay" on CHAMPUS benefits when certain beneficiaries are entitled to duplicate coverage, in whole or in part, by insurance, medical service, health and medical plan, or other Government program available through employment, law, membership in an organization or as a student. Specifically, this addendum clarifies a provision contained in the DoD Regulation 6010.8-R (32 CFR 199) that indicated lack of understanding when considered at the public rulemaking hearings on September 7 and 8, 1977, and also at a specific case review which discussed DoD intent regarding the double coverage provisions.

EFFECTIVE DATE: January 10, 1977.

FOR FURTHER INFORMATION CONTACT: LTC L. Rowlette, Special Assistant for CHAMPUS, Office of the Deputy Assistant Secretary of Defense (Health Resources & Programs), OASD(HA), Washington, D.C. 20301, telephone 202-695-6281

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the Federal Register on April 4, 1977 (42 FR 17972) the Department of Defense published its regulation, DoD 6010.8-R, "Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)." In FR Doc. 79-9566, appearing in the Federal Register on March 28, 1979 (44 FR 18661) the Office of the Secretary of Defense published the regulation's first amendment. The following clarifies certain aspects of this regulation and responds to public comment.

CHAMPUS Beneficiary Population

Statutes pertaining to the CHAMPUS are contained in Chapter 55 of Title 10, United States Code. Section 1086 of that chapter as added by the Military Medical Benefits Amendments of 1966, Pub. L. 89-614, expanded the CHAMPUS beneficiary population to include retirees, spouses, and children of retirees, and spouses and children of deceased active duty members or retirees of the uniformed services, subject to certain conditions and exceptions. One such condition set forth in subsection 1086(d) denies payment for CHAMPUS benefits when the beneficiary is entitled to other insurance, medical service, or health plan provided by law or through employment.

Exclusionary Clause in Insurance Contracts

Following enactment of Pub. L. 89-614, an anomalous situation arose. That is, some beneficiaries whose CHAMPUS entitlement was newly established under the law could not receive

payment of medical care costs either from the CHAMPUS or from their insurance, medical service or health plan provided by law or through employment. This resulted from the position taken by certain insurance carriers that exclusionary clauses in health insurance contracts relieved them from medical expenses of the beneficiaries who happened to be covered by such contracts prior to the 1966 CHAMPUS Amendments. An exclusionary clause in insurance contracts is one which, generally, excludes from coverage expenses for services and supplies to the extent they are provided under any governmental plan or law under which the insured is or could be covered. The contention of the insurance carriers was that Section 1086(d) should not be construed as having retroactive application, thereby impairing their preexisting contractual rights.

To ease transitional implementation of the 1966 Amendments to the law governing the CHAMPUS, the so-called "October 1, 1966 Rule" was incorporated into the joint Uniformed Services regulation implementing the CHAMPUS. Under that rule, the CHAMPUS assumed the status of primary health care coverage ("primary payor") for beneficiaries entitled to CHAMPUS benefits under the 1966 Amendments if the beneficiary has been continuously covered since October 1, 1966 (the effective date of the 1966 Amendments) by an insurance, medical service, or health plan provided by law of through employment which has continuously contained an exclusionary clause.

Joint Uniformed Services Regulation

The joint Uniformed Services regulation implementing the CHAMPUS was codified at 32 CFR 577.80 *et seq.* It was effective until various portions thereof were affected by implementation of Department of Defense Instruction 6010.8 and 6010.8–R (32 CFR 199, January 10, 1977). The "October 1, 1966 Rule" as incorporated into the CHAMPUS Regulation 6010.8–R, is set forth in Section D, Chapter VIII (32 CFR 199.14(d) and 42 FR 18020, April 4, 1977) as follows:

Title 32, § 199.14:

* * * * *

(d) *Retirees; Dependents of Retirees; and Dependents of Deceased Active Duty Members or Retirees.* Chapter 55 of Title 10, United States Code, is clear that the CHAMPUS Program is designed as an interim, secondary coverage for retirees, dependents of retirees and dependents of deceased active duty members or retirees. Therefore, CHAMPUS claims submitted for otherwise covered services and/or supplies provided these beneficiary classes, and which involve double coverage, shall be adjudicated as follows:

(1) *CHAMPUS Always "Last Pay".* In any double coverage situations, CHAMPUS benefits shall be "last pay."

(2) *Exclusionary Clause: October 1, 1966 Rule.* Generally if a double coverage plan has an exclusionary clause which precludes payment of benefits as "primary payor" if the insured is covered under a Federal health and medical benefits program, it is not recognized by CHAMPUS (refer to paragraph (h)(2) of this section). However, if the double coverage plan had an exclusionary clause that was in effect prior to October 1, 1966, CHAMPUS becomes primary payor: *Provided,* The following requirements are met:

(i) *Continuously in Effect.* The specific double coverage plan containing such exclusionary clause has been continuously in effect since October 1, 1966, or prior, and

(ii) *Other than FEHBP Plan.* The double coverage plan is other than one of the plans authorized under the Federal Employees Health Benefits Law (FEHBP) Chapter 89, Title 5, United States Code, as administered by the United States Civil Service Commission.

The intent of the above language is to limit application of an "exclusionary clause" to those limited number of transitional situations under the 1966 Amendments where (a) the exclusionary clause in the double coverage plan was in effect on or before October 1, 1966; (b) the exclusionary clause has been continuously in effect from October 1, 1966; (c) the double coverage plan has not changed, either in carriers or benefits (rate changes are not considered), nor changed from an insured plan to a self-insured plan nor from a self-insured plan to an insured plan;

(d) the beneficiary has been continuously enrolled in the double coverage plan with the "exclusionary clause" since on or before October 1, 1966; and (e) the beneficiary's eligibility for CHAMPUS was effective October 1, 1966. In all other cases, the CHAMPUS is "last pay" as required by law.

H. E. Lofdahl,
Director, Correspondence & Directives, Washington Headquarters Services, Department of Defense
June 7, 1979.

[FR Doc. 79-18244 Filed 6-11-79; 8:45 am]
BILLING CODE 3810-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 1244-6]

Alabama: Approval of Plan Revisions; Correction

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: In the rulemaking notices of March 7 (44 FR 12420) and April 4 (44 FR 20074), 1979, approving revisions in the Alabama implementation plan, the numbering of the revisions in § 52.50, identification of plan, was incorrect. The xylene oxidation revision should have been listed as paragraph (c)(19) of 40 CFR 52.50, and coke oven revision, as paragraph (c)(18). Also, it has been noted that paragraph (c)(17) of 40 CFR 52.50, added on September 2, 1977 (42 FR 44234), contains no submittal date. With the appropriate editorial corrections, 40 CFR 52.50(c)(17) through (19) reads as set forth below.

EFFECTIVE DATE: June 12, 1979.

FOR FURTHER INFORMATION CONTACT: Walter Bishop of the Region IV Air Programs Branch, (404) 881–2864, FTS 257–2864.

Subpart B—Alabama

§ 52.50 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(17) Regulations equivalent to EPA's New Source Performance Standards (40 CFR Part 60) and continuous monitoring requirements for existing stationary sources (40 CFR 51.19), submitted by the Alabama Air Pollution Control Commission on October 28, 1976.

(18) Revised regulations for the charging and pushing of coke in existing conventional batteries, submitted by the Alabama Air Pollution Control Commission on July 14, 1978.

(19) Part 4.12, dealing with particulate emissions from xylene oxidation, submitted by the Alabama Air Pollution Control Commission on September 13, 1978.

Dated: May 29, 1979.

John C. White,

Regional Administrator.

[FR Doc. 79-18282 Filed 6-11-79; 8:45 am]

BILLING CODE 6560-01-M

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40 CFR Part 52

[FRL 1238-1]

Approval of Revisions of the Pennsylvania State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Rulemaking.

SUMMARY: The Pennsylvania Department of Environmental Resources has submitted amendments to Article XVIII, Rules and Regulations of the Allegheny County Health Department. The revisions amend the Air Pollution Emergency Episode Regulations of Article XVIII. The revisions are designed to provide flexibility to deal with localized air pollution episodes. The amendments make provisions for declaring localized incidents where persistent winds cause high pollution levels and set forth specific actions, including ordering source curtailments, to be taken by the Bureau of Air Pollution Control. Other changes include authorizing the Director of the Allegheny County Health Department, rather than the County Commissioners, to declare Third Stage Alerts and adding provisions designed to make the regulations more consistent with Federal guidelines.

The Administrator, by this notice, announces his approval of the revision.

EFFECTIVE DATE: July 12, 1979.

ADDRESSES: Copies of the revision and accompanying support material are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Air Programs Branch (3AH10), Curtis Building, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, Attn: Ms. Patricia Sheridan.

Bureau of Air Quality Control, Department of Environmental Resources, Commonwealth of Pennsylvania, 200 North 3rd Street, Harrisburg, Pennsylvania 17120.

Allegheny County Health Department, Bureau of Air Pollution Control, 301 39th Street, Pittsburgh, Pennsylvania 15201.

Public Information Reference Unit, Room 2922—EPA Library, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mr. William Belanger (3AH13), Air Programs Branch, U.S. Environmental Protection Agency, Region III, Curtis Building, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106.

SUPPLEMENTARY INFORMATION: On May 15, 1978, the Pennsylvania Department of Environmental Resources submitted to the Regional Administrator, EPA Region III, amendments to Article XVIII, Rules and Regulations of the Allegheny Health Department, and requested that they be reviewed and processed as a revision of the Pennsylvania State Implementation Plan (SIP) applicable to Allegheny County.

The proposed amendments affect Section 1800 (Definitions) and Section 1813 (Air Pollution Emergency Episode Regulations) of Article XVIII.

In November, 1975 a localized emergency episode occurred in the Liberty Borough—Clairton area of Allegheny County. Existing regulations required extensive county-wide actions even though emergency conditions occurred in only a small portion of the County. The amended regulations will provide the flexibility to declare localized Third Stage Alerts and for instituting curtailment actions in the exact area(s) affected. The amendments also provide for declaring localized incidents where persistent winds cause high pollution levels, and also provide guidance on specific actions to be taken in the case of wind-induced pollution incidents.

A public hearing on the proposed amendments was held on February 17, 1978 at the Bureau of Air Pollution Control, 301 39th St., Pittsburgh, Pennsylvania 15201.

On November 30, 1978 (43 FR 56060), the Regional Administrator announced receipt of these amendments, proposed them as a revision of the Pennsylvania SIP, and provided for a 30-day public comment period following publication in the Federal Register. During this public comment period, no comments were received.

The Environmental Protection Agency has evaluated the Allegheny County Episode Plan and concurs with the County's rationale in revising its plan to provide the ability to deal with a localized situation on less than a county-wide basis, and to deal with wind-induced incidents in an appropriate manner.

In view of the above evaluation and the fact that the amendments to Article XVIII of the Allegheny County regulations for the Control and Abatement of Air Pollution conform to the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, the Administrator approves them as a revision of the Pennsylvania State Implementation Plan, effective (30 days from date of publication of this notice). Concurrently, 40 CFR 52.2020 (Identification of Plan) is amended to incorporate these amendments into the Federally-approved Pennsylvania SIP.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Authority: 42 U.S.C. 7401–7642 et seq.

Dated: June 1, 1979.

Douglas Costle,

Administrator.

Part 52 of Title 40 of the Code of Federal Regulations is amended as follows:

Subpart NN—Pennsylvania

1. In Section 52.2020, paragraph (c)(17) is amended to read as follows:

§ 52.2020 Identification of Plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified***

(17) Amendment to Article XVIII, Rules and Regulations of the Allegheny County Health Department, Sections 1800 (Definitions) and 1813 (Air Pollution Emergency Episode Regulations). These amendments were submitted on May 15, 1978 by the Department of Environmental Resources.

[FR Doc. 79-18272 Filed 6-11-79; 8:45 am]

BILLING CODE 6560-01-M

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40 CFR Part 65

[FRL 1240-4]

Delayed Compliance Order of Blanchester Foundry Co.

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: By this rule, the Administrator of U.S. EPA approves a Delayed Compliance Order to Blanchester Foundry Company. The Order requires the Company to bring air emissions from its grey iron cupola at

Blanchester, Ohio, into compliance with certain regulations contained in the federally approved Ohio State Implementation Plan (SIP). Blanchester Foundry Company's compliance with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act (Act) for violations of the SIP regulations covered in the Order.

DATES: This rule takes effect June 12, 1979.

FOR FURTHER INFORMATION CONTACT: Cynthia Colantoni, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, Telephone (312) 353–2082.

SUPPLEMENTARY INFORMATION: On March 23, 1979, the Regional Administrator of U.S. EPA's Region V Office published in the Federal Register (44 FR 17758) a notice setting out the provisions of a proposed State Delayed Compliance Order for Blanchester Foundry Company. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed Order.

No public comments and no request for a public hearing were received in response to the notice.

Therefore, a Delayed Compliance Order effective this date is approved to Blanchester Foundry Company by the Administrator of U.S. EPA pursuant to the authority of Section 113(d)(2) of the Act, 42 U.S.C. 7413(d)(2). The Order places Blanchester Foundry Company on a schedule to bring its grey iron cupola at Blanchester, Ohio, into compliance as expeditiously as practicable with Regulations OAC–3745–17–07 and OAC–3745–17–11, a part of the federally approved Ohio State Implementation Plan. Blanchester Foundry Company is unable to immediately comply with these regulations. The Order also imposes interim requirements which meet Section 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit Blanchester Foundry Company to delay compliance with the SIP regulations covered by the Order until July 1, 1979.

Compliance with the Order by Blanchester Foundry Company will preclude Federal enforcement action under Section 113 of the Act for violations of the SIP regulations covered by the Order. Citizen suits under Section 304 of the Act to enforce against the source are similarly precluded. Enforcement may be initiated, however, for violations of the terms of the Order, and for violations of the regulations covered by the Order which occurred before the Order was issued by U.S. EPA or after the Order is terminated. If the Administrator determines that Blanchester Foundry Company is in violation of a requirement contained in the Order, one or more of the actions required by Section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under Section 307(b) of the Act.

U.S. EPA has determined that the Order shall be effective upon publication of this notice because of the need to immediately place Blanchester Foundry Company on a schedule for compliance with the Ohio State Implementation Plan.

Authority: 42 U.S.C. 7413(d), 7601.

Dated: June 1, 1979.

Douglas Costle,
Administrator.

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

By adding the following entry to the table in Section 65.401:

§ 65.401 U.S. EPA Approval of State Delayed Compliance Orders issued to major stationary sources.

Source	Location	Order No.	Date of FR Proposal	SIP regulation involved	Final compliance date
Blanchester Foundry Company.	Blanchester, Ohio	None	Jan. 26, 1979	OAC–3745–17–07 OAC–3745–17–11.	July 1, 1979

[FR Doc. 79-18270 Filed 6-11-79; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 65

[FRL 1225–2]

Approval of Delayed Compliance Order Issued by the Connecticut Department of Environmental Protection to Ross and Roberts, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the Connecticut Department of Environmental Protection to Ross and Roberts, Inc. The Order requires the company to bring air emissions from its coating lines at Stratford, Connecticut into compliance with certain regulations contained in the federally-approved Connecticut State Implementation Plan (SIP). Because of the Administrator's approval, Ross and Roberts, Inc. compliance with the Order will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the Order during the period the Order is in effect.

DATES: This rule takes effect on June 12, 1979.

FOR FURTHER INFORMATION CONTACT: Michael Gurchin at (617) 223–5661 or engineer Steven Fradkoff at (617) 223–5610, both at the following address:

U.S. Environmental Protection Agency, J. F. K. Federal Building, Room 2103, Boston, MA 02203.

ADDRESS: A copy of the Delayed Compliance Order, any supporting material, and any comments received in response to prior Federal Register notice proposing approval of the Order are available for public inspection and copying during normal business hours at the address indicated above.

SUPPLEMENTARY INFORMATION: On February 14, 1979, the Regional Administrator of EPA's Region I Office published in the Federal Register, 44 FR 9603, a notice proposing approval of a delayed compliance order issued by the Connecticut Department of Environmental Protection to Ross and Roberts, Inc. The notice asked for public comments by March 16, 1979 on EPA's

proposed approval of the Order. No public comments were received in response to the proposal notice.

Therefore, the delayed compliance order issued to Ross and Roberts, Inc., is approved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7414(d)(2). The Order places Ross and Roberts, Inc. on a schedule to bring its coating lines at Stratford, Connecticut into compliance as expeditiously as practicable with Section 19-508-18(a)(1)(i) and 19-508-23(a)(1) of the Connecticut Regulations for the Abatement of Air Pollution, a part of the federally-approved Connecticut State Implementation Plan. The Order also imposes interim requirements which meet Sections 113(d)(1)(C) and 113(d)(7) of the Act, and reporting requirements. The Order does not include emission monitoring requirements because their inclusion in the Order would be unreasonable. If the conditions of the Order are met, it will permit Ross and Roberts, Inc. to delay compliance with the SIP regulations covered by the Order until March 15, 1979. The company is unable to immediately comply with these regulations.

Because the Order has been approved by EPA, compliance with its terms will preclude federal enforcement action under Section 113 of the Act for violations of the SIP regulations covered by the Order during the period the Order is in effect. Citizen suits under Section 304 of the Act are similarly precluded. If the Administrator determines that Ross and Roberts, Inc. is in violation of a requirement contained in the Order, one or more of the actions required by Section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under Section 307(b) of the Act.

EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the need to immediately place Ross and Roberts, Inc., on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) of the Connecticut State Implementation Plan.

Authority: 42 U.S.C. 7413(d), 7601.

Dated: June 1, 1979.

Douglas Costle,

Administrator.

In consideration of the foregoing, Chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

By adding the following entry to the table in § 65.111:

§ 65.111 EPA Approval of State delayed compliance orders issued to major stationary sources.

* * * * *

Source	Location	Order No.	SIP regulation(s) involved	Date of FR proposal	Final compliance date
*	*	*	*	*	*
Ross and Roberts, Inc.	Norwalk, Conn.	707	19-508-18	Feb. 14, 1979	Mar. 15, 1979
*	*	*	*	*	*

[FR Doc. 79-18272 Filed 6-11-79; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 65

[FRL 1240-5]

Delayed Compliance Order for the Defense Logistics Agency, Defense Electronics Supply Center

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: By this rule, the Administrator of U.S. EPA issues a Delayed Compliance Order to the Defense Logistics Agency, Defense Electronics Supply Center (DESC). The Order requires the facility to bring air emissions from its four boilers in Building 17 at Dayton, Ohio into compliance with certain regulations contained in the federally promulgated Ohio State Implementation Plan (SIP). DESC's compliance with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act (Act) for violations of the SIP regulations covered in the Order.

DATES: This rule takes effect June 12, 1979.

FOR FURTHER INFORMATION CONTACT: Louise C. Gross, Attorney, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, Telephone (312) 353-2082.

SUPPLEMENTARY INFORMATION: On February 1, 1979, the Regional Administrator of the U.S. EPA's Region V Office published in the Federal Register (44 FR 6468) a notice setting out the provisions of a proposed Federal Delayed Compliance Order for DESC. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed Order. No public comments and no request for a public hearing were received in response to the notice.

Therefore, a Delayed Compliance Order effective this date is issued to DESC by the Administrator of U.S. EPA pursuant to the authority of Section 113(d)(1) of the Act, 42 U.S.C. 7413(d)(1). The Order places DESC on a schedule to bring its four boilers in Building 17 at Dayton, Ohio, into compliance as expeditiously as practicable with 40 CFR 52.1881(b)(46)(vii), a part of the federally promulgated Ohio State Implementation Plan. DESC is unable to immediately comply with this regulation. The Order also imposes interim requirements which meet Sections 113(d)(1)(C) and 113(d)(7) of the Act, and emissions monitoring and reporting requirements. If the conditions of the Order are met, it will permit DESC to delay compliance with the SIP regulation covered by the Order until June 30, 1979.

Compliance with the Order by DESC will preclude Federal enforcement action under Section 113 of the Act for violations of the SIP regulation covered by the Order. Citizen suits under Section 304 of the Act to enforce against the source are similarly precluded. Enforcement may be initiated, however, for violations of the terms of the Order, and for violations of the regulation covered by the Order which occurred before the Order was issued by U.S. EPA or after the Order is terminated. If the Administrator determines that DESC is in violation of a requirement contained in the Order, one or more of the actions required by Section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under Section 307(b) of the Act.

U.S. EPA has determined that the Order shall be effective upon publication of this notice because of the need to immediately place DESC on a schedule for compliance with the Ohio State Implementation Plan.

Authority: 42 U.S.C. 7413(d), 7601.

Dated: June 1, 1979.

Douglas Costle,
Administrator.

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

By adding the following entry to the table in § 65.400:

§ 65.400 Federal Delayed Compliance Orders issued Under Section 113(d) (1), (3), and (4) of the Act.

Source	Location	Order No.	Date of FR proposal	SIP regulation involved	Final compliance date
•	•	•	•	•	•
Defense Logistics Agency, Defense Electronics Supply Center.	Dayton, Ohio	EPA-5-79-A-41	Feb. 1, 1979	40 CFR 52.1881(b)(46)(vii).	June 30, 1979
•	•	•	•	•	•

[FR Doc. 79-18271 Filed 6-11-79; 8:45 am]
BILLING CODE 6560-01-M

DEPARTMENT OF STATE

Agency for International Development

41 CFR Part 7-1

[AIDPR Notice 79-1]

Small Business Concerns; Administrative Revisions

AGENCY: Agency for International Development, Department of State.

ACTION: Final rule.

SUMMARY: This regulation deletes the requirement for preparing a Small Business/Minority Business Enterprise Procurement Review Form (AID 1410-14) for proposed procurements with individuals for their personal services abroad.

EFFECTIVE DATE: June 1, 1979.

FOR FURTHER INFORMATION CONTACT: Sylvia L. Courembis, CM/SD/POL, Agency for International Development, Department of State, Washington, D.C. 20523 (703) 235-9107.

Section 7-1.704-7, paragraph (d) is revised as follows:

§ 7-1.704-7 Reports on procurement actions that are exempted from screening.

• • • • •

(d) Personal services contract exemption. Preparation of AID From 1410-14 is not required for personal services contracts.

This AIDPR Notice is issued pursuant to 41 CFR 7-1.104-4.

Dated: May 31, 1979.

John F. Owens,
Deputy Assistant Administrator for Program and Management Services.

[FR Doc. 79-18218 Filed 6-11-79; 8:45 am]
BILLING CODE 4710-02-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1041, 1047, 1062

[No. MC-C-3437]

Motor Transportation of Property Incidental to Transportation by Aircraft

AGENCY: Interstate Commerce Commission.

ACTION: Notice of extension of effective date.

SUMMARY: The Interstate Commerce Commission has extended the effective date of the regulations adopted in this proceeding (44 FR 3295, January 16, 1979) from May 16, 1979, to June 26, 1979, in order to provide adequate time to dispose of certain petitions for reconsideration.

DATE: Effective June 22, 1979.

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr., (202) 275-7292.

SUPPLEMENTARY INFORMATION: By decision of December 11, 1978 (*Motor Transp. of Property Incidental to Air*, 131 M.C.C. 67 (1978)), served January 11, 1979, the Commission adopted appropriate regulations which define and generally expand those areas (air terminal areas) within which the motor carrier transportation of property incidental to transportation by aircraft is exempt from economic regulation. The regulations were to become effective May 16, 1979.

Petitions for reconsideration have been filed, but a decision thereon could not be served prior to May 16, 1979. Also, certain of the petitioners have filed a petition for stay pending judicial review which cannot be disposed of until after the petitions for reconsideration have been acted upon. Accordingly, in order to provide time for the pending pleadings to be considered, the effective date of the decision served January 11, 1979 was extended to 20 days after the service date of the decision disposing of the petitions for reconsideration. The decision disposing of the petitions for reconsideration was served June 6, 1979.

Issued in Washington, D.C.

Dated: May 30, 1979.

By the Commission, Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-18214 Filed 6-11-79; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 371

Fraser River Sockeye and Pink Salmon Fishery; Final Regulations

AGENCY: National Oceanic and Atmospheric Administration/ Commerce.

ACTION: Final regulations.

SUMMARY: These regulations for 1979 are similar to regulations adopted in previous years that implemented the Convention for Protection, Preservation, and Extension of the Sockeye Salmon and Pink Salmon Fisheries of the Fraser River System (Convention) between the United States and Canada. The regulations are amended by changing

the schedules of fishing by gillnets, purse seines and reef nets to 1979 calendar dates. The 1978 regulations provided for eight weeks of two-days-per-week fishing for sockeye salmon (pink salmon are available only in odd-numbered years); however, in-season emergency changes in fishing schedules by the International Pacific Salmon Fisheries Commission (Commission), in response to developing information on abundance and timing of the spawning races of Fraser River sockeye salmon, resulted in only three weeks of two-days fishing, two weeks of one-day fishing, one week of three days of fishing, and two weeks during which no fishing was permitted. The regulations for the ten-week season in 1979 for both sockeye and pink salmon fishing provide for six weeks of 2-days-a-week fishing and 4 weeks of one day of fishing each week. This schedule may be adjusted during the season to meet the objectives of the management program as prescribed in the Convention, as efforts to attain these objectives are affected by the abundance and timing of the salmon runs through U.S. Convention Waters. Another change in the 1979 regulations is the closure to commercial trolling during the period June 15 through June 30 in territorial waters of the State of Washington north of 48° N. latitude and U.S. Convention Waters westward of the line between the Tatoosh Island Lighthouse in Washington State and Bonilla Point on Vancouver Island, B. C.

These rules do not apply to treaty Indians exercising treaty-secured fishing rights at the tribes' usual and accustomed fishing places in accordance with regulations promulgated by the Department of Interior (25 CFR Part 256).

EFFECTIVE DATE: 1201 a.m. on June 15, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Donald R. Johnson, Regional Director, 1700 Westlake Avenue North, Seattle, Washington 98109, Telephone: (206) 442-7575.

SUPPLEMENTARY INFORMATION: On March 12, 1979, the Commission forwarded the proposed regulations for the 1979 commercial fishing season for sockeye and pink salmon in Convention Waters to the Government of the United States for approval, as required by Article VI of the Convention. The United States has provisionally approved those regulations, except that the regulations would not apply to treaty Indians exercising treaty-secured fishing rights at the tribes' usual and accustomed fishing places. These fisheries are regulated by 25 CFR Part 256, published by the Department of the Interior.

U.S. territorial waters of the State of Washington north of 48° N. latitude and U.S. Convention waters will be closed to commercial fishing with trolling gear from June 15 to June 30, both dates inclusive.

These regulations will become effective on June 15, 1979, in High Seas Convention Waters, and on June 24, 1979 in Convention Waters inside the Bontilla Point-Tatoosh Island line. These regulations are necessary to achieve the objectives of the Convention (e.g. assure adequate escapement of salmon within each spawning unit, and assure an equitable division of catch between U.S. and Canadian fishermen) and provide for a rational fishery by U.S. fishermen.

These regulations are being issued with respect to a foreign affairs function of the U.S. and, therefore, are exempt from the requirements of Executive Order 12044, pursuant to Section 6(b)(2) of that Order and the advance notice, public comment and delayed effectiveness procedures of 5 U.S.C., Section 553, pursuant to Section (a)(1) of that Act.

Signed at Washington, D.C. this 7th day of June, 1979.

Jack W. Gehringer,

Deputy Assistant Administrator, National Oceanic and Atmospheric Administration.

Accordingly, 50 CFR Part 371 is revised to read as follows:

PART 371—FRASER RIVER SOCKEYE AND PINK SALMON REGULATIONS

Subpart A—General Provisions

Sec.

371.1 Purpose of regulations.
371.2 Scope of regulations.
371.3 Definition of terms.
371.4 Other laws and regulations.
371.5 Reporting requirements.
371.6 Notice of change in regulations.
371.7 Unlawful possession.
371.8 Forcible assault of enforcement officer.
371.9 Commission regulations.

Appendix A—International Pacific Salmon Fisheries Commission Regulations.

Authority: Sockeye Salmon or Pink Salmon Fishing Act of 1947, 16 U.S.C. 776–776f.

§ 371.1 Purpose of regulations.

The regulations in this Subpart A implement the convention between the United States and Canada for the protection of the sockeye and pink salmon fisheries of the Fraser River System, and the Sockeye Salmon or Pink Salmon Fishing Act of 1947.

§ 371.2 Scope of regulations.

This Part 371 applies to all commercial fishing for sockeye salmon and pink salmon and related activities conducted in U.S. Convention Waters during the time the Commission exercises jurisdiction over the sockeye salmon and pink salmon fisheries, except that these Regulations and Appendix A do not govern fishing by treaty Indians exercising treaty-secured fishing rights at the tribes' usual and accustomed fishing places.

§ 371.3 Definition of terms.

When used in this Subchapter C:

(a) *Act* means: The Sockeye Salmon and Pink Salmon Fishing Act of 1947, 16 U.S.C. 776–776f.

(b) *Commission* means: The International Pacific Salmon Fisheries Commission provided for by Article II of the Convention.

(c) *Convention* means: The convention between the United States of America and Canada for the protection, preservation, and extension of the sockeye salmon fisheries of the Fraser River system, signed at Washington on the 26th day of May, 1930, as amended by the protocol to the convention to include pink salmon, signed at Ottawa on the 28th day of December 1956.

(d) *Convention waters* means: Those waters described in Article I of the convention.

(e) *Enforcement Officer* means: (1) Any enforcement agent of the National Marine Fisheries Service.

(2) Any commissioned, warrant, or petty officer of the Coast Guard;

(3) Any Coast Guard personnel accompanying and acting under the direction of any person described in Paragraph (e)(2) of this Section.

(4) Any other person authorized by the Regional Director, Northwest Region, National Marine Fisheries Service to enforce the provisions of the convention, the Commission's regulations, the Act and this part 371.

(f) *Fish, Fishing* means: The fishing for, catching, or taking, or the attempted fishing for, catching, or taking, of any sockeye salmon or pink salmon in convention waters.

(g) *Fishing gear* means: Any net, trap, hook, or other device, appurtenance or equipment, of whatever kind or description, used or capable of being used, for the purpose or capturing fish or an aid in capturing fish.

(h) *Gillnet* means: Gillnet as defined in Washington Administrative Code, Chapter 220-16, and lawful gillnet as defined in Washington Administrative Code, Chapter 220-47.

(i) *Person* includes: The word "person" includes individuals, partnerships, associations, and corporations.

(j) *Pink salmon* means: That species of salmon known by the scientific name *Oncorhynchus gorbuscha.*

(k) *Purse seine* means: Purse seine as defined in Washington Administrative Code, Chapter 220–16 and lawful purse seine as defined in Washington Administrative Code, Chapter 220–47.

(l) *Reef net* means: Reef net as defined in Washington Administrative Code, Chapter 220–16 and lawful reef net as defined in Washington Administrative Code, Chapter 220–47.

(m) *Salmon preserves* means: Salmon preserves defined in Washington Administrative Code, Chapter 220–47.

(n) *Sockeye salmon* means: That species of salmon known by the scientific name *Oncorhynchus nerka.*

(o) *State areas* means: Fishing areas defined as Puget Sound Salmon Management and Catch Reporting Areas in Washington Administrative Code, Chapter 220–22.

(p) *Troll line* means: Troll line as defined in Washington Administrative Code, Chapter 220–16 and lawful troll line as defined in Washington Administrative Code, Chapter 220–47.

§ 371.4 Other laws and regulations.

Nothing in Part 371 shall be construed to relieve a person from any other requirements imposed by a statute or regulation of the United States or of the State of Washington.

§ 371.5 Reporting requirements.

(a) Any person receiving or purchasing fish caught by any person fishing under § 371.9 Commission Regulations (Appendix A) of this Part 371 shall comply with Washington Administrative Code, Chapter 220–69.

(b) Any person fishing under Section 371.9, Commission Regulations (Appendix A) of this Part 371 selling these fish directly to the consumer, restaurant, boathouse or any other retail outlet shall comply with Washington Administrative Code, Chapter 220–69.

(c) No person receiving or purchasing sockeye or pink salmon caught in U.S. Convention Waters during the time the Commission exercises control over fishing for sockeye salmon or pink salmon in U.S. waters shall fail to permit enforcement officers to inspect records or reports required by Washington Administrative Code, Chapter 220–69 or to inspect fish landing, holding or storage areas under the control of this person.

§ 371.6 Notice of change in regulations.

The regulations of the Commission regarding the times permissible to fish are subject to frequent change by emergency order. Emergency orders are published by news releases to radio stations and newspapers in the fishing area. In addition, these orders will be available by calling the National Marine Fisheries Service toll-free telephone Hotline 1–800–562–2870. The emergency orders will be effective from the time of publication or as stated in the order.

§ 371.7 Unlawful possession.

No person subject to this Part 371 shall possess or retain on board a fishing vessel a sockeye or pink salmon while engaged in a fishery for other species in U.S. Convention Waters during times these waters are closed by the Commission, except that this provision shall not prohibit the direct transport of legally-caught fish to off-loading areas.

§ 371.8 Forcible assault of enforcement officer.

No person shall forcibly assault, resist, oppose, impede, intimidate or interfere with an enforcement officer engaged in enforcing the convention, the Commission's regulations, the Act or this Part 371.

§ 371.9 Commission regulations.

Appendix A sets forth regulations and fishing schedules of the Commission for the 1979 fishing season. These regulations, as may be modified from time to time by emergency orders of the Commission and disseminated pursuant to Section 371.6 of this Part 371, are the "Regulations of the Commission," violation of which is unlawful under the Act.

Appendix A—International Pacific Salmon Fisheries Commission Regulations

1. No person shall fish for sockeye or pink salmon by commercial trolling gear in that portion of Convention Waters westerly of a straight line drawn from the Tatoosh Island Lighthouse in the State of Washington to Bonilla Point in the Province of British Columbia comprising the Territorial Waters of the United States and those High Seas waters contained in the U.S. Fishery Conservation Zone, from the 15th day of June, 1979 to the 30th day of June, 1979, both dates inclusive.

2. No person shall fish for sockeye or pink salmon with nets in Convention Waters of the United States from the 24th day of June, 1979 to the 14th day of July, 1979, both dates inclusive.

3. (1) No person shall fish for sockeye or pink salmon with purse seines in the Convention Waters of the United States lying westerly of a straight line drawn from Angeles Point in the State of Washington across Race Rocks to William Head in the Province of British Columbia (Puget Sound Salmon Management and Catch-reporting Areas 4B, 5 and 6C):

(a) From the 15th day of July, 1979 to the 4th day of August, 1979, both dates inclusive, except from 3:00 AM to 9:30 PM on Monday and Tuesday of each week; and

(b) From the 5th day of August, 1979 to the 18th day of August, 1979, both dates inclusive, except from 3:00 AM to 9:30 PM on Monday of each week.

(c) From the 19th day of August, 1979 to the 8th day of September, 1979, both dates inclusive, except from 3:00 AM to 9:00 PM on Monday and Tuesday of each week.

(d) From the 9th day of September, 1979 to the 15th day of September, 1979, both dates inclusive, except from 3:00 AM to 9:00 PM on Monday of each week.

(2) No person shall fish for sockeye or pink salmon with gillnets in the waters described in subsection (1) of this section:

(a) From the 15th day of July, 1979 to the 21st day of July, 1979, and from the 29th day of July, 1979 to the 4th day of August, 1979, all dates inclusive, except from 7:00 PM on Sunday to 9:30 AM on Monday and from 7:00 PM Monday to 9:30 AM on Tuesday of each week; and

(b) From the 22nd day of July, 1979 to the 28th day of July 1979, both dates inclusive, except from 7:00 PM on Monday to 9:30 AM on Tuesday and from 7:00 PM on Tuesday to 9:30 AM on Wednesday; and

(c) From the 5th day of August, 1979 to the 11th day of August, 1979, both dates inclusive, except from 7:00 PM on Monday to 9:30 AM on Tuesday; and

(d) From the 12th day of August, 1979 to the 18th day of August, 1979, both dates inclusive, except from 7:00 PM on Sunday to 9:30 AM Monday; and

(e) From the 19th day of August, 1979 to the 25th day of August, 1979, and from the 2nd day of September, 1979 to the 8th day of September, 1979, both dates inclusive, except from 6:00 PM on Monday to 9:00 AM on Tuesday, and from 6:00 PM on Tuesday to 9:00 AM on Wednesday of each week; and

(f) From the 29th day of August 1979, to the 1st day of September, 1979, both dates inclusive, except from 6:00 PM on Sunday to 9:00 AM on Monday, and from 6:00 PM on Monday to 9:00 AM on Tuesday; and

(g) From the 9th day of September, 1979 to the 15th day of September, 1979, both dates inclusive, except from 6:00 PM on Sunday to 9:00 AM on Monday.

(3) No person shall fish for sockeye or pink salmon with commercial trolling gear in the waters described in subsection (1) of this section from the 15th day of July, 1979 to the 15th day of September, 1979, both dates inclusive, except from Monday through Friday of each week on those days when purse seine fishing is permitted within that area.

4. (1) No person shall fish for sockeye or pink salmon with purse seines in the Convention Waters of the United States lying easterly of a straight line drawn from Angeles Point in the State of Washington across Race Rocks to William Head in the Province of British Columbia (Puget Sound Salmon Management and Catch-reporting Areas 6, 6A, 7, and 7A):

(a) From the 15th day of July, 1979 to the 4th day of August, 1979, both dates inclusive,

except from 5:00 AM to 9:30 PM on Monday and Tuesday of each week; and

(b) From the 5th day of August, 1979 to the 18th day of August, 1979, both dates inclusive, except from 5:00 AM to 9:30 PM on Monday of each week; and

(c) From the 19th day of August, 1979 to the 8th day of September, 1979, both dates inclusive, except from 5:00 AM to 9:00 PM on Monday and Tuesday of each week; and

(d) From the 9th day of September, 1979 to the 22nd day of September, 1979, both dates inclusive, except from 5:00 AM to 9:00 PM on Monday of each week.

(2) No person shall fish for sockeye or pink salmon with reef nets in the waters described in subsection (1) of this section:

(a) From the 15th day of July, 1979 to the 21st day of July, 1979, and from the 29th day of July, 1979 to the 4th day of August, 1979, both dates inclusive, except from 6:30 AM to 9:30 PM on Sunday and from 5:00 AM to 9:30 PM on Monday of each week; and

(b) From the 22nd day of July, 1979 to the 28th day of July, 1979, both dates inclusive except from 7:00 AM to 7:30 PM on Sunday, and from 5:00 AM to 7:30 PM on Monday; and

(c) From the 5th day of August, 1979 to the 11th day of August, 1979, both dates inclusive, except from 7:00 AM to 7:30 PM on Sunday; and

(d) From the 12th day of August, 1979 to the 18th day of August, 1979, both dates inclusive, except from 6:30 AM to 9:30 PM on Sunday; and

(e) From the 19th day of August, 1979 to the 25th of August, 1979 and from the 2nd day of September, 1979 to the 8th day of September, 1979, all dates inclusive, except from 7:00 AM to 7:30 PM on Sunday and from 5:00 AM to 7:30 PM on Monday of each week; and

(f) From the 26th day of August, 1979 to the 1st day of September, 1979, both dates inclusive, except from 6:30 AM to 9:30 PM on Sunday, and from 5:00 AM to 9:00 PM on Monday; and

(g) From the 9th day of September, 1979 to the 15th day of September, 1979, both dates inclusive, except from 6:30 AM to 9:30 PM on Sunday; and

(h) From the 16th day of September, 1979 to the 22nd day of September, 1979, both dates inclusive, except from 7:00 AM to 7:30 PM on Sunday.

(3) No person shall fish for sockeye or pink salmon with gillnets in the waters described in subsection (1) of this section:

(a) From the 15th day of July, 1979 to the 21st day of July, 1979, and from the 29th day of July, 1979 to the 4th day of August, 1979, all dates inclusive, except from 7:00 PM on Sunday to 9:30 AM on Monday and from 7:00 PM on Monday to 9:30 AM on Tuesday of each week; and

(b) From the 22nd day of July, 1979 to the 28th day of July 1979, both dates inclusive, except from 7:00 PM on Monday to 9:30 AM on Tuesday and from 7:00 PM on Tuesday to 9:30 AM on Wednesday; and

(c) From the 5th day of August, 1979 to the 11th day of August, 1979, both dates inclusive, except from 7:00 PM on Monday to 9:30 AM on Tuesday; and

(d) From the 12th day of August, 1979 to the 18th day of August, 1979, both dates inclusive, except from 7:00 PM on Sunday to 9:30 AM on Monday; and

(e) From the 19th day of August, 1979 to the 25th day of August, 1979, and from the 2nd day of September, 1979 to the 8th day of September, 1979, all dates inclusive, except from 6:00 PM on Monday to 9:00 AM on Tuesday and from 6:00 PM on Tuesday to 9:00 AM on Wednesday of each week; and

(f) From the 26th day of August, 1979 to the 1st day of September, 1979, both dates inclusive, except from 6:00 PM on Sunday to 9:00 AM on Monday, and from 6:00 PM on Monday to 9:00 AM on Tuesday; and

(g) From the 9th day of September, 1979 to the 15th day of September, 1979, both dates inclusive, except from 6:00 PM on Sunday to 9:00 AM on Monday; and

(h) From the 16th day of September, 1979 to the 22nd day of September, 1979, both dates inclusive, except from 6:00 PM on Monday to 9:00 AM on Tuesday.

5. (1) No person shall fish for sockeye or pink salmon with nets in that portion of the waters described in subsection (1) of section 4 lying northerly and westerly of a straight line drawn from Tsawwassen Dock on Point Roberts in the State of Washington to Georgina Point Light at the entrance to Active Pass in the Province of British Columbia from the 26th day of August, 1979 to the 1st day of September, 1979, and from the 23rd day of September, 1979 to the 6th day of October, 1979, all dates inclusive.

(2) No person shall fish for sockeye or pink salmon with nets in that portion of the waters described in subsection (1) of section 4 lying westerly of a straight line drawn from the low water range marker in Boundary Bay on the International Boundary, across the east tip of Point Roberts to the East Point Light on Saturna Island, from the 2nd day of September, 1979 to the 22nd day of September, 1979, both dates inclusive.

6. The foregoing recommended regulations shall not apply to the following United States Convention Waters:

(1) Puget Sound Salmon Management and Catch-reporting Areas as follows: 6B, 7B, and 7C.

(2) Preserves previously established by the Director of Fisheries of the State of Washington for the protection of other species of food fish.

All times hereinbefore mentioned shall be Pacific Daylight Saving Time.

[FR Doc. 79-18330 Filed 6-11-79; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 44, No. 114
Tuesday, June 12, 1979

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

[5 CFR Parts 831, 870, 871, and 890]

Retention of Benefits Upon Employment by Indian Tribal Organization

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management proposes rules to implement section 105(e)–(h) of Pub. L. 93–638, the Indian Self-Determination and Educational Assistance Act, which authorizes the retention of retirement, life insurance, and health benefits coverages by Federal employees who become employed by an Indian tribal organization without a break in service on or before December 31, 1985, in connection with activities which are or have been performed by employees in or for Indian communities.

DATE: Comments must be received on or before August 13, 1979.

ADDRESS: Comments should be directed to Craig B. Pettibone, Office of Policy Development and Technical Services (Retirement and Insurance), Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Gay Gardner, Office of Policy Development and Technical Services, Retirement and Insurance, Room 4351, 1900 E Street, N.W., Washington, D.C. 20415. 202–632–4634.

(1) It is proposed to add a new Subpart P to 5 CFR 831, as set out below:

PART 831—RETIREMENT

Subpart P—Employment of Federal Employees by Indian Tribal Organizations

Sec.
831.1601 Basic records.
831.1602 Counseling employees.
831.1603 Credit for service.
831.1604 Basic pay.
831.1605 Sick leave.
831.1606 Employment of annuitants.

Authority: 5 U.S.C. 8347; E.O. 11899, 41 FR 3459, Jan. 23, 1976.

Subpart P—Employment of Federal Employees by Indian Tribal Organizations

§ 831.1601 Basic records.

Every Indian tribal organization as defined in section 4(c) of the Indian Self-Determination Act (88 Stat. 2204) having employees subject to subchapter III of chapter 83 of title 5, United States Code, shall initiate and maintain individual retirement accounts for those employees as prescribed in Federal Personnel Manual Supplement 831–1 (5 U.S.C. 8334). Each tribal organization shall (a) verify the correctness of deductions withheld from employees' pay, as well as agency contributions; (b) transmit these withholdings and contributions to the Office of Personnel Management, Retirement and Insurance Division, for deposit; and (c) maintain retirement control accounts and prepare retirement accounting reports.

§ 831.1602 Counseling employees.

(a) Tribal organizations shall obtain from the Government Printing Office pertinent portions of the Federal Personnel Manual and other instructional materials needed to effectively administer this subpart.

(b) Tribal organization questions on retirement matters may be referred to the Retirement and Insurance Division of the Office of Personnel Management.

§ 831.1603 Credit for service.

(a) Employment with an Indian tribal organization as defined in Public Law 93–638 is not, of itself, creditable service. However, an employee serving under an appointment not limited to one year or less who, on or before December 31, 1985, leaves Federal employment which is subject to subchapter III of chapter 83 of title 5, United States Code, to be employed without a break in service (or after a separation from service of three days or less) by an Indian tribal organization in a function which is or has been performed by Federal employees in or for Indian communities is entitled to full retirement credit for such service provided that (1) prior to employment by the Indian tribal organization, the employee and the organization elect in writing, on a form prescribed by the Office of Personnel Management, to retain retirement coverage, and (2) the necessary employee deductions and agency contributions for the period of the employment with the tribal organization are currently deposited into the Civil Service Retirement and Disability Fund.

(b) The Office of Personnel Management shall determine whether an Indian tribal organization function is one which is or has been performed by an employee in or for Indian communities and shall consult with the Departments of Interior and Health, Education, and Welfare when necessary in making such determinations.

(c) An employee who elects to retain retirement coverage may decide to terminate such coverage at any time during his/her employment with a tribal organization. Coverage so terminated may not attach again during such employment.

§ 831.1604 Basic pay.

Subject to pay limitations in sections 5308 and 8331(3) of title 5, United States Code, salary received during tribal organization employment will be considered basic pay for annuity computation purposes.

§ 831.1605 Sick leave.

If retirement coverage is retained, days of unused sick leave to the credit of an employee under a formal leave system remain to the employee's credit for annuity computation purposes while employed by a tribal organization.

§ 831.1606 Employment of annuitants.

An annuitant under subchapter III of chapter 83 of title 5, United States Code, who becomes employed by an Indian tribal organization, shall not be considered a reemployed annuitant.

(2) It is proposed to add a new Subpart H to 5 CFR 870 as set out below:

PART 870—REGULAR LIFE INSURANCE

Subpart H—Employment of Federal Employees by Indian Tribal Organizations

Sec.
870.801 Counseling employees.
870.802 Continuance of coverage.
870.803 Annual rate of pay.
870.804 Waiver of coverage.
870.805 Employment of annuitants.

Authority: 5 U.S.C. 8716, E.O. 11999, 41 FR 3459, Jan. 23, 1976.

Subpart H—Employment of Federal Employees by Indian Tribal Organizations

§ 870.801 Counseling employees.

(a) Tribal organizations shall obtain from the Government Printing Office pertinent portions of the Federal Personnel Manual and other instructional materials needed to effectively administer this subpart.

(b) Tribal organization questions on life insurance matters may be referred to the Retirement and Insurance Division of the Office of Personnel Management.

§ 870.802 Continuance of coverage.

(a) Employment with an Indian tribal organization as defined in section 4(e) of the Indian Self-Determination Act (88 Stat. 2206) is not, of itself, federal service and life insurance under this part cannot be acquired during such employment. However, an insured employee serving under an appointment not limited to one year or less who, on or before December 31, 1965, leaves Federal employment which is subject to subchapter III of chapter 83 of title 5, United States Code, to be employed without a break in service (or after a separation from service of three days or less) by an Indian tribal organization in a function which is or has been performed by Federal employees in or for Indian communities is entitled to continue life insurance coverage provided that (1) prior to employment by the Indian tribal organization, the employee and the organization elect in writing, on a form prescribed by the Office of Personnel Management, to retain life insurance coverage, and (2) the necessary employee deductions and agency contributions for the period of employment with the tribal organization are currently deposited into the Employees' Life Insurance Fund as prescribed in Federal Personnel Manual Supplement 870-1.

(b) The Office of Personnel Management shall determine whether an Indian tribal organization function is one which is or has been performed by an employee in or for Indian communities and shall consult with the Departments of Interior and Health, Education, and Welfare when necessary in making such determinations.

(c) An employee who elects to retain coverage under this part may decide to terminate such coverage at any time during his/her employment with a tribal organization.

§ 870.803 Annual rate of pay.

An individual's annual basic pay rate during employment with a tribal organization shall serve as the basis for determining the amount of insurance.

§ 870.804 Waiver of coverage.

An employee who elects not to retain life insurance coverage or who waives such coverage during employment with an Indian tribal organization may not cancel the waiver until reemployed in a Federal position in which the employee is not excluded from life insurance coverage.

§ 870.805 Employment of annuitants.

An annuitant under subchapter III of chapter 83 of title 5, United States Code, who becomes employed by an Indian organization, shall not be eligible as an employee for regular life insurance coverage under this part.

(3) It is proposed to add a new Subpart G to 5 CFR 871, as set out below:

PART 871—OPTIONAL LIFE INSURANCE

Subpart G—Employment of Federal Employees by Indian Tribal Organizations

Sec.
871.701 Counseling employees.
871.702 Continuance of coverage.
871.703 Cancellation of coverage.
871.704 Employment of annuitants.

Authority: 5 U.S.C. 8716, E.O. 11809, 41 FR 3450, Jan. 23, 1976.

Subpart G—Employment of Federal Employees by Indian Tribal Organizations

§ 870.701 Counseling employees.

(a) Tribal organization questions on optional insurance may be referred to the Retirement and Insurance Division of the Office of Personnel Management.

§ 871.702 Continuance of coverage.

(a) An insured employee serving under an appointment not limited to one year or less who, on or before December 31, 1965, leaves Federal employment which is subject to subchapter III of chapter 83 of title 5, United States Code, to be employed without a break in service (or after a separation from service of three days or less) by an Indian tribal organization in a function which is or has been performed by Federal employees in or for Indian communities is entitled to continue optional life insurance coverage provided that (1) prior to employment by the Indian tribal organization, the employee and the organization elect in writing, on a form prescribed by the Office of Personnel Management, to retain both regular and optional life insurance coverage, and (2) the necessary employee deductions for the period of employment with the tribal organization are currently paid into the Employees' Life Insurance Fund as prescribed in Federal Personnel Manual Supplement 870-1.

(b) The Office of Personnel Management shall determine whether an Indian tribal organization function is one which is or has been performed by an employee in or for Indian communities and shall consult with the Departments of Interior and Health, Education, and Welfare when necessary in making such determinations.

(c) An employee who elects to retain coverage under this part may decide to terminate such coverage at any time during his/her employment with a tribal organization.

§ 871.703 Cancellation of coverage.

(a) An employee who elects not to retain optional life insurance coverage or who cancels such coverage during employment with an Indian tribal organization may not reelect coverage until reemployed in a Federal position in which the employee is not excluded from optional life insurance coverage.

(b) Periods of non-coverage during Indian tribal organization employment must be considered as time during which the employee elected not to retain coverage in determining eligibility for optional life insurance coverage.

§ 871.704 Employment of annuitants.

An annuitant under subchapter III of chapter 83 of title 5, United States Code, who becomes employed by an Indian tribal organization, shall not be eligible as an employee for optional life insurance coverage under this part.

(4) It is proposed to add a new Subpart G to 5 CFR 890, as set out below:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS

Subpart G—Health Benefits Coverage During Employment With Indian Tribal Organizations Under Pub. L. 93-638

Sec.
890.701 Counseling employees.
890.702 Continuance of coverage.
890.703 Cancellation of enrollment.
890.704 Loss of coverage under another's enrollment.
890.705 Employment of annuitants.

Authority: 5 U.S.C. 8913, E.O. 11880, 41 FR 3450, Jan. 23, 1976.

Subpart G—Health Benefits Coverage During Employment With Indian Tribal Organizations Under Pub. L. 93-638

§ 890.701 Counseling employees.

(a) Tribal organizations shall obtain from the Government Printing Office

pertinent portions of the Federal Personnel Manual and other instructional materials needed to effectively administer this subpart.

(b) Tribal organization questions on health benefits matters may be referred to the retirement and Insurance Division of the Office of Personnel Management.

§ 890.702 Continuance of coverage.

(a) Employment with an Indian tribal organization as defined in section 4(c) of the Indian Self-Determination Act (88 Stat. 2204) is not, of itself, Federal service and health benefits under this part cannot be acquired during such employment. However, an enrolled employee serving under an appointment not limited to one year or less who, on or before December 31, 1965, leaves Federal employment which is subject to subchapter III of chapter 83 of title 5, United States Code, to be employed without a break in service (or after a separation from service of three days or less) by an Indian tribal organization in a function which is or has been performed by Federal employees in or for Indian communities is entitled to continue health benefits coverage provided that (1) prior to employment by the Indian tribal organization, the employee and the organization elect in writing, on a form prescribed by the Office of Personnel Management, to retain health benefits coverage, and (2) the necessary employee deductions and agency contributions for the period of employment with the tribal organization are currently paid into the Employees Health Benefits Fund as prescribed in Federal Personnel Manual Supplement 890–1.

(b) The Office of Personnel Management shall determine whether an Indian tribal organization function is one which is or has been performed by an employee in or for Indian communities and will consult with the Departments of Interior and Health, Education, and Welfare when necessary in making such determinations.

(c) An employee who elects to retain coverage under this part may decide to terminate such coverage at any time during his/her employment with a tribal organization.

§ 890.703 Cancellation of enrollment.

(a) An employee who elects not to retain health benefits coverage or who cancels such coverage during employment with an Indian tribal organization may not reenroll until reemployed in a Federal position in which the employee is not excluded from health benefits coverage.

(b) Periods of non-coverage during Indian tribal organization employment must be considered as time during which the employee elected not to retain coverage in determining eligibility for health benefits coverage as an annuitant.

§ 890.704 Loss of coverage under another's enrollment.

An employee who is not enrolled but is covered by the enrollment of another under this part, may register to be enrolled 31 days after termination of his/her coverage under the other's enrollment, other than because of death or cancellation, and within 60 days after termination, because of death, of the other's enrollment, provided the employee and the tribal organization agree to such election and the necessary employee deductions and agency contributions are currently paid into the Federal Employees Health Benefits Fund.

§ 890.705 Employment of annuitants.

An annuitant under subchapter III of chapter 83 of title 5, United States Code, who becomes employed by an Indian tribal organization, shall not be eligible as an employee for health benefits coverage under this part.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 79-18316 Filed 6-11-79; 8:45 am]

BILLING CODE 6325-01-M

FEDERAL HOME LOAN BANK BOARD

[12 CFR Parts 526, 545, 563]

[79-305]

Federal Home Loan Bank System, Federal Savings and Loan System, Federal Savings and Loan Insurance Corp.; Exemption from Early Withdrawal Penalty Upon Death of Account Owner

May 30, 1979.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rulemaking.

SUMMARY: The Bank Board's present regulations allow member institutions to exempt savings accounts from the early withdrawal penalty in the event of death of an account owner. The Bank Board believes that this exemption is in the public interest, and by this proposal would make it mandatory.

DATE: Comments must be received by July 9, 1979.

ADDRESS: Office of the Secretary, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

FOR FURTHER INFORMATION, CONTACT: Kathleen E. Topelius, Attorney, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552 (202–377–6444).

SUPPLEMENTARY INFORMATION: The Bank Board's regulations, set out at 12 CFR 526.7(b), 545.1–4(f)(4), 545.3–1(c)(6), 536.3–1(d)(4), and 563.3–2(d)(3), currently provide that upon the death of any account holder, a member institution, if it chooses, may allow withdrawal of deposits from the account prior to maturity without imposing the normally required early withdrawal penalty. The Bank Board proposes to amend each of these provisions to require member institutions to allow withdrawal of deposits from accounts prior to maturity without penalty upon the death of any account holder when requested to do so by an authorized representative or any other owner of the account. The Bank Board believes that the proposed amendments will more fully effectuate the intent of this exception to the early withdrawal penalty rule, which is to facilitate administration of estates as well as to ease the financial burdens occasioned by the death of an account holder. Public comment is specifically requested on whether the proposed amendment, if adopted, should apply to all existing accounts or only to accounts issued after the date of any final regulation.

Accordingly, the Bank Board hereby proposes to amend Part 526 of the Regulations for the Federal Home Bank Board System, Part 545 of the Rules and Regulations for the Federal Savings and Loan System, and Part 563 of the Rules and Regulations for Insurance of Accounts, to read as set forth below.

1. Amend § 526.7(b) to read as follows:

§ 526.7 Penalty for early withdrawal.

* * * * *

(b)(1) Such penalty shall not be applied if withdrawal is made after death of the owner of the account; the "owner" is an individual who at death had full legal and beneficial title to all or part of the account and full power of disposition or alienation with respect thereto, including but not limited to power of revocation with respect to any trust, regardless of whether such owner was a trustee, of which such account comprises all or part of the trust assets; and

(2) Such penalty need not be applied if the account qualified as a retirement

account under subsection 401(d) or 408(a) of the Internal Revenue Code of 1954, and withdrawal is made to distribute the funds in the account following disability or after the participant becomes 59½ years of age.

2. Amend § 545.1–4(f)(4) to read as follows:

§ 545.1–4 Other savings deposits.

* * * * *

(f) *Withdrawal prior to expiration of term.*

* * * * *

(4)(i) A federal association shall not penalize withdrawal of all or any portion of a fixed-term savings deposit prior to expiration of its term if withdrawal is made after death of the owner of the account; the "owner" is an individual who at death had full legal and beneficial title to all or part of the account and full power of disposition or alienation with respect thereto, including but not limited to power of revocation with respect to any trust, regardless of whether such owner was a trustee, of which such account comprises all or part of the trust assets; and

(ii) A Federal association need not penalize withdrawal of all or any portion of a fixed term savings deposit prior to expiration of its term if the account qualifies as a retirement account under subsection 401(d) or 408(a) of the Internal Revenue Code of 1954, and withdrawal is made to distribute the funds in the account following disability or after the participant becomes 59½ years of age.

3. Amend § 545.3–1(c)(6) to read as follows:

§ 545.3–1 Distribution of earnings at variable rates.

* * * * *

(c) *Form of certificate.*

* * * * *

(6)(i) A Federal association shall not penalize withdrawal of all or any portion of a certificate account issued pursuant to subparagraph (b)(3) of this section prior to completion of its time eligibility period if withdrawal is made after death of the owner of the account; the "owner" is an individual who at death had full legal and beneficial title to all or part of the account and full power of disposition or alienation with respect thereto, including but not limited to power of revocation with respect to any trust, regardless of whether such owner was a trustee, of which such account comprises all or part of the trust assets; and

(ii) A Federal association need not penalize withdrawal of all or any portion of a certificate account issued pursuant to subparagraph (b)(3) of this section prior to completion of its time eligibility period if the account qualified as a retirement account under subsection 401(d) or 408(a) of the Internal Revenue Code of 1954, and withdrawal is made to distribute the funds in the account following disability or after the participant becomes 59½ years of age.

* * * * *

4. Amend § 563.9–1(d)(4) to read as follows:

§ 563.9–1 Fixed-rate, fixed-term accounts.

* * * * *

(d) *Withdrawal prior to expiration of term.*

* * * * *

(4)(i) An insured institution shall not penalize withdrawal of all or any portion of a fixed-rate, fixed-term account prior to expiration of its term if withdrawal is made after death of the owner of the account; the "owner" is an individual who at death had full legal and beneficial title to all or part of the account and full power of disposition or alienation with respect thereto, including but not limited to power of revocation with respect to any trust, regardless of whether such owner was a trustee, of which such account comprises all of part of the trust assets; and

(ii) An insured institution need not penalize withdrawal of all or any portion of a fixed-rate, fixed-term account prior to expiration of its term if the account qualifies as a retirement account under subsection 401(d) or 408(a) of the Internal Revenue Code of 1954, and withdrawal is made to distribute the funds in the account following disability or after the participant becomes 59½ yers of age.

5. Amend § 563.3–2(d)(3) to read as follows:

§ 563.3–2 Certificates evidencing other accounts.

* * * * *

(d) *Provisions relating to early withdrawal.*

* * * * *

(3)(i) An insured institution shall not penalize withdrawal of all or any portion of a certificate account prior to completion of its time eligibility period if withdrawal is made after death of the owner of the account; the "owner" is an individual who at death had full legal and beneficial title to all or part of the account and full power of disposition or alienation with respect thereto, including but not limited to power of revocation with respect to any trust, regardless of whether such owner was a trust, of which such account comprises all or part of the trust assets; and

(ii) An insured institution need not penalize withdrawal of all or any portion of a certificate account prior to completion of its time eligibility period if the account qualifies as a retirement account under subsection 401(d) or 408(a) of the Internal Revenue Code of 1954, and withdrawal is made to distribute the funds of the account following disability or after the participant becomes 59½ years of age.

(Sec. 4, 80 Stat. 824 (12 U.S.C. § 1425b); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071; Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. § 1464, Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1947 Supp.; Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended; 12 U.S.C. 1725, 1726, 1730)

By the Federal Home Loan Bank Board.

J. J. Finn,
Secretary.

[FR Doc. 79-18256 Filed 6-11-79; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[Docket No. 9122]

Lone Star Industries, Inc., Et Al.; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, accepted subject to final Commission approval, would require a Greenwich, Conn. manufacturer of Portland cement and masonry cement, and the Keystone Portland Cement Co., an Allentown, Pa. competitor, among other things, to provide the Commission with evidence that their acquisition agreement has been terminated, and all non-public documents exchanged during negotiations returned. The firms would also be required to provide the Commission with 60 days' advance notice and liberal discovery rights, should merger plans be resumed before December 31, 1981.

DATE: Comments must be received on or before August 10, 1979.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:
FTC/C, Alfred F. Dougherty, Jr., Washington, D.C. 20580. (202)523-3601.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6 (f) of the Federal Trade Commission Act. 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's rules of practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's rules of practice (16 CFR 4.9(b)(14)).

Lone Star Industries, Inc.; Keystone Portland Cement Co.,

[Docket No. 9122]

The agreement herein, by and between Lone Star Industries, Inc., a corporation, by its duly authorized officer, and Keystone Portland Cement Co., a corporation, by its duly authorized officer, hereinafter sometimes referred to as respondents, and their attorneys, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's rules governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Lone Star Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at One Greenwich Plaza, in the City of Greenwich, State of Connecticut.

2. Respondent Keystone Portland Cement Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 2200 Hamilton Street, in the City of Allentown, State of Pennsylvania.

3. Respondents have been served with a copy of the complaint issued by the Federal Trade Commission charging them with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. Section 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. Section 45.

4. Respondents admit all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

5. Respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

6. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with related materials pursuant to Rule 3.25(f), will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondents, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

7. This agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the said copy of the complaint issued by the Commission.

8. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's rules, the Commission may without further notice to respondents, (1) issue its decision containing the following order in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondents' address as stated in this agreement shall constitute service. Respondents wave any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

9. Respondents have read the complaint and the order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

It is ordered, That Lone Star Industries, Inc. ("Lone Star") and Keystone Portland Cement Company ("Keystone") shall forthwith provide evidence that the acquisition agreement between them has been and is terminated and further, that any and all non-public documents provided by either Lone Star or Keystone to the other in connection with the acquisition agreement be returned. This paragraph shall not relieve any party from any obligation of confidentiality imposed by agreement between them or by operation of law.

II.

It is further ordered, That until December 31, 1981 neither Lone Star nor Keystone shall acquire, directly or indirectly, all or any part of the assets (except in the ordinary course of business), or securities of the other until sixty (60) days following the receipt by the Director of the Bureau of Competition of the Federal Trade Commission of written notice of the proposed acquisition, which notice shall specifically refer to this order. If during the first thirty (30) days of the aforesaid sixty (60) day period, the Commission staff has issued any discovery request (including requests for the production of documents or witnesses) to either Lone Star or Keystone to which a complete response has not been made on or before the fiftieth (50th) day of the aforesaid sixty (60) day period, then the proposed acquisition shall not be consummated until ten (10) days after a complete response to such discovery request has been made. Neither the aforesaid sixty (60) day period nor the discovery provisions of this paragraph are in derogation of any of the rights conferred upon the Commission by statute or rule, and shall not be construed as supplanting any of these rights.

III.

It is further ordered, That Lone Star and Keystone each shall notify the Commission at least thirty (30) days prior to any proposed corporate change such as dissolution, assignment, or sale

resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change, which may affect compliance obligations arising out of this order.

IV.

It is further ordered, That Lone Star and Keystone each shall, within sixty (60) days after service upon it of this order file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Lone Star Industries, Inc. and Keystone Portland Cement Company.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed orders.

The complaint alleged that the acquisition of Keystone Portland Cement Company by Lone Star Industries, Inc. would violate Section 7 of the Clayton act and Section 5 of the Federal Trade Commission Act. Immediately after the complaint was issued the respondents abandoned their plans to merge and agreed to enter into a consent order with the Federal Trade Commission.

The proposed consent order requires that formal notice be given that the merger has been terminated; it requires the return of all non-public documents which may have been exchanged; and it also ensures, in the event that respondents resume their merger plans before December 31, 1981, that the Commission will be given sixty (60) days' advance notice and afforded liberal discovery rights.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Carol M. Thomas,

Secretary.

[FR Doc. 79-18167 Filed 6-11-79; 8:45 am]

BILLING CODE 6750-01-M

[16 CFR Part 13]

[Docket No. C-2934]

Diners Club, Inc., et al.; Consent Agreement With Analysis To Aid Public Comment

Correction

In FR Doc. 79-16962, appearing at page 31200 in the issue of Thursday, May 31, 1979, make the following changes:

1. On page 31202, third column, last paragraph, in the sixteenth and seventeenth lines, the words "with the terms of which this amended order has been issued." should be deleted and in the twentieth line the word "of" should read "or".

2. On page 31203, first column, the fourteenth line should read, "thereafter been in full and continuous force and".

3. On page 31204, second column, the fifth, sixth, and seventh lines of paragraph "8." should be deleted.

BILLING CODE 1505-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[20 CFR Part 655]

Labor Certification Process for the Temporary Employment of Aliens in Agriculture: Adverse Effect Wage Rate for Colorado; Notice of Proposed Rulemaking

Correction

In FR Doc. 79-17393, appearing at page 32233 in the issue of Tuesday, June 5, 1979, the third line of paragraph "2." in the third column of page 32233 should read, "decision of INS. It is INS policy, however, as".

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Parts 173 and 189]

[Docket No. 78N-0208]

Hydrazine; Proposed Removal from Food Additive Use

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This is a proposal to amend the food additive regulations by deleting provisions for use of hydrazine in the preparation of steam intended to contact food and listing it as a substance prohibited from use in human food.

DATES: Comments by August 13, 1979. Final regulations based on this proposal will issue no later than October 10, 1979, and shall be effective upon publication.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John J. McAuliffe, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St., SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Section 173.310 provides for zero hydrazine in steam when used as a boiler water additive in the preparation of steam that will contact food. This limitation was established by considering the boiling point of hydrazine (100.7° C), its high reactivity with oxygen and organic matter, and its low use level (0.1 ppm in feedwater).

The petitioner for this regulation, Olin Corp., formerly Olin Mathieson Chemical Corp., has recently notified the Food and Drug Administration (FDA) that analytical data, based on improved methodology, indicate that hydrazine is present in steam when the feedwater contains hydrazine in the range of 0.05 to 0.10 ppm. It was recognized, however, that the method used by Olin Corp. to generate the latest information was not specific for hydrazine but rather measured most primary and secondary amine species. Subsequently, analyses of hydrazine treated boiler water and its steam condensate were conducted in FDA laboratories using a method more specific for hydrazine. These analyses have confirmed the presence of hydrazine in hydrazine treated boiler water and in its steam condensate.

The safety of hydrazine has been reviewed by international experts and discussed in a monograph published by the International Agency for Research on Cancer (IARC) in "IARC Monographs on the Evaluation of the Carcinogenic Risk of Chemicals to Man," volume 4, pages 127-136. The IARC evaluation, which is based on several studies, reports that oral administration of hydrazine in mice has caused a high incidence of multiple pulmonary adenomas and adenocarcinomas as well as the development of hepatomas, hepatocarcinomas, and lung tumors. Studies using newborn mice, rats, and hamsters are also discussed. The IARC report concludes that "hydrazine salts have been shown to be carcinogenic in

mice after oral and intraperitoneal administration and in rats following oral administration." A copy of IARC's report has been placed on public display at the office of the Hearing Clerk (address above).

Having evaluated the available data, the agency concludes: (1) the IARC report demonstrates that hydrazine is a carcinogen in test animals; (2) recent analyses demonstrate the presence of hydrazine in hydrazine treated boiler water and in its steam condensate; and (3) there is a reasonable expectation that hydrazine would be present in food as a result of the use of hydrazine as an additive in the preparation of steam that will contact food, and it has not been shown that hydrazine would be absent in food when used as a boiler water additive in the preparation of steam that will contact food. Accordingly, under the provisions of section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act, and the proviso thereto known as the Delaney clause (21 U.S.C. 348(c)(3)(A)), its use as a food additive may no longer be approved, and this document proposes to amend the food additive regulations to delete provisions for use of hydrazine as a boiler water additive and to list hydrazine as a substance prohibited from use in human food. The agency expects to issue the final regulation prohibiting the use of hydrazine as a food additive no later than October 10, 1979, which shall be effective upon publication under section 409(e) of the act (21 U.S.C. 348(e)). Elsewhere in this issue of the Federal Register, the Commissioner is proposing to declare that any human drug containing hydrazine or hydrazine salts is a new drug and deemed to be misbranded within the meaning of sections 201(p) and 502 of the act (21 U.S.C. 321(p) and 352).

The FDA has not received any direct evidence to show that hydrazine is a human carcinogen. Additionally, only small amounts of hydrazine would be expected to be in boiler water from its permitted use and only a very small amount of hydrazine could be expected to migrate into food. Therefore, it appears that the potential risk to the public health is not sufficient to require removal from the market of food containing hydrazine or the issuance of a public warning against the use of these products. Consequently, the agency concludes that the public health would be adequately served by permitting the use of existing stocks of products containing hydrozine that were processed before the effective date of the final regulation but prohibiting any future use of hydrazine as a food additive.

The Commissioner has carefully considered the environmental effects of the proposed regulation and, because the proposed action will not significantly affect the quality of the human environment, has concluded that an environmental impact statement is not required. A copy of the environmental impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371)) and under authority delegated to the Commissioner (21 CFR 5.1), it is proposed that Parts 173 and 189 of Chapter I of Title 21 of the Code of Federal Regulations be amended as follows:

173.310 [Amended]

1. In Part 173, § 173.310 *Boiler water additives* is amended by deleting the item "Hydrazine" from the substances listed in paragraph (d).

2. In part 189, Subpart C, by adding a new section to read as follows:

189.150 Hydrazine.

(a) Hydrazine is the chemical N_2H_4 [Chemical Abstracts Registry Service No. 302–01–2]. It is characterized as a colorless, fuming, corrosive, hygroscopic liquid, and it is not found in natural products at levels detectable by the offical methodology. It has been used as a boiler water additive.

(b) Food containing any added or detectable level of hydrazine is deemed to be adulterated in violation of the act based upon an order published in the Federal Register of August 13, 1979.

Interested persons may, on or before August 13, 1979, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rule making does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food Drug Administration.

Dated: June 5, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-18184 Filed 6-11-79; 8:45 am]

BILLING CODE 4110-03-M

[21 CFR Part 250]

[Docket No. 79-0384]

Hydrazine in Human Drug Products; Declaration of New Drug Status

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule.

SUMMARY: This proposal would amend regulations to ensure that hydrazine or hydrazine salts are not present in human drug products. A monograph published by the International Agency for Research on Cancer indicates that hydrazine poses a risk of cancer in humans.

DATES: Comments by August 13, 1979.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Howard P. Muller, Jr., Bureau of Drugs (HFD–30), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5220.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration (FDA) is proposing to declare that any human drug product containing hydrazine or hydrazine salts (as active or inactive ingredients, or in residual amounts) is a new drug and deemed to be misbranded withing the meaning of sections 201(p) and 502 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(p) and 352).

The safety of hydrazine has been reviewed by international experts and discussed in a monograph published by the International Agency for Research on Cancer (IARC) in "IARC Monographs on the Evaluation of the Carcinogenic Risk of Chemicals to Man," volume 4, pages 127–136. The IARC evaluation, which is based on several studies, concludes that "hydrazine or hydrazine salts have been shown to be carcinogenic in mice after oral and intraperitoneal administration and in rats following oral administration." A

copy of IARC's report has been placed on public display at the office of the Hearing Clerk (address above).

The FDA has reviewed the IARC report and other available data. Although it does not contain direct evidence that hydrazine induces cancer in humans, the IARC report of positive findings of cancer in test animals indicates hydrazine poses a risk of cancer for humans. Experience has indicated that, with one or two possible exceptions, compounds that are carcinogenic in humans are also carcinogenic in one or more experimental animal bioassay systems. In addition, several compounds first detected as a carcinogen in experimental animals have later been found to cause human cancer. The clear demonstration that a compound is carcinogenic in experimental animals must, therefore, be taken as evidence that it has the potential for carcinogenesis in humans unless there is strong evidence to the contrary. The agency believes that the risk to humans of exposure to a substance in human drugs that has been shown to be an animal carcinogen is contrary to the public health unless the benefit of such exposure clearly outweighs the risk.

The FDA is not aware of any currently marketed human drug that contains hydrazine or hydrazine salts as an active or inactive ingredient. Hydrazine is, however, used as a boiler water additive in high-pressure boilers to prevent hydrogen hardening of boiler tubes. Any benefits attributed to the use of hydrazine as a boiler water additive are outweighed by the risk of cancer in humans, and it is in the interest of the public health to ensure that hydrazine is not present in human drug products. The agency is therefore proposing to determine that hydrazine in human drug products may cause such products to be injurious to health and is unwarranted.

Elsewhere in this issue of the Federal Register, the Commissioner is proposing to amend the food additive regulations to delete provisions for use of hydrazine as a boiler water additive in the preparation of steam that will contact food, and to list hydrazine as a substance prohibited from use in human food. The FDA is not aware of the extent to which hydrazine or its salts may be present in human drug products in residual amounts from its use during manufacture or as a byproduct from the synthesis of an ingredient in a human drug product. Also, the FDA is not aware of any drug manufacturers who use high-pressue boilers to generate steam that would contact drug products or drug product contact surfaces. If any drug manufacturers are using hydrazine in a manner that may result in the presence of residual amounts of hydrazine in human drug products, they are urged to comment on such use. Comments should provide the following data and information:

1. The feasibility of developing and implementing viable substitutes for hydrazine;

2. The levels of residual hydrazine found in human drug products and drug product contact surfaces; and

3. The results of efforts to decrease to the least possible level, or to eliminate completely, residual hydrazine by using alternative manufacturing techniques.

The agency will consider the need for further action if evidence is submitted that the risk of a minimum level of hydrazine cannot be avoided and the benefits of a particular drug outweigh the risk.

The FDA is currently reviewing those drug products that contain hydrazine derivatives to determine whether any action should be proposed regarding them.

The Commissioner has determined that this document does not contain an agency action covered by § 25.1(b), and therefore consideration by the agency of the need for preparing an environmental impact statement is not required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 301, 502, 505, 701(a), 52 Stat. 1042–1043, 1050–1055, as amended (21 U.S.C. 331, 352, 355, 371(a)) and under authority delegated to the Commissioner (21 CFR 5.1), it is proposed that Part 250 be amended in Subpart B by adding new § 250.112, to read as follows:

§ 250.112 Hydrazine, use in drug products.

(a) Studies evaluated by the International Agency for Research on Cancer have demonstrated that hydrazine causes cancer in mice after oral and intraperitoneal administration and in rats after oral administration.

(b) Any drug product containing hydrazine or hydrazine salts as active or inactive ingredients, or in residual amounts, is a new drug within the meaning of section 201(p) of the act and is misbranded and subject to regulatory action under sections 301, 502, and 505 of the act.

Interested persons may, on or before August 13, 1979, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: June 5, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-18332 Filed 6-11-79; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[21 CFR Part 1312]

Proposed Limitations on Imports of Narcotic Raw Materials

June 6, 1979.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Advanced Notice of Proposed Rulemaking on Narcotic Importation Policy.

SUMMARY: This advance notice of proposed rulemaking requests public comment on how the United States should implement a United Nations resolution urging importing countries to limit importation of narcotic raw materials to the traditional supply countries.

DATES: Written comments should be received on or before July 12, 1979.

ADDRESS: Send comments to: Administrator, Drug Enforcement Administration, U.S. Department of Justice, 1405 I Street, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Donald E. Miller, Chief Counsel, Drug Enforcement Administration, telephone (202) 633–1276.

SUPPLEMENTARY INFORMATION: Presently, there exists a worldwide surplus of narcotic raw materials. Predictions by the United Nations International Narcotics Control Board

indicate that unless substantial changes are made, by 1982 morphine manufacturing capacity will be approximately 50% in excess of morphine demand. In the face of present as well as projected future oversupply of narcotic raw materials, there is a disturbing trend toward the proliferation of nations that produce narcotic raw materials for export.

During its February 1979 session, the United Nations Commission on Narcotic Drugs (CND), recognized these problems and adopted Resolution 471 as follows:

Title—Maintenance of a world-wide balance between the supply of narcotic drugs and the legitimate demand for those drugs for medical and scientific purposes

The Economic and Social Council:

Recalling the relevant provisions of the Single Convention on Narcotic Drugs, 1961, to limit the cultivation, production, manufacture and use of narcotic drugs to an amount required for medical and scientific purposes,

Noting that in recent years there has been considerable stepping up of morphine producing capacity for export, leading to a situation of substantial overproduction of opiates,

Having considered the report of the International Narcotics Control Board for 1978 on the world requirements and supply of narcotic drugs for medical use,

Noting with serious concern the Board's assessment that unless there is a large and unforeseen increase in demand between 1978 and 1982, morphine manufacturing capacity will be, on average, fifty percent greater than requirements,

Recognizing that it is essential to bring about a proper balance between the global supply and demand,

Taking note of the continued reliance placed by world community on countries constituting the traditional sources of supply for its medical needs of opiate raw materials and the positive response of these countries in meeting the world requirements and their contribution in the maintenance of effective control systems;

Bearing in mind that the treaties which establish this system are based on the concept that the number of producers of narcotic materials for export should be limited in order to facilitate effective control;

1. Calls upon importing countries, insofar as their constitutions and legal authority permit, to support the traditional supply countries and give all practical assistance they can to avoid the proliferation of producing/manufacturing sources for export;

2. Urges the governments of major producing countries which have set up additional capacities in recent years to take effective measures to restrict their production programmes so as to restore a lasting balance between supply and demand and to prevent any diversion to illicit channels;

3. Requests the International Narcotics Control Board to continue its efforts to make realistic projections of supply and demand in opiates and continue its dialogue with the concerned governments to ensure that the provisions of the relevant conventions are strictly adhered to by manufacturing, producing, exporting and importing countries;

4. Requests the Secretary-General to transmit the text of the present resolution to all governments for their consideration and appropriate action.

The CND resolution was confirmed by the United Nations Economic and Social Council on April 19, 1979.

The reasons behind this resolution stem from a trend firmly established by the world producers of narcotic raw materials toward bypassing the opium gum stage and extracting alkaloids directly through the poppy straw process. Only India remains a commercial exporter of opium gum to the morphine manufacturing nations. As a supplement to imports of opium from India, many morphine manufacturing nations have increasingly relied on importation of poppy straw and its extract concentrate of poppy straw (CPS). This is a matter of concern since present international regulatory framework under the *Single Convention on Narcotic Drugs, 1961*, 18 UST 1407 (Single Convention), is based upon strict control over the production of opium poppies to produce opium and on the exportation of opium (Art. 21 bis, Art. 24). However, these stringent controls do not apply to the production of opium poppies to produce CPS and do not limit to specified countries the exportation of poppy straw and CPS. The CND recognized this dilemma and urged importing countries, "to support the traditional supply countries and give all practical assistance they can to avoid the proliferation of producing/manufacturing sources for export; * * *"

The United States is a significant importer of narcotic raw materials. Its manufacturers account for one-third of the world morphine manufacturing capacity most of which is consumed within the United States in the form of codeine. The worldwide over-production of narcotic raw materials and the CND resolution make it necessary for the United States to re-evaluate past and present narcotic policies.

Historically, the United States has relied exclusively upon imports of opium gum to manufacture our narcotic medical supplies instead of cultivating opium poppies in the United States. The rationale behind this 57 year old policy, which foregoes U.S. self-sufficiency was to set an example to the world community to refrain from overproduction and to limit the number of opium-producing nations to a minimum. However, with only India remaining an exporter of opium to morphine manufacturing nations, it is not feasible for the United States to rely solely upon opium to satisfy its increasing demand for narcotic alkaloids.

As a supplement to imports of opium from India, the United States has authorized since 1975 the importation of poppy straw and CPS on an emergency basis. Although the importation of poppy straw has not yet proven to be a viable alternative, the importation of CPS now accounts for about one-half of the morphine manufactured in the United States.

The United States has become an attractive CPS import market for exporting nations, some of which cultivate their own poppies for the production of CPS. This development has significantly altered prior U.S. policy of importing only from traditional sources that produce opium for export, a limitation which has proven to be effective over the years. Through support of the CND resolution which requests importing countries to support traditional supply countries, the United States can contribute substantially to reducing the proliferation of countries that produce narcotic raw materials for export. Therefore, in coordination with the Department of State, and other concerned offices, the Drug Enforcement Administration is considering the following four point policy to implement the CND resolution:

U.S. Importation of Narcotic Raw Materials

1. Authorize imports of *Papaver somniferum* gum opium only from a country that during ten years immediately prior to January 1, 1961, exported opium which it produced, and has instituted and maintained adequate control systems for narcotic raw materials as required under the Single Convention.

2. Authorize imports of *Papaver somniferum* poppy straw only from a country that qualifies as a producer of opium for export in point 1, and has

instituted and maintained adequate control systems for narcotic raw materials as required under the Single Convention.

3. Authorize imports of *Papaver somniferum* concentrate of poppy straw (CPS) only if the CPS is produced from *Papaver somniferum* poppy straw grown in a country qualifying as a producer of opium for export under point 1, and only if that country has instituted and maintained adequate control systems for narcotic raw materials as required under the Single Convention.

4. Authorize exceptions to the above provisions as necessary in order to honor contracts of U.S. companies signed prior to January 1, 1979, or in order to ensure importation of sufficient supplies of narcotic raw materials at reasonable prices.

Until final resolution of United States policy in this matter, the Drug Enforcement Administration will hold in abeyance any application for a permit to import narcotic raw materials from any country that has not supplied commerical quantities of such materials to the United States in the past.

Peter B. Bensinger,

Administrator, Drug Enforcement Administration.

[FR Doc. 79-18139 Filed 6-11-79; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[24 CFR Part 2205]

[Docket No. R-79-676]

General Insurance Requirements

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of Transmittal of Proposed Rule to Congress under Section 7(o) of the Department of HUD Act.

SUMMARY: Recently enacted legislation authorizes Congress to review certain HUD rules for fifteen (15) calendar days of continuous session of Congress prior to each such rule's publication in the Federal Register. This Notice lists and summarizes for public information a rule which the Secretary is submitting to Congress for such review.

FOR FURTHER INFORMATION CONTACT: Burton Bloomberg, Director, Office of Regulations, Office of General Counsel, 451 7th Street, SW., Washington, D.C. 20410, (202) 755-6207.

SUPPLEMENTARY INFORMATION: Concurrently with issuance of this Notice, the Secretary is forwarding to the Chairmen and Ranking Minority Members of both the Senate Banking, Housing and Urban Affairs Committee and the House Banking, Finance and Urban Affairs Committee the rulemaking document described below:

24 CFR Part 2205—Subpart J—General Insurance Requirements

This proposed rule would amend 24 CFR Part 2205 by redesignating existing Subpart F as new Subpart J; clarifying FDAA policy relating to treatment of delinquent insurance policies and requirements for treatment of delinquent insurance policies and requirements for flood insurance on buildings located outside of the base floodplain; adding provisions to permit the Regional Director to make determinations as to insurance requirements under certain conditions; and basing insurance requirements on eligible restorative work rather than on full insurable value.

(Sec. 7(o), Department of HUD Act (42 U.S.C. 3535(o)), sec. 328 of the Housing and Community Development Amendments of 1978).

Issued at Washington, D.C., June 5, 1979.

Jay Janis,

Acting Secretary, Department of Housing and Urban Development.

[FR Doc. 79-18138 Filed 6-11-79; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF LABOR

[29 CFR Part 92]

Redwood Employee Protection Program

AGENCY: Department of Labor.

ACTION: Proposed Regulations.

SUMMARY: The Department of Labor, through the Labor-Management Services Administration (LMSA), is proposing regulations to implement the Redwood Employee Protection Program established by Title II of the Redwood National Park Expansion Act of 1978 (Pub. L. 95-250). Under the proposed regulations, LMSA has responsibility for all provisions concerning affected employee benefits, including benefit amounts, determining eligibility for benefits, extent of relocation, reemployment and training assistance and job preference for certain employment. The citations included refer the reader to the appropriate statutory provision.

DATE: Written comments on these regulations must be received by the Department on or before August 16, 1979.

ADDRESS: All written comments (six copies) should be submitted to: Redwood Employee Protection Program, Division of Employee Protections, Room N-5646, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. Paul F. Pothin of the department at (202) 523-6495. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On October 2, 1968, Congress established a 58,000 acre Redwood National Park in the State of California. Over the ensuing decade a considerable controversy developed over whether the Park's size was adequate to assure that certain key areas of the Park were protected from possible damage by upstream timbering. This debate was resolved on March 27, 1978, with the passage of Pub. L. 95-250, which provided for an addition of 48,000 acres to the Park. Under Title I of the Act, employees whose jobs were lost as a result of this Park expansion were designated to receive preference in hiring for both Federal civilian jobs and jobs with certain private employers. In addition, under Title II of the Act, these employees were provided with a program of income and benefit maintenance, and with retraining, job search, and job relocation allowances.

The Department of Labor proposes these regulations to describe (1) the eligibility requirements an individual must meet in order to qualify for benefits; (2) the level of benefits; (3) the procedures an individual must follow to claim benefits; (4) the rights of an individual to appeal a decision on an application for benefits; and (5) certain other basic information concerning individual responsibilities and program requirements.

Accordingly, it is proposed to add a new Part 92, as set forth below. (Secretary of Labor Order No. 6-78, May 15, 1978.)

Signed at Washington, D.C., this 6th day of June 1979.

R. C. DeMarco,

Acting Assistant Secretary for Labor-Management Relations.

PART 92—REDWOOD EMPLOYEE PROTECTION PROGRAM

Subpart A—General

Sec.

92.1 Purpose and scope.
92.2 Terms relating to administration.
92.3 Terms relating to employees.

Special Classes of Employees

Sec.
92.4 Short-service employee.
92.5 Seasonal employee.
92.6 Retired employee.
92.7 Contract employee.
92.8 Terms relating to employers.
92.9 Terms relating to employment.

Subpart B—Application for Benefits

92.10 Who may apply.
92.11 When to apply.
92.12 How to apply.
92.13 Certified lists of employers.
92.14 Processing applications.

Subpart C—Types of Benefits

92.20 General.
92.21 Weekly layoff benefits.
92.22 Vacation replacement benefits.
92.23 Health and Welfare benefits; pension rights and credits.
92.24 Severance payment.
92.25 Retraining.
92.26 Job search allowance.
92.27 Job relocation allowance.

Subpart D—Amounts and Calculations of Benefits

92.30 Weekly layoff/vacation replacement benefit, and/or severance payment.
92.31 Job search allowance.
92.32 Job relocation allowance.
92.33 Overpayment—general.
92.34 Recovery of overpayment.
92.35 Final decision.

Subpart E—Preferential Hiring

92.40 Full consideration obligation.
92.41 Employee full consideration obligation.
92.42 EDD full consideration responsibility.
92.43 Violations of full consideration obligations.
92.44 Judicial review.
92.45 Preexisting rights.
92.46 Period of preferential hiring.

Subpart F—Appeal Procedure

92.50 Administration.

Authority Sections 202 and 213(c)(2), PL 95–250, dated March 27, 1978.

Subpart A—General

§ 92.1 Purpose and scope.

(a) *Implementation.* The regulations contained in this chapter are designed to implement Section 103(d) through (i) of Title I, and Title II of the Redwood National Park Act of 1968, as amended by Pub. L. 95–250 enacted March 27, 1978.

(b) *Application for benefits.* These regulations pertain to applications by individuals for Redwood Employee Protection Program (REPP) benefits such as: weekly layoff benefits, severance payments, vacation replacement benefits, retraining, job search allowances, and job relocation allowances. Applications for such benefits will be administered by the California Employment Development Department (EDD) with the assistance and cooperation of other State employment security agencies (SESAs). Applications by individuals for continuing entitlement to health and welfare benefits and accrual of pension rights and credits will be administered by the Labor-Management Services Administration (LMSA) of the United States Department of Labor.

Special Considerations

(c) *Conclusive presumption.* The total or partial layoff of a covered employee employed by an affected employer during the period beginning May 31, 1977 and ending September 30, 1980, is conclusively presumed to be attributable to the expansion of the Redwood National Park (Section 203, Pub. L. 95–250, 92 Stat. 175). No such presumption exists, however, if such employee has been laid off or terminated for a cause that would disqualify him/her for unemployment compensation with certain limited exceptions. The exceptions are listed in § 92.20(b)(5) (i) through (viii) herein.

(d) *Interpretation of Title II.* In implementing and interpreting Title II of the Act, the Secretary shall avoid inequities adverse to employees. In all cases where two or more interpretations of Title II of the Act would be reasonable, the Secretary shall adopt and apply that interpretation which is most favorable to employees (Section 213(f), Pub. L. 95–250, 92 Stat. 182).

§ 92.2 Terms relating to administration.

"Act" means the Redwood National Park Act of 1968 as amended by Pub. L. 95–250.

"ALJ" means an Administrative Law Judge of the California Unemployment Insurance Appeals Board.

"Applicant" means an individual who has made an application for REPP benefits under the Act.

"Assistant Secretary" means the Assistant Secretary of Labor for Labor-Management Relations, unless otherwise indicated.

"Benefits" means weekly layoff benefits, severance payments, vacation replacement payments for seasonal employees, retraining, job search allowances, job relocation allowances, and continuing entitlement to health and welfare benefits and accrual of pension rights and credits.

"CUIAB" means the California Unemployment Insurance Appeals Board.

"Days" means calendar days.

"EDD" means the California Employment Development Department.

"ETA" means the Employment and Training Administration of the U.S. Department of Labor.

"LMSA" means the Labor-Management Services Administration of the U.S. Department of Labor.

"REPP" means the Redwood Employee Protection Program.

"Referee" means an administrative law judge or any other designee who is empowered to act as the first level appellate authority for the EDD.

"SESA" means a State employment security agency.

"Secretary" means the Secretary of Labor.

"Severance payment" means a lump sum payment in lieu of other benefits to an affected employee or a retired employee (Section 206, Pub. L. 95–250, 92 Stat. 179).

"Vacation replacement benefit" means a payment to a seasonal employee which is equivalent to the payment the seasonal employee would have received for vacation pay had the individual remained employed in his/her seasonal occupation (Section 207(c)(3), Pub. L. 95–250, 92 Stat. 178).

"Weekly layoff benefit" means a weekly payment to an affected employee (other than a short-service employee) which is an amount equivalent to the level of weekly earnings he/she would be receiving if still working for his/her last affected employer (Section 207(a), Pub. L. 95–250, 92 Stat. 178).

§ 92.3 Terms relating to employees.

(a) *Employee.* "Employee" means any person employed by an affected employer with the exception of those persons who are engaged in managerial functions or functions directly auxiliary to management as described in Section 13(a)(1) of the Fair Labor Standards Act (Section 201(3), Pub. L. 95–250, 92 Stat. 172).

(b) *Covered employee* means an employee who:

(1) Had seniority under a collective bargaining agreement with an affected employer as of May 31, 1977, has at least twelve months of creditable service as of March 27, 1978, and has performed work (as defined in Section 201(17) of the Act) for one or more affected employers on or after January 1, 1977, or

(2) Has performed work for one or more affected employers for at least 1,000 hours from January 1, 1977 through March 27, 1978 and had a continuing employment relationship with an affected employer as of March 27, 1978, or if laid off on or after May 31, 1977 but before March 27, 1978 had such a relationship as of the date of layoff

(Section 201(10), Pub. L. 95–250, 92 Stat. 173).

(c) *Affected employee* means a covered employee who: (1) has been either totally or partially laid off by an affected employer within a time period beginning on or after May 31, 1977 and ending September 30, 1980, unless extended by the Secretary; or (2) has been specifically designated by a the Secretary; or (2) has been specifically designated by the Secretary as an individual adversely affected by the expansion of the Redwood National Park (Section 201(11), Pub. L. 95–250, 92 Stat. 173).

Special Classes of Employees

§ 92.4 Short-service employee.

(a) *Definition.* "Short-service employee" means an affected employee who:

(1) Will not reach age sixty before October 1, 1984; and

(2) As of the date of becoming an affected employee, has less than five full years of service credit under a pension plan contributed to by industry employers or has less than five full years of creditable service (Section 209, Pub. L. 95–250, 92 Stat. 180).

(b) *Weekly layoff and vacation replacement benefit.* A short-service employee shall not be eligible to receive weekly layoff or vacation replacement benefits.

(c) *Severance payment.* A short-service employee shall be eligible to receive a severance payment provided he/she meets the eligiblity requirements set forth in § 92.23 (b) or (c).

(d) *Retraining, job search and relocation allowances.* A short-service employee shall be eligible for retraining, job search allowances, and job relocation allowance, beginning on the date of his/her total layoff and extending through a period equal to the length of his/her creditable service. While in good faith engaged in training a short-service employee shall be paid the same stipends and allowances as are applicable to other individuals engaged in such training programs who are not covered by this Act.

(e) *Health and Welfare and pension benefits.* A short-service employee shall not have continuing entitlement to health and welfare benefits or accrual of pension rights and credits.

§ 92.5 Seasonal employee.

(a) *Definition.* "Seasonal employee" means an affected employee (including a short-service employee) whose highest paid job held, other than by temporary assignment, with one or more affected employers during the period from January 1, 1977 through March 27, 1978, ws in an occupation in which the average annual number of weeks during which work was actually performed by all covered employees employed in such occupation during the five calendar years preceding March 27, 1978 was forty or less weeks (Section 207(c), Pub. L. 95–250, 92 Stat. 178).

A seasonal employee (other than a short-service employee) shall be eligible to receive weekly layoff and vacation replacement benefits during his/her usual season. A seasonal employee may elect to receive a severance payment in lieu of weekly layoff and vacation replacement benefits. In addition, he/she shall be eligible for retraining, job search allowances, and a job relocation allowance, during his/her period of protection, and for continuing entitlement to health and welfare benefits and to accrual of pension rights and credits.

§ 92.6 Retired employee.

(a) *Definition.* "Retired employee" means an employee who retired from employment with an affected employer, for reasons other than disability, on or after May 31, 1977 but not later than September 30, 1984 (Section 204(b)(1), Pub. L. 95–250, 92 Stat. 176). In order to be eligible for REPP benefits such employee must:

(1) be receiving pension benefits under a plan financed by an industry employer; and

(2) be at least 62 but less than 65 at the time of retirement; and

(3) not be eligible for benefits under Title XVIII of the Social Security Act (Medicare).

(b) *Weekly layoff and vacation replacement benefits.* A retired employee shall not be eligible to receive a weekly layoff or vacation benefit.

(c) *Severance payment.* An employee retiring early (between age 62 and age 65) who meets the other criteria set forth in § 92.6(a) shall be eligible to receive a severance payment upon presentation of evidence that he/she is retired on a plan financed by an industry employer (Section 204(b)(1)(2)(3), Pub. L. 95–250, 92 Stat. 176).

(d) *Retraining, job search and relocation allowances.* A retired employee shall not be eligible for retraining, job search allowances, and a job relocation allowance.

(e) Health and welfare benefits. A retired employee shall have continuing entitlement to health and welfare benefits (other than group life insurance and additional death, dismemberment and loss of sight benefits) if the employee lost entitlement to such benefits upon retirement.

§ 92.7 Contract employee.

(a) *Definition.* "contract employee" means an employee performing work pursuant to a contract or agreement for services within or directly related to the expansion area between an affected contract employer and an affected woods employer (Section 201(4), Pub. L. 95–250, 92 Stat. 172).

(b) *Limited number.* The number of contract employees who may be eligible for REPP benefits is limited. The determination by LMSA as to how many contract employees may become eligible for REPP benefits is calculated as follows: First determine what percent of the affected contract employer's employee hours were worked within or directly related to the expansion area in 1977. Then apply (multiply) that percent times the total of all employees on the contract employer's 1977 payroll. The product of this calculation becomes the number of that contract employer's employees who may receive REPP benefits. In order to assure benefits will be allocated to employees based upon priority of submission of claim, the date and time of application shall be recorded when such employees make application. For example, 40% of an employer's employee hours in 1977 were worked in expansion area. The employer had 175 total contract employees on the company's payroll in 1977. 175 multiplied by .40 equals 70; 70 employees would thereby be eligible for benefits.

§ 92.8 Terms relating to employers.

(a) *Industry employer.* "Industry employer" means a corporation, partnership, joint venture, person, or other form of business entity (including a predecessor or successor by purchase, merger, or other form of acquisition), of which a working portion or division is an affected employer (Section 201(5), Pub. L. 95–250, 92 Stat. 172).

(b) *Affected employer.* "Affected employer" means a corporation, partnership, joint venture, person, or other form of business entity (including a predecessor or a successor by purchase, merger, or other form of acquisition), or a working portion or division thereof, which is engaged in the harvest of timber or in related sawmill, plywood, or other wood processing operations, and which meets the qualifications set forth in the definition of affected woods employer, affected mill employer, or affected contract employer. For purposes of this Act, the Assistant Secretary shall detemine an

employer's status and shall provide a list of employers who qualify as affected employers (Section 201(6), Pub. L. 95–250, 92 Stat. 172).

(c) *Affected woods employer.* "Affected woods employer" means an affected employer engaged in the harvest of redwood timber who owns at least 3 per cantum of the number of acres authorized to be included within the expansion area on January 1, 1977 and on March 27, 1978; provided, that an affected woods employer shall be only that major portion or divison of the industry employer directly responsible for such harvesting operations (Section 201(7), Pub. L. 95–250, 92 Stat. 172).

(d) *Affected mill employer.* "Affected mill employer" means an affected employer engaged in sawmill, plywood, or other wood processing operations in Humboldt or Del Norte Counties in the State of California who has either (1) obtained 15 per centum or more of its raw wood materials directly from affected woods employers during calendar year 1977, or (2) is a wholly owned mill of an affected woods employer; provided, that an affected mill employer shall be only that major portion or division of the industry employer directly responsible for such wood processing operations (Section 201(8), Pub. L. 95–250, 92 Stat. 173).

(e) *Affected contract employer.* "Affected contract employer" means an affected employer providing services pursuant to contract with an affected woods employer, if at least 15 per centum of said employer's employee-hours worked during calendar year 1977 were within or directly related to the expansion area pursuant to such contract or contracts (Section 201(9), Pub. L. 95–250, 92 Stat. 173).

(f) *Last affected employer.* "Last affected employer" means the affected employer by whom an affected employee was first laid off (totally or partially), terminated, or downgraded on or after May 31, 1977 but not later than September 30, 1980 (Section 206(b)(1), Pub. L. 95–250, 92 Stat. 179).

(g) *Performed work.* "Performed work" shall include any time during which an employee worked for an affected employer or with respect to which an employee received pay from such an employer for time not worked, and shall also include any time during which an employee would have been at work for such an employer if not for service in the armed forces, for a leave (approved by the employer) for work with an employee organization, or for a disability for which said employee received workers' compensation, disability compensation benefits provided under California law, or social security disability pension benefits: *Provided,* That contract employees shall be deemed to have performed work during the period of such service or disability only if—

(i) the employee worked within or directly related to the expansion area immediately prior to the occurrence of such service or disability and

(ii) the employee returned or sought to return to work for an affected contract employer immediately after the end of the service or disability if that was prior to the date of enactment.

The term "work performed", when used in relation to a period of time, shall also be deemed to include any period during which an employee is deemed to have performed work (Section 201(17), Pub. L. 95–250, 92 Stat. 174).

§ 92.9 Terms relating to employment.

(a) *Commuting area.* "Commuting area" means an area, for purposes of suitable work, within the commuting distance of an individual's place of residence. It is determined in accordance with policy established under California State law. However, for the purposes of a job relocation allowance, commuting area shall mean a work location which is within 30 or less normal highway miles of an affected employee's place of residence.

(b) *Continuing employment relationship.* "Continuing employment relationship" means that an employee has worked for an affected employer on a regular basis. Authorized absences are not considered a break in a continuing employment relationship. Summer or vacation relief employees or other temporary employee replacements are not considered to have a continuing employment relationship.

(c) *Continuous service.* "Continuous service" with respect to employees not having seniority under a collective-bargaining agreement with an affected employer or an industry employer shall mean a period of time measured in months equal to the sum of all hours during which the employee performed work for said employer plus all hours for which the employee received pay for time not worked divided by one hundred and seventy-three (Section 201(16), Pub. L. 95–250, 92 Stat. 174).

For example, an employee worked 1,367 hours in 1976, 1,824 hours in 1977, and 2,172 hours in 1978. The employee is then laid off. Add: 1,367 + 1,824 + 2,172 for a sum of 5,363; divide this sum (5,363) by 173; the result is then 31 months of continuous service.

(d) *Creditable service.* "Creditable service" means an affected employee's total length of service working for affected or industry employers. Creditable service when used to determine an employee's period of protection shall be computed as follows:

(1) A period equal to the length of an employee's seniority (or continuous service), with the employee's last affected employer at the time said employee is eligible to receive a weekly layoff benefit or vacation replacement benefit; plus

(2) a period equal to the sum of all prior periods during which the employee had seniority (or continuous service) with the same affected employer and with other industry employers. However, if such seniority (or continuous service) was broken for more than three consecutive years, and periods of seniority (or continuous service) prior to the break shall be disregarded and shall not be counted as creditable service. Creditable service shall not be considered as broken if the cause for the break in service was one of the following:

(i) Employment with other affected employers or industry employers; or

(ii) Service in the Armed Forces; or

(iii) Disabilities for which the employee received any workers' compensation benefits; unemployment compensation disability benefits; or disability benefits under the Social Security Act.

Creditable service shall include only those periods of employment with his/her last affected employer and other industry employers (Section 200, Pub. L. 95–250, 92 Stat. 177). If necessary EDD will request the appropriate authorization to examine an applicant's social security wage record in order to establish an applicant's creditable service.

(e) *In the industry.* "In the industry" means employment with affected employers or, in general, with any employer whose Standard Industrial Classification (SIC) number is in the four digit Group No. 2411 (Logging Camps and Logging Contractors), 2421 (Sawmills and Planning Mills, General), 2435 and 2436 (Hardwood and Softwood, Veneer and Plywood), 2492 (Particle Board) or 2611 (Pulp Mills), or with an employer engaged in related types of activities that are "sawmill", "plywood", or other "wood processing operations" within the meaning of Title II.

(f) *Partial layoff.* "Partial layoff" or downgrading means a calendar week for which all pay received by a covered employee from affected employers is at least 10 per centum less than the weekly layoff benefit or vacation replacement

benefit that would have been payable for that week had the employee suffered a total layoff (Section 201(12), Pub. L. 95–250, 92 Stat. 173).

(g) *Period of protection.* "Period of protection" means a period of time equal to the length of an affected employee's creditable service during which period an affected employee is entitled to weekly layoff benefits or vacation replacement benefits and to continuation of health and welfare benefits and accrual of pension rights and credits. An employee's period of protection shall start with the beginning of the first week for which the employee is eligible to receive a weekly layoff benefit or vacation replacement benefit and shall continue until the earliest of:

(1) The date the employee accepts a severance payment;

(2) A period equal to the length of the employee's creditable service is exhausted; or

(3) The employee's sixty-fifth birthday.

In no event shall an employee's period of protection extend beyond September 30, 1984, except for an employee who reaches age 60 on or before September 30, 1984, in which case the employee's period of protection shall be extended until his/her 65th birthday (Section 206(a), Pub. L. 95–250, 92 Stat. 177).

(h) *Seniority.* "Seniority" with respect to an employee covered by a collective-bargaining agreement with an affected employer, shall be determined as provided in such agreement and shall be deemed to refer to company seniority, if the agreement provides for such seniority and, otherwise, to plant seniority (Section 201(15), Pub. L. 95–250, 92 Stat. 174).

(i) *Sixty-fifth birthday.* "Sixty-fifth birthday" means the last day of the month in which the sixty-fifth birthday occurs (Section 202, Pub. L. 95–250, 92 Stat. 175).

(j) *State job service.* "State job service" means that agency of the state government which performs the employment service functions.

(k) *Suitable work.* "Suitable work" means:

(1) Work defined as suitable in the California Unemployment Insurance Code; and

(2) With respect to an employee who has completed retraining paid for by the Secretary, a job paying no less than the prevailing wage rate in the area for the occupation for which said employee was retrained; or

(3) A job comparable with that which said employee would be required to accept pursuant to the seniority provisions of the applicable collective-bargaining agreement (or, if not covered by such an agreement, in accordance with the usual practice of the affected employer) (Section 201 (14), Pub. L. 95–250, 92 Stat. 173).

(l) *Total layoff.* "Total layoff" means a calendar week during which an affected employer has made no work available to a covered employee and has made no payment to a covered employee for the time not worked (Section 201(12), Pub. L. 95–250, 92 Stat. 173).

(m) *Usual season.* "Usual season" means those weeks commencing in each calendar year during which a seasonal employee is usually employed by an affected employer.

In the event of ambiguity of definition or meaning the express terms of the statute shall prevail.

Subpart B—Application for Benefits

§ 92.10 Who may apply.

(a) *Application.* An application for REPP benefits may be filed by a covered employee or a retired employee.

§ 92.10 When to apply.

(a) *Filing after layoff.* An initial application for REPP benefits by a covered employee may be filed with respect to a total or partial layoff by an affected employer which occurred on or after May 31, 1977 but not later than September 30, 1980, unless this date is extended by the Secretary.

(b) *Filing after retirement.* An initial application for REPP benefits by a retired employee may be filed with respect to the employee's retirement from employment with an affected employer on or after May 31, 1977, but not later than September 30, 1984.

§ 92.12 How to apply.

(a) *Application for unemployment compensation.* An application for unemployment compensation filed by a covered employee with the Employment Development Department or State Employment Security Agency (SESA) on or after April 3, 1978 shall be deemed an application for REPP benefits (Section 205(a), Pub. L. 95–250, 92 Stat. 176).

(b) *Eureka, Crescent City, and Redding field offices.* An initial application for REPP benefits may be filed directly in either the Eureka, Crescent City, or Redding, California field offices of the EDD.

(c) *Other EDD field offices.* An initial application for REPP benefits may also be filed at any other field office of the EDD.

(d) *SESA.* Persons residing outside of California may file an initial application for REPP benefits at their nearest local office of the SESA under special interstate procedures.

§ 92.13 Certified lists of employers.

(a) *Names of employers.* The Assistant Secretary shall publish and make available to the EDD Central Office and SESA offices certified lists containing the names of:

(1) industry employers;

(2) affected employers;

(3) affected contract employers (including the maximum number of contract employees who can become eligible for REPP benefits); and

(4) those local employers who have been determined not to qualify as affected employers.

(b) *Updating.* These lists were established originally based upon early survey information. Since all of the eligible affected employers may not have been identified, these lists are subject to challenge at any time to review the eligibility of any given employer.

§ 92.14 Processing applications.

EDD determinations. The EDD shall process all applications to determine whether an applicant is entitled to REPP benefits and the types and amounts of such benefits pursuant to policies, criteria, and standards set forth in these regulations.

Subpart C—Types of Benefits

§ 92.20 General.

This section discusses the types of benefits available under REPP. The amount of such benefits is discussed in Subpart D.

§ 92.21 Weekly layoff benefits.

(a) *EDD determination of entitlement.* The EDD shall determine the applicant's entitlement to weekly layoff benefits based upon the applicant's statement and other pertinent records.

(b) *Applicant eligibility.* To be eligible with respect to any week an applicant must:

(1) Have been determined to be an affected employee other than a short-service employee;

(2) Not be a retired employee;

(3) Not be receiving a Social Security retirement or disability benefit or a pension under a plan contributed to by an affected employer;

(4) Be registered with the State Job Service of the EDD or other SESA (unless the applicant is fully employed);

(5) Not have accepted a severance payment;

(6) Not have exhausted his/her period of protection; and

(7) Be eligible for unemployment compensation benefits under the California Unemployment Insurance Code; provided, however, he/she shall be eligible for weekly layoff benefits if the sole reason for ineligibility under the code is one or more of the following:

(i) Insufficient base period earnings; or

(ii) Exhaustion of benefit rights; or

(iii) Earnings in excess of the amount which would entitle the employee to a partial benefit for the week; or

(iv) The waiting week requirement; or

(v) Unavailability for work because of jury duty, National Guard duty, authorized retraining, or because of similar reason as determined by the Secretary pursuant to Section 201(14) of the Act; or

(vi) Refusal of work which is not "suitable work"; or

(vii) Receipt of workers' compensation or other benefit for partial disability which the employee would be entitled to receive while working; or

(viii) Any other cause of ineligibility with respect to which the Secretary determines that, under the circumstances, it would be unreasonable or otherwise contrary to the purpose of this Act to deny said employee a benefit provided for in the Act.

§ 92.22 Vacation replacement benefits.

(a) *EDD determination of entitlement.* The EDD shall determine the applicant's entitlement to vacation replacement benefits based upon the applicant's statement and other pertinent records.

(b) *Applicant eligibility.* Only seasonal employees will be eligible for a vacation replacement benefit. To be eligible the employee must meet the same eligibility criteria required for weekly layoff benefits.

§ 92.23 Health and welfare benefits; pension rights and credits.

(a) *Continuing entitlement.* Affected employees, other than short-service employees, have continuing entitlement to health and welfare benefits and accrual of pension rights and credits. The Assistant Secretary shall seek to enter into agreements with affected employees, affected employers, plan trustees, labor organizations, and/or others to maintain these benefits and rights.

(b) *Methods of continuation.* Continuation of coverage may be provided by:

(1) An employee's existing plan with his/her last affected employer; or

(2) An arrangement between the Assistant Secretary and others to provide equivalent coverage to the maximum extent feasible.

(c) *Selection of method.* The Assistant Secretary shall have the sole authority to select the appropriate method for benefit plan continuation.

(d) *Exemption from ERISA liability.* No person shall be subject to liability under the Employee Retirement Income Security Act of 1974, Section 302 of the Labor-Management Relations Act of 1947, or any other law, solely by reason of the receipt of payments from the Secretary or the payment of benefits to affected employees in accordance with this Section. Receipt of such payments and the payment of such benefits are deemed to be consistent with any relevant plan documents. None of these actions shall place the Secretary in the position of an employer or a party in interest (including a fiduciary) for purposes of the Employees' Retirement Income Security Act of 1974 (Section 204(d), Pub. L. 95–250, 92 Stat. 176).

(e) *Level of coverage.* If the last affected employer's health and welfare or pension benefit levels change during an employee's period of protection, the employee's benefits shall be changed so as to provide a level of benefit comparable to that which he/she would otherwise have received except for his/her current status as an affected employee.

(f) *Responsibility of affected and retired employees.* Affected and retired employees must retain medical records in order to substantiate claims for reimbursement.

(g) *Retired employee's entitlement.* A retired employee's continuing entitlement is contained in § 92.6(e).

§ 92.24 Severance payment.

(a) *EDD determination of entitlement.* The EDD shall determine the applicant's entitlement to a severance payment based upon the applicant's statement and other pertinent records.

(b) *Applicant eligibility.* To be eligible an applicant must meet the basic eligibility requirements of an affected employee or retired employee and must:

(1) (i) Have been on continuous layoff from employment with the employee's last affected employer for a period of at least 20 weeks subsequent to December 31, 1977; provided, that for a short-service seasonal employee the period of continuous layoff will not be considered broken by the employee's off season although off season weeks will not count toward the 20 weeks of layoff; and

(ii) Have no definite recall date for work with the affected employer by whom the employee was laid off and no offer of suitable work by any affected employer; and

(iii) Apply for severance payment during a week with respect to which the employee has not performed work for an affected employer; *or*

(2) If not (b)(1) (i) (ii) and (iii) of this section, then, have been permanently separated from employment with an affected employer during the period beginning May 31, 1977 and ending March 27, 1978, as a result of the closure of the mill or plant in which said employee was employed and, since said separation, have not been employed by an affected employer (Section 208(a) (1) (2) (3) (4), Pub. L. 95–250, 92 Stat. 179).

(c) *Disabled employee's eligibility.* An employee shall not be denied a severance payment for failure to comply with the requirements of paragraph (b)(1)(iii) of this section if the employee is otherwise eligible but is totally and permanently disabled as defined in the Social Security Act (Section 208(a)(3), Pub. L. 95–250, 92 Stat. 179).

(d) *Repayment agreement requirement.* An affected employee (other than a short-service employee) or a retired employee must, as a condition of receiving a severance payment, sign a repayment agreement pledging to return a severance payment if said affected employee or retired employee resumes employment with an affected employer or resumes employment in the industry within Humboldt, Del Norte, Trinity, Mendicino, or Siskiyou Counties in California prior to October 1, 1980, or such later date as established by the Secretary (Section 208(e), Pub. L. 95–250, 92 Stat. 180).

(e) *Repayment agreement liability.* An affected employee or a retired employee who signs a repayment agreement shall be liable for repayment of a severance payment if the individual returns to work in the industry prior to September 30, 1980 (or such later date as the Secretary determines but in no case later than September 30, 1984). All earnings received by an individual who has returned to the industry prior to September 30, 1980 (or as extended) shall be subject to a repayment deduction.

(f) *Arrangements for repayment.* The repayment agreement shall include the employee's agreement to arrange with his/her employer for the withholding of the applicable amounts from the employee's pay and/or shall further include authorization for the Secretary to make such arrangements with the employer.

(g) *Repayment amounts.* Repayment amounts shall be in weekly installments equal to a specified percentage of the

employee's earnings in the industry which shall not exceed the amounts specified in the Consumer Credit Protection Act, as amended. Repayment shall continue until the full amount of overpayment is recovered.

§ 92.25 Retraining (Section 210, Public Law 95-250, 92 Stat. 181).

(a) *EDD approval.* The EDD shall approve technical and professional and other types of training for an affected employee (including a short-service employee) until September 30, 1984, provided:

(1) There is no suitable work available within a reasonable commuting area. For the purpose of this section, suitable work shall include any full consideration job vacancy (see Section 92.42(b)) which EDD determines the applicant can be trained for; and

(2) There is substantial reason to believe that successful completion of training will enhance the affected employee's employment prospects; and

(3) The affected employee makes application and can complete the training during the employee's period of protection. However, a short-service employee must make application during the period which begins on the date of his/her total layoff and extends for that period of time which is equal to the length of his/her creditable service. In no instance shall authorized training for any employee extend beyond September 30, 1984.

(b) *Training criteria.* The EDD shall determine the applicant's ability to successfully complete such training, the appropriateness of the length of training, the hours of attendance, and whether the training facility and the trainee are engaged in training in good faith. Training costs as well as the weekly layoff benefits or vacation replacement benefits which the trainee would otherwise be eligible to receive, will be paid for the duration of approved training as long as the EDD determines good faith is being observed. If good faith is not observed, the EDD shall take appropriate corrective action. The criteria for determining good faith are adherence to scheduled hours of attendance and satisfactory progress as normally measured for the type of training being received. The criteria to be used in determining suitable length and hours of training are:

(1) The training is of suitable duration to achieve the desired skill or knowledge level; and

(2) The scheduled hours of attendance are in accordance with the prevailing practices of other like training available in the commuting area.

(c) *No cost training and purchased training.* In determining whether training to be secured for an affected employee shall be no cost training or purchased training, the EDD shall consider, as the primary objective, increasing the affected employee's employability so as to enhance the opportunities for the affected employee to return to full employment.

(1) The EDD shall, as far as possible, refer an affected employee to retraining which is provided at no cost. This training may be provided under the Comprehensive Employment and Training Act of 1973, as amended, as offered by a prime sponsor or under any other Federal or State law.

(2) The EDD may purchase training to assist the affected employee's return to full employment. This training may be institutional training or on-the-job training. If institutional, vocational, or professional training is purchased, the training institution must be approved as meeting applicable standards by the appropriate State educational agency, or by a recognized accreditation association.

§ 92.26 Job search allowance (Section 211, Public Law 95-250, 92 Stat. 181).

(a) *EDD approval.* The EDD shall approve a job search allowance for an eligible affected employee (including a short-service employee) to assist the employee to obtain a job within the United States. To be eligible, an affected employee must:

(1) Be totally laid off from employment with an affected employer;

(2) File an application for a job search allowance during the employee's period of protection, or, for a short-service employee, an application must be filed during the period which begins on the date of his/her total layoff and extends for that period of time which is equal to the length of his/her creditable service, but in no case less than one year.

(3) Be registered with the State Job Service in the area in which the affected employee is residing;

(4) Have no reasonable expectation of obtaining suitable work in the commuting area;

(5) Have received a good faith referral to suitable work or have been referred by a State Job Service to suitable work outside the commuting area or have a reasonable expectation of obtaining suitable work of a long term duration in the area where the job search will be conducted; and

(6) Complete the job search within a reasonable period not exceeding 30 calendar days, after the day on which the job search began.

(b) *Job search completion.* A job search shall be deemed complete when the individual has either secured employment or has contacted each employer to whom referred by the State Job Service in connection with a job search.

(c) *Verification of employer contacts.* The Job Service in the State in which the affected employee resides shall verify employer contacts certified by the affected employee.

(d) *Entitlement to reimbursement.* An affected employee who has incurred expenses as a result of any job search undertaken from the period beginning May 31, 1977 and ending June 30, 1979 shall be entitled to reimbursement of authorized expenses, provided the employee furnishes adequate evidence to support his/her claims for expenses and provided further, that the employee furnishes adequate evidence to the EDD that the job search was undertaken as required by paragraphs (a)(4) and (a)(5) of this section and has completed the job search as required by paragraph (a)(6) of this section.

§ 92.27 Job relocation allowance (Section 212, Public Law 95-250, 92 Stat. 181).

(a) *EDD approval.* The EDD shall approve a job relocation allowance for an eligible affected employee (including a short-service employee) who obtains employment outside the commuting area, to meet the reasonable and necessary travel expenses incurred in obtaining a residence and in transporting self, family, household, and personal effects to the new residence in the area of relocation. A job relocation allowance shall not be paid for more than one relocation nor shall it be paid to more than one member of a family in the same household for the same relocation.

(b) *Relocation on or prior to June 30, 1979.* For an affected employee (including a short-service employee) who relocated on or before June 30, 1979 to be eligible, the employee must:

(1) File an application for a job relocation allowance during the employee's period of protection; provided, that a short-service employee must file an application during the period which begins on the date of his/her total layoff, and extends to the end of that period of time which is equal to the length of his/her creditable service;

(2) Have relocated during the period beginning May 31, 1977 and ending June 30, 1979, to accept employment requiring a change in residence to a location outside the commuting area in which the employee resided immediately prior to becoming an affected employee.

(c) *Relocation after June 30, 1979.* For an affected employee (including a short-service employee) who relocated after June 30, 1979 to be eligible, the employee must:

(1) File an application as described in paragraph (b)(1) above;

(2) Be registered with the State Job Service in the area in which the affected employee is residing;

(3) Have no reasonable expectation of obtaining suitable work in the commuting area;

(4) Have obtained suitable work affording reasonable expectation of long-term duration, or a bona fide offer of such work, in the area in which the affected employee wishes to relocate.

(d) *Reimbursable expenses.* An affected employee shall be eligible to reimbursement for:

(1) Expenses incurred in moving household and personal effects;

(2) Traveling and living expenses in moving self and any family members from the same household, not to exceed 10 working days;

(3) Traveling and living expenses for self and spouse not to exceed 10 days which need not be consecutive days to obtain a residence;

(4) Any loss or cost incurred by the affected employee in the sale of a home for less than the fair market value or any loss or cost in securing the cancellation of an unexpired lease on a dwelling occupied by the affected employee as a home.

Subpart D—Amount and Calculations of Benefits

§ 92.30 Weekly layoff benefit, vacation replacement benefit, and/or severance payment.

The EDD shall determine the amount of an affected employee's weekly layoff benefit, vacation replacement benefit, and/or severance payment in accordance with the methods for calculation set forth in Sections 207, 208, and 209 of the Act and in the procedures and guidelines issued by the Assistant Secretaries for Labor-Management Relations and Employment and Training.

§ 92.31 Job search allowance (19 U.S.C. 2297).

(a) *Travel by commercial carrier.* For travel by commercial carrier, an affected employee shall receive 80% of the cost of transportation by the most economical and practical public transportation from the employee's regular place of residence to the area in which the job search will be conducted and return.

(b) *Travel by privately owned car.* For travel by privately owned automobile, an affected employee shall receive a travel allowance of 9.6 cents per mile, for the mileage of the usually traveled route from and to the affected employee's regular place of residence to the area in which the job search will be conducted, and for the mileage covered during the actual job search activities within the designated area.

(c) *Lodging costs.* In connection with an authorized job search, an affected employee shall receive 80% of the costs of lodging, not exceeding $12.00 per night, and 80% of the costs of meals, not exceeding $5.00 per day. Lodging costs must be verified by receipt.

(d) *Maximum amount.* The maximum amount of job search allowance payable to an affected employee in connection with an application shall not exceed $500.

(e) *Advance payment.* The EDD shall advance upon request by an affected employee within 5 days prior to commencement of a job search, 60% of the estimated job search allowance, but not exceeding $300. Such advance shall be deducted from any payments made under this part.

(f) *Overpayment.* If it is found that an affected employee failed without good cause to complete a job search, any job search allowance paid or advanced to the affected employee under this Section shall constitute an overpayment. Any overpayment shall be recovered from the affected employee by repayment in cash or by deduction from benefits due the affected employee under the Act as provided in § 92.34.

§ 92.32 Job relocation allowance (Public Law 93-236).

(a) *Travel allowance.* Travel expenses, for a period not to exceed 10 days (which need not be consecutive days), for an affected employee and spouse but not dependent children or other family members shall be reimbursed for a round trip to obtain a residence at the new work location. Travel expenses for an affected employee, spouse, and dependent children shall be reimbursed for a one-way trip in connection with moving.

(1) Reimbursement shall be made for travel by commercial carrier, provided that the most economical public transportation means available is used in view of the circumstances.

(2) Reimbursement shall be made for travel by each privately owned automobile at the rate of 15 cents per mile for the usually traveled route, for necessary bridge and highway tolls, and for parking fees.

(3) If for good cause a member or members of an affected employee's family must travel separately, the affected employee shall be reimbursed for the travel of such family member(s) in accordance with paragraphs (a) (1) and (2) of this section and lodging and living expenses in accordance with paragraphs (b) (1) and (2) of this section.

(b) *Lodging and living expenses.* An affected employee and family members shall be reimbursed for lodging and living expenses incurred while in transit from the old residence to the new residence, including the day of departure and the day of arrival, not to exceed 10 days, except that if the new residence is not ready for occupancy upon arrival, additional living expenses may be reimbursed up to 10 days. Living expenses for an affected employee and spouse shall be reimbursed, for a period not to exceed 10 days which need not be consecutive days, for a round trip to obtain a residence at the new work location.

(1) Lodging shall be reimbursed at actual cost. Rooms must be occupied when feasible so that double room rates will apply. Moderately priced hotels and motels shall be used.

(2) Meals and related gratuities shall be reimbursed at actual cost to a maximum of $16.00 per person per day for the affected employee, spouse, and children. Gratuities for meals must be included in the cost of the meals.

(c) *Moving allowance.* The cost of transporting household effects and other personal effects of the affected employee and family members shall be reimbursed when transported by licensed commercial carrier and/or by use of rental truck or trailer.

(1) Reimbursement shall be made for packing, insuring, shipping, and unpacking of standard household items and personal effects. Insurance shall be provided for a valuation of $1.50 per pound; additional insurance for exceptionally valuable items may be obtained by the employee; however, the cost of such additional insurance shall not be reimbursed. Reasonable expenses for storage of household effects and personal property at the new location shall be paid when necessary because the residence at the new location is not ready for occupancy upon arrival.

(2) For each affected employee, reimbursement shall be made for transporting as many as two automobiles, by commercial carrier, provided that the low blue book value of each automobile exceeds the cost of shipment. Automobiles eligible to be shipped must be owned by the employee, the employee's spouse, or a dependent child of the employee.

Insurance up to the low blue book value of the automobile shipped shall be reimbursed.

(3) Expenses for the shipment, including insurance, of other personal non-business property such as boats, trailers, camping equipment, and mobile homes shall be reimbursed provided that the property shipped was owned by the employee or the employee's spouse prior to the offer of employment at the new location and provided further that shipping costs, including insurance, do not exceed the fair market value of the property shipped. Storage charges for such property shall not be reimbursed.

(4) Reasonable expenses for disconnecting at the former residence and reconnecting at the new residence shall be reimbursed for the following items, provided they are owned by the affected employee or spouse prior to the offer of employment at the new location: mobile home and major appliances (such as ranges, washers, dryers, dishwashers, refrigerators, freezers, television sets, and television antennae). Expenses for installation of a 220 volt power line at the new location shall not be reimbursed.

(5) Reasonable service charges by utility companies, including installation charges for telephone service, shall be reimbursed. Refundable deposits or advance billing for telephone service shall not be reimbursed.

(6) Reasonable expenses for the common carrier transportation of pets, including feeding, shall be reimbursed when such transportation is necessary.

(7) Reimbursement shall be made for actual rental fee, mileage charges, and gas for rental truck or trailer used to move the household and personal effects subject to following conditions:

(i) the time limit allowable for rental fees for a truck or trailer may not exceed 10 days; and

(ii) expenses detailed in paragraph (c)(1), (c)(3), (c)(4), and (c)(5) of this section shall be reimbursed, where applicable.

(d) *Advance payment.* Advances shall be granted for moving expenses, living expenses, and travel expenses based on estimates the affected employee obtains from common carriers or from a truck leasing agency. The amount advanced may not exceed 80% of the estimated total cost.

(e) *Relocation on or prior to June 30, 1979.* An affected employee who relocated during the period beginning May 31, 1977 and ending on June 30, 1979, shall furnish to the EDD within 90 days following June 30, 1979 the appropriate documentation supporting a claim for a job relocation allowance and a notarized affidavit that the listed expenses and amounts claimed are correct to the best of his/her knowledge.

(f) *Relocation after June 30, 1979.* An affected employee who relocates after June 30, 1979 must submit receipts or invoices and mileage costs to the EDD within 90 days after completion of the relocation.

(g) *Reimbursement for losses or cost.* In connection with a job relocation, if an affected employee relocates after June 30, 1979, and incurs costs or a loss in the sale of a home or the cancellation of an unexpired lease, a statement describing same and requesting reimbursement shall be submitted to the EDD field office where the request for the job relocation was originally filed within 90 days after completion of the relocation. If an affected employee relocated during the period beginning May 31, 1977 and ending on June 30, 1979, the statement must be submitted to the appropriate EDD field office within 90 days following June 30, 1979. To obtain reimbursement for a loss on the sale of a home, an affected employee must:

(1) Offer the home for sale in the customary manner, at or near the fair market value for a reasonable period of time, and

(2) Furnish EDD with the following information and documents on the residence sold:

(i) Location, including street address, city or town, county, and state;

(ii) Name of the owner or owners;

(iii) Date of sale;

(iv) Copy of the closing statement, verifying the selling price;

(v) Fair market value of the house one year before the date of sale based on the average of two appraisals by licensed residential real estate appraisers (three if the appraisals vary by more than five percent);

(vi) Copies of appraisals and receipts or cancelled checks in payment; and

(vii) Amount to be reimbursed (loss on the sale plus the cost of the appraisals).

(3) A protected employee may elect to waive the reimbursement of loss on sale of home and to receive, in lieu thereof, an amount equal to his closing costs which are ordinarily paid for and assumed by a seller of real estate in the jurisdiction in which the residence is located. Such costs shall include a real estate commission paid to a licensed realtor (not to exceed $3,000 or 6 per centum of sale price, whichever is less), and any prepayment penalty required by the institution holding the mortgage; such costs shall not include the payment of any "points" by the seller.

(4) To obtain reimbursement for costs incurred in cancelling a lease of an apartment or a principal residence, an affected employee must submit the following information and documents:

(i) Location, including street address, city or town, and state;

(ii) Date leased premises were vacated;

(iii) Name, address, and telephone number of the party who was advised that the leased premises would be vacated and whether the party advised was the owner or the leasing agent;

(iv) The cancelled check or receipt for payment of a cancellation charge;

(v) The landlord's statement discharging the affected employee from the obligations of a tenant under the lease; and

(vi) The affected employee's lease.

(h) *Challenge on claims for loss or costs.* Should the EDD challenge the value of the home, the costs or loss sustained in its sale, the costs or loss under a contract for purchase, loss or cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through joint conference between the employee or his representative, and the LMSA Regional Office. In the event they are unable to agree, the dispute or controversy may be referred by either party to a board of competent real estate appraisers, selected in the following manner: One to be selected by the employee or his representative and one by the LMSA Regional Office and these two, if unable to agree upon a valuation within 30 days, shall endeavor by agreement within 10 days thereafter to select a third appraiser, or to agree to a method by which a third appraiser shall be selected, and failing such agreement, either party may request the National Mediation Board to designate within 10 days a third qualified real estate appraiser whose designation will be binding upon the parties. A decision of the majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

(i) The EDD will be guided in its decision to challenge a loss by the following considerations:

(i) Length of time the home was offered for sale at or near the fair market value;

(ii) Length of time homes of reasonably comparable value and type were on the market prior to sale; and

(iii) The total amount of the loss claimed relative to other claims for loss submitted to the EDD.

(2) The EDD will honor a reimbursement claim for up to three monthly mortgage payments which an affected employee made while trying to sell his/her home at or near the fair market value.

(i) *Overpayment.* If it is found that an affected employee failed without good cause to complete a job relocation, any amount of relocation allowance paid or advanced to the affected employee under this section shall constitute an overpayment. Any overpayment recovered from the affected employee shall be by repayment in cash or by deduction from benefits due the affected employee under the Act or by any other authorized legal action.

§ 92.33 Overpayment—general.

If the EDD, a referee, the Assistant Secretary, or a court of competent jurisdiction finds that an individual has received benefits to which the individual was not entitled under the Act then the individual shall be liable to repay the total sum to which the individual was not entitled. However, in certain cases where the recovery of the overpayment would be against equity and good conscience, recovery may be waived.

§ 92.34 Recovery of overpayments.

(a) The EDD shall take all reasonable measures under State or Federal law to recover for the account of the United States the sum of the payment to which the individual was not entitled in accordance with the provisions of § 92.33.

(b) When recovery is undertaken the EDD shall recover, insofar as is possible, the amount of any overpayment which is not repaid by the individual, by deductions from any benefits or allowances payable to the individual under the Act from any compensation payable to the individual under any Federal unemployment compensation law administered by the EDD, or under any other federal law administered by the SESA of any other state, or, by the EDD which provides for the payment of any assistance or allowance with respect to any week of unemployment. The amount of this deduction shall not exceed the amount which might be withheld if the Consumer Credit Protection Act were applicable.

§ 92.35 Final decision.

Recovery of any overpayment of benefits shall not be required or enforced until the determination establishing the overpayment has been approved by the Assistant Secretary.

Subpart E—Preferential Hiring

(Section 103, Pub. L. 95–250, 92 Stat. 167)

§ 92.40 Full consideration obligation.

(a) *Types of jobs.* Any employer specified in § 92.40(b) who is filling a job vacancy located primarily in Humboldt, Del Norte or an adjoining California county must give full consideration for employment in that job vacancy to affected employees if:

(1) The job involves skills and training that could reasonably be expected to have been gained by individuals who have been employed as logging and related woods employees or sawmill, plywood, and wood processing employees, or office employees, or that can reasonably be expected to be gained while so employed; or

(2) The applicant has the ability, or can reasonably be expected to have the ability after appropriate training of reasonable duration to perform the duties of the job.

(b) *Types of employers.* It shall be an obligation of any employer designated in this section to give full consideration to affected employee applicants for a job vacancy as described in (a) above if the employer is:

(1) A federal agency;

(2) A private employer designated by a federal agency as receiving federal funding assistance in any form or receiving the right after March 27, 1978 to use federal property in the conduct of harvesting and related activities, or replanting and land rehabilitation, or the conduct of wood processing and related activities or the conduct of highway construction and related activities;

(3) An affected or industry employer who has entered into an agreement with the EDD or other State Job Services to give full consideration to affected employees; or

(4) The State of California government, or a county and local govement within Humboldt and Del Norte Counties in California which has agreed to cooperate with the EDD in giving full consideration to affected employees when filling government job vacancies.

(c) *Selection.* An employer specified in § 92.40(b) shall have met the obligation to provide full consideration to affected employee applicants if the employer has used its normal employment standards to evaluate the applicant's qualifications for the position to be filled, and

(1) Selected a qualified affected employee applicant over non-affected employee applicants,

(2) Selected from among qualified affected employee applicants the applicant with the greatest creditable service where the qualifications of the applicants are approximately equal, or

(3) Held the full consideration job vacancy open for a non-qualified affected employee applicant who can be expected to qualify for the job after undergoing training approved by EDD.

(d) *Listing.* Any employer specified in § 92.40(b) who is filling a job described in § 92.40(a) shall provide notice of such job vacancy and the job requirements through the offices of the EDD in Humboldt and Del Norte Counties, California.

§ 92.41 Employee full consideration obligation.

(a) *Employee application requirements.* Any affected employee desiring to apply for a full consideration job vacancy must:

(1) Advise an EDD office of the full consideration position for which he/she wishes to be considered, and

(2) Demonstrate that the full consideration job vacancy involves skills and training which he/she could reasonably be expected to have gained in his/her affected employment, or

(3) If not already in possession of the requisite skill, demonstrate that he/she can reasonably be expected to have the ability to perform the job after appropriate training of reasonable duration.

§ 92.42 EDD full consideration responsibility.

(a) *Lists.* The EDD shall maintain lists of full consideration job vacancies as reported by Federal agencies; affected industry and other private employers; and the State of California, and its county and local governments in Humboldt, Del Norte and adjacent California counties.

(b) *Training.* The EDD shall determine whether an applicant for a full consideration job vacancy can reasonably be expected to have the ability to perform the job after appropriate training, and whether the period of work following training is commensurate with the time and funds required to provide the necessary training. Full consideration of an applicant shall not be required when the EDD has determined that the period of work following training is not commensurate with the training time and funds.

(c) *Referral.* Where two or more affected employee applicants for a full consideration job vacancy have approximately equal qualifications the EDD shall give preference in referral and listing to the applicant with the greatest creditable service.

§ 92.43 Violations of full consideration obligations.

(a) *Right of appeal.* Any employee who alleges that his/her rights to full consideration have been disregarded may file a complaint with the Eureka office of the EDD which shall forward the complaint to the Eureka office of the LMSA for processing. Where noncompliance with the full consideration obligation is determined, the Department shall take appropriate corrective action.

§ 92.44 Judicial review.

Determinations under this section shall be subject to Judicial Review under the same conditions as provided in § 92.50(t).

§ 92.45 Preexisting rights.

Nothing in this Subpart shall be construed to affect any additional or alternative rights under law, contract or regulation in effect as of March 27, 1978.

§ 92.46 Period of preferential hiring.

The requirement for full consideration as contained in this Subpart, shall remain in effect from March 27, 1978 through September 30, 1984.

Subpart F—Appeal Procedure

(Section 213(d)(2), Public Law 95–250, 92 Stat. 182)

§ 92.50 Administration.

(a) *Parties.* The parties to a proceeding on an application for benefits are:

(1) The applicant;

(2) The EDD;

(3) Other SESA's if involved; and, in addition,

(4) Any other individual or organization who is or may be adversely affected by grant or denial of an application for benefits may request leave to participate as an intervening party with respect to the application for REPP benefits in proceedings before a referee or before the Assistant Secretary. Leave to intervene shall be granted on such terms and conditions as are deemed appropriate.

(b) *Parties may appeal.* Any party to a proceeding on an application for benefits may appeal the determination or redetermination.

(c) *Reconsideration of determination.* The EDD may reconsider a determination on an application for benefits under the same conditions and subject to the same time limits as apply to reconsideration or determinations of entitlement to unemployment insurance under the California Unemployment Insurance Code and California Unemployment Insurance Appeals board regulations under Title 22 of the California Administrative Code.

(d) *Notice of determination.* Each party to a proceeding on an application for benefits shall be given written notice of the determination or reconsidered determination by EDD.

(e) *Notice of appeal rights.* All parties shall receive notice of each determination, reconsidered determination, or decision on an application for benefits. The notice shall advise each applicant of his/her right to appeal or to request reconsideration of the determination or decision. Such notice shall include the manner in which the appeal or request for reconsideration should be made, and the time period for making such appeal or request for reconsideration.

(f) *Appeal from determination.* A party aggrieved by or dissatisfied with a determination or reconsidered determination on an application for REPP benefits may appeal to an Administrative Law Judge (ALJ) of the California Unemployment Insurance Appeals Board.

(g) *Contents of appeal to ALJ.* An appeal to an ALJ under paragraph (f) of this Section must:

(1) Be mailed to or filed at the EDD field office where the application was initially filed within 20 days after notice of such determination or reconsidered determination was mailed or personally served on the party;

(2) Be in writing;

(3) Identify or include a copy of the determination or reconsidered determination;

(4) State that the party desires to appeal to a referee;

(5) Contain a statement of the reason(s) why the appealing party believes that an error has occurred; and

(6) Be signed by the appealing party or an authorized representative.

Notwithstanding the requirements in (g)(5) of this section, any written document indicating that a party is aggrieved by or dissatisfied with a determination or reconsidered determination on an application for REPP benefits which is received by the EDD field office where the application was initially filed within 20 days after notice of such determination was personally served or mailed to the party shall be accepted as a valid notice of appeal; provided, that the ALJ may require the appealing party, prior to the hearing on his/her appeal, to submit a written statement of the reason(s) why the appealing party believes that an error has occurred.

(h) *Notice of hearing before ALJ.* Upon the filing of an appeal, a hearing shall be promptly scheduled and a notice of the hearing shall be mailed to each party.

(i) *Rules of evidence.* (1) The technical rules of evidence shall not apply. Any evidence may be received at any stage of the appeal; a referee or the Assistant Secretary may exclude any evidence or offer of proof which is immaterial, irrelevant, unduly repetitious, or customarily privileged.

(2) A party shall have the right to present its case by oral and documentary evidence and to submit rebuttal evidence.

(j) *Hearing before an ALJ.* The ALJ shall have jurisdiction to decide all relevant issues with respect to an applicant's entitlement to REPP benefits without regard to whether such issues were set out in the appeal. The ALJ may issue subpoenas to obtain the appearance of witnesses or the presentation of documents and exhibits on the same terms and conditions as apply with respect to the issuance of subpoenas in unemployment insurance benefit appeal hearings under the California Unemployment Insurance Code.

(k) *Notice of an ALJ's decision.* Notice of an ALJ's decision on an appeal of an application for REPP benefits shall be sent to each party. In addition, a copy shall be sent to both the LMSA local office in Eureka and to the LMSA national office. Each party shall be notified of his/her right of appeal and shall be informed that the Assistant Secretary has 30 days to review the case on his/her own motion.

(l) *Appeal from an ALJ's decision.* A party aggrieved by or dissatisfied with an ALJ's decision on an application for REPP benefits may appeal such decision to the Assistant Secretary.

(m) *Appeal to Assistant Secretary.* An appeal to the Assistant Secretary must:

(1) Be addressed to the Assistant Secretary of Labor for Labor-Management Relations; U.S. Department of Labor; 200 Constitution Avenue, NW; Washington, D.C., 20210; and delivered or mailed to the Assistant Secretary within 20 days after the day on which notice of the ALJ's decision was handed or mailed to such party;

(2) Be in writing;

(3) Identify or include a copy of the referee's decision appealed from;

(4) State that the party desires to appeal from the referee's decision;

(5) Contain a statement of the reason(s) why the appealing party believes that an error has occurred; and

(6) Be signed by the appealing party or an authorized representative.

Notwithstanding the requirement in (m)(5) of this section, the Assistant Secretary shall accept as a valid appeal any written document indicating that a party is aggrieved by or dissatisfied with a referee's decision on an application for REPP benefits if such document is received by the Assistant Secretary within 20 days after notice of such referee's decision was handed or mailed to such party; provided, that the Assistant Secretary may rerquire the appealing party to submit a written statement of the reason(s) why the appealing party believes that an error has occurred.

(n) *Briefs.* Briefs are not required unless specifically requested by the Assistant Secretary. However, they are welcome and will be considered carefully. Any party may file a brief or written argument in response to a brief or other written argument filed by another party not later than 30 days after such brief or written argument is filed. Briefs or written arguments can not exceed 25 pages unless permission to file a lengthier document is obtained form the Assistant Secretary.

(o) *Service.* A party filing a brief is required to furnish each party with a copy. For purposes of service to the EDD, a copy of the brief must be sent to:

Legal Office, MIC 53, California Employment Development Department, 800 Capital Mall, Sacramento, California 95814.

(p) *Delegation of authority.* The Assistant Secretary may delegate to any employee of the United States Department of Labor the function of reviewing an appeal and preparing a recommended decision with respect thereto, but no employee of the United States Department of Labor who personally participated in any way in any proceedings with respect to an application for benefits will be assigned to prepare a recommended decision on such application for benefits.

(q) *Transmittal of record and transcript.* On receipt of a notice from the Assistant Secretary or his/her designee that an appeal from a referee's decision with respect to an application for REPP benefits has been filed, or the Assistant Secretary has decided to review the decision, the CUIAB shall promptly transmit to the Assistant Secretary or his/her designee a complete record of the proceedings before the referee, including all exhibits and documents received or tendered in such proceedings, and a complete copy of the administrative file as to the application for benefits. Upon request from the Assistant Secretary, the CUIAB shall promptly transmit an official transcript of the proceedings to the Assistant Secretary.

(r) *Processing of appeal.* The Assistant Secretary shall review the file with respect to the application for REPP benefits in issue to ascertain whether substantial error adversely affecting the rights of a party has occurred, regardless of whether such error is alleged by an appealing party.

(s) *Decision of Assistant Secretary.* The Assistant Secretary may affirm, reverse, or modify in whole or in part the decision of an ALJ as to an application for REPP benefits, or may remand the case to an ALJ for further proceedings.

(t) *Judicial review.* A party aggrieved by or dissatisfied with a decision of the Assistant Secretary has 60 days after notice of such decision to file for judicial review in the same manner and under the same conditions as provided by Section 250 of the Trade Act of 1974 which provides:

(1) A worker, group of workers, certified or recognized union, or an authorized representative of such worker or group aggrieved by a final determination by the Secretary may, within 60 days after notice of such determination, file a petition for review of such determination with the United States court of appeals for the circuit in which such worker or group is located or in the United States Court of Appeals for the District of Columbia Circuit. The clerk of such court shall send a copy of such petition to the Secretary. Upon receiving such petition, the Secretary shall promptly certify and file in such court the record on which he based such determination.

(2) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(3) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in Section 1254 of Title 28, United States Code.

(u) *Late appeals.* An appeal to an ALJ under paragraph (f) of this Section or an appeal to the Assistant Secretary under paragraph (1) of this Section which is not filed within the time for appeal stated in those paragraphs will be dismissed as untimely unless the ALJ or the Assistant Secretary finds that the appealing party has shown good cause for failure to file the appeal within the proper time. The party who fails to appear at a hearing on an appeal may apply to the ALJ within 20 days of said hearing (or longer if the ALJ determines this delay in applying is for good cause) to have the hearing reopened. Such application will be granted if the ALJ finds that the party had good cause for failure to appear.

(w) *Payment of benefits in case of appeal.* (1) Weekly layoff benefits and vacation replacement benefits awarded by a determination, reconsidered determination, or referee's decision shall be promptly paid for each week of total or partial unemployment occurring after the date on which the applicant's initial application for benefits was filed, notwithstanding the non-expiration of the period for appeal, or the pendency of an appeal, from such determination, reconsidered determination, or decision. Weekly layoff benefits and vacation replacement benefits, or other benefits awarded by a determination, reconsidered determination, or a referee's decision for a week or weeks of total or partial unemployment occurring prior to the date on which the applicant's initial application for benefits was filed, shall not be paid until the determination, reconsidered determination, or referee's decision awarding them becomes final.

(2) In all cases, a severance payment awarded by a decision of a referee or the Assistant Secretary shall not be paid until the decision awarding such payment becomes final.

[FR Doc. 79-18248 Filed 6-11-79; 8:45 am]

BILLING CODE 4510-28-M

Pension and Welfare Benefit Programs

[29 CFR Part 2520]

Exemption From Reporting and Disclosure Requirements With Regard to Apprenticeship and Other Training Plans

AGENCY: Department of Labor.

ACTION: Proposed rulemaking.

SUMMARY: This document sets forth proposed revisions to existing regulations that would provide a limited exemption from the reporting and disclosure requirements of the Employee Retirement Income Security Act of 1974 (hereinafter the Act) with respect to employee welfare benefit plans that provide exclusively: (1) apprenticeship training benefits, (2) other training benefits, or (3) apprenticeship and other training benefits. The proposed revisions are designed to avoid unnecessary reporting and disclosure requirements.

DATES: Written comments concerning the proposed revisions must be submitted on or before August 21, 1979.

ADDRESSES: Interested persons are invited to submit written data, views or arguments concerning the proposed revisions to "Reporting and Disclosure Exemption for Apprenticeship and Other Training Plans," Room N–4661, Office of Reporting and Plan Standards, Pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C. 20016, on or before the date indicated above. All such submissions will be open to public inspection in the Public Documents Room, Pension and Welfare Benefit Programs, Room N–4677, 200 Constitution Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Barry Barbash, Esq., Office of the Solicitor, U.S. Department of Labor, (202) 523–8296. (This is not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department of Labor (the Department) has under consideration certain proposed amendments to 29 CFR 2520.104–22. Regulation § 2520.104–22, which was adopted in August, 1975, grants a limited exemption from certain of the reporting and disclosure requirements of the Act with respect to plans that provide solely apprenticeship training benefits. Specifically, under the regulation, administrators of these plans are exempted from all the provisions of Part 1 of the Act,[1] except the requirements to file a short form plan description (applicable only to plans subject to Part 1 on or before January 31, 1976), an initial plan description and an annual report. As will be explained in detail below, the Department is proposing to expand the class of plans for which exemption is available under § 2520.104–22 and to change the reporting and disclosure requirements applicable to such expanded class of plans.[2]

Amended Exemption for Plans Providing Solely Apprenticeship Training. On June 1, 1978, (44 FR 31640) the Department published final regulations, 29 CFR 2520.102–1 and 104a–2, which eliminate for most plans the requirement to file a Form EBS–1 plan description. Following the publishing of proposed §§ 2520.102–1 and 104a–2 for public comment, a question was raised about the effect of these regulations on the reporting requirements of plans providing solely apprenticeship benefits. To avoid the possibility that § 2520.102–1 and 104a–2 taken together with § 2520.104–22 might be read to require plans providing solely apprenticeship training to file a summary plan description, the Department adopted §§ 2520.102–1(b) and 104a–2(b)(2), which state that those apprenticeship plans, exempt under § 2520.104–22 from the requirement to file a summary plan description, shall continue to satisfy the statutory obligation to file a plan description by filing a Form EBS–1.

In adopting 29 CFR 2520.102–1 and 104a–2, the Department noted that retaining the Form EBS–1 for plans providing solely apprenticeship training was an interim measure. The Department is proposing in this notice to rescind §§ 2520.102–1(b) and 104a–2(b)(2) and to adopt with respect to such plans the regulation described below. As noted previously by the Department,[3] plans providing only apprenticeship training differ from most other welfare plans. Frequently, apprenticeship training plans are established by the terms of collective bargaining agreements under which employers are required to make contributions to those plans based, generally, on the number of hours worked or on the compensation earned by their employees. However, only few, if any, of those employees in respect to whose services or earnings contributions are made, receive any training or other direct benefits from the apprenticeship plan. The individuals who do receive direct benefits from an apprenticeship plan are individuals who may not even be employed by contributing employers when beginning their apprenticeship training. Thus, unlike the participants or beneficiaries of a typical welfare plan, the participants or beneficiaries within the meaning of §§ 3(7) and 3(8) of the Act of an apprenticeship plan are not those individuals with respect to whose service contributions have been made to the plan.

Because employees of employers contributing to apprenticeship plans appear to have a more indirect interest in the benefits provided by such plans than employees of employer-sponsors generally have in the benefits provided under other welfare plans, the Department believes that to require administrators of apprenticeship plans to file with the Department, and to furnish those employees, all information required by Part 1 of the Act would be unnecessarily burdensome and costly. The Department also believes that administrators of apprenticeship plans would have significant difficulty in furnishing apprentices with all information required by Part 1 of the Act, since the group of apprentices receiving training from a particular plan may change frequently as new apprentices begin training and as other apprentices either drop out of the apprenticeship program or graduate and become journeymen.

For these reasons, the Department is proposing to revise 29 CFR 2520.104–22 to exempt a plan that provides solely apprenticeship training from all the reporting and disclosure provisions of Part 1 of the Act, so long as the administrator of such plan files with the Department a notice containing certain information.[4] The required notice would include the name of the plan, the name of the plan administrator, the name and address of an office or person from whom an interested individual can obtain pertinent information about the courses or apprenticeship program and a description of the procedure by which to

[1] Under the reporting and disclosure provisions contained in Part 1 of Title 1 of the Act, administrators of employee benefit plans generally must file with the Department a plan description, summary plan description, annual report, and summary of material modifications or changes. Plan administrators must also furnish each plan participant and beneficiary with a summary plan description, a statement of material modifications and changes, and a summary annual report.

[2] With regard to training programs established by employers, the Department notes that, under 29 CFR 2510.3–1(b)(2)(iv), payment of compensation out of an employer's general assets on account of periods of time during which an employee performs little or no productive work while engaged in training (whether or not subsidized in whole or in part by federal, state or local government funds) is a payroll practice not included within the definitions of "employee welfare benefit plan" and "welfare plan" contained in section 3(1) of the Act for purpose of Title I of the Act.

[3] 40 FR 34526, 34528, August 15, 1975.

[4] The amended exemption contained in § 2520.104–22 also requires the plan administrator to: (a) take steps reasonably designed to ensure that the information contained in the notice is disclosed by employers sponsoring or contributing to the plan to those employees eligible to enroll in any courses to study sponsored or established by the plan; and (b) make the notice available to such employees upon request. Presumably, these conditions would not be applicable in practice to jointly sponsored plans providing solely apprenticeship training, since persons eligible to become apprentices would often not be employees of contributing employers.

enroll in the courses or apprenticeship program.

Exemption for Training Plans. Employee welfare benefit plans that provide welfare benefits including training other than, or in addition to, apprenticeship training, are not covered by the existing exemption contained in 29 CFR 2520.104–22.[5] It has been suggested to the Department that § 2520.104–22 is too restrictive and that the exemption contained in that regulation should be available with respect to all plans that provide training or retraining benefits.[6] This suggestion appears to the Department to have merit, at least with respect to plans that provide exclusively training benefits or provide a combination of apprenticeship and training benefits. Like contributions to apprenticeship plans, employer contributions to training plans are often based on the service of a class of employees of which only a relatively small group of employees at any one time would appear to be interested in, or receive a direct benefit from, a training program. Because only a relatively few employees receive direct benefits from plans providing solely training benefits or a combination of apprenticeship and training benefits, the Department believes it may be unnecessarily burdensome and costly to continue to require the administrators of such plans to comply fully with the reporting and disclosure provisions of Part 1 of the Act.

The Department is proposing to revise 29 CFR 2520.104–22 to exempt a plan providing solely training benefits or a combination of apprenticeship and training benefits from all of the reporting and disclosure provisions of Part 1 of the Act, so long as the administrator of such plan files with the Department the notice described in proposed § 2520.104–22(b). In addition, the administrator would be required to make such notice available upon request to employees of employers contributing to the plan who are eligible to enroll in any course or program of study offered under the plan. Finally, the administrator must take steps reasonably designed to ensure that the information contained in the required notice is furnished to such employees. The administrator can satisfy this requirement in a number of ways including arranging to have employers make the required information available to employees by mail or personal delivery or by posting the notice in a conspicuous location at all job sites. In appropriate situations, the administrator could also make arrangements to have the information required to be included in the notice published in publications of general circulation of employee organizations to which participants in the plan belong.

The revisions proposed herein do not meet the criteria for significant regulations set forth in the Department's guidelines [7] issued to implement Executive Order 12044.[8]

Statutory Authority: The proposed revisions set forth below are issued under the authority of sections 104, 109 and 505 of the Act (29 USC 1024, 1029, and 1135).

In consideration of the matters discussed above, it is proposed to amend Part 2520 of Chapter XXV of Title 29 of the Code of Federal Regulations as follows:

1. Rescind §§ 2520.102–1(b) and 2520.104a–2(b)(2).

2. Amend § 2520.102–1 to read as follows:

§ 2520.102–1 Plan description.

The plan description required by section 102 of the Act shall consist of a summary plan description as described in section 102(b) of the Act and § 2520.102–2 and 2520.102–3 thereunder.

3. Amend § 2520.104a–2 by deleting paragraph (b)(2) and revising (b) to read as follows:

§ 2520.014a–2 Plan Description reporting requirements.

* * * * *

(b) Fulfilling the filing obligation. The administrator of an employee benefit plan shall satisfy the requirements of section 104(a)(1)(B) of the Act and paragraph (a) of this section by filing with the Secretary a summary plan description and an updated summary plan description in accordance with section 104(a)(1)(C) of the Act and regulations issued thereunder.

* * * * *

4. Amend § 2520.104–22 to read as follows:

§ 2520.105–22 Exemption from reporting and disclosure requirements with regard to apprenticeship and other training plans.

(a) An employee welfare benefit plan that provides exclusively apprenticeship training benefits or other training benefits or that provides exclusively apprenticeship and training benefits shall not be required to meet any requirements of Part 1 of the Act, provided that the administrator of such plan: (1) files with the Secretary the notice described in paragraph (b) of this section; (2) takes steps reasonably designed to ensure that the information required to be contained in such notice is disclosed to employees of employers contributing to the plan who may be eligible to enroll in any course of study sponsored or established by the plan; and (3) makes such notice available to such employees upon request.

(b) The notice referred to in paragraph (a) of this section shall contain: (1) the name of the plan; (2) the name of the plan administrator; (3) the name and location of an office or person from whom an interested individual can obtain a description of any existing or anticipated future course of study sponsored or established by the plan, including any prerequisites for enrolling in such course; and, (4) a description of the procedure by which to enroll in such course.

Signed at Washington, D.C., this 8th day of June 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration.

[FR Doc. 79-18279 Filed 6-11-79; 8:45 am]

BILLING CODE 4510-29-M

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[5] In a January, 1978 release, the Department made clear that § 2520.104–22 is applicable only with respect to plans providing benefits solely for apprenticeship training. *See* News release USDL 78–36, January 17, 1978.

[6] *See e.g.*, letter from National Coordinating Committee for Multiemployer Plans to F. Ray Marshall, (July 11, 1978), and letter from International Brotherhood of Electrical Workers to Ian D. Lanoff, (December 13, 1978). These letters and other letters received by the Department concerning regulation § 2520.104–22 are open to public inspection in the Public Documents Room of the Pension and Welfare Benefit Programs, the address of which is listed above.

[7] 44 FR 5570, January 26, 1979.

[8] 43 FR 12661, March 23, 1978.

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 161]

Tank Vessel Operations—Puget Sound

Correction

In FR Doc. 79–17355 appearing on page 32004 in the issue of Monday, June 4, 1979, make the following correction:

The formula appearing at the top of the first column of page 32005 now given as "V–F/KD" should have been given as "V–P/KD."

BILLING CODE 1505-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

[36 CFR Chapter II]

Procedures for Involving the Public in the Formulation of Standards, Criteria, and Guidelines That Apply to Forest Service Programs

AGENCY: Forest Service, USDA.

ACTION: Proposed Rule—Extension of Time for Comments.

SUMMARY: Section 14 of the Forest and Rangeland Renewable Resources Planning Act of 1974, added by Section 11 of the National Forest Management Act of 1976, provides for the establishment by regulations of procedures *"to give the Federal, State and local governments, and the public adequate notice and opportunity to comment upon the formulation of standards, criteria, and guidelines applicable to Forest Service programs."* Draft regulations describing a process to accomplish this were published in Federal Register, Vol. 44, No. 75, FR Doc. 79–11890, Tuesday, April 17, 1979, p. 22759. Comments on the draft were to be received on or before June 18, 1979. The due date for comments to be received is hereby extended to July 9, 1979.

DATES: Comments must be received on or before July 9, 1979.

ADDRESS: Send comments to: Chief, Forest Service, P.O. Box 2417, Washington, D.C. 20013. All written comments will be available for public review in Room 3250, South Agriculture Building, 12th and Independence Avenue, S.W., Washington, D.C., 8:00 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Wayne R. Nicolls, Office of Information, P.O. Box 2417, Washington, D.C. 20013, 202/447–7013.

John R. McGuire,
Chief, Forest Service.

June 6, 1979.

[FR Doc. 79-18582 Filed 6-11-79; 8:45 am]
BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 1246–6]

Ohio; Approval and Promulgation of Implementation Plans

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: These proposed rules are revisions to the sulfur dioxide emission limitations for Cleveland Electric Illuminating Company's Avon Lake and East Lake power plants in Ohio. The revisions are based on new monitoring information and dispersion modeling analyses and on the installation of new stacks at each of the plants. Comments are being solicited on the revisions.

DATE: Comments must be received by August 13, 1979. A public hearing will be held on the revisions from 9 a.m. to 4 p.m. on July 11, 1979, at The Anthony J. Celebrezze Federal Building, 31st Floor, 1240 East 9th St., Cleveland, Ohio. The record on the revisions (Docket No. 5A–79–1) will be open for thirty days after the hearing to allow the submission of rebuttal or additional information.

ADDRESSES: Written comments and requests to make an oral presentation at the hearing should be submitted to: Chief, Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. The docket for the revision is available for inspection and copying during normal business hours at the above address and at: Public Information Reference Unit, Room 2922, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Steve Rothblat, Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, 312/353–2205.

SUPPLEMENTAL INFORMATION: In 1976 and 1977, the Environmental Protection Agency (EPA) promulgated regulations that established sulfur dioxide emission limitations for sources in Ohio. 40 C.F.R. 52.1881. Following promulgation, the Cleveland Electric Illuminating Company (CEI) requested that the emission limitations for its Avon Lake and East Lake power plants be revised. In support of the revision request, CEI submitted dispersion modeling analyses and monitoring data collected since the original emission limitations were promulgated by EPA. The sumbission takes into account CEI's installation of "Good Engineering Practice" (GEP) stacks at the two plants. The GEP stack heights were not utilized by EPA in the modeling performed to set the original emission limitations. The new stacks will result in lower ground-level emission concentrations near the plants.

The agency has evaluated the information submitted by CEI and has determined that under Section 110(a)(3) of the Clean Air Act a revision of the originally promulgated emission limitations is appropriate. Specifically, based on dispersion modeling analyses of the new stacks and new air quality monitoring data, the agency is proposing to revise the emission limitations to status quo emission limitations for the two plants. The agency has determined that such revisions should not interfere with attainment and maintenance of the national ambient air quality standards. Furthermore, as a condition of approval of the revised emission limitations, the agency is requiring CEI to install and operate an even more extensive monitoring system surrounding the plants than now exists.

The emission limitations originally promulgated for the Avon Lake and East Lake plants were determined through dispersion modeling using the urban version of the RAM model. CEI has consistently maintained that the use of the urban RAM results in overly stringent emission restrictions for the two plants. Until the CEI petition was submitted, there have been no data to support the claim. While the on-site data relied on in the petition are not adequate to give complete ambient air quality coverage of the area impacted by the plants, the data, however, do indicate that the urban RAM is inappropriate for setting emission limitations for the two plants. At the same time, the air quality data collected by CEI indicates that the use of the rural RAM to set emission limitations is also not appropriate. The rural RAM does not account for lake-breeze and fumigation effects on emissions; both effects usually result in greater ground-level concentrations, particularly at locations near the emission source. The use of the rural RAM, therefore, may result in emission limitations tht would not be adequate to attain and maintain the national standards. In the absence of a more appropriate modeling technique, an emission limit based on the status quo emissions represents a reasonable margin of safety (pending collection of further monitoring data) to compensation for the uncertainty associated with the results of the RAM rural model. Current air quality data also does not contradict the agency conclusion that the status quo emissions are adequate to protect the standards.

In short, neither the RAM urban model used by EPA in the original promulgation nor the RAM rural model used by CEI in its request for revision are appropriate for use at the two plants. The air quality data collected by CEI demonstrate that neither model accurately predicts the air quality

impacts of the plants. However, based on the changed dispersion characteristics caused by the new GEP stack heights at the plants which will reduce ground-level concentrations at locations close to the plants where lake-breeze and fumigation effects have their greatest impact, it has been determined that status quo emissions limitations should be proposed for approval at both plants.

The agency is requiring the installation of an expanded monitoring system to further insure that the status quo emission limitations will, in fact, protect the national standards and to develop site-specific information on ground-level concentrations caused by the plants. This information will be used to develop plant-specific dispersion analyses if it should be necessary to revise the emission limitations in the future. The specific details of the expanded monitoring system will be available at the Region V Air Programs Branch within thirty days. Comments on the monitoring system should be submitted by the close of the comment period on the revisions. Final promulgation of the revisions will follow review of all written comments submitted and any public hearing statements.

The Agency has determined that this document is not a significant regulation and does not require preparation of a regulatory analysis under Executive Order 12044.

(Section 110 of the Clean Air Act, as amended 42 U.S.C. 7410)

Dated: June 4, 1979.

Douglas M. Costle,

Administrator.

Section 52.1881 part 52 of Chapter 1, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

Subpart KKK—Ohio

§ 52.1881 Control Strategy: Sulfur oxides (sulfur oxide).

* * * * *

(b) Regulations for the control of sulfur dioxide in the State of Ohio.

* * * * *

(35) In Lake County:

* * * * *

(vi) The Cleveland Electric Illuminating Co. or any subsequent owner or operator of the East Lake Plant in Lake County, Ohio shall not cause or permit the emission of sulfur dioxide at the East Lake Plant in excess of 6.58 pounds of sulfur dioxide per million BTU actual heat input from any stack.

(vii) [Revoked]

* * * * *

(38) In Lorain County:

* * * * *

(iii) The Cleveland Electric Illuminating Co., or any subsequent owner or operator of the Avon Lake Plant in Lorain County, Ohio, shall not cause or permit the emission of sulfur dioxide at Avon Lake Plant in excess of 1.35 pounds of sulfur dioxide per million BTU actual heat input from any stack at units 1 through 4 and 6.09 pounds of sulfur dioxide per million BTU actual heat input from any stack at units 6 through 9.

(iv) [Revoked]

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[FR Doc. 79-18284 Filed 6-11-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR PART 52]

[FRL 1245-2]

Proposed Revision of the Virginia State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Commonwealth of Virginia has submitted a proposed revision of its State Implementation Plan (SIP) consisting of a variance for the E. I. du Pont de Nemours and Company's Spruance, Virginia plant. The variance would exempt one of the company's boilers from the State's emission standard for particulate emissions from fuel burning equipment until December 31, 1980. Sulfur dioxide (SO_2) and opacity emission limitations would not be changed by this variance. Diffusion modeling done by the company indicates that the increase in emissions allowed by the variance would not significantly affect ambient air quality.

DATE: Comments must be submitted on or before July 12, 1979.

ADDRESSES: Copies of the proposed SIP revision and the accompanying support documents are available for inspection during normal business hours at the following offices:

U.S. Environmental Protection Agency, Air Programs Branch, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106, Attn: Mark E. Garrison.

State Air Pollution Control Board, Commonwealth of Virginia, Room 1106, Ninth Street Office Building, Richmond, Virginia 23219, Attn: W. R. Meyer.

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street, S.W. (Waterside Mall), Washington, D.C. 20460.

All comments on the proposed revision submitted within 30 days of publication of this notice will be considered and should be directed to:

Mr. Howard Heim, Chief, Air Programs Branch (3AH10), Air & Hazardous Materials Division, U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, Attn: AH016VA.

FOR FURTHER INFORMATION CONTACT: Mark E. Garrison (3AH13), U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Philadelphia, PA 19106, telephone number (215) 597-2745.

SUPPLEMENTARY INFORMATION: On December 13, 1978 the Secretary of Commerce and Resources of the Commonwealth of Virginia submitted for the Governor a proposed revision of the Virginia SIP consisting of a variance for the E. I. du Pont de Nemours and Company's Spruance, Virginia plant. The variance exempts one of the company's boilers from Part IV, Rule EX-3 of Virginia's Regulations for the Control and Abatement of Air Pollution. This regulation deals with emissions standards for particulate emissions from fuel burning equipment. On February 22, 1979 the State submitted additional information regarding the proposed revision, including an addition to the variance specifying an emissions limitation for particulates that the Company's boiler will have to meet while the variance is in effect. The additional information included a certification that the variance was approved in accordance with the public hearing and notice requirements of 40 CFR Part 51.4.

The proposed revision would allow the Company to burn coal in one of its boilers prior to the planned installation of particulate control equipment consisting of electrostatic precipitators (ESPs). The installation of this control equipment will be completed by December 31, 1980 at which time the Company intends to commence burning coal in a total of four of the Spruance plant's boilers. Since the variance expires on December 31, 1980 the Company thereafter will be required to meet the State emission limitation for particulates.

The proposed revision further places the following conditions on the Company:

1. Only one of the boilers numbered 5 through 8 can burn coal at any given time.

2. The maximum ash content of the coal cannot exceed 10%; furthermore, the particulate emission rate from the

boiler burning coal cannot exceed 201 pounds per hour.

3. Monitoring and reporting requirements include notifying the State prior to the first burning of coal and whenever the burning of coal is changed from one boiler to another. In addition, progress reports must be submitted on a quarterly basis.

Diffusion modeling performed by the company indicates that the allowed increase in particulate emissions will not significantly affect ambient air quality. The modeling was done using EPA's CRSTER model with one year's (1964) meteorology. The meteorological data was obtained from the Richmond airport and supplemented by mixing height data from National airport in Washington, D.C.

The variance exempts the boiler in question from Part IV, Rule EX-3, of Virginia's Regulations. This regulation was adopted by the State and submitted to EPA as part of a SIP revision which was proposed by EPA in the Federal Register on February 8, 1977 (42 FR 7969). EPA had not taken final action on that proposed SIP revision as of the effective date of the variance (i.e. December 1, 1978), and thus Virginia's former regulation, § 4.03.01, was still in effect as a matter of Federal law. EPA believes that its decision on the approvability of the variance for DuPont as a SIP revision is independent of the final action with respect to Part IV, Rule EX-3 and that the variance will correctly exempt the boiler in question from section 4.03.01 (for the purposes of Federal enforcement) as well as from Part IV, Rule EX-3 until December 31, 1980 as long as the conditions of the variance are met.

Based on the foregoing, it is the tentative decision of the Administrator to approve the proposed revision of the Virginia State Implementation Plan.

The public is invited to submit to the address stated above, comments on whether the DuPont variance should be approved as a revision of the Virginia State Implementation Plan.

The administrator's decision to approve or disapprove the proposed revision will be based on the comments received and on a determination whether the amendments meet the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans.

Under Executive Order 12044 EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(42 U.S.C. 7401)

Dated: May 22, 1979.

Jack J. Schramm,

Regional Administrator.

[FR Doc. 79-18286 Filed 6-11-79; 8:45 am]

BILLING CODE 6560-01-M

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40 CFR Part 52

[FRL 1244-3]

Proposed Revision of the Commonwealth of Pennsylvania State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Commonwealth of Pennsylvania has submitted a proposed revision of certain of the provisions contained in the State Implementation Plan. The proposed revisions are to Chapter 121, relating to general provisions, Chapter 123, relating to standards for contaminants, and to Chapter 129, relating to standards for sources. The revisions to these chapters are intended to clarify terms and the intent of the provisions contained in these chapters. The EPA solicits comments on whether to approve or to disapprove these proposed revisions.

DATE: Comments must be received on or before July 12, 1979.

ADDRESSES: Copies of the proposed SIP revision and accompanying support documents are available for public inspection during normal business hours at the following offices:

U.S. Environmental Protection Agency, Air Programs Branch, 6th & Walnut Sts., Philadelphia, Pennsylvania 19106, ATTN: Patricia Sheridan.

Department of Environmental Resources, Bureau of Air Quality Control, 200 North 3rd Street, Harrisburg, Pennsylvania 17120, ATTN: Mr. James Hambright, Director.

Public Information Reference Unit, Room 2922—EPA Library, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

All comments on the proposed revision submitted on or before July 12, 1979, will be considered and should be directed to:

Mr. Howard Heim, Chief, Air Programs Branch (3AH10), U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, ATTN: AH010PA.

FOR FURTHER INFORMATION CONTACT: Patricia Sheridan (3AH10), U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Philadelphia, PA 19106, telephone (215) 597-8176.

SUPPLEMENTARY INFORMATION: On September 20, 1978, the Commonwealth of Pennsylvania submitted to the Regional Administrator, EPA, a revision of the Commonwealth's State Implementation Plan (SIP). The Commonwealth requested approval of amendments which consist of the following:

(1) A detailed definition of "stockpiling" to include as the act of placing or storing material upon and removing material from piles exposed to the outdoor atmosphere.

(2) Clarification of the intent of Section 121.2 that unless explicit reference is made to another section of the regulations, each section shall be construed and enforced according to its own terms.

(3) The establishment of a clear mechanism for evaluating minor fugitive emissions and providing written approval of such emissions as stated in § 123.1(a)(9) and (b) and § 129.15 (c) and (d).

(4) The carrying out of legislative policy mandated by an amendment to § 4.1 of Air Pollution Control Act adopted on December 12, 1976, which indicated that the Department of Environmental Resources should not regulate air contaminants from production of agricultural commodities in their unmanufactured state (Section 123.1(d), 123.31(c), 123.42(4) and 129.14(c)).

The public is invited to submit to the address stated above comments on whether the above listed modifications should be approved as a revision of the Commonwealth of Pensylvania's State Implementation Plan. The Commonwealth of Pennsylvania has certified that public hearings were held on April 5, 7 and 12, 1977 in accordance with the requirements of 40 CFR 51.4.

The Administrator's decision to approve or disapprove this proposed SIP revision will be further based on a final determination as to whether it meets the requirements of Section 110 of the Clean

Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

Under Executive Order 12044 EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Dated: May 30, 1979.

(42 U.S.C. 7401)

Jack J. Schramm,

Regional Administrator.

[FR Doc. 79-18281 Filed 6-11-79; 8:45 am]

BILLING CODE 6560-01-M

GENERAL SERVICES ADMINISTRATION

Public Buildings Service

[41 CFR Parts 101-17, 101-18, and 101-19]

Federal Space Management; Extension of Comment Period of Proposed Rulemaking

AGENCY: Public Buildings Service, General Services Administration.

ACTION: Notice of extension of comment period.

SUMMARY: This notice extends the period for comments on the proposed rule, published March 29, 1979 (44 FR 18705), proposing amended regulations for the planning, acquisition, utilization, and management of Federal space facilities. Requests for additional commenting time were received. This notice extends the comment period to July 13, 1979.

DATE: Comments must be received on or before July 13, 1979.

ADDRESS: Comments should be addressed to the General Services Administration (PR), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Joseph P. Yiakis, Acting Assistant Commissioner for Space Management (202-566-1025).

Dated: June 6, 1979.

Dennis J. Keilman,

Acting Commissioner, Public Buildings Service.

[FR Doc. 79-18153 Filed 6-11-79; 8:45 am]

BILLING CODE 6820-23-M

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 1039]

[Ex Parte No. 364 [1]]

Railroad—Freight Forwarder Contract Rates; General Policy Statement; Proposed Change

AGENCY: Interstate Commerce Commission.

ACTION: Proposed Policy Statement; request for comments.

SUMMARY: The Commission proposes to issue a general policy statement permitting railroads to file in tariff form freight forwarder contract rates. Having concluded that there is nothing inherently unlawful in railroads and shippers voluntarily entering into long-term commitments for the transportation of a specified volume of freight at agreed rates, the Commission believes that similar arrangements between railroads and freight forwarders would also be within the permissible scope of the law. As the acceptance for filing of railroad tariffs containing freight forwarder contract rates represents a change in policy, interested parties will be permitted to file comments before a final policy statement is adopted. All interested parties are invited to comment.

DATE: Comments are due on or before July 12, 1979.

ADDRESS: Comments should be filed with the Office of Proceedings, Room 5342, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Janice M. Rosenak or Harvey Gobetz (202-275-7693).

SUPPLEMENTARY INFORMATION: In Ex Parte No. 358, *Change of Policy Railroad Contract Rates*, 43 Fed. Reg. 58189 (December 13, 1978) the Commission announced a change in policy with respect to contract rates. Railroad contract rates with shippers, once "deemed unlawful *per se*," will, under the policy statement, be examined on an individual basis and, where lawful, be permitted to become effective. However, in the Ex Parte No. 358 policy statement, a decision on whether to permit railroads to publish contract rates for freight forwarders was deferred for the following reason:

It has been suggested that freight forwarders should be allowed to enter into contract rates with railroads. In the past the Commission has found that contract rates between railroads and freight forwarders are prohibited by the Interstate Commerce Act. We are not prepared to re-examine that holding in the context of this policy statement.

Upon further study, we believe it is appropriate to permit a railroad to file contract rates with respect to freight forwarder traffic.

As a consequence of our decision to defer action with respect to freight forwarders, the forwarding industry may have been placed at a competitive disadvantage vis-a-vis shippers' associations, the forwarders' principal competitors.[2] Such a result would be inconsistent with the Commission's finding in Ex Parte No. 266, "that the freight forwarding industry should be given every opportunity to prove its continued usefulness and to demonstrate that it still has a vital role to play on the national transportation scene." As we continue to subscribe to this belief, we believe that additional action is necessary in the area of railroad contract rates.

The correct nexus between the forwarding and railroad industry is crucial for the forwarders' continued survival as common carriers. We recognized in our freight forwarder investigation that the great bulk of freight forwarder shipments move by rail between concentration and break-bulk points and that the use of TOFC service by the forwarding industry was extensive and growing. Generally, we found that motor carrier service tends to be more expensive than rail per ton mile and that as a result most forwarder traffic handled by motor carrier moved under section 10706 contracts [3] in assembly and distribution service.[4] Whereas the motor carrier industry was found to be both competitor to and customer of the freight forwarder industry, the Western Railroads [5] regarded the forwarding industry as their most important ally and their means to retain a share of the small shipment and less-than-carload traffic.

The Commission has long recognized the dual nature of the forwarding industry. On the one hand, forwarders hold themselves out in their own name to provide the public with a transportation service. They publish their own tariffs, issue bills of lading, and assume primary responsibility for

[1] This number is assigned for informational and retrieval purposes only.

[2] Ex Parte No. 266, *Investigation Into Status of Freight Forwarders* 309 I.C.C. 711 at 782 (1971).

[3] Formerly section 406(a) of the Interstate Commerce Commission Act.

[4] In contrast to collection and delivery service, assembly and distribution service requires movement outside the terminal area with the result that freight forwarders are required to purchase the underlying transportation from common carriers.

[5] 309 I.C.C. at 740 and 785.

the safe transportation of the freight. That they were to be considered common carriers in certain respects was made clear on December 20, 1950, when Congress revised part IV, section 402(a)(5) of the Interstate Commerce Act, 64 Stat. 1113, 1114.[6] The report accompanying the legislation noted that forwarders are clearly common carriers in their relations to the public.[7] On the other hand the Commission and those carriers who perform the actual movement of goods have traditionally looked upon freight forwarders as shippers with regard to their reliance on others for the underlying line-haul and assembly and distribution service. Indeed, in Ex Parte No. 266, shipper associations opposed extending any form of volume rate relief to forwarders. Their principal contention was that if volume economies are to be made available, they should be open to everyone including those shippers capable of tendering consolidated traffic to the railroads under similar transportation conditions. Now that the benefit of contract rates has been extended to shippers, we propose to broaden the extension to freight forwarders as well.

Although there has never been an explicit statutory prohibition against freight forwarders entering into contracts with railroads, the Commission has nevertheless construed its jurisdiction under the Interstate Commerce Act as permitting freight forwarders to enter into only those agreements explicitly authorized by statute.[8] The presumption was that in authorizing some agreements between freight forwarders and other common carriers, Congress meant to prohibit the entry into all other types of arrangements. In turn, this presumption was predicated upon the view that freight forwarders are shippers vis-a-vis the underlying carriage. To permit them to negotiate rates would amount to affording them an illegal favoritism over other shippers utilizing the same carrier facilities.

Recent developments in the law have given us cause to reconsider the scope of our jurisdiction with respect to railroad-freight forwarder contract rates. In *Commonwealth of Pennsylvania* v. *Interstate Commerce Commission*, 561 F.2d 278 (D.C. Cir. 1978),[9] the court affirmed a change in Commission policy established in 1908. The policy change resulted in our prescription of rules requiring the filing of international joint rates and through routes participated in by rail, motor, and water carriers regulated by the ICC and ocean carriers regulated by the Federal Maritime Commission. The prescribed rules required that divisions be broken out, and we limited our substantive regulation to the domestic portion of the rate.

However, prior to the court decision, the Commission in Ex Parte No. 261 (Sub-No. 1), *Joint Rates Through Routes Frt. Forwarders & NVO*, 355 I.C.C. 913 (1977), concluded that it lacked statutory authority to permit freight forwarders to establish and participate in international joint rates and through routes. The forwarders appealed the decision in a proceeding entitled *New York Foreign Freight Forwarders & Brokers Ass'n* v. *Interstate Commerce Commission*, Nos. 75–1867 and 77–1353 (U.S.C.A., D.C. Cir). Their challenge relied upon the portion of the decision in the *Commonwealth of Pennsylvania* case where the petitioners had challenged the Commission's decision to permit domestic water carriers to enter into international joint rates and through routes notwithstanding the lack of explicit statutory authority of the sort provided for rail and motor carriers. The Court of Appeals disagreed with the petitioners stating,

> We find nothing in Part III purporting to prohibit filing voluntarily adopted joint rates in foreign commerce between FMC and ICC-regulated water carriers.
>
> The question is whether Congress, without explicitly stating that domestic and foreign water carriers can voluntarily enter into and file joint rates, intended, *sub silentio*, to preclude the ICC from issuing rules permitting domestic water carriers voluntarily to do so just as their competitors, the rail and motor carriers, do.
>
> We do not think that Part III can be read so narrowly or that Congress' silence on this point can be elevated into such significance as to put Part III carriers in a different posture than their motor and rail carrier competitors. (561 F.2d at 290).

The freight forwarders argued that their position was no different than that of the domestic water carriers, concerning the absence of specific statutory authority with respect to joint rates and through routes.

The Court of Appeals, on review in the *NYFFF&BA* case, disagreed with the freight forwarders' analogy to domestic water carriers. After reviewing the history of the Commission [10] and court interpretations of the status of freight forwarders and the legislative history of the 1950 amendment to the definition of a freight forwarder, as contained in former section 402(a)(5), the court concluded: [11]

> The overall emanation from the 1950 amendment is that while Congress made no immediate change in the law as to joint rates it did not necessarily intend to freeze the development of the law of freight forwarders. The underlying law that was left unchanged was one that recognized a discretionary role for the ICC in adjusting the "common law" of the Interstate Commerce Act to changes in economic realities. The rules that had evolved to prevent overreaching by the freight forwarders, viewed as shippers, were subject to reconsideration if this danger receded and the carrier quality of forwarders advanced. (Slip op. 18–19)

Pointedly the Court of Appeals affirmed our decision in *NYFFF&BA* on a policy basis while disagreeing with our conclusion as to statutory authority. In fact, the Court's opinion "emphasize[d] * * * that the Commission retains flexibility to reconsider its conclusions in the light of future developments."

Although *NYFFF&BA* is concerned with international joint rates and through routes, the Court's interpretation of the effect of the 1950 amendment upon the status of freight forwarders is clearly not so limited. Also noteworthy for its broad application is the court's acceptance of the long-term recognition of the dual qualities of freight forwarders as both shippers and carriers and its conclusion that the legislative history of the 1950 amendment "reflects a continuing recognition of the quality of freight forwarders as shippers."

In view of the court decisions in *Commonwealth of Pennsylvania* and *NYFFF&BA*, and the 1950 amendment, we no longer believe that the absence of express statutory authority is determinative of our jurisdiction with regard to whether we may permit the establishment of railroad-freight forwarder contract rates. In recognition of those qualities freight forwarders share with shippers and the extension of contract rates to shippers in general, we propose to modify the statement of policy appearing in part 1039 to subchapter A of chapter X of title 49 of

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[6] Recodified at 49 U.S.C. 10102(1) and (6).

[7] H. Rept. 2489 to H.R. 9007, 81st Cong. 2d Sess.

[8] 49 U.S.C. 10725 (formerly sections 407 and 408) authorizes (1) subchapter I, II, and III carriers to establish forwarder assembly and distribution rates lower than those charged shippers who were not similarly situated, and (2) motor carriers to establish reduced forwarder rates for small parcel traffic.

49 U.S.C. 10709(b) authorizes freight forwarders to enter into agreements with motor carriers for transportation at a distance of 450 highway miles or less at rates less than those established in the motor carriers' regular tariffs.

[9] Ex Parte No. 261, *International Joint Rates and Through Routes*, fifth and final decision at 361 I.C.C. 490 (1978).

[10] This included our disclaimers of jurisdiction in both Ex Parte Nos. 266 and 261(1) as to freight forwarder contract rates and joint rates and through routes.

[11] NYFFF&BA, (Slip op. 18).

the Code of Federal Regulations. The following additional sentence will be added after the last sentence to 49 CFR 1039.1, the definitional section:

§ 1039. Definition.

* * * For the purposes of this policy statement the term "shipper" shall also refer to freight forwarders.

As in the case of our general policy statement in railroad contract rates, we do not perceive the need for specific rules at this time. Each individual railroad-freight forwarder contract rate proposal will be evaluated on its own merits. In this evaluation process we propose to consider the same six factors listed in our earlier general policy statement.

Comments by any interested party concerning any matter discussed in this policy statement or relevant thereto are requested.

Dated: May 31, 1979.

By the Commission. Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian. Commissioner Christian absent and not participating.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-18280 Filed 6-11-79; 8:45 am]

BILLING CODE 7035-01-M

[49 CFR Part 1252]

[No. 34364 (Sub-No. 4)]

Public Inspection of Piggyback Traffic Statistics Reports

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed rulemaking.

SUMMARY: This Notice proposes to make piggyback traffic statistics reports open to public inspection and to incorporate the reports as part of the carriers' annual report.

DATES: Comments should be filed on or before: June 30, 1979.

ADDRESSES: Send comments with 10 copies, if possible, to: Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Bryan Brown, Jr. (202) 275-7448.

SUPPLEMENTARY INFORMATION: Beginning with the first quarter of 1964, class I railroads, class I intercity motor carriers of property, class A water carriers and class A freight forwarders were required to file quarterly reports of piggyback traffic statistics on forms PTR-R, PTR-M, PTR-W, and PTR-FF, respectively. Effective January 1, 1978, the filing frequency of piggyback data was changed from a quarterly to a semiannual basis (order No. 34364 (Sub-No. 2), served October 21, 1977). Effective January 1, 1979, the filing frequency of piggyback data was changed from a semiannual to an annual basis and filing was extended to class II rail carriers and to class II intercity motor carriers (Order No. 34364 (Sub-No. 3), served October 6, 1978).

In Order No. 34364 (Sub-No. 3), the Commission requested comments from the public concerning the need to continue to keep the piggyback statistical reports confidential. No comments were received on this issue. Now, we propose to open these reports to public inspection and to incorporate these reports with the carriers' annual report forms submitted to the Commission. Data on form PTR-R for class I railroads would be included as a separate schedule in annual report R-1; data on form PTR-R for class II railroads would be included as a separate schedule in annual report R-2; data on form PTR-M for class I and class II intercity motor carriers would be included as a separate schedule in annual report form M; data on form PTR-FF for class A freight forwarders would be included as a separate schedule in annual report form F-1; data on form PTR-W for class A water carriers would be included as a separate schedule in annual report form W-1; and data on form PTR-W for all maritime carriers would be included as a separate schedule in annual report form W-4.

Accordingly, we propose to eliminate Part 1252, sections 1252.1 through 1252.4, of Title 49 of the Code of Federal Regulations and to amend carriers' annual report forms to include piggyback traffic statistics.

This proposed rule does not significantly affect the quality of the human environment.

These rules are proposed under the authority of 49 U.S.C. §§ 10911, 11145, 11142, and 10321.

Decided: May 23, 1979.

By the Commission.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-18315 Filed 6-11-79; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 44, No. 114
Tuesday, June 12, 1979

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Land and Resource Management Plan; Wenatchee National Forest, Chelan, Douglas, Yakima, and Kittitas Counties, Wash.; Intent To Prepare an Environmental Impact Statement

Pursuant to the National Environmental Policy Act of 1969, and the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, the Forest Service, Department of Agriculture, will prepare an Environmental Impact Statement for a Forest Land and Resource Management Plan for the Wenatchee National Forest.

The Forest Plan will be prepared according to regulations being promulgated by the Secretary of Agriculture. The regulations will implement Section 6 of the National Forest Management Act of 1976.

A Land Management Plan has been prepared and implemented on the Chelan Planning Unit. A Draft Environmental Statement on the Kittitas Land Management Plan was filed with the Environmental Protection Agency (EPA) on July 31, 1978. Public comment to the Kittitas Draft has been analyzed and incorporated into a Final Environmental Statement planned to be filed with the EPA in July 1979. A completed Land Use Plan for the Alpine Lakes Management Unit and subsequent legislation established the Alpine Lakes Wilderness and Intended Wilderness in July 1976. A planning team is now in the process of developing a Wilderness Management Plan for the Alpine Lakes Wilderness and Intended Wilderness and specific management direction for the nonwilderness lands. A Final Environmental Statement is planned to be filed with the EPA in June 1980, with implementation by September 1980. Draft Environmental Statements on the Cougar Lakes Wilderness Study and the Naches-Tieton-White River Land Management Plan were filed with the EPA in August 1977. These Plans will be carried through to completion as part of the Forest Plan.

The Forest Plan will replace all previous Plans and provide direction for all lands on the Wenatchee National Forest plus the Naches and Tieton Ranger Districts of the Mt. Baker-Snoqualmie National Forest which are administered by the Wenatchee National Forest.

The Forest Plan will be coordinated with local, county, State and other Federal agencies. Public involvement will be encouraged and sought throughout the planning process. The following public workshops are scheduled to help the Forest identify issues, opportunities, and concerns:

7 p.m., June 18, Thunderbird Motel Inn, Wenatchee, WA.;
7 p.m., June 19, Davis High School, Yakima, WA.;
7 p.m., June 20, Sherwood Inn, Seattle, WA.;
7 p.m., June 28, Holiday Inn, 3518 Pacific Highway East, Tacoma, WA.

Alternatives will be displayed in an Environmental Impact Statement and will include as a minimum (1) a no-action alternative, (2) one or more alternatives which will result in eliminating all backlogs of needed treatment for the restoration of renewable resources, (3) an alternative which approximates the levels of goods and services assigned by the Regional Plan, and (4) one or more alternatives formulated to resolve the major public issues or concerns.

R. E. Worthington, Regional Forester, Pacific Northwest Region is the responsible official. Robert C. Benson, Wenatchee National Forest will be the Team Leader for the Environmental analysis and Impact Statement.

A Draft Environmental Impact Statement on the Forest Plan is scheduled to be filed by December 1981. The Final Environmental Impact Statement will be filed December 1982.

Comments on this Notice of Intent for the Forest Plan should be sent to John L. Rogers, Forest Supervisor, Wenatchee National Forest, P.O. Box 811, Wenatchee, Washington 98801.

June 1, 1979.

Frank J. Kopecky,
Acting Regional Forester.

[FR Doc. 79-18139 Filed 6-11-79; 8:45 am]
BILLING CODE 3410-11-M

Office of the Secretary

Change in Boudary of National Forest

Pursuant to authority vested in me by section 11 of the Act of March 1, 1911 (36 Stat. 961) as amended, and the delegation of authority and assignment of functions by the Secretary of Agriculture to the Assistant Secretary of Agriculture for Conservation, Research, and Education, the boundary of the Uwharrie National Forest is retracted as described below.

Uwharrie National Forest, North Carolina

(Lands to be Excluded)

Randolph County:
Forest Service Tracts No. U-305 and U-307;
Montgomery County:
Forest Service Tracts No. U-123 and U-1205;
The areas described aggregate 443.30 acres.

Effective Date: This order shall become effective June 12, 1979.

David G. Unger,
Deputy Assistant Secretary.
June 7, 1979.

[FR Doc. 79-18180 Filed 6-11-79; 8:45 am]
BILLING CODE 3410-11-M

Change in Boundary of National Forest

Pursuant to authority vested in me by Section 11 of the Act of March 1, 1911 (36 Stat. 961) as amended, and the delegation of authority and assignment of functions by the Secretary of Agriculture to the Assistant Secretary of Agriculture for Conservation, Research, and Education, the boundary of the Angelina National Forest is extended as described below and all lands within the Angelina National Forest as adjusted that have been or hereafter are acquired by the United States under provisions of the aforesaid Act, or which otherwise attain status as National Forest land subject to such Act, are hereby designated for administration as part of the Angelina National Forest.

Angelina National Forest, Texas

Angelina County:
That part of Forest Service Tract No. A–100–1 lying in Angelina County;
Nacogdoches County:
That part of Forest Service Tract No. A–100–1 lying in Nacogdoches County;
Forest Service Tract No. A–100–2;
Forest Service Tract No. A–100–3;
Forest Service Tract No. A–100–4;
That part of Forest Service Tract No. A–100–5 lying in Nacogdoches County;
San Augustine County:
That part of Forest Service Tract No. A–100–5 lying in San Augustine County;
That part of Forest Service Tract No. A–100–6 lying outside the existing National Forest boundary;
Forest Service Tract No. A–100–20;
The areas described aggregate 10,671.66 acres.

Effective Date: This order shall become effective June 12, 1979.

David G. Unger,
Deputy Assistant Secretary.
June 7, 1979.
[FR Doc. 79-18181 Filed 6-11-79; 8:45 am]
BILLING CODE 3410-11-M

Change in Boundary of National Forest

Pursuant to authority vested in me by Section 11 of the Act of March 1, 1911 (36 Stat. 961) as amended, and the delegation of authority and assignment of functions by the Secretary of Agriculture to the Assistant Secretary of Agriculture for Conservation, Research, and Education, the boundary of the Daniel Boone National Forest is extended as described below and all lands within the Daniel Boone National Forest as adjusted that have been or hereafter are acquired by the United States under provisions of the aforesaid Act, or which otherwise attain status as National Forest Land subject to such Act, are hereby designated for administration as part of the Daniel Boone National Forest.

Daniel Boone National Forest, Kentucky

Bath County:
That part of Forest Service Tract No. CRR–105 lying outside the existing National Forest boundary;
Rowan County:
That part of Forest Service Tracts No. C–67a and C–75 lying outside the existing National Forest boundary;
Morgan County:
Forest Service Tracts No. CRR–5305, CRR–5306, CRR–5307, CRR–5308, CRR–5402, CRR–5403, CRR–5404–1, CRR–5404–2, CRR–5405–1, CRR–5405–2, CRR–5406, CRR–5407, CRR–5410, CRR–5413;
Corps of Engineers Tracts No. 4903, 4903–C, 4905, 4901, 4904, 4905, 4908, 4900, 4901, 4902, 4904, 5100, 5101, 5102, 5103, 5104, 5105, 5108, 5200, 5203, 5300, 5301, 5302, 5303, 5304, 5401, 5409, 5411, 5414, 5600, 5601, 5602, 5603, 5603–C, 5700, 5701, 5702, 5703, 5704, 5705, 5706, 5707;
That part of Corps of Engineers Tracts No. 4900, 4902, and 4903 lying outside the existing National Forest Boundary;
Laurel County:
Forest Service Tracts No. LRL–1007, LRL–1008, LRL–1012–1, LRL–1012–2, LRL–1013, LRL–1017, LRL–1021, LRL–1023, LRL–1051–1, LRL–1051–2;
That part of Forest Service Tract No. LRL–1058 lying outside the existing National Forest boundary;
Corps of Engineers Tracts No. 1003, 1004, 1005, 1006, 1009, 1014–1, 1014–2, 1015, 1016, 1020, 1022, 1024;
That part of Corps of Engineers Tract No. 1002 lying outside the existing National Forest boundary;
Whitley County:
Forest Service Tracts No. LRL–1032, LRL–1036, LRL–1037 (part), LRL–1038, LRL–1043, LRL–1059 (part);
Corps of Engineers Tracts No. 1030, 1031, 1032, 1033, 1034, 1035, 1037 (part), 1039, 1040, 1041, 1042, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1053.
The areas described aggregate 3,582.99 acres.

Effective Date: This order shall become effective June 12, 1979.

David G. Unger,
Deputy Assistant Secretary.
June 7, 1979.
[FR Doc. 79-18182 Filed 6-11-79; 8:45 am]
BILLING CODE 3410-11-M

CIVIL AERONAUTICS BOARD

[Order 79–6–20; Docket 35745]

Additional Great Lakes—Florida Service Show-Cause Proceeding

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause (79–6–20), *Additional Great Lakes—Florida Service Show-Cause Proceeding, Docket 35745.*

SUMMARY: The Board is proposing to grant nonstop authority in the following markets: Buffalo/Cleveland/Rochester-Ft. Lauderdale/Miami/Tampa; Pittsburgh-Daytona Beach/Orlando/Ft. Lauderdale/Miami/Tampa; and Albany/Detroit/Syracuse-Daytona Beach/Ft. Lauderdale/Miami/Orlando/Ft. Myers/Sarasota/Tampa to American Airlines and any other fit, willing and able applicants whose fitness can be established by officially noticeable data. The complete text of this order is available as noted below.

DATES: Objections: All interested persons having objections to the Board issuing the proposed authority shall file, and serve upon all persons listed below, no later than July 12, 1979, a statement of objections together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections.

Additional Data: All existing and would-be applicants who have not filed (a) illustrative service proposals, (b) environmental evaluations, and (c) an estimate of fuel to be consumed in the first year are directed to do so no later than June 27, 1979.

ADDRESSES: Objections or Additional Data should be filed in Docket 35745, Docket Section, Civil Aeronautics Board, Washington D.C., 20428.

FOR FURTHER INFORMATION CONTACT: M. Mikolajczyk, Bureau of Domestic Aviation, Civil Aeronautics, Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673–5918.

SUPPLEMENTARY INFORMATION: Objections would be served upon the following persons: American Airlines and Eastern Air Lines.

The complete text of Order 79–6–20 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 79–6–20 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: June 5, 1979.

Phyllis T. Kaylor,
Secretary.
[FR Doc. 79-18252 Filed 6-11-79; 8:45 am]
BILLING CODE 6320-01-M

[Order 79–6–34; Docket 34758]

Aerolineas Territoriales de Colombia Ltda.; Foreign Air Carrier Permit

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause: Order 79–6–34.

SUMMARY: The Board proposes to approve the following application: Applicant: AEROLINEAS TERROTORIALES DE COLOMBIA LTDA. "AEROTAL". Application Date: February 14, 1979. Docket 34758. Authority Sought: Foreign air carrier permit to engage in scheduled cargo service between Cali, Colombia and Miami, Florida.

OBJECTIONS: All interested persons having objections to the Board's tentative findings and conclusions that this authority should be granted, as described in the order cited above, shall file a statement of such objections NO LATER THAN July 2, 1979, with the Civil Aeronautics Board (20 copies) and mail copies to the applicant, the Department of Transportation, the

Department of State, and the Ambassador of Colombia in Washington, D.C. A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Secretary of the Board will enter an order which will, subject to the disapproval by the President, make final the Board's tentative findings and conclusions and issue the proposed permit or certificate.

ADDRESSES FOR OBJECTIONS:

Docket *34758*, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

Aerolineas Territoriales de Colombia Ltda. "AEROTAL" c/o Arent, Fox, Kintner, Plotkin and Kah, Attn: Robert H. Huey, 1815 "H" Street NW., Washington, D.C. 20006.

To get a copy of the complete order, request it from the C.A.B. Distribution Section, Room 516, 1825 Connecticut Avenue NW., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT: the Regulatory Affairs Division of the Bureau of International Aviation, Civil Aeronautics Board; (202) 673-5183.

By the Civil Aeronautics Board: June 8, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-18288 Filed 6-11-79; 8:45 am]

BILLING CODE 6320-01-M

[Order 79-6-47; Agreement CAB 2696, R-41, et al.]

Conditions of Carriage—Cargo; Order Granting Stay

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 5th day of June, 1979.

In the matter of Agreements adopted by the International Air Transport Association regarding Agreement CAB 2696, R-41; Agreement CAB 2699, R-42; Agreement CAB 2700, R-43; Agreement CAB 3119; Agreement CAB 7648, R-107; Agreement CAB 24475, R-4 and R-5, Docket 25280; Agreement CAB 25186, R-12, Docket 27573; Agreement CAB 25954, R-1, R-2 and R-3, Docket 27573; and Agreement CAB 26701, R-9.

On May 15, 1979, The Flying Tiger Line Inc. filed a motion to stay the effectiveness of ordering paragraphs (1) and (6) of Order 78-6-10, August 3, 1978, for a period of six months from date of final Board approval of newly amended conditions of carriage submitted by the International Air Transport Association (IATA) on May 15, 1979. Order 78-6-10 approved (some conditionally) and disapproved provisions in two IATA resolutions (Resolutions 600b and 600j) restating the condition of carriage of cargo to appear on the back and face of cargo air waybills. By Order 78-11-146, November 30, 1978, on motion of IATA, we stayed the effectiveness of paragraphs (1) and (6) of Order 78-6-10 until June 5, 1979,[1] in order to give the carriers lead time to use up their existing stock of air waybills and to print and distribute new air waybills.

In support of its motion, Flying Tiger states that the newly amended conditions of carriage deal with those provisions of the IATA Resolution 600b which were either disapproved or approved conditionally. In order to accomplish this, it was necessary to use the IATA machinery, which involved a Cargo Traffic Procedures Committee meeting recommending the proposed amendments, and then circulation for approval by all IATA member carriers. As a result, the newly amended conditions were filed with the Board on May 15, 1979.

Answers in support of Flying Tiger's motion have been filed by TWA, Pakistan International and CPAir, El Al, LAN, SAS and Varig (jointly). No objections to the motion have been received.

Based on the foregoing, we have decided to grant a stay. No useful purpose would be served in now requiring the carriers to print and distribute new air waybills, and then repeat the process very shortly following our action on the newly amended provisions.[2] We anticipate that no further amendments are presently contemplated. In these circumstances, we shall grant the stay *pendente lite* until we have had an opportunity to act on the new amendments.

Accordingly, we grant a stay of ordering paragraphs (1) and (6) of Order 78-6-10 until further order of the Board.

We will publish this order in the Federal Register.

[1] Paragraphs (1) and (6) of Order 78-6-10 withdrew the approval granted in 1949 of the conditions of carriage now appearing on air waybills.

[2] It is understood that we are not passing on the merits of the newly amended conditions of carriage, a matter with which we expect to deal shortly.

By the Civil Aeronautics Board:[3]

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-18289 Filed 6-11-79; 8:45 am]

BILLING CODE 6320-01-M

[79-6-23; Docket 35746]

Corpus Christi-Houston/San Antonio Show Cause Proceeding; Proposed Grant of Authority to Continental Air Lines

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause (79-6-23), *Corpus Christi-Houston/San Antonio Show Cause Proceeding*, Docket 35746.

SUMMARY: The board is proposing to grant Corpus Christi-Houston/San Antonio authority to Continental Air Lines (Docket 35339) and any other fit, willing and able applicant the fitness of which can be established by officially noticeable material. The complete text of this order is available as noted below.

DATES: All interested persons having objections to the Board issuing an order making final the tentative findings and conclusions shall file, by July 11, 1979, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections. Such filings shall be served upon all parties listed below.

ADDRESSES: Objections to the issuance of a final order should be filed in the Dockets Section, Civil Aeronautics Board, Washington, D.C., 20428, in Docket 35746, which we have entitled the *Corpus Christi-Houston/San Antonio Show Cause Proceeding.*

In addition, copies of such filings should be served on Continental Air Lines.

FOR FURTHER INFORMATION CONTACT: Charles Stohr, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C., 20428, (202) 673-5348.

SUPPLEMENTARY INFORMATION: The complete text of Order 79-6-23 is available from the Distribution Section, Room 516, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 79-6-23 to that address.

[3] All Members concurred.

By the Civil Aeronautics Board: June 5, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-18251 Filed 6-11-79; 8:45 am]

BILLING CODE 6320-01-M

Federal Express Corp.; Application for Pick-up and Delivery Service

June 6, 1979.

In accordance with Part 222 (14 CFR Part 222) of the Board's Economic Regulations (effective June 12, 1964), notice is hereby given that the Civil Aeronautics Board has received an application, Docket 35758, from Federal Express Corporation, Memphis International Airport, AMF Box 30167, Memphis, Tennessee 38130, for authority to provide pick-up and delivery service between sixteen of the airports served by Federal Express to points located from thirty to sixty-eight miles from such airports.

Under the provisions of section 222.3(c) of Part 222, interested persons may file an answer in opposition to or in support of this application on or before June 27, 1979. An executed original and nineteen copies of such answer shall be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. It shall set forth in detail the reasons for the position taken and include such economic data and facts as are relied upon, and shall be served upon the applicant and state the date of such service.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-18248 Filed 6-11-79; 8:45 am]

BILLING CODE 6320-01-M

[79-6-24; Docket 35747]

New York/Newark-Pittsburgh and Phoenix-Palm Springs Show-Cause Proceeding; Proposed Grant to American

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 79-6-24, the *New York/Newark-Pittsburgh and Phoenix-Palm Springs Show-Cause Proceeding*, Docket 35747.

SUMMARY: The Board is proposing to grant New York/Newark-Pittsburgh turnaround authority and Phoenix-Palm Springs unrestricted authority to American and any other fit, willing and able applicant whose fitness can be established by officially noticeable data. The complete text of this order is available as note below.

DATES: Objections: All interested persons having objections to the Board issuing the proposed authority shall file, and serve upon all persons listed below, no later than July 11, 1979, a statement of objection, together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections.

Additional Data: All existing and would-be applicants who have not filed (a) illustrative service proposals, (b) environmental evaluations, and (c) an estimate of fuel to be consumed in the first year are directed to do so no later than June 26, 1979.

ADDRESSES: Objections or Additional Data should be filed in Docket 35747, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Mary C. Terry, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Ave., Washington, D.C. 20428, (202) 673-5384.

SUPPLEMENTARY INFORMATION: Objections should be served upon the following person: American Airlines and Allegheny Airlines.

The complete text of Order 79-6-24 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metroplitan area may send a postcard request for Order 79-6-24 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: June 5, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-18250 Filed 6-11-79; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

United States Travel Service

Supplement to Final Environmental Impact Statement for Energy Expo '82

Notice is hereby given that a Supplement to the Final Environmental Impact Statement (FEIS) on the proposed International Energy Exposition (Energy Expo '82) to be held in Knoxville, Tennessee, in 1982 is now available for public review and comment. This document was prepared pursuant to Section 102(2)(C) of the National Environment Policy Act. The Supplement contains the results and conclusions of the Department of Commerce's analysis of the proposed U.S. Pavilion and the results of its on-going environmental monitoring and research concerning the overall exposition program.

Copies of the Supplement and FEIS can be obtained by submitting a written request for either or both documents to the address set forth below. To be considered, written comments on the Supplement must be received at the same address by July 12, 1979.

Mr. C. C. Pusey, United States Travel Service, Room 1856, U.S. Department of Commerce, Washington, D.C. 20230.

Questions or requests for further information should be directed to Mr. C. C. Pusey at the above address or by calling telephone 202/377-5211.

Lee Wells,

Acting Assistant Secretary for Tourism.

[FR Doc. 79-18254 Filed 6-11-79; 8:45 am]

BILLING CODE 3510-11-M

DEPARTMENT OF DEFENSE

Department of the Army

Intent to Prepare a Draft Environmental Impact Statement (DEIS) for the Savannah River Basin Study (Oates Creek Flood Control Study)

June 4, 1979.

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. Proposed Action: The purpose of the Savannah River Basin Study is to investigate the nature and scope of water resources problems and needs in the Savannah River Basin. The problems and needs addressed by the study include flood control, water supply, navigation, hydropower, and recreation. Seven projects in the watershed were analyzed, and the Oates Creek Flood Control Project was the only project determined to be economically feasible and environmentally sound. The Oates Creek watershed is contained completely within Richmond County, Georgia. Urban development in the Oates Creek watershed has resulted in 283 buildings being located in the 100-year flood plain. Average annual damages resulting from flooding are estimated at $1.6 million. Nine alternatives were evaluated, and the selected plan involves channel modification along Oates Creek from Gordon Highway (U.S. Highway 78) to Olive Road. Sixteen bridges and culverts will also be replaced. Of the 2.33 mile reach to be channelized, about 5,800 feet would be lined with concrete and have vertical sides. The remaining

6,500 feet would be grass-lined with sloping sides.

2. Alternatives: In developing the selected plan, the alternatives of no action, flood warning, floodproofing and evacuation, evacuation only, clearing and snagging, enlargement of bridge and culvert openings, levees, and upstream dam and channel modification were investigated.

3. Scoping Process: Public involvement to date includes a public meeting held on 6 June 1978 and a workshop held on 8 November 1978. Although no formal scoping meeting is planned, the public and concerned government agencies will be able to express their views at a public meeting and workshop scheduled for July, 1979. The main environmental impacts resulting from the channel modification would be associated with the construction work and the altering of the existing channel. Since the area is already heavily developed and the stream suffers from urban pollution, the overall impacts on the environment would be minor. Social impacts would be mainly beneficial resulting from the reduced flooding. Much of the Oates Creek study area is located in an economically depressed part of Augusta, Georgia. Many of the residents affected by flooding suffer financial and personal hardship when flooding occurs. Because of the unique characteristics of the area and social climate, primary consideration was given to relocating as few people as possible. Other significant issues may be identified at the public meeting and workshop.

4. DEIS Preparation: The DEIS should be available to the public in June, 1979.

ADDRESS: Questions about the proposed action and DEIS can be answered by: David Coleman, U.S. Army Engineer District, Savannah, P.O. Box 889, Savannah, GA 31402, Telephone (912) 233-6822, Ext. 371.

Tilford C. Creel,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 79-18159 Filed 6-11-79; 8:45 am]

BILLING CODE 3710-HF-M

Office of the Secretary

Defense Science Board Task Force on EMP Hardening of Aircraft

The meeting date for the Defense Science Board Task Force on EMP Hardening of Aircraft scheduled for a closed session on 20-21 June 1979 at Wright-Patterson Air Force Base, Dayton, Ohio, as published in the Federal Register (Vol. 44, No. 103, dated Friday, May 25, 1979, FR Doc 79-16461) has been changed to 10-11 July 1979 in Washington, D.C. In all other respects, the original notice cited above remains the same.

H. E. Lofdahl, Director,

Correspondence and Directives, Washington Headquarters Services, Department of Defense.

June 6, 1979.

[FR Doc. 79-18160 Filed 6-11-79; 8:45 am]

BILLING CODE 3810-70-M

ENDANGERED SPECIES COMMITTEE

Review Board Consideration of Pittston Company Exemption Applications

AGENCY: Endangered Species Committee; Endangered Species Review Board.

ACTION: Notice.

SUMMARY: Notice is hereby given that endangered species review boards have commenced considering two applications filed by the Pittston Company, to exempt its proposed oil refinery and marine terminal in Eastport, Maine from requirements of section 7(a) of the Endangered Species Act. The review boards must decide by August 3, 1979, whether Pittston's exemption applications met certain threshold requirements before the application qualifies for further consideration by the Endangered Species Committee. This notice announces that the review boards will hold a prehearing conference on June 27, 1979, and may, depending on the outcome of that conference, proceed to hold an oral hearing and decision meeting on threshold determinations concerning Pittston's application.

DATES:

June 18—Deadline for filing a motion to intervene and suggestions for issues to be discussed at prehearing conference.

June 25—Deadline for filing written comments on prehearing issues.

June 27—Prehearing conference.

TENTATIVE DATES:

July 9—Deadline for filing written submissions for the oral hearing by parties and intervenors.

July 16—Oral hearing.

July 24—Deadline for filing briefs by parties and intervenors.

July 30—Review board decision meeting.

ADDRESSES: Please send all written submissions to the Endangered Species Review Board, c/o Office of Policy Analysis, Department of the Interior, 18th & C Streets, N.W., Washington, D.C. 20240.

The prehearing conference will be held at the Federal Communications Commission, Room 252, 1919 M Street, N.W., Washington, D.C. 20554, at 9:00 a.m. on June 27, 1979.

FOR FURTHER INFORMATION CONTACT: Raphaelle Semmes, Office of Policy Analysis, Department of the Interior, 18th & C Streets, N.W., Washington, D.C. 20240. (202) 343-6578.

SUPPLEMENTARY INFORMATION:

The Exemption Process

The Endangered Species Act Amendments of 1978 establish a procedure for obtaining exemptions from section 7(a) of the Endangered Species Act, 16 U.S.C. 1536(a). Section 7(a) requires Federal agencies to insure, in consultation with the Secretary of the Interior or Commerce, that their actions do not jeopardize the continued existence of endangered or threatened species or destroy or adversely modify critical habitats. Applications for exemption from this requirement may be made by a Federal agency, by the Governor of a State in which an agency action would occur, or by a person whose permit or license application has been denied primarily because of section 7(a) considerations. An application is to be directed to the appropriate Secretary, who may, at his discretion, determine if it is timely and otherwise adequate. It is then evaluated by a review board and, if certain criteria are met, decided upon by the Endangered Species Committee.

Background of Pittston's Exemption Application

Pittston's exemption applications concern the Environmental Protection Agency (EPA)'s denial of a National Pollutant Discharge Elimination System (NPDES) permit pursuant to section 402 of the Clean Water Act of 1972. Pittston applied to EPA on September 26, 1975 for this permit for a proposed 250,000 barrel/day oil refinery and marine terminal in the City of Eastport, Maine. EPA published a final environmental impact statement on Pittston's proposed refinery on June 19, 1978, along with its tentative decision to grant Pittston the NPDES permit.

The Fish & Wildlife Service requested EPA on September 1, 1978 to initiate consultation under the Endangered Species Act on the northern bald eagle, a species designated as endangered on February 14, 1978. Following consultation, FWS issued a biological opinion on December 21, 1978 that the refinery is likely to jeopardize the continued existence of the bald eagle.

Renewed consultation between EPA and FWS, with Pittston's participation, terminated on June 4, 1979, and resulted in FWS re-affirming the conclusion of its earlier biological opinion.

NMFS requested EPA to initiate consultation on August 18, 1978 concerning the refinery's effects on endangered species of whales. Following consultation, NMFS concluded in statements of November 20, 1978 and March 8, 1979 that there was insufficient information to make a determination whether or not Pittston's refinery would jeopardize endangered whales, and that granting the permit may therefore violate section 7(a) of the Act.

EPA denied Pittston's application for an NPDES permit in a letter of January 15, 1979 on the basis of the Endangered Species Act and the National Environmental Policy Act; this denial was supplemented by a letter dated April 17, 1979. Pittston has appealed the denial and EPA will hold a formal adjudicatory hearing on the matter pursuant to 40 CFR 125.36. EPA has scheduled a prehearing conference on Pittston's appeal for June 28, 1978 at EPA's regional office in Boston, Mass.

Review Board Considerations and Procedures

Exemption Applications

Pittston has filed exemption applications with both the Secretary of the Interior and the Secretary of Commerce. The application to the Secretary of the Interior was filed on January 26, 1979, but processing of the application was deferred until June 4, 1979 because of the renewed consultation between FWS and EPA on the bald eagle. The application to the Secretary of Commerce was filed on May 4, 1979.

Two review boards have been assembled to consider the applications. The same members have been appointed to each board, however, and it is anticipated that consolidated proceedings on the two applications will be held.

Members

The review board for the Pittston applications consists of Dr. Laurence E. Lynn, Professor of Public Policy, Harvard University; John E. Menario, President of the Greater Portland Chamber of Commerce, Portland, Maine; and Administrative Law Judge Francis L. Young.

Parties

The parties before the review boards are the applicant, the Pittson Company, and the Federal agencies involved in the endangered species consultations: EPA and FWS, consulting agency for the bald eagle, and NMFS, consulting agency for the endangered whales.

Prehearing Conference

The Review Board will hold a prehearing conference in Washington, D.C. on June 27, 1979.

The primary issue to be considered at the prehearing conference will be whether Pittston's exemption application is ripe for adjudication. the Endangered Species Act is ambiguous as to whether a permit applicant such as Pittston must first complete any administrative appeals of its permit denial within the permitting agency, in this case EPA, or whether it may apply for an exemption following the initial denial of its permit. Letters are on file from the Environmental Defense Fund and the National Wildlife Federation, and from the Pittston Company, which address this question. Oral argument will be heard on this issue.

The Review Board will also consider at its prehearing conference what issues should be addressed at its oral hearing in July.

If a party or intervenor applicant feels any other matter should be considered by the review board at the prehearing conference, it should submit a written request to the review board stating the topic and the reasons for its consideration, by June 18, 1979.

In order to participate in the review board proceedings, a person must file a motion to intervene by June 18, 1979. The motion must set forth the petitioner's name and address, the name of any representative, the petitioner's interest in the proceeding, and must show that the petitioner's participation will assist in resolving the issue in question. The review board will act on the motions to intervene at or before the start of the prehearing conference.

The review board must receive all briefs and written submissions of the parties and intervenors by June 25, 1979. Because there are only seven days between when an intervenor must file a motion to intervene and when written submissions are due, all parties and intervenors will receive actual notice around June 18, 1979 of what has been filed and of any additional issues the review board will consider at the June 27 prehearing conference. In addition, all material filed concerning Pittson's exemption application will be available for public inspection at Room 4160, Interior Building, 18th & C Streets, N.W., Washington, D.C.

Oral Hearing And Decision Meeting Tentatively Scheduled

The oral hearing is tentatively scheduled to be in Washington, D.C. on July 16, 1979, and the decision meeting is tentatively scheduled to be in Washington, D.C. on July 30, 1979. These dates and places may change if the prehearing conference demonstrates a new schedule is called for, or if Pittston's application is determined not ripe.

The issues to be addressed at the oral hearing and decision meeting will involve the threshold determinations to be made by the review board:

(1) Whether the Federal agency and permit or license applicant have refrained from making any irreversible or irretrievable commitment of resources which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative which would avoid jeopardy to the species or critical habitat;

(2) Whether the Federal Agency and permit or license applicant have carried out consultation responsibilities in good faith and have made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to the proposed action which would avoid jeodardy to the species or critical habitat;

(3) Whether there is an irresolvable conflict; and

(4) Whether any required biological assessment was conducted.

Regulations Available

Proposed regulations governing the content of exemption applications are found at 44 Fed. Reg. 7777 (Feb. 1979). Interim final regulations governing the review board and Endangered Species Committee procedures, which shall be in effect for 240 days, are found at 44 Fed. Reg. 33127 (June 8, 1979).

Dated: June 7, 1979.

Francis L. Young,

Administrative Law Judge for the Review Board.

[FR Doc. 79-18246 Filed 6-11-79; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Claiborne Gasoline Co.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against potential refunds that may be deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective date: May 25, 1979. Comments by July 12, 1979.

ADDRESS: Send comments to: Wayne I. Tucker, District Manger of Enforcement, Southwest District Office, P.O. Box 35228, Dallas, Texas 75235.

FOR FURTHER INFORMATION CONTACT: Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, P.O. Box 35228, Dallas, Texas 75235. [phone] 214/749–7626.

SUPPLEMENTARY INFORMATION: On May 25, 1979, the Office of Enforcement of the ERA executed a Consent Order with Claiborne Gasoline Company of Dallas, Texas. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of $500,000 or more in the aggregate, excluding penalties and interest, becomes effective upon its execution only if the DOE expressly finds it to be in the public interest to do so.

Because of the complexity and the quantity of recomputations necessitated by this settlement, as well as the likelihood of only minor refund obligations as a result of the recalculations, the DOE has determined that it is in the public interest to make the Consent Order with the Claiborne Gasoline Company effective as of the date of its execution by the DOE and Claiborne Gasoline Company.

I. The Consent Order

Claiborne Gasoline Company, with its home office located in Dallas, Texas, is a firm engaged in the refining of crude oil and natural gas liquids, and is subject to the Mandatory Petroleum Price and Allocation regulations at 10 CFR, Parts 210, 211, 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Claiborne Gasoline Company, the Office of Enforcement, ERA, and Claiborne Gasoline Company entered into a Consent Order, the significant terms of which are as follows:

1. Claiborne Gasoline Company has agreed to recompute its increased cost of crude oil in each month of measurement, for the period of August 1973 through December 1978, to reflect an upward adjustment to its May 1973 crude cost referred to in I. 2 below. Claiborne Gasoline Company's increased crude cost will be reduced by $1,815,506.59 during the aforementioned period.

2. Claiborne Gasoline Company failed to include a $.25 per barrel retroactive price increase for certain crude oil purchases in its computation of May 1973 crude cost.

3. By entering into this Consent Order, Claiborne Gasoline Company is not admitting that it has violated any regulation or overcharged any of its customers.

4. The provisions of 10 CFR 205.199J, including the publication of this notice, are applicable to the Consent Order.

II. Disposition of Potential Overcharges

In this Consent Order, Claiborne Gasoline Company agrees to refund any potential overcharges, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the recomputations specified in I. 1 above. Any refund obligations arising out of the use of the revised increased crude cost computations will be implemented pursuant to the procedures set forth in 10 CFR Part 205, Subpart V.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the potential refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the potential refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, P.O. Box 35228, Dallas, Texas 75235. You may obtain a free copy of this Consent Order by writing to the same address or by calling 214/749–7626.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Claiborne Gasoline Company Consent Order." We will consider all comments we receive by 4:30 pm, local time, on July 12, 1979. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Washington, DC on the 7th day of June, 1979.

Wayne I. Tucker,

District Manager of Enforcement, Southwest District Office, Economic Regulatory Administration.

[FR Doc. 79-18221 Filed 6-11-79; 8:45 am]

BILLING CODE 6450-01-M

Fuel Oil Marketing Advisory Committee; Change in Meeting Date and Place

This notice is given to advise of a change in date and place of the meeting of the Fuel Oil Marketing Advisory Committee. The Committee will meet Wednesday, July 18, 1979, from 1:00 p.m. to 6:00 p.m., and Thursday, July 19, 1979, from 8:00 a.m. to 4:00 p.m., in the Savoy Room, Holiday Inn Union Square, 480 Sutter Street, San Francisco, California, rather than Tuesday, June 19, 1979, and Wednesday, June 20, 1979, at the Radisson Hotel, 45 South Seventh Street, Minneapolis, Minnesota, as previously announced. A notice of meeting was

published in the issue of June 1, 1979 (44 FR 31701 and 31702).

Issued at Washington, D.C. on June 7, 1979.

Georgia Hildreth,

Director, Advisory Committee Management.

[FR Doc. 79-18232 Filed 6-11-79; 8:45]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP73-77]

Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

June 5, 1979.

Take notice that on June 1, 1979, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), P.O. Box 918, Florence, Alabama 35630, tendered for filing as part of its FPC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheet:

Thirtieth Revised Sheet No. 3–A Superseding.

Second Substitute Twenty-Ninth Revised Sheet No. 3–A.

This revised tariff sheet is proposed to become effective as of July 1, 1979.

Alabama-Tennessee states that the purpose of such revised tariff sheet is to reflect the effect of Tennessee Gas Pipeline Company's Twenty-Fifth Revised Sheet No. 12–A, of its FERC Gas Tariff Ninth Revised Volume No. 1, filed with the Commission on May 31, 1979 to be effective July 1, 1979.

The revised sheet to Alabama-Tennessee's tariff provides for the following rates:

Rate schedule		Thirtieth revised sheet No. 3–A
G-1:		
	Demand	$2.07
	Commodity	200.88¢
SG-1:		
	Commodity	216.00¢
I-1:		
	Commodity	207.89¢

Alabama-Tennessee states that the purpose of such revised tariff sheet is to reflect the rate increase of Tennessee Gas Pipeline Company issued May 31, 1979.

Alabama-Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected State regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 18, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18230 Filed 6-11-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-396]

Boston Edison Co.; Filing

June 4, 1979.

The filing Company submits the following:

Take notice that on May 29, 1979, Boston Edison Company ("Edison") tendered for filing as a rate schedule a letter agreement between itself and the New England Power Company ("NEP") of Westboro, Massachusetts for the support by NEP of a 115 KV transmission line.

The line, designated Line 201–502, is approximately 2 miles in length and is located in Medway, Massachusetts. The line is owned, operated and maintained by Edison and used exclusively by NEP.

Edison requests that the rate schedule be allowed to become effective on August 1, 1979. Edison has served copies of this filing on NEP and the Massachusetts Department of Public Utilities.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Washington, D.C. 20426, in accordance with paragraph 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 22, 1979. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this Application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18229 Filed 6-11-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP70-196 et. al.]

Distrigas Corp.; Further Extension of Time

June 1, 1979.

Docket Nos. CP70–196 and CP74–227, CP73–135 and CP74–137.

On April 11, 1979, Distrigas Corporation filed a motion for stay of Ordering Paragraph (E) of the Commission's order of January 2, 1979, pending judicial review. The motion also asked for an extension of time for compliance with that paragraph pending Commission action on the request for a stay. By order issued June 1, 1979, the Commission denied the motion for stay.

Notice is hereby given that Distrigas shall comply with the refund requirement of Ordering Paragraph (E) on or before June 22, 1979; the report of refunds and interest shall be filed on or before July 2, 1979.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18240 Filed 6-11-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-308]

Iowa-Illinois Gas and Electric Co.; Application

May 29, 1979.

Take notice that on May 15, 1979, Iowa-Illinois Gas and Electric Company (Applicant), 206 East Second Street, P.O. Box 4350, Davenport, Iowa 52808, filed in Docket No. CP79-308 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to construct and operate approximately 0.17 mile of six-inch replacement pipeline within the City of Iowa City, Iowa and for permission and approval to abandon in place approximately 0.16 mile of four-inch pipeline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to abandon in place approximately 0.16 mile of four-inch pipeline which is a portion of approximately 1.49 miles of predominantly four-inch pipeline heretofore certificated by the Commission in Docket No. G–308 and

constructed in 1933 to supply Applicant's Benton Street Station located within the boundaries of Iowa City, Iowa. It is stated that the facilities to be abandoned would be mechanically cut from the remaining facilities, purged and capped, meeting the requirements of the U.S. Department of Transportation, Office of Pipeline Safety.

It is indicated that Applicant also proposes to construct approximately 0.17 mile of six-inch replacement pipeline within Iowa City, Iowa. The replacement pipeline would be constructed within the same private and adjacent public street right-of-way as the facilities proposed to be physically abandoned, it is stated. Applicant states that after installation of the replacement pipeline, 15,120 Mcf per day of natural gas would be transported, an increase in capacity of 720 Mcf per day over the 14,400 Mcf per day capability of the existing pipeline. Applicant indicates that the proposal herein is necessitated by residential development along Benton Street which over time has so changed the grade that the facilities may be of a depth insufficient for prudent and reliable service. Increased flow capability and pressure level maintenance at this location would be required to meet future load and to provide adequate and reliable service in this section of Iowa City, it is asserted.

Applicant estimates that the cost of the proposed pipeline is $19,800 which would be financed from funds now on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 20, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-18161 Filed 6-11-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. ER79-283]

The Kansas Power & Light Co.; Order Accepting for Filing and Suspending Proposed Increased Rates, Denying Motion To Reject, Denying Motions for Summary Judgment, Granting Interventions and Establishing Procedures

Issued May 29, 1979.

On March 30, 1979, the Kansas Power and Light Company (KPL) tendered for filing schedules containing proposed rates and charges for wholesale service to supersede those rate provisions of KPL's contracts with 17 wholesale cooperative customers and 41 wholesale municipal customers all located in the State of Kansas.[1] KPL states that the proposed rates would increase annual revenues to the company by $2,657,847 (9.49%), based on the twelve-month test period ending March 31, 1980. The changes in rates contemplate increased capacity charges for cooperative and municipal wholesale services.

KPL requests an effective date of June 1, 1979, for the proposed rates with the exception of four municipal customers whose contracts do not permit unilateral rate filings by KPL.[2] KPL requests that the proposed rates be permitted to become effective for each of the four customers from the date of a final order in this proceeding or upon the expiration, termination or renegotiation of their respective contracts, at which time KPL would file a superseding service agreement for each expired contract. If the proposed rates for all customers are not permitted to become effective without suspension and a hearing is ordered under Section 205, KPL further requests a simultaneous hearing under Section 206 in order to determine prospectively the just and reasonable rates for service to these four municipal customers and that such hearing be consolidated with the Section 205 proceedings.[3]

Public notice of the filing was issued on April 5, 1979. Protests and petitions to intervene were due on or before April 27, 1979.

On April 27, 1979, the cooperative customers (Cooperatives) filed a protest and petition to intervene in the proceeding, a motion to reject and alternatively, a motion for summary disposition, hearing and suspension. In support of their motion to reject KPL's filing, the Cooperatives characterize KPL's increased rates as grossly excessive. They state that KPL's letter of transmittal indicates aggregate rate increases of $2,657,847 to cooperative and municipal customers. However, that figure is based on the revenues that the proposed rates in this filing would produce compared to the rates in ongoing Docket No. ER78-1. A settlement agreement between KPL and the Cooperatives has been recently approved by the Commission in Docket No. ER78-1. Based on settlement rates, Cooperatives assert that the actual increase in this docket amounts to $3,127,959, or 15.8 percent. Cooperatives also move to reject the filing due to deficiencies in workpapers and supporting data. We conclude that this motion should be denied, because KPL's filing substantially complies with our filing regulations.[4] The issues of rate level and cost support should be addressed during the hearing which we shall order.

Cooperatives' reading of the workpapers accompanying KPL's rate filing lead them to conclude that KPL may have capitalized AFUDC on construction work in progress related to pollution control facilities included in rate base under Section 2.16 of our Regulations. If true, this would violate Section 2.16(c) of the Regulations, and

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[1] See Appendix A for schedule designations of the 17 wholesale cooperative customers and 37 of the wholesale municipal customers.

[2] The four Kansas municipals and their contract expiration dates are: City of Merrill (July 1, 1980); City of Tonuto (April 9, 1980); City of Sussex (November 1, 1982); and City of Waterville (May 1, 1981).

[3] The Commission has previously established this procedure for changing the rates to these four municipal customers prior to termination of their respective contracts. See, Orders issued December 22, 1975 and February 18, 1976 in Docket No. ER76-30; and Order issued December 1, 1977 in Docket No. ER78-1.

[4] *City of Groton, et al. v. F.E.R.C.*, 591 F.2d 1097 (D.C. Cir. 1978); *Municipal Light Boards v. F.P.C.*, 450 F.2d 1341 (D.C. Cir. 1971), cert. den., 405 U.S. 920 (1972).

Cooperatives suggest that summary disposition may be appropriate. However, we cannot reach that conclusion peremptorily on the basis of the pleadings. Cooperatives also allege that KPL has failed to synchronize its interest expenses with debt costs, in that KPL has used an interest expense which is substantially different from the cost of long term debt shown in the capital structure to calculate its Federal income taxes. We conclude that the CWIP and the interest synchronization issues are not ripe for summary disposition and can only be resolved through the hearing process.

Finally, Cooperatives state that a comparison of several KPL retail rates with the wholesale rates proposed in this filing indicate that rate differentials will seriously undermine Cooperatives' ability to compete with KPL for retail loads. We find it appropriate, therefore, to institute the price squeeze procedures set forth in Order No. 563 and Section 2.17 of our Regulations.[5]

On April 27, 1979, the Kansas Municipal Group (Municipals) filed a protest, petition to intervene and motion to reject. Municipals request initiation of price squeeze procedures and a full five month suspension of the proposed changes in rates.

The Municipals' motion to reject is based on KPL's alleged violation of the *Sierra-Mobile* doctrine.[6] As discussed above, this issue was resolved by the Federal Power Commission in earlier KPL proceedings involving these customers; Municipals have presented no reasons for reconsideration of those rulings.[7] KPL will be allowed to litigate the justness and reasonableness of its proposed wholesale rates for service to the four municipal customers whose contracts only "allow the rates to be altered from time to time to reflect changes authorized by this Commission in a manner consistent with Section 206(a). * * *"[8] KPL shall not be required to meet the *Sierra-Mobile* burden of proof, as the FPC previously concluded. The notice requirement of Section 35.3 of our regulations, which would otherwise prevent the filing of rates not to become effective within 120 days, shall be waived.

Our review of KPL's filing indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or otherwise unlawful. With the exception of rate applicable to the Cities of Morrill, Toronto, Seneca and Waterville, we shall accept the proposed rates for filing and suspend them until October 30, 1979, when they shall become effective, subject to refund. Rates for service to the four excepted municipals shall become effective only as permitted by their contracts with KPL.

The Commission orders:

(A) The Cooperatives and the Municipals are hereby permitted to intervene in this proceeding subject to the Rules and Regulations of the Commission; *Provided, however,* that the participation of these intervenors shall be limited to matters set forth in their petitions to intervene; and *Provided, further,* that the admission of these intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders by the Commission entered in this proceeding.

(B) The motions of Cooperatives and Municipals to reject the filing are hereby denied.

(C) Cooperatives' motion for summary disposition is hereby denied.

(D) KPL's proposed rates, for service to wholesale customers other than the Cities of Morrill, Toronto, Seneca and Waterville, are hereby accepted for filing and suspended until October 30, 1979, when they shall become effective, subject to refund.

(E) The 120 days notice requirement of Section 35.3(a) of our regulations is hereby waived with regard to the filing of proposed rate schedules applicable to the Cities of Morrill, Toronto, Seneca and Waterville. Any rate change for service to these customers will become effective upon issuance of a final order in this proceeding, or upon the expiration, termination, or renegotiation of their respective contracts and the filing of a superseding service agreement for each contract.

(F) A public evidentiary hearing shall be held concerning the justness and reasonableness of the rates proposed by KPL in this proceeding. KPL's filing shall represent its case-in-chief in the hearing under Section 206(a) of the Federal Power Act which is ordered regarding rates for services to the Cities of Morrill, Toronto, Seneca and Waterville.

(G) Pursuant to Order No. 563 and Section 2.17 of Commission's General Rules, price squeeze procedures are hereby instituted.

(H) The Staff shall prepare and serve top sheets on all parties for settlement purposes on or before July 16, 1979.

(I) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose shall preside at a prehearing conference in this proceeding to be held within ten (10) days after the serving of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 Capitol Street, N.E., Washington, D.C. 20426. Said Judge is authorized to establish procedural dates and to rule upon all motions (except motions to consolidate and sever, and motions to dismiss) as provided for in the Commission's Rules or Practice and Procedure. The Presiding Administrative Law Judge shall convene a prehearing conference within fifteen (15) days of the issuance of this order for the purpose of hearing intervenors' requests for data required to present their case, including *prima facie* showing, on price squeeze issues.

(J) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

By the Commission.

Kenneth F. Plumb,
Secretary.

[5] Cooperatives have raised several other issues which we do not address, that are clearly appropriate for this evidentiary hearing.

[6] *United Gas Pipeline Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *F.P.C.* v. *Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

[7] *See also, Municipal Electric Utility Association of Alabama* v. *F.P.C.*, 485 F. 2d 967 (D.C. Cir. 1975).

[8] *Kansas Power & Light Co.*, Docket No. ER 76-38, Order Denying Rehearing, issued February 18, 1976.

The Kansas Power & Light Co., Docket No. ER79-283

	Designation	Other party	Description
Supplement No. 8 to	Rate Schedule FPC No. 148 (Supersedes Supp. No. 7).	Ark Valley ECA, Inc	Schedule RCW-79.
Supplement No. 6 to	Rate Schedule FPC No. 149 (Supersedes Supp. No. 5).	Brown-Atchison ECA, Inc	Do.
Supplement No. 6 to	Rate Schedule FPC No. 150 (Supersedes Supp. No. 5).	Butler Rural ECA, Inc	Do.
Supplement No. 6 to	Rate Schedule FPC No. 151 (Supersedes Supp. No. 5).	The C&W ECA, Inc	Do.
Supplement No. 6 to	Rate Schedule FPC No. 152 (Supersedes Supp. No. 5).	Coffey County Rural ECA, Inc	Do.
Supplement No. 7 to	Rate Schedule FPC No. 153 (Supersedes Supp. No. 6).	D.S. & O. Rural ECA, Inc	Do.
Supplement No. 7 to	Rate Schedule FPC No. 154 (Supersedes Supp. No. 6).	Doniphan ECA, Inc	Do.
Supplement No. 7 to	Rate Schedule FPC No. 155 (Supersedes Supp. No. 6).	Flint Hills Rural ECA, Inc	Do.
Supplement No. 6 to	Rate Schedule FPC No. 156 (Supersedes Supp. No. 5).	The Kaw Valley ECC, Inc	Do.
Supplement No. 8 to	Rate Schedule FPC No. 157 (Supersedes Supp. No. 7).	Leavenworth-Jefferson EC, Inc	Do.
Supplement No. 7 to	Rate Schedule FPC No. 158 (Supersedes Supp. No. 6).	Lyon County EC, Inc	Do.

The Kansas Power & Light Co., Docket No. ER79-388—Continued

Designation	Other party	Description
Supplement No. 6 to Rate Schedule FPC No. 159 (Supersedes Supp. No. 5).	Nemaha-Marshall ECA, Inc	Do.
Supplement No. 7 to Rate Schedule FPC No. 160 (Supersedes Supp. No. 6).	Nemaha-Marshall Rural ECA, Inc	Do.
Supplement No. 6 to Rate Schedule FPC No. 161 (Supersedes Supp. No. 5).	P.R. & W. ECA, Inc	Do.
Supplement No. 6 to Rate Schedule FPC No. 162 (Supersedes Supp. No. 5).	The Smoky Hill ECA, Inc	Do.
Supplement No. 6 to Rate Schedule FPC No. 163 (Supersedes Supp. No. 5).	The Smoky Valley ECA, Inc	Do.
Supplement No. 6 to Rate Schedule FPC No. 164 (Supersedes Supp. No. 5).	The Twin Valley EC, Inc	Do.
Supplement No. 3 to Rate Schedule FPC No. 139 (Supersedes Supp. No. 2).	City of Scranton	Do.
Supplement No. 4 to Rate Schedule FPC No. 147 (Supersedes Supp. No. 3).	City of Wathena	Do.
Supplement No. 4 to Rate Schedule FPC No. 165 (Supersedes Supp. No. 3).	City of Cuba	Do.
Supplement No. 4 to Rate Schedule FPC No. 166 (Supersedes Supp. No. 3).	City of Nortonville	Do.
Supplement No. 4 to Rate Schedule FPC No. 167 (Supersedes Supp. No. 3).	City of Muscotah	Do.
Supplement No. 4 to Rate Schedule FPC No. 171 (Supersedes Supp. No. 3).	City of Severance	Schedule WSM-79.
Supplement No. 4 to Rate Schedule FPC No. 172 (Supersedes Supp. No. 3).	City of Altamont	Do.
Supplement No. 4 to Rate Schedule FPC No. 173 (Supersedes Supp. No. 3).	City of Marion	Do.
Supplement No. 4 to Rate Schedule FPC No. 174 (Supersedes Supp. No. 3).	City of Cassoday	Do.
Supplement No. 3 to Rate Schedule FPC No. 175 (Supersedes Supp. No. 2).	City of Enterprise	Do.
Supplement No. 3 to Rate Schedule FPC No. 176 (Supersedes Supp. No. 2).	City of Chapman	Do.
Supplement No. 3 to Rate Schedule FPC No. 177 (Supersedes Supp. No. 2).	City of Herington	Do.
Supplement No. 3 to Rate Schedule FPC No. 178 (Supersedes Supp. No. 2).	City of Clay Center	Do.
Supplement No. 3 to Rate Schedule FPC No. 179 (Supersedes Supp. No. 2).	City of De Soto	Do.
Supplement No. 3 to Rate Schedule FPC No. 180 (Supersedes Supp. No. 2).	City of Axtell	Do.
Supplement No. 3 to Rate Schedule FPC No. 181 (Supersedes Supp. No. 2).	City of Robinson	Do.
Supplement No. 3 to Rate Schedule FPC No. 182 (Supersedes Supp. No. 2).	City of Horton	Do.
Supplement No. 3 to Rate Schedule FPC No. 188 (Supersedes Supp. No. 2).	City of Eudora	Do.
Supplement No. 4 to Rate Schedule FPC No. 184 (Supersedes Supp. No. 2).	City of Wamego	Do.
Supplement No. 4 to Rate Schedule FPC No. 185 (Supersedes Supp. No. 2).	City of Sabetha	Do.
Supplement No. 4 to Rate Schedule FPC No. 186 (Supersedes Supp. No. 2).	City of Minneapolis	Do.
Supplement No. 3 to Rate Schedule FPC No. 187 (Supersedes Supp. No. 2).	City of Sterling	Do.
Supplement No. 3 to Rate Schedule FPC No. 189 (Supersedes Supp. No. 2).	City of Hillsboro	Do.
Supplement No. 3 to Rate Schedule FPC No. 189 (Supersedes Supp. No. 2).	City of Holton	Do.
Supplement No. 2 to Rate Schedule FPC No. 190 (Supersedes Supp. No. 1).	City of Reserve	Do.
Supplement No. 3 to Rate Schedule FPC No. 191 (Supersedes Supp. No. 2).	City of Lenexa	Do.
Supplement No. 3 to Rate Schedule FPC No. 192 (Supersedes Supp. No. 2).	City of Ellinwood	Do.
Supplement No. 3 to Rate Schedule FPC No. 193 (Supersedes Supp. No. 2).	City of Stafford	Do.
Supplement No. 3 to Rate Schedule FPC No. 194 (Supersedes Supp. No. 2).	City of Osage City	Do.
Supplement No. 3 to Rate Schedule FPC No. 195 (Supersedes Supp. No. 2).	City of St. Marys	Do.
Supplement No. 2 to Rate Schedule FPC No. 196 (Supersedes Supp. No. 1).	City of Vermillion	Do.
Supplement No. 2 to Rate Schedule FPC No. 197 (Supersedes Supp. No. 1).	City of Alma	Do.
Supplement No. 2 to Rate Schedule FPC No. 198 (Supersedes Supp. No. 1).	City of Centralia	Do.
Supplement No. 2 to Rate Schedule FPC No. 199 (Supersedes Supp. No. 1).	City of Lindsborg	Do.
Supplement No. 2 to Rate Schedule FPC No. 200 (Supersedes Supp. No. 1).	City of Elwood	Do.
Supplement No. 2 to Rate Schedule FPC No. 201 (Supersedes Supp. No. 1).	City of Troy	Do.
Supplement No. 2 to Rate Schedule FPC No. 202 (Supersedes Supp. No. 1).	City of St. John	Do.

[FR Doc. 79-18142 Filed 6-11-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP79-71]

Natural Gas Pipeline Co. of America; Proposed Changes in FERC Gas Tariff

June 5, 1979.

Take notice that on May 31, 1979, Natural Gas Pipeline Company of America (Natural) tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1 and Second Revised Volume No. 2 to become effective July 1, 1979. (Waiver was requested to make certain tariff sheets effective January 1, 1980.)

Natural states that the proposed rate changes indicate an annual revenue decrease of $24,122,000 when compared with the rates presently effective subject to refund at Docket No. RP78-78. However, Natural states that it is presently drafting a proposed settlement position in the docket No. RP78-78 proceedings which projects rates considerably lower than the rates effective subject to refund that were used, pursuant to the Commission's Regulation, in the calculation of the above stated revenue decrease. A comparison of the revised rates as proposed with rates derived on a proposed Docket No. RP78-78 settlement cost of service, indicate an estimated annual revenue increase of approximately $44.0 million.

Natural further states that the principal reasons for the proposed rate changes are: (1) a proposed increase in overall rate of return to 10.98% which would permit a rate of return to equity of 14.75%; (2) substantial investments in facilities, including offshore facilities, and a 31.03 mile looping of the Gulf Coast system; and (3) increased operation and maintenance expenses, including increased costs incurred for transmission and compression of gas by others from offshore and onshore purchase locations.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C 20426, in accordance with requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 1.10). All such petitions or protests must be filed on or before June 18, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-18143 Filed 6-11-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. CP78-220]

Northwest Pipeline Corp.; Petition To Amend

June 1, 1979.

Take notice that on May 2, 1979, Northwest Pipeline Corporation (Northwest), 315 East Second South, Salt Lake City, Utah 84111, filed in Docket No. CP78-220 a petition to amend the order issued October 4, 1978, in the instant docket pursuant to Section 7(c) of the Natural Gas Act to authorize the exchange of up to 10,000 Mcf per day of natural gas with Rocky Mountain Natural Gas Company (Rocky Mountain) and RMNG Gathering Company (RMNG), and further to add acreage in the Great Divide area, Colorado pursuant to the Exchange Agreement, as amended, so that any gas produced thereon can be made available to Northwest's system, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

Pursuant to a gas gathering and transportation agreement between Northwest and Colorado Interstate Gas Company (CIG), Northwest would purchase 25 percent of the natural gas which CIG has or will have available in the Great Divide area in Colorado and would transport the remaining volumes, for CIG's account, from the wellhead to Northwest's existing point of interconnection with CIG in Sweetwater County, Wyoming, it is indicated in the application.

The authorization of up to 10,000 Mcf per day would enable Northwest [1] to make available to its mainline system the volumes of gas which Northwest intends to purchase from or transport for CIG, it is said.

A purchase contract, dated December 5, 1977, as amended June 5, 1978, between Northwest and Northwest Exploration Company (Exploration) allows additional acreage in the Great Divide area to be subject to the said purchase contract, it is said. Northwest desires to make this additional acreage subject to the exchange agreement so that any gas produced therefrom can be made available to Northwest's system.

Northwest states that with the additional sources of gas to be made subject to the exchange agreement, as amended, it estimates it will deliver, initially, 4,000 Mcf of natural gas per day to Rocky Mountain for exchange under the exchange agreement, as amended. This volume would increase during the coming year as additional wells subject to the exchange agreement, as amended, are connected to Northwest's Great Divide Gathering System, it is asserted.

The transportation rate of 14.3 cents per Mcf of gas which Rocky Mountain is presently authorized to charge Northwest for all volumes redelivered would be applicable to the additional volumes proposed to be exchanged pursuant to the exchange agreement, as amended, it is further asserted.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before June 25, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-18144 Filed 6-11-79; 8:45 am]
BILLING CODE 6450-01-M

[1] Pursuant to an exchange agreement amended June 6, 1978, November 20, 1978, and March 12, 1979.

[Docket No. RR79-72]

Southern Natural Gas Co.; Proposed Rate Increase

June 5, 1979.

Take notice that Southern Natural Gas Company (Southern) on May 31, 1979, tendered for filing proposed changes in its FPC Gas Tariff, Sixth Revised Volume No. 1. The proposed changes are based on the twelve-month period ending July 31, 1978 and, as adjusted, would increase jurisdicitonal revenues by $98,600,000.

Southern states that the rate increase reflects only increases in the cost of purchasing regasified LNG from Southern Energy Company.

Copies of the filing have been served upon Southern's jurisdictional customers

and interested state public service commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 20, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18146 Filed 6-11-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RR71-11 (PGA 79-2)]

Tennessee Natural Gas Lines, Inc.; PGA Rate Change

June 5, 1979.

Take notice that, on June 1, 1979, Tennessee Natural Gas Lines, Inc. ("TNGL") tendered for filing a rate change, pursuant to the purchased gas cost adjustment ("PGA") provisions of its F.E.R.C. Gas Tariff, consisting of the following tariff sheet:

Thirtieth Revised Sheet No. PGA–1

TNGL states that the purpose of said PGA filing is to reflect in its rates the changed rates of its sole supplier, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc., ("TGP"), which will become effective on July 1, 1979. TNGL requests the same effective date, July 1, 1979, for the tariff sheet filed by it. TNGL further states that such proposed PGA rate change also provides for recoupment of the net balances in its Unrecovered Purchased Gas Cost and LNG Surcharge Accounts.

TNGL states that copies of the filing were served upon its jurisdictional customer and the interested state regulatory commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 18, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18148 Filed 6-11-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket Nos. RP73-114, RP74-24, RP74-73 and RP78-52]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Proposed Rate Change Under Tariff Rate Adjustment Provisions

June 5, 1979.

Take notice that on May 31, 1979, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), tendered for filing Twenty-Fifth Revised Sheet Nos. 12A and 12B to Ninth Revised Volume No. 1 of its FERC Gas Tariff to be effective on July 1, 1979.

Tennessee states that the purposes of the revised tariff sheets is to adjust Tennessee's rates pursuant to Articles XXIII, XXIV, XXV and XXVIII of the General Terms and Conditions of its FERC Gas Tariff, consisting of a PGA rate adjustment, a rate adjustment to reflect curtailment credits, and R. & D. adjustment, and a First Use Tax Rate Adjustment.

Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 20, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who has previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18147 Filed 6-11-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-310]

United Gas Pipe Line Co.; Application

May 29, 1979.

Take notice that on May 18, 1979, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP79-310 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 2,000 Mcf of natural gas per day for Transcontinental Gas Pipe Line Corporation (Transco), all as more fully set forth in the application on file with the Commission and open to public inspection.

The application states that Transco individually and as agent for certain working interest owners has acquired the right to purchase up to 2,000 Mcf of natural gas per day produced in Lake Hatch Field, Louisiana, from McMoran Exploration Company, Apache Corporation and Transco Exploration Company. In order to receive this gas into its system, Transco has entered into a transportation agreement dated March 20, 1979, with Applicant. It is indicated that pursuant to the terms of the transportation agreement Transco would deliver or cause to be delivered to Applicant for Transco's account said volumes of gas at an existing authorized point on Applicant's line in the Lake Hatch Field (delivery point) in Terrebonne Parish, Louisiana, and that Applicant would redeliver equivalent volumes of gas to Transco, less 2.3 percent for fuel and unaccounted for gas, at the outlet side of applicant's existing authorized measuring and regulating station at Gibson, Terrebonne Parish (redelivery point).

It is stated that Transco would pay Applicant for gas transported under said transportation agreement an amount per Mcf equal to ⅓ of Applicant's jurisdictional transmission rates in effect from time to time in Applicant's Southern Rate Zone as such may be determined by Applicant based on rate filings made from time to time with the Commission, less any amount included in such jurisdictional transmission rate which is attributable to fuel and unaccounted for gas. The current jurisdictional transmission rate,

exclusive of the cost of gas utilized in Applicant's operation, is 19.4 cents per Mcf in Applicant's Southern Rate Zone, it is stated. Applicant states that ⅓ of its jurisdictional transmission rate in its Southern Rate Zone excluding a component for gas utilized in the operation of Applicant's pipeline system is 9.7 cents per Mcf.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 20, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18146 Filed 6-11-79; 8:45 am]

BILLING CODE 6450-01-M

Utah; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

June 4, 1979.

On June 1, 1979 the Federal Energy Regulatory Commission received notice of a determination pursuant to 18 CFR 274.104 of the Natural Gas Policy Act of 1978 applicable to:

State of Utah, Department of Natural Resources, Division of Oil, Gas and Mining

FERC Control Number: JD79-6615
API Well Number: 43-047-302334
Section: 103
Operator: Belco Petroleums Corporation
Well Name: Chapita Wells Unit 33-16 number 30234
Field: Chapita Wells Field
County: Uintah
Purchaser: Mountain Fuel Supply Co.
Volume:

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission within fifteen (15) days of the date of publication of this Notice. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18137 Filed 6-11-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP74-85 (PGA 79-1 and 79-1a)]

Western Gas Interstate Co.; Revised PGA Rate Adjustment

June 5, 1979.

Take notice that on May 29, 1979, Western Gas Interstate Company ("Western") filed herein Second Substitute Twelfth Revised Sheet No. 3A to its FERC Gas Tariff, Original Volume No. 1, in accordance with the Commission's letter order in Docket No. RP74-85 (PGA 79-1 and 79-1a) dated May 4, 1979. Said tariff sheet is proposed to become effective on May 1, 1979.

Western states that the rates shown on the above described tariff sheet have been determined in accordance with the Commission's letter order and Appendix A therein dated May 4, 1979, which reflect the elimination of gas costs which Western 's producer-suppliers and pipeline-suppliers were not authorized to charge Western on or before May 1, 1979. The effect of this revision reduced Western's substitute filing (PGA79-1a) by .01¢ per Mcf in the Northern Division and 7.33¢ per Mcf in the Southern Division.

Any person desiring to be heard and to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 20, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Western's filing is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18140 Filed 6-11-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-150]

Southern California Edison Co.; Order Granting Rehearing and Denying Reconsideration

Issued June 5, 1979.

On April 13, 1979, Southern California Edison Company (Edison) petitioned for rehearing and reconsideration of the Commission's March 15, 1979 order in this proceeding.[1] In its petition, Edison objects to the Commission's suspension of the proposed wholesale rates for five months and summary exclusion of Electric Power Research Institute (EPRI) contributions from its cost of service. For the reasons discussed below, we grant rehearing of the EPRI issue and deny reconsideration of our suspension of Edison's proposed rate increase.

In support of its request for rehearing, Edison states that the Commission has not adequately explained its policy of disallowing EPRI contributions included in cost of service studies. Edison suggests that further analysis of the purpose of EPRI contributions and the mechanism whereby such contributions are made is a necessary predicate to the formulation of a sound regulatory policy on this issue.

[1] *Southern California Edison Company*, Docket No. ER79-150, Order Accepting For Filing and Suspending Proposed Rate Increases, Providing for Hearing, Granting Motion For Summary Judgment In Part, and Establishing Procedures, issued March 15, 1979. On May 14, 1979, the Commission issued a Notice of Intent to Act which tolled 30 day limit on Commission action pursuant to 18 CFR Section 1.34(c).

Summary disposition of EPRI contributions had its genesis in *Connecticut Light & Power Company*, Docket No. ER78-517, Order issued August 31, 1978, where the Commission relied on *Carolina Power & Light Company*, Opinion No. 19, issued August 2, 1978, as a basis for summary exclusion of EPRI contribution. On rehearing of Connecticut Light & Power,[2] the Commission affirmed its summary exclusion of EPRI contributions, stating:

> The Initial Decision in Carolina as affirmed in Opinion No. 19, then disposed of the LMFBR contribution allocation on three grounds: (1) avoidance of "double contribution" by wholesale customers; (2) preservation of the voluntary nature of contributions; and (3) elimination of the deterrence to independent contributions by wholesale customers. Clearly, the latter two arguments apply with equal force whether or not the wholesale customers have yet made contributions. Thus, the summary disposition of the inclusion of EPRI costs in the instant case, was appropriate under Carolina Power & Light, despite the lack of factual evidence of independent wholesale customer contributions. (at p. 3).[3]

In the March 15, 1979 order in this proceeding; we relied on this statement as a basis for summary disposition of the EPRI issue.

We have determined that the proper treatment of EPRI contributions for ratemaking purposes should be considered in a proposed rulemaking, which will be forthcoming. In the meantime, we do not believe that EPRI contributions should be summarily excluded from costs of service and filed rates. Those few utilities, which have already excluded EPRI contributions pursuant to Commission orders in ongoing rate cases, will be informed that they need not make a second refiling to preserve their right to this disputed cost-of-service item. If it is determined in the rulemaking proceeding that EPRI contributions are properly recovered through wholesale rates, these utilities will be allowed to offset allocated EPRI costs against any refund obligation to wholesale customers or, if necessary, devise a surcharge to recover EPRI contributions.

Edison's request for reconsideration of the five-month suspension of its rate increase raises no new substantive issue. There is nothing in the petition which warrants modification of our discretionary finding in this case that Edison's customers are entitled to the protection of the five-month suspension authorized by Section 206(e) of the Federal Power Act. *See Municipal Light Boards of Reading and Wakefield, Mass. v. FPC*, 450 F.2d 1341 (D.C. Cir 1971), *cert. den.*, 405 U.S. 989 (1972). Edison errs in assuming that we failed to consider its supplementary pleading, filed on the date of our deliveration of the suspension order.[4] This document was brought to the attention of the Commission prior to the decision to suspend Edison's proposed rate increase for five months.

The Commission orders: (A) Edison's petition for rehearing of the Commission's summary exclusion of EPRI contributions from its cost of service is hereby granted.

(B) Ordering Paragraph (G) of the Commission's order in this proceeding, dated March 15, 1979, is hereby modified to delete all reference to EPRI contributions, including the requirement that Edison revise its cost of service standing and its proposed rates to reflect the exclusion of EPRI contributions from its cost of service.

(C) The stay of Ordering Paragraph (G) of our order in this proceeding, dated March 15, 1979, which was granted in our Notice of Intent To Act, dated May 14, 1979, is hereby lifted. Edison shall revise its cost of service study and its proposed rates to reflect the treatment of Accumulated Deferred Investment Tax Credit contained in the order of March 15, 1979, and submit such revised rates and cost of service to the Commission within thirty days from the issuance of this order.

(D) Edison's petition for reconsideration of the five-month suspension of its proposed rate increase is hereby denied.

(E) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

By the Commission.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-18191 Filed 6-11-79; 8:45 am]
BILLING CODE 6450-01-M

[2] *Connecticut Light & Power Company*, Docket No. ER78-517, Order on Rehearing, issued November 22, 1978.

[3] *Id.* at 2 and 3.

[4] On March 14, 1979, Edison filed a document entitled: "Motion to Strike and Response of Southern California Edison Company To Supplemental Memorandum Of Reseis Cities of Anaheim, Riverside, Banning, Colton, And Azusa, California" (Motion).

Michigan; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

June 1, 1979.

On May 16, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of Michigan, Department of Natural Resources

FERC Control Number: JD79-[illegible]
API Well Number: 21-079-[illegible]
Section of NGPA: 103
Operator: Amoco Production Company
Well Name: Simpson "F" 3A-[illegible]
Field: Rapid River 34-38N-7W
County: Kalkaska
Purchaser: Michigan Consolidated
Volume: 285 MMcf.

FERC Control Number: JD79-[illegible]
API Well Number: 21-055-[illegible]
Section of NGPA: 102
Operator: Amoco Production Company
Well Name: State Union "O" 1-22
Field: Union 22-28N-6W
County: Grand Traverse
Purchaser: Michigan Consolidated
Volume: 1,460 MMcf.

FERC Control Number: JD79-[illegible]
API Well Number: 21-137-[illegible]
Section of NGPA: 103
Operator: Amoco Production Company
Well Name: Geraldine 2-36
Field: Bagley 35A-30N-3W
County: Otsego
Purchaser: Consumers Power Co.
Volume: 86.9 MMcf.

FERC Control Number: JD79-[illegible]
API Well Number: 21-045-[illegible]
Section of NGPA: 103
Operator: Amoco Production Company
Well Name: J. R. Smith Unit 1A-21
Field: Eaton Rapids 21A-2N-3W
County: Eaton
Purchaser: Consumers Power Company
Volume: 53.3 MMcf.

FERC Control Number: JD79-[illegible]
API Well Number: 21-079-[illegible]
Section of NGPA: 102
Operator: Amoco Production Company
Well Name: East Big Twin Lake Unit 4-18
Field: Blue Lake 18A-28N-5W
County: Kalkaska
Purchaser: Consumers Power
Volume: 2,617 MMcf.

FERC Control Number: JD79-[illegible]
API Well Number: 21-045-[illegible]
Section of NGPA: 102
Operator: Amoco Production Company
Well Name: Miller Dairy Farms 3-36
Field: Eaton Rapids 36A-2N-5W
County: Eaton
Purchaser: Consumers Power Company
Volume: 71 MMcf.

FERC Control Number: JD79-[illegible]
API Well Number: 21-079-[illegible]
Section of NGPA: 102
Operator: Amoco Production Company
Well Name: Sedwarft-La Furgey Unit 4-29
Field: Cold Springs 29A-28N-6W
County: Kalkaska
Purchaser: Michigan Consolidated
Volume: 198.2 MMcf.

FERC Control Number: JD79-[illegible]
API Well Number: 21-079-[illegible]
Section of NGPA: 102
Operator: Amoco Production Company
Well Name: Simpson State Blue Lake Unit "A" 1-16
Field: Blue Lake 16-28N-5W
County: Kalkaska

Purchaser: Consumers Power
Volume: 154.4 MMcf.

FERC Control Number: JD79-5871
API Well Number: 21-079-32232
Section of NGPA: 102
Operator: Amoco Production Company
Well Name: Simpson "U" 4-21
Field: Cold Springs 21-28N-5W
County: Kalkaska
Purchaser: Michigan Consolidated
Volume: 0 MMcf.

FERC Control Number: JD79-5872
API Well Number: 21-079-32117
Section of NGPA: 102
Operator: Amoco Production Company
Well Name: State Blue Lake "G" 1-20
Field: Blue Lake 20-28N-5W
County: Kalkaska
Purchaser: Consumers Power
Volume: 159.9 MMcf.

FERC Control Number: JD79-5873
API Well Number: 21-137-32157
Section of NGPA: 102
Operator: Amoco Production Company
Well Name: State Chester Unit "C" 1-5
Field: Chester 5-29N-2W
County: Otsego
Purchaser: Michigan Consolidated
Volume: 124 MMcf.

FERC Control Number: JD79-5874
API Well Number: 21-137-32335
Section of NGPA: 102
Operator: Amoco Production Company
Well Name: State Chester "E" 1-34
Field: Chester 34-30N-2W
County: Otsego
Purchaser: Consumers Power
Volume: 132.13 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 27, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-18192 Filed 6-11-79; 8:45 am]
BILLING CODE 6450-01-M

Tennessee; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

June 1, 1979.

On May 18, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of Tennessee; State Oil and Gas Board

FERC Control Number: JD79-5808
API Well Number: 41-129-202919
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: Burghardt #1
Field: Unnamed
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 18 MMcf.

FERC Control Number: JD79-5809
API Well Number: 41-129-20119
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: Melton #1A
Field: Unnamed
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 36 MMcf.

FERC Control Number: JD79-5810
API Well Number: 41-129-20111
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: Plateau-Aytes Unit#1
Field: Frankfort NE
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 15 MMcf.

FERC Control Number: JD79-5811
API Well Number: 41-129-10038
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: O. Cole #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 0.1 MMcf.

FERC Control Number: JD79-5812
API Well Number: 41-129-10039
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: J. Bye #2
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 0.5 MMcf.

FERC Control Number: JD79-5813
API Well Number: 41-129-20091
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: Plateau Properties #2 (Harrison)
Field: Frankfort NE
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 15 MMcf.

FERC Control Number: JD79-5814
API Well Number: 41-129-20089
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: L. Duncan #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 7 MMcf.

FERC Control Number: JD79-5815
API Well Number: 41-129-10041
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: J.D. Mize #1
Field: Frankfort NE
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 7 MMcf.

FERC Control Number: JD79-5816
API Well Number: 41-129-10063
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: A Bigonese et al Unit #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 3 MMcf.

FERC Control Number: JD79-5817
API Well Number: 41-129-00084
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: J. Bye #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 0.5 MMcf.

FERC Control Number: JD79-5818
API Well Number: 41-129-10034
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: S. Lachin #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 0.5 MMcf.

FERC Control Number: JD79-5819
API Well Number: 41-129-20104
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: M. Branstetter #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 10 MMcf.

FERC Control Number: JD79-5820
API Well Number: 41-129-20290
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: W.W. Ivey #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 0.5 MMcf.

FERC Control Number: JD79-5821
API Well Name: 41-129-20131
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: Plateau Properties #3 (Harrison)
Field: Frankfort NE
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 15 MMcf.

FERC Control Number: JD79-5822
API Well Number: 41-129-20120
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: E. Howard #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 18 MMcf.

FERC Control Number: JD79-5823
API Well Number: 41-129-10035
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: S. Lachin #2

Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 3 MMcf.

FERC Control Number: JD79-5824
API Well Number: 41-151-20-125
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: C.L. Criscillis #1
Field: Low Gap-Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A

FERC Control Number: JD79-5825
API Well Number: 41-151-20146
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Brimstone #3
Field: Low Gap-Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A

FERC Control Number: JD79-5826
API Well Number: 41-151-20135
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Brimstone #2, Permit No. 1248
Field: Low Gap-Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A

FERC Control Number: JD79-5827
API Well Number: 41-151-20836
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Fred Walker #3
Field: Low Gap-Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A

FERC Control Number: JD79-5828
API Well Number: 41-151-20816
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Criscillis #2
Field: Low Gap-Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A

FERC Control Number: JD79-5829
API Well Number: 41-151-20324
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Fred Walker #2
Field: Low Gap-Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A

FERC Control Number: JD79-5830
API Well Number: 41-151-20316
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Fred Walker #1
Field: Low Gap-Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A

FERC Control Number: JD79-5831
API Well Number: 41-151-20276
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Bowling Carson #1
Field: Low Gap-Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A

FERC Control Number: JD79-5832
API Well Number: 41-151-20270
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Brimstone-Bowling #1
Field: Low Gap-Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A

FERC Control Number: JD79-5833
API Well Number: 41-151-20263
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Bowling-Brimstone et at #1
Field: Low Gap-Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A

FERC Control Number: JD79-5834
API Well Number: 41-151-20252
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: R. Henry Bowling #1
Field: Low Gap-Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A

FERC Control Number: JD79-5835
API Well Number: 41-151-20201
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: R. Bowling-Radseck-Burress #1
Field: Low Gap-Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A

FERC Control Number: JD79-5836
API Well Number: 41-129-20046
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: Plateau Properties #1 (Harrison)
Field: Frankfort NE
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 15 MMcf.

FERC Control Number: JD79-5837
API Well Number: 41-129-20344
Section of NGPA: 103
Operator: Universal Land & Mineral Leasing Co.
Well Name: David Summer #2 Permit #1652
Field: Sunbright Gas Field
County: Morgan County
Purchaser: Intrastate Energy Corp.
Volume: 36 MMcf.

FERC Control Number: JD79-5838
API Well Number: N/A
Section of NGPA: 103
Operator: Universal Land & Mineral Co.
Well Name: David Summer #1 Permit #1292
Field: Sunbright Gas Field
County: Morgan County
Purchaser: Intrastate Energy Corp.
Volume: 36 MMcf.

FERC Control Number: JD79-5839
API Well Number: M/A
Section of NGPA: 103
Operator: Universal Land & Mineral Co.
Well Name: David Summer #3 Permit #1927
Field: Sunbright Gas Field
County: Morgan County
Purchaser: Intrastate Energy Corp.
Volume: 36 MMcf.

FERC Control Number: JD79-5840
API Well Number: 41-129-20374
Section of NGPA: 103
Operator: Cumberland Oil Producing Co., Inc.
Well Name: R. Aytes et al Unit #1
Field: Frankfort NE
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 28 MMcf.

FERC Control Number: JD79-5841
API Well Number: 41-129-20111
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: Plateau-Aytes Unit #1
Field: Frankfort NE
County: Morgan
Purchaser: East Tennessee Natural Gas Co., Inc.
Volume: 15 MMcf.

FERC Control Number: JD79-5842
API Well Number: 41-129-20190
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: E. Scott #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 10 MMcf.

FERC Control Number: JD79-5843
API Well Number: 41-133-20045
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: Wesley Mansell & Edward Fleming Unit #1 Pt. 1931
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas Co. City of Livingston, TN
Volume: 109 MMcf

FERC Control Number: JD79-5844
API Well Number: 41-133-20048
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: James Meadows #1 Permit #1946
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas Co. City of Livingston, TN
Volume: 116 MMcf.

FERC Control Number: JD79-5845
API Well Number: 41-133-20047
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: D. Dailey ETAL Unit #1 Permit #1947
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas Co. City of Livingston, TN.
Volume: 103 MMcf.

FERC Control Number: JD79-5846
API Well Number: 41-133-20049
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: Carl Gilpatrick #1 Permit #1932
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas City of Livingston, TN.
Volume: 123 MMcf.

FERC Control Number: JD79–5847
API Well Number: 41–133–20053
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: Bob Upchurch #4 Permit #1981
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas City of Livingston, TN.
Volume: 149 MMcf.

FERC Control Number: JD79–5848
API Well Number: 41–133–20042
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: Ed Fleming #2 Permit #1884
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas City of Livingston, TN.
Volume: 162 MMcf.

FERC Control Number: JD79–5849
API Well Number: 41–133–20027
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: W. E. Smith #1 Permit #1699
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas City of Livingston, TN.
Volume: 344 MMcf.

FERC Control Number: JD79–5850
API Well Number: 41–133–20038
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: Bob Upchurch #1 Permit #1842
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas City of Livingston, TN
Volume: 44 MMcf.

FERC Control Number: JD79–5851
API Well Number: 41–133–20049
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: Bob Upchurch #3 Permit #1949
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas City Of Livingston, TN
Volume: 45 MMcf.

FERC Control Number: JD79–5852
API Well Number: 41–133–20037
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: W.E. Smith #3 Permit #1837
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas City Of Livingston, TN
Volume: 60 MMcf.

FERC Control Number: JD79–5853
API Well Number: 41–133–20031
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: W.E. Smith #2 Permit #1747
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas City Of Livingston, TN
Volume: 75 MMcf.

FERC Control Number: JD79–5854
API Well Number: 41–133–20051
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: Wells Thomas #1 Permit #1140
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas City Of Livingston, TN
Volume: 22 MMcf.

FERC Control Number: JD79–5855
API Well Number: 41–133–20055
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: Nell Ogletree #1 Permit #2028
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas City Of Livingston, TN
Volume: 30 MMcf.

FERC Control Number: JD79–5856
API Well Number: 41–133–20052
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: Carl Gilpatrick #2 Permit #1978
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas City Of Livingston, TN
Volume: 30 MMcf.

FERC Control Number: JD79–5857
API Well Number: 41–133–20044
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: Bob Upchurch #2 Permit #1899
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas City Of Livingston, TN
Volume: 45 MMcf.

FERC Control Number: JD79–5858
API Well Number: 41–133–20041
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: W.E. Smith #4 Permit #1869
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas City Of Livingston, TN
Volume: 75 MMcf.

FERC Control Number: JD79–5859
API Well Number: 41–133–20040
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: E.D. Fleming #1 Permit #1868
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas
Volume: 30 MMcf.

FERC Control Number: JD79–5860
API Well Number: 41–133–20050
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: NA Permit #1959
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas City Of Livingston, TN
Volume: 30 MMcf.

FERC Control Number: JD79–5861
API Well Number: 41–133–20043
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: Hubert Pigg #1 Permit #1885
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas City Of Livingston, TN
Volume: 45 MMcf.

FERC Control Number: JD79–5862
API Well Number: 41–133–20005
Section of NGPA: 102
Operator: Tartan Oil Co.
Well Name:
Field: Flat Creek
County: Overton
Purchaser: Energy Resource Corporation
Volume: 21.5 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations, may, in accordance with 18 CFR 275.208 and 18 CFR 275.204, file a protest with the Commission on or before June 27, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18193 Filed 6-11-79; 8:45 am]

BILLING CODE 6450-01-M

New Mexico Office; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

June 4, 1979.

On May 9, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to Natural Gas Policy Act of 1978.

U.S. Geological Survey (New Mexico Office)

FERC Control Number: JD79–4975
API Well Number: 30–039–20752
Section of NGPA: 108
Operator: Elpaso Natural Gas Company
Well Name: Canyon Largo Unit #218
Field: Ballard-Pictured Cliffs Gas
County: Rio Arriba, New Mexico
Purchaser: Elpaso Natural Gas Company
Volume: 9.1 MMcf.

FERC Control Number: JD79–4976
API Well Number: 30–045–22397
Section of NGPA: 103
Operator: Elpaso Natural Gas Company
Well Name: Barnes 1A
Field: Blanco
County: San Juan, New Mexico
Purchaser: Elpaso Natural Gas Company
Volume: 360 MMcf.

FERC Control Number: JD79–4977
API Well Number: 30–045–22396
Section of NGPA: 108
Operator: Elpaso Natural Gas Company

Well Name: Barnes 2A (Pictured Cliffs)
Field: Blanco
County: San Juan, New Mexico
Purchaser: Elpaso Natural Gas Company
Volume: 334 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any those final determination, may, in acordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission . Please referrence the FERC Control Number in any correspondence concerning a determination on or before June 27, 1979.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-18194 Filed 6-11-79; 8:45 am]
BILLING CODE 6450-01-M

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

June 1, 1979.

On May 18, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

U.S. Geological Survey Conservation Division

FERC Control Number: JD79-6058
API Well Number: 30045207880000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Number: NYE 5
Field: Aztec Pictured Cliffs Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 18.0 MMcf.

FERC Control Number: JD79-6059
API Well Number: 30015210210013
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Number: Rocky Arroyo D Com 2 Can
Field: Rocky Arroyo Canyon Gas
County: Eddy
Purchaser: El Paso Natural Gas Company
Volume: 8.0 MMcf.

FERC Control Number: JD79-6060
API Well Number: 30045090650000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Number: Stewart A Com 1
Field: Aztec Pictured Cliffs Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 4.4 MMcf.

FERC Control Number: JD79-6061
API Well Number: 30045093220000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Number: Murphy
Field: Aztec Pictured Cliffs Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 2.2 MMcf.

FERC Control Number: JD79-6062
API Well Number: 30045087190000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Number: Florence E 1
Field: Blanco Mesaverde Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 12.8 MMcf.

FERC Control Number: JD79-6063
API Well Number: 30039206740000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Number: San Juan 28-4 Unit #36
Field: Basin Dakota Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 7 MMcf.

FERC Control Number: JD79-6064
API Well Number: 30039072880000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Number: San Juan 28-6 Unit #9
Field: Blanco Mesaverde Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 12.8 MMcf.

FERC Control Number: JD79-6065
API Well Number: 30039211780000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Number: Donahue 2
Field: Ballard Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 21.5 MMcf.

FERC Control Number: JD79-6066
API Well Number: 30045213970000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Number: Huerfano Unit 66
Field: Basin Dakota Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 9.0 MMcf.

FERC Control Number: JD79-6067
API Well Number: 30039206850000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Number: San Juan 27-4 Unit #72
Field: Tapacito Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 10.6 MMcf.

FERC Control Number: JD79-6068
API Well Number: 30039068780000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Number: San Juan 27-5 Unit #66
Field: Blanco Mesaverde Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 15 MMcf.

FERC Control Number: JD79-6069
API Well Number: 30045066460000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Number: Piplin 5
Field: Fulcher Kutz Pictured Cliffs
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 7.0 MMcf.

FERC Control Number: JD79-6070
API Well Number: 3003906070000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Number: Donohue 1
Field: Ballard Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 11.3 MMcf.

FERC Control Number: JD79-6071
API Well Number: 30045072380000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Lackey B 15
Field: Basin Dakota Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 8.0 MMcf.

FERC Control Number: JD79-6072
API Well Number: 30045067940000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Riddle A 4
Field: Blanco Pictured Cliffs Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 18.3 MMcf.

FERC Control Number: JD79-6073
API Well Number: 30-045-02967
Section of NGPA: 108
Operator: W. M. Gallaway
Well Name: Delo #6
Field: Fulcher Kutz Pictured Cliffs
County: San Juan
Purchaser: Southern Union Gathering Co.
Volume: 2 MMcf.

FERC Control Number: JD79-6074
API Well Number: 30-039-20444
Section of NGPA: 108
Operator: W. M. Gallaway
Well Name: Mechel #6
Field: Tapacito Pictured Cliffs
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 12 MMcf.

FERC Control Number: JD79-6075
API Well Number: 30-045-22584
Section of NGPA: 103
Operator: Northwest Pipeline Corporation
Well Name: Cox Cayon Com #19
Field: Blanco PC
County: San Juan
Purchaser: Northwest Pipeline Corporation
Volume: 37 MMcf.

FERC Control Number: JD79-6076
API Well Number: 30-039-20120
Section of NGPA: 108
Operator: W. M. Gallaway
Well Name: Pat #1
Field: Gavilan Pictured Cliffs
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 10 MMcf.

FERC Control Number: JD79-6077
API Well Number: 30045215610000
Section of NGPA: 108

Operator: El Paso Natural Gas Company
Well Name: Hancock B #12
Field: Harris Mesa Chacra Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 15.3 MMcf.

FERC Control Number: JD79-6078
API Well Number: 30045099660000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Atlantic B #12
Field: Blanco Mesaverde Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 15.3 MMcf.

FERC Control Number: JD79-6079
API Well Number: 30039823530000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Klein 9
Field: Blanco, South Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 7.7 MMcf.

FERC Control Number: JD79-6080
API Well Number: 30039054290000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Tonkin Federal 2
Field: Blanco, South Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 4.0 MMcf.

FERC Control Number: JD79-6081
API Well Number: 30039064180000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Quantius 2
Field: Blanco, South Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 3.0 MMcf.

FERC Control Number: JD79-6082
API Well Number: 30039070150000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Ripley #2Y
Field: Blanco, South Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 6.2 MMcf.

FERC Control Number: JD79-6083
API Well Number: 30045066180000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Turner Hughes #8
Field: Blanco, South Pictured Cliffs Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 12.4 MMcf.

FERC Control Number: JD79-6084
API Well Number: 30039069280000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Rincon Unit NP #84
Field: Blanco Mesaverde Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 13.5 MMcf.

FERC Control Number: JD79-6085
API Well Number: 30039209470000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit #275
Field: Ballard Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 15.7 MMcf.

FERC Control Number: JD79-6086
API Well Number: 30039209180000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Lindrith Unit 78
Field: Blanco, South Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 8.0 MMcf.

FERC Control Number: JD79-6087
API Well Number: 30039207150000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit #190
Field: Ballard Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 12.4 MMcf.

FERC Control Number: JD79-6088
API Well Number: 30039205370000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit #174
Field: Ballard Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 8.8 MMcf.

FERC Control Number: JD79-6089
API Well Number: 30039208590000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 28-6 Unit 200
Field: Blanco, South Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 19.0 MMcf.

FERC Control Number: JD79-6090
API Well Number: 30039206360000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Lindrith Unit #75
Field: Blanco, South Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 13.5 MMcf.

FERC Control Number: JD79-6091
API Well Number: 30039205330000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit 167 CH
Field: Otero Chacra Gas
County: RIO ARRIBA
Purchaser: El Paso Natural Gas Company
Volume: 19.0 MMcf.

FERC Control Number: JD79-6092
API Well Number: 30045069240000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Thompson C 5
Field: Kutz, West Pictured Cliffs Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 4.0 MMcf.

FERC Control Number: JD79-6093
API Well Number: 30045062920000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: McAdams 2
Field: Fulcher Kutz Pictured Cliffs Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 5.0 MMcf.

FERC Control Number: JD79-6094
API Well Number: 30045130370000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Day B 7
Field: Blanco, South Pictured Cliffs Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 15.0 MMcf.

FERC Control Number: JD79-6095
API Well Number: 30045104170000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Mudge 1
Field: Blanco Mesaverde Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 18.3 MMcf.

FERC Control Number: JD79-6096
API Well Number: 30039054610000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Tonkin Federal X 1
Field: Blanco, South Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 4.0 MMcf.

FERC Control Number: JD79-6097
API Well Number: 30-015-22290
Section of NGPA: 108
Operator: Mesa Petroleum Co.
Well Name: Bindel Federal Com #1
Field: Carlsbad So Morrow
County: Eddy
Purchaser: El Paso Natural Gas Company
Volume: 20 MMcf.

FERC Control Number: JD79-6098
API Well Number: 30-045-21828
Section of NGPA: 108
Operator: Mesa Petroleum Co.
Well Name: Decker Primo #1A
Field: Blanco Mesaverde
County: San Juan
Purchaser: Southern Union Gathering Company
Volume: 211 MMcf.

FERC Control Number: JD79-6099
API Well Number: 30039207860000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit #224
Field: Blanco, South Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 18.3 MMcf.

FERC Control Number: JD79-6100
API Well Number: 30039210930000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 28-7 Unit 242
Field: Basin Dakota Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 20.0 MMcf.

FERC Control Number: JD79-6101
API Well Number: 30039208900000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit #276

Field: Ballard Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 21.9 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 10000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 27, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-18185 Filed 6-11-79; 8:45 am]
BILLING CODE 6450-01-M

[FRL 1245-8; OPP-180311]

Department of Agriculture; Issuance of Specific Exemption TO Use Acephate TO Control the West Indian Sugarcane Rootstalk Borer Weevil on Citrus in Florida

AGENCY: Environmental Protection Agency (EPA), Office of Pesticide Programs.

ACTION: Issuance of a specific exemption.

SUMMARY: EPA has granted a specific exemption to the Animal and Plant Health Inspection Service, U.S. Department of Agriculture (hereafter referred to as the "Applicant") to use acephate to control the West Indian Sugarcane Rootstalk Borer Weevil on 5,000 acres of citrus in two counties in Florida. The specific exemption expires on November 1, 1979.

FOR FURTHER INFORMATION CONTACT: Emergency Response Section, Registration Division (TS-767), Office of Pesticide Programs, 401 M Street SW., Room E-124, Washington, D.C. 20460, Telephone: 202/426-2601. It is suggested that interested persons telephone before visiting EPA Headquarters, so that the appropriate files may be made conveniently available for review purposes.

SUPPLEMENTARY INFORMATION: The West Indian Sugarcane Rootstalk Borer was introduced into the United States from Puerto Rico in 1964. The first serious infestation of the pest occurred in 1966 on approximately 2,500 acres of citrus in Orange County. Currently the pest has become established on approximately 5,000 acres in Orange and Seminole Counties. A quarantine has been enacted by the State of Florida under which about 38,000 acres are being regulated.

The adult weevil feeds on foliage of a variety of plants with most damage occurring to tender new growth. It has a wide host range including many commercial crops, two of which are sugarcane and citrus.

Eggs are laid in clusters of 30 to 300 and hatch in seven days. The larvae drop to the ground and burrow into the soil where they find suitable roots to feed on. The larvae have the ability to survive several years in soil and may be found at depths of up to seven feet below the surface. In Florida, the adult is present throughout the year with the major population peaks occuring during May/June and September/October. There is no registered pesticide to control this pest.

Little information is available on the economic losses which would occur to citrus without the use of acephate. According to the Applicant, the potential damage from this pest could be tremendous if it is allowed to spread beyond the approximately 5,000 acres in Florida in which it has become established. The Applicant stated that in initial areas found infested, more than 1,670 citrus trees have shown severe decline symptoms and suffered complete production loss. More than 600 trees were killed outright.

The Applicant proposed to use a total of 13,000 pounds of acephate in Orange and Seminole Counties. Application will be by air, and will be made only after knowledgeable experts have determined the need.

EPA has determined that residues from the proposed use are not likely to exceed 4 parts per million (ppm) of acephate (of which no more than 0.7 ppm is methamidophos, a metabolite) in or on citrus. These residue levels have been deemed adequate to protect the public health. Since foraging mammals and birds may be affected from the proposed use, EPA has imposed a restriction against application in areas where rare or endangered species occur.

After reviewing the application and other available information, EPA has determined that (a) a pest outbreak of West Indian Sugarcane Rootstalk Borer Weevil has occurred; (b) there are no effective pesticides currently registered and available to control this pest in Florida; (c) there are no alternative means of control taking into account the efficacy and hazard; (d) significant economic problems may result if the West Indian Sugarcane Rootstalk Borer Weevil is not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until November 1, 1979, in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. Acephate may be used at a dosage rate of one pound in six to ten gallons of water per acre;

2. A maximum of three applications may be made per acre per season;

3. A 21-day interval between applications shall be observed;

4. A 21-day pre-harvest interval shall be observed;

5. Application is limited to 5,000 acres of citrus located in the counties named above;

6. Acephate may not be applied in areas where rare or endangered species are known or expected to occur;

7. Application is to be made by Plant Protection and Quarantine Programs personnel, and Florida Department of Agriculture and Consumer Services personnel, or State-certified applicators under their supervision;

8. Citrus treated according to the above provisions should not exceed residue levels of acephate in excess of 4 ppm (of which no more than 0.7 ppm is methamidophos). Treated citrus within this residue level may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been advised of this action; and

9. The Applicant is responsible for assuring that all of the provisions of this specific exemption are met and must submit a report summarizing the results of this program by March 31, 1980.

(Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136))

Dated: June 4, 1979.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 79-18288 Filed 6-11-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1245-4; OPP-C30142B]

FMC Corp., Approval of Application to Conditionally Register Pesticide Product Containing New Active Ingredient

On March 1, 1978, notice was given (43 FR 8293) that FMC Corp., 2000 Market St., Philadelphia, PA 19103 had filed an application (EPA File Symbol 279-GNRG) with the Environmental Protection Agency (EPA) to register the pesticide product Pounce Technical containing 92.0% of the active ingredient permethrin [(3-phenoxyphenyl) methyl (±) cis-trans-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate] which was not previously registered at the time of submission. Notice of this registration is given in accordance with 40 CFR 162.7(d)(2).

This application was conditionally approved May 7, 1979 and the product has been assigned EPA Registration No. 279-3013. As stated in the March 1, 1978 notice, Pounce Technical is an insecticide for formulating use only. A copy of the approved label and list of data references used to support registration are available for public inspection in the office of the Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, Rm. E-401, 401 M St., SW., Washington, DC 20460. The data and other scientific information used to support registration, except for the material specifically protected by Section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136), will be available for public inspection in accordance with section 3(c)(2) of FIFRA within 30 days after the registration date of May 7, 1979. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), EPA, at the above address. Such requests should: 1) identify the product by name and registration number and 2) specify the data or information desired.

Dated: June 5, 1979.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 79-18289 Filed 6-11-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1246-1]

Financial Assistance for Resource Recovery Project Development Under The President's Urban Policy; Class Deviation

Under authority of 40 CFR 30.1000, EPA has issued a class deviation from the provisions of 40 CFR 35.716 for the Financial Assistance for Resource Recovery Project Development Under the President's Urban Policy program funded under section 4008(a)(2) of the Resource Conservation and Recovery Act of 1976.

The regulations in 40 CFR Part 30, 40 CFR 35.400 through 35.425, and 40 CFR 35.700 through 35.744 will apply to all assistance awarded under this program. The class deviation waives the provision of 40 CFR 35.716 which specifies that the budget period shall be the Federal fiscal year. The Financial Assistance for Resource Recovery Project Development Under the President's Urban Policy program is project specific and the time required to perform the tasks will vary greatly from the project to project.

Under our policy to publish class deviation in the **Federal Register**, EPA is publishing the deviation as part of this notice.

FOR FURTHER INFORMATION CONTACT:

Mr. Alexander J. Greene, Director, Grants Administration Division (PM-216), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 (Tel. No. 202 755-0850).

Dated: June 6, 1979.

C. W. Carter,

Acting Assistant Administrator for Planning and Management.

Dated: May 11, 1979.

Thomas C. Jorling

Assistant Administrator for Water and Waste Management.

[FR Doc. 79-18293 Filed 6-11-79; 8:45]

BILLING CODE 6560-01-M

[FRL 1245-5; Opp-180312]

Rhode Island Department of Environmental Management; Issuance of Specific Exemption To Use Permethrin to Control Colorado Potato Beetle on Potatoes

AGENCY: Environmental Protection Agency (EPA), Office of Pesticide Programs.

ACTION: Issuance of a specific exemption.

SUMMARY: EPA has granted a specific exemption to the Rhode Island Department of Environmental Management (hereafter referred to as the "Applicant") to use permethrin on 3,700 acres of potatoes for the control of the Colorado potato beetle in Rhode Island. The specific exemption expires on December 31, 1979.

FOR FURTHER INFORMATION CONTACT: Emergency Response Section, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, SW., Room: E-124, Washington, D.C. 20460, Telephone: 202/426-2601. It is suggested that interested persons telephone before visiting the EPA Headquarters, sothat the appropriate files may be made conveniently available for review purposes.

SUPPLEMENTARY INFORMATION: The potato beetle is perhaps the best known beetle in the United States. Both the larvae and the adults feed on leaves of potato plants. This feeding may result in defoliation of the vines which prevents development of tubers or greatly reduces yield. Although Guthion, Imidan, methoxychlor, Monitor, parathion, Furadan, Temik, and Thiodan are registered for use on potatoes to control this pest, the Applicant claims tha these pesticides are unsatisfactory for Colorado potato beetle control due to pesticidal resistance. Last year Vydate was registered for control of the beetle on potatoes; however, Vydate is effective against the larvae only, not the adult, and it is not so effective as permethrin. The Applicant estimates a loss of 1.85 million dollars due to the Colorado potato beetle.

The Applicant proposes to use permethrin, manufactured under the trade names Pounce and Ambush, at a rate of 0.1 to 0.2 pound active ingredient (a.i.) per acre per application, using ground or air equipment, observing a 7-day pre-harvest interval.

EPA has determined that residues of permethrin on potatoes would not be expected to exceed 0.1 part per million (ppm) as a result of the proposed use

provided that no more than six applications of either Ambush or Pounce are made and a 7-day pre-harvest interval is observed. This residue level as been judged to be adequate to protect the public health. Since permethrin is highly toxic to bees and aquatic vertebrates and invertebrates, appropriate restrictions have been imposed. This use of permethrin is not expected to pose an unreasonable hazard to the environment.

After reviewing the application and other available information, EPA has determined that (a) a pest outbreak of Colorado potato beetle has occurred or is about to occur; (b) there is no effective pesticide presently registered and available for use to control the Colorado potato beetle in Rhode Island; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the Colorado potato beetle is not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until December 31, 1979, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The products Ambush, manufactured by ICI Americas, Inc., and Pounce, manufactured by FMC Corporation, may be applied;

2. Permethrin may be applied at a rate of 0.1 to 0.2 pound a.i. per acre;

3. A maximum of three applications may be made with a pre-harvest interval of seven days;

4. A maximum of 3,700 acres may be treated;

5. Applications may be made with air or ground equipment;

6. Spray mixture volumes of 20–100 gallons of water will be applied by gound equipment, 5–10 gallons by aircraft;

7. Applications will be made by State-certified private or commerical applicators or persons under the direct supervision of a State-certified applicator;

8. Ambush and Pounce are toxic to fish, birds, and other wildlife. They must be kept out of any body of water. They may not be applied where run-off is likely to occur. They may not be applied when weather conditions favor drift from treated areas. Care must be taken to prevent contamination of water by cleaning of equipment or disposal of wastes;

9. In order to minimize spray drift, the following restrictions will be observed for applications of permethrin:

a. Aerial applications will not be made when wind speed exceeds five miles per hour;

b. A buffer zone of 200 feet (horizontal distance) between treated areas and aquatic areas will be observed; and

c. Aerial applications should be staggered in time in areas where fish and shellfish are important resources.

10. Permethrin is highly toxic to bees exposed to direct treatment or residues on crops or weeds. It may not be applied or allowed to drift to weeds in bloom on which an economically significant number of bees are actively foraging. Protective information may be obtained from the State Cooperative Agricultural Extension Service;

11. Potatoes treated according to the above provisions will not have residues of permethrin in excess of 0.1 ppm. Potatoes with residues of permethrin which do not exceed this level may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been advised of this action;

12. A 60-day crop rotation restriction will be observed;

13. The EPA will be immediately informed of any adverse effects resulting from the use of permethrin in connection with this exemption; and

14. The Applicant is responsible for assuring that all of the provisions of this specific exemption are met and must submit a report summarizing the results of this program by March 31, 1980.

(Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136))

Dated: June 4, 1979.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 79-18287 Filed 6-11-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1245-3; OPP-C30143B]

Pesticide Programs; Approval of Application To Conditionally Register Pesticide Product Containing New Active Ingredient

On March 10, 1978, notice was given (43 FR 9956) that ICI Americas Inc., Concord Pike and New Murphy Road, Wilmington, DE 19897, had filed an application (EPA File Symbol 10182-RT) with the Environmental Protection Agency (EPA) to register the pesticide product Permethrin Technical containing 91.0% of the active ingredient permethrin [(3-phenoxyphenyl)methyl (±)-cis, trans-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate] which was not previously registered at the time of submission. Notice of this registration is given in accordance with 40 CFR 162.7(d)(2).

This application was conditionally approved May 7, 1979 and the product has been assigned EPA Registration No. 10182-17. As stated in the March 10, 1978 notice, Permethrin Technical is an insecticide for formulating use only. A copy of the approved label and list of data references used to support registration are available for public inspection in the office of the Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, Rm. E-401, 401 M St., SW, Washington, DC 20460. The data and other scientific information used to support registration, except for the material specifically protected by Section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136), will be available for public inspection in accordance with section 3(c)(2) of FIFRA, within 30 days after the registration date of May 7, 1979. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), EPA, at the above address. Such requests should: 1) identify the product by name and registration number and 2) specify the data or information desired.

Dated: June 6, 1979.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 79-18288 Filed 6-11-79; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL MARITIME COMMISSION

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for review and approval, if required, pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10423; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old San Juan, Puerto Rico.

Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before June 22, 1979. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Agreement No.: T-3813.

Filing Party: John R. Kuykendall, Vice-President, Matson Navigation Company, 444 North Capitol Street, N.W., Suite 514, Washington, D.C. 20001.

Summary: Agreement No.T-3813, between the State of Hawaii (State) and Matson Terminals, Inc. (Matson) is an agreement for the design, construction and lease of new Sand Island container terminal facilities. The purpose of the agreement is to provide for the transfer of Matson's container operations from its Diamond Head Terminal to its Sand Island Terminal, thus consolidating all of its Honolulu container terminal operations at Sand Island for the purpose of achieving a more effective and efficient operation, and effectuate the State's desire to have Matson remove its container operations from the Diamond Head Terminal in order that the land area there can be made available for other purposes beneficial to the State. Pursuant to the agreement, the State and Matson will develop and coordinate design and construction schedules for enlarging the Sand Island container terminal complex to include Berths 52 and 53, with the necessary support area and facilities, to effectuate this transfer in an orderly manner as soon as it is practical to do so. The agreement further provides that the proponents will negotiate and execute a lease for the new facilities.

By order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

Dated: June 7, 1979.

[FR Doc. 79-18136 Filed 6-11-79; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

Octane Certification and Posting; Grant of Exemption to Sun Mark Industries

AGENCY: Federal Trade Commission.

ACTION: Partial Exemption from Commission Rule.

SUMMARY: The Commission has responded to the petition of Sun Oil Company requesting permission to post octane labels in a manner that differs from certain provisions of the Commission's Octane Certification and Posting Rule. The Commission has granted the partial exemption with respect to Sun Oil Company's multi-blend gasoline dispensers.

EFFECTIVE DATE: May 22, 1979.

FOR FURTHER INFORMATION CONTACT: James Mills, Federal Trade Commission, PE-S-7317, Washington, D.C. 20580, (202) 724-1867.

SUPPLEMENTARY INFORMATION: On March 30, 1979, the Commission published the Octane Certification and Posting Rule in the Federal Register (44 FR 19160). The rule established procedures for determining, certifying and posting, by means of a label on the fuel dispenser, the octane rating of automotive gasoline intended for sale to consumers.

Section 306.9 of the rule provides that retailers must post at least one octane rating label on each face of each gasoline dispenser. Retailers (like Sun) who sell two or more kinds of gasoline with different octane ratings from a single dispenser must post separate octane rating labels for each kind of gasoline on each face of the dispenser. Labels must be placed conspicuously on the dispenser so as to be in full view of consumers and as near as reasonably practical to the price per gallon of the gasoline. A provision is included to the effect that retailers may petition the Commission for an exemption from the placement requirements.

Section 306.11 of the rule details specifications for the labels themselves. Labels must be 2½ by 3 inches, and Helvetica type must be used for all text except the octane rating number, which must be in Franklin Gothic type. The size for the text and numbers is specified, and the type and border must be process black on a process yellow background. The line "MINIMUM OCTANE RATING" must be in 12 point Helvetica bold, all capitals, with letter space set at 12½ points. The line "(R+M)/2 METHOD" must be in 10 point Helvetica bold, all capitals, with letter space set at 10½ points. The octane number must be in 96 point Franklin Gothic condensed, with ⅛ inch spacing between the numbers.

By letter dated April 3, 1979, Sun Mark Industries, a division of Sun Oil Company of Pennsylvania, requested permission to post octane ratings, with respect to certain gasolines they blend and sell through multi-blend dispensers at retail, in a manner that differs from the requirements of Sections 306.9 and 306.11 of the Commission's Rule.

Sun Oil Company proposed the following labeling system for its multi-blend dispensers: A strip of 1¾ inch wide by 1⅜₁₆ inch high labels on which the octane number would be displayed in Franklin Gothic type. On each strip, the words "MINIMUM OCTANE RATING/(R+M)/2 METHOD" would appear twice—once on each end of the strip—in 2⅜₁₆ inches long by 1⅜₁₆ inches high boxes forming arrows that point in the direction of the octane numbers. An octane number, as described above, would be displayed for each grade of gasoline dispensed by the Sun Company's multi-blend dispensing pumps.

The Commission has decided that the above described labeling is adequate to meet the posting objective and therefore has decided to grant Sun Oil Company permission to use its proposed labeling system on the multi-blend dispensers, providing that Sun Oil Company will also conform to the final rule's print and color requirements in all other respects.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 79-18248 Filed 6-11-79; 8:45 am]

BILLING CODE 6750-01-M

P Shirt Acquiring Corp.; Early Termination of Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the 30-day waiting period of the premerger notification rules.

SUMMARY: P Shirt Acquiring Corp. is granted early termination of the 30-day waiting period provided by law and the premerger notification rules with respect to its proposed acquisition of the assets of Publix Shirt Corporation. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties. Neither agency intends to take any

action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: June 1, 1979.

FOR FURTHER INFORMATION CONTACT: Malcolm R. Pfunder, Assistant Director for Evaluation, Bureau of Competition, Room 394, Federal Trade Commission, Washington, D.C. 20580, (202–523–3404).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act and § 803.11 of the rules implementing the Act permit the agencies, in individual cases, to terminate this waiting period prior to its expiration and to publish notice of this action in the Federal Register.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 79-18188 Filed 6-11-79; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 79M-0102]

Syntex Ophthalmics, Inc., Premarket Approval of Polycon Contact Lens

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug administration (FDA) announces approval of the application for premarket approval under the Medical Device Amendments of 1976 of the Polycon (silafocon A) Contact Lens sponsored by Syntex Ophtalmics, Inc., Palo Alto, CA. After reviewing the Ophtalmology Device Classification Panel's recommendation, FDA notified the sponsor that the application was approved because the device has been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by July 12, 1979.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be addressed to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Keith Lusted, Bureau of Medical Devices (HFK–402), Food and Drug Administration, Department of Health, Education, and Welfare, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7550.

SUPPLEMENTARY INFORMATION: The sponsor, Syntex Ophtalmics, Inc., Palo Alto, CA 94304, submitted an application for premarket approval of the Polycon (silafocon A) Contact Lens to FDA on January 20, 1978. The application was reviewed by the Ophthalmology Device Classification Panel, an FDA advisory committee, which recommended approval of the application. On January 19, 1979, FDA approved the application by a letter to the sponsor from the Director of the Bureau of Medical Devices.

Before enactment of the Medical Device Amendments of 1976 (Pub. L. 94–295; 90 Stat. 539–583) (the amendments), soft contact lenses and solutions were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic (FFDC) Act (21 U.S.C. 321(h)) (the act), soft contact lenses and solutions are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the Federal Register of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to insure continuation of premarket approval requirements for class III devices formerly considered new drugs.

Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of soft contact lenses or solutions comply with the records and reports provisions of 21 CFR Part 310, Subpart D, until these provisions are replaced by similar requirements under the amendments.

A summary of the information on which the FDA's approval is based is available upon request from the Hearing Clerk (address above). Requests should be identified with the name of the device and the Hearing Clerk docket number found in brackets in the heading of this document.

The laveling of the Polycon Contact Lens, like that of other approved soft contact lenses, states that the lens is to be used only with certain solutions for disinfection and other purposes. Such restrictive labeling helps to inform new lens users that they must avoid purchasing inappropriate products, e.g., solutions for use with hard contact lenses. Such restrictive labeling, however, needs to be updated periodically to refer to new solutions that FDA approves for use with an approved lens. A sponsor who does not update such restrictive labeling may violate the misbranding provisions of section 502 of the FFDC Act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41–58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93–637). Furthermore, failure to update such restrictive labeling to refer to new solutions that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens under section 515(e)(1)(F) of the FFDC Act (21 U.S.C. 360e(e)(1)(F)). Accordingly, whenever FDA publishes a notice in the Federal Register of the agency's approval of a new solution for use with an approval lens, the sponsor of the lens shall correct its labeling to refer to the new solution at the next printing or at such other time as FDA prescribes by letter to the sponsor. FDA is considering alternatives to the current restrictive labeling requirements for soft contact lenses and solutions.

Opportunity for Administrative Review

Section 515(g) of the FFDC Act (21 U.S.C. 360e(g)) authorizes any interested person to petition for administrative review of the FDA decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of the FDA administrative practices and procedures regulations or a review of the application and the agency's action by an independent advisory committee of experts. A petition must be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petition must designate the form of review that the petitioner requests (hearing or independent advisory committee) and must be accompanied by supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing any petition, FDA will decide whether to grant or deny the petition by a notice published in the Federal Register. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may at any time on or before July 12, 1979, file with the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4065, 5600 Fishers Lane, Rockville, MD 20857, four

copies of each petition and supporting data and information, identified with the name of the device and the Hearing Clerk docket number found in brackets in the heading of this document. Received petitions may be seen in the above office from 9 a.m. to 4 p.m., Monday through Friday.

Dated: June 6, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-18134 Filed 6-11-79; 8:45 am]

BILLING CODE 4110-03-M

HEALTH RESOURCES ADMINISTRATION

National Advisory Council on Nurse Training; Change of Meeting Dates

In Federal Register Document 79-165527 appearing at page 30760 in the issue for Tuesday, May 29, 1979, the June 26-28 meeting of the "National Advisory Council on Nurse Training" has been changed to August 21-23, 1979. All other information is correct as appears.

Dated: June 5, 1979.

James A. Walsh,

Associate Administrator for Operations and Management.

[FR Doc. 79-18139 Filed 6-11-79; 8:45 am]

BILLING CODE 4110-83-M

Office of Human Development Services

Federal Council on the Aging, Senior Services Committee; Amended Notice of Meeting; Change in Location

Notice is hereby given of the change in location of the meeting of the Senior Services Committee of the Federal Council on the Aging originally scheduled for June 28, 1979 in room 204, 522 N. Central Avenue, Phoenix, Arizona 85001. The new location is room 1006, Federal Building, 230 N. First Avenue, Phoenix, Arizona.

Further information on the Council and the Committee may be obtained from Dr. Thomas F. Davis, Staff Economist, Federal Council on the Aging, Washington, D.C. 20201, telephone (202) 245-0441. FCA meetings are open for public observation.

Dated: June 5, 1979.

Nelson H. Cruikshank,

Chairman, Federal Council on the Aging.

[FR Doc. 79-18047 Filed 6-11-79; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Alaska Native Claims Settlement Act

Correction

In FR Doc. 79-13858 appearing on page 25945 in the issue of Thursday, May 3, 1979, add the following under Kateel River Meridian, Alaska (Unsurveyed) (first column, page 25946): "Secs. 3 to 10, inclusive, all;".

BILLING CODE 1505-01-M

[F-20517]

Alaska Native Claims Selection

On January 3, 1917, Executive Order 2506, reserved and set aside certain lands in the Norton Bay area for use of the United States Bureau of Education and Alaska Natives, as amended by Executive Order 2525 on February 6, 1917 and Executive Order 5207 on October 12, 1929.

Section 19(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 710; 43 U.S.C. 1601, 1618 (1976)), revoked, subject to any valid existing rights of non-Natives, the various reserves set aside for Native use or administration of Native affairs. Public Land Order 5156, dated February 10, 1972, withdrew, subject to valid existing rights, the lands set aside for Native use or for administration of Native affairs in furtherance of the right of any Native village corporation or corporations to acquire title to the surface and subsurface estates in the reservations pursuant to Sec. 19(b) of the Alaska Native Claims Settlement Act.

On November 13, 1973, the Board of Directors for Elim Native Corporation certified that their stockholders had elected to acquire title to the surface and subsurface estates of the reserve as provided by Sec. 19(b) of the Alaska Native Claims Settlement Act (ANCSA). Under 43 CFR 2654.2(a), submission of such certifications constituted application to acquire reserve lands.

The State of Alaska filed general purposes grant selection application F-44562 on November 14, 1978, as amended, for all unpatented lands within Tps. 13 S., Rs. 20 and 21 W., Kateel River Meridian, pursuant to Sec. 6(b) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 340; 48 U.S.C. Ch. 2, Sec. 6(b) (1976)). The Elim Native Corporation (Norton Bay Reservation) properly elected to acquire all of U.S. Survey No. 2548 on November 13, 1973. Section 6(b) of the Alaska Statehood Act of July 7, 1958 provides that the State may select *vacant, unappropriated* and *unreserved* public lands in Alaska.

Therefore, in view of the above, State selection F-44562 is hereby rejected as to that portion of T. 13 S., R. 20 W., Kateel River Meridian lying within U.S. Survey No. 2548.

As to the lands described below, the application is properly filed and meets the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface and subsurface estates of the following described lands, containing 297,982 acres, are considered proper for acquisition by Elim Native Corporation and are hereby approved for conveyance pursuant to Sec. 19(b) of the Alaska Native Claims Settlement Act:

U.S. Survey No. 2548, Alaska, comprising the Norton Bay Reservation. Containing 297,982 acres.

The conveyance issued for the surface and subsurface estates of the lands described above shall contain the following reservation to the United States:

Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616(b) (1976)), the following public easements, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in case file F-20517-EE, are reserved to the United States. All easements are subject to applicable Federal, State or municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

25 Foot Trail—The uses allowed on a twenty-five (25) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles and small all-terrain vehicles (less than 3,000 lbs Gross Vehicle Weight (GVW)).

One Acre Site—The uses allowed for a site easement are: vehicle parking (e.g., aircraft, boats, ATV's snowmobiles, cars, trucks), temporary camping, and loading or unloading. Temporary camping, loading or unloading shall be limited to 24 hours.

a. (EIN 1 C3, D1, 0) An easement for an existing access trail twenty-five (25) feet in width from Moses Point in Sec.

23, T. 9 S., R. 17 W., Kateel River Meridian, northwesterly to Sec. 18, T. 8 S., R. 17 W., Kateel River Meridian. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

b. (EIN 2 C1, C3, D1, D9, 0) An easement for an existing access trail twenty-five (25) feet in width from Sec. 15, T. 11 S., R. 20 W., Kateel River Meridian, northeasterly through the selection to Sec. 18, T. 8 S., R. 14 W., Kateel River Meridian. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement. The season of use will be limited to winter.

c. (EIN 8 C3) An easement for a proposed access trail twenty-five (25) feet in width from trail easement EIN 1 C3, D1, 0 in Sec. 18, T. 8 S., R. 17 W., Kateel River Meridian, northerly to public lands in Sec. 28, T. 7 S., R. 17 W., Kateel River Meridian. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

d. (EIN 13 D9) A one (1) acre site easement upland of the ordinary high-water mark in Sec. 22, T. 9 S., R. 17 W., Kateel River Meridian, on the right bank of Kwiniuk River. The uses allowed are those listed above for a one (1) acre site.

The grant of lands shall be subject to:

1. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g) (1976))), contract, permit, right-of-way or easement, and the right of the lessee, contractee, permittee or grantee to the complete enjoyment of all rights, privileges and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of ANCSA, any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law;

2. The following third-party interests, in valid, created and identified by the Bureau of Indian Affairs as provided by Sec. 14(g) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(g) (1976)):

a. Use Permit, to Alaska Village Electric Cooperative, Inc., Anchorage, Alaska, for use and occupancy of approximately 20,000 square feet of land located within protracted Sec. 15 T. 10 S., R. 18 W., Kateel River Meridian.

b. Use Permit, to United States Department of the Army, Alaska National Guard, Elim, Alaska for use and occupancy of approximately 1.01 acres of land located within protracted Sec. 15, T. 10 S., R. 18 W., Kateel River Meridian.

There are no inland water bodies considered to be navigable within the land described.

In accordance with Departmental regulations 43 CFR 2650.7(d), notice of this decision is being published once in the Federal Register and once a week, for four (4) consecutive weeks, in the NOME NUGGETT. Any party claiming a property interest in lands affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510, with a copy served upon both the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501; also:

1. Any party receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to sign the return receipt shall have until July 12, 1979 to file and appeal.

3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is to be taken, the adverse party to be served with a copy of the notice of appeal is:

Elim Native Corporation, Elim, Alaska 99739.
State of Alaska, Division of Lands, 323 East Fourth Avenue, Anchorage, Alaska 99501

Sue A. Wolf,

Chief, Branch of Adjudication.

[FR Doc. 79-18197 Filed 6-11-79; 8:45 am]

BILLING CODE 4310-84-M

Nevada, Wilderness Meeting; Correction

FR Doc. 79-16346, page 30440-50 for Friday, May 25, 1979 is changed to correct the time for the Reno meeting as follows: June 19—Reno, Pioneer Inn, 221 S. Virginia Street, beginning at 2 p.m. and 7 p.m.

Dated: June 4, 1979.

Ed Evatz,

Acting State Director.

[FR Doc. 79-18200 Filed 6-11-79; 8:45 am]

BILLING CODE 4310-84-M

[2800, U-41544 (U-942)]

Utah; Application

June 4, 1979.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corporation has applied for a 6⅝ inch buried natural gas pipeline right-of-way across the following lands:

Salt Lake Meridian, Utah

T. 17 S., R. 23 E.,
Secs. 1 and 3.

The needed right-of-way is a portion of applicant's gas gathering system located in Grand County, Utah.

The purpose of this notice is to inform the public that the Bureau will be proceeding with the preparation of environmental and other analyses necessary for determining whether the application should be approved, and if so, under what terms and conditions.

Interested persons should express their interest and views to the Moab District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532.

Dell T. Waddoups,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-18201 Filed 6-11-79; 8:45 am]

BILLING CODE 4310-84-M

Heritage Conservation and Recreation Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before June 1, 1979. Pursuant to section 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, Office of Archeology and Historic Preservation, U.S. Department of the Interior, Washington, DC 20240. Written comments or a request for additional

time to prepare comments should be submitted by June 22, 1979.

Charles A. Herrington,

Acting Keeper of the National Register.

ALASKA

Nome Division

Solomon, *Solomon Roadhouse*, Nome-Council Hwy.

ARIZONA

Pima County

Tucson, *Manning, Levi H., House*, 9 Paseo Redondo

Pinal County

Casa Grande vicinity, *Peralta Rock Site*
Sacaton vicinity, *Ho-ak Site*

CALIFORNIA

Contra Costa County

Richmond, *Point Richmond Historic District*, off CA 17

Los Angeles County

Los Angeles, *Wilton Historic District*, S. Wilton Pl., S. Wilton Dr. and Ridgewood Pl.
Torrance, *Torrance School*, 2200 W. Carson

San Francisco County

San Francisco, *Girls Club*, 362 Capp St.

San Joaquin County

Stockton, *Fox California Theater*, 242 E. Main St.

Santa Clara County

Campbell, *Campbell Union Grammar School*, 11 E. Campbell Ave.

COLORADO

Chaffee County

St. Elmo, *St. Elmo Historic District*, Pitkin, Gunnison, 1st, Main and Poplar Sts.

El Paso County

Colorado Springs, *Midland Terminal Railroad Roundhouse*, 600 S. 21st St.

Mesa County

DeBeque vicinity, *Archeology Site 5ME82*

DELAWARE

New Castle County

Newark vicinity, *Ferguson, Robert, House*, E of Newark at 630 Chestnut Hill Rd.
Newark vicinity, *Walnut Lane*, E of Newark at 4133 Ogletown Rd.

ILLINOIS

Macon County

Decatur, *Millikin Building*, 100 N. Water St.

Madison County

Edwardsville, *LeClaire Historic District*, roughly bounded by RR tracks, Wolf St., Hadley and Madison Aves.

Vermilion County

Danville vicinity, *Collins Archeological District*

IOWA

Polk County

Des Moines, *Iowa-Des Moines National Bank Building*, 520 Walnut St.

Pottawattamie County

Shelby vicinity, *Carstens Farmstead*, S of Shelby on IA 168

Scott County

Davenport, *Northwest Turner Society Hall*, 1602 Washington St.

KENTUCKY

Fayette County

Lexington vicinity, *Todd, William Lytle, House*, W of Lexington at 3725 Bowman Mill's Rd.

McCraken County

Paducah, *Nashville, Chattanooga and St. Louis Railway Office and Freight House*, 300 S. 3rd St.

Powell County

Bowen vicinity, *Terrace Archeological District*

Wolfe County

Hazel Green, *Hazel Green Academy Historic Buildings*, KY 191

LOUISIANA

Natchitoches Parish

Natchitoches, *Natchitoches Historic District*, LA 6 (boundary increase)

MAIN

Androscoggin County

Lewiston, *Continental Mill Housing*, 66–82 Oxford St.
Turner Center, *Turner Town House*, ME 117

Cumberland County

Naples, *Perley, Sam, Farm*, Perley Rd.
Portland, *Minott, William, House*, 45 Park St.
Scarborough vicinity, *Atlantic House*, S of Scarborough on Kirkwood Rd.
Yarmouth, *Grand Trunk Railroad Station*, ME 115

Knox County

Rockland, *Rockland Public Library*, Union St.

Lincoln County

Edgecomb vicinity, *Moore, John, House*, SW of Edgecomb on Cross Point Rd.

Oxford County

Rumford vicinity, *Deacon Hutchins House*, NW of Rumford on ME 5

Sagadahoc County

Bath, *Crooker, W. D., House*, 71 South St.
Phippsburg, *Fort Baldwin Historic Site*, Sabino Hill

Waldo County

Searsport, *Searsport Historic District*, Main St.

MISSISSIPPI

Claiborne County

Port Gibson, *Port Gibson Multiple Resource Area*, U.S. 61

MISSOURI

Adair County

Novinger vicinity, *Cabins Historic District*, S of Novinger off MO 6

Buchanan County

St. Joseph, *Hall Street Historic District*, roughly bounded by Isadore, Corby, 6th and 9th Sts.

Clay County

Kansas City, *Compton, Dr. James, House*, 5410 NE. Oak Ridge Rd.

Cooper County

New Lebanon, *New Lebanon Cumberland Presbyterian Church and School*, MO A

Grundy County

Trenton, *St. Philip's Episcopal Church*, 141 E. 9th St.

Jasper County

Joplin, *Joplin Carnegie Library*, 9th and Wall Sts.

Marion County

Hannibal, *Hannibal Old Police Station and Jail*, 4th and Church St.

Pettis County

Sedalia, *Harris House*, 705 W. Sixth St.

Ray County

Richmond, *Ray County Poor Farm*, W. Royale St.

NEW MEXICO

Mora County

Cleveland, *Cassidy, Daniel, and Sons General Merchandise Store*, NM 3

Valencia County

Los Lunas, *Atchison, Topeka, and Santa Fe Railroad Depot*, U.S. 85

NEW YORK

Erie County

Buffalo, *Blessed Trinity Roman Catholic Church Buildings*, 317 LeRoy Ave.

Rensselaer County

Rensselaer, *Beverwyck Manor (St. Anthony-on-Hudson Seminary)* Washington Ave.

OHIO

Fairfield County

Pickerington vicinty, *Stemen Road Covered Bridge*, NE of Pickerington over Sycamore Creek (proposed move).

OREGON

Multnomah County

Portland, *Neighborhood House*, 3030 SW. 2nd Ave.

SOUTH CAROLINA

Anderson County

Belton, *Belton Depot*, Public Sq.

Barnwell County

Barnwell, *Bethlehem Baptist Church*, Wall and Gilmore Sts.

Beaufort County

Beaufort vicinty, *Seaside Plantation*, 10 mi. E of Beaufort on SC 21.

Chesterfield County

McBee vicinity, *Kirkley, Evy, Site (38CT23)*.

Clarendon County

Manning, *Manning Library*, 211 No. Brooks St.

Lexington County

Lexington vicinity, *Meetze, Maj. Henry A., House*, S of Lexington at 723 S. Lake Dr.

Marlboro County

Clio, *Clio Historic District*, SC 9 and SC 381.

Sumter County

Mayesville, *Mayesville Historic District*, irregular pattern along Lafayette St.

SOUTH DAKOTA

Clark County

Clark, *Elrod, Gov. S. H. House*, 301 N. Commercial St.

TENNESSEE

Davidson County

Nashville, *Germantown Historic District*, bounded by Jefferson, Van Buren, and Taylor Sts., 3rd and 8th Aves. North.

UTAH

Iron County

Parowan vicinity, *Long Flat Site (42In330)*.

Sanpete County

Mt. Pleasant, *Staker, Alma, House*, 61 E. 300 South.

Sevier County

Salina vicinity, *Aspen-Cloud Rock Shelters*, NE of Salina.

WYOMING

Albany County

Laramie, *Blair House*, 170 N. 5th St.,
Wheatland vicinity, *Hallack Creek Historic District*, W of Wheatland.

Converse County

Douglas, *College Inn Bar*, 103 N. 2nd St.

Laramie County

Cheyenne, *Castle on 19th Street*, 1318 E. 19th St.
Cheyenne, *Crook House*, 314 E. 21st St.
Cheyenne, *Lafrentz, Ferdinand, House*, 2015 Warren Ave.

Sheridan County

Sheridan vicinity, *Fort Mackenzie*, N of Sheridan on WY 337.

[FR Doc. 79-17852 Filed 6-11-79; 8:45 am]
BILLING CODE 4310-03-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before June 1, 1979. Pursuant to section 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, Office of Archeology and Historic Preservation, U.S. Department of the Interior, Washington, DC 20240. Written comments or a request for additional time to prepare comments should be submitted by June 22, 1979.

Charles A. Flemington,
Acting Keeper of the National Register.

New Jersey

Morris County

Mountain Lakes, *Grimes Homestead*, 45 Bloomfield Ave. (proposed move)

[FR Doc. 79-18132 Filed 6-11-79; 8:45 am]
BILLING CODE 4310-03-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 79-10

David H. Blanck and Co., Philadelphia, Pennsylvania; Hearing

Notice is hereby given that on March 21, 1979, the Drug Enforcement Administration, Department of Justice, issued to David H. Blanck and Company, Philadelphia, Pennsylvania, an Order To Show Cause as to why the Drug Enforcement Administration should not deny Respondent's application for registration, executed June 19, 1978, under Section 303 of the Controlled Substances Act (21 U.S.C. 823).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Tuesday, June 19, 1979, in the Hearing Room, Room 1210, Drug Enforcement Administration, 1405 I Street, N.W., Washington, D.C.

Dated: June 5, 1979.

Peter B. Bensinger,
Administrator, Drug Enforcement Administration.

[FR Doc. 79-18134 Filed 6-11-79; 8:45 am]
BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Youth Community and Conservation Projects (YCCIP) and Youth Employment and Training Programs (YETP) for Youth Who are Members of Migrant and Other Seasonally Employed Farmworkers

AGENCY: Employment and Training Administration.

ACTION: Announcement of Potential Sponsors.

SUMMARY: The following are the applicants selected as potential sponsors to operate programs for youth who are members of migrant and other seasonally employed farmworker families—for program year 1979. Each applicant so designated shall be notified in writing of the amount of funds, target areas to be served, items to be negotiated and the time and place of negotiations. These sponsors are designated under section 423(b) of CETA; a total of $12.1 million for YETP and $2.1 million for YCCIP.

EFFECTIVE DATE: July 1, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Lindsay L. Campbell, Acting Director, Office of Farmworker Programs, U.S. Department of Labor, 601 D Street, N.W., Room 6306 Patrick Henry Building, Washington, D.C. 20213. Telephone: (202) 376-6128.

	YETP
ARIZONA	
Migrant Opportunities Programs, Inc., Phoenix, Ariz.	$712,216
CALIFORNIA	
Campesinos Unidos, Inc., Brawley, Calif.	600,000
Center for Employment & Training, San Jose, Calif.	1,500,000
Central Coast Counties Development Corporation, Salinas, Calif.	700,000
California Human Development Corp., Windsor, Calif.	1,000,000
Proteus Adult Training, Inc., Visalia, Calif.	1,287,784

DELAWARE	
Migrant & Seasonal Farmworkers Association, Raleigh, N.C.	175,000
FLORIDA	
Florida Department of Education, Tallahassee, Fla	800,000
HAWAII	
State of Hawaii, Department of Industrial Relations, Honolulu, Hawaii	300,000
ILLINOIS	
Illinois Migrant Council, Chicago, Ill	700,000
MARYLAND	
Migrant & Seasonal Farmworker Association, Raleigh, N.C.	219,194
MICHIGAN	
Michigan Economic for Human Development, Grand Ledge, Mich	400,000
MONTANA	
State of Montana, Helena, Mont	650,000
NEW YORK	
Rural New York Farmworker Opportunities, Inc., Rochester, N.Y	506,594
OREGON	
California Human Development Corp., Windsor, Calif	1,000,000
PUERTO RICO	
Commonwealth of Puerto Rico, Hato Rey, P.R	600,000
VIRGINIA	
Migrant & Seasonal Farmworker Association, Raleigh, N.C.	500,000
WYOMING	
Northwestern Community Action Programs, Worland, Wyo	348,784
YCCIP	
ARIZONA	
Portable Practical Educational Preparation, Inc., Tucson, Ariz	281,116
HAWAII	
State of Hawaii, Department of Industrial Relations, Honolulu, Hawaii	216,926
OKLAHOMA	
ORO Development Corp., Oklahoma City, Okla	223,082
TEXAS	
Motivation, Education & Training, Inc., Cleveland, Tex	547,000
Community Action Council of South Texas, Rio Grand City, Tex	594,576
Colonias del Valle, Inc., San Juan, Tex	257,300

Signed at Washington, D.C., this 7th day of June 1979.

Lamond Godwin,

Administrator, Office of National Programs.

[FR Doc. 79-18212 Filed 6-11-79; 8:45 am]

BILLING CODE 4510-28-M

Migrant and Seasonal Farmworker Programs; Acceptance of Preapplications Beyond Deadline Dates

AGENCY: Employment and Training Administration, Labor.

ACTION: . Notice.

SUMMARY: A Notice in the Federal Register of April 13, 1979, stated that Preapplication forms for Fiscal Year 1980 Section 303 funding must be postmarked no later than June 1. Applicants are hereby informed that the Department will accept Preapplication forms which are postmarked June 1 through June 25.

FOR FURTHER INFORMATION CONTACT: Lindsay L. Campbell, Acting Director, Office of Farmworker Programs, 601 D Street NW., Room 6306, Washington, D.C. 20213, Phone 202-376-6128.

SUPPLEMENTARY INFORMATION: The Notice of April 13, 1979, stated that all states and Puerto Rico are open for competition in Fiscal Year 1980 and that Preapplications and Funding Requests had to be postmarked June 1 and July 15 respectively. The Department is hereby notifying all interested organizations that it will continue to accept Preapplications until but not later than June 25, 1979. The deadline for Funding Requests remains July 15, 1979. This action results from the delay in the publication of the CETA, Title III, Section 303 regulations, which were published in the Federal Register of May 25, 1979.

Preapplications are to be sent to the address above. The Department would greatly appreciate it if Preapplications are submitted as quickly as possible in order to arrange for the workload associated with this grant funding process. Preapplications submitted prior to June 1 will naturally be maintained by the Office of Farmworker Programs as the Official Notice of Intent to apply. Applicants are cautioned that Preapplications must also be sent to all appropriate state and area clearinghouses. Addresses of area clearinghouses can be obtained from state clearinghouses. It is the responsibility of the applicant to assure that all clearinghouses with responsibility for reviewing applications for the area involved are sent Preapplication forms. Three copies of the Funding Request must be sent by registered mail to the address above. At the same time two copies must also be sent to the Department's Regional Office and one copy to each of the following:

(a) the state and/or area clearinghouse(s); and

(b) all eligible applicants which request an opportunity for review and comment as provided in Section 689.205 of the Section 303 regulations. Applicants must specify the action taken to comply with these requirements in an attachment to the copy of the Form 424 which is included in their Funding Request.

Applicants which have not previously received Section 303 funds are invited to attend a training conference in Washington, D.C., June 13, 1979, to be held in the multi-purpose room in the Patrick Henry Building, 601 D Street NW.

Signed at Washington, D.C., this 4th day of June, 1979.

Lamond Godwin,

Administrator, Office of National Programs.

[FR Doc. 79-18211 Filed 6-11-79; 8:45 am]

BILLING CODE 4510-28-M

Mine Safety and Health Administration

[Docket No. M-79-27-C]

Action Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Action Coal Company, P.O. Box 835, Elkhorn City, Kentucky 41522, has filed a petition to modify the application of 30 CFR 75.1710 (canopies), to its No. 1 Mine, located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Public Law 95-164.

The substance of the petition follows:

1. The petition concerns the use canopies on electric face equipment in the petitioner's mine.

2. The petitioner is mining in coal seam heights ranging from 44 to 50 inches and is constantly encountering undulations in the coal bed.

3. If canopies were installed low enough to prevent possible destruction of roof support, only 23 inches of vertical space would exist in the equipment operator's compartment.

4. This restricted space would limit the vision of the equipment operator, creating hazards for the operator and other miners in the area.

5. For these reasons, the petitioner believes that the application of the standard to its mine would result in a diminution of safety to its miners.

Request for Comments

Persons interested in this petition may furnish written comments on or before July 12, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: June 4, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-18213 Filed 6-11-79; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-79-18-M]

Climax Molybdenum Co.; Petition for Modification of Application of Mandatory Safety Standard

Climax Molybdenum Company, 13949 West Colfax Avenue, Golden, Colorado 80401, has filed a petition to modify the application of 30 CFR 57.9-22 (berms) to its Climax Mill located in Climax, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

The substance of the petition follows:

1. The petition concerns the installation of berms along a 3,900 foot stretch of roadway on the petitioner's property.

2. The roadway averages 30 feet in width, measuring 20 feet at its narrowest point.

3. The petitioner states that the installation of berms or guards on the outer banks of the roadway would create the following hazards:

(a) The roadway would become so narrow that safe passage could not be guaranteed for the movement of traffic.

(b) Approximately 256 inches of snow falls annually in the area. Berms or guards would prevent effective and efficient removal of snow and ice.

(c) Run-off water would be channeled down the roadway into a parking lot where freezing would occur, creating slippage hazards.

4. As an alternative, the petitioner proposes the following:

(a) Warning signs consisting of 15 foot lengths of pipe covered with fluorescent paint will be installed at regular intervals along the outer edge of the roadway so that men and equipment do not proceed over the edge. During the months when snow is not present, these pieces of pipe will be connected by a cable positioned three feet above the roadway (when snow is present, a cable would hamper snow removal).

(b) Traffic flow control signs as outlined in the petition will be installed at appropriate locations along the roadway.

5. The petitioner believes that this alternative will achieve no less protection than that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before July 12, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: June 4, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-18214 Filed 6-11-79; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-79-15-C]

Kentucky Heritage Coal, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Kentucky Heritage Coal, Inc., Box 102, Matewan, West Virginia 25678 has filed a petition to modify the application of 30 CFR 75.1710 (canopies) to its Nos. 2 and 3 Mines, located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of the petition follows:

1. The petition concerns the use of cabs or canopies on battery-powered tractors in the petitioner's mines.

2. The petitioner states that cabs or canopies would restrict the vision of its tractor operators.

3. For this reason, the petitioner believes that the application of the standard to its tractors would result in a reduction of safety for its miners.

Request for Comments

Persons interested in this petition may furnish written comments on or before July 12, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: June 4, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-18214 Filed 6-11-79; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-79-25-C, et al.]

Wyomac Coal Company, Inc.; Petitions for Modification of Application of Mandatory Safety Standard

Wyomac Coal Company, Inc., Post Office Drawer G, Welch, West Virginia 24801 has filed separate petitions to modify the application of 30 CFR 75.1710 (canopies), to its following mines: Virginia Crews #2 (M-79-68-C), Virginia Crews #4 (M-79-69-C), Twin Branch (M-79-73-C), Banacek (M-79-74-C), Missy (M-79-75-C), Cannon (M-79-76-C) and Leslie (M-79-77-C) located in McDowell County, West Virginia; and Lynco #2 (M-79-71-C) and Carol (M-79-72-C) located in Wyoming County, West Virginia. These petitions are filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Public Law 95-164.

The substance of the petitions follows:

1. The petitioner believes that the use of cabs or canopies on electric face equipment in its mines would reduce the safety of its miners for the following reasons:

(a) Cabs or canopies do not allow the operator sufficient visibility for safe equipment operation while remaining under the cab or canopy.

(b) Cabs or canopies collide with the roof in areas of uneven tops or bottoms.

(c) A cab or canopy does not allow an equipment operator to rapidly escape from its confines in the event of an emergency.

2. To avoid these safety problems, the petitioner proposes the following alternate method:

(a) The petitioner will replace its present electrical face equipment as it wears out with lower profile equipment. Cabs or canopies will be installed on this equipment to the extent feasible to avoid the safety problems listed above.

(b) If the petitioner's engineers and safety specialist find a workable design for cabs or canopies, the design will be used under actual working conditions on an experimental basis for evaluation by the petitioner, union personnel and MSHA. If the design proves successful, the petitioner will retrofit its equipment with cabs or canopies so designed.

(c) In addition to complying with the roof control plan in effect at each of its mines, the petitioner will reinstruct all its face workers, section supervisors and inspection personnel in roof and rib fall recognition and prevention techniques, as well as safe equipment operation.

Request for Comments

Persons interested in these petitions may furnish written comments on or before July 12, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petitions are available for inspection at that address.

Dated: June 5, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-18258 Filed 6-11-79; 8:45 am]

BILLING CODE 4510-43-M

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Department of Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either or both of the following: that an alternative method exists at the petitioner's mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard to the petitioner's mine will result in a diminution of safety to the affected miners.

Summaries of petitioners received by the Secretary appear periodically in the Federal Register. Final decisions on these petitions are based upon the petitioner's statement, comments and information submitted by interested persons and a field investigation of the conditions at the petitioner's mine. The Secretary has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances the decisions are conditioned upon the petitioner's compliance with stipulations stated in the decision.

FOR FURTHER INFORMATION: The petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: June 6, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

Affirmative Decisions on Petitions for Modification

Docket No.	FR notice	Petitioner	Regulation affected	Summary of findings
M-78-30	40 FR 58672	Rochester & Pittsburgh Coal Co	30 CFR 75.1101-8	Use of a single branch line of sprinklers on belt conveyors considered acceptable alternative method of fire control. Granted with conditions.
M-78-87	40 FR 5326	Maple Meadow Mining Company	30 CFR 75.326	Due to a high rate of methane liberation and conditions preventing the development of additional airways, the use of belt entries as intake airways considered acceptable alternative method of ventilation. Granted with conditions.
M-78-160	41 FR 41937	McClure River Coal Company	30 CFR 75.1710	Use of cabs or canopies on petitioner's scoops would result in diminution of safety in current low mining heights. Granted in part with conditions.
M-78-366	41 FR 34802	L & M Coal Company	30 CFR 75.1710	Use of cabs or canopies on petitioner's continuous miner would result in diminution of safety in current low mining heights. Granted in part with conditions.
M-78-430	41 FR 22267	Mullins Coal Co., of Virginia	30 CFR 75.1710	Use of cabs or canopies on petitioner's continuous miner, shuttle cars, roof bolting machine and scoop would result in diminution of safety in current low mining heights. Granted with conditions.
M-78-496	41 FR 48148	Rita Coal Company	30 CFR 75.1710	Use of cabs or canopies on petitioner's shuttle cars and scoop would result in a diminution of safety in prescribed areas. Granted in part with conditions.
M-78-508	41 FR 39001	McCoy Elkhorn Coal Corp	30 CFR 75.1710	Use of cabs or canopies on petitioner's loading machine would result in a diminution of safety in current low mining heights. Granted in part with conditions.
M-78-582	41 FR 46586	E & C Coal Co., Inc	30 CFR 75.1710	Use of cabs or canopies on petitioner's continuous miner and shuttle cars would result in diminution of safety in current low mining heights. Granted in part with conditions.
M-78-664	41 FR 46806	South East Coal Co	30 CFR 75.1710	Use of cabs or canopies on petitioner's shuttle car would result in a diminution of safety in current low mining heights in prescribed area of petitioner's mine. Granted in part with conditions.
M-78-678	41 FR 47529	Harper Valley Coal Co., Inc	30 CFR 75.1710	Use of cabs or canopies on petitioner's shuttle cars would result in diminution of safety in current low mining heights. Granted in part with conditions.
M-78-689	41 FR 52910	V.P. No. 5 Mining Co	30 CFR 75.326	Due to a high rate of methane liberation and conditions limiting the development of additional airways, double split face ventilation involving belt entries considered acceptable alternative method of ventilation. Granted with conditions.
M-78-691	41 FR 52920	V.P. No. 5 Mining Co	30 CFR 75.1103	Use of a carbon monoxide detection system considered acceptable alternative automatic fire warning device. Granted with conditions.
M-78-695	41 FR 50462	Meggard Coal Co., Inc	30 CFR 75.1710	Use of cabs or canopies on petitioner's continuous mining machine and roof bolting machine would result in diminution of safety in current low mining heights. Granted with conditions.
M-77-119	41 FR 14758	Electromet Fuel	30 CFR 75.1710	Use of cabs or canopies on petitioner's roof bolting machine and shuttle cars would result in diminution of safety in current low mining heights. Granted with conditions.
M-77-120	41 FR 14758	J & J Mining Co., Inc	30 CFR 75.1710	Use of cabs or canopies on petitioner's roof bolting machine and shuttle cars would result in diminution of safety in current low mining heights. Granted with conditions.
M-77-186	41 FR 21331	Alrosha Coal Co., Inc	30 CFR 77.1605(k)	Proposed maintenance procedures, traffic control system and safeguards for petitioner's elevated roadway considered acceptable alternative to berms for road control. Granted with conditions.

Affirmative Decisions on Petitions for Modification—Continued

Docket No.	FR notice	Petitioner	Regulation affected	Summary of findings
M-77-189	41 FR 31669	United States Steel Corp	30 CFR 75.305	Due to poor roof conditions, weekly inspections of specified return airways would result in a diminution of safety. Petitioner's proposal to establish air measurement checkpoints considered acceptable alternative of ventilation inspection. Granted in part with conditions.
M-77-191	41 FR 43697	Ranger Fuel Corp	30 CFR 75.326	Due to a high rate of methane liberation and conditions limiting the development of additional airways, proposed split face ventilation involving belt entries considered acceptable alternative method of ventilation. Granted with conditions.
M-77-225	41 FR 40469	McCoy Elkhorn Coal Corp	30 CFR 75.1710	Use of cabs or canopies on petitioner's continuous mining machine and scoops would result in diminution of safety in current low mining heights. Granted in part with conditions.
M-77-235	41 FR 40469	McElkhorn Coal Corp	30 CFR 75.1710	Use of cab or canopy on petitioner's roof bolting machine would result in diminution of safety in current low mining heights. Granted with conditions.
M-77-254	41 FR 47669	Mill Branch Mining Co., Inc	30 CFR 75.1710	Use of cabs or canopies on petitioner's loading machine, coal drill, scoops, shuttle cars and roof bolting machines would result in a diminution of safety in current low mining heights. Granted with conditions.
M-77-260	41 FR 1014	Imperial Coals Inc	30 CFR 77.1605(k)	Berms or guards on the outer bank of the petitioner's elevated roadway would limit usable driving area, impair drainage and hamper snow removal, resulting in a diminution of safety. Granted with conditions.
M-78-4	41 FR 57662	Spring Ridge Coal Company	30 CFR 75.1710	Use of cabs or canopies on petitioner's scoops and cutting machines would result in a diminution of safety in current low mining heights. Granted with conditions.
M-78-13	43 FR 62217	Kentucky Carbon Corp	30 CFR 75.300	Forced mechanical ventilation in petitioner's refuse belt entry would cause roof deterioration and result in a diminution of safety. Natural ventilation considered acceptable alternative method of ventilation. Granted with conditions.
M-78-17	43 FR 62217	Peerless Eagles Coal Co	30 CFR 75.1710	Use of cabs or canopies on petitioner's cutting machine and roof drills would result in a diminution of safety in current low mining heights. Granted in part with conditions.
M-78-20	42 FR 64445	Lovilia Coal Company	30 CFR 75.1710	Use of cabs or canopies on petitioner's shuttle cars, loading machines, cutting machines and roof bolters would result in a diminution of safety in current low mining heights. Granted in part with conditions.
M-78-22	43 FR 1013	D. C. Coal Company, Inc	30 CFR 77.1605(k)	Berms on petitioner's elevated roadway would limit usable driving area and interfere with drainage, resulting in a diminution of safety. Proposed maintenance procedures and supervised traffic system considered acceptable alternative method of road control. Granted.
M-78-25	43 FR 1015	Sewell Coal Company	30 CFR 75.1105	Proposed fire prevention procedures and fire fighting equipment for petitioner's locomotive repair station considered acceptable alternative to coursing air used to ventilate the station directly to a return airway. Granted with conditions.
M-78-31	43 FR 8163	United States Steel Corp	30 CFR 77.1914	Proposed safeguard procedures for use of nonpermissible transformer to power blind shaft borer considered acceptable alternative to use of only permissible transformers below collar of shaft. Granted with conditions.
M-78-42	43 FR 46664	M.S.W. Coal Company	30 CFR 75.301	Proposed airflow reduction in petitioner's anthracite mine, which would maintain a safe and healthful atmosphere, considered acceptable alternative method of ventilation. Granted with conditions.
M-78-78-C	43 FR 30821	Pralley Coal Company	30 CFR 75.301	Proposed airflow reduction in petitioner's anthracite mine, which would maintain a safe and healthful atmosphere, considered acceptable alternative method of ventilation. Granted with conditions.
M-78-78-C	43 FR 34650	Solar Fuel Company	30 CFR 75.1100	Due to wet conditions, proposed use of dry chemical-type fire extinguishers instead of rock dust considered acceptable alternative method of fire protection. Granted.
M-78-81-C	43 FR 35799	U.M.W.A. Local Union No. 1599	30 CFR 75.1710	Use of cabs or canopies on petitioner's continuous miners and shuttle cars would result in diminution of safety in current low mining heights. Granted in part with conditions.
M-78-86-C	43 FR 46562	K.L.M. Coal Company	30 CFR 75.301	Proposed airflow reduction in petitioner's anthracite mine, which would maintain a safe and healthful atmosphere, considered acceptable alternative method of ventilation. Granted with conditions.
M-78-88-C	43 FR 46564	United States Steel Corp	30 CFR 75.1700	Proposed plan to plug and mine through abandoned oil and gas wells considered acceptable alternative to leaving coal barriers around the wells. Granted with conditions.
M-78-92-C	43 FR 46059	Consolidation Coal Company	30 CFR 75.1101-8	Use of a single branch line of automatic sprinklers on belt conveyors considered acceptable alternative method of fire control. Granted with conditions.
M-78-96-C	43 FR 46564	Westmoreland Coal Company	30 CFR 75.1710	Use of roof bolting in specified areas would result in a diminution of safety in current low mining heights. Granted in part with conditions.
M-78-98-C	43 FR 46563	Shelly Coal Company	30 CFR 75.301	Proposed airflow reduction in petitioner's anthracite mine, which would maintain a safe and healthful atmosphere, considered acceptable alternative method of ventilation. Granted with conditions.

Affirmative Decisions on Petitions for Modification—Continued

Docket No.	FR notice	Petitioner	Regulation affected	Summary of findings
M-78-99-C	43 FR 50273	Valley Camp Coal Company	30 CFR 75.1403-8	Due to adverse rib and roof conditions, petitioner's proposal to construct shelter holes at intervals greater than 105 feet and to implement safeguard procedures in these areas considered acceptable alternative method of shelter hole construction. Granted with conditions.
M-78-103-C	43 FR 55478	United Pocahontas Coal Company	30 CFR 75.305	Due to poor roof conditions, petitioner's proposal to establish air measurement checkpoints on specified return airways considered acceptable alternative to making weekly inspections of the airways. Granted with conditions.
M-78-104-C	43 FR 54305	Consolidation Coal Company	30 CFR 75.1100	Due to freezing conditions in winter, use of dry-pipe fire suppression system instead of a charged waterline system considered acceptable alternative method of fire protection. Granted with conditions.
M-78-105-C	43 FR 49581	Gateway Coal Company	30 CFR 75.1105	Proposed dry-chemical deluge fire suppression system for petitioner's transformer stations considered acceptable alternative to coursing air passing through the stations directly to return airways. Granted with conditions.
M-78-115-C	43 FR 56951	Garden Creek Pocahontas Co	30 CFR 77.214	Proposal to cover three abandoned mine openings and an auger-mined coal seam outcrop with compact, non-combustible soil and then to construct refuse piles over these areas considered acceptable alternative method of refuse pile placement. Granted with conditions.
M-78-116-C	43 FR 55475	Marrowbone Development Co	30 CFR 75.1700	Proposed plan to plug and mine through abandoned oil and gas wells considered acceptable alternative method to leaving coal barriers around the wells. Granted with conditions.
M-78-117-C	43 FR 55473	Bethlehem Mines	30 CFR 75.305	Due to poor roof conditions, petitioner's proposal to establish air measurement checkpoints on specified return airways considered acceptable alternative to making weekly inspections of the airways. Granted with conditions.
M-78-118-C	43 FR 55474	Consolidation Coal Co	30 CFR 75.305	Due to poor roof conditions, petitioner's proposal to establish air measurement checkpoints on specified return airways considered acceptable alternative to making weekly inspections of the airways. Granted with conditions.
M-78-31-M	43 FR 29042	Rio Blanco Oil Shale Co	30 CFR 57.4-66	Proposed procedures relating to use of fire in underground shale oil production retorts considered acceptable alternative method of fire protection. Granted with conditions.
M-78-33-M	43 FR 47795	Idarado Mining Company	30 CFR 57.19-83	Operation of petitioner's electric hoist without a motor drive torque device but with an overtravel warning horn considered acceptable alternative method of hoist control. Granted with conditions.
M-78-39-M	43 FR 49562	Hitchcock Corporation	30 CFR 57.11-50	Due to geological conditions in the vicinity of the petitioner's mine, a single shaft escapeway and proper maintenance of conditions within the mine considered acceptable alternative to presence of two separate escapeways. Granted with conditions.
M-78-40-M	43 FR 47795	Jessie S. Morie & Son, Inc	30 CFR 56.16-14	Operation of petitioner's overhead crane without an up-travel switch on the clam bucket considered acceptable method of crane operation. Granted with conditions.
M-78-43-M	43 FR 54305	Demar Boren	30 CFR 57.19-3	Operation of petitioner's man-hoist with multiple V-belt drive considered acceptable alternative method of man-hoisting. Granted with conditions.
M-78-44-M	43 FR 51469	United States Steel Corp	30 CFR 56.12-16	Use of numbered locks on power switches by maintenance personnel in addition to operation locks considered acceptable alternative to signed warning notices on the switches. Granted.
M-78-45-M	43 FR 47795	New Jersey Zinc Company	30 CFR 57.19-11	Due to structural configuration of petitioner's hoist, extension of the hoist's drum flanges would result in a diminution of safety. Granted with conditions.
M-78-49-M	43 FR 54304	American Gilsonite Co	30 CFR 57.19-3	Operation of petitioner's man-hoist multiple V-belt drive considered acceptable alternative method of man-hoisting. Granted with conditions.
M-78-50-M	43 FR 49560	Cities Service Company	30 CFR 57.19-18	Use of two independent upper limit switches on hoist, in addition to a manually-operated overtravel by-pass switch, considered acceptable alternative method of overtravel control on hoist. Granted.
M-78-57-M	43 FR 54304	Demar Boren	30 CFR 57.19.3	Operation of petitioner's man-hoist with multiple V-belt drive considered acceptable alternative method of man-hoisting. Granted with conditions.
M-78-54-M	43 FR 58134	Climax Molybdenum Company	30 CFR 57.19-22	Petitioner's proposed procedures for attaching wire rope to hoist drum considered acceptable alternative method of wire rope attachment. Granted with conditions.

[FR Doc. 79-18217 Filed 6-11-79; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Puerto Rico State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18 (c) of the Act and 29 CFR Part 1902. On August 30, 1977, notice was published in the Federal Register (42 FR 43628) of the approval of the Puerto Rico plan and the adoption of Subpart FF to Part 1952 containing the decision.

The Puerto Rico plan provides for the adoption of Federal standards as State standards by reference. Section 1953.20 of 29 CFR provides that "where any alteration in the Federal program could have an adverse impact on the 'at least as effective as' status of the State program, a program change supplement to a State plan shall be required."

In response to a Federal standard change, the State has submitted by letter dated March 28, 1979, from Assistant Secretary John Cinque to Assistant Regional Administrator Richard Andree, and incorporated as part of the plan, a State standard comparable to the Occupational Safety and Health Administration Permanent Standard for Arcylonitrile 29 CFR 1910.1045, as published in the Federal Register (43 FR 45762) dated October 3, 1978. This standard which is contained in the Purato Rico Regulations, Number Four (equivalent to 29 CFR Part 1910) was promulgated by resolution adopted by the Puerto Rico Department of Labor and Human Resources on July 20, 1978, pursuant to the Puerto Rico Act Number 16 and Chapter 43 of the Puerto Rico Rules and Regulations Act of 1958.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standard it has been determined that the State standard is identical to the Federal standard and accordingly is hereby approved.

3. *Location of supplement for inspection and copying.* A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 3445, 1515 Broadway, New York, New York 10036; Puerto Rico Department of Labor and Human Resources, 414 Barbosa Avenue, Hato Rey, Puerto Rico 00917; and the Technical Data Center, Room N2439R, 200 Constitution Avenue, NW, Washington, D.C. 20210.

4. *Public Participation.* Under 29 CFR 1953.2 (c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws: The Assistant Secretary finds that good cause exists for not publishing the supplement to the Puerto Rico State plan as a proposed change and making the Assistant Regional Director's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirement of State law and further paticipation would be unnecessary.

The decision is effective June 12, 1979.

(Sec. 18 Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at New York City, New York, this seventh day of May 1979.

Alfred Barden,

Regional Administrator.

[FR Doc. 79-18287 Filed 6-11-79; 8:45 am]

BILLING CODE 4510-26-M

Virginia State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On September 28, 1978, notice was published in the Federal Register (41 FR 42655) of the adoption of Subpart EE to Part 1952 containing the decision.

The Virginia plan provides for the adoption of Federal standards as State standards after public hearing. Section 1952.373 of Subpart EE sets forth the State's schedule for the adoption of Federal standards. By letter dated November 11, 1978, from Robert F. Beard, Jr., Commissioner, Virginia Department of Labor and Industry to David H. Rhone, Regional Administrator and incorporated as part of the plan, the State submitted State standards comparable to 29 CFR Part 1928 for Agriculture as published in the Federal Register (41 FR 10196, 22297) dated March 9, 1976, and June 2, 1976 respectively.

These standards were promulgated after hearings held on November 15, 1978 by the Virginia Occupational Safety and Health Codes Commission, pursuant to the Administrative Process Act, Chapter 1.1:1 of Title 9 of the Code of Virginia.

2. *Decision.* Having reviewed the State submission in comparision with the Federal standards it has been determined that the State standards are identical to the Federal standards and accordingly should be approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Suite 2100, 3535 Market Street, Philadelphia, PA 19104; the Office of the Commissioner, 205 North Fourth Street, Richmond, Virginia 23241; and the Technical Data Center, Room N2439R, Third and Constitution Avenues, NW., Washington, DC 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Virginia State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural

requirements of State law and further participation would be unnecessary.

This decision is effective June 12, 1979.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Philadelphia, PA this 19th of December, 1978.

David H. Rhone,

Regional Administrator.

[FR Doc. 79-18208 Filed 6-11-79; 8:45 am]

BILLING CODE 4510-26-M

Virginia State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a state plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On September 28, 1976, notice was published in the Federal Register (41 FR 42655) of the approval of the Virginia plan and the adoption of Subpart EE to Part 1952 containing the decision.

The Virginia plan provides for the adoption of Federal standards as State standards after Public Hearing. Section 1952.373 of Subpart EE sets forth the State's schedule for the adoption of Federal standards. By letter dated November 14, 1978, from Robert F. Beard, Jr., Commissioner, Virginia Department of Labor and Industry to David H. Rhone, Regional Administrator and incorporated as part of the plan, the State submitted State standards comparable to 29 CFR Part 1910, Subpart T for Commercial Diving Operations, as published in the Federal Register (42 FR 37668) dated July 22, 1977.

These standards were promulgated after hearings held on November 1, 1977 by the Virginia Occupational Safety and Health Codes Commission, pursuant to the Administration Process Act, Chapter 1.1:1 of Title 9 of the Code of Virginia.

2. *Decisions.* Having reviewed the State submission in comparison with the Federal standards it has been determined that the State standards are identical to the Federal standards and accordingly should be approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Suite 2100, 3535 Market Street, Philadelphia, PA 19104; the Office of the Commissioner, 205 North Fourth Street, Richmond, Virginia 23241; and the Technical Data Center, Room N2439R, Third and Constitution Avenue, NW, Washington, DC 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Virginia State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective June 12, 1979.

(Sec. 18, Pub. L. 91-596, 84 stat. 1608 (29 U.S.C. 667)).

Signed at Philadelphia, PA this 19th of December, 1978.

David H. Rhone,

Regional Administrator.

[FR Doc. 79-18209 Filed 6-11-79; 8:45 am]

BILLING CODE 4510-26-M

Virginia State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On September 28, 1976, notice was published in the Federal Register (41 FR 42655) of the approval of the Virginia State plan and the adoption of Subpart EE to Part 1952 containing the decision.

The Virginia State plan provides for the adoption of Federal standards as State standards after public hearing. Section 1952.373 of Subpart EE sets forth the State's schedule for the adoption of Federal Standards. By letter dated March 7, 1979, from Commissioner Robert F. Beard, Jr., Virginia Department of Labor and Industry, to David H. Rhone, Regional Administrator, and incorporated as part of the plan, the State submitted State standards comparable to (1) 29 CFR 1910.19(e), 1910.1018, and amendment to 29 CFR 1910.1000 (Title Z-1) pertaining to Inorganic Arsenic, as published in the Federal Register (43 FR 19624) dated May 5, 1978; (2) 29 CFR 1910.20, pertaining to Preservation of Records, as published in the Federal Register (43 FR 31309) dated July 19, 1978, and republished in the Federal Register (43 FR 31329) dated July 21, 1978; (3) 29 CFR 1910.1044 pertaining to 1,2-dibromo-3-chloropropane, as published in the Federal Register (42 FR 45544) dated September 9, 1977; and (4) amendment to 29 CFR 1926.605, pertaining to Commercial Diving Operations under Marine operations and equipment, as published in the Federal Register (42 FR 37674) dated July 22, 1977.

These standards, which are contained in the Virginia Safety and Health Codes, were promulgated after public hearings held on January 4, 1978, pursuant to the Code of Virginia, Title 40.1, Section 40.1-22.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and, accordingly, should be approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 3535 Market Street, Suite 2100, Philadelphia, PA 19104; Office of the Commissioner of Labor and Industry, 205 North Fourth Street, Richmond, VA 23241; and the Technical Data Center, Room N2439R, Third and Constitution Avenue, NW, Washington, DC 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Virginia State plan as a proposed change and making the Regional

Administrator's approval effective upon publication for the following reasons.

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective June 12, 1979.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Philadelphia, PA this 15th day of March, 1979.

David H. Rhems,
Regional Administrator.

[FR Doc. 79-18238 Filed 6-11-79; 8:45 am]
BILLING CODE 4510-26-M

Office of the Solicitor

Privacy Act; Notice of Systems of Records

AGENCY: Office of the Secretary, Department of Labor.

ACTION: Notice of Systems of Records.

SUMMARY: Pursuant to 5 U.S.C. 552a(e)(4) and (11), sections of the Privacy Act, the Department of Labor hereby publishes for comment the establishment of systems of records DOL/LMSA-20, "Redwood Employee Protection Program Application File". Consistent with Title II of Pub. L. 95-250, dated March 27, 1978, the Department of Labor has assumed full responsibility for all Redwood Employee Protection Program activities. Pursuant to Section 213(d)(2) of Pub. L. 95-250 the Secretary has delegated to LMSA responsibility for administration of the Program. To facilitate application for benefits a program office has been set up in Eureka, California. This office will maintain records subject to the Privacy Act of 1974 and be responsible for accepting and forwarding requests from members of the public under that Act.

EFFECTIVE DATE: July 12, 1979, unless otherwise published. Comments may be submitted to:

Redwood Employee Protection Program, Division of Employee Protections, Room N-5639, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. Paul F. Pothin of the department at (202) 523-6495. (This is not a toll-free number.)

Dated: June 8, 1979.
Ray Marshall,
Secretary of Labor.

DOL/LMSA-20

SYSTEM NAME:

LMSA, Division of Employee Protections.

SYSTEM LOCATION:

Redwood Program Office, Federal Office Building, Room 101, 5th & H Streets, Eureka, California 95501.

CATEGORY OF INDIVIDUALS (COVERED BY THE SYSTEM)

Redwood Employee Protection Program Applicants.

CATEGORY OF RECORDS IN THE SYSTEM:

Financial, medical, and personal information concerning applicant.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 95-250.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Not disclosed to public. Used as supporting and background information in eligibility determinations for Program benefits. Information can be shared with the following agencies:

California Economic Development Department.
All participating Health & Welfare Trusts, Administrators, and Pension Insurance Carriers.
Prospective employers of affected employees.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

3 x 5 index cards; letter size folders.

RETRIEVABILITY:

Filed alphabetically, manually, and by Social Security Number.

SAFEGUARDS:

Maintained in Eureka branch office of LMSA, accessible to Program personel only.

RETENTION AND DISPOSAL:

September 30, 1980.

SYSTEMS MANAGER(S) AND ADDRESS:

Mr. Michael Venuto, Program Officer, Redwood Program Office, Federal Office Building, Room 101, 5th & H Streets, Eureka, California 95501.

NOTIFICATION PROCEDURE:

Address as above.

RECORD ACCESS PROCEDURE:

Written requests should be submitted to: Ms. Beatrice Burgoon, Disclosure Officer; Room N-5653; U.S. Department of Labor; 200 Constitution Avenue NW., Washington, D.C. 20216.

CONTESTING RECORD PROCEDURE:

See "Record access procedures."

RECORD SOURCE CATEGORIES:

Individual applicants, employer health and welfare trusts, California Economic Development Department.

[FR Doc. 79-18239 Filed 6-11-79; 8:45 am]
BILLING CODE 4510-28-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 79-61]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

The NAC Aeronautics Advisory Committee will meet June 27-29, 1979 in the Auditorium of Building #3, Goddard Space Flight Center, Greenbelt, MD. The meeting will be open to the public.

The Committee was established to advise NASA senior management through the NAC in the area of aeronautical research and technology. The Chairperson is Dr. Robert G. Loewy. There are currently 49 members on the Committee. Following is the approved agenda for the meeting:

Agenda

June 27, 1979

8:30 a.m.—Registration
8:30 a.m.—Introductory Remarks
9:10 a.m.—Subcommittee Chairperson's Reports
1:45 p.m.—NASA Aeronautical Research and Technology FY 1981-86 5-Year Plan Review
5:00 p.m.—Adjourn

June 28, 1979

8:30 a.m.—Group Review and Discussion of NASA Aeronautical FY 1981-86 5-Year Plan Elements
5:00 p.m.—Adjourn

June 29, 1979

8:30 a.m.—Reports by Group Leaders of Recommendations and Comments on the NASA Aeronautical FY 1981-86 5-Year Plan
12:00 NOON—Adjourn

For further information contact Mr. C. Robert Nysmith, Executive Secretary of the Committee, Code RP-4, NASA

Headquarters, Washington, DC 20546. Telephone 202/755-3252.

June 6, 1979.

Russell Ritchie,

Acting Associate Administrator for External Relations.

[FR Doc. 79-18188 Filed 6-11-79; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Radiological Effects and Site Evaluation; Meeting

The ACRS Subcommittee on Radiological Effects and Site Evaluation will hold an open meeting on June 27, 1979 in Room 1046, 1717 H St., N.W., Washington, D.C. 20555 to discuss changes in the NRC research program budget and several other matters in the areas of radiological effects and site evaluation. Notice of this meeting was published on May 24, 1979 (44 FR 30177).

In accordance with the procedures outlined in the Federal Register on October 4, 1978 (43 FR 45926), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

Wednesday, June 27, 1979

8:30 a.m. until conclusion of business.

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full Committee.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions pertinent to this review with representatives of the NRC Staff and invited speakers from outside NRC.

The Subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether the project is ready for review by the full Committee.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Mr. Ragnwald Muller, (telephone 202/634-1413) between 8:15 a.m. and 5:00 p.m., EDT.

Dated: June 5, 1979.

John C. Hoyle,

Advisory Committee, Management Officer.

[FR Doc. 79-17830 Filed 6-11-79; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on the Floating Nuclear Plant; Meeting

The ACRS Subcommittee on the Floating Nuclear Plant will hold a meeting on June 27, 1979, in Room 1167, 1717 H Street, N.W., Washington, DC 20555 to continue its review of the Offshore Power Systems' application for a manufacturing license for the Floating Nuclear Plant. The specific topic of this meeting will be the review of the proposed core ladle design using magnesium oxide bricks. Notice of this meeting was published on May 24, 1979 (44 FR 30177).

In accordance with the procedures outlined in the Federal Register on October 4, 1978, (43 FR 45926), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

Wednesday, June 27, 1979

8:30 a.m. until the conclusion of business.

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full committee.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff, Offshore Power Systems, et al., and their consultants, pertinent to this review.

The Subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered.

In addition, it may be necessary for the Subcommittee to hold one or more closed sessions for the purpose of exploring matters involving proprietary information. I have determined, in accordance with Subsection 10(d) of Public Law 92-463, that, should such sessions be required, it is necessary to close these sessions to protect proprietary information (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Mr. Gary R. Quittschreiber, (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EDT.

Background information concerning items to be considered at this meeting can be found in documents on file and available for public inspection at the NRC Public Document Room, 1717 H Street, N.W., Washington, DC 20555 and at the Jacksonville Public Library, 122 North Ocean St., Jacksonville, FL 32204, the Business and Science Division, New Orleans Public Library, 219 Loyola Ave., New Orleans, LA 70140, and the Stockton State College Library, Pomona, NJ 08240.)

Dated: June 6, 1979.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 79-18066 Filed 6-11-79; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Docket No. MC79-3]

Red-Tag Proceeding, 1978; Deferring Procedural Deadlines

June 5, 1979.

As directed in the Order Denying Motion to Postpone Proceeding issued on April 24, 1979, the United States Postal Service submitted a testimonial filing in this docket on May 31, 1979. A preliminary examination of the Service's filing reveals that it contains technically

detailed information concerning the volumes and market characteristics of red-tag mail matter. In the letter transmitting its filing, however, the Postal Service states that it is not thereby filing, nor will it file, a case-in-chief.

According to the schedule establishing in the Commission's Order of January 4, 1979, instituting this proceeding, discovery directed to the Postal Service was to be completed by June 1, 1979, the cases-in-chief of the Officer of the Commission and of the intervenors were to be due on June 15, 1979, and hearings were to commence on June 25, 1979. In light of the detailed volume and market information contained in the Postal Service's filing, the absence of cost information from the Service's filing, and interrogatories directed to the Service that have not yet been answered, we believe that all these deadlines should be deferred. In order to give parties other than the Postal Service an ample opportunity to complete their discovery upon the Service and to prepare cases-in-chief treating all pertinent issues, the Commission will extend the deadline for filing cases-in-chief to June 29, 1979, and extend the deadline for discovery directed to the Service to July 13, 1979. An order specifying the date on which hearings will begin in this docket shall issue hereafter; at present, we anticipate that hearings will begin during September, 1979.

In the interest of expediting this proceeding, all parties are encouraged to utilize technical conferences and other forms of informal discovery in order to reduce the volume of written and oral cross-examination.

The Commission Orders

(A) The deadline for the filing of cases-in-chief by the Officer of the Commission and by the intervenors in this proceeding is hereby deferred to June 29, 1979.

(B) The deadline for the completion of discovery directed to the Postal Service is hereby deferred to July 13, 1979.

(C) The currently scheduled date of June 25, 1979, for the commencement of hearings in this docket is hereby deferred indefinitely, pending issuance of a subsequent order rescheduling hearings in this docket.

By the Commission.

David F. Harris,

Secretary.

[FR Doc. 79-[illegible] Filed 6-11-79; 8:45 am]

BILLING CODE 7715-01-M

DEPARTMENT OF STATE

Bureau of Oceans and International Environmental and Scientific Affairs

[Public Notice 577]

Convention on Migratory Species of Wild Animals; Availability of Draft Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the U.S. Department of State has prepared a Draft Environmental Impact Statement on the Convention on the Conservation of Migratory Species of Wild Animals, dated May 25, 1979. The Draft EIS considers the potential environmental effects of a proposed international convention for the conservation of migratory species of wild animals, which will be the subject of international negotiations on June 11–23, 1979.

Copies of the Draft EIS may be obtained by contacting William H. Mansfield, Office of Environmental Affairs, Department of State, Room 7820, Washington, D.C. 20520 (tel: 202/632-2416).

The Department of State will receive written and oral comments on the Draft EIS in a public meeting on June 1, 1979 at 10 a.m. in Room 1107 at the Department of State, 2201 C Street, N.W., Washington, D.C. The Department will receive additional written comments through July 13, 1979.

May 25, 1979.

William Alston Hayne,

Deputy Assistant Secretary for Environmental Affairs.

[FR Doc. 79-[illegible] Filed 6-11-79; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Emergency Order No. 11—Notice 7]

Louisville and Nashville Railroad Co.; Emergency Order Limiting Movement of Hazardous Materials; Partial Removal of Order

On February 7, 1979, the Federal Railroad Administration (FRA) issued FRA Emergency Order No. 11 (44 FR 8402), which placed certain restrictions on the movement of railroad freight cars containing materials required to be placarded in accordance with Department of Transportation regulations, 49 CFR Parts 170–189, over track owned or leased by the Louisville and Nashville Railroad Company (L&N). That Order provided, in part, that FRA would consider gradual removal of its restrictions dependent upon the L&N's progress in rectifying its safety deficiencies. On April 6, 1979, FRA rescinded the Order with respect to the 204 miles of the L&N's system between Flomaton, Alabama, and Chattahoochee, Florida. (44 FR 21725.)

As discussed at length in the Order, FRA found substantial evidence that the L&N had inadequately dealt with a number of factors that had led, or contributed, to train derailments on its system during the 37 months preceding issuance of that Order. Consequently, one of the purposes of the Order was to call the L&N's attention to the safety hazards created by its actions and omissions with the expectation that the L&N would take appropriate remedial action to improve the safety of operations over its system.

On March 1, March 23, March 28, April 20, and May 7, 1979, the L&N made separate requests that, taken together, requested that the Order be modified to exclude coverage of its mainline between the following locations: Nashville, Tennessee-Memphis, Tennessee; Nashville-Atlanta, Georgia; Nashville-New Orleans, Louisiana; and Corbin, Kentucky-Cartersville, Georgia. These track segments total approximately 1,330 miles. In support of those requests, L&N stated that such segments were in full compliance with the FRA's Track Safety Standards (49 CFR Part 213).

Following the earliest L&N request, which covered its track between Nashville and Montgomery, Alabama, FRA performed a thorough investigation of all aspects of railroad operations over that segment that bear on safety, including the condition of track and equipment, adequacy of training and testing of L&N operating personnel, L&N compliance with Federal safety regulations and its own rules, accident history, and the volume and character of hazardous materials moved. The FRA investigation was designed to accomplish two objectives; first, to ascertain whether the L&N had identified all significant safety problems with respect to that segment and had instituted the remedial action necessary to abate the emergency situation that existed at the time the Order was issued; and second, to determine whether the L&N had taken appropriate steps to ensure that another emergency situation would not develop on that segment in the future. The focus of the FRA investigation was on whether hazardous materials operations over that segment, absent the restrictions of the Order, would still create and

emergency condition. The FRA investigation indicates that, as a result of extensive corrective action taken by the L&N following issuance of the Order, an emergency condition no longer exists with respect to hazardous materials operations over L&N's track between Nashville and Montgomery, with the exception of an 11 mile segment (milepost 386 to milepost 397) in Birmingham, Alabama, that still requires extensive maintenance.

FRA has not yet completed similar investigations of the remaining segments referenced above. However, FRA track inspectors have concluded examinations of the condition of the track involved, and have discussed the L&N's planned and completed remedial action with local L&N track maintenance personnel. Those examinations indicated, in general, that a substantial number of major track problems had been identified through L&N and FRA track inspections, including the double inspections and walking inspection mandated by paragraphs 3 and 4 of the Order, and that the L&N had either completed or commenced appropriate remedial action. Consequently, the objective of paragraphs 3 and 4, namely to remedy L&N's past failures to identify many major track problems on its system, had been achieved with respect to those segments.

Based on the results of the FRA investigation of railroad operations over L&N's Nashville-Mongomery segment, I hereby order that, effective 12:01 p.m., June [date of publication of this notice in the **Federal Register**], 1979, the requirements of FRA Emergency Order No. 11, with the exception of paragraph 6 of that Order, are rescinded with respect to the L&N's mainline between Nashville, Tennessee and Birmingham, Alabama (milepost 197 to milepost 386), and between Birmingham and Montgomery, Alabama, (milepost 397 to milepost 485). Paragraph 6 of the Order, which requires the L&N to investigate, and prepare a report to FRA on, each railroad accident on L&N trackage involving a train transporating a placarded hazardous materials car, is being retained for the present time to facilitate FRA's continued monitoring of the safety of hazardous materials movements over the L&N.

Based on the results of the FRA track examinations discussed above, I further order that, efective 12:01 p.m., June [date of publication of this notice in the **Federal Register**], 1979, the requirements of paragraph 3 of the Order are rescinded with respect to the following L&N track segments; Corbin, Kentucky, Cartersville, Georgia (milepost 176 to milepost 423); Nashville, Tennessee-Memphis, Tennessee (milepost 0 to milepost F-370); Nashville, Tennessee-Chattanooga, Tennessee (milepost 7 to milepost 132); Montgomery, Alabama-New Orleans, Louisiana (milepost 485 to milepost 800.4); and Birmingham, Alabama (milepost 386 to milepost 397).

Issued in Washington, D.C. on June 8, 1979.

John M. Sullivan,

Administrator.

[FR Doc. 79-18402 Filed 6-11-79; 8:45 am]

BILLING CODE 4910-06-M

Federal Railroad Administration

[FRA Waiver Petition Docket HS-79-9]

Magna Arizona Railroad Co.; Petition for Exemption From the Hours of Service Act

In accordance with 49 CFR 211.41 and 211.9, notice is hereby given that the Magna Arizona Railroad (MAA) has petitioned the Federal Railroad Administration (FRA) for an exemption from the Hours of Service Act (83 Stat. 464, Pub. L. 91-169, 45 U.S.C. 64a(e)). That petition requests that the MAA be granted authority to permit certain employees to continuously remain on duty for in excess of twelve hours.

The Hours of Service Act currently makes it unlawful for a railroad to require or permit specified employees to continuously remain on duty for a period in excess of twelve hours. However, the Hours of Service Act contains a provision that permits a railroad, which employs no more than fifteen employees who are subject to the statute, to seek an exemption from this twelve hour limitation.

The MAA seeks this exemption so that it can permit certain employees to remain continuously on duty for periods not to exceed sixteen hours. The petitioner indicates that granting this exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs no more than fifteen employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in this proceeding by submitting written views or comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning this proceeding should identify the Docket Number, Docket Number HS-79-9, and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Trans Point Building, 2100 Second Street, SW., Washington, D.C. 20590. Communications received before July 23, 1979, will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 4406, Trans Point Building, 2100 Second Street, SW., Washington, D.C. 20590.

Authority: Section 5 of the Hours of Service Act of 1969 (45 U.S.C. 64a), 1.49(d) of the regulations of the Office of the Secretary, 49 CFR 1.49(d).

Issued in Washington, D.C. on June 5, 1979.

R. H. Wright,

Acting Chairman, Railroad Safety Board.

[FR Doc. 79-18129 Filed 6-11-79; 8:45 am]

BILLING CODE 4910-06-M

[FRA Waiver Petition Docket HS-79-10]

San Manuel Arizona Railroad Co.; Petition for Exemption From the Hours of Service Act

In accordance with 49 CFR 211.41 and 211.9, notice is hereby given that the San Manuel Arizona Railroad (SMA) has petitioned the Federal Railroad Administration (FRA) for an exemption from the Hours of Service Act (83 Stat. 464, Pub. L. 91-169, 45 U.S.C. 64a(e)). That petition requests that the SMA be granted authority to permit certain employees to continuously remain on duty for in excess of twelve hours.

The Hours of Service Act currently makes it unlawful for a railroad to require or permit specified employees to continuously remain on duty for a period in excess of twelve hours. However, the Hours of Service Act contains a provision that permits a railroad, which employs no more than fifteen employees who are subject to the statute, to seek an exemption from this twelve hour limitation.

The SMA seeks this exemption so that it can permit certain employees to remain continuously on duty for periods not to exceed sixteen hours. The petitioner indicates that granting this exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs no more than fifteen employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in this proceeding by submitting written views or comments.

FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning this proceeding should identify the Docket Number, Docket Number HS-79-10, and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Trans Point Building, 2100 Second Street, SW., Washington, D.C. 20590. Communications received before July 23, 1979, will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 4406, Trans Point Building, 2100 Second Street, SW., Washington, D.C. 20590.

Authority: Section 5 of the Hours of Service Act of 1969 (45 U.S.C. 64a), 1.49(d) of the regulations of the Office of the Secretary, 49 CFR 1.49(d).

Issued in Washington, D.C. on June 5, 1979.

R. H. Wright,

Acting Chairman, Railroad Safety Board.

[FR Doc. 79-18130 Filed 6-11-79; 8:45 am]

BILLING CODE 4910-06-M

Office of the Secretary

[Notice 79-11]

Bicycle Transportation for Energy Conservation Study

AGENCY: Department of the Transportation, Office of the Secretary.

ACTION: Request for public comments.

SUMMARY: Section 862 of the National Energy Conservation Policy Act of 1978 requires the Department of Transportation to conduct a study of Bicycle Transportation for Energy Conservation, and report the results to the President and the Congress. The purpose of this notice is to advise the public of this study and to invite comments from interested parties.

DATE: Written comments and recommendations should be submitted on or before August 1, 1979.

ADDRESS: Responses should refer to the Bicycle Transportation for Energy Conservation Study and be submitted in writing to the Director, Office of Environment and Safety, P-20, U.S. Department of Transportation, Washington, D.C. 20590. Comments received will be available for public inspection during normal working hours in Rm. 9422, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: William C. Wilkinson III, Office of Environment and Safety, P-20, Room 9422, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 426-4414.

SUPPLEMENTARY INFORMATION: A Bicycle Transportation for Energy Conservation Study is required to be submitted to the President and to the Congress by Section 862 of the National Energy Conservation Policy Act of 1978, which reads as follows:

"(a) FINDINGS.—The Congress recognizes that bicycles are the most efficient means of transportation, represent a viable commuting alternative to many people, offer mobility at speeds as fast as that of cars in urban areas, provide health benefit through daily exercise, reduce noise and air pollution, are relatively inexpensive, and deserve consideration in a comprehensive national energy plan."

"(b) STUDY.—Not more than one year after the date of the enactment of this Act, the Secretary of Transportation shall complete a study of the energy conservation of potential bicycle transportation, determine institutional, legal, physical, and personal obstacles to increased bicycle use, establish a target for bicycle use in commuting, and develop a comprehensive program to meet these goals. In developing the program, consideration should be given to educational programs, Federal demonstrations, planning grants, and construction grants. The Secretary of Transportation shall submit a report to the President and to the Congress containing the results of the report to the President and to the Congress containing the results of such a study."

The Report of the Ad Hoc Committee on Energy of the U.S. House of Representatives dated July 27, 1977 includes the following additional comment on Section 862:

"The study is designed to determine the steps necessary to implement a comprehensive and effective program which would increase the use of bicycles as an integral mode of transportation."

This notice invites public comment to assist the Department in conducting the study. Specifically, interested parties are invited to identify and describe:

(a) data or studies related to current bicycle use;

(b) problems with, or limitations of current public programs related to bicycle use;

(c) obstacles to increased bicycle use;

(d) strategies and ideas for increasing bicycle use;

(e) innovative or exemplary programs to enhance or encourage bicycle use;

(f) research, development, and demonstrations needs related to bicycle use; and

(g) technical assistance needs.

Issued in Washington, D.C. on May 31, 1979.

John J. Fearnsides,

Deputy Under Secretary.

[FR Doc. 79-18137 Filed 6-11-79; 8:45 am]

BILLING CODE 4910-62-M

VETERANS ADMINISTRATION

Veterans Administration Wage Committee; Meetings

Pursuant to the provisions of section 10 of Public Law 92-463, notice is hereby given that meetings of the Veterans Administration Wage Committee will be held on:

Thursday, July 12, 1979
Thursday, July 26, 1979
Thursday, August 9, 1979
Thursday, August 23, 1979
Thursday, September 6, 1979

The meetings will be convene at 2:30 p.m. and will be held in Room 504, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC. 20420.

The Committee's primary responsibility is to consider and make recommendations to the Chief Medical Director, Department of Medicine and Surgery, on all matters involved in the development and authorization of wage rate schedules for Federal Wage System (blue-collar) employees.

At these scheduled meetings, the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92-463, the Federal Advisory Committee Act, as amended by Public Law 94-409, meetings may be closed to the public when they are concerned with matters listed under section 552b, Title 5, United States Code. Two of the matters so listed are those related solely to the internal personnel rules and practices of an agency (5 U.S.C. 552b(c)(2)), and those involving trade secrets and commerical or financial information obtained from a person and privileged or confidential (5 U.S.C. 552b(c)(4)).

Accordingly, I hereby determine that all portions of the meetings cited above will be closed to the public because the matters considered are related to the internal rules and practices of the Veterans Administration (5 U.S.C. 552b(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who wish to do so are invited to submit material in writing to the Chairman regarding matters believed to be deserving of the Committee's attention.

Additional information concerning these meetings may be obtained by contacting the Chairman, Veterans Administration Wage Committee, Room 1175, 810 Vermont Avenue, NW., Washington, DC. 20420.

Dated: June 6, 1979.

Max Cleland,

Administrator.

[FR Doc. 79-18178 Filed 6-11-79; 8:45 am]

BILLING CODE 3320-01-M

INTERSTATE COMMERCE COMMISSION

[Notice No. 94]

Assignment of Hearings; Denver-Midwest Motor Freight, Inc., et el.

June 7, 1979.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponments of hearings in which they are interested.

Correction

MC-F-13723, Denver-Midwest Motor Freight, Inc. Merger—Load and Go Truck Line, MC 127602 (Sub-17F), Denver Midwest Motor Freight, Inc., now assigned for hearing on June 5, 1979, at Phoenix, AZ, is postponed to September 10, 1979 (1 week), at Phoenix, AZ, and continued to September 17, 1979 (1 week), at Denver, CO., in hearing rooms to be later designated.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-18275 Filed 6-11-79; 8:45]

BILLING CODE 7035-01-M

[Notice No. 93]

Assignment of Hearings; Ritchie Bus Lines, et al.

June 7, 1979.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 143130 (Sub-1F), Ritchie Bus Lines, Inc., transferred to Modified Procedure.

MC 134286 (Sub-90F), Illini Express, Inc., transferred Modified Procedure.

MC 103926 (Sub-84F), W. T. Mayfield Sons Trucking Co., transferred to Modified Procedure.

MC 145669F, Petroleum Tank Line, transferred to Modified Procedure.

MC 109324 (Sub-38F), Garrison Motor Freight, Inc., now assigned for hearing on June 12, 1979, at Dallas, TX and continued to June 18, 1979 at Little Rock, AR, is cancelled and transferred to Modified Procedure.

MC 117574 (Sub-312F), Daily Express, Inc., now being assigned for continued hearing on June 14, 1979, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 124679 (Sub-95F), C. R. England & Sons, now being assigned for continued hearing on July 31, 1979, at the Offices of the Interstate Commerce Commission, Washington, D.C.

AB 109 (Sub-1F), Quanah, Acme and Pacific Railway Company abandonment near Acme and Floyads in Hardeman, Cottle, Motley and Floyd Counties, TX, now assigned for hearing on July 10, 1979, at Paducah, TX, is postponed indefinitely.

MC F-13763F, Crown Transport, Inc.—Purchase (Portion)—Masterson Transfer Co., Inc. and MC 4484 (Sub-5F), Crown Transport, Inc., now being assigned for continued hearing on July 23, 1979, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 143059 (Sub-24F), Mercer Transportation Co., now being assigned for continued hearing on July 19, 1979, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 124300 (Sub-46F), Kenan Transport Company, Inc., now being assigned for continued hearing on July 10, 1979, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 117574 (Sub-312F), Daily Express, Inc., now being assigned for continued hearing on June 14, 1979, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 136713 (Sub-3F), R & G Transit Corp., now assigned for hearing on June 18, 1979 (1 week), at St. Louis, MO, and will be held in Room 312, U.S. Court & Custom House, 1114 Market St.

MC 124936 (Sub-3F), Truck Service Company, now assigned for continued hearing on June 11, 1979 (1 week), at Springfield, MO, and will be held in Room No. 315, City Hall, 830 Boonville Ave.

AB-43 (Sub-64F), Illinois Central Gulf Railroad Company Abandonment in Pike, Walthall, and Marion Counties, MS, now assigned for hearing on July 10, 1979 (4 days), at Tylertown, MS, in a hearing room to be later designated.

AB-43 (Sub-48), Illinois Central Gulf Railroad Company Abandonment at Rio, Louisiana and Lexie, Mississippi in Washington Parish, Louisiana, and Walthall County, Mississippi, now assigned for hearing on July 16, 1979 (5 days), at Bogalusa, LA, in a hearing room to be later designated.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-18274 Filed 6-11-79; 8:45 am]

BILLING CODE 7035-01-M

[Exception No. 10 to Revised Service Order No. 1312]

Soo Line Railroad Co.; Authorization Grant

Because of the inability of the railroad to assemble the cars, a movement of 60 empty covered hopper cars has been seriously delayed on Soo Line Railroad Company enroute to Minneapolis, Minnesota, for loading. ConAgra desires to ship a sixty (60) car unit-grain-train of wheat to Martins Creek, Pennsylvania, route Soo Line-ConRail. The consignee at Martins Creek, Pennsylvania, is badly in need of the wheat. Only 25 empty covered hoppers have arrived at Minneapolis, Minnesota. Section (a) of Revised Service Order No. 1312 authorizes any railroad which is unable to supply the number of covered hopper cars required by its tariffs to transport unit-grain-trains of fewer cars in accordance with the scale in Section (b).

Pursuant to the authority vested in the Director, Bureau of Operations, by Section (h) of Revised Service Order No. 1312, Soo Line Railroad Company is authorized to operate a sixty (60) car unit-grain-train from Minneapolis, Minnesota, to Martins Creek, Pennsylvania, comprised of sixty (60)

railroad owned covered hoppers, on a one trip basis, with a minimum of 25 loaded cars operated in the first movement, and the remaining cars of the unit-train operated together in the final movement of this unit-grain-train. The total tariff minimum weight will be transported as required except if the railroad is unable to move all of the empty covered hoppers to the loading point on the final movement, the train can be reduced by the allowable number of cars or allowable weight percentage, as set forth in section (b) of this Service Order.

This exception applies to railroad owned covered hopper cars.

The bills of lading and waybills shall bear the following endorsement:

"Unit-grain-train of ( ) tons or ( ) cars. Partial movement of ( ) tons or ( ) cars forwarded authority Exception No. 10 to ICC Revised Service Order No. 1312. ( ) tons or [ ) cars to follow".

Demurrage rules will be treated as if each of the movements of the unit-train is a complete movement in itself.

Effective May 25, 1979.

Expires 11:59 p.m., June 15, 1979.

Issued at Washington, D.C., May 25, 1979.

Joel E. Burns,

Director.

[FR Doc. 79-18270 Filed 6-11-79; 8:45 am]

BILLING CODE 7035-01-M

[Notice No. 23]

Motor Carrier Temporary Authority Applications

Correction

In FR Doc. 79-5267 appearing at page 10482 in the issue for Tuesday, February 20, 1979, on page 10487, second column, eigth line of MC 146068 (Sub-1A), insert "NY"after "NJ".

BILLING CODE 1505-01-M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 114
Tuesday, June 12, 1979

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., June 15, 1979.

PLACE: 2033 K Street, N.W., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-1163-79 Filed 6-8-79; 10:00 am]

BILLING CODE 6351-01-M

2

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: At the conclusion of the open meeting to be held at 9:30 a.m., June 14, 1979.

PLACE: 1700 G Street, N.W., Sixth Floor, Washinton, D.C.

STATUS: Closed meeting.

CONTACT PERSON FOR MORE INFORMATION: Franklin O. Bolling, 202-377-6677.

MATTERS TO BE CONSIDERED: Consideration of 1978 Financial Audits of the District Banks.

Announcement is being made at the earliest practicable time.

No. 245, June 8, 1979.

[S. 1160-79 Filed 6-8-79; 2:27 pm]

BILLING CODE 6720-01-M

3

FEDERAL RESERVE SYSTEM (Board of Governors).

TIME AND DATE: 9 a.m., Friday, June 15, 1979.

PLACE: 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed space consolidation plan, involving competitive bidding, for the Federal Reserve Bank of New York.

2. Construction management agreement for the Federal Reserve Bank of San Francisco's proposed building project.

3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

4. Any agenda items carried forward from a previously announced meeting.

[S-1165-79 Filed 6-8-79; 12:00 p.m.]

BILLING CODE 6210-01-M

4

NATIONAL SCIENCE BOARD.

DATE AND TIME: June 21, 1979, 9:30 a.m., Open Session. June 22, 1979, 10:30 a.m., Open Session. June 22, 1979, 12 noon, Closed Session.

PLACE: Headquarters, Association of Universities for Research in Astronomy and Kitt Peak National Observatory, Tucson, Arizona.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED AT THE OPEN SESSION:

Thursday, June 21

1. Minutes—Open Session—29th Annual (206th) Meeting.
2. Chairman's Report,
3. Director's Report:
   a. Report on Grant and Contract Activity—5/17-6/19, 1979,
   b. Organizational and Staff Changes,
   c. Congressional and Legislative Matters,
   d. NSB Budget for Fiscal Year 1980, and
   e. Other Items.
4. Board Committees—Reports on Meetings:
   a. Executive Committee,
   b. Committee on Eleventh NSB Report,
   c. Committee on Twelfth NSB Report,
   d. Ad Hoc Committee on Deep Sea and Ocean Margin Drilling Programs,
   e. Ad Hoc Committee on NSB Nominees, and
   f. Ad Hoc Committee on NSB Act Review.
5. NSP Advisory Groups.
6. Annual Reviews of RSB Centers at NSB.
7. Board Representation at Future Site Visits of Materials Research Laboratories.
8. Other Business.
9. Next Meetings.
10. Comments on Planning Environment Review.
11. Interim Reports of Discussion Groups.
12. Review of NSB Act of 1950 as Amended.

Friday, June 22

13. Final Reports of Discussion Groups.

MATTERS TO BE CONSIDERED AT THE CLOSED SESSION:

A. Minutes—Closed Session—29th Annual (206th) Meeting.

B. NSB Budgets for Fiscal Year 1981 and Subsequent Years.

C. NSB Annual Reports.

CONTACT PERSON FOR MORE INFORMATION: Miss Vernice Anderson, Executive Secretary, 202-632-5840.

[S-1166-79 Filed 6-8-79; 10:00 am]

BILLING CODE 7555-01-M

5

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published.

STATUS: Open meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Monday, June 4, 1979.

CHANGES IN THE MEETING: Additional items.

The following additional items will be considered at an open meeting scheduled for Wednesday, June 13, 1979 at 10 a.m.:

1. Consideration of whether to adopt an amendment to Regulation S-X [17 CFR Part 210.3-16(k)] to permit financial statement disclosure of oil and gas reserve information to be designated "unaudited" for fiscal years ending before December 25, 1980. For further information, please contact James D. Hall at (202) 755-0222.

2. Consideration of whether to re-open the comment period on the "Supplemental Earnings Summary" which was proposed in Securities Act Release No. 5980 [43 FR 40728] and extend the new comment period through July 25, 1979. For further information, please contact James D. Hall at (202) 755-0222.

Commissioners Loomis, Evans, and Karmel determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact: Mike Rogan at (202) 755-1638.

June 7, 1979.

[S-1164-79 Filed 6-8-79; 10:00 am]

BILLING CODE 8010-01-M

Tuesday
June 12, 1979

Federal Register

Part II

Department of Agriculture

Food and Nutrition Service

Food Stamp Program; Procedures for Reduction or Cancellation of Allotments to Eligible Households

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, and 273

[Amdt. 146]

Food Stamp Program; Procedures for Reduction or Cancellation of Allotments to Eligible Households

AGENCY: Food and Nutrition Service, USDA.

ACTION: Emergency rulemaking.

SUMMARY: This emergency rulemaking sets forth the procedures that are to be followed if the Secretary of Agriculture determines that it is necessary to reduce or cancel the food stamp allotments distributed to households eligible to receive food stamps. Such a reduction or cancellation would be necessary if it is determined that the value of full monthly food stamp allotments distributed to all eligible households will exceed the amount of funds appropriated by Congress. This rulemaking implements the provisions of Section 18(b) of the Food Stamp Act of 1977, Title XIII, P.L. 95–113, 91 Stat. 979, September 29, 1977, 7 U.S.C. 2525. Since there is a possibility that a reduction or cancellation of allotments may be necessary during this fiscal year, the Acting Administrator of the Food and Nutrition Service, Robert Greenstein, has determined that an emergency rulemaking is necessary to establish these procedures as expeditiously as possible. Comments are invited, however, for use in developing a final rule.

DATES: Effective date: Effective upon publication. Comments must be received on or before August 13, 1979, to be assured of consideration.

ADDRESSES: Comments should be submitted to: Alberta Frost, Acting Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, Washington, D.C. 20250. A final rulemaking will be issued after considering the comments. All written comments, suggestions or objections will be open to public inspection at the offfice of the Food and Nutrition Service, USDA during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 500 12th Street, S.W., Washington, D.C., Room 650. An Impact Analysis has been prepared, and is available from Acting Deputy Administrator Frost. A copy will also be open for public inspection at the office shown above.

FOR FURTHER INFORMATION CONTACT: Sue McAndrew, Chief, Program Standards Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, Washington, D.C. 20250, (202) 447–6535.

SUPPLEMENTARY INFORMATION:

Information

Section 18(b) of the Food Stamp Act of 1977 directs the Secretary to reduce monthly food stamp allotments if program requirements are in excess of the amount appropriated. In part, Section 18(b) states: "If in any fiscal year the Secretary finds that the requirements of participating States will exceed the limitation set herein, the Secretary shall direct State agencies to reduce the value of such allotments to be issued to households certified as eligible to participate in the food stamp program to the extent necessary to comply with the provisions of this subsection." This rulemaking establishes the procedures that will be used in carrying out this provision of the Act. Since there is a possibility that the procedures will have to be used during this fiscal year, they are being issued as an emergency rulemaking, effective immediately. The rules are subject to public comment, however, and will be reissued in final form following the end of the comment period.

The Department's General Counsel and the Comptroller General of the United States have ruled that only a *pro rata* benefit reduction is legally permissible under Section 18(b) of the Act. The procedures in this rulemaking provide for such a *pro rata* benefit reduction.

Nature of reduction action. If the Secretary determines that a reduction in food stamp allotments is necessary, a decision must be made as to how this reduction is to be affected. Based on the best information available on levels of participation and amounts of benefits, FNS will monitor the expenditure of funds to determine if a budgetary shortfall is likely to occur. If it appears that the available appropriated funds will not be sufficient to provide all households with full monthly allotments for the remainder of the fiscal year, the Secretary will determine the best manner in which to make up the shortfall. The choices available are to reduce allotments for one or more months, cancel allotments for one or more months or use a combination of reduced and cancelled allotments. The manner in which the Secretary decides to make up the shortfall will depend on the extent of the shortfall and the number of months available to make up the shortfall.

As noted earlier, any reduction or cancellation of allotments deemed necessary by the Secretary shall have an equal effect on all households. Reductions will be accomplished by providing households with a certain percentage of their normal full monthly allotments. Thus, if the Secretary determines that a 25 percent reduction in allotments will produce an adequate savings of money so that appropriations will not be exceeded, *all* households will have their allotments reduced by 25 percent. If it is determined that a cancellation of allotments is necessary, *all* allotments to all households for a given month will be cancelled.

Enactment of allotment reductions. Since State agencies are responsible for issuing food stamps to eligible households, they will be responsible for implementing reductions and cancellations of allotments. This rulemaking establishes the procedures that States are to follow in carrying out such directives.

All project areas with computerized issuance systems will be required to add an element to their computer programs to allow for percentage reductions in allotments to be made if the Secretary so directs. This element would be a new, final computation to reduce benefits by a specified percentage. The computation would be structured in one of two ways. States could choose to add a two step computation which would first multiply the full allotment by the percentage reduction factor and then subtract the result from the full allotment to arrive at the reduced allotment. Thus, if a 25 percent reduction was ordered, the full allotment would be multiplied by 25 percent and the result subtracted from the full allotment. Alternatively, State agencies could subtract the percentage reduction factor from 1.00 and multiply the full allotment by this result. For example, if a 25 percent reduction was ordered, States would multiply the full allotment by 0.75 to arrive at the reduced allotment. State agencies may use either of these two computations to reduce allotments. To ensure that this adaptation is made now, however, the implementation segment of these rules suggests that State agencies include this field in their computers when they update their data bases to reflect the July 1979 cost-of-food increases.

Any project area with a computerized issuance system that cannot be changed in the manner described above must be changed in some way to allow for the issuance of reduced allotments. The method adopted in these areas must

ensure that reduced allotments can be issued within 15 days of a notice from FNS to reduce allotments. Furthermore, the change in the computer system must be accomplished in time to reduce allotments for August 1979 if it is necessary to do so.

In project areas with manual issuance systems, preparation for a reduction in allotments in these areas includes the printing and distribution of new allotment tables or conversion tables to be used with current allotment tables. The Department will prepare and distribute them for State agencies to use. It is the responsibility of the State agencies, however, to ensure that sufficient copies are obtained and distributed in time to effect reductions in allotments.

A reduction in allotments in an area with an HIR card system can be accomplished in one of two ways. State agency personnel can either adjust all of the Household Issuance Records prior to the affected month's issuance or they can adjust the records as each household appears at the issuance office to pick up its monthly allotment. The choice of which method to use is up to the State agency.

It should be emphasized that if a reduction or cancellation of allotments is directed, the action is to affect all allotments for the month the cancellation or reduction is ordered. Thus, if August allotments are to be reduced by 50 percent, all allotments issued to eligible households for August are to be reduced by 50 percent. In States with fiscal months, this reduction shall be applied to all normal allotments for August, even if the allotment is not received until September. At the same time, allotments issued in the reduced month, but which actually represent the household's benefits for the previous month, shall not be reduced if no benefit reduction had been ordered for the previous month. Likewise, any retroactive or restored benefits for a period other than the reduced month should not be affected by the ordered reduction.

Along with putting a reduction or cancellation into effect, State agencies must notify households of the action. The rulemaking points out that the reduction or cancellation of allotments is to be considered a mass change and that the normal requirements for notifying households of mass changes are to be applied, with the one exception discussed below. Those requirements direct States to notify households through the news media, through posters in certification and issuance offices or through general explanatory notices mailed to participating households. Those requirements also give States the option of mailing individual notices of adverse action to households affected by the change. In view of the requirements of the law and the time element involved, this rulemaking prohibits States from using notices of adverse action. Households may not, under any circumstances, be entitled to continued benefits at their former level.

Included in this rulemaking is a provision that denies households an entitlement to the restoration of benefits lost as a result of a reduction or cancellation of allotments. Thus, if a reduction or cancellation of allotments results in a surplus of appropriated funds, the Department would not have to return these funds to the households affected by the reduction or cancellation. However, while households do not have an entitlement to the restoration of benefits and the Department would not be required to issue retroactive benefits the Department pledges to restore benefits to households affected by an allotment reduction or cancellation if the Secretary determines such a restoration is practicable.

In the event of a reduction or cancellation in benefits, the Department will endeavor to provide State agencies with as much lead-time as possible. Once the percentage reduction factor field is entered into computers, State agencies with computerized issuance will not require a great deal of lead-time to change the reduction factor on the computer. State agencies with manual systems will require more lead-time. The Department will make every effort to provide a minimum of one month lead-time for reductions in benefits and one-half month lead-time for cancellation. The Department anticipates that in the event a reduction or cancellation does occur, a longer lead-time than these minimums would be provided.

Effects of reductions and cancellations on ongoing Program operations. The reduction or cancellation of allotments is not intended to affect any aspect of Program operations other than the amount of benefits distributed to households. As noted in this rulemaking, applications are to be accepted and processed the same way during a month in which allotments are reduced or cancelled as they are in a normal month. Eligibility determinations are to be made according to the criteria in Part 273 and certification periods are to be assigned on a normal basis. Recertifications are also to be processed and not delayed.

As noted above, households affected by reductions and cancellations would not have an entitlement to a continuation of benefits if they object to the reduction or cancellation action. Households may request fair hearings and State agencies are required to honor and process the requests. However, fair hearings will not result in a reversal of the reduction or cancellation of a household's allotment. They will result in a correction to an incorrectly calculated allotment though, and to restored benefits if the reduction was too large because it was incorrectly computed.

Penalties

This rulemaking explains the penalties that may be invoked if State agencies fail to comply with a directive issued by FNS to reduce or cancel allotments. The penalties were developed with the realization that, in order to assure that the mandate of Congress is met, swift action would be necessary to induce to noncomplying State agencies to take immediate corrective action. Failing that, the penalties include a provision for the recovery of funds from State agencies that do not comply.

The first two penalty provisions describe what may occur if the Department discovers that a State agency does not intend to comply with an order to reduce or cancel allotments. FNS may issue a warning to such a State agency that will advise the State agency that if the ordered reduction or cancellation of allotments does not occur, FNS will cancel 100 percent of the Federal share of the State agency's administrative costs for the affected month. The warning period will be short and action to cancel the funding will come quickly following confirmation of the State's noncompliance. At the same time that this activity is taking place, FNS may, through the Attorney General, seek a court injunction against the State in question in an effort to compel the State to comply with the ordered allotment reduction or cancellation.

The last penalty provision involves the recovery of funds that are lost due to a State's failure to comply with an order to reduce or cancel allotments. As the rulemaking indicates, State agencies will be held liable for 100 percent of any overissuances that occur due to a State's failure to implement a reduction or cancellation order. It is obvious that if such an order is issued and a State ignores it, the effect of the order will be compromised, and both the Food Stamp Act and the Anti-Deficiency Act, 31 U.S.C. 665, as amended, could be in

danger of violation. Since the reason for the order is to stay within the limits set by the amount of funds appropriated by Congress and since the State agency's action will serve to force spending outside these limits, the Department determined that the noncomplying State agency should be liable for making up the overissuances it caused.

If a State agency fails to comply with an order to reduce or cancel benefits, FNS will bill the State agency for any resultant overissuances. The billing will prescribe a period of time in which FNS expects to receive payment of the bills. If payment is not made within that time period, steps will be taken to recover the billed amount through offsets to the Federal share of the State's administrative costs.

The penalty provisions in the rulemaking are strict. However, since orders to reduce or cancel allotments will only be issued if they are absolutely necessary, full compliance by all States is imperative.

Amendments

In order to ensure that there are no misunderstandings, Section 273.10(e) is being amended with the issuance of this rulemaking. This section explains how net income and benefit levels are to be calculated. The amendment in this rulemaking clarifies that the procedures for calculating benefit levels in paragraph (2) of that section apply only when a reduction or cancellation of allotments is not in effect. Further, the amendment suspends the requirement that all one and two person households be given a monthly $10 minimum allotment during months when allotments have been reduced or cancelled.

Implementation

Along with the rules establishing a procedure for reducing or cancelling allotments are requirements for the implementation of the procedure. The Department believes that there is a possibility that a reduction or cancellation of allotments may be necessary within the next few months. Therefore, expeditious implementation of the procedures is needed. To ensure that the procedures are put in place as swiftly as possible with as little disruption as possible in State agency operations, the adaptations to computer programs to add the new benefit computation can be made at the same time the issuance program is updated to reflect the July 1979 cost-of-food increases. In addition, all State agencies are required to establish internal procedures they need to have in palce so that they will be able to reduce allotments promptly if this proves necessary.

Parts 271, 272 and 273 are amended to include the following provisions:

PART 271—GENERAL INFORMATION AND DEFINITIONS

New § 271.7 is added to read as follows:

§ 271.7 Allotment reduction procedures.

(a) *General purpose.* This section sets forth the procedures to be followed if the monthly food stamp allotments determined in accordance with the provisions of § 273.10 are to be reduced or cancelled. A reduction in allotment levels would be necessary if it is determined by the Secretary that the amount of food stamp benefits that are to be distributed to households during a fiscal year, or remaining months of a fiscal year, will exceed the amount of funds appropriated. The best available data pertaining to the number of people participating in the program and the amount of benefits being issued shall be used in making this determination.

(b) *Nature of reduction action.* If the Secretary determines that the funds appropriated will not allow full monthly food stamp allotments for the remainder of a fiscal year, a decision shall be made as to the type of action needed to ensure that the appropriated funding level is not exceeded. Such action may be either a reduction in the allotment level for one or more months, a cancellation of allotments for one or more months or a combination of these two actions. All households shall be affected equally by a decision to either reduce or cancel food stamp allotments. If a reduction in allotments is deemed necessary, all households shall have their allotments reduced at the same rate. For example, if it is determined that a 25 percent reduction is necessary for two months, *all* allotments shall be reduced by 25 percent for two months. If cancellation is necessary, *all* eligible households shall have their allotments cancelled.

(c) *Implementation allotments reductions.* (1) *Reductions.* (i) If a decision is made to reduce monthly food stamp allotments, FNS shall notify State agencies of the date the reduction is to take effect and by how much they are to be reduced.

(ii) Upon receiving notification that a percentage reduction is to be made in an upcoming month's allotments, State agencies shall act immediately to implement the reduction. Such action would differ from State to State depending on the nature of the issuance systems in use. Where there are computerized issuance systems, the program used for issuing the affected month's ATP cards shall be altered to reflect the percentage reduction ordered in the FNS notice. In States where manual issuance is used, either through an HIR card system or through manually prepared ATP cards, new allotment tables or conversion tables reflecting the reduced allotments shall be prepared and distributed before the affected month's issuance activity begins. In an HIR card system State agencies have the option of enacting the reduction in benefits either by changing all HIR cards before issuance activity for the affected month begins or by adjusting allotments at the point of issuance as each household appears at the issuance office. FNS will assist State agencies in the preparation of issuance tables needed to implement a reduction in allotments.

(2) *Cancellations.* If a decision is made to cancel the distribution of food stamp benefits in a given month, FNS shall notify State agencies of the date the cancellation is to take effect. Upon receiving notification that an upcoming month's issuance is to be cancelled, State agencies shall take immediate action to effect the cancellation. This action would involve making necessary computer adjustments, and notifying issuance agents and personnel.

(3) *Affected allotments.* Whenever a reduction or cancellation of allotments is ordered for a particular month, all allotments issued for the designated month are to be reduced or cancelled. However, allotments or portions of allotments representing restored or retroactive benefits for a prior, unaffected month would not be reduced or cancelled, even though they are issued during an affected month.

(4) *Notification of eligible households.* Reductions and cancellations of allotments shall be considered to be Federal adjustments to allotments. As such, State agencies shall notify households of reductions and cancellations of allotments in accord with the notice provisions of § 273.12(e)(1), except that State agencies shall not provide notices of adverse action to households affected by reductions or cancellations of allotments.

(5) *Restoration of benefits.* Households whose allotments are reduced or cancelled as a result of the enactment of these procedures are not entitled to the restoration of the lost benefits at a future date. However, if there is any surplus of funds as a result of the reduction or cancellation, and the

Secretary determines that such a restoration is practicable, FNS will direct State agencies to provide affected households with retroactive benefits.

(6) *Records of reductions and cancellations.* State agencies must be able to produce a record of the amount of benefits each household receives during a month in which a percentage reduction is in effect along with a record of the amount of benefits each household would have received had full monthly allotments been distributed. Similarly, in the event that allotments are cancelled, State agencies must be able to produce a record of the amount of benefits each household would have received had full monthly allotments been distributed. These records will be used if FNS directs the provision of retroactive benefits.

(d) *Effects of reductions and cancellations on the certification of eligible households.* (1) Determinations of the eligibility of applicant households shall not be affected by a reduction or cancellation of allotments. State agencies shall accept and process applications during a month(s) in which a reduction or cancellation is in effect in accordance with the requirements of Part 273. Determinations of eligibility shall also be made according to the provisions of Part 273. If an applicant is found to be eligible for benefits, the amount of benefits shall first be figured in accordance with the provisions of § 273.10 and then either converted to reflect the percentage reduction in effect or not provided to reflect the cancellation in effect.

(2) The reduction or cancellation of allotments in a given month shall have no effect on the certification periods assigned to households. Those participating households whose certification periods expire during a month in which allotments were reduced or cancelled shall be recertified according to the provisions of § 273.14. Households found eligible to participate during a month in which allotments have been reduced or cancelled shall have certification periods assigned in accordance with the provisions of § 273.10.

(3) Any household that has its allotment reduced or cancelled as a result of the implementation of the requirements of this subpart may request a fair hearing if it disagrees with the action. However, since the reduction or cancellation would be necessary to avoid an expenditure of funds beyond those appropriated by Congress, the household does not have a right to a continuation of benefits. A household may receive retroactive benefits in an appropriate amount if it is determined that its benefits were reduced by more than the amount by which the State agency was directed to reduce benefits.

(e) *Penalties.* Notwithstanding any other provision of this subchapter, FNS may take one or more of the following actions against a State agency that fails to comply with a directive to reduce or cancel allotments in a particular month.

(1) If FNS ascertains that a State agency does not plan to comply with a directive to reduce or cancel allotments for a particular month, a warning will be issued advising the State agency that if there is not compliance, FNS may cancel 100 percent of the Federal share of the State's administrative costs for the affected month.

(2) If FNS ascertains after warning a State agency as provided in (1) above, that the State agency does not plan to comply with a directive to reduce or cancel allotments, a court injunction will be sought to compel compliance.

(3) If a State agency fails to reduce or cancel allotments as directed by FNS, FNS will bill the State agency for all overissuances that result. If a State agency fails to remit the billed amount to FNS within a prescribed period of time the funds will be recovered through offsets against the Federal share of the State agency's administrative costs, or any other means available under law.

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PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

Paragraph 272.1(g)(3) is added and reads as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) Implementation.

* * * * *

(3) *Amendment.* The procedures contained in amendment shall be implemented by State agencies as quickly as possible. All State agencies shall complete implementation in time to be able to issue reduced food stamp allotments in August 1979 if such action is determined to be necessary. State agencies with computerized issuance systems shall adjust these systems so that they are capable of issuing reduced coupon allotments. These adjustments may be made at the same time State agencies reprogram their computers to reflect the July 1979 cost-of-food increases.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

In Section 273.10, subparagraph (e)(2)(ii) is amended and the words "Except as provided in subparagraph (iii) below," are added at the beginning. In addition, subparagraph (e)(2)(iii) is added to Section 273.10 and reads as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(e) Calculating net income and benefit levels.

* * * * *

(2) Eligibility and benefits.

* * * * *

(iii) During a month when a reduction or cancellation of allotments has been ordered pursuant to the provisions of § 271.7, eligible households shall first have their benefits calculated as follows:

(A) If the action in effect is a reduction action, eligible households shall have their allotment levels calculated according to the procedures of subparagraph (ii) above, and then reduced by the percentage reduction in effect, and rounded to the nearest whole dollar.

(B) If the action in effect is a cancellation action, eligible households shall have their allotment levels calculated according to the procedures of subparagraph (ii) above. However, the allotments shall not be issued for the month the cancellation is in effect.

(C) The $10 minimum allotment level for one- and two-person households shall be applied in calculating allotment levels *before* a percentage reduction or cancellation is applied to the month's issuance. The actual allotments issued to one- and two-person households in a month in which allotments are reduced or cancelled may be less than $10.

* * * * *

Authority: 91 Stat. 958 (7 U.S.C. 2011–2027).

Note.—This interim final rule has been designated as significant and is being published in accordance with the emergency procedures of Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by Assistant Secretary of Agriculture Carol Tucker Foreman that the emergency nature of this interim final rule warrants publication without opportunity for prior public comment. This interim final rule implements regulations in Parts 271, 272 and 273. A Draft Impact Analysis regarding this regulation is available from Alberta Frost, Acting Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, 500 12th Street, Washington, D.C. 20250.

(Catalog of Federal Domestic Assistance Programs No. 10.551, Food Stamps.)

Dated: June 6, 1979.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 79-18043 Filed 6-7-79; 8:45 am]

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Part III

Department of Health, Education, and Welfare

Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

45 CFR Part 90

Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance

AGENCY: Department of Health, Education, and Welfare.

ACTION: Final rule.

SUMMARY: These regulations implement the provisions of the Age Discrimination Act of 1975, as amended (Act). They are general regulations designed to guide the development of agency specific regulations by each Federal agency which administers programs of Federal financial assistance. The Age Discrimination Act prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act also contains certain exceptions which permit, under limited circumstances, continued use of age distinctions or factors other than age which may have a disproportionate effect on the basis of age. These regulations discuss what is age discrimination under the Act, the circumstances under which the statutory exceptions may be invoked, the responsibilities of Federal agencies and recipients to enforce the Act, and the procedures for investigation, conciliation, and enforcement. Each Federal agency which administers programs of Federal financial assistance must issue age discrimination regulations which conform to these general regulations.

EFFECTIVE DATE: July 1, 1979.

FOR FURTHER INFORMATION CONTACT: Bayla F. White, Director Age Discrimination Task Force, Room 711–E, Hubert Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201, (202) 245–6284.

SUPPLEMENTARY INFORMATION:

Background

In November 1975, Congress enacted the Age Discrimination Act (42 U.S.C. 6101, *et seq.)* as part of the Amendments to the Older Americans Act (P.L. 94–135). At that time, the express purpose of the Act was to prohibit unreasonable discrimination based on age in programs and activities receiving Federal financial assistance, including the State and Local Fiscal Assistance Act of 1972. The Act also permitted federally assisted programs and activities, and recipients of Federal funds, to continue to use: (1) some age distinctions, and (2) "reasonable factors other than age." The Act applied to persons of all ages.

Prior to the enactment of any regulations, the Act required the Commission on Civil Rights to conduct a study of age discrimination in federally funded programs and activities. The Commission transmitted its study to the President and the Congress on January 10, 1978. The Commission published the second part of its study in January 1979. The Act also required each affected Federal agency to respond to the Commission's findings and recommendations.

After the receipt of the report of the Commission on Civil Rights and the Federal agency responses to that report, the Congress considered amendments to the Age Discrimination Act of 1975. In October 1978, Congress amended the Act (P.L. 95–478). Congress struck the word "unreasonable" from the statement of purpose clause, so that the purpose of the Act is to prohibit discrimination based on age in programs and activities receiving Federal financial assistance. However, the Congress retained the exceptions to the prohibition against age discrimination. Thus, the Act still permits the use of: (1) some age distinctions, and (2) "reasonable factors other than age." The Act continues to apply to persons of all ages.

According to the language of the Act, the prohibition against age discrimination will become effective when regulations are issued to enforce the Act. The Act requires the Secretary of HEW to publish proposed and then final general regulations. HEW issued proposed general regulations on December 1, 1978. These regulations are the final general regulations required by the Act. They set standards for other Federal agencies to follow in the development of agency specific regulations. The Act also requires each agency which provides Federal financial assistance to issue proposed and then final specific regulations. All agency specific regulations must conform to these general regulations and must be approved by the Secretary of HEW.

Rulemaking History

The Department of Health, Education, and Welfare has been vitally concerned about the need for public participation in the development of these regulations because of the substantial impact the Age Discrimination Act will have on the operation of federally assisted programs.

As the first step of its obligation to issue general regulations, HEW published in the Federal Register (43 FR 8756) a Notice of Intent To Issue Age Discrimination Regulations (NOI) on March 2, 1978. The NOI briefly identified some of the major issues addressed later in the regulatory process. Persons wishing additional information on the age discrimination regulations were asked to write to HEW. Over 600 individuals and organizations responded to the NOI. These names were incorporated into a mailing list for distribution of materials developed during the rulemaking process.

Since these general regulations apply to all Federal departments and agencies which administer programs of Federal financial assistance, HEW created an Interagency Age Discrimination Task Force to coordinate the development of the regulations. The Interagency Task Force consists of at least one representative from every department or agency which ultimately must issue its own age discrimination regulations, as well as observers, from other interested Federal agencies. The Interagency Task Force met five (5) times during the development of the age discrimination regulations to consider both substantive and procedural matters. Consultations were also held with individual Federal agencies. The Interagency Task Force will continue to function during the development of agency specific regulations.

The Notice of Proposed Rulemaking (NPRM) was published in the Federal Register (p. 56428–56448) on December 1, 1978. The NPRM contained a discussion of the major issues and a section-by-section analysis of the proposed regulations as well as the text of the proposed rules. At certain key places in the proposed rules, HEW presented options for public consideration and comment. Publication of the proposed rules inaugurated a 90-day public comment period.

HEW distributed more than 16,000 copies of the proposed rules. Copies were mailed to every member of Congress, every State governor, the head of every Federal agency which provides Federal financial assistance, adminstrators of federally assisted programs, recipients of Federal funds at the State and local levels, interested individuals and groups. Special efforts were made to distribute copies of the NPRM to groups representing the interests of the elderly and of children and youth.

In January and early February, the Department held public hearings in Washington, D.C., and in each of HEW's 10 Regions in order to obtain public comment on the proposed rules. A total of 170 witnesses made presentations at those hearings. In addition, 246 letters were received containing comments,

criticisms and suggestions on nearly every section of the proposed rules. Comments made at the public hearings and in writing have come from individuals, from State and local governmental units, from providers of federally supported services, from public officials at the Federal, State and local levels, and a large number have come from groups representing the interests of the elderly. The comments and verbatim transcripts from the eleven hearings have been analyzed and used in the development of these final regulations. A summary of the comments received and the responses to those comments follow the text of these regulations.

Although the final government-wide regulations have been significantly affected by the comments received, the implementation of the Age Discrimination Act is a continuing process which provides several opportunities for public participation. Each agency providing Federal financial assistance must now issue its own proposed and then final, specific age discrimination regulations. The issuance of proposed agency regulations 90 days after these general regulations are published will provide another opportunity for the public to participate in the shaping of age discrimination policies. The actual impact of the Age Discrimination Act and the problems which recipients of Federal financial assistance may encounter in implementing these general age discrimination regulations will be examined after 30 months time. Similarly, each agency will examine and publish for comment its own assessment of the effectiveness of its age discrimination regulations after they have been in effect for 30 months.

HEW will amend and revise the government-wide regulations as need and experience dictate.

Overview of the Regulations

The following paragraphs summarize the text of the final regulations. The last section of the preamble contains a discussion of the resolution of certain major issues which were raised in the NPRM and an explanation of key parts of the text of the final regulations.

Subpart A—General

The four sections in Subpart A explain the purpose of the Age Discrimination Act (§ 90.1), the purpose of the general age discrimination regulations (§ 90.2), the programs and activities covered by the Act (§ 90.3) and the meaning of important terms used in the regulations (§ 90.4).

The Age Discrimination Act is designed to prohibit discrimination on the basis of age in programs or activities which receive Federal financial assistance. The Act also contains certain exceptions which permit age distinctions and factors other than age to continue in use under certain circumstances (§ 90.1). The Act applies to persons of all ages.

The Act generally covers all programs and activities which receive Federal financial assistance. However, the Act does not apply to any age distinction "established under authority of any law" which provides benefits or establishes criteria for participation on the basis of age or in age related terms. Thus, age distinctions which are "established under authority of any law" may continue in use. These regulations (§ 90.3) define the phrase "any law" to mean Federal statutes, State statutes or local statutes adopted by elected, general purpose legislative bodies.

The Act also excludes from its coverage most employment practices, except for programs funded under the public service employment titles of the Comprehensive Employment and Training Act (CETA). These regulations do cover any program or activity which is both a program of Federal financial assistance and provides employment such as the College Work Study Program (42 U.S.C. 2751, *et seq.*) and the Work Incentive Program (42 U.S.C. 630, *et seq.*). The Age Discrimination in Employment Act (ADEA) which is administered by the Department of Labor, [Equal Employment Opportunity Commission (EEOC) after July 1, 1979], continues to be the Federal statute that prohibits employment discrimination for persons between the ages of 40 and 70. Individuals in this age range who experience employment discrimination, other than in CETA public service employment programs, must look to the ADEA for relief, not to the Age Discrimination Act.

Section 90.4 defines important terms used throughout these regulations.

Subpart B—What Is Age Discrimination?

This subpart sets out the rules against age discrimination and the conditions under which the statutory exceptions apply.

No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance (§ 90.12(a)). This general rule is limited by the exceptions which are contained in section 304 of the Act and which are explained in §§ 90.14 and 90.15 of these regulations. The specific prohibited actions, are patterned after the regulations issued under Title VI of the Civil Rights Act of 1964 (45 CFR Part 80). As a general rule, separate or different treatment which denies or limits service from or participation in a program receiving Federal financial assistance will be prohibited by these regulations.

The Act contains several exceptions which limit the general prohibition against age discrimination. Section 304(b)(1) of the Act permits the use of age distinctions which are necessary to the normal operation or to the achievement of a statutory objective. It also permits actions which are based on reasonable factors other than age. The regulations provide definitions for two terms which are essential to an understanding of those exceptions: "normal operation" and "statutory objective" (§ 90.13). "Normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objectives. "Statutory objective" is defined to mean any purpose which is explicity stated in a Federal statute, State statute or local statute or ordinance.

The regulations establish a four part test, all parts of which must be met for an explicit age distinction to satisfy one of the statutory exceptions and to continue in use in a Federally assisted program (§ 90.14). This four part test will be used to scrutinize age distinctions which are imposed in the administration of Federally assisted programs, but which are not explicitly authorized by a Federal, State or local statute.

Recipients of Federal funds are also permitted to take an action otherwise prohibited by the Act, if the action is based on "reasonable factors other than age." In that event, the action may be taken even though it has a disproportionate effect on persons of different ages. However, according to the regulations (§ 90.15), the factor other than age must bear a direct and substantial relationship to the program's normal operation or to the achievement of a statutory objective.

The regulations place on the recipient the burden of proving that an age distinction or a factor other than age qualifies for an exception (§ 90.16).

Subpart C—What Are the Responsibilities of the Federal Agencies?

This subpart contains four sections which explain the responsibilities that

Federal agencies have to implement the ADA.

Each agency which extends Federal financial assistance must issue proposed and then final regulations to enforce the Act (§ 90.31). The agency specific regulations must be consistent with these government-wide regulations and must be approved by the Secretary of HEW. The final agency specific regulation must contain an appendix listing all age distinctions which appear in Federal statutes and regulations which affect the agency's programs of Federal financial assistance. The appendix is the first step of a process set in motion by these regulations to inform the public of those age distinctions used in Federal Program administration. The appendix will *not* constitute agency approval or disapproval of the age distinctions contained in its regulations.

As a second step in this public information process, each Federal agency must review the age distinctions it imposes on its recipients by regulation or by administrative action to determine whether these age distinctions are permissible under the Act (§ 90.32). This review must be completed within 12 months after publication of the agency final regulations and must be published for public comment in the **Federal Register**. The report must indicate which age distinctions meet the requirements of the Act and will be continued and which will be eliminated. The report must identify age distinctions not in regulations which meet the requirements of the Act and which will subsequently be incorporated into regulations. Beginning with the effective date of an agency's specific regulations, no new age distinction may be imposed, unless it is adopted by regulation using the notice and comment procedures of the Administrative Procedure Act (5 U.S.C. 553). Beginning one year from the publication of an agency's specific regulations, no existing age distinction may be continued unless it has already been adopted by regulation or is adopted by regulation using the notice and comment procedures of the Administrative Procedure Act (5 U.S.C. 553).

The next two sections of the regulations (§§ 90.33 and 90.34) reflect HEW's goal of reducing administrative burden on recipients while still ensuring compliance with the Act. To avoid or minimize conflicting actions by different Federal agencies which deal with the same recipient, the Secretary of HEW may designate "lead agencies" to coordinate compliance and enforcement activities in those instances where two or more agencies provide assistance to the same recipient (§ 90.33). Interagency cooperation may extend to all compliance and enforcement activities *except* for the actual termination of funds and the notification to Congress of that termination.

The Act requires each agency to report annually to the Congress, through HEW, on its compliance and enforcement activities. The final regulations adopt a targeted approach to data collection and analysis, which will maximize the opportunity to measure and analyze actual progress in complying with the Act and, at the same time, minimize the burden of unnecessary data collection on recipients (§ 90.34).

The targeted approach to data collection builds on the analysis of existing data about compliance, such as complaint data and information from compliance reviews. The regulations also provide for agencies to collect data which are directly relevant to particular patterns or practices of discrimination revealed by complaints, compliance reviews or other compliance activities. This targeted approach gives each agency the authority to tailor its own data collection to the characteristics of its programs, rather than establishing specific reporting requirements for every federally assisted program.

Subpart D—Investigation, Conciliation and Enforcement Procedures

This subpart of the regulations is divided into 10 sections dealing with various aspects of the compliance and enforcement process.

Each agency is required to establish procedures for compliance, investigation, conciliation and enforcement (§ 90.41). A recipient has primary responsibility to ensure that its programs and activities are in compliance with the Act and must take necessary steps to eliminate any violations. An agency has responsibility to attempt to secure recipient compliance with the Act by voluntary means. An agency must enforce the Act when a recipient fails to eliminate violations of the Act (§ 90.42).

Each agency is required to provide written notice to each recipient of the recipient's obligations under the Act, to provide technical assistance to recipients where necessary and to make available educational materials explaining the rights and obligations of beneficiaries and recipients (§ 90.43(a)).

Moreover, each Federal agency must direct its recipients which employ the equivalent of 15 or more persons on a full-time basis to prepare a written self-evaluation (§ 90.43(b)). A recipient's self-evaluation will focus on age distinctions which are imposed directly by the recipient and not on any factors other than age. Each recipient must justify the continued use of any distinction as sanctioned under these regulations. A recipient must take corrective and remedial action whenever the self-evaluation indicates a violation of the Act. The recipient self-evaluation must be completed 18 months after the effective date of agency regulations. The self-evaluation must be available to the agency or the public for a period of three years following its completion.

Every agency must establish a procedure for processing complaints of age discrimination (§ 90.43(c)). The complaint handling procedure must include an initial screening by the Federal agency and notice to complainants and recipients of their rights and obligations in the complaint process. All complaints which fall within the coverage of the Act will be referred to a mediation process which will be managed by a single agency designated by the Secretary of HEW. That agency is the Federal Mediation and Conciliation Service (FMCS).

Complainants and recipients are required to participate in the effort to reach a mutually satisfactory mediated settlement of the complaint, although they need not meet with the mediator at the same time. The mediation process may last no more than 60 days from the date the agency first receives the complaint. The mediator will have the authority to terminate the mediation at any time before the end of the 60-day period if the process appears to have broken down. The terms of settlement that are satisfactory to both parties will be reduced to writing and sent to the Federal agency which referred the complaint. The Federal agency will take no further action on a complaint which has been successfully mediated.

If mediation does not succeed, or if a mediated settlement is violated, Federal agencies will engage in informal fact finding and then, if necessary, proceed to formal investigation of the complaint. The formal investigation may result in an administrative hearing before an administrative law judge. A Federal agency may terminate a recipient's Federal funds if the administrative law judge finds that the recipient has violated the Act.

The regulations of each Federal agency must provide that the agency may conduct compliance reviews, preaward reviews and use other similar procedures to determine compliance with the Act. These procedures are *not*

dependent on the filing of a complaint of age discrimination (§ 90.44).

To help determine whether a recipient is in compliance with the Act, each Federal agency may require its recipients to make their records reasonably accessible to the agency and to furnish information to the agency (§ 90.45). Recipients are prohibited from acts of retaliation or intimidation against individuals who file age discrimination complaints or who cooperate in any aspect of the enforcement process (§ 90.46).

After a hearing before an administrative law judge, a Federal agency may terminate Federal funds to a recipient found to have violated the Act or regulations implementing the Act. Termination must be limited to the particular recipient which has violated the Act and to the program where the violation has been found. An agency may delay granting new Federal funds to a recipient when termination proceedings have been initiated (§ 90.47).

When Federal funds are terminated, the agency may pay those funds to another qualified recipient which can demonstrate the ability to achieve the goals of the Federal program's authorizing statute and to comply with the Age Discrimination Act (§ 90.48). If a Federal agency or an administrative law judge, finds that a recipient has engaged in age discrimination, the recipient must take remedial action as the agency requires. Even in the absence of a finding of discrimination, recipients may voluntarily take affirmative action to encourage the participation of persons in age groups where participation has been limited in the past. The regulations permit a recipient to provide special benefits to children or the elderly provided that the benefits do not result in the exclusion of persons who are eligible to participate in the recipients' program (§ 90.49).

The Act authorizes a private right of action, when an individual has exhausted administrative remedies. The regulations implement that provision (§ 90.50). Administrative remedies are exhausted when either 180 days have elapsed from the filing of the complaint and the agency has made no finding or the agency issues a finding in favor of the recipient. The complainant may then file a suit in a U.S. district court. The complainant must indicate at the time the suit is filed, if attorney's fees will be demanded in the event that the complainant is successful. No action can be brought if the same alleged violation by the same defendant is the subject of a pending action in any U.S. court. Complainants who wish to file an action must give 30 days notice to the Attorney General, the Secretary of HEW, the head of the granting agency and the recipient.

Subpart E—Future Review of Age Discrimination Regulations

HEW must review the effectiveness of these general age discrimination regulations 30 months after the regulations take effect (§ 90.61). In addition, each agency must review the effectivess of its own regulations 30 months after they become effective (§ 90.62). These reviews must be published in the Federal Register with an opportunity for public comment.

Critical Issues

Comments were submitted on many sections of the proposed regulations and on many different issues raised in the NPRM. These comments and the responses to them are set forth in the appendix which follows the text of the regulations. Some of the comments concerned critical policy issues with respect to the implementation of the Act. These critical issues are discussed in the following paragraphs.

1. *What Ages Does the Act Cover?* Section 303 of the Act prohibits discrimination on the basis of age in federally funded programs or activities. Although the legislative history indicates Congressional concern for the problems of the elderly in particular, the Congress made it clear in its Conference Committee report that the Act is intended to apply to persons of all ages.

When the Act was originally passed in 1975, Congress directed the United States Commission on Civil Rights to conduct a study of age discrimination in federally funded programs, and required each affected Federal agency to respond to the Commission's study. After reviewing the Commission's report and Federal agency responses to it, Congress considered amendments to the Act. Nowhere in the amendment process was there any discussion of limiting or changing the coverage of the Act. It continues to extend protection to persons of all ages.

Various advocacy groups for older persons have suggested that HEW construe these general implementing regulations to protect only the elderly or to provide greater protection for older persons than for other age groups. This construction is not legally supportable in view of the legislative history and the plain language of the Act.

However, the Congress has consistently made clear its support for the concerns of older persons. It is therefore unlikely that Congress intended the Act to call into question the generally accepted special benefits which are provided to older persons in programs that are otherwise available to a wider age range of the population. Public comment on the regulations was almost unanimously supportive of these benefits, which often take the form of special discounts. Similarly, no one has suggested that similar benefits for children should be questioned under the Act.

HEW supports the continuation of special benefits for children and older persons. Therefore, these regulations permit special benefits for the elderly persons and for children that are extended by recipients so long as they do not result in the exclusion from the program of otherwise eligible persons. [§ 90.49(c)].

2. *Does the Act Require Proportional Allocation of Services and Funds by Age?* Commenters also asked whether the Act requires proportional allocation by age of the services and the benefits of federally assisted programs. Some believe that certain groups, especially the elderly, do not get their "fair share" of funds in certain programs or that certain program participation rates among age groups like the elderly are disproportionately low.

These final regulations do not require proportional program participation by age or the proportional allocation of funds by age. Discrimination has not been defined in this way in other non-discrimination regulations. However, disproportionate allocation of funds or program participation may be one of the elements which triggers an examination of whether age discrimination exists in the federally funded program or activity. If further inquiry is necessary, the recipient may show that the disparity in rates of participation, fund allocation, or services has nondiscriminatory causes. Comments on the NPRM suggested that there may be nondiscriminatory reasons which adequately explain the disproportionately low participation of the elderly in some programs.

3. *What Programs or Activities are "Established Under Authority of Any Law"?* The Age Discrimination Act exempts from coverage age distinctions contained in a program or activity "established under authority of any law" which provides benefits on the basis of age or in age related terms. Congress did not expressly indicate anywhere in the legislative history of the Act what it meant by the term "any law." The regulations must, nevertheless, define the phrase "established under authority of any

law" in order to determine which age distinctions are exempted by this provision of the Act.

The NPRM presented four options for interpreting the phrase "any law" and asked for comments on those or any other reasonable interpretations. The NPRM cited two overriding issues to be considered in determining the meaning of "any law" (a) whether to include age distinctions contained in regulations; and (b) whether to include age distinctions enacted by State and local legislative bodies.

The narrowest option interpreted "any law" to mean only Federal statutes. The broadest option intepreted "any law" to include Federal, State and local statutes and Federal, State and local regulations. Supporters of defining "any law" to mean only Federal statutes argued that any other interpretation seriously weakens the Act. Congress could not have intended to give discretion to State or local legislative bodies to exempt any age distinction from the coverage of the Act. To do so would be an abdication of Federal responsibility which defeats the purpose of the Act.

Those who argued that "any law" should mean Federal and State statutes argued that the Act should permit the States to use age in exercising their traditional power in such areas as defining the age of majority, controlling access to a driver's license, and regulating compulsory school attendance. On the other hand, extending this exemption to local statutes and ordinances would permit thousands of local jurisdictions to introduce age distinctions into the administration of Federal programs which would fatally weaken the Act.

Supporters of defining "any law" to mean Federal, State and local statutes and ordinances argued that there is no clear basis for limiting the interpretation of "any law" to Federal statutes. Congress rejected an amendment to the Act in 1978 which would have defined "any law" to mean Federal statutes. Furthermore, there is no basis for excluding local statutes and ordinances if State statutes are included in the definition. They argued that no case has been made that age discrimination occurs as a result of age distinctions in State and local statutes and ordinances and that beneficial age distinctions are enacted by State and local legislative bodies.

Defining "any law" to include all regulations had relatively little support. Some suggested defining "any law" to mean Federal statutes and regulations. Supporters of including regulations in the definition argued that regulations have the force and effect of law and should be included in the "any law" exemption. This position has been rejected on the grounds that it would permit administrators of federally funded programs to impose age distinctions which are not authorized by a legislative body. In addition, HEW does not believe that the language "established under authority of any law" necessarily includes regulations having the force and effect of law.

The final regulations define "any law" to mean Federal, State and local statutes and ordinances. The language of the statute, and the general lack of legislative history to justify any narrower interpretation of that language support the conclusion that Federal and State statutes, and statutes or ordinances enacted by general purpose, elected local governments should be exempt from coverage of the Act. This is particularly appropriate in the absence of any clear indication that age discrimination occurs as a result of State and local statutes. This definition of "any law" recognizes the authority of State and general purpose, elected local governments to enact statutes which condition benefits or participation on the basis of age.

Examples: "Established Under Authority of Any Law".

1. *Federal statutes.* The Adult Education Act (20 U.S.C. 1201–1213) is statutorily designed to provide services or instruction below college level for adults. The Act defines adults as individuals who have attained the age of 16. This limitation on participation in adult education programs is not covered by the Act. The Runaway Youth Program (42 U.S.C. 5701) authorized under the Juvenile Justice & Deliquency Prevention Act, awards grants for the development and/or strengthening of local facilities to address the immediate needs of runaway youth in a manner which is outside of the law enforcement and juvenile justice systems. The terms "runaway youth," "juveniles," and "young people" are used in the statute without further definition. Reasonable definitions of these terms would not be covered by the Act.

2. *State statutes.* Statutes setting age limitations on obtaining a driver's license or fixing age limits for compulsory school attendance are not covered by the Act.

3. *Local statutes or ordinances.* Age limitations on consuming alcoholic beverages or possessing firearms are not covered by the Act as long as these are adopted by an elected general purpose legislative body.

Note.—Any age distinction not exempted from coverage by the "any law" provision, may still qualify for an exception under another provision of the Act or these regulations.

4. ***What are the Rules Against Age Discrimination?*** Many commenters asked for clarification of the rules against age discrimination contained in § 90.12 of the regulations. Section 90.12 sets forth a general rule against age discrimination which is based on Section 303 of the Act, and then presents specific rules against age discrimination. These rules are limited by the exceptions contained in the Act and these regulations.

The general rule in § 90.12 reflects the language of the Act: except as provided in the Act and these regulations, ". . . no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance." It means that, unless sanctioned by one of the exceptions, recipients of Federal financial assistance may not, either directly or indirectly, do anything to exclude persons from their programs or activities on the basis of age. Nor may recipients do anything not sanctioned by one of the exceptions to deny or limit persons in their efforts to participate in federally funded programs or activities on the basis of their age. For example, a medical school may not exclude persons from admission solely because of their age.

The prohibition against age discrimination does not include an absolute prohibition against separate or different treatment on the basis of age. As a general rule, separate or different treatment which denies or limits services from, or participation in, a program receiving Federal financial assistance would be prohibited by these regulations. On the other hand, these regulations do not automatically invalidate the provision of services through separate or different treatment on the basis of age. Separate or different treatment necessary to normal operations or to the achievement of a statutory objective would qualify for an exception under these regulations.

Section 90.49 of these regulations contains language which affects the rules against discrimination in two important ways: a recipient may voluntarily act to overcome the effects of conditions which, in the past, have limited participation in a federally assisted program on the basis of age; and, a recipient may provide special benefits for children or the elderly if, by so doing, the recipient does not exclude others who are eligible from participating in the federally assisted program. As mentioned earlier, HEW does not believe that Congress meant to disturb the practices of recipients which provide special benefits to children or

the elderly. For example, reduced fares for children and for senior citizens on public transportation or on railways or airlines would qualify as a special benefit under § 90.49 of these regulations. The definition of who qualifies as "children" or "elderly" for purposes of receiving a special benefit will be left to the reasonable discretion of the recipients who voluntarily provide the benefit.

5. *What are the Statutory Exceptions to the Rules Against Age Discrimination?* a. *Definitions of Statutory Objective and Normal Operation.* Many commenters questioned the meaning, clarity, and interpretation of the statutory exceptions to the prohibition against age discrimination contained in the proposed rules §§ 90.14 and 90.15.

Two phrases, "normal operations" and "statutory objective" are used in these regulations in interpreting the Act's exceptions for explicit age distinctions (§ 90.14) and for the use of factors other than age (§ 90.15). Critical to an understanding of these statutory exceptions is the definition of "statutory objective" and the definition of "normal operation."

The NPRM stated that statutory objective would mean either: (1) any purpose of a program or activity expressly stated in a statute, or (2) any purpose of a program or activity expressly stated in a statute or reasonably inferred from its provisions or legislative history. Because legislative history is a broad concept and because statutory objectives will be used to justify the use of administratively imposed age distinctions or factors other than age which have a disproportionate effect, HEW believes that the term "statutory objective" should be construed to mean only expressly stated objectives.

The NPRM was silent about whether the term "statutory objective" referred to Federal statutes, or State statutes, or local statutes, or all statutes. HEW believes the definition of "any law" in § 90.3 and the definition of "statutory objective" in § 90.13 should be parallel. Therefore, the final regulations define "statutory objective" to mean "any purpose of a program or activity expressly stated in any Federal statute, State statute or local statute or ordinance adopted by an elected, general purpose legislative body."

The final regulations have not changed the definition of "normal operation." "Normal operation" continues to mean "the operation of a program or activity without significant changes that would impair its ability to meet its objectives." This definition of "normal operation" means that a recipient of Federal funds may not use the statutory exceptions to justify refusing to make changes in program operation because those changes disturb administrative routine or are inconvenient.

b. *The four-part test for determining when an explicit age distinction is necessary to normal program operations or necessary to achieve a statutory objective.* Section 90.14 establishes a four-part test for explicit age distinctions which are claimed to be necessary to the normal operation of a program or activity, or to the achievement of a statutory objective of a program or activity.

The NPRM provided that an action reasonably takes age into account as a factor necessary to the normal operation or the achievement of a statutory objective of a program or activity, if:

(a) Age is used as a measure or approximation of one or more other characteristics (e.g., maturity);

(b) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity;

(c) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(d) The other characteristic(s) are difficult, costly, or otherwise impractical to measure directly.

The final regulations retain the four-part test, with some changes. The word "and" has been added after parts (a) and (b) to clarify the intent that an age distinction must meet all four parts in order to qualify for an exception. The reference to "maturity" has been deleted as an example of a characteristic for which age may be an approximation, because commenters felt that the term was too vague and did not illustrate what was meant in the test. The first part of the test in § 90.14 refers to a situation in which a program uses an age distinction as an indicator of some other characteristic, such as susceptibility to disease.

The third change occurs in part (d) of the test. The final regulations no longer contain a reference to cost or difficulty; however, part (d) now requires that the characteristics for which age is an approximation must be impractical to measure directly on an individual basis.

Thus, to qualify for an exception under § 90.14, all four of the following conditions must be met: (a) the age distinction in question must be used as an indicator or measure of some other (non-age) characteristic; (b) the *other* characteristic must be necessary for "normal operation" or for the achievement of a "statutory objective"; (c) the other characteristic must be capable of being reasonably approximated by age; and (d) the other characteristic must be impractical to measure directly on an individual basis.

The test set out in § 90.14 is designed to require careful scrutiny of age distinctions in programs receiving Federal financial assistance. It is not intended to serve as a basis for permitting continued use of age distinctions for the sake of administrative convenience if this results in denial or limitation of services on the basis of age.

HEW encourages recipients to apply age distinctions flexibly; that is, to permit a person, upon a proper showing of the necessary characteristic to participate in the activity or program even though he or she would otherwise be barred by the age distinction. Other things being equal, an age distinction is more likely to qualify under one of the statutory exceptions if it does not automatically bar all those who do not meet the age requirements.

Examples* "Necessary to the Normal Operation of the Program."

1. A youth organization receiving Federal financial assistance imposes a maximum age limitation on membership. The organization claims that it has as an objective, the training, education and character development of youth. The use of a maximum age limit *is necessary* to the normal operation of the recipient's program because:

(a) Age is used as a measure of the need for training, education, and character building experiences preparing for the assumption of adult responsibility; and

(b) The need for the service must be measured in order for the youth organization's objective to be met; and

(c) Age is highly related to the need for this service and is thus a reasonable measure of it; and

(d) It is not practical to measure this need on an individual basis (i.e., while some persons over the age limit might benefit from the service and some persons under the age limit might not need it, there is no practical way to identify them on an individual basis).

2. A medical school receiving Federal financial assistance generally does not admit anyone over 35 years of age, even though this results in turning away highly qualified applicants over 35.

The school claims that it has an objective, the teaching of qualified medical students who, upon graduation, will practice as long as possible. The school believes that this objective requires it to select younger applicants over older ones.

The use of such an age distinction *is not necessary* to the normal operation of the

*The examples illustrate general situations in which the regulations are applied to hypothetical recipients.

recipient's program because it does not meet the requirement of § 90.14(b).

Age of the applicant may be a reasonable measure of a non-age characteristic (longevity of practice). This characteristic may be impractical to measure directly on an individual basis. Nevertheless, achieving a high average longevity of practice for its graduates cannot be considered a program objective for a medical school within the meaning of the Act. The "normal operation" exception is not intended to permit a recipient to use broad notions of efficiency or cost-benefit analysis to justify exclusion from a program on the basis of age. The basic objectives of the medical school involve training competent and qualified medical school graduates. These objectives are not impaired if the average length its graduates practice medicine is lowered by a fraction of a year (or even more) by the admission of qualified applicants over 35 years of age.

Examples:* "Necessary to the Achievement of a Statutory Objective."

1. Applications for grants for disease control programs under the Public Health Service Act can only be approved if they "(B) contain assurances satisfactory to the Secretary that . . . the applicant will conduct such programs as may by necessary (i) to develop an awareness in those persons in the area served by the applicant who are most susceptible to the disease or conditions . . . of appropriate preventive behavior and measures (including immunization) and diagnostic procedures for such disease, and (ii) to facilitate their access to such measures and procedures," (42 U.S.C. 247b).

Under the test of § 90.14, *it is necessary* to the achievement of this explicit statutory objective to give priority in immunization to age categories most at risk to the disease in question because:

(a) Age is being used as a measure of susceptibility to a disease; and

(b) Susceptibility to disease must be measured for the statutory objective to be met; and

(c) Age is a reasonable measure of susceptibility to the particular disease; and

(d) Susceptibility to the disease is impractical to measure directly on an individual basis.

2. The purpose of the Adult Education Act (20 U.S.C. 1201 *et seq.*) is to provide education that will "enable all adults to continue their education . . . and . . . enable them to become more employable, productive, and responsible citizens." (20 U.S.C. 1201.) The Act defines an adult as "any individual who has attained the age of 16." (20 U.S.C. 1201(a).)

A recipient limits participation in its adult education program to adults under 35 on the grounds that this is necessary to achieve the explicit Adult Education Act objective of increasing employability, productivity, and responsibility.

It *is not necessary* to the achievement of this statutory objective to limit participation to those under 35. This age limitation fails at least two elements of the four-part test set out in § 90.14. Employability, productivity and responsibility need not be measured in order to meet the statutory objective of making adults more employable, productive or responsible because the objective is comparative rather than absolute. The statute only requires an effort to improve these characteristics in an individual, not to maximize the degree of improvement.

These characteristics have no demonstrable correlation with age and cannot be reasonably measured by the use of age (§ 90.14(c)).

Whether or not these characteristics can practically be measured directly on an individual basis need not be considered, since the characteristics do not have to be measured in order to meet the statutory objective.

c. *Use of Reasonable Factors Other than Age.* Section 90.15 of the NPRM set out four options to characterize the relationship between a factor other than age that may have a discriminatory effect and the normal operation of a program or the achievement of a statutory objective. Those four options were rational, direct, substantial, and necessary. Commenters disagreed about what relationship a factor other than age should bear to the normal operation or the statutory objective of a program or activity.

The final regulations require that a factor other than age bear a direct and substantial relationship to the normal operation of the statutory objective of a program or activity. The "rational" option, which was equated in the NPRM with the rational basis test used under the equal protection clause of the Fourteenth Amendment, has been rejected on the grounds that many serious discriminatory effects created by factors other than age would be likely to survive a rational basis level of scrutiny.

The "necessary" option has been rejected because it requires a test which is not sufficiently flexible to deal with the variety of factors other than age and the variation in facts and circumstances that contribute to whether those factors other than age are "reasonable."

The regulations adopt the "direct and substantial" standard because it provides the appropriate flexibility and, at the same time, avoids the weaknesses inherent in the "rational" standard. Use of the "direct and substantial" standard means that use of factors other than age must be carefully examined in light of the individual facts and circumstances surrounding their use. This examination will determine whether use of the factor other than age is a sufficiently effective method of achieving a worthwhile program purpose to justify limiting or denying services or participation to adversely affected persons.

Examples:* "Reasonable Factors Other Than Age."

1. A federally assisted training program uses a physical fitness test as a factor for selecting participants to train for a certain job. The job involves frequent heavy lifting and other demands for physical strength and stamina. Even though older persons might fail the test more frequently than younger persons, the physical fitness test measures a characteristic that is *directly and substantially* related to the job for which persons are being trained and is, therefore, permissible under the Act.

2. The same program referred to in (1) above uses the same physical fitness test to select participants for a training program for clerical work. It claims that persons who pass the test are likely to do better work than those who are unable to pass the test. Even if this were true, the relationship between the requirements of the test and the requirements of the type of job for which training is being offered *is not direct and substantial.* It is so tenuous and limited that it will not justify the test's age discriminatory effect. In this situation, use of the test would violate the Act.

6. *Cost/Benefit Analysis.* The NPRM raised the issue of whether cost-benefit considerations can justify the use of age distinctions or factors other than age. A majority of commenters expressed support for the NPRM position that a cost-benefit consideration by itself cannot be the sole justification for an exception under § 90.14 and § 90.15. Others, however, opposed any use of cost-benefit analysis in the administration of federally assisted programs.

The use of an explicit age distinction in the operation of a federally assisted program will have to be justified as necessary to the normal operation of the program or to the achievement of a statutory objective. That is, the explicit age distinction will have to meet the four part test of § 90.14 and cannot be disqualified or justified because it reflects a cost-benefit consideration. Use of a factor other than age will have to meet the test established in § 90.15 and cannot be disqualified or justified because it reflects a cost-benefit consideration. The scrutiny afforded age distinctions and factors other than age under these regulations should have the effect of screening out discriminatory cost-benefit considerations.

7. *Relationship Between General and Age-Targeted Programs.* Another major issue in the NPRM concerned similar services provided by both general and

*The examples illustrate general situations in which the regulations are applied to hypothetical recipients.

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age-targeted programs. The question was whether the existence of an age-targeted program in any way relieved a general program of its obligation to serve the age group eligible for the age-targeted program.

Many commenters expressed the view that the general program was not relieved in any way of its obligation to serve everyone regardless of age. They reasoned that: the age targeted program was intended to supplement service for the eligible population, not to replace the services provided by the general program; an age-targeted program recognizes the special or additional needs of an age group, so that any restriction on the availability of services in a general program based solely on the existence of an age-targeted program would be discriminatory; administrators should not be given discretion to limit participation on the basis of age in a general program which Congress created to serve all ages.

Some commenters did say, however, that there are occasions when a general program should be permitted to deny services to an age group which is served elsewhere. They reasoned that the general programs can then focus on those in need who are not being served elsewhere; services offered in a general program should be based on the needs of the community as a whole and should take into account what is offered elsewhere; to require a general program to spread its limited resources to all age groups, regardless of the availability of similar services, would weaken the quality of the services provided. There was no support for the view that the general program's obligation was unconditionally lessened by the existence of the age targeted program.

The final regulations continue the policy expressed in the NPRM that, for a general program, any deviation from a policy of serving all eligible persons regardless of age that results in a denial or limitation of service on the basis of age is only permissible if it meets one of the statutory exceptions under § 90.14 or § 90.15.

A general program can focus its services by referring persons to existing age targeted programs only if those actions do not result in the denial of services to the individual or in the provision of lesser or different services. However, HEW is persuaded that there are situations when referral to an age targeted program does not result in a denial or limitation of services. For example, a program which serves all ages may be aware of an age targeted program which, because of its specialization, offers better services to that age group. A general program may have a waiting list of applicants while a similar age targeted program has space available. In situations like these, a general program could refer an applicant to the age targeted program provided that it had sufficiently well established relationship with the age targeted program to assure that the person referred actually received the service sought.

8. *Mediation of Age Discrimination Complaints.* The NPRM proposed that complaints of age discrimination be subject to mediation after initial screening by the Federal agency. The NPRM also proposed that participation in mediation be mandatory for both complainant and recipient and that administration of the mediation process be centralized in one government agency, the Federal Mediation and Conciliation Service (FMCS). These provisions of the NPRM have been kept in the final regulations.

While most commenters supported the proposed use of mediation, some commenters questioned the appropriateness of requiring mediation as the first step in resolving an age discrimination complaint. They argued that mediation promotes inappropriate bargaining over civil rights, that mediation may jeopardize the rights of complainants, that not every complaint is suitable for mediation, that mediation introduces a new and different step in the complaint resolution process which will be unnecessarily confusing to complainants and recipients.

HEW continues to believe that the mediation process is an important innovation in resolution of age discrimination complaints. Mediation is an effort to provide faster and more creative resolution of complaints through informal methods of dispute resolution. Attempts to reach a mediated settlement of the complaint must be completed in the first 60 days after the complaint is received. While mediation does represent a new step in the complaint resolution process, the experience in resolving complaints under other civil rights statutes has been that the 60 days set aside for mediation will not significantly delay the enforcement process.

Experience with mediation in other areas indicates that even the most intransigent parties can arrive at a mutually satisfactory resolution of their dispute. Consequently, HEW believes it is desirable to require that mediation be attempted in all complaints. Mediation does not necessarily mean that the two parties to the dispute must meet face to face; each may meet separately with the mediator. Since the mediated settlement must be satisfactory to both parties, neither the complainant nor the recipient is compelled to settle the complaint. Since the cost of the mediator will be paid by the Federal government, the financial burden on complainants and recipients will be minimal. HEW believes that the ADA offers a unique opportunity to try this innovative approach to the resolution of disputes.

These regulations require that the management of the mediation process be centralized in one agency, designated by the Secretary of HEW. The FMCS will be that agency. Commenters critical of this decision questioned the wisdom of introducing a new agency into the civil rights enforcement process. Some suggested that each agency should manage its own mediation process, to permit the use of staff who would be more familiar with the program and problems of the Federal agency receiving the complaint.

HEW believes that the benefits to be realized by centralizing the management of the mediation process are substantial and that the FMCS is the appropriate agency for the job. The use of a single agency to manage the mediation process assures that uniform standards will be used in the recruitment and training of mediators, that the training will be centralized, that consistent procedures will be followed in the mediation, and that there can be a comprehensive and coherent evaluation of the process as part of the 30 month review of the effectiveness of these regulations. While the use of the FMCS does introduce a new agency into civil rights enforcement, one of the key elements in mediation is that both sides have confidence that the mediator is an independent third party. HEW believes that mediation of age discrimination complaints has a better chance to succeed if the mediator is not part of the staff of a Federal agency responsible for enforcing the Age Discrimination Act. The FMCS, which has an established reputation for mediating disputes, will draw on some of its experienced staff and will recruit and train a cadre of community based mediators who will work on age discrimination complaints.

After 30 months, HEW will evaluate the mediation process in accordance with § 90.61 of these regulations. The process will be used, revised or restructured as indicated by the results of that review.

The Department of Health, Education, and Welfare adds Part 90 to Title 45 of the Code of Federal Regulations as set forth below.

Dated: June 5, 1979.

Joseph A. Califano Jr.,

Secretary, Department of Health, Education, and Welfare.

The Department of Health, Education, and Welfare adds Part 90 to Title 45 of the Code of Federal Regulations as set forth below:

PART 90—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—General

Sec.

90.1 What is the purpose of the Age Discrimination Act of 1975?
90.2 What is the purpose of these regulations?
90.3 What programs and activities does the Age Discrimination Act of 1975 cover?
90.4 How are the terms in the regulations defined?

Subpart B—What is Age Discrimination?
(Standards for Determining Discriminatory Practices)

90.11 Purpose of this Subpart.
90.12 Rules against age discrimination.
90.13 Definitions of "normal operation" and "statutory objective."
90.14 Exceptions to the rules against age discrimination. Normal operation or statutory objective of any program or activity.
90.15 Exceptions to the rules against age discrimination. Reasonable factors other than age.
90.16 Burden of proof.

Subpart C—What are the Responsibilities of the Federal Agencies?

90.31 Issuance of regulations.
90.32 Review of agency policies and administrative practices.
90.33 Interagency cooperation.
90.34 Agency reports.

Subpart D—Investigation, Conciliation and Enforcement Procedures

90.41 What is the purpose of this Subpart?
90.42 What responsibilities do recipients and agencies have generally to ensure compliance with the Act?
90.43 What specific responsibilities do agencies and recipients have to ensure compliance with the Act?
90.44 Compliance reviews.
90.45 Information requirements.
90.46 Prohibition against intimidation or retaliation.
90.47 What further provisions must an agency make in order to enforce its regulations after an investigation indicates that a violation of the Act has been committed?
90.48 Alternate funds disbursal procedure.
90.49 Remedial and affirmative action by recipients.
90.50 Exhaustion of administrative remedies.

Subpart E—Future Review of Age Discrimination Regulations

90.61 Review of general regulations.
90.62 Review of agency regulations.

Authority: *Age Discrimination Act of 1975, 42 U.S.C. 6101 et seq.*

Subpart A—General

§ 90.1 What is the purpose of the Age Discrimination Act of 1975?

The Age Discrimination Act of 1975, as amended, is designed to prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act also permits federally assisted programs and activities, and recipients of Federal funds, to continue to use certain age distinctions and factors other than age which meet the requirements of the Act and these regulations.

§ 90.2 What is the purpose of these regulations?

(a) The purpose of these regulations is to state general, government-wide rules for the implementation of the Age Discrimination Act of 1975, as amended, and to guide each agency in the preparation of agency-specific age discrimination regulations.

(b) These regulations apply to each Federal agency which provides Federal financial assistance to any program or activity.

§ 90.3 What programs and activities does the Age Discrimination Act of 1975 cover?

(a) The Age Discrimination Act of 1975 applies to any program or activity receiving Federal financial assistance, including programs or activities receiving funds under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221 *et seq.*).

(b) The Age Discrimination Act of 1975 does not apply to:

(1) An age distinction contained in that part of a Federal, State of local statute or ordinance adopted by an elected, general purpose legislative body which:

(i) Provides any benefits or assistance to persons based on age; or

(ii) Establishes criteria for participation in age-related terms; or

(iii) Describes intended beneficiaries or target groups in age-related terms.

(2) Any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program, except for any program or activity receiving Federal financial assitance for public service employment under the Comprehensive Employment and Training Act of 1974 (CETA), (29 U.S.C. 801 *et seq.*).

§ 90.4 How are the terms in these regulations defined?

As used in these regulations, the term:

"Act" means the Age Discrimination Act of 1975, as amended, (Title III of Public Law 94-135).

"Action" means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard, or method of administration.

"Age" means how old a person is, or the number of elapsed years form the date of a person's birth.

"Age distinction" means any action using age or an age-related term.

"Age-related term" means a word or words which necessarily imply a particular age or range of ages (for example, "children," "adult," "older persons," but not "student").

"Agency" means a Federal department or agency that is empowered to extend financial assistance.

"Federal financial assistance" means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

(a) Funds;

(b) Services of Federal personnel; or

(c) Real and personal property or any interest in or use of property, including:

(1) Transfers or leases of property for less than fair market value or for reduced consideration; and

(2) Proceeds from a subsequent transfer or lease of property if the Federal share of its fair market value is not returned to the Federal Government.

"Recipient" means any State or its political subdivision, any instrumentality of a State or its political sub-division, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, or transferee, but excludes the ultimate beneficiary of the assistance.

"Secretary" means the Secretary of the Department of Health, Education, and Welfare.

"United States" means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, the Trust Territory of the Pacific Islands, the Northern Marianas, and the territories and possessions of the United States.

Subpart B—What is Age Discrimination?

Standards for Determining Discriminatory Practices

§ 90.11 Purpose of this subpart.

The purpose of this subpart is to set forth the prohibitions against age discrimination and the exceptions to those prohibitions.

§ 90.12 Rules against age discrimination.

The rules stated in this section are limited by the exceptions contained in sections 90.14, and 90.15 of these regulations.

(a) *General rule:* No person in the United states shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

(b) *Specific rules:* A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual, licensing, or other arrangements use age distinctions or take any other actions which have the effect, on the basis of age, of:

(1) excluding individuals from, denying them the benefits of, or subjecting them to discrimination under, a program or activity receiving Federal financial assistance, or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

(c) The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

§ 90.13 Definitions of "normal operation" and "statutory objective."

For purposes of sections 90.14, and 90.15, the terms "normal operation" and "statutory objective" shall have the following meaning:

(a) "Normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

(b) "Statutory objective" means any purpose of a program or activity expressly stated in any Federal statute, State statute, or local statute or ordinance adopted by an elected, general purpose legislative body.

§ 90.14 Exceptions to the rules against age discrimination. Normal operation or statutory objective of any program or activity.

A recipient is permitted to take an action, otherwise prohibited by section 90.12, if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

(a) Age is used as a measure or approximation of one or more other characteristics; and

(b) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(c) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(d) The other characteristic(s) are impractical to measure directly on an individual basis.

§ 90.15 Exceptions to the rules against age discrimination. Reasonable factors other than age.

A recipient is permitted to take an action otherwise prohibited by section 90.12 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 90.16 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in sections 90.14 and 90.15 is on the recipient of Federal financial assistance.

Subpart C—What are the Responsibilities of the Federal Agencies?

§ 90.31 Issuance of regulations.

(a) The head of each agency which extends Federal financial assistance to any program or activity shall publish proposed and final age discrimination regulations in the Federal Register to:

(1) Carry out the provisions of section 303 of the Age Discrimination Act of 1975; and

(2) Provide for appropriate investigative, conciliation, and enforcement procedures.

(b) Each agency shall publish its proposed agency age discrimination regulations no later than 90 days after the publication date of the final general, government-wide age discrimination regulations.

(c) Each agency shall submit its final agency regulations to HEW for review no later than 120 days after publication of proposed agency age discrimination regulations.

(d) Final agency age discrimination regulations shall be consistent with these general, government-wide age discrimination regulations and shall not be published until the Secretary approves them.

(e) Each agency shall include in its regulations a provision governing the operation of an alternate funds disbursal procedure as described in section 90.48 of these regulations.

(f) Each agency shall publish an appendix to its final age discrimination regulations containing a list of each age distinction provided in a Federal statute or in regulations affecting financial assistance administered by the agency.

§ 90.32 Review of agency policies and administrative practices.

(a) Each agency shall conduct a review of age distinctions it imposes on its recipients by regulations, policies, and administrative practices. The purpose of this review is to identify how age distinctions are used by each Federal agency and whether those age distinctions are permissible under the Act and implementing regulations.

(b) No later than 12 months from the date the agency published its final regulations, the agency shall publish, for public comment, a report in the Federal Register containing:

(1) The results of the review conducted under paragraph (a) of this section;

(2) A list of the age distinctions contained in regulations which are to be continued;

(3) The justification under the requirements of the Act and these regulations for each age distinction to be continued;

(4) A list of the age distinctions not contained in regulations but which will be adopted by regulation under the Administrative Procedure Act using the notice and comment procedures specified in 5 U.S.C. 553; and

(5) A list of the age distinctions to be eliminated.

(c) Beginning with the effective date of an agency's final regulations, the agency may not impose a new age distinction unless the age distinction is adopted by regulation under the Administrative Procedure Act using the notice and comment procedures specified in 5 U.S.C. 553.

(d) Beginning 12 months after the publication of its age discrimination regulations, an agency may not continue

an existing age distinction, unless the age distinction has already been adopted by regulation or is adopted by regulation under the Administrative Procedure Act using the notice and comment procedures specified in 5 U.S.C. 553.

§ 90.33 Interagency cooperation.

Where two or more agencies provide Federal financial assistance to a recipient or class of recipients, the Secretary may designate one of the agencies as the sole agency for all compliance and enforcement purposes with respect to those recipients, except for the ordering of termination of funds and the notification of the appropriate committees of Congress.

§ 90.34 Agency reports.

Each agency shall submit to the Secretary not later than December 31 of each year, beginning in 1979, a report which:

(a) Describes in detail the steps taken during the preceding fiscal year to carry out the Act; and

(b) Contains data on the frequency, type, and resolution of complaints and on any compliance reviews, sufficient to permit analysis of the agency's progress in reducing age discrimination in programs receiving Federal financial assistance from the agency; and

(c) Contains data directly relevant to the extent of any pattern or practice of age discrimination which the agency has identified in any programs receiving Federal financial assistance from the agency and to progress toward eliminating it; and

(d) Contains evaluative or interpretative information which the agency determines is useful in analyzing agency progress in reducing age discrimination in programs receiving Federal financial assistance from the agency; and

(e) Contains whatever other data the Secretary may require.

Subpart D—Investigation, Conciliation and Enforcement Procedures

§ 90.41 What is the purpose of this Subpart?

This subpart sets forth requirements for the establishment of compliance, investigation, conciliation, and enforcement procedures by agencies which extend Federal financial assistance.

§ 90.42 What responsibilities do recipients and agencies have generally to ensure compliance with the Act?

(a) A recipient has primary responsibility to ensure that its programs and activities are in compliance with the Age Discrimination Act and shall take steps to eliminate violations of the Act. A recipient also has responsibility to maintain records, provide information, and to afford access to its records to an agency to the extent required to determine whether it is in compliance with the Act.

(b) An agency has responsibility to attempt to secure recipient compliance with the Act by voluntary means. This may include the use of this services of appropriate Federal, State, local, or private organizations. An agency also has the responsibility to enforce the Age Discrimination Act when a recipient fails to eliminate violations of the Act.

§ 90.43 What specific responsibilities do agencies and recipients have to ensure compliance with the Act?

(a) *Written notice, technical assistance, and educational materials.* Each agency shall: (1) Provide written notice to each recipient of its obligations under the Act. The notice shall include a requirement that where the recipient initially receiving funds makes the funds available to a sub-recipient, the recipient must notify the sub-recipient of its obligations under the Act.

(2) Provide technical assistance, where necessary, to recipients to aid them in complying with the Act.

(3) Make available educational materials setting forth the rights and obligations of beneficiaries and recipients under the Act.

(b) *Self-evaluation.* (1) Each agency shall require each recipient employing the equivalent of 15 or more full time employees to complete a written self-evaluation of its compliance under the Act within 18 months of the effective date of the agency regulations.

(2) Each recipient's self-evaluation shall identify and justify each age distinction imposed by the recipient.

(3) Each recipient shall take corrective and remedial action whenever a self-evaluation indicates a violation of the Act.

(4) Each recipient shall make the self-evaluation available on request to the agency and to the public for a period of 3 years following its completion.

(c) *Complaints.*—(1) *Receipt of complaints.* Each agency shall establish a complaint processing procedure which includes the following:

(i) A procedure for the filing of complaints with the agency;

(ii) A review of complaints to assure that they fall within the coverage of the Act and contain all information necessary for further processing;

(iii) Notice to the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure; and

(iv) Notice to the complainant and the recipient (or their representatives) of their right to contact the agency for information and assistance regarding the complaint resolution process.

(2) *Prompt resolution of complaints.* Each agency shall establish procedures for the prompt resolution of complaints. These procedures shall require each recipient and complainant to participate actively in efforts toward speedy resolution of the complaint.

(3) *Mediation of complaints.* Each agency shall prompty refer all complaints which fall within the coverage of the Act to a mediation agency designated by the Secretary.

(i) The referring agency shall require the participation of the recipient and the complainant in the mediation process, although both parties need not meet with the mediator at the same time.

(ii) If the complainant and recipient reach a mutually satisfactory resolution of the complaint during the mediation period, they shall reduce the agreement to writing. The mediator shall send a copy of the settlement to the referring agency. No further action shall be taken based on that complaint unless it appears that the complainant or the recipient is failing to comply with the agreement.

(iii) Not more than 60 days after the agency receives the complaint, the mediator shall return a still unresolved complaint to the referring agency for initial investigation. The mediator may return a complaint at any time before the end of the 60 day period if it appears that the complaint cannot be resolved through mediation.

(iv) The mediator shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the agency appointing the mediator.

(4) *Federal initial investigation.* Each agency shall investigate complaints unresolved after mediation or reopened because of a violation of the mediation agreement. As part of the initial investigation, the agency shall use informal fact finding methods including joint or individual discussions with the complainant and the recipient to establish the facts, and, if possible,

resolve the complaint to the mutual satisfaction of the parties. The agency may seek the assistance of any involved State program agency.

(5) *Formal investigation, conciliation, and hearing.* If the agency cannot resolve the complaint during the early stages of the investigation, it shall:

(i) Complete the investigation of the complaint.

(ii) Attempt to achieve voluntary compliance satisfactory to the agency, if the investigation indicates a violation.

(iii) Arrange for enforcement as described in section 90.47, if necessary.

§ 90.44 Compliance reviews.

(a) Each agency shall provide in its regulations that it may conduct compliance reviews, pre-award reviews, and other similar procedures which permit the agency to investigate, and correct, violations of the Act without regard to its procedures for handling complaints.

(b) If a compliance review or pre-award review indicates a violation of the Act, the agency shall attempt to achieve voluntary compliance with the Act. If voluntary compliance cannot be achieved, the agency shall arrange for enforcement as described in section 90.47.

§ 90.45 Information requirements.

Each agency shall provide in its regulations a requirement that the recipient:

(a) Provide to the agency information necessary to determine whether the recipient is in compliance with the Act; and

(b) Permit reasonable access by the agency to the books, records, accounts, and other recipient facilities and sources of information to the extent necessary to determine whether a recipient is in compliance with the Act.

§ 90.46 Prohibition against intimidation or retaliation.

Each agency shall provide in its regulations that recipients may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Act; or

(b) Cooperates in any mediation, investigation, hearing, or other part of the agency's investigation, conciliation, and enforcement process.

§ 90.47 What further provisions must an agency make in order to enforce its regulations after an investigation indicates that a violation of the act has been committed?

(a) Each agency shall provide for enforcement of its regulations through:

(1) Termination of a recipient's Federal financial assistance under the program or activity involved where the recipient has violated the Act or the agency's regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge.

(2) Any other means authorized by law including but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or the agency's regulations.

(ii) Use of any requirement of or referral to any Federal, State, or local government agency which will have the effect of correcting a violation of the Act or implementing regulations.

(b) Any termination under section 90.47(a)(1) shall be limited to the particular recipient and particular program or activity receiving Federal financial assistance or portion thereof found to be in violation of the Act or agency regulations. No termination shall be based in whole or in part on a finding with respect to any program or activity which does not receive Federal financial assistance.

(c) No action under paragraph (a) of this section may be taken until:

(1) The head of the agency involved has advised the recipient of its failure to comply with the Act or the agency's regulations and has determined that voluntary compliance cannot be obtained.

(2) Thirty days have elapsed after the head of the agency involved has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the Federal program or activity involved. A report shall be filed whenever any action is taken under paragraph (a) of this section.

(d) An agency may defer granting new Federal financial assistance to a recipient when termination proceedings under section 90.47(a)(1) are initiated.

(1) New Federal financial assistance includes all assistance administered by or through the agency for which an application or approval, including renewal or continuation of existing activities, or authorization of new activities, is required during the deferral period. New Federal financial assistance does not include assistance approved prior to the beginning of termination proceedings or to increases in funding as a result of changed computation of formula awards.

(2) A deferral may not begin until the recipient has received a notice of opportunity for a hearing under section 90.47(a)(1). A deferral may not continue for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and the agency. A deferral may not continue for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

§ 90.48 Alternate funds disbursal procedure.

When an agency withholds funds from a recipient under its regulations issued under section 90.31, the head of the agency may disburse the withheld funds so directly to any public or non-profit private organization or agency, or State or political subdivision of the State. These alternate recipients must demonstrate the ability to comply with the agency's regulations issued under this Act and to achieve the goals of the Federal statue authorizing the program or activity.

§ 90.49 Remedial and affirmative action by recipients.

(a) Where a recipient is found to have discriminated on the basis of age, the recipient shall take any remedial action which the agency may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated, both recipients may be required to take remedial action.

(b) Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity on the basis of age.

(c) If a recipient operating a program which serves the elderly or children in addition to persons of other ages, provides special benefits to the elderly or to children the provision of those benefits shall be presumed to be voluntary affirmative action provided that it does not have the effect of excluding otherwise eligible persons from participation in the program.

§ 90.50 Exhaustion of administrative remedies.

(a) The agency shall provide in its regulations that a complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and the agency has made no finding with regard to the complaint; or

(2) The agency issues any finding in favor of the recipient.

(b) If either of the conditions set forth in § 90.50(a) is satisfied the agency shall:

(1) Promptly advise the complainant of this fact; and

(2) Advise the complainant of his or her right, under section 305(e) of the Act, to bring a civil action for injunctive relief that will effect the purposes of the Act; and

(3) Inform the complainant:

(i) That a civil action can only be brought in a United States district court for the district in which the recipient is found or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that these costs must be demanded in the complaint;

(iii) That before commencing the action the complainant shall give 30 days notice by registered mail to the Secretary, the Attorney General of the United States, the head of the granting agency, and the recipient;

(iv) That the notice shall state: the alleged violation of the Act; the relief requested; the court in which the action will be brought; and whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) That no action shall be brought if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

Subpart E—Future Review of Age Discrimination Regulations

§ 90.61 Review of general regulations.

The Secretary shall review the effectiveness of these regulations in securing compliance with the Act. As part of this review, 30 months after the effective date of these regulations, the Secretary shall publish a notice of opportunity for public comment on the effectiveness of the regulations. The Secretary will assess the comments and publish the results of the review and assessment in the Federal Register.

§ 90.62 Review of agency regulations.

Each agency shall review the effectiveness of its regulations in securing compliance with the Act. As part of this review, 30 months after the effective date of its regulations, each agency shall publish a notice of opportunity for public comment on the effectiveness of the agency regulations. Each agency shall assess the comments and publish the results of the review in the Federal Register.

Note.—The following comment analysis will not appear in the Code of Federal Regulations.

Comment Analysis

The following comments suggestions and criticisms were made at public hearings or submitted in writing in response to the proposed rules. After the summary of each comment, a response is set forth stating the changes which have been made in the regulations or the reasons why no change was deemed necessary or appropriate. The comments are grouped according to sections of the proposed rules and are arranged in sequence.

Subpart A—General

§ 90.1 *What is the purpose of the Age Discrimination Act of 1975?*

§ 90.1 *Exclusive protection for the elderly.*

Comment: A number of commenters stated that Congress intended the ADA to protect the elderly exclusively or to a greater extent than other age groups. These commenters cited the fact that the ADA is part of the Older Americans Act and that most of the debate on the Act concerned discrimination against the elderly.

Response: The House/Senate Conference Committee report is clear in stating that the ADA applies to persons of all ages. The regulations do not, therefore, limit protection to the elderly or to any other age group. HEW does not believe that this interpretation of the coverage of the Act will in any way diminish protection of the elderly.

§ 90.1 *Reference to statutory exceptions*

Comment: Several commenters were concerned specifically about the second sentence in § 90.1 of the NPRM which stated that the ADA permits the use of certain age distinctions and factors other than age. They felt the sentence weakened the intent of the ADA by emphasizing that some age distinctions are permitted.

Response: HEW agrees that the proposed wording may have created a wrong impression. HEW has modified the sentence to serve the intended purpose of informing the reader, early in the regulations, that the ADA specifically allows certain age distinctions.

§ 90.3 *What programs and activities does the Age Discrimination Act of 1975 cover?*

§ 90.3(b)(1) *"Any law" exemption.*

Comment: Many commenters responded to the issue presented in the NPRM of how "any law" should be interpreted. Although a number of commenters stated that "any law" should be interpreted to mean either Federal, State and local statutes and regulations, or Federal, State and local statutes, the majority of commenters favored either Federal and State statutes, or Federal statutes only. A small number of commenters supported an interpretation of Federal statutes and Federal regulations.

Response: A discussion of the four options (presented in the NPRM) for interpreting "any law", the commenters' reasons for supporting one of the options, and HEW's final choice appears in the preamble to these regulations.

§ 90.3(b)(1) *Coverage of employment practices.*

Comment: Many commenters discussed employment practices. Some requested clarification of the distinction between the ADA and Age Discrimination in Employment Act of 1967 (ADEA), which only covers persons between 40 and 70 years of age. These commenters were uncertain if persons under 40 or over 70 were covered under the ADA. Although the commenters recognized that CETA public service employment is covered by the ADA, they were concerned that the ADA regulations fail to reach other types of employment.

A few commenters supported the NPRM position that the ADA covers programs which are both financial assistance and employment, like the College Work Study Program and the Work Incentive Program. Many commenters suggested that mandatory retirement ages be prohibited.

Response: HEW has made no change in the text of the regulations. Section 304(c)(1) of the ADA excludes employment practices from coverage, except for CETA-funded public service employment. The final regulations continue to apply only to programs that are both employment and Federal financial assistance, for example: the College Work Study Program. Other types of employment and employment practices, including mandatory retirement ages, clearly are not covered by the ADA and are not addressed in these regulations.

The ADEA, which the Equal Employment Opportunity Commission (EEOC) will administer beginning July 1, 1979, is the statute that addresses age discrimination in employment. However, the ADEA applies only to persons between the ages of 40 and 70.

§ 90.4 *How are the terms in these regulations defined?*

§ 90.4 *Definition for the term United States.*

Comment: Several commenters questioned whether the regulations applied to *territories*. The proposed rules defined the word "recipient" in terms of a State or its political subdivision, but did not mention territory.

Response: HEW has added *"United States"* to the definitions and has defined United States to include the territories.

This is consistent with the regulations implementing Title VI of the Civil Rights Act of 1964 (45 CFR Part 80) which define United States to include territory.

§ 90.4 *Definition of other terms.*

Comment: A few commenters suggested that the word *action* be defined to include the failure to take an action. Other commenters suggested that additional terms should be defined in this section, including *benefits* or *assistance, discriminate, undesirable age distinction, person, program or activity.* Commenters also suggested additions or changes to the definitions of *Federal financial assistance* and *recipient.*

Response: HEW has not changed the definition of *action*. A failure to act is an action and is covered by the definition. Many of the definitions including *Federal financial assistance* and *recipient* are designed to

coincide with the definitions in other civil rights regulations (covering prohibitions against race, sex, and handicap discrimination). HEW believes that definitions appearing in more than one of the civil rights regulations, should be consistent with one another.

HEW believes that the regulations are sufficiently clear concerning the meaning of the suggested terms and that further additions to the definition section would not add to the clarity of the regulations. The phrase *cooperative agreement* has been added to the definition of Federal financial assistance to reflect another type of assistance.

Subpart B—What is Age Discrimination? (Standards for Determining Discriminatory Practices)

§ 90.13 *Definitions of "normal operation" and "statutory objective."*

§ 90.13(a) *Definition of normal operation.*

Comment: Several commenters supported the NPRM definition. Several other commenters stated that it was either unclear or too broad. Suggestions for making the definition clearer included the following: explain how the term will apply to new operations; define what constitutes a significant change; define how long a program's ability to meet its objectives must be impaired; and define how the program objectives should be determined. Suggestions for restricting the definition included: limiting the "normal operation" to a statutory objective; requiring that the operation be appropriate and not for administrative ease; or requiring that a change must impair substantially the program's achievement of a statutory objective.

Response: HEW has not changed the definition of "normal operation." The existing definition provides other governmental agencies flexibility in applying the definition to their own programs which receive Federal financial assistance. Since there is a wide variation in federally funded programs, HEW does not want to restrict other agencies from refining the definition of "normal operation" to suit the characteristics of their individual programs.

"Normal operation" is defined in a way that does not require a program to make any change in its operation so significant as to impair achievement of its objectives. At the same time, a recipient would be required to make a change that merely disturbs administrative routine or causes administrative inconvenience.

§ 90.13(b) *Definition of statutory objective.*

Comment: A number of commenters stated that the definition of "statutory objective" should include reasonable inferences from its provisions or legislative history.

Several commenters suggested that a statutory objective must be expressly stated in the statute. They feared that anything may be inferred from a statute or its legislative history.

A few commenters stated that the regulations should contain a discussion of the relationship between the normal operation and a statutory objective.

Another commenter stated that a statutory objective should be limited to a Federal statutory objective. One commenter stated that no definitions were necessary since § 90.14 provided a "functional way" of interpreting the terms.

Response: HEW has changed the definition of "statutory objective" to clarify that it refers to the objective of any applicable Federal, State or local statute. The final regulations provide that a "statutory objective" means expressly stated objectives of Federal, State or local statutes. HEW believe that the definitions of "statutory objective" and "any law" should coincide.

Since "legislative history" is a broad concept, and because the "statutory objective" exception will be used to justify the use of administratively imposed age distinctions or factors other than age which have a disproportionate effect, HEW believes that "statutory objective" should be construed to mean only the expressly stated objectives of any Federal, State or local statute which affects the provision of Federal financial assistance.

§ 90.14 *Exceptions to the rules against age discrimination. Normal operation or statutory objectives of any program or activity.*

§ 90.14 *General use of this exception.*

Comment: A large number of commenters stated that either age distinctions should not be permitted or should be permitted only under narrow circumstances. Several of these commenters cited the Civil Rights Commission's conclusion that factors other than age are nearly always available and should be used. Commenters suggested restricting the use of age distinctions to children's programs; situations where individual or public safety is concerned; or situations where alternative characteristics are not available.

Response: The ADA makes specific provisions for exceptions to the general prohibition against the use of age distinctions. Section 304(b)(1)(A) of the ADA permits an exception for actions which reasonably take into account age as a factor necessary to the normal operation or the achievement of a statutory objective of a program or activity. Section 304(b)(1)(B) permits a further exception from coverage under the Act for reasonable factors other than age. HEW believes that the intent of the ADA is conveyed most accurately by adoption of the specific statutory language into § 90.14 and § 90.15 of the regulations together with a strict four part test in § 90.14 and a narrow interpretation of reasonable factors other than age in § 90.15.

§ 90.14 *Restriction on use of the exceptions.*

Comment: Several commenters stated that the regulations should be altered to require that a program must accept any person who does not meet the program's age requirements, if the person possesses the characteristics for which age is a measure or approximation.

A few commenters suggested that the regulations should make clear that persons must not be excluded from programs or activities on the presumption that because of their age they are economically, mentally, socially, or physically unqualified. An age classification, based on that kind of presumption, is an improper subterfuge for the real consideration.

Response: The ADA allows the use of age distinctions which are necessary to the normal operation or to the achievement of a statutory objective of a program or activity. The regulations implement this legislative provision and establish standards for determining whether an age distinction is necessary to the normal operation or to the achievement of a statutory objective. HEW believes that the four part test in § 90.14 establishes an appropriate standard. In determining whether an age distinction qualifies for one of the exceptions, it may be relevant that as a matter of policy the age distinction is not rigidly applied. That is, the recipient employing an age distinction may permit a person, upon a proper showing of the necessary characteristic, to participate in the program or activity even though that person would otherwise be barred by the age distinction.

§ 90.14 *General comments on the four-part test for determining when an action reasonably takes age into account as a factor necessary to the normal operation or statutory objective.*

Comment: Several commenters supported the four-part test. Several others stated that the criteria used in the test are unclear and difficult to interpret. Their reasons were that many of the terms used cannot be defined and that the issue of whether an action meets the criteria must be resolved on the basis of individual judgments.

Another commenter said that it was not clear whether all of the four-part test had to be met. A few commenters suggested that the regulations should include a list of programs or activities that meet the test and qualify under the exceptions.

A few commenters stated that the criteria were too strict and might prohibit many desirable programs and activities, such as extracurricular school activities. Another commenter stated the exception should permit age distinctions that are reasonably necessary to achieve any statutory objective or normal program operation.

Several commenters said the test was too broad or too general. As a result, all age distinctions could meet the test and agencies would have too much latitude in applying the test.

Response: HEW has retained the four part test in the final regulations. The word "and" has been added after parts (a)–(c) of the test to make clear that all four criteria must be met for the age distinction to qualify for an exception.

HEW believes the test will prohibit the use of age distinctions that violate the ADA and will permit the use of age distinctions that meet the requirements of the ADA. The test set out in § 90.14 is similar to the criteria which agencies have used successfully under the Age Discrimination in Employment Act to show exceptions for age distinctions which are *bona fide* occupational qualifications.

§ 90.14(a) *Age is used as a measure or approximation of other characteristics.*

Comment: A commenter stated there is an incorrect presumption in § 90.14(a) and (c) that the relationship between age and other characteristics is the same at both ends of the age continuum.

Response: HEW does not agree that this section makes the stated presumption. The only presumption made is that age may represent, in varying degrees, other characteristics in persons of all ages. Since the Act applies to persons of all ages, HEW believes it is neither necessary nor desirable to provide different standards for different age groups.

Comment: Several commenters suggested that the term "maturity" used as an example in this section be omitted or further defined. The reasons were that it is too vague a term or that age may be an indicator of physical maturity but not mental or emotional maturity.

Response: HEW agrees with the suggestion and has deleted the example. HEW does believe, however, that age may be, in some circumstances, a reasonable measure or approximation of characteristics reflecting either physical or emotional maturity.

Comment: A commenter said that the regulations should not limit the use of age to situations where it is used as a proxy only. A few other commenters stated that the term "proxy" should be defined and one suggested that the word "indicator" be used instead of "proxy".

Response: HEW has made no change in § 90.14(a). Where age is used by itself and does not represent another characteristic, that use of age would not pass the four-part test of § 90.14. The term "proxy" was not used in the text of the proposed regulations but only for discussion purposes in the preamble to the NPRM.

§ 90.14(b) *The other characteristic(s) must be measured or approximated.*

Comment: A few commenters suggested that the regulations should explain the meaning of the phrases "must be measured" and "necessary characteristic".

Response: HEW believes no change is necessary. A characteristic that "must be measured" is one that, if omitted from the program or activity, would significantly impair the normal operation or the achievement of a statutory objective. The phrase "necessary characteristic" does not appear in the text of the proposed regulations but was used for discussion purposes in the preamble to the NPRM. A necessary characteristic is one which meets the four part test. For example, age may be used as a measure of the likelihood of catching a communicable childhood disease. A program would be permitted to use age as a factor in identifying those persons to be vaccinated only if, in addition to the other requirements of the four part test, identification of individuals who are likely to get the disease is necessary in order to achieve a statutory objective of the program or to allow normal operation of the program.

§ 90.14(c) *The other characteristic can be reasonably measured or approximated by age.*

Comment: A commenter said that age should not be a proxy for adult characteristics. Several commenters said there must be a close relationship between age and the characteristic it represents because anything less is typically the basis for stereotyping or other discriminatory practices. A few commenters suggested the relationship should be mathematically, or statistically valid. A few other commenters suggested omitting the term "reasonable".

Response: HEW has not changed the final regulations. When age is used as a measure of one or more adult characteristics, the age distinction must still meet the remaining parts of the four part test. Implicit in the requirement that a characteristic be reasonably measured or approximated by the use of age, is the idea that there must be a close relationship between age and the characteristic being measured.

§ 90.14(d) *The other characteristics are difficult, costly, or otherwise impractical to measure directly.*

Comment: Several commenters stated that cost factors should never be used or should be used only if the other characteristics are impossible to measure. A few stated that if the other characteristic is so difficult or costly to determine it should not be an eligibility factor.

A few other commenters stated that, as an alternative, age be considered if direct measurement of the other characteristic is either impossible or so onerous to recipients or participants that it would impair the normal operation or achievement of any statutory objective.

Response: HEW has changed part four of the test to require that the characteristics for which age is an approximation must be impractical to measure directly on an individual basis. The references to cost and difficulty in measuring the factor have been deleted.

§ 90.14 *Exceptions for clubs or programs that have no basis in Federal statutes.*

Comment: A number of commenters said that the regulations either should provide a special or additional exception for, or should clarify how, senior citizens and other clubs may continue to apply an age criteria. Most said that a separate exception is needed in order for these types of programs to continue.

Suggestions for exempting or providing for the effective continuation of these age-related programs under the regulations included: permitting an exception for administrative action by any governmental level in developing and funding programs; provide a definition of "program" that allows an age-focused group to administer Federal funds as long as absolute age restrictions are not used in that portion of the program receiving Federal funds; permitting affirmative action that addresses the needs of various constituent groups.

A few commenters said that these organizations should either be prevented from using age criteria or be allowed to do so only if they meet the exceptions stated in § 90.14.

Response: It is not HEW's intention to prohibit the existence of such age-focused groups as senior citizens clubs or Junior Chambers of Commerce. If the organization receives Federal financial assistance, however, the age distinctions used by these organizations must qualify under § 90.14 of the final regulations.

§ 90.15 *Exceptions to the rules against discrimination. Reasonable factors other than age.*

§ 90.15 *General comments about the exception.*

Comment: A few commenters suggested that the meaning of the phrase, "disproportionate effect" be explained or defined. Another commenter suggested that a list of examples be included to show how the exception applies.

Response: This phrase has an established meaning in other civil rights statutes, like Title VI of the Civil Rights Act of 1964. HEW intends the phrase to have a similar meaning in these regulations; i.e., to prohibit those actions which do not make use of express age distinctions, but which result in discrimination on the basis of age. This means, for example, that due to the recipient's use of a factor other than age which does not have a direct and substantial relationship to a statutory objective or to the normal operation of a program, persons of a certain age group do not receive services under the recipient's program in proportion to their needs for those services.

§ 90.15 *Rational for linking this exception to statutory objective/normal operation.*

Comment: A commenter stated that reasonable factors other than age need not bear any relationship to the normal operation of a program or to a statutory objective. The reason stated was that these terms are not used in Section 304(b)(1)(B) of the ADA, which is the basis for the exception provided under § 90.15. The commenter said that it is only necessary to show that the factors used are reasonable.

Response: HEW believes it is necessary to establish a standard for what may be considered reasonable factors other than age. If no standard is set, the interpretation of what is reasonable could be so broad and inclusive that few factors would be prohibited. If this were true, the Act would provide little protection against factors other than age used to discriminate against various age groups.

§ 90.15 *Relationship of factors other than age to statutory objective/normal operation.*

Comment: A number of commenters suggested that factors other than age must bear a rational relationship to a program's statutory objectives or normal operation. A rational relationship is less restrictive, permits greater flexibility in considering individual factors such as needs, and is consistent with the legislative history and reflects the language of the ADA. Several commenters said the use of a stricter standard would impose great hardships and would disrupt worthwhile programs.

A number of commenters stated that a stricter standard is needed. They stated that the rational standard is too subjective and is easily influenced by traditional modes of operation. It is too easy for a recipient to meet on the one hand, and too difficult for a plaintiff to overcome in proving a claim of discrimination on the other hand.

A few commenters stated that by deleting the term "unreasonable" from the purpose clause of the original ADA, Congress intended that any action, in order to qualify for an exemption, should be subject to strict scrutiny. A few commenters stated that since the use of age must be "necessary" to the normal operation or statutory objective, the use of factors other than age should also be "necessary."

Another commenter stated that there would be a discrepancy between § 90.14 and § 90.15 if the rational standard were used. While a program may be prevented from using an age distinction because the factor it represents is not necessary to its statutory objective, the factor itself may be used under § 90.15 if it is only rationally related to the statutory objective.

Another commenter stated that the ADEA contains a similar exception for the use of reasonable factors other than age. The regulations for the ADEA and court decisions made on this issue have successfully applied a standard of careful scrutiny.

Response: HEW has concluded that the relationship of factors other than age to the normal operation or statutory objective of a program must be a "direct and substantial" relationship. This relationship requires use of a standard of careful review and examination of uses of factors other than age on a case-by-case basis. The exception in § 90.15 for a factor other than age becomes an issue for resolution if raised in a complaint or in a compliance review.

To use a rational relationship or minimal scrutiny standard would leave open the possibility of purposefully circumventing the ADA by allowing administrators to use factors other than age to operate a program when an explicit use of age would be prohibitted. HEW also believes that a minimal scrutiny standard would permit activities that should be prohibited. The use of that standard would make it very difficult to establish that an activity is in violation of the ADA. Therefore, HEW has adopted the "direct and substantial" test to define the relationship between "factors other than age" and the "normal operation" or "statutory objective" of a federally assisted program or activity.

§ 90.15 *Cost-benefit considerations as justification for age-distinctions.*

Comment: A number of commenters supported the NPRM position that a cost-benefit consideration by itself cannot be the justification for an exception under § 90.14 or § 90.15. Several commenters suggested factors to be considered in applying the tests, such as availability of adequate alternative services, relative equality of services in a given locale over a longer time period, effectiveness of program coordination at the local level, and the degree of necessity of limiting services based on extent of need and resources available. A few commenters stated that examples of specific programs should be included in the ADA regulations to illustrate where cost-benefit considerations will be allowed.

A few commenters opposed any use of cost-benefit analysis because it is too difficult to quantify the benefits involved in human services and it is impossible to predict the benefits a person will derive from services.

Several commented that the use of cost-benefit considerations is especially harmful to the elderly, and two commented that young people are even more vulnerable, being without political power. A few commenters stated that cost-benefit analysis should be specifically disallowed in the regulations.

Several commenters supported providing wider latitude for targeting programs based on cost-benefit considerations. They stated that programs with limited funds are unable to function without cost-benefit allocations and that program administrators should not be required to compose lengthy justifications for those allocations.

Response: The final regulations do not permit a cost-benefit consideration alone to justify an age distinction or a factor other than age. They allow the use of cost-benefit justifications for age distinctions or factors other than age only where those actions meet the tests of §§ 90.14–90.15. The tests of § 90.14 and § 90.15 should be sufficient to eliminate the misapplication of cost-benefit analysis.

§ 90.15 *Services rendered under age-specific programs.*

Comment: A number of commenters stated that the responsibility of a general program is not diminished by the existence of or referral to an age-specific program which provides the same service. Several commenters stated that the main thrust of the ADA is to make certain that the elderly receive their fair share of services, which requires full participation by both types of programs. Commenters cited several adverse effects of relieving a general program's obligation by using an age-specific program: separate and unequal treatment; overlending the age-specific program; and creating gaps of unserved populations.

Several commenters suggested that, to prevent duplication of services, a general program could be permitted to fulfill its obligations by referring people to a special program if: the general program could prove that the specific program's services were available; the general program used outreach to identify those ineligible for the specific program; the general program did not use more than its proportional share of funding as compared to the funding of the specific program; the general program did not deny services to anyone wishing to participate in its program.

Response: General programs may not restrict eligibility solely because of the existence of a similar age-targeted program if the result is a denial or limitation of services. A general program can focus its services by referring persons to existing age-targeted programs only if those actions do not result in a denial of services to the individual, or in the provision of lesser or different services. The recipient operating a general program should establish procedures to insure that a person referred to an age-targeted program in fact receives service.

§ 90.16 *Burden of proof.*

Comment: Several commenters supported the position that the burden is on the recipient to prove whether an age distinction or other action falls within an exception. A few commenters disagreed. Commenters in favor of placing the burden of proof upon the recipient stated that only the recipient has sufficient program knowledge.

Another commenter stated that the burden should be on the recipient only after a charging party makes a reasonable showing of discrimination. A few commenters agreed that the recipient should have the burden when the complaint concerns advancing age, but that the burden should shift to the complainant when he or she is denied the benefits of the program because he or she is too young.

Response. The final regulations continue to require that the recipient has the burden of proving that an age distinction or other action used in its program qualifies for one of the statutory exceptions.

HEW believes that the recipient is best able to demonstrate that an age distinction or factor other than age is entitled to an exception under § 90.14 or § 90.15. The recipient (rather than the complainant) is the party most knowledgeable about its program or activity, the normal operation of the program or activity, and any statutory objective governing the program or activity.

Subpart C—What Are the Responsibilities of the Federal Agencies?

§ 90.31 *Issuance of regulations.*

§ 90.31(d) *HEW approval of other agency regulations.*

Comment: A number of commenters supported the ADA's requirement that HEW review and approve the specific regulations issued by co-equal Federal agencies because this review will ensure that all agency regulations are consistent with both the ADA and the general regulations. Several commenters opposed a review role for HEW because HEW lacks sufficient knowledge of other agency programs to review their regulations effectively. Another commenter suggested the HEW seek clarification of its evaluation role from Congress.

Response: Under Section 306(a)(4) of the ADA, HEW is required to approve all agency age discrimination regulations. The final regulations have been changed to make clear that the regulations of each agency must be submitted to HEW and may not be published in final form until approved by the Secretary.

§ 90.31 *Mechanics and timetable for HEW review of other agency regulations.*

Comment: A few commenters suggested that interagency teams be established to assist HEW in reviewing regulations of other agencies. Several commenters expressed concern that the mechanics and the timetable for the review process are unclear and noted that there is insufficient time allowed in § 90.31 of the NPRM for HEW to complete the

review and approval of other agency regulations required by the ADA.

Response: HEW has involved in the development of these regulations an Interagency Task Force composed of those agencies affected by the ADA. This Task Force will continue to function during the development of specific regulations by each agency. The final regulations have been revised to require that each agency submit its final regulations to HEW at the end of 120 days for review and approval. An agency's final regulations may not be published until approved by the Secretary.

§ 90.32(f) *Appendix listing age distinctions.*

Comment: Several commenters suggested that the appendix containing existing age distinctions be published together with the agency's proposed regulations so that the public has an opportunity to comment on existing age distinctions as well as on the regulations proposed.

Response: For information purposes, HEW requires each Federal agency to publish, together with its final regulations, a list of age distinctions found in statutes and regulations. During the 12 months following the publication of its final regulations and appendix listing age distinctions, each agency is further required to review and evaluate against the tests and criteria outlined in §§ 90.13 and 90.14 all the agency's existing and proposed age distinctions. At the end of 12 months, each agency must publish in the Federal Register a report of this review indicating for each age distinction: (1) its elimination, or (2) a justification for its retention in agency regulations or, if not contained in regulations, its proposed adoption in regulation form.

§ 90.32 *Review of agency policies and administrative practices.*

§ 90.32 (a) and (b) *Twelve month review.*

Comment: A few commenters suggested that HEW be the sole agency responsible for evaluating the appropiateness of any age distinctions proposed by other agencies in their 12 month reviews, prior to the adoption of those age distinctions by regulations. A few other commenters suggested that HEW outline in the general regulations criteria for judging whether an agency may continue an age distinction so that these criteria are available to other agencies as they assess their age distinctions.

Response: HEW does not have the necessary knowledge of other agencies' programs to determine whether specific age distinctions are or are not appropriate. Agencies must justify the age distinctions used in their programs as lawful under the Act and these final regulations. HEW believes each agency is in the best position to assess which of its age distinctions should be retained or eliminated. The publication of each agency's assessment of its age distinctions and the accompanying opportunity for public comment on that assessment should provide information useful to agencies in reviewing their age distinctions. HEW will comment, where appropriate, on those distinctions during that public comment process.

§ 90.32(c) *Adopting age distinctions through regulations.*

Comment: Several commenters supported the position that only Congress has the authority to create age distinctions. These commenters opposed the adoption of age distinctions through agency regulations.

Response: Congress, through the ADA, has prohibited the use of age distinctions, with certain specific legislative exceptions. These exceptions permit age distinctions to be imposed not only through Congressional action, but also by way of agency regulations, policies and guidelines. HEW has required that in the case of federally imposed age distinctions, agencies must adopt those age distinctions by regulation under the Administrative Procedure Act (APA). In doing so, agencies must use the notice and comment procedure specified in 5 U.S.C. 553 of the APA.

§ 90.33 *Interagency cooperation.*

Comment: The commenters supported interagency cooperation for those recipients receiving funds from more than one Federal agency. They stated cooperation would eliminate duplication of enforcement procedures and reporting requirements. Commenters noted that the problem of duplication was particularly acute for State agencies, counties, and local governments receiving funds from a number of Federal agencies.

A number of commenters suggested that HEW be responsible for developing uniform government-wide procedures for complaint processing, compliance investigations, and enforcement proceedings. One suggested that given HEW's authority to review regulations, HEW should also act as a clearinghouse to review government-wide procedures.

Some commenters questioned what constitutes a "class of recipients," asking whether State agencies, counties or local governments would be considered a "class" for the purpose of designating a lead agency, and whether senior citizens could be considered a "class". [If so, would an Area Agency on Aging be an appropriate lead agency for that class?] Several commenters stated that criteria need to be established for designating the lead agency responsible for each class of recipients.

Response: HEW has revised this section of the regulations to provide further guidance in the setting up of a system of interagency cooperation. The revised § 90.33 provides that where two or more agencies provide Federal financial assistance to a recipient, the Secretary may designate one of the agencies as the sole agency for all compliance and enforcement purposes with respect to those recipients, except for ordering the termination of funds and the notification of appropriate committees of Congress.

§ 90.34 *Agency reports.*

Comment: Many commenters favored the targeted approach to data collection proposed by HEW because it minimizes the paper-work burden. Others supported a targeted approach but questioned what criteria would be used to select the data for targeting and collection. Some commenters opposed the targeted approach. They believe it will not provide sufficient information to meet the Act's reporting requirements because program participation and service population data are necessary to track age discrimination.

Some commenters opposed relying exclusively on complaints to satisfy the ADA data requirements because complaints may not reflect accurately the extent of age discrimination. Other commenters supported the use of complaints as part of a targeted data collection approach because complaints may help identify programs in which discriminatory practices are occurring.

Reponse: HEW believes that targeting is the most effective way to satisfy the ADA's reporting requirements without increasing the burden on recipients. The targeted approach does not rely exclusively on tracking complaints but recognizes that complaint data have been useful in uncovering patterns of discrimination in other civil rights statutes. In all cases, each agency should seek data that appear to be most useful in identifying age discrimination and that will impose the least burden on recipients.

§ 90.34(e) *Data requirements.*

Comment: Some commenters suggested deleting the data requirement in § 90.34(e) because it permits HEW to require potentially unlimited additional data without giving agencies fair notice of what data they will be expected to collect.

Response: This section remains unchanged. Under the ADA it is HEW's responsibility to review the performance of each agency in complying with the ADA. HEW is committed to exercising this responsibility in the least burdensome way while retaining the flexibility to require the data necessary to fulfill that responsibility.

Subpart D—Investigation, Conciliation, and Enforcement Procedures

§ 90.43 *What responsibilities do recipients and agencies have specifically to ensure compliance with the act?*

§ 90.43(b)(3) [renumbered § 90.43(a)(3)] *Providing information to beneficiaries.*

Comment: Several commenters said that the regulations should place more emphasis on informing citizens of their rights under the Act.

Response: HEW has made no change. The regulations require that each agency make available educational materials on the rights and obligations of beneficiaries and recipients. Agencies are free to use whatever methods they deem appropriate to accomplish this.

§ 90.43(c) [renumbered § 90.43(b)] *Self-evaluation generally.*

Comment: Several commenters stated that all self-evaluations should be subjected to a review, either by the specific funding agency or by an objective third party. Other commenters suggested that the funding agency spot check recipients' self-evaluations for compliance purposes. Generally commenters stated that self-evaluations alone would be insufficient to meet the ADA reporting requirements.

Several commenters expressed a need for guidelines for self-evaluations, and suggested the development of uniform guidelines for all Federal recipients. Most commenters urged the importance of keeping the self-evaluation simple, while a few supported a broader examination of recipients' policies and practices. A few commenters suggested that recipients seek assistance in completing their self-evaluations from young people and the elderly.

Response: HEW believes that the primary purpose of the self-evaluation is internal review by the recipient. The self-evaluation process is not intended to yield sufficient information to satisfy the ADA reporting requirements. However, funding agencies will be able to review recipient self-evaluations where they might provide useful information. HEW plans to issue self-evaluation guidelines for HEW recipients after the publication of HEW specific regulations. Other agencies may choose to use HEW's guidelines as a model. The self-evaluations are intended to be simple and straightforward, with each age distinction capable of being analyzed in a page or less. HEW's position is that agency regulations should avoid imposing conflicting requirements on recipients. Although the general regulation is silent on the question of public participation in the self-evaluation process, agencies have discretion to provide in their regulations for public participation in recipient self-evaluations.

§ 90.43(c) [renumbered § 90.43(b)] *Self-evaluation timetable and application.*

Comment: Most commenters stated that 18 months is an appropriate time for recipients to complete their self-evaluations. Some commenters stated that 18 months is too long and suggested that Federal agencies be required to review their age distinctions within six months after publication of their final regulations (rather than the 12 months allowed under § 90.32 of the proposed regulations). Recipients would then be required to complete their self-evaluations six months later, or one year from publication of the agency's final regulations.

Several commenters stated that restricting self-evaluations to recipients with 15 or more employees is reasonable. A few suggested including recipients with fewer than 15 employees. Some commenters stated that requiring self-evaluations from recipients with as few as 15 employees is unreasonable; cutoffs of 50, 100 or 500 were suggested. Alternative bases suggested for self-evaluations were the amount of funding received, or the number of people served by the recipient.

Response: HEW has retained the 18 month self-evaluation period because the Federal agencies need a year to analyze and review the age distinctions imposed in their programs through statutes and administrative actions. HEW expects recipients to use the information in these Federal agency reviews in their self-evaluations.

HEW has retained a cut-off based on the equivalent of 15 or more employees in the ADA self-evaluation requirement because it is consistent with self-evaluation requirements in other civil rights statutes and regulations. In addition, HEW has determined that it would be impractical to use the number of people served, or the amount of Federal financial assistance received, as a basis for requiring recipients to perform the one-time self-evaluation.

§ 90.43(d)(1)(i) [renumbered § 90.43(c)(1)(i)] *Complaints by organizations or groups.*

Comment: A few commenters suggested that the complaint procedure specifically cover group complaints. They defined group complaints as complaints by an organization representing older persons; e.g. on behalf of one or more individuals. Inclusion of this type of complaint would permit advocates for older persons to assert rights on behalf of many individuals who would be reluctant to do so on their own.

Response: The regulations do not prohibit this kind of complaint. A complaint may be made by an individual, a class, or by an organization on behalf of its members or on behalf of other persons.

§ 90.43(d)(1)(ii) [renumbered § 90.43(c)(1)(ii)] *Agency screening of complaints prior to mediation.*

Comment: Several commenters stated that there should be an investigation prior to assigning the dispute to a mediator. Frivolous complaints could be eliminated by this process and many legitimate complaints could be settled without progressing to a more formal procedure. Several commenters said that this investigation period should be 60 days in length. A few commenters expressed similar concerns but stated only that HEW should clarify the steps for initiating mediation and provide more information regarding the initial stages of the process.

Response: HEW believes that the present screening process is the most effective possible without resorting to immediate investigation, which would be time consuming and duplicative. Each agency will screen complaints for those programs it administers which receive Federal financial assistance. Screening will eliminate complaints about actions which are not covered by the ADA, and thereby reduce the number of groundless complaints which might otherwise go forward in the process.

§ 90.43(d)(2) [renumbered § 90.43(c)(2)] *Length of time for the complaint process.*

Comment: Many commenters were concerned with the length of time that was involved to process a complaint. Several commenters stated that specific time lines were needed for each step in the complaint procedure. Other commenters stressed that even a few months was too long a time, for the elderly to wait for complaint resolution.

Response: HEW is aware of the damaging effect of long drawn out complaint resolution procedures. It has adopted mediation and an informal investigation step as part of the complaint resolution process in an attempt to improve the responsiveness of that process. However, HEW has decided not to impose government-wide timeframes for every step of the complaint process. This is a drastic step to take in advance of any specific indication that there will be unusual problems of delay. Accordingly, no additional timeframes have been placed in the regulations.

§ 90.43(d)(3) [renumbered § 90.43(c)(3)] *Mediation—mandatory mediation.*

Comment: A number of commenters discussed the proposal to make mediation a mandatory step in the complaint process. Several commenters supported mandatory mediation; a few stated that mediation should be made mandatory only after a successful trial period. Several other commenters stated that mediation should not be a mandatory step. Those opposing mandatory mediation through age discrimination should not be subject to such a broad experiment that might diminish the effectiveness of the ADA.

Response: HEW believes that making the mediation process voluntary is not a reliable way of testing its effectiveness. The need to get away from the the traditional problems of complaint backlogs in civil rights enforcement requires us to carry out this effort. HEW has instead sought to rely on other safeguards such as the presence of a trained Federal mediator, the 60-day time limit, the policy of mediator confidentiality, the informality of the process and continuous monitoring of the process to insure that mediation is effective.

§ 90.43(d)(3) [renumbered § 90.43(c)(3)] *Mediation: Effectiveness of the mediation process.*

Comment: A large number of commenters addressed the issue of the effectiveness of the mediation process. While many commenters thought the process would be quick and effective in resolving complaints, others cited problems regarding possible harm to or discouragement of complainants which could make the process ineffective.

The major problems cited were:

(1) Complainants would be discouraged or intimidated from seeking their full rights through the formal administrative process;

(2) Mediation would impose a burden of expense upon the parties to the complaint, including travel expenses to the mediation site;

(3) Complainants might desire legal assistance but would be unable to afford the expense;

(4) Mediation would not always be appropriate for a complaint; and

(5) Mediation would impose another layer on the complaint process thereby delaying relief to the complainant.

Response: HEW has tried to structure the mediation process to protect the complainant and insure that valid complaints are pursued and successfully resolved.

The mediation will be conducted by a specially trained mediator who will explain the procedure to both parties. A complainant who does not believe that he is obtaining full satisfaction through mediation need not agree to a settlement. A complainant will have to wait no more than 60 days for the agency enforcement process to begin. This 60 days will count as part of the 180 day period which the agency has to resolve the complaint before a court action can be filed by the complainant.

The mediation process has been designed to minimize expenses to the parties. The mediator can travel to the location of the parties and the mediator's services will be paid for by the Federal government. The mediation process is designed to allow a party to participate in mediation without resort to an attorney and without having to build a formal legal case. Experience with other processes similar to the proposed mediation system suggest that the expense to the parties will not be significant.

These concerns about the effectiveness of the mediation process will be carefully monitored, as part of the 30 month evaluation of the use of mediation.

§ 90.43(d)(3) [renumbered § 90.43(c)(3)] *Should mediation be conducted by a single mediation agency or by each Federal agency subject to the ADA?*

Comment: A majority of the commenters favored having a single agency manage all mediation under the ADA rather than having agencies develop their own mediation capabilities.

Response: The final regulations provide that the Secretary shall designate one agency to be responsible for administering a centralized mediation process for all age discrimination complaints. A single agency insures uniform policy and practice, efficiency and centralized accountability for purposes of monitoring and evaluation. In the early stages of implementing the ADA, it would be particularly inefficient to have each Federal agency develop it own separate mediation capability.

§ 90.43(d)(3) [renumbered § 90.43(c)(3)] *Use of the Federal Mediation and Conciliation Service (FMCS).*

Comment: Most commenters supported using the FMCS to coordinate the mediation process. A few favored using a private mediation agency. Many commenters favored the use of private individuals as mediators at the local level rather than FMCS staff mediators. Some Federal agency commenters expressed a desire for additional information regarding the procedures to be used in managing the national mediation system.

Response: HEW has designated the FMCS to coordinate the mediation of ADA complaints. As is the case with every other aspect of mediation, the results of this decision will be closely monitored and evaluated as part of the 30-month review of these regulations. The FMCS is the only Federal government agency with extensive expertise in mediation. The Service has a national staff of more than 300 experienced full-time mediators located in field offices around the country.

As currently planned, mediators will be drawn from both the professional staff of FMCS and from among private citizens experienced in resolving community disputes, who will be trained by the FMCS. HEW and the FMCS intend to work closely with other Federal agencies to implement mediation.

§ 90.43(d)(3) [renumbered § 90.43(c)(3)] *Availability of qualified mediators.*

Comment: A number of commenters raised problems about obtaining mediators. A commenter stated that all parties should be allowed to approve or disapprove the mediator. Several commenters stated that older persons who are familiar with the problems of the elderly should be trained as mediators. This group would not be limited to mediating complaints of the elderly.

Several commenters stated that although mediation has been used in labor-management disputes, different methods would be required to deal with age discrimination. The mediator should have knowledge of age discrimination in program services and knowledge of alternatives available in the delivery of services. The different requirements in mediating discrimination complaints might require development of a corps of Federal program specialists trained in mediation.

Response: Mediation is proving useful in resolving a wide variety of disputes outside the traditional labor-management area. Mediators will be selected by the FMCS in order to insure their neutrality. All mediators selected to resolve age discrimination complaints will receive thorough training in the ADA and applicable regulations. Moreover, mediators will be drawn from both FMCS staff and from private citizens who have experience in resolving community disputes.

§ 90.43(d)(3) [renumbered § 90.43(c)(3)] *Length of the mediation trial period.*

Comment: A number of commenters stated that mediation should be used only on an experimental basis. Some suggested limiting the mediation experiment to geographic regions or Federal agencies. Several commenters stated that the trial period should be 30 months; a few others suggested 12, 15, 18 or 24 months.

Response: HEW is aware that the use of mediation to resolve complaints on this scale is highly innovative. Accordingly, close monitoring and evaluation are planned. However, the likelihood of success appears high enough, and the problems of traditional methods are serious enough, that mediation will be attempted nationwide rather than as a regional demonstration project.

The final regulations continue to provide for a review of the mediation experiment 30 months after these regulations are published. No complaint of age discrimination can be processed until final agency regulations are effective. Therefore, mediation will not begin until late 1979. As a result, the 30 month review will report on approximately two years of mediation.

§ 90.43(d)(3) [renumbered § 90.43(c)(3)] *Confidentiality of mediation.*

Comment: Some commenters were concerned with the adequacy of confidentiality protections in the mediation process. A few others suggested that reports of mediated settlements shoud have restricted availability.

Response: The confidentiality provision of the regulations has been changed to deal exclusively with the protection of the neutrality of the mediator and the public interest in the success of the mediation process. The parties must be able to speak freely in the mediation without fear that the mediator will testify or provide information in a later enforcement proceeding. The parties must not be bound in subsequent administrative or court proceedings by the statements made in mediation. The terms of any settlement agreed to in mediation will be sent to the agency which received the complaint originally.

§ 90.43(d) [renumbered § 90.43(c)] *Mediation of multiple jurisdiction complaints.*

Comment: A few commenters were concerned about how agencies would handle complaints that involved charges of multiple types of discrimination (e.g., age and race). They were concerned about the usefulness of mediation with this type of complaint. A few commenters stated that in such complaints, each charge of discrimination should be processed individually.

Response: The potential problem with the multiple complaint is that the ADA mediation procedure is not required in other civil rights areas. HEW expects that agencies will be able to separately mediate the age element of a complaint. A successful mediation might also resolve all the issues which gave rise to the dispute in the first instance. If a successful mediation failed to do this or mediation was unsuccessful, the agency could further process the complaint following its normal procedures for handling multiple jurisdiction complaints.

§ 90.43(d)(3) [renumbered § 90.43(c)(3)] *Initial efforts to resolve complaints.*

Comment: Several commenters were concerned that a mediation process would preclude initial efforts to informally resolve complaints.

Response: Nothing in the regulations prohibits informal resolutions between parties. However, once a formal complaint has been filed, the Federal agency has a responsibility to become involved in the process. The mediation procedure is an attempt to achieve informal resolution of complaints and to avoid lengthy and costly litigation.

§ 90.43(4)(d) [renumbered § 90.43(c)(3)(iii)] *Mediation time limits.*

Comments: Several commenters addressed the issue of the length of time which should be allowed for mediation. Some stated that the period for mediation should be 60 days; others recommended 30 days; 90 days or 120 days.

Response: HEW has changed the final regulations to allow a maximum of 60 days for mediation. The 60 day period begins as soon as the complaint is received by the Federal agency. The mediator has been given authority to terminate mediation early if it appears no agreement can be reached. The 60 day period leaves at least 120 days for agencies to investigate an unresolved complaint before the expiration of the 180 day time limit for exhaustion of administrative remedies. Because the mediation period is part of the 180 day time limit, a short mediation period is important if complaints are going to be resolved administratively rather than in court.

§ 90.44(a) *Compliance reviews.*

Comments: Several commenters supported a requirement for mandatory compliance reviews. A few other commenters supported the retention of a requirement for optional compliance reviews.

Response: Compliance reviews will be conducted at the option of the agency. HEW has modified the regulations to require that every agency include in its regulations a provision that it may conduct compliance reviews if the need should arise, regardless of the size of the agency or its programs.

§ 90.45 [renumbered § 90.45 and § 90.46] *Information requirements and prohibition against intimidation or retaliation.*

Comment: A commenter recommended that HEW set minimum record keeping requirements and specify a length of time for retention of records by recipients.

Response: HEW has specified only general data provisions and record keeping requirements because it is almost impossible to achieve the desired level of detail in general regulations. As a matter of policy, HEW is committed to minimizing record keeping requirements whenever possible by avoiding duplicative and unnecessary requirements. A time limit for record retention may be considered if specific record keeping requirements are implemented in the future.

§ 90.45 *Information requirements—assurances of compliance.*

Comment: Some commenters suggested that the regulations should require recipients to submit assurances of compliance with the ADA, similar to those required under other civil rights statutes.

Response: The regulations remain unchanged. There is no requirement in these regulations that each recipient submit a general assurance of compliance with the ADA. However, even without an assurance of compliance, the legal obligation of a recipient remains unchanged. HEW wishes to avoid imposing any unnecessary burden on recipients with respect to the compliance and enforcement procedures and accordingly has decided not to require assurances of compliance with the ADA.

§ 90.46 [renumbered § 90.47] *What further provisions must an agency make in order to enforce its regulations after an investigation indicates that a violation of the act has been committed?*

§ 90.46(d)(1) [renumbered § 90.47(d)(1)] *Deferral of funds.*

Comment: A commenter recommended that the deferral of funds apply only to the program area where non-compliance is found.

Response: Deferral precedes any final finding of non-compliance through an administrative hearing. The enforcing agency must have discretion to defer Federal financial assistance in any program affected by the agency's preliminary findings. There would be no basis for deferring any other Federal financial assistance. Accordingly, it is not necessary to make any change in the regulations.

§ 90.47 [renumbered § 90.48] *Alternate funds disbursal procedure.*

Comment: A commenter suggested that the regulations further clarify the process of selecting the alternate recipient when a recipient's funds have been terminated for noncompliance with the ADA. The question was asked "Should the alternate recipient have to satisfy the requirements of the grant statute?"

Response: The regulations permit an agency to disburse withheld funds to an appropriate alternate recipient. The recipient must demonstrate the ability both to achieve the goals of the Federal statute authorizing the program or activity and to comply with the agency's regulations issued under the ADA. Each Federal agency is authorized and required to publish its own regulations implementing this process for its programs. These regulations may consider all relevant factors to determine if the required ability has been demonstrated. HEW believes that any amplification on this process should be made in each agency's own regulations consistent with the relevant requirements of the ADA.

§ 90.50 *Exhaustion of administrative remedies.*

Comment: A few commenters stated that the time period of 180 days before civil action may commence should be reduced to 90 or 120 days. A major reason cited in support of a reduced period was that six months is too long for the elderly to wait.

Response: The period of 180 days is expressly required by the Age Discrimination Act and accordingly cannot be changed by the regulations.

Subpart E—Future Review of Age Discrimination Regulations

§ 90.61 and § 90.62 *Review of General and Agency Regulations.*

Comment: A few commenters stated that 30 months is too long a time to wait for a review of the regulations. Some commenters stated that 30 months is an adquate time but another commenter suggested that waiting longer than 30 months would be wiser.

Response: HEW intends to wait 30 months before asking for public comment on the effectiveness of these regulations. The 30 month time period was selected because use of a 30 month period will enable HEW to have information from at least one complete cycle of complaints, mediation, data collection and report preparation and time to analyze that information.

[FR Doc. 79-18301 Filed 6-11-79; 8:45 am]
BILLING CODE 4110-12-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Age Discrimination Regulations; Designation of Mediation Agency

The Secretary of Health, Education, and Welfare hereby designates the Federal Mediation and Conciliation Service as the agency to manage the mediation activities required under the age discrimination regulations issued by the Department set forth in 45 CFR Part 90 to implement the Age Discrimination Act of 1975.

Dated: June 5, 1979.

Joseph A. Califano, Jr.,

Secretary, Department of Health, Education, and Welfare.

[FR Doc. 79-18103 Filed 6-11-79; 8:45 am]

BILLING CODE 4110-12-M

Tuesday
June 12, 1979

Federal Register

Part IV

Department of Housing and Urban Development

New Community Development Corporation

Park Central New Town Project in Port Arthur, Texas; Proposal To Support Flood Plain Development

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

New Community Development Corporation

[Docket No. N-79-833]

Park Central New Town Project in Port Arthur, Texas; Proposal To Support Flood Plain Development

AGENCY: New Community Development Corporation, HUD.

ACTION: Notice of Proposal To Support Flood Plain Development. Park Central New-Town-In-Town.

SUMMARY: NCDC is proposing to approve the Park Central New Town project in Port Arthur, Texas, as a new community meeting eligibility standards of Title VII of the Housing and Urban Development Act of 1970 thereby making the project eligible for Community Development Block Grants from the new communities portion of the Secretary's Discretionary Fund and new communities assisted housing set-asides. The project is being developed in a hurricane flood-plain area. Public Notice is required by E.O. 11988.

FOR ADDITIONAL INFORMATION CONTACT:

Edwin Baker, Environmental Control Officer (Acting), New Community Development Corporation, 451 Seventh Street, S.W., Washington, D.C. 20410. Telephone: (202)755-5365 (not a toll free number).

In accordance with Executive Order 11988 (floodplain management guidelines) and HUD's draft regulations concerning Executive Order 11988, the New Community Development Corporation (NCDC), a corporate body within the Department of Housing and Urban Development (HUD), issues the following public notice of its proposed action:

Notice of Proposal To Support Floodplain Development, Park Central New Town In Town

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Description of Proposed Action

The New Community Development Corporation has issued a conditional commitment to New-Town-In-Town, Inc. (the Developer) for a "Determination of Eligibility" for a new community known as Park Central in Port Arthur, Texas (the project), in accordance with provisions of Title VII of the Housing and Community Development Act of 1970 (the Act). If approved by the Board of Directors of NCDC, the Developer and NCDC propose to enter into a project agreement and NCDC will determine that the project meets the eligibility standards for a new community under the Act. This determination will make the project eligible for grant assistance under Section 107(a)(1) of the Housing and Community Development Act of 1974 for Federal flood insurance eligibility. This determination enabled the Department to initially endorse a Title X insured mortgage for land acquisition and development in the project in December 1976. EIS and A-95 clearances by state and local agencies were attained prior to the endorsement of the Title X insured mortgage, and prior to E.O. 11988.

The final Environmental Impact Statement for Park Central was issued on December 12, 1975. While it is recognized that compliance with the National Flood Insurance Program (NFIP) does not assure compliance with E.O. 11988, the Secretary's determination of eligibility for Federal flood insurance was issued prior to Title X approval. Copies of the final EIS and the Secretary's determination are available for review at the New Community Development Corporation at HUD in Washington, D.C., and at the HUD Area Office loacted at 2001 Bryan Tower, 4th floor, Dallas, Texas (Telephone: (214) 749-1601).

Comments concerning this Notice are invited from all affected and interested parties. The comment period for the Notice will be 15 calendar days. Please send comments within 15 days to:

Edwin Baker, U.S. Department of Housing and Urban Development, New Community Development Corporation, Room 5186, Washington, D.C. 20410.

Telephone inquiries about this Notice may be directed to Edwin Baker, Acting Environmental Control Officer at (202) 755-5365.

SUPPLEMENTAL INFORMATION: The U.S. Department of Housing and Urban Development, New Community Development Corporation, Washington, D.C. proposes to approve the Park Central New-Town-In-Town project in Port Arthur, Texas, as a new community meeting the eligibility standards of Title VII of the Housing and Urban Development Act of 1970 thereby making the project eligible for Community Development Block Grants from the Secretary's Discretionary Funds and housing set-asides for new communities. The project is being developed in a hurricane flood plain area but the land is partially protected by a Hurricane Flood Control Project of the Army Corps of Engineers which is 85 percent complete and will be totally completed in 1981. In the event of a standard project flood (an occurrence with less than a 5 percent chance of happening in a given year; or, once in two hundred years) 30 percent of the project land is totally protected from flooding, 50 percent will pond to depths of 3'0" or less and 20 percent will pond to depths of 5'0" or less. 100 percent of the ponding above 3'0" would be on land used for open space, golf course, drainage canals or other similar uses. Of the balance of the project land, less than half will have any ponding and the maximum depth will be less than 3'0". No structures will be built below the ponding level according to the project agreement between HUD and the new town developer.

The New-Town-In-Town project area consists of 729 acres of a 1,600 acres new town within the city limits of Port Arthur. The present population of the entire 1,600 acres is approximately 2,300. As planned, the project has a completion goal of 12,000 people, 1,460 housing units of various types, and a mix of residential, commercial, institutional and open space land uses.

The Notice will describe the impact of the project development on the environment taking into account the implications of Executive Order 11988 relative to flood plain management guidelines. The Secretary of Housing and Urban Development has determined that Port Arthur meets all the conditions set forth in the National Flood Insurance Act of 1968 as amended by the Housing and Urban Development Act of 1974 (the new communities portion of the Secretary's Discretionary Fund). NCDC anticipates approving grant assistance of approximately $5.8 million over the next 2 years to finance construction of infrastructure in the project. The following analysis and findings concerning the project and the proposed action are made public in accordance with provisions of E.O. 11988.

Description of Project

The project is a 729 acre part of a 1,600 acre new town within the city limits of Port Arthur, Texas which has been construction since 1972. In December 1976, HUD initially endorsed a mortgage for insurance under Title X

of the National Housing Act for land acquisition and land development for the 729 acres. While the project is in a hurricane floodplain, it is partially protected by a substantially complete Corps of Engineers' Hurricane Flood Control Project. In the event of a standard project flood 30 percent of the project land is totally protected from flooding. 50 percent will pond to depths of 3'0" or less and 20 percent will pond to depths of 5'0" or less. The 1,600 acre development now has a population of approximately 2,300 people and $70,000,000 of public and private investment has occurred on site. NCDC's additional support for this project has been actively requested by the City of Port Arthur. When completed, the project will consist of a mix of residential, commercial, institutional, and open space land uses in accordance with an approved master plan.

Prior to issuance of E.O. 11988 on May 24, 1977, the public had received full notice and explanation of the project through the environmental impact assessment process. A final Environmental Impact Statement (EIS) for the Title X project (which is substantially the same project which the NCDC Board is expected to approve) was published by HUD on December 12, 1975. The local A–95 agency will receive a copy of this Notice. The NCDC Board will be relying on the 1975 EIS in taking the proposed action. A review of the significant facts considered in originally making the Title X decision can be found in that EIS.

Probable Environmental Impact of Proposed Action

Most land development in the project is expected to be financed through current and future Title X insured land development mortgages, as anticipated in the EIS. The primary effect of the proposed NCDC action is to enable some of the infrastructure to be financed through Federal grants instead of alternative sources of financing, thereby increasing the financial feasibility of the project, and making the project eligible for NCDC assisted housing set-asides. The type and location of development is not expected to be significantly changed from the planned development studies in the EIS and currently underway, except that there will be greater assurance of a substantial amount of low-and-moderate income housing (LMIH) included in the project.

Alternatives to the Proposed Action

Since the proposed action supports a project being developed in accordance with previously approved plans for federally-assisted land development, NCDC has only two alternatives to the proposed action—to assist the existing project or to not assist the project. These alternatives are discussed below:

(1) Do Not Assist—The project was eligible for the Title VII approval under all relevant regulations prior to the Executive Order. The project is underway and is likely to obtain enough funding to continue no matter what NCDC does. A decision not to provide NCDC assistance to the project solely on the basis of E.O. 11988 would not necessarily affect the ultimate physical development. Mitigating measures are required under Port Arthur's "Flood damage protection ordinance" and "Emergency plan for hurricanes or tropical storms" and Jefferson County's "Emergency Operations Plan". A NCDC decision not to assist would probably lengthen the project's development period, would not make provisions of housing for families of low and moderate income, and would prevent NCDC site plan and landscape provisions from being required.

(2) Make Substantial Modifications to the Development Plan Prior to Title VII Approval—Having reviewed the project development plan in detail prior to recommending the conditional commitment, NCDC found the plan sensitive to environmental and social concerns and found no need to recommend substantial modification. NCDC has assessed the factors relating to minimization of harm to lives, property, flood plain values, and restoration and preservation of these values. It has found that 100 percent of the site is protected from storm surge, 30 percent of the site protected from both surge and ponding and 70 percent subject to City, County, and Federal Regulations to protect people and property from harm in a shallow (less than 5') ponding situation. NCDC will require that prior to Board action, a firm plan for provision of housing for persons of low and moderate income be included in the agreements between the Developer and NCDC. In addition, since past actions have eliminated natural values, NCDC will require that additional site landscaping also be provided.

The following section describes the probable environmental impact of development in the project, including development financed through the grants, Title X mortgage insurance, and other sources.

Probable Environmental Impact of Development

The site under consideration is essentially a flat coastal prairie land that is almost devoid of trees. Until recently, the land had been unsuitable for development because it was unprotected by the City's levee system and, consequently, subject to flooding. Today, the land is partially protected by the nearly completed $76 million U.S. Army Corps of Engineers' Hurricane Flood Control Project scheduled to be completed in 1981. When the Corps has completed its flood protection system, approximately 70 percent of the project will remain in a ponding area. It can be expected that during a standard project flood a portion of the site (20 percent) will pond to a maximum depth of 5' with the majority of the area (50 percent) ponding to less than 3'. The complete site will be protected from wave damage from the standard project flood. The Housing and Urban Development Act of 1974 amended the National Flood Insurance Act of 1968 to provide that any community "that has made adequate progress, acceptable to the Secretary" on the construction of a flood protection system for the 100-year frequency flood, "will be eligible for Federal flood insurance". While it is recognized that compliance with the National Flood Insurance Program does not assure compliance with E.O. 11988, the Secretary of Housing and Urban Development has determined that Port Arthur meets all of the conditions set forth in the 1974 amendment, and, therefore, is eligible for flood insurance. The determination enabled HUD to initially endorse the Title X insured mortgage for land acquisition and development:

This previously undeveloped relatively close-in area can now be developed to fill the gap that has created urban sprawl and leapfrog development in the general area. Most of the areas surrounding the Park Central site have been developed to their capacities. Park Central constitutes the only large tract of vacant land under development by a single developer in the Port Arthur metropolitan area. This project provides an opportunity for the City of Port Arthur to capture a significant proportion of future growth within its corporate limits. Also, it offers amenities and employment opportunities that are not available in the older established neighborhoods.

There are no apparent adverse effects to the natural environment of major consequence or significance that cannot be avoided if the proposed project is

developed. The physical appearance of the land will change from its coastal state. However, the land had no delicate ecosystem and the site poses no great obstacles for development. The project will result in the minor loss to wildlife on site. It will remove existing scrub vegetation.

The social features of this area should not be drastically changed if this proposed project is implemented. It is true that all aspects of the human environment will be influenced by this project. The addition of 12,000 residents and the accompanying growth will affect the social and civic environment. However, the impact of these changes will be minimized by the long-term nature of the development plan.

The construction activities may temporarily disrupt the activities of some residents. Added movement of trucks and equipment associated with construction will result in temporary localized increases in noise and air pollution.

The general area around the proposed project is currently experiencing transition to a multiple-use center including residences, offices, and commercial facilities. This transitional process is expected to continue. This Title X project developed within the city limits will contribute to the urbanization of the land. Therefore, the use of the site proposed in the project action under consideration is in accordance with the maintenance and enhancement of its long-term productivity as an urban land resource.

Because of the large portion of the site that will be developed with single-family detached houses to be sold to individual purchasers, approval of this project would be expected to result in a commitment of the land resources to this type of urban development for at least 30 to 40 years.

Alternatives to the Planned Development

Since the Park Central site represents the single largest tract of undeveloped land that is under single ownership in the entire southern portion of the county, no other location for a project this size is feasible for the developer. Most of the area west of the site is undeveloped but lies within Aircraft Noise Zone #2 which the Department of Housing and Urban Development rates as normally unacceptable for residential development. The basic question concerns that highest and best use for the tract that will benefit social and environmental needs. Furthermore, the flexible zoning allows the developer to make changes as the market dictates.

Alternatives uses for the proposed tract evaluated in the project's EIS include the following:

(1) Total Commercial—The site is far too large and the market too small for the site to be entirely used for commercial purposes.

(2) Industrial—According to the Port Arthur *Comprhensive Plan,* most of the land west of the site will be used for industrial purposes. This land is adequate for a 25-year development. Thus, the project does not appear to have potential for industrial purposes. Without the amount of residential development proposed for the project the timely development of industrial land will be impossible. If the proposed site were developed as an industrial park, it would increase the area's already acute housing needs. Industrial development would probably increase air and water pollution levels and create some peak hour traffic problems. If feasible, industrial development would have a positive public fiscal impact, and would increase area employment opportunities.

(3) Institutional—Other than the Port Arthur Independent School District, no other educational institutions have expressed an interest in the land. Lamar University is located 15 miles to the north and Port Arthur College is approximately 4 miles to the south. The impact of such insititutional development would result in a negative public fiscal impact.

(4) Park and Recreation—The site, taken as a whole—has no particular potential for development or preservation as public open space. There is a 155 acre golf course in the middle of the development and a 60 park site south of the area. The developer also plans a greenbelt within the project. Park and recreation development would have a negative public fiscal impact and would not assist in solving the area housing needs.

(5) Conventionally Financed Residential and Commercial Development—This method of development financing has been the major source of growth in Port Arthur in recent years. The net impact of this alternative would be comparable to the proposed project, but would be less well-planned, less environmentally sensitive and less balanced racially and economically.

(6) Agricultural—The potential as an agricultural site is limited because it is subject to zoning restrictions set forth by the City of Port Arthur.

(7) Leave in Present Condition—The site's location, land value and property tax consequences would realistically eliminate this as a possible alternative once the Corps of Engineers Hurricane Flood Control Project is completed.

Reasons for Proposed Action

The following facts overwhelmingly outweigh any other in supporting the proposed action. Park Central is an existing federally supported project being built in conformity with Federal and local rules and guidelines. It is superior to any likely alternative land use. NCDC support for the project is being solicited by the City of Port Arthur.

The development of Park Central was cleared with state and local agencies through the EIS and A–95 processes prior to initial endorsement of the Title X insured mortage. The proposed NCDC action supports the continuation of that project.

The project has been designed to comply with Federal and local standards to minimize harm to property and occupants and storage of flood waters to prevent impact on other flood area residents. The Corps of Engineers' Hurricane Flood Control Project is 85 percent complete. The City of Port Arthur has enacted a "Flood damage prevention ordinance which requires siting of new construction at an elevation above the maximum ponding level for a standard project flood and flood proofing of all structures, and requires that all utility systems developed within such ponding areas also be protected from infiltration and outflow under base flood conditions. The city has also instituted a "Emergency plan for Hurricanes and Tropical Storms" to protect current and future residents from flood hazards. Through its project agreement NCDC will require landscaping and planning requirements which are intended to improve the quality of the living environment in the completed project. NCDC is also requiring the development of housing units for persons of low or moderate income to be constructed on the site to further insure that the project support the city's needs.

The natural and beneficial values of the site (except for flood water storage) have long been compromised. The area has been diked, vegetation and wildlife habitat associated with floodplain and wetlands are gone and the land has been drained with major canals and crossed by pipelines and roadways. In addition of significant portion of the 1,600 acre new town which includes the project has been developed. The flood water storage capacity will remain unchanged, and through careful design and landscaping some environmental

amenities will be added to what is now a barren site.

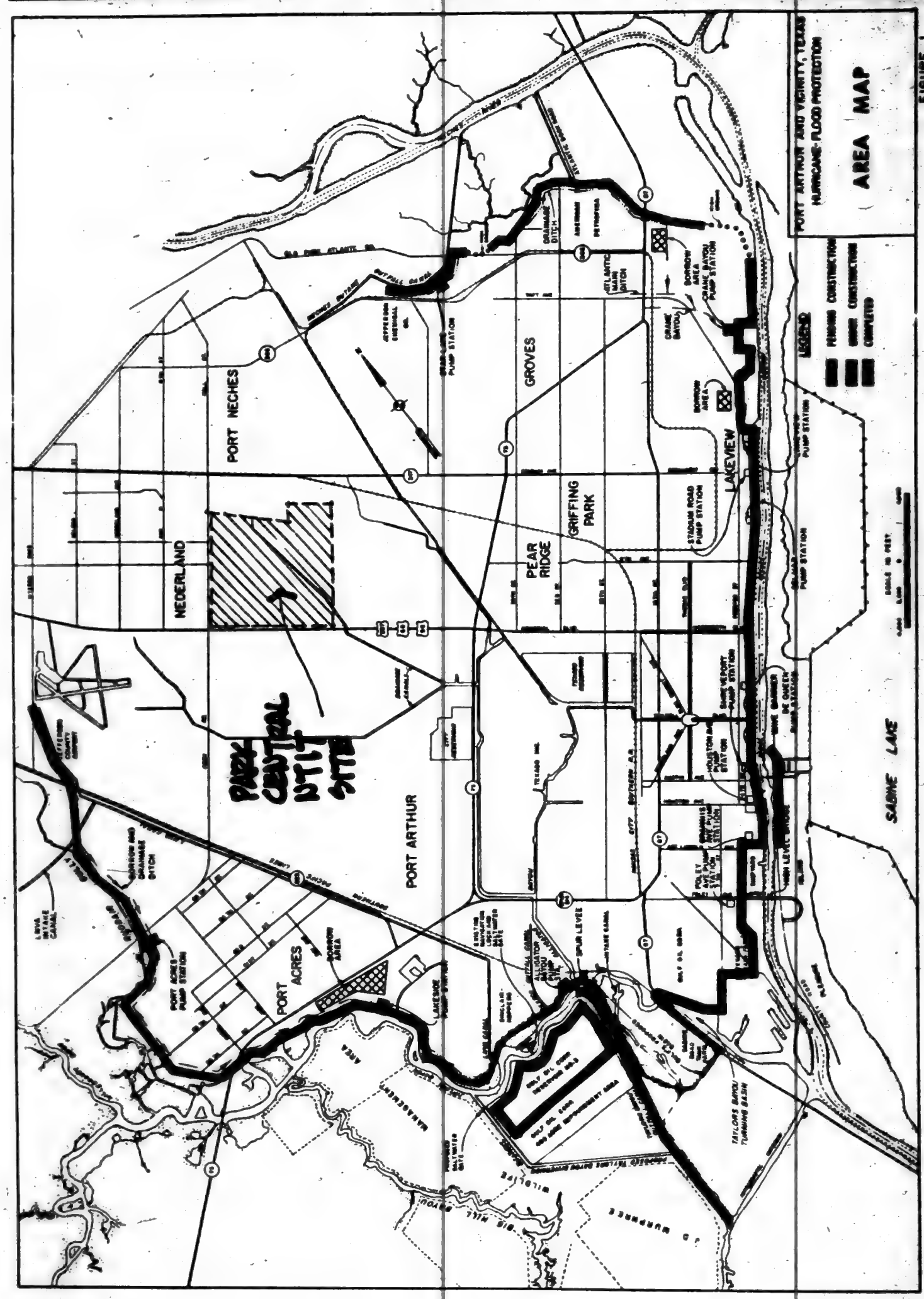
(Section 7(d) of the Department of HUD Act, 42 U.S.C. 3535(d))

Issued at Washington, D.C., June 8, 1979.

William J. White,

General Manager New Community Development Corporation.

BILLING CODE 4210-01-M



[FR Doc. 79-18513 Filed 6-8-79; 8:45 am]
BILLING CODE 4310-01-C

Tuesday
June 12, 1979

federal register

Part V

Federal Election Commission

Multicandidate Political Committees Index

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FEDERAL ELECTION COMMISSION

[Notice 1979-7]

Multicandidate Political Committees; Index

The Federal Election Commission today publishes a comprehensive Index of "Multicandidate Political Committees," which is defined by 2 U.S.C. § 441a(a)(4) of the Federal Election Campaign Act of 1971, as amended, as a political committee "* * * registered under Section 433 for a period not less than 6 months, which has received contributions from more than 50 persons, and, except for any State political party organization, has made contributions to 5 or more candidates for Federal office."

The Multicandidate Committee Index contains two sections—Party-Related Committees and Non-Party Related Committees—and has been derived from a review of the reports and statements filed with the Commission, the General Accounting Office, the Clerk of the U.S. House of Representatives and the Secretary of the U.S. Senate since April 7, 1972. Please note that all committees which had met the qualifications for Multicandidate Committee status prior to January 1, 1975, are determined to have been qualified as of January 1, 1975, the effective date of the 1974 amendments to the Federal Campaign Act.

In addition, 11 CFR § 100.14 states "all committees * * * established, financed, and maintained or controlled by the same corporation, labor organization, person, or group of persons, including any parent, subsidiary, branch, division, department, or local unit thereof, are affiliated." Therefore, committees have been included in this Index specifically identifying their connected or affiliated organization(s) as reported by each committee.

The Commission is publishing this notice of an Index as prescribed by 2 U.S.C. § 438(a)(6), requiring periodic publication in the Federal Register of an Index of Multicandidate Committees, including the date of registration of such committees and the committees' dates of qualification under 2 U.S.C. § 441a(a)(4). Copies of this Index are available upon request from the Federal Election Commission's Office of Public Records, 1325 K Street, N.W., Washington, D.C. 20463 for $5 per copy or by calling (202) 523-4181 or toll free 800-424-9530.

Any person who believes that a committee not included on this Index has, in fact, met the qualifications for multicandidate status, should so advise the Commission in writing and provide documentation as appropriate, so that the Commission can correct or update its records.

Para Persona De Hablar Espanol

Si usted tiene difficultades en entender el indice, escriba a Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463.

Dated: May 25, 1979.

Robert O. Tiernan,

Chairman, Federal Election Commission.

[FR Doc. 79-18181 Filed 6-11-79; 8:45 am]

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Tuesday
June 12, 1979

Federal Register

Part VI

Department of Agriculture

Animal and Plant Health Inspection Service

Ventilation of Animal Shipping Containers; Request for Information

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[9 CFR Ch. I]

Ventilation of Animal Shipping Containers; Request for Information

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of request for information relative to minimum ventilation standards for animal shipping containers.

SUMMARY: The purpose of this document is to give interested persons an opportunity to provide views, data, and other information regarding the minimum amount of ventilation area required of shipping containers used to transport warmblooded animals in commerce.

DATE: Written comments must be filed on or before August 13, 1979.

ADDRESSES: Written comments to the Deputy Administrator, USDA, APHIS, VS, Room 703, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782

FOR FURTHER INFORMATION CONTACT: Dr. Dale F. Schwindaman (301) 436-8271.

SUPPLEMENTARY INFORMATION: As a result of requests and comments from the National Committee on Animal Transport, and from other interested persons for reconsideration of the Department's present standards regarding the minimum ventilation requirements for shipping containers used to transport dogs and cats in commerce, the Department is soliciting the submission of data, views, and opinions relative to such ventilation requirements for shipping containers used to transport warmblooded animals in commerce. Although the requests regarding this subject were primarily concerned with dogs and cats, the Department will consider comments relative to other animals as well since the transporation standards contained in the regulations pertain to all warmblooded animals subject to the Animal Welfare Act. The Department's present standards regarding ventilation state that, "Primary enclosures, * * * used to transport live (various animals subject to the Act) shall be constructed in such a manner that * * *; (4) * * *, there are ventilation openings located on two opposite walls of the primary enclosure and the ventilation openings on each such wall shall be at least 16 percent of the total surface area of each such wall, or there are ventilation openings located on all for walls of the primary enclosure and the vehtilation openings on each such wall shall be at least 8 percent of the total surface area of each such wall; *Provided, however,* That at least one-third of the total area providing ventilation for the primary enclosure shall be located on the lower one-half of the primary enclosure and at least one-third of the total area providing the ventilation for the primary enclosure shall be located on the upper one-half of the primary enclosure; * * *." The National Committee on Animal Transport and other persons requested that the Department "increase the minimum ventilation requirement in shipping containers to 25 percent for the six months from April 1 through October 1."

The purpose of this notice is to give all interested persons an opportunity to express opinions and comments and to submit pertinent facts, data, or arguments, in writing, regarding the amount of ventilation available to animals in shipping containers. Such opinions and comments should contain information regarding any factual data which might be available concerning the adequacy or inadequacy of the present ventilation requirements, as well as, any suggested changes. Opinions and comments, which the Department has already received with regard to this issue, will be given consideration and persons who have provided them need not submit these again unless they wish to supply new or additional information to the Department.

All written submissions made pursuant to this notice will be made available for public inspection at the Federal Building, Room 703, 6505 Belcrest Road, Hyattsville, Maryland, during regular hours of business (8 a.m. to 4:30 p.m., Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

Dated: June 7, 1979.

Norman L. Meyer,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 79-18000 Filed 6-11-79; 8:45 am]

BILLING CODE 3410-34-M

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Tuesday
June 12, 1979

Part VII

Department of Housing and Urban Development

Office of Assistant Secretary for Housing—Federal Housing Commissioner

Section 8 Housing Assistance Payments Program for New Construction

Federal Register

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[24 CFR Part 880]

[Docket No. R-79-663]

Section 8 Housing Assistance Payments Program for New Construction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, (HUD).

ACTION: Proposed rule.

SUMMARY: The regulation governing the Section 8 new construction program is being revised to accomplish three major objectives. First, the language of the regulation has been simplified and the format altered to make the regulation easier to read and use. Also, the regulation has been reviewed to make sure that all necessary material is included and that material which is not appropriate for inclusion no longer appears. Second, rent, cost and amenities limitations, and requirements for cost justification of rents in certain cases, have been added in order to control and reduce the costs of the program. Third, processing changes have been made to assure coordination of Section 8 and HUD mortgage insurance programs with fewer developer submissions and to reduce and level out field office workload in order to improve the efficiency and quality or processing.

In addition, marketing requirements are revised so that owners of non-elderly family projects located in non-impacted jurisdictions will adopt and implement a marketing plan for outreach to persons residing in impacted jurisdictions.

This regulation does not apply to projects developed under other Section 8 regulations including Parts 861, 882, 883 and 885, except as provided in those Parts.

COMMENTS DUE: August 13, 1979.

ADDRESS: Comments should be filed with the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: George Hipps, Office of Multi-family Housing Development, Room 6128, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, 202-755-5720. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Since this is a proposed regulation, it will not be implemented until after it is published for effect. The Department is greatly interested in receiving comments on all of the proposed changes so that they may be carefully considered in developing the final regulation. The major change included in the proposed regulation are discussed below.

Language and Format

A primary purpose of this proposed revision of Part 880 is to simplify the language of the regulation and generally to improve readability and ease of use. A brief summary has been added as Subpart A so that the general concepts of the program can be understood without reading the entire regulation. To improve usability, the remainder of the regulation has been divided into various segments which generally flow chronologically from proposal submission through project occupancy and management.

In order to aid in understanding the program, the proposed regulation makes several changes in the basic terms used to describe the rent and assistance concepts of the program.

1. The term "total housing expense" has replaced the term "gross rent" which was confusing because the utility allowance (formerly "allowance for utilities and other services") making up part of the gross rent was not rent at all but rather an estimate of tenant-paid utilities and other services not included in the contract rent. Total housing expense is the sum of the contract rent and utility allowance, if any, for a unit.

2. The term "total family contribution" has replaced the term "gross family contribution." It consists of the "tenant rent," a new term which has been added to describe the portion of the total family contribution payable directly by the family to owner, and any utility allowance for the unit the family is leasing.

3. The term "housing assistance payments" includes two payments—the "housing assistance payment to the owner" and in some cases an additional "housing assistance payment to the family." The housing assistance payment to the owner for a leased unit is the difference between the contract rent and the tenant rent described in number 2 above. An owner may also receive a housing assistance payment for a vacant unit. An additional housing assistance payment to the family is made only if the utility allowance described in number 1 above is greater than the total family contribution, in which case the family is paid the difference between the two in order that the allowed total family contribution is not exceeded.

With these new terms, the basic rent and assistance concepts of the program can now be expressed in several simple formulas:

(1) Total housing expense = contract rent + utility allowance.

(2) Total family contribution = tenant rent + utility allowance. (Where the utility allowance is greater than the total family contribution, the tenant rent is 0 and housing assistance payment to family = utility allowance − total family contribution.)

(3) Housing assistance payment to owner = contract rent − tenant rent.

(4) Housing assistance payments (to owner and to family, where applicable) = total housing expense − total family contribution.

Several other terms have been introduced or revised for purposes of clarification or simplification. For example, the proposed regulation now uses "contract administrator" to describe either HUD or the PHA as the party contracting with the owner for housing assistance payments.

Cost Containment

In the interest of providing housing at the lowest possible costs and rents, and thereby serving more families with available funding, the proposed regulation includes the addition of several major cost containment features.

1. *Revised Limitation on Rents Including Cost Justification.* Although rent reasonableness has been a major determination of Section 8 project acceptability since the inception of the program, it has been implemented mainly through HUD handbooks, and an adequate explanation has never been included in the regulation. In addition to explaining rent reasonableness, the proposed regulation includes more stringent standards in determining the reasonableness of rents.

The current rent reasonableness test allows rents in Section 8 projects to exceed rents for comparable unassisted units by up to 15 percent without cost justification of any kind (to compensate for increased security and management costs for family housing, and the additional costs for management and special amenities and design features for elderly housing, and for higher financing costs for all assisted housing), and by anadditional 5 percent with cost justification. Two changes have been made in this area: (1) the proposed

reasonableness test would permit Section 8 rents to exceed comparable rents by a maximum of 10 percent, and (2) any rents above comparable rents would have to be justified by cost estimates during processing and by cost certification at the time the project is completed. Small and partially-assisted projects for non-elderly families would be exempt from this cost justification.

These changes, as well as the continuation of current Fair Market Rent limitations, are contained in Section 880.204(b). These revisions represent a major policy change which is expected to help avoid excessive expenditures under this program.

2. *Limitation on Replacement Costs.* To aid in controlling costs and assuring that Section 8 projects will be of "modest design," limits on project replacement costs have been included in § 880.204(d). For the purpose of obtaining comments, the numerical limits are included in the proposed regulation; however, the final regulation will state that the limits will be established initially, and updated periodically thereafter, by notice to the field offices.

The numerical limits as proposed are high enough to allow the use of all HUD mortgage insurance programs. Also, the proposed regulation contains provisions similar to HUD mortgage insurance programs which provide for increases in the limits in high cost areas and additional increases in Alaska, Guam and Hawaii.

This limitation will require the submission of a replacement cost estimate by the developer at the preliminary proposal stage and a certification of actual cost after completion of the project, except in the case of partially-assisted projects for non-elderly families which are exempt from the limitation because of their predominantly unassisted nature.

3. *Limitation on Amenities.* The current regulation does not expressly exclude amenities or design features considered luxurious, and some fear has been expressed that luxury level projects could result under the program. The proposed regulation prohibits the inclusion of amenities or design features which would exceed the standards of modest quality housing in the area in which the project is proposed. Partially-assisted projects for non-elderly families are exempt from this limitation because of their predominantly unassisted nature. See § 880.204(e).

4. *Amendments.* The Department may include in the final regulation provisions designed to reduce the volume of amendments to Section 8 new construction projects. One change currently under consideration would place a cap on the percentage increase allowable beyond the point of initial reservation of funds. The Department invites the public to comment on this potential change as well as to suggest alternative measures for improving control of amendments.

Limitation on Distributions

Section 880.205 of the proposed regulation limits the distributions that can be made to profit-motivated owners out of surplus project funds, with different rates of return for syndicated and non-syndicated owners, and for family and elderly housing. The Department believes that a lower rate of return for syndicated owners is justified by the fact that in a case of syndicated ownership a substantial profit is received initially. Accordingly, HUD believes that a lower rate of return in these cases provides sufficient incentive to promote development. The higher rates of return for family projects are intended to provide additional incentive for developers to provide this "hard to get" type of housing.

The proposed rates of return are at levels similar to those used by many state housing finance and development agencies participating in the Section 8 program. For non-syndicated owners, the permitted rate of return after the first year will be applied to total housing expense, so that the amount of the return will keep pace with annual increases in total housing expense.

Return is to be calculated annually, and shortfalls in one year may be paid from excess funds accumulated in the next five years.

The appropriate FHA programs regulations will be amended by the addition of a provision stating that distribution of project funds to mortgagors and the use of funds remaining after distribution will be governed by the Part 880 regulation in those cases where an insured project receives Section 8 assistance.

Pipeline Processing

The proposed regulation, in § 880.302, requires that previously submitted approvable proposals "in the pipeline" which have not been funded be reviewed first when any new contract authority becomes available. This will both reduce the level out field office workload by requiring the offices to consider previously submitted, high quality proposals before issuing the Notification of Fund Availability soliciting the submission of new proposals which would require full reviews. These provisions are contained in § 880.302.

Preapproved Sites

Currently, requests for preapproved sites may be submitted at any time. Such requests may be received when no contract authority is available, or when the field office has little time to review such requests. Also, scattered submissions preclude comparison of requests. The proposed regulation (§ 880.303) states that to the extent feasible such requests should be submitted early in the fiscal year. The purpose is to enable field offices to compare and approve requests prior to publication of the Notification of Fund Availability.

The proposed regulation also permits local government selection of developers on a competitive basis for preapproved sites acquired with Community Development Block Grant (CDBG) funds.

Finally, in order to reduce field office processing, projects on preapproved sites not subject to competitive selection may skip the preliminary proposal stage. The first submission would be comparable to a final proposal.

NOFA

Under current procedures, a field office issues various Notifications of Fund Availability (NOFAs) throughout the year requesting the submission of proposals for the various allocation areas within its jurisdiction. The process is repetitive and time-consuming for the field office, and occasionally permits NOFAs to be deferred until so late in the fiscal year that proper processing and selection become difficult. Also, developers are frequently unaware of when NOFAs will be issued for areas in which they are interested and, therefore, are unable to begin preparing proposals in advance of the NOFA.

Section 880.304 of the proposed regulation requires a single publication which will provide notice that the field office will accept proposals for the various allocation areas within its jurisdiction. Specific information for each allocation area will be contained in a detailed NOFA which will be provided by the field office on request.

Proposals for projects for non-elderly families will be accepted as long as contract authority remains available and will be reviewed on a monthly cycle. Proposals for projects for the elderly will be accepted only up to a set deadline date. The reason for the differentiation between proposals for family and elderly projects is the

relatively small number of proposals for family projects.

Small and Partially-Assisted Projects for Non-Elderly Families

In order to aid in deconcentration of assisted family housing, and thereby increase economic integration while at the same time lessening the impact of such housing on a neighborhood, the proposed regulation contains exemptions from program requirements and special preferences to encourage development of small projects for non-elderly families (20 units or fewer) and partially-assisted projects for non-elderly families, i.e., projects of more than 50 units of which 20 percent or less are assisted under Section 8.

1. *Small Projects.* Exempt from cost justification requirement of § 880.204(b)(2) and limitation on distributions of § 880.205. Special preferences in selection for technical processing (§ 880.306(b)) and ranking (§ 880.307).

2. *Partially-Assisted Projects.* Exempt from cost justification requirement of § 880.204(b)(2), limitation on replacement costs of § 880.204(c), limitation on amenities of § 880.204(e) and limitation on distributions of § 880.205. Special preferences in selection for technical processing (§ 880.306(b)) and ranking (§ 880.307).

Changes in Selection Procedures

The current regulation permits field offices to (1) place all acceptable proposals in technical processing and then rank all those found approvable in order to make selections or (2) identify clearly superior proposals, place only those clearly superior proposals in processing, and select those projects without further comparison to any others submitted. In some cases, field offices have processed far more proposals than could be funded, which creates costly delays to both the field office and the prospective developers. In other cases, where the clearly superior standard was used to reduce the processing burden on the field office, it was not applied in a consistent manner because it was not defined but was left to subjective judgment.

The proposed regulation continues the requirement for a preliminary evaluation of all proposals. If the number found acceptable for further processing substantially exceeds the number which can be processed expeditiously, the field office is authorized to reduce the number of proposals to be placed in technical processing by the use of specified comparison factors (see § 880.306(b)) instead of the clearly superior standard. This approach assures that competition is maintained, and a pipeline of approvable proposals is identified, without causing undue delay and processing burden.

Improved Coordination of Section 8 and Mortgage Insurance Programs

The proposed regulation has eliminated any request at preliminary proposal for special submissions for projects requesting mortgage insurance. At later stages of processing, all duplication of documents and reviews between the two programs has been eliminated. Section 8 documents and processing will constitute only a minor addition to the HUD mortgage insurance program requirements. (See §§ 880.306(d) and 880.306(b).)

Review of Architectural Drawings

The proposed regulation requires field office review of all final architectural drawings and specifications to assure that excessive amenities are not included. (See § 880.310.) HUD also reserves the right to review on a case-by-case basis for compliance with HUD Minimum Property Standards; this review is now and will continue to be done for all HUD mortgage-insured projects as part of mortgage insurance processing.

Site and Neighborhood Standards Unchanged

The proposed regulation does not alter the current site and neighborhood standards. Revisions to these standards have been published for comment. Comments have been received and are currently under study. When new standards are published, they will replace the standards contained in this regulation.

Rent Increase During Construction

The current regulation prohibits rent increases during the construction period except in very limited circumstances. A number of requests for waivers of this provision have been received, and many have been granted because of the unforeseeable nature of the circumstances which occasioned the requests and the hardships which would result if increases were not granted. The proposed regulation would permit rent increases during construction under certain circumstances described in § 880.403. These provisions are similar to, but not the same in all respects as, the current bases for mortgage increases under HUD mortgage insurance programs.

Contract Provisions

Two major changes in the Housing Assistance Payments Contract are included in the proposed regulation. First, the provision for an initial term of five years renewable at the sole option of the owner for up to the maximum total term of the Contract has been deleted. Under § 880.502 of the proposed regulation, the Contract will be executed for a single term without optional renewals. The reason for this change is to assure that units built under the Section 8 program remain available as assisted housing for the total term of the Contract. The second change, in § 880.504, has the same purpose. It places a 10 percent limitation on the leasing of assisted units to ineligible families without the prior approval of HUD and provides for appropriate remedies, including a reduction of the number of units covered by the Contract.

A new provision is included in § 880.501(a), similar to a provision in 24 CFR, Part 811. It permits execution of the Contract upon acceptable physical completion of the project, even though evidence of completion in other respects is not yet acceptable. In such cases, however, and until acceptable completion of all such other requirements, housing assistance payments will be limited to the amount of debt service, and rent-up and occupancy will be subject to field office conditions.

Changes have been made in § 880.502(a) to limit the availability of a 40-year maximum Contract term to projects which:

(1) Are not financed with the aid of a loan insured, co-insured, made, guaranteed or intended for purchase by the Federal Government,

(2) Are owned or financed by a loan or loan guarantee from a state or local agency,

(3) Are intended for occupancy by non-elderly families, and

(4) Are located in an area designated by HUD as requiring special financing assistance.

Increased Housing Opportunities for Non-elderly Families Residing in Impacted Jurisdictions

The revised regulation includes new provisions under which owners of non-elderly family projects that are located in non-impacted jurisdictions will be required to adopt and implement a marketing plan to promote occupancy in these projects by families living in impacted jurisdictions.

An impacted jurisdiction is defined in § 880.201 as a jurisdiction (smallest unit of general local government) in a Standard Metropolitan Statistical Area (SMSA) where the ratio of lower income families to total families is materially higher than the ratio of lower income families to total families for the entire SMSA.

The objective of these provisions is to help achieve the Departmental policy of increasing housing opportunities for lower income families, and to promote the objective contained in the Housing and Community Development Act of 1974, as amended, for spatial deconcentration of housing opportunities for lower income families and reduction of isolation of such families.

These provisions will be coordianted with other HUD actions to be taken in the near future with respect to housing and community development programs aimed at promoting mobility and increased housing choice. This will involve participation by public housing agencies, local government community development program agencies, area-wide planning organizations, and nonprofit and other private sector agencies and organizations concerned with these objectives.

Section 880.308(a) provides that final proposals for non-elderly family projects located in non-impected jurisdictions will contain a marketing plan to achieve occupancy of units by families from impacted jurisdictions. The plans will include activities and efforts needed to achieve an appropriate level of initial and subsequent occupancy by such families. This would be similar to the affirmative fair housing marketing activities pursuant to current requirements for achieving occupancy by minority households.

Section 880.601(a) provides that initial marketing to impected area families is to begin one month prior to marketing to non-impacted area families. However, applications from such families will not be accepted until the date of initiation of marketing to other families, which date will also be the announced date for acceptance of applications from all applicants.

Section 880.311(c) provides for HUD notification of PHAs, community development agencies, metropolitan-wide clearinghouses, and fair housing organizations as to projects that are about to begin construction. These agencies may then inform impacted area families who may be interested in occupying the housing. Owners will contact these agencies again for specific referrals during the initial and subsequent marketing periods.

As further incentive for owners to meet these requirements and implement effective marketing plans, the ranking system for selecting among competing proposals established pursuant to § 880.307(b) will include the extent of previous experience or other evidence of competence of the owner and other participants in the development of non-elderly family housing, and in marketing units located in non-impacted jurisdictions to families from impacted jurisdictions subsequent to the establishment of this requirement. These same factors will also be used in the selection of proposals for further technical processing as provided in § 880.308(b).

In addition, compliance with the various marketing requirements established pursuant to § 880.601 is one of the conditions for making vacancy payments to owners under § 880.611.

HUD intends to monitor compliance with these requirements and with the affirmative fair housing marketing requirements through the management review checklist in the appropriate Section 8 handbooks. This will focus on reviews of initial and subsequent marketing activities and the records of owners as to the race and place of previous occupancy of both applicants and occupants of projects, for comparison with the marketing standards established pursuant to § 880.308(a)(4) and (5).

Residency Requirements and Preferences

Section 880.603(b)(1) prohibits residency requirements and preferences in establishing criteria for the selection of tenants. This provision is being added to the regulation as part of the Department's efforts to promote the objective of spatial deconcentration of housing opportunities for lower income families.

Project Reserves

Two project reserves, an operating deficit escrow and a replacement reserve, have been added in § 880.602. Experience with both HUD mortgage insurance programs and the state agency program indicates that reserves are an important form of insurance against default on the basis of operating shortfalls during the early years of a project and extraordinary maintenance, repair and capital costs in later years.

The operating deficit escrow is set at 2 percent of total replacement cost for all profit-motivated owners; there is no escrow requirement for nonprofit owners. One-half of the amount escrow will be released at the end of the third year of project operation and the remainder at the end of the fourth year.

The replacement reserve is to be built up by annual deposits equal to 5 percent of total housing expenses for elderly projects and 7 percent for non-elderly family projects. Total housing expense was used as the basis for these annual deposits to the replacement reserve rather than replacement cost because it reflects cost increases over time. The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. Should the reserve achieve that level, the rate of deposits may be reduced with the approval of HUD. On the other hand, should withdrawals from the reserve and projected requirements make this necessary, higher rates of deposit may be required by HUD from time to time.

Termination of Tenancy and Modification of Leases

The provisions regarding termination of tenancy have been expanded considerably. Section 880.607 now specifies that a tenancy may be terminated by the owner only for good cause and provides detailed notice requirements. This section also contains provisions concerning modification of leases as of the end of any lease term.

Other Management Changes

1. Section 880.601(d) adds a requirement for the submission annually of audited financial and operating statements so that HUD can assure that a project is being properly managed.

2. Section 880.603(c) provides that owners will use their best efforts to achieve occupancy by families with incomes averaging at least 40 percent of the median income in the area for the purpose of promoting economically-mixed housing as stated in Section 8(a) of the U.S. Housing Act of 1937, as amended.

3. Section 880.603(d) requires annual reexamination of the incomes of all assisted families, including the elderly. Currently, only biennial review is required for elderly families.

4. A new provision is added permitting a family to report at any time a change in income or other circumstances that would result in a decrease of its required family contribution. However, an owner may not require a family to report increases in income between scheduled reexaminations.

5. Section 880.608 contains a requirement for a security deposit from

the tenant, rather than the permissive provision included in the current regulation.

Related Section 8 Changes

1. *Other Section 8 Regulations.* The program regulations for substantial rehabilitation (Part 881) and housing finance and development agencies (Part 883) are currently in the process of being revised also. Each of these regulations will reflect the revised new construction regulation (Part 880), particularly as it relates to major programmatic changes such as the addition of new cost containment factors. In addition, the regulations will contain provisions which pertain to the unique aspects of the individual programs.

2. *Mobile Homes.* This regulation does not include provisions for a Section 8 program which would assist mobile home owners in renting space in newly-constructed mobile home parks, as authorized in Section 8(j) of the United States Housing Act of 1937 which was added by the Housing and Community Development Amendments of 1978. Comments on such a program are invited at this time to assist the Department in developing a proposed regulation.

Applicability of Proposed Regulation

1. The revised Part 880 will apply to all proposals for which a notification of selection was not issued before the effective date of the revision. Where a notification was issued for a proposal before the effective date, the revised Part will apply if the owner notifies HUD within 60 calendar days that it wishes the revision to apply and promptly brings the proposal into conformance.

2. Subparts E and F will apply to all projects for which an Agreement was not executed before the effective date of the revision. Where an Agreement was so executed:

(a) The owner and HUD may agree to make the revised Subpart E applicable and to execute appropriate amendments to the Agreement and/or Contract.

(b) The owner and HUD may agree to make the revised Subpart F applicable (with or without the limitation on distribution) and to execute appropriate amendments to the Agreement and/or Contract.

3. However, § 880.607, Termination of Tenancy and Modification of Leases, will apply to all projects, including those for which an Agreement or Contract was executed before the effective date of the revision.

4. In the interest of uniformity of management standards in Section 8 new construction projects, the Department is exploring the extent to which Subparts E and F should be made applicable in the final regulation to all projects, consistent with the rights of owners under existing Contracts. Comments are specifically invited on this matter.

Inapplicability of NEPA

A finding of inapplicability regarding the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this finding of inapplicability will be available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

Accordingly, it is proposed to amend Part 880 in its entirety as follows:

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

Subpart A—Summary and Applicability

Sec.
880.101 General.
880.102 Processing.
880.103 Construction and management.
880.104 Applicability of revised regulation.
880.105 Applicability to proposals and projects under 24 CFR, Part 811.

Subpart B—Definitions, Project Eligibility and Other Requirements

880.201 Definitions.
880.202 Project eligibility.
880.203 Fair market rents.
880.204 Limitations on contract rents, replacement costs and amenities.
880.205 Limitation on distributions.
880.206 Site and neighborhood standards.
880.207 Property standards.
880.208 Financing.
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Subpart C—Proposal Submission to Start of Construction

880.301 Allocation of contract authority to field offices.
880.302 Procedures for resumption of processing of proposals and preapproved site requests.
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880.304 Publication of NOFA and receipt of proposals.
880.305 Contents of preliminary proposal.
880.306 Preliminary evaluation and technical processing.
880.307 Selection of proposals and use of remaining or additional contract authority.
880.308 Contents of final proposal.
880.309 Review of final proposals.
880.310 Submission and review of working drawings, architect's certification and requested changes.
880.311 Execution of agreement (and ACC if applicable).

Subpart D—Construction Period and Cost Certification

880.401 Timely performance of work.
880.402 Inspections during construction.
880.403 Increases in contract rents or utility allowances before contract execution.
880.404 Project completion.
880.405 Cost certification and adjustment of contract rents.

Subpart E—Housing Assistance Payments Contract

880.501 The contract.
880.502 Term of contract.
880.503 Maximum annual commitment and project account.
880.504 Reduction of number of units covered by contract.
880.505 Contract administration and conversions.
880.506 Default by owner (private-owner/HUD and PHA-owner/HUD projects).
880.507 Default by PHA and/or Owner (Private-Owner/PHA Projects).

Subpart F—Management

880.601 Responsibilities of owner.
880.602 Project reserves.
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880.609 Adjustments of contract rents.
880.610 Adjustment of utility allowances.
880.611 Conditions for receipt of vacancy payments.
880.612 Reviews during management period.

Subpart A—Summary and Applicability.

880.101 General.

(a) *Purpose.* The purpose of the Section 8 program is to provide lower-income families with decent, safe and sanitary rental housing through the use of a system of housing assistance payments. This Part contains the policies and procedures applicable to the Section 8 new construction program. In addition to this regulation, Section 8 new construction assistance may also be made available through State housing finance and development agencies (24 CFR, Part 883, Subparts A–D), in connection with financing by the Farmers' Home Administration (24 CFR, Part 883, Subparts G and H) or in connection with direct HUD loans for housing for the elderly or handicapped (24 CFR Part 885). The assistance may be provided to public housing agency owners or to private owners either directly from HUD or through public housing agencies. Section 8 may also provide assistance in substantially

rehabilitated housing (24 CFR, Part 881) or in existing housing in acceptable condition or needing only moderate rehabilitation (24 CFR, Part 882). This Part does not apply to projects developed under other Section 8 program regulations, including Parts 881, 882, 883, and 885, except to the extent specifically stated in those Parts.

(b) *Housing Assistance.* Under the Section 8 new construction program, monthly payments are made directly by the contract administrator (HUD or a public housing agency) to the project owner to assist an eligible family leasing an assisted unit or for vacancies in certain cases. These payments, known as "housing assistance payments," are made pursuant to a Housing Assistance Payments Contract, which is executed upon satisfactory completion and HUD acceptance of a project and which has a maximum term of between 20 and 40 years. This Contract is discussed in Subpart E.

(c) *Tenant Rents and Eligible Families.* In addition to the housing assistance payment, the project owner receives a tenant rent directly from the eligible family occupying an assisted unit. The total amount received by the owner for rent is called the contract rent and is set forth in the Contract. "Eligible families," including elderly and handicapped individuals, must have incomes within the HUD specified limits (based on 80 percent of median income for the area), and pay between 15 percent and 25 percent of their income, as adjusted in accordance with HUD regulations for housing (including utilites).

(d) *Rent, Cost and Amenities Limitations.* In the Section 8 new construction program, rents, replacement costs and amenities must comply with limitations contained in Subpart B. These limitations serve to establish the modest nature of housing assisted under the program and to assure that the rents in Section 8 housing are reasonable in relation to comparable unassisted housing in the area. After occupancy, rents will be adjusted to reflect changes in the costs of owning and operating rental housing.

(e) *Financing.* The Section 8 program provides only rental assistance. It does not provide construction or permanent financing. Section 8 may be used with any type of construction or permanent financing, such as FHA, mortgage insurance programs, tax exempt financing (see 24 CFR, Parts 811 and 883) and loans from conventional lending institutions. The owner can use the commitment contained in the Contract to make housing assistance payments to support financing.

(f) *Eligible Owners.* All types of private developers and sponsors, including profit-motivated and non-profit, and public housing agency developers and sponsors are eligible to develop and own housing assisted under this program. In all cases, the owner is responsible for the determination of eligibility and selection of tenants and for all ordinary management and maintenance functions. The provision governing project management are contained in Subpart F.

(g) *Allocation of Contract Authority.* HUD commits funding for new projects under the Section 8 program and increases the funding commitment for previously approved projects pursuant to contract authority provided by Congress. The contract authority for new projects is allocated to HUD field offices on the basis of a "fair share" formula reflecting population, poverty, overcrowding, housing condition and similar indices of housing need. Each field office, in turn, suballocates its contract authority among the various allocation areas within its jurisdiction on essentially the same "fair share" basis. Not every area receives an allocation of contract authority for new construction. A further description of this process is contained in 24 CFR, Part 891, Subpart D.

§ 880.102 Processing.

Proposals for housing to be assisted under this Part are submitted to HUD field offices and processed differently depending on several criteria.

(a) Previously submitted "pipeline" proposals which were found approvable but not funded are reviewed first when any new contract authority becomes available. If additional authority remains, HUD may consider preapproved sites, and, in certain areas, permit selections of developers by local governments. Where there are set-asides for projects to be owned by local public housing agencies or to be located in HUD-approved New Communities or for other purposes, proposals may be received, processed and approved without the need to await specified acceptance periods or to undergo formal competition. Sections 880.302 and 880.303 of Subpart C detail these procedures.

(b) Other proposals under this Part are received by HUD from owners (developers) in response to public invitations, called Notifications of Fund Availability (NOFA), which request the submission of preliminary proposals containing a maximum number and type of units in a particular area. Interested owners obtain copies of the detailed developer's packet from the HUD field office which published the NOFA. All proposals received in response to a NOFA are reviewed for deficiencies in documentation and content in order to determine eligibility for further processing. If there are more acceptable proposals than can be approved under available Section 8 contract authority, the proposals are evaluated and ranked, and the highest ranking proposals are selected. Those not selected are placed in the pipeline for possible later funding. Proposals for projects for non-elderly families are accepted as long as contract authority remains available and are reviewed on a monthly cycle. Proposals for projects for elderly families must be submitted by the specified deadline date and are reviewed at the end of the submission period. Details of this process are contained in Subpart C, §§ 880.304 through 880.307.

(c) After a preliminary proposal is selected, the owner of the selected proposal submits a final proposal for the project. This proposal contains a more detailed description of the project, including cost and expense estimates where required, and more detailed plans for design, construction, financing and management. After HUD review and approval of the final proposal, the working drawings are completed by the owner's architect and reviewed by HUD for compliance with program amenities limitations. When these drawings are found to be acceptable, an Agreement is executed by the owner and the contract administrator (either HUD or a public housing agency) and construction begins. Details of this process are contained in Subpart C, §§ 880.308 through 880.311. The Agreement provides that a Contract will be executed upon proper construction, completion and acceptance by HUD of the project.

§ 880.103 Construction and management.

(a) *Construction.* Construction of the project is carried out in conformance with the HUD-approved final proposal. Increases in contract rents or utility allowances are permitted with HUD approval during construction if they are necessary to cover cost increases as specified in § 880.403. The project will be accepted by HUD and a Contract executed upon completion in accordance with the Agreement. These provisions are contained in Subpart D, §§ 880.401 through 880.404.

(b) *Cost Certification.* As soon as possible after completion of a project, the owner, except in the case of

exempted projects, will provide HUD with cost certifications. HUD will review the contract rents based on the owner's certified cost and reduce them where not justified. Section 880.405 details this process.

(c) *Contract.* The Contract will be executed on satisfactory completion of the project. It provides that the owner will receive housing assistance payments for the units covered by the Contract. The housing assistance payments include payments for units being leased by eligible families and payments for vacant units. The Contract provides that the owner may not reduce the number of units in a project available for lower-income families by more than 10 percent without the prior approval of HUD. The term of the Contract varies depending on the type of financing used by the owner. Administration of the Contract is done either by HUD or by a public housing agency under an Annual Contributions Contract with HUD. Subpart E contains provisions concerning the Contract.

(d) *Management.* Subpart F contains management provisions. The owner is responsible for all management functions, including marketing, selection of tenants, reexamination of family incomes, evictions and other terminations of tenancy and collection of rents. The owner must also provide for an operating deficit escrow, except in the case of non-profit owners, and a replacement reserve. Contract rents will be adjusted annually in accordance with 24 CFR, Part 888.

§ 880.104 Applicability of revised regulation.

(a) The revised Part 880 applies to all proposals for which a notification of selection was not issued before the effective date of the revision. Where a notification was issued for a proposal before the effective date, the revised Part will apply if the owner notifies HUD within 60 calendar days that it wishes the revision to apply and promptly brings the proposal into conformance.

(b) Subparts E and F apply to all projects for which an Agreement was not executed before the effective date of the revision. Where an Agreement was so executed:

(1) The owner and HUD may agree to make the revised Subpart E applicable and to execute appropriate amendments to the Agreement and/or Contract.

(2) The owner and HUD may agree to make the revised Subpart F applicable (with or without the limitation on distributions) and to execute appropriate amendments to the Agreement and/or Contract.

(c) However, § 880.607, Termination of Tenancy and Modification of Leases, applies to all projects, including those for which an Agreement or Contract was executed before the effective date of the revision.

§ 880.105 Applicability to proposals and projects under 24 CFR, Part 811.

Proposals and projects involving financing with tax exempt obligations under 24 CFR, Part 811 will be subject to the provisions of this Part, with the following modifications:

(a) The term "replacement cost" used in this Part will mean "development cost" as defined in 24 CFR, Part 811, adjusted to include the same components as the definition contained in § 880.201.

(b) Preliminary proposals and final proposals will contain such additional information as may be required under 24 CFR, Part 811.

(c) The preliminary evaluation and technical processing of preliminary proposals and the review of final proposals will include such additional reviews and determinations as may be required under 24 CFR, Part 811.

(d) Additional inspections during construction will be provided as required under 24 CFR, Part 811.

(e) The additional provisions in 24 CFR, Part 811 concerning completion and acceptance of the project will also be applicable and, in case of any conflict with § 880.404, will be controlling.

(f) In lieu of § 880.405, non-HUD-insured projects will be subject to the provisions of 24 CFR, Part 811 concerning the submission of certified statements as to amounts actually expended for development and other costs, yield on the obligations and amount of debt service, and specifying the actions to be taken in the light thereof.

(g) In lieu of the provisions of § 880.504, such projects will be subject to the provisions of 24 CFR, Part 811 designed to assure that all the units will continue to be available for lower-income occupancy throughout the term of the tax-exempt financing.

(h) A debt service reserve may be established and maintained in accordance with the provisions of 24 CFR, Part 811.

(i) The forms of ACC, Agreement and Contract will be modified in accordance with the provisions of 24 CFR, Part 811.

Subpart B—Definitions, Project Eligibility and Other Requirements

§ 880.201 Definitions.

ACC. (Annual Contributions Contract) For a private-owner/PHA project, for which the Contract is administered by a PHA, the ACC is the contract between the contract administrator PHA and HUD under which HUD commits to provide the PHA with the funds needed to make housing assistance payments to the owner and to pay the PHA for HUD-approved administrative fees and the PHA agrees to perform the duties of a contract administrator.

Agreement. (Agreement to Enter into Housing Assistance Payments Contract) The agreement between the owner and the contract administrator which provides that, upon satisfactory completion of the project in accordance with the HUD-approved final proposal, the administrator will enter into the Contract with the owner.

Allocation Area. A municipality, county, one or more Indian areas, or group of contiguous municipalities or counties identified by HUD or in an approved Areawide Housing Opportunity Plan for the purpose of allocating housing assistance to support economically feasible housing projects.

Assisted Unit. A dwelling unit eligible for assistance under a Contract.

Contract. (Housing Assistance Payments Contract) The contract entered into by the owner and the contract administrator upon satisfactory completion of the project, which sets forth the rights and duties of the parties with respect to the project and the payments under the Contract.

Contract Administrator. The entity entering into the Contract with the owner. The contract administrator is a PHA in the case of private-owner/PHA projects, and HUD in private-owner/HUD and PHA-owner/HUD projects.

Contract Rent. The total amount of rent specified in the Contract as payable by HUD and the tenant to the owner for an assisted unit.

Decent, Safe and Sanitary. Housing is decent, safe and sanitary at project completion if the dwelling units and related facilities are accepted by HUD as meeting the requirements of the Agreement. Housing continues to be decent, safe and sanitary if it is maintained in a condition substantially the same as at the time of acceptance.

Elderly Family. An elderly family as defined in 24 CFR, Part 812, including a disabled or handicapped individual.

Fair Market Rent. HUD's determinations of the rents, including utilities (except telephone), ranges and

refrigerators, parking, and all maintenance, management and other essential housing services, which would be required to obtain privately developed and owned, newly constructed rental housing of modest quality with suitable amenities and sound architectural design.

Family. (Eligible Family) A family which qualifies as a lower-income family, as defined in this section. For purposes of this definition, "family" will have the meaning of "family" contained in 24 CFR, Part 812 (including single elderly, handicapped, disabled and displaced persons and the remaining member of a tenant family).

Final Proposal. The detailed description of a proposed project to be assisted under this Part, which an owner submits after selection of the preliminary proposal, except where a preliminary proposal is not required under § 880.303(c).

Housing Assistance Payment. The payment made by the contract administrator to the owner of an assisted unit as provided in the Contract. Where the unit is leased to an eligible family, the payment is the difference between the total housing expense and the total family contribution. A housing assistance payment, known as a "vacancy payment," is made to the owner when an assisted unit is vacant. An additional housing assistance payment is made to the family if the utility allowance is greater than the total family contribution.

Housing Assistance Plan. A housing plan submitted by a unit of general local government and approved by HUD as being acceptable under the standards of 24 CFR, Part 570.

HUD. The Department of Housing and Urban Development.

Impacted Jurisdiction. A jurisdiction in a Standard Metropolitan Statistical Area (SMSA) where the ratio of lower-income families to total families is materially higher than the ratio of lower-income families to total families for the entire SMSA.

Jurisdiction. The smallest unit of general local government for which adequate population and income data are available for determining whether a jurisdiction is an impacted or non-impacted jurisdiction.

Lower-Income Family. A family whose income does not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for the size of the family. HUD may establish income limits higher or lower if necessary in certain cases. For purposes of this definition, "income" shall have the meaning of "income for eligibility" contained in 24 CFR, Part 889.

New Communities. New community developments approved under Title IV of the Housing and Urban Development Act of 1968 and Title VII of the Housing and Urban Development Act of 1970.

Non-Impacted Jurisdiction. A jurisdiction which is not an impacted jurisdiction and which is located in an SMSA having one or more impacted jurisdictions.

NOFA. (Notification of Fund Availability) The notice published by HUD announcing the availability of contract authority for housing assistance and inviting the submission of proposals.

Non-Syndicated Owner. Any owner other than a limited partnership, and a limited partnership if it falls within the following definition. A limited partnership is a non-syndicated owner if its general partners, in the aggregate, receive or bear, as general partners, more than 25 percent of each of the following: income, gain, loss, deduction, credit and distributive share upon sale or refinancing of the project, as determined by the general partners' interest in the partnership. The general partners' interest shall be determined by the partnership agreement, or where not set forth therein, by other relevant documents. In applying this definition, the distributive shares of income, gain, loss, deduction, credit and distributive share upon sale or refinancing, of limited partners who are members of the family of a general partner will be added to the distributive shares of that general partner where such treatment would be authorized by Section 2057(c)(4) of the Internal Revenue Code.

Owner. Any private person or entity (including a cooperative) or a PHA having the legal right to lease or sublease newly constructed dwelling units assisted under this Part. The term owner also includes the person or entity submitting a proposal under this Part.

Partially-Assisted Project. A project for non-elderly families under this Part which includes more than 50 units of which 20 percent or fewer are assisted.

PHA. (Public Housing Agency) Any State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of housing for lower-income families.

PHA-Owner/HUD Project. A project under this Part which is owned by a PHA. For this type of project, the Agreement and the Contract are entered into by the PHA, as owner, and HUD, as contract administrator.

Preliminary Proposal. The application describing a proposed project under this Part which an owner submits in response to a NOFA in order to be selected for housing assistance.

Private-Owner/HUD Project. A project under this Part which is owned by a private owner. For this type of project, the Agreement and Contract are entered into by the private owner, as owner, and HUD, as contract administrator.

Private-Owner/PHA Project. A project under this Part which is owned by a private owner. For this type of project, the Agreement and Contract are entered into by the private owner, as owner, and the PHA, as contract administrator, pursuant to an ACC between the PHA and HUD. The term also covers the situation where the ACC is with one PHA and the owner is another PHA.

Project Account. A specifically identified and segregated account for each project which is established in accordance with Section 880.503(b) out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the Contract or ACC, as applicable, each year.

Rent. In the case of an assisted unit in a cooperative project, rent means the carrying charges payable to the cooperative with respect to occupancy of the unit.

Replacement Cost. The construction cost of the project when the improvements are completed. The replacement cost may include the land, the physical improvements, utilities within the boundaries of the land, architect's fees, miscellaneous charges incident to construction as approved by the Assistant Secretary for Housing.

Secretary. The Secretary of Housing and Urban Development (or designee).

Small Project. A project for non-elderly families under this Part which includes 20 or fewer units.

Syndicated Owner. A limited partnership which does not qualify under the definition of non-syndicated owner.

Tenant Rent. The portion of the contract rent payable directly to the owner by an eligible family occupying an assisted unit. Tenant rent equals the total family contribution less any utility allowance.

Total Family Contribution. The portion of an eligible family's income payable toward the family's total housing expense, as determined in accordance with 24 CFR, Part 889.

Total Housing Expense. The total monthly cost of housing an eligible family, which is the sum of the contract rent and any utility allowance for the assisted unit occupied by the family.

Utility Allowance. An estimate, made or approved by HUD, of the cost of utilities (except telephone) and other essential housing services for an assisted unit which are not included in the contract rent paid directly to the owner but which are the responsibility of the eligible family leasing the unit.

Vacancy Payment. The housing assistance payment made to the owner by the contract administrator for a vacant assisted unit if certain conditions are fulfilled as provided in the Contract. The amount of the vacancy payment varies with the length of the vacancy period.

Very Low-Income Family. An eligible family whose income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for the size of the family.

§ 880.202 Project eligibility.

(a) For purposes of this Part, "new construction" refers to (1) housing for which construction starts after execution of the Agreement, or (2) housing which is already under construction when the Agreement is executed provided that:

(i) At the date of application to HUD, a substantial amount of construction (generally at least 25 percent) remains to be completed;

(ii) At the date of application to HUD, the project cannot be completed and occupied by eligible families whithout assistance under this Part; and

(iii) At the time construction was initiated, all parties reasonably expected that the project would be completed without assistance under this Part.

(b) The Section 8 new construction program under this Part is applicable to rental housing only; no assistance will be provided for any unit occupied by an owner. Cooperatives are considered rental housing rather than owner-occupied housing for purposes of this Part.

(c) The types of new construction rental housing which can be assisted under this Part include: (1) single-family houses, mobile homes, where appropriate, and multifamily structures; (2) housing designed for the elderly, disabled or handicapped, and (3) single-room occupant housing planned specifically as a relocation resource for eligible single persons.

(d) High-rise elevator projects for families whith children are prohibited unless HUD determines that there is no practical alternative.

(e) High-rise elevator projects for the elderly may be approved only if HUD determines that high-rise construction is appropriate after taking into account land costs, safety and security factors.

(f) Housing assisted under other provisions of the U.S. Housing Act of 1937, such as public housing assisted with annual contributions under Section 5 and 9 of the act, is not eligible for assistance under this Part. Tax exemption under Section 11(b) of the Act is not considered assistance for this purpose.

(g) Conversions of new construction projects under the Section 23 Leased Housing Program to the section 8 program will be permitted, where appropriate, provided that the Section 23 project qualifies as new construction under paragraph (a) of this section and that all parties, including HUD, agree.

(h) No proposal for housing under this Part may be approved unless the requirements of 24 CFR, Part 891, implementing Sections 213(a), (b) and (c) of the Housing and Community Development Act of 1974, as amended, concerning review and comment by units of general local government, have been satisfied. (See Section 880.306(c)(1).)

§ 880.203 Fair market rents.

(a) Fair Market Rents are HUD's determinations of the rents, including utitlities (except telephone), ranges and refrigerators, parking, and all maintenance, management and other essential housing services, which would be required to obtain privately developed and owned, newly constructed rental housing of modest quality with suitable amenities and sound architectural design.

(b) Separate Fair Market Rents are established by unit size (number of bedrooms), basic structure type (detached, semi-detached/row, walk-up and elevator apartments) and occupant group (non-elderly family and elderly family, including handicapped) for individual market areas.

(c) Fair Market Rents for mobile homes may be established for an area upon application to HUD. The application must show that there is a need and demand for mobile homes in the area for which they are proposed, and that mobile homes are acceptable under local requirements in that area.

(d) Fair Market Rents are published in the Federal Register at least annually in accordance with 24 CFR, Part 888. Interim revisions for one or more market areas may be initiated by HUD at any time and may be published as market conditions dictate.

§ 880.204 Limitations on contract rents, replacement costs and amenities.

(a) *Purpose and Applicability of Limitations.* The purpose of the Section 8 program is to assist lower-income families in renting decent, safe and sanitary housing of modest quality with suitable amenities and sound architectural design. This section sets limitations on the contract rents, replacement costs and amenities of projects contructed under this Part. These limitations are intended to permit production of suitable housing without excessive costs, design features or amenities.

(b) *Limitation on Contract Rents.* The contract rents for a project from proposal submission through cost certification, must be within both of the following limitations:

(1) *Fair Market Rent.* The contract rent plus any utility allowance for the unit must not exceed the Fair Market Rent in effect at the time of processing. The published Fair Market rents will include an estimate of anticipated rent increases in order to allow for the period of construction as stated in the publication. If the scheduled construction time for a project is less, an appropriate reduction will be made in determining the approvable Contract Rent. On the other hand, the applicable Fair Market Rent may be exceeded under special circumstances or if needed to implement a local Housing Assistance Plan or Areawide Housing Opportunity Plan:

(i) By up to 10 Percent with the approval of the HUD field office manager, or

(ii) By up to 20 percent with the approval of the HUD Assistant Secretary for Housing; and

(2) *Rent Reasonableness.* The contract rent must be reasonable. Contract rents will be considered reasonable only if HUD determines that:

(i) The rents are comparable to or below the rents of unassisted units of similar age, design and location which provide comparable amenities and services, or

(ii) For small projects and partially-assisted projects, the rents exceed the comparable rents by no more than 10 percent; or

(iii) For all other proposals, the rents do not exceed the comparable rents by more than 10 percent and the owner has provided cost and expense estimates at final proposal and cost certification, as specified in §§ 880.308 and 880.405, which justify the need for rents above

comparable rents and which have been accepted by HUD.

(c) *Limitation on Replacement Costs:*

(1) No proposal for a project to be assisted under this Part will be selected or approved by HUD, and no Agreement may be executed for a project, with an estimated replacement cost greater than the following limits plus any additional cost not attributable to dwelling use to the extend approved by HUD. The limits applicable to the part of the project attributable to dwelling use, as determined by HUD, depending on the number of bedrooms, are as follows:

(i) The basic limits are: (A) $23,720 per dwelling unit without a bedroom; (B) $27,129 per dwelling unit with one bedroom; (C) $32,983 per dwelling unit with two bedrooms; (D) $42,217 per dwelling unit with three bedrooms; and (E) $47,032 per dwelling unit with four or more bedrooms.

(ii) Where necessary to compensate for the higher costs incident to construction of elevator type structures of sound standards of construction and design, HUD may increase the limits provided in paragraph (c)(1)(i) of this section, not to exceed: (A) $24,982 per dwelling unit without a bedroom; (B) $28,614 per dwelling unit with one bedroom; (C) $34,795 per dwelling unit with two bedrooms; (D) $45,011 per dwelling unit with three bedrooms; and (E) $49,409 per dwelling unit with four or more bedrooms.

(iii) For any market area where cost levels so require, the Assistant Secretary for Housing may increase, at the request of the field office, the dollar amount limits set forth in paragraphs (c)(1)(i) and (ii) by up to 50 percent.

(iv) If the Assistant Secretary finds that, because of high costs, it is not feasible to construct dwellings in Alaska, Guam, or Hawaii without the sacrifice of sound standards of construction, design, and within the limits in paragraphs (c)(1) (i) and (ii), livability, the principal amount of the replacement cost limits may be increased by amounts as are necessary to compensate for additional costs, but not to exceed the maximum, including high cost area increases under paragraph (c)(1)(iii), if any, otherwise applicable by more than 50 percent.

(2) Partially-assisted projects are exempt from the replacement cost limitation of this paragraph.

(3) The mortgage amount of a HUD-insured proposal will also be subject to the mortgage limits of the applicable mortgage insurance program.

(d) *Excess Costs.* The limitation of paragraph (c) will not prohibit the actual cost of a project from exceeding the limit referred to in that paragraph in the event of cost overruns or other unforeseeable causes. However, in determining or adjusting contracts rents, or housing assistance payment, HUD will not take into account or give credit for any cost which exceeds the applicable replacement cost limit.

(e) *Limitation on Amenities.* Amenities in projects assisted under this Part will be limited to those amenities which are generally provided in unassisted housing of modest quality in the market area, as determined by HUD. Generally, the amenities included in the determination of Fair Market Rents for the area may be included in a project. Other amenities will not be permitted unless the owner provides justification for each additional amenity to HUD, and its inclusion is approved by HUD. Partially-assisted projects are exempt from the limitation of this paragraph.

§ 880.205 Limitation on distributions.

(a) For the purposes of this Part, there will be two types of owners—non-profit and profit-motivated. In the case of HUD-insured projects, profit-motivated owners will include both general mortgagors and limited distribution mortgagors as defined in applicable HUD mortgage insurance regulations.

(b) Non-profit owners are not entitled to distributions of project funds.

(c) For the life of the Contract, project funds may only be distributed to profit-motivated owners at the end of each fiscal year of project operation following the effective date of the Contract after all project expenses have been paid, or funds have been set aside for payment, and all reserve requirements have been met. The first year's distribution may not be made until cost certification, where applicable, is completed. Distributions may not exceed the following maximum returns:

(1) For projects for elderly families that have syndicated owners, 6 percent on equity per year;

(2) For projects for non-elderly families that have syndicated owners, 8 percent on equity per year;

(3) For projects for elderly families that have non-syndicated owners, the first year's distribution will be limited to 8 percent on equity. Subsequent years' distributions will be determined by applying to each subsequent year's sum of total housing expenses the percentage arrived at by dividing the first year's allowable return by the sum of the first year's total housing expenses.

(4) For projects for non-elderly families that have non-syndicated owners, the first year's distribution will be limited to 10 percent on equity. Subsequent years' distributions will be determined by applying to each subsequent year's sum of total housing expenses the percentage arrived at by dividing the first year's allowable return by the sum of the first year's total housing expenses.

(d) For the purpose of determining the allowable distribution, an owner's equity investment in a project is deemed to be 10 percent of the replacement cost of the part of the project attributable to dwelling use accepted by HUD at cost certification (see Section 880.405).

(e) Any short-fall in return may be made up from surplus project funds at the end of any of the next five fiscal years of the project.

(f) If HUD determines at any time that project funds are more than the amount needed for project operations, reserve requirements and permitted distribution, HUD may require the excess to be placed in an account to be used to reduce housing assistance payments or for other project purposes. Upon termination of the Contract, any excess funds must be remitted to HUD.

(g) Owners of small projects or partially-assisted projects are exempt from the limitation on distributions contained in this section.

(h) In the case of HUD-insured projects, the provisions of this section will apply in lieu of the otherwise applicable mortgage insurance program provisions.

§ 880.206 Site and neighborhood standards.

Proposed sites for new construction projects must be approved by HUD as meeting the following standards:

(a) The site must be adequate in size, exposure and contour to accommodate the number and type of units proposed; and adequate utilities (water, sewer, gas and electricity) and streets must be available to service the site.

(b) The site and neighborhood must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, and HUD regulations issued pursuant thereto.

(c) The site must not be located in:

(1) An area of minority concentration unless (i) sufficient, comparable opportunities exist for housing for minority families, in the income range to be served by the proposed project, outside areas of minority concentration, or (ii) the project is necessary to meet overriding housing needs which cannot otherwise feasibly be met in that

housing market area. An "overriding need" may not serve as the basis for determining that a site is acceptable if the only reason the need cannot otherwise feasibly be met is that discrimination on the basis of race, color, religion, creed, sex, or national origin renders sites outside areas of minority concentration unavailable; or

(2) A racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.

(d) The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

(e) The site must be free from adverse environmental conditions, natural or manmade, such as instability, flooding, septic tank back-ups, sewage hazards, or mudslides; harmful air pollution, smoke or dust; excessive noise vibration, or vehicular traffic; rodent or vermin infestation; or fire hazards. The neighborhood must not be one which is seriously detrimental to family life or in which substandard dwellings or other undesirable elements predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.

(f) The site must comply with any applicable conditions in the local Housing Assistance Plan approved by HUD.

(g) The housing must be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

(h) Travel time and cost via public transportation or private automobile, from the neighborhood to places of employment providing a range of jobs for lower-income workers, must not be excessive. (While it is important that elderly housing not be totally isolated from employment opportunities, this requirement need not be adhered to rigidly for such projects.)

(i) The project may not be built on a site that has occupants unless the relocation requirements referred to in § 880.209(a) are met.

(j) The project may not be built in an area that has been identified by HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, unless the project is covered by flood insurance as required by the Flood Disaster Protection Act of 1973, and it meets any relevant HUD standards and local requirements.

§ 880.207 Property standards.

Projects must comply with:

(a) HUD Minimum Property Standards;

(b) In the case of mobile homes, the American National Standards Institute Standard No. A–119.1, or applicable State standards, in accordance with applicable HUD regulations as to certification, and standards issued pursuant to Title I of the National Housing Act, 24 CFR 201.520–1;

(c) In the case of congregate or single room occupant housing, the appropriate HUD guidelines and standards;

(d) HUD requirements pursuant to Section 209 of the Housing and Community Development Act of 1974 for projects for the elderly or handicapped;

(e) HUD requirements pertaining to noise abatement and control; and

(f) Applicable State and local laws, codes, ordinances and regulations.

§ 880.208 Financing.

(a) *Types of Financing.* Any type of construction financing and long-term financing may be used, including: (1) conventional loans from commercial banks, savings banks, savings and loan associations, pension funds, insurance companies or other financial institutions; (2) mortgage insurance programs under the National Housing Act; (3) mortgage and loan programs of the Farmers' Home Administration of the Department of Agriculture compatible with the Section 8 program; and (4) financing by tax-exempt bonds or other obligations.

(b) *HUD Approval.* The terms and conditions of the financing must be approved by HUD. As a condition of obtaining this approval, all issuers of tax-exempt obligations purporting to be exempt from Federal taxation under any provision of law or governmental regulation other than 24 CFR Part 811 (except an issuer which is a qualified participating agency pursuant to 24 CFR Part 883) must submit all documents required by 24 CFR 811.107, 811.108, 811.109 and 811.110 to the field office for review and approval. The terms and use of such obligations and the operation of the project must comply with the requirements of 24 CFR Part 811. (See also 24 CFR 811.117.)

(c) *Pledge of Contracts.* An owner may pledge, or offer as security for any loan or obligation, an Agreement, Contract or ACC entered into pursuant to this Part: Provided, however, that such security is in connection with a project constructed pursuant to this Part. Any pledge of the Agreement, Contract, or ACC, or payments thereunder, will be limited to the amounts payable under the Contract or ACC in accordance with its terms. If the pledge or other document provides that all payments will be paid directly to the mortgagee or the trustee for bondholders, the mortgagee or trustee will make all payments or deposits required under the mortgage or trust indenture and remit any excess to the owner.

(d) *Foreclosure and Other Transfers.* In the event of foreclosure, assignment or sale approved by HUD in lieu of foreclosure, or other assignment or sale approved by HUD,

(1) The Agreement, the Contract and the ACC, if applicable, will continue in effect, and

(2) Housing assistance payments will continue in accordance with the terms of the Contract.

§ 880.209 Other Federal requirements.

(a) *Relocation and Land Acquisition Requirements.*

(1) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) is applicable only to displacement resulting from acquisition of real property by a Federally-assisted public agency. However, in the evaluation or selection of all proposals, consideration will be given to whether there are site occupants who would have to be displaced, whether the relocation of site occupants is feasible, and the degree of hardship which displacement might cause. Preference points will be given to proposals which do not require displacement, or, where displacement is required, which will involve the least amount of hardship.

(2) Where the site for a project is acquired by a PHA and the site has occupants, the Agreement will provide that, pursuant to the Uniform Act, the PHA undertakes responsibility for:

(i) The provision of relocation payments and assistance as prescribed in Sections 202, 203 and 204 of the Uniform Act;

(ii) The provision of relocation assistance programs offering the services described in Section 205 of the Uniform Act;

(iii) Assuring that within a reasonable period of time prior to displacement, decent, safe and sanitary replacement dwellings will be available to displaced persons; and

(iv) Compliance with Title III of the Uniform Act. The Agreement must also provide that the PHA will provide full funding for the required relocation

payments and assistance unless other commitments, satisfactory to HUD, have been made for the funding of such payments and assistance.

(b) *Equal Opportunity Requirements.* Participation in this program requires compliance with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights of 1968, Executive Orders 11063 and 11246, and Section 3 of the Housing and Urban Development Act of 1968, and all related rules, regulations and requirements.

(c) *National Environmental Policy Act.* Participation in this program requires compliance with the National Environmental Policy Act and all related rules, regulations and requirements.

(d) *Clean Air Act and Federal Water Pollution Control Act.* Participation in this program requires compliance with the Clean Air Act and the Federal Water Pollution Control Act and all related rules, regulations and requirements.

(e) *Davis-Bacon Wage Rates.* Not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (49 Stat. 1011), must be paid to all laborers and mechanics employed in the development of any project with nine or more assisted units.

(f) *Rehabilitation Act.* Participation in this program requires compliance with the Rehabilitation Act of 1973 and Executive Order 11914 and all related rules, regulations and requirements.

(g) *Other Federal Statutes and Regulations.* Participation in this program requires compliance with the National Historic Preservation Act (Public Law 89-665), the Archeological and Historic Preservation Act of 1974 (Public Law 93-291), and Executive Order 11593 on Protection and Enhancement of the Cultural Environment, including the procedures prescribed by the Advisory Council on Historic Preservation in 36 CFR, Part 800.

Subpart C—Proposal Submission To Start of Construction

§ 880.201 Allocation of contract authority to field offices.

(a) Funding authorization for the Section 8 program is assigned to HUD field offices annually in the form of contract authority, which is the maximum amount authorized for annual payments under Contracts. Assignments are made pursuant to 24 CFR, Part 891, Subpart D. Each field office suballocates this authority to the areas within its jurisdiction, also in accordance with Part 891, Subpart D.

(b) In the allocation process, the field office determines the amount of contract authority and the approximate number of units of Section 8 new construction specifically designed for elderly families, for non-elderly families and for large non-elderly families (3 or more bedrooms) which will be made available in each allocation area.

(c) For the contract authority made available in each allocation area, the HUD field office will process proposals as provided for in §§ 880.302, 880.303 and 880.304.

§ 880.202 Procedures for resumption of processing of proposals and preapproved site requests.

(a) Prior to the publishing of a NOFA or the consideration of requests for preapproved sites, the pipeline of approvable proposals and preapproved site requests proposals will be reviewed to determine whether to resume processing any or all of them. In making the decision as to whether to resume processing, the following will be considered:

(1) Whether the proposal or preapproved site request is consistent with the final or tentative allocation plan for the area in which the project is proposed to be located;

(2) Whether the proposal or preapproved site request conforms to the housing type and household type requirements of any applicable Housing Assistance Plan;

(3) Whether the proposal or preapproved site request is consistent with priorities for targeting of contract authority to localities which have previously been underfunded relative to their needs and the funding of the needs of other localities in that allocation area; and

(4) Whether the proposal or preapproved site request is considered to be of high quality relative to the standards and requirements of this Part.

(b) Owners of proposals or local governments with preapproved site requests which are eligible in accordance with paragraph (a) to resume processing will be sent a letter requesting them to advise HUD within 5 days as to whether or not they wish processing to be resumed on their proposals or requests and, if their decision is in the affirmative, to submit to HUD within an additional 10 days (for a total of 15 days):

(1) For proposals, updated proposed rents;

(2) For proposals, the replacement cost estimate required by Section 880.305;

(3) Up-to-date evidence of site control; and

(4) Any information on other factors which might affect the current approvability of their proposals or requests.

Owners or local governments may submit any other information they wish, but the field office is not required to consider this additional information.

(c) Upon receipt of notification from an owner that it wishes processing of a proposal to be resumed, the unit of general local government and A-95 clearinghouse will be notified under Part 891 of the resumption of processing and asked for comments if the proposal is more than 6 months old or if there has been a substantive change in the local Housing Assistance Plan.

(d) Upon receipt of the updated information, the field office will resume processing of the proposal or request in accordance with § 880.303(c) or 880.303(a).

(e) Owners of proposals and local governments with preapproved site requests for which processing is not resumed because of failure to meet the requirements of paragraphs (a) and (b), or for which owners or local governments do not request resumption of processing will be notified in writing that their proposals or requests will not be processed further. One file copy of each will be retained by the field office.

§ 880.303 Special procedures for certain categories of proposals.

(a) *Preapproved Sites.* (1) Units of general local government may submit written requests to the field office for preapproval of sites. Requests for preapproval must indicate the anticipated number of units, structure type, household type, bedroom distribution and the price at which the site will be made available. Further, the local government must indicate if it wishes to select the proposal as allowed under paragraph (a)(5) of this section. To the extent feasible, such requests should be submitted early in the fiscal year.

(2) If the field office determines that use of a site for which preapproval has been requested may be appropriate, it will review the request to determine compliance with site and neighborhood standards (§ 880.208) and environmental standards, and to determine the acceptability, as to both reasonableness and feasibility, of the proposed price at which the site will be made available. The request will also be reviewed for consistency with the allocation plan for the area, any applicable Housing

Assistance Plan and targeting priorities described in § 880.302(a)(3).

(3) If the site meets all of these requirements, the field office will advise the unit of general local government:

(i) That the site is approvable for Section 8 use;

(ii) Of the approximate number of units, by structure type, household type and bedroom distribution that may be assisted;

(iii) Of the contract authority required;

(iv) Whether HUD has reserved such contract authority, will do so as soon as sufficient contract authority becomes available or will retain the request in the pipeline for consideration in accordance with Section 880.302; and

(v) How processing will proceed, including how selection of the proposal will be accomplished.

(4) Reservations of contract authority for preapproved sites may only be made after the amount of authority necessary for pipeline proposals has been determined.

(5) For approvable sites in Federally-assisted urban renewal areas (including unsold land in closed out urban renewal areas), selection of the proposal may be under applicable urban renewal procedures, subject to the field office approval. For sites acquired or to be acquired with Community Development Block Grant funds or located in non-Federally-assisted urban renewal areas, the local government may select the proposal in accordance with a competitive method approved by the field office and consistent with State law.

(6) For approvable sites outside those areas set forth in paragraph (a)(5) of this section, selection of the proposal will be accomplished by the field office by publishing a NOFA requesting proposals for that site pursuant to § 880.304.

(b) *Other Categories.* Where set-asides are made for projects to be owned by PHAs, for projects to be located in New Communities or for other purposes, proposals may be obtained by invitation or other appropriate means, as determined by the field office, or the New Communities Development Corporation where appropriate. Selection procedures may be modified, as approved by the Assistant Secretary for Housing, to meet the objectives of the set-asides. Prior to submission of proposals, prospective owners will be advised of the modified procedures.

(c) *Proposal Submissions for Special Categories of Projects.* Preliminary proposals are not required for projects submitted pursuant to paragraphs (a) or (b), except in the case of proposals under paragraph (a)(6) of this section. The first proposal submitted for such projects may be a final proposal in accordance with § 880.308.

§ 880.304 Publication of NOFA and receipt of proposals.

(a) After determination of the amount of contract authority necessary for pipeline proposals as provided in § 880.302, and any commitments of contract authority for preapproved sites as provided in § 880.303, the field office will publicize the availability of the remaining contract authority, if any, in accordance with paragraph (b) of this section.

(b) A summary notification of fund availability (NOFA) for all allocation areas within the jurisdiction of the field office will be published at least once a week for two consecutive weeks in a newpaper(s) of general circulation in the allocation areas. Specific information for each allocation area will be contained in a detailed NOFA which will be provided upon request. The detailed NOFA will identify the geographic area of each allocation area for which contract authority is available and include the following information for each area:

(1) The contract authority available for new construction and the approximate numberr of units for elderly, non-elderly and large non-elderly families that the contract authority is expected to support;

(2) The first and last dates for acceptance of preliminary proposals for projects for elderly families and the first date for acceptance of proposals for projects for non-elderly families;

(3) The fact that proposals for projects for non-elderly families will be accepted at any time after the initial acceptance date so long as contract authority remains available, and that all such proposals received during one monthly period will be processed and, if necessary, ranked against each other;

(4) The fact that the NOFA will be cancelled for an allocation area when all available contract authority has been or is expected to be used or when a decision by HUD pursuant to Section 891.405 to reallocate any unused contract authority has been made;

(5) The fact that developer's packets for each allocation area and type of proposal will be available prior to the opening date for submission of proposals and that information and assistance are available from the field office.

(6) A listing of non-impacted jurisdictions within the allocation area for which a marketing plan with respect to families in impacted areas will be required for non-elderly family projects.

(c) Copies of the detailed NOFA will be provided to minority and fair housing organizations and media in the allocation area.

(d) Field offices may issue Conditional NOFAs subject to the sufficiency of the allocation of contract authority. Proposals received in response to a Conditional NOFA will be processed in accordance with the provisions of § 880.306, but notifications of selection will not be sent until contract authority becomes available and is reserved.

(e) Proposals will be accepted by the field office beginning on the published opening date for submission and may be opened for review immediately. The contents will remain confidential until sent by the field office to the A-95 clearinghouses or local government for review or, in the case of projects for elderly families, until the deadline date has passed, whichever is earlier.

§ 880.305 Contents of preliminary proposal.

Each preliminary proposal must contain:

(a) A description of the proposed housing, including sketches of the proposed building, unit plans, listing of amenities, estimated date of completion and whether it will be completed in stages, and other information requested in the developer's packet.

(b) Identification and description of the proposed site, site plan and neighborhood, and evidence of site control or a description of actions likely to result in site control, as requested in the developer's packet;

(c) Evidence that the proposed construction is permitted by current zoning ordinances or regulations or evidence to indicate that needed rezoning is likely and will not delay the project;

(d) The proposed contract rent per unit, including an indication of which utilities, services and equipment are included in the rent and which are not. For those utilities and services which are not included, an estimate of the average monthly cost for each unit type for the first year of occupancy.

(e) The estimated replacement cost per unit.

(f) A statement describing how the proposal is consistent with any applicable Housing Assistance Plan, and/or Areawide Housing Opportunity Plan;

(g) Information concerning displacement of site occupants: if any displacement will occur; the number of families, individuals, and business

concerns affected, by race, and whether they own or rent; and a demonstration that relocation is feasible. In the case of a project involving acquisition of real property by a PHA, a statement as to how necessary relocation payments will be funded;

(h) A signed certification on the prescribed form of the owner's intention to comply with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, Executive Order 11246, and Section 3 of the Housing and Urban Development Act of 1968. If the proposed project is to be located within the area of a Housing Assistance Plan, include certification that the owner will take affirmative action to provide the opportunity to apply for units in the proposed project to persons expected to reside in the community as a result of current or planned employment, as indicated in the Housing Assistance Plan. If the proposed project is a non-elderly family project to be located in a non-impacted jurisdiction, include a certification that the owner will comply with the requirements for marketing with respect to families in impacted jurisdictions as contained in §§ 880.308(a)(5) and 883.601(a)(3).

(i) The identity of the owner, developer, builder, architect, management agent (and other participants) and the names of officers and principal members, shareholders, investors, and other parties having a substantial interest; the previous participation of each in HUD programs on the prescribed HUD form; and a disclosure of any possible conflict of interest by any of these parties which would be a violation of the Agreement, the Contract, or the ACC, if any; and information on the qualifications and experience of the principal participants;

(j) The proposed financing method and proposed terms of financing. For proposals not requesting mortgage insurance, written evidence of review and interest by a lender, including a state housing finance agency or financing agency under Part 811, or bond underwriter, indicating that the financing is likely to be available for the proposed project;

(k) The proposed term of the Contract, and justification for the term, in accordance with § 880.502; and

(l) The identity of the contract administrator entity (PHA or HUD).

§ 880.205 Preliminary Evaluation and Technical Processing.

(a) *Preliminary Evaluation.*

(1) After receipt of a preliminary proposal for a project for elderly families received prior to the deadline date in the NOFA, the field office will make a preliminary evaluation of the proposal in accordance with paragraph (a)(3) of this section. Proposals received after the deadline date will be returned unopened.

(2) After receipt of a preliminary proposal for a project for nonelderly families, the field office will, so long as contract authority remains available, make a preliminary evaluation of each such proposal in accordance with paragraph (a)(3) of this section.

(3) In performing the preliminary evaluation, the field office will determine whether it appears, without field review, that:

(i) The proposal contains all of the required documentation in the proper form; and

(ii) The proposal is responsive to and in compliance with the requirements of the NOFA, developer's packet, and program policies and regulations, including Fair Market Rent, replacement cost, and amenities limitations.

(4) If a proposal is found deficient in accordance with paragraph (a)(3), it may be rejected. If a deficiency is minor, or if there are not sufficient proposals to use the available contract authority, the field office may request correction of the deficiency within a specified time period.

(5) If the proposal is not deficient, or if necessary corrections are made within the time limit established by the field office, the proposal will be considered in accordance with paragraph (b) or (c) as appropriate.

(b) *Selection for Technical Processing.* In the event the number of proposals found eligible for technical processing exceeds the number that the field office can process expeditiously, the field office may limit the proposals placed into technical processing to those which comprise a total number of units approximately equal to two to four times the number of units which can be approved. In order to determine which proposals to place into technical processing, the field office will, in order to eliminate the excess, rank the proposals by household type (elderly family and nonelderly family) considering the following factors and such other factors as may have been recommended by the field office and approved by the Assistant Secretary:

(1) The previous experience and qualifications of the owner, developer, builder, architect, management agent, and other participants in development, marketing and management (particularly of non-elderly family housing);

(2) Responsiveness to the preferences and priorities contained in the applicable Housing Assistance Plan;

(3) The current availability of the site for development and the availability of utilities and services;

(4) The permissiveness of current zoning;

(5) The likelihood of financing and the relative speed with which a firm financing commitment can be obtained; and

(6) the relative need for and prior housing assistance to the jurisdiction in which the housing would be located. Preference points in selection of proposals for technical processing will be given to small projects and partially-assisted projects, and to projects not involving the displacement of site occupants. The owners of proposals not selected for technical processing will be notified that their proposals will not be processed further and will not be considered for selection under the provisions of Section 880.202. One copy of each proposal will be retained by the field office.

(c) *Technical Processing.*

(1) In accordance with the procedures in 24 CFR, Part 801, a description of each proposal proceeding to technical processing will be sent to the unit of general local government for review and comment. In accordance with OMB Circular A-95, a copy of each proposal will also be sent to the A-95 state and areawide clearinghouses.

(2) Technical processing in the field office will include a review of the rents (see paragraph (c)(3)), site, design, experience of the owner and other participants, local government and A-95 clearinghouse comments, extent of displacement, feasibility of the project as a whole (including financing and marketability) and compliance with all applicable standards and requirements. Any deficiencies found will be treated in the same manner as deficiencies found during preliminary evaluation (see paragraph (a)(4) of this section).

(3) The field office will evaluate proposed rents in accordance with Section 880.204(b)(2).

(i) If the proposed rents are no more than the rents determined to be comparable, or are within 110 percent of comparable for small and partially-assisted proposals, the rents will be accepted.

(ii) If the proposed rents exceed the comparable rents by not more than 10 percent, they will be tentatively accepted subject to cost estimation at final proposal (see Section 880.205(a)) and cost certification after completion (see Section 880.606).

(iii) If the proposed rents exceed the comparable rents by more than 10 percent, the field office may either reject the proposal or tentatively accept rents at 110 percent of the comparable rents subject to cost estimation at final proposal and cost certification after completion.

(4) Amenities and design features will be reviewed to assure that they do not exceed those normally provided in modest quality housing in the general area of the proposed project.

(d) *Proposals Requiring Mortgage Insurance.* Proposals requiring mortgage insurance need not contain more information than is required for a preliminary proposal not requiring mortgage insurance. Technical processing of such proposals will include a preliminary determination of eligibility under the applicable mortgage insurance program. If such proposals are selected, subsequent processing will be in accordance with § 880.306(b), and applicable mortgage insurance requirements. If the proposal is ineligible for mortgage insurance, it may be rejected, or the field office may request the owner to submit documentation showing availability of an alternative method of financing.

§ 880.307 Selection of proposals and use of remaining or additional contract authority.

(a) All of the proposals found approvable in technical processing may be selected if sufficient contract authority was available in the NOFA or has subsequently become available prior to selection. In no case will proposals be selected prior to completion of and without compliance with the final allocation plan.

(b) If the available contract authority is insufficient to select all proposals found approvable in technical processing, all approvable proposals will be ranked by household type (elderly family and nonelderly family). The ranking factors are: rents; site (including minority concentration considerations); design; previous experience of the owner and other participants in development, marketing and management (particularly of non-elderly family housing); comments from the A–95 clearinghouse and local government and responsiveness to preferences and priorities of any applicable Housing Assistance Plan and/or Areawide Housing Opportunities Plan; extent of displacement; and feasibility of the project as a whole (including likelihood of financing and marketability). Within the ranking for nonelderly family proposals, preference points will be given to small projects and partially-assisted projects. Any deviation in the ranking procedures as set forth in this paragraph and the program handbook must be approved by the Assistant Secretary for Housing.

(c) Owners who submit proposals will be notified in writing as to whether their proposals have been found not approvable, found approvable but not selected, or selected. Selection notifications will include any special conditions or requirements applicable to the proposal. Owners who are notified of the selection of their proposals must notify the field office of their acceptance of the notification within the time period specified in the notification and must submit a final proposal by the deadline stated in the notification unless an extension of the deadline is approved by the field office. Owners of proposals found not approvable will be notified of the reason for the finding. One file copy of each proposal will be retained by the field office. Proposals found approvable but not selected will be retained by the field office for reconsideration when additional contract authority becomes available in the same or subsequent fiscal years (see § 880.302).

(d) Units of general local government and A–95 clearinghouses notified under Paragraph 880.306(c) will be notified of the field office's decision regarding the proposals within their jurisdiction.

(e) When contract authority remains available after selection of proposals for housing for elderly families, or after a decision is made to reallocate unused contract authority for housing for nonelderly families, or additional contract authority becomes available due to cancellation or recapture of contract authority for a selected proposal, or due to the assignment of additional contract authority within the same fiscal year, the field office will determine the allocation areas and types of housing for which the contract authority will be used and proceed in accordance with §§ 880.302, 880.303, and 880.304.

§ 880.308 Contents of final proposal.

(a) *Proposals for Uninsured Projects.* Final proposals for all projects except those requesting mortgage insurance will contain:

(1) Preliminary architectural drawings, including site plans, landscape plans, unit plans, general floor plans, elevations at the prescribed scale, outline specifications on the prescribed form and a listing of amenities.

(2) A statement that the documentation submitted with the preliminary proposal as required by § 880.305 (b) through (g) and (i) through (l) has not changed or a statement of the changes. In the case of special categories of projects submitted in accordance with § 880.303(c), the original documentation required by § 880.305 (b) through (l) must be submitted.

(3) Description of the terms and conditions of construction and permanent financing, including copies of the commitments for such financing from a lender or bond underwriter, or satisfactory evidence that commitments will be forthcoming before execution of the Agreement. Copies of the financing documents should also be furnished if available; otherwise, they must be submitted as soon as possible but no later than with the working drawings and specifications.

(4) For proposals for projects of five units or more, an Affirmative Fair Housing Marketing Plan.

(5) For proposals for non-elderly family projects located in non-impacted jurisdictions, a marketing plan to achieve occupancy of units by families residing in impacted juriscictions. The plan must be consistent with HUD instructions for preparation of final proposals and other requirements set forth in these regulations. The marketing plan must include marketing activities directed at families from impacted jurisdictions for purposes of achieving an appropriate level of initial and subsequent occupancy by such families. The activities may include: information and publicity; recruiting efforts through local and community organizations; transportation and other assistance for interested applicants; contacting families on existing waiting lists or lists developed by PHAs or other agencies; and other activities or efforts as agreed to by the owner and HUD. In preparing the plan, consideration will be given to: the extent of housing need among lower income families in impacted jurisdictions as compared to the need in non-impacted jurisdictions in the SMSA; the likelihood of occupancy by families from impacted jurisdictions; the nature and extent of need in the jurisdiction in which the project is located; the availability of public transportation and travel time between the project site and essential facilities, such as shopping, schools, employment, and recreation; the availability of other non-elderly assisted housing in the jurisdiction in which the project is located and in other non-impacted jurisdictions; the sizes and types of units to be made available; and other relevant factors.

(6) For proposals for projects to be located within the jurisdiction of a unit

of general local government with a Housing Assistance Plan, a statement of the affirmative actions the owner intends to take the opportunity to apply for units in the proposed project to persons expected to reside in the community as a result of current or planned employment, as indicated in the Housing Assistance Plan. Examples of such efforts include: participation in regional or semi-regional application pools; establishment of a referral system with PHAs and other Section 8 owners and managers in surrounding jurisdictions; contacts with and provisions of information about the project to local industries and their employees.

(7) Evidence of management capability, a proposed management plan and certification in the prescribed form, a copy of any proposed contracts for management services, and the proposed form of lease (see § 880.606).

(8) An indication of the estimated time for completion of the project after the Agreement is signed and, if the project is to be completed in stages, identification of the units and the scheduled completion of each stage.

(9) Estimates in the HUD prescribed form of the replacement cost, operating expenses, income, and debt service, sufficient to enable the field office to determine the cost justified rent, where required under § 880.204(b)(2). The cost estimate must indicate and reflect any anticipated benefits from land write-down, tax abatement, favorable financing terms and similar savings.

(b) *Proposals for Insured Projects.*

(1) For projects requiring mortgage insurance, except special categories of proposals which are discussed in paragraph (b)(3), the complete final proposal will consist of the application for firm commitment, plus statements in accordance with paragraphs (a)(2), (a)(6) and (a)(8), the proposed form of lease, and, where applicable, the marketing plan required by (a)(5).

(2) Although it is preferable for projects requiring mortgage insurance to proceed directly from preliminary proposal to the application for firm commitment/final proposal stage, an owner may elect to submit an application for SAMA or conditional commitment first. In these cases, no additional documentation other than that normally submitted for the mortgage insurance processing stage is required. SAMA letters or conditional commitments issued for mortgage-insured projects which are infeasible without Section 8 assistance will be conditioned upon the subsequent review and approval of the application for firm commitment/final proposal.

(3) In the case of special categories of proposals submitted in accordance with § 880.303 which are requesting mortgage insurance, the first proposal may be an application for conditional or firm commitment plus the proposed form of lease, applicable information on staging, if any, and the documentation required by § 880.305 (f), (g), (h), (i) (with respect to possible conflicts of interest), (k) and (l).

§ 880.309 Review of final proposals.

(a) All final proposals will be reviewed for compliance with program policies and standards. Material deviations from the preliminary proposal will be reviewed and may cause rejection of the proposal.

(1) Preliminary architectural drawings will be reviewed for compliance with amenity standards. In addition, HUD reserves the right to review for conformance with the HUD Minimum Property Standards, adequacy of design for tenant security and efficiency in construction and design; however, HUD has no obligation to do so and any such review or non-review will not constitute approval as to these standards.

(2) The field office will review the projected replacement cost to assure compliance with the limitations of § 880.204(c) in effect of the time. The field office will also review the proposed rents to assure that the rents are within the limitations of § 880.204(b)(1) and cost justified, where required under § 880.204(b)(2). Cost justification at this stage will consist of a review by the field office of the cost and expense estimates to determine whether the estimates justify the need for rents above comparable rents based on a debt service calculation.

(3) Where the final proposal requests rents higher than were approved with the preliminary proposal, such rents may be approved only after the review required in paragraph (a)(2). In addition, the field office may approve the request for an increase only if it determines, based on documentation by the owner, that the need for increased rents is due to:

(i) Factors beyond the owner's control which could not reasonably have been foreseen and which (A) will result in substantial delay in the originally estimated completion date, or (B) will result in substantial cost increases which would make the project infeasible.

(ii) Design changes approved by the field office which are necessary because of additional requirements imposed by governmental agencies or HUD; or

(iii) HUD-approved changes in the method or terms and conditions of financing.

(b) Each owner will be notified as to whether the final proposal has been approved, rejected, or could be approved with the submission of additional information or after correction of specified deficiencies. Notifications of approval will indicate a deadline for acceptance of the notification and, for projects not requiring mortgage insurance, a deadline for submission of working drawings and architect's certifications.

§ 880.310 Submission and review of working drawings, architect's certification and requested changes.

(a) For projects which do not involve mortgage insurance, working drawings and specifications must be submitted to the field office for review after approval of the proposal. The owner must also submit an architect's certification in the prescribed form that the drawings and specifications and proposed construction comply with the HUD Minimum Property Standards, local codes and ordinances, and zoning requirements. The working drawings and specifications will be reviewed for compliance with amenity standards. Any project may, at HUD's option, be reviewed for conformance with the HUD Minimum Property Standards, adequacy of design for tenant security and efficiency in construction and design; however, HUD has no obligation to do so and any such review or non-review will not constitute approval as to these standards.

(b) Any requests for rent increases or any material deviations from preliminary or final proposal which are submitted with the working drawings will be reviewed in the same manner as required in § 880.309(a).

(c) For projects involving mortgage insurance, working drawings are reviewed as part of the review of the application for firm commitment/final proposal.

§ 880.311 Execution of agreement (and ACC, if applicable).

(a) Upon receipt of the working drawings and acceptance of the architect's certification for projects not involving mortgage insurance, or at the time of initial endorsement in the case of projects involving mortgage insurance:

(1) HUD and the owner will execute the Agreement in the case of private-owner/HUD and PHA-owner/HUD projects; or

(2) HUD and the PHA will execute the ACC, and thereafter the PHA and the owner will execute the Agreement and HUD will approve it, in the case of private-owner/PHA projects.

(b) No Agreement will be executed unless HUD has approved the financing for the project, including a definite commitment from a lender, and the final proposal is in all other respects unconditionally approved.

(c) In the case of non-elderly family projects located in non-impacted jurisdictions, the field office will promptly notify PHAs and Community Development Agencies in impacted jurisdictions in the SMSA, as well as any metropolitan-wide clearinghouse, or fair housing organizations where there is no metropolitan-wide clearinghouse, of the execution of the Agreement; the size and bedroom distribution of the project; and the expected time of initial marketing and occupancy. The notification will indicate that the agencies will be contacted again by the owner for referrals of families from impacted jurisdictions.

Subpart D—Construction Period and Cost Certification

§ 880.401 Timely performance of work.

(a) After execution of the Agreement, the owner must proceed promptly with construction as provided in the Agreement and complete the project within the time stated in the Agreement. If the owner fails to start, diligently continue or complete construction, the contract administrator will have the right to rescind the Agreement or take other appropriate action.

(b) Extensions of the time may be granted for the reasons stated in the Agreement. However, contract rents will be increased only for the reasons stated in § 880.403.

§ 880.402 Inspections during construction.

(a) All projects will be inspected by HUD periodically to determine compliance with Davis-Bacon Act requirements.

(b) Projects which involve HUD mortgage insurance, or another type of financing which requires HUD construction inspection, will be subject to the applicable inspection requirements.

(c) A review to determine contractor compliance with equal opportunity requirements may be conducted at any time during the construction period.

§ 880.403 Increases in contract rents or utility allowances before contract execution.

(a) Increases in contract rents or utility allowances after execution of the Agreement and prior to execution of the Contract are permitted with HUD approval only:

(1) To correct substantial errors by HUD in the original processing which would otherwise result in serious inequities;

(2) To reflect substantial and necessary changes in the plans and specifications which have been approved by HUD (no optional betterments may result in rent increases);

(3) To reflect additional costs for interest, taxes, hazard insurance, mortgage insurance premiums, and commitment fees, due to construction delays excusable under the Agreement;

(4) To reflect additional costs which result from new requirements imposed by local governments, HUD or other Federal agencies, which are beyond the control of the owner, which have been approved by HUD and which could not have been anticipated at the time the Agreement was executed; or

(5) To reflect increased costs which result from a change in contractors which is necessary because the original contractor became bankrupt, was terminated by the owner due to inadequate performance or abandoned the job.

(b) Such increases will be:

(1) Limited to the amount necessary to cover the specific cost increase associated with the applicable item cited in paragraph (a); and

(2) Reviewed and approved only in accordance with the Fair Market Rent and rent reasonableness limitations of § 880.204(b) and the replacement cost limitations of § 880.204(c) all in effect at the time of the review of the request.

(c) All requests for increases must be submitted promptly to the field office for review as soon as the need for the increases becomes apparent.

§ 880.404 Project Completion.

(a) *Notification and Evidence of Completion.* The owner must notify HUD and the PHA, where the PHA is the contract administrator, when work is completed and provide HUD with:

(1) A set of as-built drawings;

(2) A certificate of occupancy and any other official approvals necessary for occupancy;

(3) A certification in the prescribed form that the project has been completed and is ready for occupancy in accordance with the requirements of the Agreement; and

(4) For projects where HUD construction inspection is not required during construction, a certification from the inspecting architect in the prescribed form which states that the project has been constructed in accordance with the certified work drawings and specifications, HUD Minimum Property Standards, local codes and ordinances, and zoning requirements.

(b) *Review and Inspection.* After receipt of the notification and evidence of completion, HUD will review the evidence of completion for adequacy and will inspect the project to determine whether it appears that the project has been completed in accordance with the Agreement.

(c) *Acceptance of the Project.*

(1) If HUD determines from review and inspection that the project (or a stage of the project) has been completed in accordance with the Agreement, the project (or stage) will be accepted.

(2) If there are any items of delayed completion which are minor items or which are incomplete because of weather conditions, and in any case which do not preclude or affect occupancy, and all other requirements of the Agreement have been met, the project (or stage) will be accepted. An escrow fund determined by HUD to be sufficient to assure completion for items of delayed completion will be required, as well as a written agreement between HUD and the owner, to be included as an exhibit to the Contract, specifying the schedule for completion. If the items are not completed within the agreed time period, the contract administrator may terminate the Contract or exercise other rights under the Contract.

(3) If other deficiencies exist, HUD will determine whether and to what extent the deficiencies are correctable, and whether the contract rents should be reduced. The owner will be notified of HUD's decision. If the corrections required by HUD are possible, HUD and the owner will enter into an agreement for the correction of the deficiencies. If the deficiencies are corrected within the period of time allowed, HUD will accept the project.

(4) Otherwise, the project will not be accepted, and the owner and the PHA, where applicable, will be notified with a statement of the reasons for nonacceptance. [However, see § 880.501(a) for action where evidence of completion is acceptable only with respect to physical completion of the project.]

(d) *Pending Davis-Bacon Act Claims.* If there are pending claims under the

provisions in the Agreement relating to place a sufficient amount, as determined by HUD, in escrow as approved by HUD to assure such payments. The amount withheld may be disbursed by HUD for and on account of the owner or any subcontractor to the employees to whom it is due.

§ 880.405 Cost certification and adjustment of contract rents.

(a) As soon as possible after acceptance of the project by HUD, the owner will certify the actual cost, except in the case of partially-assisted projects, and submit a cost certification including the unqualified certificate of an Independent Public Accountant to HUD in the manner and form prescribed by HUD, based on the following guidelines:

(1) Projects which involve HUD mortgage insurance will be subject to the cost certification requirements of the applicable insurance program;

(2) For projects not insured by HUD, a simplified form of cost certification will be completed and submitted;

(3) There will be no cost certification submission required for projects with rents that are equal to or less than comparable rents or for small projects or partially-assisted projects; and

(4) The provisions of paragraphs (a) (2) and (3) do not preclude the imposition of different cost certification requirements appropriate as part of project financing requirements (such as tax exempt financing under 24 CFR, Part 811).

(b) The cost certification for projects with rents that are higher than comparable rents will be subject to review by HUD. As part of this review, additional documentation may be required.

(c) If the owner's certified costs provided in accordance with paragraph (a) of this section, as approved by HUD, are less than the cost estimate provided for in § 880.308(a)(9), the contract rents will be reduced accordingly.

(d) If the contract rents are reduced pursuant to paragraph (c) of this section, the maximum annual Contract commitment (and the Maximum ACC commitment, in the case of private-owner/PHA projects) will be reduced. If contract rents are reduced based on certification after Contract execution, any overpayment since the effective date of the Contract will be recovered from the owner by HUD.

Subpart E—Housing Assistance Payments Contract

§ 880.501. The contract.

(a) *Contract.* The Housing Assistance Payments Contract sets forth rights and duties of the owner and the contract administrator with respect to the project and the housing assistance payments. It is entered into upon satisfactory completion of the project. If the field office finds that the evidence of completion is acceptable with respect to the physical completion of the project, including the certificate of occupancy and/or other official approvals required for occupancy, but the evidence of completion in other respects is not acceptable, the field office will, upon request by the owner, execute or approve the execution of the Contract; in such case, however, until the remaining evidence of completion is submitted to and found acceptable by the field office:

(1) The contract rent for the purpose of computing housing assistance payments with respect to any unit will be the monthly amount of the debt service on the permanent obligations attributable to the unit, and

(2) Rent-up and occupancy will be subject to such conditions as the field office may require.

(b) *Effective Date of Contract.* The effective date of the Contract may be earlier than the date of execution, but no earlier than the date HUD inspects and accepts the project, except as provided in paragraph (a).

(c) *Housing Assistance Payments to Owners under the Contract.* The housing assistance payments made under the Contract are:

(1) Payments to the owner to assist eligible families leasing assisted units, and

(2) Payments to the owner for vacant assisted units ("vacancy payments") if the conditions specified in § 880.610 are satisfied.

The housing assistance payments are made monthly by the contract administrator upon proper requisition by the owner, except payments for vacancies of more than 60 days which are made semi-annually by the contract administrator upon requisition by the owner.

(d) *Amount of Housing Assistance Payments to Owner.* (1) The amount of the housing assistance payment made to the owner of a unit being leased by an eligible family is the difference between the contract rent for the unit and the tenant rent payable by the family.

(2) A housing assistance payment will be made to the owner for a vacant assisted unit in an amount equal to 80 percent of the contract rent for the first 60 days of vacancy, subject to the conditions in § 880.611. If the owner collects any tenant rent or other amount for this period which, when added to this vacancy payment, exceeds the contract rent, the excess must be repaid as HUD directs.

(3) For a vacancy that exceeds 60 days, a housing assistance payment for the vacant unit will be made, subject to the conditions in § 880.611, in an amount equal to the principal and interest payments required to amortize that portion of the debt attributable to the vacant unit for up to 12 additional months.

(e) *Additional Housing Assistance Payments to Families.* In those cases where the total family contribution of a family leasing an assisted unit is less than the utility allowance for the unit, the difference will be paid to the family as an additional housing assistance payment. The Contract will provide that the owner will make this payment on behalf of the contract administrator. Funds for this purpose will be paid to the owner in trust solely for the purpose of making the additional payment.

§ 880.502 Term of contract.

(a) *Maximum Term (Except for Mobile Homes).* The term of the Contract will be for the total number of years approved by the field office within the following limits:

(1) For assisted units in a project financed with the aid of a loan insured or co-insured by the Federal government (except for units in a co-insured project owned by or financed by a loan or loan guarantee from a state or local agency) or a loan made, guaranteed or intended for purchase by the Federal government, the maximum term is 20 years.

(2) For units in a project financed other than as described in paragraph (a)(1), the maximum term is the lesser of (i) the term of the project's financing (but not less than 20 years), or (ii) 30 years, except that this maximum will be 40 years if (A) the project is owned or financed by a loan or loan guarantee from a state or local agency, (B) the project is intended for occupancy by non-elderly families and (C) the project is located in an area designated by HUD as one requiring special financing assistance.

(b) *Maximum Term for Mobile Homes.* For mobile homes, the maximum initial term of the Contract is 5 years, subject to renewal by the owner for additional terms of not more than 5 years each with the approval of the contract administrator (and HUD if the

contract administrator is a PHA), up to a maximum total term of 20 years. In this paragraph, the term "mobile home" means the original mobile home and any replacement(s) combined.

(c) *Staged Projects.* If the project is completed in stages, the term of the Contract must relate separately to the units in each stage. The total Contract term for the units in all stages, beginning with the effective date of the Contract for the first stage, may not exceed the overall maximum term allowable for any one unit under this section, plus two years.

§ 880.503 Maximum Annual Commitment and Project Account.

(a) *Maximum Annual Commitment.* For a private-owner/HUD or PHA-owner/HUD project, the maximum annual amount that may be committed under the Contract is the total of the contract rents and utility allowances for all assisted units in the project. For a private-owner/PHA project, the maximum annual contribution that may be contracted for in the ACC is the total of the contract rents and utility allowances for all assisted units plus the HUD-approved fee for PHA administration. Where the PHA is a State Housing Finance and Development Agency, the maximum total annual contribution will not include a fee payable by HUD for the regular costs of administration of the Contract, nor will the agency be eligible for a fee payable by HUD for the preliminary costs of administration of the Contract, if the amount charged for the permanent loan by the agency to the owner ancillary is greater than the agency's cost of borrowing including costs of servicing the obligations, such as trustee fees, maintenance of books and accounts and audit expenses.

(b) *Project Account.*

(1) A project account will be established and maintained by HUD as a specifically identified and segregated account for each project. The account will be established out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the Contract or ACC each year. Payments will be made from this account when needed to cover increases in contract rents or decreases in tenant rents for:

Housing assistance payments (and fees for PHA administration, if appropriate), and

(ii) Other costs specifically approved by the Secretary.

(2) Whenever a HUD-approved estimate of required annual payments under the Contract or ACC for a fiscal year exceeds the maximum annual commitment and would cause the amount in the project account to be less than 40 percent of the maximum, HUD will, within a reasonable period of time, take such additional steps authorized by Section 8(c)(6) of the U.S. Housing Act of 1937, as may be necessary, to assure that payments under the Contract or ACC will be adequate to cover increases in Contract rents and decreases in tenant rents.

§ 880.504 Reduction of number of units covered by contract.

(a) *Limitation on Leasing to Ineligible Families.* Owners may not lease more than 10 percent of the assisted units in a project to ineligible families without the prior approval of HUD. Failure on the part of the owner to comply with this prohibition is a violation of the Contract and grounds for all available legal remedies, including suspension or debarment from HUD programs and reduction of the number of units under the Contract, as set forth in paragraph (b) of this section.

(b) *Reduction for Failure to Lease to Eligible Families.* If, at any time beginning six months after the effetive date of the Contract, the owner fails for a continuous period of six months to have at least 90 percent of the assisted units leased or available for leasing by eligible families, HUD (or the PHA at the direction of HUD, as appropriate) may, on at least 30 days' notice, reduce the number of units covered by the Contract. HUD may reduce the number of units to the number of units actually leased or available for leasing plus 10 percent (rounded up). This reduction, however, will not be made if the failure to lease units to eligible families is permitted in writing by HUD under paragraph (a) of this section.

(c) *Restoration.* HUD will agree to an amendment of the ACC or the Contract, as appropriate, to provide for subsequent restoration of any reduction made pursuant to paragraph (b) if:

(1) HUD determines that the restoration is justified by demand,

(2) The owner otherwise has a record of compliance with his obligation under the Contract, and

(3) Contract authority is available.

§ 880.505 Contract administration and conversions.

(a) *Contract Administration.* For private-owner/PHA projects, the PHA is primarily responsible for administration of the Contract, subject to review and audit by HUD. For private-owner/HUD and PHA-owner projects HUD is responsible for administration of the Contract, but may contract with another entity for the performance of some or all of its contract administration functions.

(b) *PHA Fee for Contract Administration.* A PHA will be entitled to a reasonable fee, determined by HUD, for administering a Contract except under certain circumstances (see 24 CFR Section 883.203) where a state housing finance agency is the PHA and finances the project.

(c) *Conversion of Projects from One Ownership/Contractual Arrangement to Another.* Any project may be converted from one ownership/contractual arrangement to another (for example, from a private-owner/HUD to a private-owner/PHA project) if:

(1) The owner, the PHA and HUD agree,

(2) HUD determines that conversion would be in the best interest of the project, and

(3) In the case of conversion from a private-owner/HUD to a private-owner/PHA project, contract authority is available to cover the PHA fee for administering the Contract.

§ 880.506 Default by owner (private-owner/HUD and PHA-owner/HUD projects).

The Contract will provide:

(a) That if HUD determines that the owner is in default under the Contract, HUD will notify the owner of the actions required to be taken to cure the default and of the remedies to be applied by HUD including reduction or suspension of housing assistance payments and recovery of overpayments, where appropriate; and

(b) That if the owner fails to cure the default, HUD has the right to terminate the Contract or to take other corrective action.

§ 880.507 Default by PHA and/or owner (private-owner/PHA projects).

(a) *Rights of Owner if PHA Defaults under Agreement.* The ACC and the Agreement will provide that, in the event of failure of the PHA to comply with the Agreement with the owner the owner will have the right, if he is not in default, to demand that HUD determine whether a substantial default exists. HUD will first give the PHA a reasonable opportunity to take corrective action. If HUD determines that a substantial default exists, HUD will assume the PHA's rights and obligations under the Agreement and meet the obligations of the PHA under the Agreement, including the obligations to enter into the Contract.

(b) *Rights of Owner if PHA Defaults under Contract.* The ACC and the Contract will provide that, in the event

of failure of the PHA to comply with the Contract with the owner, the owner will have the right, if he is not in default, to demand that HUD determine whether a substantial default by the PHA exists. HUD will first give the PHA a reasonable opportunity to take corrective action. If HUD determines that a substantial default exists, HUD will assure that the obligations of the PHA to the owner are met.

(c) *Rights of HUD if PHA Defaults under ACC.* The ACC will provide that, if the PHA fails to comply with any of its obligations, HUD may determine that there is a substantial default and require the PHA to assign to HUD all of its rights and interests under the Contract; however, HUD will continue to pay annual contributions in accordance with the terms of the ACC and the Contract. Before determining that a PHA is in substantial default, HUD will give the PHA a reasonable opportunity to take corrective action. The PHA's obligations include enforcing its rights under the Contract, in the event of a default by the owner, to achieve compliance to the satisfaction of HUD or to terminate the Contract in whole or in part, as directed by HUD.

(d) *Rights of PHA and HUD if Owner Defaults under Contract.* The Contract will provide:

(1) That if the PHA determines that the owner is in default under the Contract, the PHA will notify the owner, with a copy to HUD, of the actions required to be taken to cure the default and of the remedies to be applied by the PHA including abatement of housing assistance payments and recovery of overpayments, where appropriate; and

(2) That if he fails to cure the default, the PHA has the right to terminate the Contract or to take other corrective action, in its discretion or as directed by HUD. If the PHA is the leader, the Contract will also provide that HUD has an independent right to determine whether the owner is in default and to take corrective action and apply appropriate remedies, except that HUD will not have the right to terminate the Contract without proceeding in accordance with paragraph (c) of this section.

Subpart F—Management

§ 880.601 Responsibilities of owner.

(a) *Marketing.* (1) The owner must commence diligent marketing activities in accordance with the Agreement not later than 90 days prior to the anticipated date of availability for occupancy of the first unit of the project.

(2) Marketing must be done in accordance with the HUD-approved Affirmative Fair Housing Marketing Plan and all Fair Housing and Equal Opportunity requirements. The purpose of the Plan and requirements is to assure that eligible families of similar income in the same housing market area have an equal opportunity to apply and be selected for a unit in projects assisted under this Part regardless of their race, color, creed, religion, sex or national origin.

(3) In addition, in the case of a non-elderly family project located in a non-impacted jurisdiction, initial and subsequent marketing must be done in accordance with the HUD-approved plan for outreach to families from impacted jurisdictions. Initial marketing to such families must commence one month before the initiation of marketing to families living in non-impacted jurisdictions. However, applications from such families will not be accepted until the date of initiation of marketing to other families, which date will also be the announced date for acceptance of applications from all families.

(4) At the time of Contract execution, the owner must submit a list of leased and unleased units, with justification for the unleased units, in order to qualify for vacancy payments for the unleased units. (See §§ 880.501(c) and (d) and § 880.609.)

(b) *Management and Maintenance.* The owner is responsible for all management functions (including selection of tenants, reexamination of family incomes, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions must be performed in compliance with applicable Equal Opportunity requirements.

(c) *Contracting for Services.* With HUD approval, the owner may contract with a private or public entity (except the contract administrator) for performance of the services or duties required in paragraphs (a) and (b). However, such an arrangement does not relieve the owner of responsibility for these services and duties.

(d) *Submission of Financial and Operating Statements.* After execution of the Contract, the owner must submit to the contract administrator:

(1) Within 60 days after the end of each fiscal year of the project, financial statements for the project audited by an Independent Public Accountant in the form required by HUD, and

(2) Other statements as to project operation, financial conditions and occupancy as HUD may require pertinent to administration for the Contract and monitoring of project operations.

(e) *Use of Project Funds.* Project funds must be used for the benefit of the project, to make required deposits to the replacement reserve in accordance with Section 880.602(b), and to provide distributions to the owner as provided in Section 880.206. Any remaining project funds must be deposited with the mortgagee or other HUD-approved depository in a residual receipts account. Withdrawals from this account will be made only for project purposes and with the approval of HUD. In the case of HUD-insured projects, the provisions of this paragraph will apply in lieu of the otherwise applicable mortgage insurance provisions.

§ 880.602 Project reserves.

(a) *Operating Deficit Escrow.* (1) Prior to the execution of the Contract, a profit-motivated owner must provide an escrow, in the form of cash, and unconditional, irrevocable letter of credit, or other negotiable instrument, to meet any potential operating deficit during the early years of project operation. The escrow will at least 2 percent of the total replacement cost, as determined by HUD. This does not preclude more stringent requirements that may be imposed as part of HUD mortgage insurance or other project financing requirements. If the owner is not in default under the Contract or project mortgage, one-half of the unused escrow will be released to the owner at the end of the project's third fiscal year after the Contract becomes effective and the remainder will be released at the end of the project's fourth fiscal year.

(2) Funds will be held by the mortgagee or trustee for bondholders, and may be drawn from the escrow and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.

(b) *Replacement Reserve.* (1) A replacement reserve must be established and maintained in an interest-bearing account to aid in funding extraordinary maintenance and repair and replacement of capital items. An amount equivalent to 5 percent of total housing expenses for elderly family projects, and 7 percent of this total for projects other than those designed for the elderly, or any higher rate as required by HUD from time to time, will be deposited in the replacement reserve annually.

(2) The reserve must be built up to and maintained at a level determined by

HUD to be sufficient to meet projected requirements. Should the reserve achieve that level, the rate of deposit to the reserve may be reduced with the approval of HUD.

(3) All earnings including interest on the reserve must be added to the reserve.

(4) Funds will be held by the mortgage or trustee for bondholders, and may be drawn from the reserve and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.

(c) In the case of HUD-insured projects, the provisions of this section will apply in lieu of the otherwise applicable mortgage insurance provisions.

§ 880.603 Selection and admission of tenants.

(a) *Application.* The owner must accept applications for admission to the project in the form prescribed by HUD. Both the owner (or designee) and the applicant must complete and sign the application. On the request, the owner must furnish copies of all applications to HUD and the PHA, if applicable.

(b) *Determination of Eligibility and Selection of Tenants.* The owner is responsible for determining whether the applicant is eligible, in accordance with 24 CFR, Parts 812 and 889, and for the selection of families:

(1) In establishing criteria for selection, no local residency requirements or preferences may be used.

(2) If owner determines that the family is eligible and is otherwise acceptable and units are available, the owner will assign the family a unit of the appropriate size in accordance with HUD standards. If no suitable unit is available, the owner will place the family on a waiting list for the project and notify the family of when a suitable unit may become available. If the waiting list if so long that the applicant would not be likely to be admitted for the next 12 months, the owner may advise the applicant that no additional applications are being accepted for that reason.

(3) If the owner determines that an applicant is ineligible on the basis of income or family composition, or that the owner is not selecting the applicant for other reasons, the owner will promptly notify the applicant in writing of the determination, the reasons for the determination, and that the applicant has the right to meet the owner or managing agent in accordance with HUD requirements. Where the owner is a PHA, the applicant may request an informal hearing. If the PHA determines that the applicant is not eligible, the PHA will notify the applicant and inform the applicant that he has the right to request a review by HUD of the PHA's determination. The applicant may also exercise other rights if he believes he is being discriminated against on the basis of race, color, creed, religion, sex, or national origin.

(4) Records on applicants and approved eligible families, which provide racial, ethnic, gender and place of previous residency data required by HUD, must be maintained and retained for three years.

(c) *Income Mix.* In the initial renting of assisted units, the owner must lease at least 30 percent of the assisted units to very low-income families. After initial renting, the owner must use his best efforts to maintain at least 30 percent occupancy by very low-income families. In addition, at all times, the owner will use his best efforts to achieve leasing to families with a range of incomes so that the average of incomes of all families in occupancy is at or above 40 percent of the median income in the area.

(d) *Reexamination of Family Income and Composition.*

(1) The owner is responsible for reexamining the income and composition of all families, including elderly families, at least once each year and, upon verification of the information provided by the family, making appropriate adjustments in the total family contribution in accordance with the provisions of 24 CFR, Part 889. The owner will adjust tenant rent and the housing assistance payment in accordance with any change in total family contribution. The owner may schedule reexaminations at intervals of less than one year when it is not possible to make a reasonable estimate of the family's income for a full year.

(2) If the family reports a change in income or other circumstances that would result in a decrease of total family contribution between regularly scheduled reexaminations, the owner, upon receipt of verification of the decrease in income, must promptly make appropriate adjustments in the total family contribution. The owner may not require families to report increases in income between scheduled reexaminations.

§ 880.604 Tenant rent.

The tenant rent is paid directly to the owner by the eligible family to whom as assisted unit is leased in partial payment of the contract rent. It is equal to the family's total family contribution minus any utility allowance for the unit. If the family's total family contribution is less than the utility allowance for the unit which it occupies, the tenant rent payable by the family to the owner is zero.

§ 880.605 Overcrowded and underoccupied units.

If the contract administrator determines that because of change in family size an assisted unit is smaller than appropriate for the eligible family to which it is leased, or that the unit is larger than appropriate, housing assistance payments with respect to the unit will not be reduced or terminated until the eligible family has been relocated to an appropriate alternative unit. If possible, the owner will, as promptly as possible, offer the family an appropriate unit. The owner may receive vacancy payments for the vacated unit if he complies with the requirements of § 880.610.

§ 880.606 Lease requirements.

(a) *Term of Lease.* The term of the lease will be for not less than one year. The lease may, or in the case of a lease for a term of more than one year must, contain a provision permitting termination on 30 days advance written notice by the family.

(b) *Form.* The form of lease must contain all required provisions, and none of the prohibited provisions specified in the developer's packet, and must conform to the form of lease included in the approved final proposal.

§ 880.607 Termination of tenancy and modification of leases.

(a) *Entitlement of Families to Occupancy.*

(1) *General.* The owner may not terminate any tenancy except upon the following grounds:

(i) Material noncompliance with the lease;

(ii) Material failure to carry out obligations under any state landlord and tenant act; or

(iii) Other good cause.

No termination by an owner under paragraph (b)(1) (i) or (ii) of this section will be valid to the extent it is based upon a lease or a provision of State law permitting termination of a tenancy solely because of expiration of an initial or subsequent renewal term.

(2) *Notice of Good Cause.* The grounds for termination cannot be deemed "other good cause" under paragraph (b)(1)(iii) unless the owner has given the family prior notice that the grounds constitute a basis for termination of tenancy. The notice will be served on the family in the same

manner as that provided for termination notices in paragraph (c)(2).

(3) *Material Noncompliance.* Material noncompliance with the lease will include:

(i) One or more substantial violations of the lease, or

(ii) Repeated minor violations of the lease which disrupt the livability of the project, adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related project facilities, interfere with the management of the project or have an adverse financial effect on the project. Nonpayment of rent or any other financial obligation due under the lease (including any portion thereof) beyond any grace period permitted under State law will constitute a substantial violation of the rental agreement. The payment of rent or any other financial obligation due under the lease after the due date but within the grace period permitted under state law will constitute a minor violation.

(b) *Termination Notice.*

(1) *Requirements of Termination Notice.* The owner's determination to terminate the tenancy must be in writing and:

(i) State that the tenancy is terminated on a specified date;

(ii) State the reasons for the owner's action with enough specificity so as to enable the tenant to prepare a defense; and

(iii) Advise the family that if a judicial proceeding for eviction is instituted the family may present a defense; and

(iv) Be served on the family in the manner prescribed by paragraph (c)(2) of this section.

(2) *Manner of Service.* The notice provided for in paragraph (c)(1) of this section must be accomplished by:

(i) Sending a letter by first class mail properly stamped and addressed to the family at its address at the project with a proper return address, and

(ii) Serving a copy of the notice on any adult person answering the door at the leased dwelling unit or if no adult responds, by placing the notice under or through the door.

Service will not be deemed effective until both notices provided for in this paragraph have been acomplished. The date on which the notice will be deemed to be received by the family will be the date on which the first class letter provided for in this paragraph is mailed or the date on which the notice provided for in this paragraph is properly served, whichever is later.

(3) *Time of Service.* When a termination notice is issued according to this section for other good cause, the notice will be effective, and it will so state, at the end of a term (or in accordance with the applicable provisions of the lease), but in no case earlier than 30 days after receipt by the family of the notice. Where the termination notice is based on material noncompliance with the lease or material failure to carry out obligations under a state landlord and tenant act pursuant to paragraph (b)(1)(ii) or (iii), the time of service shall be in accord with the lease and state law.

(4) *Specificity of Notice in Rent Nonpayment Cases.* In any case in which a tenancy is terminated because of the family's failure to pay rent, a notice stating the dollar amount of the balance due on the rent account and the date of the computation will satisfy the requirement of specificity set forth in paragraph (c)(1)(ii) of this section.

(5) *Failure of Family to Object.* The failure of the family to object to the termination notice will not constitute a waiver of rights to contest the owner's action in any judicial proceeding.

(6) *Limitations on Allegations of New Grounds.* In any judicial action instituted to evict the family, the owner may not rely on any grounds which are different from the reasons set forth in the termination notice served on the family according to this section.

(c) *Modification of Lease.* Notwithstanding any provision of this subpart, the owner may, with the prior approval of HUD, modify the terms and conditions of the lease effective at the end of the initial term or a successive term, by serving an appropriate notice on the family, together with the offer of a revised lease or an addendum revising the existing lease. This notice and offer must be served on the family in the same manner as provided for in paragraph (c)(2) and must be received by the family at least 30 days prior to the last date on which the family has the right to terminate the tenancy without being bound by the modified terms and conditions. The family may accept the modified terms and conditions by executing the offered revised lease or addendum, or may reject the modified terms and conditions by giving the owner written notice in accordance with the lease that he intends to terminate the tenancy. Any increase in rent will in all cases be governed by § 880.609 and other applicable HUD regulations.

(d) *State and Local Law.* This section will apply in conjunction with any State and local landlord tenant law.

§ 880.608 Security deposits.

(a) At the time of the initial execution of the lease, the owner will require each family to pay a security deposit in an amount equal to one month's total family contribution or $50, whichever is greater. The family is expected to pay the security deposit from its own resources and/or other public sources. The owner may collect the security deposit on an installment basis.

(b) The owner must place the security deposits in a segregated, interest-bearing account. The balance of this account must at all times be equal to the total amount collected from the families then in occupancy, plus any accrued interest. The owner must comply with any applicable State and local laws concerning interest payments on security deposits.

(c) In order to be considered for the return of the security deposit, a family which vacates its unit will provide the owner with its forwarding address or arrange to pick up the refund.

(d) The owner, subject to State and local law and the requirements of this paragraph, may use the security deposit, plus any accrued interest, as reimbursement for any unpaid family contribution or other amount which the family owes under the lease. Within 30 days after receiving notification of the family's forwarding address, the owner must:

(1) Refund to a family owing no rent or other amount under the lease the full amount of the security deposit, plus accrued interest;

(2) Provide to a family owing rent or other amount under the lease a list itemizing any unpaid rent, damages to the unit, and estimated costs for repair, along with a statement of the family's rights under State and local law. If the amount which the owner claims is owed by the family is less than the amount of the security deposit, plus accrued interest, the owner must refund the unused balance to the family. If the owner fails to provide the list, the family will be entitled to the refund of the full amount of the security deposit plus accrued interest.

(e) In the event a disagreement arises concerning reimbursement of the security deposit, the family will have the right to present objections to the owner in an informal meeting. The owner must keep a record of any disagreements and meetings in a tenant file for inspection by the contract administrator. The procedures of this paragraph do not preclude the family from exercising its rights under State and local law.

(f) If the security deposit, including any accrued interest, is insufficient to

reimburse the owner for any unpaid tenant rent or other amount which the family owes under the lease, and the owner has provided the family with the list required by paragraph (d)(2), the owner may claim reimbursement from HUD or the PHA, as appropriate, for an amount not to exceed the lesser of:

(1) The amount owed the owner, or

(2) One month's contract rent, minus the amount of the security deposit plus accrued interest.

Any reimbursement under this section will be applied first toward any unpaid tenant rent due under the lease. No reimbursement may be claimed for unpaid rent for the period after termination of the tenancy.

§ 880.609 Adjustment of contract rents.

(a) *Annual Adjustment of Contract Rents.* Contract rents will be adjusted on the anniversary date of the Contract in accordance with 24 CFR, Part 888.

(b) *Special Additional Adjustments.* For all projects, special additional adjustments will be granted, to the extent determined necessary by HUD, to reflect increases in the actual and necessary expenses of owning and maintaining the assisted units which have resulted from substantial general increases in real property taxes, assessments, utility rates, and utilities not covered by regulated rates, and which are not adequately compensated for by annual adjustments under paragraph (a). The owner must submit to the contract administrator required supporting data, financial statements and certifications.

(c) *Overall Limitation.* Any adjustments of contract rents and utility allowances for a unit after cost certification must not result in material differences between the rents charged for assisted units and comparable unassisted units except to the extent that the differences existed with respect to the contract rents set at cost certification.

§ 880.610 Adjustment of utility allowances.

The owner must recommend to the contract administrator, in connection with annual and special adjustments of contract rents, and at other times if appropriate, whether and to what extent the utility allowance for any assisted unit should be adjusted. Whenever a utility allowance for a unit is adjusted, the contract administrator will promptly notify the families occupying assisted units and make a corresponding adjustment of the tenant rent and the amount of the housing assistance payment for the unit.

§ 880.611 Conditions for receipt of vacancy payments.

(a) *General.* Vacancy payments under the Contract will not be made unless the conditions for receipt of these housing assistance payments set forth in this section are fulfilled.

(b) *Vacancies During Rent-up.* For each assisted unit that is not leased as of the effective date of the Contract, the owner is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 60 days of vacancy if the owner:

(1) Conducted marketing in accordance with § 880.601(a) and otherwise complied with § 880.601;

(2) Has taken and continues to take all feasible actions to fill the vacancy; and

(3) Has not rejected any eligible applicant except for good cause acceptable to the contract administrator.

(c) *Vacancies after Rent-Up.* If an eligible family vacates a unit, the owner is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 60 days of vacancy if the owner:

(1) Certifies that he did not cause the vacancy by violating the lease, the Contract or any applicable law;

(2) Notified the contract administrator of the vacancy or prospective vacancy and the reasons for the vacancy immediately upon learning of the vacancy or prospective vacancy;

(3) Has fulfilled and continues to fulfill the requirements specified in § 880.601(a)(2) and (3) and § 880.611(b)(2) and (3); and

(4) For any vacancy resulting from the owner's eviction of an eligible family, certifies that he gave the family written notice of the proposed eviction, stating the grounds and advising the family that it had 10 days to present objections to the owner.

(d) *Vacancies for Longer than 60 Days.* If an assisted unit continues to be vacant after the 60-day period specified in paragraph (b) or (c), the owner may apply to receive additional vacancy payments in an amount equal to the principal and interest payments required to amortize that portion of the debt service attributable to the vacant unit for up to 12 additional months for the unit if:

(1) The unit was in decent, safe and sanitary condition during the vacancy period for which payments are claimed;

(2) The owner has fulfilled and continues to fulfill the requirements specified in paragraphs (b) or (c), as appropriate; and

(3) The owner has demonstrated to the satisfaction of HUD that:

(i) For the period of vacancy, the project is not providing the owner with revenues at least equal to project expenses (exclusive of depreciation), and the amount of payments requested is not more than the portion of the deficiency attributable to the vacant unit, and

(ii) The project can achieve financial soundness within a reasonable time.

(e) *Prohibition of Double Compensation for Vacancies.* The owner is not entitled to vacancy payments for vacant units to the extent he can collect for the vacancy from other sources (such as security deposits, payments under § 880.608(f), and governmental payments under other programs).

§ 880.612 Reviews during management period.

(a) After the effective date of the Contract, the contract administrator will inspect the project and review its operation at least annually to determine whether the owner is in compliance with the Contract and the assisted units are in decent, safe and sanitary condition.

(b) In addition, for private-owner/PHA projects, HUD:

(1) Will review the PHA's administration of the Contract at least annually to determine whether the PHA is in compliance with the Contract, and

(2) May independently inspect project operations and units at any time.

(c) Equal Opportunity reviews may be conducted by HUD at any time.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); Section 3(b), U.S. Housing Act of 1937 (42 U.S.C. 1437c(b)). (Section 7(o) of the Department of HUD Act 42 U.S.C. 3535(o), Section 324 of the Housing and Community Development Amendments of 1978)

Issued at Washington, D.C., May 4, 1979.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 79-18222 Filed 6-11-79; 8:45 am]

BILLING CODE 4210-01-M

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

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DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/OHMO	USDA/FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
CSA	MSPB*/OPM*		CSA	MSPB*/OPM*
	LABOR			LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

*NOTE: As of January 1, 1979, the Merit Systems Protection Board (MSPB) and the Office of Personnel Management (OPM) will publish on the Tuesday/Friday schedule. (MSPB and OPM are successor agencies to the Civil Service Commission.)

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.

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22388 4-13-79 / Leasing of personal property by national banks; interpretive ruling

List of Public Laws

Last Listing June 7, 1979

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202-275-3030).

H.R. 3404 / Pub. L. 96-18 To amend the Federal Reserve Act to authorize Federal Reserve banks to lend certain obligations to the Secretary of the Treasury to meet the short-term cash requirements of the Treasury, and for other purposes. (June 8, 1979; 93 Stat. 35) Price $.60.

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.
WHO: The Office of the Federal Register.
WHAT: Free public briefings (approximately 2½ hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between Federal Register and the Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them, as part of the General Services Administration's efforts to encourage public participation in Government actions. There will be no discussion of specific agency regulations.

WASHINGTON, D.C.

WHEN: July 6 at 9 a.m. (identical sessions).
WHERE: Office of the Federal Register, Room 9409, 1100 L Street NW., Washington, D.C.
RESERVATIONS: Call Mike Smith, Workshop Coordinator, 202-523-5235.

BOSTON, MASSACHUSETTS

WHEN: June 14, at 9:30 a.m. (identical sessions).
WHERE: John F. McCormack Federal Building, Conference Room 208, Boston.
RESERVATIONS: Call James Mullen, 617-223-2368.

LOS ANGELES, CALIFORNIA

WHEN: June 28 and 29 at 9:00 a.m. (identical sessions).
WHERE: Federal Building, Army Corps of Engineers Conference Room 7412, 300 N. Los Angeles Street
RESERVATIONS: Federal Information Center, 213-688-3800.

SAN FRANCISCO, CALIFORNIA

WHEN: June 28 and 29 at 9:00 a.m. (identical sessions).
WHERE: Federal Building, Room 2007, 450 Golden Gate Avenue
RESERVATIONS: Call Mike Madena or Judy Barbee, Federal Executive Board, 415-556-0250.

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Federal Register

Wednesday
June 13, 1979

Highlights

34024 **State and Local Educational Agency Grants** HEW-OE amends regulations governing awards for elementary and secondary school health education projects; comments by 8-13-79 (Part II of this issue)

33913 **Coal Miner's Respiratory Clinics** HEW/PHS/HSA proposes to develop regulations governing program grants

33913 **Risk Reduction Grants** HEW/CDC develops procedures and requirements applicable to Health Education

34048 **Federal Disaster Assistance** HUD/FDAA adds a new subpart to its regulations in order to implement Floodplain Management and Protection of Wetlands; comments by 8-13-79 (Part IV of this issue)

34034 **Agricultural Trade Development and Assistance** State/AID prescribes terms and conditions governing transfer of food commodities; effective 6-13-79 (Part III of this issue)

33884 **Federal Contracting Programs** SBA proposes to assist small businesses; comments by 8-13-79

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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Area Code 202–523–5240

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34078 **Historic Properties** Historic Preservation Advisory Council offers programs concerning accessibility of handicapped; comments by 7–13–79 (Part VI of this issue)

33962–33973 **Older Americans** HEW/OE announces 8–13, 8–27, 9–4, and 9–20–79 as closing dates for receipt of grant applications for certain programs. (7 documents)

33953 **Peaceful Uses of Atomic Energy** DOE/Secy announces proposed "subsequent arrangements" between the United States government and Republic of Korea government

33961 **Public Education Desegregation Awards** HEW/OE accepts sex desegregation assistance applications for certain states; closing date 7–27–79

33913 **Case Assistance, Medical Assistance, and Social Service Programs** HEW drafts regulations on fair hearings process for applicants and recipients

33960 **Occupational and Adult Education Bureau** HEW/OE requests suggestions concerning leadership activities, research ideas, and documentation of need; comments by 8–1–79

33917 **Foster Grandparent and Senior Companion Programs** ACTION revises the schedule of income eligibility levels; effective 6–6–79

33962 **Administration for Native Americans** HEW/HDSO accepts applications for training and technical assistance program grants

33827 **Peanut Warehouse Storage Loans and Handler Operations** USDA/CCC provides terms and conditions for eligible producers; effective 6–13–79

33847 **Retail Electric Service** DOE/FERC implements and establishes procedures governing collection and reporting of cost information; effective 7–15–79

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1446

General Regulations Governing 1978 and Subsequent Crops Peanut Warehouse Storage Loans and Handler Operations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: These regulations provide the terms and conditions under which producers acting through their associations may receive price support on their eligible peanuts through warehouse storage loans for the 1978 and subsequent crop peanuts. Producers and handlers may market peanuts in accordance with the provisions of this subpart. This revision is necessary so that the program may be administered more effectively.

EFFECTIVE DATE: June 13, 1979.

FOR FURTHER INFORMATION CONTACT: Dalton J. Ustynik, (ASCS), 202-447-6761.

SUPPLEMENTARY INFORMATION: A notice that the Department was preparing to make determinations with respect to these provisions was published in the Federal Register on April 27, 1979 (44 FR 24854). The comment period expired on May 29, 1979; however, all written comments received through June 2, 1979 were considered. There were 31 written responses: 8 from members of Congress; 3 from farm organizations; 5 from peanut grower groups; 5 from sheller organizations and shellers; 6 from individuals; one from the Peanut Administrative Committee; the Florida State ASC Committee and two from manufacturers.

On May 22, 1979, a group of producers and handlers from the Virginia-Carolina and Southeastern peanut production areas met with Department officials. Recommendations made at this meeting were given consideration by the Department and are discussed in this analysis of comments. A summary report of the meeting is on file with comments received directly by the Department.

On May 23, 1979, a hearing on these proposals was held before the Oilseeds and Rice Subcommittee of the Agriculture Committee of the House of Representatives. Consideration was given by the Department to the written testimony presented to the Subcommittee by representatives of one grower organization, one farm organization and one sheller organization. Copies of this testimony are on file with comments received directly by the Department.

Following is a summary of the major provisions on which comments were received:

Sec. 1446.3(c) *Farmers stock peanuts.* One commentator approved, one disapproved, and one requested clarification of the proposal to define loose shelled kernels as farmers stock peanuts. Currently, producers are required to market loose shelled kernels (those kernels which have become free of the shell and may be damaged or coated with dirt or other foreign material) with other inshell farmers stock peanuts. There has been no provision for inspection of these kernels if they are removed from the load. The provision to define loose shelled kernels as farmers stock will be adopted so that growers may remove these kernels, have them inspected, and sell them at market value (which is usually higher than the loan value of 7 cents per pound). Removal of the lower quality loose shelled kernels will enhance the quality and value of the inshell peanuts from which they have been removed.

Sec. 1446.3(z) *Edible Export Standard for Contract Additional Peanuts.* One commentator approved and none disapproved of the proposal to provide that raw or inshell peanuts of any grade exported for human consumption shall meet the requirements as specified in the outgoing quality regulations of the peanut marketing agreement for such crops. This provision will be adopted in order to make compliance uniform with quota peanuts moving in edible export trade.

Sec. 1446.3(ff) *Peanut Products.* Two commentators approved and none disapproved of the proposal to add a definition of peanut products but one suggested that the definition be clarified. The definition will be added with the clarifications as suggested.

Sec. 1446.3(hh) *Peanut segregations.* One respondent approved and none disapproved of the proposal to define Segregation 2 and 3 peanuts as Segregation 1 peanuts when purchased under "buy back" provisions for domestic edible and related [seed] use for pool accounting purposes. This provision will be adopted so that profits returned to growers will more accurately reflect commercial demand for Segregation 2 and 3 peanuts sold under the buy back provision.

Sec. 1446.3(ll) *Raw peanuts.* One respondent approved and none disapproved of the proposal to add the definition of raw peanuts. This definition will be adopted.

Sec. 1446.5(a) *Contracts between handlers and producers.* Amended to delete from contract provisions the language that the amount of segregation 1 peanuts required to be delivered shall not exceed the difference between the farm base production poundage and the sum of the farm poundage quota and the quantity of additional peanuts covered by prior contracts.

Sec. 1446.5(b) *Deliveries under optional provisions of the contract.* Three respondents approved and none disapproved of the provision under which a producer retains the right to market Segregation 1 peanuts as quota peanuts in lieu of delivering them under a contract, to the extent that the farm poundage quota has not been filled. This provision will be adopted.

Sec. 1446.7 *Use of additional peanuts as domestic edible peanuts.* The proposed change would have increased from one to two work days, excluding Saturdays, Sundays and Federal holidays, following the day of inspection for completing the paperwork associated with purchases under the "immediate buy back" provision. In response to four recommendations for a longer time period, the period will be extended from two to three workdays. One respondent opposed extending the time period beyond one workday.

1446.8(b) *Method of determining compliance.* A proposed change would delete the provision that shellers may account for commingled additional peanuts on a shelled basis. One respondent favored this proposal and none disapproved the changes. The proposal will be adopted to eliminate substantial handler reports and recordkeeping requirements from the regulations.

Sec. 1446.9(d) *Replacements.* A proposed change would have permitted handlers to use additional peanuts as quota peanuts for which approval was not previously given, provided the handler pays CCC a penalty of 120 percent of the quota loan rate for such peanuts. When the handler established to the satisfaction of CCC that a like amount of quota peanuts was exported the penalty would be refunded. One respondent favored this proposal, other respondents favored a bond or other acceptable security, and one opposed permitting handlers to use additional peanuts as quota peanuts before a like amount of quota peanuts were sold as additional peanuts. Considering all comments, it has been determined that handlers may furnish a letter of credit in an amount not less than 120 percent of the basic quota support rate of the quantity of peanuts to be replaced. If satisfactory evidence is not presented to the association by the final date for exportation the association will draw against the letter of credit the full amount of the marketing quota penalty applicable to any quantity of peanuts on which an accounting was not made.

Sec. 1446.10(i) *Ineligible peanuts.* One respondent approved and one opposed a provision which will enable CCC to assess liquidated damages for ineligible peanuts placed under loan. Opposition was on the grounds that the provision would be burdensome on administration of the program and would not provide any counterbalancing effects. The provision will be retained because commingling of ineligible peanuts (those containing excess moisture, foreign material, or other contamination) with other loan stocks causes a deterioration in average quality of the stocks and results in losses to CCC. Assessment of damages in such instances will enable CCC to recover such losses.

Sec. 1446.14(b) *Additional support.* Under current regulations, all peanuts containing more than 10 percent moisture and/or foreign material are ineligible for price support. It was proposed that an exception be made on foreign material in the case of additional peanuts if a handler agrees to purchase such peanuts under the immediate buy back provision. Also that exceptions be made for both moisture and foreign material on Segregation 2 and 3 peanuts to be sold without storage for crushing or fragmentation for export, up to a maximum determined appropriate by the producer association, based on the crushing market and other local conditions. Five respondents favored and one opposed the proposal. The objector is opposed to any redefinition of quality standards of eligible peanuts as to moisture and foreign material. The proposal will be adopted in order to reduce both compliance and economic burdens to the producer in specific instances which do not involve storage.

Sec. 1446.15 *Disposition and liquidated damages on Segregation 3 peanuts.* This provision has been amended to delete Segregation 2 peanuts from the "antishopping" procedures contained in that section. One commentator approved and one opposed this amendment, which will be retained as a means of reducing compliance and economic burdens to the producer. Segregation 2 peanuts do not create a hazard to health or the integrity of the support and inspection programs.

It was also proposed to amend this section to prohibit producers from attempting to reclean peanuts graded as segregation 3 peanuts on the day of initial inspection. Farmers would be required, as a condition of continued loan eligibility, to dispose of such peanuts, as specified in this section, on the day in inspection. There was considerable opposition to this proposal as presented. However, most respondents (9) were in favor of the proposal, provided the discount on segregation 3 peanuts transferred from additional to quota loan pools was reduced from $50 to $25 per ton. The consensus appears to be that a reduced discount was needed to offset the economic hardship to producers no longer permitted to reclean segregation 3 peanuts. The proposed procedure for disposition of segregation 3 peanuts will be retained. The recommendation to make an offsetting reduction in the segregation 3 discount, from $50 to $25 per ton, will be adopted and included in the forthcoming annual crop supplement pertaining to loan rates, premiums and discounts.

Sec. 1446.16 *Producer transfers of additional loan stocks to quota pools.* The proposed change in this section was to specify that only Segregation 2 and 3 additional loan stocks may be transferred to quota pools. No comments were received on this proposal. However, two respondents recommended that growers be permitted to make such transfers immediately on delivery, rather than after marketings have been completed. The change limiting transfers to Segregation 2 and 3 peanuts will be adopted. The recommendation to permit immediate transfers is rejected because this would be contrary to the intent of the disaster program by permitting transfers whether or not producers suffered quality problems which reduced the production of segregation 1 peanuts to below the farm poundage quota.

In addition to comments on changes proposed by the Department, the following recommendations were received:

Sec. 1446.3(hh) *Peanut segregation.* One respondent recommended no change in the definition of segregation 2 peanuts with regard to freeze damage. No changes will be made, because eliminating freeze damage as a grade factor could cause freeze damaged peanuts to be classed as segregation 1 peanuts. Such peanuts would have to be sold for crushing causing substantial costs to CCC.

Sec. 1446.9 *Compliance by handlers of contract additional peanuts.* Two respondents recommended that certification be accepted in lieu of supervision in determining compliance with the regulations governing disposition of contract additional peanuts. This recommendation was rejected because supervision is considered necessary to assure timely compliance, maintain the identity of restricted peanuts, and avoid unnecessary costs to the Department of verifying the authenticity of alternative documents.

Sec. 1446.9(d) *Replacements.* Six commentators recommended that replacement of different sized shelled peanuts between domestic and export markets be allowed and two respondents opposed such change. This recommendation was not adopted since it was not authorized by law, particularly section 359(h) of the Agricultural Adjustment Act of 1938, as added by the Food and Agriculture Act of 1977, which authorizes the interchange of quota and additional peanuts only if they are of "like type and segregation or quality." The statutory scheme was devised to prevent the blending of the export and crushing markets and the domestic edible market which receive different levels of price support. If additional peanuts of lower quality are permitted to move into the domestic edible market, some price erosion might occur in that

market. The structure of the legislation was designed to prevent price erosion of this kind, with the potential for added expense to the Government because of the higher level of support in the domestic edible market.

Sec. 1446.(9)(i) *Export provisions and handling of additional contract peanuts.* One respondent recommended that additional peanuts be considered exported upon delivery at cold storage warehouses. This recommendation was rejected since it was determined that CCC could not effectively control the exportation of these peanuts and some additional peanuts could enter domestic channels if supervision were relaxed.

Sec. 1446.11 *Pooling and distribution of net profits.* Seven respondents recommended that "buy back" pools be established separately from the additional segregation 1 pools. Under such a provision, profits on sales of additional peanuts for domestic edible and related use under the immediate buy back procedure could not be retained to offset losses on quota pools of the same type. Whether such a recommendation could legally be adopted is questionable in view of Section 108(c)(2) of the Agricultural Act of 1949, as amended, which provides in part that net gains from the sale of additional peanuts for domestic food and related uses shall be used to offset any loss on disposition of all peanuts in the pool for quota peanuts and the fact that the Secretary informed Congress at the time this legislation was being considered that he intended to use area pools. Furthermore, it is hereby determined that the adoption of such a recommendation, if legally permissible, would not be desirable since it would not result in the efficient and effective administration of the peanut price support program and would probably result in increased losses to the Government.

Final Rule

7 CFR 1446.1–1446.16 and the title of this subpart of Part 1446 are amended to read as follows effective for the 1979 and subsequent crops.

Subpart—General Regulations Governing 1979 and Subsequent Crops Peanut Warehouse Storage Loans and Handler Operations.

General

Sec.

1446.1 General statement.
1446.2 Administration.
1446.3 Definitions.

Handler Operations

1446.4 Handler operations.
1446.5 Contracts for additional peanuts for crushing and export.
1446.6 Commingling quota and additional peanuts.
1446.7 Use of additional peanuts as domestic edible peanuts.
1446.8 Compliance by handlers of contract additional peanuts.
1446.9 Supervision and handling of additional contract peanuts.

Warehouse Storage Loans

1446.10 Availability of warehouse storage loans.
1446.11 Pooling and distribution of proceeds.
1446.12 Producer indebtedness.
1446.13 Eligible producers.
1446.14 Eligible peanuts.
1446.15 Disposition and liquidated damages on segregation 3 peanuts.
1446.16 Producer transfers of additional loan stocks to quota pools.

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); secs. 101, 106, 401, 63 Stat. 1051, as amended (7 U.S.C. 1441, 1421); sec. 358, 52 Stat. 91, as amended (7 U.S.C. 1358).

Subpart—General Regulations Governing 1979 and Subsequent Crops Peanut Warehouse Storage Loans and Handler Operations

General

§ 1446.1 General statement.

(a) *Scope.* This subpart sets forth conditions under which producers and handlers may trade in 1979 and subsequent crop(s) peanuts. This subpart also sets forth the terms and conditions under which eligible producers acting collectively through specified marketing associations (referred to severally in this subpart as "the association") may obtain price support on their 1979 and subsequent crop farmers stock peanuts. Eligible farmers stock peanuts produced by eligible producers which are quota peanuts shall be eligible for price support at the quota support rate. Farmers stock peanuts which are not quota peanuts shall be eligible for price support at the additional support rate. Additional peanuts may only be marketed through contracts with handlers or by being pledged to Commodity Credit Corporation ("CCC") for loans. Annual supplements to this subpart will specify support prices, and other terms and conditions not contained in this subpart which are applicable to the warehouse storage loan program for peanuts of a particular crop.

(b) *Price Support Advances.* Producers may obtain price support loans at the rates specified in the applicable annual supplement through the applicable association. Each association will make appropriate loan advances on peanuts delivered to it by producers at warehouses operating under peanut receiving and warehouse contracts with the association. CCC will make a loan (referred to in this subpart as a "warehouse storage loan") to the association. Such loan will be secured by peanuts received by the association.

(c) *Farm storage loans and purchases from producers.* Regulations containing the terms and conditions under which CCC will make farm storage loans directly to producers and purchases directly from producers on any crop farmers stock peanuts will be published separately in the Federal Register.

§ 1446.2 Administration.

(a) *Responsibility.* Under the general direction and supervision of the Executive Vice President, CCC, and the Producer Associations Division, Agricultural Stabilization and Conservation Service (ASCS) will administer this subpart.

(b) *Limitation of authority.* State and county committees or their employees and the associations have no authority to modify or waive any of the provisions of this subpart or any amendments or supplements thereto.

(c) *Supervisory authority.* No delegation of authority in this subpart shall preclude the Executive Vice President, CCC, or the Executive Vice President's designee from determining any questions arising under the regulations or from reversing or modifying any determinations made pursuant to such delegation.

§ 1446.3 Definitions.

As used in this subpart, and in instructions and documents in connection herewith, the words and phrases defined in this section shall have the meanings herein assigned to them unless the content or subject matter otherwise requires.

(a) *Additional peanuts.* Any peanuts which are marketed from a farm other than peanuts marketed or considered marketed as quota peanuts.

(b) *Additional support rate.* The support rate published in annual crop supplements to this part applicable to additional peanuts.

(c) *ASCS.* The Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

(d) *Association.* An area marketing association which is operated primarily for the purpose of conducting loan activities and which is selected and

approved for such activities by the Secretary.

(e) *CCC.* The Commodity Credit Corporation, an agency and instrumentality of the United States within the Department of Agriculture.

(f) *Compliance regulations.* The Regulations Governing Acreage and Compliance Determinations for Farm Marketing Quotas, Acreage Allotments, and Related ASCS Programs, as amended, issued by the Administrator, ASCS, and effective for the applicable crop, Part 718 of this title.

(g) *Contract additional peanuts.* Additional peanuts for crushing or exporting, or both, on which a contract has been entered into between a handler and producer in accordance with § 1446.5.

(h) *County committee.* Persons elected within a county as the county committee under the regulations governing the selection and function of Agricultural Stabilization and Conservation county and community committees in Part 7 of subtitle A of this title, except that for Puerto Rico and the Virgin Islands, the Carribbean Area Agricultural Stabilization and Conservation committee shall insofar as applicable, perform the functions of the county committee.

(i) *County office.* The office of the county ASC committee where records for the farm are kept.

(j) *Domestic edible use.* Use for milling to produce domestic food products or seed and use on the farm.

(k) *Effective farm allotment.* The effective farm peanut acreage allotment for the applicable crop of peanuts, as defined in the peanut marketing quota regulations, Part 729 of this title.

(l) *Effective farm poundage quota.* The effective farm poundage quota for the applicable crop of peanuts as defined in the marketing quota regulations, Part 729 of this title.

(m) *Extra large kernels.* Shelled Virginia type peanuts which are "whole" and free from "minor defects" and "damage" as such terms are defined in the U.S. Standards for Shelled Virginia type peanuts effective on the date of inspection and which will not pass through a screen having 21.5/64 by 1 inch openings.

(n) *Farm.* A farm, as defined in the Regulations Governing Reconstitution of Farms, Allotments, and Bases, Part 719 of this title.

(o) *Farmers stock peanuts.* Picked or threshed peanuts produced in the United States which have not been changed (except for removal of foreign material, loose shelled kernels, and excess moisture) from the condition in which picked or threshed peanuts are customarily marketed by producers, plus any loose shelled kernels removed by producers from farmers stock peanuts.

(p) *Final acreage.* The acreage on the farm from which peanuts are picked or threshed as determined and adjusted under Part 718 of this title.

(q) *Form MQ–94 and Form FVQ–95.*

(1) *Form MQ–94.* Inspection Certificate and Sales Memorandum for farmers stock peanuts.

(2) *Form FVQ–95.* Federal-State Inspection Service, Peanut Inspection Note Sheet.

(r) *Handler.* Any person or firm who acquires peanuts through a business of buying, shelling, or drying peanuts.

(s) *Inspector.* A Federal-State inspector authorized or licensed by the Secretary, U.S. Department of Agriculture.

(t) *Lot.* That quantity of farmers stock peanuts for which one MQ–94 or other inspection certificate is issued. In case of farmers stock peanuts delivered to the association for a loan advance, a lot shall consist of not more than the content of one vehicle, or two or more vehicles containing approximately 24,000 pounds.

(u) *Marketing cards.* Forms MQ–76 issued each year according to Part 729 of this title by ASCS county offices to growers for use in marketing peanuts of the applicable crop. Each Form MQ–76 shall indicate the farm operator's eligibility for quota price support and the pounds that may be marketed as quota peanuts and contract additional peanuts.

(v) *Marketing quota penalties.* The penalties prescribed in the marketing quota regulations, Part 729 of this title, which shall be computed and collected in accordance with those regulations.

(w) *Marketing quota regulations.* The Allotment and Marketing Quota Regulations for Peanuts of the 1978 and Subsequent Crops, as amended, issued by the Administrator, ASCS, Part 729 of this title.

(x) *Marketing year.* The period beginning on August 1 of the year in which the peanuts of the applicable crop are planted and ending on July 31 of the following year.

(y) *Net weight.* That weight of farmers stock peanuts obtained by deducting from the gross scale weight of the peanuts (1) foreign material, and (2) moisture in excess of seven percent in the Southwestern and Southeastern areas, and eight percent in the Virginia-Carolina area.

(z) *Edible export standard for contract additional peanuts.*

(1) Raw shelled or inshell peanuts of any crop exported for human consumption shall meet such U.S. grade requirements, or modifications thereof, or requirements as to wholesomeness as specified in the outgoing quality regulations for such crop in the Marketing Agreement for peanuts No. 146.

(2) Peanuts shown by the applicable Federal-State Inspection Certificate to deviate from these requirements may be exported if the handler certifies to the association that such deviations are acceptable (i) to the export buyer and (ii) under the Marketing Agreement.

(aa) *Eligible country.* Any destination outside the United States, other than any country or area for which a validated export license is required under regulations issued by the Bureau of International Commerce, unless such license for shipment or transshipment thereto has been obtained from the Bureau, except that neither Canada nor Mexico shall be considered an eligible country for the export of peanut products other than treated seed peanuts.

(bb) *Export and exportation.* A shipment of peanuts or peanut products from the United States directed to a destination outside the United States to become part of the mass of goods of the country of destination.

(cc) *Fragmented peanuts.* Peanuts not more than 20 percent of which are whole kernels which will not pass through the following openings, by type: Spanish 15/64 x 3/4 inch slot; Runner 15/64 x 3/4 inch slot; and Virginia 15/64 x 1 inch slot.

(dd) *Loan value.* The amount of the loan which may be obtained under these regulations on a lot of eligible farmers stock peanuts computed for quota or additional peanuts, as applicable, on the basis of the weight, quality, and the support values for such type appearing in the applicable crop supplement.

(ee) *Peanut meal.* Any meal, cake pellets, or other forms of residue remaining after extraction or expulsion of oil from peanut kernels, but not including pressed peanuts.

(ff) *Peanut Products.* Any products manufactured or derived from peanuts such as but not limited to peanut candy, peanut butter, peanut granules or peanut flakes.

(gg) *Peanut receiving and warehouse contract.* Form CCC–1028 Identity Preserved, Form CCC–1028–A, Commingled Storage, or any other form approved by CCC for this purpose.

(hh) *Peanut segregations—(1) Segregation 1.* Farmers stock peanuts which (i) have at least 80 percent peanuts of one type, (ii) have not more

than two percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold, or decay, nor more than 0.5 percent freeze damage, and (iii) are free from visible Aspergillus flavus mold;

(2) *Segregation 2.* Farmers stock peanuts which (i) have less than 99 percent peanuts of one type, or (ii) have more than two percent damaged kernels or more than 1.00 percent concealed damage caused by rancidity, mold, or decay, or more than 0.5 percent freeze damage, and (iii) are free from visible Aspergillus flavus mold; *Provided however,* If such peanuts are placed under additional loan and purchased under the immediate buy back procedure, as provided in § 1446.7 of these regulations, such peanuts shall be considered Segregation 1 additional peanuts for loan pool accounting purposes.

(3) *Segregation 3.* Farmers stock peanuts which have visible Aspergillus flavus mold. *Provided, however,* if such peanuts are placed under additional loan and purchased under the immediate buy back procedure as provided in § 1446.7 of these regulations, such peanuts shall be considered Segregation 1 additional peanuts for loan pool accounting purposes.

(ii) *Pools.* Accounting pools established by the association and on which complete and accurate records are maintained by area, by type, and by segregation for quota peanuts and additional peanuts not under contract.

(jj) *Quota peanuts.* Peanuts which are eligible for domestic edible and related use, are marketed or considered marketed from a farm as quota peanuts, and which are not in excess of the farm poundage quota.

(kk) *Quota support rate.* The support rate published in annual crop supplements applicable to quota peanuts.

(ll) *Raw Peanuts.* Inshell, shelled peanuts, or blanched peanuts which have not passed through any other processing operation.

(mm) *Sound mature kernels.* Kernels which are free from "damage" and "minor defects" as defined in the U.S. Standards for the applicable type of peanuts effective on the date of the inspection, and which will not pass through screens with the following openings:

Runner type: 1⁹⁄₆₄ x ¾ inch slot
Spanish type: 1⁹⁄₆₄ x ¾ inch slot
Virginia type: 1⁹⁄₆₄ x 1 inch slot

(nn) *Type.* The generally known types of peanuts (i.e., Runner, Spanish, Valencia, and Virginia), as defined in the marketing quota regulations.

(oo) *United States.* The 50 States of the United States, Puerto Rico, the territories and possessions of the United States, and the District of Columbia.

(pp) *United States government agency.* Any corporation wholly owned by the Federal Government, and any department, bureau, administration, or other agency of the Federal Government.

(qq) *Valencia type peanuts produced in the Southwest suitable for cleaning and roasting.* Valencia type peanuts produced in the Southwest containing not more than 25 percent having shells damaged by (1) discoloration, (2) cracks or broken ends, or (3) both.

Handler Operations

§ 1446.4 Handler responsibilities.

(a) *Examination of producer's marketing card.* All handlers shall examine producer's marketing cards and record each purchase or delivery of peanuts as required in part 729 of this title. Any peanuts delivered under the additional peanut contract (Form CCC–1005) in excess of the provisions of such contract shall be considered as a marketing of quota peanuts. No peanuts shall be handled from any producer who does not present a marketing card and farm identification card at time of delivery.

(b) *Purchase records.* (1) Purchases of quota peanuts on which an MQ–94 is prepared. Each handler shall maintain records of the peanuts, the State and county code, and the farm number of the farm on which the peanuts were produced or the registration number of the seller if the seller is a handler and must indicate the quantity, type, date of purchase, and applicable MQ–94 serial number. The handler shall imprint forms MQ–94 and FVQ–95 with the farm identification card, the peanut buyers card, and the buying point card.

(2) Purchases of quota peanuts from producers on which MQ–94 is not prepared. The handler shall immediately transmit a record of such purchase to CCC. Such record shall show name and address of producer, State and county code, farm number, handler's name, address and registration number, buying point, any marketing quota penalty collected, quantity, and date of purchase.

(c) *Sales and disposal records.* Each handler shall maintain records of all sales and other disposals of peanuts. Such records shall show date of sale, quantity, type, to whom sold, whether sold as edible peanuts or for crushing, and any other information required by this subpart.

(d) *Method of keeping records.* Handler records shall be maintained within their operation in such a manner that will enable representatives of the Secretary to readily reconcile the quantities, grades, and qualities of all such peanuts disposed of by a handler. Records concerning the acquisition and disposal of contract of additional peanuts must also be kept in such a manner that representatives of the Secretary can readily determine compliance with the regulations and contract provisions.

(e) *Retention of records.* All records shall be maintained for a period of three years following the end of the marketing year in which the peanuts were produced.

§ 1446.5 Contracts for additional peanuts for crushing and export.

(a) *Contracts between handlers and producers.* Handlers who have a U.S. address may contract with producers on form CCC–1005 to buy additional peanuts from the producers for crushing or export, or both. The type and quality of each lot of contract peanuts delivered under contract shall be determined by an inspector when such peanuts are delivered by a producer. All such contracts shall be completed and submitted to the county office for approval prior to June 15 of the year in which the crop is produced. Such contracts cannot be sold or traded: *Provided,* That if a handler is unable to perform under such contracts because of conditions beyond his control, including but not limited to insolvency, bankruptcy, death, or destruction of warehouse facilities, the handler and the producers may agree to the delivery of the peanuts to other handlers under the terms of the original contract, if specifically authorized by the Deputy Administrator, State and County Operations, ASCS. The county office shall summarize contracts and send such summary to the association through the State office. Contracts shall include at least the following provisions:

(1) Name and address of operator, State and county code, and farm serial number of the farm.

(2) Name, address of handler, and registration number.

(3) Amount of segregation 1 peanuts in pounds by type.

(4) Contract price shown as a percentage of quota peanut support rate.

(5) Requirement for disclosure by producer of any liens on peanuts on date of delivery.

(6) A provision that the producer shall not be liable for failure to deliver against such contract above the actual production of such type quality on the farm: *Provided*, that such physical loss of production resulted solely from an external source such as drought, fire, lightning, inherent explosion, windstorm, tornado, flood, or other acts of God.

(7) Signature of farm operator and producer if different from operator.

(8) Signature of handler or authorized agent.

(9) The following agreement by the handler:

I agree that I will either export or crush the peanuts delivered under this contract as provided in Part 1446, Subpart-General Regulations Governing 1979 and Subsequent Crops Peanuts Warehouse Storage Loan and Handler Operations, by August 31 following the calendar year in which the crop is grown and that, upon my failure to do so, I shall be subject to liquidated damages as specified in such regulations, on all such peanuts which have not been so crushed or exported. I further agree that if I contract with another Handler to market any such peanuts, I shall include as part of the contract the agreement contained herein, and upon my failure to do so, I shall be subject to liquidated damages, as specified in the regulations on all such peanuts.

(b) *Deliveries under optional provisions of the contract.* Contracts may also include provisions under which a specified quantity of segregation 1 peanuts in excess of the quantity specified in paragraph (a) of this section may be delivered under the contract: *Provided*, The quantity of segregation 1 peanuts specified in paragraph (a) has been delivered and the producer retains the right to market Segregation 1 peanuts as quota peanuts to the extent that the farm poundage quota has not been filled. Contracts may also provide for delivery of segregations 2 and 3 peanuts without regard to any quantity limits specified in this section.

(c) *Contracts between handlers.* Handlers may contract with other handlers to market additional contract peanuts. Such contracts must contain the agreement specified in paragraph (a)(9) of this section and an agreement that such agreement will be included in all subsequent contracts covering resale of such peanuts.

§ 1446.6 Commingling of quota and additional peanuts.

Quota and additional farmers stock peanuts of like type and segregation may be commingled and exchanged on a dollar value basis to facilitate handling and marketing. The dollar value basis shall be determined on the basis of the quota support rate. The handler shall receive, store, and deliver all such peanuts in accordance with good commercial practices and instructions provided by CCC. For each lot of quota and/or additional peanuts stored commingled, the records of the handler shall show at all times the date and place received, name and address of the producer, the type, segregation, pounds, and dollar-value-in. The handler shall keep such other accounts and records and furnish such information and reports relating to the dollar value out and disposition of such peanuts as may be prescribed by the association or CCC.

§ 1446.7 Use of additional peanuts as domestic edible peanuts.

During harvest season, a handler shall have the right to purchase additional peanuts for domestic edible use at buying points owned or controlled by such handler at 100 percent of the quota loan value of such peanuts plus handling charges. Such purchase may be made only from the association and only on the date such peanuts were offered by producers to the association for loan. The handler shall advance to the producer, as an agent for the association, price support at the additional level and forward to the association a check payable to CCC for the peanuts at the quota support rate plus handling charges. The check and applicable MQ–94 will identify the peanuts as additional peanuts that may be used as domestic edible peanuts and must be postmarked not later than the third work day excluding Saturdays, Sundays, and Federal holidays following the day the peanuts were inspected. The association shall credit such receipts to the additional pool for such peanuts. Handlers may also purchase additional peanuts from the loan pool for domestic edible use after delivery by producers to the association, under terms and conditions announced by CCC. The minimum price for such purchases shall be not less than carrying charges plus (a) 105 percent of the quota loan value if purchased not later than December 31 of the marketing year, or (b) 107 percent of the quota loan value if purchased after December 31 of the marketing year.

§ 1446.8 Compliance by handlers of contract additional peanuts.

All contract additional peanuts acquired by a handler shall be disposed of by domestic crushing or export to an eligible country. All handler's records shall be subject to a review by CCC or other representatives of the Secretary, to determine compliance with the provisions of this subpart. Failure to dispose of such peanuts by August 31 following the calendar year in which the crop was grown or such later date as may be authorized by the association shall constitute noncompliance with the provisions of this subpart. Refusal to make such handler's records available to authorized representatives of the Secretary or failure of such records submitted to establish such disposition shall constitute prima-facie evidence of noncompliance with this subpart. Reviews shall be made by the association in accordance with guidelines established by CCC and the association shall not take any administrative or any other actions concerning indicated program violations until directed to do so by the Director, Producer Associations Division, ASCS.

(a) *Quota peanuts.* A handler will be subject to a penalty for noncompliance if it is determined by CCC that he marketed from any crop, for domestic edible use, a larger quantity, or higher grades or quality of peanuts than could reasonably be produced from the quantity of peanuts having the grade, kernel content and quality of quota farmers stock peanuts purchased by the handler for domestic edible use during the applicable marketing year and of those purchased under § 1446.7, whether or not additional peanuts were acquired by the handler. In such case, the handler will be obligated to pay a penalty equal to 120 percent of the basic quota support rate on that quantity of farmers stock peanuts determined by CCC to be necessary to produce the excess quantity or grade or quality of peanuts sold.

(b) *Method of determining compliance (1) Commingled storage.* Handlers may commingle quota loan, quota commercial, additional loan and contract additional peanuts. In such instance, quota loan and additional loan peanuts must be inspected as farmers stock peanuts and settled on a dollar value basis less adjustments for shrinkage except when such peanuts are purchased from the association for domestic edible and related use on an in-grade, in-weight basis. Contract additional peanuts must be inspected on a farmers stock basis and accounted for on a dollar value basis less a one time adjustment for shrinkage for each crop equal to 4.0 percent of the dollar value for Virginia type peanuts and 3.5 percent for all other types except that if the additional contract peanuts are graded

out and accounted for prior to February 1, the adjustment shall be 3.5 for Virginia type and 3.0 percent of the dollar value for all other peanuts.

(2) *Identity preserved storage.* Contract additional peanuts stored identity preserved shall be inspected as farmers stock peanuts and settled on a dollar value basis. The handler shall receive, store, and otherwise handle such peanuts in accordance with good commercial practices.

§ 1446.9 Supervision and handling of additional contract peanuts.

The association shall supervise domestic handling of contract additional peanuts including storing, shelling, crushing, cleaning, weighing, and shipping.

(a) *Access to facilities.* The handler, by entering into contracts to receive contract additional peanuts, shall be deemed to have agreed that authorized representative(s) of CCC and the association:

(1) May enter and remain upon any of the premises when such peanuts are being received, shelled, cleaned, bagged, sealed, weighed, graded, stored, crushed, packaged, shipped, or otherwise handled.

(2) May inspect such peanuts and the oil, meal, and other products thereof, and

(3) May inspect the premises, facilities, operations, books, and records to the extent necessary to determine that such peanuts have been handled in accordance with these regulations.

(b) *Notifying the association.* Before moving or processing any peanuts, the handler (or cleaner, sheller, or processor under contract with the handler) shall notify the association of the time such operation will begin and the approximate period of time required to complete the operation. When a plant is not currently under supervision, the handler shall give at least five working working days advance notice to the association so that supervision can be arranged.

(c) *Processing.* The peanuts shall be shelled or otherwise milled, crushed, or shelled and crushed as a continuous operation separate from other peanuts. Shelled peanuts shall be identified with positive lot identity tags before being stored and moved for crushing, export or domestic use in peanut products to be exported. Except as authorized by the association, positive lot identity shall be maintained when peanuts are transported or stored in the following manner:

(1) *Transportation.* The peanuts shall be transported from the storage location in a covered vehicle, such as a truck or railroad car. The vehicle shall be sealed unless the association determines that identity of the peanuts can be maintained without sealing.

(2) *Storage.* The peanuts shall be stored in separate building(s) or bin(s) which can be sealed or which the association determines will satisfactorily maintain lot identity.

(d) *Replacements.* The identical additional farmer stock peanuts contracted shall be handled in accordance with this section except that with prior notification and approval of the association, farmer stock quota peanuts of the same crop, type, quality, and area may be used to replace such additional peanuts. The identical additional milled peanuts shelled under supervision of the association shall be disposed of in accordance with this section except that prior notification and approval of the association, such peanuts may be used to replace in domestic use quota peanuts of the same crop, type, area, and screen size which have been exported. The quota peanuts exported, for which replacement is requested, must have been positive lot identified and otherwise handled as additional peanuts. Additional peanuts may be used in domestic edible and related uses with prior notification and approval of the association and upon presentation to the association of an irrevocable letter of credit in an amount not less than 120 percent of the quota support rate on any portion of the lot for which replacement has not been approved. Such letter of credit shall be issued in a form and by a bank acceptable to CCC. The handler shall deliver to the association satisfactory evidence that a like amount of quota peanuts of appropriate screen sizes have been exported in accordance with these regulations. Such evidence must be submitted no later than 30 days after August 31, the final date for exportation or such later date as may be approved by the association. If satisfactory evidence is not presented by such date, the association will draw against the letter of credit the full amount of the marketing quota penalty applicable to the quantity of peanuts on which an accounting was not made.

(e) *Expense charged to handlers.* All supervision costs shall be borne by handlers.

(f) *Domestic sale or transfer—(1) Farmers stock.* The handler must submit contracts covering any domestic sale, transfer, or other disposition of farmers stock contract additional peanuts to the association and obtain written approval prior to any physical movement of the peanuts from the buying point. Approval of such contracts may be made before or after delivery by the producer.

Approval of any domestic sale, transfer, or other disposition may be made only if the person to whom the peanuts are sold, transferred, or disposed of agrees in writing to handle and crush or export as raw peanuts or peanut products in accordance with the terms and conditions of these regulations.

(2) *Milled peanuts.* The handler must submit contracts covering any domestic sale, transfer, or other disposition of milled contract additional peanuts to the association and obtain approval prior to any physical movement of the peanuts. Approval of any domestic sale, transfer, or other disposition may be made only if the person to whom the peanuts are sold, transferred, or disposed of agrees, in writing, to handle and crush or export the peanuts in accordance with the terms and conditions of these regulations.

(g) *Disposal of additional contract peanuts.* Contract additional peanuts may be disposed of by domestic crushing or by exporting to an eligible country as follows:

(1) All kernels may be crushed domestically, or

(2) All kernels may be exported for crushing, if fragmented, or

(3) All kernels that are graded to meet the edible export standards may be exported and the remaining kernels:

(i) Crushed domestically, or

(ii) Exported for crushing if peanuts are fragmented, or

(4) All of the peanuts may be exported as farmers stock peanuts, or

(5) Peanuts may be exported as peanut products if such peanuts meet edible export standards, or

(6) Peanuts may be exported as milled or inshell peanuts.

(h) *Disposal of meal contaminated by aflatoxin.* All meal produced from peanuts which are crushed domestically and found to be unsuitable for use as feed because of contamination by aflatoxin shall be disposed of for nonfeed purposes only. If the meal is exported, the export bill of lading shall reflect the analysis of the lot by inclusion thereon of the following statement, "This shipment consists of lots of meal which contain aflatoxin ranging from———to———PPB and averaging———PPB."

(i) *Final dates for scheduling supervision.* Additional contract peanuts shall be scheduled for supervision by the association during the normal marketing period but not later than July 31 following the calendar

year in which the crop is grown unless prior approval of a later date is authorized by the association.

(j) *Export provisions*—(1) *General.* Exports to Southern Rhodesia, North Korea, Vietnam, Cambodia, and Cuba are regulated by U.S. Department of Commerce regulations and require a validated export license. Additional information concerning the regulations may be obtained from the Bureau of International Commerce or from the field office of the Department of Commerce.

(2) *Export to a U.S. Government agency.* Except for the export of raw peanuts to the military exchange services for processing outside the United States, export of peanuts in any form by or to a United States government agency shall not be considered an export to an eligible country. However, sales to a foreign government which are financed with funds made available by a United States agency such as the Agency for International Development are not considered sales to a United States government agency: *Provided,* The peanuts were not purchased by the foreign buyer for transfer to a United States agency.

(3) *Exportation of contract additional peanuts.* All contract additional peanuts which are not crushed domestically and which are eligible for export shall be exported to an eligible country as peanuts or peanut products.

(4) *Reentry Transshipment and Liquidated Damages*—(i) *Reentry Transshipment.* Peanuts and peanut products exported shall not be reentered by anyone into the United States in any form or product and shall not be caused by the handler to be diverted or transshipped to other than an eligible country in any form or product, and if they are reentered, the handler shall be subject to liquidated damages as specified in subparagraph (4)(ii) of this paragraph.

(ii) *Liquidated Damages.* The handler, by entering into contracts to receive contract additional peanuts, shall be deemed to have agreed that CCC will incur serious and substantial damages to its program to support the price of quota peanuts if additional contract peanuts are exported and later are reentered into the United States or diverted or transshipped to other than an eligible country in any form or product; that the amount of such damages will be difficult, if not impossible, to ascertain exactly; and that the handler shall, with respect to any peanuts or peanut products reentered into the United States or diverted or transshipped to other than an eligible country, pay to CCC, as liquidated damages and not as a penalty, ten cents ($.10) per net pound for such peanuts or peanut products. It is agreed that such liquidated damages are a reasonable estimate of the probable actual damages which CCC would suffer because of such reentry, diversion, or transshipment.

(5) *Evidence of Export.* The handler shall furnish the association with the following documentary evidence of exportation of peanuts or peanut products not later than 30 days after August 31, the final date for exportation, or such later date as may be approved by the association:

(i) *Export by water.* A nonnegotiable copy of an onboard ocean bill of lading, signed, on behalf of the carrier, showing the date and place of loading onboard vessel, the weight of the peanuts, peanut meal, or products exported, the name of the vessel, the name and address of the exporter, and the country of destination. Peanut meal which is unsuitable for use as feed because of contamination by aflatoxin shall be identified on the bill of lading in accordance with this section.

(ii) *Export by rail or truck.* A copy of the bill of lading (showing the weight of the peanuts or peanut meal exported), supplemented by a copy of the Shipper's Export Declaration or other documentation acceptable to the association. Peanut meal which is unsuitable for feed use because of contamination by aflatoxin shall be identified on the bill of lading according to this section.

(iii) *Export by air.* A copy of the Airway Bill (showing weight consignee and shipper) and other acceptable documentation acceptable to the association.

(iv) *Certified statement.* A statement signed by the handler specifying the name and address of the consignee and the applicable Bureau license number if exportation has been made to one or more of the countries or areas for which a validated license is required under regulations issued by the Bureau of International Commerce, U.S. Department of Commerce.

(6) *Penalties.* Failure to dispose of contract additional peanuts acquired by a handler for domestic crushing or export by August 31 following the calendar year in which the crop was grown or such later date as may be authorized by the association shall constitute noncompliance with the provisions of this subpart. In such case, the handler will be obligated to pay a penalty equal to 120 percent of the basic quota support rate on that quantity of the additional peanuts not crushed or exported.

Warehouse Storage Loans

§ 1446.10 Availability of warehouse storage loans.

(a) *Loans to associations.* CCC will make warehouse storage loans to the associations specified in subparagraph (b) which contract with CCC to arrange for the storing and handling of farmers stock peanuts, make price support advances to producers on such peanuts, and use such peanuts as collateral for loans to be obtained from CCC. Loans on quota peanuts shall be made on the basis of the quota support rate, and loans on additional peanuts shall be made on the basis of the additional support rate. The association shall establish an adequate system of records to identify each lot of peanuts delivered from producers as quota or additional peanuts and shall establish adequate records to identify whether such peanuts were pledged to CCC at the quota loan rate or additional loan rate. Such loans will mature on demand.

(b) *Associations and Areas.* Price support advances will be available through:

(1) GFA Peanut Association, Camilla, Georgia, in the Southeastern area consisting of the States of Alabama, Georgia, Mississippi, Florida, and that part of South Carolina south and west of the Santee-Congaree-Broad Rivers.

(2) The Southwestern Peanut Growers Association, Gorman, Texas, in the Southwestern area consisting of the States of Arizona, Arkansas, California, Louisiana, New Mexico, Oklahoma, and Texas.

(3) The Peanut Growers Cooperative Marketing Association, Franklin, Virginia, in the Virginia-Carolina area consisting of the States of Missouri, North Carolina, Tennessee, Virginia, and that part of South Carolina north and east of the Santee-Congaree-Broad Rivers.

(c) *Where available.* Price support advances will be available to eligible producers at warehouses which have entered into peanut receiving and warehouse contracts with the association. Such contracts will require the warehouses to inform producers that price support advances are available and to make advances to producers on eligible peanuts tendered for price support as provided in paragraph (g) of this section. The contracts will require warehousemen to examine the producer's marketing cards to determine price support eligibility and make

entries on the marketing card as required by Part 729 of this title and record each delivery as to quota or additional peanuts and date of delivery. If quota peanuts or contract additional peanuts are delivered, the balance of the quota or contract additional peanuts must be shown on the marketing card after each delivery. The names and locations of such warehouses may be obtained from the office of the appropriate association or from a State or county ASCS office. The associations shall pledge to CCC all peanuts upon which they have made price support advances as security for loans obtained pursuant to agreements with CCC.

(d) *Time.* Price support advances to eligible producers on peanuts of any crop will be available from the beginning of harvest through the following January 31 or such later date as may be established by the Executive Vice President, CCC. If the final date of availability falls on a nonworkday for the association, the applicable final date shall be the next workday.

(e) *Inspection.* The type and quality of each lot of farmers stock peanuts delivered to an association for a price support advance shall be determined by an inspector when such peanuts are received at a warehouse under contract with an association.

(f) *Producer agreement.* To obtain a price support advance, the producer shall, in writing, authorize the association to pledge peanuts delivered to the association to CCC as collateral for a warehouse storage loan and relinquish any right to redeem or obtain possession of such peanuts.

(g) *Advance to producer.* For each lot of peanuts received, the associations will make a price support advance to the producer in an amount equal to the support value of such peanuts, except that, in addition to marketing quota penalties and the deductions specified in § 1446.12, the association will deduct from such advances and pay over to the proper State authorities, any assessments or excise taxes imposed by State law, and the Southwestern Peanut Growers Association will, upon the prior agreement of the producer, deduct from such advance an amount approved by CCC, not to exceed 50 cents per net weight ton of peanuts upon which such advance was made, to be used in payment for its peanut activities outside the price support program.

(h) *Fraud by Producer.* The making of any fraudulent representation by a producer in the loan documents or in obtaining a loan or an advance shall render him subject to criminal prosecution under Federal law. The producer shall be personally liable to CCC, aside from any additional liability under criminal or civil fraude statutes, for the amount of such advance and for all costs which CCC would not have incurred except for the producer's fraudulent representation, together with interest upon such amounts at the rate for fraudulent representation as shown in a separate notice in the Federal Register: *Provided,* That the producer shall be given credit for the proceeds received by CCC upon sale of the peanuts upon which such advance was made.

(i) *Ineligible Peanuts.* Any person who causes ineligible peanuts, as defined in § 1446.14, to enter the loan, shall pay to CCC, as liquidated damages, the amount by which the average quota or additional loan level for that type of peanuts exceeds the market price as determined by CCC and shall pay such amount to CCC promptly upon demand. The market price shall be based upon the estimated value for crushing stock.

§ 1446.11 Pooling and distribution of net gains.

The association shall establish separate pools by area, type, and segregation or quality of peanuts and maintain separate, complete and accurate records for quota peanuts under loan and for additional peanuts not under contract. Net gains on peanuts in each pool shall be distributed to each grower in proportion to the value of peanuts placed in the pool by the grower except any distribution of net gains on additional pools of any type to a producer shall be reduced to the extent of any loss incurred by CCC on quota peanuts of a different type placed under loan by the same producer, and the proceeds available to any producer from any pool shall be reduced by the amount of any losses to CCC on peanuts transferred from an additional loan pool to a quota loan pool under the provisions of this subpart.

(a) *Quota pool.* Net gains from peanuts in the quota pool consist of:

(1) The net gains over and above the loan indebtedness on quota peanuts and other costs or losses incurred by CCC on such peanuts placed in the pool by a producer, plus

(2) An amount from the net gains on additional peanuts sold into domestic food and related uses equal to the losses incurred on disposing of an equal quantity of quota peanuts of the same type and segregation in the same production area, considering sales of quota peanuts for export first and then as necessary, sales for crushing.

(b) *Additional pool.* Net gains for peanuts in the additional pool consist of:

(1) The net gains over and above the loan indebtedness on additional peanuts and other costs or losses incurred by CCC on such peanuts placed in the pool by a grower, less

(2) An amount of the net gains on the additional pool allocated to the quota pool to offset any loss on that pool attributed to additional peanuts being used in domestic edible use.

§ 1446.12 Producer indebtedness.

(a) *Facility and drying equipment loans.* If any installment or installments on any loan made by CCC on farm storage facilities or drying equipment are payable under the provisions of the note evidencing such loan and the amount due is recorded on the producer's marketing card, any amount due the producer under this subpart, after deduction of amounts due prior lienholders, shall be applied to such installment(s).

(b) *Producers listed on county debt record.* If the producer is indebted to CCC or to any other agency of the United States and such indebtedness is listed on the county debt record and recorded on the producer's marketing card, amounts due the producer under this subpart, after deduction of amounts due prior lienholders and on farm storage facilities or drying equipment, shall be applied to such indebtedness as provided in the Secretary's Setoff Regulations, Part 13 of this title.

§ 1446.13 Eligible producer.

(a) *Requirements.* An eligible producer is an individual, partnership, association, corporation, estate, trust, or other legal entity, and whenever applicable, a State, political subdivision of a State or any agency thereof, producing peanuts as a landowner, landlord, tenant, or sharecropper on a farm. No producer on a farm for which the farm operator fails timely to file a report of crop or land use acreages as required by Part 718 of this title shall be eligible for price support at the quota rate unless the late filed report was accepted by the county committee.

(b) *Estates and trusts.* A receiver of an insolvent debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate or of a ward or of an incompetent person, and trustees of a trust estate shall be considered to represent the insolvent debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian or trustees shall be considered

to be the production of the person represented. Loan documents executed by any such person shall be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) *Eligibility of minors.* A minor who is otherwise an eligible producer shall be eligible for price support only if such minor meets one of the following requirements: (1) The right of majority has been conferred on such minor by court proceedings or by statute; (2) a guardian has been appointed to manage such minor's property and the applicable price support documents are signed by the guardian; or (3) a bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had such minor been an adult.

§ 1446.14 Eligible peanuts.

Eligible peanuts shall be farmers stock peanuts of the applicable crop which were produced in the United States by an eligible producer.

(a) *Quota support.* Peanuts eligible for quota support are peanuts which (1) are segregation 1 peanuts; and (2) contain not more than 10 percent moisture and which, if mechanically dried, contain at least 6 percent moisture; and (3) contain not more than 10 percent foreign material; (4) are free and clear of all liens and encumbrances, including landlord's lien, or if liens or encumbrances exist on the peanuts, acceptable waivers are obtained; and (5) the beneficial interest is in the producer who delivers them to the association and has always been in such producer or in such producer and a former producer whom such producer succeeded before the peanuts were harvested. To meet the requirements of succession to a former producer, the rights, responsibilities, and interest of the former producer with respect to the farm on which the peanuts were produced shall have been substantially assumed by the person claiming succession. Mere purchase of a crop prior to harvest, without acquisition of any additional interest in the farm on which the peanuts were produced, shall not constitute succession. Any producer in doubt as to whether such interest in the peanuts complies with the requirements of this section should, before applying for price support, make available to the county ASC committee all pertinent information which will permit a determination with respect to succession to be made by CCC; (6) are, if delivered to the association in bags in the Southwestern area, in new or thoroughly cleaned used bags which are made of material other than mesh or net, weighing not less than 7½ ounces nor more than 10 ounces per square yard and containing no sisal fibers, are free from holes and are finished at the top with either the selvage edge of the material, binding, or a hem. Such bags shall be of uniform size with approximately 2 bushel capacity; (7) must not have been produced on land owned by the Federal Government if such land is occupied without a lease permit or other right of possession; (8) must have been produced on a farm on which the effective farm allotment has not been knowingly exceeded; and (9) must have been inspected as farmer stock peanuts and have an official grade determined by an inspector.

(b) *Additional support.* Peanuts eligible for additional support are peanuts which (1) contain not more than 10 percent moisture; and (2) contain not more than 10 percent foreign material, except that such peanuts may contain more foreign material if the handler agrees to purchase for domestic edible use as provided in the first sentence in § 1446.7 of these regulations; (3) segregation 2 or 3 peanuts which will be sold without storage for crushing or fragmentation for export, may contain more than 10 percent moisture and/or foreign material up to a maximum determined appropriate by the producer association based on the crushing market and other local conditions; (4) are free and clear of all liens and encumbrances, including landlord's lien, or if liens or encumbrances exist on the peanuts, acceptable waivers are obtained; and (5) the beneficial interest is in the producer who delivers them to the association and has always been in such producer or in such producer and a former producer whom such producer succeeded before the peanuts were harvested. To meet the requirements of succession to a former producer, the rights, responsibilities, and interest of the former producer with respect to the farm on which the peanuts were produced shall have been substantially assumed by the person claiming succession. Mere purchase of a crop prior to harvest, without acquisition of any additional interest in the farm on which the peanuts were produced, shall not constitute succession. Any producer in doubt as to whether such interest in the peanuts complies with the requirements of his section should, before applying for price support, make available to the county ASC committee all pertinent information which will permit a determination with respect to succession to be made by CCC; (6) are, if delivered to the association in bags in the Southwestern area, in new or thoroughly cleaned used bags which are made of material other than mesh or net, weighing not less than 7½ ounces nor more than 10 ounces per square yard and containing no sisal fibers, are free from holes and are finished at the top with either the selvage edge of the material, binding, or a hem. Such bags shall be of uniform size with approximately 2 bushel capacity; (7) must not have been produced on land owned by the Federal Government if such land is occupied without a lease permit or other right of possession; (8) if produced on acreage in excess of the effective farm allotment, the penalty has been collected in accordance with Part 729 of this title; and (9) must have been inspected as farmer stock peanuts and have an official grade determined by an inspector.

§ 1446.15 Disposition and liquidated damages on segregation 3 peanuts.

(a) Any producer who has a lot of farmers stock peanuts classified by the inspector as segregation 3 peanuts shall (1) deliver the peanuts to the association for loan at the additional loan rate, (2) deliver such lot as contract additional peanuts under the provisions of § 1446.5, (3) sell as quota peanuts to a handler who is a signer of the peanut marketing agreement or (4) retain the lot for seed. If the producer does not dispose of or market such peanuts as provided above on the day of inspection, such producer shall be ineligible for continued quota price support for the rest of the marketing year on all peanuts at the close of business on the day of the inspection. If the producer elects to retain a lot for seed, he shall designate such peanuts as quota peanuts, have the net weight of such peanuts determined and deducted from the farm marketing card, and advise the inspector that the peanuts are being retained for seed. The producer shall be given a copy of the MQ–94 as a record showing the quantity and quality factors of the peanuts and must store such peanuts separate from other peanuts on the farm. The producer shall notify CCC when such peanuts are used and otherwise account for the disposition of such peanuts. Should it later be determined that such peanuts are unfit for seed use, the producer may, after receiving prior approval from the county office, sell such peanuts for crushing as quota peanuts without benefit of price support.

(b) *Liquidated damages.* The producer, by participating in the loan program, shall be deemed to have agreed that CCC will incur serious and substantial damages to its program to

support the price of peanuts if segregation 3 peanuts are disposed of other than in accordance with the provisions of paragraph (a) of this section; that the amount of such damage will be difficult, if not impossible, to ascertain exactly; and that the producer shall, with respect to any lot of peanuts ineligible for quota support which are placed under quota loan or any lot of peanuts which are placed under quota loan by a producer after he has disposed of any lot of segregation 3 peanuts in any manner other than in the manner prescribed in paragraph (a) of this section, pay to CCC as liquidated damages and not as a penalty, seven cents ($.07) per net pound of such peanuts. It is agreed that such liquidated damages are a reasonable estimate of the probable actual damages which CCC would suffer because of such action by the producer. The provisions of § 1446.11 relating to the producer's liability (Aside from liability under criminal and civil frauds statutes) shall not be applicable to such peanuts.

§ 1446.16 Producer transfers of additional loan stocks to quota pools.

Producers may transfer Segregation 2 and 3 additional loan stocks to quota loan after the producer has completed marketing and returned his marketing card to the county office not to exceed the smaller of the farm poundage quota minus the production of segregation 1 peanuts on the farm, or the undermarketing of quota peanuts shown on the farm marketing card: *Provided:* That the proceeds available to such producer from peanuts in any other pool shall be reduced by the amount of any losses to CCC on the peanuts so transferred. The support values for any segregation 2 peanuts so transferred shall be the support value for quota peanuts minus the damage discount published in the quota support schedule and the support value for segregation 3 peanuts shall be the support value for quota peanuts minus the applicable discount published in the quota support schedule. Producers eligible to transfer additional loan peanuts to the quota loan in accordance with this section may apply for such transfers with the county office. The county office shall determine the quantity of undermarketing of quota peanuts and the quantity of additional peanuts which are eligible for transfer. The producer may indicate to the county office the net weight and applicable Farm MQ–94 numbers for the peanuts to be transferred. Such pounds shall be considered as quota peanuts marketed, the applicable MQ–94's recomputed at the quota loan level, and the producer advanced the difference between the additional and quota support.

Note.—This regulation has been determined to be not significant under the USDA criteria implementing Executive Order 12044 and only contains necessary operating decisions and requirements to implement the national average peanut price support rates announced on February 16, 1979. An approved Final Impact Statement is available from Dalton J. Ustynik (ASCS) 202 447–6701.

Signed at Washington, D.C., on June 6, 1979.

Ray Fitzgerald,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 79-18236 Filed 6-12-79; 8:45 am]

BILLING CODE 3410-05-M

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Reg. E; Docket No. R-0212]

Electronic Fund Transfers; Disclosure of Consumers' Liability for Unauthorized Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: Section 908 of the Electronic Fund Transfer Act, which relates to consumers' liability for unauthorized transfers, became effective on February 8, 1979. The Board is adopting an amendment to Regulation E, which implements the EFT Act. The amendment requires financial institutions to give certain disclosures before imposing any liability for unauthorized use of an access device. The amendment generally corresponds to Proposal B, one of two proposals that was published for comment on March 28, 1979 (44 FR 18514). Unlike Proposal B, however, the amendment does not set a deadline for making disclosures. Rather, it permits an institution to make the disclosures if and when the institution chooses to do so. Until disclosures are made, however, a consumer cannot be held liable for unauthorized use of the access device.

This amendment becomes effective August 1, 1979. Unauthorized transfers initiated between February 8 and July 31, 1979, are governed by the statutory provisions and by the regulations adopted by the Board in March (44 FR 18468). Since, under those provisions, liability disclosures were required only in the case of unsolicited access devices, consumers could be held liable for transfers initiated during this period even if liability disclosures were not made before the transfer occurred.

EFFECTIVE DATE: August 1, 1979.

FOR FURTHER INFORMATION CONTACT: Regarding the regulation: Dolores S. Smith, Section Chief, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202–452–2412). Regarding the economic impact analysis: Frederick J. Schroeder, Economist, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202–452–2584).

SUPPLEMENTARY INFORMATION: (1) On March 28, 1978, the Board published final regulations implementing sections 909 and 911 of the Electronic Fund Transfer Act, the two sections that became effective on February 8, 1979. Under those regulations, only consumers who receive an unsolicited access device for making electronic fund transfers need be given notice of their potential liability for unauthorized transfers. The vast majority of users of EFT devices, however, might not learn of their liability until the remaining provisions of the Act and regulation go into effect in May 1980.

The Board believes it is important for all consumers to be informed about the rules that govern liability for unauthorized transfers. Accordingly, the Board published two alternative proposals regarding disclosure of liability (44 FR 18514, March 28, 1979). The proposals, labelled Proposals A and B, would have required financial institutions that hold consumers liable for unauthorized use to disclose no later than August 1, 1979: the consumer's liability for unauthorized transfers, the address and telephone number to be used for reporting the loss or theft of an access device, and the financial institution's business days. For access devices issued after August 1, disclosures would have been required before the first electronic fund transfer was initiated. Proposal B would have made delivery of the three disclosures a precondition to the institution's imposing liability on the consumer. Under either proposal, an institution that imposed no liability on consumers would have been exempt from making the disclosures.

Both proposals would have required disclosures to be made by August 1, 1979, for accounts that can be accessed by an EFT device. Many commenters did not understand this. They thought that under Proposal B disclosures could be made at any time before May 1980, so

long as the consumer was not held liable until the disclosures were made.

The Board received 55 comments. Twenty-five supported Proposal B, and a number of commenters endorsed both proposals. Twenty-one objected to the Board's adopting any disclosure requirement; of this number, 8 preferred Proposal B provided the Board gave institutions the right to decide when to make disclosures and to whom.

The commenters who supported Proposal B (or a modified version of it) believe it would give financial institutions greater flexibility to decide for themselves whether and when to make the liability disclosures. They note that under Proposal B consumers would be protected whether or not an institution chose to make the disclosures. They also believe that consumers must be told the rules for limiting their liability if the Act's provisions limiting liability are to have any meaningful effect.

Commenters who oppose a disclosure requirement say that the proposed disclosures would mean added costs, since other disclosures still have to be given in May 1980. Having to make disclosures now may require a reallocation of resources, and some also feel that they need more time to resolve apparent conflicts between Federal and State EFT laws.

Sixteen commenters questioned the Board's authority to require disclosures and to make their delivery a precondition to an institution's being able to impose liability on consumers. They believe that Congress, in making the liability limitations effective in February 1979, consciously decided to postpone disclosure of these provisions until May 1980 (except in the case of access devices issued on an unsolicited basis). Similarly, they believe that Congress did not intend to precondition liability on disclosures until the general disclosure requirements go into effect in May 1980.

Some argued that, as a practical matter, disclosure is not necessary to protect consumers. This opinion is based on the fact that consumers who previously had potentially greater liability than the Act now allows will automatically have that liability reduced to conform to the Act's limits. This reduction of potential liability will take place even if consumers are not personally notified of their more limited liability. In addition, these commenters noted, consumers who previously had less liability than the Act allows will not be affected, because the Act does not override agreements or State laws that impose lesser liability.

These arguments fail to address, however, the need for consumers to know that liability standards require prompt reporting of the loss or theft of an access device to insure minimum liability. Many consumers may not know, for example, that their potential liability will increase from $50 to $500 if they fail to report the loss or theft of an access device within two business days of learning of the loss or theft. Similarly, they may not know that they must report an unauthorized transfer that appears on a periodic statement within 60 days, in order to avoid unlimited liability for subsequent transfers. Without knowledge of these rules, consumers' legal right to limit their liability may be meaningless.

In the Board's judgment, based on the comments and its own analysis, disclosure of consumers' liability is necessary to carry out the purposes of § 909 of the Act, which is now in effect. The primary purpose of the EFT Act is to provide protection to consumers who use EFT services. The Board believes consumers will be protected only if they are advised of the rules that govern their liability for unauthorized transfers.

Accordingly, the Board is adopting an amendment to § 205.5(a) of Regulation E. The amendment adds a third condition to the general rule regarding consumer liability for unauthorized transfers, by requiring the issuer of an access device to disclose: the consumer's liability for unauthorized transfers, the telephone number and address for reporting a lost or stolen access device, and the institution's business days. Financial institutions must make these disclosures before they can hold consumers liable for the unauthorized use of an access device. Institutions are not required to make new disclosures to comply with § 205.5(a) as amended if they have already told customers of their potential liability for unauthorized use under State or Federal law or an agreement with the institution.

This amendment will become effective on August 1, 1979, and applies to any transfer initiated on or after that date. It should be noted that the Board has not set a deadline for making disclosures. The amendment permits an institution to make the liability disclosures if and when the institution chooses to do so. Until disclosures are made, however, a consumer cannot be held liable for unauthorized use of the access device.

Financial institutions may elect to send disclosures to some accounts and not others. For example, they may send disclosures to active accounts accessible by an EFT device, and not send disclosures (absorbing any losses) for inactive accounts. Similarly, an institution may decide to send disclosures to customers with an EFT card usable at cash dispensing machines, but not to customers whose sole access device is a code used in a telephone bill-paying service.

Unauthorized transfers initiated between February 8 and July 31, 1979, remain subject to the statutory and regulatory disclosure requirements now in effect. Since these requirements mandate disclosures only in connection with unsolicited access devices, a consumer could be held liable for transfers initiated during this period even if disclosures had not been given.

The amendment contains an exception regarding disclosure of an institution's business days (item 3 of the required disclosures). The business day disclosure is intended to let consumers know what days will count toward determining whether the consumer has notified the institution "within 2 business days" of learning of the loss or theft of an access device. After 2 business days, the consumer's potential liability increases from $50 to $500 under the Federal EFT Act. Wisconsin institutions requested an exception to the business-day requirement on the grounds that under Wisconsin law, consumers can only be held liable for up to $50, whether or not they report a loss within 2 business days. They believe that institutions which have already disclosed the first two items to consumers should not have to make new disclosures because of a remaining undisclosed item that is largely irrelevant.

The exception in § 205.5(a)(3)(iii) will be available in instances where a consumer's liability, under applicable State law or an agreement with the institution, cannot exceed $50 and, thus, is not contingent on notification within a specified number of business days.

(2) *Economic impact analysis.* Section 904(a)(2) of the Act requires the Board to prepare an analysis of the economic impact of regulations issued by the Board to implement the Act.[1] The

[1] The analysis must consider the costs and benefits of the proposed regulation to suppliers and users of EFT services, the effects of the proposed regulation on competition in the provision of electronic fund transfer services among large and small financial institutions, and the effects of the proposed regulation on the availability of EFT services to different classes of consumers.

Footnotes continued on next page

following economic analysis accompanies amended § 205.5(a) of the regulation, which implements in part § 909 of the Act.

The amendment adopted by the board makes disclosures before May 1980 optional but provides that a financial institution can hold a consumer liable for unauthorized transfers from the consumer's account only after disclosures have been made. The amendment shifts to the institution all liability for unauthorized transfers after July 31, 1979, unless disclosures are made. Institutions thus face potentially large losses associated with lost or stolen access devices or unauthorized transactions not reported by consumers.

Institutions may regard this increased liability exposure as an incentive to make disclosures, which would induce consumers to handle access devices more carefully and to scrutinize periodic statements for unauthorized transfers. Making disclosures for all existing accounts—or, alternatively, for all active accounts—would provide more consumers with information and give them the incentive for quickly reporting loss or theft of a card or unauthorized transfers from an account. Both system-wide and average individual losses would be diminished. Interim liability disclosures would also provide consumers with information that improves their ability to decide whether to use EFT services. Another potential benefit to institutions is greater consumer acceptance of EFT stemming from increased certainty about the liability rules applicable to unauthorized transfers.

Against these potential benefits financial institutions would have to weigh costs that would be incurred for disclosure statement drafting, legal advice, printing and distribution. Costs associated with the disclosure program would be passed on to consumers to some degree. Commenters offered no empirical estimates of expected per-account costs associated with disclosure programs, although several commenters stated that they expected costs to exceed all possible benefits. The amendment would permit institutions to choose optimal disclosure programs after weighing the expected costs and benefits associated with making the disclosures to all or some of their account holders. A more efficient allocation of resources would result with no loss of consumer protection relative to the liability provisions established by the Act.

It is not apparent whether small financial institutions or low-income consumers are likely to be placed at significant cost or other disadvantage. The amendment will, however, allow institutions flexibility to adapt to the ultimate disclosure requirements mandated by the Act for May 1980, so that small institutions should be better able (than under a mandatory disclosure requirement) to schedule the relatively larger fixed-cost expenditures associated with their disclosure programs.

(3) Pursuant to the authority granted in Pub. L. 95–630 (to be codified in 15 U.S.C. 1693b), the Board revises 12 CFR 205.5(a) as follows:

§ 205.5 Liability of consumer for unauthorized transfers.

(a) *General rule.* A consumer is liable, within the limitations described in paragraph (b) of this section, for unauthorized electronic fund transfers involving the consumer's account only if:

(1) The access device used for the unauthorized transfers is an accepted access device;

(2) The financial institution has provided a means (such as by signature, photograph, fingerprint, or electronic or mechanical confirmation) to identify the consumer to whom the access device was issued; and

(3) The financial institution has provided the following information, in writing, to the consumer:

(i) The consumer's liability under § 205.5, or under other applicable law or agreement, for unauthorized electronic fund transfers and, at the financial institution's option, notice of the advisability of prompt reporting of any loss, theft, or unauthorized transfers.

(ii) The telephone number and address of the person or office to be notified in the event the consumer believes that an unauthorized electronic fund transfer has been or may be made.

(iii) The financial institution's business days, as determined under § 205.2(d), unless applicable State law or an agreement between the consumer and the financial institution sets a liability limit not greater than $50.

* * * * *

By order of the Board of Governors, June 7, 1979.

Theodore E. Allison,

Secretary of the Board.

[FR Doc. 79-18438 Filed 6-12-79; 8:45 am]

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particularly low-income consumers. The analysis presented here is to be read in conjunction with the economic impact analysis that accompanied the Board's Regulation E at 44 FR 18474, March 28, 1979, and 44 FR , May 2, 1979.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 15, 17 and 18

Statement of Policy on Aggregation of Accounts and Adoption of Related Reporting Rules

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission) is issuing a statement of policy regarding the aggregation of positions held in discretionary accounts or accounts which are part of a customer trading program for purposes of speculative position limits, and is adopting amendments to its regulations concerning the reporting of positions held in such accounts. These amendments leave unchanged the general requirement that for determining reporting status all positions in accounts which a trader holds, has a financial interest in, or controls must be combined. Moreover, positions in accounts trading pursuant to an expressed or implied agreement or understanding must also continue to be combined.

With respect to reports filed by futures commission merchants, the amendments require that for determining reporting status all positions held in discretionary accounts and accounts traded pursuant to customer trading programs of a futures commission merchant or its officers, partners, or employees, must be combined with all other positions in accounts which the futures commission merchant holds, has a financial interests in, or controls *unless*, in general, (1) a person other than the futures commission merchant directs trading in the accounts, and (2) trading decisions in the accounts are determined independently from trading decisions in other accounts which the futures commission merchant holds, has a financial interest in, or controls.

The amended rules also set forth the conditions under which positions in accounts of commodity pools and certain partnership accounts are required to be combined for purposes of determining reporting status.

The Commission's statement of policy states the Commission's views regarding the aggregation of certain accounts for purposes of compliance with speculative limit requirements. The policy sets forth indicia the Commission will consider to determine whether the limits have been

exceeded and appropriate enforcement proceedings should be instituted by the Commission. The statement of policy generally parallels the Commission's rules for determining reporting status.

EFFECTIVE DATE: July 13, 1979.

FOR FURTHER INFORMATION CONTACT: Lamont L. Reese, Commodity Futures Trading Commission, Office of Chief Economist, 2033 K Street N.W., Washington, D.C. 20581, (202) 254-7446.

SUPPLEMENTARY INFORMATION: On February 25, 1977, the Commission published for public comment in the Federal Register, 42 FR 11150, a proposed policy different from that implemented by the Commission's predecessor, the Commodity Exchange Authority, concerning aggregation of accounts of traders for reporting purposes and determining compliance with speculative limits. In addition, the Commission sought comment on the need for uniform Commission and exchange rules concerning the aggregation of accounts to determine compliance with federal and/or exchange-imposed speculative limits. New reporting requirements were also proposed which would allow the Commission to implement its proposed aggregation policy.

Background: One of the primary objectives of the Commodity Exchange Act, 7 U.S.C. § 1 *et seq.* (1976), as amended by the Futures Trading Act of 1978, Pub. L. 95-405, 92 Stat. 865, is to maintain orderly and competitive futures markets. Section 4a(1) of the Act, 7 U.S.C. § 6a(1) (1976), specifically provides that:

"Excessive speculation in any commodity under contract of sale of such commodity for future delivery made on or subject to the rules of contract markets causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity."

Pursuant to this section the Commission is authorized to establish limits on the amount of trading which may be done or positions which may be held by any person. Section 4a(1) of the Act further provides that in determining whether

"... any person has exceeded such limits, the positions held and trading done by any persons directly or indirectly controlled by such person shall be included with the positions held and trading done by such person; and further, such limits ... shall apply to positions held by, and trading done by, two or more persons acting pursuant to an expressed or implied agreement or understanding, the same as if the positions were held by, or the trading were done by, a single person." [1]

Prior to the enactment of the Commodity Futures Trading Commission Act of 1974, Pub. L. 93-463, 88 Stat. 1389 (October 23, 1974), Section 4a(1) had been the subject of interpretative statements issued by the Administrator of the Commodity Exchange Authority. One interpretative statement, Administrative Determination 229 (October 14, 1971) (A.D. 229), concerned "customer trading programs" of a futures commission merchant ("FCM") and stated that these programs have the following elements:

They normally require the customer to sign an agreement not obtained from other customers and to make a minimum deposit in excess of that required of other customers. Those in the program are given specific advice or recommendations not made available to other customers of the firm. Although participants are not required to follow specific recommendations, the programs are designed to provide best results when such recommendations are followed.

A.D. 229 concluded with respect to these trading programs that:

All trades and positions of all customer accounts included in a trading program must be combined for reporting and speculative purposes. Any officer, partner, or employee of a futures commission merchant who operates a customer trading program is acting on behalf of the futures commission merchant. ...

Thus, under A.D. 229, the FCM was deemed to control the trading of customer accounts in the trading program and was required to file large trader reports under Part 18 of the regulations under the Act if the positions in the accounts exceeded the reporting limits.[2] A related determination (A.D. 232), April 20, 1972, was also made by the Administrator concerning uniform application of A.D. 229 to commodities for which exchanges had established their own speculative limits. A.D. 232 stated:

... that each exchange which has speculative limits in a regulated commodity notify members that the Commodity Exchange Authority interpretation of the application of speculative limits to customer trading programs applies equally to exchange limits.

The Commission has received petitions and inquiries from FCM's and others requesting that the Commission revise the prior interpretations made by the Administrator of the Commodity Exchange Authority. Due to the general importance of these issues, the Commission sought comment from interested persons. See 40 FR 44804 (September 30, 1975). Subsequently, questions concerning aggregation were discussed and reported on by two advisory committees established by the Commission: The Advisory Committee on the Economic Role of Contract Markets, chaired by Commissioner Seevers,[3] and the Advisory Committee on Commodity Futures Trading Professionals, chaired by Commissioner Martin.[4]

The Advisory Committees generally found that customer trading programs, commodity pools and guided account programs may perform a useful function in the market. The Advisory Committee on Commodity Futures Trading Professionals specifically noted that "[t]rading programs and commodity pools are evidentially becoming increasingly attractive to the trading public and may serve a valuable economic function in bringing speculative funds into the market." [5]

The Advisory Committee on the Economic Role of Contract Markets found that customer trading programs provided less stability than most standard types of speculative capital in the market.[6] The placing of large block orders from trading programs, especially if trading is based on "technical factors," may produce "technical runaways" in the market.[7] It was reported that markets have been "buffeted for short periods by these trend-trading blocks." [8]

Despite noting potential market problems accompanying large market orders, neither committee recommended further restrictions on trading by customer trading programs. Both committees did recommend further study and review of the existing aggregation policy, especially as it required FCM's to aggregate all trading programs operated by its personnel and "house accounts" of the FCM for

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[1] The Commission has recently amended its rules to eliminate daily trading limits on speculative trading for all commodities where such limits were in effect. See 44 FR 7124, *et seq.* (February 6, 1979). The Commission has retained limits on the positions which may be held for speculative purposes on all these commodities. Those commodities are grains (defined to include oats, barley and flaxseed), cotton, rye, soybeans, eggs, potatoes, corn and wheat. 17 CFR Part 150, 44 FR 7127-7128.

[2] For purposes of Part 18, a trader is any person, including an FCM, who, for his own account or for an account he controls, makes or has made transactions in commodity futures. 17 CFR 18.00(e).

[3] The text of this Committee Report which concerned aggregation appears at CCH Comm. Fut. L. Rep. ¶20,187 at 21,077-21,078 (July 19, 1976) [Transfer Binder 1975-1977].

[4] The text of this Committee Report which concerned aggregation appears at CCH Comm. Fut. L. Rep. ¶20,197 at 21,086 [Transfer Binder 1975-1977]. Report Letter No. 29, Part II at 51-52 [August 20, 1976) (Report letter No. 29).

[5] *Id.*

[6] CCH Comm. Fut. L. Rep. ¶20,187 at 21,078.

[7] *Id.*

[8] *Id.*

purposes of determining compliance with reporting and speculative limit requirements. The Advisory Committee on Commodity Futures Trading Professionals suggested that the Commission's aggregation policy with regard to programs affiliated with the FCM "should not emphasize principal—agent or employee relationships . . ." but should place the burden on the FCM to demonstrate independence in "program design, internal procedures and surveillance." [9]

The Commission believes the aggregation policy it is now adopting is in accordance with the general recommendations of these committees. The Commission recognizes the great variety of commodity trading programs available for trader participation. If such accounts and programs are traded independently and for different purposes, such trading can be beneficial to the markets by adding liquidity to the markets and aiding in the price-discovery process. Further, the Commission believes that the aggregation policy of the CEA did not adequately reflect the efforts made by FCM's, as well as others, to establish internal management procedures designed to assure independence by the person who controls trading in a discretionary account or a customer trading program. However, the Commission also recognizes that purportedly different programs which in fact are similar in design and purpose and are under common control may be initiated in an attempt to circumvent speculative limit and reporting requirements.

Overview of Aggregation Policy. The Commission received six comments in response to its February 25, 1977 proposed policy statement, one of which fully endorsed the policy and did not recommend any changes. Several of the commentators raised questions or made suggestions that have persuaded the Commission that some changes to the proposed policy statement were warranted.

The policy of the Commission's predecessor, and that proposed by the Commission, presumed that an FCM controlled all accounts of customers which were part of a customer trading program affiliated with the FCM, or its officers, partners, or employees. The Commission's proposed policy would have required an FCM to aggregate positions in all such customer trading program accounts unless it could make a sufficient showing in advance that control of trading was vested in a person other than the FCM. The Advisory Committees, and for that matter three of the four commentators who stated their opinion on the subject, agreed that the burden should be on the FCM to establish that the FCM does not control an affiliated customer trading program.

The Commission agrees that the FCM or other trader bears the responsibility to comply fully with applicable legal requirements. However, the Commission, after further consideration, has determined that an initial showing by the FCM prior to commencement of trading in customer trading programs is an inefficient method to establish whether the FCM in fact controls trading in an account. In all cases, control is a matter of fact, the existence of which may be fairly inferred from surrounding circumstances. Thus, the FCM's initial affirmation, even though accurate when made, would not be dispositive of compliance with either speculative limit or reporting requirements if, in fact, there develops a consistent pattern of trading between accounts in supposedly different programs carried by the FCM and/or supposedly controlled by different employees of the FCM. Indeed, at the time the Commission published its proposal it noted that, despite the initial showing by the FCM, trading in the accounts would be subject to periodic review. In this connection, the administrative cost to the Commission to determine in each case, whether a sufficient showing has been made by the FCM prior to trading cannot be justified when, in any case, the Commission must continually monitor the programs to determine if coordinated patterns of trading are occurring.

In view of these considerations the Commission has determined to amend its reporting regulations to provide that for purposes of determining reporting status an FCM will be assumed to control all customer discretionary accounts and accounts which are part of a customer trading program of the FCM, or its officers, partners, or employees, unless specified conditions indicative of the absence of control exist. If these conditions exist with respect to a particular account, the FCM need not aggregate positions in such account for purposes of determining reporting status. In such a case, of course, the positions held in the account must be combined with those of the officer, partner or employee of the FCM who does control the account in determining the reporting status of such officer, partner or employee. [10]

Further, the Commission's statement of policy on aggregation included in this release makes clear that the Commission will employ similar criteria in determining the FCM's compliance with speculative position limits insofar as those limits apply to controlled positions. If, after investigation or otherwise, the Commission has reason to believe that the FCM or any other trader has failed to aggregate positions in customer accounts properly for determining reporting status, or has violated speculative limits set in Part 150 of the regulations based on a failure to aggregate accounts properly or otherwise, the Commission may institute appropriate enforcement proceedings.

As adopted, the Commission's statement of policy on aggregation with respect to controlled accounts does no more than restate Section 4a(1) of the Act, which expressly provides that any person who directly or indirectly controls the positions held or trading done by any other person, must include the positions held or trading done by such other person in determining whether that person has exceeded the speculative limits set by the Commission. The language in Section 4a(1) regarding controlled positions was enacted in 1968. Pub. L. 90–258, § 2, 82 Stat. 26 (1968). The Senate Report accompanying the 1968 amendment states:

> "All of the changes made by this section incorporate longstanding administrative interpretations reflected in orders of the [Commodity Exchange] Commission." [11]

Indeed, the Commodity Exchange Commission's order setting speculative limits issued in 1938, had placed limits on the positions which "any person may hold or control." [12]

Applicability of Speculative Limits to FCM's. One commentator on the Commission's February, 1977 proposal suggested that, while an FCM who controls several customer accounts

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[9] Report Letter No. 28, *supra*, at 51–52.

[10] The Commission's authority to require futures commission merchants and floor brokers, to report transactions and positions of such persons, and the transactions and positions of their customers, is set forth in Section 4g of the Act, 7 U.S.C. § 6g (1976). Further, Section 4i of the Act, 7 U.S.C. § 6i (1976), in pertinent part provides: "It shall be unlawful for any person to make any contract for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market unless such person shall report or cause to be reported to the properly designated officer in accordance with the rules and regulations of the Commission . . . whenever such person shall directly or indirectly have or obtain a long or short position in any commodity or in any future of such commodity, equal to or in excess of such amount as shall be fixed from time to time by the Commission."

[11] Senate Report No. 947, 90th Cong., 2d Sess. 5 (1968).

[12] *In the Matter of Limits on Positions and Daily Trading in Wheat, Corn, Oats, Barley, Rye, and Flaxseed, for Future Delivery*, C.E.A. Docket No. 3 (December 22, 1938).

should be subject to the Act's speculative limit provisions, Section 4a(4) of the Act precludes the use of presumptions of control applied to an FCM. Although an FCM need not make a showing to the Commission prior to trading under the policy and regulations herein adopted, the Commission again wishes to express its views on the applicability of Section 4a(4).

In pertinent part, Section 4a(4) of the Act provides that the speculative limit provisions of Section 4a

". . . shall apply to a person that is registered as a futures commission merchant or floor broker . . . only to the extent that transactions made by such person are made on behalf of or for the account or benefit of such person."

As indicated above, as originally enacted, Section 4a did not expressly refer to trading in controlled accounts. However, trading effected either "directly or indirectly" was subject to speculative limits, and served as the basis for the Commodity Exchange Commission's interpretations regarding controlled accounts. Thus, the enactment of Section 4a(4) can only be understood to clarify that the broad, remedial provisions of Section 4a were not meant to apply to transactions effected for customers by an FCM or floor brokers, acting merely in that capacity as traditionally viewed. Considering the rationale for the enactment of Section 4a, Congress could hardly have intended to grant FCM's and floor brokers an exemption from any speculative limits established by the Commodity Exchange Commission if they traded "directly or indirectly," through controlled or otherwise managed accounts.

Thus, the Commission and its predecessor have consistently construed Section 4a(4) to apply only to situations in which the FCM or floor broker was handling customer accounts and exercised no discretion or control, either direct or indirect. See 42 FR 11150–51 (February 25, 1977).

Trading programs operated by non FCM's. Several persons who are not FCM's but who operator customer trading programs have inquired concerning the effect of the aggregation policy on their activities. The Commission's February 1977 release focused primarily on programs operated by FCM's. However, the Commission wishes to emphasize that Section 4a(1) of the Act and Part 150 of the Commission's regulations, expressly apply to any person, and thus cover an associated person of an FCM, a commodity pool operator ("CPO"), commodity trading advisor ("CTA"), or any other trader who directly or indirectly controls futures positions. Similarly, these persons are subject to the large trader reporting requirements of the Commission's regulations, 17 CFR Part 18.

All traders who operate customer trading programs share the ability, through control of large trading blocks, to influence the market. Accordingly, a non-FCM who has an affiliated customer trading program is required to aggregate positions in accounts of such program with all other positions in accounts which the non-FCM holds, has a financial interest in, or controls, for purposes of determining reporting status and for purposes of compliance with speculative position limits. These requirements are discussed more fully below.

Definitions. In its February 25, 1977 release the Commission used and requested comments on definitions of terms referring to specific types of trading programs to which its aggregation policy would apply. No specific comments concerning these definitions were received. Upon review of other general comments which it received, the Commission has adopted certain of the definitions in a modified form in Part 15 of its regulations. The definitions will also apply to terms used in its policy statement on aggregation.

Rule 15.00(l) defines the term "customer trading program" to mean any system of trading offered, sponsored, promoted, managed or in any other way supported by, or affiliated with, an FCM, a commodity trading advisor, a commodity pool operator, or other trader, or any of its officers, partners or employees, and which by agreement, recommendations, advice, or otherwise directly or indirectly controls trading done and positions held by any other person. The term includes but is not limited to, arrangements where a program participant enters into an expressed or implied agreement not obtained from other customers and makes a minimum deposit in excess of that required of other customers for the purpose of receiving specific advice or recommendations which are not made available to other customers. The term includes any program which is of the character of, or is commonly known to the trade as, a managed account, guided account, discretionary account, commodity pool or partnership account.

The Commission has retained that part of its definition regarding programs designed to provide its participants with specific advice or recommendations not given to other customers. However, the Commission has modified the definition to make clear that specific advice or recommendations given to a particular customer without more is not a customer trading program.

Rule 15.00(g) defines the term "guided account program" to mean any customer trading program which limits trading to the purchase or sale of a particular contract for future delivery of a commodity that is advised or recommended to the participant in the program.

As adopted the definition makes clear that the term "guided account program" does not include market letters or programs which give specific advice or recommendations regarding trading, but do not limit the trading activities to the advice or recommendations generated. An example of a guided account program is where the person controlling the account advises the customer to buy "May wheat." The customer may either agree to the trade or reject the trade before it is made.

One commentator suggested that if a participant in a customer trading program is given the option to accept or reject a suggested trade, the participant's account is not being "controlled" and should not be aggregated with other customer trading program accounts. The Commission is not persuaded that control should be viewed so narrowly for this purpose. Even though a customer may reject a specific trade in a guided account program, the only trades which can in fact be made for these accounts are those generated by the program. Secondly, customer trading programs, such as guided account programs, are designed and represented to customers to give best results by complete or general participation in the trades generated by the program. Thus, the incentive to join the program inhibits at the outset the independent judgment the customer might otherwise exercise. Moreover, the Commission understands that, in most cases, customers in a guided account program are contacted prior to the execution of an order, informed that the program expects a trend to develop, and that the customer's account will be traded in accordance with the program trend analysis unless the customer contacts the program and rejects the trade. Finally, although a guided account program may represent many individual customer accounts, orders placed may be block orders. The coordinated trading of these individual accounts at the direction of a single trader based on technical factors could have just as significant an impact in the market as

where the trader had complete discretionary authority over the accounts.

Rule 15.00(h) defines the term "discretionary account" to mean a commodity futures trading account for which buying and/or selling orders can be placed or originated, or for which transactions can be effected, under a general authorization and without the prior specific consent of the customer, whether the general authorization for such orders or transactions is pursuant to a written agreement, power of attorney, or otherwise.

Rule 15.00(i) defines the term "managed account program" to mean a customer trading program which includes two or more discretionary accounts traded pursuant to a common plan, advice, or recommendations. The Commission did not include a definition of this term in its February, 1977 release. Upon further consideration the Commission has determined that it was advisable to add this definition in order to emphasize that a group of discretionary accounts traded pursuant to a common plan, advice or recommendations are required to be aggregated for reporting purposes and for purposes of speculative limits.

If several discretionary accounts are part of a managed account program, all positions that are in the accounts must be aggregated by the trader or traders controlling trading in the program. For example, if several associated persons of an FCM individually manage one or more discretionary accounts, and all such accounts are traded according to a common plan or a commonly derived recommendation, then all positions in such accounts must be aggregated. If the FCM directs trading, the FCM would be obligated to aggregate the positions for purposes of reporting.

On the other hand, if the associated persons direct trading, each associated person would be deemed to share control of all the positions in all accounts which trade in accordance with the plan. Of course, irrespective of whether a managed account program is involved, when an associated person directs trading in one or more discretionary accounts, the associated person must aggregate the positions in such accounts with all positions in accounts which he holds, has a financial interest in, or controls. Similarly, if the FCM directs trading in a discretionary account, positions in such an account must be aggregated with positions owned or controlled by the FCM for reporting purposes.

The Commission received several comments asking for a definition or clarification of "control." As indicated above, control is a question of fact in each case. The Commission considers its existing definition adequate for this purpose. Section 1.3(j) of the Commission's regulations, 17 CFR § 1.3(j) (1978), states that:

"An account shall be deemed to be controlled by a person if such person by power of attorney or otherwise actually directs trading for such account."

The February, 1977 release provided that the term "house accounts" would refer to a commodity futures trading account owned by or carried in the name of the futures commission merchant. The Commission believes that a definition of this term is unnecessary at this time.

The Commission received one comment asking for a definition or clarification of the term "account or program controller" used in its February, 1977 release. The term "account or program controller" has been deleted from the adopted rules.

Financial Interest in Accounts. Consistent with the underlying rationale of aggregation, existing reporting Rule 18.10(a) a basically provides that if a trader holds or has a financial interest in more than one account, all accounts are considered as a single account for reporting purposes. Several inquiries have been received regarding whether a nomial financial interest in an account requires the trader to aggregate. Traditionally, the Commission's prodecessor and its staff have expressed the view that except for the financial interest of a limited partner or shareholder (other than the commodity pool operator) in a commodity pool, a financial interest of 10 percent or more requires aggregation. The Commission has determined to codify this interpretation at this time and has amended Rule 18.01 to provide in part that

"For purposes of this Part, except for the interest of a limited partner or shareholder (other than the commodity pool operator) in a commodity pool, the term 'financial interest' shall mean an interest of 10 percent or more in ownership or equity of an account."

Thus, a financial interest at or above this level will constitute the trader as an account owner for aggregation purposes.

Reporting Status of FCM's. New Rule 18.01(b)[13] has been adopted to provide generally that for the purpose of determining reporting status of an FCM the positions held in a discretionary account or a customer trading program of the FCM, or of any of its officers, partners, or employees, shall be considered positions controlled by such FCM—unless (1) a trader other than the FCM directs trading in the account; (2) the FCM maintains only such control over trading in such an account as is necessary to fulfill its duty to supervise diligently trading in the account; and, (3) each trading decision in the discretionary account or customer trading program is determined independently of all trading decisions in other accounts which the FCM holds, has a financial interest in, or controls.

Evidence demonstrating control by FCM. The Commission's February, 1977 proposal noted that an FCM or other trader seeking to avoid the requirment to aggregate positions in accounts affiliated with customer trading programs would have to demonstrate, among other things, that the customer trading program for which the exemption would be sought was independent from the control of the FCM or other trader seeking the exemption. The Commission received several comments concerning the type of evidence that the FCM could submit to demonstrate that a program controller is free to act independently of the FCM. Altough the Commission has decided not to require an FCM or other trader to submit evidence prior to trading, the issues raised by the commentators have assisted the Commission in developing its aggregation policy. As indicated above the determination of control must be decided on a case-by-case basis. However, FCM's and other affected persons should be aware that in assessing whether a particular trader exercises control, the Commission will look to whether any of the following indicia of control exist, among others. The Commission believes that discussion of some of these indicia will assist FCM's and other affected persons in complying fully with applicable legal requirements.

(A) *Agreements vesting control in the name of the FCM or other trader.* The documents signed by a customer to participate in the customer trading program account, indicating that the FCM or other trader has the authority to direct trading in the account. Relevant documents would include those opening a customer account, any power of attorney or other document authorizing execution of trades and any special agreement that may be signed by a customer to participate in a customer trading program.

(B) *Advertising.* Advertisements and other promotional material containing statements or representations that

[13] The Commission has redesignated existing Rule 18.01(b)—net positions—as part of new Rule 18.01(h), with certain clarifying changes.

indicate that the FCM or other trader will direct trading in the program.

(C) *Agreements between the FCM and other traders.* Agreements between the FCM and its employees or other affiliated traders demonstrating the degree of independence between the FCM and the trader. Several commentators have suggested that in some cases a contract between the FCM and its associated persons assuring independence of action might be inconsistent with the employer-employee relationship and in any event would be self-serving. The Commission agrees and has attempted to structure its regulations to make clear that control should not be equated with the supervisory responsibilities of the FCM. The existence or nonexistence of a self-serving contract will not be determinative. Of primary importance will be whether the practices of the FCM include only supervisory and surveillance procedures, or whether they interfere with the trading determinations made by the person designated to direct trading in a customer's account.

(D) *Degree of supervision.* Several commentators suggested that an FCM would be abdicating its fiduciary responsibilities to its customers if it allowed any person who directs trading in a program to act completely independent of its supervision in the trading of the customer programs. Commentators stated that the FCM must be allowed to control margin policies and be able to act with respect to a program controller's trading practices which in the opinion of the FCM are not appropriate for its customers.

As stated above, the Commission does not intend for its policy on aggregation to reduce the FCM's responsibility to supervise and monitor the activity of the persons who direct trading in an account or program. The Commission's customer protection regulations require that an FCM diligently supervise persons who control accounts. See Commission rule 166.3, 43 FR 31886, 31890–31891 (July 24, 1978). Thus, the retention by the FCM of general supervisory obligations over the trader who actually directs trading in an account or program will not, in and of itself, require the FCM to aggregate positions. The Commission's aggregation policy and reporting rules have been modified to make this clear.

(E) *Confidentiality of trading decision of a customer trading program.* Indications of control by the FCM may exist if the FCM has not taken steps to assure that trading decisions in any one program generally not be available to other program managers.

(F) *Access to and reliance on market information generated by the FCM.* One commentator noted that although a person who directs trading in a customer account or program should be denied access to specific trading decisions generated by other customer programs, such persons should not be precluded from access to general research information generated by the FCM. The Commission agrees that research information concerning fundamental demand and supply factors and other data should be readily available to a person who directs trading in a customer account or programs. However, the Commission is concerned that specific trading recommendations of the FCM contained in such information not be substituted for independently derived trading decisions. When the person who directs trading in an account or program regularly follows the trading suggestions disseminated by the FCM, such account or program will be evidence that the account is controlled by the FCM.

(G) *Financial interest of the futures commission merchant.* As stated above, when the financial interest of the FCM is greater than 10 percent, the Commission will consider the FCM to be the owner of all positions in the program. However, quite apart from considerations of ownership, any financial interest may also be indicative of control of the account. Thus, a financial interest held by an FCM in a customer trading program will be considered for this purpose.

Common trading patterns. Several commentators offered arguments that common trading patterns are an insufficient basis for requiring aggregation of accounts for reporting or speculative limit purposes. The Commission disagrees. A common trading pattern indicates either that several programs are traded in accordance with a common plan or understanding, or that the programs share a common design despite what the original object of each program may have been or the difference in the stated factors which are to influence trading in each program. The Commission is mindful that at times similar trading patterns may result in the case of customer trading programs that are in fact designed to react to different market signals. But the existence of common trading patterns generally indicates that the programs are similar in design and purpose and hence most probably under the control of the FCM or jointly controlled by several traders. Moreover, it is the responsibility of the FCM to assure that supposedly different trading programs offered by or affiliated with such FCM, in fact, are different in design or purpose.

Additional possible amendments. The Commission will be reviewing the existing reporting and recordkeeping requirements and special call provisions set forth in its regulations in order to ascertain whether any modifications are necessary in order to assure that the documentation relating to the existence of control is readily available for Commission review.

Discretionary accounts of associated persons. In its February 25, 1977 release the Commission proposed several criteria that it would consider to determine if an associated person actually exercises control over a discretionary account or is merely providing administrative service to an account which an FCM controls. 42 FR 11152. The Commission's policy and regulations herein adopted are consistent with that approach. Discretionary accounts, whether or not traded as part of a managed trading program, raise the same concerns as other customer trading programs. Therefore, aggregation of positions in such accounts for determining reporting status and for speculative limit purposes should be based on the same factors as those that apply to managed account programs. Thus, if the associated person directs trading in the customer's account it would be required to aggregate positions in such account with all other positions which the associated person holds, has a financial interest in, or controls. On the other hand, the FCM would be required to aggregate where it is determined that the associated person acts only at the direction of the FCM. In that regard the Commission will look to the overall policy of the FCM regarding associated persons who are authorized to handle discretionary accounts; the apparent reliance by the associated persons who handle discretionary accounts on the suggested trading decisions of the FCM; and whether a pattern of trading exists between the discretionary account and any other customer trading program or house account.

Commodity pools and partnership accounts. The Commission's February 25, 1977 proposed policy statement indicated that a general partner in a commodity pool organized as a limited partnership need not aggregate positions in the partnership account with other positions which the general partner held, had a financial interest in, or controlled, if the general partner could show that (1) he had divested himself of control over the trading in the

partnership's account, and (2) he had maintained a minimal beneficial interest in the partnership of no more than necessary to form a partnership under applicable state or federal law and in any case less than 10 percent. However, the proposal did not make clear that when the general partner of the commodity pool is also an officer, partner, or employee of an FCM, the partnership account must also be considered as any other customer trading program of the FCM in order to determine whether the FCM or the officer, partner or employee should aggregate. In order to make this clear, the definition of the term "customer trading program" as adopted includes reference to commodity pools. Thus, under Rule 18.01(b), positions in accounts of customer trading programs of officers, partners or employees of an FCM, including commodity pools, are presumed to be controlled by the FCM. Further, the Commission has adopted new Rule 18.01(c) of its regulations to provide rules for determining reporting status of CPO's and has included reference to commodity pools in its statement of policy on aggregation.[14] Since Section 18.01(a) makes clear that any person holding a financial interest in any account 10% or more in ownership or equity is an account owner, the Commission has deleted from its final statement of policy and reporting rules the proposed financial limitation which specifically referred to commodity pools.

The rules for determination of reporting status provide that positions held in all commodity pools operated by a CPO, other than a CPO who is an officer, partner, or employee of an FCM, shall be considered positions controlled by such CPO unless:

(1) A trader other than the CPO directs trading in such commodity pool;

(2) The CPO maintains only such minimum control over trading in the commodity pool that is necessary to fulfill its duty to supervise diligently all accounts of the pool; and

(3) Each trading decision of the commodity pool is determined independently of all trading decision in other commodity pools and position in accounts which the CPO holds, has a financial interest in, or controls.

The above rules apply to all of commodity pool operators, whether individuals, corporations or partnerships. And, of course, any trader other than the commodity pool operator who directs or otherwise controls trading for the pool, such as an independent commodity trading advisor, must aggregate the pool's positions with his own for speculative limit and reporting purposes. *Interest of a commodity pool participant, including a limited partnership interest.* The February 25, 1977, release stated that limited partners in partnership accounts, such as pool participants in a commodity pool limited partnership, who do not control the trading or have property rights in the partnership, are not required to combine the trading in the partnership accounts with any other account which they own or control. One commentator generally requested an explanation of the term "property rights." The term originated in A.D. 234 (July 20, 1972) and referred to an individual interest in the specific assets of the partnership, as distinct from the residual beneficial interest in the partnership account.

The Commission is in agreement with the approach taken by its predecessor. The determination must be made on a case-by-case basis. Where a limited partner neither has direct or indirect control of trading in the partnership account, nor has a property interest in particular assets of the partnership, other than his residual, beneficial interest in the account or accounts of the partnership, the limited partner generally is not required to aggregate the positions held in partnership accounts with other positions which he holds, has a financial interest in, or controls. In the Commission's final reporting rules and statement of policy the term "property interest" has been substituted for the term "property rights."

Speculative Trading and Position Limits. Two commentators suggested that the Commission inquire into the current necessity and advisability of speculative limits in general. The Commission has recently eliminated daily trading limits on all commodities traded for which such limits were previously imposed. See 44 FR 7124 (February 6, 1979). However, after an extensive review of both trading and position limits, the Commission has determined to continue the enforcement of position limits. Further, the Commission believes that the modifications to its aggregation policy will to a great extent alleviate the burden to aggregate previously imposed on certain FCM's.

Uniform Exchange and CFTC Rules on Aggregation. The Commission's proposal had generally requested comment on the need to require exchanges to adopt the CFTC's aggregation policy. One commentator requested a separate comment period for interested parties to respond if the Commission were to propose regulations in this area. The Commission has decided not to take action in this area at this time; however, the Commission may in the near future issue a Federal Register release requesting comment on a proposed rule requiring exchanges which have limits on the maximum net long or net short position which one person may hold or control under contracts for future delivery of a particular commodity on or subject to the rules of the contract market to adopt and enforce an aggregation policy at least as stringent as that set forth in the Commission's statement of policy on aggregation.

Statement of Aggregation Policy

Accordingly, for the reasons stated above, the Commission adopts the following statement of policy on the aggregation of positions in certain accounts for purposes of speculative limits. This statement of policy is meant to advise traders of the enforcement policy of the Commission.

1. All positions in accounts directly or indirectly controlled by a person shall be included with the positions in accounts owned by such person for purposes of determining whether such person has exceeded speculative position limits set by the Commission. Except for a limited partner or shareholder (other than a commodity pool operator) in a commodity pool, any person who has a 10 percent or more financial interest in an account will be considered as an account owner.

2. Positions in accounts held by two or more persons acting pursuant to an expressed or implied agreement or understanding shall be combined as if the positions were held by and trading done by a single person.

3. *Customer trading programs and discretionary accounts.* The positions held in a discretionary account or held in an account which is part of, or participates in, or receives trading advice from, a customer trading program of a futures commission merchant, or of any of the officers, partners, or employees of such futures commission merchant, shall be considered positions controlled by such futures commission merchant unless:

(a) A trader other than the futures commission merchant directs trading in such an account;

(b) The futures commission merchant maintains only such minimum control over the trading in such an account as is

[14] The Commission has redesignated existing Rule 18.01(c)—Cross positions—as part of new Rule 18.00(h), with certain clarifying changes.

necessary to fulfill its duty to supervise diligently trading in the account; and,

(c) Each trading decision of the discretionary account or the customer trading program is determined independently of all trading decisions in other accounts which the futures commission merchant holds, has a financial interest in, or controls.

4. *Commodity Pools.* The positions held in all commodity pools operated by a commodity pool operator, other than a commodity pool operator who is an officer, partner, or employee of a futures commission merchant, shall be considered positions controlled by such commodity pool operator unless:

(a) A trader other than the commodity pool operator directs trading for such commodity pool;

(b) The commodity pool operator maintains only such control over trading in the commodity pool as is necessary to fulfill its duty to supervise diligently all accounts of the pool; and

(c) Each trading decision of the commodity pool is determined independently of all trading decisions in other commodity pools and positions in accounts which the commodity pool operator holds, has a financial interest in, or controls.

Other changes in the reporting requirements. The Commission is also adding § 17.00(d) to its regulations to provide that where an FCM files a series 03 report for purposes of Part 18 for an account in which it has a financial interest the FCM is not required to file the report as to such an account required pursuant to § 17.00(a).

In consideration of the foregoing, the Commission, pursuant to its authority contained in sections 4a, 4f, 4g, 4i and 8a(5) of the Commodity Exchange Act, 7 U.S.C. 6a, 6f, 6g, 6i and 12a(5), as amended, Pub. L. 95-405, §§ 5 and 6, 92 Stat. 869 (1978), hereby amends Parts 15, 17 and 18 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 15—REPORTS—GENERAL PROVISIONS

Section 15.00 is amended by adding paragraphs (f), (g), (h) and (i) as follows:

§ 15.00 Definitions.

* * * * *

(f) Customer Trading Program. This term means any system of trading offered, sponsored, promoted, managed or in any other way supported by, or affiliated with, a futures commission merchant, a commodity trading advisor, a commodity pool operator, or other trader, or any of its officers, partners or employees, and which by agreement, recommendations, advice or otherwise directly or indirectly controls trading done and positions held by any other person. The term includes but is not limited to, arrangements where a program participant enters into an expressed or implied agreement not obtained from other customers and makes a minimum deposit in excess of that required of other customers for the purpose of receiving specific advice or recommendations which are not made available to other customers. The term includes any program which is of the character of, or is commonly known to the trade as, a managed account, guided account, discretionary account, commodity pool or partnership account.

(g) Guided Account Program. This term shall mean any customer trading program which limits trading to the purchase or sale of a particular contract for future delivery of a commodity that is advised or recommended to the participant in the program.

(h) Discretionary Account. This term means a commodity futures trading account for which buying and/or selling orders can be placed or originated, or for which transactions can be effected, under a general authorization and without the specific consent of the customer, whether the general authorization for such orders or transactions is pursuant to a written agreement, power of attorney, or otherwise.

(i) Managed Account Program. This term means a customer trading program which includes two or more discretionary accounts traded pursuant to a common plan, advice or recommendations.

PART 17—REPORTS BY FUTURES COMMISSION MERCHANTS AND FOREIGN BROKERS

Section 17.00 is amended by adding a new paragraph (d) as follows:

§ 17.00 Information to be furnished by futures commission merchants and foreign brokers.

* * * * *

(d) A futures commission merchant which files a series 03 report for purpose of Part 18 for an account in which it has a financial interest is not required to file a report for such an account pursuant to this section.

PART 18—REPORTS BY TRADERS

1. Section 18.00 is amended by adding a new paragraph (h) as follows:

§ § 18.00 Information to be furnished by traders.

* * * * *

(h) *Reporting of positions, net or gross.* (1) *Net positions.* The reporting trader shall report the *net* open contracts, long *or* short, in each future of such commodity in all such accounts, except as specified in subparagraph (2) of this section.

(2) *Gross positions.* In the following cases, the reporting trader shall report the *gross* open contracts, *i.e.*, total long open contracts *and* total short open contracts in each future of such commodity in all such accounts:

(i) Positions on the New York Mercantile Exchange;

(ii) Positions on the Chicago Mercantile Exchange;

(iii) Positions on any exchange carried through different futures commission merchants or foreign brokers;

(iv) Positions which represent spreads between different types of contracts in the same commodity;

(v) Positions against which notice have been stopped or issued, but upon which actual delivery has not been made;

(vi) Positions in accounts owned or held jointly with another person or persons as specified in § 18.01; and

(vii) Positions in accounts subject to trading control by the reporting trader, but in which he has no interest as an owner as specified in § 18.01.

2. Section 18.01 is amended by deleting paragraphs (a), (b) and (c), and by adding as new paragraphs (a), (b) and (c) the following:

§ 18.01 Interest in or control of several accounts.

(a) *Multiple accounts.* If any trader holds or has a financial interest in or controls more than one account, whether carried with the same or with different futures commission merchants or foreign brokers, all such accounts shall be considered as a single account for the purposes of determining whether such trader has a reportable position and for the purpose of reporting. For the purpose of this Part, except for the interest of a limited partner or shareholder (other than the commodity pool operator) in a commodity pool, the term "financial interest" shall mean an interest of 10 percent or more in ownership or equity of an account.

(b) *Customer trading programs and discretionary accounts of traders who are futures commission merchants.* For the purpose of paragraphs (a) and (d) of this section, positions held in a discretionary account, or held in an account which is part of, or participates in, or receives trading advice from, a customer trading program of a futures commission merchant, or any of the

officers, partners, or employees of such futures commission merchant, shall be considered positions controlled by such futures commission merchant unless:

(1) A trader other than the futures commission merchant directs trading in such an account;

(2) The futures commission merchant maintains only such minimum control over the trading in such an account as is necessary to fulfill its duty to supervise diligently trading in the account; and

(3) Each trading decision of the discretionary account or the customer trading program is determined independently of all trading decisions in other accounts which the futures commission merchant holds, has a financial interest in, or controls.

(c) *Commodity Pools.* For the purpose of paragraphs (a) and (d) of this section, the positions held in a commodity pool operated by a commodity pool operator, other than a commodity pool operator who is an officer, partner or employee of a futures commission merchant, shall be considered positions controlled by such commodity pool operator unless:

(1) A trader other than the commodity pool operator directs trading for such commodity pool;

(2) The commodity pool operator maintains only such control over trading in the commodity pool as is necessary to fulfill its duty to supervise diligently all accounts of the pool; and

(3) Each trading decision of the commodity pool is determined independently of all trading decisions in other commodity pools and positions in accounts which the commodity pool operator holds, has a financial interest in, or controls.

(d) * * *

Issued in Washington, D.C. on June 8, 1979.

Jane K. Stuckey,

Secretary to the Commission, Commodity Futures Trading Commission.

[FR Doc. 79-18380 Filed 6-12-79; 8:45 am]

BILLING CODE 6351-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB-31]

Staff Accounting Bulletin No. 31

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin

SUMMARY: This interpretation clarifies and reiterates the Staff's long-standing position concerning the presentation believed appropriate in balance sheets for notes and other receivables evidencing a promise to contribute capital from affiliates of corporate general partners in limited partnership offering filed with the Commission. This interpretation supersedes Topic 4–G(2) which also stated the staff's view with respect to this matter.

DATE: June 7, 1979.

FOR FURTHER INFORMATION CONTACT: Howard P. Hodges, Jr. (202–755–1744), Division of Corporation Finance, or Eugene W. Green, Office of the Chief Accountant (202–755–0222), Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The statements in Staff Accounting Bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval; they represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the federal securities laws.

George A. Fitzsimmons,

Secretary.

June 7, 1979.

Staff Accounting Bulletin No. 31

The staff hereby issues topic 4–I, "Notes and Other Receivable from Affiliates." Topic 4–I supersedes Topic 4–G(2) which also stated the staff's position with respect to certain receivables from affiliates. It has come to our attention that some registrants have interpreted that topic to apply only to notes and other receivables arising directly from the sale of capital stock. As a result, several registrants have not followed the presentation described under Topic 4–G(2) of Staff Accounting Bulletin No. 1 in recent limited partnership offerings filed with the Commission.

To preclude possible misunderstanding in the future as to the staff's position concerning the presentation of such items in balance sheets, this revised interpretation is placed under a separate caption "Notes and Other Receivables from Affiliates."

Topic 4: Equity Accounts

* * * * *

I. Notes and Other Receivables from Affiliates.

Facts. The balance sheet of a corporate general partner is often presented in a registration statement. Frequently the balance sheet of the general partner discloses that it holds notes or other receivables from a parent or another affiliate. Often the notes or other receivables were created in order to meet the "substantial assets" test which the Internal Revenue Service utilizes in applying its "Safe Harbor" doctrine in the classification of organizations for income tax purposes.

Question. How should such notes and other receivables be reported in the balance sheet of the general partner?

Interpretive Response. While these notes and other receivables evidencing a promise to contribute capital are often legally enforceable, they seldom are actually paid. In substance these receivables are equivalent to unpaid subscriptions receivable for capital shares which Rules 5–02.30 of Regulation S–X requires to be deducted from the dollar amount of capital shares subscribed.

The balance sheet display of these or similar items is not determined by the quality or actual value of the receivable or other asset "contributed" to the capital of the affiliated general partner, but rather by the relationship of the parties and the control inherent in that relationship. Accordingly, in these situations, the receivable must be treated as a deduction from stockholders' equity in the balance sheet of the corporate general partner.

[FR Doc. 79-18374 Filed 6-12-79; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 290

[Docket No. RM79-6]

Procedures Governing Collection and Reporting of Information Concerning Cost of Providing Retail Electric Service

June 5, 1979

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final regulations.

SUMMARY: These regulations implement section 133 of the Public Utility Regulatory Policies Act of 1978 and establish procedures governing the collection and reporting of information concerning the cost of providing retail electric service.

DATES: Effective July 15, 1979. Written comments on § 290.404 (d) and (f) by July 15, 1979.

ADDRESS: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (Reference Docket No. RM79–6).

FOR FURTHER INFORMATION CONTACT:

Gregory Martin, Office of Commissioner Matthew Holden, 825 North Capitol Street, NE., Room 9010, Washington, D.C. 20426 (202) 275–4176.

William Lindsay, Office of Electric Power Regulation, 825 North Capitol Street, NE., Room 5200, Washington, D.C. 20426 (202) 275–4777.

Jane Phillips, Office of the General Counsel, 825 North Capitol Street, NE., Room 8000, Washington, D.C. 20426 (202) 275-0422.

SUPPLEMENTARY INFORMATION: In this final rule, we seek to implement section 133 of the Public Utility Regulatory Policies Act of 1978 (PURPA) Pub. L. 95-617. This provision of the statute requires the Federal Energy Regulatory Commission (Commission) to prescribe, within 6 months of enactment, the methods, procedure and format to be used by electric utilities in gathering information necessary to determine the costs of providing electric service.

We have made an intense effort to inform electric utilities, their customers, potential intervenors and State regulatory agencies about both the nature of thinking and the timing of action within the Commission. Since last November we have held a variety of staff-level conferences with interested persons, the details of which are recorded in the public file. On December 4, 1978, an informal conference was held to elicit the views of interested persons, and on January 13, 1979, representatives of the Commission met with Commissioners from sixteen State regulatory authorities constituting the Ad Hoc Committee on the National Energy Act of the National Association of Regulatory Utility Commissioners (NARUC).

Various memoranda, correspondence and drafts concerning concepts of the Commission's responsibilities regarding section 133 have been placed in the public file and have been reported in the trade press. The product of this procedure was the Notice of Proposed Rulemaking in Docket No. RM79-6, adopted by the Commission on March 1, 1979, and printed in the Federal Register on March 7, 1979 (44 FR 12438).

In order to avail ourselves of the opportunity for comment on the rule, we held four regional hearings on the proposed rules in addition to soliciting written comments. During the 30-day comment period the Commission received, in addition to the 628 pages of regional hearing transcript, more than 230 oral and written comments from over 180 utilities, State regulatory authorities and consumer groups. Because of the range, number and complexity of these comments the Commission was unable to issue a final rule within the prescribed time limits and issued on May 8, 1979 (44 FR 29102) a Notice of Intent to Act in promulgating final regulations by May 30, 1979.

The Commission has considered carefully all of the testimony and all of the written comments received on its Notice of Proposed Rulemaking, including the 60 or more comments that were filed as many as two weeks after the close of the comment period.

The procedure which we have followed is, we posit, in more than substantial compliance with the requirements and spirit of the Administrative Procedure Act and any other applicable provisions of law, as well as the requirements of elementary fairness and good sense.[1]

Basic Determination

Upon careful review, we have concluded that the basic concept of the proposed rule was correct, although we have been persuaded to limit many of the specific data requirements originally contained therein.

The Joint Explanatory Statement of the Committee of Conference succinctly summarizes at page 86 the general purpose of section 133:

> The conferees intend that good information with regard to costs of providing service must be readily available on a timely basis to everyone concerned.

In preparing its rules under section 133, the Commission was faced with certain key questions as to what would constitute good information readily available on a timely basis. Those issues include: The nature of the cost data to be reported (i.e., whether accounting, marginal or both costs should be required); the extent of reporting (i.e., whether raw data or calculations should be required); and the format for reporting (i.e., whether information should be supplied in Form 1 or in a discrete form for section 133 alone. The initial discussion in this Preamble focuses on these three issues. The Commission has also undertaken a section by section analysis of the comments, keyed to the provisions in the proposed rule and has indicated what position it has adopted in the final rules.

Accounting or Marginal Costs—Legal Issues

Several commentators, mostly utilities, maintained that to require marginal cost data would go beyond the minimum requirements of section 133 since that section of PURPA does not contain any explicit reference to marginal costs or marginal cost pricing. One of these commentators [2] further asserted that "the Commission lacks the statutory authority to compel the submission of marginal costs." This same commentator [3] also argued that it was "reasonable" to assume that when it used the term "costs" in Title I, Congress intended reference to the industry's understanding of the term as referring to embedded costs or fully allocated costs.

In the proposed rules, we interpreted the obligation to insure that "good information with regard to [the] costs of providing service * * * be readily available on a timely basis to everyone concerned * * * " to require the gathering and reporting of both marginal and accounting cost information. Paragraph (a) of section 133 lists four broad categories of information that are to be required under this rule, and then states: "Such rules shall provide that information required to be gathered under this section shall be presented in such categories and in such detail as may be necessary to carry out the purposes of this section." The Commission interprets this as providing considerable latitude for the exercise of its judgment, including the authority to require both accounting cost information and marginal cost information.

It is true that Title I of PURPA does not use the words "marginal costs." However, Title I does not specifically mention accounting or embedded costs either. We do not dispute that this Commission and various State regulatory commission have typically used the term "costs" as synonymous with embedded or fully allocated costs. However, the legislative history of Title I of PURPA suggests that Congress wanted State regulatory authorities and non-regulated utilities to conduct a

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[1] We specifically reject the comments made in a late filing (on behalf of Appalachian Power Company and eleven other utilities) which assert that this final rule violates Executive Order 12044. Executive Order 12044 requires that the public be given at least 60 days to comment on any proposed "significant regulations" and that, if the additional economic impact of the regulations will be equal to or greater than $100 million, the agency prepare a comprehensive regulatory analysis assessing the cost of the program and alternative approaches which could minimize its adverse impact on the economy. Executive Order 12044 does not purport to bind independent regulatory commissions acting as agents of Congress. However, the Commission has acted on its own initiative in full accord with the spirit and intent of this order. Utilities have had full opportunity to comment in the entire rulemaking process (not merely on specific regulations) with full understanding of its foundation and evolution. Moreover, we have sought to ascertain the cost of compliance, and to choose cost minimizing strategies wherever possible. See, for example, the discussion at pages 14 through 16 and 66 and 67. Given the mandatory time for promulgating these rules, the Commission could not submit to a paralysis of analysis that would violate its specific statutory obligations under section 133.

[2] See the comments filed on behalf of the Edison Electric Institute (EEI) and Individual Members of the Utility Regulatory Analysis Program, April 6, 1979, Part II, pages 1 and 3. The same assertion is later reiterated as a subtitle heading "Elementary Rules of Statutory Interpretation do not Permit the FERC to Require Marginal Cost Information under Section 133."

[3] See EEI comments, Part II, page 3.

thorough reevaluation of retail rate structures. State regulatory authorities and non-regulated utilities cannot begin to make decisions on the issue of whether marginal or embedded costs are more relevant for utility cost of service calculations unless they are provided information showing what the numbers look like under the two approaches. The Commission will not interpret section 133 so as to bar the reporting of marginal cost information and thus hinder such an inquiry.

Accounting or Marginal Costs—Policy Considerations

We also received a variety of policy and procedural arguments against the marginal cost reporting requirement. Several commentators urged us not to set forth data requirements but instead to accept as sufficient for complying with section 133 whatever information is currently supplied to State regulatory authorities. Others argued that it would be duplicative to require both accounting and marginal cost data, and that the utility or its State regulatory authority should be allowed to choose the appropriate type of data necessary for performing cost calculations.

It is our belief that Congress included section 133 in PURPA to ensure the availability of adequate cost and load data in all states. The regulations would not comply with the intent of Congress if they simply required the submission of whatever cost of service information is currently supplied to the relevant State regulatory authorities.

Many of those who objected to requiring marginal cost data imputed to the industry a lack of familiarity with marginal cost concepts and contended that marginal cost calculations were imprecise and subject to considerable speculation. These commentators argued that accounting cost data are more familiar to the industry and would therefore be more reliable.

The contention that industry is not familiar with marginal cost methods appears overstated. We estimated that marginal cost studies have been initiated or completed for approximately fifty of the one hundred and ninety utilities that will be required to comply with the section 133 reporting requirements in November 1980. Nor do we agree that accounting cost calculations will necessarily be more reliable. We do not dispute that accounting or embedded costs have been the industry norm for many years. However, such costs have not been used extensively for determining time differentiated costs. Section 133, in contrast, emphasizes the need to determine how costs differ by time of day and season of year. No present methods for determining time differentiated accounting costs are very advanced. As one respondent commented, "The time differentiation of accounting costs, as you know, is probably subject to [as] much uncertainty and debate at this point, as are most of the aspects of the marginal cost studies."[a]

Calculations or Raw Data

In preparing its rules under section 133, the Commission recognized that it had the discretion to require only raw information which could then be used as the basis for calculating costs by costing periods, by customer group and by voltage level or to require calculated costs for such functions and customer groups. The question was raised of whether the reporting requirements should have been limited to raw data or should also have included calculated costs. In its Notice of Proposed Rulemaking the Commission recognized that the information must be calculated in order to be useful and posed the question of where the burden of such calculations should lie: with the utility providing the information or with each of the potential users of the information.

Over a third of the participants in this rulemaking addressed this question. Several indicated that the decision should be left to either the discretion of the utility or to the relevant State regulatory commission. Those arguing against supplying more than raw information asserted that the benefits accruing from such calculations would not outweigh the associated expenses and emphasized that such expenses would ultimately be borne by ratepayers. Those supporting the requirement that utilities submit calculations generally argued that it would be easier and less expensive for the submitting utility rather than outside parties to make the calculations.

Under the final rules, the Commission has required the submission of both raw information and calculations. The Commission believes that there are several advantages to requiring both raw information and calculations. First, the availability of calculated costs will lead to more informed participation by various intervenors in retail rate proceedings. We agree with one comment that many State regulatory commissions "do not currently have the expertise necessary for conducting in-house cost of service studies * * * ." The resources of environmental and residential consumer groups are generally even more limited. One commentator indicated in this regard: "We cannot overemphasize the importance of requiring the utilities to complete the summary table * * *. Limiting the utilities' responsibilities to the compilation of raw data would restrict the ratesetting process to those groups able to hire expensive consultants before intervening in a rate case [and] * * * would tend to exclude consumer and environmental groups from the ratemaking process * * *."[b]

If intervenors and State commission staffs do not have ready access to cost of service information, in a manageable form, the quality of the deliberation will suffer or the proceedings will be delayed until the data become available to all parties. We would be remiss if we promulgated regulations which produced either result.

A second advantage of having utilities perform calculations is the likelihood that confusion about what the data actually means, in the understanding of the utility, will be minimized. One utility commented that "misinformation and misunderstanding will be reduced with the utilities performing the marginal cost studies".[c]

A third advantage to such calculations is that they avoid unnecessary duplication of effort. Not every calculation is subject to dispute in a typical rate case. There are often broad areas of agreement between the different parties in a rate proceeding. If the reporting utilities perform certain calculations, State commissions and intervenors can focus their more limited resources on controversial and disputed areas.

The fourth advantage is that other users of the information will have a better opportunity to understand the unique circumstances of the particular utility. The calculation of time differentiated rates, based on either accounting or marginal costs, is a relatively new area for both the industry and State regulatory commissions. We have tried to draft regulations that would accommodate calculation of time differentiated costs based on any one of the several principal approaches. Each utility's particular circumstances will suggest the selection of one approach as

[a] See comments of the Public Service Company of New Hampshire at the Cambridge public conference.

[b] Comments of the Florida Public Service Commission.

[c] Comments of the Environmental Defense Fund. The contrary view was advanced by several representatives of low-income interests and by ELCON.

[d] Comments of Detroit Edison Company. See also the comments of Ernst and Ernst.

preferable to another. After they have performed such calculations "utilities will be in an excellent position to suggest improvements." [7]

One commentator strongly objected to requiring calculations and argued that:

> * * * an information gathering procedure which allows the utility to select marginal and embedded cost methodologies rather than providing raw information is necessarily inconsistent with the purposes of PURPA. First, it allows the utility to define and structure the raw materials for ratemaking proceedings to its own purposes. Intervenors will only be able to derive the raw information necessary to construct contrary positions by "unbundling" the utility cost study to get at its premises and raw data.[8]

A different commentator, representing low income residential customers, also objected to the calculation requirement, contending that it would only serve to cut off "a full review of the issues involved".[9] We disagree that the calculation requirement as provided would serve to cut off debate on controversial issues.

We do not intend that raw information be hidden within the cost calculations although it appears that the regulations as proposed might arguably have permitted such a possibility. (See §§ 290.501(d) and 290.502(d).) The final rules are specifically designed to emphasize that all of the accounting cost, marginal cost and load information (specified in Subparts B, C and D) must be provided separately from and in addition to whatever cost calculations are developed in compliance with Subpart E. Therefore, an intervenor wishing to dispute the Subpart E calculations will not have to "unbundle" any calculations to gain access to raw information. Utilities will have the discretion to choose whichever method they deem appropriate for their system. However, if an intervenor disagrees with the method selected, the information necessary to develop alternative calculations will also be available.

In summary, requiring the calculations will provide a common point from which all parties can commence an analysis of rate design issues. Requiring that the supporting raw information also be provided will assist those who wish to challenge the assumptions underlying the chosen cost methodology or to propose a different methodology.

[7] See the comments of Detroit Edison Company.

[8] See comments of Electrical Consumers Resource Council (ELCON).

[9] Several other organizations representing similar constituencies strongly supported requiring calculations. See, for example, the comments of Legal Aid of Missouri, Prairie State Legal Services, Inc. and the Ohio Association of Community Action Agencies.

The Commission recognizes that requiring both raw and calculated information imposes certain costs on the reporting utility, at least if it has not previously conducted marginal cost studies. At each of the public conferences we asked for estimates on the cost of supplying marginal cost data and on the cost of preparing a marginal cost study. The purpose was to provide the Commission with an informed basis to adjudge the reasonableness of any such requirement. The estimates of initial cost, as provided by utility managements, ranged from $40,000 to $856,000. Most estimates fell in the $50,000 to $150,000 range.[10] The average electric operating revenues in 1977 for the 258 utilities covered by section 133 of PURPA were approximately $248 million. This implies that the additional cost incurred to comply with Subparts B, C and E will typically range from 0.02 to 0.06 percent of electric operating revenues. The Commission believes that these costs are not unreasonable in light of the potential benefits to be gained in providing all sides—utilities, large industrial customers, residential users, *et al.*—with full opportunities to participate, on the basis of good information, in the consideration of electric rate issues.

In addition to the question of cost calculations proposed under Subpart E, we solicited comments as to whether we should require that utilities calculate marginal energy costs and annual carrying charge rates. With regard to the question of whether utilities should be required to report calculated marginal energy costs, as specified in § 290.303, or whether it is reasonably possible for users of the reported raw information to calculate those costs from the raw information, the comments followed essentially the same pattern as those regarding the calculations specified in Subpart E. With regard to whether or not utilities should be required to submit calculated annual carrying charge rates as specified in § 290.307, a majority of those responding indicated that they preferred that calculations be required. Most did not strenuously object to providing raw information to support those calculations.

For those reasons discussed regarding calculations in Subpart E, the Commission will require the calculation of marginal energy costs and annual carrying charge rates in the final rules.

[10] See the written comments of Utah Power and Light, Tampa Electric Company, Florida Power Corporation and City Public Service Board of San Antonio, Texas, Massachusetts Electric Co., Public Service of Colorado, Central Power and Light Co., Central and Southwest Corp., Pacific Gas and Electric Co., and Consumers Power Company.

These are necessarily rough estimates, subject to errors in both directions. For example, the estimates may be too low because some utilities may have simply estimated the cost of completing a marginal cost study without taking into account that Subpart B may require data that would not be used in their own marginal cost studies. On the other hand, some of the estimates are probably too high because the data requirements in the proposed version of Subpart B were more extensive than those which will be required in the final version of Subpart B. Furthermore, these are estimates of initial cost. The cost estimates for subsequent filings are, in almost all instances, as much as 50 percent lower.

Format for Collection of Raw Information

In the Notice of Proposed Rulemaking, the Commission solicited comments as to whether an entirely new form or a modified FERC Form 1, already required to be filed by a number of the utilities required to report under section 133, should be used for the submission of information.

Based upon comments[11] and its own evaluation, the Commission has chosen not to modify Form 1 but rather to create a new form. To the extent that information already required by FERC Form 1 is included in the filings required by section 133, the simple transfer of that information from Form 1 to the new form should be easily accomplished.

The Commission was concerned that modification of Form 1, which presently serves a useful accounting function, would create confusion for both utilities and potential users of the information submitted under section 133. In addition, many utilities indicated that modification of Form 1 would require substantial modification of programs designed to comply with its present requirements.

Subpart A—Coverage, Compliance and Definitions

§ 290.101 *Coverage.*

The language of both the proposed and the final rule tracks the statutory

[11] Most of the commenting parties expressing a preference for utilization of a modified Form 1 cited a concern over the burden of providing duplicative information. The parties favoring modification were: Indianapolis Power and Light, Northern States Power Co., Texas Power and Light Co., Central Illinois Public Service Co., United Illuminating Co., Kansas Gas and Electric Co., Massachusetts Electric Co. and Narragansett Electric Co., Texas Electric Service Co., Carolina Power and Light Co., Climax Molybdenum Co., Northeast Utilities, Florida Power and Light Co., Arkansas Power and Light Co., U.S. Office of Consumer Affairs, El Paso Electric Company.

The commenting parties opposing a modification of Form 1 were: Middlewest Service Company, Florida Public Service Company, West Texas Utilities, Puerto Rico Water Resources Authority, Pacific Power and Light Co., Publicly-Owned Systems, American Public Power Association, Middlewest Services Co., Georgia Power Co., Seattle City Light, Pennsylvania Power and Light Co., Central Louisiana Electric Co., and National Rural Electric Cooperative Association.

language of section 102 of PURPA in designating what utilities will be required to report under Part 290. A utility would be required to report beginning in the first even-numbered calendar year not less than two years following the first year (after December 31, 1975) in which it had the requisite volume of retail sales but no earlier than 1980. Such utility will also be required to report biennially for all future years even if its volume of sales in those years falls below the statutory threshold. Although the Secretary of the Department of Energy is required under section 102(c) of PURPA to publish a list of the covered utilities, omission from this list will not relieve a utility covered under § 290.101 from the reporting requirements of Part 290.

A number of smaller utilities stated that 500 million kilowatt-hours annual retail sales is too low a threshold for coverage. They argued that the cost of compliance is unfairly burdensome to smaller utilities, and is proportionately higher for them than for large utilities.[12] In addition, some municipal utilities and rural electric cooperatives argued that the administrative ratemaking procedure applicable to them is such that the information required under the proposed rules would serve neither the purposes of section 133 nor any other useful purpose.[13]

The coverage of section 133, as a part of Title I of PURPA, is stated in section 102 of the Act. The Commission does not have authority to change that coverage. We observe further that the purpose of section 133[14] is equally applicable to large and small utilities. We are concerned, however, about the effect of immediately imposing this new reporting requirement on small utilities. Therefore, we have included a special two year extension for utilities having annual retail sales of less than one billion kilowatt-hours. Such utilities will be relieved from reporting now or at any future date that information which they would otherwise be required to report in 1980. We expect that in this two year period before the first filing is required, these small utilities will be able to make the managerial and technical preparations required to meet the requirements of this part as economically as possible. We also expect that the two year period will provide an opportunity for some small utilities to establish joint load research programs so as to reduce the costs of compliance for each participant. This extension is granted for such good cause and is contained in § 290.102(d).

Several utilities[15] argued that no useful purpose will be served by applying the requirements in Part 290 to them. The Commission has granted such generic extensions and exemptions in this part as it deems necessary and would expect such utilities to seek any additional relief through the exemption and extension procedures provided in Subpart F.

The Tennessee Valley Authority suggested "a special reporting procedure whereby an electric power supplier, such as TVA, which is both a covered electric utility within the meaning of PURPA and the sole source of power at wholesale for an integrated system of other electric utilities subject to the reporting requirements of section 133, may file a consolidated report for itself and for its covered distributing utilities. Such a provision would be especially appropriate in cases in which the wholesale supplier designs the resale rates applied by the distributing utilities."[16] The Commission accepts this suggestion and has embodied it in § 290.102(c) of the final rule.

§ 290.102 Compliance.

The proposed rule established when and for what periods of time information specified in Subparts B, C, D and E were to be reported and the manner in which information was to be provided to the public.

§ 290.102(a) Information gathering and filing.

Comments were received from a number of utilities objecting to the burden of providing copies of filings for public inspection at their own offices, and suggesting that State regulatory agencies or this Commission perform this function. Other utilities requested that the rule state that they would not be required to bear the cost of providing copies to requesting parties.[17]

We believe that public access to the information in filings under this rule is as important as the quality of the information reported. Although providing for public inspection and copying may require additional public information resources for some utilities, we believe this is well justified by the importance of the information. Therefore, we continue to require that copies be available at each utility's principal offices. We agree with the comments regarding cost of reproduction, and have made such modification in the final rule.

§ 290.102(b) Time of filing and reporting period.

There were many comments on this paragraph of the proposed rule. Most recommended changes to either the filing dates or the six-month staleness limitation so as to encourage or at least permit use of the most recent calendar year as the reporting period.[18] We have adopted this approach in § 290.103(b) of the final rule and have further provided in § 290.103(c) for the case in which a utility has recently gathered information in connection with a retail rate proceeding. If information so gathered is based on a reporting period reasonably near the "most recent calendar year," it serves no interest to require the utility to do additional data gathering and calculations to comply with our requirements. We will, therefore, permit the alternative submission of the equivalent information.

We have changed the biennial filing date from November 1 to May 31 for filings after that required in 1980 so as to improve the currency of the calendar year data in each filing.

§ 290.102(c) Filing of information at the time of application for a rate change.

The proposed rule included a requirement for gathering and filing information specified in Subparts B, C, D and E at the time of making an application or proposal for a rate increase. A number of commentators[19] objected to this requirement on the grounds that it is either not required or prohibited by section 133 of PURPA. The Commission agrees that section 133 does not specifically require gathering and filing of cost information more frequently than every two years. However, the Commission clearly was given the authority in the first sentence of section 133(c) to require such additional filings if it deemed them appropriate. Considering the purposes of section 133, it may be reasonable to

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[12] See comments made on behalf of Fitchburg Gas and Electric Co., *et al.* See also comments of Savannah Electric and Power Co., and of the American Public Power Association (APPA).

[13] See, for example, comments made on behalf of the Electric Department of the City of Tallahassee, Florida.

[14] The statement of managers in discussing Section 133 states: "The conferees intend that good information with regard to costs of providing service must be readily available on a timely basis to everyone concerned."

[15] See, for example, the testimony of the Hawaiian Electric Company at the March 19, 1979, public hearing held in Seattle. See further discussion of such requests under Subpart F.

[16] Meriwether Lewis Electric Cooperative, Electric Power Board of Chattanooga, and Tennessee Valley Public Power Association.

[17] See, for example, comments of Puget Sound Power and Light Company.

[18] See, for example, comments of the Detroit Edison Company and of the Florida Public Service Commission. Approximately twenty other utilities and commissions made this same suggestion.

[19] See comments of the NRI, Part II, Inc., Reed, Lamb, Lesby and MacRae and others.

expect that the greatest need for the cost information by regulators and others will occur at the time of a proposal for a rate change. If a concurrent gathering and filing is not required, the question arises as to the usefulness, in the rate proceeding, of the most recent cost information filed pursuant to these rules. With regard to this, it seems clear that the needs most likely to be met by information filed under these rules will relate to consideration of rate structure rather than rate level. The currency of data is certainly an essential factor in addressing questions of rate level, but tends to be less important in considering rate structure, because the relationships among costs tend to persist over longer periods of time even though the overall level of costs may change significantly. A regular biennial filing requirement will permit utilities to schedule resources for this task on a regular basis, integrated with related reporting requirements, so as to avoid costly variations in data-related workload.

There is no doubt that the rate increase filing requirement as stated in the proposed rule would have added a significant reporting burden to the requirement that utilities make information filings every two years. On balance, the Commission concludes that it will not require a separate gathering and filing of the data specified in Subparts B, C, D and E at the time of a proposed rate increase. The purposes of section 133 will be served adequately by the biennial filing prescribed in the final rule. The Commission believes that the public access provisions of § 290.102 are sufficient so that no additional publication is necessary at the time of any rate increase application.

The issue of what information is needed at the time of application for a rate increase is one that the Commission will continue to review as a part of the ongoing effort to improve these rules.

§ 290.103 Form of the information.

The question of whether to use Form 1 or other existing forms as vehicles for submissions under this rule has previously been discussed. It is the Commission's intention to provide suitable standard forms for certain items of data required under this rule and to prescribe the general acceptable forms of presentation for the remainder. The rule as proposed has been retained and appears in § 290.102(b).

Additional Provisions

The Commission has added several additional provisions to this subpart:

§ 290.102(c) Consolidated reporting by certain wholesale suppliers.

§ 290.102(d) Extension for small utilities.

§ 290.104 Cost of compliance.

§ 290.105 Definitions.

Sections 290.102(c) and 290.102(d) have been discussed above. The question of proper accounting for the costs utilities incur in the gathering and filing of information under these rules was not addressed in the proposed rule. The Commission has considered this question and has determined that, since the information collected involves only retail service, the corresponding costs should be treated as an expense of regulation to be recovered through retail revenue. Accordingly, as indicated in § 290.104 of the final rule, these expenses will not be allowed by the Commission in establishing wholesale rates.

In comments on the proposed rule, a number of parties requested more complete definition of certain terms. Others comments pointed out the possible misapplication of the rule as proposed, particularly with respect to jurisdictional questions. Section 290.105 has been added to the rule and provides definitions for the following:

State Regulatory Authority. The definition of this term is taken directly from paragraphs 15, 16 and 17 in section 3 of PURPA.

Retail Regulatory Jurisdiction. This definition is included in response to comments [20] indicating that separate reporting for each State regulatory authority as defined above would have been overly burdensome because original jurisdiction is assigned to municipalities in the State of Texas by the laws of that State. The definition identifies those subdivisions of regulatory authority for which separate reporting will be required for certain items of information, particularly load data.

It was not intended in the proposed rule that separate reporting of load or other data would be required relative to operations in political subdivisions smaller than states. The definition implements this limitation on separate reporting.

Predominant Retail Regulatory Jurisdiction. Several comments [21] suggested that a more complete definition was needed for this term, which is used in several sections of this part. For example, it is used in § 290.307(a)(1) to specify what method is to be used for the calculation of annual carrying charge rates.

Voltage Level. Both the proposed rule and the final rule require reporting of certain data by voltage level. A separate definition of this term has now been provided. [22]

Typical Day Costs and Loads. This definition was originally included in Subpart D on Load Data, and is discussed below.

Subpart B—Accounting Cost Information

General

As proposed the rule required the submission of the following information in order to develop fully allocated cost of service studies: rate base information including plant, depreciation, prepayments, accumulated deferred income tax, materials and supplies, electric plant held for future use, nuclear fuel material and construction work in progress data; operating expense information including operation and maintenance expense and tax data; and rate of return information. This accounting cost information coupled with the load information is intended to permit the development of fully allocated accounting cost of service studies under a variety of methods currently in use.

About one third of the parties submitting comments on the proposed rule made specific comments on Subpart B. In general, the comments were of a technical nature. The only policy matter raised was the concern of a number of publicly owned utilities that the account structure (the FERC Uniform System of Accounts) on which Subpart B is based is not completely applicable to them, and that they should be permitted to report information based on their own account structure. [23] The data in Subpart B have been referenced to the FERC Accounts in order to achieve as much uniformity as possible in reporting. It is recognized that publicly owned systems do not keep their books in accordance with the FERC Uniform System of Accounts. The rule requires the public systems to follow FERC accounts only to the extent practicable.

§ 290.201 Rate base information.

Section 290.201 of the proposed rule required balances to be reported at the beginning and end of the reporting period together with the average of the thirteen monthly balances, if available.

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[20] See, for example, the comments of the Public Utility Commission of Texas.

[21] See the comments of the Public Service Company of Colorado.

[22] See the comments submitted on behalf of Appalachian Power Co., *et al.*

[23] See the comments of Publicly Owned Systems.

Various comments [34] were received stating that the utilities do not close their books at the end of each month and that such a requirement would be costly and burdensome. Additional commentators [35] indicated that only end of reporting period data should be shown or that the data should be reported in a manner consistent with the rate base requirements of the State regulatory authority. The reporting of beginning and end of year balances appears to provide sufficient information to allow flexibility in preparing cost of service studies when coupled with a requirement that the average of the thirteen monthly balances be provided if required by the State regulatory authority. Accordingly, the regulations have been revised to require averaging of the thirteen monthly balances only if required by the State regulatory authority.

Section 290.201(a) of the proposed rule required plant data to be provided for various specified accounts and for any sub-accounts. Numerous comments were received questioning what was meant by sub-accounts. These comments indicated that a wide variety of sub-accounts are available for both plant accounts and operating and maintenance accounts. The comments [36] stated that the sub-accounts are utilized for such things as internal accounting cost controls and argued that the requirement to report such sub-accounts would be unduly burdensome without countervailing benefits unless specific sub-accounts were named for which information would be required. The requirement for sub-account data was originally proposed for added flexibility in preparing fully allocated cost of service studies. Such data may be of assistance in the functionalization, classification and allocation of costs, and the Commission originally intended to require detailed information in the event that a complete "raw data" approach was adopted. Since the final rule requires detailed calculated cost of service data in Subpart E, with appropriate supporting backup information, the amount of detailed "raw data" required in Subpart B is no longer as great. Submission of sub-account data is not now considered necessary in order to perform an independent cost of service review of the utility's analysis submitted in Subpart E, and the rule has been revised accordingly by deleting the reference to sub-accounts.

Section 290.201 (a)(2), (a)(3) and (a)(4) of the proposed rule required: A functional breakdown of distribution plant into demand and customer related components and an explanation of the functional allocation used; a breakdown of demand related transmission or distribution plant assigned different service levels and an explanation of this allocation; and a breakdown of all plant directly assigned to customer classes. Various comments [37] indicated that such information is not directly available from accounting records and that such information must necessarily be calculated or estimated. Although Subpart B of the proposed rule was entitled "Accounting Cost Information," the Commission realizes that some of the requested data will have to be derived from data in the books of the reporting utilities. In developing fully allocated cost of service studies, some calculations and manipulation of accounting cost data are necessary, and, as numerous non-utility respondents indicated, these initial calculations are best done by the reporting utilities. At least one commentator suggested that distribution costs be broken down in even greater detail. Upon reconsideration, these particular data requirements are probably most logically placed in § 290.501(b) of Subpart E. Accordingly, the rule has been so revised, leaving it to the utility to develop support for the costs assigned to various classifications, functionalizations and voltage levels.

Section 290.201(b) and (c) of the proposed rule required depreciation data by plant account. Many commentators [38] correctly pointed out that the depreciation accounts are not kept in this manner. These comments state that such reporting would require a substantial revision of current accounting practices or would require the calculation of estimated amounts. Substantial modification of current accounting practices should not be necessary for the purpose of gathering sufficient information to develop fully allocated cost of service studies. The rule has been revised to require depreciation data to be shown by primary function as currently required under the FERC Uniform System of Accounts.

Section 290.201(d) of the proposed rule required certain cash working capital information. Although this section has not been changed, it has been moved to § 290.501(b) of Subpart E because it is more logically related to the utility's method of developing its calculated accounting costs.

Section 290.210(e) of the proposed rule required various information with respect to construction work in progress for each project under construction. Several utilities stated that the data requirement was too extensive in that a great number of projects are under construction from time to time, many of which are relatively small. Various commentators [39] suggested that, if retained, the data be limited to major production and transmission projects. Others commented that the data be combined into functional groups or that dollar thresholds be established. These suggestions are incorporated in the final rule. The detailed information is required only for the major generation and transmission projects, whereas the remaining projects may be grouped by primary function and the account balances reported for each of the primary functions. Other comments suggested that CWIP be reported only if permitted to be included in rate base by the State regulatory authority. Since the data requirement as modified should be readily available, it has been retained to permit flexibility in the development of cost of service studies. The comments indicated that § 290.201(j) inadvertently omitted certain of the nuclear fuel accounts. This has been corrected in § 290.101(f) of the final rule.

§ 290.202 Operating Expense Information.

Section 290.202 (a)(2), (a)(3) and (a)(4) of the proposed rule required various functional and classification breakdowns of operating and maintenance expenses similar to the plant accounting data. Consistent with the treatment of those items indicated above, this data requirement has been transferred to Subpart E.

Section 290.202(a)(5) of the proposed rule required the utility to estimate the monthly fuel expense for each of the costing periods determined in § 290.308 in Subpart C. Various comments [40] indicated that such data are not readily available from accounting records. A few comments indicated that more extensive data are necessary for these estimations such as hourly average fuel expense for all hours of the year and the costs of purchased power. This data requirement is similar in some respects to that contained in § 290.303 of the final rule regarding marginal energy costs.

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[34] See comments of the New York State Electric and Gas Co. and Central Hudson Gas and Electric Co.

[35] Comments of the Pennsylvania Power and Light Co.

[36] For example, comments of the Philadelphia Electric Co.

[37] For example, comments of Georgia Power Co. and Public Service Electric and Gas (NJ).

[38] For example, Pennsylvania Power and Light Co., and Arizona Public Service Co.

[39] For example, Iowa-Illinois Gas and Electric Co.

[40] For example, Houston Lighting and Power Co.

The section has been amended in a similar manner. The utility will be required to report estimated hourly average energy costs (including both generation and purchased power) per kilowatt-hour for total retail load and for all firm wholesale load for a typical weekday, a typical weekend day and the system peak day for each month of the reporting period. Although this will not require data for all hours of the year, it will permit the reconciliation to average monthly or annual energy costs and permit the development of time-of-day rates. Since estimated data are all that are required, substantial changes in the accounting for fuel expenses will not be required.

§ 290.203 Income and revenue related tax information.

Section 290.203 of the proposed rule required the utility to collect certain information to permit the calculation of income and sales taxes in costs of service. Various comments[31] requested clarification as to what was intended by the term "sales" tax. The reference to "sales" has been deleted from the final rule and has been replaced with the term "revenue related." This makes clear that the information required concerns those taxes which are based on the utility's revenue and not those taxes paid for "sales" in connection with utility purchases of goods or services. Some respondents requested clarification as to whether gross receipts or franchise taxes should be included. Gross receipts are clearly revenue related. Franchise taxes should only be reported if they are computed based on revenue.

§ 290.204 Rate of return information.

Section 290.204 of the proposed rule required the reporting of rate of return information averaged for the reporting period. Some comments indicated that only end of year data should be used. Other comments stated that the data should be consistent with State regulatory authority requirements. One comment [32] stated that this section should follow exactly the format provided in 18 CFR 35.13 (filing requirements for wholesale rate increase applications). There were also comments suggesting that a requirement should be added for reporting the estimated cost of common equity and the book value of common equity. Several publicly owned utilities commented on the need for recognizing their financial structure in relation to this section. The rule has been revised to require both beginning and end of year balances. This will permit the use of end of year data or permit the calculation of average reporting year requirements, if appropriate, in the particular jurisdiction. The requirements of § 35.13 have not been used because those data relate to the Commission's wholesale jurisdiction. The publicly owned systems will be free to conform their reporting to their financial structure. Like other portions of the accounting cost section, it is recognized that the publicly owned systems will be required to conform to the specified FERC Uniform System of Accounts only to the extent practicable, recognizing their separate accounting conventions. The accounting cost section does not include the estimated cost of common equity because such information is more appropriately solicited in Subpart E as backup for the utility's calculated costs.

A new § 290.205 has been added to Subpart B, which parallels § 290.306 for marginal costs. It requires the utility to design and report costing periods which group together contiguous hours of similar accounting costs in an administratively feasible manner.

Some comments [33] requested additional information in order to permit more accurate cost of service analyses, such as allowance for funds used during construction or the operation of fuel adjustment clauses. Because these data items were substantially incorporated in the proposed rule, we do not believe that any further modification in the final rule is necessary.

Subpart C—Marginal Cost Information

One general objection raised against the collection of marginal cost information was that it "would lead to anti-competitive price differentials". One respondent [34] argued that our "proposed rule fails to consider the serious anti-competitive impact that could result from the piecemeal application of marginal cost based rates by electric utilities throughout the United States."

While we are sympathetic to concerns about "anti-competitive price differentials," we have difficulty following the line of reasoning presented. Section 133 requires the establishment of rules for the collection of cost information. We have responded by requiring both accounting and marginal cost information. Neither section 133 nor any other part of PURPA gives us authority to establish retail rates. That authority lies firmly with State regulatory commissions and non-regulated utilities. Imposition of certain data requirements in these regulations does not require that the commissions or non-regulated utilities employ a specific methodology in setting retail rates.

Even if a State commission or non-regulated utility were to adopt time differentiated rates based on the marginal cost information produced by the section 133 regulations, it does not follow that the establishment of such rates will necessarily lead to "anti-competitive price differentials." Much would depend on the particular circumstances. Among the factors to be considered would be whether there is competition for the loads of customer groups subject to the different rates and whether the partial availability of time differentiated rates based on marginal costs was not cost justified. For example, it is quite possible that time differentiated marginal cost based rates may be initially offered only to one customer group because the metering costs of general implementation would be too high. In that situation, the partial implementation of these rates would probably be cost justified. None of these issues was addressed in the comments; nor do we see how they could be addressed without reference to the specific circumstances of a particular utility.

The concern expressed is more appropriately directed toward time differentiated rates in general, and not just at time differentiated rates based on marginal costs. As the respondent noted, it is "incorrect and misleading" to associate "time-of-use rates and rates based on marginal cost as being synonymous." Time of use rates may be based on either marginal or embedded costs. It appears that once marginal cost rates are adjusted for the total revenue constraints they may look very similar to time differentiated rates based on accounting costs. One would then need to consider, among other factors, whether the potential for "anti-competitive price differentials" resulted from the sequential availability of time of use rates rather than from the cost calculations that were used to produce such rates.

Six utilities [35] expressed concern that some of the information required by the

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[31] See comments of Tampa Electric Co. and Northeast Utilities.

[32] See comments of Houston Lighting and Power Co., General Public Utilities Service Corp. and Alabama Power Co.

[33] See comments of U.S. Office of Consumer Affairs.

[34] See comments of EEI and Middle South Services Corp. at the New Orleans hearing.

[35] See comments of El Paso Electric Company, Gulf States Utilities Company and joint Comment of Public Service Company of Oklahoma, Central Power and Light Company, Southwestern Electric Power Company and West Texas Utilities Company.

proposed rule might expose publicly held utilities to legal liability under the Federal securities statutes. Two concern appear to be involved. The first is that some of the material elicited by the proposed rule may be more conjectural and more speculative than is normally permissible under the securities laws. The other is that the public release of information of this sort may engender special difficulties when public offerings registered under the Securities Act of 1933 are being made or are about to be made.

These concerns stem from the commentators' interpretations of certain past pronouncements by the Securities and Exchange Commission (SEC). However, it is hard to imagine that those pronouncements were ever intended to suggest that compliance with one Federal law would result in the violation of another. Moreover, the comments in question are flawed by their failure to take account of the Securities and Exchange Commission's present position with respect to projections and related topics.

That position is stated in *Guides for Disclosure of Projections of Future Economic Performance*, Securities Act Release No. 5992, Securities Exchange Act Release No. 15305 (November 7, 1978), which points out that filings of the type here involved are compatible with the securities laws but that an affected issuer must, of course, be always mindful of its "obligation to assure the material facts concerning its financial conditions are promptly and fully disclosed and that the information submitted does not become misleading by virtue of subsequent events." [26]

The above-mentioned release also states that the SEC's prior position that section 5 of the Securities Act "would prevent issuers in registration from making projections or including them in their filings * * * is superseded.

What has thus far been said does not mean that the Commission regards the commentators' concerns as frivolous. The securities statutes embody basic public policies, but the policies can easily be reconciled with those reflected in PURPA and in this regulation.

To effect that reconciliation, the Commission suggests that filings made with it and with the Securities and Exchange Commission make appropriate note of the limitations of the material filed in response to the requirements of Part 290.

The Commission notes that the SEC is in accord with this view. Attention is directed to footnote 27 in that agency's aforementioned release of November 7, 1978 which reads:

> In this regard, issuers may wish to consider the appropriateness of clearly distinguishing such information from any projections already made, or clearly indicating that the information should not be considered as a projection for any purpose other than consideration by the requesting authority. In this connection, issuers may also wish to consider the appropriateness of filing a report on form 8-K, 17 CFR 249.308, under item 5, in which the furnishing of this information could be disclosed and the purpose of its submission and nature of its use clarified.

§ 290.301 General instructions for reporting marginal cost information.

The proposed regulations required that estimates of future costs be reported in constant year dollars. Two private utilities [27] requested that the regulations provide the option of reporting future costs in either constant (base year) or in current (expenditure year) dollars. They contended that many utilities produce estimates of future operating and investment costs only in current year dollars and that it would be uneconomical for them to revise their planning and budgeting procedures just for purposes of section 133 reporting. We found their argument persuasive and, therefore, have adopted a modified version giving utilities the option of providing future costs in either base year or current year dollars. However, under either option, it will be necessary to indicate the inflation factors used in producing the cost estimates.

One utility [28] observed that the § 290.301(b) requirement that "[a]ll historic costs shall be as recorded" was inconsistent with § 290.306(b)(1) requiring that "extraordinary and non-recurring" expenses be adjusted to typical levels. In light of this comment, this section now requires that historic costs be reported as recorded "except when an adjustment is specifically required."

§ 290.302 Generation cost information.

The proposed regulations required that data on certain cost and operating characteristics be provided for each existing generating unit and for each generating unit that is expected to come on-line during the next ten years. At least five utilities [29] indicated that some of the data items were generally available only on a plant basis. Several utilities [30] urged that the regulations be revised to allow for reporting at a more aggregated level. The data collected in paragraphs (a) and (b) are intended to be used principally in production costing models. Such models can be used to produce estimates of marginal energy costs and marginal generation capacity costs. Our review of these models indicates that cost and operating data are generally not needed on individual units and that reasonably accurate estimates of system marginal costs can be produced from data relating to groups of units with similar operating characteristics. Therefore, revised regulations allow for the reporting of aggregated information on "groups of generating units with similar operating characteristics." It should be noted that the regulations do not require that the units comprising a group be located at the same site. Where similar units are located at the same site, it may be possible to report the required information on a plant basis.

Several privately owned utilities [31] commented that the proposed regulations seemed to require that the data items listed in paragraphs (a) and (b) be supplied for each year of the ten years following the reporting period. It was argued that such a requirement was unnecessary and burdensome. We have tried to clarify this point in the final regulations. The data for existing generating units will be required only for the reporting period. The data for planned generating units will be required only for the first full year of commercial operation. In the case of existing units, § 290.302(c)(1) requires utilities to describe any changes expected at the time of filing, in engineering, regulatory, or economic conditions (apart from general inflation) that would significantly affect the values of any of the reported data items during the next five years.

More than 15 commentators, including utilities, State commissions and consumer groups, [32] filed detailed

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[26] The quotation is from the portion of the release captioned "Projections Required by Regulatory Authorities".

[27] See the comments of Carolina Power and Light Co., April 6, 1979 and Gulf Power Co., April 5, 1979.

[28] Alabama Power.

[29] See the comments of Florida Power and Light Co., April 5, 1979, Texas Power and Light Co., April 5, 1979, General Public Utilities Service Co., April 6, 1979, Alabama Power Co., April 6, 1979, and Houston Light and Power Co., April 5, 1979.

[30] See the comments of Pacific Power and Light Co., April 6, 1979, Southern California Edison Co., April 6, 1979, Pennsylvania Power and Light Co., April 6, 1979, Florida Power and Light Co., April 5, 1979, Texas Power and Light Co., April 5, 1979 and Kansas Gas and Electric Co., April 9, 1979.

[31] For example, see the comments of Florida Power and Light Co., April 5, 1979, Appalachian Power Co. et al., April 9, 1979, Southern California Edison, April 6, 1979 and the Massachusetts Electric Co., April 5, 1979.

[32] See the comments of the New England Regional Energy Project, April 10, 1979, Boston Edison Co., April 6, 1979, Ohio Edison Co., April 6, 1979, Arizona Public Service Corp., April 6, 1979, Southern California Edison Co., April 6, 1979, Pennsylvania Power and Light Co., April 6, 1979,

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technical comments on specific items in paragraphs (a) and (b). The comments pointed out that terms such as "normalized" and "typical operating conditions" were unclear. Some comments cited instances where the wording in the proposed regulation was inconsistent with definitions commonly used in the industry. In response to these comments, a number of technical changes have been made. These changes are described below.

Both a consulting firm and a consulting economist,[42] urged that the number of hours that a unit was connected to load be required as a data item. The consulting firm also suggested that the kilowatt-hour output of each unit be provided. We have adopted both suggestions because such data would provide useful information about a utility's dispatching procedures. We have also adopted the Department of Energy's recommendations for information on start-up costs and fuel use because such information allows for an independent analysis of unit dispatching. This is important because the actual or planned pattern of unit dispatching can significantly affect marginal cost calculations.

We have also added a requirement in § 290.302(c)(2) that the reporting utility provide a description of any economic, engineering or regulatory factors that interfered with merit order dispatching during the reporting period and that are likely to continue to do so in the future. This item was added because we saw evidence that the data items listed in paragraphs (a) and (b) were, by themselves, inadequate to allow someone outside the utility to simulate its operations for costing purposes.[44]

One utility [45] recommended that we limit the data submission on hydroelectric units to peaking hydroelectric units since only peaking units would be relevant to the calculation of marginal capacity cost. We did not adopt this recommendation since it was not intended that the data required in paragraphs (a) and (b) would be used only for the calculations of marginal generation capacity costs. As noted earlier, the information in these two paragraphs might also be used by intervenors to produce independent estimates of marginal energy costs. One commentator [46] urged that the fuel saving component of each planned addition be itemized. We did not adopt this suggestion because there was no indication that the value of this information exceeded the costs that would be incurred in collecting it.

The final regulations contain a new data requirement in § 290.302(e) which requires utilities to list "any publicly available reports, documents and forms containing information about the utility's planned additions to generating or transmission capacity which were supplied within the previous 18 months to regional reliability councils and to State or Federal regulatory agencies." This requirement was included so that intervenors and State commission staffs would be informed of other sources of information that could be useful in making marginal cost calculations.

Paragraph (e) of the proposed regulations requested cost information for a hypothetical minimum cost generating unit. Of the more than ten organizations [47] commenting on this paragraph, almost all indicated that they were uncertain as to what was being requested and, therefore, would have difficulty in complying with the requirement. In the final regulations we have clarified the meaning of this paragraph by using a modified version of suggested alternative language submitted by an economic consulting firm. [48] The suggested version would have required estimates of the net annual cost of expanding capacity for five different types of generating units. In our view, this requirement would be too burdensome. Instead, we have modified the suggestion to require that the net annual cost be estimated only for the generating facility or facilities most likely to be installed by the utility to meet increases in peak demand.

§ 290.303 Energy cost information.

Paragraph (a) of the proposed rules would have required utilities to report hourly marginal energy costs for the reporting year and for each of the next five years: in effect, more than 50,000 data items. Opposition to this requirement was virtually unanimous among the thirty seven utilities and State regulatory commissions commenting on this requirement. One State commission [49] recommended requiring data for typical days. Three utilities [50] made similar recommendations. Most of those who commented [51] took the position that good estimates of marginal energy costs by costing period could be derived from a much smaller data base. We concur with that judgment. The regulations have been modified to require estimates of hourly marginal energy costs for certain typical days for the reporting period and for the five following years. The regulations require, in addition, that if a utility has calculated marginal energy costs or system lambdas for hours other than those reported for the typical days, this information be made available upon request. At the request of several commentators,[52] the definition of marginal energy costs have been clarified.

Paragraph (c) of the proposed regulations allowed utilities to provide pool marginal energy costs as an alternative to specific company estimates of marginal energy costs. NARUC and three other commentators [53] all recommended that this information be required in addition to the company's own marginal energy costs. Two utilities [54] indicated that pool marginal energy costs may not always be readily available. We have adopted the NARUC recommendation. It seems clear to us that as more and more utilities move into centrally dispatched pools, the pool operating costs may become the relevant basis for determining company marginal costs. If a pool is centrally dispatched, it is not clear to us how the dispatching can take place in the absence of numbers that equal or approximate marginal energy costs.

Paragraph (f) of the proposed rule required the reporting utility to indicate "hours in which the marginal energy

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Footnotes continued from last page
California Manufacturers Association, April 4, 1979, Texas Power and Light Co., April 5, 1979, California Public Utilities Commission, April 6, 1979, Ernst and Ernst, April 6, 1979, Department of Energy (Economic Regulatory Administration), April 6, 1979, Appalachian Power Co. *et al.*, April 9, 1979, Kansas Gas and Electric Co., April 3, 1979, Eugene Coyle, Ph.D., April 2, 1979 and National Retail Merchants Association, April 6, 1979.

[42] Ernst and Ernst and Eugene Coyle, respectively.

[44] See page 26 of the transcript of the Kansas City, Missouri hearing held March 15, 1979.

[45] Southern California Edison Company.

[46] Los Angeles Water and Power District.

[47] Among the commentators who suggested or requested clarification were the New England Regional Energy Project, April 10, 1979, Texas Public Utilities Commission, March 28, 1979, Ohio Edison Co., April 6, 1979, Los Angeles Power and Water District, April 9, 1979, California Public Utilities Commission, April 6, 1979, National Economic Research Associates (NERA), April 6, 1979, El Paso Electric Co., April 6, 1979, Arkansas Power and Light Co., April 6, 1979 and Utah Power and Light, April 6, 1979.

[48] NERA.

[49] Texas Public Utilities Commission.

[50] Public Service of Colorado, Massachusetts Electric and Carolina Power and Light.

[51] See the comments of the Detroit Edison Co., April 5, 1979, Ohio Edison Co., April 6, 1979, Public Service Co. of New Mexico, April 10, 1979, Carolina Power and Light Co., April 6, 1979, Massachusetts Electric Co., April 5, 1979 and Pennsylvania Power and Light Co., April 6, 1979.

[52] This request was made by Appalachian Power Co. *et al.*, April 9, 1979, El Paso Electric Co., April 6, 1979 and the Department of Energy (Economic Regulatory Administration), April 6, 1979.

[53] The New England Regional Energy Project, the Michigan Department of Commerce and the California Public Utilities Commission.

[54] Consolidated Edison and Baltimore Gas and Electric.

cost is likely to be determined by the price paid for purchased power * * *." Two utilities objected to this requirement because of the difficulty in estimating when such hours will occur. Recognizing that such estimates cannot be made with certainty we had included in paragraph (f) the phrase, "likely to be determined," to indicate that the estimates will necessarily be informed guesses. We see no reason to modify this paragraph in the final regulations.

One utility [46] also urged that the energy adjustments required in paragraph (i) be expanded to specify how losses may vary by the location of the customer within the utility's service area. We view this suggestion as a possible refinement to energy loss calculations and note that there is nothing in our regulations to prevent a utility from making these additional calculations if it believes that such calculations are necessary for estimating marginal energy costs. The same comment applies to any other suggested refinements to data request. Our data requirements were designed to provide a core of information for marginal cost calculations. If a utility believes that better cost estimates can be produced using additional information or refinements to the required information we see nothing in our regulations that would preclude filing such information as supplementary material but see no necessity for further refinement in the regulations themselves.

§ 290.304 Transmission cost information.

Several major objections were raised to the proposed transmission cost information requirements. More than a dozen utilities [47] objected to the requirement that transmission investment, both historic and prospective, be estimated separating out replacement investments. They indicated that in many instances it is difficult to determine if a particular installation constitutes a new or a replacement investment. Recognizing that some utilities would have difficulty with this calculation, we have revised the regulation to give utilities the option of reporting transmission investment with or without replacement investments.

A second objection concerned our requirements for estimates of transmission investments projected ten years into the future. Many utilities [47] indicated that their planning horizon for transmission investments typically is limited to five years and that any information given beyond five years would simply be a trended extrapolation. We have, therefore, revised our regulations to require only five years of projections. These five years of prospective data combined with the ten years of historic data should be sufficient to permit estimates of marginal transmission capacity costs.

A third major objection concerned the requirement that a system map be provide showing existing and proposed generation sites and transmission facilities. Several utilities [48] objected that disclosure of such information would raise acquisition costs. If this is true, it would be an undesired and unintended consequence of our regulations. To minimize the likelihood of such a result, we have modified our regulations so that a utility need not show the specific location of a planned generating or transmission facility, if it believes that the disclosure of such information would raise acquisition costs.

A fourth objection concerned the requirement that project transmission operation and maintenance expenses be reported by account number. Several utilities pointed out that these projections are usually made by functional area and not by account number. Since in most instances the relevant marginal costs can be calculated from changes in aggregates, we have modified the regulations to allow utilities to report projected operating and maintenance expenses by totals rather than by account number.

A consulting economist [49] recommended that certain additional items of informations be collected: Additions to the transmission system by mile of line and size of line; separation of transmission investment into a demand and energy component; the calculation of payments received from other utilities for transmission services on a cents per kilowatt-hour basis; and the separating out of the AFUDC or CWIP components of transmission investment outlays. We have adopted two of these recommendations. Utilities will be required to report pole miles added at each principal transmission voltage level and to separate out AFUDC. It is our view that this information will be useful in making adjustments to marginal transmission capacity cost calculations. The other recommendations were not accepted because they were either method specific or refinements that go beyond basic data needs.

§ 290.305 Distribution and customer cost information.

Several major objections were made to the proposed distribution and customer cost information requirements. These objections generally parallel those that were made with respect to the transmission cost requirements. More than ten utilities [50] objected to the requirement that the replacement component of distribution plant investment be separated from overall distribution investment, both historically and prospectively. Most utilities pointed out that their records do not show such a separation and that this calculation would require a costly review of thousands of work orders. While information on the non-replacement component of distribution investment may be more useful for marginal costs, it is clearly not worth the cost burden that calculating it would impose on most utilities. We have, therefore, rewritten the regulations to give utilities the option of reporting annual distribution investment without separating out the replacement component.

A second objection related to the requirement that utilities provide five years of prospective information. Almost all utilities commented that the typical planning horizon for distribution investment and distribution operation and maintenance expenses is two to three years. Because it is our impression that projections beyond three years will simply represent extrapolations of existing trends, the regulations have been changed to require only three years of projected data. Futhermore, the projections on distribution operation and maintenance expenses have been modified to allow reporting by totals rather than by individual account number.

The item in this section which generated the most controversy was the request in paragraph (a)(3) for an estimate of a minimum distribution system. Some utilities expressed doubts as to whether such a calculation was relevant for a marginalist approach. One association [51] observed that the concept may be inappropriate for a system with

[46] El Paso Electric Co.

[47] See for example, the comments of the Boston Edison Co., April 6, 1979, Georgia Power Co., April 6, 1979, Appalachian Power Co. *et al.*, April 9, 1979, and Mississippi Power Co., April 5, 1979.

[47] In particular, see the comments of Public Service Co. of Colorado, March 28, 1979, Georgia Power Co., April 6, 1979, Consolidated Edison Co., April 6, 1979, Wisconsin Power and Light, April 6, 1979 and NARUC, April 6, 1979.

[48] See, for example, the comments of Texas Power and Light.

[49] Eugene Coyle.

[50] For example, see the comments of Gulf Power Co., April 5, 1979, Alabama Power Co., April 6, 1979, Iowa-Illinois Gas and Electric Co., April 5, 1979 and Southwestern Power Co. *et al.*, April 5, 1979.

[51] APPA.

a substantial amount of underground equipment. Two commentators[62] objected that the calculation was specific to a certain method and asserted that the Commission should not endorse that method by including this item as a data requirement. As we indicated in the preamble of the proposed regulations, we believe that Congress did not intend that the Commission adopt or endorse a particular costing method in promulgating regulations under section 133. However, we do not think our inclusion of this item in any way represented an endorsement of a particular approach. The Commission has dropped this item from the regulations on the basis that, at this time, it does not wish to impose this reporting burden on the utilities. The Commission re-emphasizes that this action in no way precludes a utility from performing this calculation if the utility believes that the minimum distribution system concept is relevant to its costing exercise.

Paragraph (a)(5) of the proposed regulations required that estimates be made of the current cost of connecting a new customer to the distribution system for each customer class. Three commentators, including the Department of Energy,[63] argued that these estimates would be too aggregated to be of much use. The regulations have now been modified to elicit somewhat more detailed information.

§ 290.306 Other cost information to be reported.

Several minor changes have been made in the final regulations as a result of comments received on this section. At the suggestion of one group of utilities,[64] paragraph (b) has been modified to require separation of sales expenses "that can be attributed to specific customers or customer classes. In paragraph (d), a transposition in account numbers has been corrected.

§ 290.307 Annual carrying charge rates.

The proposed regulation required that the carrying charge rate reflect only four types of cost: Depreciation, return, income and property-related taxes, and insurance. Comments indicated that certain cost components should be dropped and other cost components added. One utility[65] advised that the regulations be written to provide more discretion to the reporting utilities. We have taken that advice and have given utilities considerable discretion regarding the calculation of carrying charge rates in the final regulation while requiring that they document in a clear manner the procedures and assumptions employed in deriving the carrying charge rates.

One commentator[66] inquired as to which agency is the "predominant regulatory authority" when a Federal and State commission are both involved. The term "predominant retail regulatory jurisdiction," which is the term now used in this section, excludes a regulatory body of the Federal government.

§ 290.308 Costing periods.

The proposed regulation required that costing periods be developed that could be used to implement "time differentiated pricing." One industrial consumer advocate[67] claimed that by including this phrase the Commission had overstepped its statutory mandate by moving from costing to ratemaking. We have removed the term from the final regulations. It should be recognized, however, that the periods used for costing will, in most instances, be the same as the periods used for pricing. At the suggestion of one economic consulting firm,[67a] we have added a sentence indicating that costing periods should be designed so as to group together hours of similar cost. We view this as a reasonable general prescription. By including this language, we hope to indicate that seasonal or daily differentials may not be justified when the cost differentials are insignificant.

Subpart D—Load Data

General

Comments on Subpart D of the proposed regulations were plentiful and very constructive, and many changes were made in this subpart to reflect those comments. The changes made were primarily to ease the burden of load research on utilities.

Costs of Load Research

The Commission, from the outset, expressed concern with the costs of compliance with the regulations promulgated pursuant to section 133. The item of major concern was the expenses associated with load research. Consequently, meter manufacturers were specifically invited to participate in the informal public conference held on December 4, 1978. The Commission was interested in obtaining information as to whether the manufacturers would be able to meet additional demand for meters in a time frame which would allow covered utilities to comply with a November 1980 filing date, the state of the art in technology, and the cost of meters and associated equipment. An informative presentation was provided by a representative of one manufacturer.[68]

In addition, in the course of the four public hearings, the Commission solicited from various utility representatives, comment as to the cost of conducting load research to meet the requirements of the proposed regulation. The cost figures provided ranged from $250,000 [69] to $4.5–$6.5 million.[70] Therefore, we have undertaken to minimize these costs, while simultaneously attempting to adhere to the Congressionally prescribed requirements for load data.

The two major changes were made in § 290.403(a), concerning for which electric customer classes load data would be required, and in § 290.403(c), concerning the accuracy standard for sample metering.

Customer groups to be reported

Section 290.403(a) of the proposed rule required load data collection for "each customer class for which there is a separate rate". Several utilities [71] commented that this requirement would require the collection of load data for too many rate classes. Conversely, several consumer groups [72] urged the Commission to require a more extensive breakdown of load data by income and usage levels within rate classes.

The rule as revised in § 290.404 requires in paragraph (a) that utilities report load data on a best estimate basis in 1980 and in each subsequent reporting period for residential, commercial and industrial use classes and for any rate class to which 10 percent or more of the system's retail kilowatt-hour sales are

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[62] The New England Regional Energy Project and Eugene Coyle.

[63] See also the comments of the New England Regional Energy Project and Louisiana Power and Light.

[64] Appalachian Power Co., *et al.*

[65] Wisconsin Electric Power.

[66] Comments of Public Service Company of Colorado.

[67] ELCON.

[67a] NERA.

[68] See the Statement of Mr. William F. Dewire, Westinghouse Meter Division, Tr. pp. 84–91.

[69] See the written comments of Hawaiian Electric Company.

[70] See the written comments of Massachusetts Electric Company and Narragansett Electric Company.

[71] See, for example, Kansas City Power and Light, testimony at the Kansas City, Missouri hearings, wherein it was said that 180 to 200 rate schedules would be subject to load collection under the proposed regulations.

[72] See, for example, the filing by the National Consumer Law Center, Inc., Missouri Legal Aid and Prairie View Legal Services. See also, the comments of El Paso Electric.

made for any month during the reporting period, other than a group composed in whole or in part of residential, commercial or industrial users. Because data on master metered buildings composed of customers in more than one major customer class would not be useful to the determination of the loads for a single major customer class, the final rule requires utilities to exclude the loads in master metered mixed use buildings from the estimates for major customer class loads.

Paragraph (d) of the final rule specifies certain end uses for which load data are proposed to be required and indicates that the list of end uses will not take effect until the Commission makes a determination either to implement the list as proposed or to modify it. Under paragraph (c), utilities having separate rates for all or some of the specified end uses on December 31, 1980, would be required to report load data for any such rates on a sample metered basis beginning in 1982. Utilities having several separate rates for a single specified end use would be permitted to combine for reporting purposes all rates charged for that single end use, as in the case of a utility that charges different rates to communities because of differences in customer charges or in the initial block.

Utilities that do not have a separate rate applicable to one of the specified end uses would be required to report load data for each of the specified end uses on a best estimate basis in 1982 and on a sample metered basis beginning in 1984, since some time must be given for the utility to survey its customers served under a more general rate and separate out for sampling purposes the specified end-use customers.

The end-use groups for which the Commission proposes to require sample metering are:

(1) Residential space heating.
(2) Residential water heating.
(3) All electric residences.
(4) Commercial space heating.
(5) Commercial space cooling.
(6) All electric office buildings.
(7) Master metered multiple dwellings.
(8) Agricultural or industrial uses of process heat.
(9) Large (over 1,000 kilowatts) electric drive motors used in industry, such as in steel rolling mills.
(10) Irrigation.

The Commission has tentatively selected these end-use categories for separate reporting on a sample metered basis because: They have daily and seasonal variations that might be unpredictable without the aid of load research; they comprise a major portion of a system's on-peak loads; they represent uses frequently served under separate rates (and that presumably represent uses with distinct costs); or they cover the principal loads within each major retail customer class. Comments are specifically requested on whether the end uses identified satisfy these criteria sufficiently well to merit implementation, and, if not, for what other end uses separate reporting should be implemented. Recognizing that utilities must know as soon as possible what groups of end-use customers will require sample metering, the Commission, based on comments received on these categories, will determine by the end of August 1979, if the list of end-use categories to be metered should be implemented as proposed or should be modified in response to information supplied in the comments.

Where only best estimates are required either under paragraph (a) or under paragraph (c), utilities must base such estimates on any sample metering they may have conducted for all or a portion of the customer group.

The Commission has granted an extension in paragraph (e) of § 290.404 until January 1, 1985, for the gathering and reporting of load data on all customer groups not specified as major customer classes or end use categories in § 290.404, to the extent that such data are required to be collect under section 133. Section 290.404 is referenced in several other subparts of the rule specifying what cost calculations shall be made for specific customer groups. The Commission has also granted an extension in paragraph (e) until January 1, 1985, for the gathering and reporting of cost information for all customer groups not specified in § 290.404 and for which section 133 requires the collection of cost information.

The Commission believes that good cause exists to grant such extensions. The Congress was explicit in its mandate to the Commission in section 133. Section 133(a)(1) directs the Commission to collect information on costs of serving each electric consumer class, "including costs of serving different consumption patterns within such class * * *." The Commission interprets this statutory language to mean that cost information must be collected for subgroups of customers within a customer class if these subgroups have different consumption patterns, such as electric space heating within the broad residential class. In order to determine the costs of serving such consumption patterns, the utility must collect load data regarding those subgroups.

Section 133(a)(2) directs the Commission to collect load data for each electric consumer class "for which there is a separate rate. * * *" We believe this means that load data are to be collected both for customers served under a separate, distinct rate schedule as well as for customers served under a distinct rate block within a rate schedule. These data could be used, presumably, to test the cost justification of separate and distinct retail rates and to disclose any cross-subsidies between rate schedules or rate blocks.

In granting the extension in paragraph (e), the Commission is attempting to balance the strict requirements of the statute with the problems inherent in meeting the statutory deadlines for collecting and reporting cost and load information.

The Commission has received many comments concerning the expenditures of time and money which will be necessary for conducting that load research required under section 133 and has been advised that it takes several years to initiate and complete such load research and to analyze load and cost data for reporting purposes. The comments assert that costs of meter equipment and of computer hardware and software, and costs of training personnel are high. We understand that new meter technology is being developed that will utilize solid state mechanisms and that will considerably reduce the expense of sample metering for load research. Because of the advent of this new technology, the Commission is reluctant to impose data requirements which may require heavy investments in existing load research meters that may soon be obsolete. On the other hand, new technology will reduce the costs of billing under time of day rates and make them more cost effective. Thus, it is important to begin to collect load data now as a guide to designing time of day rates for the near future. The Commission feels that the extension in § 290.404(e) represents the best accommodation between these conflicting realities and grants such extension for good cause shown. However, Congress contemplated that the Commission would review and revise its regulations as future conditions such as that rate reform contemplated by Title I of PURPA require. We intend to re-examine these extensions and will make such modifications as such future conditions may warrant.

The Commission considers that collection of sample load data for

customer groups served on time of day rates is not likely to carry out the purposes of section 133 and, accordingly, has exempted utilities from gathering and reporting such information. The Commission wishes to permit flexibility in the gathering of such information and will impose only cost reporting requirements for those customer groups.

The Commission has already provided an opportunity for comment on the issue of exemptions for customer groups served under time of day rates in accordance with the requirements of section 133(b) of PURPA. (See discussion of comments regarding § 290.404(g) of the proposed rule.) However, the Commission is now soliciting additional comments on this portion of the final rule and will determine, by the end of August 1979, whether to alter it.

As with all other data requirements in Subparts B, C, D and E, State regulatory authorities are not pre-exempted by this federal action from requiring other data with regard to providing electric service. Utilities also should consider whether they, on their own initiative, should gather more extensive information than is called for by the Commission at this time in order to justify the rates that they apply to different groups of consumers.

Accuracy standard

The second major change from the proposed rule concerns the accuracy standard used for conducting load research. Section 290.403(c) of the proposed rule established a standard of plus or minus ten percent at a ninety-five percent confidence level to be met for each hour of the sample period. Almost every respondent commented on this accuracy standard.[73] Critics indicated that it was too stringent because it would be applied to load data collection for every hour of the year and could be used as the basis for rejecting load data if the standard were not met. There were also objections to the confidence level. As proposed, we believe that the accuracy standard would have required heavy investments in recording meters and translating equipment.

Section 290.403(b) of the final rule makes the three following changes designed to ease the reporting burdens and maintain consistency with standard industry practice for conducting load research:

(1) The accuracy level is now a target to be achieved in determining sample size rather than a standard that could be used for the rejection of load data.

(2) The target applies only to measurement of loads at time of system and customer group peaks rather than for each hour.

(3) The accuracy level has been lowered to plus or minus ten percent at a ninety percent confidence level.

The final rule requires utilities to file a sampling plan along with the initial filing of best estimate load data. If the sampled load data do not reach the target level of accuracy in subsequent filings, utilities will be required to provide an explanation for the deficiency.

§ 290.401(a) Hourly load information.

The proposed rule specified that load data be reported as total sixty minute integrated demands for each hour of a twenty-four hour period. Several respondents[74] suggested that the data be reported on a fifteen minute or thirty minute integrated basis since these time intervals are generally used for load data collection. The final rule allows the utility the option to report load data on whatever basis it chooses, so long as the pool, system, and class loads are reported using the same integration interval. One comment[75] suggested that utilities be given the option of supplying these data on punched cards or in a computer printout. Since it is the Commission's intention at a later date to prescribe the form in which all of these data are to be reported, no change has been made in the proposed regulations on this particular point.

§ 290.401(b) Separate jurisdictional loads.

This section in the proposed rule required utilities to report customer class loads separately for each jurisdiction. Several respondents[76] indicated that the reporting should be done only on a state-wide jurisdictional basis. Since it was not the intention of the proposed rule to require separate data for small municipalities having original jurisdiction, such as those that exist in Texas and Ohio, this section was changed to make it clear that the data are to be reported separately by state-wide retail regulatory jurisdictions.

Section 290.404(f) of the proposed rule provided an automatic waiver of the separate reporting requirement, with the consent of the State regulatory agency. Several comments[77] suggested that exemptions be made for separate jurisdictional reporting based on the amount of business done in the jurisdictions, the homogeneity of the classes in the jurisdictions, and the similarity of rates for the two or more jurisdictions.

Section 290.401(b) of the final rule is designed to ease the burden of separate jurisdictional reporting of customer group load data by treating monthly group load data differently from hourly group load data. Under paragraph (b)(2) hourly group load data specified in § 290.403(a)(4) are not to be reported separately by retail regulatory jurisdiction unless at least one of the retail regulatory jurisdictions or unless other parties request the separation. If the retail regulatory jurisdiction requests the separation, it is automatically required; if other parties request it, they must demonstrate that the benefits of the separate jurisdictional reporting outweigh the costs.

Under paragraph (b)(1) monthly load data specified in § 290.403 (a)(1), (a)(2) and (a)(3), are required to be reported by separate retail regulatory jurisdiction unless all of the jurisdictions involved waive the separate reporting requirement. Opportunity for comment on the waiver request will be allowed prior to Commission action. Under paragraph (c) applications for the waiver or for the separate reporting of group load data are to be filed at least two years before the time the data would be required to allow sufficient time for Commission action on the application and to permit utilities required to report by separate jurisdictions time to gather the data. For the 1980 reporting, paragraph (d) permits utilities the option of reporting both the monthly and hourly class load data on either a system-wide or a separate jurisdictional basis.

§ 290.401(c) Master metering.

The proposed rule defined customers as meters and required separate reporting under § 290.406 for the number of customers served under master meters. Several utilities[78] indicated that identification of those customers served under master meters would create a

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[73] See, for example, the comments of the Load Research Committee of the Association of Edison Illuminating Companies.

[74] See, for example, comments of Consolidated Edison of New York, New England Regional Energy Project, Public Service Company of New Hampshire, Eugene Coyle.

[75] General Public Utilities Service Corp.

[76] NARUC, the California Public Utilities Commission and several utilities commented on the jurisdictional reporting requirement. Particularly, the utilities in Texas and the State PUC and Attorney General pointed out that primary retail rate jurisdiction lies with municipals in the State. See Subpart A for further discussion on this point.

[77] For example, General Public Utility Service Corp. and Pacific Power and Light Co.

[78] For example, Houston Lighting and Power, Public Service of Colorado.

tremendous burden since separate records are not kept for master metered customers. One comment [79] accurately pointed out that the proposed regulations required no separate load data for master metered customers. The final regulations retain the definition of customers as meters in § 290.403(a)(2), and retain the requirement to report separately the customers served under master meters but only if information as to the number of those customers is available. To the extent that master-metered multiple dwellings remain as a category for which load research is required, the number of these customers will be required to be reported.

§ 290.401(d) Typical day loads.

The proposed rule required that typical day loads for the system and individual classes be determined by averaging hourly loads for each hour of the week, day or weekend day in each month. One commentator [80] suggested that holidays be excluded from the data to avoid distortion. This suggestion was adopted in the final rules. Several other commentators [81] indicated that the concept of typical day and average day loads needed further definition. The final regulations indicated that either the mean or mode of the hourly loads can be used in determining the typical hourly loads. This change should make it clear that the typical day loads are to be an arithmetic average of the measured loads, rather than an arbitrarily selected "typcial day". In the final rules, this section has been moved to the definition section, § 290.105(e), since the typical day concept is used for cost calculations as well as load data reporting.

§ 290.402 Load information for the total of all customer classes (system load information).

Paragraph (a) of the proposed rule defines the kilowatt load on the system to be reported by utilities. Several comments [82] suggested that adjustments be made to this requirement, particularly to correct for reciprocal supply arrangements between utilities or for wheeling loads. Since the definition would require that interchange power, as well as any temporary deliveries of emergency power be netted out, no further changed has been made in the definition. Firm loads of the reporting utility would and should be included since system costs are affected by all firm loads. Wheeling loads would not affect *net* generation, so no correction to the definition needs to be made for these loads.

§ 290.402(b) Pool load information.

In the proposed rule, this section required utilities that are members of a power pool to report load data for the pool as well as for the utility. Several comments suggested that this requirement be eliminated either because it served no purpose or because such information is already filed monthly.[83] The requirement has been retained because marginal costing may be based on pool bulk power facilities rather than on the system bulk power facilities, in which case, load data for the pool will be needed for determining costing periods. Although some historic data are reported on pools, the detail needed for costing, and thus required under these regulations, is not generally available historically.

The proposed rule allowed one utility to report pool load data for all of the other utilities in the pool. That provision has been deleted from the final rule and each utility will now be required to report the load data for its pool. This approach is consistent with the Commission's intent that each of these reports be self contained, and that parties using these data not be required to go elsewhere for the required information.

§ 290.402(c) Historic peak loads.

The proposed regulation required the annual system peak loads to be reported for each of the previous ten years for the system but not for power pools. Although, as one commentator pointed out,[84] this information is already reported in Form 1, the requirement to report is repeated here consistent with the policy of making reports under section 133 self-contained. Two comments [85] indicated that reporting should be done for winter and summer peaks separately. That suggestion has been incorporated into the final rule. One comment [86] suggested that reporting should be done for power pool as well as system peaks because some marginal costing methods use the growth in pool-wide peak demand rather that system peak demand. Although that is true, marginal generation costing methods tend to use projected rather than historic peaks loads. The projected peak loads on a pool basis are required by § 290.402(a). Although historic peak loads are used to normalize the marginal transmission cost data, marginal transmission costs are not calculated on a pool-wide basis.

§ 290.402(d) Reporting period loads.

This section indicates what load data are to be reported for the pool or system in the reporting period.

§ 290.402(d)(1) Hourly loads

In the proposed rule, this section required the reporting of hourly loads for each clock hour of each day. Several utilities [87] suggested that this section should be eliminated since only typical hourly loads as required in paragraph (d)(2) would be needed. Since paragraph (d)(2) is an alternative to (d)(1) and since a reporting utility has the option of supplying one or the other, both paragraphs have been retained in the final rule.

§ 290.402(d)(3) Actual and weather normalized monthly peak loads.

§ 290.402(d)(4) Actual and weather normalized summer and winter peak loads.

In the proposed rule these sections required the monthly reporting of pool or system peaks with a separate indication of the summer and winter peaks, and required both actual and weather normalized data to be reported. Many comments [88] indicated that no information should be required for weather normalized peaks because of unreliability of estimates, costs of obtaining the estimates, lack of use, and lack of a consensus regarding normalization methods. Other comments [89] pointed out that the requirements in pararaphs (d)(3) and (d)(4) were redundant.

The final regulations have been changed in two ways. First, the requirement for separate reporting of summer and winter peak loads has been eliminated since these data would be included in the monthly peak reporting. Secondly, monthly peaks are now to be normalized for weather or for other factors affecting loads only if the reporting utility uses normalizing techniques for its own purposes.

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[79] Public Service Electric and Gas.

[80] Southern California Edison.

[81] For example, the Department of Energy, Economic Regulatory Administration.

[82] Texas Public Utility Commission and Department of Energy.

[83] United Illuminating and Pacific Power and Light.

[84] Michigan Public Service Commission.

[85] New England Regional Energy Project and Missouri Legal Aid.

[86] Department of Energy.

[87] For example, Florida Power and Light and United Illuminating.

[88] For example, Consumer Power, Carolina Power and Light, Indiana Power and Light Company, APPA.

[89] For example, Toledo Edison, Hawaiian Electric Company.

§ 290.402(d)(5) Maximum demand at primary and secondary distribution voltages.

This section in the proposed rule required utilities to provide information on the maximum demand on the distribution system at the primary and secondary voltage levels. Quite a few of the comments[80] indicated that requiring the collection of such data is inadvisable if not impossible because of the costs of extensive metering, the impossibility of measuring such data accurately, and the lack of necessity for gathering such information. Other comments[81] criticized the vagueness of the regulation as written. The final regulations eliminate this reporting requirement, primarily because of the costs associated with measuring the maximum demands on the distribution system. It is the Commission's view that marginal distribution costs can be estimated without requiring the collection of these load data.

§ 290.402(e) Projected load information.

This section of the proposed rule specified projected pool or system load data to be supplied for each of the next ten years. Several general suggestions were made[82] regarding projected load data: Changing the time period from ten years to five years or to the planning period used by the utility; and requiring such data only for the seasonal peak day hourly loads, seasonal average week day and weekend loads. In the final rule projected load data must be supplied for each of the next five years and for the tenth year.

One comment[83] suggested that this section require the utility to describe the process by which the forecasted load data are determined. Growth rates for kilowatt-hour sales, summer peak and winter peak load are required as part of the reporting; the Commission is reluctant to expand the requirement to require any additional, more detailed explanation of projection methodologies at this time.

§ 290.402(e)(1) Projected load duration curves.

The proposed rule required that utilities supply the annual projected load duration curves and the duration of the loads in hours at 100, 80, 60, 40 and 20 percent of the peak load. Several comments[84] were received on this section requesting that it be either deleted or modified. Several comments[85] suggested that either load duration curves only, or hours of load only, or load curves only be required. The final rule requires reporting of both the load duration curve and the duration of load. Although an outside party could read the duration of load off the load duration curve, the reporting utility would have more accurate data than could be obtained by reading from the curves. One commentator[86] suggested that load duration curves are no longer used in the industry for capacity planning since the advent of modern digital computers and simulation programs. Although this may be true for some utilities, many small utilities reporting under these final regulations still rely on less sophisticated estimating techniques. These requirements are intended to be minimum reporting requirements; any reporting utility having more detailed or computerized projections of load and profiles is encouraged to file such information in satisfaction of this requirement.

Several comments[87] suggested that the duration of load in hours be expanded between 100 percent and 80 percent of the peak load, since it is important to know with some specificity what the variations are around the peak. In response to these comments, the final rule includes the requirement that utilities supply duration of load at 98, 95 and 90 percent of the peak load, as well as the percentages originally required in the proposed rule.

§ 290.402(e)(2) Growth rates for load duration curve.

This section of the proposed rule required reporting of the growth rates implied by the projected load duration curves specified in paragraph (e)(1) for total kilowatt hour sales, summer peak load and winter peak load. One comment[88] suggested that the Commission require a description of the reliability which the system planners use to project peak loads. Since any projections are done with varying degrees of reliability, it is not necessary to require such detailed information.

§ 290.402(e)(4) Projected maximum demand on the distribution system.

The proposed rule would have required utilities to project maximum demands on the distribution system at the primary and secondary voltage levels. Because § 290.402(d)(5) of the proposed rules has been eliminated, this section has also been eliminated. This change is consistent with the requests of several utilities[89] that this section be eliminated because such data are almost impossible to obtain.

§ 290.403 Load information for individual customer classes.

In addition to commenting on the number of customer classes for which load data should be collected, several commentators[90] suggested additional information which should be gathered for each customer group, however defined. That information included the sum by class of each customer's maximum individual demand during the year, during each month, and during the on peak period of each month. Commentators argued that this information could be used to compute diversity factors for the purposes of translating demand costs into demand rates. The Commission has not adopted this suggestion since such data may be needed for pricing but are not needed for costing. If these data are required for determining retail rates, the utilities would be able to supply the raw information from which these sums could be calculated and the State regulatory authority would probably have the power to require these sums in individual cases. In conjunction with those changes discussed earlier on what customer groups are to be reported, the word "class" in this section has been changed to "group" when referring to customer categories for which load data are required. Under § 290.404 load data must be reported for major customer classes as well as certain end-use customers. The wording change in this section is intended to be a generic identification for both of these customer categories.

§ 290.403(a)(1) Class maximum demands.

The proposed rule required the utility to report the class maximum demand, in kilowatts noncoincidental with the system peak. Several comments[91]

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[80] For example, AEIC, Public Service Co. of New Hampshire.

[81] For example, Michigan Public Service Commission, Northern States Power Co.

[82] See, for example, the comments of Southern California Edison and Eugene Water and Electric Board.

[83] Department of Energy.

[84] For example, Michigan Public Service Commission, United Illuminating.

[85] For example United Illuminating Company of New Haven.

[86] Hawaiian Electric Co.

[87] For example, California Manufacturers Association, California Public Utilities Commission.

[88] California Public Utilities Commission.

[89] For example, Central Maine Power Co., United Illuminating, Texas Power and Light Co., Kansas Gas and Electric Co.

[90] For example, NERA, Department of Energy, ELCON.

[91] Carolina Power and Light, Hawaiian Electric Co., Association of Edison Illuminating Companies (AEIC).

pointed out that the phrase "noncoincidental with the system peak" would require reporting class loads for the next peak hour if those class loads were indeed co-incident with the peak. The final regulations require the maximum demand for the group without further elaboration; thus maximum demands, either coincident or noncoincident with the system peak would be reported.

§ 290.403(a)(2) Class contributions to jurisdictional peak.

The proposed regulations required the utility to report the class contribution to the monthly jurisdictional maximum demand. Several comments [105] indicated that this requirement should be deleted because generation and transmission resources serve the entire system not just a particular retail jurisdiction. Although this comment is correct, group contributions to jurisdictional maximum demands may be used to separate costs between jurisdictions for the purposes of determining the group revenue requirements. Therefore, this requirement is retained in the final regulations.

§ 290.403(a)(4) Hourly class loads.

The proposed regulations would have required the utility to report hourly class loads for a typical week day, weekend day, the class peak day, the jurisdiction peak day and system peak day. Several comments [106] were received on this section, primarily concerning the definition of "typical" and the need for clarification. Since typical days are now defined in § 290.105(e), the only change that was made in this section of the final rule was to delete the requirement for reporting hourly class loads for the jurisdiction peak day. Under § 290.401(b)(2) a utility would not be required to report these hourly loads by separate jurisdictions unless the Commission approved an application for separate jurisdictional reporting. This change is discussed more completely under § 290.401(b) above.

§ 290.403(b) (1), (2) and (3) Use of estimated information.

This section in the proposed rule permitted utilities to report class load information through the use of estimation techniques that could be based on sample metering, except where load estimates with comparable accuracy could otherwise be made. The purpose of this section had been to make clear that sample metering, not universal sampling, was required, except in those cases where estimates of loads could be made without metering. In the final regulations, this section has been eliminated. The final regulations require, on a best estimate basis, load data for major customer classes. Sample metering is required only for specified end uses. Estimates of loads are allowed as part of the "best estimate" of major class loads and need not be separately provided for further in the rules. An extension until 1985 has been provided for the collection and reporting of load data for rate classes not falling within the specified end-use categories or within the definition of major customer class. Thus estimates of loads for these groups are not longer needed. Paragraph (b)(3) of the proposed regulation had required a description of the sampling method used by the utility. This requirement is retained in § 290.403(c) of the final regulation.

§ 290.403(c) Accuracy standard.

In the final regulation, this section has been changed to 290.403(b). The substance of the changes has been discussed above.

§ 290.403(d) Load research conducted every 5 years.

The proposed rule allowed utilities to use historic test load data in reporting estimated load data for the current period. The historic test load data could be collected during any period as long as the data were no older than five years. Several utilities [107] commented that the regulation was beneficial because it allowed rotational metering for measuring loads. Other commentators, including one public utility commission, [108] criticized the regulation because, in encouraging rotational metering, it would have discouraged ongoing load research. Several consumer groups [109] objected to the regulation because load research as old as four to five years would be stale and would not reflect any customer response to a rate change that had taken place in the interim.

The Commission believes that rotational metering may serve a useful purpose, especially for smaller utilities that do not have the capability for purchasing meters for each customer group for which load data are required. Therefore, the final regulation allows rotational metering for any utility with less than one billion annual kilowatt-hour retail sales. For these utilities, actual test data need not be gathered for any particular customer group any more frequently than once every five years. This means that for such utilities reporting in May 1982, group load data collected in any year over the period 1977 to 1981 could be used as the basis for 1981 load estimates. Similarly, for the 1984 filing, load data collected in any year from 1979 to 1983 could be used as the basis for the 1983 load estimates.

Several comments [107] indicated that the regulations improperly imposed the class load factor methodology for translating test load data into current estimated load data. The final regulations delete that specified methodology and leave the choice of estimating technique to the reporting utility.

§ 290.404 Certain exemptions from reporting load information by individual customer classes.

This section in the proposed rule provided five blanket exemptions and two applied-for exemptions from the requirements that load data be provided for "each customer class for which there is a separate rate." These exemptions were designed to ease the burden of sampling each and every rate class that a utility might have. Since the final rule requires that data be reported on a sample metered basis only for a limited number of specified end uses, many of the exemptions provided for in this section have been eliminated.

Other than the provision for use of borrowed data in 1980, § 290.405 of the final rules provides that the remaining exemptions in this section will now be allowed only after application under § 290.601. Other exemptions may also be requested under the procedures specified in § 290.601.

§ 290.404(a) Combined reporting of class load information.

The proposed rule allowed the utility to combine two classes for the purposes of reporting customer class load data so long as the load imposed by at least one of these classes was less than five percent of the system's daily or annual peak and so long as the two classes being combined were not both major retail classes. The purpose of this exemption was to eliminate the requirement for separate sample metering of non-major, small rate

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[105] For example, Southern California Edison Co.

[106] For example, Missouri Public Service Commission.

[107] For example, Seattle City Light, Alabama Power Co., El Paso Electric Company, Massachusetts Electric and Narragansett Electric Company.

[108] Missouri Public Service Commission, Kansas City Power and Light, Indiana Power and Light Company.

[109] For example, National Consumer Law Center, New England Regional Energy Project.

[107] For example, Carolina Power and Light, AIEC.

classes. Several commentators[108] noted that a utility could not determine which classes imposed loads of less than five percent until load research had been conducted and suggested that the limitation be expressed in terms of kilowatt-hours of consumption rather than demand. One comment[109] indicated that the exemption should not be extended to fast growing classes. Others suggested that the exemption either be further limited or eliminated. For instance, two comments[110] suggested that combinations should only be permitted for classes with similar voltage levels and load pattern characteristics and that the exemption should not be a blanket exemption. The extension granted in § 290.404(e) of the final rule until 1985 for all customer groups not specified in § 290.404 (b) or (d) covers many of the groups which had been covered by the exemption in § 290.404(a) of the proposed rule. Absent a showing under Subpart F, the Commission has determined that information on the groups not covered by the extension should be reported. Thus the blanket exemption has been eliminated from the final rules.

§ 290.404(b) Exemption for hourly load information.

This exemption, included in the proposed regulations but eliminated in the final regulations, would have exempted utilities from reporting hourly class load data for any class combined under the proposed exemption in § 290.404(a). Again, since the final regulations grant an extension for reporting load data for many of these rate classes, this exemption would be meaningless if retained.

§ 290.404(c) (1) and (2) Provisions for exemption from accuracy standard.

§ 290.404(d) Support for borrowed information.

§ 290.404(e) Applicability of borrowed information.

In the proposed regulations, the exemption in § 290.404(c) from the accuracy standard applied if a particular customer class load could be determined from methods not dependent on direct measurement or sampling. Since the accuracy standard has been changed to an accuracy target, this exemption has been eliminated in the final rule.

The second portion of this blanket exemption allowed a utility to borrow load data from a similarly situated utility for purposes of determining its own load data. Sections 290.404(d) and 290.404(e), described what support the utility would be required to supply for the borrowed load data and what adjustments the utility would have to make to the borrowed load data to insure its applicability to its own class loads. Several commentators[111] endorsed the concept of this blanket exemption. Others[112] indicated that borrowing data is not a viable alternative to gathering load data for a specific system. Several comments[113] suggested that rigorous analysis of transferred data would be necessary prior to use of this exemption, and that the burden of evaluating comparability should be borne by the utilities using the data, not intervenors. Section 290.405(a) of the final regulation allows the use of borrowed load data only for the initial filing in November 1980, which is to be made on a best estimate basis. A utility may not use borrowed load data in any subsequent filing absent an exemption for use of borrowed load data granted pursuant to the procedures in § 290.601.

§ 290.404(f) Waiver of reporting requirement for retail jurisdictional loads.

The proposed regulations allowed retail jurisdictions to waive the requirement for separate jurisdictional reporting of class load data. Several comments[114] suggested that granting of this blanket exemption not be made contingent on concurrence by the State regulatory authority or, in the alternative, that concurrence be required only if the total retail sales in the jurisdiction for the reporting year are less than 500 million kilowatt-hours or do not exceed five percent of the system's daily annual peak. One commentator[115] suggested that those State regulatory authorities consenting to the waiver should be required to specify the allocations that would be used among jurisdictions for splitting the revenue requirements. Another commentator[116] suggested that safeguards be included to assure an opportunity for interested parties to be heard before any waiver of jurisdictional reporting of load data was allowed. Since section 133 does not require separate jurisdictional reporting, an exemption to the statute is not needed and this blanket exemption has been eliminated in the final regulations. Waivers to that separate jurisdictional reporting required by these final regulations will be permitted under those conditions specified in § 290.401(b), discussed above.

§ 290.404(g) Exemption based on extension of time.

The proposed regulations granted a one year exemption from filing hourly class load information if the utility applied for a rate increase during the one year extension period provided in § 290.405 of the proposed regulations. Since filing of load and cost data is not mandated in section 133 at the time of a rate increase and has not been required under the final rule, this exemption is unnecessary and has been eliminated in the final rules.

§ 290.404(h) No exemptions for major classes on time of use rates.

The proposed rule allowed no exemptions for any rate class served under a time of use rate. Almost all of the utilities[117] commenting on this section felt that this exception to the general blanket exemptions was inadvisable. Some were concerned that it could present a disincentive to utilities to engage in time of use pricing. The final regulation eliminates this section of the proposed rule. It should be noted, however, that the Commission intends to further consider by the end of August, 1979, whether the utilities having customer groups served under time of day rates are exempted from collecting load data by sample metering. (See the general discussion at the beginning of this subpart.)

§ 290.404(i) Exemption if the customer class is to be changed.

The proposed regulation exempted utilities from separately reporting any rate class that was to be combined with another class of customers or was to be otherwise drastically altered. The single comment[118] on this section suggested that it be eliminated because it removes the requirement that necessary data be gathered concerning similarity of load characteristics for the rate classes to be consolidated. Since the Commission has required in the final regulation that load information be collected for specified end uses, whether or not there is a separate rate, this exemption has been deleted.

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[108] For example, Iowa Southern Utilities, NARUC, California Public Utilities Commission.
[109] Public Service Co. of Colorado.
[110] ELCON and Eugene Coyle.
[111] For example, Public Service Co. of Colorado, City of Santa Clara, California, Toledo Edison Co.
[112] For example, El Paso Electric Co., Eugene Coyle, Carolina Power and Light Co., Indianapolis Power and Light Co.
[113] For example, Kansas City Power and Light Co., Missouri Legal Aid.
[114] For example, Wisconsin Power and Light Co., Public Service Co. of New Hampshire.
[115] National Retail Manufacturers Association.
[116] Department of Energy.
[117] For example, Texas Electric Service Co., Consolidated Edison of New York.
[118] Texas Public Utilities Commission.

§ 290.404(j) Exemption for joint load research.

The proposed regulations allowed any group of utilities intending to engage in joint load research to apply to the Commission for an exemption from the requirement that each utility report system and class load data separately. Several comments[119] suggested that the Commission require evidence of comparability of class loads before granting this exemption. Other comments[120] suggested that the Commission conduct a major research study to determine load characteristics of retail loads that could be used by other utilities or establish joint regional committees to conduct joint load research. One commentator[121] indicated that the exemption should apply to generation and transmission cooperatives and their member distribution rural electric cooperatives. Several comments[122] were received suggesting that the TVA be permitted to undertake joint research for all of its distributors and to report such information in a consolidated report. (See the discussion concerning § 290.102(c).) This provision has been retained in § 290.405(b) of the final rule. As in the proposed rule, this provision is not a blanket exemption but must be applied for under § 290.401 on a case-by-case basis.

§ 290.405 Extension for reporting hourly load information by individual customer classes.

This section in the proposed rule provided for an automatic one year extension beyond November 1980 for the reporting of hourly class load data if the utility certified that it had not commenced a program for the collection of hourly class load data by means of sample metering and had not been ordered to collect such data by any other regulatory authority at the time PURPA was enacted. Several suggestions[123] were made changing the time frame from two years to five years to "a reasonable time". Several comments[124] suggested that the extension should apply even if the State regulatory authority had not ordered the utility to conduct load research; i.e., even if the utility had already begun to conduct such research on its own. Other commentators[125] suggested that the term "commenced a program" was unclear. The extension has been eliminated from the final regulations since no new load research will be required in 1980 for reporting of the best estimate loads for the major customer classes.

§ 290.406 Other information to be reported.

This section required additional information to be reported on customer classes, loss factors, and on other items affecting load data collection.

Two comments[126] suggested that a new paragraph be added to this section to require submission of bill frequency data in order to permit development of block rates and to determine the effect of these rates on the distribution of revenue responsibilities by class, by tariff schedule and by individual customers or groups of customers within a tariff schedule. It is the Commission's view that these data would generally be available from the reporting utility in any rate design proceeding, and the suggestion has not been adopted in the final regulation.

§ 290.406(a) Assumptions used and description of weather normalization techniques.

The proposed regulations required the utility to describe the parameters used for weather normalization as reported under §§ 290.402 and 290.403. In the final regulations, weather normalization or normalization of loads for other factors is required only if the utility already makes those calculations for peak loads. If normalization techniques are used, a description and demonstration of the technique are required under § 290.402(d)(3) of the final regulations. Therefore, separate reporting of this information is not required as a general matter, and this paragraph has been eliminated.

§ 290.406(b) Information on individual customer classes.

Paragraph (b)(1) of the proposed regulations required utilities to provide information on energy sales for each month in the reporting period for each customer class for which load data were collected under § 290.403(a). One commentator[127] suggested that a new section be added requesting energy sales for given time periods and voltage levels so that average costs by time of use could be assigned. Since a requirement has been added to Subpart B, Accounting Cost Information, for the utility to calculate average energy costs by time of use, collection of these data here would not be necessary, and the final rule has not been changed in this regard. Another commentator[128] suggested that the requirement include data for each of the previous nine years as well as for the reporting period. Since the load data by customer groups would only cover the reporting period, customer group information has similarly been limited to the reporting period. The data to be collected under this section refer to customer groups identified in §§ 290.404 (b) and (d). This section is now § 290.406(a).

§ 290.406(b)(2) Number of customers.

This section required reporting of the number of customers at the end of the reporting period. One commentator[129] suggested that both number of customers as well as monthly energy sales should be supplied by voltage level. Since loss factors for energy sales are required under § 290.406(b) of the final regulations and since the number of new customers by principal delivery voltages is required under § 290.406(a)(3) of the final regulations, the number of customers and sales by voltage level could be calculated and further reporting of the number of customers or energy sales by voltage level would be unnecessary. The number of customers is to be reported in § 290.406(a)(2) of the final regulations.

§ 290.406(b)(3) New customers by voltage level.

This section of the proposed rule required utilities to report the number of new customers by primary, secondary and transmission voltage levels for the reporting period and for each of the previous five years. Several commentators[130] indicated that information on new new customers could not be supplied since those data currently were unavailable, that the burden of obtaining them would be onerous, and that, especially for historical information, the number of new customers would be practically impossible to reconstruct. The final regulations have been changed to reflect these comments and to require the reporting of the number of new customers only if available. Net change in customers is required under § 290.406(a)(3) of the final regulations if

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[119] For example, National Retail Manufacturers Association, Department of Energy.

[120] For example, Publicly Owned Systems, National Rural Electric Cooperative Association.

[121] Rural Electric Administration.

[122] For example, Electric Power Board of Chattanooga, Tennessee Valley Public Power Association.

[123] For example, Public Service Company of Oklahoma, Iowa Southern Utilities Co.

[124] For example, Texas Power and Light Co.

[125] For example, Kansas Gas and Electric Co.

[126] Department of Energy and Eugene Coyle.

[127] ELCON.

[128] Ernst and Ernst.

[129] ELCON.

[130] For example, City Public Service Board of San Antonio, Texas and United Illuminating.

data on new customers are not available.

§ 290.406(c) Loss factors.

In the proposed regulations, this section required the utility to report the estimated loss factors both for energy and demand resulting from the transmission of electricity to principal delivery voltage levels. Several comments [121] indicated that the regulation was too burdensome. Nevertheless, the requirement is retained in the final regulations since these loss factors may be estimated by the reporting utility and do not have to attain a level of accuracy that would require metering at various points on the transmission and distribution systems.

§ 290.406(d) Effective date of rate changes.

In the proposed regulations, this section required the utility to report the effective date of a rate change and the approximate date on which bills were first received under the new rate. A similar requirement was imposed if an automatic adjustment clause resulted in a rate adjustment of more than ten percent of the previous month's rate. Several commentators [122] indicated they have no information on when bills were received because they bill cyclically. Others indicated that the requirement regarding automatic adjustment clauses was irrelevant. Although it would be useful for parties using the load data to have some information concerning price changes during the period in which load data were being collected, this information can be obtained by other means and the provision has been deleted from the final regulations.

§ 290.406(e) Shifts on and off daylight saving time.

This section required that utilities report the hour, day and month of shifts on and off daylight saving time and the time zones in which the retail loads are located. No comments were received on this section.[123] The final regulations retain the requirement as § 290.406(c).

Subpart E—Calculated Costs

This subpart required utilities to calculate both accounting costs and marginal costs by costing period, customer class, and voltage level in summary tables similar to those included in the regulation. The proposed rule required that such tables be completed for each jurisdiction in which the utility operated unless the utility could show that the jurisdictional cost variation was not significant. If a method for calculating either marginal or accounting costs has been specified by State law or the State regulatory authority, the regulations required that the calculation method used by the utility be consistent with that method. The regulations also required that the reporting utility describe the method used for the calculations and provide a copy of any cost study upon which the calculations in the table were based. As an alternative to completing the tables, the proposed rule provided that the utility may provide a recent cost of service study (fully allocated and marginal) provided that such study included all the information specified in the tables and in Subparts B and C, respectively.

§ 290.501 Accounting cost calculations.

The alternative for providing a cost of service study has been eliminated from paragraph (d) of both § 290.501 and § 290.502 of the final rule. Provisions for alternate submissions of information are now contained in § 290.103(c) of the final rule. The only major change in § 290.501 has been the inclusion in paragraph (b) of accounting cost requirements previously contained in Subpart B.

§ 290.502 Marginal cost calculations.

The proposed regulations required utilities to estimate the marginal costs of providing service by costing period, customer class and voltage level for each State jurisdiction in which the utility operated, unless it could be shown that the jurisdictional variation was not significant. One utility [124] urged us to allow for the reporting of costs on a system wide basis, without a prior showing that jurisdictional variation was insignificant. One commentator [124a] concurred, arguing that the regulation incorrectly presumed that marginal costs will typically vary by jurisdiction and observing that, "[t]he real economic (marginal) costs of providing service are incurred at the system (or the pool) level and are the same at the margin for all jurisdictions at the same point in time. What will vary among jurisdictions is the allowed rate base, expenses and rate of return, thus leading to differences in total revenue constraints." We have reviewed a number of marginal cost studies and found that jurisdictional boundaries were generally deemed irrelevant for the calculation of marginal costs. Therefore, the regulations have been changed to require the calculation of marginal costs for the "system as a whole".

One commentator [125] recommended that Table 2 should also include an estimate of the total amount of revenue that would be generated if the calculated cost components were implemented as billing determinants. We did not adopt this proposal for two reasons. First, it might lead to the false impression that marginal costs can be directly translated into time differentiated rates. We think it is clear that requiring marginal cost calculations does not necessarily imply that prices should be equivalent to marginal cost. A second consideration is that the adoption of this recommendation would extend the regulations unnecessarily into the sphere of ratemaking whereas the regulations should more properly focus on cost data. We recognize that calculations such as those proposed will eventually have to be performed but we do not think such calculations should be required under the regulations implementing section 133.

NARUC and several other commentators [126] observed that the illustration table conveyed the impression that "off-peak" hours could not carry any marginal capacity costs. This was an oversight on our part. Table 2 has been revised to show that off-peak hours do have the potential for carrying some capacity costs.

Subpart F—Exemptions and Extensions

§ 290.601 Exemptions.

The proposed rule required that utilities submit exemption applications one year prior to the time the filing is required. The Commission deemed this period necessary for allowing time for notice, comment, analysis, and Commission action but now feels that an additional six months lead time is required if utilities denied an exemption are to have adequate time to supply the necessary information. It should be clarified that a utility need submit only one application for each filing year for which it seeks a partial or total exemption.

The proposed rule also required that utilities seek review of such applications by State regulatory authorities and permitted State regulatory authorities to apply for exemptions for utilities under their jurisdiction. NARUC suggested an alternative to the proposed procedure

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[121] For example, Public Service Co. of Colorado, Puerto Rico Water Resources Authority.

[122] For example, Louisiana Power and Light Co., Northern State Power Co.

[123] In this regard, this section is unique.

[124] Houston Power and Light Co.

[124a] Department of Energy.

[125] EEI.

[126] See, for example, comments of Massachusetts Electric Co., Wisconsin Electric Power Co.

that would involve a compliance plan to be developed by utilities and approved by State regulatory authorities prior to its submission to the Commission for approval. [137] The Commission has considered this suggestion carefully. Although the final rule does not explicitly include this suggestion, the State regulatory authority will have an opportunity to review any request for exemption and to comment on it to the Commission. The final rule contains a specific provision requiring applications for exemption to be filed with this Commission and with the State regulatory authority no less than eighteen months prior to the time the information would otherwise be required to be filed. A State regulatory agency may, on its own authority, require a utility to provide the application for exemption to it at an earlier time than that required in the regulation. Also a State regulatory authority may, under State law, continue to require information to be filed with it even though the Commission grants an exemption.

There were several comments suggesting that authority to grant exemptions to the filing requirements be delegated to State regulatory authorities. [138] We do not believe that the statute gives the Commission authority to make such a delegation. However, the various State regulatory agencies can provide a very important contribution by evaluating applications for exemptions. The rule acknowledges this function by requiring utilities to submit applications for review at the State level. Through this requirement we intend to place principal reliance for such evaluation on the State regulatory authorities.

We have amplified on the specific information necessary to support applications for exemption. We believe this expansion is an improvement on the proposed rule in that it makes certain distinctions among basis for exemptions, and indicates the nature of the information that the Commission will require in reviewing each type of exemption.

A large number of small utilities submitted comments that were really requests for exemption. These requests were based either on the size of the utility or on the utility's receiving all of its power through purchase from another utility. [139] The Commission considers these requests to be premature and has not considered their merits relevant to each applicant. If these utilities seek exemptions from provisions of the final rule, they must file new applications in accord with the requirements of the final rule. It should be noted that a number of the utilities that requested exemption on the basis of size will qualify for the special extension for small utilities provided in § 290.102(d) of the final rule.

Both the Department of Agriculture, Rural Electrification Administration (REA), and the National Rural Electric Cooperative Association suggested that specific exemptions be established for REA borrowers because these cooperative utilities already file substantial cost information with REA. The Commission finds that the cost information required under this rule is substantially different from that filed with REA by its borrowers. Therefore, the utilities' compliance with REA requirements is not an adequate substitute for filing the cost information required here. However, there may be other reasons for exempting certain of the cooperative utilities from the requirements of these regulations which will be considered upon application pursuant to the exemption provisions of the final rule. Meanwhile, many of these cooperatives will qualify for the special extension provided in § 290.102(d).

§ 290.602 Extensions.

The proposed rule provided an application procedure for extensions. No substantial comments were received on this section distinct from those concerning the exemption provisions which have already been discussed. The final rule includes changes in this section only to the extent necessary to parallel changes made in § 290.601 governing exemptions. In granting extensions either through the mechanism established in this section or in such blanket extensions as are embodied in the final rule, the Commission intends that a utility not be required to file at any later time the information which it would otherwise have been required to report during the extension period. The Commission's extension authority under section 133 is limited by section 133(b)(2) to extensions of the initial two year period following the date of enactment.

Subpart G—Enforcement

§ 290.701 Enforcement provisions.

This section states that any person who violates the requirements of Part 290 shall be subject to a civil penalty of not more than $2,500 for each violation and that any person who willfully violates those requirements shall be fined not more than $5,000 for each violation. This section corresponds to the enforcement provisions in section 12 of the Energy Supply and Environmental Coordination Act of 1974 (ESECA).

Several comments [140] indicated that all sanctions should be limited to willful violations. Two of these commentators [141] indicated that sanctions should not apply to *de minimis* violations. Section 133(d) requires that any violation of section 133 of PURPA be treated as a violation of a provision of ESECA, enforcible under section 12 of that Act. The regulations as promulgated in proposed form adhere to this statutory mandate and will not be amended. In enforcing the requirements of Part 290, the Commission will invoke such sanctions as it deems appropriate.

Written Comments

Although these regulations are being issued in final form, the Commission has specifically requested comments on §§ 290.404(d) and 290.404(f). The substantive provisions of these sections will not become effective absent further determination by the Commission. The Commission intends to act in this regard by the end of August, 1979.

Interested parties are invited to submit written comments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. Comments should reference Docket No. RM79-6 on the outside of the envelope and on all documents submitted to the Commission.

Fifteen (15) copies should be submitted. All comments and related information received by the Commission before July 15, 1979, will be retained and considered by the Commission prior to any further action on these final regulations.

(Public Utility Regulatory Policies Act of 1978, Pub. L. 95-617, Energy Supply and Environmental Coordination Act, 15 U.S.C. 791 *et seq.*, Federal Power Act, as amended 16 U.S.C. 792 *et seq.*, Department of Energy Organization Act, Pub. L. 95-91, E.O. 12009, 42 FR 46267).

In consideration of the foregoing, the Commission amends Chapter I of Title 18, Code of Federal Regulations, as set forth below, effective July 15, 1979.

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[137] See also the comments of the Texas Public Utility Commission and the Michigan Public Service Commission.

[138] See the comments of Hawaiian Electric Company and Texas Electric Service Company.

[139] The comments filed on behalf of the Electric Department of the City of Tallahassee, Florida, and of the City of Wilson, North Carolina, Department of Utilities, are representative.

[140] See comments of EEI, Southern California Edison Co., Pennsylvania Power and Light, Houston Lighting and Power Company, and Pittsburg Gas and Electric, *et al.*

[141] See comments of EEI and Pennsylvania Power and Light Co.

By the Commission.

Kenneth F. Plumb,

Secretary.

1. Chapter I of Title 18 is amended by adding new Subchapter K, Part 290 to read as follows:

SUBCHAPTER K—REGULATIONS UNDER THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978

PART 290—COLLECTION OF COST OF SERVICE INFORMATION UNDER SECTION 133 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978

Subpart A—Coverage, compliance and definitions

Sec.

290.101 Coverage.
290.102 Compliance.
290.103 Time of filing and reporting period.
290.104 Costs of compliance.
290.105 Definitions.

Subpart B—Accounting cost information

290.201 Rate base information.
290.202 Operating expense information.
290.203 Income and revenue related tax information.
290.204 Rate of return information.
290.205 Costing period.

Subpart C—Marginal cost information

290.301 General instructions for reporting marginal cost information.
290.302 Generation cost information.
290.303 Energy cost information.
290.304 Transmission cost information.
290.305 Distribution and customer cost information.
290.306 Other cost information.
290.307 Annual carrying charge rates.
290.308 Costing periods.

Subpart D—Load data

290.401 General instructions for reporting load data.
290.402 Load data for the total of all customers (system and pool load data).
290.403 Load data for certain customer groups.
290.404 Customer groups to be reported.
290.405 Certain exemptions from reporting requirements.
290.406 Other information.

Subpart E—Calculated costs

290.501 Accounting cost calculations.
290.502 Marginal cost calculations.

Subpart F—Exemptions and extensions

290.601 Exemptions.
290.602 Extensions.

Subpart G—Enforcement

290.701 Enforcement provisions.

Authority: Public Utility Regulatory Policies Act of 1978, Pub. L. 95-617, 92 Stat. 3117 (16 U.S.C. 2601 et seq.).

Subpart A—Coverage, Compliance and Definitions

§ 290.101 Coverage.

This part shall apply to each electric utility, in any calendar year, if the total sales of electric energy by such utility for purposes other than resale exceeded 500 million kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year.

§ 290.102 Compliance.

Each utility covered under this part shall gather and report information specified in Subparts B, C, D and E of this part as follows:

(a) *Information gathering and filing.* Each electric utility shall gather and report such information in accordance with § 290.103 and shall file an original and one copy of the information with the Federal Energy Regulatory Commission (Commission) and an additional copy of the information with any State regulatory authority that has ratemaking authority for such utility. The utility shall retain additional copies of such information for a period of 5 years from the date of filing with the Commission, shall make copies of such information available for public inspection at the principal offices of the utility and shall provide copies to the public at the cost of reproduction.

(b) *Form of the information.* Such information shall be submitted on suitable standard forms prescribed by the Commission or in any form otherwise determined by the Commission. With regard to specific items of cost information, if an account number from the FERC [1] Uniform System of Accounts is specified in Subparts B and C of this part, public utilities under the Federal Power Act shall file in accordance with the specified accounts. Any utility covered by section 133 of the Public Utility Regulatory Policies Act (PURPA) but not required to keep its books by the FERC Uniform System of Accounts may provide this information in accordance with the system of accounts presently employed, so long as all required individual items of information are fully defined and expressed in the same degree of detail as that required in the FERC Uniform System of Accounts.

(c) *Consolidated reporting by certain wholesale suppliers.* Consolidated reporting of such information shall be permitted as follows:

(1) Any electric power supplier qualifying under paragraph (c)(4) of this section may file a consolidated system report for the integrated system as a whole in lieu of individual reports for itself and its distributors which would otherwise be required under this part, if the distributors agree in writing to participate in the consolidated reporting and such written agreement is filed with the Commission at least 1 year prior to the date that such information is required to be reported. Where appropriate, information such as master metering practices and sales and property taxes shall be reported separately for each distributor.

(2) The electric power supplier and each distributor shall retain copies of such consolidated report for a period of 5 years from the date of filing with the Commission, shall make copies of such filing available for public inspection at its principal offices and shall provide copies to the public at the cost of reproduction.

(3) Any exemption or extension granted under Subpart F of this part to such electric power supplier shall be deemed to apply to all utilities which are a part of the integrated system and which are subject to reporting requirements under this part.

(4) In order to qualify for the consolidated reporting provisions of this section an electric power supplier must:

(i) Be a sole-source wholesale supplier to an electrically integrated system of distributors, some or all of which are also utilities subject to the reporting requirements of this part.

(ii) Have a direct role in establishing the specific resale rates charged by such distributors.

(d) *Extension for small utilities.* Each utility covered under § 290.101 but having total sales of electric energy for purposes other than resale of less than 1 billion kilowatt-hours in each of the calendar years 1976, 1977, and 1978 is granted an extension for the November 1, 1980 filing and shall not be required to make a filing pursuant to paragraph (a) of this section until May 31, 1982.

§ 290.103 Time of filing and reporting period.

Each electric utility shall gather and report information specified in Subparts B, C, D and E of this part as follows:

(a) *Biennial filing.* Information required under § 290.102 shall be filed biennially in even-numbered years beginning in 1980. The filing in 1980 shall made on or before November 1 of that year. Filings in 1982 and in each subsequent filing year shall be made on or before May 31 of that year.

(b) *Reporting period.* Except as specified in paragraph (c) of this section,

[1] FERC accounts refer to FPC accounts so numbered.

the reporting period covered by the information shall be the calendar year immediately preceding the filing year. Information for previous years and projected information for future years, as required in Subparts C, D and E of this part, shall be reported on a calendar year basis.

(c) *Alternate reporting period.* Use of an alternate reporting period shall be permitted as follows:

(1) Except as provided in paragraph (c)(2) of this section, if a utility has gathered all of the information specified in Subparts B, C, D, and E of this part and has filed such information with its State regulatory authority in connection with a rate proceeding, the utility may file such information with the Commission in fulfillment of the filing requirements of paragraph (a) of this section if the reporting period covered by the information is a 12 month period the end date of which does not precede January 1 of the filing year by more than 6 months.

(2) If the information gathered and filed with the State regulatory authority is incomplete with respect to any of the specifications of Subparts B, C, D, and E of this part, the utility shall not be permitted to filed under this paragraph unless it files the additional information specified in such subparts using the same reporting period as specified under paragraph (c)(1) of this section.

§ 290.104 Costs of compliance.

The cost of complying with the reporting requirements of this part shall not be allowed by the Commission in establishing rates for the sale of electric energy at wholesale under Part II of the Federal Power Act.

§ 290.105 Definitions.

The following definitions shall apply to this part:

(a) State regulatory authority. State regulatory authority is defined as any State agency which has ratemaking authority with respect to the sale of electric energy by any electric utility (other than such State agency) and, in the case of an electric utility with respect to which the Tennessee Valley Authority has ratemaking authority, such term means the Tennessee Valley Authority. The term State agency means a State, political subdivision thereof, and any agency or instrumentality of either. The term State means a State, the District of Columbia and Puerto Rico.

(b) *Retail regulatory jurisdiction.* Retail regulatory jurisdiction is defined as a jurisdiction or authority with jurisdiction not less than state-wide in area.

(c) *Predominant retail regulatory jurisdiction.* Predominant retail regulatory jurisdiction is defined as the retail regulatory jurisdiction in which the utility has its largest amount of total retail sales of electric energy, measured in dollars of revenue.

(d) *Voltage level.* Voltage level is defined as any of the several ranges of nominal voltage used on a given utility system for transmission and distribution of electric power, the levels to be separately identified to the extent necessary to account for significant differences in such cost factors as investment and losses attributable to providing service at the different levels. For most utilities, the levels of "transmission voltage," "primary distribution voltage," and "secondary distribution voltage" will provide adequate load and cost differentiation.

(e) *Typical day costs and loads.* For historic or reporting period information, typical day costs and loads shall be reported as the mean or mode of the hourly costs and loads for each hour for each weekday or weekend day in each month. For projected information, the typical day shall be any day in the month which the utility believes is representative of cost incurrence. Holidays shall be excluded from weekday determinations and the utility shall specify whether the mean or mode is reported.

Subpart B—Accounting Cost Information

§ 290.201 Rate base information

Except as otherwise specified in this section, the utility shall report the balances at the beginning and end of the reporting period (and, if required by the retail regulatory jurisdiction, the average of the 13 monthly balances) for the following:

(a) *Plant accounts.* The balances in each account, by account (FERC Accounts 301 through 399).

(b) *Depreciation reserve.* The depreciation reserve (FERC Account 108) associated with each primary function; i.e., steam production, nuclear production, hydroelectric production—conventional, hydroelectric production—pumped storage, other production, transmission, distribution, general and common—electric.

(c) *Depreciation expense.* The depreciation expense (FERC Account 403) associated with each primary function; i.e., steam production, nuclear production, hydroelectric production—conventional, hydroelectric production—pumped storage, other production, transmission, distribution, general and common—electric.

(d) *Construction work in progress.* For construction work in progress:

(1) For each generation and transmission project under construction, which the utility considers major, the end of period account balance in FERC Account 107 and the following:

(i) A description of plant including appropriate functionalization; i.e., production, transmission, distribution, general, comm[illegible] and other.

(ii) The star[illegible]truction date.

(iii) The exp[illegible]mpletion date and estimated cost [illegible]ted in-service date.

(2) For the re[illegible]ning projects and construction, the end of period account balance in FERC Account 107, grouped by primary function.

(e) *Prepayments.* A breakdown of the components of all prepayments (FERC Account 165).

(f) *Accumulated deferred income tax.* The amount of accumulated deferred income taxes, by account (FERC Accounts 281, 282 and 283).

(g) *Materials and supplies.* The amounts for materials and supplies (FERC Accounts 151 through 163).

(h) *Electric plant held for future use.* The amount for electric plant held for future use, itemized as to land and other, and functionalized (FERC Account 105).

(i) *Nuclear fuel materials.* The amounts for nuclear fuel materials (FERC accounts 120.1 through 120.5).

(j) *Common utility plant and expenses.* Information as reported in FERC form 1, *Annual Report*,[2] page 351, for Class A and B utilities.

§ 290.202 Operating expense information.

For operating expenses for the reporting period, the utility shall report the following:

(a) *Operating & maintenance expense accounts.* The balances in each account, by account, for operating and maintenance expenses (FERC Accounts 500 through 598 and 901 through 932). Additionally, the estimated hourly average energy costs (in cents per kilowatt-hour) incurred to supply all retail customers and those wholesale customers that are served under firm contracts shall be reported for a typical weekday, a typical weekend day, and the system peak day for each month of the reporting period. Such average energy cost shall include variable operating and maintenance expense, fuel expense and the energy portion of purchased power expense.

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[2] FERC Form 1, *Annual Report* refers to FPC Form 1, *Annual Report*.

(b) *Payroll.* The payroll associated with each operating and maintenance expense account, by account.

(c) *Taxes.* For taxes:

(1) All property taxes, payments in lieu of taxes, and other non-income and non-revenue related taxes (FERC Account 408.1).

(2) Income and revenue related taxes (FERC Accounts 408.1 and 409.1).

§ 290.203 Income and revenue related tax information.

If applicable to the reporting period, the utility shall report the following information necessary to calculate income and revenue related taxes for the reporting period:

(a) *Tax rates.* The applicable income tax rates and revenue related tax rates.

(b) *Differences in income items and deductions.* A specification of the differences in income items and deductions for Federal and State income taxes.

(c) *Itemized deductions.* An itemization of the Federal income tax deductions in addition to those contained in §§290.201 and 290.202; i.e., interest, tax depreciation above book depreciation, etc.

(d) *Adjustments to taxes.* Federal and State adjustments for such items as provisions for deferred income taxes, income taxes deferred in previous years, and investment tax credits, including the amortization and reporting period amounts.

§ 290.204 Rate of return information.

The utility shall report the following for the reporting period:

(a) *Capitalization.* Beginning and end of year balances for various components of total capitalization.

(b) *Costs of capital.* Costs of capital, including interest costs and book values of the various issues of debt and preferred stock book value and dividends for the various issues of preferred stock.

§ 290.205 Costing periods.

The utility shall design and report costing periods which group together contiguous hours of similar cost in an administratively feasible manner.

Subpart C—Marginal Cost Information

§ 290.301 General instructions for reporting marginal cost information.

The utility shall report all marginal cost information in accordance with the following general instructions:

(a) *Estimates of future costs and inflation factors used.* Except as otherwise specified, all estimates of future costs may be reported either in constant (base year) dollars or in current (expenditure year) dollars, and the assumed inflation factors shall be indicated.

(b) *Historic costs.* Except where an adjustment is specifically required, all historic costs shall be as recorded.

(c) *Designation of estimations.* All estimated historic and reporting period information shall be designated "Est."

(d) *Information not applicable.* All requested information not applicable to the utility's operations shall be designated "Not Applicable."

§ 290.302 Generation cost information.

For generation costs the utility shall report the following:

(a) *Production planning information for existing generating plants.* For the reporting period for each generating unit (or for each group of generating units with similar operating characteristics):

(1) Plant-unit identification. (If two or more units are reported as a group, identify each unit.)

(2) If jointly owned, the percent ownership of the unit's total capability.

(3) The kind of unit (steam, internal combustion, gas turbine, nuclear, conventional hydroelectric, pumped storage, or other).

(4) Estimated retirement date.

(5) Primary and secondary fuel types.

(6) Net dependable capacity (in kilowatts).

(7) Fixed operating and maintenance expenses (in dollars per kilowatt per year).

(8) Cost of fuel per kilowatt-hour of net generation at full load; i.e., when the unit is run at 100 percent of net dependable capacity (in cents per kilowatt-hour).

(9) Average cost of fuel per million Btu's burned.

(10) Average heat content of fuel burned (in Btu's per unit of fuel measure).

(11) Heat rates at 100, 75 and 50 percent of net dependable capacity (in Btu's per kilowatt-hour).

(12) Non-fuel variable operating and maintenance costs per kilowatt-hour of net generation (in cents per kilowatt-hour).

(13) Planned maintenance requirements (in days of maintenance per year).

(14) Equivalent forced outage rate (in percent).

(15) Minimum loading under normal operating conditions (in kilowatts).

(16) Time required to achieve full load from:

(i) A cold start.

(ii) A hot start.

(17) Start-up costs from a cold start (in dollars).

(18) Number of hours connected to load.

(19) Net generation, exclusive of plant use.

(20) If the unit is hydroelectric, the following information for each month of the reporting year:

(i) Net capability under average or median flow conditions (in kilowatts).

(ii) Net capability under adverse flow conditions (in kilowatts).

(iii) Monthly energy output under average or median flow conditions (in kilowatt-hours).

(iv) For hydroelectric units having storage capability, the usable storage capacity (in acre-feet or equivalent megawatt-hours).

(21) Capital costs, on an undepreciated original cost basis, as follows:

(i) Land and land rights, if such costs are incurred for the unit.

(ii) Structures and improvements.

(iii) Equipment.

(iv) Total capital costs.

(v) Cost per kilowatt of installed capacity.

(b) *Production planning information for planned additions to generating capacity.* For the first full year of commercial operation for each generating unit (or for each group of generating units with similar operating characteristics) which is planned to go into operation during the next 10 years:

(1) Plant-unit identification. (If two or more units are reported as a group, identify each unit.)

(2) If to be jointly owned, the planned percent ownership of the unit's expected capability.

(3) Kind of unit (steam, internal combustion, gas turbine, nuclear, conventional hydroelectric, pumped storage, or other).

(4) Planned date of commercial operation.

(5) Estimated earliest possible date of commercial operation.

(6) Estimated unit life.

(7) Primary and secondary fuel types.

(8) Expected net dependable capacity (in kilowatts).

(9) Annual estimated expenditures up to planned date of commercial operation, separating out AFUDC.

(10) Estimated fixed operating and maintenance expenses (in dollars per kilowatt per year).

(11) Estimated cost of fuel per kilowatt-hour of net generation at full load; i.e., when the unit is run at 100 percent of net dependable capacity (in cents per kilowatt-hour).

(12) Estimated average cost of fuel per million Btu's burned.

(13) Expected average heat content of fuel to be burned (in Btu's per unit of fuel measure).

(14) Estimated heat rates at 100, 75 and 50 percent of net dependable capacity (in Btu's per kilowatt-hour).

(15) Estimated non-fuel variable operating and maintenance costs per kilowatt-hour of net generation (in cents per kilowatt-hour).

(16) Expected planned maintenance requirements (days of maintenance per year).

(17) Expected annual equivalent forced outage rate (in percent).

(18) Expected minimum loading under normal operating conditions (in kilowatts).

(19) Expected time required to achieve full load from:

(i) A cold start.

(ii) A hot start.

(20) Estimated start-up costs form a cold start (in dollars).

(21) Expected number of hours connected to load.

(22) Expected net generation, exclusive of plant use.

(23) If the unit is hydroelectric, the following information for each month of the first full year of operation:

(i) Expected net capability under average or median flow conditions (in kilowatts).

(ii) Expected net capability under adverse flow conditions (in kilowatts).

(iii) Expected monthly energy output under average or median flow conditions (in kilowatt-hours).

(iv) For hydroelectric units having storage capability, the expected usable storage capacity (in acre-feet or equivalent megawatt-hours).

(24) Estimated capital costs as follows:

(i) Land and land rights, if such costs will be incurred for the unit.

(ii) Structures and improvements.

(iii) Equipment.

(iv) Total capital cost.

(v) Cost per kilowatt of installed capacity.

(c) *Factors affecting existing generating units.* For the existing generating units specified in paragraph (a) of this section, the following additional information:

(1) A description of any changes in engineering, regulatory or economic conditions (apart from general inflation) that are expected to affect significantly, during the next 5 years, values of any of the data items reported.

(2) A description of any economic, engineering or regulatory factors that interfered during the reporting period with merit order dispatching of the specified generating units and an assessment of the likelihood that those factors will continue to limit merit order dispatching during the next 10 years.

(d) *Planning method used.* A description of the system planning method or model used to determine the pattern of generating capacity additions specified in paragraph (b) of this section.

(e) *Other sources of information.* A list of any publicly available reports, documents and forms containing information about the utility's planned additions to generating or transmission capacity which were supplied within the previous 18 months to regional reliability councils or to State or Federal regulatory agencies.

(f) *Ten year resource projection.* For each of the next 10 years, estimates of the following at the time of each summer and winter peak:

(1) The net dependable capacity available from system plants.

(2) The total capacity available through firm purchase agreements.

(3) The total firm obligations of capacity to other systems.

(4) The total system net dependable capacity (paragraphs (f)(1) plus (f)(2) of this section minus paragraph (f)(3)).

(5) The total system reserve capacity required.

(6) The total reserve capacity available from other systems through interchange or emergency agreements.

(7) The reserve capacity to be supplied by system plants (paragraph (f)(5) of this section minus paragraph (f)(6)).

(8) The net assured system capacity (paragraph (f)(4) of this section minus paragraph (f)(7)).

(g) *Net annual cost of the generating unit or units that will be installed to meet increases in peak demand.* The estimated net annual cost (in dollars per kilowatt) of the generation unit or units most likely to be installed by the utility during the next 10 years to meet increases in peak demand. The net annual cost shall be defined as the additional carrying charges for the unit less any fuel savings that may occur as a result of the unit's addition. The calculation should take into account the life cycle costs of the equipment being analyzed. As an alternative to supplying information on the specific generation facility selected, the utility may provide the estimated net annual cost of a 50 or 100 megawatt facility of the capacity type selected.

§ 290.303 Energy cost information.

For energy costs, the utility shall report the following:

(a) *Typical hourly marginal energy costs.* Hourly marginal energy costs (in cents per kilowatt-hour) for a typical weekday, a typical weekend day, and the system peak day for each month of the reporting period and for each month of the next 5 years. Marginal energy cost at any hour shall be defined, for purposes of fulfilling the reporting requirements of this part, as the cost of fuel and variable operating and maintenance expenses incurred in producing an additional kilowatt-hour of electricity to supply all retail customers and those wholesale customers that are served under firm contracts. Marginal energy costs shall be equivalent to the fuel and variable operating and maintenance costs of the most expensive machine on line use of which will be increased or decreased in response to additional changes in demand. If increments or decrements to such retail and wholesale load are supplied by purchased power, the marginal energy cost shall be defined as the cost of that purchased power.

(b) *Other information on marginal energy costs.* If the utility has calculated marginal energy costs or system lambdas for any hours other than those reported in paragraph (a) of this section, this additional information, upon request.

(c) *Pool hourly marginal energy costs.* If the utility is a member of a centrally dispatched power pool, hourly marginal energy costs (in cents per kilowatt-hour) for a typical weekday, a typical weekend day, and the pool peak day for each month of the reporting period and for each month of the next 5 years.

(d) *Procedures and models used.* A general description of the procedures and models used in estimating hourly marginal energy costs.

(e) *Hydroelectric units.* If a hydroelectric unit is used to meet a marginal load, the assumptions and procedures used in valuing the electricity produced from the hydroelectric source.

(f) *Effect of purchased power costs.* The following information on purchased power costs:

(1) The hours in the typical days of the reporting period specified in paragraph (a) of this section when the marginal energy cost was determined by the price paid for purchased power, with citations to contracts, tariffs or agreements then in effect.

(2) The hours in the projected typical days specified in paragraph (a) of this section in which the marginal energy

cost is likely to be determined by the price paid for purchased power, with citations to contracts, tariffs or agreements currently in effect and likely to determine the hourly marginal energy costs specified in paragraph (a) of this section.

(g) *Marginal energy costs by costing period and by year.* Estimates of the average hourly marginal energy cost (in base year cents per kilowatt-hour) by costing period for the reporting year and for each of the next 5 years using the costing periods specified in § 290.308. For example, if 4 costing periods are specified in § 290.308, 24 items would be reported.

(h) *Calculated marginal energy costs by costing period.* A single marginal energy cost calculated for each of the costing periods specified in § 290.308, using the information specified in paragraph (g) of this section, and a description of the assumptions and procedures used in making these calculations. For example, if 4 costing periods are specified in § 290.308, 4 items would be reported based on the 24 items reported in paragraph (g) of this section.

(i) *Effect of energy loss.* The estimated marginal energy costs by voltage level for the different costing periods specified in § 290.308 using the estimates of energy loss factors specified in § 290.408(b).

§ 290.304 Transmission cost information.

For transmission costs the utility shall report the following:

(a) *Plant information.* For transmission plant:

(1) The expenditures for additions to transmission plant by principal voltage levels for the reporting year and for each of the previous 10 years separating out AFUDC. If available, expenditures for replacements shall be separated out and labeled accordingly.

(2) The estimated expenditures for additions to transmission plant by principal voltage levels for each of the next 5 years, separating out expected AFUDC. If available, expenditures for replacements shall be separated out and labeled accordingly.

(3) An estimate of the cost of additional transmission investment (in base year dollars) that would be required for the installation of the generation facility or facilities described in § 209.302(g); i.e., the cost required to establish a connection from the high voltage side of the step-up transformer at the generation facility through the switch connection to the transmission grid, plus such other expenditures as may be necessary to strengthen the transmission system to accommodate the unit or units.

(4) For paragraphs (a)(1) and (a)(2) of this section, payments received and an estimate of payments to be received from other utilities for use of the additional transmission capacity.

(5) A system map showing the following, except that a utility need not identify the specific site of a planned facility if it believes that disclosure of such information will raise acquisition costs:

(i) Existing generation and transmission facilities.

(ii) Generation facilities planned to go into commercial operation during the next 10 years.

(iii) Transmission facilities planned to go into commercial operation during the next 5 years.

(b) *Operating and maintenance expense.* For operating and maintenance expenses (FERC Accounts 560 through 573):

(1) The transmission operating and maintenance expenses, by account where applicable, for the reporting year and for each of the previous 10 years, adjusting to typical levels any expenses which the utility believes were extraordinary or likely to be non-recurring.

(2) The estimated transmission operating and maintenance expenses for each of the next 5 years. This information may be provided in the form of estimated totals for each of the next 5 years and need not be given by account number.

(3) The operating and maintenance expenses associated with the installation of the additional transmission plant specified in paragraph (a)(3) of this section.

(4) For paragraphs (b)(1) and (b)(2) of this section, the following:

(i) Dispatch expenses related to pool or interchange operations.

(ii) Any fixed payments, such as rental payments.

§ 290.305 Distribution and customer cost information.

For distribution and customer costs the utility shall report the following:

(a) *Plant information.* For distribution plant:

(1) The expenditures for additions to distribution plant for the reporting year and for each of the previous 5 years. If available, expenditures for replacements shall be separated out and labeled accordingly.

(2) The expected expenditures for additions to distribution plant for each of the next 3 years. If available, expenditures for replacements shall be separated out and labeled accordingly.

(3) An estimate of the current cost of connecting a new customer to the distribution system for each customer group specified in § 290.404 (b) and (d). This estimate should show, if practicable, the current cost of the following:

(i) An additional distribution line for the average addition.

(ii) an additional kilovolt-ampere of line transformer for the average addition.

(iii) The service drop for the average addition.

(iv) The meter used for the average addition.

(v) The labor required to connect a new customer.

(b) *Operating and maintenance expense.* For operating and maintenance expenses (FERC Accounts 580 through 598):

(1) The distribution operating and maintenance expenses, by account where applicable, for the reporting year and for each of the previous 5 years, adjusting to typical levels any expenses which the utility believes were extraordinary or likely to be non-recurring.

(2) The estimated distribution operating and maintenance expenses for each of the next 3 years. This information may be provided in the form of estimated totals for each of the next 3 years and need not be provided by account number.

§ 290.306 Other cost information.

For each of the previous 5 years, the utility shall report the following:

(a) *Customer expenses.* Customer account expenses, by account (FERC Accounts 901 through 910).

(b) *Sales expenses.* Sales expenses, by account (FERC Accounts 911 through 916), indicating separate amounts that can reasonably be attributed to each customer group specified in § 290.404 (b) and (d).

(c) *Administrative and general expenses.* Administrative and general expenses, by account (FERC Accounts 920 through 932).

(d) *Certain taxes.* Social security and unemployment taxes (FERC Account 408.1).

(e) *Electric plant in service.* Electric plant in service, end of the year (FERC Account 101).

(f) *General plant.* General plant, by account, end of the year (FERC Accounts 389 through 399).

(g) *Materials and supplies.* Materials and supplies, by account, end of the

year (FERC Accounts 151 through 157 and 163).

(h) *Prepayments.* Prepayments, end of the year (FERC Account 165).

§ 290.307 Annual carrying charge rates.

For annual carrying charge rates the utility shall report the following:

(a) *Estimates.* Estimates of current annual carrying charge rates for generation, transmission, and distribution facilities based on annual revenue requirement calculations for a hypothetical $1000 investment. These calculations shall be made in accordance with the following rules:

(1) The calculations shall correspond to the regulatory prescriptions of the predominant retail regulatory jurisdiction.

(2) Publicly owned systems shall present carrying charge rates calculated with reference to the cost factors relevant to their system planning.

(3) The rate of return component shall be based on the utility's expected capital structure and marginal costs of debt, preferred and common equity and customer contributed capital.

(b) *Worksheets.* Worksheets showing how the calculations specified in paragraph (a) of this section were made.

§ 290.308 Costing periods.

The utility shall design and report costing periods which group together contiguous hours of similar cost in an administratively feasible manner.

Subpart D—Load Data

§ 290.401 General instructions for reporting load data.

The utility shall report load data in accordance with the following general instructions:

(a) *Hourly load data.* Kilowatt loads shall be reported for a 24-hour period, beginning at 12:01 a.m. and ending at 12:00 midnight, local time, using an interval of integration of the reporting utility's choice, so long as such time interval is no longer than 60 minutes. Pool, system and customer group loads shall be reported using the same integration interval. If loads are metered on a different basis from that reported, the time interval of integration for metered loads and the factor which converts metered loads to reported loads shall be specified.

(b) *Load data by retail regulatory jurisdiction.* Each utility that serves at retail in more than one retail regulatory jurisdiction shall report load data specified in § 290.403 as follows:

(1) By separate retail regulatory jurisdiction for data specified in § 290.403 (a)(1) and (a)(2) and (a)(3), unless all such jurisdictions waive the separate reporting requirement. Opportunity for comment on the waiver request shall be allowed prior to Commission action on the waiver.

(2) For the system as a whole, for data specified in § 290.403(a)(4), unless 1 or more retail regulatory jurisdictions requests separate reporting by jurisdiction, in which case such separate reporting shall be required. If a party other than a retail regulatory jurisdiction requests that hourly customer group load data be reported separately, that party must demonstrate that the benefits of reporting such loads by separate jurisdictions outweight the costs of reporting such loads by separate jurisdictions.

(c) *Applications for waiver or separate reporting.* Applications under paragraph (b) of this section for waiver or for separate reporting of customer group load data shall be filed with the Commission at least 2 years prior to the time the data would otherwise be required to be reported.

(d) *Option for 1980 filing.* In complying with the filing requirement for November, 1980, the utility may choose whether to report the customer group load data specified in § 290.403 (a)(1), (a)(2), (a)(3) and (a)(4) for the system as a whole or on a separate jurisdictional basis.

(e) *Master metering.* For purposes of reporting data in § 290.406, "customers" shall be defined as meters. A utility with master metered loads shall report the number of master meters separately, if available, and identify the groups of customers served under master meters, if available.

§ 290.402 Load data for the total of all customers (system and pool load data).

The utility shall report system and pool load data as follows:

(a) *General.* The kilowatt load shall be measured by the sum of the coincident net generation and purchases, plus or minus net interchange, minus temporary deliveries (not interchange) of emergency power to another system. These data shall be consistent with the monthly coincident peak kilowatt loads as reported in FERC Form 1, *Annual Report*, page 431, column (b).

(b) *Pool load data.* If the utility is a member of a power pool that centrally dispatches or a power pool that plans future bulk power facilities as a pool, load data as specified in this section shall be reported for the pool as well as the utility, unless otherwise specified.

(c) *Historic peak loads.* For each of the previous 10 years, the summer and winter peak loads on the system (in kilowatts) shall be reported and the date, day of the week and time of day for each peak shall be indicated. These data are not required for power pool reporting.

(d) *Load data for the reporting period.* For the reporting period, the following data shall be reported:

(1) Kilowatt load for each clock hour of each day. A utility that provides the Edison Electric Institute with "Load Diversity Studies" may provide these data in computer compatible form to satisfy this reporting requirement.

(2) As an alternative to paragraph (d)(1) of this section, hourly system loads for a typical weekday, a typical weekend day and the system peak day for each month in the reporting period, if the utility certifies that it will make the information specified in paragraph (d)(1) of this section available upon request.

(3) Monthly peak (maximum coincident kilowatt) load for each month, indicating the date, day of the week and time of day for each peak. If monthly peaks are normalized for weather or for other factors affecting loads, the utility shall report these data, along with a description and demonstration of the normalizing techniques used.

(e) *Projected load data.* For each of the next 5 years and for the tenth year, the following shall be reported:

(1) The projected annual load duration curves and the duration of load (in hours) at 100, 98, 95, 90, 80, 60, 40 and 20 percent of the peak load and an indication as to whether these data were used as the basis for the planned capacity additions reported under § 290.302(b).

(2) For each of the next 5 years and for the period between the fifth and tenth year, the average annual growth rates implied by the projected load duration curves specified in paragraph (e)(1) of this section for total kilowatt-hour sales, summer peak load, and winter peak load.

(3) Hourly loads for a typical week day, a typical weekend day and the system peak day for each month, or for each group of months for which there is no variation in hourly load.

§ 290.403 Load data for certain customer groups.

The utility shall report load data for each customer group for which data are required to be reported under § 290.404 as follows:

(a) *General.* For each month in the reporting period and for each such customer group:

(1) The group maximum demand (in kilowatts).

(2) The group contribution (in kilowatts) to the monthly jurisdictional maximum demand.

(3) The group contribution (in kilowatts) to the monthly system maximum coincident demand.

(4) Hourly group loads for a typical week day, a typical weekend day, the group peak day, and the system peak day.

(b) *Accuracy level.* If sample metering is required, the sampling method and procedures for collecting, processing, and analyzing the sample loads, taken together, shall be designed so as to provide reasonably accurate data consistent with available technology and equipment. An accuracy of plus or minus 10 percent at the 90 percent confidence level shall be used as a target for the measurement of group loads at the time of system and customer group peaks.

(c) *Sampling plan.* The utility shall file a sampling plan and description of any current sample at the time of making its first filing under this part and, if the load data are required to be collected on a sample metered basis but the data collected do not realize the target level of accuracy specified in paragraph (b) of this section, the utility shall explain why that target was not met.

(d) *Load research conducted every 5 years.* If load data are required to be collected on a sample metered basis, such research need not be conducted more frequently than every 5 years for any utility that had total sales of electric energy for purposes other than resale of less than 1 billion kilowatt-hours annually in the three-calendar-year period 2 years prior to the reporting period. The kilowatt demands obtained from sample metering shall be updated in each reporting period to reflect current kilowatt-hour sales, customers and other consumption determinants and a description and example of the estimation technique and underlying data used for such updating shall be provided.

§ 290.404 Customer groups to be reported.

Subject to the provisions of paragraphs (e) and (f) of this section, the utility shall gather and report the load data specified in § 290.403 for each of the following customer groups. Best estimates shall be based on any sample metered data collected for all or part of the group and may also be based on borrowed data to the extent provided in § 290.405(a).

(a) *By major customer class.* The utility shall report load data in 1980 and in each subsequent reporting period on a best estimate basis for each major customer class as defined in paragraph (b) of this section.

(b) *Definition of major customer class.* Major customer class is defined as residential use (domestic), commercial use (office buildings, stores, shopping centers, etc.) and industrial use (factories, etc.) and any other rate class to which 10 percent or more of the system kilowatt-hour sales at retail are made for any month during the reporting period (other than a rate class composed in whole or in part of residential, commercial or industrial users). Estimates for each major customer class shall exclude master meters serving more than one major customer class.

(c) *By certain end use.* Subject to the provisions of paragraph (c)(3) of this section, the utility shall report load data in 1982 and in each subsequent reporting period for those major end uses specified in paragraph (d) of this section, as follows:

(1) If the utility has a separate rate for any of the specified end uses as of December 31, 1980 the utility shall report load data for such rate class on a sample metered basis in 1982 and in each subsequent reporting period, except that the utility may combine for reporting purposes any such rate classes which apply to a single specified end use.

(2) If the utility does not have a separate rate for a specified end use, the utility shall report load data for such specified end use on a best estimate basis in 1982 and on a sample metered basis in 1984 and in each subsequent reporting period.

(3) The list of items in paragraph (d) of this section shall not take effect until the Commission makes a determination that such list or a modification thereof shall become effective.

(d) *Definition of major end use.* Mayor end use is defined as:

(1) Residential space heating.

(2) Residential water hearing.

(3) Single family or individually metered multifamily dwelling units using at least 15,000 kilowatt-hours annually or using only electricity for heating, cooling, cooking, water-heating and all other domestic uses.,

(4) Commercial space heating.

(5) Commercial space cooling.

(6) Office building using only electricity for heating, cooling, water-heating and all other uses.

(7) Master metered multiple dwellings.

(8) Electric heat used in agricultural or industrial processes.

(9) Large (over 1000 Kilowatts) electric drive motors (e.g., steel rolling mills).

(10) Irrigation.

(e) *Extension for all other customer groups.* Each utility covered under § 290.101 is granted an extension until January 1, 1985 for the gathering and reporting of separate cost and load data for any electric consumer class for which there is a separate rate and for any different consumption pattern within a class if information on such class or consumption pattern is not required to be reported as a customer group under this section.

(f) *Exemption for customer groups served under time of day rates.* Each utility covered under § 290.101 is granted an exemption from collecting load data by sample metering for any customer group served under time of day rates but shall be required to submit all information which is required to be reported in §§ 290.305(a)(3), 290.306(b), 290.406, 290.501 and 290.502 for each customer group specified in paragraphs (b) and (d) of this section. This section shall not take effect until the Commission makes a determination that such exemption or a modification thereof shall become effective.

§ 290.405 Certain exemptions from reporting requirements.

Exemptions from the reporting requirements of this subpart are provided as follows:

(a) *Borrowed load data.* The utility may use borrowed load data as support for its best estimate of loads submitted for the November, 1980 filing only and may use borrowed data in any subsequent filing, only if granted such an exemption under § 290.601.

(b) *Joint load research.* If a group of utilities intends to engage in joint load research for the purpose of fulfilling the reporting requirements of §§ 290.402 and 290.403, the group may apply to the Commission under § 290.601 for an exemption from the requirement that each utility in the group separately report such data.

§ 290.406 Other information.

The utility shall report additional information as follows:

(a) *Information on customer groups.* For each customer group specified in § 290.404 (b) and (d), the following information shall be reported:

(1) The monthly energy sales (in thousand kilowatt-hours) for each month of the reporting period.

(2) The number of customers at the end of the reporting period.

(3) For the reporting period and for each of the previous 5 years, the number

of new customers, if available, by voltage level. If this information on new customers is not available, the utility shall report instead the net change in customers.

(b) *Loss factors.* The utility shall report the estimated loss factors, both for energy (kilowatt-hours) and demand (kilowatts), resulting from the transmission of electricity from the system's source to the voltage levels at which sales are made. If different loss factors apply to peak and off-peak losses, both sets of loss factors shall be provided.

(c) *Shifts on and off daylight saving time.* The utility shall report the hour, day and month of shifts on and off daylight saving time, if applicable, and the time zone in which the retail load is located.

Subpart E—Calculated Costs

§ 290.501 Accounting cost calculations.

The utility shall calculate accounting costs as follows:

(a) *Calculated accounting costs of providing service.* The utility shall calculate the accounting costs of providing service by costing period and by voltage level for each customer group specified in § 290.404 (b) and (d) and shall provide a summary of this information by completing Table 1. The table shall be completed for each retail regulatory jurisdiction in which the utility operates, unless the utility can show that the jurisdictional cost variation is not significant. If a method for calculating accounting costs has been specified by State law or by the retail regulatory jurisdiction, the calculation method used by the utility shall be consistent with such method. In the case of a non-regulated utility, the calculation method used shall be consistent with any applicable legal constraints upon such utility.

(b) *Description of method used.* The utility shall describe the method used for the calculations specified in paragraph (a) of this section as well as the following:

(1) For plant:

(i) A functional breakdown of distribution plant into demand and customer related components and an explanation of the functional allocation used.

(ii) A breakdown of demand related transmission or distribution plant by voltage levels and an explanation of this allocation.

(iii) A breakdown of all plants directly assigned to each customer group specified in § 290.404 (b) and (d), if such assignment is appropriate based on prior precedents of the retail regulatory jurisdiction.

(2) Estimates of cash working capital required, including an explanation of the computation. Sufficient information shall be submitted to enable a calculation employing those methods specified by the retail regulatory jurisdiction or those methods chosen by the non-regulated electric utility. If the estimated cash working capital requirement is based on a lead lag study, a summary of the study shall also be filed.

(3) For operating and maintenance expenses:

(i) A functional breakdown of distribution operating and maintenance expenses into demand and customer related components and an explanation of the functional allocation made.

(ii) A breakdown of demand related transmission and distribution operating and maintenance expenses by voltage level and an explanation of the allocation method used.

(iii) A breakdown of all operating and maintenance expenses directly assigned to each customer group specified in § 290.404 (b) and (d) of such assignment is appropriate based on prior precedents of the retail regulatory jurisdiction.

(iv) For accumulated deferred income tax an explanation of the method of functionalization used.

(c) *Cost study.* The reporting utility shall provide a copy of the cost study upon which the information entered in summary Table 1 is based, or certify that such study has been conducted and will be made available upon request. This provision shall not relieve the utility from reporting any information specified in Subparts B, D and E of this part.

§ 290.502 Marginal cost calculations.

The utility shall calculate marginal costs as follows:

(a) *Calculated marginal costs of providing service.* The utility shall calculate for the system as a whole the marginal costs of providing service by costing period and by voltage level for each customer group specified in § 290.404 (b) and (d) and shall provide a summary of this information by completing Table 2. The calculations shall be made as follows:

(1) The marginal costs shall be shown without any adjustments for revenue constraints. This requirement shall in no way prevent the utility from presenting an additional table showing how time differentiated rates could be developed from the information developed in summary Table 2.

(2) If a method for calculating marginal costs has been specified by the predominant retail regulatory jurisdiction or by State law in that jurisdiction, the calculation method used by the utility shall be consistent with such method. In the case of a non-regulated electric utility, the calculation method used shall be consistent with any applicable legal constraints upon such utility.

(b) *Description of method used.* The utility shall describe the method used for the calculations specified in paragraph (a) of this section as well as the following:

(1) A listing of the different components of demand related costs (marginal generation, transmission, and distribution capacity costs) and how such costs were calculated.

(2) A description of how demand related costs were determined for different costing periods.

(3) A description of how the marginal energy costs specified in § 290.303 were calculated.

(4) A listing of the different components of customer costs and how such costs were calculated.

(c) *Cost study.* The utility shall provide a copy of the cost study upon which the information entered in summary Table 2 is based or certify that such a study has been conducted and will be made available upon request. This provision shall not relieve the utility from reporting any information specified in Subparts C, D and E of this part.

Table 1.—*Illustrative Summary of Accounting Costs by Costing Period, Customer Group and Voltage Level*

Customer group and voltage level	Costing period				Annual customer cost
	Peak hours		Off-peak hours		
	I	II	III	IV	
Customer Group A:					
Voltage Level 1					$/customer.
Demand Costs:					
Generation	$/kW	$/kW	$/kW	$/kW	
Transmission	$/kW	$/kW	$/kW	$/kW	
Distribution	$/kW	$/kW	$/kW	$/kW	
Energy Costs	¢/kWh	¢/kWh	¢/kWh	¢/kWh	
Voltage Level 2					$/customer.
Demand Costs:					
Generation	$/kW	$/kW	$/kW	$/kW	
Transmission	$/kW	$/kW	$/kW	$/kW	
Distribution	$/kW	$/kW	$/kW	$/kW	
Energy Costs	¢/kWh	¢/kWh	¢/kWh	¢/kWh	

Table 1.—*Illustrative Summary of Accounting Costs by Costing Period, Customer Group and Voltage Level*

Customer group and voltage level	Costing period				Annual customer cost
	Peak hours		Off-peak hours		
	I	II	III	IV	
Customer Group B:					
Voltage Level 1					$/customer.
Demand Costs:					
Generation	$/kW	$/kW	$/kW	$/kW	
Transmission	$/kW	$/kW	$/kW	$/kW	
Distribution	$/kW	$/kW	$/kW	$/kW	
Energy Costs	¢/kWh	¢/kWh	¢/kWh	¢/kWh	

N.B.—Both the number and designation of the costing periods, customer groups, and voltage levels shown in this table are illustrative. They are not intended to suggest any constraint on the reporting utility's choice of the specifications most appropriate to its operation. The costing period, customer groups, and voltage levels chosen, however, should be clearly specified either in the table headings or in footnotes.

Table 2.—*Illustrative Summary of Marginal Costs by Costing Period, Customer Group and Voltage Level*

Customer group and voltage level	Costing period				Annual customer cost
	Peak hours		Off-peak hours		
	I	II	III	IV	
Customer Group A:					
Voltage Level 1					$/customer.
Demand Costs:					
Generation	$/kW	$/kW	$/kW	$/kW	
Transmission	$/kW	$/kW	$/kW	$/kW	
Distribution	$/kW	$/kW	$/kW	$/kW	
Energy Costs	¢/kWh	¢/kWh	¢/kWh	¢/kWh	
Voltage Level 2					$/customer.
Demand Costs:					
Generation	$/kW	$/kW	$/kW	$/kW	
Transmission	$/kW	$/kW	$/kW	$/kW	
Distribution	$/kW	$/kW	$/kW	$/kW	
Energy Costs	¢/kWh	¢/kWh	¢/kWh	¢/kWh	
Customer Group B:					
Voltage Level 1					$/customer.
Demand Costs:					
Generation	$/kW	$/kW	$/kW	$/kW	
Transmission	$/kW	$/kW	$/kW	$/kW	
Distribution	$/kW	$/kW	$/kW	$/kW	
Energy Costs	¢/kWh	¢/kWh	¢/kWh	¢/kWh	

N.B.—Both the number and designation of the costing periods, customer groups, and voltage levels shown in this table are illustrative. They are not intended to suggest any constraint on the reporting utility's choice of the specifications most appropriate to its operations. The costing periods, customer groups, and voltage levels chosen, however, should be clearly specified either in the table headings or in footnotes. In most circumstances the cost components shown in this table would require adjustments in order to be used for billing under time differentiated rates.

Subpart F—Exemptions and Extensions

§ 290.601 Exemptions.

Applications for exemptions shall be made as follows:

(a) *Application.* A utility may apply for an exemption from all or part of the requirements set forth in this part by filing an application with the Commission no less than 18 months prior to the time the information would otherwise be required, and by November 1, 1979, for the 1980 filing. The application shall contain the following information:

(1) The name and location of the applicant.

(2) The time of filing for which each exemption is sought.

(3) The nature of each exemption sought, including a list of the requirements set forth in Subparts B, C, D and E of this part from which the exemption is sought and information explaining why the gathering of such information will not be likely to carry out the purposes of section 133 of PURPA. Such information shall include the following:

(i) If the exemption is based on the nature of the utility or on the type or extent of service provided, the application shall contain information specifically relating such factors to the nature of the exemption sought.

(ii) If the exemption is based on alternate compliance with the requirements of section 133 of PURPA, the application shall contain a showing, with respect to the specific utility, that the purposes of section 133 have been and will continue to be served by use of such alternate procedures.

(iii) If the exemption is based on plans for deferred compliance with the reporting requirements of this part, the application shall contain information on economic, technical, or other factors which prevent timely compliance, and shall contain a plan of compliance stating the schedule of actions to be taken by the utility to achieve full compliance.

(4) A statement of any action taken by a State regulatory authority in response to an application submitted to such State regulatory authority under paragraph (b) of this section, together with the statement of concurrence by the State regulatory authority, if any.

(b) *State regulatory authority review of applications for exemption.* A utility regulated by a State regulatory authority and applying for an exemption under this section shall submit such application to any State regulatory authority which has ratemaking authority for such utility for review prior to or concurrent with filing the application with the Commission.

(c) *Requests by a State regulatory authority.* A State regulatory authority may act on behalf of 1 or more utilities subject to its regulation in requesting a total or partial exemption. Such requests shall be filed at least 18 months prior to the time the information would otherwise be required and shall contain the following information:

(1) The name and location of the utility for which the exemption is sought.

(2) The time of filing for which the exemption is sought.

(3) The nature and duration of the exemption sought including a list of the requirements set forth in Subparts B, C, D and E of this part for which each exemption is sought and information explaining why the gathering of such information will not be likely to carry out the purposes of section 133 of PURPA. Such information shall include that information specified in paragraph (a)(3) (i), (ii) and (iii) of this section.

(d) *Public notice and comment.* (1) Within 15 days following receipt of the completed application for exemption submitted in accordance with paragraphs (a) or (c) of this section:

(i) The application shall be noticed in the Federal Register.

(ii) The utility shall apply to each State regulatory authority by which it is regulated to have such application

published in any official State publication in which rate change applications are usually noticed.

(iii) The utility shall have such application published in a sufficient number of newspapers of general circulation in the affected jurisdiction so as to give widest practicable notice to interested parties.

(2) A period of 45 days shall be permitted for receipt of written information, views, arguments, or other comments on the application, which period shall commence at the time all requirements imposed in paragraph (d)(1) of this section have been fulfilled.

(3) Additional information required for purposes of review and evaluation of the application shall be supplied if requested by Commission Staff or by the State regulatory authority.

(4) Within 15 days following the conclusion of the comment period, the applicant may file reply comments.

(e) *Scope of exemption.* A utility shall submit a separate application for each filing year for which it seeks a partial or total exemption. An exemption granted by the Commission shall apply only to the next filing required under § 290.102, unless otherwise specifically provided by the Commission.

§ 290.802 Extensions.

Applications for extensions shall be made as follows:

(a) *Applications.* A utility may apply for an extension of the November, 1980, deadline for all or part of the requirements set forth in this part by filing an application with the Commission on or before May 1, 1980, which application shall contain the following information:

(1) The name and location of the applicant.

(2) A description of the information requirements for which the extension is sought, including the length of the proposed extension.

(3) A showing of good cause for the extension sought.

(4) A statement describing plans for application for, or proposal of, any rate increase during the period covered by the extension.

(5) A statement of any action taken by a State regulatory authority in response to an application submitted to such State regulatory authority under paragraph (b) of this section, together with the statement of concurrence by the State regulatory authority, if any.

(6) A plan of compliance setting forth the steps that the utility will take to comply fully with the reporting requirements of this part and indicating the time when the information will be supplied.

(b) *State regulatory authority review of application for extension.* A utility regulated by a State regulatory authority and applying for an extension under this section shall submit such application to any State regulatory authority which has ratemaking authority for such utility for review prior to or concurrent with filing the application with the Commission.

(c) *Additional information.* Additional information required for purposes of review and evaluation of the application shall be supplied if requested by Commission Staff or by the State regulatory authority.

(d) *Comments by interested parties.* The Commission may seek comments from interested parties on applications for extensions.

Subpart G—Enforcement

§ 290.701 Enforcement provisions.

Pursuant to section 133(d) of PURPA, any person that violates a requirement of this part shall be subject to the following sanctions:

(a) *Violations.* Whoever violates any provision of this part shall be subject to a civil penalty of not more than $2,500 for each violation.

(b) *Willful violations.* Whoever willfully violates any provision of this part shall be fined not more than $5,000 for each violation.

(c) *Civil action by Attorney General.* Whenever it appears to the Commission or to its designee that any individual or organization has engaged, is engaged, or is about to engage in acts or practices constituting a violation of this part, the Commission or its designee may request the Attorney General to bring a civil action to enjoin such acts or practices, and upon a proper showing, a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. In such action, the court may also issue mandatory injunctions commanding any person to comply with any provision, the violation of which is prohibited by this section.

(d) *Civil action by private party.* Any person suffering legal wrong because of any act or practice arising out of any violation of this part may bring a civil action for appropriate relief, including an action for a declaratory judgment or writ of injunction. United States district courts have jurisdiction of actions under this paragraph without regard to the amount in controversy. Nothing in this paragraph shall authorize any person to recover damages.

[FR Doc. 79-18888 Filed 6-12-79; 8:45 am]
BILLING CODE 6450-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 153

[T.D. 79-166]

Antidumping; Certain Carbon Steel Plate From Taiwan

AGENCY: U.S. Treasury Department.

ACTION: Finding of Dumping.

SUMMARY: This notice is to inform the public that investigations conducted under the Antidumping Act, 1921, as amended, by the U.S. Treasury Department and the U.S. International Trade Commission, respectively, have resulted in a determination that carbon steel plate from Taiwan produced by China Steel Corporation is being sold at less than fair value and that these sales are injuring an industry in the United States. On this basis, a finding of dumping is being issued and, generally, all unappraised entries of this merchandise will be liable for the possible assessment of special dumping duties.

EFFECTIVE DATE: June 13, 1979.

FOR FURTHER INFORMATION CONTACT: David Mueller, Operations Officer, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229 (202-566-5492).

SUPPLEMENTARY INFORMATION: Section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)) (referred to in this notice as "the Act"), gives the Secretary of the Treasury responsibility for determining whether imported merchandise is being sold at less than fair value. Pursuant to this authority, the Secretary has determined that carbon steel plate from Taiwan produced by China Steel Corporation is being sold at less than fair value within the meaning of section 201(a) of the Act (19 U.S.C. 160(a)). (Published in the Federal Register of February 14, 1979 (44 FR 9639).)

Section 201(a) of the Act (19 U.S.C. 160(a)) gives the United States International Trade Commission responsibility for determining whether, by reason of such sales at less than fair value, a domestic industry is being or is likely to be injured. The Commission has determined, and on May 14, 1979, it notified the Secretary of the Treasury

that an industry in the United States is being injured by reason of the importation of carbon steel plate from Taiwan that is being sold at less than fair value within the meaning of the Act. Notice of this determination was published in the **Federal Register** of May 22, 1979 (44 FR 29734).

On behalf of the Secretary of the Treasury, I hereby make public these determinations which constitute a finding of dumping with respect to carbon steel plate from Taiwan produced by China Steel Corporation.

For purposes of this notice, the term "carbon steel plate" refers to hot rolled carbon steel plate, not coated or plated with metal and not clad, other than black plate, not alloyed, and other than in coils. This merchandise is classified under item 608.8415 of the Tariff Schedules of the United States Annotated.

§ 153.46 [Amended]

Accordingly, § 153.46 of the Customs Regulations (19 CFR 153.46) is being amended by adding the following to the list of findings of dumping currently in effect:

Merchandise	Country	Treasury decision
Carbon Steel Plate produced by China Steel Corporation.	Taiwan	79-166

(Sec. 201, 407, 42 Stat. 11, as amended, 18 (19 U.S.C. 160, 173).)

Robert H. Mundheim,
General Counsel of the Treasury.
June 7, 1979.

[FR Doc. 79-18442 Filed 6-12-79; 8:45 am]
BILLING CODE 4810-22-M

19 CFR Part 153

[T.D. 79-167]

Antidumping; Sugar From Belgium, France, and the Federal Republic of Germany

AGENCY: U.S. Treasury Department.
ACTION: Finding of Dumping.

SUMMARY: This notice is to inform the public that investigations conducted under the Antidumping Act, 1921, as amended, by the U.S. Treasury Department and the U.S. International Trade Commission, respectively, have resulted in a determination that sugar from Belgium, France and the Federal Republic of Germany is being sold at less than fair value and that these sales are injuring an industry in the United States. On this basis, a finding of dumping is being issued and, generally, all unappraised entries of this merchandise will be liable for the possible assessment of special dumping duties.

EFFECTIVE DATE: June 13, 1979.

FOR FURTHER INFORMATION CONTACT: John Kugelman, Operations Officer, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229 (202-566-5492).

SUPPLEMENTARY INFORMATION: Section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)) (referred to in this notice as "the Act"), gives the Secretary of the Treasury responsibility for determining whether imported merchandise is being sold at less than fair value. Pursuant to this authority, the Secretary has determined that sugar from Belgium, France and the Federal Republic of Germany is being sold at less than fair value within the meaning of section 201(a) of the Act (19 U.S.C. 160(a)). (Published in the **Federal Register** of February 12, 1979 (44 FR 8949).)

Section 201(a) of the Act (19 U.S.C. 160(a)) gives the United States International Trade Commission responsibility for determining whether, by reason of such sales at less than fair value, a domestic industry is being or is likely to be injured. The Commission has determined, and on May 16, 1979, it notified the Secretary of the Treasury that an industry in the United States is being injured by reason of the importation of sugar from Belgium, France and the Federal Republic of Germany that is being sold at less than fair value within the meaning of the Act. Notice of this determination was published in the **Federal Register** of May 23, 1979 (44 FR 29932).

On behalf of the Secretary of the Treasury, I hereby make public these determinations which constitute a finding of dumping with respect to sugar from Belgium, France and the Federal Republic of Germany.

For purposes of this notice, the term "sugar" refers to raw and refined sugar provided for in item numbers 155.20 and 155.30 of the Tariff Schedules of the United States (TSUS).

§ 153.46 [Amended]

Accordingly, § 153.46 of the Customs Regulations (19 CFR 153.46) is being amended by adding the following to the list of findings of dumping currently in effect:

Merchandise	Country	Treasury decision
Sugar	Belgium, France, The Federal Republic of Germany	79-167

(Sec. 201, 407, 42 Stat. 11, as amended, 18 (19 U.S.C. 160, 173).)

Robert H. Mundheim,
General Counsel of the Treasury.
June 6, 1979.

[FR Doc. 79-18443 Filed 6-12-79; 8:45 am]
BILLING CODE 4810-22-M

19 CFR Part 153

[T.D. 79-168]

Antidumping; Viscose Rayon Staple Fiber From Italy

AGENCY: U.S. Treasury Department.
ACTION: Finding of Dumping.

SUMMARY: This notice is to inform the public that separate investigations conducted under the Antidumping Act, 1921, as amended, by the U.S. Treasury Department and the U.S. International Trade Commission, respectively, have resulted in determinations that viscose rayon staple fiber from Italy is being sold at less than fair value and that these sales are injuring an industry in the United States. On this basis, a finding of dumping is being issued and, generally, all unappraised entries of this merchandise will be liable for the possible assessment of special dumping duties.

EFFECTIVE DATE: June 13, 1979.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5492).

SUPPLEMENTARY INFORMATION: Section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)) (referred to in this notice as "the Act"), gives the Secretary of the Treasury responsibility for the determination of sales at less than fair value. Pursuant to this authority, the Secretary has determined that viscose rayon staple fiber from Italy is being sold at less than fair value within the meaning of section 201(a) of the Act (19 U.S.C. 160(a)). (Published in the **Federal Register** of February 27, 1979, 44 FR 11137).

Section 201(a) of the Act (19 U.S.C. 160(a)) gives the United States International Trade Commission responsibility for determining whether, by reason of such sales at less than fair value, a domestic industry is being or is likely to be injured. The Commission has determined, and on May 22, 1979, it

notified the Secretary of the Treasury that an industry in the United States is being injured by reason of the importation of viscose rayon staple fiber from Italy that is being sold at less than fair value within the meaning of the Act. Notice of this determination was published in the Federal Register of May 31, 1979 (44 FR 31327).

On behalf of the Secretary of the Treasury, I hereby make public these determinations, which constitute a finding of dumping with respect to viscose rayon staple fiber from Italy.

For purposes of this notice, the term "viscose rayon staple fiber" means viscose rayon staple fiber, except solution dyed, in noncontinous form, not carded, not combed, and not otherwise processed, wholly of filaments (except laminated filaments and plexiform filaments). This term includes both commodity fiber and specialty fiber.

§ 153.46 [Amended]

Accordingly, § 153.46 of the Customs Regulations (19 CFR 153.46) is being amended by adding the following to the list of findings of dumping currently in effect.

Merchandise	Country	Treasury decision
Viscose rayon staple fiber.	Italy	T.D. 79-168

(Sec. 201, 407, 42 Stat. 11, as amended, 18 (19 U.S.C. 160, 173).)

Robert H. Mundheim,
General Counsel of the Treasury.
June 1, 1979.

[FR Doc. 79-18446 Filed 6-12-79; 8:45 am]
BILLING CODE 4810-22-M

POSTAL SERVICE

39 CFR Part 111

Minimum Mail Size Standards and Nonstandard Mail Surcharge

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The final rule establishes July 15, 1979, as the effective date for the minimum size standards for all mail matter and for a surcharge to be applied to all nonstandard mail. This rule is intended to provide notice of the changes in postal regulations which implement the decisions of the Postal Service establishing the July 15, 1979, effective date.

EFFECTIVE DATE: July 15, 1979.

FOR FURTHER INFORMATION CONTACT: Skip McGill, Office of Mail Classification, (202) 245-4749.

SUPPLEMENTARY INFORMATION:

Minimum Mail Size Standards

On January 18, 1978, the Postal Service filed a request, pursuant to 39 U.S.C. 3623, with the Postal Rate Commission for a recommended decision which, among other things, would establish minimum size standards for all mail matter and a surcharge for non-standard letter size mail. On April 15, 1978, the Postal Rate Commission issued its recommended decision to the Governors of the Postal Service in that mail classification case. The Commission's decision recommended the establishment of both the minimum size requirements and a classification of nonstandard letter size mail.

On June 2, 1978, the Governors, acting on the Commission's recommendation pursuant to 39 U.S.C. 3625, established the following minimum size standards:

a. All mailing pieces must be at least 0.007 of an inch thick, and

b. All mailing pieces (other than keys and identification devices) which are ¼ of an inch thick or less must be:

(1) Rectangular in shape,

(2) At least 3½ inches high, and

(3) At least 5 inches long.

The effective date of the implementation of these standards was postponed so that the public would have ample time to adjust to the new size requirements.

On April 3, 1979, the Board of Governors of the Postal Service, by resolution issued pursuant to 39 U.S.C. 3625(f), ordered that the minimum size standards become effective at 12:01 A.M. on July 15, 1979. In order to implement those decisions, the Postal Service adopts a new Part 129 of the Postal Service Manual setting forth the minimum size standards and their effective date. In addition, the Postal Service also adopts conforming amendments to sections 131.2, 131.3 and 134.3 of the Postal Service Manual.

Nonstandard Mail Surcharge

In addition to the establishment of minimum size standards for all mail matter, the Governors' decision of June 2, 1976 declared that First-Class Mail weighing less than one ounce and single piece rate third-class mail weighing less than two ounces, are nonstandard and subject to a surcharge unless they meet the following size standards:

a. Length not greater than 11.5 inches, and

b. Height not greater than 6.125 inches, and

c. Thickness not greater than .25 inches, and

d. An aspect ratio (ratio of height to length) between 1:1.3 and 1:2.5 inclusive.

These regulations are incorporated in sections 131.34 and 134.33 of the Postal Service Manual. The application of a surcharge on nonstandard mail was also postponed in order to afford mailers a transition period in which to adapt to the new standards.

In April, 1978, the Potal Service, pursuant to 39 U.S.C. § 3622, requested from the Postal Rate Commission a recommended decision on a proposal to apply a surcharge, in addition to the applicable postage and fees, on nonstandard size mail. After public hearings on the proposal, the Commission, on February 28, 1979, transmitted its recommended decision to the Governors of the Postal Service to establish the surcharge at 7 (seven) cents per piece.

On April 3, 1979, the Governors, pursuant to 39 U.S.C. § 3625, approved the Commission's recommended decision, and the Board of Governors, by resolution issued pursuant to 39 U.S.C. § 3625(f), ordered the surcharge implemented at 12:01 A.M. on July 15, 1979. In order to implement those decisions, the Postal Service adopts conforming amendments to sections 131.13, 131.34 and 134.33 of the Postal Service Manual.

For the above reasons, the Postal Service hereby adopts the following amendments to the Postal Service Manual:

1. Add a new Part 129 to read as follows:

PART 129—MINIMUM SIZES

Effective July 15, 1979, the following minimum size standards will be applicable:

a. All mailing pieces must be at least 0.007 of an inch thick.

b. All mailing pieces (other than keys and identification devices mailed pursuant to 134.13) which are ¼ of an inch thick or less must be:

(1) Rectangular in shape,

(2) At least 3½ inches high, and

(3) At least 5 inches long.

Note.—Effective July 15, 1979, mailing pieces which do not meet these minimum size standards will be prohibited from the mails.

PART 131—FIRST CLASS

2. In 131.1 amend .13 to read as follows:

131.1 Rates

* * * * *

.13 Nonstandard Surcharge

Effective July 15, 1979, a surcharge of 7 (seven) cents will be assessed on each

piece of nonstandard mail as defined in 131.34.

3. Add statements at the end of 131.222 (a) and (b) as follows:

.222 Post cards

* * * * *

a. * * *

Effective July 15, 1979, post cards may not be smaller than 3½ by 5 inches. (See 129.)

b. * * *

Effective July 15, 1979, the thickness of post cards may not be less than 0.007 of an inch.

4. Add the following statement at the end of 131.33:

.33 Shape, ratio, and sealing for envelopes, cards, and self-mailers.

* * * * *

Note.—Effective July 15, 1979, all first-class mailing pieces which are ¼ of an inch thick or less must be rectangular in shape, at least 3½ inches high, and at least 5 inches long. All first-class mailing pieces must also be at least 0.007 of an inch thick, effective July 15, 1979. (See 129.)

5. In 131.34 amend .342 and add .343 to read as follows:

.34 Nonstandard First-Class Mail

* * * * *

.342 Nonstandard mail often results in delays or damage to mail because it does not lend itself to machine processing. For this reason, mailers are encouraged to avoid mailing nonstandard First-Class Mail.

.343 Effective July 15, 1979, a surcharge of 7 (seven) cents will be assessed on each piece of nonstandard First-Class Mail.

PART 134—THIRD CLASS

6. Add the following statement at the end of 134.32:

.32 Size, Shape, and Ratio

* * * * *

Note.—Effective July 15, 1979, all third-class mailing pieces (other than keys and identification devices mailed pursuant to 134.13) which are ¼ of an inch thick or less must be rectangular in shape, at least 3½ inches high, and at least 5 inches long. All third-class mailing pieces must also be at least 0.007 of an inch thick, effective July 15, 1979. (See 129.)

7. In 134.33 amend .333 to read as follows:

.33 Nonstandard Third-Class Mail

* * * * *

.333 Effective July 15, 1979, a surcharge of 7 (seven) cents will be assessed on each piece of nonstandard third-class single piece rate mail.

These changes will be included in the Domestic Mail Manual when it is published this summer. These changes will be published in the Federal Register as provided in 39 CFR 111.3.

(39 U.S.C. 401(2))

W. Allen Sanders,
Acting Deputy General Counsel.

[FR Doc. 79-18838 Filed 6-12-79; 8:45 am]
BILLING CODE 7710-12-M

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39 CFR Part 257

Stamp Accountability at Philatelic Outlets

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This change in postal regulations authorizes a postmaster to maintain postage stock (includes stamps, stationery, and other philatelic products) of up to $125,000 at each philatelic outlet. Postage stock in excess of the above amount, up to $250,000, may be authorized upon approval at the regional level and with Headquarters' concurrence. Existing regulations do not provide a specific limit on the total dollar amounts of philatelic items authorized, and provide no method for requesting approval of philatelic items in excess of $125,000.

EFFECTIVE DATE: July 13, 1979.

FOR FURTHER INFORMATION CONTACT: Jo Elaine Anderson, 245-4434.

In 39 CFR 257.3 revise paragraph (e)(3)(v) to read as follows:

§ 257.3 Distribution and sale of stamps, postal stationery and philatelic products.

* * * * *

(e) Sales Policies * * *

(3) Philatelic Outlets * * *

(v) Stamp Credit (Accountability).

(A) Philatelic outlets should maintain a good working level of stamp stock, stationery, and philatelic products to encourage philatelic interest and to meet the needs of collectors. Therefore, postmasters may maintain a postage stock of up to $125,000 for each philatelic outlet at their office. This stock may be in excess of normal authorized stock limits.

(B) If operating requirements necessitate postage stock in excess of $125,000, written notification must be submitted to the appropriate Regional Retail Branch requesting special authorization. The Regional Retail Branch, with concurrence of the Regional Chief Postal Inspector, may authorize postage stock up to $250,000. If approved at the regional level, the request should be forwarded for Headquarters' concurrence to the Philatelic Marketing Division, Office of Consumer Marketing, Customer Service Department.

(C) The total amount of annual sales at the philatelic outlet must be included with any request for authorization to maintain a postage stock in excess of $125,000 for that outlet. Such requests will be approved only when the total sales justify the increase in stock level.

(D) All clerks working in philatelic outlets will be fully accountable for their own stamp credit. It is the responsibility of the postmaster to provide adequate security equipment for secure storage of these credits at all times. This paragraph (e)(3)(v) of this section does not apply to the Philatelic Sales Branch.

(39 U.S.C. 401, 404.)

W. Allen Sanders,
Acting Deputy General Counsel.

[FR Doc. 79-18839 Filed 6-12-79; 8:45 am]
BILLING CODE 7710-12-M

POSTAL RATE COMMISSION

39 CFR Ch. III

[Order No. 284 Docket No. RM79-2]

Improving Government Regulations; Order of the Commission Amending Rules of Practice

June 7, 1979

AGENCY: Postal Rate Commission.

ACTION: Final Rules.

SUMMARY: Pursuant to its final plan for implementing Executive Order 12044, the Postal Rate Commission proposed two amendments to its rules of practice, one establishing procedures governing the Commission's *in camera* orders, the other changing the description of a costing report that the Postal Service is required to file periodically with the Commission. Public comment concerning these proposed amendments was solicited in an Advance Notice of Proposed Rulemaking (44 FR 2006, January 12, 1979) and a Notice of Proposed Rulemaking (44 FR 22479, April 16, 1979). No comments were received, and we have decided to adopt these amendments as initially published.

EFFECTIVE DATE: These amendments shall become effective July 13, 1979.

FOR FURTHER INFORMATION CONTACT: David F. Stover, Assistant General Counsel (Regulation), Suite 500, 2000 L Street, N.W., Washington, D.C. 20268; telephone 202-254-3630.

SUPPLEMENTARY INFORMATION: Executive Order 12044 (43 FR 12664, March 24, 1978) sets forth the President's

program for clarifying and improving government regulations. The Postal Rate Commission's final plan for implementing that executive order includes a procedure for annual review of its rules of practice. As the first step in that procedure, the Commission published an Advance Notice of Proposed Rulemaking in the Federal Register (44 FR 2808, January 12, 1979), inviting public comments on specific amendments proposed by the Commission governing voting procedures for final acts of the Commission, *in camera* orders, and a technical amendment to our rules concerning the costing reports that the Postal Service is required to file periodically with the Commission.

Subsequently, we severed the proposed amendment relating to voting requirements and adopted that proposal as a final rule (44 FR 7695, February 7, 1979). With respect to the two remaining proposed amendments, the Commission issued a Notice of Proposed Rulemaking Bearing Docket No. RM79-2 (44 FR 22479, April 16, 1979), inviting a second round of public comment. No comments were received in response to either notice. The Commission has decided, therefore, to adopt these two proposed amendments as initially published. Accordingly, pursuant to 39 U.S.C. 3603 and 5 U.S.C. 552a, it is ordered that the Commission's rules of practice and procedure (39 CFR 3001) be amended as follows, effective 30 days after publication of this notice in the Federal Register.

Part 3001 of 39 CFR is amended by adding the following new section:

§ 3001.31a In camera orders.

(a) *Definition.* Except as hereinafter provided, documents and testimony made subject to *in camera* orders are not made a part of the public record, but are kept confidential, and only authorized parties, their counsel, authorized Commission personnel, and court personnel concerned with judicial review shall have access thereto. The right of the presiding officer, the Commission, and reviewing courts to disclose *in camera* data to the extent necessary for the proper disposition of the proceeding is specifically reserved.

(b) *In camera treatment of documents and testimony.* Presiding Officers shall have authority, but only in those unusual and exceptional circumstances when good cause is found on the record, to order documents or oral testimony offered in evidence whether admitted or rejected, to be placed *in camera.* The order shall specify the date on which *in camera* treatment expires and shall include: (1) A description of the documents and testimony; (2) a full statement of the reasons for granting *in camera* treatment; and (3) a full statement of the reasons for the date on which *in camera* treatment expires. Any party desiring, for the preparation and presentation of the case, to disclose *in camera* documents or testimony to experts, consultants, prospective witnesses, or witnesses, shall make application to the presiding officer setting forth the justification therefor. The presiding officer, in granting such application for good cause found, shall enter an order protecting the rights of the affected parties and preventing unnecessary disclosure of information. *In camera* documents and the transcript of testimony subject to an *in camera* order shall be segregated from the public record and filed in a sealed envelope, bearing the title and docket number of the proceeding, the notation "*In Camera* Record under § 3001.31a," and the date on which *in camera* treatment expires.

(c) *Release of in camera information. In camera* documents and testimony shall constitute a part of the confidential records of the Commission and shall be subject to the provisions of § 3001.42 of this chapter. However, the Commission, on its own motion without notice to any affected party, may make *in camera* documents and testimony available for inspection, copying, or use by any other governmental agency.

(d) *Briefing of in camera information.* In the submittal of proposed findings, briefs, or other papers, counsel for all parties shall make a good faith attempt to refrain from disclosing the specific details of *in camera* documents and testimony. This shall not preclude references in such proposed findings, briefs, or other papers to such documents or testimony including generalized statements based on their contents. To the extent that counsel consider it necessary to include specific details of *in camera* data in their presentations, such data shall be incorporated in separate proposed findings, briefs, or other papers marked "confidential," which shall be placed *in camera* and become a part of the *in camera* record.

The first sentence of paragraph (b) of § 3001.42 is amended to read as follows:

§ 3001.42 Public information and requests.

* * * * *

(b) *Public records.* Except as provided in § 3001.31a of this chapter, the public records of the Commission include:

39 CFR 3001.102(a)(2) is amended to read as follows:

§ 3001.102 Filing of reports.

(a) * * *

(1) * * *

(2) Cost Segments and Components.

By the Commission.

David F. Harris,

Secretary.

[FR Doc. 79-18379 Filed 6-12-79; 8:45 am]

BILLING CODE 7715-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 65

[FRL 1238-5]

Delayed Compliance Order for Sun Oil Company of Pennsylvania

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: By this rule, the Administrator of U.S. EPA issues a Delayed Compliance Order to Sun Oil Company of Pennsylvania (Sun Oil). The Order requires the Company to bring air emissions from its marketing terminals at Cleveland, Dayton, Akron, Columbus and Toledo, Ohio into compliance with certain regulations contained in the federally approved Ohio State Implementation Plan (SIP). Sun Oil's compliance with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act (Act) for violations of the SIP regulations covered in the Order.

DATE: This rule takes effect on June 13, 1979.

FOR FURTHER INFORMATION CONTACT: Pierre Talbert, Attorney, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, Telephone (312) 353-2082.

SUPPLEMENTARY INFORMATION: On January 25, 1979, the Regional Administrator of U.S. EPA's Region V Office published in the Federal Register (44 FR 5160) a notice setting out the provisions of a proposed Federal Delayed Compliance Order for Sun Oil. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed Order. No public comments and no request for a public hearing were received in response to the notice.

Therefore, a Delayed Compliance Order effective this date is issued to Sun Oil by the Administrator of U.S. EPA pursuant to the authority of Section

113(d)(1) of the Act, 42 U.S.C. 7413(d)(1). The Order places Sun Oil on a schedule to bring its marketing terminals at Cleveland, Columbus, Dayton, Akron and Toledo into compliance as expeditiously as practicable with Regulation AP-5-07, a part of the federally approved Ohio State Implementation Plan. Sun Oil is unable to immediately comply with this regulation. The Order also imposes interim requirements which meet Sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit Sun Oil to delay compliance with the SIP regulation covered by the Order until July 1, 1979.

Compliance with the Order by Sun Oil will preclude Federal enforcement action under Section 113 of the Act for violations of the SIP regulation covered by the Order. Citizen suits under Section 304 of the Act to enforce against the source are similarly precluded. Enforcement may be initiated, however, for violations of the terms of the Order, and for violations of the regulation covered by the Order which occurred before the Order was issued by U.S. EPA or after the Order is terminated. If the Administrator determines that Sun Oil is in violation of a requirement contained in the Order, one or more of the actions required by Section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under Section 307(b) of the Act.

U.S. EPA has determined that the Order shall be effective upon publication of this notice because of the need to immediately place Sun Oil on a schedule for compliance with the Ohio State Implementation Plan.

Authority—42 U.S.C. 7413(d), 7601.

Dated: June 5, 1979.

Douglas Costle,

Administrator.

In consideration of the foregoing, Chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

Part 65—Delayed Compliance Orders

1. By adding the following entry to the table in Section 65.400:

Section 65.400 Federal Delayed Compliance Orders issued under Section 113(d)(1), (3), and (4) of the Act.

65.400 Federal Delayed Compliance Orders

Source	Location	Order No.	Date of FR proposal	SIP regulation involved	Final compliance date
•	•	•	•	•	•
Sun Oil Co., of Pennsylvania	Columbus	EPA-5-79-A-36	Jan. 25, 1979	AP-5-07	July 1, 1979.
	Cleveland	EPA-5-79-A-37	Jan. 25, 1979	AP-5-07	July 1, 1979.
	Akron	EPA-5-79-A-38	Jan. 25, 1979	AP-5-07	July 1, 1979.
	Dayton	EPA-5-79-A-39	Jan. 25, 1979	AP-5-07	July 1, 1979.
	Toledo	EPA-5-79-A-40	Jan. 25, 1979	AP-5-07	July 1, 1979.
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[FR Doc. 79-19486 Filed 6-12-79; 8:45 am]
BILLING CODE 6560-01-M

Proposed Rules

Federal Register
Vol. 44, No. 115
Wednesday, June 13, 1979

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

[10 CFR Part 2]

Study of Nuclear Power Plant Construction During Adjudication; Request for Public Comments

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comments.

SUMMARY: The Nuclear Regulatory Commission's Advisory Committee on Construction During Adjudication is studying several aspects of the Commission's licensing procedures. The Advisory Committee is seeking the views of the public on the Commission's "immediate effectiveness" rule (10 CFR 2.764). That rule provides that a construction permit can be issued on the basis of an initial decision of an Atomic Safety and Licensing Board even though that decision is subject to further review within the Commission. The Committee believes that the views of the public on the rule would be of help to it in evaluating the rule's operation and impact and in assessing possible changes for improving the licensing procedures.

DATES: Comments must be received by July 6, 1979.

ADDRESS: Send comments to: Secretary of the Commission, Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Branch.

Copies of all comments received may be examined in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555.

FOR FURTHER INFORMATION CONTACT: Stephen S. Ostrach, Office of the General Counsel, Nuclear Regulatory Commission, Washington, D.C. 20555, (202) 634-3224.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission's Advisory Committee on Construction During Adjudication is seeking the views of the public on the Commission's "immediate effectiveness" rule [10 CFR 2.764]. The views of those who have participated in licensing proceedings in which the rule was significant are of particular interest. In addition to general views, the group wishes public comment on a number of specific questions about the rule. Comments must be received by July 6, 1979, and should be submitted to the Secretary of the Commission, Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Branch. Copies of all comments received may be examined in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555. Further information may be obtained from Stephen S. Ostrach, Office of the General Counsel, Nuclear Regulatory Commission, Washington, D.C. 20555, (202) 634-3224.

The Nuclear Regulatory Commission has established an Advisory Committee on Construction During Adjudication. The Committee is studying several aspects of the Commission's licensing procedures including, in particular, the Commission's "immediate effectiveness" rule (10 CFR 2.764). That rule provides that a construction permit can be issued on the basis of an initial decision of an Atomic Safety and Licensing Board even though that decision is subject to further review within the Commission.

The Committee believes that the views of the public on the rule would be of help to it in evaluating the rule's operation and impact and in assessing possible changes for improving the licensing process. The views of those who have actually participated in nuclear licensing proceedings in which the rule played a significant role are of particular interest to the group. The questions given below have been provided principally as an aid to those persons with actual experience in licensing proceedings, but they may be answered by any person. The group desires the views of parties associated with each of the different interests in licensing cases.

If each viewpoint on the rule is presented fully by these comments, the Committee will be able to formulate its recommendations to the Commission with confidence that it has taken into account a fair balance of all viewpoints. The questions concerning which respondents views are desired are as follows:

1. In a general way, how were the proceedings in which you participated affected by the rule permitting construction during agency appellate review? If there had been no such rule during appellate review, how would the proceedings have been different?

2. Was the appellate resolution of any issue which you appealed prejudiced by ongoing construction during the pendency of the appeal?

3. If so, please state the case, issue and elaborate the details, citing specific references (i.e., briefs, decisions, transcripts, etc.) which you believe indicate such prejudice.

4. In these proceedings, how long after the issuance of a limited work authorization or a construction permit did the principal environmental impact of construction occur? How did the timing of this impact affect the proceeding? Should consideration be given to changing the order in which issues are decided (currently NEPA and site suitabilitiy first, safety second)?

5. Was a stay of construction sought pending appeal? Did construction during the pendency of the stay request affect the proceeding? If so, how? Was an evidentiary hearing held on the stay request? Did such hearing (or the lack thereof) affect the disposition of the request?

6. Was interlocutory review (certification or referral) sought during the proceeding? If interlocutory review had been available, would that review have improved the proceeding? Should consideration be given to adopting a standard for interlocutory review which would facilitate an early appellate decision on the inclusion or exclusion of issues in the proceeding?

7. The following are some possible alternatives to the present rules. What effect would these alternatives have had if they had applied to the proceedings in which you participated? Do you believe, based on your experience, that any of these alternatives should be adopted?

a. Delay effectiveness of Licensing Board decisions:

1. By 10 or 15 days, to allow parties to prepare stay motions for the Appeal Board.

2. Until the Appeal Board rules on any stay motion before it.

3. Until the Commission rules on a stay.

4. Until the Appeal Board rules on the merits.

5. Until the Commission rules on the merits.

[This last suboption would in effect *repeal* the immediate effectiveness rule.]

b. Restrict effectiveness to certain cases, in which immediate effectiveness is less likely to create problems. The following are examples:

1. The case is uncontested.

2. The decision is unanimous.

3. Applicant requests immediate effectiveness and no good is shown to delay.

4. Applicant shows urgency and no good cause is shown to delay.

5. The design is an approved standard design.

6. For custom plants, design definition is well along toward final design (meeting design status criteria which would be specified).

7. The case involves a subsequent unit for a site already approved for at least one unit.

8. The site has been reviewed and received final Commission approval.

c. Restrict the amount of work the applicant may do in reliance upon the Licensing Board's decision:

1. Up to some dollar limit on:

—total commitments, or

—site-dependent commitments.

2. To certain kinds of work (e.g., items which require long lead-time, or have low impact).

3. To exclude certain items, either because they would have high or irreparable environmental impact, or because they depend upon resolution of contested issues.

d. Allow initial decisions to become immediately effective only if the authorization or permit has certain conditions attached. For examples:

1. A requirement to restore the site if the favorable Board decision is ultimately reversed.

2. Conditions on the construction sequence or schedule (to limit environmental damage during appellate review and to safeguard against an applicant rushing to build up a sunk-cost case against later reversal).

e. Alter stay standards while leaving the immediate effectiveness rule in place. Following are examples of alternative standards:

1. Alter the burden or proof on stays.

2. Grant a stay when the Appeal Board confirms the existence of an important policy or legal issue appropriate for Commission review.

3. Make stay standards vary according to the issue on which appeal is taken:

(a) Environmental as contrasted with safety issues.

(b) Site-related issues.

f. Change appellate procedures so as to permit the Commission or the Appeal Board to reach certain issues earlier. Following are examples of such changes:

1. Allow interlocutory appeals for issues (such as siting) which require decision.

2. Certify questions more frequently to the Appeal Board and the Commission.

3. Establish a mechanism for the Commission to monitor proceedings of lower boards.

4. Expedite decisions on issues affected by construction during adjudication.

8. It would also be helpful to have the public's views on aspects of the immediate effectiveness or stay rules which the above questions may not specifically address. If you are in favor of the present rules as they are now written, please give us your reasons. Also, please discuss any alternatives to or changes in the present immediate effectiveness rule (§ 2.764) or stay criteria (§ 2.788) which you feel may be appropriate.

Dated at Washington, D.C. this 8th day of June 1979.

Gary Milhollin,

Chairman.

[FR Doc. 79-18366 Filed 6-12-79; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 125]

Procurement Assistance; Assistance to Small Business in Federal Contracting Programs

AGENCY: Small Business Administration.

ACTION: Proposed Rules.

SUMMARY: This proposed rule implements the Small Business Act as amended by Pub. L. 95–507 with respect to programs rendering assistance to small businesses in Federal prime and subcontracting. Additionally, it is designed to eliminate obsolete functions an unnecessary regulations while at the same time updating, simplifying, and clarifying the functions and activities currently operational in the various programs to assist small businesses pursuing and engaged in Federal contracting, other than that covered in Part 124 (The Small Business and Capital Ownership Development Program).

DATES: Comments must be received on or before August 13, 1979.

ADDRESSES: Comments, submitted in duplicate are to be addressed to the Associate Administrator for Procurement Assistance, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Edward N. Odell, Deputy Director, Office of Procurement and Technical Assistance, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416, telephone (202) 653–6332.

SUPPLEMENTARY INFORMATION: Previously 13 CFR Part 124 contained rules and regulations covering programs designed to render management, technical, and procurement assistance. The latter included the business development program for companies owned and controlled by socially or economically disadvantaged individuals. To be in consonance with the organizational changes mandated by Pub. L. 95–507 amending the Small Business Act as well as to reflect internal administrative reorganizations, 13 CFR Part 124 was used to cover the business development program cited above. Management and some technical assistance programs regulatory coverage was designated as 12 CFR Part 129. Procurement Assistance is now being presented as 13 CFR Part 125.

The provisions contained in Part 124.8(b) 1 and 2 are now covered in Part 125.4, 6, 8 and 10. Part 124.8(b)3 has been eliminated as obsolete. Part 124.8(b)4 through 12 (excepting 124.8(b)6) are now contained in Part 125.6 through .9. Part 124.8(b)6 is properly part of the Size Standard Regulation and is covered in Part 121. The matter covered by Part 124.8–3 dealing with management assistance is properly located under Part 129. Part 124–5 and 6 have been eliminated as obsolete while Part 124.8–4, is now to be found under Part 125.6. Part 124.8–7 is covered in Part 129 entitled Management Assistance Part 124.8–7 through 17 is now contained in Parts 125–5 through 10. What was previously entitled "Part 125—Research and Development Assistance" is now covered under part 125.10. "Part 126—Defense Production Pools" is presented now under 125.7 "Part 127—Joint Set Asides" is covered in Part 125.6 and .8.

Notice is hereby given that pursuant to the authority contained in Section 5(b)(6) of the Small Business Act, 15 U.S.C. 634, it is proposed to delete § 124.8–3 through § 124.8–17 from 13 CFR Part 124; to delete 13 CFR Parts 126 and

127 in their entirety; and to revise Part 125 of Chapter I, Title 13 of the Code of Federal Regulations, as set forth below.

Dated June 6, 1979.

William H. Mauk, Jr.,
Acting Administrator.

Revision 1

PART 125—PROCUREMENT ASSISTANCE

Sec.
125.1 Policy.
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Procurement Assistance

125.3 Introduction.
125.4 Statutory Provisions.

Office of Procurement and Technical Assistance

125.5 Certificate of Competency.
125.6 Prime Contracts Assistance.
125.7 Defense Production Pools.
125.8 Property Sales Assistance.
125.9 Subcontracting Assistance.
125.10 Technology Assistance

Authority: Sec. 5, Small Business Act, 15 U.S.C. 634.

§ 125.1 Policy.

It is the policy of the United States that small concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency. The Small Business Administration will aid, counsel, and assist, insofar as is possible, small business concerns to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government (including but not limited to contracts or subcontracts for equipment, materials and supplies; maintenance, repair, construction and architect-engineer services; research, development, test and evaluation) are placed with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to insure that a fair proportion of the total sales of Government property be made to such enterprises; and to maintain and strengthen the overall economy, well-being and security of the Nation.

§ 125.2 Definitions.

For purposes of this part:

(a) "Administrator" means the Administrator of the Small Business Administration.

(b) "SBA" means the Small Business Administration.

(c) "Small business" means a business which qualifies as a small business under the small business size standards requirements, Part 121 of this chapter, and includes small concerns owned and controlled by socially and economically disadvantaged individuals under the definition thereof in Part 124 of this chapter.

(d) The terms "procurement" and "acquisition" are used interchangably throughout.

(e) The term "Federal agency" as used herein does not include the U.S. Postal Service or the General Accounting Office.

(f) The term "Government procurement contract" means any contract for the procurement of any goods or services by any Federal agency.

Procurement Assistance

§ 125.3 Introduction.

The regulations in this part implement the Procurement Assistance Programs of the Small Business Administration. The Office of the Associate Administrator for Procurement Assistance establishes SBA policy for and issues directives to carry out the nationwide operation of (currently) five major programs: Certificate of Competency; Prime Contracts Assistance; Property Sales Assistance; Subcontracting Assistance; and Technology Assistance. The five programs are involved in aiding small business firms to obtain a fair share of Federal Government procurement contracts and subcontracts and Federal Government resources.

§ 125.4 Statutory Provisions Summarized.

SBA Procurement Assistance is authorized, as of the date of this regulation, under Sections 8(b) (15 U.S.C. 637(b)); 8(d) (15 U.S.C. 637(d)); 9 (15 U.S.C. 638); 11 (15 U.S.C. 640); (15 U.S.C. 643); 15 (15 U.S.C. 644); 222 (41 U.S.C. 405(a)); (40 U.S.C. 401 note); and 223(a) (15 U.S.C. 637(b)) of the Small Business Act, as amended.

(a) Section 8(b) authorizes the SBA—

(1) To provide procurement and technical assistance to small business concerns by advising and counseling on matters in connection with Government procurement (including certain Federal prime contractor procurements) and property disposal, and on policies, principles, and practices of Federal Government acquisition;

(2) To obtain from any Federal department, establishment or agency engaged in procurement, or in the financing of procurement or production, or in the disposal of Federal property, such reports concerning the letting of and compliance with contracts and subcontracts, solicitations of bids or proposals, time of sale, or otherwise as it may deem appropriate in carrying out its functions under the Small Business Act, as amended;

(3) To certify to Government procurement officers, and officers engaged in the sale and disposal of Federal property with respect to all elements of responsibility, including but not limited to the competency, capability, capacity, credit, integrity, perseverance and tenacity, of any small business concern or group of such concerns to perform a specific Government contract;

(4) To review a Government procurement officer's finding that an otherwise qualified small business concern may be ineligible due to the provisions of Section 35(a) of Title 41, United States Code (the Walsh-Healey Public Contracts Act);

(5) To make a complete inventory of all productive facilities of small business concerns or to arrange for such inventory to be made by any other Governmental agency which has the facilities; and

(6) To assist small business concerns to obtain Government contracts for research and development; to assist small business concerns to obtain the benefits of research and development performed under Government contracts or at Government expense; to provide technical assistance to small business concerns to accomplish this purpose; and to insure that a fair proportion of Government contracts for research and development be placed with small business concerns.

(b) Section 8(d) authorizes the SBA—

(1) To review solicitations requiring the submission of subcontracting plans to determine the maximum practicable opportunity for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate as subcontractors in the performance of any contract resulting from any solicitation, and submit findings which shall be advisory in nature to the appropriate Federal agency;

(2) To assist Federal agencies and businesses in complying with their subcontracting responsibilities (Section 8(d) of the Small Business Act, as amended) including the formulation of subcontracting plans for contracts to be let pursuant to the negotiated method of procurement;

(3) To obtain reports from Federal prime contractors and subcontractors demonstrating the extent of compliance with the contract provisions for small and disadvantaged subcontracting; and

(4) To evaluate compliance with subcontracting plans, either on a contract-by-contract basis, or in the case of contractors having multiple contracts, on an aggregate basis.

(c) Section 8(d) provides—

(1) That each Government procurement prime contract and any amendment or modification thereto, and each subcontract let thereunder, which may exceed $1,000,000 in the case of construction projects or $500,000 in every other case, except those which (i) will be performed entirely outside of any state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; (ii) are for personal services; or (iii) are awarded to small business concerns; shall contain a mandatory provision for timely submission by the apparent successful bidder or offeror of an acceptable subcontracting plan that reflects maximum practicable opportunities for participation by and utilization of, to the fullest extent consistent with efficient contract performance, small and small disadvantaged business concerns to perform subcontracts to be let thereunder;

(2) That any contractor or subcontractor who fails to comply in good faith with the mandatory subcontracting provisions of a Government procurement contract or subcontract thereunder shall be found in material breach of such contract or subcontract.

(d) Section 9 authorizes the SBA—

(1) To consult with and make recommendations to all Government agencies for the purpose of providing small business concerns assistance, including technical assistance, to obtain (i) Government contracts for research and development, and (ii) the benefits of research and development performed under Government contracts or at Government expenses; and to conduct studies, with the cooperation of Government agencies, of Government procurement or funding of research and development effort;

(2) To assist and encourage small business concerns to jointly undertake programs for research and development through such corporate or other mechanism appropriate for the purpose and to approve, after consultation with the Chairman of the Federal Trade Commission and with prior authorization of the Attorney General, any agreement between small business firms providing for such a joint program.

(e) Section 11 provides that small business concerns may be authorized and encouraged, if found to be in the public interest as contributing to the national defense, to enter into voluntary agreements and programs to form Defense Production Pools for the purpose of furthering the objectives of the Small Business Act.

(f) Section 14 authorizes the SBA to make a fair charge for the use of Government-owned property as and to the fullest extent it deems practicable, and to make and let contracts on a basis that will result in recovery of the direct costs which it incurs in so doing.

(g) Section 15 provides—

(1) That small business concerns shall be awarded any Government procurement contract, or any part thereof, and any contract for the sale of Government property, as to which it is determined by the SBA and the procurement or disposal contracting agency to be in the interest of (1) maintaining or mobilizing the Nation's full productive capacity, (2) war or national defense programs, (3) assuring that a fair proportion of the total purchases and contracts for property and services for the Government are placed with small business concerns, or (4) assuring that a fair proportion of the total sales of Government property be made to small business concerns; and that any failure of the SBA and contracting agency to reach agreement shall cause the SBA Administrator to submit the matter to the Secretary or head of the appropriate department or agency for determination;

(2) That the head of each Federal agency will provide the SBA a report at the conclusion of each fiscal year on the extent of participation by small business concerns, and by small disadvantaged business concerns in procurement contracts, which report shall contain the rationale and justification for any failure by the Federal agency to meet established goals for review, consolidation and submission to the Select Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives;

(3) That separate goals for the participation by small business concerns and small disadvantaged business concerns in Government procurement contracts shall be established annually by the head of each Federal agency following consultation with the SBA, and that the Administrator of the Office of Federal Procurement Policy shall establish the goal whenever there is disagreement between a Federal agency head and the SBA;

(4) That exclusive small business set-asides are authorized for Government procurements or architect and engineering services, and research, development, test and evaluation;

(5) That each Government contract for procurement of goods or services which has an anticipated value of less than $10,000 and is subject to small purchase procedures shall be set aside exclusively for small business concerns unless the contracting officer is unable to obtain competitive offers from at least two small business concerns;

(6) That a method of prompt payment to contractors which also minimizes paperwork shall be employed whenever circumstances permit for Government procurement contracts effected under small purchase procedures;

(7) That an "Office of Small and Disadvantaged Business Utilization" shall be established in each Federal agency having procurement powers, and that management of such office shall be vested in an employee of each such agency who shall be known as the "Director of Small and Disadvantaged Business Utilization" and who shall—

(i) Be appointed by the head of such agency, and be responsible only to, and report directly to, the head of such agency or to his deputy;

(ii) Be responsible for implementation and execution of the Federal agency's functions and duties under Sections 8 and 15 of the Small Business Act as amended, and have supervisory authority over such agency personnel to the extent of their functions and duties thereunder;

(iii) Cooperate and consult on a regular basis with the SBA relative to carrying out the Federal agency's functions and duties under Sections 8 and 15 of the Small Business Act, as amended; and

(iv) Assign to each acquisition activity within such Federal agency to which the SBA has a procurement center representative assigned, a small business technical advisor (A) who shall be a full-time employee of the activity and well-qualified, technically trained, and familiar with the supplies or services purchased at the activity, and (B) whose principal duty shall be to assist the assigned SBA procurement center representative in carrying out his duties and functions relating to Sections 8 and 15 of the Small Business Act, as amended.

(h) Section 222 of Pub. L. 95-507 provides—

(1) That in formulating Federal procurement procedures which govern the acquisition process for all Government procurement requirements, the Administrator of the Office of Federal Procurement Policy shall, in consultation with the SBA, conduct

analyses of the impact on small business concerns;

(2) That the forthcoming Federal Acquisition Regulation directed by Public Law 93-400 incorporate revised Government procurement regulations which provide for simplified bidding, contract administration, and contract performance procedures for small business concerns.

(i) Section 223(a) of Pub. L. 95-507 provides that any small business concern shall be provided upon its request, in connection with any Government procurement contract to be let by any Federal agency, except in the case of a contract which will be performed entirely outside any state, territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico, or which is for personal services—

(1) The applicable bid set and specifications;

(2) The name and telephone number of an employee of such agency to answer questions with respect to such contract; and

(3) Adequate citations to each major Federal law or agency rule with which small business concerns must comply in performing such contract.

Office of Procurement and Technical Assistance

§ 125.5 Certificate of competency program.

The Certificate of Competency (COC) Program is authorized under Sections 8(b)(7)(A), (B), and (C) of the Small Business Act. A COC is a written instrument issued by SBA to a Government contracting officer, certifying that a small concern (or group of such concerns) named therein possesses the responsibility to perform a specific Government procurement (or sale) contract.

(a) Government procurement officers and officers engaged in the sale and disposal of Federal property, upon determining and documenting that a small business lacks certain elements of responsibility, including but not limited to competency, capability, capacity, credit, integrity, perseverance, and tenacity, notify SBA of such determination. Award is withheld by the contracting officer for a period of up to 15 working days following the date of receipt by SBA of notice of such determination (with appropriate documentation) in order to permit SBA to investigate the elements referred and certify as to the bidder's responsibility with respect to the elements referred.

(b) Upon receipt of this notification, SBA personnel then contact the company concerned to inform it of the impending decision and to offer an opportunity to apply to SBA for a COC. A concern wishing to apply to SBA for a COC advises the SBA regional office for the geographic area within which the concern is located. Upon timely receipt of required documentation, a team of SBA personnel is sent to the firm to investigate the responsibility of the applicant as to the specific elements of responsibility referred to SBA and make recommendations to the regional director.

(c) If the regional director's decision is negative, the COC is denied and both the firm and procuring activity are notified. If the regional director's decision is affirmative and the procurement is less than $500,000, the regional director issues a COC. For procurements in excess of $500,000, if the regional directoir recommends issuance of the certificate, the Associate Administrator for Procurement Assistance, SBA Central Office, causes a review to be made and either issues or denies the certificate. If the Associate Administrator's decision is negative, the firm and procuring activity are so informed; if affirmative, a letter, certifying the responsibility of the firm as to the elements of responsibility referred (the Certificate of Competency) is sent to the procuring activity and the applicant informed of such issuance by the regional office. By terms of the Small Business Act, as amended, the COC is conclusive as to responsibility. Contracting officers are directed to award a contract without requiring the firm to meet any other requirement with respect to responsibility.

(d) The notification to an unsuccessful applicant concern will briefly state the reason for denial and inform the applicant that a meeting may be requested with the appropriate SBA regional personnel to discuss the reasons for denial. Upon receipt of a request for such a meeting, the appropriate regional personnel will confer with the applicant and explain fully the reasons for SBA's action. However, such conference will be for the sole purpose of enabling the applicant to improve or correct deficiencies and will not constitute a basis for reopening the case in which the certificate was denied.

(e) After a COC is awarded for capacity or credit and the contract is let to the applicant, SBA keeps a close watch on the progress. Monthly checks are made by SBA field personnel who report directly to the Central Office on the status of the contract. In this way SBA technical assistance is constantly available to the contractor.

(f) A manufacturing, construction or service concern shall not be eligible for a COC unless it performs a significant portion of the contract with its own facilities and personnel to assure SBA that the bidder is a manufacturing, construction or service concern.

(g) An independent small business dealer, distributor or wholesaler shall be eligible for a COC only when it is responding in its own name to a non-set-aside procurement, and the items to be furnished under the contract will be manufactured in the United States, and the small non-manufacturer alone bears the responsibility for success or failure in supplying those products. In the event of a tie bid, preference shall be given to the concern supplying the product of a small business. Should the product of a large business be supplied, that product and the responsibility of the manufacturer must be acceptable to the procuring activity. The responsibility of the small business dealer is ceritifed, not the manufacturer.

(h) A Government procurement officer documenting that a small concern is ineligible due to the provisions of Section 35(a) of Title 41, U.S.C. (the Walsh-Healey Public Contracts Act) notifies SBA of such determination. SBA may certify that the concern is eligible for the specific contract or concur with the finding of ineligibility and refer the matter to the Secretary of Labor for final disposition. Brokers are not eligible for a COC.

(i) SBA by law issues a certification on the basis that officers of the Government having procurement or property disposal powers are directed to accept such certification as conclusive, and shall let the contract to such concern without requiring it to meet any other requirement of responsibility or eligibility.

§ 125.6 Prime contracts assistance.

In accordance with specific provisions of the Small Business Act, as amended, the Small Business Administration, develops, establishes and implements programs to increase the share of Government prime contracts awarded to small business concerns, including small business concerns owned and controlled by socially and economically disadvantaged individuals; to assist those small busjness firms having procurement and contract administration problems involving the Federal acquisition agencies; and to assist such concerns to form small business production or research and

development pools. Federal acquisition regulations and instructions serve as the procedural vehicle for implementation of the Government's small and small disadvantaged business acquisition policy as declared in the Small Business Act. The effort to increase prime contract awards to small and small disadvantaged business concerns is concentrated in the early stages of the procurement cycle. The SBA has procurement center representatives stationed at Federal installations which have major buying programs. SBA procurement center representatives accomplish their mission in coordination with small business specialists, and with small business technical advisers assigned to Federal acquisition activities, whose principal duties include responsibility for assisting SBA procurement center representatives in the performance of all prime contracting assistance duties and functions emanating from the Small Business Act, as amended. The SBA Prime Contracts Assistance Program is designed to cause the procurement center representatives to carry out the following functions in connection with the acquisition of Federal procurement requirements:

(a) Represents the SBA in all Prime Contracts Assistance matters at Federal acquisition installations;

(b) Screen proposed Government procurements which the acquisition agencies' contracting officials and small business specialists or small business technical advisors do not recommend, including those recommended initially but later withdrawn, for small business set-asides, and small business labor surplus area set-asides, as appropriate, for possible set-aside action, either partial or total, by the SBA. In appropriate instances, appeal SBA initiated set-asides denied by the heads of acquisition activities to the secretary of the department or head of the agency through the Associate Administrator for Procurement Assistance, SBA Central Office;

(c) Representes the entire small business community to the Federal acquisition agencies and initiate activities necessary to provide an optimum climate for participation in the Government's contracting system;

(d) Review regulations and instructions of Federal acquisition agencies and activities for potential impact on small and small disadvantaged business concerns involved in Government procurement, and make recommendations through the Associate Administrator for Procurement Assistance for resolutions of provisions deemed prejudical to small or small disadvantaged business concerns at the highest necessary levels of the acquisition agencies;

(e) Review and evaluate the small business programs of individual Federal acquisition actitities, and make recommendations either directly to the activities or through the Offices of Procurement and Technical Assistance, SBA Central Office, to the Federal department or agency which, when implemented, improve program effectiveness and results;

(f) Recommend potential small and small disadvantaged business sources for the contracting agencies' use in their procurement solicitations;

(g) Assist the acquisition agencies and activities in establishment of goals for awards to small business concerns and to small business concerns owned and controlled by socially and economically disadvantaged individuals, and periodically report progress toward attainment thereof to the Associate Administrator for Procurement Assistance, SBA Central Office;

(h) Sponsor and participate in conferences and training courses, public and Government, designed to provide information and counsel to increase small and small disadvantaged business participation in Government procurement;

(i) Establish local operating procedures at and in conjunction with individual acquisition activities, within policy guidelines and direction of the Associate Administrator for Procurement Assistance, SBA Central Office, designated to efficiently and effectively utilize Federal agency small business technical advisors in the discharge of their statutory responsbility and performance of their principal duty to assist SBA procurement center representatives in achieving the congressional objective of providing maximum procurement opportunities for small and small disadvantaged business concerns;

(j) Advise, counsel and assist small and small disadvantaged business concerns which are having procurement or contracting problems with an acquisition or contract administration activity;

(k) Advise and guide small and small disadvantaged businesses in doing business with the Government;

(l) Counsel small and small disadvantaged businesses on how to prepare and submit bids and proposals, and obtain prime contracts and subcontracts;

(m) Assist small and small disadvantaged businesses in getting their names placed on bidders' lists, and in obtaining drawings and specifications for proposed purchases, and offer related services, which include supplying leads on research and development projects;

(n) Review terms, conditions and specifications of solicitations for bid or proposal offerings to ascertain, insofar as possible, that maximum contract and subcontract opportunities are afforded to small and small disadvantaged business concerns as required by the Small Business Act, as amended;

(o) Coordinate, as possible, with contracting officials in determining acceptability of proposed subcontracting plans to provide maximum practicable opportunities for small and small disadvantaged businesses; and advise the head of the acquisition activity and the Associate Administrator for Procurement Assistance, SBA Central Office, in cases of disagreement with contracting officials;

(p) Identify procurement requirements for potential 8(a) contracting action by officials of the Associate Administrator for Minority Small Business and Capital Ownership Development as a result of screening Government procurement requisitions.

§ 125.7 Defense production pools.

(a) Defense Production Pools, which involve the voluntary pooling of small business concerns, are authorized for the purpose of furthering the objectives of the Small Business Act. Such pools, if their pooling agreements are approved, enjoy certain immunities from the antitrust laws and the Federal Trade Commission.

(b) An approved pool is treated the same as any other bidder or contractor for procurement purposes. A member company of a pool is not precluded from submitting bids or proposals on other procurements but its bid or proposal will not be considered if it has participated in a bid or proposal submitted by its pool. However, the existence of a production pool agreement may affect the responsibility of a pool member company in the consideration of its individual bid or proposal.

(c) To qualify as a pool, the group members must:

(1) Associate for the purpose of procuring contracts—or to effectuate the purposes of the Small Business Act;

(2) Enter into a pool agreement controlling their organization, relationship and procedures;

(3) Secure approval under either the Defense Production Act or the Small Business Act

(d) Bids or proposals of an approved pool may be submitted by the pool in its

own name or by an individual member if the bid or proposal specifies that it is made on behalf of the pool. If a bid is not so submitted, it is not eligible for award. Contracting officers may rely upon a copy of the SBA notification of approval as proof of such approval.

(e) Unincorporated pools, before award of a contract, must furnish a certified copy of a Power of Attorney from each member who is to participate in the performance of the contract. The Power of Attorney must designate an agent to execute the bid, proposal, or contract for the member.

(f) Any group of small business concerns which wishes to form a pool should request the SBA district office to arrange a meeting. The names and addresses of all such concerns which are considering participation in the pool shall be provided to SBA along with information as to the kinds of businesses in which they are engaged, and the name of a representative of each participant who should be invited to the initial meeting to be held at the SBA district office. The purpose of the meeting is to explore, with the SBA representative, the desirability of forming a pool, the proposed plan of operation and related matters.

§ 125.8 Property sales assistance.

The Property Sales Assistance Program is authorized under Sections 2(a), 8(b), 10(f), and 15 of the Small Business Act.

(a) Pursuant to the statutory requirements of the Small Business Act, the Small Business Administration is charged to insure that small business concerns obtain a fair share of all Federal real and personal property which qualifies for sale or other competitive disposal action. The basic purpose of the program is:

(1) To insure small business concerns obtain a fair share of Government property sales/leases to include, where necessary, small business set-asides;

(2) To provide aid, counsel and other available assistance to small business concerns on all matters pertaining to Government sales/leases.

(b) The Property Sales Assistance Program and its implementation were designed to assure small business the opportunity to bid competitively on Government property being sold or leased. Interagency agreements have been formalized with the Departments of Agriculture, Interior and Defense, and the General Services Administration to provide for cooperative effort in setting aside certain sales of Government property for exclusive bidding by small business concerns.

(c) Specific areas of Government property included in the Property Sales Assistance Program are:

(1) Timber and related forest products;

(2) Strategic material from national stockpiles;

(3) Royalty oil and leases involving rights to minerals, oil, gas, vegetation; and

(4) Excess and surplus real and personal property primarily from GSA and DOD sources.

(d) The Property Sales Assistance Program is directed by Central Office staff management and assigned industrial specialists with posts of duty at key geographic locations throughout the United States. SBA property sales industrial specialists are charged with the specific, primary responsibility to monitor all Federal timber sales and to require, if necessary, joint set-asides as proposed timber sales to insure a "fair proportion" of sales are offered to small businesses. Specific procedures for determining a "fair proportion" are in accordance with appropriate interagency agreements. Guidelines pertaining to timber sales are further outlined in § 121.3–9. To insure that set-aside timber is processed by small business, the provisions of § 121.3–9(b) require that the purchasers of preferential Government timber sales agree to the following:

(1) If the timber is being purchased for resale, that it will not sell more than 30 percent (50 percent in Alaska) of the preferential timber to concerns not meeting SBA's small business size standard; and

(2) If the timber is being purchased for manufacture, that it will do so with its own facilities or those of concerns that qualify as small business.

(e) At the time the contract for the sale of Federal timber is executed, the selling agency requires execution of SBA Form 723, "Small Business Certification Required on all Preferential Sales of Set-Aside Timber," which becomes a part of the sales contract.

(f) A concern that violates the provisions of a preferential set-aside sale agreement may be subject to:

(1) Cancellation of timber sale contract or contracts that have been breached;

(2) Debarment from participating in future Federal timber sales;

(3) Disqualification from participating in future Federal timber sales set aside for small business; and

(4) Criminal proceedings.

(g) When it brought to the attention of SBA that a purchaser of set-aside timber or logs has appeared to violate the 30 percent (50 percent in Alaska) clause in the size standard for disposal of timber or sawlogs, the industrial specialist, when necessary, shall investigate the circumstances immediately. The purpose of the investigation shall be to ascertain whether said person or concern sold set-aside logs to other than small business in excess of the 30 percent allowable under the size standard regulations.

(h) The program's past efforts have stressed small business involvement primarily in the timber and royalty oil areas. Under the expanded, more fully developed Property Sales Assistance Program, increased emphasis is placed on the following key areas:

(1) Closer definition of small business constituency which qualify for assistance, and establishement of an inventory of related firms and their capabilities;

(2) Expanded negotiations with various Federal departments and agencies involved to establish specific small business set-aside programs, and to develop mutual operating procedures, as necessary, to monitor set-aside implementation and progress; and

(3) Increased development of energy information relating to mineral leasing and set-asides and access thereto as required for counseling, programming and other assistance to small concerns involved or contemplating involvement in the energy field.

§ 125.9 Subcontracting assistance program.

The Subcontracting Assistance Program is authorized under Sections 2(a), 8(b)(2), 8(b)(3), 8(b)(5), 8(c), 8(d)(1) through 8(d)(11), and 10(f) of the Small Business Act, as amended.

(a) Pursuant to statutory authorities and requirements of the Small Business Act, as amended, it is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals, shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency. Participation in performance is defined to mean subcontracted goods or services under Federal agency prime contracts.

(b) The Small Business Administration has subcontract specialists throughout the Nation who may assist small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals in subcontracting opportunities. Federal prime contracts in excess of $10,000 shall contain the clause entitled "Utilization of Small Business Concerns

and Small Business Concerns Owned and Controlled by Socially and Ecohomically Disadvantaged Individuals."

(c) Federal agency prime contracts in excess of $1,000,000 for construction and $500,000 for all others which offer subcontracting possibilities must contain a subcontracting plan. Small business prime contractors are excluded. Each subcontracting plan required shall include:

(1) Percentage goals (expressed in terms of total planned subcontracting) for the utilization as subcontractors of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals;

(2) The name of an individual within the employ of the offeror or bidder who will administer the subcontracting program of the offeror or bidder and a description of the duties of such individuals;

(3) A description of the efforts the offeror or bidder will take to assure that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals will have an equitable opportunity to compete for subcontracts;

(4) Assurances that the offeror or bidder will include the clause entitled "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals" in all subcontracts which offer further subcontracting opportunities, and that the offeror or bidder will require all subcontractors (except small business concerns) who receive subcontracts in excess of $1,000,000 in the case of a contract for construction of any public facility, or in excess of $500,000 in the case of all other contracts, to adopt a plan meeting the basic requirements of the prime contractor's subcontracting plan;

(5) Assurances that the offeror or bidder will submit such periodic reports and cooperate in any studies or surveys as may be required by the Federal agency or the Small Business Administration in order to determine the extent of compliance by the offeror or bidder with the subcontracting plan; and

(6) A recitation of the types of records the successful offeror or bidder will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in this plan, including the establishment of source lists of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals; and efforts to identify and award subcontracts to such small business concerns.

(d) The failure of contractor or subcontractor to comply in good faith with the clause entitled "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals" or any required subcontracting plan in its contract or subcontract shall be a material breach of such contract or subcontract.

(e) The Small Business Administration is authorized to assist Federal agencies and businesses in complying with their responsibilities under subcontracting plans. The SBA may review any solicitation for any contract to be let, which would require a subcontracting plan, to determine the maximum practicable opportunity for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate as subcontractors in the performance of any contract resulting from any solicitation, and submit its findings, which shall be advisory in nature, to the appropriate Federal agency.

(f) The Small Business Administration will evaluate compliance with subcontracting plans, either on a contract-by-contract basis, or in the case of contractors having multiple contracts on an aggregate basis. In the case of aggregate evaluation of contract plans, a statistical sampling of contracts will be performed to determine compliance or non-compliance. All cases of non-compliance will be referred by SBA regional offices with recommendations for Central Office final decision. Evaluation for compliance will be based upon the complete terms of the contract subcontracting plan. Due to the length of the contract, performance periods and the point of evaluations, compliance or non-compliance may either be interim or final.

(g) At the conclusion of each fiscal year, SBA shall submit to the Senate Select Committee on Small Business and the Committee on Small Business, House of Representatives, a report on subcontracting plans found acceptable by any Federal agency which SBA determines do not contain maximum practicable opportunities to participate in the performance of the contract. In addition, the report will furnish information concerning subcontracting plans found to be in non-compliance.

(h) *Program Operation.* To carry out the Subcontracting Assistance Program, SBA subcontracting specialists are located in regional and district officers throughout the Nation.

(1) Program assistance directly available to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals from SBA personnel is as follows:

(i) Counseling representatives of firms interested in and capable of supplying Government procurement requirements on a subcontract basis;

(ii) Information and assistance on how to develop subcontract opportunities, and in obtaining currently available projects;

(iii) Information concerning subcontract opportunities for selected items, equipment and services being procured by the Government through large business prime contractors and major subcontractors;

(iv) Information and assistance on qualifications required to become eligible for inclusion on potential source listings of large business firms for future subcontract requirements;

(v) Names, addresses and telephone numbers of large business procurement representatives.

(2) SBA subcontract specialists perform the following additional duties:

(i) Assist large business, Government prime contractors and subcontractors, if requested and to the extent of available resources, in the compliance and formulation of contractually required subcontracting plans through the furnishing of potential sources;

(ii) Review subcontracting plans submitted by large business firms to Government contracting officials for approval and inclusion in major prime contracts and subcontracts;

(iii) Evaluate compliance by large business concerns with subcontracting lans incorporated into and made a material part of major prime contracts and subcontracts;

(iv) Evaluation of compliance by all concerns in their adherence to the clause entitled "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals";

(v) Recommend potential small and disadvantaged business sources to large business firms and to Government officials for performance of subcontract requirements under major Government contracts and subcontracts;

(vi) Maintain liaison with and visit large business Government prime contractors and subcontractors to assist, where requested and possible with available resources, in long term

procurement plans for the purpose of encouraging increased utilization of small and disadvantaged business concerns as subcontractors;

(vii) Review and evaluate subcontracting regulations, procedures, policies, and instructions for impact on small and disadvantaged business;

(viii) Participate in conferences and training courses, public and Government, which provide information and counsel directed at increased small and disadvantaged business participation in subcontracting for Federal procurement requirement.

(3) The Associate Administrator for Procurement Assistance monitors performance, evaluates effectiveness and issues directives to implement the Subcontracting Assistance Program field operations. Management of the program is accomplished through:

(i) Establishment of program policy and procedural guidance and direction of SBA subcontracting specialists for daily interface with Government and industry officials at the field level to accomplish program objectives;

(ii) Studies and surveys conducted of the methods and practices employed by large business Government prime contractors and subcontractors;

(iii) Review and analysis of subcontracting plan compliance evaluation reports developed by SBA subcontracting specialists and reported to the Associate Administrator for Procurement Assistance; and

(iv) Compile the required reports to Congress.

(i) *Procurement Automated Source System.*

The SBA maintains an active Procurement Automated Source System (PASS) which is the primary basis for recommending potential small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals as sources for both prime and subcontracting. The PASS is a nationwide computerized storage and retrieval bank. Concerns desirous of being included in the PASS should obtain SBA Form 1167, "PASS Company Profile," from the nearest SBA branch, district, or regional office. Instructions for filing are conveniently printed on form 1167. If assistance should be required, it can be obtained from SBA field offices. The computerized inventory of small and disadvantaged business concerns is used to make referrals for procurements to assist those concerns in being placed on appropriate bidders' lists and for mobilization purposes, if required. Potential procurement opportunities may be local or nationwide. Once registered in the system, the company must update its data once a year to remain in the system. Potential sources may be obtained by small and large business and Government agencies.

§ 125.10 Technology assistance program.

(a) Section 9(a) of the Small Business Act states: "Research and Development are major factors in the growth and progress of industry and the national economy. The expense of carrying on research and development programs is beyond the means of many small business concerns, and such concerns are handicapped in obtaining the benefits of research and development programs conducted at Government expense. These small business concerns are thereby placed at a competitive disadvantage. This weakens the competitive free enterprise system and prevents the orderly development of the national economy. It is the policy of the Congress that assistance be given to small business concerns to enable them to undertake and to obtain the benefits of research and development in order to maintain and strengthen the competitive free enterprise system and the national economy."

(b) Section 9(b) states: "It shall be the duty of the Administration (SBA), and it is hereby empowered—

"(1) To assist small business concerns to obtain Government contracts for research and development;

"(2) To assist small business concerns to obtain the benefits of research and development performed under Government contracts or at Government expense; and

"(3) To provide technical assistance to small business concerns to accomplish the purposes of this section."

(c) Section 9(c) states: "The Administration is authorized to consult and cooperate with all Government agencies and to make studies and recommendations to such agencies, and such agencies are authorized and directed to cooperate with the Administration in order to carry out and to accomplish the purposes of this section."

(d) *Research and Development (R&D) Procurement Assistance.* (1) SBA will identify and register the capabilities of small R&D firms interested in Government contract opportunities. The procedure for cataloging the pertinent information on these firms will be through registration in the PASS. PASS is a computerized system designed to be instantaneously responsive to the requests of Government agencies for the profiles of small firms that would be potential bidders on Government contracting opportunities. SBA will publish an annual directory of R&D firms contained in the PASS, and make appropriate distribution of this directory. SBA will periodically convene conferences with small R&D firms and other Federal agencies for the purpose of increasing the share of Government R&D contracts awarded to small business.

(2) *Procedure.* Small business concerns desiring to register in the PASS program should contact the nearest SBA field office and request a PASS Company Profile Form. The completed profile should be forwarded to the cognizant SBA regional office as described in the registration instructions. Registration in the PASS program is a no-charge service for participating firms.

(e) *Technology Transfer.* (1) SBA, within existing resources, will assist small firms by identifying and transferring applicable and available technology for purposes which may include product development, process improvement, problem-solving, or state-of-the-art information.

(2) *Procedures.* (a) Small business firms may request technology assistance at any SBA district or regional office. The majority of requests come from small business firms as a result of SBA information flyers which describe the services available. The Reader Service portion of the information flyer is completed by the small firm and forwarded to SBA for action.

(b) SBA will make every effort to respond initially to these requests within 30 days. Whenever possible, this response will be in the form of personal or telephone contact with the appropriate individual at the requesting firm.

(c) Where necessary SBA will assist the firm to clearly and adequately define the problem or request for technical information.

(d) SBA will locate the requisite technology and provide it to the requesting firm.

[FR Doc. 79-18294 Filed 6-12-79; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[22 CFR Part 6a]

[Docket No. SD-146]

Privacy Act Policies and Procedures

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State proposes to amend Part 6a of Title 22 of the Code of Federal Regulations by exempting portions of a record system from certain provisions of the Privacy Act of 1974 (5 U.S.C. 552a). In addition to a previously-published amendment to exempt the records of the Special Assignments Staff, the Department finds it necessary to also exempt the records of the Command Center, both of which are described in the Security Records (STATE–36), from the provisions of subsection (c)(3); (d); (e)(1); (e)(4)(G), (H), (I); and (f).

DATES: Comments must be received on or before July 13, 1979.

ADDRESS: Send comments to the Chief of the Privacy Staff, Room 1239, Department of State, 2201 C Street NW., Washington, D.C. 20520.

FOR FURTHER INFORMATION CONTACT: Sharon B. Kotok, (202) 632–1267.

SUPPLEMENTARY INFORMATION: The Department has found it necessary to exempt from disclosure records compiled and maintained by the Special Assignments Staff, previously published in the Federal Register (SD–138, 43 FR 48046, October 5, 1978). Records compiled and maintained by the Command Center, which are included among the Security Records (STATE–36), should also be exempt from certain provisions of the Act. Pursuant to subsection (j)(2) of the Privacy Act, the Department intends to exempt the records of the Special Assignments Staff in order to assure effective investigative and judicial proceedings in criminal cases. The Special Assignments Staff conducts criminal and counterintelligence investigations, as well as investigations to determine suitability for continued employment. The Department also intends to exempt the records of the Command Center under subsection (j)(2). This will assure the Department's ability to provide adequate protection to the Secretary of State and his family, high-ranking U.S. Government officials, and visiting foreign dignitaries. The Department's Command Center coordinates all activities of the protective branch of the Office of Security. In addition, the Command Center maintains records concerning domestic and foreign terrorist activities, as well as individuals and organizations which may pose a threat to the Department's protectees. If the records of the Special Assignments Staff and Command Center were not exempt from disclosure under the provisions of the Privacy Act, the Department's ability to provide investigative and protective services would be seriously impaired. The Department of State therefore proposes to amend its Privacy Act regulations as set forth below.

1. In § 6a.6, paragraph (h) will be amended to read as follows:

§ 6a.6 Exemptions.

* * * * *

(h) Records originated by another agency when that agency has determined that the record is exempt under 5 U.S.C. 552a(j). Also, pursuant to section (j)(2) of the Act, records compiled by the Command Center, the Passport and Visa Fraud Branch, and the Special Assignments Staff, all of which are components of the Office of Security, may be exempt from the requirements of any part of the Act, except subsections (b); (c)(1) and (2); (e)(4)(A) through (F); (e)(6), (7), (9), (10), and (11); and (i), to the extent necessary to assure the effective completion of the protective, investigative, and judicial processes.

* * * * *

(Sec. 4 of the Act of May 26, 1949, as amended (63 Stat. 111; 22 U.S.C. 2658); Pub. L. 93–579 (88 Stat. 1894); (5 U.S.C. 552a))

Dated: June 7, 1979.

For the Secretary of State.

Ben H. Read,

Under Secretary for Management.

[FR Doc. 79–18373 Filed 6–12–79; 8:45 am]

BILLING CODE 4710–06–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[24 CFR Part 1917]

[Docket No. FI–5519]

Proposed Flood Elevation Determinations for the Township of Chatham, Morris County, N.J., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Township of Chatham, Morris County, New Jersey.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Municipal Building, Southern Boulevard, Chatham, New Jersey.

Send comments to: Honorable Dorothy A. Willis, Mayor, Township of Chatham, Municipal Building, Southern Boulevard, Chatham, New Jersey 07928.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Township of Chatham, New Jersey, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Passaic River	Mount Vernon Avenue*	205
	Central Avenue (Fairmont Avenue) (80 feet)**	212
	Snyder Avenue*	214

*Centerline.
**Upstream from centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.)

Issued: June 1, 1979.

Gloria M. Jiménez,

Federal Insurance Administrator.

[FR Doc. 79-18187 Filed 6-12-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5520]

Proposed Flood Elevation Determinations for the Town of Ellery, Chautauqua County, N.Y., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Ellery, Chautauqua County, New York.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the office of the Town Clerk, Jamestown, New York. Send comments to: Mr. Arden Johnson, Town Supervisor of Ellery, Box J, Bemus Point, New York 14712.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Town of Ellery, Chautauqua County, New York in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by Section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet national geodetic vertical datum
Chautauqua Lake	Shore Line	1,310
Bemus Creek	Confluence of Chautauqua Lake.	1,310
	Main Street (Upstream)	1,316
Dutch Hollow Creek	Confluence of Chautauqua Lake.	1,310
	Old Route 17 (Upstream)	1,328
Maple Springs Creek	Confluence of Chautauqua Lake.	1,310
	Chautauqua Avenue Upstream.	1,315
	Route 17 Upstream	1,325

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.)

Issued: June 1, 1979.

Gloria M. Jiménez,

Federal Insurance Administrator.

[FR Doc. 79-18188 Filed 6-12-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5521]

Proposed Flood Elevation Determinations for the City of Maumee, Lucas County, Ohio, Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Maumee, Lucas County, Ohio.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the City Hall, 410 Conant Street, Maumee, Ohio 43537. Send comments to: The Honorable Arthur W. Buffington, Mayor, City of Maumee, City Hall, 410 Conant Street, Maumee, Ohio 43537.

FOR FURTHER INFORMATION CONTACT: Mr. Richard W. Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives

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[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 20, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

notice of the proposed determination of base (100-year) flood elevations for the City of Maumee, Lucas County, Ohio, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.4(a).

These elevations, together with the flood plain management measures required by section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, pursuant to policies established by other Federal, State or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet national geodetic vertical datum
Hellman ditch	Just upstream of Ohio Turnpike.	623
	Just upstream of Dussel Drive.	627
	Just upstream of Chesterfield Lane.	629
	Just downstream of Conant Street.	631
Graham ditch	Just upstream of Ohio Turnpike.	624
	Just upstream of Ohio Turnpike Access ramps.	626
	Just upstream of Holland Road.	628
	Just downstream of Salisbury Road.	629

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority of Federal Insurance Administrator, 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18159 Filed 6-12-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5127]

Proposed Flood Elevation Determinations for the City of Trotwood, Montgomery County, Ohio, Under the National Flood Insurance Program; Correction

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Correction of proposed rule.

SUMMARY: This document corrects a proposed rule on base (100-year) flood elevations that appeared on page 44 FR 6940 of the Federal Register of February 5, 1979.

EFFECTIVE DATE: February 5, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

The following:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Tributary A	500 feet upstream from mouth.	850
Dry Run	East-West corporate limit	836
Tributary G	Limit of flood 250 feet upstream of northern corporate limit.	867

Should be corrected to read:

Tributary A	500 feet upstream from mouth.	848
Dry Run	2,575 feet upstream of the confluence of Tributary E.	836
Tributary G	250 feet upstream of northern corporate limit.	867

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18160 Filed 6-12-79; 8:45 am]

BILLING CODE 4210-23-M

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3, of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

[24 CFR Part 1917]

[Docket No. FI-4622]

Proposed Flood Elevation Determinations for Union County, Oreg., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in Union County, Oregon. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Union County Courthouse, La Grande, Oregon. Send comments to: Honorable Earle C. Misener, Judge, Union County, Union County Courthouse, La Grande, Oregon 97850.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for Union County, Oregon, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by Section 1910.3 of the

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency be Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation, feet, national geodetic vertical datum
Phillips Creek	Lumber Yard Access Bridge-20 feet*	2730
	Residence Access Bridge**	2754
	Limit of Detailed Study**	2778
Little Creek	Godley Road Bridge-100 feet*	2753
	Corporate Limits (upstream from Godley Road Bridge)-20 feet*	2762
	Most Upstream Corporate Limits from Godley Road Bridge**	2817
	Limit of Detailed Study at Bridge-80 feet*	2957
North Powder River	Limit of Detailed Study**	3222
	Corporate Limits (upstream from Limit of Detailed Study)**	3234
	Thief Valley Road-80 feet*	3244
	U.P. Route 30-20 feet*	3257
Grande Ronde at Island City	Most Downstream Limit of Detailed Study**	2709
	Union Pacific Bridge**	2726
	Most Upstream Limit of Detailed Study**	2734
Grande Ronde at Elgin	Most Downstream Limit of Detailed Study**	2834
	Corporate Limits (upstream from most downstream Limit of Detailed Study)**	2846
	State Highway 82 Bridge (Wallowa Lake Highway)-20 feet*	2849
	New Cedar Street Bridge-20 feet*	2854
	Corporate Limits (upstream from New Cedar Street Bridge)**	2858
	State Highway 82 Bridge (upstream from New Cedar Street Bridge) (Wallowa Lake Highway)-20 feet	2861
	Limit of Detailed Study at State Highway 82 Bridge (Wallowa Lake Highway)**	2874

* Upstream from centerline.
** At centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18185 Filed 6-12-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-6523]

Proposed Flood Elevation Determinations for the Township of Conewago, York County, Pa., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Township of Conewago, York County, Pennsylvania.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Conewago Township Building. Send comments to: Mr. Jim Kennedy, Chairman of the Township of Conewago, Township Building, R.D. 4, Copenhaffer Road, York, Pennsylvania 17404.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW, Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Township of Conewago, York County, Pennsylvania in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by Section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Little Conewago Creek—Harrisburg Baltimore 324 Expressway.	Canal Road State Route 921 Susquehanna Trail.	333
	3,100 feet upstream of Susquehanna Trail.	335

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18182 Filed 6-12-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-6524]

Proposed Flood Elevation Determinations for the Township of East Manchester, York County, Pa., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

[1] The functions of the Federal Insurance Administration Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 18, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

[1] The functions of the Federal Insurance Administration Department of Housing and Urban Development, were transferred to the newly

Footnotes continued on next page

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Township of East Manchester, York County, Pennsylvania.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the East Manchester Township Building. Send comments to: Mr. John Brown III, Chairman of the Township of East Manchester, R. D. 1, Mount Wolf, Pennsylvania 17347.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 425–8872, Room 5270, 451 Seventh Street, SW, Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Township of East Manchester, York County, Pennsylvania in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by Section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Susquehanna River	Downstream Corporate Limits.	276
	Upstream Corporate Limits	281
West Conewago Creek.	Flood Channel	281
	Confluence of Little Conewago Creek.	290
Little Conewago Creek.	Confluence with West Conewago Creek.	290
	Locust Point Road Bridge	321
	Interstate 83 crossing	324
Codorus Creek	L. R. 66152 crossing	276
	L. R. 66020 crossing	343
	Upstream Corporate Limits	347
hartman Run	L. R. 66153 and Conrail crossing.	320
	Mount Wolf-East Manchester boundary.	351
	Township Route 945 crossing.	434

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963)

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18163 Filed 6-12-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI–5525]

Proposed Flood Elevation Determinations for the Borough of Fairview, Erie County, Pa., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Borough of Fairview, Erie County, Pennsylvania.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Borough Hall, Fairview, Pennsylvania. Send comments to: Mr. William E. Walker, President of the Council of Fairview, 44 Walker Avenue, Fairview, Pennsylvania 16416.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW, Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Borough of Fairview, Erie County, Pennsylvania in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by Section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

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established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

[1] The functions of the Federal Insurance Administration Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Trout Run	Downstream Corporate Limits.	709
	Downstream Lane of U.S. Route 30.	779
	South Carwood Street	791
	Upstream Corporate Limits	804

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.)

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18104 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-6828]

Proposed Flood Elevation Determinations for the Township of Hellam, York County, Pa., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selection locations in the Township of Hellam, York County, Pennsylvania. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Hellam Township Building. Send comments to: Mr. Michael Loucks, Chairman of the Township of Hellam, Hellam Township Office, R. D. 24, P.O. Box 62, Wrightsville, Pennsylvania 17406.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755-5581 or Toll Free Line (800) 424-8872, Room 5270, 451 Seventh Street, SW, Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Township of Hellam, York County, Pennsylvania in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 [Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)], 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by Section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Susquehanna River	Downstream Corporate Limits.	238
	U.S. Route 30 (Upstream)	244
	Upstream Corporate Limits	275
Kreutz Creek	Downstream Corporate Limits.	254
	Cool Creek Road, Legislative Route 6804 (Upstream).	269
	Bairdsmill Road, T-773 (Upstream).	279
	Stebbins School Road T-773 (Upstream).	284
	Dam 1,200 feet upstream of Stebbins School Road (Upstream).	289
	Abandoned Railroad (Upstream).	303
	Abandoned Railroad 1,200 feet downstream of Duncktown Road (Downstream).	308
	Abandoned Railroad 1,200 feet downstream of Duncktown Road (Upstream).	314
	Duncktown Road (Upstream)	318
	Abandoned Railroad 1,400 feet downstream of Hillview Road (Downstream).	320
	Abandoned Railroad 1,400 feet downstream of Hillview Road (Upstream).	327
	Abandoned Railroad 600 feet upstream of Hillview Road (Upstream).	331
	Abandoned Railroad 225 feet downstream of Hellam Borough Corporate Limits (Downstream).	333
	Abandoned Railroad 625 feet downstream of Hellam Borough Corporate Limits (Upstream).	336
	Abandoned Railroad 680 feet upstream of Hellam Borough Corporate Limits (Downstream).	347
	Abandoned Railroad 680 feet upstream of Hellam Borough Corporate Limits (Upstream).	356
	Valley Access Road (Upstream).	360
	Lipphard Mill Road (Downstream).	379
	Lisphard Mill Road (Upstream).	384
	Cer Valley (Upstream)	400
	Upstream Corporate Limits	424
Tributary B	Downstream Corporate Limits.	362
	U. S. Route 30 (Upstream)	380
	U. S. Route 30 (Upstream)	398
	Horn Road, F779 (Upstream)	408
Tributary E	Downstream Corporate Limits.	349
	Fryeville Road	352
	Confluence of Tributary E-2	357
	Lincoln Highway (Upstream)	376
	Old Church Lane (Upstream)	381
	Kreutz Creek Road (Downstream).	382
	Kreutz Creek Road (Upstream).	398
Tributary E-1	Abandoned Railroad Bridge 300 feet downstream of Fryeville Road (Downstream).	354
	Abandoned Railroad Bridge 100 feet downstream of Fryeville Road (Upstream).	363
	Main Road	364
	Campbell Road (Upstream)	371
	Upstream Corporate Limits	375
Tributary E-2	Confluence with Tributary E	357
	Footbridge	361
	Irrigation Ditch	380
	Campbell Road (Downstream).	396
	Campbell Road (Upstream)	402
	Lincoln Highway	402
	Shoefhouse Road (Upstream)	405

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18105 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

[1] The functions of the Federal Insurance Administration Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 18, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

[24 CFR Part 1917]

[Docket No. FI-5527]

Proposed Flood Elevation Determinations for the Township of Manor, Lancaster County, Pa., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Township of Manor, Lancaster County, Pennsylvania.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community,

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Township Building, 26 Millersville Road, 9:00 am to 4:00 pm. Send comments to: Mr. James Huber, Chairman of the Township of Manor, 113 Shannon Drive, Lancaster, Pennsylvania 17603.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW, Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice to the proposed determinations of base (100-year) flood elevations for the Township of Manor, Lancaster County, Pennsylvania in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by Section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet national geodetic vertical datum
Susquehanna River	Confluence of Conestoga Creek.	100
	Safe Harbor Dam (Upstream)	227
	Corporate Limits	239
Conestoga Creek	Conrail	190
	Confluence of Little Conestoga Creek.	204
	Stackwater Road	216
	Corporate Limits	227
Little Conestoga Creek.	Confluence with Conestoga Creek.	204
	Walnut Hill Road	213
	Owl Bridge Road	230
	Letort Road	239
	Blue Rock Road	250
	Weir 950 feet upstream of Route 36006 (Upstream).	257
	Confluence of Tributary A	273
	Mill Driveway (Downstream)	284
	Columbia Avenue	291
Tributary A	Confluence with Little Conestoga Creek.	273
	Confluence of Tributary A1	275
	Farm Road Culvert	308
	A. Cork Property Number One Culvert.	332
	Kready Road	348
	Limit of detailed study 1,840 feet upstream of Kready Road.	366
Tributary A1	Confluence with Tributary A	275
	Farm Road Culvert	291
	2,030 feet upstream of Culvert.	325
West Branch of Little Conestoga Creek.	Confluence with Little Conestoga Creek.	215
	Owl Bridge Road (Downstream).	243
	Letort Road	263
	Confluence of Tributary A	268
	Confluence of Tributary B	275
	Confluence of Tributary C	294
	Bluerock Road	303
	Charlestown Road	321
	Hebecker Church Road	335
	Hershey Mill Road (Downstream).	367
	Hershey Mill Road (Upstream).	375
Columbia Pike		382

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[FR Doc. 79-18186 Filed 6-12-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5528]

Proposed Flood Elevation Determinations for the Township of Marshall, Allegheny County, Pa., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Township of Marshall, Allegheny County, Pennsylvania.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the residence of the Township Secretary, by appointment. Send comments to: Mr. Thomas W. Frank, Chairman of the Township of Marshall, P.O. Box 194, Warrendale, Pennsylvania 15086.

[1] The functions of the Federal Insurance Administration Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Township of Marshall, Allegheny County, Pennsylvania in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by Section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Brush Creek	Downstream Corporate Limits	1,022
	Upstream Thorn Hill Road	1,032
	Upstream Perry Highway	1,052
	Upstream Northgate Drive	1,069
	Upstream Sewage Plant Entrance	1,062
	Upstream Corporate Limits	1,072

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963.)

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18167 Filed 6-12-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5529]

Proposed Flood Elevation Determinations for the Borough of Mount Holly Springs, Cumberland County, Pa., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Borough of Mount Holly Springs, Cumberland County, Pennsylvania.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Borough Hall, Mount Holly Springs, Pennsylvania.

Send comments to: Mr. Joseph Coproski, President of the Council of Mount Holly Springs, Borough Office, Chestnut Street, Mount Holly Springs, Pennsylvania 17065.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Borough of Mount Holly Springs, Cumberland County, Pennsylvania in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 18, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

These elevations, together with the flood plain management measures required by Section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Mountain Creek	Conrail (Downstream Side)	540
	Conrail (Upstream Side)	544
	Mill Street (Upstream Side)	547
	Pine Street (Upstream Side)	562
	Mountain Street (Downstream Side)	565
	State Route 34 (Downstream Side)	576
	Dam No. 1 (Upstream Side)	578
	Dam No. 2 (Downstream Side)	596
	Dam No. 2 (Upstream Side)	597
	Upstream Corporate Limits	601

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963.)

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18168 Filed 6-12-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5530]

Proposed Flood Elevation Determinations for the Borough of Paxtang, Dauphin County, Pa., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 18, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Borough of Paxtang, Dauphin County, Pennsylvania.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Municipal Building, Paxtang, Pennsylvania.

Send comments to: Honorable J. Calvin Neill, Mayor of Paxtang, Municipal Building, Derry Street, Paxtang, Pennsylvania 17111.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Borough of Paxtang, Dauphin County, Pennsylvania in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by Section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Parkway Creek	Downstream Corporate Limits.	373
	Derry Street (Upstream)	373
	Brisben Street (Upstream)	373
	Upstream Corporate Limits	380
Spring Creek	Downstream Corporate Limits.	363
	Lower 'Garrlec' Bridge	364
	Upstream Corporate Limits	365

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18169 Filed 6-12-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI–5531]

Proposed Flood Elevation Determinations for the Township of Shaler, Allegheny County, Pa., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solocited on the proposed base (100-year) flood elevations listed below for selected locations in the Township of Shaler, Allegheny County, Pennsylvania.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Municipal Building, 300 Wetzel Road, Glenshaw, Pennsylvania.

Send comments to: Mr. Thomas E. Dunmyre, President of the Commission of Shaler, 742 Center Avenue, Pittsburgh, Pennsylvania 15215.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Township of Shaler, Allegheny County, Pennsylvania in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by Section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Allegheny River	Downstream Corporate Limits.	734
	Upstream Corporate Limits	735
Pine Creek	Downstream Corporate Limits.	751
	Shopping Center Bridge	760
	Pennview Street	764
	Maple Avenue	769
	Spencer Lane	782
	Butler Plank Road	809
	Burchfield Road	839
	Upstream Corporate Limits	859
Girtys Run	Downstream Corporate Limits.	764

[1] The functions of the Federal Insurance Administration Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 18, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	Evergreen Road	804
	Dravo Street Extension	829
	Upstream Corporate Limits	840
Little Pine Creek West	Downstream Corporate Limits	791
	Private Drive	818
	Walnut Road	860
	Clair Street	873
	Upstream Corporate Limits	877
Little Pine Creek East	Confluence with Pine Creek	757
	Kaye Street	757
	Saxonburg Boulevard	786
	Private Drive	798
	Upstream Corporate Limits	798

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367, and delegation of authority to Federal Insurance Administrator 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18170 Filed 6-12-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5532]

Proposed Flood Elevation Determinations for the Borough of Turtle Creek, Allegheny County, Pa. Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Borough of Turtle Creek, Allegheny County, Pennsylvania.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Borough Building, 125 Monroeville Avenue, Turtle Creek, Pennsylvania.

Send comments to: Mr. John Rettger, Council President of Turtle Creek, 125 Monroeville Avenue, Turtle Creek, Pennsylvania 15145.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Borough of Turtle Creek, Allegheny County, Pennsylvania in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)). 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by Section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, National geodetic vertical datum
Turtle Creek	Confluence of Thompson Run.	732
	Upstream Corporate Limits	736
Thompson Run	Conrail	732
	Conrail	734
	Penn Avenue	738
	Conrail	739
	Tri-borough Expressway	745
	Church Street	749
	Union Railroad	749
	Factory Entrance	756
	James Avenue	758

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18171 Filed 6-12-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5533]

Proposed Flood Elevation Determinations for Town of Clover, York County, S.C., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposal rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Clover, York County, South Carolina.

These base (100–year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Town Hall, Clover, South Carolina. Send comments to: Mayor William Sentelle or Mr. Carl Morrow, Mayor Pro Tem, Town Hall, P.O. Box 161, Clover, South Carolina 29710.

[1]The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 18, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

[1]The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 18, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5561 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Town of Clover, York County, South Carolina, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by Section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Allison Creek	Just upstream of Western corporate limits.	722
Calabash Branch	Just downstream of Flat Rock Street.	736
	Approximately 200 feet upstream of McConnell Street.	746

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18172 Filed 6-12-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI–5534]

Proposed Flood Elevation Determinations for the City of Castle Dale, Emery County, Utah, Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Castle Dale, Emery County, Utah.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 61 East First North, Castle Dale, Utah.

Send comments to: Honorable Bert Oman, Mayor, City of Castle Dale, City Hall, 61 East First North, Castle Dale, Utah 84513.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Castle Dale, Utah, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by Section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Cottonwood Creek	Downstream Corporate Limits.	5626
	Upstream Corporate Limits	5656

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18173 Filed 6-12-79; 8:45 am]

BILLING CODE 4210-23-M

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3, of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

[24 CFR Part 1917]

[Docket No. FI–5412]

Proposed Flood Elevation Determinations for the Town of Chester, Windsor County, Vt., Under the National Flood Insurance Program; Correction

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Correction of proposed rule.

SUMMARY: This document corrects a proposed rule on base (100-year) flood elevations that appeared on page 44 FR 26757 of the Federal Register of May 7, 1979.

EFFECTIVE DATE: May 7, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3, of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

The following:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Williams River	Approximately 850 feet downstream of the confluence of Kingdom Valley Brook.	565
	Just upstream of Duttonsville Gulf Road.	771
Middle Branch Williams River.	610 feet downstream of the first crossing of Joe Sweet Road.	655
	Just downstream of the first crossing of Joe Sweet Road.	662
	1,400 feet upstream of the first crossing of Joe Sweet Road.	690
	Approximately 3,000 feet downstream of the second crossing of Joe Sweet Road.	702
	30 feet downstream of the second crossing of Joe Sweet Road.	739
	Just upstream of the second crossing of Joe Sweet Road.	743
	1,220 feet upstream of the second crossing of Joe Sweet Road.	760
South Branch Williams River.	Approximately 120 feet upstream of State Route 55.	681
	775 feet downstream of Ethan Allen Road.	1,370
Lovers Lane Brook	500 feet upstream of Church Street.	620
Andover Branch	2,780 feet upstream of Potash Brook Road.	906

Should be corrected to read:

Source of flooding	Location	Elevation in Feet, national geodetic vertical datum
Williams River	Approximately 850 feet downstream of the confluence of Kingdom Valley Brook.	565
	Just upstream of Duttonsville Gulf Road.	769
Middle Branch Williams River.	610 feet downstream of the first crossing of Joe Sweet Road.	655
	Just downstream of the first crossing of Joe Sweet Road.	662
	1,400 feet upstream of the first crossing of Joe Sweet Road.	690
	Approximately 3,000 feet downstream of the second crossing of Joe Sweet Road.	702
	30 feet downstream of the second crossing of Joe Sweet road.	739
	Just upstream of the second crossing of Joe Sweet Road.	743
	1,220 feet upstream of the second crossing of Joe Sweet Road.	750
South Branch Williams River.	Approximately 120 feet upstream of State Route 55.	682
	775 feet upstream of Ethan Allen Road.	1,370
Lovers Lane Brook	500 feet downstream of Church Street.	620
Andover Branch	2,500 feet upstream of Potash Brook Road.	906

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.)

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18174 Filed 6-12-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5536]

Proposed Flood Elevation Determinations for the Town of Remington, Fauquier County, Va., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Remington, Fauquier County, Virginia.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Municipal Building, Remington, Virginia.

Send comments to: Honorable Wynant Hoffman, Mayor of Remington, P.O. Box 123, Remington, Virginia 22734.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Town of Remington, Fauquier County, Virginia in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by Section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Tripot Run	Route 651 Bridge	277
	Route 655 Bridge	277
	Upstream Corporate Limit	277

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.)

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18175 Filed 6-12-79; 8:45 am]

BILLING CODE 4210-23-M

[1] The functions of the Federal Insurance Administration Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 18, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

[24 CFR Part 1917]

[Docket No. FI-5536]

Proposed Flood Elevation Determinations for the City of Chehalis, Lewis County, Wash., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Chehalis, Lewis County, Washington.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, Chehalis, Washington.

Send comments to: Honorable Vivian M. Roewe, Mayor, City of Chehalis, P.O. Box 871, Chehalis, Washington 98532.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Chehalis, Washington, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by Section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Chehalis River	Confluence with Salzer Creek	175
	Confluence with Dillenbaugh Creek.	179
	Southwest Riverside Road*	181
Newaukum River	H.C. Shory Road*	182
	Burlington Northern Railroad (upstream crossing)*.	184
Coal Creek	North National Avenue (50 feet)**.	177
	Coal Creek Road-1 Bridge*	178
Salzer Creek	Burlington Northern Railroad*.	178
	Grand Avenue Bridge*	178
Dillenbaugh Creek	Ocean Beach Highway*	180
	Burlington Northern Railroad	186
	Southwest Parkland Drive (100 feet)**.	185

*Centerline.
**Upstream From Centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[FR Doc. 79-18176 Filed 6-12-79; 8:45 am]
BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5537]

Proposed Flood Elevation Determinations for the Town of Shepherdstown, Jefferson County, W. Va., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Shepherdstown, Jefferson County, West Virginia.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Town Hall, Shepherdstown, West Virginia.

Send comments to: Honorable Clarence Wright, Mayor of Shepherdstown, Town Hall, Shepherdstown, West Virginia 25443.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Town of Shepherdstown, Jefferson County, West Virginia in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by Section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

[1] The functions of the Federal Insurance Administration Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Potomac River	Upstream Corporate Limits	323
	Downstream Corporate Limits	322
Town Run	Confluence with Potomac River.	323
	From the centerline of East High Street to 150' North.	Depth 1
	From the centerline of East High Street South 600'.	Depth 2
	From 60' south of the intersection of South Princess Street and East Garmen Street to 150' south of the intersection.	Depth 1

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963.)

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18177 Filed 6-11-79; 8:45 am]

BILLING CODE 4210-23-M

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 1246-6]

Approval and Promulgation of Implementation Plans; California Plan Revision: Santa Barbara County Air Pollution Control District and the Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Santa Barbara County Air Pollution Control District (APCD) submitted Regulation VII, "Emergencies" on July 19, 1974; October 23, 1974; and April 21, 1976 and the Ventura County APCD submitted Regulation VIII, "Emergency Action" on July 19, 1974; January 10, 1975; and November 3, 1975 to the Environmental Protection Agency (EPA). The purpose of these regulations is to provide an emergency episode contingency plan in accordance with 40 CFR 51.16 that will prevent ambient air pollutant concentrations from reaching levels which could cause significant harm to public health and to abate such concentrations should they occur. These rules have been submitted to EPA by the California Air Resources Board (ARB) as a revision to the California State Implementation Plan (SIP). The purpose of this rulemaking is to approve part of the SIP revisions, to take no action on part of the revisions, and to propose replacement regulations to correct deficiencies in the revised plans. EPA invites written public comment concerning this proposed rulemaking. Those wishing to comment or request a public hearing may do so by writing EPA at the address listed below.

DATES: Comments or requests for a public hearing may be submitted up to August 13, 1979.

ADDRESSES: Comments or requests for a public hearing may be sent to: Regional Administrator, Attn: Air and Hazardous Materials Division, Air Technical Branch, Technical Analysis Section (A–4–3), Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105.

The EPA has established a rulemaking Docket, 9A–79–4 containing all the information on which the proposed rulemaking relies, which is available for public inspection during normal business hours at the EPA Region IX Office at the above address and at the EPA Central Docket Section at the following address: EPA Central Docket Section, Waterside Mall, Room 2903 B, 401 "M" Street, S.W. Washington, DC 20460.

Additionally, copies of Regulations VII and VIII and EPA's "Evaluation Report and Technical Support Document" for the appropriate agency's plan are available for public inspection during normal business hours at the following locations:

Ventura County Air Pollution Control District, 800 South Victoria Avenue, Ventura, CA 93001.

Santa Barbara County Air Pollution Control District, 4440 Calle Real, Santa Barbara, CA 93110.

California Air Resources Board, 1102 "Q" Street, P.O. Box 2815, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Charlotte Hopper, Acting Chief, Technical Analysis Section, Air Technical Branch, Air and Hazardous Materials Division, Environmental Protection Agency, Region IX (415) 556–2002.

SUPPLEMENTARY INFORMATION:

Background

Section 110(a) of the Clean Air Act required that a SIP contain air pollution emergency episode plans, and 40 CFR 51.16 "Prevention of Air Pollution Emergency Episodes," specifies the minimum requirements for the content of these plans, including provisions for taking any emission control actions necessary to prevent ambient pollutant concentrations from reaching levels which could cause significant harm to the health of persons. The original SIP submitted by the State of California on February 21, 1972 failed to meet the requirements specified in 40 CFR 52.16. Therefore, on May 31, 1972 (37 FR 10851) EPA disapproved the emergency plan portion of the California SIP.

In November 1973, the State of California adopted a revised episode plan, which was submitted to EPA on February 6, 1974. EPA proposed conditional approval of this SIP revision on June 26, 1974 (39 FR 23060), but this proposal was never finalized.

In March 1975, the California Lung Association and others commenced a citizen suit against EPA and the ARB requesting the U.S. District Court fot the Central District of California to order EPA to promulgate and enforce an emergency episode plan for the South Coast Air Basin (SCAB) of California *(California Lung Association et al. v. Train,* Civil No. 75–1044–WPG). According to an agreed upon schedule, EPA and the ARB worked together towards Federal approval of an emergency episode plan for the SCAB.

On April 12, 1976 (41 FR 15237) EPA approved, as a revision to the SIP, California's October 21, 1975 Air Pollution Emergency Plan for three pollutants: photochemical oxidants, sulfur dioxide, and carbon monoxide. Although required by 40 CFR 51.16, provision for nitrogen dioxide, particulate matter, and sulfur dioxide and particulate matter combined were missing from this revised plan. On June 27, 1977, pursuant to plaintiff California Lung Association's motion, the Court ordered EPA to certify that the emergency episode plan approved on April 12, 1976 was fully adequate under the law in all respects (i.e., contained episode plans for all six pollutants), or to withdraw such approval *(California Lung Association et al. v. Costle* Civil No. 75–1044–WPG).

The EPA Administrator responded to this order with an affidavit dated July 6, 1977, which stated that since the Agency's April 12, 1976 approval of the plan applied only to the three pollutants specifically set forth therein, EPA

concluded in accordance with the Court's order, that the plan was not fully complete. Consequently, on August 11, 1977 (42 FR 40695), EPA rescinded the prior approval, reinstating the disapproval of the emergency episode plan portion of the California SIP.

On March 24, 1977, the ARB adopted a revised Air Pollution Emergency Plan (State guideline) which was submitted to EPA as a revision to the SIP on June 1, 1977. On August 8, 1977, the EPA Administrator submitted a second affidavit as required by the Court, concerning the recent submittal, stating that EPA intended to approve most of the State guideline for use by the Air Pollution Control Districts in developing episode plans. Subsequently, EPA developed a supplement to the State guideline to correct deficiencies noted in that document (43 FR 60929).

The August 8, 1977 affidavit was then followed by a Joint Stipulation of Settlement, signed on December 5, 1977 by counsels for the Administrator and for the California Lung Association. Among other things this Stipulation contained an agreement that by June 8, 1980, EPA would review the emergency episode regulations of the Air Pollution Control Districts in the State of California, approving or promulgating regulations as necessary. This proposed rulemaking and its associated documents carry out part of the actions called for in the December 5, 1977 Joint Stipulation of Settlement, relating to the Santa Barbara County APCD and the Ventura County APCD emergency episode plans.

The California Air Resources Board submitted the following rules and regulations to the EPA for the Santa Barbara County APCD and the Ventura County APCD on the following dates:

Santa Barbara County APCD

Rules 150–159 and 161–164—July 19, 1974
Rule 160—October 23, 1974
Rule 63—April 21, 1976

Ventura County APCD

Rules 150–159 and 161–164—July 19, 1974
Rule 160—January 10, 1975
Rule 153—November 3, 1975

Summary of Regulation VII, "Emergencies" and Regulation VIII, "Emergency Action"

In general, Regulations VII and VIII establish the procedures which are to be taken by industry, commerce, business, government, and the public to prevent ambient pollutant concentrations from reaching levels which could cause significant harm to public health. For example, whenever it is determined that any episode level specified in Regulations VII or VIII is predicted to be attained, is being attained, or has been attained, and is predicted to remain at such levels for 12 or more hours, the episode stage is declared, the appropriate persons are notified, and the abatement actions for that particular stage are implemented. The abatement actions are designed to reduce the pollutant level into the next lower stage or level and to prevent pollutant concentrations from reaching levels which could cause significant harm to public health. To accomplish this, the abatement actions become more stringent as an episode is predicted to progress or progresses from one stage to the next.

EPA's Proposed Actions

EPA evaluated Regulations VII and VIII by comparing each Regulation to 40 CFR 51.16 which sets forth the minimum requirements for an emergency episode contingency plan. This comparison is presented in an "Evaluation Report and Technical Support Document." Based upon the comparison of the regulations to 40 CFR 51.16, EPA proposes to approve those portions of the revisions which meet the requirements of 40 CFR 51.16, take no action on part of the revisions, and propose replacement regulations to correct deficiencies in the revised plans with respect to the requirements of 40 CFR 51.16.

The Rules that EPA is proposing to approve for inclusion into the California SIP are as follows:

Ventura County APCD

Rule 150—Source and Receptor Areas
Rule 151—Air Monitoring Stations
Rule 152—Air Monitoring Summaries
Rule 153—Episode Criteria
Rule 154—Episode Notifications
Rule 155—Plans
Rule 156—Communication Network
Rule 157—First Stage Episode Actions
Rule 158—Second Stage Episode Actions
Rule 159—Third Stage Episode Actions
Rule 160—Interdistrict Coordination
Rule 161—Enforcement
Rule 162—Termination of Episodes
Rule 163—Advisory Committee
Rule 164—Emergency Action Board

Santa Barbara County Air Pollution Control District

Rule 63—Episode Criteria
Rule 150—General
Rule 151—Air Monitoring Stations
Rule 152—Air Monitoring Summaries
Rule 154—Episode Notifications
Rule 155—Plans
Rule 156—Communication Network
Rule 157—First Stage Episode Actions
Rule 158—Second Stage Episode Actions
Rule 159—Third Stage Episode Actions
Rule 160—Interdistrict Coordination
Rule 61—Enforcement
Rule 162—Termination of Episodes
Rule 163—Scientific Committee
Rule 164—Emergency Action Committee

The following discusses those rules which EPA is proposing to approve and to take no action on. EPA is also proposing replacement regulations to correct deficiencies in both plans:

Rule 63, Episode Criteria, for the Santa Barbara County APCD: EPA is proposing to approve part of Rule 63, take no action on part of Rule 63, and is proposing the following replacement regulations:

1. Rule 63 of Regulation VII specifies 1- and 12-hour average carbon monoxide (CO) episode criteria levels. EPA has specified significant harm levels for 1-, 4-, and 8-hour averaging periods for CO. The 1-hour CO criteria level in Regulation VII is consistent with EPA requirements; however, the regulation does not provide for either a 4- or an 8-hour CO criteria level. EPA is therefore proposing 4- and 8-hour CO criteria levels to supplement the existing 1-hour level specified in Rule 63 and is taking no action on the 12-hour CO criteria level. EPA is also proposing that the episode actions which apply to the 1-hour CO criteria level in Rule 63 also apply to the 4- and 8-hour criteria levels.

Rule 155, Plans, for the Santa Barbara County APCD and the Ventura County APCD: EPA is proposing to approve Rule 155 but also proposes to add the following replacement regulations:

1. Rule 155 for the Ventura County APCD and the Santa Barbara County APCD does not provide for a time schedule for the Air Pollution Control Officers to initiate the call for the submittal of individual abatement plans. EPA's proposed regulations call for the submittal and approval of the necessary abatement plans within a specified time limit.

2. The requirements specified in Rule 155 for the content of the abatement plans are not sufficiently specific to ensure that adequate plans will be submitted. EPA is therefore proposing criteria for the content of such plans, following the requirements specified in the California Air Resources Board, Air Pollution Emergency Plan (State guideline) (March 24, 1977) and EPA's Supplement to the State guideline (43 FR 60929).

Rule 158, Second Stage Episode Actions and Rule 159, Third Stage Episode Actions, for the Santa Barbara County APCD and the Ventura County APCD: EPA is proposing to approve Rules 158 and 159 but also proposes to add the following replacement regulations:

1. Both regulations do not provide adequate emission control actions to prevent the significant harm levels of the Priority I pollutants from being reached. EPA intends to correct this deficiency by proposing mandatory emission control actions to be taken at each stage.

In addition to the above approvals and deficiencies the Ventura County APCD and the Santa Barbara County APCD omitted certain requirements specified by 40 CFR 51.16. The omissions, and a discussion of EPA's proposed regulations to correct those omissions, are as follows:

1. The Ventura County APCD and the Santa Barbara County APCD are required to provide for a particulate matter (TSP) emergency episode contingency plan. Both districts, however, do not provide for this type of plan, as required by 40 CFR 51.16. EPA is therefore proposing a 24-hour TSP criteria level. EPA is also proposing that the episode actions which apply to the 1-hour CO and photochemical oxidants (O_x) criteria levels also apply to the 24-hour TSP criteria level.

Santa Barbara County is divided into two planning areas: The Santa Barbara non-Air Quality Management Area (AQMA) and the Santa Barbara AQMA. The Santa Barbara non-AQMA is Priority III for all pollutants (40 CFR 52.221) and, as such, an emergency episode plan is not required for this planning area.

Amendments to 40 CFR 51.16 were published on March 20, 1979 in the Federal Register (44 FR 16911). Under these amendments, the Administrator may exempt attainment or unclassifiable areas from the requirements for future emergency episode plan development.

The Santa Barbara AQMA planning area is classified as Priority I for total suspended particulate matter (TSP), nitrogen dioxide (NO_2), carbon monoxide (CO), and photochemical oxidants (O_x), and as Priority II for sulfur dioxide (SO_2) (40 CFR 52.221). On March 3, 1978 (43 FR 8962) EPA designated the Santa Barbara AQMA as nonattainment for TSP, O_x, and CO, as unclassifiable for SO_2, and as attainment for NO_2. As such, the Administrator has exempted the Santa Barbara AQMA planning area for NO_2 and SO_2 from episode plan requirements.

Ventura County is classified as Priority I for NO_2, CO, TSP, and O_x, and Priority II for SO_2. In the above-mentioned March 3, 1978, Federal Register (43 FR 8962), Ventura County was designated as nonattainment for TSP and O_x, as unclassifiable for SO_2, and as attainment for NO_2 and CO. As such, the Administrator has exempted Ventura County for CO, SO_2, and NO_2 from episode plan requirements.

EPA's proposed regulations are based on 40 CFR 51.16 requirements, air quality data, emissions data, Regulations VII and VIII and the evaluation of the control strategies contained in Regulations VII and VIII.

The evaluation of the control strategies is presented in an "Evaluation Report and Technical Support Document." Incorporated into the document is a report by Pacific Environmental Services, Inc., prepared for Region IX EPA to develop background information for emergency episode abatement strategies applicable in Ventura County and the Santa Barbara AQMA planning area.

In proposing regulations, EPA used Regulations VII and VIII as a procedural guide to translate the "Evaluation Report and Technical Support Document" into regulations. Thus, the general detail and terminology proposed in this notice is consistent with Regulations VII and VIII.

Miscellaneous Information

Under Section 110 of the Clean Air Act as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove the regulations submitted as revisions to the SIP. The Regional Administrator hereby issues this notice setting forth these revisions as proposed rulemaking and advises the public that interested persons may participate by submitting written comments to the Region IX Office. Additionally, anyone wishing to request a public hearing may do so by writing EPA at the Region IX office. Comments or requests for a public hearing received on or before August 13, 1979, will be considered. Also, comments received will be available for public inspection at the EPA Region IX Office and the EPA Central Docket Section.

(Secs. 110, 301(a), Clean Air Act as amended (42 U.S.C. 7410 and 7601(a)).)

Dated: June 4, 1979.

Paul de Falco, Jr.,

Regional Administrator.

Proposed Rulemaking

It is proposed to amend Part 52 of Chapter I, Title 40, of the Code of Federal Regulations as follows:

Subpart F—California

1. Section 52.220 is amended by adding paragraphs (c)(24)(x)(C), (c)(24)(xi), (c)(25)(vi), (c)(28)(xviii), (c)(29)(vi)(B), and (c)(31)(vii)(C) as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(24) * * *

(x) * * *

(C) Rules 150 to 159 and 161 to 164, except those portions that pertain to nitrogen dioxide, sulfur dioxide and carbon monoxide.

(xi) Santa Barbara County Air Pollution Control District.

(A) Rules 150 to 159 and 161 to 164, except those portions pertaining to nitrogen dioxide, sulfur dioxide and the 12-hour carbon monoxide criteria level.

* * * * *

(25) * * *

(vi) Santa Barbara County Air Pollution Control District.

(A) Rule 160, except those portions pertaining to nitrogen dioxide, sulfur dioxide and the 12-hour carbon monoxide criteria level.

* * * * *

(28) * * *

(xviii) Ventura County Air Pollution Control District.

(A) Rule 160, except those portions pertaining to nitrogen dioxide, sulfur dioxide and carbon monoxide.

* * * * *

(29) * * *

(vi) * * *

(B) Rule 153, except those portions pertaining to nitrogen dioxide sulfur dioxide and carbon monoxide.

* * * * *

(31) * * *

(vii) * * *

(C) Rule 63, except those portions pertaining to nitrogen dioxide, sulfur dioxide and the 12-hour carbon monoxide criteria level.

* * * * *

2. Section 52.274 is amended by adding paragraphs (a)(5), (a)(6), (m), (n), (o), and (p) as follows:

§ 52.274 California air pollution emergency plan.

(a) * * *

(5) Ventura County Air Pollution Control District.

(6) Santa Barbara Air Quality Management Area portion of the Santa Barbara County Air Pollution Control District.

* * * * *

(m) The requirements of § 51.16 of this chapter are met in the Ventura County Air Pollution Control District with the following exceptions: (1) There is no time schedule to initiate the call for the submittal of individual abatement plans;

(2) the requirements for the content of the abatement plans are not sufficiently specific to ensure that adequate plans are submitted; (3) adequate mandatory emission control actions are not provided for; (4) there are no episode criteria levels, declaration procedures, notification procedures, source inspection procedures, emission control actions, or episode termination procedures for particulate matter episodes.

(n) *Regulation for prevention of air pollution emergency episodes—preplanned abatement strategies, mandatory emission control actions, and a particulate matter emergency episode contingency plan.* (1) The requirements of this paragraph are applicable in the Ventura County Air Pollution Control District.

(2) For the purposes of this regulation the following definitions apply:

(i) "Administrator" means the Administrator of the Environmental Protection Agency or his authorized representative.

(ii) "ug/m^3" means micrograms per cubic meter.

(iii) "Major National Holiday" means a holiday such as Christmas or New Year's.

(3) Stationary source curtailment plans and traffic abatement plans shall be prepared by business, commercial, industrial, and governmental establishments in Ventura County as follows:

(i) The owner or operator of any business, commercial, industrial, or governmental facility or activity listed below shall submit to the Administrator plans to curtail or cease operations causing stationary source air contaminants is such activity:

(A) Stationary sources which emit 25 tons per year or more of hydrocarbons, nitrogen oxides, or particulate matter.

(ii) The plans required by subpargraph (3)(i)(A) of this paragraph shall include the following information:

(A) The information requested by the California Air Resources Board, Air Pollution Emergency Plan (March 24, 1977).

(B) The total number of employees at the facility during each shift on a normal weekday and on a Major National Holiday.

(C) The amount of energy (gas, fuel oil and electricity) used on a normal weekday and on a Major National Holiday.

(D) For first-stage episodes, the measures to voluntarily curtail equipment operations that emit air pollutants specific to the type of episode and in the case of oxidant episodes, the equipment operations that emit hydrocarbons and nitrogen oxides.

(E) For second-stage episodes:

(*1*) The measures to curtail as much as possible, equipment operations that emit air pollutants specific to the type of episode and in the case of oxidant episodes, the equipment operations that emit hydrocarbons and nitrogen oxides.

(*2*) The measures to postpone operations which can be postponed until after the episode.

(*3*) For fossil fuel-fired combustion sources, including electric utilities, with a heat input greater than 50 million BTU per hour the measures to burn natural gas.

(*4*) For electric utilities the measures, in addition to those in subparagraph (E)(3), to:

(*i*) Shift oil burning power generation to non-source areas to the maximum extent consistent with the public health, safety, and welfare.

(*5*) For refineries and chemical plants, the measures to be taken to reduce emissions by 20 percent by curtailing equipment operations that emit air pollutants specific to the type of episode and in the case of oxidant episodes, the equipment operations that emit hydrocarbons and nitrogen oxides without jeopardizing the public health or safety, without causing an increase in the emissions of other air contaminants, and without damaging production by more than 20 percent.

(*6*) The measures in subparagraph (3)(ii)(D) of this paragraph.

(F) For third-stage episodes:

(*1*) A list of equipment, with permit numbers if applicable, which can be shut down without jeopardizing the public health or safety, and an estimate of the resultant reductions in hydrocarbons, nitrogen oxides and particulate matter emissions.

(*2*) A list of all equipment, with permit numbers if applicable, which must be operated to protect the public health or safety, and an estimate of the hydrocarbons, nitrogen oxides and particulate matter emissions from such equipment.

(*3*) The measures for chemical plants, petroleum refineries and electric utilities to reduce emissions by 33 percent by curtailing equipment operations that emit air pollutants specific to the type of episode and in the case of oxidant episodes the equipment operations that emit hydrocarbons and nitrogen oxides, without damaging the equipment or increasing the emissions of other air contaminants.

(*4*) The measures described in subparagraph (3)(ii)(E) of this paragraph.

(*5*) The measures for stationary sources which emit 25 tons per year or more of air contaminants to eliminate emissions specific to the type of episode and in the case of oxidant episodes, the measures to eliminate hydrocarbons and nitrogen oxides by starting no new batches, by ceasing feed of new materials, and by phasing down as rapidly as possible without damage to the equipment.

(iii) The owner or operator of any industrial, business, commercial, or governmental facility or activity listed below shall submit to the Administrator plans to curtail or cease operations causing air contaminants from vehicle use:

(A) Operators of 50 or more fleet vehicles.

(B) Industrial, business, commercial or governmental establishments employing more than 100 persons per shift at one business address.

(iv) The plans required by subparagraph (3)(iii)(A) and (B) of this paragraph shall include the following information:

(A) The information requested in the California Air Resources Board, Air Pollution Emergency Plan (March 24, 1977).

(B) The total number of employees at the facility during each shift.

(C) The total number of motor vehicles and vehicle miles traveled for motor vehicles operated:

(*1*) By the company on company business on a normal weekday and a Major National Holiday.

(*2*) By employees commuting between home to the place of business on a normal weekday and a Major National Holiday.

(*3*) The minimum number of motor vehicles to be operated that are neccessary to protect public health or safety.

(4) A copy of the stationary source curtailment and/or traffic abatement plans approved in accordance with the provisions of this paragraph shall be on file and readily available on the premises to any person authorized to enforce the provisions of this paragraph.

(5) The owner or operator of any governmental, business, commercial, or industrial activity or facility listed in subparagraph (3) of this paragraph shall submit a stationary source curtailment plan and/or traffic abatement plan to the Administrator within 60 days after promulgation of final rulemaking.

(6) The plans submitted pursuant to the requirements of this paragraph shall be reviewed by the Administrator for approval or disapproval according to the following schedule:

(i) For sources with emissions of hydrocarbons, nitrogen oxides or particulate matter greater than or equal to 454 metric tons (500 tons) per year, or for establishments employing 400 or more employees per shift, within 45 days after receipt.

(ii) For sources with emissions of hydrocarbons, nitrogen oxides, or particulate matter greater than or equal to 91 metric tons (100 tons) per year and less than 454 metric tons (500 tons) per year, or for establishments employing more than 200 and less than 400 employees per shift, within 90 days after receipt.

(iii) For sources with emissions of hydrocarbons, nitrogen oxides, or particulate matter less than 91 metric tons (100 tons) per year, or for establishments employing 100 to 200 employees per shift, within 180 days after receipt.

(7) The owner or operator of any industrial, business, governmental or commercial establishment required to submit a plan by this paragraph shall be notified by the Administrator or his authorized representative within 30 days after the plan has been evaluated, if the plan is disapproved. Any plan disapproved by the Administrator shall be modified to overcome the disapproval and resubmitted to the Administrator within 30 days of receipt of the notice of disapproval.

(8) Any source that violates any requirement of this regulation shall be subject to enforcement action under Section 113 of the Act.

(9) All submittals or notifications required to be submitted to the Administrator by this regulation shall be sent to:

Regional Administrator, Attn: Air and Hazardous Materials Division, Air Technical Branch, Technical Analysis Section (A-4-3), Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105.

(10) For the purposes of this regulation the following episode criteria shall apply to particulate matter episodes:

Pollutant	Averaging time	Stage 1	Stage 2	Stage 3
Particulate matter	24 hours	375 $\mu g/m^3$	625 $\mu g/m^3$	875 $\mu g/m^3$

(11) The provisions of the Ventura County Air Pollution Control District's Regulation VIII, as submitted on July 19, 1974 and January 10, 1975, relating to episodes for carbon monoxide and photochemical oxidants averaged over 1 hour shall apply to particulate matter episodes averaged over 24 hours except that the Administrator shall insure that declaration procedures, notification procedures, source inspections, and termination of such episodes occur.

(12) The following abatement actions shall augment those abatement actions contained in Regulation VIII, Rule 158, Part B of the Ventura County Air Pollution Control District as submitted on July 19, 1974:

(i) Postpone construction and demolition.

(13) The Administrator shall insure that the following actions will be taken in Ventura County in the source and receptor areas on the declaration of a Stage 1, Stage 2 or Stage 3 episode for particulate matter or photochemical oxidants episodes:

(i) For a Stage 1 or Stage 2 episode:

(A) Persons operating any facility or activity named in subparagraph (3) of this paragraph shall implement the appropriate plans submitted in accordance with subparagraph (3) of the declared Stage 1 or Stage 2 episode for the appropriate air contaminant(s).

(ii) For a Stage 3 episode:

(A) The general public, schools, industrial, business, commercial, and governmental activities throughout the District shall operate as though the day were a Major National Holiday.

(c) The requirements of § 51.16 of this Chapter are met in the Santa Barbara Air Quality Management Area with the following exceptions: (1) There is no time schedule to initiate the call for the submittal of individual abatement plans; (2) the requirements for the content of the abatement plans are not sufficiently specific to ensure that adequate plans are submitted; (3) adequate mandatory emission control actions are not provided for; (4) there are no episode criteria levels, declaration procedures, notification procedures, source inspection procedures, emission control actions, or episode termination procedures for particulate matter episodes; (5) there are no episode criteria levels, declaration procedures, notification procedures, source inspection procedures, emission control actions, or episode termination procedures for carbon monoxide episodes based on 4- and 8-hour averaging times for the Santa Barbara Air Quality Management Area.

(p) *Regulation for prevention of air pollution emergency episodes—preplanned abatement strategies, mandatory emission control actions, a particulate matter emergency episode contingency plan, and 4- and 8-hour carbon monoxide criteria levels.* (1) The requirements of this paragraph are applicable in the Santa Barbara Air Quality Management Area.

(2) For the purposes of this regulation the following definitions apply:

(i) "Administrator" means the Administrator of the Environmental Protection Agency or his authorized representative.

(ii) "ppm" means parts per million by volume.

(iii) "$\mu g/m^3$" means micrograms per cubic meter.

(iv) "Major National Holiday" means a holiday such as Christmas or New Year's.

(3) For the purposes of this regulation, the following episode criteria levels shall apply to carbon monoxide episodes:

Pollutant	Averaging time	Stage 1	Stage 2	Stage 3
Carbon monoxide	4 hours	25 ppm	45 ppm	60 ppm
	8 hours	15 ppm	30 ppm	40 ppm

(4) The provisions of the Santa Barbara County Air Pollution Control District's Regulation VII, as submitted on July 19, 1974, October 23, 1974 and April 21, 1974, relating to carbon monoxide episodes averaged over 1 hour shall apply to carbon monoxide episodes averaged over 4 and 8 hours except that the Administrator shall insure that declaration procedures, notification procedures, source inspections, and termination of such episodes occur.

(5) Stationary source curtailment plans and traffic abatement plans shall be prepared by business, commercial, industrial, and governmental

establishments in the Santa Barbara Air Quality Management Area as follows:

(i) The owner or operator of any business, commercial, industrial, or governmental facility or activity listed below shall submit to the Administrator plans to curtail or cease operations causing stationary source air contaminants in such activity:

(A) Stationary sources which can be expected to emit 100 tons per year or more of hydrocarbons, nitrogen oxides, carbon monoxide or particulate matter.

(ii) The plans required by subparagraph (5)(i)(A) of this paragraph shall include the following information:

(A) The information requested by the California Air Resources Board, Air Pollution Emergency Plan (March 24, 1977).

(B) The total number of employees at the facility during each shift on a normal weekday and on a Major National Holiday.

(C) The amount of energy (gas, fuel oil and electricity) used on a normal week and on a Major National Holiday.

(D) For first-stage episodes, the measures to voluntarily curtail equipment emitting air pollutants.

(E) For second-stage episodes:

(*1*) The measures to curtail as much as possible, equipment operations that emit air pollutants specific to the type of episode and in the case of oxidant episodes, the equipment operations that emit hydrocarbons and nitrogen oxides.

(*2*) The measures to postpone operations which can be postponed until after the episode.

(*3*) The measures described in subparagraph (5)(ii)(D) of this paragraph.

(F) For third-stage episodes:

(*1*) A list of equipment, with permit numbers if applicable, which can be shut down without jeopardizing the public health or safety, and an estimate of the resultant reductions in hydrocarbons, nitrogen oxides, carbon monoxide, and particulate matter emissions.

(*2*) A list of all equipment, with permit numbers if applicable, which must be operated to protect the public health or safety, and an estimate of the hydrocarbons, nitrogen oxides, carbon monoxide, and particulate matter emissions from such equipment.

(*3*) The measures described in subparagraph (5)(ii)(E) of this paragraph.

(iii) The owner or operator of any industrial, business, commercial, or governmental facility or activity listed below shall submit to the Administrator plans to curtail or cease operations causing air contaminants from vehicle use:

(A) Operators of 50 or more fleet vehicles.

(B) Industrial, business, commercial or governmental establishments employing more than 100 persons per shift at one business address.

(iv) The plans required by subparagraph (5)(iii) (A) and (B) of this paragraph shall include the following information:

(A) The information requested in the California Air Resources Board, Air Pollution Emergency Plan (March 24, 1977).

(B) The total number of employees at the facility during each shift.

(C) The total number of motor vehicles and vehicle miles traveled for motor vehicles operated:

(*1*) By the company on company business on a normal weekday and a Major National Holiday.

(*2*) By employees commuting between home to the place of business on a normal weekday and a Major National Holiday.

(*3*) The minimum number of motor vehicles to be operated that are necessary to protect public health or safety.

(6) A copy of the stationary source curtailment and/or traffic abatement plans approved in accordance with the provisions of this paragraph shall be on file and readily available on the premises to any person authorized to enforce the provisions of this paragraph.

(7) The owner or operator of any governmental, business, commercial, or industrial activity or facility listed in subparagraph (5) of this paragraph shall submit a stationary source curtailment plan and/or traffic abatement plan to the Administrator within 60 days after promulgation of final rulemaking.

(8) The plans submitted pursuant to the requirements of this paragraph shall be reviewed by the Administrator for approval or disapproval according to the following schedule:

(i) For sources with emissions of hydrocarbons, carbon monoxide, nitrogen oxides or particulate matter greater than or equal to 454 metric tons (500 tons) per year, or for establishments employing 400 or more employees per shift, within 45 days after receipt.

(ii) For sources with emissions of hydrocarbons, nitrogen oxides, carbon monoxide or particulate matter greater than or equal to 91 metric tons (100 tons) per year and less than 454 metric tons (500 tons) per year, or for establishments employing more than 200 and less than 400 employees per shift, within 90 days after receipt.

(iii) For sources with emissions of hydrocarbons, nitrogen oxides, carbon monoxide or particulate matter less than 91 metric tons (100 tons) per year, or for establishments employing 100 to 200 employees per shift, within 180 days after receipt.

(9) The owner or operator of any industrial, business, governmental or commercial establishment required to submit a plan by this paragraph shall be notified by the Administrator or his authorized representative within 30 days after the plan has been evaluated, if the plan is disapproved. Any plan disapproved by the Administrator shall be modified to overcome the disapproval and resubmitted to the Administrator within 30 days of receipt of the notice of disapproval.

(10) Any source that violates any requirement of this regulation shall be subject to enforcement action under Section 113 of the Act.

(11) All submittals or notifications required to be submitted to the Administrator by this regulation shall be sent to:

Regional Administrator, Attn.: Air and Hazardous Materials Division, Air Technical Branch, Technical Analysis Section (A-4-3), Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105.

(12) For the purposes of this regulation the following episode criteria shall apply to particulate matter episodes:

Pollutant	Averaging time	Stage 1	Stage 2	Stage 3
Particulate matter	24 hours	375 $\mu g/m^3$	625 $\mu g/m^3$	875 $\mu g/m^3$

(13) The provisions of the Santa Barbara County Air Pollution Control Distict's Regulation VII, as submitted on July 19, 1974 and October 23, 1974, relating to episodes for carbon monoxide and photochemical oxidants averaged over 1 hour shall apply to particulate matter episodes averaged over 24 hours except that the Administrator shall insure that declaration procedures, notification

procedures, source inspections, and termination of such episodes occur.

(14) The Administrator shall insure that the following actions will be taken in the Santa Barbara Air Quality Management Area in the source and receptor areas on the declaration of a Stage 1, Stage 2 or Stage 3 episode for particulate matter, carbon monoxide or photochemical oxidants episodes:

(i) For a Stage 1 or Stage 2 episode:

(A) Persons operating any facility or activity named in subparagraph (5) of this paragraph shall implement the appropriate plans submitted in accordance with subparagraph (5) of the declared Stage 1 or Stage 2 episode for the appropriate air contaminant(s).

(ii) For a Stage 3 episode:

(A) The general public, schools, industrial, business, commercial, and governmental activities throughout the Santa Barbara Air Quality Management Area shall operate as though the day were a Major National Holiday.

* * * * *

[FR Doc. 79-18452 Filed 6-12-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Part 65]

[FRL 1233-1]

Notice of Proposed Approval of an Administrative Order Issued by the Pennsylvania Department of Environmental Resources to the Pennsylvania Power and Light Company, Montour Units 1 and 2

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: EPA proposes to approve an administrative order issued by the Pennsylvania Department of Environmental Resources (DER) to the Pennsylvania Power and Light Company (PP&L). The order requires the company to bring air emissions from its Montour Steam Electric Station Units 1 and 2 in Derry Township, Pennsylvania into compliance with certain regulations contained in the federally approved Pennsylvania State Implementation Plan (SIP) by July 1, 1979. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before July 13, 1979.

ADDRESSES: Comments should be submitted to Director, Enforcement Division, EPA, Region III, Curtis Building, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Gross, Air Enforcement Branch (3EN12) at the above address or telephone 215/597-8007.

SUPPLEMENTARY INFORMATION: PP&L operates a steam electric generating station at Derry Township, Pennsylvania. The order under consideration addresses emissions from boiler units 1 and 2 at the facility, which are subject to Section 123.11 of Title 25 of the Pennsylvania Code. The regulation limits the emissions of particulate matter and is part of the federally approved Pennsylvania State Implementation Plan. The order requires final compliance with the regulation by July 1, 1979 through installation of a sulfur trioxide (SO_3) flue gas conditioning system as well as mechanical and electrical modifications to the existing electrostatic precipitators. PP&L has consented to the terms of the order.

Because this order has been issued to a major source of particulate emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under Section 113(d) of the Clean Air Act (the Act). EPA may approve the order only if it satisfies the appropriate requirements of this subsection. Based on a preliminary review of the order, EPA presently believes it is approvable as a delayed compliance order.

If the order is approved by EPA, source compliance with its terms would preclude federal enforcement action under Section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Pennsylvania SIP.

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the Federal Register the Agency's final action on the order in 40 CFR Part 65.

(Authority: 42 U.S.C. 7413, 7601.)

Dated: April 6, 1979.

Jack J. Schramm,

Regional Administrator, Region III.

[FR Doc. 79-18181 Filed 6-12-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Part 65]

[FRL 1246-7]

State and Federal Administrative Enforcement of Implementation Plan Requirements After Statutory Deadlines; Proposed Delayed Compliance Order for Whitehead Brothers Co. Dividing Creek, N.J.

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: The EPA proposes to issue an administrative Order pursuant to Section 113(d)(3) of the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.* ("the Act"), requiring the Whitehead Brothers Company ("Whitehead") to bring a sand producing facility located at Dividing Creek, New Jersey, into compliance with certain regulations contained in the federally-approved New Jersey State Implementation Plan ("SIP"). The proposed Order would establish a final compliance date by Whitehead of July 1, 1979 because of the inability of this source to comply with these regulations at this time. Source compliance with this Order would preclude suits under the federal enforcement and citizen suit provisions of the Act for violation of the SIP regulations covered by this Order. The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on EPA's proposed issuance of this Order.

DATES: Written comments and requests for a public hearing must be received on or before July 13, 1979. All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held after thirty days notice of

the date, time, and place of the hearing has been given in this publication.

ADDRESSES: Comments and requests for a public hearing should be submitted to: Meyer Scolnick, Director, Enforcement Division, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10007.

Material supporting this Order and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Samuel P. Moulthrop, Attorney General Enforcement Branch, Enforcement Division, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10007, (212) 264–5695.

SUPPLEMENTARY INFORMATION: The Whitehead Brothers Company owns and operates a plant which produces foundry sand in Dividing Creek, New Jersey. The Order under consideration concerns emissions from the Number 3 cooling unit, which are subject to the requirements of Title 7, Chapter 27, Subchapter 6 of the New Jersey Administrative Code. This regulation limits the emission of particulate matter and is part of the federally-approved State Implementation Plan for the Air Quality Control Region in which the source is located.

Whitehead has proposed to comply with the emission limitation by terminating the production of foundry sand and the operation of the cooling unit at the Dividing Creek plant. The Order requires that the operation of the cooling unit cease no later than July 1, 1979. As a condition of the issuance of the Order, Whitehead has posted a bond in the amount of $98,000.00, which shall be forfeited if Whitehead fails to terminate the operation of the cooling unit. The amount of the bond is equal to the cost of actual compliance by the plant plus the economic value which would accrue to Whitehead by reason of failure to comply. The source has consented to the issuance of the Order and to its terms.

The proposed Order Satisfies the applicable requirements of Section 113(d) of the Act. If the Order is issued, source compliance would preclude further EPA enforcement action under Section 113 of the Act against the source for violations of the regulation covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provisions of Section 304 of the Act would be similarly precluded.

Comments received by the date specified above will be considered in determining whether EPA should issue these Orders. Testimony given at any public hearing concerning the Orders will also be considered. After the public comment period and any public hearing, the Administrator of the EPA will publish in the **Federal Register** the Agency's final action on the Order in 40 CFR Part 65.

Dated: April 20, 1979.

Eckardt C. Beck,

Regional Administrator, Region II.

1. The text of the Order reads as follows:

U.S. Environmental Protection Agency, Region II

In the matter of Whitehead Brothers Company (Dividing Creek, New Jersey).

Consent Order: Index No. 70104

Findings

1. Whitehead Brothers Company (Whitehead) is a New Jersey Corporation located at 60 Hanover Road, Florham Park, New Jersey. Whitehead owns and operates a sand manufacturing facility at Dividing Creek, New Jersey.

2. On November 11, 1976 the United States Environmental Protection Agency (EPA) issued a Notice of Violation, pursuant to Section 113(a)(1) of the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.* (the Act), to Whitehead. The Notice of Violation was issued upon a finding that emissions from Whitehead's facility at Dividing Creek, New Jersey were in violation of N.J.A.C. 7:27–6.2(a) and Section 52.1577 of Title 40 of the Code of Federal Regulations. Specifically, emissions from the facility's Number 3 Cooler cyclones were found to be in violation of the particulate emission limitations of N.J.A.C. 7:27–6.2(a). The finding of violation was based upon stack tests conducted by the New Jersey Department of Environmental Protection in 1971 and admissions by Whitehead that the violation was not corrected. A conference between EPA and Whitehead was held on March 15, 1977 in accordance with Section 113(a)(4) of the Act.

3. In June, 1978 Whitehead conducted a stack test of the emissions from the Number 3 Cooler cyclones at said Dividing Creek facility. The test results indicated that the emissions continued to violate N.J.A.C. 7:27–6.2(a).

4. Said regulation is a part of the federally-approved New Jersey State Implementation Plan (NJSIP) applicable to the Air Quality Control Region in which said Dividing Creek facility is situated.

5. The EPA finds that Whitehead's Dividing Creek facility (Number 3 Cooler cyclones) is presently in violation of the above-mentioned regulation and will be unable to comply until July 1, 1979.

6. Whitehead has acknowledged the above-mentioned violations and has notified the EPA in writing that it intends to terminate emissions from the Number 3 Cooler by July 1, 1979 by ceasing the production of foundry sand at the Dividing Creek facility.

7. In conformance with Section 113(d)(3) of the Act Whitehead has posted a bond in the amount of ninety-eight thousand dollars ($98,000.00), an amount equal to the cost of actual compliance by the facility and any economic value which may accrue to Whitehead since August 7, 1977 (effective date of the Act) by reason of its noncompliance. Section 113(d)(3) authorizes EPA to issue an order, specifying compliance later than the final SIP compliance date without an interim schedule of compliance, only if the source owner posts such a bond.

8. The EPA has determined that Whitehead has acted in good faith and that it can, by meeting the terms of this Order, be in final compliance by July 1, 1979. The EPA has determined that the schedule embodied herein will provide for compliance as expeditiously as is practicable.

9. The EPA has determined that there exist no interim control measures which are practicably available to the Company to minimize air emissions during the period of delayed compliance at its Dividing Creek facility permitted by the terms of this Order.

10. Public notice, opportunity for a public hearing and thirty days notice to the State of New Jersey have been provided.

Order

Based upon the foregoing, after consideration of public comment, and pursuant to Section 113(d) of the Act, IT IS HEREBY ORDERED:

I. That Whitehead shall terminate all emissions from the Number 3 Cooler at its Dividing Creek, New Jersey facility and shall terminate the use of said Cooler no later than July 1, 1979.

II. That, no later than five days after the above-mentioned compliance date, Whitehead shall notify the EPA, Region II in writing of the status of its compliance. Said notice shall be directed to: Mr. Kenneth Eng, Chief, Air and Environmental Application Section, Status of Compliance Branch, Enforcement Division, U.S. Environmental Protection Agency, 26 Federal Plaza, New York, New York 10007.

III. Nothing herein shall affect the responsibility of Whitehead to comply with state or local regulations. This Order shall be terminated in accordance with Section 113(d)(8) of the Act if the Administrator (or his delegate) determines on the record, after notice and hearing, that an inability to comply with N.J.A.C. 7:27–6.2(a) no longer exists.

IV. Violation of any requirement of this Order shall result in one or more of the following actions:

A. Forfeiture of the bond posted by Whitehead in accordance with Section 113(d)(3) of the Act and the terms of the bond. The Administrator has no discretion under the Act to modify this Order or to compromise the bond.

B. Enforcement of such requirement pursuant to Section 113(a), (b) or (c) of the Act, including possible judicial action for an injunction or criminal prosecution.

C. Revocation of this Order, after notice and opportunity for a public hearing, and subsequent enforcement of N.J.A.C. 7:27–6.2(a) in accordance with the preceding paragraph.

D. If such violation continues beyond July 1, 1979, notice of noncompliance and subsequent action pursuant to Section 120 of the Act.

So Ordered, Effective Immediately

Douglas M. Costle,

Administrator, U.S. Environmental Protection Agency.

Date: ————

Consent

The undersigned, having full authority to represent the Whitehead Brothers Company in these proceedings, has read the foregoing Order and believes it to be reasonable, and consents to both its issuance and to its terms. Furthermore, the undersigned acknowledges that the Whitehead Brothers Company's facility at Dividing Creek, New Jersey has been and continues to be in violation of the requirements of N.J.A.C. 7:27–6.2(a). The undersigned recognizes that Whitehead is subject to all remedies provided in Section 113 of the Act for failure to comply with the terms of the foregoing Order.

(Name of Officer)
For Whitehead Brothers Company
Date: ————

[FR Doc. 79-18424 Filed 6-12-79; 8:45 am]
BILLING CODE 6560-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service, Center for Disease Control

[42 CFR Part 51g]

Health Education-Risk Reduction Grants

AGENCY: Center for Disease Control, PHS, HEW.

ACTION: Notice of Decision to Develop Regulations.

SUMMARY: The Center proposes to develop regulations which will be applicable to Health Education-Risk Reduction programs under Section 1703 of the Public Health Service Act. The regulations will establish procedures and requirements for awarding project grants to State and local health agencies to assist them in initiating or strengthening existing activities to help the agencies become the focal point for health risk reduction programs within their jurisdiction. The grants will encourage coordination of efforts by all agencies interested in this area. These grants will also serve as the nucleus for lifestyle activities by these agencies, with the final objective being a decrease in premature and unnecessary morbidity and mortality. These programs will target activities at youth and at specific population groups with increased risk of premature morbidity and mortality related to adverse personal choice behavior.

FOR FURTHER INFORMATION CONTACT: Mr. Billy G. Griggs, Deputy Director, Bureau of Health Education, Center for Disease Control, PHS, HEW, Atlanta, Georgia 30333. Telephone: (404) 329–3111 or FTS: 236–3111.

Dated: May 22, 1979.

Julius B. Richmond,

Assistant Secretary for Health.

[FR Doc. 79-18377 Filed 6-12-79; 8:45 am]
BILLING CODE 4110-88-M

Health Services Administration

[42 CFR Part 55a]

Program Grants for Coal Miners' Respiratory Clinics

AGENCY: Health Services Administration, PHS, HEW.

ACTION: Notice of Decision to Develop Regulations.

SUMMARY: HSA is proposing to develop amendments to the regulations governing program grants for Coal Miners' Respiratory Clinics. This grant program is authorized by the Federal Mine Safety and Health Act of 1977. HSA is considering an amendment which would delete certain restrictions on grantee eligibility. Present regulations limit eligibility to certain entities receiving grants from the Appalachian Regional Commission (ARC) or entities which are designated by the Governor of the State.

Other amendments under consideration would be made to (1) conform the regulations with recent advances in therapeutic care of patients with chronic obstructive pulmonary disease, (2) reflect changes that have occurred since 1974 in the diagnostic procedures required by the black lung disability benefits program, and (3) make technical conforming amendments in response to legislation which has been enacted since the promulgation of 42 CFR Part 55a in 1974.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Corrigan, Director, Division of Policy Development, Bureau of Community Health Services, HSA, 5600 Fishers Lane, Rockville, Maryland 20857, telephone 301–443–1034.

Dated: May 14, 1979.

Charles Miller,

Acting Assistant Secretary for Health.

[FR Doc. 79-18378 Filed 6-12-79; 8:45 am]
BILLING CODE 4110-83-M

Office of the General Counsel

[45 CFR Parts 205 and 220; 42 CFR Part 431]

Case Assistance, Medical Assistance, and Social Services Programs; Fair Hearings

AGENCY: Department of Health, Education, and Welfare.

ACTION: Availability of Draft Regulations.

SUMMARY: The Department of Health, Education, and Welfare announces the availability of draft regulations on the fair hearings process for applicants and recipients in the AFDC, Medicaid, and Social Services programs.

The draft regulations have been developed as part of the Department's effort to simplify and clarify its regulations. After further review within the Department (and informal consultation with interested parties) the fair hearings regulations will be published as a Notice of Proposed Rulemaking, with an appropriate comment period.

ADDRESS: A copy of the draft fair hearings regulations may be obtained by writing to: Annette Blum, Director, Joint Recodification Project, Room 716–E, Hubert Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Annette Blum (202) 245–7542.

Dated: June 7, 1979.

Inez Smith Reid,

Deputy General Counsel for Regulation Review.

[FR Doc. 79-18371 Filed 6-12-79; 8:45 am]
BILLING CODE 4110-12-M

FEDERAL MARITIME COMMISSION

[46 CFR 537]

[Docket No. 79–60]

The Filing With the Commission of Cargo Statistics Compiled by Various Conferences of and Rate Agreements Between, Common Carriers by Water in the Foreign Commerces

AGENCY: Federal Maritime Commission.

ACTION: Proposed Rulemaking.

SUMMARY: The Federal Maritime Commission hereby proposes the promulgation of a rule which would require the filing with the Commission annually of certain cargo statistics compiled by conferences of, and rate agreements between, common carriers by water engaged in the various foreign commerces of the United States.

DATE: Comments due on or before August 13, 1979.

ADDRESSES: Comments (original and fifteen copies) to:
Secretary, Federal Maritime Commission, Room 11101, 1100 L. Street NW., Washington, D.C. 20573.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commision, Room 11101, 1100 L. Street NW., Washington, D.C. 20573, (202) 523–5725.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Federal Maritime Commission is considering the promulgation of the proposed rule set forth below which would require the filing with the Commission annually of certain cargo statistics compiled by conferences of, and rate agreements between, common carriers by water engaged in the various foreign commerces of the United States. As envisaged by the Commission, nothing more than three copies of a final work product need be filed. Such information will not be made routinely available for public inspection and, to the extent that it is considered confidential, the Commission will make all efforts to preserve its confidentality. Notice is given hereby, however, that nothing herein shall preclude the Commission from furnishing such statistical information in response to any legal process issued under the authority of any court or administrative tribunal, or of any officer or agent of the Government of the United States, or of any State, territory, district, or possession thereof, in the exercise of his powers and in the prosecution of his duties.

The reasons for the promulgation of this rule are several. First, the Commission is charged with the duty of maintaining a continuing surveillance of the activity of those persons subject to the Shipping Act, 1916 (the Act), and particularly those whose activity has been immunized from the antitrust laws pursuant to section 15. Section 15 of the Act requires the Commission to determine that any agreement is not unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, detrimental to the commerce of the United States, contrary to the public interest or in any way violative of the Shipping Act, 1916, not only prospectively at the time of the Commission's initial approval, but actually during any term of that, finite or indefinite. Second, this obligation is not discharged fully unless the Commission is aware, somehow, of the impact upon our commerces of what it approved under section 15 of the Act. Minutes of meetings of the conferences' carriers now required to be filed pursuant to 46 CFR 537 are helpful but their value is diminished considerably if they cannot be reviewed by the Commission within some frame of reference. Third, many of the more significant agreements submitted for the Commission's approval by the various conferences usually require some sort of statistical evaluation to facilitate the Commission's determination as to whether or not, in the overall, they begin to meet the criteria required by section 15 of the Act of any approval. Fourth, the Commission has noticed that what would be submitted here is often sought by opponents of significant agreements in formal hearings, or is advanced by their proponents in furtherance of their justification. Thus, the ready availability of this information should serve to expedite formal hearings and, as significantly, should materially assist the Commission in determining whether formal hearings of particular matters are required at the outset, or whether something less than that will suffice in the particular circumstances. Fifth, the Commission has become aware of the fact that many conferences and ratemaking agreements presently compile statistics for their own purposes.

Accordingly, pursuant to section 4 of the Administrative Procedures Act (5 USC 553(b)) and sections 15, 21 and 43 of the Shipping Act, 1916 (46 USC 814, 820, and 841A) respectively; the Commission intends to expand upon 46 CFR 537—*Conference Agreement Provisions Relating to Concerted Activities*, by adding another section, § 537.5 Filing of statistical information, to read as follows:

§ 537.5 Filing of statistical information.

(1) *Definitions.*—(1) *Conferences.* Conferences of, or ratemaking agreements between, common carriers by water engaged in the foreign commerces of the United States.

(2) *Statistics.* Compilations of all cargoes transported port-to-port, point-to-port, and point-to-point by member lines of a conference whether compiled by the conference's secretariat or by any of the conference's member lines but excluding statistics compiled by any member line solely for its own use and without distribution to or with the cooperation of any other member line.

(b) *Filing requirements.* (1) By April 30 annually, each conference which has compiled statistics for all or part of the preceding calendar year shall file three (3) copies of those statistics with the Director, Bureau of Ocean Commerce Regulation, Federal Maritime Commission. This filing shall cover the activity of its member lines for the preceding calendar year and its format shall be that as regularly compiled by the conference. In the event the statistics are incomplete, the conference's chairman or secretary shall submit an accompanying statement explaining the extent of, and reasons for, the deficiency.

(2) By April 30 annually, each conference which has not compiled statistics for all of the preceding calendar year shall file a statement to that effect, signed by the conference's chairman or secretary, with the Director, Bureau of Ocean Commerce Regulation, Federal Maritime Commission.

(c) *Status of filings and confidentiality.* (1) Copies of all statistics received shall be presumed correct by the Commission unless corrected subsequently by the filing conference.

(2) Copies of all statistics filed shall not be available for public inspection.

(3) Statistical information received pursuant to this rule may be used in any formal proceeding before the Commission provided it receives that protection afforded objected materials upon order of an administrative law judge of the Commission as set forth in Rule 167 of the Commission's Rules of Practice and Procedure (46 CFR 502.167).

(4) Statistical information received pursuant to this rule may be used with respect to any matter undertaken by the Commission or its staff. If the statistical information should in any way serve to support any Commission action, as reflected in an appropriate order, then such statistical information shall be distributed to parties of interest only to the same extent, and under the same protection, as is afforded objected material in Rule 167 of the Commission's rules of practice and procedure (46 CFR 502.167). Any claim to confidentiality is waived if a conference submits the data encompassed by this rule as justification for, or in support of, any Commission action.

Interested parties may participate in this rulemaking proceeding by filing

with the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before August 13, 1979, an original and 15 copies of their views or arguments pertaining to the proposed rules. All suggestions for changes in the text as set out above should be accompanied by drafts of the language thought necessary to accomplish the desired change and should be supported by statements and arguments relating to the proposed change. Bearing in mind that what the Commission anticipates receiving annually in compliance with this rule are three copies of a final work product, each interested person submitting comment and in a position to do so will provide the Commission with an estimate of the total financial burden which will be incurred annually by the promulgation of this rule, as well as an estimate of the number of employee hours to be allocated annually.

The Federal Maritime Commission, Bureau of Hearing Counsel, shall participate in the proceeding. Bureau of Hearing Counsel shall file Reply to Comments on or before August 27, 1979 by serving an original and 15 copies on the Federal Maritime Commission and one copy on each party who filed written comments. Answers to Hearing Counsel's replies shall be submitted to the Federal Maritime Commission on or before September 7, 1979.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 79-18439 Filed 6-12-79; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 17]

Endangered and Threatened Wildlife and Plants; Review of the Status of Ten Birds and Two Mammals From Guam

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Extension of Comment Period.

SUMMARY: In the Federal Register of Friday, May 18, 1979 (44 FR 29128), the Service requested that all pertinent comments on its status review of ten birds and two mammals from Guam be received before June 17, 1979. The service now feels that this allows too short a time frame within which to adequately respond to the review notice and has therefore extended the comment period.

DATE: The comment period is extended to August 16, 1979.

ADDRESS: All comments should be sent to Director (OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: John L. Spinks, Jr., (703) 235–2771.

Dated: June 7, 1979.

Lynn A. Greenwalt,

Director, Fish and Wildlife Service.

[FR Doc. 79-18508 Filed 6-12-79; 8:45 am]

BILLING CODE 4310-55-M

[50 CFR Part 70]

National Fish Hatcheries

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed Rulemaking.

SUMMARY: This proposal would amend Part 70 by changing cross-references to the National Wildlife Refuge System contained therein in order that such references accurately cite the appropriate parts of the National Wildlife Refuge System regulations. Additionally, the proposal would apply the administration provisions for the National Wildlife Refuge System to national fish hatchery areas; such provisions are presently unaddressed.

DATES: Comments on these proposed regulations must be received on or before July 13, 1979.

ADDRESSES: The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed revision. Comments should be addressed to the Director (FWS/LE), U.S. Fish and Wildlife Sevice, P.O. Box 19183, Washington, D.C. 20036, and should refer to the file number, REG 70–02–2.

Comments received will be available for public inspection during normal business hours at the Service's Divison of Law Enforcement, Suite 600, 1612 K Street, N.W., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Robert W. Thoesen, Chief, Division of National Fish Hatcheries, telephone: 343–2197.

SUPPLEMENTARY INFORMATION: For some time prior to the 1977 revision of Title 50, Code of Federal Regulations, sections of the National Fish Hatcheries regulations found in Part 70 of Title 50, CFR, have contained inaccurate references to corresponding sections in Parts 25–31 of Title 50, CFR. This proposal would correct these references and would add a further cross-reference that would incorporate the administrative provisions of Part 25 in the national fish hatcheries regulations. Such provisions would provide regulations for public notice, permits, appeals, fees, concessions, safety, and closing national fish hatcheries.

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Note.—The Service has determined that this proposed rulemaking is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

The primary author of this proposed rulemaking is Richard A. Stephan, Legal Specialist, Fish and Wildlife Service.

Accordingly, it is hereby proposed to revise Part 70 of Title 50, Code of Federal Regulations, to read as set forth below.

SUBCHAPTER E—MANAGEMENT OF FISHERIES CONSERVATION AREAS

PART 70—NATIONAL FISH HATCHERIES

Sec.

70.1 Purpose.
70.2 Administrative provisions.
70.3 State cooperation in national fish hatchery area management.
70.4 Prohibited acts.
70.5 Enforcement, penalty, and procedural requirements for violations of Parts 25, 26, and 27.
70.6 Public entry and use.
70.7 Land-use management.
70.8 Range and feral animal management.
70.9 Wildlife/species management.

Authority.—Sec. 4, 48 Stat. 402, as amended, sec. 4, 76 Stat. 654; 5 U.S.C. 301, 16 U.S.C. 664; 460k; sec. 2, 80 Stat. 926; 16 U.S.C. 668bb.

§ 70.1 Purpose.

All national fish hatchery areas are maintained for the fundamental purpose of the propagation and distribution of fish and other aquatic animal life and managed for the protection of all species of wildlife.

§ 70.2 Administrative provisions.

The provisions and regulations set forth in Part 25 of this chapter are equally applicable to national fish hatchery areas.

§ 70.3 State cooperation in national fish hatchery area management.

State cooperation may be enlisted in management programs including public

hunting, fishing, and recreation. The details of these programs shall be mutually agreed upon by the Secretary and the head of the appropriate State agency in cooperative agreements executed for the purpose. Persons entering upon a national fish hatchery area shall comply with all regulations issued by the State agency under the terms of the cooperative agreement.

§ 70.4 Prohibited acts.

(a) The prohibited acts enumerated in Part 27 of this chapter are equally applicable to national fish hatchery areas.

(b) Fishing, taking, seining, or attempting to fish, take, seine, any fish, amphibian, or other aquatic animal on any national fish hatchery area is prohibited except as may be authorized under the provisions of Part 71 of this chapter.

(c) Hunting, killing, capturing, taking, or attempting to hunt, kill, capture, or take any animal on any national fish hatchery area is prohibited except as may be authorized in the provisions of Part 71 of this chapter.

(d) Disturbing spawning fish or fish preparing to spawn in ponds, raceways, streams, lakes, traps, and below traps, ladders, fish screens, fishways and racks is prohibited.

§ 70.5 Enforcement, penalty, and procedural requirements for violations of Parts 25, 26, and 27.

The enforcement, penalty, and procedural requirement provisions set forth in Part 28 of this chapter are equally applicable to national fish hatchery areas.

§ 70.6 Public entry and use.

The public entry and use provisions set forth in Part 26 of this chapter are equally applicable to National fish hatchery areas.

Note.—For Federal Register citations to special regulations issued under § 70.6, see the List of CFR Sections Affected.

§ 70.7 Land-use management.

The land-use management provisions set forth in Part 29 of this chapter are equally applicable to national fish hatchery areas.

§ 70.8 Range and feral animal management.

The range and feral animal management provisions set forth in Part 30 of this chapter are equally applicable to national fish hatchery areas.

§ 70.9 Wildlife species management.

The wildlife species management provisions set forth in Part 31 of this chapter are equally applicable to national fish hatchery areas with exception of § 31.15, relating to hunting and fishing, which are treated separately in this Part.

Dated: May 30, 1979.

Lynn A. Greenwalt,

Director.

[FR Doc. 79-18446 Filed 6-12-79; 8:45 am]

BILLING CODE 4310-55-M

ENDANGERED SPECIES SCIENTIFIC AUTHORITY

[50 CFR Part 810]

Export Findings for American Alligator; Public Hearing on July 10, 1979

AGENCY: Endangered Species Scientific Authority.

ACTION: Notice of Public Hearing.

SUMMARY: The Endangered Species Scientific Authority (ESSA) will hold an informal public hearing on July 10, 1979. The hearing will concern information needed to satisfy the ESSA that export will not be detrimental to the survival of American alligator or to the survival of other species of crocodilians included in the appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. The ESSA published proposed findings on May 31, 1979 (44 FR 31584), with a comment period open until July 30, 1979. The hearing is one of several steps being taken by the ESSA to ensure maximum public input for its determinations.

DATE: The hearing will be held from 10 a.m. until 6 p.m. on Tuesday, July 10, 1979, at the following address: Room 8070 (Penthouse), Main Interior Building, 18th and C Streets, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Peter C. Escherich, (202) 653-5948.

SUPPLEMENTARY INFORMATION: Statements should be limited to information and analysis relevant to ESSA findings on export of this species and to the potential effect of its export on this and other species of crocodilians. Appointments to speak may be made with the Office of the Executive Secretary, Endangered Species Scientific Authority, 18th and C Streets, NW., Washington, D.C. 20240 (202-653-5948). Participants without prior appointments will be given opportunity to speak, but only to the extent that time allows following speakers with appointments.

Dated: June 8, 1979.

William Y. Brown,

Executive Secretary, Endangered Species Scientific Authority.

[FR Doc. 79-18286 Filed 6-12-79; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 44, No. 115
Wednesday, June 13, 1979

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Foster Grandparent and Senior Companion Programs; Income Eligibility Levels

This notice revises the schedule of income eligibility levels for individuals and families for the Foster Grandparent Program and the Senior Companion Program published in the Federal Register of January 8, 1979 (44 FR 1768). The revised schedule is based on the Community Services Administration (CSA) Income Poverty Guidelines effective June 6, 1979 and by the addition, through the Comprehensive Older Americans Act Amendments of 1978, of a new Subsection (f) to Section 211 of the Domestic Volunteer Service Act of 1973 to extend the eligibility for participation in the Foster Grandparent/Senior Companion Programs to individuals with an income not greater than 125% of the poverty level. Income eligibility levels are further increased in certain states in the amounts by which individual states have supplemented the Federal Supplemental Security Income (SSI) Summary dated October 1, 1978. The Director of ACTION has determined that the addition of such amounts to the SSI Summary is an existing poverty guideline within the meaning of Section 421(d) of the Domestic Volunteer Service Act of 1973 (42 U.S.C., 5061(d)), and that persons whose income is at or below the supplemented SSI level are "poor" or "low income" persons within the meaning of such section, and are eligible to participate in the Foster Grandparent and Senior Companion programs.

These ACTION programs are authorized pursuant to Section 211 of the Domestic Volunteer Service Act of 1973, Pub. L. 93–113, 87 Stat. 402.

Pursuant to Section 421 (4) of Pub. L. 93–113, 87 Stat. 414, the income eligibility levels are determined by the currently applicable guideline published by CSA pursuant to Section 625 of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2971 (a)), and increased by the amounts individual States supplement the Federal Supplemental Security Income, permitting ACTION, in accordance with Section 421 (4) of Pub. L. 93–113, to take into consideration existing poverty guidelines as appropriate to local situations. Section 625 of the Economic Opportunity Act of 1964 permits the CSA poverty guidelines to be adjusted for cost-of-living changes.

The income eligibility levels will be reviewed at least once a year, and similar schedules will be prepared to reflect any changes required as a result of that review.

This policy will become effective on June 6, 1979.

Schedule of Income Eligibility Levels—Foster Grandparent and Senior Companion Programs

[Effective date June 6, 1979]

State	Individuals	Family of two	Family of three
Alabama	$4,250	$5,840	$7,215
Alaska	5,730	8,125	10,540
Arizona	4,250	5,625	7,000
Arkansas	4,250	5,625	7,000
California	5,670	8,110	10,485
Colorado	4,730	7,715	8,080
Connecticut	5,530	8,190	9,585
Delaware	4,250	5,625	7,000
District of Columbia	4,250	5,625	7,000
Florida	4,250	5,625	7,000
Georgia	4,250	5,625	7,000
Hawaii	5,095	6,780	8,465
Idaho	5,195	6,665	7,960
Illinois	4,250	5,625	7,000
Indiana	4,250	5,625	7,000
Iowa	4,250	5,625	7,000
Kansas	4,250	5,625	7,000
Kentucky	4,250	5,625	7,000
Louisiana	4,250	5,625	7,000
Maine	4,370	5,895	7,190
Maryland	4,250	5,625	7,000
Massachusetts	5,705	7,995	9,300
Michigan	4,535	6,205	7,580
Minnesota	4,510	5,950	7,325
Mississippi	4,250	5,625	7,000
Missouri	4,250	5,625	7,000
Montana	4,250	5,625	7,000
Nebraska	5,315	6,780	8,125
Nevada	5,730	8,550	7,825
New Hampshire	4,725	6,090	7,455
New Jersey	4,460	5,730	7,105
New Mexico	4,250	5,625	7,000
New York	4,980	6,935	7,910
North Carolina	4,250	5,625	7,000
North Dakota	4,250	5,625	7,000
Ohio	4,250	5,625	7,000
Oklahoma	4,755	6,575	7,950
Oregon	4,985	6,745	7,130
Pennsylvania	4,640	6,210	7,585
Rhode Island	4,850	6,365	7,760
South Carolina	4,250	5,625	7,000
South Dakota	4,430	5,805	7,180
Tennessee	4,250	5,625	7,000
Texas	4,250	5,625	7,000
Utah	4,370	5,745	7,120
Vermont:			
Area 1	4,880	6,190	7,595
Area 2	4,690	6,440	7,815
Virginia	4,250	5,625	7,000
Washington:			
Area 1	4,740	6,190	7,535
Area 2	4,525	5,770	7,145
West Virginia	4,250	5,625	7,000
Wisconsin	5,295	7,295	8,670
Wyoming	4,490	5,985	7,480
Guam	4,250	5,625	7,000
Puerto Rico	4,250	5,625	7,000
Virgin Islands	4,250	5,625	7,000

Schedule of Income Eligibility Levels—Foster Grandparent and Senior Companion Programs—Continued

[Effective date June 6, 1979]

State	Individuals	Family of two	Family of three

For families of more than three persons in the household, add the appropriate supplement for each member over three as follows:

In the 48 contiguous states	$1,375 per person
Alaska	1,713 per person
Hawaii	1,575 per person

Revision based on Community Services Administration Income Poverty Guidelines effective June 6, 1979, increased by the DHEW Supplemental Security Income Summary dated October 1, 1978.

Sam Brown,

Director.

[FR Doc. 79-18219 Filed 6-12-79; 8:45 am]

BILLING CODE 6050-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

Pacific Crest National Scenic Trail; Notice of Relocation; Correction

The notice of relocation published in FR volume 44, page 27464, doc. #79-14616, column 1, dated May 10, 1979, is revised by adding the following paragraph to the end of the description of Segment A:

Page 2837, Column 2, delete the following described private lands.

Mount Diablo Meridian

Township, Range and *Section*

38 North, 9 West, 3 and 5.

Private land ownership is involved in the change in location of Segment A. Written concurrence from the landowner is on file in the Supervisor's Office, Shasta-Trinity National Forest.

R. M. Housley,

Associate Deputy Chief.

[FR Doc. 79-18303 Filed 6-12-79; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Oil Creek Watershed, Pa.; Intent To Prepare an Environmental Impact Statement

Pursuant to Section 102(c)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the Oil Creek Watershed, Crawford, Erie, Warren, and Venango Counties, Pennsylvania.

The environmental assessment of this federally-assisted action indicates that the action may cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Graham T. Munkittrick, State Conservationist, has determined that the preparation and review of an environmental impact statement is needed for this action.

The action concerns a plan for watershed protection and flood prevention. The planned works of improvement already installed consist of accelerated land treatment measures. Planned project features to be installed include three single-purpose floodwater retarding dams with a combined controlled drainage area of approximately 47 square miles.

A draft environmental impact statement will be prepared for the entire project and circulated for review by agencies and the public. The SCS invites participation of agencies and individuals with expertise or interest in the preparation of the draft environmental impact statement. The draft environmental impact statement will be developed by Mr. Graham T. Munkittrick, State Conservationist, Soil Conservation Service, Federal Building and U.S. Courthouse, 228 Walnut Street, Harrisburg, Pennsylvania 17108, telephone number (717) 782-2202.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program—Public Law 83-566, 16 U.S.C. 100-1008)

Dated: June 5, 1979.

Joseph W. Haas,

Assistant Administrator for Water Resources.

[FR Doc. 79-18307 Filed 6-12-79; 8:45 am]

BILLING CODE 3410-16-M

Tesnatee Creek Watershed, Ga.; Intent Not To File an Environmental Impact Statement for Deauthorization of Federal Funding

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the deauthorization of Federal funding of the Tesnatee Creek Watershed, Lumpkin and White Counties, Georgia.

The watershed was planned in 1966 and 1967 and approved for operations in 1969. None of the planned structural measures, consisting of 11 miles of channel modification, 5 single-purpose floodwater retarding structures, 1 multipurpose structure for flood prevention and municipal water supply, and 1 multipurpose structure for flood prevention and recreation development, have been installed. The sponsoring local organizations made the decision not to implement the project.

The environmental assessment of this action indicates that deauthorization of Federal funding will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Dwight M. Treadway, State Conservationist, has determined that an environmental impact statement is not needed for the proposed deauthorization.

The basic data acquired during the development of the plan and environmental assessment may be reviewed at the Soil Conservation Service, 355 East Hancock Avenue (P.O. Box 832), Athens, Georgia 30603 (telephone: 404-546-2275).

The notice of intent not to file an environmental impact statement, and an environmental impact appraisal, have been forwarded to the Environmental Protection Agency as well as other interested agencies and organizations. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until August 13, 1979.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program, Public Law 83-566, 16 U.S.C. 1001-1008)

Dated: May 30, 1979.

Joseph W. Haas,

Assistant Administrator for Water Resources, Soil Conservation Service.

[FR Doc. 79-18308 Filed 6-12-79; 8:45 am]

BILLING CODE 3410-16-M

Willow Creek Watershed, Wis.; Intent Not To File an Environemntal Impact Statement for Deauthorization of Federal Funding

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil

Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for deauthorization of Federal funding of the Willow Creek Watershed, Richland and Sauk Counties, Wisconsin.

The environmental assessment of this action indicates it will not cause significant adverse local, regional, or national impacts on the environment. As a result of these findings, Mr. J. C. Hytry, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this action.

The project concerns a plan for watershed protection, flood prevention, and enhancement of fish and wildlife resources. The planned works of improvement include seven singly-purpose floodwater retarding structures and 2 miles of trout stream improvement.

The notice of intent not to file an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment is on file and may be reviewed by interested parties at the Soil Conservation Service, 4601 Hammersley Road, Madison, Wisconsin 53711. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal is available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until August 13, 1979.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program, Public Law 83-566, 16 U.S.C. 1001-1008)

Date: June 1, 1979.

Joseph W. Haas,

Assistant Administrator for Water Resources, Soil Conservation Service.

[FR Doc. 79-18388 Filed 6-12-79; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

[Order 79-6-19; Docket 34242]

Florida Airlines, Inc. Fitness Investigation

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 79-6-19, Docket 34242, *Florida Airlines, Inc. Fitness Investigation.*

SUMMARY: The Board is proposing to grant the application of Florida Airlines, Inc. for a certificate of public convenience and necessity under section 401(b) of the Federal Aviation Act of 1958, as amended, authorizing it to provide interstate air transportation between the following points: Atlanta, Ga., Brunswick, Ga., St. Simons Island, Ga., Waycross, Ga., Hilton Head Island, S.C., Jacksonville, Fla., Tampa, Fla., Sarasota, Fla., Ft. Myers, Fla., Miami, Fla., and Ft. Lauderdale, Fla. The grant would be contingent upon a finding that the carrier is fit, willing and able to perform properly the proposed transportation and to conform to the provisions of the Act and the Board's applicable rules and regulations, and, for certain markets, contingent on the outcome of the *Elorida Service Case*, Docket 33091. The order accordingly institutes the *Florida Airlines, Inc. Fitness Investigation.* The complete text of the order is available as noted below.

DATES: All interested persons having objections to the Board issuing the proposed authority shall file, and serve upon all persons listed below, a statement of objections, together with a summary of the testimony, statistical data and other material expected to be relied upon to support the stated objections;

(a) Where the objections are on grounds other than fitness, no later than July 9, 1979.

(b) Where the objections are on fitness grounds, by such time as shall be designated by the administrative law judge assigned to the case. Comments on the evidence request for this proceeding shall be filed no later than June 25, 1979. An example of our standard evidence request appears at 44 FR 33135 June 8, 1979.

ADDRESSES: All objections should be filed in Docket 34242, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Ava Scheinman, B-72, Bureau of Domestic Aviation, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428 (202) 673-5842.

SUPPLEMENTARY INFORMATION: Objections should be served upon Florida Airlines, Inc.

The complete text of Order 79-6-19 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 79-6-19 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: June 8, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-18613 Filed 6-12-79; 8:45 am]

BILLING CODE 6320-01-M

[Docket 33363]

Former Large Irregular Air Service Investigation; Hearing

Hearings on applications in Docket 33363 will be held in Room 1003, Hearing Room B, Universal Building North, 1875 Connecticut Avenue, N.W., Washington, D. C. 20428, at 9:00 a.m., during the month of July 1979 as follows:

Duncan Tours, July 2
Leico, Inc., July 9
Homeric Airlines, July 16
Overseas Military Travel Corp., d/b/a Militair, July 23
Robert G. Rutkoski, d/b/a/, Northeastern Airlines, July 26
Lone Star Airways, July 31

Dated at Washingon, D. C., 8 June 1979.

Rudolf Sobernheim,

Administrative Law Judge.

[FR Doc. 79-18613 Filed 6-12-79; 8:45 am]

BILLING CODE 6320-01-M

[Docket 30662]

The Flying Tiger Line, Inc. v. Scandinavian Airlines System; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-titled proceeding is assigned to be held on June 20, 1979, at 10:00 a.m. (local time), in Room 1003, Hearing Room C, Universal North Building, 1875 Connecticut Avenue NW., Washington, D.C., before the undersigned.

The matters to be considered at the conference are those remanded to the administrative law judge by the Board's Orders 78-8-86 of August 17, 1978, and 79-4-59 of April 6, 1979.

Dated at Washington, D.C., June 7, 1979.

William A. Kane, Jr.,

Administrative Law Judge.

[FR Doc. 79-18614 Filed 6-12-79; 8:45 am]

BILLING CODE 6320-01-M

[Docket 35752]

Wild Card Route Case; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on June 28, 1979, at 9:30 a.m. (local time) in Room 1003, Hearing Room D, Universal Building North, 1975 Connecticut

Avenue NW., Washington, D.C., before Administrative Law Judge William H. Dapper.

In order to facilitate the conduct of the conference, parties are instructed to submit one copy to each party and three copies to the Judge of (1) proposed statements of issues; (2) proposed stipulations; (3) proposed requests for information and for evidence; (4) statements of positions; and (5) proposed procedural dates. The Bureau of International Aviation will circulate its material on or before June 18, 1979, and the other parties on or before June 22, 1979. The submissions of the other parties shall be limited to points on which they differ with the Bureau of International Aviation, and shall follow the numbering and lettering used by the Bureau to facilitate cross-referencing.

Dated at Washington, D.C., June 8, 1979.

William H. Dapper,
Administrative Law Judge.

[FR Doc. 79-18612 Filed 6-12-79; 8:45 am]
BILLING CODE 6320-01

COMMISSION ON CIVIL RIGHTS

Connecticut Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U. S. Commission on Civil Rights, that a planning meeting of the Connecticut Advisory Committee SAC of the Commission will convene at 7:00 pm and will end at 10:00 pm, on July 26, 1979, at the hotel Sheraton, 315 Trumbull Street, Hartford, Connecticut.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the New England Regional Office of the Commission, 0/0 of 26 Federal Plaza, Room 1639, New York, New York 10007.

The purpose of this meeting is to discuss program planning.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C. June 8, 1979.

John I. Binkley
Advisory Committee Management Officer.

[FR Doc. 79-18347 Filed 6-12-79; 8:45 am]
BILLING CODE 6335-01-M

Iowa Advisory Committee; Meeting Cancellation

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Iowa Advisory Committee (SAC) of the Commission scheduled for June 21, 1979 (FR Doc. 79-17408) on page 32269, has been cancelled.

Dated at Washington, D.C. June 8, 1979.

John I. Binkley,
Advisory Committee Management Officer.

[FR Doc. 79-18348 Filed 6-12-79; 8:45 am]
BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Marine Fisheries Service; Modification of Permit

Notice is hereby given that, pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Scientific Research Permit No. 93 issued to Dr. William W. Dawson and Mr. Nicholas R. Hall, University of Florida, College of Medicine, Gainesville, Florida 32610, on May 8, 1975 (40 FR 21507), as modified February 16, 1978 and June 2, 1978, is further modified as follows:

1. Section B is modified by deleting Section B–3 and substituting therefor the following:

"The animals shall be maintained at the Marine Mammal Foundation, South Pasadena, Florida, or Clearwater Marine Science Center, Clearwater Beach, Florida, for the purpose of conducting the research as described in the application. However, no dolphins shall be maintained at the Clearwater Marine Science Center until the facility has been inspected by a duly authorized representative of the National Marine Fisheries Service and approved in writing by the Assistant Administrator for Fisheries."

This modification is effective June 13, 1979.

The permit, as modified, and documentation pertaining to the modification, is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, Duval Building, St. Petersburg, Florida 33702.

Dated: May 23, 1979.

Winfred H. Meibohm,
Associate Director,
National Marine Fisheries Service.

[FR Doc. 79-18283 Filed 6-12-79; 8:45 am]
BILLING CODE 3510-22-M

National Marine Fisheries Service; Issuance of Permit

On April 24, 1979, Notice was published in the Federal Register (44 FR 24120), that an application had been filed with the National Marine Fisheries Service by Zoogesellschaft Osnabruck E.V., Am Waldzoo 2/3, 45 Osnabruck, Federal Republic of Germany, to take four (4) California sealions (*Zalophus californiinus*) for the purpose of public display.

Notice is hereby given that on June 1,1979, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a public display permit for the above taking to Zoogesellschaft Osnabruck, subject to certain conditions set forth therein.

The Permit is available for review in the following offices: Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C; and Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: June 1, 1979.

Winfred H. Meibohm,
Executive Director, National Marine Fisheries Service.

[FR Doc. 79-18285 Filed 6-12-79; 8:45 am]
Billing Code 3510-22-M

National Marine Fisheries Service; Modification of Permit No. 42

Notice is hereby given that pursuant to the provisions of Sections 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Permit No. 42 issued to the Northwest Fisheries Center, National Marine Fisheries Service, Seattle, Washington 98112, on September 5, 1974 (39 FR 33388).

Sections A.1 and A.2 have been changed to read:

A. *Number and kind of marine mammals.*—1. Bowhead whales *(Balaena mysticetus)* may be taken, in that such whales or parts of such whales may be collected for the purposes stated in the application. There is no restriction

on the number of specimens which may be collected.

2. Gray whales *(Eschrichtius robustus)* may be taken in that such whales or parts of such whales may be collected for the purposes stated in the application. There is no restriction on the number of specimens which may be collected.

This modification makes Permit No. 42 consistent with its counterpart which was issued under the Endangered Species Act on May 27, 1975. The Permit as modified and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW, Washington, D.C.; and
Regional Director, National Marine Fisheries Service, Northwest Region, 1700 Westlake Avenue North, Seattle, Washington 98109.

Dated: May 31, 1979.

Winfred H. Meibohm,

Associate Director, National Marine Fisheries Service.

[FR Doc. 79-18286 Filed 6-12-79; 8:45 am]

BILLING CODE 3510-22-M

Office of the Secretary

[Dept. Organization Order 20-6]

Office of Investigations and Security; Functions and Organization

EFFECTIVE DATE: May 17, 1979.

This order effective May 17, 1979 supersedes the materials appearing at 38 FR 34134 of December 11, 1973 and 39 FR 43565 of December 16, 1974.

Section 1. Purpose

.01 This Order prescribes the functions and organization of the Office of Investigations and Security.

.02 This revision provides for new responsibilities in connection with security of foreign and domestic intelligence liaison. It reflects the transfer to the Office of the Inspector General the responsibility for the investigation of violations of the United States Code and the performance of contractors or grantees, including alleged violations of law or improprieties by such parties as well as inspections relating to the conduct and performance of Department personnel dealing with such parties. It also authorizes the Office of Investigations and Security to act as the final repository for all investigative files and reports of investigation of Department of Commerce applicants, employees, or former employees.

Section 2. Status and Line of Authority

.01 The Office of Investigations and Security (OIS), a Departmental office, shall be headed by a Director who shall report and be responsible to the Assistant Secretary for Administration (the "Assistant Secretary"). The Director shall be assisted by a Deputy Director who shall perform the functions of the Director during the latter's absence, and exercise day-to-day supervision over the documentary security and physical security functions of OIS, as set forth in section 3. of this Order.

.02 The Director, OIS, may redelegate the authority, as prescribed by this Order, to appropriate personnel of OIS and to operating units of the Department, subject to such conditions as the Director may prescribe.

Section 3. Responsibilities and Functions.

Pursuant to the authority vested in the Assistant Secretary by Department Organization 10-5, and subject to such policies and directives as the Assistant Secretary may prescribe, OIS shall conduct investigations in accordance with paragraph 3.01 of this Order, serve as the focal point for personnel security matters within the Department, establish policies and procedures for documentary security and physical security throughout the Department, advise the Assistant Secretary on all security matters, represent the Department as appropriate on security matters, and carry out physical protection assignments, as prescribed herein. To implement these responsibilities, OIS shall perform the functions enumerated in the following paragraphs.

.01 *Investigations.* OIS shall: a. As requested, conduct investigations of job applicants and employees regarding personnel security (in accordance with E.O. 10450 and Federal Personnel Manual, Chapter 736), and personnel suitability (in accordance with orders and regulations of the Department and of the Office of Personnel Management.

b. As requested by appropriate authority, conduct investigations of complaints of discrimination under, e.g., E.O. 11478, the Equal Employment Opportunity Act of 1972 and implementing regulations, and other administrative and civil matters as permitted by law.

c. As requested, provide investigative services to Departmental programs requiring National Agency Checks, special name checks and inquiries to ascertain the integrity of contractors, grantees and other financial assistance applicants and recipients, as well as advisory committee members.

d. As requested by the Inspector General, conduct investigations of matters under the Inspector General's jurisdiction.

.02 *Personal Security.* OIS shall: a. Develop and recommend policies and procedures for personnel security matters within the Department.

b. Develop and supervise programs for the training and indoctrination of employees in personnel security and the maintenance of security discipline.

c. Receive and review reports of investigation of Department employees and job applicants and, as appropriate, channel the information to the responsible operating unit official for suitability determination.

d. Receive from the Office of the Inspector General notifications of investigations and inspections concerning employee misconduct for appropriate review, evaluation and action under the provisions of E.O. 10450 as amended and E.O. 12065.

e. Receive and process from the various operating units requests for security clearances concerning prospective employees to be assigned to positions that require access to classified information, material, or restricted areas; and review and determine the security status of personnel cases which involve the appraisal of derogatory information in connection with the issuance of certificates of personnel security clearance, the imposition of security restrictions on individual employees, and other decisions affecting personnel security considerations.

f. Take action, as appropriate, on withholding or withdrawing the security clearance of a job applicant, employee, potential contractor, or grantee, and with respect to employees, recommend action under the provisions of 5 U.S.C. §§ 7531-32 and E.O. 10450, as amended.

.03 *Documentary Security.* OIS shall: a. Establish appropriate security policies, procedures, and minimum requirements for the Department's safeguarding of classified documents, information, and materials in accordance with E.O. 12065.

b. Develop and supervise programs for the training and indoctrination of Department personnel in documentary security.

.04 *Physical Security.* OIS shall: a. Develop and prescribe, in accordance with E.O. 12065, necessary measures for the protection of classified and

restricted areas, and for the control of access to such areas.

b. In conjunction with GSA's Federal Protective Service and in accordance with GSA regulations, establish and enforce policies and procedures for controlling access of visitors to unclassified areas, including access by employees during periods of civil disturbance or emergency.

.05 *Intelligence Security.* OIS shall: a. Provide security advice and guidance to the Departmental Office of Intelligence Liaison (OIL) and throughout the Department with full authority to implement and require compliance with security measures established by the Memorandum of Understanding on the Security of Foreign Intelligence between the Department of Commerce and the Member Agencies of the National Foreign Intelligence Board.

b. Provide guidance for the physical security and transmittal of foreign intelligence material, both collateral and compartmented.

c. In cooperation with OIL, concur in the selection of foreign intelligence primary control centers and officers for Department facilities not located in the Main Commerce Building, which are to receive foreign intelligence reports and materials, and provide, as required, guidance and coordination of their activities.

d. In coordination with OIL, concur in the selection of foreign intelligence secondary control centers and officers in the Department, which are to receive foreign intelligence reports and materials through the registry or a primary control center, and provide, as required, guidance and coordination of their activities.

e. OIS and OIL shall coordinate on sensitive compartmented information security clearance matters.

f. In conjunction with the Departmental Office of Procurement and ADP Management and OIL, review and approve all existing uses and proposals for the use of any ADP equipment (including computers, word processing devices, and related equipment) in the processing of classified foreign intelligence.

g. Serve as the focal point for the security of designated intelligence matters, foreign and domestic, between the Department and the intelligence community.

h. Provide the Department's observer to the National Foreign Intelligence Board Security Committee and subcommittees.

.06 *Advice and Representation.* OIS shall: a. Serve as the principal adviser within the Department to the Assistant Secretary and other officials on security matters.

b. Serve as the Department's point of liaison with agencies of Federal, State, and local governments in security matters, including administrative investigations, physical protection, and intelligence security.

c. Represent the Department, as requested, on interagency committees dealing with security.

.07 *Physical Protection Assignments.* OIS shall, at the request of the Assistant Secretary or other appropriate authority, provide physical protection for the Secretary of Commerce, visiting foreign officials and official guests, and Department functions. This may involve assignment of OIS personnel as special Deputy U.S. Marshals and the use of firearms and arrest powers provided in 18 U.S.C. 3053. (See section 4. of this Order.)

.08 *General Security.* OIS shall: a. Serve as the focal point within the Department for the receipt, review, and processing of security matters which require Departmental action.

b. Devise and carry out periodic tests of the adequacy of security within the Department.

Section 4. Specified Authority.

.01 To assist in their carrying out the physical protection functions assigned to OIS, the Director, OIS, and certain members of the OIS staff, under a special deputation from the United States Marshal, have been authorized to carry firearms and make arrests.

.02 Also, the Director, OIS, has been specifically designated by the Secretary of Commerce, under the provisions of Section 5-404, E.O. 12065, "to ensure effective implementation" of E.O. 12065, effective December 1, 1978. Concurrently, the Secretary established the Department of Commerce Information Security Program Committee and appointed the Director, OIS, as its chairperson.

Section 5. Savings Provisions.

Nothing in this Order shall have the effect of or be construed as an exception to the responsibility and authority of the Department General Counsel under DOO 10-6 for policy and operating guidance on legal matters. With respect to such matters the Director, OIS, shall consult the General Counsel, or a designee of the General Counsel.

Guy W. Chamberlin, Jr.,
Acting Assistant Secretary for Administration.

[FR Doc. 79-18581 Filed 6-12-79; 8:45 am]
BILLING CODE 3510-17-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Restraint Levels for Certain Cotton and Man-Made Fiber Apparel From the People's Republic of China

Corrections

In FR Doc. 79-17774 appearing at page 32433 in the issue for Wednesday, June 6, 1979, on pages 32433 and 32434, the table in the third and first columns respectively should have read as set forth below:

Category	Twelve-month Level of Restraint
331	2,966,986 dozen pairs
339	535,658 dozen
340	256,613 dozen
347/348	1,088,632 dozen
645/646	334,836 dozen

BILLING CODE 3510-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Prepare a Draft Supplement Environmental Impact Statement for the Proposed Burlington Dam Flood Control Project on the Souris River, N. Dak.

AGENCY: St. Paul District, U.S. Army Corps of Engineers.

ACTION: Notice of Intent to Prepare Draft Supplement I to the Burlington Dam Environmental Impact Statement (EIS).

SUMMARY: The project for flood damage reduction on the Souris River, North Dakota, recommended by the Chief of Engineers in House Document No. 321, 91st Congress, 2nd Session, provides for two major structural measures: channel modification through Minot, North Dakota and upstream reservoir development. The channel modification in Minot was approved by Senate and House Public Works Committees' resolutions adopted 25 June and 14 July 1970, respectively. The reservoir and related works were authorized later in the Flood Control Act approved 31 December 1970, Pub. L. 91-611. Construction of the Minot channel modifications, now completed, was authorized separately to provide limited

flood protection separately for the city at the earliest possible date.

The principal features of the reservoir project include a dam near Burlington on the Souris River; a raise of Lake Darling Dam, a diversion tunnel to carry flood flows on the Des Lacs River to the Souris River above Burlington Dam, levee improvements between Burlington and Minot and at Sawyer and Velva, and modifications to refuge dams in the Upper Souris and J. Clark Salyer National Wildlife Refuges.

In addition to the proposed action, the following reasonable alternatives have been identified:

1. *No Action*—The no action alternative is a viable alternative which represents no additional action on the part of the Corps of Engineers. Certain conditions are expected to occur in the future if none of the flood control measures that are discussed in this section are implemented. The no action alternative could include floodplain regulations, flood insurance, the existing channel modifications at Minot, flood warning and emergency protection, floodproofing, and rehabilitation of the Lake Darling Dam to meet current engineering standards for such a structure.

2. *Floodplain Evacuation*—This alternative involves the removal of all development in the 100-year Souris River floodplain between Burlington and the J. Clark Salyer Refuge.

3. *Boundary Diversion*—This alternative involves the diversion of the Souris River floodwaters immediately upon their entering the United States. The channel would parallel the Canadian border for a distance of about 45 miles.

4. *Flood Barriers*—This alternative would include upgrading existing emergency levees to current engineering standards for permanent levees in urban flood areas along the Souris River. These include nine subdivision areas between Burlington and Minot, and the cities of Minot, Logan, Sawyer and Velva.

5. *Minot Tunnel Diversion*—This alternative consists of:

a. Upgrading emergency levees at several residential areas between Minot and Burlington so that Souris River flows of 14,000 cfs could be passed with no flood damage.

b. A 2.2-mile diversion tunnel beneath Minot with a capacity of 9,000 cfs and 27 miles of channel modifications downstream of the tunnel.

c. Levees and channel modifications at Sawyer and Velva to provide a 100-year level of protection.

6. *Burlington Dam*—This alternative is identical to the recommended plan except that the Des Lacs diversion tunnel is not included.

7. *Lake Darling Dam*—This alternative is essentially a modification of the above alternative (i.e., the recommended plan without the Des Lacs diversion tunnel) in that the large reservoir storage structure would simply be located upstream at the site of the existing Lake Darling Dam.

8. *Confluence Dam*—This alternative has a dam located near Burlington below the confluence of the Souris and Des Lacs Rivers.

9. *Burlington Dam and Des Lacs Tributary Dams*—This alternative includes Burlington Dam as discussed in alternative no. 6, in combination with dams on 19 of the coulees tributary to the Des Lacs River.

10. *Recommended Plan*—See discussion under project summary.

11. *Lake Darling Dam and Des Lacs Diversion*—This alternative is similar to alternative no. 7 (i.e., Lake Darling Dam) with the addition of a diversion tunnel from the Des Lacs River to the Souris River dam site.

12. *Burlington Dam, Des Lacs Diversion, Gassman Coulee Dam*—This alternative is the same as the recommended plan with the addition of a dry dam at the mouth of Gassman Coulee.

13. *Lake Darling Dam and Minot Tunnel Diversion*—This plan is a combination of alternatives 5 and 7, with the exception that the size of the tunnel beneath Minot would be reduced to a 5,000 cfs capacity.

14. *Lake Darling Dam and Flood Barriers*—The features of this alternative are the same as alternative No. 13 except that the tunnel under Minot would be replaced by levees.

15. *Environmental Quality Plan (EQ Plan)*—The EQ alternative consists of the following items:

a. 14,000 cfs diversion tunnel under the city of Minot.

b. A low-head dam upstream of Minot to divert all flows above channel capacity into the diversion tunnel.

c. A low-head dam downstream of Minot to prevent backup of tunnel discharges.

d. Evacuation of the 100-year floodplain or floodproofing below Minot where flood stages are increased due to tunnel discharges, and evacuation of a mobile home park above Minot.

e. Local protection measures at Velva and at urbanized areas from Burlington to Minot.

f. Continuation of floodplain regulations downstream from Velva, and enactment of floodplain regulations at Sawyer.

g. Improvements to marsh impoundments on the Upper Souris National Wildlife Refuge (NWR) to permit more efficient refuge operations.

h. Operation of the rehabilitated (to current engineering standards) Lake Darling Dam for flood control.

16. *National Economic Development Plan (NED Plan)*—This alternative would include a dam at the Lake Darling site (alternative No. 7) providing 383,000 acre-feet of flood control storage to elevation 1,620, and levees in three of seven subdivision areas between Burlington and Minot and at Velva.

Copies of the Draft Environmental Impact Statement, which has been filed with the Environmental Protection Agency and noted in the Federal Register on November 4, 1977, were provided for coordination to all concerned Federal, State, and local agencies; affected Indian tribes; and private organizations and individuals. Copies of the Draft Supplement EIS will be provided to all those identified above. Anyone else who is interested in reviewing this supplement is invited to do so and should contact the St. Paul District, Corps of Engineers to assure that they are included on the mailing list. The Final EIS has been prepared and is currently undergoing a preliminary review at the Washington level. When the Final EIS is ready for public distribution, we will append the Draft Supplement to it. After comments on the Draft Supplement and the Final EIS have been received, we will prepare and distribute a Final Supplement.

Significant issues to be analyzed in the Draft Supplement EIS include:

1. A Section 404(b) Evaluation of the discharge into U.S. waters of dredged or fill material.

2. An assessment of the impacts on threatened or endangered species. This portion of the EIS supplement has been included to comply with Section 7 of the Endangered Species Act (Amendment 7C).

Our review of the project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, Council on Environmental Quality Regulations (40 CFR Parts 1500-1508), and applicable Corps of Engineers regulations and guidance.

A scoping meeting will not be held for the preparation of this supplement. Significant issues to be discussed in this supplement were identified through coordination with Federal, State, and local government agencies; interested citizens' groups; and individual citizens.

We estimate that the Draft Supplement EIS will be available to the public by July 1979.

Questions concerning the proposed action and the Draft Supplement EIS can be directed to:

Colonel William W. Badger,

District Engineer, St. Paul District, Corps of Engineers, 1135 U.S. Post Office and Custom House, St. Paul, Minnesota 55101.

Dated: June 1, 1979.

Walter L. Heme,

Lieutenant Colonel, CE, Acting District Engineer.

[FR Doc. 79-18293 Filed 6-12-79; 8:45 am]

BILLING CODE 3710-CY-M

DEPARTMENT OF ENERGY

Clark Oil and Refining Corp.; Proposed Remedial Order

AGENCY: Department of Energy.

ACTION: Notice of Proposed Remedial Order to Clark Oil and Refining Corporation and Opportunity for Objection

Pursuant to 10 CFR 205.192(c), the Office of Special Counsel for Compliance of the Economic Regulatory Administration (ERA), Department of Energy, hereby gives notice that a Proposed Remedial Order was issued to Clark Oil and Refining Corporation (Clark), 8530 West National Avenue, Milwaukee, Wisconsin 53201, on April 30, 1979. The Proposed Remedial Order sets forth findings of fact and conclusions of law concerning Clark's overstatement of crude oil costs in violation of the Phase IV Petroleum Price Regulations formerly at 6 CFR Part 150, subsequently recodified at 10 CFR Part 212. The violation, in the amount of $82,500, resulted from Clark's failure to reduce its costs of crude oil purchased in the United States to reflect income received in connection with certain reciprocal crude oil purchase and exchange transactions, entered into by Clark to realize the value of its fee-free oil imports licenses. The subject transactions occurred between October 23, 1973 and December 31, 1973.

In accordance with 10 CFR 205.192(c), any person may obtain a copy of the Proposed Remedial Order, with confidential information, if any, deleted, from the ERA.

On or before June 28, 1979, any aggrieved person may file a Notice of Objection in accordance with 10 CFR 205.193. Such Notice should be filed with:

Office of Hearings and Appeals, Department of Energy, Room 8014, 2000 M Street, NW., Washington, D.C. 20461.

Copies of the Proposed Remedial Order may be obtained by written request addressed to:

Milton Jordan, Director, Division of Freedom of Information and Privacy Act Activities, Forrestal Building, Room GB-145, 1000 Independence Avenue, SW., Washington, D.C. 20585; Attention: George W. Young, Jr.

Copies of the Proposed Remedial Order may be obtained in person from:

Office of Freedom of Information, Reading Room, Forrestal Building, Room GA-152, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Issued in Washington, D.C., June 7, 1979.

Paul L. Bloom,

Special Counsel for Compliance.

[FR Doc. 79-18426 Filed 6-12-79; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

[DOE/EIS-0048-DS-1]

Availability of Draft Facility Location Supplement

Notice is hereby given that the Bonneville Power Administration (BPA), Department of Energy (DOE) has issued a draft facility location supplement to BPA's Final Fiscal Year 1976 Proposed Program Environmental Statement. This Draft Facility Location Supplement is issued pursuant to DOE's implementation of the National Environmental Policy Act of 1969. Entitled "Okanogan Area Service" this supplement assesses the environmental impacts of proposed transmission facility additions to serve the Okanogan Valley in Washington State. This EIS is a reissue of a previous location supplement filed as a draft with CEQ on April 15, 1975, and as a final on September 16, 1975.

Copies of the Okanogan Area Service Draft Facility Location Supplement are available for public inspection at designated Federal depositories (for locations, contact the Environmental Manager, BPA, P.O. Box 3621, Portland, OR 97208) and at DOE public document rooms located at:

Library, FOI—Public Reading Room GA-152, Forrestal Building, 1000 Independence Ave. SW., Washington, D.C.

BPA, Washington, D.C., Office, Federal Building, 12th & Pennsylvania Avenue NW., Room 3352, Washington, D.C.

Library, BPA Headquarters, 1002 NE., Holladay Street, Portland, OR.

And the following BPA Area and District Offices:

Spokane Area Office, U.S. Court House, Room 561, W. 920 Riverside Avenue, Spokane, WA.

Wenatchee District Office, U.S. Federal Building, Room 314, 301 Yakima Street, Wenatchee, WA.

This document is being furnished to various Federal, State, and local agencies with environmental expertise, or which are otherwise likely to be interested in, or affected by, the proposal. Copies of the document are also being furnished to State and local clearinghouses and to other interested groups and individuals.

A limited number of single copies are available for distribution by contacting the Environmental Manager, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208 or the BPA Area and District Offices mentioned above.

Dated at Washington, D.C. this 5th day of June, 1979.

George E. Bell,

Assistant Administrator.

[FR Doc. 79-18460 Filed 6-12-79; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 79-CERT-001]

E. I. Du Pont de Nemours & Co.; Application for Certification of the Use of Natural Gas to Displace Fuel Oil

Take notice that on May 1, 1979, E. I. du Pont de Nemours and Company (Du Pont), Wilmington, Delaware 18898, on behalf of its Chambers Works, Deepwater, New Jersey 08023; Newport Plant, James & Water Streets, Newport, Delaware 19804; and Old Hickory Plant, Old Hickory, Tennessee 37138, filed three separate applications with the Economic Regulatory Administration (ERA) pursuant to 10 CFR Part 595 (44 FR 20398, April 15, 1979) for certification of an eligible use of natural gas to displace fuel oil for each of the three facilities, all as more fully set forth in the applications, since all three applications pertain to the use of natural gas at Du Pont facilities, ERA, in the interest of administrative efficiency, will combine the applications into one proceeding under ERA Docket 79-CERT-001. Du Pont's three applications for certification are on file with the ERA and open to public inspection at the ERA, Docket Room 6317-B, 2000 M Street, N.W., Washington, D.C. 20461, from 8:00 a.m.-4:30 p.m., Monday through Friday, except Federal holidays.

In support of its applications, Du Pont presented the following data for the three plants:

Plant and location	Quantity of natural gas to be used (Mcf/day)	Quantity of fuel oil to be displaced (bbls/yr)	Sulfur content (percent)	Eligible seller	Interstate pipeline
Chambers Works, Deepwater, N.J.	Maximum 6,000	Maximum 347,000 of No. 6	1.5	Cabot Corp., Charleston, W. Va.	Tennessee Gas Pipeline Co., Houston, Tex. and Columbia Gas Transmission Co., Charleston, W. Va.
Newport Plant, Newport, Del.	Maximum 2,500	154,000 of No. 6	0.3	do	Same as above, plus Transcontinental Gas Pipe Line Co., Houston, Tex.
Old Hickory Plant, Old Hickory, Tenn.	Maximum 4,000	259,000 of No. 2	low	do	Tennessee Gas Pipeline Co., Houston, Tex. and Tennessee Natural Gas Lines, Inc., Nashville.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Room 6318, 2000 M Street NW., Washington, D.C. 20461, Attention: Mr. Finn K. Neilsen, on or before June 23, 1979.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest, and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines an oral presentation is required, further notice will be given to Du Pont and any persons filing comments, and filed in the Federal Register.

Issued in Washington, D.C., on June 8, 1979.

Doris J. Dewton,

Acting Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-18528 Filed 6-12-79; 8:45 am]

BILLING CODE 6450-01-M

Hughes & Hughes Oil and Gas; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives Notice of a Proposed Remedial Order which was issued to Hughes and Hughes Oil and Gas, 208 East Houston Street, Beeville, Texas 78102. This Proposed Remedial Order charges that Hughes and Hughes violated the Mandatory Petroleum Allocation Regulations connected with the termination of a crude oil supplier/purchaser relationship.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Mr. William Miller, Program Manager, Department of Energy, Economic Regulatory Administration, Room 5002G, Washington, D.C. 20461, phone 202-632-8761. On or before June 28, 1979, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, N.W., Washington, D.C. 20461, in accordance with 10 CFR § 205.193.

Issued in Washington, D.C. on the 5th day of June 1979.

Barton Isenberg,

Assistant Administrator for Enforcement, Economic Regulatory Administration.

Concurrence: L. Feldman, Office of General Counsel.

June 7, 1979.

[FR Doc. 79-18527 Filed 6-12-79; 8:45 am]

BILLING CODE 6450-01-M

R. W. Anderson; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective date: May 31, 1979. Comments by: July 13, 1979.

ADDRESS: Send comments to: Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, TX 75235.

FOR FURTHER INFORMATION CONTACT: Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, TX 75235 [phone] 214-749-7628.

SUPPLEMENTARY INFORMATION: On May 31, 1979, the Office of Enforcement of the ERA executed a Consent Order with R. W. Anderson of Delhi, Louisiana. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

Because the DOE and R. W. Anderson wish to expeditiously resolve this matter as agreed and to avoid delay in the payment of refunds, the DOE has determined that it is in the public interest to make the Consent Order with R. W. Anderson effective as of the date of its execution by the DOE and R. W. Anderson.

I. The Consent Order

Hercules Petroleum Company, Inc., Choudrant, Louisiana, and Anderson Butane Service, Inc., Delhi, Louisiana, are entities engaged in the resale of petroleum products. Pursuant to 10 CFR 212.31 (6 CFR 150.31 prior to January 15, 1974), the DOE concluded these entities are a firm based on the fact that R. W. Anderson, President and a member of the Board of Directors of both entities, owns 75 percent of the outstanding stock of Hercules Petroleum Company, Inc., and 100 percent of the outstanding stock of Anderson Butane Service, Inc. As a firm engaged in the resale of petroleum products, the entities are subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR, Parts 210, 211, 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic

Regulatory Administration as a result of its audit of R. W. Anderson as a reseller-retailer of petroleum products, the Office of Enforcement, ERA, and R. W. Anderson entered into a Consent Order, the significant terms of which are as follows:

1. The period covered by the audit was August 17, 1973, through November 30, 1974, and it included sales of propane to five classes of purchaser and butane to one class of purchaser.

2. R. W. Anderson improperly applied the provisions of 10 CFR 212.93 (6 CFR 150.359 prior to January 15, 1974) when determining the prices to be charged for its petroleum products, and as a consequence certain of its customers were overcharged on some of their purchases.

3. R. W. Anderson agrees to refund to the DOE $160,000, including interest and penalties, on May 31, 1979, the date of execution of the Consent Order. An additional $90,235 was previously refunded on a voluntary basis resulting in a total refund of $250,235.

4. The provisions of 10 CFR 205.199J, including the publication of this Notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In this Consent Order, R. W. Anderson agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I. 1. above, the sum of $160,000 on the effective date of the Consent Order. Refunded overcharges will be in the form of a certified check made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the Petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

b. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, TX. You may obtain a free copy of this Consent Order by writing to the same address or by calling 214/749-7628.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on R. W. Anderson Consent Order." We will consider all comments we receive by 4:30 p.m. local time, on July 13, 1979. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Dallas, TX on the 4th day of June, 1979.

Wayne I. Tucker,

District Manager of Enforcement, Southwest District Office, Economic Regulatory Administration.

[FR Doc. 79-18331 Filed 6-12-79; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

Amerada Hess Corp.; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

June 1, 1979.

On May 2, 1979, the Federal Energy Regulatory Commission received notice of a determination pursuant to 18 CFR 274.104 of the Natural Gas Policy Act of 1978 applicable to:

Railroad Commission of Texas

FERC Control Number: JD79-6569
API Well Number: 42-165-31347
Section: 103
Operator: Amerada Hess Corporation
Well Name: Northrup & Carr B #2
Field: Hanford
County: Gaines
Purchaser: Phillips Petroleum Co.
Volume: 1 MMcf

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E. Washington, D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 28, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18367 Filed 6-12-79; 8:45 am]

BILLING CODE 6450-01-M

ARCO Oil and Gas Co.; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978.

June 5, 1979.

On May 21, 1979, the Federal Energy Regulatory Commission received notice of a determination purusant to 18 CFR 274.104 of the Natural Gas Policy Act of 1978 applicable to:

United States Department of the Interior, Geological Survey, Louisiana

FERC Control Number: JD79-4971
API Well Number: 17721401330S1
Section: 102
Operator: ARCO Oil and Gas Company
Well Name: OCS-G-2938 Well No. D-10
Field: South Pass Block 61 17
County: Offshore, Louisiana
Purchaser: Southern Natural Gas Company
Volume: 400 MMcf.

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E. Washington D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 28, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-18383 Filed 6-12-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket Nos. ER78-516, E-8187, E-8700, ER76-203 and ER76-238]

Boston Edison Co.; Certification

June 6, 1979.

Take notice that the Honorable Jon G. Lotis, on May 18, 1979, certified to the Commission a proposed settlement agreement submitted by Boston Edison Company and New England Power Company covering proceedings in Docket Nos. ER78-516, E-8187, E-8700, ER76-203 and ER76-238.

Any person desiring to be heard or to protest said settlement agreement should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before June 25, 1979. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this agreement are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-18385 Filed 6-12-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. CP79-321]

Colorado Interstate Gas Co.; Application

June 5, 1979.

Take notice that on May 21, 1979, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP79-321 an application pursuant to Section 311(a)(1) of the Natural Gas Policy Act of 1978 for approval of a transportation service, on a best efforts basis, by CIG for Cheyenne Light, Fuel and Power Company (Cheyenne Light), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

CIG states that it has entered into a gas transportation and exchange agreement dated November 21, 1978 with Montana-Dakota Utilities Company (MDU), Cheyenne Light, Fuel Resources Development Company (Fuelco) and Energetics, Inc. (Energetics). CIG further states that it is involved to the extent of providing a transportation service by receiving for and delivering gas to Cheyenne Light.

The term of the transportation service is effective on the date of the said agreement through April 1, 1983, and thereafter until terminated by any party upon one year's prior written notice and CIG anticipates the initial service under the said agreement would commence on December 1, 1979, the application indicates.

CIG contends that certain gas is to be produced by Energetics from acreage in Williams and McKenzie Counties, North Dakota and Fuelco has purchase rights to this gas which is to be processed through the Tioga Plant, operated by Aminoil USA, Inc., located in Williams County, North Dakota. CIG further asserts that Fuelco has assigned to Cheyenne Light, a local distribution company which is one of CIG's customers and an affiliate of Fuelco, its purchase rights to the residue gas on an annual basis during the months of December through March. MDU would purchase the residue gas during the months of April through November of each year.

CIG asserts that the volume of residue gas, expected to average up to 1,500 Mcf per day, (approximately 177,000 Mcf per year), is to be delivered to MDU at the tailgate of the Tioga Plant for the account of Cheyenne Light. MDU, in turn, would transport and deliver thermally equivalent volumes to CIG at existing interconnections between CIG and MDU. The subject gas, less fuel usage and lost or unaccounted-for volumes, CIG states, would be delivered to Cheyenne Light by CIG at an existing delivery point in Weld County, Colorado.

CIG states in the application that Cheyenne Light would reimburse it for redelivery volumes delivered at a rate to reflect CIG's transmission system cost of service, including a reasonable return on investment, but exclusive of the cost of service attributable to its gathering and storage system and exclusive of the cost of gas attributable to gas used in the operation and maintenance of CIG's transmission system. The current transportation rate is 24.91 cents per Mcf at a pressure base of 14.73 psia as filed in Docket No. RP79-59.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 28, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-18382 Filed 6-12-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket Nos. RP75-86, et al., RP76-76, and RP77-105]

Colorado Interstate Gas Co.; Proposed Changes in FERC Gas Tariff

June 6, 1979.

Take notice that Colorado Interstate Gas Company (CIG) on May 30, 1979, tendered for filing certain changes to its FPC Gas Tariff, Second Revised Volume No. 1, FPC Gas Tariff, Third Revised Volume No. 2, and FERC Gas Tariff, Original Volume No. 1. These changes, which result from the Commission's Order issued March 16, 1979, approving the rate settlement in Docket Nos. RP75-86, et al., RP76-76, and RP77-105, adjust the base tariff rates on FPC Gas Tariff, Second Revised Volume No. 1, Sheet Nos. 5 and 6; adjust certain purchased gas stipulations on FPC Gas Tariff, Second Revised Volume No. 1, Sheet Nos. 64, 66, and 67 and FERC Gas Tariff, Original Volume No. 1, Sheet Nos. 58 and 59; adjust certain transportation charges on FPC Gas Tariff, Third Revised Volume No. 2, Sheet Nos. 198 and 282.

Revised Tariff Sheet Nos. 5 and 6 cover the period from October 1, 1975 to September 30, 1978, inclusive. Revised Tariff Sheet Nos. 198 and 282 cover the period from January 1, 1978 to September 30, 1978. Revised Sheet Nos. 66 and 67 are to be effective October 1, 1977; Revised Sheet Nos. 58 and 59 are to be effective January 1, 1979; and

Revised Sheet No. 64 is to be effective April 16, 1979.

Copies of the filing were served upon CIG's jurisdictional customers and certain other parties.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 21, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18308 Filed 6-12-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CI79-415]

Continental Oil Co.; Granting Intervention

June 5, 1979.

On May 21, 1979, Mobil Oil Corporation (Mobil), Nine Greenway Plaza, Suite 2700, Houston, Texas 77046, filed an untimely petition to intervene in Docket No. CI79-415.

Continental Oil Company has requested, in Docket No. CI79-415, that the Commission declare that certificates of public convenience and necessity are not required for sales from old offshore federal leases where such sales were not commenced and no certificate was issued prior to December 1, 1978, the effective date of the Natural Gas Policy Act of 1978. Mobil states that it is a substantial gas producer and seller from the Outer Continental Shelf and it has, therefore, substantial interests that will be affected by the determinations made in this proceeding which cannot be represented by any other party. Mobil, therefore, alleges that it has a direct and substantial interest in this proceeding which may be adversely affected by the Commission's findings and conclusions in this matter. Mobil further avers that it has a right to intervene herein and that its intervention is in the public interest, is not intended to and will not delay this proceeding and is necessary and appropriate to the administration of the Natural Gas Act and the Natural Gas Policy Act of 1978.

Pursuant to Section 3.5 (a)(5) of the Commissioner's Rules of Practice and Procedure (18 CFR § 3.5 (a)(5)) as promulgated in Docket No. RM 78-19 (issued August 4, 1978), Mobil Oil Corporation is permitted to intervene in Docket No. CI79-415 subject to the Commission's regulations. Participation shall be limited to matters affecting asserted rights and interests specifically set forth in Mobil's petition to intervene. The admission of the intervenor shall not be construed as recognition by the Commission that it may be aggrieved by any order entered in this proceeding.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18303 Filed 6-12-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket Nos. RP71-15 and RP75-28]

East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

June 6, 1979.

Take notice that on May 31, 1979, East Tennessee Natural Gas Company (East Tennessee) tendered for filing Twenty-Ninth Revised Sheet No. 4 of Sixth Revised Volume No. 1 of its FERC Gas Tariff to be effective July 1, 1979.

East Tennessee states that the sole purpose of this tariff sheet is to reflect various rate adjustments as follows:

(1) A Current Purchased Gas Cost Rate Adjustment of positive 57.55 cents per Mcf determined in accord with Section 22.2.

(2) A negative Demand Surcharge for Amortizing the Unrecovered Purchased Gas Cost Account of 4.0 cents per Mcf determined in accord with Section 22.3.

(3) A negative Current Rate Adjustment of 1.16 cents per Mcf determined pursuant to Section 24.8 reflecting the recoupment of curtailment credits given its customers and the flow-through of the curtailment credits received by East Tennessee.

East Tennessee also states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure 918 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 22, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who has previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18307 Filed 6-12-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-224]

El Paso Natural Gas Co.; Amendment

June 5, 1979.

Take notice that on May 29, 1979, El Paso Natural Gas Company (Applicant), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP79-224 an amendment to its application filed in the instant docket pursuant to Section 7 of the Natural Gas Act so as to delete Applicant's request for authorization to sell in interstate commerce natural gas withdrawn from the Washington Ranch Field to Applicant's east-of-California (EOC) customers for use in protecting such EOC customers' Priority 1 and 2 requirements, all as more fully set forth in the amendment on file with the Commission and open to public inspection.

In its application filed in the instant docket, Applicant requests permission and approval to abandon certain existing pipeline facilities, with associated appurtenances, and a certificate authorizing the operation of certain existing facilities; the construction and operation of certain new facilities in Culberson County, Texas, and Eddy County, New Mexico, necessary to implement the Washington Ranch Storage Project; and the transportation and sale in interstate commerce of natural gas withdrawn from the Washington Ranch Field to Applicant's EOC customers for use in protecting such customers' Priority 1 and 2 requirements commencing with the 1981-82 winter heating season and during subsequent winter heating seasons.[1]

Applicant states that at various times it has filed for and received authorizations to sell various quantities of natural gas to its EOC customers, for resale, pursuant to certain service

[1] The instant application has been consolidated with the proceedings in Docket Nos. CP78-238, *et al.*

agreements between Applicants and such customers, in order that such customers may serve the needs of natural gas consumers in their respective service areas. Inasmuch as such service agreements have previously been approved by the Commission and their related sales authorization have previously been granted to Applicant, Applicant presently believes that additional authorization for the sale of natural gas withdrawn from the Washington Ranch Field to its existing EOC customers is not required in order to effectuate the proposed Washington Ranch Storage Project. Consequently, Applicant proposes to delete from its application its request to sell natural gas withdrawn from the Washington Ranch Field.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before June 28, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18304 Filed 6-12-79; 8:45 am]

BILLING CODE 6450-01-M

El Paso Natural Gas Co.; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

June 5, 1979.

On May 18, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

United States Department of the Interior Geological Survey, New Mexico

FERC Control Number: JD79-5929
API Well Number: 3004521156000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Riddle G-8
Field: Blanco-South Pictured Cliffs Gas
County: San Juan, New Mexico
Purchaser: El Paso Natural Gas Company
Volume: 16.4 MMcf.

FERC Control Number: JD79-5930
API Well Number: 3003908230000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Klein 4
Field: Blanco-South Pictured Cliffs Gas
County: Rio Arriba, New Mexico
Purchaser: El Paso Natural Gas Company
Volume: 17.9 MMcf.

FERC Control Number: JD79-5931
API Well Number: 3003900710000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 28-7 Unit NP No. 66
Field: Blanco-Mesaverde Gas
County: Rio Arriba, New Mexico
Purchaser: El Paso Natural Gas Company
Volume: 19.0 MMcf.

FERC Control Number: JD79-5932
API Well Number: 3004521030000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Jones A 8
Field: Blanco-South Pictured Cliffs Gas
County: San Juan, New Mexico
Purchaser: El Paso Natural Gas Company
Volume: 14.2 MMcf.

FERC Control Number: JD79-5933
API Well Number: 3004520910000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Hardie D 3
Field: Blanco-South Pictured Cliffs Gas
County: San Juan, New Mexico
Purchaser: El Paso Natural Gas Company
Volume: 15.3 MMcf.

FERC Control Number: JD79-5934
API Well Number: 3003900510000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit NP 15
Field: Ballard-Pictured Cliffs Gas
County: Rio Arriba, New Mexico
Purchaser: El Paso Natural Gas Company
Volume: 1.0 MMcf.

FERC Control Number: JD79-5935
API Well Number: 3004506710000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Turner Hughes 10
Field: Blanco-South Pictured Cliffs Gas
County: San Juan, New Mexico
Purchaser: El Paso Natural Gas Company
Volume: 11.3 MMcf.

FERC Control Number: JD79-5936
API Well Number: 3004506761000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Turner Hughes 1
Field: Blanco-South Pictured Cliffs Gas
County: San Juan, New Mexico
Purchaser: El Paso Natural Gas Company
Volume: 7.3 MMcf.

FERC Control Number: JD79-5937
API Well Number: 3003900930000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Rincon Unit 19
Field: Blanco-South Pictured Cliffs Gas
County: Rio Arriba, New Mexico
Purchaser: El Paso Natural Gas Company
Volume: 3.0 MMcf.

FERC Control Number: JD79-5938
API Well Number: 3003920673000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 28-4 Unit 37
Field: Basin-Dakota Gas
County: Rio Arriba, New Mexico
Purchaser: El Paso Natural Gas Company
Volume: 9.1 MMcf.

FERC Control Number: JD79-5939
API Well Number: 3003907758000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 30-6 Unit 57
Field: Blanco-Mesaverde Gas
County: Rio Arriba, New Mexico
Purchaser: El Paso Natural Gas Company
Volume: 19.0 MMcf.

FERC Control Number: JD79-5940
API Well Number: 3003920787000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit No. 225
Field: Blanco-South Pictured Cliffs Gas
County: Rio Arriba, New Mexico
Purchaser: El Paso Natural Gas Company
Volume: 12.0 MMcf.

FERC Control Number: JD79-5941
API Well Number: 3003906730000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Rincon Unit 7
Field: Blanco-South Pictured Cliffs Gas
County: Rio Arriba, New Mexico
Purchaser: El Paso Natural Gas Company
Volume: 3.3 MMcf.

FERC Control Number: JD79-5942
API Well Number: 3003920965000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 28-6 Unit 196
Field: Blanco-South Pictured Cliffs Gas
County: Rio Arriba, New Mexico
Purchaser: El Paso Natural Gas Company
Volume: 10.6 MMcf.

FERC Control Number: JD79-5943
API Well Number: 3003906771000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 27-4 Unit No. 26
Field: Blanco-Mesaverde Gas
County: Rio Arriba, New Mexico
Purchaser: El Paso Natural Gas Company
Volume: 11.7 MMcf.

FERC Control Number: JD79-5944
API Well Number: 3003982366000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 28-6 Unit No. 108
Field: Blanco-South Pictured Cliffs Gas
County: Rio Arriba, New Mexico
Purchaser: El Paso Natural Gas Company
Volume: 15.0 MMcf.

FERC Control Number: JD79-5945
API Well Number: 3003907191000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 27-5 Unit No. 61
Field: Blanco-Mesaverde Gas
County: Rio Arriba, New Mexico
Purchaser: El Paso Natural Gas Company
Volume: 12.0 MMcf.

FERC Control Number: JD79–5946
API Well Number: 3003906000000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 32–5 Unit No. 12
Field: Blanco-Mesaverde Gas
County: Rio Arriba, New Mexico
Purchaser: El Paso Natural Gas Company
Volume: 3.0 MMcf.

FERC Control Number: JD79–5947
API Well Number: 30039067920000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 27–4 Unit No. 27
Field: Blanco-Mesaverde Gas
County: Rio Arriba, New Mexico
Purchaser: El Paso Natural Gas Company
Volume: 6.9 MMcf.

FERC Control Number: JD79–5948
API Well Number: 300399071090000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 27–4 Unit No. 28
Field: Blanco-Mesaverde Gas
County: Rio Arriba, New Mexico
Purchaser: El Paso Natural Gas Company
Volume: 16.1 MMcf.

FERC Control Number: JD79–5949
API Well Number: 30045210350000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Roelofs 6
Field: Blanco-Pictured Cliffs Gas
County: San Juan, New Mexico
Purchaser: El Paso Natural Gas Company
Volume: 16.8 MMcf.

FERC Control Number: JD79–5950
API Well Number: 30045210690000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Roelofs 7
Field: Blanco-Pictured Cliffs Gas
County: San Juan, New Mexico
Purchaser: El Paso Natural Gas Company
Volume: 17.9 MMcf.

FERC Control Number: JD79–5951
API Well Number: 30039062180000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Kein 5
Field: Blanco-South Pictured Cliffs Gas
County: Rio Arriba, New Mexico
Purchaser: El Paso Natural Gas Company
Volume: 16.4 MMcf.

FERC Control Number: JD79–5952
API Well Number: 30039073420000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 28–5 Unit No. 46
Field: Blanco-Mesaverde Gas
County: Rio Arriba, New Mexico
Purchaser: El Paso Natural Gas Company
Volume: 12.0 MMcf.

FERC Control Number: JD79–5953
API Well Number: 30045063580000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Huerfanito Unit No. 77
Field: Blanco-Mesaverde Gas
County: San Juan, New Mexico
Purchaser: El Paso Natural Gas Company
Volume: 11.0 MMcf.

FERC Control Number: JD79–5954
API Well Number: 30045061140000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Huerfano Unit No. 22
Field: Kutz-West Pictured Cliffs Gas
County: San Juan, New Mexico
Purchaser: El Paso Natural Gas Company
Volume: 2.0 MMcf.

FERC Control Number: JD79–5955
API Well Number: 30045060740000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Huerfano, Unit No. 19
Field: Kutz, West Pictured Cliffs Gas
County: San Juan, New Mexico
Purchaser: El Paso Natural Gas Company
Volume: 4.0 MMcf.

FERC Control Number: JD79–5956
API Well Number: 30039060060000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 30–6 Unit No. 3
Field: Blanco-Mesaverde Gas
County: Rio Arriba, New Mexico
Purchaser: El Paso Natural Gas Company
Volume: 12.0 MMcf.

FERC Control Number: JD79–5957
API Well Number: 30039073300000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 28–5 Unit No. 1
Field: Blanco-Mesaverde Gas
County: Rio Arriba, New Mexico
Purchaser: El Paso Natural Gas Company
Volume: 8.0 MMcf.

FERC Control Number: JD79–5958
API Well Number: 30039062430000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 28–5 Unit No. 11
Field: Blanco-Mesaverde Gas
County: Rio Arriba, New Mexico
Purchaser: El Paso Natural Gas Company
Volume: 17.2 MMcf.

FERC Control Number: JD79–5959
API Well Number: 30039078060000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 30–6 Unit No. 27
Field: Blanco-Mesaverde Gas
County: Rio Arriba, New Mexico
Purchaser: El Paso Natural Gas Company
Volume: 11.3 MMcf.

FERC Control Number: JD79–5960
API Well Number: 30039066620000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 27–4 Unit No. 25
Field: Blanco-Mesaverde Gas
County: Rio Arriba, New Mexico
Purchaser: El Paso Natural Gas Company
Volume: 12.0 MMcf.

FERC Control Number: JD79–5961
API Well Number: 30045066120000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Quigley A No. 1
Field: Blanco- Pictured Cliffs Gas
County: San Juan, New Mexico
Purchaser: El Paso Natural Gas Company
Volume: 11.0 MMcf.

FERC Control Number: JD79–5962
API Well Number: 30045067850000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Huerfano Unit NP No. 81
Field: Ballard-Pictured Cliffs Gas
County: San Juan, New Mexico
Purchaser: El Paso Natural Gas Company
Volume: 1.0 MMcf.

FERC Control Number: JD79–5963
API Well Number: 30045062210000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Frost No. 9
Field: Basin-Dakota Gas
County: San Juan, New Mexico
Purchaser: El Paso Natural Gas Company
Volume: 11.0 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations, may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 28, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-18804 Filed 6-13-79; 8:45 am]
Billing Code 6450-01-M

Harvey E. Yates Co.; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

June 5, 1979.

On May 22, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of New Mexico, Energy and Minerals Department, Oil Conservation Division

FERC Control Number: JD79–4972
API Well Number: 30–025–25551
Section of NGPA: 102 and 103
Operator: Harvey E. Yates Company
Well Name: Mobil 27 State
Field: Undesignated Queen
County: Lea, New Mexico
Purchaser: Northern Natural Gas Company
Volume: 73 MMcf.

FERC Control Number: JD79–4973
API Well Number: 30–025–25583
Section of NGPA: 102
Operator: Harvey E. Yates Company
Well Name: Haniad State #1

Field: None-Wildcat Well
County: Lea, New Mexico
Purchaser: Northern Natural Gas Company
Volume: 100 MMcf.

FERC Control Number: JD79-4874
API Well Number: 30-025-25417
Section of NGPA: 102 and 103
Operator: Harvey E. Yates Company
Well Name: State 22 #1
Field: Undesignated
County: Lea, New Mexico
Purchaser: Northern Natural Gas Company
Volume: 73 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 28, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-18880 Filed 6-12-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket Nos. RP71-16 and RP74-29]

Midwestern Gas Transmission Co.; Filing Pursuant to Tariff Rate Adjustment Provisions

June 6, 1979.

Take notice that on May 31, 1979, Midwestern Gas Transmission Company (Midwestern) tendered for filing Twenty-Fifth Revised Sheet No. 5 and Eighth Revised Sheet No. 5A to its FERC Gas Tariff, Third Revised Volume No. 1, to be effective July 1, 1979. Midwestern states that the sole purpose of the revised tariff sheets is to reflect adjustments to its rates pursuant to rate adjustment provisions in Articles XVII, XVIII and XIX of the General Terms and Conditions of its tariff.

Midwestern states that as to the Southern System, Twenty-Fifth Revised Sheet No. 5 reflects (1) a Current Purchased Gas Cost Rate Adjustment pursuant to Section 2 of Article XVII which is based on rate changes reflected in the filing made by Tennessee Gas Pipeline Company, a Division of Tenneco Inc. on May 31, 1979 in Docket Nos. RP73-114, RP74-34 and RP74-73 and (2) a revised Surcharge for Amortizing the Unrecovered Purchased Gas Cost Account for the Southern System, consisting of a negative $0.05 per Mcf for Midwestern's demand rates and a negative 0.97 cents per Mcf for the commodity rates, pursuant to Section 3 of Article XVII. According to Midwestern, the revised tariff sheet also reflects a Rate Adjustment of a negative 3.81 cents per Mcf to reflect curtailment credits applicable to the Southern System pursuant to Section 9 of Article XIX.

Midwestern states that as to the Northern System, Eighth Revised Sheet No. 5A reflects (1) a Current Purchased Gas Cost Rate Adjustment pursuant to Section 2 of Article XVIII which is based on an increase, effective May 1, 1979, to $2.30 (U.S.) per MMBTU in the price which Midwestern is required by action of the Canadian Government to pay for gas to its Northern System supplier, TransCanada Pipelines, Limited and (2) a revised Surcharge for Amortizing the Unrecovered Purchased Gas Cost Account for the Northern System of a positive 0.50 cents per Mcf as specified in Section 3 of Article XVIII.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 22, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who has previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-18886 Filed 6-12-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. CP79-532]

Ozark Gas Transmission System; Request for Environmental Comments About a Proposed Natural Gas Transmission System

June 6, 1979.

This notice requests that environmental agencies and the public comment on anticipated environmental problems associated with the proposed project. These comments will be used by the staff of the Federal Energy Regulatory Commission (FERC) to prepare an environmental assessment and will aid in making the final determination of the project's environmental status.

The environmental assessment will address the application by Ozark Gas Transmission System (Ozark) in Docket No. CP79-532 for a certificate of public convenience and necessity. This certificate is requested pursuant to Section 7(c) of the Natural Gas Act and would authorize the construction and operation of pipeline facilities to be known as the "Ozark System." Natural gas would be obtained from natural gas reserves in the Arkoma Basin in Oklahoma and Arkansas which are presently developed, as well as reserves which will be developed in the immediate future, transported, or exchanged through the Ozark's System to an existing pipeline system and sold to the applicant's customers or their affiliates.

The Ozark System would consist of 285 miles of 20-inch diameter pipeline extending in a generally easterly direction from Pittsburg County, Oklahoma, to the proposed point of interconnection with an existing transmission system in White County, Arkansas. In addition to the main pipeline system, there would be approximately 170 miles of 4- to 10-inch diameter laterals, gas measuring stations, skid-mounted dehydration units, and compressor stations located as required along the pipeline system. The proposal would traverse Pittsburg, Latimer, Haskell, Sequoyah and Leflore Counties in Oklahoma and Crawford, Sebastian, Franklin, Logan, Johnson, Pope, Conway, Faulkner and White Counties in Arkansas.

To allow sufficient space for construction of the 20-inch diameter pipeline, a right-of-way width of 65 feet would be required. After construction, a 30-foot wide right-of-way would be maintained. A 50-foot wide right-of-way

for construction and a 25-foot wide permanent right-of-way would be required for the laterals. Approximately 225 miles of the total 455 miles of proposed pipeline would parallel existing righs-of-way.

Typical natural gas pipeline construction procedures would be followed. Construction is proposed to begin September 1, 1979, and be completed by the end of November 1979.

Alternatives which have been considered include utilizing existing pipelines and realigning the porposed Ozark System along existing rights-of-way.

Federal, state, and local agencies, private interest groups, and the public are encouraged to contribute comments within 30 days of the date of this notice by contacting Mr. Alan L. Barnett, Federal Energy Regulatory Commission, Office of Pipeline and Producer Regulation, Room 3309A, 825 North Capitol Street, Washington, D.C. 20426; telephone (202) 275–3963. Additional information about the proposal is available from Mr. Barnett.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18422 Filed 6-12-79; 8:45 am]

BILLING CODE 6450-01-M

Primos Production Co., et al.; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

June 5, 1979.

On May 18, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of Louisiana, Department of Natural Resources, Office of Conservation

FERC Control Number: JD79–5964
API Well Number: 17067004230000
Section of NGPA: 108
Operator: Primos Production Company
Well Name: Tensas Delta No. 30
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: United Gas Pipeline Co.
Volume: 3.22 MMcf.

FERC Control Number: JD79–5965
API Well Number: 17067003780000
Section of NGPA: 108
Operator: Primos Production Company
Well Name: Tensas Delta No. 36
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: United Gas Pipeline Co.
Volume: 3.78 MMcf.

FERC Control Number: JD79–5966
API Well Number: 17067003770000
Section of NGPA: 108
Operator: Primos Production Company
Well Name: Tensas Delta No. 47
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: United Gas Pipeline Co.
Volume: 10.30 MMcf.

FERC Control Number: JD79–5967
API Well Number: 1701521077
Section of NGPA: 103
Operator: The Louisiana Land and Exploration Co.
Well Name: Bolinger No. 5 L%¢¢#'
Field: Plain Dealing
County: Bossier, Louisiana
Purchaser: Arkansas Louisiana Gas Company
Volume: 72 MMcf.

FERC Control Number: JD79–5968
API Well Number: 1701521171
Section of NGPA: 103
Operator: The Louisiana Land and Exploration Co.
Well Name: Bolinger No. 9 160615
Field: Plain Dealing
County: Bossier, Louisiana
Purchaser: Arkansas Louisiana Gas Company
Volume: 46 MMcf.

FERC Control Number: JD79–5969
API Well Number: 1701722686
Section of NGPA: 103
Operator: The Louisiana Land and Exploration Co.
Well Name: T. F. Bryson No. 2
Field: Longwood
County: Caddo, Louisiana
Purchaser: Southwestern Electric Power Co.
Volume: 102 MMcf.

FERC Control Number: JD79–5971
API Well Number: 1711100433
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Union Producing No. 6
Field: Monroe Gas Field
County: Union, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 7.7 MMcf.

FERC Control Number: JD79–5970
API Well Number: 1711100391
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Union Producing No. 5
Field: Monroe Gas Field
County: Union, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 1.8 MMcf.

FERC Control Number: JD79–5972
API Well Number: 1711100584
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Union Producing No. 7
Field: Monroe Gas Field
County: Union, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 5.8 MMcf.

FERC Control Number: JD79–5973
API Well Number: 1711100583
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Union Producing No. 8
Field: Monroe Gas Field
County: Union, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 2.2 MMcf.

FERC Control Number: JD79–5974
API Well Number: 1711100426
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Union Producing No. 9
Field: Monroe Gas Field
County: Union, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 13.9 MMcf.

FERC Control Number: JD79–5975
API Well Number: 1711100432
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Union Producing No. 10
Field: Monroe Gas Field
County: Union, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 2.9 MMcf.

FERC Control Number: JD79–5976
API Well Number:
Section of NGPA: 108
Operator: Primos Production Company
Well Name: Tensas Delta No. 10
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: United Gas Pipeline Co.
Volume: 1.74 MMcf.

FERC Control Number: JD79–5977
API Well Number: 17067004240000
Section of NGPA: 108
Operator: Primos Production Company
Well Name: Tensas Delta No. 24
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: United Gas Pipeline Co.
Volume: 6.09 MMcf.

FERC Control Number: JD79–5978
API Well Number: 17067004220000
Section of NGPA: 108
Operator: Primos Production Company
Well Name: Tensas Delta No. 28
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: United Gas Pipeline Co.
Volume: 4.36 MMcf.

FERC Control Number: JD79–5979
API Well Number:
Section of NGPA: 108
Operator: Primos Production Company
Well Name: Tensas Delta No. 29
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: United Gas Pipeline Co.
Volume: 5.24 MMcf.

FERC Control Number: JD79–5980
API Well Number:
Section of NGPA: 108
Operator: A. J. Hodges Industries, Inc.
Well Name: Vu A. Skannal No. A–1
Field: Sligo
County: Bossier Parish, Louisiana
Purchaser: United Gas Pipeline Co.
Volume: 4 MMcf.

FERC Control Number: JD79–5981
API Well Number: 1702720197
Section of NGPA: 108
Operator: Hassie Hunt Exploration Company
Well Name: Sx Sun Shirey No. 1 (Serial No. 139153)
Field: Lisbon
County: Claiborne Parish, Louisiana
Purchaser: Texas Eastern Transmission Corp.
Volume: 2* MMcf.

FERC Control Number: JD79-8962
API Well Number: 1701320290
Section of NGPA: 108
Operator: Bodcaw Company
Well Name: Hoss Ra Su 11; Bodcaw D No. 1
Field: Castor
County: Bienville, Louisiana
Purchaser: United Gas Pipeline Co.
Volume: 4.120 MMcf.

FERC Control Number: JD79-8963
API Well Number: 1701320264
Section of NGPA: 108
Operator: Bodcaw Company
Well Name: Hoss C Su 60: Bodcaw Fee LBN No. 5
Field: Danville
County: Bienville, Louisiana
Purchaser: La Gas Intrastate Inc., of Shreveport
Volume: 7.630 MMcf.

FERC Control Number: JD79-8964
API Well Number: 17-017-025910000
Section of NGPA: 108
Operator: Jack W. Grigsby
Well Name: Crane Su 2: Johns No. 1-A-D-Serial No. 58070
Field: Bethany Longstreet
County: Caddo, Louisiana
Purchaser: Texas Eastern Transmission Corp.
Volume: 11 MMcf.

FERC Control Number: JD79-8965
API Well Number: 1710922110
Section of NGPA: 103
Operator: Union Oil Company of California
Well Name: Houma Community Well No. 1
Field: Houma
County: Terrebonne Parish, Louisiana
Purchaser: United Gas Pipeline Co.
Volume: 700 MMcf.

FERC Control Number: JD79-8966
API Well Number: 17-109-21620
Section of NGPA: 107
Operator: Tenneco Oil Company
Well Name: Vub: Terrebonne Land & Dev. Corp. A No. 2
Field: Four Isle Dome
County: Terrebonne Parish, Louisiana
Purchaser:
Volume: 730 MMcf.

FERC Control Number: JD79-8967
API Well Number: 1702020404
Section of NGPA: 103
Operator: Bryant Oil and Gas Corp.
Well Name: Wilson Bufkin No. 1
Field: Lisbon
County: Claiborne, Louisiana
Purchaser: Louisiana Gas Intrastate, Inc. of Shreveport
Volume: 102 MMcf.

FERC Control Number: JD79-8968
API Well Number: 17-045-20513
Section of NGPA: 103
Operator: Chevron U.S.A. Inc.
Well Name: E. H. Peterman No. E-3
Field: East Bayou Postillion
County: Iberia, Louisiana
Purchaser: Southern Natural Gas Co.
Volume: 3650 MMcf.

FERC Control Number: JD79-8969
API Well Number: 17-015-20882
Section of NGPA: 103
Operator: Sun Oil Company (Delaware)
Well Name: Gray Ra Suc: Olinkraft "A" No. 1
Field: Ivan
County: Bossier, Louisiana
Purchaser: Arkansas Louisiana Gas Co.
Volume: 110 MMcf.

FERC Control Number: JD79-8990
API Well Number: 17-119-20188
Section of NGPA: 103
Operator: Sun Oil Company (Delaware)
Well Name: Cv Ra Suk: John Adkins No. 1
Field: Ivan
County: Webster, Louisiana
Purchaser: Arkansas Louisiana Gas Co.
Volume: 37 MMcf.

FERC Control Number: JD79-8991
API Well Number: 17-015-21037
Section of NGPA: 103
Operator: Sun Oil Company (Delaware)
Well Name: Cv-Ra Sub: R. D. Johnston No. 1
Field: Ivan
County: Bossier, Louisiana
Purchaser: Arkansas Louisiana Gas Co.
Volume: 11 MMcf.

FERC Control Number: JD79-8992
API Well Number: 17-015-20802
Section of NGPA: 103
Operator: Sun Oil Company (Delaware)
Well Name: Cv Ra Sul: J. A. Adair No. 1
Field: Ivan
County: Bossier, Louisiana
Purchaser: Arkansas Louisiana Gas Company
Volume: 329 MMcf.

FERC Control Number: JD79-8993
API Well Number:
Section of NGPA: 108
Operator: Primos Production Company
Well Name: Tensas Delta No. 27
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: United Gas Pipeline Co.
Volume: 4.10 MMcf.

FERC Control Number: JD79-8994
API Well Number: 1708700429
Section of NGPA: 108
Operator: Primos Production Co.
Well Name: Tensas Delta No. 26
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: United Gas Pipeline Co.
Volume: 4.97 MMcf.

FERC Control Number: JD79-8995
API Well Number: 1708700567
Section of NGPA: 108
Operator: Primos Production Co.
Well Name: Tensas Delta No. 25
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: United Gas Pipeline Co.
Volume: 8.85 MMcf.

FERC Control Number: JD79-8996
API Well Number: 1708700344
Section of NGPA: 108
Operator: Primos Production Co.
Well Name: Tensas Delta No. 23
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: United Gas Pipeline Co.
Volume: 5.47 MMcf.

FERC Control Number: JD79-8997
API Well Number: 1708700440
Section of NGPA: 108
Operator: Primos Production Co.
Well Name: Tensas Delta No. 21
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: United Gas Pipeline Co.
Volume: .075 MMcf.

FERC Control Number: JD79-8998
API Well Number:
Section of NGPA: 108
Operator: Primos Production Co.
Well Name: Tensas Delta No. 19
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: United Gas Pipeline Co.
Volume: 7.33 MMcf.

FERC Control Number: JD79-8999
API Well Number: 1708720011
Section of NGPA: 108
Operator: Primos Production Co.
Well Name: Tensas Delta No. 51
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: United Gas Pipeline Co.
Volume: 9.95 MMcf.

FERC Control Number: JD79-9000
API Well Number: 1708700376
Section of NGPA: 108
Operator: Primos Production Co.
Well Name: Tensas Delta No. 49
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: United Gas Pipeline Co.
Volume: 11.54 MMcf.

FERC Control Number: JD79-9001
API Well Number: 1708700375
Section of NGPA: 108
Operator: Primos Production Co.
Well Name: Tensas Delta No. 45
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: United Gas Pipeline Co.
Volume: 2.47 MMcf.

FERC Control Number: JD79-9002
API Well Number: 17-10921858
Section of NGPA: 102
Operator: North American Royalties, Inc.
Well Name: 11,000 Ra Su A: CL&F
Field: Palmetto Bayou
County: Terrebonne Ph., Louisiana
Purchaser: Energy Development Corp.
Volume; 880 MMcf.

FERC Control Number: JD79-9003
API Well Number: 1708700585
Section of NGPA: 108
Operator: Primos Production Co.
Well Name: Tensas Delta No. 1-A
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: United Gas Pipeline Co.
Volume: 2.75 MMcf.

FERC Control Number: JD79-9004
API Well Number:
Section of NGPA: 108
Operator: Primos Production Co.
Well Name: Tensas Delta No. 1
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: United Gas Pipeline Co.
Volume: 3.24 MMcf.

FERC Control Number: JD79-9005
API Well Number:
Section of NGPA: 108
Operator: Primos Production Co.
Well Name: Tensas Delta No. 8
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: United Gas Pipeline Co.
Volume: 5.83 MMcf.

FERC Control Number: JD79-6006
API Well Number: 1706700402
Section of NGPA: 108
Operator: Primos Production Co.
Well Name: Tensas Delta No. 44
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: United Gas Pipeline Co.
Volume: 5.20 MMcf.

FERC Control Number: JD79-6007
API Well Number: 1706700335
Section of NGPA: 108
Operator: Primos Production Co.
Well Name: Tensas Delta No. 12
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: United Gas Pipeline Co.
Volume: 8.80 MMcf.

FERC Control Number: JD79-6008
API Well Number:
Section of NGPA: 108
Operator: Primos Production Co.
Well Name: Tensas Delta No. 19
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: United Gas Pipeline Co.
Volume: 10.42 MMcf.

FERC Control Number: JD79-6009
API Well Number: 1706700380
Section of NGPA: 108
Operator: Primos Production Co.
Well Name: Tensas Delta No. 39
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: United Gas Pipeline Co.
Volume: 9.48.

FERC Control Number: JD79-6010
API Well Number: 1706700381
Section of NGPA: 108
Operator: Primos Production Co.
Well Name: Tensas Delta No. 40
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: United Gas Pipeline Co.
Volume: 3.34 MMcf.

FERC Control Number: JD79-6011
API Well Number: 1706700332
Section of NGPA: 108
Operator: Primos Production Co.
Well Name: Tensas Delta No. 42
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: United Gas Pipeline Co.
Volume: 10.29 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 28, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary

[FR Doc. 79-18606 Filed 6-12-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. GP79-20]

South Texas Natural Gas Gathering Co.; Gas Tariff Filing

June 5, 1979.

Take notice that on May 11, 1979, South Texas Natural Gas Gathering Company (South Texas), Five Greenway Plaza East, Houston, Texas 77046, filed in Docket No. GP79-20 pursuant to Section 154.26 of the Commission Regulations under the Natural Gas Act (18 CFR 154.26) proposed Rate Schedule T-1 to its FERC Gas Tariff, original Volume No. 1, providing for the transportation of gas purchased by others pursuant to Section 311(b) of the Natural Gas Policy Act of 1978 (NGPA), all as more fully set forth in the gas tariff which is on file with the Commission and open for public inspection.

South Texas states that its tariff is proposed to be effective on June 15, 1979, and that the rate charged under Rate Schedule T-1 is the same as the settlement rate proposed for transportation service in Docket No. RP78-58.[1]

South Texas states that it has no customers for service under Rate Schedule T-1 and so includes no estimate of revenues required by Section 154.62(b)(2) of the regulations.

South Texas explains that because of its proximity to certain intrastate pipelines, it has been approached with inquiries concerning the transportation of gas purchased from intrastate pipelines by interstate pipelines and local distribution companies. South Texas goes on to say that it is presently providing transportation services for one intrastate pipeline pursuant to Sections 157.45, *et seq.*, of the Regulations (18 CFR 157.45) which explicitly permit an intrastate pipeline to transport emergency gas on behalf of another interstate pipeline without prior approval. South Texas states that it is its position that the NGPA authorizes transportation rendered pursuant to Rate Schedule T-1, without requiring a certificate of public convenience and necessity.

South Texas asserts that Section 311(b) of the NGPA provides for the sales by intrastate pipelines to interstate pipelines and local distribution companies. However, South Texas maintains that Section 311(a) of the NGPA authorizes transportation by interstate pipelines "on behalf of" intrastate pipelines and local distribution companies and that the Regulations promulgated in Part 284 track the NGPA language without clarifying whether interstate pipelines can contract with other interstate pipelines for transportation of Section 311(b) gas.

South Texas contends that it has specific authority to transport gas purchased by local distribution companies pursuant to Section 311, yet no explicit authorization to move gas for an interstate pipeline making a similar purchase.

South Texas asserts that the Commission's policy favoring self-executing regulations governing Section 311 transactions would be frustrated unless the Commission affirms the right of interstate pipelines to transport all Section 311 gas without a certificate.

A more restrictive reading of Section 311(a) would mean that the only interstate pipelines that can arrange expeditious delivery of gas purchased from the intrastate market are those directly connected to the selling intrastate pipeline, it is said. Alternatively, pipelines would have to structure their Section 311(a) transactions to insure that the intrastate pipeline is doing the contracting, it is further said.

South Texas contends that it is clearly allowed to contract with an intrastate pipeline selling gas pursuant to Section 311(b) and it should likewise be permitted to have contractual arrangements with the purchasing interstate pipeline, since the terms of the contract, refund obligations, and the gas itself, would be identical.

Further, South Texas states that there is support for its position independent of the NGPA, since Section 7(c) of the Natural Gas Act (15 USC 717(c)) provides that "temporary acts or operations" are exempt from certificate requirements and the limited term and interruptible nature of the service to be provided characterize these transactions as temporary acts.

Any person desiring to be heard or to make any protest with reference to said gas tariff filing should on or before June 20, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be

[1] Authorization pending before the Commission.

taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18285 Filed 6-12-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP78-414]

Southern Natural Gas Co.; Petition to Amend

June 5, 1979.

Take notice that on May 18, 1979, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP78-414 a petition to amend the Commission's order issued October 2, 1978 in said docket pursuant to Section 7(c) of the Natural Gas Act as implemented by § 157.7(b) of the Regulations thereunder (18 CFR 157.7(b)) by authorization of an increase in expenditures for gas purchase facilities by 43 percent and by expanding the definition of gas-purchase facilities, all as more fully set forth in the petition which is on file with the Commission and open for public inspection.

Southern asserts the requested 43 percent increase represents inflation in gas utility construction costs since January 1975, and the percentage figure is derived from the *Handy-Whitman Index of Public Utility Construction Costs.* Applying this factor, the total expenditure for facilities authorized in this docket would be increased to a total cost limitation not to exceed $17,160,000 and with no single onshore and offshore project to exceed $2,145,000 and $3,575,000, respectively, it is said.[1]

Southern states that it is pursuing an active program of gas acquisition and anticipates the need to construct additional gas purchase facilities in the next few months. Southern maintains that increased single and total project cost limitations may allow Southern to connect new sources of supply that might be lost to Southern if producers had to wait for individual certificate authorization and a later construction period before the movement of gas could commence.

Southern further asserts that the delay in attaching gas supplies which is inherent in the certification process may nullify the beneficial effect of the provisions of Part 284 of the Commission's Regulations under the Natural Gas Policy Act of 1978 (NGPA) whenever an interstate pipeline must construct and operate facilities to connect an intrastate pipeline to a producer's facilities or to receive gas sold or transported under Part 284. A similar difficulty exists when facilities must be constructed to connect Southern's system with that of another natural gas company authorized to transport gas for Southern, it is said.

Southern therefore contends that to eliminate this delay the Commission should expand the definition of budget-type gas purchase facilities authorized in Docket No. CP78-414 to include:

(1) facilities necessary to connect the facilities of an interstate or intrastate pipeline with Southern's interstate system or with the facilities of another natural gas company or intrastate pipeline authorized to transport gas for or exchange gas with Southern, for the purpose of receiving gas which is (a) transported by an intrastate pipeline for Southern's account pursuant to Section 311(a)(2) of the NGPA, (b) sold by an intrastate pipeline to Southern pursuant to Section 311(b) of the NGPA, (c) assigned to Southern by an intrastate pipeline pursuant to Section 312 of the NGPA or (d) transported by another natural gas company for the account of, or for exchange with Southern and

(2) facilities necessary to connect the facilities of an independent producer or other similar seller with the system of an intrastate pipeline authorized by Part 284 of the Commission's Regulations under the NGPA to transport gas for the account of Southern.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before June 28, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18286 Filed 6-12-79; 8:45 am]

BILLING CODE 6450-01-M

Tenneco Oil Co. and Pioneer Production Corp.; Determination by a Jurisdictional Agency under the Natural Gas Policy Act of 1978

June 5, 1979.

On May 22, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

United States Department of the Interior Geological Survey Oklahoma

FERC Control Number: JD79-4069.
API Well Number: 35-093-35869.
Section of NGPA: 108.
Operator: Tenneco Oil Company.
Well Name: USA—T. Connell No. 1.
Field: Ringwood.
County: Major, Oklahoma.
Purchaser: Oklahoma Natural Gas Gathering Corp.
Volume: 5 MMcf.

FERC Control Number: JD79-4070.
API Well Number: 35-121-02176.
Section of NGPA: 108.
Operator: Pioneer Production Corporation.
Well Name: U.S. Naval Depot No. 1 OTC 121 482680.
Field: South Pine Hollow.
County: Pittsburg, Oklahoma.
Purchaser: Arkansas Louisiana Gas Company.
Volume: 16.75 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 28, 1979. Please reference the FERC Control Number in any

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[1] The order issued October 2, 1978, authorized a total cost limitation not to exceed $12,000,000 and single onshore and offshore costs not to exceed $1,500,000 and $2,500,000, respectively.

correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18382 Filed 6-12-79; 8:45 am]

BILLING CODE 6450-01-M

[Project No. 2906]

Terra Bella Irrigation District; Application for Preliminary Permit

June 5, 1979.

Take notice that on January 18, 1979, Terra Bella Irrigation District filed an application for preliminary permit, [pursuant to the Federal Power Act, 16 U.S.C. Section 791(a)–825(r)], for a proposed waterpower project, to be known as the Jackass-Chiquito Water Conservation and Hydroelectric Development Project, FERC No. 2906, located on the Jackass and Chiquito Creeks, near Southern California Edison Company's Mammoth Pool Reservoir (existing licensed FERC Project No. 2085), in the county of Madera, California. Lands of the United States which may be affected by the proposed project are located in the Sierra National Forest, under the jurisdiction of the United States Forest Service. Correspondence with the Applicant should be directed to: John Boudreau, Manager, Terra Bella Irrigation District, 24790 Avenue 95, Terra Bella, California 93270 and Paul R. Minasian, Esquire, Minasian, Minasian, Minasian, Spruance and Baber, Attorneys at Law, Post Office Box 1679, Oroville, California 95965.

Purpose of the Project—A portion of project energy would be used for distribution to the Applicant's major pumping stations for irrigational purposes. Remaining power would be sold to other public agencies or utility companies.

Proposed Scope and Cost of Studies Under Permit—The Applicant seeks issuance of a preliminary permit for a period of three years, during which it would prepare a definitive project report, prepare preliminary designs, conduct geological explorations, collect environmental data and prepare an environmental report, obtain agreements with various Federal, State, and local agencies, and prepare a FERC license application. The cost of these activities is estimated by the Applicant to be about $1,000,000.

Project Description—The principal project works would consist of: (1) a concrete overflow dam diverting flow from East Fork Granite Creek through a 9,300-foot-long, 11-foot-diameter tunnel to West Fork Granite Reservoir; (2) a concrete overflow dam diverting flow from Middle Fork Granite Creek through a 12-inch pipeline connecting to a bore hole in the 11-foot-diameter tunnel; (3) West Fork Granite Reservoir (6-acre surface area) to be created by a third concrete overflow diversion dam; (4) a 14-foot-diameter tunnel approximately 10,300 feet long, carrying water from West Fork Granite Reservoir to; (5) the Jackass Reservoir which would have a capacity of 100,000 acre-feet, a maximum surface area of about 1,430 acres, and formed by a homogeneous rolled earthfill structure designated Jackass Dam; (6) a horseshoe tunnel 9 feet 6 inches in diameter and approximately 10,900 feet long, leading to an above-ground penstock approximately 6,700 feet long, varying in diameter from 6 feet 6 inches to 6 feet 0 inches, connected to an underground 6-foot-diameter steel-lined penstock serving; (7) the underground Jackass Powerhouse containing two impulse type turbine-generator units, having a total installed capacity of 80 megawatts; (8) a tailrace tunnel about 4,100 feet long leading to; (9) Chiquito Reservoir having a surface area of 1,030 acres and storage capacity of 80,000 acre-feet, formed by a zone-type composite earth and rockfill structure designated Chiquito Dam; (10) a horseshoe tunnel 13 feet in diameter and about 22,590 feet long, connected to an approximately 4,195-foot-long, above-ground penstock varying in diameter from 7 feet 6 inches to 8 feet 6 inches leading to; (11) Chiquito Powerhouse containing two impulse-type turbine-generator units, having a total installed capacity of 120 megawatts, and located at the headwaters of Mammoth Pool near the junction of Jackass Creek.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other necessary information for inclusion in an application for a license. In this instance, the applicant seeks a 36-month permit.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. A copy of the application may be obtained directly from the Applicant.

Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal requests for comments will be made.

If an agency does not file comments within the time set below, it will be presumed to have no comments.

Protests and Petitions To Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 C.F.R. Section 1.8 or Section 1.10 (1978).

In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules.

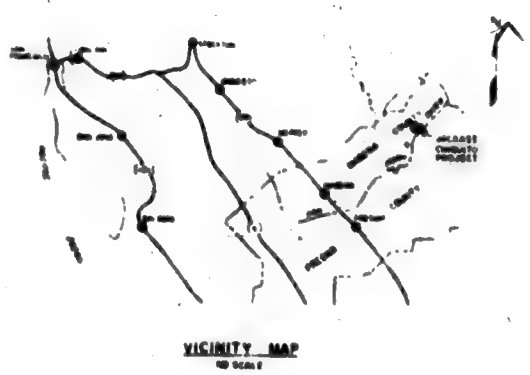
Any protest, petition to intervene, or agency comments must be filed on or before August 6, 1979. The Commission's address is: 825 N. Capitol Street, N.E., Washington, D.C. 20426.

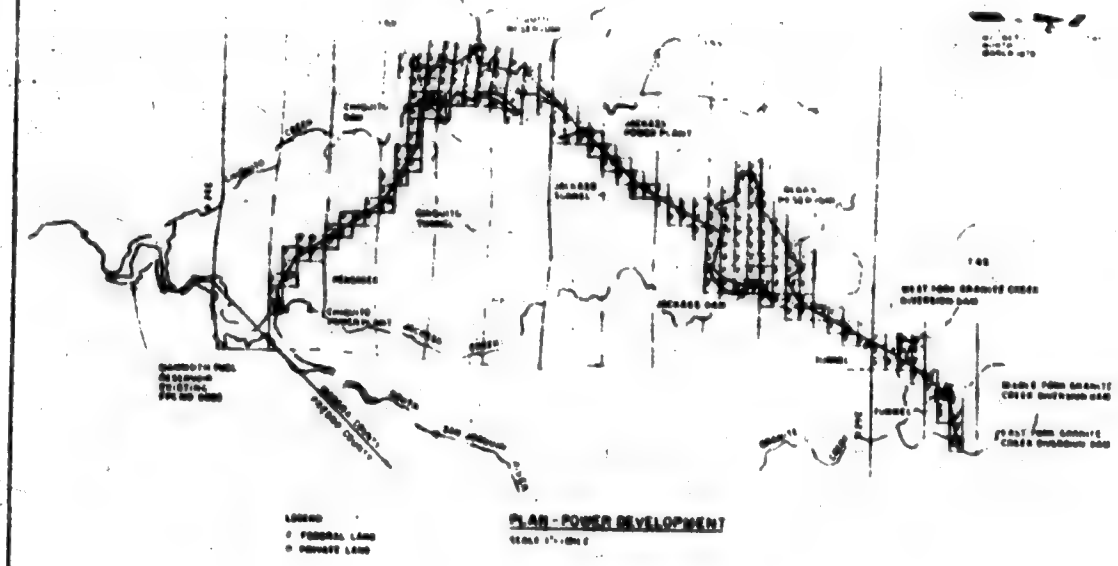
The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

BILLING CODE 6450-01-M





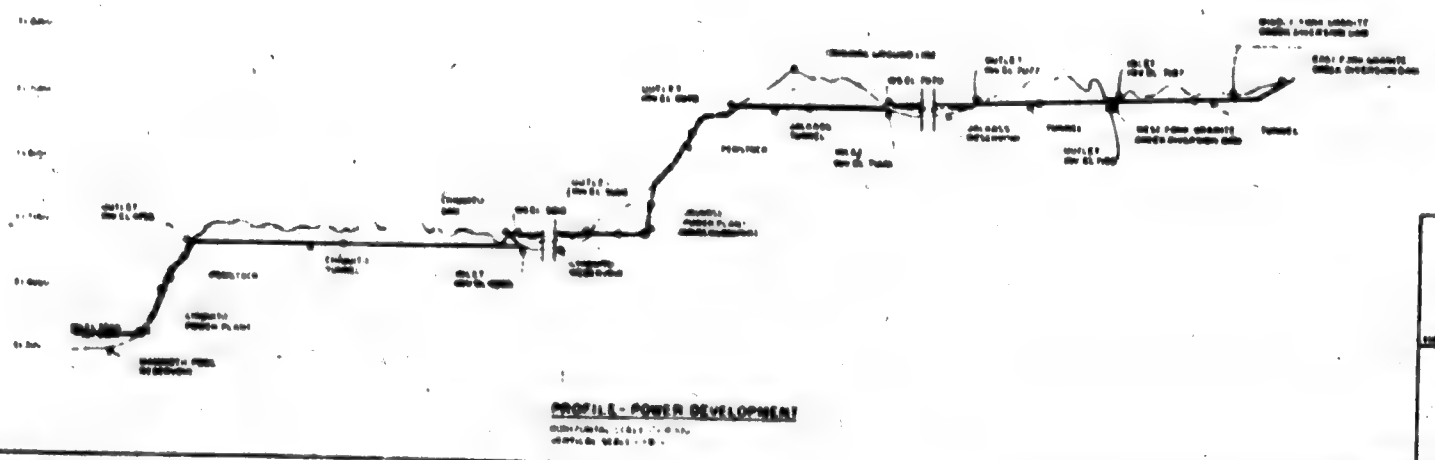


EXHIBIT R AND S

TERRA BELLA IRRIGATION DISTRICT
TERRA BELLA, CALIFORNIA

JACKASS-CHICAGO WATER CONSERVATION
AND HYDROELECTRIC DEVELOPMENT

GENERAL PLAN, PROPERTY MAP AND
LOCATION OF PRINCIPAL FACILITIES

FERC No. 2906-1

[FR Doc. 79-18388 Filed 6-12-79; 8:45 am]
BILLING CODE 6450-01-C

[Docket No. CP77-313]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 6, 1979.

Take notice that Texas Eastern Transmission Corporation on May 25, 1979, tendered for filing proposed changes in its FERC Gas Tariff, Fourth Revised Volume No. 1, the following sheet:

Revised Alternate Second Substitute Forty-eighth Revised Sheet No. 14

This tariff sheet is being issued to reflect changes in Texas Eastern's rates under Rate Schedule ISS, pursuant to ordering Paragraph (A) of the Commission's order issued January 27, 1978 at Docket Nos. CP77-313, *et al.* This increase in ISS rates reflects the flow-through of increased costs to Texas Eastern as a result of Consolidated Gas Supply Corporation's (Consolidated) increase in rates under Consolidated's Rate Schedule GSS to become effective July 1, 1979 in Docket No. RP79-22.

The proposed effective date of the above tariff sheet is July 1, 1979.

Copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 20, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18400 Filed 6-12-79; 8:45 am]

BILLING CODE 6450-01-M

The Superior Oil Co., et al.; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

June 5, 1979.

On May 18, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of Louisiana, Department of Natural Resources, Office of Conservation

FERC Control Number: JD79-6230
API Well Number: 1710922046
Section of NGPA: 103
Operator: The Superior Oil Company
Well Name: VUA: LL&E 13 No. 5
Field: Four Isle Dome
County: Terrebonne Parish, Louisiana
Purchaser: Tennessee Gas Pipe Line Company
Volume: 641 MMcf.

FERC Control Number: JD79-6231
API Well Number: 17-717-20140
Section of NGPA: 103
Operator: Hunt Industries
Well Name: SL 3768 #7 156631
Field: Grand Isle Blk 24 (Miocene P Sand)
County: Offshore (Zone 1), Louisiana
Purchaser: Michigan Wisconsin Pipeline Company
Volume: 1,000* MMcf.

FERC Control Number: JD79-6232
API Well Number: 1706720098
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Tensas Delta #F-36
Field: Monroe Gas Filed
County: Morehouse, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 4.0 MMcf.

FERC Control Number: JD79-6233
API Well Number: 1706720037
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Tensas Delta Fee #F-37
Field: Monroe Gas
Field
County: Morehouse, La.
Purchaser: Mid Louisiana Gas Company
Volume: 8.8 MMcf.

FERC Control Number: JD79-6234
API Well Number: 1706720099
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Tensas Delta #F-38
Field: Monroe Gas
Field
County: Morehouse, La.
Purchaser: Mid Louisiana Gas Company
Volume: 13.1 MMcf.

FERC Control Number: JD79-6235
API Well Number: 1711101208
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Love #4
Field: Monroe Gas
Field
County: Union, La.
Purchaser: Mid Louisiana Gas Company
Volume: 9.5 MMcf.

FERC Control Number: JD79-6236
API Well Number: 1711101271
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Love #5
Field: Monroe Gas
Field
County: Union, La.
Purchaser: Mid Louisiana Gas Company
Volume: 8.4 MMcf.

FERC Control Number: JD79-6237
API Well Number: 1711101248
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Love #6
Field: Monroe Gas
Field
County: Union, La.
Purchaser: Mid Louisiana Gas Company
Volume: 8.0 MMcf.

FERC Control Number: JD79-6238
API Well Number: 1711101249
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Love #8
Field: Monroe Gas
Field
County: Union, La.
Purchaser: Mid Louisiana Gas Company
Volume: 5.5 MMcf.

FERC Control Number: JD79-6239
API Well Number: 1711101251
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Love #9
Field: Monroe Gas
Field
County: Union, La.
Purchaser: Mid Louisiana Gas Company
Volume: 5.1 MMcf.

FERC Control Number: JD79-6240
API Well Number: 1711101250
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Love #10
Field: Monroe Gas
Field
County: Union, La.
Purchaser: Mid Louisiana Gas Company
Volume: 8.4 MMcf.

FERC Control Number: JD79-6241
API Well Number: 1711101272
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Love #11
Field: Monroe Gas Field
County: Union, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 5.1 MMcf.

FERC Control Number: JD79-6242
API Well Number: 17077-28178
Section of NGPA: 107
Operator: Chevron U.S.A. Inc.
Well Name: Walter C. Parlange, Jr., et al., #2
Field: Judge Digby
County: Point Coupee, La.
Purchaser: Sugar Bowl Gas Corp.
Volume: 3723 MMcf.

FERC Control Number: JD79-6243
API Well Number: 1711320856
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Exxon Fee-Pecan Island No. 69
Field: Pecan Island
County: Vermilion Parish, La.
Purchaser: Columbia Gas Trans. Corp.
Volume: 3000 MMcf.

FERC Control Number: JD79-6244
API Well Number: 1701722579
Section of NGPA: 103
Operator: McGoldrick Oil Company
Well Name: Lane No. 8

Field: Caddo Pine Island
County: Caddo, La.
Purchaser: United Gas Pipeline Company
Volume: 7.5 MMcf.

FERC Control Number: JD79-6245
API Well Number: 1701722627
Section of NGPA: 103
Operator: McGoldrick Oil Company
Well Name: Ducote "B" No. 12
Field: Caddo Pine Island
County: Caddo, La.
Purchaser: United Gas Pipeline Company
Volume: 4 MMcf.

FERC Control Number: JD79-6246
API Well Number: 1701722604
Section of NGPA: 103
Operator: McGoldrick Oil Company
Well Name: Ducote "B" No. 11
Field: Caddo Pine Island
County: Caddo, La.
Purchaser: United Gas Pipeline Company
Volume: 7.5 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 28, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-18999 Filed 6-12-79; 8:45 am]
BILLING CODE 6450-01-M

Tiger Oil, Inc., et al.; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

June 5, 1979.

On May 18, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the National Gas Policy Act of 1978.

State of Ohio, Department of Natural Resources, Division of Oil and Gas

FERC Control Number: JD79-6102
API Well Number: 34 121 2 1952 ** 14
Section of NGPA: 103
Operator: Tiger Oil, Inc.
Well Name: Mildred Cutler #2
Field: N/A
County: Noble, Ohio
Purchaser: East Ohio Gas Co.
Volume: 15 MMcf.

FERC Control Number: JD79-6103
API Well Number: 3401921065**14
Section of NGPA: 103
Operator: MB Operating Co., Inc.
Well Name: W. B. Flanagan #1
Field: N/A
County: Carroll, Ohio
Purchaser:
Volume: 5.475 MMcf.

FERC Control Number: JD79-6104
API Well Number: 3415722243**14
Section of NGPA: 103
Operator: MB Operating Co., Inc.
Well Name: A. & S. Fish Unit #2
Field: N/A
County: Tuscarawas, Ohio
Purchaser:
Volume: 5.475 MMcf.

FERC Control Number: JD79-6105
API Well Number: 3415721210**14
Section of NGPA: 103
Operator: MB Operating Co., Inc.
Well Name: A. Fish #1
Field: N/A
County: Tuscarawas, Ohio
Purchaser:
Volume: 5.475 MMcf.

FERC Control Number: JD79-6106
API Well Number: 3415722108**14
Section of NGPA: 103
Operator: MB Operating Co., Inc.
Well Name: J. & M. Downing #3
Field: N/A
County: Tuscarawas, Ohio
Purchaser:
Volume: 5.475 MMcf.

FERC Control Number: JD79-6107
API Well Number: 3415722977**14
Section of NGPA: 103
Operator: MB Operating Co., Inc.
Well Name: J. Cutshall Unit #2
Field: N/A
County: Tuscarawas, Ohio
Purchaser:
Volume: 5.475 MMcf.

FERC Control Number: JD79-6108
API Well Number: 3415723004**14
Section of NGPA: 103
Operator: MB Operating Co., Inc.
Well Name: J. Downing #2
Field: N/A
County: Tuscarawas, Ohio
Purchaser:
Volume: 5.475 MMcf.

FERC Control Number: JD79-6109
API Well Number: 3415722976**14
Section of NGPA: 103
Operator: MB Operating Co., Inc.
Well Name: J. Cutshall Unit #1
Field: N/A
County: Tuscarawas, Ohio
Purchaser:
Volume: 5.475 MMcf.

FERC Control Number: JD79-6110
API Well Number: 3401921167**14
Section of NGPA: 103
Operator: MB Operating Co., Inc.
Well Name: B. M. Corbitt #1
Field: N/A
County: Carroll, Ohio
Purchaser:
Volume: 5.475 MMcf.

FERC Control Number: JD79-6111
API Well Number: 3401921070**14
Section of NGPA: 103
Operator: MB Operating Co., Inc.
Well Name: C. & L. Clark Unit #2
Field: N/A
County: Carroll, Ohio
Purchaser:
Volume: 5.475 MMcf.

FERC Control Number: JD79-6112
API Well Number: 3401921047**14
Section of NGPA: 103
Operator: MB Operating Co., Inc.
Well Name: C. & L. Clark Unit #1
Field: N/A
County: Carroll, Ohio
Purchaser:
Volume: 5.475 MMcf.

FERC Control Number: JD79-6113
API Well Number: 3401921185**14
Section of NGPA: 103
Operator: MB Operating Co., Inc.
Well Name: G. Bowling #1
Field: N/A
County: Carroll, Ohio
Purchaser:
Volume: 5.475 MMcf.

FERC Control Number: JD79-6114
API Well Number: 3408521079**14
Section of NGPA: 108
Operator: SPS Technologies, Inc.
Well Name: Victoria Indus. Prop. #2
Field: N/A
County: Mahoning, Ohio
Purchaser: The East Ohio Gas Company
Volume: 27 MMcf.

FERC Control Number: JD79-6115
API Well Number: 3415724488**14
Section Of NGPA: 108
Operator: Trep Springs Oil and Gas Company
Well Name: Gerald Lang #1
Field:
County: Washington, Ohio
Purchaser: American Energy Services, Inc.
Volume: 365 MMcf.

FERC Control Number: JD79-6116
API Well Number: 3415722888**14
Section Of NGPA: 108
Operator: The Mutual Oil & Gas Company
Well Name: Parry-Everhard Unit #1
Field: N/A
County: Tuscarawas, Ohio
Purchaser: American Energy Services, Inc.
Volume: 31 MMcf.

FERC Control Number: JD79-6117
API Well Number: 3415723053**14
Section Of NGPA: 108
Operator: The Mutual Oil & Gas Company
Well Name: Barnett-Parish Unit #1
Field: N/A
County: Tuscarawas, Ohio
Purchaser: American Energy Services, Inc.
Volume: 38 MMcf.

FERC Control Number: JD79-6118
API Well Number: 3413321595**14
Section Of NGPA: 108
Operator: Viking Resources Corporation
Well Name: Gollan/Adam #1
Field: N/A
County: Portage, Ohio
Purchaser:
Volume: 30 MMcf.

FERC Control Number: JD79-6119
API Well Number: 3413321650**14

Section Of NGPA: 103
Operator: Viking Resources Corporation
Well Name: Chester O. & Deborah Timmons #3
Field: N/A
County: Portage, Ohio
Purchaser:
Volume: 30 MMcf.

FERC Control Number: JD79-6120
API Well Number: 3415520803**14
Section Of NGPA: 103
Operator: Morain Coating and Construction Inc.
Well Name: Mills #2
Field: N/A
County: Trumbull, Ohio
Purchaser: East Ohio Gas Company
Volume: 25 MMcf.

FERC Control Number: JD79-6121
API Well Number: 3415122755**14
Section Of NGPA: 103
Operator: Amtex Oil and Gas, Inc.
Well Name: Gleasner Well No. 1
Field: N/A
County: Stark, Ohio
Purchaser: Columbia Gas Transmission Corp.
Volume: 25 MMcf.

FERC Control Number: JD79-6122
API Well Number: 3415520631**14
Section Of NGPA: 103
Operator: Ohio Gas and Oil
Well Name: Tauro0Dejuto #1
Field: N/A
County: Trumbull, Ohio
Purchaser: East Ohio Gas Co.
Volume: 20 MMcf.

FERC Control Number: JD79-6123
API Well Number: 3415520732**14
Section Of NGPA: 103
Operator: Ohio Oil and Gas
Well Name: Gollan #1
Field: N/A
County: Trumbull, Ohio
Purchaser: Aluminum Billets, Inc.
Volume: 25 MMcf.

FERC Control Number: JD79-6124
API Well Number: 3411920501**14
Section Of NGPA: 103
Operator: Charles O. Lighthizer
Well Name: A. R. Crawford #1
Field: Andrea Crawford Farm
County: Muskingum, Ohio
Purchaser: Columbia Gas Corp.
Volume: 10,000,000 MMcf.

FERC Control Number: JD79-6125
API Well Number: 3415121149**14
Section Of NGPA: 108
Operator: K-Vill Oil & Gas
Well Name: Briner #1
Field: N/A
County: Stark, Ohio
Purchaser: East Ohio Gas Company
Volume: 4 MMcf.

FERC Control Number: JD79-6126
API Well Number: 3413320284**14
Section Of NGPA: 108
Operator: K-Vill Oil & Gas
Well Name: Gentry #1
Field: N/A
County: Portage, Ohio
Purchaser: East Ohio Gas Company
Volume: 2 MMcf.

FERC Control Number: JD79-6127
API Well Number: 3411921661**14
Section Of NGPA: 108
Operator: Royal Oil & Gas Corporation
Well Name: Paul Wahl #1
Field:
County: Muskingum, Ohio
Purchaser: Newzane Gas Company
Volume: 2.649 MMcf.

FERC Control Number: JD79-6128
API Well Number: 3411921676**14
Section Of NGPA: 108
Operator: Royal Oil & Gas Corporation
Well Name: James Tanner #1
Field:
County: Muskingum, Ohio
Purchaser: Newzane Gas Company
Volume: 1.141 MMcf.

FERC Control Number: JD79-6129
API Well Number: 3416920841**14
Section Of NGPA: 108
Operator: David Shafer Oil Producers Inc.
Well Name: Weary #1
Field: N/A
County: Wayne, Ohio
Purchaser: Columbia Gas Transmission Corp.
Volume: 3.72 MMcf.

FERC Control Number: JD79-6130
API Well Number: 3407521016**14
Section Of NGPA: 108
Operator: Triple R Oil & Gas Co.
Well Name: Fair-Tidball #1
Field: N/A
County: Holmes, Ohio
Purchaser: Columbia Gas Transmission Corp.
Volume: 2 MMcf.

FERC Control Number: JD79-6131
API Well Number: 3405921685**14
Section Of NGPA: 108
Operator: Viking Resources Corporation
Well Name: John N. Eibel Unit #1
Field:
County: Guernsey, Ohio
Purchaser: The East Ohio Gas Company
Volume:

FERC Control Number: JD79-6132
API Well Number: 3412121636**14
Section Of NGPA: 108
Operator: Viking Resources Corporation
Well Name: A. Spurrier Unit #1
Field: N/A
County: Nobel, Ohio
Purchaser: The East Ohio Gas Company
Volume:

FERC Control Number: JD79-6133
API Well Number: 3415721606**14
Section Of NGPA: 108
Operator: Zenith Exploration Company
Well Name: Milligan Unit #1
Field: N/A
County: Tuscarawas, Ohio
Purchaser: East Ohio Gas Company
Volume: 3 MMcf.

FERC Control Number: JD79-6134
API Well Number: 3415721282**14
Section Of NGPA: 108
Operator: Zenith Exploration Company
Well Name: D. & E. Beaber #1
Field: N/A
County: Tuscarawas, Ohio
Purchaser: Stone Creek Brick Co.
Volume: 7 MMcf.

FERC Control Number: JD79-6135
API Well Number: 3408322320**14
Section Of NGPA: 108
Operator: Lew Bates, Jr.
Well Name: Roahrig #1
Field: N/A
County: Knox, Ohio
Purchaser: Columbia Gas Transmission Corp.
Volume: 1.5 MMcf.

FERC Control Number: JD79-6136
API Well Number: 3411924005**14
Section Of NGPA: 108
Operator: Bates Oil & Gas, Inc.
Well Name: Thompson #1
Field: N/A
County: Muskingum, Ohio
Purchaser: Columbia Gas Transmission Corp.
Volume: 3.6 MMcf.

FERC Control Number: JD79-6137
API Well Number: 3403122378**14
Section Of NGPA: 108
Operator: Lew Bates, Jr.
Well Name: Butler #1
Field: N/A
County: Coshocton, Ohio
Purchaser: Columbia Gas Transmission
Volume: 8 MMcf.

FERC Control Number: JD79-6138
API Well Number: 3403122593**14
Section Of NGPA: 108
Operator: Lew Bates, Jr.
Well Name: Dickerson #1
Field: N/A
County: Coshocton, Ohio
Purchaser: Columbia Gas Transmission Corp.
Volume: 1.8 MMcf.

FERC Control Number: JD79-6139
API Well Number: 3403122933**14
Section Of NGPA: 108
Operator: Bates Oil & Gas, Inc.
Well Name: Sibert #1
Field: N/A
County: Coshocton, Ohio
Purchaser: Columbia Gas Transmission Corp.
Volume: 3.7 MMcf.

FERC Control Number: JD79-6140
API Well Number: 3411922182**14
Section Of NGPA: 108
Operator: Mineral Leasing, Inc.
Well Name: Hansel #1
Field: N/A
County: Muskingum, Ohio
Purchaser: Columbia Gas Transmission Corp.
Volume: 3.5 MMcf.

FERC Control Number: JD79-6141
API Well Number: 3411521352**14
Section Of NGPA: 108
Operator: Ohio Production Corp.
Well Name: Campbell-Dingey Unit #1
Field: N/A
County: Morgan, Ohio
Purchaser: Columbia Gas Transmission Corporation
Volume: 6 MMcf.

FERC Control Number: JD79-6142
API Well Number: 3407521823**14
Section Of NGPA: 108
Operator: Ponderosa Oil Company
Well Name: No-Ra Inc. Well #2
Field: N/A
County: Holmes, Ohio
Purchaser: Columbia Gas Trans. Corp.
Volume: 2.5 MMcf.

FERC Control Number: JD79-6143
API Well Number: 3407520964**14

Section Of NGPA: 108
Operator: Paul R. Baker Oil & Gas Co.
Well Name: Charles Brink #1
Field: N/A
County: Holmes, Ohio
Purchaser: Columbia Gas Transmission Corp.
Volume: 3 MMcf.

FERC Control Number: JD79-6144
API Well Number: 3410921661**14
Section Of NGPA: 108
Operator: Ponderosa Oil Company
Well Name: Hersh.-Miller Unit Well #1
Field: N/A
County: Wayne, Ohio
Purchaser: Columbia Gas Trans. Corp.
Volume: 4 MMcf.

FERC Control Number: JD79-6145
API Well Number: 34 031 2 2757**14
Section of NGPA: 108
Operator: Ralph H. Bauman
Well Name: Bauman Groff No. 2
Field: N/A
County: Coshocton, Ohio
Purchaser: Columbia Gas Transmission Corp.
Volume: 7.784 MMcf.

FERC Control Number: JD79-6146
API Well Number: 34 031 22817**14
Section of NGPA: 108
Operator: Ralph H. Bauman
Well Name: Bauman Gress No. 1
Field: N/A
County: Coshocton, Ohio
Purchaser: Columbia Gas Transmission Corp.
Volume: 8.800 MMcf.

FERC Control Number: JD79-6147
API Well Number: 34-031-2-2973**14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Lawrence R. Laughlin No. 4
Field: Warsaw
County: Coshocton, Ohio
Purchaser: CGT
Volume: 9.4 MMcf.

FERC Control Number: JD79-6148
API Well Number: 34-031-2-2438**14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Leroy F. Stuller No. 2
Field: Tunnel Hill
County: Coshocton, Ohio
Purchaser: Columbia Gas Transmission
Volume: 2.6 MMcf.

FERC Control Number: JD79-6149
API Well Number: 3412723954**14
Section of NGPA: 108
Operator: Oxford Oil Co.
Well Name: R. E. & Norma Beard No. 15A
Field: N/A
County: Perry, Ohio
Purchaser: National Gas & Oil Corp.
Volume: 3.0 MMcf.

FERC Control Number: JD79-6150
API Well Number: 3411923963**14
Section of NGPA: 108
Operator: Oxford Oil Co.
Well Name: Earl Swingle No. 1
Field: N/A
County: Muskingum, Ohio
Purchaser: Columbia Gas Trans. Corp.
Volume: 7.0 MMcf.

FERC Control Number: JD79-6151
API Well Number: 3407521951**14
Section of NGPA: 108
Operator: Oxford Oil Co.
Well Name: Zora Smith No. 1
Field: N/A
County: Holmes, Ohio
Purchaser: Columbia Gas Trans. Corp.
Volume: 8.0 MMcf.

FERC Control Number: JD79-6152
API Well Number: 34-151-3-2944**14
Section of NGPA: 103
Operator: Belden & Blake and Co. L. P. No. 70
Well Name: V & O Pittis Comm No. 1-872
Field: N/A
County: Stark, Ohio
Purchaser:
Volume: 10 MMcf.

FERC Control Number: JD79-6153
API Well Number: 3413320855**14
Section of NGPA: 108
Operator: Nucorp Energy Company
Well Name: Kryvicky No. 1
Field: N/A
County: Portage, Ohio
Purchaser: East Ohio Gas Company
Volume: 6.939 MMcf.

FERC Control Number: JD79-6154
API Well Number: 3413320594**14
Section of NGPA: 108
Operator: Nucorp Energy Company
Well Name: Carlton No. 2
Field: N/A
County: Portage, Ohio
Purchaser: East Ohio Gas Company
Volume: 7.687 MMcf.

FERC Control Number: JD79-6155
API Well Number: 34-133-2-0084**14
Section of NGPA: 108
Operator: K-Vill Oil & Gas
Well Name: McPeak Comm. No. 1
Field: N/A
County: Portage, Ohio
Purchaser: East Ohio Gas Company
Volume: 3.3 MMcf.

FERC Control Number: JD79-6156
API Well Number: 3401921242**14
Section of NGPA: 103
Operator: MB Operating Co., Inc.
Well Name: R. Magee No. 1
Field: N/A
County: Carroll, Ohio
Purchaser:
Volume: 5.475 MMcf.

FERC Control Number: JD79-6157
API Well Number: 3401921186**14
Section of NGPA: 103
Operator: MB Operating Co., Inc.
Well Name: Jones Unit No. 1
Field: N/A
County: Carroll, Ohio
Purchaser:
Volume: 5.475 MMcf.

FERC Control Number: JD79-6158
API Well Number: 3415723216**14
Section of NGPA: 103
Operator: MB Operating Co., Inc.
Well Name: R. & J. Hull No. 1
Field: N/A
County: Tuscarawas, Ohio
Purchaser:
Volume: 5.475 MMcf.

FERC Control Number: JD79-6159
API Well Number: 3401921107**14
Section of NGPA: 103
Operator: MB Operating Co., Inc.
Well Name: S. Horvath No. 1
Field: N/A
County: Carroll, Ohio
Purchaser:
Volume: 5.475 MMcf.

FERC Control Number: JD79-6160
API Well Number: 3401921178**14
Section of NGPA: 103
Operator: MB Operating Co., Inc.
Well Name: G. Hill No. 1 (M. B. & S. E. Belden Jr.)
Field: N/A
County: Carroll, Ohio
Purchaser:
Volume: 5.475 MMcf.

FERC Control Number: JD79-6161
API Well Number: 3415722944**14
Section of NGPA: 103
Operator: MB Operating Co., Inc.
Well Name: Harrison Leasing Co. No. 1
Field: N/A
County: Tuscarawas, Ohio
Purchaser:
Volume: 5.475 MMcf.

FERC Control Number: JD79-6162
API Well Number: 3415723219**14
Section of NGPA: 103
Operator: MB Operating Co., Inc.
Well Name: R. Grubbs Unit No. 3
Field: N/A
County: Tuscarawas, Ohio
Purchaser:
Volume: 5.475 MMcf.

FERC Control Number: JD79-6163
API Well Number: 3415723003**14
Section of NGPA: 103
Operator: MB Operating Co., Inc.
Well Name: R. Grubbs No. 2
Field: N/A
County: Tuscarawas, Ohio
Purchaser:
Volume: 5.475 MMcf.

FERC Control Number: JD79-6164
API Well Number: 3401921238**14
Section of NGPA: 103
Operator: MB Operating Co., Inc.
Well Name: O. German No. 3
Field: N/A
County: Carroll, Ohio
Purchaser:
Volume: 5.475 MMcf.

FERC Control Number: JD79-6165
API Well Number: 3415723055**14
Section of NGPA: 103
Operator: MB Operating Co., Inc.
Well Name: R. Fulton Unit No. 3
Field: N/A
County: Tuscarawas, Ohio
Purchaser:
Volume: 5.475 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 28, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[Fr Doc. 79-18391 Filed 6-12-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. RP72-133, PGA79-2]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

May 25, 1979.

Take notice that on May 21, 1979, United Gas Pipe Line Company (United) tendered for filing Forty-ninth Revised Sheet No. 4 and Alternate Forty-Ninth Revised Sheet No. 4, to its FERC Gas Tariff, First Revised Volume No. 1. These tariff sheets and supporting information are being filed pursuant to the Purchased Gas Adjustment Provisions set out in Section 19 of United's tariff.

United states that the Current Adjustment under each set of tariff sheets reflect rates payable to United's suppliers as of July 1, 1979, in accordance with applicable price regulations under the Natural Gas Policy Act of 1978 (NGPA). Sea Robin Pipeline Company (Sea Robin) one of United's suppliers, has filed alternate tariff sheets to be effective July 1, 1979 under its PGA. The Current Adjustment on Forty-ninth Revised Sheet No. 4 reflects Sea Robin's rates under Sea Robin's Twenty-first Revised Sheet No. 4. The current adjustment on Alternate Forty-ninth Revised Sheet No. 4 reflects Sea Robin's rates under Sea Robin's Alternate Twenty-first Revised Sheet No. 4. The only other difference between Forty-ninth Revised Sheet No. 4 and Alternate Forty-ninth Revised Sheet No. 4 is in the computation of the Surcharge Adjustment.

United further states that during the transition from historical methods of regulation under the Natural Gas Act to regulation under the NGPA, which occured during the surcharge accumulation period for this filing, there have been extended periods of incidents with respect to the rates which may be charged by producers and retroactive charges in those rates under Part 273 of the Commission's regulations, producers which are eligible to collect rates authorized under Sections 102, 103, 107 and 108 of the NGPA may collect such rates from the date of filing for a determination of eligibility with the appropriate juriadictional agency. Such collections may either be made on a current basis through interim collection procedures or retroactively after the determination of eligibility becomes final. In addition, if the filing for a determination of eligibility was made prior to April 1, 1979, the producer may, after final determination, collect the higher rate retroactive to December 1, 1978. The estimated impact of requests for determinations filed by its suppliers under Sections 102, 103, and 107 of the NGPA on United's costs for gas delivered during the months December 1978 through June 1979 is approximately $81,055,000. $42,620,000 of this amount is attributable to deliveries during December 1978 through March 1979 and the jurisdictional portion of this $42 million is reflected in the Surcharge Adjustment under Forty-ninth Revised Sheet No. 4 in accordance with the normal operation of United's PGA. The remaining $38,438,000 is attributable to gas delivered or to be delivered during the months April–June, 1979. Under the normal operation of United's PGA, recovery of the jurisdictional portion of this $38 million would be deferred until United's PGA becomes effective January 1, 1980. Until collected, this deferred amount would accrue interest at 9% per annum. In order to reduce the ultimate economic burden of these large producer increases on its customers, and to reduce the adverse cash flow impact of such increases on United, United has computed the Surcharge Adjustment for the Alternate Forty-ninth Revised Sheet No. 4 to reflect the estimated impact of increased rates, under Sections 102, 103, and 107 of the NGPA for gas purchased from December 1, 1978 through June 30, 1979. In all other respects Alternate Forty-ninth Revised Sheet No. 4 was computed in accordance with the provisions of Section 19 of United's Tariff. United respectfully requests waiver of the requirements of Section 19 of its Tariff and of Section 154.38 of the Commission's regulations to permit Alternate Forty-ninth Revised Sheet No. 4 to become effective July 1, 1979.

Copies of the revised tariff sheets and supporting data are being mailed to United's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 7, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18423 Filed 6-12-79; 8:45 am]
BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed for the Week of March 9 through March 16, 1979

Notice is hereby given that during the week of March 9 through March 16, 1979, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under the DOE's procedural regulations, 10 CFR, Part 205, any person who will be aggrieved by the DOE action sought in this case may file with the DOE written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

June 5, 1979.

Melvin Goldstein,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of Mar. 9 through Mar. 16, 1979]

Date	Name and location of applicant	Case No.	Type of submission
3/9/79	Clifton E. Curtis, Washington, D.C.	DFA-0045	Appeal of an Information Request Denial. If granted: The DOE's February 2, 1979, Information Request Denial would be rescinded and Clifton E. Curtis would receive access to certain unspecified DOE documents pursuant to 5 U.S.C. Section 552 and 10 CFR Section 709.10.
3/9/79	Gas del Oro, Inc., Washington, D.C.	DED-0068	Motion for Discovery. If granted: Discovery would be granted to Gas del Oro, Inc. in relation to the Statement of Objections filed by the firm to the Proposed Decision and Order issued to Ozona Gas Processing Company.
3/9/79	J&W Refining Company, Washington, D.C.	DMR-0044	Application for Modification. If granted: The DOE's Decision and Order of February 2, 1979 (Case No. FXE-4459) would be modified.
3/9/79	John O. Farmer, Inc., Russell, Kansas	DES-0227	Exception to the reporting requirements. If granted: John O. Farmer, Inc. would not be required to file Form EIA-23.
3/9/79	Suburban Manufacturing Company, Dayton, Tennessee.	DEE-0202	Exception. If granted: Suburban Manufacturing Company would be granted an exception from the requirement to test vented gas space heaters.
3/12/79	Little America Refining Company, Washington, D.C.	DES-0110	Request for Stay. If granted: Little America Refining Company would be granted a stay of its entitlements purchase obligations pending a final determination on its Application for Exception.
3/12/79	Shechschutte Gas & Oil Company, Washington, D.C	DMR-0043	Application for Modification. If granted: The DOE's Decision and Order issued on March 7, 1979 (Case No. DST-0018) would be modified.
3/12/79	Texaco, Inc., Denver, Colorado	DEE-0242	Price Exception (Section 212.73). If granted: Texaco, Inc. would be permitted to sell the crude oil produced from Dugout Creek Shannon Sand Unit, located in Johnson County, Wyoming, at upper tier ceiling prices.
3/12/79	Texaco, Inc., Denver, Colorado	DEE-0269 through DEE-0281.	Price Exception. If granted: Texaco, Inc. would be permitted to sell the crude oil produced from the C. S. McGee, Owen Kapp, and Owens B Leases located in Dawson County, Montana, at upper tier ceiling prices.
3/13/79	Diamond Drilling Udy Core Drilling, Leadore, Idaho	DEE-0403	Allocation Exception. If granted: Diamond Drilling Udy Core Drilling would be granted an allocation of gas and diesel fuel for its drilling operation.
3/13/79	Gardere, Porter & DeHay, Dallas, Texas	DFA-0044	Appeal of Information Request Denial. If granted: The DOE's February 6, 1979, Information Request Denial would be rescinded and Gardere, Porter & DeHay would receive access to certain DOE data.
3/13/79	Gas Service, Inc., Bluefield, West Virginia	DEE-0401	Price Exception. If granted: Gas Service, Inc. would be granted an increase in the price it charges for propane.
3/13/79	Louisville Tin and Stove Company, Louisville, Kentucky.	DEE-0269	Exception. If granted: Louisville Tin and Stove Company would be granted an exemption from the requirement to test vented gas space heaters.
3/13/79	New York Petroleum Corporation, New Orleans, Louisiana.	DRT-0038	Request for Temporary Stay. If granted: New York Petroleum Corporation would be granted a temporary stay of a Remedial Order issued on July 28, 1977, and upheld on administrative appeal by a Decision and Order issued on January 18, 1979, directing that the firm refund overcharges allegedly made in sales of crude oil.
3/13/79	Public Citizen, Washington, D.C.	DFA-0046	Appeal of Information Request Denial. If granted: the DOE January 31, 1979, Information Request Denial would be rescinded and Public Citizen would receive access to certain DOE information.
3/13/79	Readybuild Products Company, Baltimore, Maryland.	DEE-0400	Exception. If granted: Readybuild Products Company would be granted an exemption from the requirement to test vented gas space heaters.
3/14/79	Charter Oil Company, Jacksonville, Florida	DEX-0147	Supplemental Order. If granted: Charter Oil Company would receive a stay of its entitlement purchase obligations under the provisions of 10 CFR 211.67.
3/14/79	Charter Oil Company, Jacksonville, Florida	DES-0160	Request for Stay. If granted: Charter Oil Company would be granted a stay of its Entitlements Purchase Obligations pending a final determination on its Application for Exception.
3/14/79	Zenith Oil Company, Minneapolis, Minnesota	DEE-0038	Price Exception. If granted: Zenith Oil Company would be relieved of its obligation to refund certain overcharges as required by a Proposed Remedial Order.
3/15/79	Austral Oil Company, Houston, Texas	DEE-0240	Exception to the reporting requirements. If granted: Austral Oil Company would not be required to file Form EIA-23.
3/15/79	Gulf Corporation, Houston, Texas	DEE-0036	Exception to the provisions of 10 CFR 212.83. If granted: Gulf Oil Corporation would be granted an exception to the provisions of 10 CFR 212.83.
3/15/79	Monsanto Company, St. Mary's Parish, Louisiana	DXE-0037	Extension of relief granted in *Monsanto Co.*, 1 DOE Par. (April 28, 1978). If granted: Monsanto Company would be permitted to sell the crude oil produced from the Lucia G, SU C No. 2 located in St. Mary's Parish, Louisiana, at upper tier ceiling prices.
3/16/79	Northland Oil & Refining Company, Tulsa, Oklahoma.	DXE-0039	Exception to the Entitlements Program. If granted: Northland Oil & Refining Company would be granted an exception to the provisions of 10 CFR 211.67, regarding its Entitlements Purchase Obligations for the period January through June 1979.
3/16/79	Shell Company (Puerto Rico), Washington, D.C.	DEE-0241	Price Exception. If granted: Shell Company (Puerto Rico) would be able to purchase gasoline from Commonwealth Oil Refining Company, Inc. at a reasonable price.
3/16/79	Standard Oil Company, (Indiana), Chicago, Illinois	DXE-0284	Extension of relief granted in *Standard Oil Co. (Indiana)*, 1 DOE Par. (December 12, 1978) If granted: Standard Oil Company (Indiana) would be permitted to sell the crude oil produced from the Sleepy Hollow Lansing Unit located at Red Willow County, Nebraska, at upper tier ceiling prices.
3/16/79	Sun Company, Washington, D.C.	DEA-0047, DES-0047 and DES-0169.	Request for Stay; Appeal of ERA Decision and Order. If granted: The Economic Regulatory Administration's February 16 and 21, 1979, Decisions and Orders would be modified and Sun Company would not be required to supply Rock Island Refining Corporation and Gladieux Refinery, Inc. A stay would be granted pending a determination on the Application for Appeal.

If granted: The following firms would receive a temporary stay, a stay, and/or exception from the activation of the Standby Petroleum Product Allocation regulations with respect to motor gasoline.

3/9/79	Amoco Oil Company, Chicago, Illinois	DES-2257 and DST-2257.	Request for Stay and Temporary Stay.
3/9/79	Beedel Enterprises, West Palm Beach, Florida	DST-2221 and DES-2221.	Allocation Exception, Request for Temporary Stay.
3/9/79	Blarney Castle Oil Company, Bear Lake, Michigan	DST-2229	Request for Temporary Stay.
3/9/79	Century Oil Company, Hutchinson, Kansas	DES-0173	Request for Stay.
3/9/79	Commerce Crossroads Service, Inc., Yorktown Heights, New York.	DEE-2230, DES-2260 and DST-2260.	Allocation Exception, Request for Stay and Temporary Stay.

List of Cases Received by the Office of Hearings and Appeals—Continued

[Week of Mar. 9 through Mar. 16, 1979]

Date	Name and location of applicant	Case No.	Type of submission
3/9/79	DeLozier Chevron, Atlanta, Georgia	DEE-2299, DES-2300 and DST-2300.	Allocation Exception, Request for Stay and Temporary Stay.
3/9/79	Henry Jacobs & Associates, Inc., Chattanooga, Tennessee.	DST-0025	Request for Temporary Stay.
3/9/79	Lloyd R. Cole Oil Company, New Orleans, Louisiana.	DEE-2478 and DES-2478.	Allocation Exception, Request for Stay.
3/9/79	Miller Enterprises, Inc., Crescent City, Florida	DEE-2325 and DST-2325.	Allocation Exception, Request for Temporary Stay.
3/9/79	People's Oil & Gas Company, Pigeon, Michigan	DES-0174	Request for Stay.
3/9/79	Petro-Wash, Inc., Atlanta, Georgia	DEE-2318 and DST-2318.	Allocation Exception, Request for Temporary Stay.
3/9/79	Same Oil Corporation, New Smyrna Beach, Florida	DEE-2323 and DST-2323.	Allocation Exception, Request for Temporary Stay.
3/9/79	Schaeffer Oil, Inc., Winner, South Dakota	DEE-2332, DES-2332 and DST-2332.	Allocation Exception, Request for Stay and Temporary Stay.
3/9/79	Scott Boulevard Chevron, Decatur, Georgia	DEE-2614 and DES-2614.	Allocation Exception, Request for Stay.
3/9/79	Sunset 66, Inc., Miami, Florida	DEE-2361 and DST-0026.	Allocation Exception, Request for Temporary Stay.
3/9/79	Taxi Service, Inc., Huntington, West Virginia	DEE-2319	Allocation Exception.
3/12/79	Ashland Oil Company, Washington, D.C.	DES-0177 and DST-0177.	Request for Stay and Temporary Stay.
3/12/79	Bi-lo Oil Company, Orlando, Florida	DEE-2341 and DST-2341.	Allocation Exception, Request for Temporary Stay.
3/12/79	Blanton Petroleum, Moultrie, Georgia	DEE-2340, DES-2340 and DST-2340.	Allocation Exception, Request for Stay and Temporary Stay.
3/12/79	Brentwood Exxon, Raleigh, North Carolina	DEE-2363	Allocation Exception.
3/12/79	Briarvista Chevron, Atlanta, Georgia	DEE-2328, DST-2328 and DES-2320.	Allocation Exception, Request for Stay and Temporary Stay.
3/12/79	Brilad Oil Company, Vidalia, Georgia	DEE-2333, DES-2333 and DST-2333.	Allocation Exception, Request for Stay and Temporary Stay.
3/12/79	Bryant & Blount Oil Company, Branson, Missouri	DEE-2405	Allocation Exception.
3/12/79	C. M. Routh Oil Company, Winston-Salem, North Carolina.	DEE-2355	Allocation Exception.
3/12/79	Callee's Minute Market, Dalton, Georgia	DEE-2368	Allocation Exception.
3/12/79	Charles Hasling Oil Company, Inc., Waynesboro, Tennessee.	DEE-2350 and DST-2350.	Allocation Exception, Request for Temporary Stay.
3/12/79	Clark's Exxon, Mauldin, South Carolina	DEE-2362, DES-2362 and DST-2362.	Allocation Exception, Request for Stay and Temporary Stay.
3/12/79	Clyde Oil, Company, Ypsilanti, Michigan	DES-0175	Request for Stay.
3/12/79	Duke Oil Company, Inc., Mineral, Virginia	DEE-2334 and DES-2334.	Allocation Exception, Request for Stay and Temporary Stay.
3/12/79	Ellingsen-MacLean Oil Company, Escanaba, Michigan.	DEE-2342 and DST-2342.	Allocation Exception, Request for Temporary Stay.
3/12/79	Evert Oil Company, Inc., Kansas City, Missouri	DEE-2387 and DES-2387.	Allocation Exception, Request for Stay.
3/12/79	Fleet-Wing River Oil Company, Marietta, Ohio	DEE-2335, DES-2335 and DST-2335.	Allocation Exception, Request for Stay and Temporary Stay.
3/12/79	Forward Corporation, Standish, Michigan	DEE-2329	Allocation Exception.
3/12/79	Groesenbacher Oil Company, Austin, Texas	DEE-2324, DES-2324 and DST-2324.	Allocation Exception, Request for Stay and Temporary Stay.
3/12/79	Hagan-Kennington Oil Company, Inc., Gastonia, North Carolina.	DEE-2383	Allocation Exception.
3/12/79	Hardee World, Inc., Rocky Mount, North Carolina	DEE-2336, DES-2336 and DST-2336.	Allocation Exception, Request for Stay and Temporary Stay.
3/12/79	Health Oil & Distributing, Mena, Arkansas	DEE-2337, DES-2337 and DST-2337.	Allocation Exception, Request for Stay and Temporary Stay.
3/12/79	Hughes Oil Company, Daytona Beach, Florida	DEE-2344 and DST-2334.	Allocation Exception, Request for Temporary Stay.
3/12/79	Hutton's Grove City 66, Grove City, Florida	DEE-2343, DES-2343 and DST-2343.	Allocation Exception, Request for Stay and Temporary Stay.
3/12/79	J. B. Davis, Inc., Madison, Florida	DEE-2345 and DST-2345.	Allocation Exception, Request for Temporary Stay.

List of Cases Received by the Office of Hearings and Appeals—Continued

[Week of Mar. 9 through Mar. 16, 1979]

Date	Name and location of applicant	Case No.	Type of submission
3/12/79	J. H. Wilson Oil Company, Lithonia, Georgia	DEE-2336, DEB-2336 and DST-2336.	Allocation Exception, Request for Stay and Temporary Stay.
3/12/79	Lee Anger, Inc., Austin, Texas	DEE-2335, DEB-2335 and DST-2335.	Allocation Exception, Request for Stay and Temporary Stay.
3/12/79	McMahon Oil Company, Newton, Texas	DEE-2349 and DST-2349.	Allocation Exception, Request for Temporary Stay.
3/12/79	Norcom Oil Company, Inc., Burlington, North Carolina.	DEE-2339, DEB-2339 and DST-2339.	Allocation Exception, Request for Stay and Temporary Stay.
3/12/79	Rex Oil Company, Denver, Colorado	DEE-2418	Allocation Exception.
3/12/79	San Ann Service, Inc., Boaz, Alabama	DEE-2350 and DST-2350.	Allocation Exception, Request for Temporary Stay.
3/12/79	Southern Fuel Distributors, Portsmouth, Virginia	DEE-2353 and DEB-2353.	Allocation Exception, Request for Temporary Stay.
3/12/79	Southwest Oil Company, Inc., Big Stone Gap, Virginia.	DEE-2357	Allocation Exception.
3/12/79	Walt Stewart, Tampa, Florida	DEE-2460	Allocation Exception.
3/12/79	Superior Oil Company, Miami, Florida	DEE-2362, DEB-2362 and DST-2362.	Allocation Exception, Request for Stay and Temporary Stay.
3/12/79	Terry Exxon, Holly Hill, Florida	DEE-2348, DEB-2348 and DST-2348.	Allocation Exception, Request for Stay and Temporary Stay.
3/12/79	Vaughn Oil Company, Omaha, Nebraska	DEE-2368	Allocation Exception.
3/12/79	Vish's Chevron Service, Lexington, Kentucky	DEE-2813, DEB-2813 and DST-2813.	Allocation Exception, Request for Stay and Temporary Stay.
3/12/79	Webco Southern Oil, Smyrna, Georgia	DEE-2364 and DST-2364.	Allocation Exception, Request for Temporary Stay.
3/13/79	Arrow Oil Company, Kansas City, Missouri	DEE-2433, DEB-2433 and DST-2433.	Allocation Exception, Request for Stay and Temporary Stay.
3/13/79	Autotronic Systems, Inc., Denver, Colorado	DEE-2397 and DEB-2397.	Allocation Exception, Request for Stay.
3/13/79	Bitterroot Exxon Distributor, Stevensville, Montana	DEE-2390, DEB-2390 and DST-2390.	Allocation Exception, Request for Stay and Temporary Stay.
3/13/79	Black Coach Enterprises, Bonham, Texas	DEE-2364, DEB-2364 and DST-2364.	Allocation Exception, Request for Stay and Temporary Stay.
3/13/79	Butler Oil Company, Grant, Michigan	DEE-2407 and DEB-2407.	Allocation Exception, Request for Stay.
3/13/79	C.R. Enterprises, Park City, Utah	DEE-2413 and DEB-2413.	Allocation Exception, Request for Stay.
3/13/79	Cal Bliss Enterprises, Kansas City, Missouri	DEE-2368 and DEB-2368.	Allocation Exception, Request for Stay.
3/13/79	L. E. Caffey, Mangum, Oklahoma	DEE-2375 and DEB-2375.	Allocation Exception, Request for Stay.
3/13/79	Carroll Oil Company, Brush, Colorado	DEE-2379, DEB-2379 and DST-2379.	Allocation Exception, Request for Stay and Temporary Stay.
3/13/79	Carse Oil Company, Orlando, Florida	DEE-2367 and DST-2367.	Allocation Exception, Request for Temporary Stay.
3/13/79	Cohodes Oil Company, Iron Mountain, Michigan	DEE-2391 and DST-2391.	Allocation Exception, Request for Temporary Stay.
3/13/79	Comer Pantry Food, Greenboro, Georgia	DEE-2408 and DEB-2408.	Allocation Exception, Request for Stay.
3/13/79	Crystal Flash Petroleum Corporation, Indianapolis, Indiana.	DEE-2370	Allocation Exception.
3/13/79	Delta Petroleum Corporation, Fort Lauderdale, Florida.	DEE-2368 and DST-2368.	Allocation Exception, Request for Temporary Stay.
3/13/79	Dobbins Automotive Towing, Portland, Oregon	DEE-2402 and DEB-2402.	Allocation Exception, Request for Stay.
3/13/79	East High Sixty-Six, Denver, Colorado	DEE-2409	Allocation Exception.
3/13/79	Fast Stops, Inc., Charleston, South Carolina	DEE-0029	Request for Temporary Stay.
2/13/79	Ferguson Service, Ferguson, Missouri	DEE-2511, DEB-2511 and DST-2511.	Allocation Exception, Request for Stay and Temporary Stay.
3/13/79	Gas-Mart Company, Tulsa, Oklahoma	DEE-2366 and DST-2366.	Allocation Exception, Request for Temporary Stay.
3/13/79	Griffith Oil Company, Manhattan, Kansas	DEE-2410	Allocation Exception.
3/13/79	Gurley Oil Company, Memphis, Tennessee	DEB-2356	Request for Stay.
3/13/79	Handeyside Oil Corporation, Elcho, Wisconsin	DEE-2360, DEB-2360 and DST-2360.	Allocation Exception, Request for Stay and Temporary Stay.
3/13/79	Harold's Exxon, Raleigh, North Carolina	DEE-2384	Allocation Exception.

List of Cases Received by the Office of Hearings and Appeals—Continued

[Week of Mar. 9 through Mar. 16, 1979]

Date	Name and location of applicant	Case No.	Type of submission
3/13/79	Industrial Petroleum Supplier of Evansville, Inc., Evansville, Indiana.	DEE-2404 and DES-2404.	Allocation Exception, Request for Stay.
3/13/79	J. B. McBride Distributor, Inc., Butte, Montana	DEE-2403 and DES-2403.	Allocation Exception, Request for Stay.
3/13/79	J. Marzano & Son, Inc., Newark, New Jersey	DEE-2411	Allocation Exception.
3/13/79	Jack Ritter Oil, Austin, Texas	DEE-2365, DES-2365 and DST-2365.	Allocation Exception, Request for Stay and Temporary Stay.
3/13/79	Jayhawk Oil Company, Inc., Lawrence, Kansas	DEE-2455	Allocation Exception.
3/13/79	JSR Auto Center, Miami, Florida	DEE-2370 and DST-2370.	Allocation Exception, Request for Temporary Stay.
3/13/79	Kettle Moraine Standard, Delafield, Wisconsin	DEE-2412 and DES-2412.	Allocation Exception, Request for Stay.
3/13/79	Lee's Grocery, Henderson, North Carolina	DEE-2392	Allocation Exception.
3/13/79	Lynch Oil Company, Kissimmee, Florida	DEE-2371 and DST-2371.	Allocation Exception, Request for Temporary Stay.
3/13/79	Metropolitan Petroleum, Miami, Florida	DEE-2372 and DST-2372.	Allocation Exception, Request for Temporary Stay.
3/13/79	Nelson's Garage, Mount Holly Springs, Pennsylvania.	DEE-2417	Allocation Exception.
3/13/79	Petro-Pantry, Monrovia, Indiana	DEE-2377, DES-2377 and DST-2377.	Allocation Exception, Request for Stay and Temporary Stay.
3/13/79	Rapid Service Oil, Roberts, Wisconsin	DEE-2373 and DST-2373.	Allocation Exception, Request for Temporary Stay.
3/13/79	Regional Oil Company, Inc., Monroe, Louisiana	DEE-2414 and DES-2414.	Allocation Exception, Request for Stay.
3/13/79	Rex Oil Company of Florida, Fort Lauderdale, Florida.	DEE-2347 and DST-2347.	Allocation Exception, Request for Temporary Stay.
3/13/79	River Oil Company, Memphis, Tennessee	DEE-2346 and DST-2346.	Allocation Exception, Request for Temporary Stay.
3/13/79	Riverside Oil, Inc., Evansville, Indiana	DEE-2415 and DES-2415.	Allocation Exception, Request for Stay.
3/13/79	Riverside Petroleum, Inc., New Albany, Indiana	DEE-2416	Allocation Exception.
3/13/79	Roettgers Oil, Inc., Milwaukee, Wisconsin	DEE-2385	Allocation Exception.
3/13/79	Seaway Oil, Inc., Tampa, Florida	DEE-2376, DES-2376 and DST-2376.	Allocation Exception, Request for Stay and Temporary Stay.
3/13/79	Skip's Mobil, Jennings, Missouri	DEE-2510	Allocation Exception.
3/13/79	Sloan's Dixie Oil, Carthage, Tennessee	DEE-2368, DES-2368 and DST-2368.	Allocation Exception, Request for Stay and Temporary Stay.
3/13/79	Spring Valley 76, Henderson, North Carolina	DEE-2382	Allocation Exception.
3/13/79	Spruill Oil Company, Carrollton, Georgia	DEE-2394, DES-2394 and DST-2394.	Allocation Exception, Request for Stay and Temporary Stay.
3/13/79	Steve Paschall's Texico, Lubbock, Texas	DEE-2395	Allocation Exception.
3/13/79	Strickland Oil Company, Pooler, Georgia	DEE-2388	Allocation Exception.
3/13/79	Suburban Oil Company, Inc., Cincinnati, Ohio	DEE-2445 and DES-2445.	Allocation Exception, Request for Stay.
3/13/79	T. J. Dubose Conoco Jobber, Monroe, Louisiana	DEE-2406	Allocation Exception.
3/13/79	Warehubco, Inc., Jacksonville, Illinois	DEE-2396 and DST-2396.	Allocation Exception, Request for Temporary Stay.
3/13/79	Young Oil Company, Pompano Beach, Florida	DEE-2374 and DST-2374.	Allocation Exception, Request for Temporary Stay.
3/13/79	Zippy Mart, Inc., Jacksonville, Florida	DEE-2381 and DES-2381.	Allocation Exception, Request for Stay.
3/13/79	Acomi Corporation, Washington, D.C.	DEE-2465 and DES-2465.	Allocation Exception, Request for Stay.
3/14/79	AIA Essen, Daytona Beach, Florida	DEE-2426 and DST-2426.	Allocation Exception, Request for Temporary Stay.
3/14/79	Allied Oil Company, Kalamazoo, Michigan	DEE-2420, DES-2420 and DST-2420.	Allocation Exception, Request for Stay and Temporary Stay.
3/14/79	Allinder's Services, Inc., Independence, Missouri	DEE-2419, DES-2419 and DST-2419.	Allocation Exception, Request for Stay and Temporary Stay.
3/14/79	Apollo Oil Company, Peoria, Illinois	DEE-2427 and DST-2427.	Allocation Exception, Request for Temporary Stay.
3/14/79	Arnold Owens Oil Company, Normal, Illinois	DEE-2447	Allocation Exception.
3/14/79	Bob's Chevron, Long Beach, California	DEE-2530, DES-2530 and DST-2530.	Allocation Exception, Request for Stay and Temporary Stay.
3/14/79	Blanton Oil Company, Sullivan, Missouri	DES-0186	Request for Stay.
3/14/79	Jack Bradshaw, Gastonia, North Carolina	DEE-2398, DES-2398 and DST-2398.	Allocation Exception, Request for Stay and Temporary Stay.
3/14/79	Bruder's Essco, Baltimore, Maryland	DEE-2448 and DES-2448.	Allocation Exception, Request for Stay.
3/14/79	Carroll Oil Company, Inc., Cheyenne, Wyoming	DEE-2550	Allocation Exception.

List of Cases Received by the Office of Hearings and Appeals—Continued

[Week of Mar. 5 through Mar. 16, 1979]

Date	Name and location of applicant	Case No.	Type of submission
3/14/79	Cassels Oil Company, Allen, South Carolina	DEE-9481, DEE-9481 and DST-9481.	Allocation Exception, Request for Stay and Temporary Stay.
3/14/79	Clay's Auto Service, Vidor, Texas	DEE-9491 and DEE-9491.	Allocation Exception, Request for Stay.
3/14/79	Columbia Pike Shell, Ellicott City, Maryland	DEE-9494 and DEE-9494.	Allocation Exception, Request for Stay.
3/14/79	Comer Oil, Inc., Fort Myers, Florida	DEE-9498 and DST-9498.	Allocation Exception, Request for Temporary Stay.
3/14/79	Commandant Fifth Naval District, Norfolk, Virginia	DEE-9499 and DST-9499.	Allocation Exception, Request for Temporary Stay.
3/14/79	Coy Burge Oil Company, Wichita, Kansas	DEE-9446	Allocation Exception.
3/14/79	Crest International Petroleum Corporation	DEE-9489 and DEE-9489.	Allocation Exception, Request for Stay.
3/14/79	Dalworth Oil Company, Inc., Arlington, Texas	DEE-9495 and DEE-9495.	Allocation Exception, Request for Stay.
3/14/79	Daly Oil Company, Peoria, Illinois	DEE-9481	Allocation Exception.
3/14/79	Day-Nite Food, Villa Rica, Georgia	DEE-9492, DEE-9492 and DST-9492.	Allocation Exception, Request for Stay and Temporary Stay.
3/14/79	Delta Oil & Supply, Seward, Nebraska	DEE-9499	Allocation Exception.
3/14/79	Dorchester Exxon Station, Charles Heights, South Carolina.	DEE-9500, DEE-9500 and DST-9500.	Allocation Exception, Request for Stay and Temporary Stay.
3/14/79	Drummond Oil Company, Sioux City, Iowa	DEE-9485	Allocation Exception.
3/14/79	Elm City Filling Station, New Haven, Connecticut	DEE-9483, DEE-9483 and DST-9483.	Allocation Exception, Request for Stay and Temporary Stay.
3/14/79	Exxon of Olney, Olney, Maryland	DEE-9484	Allocation Exception.
3/14/79	Fleetwing Corporation, Lakeland, Florida	DEE-9847 and DEE-9847.	Allocation Exception, Request for Stay.
3/14/79	Gallen Tire Company, Holly Hill, Florida	DEE-9489 and DST-9489.	Allocation Exception, Request for Temporary Stay.
3/14/79	Lahser & 11 Mile Shell, Southfield, Michigan	DEE-9488 and DEE-9488.	Allocation Exception, Request for Stay.
3/14/79	Lee-Moore Oil Company, Sanford, North Carolina	DEE-9488 and DEE-9488.	Allocation Exception, Request for Stay.
3/14/79	H. F. Lovvorn, Graham, Alabama	DST-9481	Request for Temporary Stay.
3/14/79	Matthews Exxon, Matthews, North Carolina	DEE-9488	Allocation Exception.
3/14/79	McCormack Distributing, Denver, Colorado	DEE-9484 and DEE-9484.	Allocation Exception, Request for Stay.
3/14/79	Midtown Oil Company, Inc., Kingston, Tennessee	DEE-9487 and DEE-9487.	Allocation Exception, Request for Stay.
3/14/79	Monroe Road Exxon, Charlotte, North Carolina	DEE-9487	Allocation Exception.
3/14/79	Mr. K. Exxon, Newberry, South Carolina	DEE-9479 and DST-9479.	Allocation Exception, Request for Temporary Stay.
3/14/79	Payne's Oil Company, Inc., Clearwater, Florida	DEE-9491 and DST-9491.	Allocation Exception, Request for Temporary Stay.
3/14/79	Pep-o Petroleum Company, Inc., Jacksonville, Florida.	DEE-9492 and DST-9492.	Allocation Exception, Request for Temporary Stay.
3/14/79	Petro Lock, Inc., Lancaster, California	DEE-9900	Allocation Exception.
3/14/79	Phenix Petroleum Products, Inc., Atlanta, Georgia	DEE-9480	Allocation Exception.
3/14/79	Rustin Oil Company, Wichita, Kansas	DEE-9489 and DEE-9489.	Allocation Exception, Request for Stay.
3/14/79	Saginaw Valley Oil, Saginaw, Michigan	DEE-9440 and DEE-9440.	Allocation Exception, Request for Stay.
3/14/79	Scotland Oil Company, Alma, Michigan	DEE-9441 and DEE-9441.	Allocation Exception, Request for Stay.
3/14/79	Scott Oil, Inc., Clinton, Indiana	DEE-9442 and DEE-9442.	Allocation Exception, Request for Stay.
3/14/79	Shoreline Petroleum Company, Skokie, Illinois	DEE-9434, DEE-9434 and DST-9434.	Allocation Exception, Request for Stay and Temporary Stay.
3/14/79	Silverman Oil Company, Paris, Illinois	DEE-9499	Allocation Exception.
3/14/79	Springer-Eubank Oil Company, Wilmington, North Carolina.	DEE-9449 and DEE-9449.	Allocation Exception, Request for Stay.
3/14/79	Stell Oil Company, Inc., Vero Beach, Florida	DEE-9444 and DEE-9444.	Allocation Exception, Request for Stay.
3/14/79	Summit Car Care, Kansas City, Missouri	DEE-9491 and DEE-9491.	Allocation Exception, Request for Stay.
3/14/79	Township Oil Company, Warren, Michigan	DEE-9482	Allocation Exception.
3/14/79	Travelers Petroleum, Anderson, South Carolina	DEE-9448 and DEE-9448.	Allocation Exception, Request for Stay.
3/14/79	Tripus Chevron, Somerville, New Jersey	DEE-9501, DEE-9501 and DST-9501.	Allocation Exception, Request for Stay and Temporary Stay.
3/14/79	Village Amoco, McMinnville, Tennessee	DEE-9446	Allocation Exception.
3/14/79	Wayne's Standard Service, Menomonee Falls, Wisconsin.	DEE-9469	Allocation Exception.
3/14/79	West Asheville Exxon #2, Asheville, North Carolina	DEE-9495, DEE-9495 and DST-9495.	Allocation Exception, Request for Stay and Temporary Stay.

List of Cases Received by the Office of Hearings and Appeals—Continued

[Week of Mar. 9 through Mar. 16, 1979]

Date	Name and location of applicant	Case No.	Type of submission
3/14/79	Westgate Oil Company, Muskegon, Michigan	DEE-2464	Allocation Exception.
3/14/79	Wilkes Oil Company, Brooksville, Florida	DEE-2466 and DST-2466.	Allocation Exception, Request for Temporary Stay.
3/14/79	Myron Yarbrough, Memphis, Tennessee	DEE-2462 and DES-2462.	Allocation Exception, Request for Stay.
3/15/79	ADCO, Inc. d/b/a Quintard Exxon, Anniston, Alabama.	DEE-2562	Allocation Exception.
3/15/79	Henry Austin, Birmingham, Alabama	DEE-2527	Allocation Exception.
3/15/79	B & O Shell Service, Augusta, Georgia	DEE-2563	Allocation Exception.
3/15/79	Bearsch's Penn Jersey Auto Store, Abingdon, Maryland.	DEE-2477, DES-2477.	Allocation Exception, Request for Temporary Stay and Stay.
3/15/79	Bert's Exxon, Potomac, Maryland	DES-2496 and DEE-2496.	Allocation Exception, Request for Stay.
3/15/79	Marshall L. Bjort, Folsom, Montana	DEE-2504	Allocation Exception.
3/15/79	Black's Shell Service, Spartanburg, South Carolina	DEE-2544 and DES-2544.	Allocation Exception and Request for Stay.
3/15/79	Boardman Petroleum, Inc., Augusta, Georgia	DEE-2488 and DES-2488.	Allocation Exception and Request for Stay.
3/15/79	Bob's Amoco, Charleston, South Carolina	DEE-2524	Allocation Exception.
3/15/79	Roland Boudreaux, Rayney, Louisiana	DEE-2516	Allocation Exception.
3/15/79	Boulder Valley Oil Co., Lafayette, Colorado	DEE-2495 and DES-2495.	Allocation Exception, Request for Stay.
3/15/79	Champion Petroleum Corp., Painesville, Ohio	DEE-2522	Allocation Exception.
3/15/79	Chevron (Standard) Oil Service	DEE-2555 and DES-2555.	Allocation Exception, Request for Stay.
3/15/79	E. D. Christensen, Hanahan, South Carolina	DEE-2525	Allocation Exception.
3/15/79	Circle S Service, Eureka, Montana	DEE-2531	Allocation Exception.
3/15/79	"Circus World" Shell Service, Davenport, Florida	DEE-2546	Allocation Exception.
3/15/79	Clear Creek Oil Co., Golden, Colorado	DEE-2518	Allocation Exception.
3/15/79	Coldwater Oil Co., Coldwater Ohio	DEE-2514	Allocation Exception.
3/15/79	Craig Shell Station, Jacksonville, Florida	DEE-2561	Allocation Exception.
3/15/79	Don Cramer, Lakewood, Colorado	DEE-2509	Allocation Exception.
3/15/79	Dade Oil Company, Hialeah, Florida	DEE-2491 and DES-2491.	Allocation Exception, Request for Stay.
3/15/79	Dauphin & Sage Shell, Mobile, Alabama	DEE-2543, DES-2543 and DST-2543.	Allocation Exception, Request for Temporary Stay and Stay.
3/15/79	Robert B. Davison, Hamilton, Montana	DEE-2506	Allocation Exception.
3/15/79	Fargo, Inc., Little Rock, Arkansas	DEE-2533 and DES-2533.	Allocation Exception, Request for Stay and Temporary Stay.
3/15/79	Fisco Oil Co., Kansas City, Kansas	DEE-2505	Allocation Exception.
3/15/79	Friendly Oil Company, Alhambra, California	DEE-2474, DES-2474 and DST-2474.	Allocation Exception, Request for Stay and Temporary Stay.
3/15/79	Fuller's 66, Salt Lake City, Utah	DEE-2520	Allocation Exception.
3/15/79	Glover Oil Company, Melbourne, Florida	DEE-2534	Allocation Exception.
3/15/79	Henderson Oil Company, Columbia, Missouri	DEE-2475, DES-2475 and DST-2475.	Allocation Exception, Request for Stay and Temporary Stay.
3/15/79	Robert O. Hixon, Birmingham, Alabama	DEE-2526	Allocation Exception.
3/15/79	Home Service Oil Company, Barnhart, Montana	DEE-2489 and DES-2489.	Allocation Exception and Request for Stay.
3/15/79	Howie Oil Company, Pensacola, Florida	DEE-2549	Allocation Exception.
3/15/79	Jim's Central City Service, St. Louis, Missouri	DEE-2512, DES-2512 and DST-2512.	Allocation Exception, Request for Stay and Temporary Stay.
3/15/79	Joe's Getty Station, Conshohocken, Pennsylvania	DEE-2469 and DST-2469.	Allocation Exception, Request for Temporary Stay.
3/15/79	Jones Oil Company, Inc., Memphis, Tennessee	DEE-2493, DES-2493 and DST-2493.	Allocation Exception, Request for Stay and Temporary Stay.
3/15/79	Kelley Gas & Oil, Narrows, Virginia	DEE-2517	Allocation Exception.
3/15/79	Kay Oil Company, Inc., Franklin, Kentucky	DEE-2528	Allocation Exception.
3/15/79	Lammers & Gerding, Ottawa, Ohio	DEE-2535	Allocation Exception.
3/15/79	Locust Grove Standard Station, Locust Grove, Georgia.	DEE-2472, DES-2472 and DST-2472.	Allocation Exception, Request for Stay and Temporary Stay.
3/15/79	M & G Food Center, Eden, North Carolina	DEE-2565 DES-0178 and DST-0178.	Allocation Exception, Request for Temporary Stay and Stay.
3/15/79	J. F. McCulley, Overland Park, Kansas	DEE-2486 and DES-2486.	Allocation for Exception and Request for Stay.
3/15/79	Nelson-Wilson, Inc., Missoula, Montana	DEE-2503	Allocation Exception.
3/15/79	Northgate Texaco, Chattanooga, Tennessee	DEE-2554 and DES-2554.	Allocation Exception, Request for Stay.
3/15/79	Ozark County Gas Co., Gainesville, Missouri	DEE-2513	Allocation Exception.
3/15/79	Palm Oil Co., Inc., Costa Mesa, California	DEE-2497 and DES-2497.	Allocation Exception and Request for Stay.
3/15/79	Pates Wholesale Exxon, Lakewood, California	DEE-2507 and DES-2507.	Allocation Exception, Request for Stay.
3/15/79	Patriot Petroleum, Inc	DEE-2523	Allocation Exception.
3/15/79	Pine Ridge, Merrill, Wisconsin	DEE-2498	Allocation Exception.
3/15/79	Riddell Petroleum Company, Denver, Colorado	DST-0032	Request for Temporary Stay.
3/15/79	S and S Oil Company, Inc., Jesup, Georgia	DEE-2519	Allocation Exception.

List of Cases Received by the Office of Hearings and Appeals—Continued

[Week of Mar. 9 through Mar. 16, 1979]

Date	Name and location of applicant	Case No.	Type of submission
3/15/79	Sabo Oil Company, Topeka, Kansas	DEE-3467, DES-3467 and DST-3467.	Allocation Exception, Request for Temporary Stay and Stay.
3/15/79	Sander Oil Company, Salida, Colorado	DEE-3529	Allocation Exception.
3/15/79	Shoals Creek Chevron, Florence, Alabama	DEE-3476, DES-3476 and DST-3476.	Allocation Exception, Request for Stay and Temporary Stay.
3/15/79	Steve's Exxon Servicenter, Greenbelt, Maryland	DEE-3473, DES-3473 and DST-3473.	Allocation for Exception, Request for Temporary Stay.
3/15/79	Stinson Grocery	DEE-3482 and DES-3482.	Allocation Exception,and Request for Stay.
3/15/79	UCO Oil Company, Whittier, California	DEE-3467, DES-3467 and DST-3467.	Allocation Exception, Request for Stay and Temporary Stay.
3/15/79	W. W. Fowler Oil Company, Mableton, Georgia	DEE-3515	Allocation Exception.
3/15/79	Werner Oil Company Inc., Kansas City, Missouri	DEE-3480 and DES-3480.	Allocation Exception, Request for Stay.
3/16/79	Big K Oil Company, Inc., Hattiesburg, Mississippi	DEE-3494 and DES-3494.	Allocation Exception, and Request for Stay.
3/16/79	Brucker Service Station, Bronx, New York	DEE-3485 and DES-3485.	Allocation Exception, Request for Stay.
3/16/79	Empire Petroleum, Inc., Toledo, Ohio	DEE-3489	Allocation Exception.
3/16/79	Marblehead Services, Inc., Marblehead, Massachusetts.	DEE-3471, DES-3471 and DST-3471.	Allocation Exception, Request for Temporary Stay and Stay.
3/16/79	Melvin Grower Motor Co., Townsend, Montana	DEE-3480 and DES-3480.	Allocation Exception, Request for Stay.
3/16/79	Poe's Exxon Service, Townsend, Montana	DEE-0179	Request for Stay.
3/16/79	Robert H. Hart & Sons Inc., Winter Haven, Florida	DEE-3479, DES-3479 and DST-3479.	Allocation Exception, Request for Stay and Temporary Stay.
3/16/79	Whitfield Oil Company, Chicamauga, Georgia	DEE-3521	Allocation Exception.

Notices of Objection Received

Date	Name and location of applicant	Case No.
3/12/79	Johnson, Donald (D & J Oil Co.), Park City, Utah	DEX-0042
3/14/79	Commercial Bottle Gas, Oxford, North Carolina	DEE-0068
3/14/79	Union Oil Co. of California, Los Angeles, California	DEE-0102

Proposed Remedial Orders

3/12/79	A. Tarricone, Inc., New York, New York	DRO-0162
3/16/79	Rhodes Drilling Company, Abilene, Texas	DRO-0161

[FR Doc. 79-18220 Filed 6-12-79; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders; April 23 through April 27, 1979

Notice is hereby given that during the period April 23 through April 27, 1979, the Proposed Decisions and Orders which are summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to Applications for Exception which had been filed with that Office.

Under the procedures which govern the filing and consideration of exception applications (10 CFR, Part 205, Subpart D), any person who will be aggrieved by the issuance of the Proposed Decision

and Order in final form may file a written Notice of Objection within ten days of service. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. The applicable procedures also specify that if a Notice of Objection is not received from any aggrieved party within the time period specified in the regulations, the party will be deemed to consent to the issuance of the Proposed Decision and Order in final form. Any aggrieved party that wishes to contest any finding or conclusion contained in a Proposed Decision and Order must also file a detailed Statement of Objections within 30 days of the date of service of the Proposed Decision and Order. In that Statement of Objections an aggrieved party must specify each issue of fact or law contained in the Proposed Decision and Order which it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these Proposed Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-210, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m. e.d.t., except Federal holidays.

Melvin Goldstein,

Director, Office of Hearings and Appeals.

June 7, 1979.

Proposed Decisions and Orders

Atlantic Oil Co., Los Angeles Calif., DEE-2134, crude oil

Atlantic Oil Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit the firm to sell a certain portion of the crude oil produced for the benefit of the working interest owners from the Coykendall Lease located in Orange County, California, at upper tier ceiling prices. On April, 27, 1979, the DOE issued a Proposed Decision and Order and tentatively determined that exception relief should be granted, in part, with respect to Atlantic's Coykendall Lease.

Glickman, Inc., Wichita, Kans., DEE-2211, crude oil

Glickman, Inc. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Glickman to sell the crude oil produced for the benefit of the working interest owners at the Burch Lease at upper tier ceiling prices. On April 24, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

Save O.K. Oil & Gas, Macon, Ga., DEE-2048, motor gasoline

Save O.K. Oil & Gas filed an Application for Exception from the provisions of Standby Regulation Activation Order No. 1. The exception request, if granted, would result in an increase in the firm's base period allocation of motor gasoline for the months of March, April, and May 1979. On April 24, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be denied.

Exception

The following firms filed Applications for Exception from the provisions of Standby Regulation Activation Order No. 1. The exception requests, if granted, would result in an increase in each firm's base period allocation of motor gasoline for the months of March, April, and May 1979. During the week of April 23-27, 1979, the DOE issued Proposed Decisions and Orders which determined that the exception request be granted:

Red Bluff Mobil Service Center, Pasadena, Tex., DEE-3111
Palm Oil Co., Costa Mesa, Calif., DEE-2497
Sav-Mor Oil Co., Los Angeles, Calif., DEE-3170
Terry's Mobil, Red Lake Falls, Minn., DEE-2900
Walter's North Bellmore Exxon, N. Bellmore, N.Y., DEE-2244
Jesse Morales, Jr., Uvalde, Tex., DEE-3084
L. J. Bonnaffons, New Orleans, La., DEE-3721
Steve's Gulf Service, Tryon, N.C., DEE-2574
Bingo Exxon, Muscle Shoals, Ala., DEE-2726
Givan's Exxon, Watertown, Tex., DEE-3116
Phillips & Munzell Shell, Tuskin, Fla., DEE-2925

[FR Doc. 79-18328 Filed 6-12-79; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders; April 30 through May 4, 1979

Notice is hereby given that during the period April 30 through May 4, 1979, the Proposed Decisions and Orders which are summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to Applications for Exception which had been filed with that Office.

Under the procedures which govern the filing and consideration of exception applications (10 CFR, Part 205, Subpart D), any person who will be aggrieved by the issuance of the Proposed Decision and Order in final form may file a written Notice of Objection within ten days of service. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. The applicable procedures also specify that if a Notice of Objection is not received from any aggrieved party within the time period specified in the regulations, the party will be deemed to consent to the issuance of the Proposed Decision and Order in final form.

Any aggrieved party that wishes to contest any finding or conclusion contained in a Proposed Decision and Order must also file a detailed Statement of Objections within 30 days of the date of service of the Proposed Decision and Order. In that Statement of Objections an aggrieved party must specify each issue of fact or law contained in the Proposed Decision and Order which it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these Proposed Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-210, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m. e.d.t., except federal holidays.

June 7, 1979.

Melvin Goldstein,

Director, Office of Hearings and Appeals.

Proposed Decisions and Orders

E. B. Brooks, Jr., Dallas, Tex., DEE-2223, crude oil

E. B. Brooks, Jr., filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Brooks to sell the crude oil produced from the Baptist Foundation Lease for the benefit of the working interest owners at stripper well prices. On May 1, 1979 the DOE issued a Proposed Decision and Order which determined that the Baptist Foundation Lease does not qualify as a stripper well property.

Champlin Petroleum Co., Fort Worth, Tex., DXE-2212

Champlin Petroleum Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in an extension of exception relief previously granted and would permit the firm to sell 62.26 percent of the crude oil which it produces from the State of New Mexico No. 18 Property at upper tier ceiling prices. On April 30, 1979, the DOE issued a Proposed Decision and Order and tentatively determined that an extension of exception relief should be granted with respect to Champlin's State of New Mexico No. 18 Property.

Chevron, U.S.A. Inc., Los Angeles, Calif., DEE-3153, motor gasoline

Chevron U.S.A. Inc. filed an Application for Exception from the provisions of Standby Regulation Activation Order No. 1. The exception request, if granted, would permit Chevron to supply approximately 258 of its branded retail outlets with volumes of motor gasoline in excess of their base period allocation. It would also permit Chevron to become the base period supplier for approximately 184 purchasers which were

buying gasoline from Chevron on January 31, 1979 but which had different base period suppliers. On May 3, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted in part.

Crown Central Petroleum Corp., Bellaire, Tex., DXE–2230

Crown Central Petroleum Corporation filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in an extension of exception relief previously granted and would permit the firm to sell 11.28 percent of the crude oil which it produces from the Santa Ana and Fresno Land Lease at upper tier ceiling prices. On April 30, 1979, the DOE issued a Proposed Decision and Order and tentatively determined that an extension of exception relief should be granted with respect to Crown Central's Santa Ana and Fresno Land Lease.

Pennzoil Producing Co., Houston, Tex., DXE–2169

Pennzoil Producing Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in an extension of exception relief previously granted and would permit the firm to sell 100 percent of the crude oil which it produces from the Perry Sand Waterflood Unit, North Segment, at upper tier ceiling prices. On April, 30, 1979, the DOE issued a Proposed Decision and Order and tentatively determined that an extension of exception relief should be granted with respect to Pennzoil's Perry Sand Waterflood Unit, North Segment.

Phillips Petroleum Co., Bartlesville, Okla., DEE–2169

Phillips Petroleum Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, in which the firm requested that it be permitted to sell the crude oil produced from the Crone "C" lease, located in Columbia County, Arkansas, at prevailing market prices. On April 30, 1979, the DOE issued a Proposed Decision and Order which determined that the Phillips request be granted.

Phillips Petroleum Co., Bartlesville, Okla., crude oil, DXE–2174

Phillips Petroleum Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, in which the firm requested that it be permitted to continue to sell at market prices certain of the crude oil produced from the Theimer "D" Lease, located in Oklahoma County, Oklahoma. On May 2, 1979, the DOE issued a Proposed Decision and Order which determined that the Phillips exception request be granted.

S & W Engine Supply Co., Oklahoma City, Okla., crude oil, DXE–3444

S & W Engine Supply Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in the extension of exception relief previously granted and would permit the applicant to continue to sell certain quantities of crude oil which it produces from the Baker Townsend Lease, located in Oklahoma County, Oklahoma, at upper tier ceiling prices. On April 30, 1979, the DOE issued a Proposed Decision and Order which determined that S & W Engine Supply should be permitted to sell 78.37 percent of the crude oil produced and sold for the benefit of the working interest owners from the Baker Townsend Lease at upper tier ceiling prices.

Shell Oil Co., Houston, Tex., DEE–3294, motor gasoline

The Shell Oil Company filed an Application for Exception from the provisions of Standby Regulation Activation Order No. 1. The exception request, if granted, would permit Shell to allocate motor gasoline to approximately 970 branded Shell retail sales outlets on a basis different from that specified in the DOE allocation regulations. On May 2, 1979, the DOE issued a Proposed Decision and Order in which it proposed to grant the request in part.

List of Cases Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline

Week of April 30 through May 4, 1979

The following firms filed Applications for Exception from the provisions of Standby Regulation Activation Order No. 1. The exception requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline for the months of March, April and May 1979. The DOE issued Proposed Decisions and Order which determined that the exception requests be granted.

Company name	Case No.	Location
Holiday Foods, Inc.	DEE–2752	Des Moines, Wash.
River Oil Co.	DEE–2946	Memphis, Tenn.
Tom's Village Arco	DEE–3181	Starkweather, Wis.
Bud Wolfe's Arco Mini-Market	DEE–3367	Redlands, Calif.
Manchester Shell	DEE–3541	Inglewood, Calif.
Brentwood Exxon	DEE–2363	Raleigh, N.C.
Fave Little Oil Co.	DEE–3627	St. Augustine, Fla.
Keahey's Friendly Service	DEE–3209	Hot Springs, Ariz.
AIA Exxon	DEE–3428	Daytona Beach, Fla.

[FR Doc. 79-18227 Filed 6-12-79; 8:45 am].

BILLING CODE 6450-01-M

Objection to Proposed Remedial Orders; Week of May 11 through May 18, 1979

Notice is hereby given that during the week of May 11 through May 18, 1979, the Notices of Objection to Proposed Remedial Orders listed in the Appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

By July 3, 1979, any person who wishes to participate in the proceeding which the Department of Energy will conduct concerning the Proposed Remedial Orders described in the Appendix to this notice must file a request to participate pursuant to 10 CFR 205.194 (44 FR 7926, February 7, 1979). By July 13, 1979, the Office of Hearings and Appeals will determine those persons who may participate on an active basis in this proceeding, and will prepare an official service list which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown. All requests regarding this proceeding shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

Issued in Washington, D.C. June 7, 1979.

Melvin Goldstein,

Office of Hearings and Appeals.

Red Triangle Oil Co., Fresno, Calif., DRO–0213, motor gasoline

On May 15, 1979, Red Triangle Oil Co., 2609 South Chestnut Street, Fresno, California 93745, filed a Notice of Objection to a Proposed Remedial Order which the DOE Western Enforcement District issued to Red Triangle on April 13, 1979. In the Proposed Remedial Order, the Enforcement District found that during the period from November 1, 1973 through April 30, 1974, Red Triangle committed pricing violations in the State of California in connection with resales of motor gasoline. According to the Proposed Remedial Order, Red Triangle's violations resulted in overcharges of $01,298.00.

Lowe Oil Co., Clinton, Mo., DRO–0215, motor oils and motor gasoline

ON May 17, 1979, Lowe Oil Company, 510 Price Lane, Clinton, Missouri 64735, filed a Notice of Objection to a Proposed Remedial Order which the Central Enforcement District of the Economic Regulatory Administration of the Department of Energy issued to the firm on April 17, 1979. In the Proposed Remedial Order, the Enforcement District found that during the time period November 1, 1973 through April 30, 1974, Lowe Oil Company committed pricing violations in sales of motor oils and motor gasoline to customers in the State of Missouri. According to the Proposed Remedial Order, Lowe Oil Company's violations of the provisions of 10 CFR Part

212 resulted in overcharges to its customers of $83,298.31.

[FR Doc. 79-18328 Filed 6-12-79; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Orders Filed; Week of May 18 through May 25, 1979

Notice is hereby given that during the week of May 18 through May 25, 1979, the Notices of Objection to Proposed Remedial Orders listed in the Appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

By July 3, 1979, any person who wishes to participate in the proceeding which the Department of Energy will conduct concerning the Proposed Remedial Orders described in the Appendix to this notice must file a request to participate pursuant to 10 CFR 205.194 (44 FR 7926, February 7, 1979). By July 13, 1979, the Office of Hearings and Appeals will determine those persons who may participate on an active basis in this proceeding, and will prepare an official service list which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown. All requests regarding this proceeding shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

Issued in Washington, D.C. June 7, 1979.

Melvin Goldstein,

Director, Office of Hearings and Appeals.

Bill J. Graham, Midland, Tex., DRO-0216, crude oil

On May 22, 1979, Bill J. Graham, P.O. Box 5321, Midland, Texas 79702, filed a Notice of Objection to a Proposed Remedial Order which the DOE Southwest Enforcement District issued to Graham on May 3, 1979. In the Proposed Remedial Order, the Enforcement District found that during the period from September 1, 1973, through February 28, 1977, Graham committed pricing violations in Texas and New Mexico in connection with the sale of crude oil. According to the Proposed Remedial Order, Graham's violations resulted in overcharges to his customers, the Permian Corporation and the Scurlock Oil Company, of $117,520.10.

Michaelson Producing Co., Midland, Tex., DRO-0217, crude oil

On May 22, 1979, Michaelson Producing Company, 1404 Gihis Tower West, Midland, Texas 79701, filed a Notice of Objection to a Revised Proposed Remedial Order which the DOE Southwest Enforcement District issued to the firm on May 7, 1979. In the Revised Proposed Remedial Order, the Enforcement District found that during the period from September 1, 1973, through December 31, 1975, Michaelson committed pricing violations in the State of Texas in connection with the production and sale of crude oil. According to the Revised Proposed Remedial Order, the firm's violations resulted in overcharges to its customer, the Permian Corporation, of $929,580.84.

RPL Oil Co., Inc., Midland, Tex., DRO-0218, crude oil

On May 17, 1979, RPL Oil Company, Inc., P.O. Box 5456, Midland, Texas 79701, filed a Notice of Objection to a Proposed Remedial Order which the DOE Southwest Enforcement District issued to it on May 11, 1979. In the Proposed Remedial Order, the Enforcement District found that during the period January 1, 1974, through December 31, 1974, RPL committed pricing violations in the State of Texas in connection with the production and sale of crude oil. According to the Proposed Remedial Order, the firm's violations resulted in overcharges to its customers of $82,363.80.

Texas City Refining, Inc., Texas City, Tex., DRO-0219, motor gasoline

On May 24, 1979, Texas City Refining, Inc. (TCR), P.O. Box 1271, Texas City, Texas 75590, filed a Notice of Objection to an Interim Remedial Order for Immediate Compliance (IROIC) which the Office of Special Counsel for Compliance (OSC) issued to the firm on May 14, 1979. In the IROIC, the OSC ordered TCR to supply motor gasoline to the Edmunds Street Oil Corporation (ESO), a wholesale purchaser-reseller. The IROIC was based upon a funding that ESO had acquired the entire ongoing business operations of Edmondson's Oil Company, a base period purchaser of TCR, and that ESO was therefore entitled to purchase Edmondson's base period entitlement of motor gasoline from TCR.

[FR Doc. 79-18330 Filed 6-12-79; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Orders Filed; Week of May 25 through June 1, 1979

Notice is hereby given that during the week of May 25 through June 1, 1979, the Notices of Objection to Proposed Remedial Orders listed in the Appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

By July 3, 1979, any person who wishes to participate in the proceeding which the Department of Energy will conduct concerning the Proposed Remedial Orders described in the Appendix to this notice must file a request to participate pursuant to 10 CFR 205.194 (44 FR 7926, February 7, 1979). By July 13, 1979, the Office of Hearings and Appeals will determine those persons who may participate on an active basis in this proceeding, and will prepare an official service list which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown. All requests regarding this proceeding shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461. Issued in Washington, D.C. June 7, 1979.

Melvin Goldstein,

Director, Office of Hearings and Appeals.

On May 29, 1979, each of the seven firms listed below filed a Notice of Objection to the Proposed Remedial Order that the DOE Office of Special Counsel (OSC) issued to that firm on May 1, 1979. By filing Notices of Objection, these seven firms have declared their intent to contest the findings of fact and conclusions of law contained in the Proposed Remedial Order that was issued to it. The OSC found in each of the Proposed Remedial orders that the firm involved had committed pricing violations during the period September 1973 through March 1979 in sales of crude oil produced from a number of properties located throughout the United States. As restitution for the overcharges, including interest accrued thereon, the OSC directed the seven firms to pay to the United States Treasury the sums of money indicated below:

Atlantic Richfield Company, 515 South Flower Street, Los Angeles, California 90071. (Case No. DRO-0193)—$42,023,718.03.

Gulf Oil Corporation and Gulf Exploration & Production Co., Gulf Building, Post Office Box 1166, Pittsburgh, Pennsylvania 15230. (Case No. DRO-0194)—$577,969,479.83.

Marathon Oil Company, Inc., 539 South Main Street, Findlay, Ohio 45840. (Case No. DRO-0195)—$29,063,515.63.

Standard Oil Company of California and Chevron, U.S.A., Inc., 235 Bush Street, San Francisco, California 94104. (Case No. DRO-0196)—$101,618,243.07.

Standard Oil Company of Indiana and Amoco Production Company, 200 East Randolph Drive, Chicago, Illinois 60601. (Case No. DRO-0198)—$23,854,306.70.

Standard Oil Company (Ohio), Midland Building, Cleveland, Ohio 44115. (Case No. DRO-0197)—$16,969,407.46.

Texaco, Inc., 2000 Westchester Avenue, White Plains, New York 10650. (Case No. DRO-0199)—$[illegible].00.

In addition to the Notices of Objection filed by the seven firms lited above, further Notices of Objection to the OSC's May 1, 1979 Proposed Remedial Orders were filed by the following firms on May 29 and May 30, 1979:

Southland Royalty Company, 1000 Fort Worth Club Tower, Fort Worth, Texas 76102.

with respect to the Proposed Remedial Order issued to Gulf Oil Corporation;

Louisiana Land and Exploration Company, Box 60350, New Orleans, Louisiana 70160.

with respect to the Proposed Remedial Orders issued to Marathon Oil Company and to Texaco, Inc.; and

The State of Louisiana, Department of Justice, State Capitol, P.O. Box 44005, Baton Rouge, Louisiana 70804.

with respect to the Proposed Remedial Order issued to Texaco, Inc.

Exxon Co., U.S.A., Houston, Tex., DRO-0221, Motor Gasoline

On May 29, 1979, Exxon Company, U.S.A., 800 Bell Street, Houston, Texas 77002, filed a Notice of Objection in which it indicates that it will contest an Interim Remedial Order for Immediate Compliance (IROIC) which the DOE Office of Special Counsel, Southwest Refiner District, issued to it on May 16, 1979. In the IROIC, the Special Counsel found that (i) during the period from March through May 1979, Exxon violated the DOE Mandatory Petroleum Allocation Regulations by refusing to supply the Hydrocarbon Trading and Transport Company of Houston, Texas, with its base period volume of motor gasoline, as reduced by the application of Exxon's allocation fraction, (ii) that the violation was continuing, and (iii) that Hydrocarbon would be irreparably harmed unless an IROIC were issued immediately. the IROIC directed Exxon to make available to Hydrocarbon the volumes of motor gasoline which it was entitled to receive under Part 211 in March and April 1974, as well as that firm's May 1979 allocation level.

Dalton J. Woods, Shreveport, La., DRO-0222, crude oil

On May 30, 1979, Dalton J. Woods, 1412 Mid South Tower, Shreveport, Louisiana 71101, filed a Notice of Objection to a Proposed Remedial Order which the DOE Southwest Enforcement District issued to him on May 15, 1979. In the Proposed Remedial Order, the Enforcement District found that during the time period January 1975 through July 1976, Woods committed pricing violations in the State of Louisiana in connection with the production and sale of crude oil. According to the Proposed Remedial Order, Woods' violations resulted in overcharges to its customers of $51,392.91.

[FR Doc. 79-18939 Filed 6-12-79; 8:45 am]

BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs

Proposed Subsequent Arrangements

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of proposed "subsequent arrangements" under the Agreement for Cooperation Between the Governments of the United States of America and Republic of Korea Concerning the Peaceful Uses of Atomic Energy.

The subsequent arrangements to be carried out under the above mentioned agreement involve contractual arrangements under which DOE will consent to the assignment of two uranium enrichment services contracts with two U.S. utilities involving approximately 3 million separate work units under each contract, and two uranium enrichment services contracts involving approximately 2.9 million separate work units under each contract with a non-U.S. customer to the Korea Electric Company for four Korean nuclear units 7, 8, 9 and 10.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security of the United States.

These susbsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: June 8, 1979.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 79-18978 Filed 6-11-79; 10:50 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1246-8]

Detroit Lime Co.; Application

In the matter of the applicability of Title 1, Part C of the Clean Air Act (Act), as amended, 42 U.S.C. 7401 *et seq.*, and the Federal regulations promulgated thereunder at 40 CFR 52.21 (43 FR 26388, June 19, 1978) for Prevention of Significant Deterioration of Air Quality (PSD), to Detroit Lime Company, Detroit, Michigan.

On August 1, 1978, Detroit Lime Company submitted an application to the United States Environmental Protection Agency (U.S. EPA), Region V office, for an approval to construct a rotary lime kiln and limestone preheater. The application was submitted pursuant to the regulations for PSD.

On November 21, 1978, Detroit Lime Company was notified that its application was complete, and preliminary approval was granted.

On December 12, 1978, U.S. EPA published notice of its decision to grant a preliminary approval to Detroit Lime Company. Several comments were received and a public hearing was requested as a result of the preliminary approval. On February 14, 1979, U.S. EPA conducted the hearing in Detroit, Michigan.

After review and analysis of all materials submitted by Detroit Lime Company, the public record established at the hearing, and written comments, Detroit Lime Company was notified on April 20, 1979, that U.S. EPA had determined that the proposed new construction in Detroit, Michigan, would be utilizing the best available control technology and that emissions from the facility will not adversely impact air quality, as required by Section 165 of the Act.

This approval to construct does not relieve Detroit Lime Company of the responsibility to comply with the control strategy and all local, State and Federal regulations which are part of the applicable State Implementation Plan, as well as all other applicable Federal, State and local requirements.

This determination may now be considered final agency action which is locally applicable under Section 307(b)(1) of the Act and therefore a petition for review may be filed in the U.S. Court of Appeals for the Seventh Circuit by any appropriate party. In accordance with Section 307(b)(1), petitions for review must be filed sixty days from the date of this notice.

John McGuire,

Regional Administrator, Region V.

United States Environmental Protection Agency

In the matter of Detroit Lime Company, Detroit, Michigan; Proceeding pursuant to the Clean Air Act, as amended; Approval to Construct EPA-5-79-A-13.

Authority

The approval to construct is issued pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401 *et. seq.*, (The Act), and the federal regulations promulgated thereunder at 40 CFR 52.21 for the Prevention of Significant Deterioration of Air Quality (PSD).

Findings

1. The Detroit Lime Company (Detroit Lime) proposes to construct a 1,000 tons per day rotary lime kiln and limestone preheater in Detroit, Michigan at 125 South Dix Road.

2. The section of Detroit in which Detroit Lime will construct is a Class II area as determined pursuant to the Act and has been designated a non-attainment area for total suspended particulate matter, and an attainment area for sulfur dioxide by the State of Michigan pursuant to Section 107 of the Act.

3. The proposed rotary lime kiln and preheater are subject to the requirements of 40 CFR 52.21 and the applicable sections of the Act. The proposed source is not subject to the Interpretive Ruling (41 F.R. 55524, December 21, 1976), because its allowable emission rate for particulate matter is less than 100 tons per year, and because it will meet all applicable emission standards. Therefore the proposed source is subject to Tier II PSD review for total suspended particulates and sulfur dioxide.

4. Detroit Lime's PSD application was determined to be complete and preliminarily approved on November 21, 1978. On December 12, 1978, public notice appeared in the *Detroit Free Press*. A public hearing was requested and one was held on February 14, 1979, at the Campbell Branch of the Detroit Public Library at 6625 W. Fort in Detroit. The public comment period was extended to February 21, 1979.

5. After review and analysis of all material submitted by Detroit Lime, U.S. EPA has determined that emissions from the construction and operation of the proposed rotary lime kiln and preheater will not violate the Air quality increments applicable in the area where the source will be located, or will it violate the air quality increments applicable in any other area.

Detroit Lime's rotary lime kiln will meet an emission limit at least as restrictive as the new source performance standard for lime manufacturing plants (40 CFR Part 60).

Conditions

Particulate emissions from the baghouse stack shall be limited to 15 lbs. per ton of limestone feed.

Sulfur dioxide emissions from the baghouse stack shall be limited 0.25 lbs. per ton of actual process weight input. Process weight defined as the weight of the total solid materials input into the production process.

Prior to operation, the following fugitive particulate emission control measures shall be implemented:

(a) A negative pressure shall be maintained within the new firing building hood.

(b) The new limestone feed conveyor shall be enclosed with a 180° enclosure over the top of the conveyor. The new lime takeaway belt shall be enclosed with a 360° enclosure.

(c) All normally used roadways and work areas on Detroit Lime's property shall be hard surfaced and maintained in a dust free manner by periodic cleaning with an appropriately controlled vacuum pick-up system.

(d) The surfaces of the coal piles shall be sprayed with a surfactant to minimize fugitive dust.

(e) Storage of waste dust and coal fines shall be enclosed.

(f) A negative pressure shall be maintained within the lime storage silo building. The building shall have automatic door closer devices, and the conveyor room atop the silos shall be ventilated to a baghouse collector.

(g) a negative pressure shall be maintained in the head house building. All dust pick-up points presently vented to a baghouse shall be repaired and maintained for the life of the plant.

(h) The shipping house screen discharge belt (transfer belt) shall be enclosed and ventilated to a baghouse.

(i) The inlet air ports of the existing rotary kiln preheater shall be partially closed so as to increase indraft velocity and reduce accumulation of wastes and fines. Cleanout chutes emptying into collection containers shall be installed so as to control potential fugitive emissions from cleanout of the preheater.

(j) From the existing rotary kiln baghouse:

(1) the discharge from the ventilating fan for the area under the baghouse hoppers shall be controlled or eliminated.

(2) The bottom of the bucket elevator for conveying collected dust shall be enclosed.

(3) A dust-free loading device for truck loading shall be maintained at all times.

(k) Automatic door closers shall be installed and the building maintained so fugitive emissions are not emitted from the pebble lime briquette building.

(l) The following conveyors shall be completely enclosed (360°) and transfer points shall be ventilated to the baghouse collection system:

(1) Belts Nos. 11 and 12 from the existing rotary kiln to the surge tank and to the head house.

(2) The pan (apron) conveyor from the vertical kiln to the head house.

(3) The shuttle conveyor at the loading station.

(4) Shipping belt No. 4 (head house to shipping house) for transporting product.

(m) The handling and disposal from the existing waste dust shed shall be revised to minimize dust from the loading operation.

The control measures stated in conditions 7–9 above represent emissions limitations at least as stringent as those required by the application of Best Available Control Technology [40 CFR 52.21(d)(ii)].

10. (a) The new rotary lime kiln shall be limited to a maximum daily production rate in accordance with the schedule in Attachment A and shall not exceed 1128 tons per day maximum production rate.

(b) The existing vertical kiln shall be operated in conjunction with the new rotary kiln in accordance with the schedule in Attachment A.

(c) The company shall maintain appropriate operating logs for verifying the above production rate data. Such logs shall be sent to the Wayne County Air Pollution Control Board on a yearly basis and shall be made available for on-site examination at any time upon request by the Wayne County Air Pollution Control Board or the U.S. EPA, Region V.

Condition 10 is required in order to ensure that Detroit Lime operates the rotary lime kiln and limestone preheater in accordance with the descriptions presented in their application for approval to construct.

Approval

11. Approval to construct a rotary lime kiln and limestone preheater is hereby granted to the Detroit Lime Company subject to the conditions expressed herein and consistent with the materials and data included in the application filed by this Company. Any departure from the conditions of this approval or the terms expressed in Detroit Lime's application must receive the prior written authorization of U.S. EPA.

12. This approval to construct does not relieve Detroit Lime of the responsibility to comply with the control strategy and all local, State and Federal regulations which are part of the applicable State Implementation Plan, as well as all other State and Federal requirements.

13. A copy of this approval has been forwarded to the Campbell Branch of the Detroit Public Library, 6625 W. Fort, Detroit, Michigan 48209.

Dated: April 20, 1979.

John McGuire,

Regional Administrator.

Production Limitation Schedule—Attachment A

Proposed new kiln			Existing vertical kiln			Combined TSP		
Tons per day	TPS per day (#)	TSP per year Tons	Tons per day	TSP per day (#)	TSP per year tons	Per day (#)	Per year tons	Remarks
0	0	0	782	720	86.42	720	62.42	Vertical kiln operating for 240 days.
1,000	285	84.21	600	420	42.21	705	86.42	Vertical kiln operating for 201 days—rotary kiln operating efficiency—85 pct.
1,050	299.25	86.42	584	398	40.00	697.25	86.42	Vertical kiln operating for 201 days—rotary kiln operating efficiency—85 pct.
1,100	313.5	48.63	565	376	37.79	698.5	86.42	Vertical kiln operating for 201 days—rotary kiln operating efficiency—85 pct.
1,128*	321.48	49.9	556	363.4	36.52	684.88	86.42	Vertical kiln operating for 201 days—rotary kiln operating efficiency—85 pct.

*Maximum production.

[FR Doc. 79-18437 Filed 6-12-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1246-5; PP 9G2182 & 9G2183/T201A]

Pesticide Programs; Establishment of Temporary Exemptions From the Requirement of a Tolerance; Correction

In FR Doc. 79-13523 appearing at page 25506 in the issue of May 1, 1979, the term "tobacco bollworm" in the penultimate lines of the second and third paragraphs is corrected by changing the term to read only "bollworm."

[Section 408(j) of the Federal Food, Drug, and Cosmetic Act 21 U.S.C. 346a(j)]

Dated: June 6, 1979.

Douglas D. Campt,

Director, Registration Division.

[FR Doc. 79-18449 Filed 6-12-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1246-2; OPP-50428]

Issuance of Experimental Use Permits

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 8730—EUP-7. Herculite Products, Inc., New York, New York 10010. This experimental use permit allows the use of 14.53 pounds of the insecticide n-tetradecyl formate on forested areas and wooded residential areas to evaluate control of gypsy moths. A total of 505 acres is involved; the program is authorized only in the States of Maryland, Massachusetts, and Wisconsin. The experimental use permit is effective from April 3, 1979 to April 3, 1980. (PM-17, Room: E-229, Telephone: 202/426-9425)

No. 42048-EUP-1. University of Idaho, Moscow, Idaho 83843. This experimental use permit allows the use of 0.10 pound of the rodenticide strychnine alkaloid on forest plantations to evaluate control of pocket gophers. A total of 18 acres is involved; the program is authorized only in the State of Idaho. The experimental use permit is effective from March 22, 1979 to October 1, 1981. (PM-16, Room: E-229, Telephone: 202/755-9315)

No. 1016-50. Union Carbide Corp., Arlington, Virginia 22202. This experimental use permit allows the use of 12,420 pounds of the insecticide carbaryl on alfalfa, corn (field and sweet), cotton, forests, pastures, peanuts, rangeland, rice, and sorghum to evaluate control of various insect pests. A total of 2,765 acres is involved; the program is authorized only in the States of Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, New York, Oklahoma, Pennsylvania, Texas, Utah, Wisconsin, and Wyoming. The experimental use permit is effective from May 1, 1979 to May 1, 1980. Permanent tolerances for residues of the active ingredient in or on alfalfa, corn (field and sweet), cotton, peanuts, rice, and sorghum have been established (40 CFR 180.169). (PM-12, Room: E-229, Telephone: 202/426-9425)

Interested parties wishing to review the experimental use permits are referred to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs EPA, 401 M Street, S.W., Washington, D.C. 20460. The descriptive paragraph for each permit contains a telephone number and room number for information purposes. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate permit may be made conveniently available for review purposes. The files will be available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday.

[Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136)]

Dated: June 4, 1979.

Douglas D. Campt,

Director, Registration Division.

[FR Doc. 79-18448 Filed 6-12-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1246-2; OPP-50426]

Issuance of Experimental Use Permits

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 264-EUP-55. Union Carbide Co., Inc., Ambler, Pennsylvania 19002. This experimental use permit allows the use of 17,200 pounds of the plant regulator ethephon on cotton to evaluate its effectiveness for accelerating the opening of mature cotton bolls and preconditioning cotton for defoliation. A total of 8,600 acres is involved; the program is authorized only in the States of Alabama, Arizona, Arkansas, California, Georgia, Louisiana, Mississippi, Missouri, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas. This program was authorized in a previous expermimental use program which was effective from July 15, 1978 to July 14, 1979. It is now authorized until June 15, 1980. A temporary tolerance for residues of the active ingredient in or on cottonseed has been established. (PM-25, Room: E-301, Telephone: 202/755-2196)

No. 7452-EUP-6. The Freers Co., Muscatine, Iowa 52761. This experimental use permit allows the use of 22 pounds of the fungicide thiabendazole on oak trees to evaluate control of oak wilt. A total of 225 oak trees is involved; the program is authorized only in the State of Iowa. The experimental use permit is effective from May 7, 1979 to May 7, 1981. (PM-21, Room: E-205, Telephone: 202/755-2562)

No. 38566-EUP-1. University of Maine, Orono, Maine 04469. This experimental use permit allows the use of 9.089 billion international units of the insecticide *Bacillus thuringiensis* Berliner on fir-spruce forest land to evaluate control of Eastern spruce budworm. A total of 1,200 acres is involved; the program is authorized only in the State of Maine. The experimental use permit is effective from May 10, 1979 to June 30, 1979. (PM-17, Room: E-229, Telephone: 202/426-9425)

Interested parties wishing to review the experimental use permits are referred to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Prgorams, EPA, 401 M Street, S.W., Washington, D.C. 20460. The descriptive paragraph for each permit contains a telephone number and room number for information purposes. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate permit may be made conveniently available for review purposes. The files will be available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday.

[Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136)]

Dated: June 4, 1979.

Douglas D. Campt,

Director, Registration Division.

[FR Doc. 79-18428 Filed 6-12-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1246-4; OPP—50390B]

Amendment to Experimental Use Permit Issued to Mobil Chemical Co.

On Monday, September 25, 1978 (43 FR 45380), information appeared pertaining to the issuance of an experimental use permit, No. 2224-EUP-10, to Mobil Chemical Company. The permit was amended on Friday, April 13, 1979 (44 FR 22175). At the request of the company, that permit has been further amended. The experimental use permit now allows the use of 2,198 pounds of the herbicide bifenox on corn and grain sorghum to evaluate control of various weeds. A total of 185 acres is involved; the program is authorized only in the States of Colorado, Kansas, Nebraska, Oklahoma and Texas. The experimental use permit is effective from March 22, 1979 to March 22, 1980. Permanent tolerances for residues of the active ingredient in or on corn and grain sorghum have been established (40 FR 180.351). (PM-25, Room: E-301, Telephone: 202/755-2196)

(Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).)

Dated: June 6, 1979.
Douglas D. Campt,
Director, Registration Division.
[FR Doc. 79-18639 Filed 6-12-79; 8:45 am]
BILLING CODE 6560-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 79-61]

Rene Lopez and David Romano d/b/a United Dispatch Services—Independent Ocean Freight Forwarder License No. 1381; Order of Investigation and Hearing

Rene Lopez and David Romano d/b/a United Dispatch Services, located at 1349 N.W. 8th Avenue, Miami, Florida 33126, is an independent ocean freight forwarder operating under FMC License No. 1381, issued on March 22, 1972, pursuant to section 44(b) of the Shipping Act, 1916, and FMC General Order 4, 46 CFR Part 510.

An investigation of the licensee conducted by the Commission's Gulf District Office in October 1978 indicated that Rene Lopez and David Romano d/b/a United Dispatch Services entered into an arrangement which allowed a nonlicensed forwarder, Foreign Freight Forwarders, Inc. (FFF) to use United Dispatch Services' name and FMC license number in the performance of ocean freight forwarding services. Under this arrangement, United Dispatch Services received $2,360.47 in compensation from ocean carriers involving at least 85 shipments between June 2, 1978 and September 9, 1978, by certifying to ocean carriers that United Disptach Services was entitled to compensation on shipments handled by FFF for which United Dispatch Services did not provide any forwarding services.

Based on the information stated above, United Dispatch Services permitted a nonlicensed forwarder to use the licensee's name and FMC license number in apparent violation of section 510.23(a) [1] and certified to ocean carriers that it had performed the forwarding services necessary to receive ocean carrier compensation and accepted ocean carrier compensation on these shipments for which it did not provide freight forwarding services in apparent violation of section 44(e), Shipping Act, 1916, and § 510.24(e) of General Order 4.[2]

Section 44(d) of the Shipping Act provides that a license may be revoked, suspended or modified after notice and hearing for failure to comply with any lawful rules, regulations or orders of the Commission. Section 510.9 of General Order 4 provides that a license may be revoked or suspended after notice and hearing for such conduct as the Commission shall find renders the licensee unfit or unable to carry on the business of forwarding.

Therefore, it is ordered, Pursuant to sections 22 and 44 of the Shipping Act, 1916 (46 U.S.C. 821 and 841(b)) and sections 510.9, 510.23(a) and 510.24(e) of the Commission's General Order 4 (46 CFR 510.9, 510.23(a) and 510.24(e)) that a proceeding be instituted to determine:

1. Whether Rene Lopez and David Romano d/b/a United Dispatch Services has violated section 510.23(a) of General Order 4 by permitting its name and license number to be used by a person not employed by it for the performance of ocean freight forwarding services.

2. Whether Rene Lopez and David Romano d/b/a United Dispatch Services has violated section 44(e) of the Shipping Act, 1916, and section 510.24(e) of General Order 4 by falsely certifying to ocean carriers that it had performed forwarding services necessary to receive ocean carrier compensation and accepting ocean carrier compensation on such shipments for which it did not provide freight forwarding services; and

3. Whether Rene Lopez and David Romano d/b/a United Dispatch Services' independent ocean freight forwarder license should be revoked or suspended pursuant to section 44(d) of the Shipping Act, 1916, and § 510.9 of General Order 4 for failure to comply with any lawful rules, regulations or orders of the Commission and for conduct which renders the licensee unfit to carry on the business of forwarding.

It is further ordered, That Rene Lopez and David Romano d/b/a United Dispatch Services to named Respondent in this proceeding;

It is further ordered, That this proceeding be assigned for public hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges and that the proceeding shall initially be limited to the submission of affidavits of fact and memoranda of law;

It is further ordered, That the following schedule be adhered to:

July 13, 1979—Opening memorandum of law and affidavits of fact from the Commission's Bureau of Hearing Counsel;

June 22, 1979—Petitions to Intervene;

August 10, 1979—Memoranda of law and affidavits of fact from Respondent and any intervenors;

It is further ordered, That within two weeks following the submission of the affidavits of fact and memoranda of law of Respondent and intervenors, the parties will submit to the Administrative Law Judge written statements identifying any unresolved issues and specifying the type of procedure best suited to resolve them. After consideration of these recommendations, the Administrative Law Judge will issue an appropriate order establishing the procedure for their resolution. However, any additional procedure shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon a showing that there are issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents, or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That any persons other than Respondent and Hearing Counsel who desire to become parties to this proceeding and to participate therein shall file a Petition to Intervene pursuant to Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR 502.72);

It is further ordered, That a notice of this Order be published in the Federal Register and that a copy thereof be served upon Respondent and Hearing Counsel;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, in an original and 15 copies as well as being mailed directly to all parties of record.

By the Commission.
Francis C. Hurney,
Secretary.
[FR Doc. 79-18430 Filed 6-12-79; 8:45 am]
BILLING CODE 6730-01-M

[1] Section 510.23(a) of General Order 4 provides that: "No licensee shall permit his license or name to be used by any person not employed by him for the performance of any freight forwarding service."

[2] Section 44(a) of the Shipping Act, 1916, and section 510.24(a) of General Order 4 provide that before a licensee may receive compensation from the ocean common carrier, the licensee shall certify in writing to the ocean common carrier that he is licensed by the Federal Maritime Commission and that he had solicited and secured the cargo for the ship or booked or otherwise arranged for space for such cargo and performed two of five enumerated services.

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate [Casualty]

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR 540):

Glacier Bay Lodge, Inc., Suite 312, Park Place Building, Seattle, Washington 98101. Dated: June 7, 1979.

Francis C. Hurney,
Secretary.

[FR Doc. 79-18481 Filed 6-12-79; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

American National Sidney Corp.; Formation of Bank Holding Company

American National Sidney Corp., Sidney, Nebraska, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 95 per cent or more of the voting shares of the American National Bank of Sidney, Sidney, Nebraska. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than July 6, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, June 6, 1979.

Edward T. Mulrenin,
Assistant Secretary of the Board.

[FR Doc. 79-18451 Filed 6-12-79; 8:45 am]
BILLING CODE 6210-01-M

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than July 5, 1979.

A. *Federal Reserve Bank of New York*, 33 Liberty Street, New York, New York 10045:

Schroders Incorporated, New York, New York, and Schroders Limited, Schroders International Limited, and Schroders International Holdings Limited, London, England (investment advisory activities; national, international): to offer portfolio investment advice to United States clients who wish to invest in foreign securities, through an office in London, England, of the Schroders Naess and Thomas division of Schroders Incorporated.

B. *Federal Reserve Bank of Chicago*, 230 South LaSalle Street, Chicago, Illinois 60690:

Harris Bankcorp, Inc., Chicago, Illinois (trust company and investment advisory activities; southwestern United States): to engage, through its subsidiary, Harris Trust Company of Arizona, in activities that may be performed or carried on by a trust company (including activities of a fiduciary, investment advisory, agency, or custodian nature). These activities would be conducted from an office in Scottsdale, Arizona, serving the southwestern United States.

C. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, June 8, 1979.

Edward T. Mulrenin,
Assistant Secretary of the Board.

[FR Doc. 79-18452 Filed 6-12-79; 8:45 am]
BILLING CODE 6210-01-M

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than July 6, 1979.

A. *Federal Reserve Bank of Kansas City,* 925 Grand Avenue, Kansas City, Missouri 64198:

Colorado National Bankshares, Inc., Denver, Colorado (industrial bank and insurance activities; Colorado): to operate, through it subsidiary East Industrial Bank, as an industrial bank, including the acceptance of time and savings deposits and the extension of consumer credit, and to engage in the sale of life and accident and health insurance directly related to its extensions of credit. These activities would be conducted from an office in Denver, Colorado, and the geographic area to be served is approximated by the southeast portion of Denver, Colorado.

C. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, June 5, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-18653 Filed 6-12-79; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and, unless otherwise noted, received by the appropriate Federal Reserve Bank not later than July 5, 1979.

A. *Federal Reserve Bank of New York,* 33 Liberty Street, New York, New York 10045:

Security New York State Corporation, Rochester, New York (data processing activities; New York): to provide, through a subsidiary, Griffin Computer Services, Inc., information processing services to meet the needs of the applicant and others. These activities would be conducted from offices in Rochester, Auburn, Ithaca, Seneca Falls, and Olean, New York, serving western New York.

B. *Federal Reserve Bank of Philadelphia,* 100 North 6th Street, Philadelphia, Pennsylvania 19105:

Philadelphia National Corporation, Philadelphia, Pennsylvania (insurance activities; Pennsylvania): to engage, through a subsidiary, Colonial Mortgage Consumer Discount Company, in selling life and accident and health insurance directly related to its personal installment loans secured by mortgages on real estate. These activities would be conducted from an office in Melrose Park, Pennsylvania, serving Pennsylvania.

C. *Federal Reserve Bank of Cleveland,* 1455 East Sixth Street, Cleveland, Ohio 44101:

Pittsburgh National Corporation, Pittsburgh, Pennsylvania (mortgage banking activities; Georgia): to engage, through a subsidiary, The Kissell Company, in mortgage banking activities, including making or acquiring and servicing loans and other extensions of credit. These activities would be conducted from an office in the Savannah, Georgia, metropolitan area, serving Savannah.

D. *Federal Reserve Bank of Atlanta,* 104 Marietta Street, N.W., Atlanta, Georgia 30303:

First Amtenn Corporation, Nashville, Tennessee (finance and insurance activities; Tennessee): to engage, through subsidiaries, Atlantic Discount Company, Inc., and Atlantic Consumer Services of Tennessee, Inc., in making or acquiring loans and other extensions of credit such as would be made by a finance company, including secured and unsecured loans to individuals, discounting installment sales contracts, and secured commercial financing, such as dealer floor-plan financing and lease financing; and acting as agent or broker in selling life, accident and health, and property damage insurance directly related to its extensions of credit. These activities would be conducted from an office in Nashville, Tennessee, serving southern and western metropolitan Nashville, Davidson County, Tennessee.

E. *Federal Reserve Bank of Kansas City,* 925 Grand Avenue, Kansas City, Missouri 64198:

Torrington National Company, Torrington, Wyoming (insurance activities; Nebraska, Wyoming): to engage in the sale of life and accident and health insurance directly related to extensions of credit by First National Bank, Torrington, Wyoming. These activities would be conducted from the bank's premises, and the geographic areas to be served are Sioux and Scotts Bluff Counties, Nebraska, and Goshen, Niobrara, and Platte Counties, Wyoming. Comments on this application must be received by the Federal Reserve Bank of Kansas City by July 3, 1979.

F. *Federal Reserve Bank of San Francisco,* 400 Sansome Street, San Francisco, California 94120:

Wells Fargo & Company, San Francisco, California (finance, leasing, and insurance activities; national): to engage, through a subsidiary, Wells Fargo Credit Corporation, in making or acquiring loans and other extensions or credit, including acquiring consumer installment loans originated by others and making or acquiring commercial loans secured by a borrower's or a guarantor's assets; servicing loans for the account of others; making full pay-out leases of personal property to the extent permitted by the Board's Regulation Y; and acting as agent for life and accident and health insurance directly related to its extensions of credit. These services will be offered to finance companies, banks and other lending institutions, manufacturers, distributors and other corporations or businesses, and individuals. These activities will be conducted from offices in Tucson, Arizona and Tulsa and Oklahoma City, Oklahoma, and the area to be served is national. Comments on this application must be received by the Federal Reserve Bank of San Francisco by July 3, 1979.

G. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, June 7, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-18654 Filed 6-12-79; 8:45 am]

BILLING CODE 6210-01-M

CleveTrust Corp.; Acquisition of Bank

CleveTrust Corporation, Cleveland, Ohio, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares of Cincinnati Trust Company, Cinncinnati, Ohio. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Cleveland. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than June 27, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, June 5, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-18455 Filed 6-12-79; 8:45 am]

BILLING CODE 6210-01-M

Old Kent Financial Corp.; Acquisition of Bank

Old Kent Financial Corporation, Grand Rapids, Michigan, has applied for the Board's approval under Section 3(a)(5) of the Bank Holding Company Act (12 U.S.C. 1842(a)(5)) to merge with Peoples Banking Corporation, Bay City, Michigan. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than July 6, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, June 6, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-18456 Filed 6-12-79; 8:45 am]

BILLING CODE 6210-01-M

ONB Bancorp, Inc.; Formation of Bank Holding Company

ONB Bancorp, Inc., Chickasha, Oklahoma, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1) to become a bank holding company by acquiring 100 per cent of the voting shares of Oklahoma National Bank and Trust Company, Chickasha, Oklahoma. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

ONB Bancorp, Inc., Chickasha, Oklahoma, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR § 225.4(b)(1)), for permission to indirectly acquire voting shares of ONB Insurance Agency, Inc., Chickasha, Oklahoma.

Applicant states that the proposed subsidiary would engage in the activities of selling as agent life, accident and health insurance inconnection with extensions of credit by Oklahoma National Bank and Trust Company. these activities would be performed from offices of Applicant's subsidiary in Chickasha, Oklahoma, and the geographic areas to be served in Grady County, Oklahoma. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than July 2, 1979.

Board of Governors of the Federal Reserve System, June 4, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-18457 Filed 6-12-79; 8:45 am]

BILLING CODE 6210-01-M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on June 6, 1979. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the Federal Register is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable, and the frequency with which the information is proposed to be collected.

Written comments on the proposed FCC request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before July 2, 1979, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

Federal Communications Commission

The FCC requests an extension without change clearance of Form P, Annual Report of Miscellaneous Common Carriers. Form P is an annual report for obtaining operating and financial data from miscellaneous and specialized common carriers. Form P is required by Sections 219(b), 303 (j), (r), and 308(b) of the Communications Act

of 1934, as amended, and Sections 1.785, 21.300, and 43.21 of the FCC's Rules and Regulations. The data collected by Form P is used for analyses of required applications for construction permits and licenses, reviewing operating data and revenues, and for compilation of periodical statistical reports. The FCC estimates approximately 100 respondents will complete Form P and that reporting burden will average 15 hours per response.

John M. Lovelady,

Assistant Director, Regulatory Reports Review.

[FR Doc. 79-18349 Filed 6-12-79; 8:45 am]

BILLING CODE 1610-01-M

GENERAL SERVICES ADMINISTRATION

Federal Property Management Regulations; Temporary Regulation F-486

Subject: Delegation of authority.

1. *Purpose.* This regulation delegates authority to the Secretary of Defense to represent the interests of the executive agencies of the Federal Government in a telecommunications proceeding.

2. *Effective date.* This regulation is effective immediately.

3. *Delegation.*

a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government before the Illinois Commerce Commission, Docket No. 79-0143, involving the application of the Illinois Bell Telephone Company for an increase in intrastate telecommunication service rates for private line and mileage services.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

Dated: May 25, 1979.

Paul E. Goulding,

Acting Administrator of General Services.

[FR Doc. 79-18294 Filed 6-12-79; 8:45 am]

BILLING CODE 6820-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

Bureau of Occupational and Adult Education

AGENCY: Office of Education, HEW.

ACTION: Notice of request for suggestions regarding implementation of eight Bureau of Occupational and Adult Education (BOAE) priorities for vocational education.

SUMMARY: In accordance with his national leadership role, the Commissioner of Education, in conjunction with the Coordinating Committee on Research in Vocational Education, is requesting comments relating to eight designated priorities for vocational education. Specific comments are requested for: 1) suggested leadership activities and initiatives that can be implemented nationwide; 2) possible research ideas; and 3) documentation of need in these areas.

DATE: Comments must be received on or before August 1, 1979.

ADDRESS: Comments should be addressed to Dr. Daniel B. Dunham, Deputy Commissioner, Bureau of Occupational and Adult Education, Office of Education, 400 Maryland Avenue, SW., Wahington, D.C. 20202.

FOR INFORMATION CONTACT: Sharon Berard, Planning Office, (202) 245-8176.

SUPPLEMENTARY INFORMATION: The Bureau of Occupational and Adult Education (BOAE) is in the process of developing and implementing a long-range master plan based upon the mission of the Bureau. This master plan identifies eight specific priorities for increased Federal involvement in vocational education programs. It is the development of strategies to impact on these priorities that BOAE and the Coordinating Committee for Research in Vocational Education are seeking field input. Suggested ideas are requested for applied research, demonstration, curriculum development, and personnel development projects, as well as for general leadership activities for BOAE and the member agencies of the Coordinating Committee, which are the Office of Career Education and the Bureau of Occupational and Adult Education of the U.S. Office of Education, the Fund for the Improvement of Postsecondary Education, and the National Institute of Education. Please reference the eight priority areas for any comment, issue, need or suggested area of study.

Priorities

1. *The Education-Work Connection.*—Vocational education must increase its efforts to serve as deliverer of education for work. The transition from education to work is interwoven with critical State and national initiatives for reducing youth employment, for job placement, and most importantly, for job development. A major emphasis must be the elimination of the barriers between school and work and the establishment of linkages among vocational education, CETA prime sponsors, and other Federal and State education programs.

2. *Urban/Rural Youth Programs.*—Unemployment rates for youth are extremely high, even at a time when the total unemployment rate has dropped. Recognizing that urban and rural areas do not have identical problems, youth in these areas share the common problem of high unemployment. Since the unemployment rate for youth who have completed vocational education is generally lower than for those who have not, approaches and strategies must be developed to increase the participation rates of both urban and rural youth in vocational education programs.

3. *Program Availability and Accessibility-Emphasis: Adults.*—Currently, there are barriers existing which limit the accessibility to vocational education for those who need or desire it—barriers in terms of facilities, equipment, out-reach, and support services. For example, programs are often restricted to the schoolhouse when many could be successfuly operated at the workplace. In addition, alternatives must be increased for eccouraging adults to participate in upgrading and retraining courses. Federal, State, and local barriers limiting access to programs must be identified and eliminated.

4. *Planning, Accountability and Data.*—Planning, accountability, and data systems must be improved, expanded, and extended to all aspects of the vocational education enterprise. Improvements in this area have occurred and are continuing through the efforts of the National Occupational Information Coordinating Committee (NOICC) and the planned implementation of the Vocational Education Data System (VEDS). However, these efforts must be

expanded. Good data, good planning, and good evaluation are necessary for managing resources and producing better results.

5. *Guidance for Vocations.*—The capacity in vocational education for providing vocational development guidance and counseling programs and services must be enlarged. Having good up-to-date information about careers and occupations is essential to achieving responsiveness in the guidance system. Young people and adults must be assessed to determine individual interest, aptitude, and ability, and occupational choices should be based upon real work knowledge. Support must be provided to enable change in careers at all stages of life.

6. *Vocational Equity.*—This is a time of transition in the roles of both men and women. Issues surface daily surrounding problems of displaced homemakers and of men and women desiring to enter non-traditional occupations. Sex role biases and stereotypes must be removed if vocational education is to be responsive to the desires and needs of all individuals. Pub. L. 94–482 lays the groundwork for the vocational education effort to achieve equity, but it is just a beginning. Other issues which need emphasis include age, race, and national origin, while at the same time, greater effort must be given to identifying and removing all forms of bias, stereotyping, and discrimination.

7. *Special Needs: The Handicapped and Disadvantaged.*—Meeting the special needs of those persons who cannot succeed in a regular program of vocational education without special assistance continues to be a pressing priority for the Federal effort. A better job must be done of identifying those with special needs and then meeting those needs. The Education of all Handicapped Children Act furthers this effort for the handicapped, but the needs of the disadvantaged, including the incarcerated have yet to be addressed adequately.

8. *Basic Skills.*—The separatist concept of the "academic" versus the "vocational" delivery system within our public school setting is no longer useful. Basic educational skills are essential to all persons, and vocational education must complement basic skills/remedial programs if persons are to succeed in vocational education programs. Improving the proficiency in reading, writing, and speaking of persons with limited English-speaking ability is an essential aspect of basic skills development. Both academic and vocational programs should complement and further one another in producing persons who are prepared to function responsibly in a working world.

Invitation to Comment. Persons or organizations wishing to provide comments and suggestions on these eight priorities are invited to send the comments and suggestions in the form of letters, briefs, or memoranda to the Office of Education at the address indicated above. Proposals should not be submitted. If proposals are submitted, they will be returned to the sender without review.

In order to be assured of full consideration, comments must be received on or before the date the comment period ends.

(Catalog of Federal Domestic Assistance Nos. Vocational and Adult Education—13.400, 13.493, 13.494, 13.495, 13.498, 13.499, 13.500, 13.503, 13.558, 13.578, 13.585, 13.587, 13.588)

Dated: June 6, 1979.

Ernest L. Boyer,

U.S. Commissioner of Education.

[FR Doc. 79-18381 Filed 6-12-79; 8:45 am]

BILLING CODE 4110-02-M

Desegregation of Public Education; Closing Date for Transmittal of Applications for Fiscal Year 1979; Desegregation Assistance Centers

Applications are invited to provide sex desegregation assistance in the service area covering the following States: North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Kentucky, and Tennessee.

Authority for this program is contained in section 403 of Title IV of the Civil Rights Act of 1964, as amended (45 U.S.C. 2000c et seq.).

Public agencies (other than State education agencies or school boards) and private, nonprofit organizations are eligible for an award under this program.

The purpose of the award is to provide technical assistance (including training) in the preparation, adoption, and implementation of plans for sex desegregation. This includes assistance in solving educational problems resulting from that desegregation.

The Commissioner of Education is authorized under 45 CFR 180.36(b) to approve the continuation of existing Sex Desegregation Assistance Center awards if the Centers meet the criteria in that section. The Commissioner has used this authority to continue the awards of nine of the ten existing Centers for a period of one year. This notice covers only the one remaining service area, described above.

Closing Date for Transmittal of Applications: Applications for an award must be mailed or hand delivered by July 27, 1979.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Office of Education, Application Control Center, Attention: 13.405D, Desegregation Assistance Centers, Washington, D.C. 20202.

The Commissioner of Education prefers a legible U.S. Postal Service dated postmark or a legible mail receipt with the date of mailing stamped by the U.S. Postal Service as proof of mailing.

Note:—The U.S. Postal Service does not uniformly provide a dated postmark. Applicants should check with their local post office before relying on this method.

Applicants are encouraged to use registered or at least first-class mail.

Each late applicant will be notified that its application will not be considered in the current competition.

Applications Delivered by Hand: An application that is hand delivered must be taken to the U.S. Office of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets S.W., Washington, D.C. The Application Control Center will accept hand-delivered applications between 8 a.m. and 4 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays and Federal holidays.

Applications that are hand delivered will not be accepted after 4 p.m. on the closing date.

Available Funds: A total of approximately $3,350,000 is available for all ten Desegregation assistance centers in fiscal year 1979. At present Center awards range in amount from $240,557 to $350,799.

This estimate does not bind the U.S. Office of Education except as may be required by the applicable statute and regulations.

Application Forms: Application forms and program information may be obtained by writing to the Divisions of Technical Assistance, Equal Educational Opportunity Programs, U.S. Office of Education, 400 Maryland Avenue S.W., Washington D.C. 20202.

An application must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package.

Project Period: The new award made under this notice will be for a project beginning no earlier than July 1, 1979, and ending no later than September 30, 1980, but in no case for more than 12 months.

Applicable Regulations: The award made under this notice will be subject to: (a) the Office of Education general provisions regulations (45 CFR Parts 100 and 100a), except to the extent that those regulations are inconsistent with 45 CFR Part 180, and (b) regulations relating to programs under Title IV of the Civil Rights Act of 1964 (45 CFR Part 180).

Further Information: For further information contact Ms. Delia Alpert, Acting Director, Division of Technical Assistance, EEOP, U.S. Office of Education (Room 2181–J, FOB–6) 400 Maryland Avenue S.W., Washington, D.C. 20202. Telephone: (202) 245–8840.

(42 U.S.C. 2000c–2000–5)

(Catalog of Federal Domestic Assistance Number 13.405, Civil Rights Technical Assistance and Training Programs.)

Dated: June 7, 1979.

Ernest L. Boyer,

U.S. Commissioner of Education.

[FR Doc. 18362 Filed 6-12-79; 8:45 am]

BILLING CODE 4110-02-M

Office of Human Development Services

[Program Announcement No. 13612-792]

Administration for Native Americans; Training and Technical Assistance Program

AGENCY: Administration for Native Americans.

SUBJECT: Announcement of availability of grant funds for the Traing and Technical Assistance Program.

SUMMARY: The Administration for Native Americans (ANA) announces that applications are being accepted for training and technical assistance (T & TA) program grants under section 804 of the Native Americans Program Act of 1974, Pub. L. 93–644 as amended, by Pub. L. 95–568. Regulations covering this program are published in the Code of Federal Regulations in 45 CFR 1336.

DATES: Closing dates for the receipt of applications are scheduled on a staggered basis, according to grantees' program year end (PYE). The purpose for multiple closing is to enable grantees with differing PYE's to compete for funds under this program announcement and to ensure grantees' adherence to the requirement that the proposed specialized Training and Technical Assistance projects will be integrated with the regular ANA grant applications.

Closing dates follow:

1. November 15, 1979 for PYE 10/1—December 31, 1979.
2. February 15, 1980 for PYE 1/1—March 31, 1980.
3. May 15, 1980 for PYE 4/1—June 30, 1980.
4. August 15, 1980 for PYE 7/1—September 30, 1980.

Program Purpose

The purpose of the ANA supported technical assistance is to strengthen grantees' capabilities in the areas of planning, management, administration, and service delivery. The assistance also focuses on enabling grantees to identify barriers to community organization and to resource mobilization, and to subsequently develop strategies to overcome these barriers.

ANA supported training assists grantees to develop or improve the leadership capabilities of their governing bodies and their community members. These leadership and management capabilities provide the organizational stability necessary for grantees to accomplish socio-economnic growth.

Program Goal and Objectives

The goal of the program under this announcement is to provide grantees selected through a competitive process the opportunity to directly purchase specialized training and/or technical assistance which will result in the achievement of a quantifiable objective. The proposed project must be integrated with and complementary to the grantees' proposed regular ANA grant application and must support successful, measureable achievement of the goals and objectives stated in the grant renewal proposals. Applicants should address needs which are not otherwise addressed through training and technical assistance provided under ANA contract.

Proposed training and technical assistance projects must be clearly correlated with the grantees' organizational goals and objectives. Applicants must define, in quantifiable terms, the manner in which the proposed training and technical assistance will impact on achievement of their goals and objectives.

Proposed projects may address one or more of the activities listed below or other activities within the scope of the applicants' renewal application under social and/or economic development;

1. To assist applicants to influence Federal, State, and local decision-making processes which affect or have the potential to affect the Native American community.

This activity would be designed to:

(a) Achieve Federal recognition where necessary;

(b) Identify individuals and agencies at Federal, State, and local levels which have primary control over allocation of services and resources;

(c) Increase Native American participation on boards, commissions and/or committees involved in the planning processes of civic, political, social and economic agencies or organizations.

2. To assist applicants to promote changes in the method of providing local service delivery to make it more responsive to the Native American population's needs and environment.

This activity would be designed to:

(a) Increase coordination of the various social and economic efforts of public and private agencies responsible for providing services to Native Americans.

This may include initiating requests for joint funding, joint monitoring, etc.

(b) Improve knowledge of and sensitivity to Native American cultural factors on the part of Federal, State and local officials and service providers.

3. To assist applicants to mobilize Native and non-Native American resources of volunteer time and monetary donations.

This activity would be designed to: (a) Increase the amount of free assistance given directly to grantee clientele from community lawyers, doctors, dentists, etc.;

(b) Increase the amount of free time contributed to grantee organizations from carpenters, painters, plumbers, van drivers, etc.;

(c) Increase the commitment of free or reduced rate courses for Board, staff or clientele training given by a local educational institution;

(d) Increase contributions to the unrestricted fund as well as contributions of food, clothing, items for basic house repairs, etc.

Training and technical assistance may be directed to leadership development in decision-making skills, public administration, negotiation skills, fundraising techniques, public speaking and public relations, etc.

Note.—Applications for consultant services for proposal writing will not be considered for funding.

In addition, costs will not be allowed for the hiring of staff, nor for any overhead or indirect costs.

Applicants are required to include as part of the application, a one (1) page executive summary highlighting the problem areas to be addressed, proposed objectives, summary of

proposed activities, anticipated accomplishments, and overall cost data.

Applications must include a section on how the grantee intends to monitor and evaluate the implementation and progress of the proposed training and technical assistance project. Costs required for such monitoring should be specified as should the time periods during which monitoring will occur.

Recipients of grants under this Program Announcement will be required to comply with DHEW financial reporting and program progress reporting regulations published in 45 CFR 74. The information contained in these quarterly reports should clearly identify cost and effectiveness of this project.

The new project funds are intended to supplement and not replace other ANA training and technical assistance resources available to the grantees. Applicants are required to identify in the application all available training and technical assistance resources, including those from ANA and other federal, state, community and private sources. All applicants must include in their proposals, plans specifying the utilization and coordination of these resources and detailing ways in which the grantee organizations will insure training and technical assistance project linkages. In addition, assurance must be provided that the proposed project will not duplicate training and technical assistance services supported by another federal, state, or local agency.

Applications shall include written statements that contracts awarded under grant will specifically state the terms and conditions, work to be performed, time frames for consultant contracts.

Budget Period

These one-time grants will be for a period of twelve months, and consistent with the grantees' regular ANA budget period.

Eligible Applicants

Only organizations which are current ANA grant recipients are eligible to apply for funding under this Program Announcement. ANA grantees funded for research projects are not eligible.

Available Funds

The Administration for Native Americans expects to award approximately $145,000 in fiscal year 1980 for new projects under this training and technical assistance program. It is expected that between ten (10) and fifteen (15) grants will be awarded pursuant to this announcement. Up to four (4) grants are expected to be awarded during each quarter of the federal government fiscal year.

Grantee Share of Project

Grantees will provide 20% of the approved cost of the project. Grantees' contributions may be in cash or in kind, fairly evaluated, including, but not limited to, plant, equipment, and services. The contribution must be project related and must be allowable under the Department's applicable regulations in 45 CFR Part 74, Subparts Q and G.

Under certain circumstances, some or all of the non-Federal share of the project may be waived by ANA. Further explanation is contained in section 1336.52 of ANA's Regulations which will be provided in the Application Kit.

The Application Process

Availability of application forms. In order to be considered for grants under the Training and Technical Assistance Program, an application must be submitted on the forms supplied in the manner prescribed by ANA. An application kit containing the necessary forms may be obtained from:

Administration for Native Americans, Room 357–G, Hubert H. Humphrey Bldg., 200 Independence Ave. S.W., Washington, D.C. 20201. Attention: 13612–792 (202–426–3940). Attention: Ms. Janice Phalen.

For clarification or further explanation of the program announcement, call Ms. Geraldine Farrell (202–426–4055).

Application submission. One signed original and six copies of the grant application, including all attachments, must be submitted to the address specified in the application kit.

The application shall be executed by an individual authorized to act for the applicant agency and to assume for the agency the obligations imposed by the terms and conditions of the grant award, including Native American Programs Rules and Regulations.

A–95 notification process. In compliance with the Department of Health, Education and Welfare's implementation of the Office of Management and Budget Circular No. A–95 Revised (interim procedures at 41 FR 3160, July 29, 1976), applicants, with the exception of Federally recognized tribes, who request grant support must, prior to submission of an application, notify both the State and Areawide Clearinghouses of the intent to apply for Federal assistance. Some State and Areawide Clearinghouses provide their own forms for the notification of intent and others use the facesheet (Form 424) of the application form. Applicants should contact the appropriate Clearinghouses (listed at 42 FR 2210, January 10, 1977) for information on how they can meet the A–95 requirements.

Prospective grantees should contact their local and state A–95 Clearinghouses *immediately* to initiate pre-notification procedures. So doing will greatly reduce the time required to comply with OMB circular A–95.

Application consideration. The Commissioner for the Administration for Native Americans (in conjunction with the Regional Administrator for urban grantees) determines the final action to be taken with respect to each grant application for this program. Applications which do not conform to this announcement or are not complete will not be accepted for review and applicants will be notified in writing accordingly. Applications which are complete and conform to the requirements of this program announcement are subjected to a competitive review and evaluation by qualified persons independent of the Administration for Native Americans. The results of the review assist the Commissioner (and Regional Administrator where appropriate) in the consideration of competing applications. The Commissioner's consideration also takes into account the comments of the A–95 Clearinghouse, the ANA staff, and other interested parties.

After the Commissioner (and Regional Administrator where appropriate) has reached a decision either to disapprove or to fund a competing grant application, unsuccessful applicants are notified of the decision in writing. Successful applicants are notified through the issuance of a Notice of Grant Awarded.

The Commissioner (or Regional Administrator) makes grants awards consistent with the purpose of the Act, the regulations, and the program announcement within the limits of funds available. The official grant award document is the Notice of Grant Awarded (NGA). The NGA sets forth in writing to the grantee the amount of funds granted, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the budget period for which support is given and the amount of grantee participation. The NGA also specifies the total project period for which support is contemplated.

Criteria for Review and Evaluation of Applications

Competing grant applications will be reviewed and evaluated against the following criteria:

1. Program Design (0–50 points). The quality of the program design as indicated by such factors as:

(a) Well defined problems to be addressed and demonstrated need for proposed project (10 points).

(b) Integration of proposed project with the applicants' regular ANA project goals and objectives (15 points).

(c) Specified steps for coordination of all ANA and non-ANA supported training and technical assistance resources (15 points).

(d) Plan for project implementation is adequate for successful task accomplishment and productive results (5 points).

(e) Proposed objectives are sharply defined, clearly stated, capable of being attained, and capable of being measured (5 points).

(f) The projected activity plan or milestones clearly outline the necessary steps to be taken in order to achieve the objectives (5 points).

(g) The proposed activities, if well executed, will achieve the project objectives (5 points).

2. Evaluation Design (0–15 points). The evaluation design details how progress toward meeting the proposed objectives will be measured.

3. Management and Organizational Capability (0–15 points). The soundness of the organizational capability as evidenced by such factors as: (a) The grantee's general administration and management capability (5 points). (b) The adequacy of facilities and other resources (5 points). (c) Demonstrated implementation of like projects as exemplified by achievement of objectives, adherence to grant conditions, and the governing body's assumption of responsibility (5 points).

4. Provision for the implementation of Indian Preference (0–10 points).

5. Budget (0–10 points). The budget is given in detail with justifications and explanations; estimated costs are commensurate with the level of effort needed to accomplish project objectives, and the reasonableness of project costs in relation to anticipated results.

Closing Date for Receipt of Applications

The closing dates for receipt of applications under this program announcement are:

1. November 15, 1979 for PYE 10/1—December 31, 1979.
2. February 15, 1980 for PYE 1/1—March 31, 1980.
3. May 15, 1980 for PYE 4/1—June 30, 1980.
4. August 15, 190 for PYE 7/1—September 30, 1980.

Hand delivered applications are accepted during normal working hours of 9 a.m. to 5 p.m. An application will be considered to have arrived by the closing date if: (a) the application is at the HDS Receiving Office on or before the closing date, or (b) the application is postmarked on or before the closing date as evidenced by the U.S. Postal Service postmark on the wrapper or envelope or by an original receipt from the U.S. Postal Service.

Late applications are not accepted, and applicants are notified accordingly.

(Catalog of Federal Domestic Assistance Program No. 13.612, Native American Programs.)

Dated: May 11, 1979.

A. David Lester,

Commissioner, Administration for Native Americans.

Dated: June 5, 1979.

Arabella Martinez,

Assistant Secretary for Human Development Services.

[FR Doc. 79-18179 Filed 6-12-79; 8:45 am]

BILLING CODE 4110-92-M

Administration on Aging Education and Training Programs

AGENCY: Office of Human Development Services, DHEW.

SUBJECT: Announcement of availability of *AoA Education and Training Program Plans and Guidelines, FY 1979.*

SCOPE: *AoA Education and Training Program Plans and Guidelines, FY 1979* contains information describing most career education and training activities administered by the Administration on Aging (AoA) authorized under title IV, parts A and E of the Older Americans Act of 1965, as amended (43 U.S.C. 3131d *et seq.* and 3036) for Fiscal Years 1979, 1980 and 1981. It describes all program competitions planned for this period by AoA's Office of Education and Training (OET), and proposed plans for DHEW regional decentralization of the administration of selected education and training activities currently monitored in Washington, D.C. Activities which are proposed for support by contract include: development of a national manpower policy for personnel in the field of aging, in-service curricula development, conference and technical assistance activities, and recruitment of minorities for career preparation and training in gerontology. Six (6) sets of guidelines for grant, and/or cooperative agreement competitions scheduled for Fiscal Year 1979 and early Fiscal Year 1980 comprise the main body of this document. Each of the competitions described (Gerontology Career Preparation Program, Geriatric Fellowship Program, Minority Research Associate Program, National Continuing Education Program, and the Long Term Care Gerontology and Aging Policy Study Centers) is announced separately in this issue of the Federal Register.

AVAILABILITY: Copies of *AoA Education and Training Program Plans and Guidelines, FY 1979,* will be sent to all present and former grantees and contractors, major educational institutions, and other non-profit organizations that have been identified or requested placement on a mailing list. Additional copies may be obtained by writing:

Office of Education and Training, AoA/OHDS/DHEW, Room 4280, HEW North Bldg., 300 Independence Avenue SW., Washington, D.C. 20201. Telephone: (202) 472–4683.

Dated: June 5, 1979.

Robert Benedict,

Commissioner on Aging.

Approved: June 7, 1979.

Arabella Martinez,

Assistant Secretary for Human Development Services.

[FR Doc. 79-18319 Filed 6-12-79; 8:45 am]

BILLING CODE 4110-92-M

[Program Announcement No. 13637-791]

Gerontology Career Preparation Program

AGENCY: Office of Human Development Services, DHEW.

SUBJECT: Announcement of Competition for Grants for Gerontology Career Preparation Projects.

SUMMARY: The Administration on Aging (AoA) announces that applications are being accepted under title IV, part A, of the Older Americans Act of 1965, as amended (42 U.S.C., sec. 3031 *et seq.*) for career preparation grants in the field of aging.

DATE: Closing date for receipt of applications is August 13, 1979.

Scope of This Announcement

This program announcement is one of six (6) published in this issue of the Federal Register for grant and/or cooperative agreement competitions under title IV, parts A and E, of the Older Americans Act. Information describing these activities and other programs of the Office of Education and Training, Administration on Aging, is contained in *AoA Education and Training Program Plans and Guidelines, FY 1979.* Guidelines for the Gerontology Career Preparation Program are

included in a separate section of this document.

Program Purpose

The purpose of the Gerontology Career Preparation Program is to train persons for entry or re-entry into occupations which serve or benefit older Americans.

Program Goal and Objectives

Grants under this program are awarded to post-secondary educational institutions and to other public and private nonprofit institutions to establish or strengthen their capability to develop innovative programs of career preparation in the field of aging. For more than a decade, this grant program has assisted academic institutions to initiate and develop educational programs in gerontology by providing financial assistance for student incentive stipends, faculty salaries, and other costs related to program development and quality improvement. The relative maturity of these programs, combined with the new AoA program mandates in the 1978 Older Americans Act Amendments, have resulted in new or modified program objectives for Fiscal Year 1979 awards under this announcement. Support will be given for projects that provide career training for specific professions and occupations in areas, including, but not limited to, the following:

- Policy formulation, planning, and management, at Federal, State and Area levels in agencies or systems administered under, or directly related to the purposes of the Older Americans Act;
- Supervision of, or practice in, case management or services management at the system or service provider level in programs administered under, or directly related to the purposes of the Older Americans Act;
- Administration of, or practice in, the provision of health services, including mental health services, legal services, services delivered in community focal points such as multi-service senior centers, employment services including guidance and counseling services, services delivered in congregate housing, home care services, day care services, protective services, or transportation services funded through programs administered under, or directly related to the purposes of, the Older Americans Act;
- Administration of, or practice in, the provision of services to special populations such as older members of minority groups, the rural elderly, the inner cities elderly, or the developmentally disabled elderly funded through programs administered under, or directly related to the purposes of, the Older Americans Act.

Building the capacity of institutions of higher education to provide specialized career training in aging necessarily involves a carefully planned and integrated set of project activities.

Examples of the type of project activities which might be incorporated into a title IV–A Gerontology Career Preparation Program application are given below:

- Developing innovative gerontology curricula and instructional materials;
- Providing financial assistance to students for specific purposes, namely, the establishment of new careers responsive to Older Americans Act program priorities or a concerted attempt to recruit and train minority (Black, Hispanic, Asian and Pacific Islanders or Native Americans) in aging;
- Providing increased student opportunities for combining work and/or practical experience with study;
- Supporting field instructors to supervise field practicums;
- Providing student placement services for jobs serving the elderly;
- Developing effective methods of linking research training, and service in the field of aging;
- Using sophisticated information systems to stimulate the transfer of information and knowledge into the curricula of postsecondary educational institutions;
- Providing continuing education opportunities to upgrade the skills of persons now in priority careers linked to Older American Act programs; and
- Providing consultation to agencies that work with older people.

Both in recognition of the different gerontological program strengths among various types of potential applicants, and to promote equity in the competition for title IV–A support, AoA is establishing four (4) categories of applications:

(1) University-wide Projects
(2) Graduate and Professional School Projects
(3) Two and Four Year Undergraduate Projects
(4) Consortia Projects

Eligible Applicants

Any public or private post-secondary educational institution may apply for a grant under this announcement. A public or private non-profit agency, organization or institution may apply for a grant under the "Consortia" category, provided it is affiliated or has a letter of agreement with a post-secondary institution.

Available Funds

The Administration on Aging expects to award a maximum of seventy (70) new multiple project year grant awards in this program for Fiscal Year 1979. Anticipated funding and the number and range of awards for each of the four (4) program categories are:

University Wide

$3.0 million—18 to 24 awards of $130 to $150 thousand each.

Graduate and Professional School

$1.5 million—10 to 14 awards of $110 to $130 thousand each.

Two and Four Year Undergraduates

$2.0 million—20 to 24 awards of $80 to $100 thousand each.

Consortia

$1.5 million—7 to 9 awards of $180 to $200 thousand each. Awards will be made for project periods of nine (9) months to three (3) years depending upon application requests and/or AoA approval of project duration. The initial budget period will be for nine (9) months. Non-competing continuation funding beyond the initial nine (9) month budget period depends on satisfactory performance and availability of funds.

Grantee Share of the Project

Grantees are expected to provide five (5) percent of the total allowable project costs. The grantee share may be cash or in-kind, and must be allowable under the Department's applicable regulations published in 45 CFR Part 74, Subparts G and Q (see 43 FR 34076, August 2, 1978).

Indirect Cost Limitation

Indirect costs for the conduct of training by educational institutions may not exceed eight (8) percent of allowable direct costs.

The Application Process

Availability of Forms

Applicaiton for a Gerontology Career Preparation Program grant must be submitted on Standard Form 424, Application for Federal Assistance, and other forms provided for this purpose. Application kits and appropriate instructions are included in *AoA Education and Training Program Plans and Guidelines, FY 1979.*

Copies may be obtained by writing to: Office of Education and Training, Administration on Aging, Room 4228, DHEW North Building, 330 Independence Avenue, SW.,

Washington, D.C. 20201, telephone: (202) 472-4663.

Application Submission

One (1) signed orginial and four (4) copies of the grant application, including all attachments, must be prepared. The original and two (2) copies must be submitted to the address indicated in the application instructions. One (1) copy is to be submitted to the appropriate State Agency on Aging and one (1) copy is to be submitted to the Director of the DHEW Regional Office of Aging. Addresses for State Agencies on Aging and DHEW Regional Offices of Aging are included in the application instructions.

A-95 Notification Process

Not applicable.

Application Consideration

The Commissioner on Aging will make the final decision on each grant application under this announcement. Applications which are complete and conform to the requirements of the program guidelines will be subjected to a competitive review and evaluation by persons outside the Administration on Aging. The results of the peer review will assist the Associate Commissioner for Education and Training in considering competing applications and making recommendations for funding to the Commissioner on Aging. The Associate Commissioner will take into account comments of the State Agency on Aging and the DHEW Regional Office of Aging. Unsuccessful applicants will be notified in writing. Successful applicants will be notified through the issuance of a Notice of Grant Awarded. This notice sets forth the amount of funds granted, the terms and conditions of the grant, the budget period for which support is given, the total grantee share expected, and the total period for which project support is intended.

Criteria for Review and Evaluation of Applications

Competing grant applications will be reviewed and evaluated using the following criteria:

1. The degree to which the applicant demonstrates an understanding of the intent of AoA's Gerontology Career Preparation Program in providing personnel to carry out priority Older Americans program responsibilities. (20 points)

2. The responsiveness of the proposed project goals and activities to the objectives of the Gerontology Career Preparation Program. (40 points)

3. Capability and qualifications of the applicant institution and key staff to carry out the proposed project. (40 points)

4. Specificity of the implementation plan and its appropriateness for achieving project objectives, including the means the applicant will employ to place graduates in career positions in the field of aging. (40 points)

5. Adequacy of the applicant's plan for attracting to the program minority students and faculty (Black, Hispanic, Asian or Pacific Islander, or Native American), and for developing appropriate course content and practicum experience concerning the special needs of minority elderly. (30 points)

6. Commitment of the applicant institution to carry out the proposed project and the degree to which similar activities are likely to be carried out beyond the period of AoA support. (20 points)

7. Appropriateness and justification of the budget presentation with respect to its reasonableness in supporting the activities proposed in the application. (20 points)

Closing Dates for Receipt of Applications

The closing date for receipt of applications under this announcement is August 13, 1979. Applications may be mailed or hand delivered. Hand delivered applications will be accepted daily (except Saturdays, Sundays and Federal holidays) from 9:00 a.m. to 5:30 p.m., through August 13, 1979. Mailed applications received after the closing date will be accepted only if they show a U.S. Postal Service postmark or a U.S. Postal Service mail receipt of no later than August 13, 1979.

(Catalog of Federal Domestic Assistance Program No: 13.637, Programs for the Aging—Training Grants)

Dated: June 5, 1979.

Robert Benedict,

Commissioner on Aging.

Approved: June 7, 1979.

Arabella Martinez,

Assistant Secretary for Human Development Services.

[FR Doc. 79-18320 Filed 6-12-79; 8:45 am]

BILLING CODE 4110-92-M

[Program Announcement No. 13637-792]

Geriatric Fellowship Program

AGENCY: Office of Human Development Services, DHEW.

SUBJECT: Announcement of the Competition for Grants for Geriatric Fellowship Projects.

SUMMARY: The Administration on Aging (AoA) announces that applications are being accepted under title IV, part A, of the Older Americans Act of 1965, as amended (42 U.S.C., sec. 3031 *et seq.*), for fellowship grants to develop medical school faculty in gerontology.

DATES: Closing date for receipt of applications is August 13, 1979.

Scope of this Program Announcement

This program announcement is one of six (6) published in this issue of the **Federal Register** for grant and/or cooperative agreement competitions under title IV, parts A and E, of the Older Americans Act. Information describing these activities and other programs of the Office of Education and Training, Administration on Aging, is contained in *AoA Education and Training Program Plans and Guidelines, FY 1979.* Guidelines for the Geriatric Fellowship Program are included in a separate section of this document.

Program Purpose

The purpose of the Geriatric Fellowship Program is to develop medical school faculty who will be trained and given experience in geriatric medicine to serve as educators and leaders in the training of current and future physicians and other health care providers.

Program Goal and Objectives

Grants will be awarded to medical schools to support three (3) year fellowships to physicians who are entering their third or fourth year of resident training in internal medicine, family practice and/or psychiatry. Fellows will complete a one (1) year residency with special geriatric focus and then serve a two (2) year faculty appointment for full time geriatric teaching and clinical responsiblities. Each grant award will support three (3) fellows whose three (3) year fellowships are scheduled to start and continue in a sequence covering the six (6) year project period. At the completion of the three (3) year fellowship, each physician will:

- Be knowledgeable about the organization and delivery of health services to older persons at the community level, and the public policy issues affecting the availability and acceptability of such services;
- Possess the appropriate knowledge and skills necessary to meet the diagnostic, therapeutic, and care management problems confronting patients in later years;
- Recognize the special physical, psychological and social needs of older

persons and design treatment accordingly;

• Have had an extensive experience in working with older persons in a variety of settings including ambulatory and institutional care (acute and chronic) as well as community based care and facilities (such as home care, day care and outreach programs); and

• Possess the necessary knowledge, skills and experience to approach, on a multidisciplinary basis, the mobilization of appropriate medical, social and related professional and program resources required to meet the short and long term needs of the older patient.

Eligible Applicants

Any institution with accredited programs of graduate medical education and residencies in internal medicine, family practice and/or psychiatry may apply for financial assistance under this announcement. Grants will not be awarded to individuals.

Available Funds

The Administration on Aging expects to make five (5) new multiple project year awards totalling $200,000 in Fiscal Year 1979. Each award will be approximately $40,000 for the first budget period of nine (9) months. Depending upon project performance of the grantee and availability of appropriations, non-competing continuation funding for the second and subsequent twelve (12) month budget periods is anticipated as follows:

	Total dollars	Average award
Fiscal year:		
1980	$275,000	$55,000
1981	450,000	90,000
1982	575,000	115,000
1983	450,000	90,000
1984	225,000	45,000

Recipient Share of the Project

Cost sharing is considered to be an important means of demonstrating an applicant's commitment to the objectives of this program. Grantee must provide at least one-half of the faculty salary of fellows in the third year of each fellowship. The grantee share may be cash or in-kind, and must be allowable under the Department's applicable regulations published in 45 CFR Part 74, Subparts G and Q (see 43 FR 34076, August 2, 1978).

Indirect Cost Limitation

Indirect costs for the conduct of training by educational institutions may not exceed eight (8) percent of allowable direct costs.

The Application Process

Availability of Forms

Application for a grant under the Geriatric Fellowship Program must be submitted on Standard Form 424, Application for Federal Assistance, and other forms provided for this purpose. Application kits and appropriate instructions are included in *AoA Education and Training Program Plans and Guidelines, FY 1979.*

Copies may be obtained by writing to: Office of Education and Training, Administration on Aging, Room 4286, DHEW North Building, 330 Independence Avenue, S.W., Washington, D.C. 20201, telephone: (202) 472-4883.

Application Submission

One (1) signed original and four (4) copies of the grant application, including all attachments, must be prepared. The original and two (2) copies must be submitted to the address indicated in the application instructions. One (1) copy is to be submitted to the appropriate State Agency on Aging and one (1) copy is to be submitted to the Director of the DHEW Regional Office of Aging. Addresses for State Agencies on Aging and DHEW Regional Offices of Aging are included in the application instructions.

A-95 Notification Process

Not applicable.

Application Consideration

The Commissioner on Aging will make the final decision on each grant application under this announcement. Applications which are complete and conform to the requirements of the program guidelines will be subjected to a competitive review and evaluation by qualified persons outside the Administration on Aging. The results of the peer review will assist the Associate Commissioner for Education and Training in considering competing applications and making recommendations for funding to the Commissioner on Aging. The Associate Commissioner will take into account comments of the State Agency on Aging and the DHEW Regional Office of Aging and priorities described under "Special Considerations for Funding." Unsuccessful applicants will be notified in writing. Successful applicants will be notified through the issuance of a Notice of Grant Awarded. This notice sets forth the amount of funds granted, the terms and conditions of the grant, the budget period for which support is given, the total grantee share expected, and the total period for which project support is intended.

Special Considerations for Funding

Special consideration will be given to applications which propose recruitment of minority (Black, Hispanic, Native American, and Asian or Pacific Islanders) candidates for fellowships under this program.

Criteria for Review and Evaluation of Applications

Competing grant applications will be reviewed and evaluated, using the following criteria:

1. The degree to which the background statement reflects the applicant's understanding of the intent of the Geriatric Fellowship Program, including, clarity of the statement, understanding of the health and related service needs of older people, and recognition of the need to address these problems along a continuum of care. (10 points)

2. The degree to which the project goals and objectives reflect the intent of the Geriatric Fellowship Program, including objectives which are realistic, relevant and obtainable. (15 points)

3 Specificity and appropriateness of the resources to be used in conducting this program, including behavioral education objectives, curriculum plan, multidisciplinary faculty, clinical resources, educational resources and the evaluation plan. (25 points)

4. Specificity of the implementation plan and its appropriateness to ensuring the accomplishment of project objectives, including plan for recruitment and selection of fellows and the arrangements within the medical specialties and health and allied health professions for achieving a multidisciplinary focus and interdisciplinary involvement. (25 points)

5. Commitment of the applicant institution to carry out proposed activities of the project and the degree to which similar activities will be continued beyond the period of AoA support. (15 points)

6. Appropriateness and justification of the budget presentation with respect to its reasonableness in supporting the activities proposed in the application. (10 points)

Closing Dates for Receipt of Applications

The closing date for receipt of applications under this announcement is August 13, 1979. Applications may be mailed or hand delivered. Hand delivered applications will be accepted

daily (except Saturdays, Sundays, and Federal holidays) from 9 a.m. to 5:30 p.m., through August 13, 1979. Mailed applications received after the closing date will be accepted only if they show a U.S. Postal Service postmark or a U.S. Postal Service mail receipt of no later than August 13, 1979.

(Catalog of Federal Domestic Assistance Program No.: 13.637, Programs for the Aging—Training Grants)

Dated: June 5, 1979.

Robert Benedict,

Commissioner on Aging.

Approved: June 7, 1979.

Arabella Martinez,

Assistant Secretary for Human Development Services.

[FR Doc. 79-18321 Filed 6-12-79; 8:45 am]

BILLING CODE: 4110-92-M

[Program Announcement No. 13637-793]

Minority Research Associate Program

AGENCY: Office of Human Development Services, DHEW.

SUBJECT: Announcement of Competition for Grant Funds for Minority Research Associate Projects.

SUMMARY: The Administration on Aging (AoA) announces that applications are being accepted under title IV, part A, of the Older Americans Act of 1965, as amended, (42 U.S.C., sec. 3031 *et seq.*) for Fiscal Year 1980 grants strengthening the interest, participation and productivity of minority research associates in the field of aging.

DATES: Closing date for receipt of applications is September 20, 1979.

Scope of This Announcement

This program announcement is one of two new special activities under title IV, part A, of the Older Americans Act, which addresses the special education and training needs of minority group individuals with careers in the field of aging. The other activity, the Minority Recruitment Program, will be supported through award of contracts under the Small Business Administration's title 8(a) Minority Business Firm Program. Five (5) other grant program announcements for education and training activities under title IV, parts A and E, are announced separately in this issue of the Federal Register. Information describing these and other programs of the Office of Education and Training, Administration on Aging, are contained in *AoA Education and Training Program Plans and Guidelines, FY 1979.* Guidelines for the Minority Research Associate Program are included in a separate section of this document.

Program Purpose

The purpose of the Minority Research Associate Program is to provide opportunities for strengthening the interest, participation and productivity of minority (Black, Hispanic, Asian and Pacific Islander or Native American) scholars in performing research in the field of aging, particularly studies related to service provision and delivery to minority elderly.

Program Goal and Objectives

The goal of the Minority Research Associate Program is to enhance participation in aging research by experienced minority social scientists whose expertise could well be used in the field of aging. By encouraging increased efforts to expand the base of knowledge concerning minority aging, the Program will contribute to advances in public policies and programs on behalf of minority elderly. This goal is to be achieved through AoA support of projects designed to accomplished all of the following:

- Effectively recruit qualified minority social scientists from private research organizations, social service agencies and post-secondary educational institutions, particularly institutions with large minority enrollments;
- Provide extensive opportunities for education and research in gerontology;
- Foster research activity focused on improvement of services or service delivery, changes in Federal programs, or new policy recommendations benefiting minority elderly; and
- Recognize and be responsive to the cultural variations and different needs of minority elderly.

Eligible Applicants

Any public or private non-profit agency or organization may apply for grant support under this announcement. Grants will not be awarded to individuals.

Available Funds

The Administration on Aging expects to award $480,000 for this program in Fiscal Year 1980. Approximately eight (8) new two-year grants will be made with awards averaging $45,000 to $75,000 each per year. In Fiscal Year 1981, subject to availability of adequate funds, AoA intends to fund an additional seven (7) Minority Research Associate projects.

Recipient Share of the Project

Cost sharing is considered to be an important means of demonstrating an applicant's commitment to the objectives of this program. Grantees are expected to provide five (5) percent of the total allowable project costs. The grantee share may be cash or in-kind, and must be allowable under the Department's applicable regulations published in 45 CFR Part 74, Subparts G and Q (see 43 FR 34076, August 2, 1978).

Indirect Cost Limitation

Indirect costs for the conduct of training by educational institutions may not exceed eight (8) percent of allowable direct costs.

The Application Process

Availability of Forms

Application for a grant under the Minority Research Associate Program must be submitted on Standard Form 424, Application for Federal Assistance, and other forms provided for this purpose. Application kits and appropriate instructions are included in *AoA Education and Training Program Plans and Guidelines, FY 1979.*

Copies may be obtained by writing to: Office of Education and Training, Administration on Aging, Room 4286, DHEW North Building, 330 Independence Avenue, SW., Washington, D.C. 20201. Telephone: (202) 472-4883.

Application Submission

One (1) signed original and four (4) copies of the grant application, including all attachments, must be prepared. The original and two (2) copies must be submitted to the address indicated in the application instructions. One (1) copy is to be submitted to the appropriate State Agency on Aging and one (1) copy is to be submitted to the Director of the DHEW Regional Office of Aging. Addresses for State Agencies on Aging and DHEW Regional Offices of Aging are included in the application instructions.

A-95 Notification Process

Not applicable.

Application Consideration

The Commissioner on Aging will make the final decision on each grant application under this announcement. Applications which are complete and conform to the requirements of the program guidelines will be subjected to a competitive review and evaluation by qualified persons outside the Administration on Aging. The results of

the peer review will assist the Associate Commissioner for Education and Training in considering competing applications and making recommendations for funding to the Commissioner on Aging. The Associate Commissioner will take into account comments of the State Agency on Aging and the DHEW Regional Office of Aging and priorities described under "Special Considerations for Funding." Unsuccessful applicants will be notified in writing. Successful applicants will be notified through the issuance of a Notice of Grant Awarded. This notice sets forth the amount of funds granted, the terms and conditions of the grant, the budget period for which support is given, the total grantee share expected, and the total period for which project support is intended.

Special Considerations for Funding

In making grant awards under this announcement, the Commissioner will take into account the merits of achieving a balanced representation of the research associates among the four minority groups (Asian and Pacific Islanders, Blacks, Hispanics, and Native Americans).

Criteria for Review and Evaluation of Applications

Competing applications will be reviewed and evaluated against the following criteria:

1. Quality of the project design, including compatibility of the project with program objectives, adequacy of the recruitment plan for attracting qualified social scientists, clarity and specificity of project objectives, and feasibility and likely effectiveness of the project design. (30 points)

2. Specificity and appropriateness of anticipated project outcomes, including enhancement of professional capabilities and career opportunities of participating minority social scientists, and the production of research results that will be useful in developing programs responsive to the needs of minority elderly. (30 points)

3. Qualifications of the applicant and the minority research associate candidate(s) with respect to the applicant's commitment to the project, and the potential of the proposed minority research associate(s) for carrying out research in social gerontology. (30 points)

4. Reasonableness and appropriateness of the proposed budget. (10 points)

Closing Dates for Receipt of Applications

The closing date for receipt of applications under this announcement is September 20, 1979. Applications may be mailed or hand delivered. Hand delivered applications will be accepted daily (except Saturdays, Sundays and Federal holidays) from 9:00 a.m. to 5:30 p.m., through September 20, 1979. Mailed applications received after the closing date will be accepted only if they show a U.S. Postal Service postmark or a U.S. Postal Service mail receipt of no later than September 20, 1979.

(Catalog of Federal Domestic Assistance Program No.: 13.637, Programs for the Aging—Training Grants)

Dated: June 5, 1979.

Robert Benedict,

Commissioner on Aging.

Approved: June 7, 1979.

Arabella Martinez,

Assistant Secretary for Human Development Services.

[FR Doc. 79-18522 Filed 6-13-79; 8:45 am]

BILLING CODE 4110-88-M

[Program Announcement No. 13638-791]

Multidisciplinary Centers of Gerontology Program: Long Term Care Gerontology Centers

AGENCY: Office of Human Development Services, DHEW.

SUBJECT: Announcement of Competition for Grants for Long Term Care Gerontology Center Projects.

SUMMARY: The Administration on Aging (AoA) announces that applications are being accepted under title IV, part E, of the Older Americans Act of 1965, as amended (42 U.S.C., sec. 3036), Multidisciplinary Centers of Gerontology Program, for grants to support development of Long Term Care Gerontology Centers.

DATES: Closing date for receipt of applications is August 27, 1979.

Scope of this Announcement

This program announcement is one of two (2) sets of activities under the Multidisciplinary Centers of Gerontology Program announced in this issue of the **Federal Register**. The other is a cooperative agreement competition for development and operation of Aging Policy Study Centers. Four (4) other grant and cooperative agreement competitions under title IV, part A (Career Training), of the Older Americans Act, are also announced in this issue. Information describing these activities and other programs of the Office of Education and Training, Administration on Aging, are contained in *AoA Education and Training Program Plans and Guidelines, FY 1979.* Guidelines for the Long Term Care Gerontology Centers are included in a separate section of this document.

Program Purpose

The purpose of the Long Term Care Gerontology Centers is to give financial assistance to institutions which engage in research and demonstration, education and training, technical assistance, and synthesis and dissemination of knowledge concerning issues, policies and programs affecting long term care of the chronically impaired elderly.

Program Goal and Objectives

The Administration on Aging has established as the goal of the Long Term Care Gerontology Centers the development of regional-level institutions which focus upon the broad issues of providing community-based service systems for chronically impaired older Americans. This goal is to be attained by support of a complex set of projects and activities in long term care of the elderly in collaboration with governmental, voluntary, and other public and private agencies and organizations serving the aged. Individual centers will be supported to pursue this goal by functioning as:

- Effective demonstrations of a full range of integrated health and social services geared specifically to the chronically impaired elderly;
- Ideal sites for training future health and social service professionals as members of multidisciplinary teams;
- Centers of excellence in continuing education for service providers who currently work, or will work, with impaired elderly;
- Research sites uniquely suited to social and health services research, especially policy-oriented research, on the delivery and effectiveness of services to the chronically impaired;
- Authoritative and resourceful providers to consumers and policy makers of up-to-date scientifically-based information concerning health maintenance and health policy issues; and
- Accessible and available providers of technical assistance to service agencies in the governmental and voluntary sectors.

The Administration on Aging intends to achieve the objectives set for the Long Term Care Gerontology Centers by supporting individual centers in two phases. In response to this program

announcement, applications will be considered for award of Phase I grants for a project period of one year. During Phase I, grantees will develop a program and secure necessary relationships with State and Area Agencies on Aging, health and social service providers and medical schools and other academic institutions not directly involved in submitting the application for Phase I support, but within the same DHEW region as the successful applicant. The culmination of Phase I support will be an application for Phase II or full-scale center operation. Phase I centers which successfully compete for Phase II support will conduct programs with the following functional components:

- Clinical services which provide a full spectrum of integrated health and social services to chronically impaired elderly;
- An educational and professional training program in the health and social sciences to develop manpower for meeting the service needs of the chronically impaired elderly;
- A research program addressing policy relevant issues in planning, organizing, administering, financing, and evaluating health and social service systems;
- Public information activities providing effective dissemination of new knowledge regarding chronic illness and impairment in the elderly with emphasis on early evaluation, intervention, techniques of self-care and maintenance of independent functioning; and
- Coordination and technical assistance activities with Area Agencies on Aging in their DHEW region and long term care projects funded under new initiatives of the Older Americans Act.

Eligible Applicants

Any university or public or private, non-profit health and social service organization may apply for financial assistance under this announcement, provided the applicant is affiliated or has a letter of agreement with a medical school to serve as a teaching facility for health and allied health professionals.

Available Funds

The Administration on Aging expects to make sixteen (16) to twenty-four (24) new one (1) year awards for Phase I Long Term Care Gerontology Centers in Fiscal Year 1979. Total funding anticipated for Phase I grants is $1.6 million. Each award is expected to range from $60,000 to $100,000 for the one (1) year project and budget year. Multiple project year awards in the form of cooperative agreements are expected under Phase II of this program. These grants will be competitively awarded in Fiscal year 1980. Each Phase II award is expected to be approximately $250,000 for the first twelve-month budget year, and $400,000 for each subsequent budget year for a total project period of three (3) years. Prior to the completion of the initial Phase II project period, the centers will be afforded the opportunity to compete for an additional two (2) years of title IV, part E, support. Phase II center projects are expected to seek support from other sources to augment funding for core functions in order to fulfill the long term expectations of this program. Sources of anticipated support include other Administration on Aging programs, and other Federal agencies with missions and interests in long term geriatric care, such as the National Institute on Aging, the Vererans Administration, and National Institute of Mental Health.

Recipient Share of the Project

Cost sharing is considered to be an important means of demonstrating an applicant's commitment to the objectives of this program. Grantees are expected to provide five (5) percent of the total allowable project costs. The grantee share may be cash or in-kind, and must be allowable under the Department's applicable regulations published in 45 CFR Part 74, subpart G and Q (see FR 34076, August 2, 1978).

Indirect Cost Limitation

Not applicable.

The Application Process

Availability of Forms

Application for a grant under the Long Term Care Gerontology Centers Program must be submitted on Standard Form 424, Application for Federal Assistance, and other forms provided for this purpose. Application kits and appropriate instructions are included in *AoA Education and Training Program Plans and Guidelines, FY 1979.* Copies may be obtained by writing to:

Office of Education and Training
Administration on Aging, Room 4266,
DHEW North Building, 330
Independence Avenue, SW.,
Washington, D.C. 20201. Telephone:
(202) 472-4683.

Application Submission

One (1) signed original and four (4) copies of the grant application, including all attachments, must be prepared. The original and two (2) copies must be submitted to the address indicated in the application instructions. One (1) copy is to be submitted to the appropriate State Agency on Aging and one (1) copy is to be submitted to the Director of the DHEW Regional Office of Aging. Addresses for State Agencies on Aging and DHEW Regional Offices of Aging are included in the application instructions.

A-95 Notification Process

Applications for Long Term Care Gerontology Centers must follow the provisions of OMB Circular A-95. Applicants for grants must, prior to the submission of an application, notify *both* the State and Areawide A-95 Clearinghouses of their interest to apply for Federal assistance for this program. Applicants should contact the appropriate State Clearinghouse (listed in 42 FR 2210, January 10, 1977), or DHEW Regional Offices of Aging for information on how they can meet the A-95 requirements. Addresses of the DHEW Regional Offices of Aging are included in the application instructions.

Application Consideration

The Commissioner on Aging will make the final decision on each grant application under this announcement. Applications which are complete and conform to the requirements of the program guidelines will be subjected to a competitive review and evaluation by qualified persons outside the Administration on Aging. The results of the peer review will assist the Associate Commissioner for Education and Training in considering competing applications and making recommendations for funding to the Commissioner on Aging. The Associate Commissioner will take into account comments of the State Agency on Aging and the DHEW Regional Office of Aging and priorities described under "Special Considerations for Funding." Unsuccessful applicants will be notified in writing. Successful applicants will be notified through the issuance of a Notice of Grant Awarded. This notice sets forth the amount of funds granted, the terms and conditions of the grant, the budget period for which support is given, the total grantee share expected, and the total period for which project support is intended.

Special Considerations for Funding

Special consideration for funding will be given to applicants that:

- Can document that a high proportion of residents in their service area are aged 75 and over, and/or reside in rural areas, and/or are members of a minority group (Blacks, Hispanics, Asians or Pacific Islanders, and Native Americans)

• Are affiliated with or have working agreements with a variety of service and care facilities for the elderly, including nursing home, day-care centers, senior centers, various health and social service programs as well as specialized housing for the elderly.

Criteria for Review and Evaluation of Applications

Competing grant applications will be reviewed and evaluated against the following criteria:

1. The degree to which the background statement reflects the applicant's understanding of the intent of the Long Term Care Gerontology Center Program. This will include consideration of clarity of the statement and understanding of need. (10 points)

2. The degree to which the project goals and objectives reflect the intent of the Long Term Care Gerontology Center Program. This will include consideration of the responsiveness to the program purposes outlined in Section 2 of the guidelines. (15 points)

3. Specificity and appropriateness of the resources to be used in approaching this project. This will include demonstrated administrative ability, appropriateness of staffing, adequacy of facilities, and past experience of the applicant and its affiliates. (25 points)

4. Specificity of the implementation plan and its appropriateness in ensuring the accomplishment of the developmental objectives. This includes consideration of the thoroughness, completeness, coherence and sophistication of the development grant proposal, including demonstrated awareness of existing models of continuum of services in the delivery of long term care to the chronically impaired (25 points)

5. Demonstrated commitment of the applicant institution to carry out the proposed project and the degree to which similar activities will be carried out beyond the period of AoA support. This includes the likelihood that the development grant, if awarded, will result in a detailed, comprehensive and realistic plan for a full scale Long Term Gerontology Center. (15 points)

6. Appropriateness and justification of the budget as to its reasonableness in supporting the activities proposed for achieving project objectives. (10 points)

Closing Dates for Receipt of Applications

The closing date for receipt of applications under this announcement is August 27, 1979. Applications may be mailed or hand delivered. Hand delivered applications will be accepted daily (except Saturdays, Sundays and Federal holidays) from 9:00 a.m. to 5:30 p.m., through August 27, 1979. Mailed applications received after the closing date will be accepted only if they show a U.S. Postal Service postmark or a U.S. Postal Service mail receipt of no later than August 27, 1979.

(Catalog of Federal Domestic Assistance Program No: 13.633, Multidisciplinary Centers of Gerontology Program)

Dated: June 5, 1979.

Robert Benedict,

Commissioner on Aging.

Approved: June 7, 1979.

Arabella Martinez,

Assistant Secretary for Human Development Services.

[FR Doc. 79-18524 Filed 6-12-79; 8:45 am]

BILLING CODE 4110-92-M

[Program Announcement No. 13630-792]

Multidisciplinary Centers of Gerontology Program: Aging Policy Study Centers

AGENCY: Office of Human Development Services, DHEW.

SUBJECT: Announcement of Competition for Cooperative Agreements for Aging Policy Study Center Projects.

SUMMARY: The Administration on Aging (AoA) announces that applications are being accepted under title IV, part E, of the Older Americans Act of 1965, as amended (42 U.S.C., sec. 3036), Multidisciplinary Centers of Gerontology Program, for cooperative agreements to support development of Aging Policy Study Centers.

DATES: Closing date for receipt of applications is September 4, 1979.

Scope of this Announcement

This program announcement is one of two (2) sets of activities under the Multidisciplinary Centers of Gerontology Program announced in this issue of the Federal Register. The other is a grant competition for development and operation of Long Term Care Gerontology Centers. Four (4) other grant and cooperative agreement competitions under title IV, part A (Career Training), of the Older Americans Act, are also announced in this issue. Information describing these activities and other programs of the Office of Education and Training, Administration on Aging, are contained in *AoA Education and Training Program Plans, and Guidelines, FY 1979.* Guidelines for the Aging Policy Study Centers are included in a separate section of this document.

Program Purpose

The Administration on Aging provides financial support under the Multidisciplinary Centers of Gerontology Program for Aging Policy Study Centers to encourage the development of organizational, personnel and other resources for the performance of activities that solve or significantly alleviate, social, economic or health related problems or conditions of impairment affecting older Americans.

Program Goal and Objectives

The Administration on Aging has established the following goals for Aging Policy Study Centers:

• The development of manpower and training resources capable of addressing major problems and issues affecting the planning, administration and delivery of services to the elderly;

• The generation and synthesis of new and existing knowledge from fields and disciplines relevant to the field of aging, and its specific application towards the development and testing of more effective policies affecting the delivery of services to the elderly;

• The development and support of organizational resources which encourage and facilitate interdisciplinary communication and work performance in a problem-focused multifunctional setting.

To achieve these goals, the Administration on Aging has established the following objectives for Aging Policy Study Centers:

• To develop consensus among various constituencies in the field of aging on the scope and nature of subject and problem-focused areas appropriate for consideration by the Aging Policy Study Centers;

• To set long-term goals for projects and activities that address problems affecting the well being of elderly citizens, including the study and assessment of policies and programs at Federal State and local levels of relevant focus;

• To develop and sustain organizational and leadership resources capable of sustaining multidisciplinary and interdisciplinary activities, including identification and support of knowledge building networks involving scholars, experts, practitioners and policy makers;

• To develop formal relationships with schools, departments and colleges in fields and disciplines relevant to

specific aging subject and problem areas for the exchange of faculty, development of educational programs and materials, and sharing of other resources.

The Administration on Aging expects that each Aging Policy Center will have a unique subject or problem area focus of national concern to the elderly. The nature and extent of this focus will affect the types of organizations and individuals who are expected to be involved in order for the center to achieve the program's goals and objectives. For this competition, the Administration on Aging has established nine (9) priority subject areas for Aging Policy Study Center projects. An applicant may select one (1) of these subject areas, or offer an alternative which it believes to be equally important under the legislative mandate of the Older Americans Act. The nine (9) priority areas are:

- Health
- Income Maintenance
- Housing and Living Arrangements
- Employment and Retirement
- Education, Leisure and Continuing Opportunities for Older Persons
- Family and Community Support Systems
- Older Women
- Aging in the Future Society
- Ethics and Values in the Aging Society

Method of Support

Support of all Aging Policy Study Center projects will be awarded in two phases using cooperative agreements. Cooperative agreements are a form of financial assistance, similar to grants, but which differ from grants in that substantial involvement is anticipated between the Administration on Aging and the recipient during performance of project activities. The level and type of involvement in Aging Policy Study Centers by AoA is specified in the application guidelines. In Phase I, centers will receive support for a fifteen (15) month budget and project period. A major activity for the first twelve (12) months will be the development of a long-range plan which addresses priority issues and concerns that emerge from discussions with relevant academic, practitioner and policy making communities. Phase I centers will also engage in activities of shorter term duration consistent with program goals and objectives. Phase II cooperative agreements will be awarded on a non-competitive basis to Phase I centers which successfully complete a formal review process for performance of the long range plan produced during Phase I. Phase II support will sustain core functions of centers and provide some assistance in performance of other project activities. Phase II centers, however, are expected to seek the support of other Administration on Aging programs such as title IV B (Research); other Federal agencies; and State, Area and other governmental agencies; and private, non-profit organizations of relevance to their unique subject area.

Eligible Applicants

Any public or private non-profit agency or organization may apply for support under this announcement.

Available Funds

The Administration on Aging expects to award $1 million for Phase I Aging Policy Study Centers in Fiscal Year 1980. It is anticipated that up to $1.25 million per year will be available for Phase II centers in Fiscal Years 1981, 1982, and 1983. A total of five (5) cooperative agreements will be awarded in December 1979 under this announcement. Each award is expected to be approximately $200,000 with a project period of fifteen (15) months. Support under Phase II cooperative agreements will be approximately $250,000 per year for a project period of thirty-eight (38) months.

Recipient Share of the Project

Cost sharing is considered to be an important means of demonstrating the applicant's commitment to the objectives of this program. Grantees are expected to provide five (5) percent of the total allowable project costs. The grantee share may be cash or in-kind, and must be allowable under the Department's applicable regulations published in 45 CFR Part 74, Subparts G and Q (see 43 FR 34076, August 2, 1978). It should be understood that applicants who hope to successfully apply for Phase II financial assistance should be able to demonstrate a willingness and ability to increase their own participation in support of this project and successfully solicit other sources of financial support related to the center's focus.

Indirect Cost Limitation

Not applicable.

The Application Process

Availability of Forms

Application for a grant under the Aging Policy Study Centers must be submitted on Standard Form 424, Application for Federal Assistance, and other forms provided for this purpose. Application kits and appropriate instructions are included in *AoA Education and Training Program Plans and Guidelines, FY 1979*. Copies may be obtained by writing to:

Office of Education and Training
Administration on Aging, Room 4266,
DHEW North Building, 330
Independence Avenue, SW.,
Washington, D.C. 20201. Telephone:
(202) 472-4683.

Application Submission

One (1) signed original and four (4) copies of the grant application, including all attachements, must be prepared. The original and two (2) copies must be submitted to the address indicated in the application instructions. One (1) copy is to be submitted to the appropriate State Agency on Aging and one (1) copy is to be submitted to the Director of the DHEW Regional Office of Aging. Addresses for State Agencies on Aging and DHEW Regional Offices of Aging are included in the application instructions.

A-95 Notification Process

Not applicable.

Application Consideration

The Commissioner on Aging will make the final decision on each application under this announcement. Applications which are complete and conform to the requirements of the program guidelines will be subjected to a competitive review and evaluation by qualified persons outside the Administration on Aging. Applications will be reviewed in three stages. During the first stage, applications will be sent to qualified experts in the field of aging, and to experts in the subject or problem area selected by the applicant. In the second stage, the results of the first stage will be considered by a review panel selected from participants in the first stage with representation by staff from other Administration on Aging programs, the Office of Human Development Services, and the Office of the Assistant Secretary for Planning and Evaluation in DHEW. The review panel will recommend leading applicants in Administration on Aging priority and applicant initiated subject areas. Review panel recommendations will be submitted to the Associate Commissioner on Aging for Education and Training. In the third, and final stage of proposal review, site visit teams consisting of AoA staff and participants from earlier stages of review, will visit each applicant recommended by the second stage review panel. The results of the peer review and the recommendations of the review panel

and the site visit team will assist the Associate Commissioner for Education and Training in considering competing applications and making recommendations for funding to the Commissioner on Aging.

The Associate Commissioner will take into account comments of the State Agencies on Aging and the DHEW Regional Offices of Aging. Unsuccessful applicants will be notified in writing. Successful applicants will be invited by letter from the Commissioner on Aging to enter into negotiations with the Administration on Aging and the Office of Human Development Services for award of a Phase I cooperative agreement. The actual award will be made through issuance of a Notice of Grant Awarded from the Office of Human Development Services. This notice sets forth the amount of funds awarded, the terms and conditions of the cooperative agreement, the budget period for which support is given, the total recipient share expected, and the total period for which project support is given.

Criteria for Review and Evaluation of Applications

Competing applications will be reviewed and evaluated against the following criteria:

1. Responsiveness of the applicant to the goals and objectives established by the Administration on Aging for Aging Policy Study Centers, including plans for integrating multidisicplinary and multi-functional activities and strategies for participation of outside interests in center planning amd performance. (40 points)

2. Adequacy of plans for performance of individual tasks, including mission development; short term knowledge building and synthesis activities; education and training program efforts; technical assistance activities; and development of knowledge and communication networks. (60 points)

3. Appropriateness and experience of key staff and consultants. (40) points)

4. Appropriateness and justification of the budget presentation with respect to its reasonableness in supporting the activities proposed in the application. (30 points)

5. Appropriateness of experience of the applicant institution and adequacy of its resources and facilities. (30) points.)

Closing Dates for Receipt of Applications

The closing date for receipt of applications under this announcement is September 4, 1979. Applications may be mailed or hand delivered. Hand delivered applications will be accepted daily (except Saturdays, Sundays and Federal holidays) from 8:00 a.m. to 5:30 p.m., through September 4, 1979. Mailed applications received after the closing date will be accepted only if they show a U.S. Postal Service postmark or a U.S. Postal Service mail receipt of no later than September 4, 1979.

(Catalog of Federal Domestic Assistance Program No.: 13.638, Multidisciplinary Centers of Gerontology Program)

Dated: June 5, 1979.

Robert Benedict,

Commissioner on Aging.

Approved: June 7, 1979.

Arabella Martinez,

Assistant Secretary for Human Development Services.

[FR Doc. 79-18639 Filed 6-12-79; 8:45 am]

BILLING CODE 4110-92-M

[Program Announcement No. 13637-794]

National Continuing Education Program

AGENCY: Office of Human Development Services, DHEW.

SUBJECT: Announcement of Competition for Grant or Cooperative Agreements for National Continuing Education projects.

SUMMARY: The Administration on Aging (AoA) announces that applications are being accepted under title IV, part A, of the Older Americans Act of 1965, as amended (42 U.S.C., sec. 3031 *et seq.*) for grant or cooperative agreements meeting the education and training needs of service personnel in the field of aging.

DATES: Closing date for receipt of applications is August 13, 1979.

Scope of this Announcement

This program announcement is one of six (6) published in this issue of the Federal Register for grant and/or cooperative agreement competitions under title IV, parts A and E, of the Older Americans Act. Information describing these activities and other programs of the Office of Education and Training, Administration on Aging, is contained in *AoA Education and Training Program Plans and Guidelines, FY 1979.* Guidelines for the National Continuing Education Program are included in a separate section of this document.

Program Purpose

The purpose of the National Continuing Education Program is to provide financial support for design, development and implementation of training activities meeting the continuing needs of public and private service practitioners and providers in the field of aging.

Program Goal and Objectives

Financial assistance under this program is awarded for projects which prepare continuing educators to design, develop and implement training programs in the field of aging. The program goal is to support projects which use a "train the trainer" approach. Projects are expected to design, develop and evaluate curricula and related activities for the conduct of workshops, institutes or courses for continuing educators. These educators and trainers will, in turn, use knowledge gained from these training programs to design, develop and conduct education and training activities within their own States, localities and regions. The ultimate beneficiaries of this program are administrators, practitioners, and providers of service to older persons in their homes and in such settings as hospitals, nursing homes, long term care facilities, day centers and hospitals, out-patient service departments, and community health and mental health centers. The program goal, and the needs of service practitioners and providers will be met by designing education and training activities meeting these content objectives:

- Identification and understanding of unique service needs of older adults;
- Familiarization and understanding of the functions and services provided to the aging service network, especially State and Area Agencies on Aging;
- Knowledge of and familiarity with the resources available to professionals who develop, implement, manage or provide staff development programs;
- Knowledge and skill development in the teaching modalities most useful for staff development activities used in training service practitioner and provider personnel; and
- Knowledge of continuing education organizations and systems.

The Administration on Aging has the following priorities for the National Continuing Education Program in Fiscal Year 1979:

- Staff development personnel in health, mental health, and long term care facilities (one award)
- Personnel in continuum of care services (two awards)
- Supervisors of home services (one award)

Design and development of curricula and activities that meet the above program objectives and priorities should consider the following strategies for dissemination and implementation:

- AoA's training and technical assistance activities in DHEW Regional Offices of Aging, and
- Placement of project materials in the public domain.

Eligible Applicants

Any public or private non-profit agency, organization or institution may apply for financial support under this announcement.

Available Funds

The Administration on Aging expects to award a maximum of four (4) new awards for this program, totaling $500,000 in Fiscal Year 1979. Each award will be approximately $100,000 to $150,000 for a budget period of twelve months. The project period may not exceed two (2) years.

Recipient Share of the Project

Cost sharing is considered to be an important means of demonstrating an applicant's commitment to the objectives of this program. Recipients are expected to provide five (5) percent of the total allowable project costs. The recipient share may be cash or in kind, and must be allowable under the Department's applicable regulations published under 45 CFR Part 74, Subparts G and Q (see 43 FR 34076, August 2, 1978).

Indirect Cost Limitation

Indirect costs for the conduct of training by educational institutions may not exceed eight (8) percent of allowable direct costs.

Types of Award

Awards will be made under this program by both grant and cooperative agreement. The cooperative agreement instrument will be used in those cases in which the Administration on Aging expects to have considerable involvement with the projects, such as jointly reviewing and approving of activities and products. The involvement shall not include identifying or directing the specific groups to be trained or specific content or curriculum to be developed. However, the Administration on Aging will jointly, with the recipient, approve on a general basis, the approach in carrying out the project.

The Application Process

Availability of Forms

Application for financial assistance under the National Continuing Education Program must be submitted on Standard Form 424, Application for Federal Assistance, and other forms provided for this purpose. Application kits and appropriate instructions are included in *AoA Education and Training Program Plans and Guidelines, FY 1979.*

Copies may be obtained by writing to: Office of Education and Training, Administration on Aging, Room 4266, DHEW North Building, 330 Independence Avenue, S.W., Washington, D.C. 20201, telephone: (202) 472-4683.

Application Submission

One (1) signed original and four (4) copies of the grant application, including all attachments, must be prepared. The original and two (2) copies must be submitted to the address indicated in the application instructions. One (1) copy is to be submitted to the appropriate State Agency on Aging and one (1) is to be submitted to the Director of the DHEW Regional Office of Aging. Adresses for State Agencies on Aging and DHEW Regional Offices of Aging are included in the application instructions.

A-95 Notification Process

Not applicable.

Application Consideration

The Commissioner on Aging will make the final decision on each grant application under this announcement. Applications which are complete and conform to the requirements of the program guidelines will be subjected to a competitive review and evaluation by qualified persons outside the Administration on Aging. The results of the peer review will assist the Associate Commissioner for Education and Training in considering competing applications and making recommendations for funding to the Commissioner on Aging. The Associate Commissioner will take into account comments of the State Agency on Aging and the DHEW Regional Office of Aging and priorities described under "Special Considerations for Funding." Unsuccessful applicants will be notified in writing. Successful applicants will be notified through the issuance of a Notice of Grant Awarded. This notice sets forth the amount of funds granted, the terms and conditions of the grant, the budget period for which support is given, the total grantee share expected, and the total period for which project support is intended.

Special Considerations for Funding

Special consideration will be given to projects which emphasize development of curricula and course content that address the needs and concerns of minority older persons (black, Hispanic, Asian and Pacific Islander, or Native American); those living in rural, isolated areas; low income; and chronically ill or impaired older persons.

Criteria for Review and Evaluation of Applications

Competing applications will be reviewed and evaluated using the following criteria:

1. The significance of the proposed project with respect to the state of the art in continuing education activities in the field of aging, including adequacy in addressing current deficiencies and factors contained in the applicant's approach that clearly indicate the extent of the contribution to be made by funding this project. (25 points)

2. The reasonableness and specificity of the applicants proposal with respect to the program objectives, including their appropriateness for measuring progress and achievement. (20 points)

3. Appropriateness and feasibility of methodology to accomplish proposed objectives, including clarity of descriptions of learning objectives, curriculum content and design, methods, materials and organization of the proposed project. (25 points)

4. Appropriateness of evaluation and dissemination plans which describe the approach to be taken to determine whether or not the project objectives are being met, and to whom and how information concerning training activities will be disseminated. (10 points)

5. The capability and qualifications of the applicant to carry out the proposed project, including experience of the organization, project staff, consultants, and training faculty. (10 points)

6. Appropriateness and justification of budget presentation. (10 points)

Closing Dates for Receipt of Applications

The closing date for receipt of applications under this announcement is August 13, 1979. Applications may be mailed or hand delivered. Hand delivered applications will be accepted daily (except Saturdays, Sundays, and Federal holidays) from 9 a.m. to 5:30 p.m., through August 13, 1979. Mailed applications received after the closing date will be accepted only if they show a U.S. Postal Service postmark or a U.S. Postal Service mail receipt of no later than August 13, 1979.

(Catalog of Federal Domestic Assistance Program No. 13.637, Programs for the Aging—Training Grants)

Dated: June 5, 1979.

Robert Benedict,

Commissioner on Aging.

Approved: June 7, 1979

Arabella Martinez,

Assistant Secretary for Human Development Services.

[FR Doc. 79-18223 Filed 6-12-79; 8:45 am]

BILLING CODE 4110-92-M

Social Security Administration

International Agreements; Agreement Between the U.S. and Italy on the Matter of Social Security; Availability of Text of Agreement

The Commissioner of Social Security gives notice that the text of an agreement coordinating the social security systems of the United States and Italy is available to interested parties. This agreement, authorized under section 233 of the Social Security Act, became effective on November 1, 1978. It permits persons who have earned sufficient periods of coverage under the social security systems of both the United Stats and Italy to become entitled to benefits on the basis of their combined (totalized) credits. Under the agreement, each country will pay its pro rata share of the benefit amount based on the proportion of total covered work that was completed in that country. In addition, the agreement eliminates dual coverage and dual taxation of the same work. for example, a United States citizen working in Italy who was covered by and paid taxes to both the United States and Italian social security systems, remains covered under the United States system, is excluded from coverage under the Italian system, and pays taxes only to the United States system.

The agreement has been published in booklet form as part of the *Treaties and Other International Acts Series* (TIAS No. 9058). This publication contains (1) the principal agreement signed on May 23, 1973; (2) an administrative protocol signed on November 22, 1977, clarifying several provisions of the principal agreement and establishing the basic procedure for implementing the principal agreement; (3) statements signed on October 21, 1977 and October 4, 1978, following meetings between representatives of the two countries; and (4) an exchange of notes signed on January 16 and 20, 1978, revising the definition of the United States basic benefit amount. Copies may be purchased for $2.50 from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Also, persons who have questions about the agreement or wish more information about its provisions may write to: Totalization, Post Office Box 17049, Baltimore, Maryland 21235.

Dated: May 24, 1979.

Stanford G. Ross,

Commissioner of Social Security.

[FR Doc. 79-18271 Filed 6-12-79; 8:45 am]

BILLING CODE 4110-07-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Disaster Assistance Administration

FDAA-586-DR; Docket No. NFD-715

Florida; Major Disaster and Related Determinations

AGENCY: Federal Disaster Assistance Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Florida (FDAA-586-DR), dated May 15, 1979, and related determinations.

DATED: May 15, 1979.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Program Support Staff, Federal Disaster Assistance Administration , Department of Housing and Urban Development, Washington, D.C. 20410 (202/634-7825).

NOTICE: Pursuant to the authority vested in the Secretary of Housing and Urban Development by the President under Executive Order 11795 of July 11, 1974, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285; and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143); notice is hereby given that, in a letter of May 15, 1979, to the Secretary, the President declared a major disaster as follows:

I have determined that the damage in certain areas of the State of Florida resulting from severe storms, tornadoes and flooding, beginning on or about May 8, 1979, is of sufficient severity and magnitude to warrant a major-disaster declaration under Public Law 93-288. I therefore declare that such a major disaster exists in the State of florida.

Notice is hereby given that pursuant to the authority vested in the Secretary of Housing and Urban Development under Executive Order 11795, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-284, I hereby appoint Mr. Norman Steinlauf of the Federal Disaster Assistance Administration to act as the Federal Coordinating Officer for this declared major disaster.

I do hereby determine the following areas of the State of Florida to have been affected adversely by this declared major disaster.

The following Counties for Individual Assistance only: Hillsborough, Pinellas, Polk, Volusia.

(Catalog of Federal Domestic Asst. No. 14.701, Disaster Assistance)

[FR Doc. 79-18260 Filed 6-12-79; 8:45 am]

BILLING CODE 4210-23-M

FDAA-577-DR; [Docket No. NFD-713]

Mississippi; Amendment to Notice of Major Disaster Declaration

AGENCY: Federal Disaster Assistance Administration.

ACTION: Notice.

SUMMARY: This Notice amends the Notice of a major disaster for the State of Mississippi (FDAA-577-DR), dated April 16, 1979.

DATED: May 23, 1979.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Program Support Staff, Federal Disaster Assistance Administration, Department of Housing and Urban Development, Washington, D.C. 20410 (202/634-7825).

NOTICE: This Notice of major disaster for the State of Mississippi dated April 16, 1979, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 16, 1979.

For Individual Assistance and Public Assistance: Tallahatchie County.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

[FR Doc. 79-18344 Filed 6-12-79; 8:45 am]

BILLING CODE 4210-23-M

[FDAA-581-DR; Docket No. NFD-714]

North Dakota; Amendment to Notice of Major Disaster Declaration

AGENCY: Federal Disaster Assistance Administration.

ACTION: Notice.

SUMMARY: This Notice amends the Notice of a major disaster for the State of North Dakota (FDAA-581-DR), dated April 26, 1979.

DATED: May 24, 1979.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Program Support Staff, Federal Disaster Assistance Administration, Department of Housing and Urban Development, Washington, D.C. 20410 (202/634–7825).

NOTICE: This Notice of a major disaster for the State of North Dakota dated April 26, 1979, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 26, 1979.

McKenzie County
Sheridan County.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

William H. Wilcox,

Administrator, Federal Disaster Assistance Administration.

[FR Doc. 79-18345 Filed 6-12-79; 8:45 am]

BILLING CODE 4210-22-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Advance Notice of Intent to Call for Expressions of Interest in Coal Leasing

AGENCY: Bureau of Land Management, Interior.

ACTION: Advance Notice of Intent to Call for Expressions of Interest in Coal Leasing.

SUMMARY: On June 4, 1979, the Secretary of the Interior announced the approval of a Federal coal management program. The Department will issue regulations that reflect the Secretary's decision. Supplements to selected management framework plans (MFP) (discussed in 43 FR 57662–57670, 44 FR 21380, and 44 FR 2887) will now be completed in final form, in accordance with the final criteria for assessing lands unsuitable for coal leasing chosen by the Secretary.

The purpose of this advance notice is to give parties who may wish to submit expressions of interest in coal leasing an opportunity to get on mailing lists for information that will help them prepare formal expressions of interest in coal leasing in the areas identified as acceptable for further consideration.

DATES: By July 10, 1979, at the latest, the Department of the Interior will publish, in the **Federal Register**, and in at least one newspaper of general circulation in each affected State, a call for expressions of interest in coal leasing within areas identified as acceptable for further consideration for coal leasing in the final Hanna (Wyoming), Overland (Wyoming), and Williams Fork (Colorado) MFP supplements. Expressions of interest under this call may be submitted until August 24, 1979.

A call for expressions of interest for areas acceptable for further consideration for coal leasing within the area covered by the Northern Alabama land use analysis, and the San Rafael and Wattis MFP areas of Utah, will be published in early August 1979. Expressions of interest for these areas will be received for sixty days thereafter.

ADDRESS: Requests for specific information and maps of areas acceptable for further consideration for coal leasing may be submitted, in advance of formal publication of calls for expressions of interest, to the following State Directors:

Dale Andrus, State Director Colorado, Room 700 Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80202. Telephone (303) 837–4325.

Lowell J. Udy, Director, Eastern States, 7981 Eastern Avenue, Silver Spring, Maryland 20910. Telephone (301) 427–7500.

Paul L. Howard, State Director Utah, University Club Building, 136 South Temple, Salt Lake City, Utah 84111. Telephone (801) 524–5311.

Daniel P. Baker, State Director Wyoming, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82001. Telephone (307) 778–2220

FOR FURTHER INFORMATION CONTACT: Robert Moore, Director, Office of Coal Management (202) 343–4636.

SUPPLEMENTARY INFORMATION: In order to speed the exchange of necessary information between the Bureau of Land Management and parties interested in leasing coal, the Department of the Interior is inviting interested parties to submit, in writing, prior to formal calls for expressions of interest, requests for maps and other detailed information on areas found acceptable for further consideration for coal leasing in the final MFP supplements. Such requests may be submitted to the BLM State Directors in the affected States, where they will be kept on file until the formal calls for expressions of interest in coal leasing are published. At those times, maps and other pertinent information needed by parties who wish to submit expressions of interest will automatically be sent to those persons who have filed such requests. Failure to submit an advance request will not preclude the acceptance of any expression of interest received by the BLM within the specified period of time.

This invitation facilitates the timely receipt of relevant information by interested parties. Requests for information should indicate the *general* geographical area(s) for which interested parties anticipate submitting expressions of interest, and the name and address of interested parties. The first two calls for expressions of interest will be limited to areas acceptable for further consideration for coal leasing within the area covered by the Northern Alabama land use analysis and the following MFP areas: Williams Fork (Colorado), San Rafael (Utah), Wattis (Utah), Overland (Wyoming), and Hanna (Wyoming).

June 8, 1979.

Arnold E. Petty,

Acting Associate Director, Bureau of Land Management.

[FR Doc. 79-18421 Filed 6-12-79; 8:45 am]

BILLING CODE 4310-84-M

[AA-6962-A through AA-6962-B]

Alaska Native Claims Selection

On May 6 and December 12, 1974, Kake Tribal Corporation, for the Native village of Kake, filed selection applications AA–6962–A and AA–6962–B, respectively, under the provisions of Sec. 16(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 706; 43 U.S.C. 1601, 1615(b) (1976)) (ANCSA), for the surface estate of certain lands in the vicinity of Kake, Alaska.

As to the lands described below, the applications, as amended, are properly filed and meet the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 16(b) of ANCSA, aggregating 21,712.89 acres, is considered proper for acquisition by Kake Tribal Corporation and is hereby approved for convenance pursuant to Sec. 14(b) of ANCSA.

Lot 2 of U.S. Survey 3852, Alaska, townsite elimination from Tongass National Forest, situate at Kake, Alaska.

Containing 2.23 acres.

Copper River Meridian, Alaska (Surveyed)

T. 55 S., R. 72 E.
Sec. 14, Lot 1;
Sec. 22, Lots 1, 2, and 3;
Sec. 23, Lots 1 to 5, inclusive, NE¼SE¼, S½S½;
Sec. 26;
Sec. 27, Lots 1 to 9, inclusive, SE¼NE¼, S½SW¼, SE¼;
Sec. 29, Lots 1 to 5, inclusive, S½SE¼;

Sec. 31, Lots 1 to 9, inclusive, E½SE¼;
Sec. 32, Lot 1, NE¼, E½NW¼, SW¼NW¼, S½;
Secs. 33, 34, and 35.
Containing 4,424.25 acres.

T. 56 S., R. 72 E.
Secs. 1 to 5, inclusive;
Sec. 6, Lots 1 to 6, inclusive, NE¼NE¼;
Sec. 7, Lots 1 to 8, inclusive, E½SE¼;
Secs. 8 to 16, inclusive;
Sec. 17, Lot 1, N½, N½SW¼, SE¼SW¼, SE¼;
Sec. 18, Lots 1 to 8, inclusive, E½NE¼, NW¼NE¼, NE¼NW¼;
Sec. 20, Lots 1 to 5, inclusive, N½NE¼, SE¼NE¼, NE¼NW¼;
Sec. 21, Lots 1 and 2, N½, NE¼SW¼, SE¼;
Secs. 22 to 26, inclusive;
Sec. 27, Lot 1, N½, E½SW¼, NW¼SW¼, SE¼;
Sec. 28, Lots 1 to 4, inclusive, NE¼NE¼;
Sec. 32, Lots 1 and 2;
Sec. 33, Lots 1 and 2;
Sec. 34, Lots 1 to 4, inclusive, NE¼NE¼;
Sec. 35, Lots 1 to 9, inclusive, N½;
Sec. 36, Lots 1 to 12, inclusive, N½.
Containing 16,654.61 acres.

T. 56 S., R. 73 E.
Sec. 6, Lots 1 to 4, inclusive, E½, E½W½.
Containing 631.80 acres.
Aggregating 21,712.80 acres.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(f) (1976));

2. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616(b) (1976)), the following public easement, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in case file AA–6982–EE, is reserved to the United States. All easements are subject to applicable Federal, State, or municipal corporation regulation. The following is a listing of uses allowed for this type of easement. Any uses which are not specifically listed are prohibited.

25 Foot Trail—The uses allowed on a twenty-five (25) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 Gross Vehicle Weight (GVW)).

(EIN 6 E) An easement for a proposed access trail twenty-five (25) feet in width from Sec. 27, T. 55 S., R. 72 E., Copper River Meridian, westerly to isolated public lands in Sec. 28, T. 55 S., R. 72 E., Copper River Meridian. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

The grant of the above-described lands shall be subject to:

1. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g) (1976))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688,708; 43 U.S.C. 1601, 1616(b)(1976)), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law.

2. The following third-party interests, if valid, created and identified by the U.S. Forest Service, as provided by Sec. 14(g) of ANCSA:

a. A special use permit issued September 9, 1942, to the Town of Kake for watershed purposes covering sixty (60) acres in Sec. 35, T. 56 S., R. 72 E., Copper River Meridian.

b. A special use permit issued June 15, 1970, to the City of Kake for an existing cat road ten (10) feet wide and 3,600 feet long extending from the National Forest boundary to a staging area below the Gunnuk Creek dam, covering 0.68 miles in Sec. 35, T. 56 S., R. 72 E., Copper River Meridian.

c. A special use permit issued June 15, 1970, to the City of Kake for a water transmission line from permittee's dam located on Gunnuk Creek Kupreanof Island, in a southerly direction to the National Forest boundary, and also included are a staging area adjacent to the dam site and a site for a water tank and chlorinator covering 3.3 acres and 3,235 linear feet of pipeline, a 100,000 gallon redwood water tank and a 12 x 16 ft. chlorinator surrounded by a fence, in Sec. 35, T. 56 S., R. 72 E., Copper River Meridian.

3. Requirements of Sec. 22(k) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 715; 43 U.S.C. 1601, 1621(k) (1976)), that, until December 18, 1983, the portion of the above-described lands located within the boundaries of a national forest shall be managed under the principles of sustained yield and under management practices for protection and enhancement of environmental quality no less stringent than such management practices on adjacent national forest lands;

4. Requirements of Sec. 14(c) of the Alaska native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 703; 43 U.S.C. 1601, 1613(c) (1976)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section, except as provided by the Act of October 20, 1978 (P.L. 95–487, 92 Stat. 1635);

5. A right-of-way, 20 feet in width, AA–5851, for water pipeline purposes, granted to the City of Kake pursuant to the Act of February 15, 1901 (31 Stat. 790, 43 U.S.C. 959), as to lot 2 of U.S. Survey 3852.

6. Power project 2432, if valid, and the right of the permittee or licensee, if any, to enter upon, occupy and use any or all of the lands within the project in Secs. 34, 35 and 36, T. 56 S., R. 72 E., Copper River Meridian, subject to the conditions and limitations of any permit or license issued under the Federal Water Power Act of June 10, 1920, 41 Stat. 1075, as amended (16 U.S.C. 818).

Kake Tribal Corporation is entitled to conveyance of 23,040 acres of land selected pursuant to Sec. 16(b) of ANCSA. Together with the lands herein approved, the total acreage conveyed or approved for conveyance is 21,712.80 acres. The remaining entitlement of approximately 1,327.11 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of NACSA, conveyance of the subsurface estate of the lands described above shall be granted to Sealaska Corporation when conveyance is granted to Kake Tribal Corporation for the surface estate, and shall be subject to the same conditions as the surface conveyance.

There are no inland water bodies considered to be navigable within the above described lands.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the Federal Register and once a week, for four (4) consecutive weeks, in the Southeast Alaska Empire (Juneau). Any party claiming a property interest in lands affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510 with a copy served upon both the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501, also:

1. Any party receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to

sign the return receipt shall have until July 13, 1979 to file an appeal.

3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

Kake Tribal Corporation, P.O. Box 263, Kake, Alaska 99830.
Sealaska Corporation, One Sealaska Plaza, Suite 400, Juneau, Alaska 99801.

Sue Wolf,
Chief, Branch of Adjudication.

[FR Doc. 79-18301 Filed 6-12-79; 8:45 am]
BILLING CODE 4310-84-M

[M 40645]

Montana; Proposed Withdrawal of Lands

June 4, 1979.

On May 18, 1979, the Deputy Assistant Secretary, Land and Water Resources, granted the Bureau of Land Management permission to file an application, Serial No. M 40645, for the withdrawal of the following described lands from location and entry under the general mining laws, 30 U.S.C., Chapter 2, subject to valid exisiting rights:

Principal Meridian, Montana.

T. 8 S., R. 11 W.,
Sec. 5, Lot 8;
Sec. 6, Lots 6, 7, 8, 9, and 11;
Sec. 7, Lots 1, 2, 3, E½ Lot 4, 6, 7, 8, E½ Lot 10, and NE¼NW¼SE¼; and
Sec. 8, Lot 5.

The area described contains 305 acres of public lands in Beaverhead County, Montana.

The applicant desires the withdrawal to protect the lands in the Bannack Historic District to insure the integrity of the District until the Bureau's planning efforts are completed.

On or before July 15, 1979, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976, notice is hereby given that an opportunity for a public hearing in connection with the withdrawal is afforded. All interested persons who desire to be heard on the proposed withdrawal must submit a written request for a hearing to the State Director, Bureau of Land Management, at the address shown below by July 15, 1979. Upon determination by the State Director that a public hearing will be held, the time and place will be announced.

The Department of the Interior's regulations provide that the authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demands for the lands and their resources. He will also review the application to insure that the area to be withdrawn is the minimum essential to meet the desired needs and to provide for the maximum utilization of the lands.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn as requested. The determination of the Secretary on the application will be published in the Federal Register. A separate notice will be sent to each interested party of the record.

For a period of 2 years from the date of publication of this notice in the Federal Register, the lands will be segregated from location and entry as specified above unless the application is rejected or the withdrawal is approved prior to that date.

All communications in connection with this withdrawal should be addressed to the Bureau of Land Management, Department of the Interior, Montana State Office, P.O. Box 30157, Billings, Montana 59107.

Roland F. Lee,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-18370 Filed 6-12-79; 8:45 am]
BILLING CODE 4310-84-M

Bureau of Land Management [U-910] 4310-84 Utah, Initial Wilderness Inventory; Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public meeting will be held to receive comments concerning the Utah BLM State Director's proposals on the initial wilderness inventory of BLM-managed public lands in Utah. A 90-day public comment period began April 4, 1979 and ends July 2, 1979. Notice concerning these proposals was published in the Federal Register March 22, 1979.

Public Meeting—Salt Lake City, June 21, Suite D, Salt Palace, 2 p.m. and 7 p.m.

Written and oral comments will be accepted at the meeting. People wishing to make oral comments at the meeting should contact the BLM state office (801-524-4227) by June 20. Those who cannot attend the meeting may address written comments before July 2 to the State Director, Attention—Wilderness, Bureau of Land Management, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111.

Dated: June 5, 1979.

Gary F. George,
Acting State Director.

[FR Doc. 79-18292 Filed 6-12-79; 8:45 am]
BILLING CODE 4310-84-M

Fish and Wildlife Service

Endangered Species Environmental Impact Statement; Scoping Meeting

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that a meeting of all affected agencies and interested individuals will be held to help determine and refine the scope of an environmental impact statement for the Endangered Species Program.

Due to coincidence with issuance of the proposed and final new NEPA regulations, drafting of the EIS has reached an advanced stage without a scoping meeting. To comply with the new NEPA regulations which become effective July 30, 1979, and to provide the guidance and perspective of a broad range of affected groups, the Service invites the participation of all individuals who can provide constructive criticism and suggestions.

DATES: Tuesday, Wednesday, and Thursday, July 17, 18, and 19, 1979, at 9:00 a.m. (The scoping meeting will be shortened as progress warrants).

ADDRESS: Room 7000 A and B, Main Interior Building, 19th & C Streets, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Harold J. O'Connor, Associate Director for Federal Assistance, United States

Department of the Interior, Fish and Wildlife Service, (202) 343–4646.

SUPPLEMENTARY INFORMATION: For the purposes of this impact statement, the action or source of the impacts is the current Endangered Species Program or proposed alternative. The need of or purpose for the action is the perpetuation of species diversity as it serves the interest and welfare of mankind. Among the alternatives to the current program proposed to meet the stated need are (1) a no action or no program alternative (prescribed by the NEPA regulations) and (2) repeal of Section 7 (Interagency Cooperation). Positive effects of the program are predominately ecological. Negative impacts of the action are primarily economic. These effects will fall directly on plants and animals threatened with extinction which are the intended beneficiaries of the action and indirectly on the elements of human society which reap economic, social, and aesthetic benefits.

Impacts also fall on (1) the various trade environments which exploit wild plants and animals, (2) on recreational activities in which plants and animals may be collected, (3) on plant and animal control measures in which target species may become the endangered species or (4) resource development programs which affect plant and animal habitat.

All who wish to attend this meeting are asked to advise Mr. O'Connor at the address or phone number above by July 10, 1979.

This notice of review was prepared by Clifford E. Ruhr, Office of Endangered Species (703/235–1726).

Dated: June 7, 1979.

Lynn A. Greenwalt,

Director, Fish and Wildlife Service.

[FR Doc. 79-18353 Filed 6-12-79; 8:45 am]

BILLING CODE 4310-55-M

Geological Survey

Outer Continental Shelf (OCS) Order No. 5, Failure and Inventory Reporting System Requirements

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Solicitation of comments on the content of the U.S. Geological Survey failure reports.

SUMMARY: By Notice in the Federal Register, May 17, 1979, Vol. 44, No. 97, the Geological Survey announced the solicitation of comments on the content of the Failure and Inventory Reporting System reports generated by the U.S. Geological Survey.

This Federal Register Notice failed to specify a commenting period. Therefore, the first paragraph of the stated Notice is amended by adding the following: "The comment period is 45 days. All comments received by July 1, 1979, will be considered."

Our original intent was to allow 30 days for the commenting period. Because of our omission in stating this in the Notice of May 17, 1979, we are extending the commenting period to 45 days to alleviate any inconvenience incurred.

DATES: Comments must be received on or before July 1, 1979.

ADDRESSES: Send comments to: U.S. Geological Survey, National Center, Mail Stop 620, Reston, Virginia 22092.

FOR FURTHER INFORMATION CONTACT: Mr. Richard B. Krahl, U.S. Geological Survey, National Center, Mail Stop 620, Reston, Virginia 22092, (703) 860–7531.

Dated: June 5, 1979.

Henry W. Coulter,

Acting Director.

[FR Doc. 79-18420 Filed 6-12-79; 8:45 am]

BILLING CODE 4310-31-M

INTERNATIONAL COMMUNICATION AGENCY

National Environmental Policy Act; Agency Implementing Procedures

June 8, 1979.

AGENCY: International Communication Agency.

ACTION: Proposed Agency internal implementing procedures.

SUMMARY: USICA proposes to adopt internal procedures to implement the National Environmental Policy Act (NEPA) in accordance with the regulations of the Council on Environmental Quality (CEQ) 43 FR 55978, November 29, 1978.

DATE: Comments or suggestions should be submitted in writing on or before July 10, 1979.

ADDRESS: Comments should be addressed to Mr. R. Wallace Stuart, Assistant General Counsel, Office of the General Counsel, International Communication Agency, Washington, D.C. 20547

Pursuant to the provisions of the National Environmental Policy Act of 1969 (Pub. L. 91–190), as amended, the International Communication Agency has revised its internal procedures to implement the provisions therein for environmental review of major agency actions. These implementing procedures are for intra-agency uses and will not therefore be codifed to the Code of Federal Regulations. The implementing procedures follow:

II MOA, Sec. 2000 *et seq.*

2000 Environmental Review of Agency Actions

2000.1 *Background*

(a) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA) establishes national policies and goals for the protection of the environment. Section 102(2) of the NEPA contains certain procedural requirements directed toward the attainment of such goals. In particular, all Federal agencies are required to give appropriate consideration to the environmental effects of their proposed actions in their decisionmaking and to prepare detailed environmental statements on recommendations or reports on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

(b) Executive Order 11991 of May 24, 1977, directed the Council on Environmental Quality (CEQ) to issue regulations to implement the procedural provisions of NEPA. Accordingly, CEQ issued final NEPA regulations (40 CFR Part 1500–1508) on November 29, 1978, which are binding on all Federal agencies as of July 30, 1979. These regulations provide that each Federal agency shall, as necessary, adopt implementing procedures to supplement the regulation. Section 1507.3(b) of the NEPA regulations identifies those sections of the regulations which must be addressed in agency procedures.

2000.2 *Purpose*

This section establishes guidelines and procedures pursuant to the National Environmental Policy Act of 1969 (P.L. 91–190), as amended (NEPA), and regulations promulgated by the Council on Environmental Quality (CEQ), 43 F.R. 55978–56007, November 29, 1978 (40 CFR Parts 1500–1508). The CEQ regulations (40 CFR 1500) are the basic regulations to be followed in all phases of the Agency's NEPA process with respect to decisions concerning proposed Agency projects.

2000.3 *Coverage*

These regulations apply to all major domestic activities of the Agency which may have a significant impact upon the quality of the human environment. These implementing procedures are effective July 30, 1979. For guidance

concerning the consideration of environmental effects of Agency program activities abroad, see Executive Order 12114, January 4, 1979, "Environmental Effects Abroad of Major Federal Action" and Agency Implementing Procedures issued pursuant thereto.

2001 General

The Associate Director for Management, or his designee (MGT), is the responsible officer for assuring compliance with NEPA and the NEPA regulations (40 CFR 1500 *et seq.*). MGT Must be advised by the responsible Agency element, as early in the decisionmaking process as practicable, of any major Agency proposal which may significantly affect the environment, or whose effects on the human environment may be controversial in nature. The Office of the General Counsel (GC) shall advise MGT with respect to, and shall review action, decisions, and documentation required by, the NEPA process.

2002 Applications From private Applicants or Other Non-Federal Entities Which May Involve the Agency.

The International Communication Agency performs no functions which involve the issuance of licenses or permits to applicants from the private sector; therefore, implementing procedures related to those functions as required by 40 CFR § 1507.3(b) are unnecessary.

2003 Responsibilities

a. *Associate Director for Management.*—1. The Associate Director for Management (MGT) is the Agency officer responsible for compliance with NEPA, NEPA Regulations, and these Agency implementing procedures, for Agency activities or projects which may be affected by the NEPA process.

2. The Associate Director for Management may delegate his authority with respect to the Agency's NEPA process.

3. The Associate Director for Management may, as appropriate, require Agency officers and employees to assist in the carrying out of his NEPA process responsibilities.

b. *General Counsel.*—The General Counsel (GC) shall provide necessary advice, assistance, review, and consultation to the Associate Director for Management, or his designee, in implementing the Agency's NEPA process with respect to a proposed project.

2004 Agency Procedures to Determine Whether To Prepare an Environmental Assessment or an Environmental Impact Statement

Few, if any, of the Agency's activites, with the exception of construction or similar activities at domestic VOA relay or transmitter stations, will have any effect on the quality of the human environment. Normally only large scale construction may be expected to involve the NEPA process. The following guidance is provided, however, for those activities which could require environmental review:

a. *Initial determination of need for an environmental assessment.*—In accordance with 40 CFR 1501.3, the Agency element head having responsibility for a proposed Agency project or activity (or private project or activity in which the Agency may have a signficant involvement) which may reasonably be foreseen to have an impact on the quality of the human environment shall, prior to the commitment of significant Agency resources, consult with MGT concerning the need for the preparation of an environmental assessment.

b. *Initial determination of need for an environmental impact statement.*—The Associate Director for Management, or his designee, with respect to any signficant Agency action which may affect the domestic human environment, shall, as early in the decisionmaking process as practicable and with the advice and assistance of GC, determine whether the action is one with respect to which an evnironmental impact statement normally is, or is not, prepared, referring to Section 2005.

2005 Typical Classes of Action for Similar Treatment Under NEPA

Section 1507.3(b)(2) of the regulations requires agencies to establish three typical classes of action for similar treatment under NEPA. These classes of action and specific criteria therefor are set forth in 2005.1, 2005.2, and 2005.3.

2005.1 *Actions Normally Requiring Environmental Impact Statements*

(1) *Agency Actions Which Normally Require An Environmental Impact Statement To Be Prepared.*—a. Construction of signficant proportion, *e.g.*, an entire transmitting or relay station or major subcomponent thereof which requires the acquisition of new real estate, and which has a signficant impact on the environment.

b. Significant use of herbicides or pesticides which has a significant impact on the environment.

c. Major clearing of forrested or wetlands area to accommodate construction which has a signficant impact on the environment.

d. Agency acquisition or disposal of real property by lease, assignment, purchase, or otherwise which has a significant impact on the environment.

e. Major diversion or other interference with natural water courses which has a significant impact on the environment.

f. Major use of any chemical agent which has a significant impact on the environment.

g. Installation of large scale diesel-powered electric generators which has a significant impact on the environment.

(2) *Specific Criteria For Determining Other Classes Of Agency Action Which Normally Do Require Environmental Impact Statements.*—a. Any major activity which will directly affect or alter any part of the environment (including animal and plant life, air, water, land usage, noise levels, or aesthetics) to a significant degree (whether beneficially or adversely).

b. Any major Agency action which may reasonably be foreseen to affect or alter indirectly the physical environment or any aspect thereof, significantly.

c. Issuance of a policy or regulation which may reasonably be foreseen to have a direct or indirect significant effect (in the carrying out thereof) on the human environment (other than purely economic or socioeconomic).

2005.2 *Actions Normally Requiring Environmental Assessment But Not Necessarily Environmental Impact Statements*

(1) *Specific Criteria For Identifying Typical Classes Of Agency Action Which Normally Require An Environmental Assessment But Not Necessarily Environmental Impact Statements.*—The following criteria are to be used by MGT as a guide in making the initial determination whether an environmental assessment is needed:

(i) Activities, such as construction, clearing of forested or wetlands areas, use of herbicides or pesticides, which entail only a moderate degree of Agency resource involvement or affect a relatively limited site, but as to which a direct, significant environmental effect may reasonably be foreseen.

(ii) Installation of electrical transmission lines of a significant physical size, including supporting structures, if accompanied by reasonably foreseeable environmental effects.

(iii) Proposed Agency projects or activities which, although environmental

impact is only remotely probable, are or may be the object of controversy or criticism by special interest groups.

(iv) Major projects or activities with respect to which the environmental effects are virtually unknown, but which could reasonably be suspected of being significant in some respect.

(2) With respect to any proposed projects or activities for which the Agency determines at the outset to prepare an environmental impact statement, no environmental assessment is required.

(3) Major proposals or activities which may significantly affect the quality of the domestic human environment, and which are not covered by § 2005.1 or § 2005.3 or which may be controversial, normally shall have an environmental assessment prepared. Such an assessment will be the basis for a "no significant impact" finding or a decision to prepare an environmental impact statement.

2005.3 *Actions Normally Not Requiring Environmental Assessment or Environmental Impact Statements (Categorical Exclusions)*

(1) Communication between the Agency and private individuals, Government or non-Governmental entities, or other firms or persons in connection with the implementation or planning of Agency programs, domestically or abroad. This class of activity is categorically excluded because it involves primarily interpersonal contact, oral or written, in implementation of plans for conducting programs abroad, exchanges or activities such as exhibits, participation in exhibitions, English teaching, magazine or other periodical distribution or production, and Voice of America operations overseas. Such contact has no significant impact upon the quality of the domestic human environment.

(2) Domestic planning and implementation (including acquisition or procurement) of the following types of specific Agency (overseas) programs:

a. Voice of America operations (broadcasting, operation of transmitter and relay stations, but excluding domestic construction);

b. participation in international fairs, exhibits and expositions;

c. Fulbright exchange programs (educational and cultural) and agency relations with grantees (students, professors, etc.) or such contract firms as assist in the selection, payment and placement of individuals under these programs;

d. English teaching program;

e. film and VTR production, acquisition, and distribution;

f. magazine (or other periodical) production or distribution;

g. cooperation with binational centers (including the making of grants);

h. operations of USICA centers or libraries;

i. international visitors program;

j. international speakers program; and

k. operation of the Wireless File.

The above class of activities is categorically excluded because the planning and implementation of those activities as carried out by USICA involve no significant impact on the quality of the domestic human environment. Such activities consist generally of contracting for exhibits, agency operation of printing facilities, shipment overseas from agency warehouses, program planning and carrying out studio work in connection with Voice of America broadcasts.

The exchange programs involve selection of scholars and cultural exchange materials to implement educational and cultural exchange programs with other countries and may require planning for travel of individuals in those programs. Other activities in connection with the overseas Agency programs include staffing functions at the Agency's offices in Washington. None of the above activities have significant impact on the quality of the human environment, and they are therefore categorically excluded from the need for an environmental review.

(3) Agency operation and maintenance of existing facilities (domestic) at current levels. Such current levels of operation and maintenance of existing facilities without significant change in degree or function do not have a significant impact on the quality of the human environment.

(4) Relocation, or actions forcing the relocation, of personnel and equipment. Such relocations do not constitute a major federal action affecting the quality of the human environment. Moreover, the effect of such relocation on the sending and receiving areas would be one of economic or socioeconomic impact, not warranting the preparation of an environmental impact statement or other review.

(5) Disposal of surplus personal property. This class of activity contemplates the sale or disposal of items of office furniture and equipment, household furniture, radio station equipment and material. Such activities do not significantly affect the quality of the environment.

(6) New and replacement construction on existing installations or locations when new real estate is not required, existing transportation and utilities are not appreciably affected, no significant change in the overall appearance of the installation occurs when viewed from outside the property boundary, and no appreciable increase in noise or air pollution occurs.

(7) MGT shall determine whether an EIS or an environmental assessment is required where:

(i) a proposal for Agency action is not covered by one of the typical classes of action above; or

(ii) for actions which are covered, the presence of extraordinary circumstances indicates that some other level of environmental review may be appropriate.

2006 Agency Decisionmaking Procedures—Environmental Review.

2006.1 *General*

The Agency NEPA process (environmental review, etc.) applies to any proposed major Agency action (including substantial involvement in proposed projects or activities submitted for consideration by private firms or persons or other non-U.S. Governmental entities) which is likely to have a substantial effect on the (domestic) human environment.

For USICA, few, if any, programs or program related activities will have any effect on the quality of the domestic environment. By statute, virtually all Agency programs which could conceivably affect the environment are to be carried out abroad. Such programs are contained within the boundaries of the individual countries in which the Agency conducts its activities with the exception of international radio broadcasts, which do not affect the environment. Normally, only construction or certain activities at domestic VOA relay or transmitter stations may be expected to trigger the Agency's NEPA process.

2006.2 *Procedures*

a. Any Agency officer (project officer) who proposes a major Agency action or project, or who receives a proposal which may substantially involve the Agency in a major private activity or project, shall consider whether the project is likely to have a significant effect (beneficial or adverse) on the quality of the human environment. If the determination is affirmative or questionable, the project officer shall promptly so advise the Associate Director for Management. In making the

initial informal determination above, the project officer may consult with the Office of the General Counsel if there is any reasonable question as to the potential environmental effect of a proposed project. In all cases involving new construction or other significant direct modification of the environment (including animal or plant life, air, water, aesthetics, land or utility usage, or noise level) the project officer shall notify MGT that the project is under consideration and of the nature of any foreseeable environmental effect.

b. The Associate Director for Management, or his designee, with the advice and assistance of GC, shall insure that the Agency's NEPA process is initiated at the earliest practicable time before a final decision is made to recommend the proposed project or activity in question to the Director, USICA, for final approval to carry out the project or activity. Normally, in the case of a major Federal action involving construction within the United States or its territories, the NEPA process should be initiated contemporaneously with a feasibility or similar study, made prior to the commitment of significant Federal resources, but in any event the NEPA process should begin at such time that any alternative proposals resulting from an environmental review may be effectively considered by Agency decisionmakers.

c. *Environmental materials available to decisionmakers.*—(1) The NEPA procedure is designed to provide agency decisionmakers with the analyses resulting from environmental review at a time when such analyses will be most valuable and useful to them in deciding upon proposals for Agency activities and projects. With respect to those activities which require environmental review, an environmental assessment shall have been prepared and made available to the responsible Area Director or Associate Director for consideration as a part of the decision whether such officer should recommend approval of a proposed project or activity to the Director, USICA. In the event that the Associate Director or Area Director is the final deciding officer regarding implementation of a proposed project, that officer shall consider the entire administrative record concerning environmental matters (including the final environmental impact statement (if any) and any necessary supplements) in reaching a decision.

(2) With respect to those proposed projects or activities submitted to the Director, USICA, for approval for implementation, an environmental assessment or, if appropriate, a final and a supplemental environmental impact statement (if any), conforming to NEPA Regulations, shall be forwarded for consideration, if such environmental review documents are required by law or regulations.

d. *Proposals for Legislation.*—(1) *General.* NEPA requires an environmental impact statement on recommendations or reports on proposals for legislation significantly affecting the quality of the human environment.

(2) *Procedure.* As the Agency office responsible for coordinating the Agency's Congessional relations, the Office of Congressional and Public Liaison (CPL) shall, with the advice of GC, assist MGT in carrying out any required NEPA process concerning such proposed legislation.

2006.3 *Administrative Record of Decision*

a. GC shall advise MGT in compiling, and shall review, the administrative record related to proposals involving environmental review. This record shall be considered at appropriate stages of the decisionmaking process by Agency decisionmakers. The administrative record shall be available to the public.

b. The decisionmaker (Director, Associate Director, or Area Director) shall, in cases where environmental review is required, consider only those choices which have been discussed in the administrative environmental record, and which have been made available to the public to the extent required by the NEPA regulations (40 CFR Part 1500).

2007 Public Involvement in Agency Decisionmaking Processes Involving Enivornmental Concerns

a. The Associate Director of Management, or his designee, when involved in the consideration of any proposed Agency action which may significantly affect the environment, with the advice and review of GC, shall follow the requirements of 40 CFR 1506.6, concerning the involvement of the public in the decisionmaking process. MGT shall insure that copies of the administrative record, if any, related to the environmental review associated with Agency projects are available to the Congressional and Public Liaison Office for purposes of (b) below. MGT shall maintain a register of projects involving environmental review and indicating the status of the administrative environmental record of such projects.

b. *Congressional and Public Liaison Office.*—Interested persons may obtain information concerning the status of, and environmental and other documentation involved in, the Agency's decisionmaking process concerning a particular proposal (which is subject to environmental review) by sending a written request for such specifically identified information to the Office of Congressional and Public Liaison, International Communication Agency, Washington, D.C. 20547; Phone (202) 724–0103.

Dated: June 8, 1979.

Charles W. Bray III,

Acting Director, International Communication Agency.

[FR Doc. 79-19632 Filed 6-12-79; 8:45 am]
BILLING CODE 8230-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-42]

Certain Electric Slow Cookers; Notice of the Commission Procedure on the Presiding Officer's Recommended Determination, Relief, Bonding, and the Public Interest, and of the Schedule for Filing Written Submissions

Recommendation of "violation" issued

In connection with this investigation by the U.S. International Trade Commission under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), of alleged unfair methods of competition and unfair acts in the importation and sale of certain electric slow cookers in the United States, the presiding officer recommended on May 9, 1979, that the Commission—

(1) Grant the joint motion for summary determination and

(2) Determine that there is a violation of section 337. The presiding officer certified to the Commission for its consideration the evidentiary record, which had been augmented pursuant to the Commission's order to remand of February 9, 1979. Interested persons may obtain copies of the presiding officer's recommended determination of May 9, 1979 (and all other public documents), by contacting the office of the Secretary to the Commission, 701 E Street NW., Washington, D.C. 20436, telephone (202) 523–0161.

Requests for oral argument and oral presentation

At present, no oral argument is planned with respect to the recommended determination of the

presiding officer. Similarly, no oral presentation is planned with respect to the subject matter of § 210.14(a) of the Commission's Rules of Practice and Procedure (19 CFR 210.14(a)) concerning relief, bonding, and the public-interest factors set forth in section 337 (d), (f) and (g)(3) of the Tariff Act of 1930, as amended, which the Commission is to consider in the event it determines that there should be relief. However, the Commission will consider written requests for an oral argument or an oral presentation if they are received by the Secretary to the Commission no later than the close of business (5:15 p.m., e.d.t.), on June 28, 1979.

Written submissions to the Commission

The Commission requests that written submissions of three types be filed no later than the close of business on June 28, 1979:

1. *Briefs on the presiding officer's recommended determination.* Parties to the Commission's investigation, interested agencies, and the Commission investigative staff are encouraged to file briefs concerning exceptions to the presiding officer's recommended determination. Briefs must be served on all parties of record to the Commission's investigation on or before the date they are filed with the Secretary. Statements made in briefs should be supported by references to the record. Persons with the same positions are encouraged to consolidate their briefs, if possible.

2. *Written comments and information concerning relief, bonding, and the public interest.* Parties to the Commission's investigation, interested agencies, public-interest groups, and any other interested members of the public are encouraged to file written comments and information concerning relief, bonding, and the public interest. These submissions should include a proposed remedy, a proposed determination of bonding, and a discussion of the effect of the proposals on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers. These written submissions will be very useful to the Commission if it determines that there is a violation of section 337 and that relief should be granted.

3. *Requests for oral argument and oral presentation.* Written requests that the Commission hold oral argument and/or oral presentation must be filed with the Secretary to the Commission as described above.

Additional information

The original and 19 true copies of all briefs, written comments, and any written request must be filed with the Secretary to the Commission.

Any person desiring to submit a document (or a portion thereof) to the Commission in confidence must request *in camera* treatment. Such request should be directed to the Chairman of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. The Commission will either accept such submission in confidence or return it. All nonconfidential written submissions will be open to public inspection at the Secretary's Office.

Notice of the Commission's investigation was published in the Federal Register of February 9, 1978 (43 F.R. 5590).

By order of the Commission.

Issued: June 6, 1979.

Kenneth R. Mason,

Secretary.

[FR Doc. 79-18424 Filed 6-12-79; 8:45 am]

BILLING CODE 7020-02-M

[AA1921-204 and AA1921-205]

Kraft Condenser Paper From Finland and France; Investigations and Hearing

The United States International Trade Commission (Commission) received advice from the Department of the Treasury (Treasury) on May 30, 1979, that kraft condenser paper from Finland and France, provided for in items 252.40 and 256.30 of the Tariff Schedules of the United States, is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)). Treasury indicated that, for the purpose of its investigations, kraft condenser paper means capacitor tissue or condenser paper containing 80 percent or more by weight of chemical sulphate or soda wood pulp based on total fiber content. Accordingly, the Commission on June 5, 1979, instituted investigations Nos. AA1921-204 and AA1921-205, under section 201(a) of the act, to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Hearing. A public hearing in connection with the investigations will be held in Hartford, Conn., on Tuesday, July 24, 1979, at 10:00 a.m., e.d.t. The hearing will be held in Room 509, Internal Revenue Service Building, 450 Main Street, Hartford, Conn. All parties will be given an opportunity to be present, to produce evidence, and to be heard at such hearing. Requests to appear at the public hearing, or to intervene under the provisions of seciton 201(d) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(d)), should be received in writing in the office of the Secretary to the Commission not later than noon Thursday, July 19, 1979.

Written statements. Interested parties may submit statements in writing in lieu of, and in addition to, appearance at the public hearing. A signed original and nineteen true copies of such statements should be submitted. To be assured of their being given due consideration by the Commission, such statements should be received not later than Friday, August 3, 1979.

Issued: June 6, 1979.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 79-18425 Filed 6-12-79; 8:45 am]

BILLING CODE 7020-02-M

NATIONAL ADVISORY COUNCIL ON ECONOMIC OPPORTUNITY

Meeting; correction

June 7, 1979

This is to advise that there will be a two-day meeting of the National Advisory Council on Economic Opportunity on June 21–22, 1979 NOT June 22–23, 1979 as previously published. All other information remains the same.

Walter B. Quetsch,

Executive Director.

[FR Doc. 79-18441 Filed 6-12-79; 8:45 am]

BILLING CODE 6820-41-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Evaluation of Licensee Event Reports; Meeting

The ACRS Subcommittee on Evaluation of Licensee Event Reports will hold an open meeting on June 28 and 29, 1979, in Room 1046, 1717 H Street, NW., Washington, D.C. 20555 to continue its review of Licensee Event Reports (LERs). Notice of this meeting was published on May 24, 1979 (44 FR 30177).

In accordance with the procedures outlined in the Federal Register on October 4, 1978 (43 FR 45928), oral or

written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

Thursday, June 28 and Friday, June 29, 1979 8:30 a.m. until the conclusion of business each day.

The Subcommittee will meet with any of its consultants who may be present, and with representatives of the NRC Staff and their consultants, to continue its review of LERs submitted during the period 1976–1978.

Also, one or more open Executive Sessions will be held to discuss LERs and a planned Subcommittee report to the full Committee.

In addition, the Subcommittee will meet with representatives of several utilities in order to obtain information on the procedures used in filing an LER with the NRC and in following up on the event within the utility organization.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Dr. Andrew L. Bates (telephone 202/634–3267), between 8:15 a.m. and 5:00 p.m., EDT.

Background information concerning items to be considered at this meeting can be found in documents on file and available for public inspection at the NRC Public Document Room, 1717 H Street, NW., Washington, D.C. 20555.

Dated: June 8, 1979.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 79-18354 Filed 6-12-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–471]

Boston Edison Co., Et Al. (Pilgrim Nuclear Generating Station, Unit 2); Reconstitution of Board

Edward Luton, Esq., was Chairman of the Atomic Safety and Licensing Board for the above proceeding. Because he is transferring to another Federal Agency, where he will serve as an Administrative Law Judge, Mr. Luton is unable to continue his service on this Board.

Accordingly, Andrew C. Goodhope, Esq., whose address is 3320 Estelle Terrace, Wheaton, Maryland 20906, is appointed Chairman of this Board. Reconstitution of the Board in this manner is in accordance with Section 2.721 of the Commission's Rules of Practice, as amended.

Dated at Bethesda, Maryland this 7th day of June 1979.

Robert M. Lazo,

Acting Chairman Atomic Safety and Licensing Board Panel.

[FR Doc. 79-18356 Filed 6-12-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-8722]

Brush Wellman Inc.; Negative Declaration Regarding Issuance of Source Material License for Operation of Delta Facility in Millard County, Utah

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuing a source material license for a uranium recovery operation from barren beryllium mill waste streams by Brush Wellman Incorporated at their Delta facility in Millard County, Utah.

The Commission's Division of Waste Management has prepared an environmental/safety impact appraisal for the proposed operation. On the basis of this appraisal, the Commission has concluded that an environmental impact statement for this particular action is not warranted for there will be no significant environmental impact attributable to the action. The environmental/safety impact appraisal is available for public inspection and copying at the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C.

Dated at Silver Spring, Maryland, this 6th day of June.

For the Nuclear Regulatory Commission.

Ross A. Scarano,

Section Leader, Uranium Recovery Licensing Branch Division of Waste Management.

[FR Doc. 79-18357 Filed 6-12-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. PRM–71–5]

Chem-Nuclear Systems, Inc.; Denial of Petition for Rulemaking

The Nuclear Regulatory Commission's regulation, "Packaging of Radioactive Material For Transport and Transportation of Radioactive Material Under Certain Conditions," 10 CFR Part 71, provides a general license in 10 CFR 71.12 to persons holding a general or specific Commission license, to deliver licensed material to a carrier for transport. The licensee must have a quality assurance program whose description has been submitted to and approved by the Commission as satisfying the provisions of 10 CFR 71.51. Further, if delivery is made in a package for which a license, certificate of compliance (Form NRC–618) or other approval has been issued by the NRC or the Atomic Energy Commission, the person using the package must have a copy of the specific license, certificate of compliance, or other approval authorizing use of the package and all documents referred to in the license, certificate, or other approval, as applicable (10 CFR 71.12(b)(1)(i)). Quality assurance requirements specific to the particular package design are specified in the package approval.

The Petition

By letter dated September 24, 1977, Chem-Nuclear Systems, Inc. filed with the Commission a petition for rule making (PRM–71–5) requesting that the Commission exempt the package owner from the requirements in 10 CFR Part 71 that the package owner furnish the named user with the safety analysis report and blueprints of a particular container or package if (1) a user of the NRC approved container or package is named a user; (2) the named user is supplied with a copy of the license or certificate; and, (3) the named user is provided with specific procedures which have been developed by the owner of the container or package and filed with the NRC in accordance with the provisions of 10 CFR Part 71, Appendix E, "Quality Assurance Criteria for Shipping Packaging for Radioactive Material."

Bases for Request

The bases for the request are set out by the petitioner as follows:

a. Chem-Nuclear has been advised by NRC licensing staff that "all documents referred to in the license" would include the safety analysis report and blueprints of the particular container or package.

b. In several cases, some of the information contained in the safety analysis and blueprints is regarded by Chem-Nuclear as proprietary. For competive reasons, Chem-Nuclear wishes to limit the furnishing of this information to instances where such information is necessary and where adequate safeguards can be imposed.

c. In all cases, the license or certificate issued by the NRC clearly

defines the specific conditions for use of a particular container or package. Users of containers or packages have no need for the safety analysis and blueprints. Providing the safety analysis and blueprints to the user can serve no useful purpose, but only create a large amount of additional paperwork for the owner of the container or package and adds to the risk of misuse of proprietary data.

d. The need of the users for safety information can be met thoroughly by the specific procedures developed by the owner of the container or package and filed with the NRC in accordance with the provisions of Appendix E to 10 CFR Part 71.

Request for Comments on Petition

A notice of filing of petition for rule making was published in the Federal Register on October 6, 1977 (42 FR 54475). The comment period expired December 5, 1977. No comments were received in response to the notice.

Previous Action

On August 4, 1977 (42 FR 39364), the Commission amended 10 CFR Part 71 to add new Appendix E and upgraded quality assurance requirements that are the subject of the petitoner's request.

In the preamble to the final rule, the Commission discussed package manufacturers' submission of information on specific aspects of quality assurance:

> The licensee who is an applicant for the package approval provides the descriptions of quality assurance programs governing the manufacturer and use of the package. If the package is approved by the Nuclear Regulatory Commission for use in the transportation of radioactive material, a package approval is issued which incorporates the packages description and identification, its safety evaluation, and a description of the applicant's specific quality assurance provisions for design, fabrication, assembly, testing, use, and maintenance of the package.

Clearly, the requirement in a package approval for a description of the applicant's specific quality assurance provisions is in addition to, and not in substitution for, the package's safety evaluation which is based on the safety analysis report of the package design or application.

Witholding From Public Disclosure

Persons who submit to the Commission information believed to be privileged, confidential, or a trade secret are on notice (10 CFR 2.790) that it is the policy of the Commission to achieve an effective balance between legitimate concerns for protection of competitive positions and the right of the public to be fully apprised as to the basis for and effects of licensing actions, and that it is within the discretion of the Commission to withhold such information from public disclosure.

Under this policy and as a matter of licensing practice, the NRC staff issues package approvals on the basis of safety analysis reports prepared by applicants and refers to applications that contain blueprints. As a consequence, it is the general licensees delivering licensed radioactive material to a carrier for transport under the authority of 10 CFR 71.12(b) who must assure themselves and the NRC that the subject packages are as described in the package approvals. (The NRC must exercise its regulatory authority through its general licensees who use package approvals because the NRC has no general enforcement powers over package manufacturers or package owners unless they possess and use licensed radioactive material. They would, however, be subject to 10 CFR Part 21, "Reporting of Defects and Noncompliance.") An exemption from the requirements of 10 CFR Part 71 for furnishing the safety analysis reports and blueprints as requested by the petitioner could deny general licensees information essential to the safe use of packages to deliver licensed material to carriers for transport. In addition, for the public to be assued that general licensees comply with the terms and conditions of package approvals, the public must be apprised of the information in safety analysis reports and blueprints referred to in package approvals. Therefore, these documents cannot be exempt from public disclosure.

Grounds for Denial

The Commission has given careful consideration to this petition for rule making (PRM-71-5) and has decided to deny the petition on the grounds that: (1) The requirement in a package approval for a description of the applicant's specific quality assurance provisions is in addition to, and not in substitution for, the package's safety evaluation which is based on the safety analysis report of the package design or application; and (2) The right of the public to be full apprised as to the bases (e.g., safety analysis reports and blueprints) for licensing under 10 CFR 71.12(b) outweighs the concern of Chem-Nuclear Systems, Inc. for protection of a competitive position that may be set out in a safety analysis report or blueprint.

A copy of the petition for rule making and the Commission's letter of denial are available for public inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

Dated at Bethesda, Maryland this 30th day of May, 1979.

For the Nuclear Regulatory Commission.

Lee V. Gossick,

Executive Director for Operations

[FR Doc. 79-18888 Filed 6-12-79; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-454; 50-455; 50-456; 50-457]

Commonwealth Edison Co.; (Byron Station, Units 1 and 2; and Braidwood Station Units 1 and 2;) Construction Permit Nos. CPPR-130, CPPR-131, CPPR-132, and CPPR-133; Reconstitution of Board

Edward Luton, Esq., was Chairman of the Atomic Safety and Licensing Board for the above proceeding. Because he is transferring to another Federal Agency, where he will serve as an Administrative Law Judge, he is unable to continue his service on this Board.

Dr. Franklin C. Daiber, who was a technical member of the Board has resigned from the Atomic Safety and Licensing Board Panel, and is unable to continue his service on this Board.

Accordingly, Marshall E. Miller, Esq., is appointed Chairman of this Board and Dr. Richard F. Cole is appointed as a technical member of this Board. Their address is as follows:

Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Reconsitution of the Board in this manner is in accordance with Section 2.721 of the Commission's Rules of Practice, as amended.

Dated at Bethesda, Maryland this 7th day of June 1979.

Robert M. Lazo,

Acting Chairman, Atomic Safety and Licensing Board Panel.

[FR Doc. 79-18890 Filed 6-12-79; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-424, 50-425]

Georgia Power Co. (Alvin W. Vogtle Nuclear Plant, Units 1 & 2; Request for Action Under 10 CFR 2.206

Notice is hereby given that by petition dated May 1, 1979, the Georgians Against Nuclear Energy (GANE) requested that the Director of Nuclear Reactor Regulation reconsider his April 13, 1979, denial of GANE's earlier petition under 10 CFR 2.206.

GANE's latest petition is being treated as a request for action under 10 CFR 2.206 of the Commission's regulations, and accordingly, action will be taken on the petition within a reasonable time.

Copies of the petition are available for inspection in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555 and in the local public document room at the Burke County Library, 4th Street, Waynesboro, Georgia.

Dated at Bethesda, Maryland, this 6 day of June, 1979.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 79-18300 Filed 6-12-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50.263]

Northern States Power Co.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 40 to Facility Operating License No. DPR–22, issued to Northern States Power Company, which revised Technical Specifications for operation of the Monticello Nuclear Generating Plant (the facility) located in Wright County, Minnesota. The amendment is effective as of its date of issuance.

The amendment deletes reference to respiratory protection equipment since this item is now covered by 10 CFR 20.103 of Part 20 of the Commission's regulations.

The amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the Commission's letter to Northern States Power Company dated August 12, 1977 and the licensee's letter to the Commission dated September 13, 1977, (2) Amendment No. 40 to License No. DPR–22, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public document room, 1717 H Street, NW., Washington D.C. 20555, and at the Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota 55401. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 5th day of June 1979.

For the Nuclear Regulatory Commission.

Thomas A. Ippolito,

Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 79-18361 Filed 6-12-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 27-39]

Nuclear Engineering Co., Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site); Hearing

The Nuclear Engineering Company, Inc. (NECO), has operated the Sheffield, Illinois low-level radioactive waste disposal site under License No. 13–10042–01 issued by the Nuclear Regulatory Commission. NECO filed a timely application for license renewal in August, 1968, and its license continued in effect pending final Commission action. 10 CFR 2.109. On March 8, 1979, NECO informed the Director, Nuclear Material Safety and Safeguards (NMSS), that it was unilaterally terminating its license for all activities at the Sheffield site.

On March 20, 1979, the Director, NMSS, pursuant to 10 CFR 2.202 of the Commission's regulations, served on NECO an immediately effective Order to Show Cause why it should not resume its obligations and liabilities under the license. The Director based his Order on NECO's obligation to act in a safe and responsible manner with respect to its license for receipt and possession of nuclear materials at the Sheffield site. These obligations include maintenance of site security and trenches in which low-level radioactive material is buried. NECO's abandonment of the site and consequent general failure to hold in force terms and conditions of its license were confirmed by two on-site visits on March 9 and 16 by inspectors from the Commission's Office of Inspection and Enforcement (Region III).

On March 23, 1979, NECO filed Answer of Nuclear Engineering Company Inc. To Order to Show Cause and Demand for Hearing pursuant to 10 CFR 2.202(b). NECO, the NRC Staff, and the State of Illinois agree that resolution of the issues raised by the Order to Show Cause would be most expeditiously and efficiently handled by consolidating consideration of these issues with the Licensing Board proceeding now considering NECO's application to renew its license and its subsequent motion to withdraw that application.

10 CFR 2.202(c) provides that if the answer demands a hearing the Commission will issue an order designating the time and place of hearing. Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and 10 CFR Part 2 of the Commission's regulations, notice is hereby given that a hearing will be held before an Atomic Safety and Licensing Board composed of Andrew C. Goodhope, Esq., Chairman, Dr. Linda W. Little, and Dr. Forest J. Remick.

In addition to the issues now pending before the Atomic Safety and Licensing Board it shall consider and decide:

whether NECO can unilaterally terminate License No. 13–10042–01 for activities at Sheffield without affirmative action by the Commission.

A prehearing conference shall be held by the Atomic Safety and Licensing Board at a date and place to be set by the Board to consider pertinent matters in accordance with the Commission's Rules of Practice. The date and place of the hearing will be set at or after the prehearing conference and will be noticed in the Federal Register.

Pursuant to CFR 2.705, an answer to this Notice may be filed by the Licensee not later than July 3, 1979.

The Commission authorizes an Atomic Safety and Licensing Appeal Board pursuant to 10 CFR 2.785 to exercise the authority to perform the review functions which would otherwise be exercised and performed by the Commission, subject to Commission review, as appropriate, under 10 CFR 2.786. The Appeal Board will be designated pursuant to 10 CFR 2.787 and notice as to membership will be published in the Federal Register.

For the Commission.
Samuel J. Chilk,
Secretary of the Commission.
Dated at Washington, D.C. this 6th day of June, 1979.
[FR Doc. 79-18362 Filed 6-12-79; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-277 and 50-278]

Philadelphia Electric Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 54 and 54 to Facility Operating License Nos. DPR-44 and DPR-56, issued to Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, which revised Technical Specifications for operation of the Peach Bottom Atomic Power Station, Units Nos. 2 and 3 (the facility) located in York County, Pennsylvania. The amendments are effective as of the date of issuance.

The amendments consist of a revision to the Definitions Section of the Technical Specifications to extend the specified time interval, as it relates to the frequency for performance of surveillance testing, from 12 to 18 months to coincide with the refueling cycle length.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendment dated April 30, 1979, (2) Amendment Nos. 54 and 54 to License Nos. DPR-44 and DPR-56, and (3) the Commission's letter dated June 6, 1979.

All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 6th day of June 1979.
For the Nuclear Regulatory Commission.
Thomas A. Ippolito,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.
[FR Doc. 79-18363 Filed 6-12-79; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-352, 50-353]

Philadelphia Electric Co. (Limerick Generating Station, Units 1 & 2), Request for Action Pursuant to 10 CFR 2.206

Notice is hereby given that by letter dated April 12, 1979, Frank Romano of Ambler, Pennsylvania, requested that the Commission investigate seismic effects of blasting at a quarry located near the site of the Philadelphia Electric Company's Limerick Generating Station, Units 1 & 2.

This letter is being treated as a request for action under 10 CFR 2.206 of the Commission's regulations, and accordingly, action will be taken on the request within a reasonable time. Copies of the request are available for inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, and at the local public document room for the Limerick Generating Station, located at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Dated at Bethesda, Maryland this 31st day of May 1979.
For the Nuclear Regulatory Commission.
Harold R. Denton,
Director, Office of Nuclear Reactor Regulation.
[FR Doc. 79-18364 Filed 6-12-79; 8:45 am]
BILLING CODE 7590-01-M

Privacy Act of 1974; New System of Records

AGENCY: U.S. Nuclear Regulatory Commission (NRC).
ACTION: Notice of new system of records.

SUMMARY: The Nuclear Regulatory Commission has established a new system of records identified as Oral History Program, NRC-25. The purpose of the system is to develop a collection of taped interviews with NRC staff members, former agency personnel, and other individuals who have been involved in nuclear regulatory activities. These interviews will be transcribed for use as a resource for the future writing of a history of nuclear regulation. They will provide an important tool for documenting the role of the Nuclear Regulatory Commission, and a valuable resource for present and future researches.

EFFECTIVE DATE: This amendment to the NRC Notices of Systems of Records becomes effective on July 13, 1979.

FOR FURTHER INFORMATION CONTACT: Ms. Betty L. Wagman, Privacy Act Officer, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-8133.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission published a notice of a proposed new system of records in the Federal Register on March 13, 1979 (44 FR 14953). The notice invited comments on the proposed new system of records identified as Oral History Program, NRC-25, by April 12, 1979. No comments were received on the proposed new system of records.

The new system is identified as the NRC Oral History Program. The Historian will conduct interviews, on a voluntary basis, with individuals knowledgeable about various aspects of the history of nuclear regulation. The interviews will be recorded on magnetic tape, then transcribed to typescript for long-term retention and eventual use as background for a written history. The records will be accessible by name of the individuals interviewed.

Notice is hereby given that the Commission has established the new system of records Oral History Program, NRC-25. The text of NRC-25 is identical with the text of the proposed NRC-25 published on March 13, 1979.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552, 552a, and 553 of Title 5 of the United States Code, the following notice of NRC Systems of Records, Oral History Program, NRC-25, is published as a document subject to publication in the annual compilation of Privacy Act Documents.

EFFECTIVE DATE: This amendment to the NRC Notices of Systems of Records becomes effective on July 13, 1979.

Dated at Bethesda, Maryland this 4th day of June 1979.

For the Nuclear Regulatory Commission.

Lee V. Gossick,

Executive Director for Operation.

NRC–25

SYSTEM NAME:

Oral History Program—NRC

SYSTEM LOCATION:

Office of the Secretary of the Commission, NRC, 1717 H Street, NW, Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees, former employees, and other individuals who volunteer to be interviewed for purpose of providing information for a history of the nuclear regulatory program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of interviews on magnetic tape, and transcribed scripts of the interviews.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

a. Energy Reorganization Act of 1974, Title II, Sections 201(a)(1) and 201(a)(2)

b. Section 141b, Atomic Energy Act of 1954, as amended, 42 U.S.C. 2161b.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. For incorporation in a future publication on the history of the nuclear regulatory program;

b. To provide information to historians and other researchers.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on magnetic tape and typescripts.

RETRIEVABILITY:

Information is accessed by the name of the interviewee.

SAFEGUARDS:

Maintained in locked file cabinet. Access to and use of these records are limited to those authorized by the Historian or a designee.

RETENTION AND DISPOSAL:

Typescripts are retained indefinitely. Tapes are normally retained until they are transcribed; some may be retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

NRC Historian Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from interviews granted on a voluntary basis to the Historian and his/her staff.

[FR Doc. 79-18281 Filed 6-12-79; 8:45 am]

BILLING CODE 7590-01-M

Study of Nuclear Power Plant Construction During Adjudication; Meetings

The next meeting of the Nuclear Regulatory Commission's advisory committee on nuclear power plant construction during adjudication will be held at 9:30 a.m. Friday, July 6, 1979, in Room 415, East West Towers, 4350 East West Highway, Bethesda, Maryland. After that meeting, the study group is currently planning as its next session a two day public workshop addressing various aspects of the subject of construction during adjudication. This workshop, and a request for public comment which will soon be published in the Federal Register, are designed to assist the study group by providing it with insight into public views on the subject of its work. At the workshop, three panels composed of private citizens and Commission employees will consider the issues of delaying effectiveness of initial decisions, limiting effectiveness to certain situations, and changing the existing adjudicatory process. Most of the panel members will be selected by the study group itself, but the group is prepared to consider qualified nominations submitted by the public. Any nominations should include sufficient information for the group to decide whether the nominee'e presence on a panel could effectively aid the group's work. Such information would at the minimum include the nominee's prior experience with the nuclear licensing process, other relevant experience and a telephone and a telephone number at which the nominee can be reached. Any nominations must be received by June 25, 1979 to be considered, since the workshop is currently tentatively scheduled for Wednesday and Thursday, July 18 and 19. Further details on the location and scheduling of the workshop meeting will be announced later.

Members of the public are invited to attend the group's meetings and there will be a limited amount of time available during each meeting for members of the public to make oral statements to the study group. Written comments, addressed to the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, will be accepted for one week after each meeting. The Chairman of the study group is empowered to conduct the meeting in a manner that in his judgment, will facilitate the group's work, including, if necessary, continuing or rescheduling meetings to another day.

A file of documents relevant to the group's work, including a complete transcript of each meeting, memoranda exchanged between group members, public comments and other documents, is available for inspection and copying at the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. 2055. The Secretary of the NRC maintains a mailing list for persons interested in receiving notices of the group's meetings and actions. Anyone wishing to be on that list should write to: Secretary of the Commission, Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

The study group will provide its final report to the Commission by November 1, 1979. For further information on the study group's mission, please call Stephen S. Ostrach, Office of the General Counsel, Nuclear Regulatory Commission, 202/634–3224.

Dated at Washington, D.C., this 8th day of June, 1979.

Gary Milhollin,

Chairman.

[FR Doc. 79-18285 Filed 6-12-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-338SP, 50-339SP]

Virginia Electric & Power Co. (VEPCO); (North Anna Power Station Units 1 and 2); Proposed Amendment to Operating License NPF–4

Reschedule of Hearing

In its Notice of Hearing of May 4, 1979, the Licensing Board scheduled a prehearing conference to begin at 9:30 in the morning, Tuesday, June 26, 1979 at the Council Chambers, City Hall, Charlottesville, Virginia, and a hearing to begin thereafter and continue through the rest of the work week and into the following work week, if necessary.

In its Notice of Hearing, the Licensing Board stated that it would be amenable to a motion to reschedule the hearing at a later date for good cause shown. Subsequently, the NRC Staff moved to reschedule the prehearing conference and hearing to July 9–13, 1979; Citizens Energy Forum (CEF) requested that the hearing be postponed to no earlier than July 24, 1979; and Potomac Alliance urged a schedule that would permit a hearing about the second half of August. Virginia Electric and Power Company (VEPCO), on the other hand, was opposed to any delay in the hearing, but if the Licensing Board decided to reschedule the hearing, VEPCO asked that it be rescheduled to begin no later than July 9.

After giving consideration to the foregoing and the reasons in support thereof and mindful that answers to VEPCO's Motion for Summary Disposition are presently due and that said answers of the NRC Staff and CEF have just been received, the Licensing Board cancels the prehearing conference and hearing scheduled in the Notice of Hearing of May 4, 1979 and reschedules the same as follows:

Prehearing Conference—9:30 a.m., Monday July 9, 1979

Hearing—Immediately following the prehearing conference and continuing through the work week, if necessary

The location of the prehearing conference and hearing shall be the same as scheduled before, namely the Council Chambers, City Hall (2nd floor), 7th and Main Streets, Charlottesville, Virginia.

Any person who wishes to make an oral or written statement in this special proceeding but who has not filed a petition for leave to intervene as heretofore provided for in the notice published by the Commission on May 22, 1978 in the Federal Register, 43 FR 21957, entitled "Proposed Issuance of Amendment to Facility Operating License," may request permission to make a limited appearance pursuant to the provisions of 10 CFR § 2.715 of the Commission's Rules of Practice. Limited appearances will be permitted in this special proceeding at the discretion of the Licensing Board on the predication that VEPCO's pending Motion for Summary Disposition is denied with respect to one or more contentions set out in the Licensing Board's Order Granting Intervention, Providing for a Hearing and Designating Contentions of Intervenors, dated April 21, 1979, as amended.

A person permitted to make a limited appearance does not become a party to this proceeding, but may state his or her position and raise questions which he or she would like to have answered to the extent that the questions are within the scope of the hearing. Limited appearances will be allowed during the above scheduled prehearing conference. Each person making a limited appearance will be limited to ten (10) minutes unless the Licensing Board has occasion to rule otherwise at the prehearing conference.

The parties will be notified by the Licensing Board as soon as practicable of such contentions designated for hearing which have been disposed of as a result of VEPCO's Motion for Summary Disposition, dated May 11, 1979. Any contention so disposed of obviously will not be the subject of any hearing.

Done this 6th day of June, 1979 at Washington, D.C.

Atomic Safety and Licensing Board.

Valentine B. Deale,

Chairman.

[FR Doc. 79-18695 Filed 6-12-79; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Intergovernmental Science, Engineering, and Technology Advisory Panel; Meeting

In accordance with the Federal Adivsory Committee Act, Pub. L. 92–463, the Office of Science and Technology Policy announces the following meeting:

Name: Intergovernmental Science, Engineering, and Technology Advisory Panel; Full Panel Meeting.

Date: Wednesday, June 27, 1979, 8:00 p.m.–9:30 p.m.; Thursday, June 28, 1979, 8:30 a.m.–3:00 p.m.

Place: Governor's Inn, Research Triangle Park, North Carolina. Conference Rooms A, B, C, Second Floor.

Type of Meeting: Open.

Contact Person: Mr. Louis Blair, Executive Secretary, ISETAP, Office of Science and Technology Policy, Executive Office of the President, 202/395–4696.

Minutes of the meeting: Executive minutes of the meeting will be available from Mr. Blair's office.

Agenda

Wednesday, June 27

8:00 p.m.–8:05 p.m.: Welcome.

8:05 p.m.–8:25 p.m.: Address—Selected Science & Technology Issues Confronting the Nation and Administration Actions.

8:30 p.m.–9:30 p.m.: Status Reports on ISETAP and its Task Forces.

Thursday, June 28

8:30 a.m.–10:30 a.m.: Functions and Organization of ISETAP and Relationship of ISETAP to OSTP.

10:45 a.m.–12:00 noon: Review of Selected Current Activities and Advice and Direction from Panel.

12:20 p.m.–2:30 p.m.: Prospective Issues and Continuing ISETAP Activities.

2:30 p.m.–3:00 p.m.: Task Force Assignments, Next Meeting, Comments from Public.

William J. Montgomery,

Executive Officer.

[FR Doc. 79-18830 Filed 6-13-79; 8:45 am]

BILLING CODE 3170-01-M

Intergovernmental Science, Engineering, and Technology Advisory Panel; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the Office of Science and Technology Policy announces the following meeting:

Name: Intergovernmental Science, Engineering, and Technology Advisory Panel; Human Resources Task Force.

Date: Wednesday, June 27, 1979, 9:00 a.m.–2:30 p.m.

Place: New Executive Office Building, Room 3104, 726 Jackson Pl. NW., Washington, D.C.

Type of Meeting: Open.

Contact Person: Dr. Michael Gruber, Human Resources Task force, ISETAP—Office of Science and Technology Policy, Executive Office of the President.

Minutes of the meeting: Executive minutes of the meeting will be available from Dr. Gruber's office.

Agenda

10:00 a.m.: Progress report by ISETAP staff on the elderly services research project and presentation of research priorities set by state and local officials.

10:30 a.m.: Presentation of research plans in elderly services research by research managers from selected Federal agencies.

12:30 p.m.: Working Lunch.

1:00 p.m.: discussion of results of American Association for the Advancement of Science/ISETAP Workshop on evaluation of social program impact, health care cost control, health screening, and integrated services.

2:30 p.m.: Adjourn.

June 6, 1979.

William J. Montgomery,

Executive Officer, OSTP.

[FR Doc. 79-18831 Filed 6-12-79; 8:45 am]

BILLING CODE 3170-01-M

PRESIDENTIAL COMMISSION ON WORLD HUNGER

Meeting

The seventh meeting of the Presidential Commission on World

Hunger will be held on July 6 and 7 at facilities near Queenstown, Maryland. On July 6 the meeting will begin at 9 a.m. and conclude at 4:30 p.m. and on July 7, the meeting will begin at 9 a.m. and conclude at approximately 2 p.m.

The meeting will be devoted to a review and discussion of an initial draft of the Commission's report to the President.

Inquiries should be addressed to Mr. Daniel E. Shaughnessy, Executive Director, Presidential Commission on World Hunger, Washington, D.C. 20006.

Donald B. Harper,

Administrative Officer, Presidential Commission on World Hunger.

[FR Doc. 79-18312 Filed 6-12-79; 8:45 am]

BILLING CODE 6820-97-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 21084; 70-6290]

General Public Utilities Corp. and Jersey Central Power & Light Co.; Proposed Issuance and Sale of First Mortgage Bonds by Subsidiary and Guaranty by Holding Company; Request for Exemption From Competitive Bidding

June 6, 1979.

In the matter of General Public Utilities Corporation, 260 Cherry Hill Road, Parsippany, New Jersey 07054, Jersey Central Power & Light Company, Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960.

Notice is hereby given that General Public Utilities Corporation ("GPU"), a registered holding company, and its electric utility subsidiary Jersey Central Power & Light Company ("Jersey Central") have filed with this Commission an application-declaration and amendments thereto pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(b) and 12 of the Act and Rules 45 and 50(a)(5) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, as amended, which is summarized below, for a complete statement of the proposed transaction.

Jersey Central proposes to issue and sell up to $75,000,000 aggregate principal amount of first mortgage bonds ("Bonds"), to be issued under its indenture dated as of March 1, 1946, as heretofore supplemented and amended and as to be further supplemented and amended by a supplemental indenture. None of the Bonds may be redeemed before ten years after date of issuance if such redemption is for the purpose of refunding them through the use, directly or indirectly, of borrowed funds having a lower effective interest cost than the effective interest cost of the Bonds. Other terms of the Bonds will be supplied by amendment. It is proposed that GPU will guarantee the payment of principal and interest of the Bonds.

The net proceeds from the sale of the Bonds will be used to pay ar or before maturity a like amount of short-term bank loans outstanding at the date of sale or to pay construction expenditures or to reimburse Jersey Central's treasury for funds previously expended thereform.

Jersey Central requests an exemption from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5). It refers to the March 28, 1979, nuclear accident at Unit No. 2 of the Three Mile Island nuclear generating station ("TMI-2"), in which unit Jersey Central owns an undivided 25% interest, the remainder being owned by Pennsylvania Electric Company (25%) and Metropolitan Edison Company (50%), associate companies of Jersey Central. Expenditures related to TMI-2 and the purchase of replacement energy will subject the GPU system, including Jersey Central, to a serious cash drain for an indeterminable period. In view of these uncertain and exceptional conditions, Jersey Central believes that competitive bidding for the Bonds is not now feasible.

Jersey Central believes it may be possible to effect a sale of the Bonds through private placement or a negotiated public offering, or both. Jersey Central proposes to explore with a group of prospective underwriters the prospects for such private or public offering and negotiate the terms thereof. It is hereby authorized to do so.

The fees and expenses to be incurred in connection with the proposed transaction will be supplied by amendment. It is stated that the Board of Public Utilities of the State of New Jersey has jurisdiction over the proposed issuance and sale of the Bonds and that no other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than June 27, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as amended, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any post-ponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-18309 Filed 6-12-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21085, 70-6303]

General Public Utilities Corp. and Jersey Central Power & Light Co.; Proposed Issuance and Sale of Debentures by Subsidiary and Guaranty by Holding Company; Request for Exemption From Competitive Bidding

June 6, 1979.

In the matter of General Public Utilities Corporation, 260 Cherry Hill Road, Parsippany, New Jersey 07054, Jersey Central Power & Light Company, Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960.

Notice is hereby given that General Public Utilities Corporation ("GPU"), a registered holding company, and its electric utility subsidiary Jersey Central Power & Light Company ("Jersey Central") have filed with this Commission an application-declaration and amendments thereto pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(b) and 12 of the Act and Rules 45 and 50(a)(5) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, as amended,

which is summarized below, for a complete statement of the proposed transaction.

Jersey Central proposes to issue and sell up to $50,000,000 aggregate principal amount of unsecured debentures ("Debentures"), to be issued under its indenture dated as of October 1, 1963, as heretofore supplemented and amended and as to be further supplemented and amended by a supplemental indenture. None of the Debentures may be redeemed before ten years after date of issuance if such redemption is for the purpose of refunding them through the use, directly or indirectly, of borrowed funds having a lower effective interest cost than the effective interest cost of the Debentures. Other terms of the Debentures will be supplied by amendment. It is proposed that GPU will guarantee the payment of principal and interest of the Debentures.

The net proceeds from the sale of the Debentures will be used to pay at or before maturity a like amount of short-term bank loans outstanding at the date of sale or to pay construction expenditures or to reimburse Jersey Central's treasury for funds previously expended therefrom.

Jersey Central Requests an exemption from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5). It refers to the March 28, 1979, nuclear accident at Unit No. 2 of the Three Mile Island nuclear generating station ("TMI–2"), in which unit Jersey Central owns an undivided 25 percent interest, the remainder being owned by Pennsylvania Electric Company (25%) and Metropolitan Edison Company (50%), associate companies of Jersey Central. Expenditures related to TMI–2 and the purchase of replacement energy will subject the GPU System, including Jersey Central, to a serious cash drain for an indeterminable period. In view of these uncertain and exceptional conditions, Jersey Central believes that competitive bidding for the Debentures is not now feasible.

Jersey Central believes it may be possible to effect a sale of the Debentures through private placement or a negotiated public offering, or both. Jersey Central proposes to explore with a group of prospective underwriters the prospects for such private or public offering and negotiate the terms thereof. It is hereby authorized to do so.

The fees and expenses to be incurred in connection with the proposed transaction will be supplied by amendment. It is stated that the Board of Public Utilities of the State of New Jersey has jurisdiction over the proposed issuance and sale of the Debentures and that no other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than June 27, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as amended, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 79-18901 Filed 6-12-79; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 10719; 812-4226]

Insured Municipals—Income Trust, Filing of Application for an Order Amending a Previous Order Granting Exemption and Permitting an Offer of Exchange

June 6, 1979.

In the matter of Insured Municipals—Income Trust, Investors' Corporate—Income Trust, Investors' Municipal—Yield Trust, Investors' Governmental Securities-Income Trust Van Kampen Sauerman, Inc., Dain, Kalman & Quail, Inc., c/o Van Kampen Sauerman, Inc., 208 South LaSalle Street, Chicago, Illinois 60604.

Notice is hereby given that Insured Municipals-Income Trust (the "Municipal Fund"), Investors' Corporate-Income Trust (the "Corporate Fund"), Investors' Municipal-Yield Trust (the "Municipal Yield Fund") and Investors' Governmental Securities-Income Trust (the "Government Fund"), registered under the Investment Company Act of 1940 (the "Act") as unit investment trusts (collectively referred to herein as the "Funds"), their sponsor, Van Kampen Sauerman, Inc., and a cosponsor of the Corporate Fund, Dain, Kalman & Quail, Inc. (collectively referred to as the "Applicants"), filed an application on April 20, 1979, and amendments thereto on May 8, 1979 and May 14, 1979, requesting an order of the Commission amending in the manner described below an earlier order of the Commission dated November 28, 1978 (Investment Company Act Release No. 10496), which earlier order amended an order of the Commission dated October 17, 1978 (Investment Company Act Release No. 10442), which order amended an order of the Commission dated January 31, 1978 (Investment Company Act Release No. 10109). These orders pursuant to Section 6(c) of the Act exempted from the provisions of Section 22(d) of the Act the offer and sale of units of the Funds pursuant to a conversion option (the "Plan"), and pursuant to Section 11 of the Act permitted the Funds to offer their units at net asset value plus a fixed dollar sales charge pursuant to the Plan. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Under the Plan, as currently administered, a certificateholder in one of the Funds wishing to dispose of his units in a series of that Fund for which a secondary market is being maintained has the option to convert his units into units of another Fund (e.g., Corporate into Municipal, Municipal into Government) of any series for which units are available for sale. The Applicants state that the purpose of the Plan is to provide investors in each of the Funds a convenient and less costly means of transferring interests as their investment requirements change. The Applicants state that the respective sponsors have indicated that they intend to maintain a market for the units of each series of the respective Funds; however there is no obligation to maintain such a market. Consequently, the respective sponsors reserve the right to modify, suspend or terminate the Plan

at any time without further notice to certificateholders.

Under the Plan as originally proposed, the Applicants state that they intended to have each conversion transaction operate in a manner essentially identical to any secondary market transaction. Since Van Kampen Sauerman, Inc. elected to price the securities in the underlying portfolios of each series of each Fund on a weekly basis, it was required to make all purchases in the secondary market at a price based on the offering side evaluation of such portfolio securities. As a result, each conversion transaction was effected at a price based on the offering side evaluation of the portfolio securities of the Funds involved in the transaction. However, Van Kampen Sauerman, Inc. has decided recently to elect to price the portfolio securities of the Municipal Fund, the Government Fund, and the Municipal Yield Fund (the "Daily Valued Funds") on a daily basis and to maintain the secondary market for the units of the Daily Valued Funds at a price based on the bid side evaluation of the underlying portfolio securities for each Fund. In connection therewith, the sales charges relating to such secondary market resales will be revised. The Applicants state that the sales charges that will be added to the price of units in the secondary market of the Municipal Fund, Municipal Yield Fund and the Government Fund will be 5.7%, 6.2% and 4.0%, respectively, of the related public offering prices for such Funds. The sales charges during the initial offering of units of such Funds will be 4.7%, 5.2% and 3.5%, respectively, of the related public offering prices. The Corporate Fund will continue to be valued for both primary and secondary market transactions at a price based on the offering side evaluation of the underlying portfolio securities of that Fund and will continue to charge a 4.5% sales charge for both primary and secondary market transactions. As a result of the foregoing changes, the Applicants propose that the conversion option be amended to permit the purchase of units from certificateholders of the Daily Valued Funds at prices based on the bid side evaluation of the units of such Funds being purchased, and the resale of units upon conversion to such certificateholders at prices based on the bid side evaluation of units in the case of resales of units of the other Daily Valued Funds and at prices based on the offering side evaluation of units in the case of resales of units of the Corporate Fund. In addition, the Applicants propose that the conversion option relating to the Corporate Fund be amended to permit the purchase of units from certificateholders of that Fund at prices based on the offering side evaluation of the units being purchased, and the resale of units upon conversion to such certificateholders at prices based on the bid side evaluation of units of the Daily Valued Funds being sold.

The Applicants state that the Plan will operate essentially in the same manner as in the original application, as amended. In addition to the change in the procedure of evaluating the underlying portfolio securities of the Daily Valued Funds from weekly to daily pricing, the Applicants state that the conversion option will only be available for conversions into secondary market units of the Funds. The original application, as amended, stated that conversions could be made into either primary or secondary market units of the Funds. The Applicants state that restricting the conversion option to conversions into secondary market units of the Funds is appropriate in light of the revisions that have been made in the method of determining the net asset value of the Daily Valued Funds and the varying sales charges between the primary and secondary markets for sale of units of such Funds.

The Applicants state that as a result of the differences in methods of evaluation and sales charges between primary and secondary market transactions in the Daily Valued Funds, a potential for abuse in effecting conversion transactions under the Plan may occur. Currently, each of the units of the Funds may be converted into units of one or more of the other Funds for a special sales charge of $15.00 per unit. It is possible because of the different methods of valuing units (i.e., bid and offering price) and the varying sales charges imposed by the Funds, that there could be created inequities between a person buying units of a Fund directly and another person acquiring units through the Plan. To be specific, a person could acquire units in one Fund, immediately convert such units into another Fund and pay a lower sales charge than would a person acquiring units in the same Fund directly. The Applicants state that under normal circumstances this situation is unlikely to arise since the initial sales charge on the units being converted plus the conversion sales charge usually will exceed the sales charge related to direct purchases of the units being acquired through the Plan. However, given the differences in sales charges between the Funds a spread will occur in most conversions and thus the potential for discrimination exists. The Applicants further state that they believe after a certificateholder has held his Fund units for an adequate period of time the discriminatory nature of his effecting a conversion transaction is not as compelling, and thus argue that the potential abuses outlined above are not material if the converting certificateholder has held his Fund units for at least an eight month period of time. Thus, the Applicants propose that certificateholders who have owned units in the various Funds for a period of eight months or more be allowed to exercise the conversion option and acquire units of one or more of the other Funds at net asset value plus a sales charge of $15.00 per unit. Furthermore, the Applicants state that any certificateholders who wish to convert their units prior to the expiration of the eight month period be allowed to exchange such units at net asset value (bid side evaluation in the case of the Daily Valued Funds and offering side evaluation in the case of the Corporate Fund) plus a sales charge based on the greater of $15.00 per unit or an amount which together with the initial amount paid to acquire the units being converted equals the highest price during the initial public offering of the units of the Fund into which the conversion is being affected. The highest price during the initial public offering of units in each Fund is based on the offering side evaluation of the underlying securities in the portfolios of such Funds (rather than the bid side evaluation thereof) except for bid side evaluations of existing Fund units, if any, deposited in the Daily Valued Funds.

The Applicants state that in the case of certificateholders of the Daily Valued Funds who wish to exercise the conversion option to acquire units of the Corporate Fund, such certificateholders will be selling their units in the Daily Valued Funds at a price based on the bid side evaluation of such units and acquiring units at a price based on the offering side evaluation. The Applicants state that this is neither unfair nor inequitable to any certificateholder since all certificateholders who acquire units of the Corporate Fund in the secondary market will be required to purchase such units at a price based on the offering side evaluation. Furthermore, the Applicants state that participation in the Plan is optional and that no certificateholder is obligated to exercise the conversion option. The Applicants represent that the pricing procedures for the Funds will be clearly stated in all related disclosure documents. Thus, the Applicants state that the proposed changes in the

conversion option will be fair and equitable to all certificateholders. Finally, the Applicants assert that the fundamental purpose underlying the conversion option (providing existing certificateholders an opportunity to reinvest the proceeds from the sale of their Fund units into units of a series of another Fund at a reduced sales charge) will be as sound, justifiable and fair to all certificateholders under the changes that are proposed to be made in the Plan as it was under the Plan, as currently administered.

Section 11(c) of the Act provides, among other things, that exchange offers involving registered unit investment trusts are subject to the provisions of Section 11(a) of the Act irrespective of the basis of exchange. Section 11(a) of the Act provides, in pertinent part, that it shall be unlawful for any registered open-end company or any principal underwriter for such a company to make, or cause to be made, an offer to the holder of a security of such company or any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company or principal underwriter thereof shall sell any redeemable security issued by such company to any person except at a current offering price described in the prospectus. The sales charge described in the prospectus of each of the Funds for effecting regular secondary market purchase and sale transactions is greater than the sales charge which will be applicable to transactions under the Plan. Rule 22d-1 under the Act permits certain variations in sales charges, none of which it is alleged will be applicable to transactions under the Plan.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provision of the Act or of any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may not later than June 28, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C 20549. A copy of such request shall be served personally or by mail upon the Applicants at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons, who request a hearing or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 79-18302 Filed 6-12-79; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-15901; File No. SR-MSRB-79-5]

Municipal Securities Rulemaking Board; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 24, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission the proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Change

The Municipal Securities Rule making Board (the "Board") has filed the following proposed amendment to rule G–12 on uniform practice (hereafter referred to as the "proposed rule change"): Rule G–12.* Uniform Practice.

Italics indicates new language; [brackets] indicate deletions.

(a) through (c) No change.

(d) Comparison and Verification of Confirmations; Unrecognized Transactions.

(i) through (ii) No change.

(iii) In the event a party has sent a confirmation of a transaction but fails to receive a confirmation from the contra party or a notice indicating nonrecognition of the transaction within four business days of the trade date (within six business days of the trade date, in the case of an initial confirmation of a transaction effected on a "when, as, and if issued" basis), the confirming party shall, *not later than the eleventh business day following the trade date,* [promptly] seek to ascertain whether a trade occurred. If, after such verification, such party believes that a trade occurred, it shall immediately notify the non-confirming party by telephone to such effect and send within one business day thereafter, a written notice, return receipt requested, to the non-confirming party, indicating failure to confirm. Promptly following receipt of telephone notice from the confirming party, the non-confirming party shall seek to ascertain whether a trade occurred and the terms of the trade. In the event the non-confirming party determines that a trade occurred, it shall immediately notify the confirming party by telephone to such effect and, within one business day thereafter, send a written confirmation of the transaction to the confirming party. In the event a party cannot confirm the trade, such party shall promptly send a written notice, return receipt requested, to the confirming party, indicating nonrecognition of the transaction.

(iv) through (viii) No change.

(e) through (l) No change.

Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change is as follows:

Purpose of Proposed Rule Change

Under rule G–12 as currently in effect, each party to a transaction between municipal securities professionals must send to the other party a confirmation containing certain information. Paragraph (d) of rule G–12 provides that in the event a confirming party does not receive a contra-confirmation of the transaction within the time periods specified by the rule, such party must initiate certain procedures to verify the transaction, including giving telephonic and written notice to the contra party who has failed to confirm. Paragraph (d) also provides that these procedures must be initiated within four business

days of the trade date (within six business days of the trade date in the case of an initial confirmation of a transaction effected on a "when, as, and if issued" basis).

Several members of the industry have indicated to the Board that they have found rule G–12(d) burdensome because of the time periods provided in the rule. Specifically, they assert that the requirement in the rule to initiate verification procedures after four business days often results in their needlessly initiating such procedures when contra-confirmations have in fact been prepared and sent. They attribute this problem in large part to delays in mail service.

As a result of such comments, the Board informally surveyed approximately 30 municipal securities brokers and municipal securities dealers to obtain information concerning their experience with this provision. The results of that survey indicated that certain municipal securities dealers, particularly those located on the West Coast, have encountered difficulty with the four business day requirement in the rule.

In light of the comments and the results of its informal survey, the Board issued in exposure draft form on November 28, 1978, a proposed amendment to rule G–12(d), which provided additional time for initiating the verification procedures. The response to the exposure draft is described under item 5 in this filing.

The Board believes in view of all of the foregoing that rule G–12(d)(iii) should be modified to provide additional time for the initiation of verification procedures. The Board therefore proposes to amend rule G–12(d)(iii) to provide that the verification procedures may be initiated, in the event a contra-confirmation is not received, at any time between the fourth business day and eleventh business day following the trade date. The Board is of the view that the proposed change will alleviate the problems which the industry has experienced with the current requirement, while at the same time assuring that confirmations will continue to be compared and verified on a timely basis.

Basis Under the Act for Proposed Rule Changes

The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended (the "Act"), which requires and empowers the Board to adopt rules:

> Designed * * * to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in * * * facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest * * *

Comments Received From Members, Participants or Others on Proposed Rule Change

As indicated above, the Board issued for comment on November 28, 1978, a draft amendment to rule G–12(d). The draft amendment provided that the verification procedures could be initiated, in the event a contra-confirmation was not received, at any time between the fourth business day and fifteenth calendar following trade date. The following persons submitted comments in response to the draft amendments:

Bankers Trust Company ("Bankers Trust")
Lebenthal & Co., Inc. ("Lebenthal")
Mercantile Trust Company, N.A. ("Mercantile Trust")
Merrill Lynch, Pierce, Fenner & Smith ("Merrill Lynch")
The Northern Trust Company
Salomon Brothers
Weil Investment Company

All of the commentators, except Merrill Lynch, supported the general intent of the draft amendment. Salomon Brothers and Mercantile Trust expressed unqualified support for the amendment. Lebenthal supported the amendment, but suggested that in order to avoid confusion the time period involved in the provision should be described in terms of "business" days only, rather than in "business" and "calendar" days. The Board adopted this suggestion, providing in the proposed amendment for an outside time limit of 11 business days.

The Northern Trust Company and Weil Investment Company suggested that the outside time limit of fifteen calendar days in the draft amendment was too long. Bankers Trust suggested that the four business day time limit be preserved, but that it should begin on settlement date, rather than trade date.

The Board notes in response to these comments that the proposed rule change only sets an outside limit within which time the verification procedures must be initiated, and would not prohibit a municipal securities broker or municipal securities dealer from initiating the procedures at an earlier time.

Merrill Lynch opposed the draft amendment, stating that "uncompared transactions left unresolved for a longer period of time create greater potential liability for the brokerage community and for the public." As an alternative, Merrill Lynch suggested amending the rule to require that verification procedures be initiated on the fifth business day following trade date, rather than "promptly" after a party fails to receive a contra-confirmation "within four business days of trade date." As reflected in this filing, the Board is of the view that it is appropriate to provide additional time for the initiation of the verification procedures.

Merrill Lynch also objects to the statement in the exposure draft that:

> [i]f a transaction were settled prior to commencement of the verification procedure, the confirming party would not be required to complete the procedure.

The Board is of the view that the confirming party should not be obligated by rule to proceed with the verification procedures, although such party is free to do so if it wishes.

Burden on Competition

The Board is of the opinion that the proposed rule change will not impose any burden on competition.

On or before July 18, 1979, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before July 5, 1979.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

June 6, 1979.

[FR Doc. 79-18287 Filed 6-13-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-15900; File No. SR-MSRB-79-4]

Municipal Securities Rulemaking Board; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 24, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission the proposed rule changes as follows

Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule changes effect modifications in rule D-11 defining "associated persons" for purposes of the Board's rules, in rule G-13 concerning mis-representations of quotations, and in rule G-19 governing suitability of recommendations and transactions in municipal securities. The text of the proposed rule changes appears below.

Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change is as follows:

Purpose of Proposed Rule Changes, Rule D-11

Rule D-11 provides that for purposes of the Board's rules the terms "broker," "dealer," "municipal securities broker," "municipal securities dealer," and "bank dealer" include their respective associated persons. The rule elimiates the need to make specific reference to personnel of securities firms and bank dealers in each Board rule that applies to both the organization and its personnel.

Under the securities laws, the term "associated persons" is subject to varying definitions.*

See e.g., Section 3(a)(18) of the Act, which defines the term "person associated with a broker or dealer" to include those "directly or indirectly controlling, controlled by, or under common control with such broker or dealer."

Similarly, Section 2(a)(32) of the Act includes within the definition of "person associated with a municipal securities dealer" when used with respect to a municipal securities dealer which is a bank or a division or department of a bank, "any person directly or indirectly controlling [the municipal securities dealer's activities with respect to municipal securities] or controlled by the municipal securities dealer in connection with such activities."

In this connection, the Board has stated in notices relating to rule D-11 that:

> [a]lthough the statutory definition of associated persons includes individuals and organizations in a control relationship with the securities professional, the context of the fair practice rules indicates that such rules will ordinarily not apply to persons who are associated with securities firms and bank dealers solely by reason of a control relationship.

The Board is of the view that this point shoud be expressly addressed in rule D-11 to avoid possible confusion. Accordingly, the proposed rule changes amend rule D-11 to clarify that the Board's rules apply to associated persons only to the extent they are engaged in performing municipal securities dealer activities, as defined in the Board's rules.

Rule G-13

Rule G-13 sets forth a number of requirements applicable to quotations relating to municipal securities. Paragraph (b) of the rule addresses the distribution of quotations by a municipal securities dealer on its own behalf or on behalf of another municipal securities professional. Paragraph (d) of the rule addresses the distribution of quotations made by other professionals. Since paragraph (d) complements paragraph (b), the Board believes that is should logically be included as a separate subparagraph of paragraph (b) of rule G-13

Rule G-19

Rule G-19 prohibits a securities professional from recommending transactions in municipal securities to a customer unless the professional makes certain determinations with respect to the suitability of such recommendations. Paragraph (a) of the rule provides in pertinent part:

> Notwithstanding the foregoing, if a broker, dealer or municipal securities dealer determines that a transaction in *specific municipal securities* would not be suitable for a customer and so informs such customer, such broker, dealer or municipal securities dealer may thereafter respond to the customer's request for advice concerning such securities and may execute transactions in such securities at the direction of the customer. [Emphasis added.]

The Board is concerned that the reference to "specific municipal securities" may be misconstrued. The provision is clearly intended to permit a municipal securities professional to give advice and execute transactios in securities which the professional has recommended that a customer not purchase, if the customer is insistent on doing so. The provision, moreover, is also intended to permit a municipal securities professional to make recommendations to a customer who, after being advised that municipal securities in general are not a proper investment for him, insists on purchasing municipal securities. In order to make clear that the provision applies in the latter circumstances, the Board has adopted the proposed amendment to rule G-19.

Basis Under the Act for Proposed Rule Changes

The Board has adopted the proposed rule changes pursuant to Section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended (the "Act"), which directs the Board to adopt rules which are

> * * * designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest. * * *

Comments Received From Members, Participants or Others on Proposed Rule Changes

The Board neither solicited nor received written comments on the proposed rule changes, which were developed in response to comments made by the staff of the Commission.

Burden on Competition

The Board does not believe that the proposed rule changes will impose any burden on competition. On or before July 18, 1979, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes it reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and

of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before July 5, 1979.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

Text of Proposed Rule Changes*

Rule D–11—"Associated Persons"

Unless the context otherwise requires or a rule of the Board otherwise specifically provides, the terms "broker," "dealer," "municipal securities broker," "municipal securities dealer," and "bank dealer" shall refer to and include their respective associated persons *to the extent such associated persons are performing municipal securities dealer activities, as defined in Board rules, with or for the broker, dealer, municipal securities broker, municipal securities dealer or bank dealer.* Unless otherwise specified, persons whose functions are solely clerical or ministerial shall not be considered associated persons for purposes of the Board's rules.

Rule G–13

(a) No change.
(b)(i)(ii) and (iii) No change.
(iv) *No municipal securities broker or municipal securities dealer shall knowingly misrepresent a quotation relating to municipal securities made by any other broker, dealer, or municipal securities dealer.*

[(d) *Misrepresentations of Quotations.* No municipal securities broker or municipal securities dealer shall knowingly misrepresent a quotation relating to municipal securities made by any other broker, dealer or municipal securities dealer.]

Rule G–19—Suitability of Recommendations and Transactions

(a) Customer Information. No broker, dealer, or municipal securities dealer shall recommend the purchase, sale, or exchange of a municipal security to a customer unless such broker, dealer, or municipal securities dealer, after reasonable inquiry.

(i) and (ii) No change.

Notwithstanding the foregoing, if a broker, dealer, or municipal securities dealer determines that a transaction *in municipal securities or* in specific municipal securities would not be suitable for a customer and so informs such customer, such broker, dealer, or municipal securities dealer may thereafter respons to the customer's requests for *investment* advice concerning *municipal securities generally or such specific* securities and may execute transactions [in such securities] at the direction of the customer.

(b) and (c) No change.

[FR Doc. 79–18303 Filed 6–12–79; 8:45 am]
BILLING CODE 8010–01–M

Italics indicate new language; [brackets] indicate deletions.

SMALL BUSINESS ADMINISTRATION

[Proposal No. 06/06–0048]

Capital Corp. of Wyoming, Inc.; Application for a License as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration pursuant to § 107.102 of the SBA Regulations (13 CFR 107.102 (1979)), by the Capital Corporation of Wyoming, Inc., 145 South Durbin Street, P.O. Box 612, Casper, Wyoming 82602 for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. *et seq.).*

The proposed officers, directors and sole shareholder will be:

B. R. Weber, President, 3421 Warren Avenue, Casper, Wyoming 82601.
Larry J. McDonald, Executive Vice President and Director, 4524 South Skyline Road, Alcova Route, Casper, Wyoming 82601.
Robert E. Kemper, Vice President, 1035 Cardiff, Casper, Wyoming 82601.
Hugh L. Binford, Vice President, La Casa Cerro, Sinclair, Wyoming 82334.
D. Thomas Kidd, Secretary-Treasurer, 3321 Carmel Drive, Casper, Wyoming 82601.
Elizabeth Smith, Assistant Secretary, 4440 South Poplar No. 201, Casper, Wyoming 82601.
Bruce G. Beaudoin, Director, 4441 Sunrise Court, Casper, Wyoming 82601.
H. K. Harris, Director, 508 4th Avenue North, Greybull, Wyoming 82426.
Robert G. Kimball, Director, 1801 Brookview Drive, Casper, Wyoming 82601.
Vern Rissler, Director, 2905 Nob Hill Drive, Casper, Wyoming 82601.
Harmon H. Watt, Director, 420 East Park Avenue, Riverton, Wyoming 82501.
Wyoming Industrial Development Corporation, Sole Shareholder 100, 145 South Durbin Street, P.O. Box 612, Casper, Wyoming 82602.

Wyoming Industrial Development Corporation (WIDC) is a private, for profit, company organized for the purpose of creating quality growth and adding industrial diversification to the economy of Wyoming. WIDC has a pool of funds for making loans and investments and also offers promotional capabilities and management consulting services for financial planning and economic feasibility analyses. The University of Wyoming Foundation is the only 10 or more percent stockholder of WIDC.

The Applicant proposes to begin operations with a capitalization of $305,000 and will be a source of equity capital and long term loans for qualified small business concerns. The Applicant intends to render management consulting services to small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including adequate profitability and financial soundness, in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Finance and Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in Casper, Wyoming.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Dated: June 6, 1979.

Peter F. McNeish,
Deputy Associate Administrator for Finance and Investment.

[FR Doc. 79–18288 Filed 6–12–79; 8:45 am]
BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area No. 1643]

Maryland; Declaration of Disaster Loan Area

Carroll County and adjacent counties within the State of Maryland constitute a disaster area as a result of damage caused by a tornado which occurred on May 23, 1979. Applications will be processed under the provisions of Public Law 94–305. Interest rate is 7¾ percent. Eligible persons, firms and organizations may file applications for loans for

physical damage until the close of business on August 3, 1979, and for economic injury until the close of business on March 4, 1980 at:

Small Business Administration, District Office, Oxford Building, Room 630, 8600 LaSalle Road, Towson, Maryland 21204.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: June 4, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-18288 Filed 6-12-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1616; Amendment No. 5]

Mississippi; Declaration of Disaster Loan Area

The above numbered Declaration (See 44 FR 24179), amendment No. 1 (See FR 26232) and amendment No. 2 (See 44 FR 27782), amendment No. 3 (See FR 29189), and amendment No. 4 (See FR 31339), are amended in accordance with the President's declaration of April 16, 1979, to include the City of Greenville in the State of Mississippi. The Small Business Administration will accept applications for disaster relief loans from disaster victims in the above-named city in the State of Mississippi. All other information remains the same; i.e., the termination dates for filing applications for physical damage is close of business on June 15, 1979, and for economic injury until the close of business on January 15, 1980.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 17, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-18289 Filed 6-12-79; 8:45 am]

BILLING CODE 8025-01-M

[License No. 07/07-5061]

REC Business Opportunities Corp.; License Surrender

Notice is hereby given that REC Business Opportunities Corporation (REC), 316 Fifth Street, Racine, Wisconsin 53403 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). REC was licensed by the Small Business Administration on October 23, 1979.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on May 31, 1979, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 8, 1979.

Peter F. McNeish,

Deputy Associate Administrator for Finance and Investment.

[FR Doc. 79-18287 Filed 6-12-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1642]

Texas; Declaration of Disaster Loan Area

Limestone and McLennan counties within the State of Texas constitute a disaster area as a result of damage caused by excessive rain, high winds and flooding which occurred on May 10-12, 1979. Applications will be processed under the provisions of Public Law 94-305. Interest rate is 7¾ percent. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on July 30, 1979 and for economic injury until the close of business on February 29, 1980 at:

Small Business Administration, District Office, 1100 Commerce Street, Dallas, Texas 75242.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: May 31, 1979.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 79-18290 Filed 6-12-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1644]

Texas; Declaration of Disaster Loan Area

Cameron, Hidalgo and Willacy Counties and adjacent counties within the State of Texas constitute a disaster area as a result of damage caused by hail, rain, winds and tornadic winds which occurred on April 17, 29 and 30, 1979. Applications will be processed under the provisions of Public Law 94-305. Interest rate is 7¾ percent. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on August 3, 1979, and for economic injury until the close of business on March 4, 1980, at:

Small Business Administration, District Office, 222 E. Van Buren, Suite 500, Harlingen, Texas 78550.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: June 4, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-18291 Filed 6-12-79; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Certain Steel I-Beams From Belgium; Antidumping; Tentative Determination of Sales at Not Less Than Fair Value

AGENCY: U.S. Treasury Department.

ACTION: Tentative Negative Determination.

SUMMARY: This notice is to advise the public that no sales of certain steel I-beams from Belgium to the United States at less than fair value within the meaning of the Antidumping Act, 1921, have been found. Sales at less than fair value generally occur when the price of the merchandise sold for exportation to the United States is less than the price of such or similar merchandise sold in the home market or to third countries. Interested persons are invited to comment on this action not later than July 13, 1979.

EFFECTIVE DATE: June 13, 1979.

FOR FURTHER INFORMATION CONTACT: John R. Kugelman, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5492).

SUPPLEMENTARY INFORMATION: Information was received on January 2, 1979, from counsel acting on behalf of Connors Steel Company, alleging that certain steel I-beams from Belgium were being sold at less than fair value, thereby causing injury to, or the likelihood of injury to, or the prevention of establishment of, an industry in the United States, within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 *et seq.*) (referred to in this notice as "the Act"). On the basis of this information and subsequent preliminary investigation by the Customs Service, an "Antidumping Proceeding Notice" was published in the Federal Register of February 9, 1979 (44 FR 8408-9).

For purposes of this investigation, the term "certain steel I-beams" means hot-rolled steel I-beams, with symmetrical flanges or with one or more flanges

offset, less than six inches in height and weighing not over 4–½ pounds per linear foot, provided for under item number 609.80 of the Tariff Schedules of the United States Annotated (TSUSA).

Tentative Determination of Sales at Not Less Than Fair Value

On the basis of information developed in the Customs' investigation and for the reasons stated below, pursuant to section 201(b) of the Act (19 U.S.C. 160(b)), I hereby determine that there are no reasonable grounds to believe or suspect that the purchase price of these I-beams from Belgium is less than fair value, and thereby foreign market value, of such or similar merchandise.

Statement of Reasons on Which This Determination is Based

The reasons and bases for the above determination are as follows:

a. *Scope of the Investigation.* It appears that all or virtually all of the subject merchandise imported from Belgium were manufactured by S.A. Cockerill-Ougree-Providence-et-Esperance-Longdoz. Therefore, the investigation was limited to this manufacturer.

b. *Basis of Comparison.* For purposes of considering whether the merchandise in question is being, or is likely to be, sold at less than fair value within the meaning of the Act, the proper basis of comparison appears to be between the purchase price and the home market price of such merchandise. Purchase price, as defined in section 203 of the Act (19 U.S.C. 162), was used since all export sales to the United States of these I-beams from Belgium appear to be made to unrelated purchasers in the United States prior to the dates of exportation. Home market price, as defined in § 153.2, Customs Regulations (19 CFR 153.2), was used since such merchandise appears to have been sold in the home market in sufficient quantities to provide an adequate basis of comparison for fair value purposes. In accordance with § 153.31(b) Customs Regulations (19 CFR 153.31(b)), pricing information was obtained concerning sales of this merchandise to the U.S. involving shipments during the period August 1, 1978 through January 31, 1979, and home market sales occurring at or about the time of sales to the U.S.

c. *Purchase Price.* For the purposes of this tentative determination, since all merchandise was purchased, or agreed to be purchased, prior to the time of exportation by the persons by whom or for whose account it was imported, within the meaning of section 203 of the Act, purchase price has been calculated on the basis of the f.o.b. Antwerp prices to United States purchasers, with a deduction for Belgian inland freight.

d. *Home Market Price.* For the purposes of this tentative determination, the home market price was calculated on the basis of the weighted average delivered prices to both related and unrelated purchasers, with appropriate deductions for Belgian inland freight. Sales to related purchasers were considered to be arm's length transactions since they did not occur at prices less than those applicable to sales to unrelated purchasers. No other adjustments were claimed or allowed.

e. *Results of Fair Value Comparisons.* Using the above criteria, purchase price was found to be not less than the home market price of such merchandise. Comparisons were made on approximately 100 percent of the sales of these I–beams to the United States from Belgium during the period of investigation. In accordance with § 153.40, Customs Regulations (19 CFR 153.40), interested persons may present written views or arguments, or request in writing that the Secretary of the Treasury afford an opportunity to present oral views.

Any request that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to the Commissioner of Customs, 1301 Constitution Avenue, NW., Washington, D.C. 20229, in time to be received by his office not later than June 28, 1979. Such requests must be accompanied by a statement outlining the issues wished to be discussed, which issues may be discussed in greater detail in a written brief.

Any written views or arguments should be addressed in ten copies to the Commissioner of Customs in time to be received in his office no later than July 13, 1979. All persons submitting written views or arguments should avoid repetitious and merely cumulative material. Counsel for the petitioner and respondent are also requested to send to each other all written submissions, including non-confidential summaries or approximated presentations of all confidential information.

This tentative determination and the statement of reasons therefor are published pursuant to § 153.34(a), Customs Regulations (19 CFR 153.34(a)).

Robert H. Mundheim,

General Counsel of the Treasury.

June 7, 1979.

[FR Doc. 79–18417 Filed 6–12–79; 8:45 am]

BILLING CODE 4810-22-M

Elemental Sulphur From Mexico; Tentative Determination To Modify or Revoke Dumping Finding

AGENCY: U.S. Treasury Department.

ACTION: Tentative modification or revocation of finding of dumping.

SUMMARY: This notice is to advise the public that it appears that elemental sulphur from Mexico is no longer being sold to the United States at less than fair value within the meaning of the Antidumping Act, 1921, as amended. Sales at less than fair value generally occur when the price of merchandise sold for exportation to the United States is less than the price of such or similar merchandise sold in the home market or to third countries. In addition, the concerned exporters have given assurances that future sales will not be at less than fair value. If this action is made final, imports of this merchandise from Mexico on or after the effective date of this notice will no longer be liable for special dumping duties under the Antidumping Act, 1921. Interested persons are invited to comment on this action.

EFFECTIVE DATE: June 13, 1979.

FOR FURTHER INFORMATION CONTACT: Richard Rimlinger, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5492).

SUPPLEMENTARY INFORMATION: A finding of dumping with respect to elemental sulphur from Mexico was published as Treasury Decision 72–179 in the Federal Register of June 28, 1972 (37 FR 12727).

On January 5, 1978, the finding of dumping was modified to exclude elemental sulphur produced and sold by Azufrera Panamericana, S.A. (Azufrera) (43 FR 954).

After due investigation, it has been determined tentatively that elemental sulphur from Mexico is no longer being, nor is likely to be, sold to the United States at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 *et seq.*).

Statement of Reasons on Which This Tenative Determination Is Based

The investigation indicated that all shipments of elemental sulphur from Mexico to the United States since 1974, have been made at not less than fair value. Sulphur produced by three Mexican companies was sold to the United States during that period. Although sulphur produced by Azufrera has already been excluded from the finding, sulphur produced by Petroleas Mexicanos (Pemex) but marketed by Azufrera and that which was both

produced and sold by Compania Exploradora del Istmo, S.A. (CEDI) were not so excluded. Written assurances now have been given by Azufrera and CEDI—the only companies actually engaged in sales to the United States—that future sales of elemental sulphur to the United States marketed by them will not be made at less than fair value.

Accordingly, notice is hereby given that the Department of the Treasury intends to revoke the finding of dumping on elemental sulphur from Mexico.

In accordance with § 153.40, Customs Regulations (19 CFR 153.40), interested persons may present written views or arguments, or request in writing that the Secretary of the Treasury afford an opportunity to present oral views. A copy of all submissions should be delivered to any counsel that has heretofore represented any parties in these proceedings.

Any requests that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to the Commissioner of Customs, 1301 Constitution Avenue, NW, Washington, D.C. 20229, in time to be received by his office not later than June 25, 1979. Such requests must be accompanied by a statement outlining the issues wished to be discussed.

Any written views or arguments should likewise be addressed to the Commissioner of Customs in time to be received by his office not later than July 13, 1979.

This notice is published pursuant to § 153.44(c) of the Customs Regulations (19 CFR 153.44(c)).

Robert H. Mundheim,
General Counsel of the Treasury.
June 7, 1979.

[FR Doc. 79-19418 Filed 6-12-79; 8:45 am]
BILLING CODE 4810-22-M

INTERSTATE COMMERCE COMMISSION

[Twenty-Sixth Revised Exemption No. 129]

Atlanta & Saint Andrews Bay Railway Co., et al; Exemption Under Provison of Rule 19 of the Mandatory Car Service Rules Ordered in Ex Parte No. 241

It appearing, That the railroads named herein own numerous forty-foot plain boxcars; that under present conditions, there is virtually no demand for these cars on the lines of the car owners; that return of these cars to the car owners would result in their being stored idle on these lines; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of plain boxcars owned by the railroads listed herein, resulting in unnecessary loss of utilization of such cars.

It is ordered, That, pursuant to the authority vested in me my Car Service Rule 19, plain boxcars described in the Official Railway Equipment Register, I.C.C. RER 6410–A, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM," with inside length 44-ft. 6-in. or less, regardless of door width and bearing reporting marks assigned to the railroads named below, shall be exempt from provisions of Car Service Rules 1(a), 2(a), and 2(b).

Atlanta & Saint Andrews Bay Railway Company, Reporting Marks: ASAB
Chicago, West Pullman & Southern Railroad Company, Reporting Marks: CWP
Illinois Terminal Railroad Company, Reporting Marks: ITC
Louisville, New Albany & Corydon Railroad Company, Reporting Marks: LNAC
[1] Missouri-Kansas-Texas Railroad Company, Reporting Marks: MKT-BKTY
• • •

Effective 12:01 a.m., June 1, 1979, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., May 25, 1979.

Interstate Commerce Commission
Joel E. Burns,
Agent.

[FR Doc. 79-19405 Filed 6-12-79; 8:45 am]
BILLING CODE 7035-01-M

[Exception No. 3 to Corrected Second Revised Service Order No. 1301]

Chicago, Rock Island and Pacific Railroad Co.

Pursuant to the authority vested in me by section (a)(4) of Corrected Second Revised Service Order No. 1301, the Chicago, Rock Island and Pacific Railroad Company is authorized to use 40-ft., narrow-door plain boxcars owned by Burlington Northern Inc. for loading at stations in the State of Oklahoma, and destined to any station designated by the shipper, regardless of the provisions of Section (a)(3) of Corrected Second Revised Service Order No. 1301 which authorizes these cars to be loaded to any station on the lines of Burlington Nothern Inc.

Effective June 1, 1979.
Expires June 19, 1979.

[1] Addition
• • • Richmond, Fredericksburg and Potomac Railroad Company deleted.

Issued at Washington, D.C., May 31, 1979.

Joel E. Burns,
Director, Bureau of Operations.

[FR Doc. 79-19406 Filed 6-12-79; 8:45 am]
BILLING CODE 7035-01-M

[Exemption No. 167]

Chicago, Rock Island and Pacific Railroad Co.; Exemption Under Provision of Rule 19 of the Mandatory Car Service Rules Ordered in Ex Parte No. 241

There has been a substantial increase in the demand for 40-ft., narrow-door plain boxcars for shipments of grain from stations on the Chicago, Rock Island and Pacific Railroad Company (RI) in the State of Oklahoma. There are substantial shortages of these cars on the lines of RI, and RI is unable to furnish shippers 40-ft., narrow-door plain boxcars of suitable ownership to move the present grain harvest.

It is ordered, That pursuant to the authority vested in me by Car Service Rule 19:

The Chicago, Rock Island and Pacific Railroad Company is authorized to accept from shippers, within the State of Oklahoma, 40-ft., narrow-door plain boxcars less than 40-ft., 6-in., in length and bearing mechanical designation "XM" as listed in the Official Railway Equipment Register ICC RER 6410-A, issued by W.J. Trezise, or successive issues thereof, regardless of the provisions of Car Service Rules 1 and 2.

It is further ordered,

This exemption shall not apply to cars of Mexican or Canadian ownership or to cars subject to Interstate Commerce Commission or Association of American Railroads' Orders requiring return of cars to owner.

Effective June 1, 1979.
Expires June 19, 1979.

Issued at Washington, D.C., May 31, 1979.

Interstate Commerce Commission
Joel E. Burns,
Agent.

[FR Doc. 79-19404 Filed 6-12-79; 8:45 am]
BILLING CODE 7035-01-M

[Decision No. 37149]

Kansas Intrastate Freight Rates and Charges—1979

Decided: June 4, 1979

By petition filed March 20, 1979, The Atchison, Topeka and Santa Fe Railway (Atchison) operating in intrastate commerce in Kansas, requests that this Commission institute an investigation of its Kansas Intrastate freight rates and

charges, under 49 U.S.C. 11501 and 11502. Atchison seeks an order authorizing it to increase such rates and charges in the same amounts approved for interstate application by this Commission in Ex Parte No. 357. Atchison has stated grounds sufficient to warrant instituting an investigation. Atchison has also requested that certain railroads operating in Kansas be made parties to this proceeding. This request will not be granted.

The Atchison allegation that "the State Corporation Commission of the State of Kansas . . . presumably would deny the application of other Kansas rail carriers" does not establish that this Commission should name as respondents the other railroads operating in Kansas absent a request on their behalf.

The St. Louis-San Francisco Railway Company (Frisco), the Missouri-Kansas-Texas Railroad Company (Missouri) and the Union Pacific Railroad Company (UP), filed letter requests to be joined as respondents in this proceeding as a result of the failure of the State Corporation Commission of the State of Kansas to grant an increase based on the increase authorized by the Commission in Ex Parte 357. These petitions will be granted.

It is ordered: The Atchison petition for investigation and the requests of the Frisco, Missouri and UP are granted. An investigation, under 49 U.S.C. 11501 and 11502, is instituted to determine whether the Kansas intrastate rail freight rates maintained by the Atchison, Frisco, Missouri, and UP in any respect cause any unjust discrimination against or any undue burden on their interstate or foreign commerce operations, or cause undue or unreasonable advantage, perference, or prejudice as between as persons or localities in interstate or foreign commerce, or are otherwise unlawful, by reason of the failure of such rates and charges to include the full increases authorized for interstate application by this Commisison in Ex Parte No. 357. In the investigation we shall also determine if any rates or charges, or maxiumu or minimum charges, or both, should be prescribed to remove any unlawful advantage, preference, discrimination, undue burden, or other violation of law, found to exist.

All persons who wish to participate in this proceeding and to file and receive copies of pleadings shall make known that fact by notifying the Office of Proceedings, Room 5342, Interstate Commerce Commission, Washington, D.C. 20423, on or before 15 days from the Federal Register Publication date. Although individual participation is not precluded, to conserve time and to avoid unnecessary expense, persons having common interests should endeavor to consolidate their presentations to the greatest extent possible. This Commission desires participation of only those who intend to take an active part in this proceeding.

As soon as practicable after the last day for indicating a desire to participate in the proceeding, this Commission will serve a list of names and addresses on all persons upon whom service of all pleadings must be made. Thereafter, this proceeding will be assigned for oral hearing or handling under modified procedure.

A copy of this decision shall be served upon petitioner Atchison, the Frisco, the Missouri, and the UP and copies shall be sent by certified mail to the State Corporation Commission of the State of Kansas and the Governor of Kansas. Further notice of this proceeding shall be given to the public by deposition a copy of this decision in the Office of the Secretary of the Interstate Commerce. Commission at Washington, D.C., and by filing, a copy with the Director, Office of the Federal Register, for publication in the Federal Register.

This is not a major Federal action significantly affecting the quality of the human environment. Furthermore, this decision is not a major regulatory action under the Energy Policy and Conservation Act of 1975.

By the Commission, Alan Fitzwater, Director, Office of Proceedings.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-18611 Filed 6-12-79; 8:45 am]

BILLING CODE 7035-01-M

[Notice No. 59]

Motor Carrier Temporary Authority Applications

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

MC 14252 (Sub-36TA), filed January 10, 1979, and published in the Federal Register issue of February 23, 1979, and republish as corrected this issue. Applicant: COMMERCIAL LOVELACE MOTOR FREIGHT, INC., 3400 Refugee Road, Columbus, Ohio 43227. Representative: William C. Buckham, 3400 Refugee Road, Columbus, Ohio 43227. Common carrier-regular route. *General commodities, except those of unusual value, class A or B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment* (1) Between Danville, IL and junction IL Hwy. 1 and U.S. Hwy. 24; from Danville, IL over IL Hwy. 1 to the junction of U.S. Hwy. 24 at or near Wateska, IL and return over the same route. (2) Between the Junction of IL Hwy. 1 and U.S. Hwy. 24, and Gilman, IL from the junction of IL Hwy. 1 and U.S. Hwy. 24 over U.S. Hwy. 24 to Gilman, IL, and return over the same route. (3) Between Gilman, IL and Champaign, IL from Gilman, IL over U.S. Hwy. 45 to Champaign, IL and return over the same route. (4) Between Onarga, IL and the junction of IL Hwy. 54 and U.S. Hwy. 150 from Onargo, IL over IL Hwy. 54 to the junction of IL Hwy. 54 and U.S. Hwy. 150, and return over the same route. (5) Between Junction U.S. Hwys. 24 and IL Hwy. 49, and the junction of IL Hwy. 49 and U.S. Hwy. 150 from the junction of U.S. Hwy. 24, and IL Hwy. 49 at or near Crescent City, IL over IL Hwy. 49 to the junction

of U.S. Hwy. 150 and return over the same route. Service is authorized at all intermediate points on the above described routes and at the off-route point of East Lynn, IL. The purpose of this republication is to completely show the territorial description, as filed. Supporting shipper(s): "There are (14) shippers. Their statements may be examined at the office listed below and Headquarters." Send protests to: Frank L. Calvary, District Supervisor, Interstate Commerce Commission, 220 Federal Building and U.S. Courthouse, 85 Marconi Boulevard, Columbus, Ohio 43215.

MC 109533 (Sub-109TA), filed March 22, 1979, and published in the Federal Register issue of May 1, 1979, and republish as corrected this issue. Applicant: OVERNITE TRANSPORTATION CO., 1000 Semmes Avenue, Richmond, VA 23224. Representative: E. T. Liipfert, 1660 L Street NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting *general commodities (except those of unusual value, classes A & B explosives, household goods as described by the Commission, commodities in bulk and those requiring special equipment*, (1) between Louisville, KY, and Hazel, KY, from Louisville, KY over Interstate Hwy 65 to the junction of United States Western KY Parkway, thence over Western KY Parkway to the junction of U.S. Hwy 62, thence over U.S. Hwy 62 to junction of Purchase Parkway, thence over Purchase Parkway to Benton, KY, thence over U.S. Hwy 641 to Hazel and return over the same route serving all intermediate points; (2) between Madisonville, KY and the junction of U.S. Alternate Hwy 41 and Western KY Parkway over U.S. Alternate Hwy 41 serving all intermediate points; (3) betwen Paducah, KY and Western KY Parkway over U.S. Hwy 62 serving all intermediate points; (4) In connection with routes 1, 2 and 3, serving all points in the counties of Breckenridge, Bullitt, Butler, Caldwell, Calloway, Christian, Crittenden, Daviess, Edmonson, Grayson, Hancock, Hardin, Hart, Henderson, Hopkins, Jefferson, Larue, Livingston, Logan, Lyon, McCracken, McLean, Marshall, Meade, Muhlenberg, Ohio, Todd, Trigg, Union, and Webster Counties as off-route points; (5) In connection with routes 1, 2 and 3, serving the commercial zones of the termini and intermediate points, for 180 days. An underlying ETA seeks 90 days of authority. Suporting Shipper(s): There are 343 supporting shippers to this application. Their statements may be examined at the office listed below and at Headquarters. Send Protests To: Paul D. Collins, DS, ICC, Rm. 10-502 Federal Bldg., 400 North 8th Street, Richmond, VA 23240. The purpose of this republication is to correctly show the complete territorial description which was previously omitted.

MC 109692 (Sub-84TA), filed April 10, 1979. Applicant: GRAIN BELT TRANSPORTATION CO., Route 13, Kansas City, MO 64161. Representative: Warren H. Sapp, P.O. Box 16047, Kansas City, MO 64112. (1) *Iron and steel tanks, and parts, components and accessories therefor* from the Kansas City, MO-KS Commercial Zone to points in AR, IL, IN, KY, LA, MN, ND, OH, SD, TN, and WI; and (2) materials, equipment and supplies used in the manufacture of the commodities named in (1) above from points in AR, IL, IN, KY, LA, MN, ND, OH, SD, TN and WI to the Kansas City, MO-KS Commercial Zone for 180 days. Supporting Shipper(s): Butler Maufacturing Co., 7400 East 13th Street, Kansas City, MO 64126. Send protests to: Vernon V. Coble, DS, ICC, 600 Federal Building, 911 Walnut St., Kansas City, MO 64106.

MC 110683 (Sub-137TA), filed March 20, 1979, and published in the Federal Register issues of April 24, 1979 and May 18, 1979, and republish as corrected this issue. Applicant: SMITH'S TRANSFER CORP., P.O. Box 1000, Staunton, VA 24401. Representative: Francis W. McInerny, 1000 16th Street, NW., Washington, DC 20036. The scope of this application remains as previously published. The purpose of this republication is to show that the applicant intends to tack the authority sought with its existing authority, in addition to correctly show the destination as Barren, KY in lieu Barrne and to correctly show that KY Hwy 611 should read KY Hwy 61.

MC 116323 (Sub-3TA), filed April 27, 1979. Applicant: STEGALL MILLING CO., INC., P.O. Box 607, Marshville, NC 28103. Representative: Archie B. Culbreth, Attorney At Law, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. (1) *Cement and Mortar Mixes, including cement and mortar mixed with rock, sand or other aggregates, cold mix asphalt, sand, vinyl concrete patcher, lime, masonry coating, tile grout, hydraulic cement, adhesives, and advertising matter, in bags or containers*, from the facilities of W. R. Bonsal Company at or near Lilesville, NC to points in GA, SC, TN, and VA, and (2) Materials, equipment, and supplies used in the manufacture or distribution of commodities named in (1) above (except commodities in bulk in tank vehicles) from points in GA, SC, TN, and VA to the facilities of W. R. Bonsal Company at or near Lilesville, NC for 180 days. An underlying ETA seeks 90 days of authority. Supporting shipper(s): W. R. Bonsal Company, P.O. Box 38, Lilesville, NC 28091. Send protests to: Terrell Price, DS, ICC, 800 Briar Creek Rd., Rm. CC516, Charlotte, NC 28205.

MC 116763 (Sub-503TA), filed April 30, 1979. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380. Representative: Gary J. Jira (same as applicant). *Malt beverages and malt syrups, and related advertising materials (except commodities in bulk, in tank vehicles)*, from the facilities of Anheuser-Busch, Inc., at or near St. Louis, MO, to points in CT, ME, MA, NH, NJ, NY, RI, VT, VA, DE, DC, MD and PA. Restricted to traffic originating at the named origin and destined to the indicated destination, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Anheuser-Busch, Inc., Arland Nottmeier, Traffic Manger, 721 Pestalozzie St., St. Louis, MO 63118. Send protests to: Bureau of Operations, ICC, Wm. J. Green, Jr., Federal Bldg., 600 Arch St., Room 3238, Philadelphia, PA 19106.

MC 116763 (Sub-505TA), filed May 2, 1979. Applicant: CARL SUBLER TRUCKING, INC., North West St., Versailles, OH 45380. Representative: Gary Jira (same address as applicant). *Such commodities as are manufactured, processed, or dealt in by manufacturers of rubber products (except commodities in bulk, in tank vehicles)*, from points in and east of MN, IA, MO, OK, and TX, to the facilities of J & L distributing Co. located at or near Chicago, IL and Milwaukee, WI (restricted to traffic originating at the named origins and destined to the indicated destinations) for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): J & L Distributing Company, Inc., 1419 St. Paul Ave., Milwaukee, WI 53233. Send protests to: ICC, Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 116763 (Sub-506TA), filed April 24, 1979. Applicant: CARL SUBLER TRUCKING, INC., North West St., Versailles, OH 45380. Representative: Gary J. Jira (same as applicant). *Such materials, equipment and supplies used in the manufacturing, processing and distribution of paper and paper products (except commodities in bulk, in tank vehicles)*, from points in the U.S. (except AK and HI) to the facilities of Bergstrom Paper Co., a division of P. H. Glatfelter

Co., located at or near Neenah, WI, and West Carrollton, OH. Restricted to traffic originating at the named origin territory and destined to the indicated destinations, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Bergstrom Paper, Division of P. H. Glatfelter Co., Dan Sauve, Traffic Manager, Bergstrom R., Neenah, WI 54956. Send protests to: Bureau of Operations, ICC, 600 Arch St., Room 3238, Philadelphia, PA 19106.

MC 116763 (Sub-507TA), filed April 26, 1979. Applicant: CARL SUBLER TRUCKING, INC., North West St., Versailles, OH 45380. Representative: Gary J. Jira (same as applicant). *(1) Such merchandise as is dealt in by wholesale, retail, chain grocery and feed business houses, soy products, paste, flour products, dairy based products and (2) materials, ingredients and supplies used in the manufacture, distribution and sale of items in (1) above (except in bulk, in tank vehicles),* between the facilities of Ralston Purina Company on the one hand, and, on the other, points in and east of ND, SD, NE, CO and NM, for 180 days. Restricted to traffic originating at, or destined to, the facilities of Ralston Purina Company in the authorized territory. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ralston Purina Company, L. N. Brown, Coordinator, Motor Transportation, Checkerboard Square, St. Louis, MO 63188. Send protests to: Bureau of Operations, ICC, Wm. J. Green, Jr., Federal Bldg., 600 Arch St., Room 3238, Philadelphia, PA 19106.

MC 116763 (Sub-506TA), filed April 18, 1979. Applicant: CARL SUBLER TRUCKING, INC., North West St., Versailles, OH 45380. Representative: Gary J. Jira (same as applicant). *Such materials and supplies as are used in the manufacturing, distribution, packaging, warehousing and sale of foodstuffs (except commodities in bulk, in tank vehicles),* from points in the U.S. in and east of MN, IA, MO, OK, and TX to Greenville, MS, for 180 days. Restricted to traffic originating at the named origin territory and destined to the indicated destination. An underlying ETA seeks 90 days authority. Supporting shipper(s): Uncle Ben's Foods, Clifford W. Rieger, Traffic Manager, P.O. Box 1752, Houston, TX 77001. Send protests to: Bureau of Operations, ICC, Wm. J. Green, Jr., Federal Bldg., 600 Arch St., Room 3238, Philadelphia, PA 19106.

MC 119493 (Sub-284TA), filed April 11, 1979. Applicant: MONKEM COMPANY, INC., P.O. Box 1196, Joplin, MO 64801. Representative: Thomas D. Boone (same as applicant). *Furniture parts, and materials and supplies* used in the manufacture and distribution thereof (except in bulk) between FL, GA, IL, MO, KY, MA, MI, NJ, NC, OH, and TX; restricted to traffic originating at or destined to the facilities of Leggett & Platt, Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shippers(s): Leggett & Platt, Inc., P.O. Box 757, Carthage, MO 64836. Send protests to: John V. Barry, DS, ICC, 600 Federal Building, 911 Walnut St., Kansas City, MO 64106.

MC 119493 (Sub-285TA), filed April 13, 1979. Applicant: MONKEM COMPANY, INC., P.O. Box 1196, Joplin, MO 64801. Representative: Thomas D. Boone (same as applicant). *Iron & Steel articles* from facilities of Armco, Inc., at or near Ashland, KY and Middletown, OH to points in AR, KS, IA, MN, MO, NE, OK, TX, CO, MS, and LA. for 180 days. Supporting shipper(s): Armco, Inc., 703 Curtis St., Middletown, OH 45043. Send protests to: John V. Barry, D/S, ICC, 600 Federal Building, 911 Walnut St., Kansas City, MO 64106.

MC 119493 (Sub-286TA), filed April 17, 1979. Applicant: MONKEM COMPANY, INC., P.O. Box 1196, Joplin, MO 64801. Representative: Thomas D. Boone (same as applicant). *Plastic articles* from Springfield, IL to AL, AR, IA, KS, MO, MS, NE, ND, OK, SD, and TN, for 180 days. An underlying ETA seeks 90 day authority. Supporting shipper(s): Contractor Utility Sales Company, P.O. Box 2937, Springfield, IL 62701. Send protests to: John V. Barry, D/S, ICC, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 119493 (Sub-287TA), filed April 17, 1979. Applicant: MONKEM COMPANY, INC., P.O. Box 1196, Joplin, MO 64801. Representative: Thomas D. Boone (same as applicant). *Personal sanitary products (Internal or External); Toilet preparations; Cosmetics; and Clothing,* from points in IL to points in AL, AR, KS, LA, MO, MS, OK, TN, and TX, for 180 days. An underlying ETA seeks 90 day authority. Supporting shipper(s): Personal Products Company, Kankakee River Drive, Wilmington, IL 60481. Send protests to: John V. Barry, D/S, ICC, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 121473 (Sub-2TA), filed April 26, 1979. Applicant: VENCO TRUCKING, INC., R.D. No. 3, Emlenton, PA 16373. Representative: Guy Shoup (same address). *Petroleum products* in packages, from Rouseville and Reno, PA to points in Ohio and New York, for 180 days. An underlying ETA seeks 90 day authority. Supporting shipper(s): Pennzoil Company, P.O. Box 808, Oil City, PA 16301. Send protests to: J. J. England, D/S, ICC, 2111 Federal Bldg., Pittsburgh, PA 15222.

MC 121712 (Sub-2TA), filed April 30, 1979. Applicant: MORRIS TRANSPORTATION, INC., 6300 Baldwin St., Oakland, CA 94621. Representative: W. H. Walker, Attorney-at-Law, 100 Pine St., Rm 2550, San Francisco, CA 94111. 180 days common carrier by motor vehicle over irregular routes, *tinplate,* from points in California to facilities of Continental Can Co., Portland, OR. An underlying ETA seeks 90 day authority. Supporting shipper(s): American Tinplate Exporters, Inc., 6300 Baldwin St., Oakland, CA 94621. Send protests to: A. J. Rodriguez, D/S, ICC, 211 Main St., Suite 500, San Francisco, CA 94105.

MC 121712 (Sub-3TA), filed April 30, 1979. Applicant: MORRIS TRANSPORTATION, INC., 6300 Baldwin St., Oakland, CA 94621. Representative: W. W. Walker, Attorney-at-Law, 100 Pine St., Rm. 2550, San Francisco, CA 94111. 180 days common carrier by motor vehicle, over irregular routes: (1) *scaffolding, shoring and related steel items* between facilities of Waco Scaffold & Shoring Co., San Leandro and Long Beach, CA, on the one hand, and, on the other points in NV and AZ. (2) *Refractory material* from Gabbs, NV to facilities of Judson Steel Corp., Emeryville, CA. (3) *Materials, tools, and supplies used in concrete construction* between points in California, on the one hand, and, on the other, Reno, Sparks, Carson City and Winnemucca, NV. Supporting shipper(s): Judson Steel, 42 Eastshore Highway, Emeryville, CA 94608; Burke Co., 1730 Lathrop Way, Sacramento, CA 95815; Waco Scaffold & Shoring Co., 1999 Republic Ave., San Leandro, CA 94577. Send protests to: District Supvr. A. J. Rodrigues, ICC, 211 Main St., Suite 500, San Francisco, CA 94105.

MC 123502 (Sub-52TA) filed April 20, 1979. Applicant: FREE STATE TRUCK SERVICE, INC., P.O. Box 780, Glen Burnie, MD 21061. Representative: W. Wilson Corroum (same as above). *Petroleum Fuel Oil Flue Dust,* in bulk, in dump vehicles, from Oswego, NY, Portsmouth and Strasburg, VA to Bellaire, OH and Freeport, PA, for 180 days. An underlying ETA for 90 days has been filed. Supporting shipper(s): Walter L. Jaffe, Philipp Brothers, 1221 Avenue of the Americas, New York, NY 10020. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore, MD.

MC 125023 (Sub-71TA) filed April 27, 1979. Applicant: SIGMA-4 EXPRESS,

INC., 3625 Beech Avenue, P.O. Box 9117, Erie, PA 16504. Representative: Richard G. McCurdy (same as applicant). (1) Corrugated Cardboard Containers from points in Onondaga and Oswego Counties, NY to Washington, PA and (2) Glass Containers from Washington, PA to points in Onondaga County, NY and Oswego County, NY (except South Volney, NY) for 180 days. An underlying ETA seeks 90 days operating authority. Supporting shipper(s): Miller Brewing Company, 3939 W. Highland Blvd., Milwaukee, WI 53208. Send protests to: J. J. England, DS, ICC, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

MC 125433 (Sub-257TA), filed April 26, 1979. Applicant: F–B TRUCK LINE COMPANY, 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). (1) *Lift and hoist trucks*, (2) *tractors (other than truck tractors)*, and (3) *attachments and accessories for items named in (1) and (2) above*, from the facilities of Towmotor Corp. located at or near Mentor, OH to NM, CO, WY, MT, ID, NV, UT, AZ, CA, OR and WA, for 180 days. Supporting shipper(s): Towmotor Corporation, 109 NE Adams Street, Peoria, IL 61629. Send protest to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 125433 (Sub-258TA) filed April 16, 1979. Applicant: F–B TRUCK LINE COMPANY, 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). *Batteries, scrap batteries, parts, attachments, accessories and supplies used in connection with batteries, and equipment, materials and supplies used in the manufacture or distribution of batteries*, between the facilities of Chloride Co., Inc. located at or near Florence, MS; Columbus, GA; Raleigh, NC; Tampa, FL; and Beaverton, OR, on the one hand, and, on the other, points in the United States, for 180 days. An underlying ETA requests 90 days authority. Supporting shipper(s): Chloride Incorporated, 3507 South 50th Street, Tampa, FL 33601. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 127053 (Sub-1TA), filed April 20, 1979. Applicant: ALERT MESSENGER SERVICE, INC. d.b.a. AVAK MESSENGER SERVICE, 28 East Winant Avenue, Ridgefield Park, NJ 07660. Representative: Henry Lopez, 28 East Winant Avenue, Ridgefield Park, NJ 07660. *General commodities*, except those of unusual value, and except dangerous explosives, household goods as defined in Practices of Motor Common Carriers of Household Goods, 17 M.C. 467, commodities in bulk, commodities requiring special equipment, and those injurious of contaminating to other lading, not to exceed 500 lbs. per shipment. Between Bergen and Passaic Counties, NJ and points within 350 miles of New York, NY, for 180 days. Supporting shipper(s): There are six (6) supporting shippers on file at Newark, NJ and Washington, DC. Send protests to: Joel Morrows, DS, ICC, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 128363 (Sub-85TA), filed April 24, 1979. Applicant: PINTO TRUCKING SERVICE, INC., 1414 Calcon Hook Road, Sharon Hill, PA 19079. Representative: Leonard C. Zacker (same as applicant). *General Commodities, except commodities in bulk and commodities injurious to other lading, and Class A and B Explosives, restricted to shipments having a prior or subsequent movement by air*, between the airport cities of Charlotte, NC; Greenville, SC; and Atlanta, GA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): There are 7 shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: T. M. Esposito, TA, ICC, 600 Arch St., Rm. 3238, Phila., PA 19106.

MC 128663 (Sub-4TA), filed April 30, 1979. Applicant: LAUREL HILL TRUCKING CO., 614 New County Road, Secaucus, NJ 07094. Representative: William J. Augello, Esq., Augello, Pezold & Herschmann, P.C., 120 Main Street, P.O. Box Z, Huntington, NY 11743. Contract, irregular. *Drugs, medicines, toilet preparations*, and materials, equipment and supplies used in the manufacture of drugs, medicines and toilet preparations. (1) Between New York, NY; Elkhart, IN and Hammonton, NJ; (2) from Elkhart, IN to Forest Park, GA; Dallas, TX and Lenexa, KS; (3) from St. Louis , MO to Hammonton, NJ and Elkhart, In; (4) From Hammonton, NJ to Forest Park, GA and Dallas, TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Whitehall Laboratories, 685 Third Avenue, New York, NY 10017. Send protests to: Robert E. Johnston, D/S, ICC, 9 Clinton, St., Room 618, Newark, NJ 07102.

MC 129032 (Sub-85TA), filed April 19, 1979. Applicant: TOM INMAN TRUCKING, INC., 6015 So. 49th West Avenue, Tulsa, OK 74107. Representative: David R. Worthington (same address as applicant). (1) *Malt beverages and related advertising materials*, and (2) *empty, used beverage containers and materials and supplies used in and dealt with by breweries*, from (1) Jefferson County, CO, to MO and WA, and (2) from WA and MO, to Jefferson County, CO, restricted to traffic originating at or destined to the above named locations, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Adolph Coors Company, Golden, CO 80401. Send protests to: District Supervisor, Interstate Commerce Commission, Room 240 Old Post Office & Court House Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 129032 (Sub-86TA), filed April 26, 1979. Applicant: TOM INMAN TRUCKING, INC., 6015 So. 49th West Avenue, Tulsa, OK 74107. Representative: David Worthington (same address as applicant). *Glass containers and returned pallets*, between the facilities of Midland Glass Company, at or near Henryetta, OK, on the one hand, and, on the other, MI and WI, restricted to traffic originating at or destined to the above named origin, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Midland Glass Company, Inc., P.O. Box 557, Cliffwood, NJ 07721. Send protests to: District Supervisor, ICC, Room 240 Old Post Office, 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 134613 (Sub-11TA), filed May 1, 1979. Applicant: WESTERN CARTAGE, INC., an Oklahoma Corporation, 2921 Dawson Road, Tulsa, OK 74110. Representative: Michael R. Vanderburg, Atty., 5200 South Yale, Tulsa, OK 74135. *Motor vehicle parts and accessories, machine parts and accessories and the tools used in their manufacture, powered metals, castings, fasteners, and coatings*. Between the plant sites of Holley Carburetors in Warren, Michigan, Watervalley, Mississippi, Bowling Green, Kentucky, Paris, Tennessee and Sallisaw, Oklahoma on the one hand; and the points in the states of AL, AR, GA, IL, IN, IA, KY, MI, MN, MO, MS, OH, OK, TN, and WI on the other hand, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Holley Carburetor Division Special Products, P.O. Box 827, Sallisaw OK 74955. Send protests to: Connie Stanley, Transportation Assistant, Interstate Commerce Commission, Room 240 Old Post Office Bldg. 215 N.W. Third, Oklahoma City, OK 73102.

MC 135213 (Sub-17TA), filed May 2, 1979. Applicant: JOE GOOD d.b.a., GOOD TRANSPORTATION, P.O.Box 335, Lovell, WY 82431. Representative:

John T. Wirth, 717—17th Street, Suite 2600, Denver, CO 80202. *Contract carrier,* irregular routes: *Gypsum, gypsum wall board, joint systems, and materials and supplies,* related to the application thereof, from facilities of Georgia-Pacific Corporation at or near Acme, TX to points in the state of CO, for 180 days. RESTRICTIONS: (1) Restricted against the transportation of commodities in bulk and (2) Restricted to transportation performed under a continuing contract or contracts with Georgia-Pacific Corporation. An underlying ETA seeks 90 days authority. Supporting shipper(s): Georgia-Pacific Corporation, 900 S.W. Fifth Ave., Portland, OR 97204. Send protests to: Paul A. Naughton, D/S. ICC, Rm 105 Federal Bldg. 111 South Wolcott, Casper, WY 82601.

MC 135283 (Sub-50TA), filed April 20, 1979. Applicant: GRAND ISLAND MOVING & STORAGE CO., INC., P.O. Box 2122, Grand Island, NE 68801. Representative: Lloyd A. Mettenbrink (same address as applicant). *General commodities (except articles of unusual value, classes A & B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment)* from (A) Hastings and Grand Island, NE, to points in CO, IA, KS, NE, and WY, and (B) from points in AR, IL, KS, and TX to Grand Island, NE. Restricted in both A & B to traffic destined to the facilities of Wheeler Stores, Division of Peavey Co. An underlying ETA seeks 90 days authority. Supporting shipper(s): Morris Nitzel, Distribution Manager, Wheeler Stores Division of Peavey Co., P.O. Box E, Grand Island, NE 68801. Send protests to: Max H. Johnston, District Supervisor, 285 Federal Building & Court House, 100 Centennial Mall North, Lincoln, NE 68508.

MC 135283 (Sub-51TA), filed April 23, 1979. Applicant: GRAND ISLAND MOVING & STORAGE CO., INC., P.O. Box 2122, Grand Island, NE 68801. Representative: Lavern R. Holdeman, P.O. Box 81849, Lincoln, NE 68501. (1) *Iron and steel articles,* (a) from Chicago, IL, and points in its commercial zone, to the facilities of Howland Manufacturing Corp., at or near Kearney, NE; and (b) from Chicago, IL, and Milwaukee, WI, and points in their commercial zones, to the facilities of Ag Tronic, Inc., at or near Kearney, NE and Hastings, NE, and Caldwell Manufacturing Co., at or near Kearney, NE. (2) *Electric heaters,* from St. Louis, MO, and points in its commercial zone, to the facilities of Caldwell Manufacturing Co., at or near Kearney, NE. (3) *Screen guards,* from Neosho, MO, and points in its commercial zone, to the facilities of Caldwell Manufacturing Co., at or near Kearney, NE. (4) *Parts, materials, equipment and supplies used in the manufacture, sale and distribution of standby power units* (except in bulk), from points in IA to the facilities of Ag Tronic, Inc., at or near Kearney, NE, for 180 days. Supporting shipper(s): Howland Manufacturing Corp., 305 East 8th Street, Kearney, NE 68467; Ag Tronic, Inc., R.R. 1—Airport Road, Kearney, NE 68467; Caldwell Manufacturing Company, P.O. Box 338, Kearney, NE 68467. Send protests to: Max H. Johnston, District Supervisor, 285 Federal Building & Court House, 100 Centennial Mall North, Lincoln, NE 68508.

MC 138882 (Sub-240TA), filed May 2, 1979. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Drawer 707, Troy, AL 36081. Representative: James W. Segrest (same address as applicant). *Glass,* from Laurinburg and Clinton, NC, to points in the U.S. (except HI, AK, and NC), for 180 days. Supporting shipper(s): Libbey-Owens-Ford Company, 811 Madison Avenue, Toledo, OH 43695. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616—2121 Building, Birmingham, AL 35203.

MC 139083 (Sub-7TA), filed April 30, 1979. Applicant: BUILDING SYSTEMS TRANSPORTATION, INC., P.O. Box 142, 10650 Route 22, East, Washington Court House, OH 43160. Representative: Paul F. Beery, 275 East State Street, Columbus, OH 43215. *Iron and steel articles,* (1) from Ashland, KY to points in IN; (2) from Ashland, KY to Longview, TX; (3) from Washington Court House, OH to Longview, TX for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Armco, Inc., 703 Curtis St., Middletown, OH 45042. Send protests to: ICC, Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 139353 (Sub-7TA), filed April 27, 1979. Applicant: DAVIE TRUCKERS, INC., Rt. 1, Advance, NC 27006. Representative: W. P. Sandridge, Jr., Attorney, 2400 Wachovia Bldg., P.O. Drawer 84, Winston-Salem, NC 27102. *Contract:* irregular: *grains, pressed grains, dry grains, and waste yeast.* From Dougherty, Worth, Lee, Terrell, Baker, Mitchell, Turner, and Sumter, Counties, GA to various locations in the states of AL, FL, GA, LA, MS, NC, SC, and TN for 180 days. An underlying ETA seeks 90 days of authority. Supporting shipper(s): The Pillsbury Company, Mail Station M363, 608 2nd Ave., South, Minneapolis, MN 55402. Send protests to: Terrell Price, DS, ICC, 800 Briar Creek Rd., Rm. CC516, Charlotte, NC 28205.

MC 139643 (Sub-4TA), filed April 26, 1979. Applicant: VERNON G. SAWYER, P.O. Drawer B, Bastrop, LA 71220. Representative: Harry E. Dixon, Jr., P.O. Box 4319, Monroe, LA 71203. *Turned wood products* from Bastrop, LA to all points and places in the state of WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Boltz Manufacturing Company, P.O. Box 470, Bastrop, LA 71220. Send protests to: William H. Land, Jr., DS, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 140612 (Sub-69TA), filed April 20, 1979. Applicant: ROBERT F. KAZIMOUR, P.O. 2207, Cedar Rapids, IA 52406. Representative: J. L. Kazimour (same address as applicant). *Such commodities as are dealt in or used by retail stores,* (except foodstuffs, alcoholic beverages and commodities in bulk in tank vehicles), from points SD, ND, NE, KS, OK, TX, MN, IA, MO, AR, LA, WI, IL, IN, OH, KY, TN, MS, AL, GA, and MI to Northridge, CA and its commercial zones for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): International Industries, Inc., 19411 Londelius St., Northridge, CA 91324. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 141783 (Sub-5TA), filed May 2, 1979. Applicant: HARRIGILL TRUCKING COMPANY, P.O. Box 89, Brookhaven, MS 39601. Representative: Fred W. Johnson, Jr., P.O. Box 22628, Jackson, MS 39205. (1) *Paper and paper articles* from the facilities of St. Regis Paper Co., Ferguson, MS, to points in AL, AR, LA and TN; and (2) *Equipment, materials and supplies* used in the manufacture and distribution of the commodities in (1) above in the reverse direction, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): St. Regis Paper Company, P.O. Box 606, Monticello, MS 39654. Send protests to: Alan Tarrant, D/S ICC, Rm. 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 142872 (Sub-62TA), filed April 24, 1979. Applicant: DAVID BENEUX PRODUCE AND TRUCKING, INC., P.O. Drawer F, Mulberry, AR 72947. Representative: Don Garrison, P.O. Box 159, Rogers, AR 72756. (1) *Electric motors, grinders, buffers, dental lathes, dust collectors, and pedestals, and* (2) *Parts, accessories and attachments* for the commodities named in (1) and (2) above, and (3) *Materials, equipment and supplies* used in the manufacture and distribution of the commodities named

in (1) above, from the facilities of Baldor Electric Company, at or near St. Louis, MO, to the facilities of Baldor Electric Company at or near Columbus, MS and Westville, OK; and from points in the state of OH to the facilities of Baldor Electric Company, at or near Columbus, MS, for 180 days as a common carrier over irregular routes. An underlying ETA seeks 90 days authority. Supporting shipper(s): Baldor Electric Company, 5711 South Seventh Street, Fort Smith, AR 72901. Send protests to: William H. Land, Jr., D/S, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 142703 (Sub-18TA), filed April 30, 1979. Applicant: INTERMODAL TRANSPORTATION SERVICES, INC., 750 W. Third St., Cincinnati, OH 45214. Representative: Michael Spurlock, Beery & Spurlock Co., L.P.A., 275 E. State St., Columbus, OH 43215. *Commodities moving in Trailer on Flat Car Service (except commodities in bulk)*, between St. Louis, MO; Danville, IL; and Lafayette, IN, and their respective commercial zones, on the one hand, and, on the other, points in IL, IN, KY, lower peninsula of MI, MO, OH, and the following 33 counties of Western PA: Allgheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Cameron, Centre, Clarion, Clearfield, Crawford, Elk, Erie, Fayette, Forest, Franklin, Fulton, Green, Huntingdon, Indiana, Jefferson, Juniata, Lawrence, McKean, Mercer, Mifflin, Potter, Somerset, Venango, Warren, Washington and Westmoreland, for 180 days. Restricted to transportation of shipments having prior or subsequent rail or water movement. An underlying ETA seeks 90 days authority. Supporting shipper(s): There are 12 supporting shippers. Send protests to: Bureau of Operations, ICC, Wm. J. Green, Jr., Federal Bldg., 600 Arch St., Room 3238, Philadelphia, PA 19106.

MC 143133 (Sub-2TA), filed March 30, 1979. Applicant: SHEPPARD ENTERPRISES, INC., 101 Philadelphia St., Hanover, PA 17331. Representative: Daniel M. Frey, 31 York St., Hanover, PA 17331. *Contract carrier:* irregular routes: *power steering units* from Hanover, PA to Delaware, OH; *pretzels and potato chips* from Hanover and Centre Hall, PA to Cincinnati and Toledo, OH, Louisville, KY, Indianapolis, IN, Detroit and Grand Rapids, MI, and Chicago, IL, for 180 days. Supporting shipper(s): R. H. Sheppard Co., Inc., 101 Philadelphia St., Hanover, PA 17331; Hanover Guest Quality Food Corp., Granger St., Hanover, PA 17331. Send protests to: Peter R. Guman, D/S, 600 Arch St., Rm. 3238, Phila., PA 19106.

MC 144122 (Sub-46TA), filed May 4, 1979. Applicant: CARRETTA TRUCKING, INC., South 160, Route 17 North, Paramus, NJ 07652. Representative: Charles J. Williams, 1815 Front Street, Scotch Plains, NJ 07076. Common, irreg. Hair care toiletries, hair care accessories and equipment, toilet preparations, beauty and health products and equipment, personal electrical appliances and accessories and parts thereof, and equipment, materials, supplies and ingredients used in the packaging, sale and manufacture thereof (except commodities in bulk) (1) from Stamford, CT, to Dallas, TX; La Mirada and Camarillo, CA; Chicago, IL and Atlanta, GA, and (2) from La Mirada and Camarillo, CA; to Dallas, TX; Stamford, CT; Chicago, IL and Atlanta, GA; restricted to traffic originating at or destined to the facilities of Clairol, Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Clairol, Inc., 1 Blachley Road, Stamford, CT 06902. Send protests to: Joel Morrows, D/S, ICC, 9 Clinton St., Rm. 618, Newark, NJ 07102.

MC 144233 (Sub-7TA), filed May 3, 1979. Applicant: RAJEAN, INC., Highway 64 East, Russellville, AR 72801. Representative: Thomas B. Staley, 1550 Tower Building, Little Rock, AR 72201. *Goods* utilized by manufacturers and distributors of auto parts between Murfreesboro, TN, on the one hand, and on the other, points and places in the states east of and inculding the states of ND, SC, NE, KS, OK and TX (except the state of TN); restricted to movements originating at and destined to the facilities of Perfect Equipment Co., as a common carrier over irregular routes, for 180 days. Supporting Shipper(s): Perfect Auto Parts, 751 S. Mallard Drive, Palatine, IL 60067. Send protests to: William H. Land, Jr., D/S, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 144303 (Sub-6TA), filed April 27, 1979. Applicant: YOUNGBLOOD TRUCK LINES, INC., U.S. Highway 1048, Fletcher, NC 28732. Representative: H. Charles Ephraim, 1250 Connecticut Ave., NW., Washington, DC 20036. *Contract:* Irregular: *Paper and Paper Articles* from Courtland, AL to points in the states of FL, GA, KY, NC, SC, TN, and VA for 180 days. Supporting Shipper(s): Champion International Corporation, Knightsbridge Dr., Hamilton, OH 45020. Send protests to: Terrell Price, DS, ICC, 800 Briar Creek Rd., Rm. CC-516, Charlotte, NC 28205.

MC 145363 (Sub-1TA), filed April 18, 1979. Applicant: BREWTON EXPRESS, INC., P.O. Box 508, Winnfield, LA 71483. Representative: Brian E. Brewton (same address as applicant). Applicant is applying for authority to operate as a contract carrier over irregular routes transporting *lumber, plywood and forest products* from the plantsites of Crown Zellerbach Corp., at or near Joyce, Ponchatoula, Pine Grove, Bogalusa, Powhatan, LA; and Lumberton, MS to points in AL, AR, FL, GA, IL, IN, IA, KS, KY, MI, MN, MO, MS, NE, NJ, OH, PA, SC, TN, TX, WV, and WI, for 180 days. Supporting Shipper(s): Crown Zellerbach Corporation, P.O. Box 1060, Bogalusa, LA 70427. Send protests to: Robert J. Kirspel, DS, ICC, T-9038 Federal Bldg., 701 Loyola Ave., New Orleans, LA 70113.

MC 145423 (Sub-6TA), filed April 20, 1979. Applicant: C. VAN BOXEL, TRANSPORTATION COMPANY, 783 South Oakwood, Detroit, MI 48217. Representative: William B. Elmer, 21635 East Nine Mile Road, St. Clair Shores, MI 48080. *Roofing felt paper* from the Owens Corning Fiberglass Plant at Brookville, IN, to the Owens-Corning Fiberglass plant at Detroit, MI. For 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Owens-Corning Fiberglass Corporation Fiberglas Tower, OH 43659. Send protest to: C. R. Flemming, D/S I.C.C. 225 Federal Building, Lansing, MI 48933.

MC 145503 (Sub-4TA), filed May 2, 1979. Applicant: HAROLD SHULL TRUCKING, INCORPORATED, P.O. Box 1533, Hickory, NC 28601. Representative: Charles Ephraim, Suite 600, 1250 Connecticut Ave. NW., Washington, DC 20036. *Furniture and furniture parts* from points in Catawba, Iredell, Caldwell, Wilkes, Burke, Rutherford, Cleveland, Alexander and Lincoln Counties, NC to points in MI and OH, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): There are approximately 8 shippers. Their statements may be examined at the office listed below or Headquarters. Send protests to: D/S Terrell Price, 800 Briar Creek Rd., Rm. CC516, Mart Office Building, Charlotte, NC 28205.

MC 145703 (Sub-2TA), filed April 27, 1979. Applicant: FRI TRANSPORTATION, INC., 98 Doty St., Fond du lac, WI 54935. Representative: Wayne Wilson, 150 E. Gilman St., Madison, WI 53703. Contract carrier; irregular routes: (1) *Cured Hides and materials, equipment, and supplies used or useful in the manufacture, sale or distribution of cured hides and finished leather* from Nashville, TN to Fond du Lac, WI; (2) *Finished leather* from Fond du Lac, WI to Nashville, TN, restricted

to service performed under a continuing contract(s) with Fred Rueping Leather Co., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Fred Rueping Leather Co., 96 Doty St., Fond du Lac, WI 54935. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 145772 (Sub-5TA), filed April 25, 1979. Applicant: LANG CARTAGE CORP., 1308 S. West Ave., Waukesha, WI 53187. Representative: John Bruemmer, 121 W. Doty St., Madison, WI 53703. *Such merchandise as is dealt in by retail mail order houses* from facilities of Aldens, Inc. at Chicago, IL to points in WI, MN & UP of MI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Aldens, Inc., 5000 W. Roosevelt Rd., Chicago, IL 60607. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., R. 619, Milwaukee, Wi 53202.

MC 146293 (Sub-15TA), filed March 19, 1979. Applicant: REGAL TRUCKING CO., INC., 95 Lawrenceville Industrial Park Circle NE., Lawrenceville, GA 30245. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Blvd., Atlanta, GA 30349. *Household products, chemicals, paint, and related articles; materials, equipment, and supplies used in the manufacturing, sales and distribution of the above products* from Atlanta, GA to CA and WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Zep-Manufacturing Co., Division of National Service Industries 1310 Seaboard Industrial Blvd., Atlanta, GA. Send protests to: Sara K. Davis TA, ICC, 1252 W. Peachtree St. NW., Room 300, Atlanta, GA 30309.

MC 146293 (Sub-16TA), filed April 16, 1979. Applicant: REGAL TRUCKING CO., INC., 95 Lawrenceville Industrial Park Circle, NE, Lawrenceville, GA 30245. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Blvd., Atlanta, GA 30349. *(a) General commodities, (except commodities in bulk, class A and B explosives, household goods as defined by the Commission). Restricted to commodities moving on freight forwarder Bill of Lading.* (b) I from CA to points in IL, IN, MI, KY, OH, PA, WV, VA, MD, NY, CT, MA II From all points in IL, MI, KY, OH, PA, WV, VA, MD, NY, CT, MA, IN to CA III From NC, SC, GA, TN to CA, AZ, UT, NV, for 180 days. Supporting shipper(s): Western Freight Asst., 3336 San Fernando Rd., Los Angeles, CA 90065. Westransco Freight Inc., P.O. Box 54810, Los Angeles, CA 90054. Send protests to: Sara K. Davis TA, ICC, 1252 W. Peachtree St., N.W., Room 300, Atlanta, GA 30309.

MC 146303 (Sub-4TA), filed April 30, 1979. Applicant: COLO-TEX INDUSTRIES, INCORPORATED, 1325 West Quincy Avenue, Englewood, CO 80110. Representative: Kenneth R. Vancil, President (Same address as above). *Coco powder, chocolate powder, chocolate chips, and peanut butter chips* except that which is transported in bulk or tank vehicles, from WI, NJ, and PA to Denver, CO, for 180 days. Underlying ETA seeks authority for 90 days. Supporting shipper(s): Keebler Company, 5000 Osage Street, Denver, CO 80221. Send protests to: District Supervisor Herbert C. Ruoff, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 146522 (Sub-2TA), filed May 3, 1979. Applicant: ADRIAN CARRIERS, INC., P.O. Box 3532, Davenport, IA 52808. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Contract authority. *Malt beverages* from the facilities of the Olympia Brewing Co. at St. Paul, MN to Davenport, IA, under continuing contract(s) with Valley Beverage Company, Inc. for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Valley Beverage Company, Inc., 1735 W. 3rd St., Davenport, IA 52802. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

By the Commission.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-18406 Filed 6-12-79; 8:45 am]

BILLING CODE 7035-01-M

[Notice No. 91]

Motor Carrier Temporary Authority Applications

June 5, 1979.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register**. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

MC 475 (Sub-3TA), filed May 16, 1979. Applicant: WYMORE TRANSFER CO., P.O. Box 448, Oregon City, OR 97045. Representative: David C. White, 2400 S.W. Fourth Avenue, Portland, OR 97201. *Paper, paper articles, and plastic film* from Portland, OR, to points in WA in and East of Okanogan, Chelan, Kittitas, Yakima, and Klicitat Counties, and points in ID in and South of Adams, Valley, and Lemhi Counties for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): CROWN ZELLERBACH CORPORATION, 3400 N. Marine Dr., Ptld 97217. Send protests to: A. E. Odoms, DS, ICC, 114 Pioneer Courthouse, 555 S.W. Yamhill St., Portland, OR 97204.

MC 20824 (Sub-41TA), filed March 21, 1979. Applicant: COMMERCIAL MOTOR FREIGHT, INC. OF INDIANA, 2141 South High School Road, Indianapolis, IN 46241. Representative: Alki E. Scopelitis, 1301 Merchants Plaza, Indianapolis, IN 46204. *Common carrier:* regular route: *General commodities (except those of unusual value, Classes A & B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment,* serving Borden, French Lick, Jasper, Pekin, Salem, Washington and West Baden Springs, IN as off-route points in connection with carrier's authorized regular route operations, for 180 days. There are 28 supporting shippers. Send

protests to: Beverly J. Williams, Transportation Assistant, ICC, 46 E. Ohio St., Rm. 429, Indianapolis, IN 46204. An underlying ETA seeks 90 days authority.

Note.—Applicant request authority to interline at all points throughout its system and to tack this authority it presently holds in NO. MC–20824.

MC 29745 (Sub-7TA), filed March 22, 1979. Applicant: BODGE LINES, INC., 501 South West Street, P.O. Box 546, Indianapolis IN 46206. Representative: Phillip V. Price, 115 N. Pennsylvania St., Rm 1444, Indianapolis IN 46204. *Common carrier:* regular route: *General commodities, except articles of unusual value, Classes A & B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment,* serving the facilities of Cerro Copper Tube Co., at or near New Ross, IN as an off-route point in connection with carrier's regular route authority, for 180 days. Supporting shipper: Cerro Copper Tube Company, State Road 136, New Ross, IN. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 46 E. Ohio St., Rm 429, Indianapolis, IN 46204. An underlying ETA seeks 90 days authority.

Note.—Applicant requests authority to interline at Indianapolis, IN and St. Louis, MO and to tack this authority with authority it presently holds in No. MC–29745.

MC 52704, filed May 8, 1979. Applicant: GLENN McCLENDON TRUCKING COMPANY, INC., P.O. Drawer "H", LaFayette, AL 36862. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. *Glass containers,* from Henryetta, OH to Martinsville, VA and Eden, NC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shippers(s): Midland Glass Co., Inc., P.O. Box 557, Cliffwood, NJ 07721. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616–2121 Building, Birmingham, AL 35203.

MC 52704 (Sub-224TA), filed May 14, 1979. Applicant: GLENN McCLENDON TRUCKING COMPANY, INC., P.O. Drawer "H", LaFayette, AL 36862.Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. *Rubber, rubber products and such commodities as are manufactured, processed or dealt in by manufacturers of rubber and rubber products, and equipment, materials and supplies used in the manufacture and distribution of rubber and rubber products* (except commodities in bulk, in tank vehicles), between the facilities of The Goodyear Tire & Rubber Company at or near Gadsden, AL, on the one hand, and on the other, points in AL, AR, DE, FL, GA, IA, IL, IN, KY, KS, LA, MD, MI, MN, MS, MO, NJ, NY, NC, OH, OK, PA, SC, TN, TX, VA, WV and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shippers(s): The Goodyear Tire & Rubber Company, 1144 E. Market Street, Akron, OH 44316. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616–2121 Building, Birmingham, AL 35203.

MC 59655 (Sub-24TA), filed May 17, 1979. Applicant: SHEEHAN CARRIERS, INC., 62 Lime Kiln Road, Suffern, NY 10901. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Malt beverages and related advertising materials, and materials, equipment and supplies used in the manufacture and sale of malt beverages,* between Rochester, NY, on the one hand, and, on the other, Torrington CT, Danvers and Westfield, MA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shippers(s): 1. J & M Sales Company, Old Route 8, East Litchfield, CT. 2. Commercial Distributing Co., Inc., South Broad St., Westfield, MA 01085. 3. Merrimack Valley Distributing Co., 50 Prince St., Danvers, MA 01923. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, NY 10007.

MC 106674 (Sub-386TA), filed March 30, 1979. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, U.S. Hwy 24 West, Remington, IN 47977. Representative: Jerry L. Johnson (same address as applicant). *Salt,* from the facilities of Morton Salt, at or near Manistee, MI to points in IL and IN, for 180 days. Supporting Shipper: Morton Salt Division, Morton-Norwich Products, Inc., 110 North Wacker Drive, Chicago, IL 60606. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 46 E. Ohio St., Rm 429, Indianapolis, IN 46204. An underlying ETA seeks 90 days authority.

MC 113434 (Sub-135TA), filed May 3, 1979. Applicant: GRA-BELL TRUCK LINE, INC., A 5253 144th Avenue, Holland, MI 49423. Representative: Roger Van Wyk, A 5253 144th Avenue, Holland, MI 49423. *Canned and preserved foodstuffs* from the facilities of Heinz USA at or near Iowa City and Muscatine, IA and Holland, MI to points in the State of IL. Restricted to traffic originating at the named origins and destined to the named destinations. For 180 days. An underlying ETA seeks no days authority. Supporting shipper(s): Heinz USA, P.O. Box 57, Pittsburgh, PA 15230. Send protests to: C. R. Flemming, D/S, ICC, 225 Federal Building, Lansing, MI 48933. An underlying ETA seeks 90 days authority.

MC 113855 (Sub-485TA), filed May 9, 1979. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Road, Southeast, Rochester, MN 55901. Representative: Thomas J. Van Oedel, 502 First National Bank Building, Fargo, ND 58126. *Such commodities as are dealt in or used by agricultural, industrial and construction equipment dealers, except in bulk,* from the facilities of Massey Ferguson, Inc. located at or near Detroit, MI to points in AZ, CA, CO, ID, MT, NV, OR, UT, WA and WY, restricted to traffic originating at the facilities of Massey Ferguson, Inc. located at or near Detroit, MI and destined to points in the named states, for 180 days. An underlying ETA seeks 90 day authority. Supporting shipper(s): Massey Ferguson Inc., 1901 Bell Avenue, Des Moines, IA 50315. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building, 110 South 4th Street, Minneapolis, MN 55401.

MC 113974 (Sub-89TA), filed May 15, 1979. Applicant: PITTSBURGH & NEW ENGLAND TRUCKING CO., 211 Washington Ave., Dravosburg, PA–15034. Representative: James D. Porterfield (same as applicant). *Iron and steel articles,* (1) from Philadelphia, PA to Marietta, GA; and (2) from Marietta, GA to points in AR, FL, IL, IN, IA, MD, MI, NY, NC, OH, PA, SC, TN and VA, for 180 days. Supporting shipper(s): Pacesetter Steel Service, Inc., P.O. Box 0665, Marietta, GA 30065. Send protests to: J. A. Niggemyer, D/S, 416 Old P.O. Bldg., Wheeling, WV 26003.

MC 114725 (Sub-102TA), filed May 10, 1979. Applicant: WYNNE TRANSPORT SERVICE, INC., 2222 North 11th St., Omaha, NE 68110. Representative: Donald F. Swerczek (same address as applicant). *Liquid fertilizer, in bulk, in tank vehicles,* from Perry, NE to points in KS and CO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Allied Chemical Corporation, P.O. Box 2120, Houston, TX 77001. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 116254 (Sub-208TA), filed May 17, 1979. Applicant: CHEM-HAULERS, INC., P.O. Box 339, Florence, AL 35630. Representative: Mr. M. D. Miller (same address as applicant). *Ferro-Phosphorus,* in dump vehicles, from the plantsite and storage facilities of Monsanto Company, Columbia, TN, to Marshall, TX, for 180 days. An underlying ETA seeks 90 days authority.

Supporting shipper(s): Monsanto Co., 800 N. Lindbergh Blvd., St. Louis, MO 63166. Send protests to: Mabel E. Holston, Transportation Asst., ICC., Room 1616, 2121 Building, Birmingham, AL 35203.

MC 116915 (Sub-80TA), filed March 26, 1979. Applicant: ECK MILLER TRANSPORTATION CORPORATION, Route #1, P.O. Box 248, Rockport, IN 47635. Representative: Fred Bradley, P.O. Box 773, Frankfort, KY 40602. *Iron and steel articles*, from the facilities of Bethlehem Steel Corp. at Burns Harbor, IN, to points in AL, GA and MS, for 180 days. Supporting shipper: Bethlehem Steel Corporation, P.O. Box 248, Chesterton, IN 46304. Send protests to: Beverly J. Williams, Transportation Assistant, ICC., 46 E. Ohio St., Rm 429, Indianapolis, IN 46204. An underlying ETA seeks 90 days authority.

MC 126305 (Sub-120TA), filed May 7, 1979. Applicant: BOYD BROTHERS TRANSPORTATION CO., INC., RFD 1, Box 18, Clayton, AL 36016. Representative: George A. Olsen, P.O. Box 357, Gladston, NJ 07934. *Laminated beams*, from the facilities of Boozer Laminated Beam Company, Anniston, AL to points in GA, FL, SC, MS, LA, and AL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Boozer Laminated Beam Co., P.O. Box 657, Anniston, AL 36201. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 126305 (Sub-12TA), filed May 14, 1979. Applicant: BOYD BROTHERS TRANSPORTATION CO., INC., RFD 1, Box 18, Clayton, AL 36016. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Stairwork, jams, molding, lumber*. From the facilities of Potlatch Corp., at Warren and Prescott, AR, to points in AL, GA, IA, MN, MO, MS, MD, NJ, OH, PA, TN, and VA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Potlatch Corporation, P.O. Box 390, Warren, AR 71671. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616—2121 Building, Birmingham, AL 35203.

MC 127705 (Sub-83TA), filed March 29, 1979. Applicant: KREVDA BROS. EXPRESS, INC., P.O. Box 68, Gas City, IN 46933. Representative: Donald W. Smith, Suite 945—9000 Keystone Crossing, Indianapolis, IN 46240. *Glass containers and fibreboard boxes*, from Gas City, IN, to points in IL, OH and Bardstown, Clermont, Covington, Frankfort, Louisville and Taylor, KY, for 180 days. Supporting shipper(s): Owens-Illinois, Inc., P.O. Box 1035, Toledo, OH 43666. Send protests to: Beverly J. Williams, Transportation Assistant, ICC 46 E. Ohio St., Rm 429, Indianapolis, IN 46204. An underlying ETA seeks 90 days authority.

MC 127705 (Sub-84TA), filed March 29, 1979. Applicant: KREVDA BROS. EXPRESS, INC., P.O. Box 68, Gas City, IN 46933. Representative: Donald W. Smith, Suite 945—9000 Keystone Crossing, Indianapolis, IN 46240. *Mineral wool insulation and materials and supplies used in the manufacture and distribution of mineral wood insulation* (except commodities in bulk), between the facilities of Guardian Industries, Insulation Division at Huntington, IN on the one hand, and on the other, points in IL, MI, OH, NY, PA, KY, TN, MN, WI, MO, and IA, for 180 days. Supporting shipper(s): Guardian Industries Insulation Division. P.O. Box 406, Huntington, IN 46750. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 46 E. Ohio St., Rm. 429, Indianapolis, IN 46204.

MC 134775 (Sub-10TA), filed May 2, 1979. Applicant: GUNTER BROTHERS, INC., 19060 Frager Road, Kent, WA 98031. Representative: Henry C. Winters, 525 Evergreen Bldg., Renton, WA 98055. *Contract carrier*: irregular routes: *Carpeting, floor coverings, and materials and supplies used in the installation thereof*, from points in CA to points in ID, MT, OR, and WA, for the account of William Volker & Co. for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): William Volker & Co., 945 California Drive, Burlingame, CA 94010. Send protests to: Shirley M. Holmes, T/A I.C.C., 858 Federal Bldg., Seattle, WA 98174.

MC 135444 (Sub-5TA), filed May 14, 1979. Applicant: SOUTHERN OHIO TRUCK LINES, INC., 3585 Hamilton-Trenton Rd., Hamilton, OH 45011. Representative: Earl N. Merwin, 85 E. Gay St., Columbus, OH 43215. *Zinc, zinc oxide, zinc dust, zinc dross, zinc residue, zinc skimmings, metallic cadmium, and lead sheets (except commodities in bulk)*, between the facilities of St. Joe Zinc Company, located at Josephtown, Potter Township, Beaver County, PA, and points in IN, KY, NY, and OH, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): St. Joe Zinc Company, Two Oliver Plaza, Pittsburgh, PA 15222. Send protests to: DS/ICC, Room 620, 101 N. 7th St., Philadelphia, PA 19106.

MC 135895 (Sub-42TA), filed May 23, 1979. Applicant: B & R DRAYAGE, INC., P.O. Box 8534, Battlefield Sta., Jackson, MS 39204. Representative: Harold H. Mitchell, Jr., P.O. Box 1295, Greenville, MS 38701. *Malt beverages, advertising and display materials and containers* (except commodities in bulk) between Houston, TX and Covington and Houma, LA, for 180 days. An underlying ETA seeks 90 day authority. Supporting shipper(s): Buquet Distributing Co., Inc., 1200 St. Charles St., Houma, LA 70360; Champagne Beverage Co., Inc., P.O. Box 818, Covington, LA 70433. Send protests to: Alan Tarrant, D/S, ICC, Rm. 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 135904 (Sub-3TA), filed April 20, 1979. Applicant: ALLTRANS EXPRESS LTD., 4878 Manor St., Burnaby, B.C., Canada U5G 1B3. Representative: George H. Hart, 1100 IBM Bldg., Seattle, WA 98101. *General commodities (except those of unusual value, classes A & B explosives, household goods as defined by the Commission, commodities in bulk, and commodities which because of size or weight require the use of special equipment)*, between Portland, OR and the Port of Entry on the U.S.-Canada Boundary line at Blaine, WA, serving Vancouver, WA, as an intermediate point, and serving junction Interstate Hwy. 5 and Washington Hwy. 539 (formerly Alternate U.S. Hwy. 99) at Bellingham, WA, for purposes of joinder only: From Portland over Interstate Hwy. 5 to the Port of Entry on the U.S.-Canada Boundary line at Blaine, and return over the same route. Between junction Interstate Hwy. 5 and Washington Hwy. 539 (formerly Alternate U.S. Hwy. 99) at Bellingham, WA, and the Port of Entry on the U.S.-Canada Boundary line at Sumas, WA, serving no intermediate points and serving junction Interstate Hwy. 5 and Washington Hwy. 539 (formerly Alternate U.S. Hwy. 99) at Bellingham, WA, for purposes of joinder only: From junction Interstate Hwy. 5 and Washington Hwy. 539 (formerly U.S. Hwy. 99) at Bellingham, over Washington Hwy. 539 (formerly portion U.S. Hwy. 99) to junction Washington Hwy. 544, thence over Washington Hwy. 544 to junction Washington Hwy. 9, and thence over Washington Highway 9 to Sumas, and return over the same route, for 180 days. Applicant intends to tack this authority with MC 135904 Sub 2, at Tacoma, WA and Seattle, WA, for service beyond Canada. Applicant intends to interline traffic at Portland, OR, Tacoma and Seattle, WA. Supporting shipper(s): There are 27 shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: Shirley

M. Holmes, T/A, ICC, 858 Federal Bldg., Seattle, WA 98174.

MC 136315 (Sub-74TA), filed May 18, 1979. Applicant: OLEN BURRAGE TRUCKING, INC., Rt. 9, Box 22–A, Philadelphia, MS 39350. Representative: Fred W. Johnson, Jr., P.O. Box 22628, Jackson, MS 39205. (1) *Lumber, particleboard, composition board, paneling, poles, piling, pallets, timbers, crossties and wallboard* and (2) *materials, equipment and supplies used in the manufacture, production or distribution of the commodities named in (1) above,* except commodities in bulk, between points in AL, AR, FL, GA, IL, IN, IA, KS, KY, LA, MI, MN, MO, MS, NC, NE, NY, OH, OK, PA, SC, TN, TX, VA, WV, and WI, for 180 days. An underlying ETA seeks 90 day authority. Supporting shipper(s): There are 30 statements in support attached to this application which may be examined at the I.C.C. in Washington, D.C. or copies of which may be examined in the field office named below. Send protests to: Alan Tarrant, D/S, ICC, Rm. 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 138875 (Sub-181TA), filed April 4, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Road, Boise, ID 83705. Representative: F. L. Sigloh (same address as above). *Frozen foods,* except in bulk, between points in ID and Malheur County, OR, on the one hand, and, on the other, points in CA, for 180 days, in common carriage. An underlying ETA seeks 90 day authority. Supporting shipper(s): Ore-Ida Foods, Inc., P.O. Box 10, Boise, ID 83706. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83702.

MC 138875 (Sub-182TA), filed April 9, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Road, Boise, ID 83705. Representative: F. L. Sigloh (same address as above). *Such products as are dealt in by tile, floor, ceiling, wall and counter covering distributors, except commodities in bulk,* from the facilities of GAF Corporation located at or near Vails Gate, NY and Fullerton, PA to points in CA, ID, NV, OR, UT and WA, for 180 days in common carriage. An underlying ETA seeks 90 days authority. Supporting shipper(s): GAF Corporation, 1361 Alps Road, Wayne, NJ 07470. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83702.

MC 138875 (Sub-183TA), filed April 9, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Road, Boise, ID 83705. Representative: F. L. Sigloh (same address as above). *Doors and accessories, except commodities in bulk,* from the facilities of Republic Builders Products Corporation located at or near McKenzie, TN to Nampa & Twin Falls, ID and Ogden, UT, for 180 days in common carriage. (Restricted to traffic originating at and destined to named origins and destinations.) An underlying ETA seeks 90 days authority. Supporting shipper(s): Western Block, Inc., 224 1st St. So., Nampa, ID 83651. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83702.

MC 138875 (Sub-184TA), filed April 10, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Road, Boise, ID 83705.Representative: F. L. Sigloh (same address as above). *Dehydrated potatoes, except commodities in bulk,* from Rupert, ID to the facilities of Ore-Ida Foods, Inc. at Plover, WI, for 180 days in common carriage. Restricted to traffic originating at and destined to named origins and destinations. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ore-Ida Foods, Inc., P.O. Box 10, Boise, ID 83707. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83702.

MC 138875 (Sub-185TA), filed April 12, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Road, Boise, ID 83705.Representative: F. L. Sigloh (same address as above). *Lumber, lumber mill products, wood products and composition board, except commodities in bulk,* from points in MT to points in Ada and Canyon Counties, ID, in common carriage, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Chandler Corporation, 1301 N. Orchard, Boise, ID 83705. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83702.

MC 138875 (Sub-186TA), filed April 24, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Road, Boise, ID 83705. Representative: F. L. Sigloh (same address as above). *Such products as are dealt in by wholesale and retail drug and discount stores, except drugs and medicines and except commodities in bulk,* between the facilities of Formac-Valu-Rite, a subsidiary of Foremost-McKesson, Inc. at or near Los Angeles, CA, Denver, CO, Smyrna, GA, Bedford Park, IL, Grand Prairie, TX and Portland, OR, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Formac-Valu-Rite, A subsidiary of Foremost-McKesson, Inc., Crocker Plaza, One Post Street, San Francisco, CA 94104. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83702.

MC 142494 (Sub-2TA), filed April 25, 1979. Applicant: UNITED CARTAGE, INC., 737 S. Stacy Street, Seattle, WA 98134. Representative: Michael D. Duppenthaler, 211 S. Washington St. Seattle, WA 98104. *General commodities (except Classes A and B explosives),* between points in the Seattle, WA Commercial Zone, restricted to traffic having a prior or subsequent movement by water, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Eckert Overseas Agency, Inc., 1218 3rd Ave., Seattle, WA 98101; Totem Ocean Trailer Express, Inc., 1100 Olive Way, P.O. Box 24908, Seattle, WA 98124. Send protests to: Shirley M. Holmes, T/A, ICC, 858 Federal Bldg., Seattle, WA 98174.

MC 145194 (Sub-4TA), filed May 14, 1979. Applicant: WOOSTER MOTOR WAYS, INC., 1357 Mechanicsburg Rd., Wooster, OH 44691. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215. *Such merchandise, as is manufactured or dealt in by persons whose primary business purpose is the manufacture, processing, or distribution of rubber products, and, in connection therewith, equipment, materials and supplies* used in the conduct of such business from Allen County, IN to points in MI and OH, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The B. F. Goodrich Co., 500 S. Main St., Akron, OH 44318. Send protests to: DS/ICC, Room 620, 101 N. 7th St. Philadelphia, PA 19106.

MC 145734 (Sub-6TA), filed April 26, 1979. Applicant: B D TRUCKING CO. P.O. Box 817, Ripon, CA 95366. Representative: E J. Hegarty, Attorney, Loughran & Hegarty, 100 Bush St., 21st Floor, San Francisco, CA 94104. *Gypsum products, viz., gypsum board, thermal (solid gypsum board with enclosed electrical heating element); and, gypsum board, viz., gypsum backing board, gypsum form board, gypsum lath, gypsum sheeting and gypsum wall board.* From facilities of National Gypsum Company, Phoenix, AZ to San Diego, Orange, Los Angeles, Riverside, and San Bernardino counties, CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): National Gypsum Company, 1650 West 8th St., Long Beach, CA 90813. Send protests to: A. J. Rodriquez, I.C.C., 211 Main St., Suite 500, San Francisco, CA 94105.

MC 145734 (Sub-7TA), filed May 17, 1979. Applicant: B D TRUCKING CO., P.O. Box 817, Ripon, CA 95366.

Representative: Edward J. Hegarty, J. H. Gulseth, PH: (415) 986-5778, Loughran & Hegarty, 100 Bush Street, 21st Floor, San Francisco, CA 94104. *Lime and lime products* (except in bulk), from the Flintkote Lime Company facilities at or near Dolomite, UT to points in Oregon and points in San Francisco, Santa Clara, San Mateo, Alameda and Sacramento counties, CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Flintkote Lime Company, 4700 Ramon Blvd., Monterey Park, CA 91754. Send protests to: A. J. Rodriguez, DS, ICC, 211 Main Street, suite 500, San Francisco, CA 94105.

MC 148974 (Sub-1TA), filed May 16, 1979. Applicant: WILLIAM V. THOMAS, P.O. Box 554, Ojo Caliente, NM 87549. Representative: William V. Thomas (same address as applicant). *Iron and steel articles*, except those described in the Mercer Description, 74 MCC 459, and those requiring special equipment because of size and weight, (1) from CA, OK, and TX, to AZ, CO, and NM, (2) from AZ to NM and CO, (3) from NM to AZ and CO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Rio Grande Steel Co., 7100-2nd Street, NW, Albuquerque, NM 87103; Drainage Structures, Inc., 10300 Central SW, Albuquerque, NM 87105. Send protests to: DS, ICC, 1106 Federal Office Building, 517 Gold Avenue SW., Albuquerque, NM 87101.

MC 147004 (Sub-1TA), filed May 14, 1979. Applicant: E.G. MASON, d.b.a., CITY WIDE DELIVERY SERVICE, 4858 Space Center, San Antonio, TX 78210. Representative: Kenneth R. Hoffman, 801 Vaughn Building, Austin, TX 78701. *Plumbing supplies, bathroom vanities and accessories for vanities* between San Antonio, TX on the one hand, and, on the other, Hondo, TX. Restricted to traffic moving in trailers not owned or furnished by carrier and restricted to traffic having a prior or subsequent movement by rail, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Universal-Rundle Corporation, 217 North Mill Street, New Castle, PA 16103. Send protests to: Martha A. Powell, TA, Interstate Commerce Commission, Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

By the Commission.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-18810 Filed 6-12-79; 8:45 am]

BILLING CODE 7035-01-M

Operating Rights Application(s) Directly Related to Finance Proceedings

The following operating rights application(s) are filed in connection with pending finance applications under section 11343 (formerly section 5(2)) of the Interstate Commerce Act, or seek tacking and/or gateway elimination in connection with transfer applications under Section 10926 (formerly section 212(b)) of the Interstate Commerce Act.

An original and one copy of protests to the granting of the authorities must be filed with the Commission on or before July 13, 1979. Such protests shall comply with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247) and include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities. Verified statements in opposition should not be tendered at this time. A copy of the protest shall be served concurrently upon applicant's representative or applicant if no representative is named.

Each applicant states that approval of its application will not significantly affect the quality of the human environment nor involve a major regulatory action under the Energy Policy and Conservation Act of 1975.

MC 109397 (Sub-454F) (partial correction), filed April 27, 1979. Previously noticed in the Federal Register issue of May 17, 1979. Applicant: TRI-STATE MOTOR TRANSIT CO., P.O. Box 113, Joplin, MO 64801. Portions of the purchased authority was omitted and should be included as follows: 3. *Commodities*, which because of size or weight require special equipment, and related *machinery parts*, and related *contractor's materials* and *supplies* when their transportation is incidental to commodities requiring special equipment, and *self-propelled articles* each weighing 15,000 pounds or more, and *related machinery, equipment, tools, parts*, and *supplies* moving in connection therewith (restricted to self-propelled articles which are transported on trailers), incidental to and used in connection with the construction, repairing, or dismantling of gas, gasoline, and oil pipe lines, between points in CA, on the one hand, and, on the other, points in the United States (except AK and HI). Restriction: Restricted to traffic moving to or from pipe line rights-of-way. 4. *Commodities*, which because of size or weight require special equipment, and related *machinery parts*, and related *contractor's materials* and *supplies* when their transportation is incidental to commodities requiring special equipment, and *self-propelled articles* each weighing 15,000 pounds or more, and related *machinery, equipment, tools, parts*, and *supplies* moving in connection therewith (restricted to self-propelled articles which are transported on trailers), used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products, between points in AR, CO, IA, KS, LA, MO, NM, OK, TX, WY, WI, ND, SD, MN, IL, IN, OH, PA, NJ, DE, MD, NC, WV, VA, NY, CT, RI, MA, and DC. 7. *Oilfield equipment and supplies, except commodities moving in tank vehicles, new passenger automobiles, and Classes A and B explosives, between points in MO, on the one hand, and, on the other, ports of entry on the Pacific Coast and those on the United States-Canada Boundary line—restricted to traffic moving to or from AK or foreign commerce.* 10. (a) *Commodities*, the transportation of which because of their size or weight requires the use of special equipment or handling, and *parts of commodities*, the transportation of which because of their size or weight requires the use of special equipment or handling, except commodities moving in tank vehicles, new passenger automobiles, and Classes A and B explosives, and (b) *self-propelled articles*, each weighing 15,000 pounds or more, transported on trailers, and related *machinery, tools, parts*, and *supplies* moving in connection therewith, between points in IL, IN, WY, NM, IA, MO, AR, KY, and LA, on the one hand, and, on the other, ports of entry on the Pacific Coast and those on the United States-Canada Boundary line—restricted to traffic moving to or from AK or foreign commerce. 11. (a) *Commodities*, the transportation of which because of their size or weight requires the use of special equipment or handling, and *parts of commodities*, the transportation of which because of the size or weight requires the use of special equipment or handling, except commodities moving in tank vehicles, new passenger automobiles, and Classes A and B explosives, and (b) *self-propelled articles* each weighing 15,000 pounds or more, transported on trailers, and related *machinery, tools, parts*, and *supplies* moving in connection therewith, between points in WI, MN, and ND, on the one hand, and, on the other, ports of entry on the Pacific Coast and those on the United States-Canada Boundary line—restricted to traffic

moving to or from AK or foreign commerce. 18. *Machinery, equipment, materials,* and *supplies* used in or in connection with the construction, operation, repair, servicing, maintenance, and dismantling of pipelines for the transportation of water and sewerage, including the stringing and picking up of pipe—restricted to traffic originating at or destined to pipeline rights-of-way, and except commodities moving in tank vehicles, new passenger automobiles and Classes A and B explosives, between points in AZ, CT, DE, ID, MA, MD, ME, NH, NC, NJ, NV, RI, SC, VT, and DC, on the one hand, and, on the other, ports of entry on the Pacific Coast and those on the United States-Canada Boundry line—restricted to traffic moving to or from AK or foreign commerce. 19. *Earth drilling machinery* and *equipment,* and *machinery, equipment, materials, supplies,* and *pipe* incidental to, used in, or in conneciton with (a) the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, (b) the completion of holes or wells drilled, (c) the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites and (c) the injection or removal of commodities into or from holes or wells, except commodities moving in tank vehicles, new passenger automobiles, and Classes A and B explosives, between points in WY, NM, NE, IA, MO, AR, LA, KY, NV, and IN, on the one hand, and, on the other, ports of entry on the Pacific Coast and those on the United States-Canada Boundary line—restricted to traffic moving to or from AK or foreign commerce. 21. *Aerospace craft* which because of size or weight require special equipment or handling, and *parts* of aerospace craft which because of size or weight require special equipment or handling, between points in CA, WA, NE, MN, SD, ND, AZ, OR, WY, UT, NM, TX, OK, CO, IA, KS, MO, AR, LA, ID, MT, and NB, on the one hand, and, on the other, points in the United States in and west of MN, IA, MO, AR, and LA. 22.(a) *Antipollution systems,* which because of size or weight special equipment or handling; and (b) *parts* of commodities in (a) above, from points in NJ, to points in LA, CA, WA, OR, ID, and MT. 23. *Lumber* and *wood products,* which because of size or weight require special equipment or handling, and *parts* of lumber and wood products, from points in ID and MT, to points in CO, IA, LA, NM, OK, TX, IL, IN, MI, OH, KY, PA, MA, RI, CT, NY, NJ, DE, MD, WV, VA, NC, and DC.

24.(a) *Aircraft ground support equipment* (except automobiles, trucks and buses as defined in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766), which because of size or weight requires the use of special equipment, and (b) *self-propelled aircraft ground support equipment* weighing 15,000 pounds or more, transported on trailers, between points in WA, OR, UT, NV, AZ, and CA, on the one hand, and, on the other, points in the United States (except AK and HI). 29. (1) *Turbines, steam condensers, feed water heaters, weldments* and *heat exchangers,* (2) *parts* of the commodities in (1) above, and (3) *iron* and *steel castings* and *forgings,* restricted in (1) above to the transportation of commodities which because of size or weight require the use of special equipment and in (2) above to the transportation of parts which because of size or weight do not require the use of special equipment in mixed loads with commodities in (1) between points in ND, SD, NM, NY, PA, MD, DC, VA, WV and NC, on the on the one hand, and, on the other, points in and west of MN, IA, MO, AR, and LA. 30. *Iron* and *steel articles,* from points in CA, to points in AL, AK, AZ, CA, FL, GA, ID, OR, SC, TN, UT, CO, AR, IL, IA, KS, KY, LA, MI, NM, NC, OH, OK, PA, TX, VA, WA, WV, WY, WI, and MN. 31. *Pre-finished vinyl* or *paper-covered paneling, gypsum board, hardboard, composition board* and *molding,* which because of size or weight require special equipment, from the plant site of Sioux Veneer Panel Co., at or near Boise, ID, to points in OR and WA. 32. *Steel roofing,* from Phoenix, AZ, and *reinforcing bars,* from Helena, AZ, to points in CA. 33. Such *contractors' equipment, heavy* and *bulky articles, machinery* and *machinery parts,* and *articles requiring specialized handling or rigging,* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products, between points in MT, ND, and SD, on the one hand, and, on the other, points in CT, DE, MD, MA, NJ, NY, NC, PA, RI, VA, WV, and DC. 38. *Turbines, steam condensers, feed water heaters, weldments, heat exchangers,* and *iron* and *steel castings* and *forgings,* which because of size or weight require special equipment or handling, between VT, NH, ME, NY, PA, and MD, on the one hand, and, on the other, points in and west of IN, KY, AR, and LA. 39. *Zinc* and *zinc products,* which because of size or weight require the use of special equipment, from points in VA, NC, CT, DE, MD, MA, NJ, NY, PA, RI, WV, and DC, to points in and west of TX, OK, KS, NE, SD, and ND. 40. *Refined copper,* which because of size or weight requires the use of special equipment, from points in VA, NC, CT, DE, MD, MA, NJ, NY, PA, RI, WV, and DC, to points in and west of TX, OK, KS, NE, SD, and ND. 41. *Aluminum* and *aluminum articles,* which because of size or weight require the use of special equipment, from points in VA, NC, CT, DE, MD, MA, NJ, NY, PA, RI, WV, and DC, to points in and west of TX, OK, KS, NE, SD, and ND. 42. (1) *Tractors* with or without *attachments* (except tractors used for pulling highway trailers), *lift trucks, excavators, motor graders, scrapers, engines, generators, generators and engines combined, road rollers, pipe layers, dump trucks,* with or without bodies designed for off-highway use; (2) *parts, attachments* and *accessories* for the commodities described in (1) above; which because of size or weight require the use of special equipment, from the plant sites and facilities of Caterpillar Tractor Co., located in Scott County, IA, to points in VA, NC, CT, DE, MD, MA, NJ, NY, PA, RI, WV, and DC. 46. *Radioactive materials* and *radioactive material handling containers, which* because of size or weight require the use of special equipment or handling, between points in WY, CO, NM, KS, OK, TX, LA, AR, MO, IA, WA, OR, ID, MT, UT, KY, IN, and WI, on the one hand, and, on the other, points in the United States (except AK and HI). 47. *Lumber, particleboard* and *plywood,* which because of size or weight require the use of special equipment, from points in MA, RI, CT, NJ, NY, PA, MD, DE, DC, VA, NC, WV, OH, IN, MI, and IL, to points in and west of TX, OK, KS, NE, SD, and ND. 48. *Pollution control systems, parts,* and *attachments* for pollution control systems, which require special handling or rigging, and *equipment, materials,* and *supplies* used in the installation, operation, and maintenance of pollution control systems, from points in MD, NC, VA, NY, PA, CT, MA, and RI, to point in the United States (except AK, HI, IL, MI, IN, OH, WV, NC, VA, DE, MD, DC, PA, NY, NJ, CT, RI, MA, VT, NH, and ME). 49. *Pollution control systems, parts* and *attachments* for pollution control systems, and *equipment, materials,* and *supplies* used in the installation, operation, and maintenance of pollution control systems, from points in NJ, to points in the United States (except AK, HI, IL, MI, IN, OH, WV, NC, VA, DE, MD, DC, PA, NY, NJ, CT, RI, MA, VT, NH, and ME). 50. *Aluminum products* and *fabricated or structural steel*

requiring specialized handling or rigging, from points in MA, CT, RI, NJ, NY, PA, WV, VA, NC, DC, OH, IN, MI, and IL, to points in the United States (except AK, HI, IL, IN, MI, OH, WV, NC, VA, DE, MD, DC, PA, NY, NJ, CT, RI, MA, VT, NH, and ME). 55. *Metal buildings* and *metal wall sections* requiring special handling (a) from points in MA, CT, RI, NY, NJ, PA, MD, DE, DC, VA, WV, NC, and OH, to points in the United States (except AK and HI), and (b) from points in CA, OR, WA, MT, ID, UT, NM, CO, WY, KS, OK, TX, IA, ND, SD, MN, WI, IL, IN, MO, AR, LA, and KY, to points in MA, RI, CT, NY, NJ, MD, DE, DC, VA, NC, WV, PA, and OH. 56. (a) *Pre-cut buildings* which because of size or weight require special equipment; and (b) *parts, attachments, materials,* and *supplies* for pre-cut buildings, from points LA, TX, OK, AR, NM, MO, KS, CO, UT, WY, IL, IN, WI, KY, OH, ND, SD, MN, WA, ID, MT, OR, CA, NC, VA, WV, DC, MD, DE, PA, NJ, CT, MA, RI, NY, and MI, to points in the United States (except AK and HI). 57. *Iron* or *steel articles* which because of size or weight require special equipment, from points in MA, RI, CT, NY, NJ, PA, MD, DE, DC, WV, VA, and NC, to points in and west of LA, AR, MO, IA, and MN. 58. *Zinc* and zinc products, from points in Montgomery County, TN, to points in the United States in and west of ND, SD, NE, KS, OK, and TX. 59. *Commodities,* the transportation of which because of size or weight requires the use of special equipment, and related *machinery, parts,* and related *contractors' materials* and *supplies* when their transportation is incidental to the transportation by carrier of commodities which by reason of size or weight require the use of special equipment; *self-propelled articles,* each weighing 15,000 pounds or more, and related *machinery, tools, parts,* and *supplies* moving in connection therewith—restricted to commodities which are transported on trailers; 62. (1) *Turbines, steam condensers, feed water heaters, weldments* and *heat exchangers, (2) parts* of the commodities in (1) above, and (3) *iron* and *steel castings* and *forgings,* restricted in (1) above to the transportation of commodities which because of size or weight require the use of special equipment and in (2) above to the transportation of parts which because of size or weight do not require the use of special equipment in mixed loads with commodities in (1) above, between points in ID and MT, on the other hand, and, other other, points in the United States (except AK and HI). 63. *Electric controllers* and *instruments* which because of size or weight require special equipment, from points in CT, MA, NJ, NY, PA, DE, MD, VA, and NC, to points in ID and MT. 64. Asphalt mixing systems which because of size or weight require special equipment, between King County, WA, on the one hand, and, on the other, points in ID and MT. 65. *Electonic equipment, machinery,* and *systems* requiring specialized handling or rigging, between VT, on the other hand, and on the other, points in ID and MT. 66. *Source, special nuclear,* and *by-product materials, radioactive materials,* which because of size or weight require special equipment or handling, and *related reactor experiment equipment, component parts,* and *associated materials,* between points in ID, CA, FL, and NV, on the other hand, and, on the other, points in the United States (except AK and HI).

Note.—This matter is directly related to MC–F–13956F.

By the Commission.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-18407 Filed 6-12-79; 8:45 am]
BILLING CODE 7035-01-M

[Permanent Authority Decisions Volume No. 68]

Permanent Authority Applications; Decision-Notice

Decided: May 22, 1979

The following applications are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the application is published in the **Federal Register.** Failure to file a protest, within 30 days, will be considered as a waiver of opposition to the application. A protest under these rules should comply with Rule 247(e)(3) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding, (as specifically noted below), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. A protestant should include a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describe in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named. If the protest includes a request for oral hearing, such request shall meet the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

On cases filed on or after March 1, 1979, petitions for intervention either with or without leave are appropriate.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If applicant has introduced rates as an issue it is noted. Upon request an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may be been modified to conform to the Commission's policy of simplifying grants of operating authority.

We Find:

With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy 49 U.S.C. 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human envirnment nor a major regulatory

action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a protestant, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. 10101 subject to the right of the Commission, which is expressly reserved, to impose such conditions as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930(a) [formerly section 210 of the Interstate Commerce Act.].

In the absence of legally sufficient protests, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as confering more than a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

H. G. Homme, Jr.,

Secretary.

MC 16903 (Sub-60F), filed December 6, 1978, and previously published in the Federal Register on February 8, 1979, as MC 16903 (Sub-10F). Applicant: MOON FREIGHT LINES, INC., P.O. Box 1275, Bloomington, IN. Representative: Donald W. Smith, P.O. Box 40659, Indianapolis, IN 46240. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *roof insulation*, from the facilities of The Celotex Corporation, at Elizabethtown, KY, to points in MN, WI, IA, IL, MO, AR, LA, MS, AL, GA, FL, SC, NC, TN, KY, VA, WV, IN, MI, OH, PA, DE, MD, NJ, NY, and DC. (Hearing site: Miami, FL, or Washington, DC.)

MC 106373 (Sub-36F), filed February 26, 1979. Applicant: THE SERVICE TRANSPORT COMPANY, A CORPORATION, 114½ East Main Street, Ravenna, OH 44310. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. To operate as a *common carrier* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, (1) from the facilities of Gibraltar Steel Corporation, Seneca Steel Corporation, and Beals, McCarthy and Rogers, Inc., at or near Buffalo, NY, and (2) from the facilities of Lake Eastern Steel Products Company and Steel Bar Service, Inc., at or near Niles, OH, to points in MI, IN, IL, and WI. (Hearing site: Akron, OH, or Washington, DC.)

Note.—The purpose of this republication is to correctly identify the Sub-No. as 60F.

MC 117903 (Sub-12F), filed February 7, 1979. Applicant: FRUITBELT TRUCKING INC., 12 Smith Street, St. Catharines, Ontario, Canada. Representative: Robert D. Gunderman, Suite 710 Statler Bldg., Buffalo, NY 14202. To operate as a *common carrier*, by motor vehicle, in foreign commerce only, over irregular routes, transporting (1) *meats, meat products, and meat byproducts, and articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk, in tank vehicles), and (2) *foodstuffs* (except the commodities in (1) above), in mixed loads with the commodities in (1) above, from points in IL, IA, and WI, to ports of entry on the international boundary line between the United States and Canada, restricted to the transportation of traffic originating at the facilities of Oscar Mayer & Co., Inc. (Hearing site: Buffalo, NY.)

[FR Doc. 79-18628 Filed 6-12-79; 8:45 am]

BILLING CODE 7035-01-M

[Permanent Authority Decisions Volume No. 69]

Permanent Authority Applications; Decision-Notice

Decided: May 22, 1979.

The following applications, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a petition for intervention, either in support of or in opposition to the granting of an application, must be filed with the Commission within 30 days after the the date notice of the application is published in the Federal Register. Protests (such as were allowed to filings prior to March 1, 1979) *will be rejected*. A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, and has the necessary equipment and facilities for performing that service, and (2) has either performed service within the scope of the application or has solicited business which is controlled by those supporting the application and which would have involved transportation performed within the scope of the application.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, the extent to which petitioner's interest will be represented by other parties, the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable compliance with the requirements of the rules may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If an applicant has introduced rates as an issue it is noted. Upon request, an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication (June 13, 1979).*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings:

With the exception of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier

applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the tranportation policy of 49 U.S.C. § 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. § 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. § 10930(a) [formerly section 210 of the Interstate Commerce Act].

In the absence of legally sufficient petitions for intervention, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

H. G. Homme, Jr.,
Secretary.

MC 4963 (Sub-82F), filed March 12, 1979. Applicant: JONES MOTOR CO., INC., Bridge Street & Schuylkill Road, Spring City, PA 19475. Representative: Roland Rice, Suite 501 Perpetual Bldg., 1111 E Street, NW, Washington, DC 20004. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, transporting *general commodities* (except those of unusual value, classes A and B explosives, commodities in bulk, household goods as defined by the Commission, and those requiring special equipment), serving Glens Falls, Hudson Falls, South Glens Falls, and Fort Edward, NY, as off-route points in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Albany, NY.)

MC 13123 (Sub-97F), filed March 12, 1979. Applicant: WILSON FREIGHT COMPANY, A Corporation, 11353 Reed Hartman Hwy., Cincinnati, OH 45241. Representative: Milton H. Bortz (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *refractory products* from the facilities of A. P. Green Refractories Co., at or near Mexico and Fulton, MO, to points in CT, DE, IN, KY, ME, MD, MA, MI, NH, NJ, NY, NC, OH, PA, RI, VA, WI, WV, and DC; and (2) *aluminum products,* from the facilities of Consolidated Aluminum Corporation, at or near Murphysboro, IL, to points in AR, CT, DE, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MO, NH, NJ, NY, NC, OH, OK, PA, RI, TN, TX, VA, WI, WV, and DC. (Hearing site: Cincinnati, OH, or Washington, DC.)

MC 14252 (Sub-55F), filed March 12, 1979. Applicant: COMMERCIAL LOVELACE MOTOR FREIGHT, INC., 3400 Refugee Road, Columbus, OH 43227. Representative: William C. Buckham (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Danville, IL, and junction IL Hwy 1 and U.S. Hwy 24, over IL Hwy 1, serving all intermediate points and the off-route point of East Lynn, IL, (2) between Gilman, IL, and junction IL HWY 1 and U.S. Hwy 24, over U.S. Hwy 24, serving all intermediate points, (3) between Gilman and Champaign, IL, over U.S. Hwy 45, serving all intermediate points, (4) between Onarga, IL, and junction IL Hwy 54 and U.S. Hwy 150, over IL Hwy 54, serving all intermediate points, and (5) between junction U.S. Hwy 24 and IL Hwy 49 and junction IL Hwy 49 and U.S. Hwy 150, over IL Hwy 49, serving all intermediate points. (Hearing site: Columbus, OH.)

MC 16882 (Sub-94F), filed March 12, 1979. Applicant: MURAL TRANSPORT, INC., P.O. Box 1785, North Brunswick, NJ 08902. Representative: W. C. Mitchell, 370 Lexington Avenue, New York, NY 10017. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *automotive, bus, and truck chairs, seats, stools, fixtures, and steel beds,* from Dubuque, IA, Waxahachie, TX, Lancaster, PA, Riverside, CA, Harrison, AR, Sweetwater and Evensville, TN, and Salt Lake City, UT, to points in the United States (except AK and HI). (Hearing site: Washington, DC.)

MC 40852 (Sub-5F), filed March 5, 1979. Applicant: SEDALIA–MARSHALL–BOONVILLE STAGE LINE, INCORPORATED, 5805 Fleur Drive, Des Moines, IA 50321. Representative: Steven C. Schoenebaum, 1200 Register and Tribune Bldg., Des Moines, IA 50309. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, motor vehicles, commodities in bulk, and those requiring special equipment), between Miami International Airport, at or near Miami, FL, New Orleans International (or Moissant) Airport, at or near New Orleans, LA, and Houston Intercontinental Airport, at or near Houston, TX, restricted to the transportation of traffic having a prior or subsequent movement by air. (Hearing site: Dallas or Houston, TX.)

MC 47583 (Sub-90F), filed March 12, 1979. Applicant: TOLLIE FREIGHTWAYS, INC., 1020 Sunshine Road, Kansas City, KS 66115. Representative: D. S. Hults, P.O. Box 225, Lawrence, KS 66044. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *canned and preserved foodstuffs,* from the facilities of Heinz USA, Division of H. J. Heinz Company, at or near Muscatine and Iowa City, IA, to points in TX, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Kansas City, MO.)

MC 61592 (Sub-435F), filed March 9, 1979. Applicant: JENKINS TRUCK LINE, INC., P.O. Box 697, Jeffersonville, IN

47130. Representative: E. A. DeVine, P.O. Box 737, Moline, IL 61265. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *metal wire and plastic insulated wire*, from Willimantic, CT, Siloam Springs, AR, and Enka, NC, to points in AZ, AR, CA, NM, NV, OR, TX, and WA. (Hearing site: Washington, DC.)

MC 61592 (Sub-436F), filed March 8, 1979. Applicant: JENKINS TRUCK LINE, INC., P.O. Box 697, Jeffersonville, IN 47130. Representative: E. A. DeVine, P.O. Box 737, Moline, IL 61265. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *filters*, and (2) *materials and supplies* used in the manufacture and distribution of filters (except commodities in bulk), between New Albany, IN, on the one hand, and, on the other, points in AL, CA, FL, IL, LA, MA, MN, MO, NY, OH, RI, VA, and WV. (Hearing site: Louisville, KY.)

MC 64932 (Sub-593F), filed March 9, 1979. Applicant: ROGERS CARTAGE CO., a corporation, 10735 South Cicero Avenue, Oak Lawn, IL 60453. Representative: Allan C. Zuckerman, 39 South LaSalle Street, Chicago, IL 60603. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *liquid chemicals*, in bulk, in tank vehicles, from the facilities of Dow Chemical U.S.A., Central Division, at Channahon, IL, to those points in the United States on and east of U.S. Hwy. 85. (Hearing site: Chicago, IL.)

MC 71593 (Sub-22F), filed March 12, 1979. Applicant: FORWARDERS TRANSPORT, INC., 1606 East 2nd Street, Scotch Plains, NJ 07076. Representative: Peter Wolff, P.O. Box 116, Scranton, PA 18504. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) (1) between New Haven, CT, Chicago, IL, Baltimore, MD, Boston and Springfield, MA, New York, NY, and Philadelphia, PA, on the one hand, and on the other, Minneapolis, MN, and Kansas City, Mo, and (2) between Kansas City and St. Louis, MO, restricted in (1) and (2) above to the transportation of traffic moving on freight forwarder bills of lading as defined in 49 U.S.C. 10102(8) formerly Section 402(a)(5) of the Interstate Commerce Act. (Hearing site: New York, NY, or Washington, DC.)

MC 82492 (Sub-231F), filed March 2, 1979. Applicant: MICHIGAN & NEBRASKA TRANSIT CO., INC., 2109 Olmstead Road, P.O. Box 2853, Kalamazoo, MI 49003. Representative: Dewey R. Marselle (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *household products*, from Waxdale, WI, to points in KS, KY, MI, MO, NE, OH, TN, those in PA on and west of U.S. Hwy 219, and those in NY in and west of Broome, Courtland, Onondaga, and Oswego Counties. (Hearing site: Milwaukee, WI, or Chicago, IL.)

MC 98952 (Sub-63F), filed March 8, 1979. Applicant: GENERAL TRANSFER COMPANY, a corporation, 2880 North Woodford Street, Decatur, IL 62526. Representative: Paul E. Steinhour, 918 East Capitol Avenue, Springfield, IL 62701. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs, cleaning compounds, and toilet preparations*, (except commodities in bulk), in vehicles equipped with mechanical refrigeration, from the facilities of Couzens Warehouse & Distributors, Inc., at or near Chicago, IL, to points in IN, KY, MO, and OH, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Springfield or Chicago, IL.)

MC 98952 (Sub-64F), filed March 12, 1979. Applicant: GENERAL TRANSFER COMPANY, a corporation, 2880 North Woodford Street, Decatur, IL 62526. Representative: Paul E. Steinhour, 918 East Capitol Avenue, Springfield, IL 62701. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in or used by food and drug business houses, in vehicles equipped with mechanical refrigeration, (except commodities in bulk), from the facilities of A. E. Staley Manufacturing Company, at or near Chicago, IL, to points in IN, KY, MO, and OH, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Springfield or Chicago, IL.)

MC 106603 (Sub-197F), filed March 12, 1979. Applicant: DIRECT TRANSIT LINES, INC., 200 Colrain Street, NW, P.O. Box 8099, Grand Rapids, MI 49508. Representative: Martin J. Leavitt, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *iron and steel articles*, from the facilities of Northwestern Steel and Wire Company, at Sterling and Rock Falls, IL, to points in DE, KY, IN, IA, MD, MI, MN, MO, NJ, NY, OH, PA, VA, WV, and WI; and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, in the reverse direction. (Hearing site: Washington, DC, or Chicago, IL.)

MC 107403 (Sub-1183F), filed March 12, 1979. Applicant: MATTLACK, INC., Ten West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *commodities*, in bulk, (1) between those points in the United States in and east of ND, SD, NE, KS, OK, and TX, and (2) between points named in (1) above, on the one hand, and, on the other, those points in the United States in and west of MT, WY, CO, and NM (except AK and HI), restricted in (1) and (2) above to the transportation of traffic originating at or destined to the facilities of Owens-Illinois, Inc. (Hearing site: Washington, DC.)

MC 108053 (Sub-158F), filed March 12, 1979. Applicant: LITTLE AUDREY'S TRANSPORTATION CO., INC., P.O. Box 129, Fremont, NE 68025. Representative: Arnold L. Burke, 180 N. LaSalle Street, Chicago, IL 60601. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts*, and *articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except hides and commodities in bulk) from Lyons, NE, to points in CA, restricted to the transportation of traffic originating at the named origin. (Hearing site: Omaha, NE.)

MC 111302 (Sub-152F), filed March 12, 1979. Applicant: HIGHWAY TRANSPORT, INC., P.O. Box 10470, Knoxville, TN 37919. Representative: David A. Petersen, P.O. Box 10470 Knoxville, TN 37919. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *chemicals*, in bulk, in tank vehicles, between points in Talladega County, AL, on the one

hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Mobile, AL.)

MC 113382 (Sub-24F), filed March 12, 1979. Applicant: NELSEN BROS., INC., P.O. Box 613, Nebraska City, NE 68410. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in or used by grocery and food business houses (except commodities in bulk), from the facilities of Thomas J. Lipton, Inc., at or near (a) Santa Cruz, CA, (b) Nebraska City, NE, (c) Independence, MO, (d) Galveston and Dallas, TX, (e) Wilmington, MA, (f) Harrisburg, PA, (g) Suffolk, VA, (h) Flemington, NJ, (i) Albion, NY, and (j) Chicago, IL, to points in the United States (except AK and HI), under continuing contract(s) with Thomas J. Lipton, Inc., of Englewood Cliffs, NJ. (Hearing site: New York, NY.)

Note.—Dual operations may be involved.

MC 114273 (Sub-577F), filed March 9, 1979. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *coal tar and petroleum resins*, (except commodities in bulk, in tank vehicles), from Neville Island, PA, to Oregon, IL. (Hearing site: Chicago, IL, or Washington, DC.)

MC 114632 (Sub-209F), filed March 12, 1979. Applicant: APPLE LINES, INC., P.O. Box 287, Madison, SD 57042. Representative: David E. Peterson, P.O. Box 287, Madison, SD 57042. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *frozen foodstuffs*, from Hartford, CT, to Syracuse, NY, and points in GA, IL, KS, MN, MI, MO, OH, PA, TX, and WI. (Hearing site: Boston, MA, or Washington, DC.)

Note.—Dual operations may be involved.

MC 114632 (Sub-210F), filed March 12, 1979. Applicant: APPLE LINES, INC., P.O. Box 287, Madison, SD 57042. Representative: David E. Peterson, P.O. Box 287, Madison, SD 57042. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, from the facilities of Wheeling-Pittsburgh Steel Corporation, at (a) Canfield, Martins Ferry, Mingo Junction, Steubenville, and Yorkville, OH, (b) Allenport and Monessen, PA, and (c) Beechbottom, Benwood, Follansbee, and Wheeling, WV, to points in CO, IL, IA, KS, MN, MO, MT, NE, ND, SD, WI, and WY. (Hearing site: Pittsburgh, PA, or Washington, DC.)

Note.—Dual operations may be involved.

MC 115162 (Sub-464F), filed March 9, 1979. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *tractors, tractor parts, and tractor attachments*, from Racine, WI, to points in AL, AR, FL, GA, LA, MS, TN, and TX. (Hearing site: Chicago, IL, or Milwaukee, WI.)

MC 115162 (Sub-465F), filed March 12, 1979. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *construction materials, and materials, equipment, and supplies* used in the manufacture and distribution of construction materials, (except commodities in bulk, in tank vehicles), between points in AL, AR, FL, IL, IN, IA, KY, LA, MI, NJ, NY, NC, OH, PA, SC, TN, TX, and WV, on the one hand, and, on the other, those points in the United States in and east of ND, SD, NE, KS, OK, and TX, restricted to the transportation of traffic originating at or destined to the facilities of The Celotex Corporation. (Hearing site: Tampa, FL, or Washington, DC.)

MC 115162 (Sub-471F), filed March 12, 1979. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs*, from points in MI, to Kansas City, MO. (Hearing site: St. Louis, MO, or Chicago, IL.)

MC 115523 (Sub-178F), filed March 9, 1979. Applicant: CLARK TANK LINES, INC., P.O. Box 1895, 1450 N. Beck Street, Salt Lake City, UT 84110. Representative: William S. Richards, P.O. Box 2465, Salt Lake City, UT 84110. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *acids, chemicals, minerals, petroleum coke, salt, salt products, and zirconium sand*, between Little Mountain, UT, and points within 10 miles thereof, on the one hand, and, on the other, points in AZ, CA, CO, ID, KS, MT, NM, NV, OR, TX, UT, WA, and WY; and (2) *acids, chemicals, minerals, salt, and salt products*, from Little Mountain, UT, and points within 10 miles thereof, to points in NE, ND, OK, and SD. (Hearing site: Salt Lake City, UT.)

MC 116763 (Sub-493F), filed March 8, 1979. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380. Representative: H. M. Richters (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in or used by wholesalers, distributors, retailers, and manufacturers of automotive and transportation equipment, parts, and accessories (except (a) commodities in bulk, in tank vehicles, (b) commodities the transportation of which because of size or weight requires the use of special equipment, and (c) automobiles, trucks, and buses, as described in the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209, 766), from the facilities of Kinpak, Inc., at or near Atlanta, GA, to points in AL, FL, NC, SC, and TN, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Atlanta, GA.)

MC 116763 (Sub-494F), filed March 8, 1979. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380. Representative: H. M. Richters (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs* (except in bulk, in tank vehicles), from the facilities of Aunt Jane Foods, Inc., at or near Croswell, MI, to those points in the United States in and east of MN, IA, MO, OK, and TX, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Detroit MI.)

MC 116763 (Sub-499F), filed March 8, 1979. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380. Representative: H. M. Richters (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in or used by wholesalers, distributors, retailers, and manufacturers of automotive and transportation equipment, parts, and accessories (except (a) commodities in bulk, in tank vehicles, (b) commodities

the transportation of which because of size or weight requires the use of special equipment, (c) automobiles, trucks, and buses, as described in the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, 766, and (d) paper and paper products), from those points in the United States in and east of MN, IA, MO, OK, AND TX (except WI), to points in WI. (Hearing site: Chicago, IL.)

MC 119493 (Sub-277F), filed March 12, 1979. Applicant: MONKEM COMPANY, INC., P.O. Box 1196, Joplin, MO 64801. Representative: Thomas D. Boone (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *flour, corn meal, flaked potatoes, and edible flour and meal preparations*, (except commodities in bulk), from Sherman, TX, to points in AL, AR, AZ, CO, GA, LA, MS, MO, OK, and TN. (Hearing site: Omaha, NE, or Dallas, TX.)

MC 125433 (Sub-216F), filed March 12, 1979. Applicant: F-B TRUCK LINE COMPANY, a corporation, 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *ground limestone*, in bags, from Santa Ana, CA, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Salt Lake City, UT.)

MC 125952 (Sub-38F), filed March 6, 1979. Applicant: INTERSTATE DISTRIBUTOR CO., a corporation, 8311 Durango St., S.W., Tacoma, WA 98499. Representative: George R. LaBissoniere, 1100 Norton Building, Seattle, WA 98104. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *toppings, flavoring, extract, pie filling, syrups, fruit juice concentrates, jams and jellies, in packages*, and (2) *equipment* used for dispensing the commodities in (1) above, from the facilities of Lyons Magnus at Clovis, CA, to points in ID, OR, NV, UT, and WA, under a continuing contract(s) with Lyons Magnus at Clovis, CA. Dual operations may be involved. (Hearing site: Los Angeles, CA.)

MC 127303 (Sub-55F), filed March 12, 1979. Applicant: ZELLMER TRUCK LINES, INC., P.O. Box 343, Granville, IL 61326. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh Street, NW, Washington, DC 20001. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *chemicals, plastic, and plastic products*, (except commodities in bulk), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), between the facilities of Northern Petrochemical Company, at or near (a) Mankato, MN, (b) Newark, OH, (c) Clinton, MA, and (d) Chicago, Morris, and Mapleton, IL, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Chicago, IL, or Washington, DC.)

MC 129032 (Sub-78F), filed March 12, 1979. Applicant: TOM INMAN TRUCKING, INC., 6015 So. 49th West Avenue, Tulsa, OK 74107. Representative: David R. Worthington (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as described in section A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except hides and commodities in bulk), and (2) *foodstuffs* (except the commodities in (1) above), from the facilities of Geo. A. Hormel & Co., at or near Austin and Owatonna, MN, to points in AR, OK, and TX, restricted to the transportation of traffic originating at the named origins. (Hearing site: Minneapolis, MN, or Chicago, IL.)

MC 136343 (Sub-162F), filed March 8, 1979. Applicant: MILTON TRANSPORTATION, INC., P.O. Box 355, Milton, PA 17847. Representative: Herbert R. Nurick, P.O. Box 1166, 100 Pine Street, Harrisburg, PA 17108. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *limestone* (except in bulk), from Texas, MD, to points in NJ, NY, OH, and PA. (Hearing site: Harrisburg, PA, or Washington, DC.)

MC 136682 (Sub-227F), filed March 12, 1979. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Box 707, Troy, AL 36081. Representative: James W. Segrest (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *oilfield equipment*, from Shreveport, LA, to points in TN, VA, and WV. (Hearing site: Shreveport, LA, or Birmingham, AL.)

MC 136682 (Sub-228F), filed March 12, 1979. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Box 707, Troy, AL 36081. Representative: James W. Segrest (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *lumber*, from Passadumkeag, ME, to points in NY and PA. (Hearing site: New York, NY, or Washington, DC.)

MC 136682 (Sub-229F), filed March 12, 1979. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Box 707, Troy, AL 36081. Representative: James W. Segrest (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *pipe, pipe fittings, valves, and hyrants*, and *materials and supplies* used in the installation of pipe (except commodities in bulk), from the facilities of Clow Corporation, at or near Columbia, MO, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Chicago, IL, or Birmingham, AL.)

MC 139193 (Sub-97F), filed March 8, 1979. Applicant: ROBERTS & OAKE, INC., 4240 Blue Ridge Blvd., Blue Ridge Tower, Suite 820, Kansas City, MO 64133. Representative: Terrence D. Jones, 2033 K Street, NW, Suite 300, Washington, DC 20006. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from those points in the United States in and east of ND, SD, NE, CO, and NM, to Gulfport, MS, Charleston, SC, and New Orleans, LA, restricted to the transportation of traffic having a subsequent movement by water, under continuing contract(s) with the Maritrop Trading Corporation, of New York, NY. (Hearing site: Washington, DC.)

Note.—Dual operations may be involved.

MC 139193 (Sub-98F), filed March 12, 1979. Applicant: ROBERTS & OAKE, INC., 4240 Blue Ridge Blvd., Blue Ridge Tower, Suite 820, Kansas City, MO 64133. Representative: Terrence D. Jones, 2033 K Street, NW, Suite 300, Washington, DC 20006. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *beverage bases, syrups, canned and preserved fruits, ice cream toppings, dessert toppings, sauces, flavoring extracts, flavoring compounds, and salad dressings*, (except commodities in bulk, in tank vehicles), and (2) *equipment and supplies* used in the

manufacture and distribution of the commodities in (1) above, from Humboldt, TN, to points in AZ, CO, NV, NM, and WY, under continuing contract(s) with J. Hungerford Smith Co., Inc., of Modesto, CA. (Hearing site: Washington, DC.)

Note.—Dual operations may be involved.

MC 139193 (Sub-99F), filed March 12, 1979. Applicant: ROBERTS & OAKE, INC., 4240 Blue Ridge Blvd., Blue Ridge Tower, Suite 820, Kansas City, MO 64133. Representative: Terrence D. Jones, 2033 K Street, NW, Suite 300, Washington, DC 20006. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *beverage bases, syrups, canned and preserved fruits, ice cream toppings, dessert toppings, sauces, flavoring extracts, flavoring compounds, and salad dressings*, (except commodities in bulk, in tank vehicles), and (2) *equipment and supplies* used in the manufacture and distribution of the commodities in (1) above, from the facilities of J. Hungerford Smith Co., Inc., at or near Modesto, Redwood City, and Montebello, CA, to Humboldt, TN, under continuing contract(s) with J. Hungerford Smith Co., Inc., of Modesto, CA. (Hearing site: Washington, DC.)

Note.—Dual operations may be involved.

MC 139193 (Sub-102F), filed March 12, 1979. Applicant: ROBERTS & OAKE, INC., 4240 Blue Ridge Blvd., Kansas City, MO 64133. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *frozen foods*, from the facilities of Campbell Soup Co., at or near Omaha, NE, to Springdale and Fayetteville, AR, Napoleon, OH, and points in CO, IA, IL, IN, KS, MN, MO, and WI, under continuing contract(s) with Campbell Soup Co., of Omaha, NE. (Hearing site: St. Paul, MN.)

Note.—Dual operations may be involved.

MC 139193 (Sub-103F), filed March 12, 1979. Applicant: ROBERTS & OAKE, INC., 4240 Blue Ridge Blvd., Knasas City, MO 64123. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce over irregular routes, transporting *frozen foods*, from the facilities of Campbell Soup Co., at or near Omaha, NE, to Sacramento and Modesto, CA, under continuing contract(s) with Campbell Soup Co., of Omaha, NE. (Hearing site: St. Paul, MN.)

Note.—Dual operations may be involved.

MC 140273 (Sub-15F), filed March 8, 1979. Applicant: BUESING BROS. TRUCKING, INC., 2285 Daniels Street, Long Lake, MN 55356. Representative: Val M. Higgins, 1000 First National Bank Bldg., Minneapolis, MN 55402. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce over irregular routes, transporting *soda ash, lime, limestone, silica sand, and crushed glass*, from points in IL, IN, IA, MN, MO, NE, ND, OH, SD, WI, and WY, to Minneapolis, MN. (Hearing site: Minneapolis or St. Paul, MN.)

MC 141773 (Sub-10F), filed March 12, 1979. Applicant: THERMO TRANSPORT, INC., 156 East Market Street, Indianapolis, IN 46204. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce over irregular routes, transporting *chain saw parts, wood-cutting equipment*, and *accessories* for chain saw parts and wood-cutting equipment, form Portland, OR, and Los Angeles, CA, to points in the United States (except AK and HI), under continuing contract(s) with Omark Industries, Inc., of Portland, OR. (Hearing site: Portland, OR.)

Note.—Dual operations may be involved.

MC 142872 (Sub-61F), filed March 9, 1979. Applicant: DAVID BENEUX PRODUCE & TRUCKING, INC., P.O. Drawer F, Mulberry, AR 72947. Representative: Don Garrison, P.O. Box 159, Rogers, AR 72756. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce over irregular routes, transporting *confectionery*, from the facilities of Peter Paul, Inc., at or near York and Hazelton, PA, to points in CA, OR, and WA, restricted to the transportation of traffic originating at the named origins. (Hearing site: Waterbury, CT, or Little Rock, AR.)

Note.—Dual operations may be involved.

MC 142743 (Sub-10F), filed March 12, 1979. Applicant: FAST FREIGHT SYSTEMS, INC., P.O. Box 132C, Tupelo, MS 38801. Representative: Martin J. Leavitt, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *iron and steel articles*, from the facilities of Northwestern Steel and Wire Company, at Sterling and Rock Falls, IL, to points in AL, AR, FL, GA, LA, MS, and TN; and (2) *materials, equipment, and supplies used* in the manufacture and distribution of iron and steel articles, in the reverse direction. (Hearing site: Washington, DC, or Atlanta, GA.)

MC 143163 (Sub-13F), filed March 12, 1979. Applicant: RICHARDSON TRUCKING, INC., d.b.a. TRIARC TRANSPORT, 909 37th Avenue Court, Greeley, CO 80631. Representative: Wm. Fred Cantonwine (same address as applicant). To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs*, and *materials and supplies* used in the manufacture of margarine and shortening, between the facilities of Miami Margarine Company, at Albert Lea, MN, on the one hand, and, on the other, points in AZ, AR, CA, CO, ID, IL, IN, IA, KS, LA, MI, MN, MS, MO, MT, NE, NV, NM, ND, OH, OK, OR, SD, TN, and TX, under continuing contract(s) with Miami Margarine Company, of Cincinnati, OH. (Hearing site: Denver, CO.)

Note.—Dual operations may be involved.

MC 143373 (Sub-3F), filed March 8, 1979. Applicant: WEILAND TRUCKING CO., INC., Route 2, P.O. Box 288, Wautoma, WI 54982. Representative: James A. Spiegel, Olde Towne Office Park, 6425 Odana Road, Madison, WI 53719. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *malt beverages*, from the facilities of Schmidt Brewing Co., at St. Paul, MN, to points in WI, under continuing contract(s) with G. Heileman Brewing Company, Inc., of LaCrosse, WI. (Hearing site: LaCrosse or Madison, WI.)

MC 145322 (Sub-2F), filed March 12, 1979. Applicant: WATSON TRUCKING, INC., Route 1, Old Dunbar Road, Byron, GA 31008. Representative: J. Michael May, Suite 508, 1447 Peachtree Street, NE, Atlanta, GA 30309. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *well sand and well gravel*, in bulk, in dump vehicles, from points in Macon County, AL, to those points in GA on and south of Interstate Hwy 20. (Hearing site: Atlanta, GA.)

Note.—Duel operations may be involved.

MC 145612 (Sub-2F), filed March 5, 1979. Applicant: CLAYTON R. NUNN, P.O. Box 234, Tazewell, TN 37879. Representative: Richard L. Hollow, P.O. Box 550, Knoxville, TN 37901. To operate as a *common carrier*, by motor vehicles, in interstate or foreign commerce, over irregular routes, transporting *feed and feed ingredients*, (except commodities in bulk) from Blissfield, MI, to points in GA and FL. (Hearing site: Knoxville, TN.)

MC 146222 (Sub-3F), filed March 9, 1979. Applicant: ILCO TRUCKING, INC., P.O. Box 57087, Birmingham, AL 35209. Representative: Alan E. Serby, 3390 Peachtree Road, NE., 5th floor, Lenox Towers South, Atlanta, GA 30326. To operate as a *contact carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) pipe fittings, hydrants, and valves, (2) *iron and steel products* (except the commodities in (1) above), and (3) *parts and accessories* for the commodities in (1) and (2) above, (except commodities in bulk), from the facilities of American Cast Iron Pipe Company, at or near Birmingham, AL, to those points in the United States in and east of MT, WY, CO, and NM, under continuing contract(s) with American Cast Iron Pipe Company, of Birmingham, AL. (Hearing site: Birmingham, AL, or Atlanta, GA.)

MC 146222 (Sub-4F), filed March 9, 1979. Applicant: ILCO TRUCKING, INC., P.O. Box 57087, Birmingham, AL 35209. Representative: Alan E. Serby, 3390 Peachtree Road, NE., 5th floor, Lenox Towers South, Atlanta, GA 30326. To operate as a *contact carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *materials, equipment, and supplies* used in the smelting and refining of non-ferrous metal (except commodities in bulk, in tank vehicles, and commodities the transportation of which because of size or weight requires the use of special equipment), from those points in the United States on and east of U.S. Hwy 85, to the facilities of Interstate Lead Company, at (a) Leeds, AL, and (b) Savanna, IL; and (2) *non-ferrous metals*, in the reverse direction, of restricted in (1) and (2) above against the transportation of traffic between (a) Savanna, IL, on the one hand, and, on the other, points in IL, and (b) Leeds, AL, on the one hand, and, on the other, points in AL, under continuing contract(s) in (1) and (2) above with Interstate Lead Company, of Leeds, AL. (Hearing site: Birmingham, AL, or Atlanta, GA.)

MC 146623F, filed March 12, 1979. Applicant: STAMEY ENTERPRISES, INC., 7350 102nd Place, South, Boynton Beach, FL 33435. Representative: Richard B. Austin, Suite 214, Palm Coast II Bldg., 5255 N.W. 87th Avenue, Miami, FL 33178. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *materials* used in the propagation, production, and distribution of horticultural products, between points in FL, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Miami, FL.)

MC 146703 (Sub-1F), filed March 8, 1979. Applicant: ROBERTS & OAKE, INC., 4240 Blue Ridge Blvd., Blue Ridge Tower, Suite 820, Kansas City, MO 64123. Representative: Terrence D. Jones, 2033 K Street, NW., Washington, DC 20006. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *wine* in containers, from those points in CA in and north of Monterey, Kings, Tulare, and Inyo Counties, CA, to those points in the United States in and east of ND, SD, NE, CO, and NM. (Hearing site: Washington, DC.)

Notes.—(1) Applicant has introduced the issue of rates in support of its application. (2) Dual operations may be involved.

MC 146703 (Sub-2F), filed March 8, 1979. Applicant: ROBERTS & OAKE, INC., 4240 Blue Ridge Blvd., Blue Ridge Tower, Suite 820, Kansas City, MO 64133. Representative: Terrence D. Jones, 2033 K Street, N.W., Suite 300, Washington, DC 20006. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in or used by manufacturers and distributors of home products, personal health care products, and beauty aid products, from Easthampton, MA, to points in IA, MO, and TX. (Hearing site: Washington, DC.)

Notes.—(1) Applicant has introduced the issue of rates in support of its application. (2) Dual operations may be involved.

MC 146703 (Sub-3F), filed March 8, 1979. Applicant: ROBERTS & OAKE, INC., 4240 Blue Ridge Blvd., Blue Ridge Tower, Suite 820, Kansas City, MO 64133. Representative: Terrence D. Jones, 2033 K Street, NW., Suite 300, Washington, DC 20006. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such merchandise* as is dealt in by discount and variety stores, from New York, NY, Philadelphia, PA, and Boston, MA, to Hodgkins, IL, and Junction City, KS. (Hearing site: Washington, DC.)

Notes.—(1) Applicant hast introduced the issue of rates in support of its application. (2) Dual operations may be involved.

MC 146703 (Sub-4F), filed March 8, 1979. Applicant: ROBERTS & OAKE, INC., 4240 Blue Ridge Blvd., Blue Ridge Tower, Suite 820, Kansas City, MO 64133. Representative: Terrence D. Jones, 2033 K Street, NW., Suite 300, Washington, DC 20006. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *paper and paper products*, and *materials, equipment, and supplies* used in the manufacture and distribution of paper and paper products, (except commodities in bulk), from points in DE, ME, MA, NY, NJ, and PA, to points in AR, IL, IA, KS, MN, MO, NE, ND, OK, SD, TX, and WI. (Hearing site: Washington, DC.)

Notes.—(1) Applicant has introduced the issue of rates in support of the application. (2) Dual operations may be involved.

MC 146703 (Sub-5F), filed March 8, 1979. Applicant: ROBERTS & OAKE, INC., 4240 Blue Ridge Blvd., Blue Ridge Tower, Suite 820, Kansas City, MO 64133. Representative: Terrence D. Jones, 2033 K Street, NW., Suite 300, Washington, DC 20006. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *paper and paper products*, from Franklin, VA, to points in AR, IL, IA, KS, MN, MO, NE, ND, OK, SD, TX, and WI. (Hearing site: Washington, DC.)

Note.—(1) Applicant has introduced the issue of rates in support of its application. (2) Dual operations may be involved.

MC 146703 (Sub-6F), filed March 8, 1979. Applicant: ROBERTS & OAKE, INC., 4240 Blue Ridge Blvd., Blue Ridge Tower, Suite 820, Kansas City, MO 64133. Representative: Terrence D. Jones, 2033 K Street, NW, Suite 300, Washington, DC 20006. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *medical supplies*, from points in Town of North Canaan, CT, to Dallas, TX, and Chicago, IL. (Hearing site: Washington, DC.)

Notes.—(1) Applicant has introduced the issue of rates in support of its application. (2) Dual operations may be involved.

MC 146703 (Sub-7F), filed March 8, 1979. Applicant: ROBERTS & OAKE, INC., 4240 Blue Ridge Blvd., Blue Ridge Tower, Suite 820, Kansas City, MO 64133. Representative: Terrence D. Jones, 2033 K Street, NW, Suite 300, Washington, DC 20006. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *aluminum and aluminum products, boxes, plastic and plastic articles, paper and paper articles*, and (2) *materials, equipment, and supplies* used in the manufacture, distribution, and storage of the commodities in (1) above (except commodities in bulk, in tank vehicles), from Richmond and Grottoes, VA, to points in AR, IA, KS, MN, MO, NE, OK,

TX, and WI. (Hearing site: Washington, DC.)

Notes.—(1) Applicant has introduced the issue of rates in support of its application. (2) Dual operations may be involved.

MC 146703 (Sub-13F), filed March 8, 1979. Applicant: ROBERTS & OAKE, INC., 4240 Blue Ridge Blvd., Blue Ridge Tower, Suite 820, Kansas City, MO 64133. Representative: Terrence D. Jones, 2033 K Street, NW, Suite 300, Washington, DC 20006. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *aluminum plate and aluminum sheet*, in coils, from Clayton, NJ, to points in AR, NE, SD, and TX. (Hearing site: Washington, DC.)

Notes.—(1) Applicant has introduced the issue of rates in support of its application. (2) Dual operations may be involved.

[FR Doc. 79-18630 Filed 6-12-79; 8:45 am]
BILLING CODE 7035-01-M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 115
Wednesday, June 13, 1979

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: (9:30 a.m., Thursday, June 7, 1979.

PLACE: Room 856, 1919 M Street, N.W., Washington, D.C.

STATUS: Open Commission Meeting.

CHANGES IN THE MEETING: The following item has been added and the time of the meeting changed to 11:00 a.m.:

Agenda, Item No., and Subject

Aural—4—Petitions and application by the Trustees of the University of Pennsylvania, Radio Station WXPN (FM) Philadelphia, Pennsylvania (Docket No. 20677).

Additional information concerning this meeting may be obtained from the FCC Public Affairs Office, telephone number (202) 632-7260.

Issued: June 7, 1979.

[S-1168-79 Filed 6-11-79; 9:30 am]

BILLING CODE 6712-01-M

2

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 3:15 p.m., Monday, June 11, 1979.

PLACE: Room 856, 1919 M Street, NW., Washington, D.C.

STATUS: Special Open Commission Meeting.

MATTERS TO BE CONSIDERED:

Agenda, Item No., and Subject

Common Carrier—1—A.T. & T. Transmittal No. 13216 revisions to implement flow through of Comsat rate reductions for overseas private line services.

Common Carrier—2—Application of GTE to acquire control of Telenet Corp. (File Nos. W-P-C-2486, et al.)

Additional information concerning this meeting may be obtained from the FCC Public Affairs Office, telephone number (202) 632-7260.

This meeting may be continued the following workday to allow the Commission to complete action.

Issued: June 7, 1979.

[S-1169-79 Filed 6-11-79; 9:30 am]

BILLING CODE 6712-01-M

3

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Tuesday, June 12, 1979.

PLACE: Room 856, 1919 M Street, N.W., Washington, D.C.

STATUS: Special Open Commission Meeting.

MATTERS TO BE CONSIDERED:

Agenda, Item No., and Subject

Broadcast—1—Broadcast Regulation Tradeoff Study by the Georgia Institute of Technology Engineering Experiment Station.

This meeting may be continued the following workday to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from the FCC Public Affairs Office, telephone number (202) 632-6427.

Issued: June 6, 1979.

[S-1170-79 Filed 6-11-79; 9:30 am]

BILLING CODE 6712-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Agency Meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sushine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at 11:30 a.m. on Thursday, June 7, 1979, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider a recommendation regarding the initiation of termination-of-insurance proceedings against an insured bank, in accordance with section 8(a) of the Federal Deposit Insurance Act (12 U.S.C. 1818(a)).

In calling the meeting, the Board determined, on motion of Chairman Irvine H. Sprague, seconded by Director John G. Heimann (Comptroller of the Currency), concurred in by Director William M. Issac (Appointive), that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter was eligible for consideration in a closed meeting pursuant to subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: June 7, 1979.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1167-79 Filed 6-11-79; 9:26 am]

BILLING CODE 6714-01-M

5

FEDERAL MARITIME COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: June 8, 1979, 44 FR 33235.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 A.M., June 12, 1979.

CHANGE IN THE MEETING: Addition of the following item to the open session:

9. Proposed new service of Puerto Rico Maritime Shipping Authority in the Puerto Rico/Virgin Islands trades.

[S-1174-79 Filed 6-11-79; 2:23 pm]

BILLING CODE 6730-01-M

6

[USITC SE-79-23E]

INTERNATIONAL TRADE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 32336 (6/5/79).

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Tuesday, June 12, 1979.

CHANGES IN THE MEETING: In deliberations held June 7, 1979, the Commission, by unanimous consent, voted to change the schedule with respect to item No. 4, as follows:

4. Petitions and complaints, if necessary:
a. Inclined-field acceleration tubes (Docket No. 574)—Briefing [in morning session] and vote [at 2 p.m.].
b. Surveyors reels (Docket No., 575)—Briefing [in morning session] and vote [at 2 p.m.].
c. Coke (Docket No. 554)—Briefing [in morning session] and vote [at 2 p.m.].

Commissioners Alberger, Moore, Bedell, and Stern determined by unanimous consent that Commission business requires the change in the schedule for these agenda items, and affirmed that no earlier announcement of the change to the agenda was possible, and directed the issuance of this notice at the ealiest practicable time. Commissioner Parker was not present for the vote.

[S-1176-79 Filed 6-11-79; 3:03 pm]

BILLING CODE 7020-02-M

7

[USITC SE-79-24]

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Thursday, June 21, 1979.

PLACE: Room 117, 701 E Street, N.W., Washington, D.C. 20436.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions Open to the Public.

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary: a. Stoves (Docket No. 576).
5. Methyl alcohol from Canada (Inv. AA1921-202)—Briefing and vote.
6. Any items left over from previous agenda.

Portions Closed to the Public.

7. Status report on Investigation 332-101 (MTN Study), if necessary.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, 202-523-0161.

[S-1177-79 Filed 6-11-79; 3:03 pm]

BILLING CODE 7020-02-M

8

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: June 8, 1979.

PLACE: Chairman's Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Closed (additional item).

MATTERS TO BE CONSIDERED:

Friday, June 8; 3 pm

Discussion of congressional testimony to be given Monday, June 11 (approximately 1 hour, closed—exemption 9) additional item.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee, 202-634-1410.

Roger M. Tweed,
Office of the Secretary.
June 8, 1979.

[S-1171-79 Filed 6-11-79; 10:08 am]

BILLING CODE 7590-01-M

9

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: June 14 and 15, 1979.

PLACE: Commissioners' Conference Room, 1717H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

Thursday, June 14; 9:30 a.m.

1. Briefing by O.P.M. Staff on S.E.S. performance appraisal system (approximately 2 hours, public meeting).

Thursday, June 14; 2:30 p.m.

1. Discussion of power needs of Pennsylvania-New Jersey-Maryland (approximately 15 minutes, public meeting).
2. Discussion of nuclear power needs of Pennsylvania-New Jersey-Maryland (approximately 45 minutes, public meeting).
3. Affirmation Session (approximately 10 minutes, public meeting):
a. Office space for resident inspectors,
b. Reduction of radiography overexposures,
c. Seabrook seismic shutdown and redesign petition, and
d. Ownership of stocks by NRC employees.
4. Discussion of personnel matter (approximately 1½ hours, closed—exemption 6).

Friday, June 15; 9:30 a.m.

1. Briefing by executive branch on nuclear safety matters (approximately 1½ hours, closed—exemption 1).
2. Discussion of personnel matter (approximately 1½ hours, closed—exemption 6).

Friday, June 15; 2 p.m.

1. Discussion of S-3 (approximately 1 hour, public meeting).
2. Discussion of deferral of licenses (approximately 1½ hours, public meeting).

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634-1410.

Walter Magee,
Office of the Secretary.
June 7, 1979.

[S-1172-79 Filed 6-11-79; 10:00 am]

BILLING CODE 7590-01-M

10

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 1 p.m. on June 19, 1979.

PLACE: Room 1101, 1825 K Street, N.W., Washington, D.C.

STATUS: Because of the subject matter, it is likely that his meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Ms. Patricia Bausell (202) 634-4015.

Dated: June 11, 1979.

[S-1175-79 Filed 6-11-79; 2:54 pm]

BILLING CODE 7600-01-M

11

PAROLE COMMISSION.

TIME AND DATE: Monday, June 18, 1979, beginning at 9:30 a.m.

PLACE: Room 818, 320 First Street, N.W., Washington, D.C.

STATUS: Closed, pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED:

(1) Appeals to the Commission of approximately 15 cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.17 and appealed pursuant to 28 CFR 2.27. These are all cases originally heard by examiner panels wherein inmates of Federal Prisons have applied for parole or are contesting revocation of parole or mandatory release.
(2) Consideration of an application for exemption from a bar imposed by 29 U.S.C. 504 against the employment of applicant by a labor union following a hearing held pursuant to the Administrative Procedures Act and a recommended decision based thereon.

CONTACT PERSON FOR MORE INFORMATION: A. Ronald Peterson, Analyst (202) 724-3094.

[S-1173-79 Filed 6-11-79; 10:36 am]

BILLING CODE 4401-01-M

Federal Register

Wednesday
June 13, 1979

Part II

Department of Health, Education, and Welfare

Office of Education

Health Education Program; Proposed Regulations Governing Award of Grants to State and Local Educational Agencies

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 161i]

Health Education Program

AGENCY: Office of Education, HEW.

ACTION: Proposed Regulations.

SUMMARY: The Commissioner proposes to amend Title 45 of the Code of Federal Regulations by adding a new Part 161i for the program of Health Education enacted by the Education Amendments of 1978. These proposed regulations govern the award of grants to State and local educational agencies for projects that are designed to establish and support programs of health education in elementary and secondary schools.

DATES: All written comments on the proposed regulations must be received on or before August 13, 1979. Public meetings will be held in each of the ten regions on July 11, 1979. The time for these meetings is—

9:00 a.m.–12:00 Noon
1:00 p.m.–5:00 p.m.
7:00 p.m.–9:00 p.m.

ADDRESSES: Written comments should be addressed to Mr. Simon A. McNeely, U.S. Office of Education, Room 2079, FOB No. 6, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

The locations of the public meetings are—

Region I—Boston: Bunker Hill Community College, Room C 202, Rutherford Avenue, Charlestown, Massachusetts
Region II—New York: Norman Thomas High School, 111 Each 33rd Street, New York City, New York.
Region III—Philadelphia: University City, Holiday Inn, 36th & Chestnut Streets, Philadelphia, Pennsylvania.
Region IV—Atlanta: Suite 2221, 101 Mariette Tower Bldg., Atlanta, Georgia.
Region V—Chicago: Center for Urban Education, 160 West Wendell Street, (1060 North Wells), Chicago, Illinois.
Region VI—Dallas: North Lake Junior College, 2000 Walnut Hill Lane, Irving, Texas.
Region VII—Kansas City: Penn Valley Community Junior College, 3201 Southwest Trafficway, Room CC 503, Kansas City, Missouri.
Region VIII—Denver: George Washington High School, Lunch Room, 655 South Monaco Street, Denver, Colorado.
Region IX—San Francisco: Room 209, Federal Office Bldg., 50 United Nations Plaza, San Francisco, California.
Region X—Seattle: Room RC 1132, North Seattle Community College, 9600 College Way North, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT:
Mr. Simon A. McNeely, (202) 245–8407.

For Information on Regional Hearings Contact:

The appropriate Regional Commissioner for Education Programs listed below:

Region I, Boston, Dr. Thomas J. Burns, (617) 223–7500
Region II, New York, Dr. William D. Green, (212) 264–4370
Region III, Philadelphia, Dr. Albert C. Crambert, (215) 596–1001
Region IV, Atlanta, Dr. William L. Lewis, (404) 221–2063
Region V, Chicago, Ms. Juliette Noone Lester, (312) 353–5215
Region VI, Dallas, Mr. Edward J. Baca, (214) 767–3626
Region VII, Kansas City, Dr. Harold Blackburn, (816) 374–2276
Region VIII, Denver, Dr. John Rumkel, (303) 837–3544
Region IX, San Francisco, Dr. Caroline Gillin, (415) 556–4920
Region X, Seattle, Mr. Allen Apodaca, (206) 442–0460

SUPPLEMENTARY INFORMATION:

A. Background

Health education has long been recognized as an important part of elementary and secondary education. Authorities in the field believe there is reason to be concerned about the extent and quality of health education programs in the schools of America. They are aware that much present-day human suffering, premature death, and economic loss are due to illness and injury that might have been prevented, or at least postponed to later years—and that many people could live more productively—if they had been educated to make better health-related choices in their general way of life.

Recognizing these national problems and realizing the significance to the national well-being of a concerted effort to promote health education and preventive measure, the Secretary of HEW, with the cooperation of the Commissioner of Education and the Assistant Secretary for Health, has established a school health initiative in the Department.

The Secretary has also establish interagency task forces on a number of other health-related initiatives including immunization, smoking and health, nutrition, mental health, child—health services (including school health services), teenage pregnancy and parenting, and prevention and intervention strategies in health promotion. All of these initiatives have implications for the improvement of school health education programs and for the involvement of State education agencies (SEAs) and local educational agencies (LEAs).

The Congress, too, has been aware of the importance of school health programs. In 1970, the Elementary and Secondary Education Act was amended to include sec. 806 of title VIII. This section provided assistance for demonstration programs of health and nutrition services for low-income children. The program was consolidated into Title IV of the Elementary and Secondary Education Act in the Education Amendments of 1974.

In Title III, Part I, of the Education Amendments of 1978, the Congress has initiated a new, direct grant program of school health education. These proposed regulations have been prepared for the administration of that program. The concern and intention of the Congress are reflected in the following statement from the Report of the Senate Committee on Human Resources, to accompany S. 1753, Education Amendments of 1978, Calendar No. 787, Report No. 95–856, May 15, 1978:

> The Committee believes additional emphasis must be placed on preventive health education in our public schools.
>
> Changes in personal lifestyle and a better understanding of good health principles are the key to improvements in the health of individuals and prevention of disease and illness.
>
> It is the committee's hope that the programs under (part I) will encourage a greater interest in providing preventive health education in our elementary and secondary schools.

B. Summary of Major Provisions

These proposed regulations describe the nature of projects to encourage the development and improvement of comprehensive health education programs in elementary and secondary schools. The methods and procedures for applying for grants and the selection criteria for grants are also set forth.

The following statements give the reasoning behind some of the major provisions of these proposed regulations for the purpose of facilitating comments.

Eligible applicants. Grants are restricted by the legislation to State educational agencies (SEAs) and local educational agencies (LEAs).

Program-specific definitions. Because some of the essential terms used in these proposed regulations may have different meanings for individuals, the Commissioner has attempted to define them as they are used in this context.

The term "comprehensive school health education," is described in § 161i.1. This term refers to learning experiences that motivate and educate

each student to protect, maintain, and improve his or her own health and the health of other people. These learning experiences are based on the best available scientific information, cover a broad range of subjects and concepts, and are designed to help students gain the understanding, attitudes, and behavorial skills that are essential to the achievement of health goals for the individual, the family, and the community. Health education experiences are selected, organized, and conducted in accordance with the needs, interests, and maturational levels of the individual students, and with the needs of the community at large.

A comprehensive school health education program is part of a "coordinated school health program." This latter term applies to all of the elements of a school-wide concern to protect and promote the health of students, staff, and others. The term is defined in § 1611.4 to include the following essential components:

(a) Comprehensive school health education;

(b) School health services;

(c) Healthful and safe school environment; and

(d) Guidance toward health careers.

Although all of the components of a school health program are essential and interrelated, funds are only available for the *comprehensive school health education* component. Thus, these regulations attempt to provide guidance for proposals to develop and improve programs of comprehensive school health education that, at the same time, contribute to the enhancement of the school health programs of which they are a part.

The *comprehensiveness* of school health education is emphasized to indicate that the program includes more than single-subject "programs." However, these proposed regulations require all applicants to include in each project plan learning experiences on smoking and health. The proposed regulations also call for the applicant in its comprehensive health education program to give attention to 10 other major national health concerns and to include other subjects, as appropriate.

Health education experts believe that the various subjects can be taught more effectively in a broad and integrated curriculum than in piece-meal fashion. The idea is to treat the various health-related subjects in a conceptual framework that stresses soundly-based decisions, prevention over remediation, and positive health practices in full and effective living.

The word "school" is used in the health education definition to differentiate this program from programs of general health education of the public that are conducted by public health agencies, voluntary health organizations, and others.

The definitions of "coordinated school health program," and "guidance toward health careers" are derived from terminology used in *A Statement of Basic Beliefs—the School Program of Health, Physical Education and Recreation,* published by the Society of State Directors of Health, Physical Education, and Recreation.

The definition of "school health services" is taken, with slight adaptation, from *Combined Glossary—Terms and Definitions from the Handbooks of the State Educational And Report Series,* published by the National Center for Educational Statistics, Department of Health, Education, and Welfare.

The definition of "comprehensive school health education" is derived from *A Statement of Basic Beliefs,* and it incorporates the definition of "health education" given in the *Combined Glossary.*

Project requirements. Sections 1611.20 through 1611.23 describe aspects of an SEA and LEA project that the Commissioner requires. These regulations propose that both the SEA and the LEA develop strategies in the project plan that will contribute to the advancement of the coordinated State or local school health program.

The main difference in the thrust of the requirements for an SEA as compared to an LEA project is that an SEA project must demonstrate effective Statewide leadership and promotion of health education covering several or all of the LEAs of the State. An LEA project must demonstrate effective educational services and materials to motivate and educate students concerning health maintenance and enhancement and the prevention of disease, illness, and injury. An LEA project may involve one or more schools of that district, at the elementary or secondary level, or both levels.

Duration of projects. The proposed regulations provide for the possibility of funding projects of up to five years' duration if that length is necessary to implement and evaluate a comprehensive health education project. However, the Commissioner encourages projects of one to three years' duration.

Initial funding. The proposed regulations do not indicate the size and number of grants or the distribution between SEA and LEA projects. These will, of course, be contingent upon the appropriation in any fiscal year and the scope of proposals.

However, the Commissioner is considering an initial funding procedure that would divide the appropriated funds equally between the two sets of eligible applicants, SEAs and LEAs. The size of a grant to an LEA would be one-half that of a grant to an SEA because the latter agency would be dealing with broader, State-wide problems and program considerations. About twice as many grants would be made to LEAs as to SEAs. The Commissioner invites interested persons to comment on this procedure.

Considering the nature of projects proposed by these regulations and the likelihood that the initial appropriation for health education will be relatively small, the Commissioner is contemplating awarding grants to SEAs averaging about $150,000 and grants to LEAs averaging approximately $75,000. Comments on the practicality of grants of these sizes will also be particularly welcomed.

Limitation on the number of applications. Under these proposed regulations, SEAs and LEAs would be limited to one application in each fiscal year. The purpose is to encourage one well-considered, cohesive project rather than several smaller, separate efforts.

State review of applications. An LEA applicant must provide its SEA the opportunity to review and comment on its application. The Commissioner expects to obtain through this procedure, a better understanding of how the proposed LEA project ties in with other health education activities in the State, particularly those that may be funded under Title IV of the Elementary and Secondary Education Act. SEA comments may also help identify resources that could be helpful to the LEA project and provide other information that would be useful in evaluating LEA proposals and in avoiding duplications.

Open meetings to be held by LEAs. LEAs must provide an opportunity for members of the community to comment on a proposal before submitting an application. This requirement implements Section 1006 of the Elementary and Secondary Act of 1965, as amended.

Selection of projects. Sections 1611.40 through 1611.44 describe the criteria the Commissioner uses to evaluate SEA and LEA applications. These criteria and the relative weightings given them are intended to enable the Commissioner to judge the applications in a uniform and consistent manner. SEA applicants

compete against each other and LEA applicants against other LEA applicants.

Encouragement of SEA and LEA coordination. These proposed regulations would allow the Commissioner the discretion of selecting among SEA and LEA applications those that are cooperatively designed by an SEA and LEA of the same State. The proposed SEA project and the LEA project would have to be jointly planned so that they could be coordinated and would reinforce one another, and both would have to be rated high in their respective categories.

Geographic diversity and variety of settings. The Commissioner proposes to select among relatively equal projects (within 10 points of one another) those that contribute to geographic diversity of projects and projects in a variety of urban, suburban, and rural settings.

Allowable and non-allowable costs. The proposed regulations under §§ 161i.50 and 161i.51 apply to project proposals of both an Sea and an Lea. They allow the use of funds for direct and indirect costs of approved project activities, including funds to be used for released time of teachers to participate in inservice activities if these costs cannot be met in any other feasible way.

The focus of the program for which these regulations are proposed is the health education component rather than the health services component of the school health program. Therefore, these proposed regulations do not allow funds to be used for school health services in the nature of medical, dental, or other services related to the health care of individuals. These services are costly and can be funded through resources other than those under this legislation.

As proposed in these regulations, funds may not be used for the support of physical education programs except for limited activities that directly reinforce health instruction regarding exercise or fitness-related concepts. Nor may funds be used for the support of school sports or competitive athletic programs.

Section 161i.53 *Participation of children in private, nonprofit elementary and secondary schools.* These proposed regulations highlight the overall requirements of Title III, Special Projects, Part A, Sec. 302(b) of the Education Amendments of 1978. Under this title, no grant may be awarded to a State or local educational agency unless the Commissioner determines that in designing the proposal for which application is made, the needs of children in nonprofit private elementary and secondary schools have been taken into account through consultation with private school officials; and, to the maximum extent feasible, and consistent with the number of such children in the area to be served who have the educational needs the proposal is intended to address, those children will be provided an opportunity to participate in the proposed activity on a basis comparable to that provided for public school children.

Relationship to the Education Division's General Administrative Regulations (EDGAR). These proposed regulations do not contain certain types of administrative requirements. Those requirements will be covered in the Education Division's General Administrative Regulations (EDGAR) which will replace the General Provisions for Office of Education Program Regulations and which were published as a notice of proposed rulemaking (NPRM) on May 4, 1979 (44 FR 26308).

Anyone wanting to comment on the EDGAR requirements should do so in response to the EDGAR NPRM, rather than to this NPRM.

The following items applicable to this program are among those covered generally in EDGAR:

How to apply for a grant.

How grants are made.

Certain conditions that must be met by a grantee.

The administrative responsibilities of a grantee.

The procedures the Office of Education uses to obtain compliance.

Invitation to Comment

A public meeting on this Notice of Proposed Rulemaking will be held in each of the ten Federal regions. Since we expect to schedule public meetings for several regulations on the same day, at the same place, we need to get an idea of how many persons are interested in speaking about these regulations. If you are interested in commenting at a public meeting, we encourage you to call the appropriate Regional Commissioner of Education, who will schedule a time for your comments. Persons who do not notify the Regional Commissioner of their intention to comment will be given an opportunity to speak. Those persons making presentations will be called upon according to their prearranged schedule, or if not prearranged, in the order of registration.

We expect that comments on these proposed regulations will be third on the agenda of the public meeting, after the Correction Education regulations.

In addition, interested persons are invited to submit comments and recommendations regarding the proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before the 60th day after publication of this document will be considered in the development of the final regulations.

All comments submitted in response to this notice will be available for public inspection, both during and after the comment period, in Room 2079, FOB–6, 400 Maryland Avenue SW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

D. Citations of Authority

These proposed regulations are issued under the authority of Title III, Part I, of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978 (Pub. L. 95–561).

As required by Section 431(a) of the General Provisions Act (20 U.S.C. 1232(a)), a citation of statutory authority for each section of the proposed regulations has been placed in parentheses on the line following the text of the section unless all of the sections of a subpart are supported by the same citation. In this case, the citation is given only at the end of the subpart and is meant to relate to each section of that subpart. References to ("Sec. 361 through Sec. 364, 20 U.S.C. 3021–3024") in these citations of authority relate to sections of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978.

(Catalog of Federal Domestic Assistance Number: 13;[1] Health Education Program)

Dated: February 13, 1979.

Ernest L. Boyer,

United States Commissioner of Education.

Approved: May 25, 1979.

Joseph A. Califano, Jr.,

Secretary of Health, Education, and Welfare.

It is proposed that Title 45 of the Code of Federal Regulations be amended by adding a new Part, 161i, to read as follows:

PART 161i—HEALTH EDUCATION

Subpart A—General

Sec.

161i.1 The Health Education Program.
161i.2 Eligible applicants.
161i.3 Regulations that apply to Health Education; general definitions.
161i.4 Program-specific definitions.

[1] Not yet assigned.

Subpart B—Projects the Office of Education Assists under the Health Education Program

161i.20 Comprehensive school health education projects.
161i.21 Additional project requirements—general.
161i.22 Additional project requirements—SEAs.
161i.23 Additional project requirements—LEAs.
161i.24 Project duration.

Subpart C—How to Apply for A Grant

161i.30 Procedures for applying.
161i.31 Limitation on the number of applications.
161i.32 State review of applications.
161i.33 Open meetings to be held by LEAs.

Subpart D—How Grants are Made

161i.40 Review, selection, and approval of applications.
161i.41 Criteria for selection of projects.
161i.42 Criteria that apply to applications from both SEAs and LEAs.
161i.43 Additional criteria that apply to applications from SEAs.
161i.44 Additional criteria that apply to applications from LEAs.
161i.45 Encouragement of SEA and LEA coordination.
161i.46 Geographic diversity and variety of settings.

Subpart E—Conditions That Must Be Met By a Grantee

161i.50 Allowable costs.
161i.51 Non-allowable costs.
161i.52 Coordination and non-duplication with other health-education related programs.
161i.53 Participation of children in private, nonprofit elementary and secondary schools.

Appendixes

Appendix A—Examples of Allowable SEA Project Activities
Appendix B—Examples of Allowable LEA Project Activities

Authority: Title III, Part I, of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978 (Pub. L. 95-561).

PART 161i—HEALTH EDUCATION

Subpart A—General

§ 161i.1 Health Education Program.

(a) The Commissioner awards project grants to develop or improve and implement comprehensive school health education programs.

(b) A comprehensive school health education program provides learning experiences—based on the best available scientific information—to promote the understanding, attitudes, and behavorial skills and practices that prepare and motivate elementary and secondary school students to—

(1) Prevent illness, disease, and injury; and

(2) Enhance the physical and mental health of themselves, their families, and communities.

(20 U.S.C. 3021–3024)

§ 161i.2 Eligible applicants.

(a) Eligible applicants are State and local educational agencies (SEAs and LEAs).

(b) An SEA competes against other SEA applicants.

(c) An LEA competes against other LEA applicants.

(20 U.S.C. 3021–3024)

§ 161i.3 Regulations that apply to Health Education; general definitions.

(a) *Regulations.* The following regulations apply to the Health Education Program:

(1) The Education Division General Administrative Regulations (EDGAR) in Part 100a (Direct Grant Programs) and part 100c (Definitions).

(2) The regulations in this Part 161i.

(b) *Definitions in EDGAR.* The following terms used in this part are defined in part 100c:

Applicant
Application
Commissioner
Department
Elementary school
Institution of higher education
Local educational agency (LEA)
Nonprofit
Non-public elementary and secondary education
Program
Project
Public agency
Recipient
Secondary school
State
State educational agency (SEA)

(20 U.S.C. 1221c)

§ 161i.4 Program specific definitions.

"Coordinated school health program" means the sum of procedures, services, and learning experiences that protect and promote the physical and mental health of students, school staff, and others. It includes—school health education program;

(1) School health services: medical, dental, mental health, and nursing services provided for students and employees of the educational agency, including examination, referrals, and emergency care;

(2) A healthful and safe school environment; and

(3) Guidance toward health careers: learning experiences and counseling to help students understand professional and paraprofessional health roles and to explore their aptitudes and interests for a career in one of the health professions or occupations.

(20 U.S.C. 3021–3024)

Subpart B—Projects the Office of Education Assists under the Health Education Program

§ 161i.20 Comprehensive school health education projects.

The Commissioner awards grants for comprehensive school health education projects of SEAs and LEAs that—

(a) Contribute to the advancement of a coordinated school health program.

(b) Identify and demonstrate effective methods, materials, practices, organizational patterns, and administrative procedures that develop or strengthen the comprehensive school health education program; and

(c) Develop or strengthen a comprehensive school health curriculum, that—

(1) Includes learning experiences on smoking and health;

(2) Addresses the following major national health concerns by providing learning experiences either in the project or in other aspects of its comprehensive school health education program:

(i) Nutrition and food.
(ii) Values of exercise.
(iii) Weight control and obesity.
(iv) Immunization.
(v) Mental health.
(vi) Medical, dental, and other health care.
(vii) Consumer health interests.
(viii) Environmental conditions affecting health.
(ix) Alcohol and drug abuse.
(x) Safety and accident prevention.

(3) Provides learning experiences also, as appropriate, on—

(i) Community health;
(ii) Dental health and oral hygiene;
(iii) Chronic disease—risk factors and prevention;
(iv) Communicable disease—prevention and control;
(v) Family life education;
(vi) First aid and cardio-pulmonary resuscitation;
(vii) Health careers;
(vii) Personal grooming and body care;
(ix) Physical fitness;
(x) Sleep, rest, and relaxation; and
(xi) Work and recreation;

(4) Selects and organizes these learning experiences in a progressive sequence according to the assessed needs, interests, developmental level, and previous experiences of students.

(20 U.S.C. 3021–3023)

§ 161l.21 Additional project requirements—general.

A comprehensive school health education project must also—

(a) Include a thorough evaluation design to assess student and staff competencies and performance in terms of behavioral skills and practices as well as knowledge;

(b) Assess the adequacy of administrative, teaching, and support personnel for the comprehensive school education program, and provide necessary training opportunities;

(c) Use and coordinate appropriate resources of public and private agencies and organizations concerned with developing, improving, and expanding school health education and other aspects of the program; and

(d) Meet the requirements of Section 302 of the Elementary and Secondary Education Act, as amended, regarding participation of children in private, non-public schools.

(20 U.S.C. 2942; 20 U.S.C. 3021–3023)

§ 161l.22 Additional project requirements—SEAs.

An SEA project must demonstrate leadership activities to improve comprehensive school health education programs in the elementary and secondary schools of several or all of the LEAs in the State. These activities include—

(a) Development and provision of technical assistance and health education materials; and

(b) Identification, validation, and dissemination of successful health education practices and materials.

§ 161l.23 Additional project requirements—LEA's.

(a) An LEA project must provide learning experiences at the elementary or secondary level, or at both levels.

(b) An LEA project must be implemented at one or more schools in the LEA. The Commissioner encourages projects that implement a comprehensive school health education program throughout the LEA.

§ 161l.24 Project duration.

The Commissioner approves projects of up to five years in duration if that length of time is demonstrated to be essential to implementing and evaluating a comprehensive school health education program. The Commissioner encourages projects of one to three years' duration.

(20 U.S.C. 3021–3024)

Subpart C—How to Apply for a Grant

§ 161l.30 Procedures for applying.

In applying for a grant, an SEA or an LEA shall follow the procedures and meet the requirements stated in EDGAR.

§ 161l.31 Limitations on the number of applications.

An SEA or an LEA may submit only one application in a fiscal year for assistance under this part.

§ 161l.32 State review of applications.

(a) The Commissioner does not approve an application from an LEA unless its SEA has had an opportunity to review and comment on the application.

(b) An LEA applicant and its SEA shall follow the State review procedures outlined in EDGAR.

§ 161l.33 Open meetings to be held by LEAs.

Prior to submitting an application, an LEA shall hold an open meeting that complies with the provisions in EDGAR.

(Sec. 20 U.S.C. 3023; 20 U.S.C. 3386)

Subpart D—How Grants Are Made

§ 161l.40 Review, selection, and approval of applications.

The procedures for review, selection, and approval of applications under this part are presented in EDGAR.

§ 161l.41 Criteria for selection of projects.

(a) *How selection criteria are used under this part.* (1) In evaluating an application, the Commissioner uses general selection criteria, as well as the criteria that are specific to the Health Education Program.

(2) The criteria that are used in evaluating applications for grants under this part incorporate the general selection criteria of EDGAR.

(b) *How selection criteria are organized.* (1) The selection criteria are organized in three sections:

(i) The first describes criteria that apply to applications from both SEAs and LEAs.

(ii) The second describes criteria specific to SEA applications.

(iii) The third describes criteria specific to LEA applications.

(2) The criteria are weighted and are based on a total possible score of 100.

§ 161l.42 Criteria that apply to applications from both SEAs and LEAs.

(a) Under the weighting system, the criteria of this section represent a maximum score of 28 points for either an SEA or an LEA application.

(b) The Commissioner reviews an application from an SEA or an LEA for information on the following criteria and gives up to the maximum point values shown:

(1) *Plan of operation (13 points).* (i) How the objectives and activities of the project relate to, and will contribute to, the purpose of this part and to the overall school health program of the SEA or the LEA.

(ii) High quality in the overall design of the proposed project.

(iii) An effective plan of management of the program.

(iv) The way the applicant plans to use its resources and staff to achieve each objective.

(2) *Quality of staff (10 points).* (i) The qualifications—including the professional training, experience, and competency in the field of comprehensive school health education—that are established for the employment of the following staff:

(A) The project director.

(B) Every member of the professional staff.

(C) Each consultant.

(D) Support staff.

(ii) Of the maximum 10 points allotted to this criterion a maximum of four are allotted to the qualifications of the project director, four to the other professionals on the project staff and consultants, and two to the project support staff.

(3) *Budget and cost effectiveness (5 points).* (i) An effective plan of financial management.

(ii) An itemized statement of cost that justifies each line item in the budget.

(iii) A showing that costs are reasonable in relation to the objectives of the project.

§ 161l.43 Additional criteria that apply to applications from SEAs.

(a) Under the weighting system, the criteria of this section represent a maximum score of 72 points. The combined scores of this section and § 161l.42(b) add up to a total possible score of 100.

(b) The Commissioner reviews an application from an SEA for information on the following criteria and gives up to the maximum point values shown:

(1) *Quality and comprehensiveness (14 points).* (i) The extent to which the project is likely to enhance substantially the quality and scope of comprehensive school health education programs in LEAs throughout the State.

(ii) The extent and nature of the component on the effects of smoking.

(iii) The extent to which the project addresses modern-day health problems and issues—such as immunization, obesity and weight control, lack of

exercise, mental health, nutrition, accidents, alcohol and drug abuse, environmental conditions affecting health, consumer health interests, and availability and use of medical, dental, and other health-care services—or, if any of these problems and issues are not included in the proposed project, the way the applicant plans to treat them in other aspects of the comprehensive school health education program.

(iv) The scope of other curriculum offerings to be considered; and

(v) The quality of the project plans to organize instructional materials and implement curriculum improvements.

(2) *Training of school health personnel (14 points).* (i) A plan to assess the adequacy of school health education personnel—in terms of both numbers and competencies—to serve the students in the elementary and secondary schools of the State.

(ii) The quality of preservice and inservice training activities planned to prepare and train the required numbers of school health education specialists, elementary school classroom teachers, health teachers in secondary schools, and other related school personnel.

(iii) Provisions to certify qualified health education personnel and encourage their employment in schools and administrative offices of LEAs.

(3) *Evaluation plan (14 points).* (i) A method to determine the extent to which the project achieves each of its objectives, using quantifiable data insofar as possible.

(ii) How the effectiveness of the project in advancing the State's overall school health program will be evaluated.

(4) *Quality of dissemination and extension of comprehensive school health education programs (10 points).* (i) How the project will help to establish new comprehensive school health education programs in schools of the State.

(ii) The quality of the plan to make information about the project available to interested agencies and institutions and the general public.

(5) *Adequacy and coordination of resources (10 points).* (i) The extent to which the project will seek out, use, and coordinate Federal, State, and other programs and resources that will help improve the quality of the comprehensive school health education program.

(ii) The adequacy of the support staff that the applicant plans to use.

(iii) The adequacy of facilities and the equipment that the applicant plans to use.

(iv) Ways in which the project is designed to promote or strengthen cooperation among State educational, public health, and other agencies and organizations concerned with the improvement of comprehensive school health education programs.

(6) *Promotion of exemplary programs (5 points).* Procedures designed to identify, validate, and promote the adoption of innovative, successful, and exemplary school health education projects, practices, and instructional materials.

(7) *State continuation of the project (5 points).* The likelihood that the State will continue the project after Federal assistance ends as indicated by—

(i) The applicant's staffing and financial commitments; and

(ii) The project design for building State capacity to provide program leadership and, especially, to assist LEAs to carry out comprehensive health education programs.

§ 161i.44 Additional criteria that apply to applications from LEAs.

(a) Under the weighting system, the criteria of this section represent a maximum score of 72 points. The combined maximum scores of this section and § 161i.42(b) equal a total possible score of 100.

(b) The Commissioner reviews an application from an LEA for information on the following criteria and gives up to the maximum point values shown:

(1) *Quality and comprehensiveness (14 points).* (i) Ways the project will assess and address the health needs of individual students and the community.

(ii) The extent and nature of the component on the effects of smoking.

(iii) The extent to which the project addresses modern-day health problems and issues—such as immunization, obesity and weight control, lack of exercise, nutrition, alcohol and drug abuse, mental health, accidents, environmental conditions affecting health, consumer health interests, and availability and use of medical, dental, and other health-care services—or, if any of these problems and issues are not included in the proposed project, the way the applicant plans to treat them in other aspects of the comprehensive school health education program.

(iv) The scope of other curriculum offerings to be included.

(v) How the project is designed to enhance the quality and scope of the comprehensive health education program in one or more schools of the LEA.

(2) *Training of school health personnel (14 points).* (i) A plan to assess the adequacy of school health personnel—both in terms of numbers and competencies—in the administrative offices and in the schools of the LEA.

(ii) The quality of inservice training activities planned to improve the qualifications of health education specialists, elementary school classroom teachers, health teachers in secondary schools, and other school personnel associated with the school or schools involved in the project.

(iii) Plans to foster adequate staffing of comprehensive school health education programs to serve the students in public and private, nonprofit elementary and secondary schools of the area.

(3) *Evaluation plan (14 points).* (i) The thoroughness and quality of procedures incorporated in the project for determining the effects of the health education experiences on the students' understanding, attitudes, and behavioral skills and practices, using quantifiable data insofar as possible.

(ii) A method to determine the extent to which the project achieves its other objectives, using quantifiable data insofar as possible.

(iii) How the LEA plans to evaluate the effectiveness of the project in advancing the LEA's overall school health program.

(4) *Quality of dissemination and extension of comprehensive school health education programs (10 points).* (i) Procedures designed to transfer to schools of the LEA area, that are not included in the project, the benefits and the successful practices and materials to be derived from the project.

(ii) The quality of the plan to make information about the project available to interested agencies and institutions and the general public.

(5) *Adequacy and coordination of resources (10 points).* (i) How the project will seek out, use, and coordinate Federal, State, local, and other programs and resources that will enhance the development or improve the quality of the LEA's comprehensive school health education program.

(ii) The adequacy of the support staff that the applicant plans to use.

(iii) The adequacy of the facilities and equipment that the applicant plans to use.

(iv) How the project will promote and strengthen cooperation among local educational and public health agencies and other agencies, organizations, and institutions concerned with the improvement of health education programs as part of the overall school health programs of the schools of the area.

(6) *Promotion of exemplary programs (5 points).* Plans for cooperation with officials of the SEA for possible validation of the project and for promotion of the adoption of the project's proven practices and materials by other LEAs in the State.

(7) *Local continuation of the project (5 points).* The likelihood that the LEA will continue the project after Federal assistance is ended as indicated by—

(i) The applicant's staffing and financial commitments; and

(ii) The project design for building local capacity to provide leadership and assistance to schools of the area to carry out comprehensive school health education programs.

(20 U.S.C. 3021–3024)

§ 161L45 Encouragement of SEA and LEA coordination.

The Commissioner reserves the discretion to fund an SEA project and a LEA project in the same State where the projects have been jointly planned and complement each other—and are judged of high quality in their respective categories—but where one of the two projects would not otherwise be funded.

(20 U.S.C. 3022)

§ 161L46 Geographic diversity and variety of settings.

The Commissioner selects, among relatively equal projects (within 10 points of one another), those that contribute to geographic diversity of projects and projects in a variety of urban, suburban, and rural settings.

(20 U.S.C. 3021–3024)

Subpart E—Conditions That Must Be Met By A Grantee

§ 161L50 Allowable costs.

In addition to other direct and indirect costs of project activities, a grantee may use funds for released time for teachers to participate in inservice training opportunities if those costs cannot be met in any other feasible way.

§ 161L51 Non-allowable costs.

The following are non-allowable uses of funds from a grant to an SEA or an LEA:

(a) Medical, dental, or other health-care services.

(b) Support for programs of physical education except for limited activities that are directly related to and that reinforce instruction on exercise physiology, fitness, or the values of exercise and weight-control.

(c) Support for school programs of sports and competitive athletics.

(d) Stipends for teachers or others participating in inservice training activities.

(e) Any services or activities related to the project that were supported with funds from any other source during a reasonable period prior to the grant award, as determined by the Commissioner.

§ 161L52 Coordination and non-duplication with other health-education related programs.

(a) An SEA or LEA shall use funds received under this part in coordination with any other health-education related programs that the applicant may be undertaking, and shall not use these funds to duplicate any other program.

(b) Grantees shall also comply with the provisions of EDGAR concerning coordination.

(Sec. 303, 20 U.S.C. 3023)

§ 161L53 Participation of children in private, nonprofit elementary and secondary schools.

An applicant shall meet the requirements for participation of children in private, nonprofit elementary and secondary schools stated in Sec. 302(b) of Part A, Title III, of the Elementary and Secondary Education Act, as amended by the Education Amendments of 1978, and in EDGAR.

(Sec. 20 U.S.C. 2942; 20 U.S.C. 3021–3023)

Appendix A—Examples of Allowable SEA Project Activities

The following are examples of activities for which a grantee may use funds in an SEA project under the Health Education Program:

(a) The assessment of needs and the development or improvement of State curriculum requirements, courses of study, and instructional materials for the comprehensive school health education program.

(b) Special efforts to identify and analyze the educational implications of significant, current, health-related concerns, such as, smoking, alcohol and drug abuse, inadequate exercise, poor nutritional practices, obesity and weight control, inadequate immunization, mental health, accidents, availability and use of medical, dental and other health-care services, environmental conditions that affect health, and consumer health interests; provision of technical assistance and educational materials to LEAs to demonstrate and evaluate effective ways of dealing with these concerns in the context of a comprehensive school health education program.

(c) The study of qualifications required and the establishment of standards for the certification of school-health administrators, consultants or other school health education specialists, teachers—including elementary classroom teachers—and other appropriate instructional staff.

(d) The organization and conduct of inservice workshops and other training experiences, relative to comprehensive school health education programs.

(e) In cooperation with institutions of higher education, the development of procedures for the preservice preparation of health education specialists, elementary classroom teachers, and secondary school health teachers for their respective responsibilities for comprehensive school health education.

(f) The provision of awareness clinics and other participatory opportunities for school administrators, school board members, parents, and other public-minded citizens whose interest and support may help improve the overall school health program and, in particular, the comprehensive school health education component.

(g) The development, improvement, and application of evaluative techniques, data collection, and other aspects of careful and sound evaluation.

(h) The correlation of activities undertaken with grant funds under this part with other appropriate State and Federal programs.

(i) The coordination of SEA efforts with those of State and local public health agencies, medical and dental societies and their auxiliary organizations, and other public, professional private, voluntary, and civic organizations concerned with the improvement of school health education programs.

(j) The establishment, development, and evaluation of pilot programs of comprehensive school health education.

(k) The identification, evaluation, validation, and dissemination of innovative, successful, or exemplary projects, practices, and instructional materials in comprehensive school health education.

Appendix B—Examples of Allowable LEA Project Activities

The following are examples of activities for which a grantee may use funds in an LEA project under the Health Education program:

(a) The review or adaptation and use of State courses of study and instructional guides in health education, and the development or improvement of local curriculum materials.

(b) The development and implementation of innovative and exemplary methodologies, instructional materials, and staffing patterns in the education of elementary and secondary school students relating to health maintenance and enhancement and the prevention of disease, illness, and injury.

(c) The demonstration and evaluation of effective ways of dealing—within the context of a comprehensive school health education program—with significant current, health-related concerns, such as smoking, alcohol and drug abuse, inadequate exercise, poor nutritional practices, obesity and weight-control, immunization, mental health, accidents, availability and use of medical, dental, and other health-care services, environmental conditions that affect health, and consumer health interests.

(d) The organization and conduct of inservice workshops and other training experiences for personnel who serve in the LEA's comprehensive school health education program.

(e) The provision of awareness clinics and other opportunities for administrative staff, members of the local school board, parents, and other public-minded citizens whose interest and support are important to the improvement of the overall school health program and, in particular, the comprehensive school health education component.

(f) The correlation of project activities with other health-related programs and resources available to the LEA.

(g) The identification and involvement—and the coordination of programs and services—of State and local educational and public health agencies, medical and dental societies and their auxilliary organizations, and other public, professional, voluntary, private, and civic agencies and organizations in implementing project objectives.

(h) The identification of practices, products, staff development techniques, and materials which are demonstrated by the project to be successful and—in cooperation with the SEA—their validation and replication.

(i) Participation in local or State-sponsored pilot programs of comprehensive school health education.

[FR Doc. 79-17880 Filed 6-12-79; 8:45 am]
BILLING CODE 4110-02-M

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Wednesday
June 13, 1979

Federal Register

Part III

Department of State

Agency for International Development

Transfer of Food Commodities for Use in Disaster Relief and Economic Development, and Other Assistance; Final Revision in Requirements

DEPARTMENT OF STATE

Agency for International Development

22 CFR Part 211

[A.I.D. Regulation 11]

Transfer of Food Commodities for Use in Disaster Relief and Economic Development, and Other Assistance; Final Revision in Requirements

AGENCY: Agency for International Development (A.I.D.).

ACTION: Final rules.

SUMMARY: These final rules amend A.I.D. Regulation 11 to conform it to amendments made to Title II of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480), by the International Development and Food Assistance Act of 1977 (Pub. L. 95–88) and the Food and Agriculture Act of 1977 (Pub. L. 95–113). In addition, these rules clarify the responsibilities of cooperating sponsors with respect to the conduct of independent cargo surveys in the case of discharge of bulk grain shipments; provide authority to reimburse voluntary agencies for costs of rebagging commodities in foreign countries; make modifications in record-keeping requirements for Title II emergency programs; and make other minor editorial and language changes needed to clarify the Regulation. The text of these final rules, published in the Federal Register as proposed rules on January 4, 1979 (44 FR 1123) remains unchanged except for the withdrawal of the proposed administrative requirements for expanding and detailing the responsibilities of voluntary agencies and their freight forwarders included in the Regulation as § 211.4(b)(3).

EFFECTIVE DATE: June 13, 1979.

FOR FURTHER INFORMATION CONTACT: Ms. Jessie C. Vogler, Office of Food for Peace, Bureau for Private and Development Cooperation, Room 540, P.P. Bldg., Agency for International Development, Department of State, Washington, D.C. 20523.

SUPPLEMENTARY INFORMATION: Under provisions of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480), A.I.D. is authorized to provide agricultural commodities to foreign governments, U.S. and foreign Voluntary Agencies, or intergovernmental organizations to meet famine or other urgent or extraordinary relief requirements, to combat malnutrition, and to promote economic and community development. A.I.D. Regulation 11, 22 CFR Part 211-Transfer of Food Commodities for Use in Disaster Relief and Economic Development, and Other Assistance, contains the regulations prescribing the terms and conditions governing the transfer of U.S. agricultural commodities pursuant to Title II of Pub. L. 480.

The text of the proposed rules of A.I.D. Regulation 11 was published in the Federal Register on pages 1123 through 1134, January 4, 1979. The 30-day comment period was extended to March 5, 1979 in response to a request from the Members of the Material Resources Committee of the American Council of Voluntary Agencies for Foreign Service, Inc., and their freight forwarders to enable them to meet and consider the rules in § 211.4(b)(3) in the Regulation, proposed by the U.S. Department of Agriculture, ASCS/Commodity Credit Corporation. These proposed rules would expand and detail the responsibilities of the voluntary agencies and their freight forwarders with regard to the receipt and handling of Title II commodities at port of export.

Specific Comments

During the comment period, the only comments received on the proposed rules were those from the Material Resources Committee of the American Council of Voluntary Agencies for Foreign Service, Inc., hereafter referred to as the Committee. Their comments, which were limited to the proposed administrative requirements contained in § 211.4(b)(3), set forth reasons why they believe these proposed rules would be either unworkable or too difficult to implement. Further, the Committee requested that a meeting be held with officials of their freight forwarders, the U.S. Department of Agriculture, ASCS/Commodity Credit Corporation and A.I.D., Office of Food for Peace, Bureau for Private and Development Cooperation, for the purpose of resolving the issues and concerns of the Committee and their freight forwarders with respect to the proposed rules in question.

On April 18, 1979, a meeting was held with the appropriate U.S. Government officials, the Committee and their freight forwarders. It was decided at that meeting to withdraw the proposed new rule in its entirety, as set forth in the Regulation, § 211.4(b)(3). With the exception of this deletion, the Regulation remains unchanged as published in the Federal Register, pages 1123–1134, on January 4, 1979.

The revisions listed below update A.I.D. Regulation 11 to reflect amendments to Title II of Pub. L. 480 contained in the International Development and Food Assistance Act of 1977 (Pub. L. 95–88) and the Food and Agriculture Act of 1977 (Pub. L. 95–113) and incorporate other necessary changes. These latter changes include authority to reimburse voluntary agencies for the costs of rebagging Title II commodities in foreign countries in certain circumstances, a new provision regarding responsibilities of cooperating sponsors with respect to the conduct of independent cargo surveys in the case of discharge of bulk grain shipments, modifications in record-keeping requirements for Title II emergency programs; and other minor editorial and language changes needed to clarify the Regulation.

The principal changes in the Regulation are as follows:

1. The statutory excerpts in § 211.1(b), subsections (2) through (7) have been revised to conform them to changes in Pub. L. 480.

2. Section 211.2(c) has been revised to include foreign nonprofit voluntary agencies registered with the Advisory Committee on Voluntary Foreign Aid within the term "cooperating sponsor." Under the 1977 amendments registered foreign Private Voluntary Organizations (PVOs) were made eligible for receipt of Title II commodities when no registered U.S. Private Voluntary Organization is available to provide such assistance. Section 211.2(r) has also been revised to include foreign nonprofit voluntary agencies within the term "voluntary agency."

3. In § 211.2(l), the words "expecting and lactating mothers" has been changed to "women of childbearing age" in order to more clearly reflect the intended beneficiaries of maternal and pre-school feeding programs.

4. Section 211.4(c)(3) has been revised by deleting language relating to general average contributions, which is relocated to § 211.9(h); and adds new provisions authorizing reimbursement of ocean freight charges to inland points of entry in four situations. Regulation 11 and Section 203 of Pub. L. 480 previously authorized reimbursement to points of entry other than ports only in the case of landlocked countries.

5. Section 211.4(e), General Average, has been relocated to § 211.9(h) and § 211.4 (f) and (g) redesignated (e) and (f), respectively.

6. New provisions have been added to § 211.5(a) requiring, as part of cooperating sponsor program descriptions, information from which

determination can be made that Title II programs will not have a disincentive effect on the domestic agricultural production of the recipient country and that adequate storage will exist for Title II commodities in the recipient country. Amendments to Pub. L. 480 now require such determinations to be made before P.L. 480 commodities may be made available.

7. Section 211.5(b) has been revised to include foreign private voluntary organizations in the requirement for a local representative responsible to such organization for the supervision and control of the program within the country of distribution.

8. A new § 211.7(e) has been added which authorizes the reimbursement of the costs (up to $500) of rebagging Title II commodities in a foreign country by cooperating sponsors when necessary to ensure that the commodity arrives at the distribution point in wholesome condition. In order to obtain reimbursement for costs exceeding $500 they must be authorized by the USAID or Diplomatic Post in advance of repackaging unless such prior approval is specifically waived in writing. This new reimbursement authority was added to implement a primary purpose of Title II of Pub. L. 480, i.e., the use of the abundant agricultural productivity of the United States to combat hunger and malnutrition. The failure to repackage commodities held in damaged bags could well result in the loss of such items to the program itself.

9. Section 211.9(c)(1)(ii), relating to ocean carrier loss and damage, has been revised to more clearly state the responsibilities of cooperating sponsors with respect to the conduct of independent cargo surveys in the case of discharge of bulk grain shipments. Section 211.9(c)(1)(iv), which provides for a location for submitting certain reports, has been deleted and § 211.9(c)(1)(v) redesignated § 211.9(c)(1)(iv).

10. Section 211.9(c)(2)(ii)(e) has been modified to raise from $400 to $600 the upper limit of a claim that voluntary agencies may terminate collection activity on without the prior approval of the Commodity Credit Corporation.

11. A new § 211.9(h) has been added consolidating in one place provisions regarding the handling of general average claims. This Section is substantially the same as the present § 211.4(e).

12. A new § 211.10(b)(r) and an additional sentence has been added to § 211.10(c) regarding reporting requirements and auditing for Title II emergency programs in which normal record-keeping requirements cannot be followed because of the emergency nature of the program. The new provision permits the Mission concerned to authorize alternative record-keeping methods if necessary which provide, nevertheless, for the recording of essential information necessary to account for Title II commodities in such situations. Inspections and audits of emergency programs are to take into account the circumstances under which such programs are carried out.

13. Other grammatical or minor conforming revisions have been made to §§ 211.5(c)(2), 211.7(a), 211.7(c), 211.9(c)(1)(iii), 211.9(c)(2)(ii)(a), 211.9(c)(2)(ii)(b) (1) and (2), 211.9(c)(2)(iii), 211.9(g), and 211.10(b)(2).

Because of the substantial revisions, A.I.D. Regulation 11, as revised, is printed below in its entirety. Therefore, 22 CFR Part 211 is revised to read as follows:

PART 211—TRANSFER OF FOOD COMMODITIES FOR USE IN DISASTER RELIEF AND ECONOMIC DEVELOPMENT, AND OTHER ASSISTANCE

Sec.

211.1 General purpose and scope.
211.2 Definitions.
211.3 Cooperating sponsor agreements.
211.4 Availability of commodities.
211.5 Obligations of cooperating sponsors.
211.6 Processing, repackaging, and labeling commodities.
211.7 Arrangements for entry and handling in foreign country.
211.8 Disposition of commodities unfit for authorized use.
211.9 Liability for loss and damage or improper distribution of commodity.
211.10 Records and reporting requirements of cooperating sponsor.
211.11 Termination of program.
211.12 Waiver and amendment authority.

Authority: Secs. 105, 201, 202, 203, and 303, Agricultural Trade Development and Assistance Act of 1954, as amended, 7 U.S.C. 1705, 1721, 1722, 1723, and 1693; 68 Stat. 454, as amended.

§ 211.1 General purpose and scope.

(a) *Terms and conditions.* This Part 211 contains the regulations prescribing the terms and conditions governing the transfer of agricultural commodities to foreign governments, U.S. voluntary agencies, or intergovernmental organizations (except the World Food Program and United Nations Relief and Works Agency) pursuant to Title II, the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480, 83rd Congress, as amended).

(b) *Legislation.* The legislation implemented by the regulations in this part is as follows:

(1) Section 2(3) of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides that in furnishing food aid, the President shall:

relate United States food assistance to efforts by aid-receiving countries to increase their own agricultural production, with emphasis on development of small, family farm agriculture, and improve their facilities for transportation, storage, and distribution of food commodities.

(2) Section 201 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

(a) The President is authorized to determine requirements and furnish agricultural commodities on behalf of the people of the United States of America, to meet famine or other urgent or extraordinary relief requirements; to combat malnutrition, especially in children; to promote economic and community development in friendly developing areas, and for needy persons and nonprofit school lunch and preschool feeding programs outside the United States. The Commodity Credit Corporation shall make available to the President such agricultural commodities determined to be available under section 401 as he may request.

(b) The minimum quantity of agricultural commodities distributed under this title—(1) for fiscal years 1978 through 1980 shall be 1,600,000 metric tons, of which not less than 1,300,000 metric tons shall be distributed through nonprofit voluntary agencies and the World Food Program; (2) for fiscal year 1981 shall be 1,650,000 metric tons, of which not less than 1,350,000 metric tons shall be distributed through nonprofit voluntary agencies and the World Food Program; and (3) for fiscal year 1982 and each fiscal year thereafter shall be 1,700,000 metric tons, of which not less than 1,400,000 metric tons shall be distributed through nonprofit voluntary agencies and the World Food Program; unless the President determines and reports to the Congress, together with his reasons, that such quantity cannot be used effectively to carry out the purposes of this title: *Provided*, That such minimum quantity shall not exceed the total quantity of commodities determined to be available for disposition under this Act pursuant to section 401, less the quantity of commodities required to meet famine or other urgent or extraordinary relief requirements.

(3) Section 202 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

(a) The President may furnish commodities for the purposes set forth in section 201 through such friendly governments and such agencies, private or public, including intergovernmental organizations such as the World Food Program and other multilateral

organizations in such manner and upon such terms and conditions as he deems appropriate. The President shall, to the extent practicable, utilize nonprofit voluntary agencies registered with, and approved by, the Advisory Committee on Voluntary Foreign Aid. If no United States nonprofit voluntary agency registered with and approved by the Advisory Committee on Voluntary Foreign Aid is available, the President may utilize a foreign nonprofit voluntary agency which is registered with and approved by the Advisory Committee. Insofar as practicable, all commodities furnished hereunder shall be clearly identified by appropriate markings on each package or container in the language of the locality where they are distributed as being furnished by the people of the United States of America. Except in the case of emergency, the President shall take reasonable precaution to assure that commodities furnished hereunder will not displace or interfere with sales which might otherwise be made.

(b)(1) Assistance to needy persons under this title shall be directed, insofar as practicable, toward community and other self-help activities designed to alleviate the causes of need for such assistance.

(2) In order to assure that food commodities made available under this title are used effectively, indigenous workers shall be employed, to the extent feasible, to provide information on nutrition and conduct food distribution programs in the most remote villages.

(3) In distributing food commodities under this title, priority shall be given, to the extent feasible, to those who are suffering from malnutrition by using means such as (A) giving priority within food programs for preschool children to malnourished children, and (B) giving priority to the poorest regions of countries.

(4) Section 203 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

The Commodity Credit Corporation may, in addition to the cost of acquisition, pay with respect to commodities made available under this title costs for packaging, enrichment, preservation, and fortification, processing, transportation, handling, and other incidental costs up to the time of their delivery free on board vessels in U.S. ports. Ocean freight charges from U.S. ports to designated ports of entry abroad; transportation from United States ports to designated points of entry abroad in the case (1) of landlocked countries, (2) where ports cannot be used effectively because of natural or other disturbances, (3) where carriers to a specific country are unavailable, or (4) where a substantial savings in cost or time can be effected by the utilization of points of entry other than ports; and charges for general average contributions arising out of the ocean transport of commodities transferred pursuant thereto.

(5) Section 204 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides in part as follows:

Programs of assistance shall not be undertaken under this title during any calendar year which call for an appropriation of more than $750,000,000[45] to reimburse the Commodity Credit Corporation for all costs incurred in connection with such programs (including the Corporation's investment in commodities made available) plus any amount by which programs of assistance undertaken under this title in the preceding calendar year have called or will call for appropriations to reimburse the Commodity Credit Corporation in amounts less than were authorized for such purpose during such preceding year.

In addition to other funds available for such purposes under any other act, funds made available under this title may be used in an amount not exceeding $7,500,000 annually to purchase foreign currencies accruing under title I of this Act in order to meet costs (except the personnel and administrative costs of cooperating sponsors, distributing agencies, and recipient agencies; and the costs of construction or maintenance of any church owned or operated edifice or any other edifices to be used for sectarian purposes) designed to assure that commodities made available under this title are used to carry out effectively the purposes for which such commodities are made available or to promote community and other self-help activities designed to alleviate the causes or the need for such assistance: *Provided, however,* That such funds shall be used only to supplement and not substitute for funds normally available for such purposes from other non-United States Government sources.

(6) Section 206 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides in part as follows:

Except to meet famine or other urgent or extraordinary relief requirements, no assistance under this title shall be provided under an agreement permitting generation of foreign currency proceeds unless (1) the country receiving the assistance is undertaking self-help measures in accordance with section 109 of this Act, (2) the specific uses to which the foreign currencies are to be put are set forth in a written agreement between the United States and the recipient country, and (3) such agreement provides that the currencies will be used for increasing the effectiveness of the programs of food distribution and increasing the availability of food commodities provided under this title to the neediest individuals in recipient countries. The President shall include information on currencies used in accordance with the section in the reports required under section 408 of this Act and section 657 of the Foreign Assistance Act of 1961.

(7) Section 401 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

(a) After consulting with other agencies of the Government affected and within policies laid down by the President for implementing this Act, and after taking into account productive capacity, domestic requirements, farm and consumer price levels, commercial exports and adequate carryover, the Secretary of Agriculture shall determine the agricultural commodities and quantities thereof available for disposition under this Act, and the commodities and quantities thereof which may be included in the negotiations with each country. No commodity shall be available for disposition under this Act if such disposition would reduce the domestic supply of such commodity below that needed to meet domestic requirements, adequate carryover, and anticipated exports for dollars as determined by the Secretary of Agriculture at the time of exportation of such commodity, unless the Secretary of Agriculture determines that some part of the supply thereof should be used to carry out urgent humanitarian purposes of this Act.

(b) No agricultural commodity may be financed or otherwise made available under the authority of this Act except upon a determination by the Secretary of Agriculture that (1) adequate storage facilities are available in the recipient country at the time of exportation of the commodity to prevent the spoilage or waste of the commodity, and (2) the distribution of the commodity in the recipient country will not result in a substantial disincentive to domestic production in that country.

(8) Section 402 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides, in part, as follows:

The term "agricultural commodity" as used in this Act shall include any agricultural commodity produced in the United States or product thereof produced in the United States: *Provided, however,* That the term "agricultural commodity" shall not include alcoholic beverages, and for the purposes of title II of this Act, tobacco or products thereof. Subject to the availability of appropriations therefor, any domestically produced fishery product may be made available under this Act.

(9) Section 404 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

The programs of assistance undertaken pursuant to this Act shall be directed toward the attainment of the humanitarian objectives and national interest of the United States.

(10) Section 405 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

The authority and funds provided by this Act shall be utilized in a manner that will assist friendly countries that are determined to help themselves toward a greater degree of self-reliance in providing enough food to meet

the needs of their people and in resolving their problems relative to population growth.

§ 211.2 Definitions.

(a) "AID" means the Agency for International Development or any successor agency, including, when applicable, each USAID. "USAID" means an office of AID located in a foreign country. "AID/W" means the Office of AID located in Washington, D.C.

(b) "CCC" means the Commodity Credit Corporation, a corporate agency and instrumentality of the United States within the U.S. Department of Agriculture.

(c) "Cooperating sponsor" means the foreign government, the U.S. registered nonprofit voluntary agency, the American National Red Cross, or the intergovernmental organization, which enters into an agreement with the U.S. Government for the use of agricultural commodities and/or funds (including local currencies), and which is directly responsible under the agreement for administration and implementation of and reporting on programs involving the use of the commodities and/or funds made available to meet the requirements of eligible recipients. The term also includes foreign nonprofit voluntary agencies registered with the Advisory Committee on Voluntary Foreign Aid entering into such agreements following a determination of unavailability of a U.S. registered nonprofit voluntary agency to provide the assistance.

(d) "Diplomatic Posts" means the offices of the Department of State located in foreign countries, and may include Embassies, Legations, and Consular offices.

(e) "Disaster relief organizations" means organizations which are authorized by AID/W, USAID, or by a Diplomatic Post to assist disaster victims.

(f) "Disaster victims" means persons who, because of flood, drought, fire, earthquake, other natural or manmade disasters, or extraordinary relief requirements, are in need of food, feed, or fiber assistance.

(g) "Duty free" means exempt from all customs duties, duties, tolls, taxes or governmental impositions levied on the act of importation.

(h) "Food for Peace Program Agreement" constitutes the agreement between the cooperating sponsor(s) and the U.S. Government. The Food for Peace Program Agreement may be specific, listing the kinds and quantities of commodities to be supplied, program objectives, criteria for eligibility of recipients, plan for distribution of commodities, and other specific program provisions in addition to the provisions set forth in this part; or it will state that the cooperating sponsor will comply with this part and such other terms and conditions as set forth in other AID programing documents.

(i) "Institutions" means nonpenal, public or nonprofit private establishments that are operated for charitable or welfare purposes where needy persons reside and receive meals, including, but not limited to, homes for the aged, mentally and physically handicapped, refugee camps, and leprosy asylums.

(j) "Intergovernmental organizations" means agencies sponsored and supported by the United Nations organization or by two or more nations, one of which is the United States of America.

(k) "Maternal-child feeding, primary school and other child feeding programs":

(1) Maternal and preschool feeding programs means programs conducted for women of child bearing age, for mothers with preschool children, and for children below the usual enrollment age for the primary grade at public schools.

(2) School feeding programs refers to programs conducted for the benefit of children enrolled in primary schools.

(3) Other child feeding programs refers to programs designed to reach preschool or primary school age, needy children in child care centers, orphanages, institutions, nurseries, kindergartens, and similar activities.

(l) "Nonprofit" means that the residue of income over operating expenses accruing in any activity, project, or program is used solely for the operation of such activity, project, or program.

(m) "Primary School" means a public or nonprofit facility, or an activity within such facility, which has as its primary purpose the education of children at education levels which are generally comparable to those of elementary schools in the United States.

(n) "Recipient agencies" means schools, institutions, welfare agencies, disaster relief organizations, and public or private agencies whose food distribution functions are sponsored by the cooperating sponsor and who receive commodities for distribution to eligible recipients. A cooperating sponsor may be a recipient agency.

(o) "Recipients" means persons who are in need of food assistance because of their economic condition or who are otherwise eligible to receive commodities for their own use in accordance with the terms and conditions of the Food for Peace Program Agreement.

(p) "Refugees" means persons who fled or were forced to leave their country of nationality or residence and are living in a country other than that of which they hold or have held citizenship or in a part of their country of nationality or residence other than that which they normally consider their residence, and become eligible recipients.

(q) "USDA" means the U.S. Department of Agriculture.

(r) "Voluntary Agency" means the American National Red Cross and any U.S. or foreign voluntary nonprofit agency registered with, and approved by, the Advisory Committee on Voluntary Foreign Aid of the Agency for International Development.

(s) "Welfare agencies" means public or nonprofit private agencies that provide care, including food assistance, to needy persons who are not residents of institutions.

§ 211.3 Cooperating sponsor agreements.

(a) *Food for Peace Program Agreement.* The cooperating sponsor shall enter into a written agreement with AID by assigning a Food for Peace Program Agreement which shall incorporate by reference or otherwise the terms and conditions set forth in this part.

(b) *Individual Country Food for Peace Program Agreement.* Voluntary agencies or intergovernmental organizations shall, in addition to the Food for Peace Program Agreement, enter into a separate written Food for Peace Agreement with the foreign government of each cooperating country. This agreement shall incorporate by reference or otherwise the terms and conditions set forth in this part; Provided, however, that where such written agreement is not feasible or practicable, the USAID or Diplomatic Post shall assure AID/W that the program can be effectively operated without such an agreement.

§ 211.4 Availability of Commodities.

(a) *Distribution and use of commodities.* Commodities shall be available for distribution and use in accordance with the provisions of the Food for Peace Program Agreement and this part.

(b) *Transfer of title and delivery.* (1) Unless the Food for Peace Program Agreement provides otherwise, title to the commodity shall pass to the cooperating sponsor at the time and place of delivery f.o.b. or f.a.s. vessels at the U.S. ports except that in the case of

voluntary agencies and intergovernmental organizations, title may pass at the discretion of USDA at other points in the United States.

(2) Voluntary agencies and intergovernmental organizations shall make the necessary arrangements to accept commodities at the points of delivery designated by the USDA.

(c) *Processing, handling, transportation and other costs.* (1) The United States will pay processing, handling, transportation, and other incidental costs incurred in making commodities available to cooperating sponsors free on board (f.o.b.) or free along side (f.a.s.) vessel at U.S. ports, or free at inland destinations in the United States except as otherwise provided in this paragraph (c).

(2) Voluntary agencies and intergovernmental organizations shall reimburse the United States for expenses incurred at their request and for their accommodation which are in excess of those which the United States would have otherwise incurred in making delivery (i) at the lowest combination of inland and ocean transportation costs to the United States as determined by the United States or (ii) in sizes and types of packages announced as available.

(3) All costs and expenses incurred subsequent to the transfer of title in the United States to cooperating sponsors except as otherwise provided herein shall be borne by them. Upon the determination that it is in the interests of the program to do so, the United States may pay or make reimbursement for ocean transportation costs from U.S. ports to the designated ports of entry aboard; or to designated points of entry abroad in the case (i) of landlocked countries, (ii) where ports cannot be used effectively because of natural or other disturbances, (iii) where carriers to a specific country are unavailable, or (iv) where a substantial savings in cost or time can be effected by the utilization of points of entry other than ports.

(d) *Transportation authorization.* A transportation authorization will be issued to cover the ocean freight paid directly by the United States. When CCC contracts for ocean carriage, disbursement to the carriers shall be made by CCC upon presentation of Standard Form 1113 and three copies of 1113A (Public Voucher for Transportation Charges), together with three copies of the related onboard ocean bill of lading, one copy of which must contain the following certification signed by an authorized representative of the steamship company:

I certify that this document is a true and correct copy of the original onboard ocean bill of lading under which the goods herein described were loaded on the above-named vessel and that the original and all other copies thereof have been clearly marked as not to be certified for billing.

.....
(Name of steamship co.)
By
(Authorized representative)

Such vouchers should be submitted to: Director Ocean Transportation Division, Office of the General Sales Manager, U.S. Department of Agriculture, Washington, D.C. 20250. Except for duty, taxes and other costs exempted in § 211.7 (a) and (b) of this part, voluntary agencies booking their own vessels will be reimbursed as provided in AID Regulation 2 (Part 202 of this chapter) for ocean freight authorized by the United States upon presentation to AID/W (or to a U.S. Bank holding an AID Letter of Commitment) of proof of payment to the ocean carrier.

(e) *Shipping instructions*—(1) *Shipments booked by CCC.* Request for shipment of commodities shall originate with the cooperating sponsor and shall be submitted to USAID or Diplomatic Post for clearance and transmittal to AID/W. AID/W shall, through cables, airgrams or letters to USAID or Diplomatic Posts, provide cooperating sponsors (and where applicable voluntary agency headquarters) with names of vessels, expected times of arrival (ETAs), and other pertinent information on shipments booked by CCC. At the time of exportation of commodities, applicable ocean bills of lading shall be sent airmail, or by the fastest means available, by the freight forwarder, representing CCC, to USDA, to USAID or Diplomatic Posts (and where applicable to USAID Controller, voluntary agency headquarters, and voluntary agency field representatives), and to the consignee in sufficient time to advise of the arrival of the shipment.

(2) *Shipments booked by voluntary agency or intergovernmental organization.* Requests for shipment of commodities shall originate with the cooperating sponsor and shall be cleared by the USAID or Diplomatic Post before transmittal to the voluntary agency's or intergovernmental organization's headquarters for concurrence and issuance. USAID or Diplomatic Post shall promptly clear voluntary agency and intergovernmental organization requests for shipment of commodities or, if there is reason for delay or disapproval, advise the cooperating sponsor and AID/W within seven (7) days of receipt of requests for shipment. After the voluntary agency or intergovernmental organization headquarters concurs in the request and issues the order, the original will be sent promptly to USDA with a copy to the USAID or Diplomatic Posts. Headquarters of voluntary agencies and intergovernmental organizations which book their own shipments shall provide their representatives and the USAID or Diplomatic Posts with the names of vessels, expected times of arrival (ETAs) and other pertinent information on shipments booked. At the time of exportation of commodities, applicable ocean bills of lading shall be sent airmail or by the fastest means available by the freight forwarder, representing the voluntary agency or intergovernmental organization, to USDA to the USAID or Diplomatic Post (and where applicable to USAID Controller and voluntary agencies' representatives), and to the consignee in the country of destination in sufficient time to advise of the arrival of the shipment. However, voluntary agencies will also forward cable advice of actual exportation to their program directors in countries within the Caribbean area which are supplied by vessels having a rapid and short run from U.S. port to destination.

(f) *Tolerances.* Delivery by the United States to the cooperating sponsor at point of transfer of title within a tolerance of 5 percent (2 percent in the case of quantities over 10,000 metric tons) plus or minus, of the quantity ordered for shipment shall be regarded as completion of delivery. There shall be no tolerance with respect to the ocean carrier's responsibility to deliver the entire cargo shipped and the United States assumes no obligation for failure by an ocean carrier to complete delivery to port of discharge.

§ 211.5 Obligations of cooperating sponsor.

(a) *Plan of operation.* Each cooperating sponsor shall submit to the USAID or Diplomatic Post for the approval of AID/W, within such times and on the forms prescribed by AID/W, a description of the programs it is sponsoring or proposes to sponsor. This description will provide basic information for preparation and amendment of Food for Peace Program Agreements and Individual Country Food for Peace Program Agreements and will include program purposes and goals, criteria for measuring program effectiveness, and other specific provisions in addition to those set forth in this Part. Further, this description will include information from which it may

be determined that the distribution of commodities in the recipient country will not result in a substantial disincentive to domestic production and that adequate storage facilities are available in the recipient country at the time of exportation of the commodity to prevent the spoilage or waste of the commodity.

(b) *Program supervision.* Cooperating sponsors shall provide adequate supervisory personnel for the efficient operation of the program, including personnel to plan, organize, implement, control, and evaluate programs involving distribution of commodities, and, in accordance with AID guidelines, to make internal reviews, including warehouse inspections, physical inventories, and end-use checks. Maximum use of volunteer personnel shall be encouraged, but U.S. voluntary agencies shall be represented by a U.S. citizen, resident in the country of distribution or other nearby country approved by AID/W, who is appointed by and responsible to the voluntary agency for distribution of commodities in accordance with the provisions of this part. Intergovernmental organizations foreign nonprofit voluntary agencies and the American National Red Cross shall be represented by a person appointed by and responsible to these organizations for the supervision and control of the program in the country of distributions in accordance with the provisions of this part.

(c) *Internal Reviews*—(1) *Voluntary Agencies.* At intervals mutually agreed upon in writing by USAIDs or the Diplomatic Post and the voluntary agency as appropriate for good management, the voluntary agencies shall conduct or arrange to have conducted comprehensive internal reviews or a series of examinations which, when combined, will represent a complete review of the Title II program(s) under their jurisdiction. Copies of reports of these comprehensive examinations shall be submitted to USAIDs or Diplomatic Posts as required in § 211.10(b)(3).

(2) *Other Cooperating Sponsor.* In the case of programs administered by cooperating governments and intergovernmental organizations, responsibility for conducting internal audit examinations shall be determined by AID/W on a case by case basis. For records and reporting requirements for emergency programs see § 211.10(5).

(d) *Commodity requirements.* Each cooperating sponsor shall submit to the USAID or Diplomatic Post, within such times and on the form prescribed by AID/W, estimates of requirements showing the quantities of commodities required for each program proposed. Requirements shall be summarized for all programs in the country on a form prescribed by AID/W.

(e) *Determination of eligibility.* Cooperating sponsors shall be responsible for determining that the recipients and recipient agencies to whom they distribute commodities are eligible in accordance with the terms and conditions of the Food for Peace Program Agreement and this part. Cooperating sponsor shall impose upon recipient agencies responsibility for determining that the recipients to whom they distribute commodities are eligible. Commodities shall be distributed free of charge except as provided in paragraph (i) of this section, or as otherwise authorized by AID/W.

(f) *No discrimination.* Cooperating sponsors shall distribute commodities only to eligible recipient agencies and eligible recipients without regard to nationality, race, color, sex, or religious or political beliefs, and shall impose similar conditions upon distribution by recipient agencies.

(g) *Public recognition.* To the maximum extent practicable, and with the cooperation of the host government, adequate public recognitions shall be given in the press, by radio, and other media that the commodities have been furnished by the people of the United States. At distribution centers the cooperating sponsor shall, to the extent feasible, display banners, posters, or similar media which shall contain information similar to that prescribed for containers in § 211.6(c). Recipients' individual identification cards shall, insofar as practicable be imprinted to contain such information.

(h) *Containers*—(1) *Markings.* Unless otherwise specified in the Food for Peace Program Agreement, when commodities are packaged for shipment from the United States, bags and other containers shall be marked with the CCC contract number or other identification, the AID emblem and the following information stated in English and, as for as practicable, in the language of the country receiving the commodity:

(i) Name of the commodity.

(ii) Furnished by the people of the United States of America.

(iii) Not to be sold or exchanged (where applicable). Emblems or other identification of voluntary agencies and intergovernmental organizations may also be added.

(2) *Disposal of containers.* Cooperating sponsors may dispose of containers, other than containers provided by carriers, in which commodities are received in countries having approved Title II programs, by sale or exchange, or distribute the containers free of charge to eligible food or fiber recipients for their personal use. If the containers are to be used commercially, the cooperating sponsor must arrange for the removal or obliteration of U.S. Government markings from the containers prior to such use.

(i) *Use of funds.* In addition to funds accuring to cooperating sponsors from the sale of containers, funds may also be available from charges made in maternal, preschool, school and other child feeding programs where payment by the recipients will be encouraged on the basis of ability to pay. Funds from these sources shall be used for payment of program costs such as transportation, storage, (including the improvement of storage facilities and the construction of warehouses) handling, insect and rodent control, rebagging of damaged or infested commodities, and other program expenses specifically authorized by AID to carry out the objectives of the program for which the commodities were furnished. Funds may also be used for payment of indigenous and/or third country personnel employed by cooperating sponsors or recipient agencies in support of Title II programs. However, such funds may not be used to purchase land for sectarian purposes, to acquire or construct church buildings, or to make alterations in existing church-owned buildings. Actual out-of-pocket expenses incurred in effecting any sale of containers may be deducted from the sales proceeds.

(j) *No displacement of sales.* Except in the case of emergency or disaster situations, the donation of commodities furnished for these programs shall not result in increased availability for export by the foreign country on the same or like commodities and shall not interfere with or displace sales in the recipient country which might otherwise take place. A country may be exempt from this proviso if circumstances warrant. Missions should seek AID/W guidance on this matter.

(k) *Commodities borrowed or exchanged.* After the date of the program approval by AID/W, but before arrival at the distribution point of the commodities authorized herein, the cooperating sponsor may, with prior approval of the USAID or Diplomatic Post, borrow same or similar commodities from local sources to meet program requirements provided that: (1) Such of the commodities borrowed as are used in accordance with the terms of

the applicable Food for Peace Program Agreement will be replaced with commodities authorized herein on an equivalent value basis at the time and place that the exchange takes place as determined by mutual agreement between the cooperating sponsor and the USAID or Diplomatic Post except, that at the request of the cooperating sponsor the USAID or Diplomatic Post may determine that such replacement may be made on some other justifiable basis; (2) packaged commodities which are borrowed shall be appropriately identified in the language of the country of distribution as having been furnished by the people of the United States; and (3) suitable publicity shall be given to the exchange of commodities as provided in paragraph (g) of this section and containers for borrowed commodities shall be marked to the extent practicable in accordance with § 211.6(c).

(l) *Commodity Transfer.* After the date of program approval by AID/W, but before distribution of the commodities authorized herein by the recipient agency, the USAID or the Diplomatic Post, or the cooperating sponsor with prior approval of the USAID or Diplomatic Post, may transfer commodities between approved Title II programs to meet emergency disaster requirements or to improve efficiency of operation; for example, to meet temporary shortages due to delays in ocean transportation, or to provide for rapid distribution of stocks in danger of deterioration. Transfers may also be made to disaster organizations for use in meeting exceptional circumstances. Commodity transfers shall be made at no cost to the U.S. Government and with the concurrence of the cooperating sponsor or disaster organization concerned. The USAID or the Diplomatic Post may, however, provide funds to pay the costs of transfers to meet extraordinary relief requirements in which case AID/W shall be advised promptly of the details of the transfer. Commodities transferred as described above shall not be replaced by the U.S. Government unless AID/W authorizes such replacement.

(m) *Disposal of excessive stock of commodities.* If commodities are on hand which cannot be utilized in accordance with the applicable Food for Peace Program Agreement, the cooperating sponsor shall promptly advise USAID or the Diplomatic Post of the quantities, location, and condition of such commodities, and, where possible shall propose an alternate use of the excess stocks. USAID or Diplomatic Post shall determine the most appropriate use of the excess stocks, and with prior AID/W concurrence, shall issue instructions for disposition. Transportation costs and other charges attributable to transferring commodities from one program to another within the country shall be the responsibility of the cooperating sponsor, except that in case of disaster or emergency, AID/W may authorize the use of disaster or emergency funds to pay for the costs of such transfers.

§ 211.6 Processing, repackaging, and labeling commodities.

(a) *Commercial processing and repackaging.* Cooperating sponsors may arrange for processing commodities into different end products and for packaging or repackaging commodities prior to distribution. When commercial facilities are used for processing, packaging or repackaging, cooperating sponsors shall enter into written agreements for such services. Except in the case of commodities and/or containers provided to foreign governments for sale under section 206 of the Act, the agreements must have the prior approval of USAID or Diplomatic Post in the country of distribution. Copies of the executed agreements shall be provided to the USAID or Diplomatic Post. Agreements for such services shall provide as a minimum that:

(1) No part of the commodities delivered to the processing, packaging, or repackaging company shall be used to defray processing, packaging, repackaging, or other costs, except as provided in paragraph (a)(2) of this section.

(2) When the milling of grain is authorized in the cooperating country, the United States will not pay any part of the processing costs, directly or indirectly, except that with the prior approval of AID/W, the value of the offal may be used to offset such part of the processing costs as it may cover.

(3) The party providing such services shall:

(i) Fully account to the cooperating sponsor for all commodities delivered to the processor's possession and shall maintain adequate records and submit perodic reports pertaining to the performance fo the agreement;

(ii) Be liable for the value of all commodities not accounted for as provided in § 211.9(g);

(iii) Return or dispose of the containers in which the commodity is received from the cooperating sponsor according to instructions from the cooperating sponsor; and

(iv) Plainly lable cartons, sacks, or other containers containing the end product in accordance with paragraph (c) of this section.

(b) *Use of cooperating sponsor facilities.* When cooperating sponsors utilize their own facilities to process, package, or repackage commodities into different end products, and when such products are distributed for consumption off the premises of the cooperating sponsor, the cooperating sponsor shall plainly lable the containers as provided in paragraph (c) of this section, and banners, posters, or similar media which shall contain information similar to that prescribed in paragraph (c) of this section, shall be displayed at the distribution center. Recipients' individual identification cards shall to the maximum extent practicable be imprinted to contain such information.

(c) *Labeling.* If prior to distribution the cooperating sponsor arranges for packaging or repackaging donated commodities the cartons, sacks, or other containers in which the commodities are packed shall be plainly labeled with the AID emblem, in the language of the country in which the commodities are to be distributed with the following information:

(1) Name of commodity;

(2) Furnished by the people of the United States of America; and

(3) Not to be sold or exchanged (where applicable). Emblems or other identification of voluntary agencies and intergovernmental organizations may also be added.

(d) *Where commodity containers are not used.* When the usual practice in a country is not to enclose the end product in a container, wrapper, sack, etc., the cooperating sponsor shall, to the extent practicable, display banners, posters, or other media, and imprint on individual recipient identification cards information similar to that prescribed in paragraph (c) of this section.

§ 211.7 Arrangements for entry and handling in foreign country.

(a) *Costs at discharge ports.* Except as otherwise agreed upon by AID/W and provided in the applicable shipping contract or in paragraph (d) and (e) of this section, the cooperating sponsor shall be responsible for all costs, other than those assessed by the delivering carrier either in accordance with its applicable tariff for delivery to the discharge port or in accordance with the applicable charter or booking contract. The cooperating sponsor shall be responsible for all costs for (1) distributing the commodity as provided in the Food for Peace Program Agreement to end users, and (2) for

demurage, detention, and overtime, and (3) for obtaining independent discharge survey reports as provided in § 211.9. The cooperating sponsor shall also be responsible for wharfage, taxes, dues, and port charges assessed against the cargo whenever assessed and collected by local authorities from the consignee, and for lighterage (when not a custom of the port), and lightening costs when assessed as a charge separate from the freight rate.

(b) *Duty, taxes, and consular invoices.* Commodities shall be admitted duty free and exempt from all taxes. Consular invoices shall not be required unless specific provision is made in the Food for Peace Program Agreement. If required, they shall be issued without cost to the cooperating sponsor or to the Government of the United States.

(c) *Storage facilities and transportation in foreign countries.* Cooperating sponsors shall make all necessary arrangements for receiving the commodities and assume full responsibility for storage and maintenance of commodities from time of delivery at port of entry abroad or, when authorized, at other designated points of entry abroad agreed upon between the cooperating sponsor and AID. Before recommending approval of a program to AID/W, USAID, or Diplomatic Post shall obtain from the cooperating sponsor, assurance that provision has been made for internal transportation, and for storage and handling which are adequate by local commercial standards. The cooperating sponsor shall be responsible for the maintenance of commodities in such manner as to assure distribution of the commodities in good condition to recipient agencies or eligible recipients.

(d) *Inland transportation in intermediate countries.* In the case of landlocked countries, transportation in the intermediate country to a designated inland point of entry in the recipient country shall be arranged by the cooperating sponsor unless otherwise provided in the Food for Peace Program Agreement or other program document. Voluntary agencies and intergovernmental organizations shall handle claims arising from loss or damage in the intermediate country, in accordance with § 211.9(e). Other cooperating sponsors shall assign any rights that they may have to any claims that arise in the intermediate country to USAID which shall pursue and retain the proceeds of such claims.

(e)(1) *Authorization for Reimbursement of Costs.* If, because of packaging damage, it is determined by a voluntary agency or intergovernmental organization that commodities must be repackaged to ensure that the commodities arrive at the distribution point in a wholesome condition, voluntary agencies and intergovernmental organizations may incur expenses for such repackaging up to $500.00 and such costs will be reimbursed to the voluntary agency or intergovernmental organization by CCC. If costs will exceed $500.00 the authority to repackage and incur the costs must be approved by the USAID or Diplomatic Post in advance of repackaging unless such prior approval is specifically waived in writing by the USAID or Diplomatic Post.

(2) *Method of Reimbursement.* (i) *Repackaging Required Because of Damage Occurring Prior to or During Discharge from the Ocean Carrier.* Costs of such reconstitution or repackaging should be included, as a separate item in claims filed against the ocean carrier (see 211.9(c)). Full reimbursement of such costs up to $500.00 will be made by CCC, Kansas City Commodity Office, upon receipt of invoices or other documents to support such costs. For amounts expended in excess of $500.00, reimbursement will be made upon receipt of supporting invoices or other documents establishing the costs of repackaging and showing the prior approval of the USAID or Diplomatic Post to incur the costs (unless approval waived, see § 211.7(e)(1) of this chapter).

(ii) *Repackaging Required Because of Damage Caused After Discharge of the Cargo from the Ocean Carrier.* Costs of such repackaging will be reimbursed to the agency or organization by CCC (USDA-ASCS Financial Management Division, 14th & Independence Avenue, Washington, D.C. 20250) upon receipt of documentation as set forth in § 211.7(e)(2) of this chapter.

§ 211.8 Disposition of commodities unfit for authorized use.

(a) *Prior to delivery to cooperating sponsor at discharge port or point of entry.* If the commodity is damaged prior to delivery to the cooperating sponsor (other than a voluntary agency or an intergovernmental organization) at discharge port or point of entry overseas, the USAID or Diplomatic Post shall immediately arrange for inspection by a public health official or other competent authority. If the commodity is determined to be unfit for human consumption, the USAID or Diplomatic Post shall dispose of it in accordance with the priority set forth in paragraph (b) of this action. Expenses incidental to the handling and disposition of the damaged commodity shall be paid by USAID or the Dispolmatic Post from the sales proceeds, from CCC Account No. 20 FT 401 or from special Title II, Pub. L. 480 Agricultural Commodity Account. The net proceeds of sales shall be deposited with the U.S. Disbursing Officer American Embassy, for the credit of CCC Account No. 20 FT 401.

(b) *After delivery to cooperating sponsor.* If after arrival in a foreign country it appears that the commodity, or any part thereof, may be unfit for the use authorized in the Food for Peace Program Agreement, the cooperating sponsor shall immediately arrange for inspection of the commodity by a public health official or other competent authority approved by USAID or the Diplomatic Post. If no competent local authority is available, the USAID or Diplomatic Post may determine whether the commodities are unfit for human consumption, and if so may direct disposal in accordance with paragraphs (b) (1) through (4) of this section. The cooperating sponsor shall arrange for the recovery for authorized use of that part designated during the inspection as suitable for program use. If, after inspection, the commodity (or any part thereof) is determined to be unfit for authorized use the cooperating sponsor shall notify USAID or the Diplomatic Post of the circumstances pertaining to the loss or damage as prescribed in § 211.9(f). With the concurrence of USAID or the Diplomatic Post, the commodity determined to be unfit for authorized use shall be disposed of in the following order of priority:

(1) By transfer to an approved Food for Peace Program for use as livestock feed. AID/W shall be advised promptly of any such transfer so that shipments from the United States to the livestock feeding program can be reduced by an equivalent amount:

(2) Sale for the most appropriate use, i.e., animal feed, fertilizer, or industrial use, at the highest obtainable price. When the commodity is sold all U.S. Government markings shall be obliterated:

(3) By donation to a governmental or charitable organization for use as animal feed or for other nonfood use: and

(4) If the commodity is unfit for any use or if dispcsal in accordance with subparagraph (b) (1), (2), or (3) of this section is not possible, the commodity shall be destroyed under the observation of a representative of USAID or Diplomatic Post, if practicable, in such manner as to prevent its use for any purpose. Expenses incidental to the handling and

disposition of the damaged commodity shall be paid by the cooperating sponsor unless it is determined by the USAID or the Diplomatic Post that the damage could not have been prevented by the proper exercise of the cooperating sponsor's responsibility under the terms of the Food for Peace Program Agreement Actual expenses incurred in effecting any sale may be deducted from the sales proceeds and the net proceeds shall be deposited with the U.S. Disbursing Officer, American Embassy, with instructions to credit the deposit to CCC Account No. 20 FT 401. The cooperating sponsor shall promptly furnish USAID or the Diplomatic Post a written report of all circumstances relating to the loss and damage and shall include in this report, or a supplemental report, a certification by a public health official or other competent authority of the exact quantity of the damaged commodity disposed of because it was determined to be unfit for human consumption.

§ 211.9 Liability for loss and damage or improper distribution of commodities.

(a) *Fault cooperating sponsor prior to loading on ocean vessel.* If a voluntary agency or intergovernmental organization books cargo for ocean transportation and is unable to have a vessel at the U.S. port of export for loading in accordance with the agreed shipping schedule, the voluntary agencies and intergovernmental organizations shall immediately notify the USDA. The USDA will determine whether the commodity shall be (1) moved to another available outlet: (2) stored at the port for delivery to the voluntary agencies or intergovernmental organization until a vessel is available for loading: or (3) disposed of as the USDA may deem proper. When additional expenses are incurred by CCC as a result of a failure of the voluntary agency or intergovernmental organization, or their agent; (4) to meet the agreed shipping schedule, or (5) to make necessary arrangements to accept commodities at the points of delivery designated by CCC, and it is determined by CCC that the expenses were incurred because of the fault or negligence of the voluntary agency or intergovernmental organization, or their agents, the voluntary agency or intergovernmental organization shall reimburse CCC for such expenses or take such action as directed by CCC.

(b) *Fault of others prior to loading on ocean vessel.* Upon the happening of any event creating any rights against a warehouseman, carrier, or other person for the loss of or damage to a commodity occurring between the time title is transferred to a voluntary agency or intergovernmental organization and the time the commodity is loaded on board vessel at designated port of export, the voluntary agencies or intergovernmental organizations shall immediately notify CCC and promptly assign to CCC any rights to claims which may accrue to them as a result of such loss or damage and shall promptly forward to CCC all documents pertaining thereto. CCC shall have the right to initiate and prosecute, and retain the proceeds of all claims for such loss or damage.

(c) *Ocean carrier loss and damage—*
(1) *Survey and outturn reports.* (i) Cooperating sponsors shall arrange for an independent cargo surveyor to attend the discharge of the cargo and to count or weigh the cargo and examine its condition, unless USAID or the Diplomatic Post determines that such examination is not feasible, or if CCC has made other provisions for such examinations and reports. The surveyor shall prepare a report of his findings showing the quantity and condition of the commodities discharged. The report shall also show the probable cause of any damage noted, and set forth the time and place when the examination was made. If practicable, the examination of the cargo shall be conducted jointly by the surveyor, the consignee, and the ocean carrier, and the survey report shall be signed by all parties. Customs receipts, port authority reports, shortlanding certificates, cargo boat notes, stevedore's tallies, etc., where applicable, shall be obtained and furnished with the report of the surveyor. The cooperating sponsor shall obtain a certification by public health official or similar competent authority as to (*a*) the condition of the commodity in any case where a damaged commodity appears to be unfit for its intended use; and (*b*) a certificate of disposition in the event the commodity is determined to be unfit for its intended use. Such certificates shall be obtained as soon as possible after discharge of the cargo. In any case where the cooperating sponsor can provide a narrative chronology or other commentary to assist in the adjudication of ocean transportation claims, such information should be forwarded. Cooperating sponsors shall prepare such a statement in any case where the loss is estimated to be in excess of $5,000.00. All documentation shall be in English or supported by an English translation and shall be forwarded as set forth in paragraph (c)(1) (iii) and (iv) of this section. The cooperating sponsor may, at his option, also engage the independent surveyor to supervise clearance and delivery of the cargo from customs or port areas to the cooperating sponsor or its agent and to issue delivery survey reports thereon.

(ii) In the event of cargo loss and damage, the cooperating sponsor shall provide the names and addresses of individuals who were present at the time of discharge and during survey and can verify the quantity lost or damaged. In the case of bulk grain shipments, the cooperating sponsor shall obtain the services of an independent surveyor to (*a*) observe the discharge of the cargo, (*b*) report on discharging techniques and furnish information as to whether cargo was carefully discharged in accordance with the customs of the port, (*c*) estimate the quantity of cargo, if any, lost during discharge through carrier negligence, (*d*) advise quality of sweepings, (*e*) obtain copies of port and/or vessel records, if possible, showing quantity discharged, (*f*) provide immediate notification to cooperating sponsor if additional services are necessary to protect cargo interests or if surveyor has reason to believe that the correct quantity was not discharged. The cooperating sponsor, in the case of damage to bulk grain shipments, shall obtain and provide the same documentation regarding quality of cargo as set forth in § 211.8(a) of this chapter and paragraph (c)(1)(i) of this section. In the case of shipments arriving in container vans, cooperating sponsors shall require the independent surveyor to list the container van numbers and seal numbers shown on the container vans, and indicate whether the seals were intact at the time the container vans were opened, and whether the container vans were in any way damaged.

(iii) Cooperating Sponsors shall send copies of all reports and documents pertaining to the discharge of commodities to USDA.

(iv) CCC will reimburse the voluntary agencies and intergovernmental organizations for the costs incurred by them in obtaining the services of an independent surveyor to conduct examinations of the cargo and render the report set forth above. Reimbursement will be made when the surveyor's invoice or other documents that establish the survey cost are furnished to CCC. However, CCC will not reimburse voluntary agencies or intergovernmental organizations for the costs of only a delivery survey, in the absence of a discharge survey, or for any other survey not taken contemporaneously with the discharge of the vessel, unless such deviation from the documentation requirements of

§ 211.9(c)(1) is justified to the satisfaction of CCC.

(2) *Claims against ocean carriers.* (i) Irrespective of transfer of title to the commodities, CCC shall have the right to initiate and prosecute, and retain the proceeds of, all claims against ocean carriers for cargo loss and damage or cargos for which CCC contracts for ocean transportation.

(ii)*(a)* Unless otherwise provided in the Food for Peace Program Agreement or other program document, voluntary agencies and intergovernmental organizations shall file notice of any cargo loss and damage with the carrier immediately upon discovery of any such loss and damage and shall promptly initiate claims against the ocean carriers for cargo loss and damage, and shall take all necessary action to obtain restitution for losses within any applicable periods of limitations and shall transmit to CCC copies of all such claims. However, the voluntary agencies or intergovernmental organizations need not file a claim when the cargo loss is not in excess of $25, or in any case when the loss is in excess of $25, but not in excess of $100 and it is determined by the voluntary agencies or intergovernmental organizations that the cost of filing and collecting the claim will exceed the amount of the claim. The voluntary agencies and intergovernmental organizations shall transmit to CCC copies of all claims filed with the ocean carriers for cargo loss and damage, as well as information and/or documentation on shipments when no claim is to be filed. When General Average has been declared, no action will be taken by the voluntary agencies of intergovernmental organizations to file or collect claims for loss or damage to commodities. (See paragraph (c)(2)(iii) of this section.)

(b) Determination of value. When payment is made for commodities misused, lost or damaged, the value shall be determined on the basis of the domestic market price at the time and place the misuse, loss or damage occurred, or, in case it is not feasible to obtain or determine such market price, the f.o.b. or f.a.s. commercial export price, of the commodity at the time and place of export, plus ocean freight charges and other costs incurred by the Government of the United States in making delivery to the cooperating sponsor. When the value is determined on a cost basis, the voluntary agencies or intergovernmental organizations may add to the value any provable costs they have incurred prior to delivery by the ocean carrier. In preparing the claim statement, these costs shall be clearly segregated from costs incurred by the Government of the United States. With respect to claims other than ocean carrier loss and/or damage claims, at the request of the cooperating sponsor and/or upon the recommendation of the USAID or diplomatic Post, AID W may determine that such value may be determined on some other justifiable basis. When replacements are made, the value of commodities misused, lost or damaged, shall be their value at the time and place the misuse, loss, or damage occurred and the value of the replacement commodities shall be their value at the time and place replacement is made.

(c) Amounts collected by voluntary agencies and intergovernmental organizations on claims against ocean carriers not in excess of $100 may be retained by the voluntary agencies or intergovernmental organizations.

On claims involving loss or damage having a value in excess of $100 the voluntary agencies or intergovernmental organizations may retain from collections received by them, the larger of *(1)* the amount of $100 plus 10 percent of the difference between $100 and the total amount collected on the claim, up to a maximum of $350, or *(2)* actual administrative expenses incurred in collection the claim; provided retention of such expenses is approved by CCC. Collection costs shall not be deemed to include attorneys fees, fees of collection agencies, and the like. In no event will collection costs in excess of the amount collected on the claim be paid by CCC. The voluntary agencies or intergovernmental organizations may also retain from claim recoveries remaining after allowable deductions for administrative expenses of collection, the amount of any special charges, such as handling, packing, and insurance costs, which the voluntary agency or intergovernmental organization has incurred on the lost or damaged commodity and which are included in the claim and paid by the liable party.

(d) The voluntary agencies and intergovernmental organizations may redetermine claims on the basis of additional documentation or information, not considered when the claims were originally filed when such documentation or information clearly changes the ocean carriers liability. Approval of such changes by CCC is not required regardless of amount. However copies of redetermined claims and supporting documentation or information shall be furnished to CCC.

(e) Voluntary agencies of intergovernmental organizations may negotiate compromise settlements of claims regardless of the amount thereof, except that proposed compromise settlements of claims having a value in excess of $5,000 shall not be accepted until such action has been approved in writing, by CCC. When a claim is compromised, the voluntary agency or intergovernmental organization may retain from the amount collected, the amounts authorized in (c)(2)(ii)(c) of this section and in addition, an amount representing the percentage of the special charges described in (c)(2)(ii)(c) of this section as the compromised amount is to the full amount of the claim. When a claim is not in excess of $300, the voluntary agencies or intergovernmental organizations may terminate collection activity on the claim according to the standards set forth in 4 CFR 104.3 (1972). Approval of such termination by CCC is not required but the voluntary agencies or intergovernmental organizations shall notify CCC when collection activity on a claim is terminated.

(f) All amounts collected in excess of the amounts authorized herein to be retained shall be remitted to CCC. For the purpose of determining the amount to be retained by the voluntary agencies or intergovernmental organizations from the proceeds of claims filed against ocean carriers, the word "claim" shall refer to the loss and damage to commodities which are shipped on the same voyage of the same vessel to the same port destination, irrespective of the kinds of commodities shipped or the number of different bills of lading issued by the carrier. If a voluntary agency or intergovernmental organization is unable to effect collection of a claim or negotiate an acceptable compromise settlement within the applicable period of limitation or any extension thereof granted in writing by the liable party or parties, the rights of the voluntary agencies or intergovernmental organizations to the claim shall be assigned to CCC in sufficient time to permit the filing of legal action prior to the expiration of the period of limitation or any extension thereof. Voluntary agencies or intergovernmental organizations shall promptly assign their claim rights to CCC upon request. In the event CCC effects collection or other settlement of the claim after the rights of the voluntary agency or intergovernmental organization to the claim have been assigned to CCC, CCC shall, except as shown below, pay to the voluntary agency or intergovernmental organization the amount the agency or organization would have been entitled to retain had they collected the same amount. However, the additional 10

percent on amounts collected in excess of $100 will be payable only if CCC determines that reasonable efforts were made to collect the claim prior to the assignment, or if payment is deemed to be commensurate with the extra efforts exerted in further documenting claims. Further, if CCC determines that the documentation requirements of § 211.9(c)(1) have not been fulfilled and the lack of such documentation has not been justified to the satisfaction of CCC, CCC reserves the right to deny payment of all allowances to the voluntary agency.

(g) When voluntary agencies or intergovernmental organizations fail to file claims, or permit claims to become time-barred, or fail to provide for the right of CCC to assert such claims, as provided in this § 211.9 and it is determined by CCC that such failure was due to the fault or negligence of the voluntary agency or intergovernmental organization, the agency or organization shall be liable to the United States for the cost and freight (C&F) value of the commodities lost to the program.

(iii) If a cargo loss has been incurred on a voluntary agency or intergovernmental organization shipment, and general average has been declared, the voluntary agency or intergovernmental organization shall furnish to the Chief Claims and Collections Division, Kansas City ASCS Commodity Office, P.O. Box 8377, Shawnee Mission, Kansas, ZIP 66208, with a duplicate copy to AID/W–PDC/FFP/POD, (a) copies of booking confirmations and the applicable on-board bill(s) of lading, (b) the related outturn or survey report(s), (c) evidence showing the amount of ocean transportation charges paid to the carrier(s), and (d) an assignment to CCC of the cooperating sponsor's rights to the claim(s) for such loss.

(d) *Fault of cooperating sponsor in country of distribution.* If the cooperating sponsor improperly distributes a commodity or knowingly permits it to be used for a purpose not permitted under the Food for Peace Program Agreement or this part, or causes loss or damage to a commodity through any act or omission or fails to provide proper storage, care, and handling, the cooperating sponsor shall pay to the United States the value of the commodities lost, damaged, or misused (or may, with prior USAID approval, replace such commodities with similar commodities of equal value), unless it is determined by AID that such improper distribution or use, or such loss or damage, could not have been prevented by proper exercise of the cooperating sponsor's responsibility under the terms of the agreement. Normal commercial practices in the country of distribution shall be considered in determining that there was a proper exercise of the cooperating sponsor's responsibility. Payment by the cooperating sponsor shall be made in accordance with paragraph (b) of this section.

(e) *Fault of others in country of distribution and in intermediate country.* (1) In addition to survey and/or outturn reports to determine ocean carrier loss and damage, the cooperating sponsor shall, in the case of land-locked countries, arrange for an independent survey at the point of entry into the country and to make a report as set forth in § 211.9(c)(1). CCC will reimburse the cooperating sponsor for the costs of survey as set forth in § 211.9(c)(1)(iv).

(2) Upon the happening of any event creating any rights against a warehouseman, carrier or other person for the loss of, damage to, or misuse of any commodity, the cooperating sponsor shall make every reasonable effort to pursue collection of claims against the liable party or parties for the value of the commodity lost, damaged, or misused and furnish a copy of the claim and related documents to USAID or Diplomatic Post. Cooperating sponsors who fail to file or pursue such claims shall be liable to AID for the value of the commodities lost, damaged, or misused: *Provided, however,* That the cooperating sponsor may elect not to file a claim if the loss is less than $300 and such action is not detrimental to the program. Cooperating sponsors may retain $100 of any amount collected on a claim. In addition, cooperating sponsors may, with the written approval of the USAID or Diplomatic Post, retain special costs such as legal fees that they have incurred in the collection of a claim. Any proposed settlement for less than the full amount of the claim must be approved by the USAID or Diplomatic Post prior to acceptance. When the cooperating sponsor has exhausted all reasonable attempts to collect a claim, it shall request the USAID or Diplomatic Post to provide further instructions.

(f) *Reporting losses to USAID or Diplomatic Post.* The cooperating sponsor shall promptly notify USAID or the Diplomatic Post in writing of the circumstances pertaining to any loss, damage, or misuse occurring within the country of distribution or intermediate country and shall include information as to the name of the responsible party; kind and quantities of commodities; size, and type of containers; the time and place of misuse, loss, or damage; the current location of the commodity; and the Food for Peace Program Agreement number, the CCC contract numbers, if known, or if unknown, other identifying numbers printed on the commodity containers; the action taken by the cooperating sponsor with respect to recovery or disposal; and the estimated value of the commodity. If any of the above information is not available, an explanation of its unavailability shall be made by the cooperating sponsor. Proceeds from sale and the disposition of the proceeds if any, should also be reported.

(g) *Handling claims proceeds.* Claims against ocean carriers shall be collected in U.S. dollars (or in currency in which freight is paid, or a pro rata share of each) and shall be remitted (less amounts authorized to be retained) by voluntary agencies and intergovernmental organizations to CCC. Claims against voluntary agencies and intergovernmental organizations shall be paid to CCC or AID/W in U.S. dollars. Amounts paid by other cooperating sponsors and third parties in the country of distribution shall be deposited with the U.S. Disbursing Officer, American Embassy, preferably, in U.S. dollars with instructions to credit the deposit to CCC Account No. 12X4336, or in local currency at the official exchange rate applicable to dollar imports at the time of deposit with instructions to credit the deposit to Treasury sales account 20FT401.

(h) *General average.* CCC shall (1) be responsible for settling general average and marine salvage claims, (2) retain the authority to make or authorize any disposition of commodities which have not commenced ocean transit or of which the ocean transit is interrupted, and receive and retain any monetary proceeds resulting from such disposition, (3) in the event of a declaration of general average, initiate and prosecute, and retain all proceeds of, cargo loss and damage claims against ocean carriers and (4) receive and retain any allowance in general average. CCC will pay any general average or marine salvage claims determined to be due.

§ 211.10 Records and reporting requirements of cooperating sponsor.

(a) *Records.* Cooperating sponsors shall maintain records and documents in a manner which will accurately reflect all transactions pertaining to the receipt, storage, distribution, sale and inspection of commodities. This shall include a periodic summary report and records of receipt and disbursement of any funds accruing from the operation of the

program. Such records shall be retained for a period of 3 years from the close of the U.S. fiscal year to which they pertain.

(b) *Reports.* Cooperating sponsors shall submit reports to the USAID or Diplomatic Post, at such times and on such forms as prescribed by AID. The following is a list of the principal types of reports that are to be submitted:

(1) Periodic summary reports showing receipt, distribution, and inventory of commodities and proposed schedules of shipments or call forwards.

(2) In the case of Title II sales agreements under section 206 of the Act, the foreign government is directly responsible for reporting on programs involving the use of funds for purposes specified in the agreement.

(3) Reports relating to progress and problems in the implementation and operation of the program, and inspection reports, as may be required from time to time by AID/W, or as may be agreed upon between the USAID or Diplomatic Post and the cooperating sponsor and approved by AID/W.

(4) Reports of all comprehensive internal reviews prepared in accordance with § 211.5(c) shall be submitted to the USAID or Diplomatic Post for review as soon as completed and in sufficient detail to enable the USAID or Diplomatic Post to assess and to make recommendations as to the ability of the cooperating sponsors to effectively plan, manage, control and evaluate the Food for Peace programs under their administration.

(5) Emergency programs. At the time that an emergency program under Pub. L. 480, Title II is initiated, either on a government-to-government basis or through an intergovernmental organization or a voluntary agency, the Mission should (i) make a determination regarding the ability of the cooperating sponsor to perform the record-keeping required by § 211.10, and (ii) in those instances in which those specific record-keeping requirements cannot be followed, due to emergency circumstances, specify exactly which essential information will be recorded in order to account fully for Title II commodities.

(c) *Inspection and audit.* Cooperating sponsors shall cooperate with and give reasonable assistance to U.S. Government representatives to enable them at any reasonable time to examine activities of the cooperating sponsors, processors, or others, pertaining to the receipt, distribution, processing, repackaging, and use of commodities by recipients; to inspect commodities in storage, or the facilities used in the handling or storage of commodities; to inspect and audit records, including financial records and reports pertaining to storage, transportation, processing, repackaging, distribution and use of commodities; the deposit of and use of any Title II generated local currencies; to review the overall effectiveness of the program as it relates to the objectives set forth in the Food for Peace Program Agreement; and to examine or audit the procedure and methods used in carrying out the requirements of this Part. Inspections and audits of Title II emergency programs will take into account the circumstances under which such programs are carried out.

§ 211.11 Termination of program.

All or any part of the assistance provided under the program, including commodities in transit, may be terminated by AID at its discretion if the cooperating sponsor fails to comply with the provisions of the Food for Peace Program Agreement, this part, or if it is determined by AID that the continuation of such assistance is no longer necessary or desirable. Under such circumstances title to commodities which have been transferred to the cooperating sponsor shall at the written request of USAID, the Diplomatic Post, or AID/W, be retransferred to the U.S. Government by the cooperating sponsor. Any excess commodities on hand at the time the program is terminated shall be disposed of in accordance with § 211.5(1). If it is determined that any commodity to be supplied under the Food for Peace Program Agreement is no longer available for Food for Peace Programs, such authorization shall terminate with respect to any commodities which, as of the date of such determination have not been delivered f.o.b. or f.a.s. vessel, provided every effort will be made to give adequate advance notice to protect cooperating sponsors against unnecessarily booking vessels.

§ 211.12 Waiver and amendment authority.

AID may waive, withdraw, or amend, at any time, any or all of the provisions of this Part 211 if such provision is not statutory and if AID determines it is in the best interest of the U.S. Government to do so. Any cooperating sponsor which has failed to comply with the provisions of this part or any instructions or procedures issued in connection herewith, or any agreements entered into pursuant hereto may at the discretion of AID be suspended or disqualified from further participation in any distribution program. Reinstatement may be made at the option of AID. Disqualification shall not prevent AID from taking other action through other available means when considered necessary.

Dated: May 31, 1979.

Robert H. Nooter,
Acting Administrator.

[FR Doc. 79-18017 Filed 6-12-79; 8:45 am]
BILLING CODE 4710-02-M

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Wednesday
June 13, 1979

Federal Register

Part IV

Department of Housing and Urban Development

Federal Disaster Assistance Administration

Floodplain Management

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Disaster Assistance Administration

[24 CFR Part 2205]

[Docket No. R-79-675]

Federal Disaster Assistance; Floodplain Management

AGENCY: Federal Disaster Assistance Administration, Department of Housing and Urban Development.

ACTION: Proposed Rule.

SUMMARY: This rule adds a new subpart to the Federal Disaster Assistance Regulations in order to implement Executive Orders 11988 (Floodplain Management) and 11990 (Protection of Wetlands). Policy and procedures are being established for carrying out disaster assistance in accordance with these Executive Orders.

DATE: Comments due: August 13, 1979.

ADDRESS: Interested parties and government agencies are encouraged to submit written comments to the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Charles B. Stuart, Office of Public Assistance, Federal Disaster Assistance Administration, Department of Housing and Urban Development, Washington, D.C. 20410, Telephone (202) 634-7635.

SUPPLEMENTARY INFORMATION: On May 24, 1977, Executive Order 11988 was issued for the following purposes: (1) To avoid to the extent possible the long- and short-term adverse impacts associated with the occupancy and modification of floodplains; and (2) to avoid direct or indirect support of floodplain development wherever there is a practicable alternative. This Executive Order applies to Federal agencies engaged in 1) acquiring, managing and disposing of Federal lands and facilities; 2) providing federally undertaken, financed or assisted construction and improvements; and 3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. The United States Water Resources Council (WRC) published guidelines for implementing E.O. 11988 in the Federal Register on February 10, 1978 at 43 FR 6030. These regulations follow closely the WRC guidelines in setting forth policy and procedures for floodplain management relating to disaster assistance granted under the Disaster Relief Act of 1974, Pub. L. 93-288 referred to as "the Act" in this proposed subpart. The main emphasis of these regulations is on compliance with Executive Order 11988, Floodplain Management. However, in cases where Executive Order 11990—Protection of Wetlands would apply, these regulations also set forth policy and procedures to implement that Executive Order. Further implementation of Executive Order 11990, as appropriate, will be included in revisions to other subparts of these Disaster Assistance Regulations, 24 CFR 2205.

Specific details of procedures will be given in revisions to internal FDAA guidance and handbooks such as the Environmental Review Handbook.

This subpart presents the purpose and objective of the floodplain management regulations, specific responsibilities of individuals and organizations involved with disaster assistance, basic policies of FDAA which will guide an agency's actions, a description of different categories of actions with respect to application of the requirements of the orders, and finally, the step-by-step procedures for carrying out the requirements of the orders.

The decision-making process as described in the WRC guidelines, is applied to selected categories of FDAA actions in different ways. The categories of actions are: 1. Exempt; 2. Inapplicable; and, 3. Applicable. Actions which are exempt from all provisions of the orders are those which are essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of Pub. L. 93-288. This exemption is contained in Section 8 of E.O. 11988 and Section 9 of E.O. 11990. However, to the extent practicable, considering the urgency of the situation, such emergency work shall be consistent with the spirit and intent of these two Executive Orders.

Inapplicable actions are those which the Administrator, FDAA, has determined do not require implementation of the full decision-making process as set forth in this subpart. There are two subdivisions under this category. One is those types of actions which typically do not create adverse effects on or incompatible development of floodlplains or wetlands. This determination included an analysis of potential long-and short-term impacts associated with occupancy or modification of floodplains, potential support of floodplain development, potential harm to lives and property or to natural and beneficial floodplain values, and potential cumulative impacts of multiple actions over time. These actions will not require any further implementation of the procedures set forth in this subpart.

The second subdivision consists of those inapplicable actions for which generally no practicable alternative actions or sites are available or identifiable. The determinations by the FDAA Administrator in this regard included consideration of factors such as environment, cost and technology. Therefore, when a Federal official undertakes one of these inapplicable actions, there is no requirement to implement the full eight-step decision-making process in accordance with Sec. 2205.506. Nevertheless, the Administrator has determined that Federal officials acting under these regulations shall take appropriate measures to minimize potential harm to or within the floodplain and to restore and preserve beneficial floodplain values.

There are six categories of inapplicable actions within this subdivision. First, Sec. 416(d) authorizes the Administrator to make grants for the purpose of removing timber from privately-owned lands where that timber has been damaged by a disaster. When this work is performed on an emergency basis, time is of the essence in order to salvage the value of the timber. More importantly, if the damaged timber is located in the floodplain, there is obviously no alternative site or alternative action to accomplish the goal of removing the damaged timber. Therefore, the Administrator has determined that, where the action is designed or modified to minimize the potential risks to and within the floodplain and actions are taken to restore and preserve natural and beneficial values served by floodplains, the full eight-step review is not necessary.

Second, full decision-making procedures are not required in the case of debris removal under Sec. 403 except for non-emergency removal of debris from the floodway. Because the removal of debris caused by a disaster generally has positive impacts on the floodplain and because the debris must be removed from where it lies, the goals of the Executive Order will not be served by the full decision-making process.

Third, Sec. 408 authorizes Federal contributions to states for the purpose of making grants to individuals and

families for specified serious needs and necessary expenses. Among these, medical and dental expenses, replacement of personal property, transportation and funeral expenses bear virtually no relationship to the goals of the Executive Order. Therefore, as to these items, the Administrator has determined that full review procedures are not required. Grants may also be used to repair, replace or rebuild primary residences. Because the maximum Federal contributions to any family or individual under this program is $3,750, FDAA's ability to achieve floodplain management goals is limited. The Federal contribution could pay for most or all of the cost of purchasing a mobile home for permanent housing. For this action, the full decision-making process is applicable. However, if the family decides to buy a new permanent structure other than a mobile home, or if the family decides to replace its previous home, the Administrator assumes that the Federal contribution under the individual and family grant program will be a small part of the total cost of the new residence. If another Federal agency has made available additional funds to assist the family in buying a new residence, that Federal agency should assume the primary role in carrying out Executive Order 11988. If the family has determined that it will make minor repairs to its existing structure, then there is no practicable alternative but for the family to carry out that activity where its house is located, even if that is in the floodplain. Therefore, the Administrator has determined that only in the case of the purchase of a mobile home will the eight-step decision-making process be applied to individual and family grants.

Fourth, Sec. 419 authorizes in-lieu contributions when the total project application by a state or local government is less than $25,000. In enacting this section, Congress intended to simplify the procedures for a majority of applicants. Given the small amount of money in question (typically, one project application under Sec. 419 will be comprised of three or more separate projects which cumulatively amount to less than $25,000), and the legislative preference for flexibility, limited paperwork, and local control of their own projects, the Administrator has determined that the full decision-making process in inapplicable to the project applications under Sec. 419. An exception to this determination is when the Federal funds are used for the construction of new facilities or structures within the floodplain. When this happens, the Administrator assumes that there may be some practicable alternative sites or actions which would better serve the goal of sound floodplain management.

Fifth, FDAA can replace building contents, materials and equipment in conjunction with the repair or restoration of disaster-damaged public facilities. The Administrator assumes that there will be no practicable alternatives to replacing building contents in the repaired or replaced structure. Nevertheless, as with all other items in this subdivision, FDAA will have to take action to minimize the potential flooding risk to these contents and the floodplain.

Finally, Sec. 402 authorizes FDAA to make contributions to repair, replace, reconstruct or rebuild public facilities belonging to state or local governments and certain private, non-profit facilities. The Administrator has determined that the full eight-step decision-making process is not a requirement where public facilities are being repaired except where one of the following conditions is met: (1) the cost of repairs is more than 50 percent of the reconstruction costs of the entire facility and the cost of repairs is more than $25,000; or (2) the facility is located in the floodway or coastal high hazard area; or (3) the facility has been damaged by a prior flooding major disaster. The Administrator assumes that where a building or other facility is less than 50% damaged, it would be unreasonable to require the applicant to abandon the remaining undamaged portions of the facility in order to totally relocate the facility outside the floodplain. In most cases, the difference between the cost of relocating the facility outside the floodplain and the cost of repairing the facility in place will be substantial and will be borne by the applicant. FDAA by Sec. 402(e) of its Act may contribute up to 100% of the net cost of repairing, restoring or reconstructing or replacing any such facility on the basis of the design of such facility as it existed immediately prior to the disaster and in conformity with current applicable codes, specifications and standards.

In those rare cases where a facility is repairable even though it is more than 50% damaged, the alternative limitation in this subsection comes into effect. If the Federal contribution is less than $25,000 the eight-step decision-making process is unnecessary. This limitation is consistent with the fifth inapplicable category, the small project grants. Furthermore, very little construction can be done for $25,000 which would have an impact on the floodplain. This is especially true for locations outside the floodway and for the repair of facilities which have not been damaged by previous flood disaster. Work performed under Sec. 402 may be to repair public utilities, roads, bridges and water control facilities. Such facilities, when damaged, are typically parts of much larger facilities. Further, these facilities are often functionally dependent on the floodplain. Therefore, there are rarely alternatives to doing the repair work on these facilities in the floodplain. Section 402 funds may also be contributed to States and local governments for the purpose of repairing public or private non-profit buildings. Again, even in the context of repairing disaster-damaged buildings, so little can be done with $25,000 that such disaster damage will not present an opportunity to carry out the floodplain management goals of the Executive Order.

The third category of actions, Applicable Actions, includes all of the remaining actions performed under Pub. L. 93-288 unless otherwise determined to be exempt or inapplicable in accordance with this subpart of the regulations. These actions will require implementation of the procedures as set forth in § 2205.506 of this subpart.

The application of the Executive Order to disaster temporary housing (Sec. 404) is particularly noteworthy. The Administrator has established a list of resources in order of priority. The order of the resources reflects, in addition to floodplain management goals, program considerations such as the relative costs of alternatives, the speed of achieving the goal of temporarily housing all eligible disaster victims and various social considerations. Therefore, the ranking of temporary housing resources reflects in gross, the Administrator's determination as to the practicability of various housing alternatives. For any given resource, it is always preferable to use housing units outside the floodplain. It is important to note that existing resources are available only if they have been undamaged by the disaster. Largely to avoid dislocation of disaster victims, using resources created by making minimal repairs to existing owner-occupied homes is preferable to the use of mobile homes; use of mobile homes is also more expensive. In the placement of mobile homes the use of private sites and commercial sites are preferable to the development of group sites. Use of private sites and in particular, sites owned by the temporary housing applicants, is advantageous because they minimize the dislocation of the family, the disruption of normal

community life and the cost to the Federal Government. Commercial sites also minimize the Federal expenditure.

Therefore, group sites, even those outside the floodplain, are the least preferable sites. As to placement of mobile homes on private or commercial sites within the floodplain, the Administrator has determined that it is preferable to avoid upgrading of commercial sites in the floodplain because that would encourage continued long-term occupancy of the floodplain.

The Administrator has also made some determinations with respect to minimization. While minimization means to reduce the potential risk to the least possible extent, only practicable means need be employed. In carrying out a temporary housing program, the overriding concern is to place disaster victims in suitable housing until they can reoccupy permanent housing. Therefore, where significantly more time would be required to perform flood hazard minimization measure as to certain types of resources (i.e., existing (undamaged) resources) and minimally repaired homes need not be performed. As to mobile homes, the Administrator has determined that his designee for temporary housing must take appropriate minimization measures.

These determinations should be viewed in light of the nature of temporary housing. The program is designed to provide temporary shelter and thereby meet an emergency need while permanent accommodations are secured. Therefore, even if a victim is place in a housing unit in the floodplain, where no better alternatives are available, that placement is still temporary. One exception to this principle is the minimal repair program. However, mini-repair is feasible only where the dwelling has sustained relatively minor damage and can be quickly repaired to habitable conditions pending permanent repairs. The owners would undoubtedly reoccupy their residence regardless of mini-repair assistance. The other exception is where a family (or individual) is place in a mobile home which is eventually sold to them. While the Administrator has determined that there may be situations where the designee may find that minimization measures are unworkable, the rule is that the appropriate minimization measure shall be taken with regard to mobile homes which are place as temporary housing. Also, before that unit is sold, the appropriate Federal official must complete the full eight-step process.

Interested parties and government agencies are encouraged to submit written comments, suggestions, data or arguments regarding this rulemaking to the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. All submissions received on or before August 13, 1979, will be evaluated. All comments shall be available for inspection at the Office of the Rules Docket Clerk. FDAA will evaluate all such comments and experiences to date and will then prepare a Final Rule in consultation with the Federal Insurance Administration (FIA), the Water Resources Council (WRC), and the Council on Environmental Quality (CEQ). This Final Rule will then be issued after HUD departmental review and clearance.

A Finding of Inapplicability of Section 102(2)(c) of the National Environmental Policy Act of 1969 has been made in accordance with HUD Handbook 1390.1 (38 FR 19182). It is the position of the signatories to the finding that this regulation in itself has no significant impact on the human environment beyond those impacts of Executive Orders 11988 and 11990.

Interested parties may inspect and obtain copies of this Finding of Inapplicability at the Office of the Rules Docket Clerk of the Department of Housing and Urban Development in Washington, DC 20410.

In compliance with Executive Orders 11988 and 11990, Title 24, Part 2205 is amended by the addition of the following Subpart N.

Subpart N—Floodplain Management

Sec.
2205.500 General.
2205.501 Policies.
2205.502 Definitions.
2205.503 Exempt actions.
2205.504 Inapplicable actions.
2205.505 Actions requiring decision-making process.
2205.506 Decision making process.

Authority: Sec. 601, Pub. L. 93–288, 88 Stat. 163 (42 U.S.C. 5201); Executive Order 11795 as amended by Executive Order 11919; Delegation of Authority, 39 FR 28227; Executive Order 11988, 42 FR 26951, and Executive Order 11990, 42 FR 26961.

Subpart N—Floodplain Management

§ 2205.500 General.

(a) *Purpose.* The purpose of this subpart is to prescribe the policies and procedures for implementing Executive Orders 11988 and 11990 as they apply to Pub. L. 93–288 as amended. Any conflicting provisions elsewhere in prior subparts of 24 CFR Part 2205 are suspended by this subpart.

(b) *Objective.* The objective of this subpart of the regulations is to integrate the objectives and requirements of these two Executive Orders into the policies, and procedures of the Federal Disaster Assistance Administration (FDAA) in its programs of disaster preparedness and disaster assistance under Pub. L. 93–288, as amended. The objective of Executive Order 11988 is to avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative. The objective of Executive Order 11990 is to avoid to the extent possible the long- and short-term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative.

(c) *Scope.* This subpart covers policies, procedures, standards and criteria for applying Executive Orders 11988 and 11990 to programs administered by FDAA under the Act. Refer also to §§ 2205.503, 2205.504, and 2205.505 of this subpart. These regulations are intended for the use of Federal, State and local government officials who have specific responsibilities under the regulations and others involved with disaster relief.

(d) *Responsibilities.* Under these executive orders the following have responsibilities which are described briefly below and may be discussed in more detail elsewhere in this report.

(1) Administrator—The Administrator, FDAA, is responsible for assuring that all Federal assistance given under Pub. L. 93–288, as amended, and 24 CFR 2205 meets the requirements of these Executive orders.

(2) Regional Director—Pursuant to these regulations and the orders the Regional Director shall make determinations of applicability of these orders and shall apply them to specific actions undertaken by eligible applicants receiving Federal assistance under Pub. L. 93–288 as amended. The Regional Director is responsible for accomplishment of applicable portions of the decision-making process as specified in Section 2205.506 of these regulations. When necessary the Regional Director shall instruct the State in carrying out the requirements of these orders.

(i) In this subpart, for actions dealing with Temporary Housing Assistance

(Sec. 404) reference to the Regional Director shall mean the Administrator's designee.

(3) State—The Governor's Authorized Representative (GAR) shall assist applicants carrying out their responsibilities in complying with these regulations. When the State or State agency is an applicant, the State or agency shall carry out the responsibilities of an applicant.

(4) Applicant—In order to receive Federal assistance under Pub. L. 93–288, as amended, State or local governments and eligible private non-profit organizations must agree to assist the Regional Director in evaluating applicable actions in accordance with these regulations and particularly this subpart. However, the final responsibility for compliance with the two Executive orders and this subpart remains with the Regional Director in decision-making on any proposed action.

§ 2205.501 Policies.

(a) FDAA will provide leadership and shall take action to reduce the risk of flood loss, to restore and preserve natural and beneficial values served by wetlands and floodplains; to minimize the impact of floods on human health, safety and welfare; to restore and preserve natural and beneficial values served by floodplains; and to develop an integrated process to involve the public in the decision-making process for floodplain management in providing Federal grant or loan assistance under Pub. L. 93–288, as amended, except for emergency work under Sections 305 and 306 of the Act.

(b) FDAA shall identify flood hazards and evaluate the potential effects of any actions it may take in wetlands or inside or outside a floodplain to achieve the goals and objectives set forth by the two Executive orders, except exempt actions.

(c) FDAA shall avoid direct or indirect support of floodplain development wherever there is a practicable alternative. For actions within or affecting the floodplain FDAA shall ensure that actions are designed to minimize potential harm to or within the floodplain.

(d) FDAA will support sound floodplain management as applied to broad agency program reviews, as well as to individual project actions, from their initial planning and scoping stages through post-implementation monitoring and evaluation.

(e) FDAA will monitor its actions to assure that they are carried out in accordance with Executive orders 11988/11990 and these regulations.

(f) FDAA will conduct an on-going analysis of consistency of its policies and programs with Executive orders 11988/11990 and these regulations.

(g) FDAA will comply fully with the requirements of the two Executive orders to give early public notice and full publicity to appropriate steps in the decision-making process set forth in this subpart.

(h) FDAA will assure that its preparedness programs and budget requests reflect consideration of flood hazards, protection of the wetlands, and floodplain management in accordance with applicable standards and the WRC guidelines.

(i) FDAA will coordinate its implementation of these two Executive orders under this subpart with the implementation of the National Environmental Policy Act and of Section 406, Pub. L. 93–288, as amended, to achieve the requirement of all these programs in the decision-making process with minimum duplication or conflict.

(j) In its contacts with other local, State and Federal agencies, FDAA will provide leadership in achieving the objectives of these two Executive orders by setting appropriate examples consistent with sound floodplain management in its actions within the base floodplain or wetlands; for all critical actions located within the 500-year floodplain which may have direct or indirect impact upon the base floodplain, or directly or indirectly support development of the floodplain. However, FDAA will not employ unworkable means to meet these objectives and FDAA procedures will not be inconsistent with the Flood Insurance Program of the Federal Insurance Administration (FIA) or "A Unified National Program for Floodplain Management" issued by the Water Resources Council.

§ 2205.502 Definitions.

As used in this subpart, the following basic definitions shall apply:

(a) *Action* means any Federal activity including: "* * * (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed or assisted construction and improvement; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities." For assistance to State or local governments or to eligible private non-profit organizations, an action shall normally include the work covered by one Damage Survey Report.

(b) *Agency* means an executive department, a government corporation, or an independent establishment. (An independent establishment is part of the executive branch which is not an executive department, military department, government corporation, or part thereof.)

(c) *Base flood* means that flood which has a one percent chance of being equalled or exceded in any given year (also known as a 100-year flood). This term is used in the National Flood Insurance Program (NFIP) to indicate the minimum level of flooding to be used by a community in its floodplain management regulations.

(d) *Base floodplain* means an area subject to flooding by the base flood (also see definition of floodplain).

(e) *Channel* means a natural or artificial watercourse of perceptible extent, with a definite bed and banks to confine and conduct continuously or periodically flowing water.

(f) *Critical action* means any activity for which even a slight chance of flooding would be too great.

(g) *Coastal high hazard area* means the area subject to high velocity waters, including but not limited to hurricane wave wash or tsunamis.

(h) *Damage Survey Report* (DSR) means a report of damages caused by a major disaster or emergency and a description and estimate of repair work. Aproved DSR's form the basis for a project application.

(i) *Facility* means any man-made or man-placed item other than a structure.

(j) *Flood or flooding* means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland and/or tidal waters, and/or the unusual and rapid accumulation or runoff of surface waters from any source.

(k) *Floodplain* means the lowland and relatively flat areas adjoining inland and coastal waters, including floodprone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year. The base floodplain shall be used to designate the 100-year floodplain (one percent chance floodplain). The critical action floodplain is defined as the 500-year floodplain (0.2 percent chance floodplain).

(l) *Floodproofing* means the modification of individual structures and facilities, their sites, and their contents to protect against failure, to keep water out or to reduce effects of water entry.

(m) *Floodway* means that portion of the floodplain which is effective in carrying flow and within which this carrying capacity must be preserved. It is that area where the flood hazard is generally highest; i.e., where water depths are velocities are the greatest.

(n) *Flood fringe* means that portion of the floodplain outside of the floodway (often referred to as "flooway fringe").

(o) *Flood Hazard Boundary Map* (FHBM) means an official map of a community, issued by the Federal Insurance Administrator, where the boundaries of the flood, mudslide (i.e., mudflow) and related erosion areas having special hazards have been designated as Zone A, M, or E.

(p) *Flood Insurance Rate Map* (FIRM) means an official map of a community on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

(q) *Flood Insurance Study* (FIS) means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

(r) *Impacts (long-term)* means changes occurring during or after an action which may take the form of delayed changes or changes resulting from the cumulative effects of many individual actions.

(s) *Impacts (short-term)* means temporary changes occurring during or immediately following an action and usually persist for a short while.

(t) *Minimize* means to reduce to the smallest possible amount or degree.

(u) *New construction in wetlands* includes draining, dredging, channelizing, filling, diking, impounding, and related activities and any structures begun or authorized after October 1, 1977.

(v) *One percent chance flood* means the flood having one chance in 100 of being equalled or exceeded in any one-year period (a large flood). The likelihood of exceeding this magnitude increases in a time period longer than one year. For example, there are two chances in three of a larger flood exceeding the one percent chance flood in a 100-year period.

(w) *Practicable* means capable of being done within existing constraints. The test of what is practicable depends upon the situation and includes consideration of the pertinent factors, such as environment, cost or technology.

(x) *Preserve* means to prevent modification to the natural floodplain environment or to maintain it as closely as possible to its natural state.

(y) *Project Application* means an application by an eligible applicant for Federal funding of work approved under the Act.

(z) *Restore* means to reestablish a setting or environment in which the natural functions of the floodplain can again operate.

(aa) *Structure* means walled or roofed buildings, including mobile homes and gas or liquid storage tanks that are primarily above ground (as set by the NFIP).

(bb) *Wetands* means "those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds" (as defined in Executive Order 11990).

§ 2205.503 Exempt actions.

(a) *General.* Section 8 of Executive Order 11988 and Section 9 of Executive Order 11990 specifically exempt from the provisions of these orders emergency work essential to save lives and protect property and public health and safety performed pursuant to Sections 305 and 306 of the Act. Such exempt actions include the following examples:

(1) Category A emergency debris clearance provided under Section 305 or 306 of the Act to save lives and protect property and public health and safety.

(2) Category B emergency protective measures under Section 305 or 306 of the Act to save lives, or to protect public health and safety, or to protect property.

(3) Restorative work under Section 305 or 306 of the Act consisting of emergency repairs to essential public facilities as necessary to provide for their continued operation in accordance with § 2205.31 of these regulations.

(b) Such exempt emergency actions do not require consideration of alternative actions, agency or public review, or any other procedures set forth in this subpart. However, to the extent practicable, considering the urgency of the situation, such emergency work shall be consistent with the spirit or intent of these two Executive Orders.

§ 2205.504 Inapplicable actions.

(a) The Administrator has determined that certain types of actions taken pursuant to Pub. L. 93-288, as amended, typically do not create adverse effects or incompatible development of floodplains or wetlands. The basis for this determination included analysis of: (1) potential long- or short-term adverse impacts associated with occupany or modification of floodplains, (2) potential direct or indirect support of floodplain development, (3) potential harm to lives and property or to natural and beneficial floodplain values, (4) potential cumulative impacts of multiple actions over time. It has further been determined that the procedures set forth in this subpart are not applicable to such actions, except that the Regional Director shall require compliance with the spirit of these two Executive Orders to the extent practicable considering the urgency of each situations. The following types of actions have been determined to be in this category:

(1) Preparedness (Title II) except for actions involved with floodplain management.

(2) Emergency Support Teams (Sec. 304).

(3) Availability of Materials (Sec. 318), except that for non-emergency uses, flood resistant materials shall be used where practicable.

(4) Mortgage and rental payment assistance (Sec. 404(b)).

(5) Unemployment Assistance (Sec. 407).

(6) Community Disaster Loans (Sec. 414), except to the extent that the proceeds of the loan will be used for repair of facilities or structures or for construction of additional facilities or structures.

(7) Emergency Communications (Sec. 415).

(8) Emergency Public Transportation (Sec. 416).

(9) Fire Suppression Assistance (Sec. 417).

(10) Actions located outside the base floodplain and critical actions located outside the 500-year floodplain which do not directly or indirectly support development and which do not impact on the base floodplain.

(b) The Administrator has also determined that certain other actions generally have no practicable alternative actions or sites. The basis for this determination included consideration of factors such as environment, cost and technology. Actions in this category are listed below. It has been further determined that, with certain exceptions, the procedures set forth in this subpart are

not applicable to such actions except that appropriate measures shall be taken to minimize potential harm to or within the floodplain and to restore and preserve beneficial floodplain values. The Regional Director may also require certain other portions of the decision-making process to be carried out for individual actions as he deems necessary.

(1) Grants for removing damaged timber from privately owned lands (Sec. 418(d)), when performed on an emergency basis.

(2) Debris removal (Sec. 413) except those grants involving non-emergency disposal of debris within the base floodplain or non-emergency removal of debris from the floodway.

(3) Individual and Family Grant programs (Sec. 408), except for the purchase of mobile homes to be placed in the base floodplain and for private structures providing access to homes.

(4) Small project grants (Sec. 419), after the Regional Director has applied steps 1, 2, 4 and 5 of the decision-making process of this subpart, except to the extent that Federal funding involved is used for construction of new facilities or structures within the base floodplain.

(5) Replacement of building contents, materials and equipment.

(6) Repairs under Section 402 of the Act to damaged facilities or structures after the Regional Director has applied steps 1, 2, 4, and 5 of the decision-making process of this subpart, except any such action for which one or more of the following are applicable:

(i) Cost of repairs is more than 50 percent of the reconstruction cost of the entire facility or structure and is more than $25,000, (or)

(ii) The action is located in a floodway or coastal high hazard area, (or)

(iii) The facility or structure has been subject to prior damage by a flooding major disaster.

(c) For those actions described in paragraphs (a) and (b) of this section, the publication of these regulations constitutes compliance with the requirements contained in § 2205.506 of these regulations, except as noted under paragraph (b) of this section.

(d) *Finding of inapplicability.* The Administrator may apply the decision-making process prescribed in § 2205.506 to other categories of action. Based upon the completion of this 8-step decision-making process, the Administrator may find that additional types of actions are also inapplicable as discussed in this section. Criteria stated in paragraph (a) of this section are applicable to each of these findings of inapplicability. No such finding of inapplicability may be made unless the criteria stated in paragraph (a) or (b) of this section are satisfied.

§ 2205.505 Actions requiring decision-making process.

This section includes actions which will require review and application of the decision-making process as set forth in this subpart, unless otherwise exempt or inapplicable in accordance with §§ 2205.503 or 2205.504 of these regulations. Such actions include but are not limited to:

(a) Preparedness (Title II) where the Federal funding is used for floodplain management plans or programs.

(b) Non-emergency actions under Section 418, and under Section 318 involving materials in floodprone areas that are not flood resistant.

(c) Community disaster loans (Sec. 414). Loans to the extent that construction of additional public facilities or structures is involved.

(d) Actions outside the base floodplain and critical actions outside the 500-year floodplain, when such actions have potential to impact the floodplain adversely or support floodplain development.

(e) Non-emergency debris removal from a floodway or non-emergency disposal of debris within the base floodplain.

(f) Temporary housing assistance (Sec. 404). (1) The following listing of temporary housing alternatives has been determined by the Administrator to be generally reflective of practicability concepts. This determination is based on floodplain management criteria and on the determinations of practicality included as regulatory guidance at § 2205.45 (d)(2), (e), (f). The Administrator's designee shall select temporary housing alternatives for each applicant from this list. However, despite this listing, practicable alternatives outside the base floodplain must be chosen in preference to practicable alternatives within the base floodplain.

(i) Existing resources outside the base floodplain.

(ii) Minimal repair of owner-occupied residences outside the base floodplain.

(iii) Existing resources within the base floodplain.

(iv) Minimal repair of owner-occupied residences within the base floodplain.

(v) Placement of a mobile home or readily fabricated dwelling on a private or commercial site outside the base floodplain.

(vi) Placement of a mobile home or readily fabricated dwelling on a private site within the base floodplain.

(vii) Placement of a mobile home or readily fabricated dwelling on a commercial site within the base floodplain.

(viii) Placement of a mobile home or readily fabricated dwelling on a group site outside the base floodplain.

(ix) Placement of a mobile home or readily fabricated dwelling on a group site within the base floodplain.

(x) Any action involving housing in a mapped floodway or coastal high hazard area.

(2) The Administrator has determined that minimization measures are impracticable (considering cost effectiveness and timeliness of assistance) in the case of existing resources and minimal repairs. The appropriate minimization measures shall be taken in the case of mobile homes, especially those placed in a mapped floodway or coastal high hazard area.

(3) The sale of mobile homes or other readily fabricated dwellings, and the donation of temporary housing units to States, other governmental entities, or voluntary organizations, shall require full implementation of the decision-making process described in this subpart.

(g) *Individual and Family Grant programs (Sec. 408).* Actions which involve purchase of a mobile home or building of bridges to provide access to private residences shall require implementation of the procedures of this subpart. Should the Governor or his/her designee determine an applicant eligible for either or the above items, he/she shall request the Regional Director to make a determination with respect to this subpart. If the action is approved, the appropriate minimization measures shall be taken by applicants and grant funds may be approved for this purpose.

(h) Small project grants (Sec. 419) where the Federal funding involved is used for construction of new facilities or of new structures within the base floodplain that are not otherwise exempt or inapplicable.

(i) *Repair and restoration of public facilities (Sec. 402).* (1) Categorical grants (Sec. 402 (a), (b), or (c)).

(i) Repairs to facilities or structures.

(ii) Replacement of destroyed facilities or structures.

(iii) A grant-in-lieu.

(2) Flexible funding (Sec. 402(f)).

(i) Repairs to facilities or structures.

(ii) Replacement of destroyed facilities or structures.

(iii) New facilities or structures which the State or local government determines to be necessary to meet its

needs for governmental services and functions in the disaster-affected area.

§ 2205.506 Decision making process.

(a) *General.* The Regional Director and individuals responsible to him for executing this decision-making process must be thoroughly familiar with the two Executive Orders, the USWRC Guidelines, and with this subpart. Questions requiring clarification of any aspect of this subpart should be referred to the Administrator for his review and determination. The Regional Director is responsible to the Administrator for appropriate execution of this decision-making process in each case, involving any non-exempt applicable action funded by FDAA grant or loan in the wetlands or in a flood-plain (see Appendix A for flow chart of this 8-step process).

(b) *Step 1.* Determine if a Proposed Action is in the Base Floodplain.

(1) Exempt or Inapplicable Actions. First it is necessary to verify whether the proposed action is exempt (§ 2205.503) or inapplicable (§ 2205.504). If so, the 8-step decisionmaking process need not be applied except as provided in the above sections, and Federal funding under the Act may be approved.

(2) Applicable Actions.

(i) Procedures for determining a floodplain location. (A) Areas of predominantly private land ownership: detailed maps showing the elevations and boundaries of the "100-year" (Zones A and V) and "500-year" (Zone B) floodplains are known as "Flood Insurance Rate Maps" (FIRM). Many of the communities which have a FIRM also have a Flood Insurance Study Report (FIS) containing detailed flood information. Some less detailed maps showing the approximate areas of the base (Zone A) floodplain are available for most of the remaining communities for which a FIRM is not available. These are called "Flood Hazard Boundary Maps" (FHBM). Similar information, some very detailed, is also available from the agencies described in Appendix A. The search for flood hazard information should follow the sequence below.

- The detailed map (FIRM) or the Flood Insurance Study (FIS) report shall be consulted first.
- If a detailed map (FIRM) is not available, obtain an approximate boundary map (FHBM). If the proposed site is at or near the "100-year" boundary, if data on flood elevations are needed, or if the map does not delineate the flood hazard boundaries in the vicinity of the proposed site, seek detailed information and assistance from the agencies listed in Appendix B.
- If an approximate boundary map (FHBM) is not available or if the map does not delineate the flood hazard boundaries in the vicinity of the proposed site, seek detailed information and assistance from the agencies listed in Appendix B.
- If the agencies listed do not have or know of detailed information and are unable to assist in determining whether or not the proposed site is in the base floodplain, seek the services of a licensed engineer experienced in this type of work to obtain data needed to identify the floodplain.

(B) Areas of predominantly Federal and State land holdings: If a decision involves an area or location within extensive Federal or State holdings and FIS reports and FIRM or FHBM maps are not available, information shall be sought from the land administering agency before information and/or assistance is sought from the agencies listed in Appendix B. If none of these agencies has information or can provide assistance, the services of an experienced consulting engineer shall be sought as described above.

(ii) Procedures if site is out of the base floodplain. Actions located out of the base floodplain as shown on either the FIRM or FHBM would meet the minimum requirements and no further action is required unless the action impacts the base floodplain, indirectly supports floodplain development, or is a critical action.

(3) Critical Action. As indicated previously, the minimum floodplain of concern for certain critical actions is the area subject to inundation from a flood having a 0.2 percent chance of occurring in any given year (500-year floodplain). This floodplain includes both Zones A and B as shown on FIRMs and the location of each critical action will be verified as discussed under § 2205.506(b)(2). Some key concerns in identifying critical actions are:

- Whether the proposed action, if flooded, would create an added dimension to the disaster as could be the case for liquified natural gas terminals and facilities producing and storing highly volatile, toxic, or water-reactive materials.
- Given the flood warning lead-time available, whether the occupants of buildings such as hospitals, schools, and nursing homes would be insufficiently modile to avoid loss of life and injury.
- Whether essential and irreplaceable records, utilities, and/or emergency services would be lost or become inoperative if flooded. Potential critical actions include, but are not limited to, those types of facilities or structures already mentioned in this section.

(4) Other Actions Outside the Base Floodplain. The location will be verified in Step 1 as discussed in § 2205.506(b)(2) for each proposed action outside the base floodplain which impacts the base floodplain or indirectly supports floodplain development.

(c) *Step 2—Early Public Review.* (1) General. The objective of public involvement is to provide sufficient information early enough in the process of making decisions affecting floodplains so that the public can have impact on the decision outcome. The order includes requirements that the public be provided adequate information on plans or proposals for actions in floodplains, an accounting for the rationale for proposed actions affecting floodplains and opportunity for review and comment. This requirement for public involvement can be met in a cumulative manner, when appropriate. Several actions may be addressed in one notice or series of notices. For some actions involving limited public interest a single notice in a local newspaper or letter to interested parties will suffice.

(2) Procedures. The Regional Director may require the State, or applicant through the State, to assist him in developing and executing a plan and a procedure for giving public notice of a proposed action. Such plan and procedure shall in each case contain the following elements:

- A description of the overall audience, including specific segments to whom public notice information will be targeted (e.g., floodplain residents, elected officials, basin residents, interest groups, other agencies, etc.). The responsibility is to reach as broad an audience as possible.
- A description of the vehicles or public information mechanisms which will be utilized to reach the target audience (e.g., public hearings, newsletters, workshops, advisory groups, etc.). The responsibility is to provide continuous interaction and involvement opportunities for the public during the floodplain decision-making process.
- A description of the purpose for which various public notice actions will be undertaken and assurance that public input will be integrated into the decision-making process (e.g., specific efforts to provide one-way information dissemination, two-way public communication or interaction, etc.). The responsibility is to provide information which promotes the fullest understanding of the proposed plan or action.
- A statement explaining the timing of public notice actions to promote public understanding and provide opportunities for the public to affect a proposed action or plan before alternative actions have been precluded.

The Regional Director of his designee shall insure that this plan and procedure is compatible with Section (2)(b) of Executive Order 11514 and that they apply to actions which do not require preparation of an Environmental Impact Statement (EIS) under Section 102(2)(C) of NEPA.

If there is a reasonable likelihood that a proposed action or a practicable alternative outside the base floodplain will impact the base floodplain, this shall be announced as early as possible without any delay to obtain more detailed information being developed. Public notice must precede major site identification and analysis so the public can have an input early in the decision-making process of preliminary site screening and selection. If not, options for public choice may be foreclosed, or decisions will not be based on similarly detailed information bases.

Early public notice is the first in a series of public information and involvement activities. This would logically be followed by continuing public communication at Step 4, in identifying impacts, Step 6, reevaluating alternatives through the environmental review process, and at Step 7, in the issuance of findings and explanation of why the proposed plan or action must impact the floodplain.

(d) *Step 3—Identify and Evaluate Practicable Alternatives to Locating in the Base Floodplain.* (1) Having determined that a proposed action is located in the base floodplain, the Regional Director is required by the Order to identify and evaluate practicable alternatives to locating in the base floodplain. Alternatives to be evaluated include: (i) carrying out the proposed action at a location outside the base floodplain (alternative sites); (ii) other means which accomplish the same purpose as the proposed action (alternative actions); and (iii) no action.

(2) In determining how this identification of alternatives is to be carried out, the Regional Director may categorize certain types of actions and shall perform the steps as prescribed in the following paragraphs.

(i) Actions which must be located in the floodway. Some facilities or structures may have functionally dependent uses and must be located in the floodplain in order to function. An example of such a facility would be a dam or floodwall. This type of action may be assumed to have no practicable alternative to locating in the floodplain. The Regional Director shall document the reasons why the floodplain location is required. Certain other facilities or structures must be located in the floodway in order to function, such as water intakes and stream gauging stations. For these actions no alternatives need be identified and the review may proceed to Step 4—Identification of Impacts and Step 5—Minimize, Restore and Preserve. In some instances where the magnitude and severity of damages within the base floodplain virtually eliminate all non-conforming facilities or structures, the proposed action, or actions, create a situation that is particularly conducive to sound floodplain management as well as minimization of harm to and within the floodplain. Recognition of this situation is a key factor to be considered by the Regional Director in the practicability determinations required by this decision-making process. This type of situation also may increase the practicability of sites outside the base floodplain.

(ii) Actions with alternative locations outside the base floodplain (or outside the 500-year floodplain for critical actions). The Regional Director will consult with the State and the applicant through the State to identify acceptable alternative locations for the proposed action. Separate reports will be prepared for each such alternative location. If a practicable location outside the floodplain (base or 500-year as applicable) is found based on FDAA review of these reports it must be used, and further consideration of alternative locations is not necessary. At this point, the Regional Director shall determine that the proposed action within the floodplain may not be Federally funded. If the applicant decides to proceed with the practicable alternative action outside the floodplain, the Regional Director may then complete the decision-making process and approve elegible Federal funding. If the applicant declines to proceed with the practicable alternative outside the base floodplain, as determined by the Regional Director, the latter may not approve Federal funding. However, the applicant may propose other actions, perhaps based on flexible funding or a grant-in-lieu. It may then be necessary to repeat the 8-step decision-making process for the new proposed action.

(iii) Actions with alternative locations within the base floodplain, or within the 500-year floodplain for critical actions involving facilities or structures that may not be adequately floodproofed. If no practicable location outside the floodplain is found, then locations within the floodplain which might have less potential for harm or impact on the floodplain should be considered. A report will be made out for each alternative location. Each report will also include a cost breakdown of applying minimization standards as described in Step 5 of this decision-making process (2205.506(f)).

(iv) Alternative actions at the same location. I no practicable alternative locations to the original location exist, then the Regional Director will consult with the applicant to determine if there are alternative methods, including floodproofing, for accomplishing the same purpose or function as that proposed which will have less potential for harm or impact on the floodplain. The alternative method will be evaluated as described above for alternative locations within the floodplain.

(v) No action—The alternative of not completing the action at all must be considered if no practicable alternative outside the floodplain or practicable alternate action is found.

(e) *Step 4—Identify Impacts of Proposed Action.* (1) General. After identifying a practicable alternative, the impacts of this action must be identified within two areas; potential harm to lives and property and impact upon the natural and beneficial floodplain values. Since the Order is based primarily on NEPA, the Regional Director can draw upon the impact identification and assessment procedures which have been developed in the implementation of NEPA. This review shall consider whether the proposed action will result in an increase in the useful life of any structure or facility in question, or maintain the investment at the same risk and exposure of lives to the flood hazard, or forego an opportunity to restore the natural and beneficial values served by the floodplain.

(2) Step 4.A. General Concepts. In his review of a proposed or alternative action that is not exempt or inapplicable, the Regional Director shall specifically consider and evaluate: (i) impacts associated with modification of wetlands or floodplains regardless of its location; (ii) additional impacts which may occur when certain types of actions may support subsequent actions which have additional impacts of their own; (iii) adverse impacts of the proposed actions on lives and property and on natural and beneficial floodplain or wetland values; (iv) the three basic types of impacts discussed in the following paragraphs.

(A) Step 4.A.1. Direct and Indirect Support of Floodplain or Wetland Development. An action supports floodplain development if it encourages, allows, serves, or otherwise facilitates additional floodplain development. The Regional Director shall consider whether or not proposed repair or restorative work has the effect of maintaining the status quo that existed prior to a major disaster in evaluating its impacts. These impacts may reinforce land use patterns which have developed without regard to hazard minimization or preservation of floodplain values and thus may be undesirable. Direct support results from actions located in wetlands or on the floodplain, while indirect

support results from those outside. All such impacts shall be evaluated.

(B) Step 4.A.2. Types of Impacts. Public notice will invite comments to identify these impacts. The Regional Director's analysis of impacts shall also consider other sources in making his analysis of impact. The three basic types of impacts which must be addressed are:

(*1*) Positive and negative impacts: both shall be identified, even though the focus of impact identification and assessment is on negative or adverse impacts. This is necessary in order to identify the full range of impacts against which to weigh the practicability of a proposed action. In addition, it must be recognized that impacts which are beneficial to some, may be harmful to others.

(*2*) Concentrated and dispersed impacts: both may result from any action. The impact is concentrated if it occurs at or near the site of the action and is dispersed if it occurs at a site remote from the action.

(*3*) Short- and long-term impacts: both must be analyzed in order to evaluate the total impact of an action. Short-term impacts are temporary changes occurring during or immediately following an action and usually persist for a short while. Long-term impacts occur during or after an action and may take the form of delayed changes or changes resulting from the cumulative effects of many individual actions. Long-term impacts may persist for a considerable time and may continue indefinitely.

(3) Step 4.B. Lives and Property. After determining that a proposed action is in the base floodplain, the risk to lives and property involved in using that site must be determined. This requires an understanding of the magnitude and consequences of flooding that can be expected.

(i) Step 4.B.2. High Hazard Areas. High hazard areas are those portions of riverine and coastal floodplains nearest the source of flooding. These are the frequently flooded areas that become arenas of major flood dynamics during large floods. Here flood waters exert their maximum pressures, erosion is greatly accelerated and loss potential is increased. Additionally, these are the areas of coastal and riverine floodplains within which many of the most critical floodplain values are concentrated. In riverine situations, the high hazard area is that portion of the floodplain where impedence to flood flow resulting from man's occupancy can increase flood heights and consequently the area subject to flooding. In coastal floodplains the high hazard area is usually confined to the beach area in front of high bluffs or the crest of primary or foredunes, where wave impact is the most significant inducing factor. In light of the high loss potential and the likelihood of significant adverse effects to floodplain values associated with the conduct, support or allowance of actions in these portions, the Regional Director must rigorously apply the Order's charge to avoid these areas.

(ii) Step 4.B.3. Evaluation of Flood Hazard. In reviewing the Damage Survey Report for a proposed action in the wetlands or in the floodplain, the Regional Director shall make a determination whether the 8-step decision-making process may be involved and shall record the determination on the Damage Survey Report. If the determination is affirmative, the hazard involved shall be clearly identified and the following considerations taken into account:

- Whether the proposed action is in a flood-fringe area such as the flood-fringe portion of a riverine floodplain or the backwater areas of a coastal floodplain.
- Whether the flood hazard is aggravated by the presence of, or potential for, destructive velocity flows, flood-related erosion, subsidence or sinkholes, or other special problems.
- Whether there is a combination of flood sources present which may flood simultaneously in the area (e.g., river and ocean, or shallow overland runoff and river, etc.).

(4) Step 4.C. Natural and Beneficial Floodplain Values. (i) Water and the adjacent floodplain exist in nature in a state of dynamic equilibrium. If one part of a coastal or riverine system is disturbed, the entire system usually readjusts toward a new equilibrium. Thus floodplain actions must be viewed with caution and a careful assessment made of their impact on natural and beneficial floodplain values.

(ii) Floodplains in their natural or relatively undisturbed state serve water resource values (natural moderation of floods, water quality maintenance, and groundwater recharge), living resource values (fish, wildlife, and plant resources), cultural resource values (open space, natural beauty, scientific study, outdoor education, and recreation), and cultivated resource values (agriculture, aquaculture, and foreatry). The review will consider whether the proposed action will forego an opportunity to restore the natural and beneficial values served by the floodplains. The Regional Director shall use appropriate measures to avoid this undesirable impact.

(f) *Step 5—Minimize, Restore, Preserve.* (1) General. The requirements of the Order to minimize, restore, and preserve apply if a proposed action will result in harm to or within the floodplain. The term "harm," as used in the context of the Order, applies to both lives and property (Step 4.B.), and natural and beneficial floodplain values (Step 4.C.). The concept of minimization (Step 5.A.), applies to harm. The concept of restoration and preservation (Step 5.B.) applies only to floodplain values. Step 5.C. discusses some mechanisms which may be applied to achieve these three requirements. The Regional Director shall start his/her analysis of these three requirements by applying these minimum standards: (i) no non-critical structure shall be built or improved significantly unless its lowest flood intended for human occupancy including basement is at or above the level of the 100-year frequency flood; (ii) there shall be no construction in a floodway or coastal high hazard area unless the use is functionally dependent on the floodplain site; (iii) the minor repair or improvement of a structure shall be accomplished with flood resistant materials. A Regional Director may withhold financial assistance to an applicant in those cases where these minimum standards are not met, or followup with the applicant to seek another practicable alternative action.

(2) Step 5.A. Minimize. Minimize is a demanding standard and requires that harm be reduced to the smallest possible degree. From the standpoint of lives and property, potential harm to or within the floodplain must be reduced to the smallest possible amount or degree. The goal is to avoid increasing the flood loss potential associated with the level of the base flood prior to the proposed action. Where a critical action is proposed (see Step 2.C.) the goal is associated with the 500-year level of flooding. The Order's requirement to minimize potential harm applies to (i) the investment at risk, i.e., the flood loss potential of the action itself, (ii) the impact the action may have on others, and (iii) the impact the action may have on floodplain values. In his/her review and findings the Regional Director shall specify how actions will be designed and modified to minimize harm to or within the floodplain. His/her review shall determine applicability of land use regulations and safe construction practices, including floodproofing or conversion of flood-exposed portions of a facility or structure to other uses less harmful to life or property or to the environment. He/she may consult with environmental or floodplain

management specialists from the State or other Federal agencies in deciding on appropriate design changes or other modifications to achieve minimization and still have a practicable proposed action or alternative.

(3) Step 5.B. Restore and Preserve. (i) In the context of this Order, "restore" focuses upon conditions existing as a result of prior actions, while "preserve" focuses upon the impacts of a proposed action. Restore means to reestablish a setting or environment in which the natural and beneficial floodplain values can again operate as well as or better than they did prior to the major disaster. Where floodplain values have been degraded by past actions, the Regional Director must identify, evaluate and implement appropriate measures to restore the values diminished or lost.

(ii) Preserve means to prevent modification to the natural floodplain environment as it existed prior to the major disaster, or to maintain it as closely as possible to its natural state. If an action will result in harm to or within the floodplain, the Regional Director must design or modify the action to assure that it will be carried out in an manner which preserves as much of the natural and beneficial floodplain values as is possible.

(4) Step 5.C. Methods to Minimize and Preserve. A wide range of methods have been developed over time to minimize harm to lives and property from flood hazards. For example, refer to page 36, Water Resources Council Guidelines, 43 FR 6048, **Federal Register** Volume 43, February 10, 1978. In the recent past, other methods directed toward minimizing harm to natural and beneficial environmental values, including those associated with the floodplain, have also been developed. The technology and methodologies for achieving restoration and preservation are not as well documented nor understood, but currently are receiving increasing attention. The tools and approaches, which are directed toward attaining these three goals of the Order, shall be considered and applied at all stages of a proposed action, as appropriate, e.g., during the planning, design, construction, operation and maintenance of a proposed project.

(g) *Step 6—Reevaluate Alternatives.* (1) General. (i) Having identified the impacts the proposed action would have on the floodplain (Step 4), methods to minimize these impacts, and opportunities to restore and preserve floodplain values (Step 5); the proposed action shall now be reevaluated. For proposed actions in the base floodplain, the reevaluation shall consider if the action is still practicable at the original site. If not, consider limiting the action to make non-floodplain sites practicable. If neither is acceptable, the alternative is no action. If the proposed action is outside the base floodplain but has impacts which cannot be minimized (Step 5), consider whether the action can be modified or relocated to eliminate or reduce the identified impacts, or if the no action alternative should be chosen.

(ii) When there is no practicable alternative outside the floodplain, the reevaluation shall also include a provision for comparison of the relative adverse impacts associated with the proposed action located in an out of the floodplain. The comparison shall emphasize floodplain values. However, a site out of the floodplain should not be chosen if the overall harm is significantly greater than that associated with the floodplain site.

(2) Step 6.A. Location in the Base Floodplain. In determining whether the proposed action will be located in the base floodplain, the Regional Director must ascertain that the floodplain site is the only practicable alternative. In carrying out his analysis, the Regional Director should keep in mind the just weight the Order accorded the following requirements and the importance of the location must outweigh them:

- Avoid direct or indirect support of floodplain development wherever there is a practicable alternative;
- Reduce the risk of flood loss;
- Minimize the impact of floods and human safety, health and welfare; and,
- Restore and preserve the natural and beneficial floodplain values.

(3) Step 6.B.1. Limit Action. If an action proposed to be located in the floodplain cannot satisfy the four requirements in Step 6.A., the Regional Director shall consider reducing the criteria for the proposed action in consultation with the Governor's Authorized Representative and the applicant. This would lower the threshold for what constitutes a practicable alternative. New alternative actions and sites could then be identified and previously rejected ones reevaluated for practicability based on scaled-down expectations. Public input would be solicited to help identify these new alternatives.

(4) Step 6.C. No Action. If neither of the above courses of action are feasible, the Regional Director shall reevaluate the no action alternative.

(h) *Step 7—Findings and Public Explanation.* (1) General. If reevaluation results in the determination that there is no practicable alternative to locating in or impacting upon the floodplain, a statement of findings and public explanation must be provided for the proposed action. The FDAA Public Statement of Findings and Explanation shall explain how any tradeoff analysis was conducted by the agency in making its findings. The Regional Director and the Governor's Authorized Representative should consult with the applicant to determine whether any other alternative than the proposed action within the floodplain should be considered. Possibilities of a grant-in-lieu or flexible funding as alternatives should be reviewed. If the applicant proposes an alternative outside the base floodplain, which the Governor's Authorized Representative and the Regional Director approve and determine practicable, public notice as in Step 2 can be given by the Regional Director of these findings together with a public explanation. The proposed practicable alternative outside the base floodplain can then be implemented. Some existing Regional public notice procedures may already satisfy part of the requirements of the Order (Section 2(a)(2)(ii)) through such mechanisms as OMB A–95 and NEPA procedures, or other public involvement programs. However, Regional procedures must incorporate the development and issuance of a written statement of findings and public explanation which includes:

(i) A description of why the proposed action must be located in the floodplain;

(ii) A description of all significant facts considered in making the determination including alternative sites and actions;

(iii) A statement indicating whether the actions conform to applicable State or local floodplain protection standards.

In addition, and in keeping with the concept of the overall public involvement process discussed in Step 2, the following items should be included in the statement of findings and public explanation:

(iv) A statement indicating why the NFIP criteria are demonstrably inappropriate for the proposed action;

(v) A provision for publication in the **Federal Register** or other appropriate vehicle;

(vi) A provision for a brief comment period prior to agency action (15 to 30 days);

(vii) A description of how the activity will be designed or modified to minimize harm to or within the floodplain.

(viii) A statement indicating how the action affects natural or beneficial floodplain values.

(ix) A statement listing other involved agencies and individuals.

(2) Step 7.A. Interagency Notice. Certain public review procedures already exist with which the Order's review requirements are to be integrated.

(i) Step 7.A.1. Programs Subject to OMB Circular A–95. For programs subject to OMB Circular A–95. For programs subject to OMB Circular A–95, the Regional Director shall send a notice, not to exceed three pages in length including a location map, to the State and area-wide A–95 clearinghouse for the areas affected. The notice shall include (as a minimum) paragraph (h)(1)(i), (ii), and (iii) from Step 7 above. It would also be helpful to the reviewer and consistent with the intent of the order to include Items 4 through 9.

(ii) Step 7.A.2. Other Programs. For programs not subject to OMB Circular A–95 review procedures, the Regional Director must develop procedures to provide for similar notice and explanation of why a proposed action is to be located in a floodplain. This notice must be circulated among interested agencies and also be made available to the public for review.

(3) Step 7.B. Actions Subject to NEPA. For major actions subject to NEPA which take place in the base floodplain, the public review requirements, discussed above as set out in Section 2(b) of Executive Order 11514, as amended, shall include the nine items listed in the introduction to Step 7. Section 2(a)(4) of the Order requires the same public notice procedures for Federal actions in the floodplain even though impacts are not significant enough to require the preparation of an environmental impact statement (EIS) under Section 102(2)(C) of NEPA (Pub. L. 91–190). Under NEPA procedures, a final EIS is circulated for public and interagency review and comment. A minimum of 30 days is required to allow a review and to receive responses from the public and governmental agencies. These comments must then be considered. The findings must be made in conjunction with a final FDAA decision, and the formal statement of findings required by the Order must be issued prior to initiating the proposed action. A final EIS shall explain, if appropriate, why the responsible official has recomended or why FDAA might support an action located in a floodplain.

(4) A statement of findings (including the explanatory information discussed in 7.A.) must be issued by the Regional Director in compliance with Section 2(a)(2) of the Order. This applies to all proposed actions located within or impacting the floodplain, including proposed actions whose impacts are not significant enough or are not otherwise required to complete an EIS.

(i) Step 8—Implement Action. With the conclusion of the decision-making process described in Steps 1–7, the proposed action can be implemented. However, the Regional Director has a continuing responsibility for insuring that the action is carried out in compliance with the Order. This is especially important for projects with long-term operation, maintenance and repair programs such as reservoirs or waste treatment facilities.

(Sec. 601, Pub. L. 93–288, 88 Stat. 163 (42 U.S.C. 5201); Executive Order 11795 as amended by Executive Order 11919; Delegation of Authority, 39 FR 20227; Executive Order 11988, 42 FR 26951, and Executive Order 11990, 42 FR 26961)

Issued at Washington, D.C., June 4, 1979.

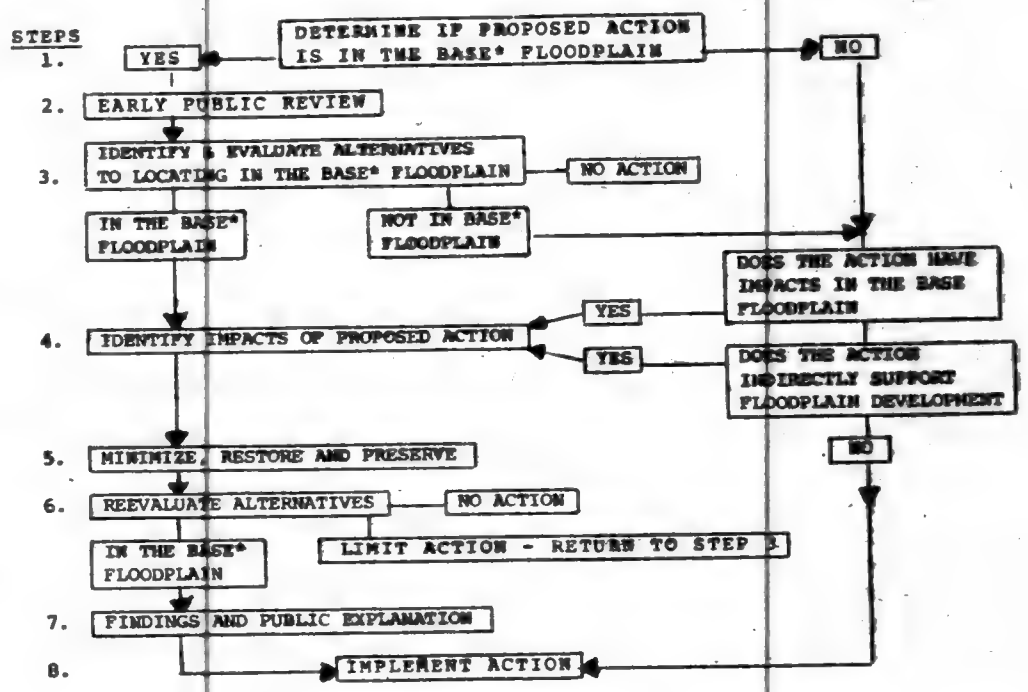
William H. Wilcox,

Administrator, Federal Disaster Assistance Administration.

BILLING CODE 4210-01-M

APPENDIX A

DECISION-MAKING PROCESS FOR E.O. 11988



* FOR CRITICAL ACTIONS SUBSTITUTE "500 YEAR" FOR "BASE".

Appendix B.—*Sources of Floodplain Information and Technical Assistance Services for Determining Whether a Location is in a Floodplain*

Agency*	Floodplain maps and profiles		Technical assistance services
	Riverine	Coastal	
Department of Agriculture, Soil Conservation Service	●	●	●
Department of the Army, Corps of Engineers	●	●	●
Department of Commerce, National Oceanic Atmospheric Administration	—	●	●
Department of Housing and Urban Development:			
Federal Housing Administration	—	—	●
Federal Insurance Administration	●	●	●
Department of the Interior:			
Geological Survey	●	●	●
Bureau of Land Management	●	●	—
Bureau of Reclamation	●	—	●
Tennessee Valley Authority	●	—	●
Delaware River Basin Commission	●	●	●
Susquehanna River Basin Commission	●	—	●
States	Varies from State to State.		

*See Appendix A, WRC Guidelines, for detailed description.

[FR Doc. 79-18060 Filed 6-12-79; 8:45 am]

BILLING CODE 4210-01-C

Wednesday
June 13, 1979

Part V

Department of the Interior

Geological Survey

Proposed Order Governing Oil and Gas Operations on the Outer Continental Shelf of the Arctic Ocean

DEPARTMENT OF THE INTERIOR

Geological Survey

Proposed Orders Governing Oil and Gas Operations on the Outer Continental Shelf of the Arctic Ocean

Notice is hereby given that, pursuant to Title 30 CFR 250.11, the Chief, Conservation Division, U.S. Geological Survey, has proposed Orders Nos. 1, 2, 3, 4, 5, 7 and 12 governing oil and gas lease operations on the Outer Continental Shelf (OCS) of the Arctic Ocean. These Orders will be applicable to OCS lands in the Beaufort Sea, the Chukchi Sea, and the Hope Basin.

These proposed Orders were developed from the revised Area OCS Orders which were published in final form in the **Federal Register** on May 18, 1979, Vol. 44, No. 96.

These proposed Orders do not reflect the revision of the existing regulations which are required by the enactment of the OCS Lands Act Amendments of 1978. It is recognized that some of these requirements will be reorganized and restructured when the existing regulations are revised to reflect the enactment of the OCS Lands Act Amendments of 1978.

The portions of the Orders which have been revised to reflect requirements for Arctic conditions are indicated in italics. Comments are solicited on these italicized portions and any other portions of the Orders which should be revised to include additional requirements pertaining to environmental, geological, or geophysical conditions which may be encountered in the Arctic Area.

A proposed Arctic Area OCS Order No. 8, containing requirements pertaining to the verification of the structural integrity of platforms and other structures including gravel and/or ice islands, is now being developed and will be published at a later date, with a solicitation for comments.

Copies of the U.S. Geological Survey standards which are referenced in OCS Order No. 2 are available from: Chief, Conservation Division, U.S. Geological Survey, Mail Stop 620, National Center, 12201 Sunrise Valley Drive, Reston, Virginia 22092.

Interested parties may submit written comments and suggestions on the proposed Arctic Area OCS Orders to the Chief, Conservation Division, at the address above, on or before July 30, 1979.

For further information, contact Mr. Richard B. Krahl, Chief of the Branch of Marine Oil and Gas Operations, Conservation Division, U.S. Geological Survey, Mail Stop 620, Reston, Virginia 22092 (703–860–7531). The primary author of this document is Mr. Rodney Smith, Area Oil and Gas Supervisor, Alaska Area, 800 "A" Street, Suite 109, Anchorage, Alaska 99501 (907–271–4303).

Dated: June 8, 1979.

J. R. Balsley,
Acting Director.

Arctic—OCS Orders

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(Under development)

DEPARTMENT OF THE INTERIOR

Geological Survey, Conservation Division, Western Region

ALASKA AREA—ARCTIC

OCS Order No. 1, Effective

Identification of Wells, Platforms, Structures, Mobile Drilling Units, and Subsea Objects

This Order is issued pursuant to the authority prescribed in 30 CFR 250.11 and in accordance with 30 CFR 250.37.

1. *Identification of Fixed Platforms or Structures.* Platforms and structures shall be identified at two diagonal corners by a sign with letters and figures not less than 30 centimeters (12 inches) in height with the following information:

a. The name of the lease operator.

b. The area designation based on OCS Official Protraction Diagrams.

c. The block number in which the platform or structure is located.

d. The platform or structure designation.

The information shall be abbreviated as in the following example:

The Blank Oil Company operates "C" platform on Block 999 of the Salisbury Area. The identifying sign on the platform would indicate: BOC-SAL-999-C.

2. *Identification of Mobile Drilling Units.* Floating semisubmersible platforms, bottom-setting mobile rigs, and drilling ships shall be identified by one sign with letters and figures not less than 30 centimeters (12 inches) in height affixed to the derrick so as to be visible to approaching traffic and containing the following information:

a. The name of the lease operator.

b. The area designation based on OCS Official Protraction Diagrams.

c. The block number in which the drilling unit is located.

d. The OCS lease number.

e. The well number.

3. *Identification of Wells.* The OCS lease and well numbers shall be painted on, or a sign affixed to, the wellhead of each singly completed well. In multiple completed wells, each completion shall be individually identified at the wellhead. All identifying signs shall be maintained in a legible condition.

4. *Identification of Subsea Objects.* All subsea objects resulting from lease operations which are determined by the U.S. Coast Guard District Commander to be hazards to navigation or to the deployment of commercial fishing devices shall be identified by suitable aid-to-navigation devices as directed by the District Commander. Prior to the establishment of a subsea object or in the event of the accidental submergence of an object, the owner shall inform the District Commander of the object's description, location, and unobstructed depth of water above the object's highest point. Based on this information, the District Commander will determine what marking and permits, if any, will be required (14 U.S.C. 83, 85; 43 U.S.C. 1333; 33 CFR Part 67). The owner shall maintain these navigational markings onsite and properly functioning at all times while the obstruction remains.

5. *Departures.* All departures from the requirements specified in this Order shall be

subject to approval, pursuant to 30 CFR 250.12(b).

Rodney A. Smith,

Oil and Gas Supervisor, Arctic Area.

Approved:

Don E. Kash,

Chief, Conservation Division.

DEPARTMENT OF THE INTERIOR

Geological Survey, Conservation Division,

Western Region

ALASKA AREA—ARCTIC

OCS Order No. 2. Effective

Drilling Operations

This Order is issued pursuant to the authority prescribed in 30 CFR 250.11. All exploratory and development wells drilled for oil and gas shall be drilled in accordance with 30 CFR 250.34, 250.41, 250.91, and the provisions of this Order except for those provisions superseded by the issuance of field drilling rules.

1. *Plans and Applications*

1.1 *Exploration Plan and Development and Production Plan.* In accordance with 30 CFR 250.34, the lessee shall submit Exploration Plans and Development and Production Plans to the Supervisor for approval. All wells drilled under the provisions of this Order shall be included in the appropriate plan. *In addition, the Exploration Plans and Development and Production Plans shall include provisions to deal with emergency situations involving:*

a. A means of drilling a relief well should a blowout occur.

b. Loss or disablement of a drilling unit or a drilling rig.

c. Loss of or damage to support craft.

1.2 *Application for Permit to Drill.* Prior to commencing drilling under an approved Exploration Plan or a Development and Production Plan, the lessee shall file, in triplicate, an Application for Permit to Drill (Form 9–331 C) with the District Supervisor for approval. Additionally, the Supervisor will prescribe the number of public information copies to be submitted. If drilling activity does not commence within 6 months after the approval date, the Permit to Drill will expire.

2. *Drilling from Fixed Platforms and Mobile Drilling Units.*

2.1 *General Requirements.*

2.1.1 *Fitness of Drilling Unit.* All fixed and mobile drilling units shall be capable of withstanding the oceanographic and meteorological conditions for the proposed area of operations. The lessee shall submit evidence to the District Supervisor of the fitness of the drilling unit to perform the planned drilling operation. This evidence shall include drawings and specifications of the following:

a. The rated capacity of all major drilling equipment.

b. Drilling safety systems.

c. Firefighting equipment.

d. Pollution-prevention equipment associated with the drilling operation.

e. A schematic diagram of the drilling unit.

2.1.2 *Pre-Drilling Inspection.* Prior to commencing operations in an OCS Area, all fixed drilling platforms and mobile drilling units shall be made available for a complete inspection by the District Supervisor.

2.1.3 *Well-Site Surveys.* Lessees shall conduct a shallow geologic hazards survey, and other surveys as required by the Supervisor. In Areas where shallow hazards or hydrocarbons are unknown, shallow high-resolution geophysical data shall be obtained. The results of these surveys and an analysis of the geological hazards shall be furnished to the District Supervisor. All data obtained from the surveys and all geophysical data relating to shallow hazards shall be furnished upon request to the District Supervisor.

2.1.4 *Oceanographic, Meteorological, Performance Data.* Operators shall collect and report oceanographic, meteorological, and performance data during the period of operations. The type of information collected, method of collection, and report requirements will be as specified by the Supervisor.

2.1.5 *Subfreezing Operations.* Operators shall furnish evidence that the drilling equipment, drilling safety systems, and other associated equipment and materials are suitable for operations in those Areas which are subject to subfreezing conditions.

2.2 *Mobile Drilling Units.* Applications for drilling from mobile drilling units shall include the following:

a. Maximum environmental design criteria, operational criteria, and a critical operations plan as described in paragraph 9 of this Order.

b. Environmental data, statistical data and calculations which indicate the maximum-anticipated wave, wind, current values, and forces due to ice, icing, storm surges, and seismic motion to be encountered at the drill site during the period of drilling operations.

c. Current American Bureau of Shipping Classification, U.S. Coast Guard Certificate of Inspection, or other appropriate classifications, with operational limitations.

Unless required by the Supervisor, after a mobile drilling unit has been approved for use in an area, the information detailed in subparagraph 2.1.1 need not be resubmitted unless there are changes in equipment which affect the rated capability of the unit.

2.3 *Fixed Drilling Platforms.* Applications for installations of fixed drilling platforms or structures, including artificial islands, shall be submitted in accordance with OCS Order No. 8.

3. *Well Casing and Cementing.*

3.1 *General Requirements.* All wells shall be cased and cemented in accordance with the requirements of 30 CFR 250.41(a)(1). The Application for Permit to Drill shall include the casing design safety factors for collapse, tension, and burst. *In addition, the Application for Permit to Drill must include a proposal to fill all annuli within permafrost zones with cement or a liquid with a freezing point below the minimum permafrost temperature to prevent internal freezeback. The cement used to cement through permafrost zones must be designed to set before freezing and to have a low heat of dydration to prevent excessive thawing of the permafrost zones.* Wells drilled in areas which are underlain by freshwater aquifers shall have casing programs which are designed to protect the freshwater zones. In cases where cement has filled the annular space back to the ocean floor, upon approval by the District Supervisor, the cement may be washed out or displaced to a depth not exceeding 12 meters (39 feet) below the ocean floor to facilitate casing removal upon well abandonment. For the purpose of this Order, the several casing strings in order of normal installation are drive or structural, conductor, surface, intermediate, and production casing. If there are indications of inadequate cementing (such as lost returns, cement channeling, or mechanical failure of equipment in the surface-, intermediate-, and production-casing strings), the lessee shall evaluate the adequacy of the cementing operations by pressure testing the casing shoe, running a cement bond log, running a temperature survey, or a combination thereof before continuing operations. If the evaluation indicates inadequate cementing, the lessee shall recement or take other actions in accordance with the instructions of the District Supervisor. The lessee shall verify the adequacy of the remedial cementing operations as required by the District Supervisor.

The design criteria for all wells shall consider all pertinent factors for well control, such as:

a. Formation fracture gradients.

b. Formation pressure.

c. Maximum-anticipated surface pressure.

d. Casing setting depths.

e. Permafrost zones. The lessee shall utilize appropriate drilling technology and state-of-the-art methods, such as drilling-rate evaluation, shale-density analysis, or other appropriate methods in order to enhance the evaluation of conditions of abnormal pressure and to minimize the potential for the well to flow or kick.

All casing, except drive pipe or structural casing, shall be new pipe which meets or exceeds American Petroleum Institute (API) standards, or reconditioned used pipe that has been tested to assure that it will meet or exceed API standards for new pipe. If casing which is not fabricated to API standards is used, the manufacturer's specifications shall be included on the Application for Permit to Drill (Form 9–331 C).

In permafrost zones, the surface casing shall have minimum axial post-yield strain properties of 0.9 percent in tension and 1.25 percent in compression. Other means for maintaining the integrity of the well from the effects of permafrost thaw may be approved by the Supervisor upon application.

3.2 *Drive or Structural Casing.* This casing shall be set by drilling, driving, or jetting to a minimum depth of 30 meters (98 feet) below the ocean floor or to other depths, as may be required or approved by the District Supervisor, in order to support unconsolidated deposits and to provide hole stability for initial drilling operations. If this portion of the hole is drilled, the drilling fluid shall be of a type that is in compliance with the liquid disposal requirements of OCS Order No. 7, and a quantity of cement

sufficient to fill the annular space *of the drilled hole* shall be used.

3.3 *Conductor and Surface Casing Setting and Cementing Requirements.*

3.3.1 *Conductor and Surface Casing Setting Depths.* Casing design and setting depths shall be based upon all engineering and geologic factors, including the presence or absence of hydrocarbons, other potential hazards, and water depths. These strings of casing shall be set at the depths specified, subject to approved variation to permit the casing to be set in a competent bed, or through formations determined desirable to be isolated from the well by pipe for safer drilling operations; however, the conductor casing shall be set immediately prior to drilling into formations known to contain oil or gas, or, if unknown, upon encountering such formations. These casing strings shall be run and cemented prior to drilling below the specified setting depths. The District Supervisor may prescribe the exact setting depths for those wells which may encounter abnormal pressure conditions.

In permafrost-free areas, conductor casing setting depths shall be between 91 meters (298 feet) and 305 meters (1,000 feet) TVD below the ocean floor, and surface casing setting depths shall be between 305 meters (1,000 feet) and 1,400 meters (4,593 feet) TVD below the ocean floor.

In areas containing permafrost, the conductor or surface casing shall be set and cemented after drilling a maximum of 150 meters (492 feet) below the base of the permafrost. Where conditions warrant, the District Supervisor may approve a program where surface casing may be set at a greater depth below the base of permafrost, but not to exceed 1,400 meters (4,593 feet) below the ocean floor.

Engineering, geophysical, and geologic data used to substantiate the proposed setting depths of the conductor and surface casings (such as estimated fracture gradients, pore pressures, shallow hazards, etc.) shall be furnished with the Application for Permit to Drill.

3.3.2 *Conductor Casing Cementing Requirements.* Conductor casing shall be cemented with a quantity of cement sufficient to fill the calculated annular space *up to the top of the casing.* Cement fill to the ocean floor shall be verified by the observation of cement returns. In the event that observation of cement returns is not feasible or possible, *the method of verifying the cement fill shall be approved by the district Supervisor.*

3.3.3 *Surface Casing Cementing Requirements.* Surface casing shall be cemented with a quantity of cement sufficient to protect all freshwater zones, to provide well control until the next string of casing is set, with sufficient cement to fill the annular space to *the top of the permafrost zone, and with the cement fill* at least 60 meters (197 feet) inside the conductor casing, *or as approved by the District Supervisor. Any portion of the annulus opposite a permafrost zone which is not protected by cement shall be filled with a liquid with a freezing point below the minimum permafrost temperature to prevent internal freezeback.* After drilling a maximum of 15 meters (49 feet) of new hole, a pressure test shall be conducted to obtain data to be used in estimating the formation fracture gradient. Pressure data shall be obtained either by testing to formation leak-off or by testing to a predetermined equivalent mud weight. The results of this test and any subsequent tests of the formation shall be recorded on the driller's log and used to determine the depth and maximum mud weight to be used in the intermediate hole.

3.4 *Intermediate Casing Setting and Cementing Requirements.* One or more strings of intermediate casing shall be set when required by anticipated abnormal pressure, mud weight, sediment, and other well conditions. The setting depth for intermediate casing shall be based on the pressure tests of the exposed formation below the surface casing shoe or on subsequent pressure tests. After drilling a maximum of 15 meters (49 feet) of new hole, a pressure test shall be conducted to obtain data to be used in estimating the formation fracture gradient. Pressure data shall be obtained either by testing to formation leak-off or by testing to a predetermined equivalent mud weight. The results of this test and any subsequent tests of the formation shall be recorded on the driller's log and used to determine the depth and maximum mud weight to be used in the hole below the intermediate-casing string.

A quantity of cement sufficient to cover and isolate all hydrocarbon zones and to isolate abnormal pressure intervals from normal pressure intervals shall be used. This requirement for isolation may be satisfied by squeeze cementing prior to completion, suspension of operations, or abandonment, whichever occurs first. Sufficient cement shall be used to provide annular fill-up to a minimum of 150 meters (492 feet) above the zones to be isolated or 150 meters (492 feet) above the casing shoe in cases where zonal coverage is not required. *Any portion of the annulus opposite a permafrost zone not protected by cement must be filled with a liquid which has a freezing point below the minimum permafrost temperature to prevent internal freezeback.*

If a liner is used as an intermediate string, it shall be lapped a minimum of 30 meters (98 feet) into the previous casing string and cemented as required for intermediate casing. The liner shall be tested by a fluid entry or pressure test to determine whether a seal between the liner top and the next larger string has been achieved. The test shall be recorded on the driller's log. If the test indicates an improper seal, the top of the liner shall be squeeze cemented. When such liner is used as production casing, it shall be extended to the surface and cemented to avoid surface casing being used as production casing.

3.5 *Production Casing.* Production casing shall be set before completing the well for production. It shall be cemented in a manner necessary to cover or isolate all zones above the shoe which contain hydrocarbons; but in any case, a calculated volume sufficient to fill the annular space at least 150 meters (492 feet) above the uppermost hydrocarbon zone must be used. Any portion of the annulus opposite a permafrost zone not protected by cement must be filled with a liquid which has a freezing point below the permafrost temperature to prevent internal freezeback.

When a liner is used as production casing below intermediate casing, it shall be lapped a minimum of 30 meters (98 feet) into the previous casing string and cemented as required for the production casing. Testing of the seal between the liner top and the next larger string shall be conducted as in the case of intermediate liners and recorded on the driller's log. If the test indicates an improper seal, the top of the liner shall be squeeze cemented.

3.6 *Pressure-Testing of Casing.* Prior to drilling the plug after cementing, all casing strings, except the drive or structural casing, shall be pressure-tested as shown in the table below. The test pressure shall not exceed 70 percent of the internal yield pressure of the casing. If the pressure declines more than 10 percent in 30 minutes or if there is another indication of a leak, the casing shall be recemented, repaired, or an additional casing string run, and the casing tested again. The above procedures shall be repeated until a satisfactory test is obtained.

Casing:	*Minimum surface pressure*
Conductor	1,400 kilopascals (kPa)(203 psi).
Surface	* 10,800 kPa (1,000 psi).
Intermediate, liner, and Production.	* 110,400 kPa (1,500 psi) or 5 kPa/m (0.22 psi/ft) whichever is greater.

* Must not exceed 70 percent of the minimum internal yield pressure.

In the event of unscheduled drill pipe operations such as an unscheduled side-tracking operation or a fishing operation, the surface pipe shall be pressure tested, calipered, or otherwise evaluated, as approved by the District Supervisor.

After cementing any of the above strings, drilling shall not be resumed until a time lapse of 8 hours under pressure for the conductor casing string or 12 hours under pressure for all other strings. Cement is considered under pressure if one or more float valves are employed and are shown to be holding the cement in place or when other means of holding pressure is used. All casing pressure tests shall be recorded on the driller's log.

In addition to the time lapse stated above, sufficient time must elapse to allow the bottom 153 meters (502 feet) of annular cement fill, or total length of annular cement fill, if less, to attain a compressive strength of at least 3,448 kPa (500 psi) or as approved by the District Supervisor before drilling resumes.

The typical performance data for the particular cement mix used in the well shall be used to determine the time lapse required.

4. *Directional Surveys.* Wells are considered vertical if inclination does not exceed an average of 3 degrees from the vertical or the maximum individual inclination survey does not exceed 5 degrees. Inclinational surveys shall be obtained on all vertical wells at intervals not exceeding 150 meters (492 feet) during the normal course of drilling.

Wells are considered directional if inclination exceeds an average of 3 degrees

from the vertical or the maximum individual inclination survey exceeds 6 degrees. Directional surveys giving both inclination and azimuth shall be obtained on all directional wells at intervals not exceeding 150 meters (492 feet) during the normal course of drilling and at intervals not exceeding 30 meters (98 feet) in all planned angle-change portions of the hole.

On both vertical and directional wells, directional surveys giving both inclination and azimuth shall be obtained at intervals not exceeding 150 meters (492 feet) prior to, or upon, setting surface or intermediate casing, liners, and at total depth. Composite directional surveys shall be filed with the District Supervisor. The interval shown will be from the bottom of conductor casing or, in the absence of conductor casing, from the bottom of drive or structural casing to total depth. In calculating all surveys, a correction from true north to Universal Transverse Mercator Grid north or Lambert Grid north shall be made after making the magnetic-to-true-north correction.

5. *Blowout-Preventer (BOP) Equipment Requirements*

5.1 *General Requirements.* Blowout preventers and related well-control equipment shall be installed, used, maintained, and tested in a manner necessary to assure well control.

5.1.1 *BOP Equipment.* Blowout-preventer equipment shall consist of an annular preventer and the specified number of ram-type preventers. The pipe rams shall be of proper size to fit the drill pipe in use. The working pressure of any blowout preventer shall exceed the maximum-anticipated surface pressure to which it may be subjected, except that the working pressure of the annular preventer need not exceed 34,475 kPa (5,000 psi).

Information submitted with the Application for Permit to Drill shall include the maximum-anticipated surface pressure and the criteria used to determine this pressure. All blowout-preventer systems shall be equipped with:

a. A hydraulic actuating system that provides sufficient accumulator capacity to supply 1.5 times the volume necessary to close all BOP equipment units with a minimum pressure of 1,400 kPa (203 psi) above the precharge pressure. An accumulator backup system, supplied by a secondary power source independent from the primary power source, shall be provided with sufficient capacity to close all blowout preventers and hold them closed. Locking devices shall be provided on the ram-type preventers. The method of BOP actuation control such as hydraulic, acoustic, or other methods, shall be described and included in the Application for Permit to Drill.

b. At least one operable remote blowout-preventer-control station, in addition to the one on the drilling floor. This control station shall be in a readily accessible location away from the drilling floor.

c. A drilling spool with side outlets, if side outlets are not provided in the BOP body, to provide for separate kill and choke lines.

d. A kill line equipped with 2 kill-line valves is required. The master valve shall be located adjacent to the BOP. This valve shall not normally be used for opening or closing on flowing fluid. The second valve shall be located adjacent to the master valve. This valve shall be used as the control valve.

e. A fill-up line above the uppermost preventer.

f. A choke manifold equipped in accordance with "API Recommended Practice for Blowout-Prevention Equipment Systems," API RP 53, First Edition, February 1976, reissued February 1978, Sections 3A and 3B, or subsequent revisions which the Chief, Conservation Division, has approved for use.

g. Valves, pipes, and fittings upstream of, and including, the choke manifold shall have a pressure rating at least equal to the maximum-anticipated surface pressure.

h. A wellhead assembly with a working pressure at least equal to the maximum-anticipated surface pressure.

5.1.2 *Auxiliary Equipment.* The following auxiliary equipment shall be provided and maintained in operable condition at all times:

a. A kelly cock shall be installed below the swivel and an essentially full-opening valve of such design that it can be run through blowout preventers shall be installed at the bottom of the kelly. A wrench to fit each valve shall be stored in a conspicuous location readily accessible to the drilling crew.

b. An inside blowout preventer and an essentially full-opening drill string safety valve in the open position shall be maintained on the rig floor at all times while drilling operations are being conducted. These valves shall be maintained on the rig floor to fit all connections that are in the drill string.

c. A safety valve shall be available on the rig floor assembled with the proper connection to fit the casing string that is being run in the hole at the time.

5.1.3 *Subfreezing Operations.* The blowout preventers and related control equipment shall be suitable for operations in those Areas which are subject to subfreezing conditions.

5.2 *Subsea BOP Requirements.* The minimum requirements for drilling below the casing strings for subsea blowout-preventer stacks are tabulated below:

Drive or Structural	None required [1, 2]
Conductor	1—Annular
	1—Diverter System [2, 3]
Surface	1—Annular
	2—Pipe Rams
	1—Blind Shear Ram
Intermediate	1—Annular
	2—Pipe Rams [4]
	1—Blind Shear Ram

[1] When drilling fluids are circulated to the drilling vessel, a diverter system as described in subparagraph 5.4.1 shall be installed on top of the marine riser.

[2] If returns to the surface cannot be established, refer to subparagraph 5.4.2.

[3] The choke and kill lines or equivalent vent lines, equipped with necessary connections and fittings, can be used for diversion, if approved by the Supervisor, or an annular preventer or pressure-rotating, packoff-type head, equipped with suitable diversion lines, shall be installed on top of the marine riser.

[4] To be installed on top of the marine riser. The diverter system shall provide, as a minimum two 15-centimeter (6-inch) internal diameter lines and full-opening valves.

[5] When a tapered drill string is in use, the BOP stack shall be equipped with pipe rams to fit both sizes of drill pipe.

Subsea blowout-preventer stacks shall be equipped with blind shear rams. A subsea accumulator or a suitable alternate approved by the District Supervisor is required to provide fast closure of the preventers and to operate all critical functions in case of loss of power fluid connection to the surface. The blowout-preventer system shall include dual pod control systems in accordance with API RP 53, First Edition, February 1976, reissued February 1978, Subsection 5.B.13, or subsequent revisions which the Chief, Conservation Division, has approved for use. Prior to the removal of the marine riser for installing casing, the riser shall be displaced with seawater. Sufficient hydrostatic head shall be maintained within the well bore to compensate for the reduction in head and to maintain a safe well condition. If repair or replacement of the blowout-preventer stack is necessary after installation, this work shall be accomplished after casing has been cemented prior to drilling out the casing shoe or by setting a cement or bridge plug to assure safe well conditions.

5.3 *Surface BOP Requirements.* The minimum requirements for drilling below the casing strings for conventional surface blowout-preventer stacks are tabulated below:

Drive or Structural	1—Diverter System[1]
Conductor	1—Annular
	1—Diverter System[1]
Surface	1—Annular
	2—Pipe Rams
	1—Blind Ram
Intermediate	1—Annular
	2—Pipe Rams[2]
	1—Blind Ram

[1] The diverter system shall include a minimum of two 15-centimeter (6-inch) internal diameter lines and full-opening valves.

[2] When a tapered drill string is in use, the BOP stack shall be equipped with pipe rams to fit both sizes of drill pipe.

5.4 *Drive Pipe or Structural Casing BOP Requirements.*

5.4.1. *Drilling Operations from Bottom-Supported Rigs.* Before drilling below this string with a bottom setting rig, a diverter system and related equipment shall be installed for circulating the drilling fluid to the drilling structure. The diverter system shall be equipped with remote control valves in the main and diverter flow lines that can be operated from the control panel prior to shutting in the well. The diverter lines shall vent in different directions to permit downwind diversion. A schematic diagram and operational procedure for the diverter system shall be submitted with the Application for Permit to Drill (Form 9-331 C) to the District Supervisor for approval.

5.4.2 *Floating Drilling Operations.* In drilling operations where a floating or semi-submersible type of drilling vessel is used and formation competency at structural casing setting depth is not adequate to permit circulation of drilling fluids to the vessel while drilling the conductor hole, a program which provides for safety in these operations shall be described and submitted to the District Supervisor for approval. This program shall include all known pertinent information, including seismic and geologic data, water depth, drilling-fluid hydrostatic pressure, a schematic diagram indicating the equipment to be installed from the rotary table to the proposed conductor-casing seat, and a contingency plan for moving off location.

5.5 *Conductor Casing.* Before drilling below this string, at least one remote-controlled, annular-type blowout preventer shall be installed. A diverter system and other equipment for circulating the drilling fluid to the drilling structure or vessel shall be installed as described in subparagraph 5.4.1.

5.6 *Surface and Intermediate Casing.* Before drilling below these strings, the blowout-preventer system shall consist of at least four remote-controlled, hydraulically operated blowout preventers including at least two equipped with pipe rams, one with blind rams, and one annular type. Subsea blowout-preventer stacks used with floating drilling vessels shall include one set of blind shear rams.

5.7 *Testing of BOP Systems.* Prior to conducting high-pressure tests, all BOPs shall be tested to a low pressure of 1,400 to 2,000 kPa (203 to 290 psi).

5.7.1 *BOP Testing Frequency.* Surface and subsea BOP stacks shall be tested as follows:

a. When installed.

b. Before drilling out after each string of casing has been set.

c. At least once each week, but not exceeding 7 days between tests, alternating between control stations. A period of more than 7 days between tests may be allowed where drilling problems prevent testing and remedial efforts are being made, provided BOP tests will be conducted as soon as possible. Testing shall be at staggered intervals to allow each drilling crew to operate the equipment.

d. Following repairs that require disconnecting a pressure seal in the assembly.

5.7.2 *Pressure Testing Surface BOP Systems.* Ram-type BOPs and related control equipment shall be tested at the maximum-anticipated surface pressure or at 70 percent of the minimum internal yield pressure of the casing, whichever if the lesser. The annular-type BOP shall be tested at 70 percent of its rated working pressure or 70 percent of the minimum internal yield pressure of the casing, whichever is the lesser. Before drilling out of each casing or liner shoe, the blind rams shall be tested as required for pipe rams. When a tapered drill string is in use, the smaller pipe rams shall be tested when the smaller pipe is within the stack during a trip.

5.7.3 *Pressure Testing Subsea BOP Systems.* Subsea BOPs and all related well-control equipment shall be stump tested at the surface with water to the maximum-anticipated surface pressure, except that the annular-type BOP shall not be tested above 70 percent of its rated working pressure. After the installation of the BOP stack on the sea floor, the control equipment and pipe rams, conforming to the drill string within the stack, shall be tested as required under subparagraph 5.7.2. Before drilling out of each casing or liner shoe, the blind shear rams shall be tested as required for blind rams under subparagraph 5.7.2.

5.7.4 *Actuation of Surface BOP Systems.* The following minimum-actuation frequencies are required:

a. Pipe Rams—Daily. In order to prevent damage to the rams, complete closure of the rams on drill pipe is not required, provided proper operation is indicated.

b. Blind Rams—Once each trip while the drill pipe is out of the hole. If multiple trips are made, only one action per day is required.

c. Annular-Type Preventer—Once each week in conjunction with the pressure test.

d. Control Stations—Once each trip while the drill pipe is out of the hole; however, not more than once each day, if multiple trips are made.

e. Choke manifold valves, kelly cocks, drill pipe safety valves—Weekly.

5.7.5 *Actuation of Subsea BOP Systems.* The actuation frequency requirements for subsea BOP systems shall be the same as those listed in subparagraph 5.7.4 for surface BOP systems, except item "b" pertaining to blind rams.

The blind shear rams shall be actuated once each trip from alternate control stations and control systems; however, not more than once each day, if multiple trips are made. During the weekly pressure tests, all hydraulic systems except those actuating the blind shear rams shall be actuated from each control station and control system.

5.8 *Inspection and Maintenance.* All BOP systems, marine risers, and associated equipment shall be inspected and maintained in accordance with the manufacturer's recommended procedures. The BOP systems and marine risers shall be visually inspected at least once each day if the weather and sea conditions permit the inspection. Inspection of subsea installations may be accomplished by the use of television equipment.

5.9 *Blowout-Preventer Drills.* All drilling personnel shall be indoctrinated in blowout-preventer drills and be familiar with the blowout-preventer equipment before starting work on the well. A blowout-preventer drill shall be conducted for each drilling crew in accordance with the well-control drill requirements of the U.S. Geological Survey (USGS) Outer Continental Shelf Standard, "Training and Qualifications of Personnel in Well-Control Equipment and Techniques for Drilling on Offshore Locations," No. T 1 (GSS-OCS-T 1), First Edition, December 1977, and subsequent revisions thereto. A BOP drill may be required by a USGS designated representative at any time during the drilling operation.

6. *Mud Program.* The characteristics, use, and testing of drilling mud and the implementation of related drilling procedures shall be designed to prevent the loss of well control. Sufficient quantities of mud materials shall be maintained readily accesible for use at all times to assure well control.

Mud temperatures shall be controlled to minimize heat loss to and thawing of the permafrost which can result in serious well problems. To insure maximum safety, hydrate zones shall be anticipated and diagnosed quickly, and drilled at controlled rates with mud cooled to the hydrate equilibrium temperature. To prevent problems after hydrate zones are penetrated, cooled muds shall continue to be used, and where possible, hydrate zones should be cased off with high-collapse-strength casing.

6.1 *Mud Control.* Before starting out of the hole with drill pipe, the mud shall be properly conditioned. Proper conditioning requires either circulation with the drill pipe just off bottom to the extent that the annular volume is displaced, or proper documentation in the driller's log prior to pulling the drill pipe as follows:

a. There was no indication of influx of formation fluids prior to starting to pull the drill pipe from the hole.

b. The weight of the returning mud is not less than the weight of the mud entering the hole.

c. Other mud properties recorded on the daily drilling log are within the specified ranges required by the mud program.

When the mud in the hole is circulated, the driller's log shall be so noted.

When coming out of the hole with drill pipe, the annulus shall be filled with mud before the change in mud level decreases the hydrostatic pressure 517 kPa (75 psi) or every 5 stands of drill pipe, whichever gives a lower decrease in hydrostatic pressure. The number of stands of drill pipe and drill collars that may be pulled prior to filling the hole and the equivalent mud volume shall be calculated and posted. A mechanical, volumetric, or electronic device for measuring the amount of mud required to fill the hole shall be utilized.

When there is an indication of swabbing or influx of formation fluids, the necessary safety devices and action shall be employed to control the well. The mud shall be circulated and conditioned, on or near bottom, unless well or mud conditions prevent running the drill pipe back to the bottom.

For each casing string, the maximum pressure to be contained under the blowout preventer, before controlling excess pressure by bleeding through the choke, shall be posted near the driller's control console.

An operable vacuum-type gas separator shall be installed in the mud system prior to commencement of drilling operations. The separator shall be maintained for use throughout the drilling and completion of the well.

The mud in the hole shall be circulated or reverse-circulated prior to pulling the drill-stem test tools from the hole.

6.2 *Mud Testing and Monitoring Equipment.* Mud-testing equipment shall be maintained on the drilling rig at all times, and mud tests shall be performed once each tour, or more frequently, as conditions warrant. Such tests shall be conducted in accordance with procedures outlined in "API Recommended Practice for Standard Procedure for Testing Drilling Fluids," API RP 13B, Seventh Edition, April 1978, or subsequent revisions which the Chief, Conservation Division, has approved for use. The results of the tests shall be recorded and maintained at the drill site.

The following mud-system monitoring equipment shall be installed with derrick floor indicators and used when mud returns are established and throughout subsequent drilling operations:

a. Recording mud pit level indicator to determine mud pit volume gains and losses.

This indicator shall include both a visual and an audio warning device.

b. Mud-volume measuring device for accurately determining mud volumes required to fill the hole on trips.

c. Mud-return indicator to determine that returns essentially equal the pump discharge rate.

d. Gas-detecting equipment to monitor the drilling mud returns, with indicators located in the mud-logging compartment or on the derrick floor. If the indicators are in the mud-logging compartment, there shall be a means of immediate communication with the rig floor, and the equipment shall be continually manned.

6.3 *Mud Quantities.* The lessee shall include, with his Application for Permit to Drill, a tabulation of well depth versus minimum quantities of mud material, including weighting material, to be maintained at the drill site. The minimum quantities of mud material required shall be based on the following:

a. The volume required to replace the calculated capacity of the downhole and active surface mud system.

b. The quantity of weighting material required to overcome the highest anticipated formation pressure.

When the mud quantity required exceeds the storage capacity of the drilling facility, the lessee shall maintain maximum mud inventories and must receive approval from the District Supervisor of the lessee's plans to resupply mud inventories in the event of an emergency. The plan shall include an estimate of the time required for delivery of the mud supplies.

Daily inventories of mud materials, including weighting material, shall be recorded and maintained at the well site. Drilling operations shall be suspended in the absence of minimum quantities of mud material specified in the table or as modified in the approved plan.

6.4 Safety Precautions in Enclosed Mud-Handling Areas. All enclosed mud-handling areas where dangerous concentrations of combustible gases may accumulate shall be equipped with a ventilation system and with gas monitors. These enclosed areas shall be:

a. Ventilated with high-capacity, mechanical ventilation systems capable of changing the air once every 2 minutes.

b. Maintained at a negative pressure relative to the surrounding areas where discharge to an adjacent enclosed area may be hazardous.

c. Fitted with gas detectors and alarms.

d. Equipped with electrical equipment of the "explosion proof" type. Alternatively, the equipment may be pressurized to prevent the ingress of explosive gases, and where air is used for pressurizing, the air intake shall be located outside of, and as far as practicable from, hazardous areas.

7. Supervision, Surveillance, and Training.

7.1 *Supervision.* A representative of the operator shall provide onsite supervision of drilling operations on a 24-hour basis.

7.2 *Surveillance.* From the time drilling operations are initiated and until the well is completed or abandoned, a member of the drilling crew or the toolpusher shall maintain rig-floor surveillance continuously, unless the well is secured with blowout preventers, bridge plugs, or cement plugs.

7.3 *Training.* By December 1, 1979, lessee and drilling contractor personnel shall be trained and qualified in accordance with the provisions of the USGS Outer Continental Shelf Standard, "Training and Qualifications of Personnel in Well-Control Equipment and Techniques for Drilling on Offshore Locations," No. T 1 (GSS–OCS–T 1), First Edition, December 1977, and subsequent revisions thereto.

Any driller, toolpusher, or operator's representative who received training in well-control operations between December 1, 1975, and December 1, 1979, will be credited with having met the training requirements of GSS–OCS–T 1.

After December 1, 1979, in order to maintain qualification, employees must successfully complete a USGS-approved refresher course annually and repeat the basic well-control course every 4 years, as described in the provisions of GSS–OCS–T 1. Credit for these courses shall be obtained from USGS-approved schools. The refresher course shall be completed within 45 days of the student's anniversary date. The anniversary date is established upon the student's successful completion of a basic course in well control.

Records shall be maintained at the drill site for the affected personnel, indicating the specific training and refresher courses successfully completed, the dates of completion, and the names and dates of the courses.

In those Areas which are subject to subfreezing conditions, the lessee shall ensure that personnel responsible for maintenance of the blowout-preventer stack, the associated-control equipment, and the hydraulic-control fluids shall be instructed in the proper procedures to prevent freezing of the hydraulic-control fluids in the control system and the fluids in the choke and kill lines.

8. *Hydrogen Sulfide.* When drilling operations are planned which will penetrate reservoirs known or expected to contain hydrogen sulfide (H_2S), or in those Areas where the presence of H_2S is unknown, or upon encountering H_2S, the preventive measures and the operating practices set forth in USGS Outer Continental Shelf Standard, "Safety Requirements for Drilling Operations in a Hydrogen Sulfide Environment," No. 1 (GSS–OCS–1), Second Edition, June 1979, or subsequent revisions thereto, shall be followed.

9. *Critical Operations and Curtailment Plans.* Certain operations performed in drilling are more critical than others with respect to well control, and for the prevention of fire, explosion, oil spills, and other discharges or emissions. The lessee shall file with the District Supervisor, for approval, a Critical Operations and Curtailment Plan to be followed while conducting drilling operations on each lease. This plan shall include:

a. A list or description of the critical drilling operations that are, or are likely to be, conducted on the lease. This list or description shall specify the operations to be ceased, limited, or not to be commenced under given circumstances or conditions. This list shall include operations such as:

(1) Drilling in close proximity to another well.

(2) Drill-stem testing.

(3) Running and cementing casing.

(4) Cutting and recovering casing.

(5) Logging or wireline operations.

(6) Well-completion operations.

(7) Moving the drilling vessel off location in an emergency, repositioning the vessel on location, and reestablishing entry into the well.

b. A list or description of circumstances or conditions under which such critical operations shall be curtailed. This list or description shall be developed from all the factors and conditions relating to the conduct of operations on the lease, and shall consider but not necessarily be limited to the following:

(1) Whether the drilling operations are to be conducted from mobile or fixed platforms.

(2) The availability and capability of containment and cleanup equipment and spill-control system response time.

(3) Abnormal or unusual conditions expected to be encountered during drilling operations.

(4) Known or anticipated meteorological or oceanographical conditions.

(5) Availability of personnel and equipment for particular operations to be conducted.

(6) Other factors peculiar to the particular lease under consideration.

c. The name of the person who has overall responsibility, as the person in charge at the site, for safety of drilling operations.

When any circumstance or condition listed or described in the plan occurs or other operational limits are encountered, the lessee shall notify the District Supervisor and shall curtail the critical operations as set forth under 9a.

Deviations from the plan shall require prior approval of the District Supervisor. If emergency action requires deviation from the plan, the District Supervisor shall be notified as soon as possible.

The lessee shall review the plan at least annually. The lessee shall notify the District Supervisor of the results of this review. Any amendments or modifications of the plan are subject to the approval of the District Supervisor.

10. *Field Drilling Rules.* When sufficient geological and engineering information is obtained as a result of drilling operations, the lessee may make an application or the Supervisor may require an application for the establishment of field drilling rules. After field drilling rules have been established by the Supervisor, development wells shall be drilled in accordance with these rules and the requirements of this Order which are not affected by such rules.

11. *Departures.* All departures from the requirements specified in this Order shall be

subject to approval, pursuant to 30 CFR 250.12(b).

Rodney A. Smith,
Oil and Gas Supervisor, Arctic Area.

Approved:
Don E. Kash,
Chief, Conservation Division.

DEPARTMENT OF THE INTERIOR

Geological Survey Conservation Division Western Region

ALASKA AREA, ARCTIC

Ocs Order No. 3 Effective

Plugging and Abandonment of Wells

The Order is issued pursuant to the authority prescribed in 30 CFR 250.11 and in accordance with 30 CFR 250.15. The operator shall comply with the following minimum plugging and abandonment procedures which have general application to all wells drilled for oil and gas. Plugging and abandonment operations shall not be commenced prior to obtaining approval from the appropriate District Supervisor. Oral or telegraphic approvals shall be in accordance with 30 CFR 250.13.

1. *Permanent Abandonment.*

1.1 *Isolation of Zones in Open Hole.* In uncased portions of wells, cement plugs shall be spaced to extend 30 meters (98 feet) below the bottom to 30 meters (98 feet) above the top of any oil, gas, and freshwater zones so as to isolate them in the strata in which they are found and to prevent them from escaping into other strata or the surface. The placement of additional cement plugs to prevent the migration of formation fluids in the well bore may be required by the District Supervisor.

1.2 *Isolation of Open Hole.* Where there is open hole below the casing, a cement plug shall be placed in the deepest casing string in accordance with "a" or "b" below. In the event lost circulation conditions have been experienced or are anticipated, a permanent-type bridge plug may be placed in accordance with "c" below:

a. A cement plug set by the displacement method so as to extend a minimum of 30 meters (98 feet) above and 30 meters (98 feet) below the casing shoe.

b. A cement retainer with effective back-pressure control set not less than 15 meters (49 feet) nor more than 30 meters (98 feet) above the casing shoe, with a cement plug calculated to extend at least 30 meters (98 feet) below the casing shoe and 15 meters (49 feet) above the retainer.

c. A permanent-type bridge plug set within 45 meters (148 feet) above the casing shoe with 15 meters (49 feet) of cement on top of the bridge plug. This bridge plug shall be tested in accordance with subparagraph 1.7 prior to placing subsequent plugs.

1.3 *Plugging or Isolating Perforated Intervals.* A cement plug shall be set by the displacement method opposite all open perforations (perforations not squeezed with cement) extending a minimum of 30 meters (98 feet) above and 30 meters (98 feet) below the perforated interval or down to a casing plug, whichever is less. In lieu of setting a cement plug by the displacement method, the following two methods are acceptable, provided the perforations are isolated from the hole below:

a. A cement retainer with effective back-pressure control set not less than 15 meters (49 feet) nor more than 30 meters (98 feet) above the top of the perforated interval with a cement plug calculated to extend at least 30 meters (98 feet) below the bottom of the perforated interval and 15 meters (49 feet) above the retainer.

b. A permanent-type bridge plug set within 45 meters (148 feet) above the top of the perforated interval with 15 meters (49 feet) of cement on top of the bridge plug.

1.4 *Plugging of Casing Stubs.* If casing is cut and recovered leaving a stub, one of the following methods shall be used to plug the casing stub.

1.4.1 *Stub Termination Inside Casing String.* A stub terminating inside a casing string shall be plugged by one of the following methods:

a. A cement plug set so as to extend 30 meters (98 feet) above and 30 meters (98 feet) below the stub.

b. A cement retainer set 15 meters (49 feet) above the stub with 45 meters (148 feet) of cement set below and 15 meters (49 feet) above.

c. A permanent bridge plug set 15 meters (49 feet) above the stub and capped with 15 meters (49 feet) of cement.

1.4.2 *Stub Termination Below Casing String.* If the stub is below the next larger string, plugging shall be accomplished in accordance with either subparagraph 1.1 or 1.2.

1.5 *Plugging of Annular Space.* Any annular space communicating with any open hole and extending to the ocean floor shall be plugged with cement.

1.6 *Surface Plug.* A cement plug at least 45 meters (148 feet) in length, with the top of the plug 45 meters (148 feet) or less below the ocean floor, shall be placed in the smallest string of casing which extends to the ocean floor.

1.7 *Testing of Plugs.* The setting and location of the first plug below the surface plug shall be verified by one of the following methods:

a. By placing a minimum pipe weight of 6,800 kilograms (15,000 pounds) on the cement plug, cement retainer, or bridge plug. The cement placed above the bridge plug or retainer need not be tested.

b. By testing the plug with a minimum pump pressure of 6,900 kPa (1,000 psi) with no more than a 10-percent pressure drop during a 15-minute period.

1.8 *Mud.* Each of the respective intervals of the hole between the various plugs shall be filled with mud fluid of sufficient density to exert hydrostatic pressure exceeding the greatest formation pressure encountered while drilling the intervals between the plugs. *Fluid left in the hole adjacent to the permafrost zone shall have a freezing point below the temperature of the permafrost zone and shall not have an oil base.*

1.9 *Clearance of Location.* All casing, wellhead, equipment, and piling shall be removed to a depth of at least 5 meters (16 feet) below the ocean floor or at a depth approved by the District Supervisor after a review of data on the ocean-bottom conditions. The operator shall verify that the location has been cleared of all obstructions.

1.10 *Cement. The cement used for cement plugs placed across the permafrost zones must be designed to set before freezing and to have a low heat of hydration.*

2. *Temporary Abandonment.* Any drilling well which is to be temporarily abandoned shall be mudded and cemented as required for permanent abandonment except for the requirements in subparagraphs 1.6. and 1.9. When a drilling well is temporarily abandoned, a bridge plug or a cement plug shall be set at the base of the deepest casing string. If a cement plug is set, it is not necessary for the cement plug to extend below the casing shoe into the open hole. When a casing stub extends above the ocean floor, the operator shall comply with the following requirements:

a. A mechanical, retrievable, or permanent bridge plug, or a cement plug at least 30 meters (98 feet) in length shall be set in the casing between 5 and 60 meters (16 and 197 feet) below the ocean floor.

b. The requirements of OCS Order No. 1, paragraph 4, "Identification of Subsea Objects."

3. *Departures.* All departures from the requirements specified in this order shall be subject to approval, pursuant to 30 CFR 250.12(b).

Rodney A. Smith,
Oil and Gas Supervisor, Arctic Area.

Approved:
Don E. Kash,
Chief, Conservation Division.

DEPARTMENT OF THE INTERIOR

Geological Survey, Conservation Division, Western Region

ALASKA AREA, ARCTIC

OCS Order No. 4, Effective

Determination of Well Producibility

This Order is issued pursuant to the authority prescribed in 30 CFR 250.11 and in accordance with 30 CFR 250.12. An OCS lease provides for extension beyond its primary term for as long as oil or gas may be produced from the lease in paying quantities. The term "paying quantities" as used herein means production of oil and gas in quantities sufficient to yield a return in excess of operating costs. An OCS lease may be maintained beyond the primary term, in the absence of actual production, when a suspension of production has been approved in accordance with 30 CFR 250.12.

1. *Application for Determination of Well Producibility.* An application shall be submitted to the District Supervisor for the determination of every new well's capability of producing until a well, drilled on the lease, has been determined to be capable of producing oil or gas in paying quantities. The application shall be submitted within 60 days after the drilling rig has been moved from the well.

2. *Criteria for the Determination of Well Producibility.* The Supervisor shall prescribe which of the following criteria is to be used to determine the capability of a well to produce in paying quantities.

2.1 *Production Tests.* All tests must be witnessed by an authorized respresentative of the U.S. Geological Survey. Test data accompanied by operator's affidavit, or third-party test data, may be accepted in lieu of a witnessed test, provided approval is obtained from the District Supervisor prior to the performance of the test. All tests must conform to the following minimum requirements:

a. A production test for oil wells of at least 2 hours' duration following stabilization of flow.

b. A deliverability test for gas wells of at least 2 hours' duration following stabilization of flow or a 4-point back-pressure test.

2.2 *Production Capability Determination.* When the District Supervisor determines that open-hole evaluation data, such as wireline formation tests, drill stem tests, core data, and logs, have been demonstrated as reliable in a geologic area such data may be considered as acceptable evidence that a well is capable of producing in paying quantities.

3. *Departures.* All departures from the requirements specified in this Order shall be subject to approval, pursuant to 30 CFR 250.12(b).

Rodney A. Smith,

Oil and Gas Supervisor, Arctic Area.

Approved:

Don E. Kash,

Chief, Conservation Division.

DEPARTMENT OF THE INTERIOR

Geological Survey, Conservation Division, Western Region

ALASKA AREA, ARCTIC

OCS Order No. 5, Effective

Production Safety Systems

This Order is issued pursuant to the authority prescribed in 30 CFR 250.11 and 250.12(a), and in accordance with 30 CFR 250.41(b), 250.42, and 250.46. The lessee shall be responsible for compliance with the requirements of this Order in the installation and operation of the production safety systems on all platforms and structures including those facilities not operated or owned by the lessee. All applications for approval under the provisions of this Order shall be submitted to the District Supervisor.

1. *Technological Improvement.* The lessee is encouraged to continue the development of safety-system technology. As research and product improvement result in increased effectiveness of existing safety equipment or the development of new equipment systems, such equipment may be used or required.

2. *Quality Assurance and Performance of Safety and Pollution-Prevention Equipment.* Safety and Pollution-Prevention Equipment (SPPE) shall conform to the following quality assurance standards or subsequent revisions which the Chief, Conservation Division, has approved for use.

a. American National Standards Institute/American Society of Mechanical Engineers Standards "Quality Assurance and Certification of Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations," ANSI/ASME SPPE-1-1977, December 1977 (formerly ANSI/ASME-OCS-1-1977).

b. American National Standards Institute/American Society of Mechanical Engineers Standard "Accreditation of Testing Laboratories for Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations," ANSI/ASME-SPPE-2-1977, December 1977 (formerly ANSI/ASME-OCS-2-1977).

The dates for compliance with these quality assurance standards, the applicable SPPE components, and the applicable SPPE specifications are identified in subparagraph 3.2 and subparagraph 4.2.

3. *Subsurface-Safety Devices.*

3.1 *Installation.* All tubing installations open to hydrocarbon-bearing zones shall be equipped with a subsurface-safety device such as a Surface-Controlled Subsurface-Safety Valve (SCSSV), a Subsurface-Controlled Safety Valve (SSCSV), an injection valve, or a tubing plug, unless, after application and justification, the well is determined to be incapable of flowing. The device shall be installed at a depth of 30 meters (98 feet) or more below the ocean floor within 2 days after production is stabilized. *In areas with permafrost, the device shall be installed at a depth of 30 meters (98 feet) or more below the base of the permafrost within 2 days after production is stabilized.*

The well shall be attended at the wellhead while open to a hydrocarbon-bearing zone, unless a subsurface-safety device is installed.

3.1.1 *Subsurface-Safety Valves.* The requirements for subsurface-safety valves vary according to the shut-in tubing pressure of the well. Alternatives to the following requirements may be approved by the Supervisor when greater reliability or safety can be demonstrated.

Wells completed after the effective date of this Order shall be equipped with one of the following:

a. All tubing installations shall be equipped with a surface- or other remotely controlled subsurface-safety device if the shut-in tubing pressure of the well is 27,600 kilopascals (kPa) (4,000 psi) or less.

b. If the shut-in tubing pressure of the well is greater than 27,600 kPa (4,000 psi), the well shall be equipped with a subsurface-controlled subsurface-safety valve. When the shut-in tubing pressure declines below 27,600 kPa (4,000 psi), a surface- or other remotely controlled subsurface-safety valve shall be installed when the tubing is first removed and reinstated.

3.2 *Specification for Subsurface-Safety Valves.* Surface-controlled and subsurface-controlled subsurface-safety valves required by subparagraphs 3.4 and 3.5, which are installed on new installations after July 1, 1979, shall conform to "American Petroleum Institute (API) Specification for Subsurface-Safety Valves," API Spec 14A, Third Edition, November 1978, or subsequent revisions which the Chief, Conservation Division, has approved for use at the time of installation.

3.3 *Design, Installation, and Operation.* After the effective date of this Order, new installations of subsurface-safety valves shall be in accordance with "API Recommended Practice for Design, Installation, and Operation of Subsurface Safety Valve Systems," API RP 14B, First Edition, October 1973, or subsequent revisions which the Chief, Conservation Division, has approved for use.

3.4 *Surface-Controlled Subsurface-Safety Valves.* After the effective date of this Order, all tubing installations open to a hydrocarbon-bearing zone shall be equipped with a surface-controlled subsurface-safety valve, except as specified in subparagraphs 3.1, 3.5, and 3.6. The surface controls may be located on the site or at a remote location.

The lessee shall furnish evidence that the surface-controlled subsurface-safety devices and related equipment are capable of normal operation in those Areas which are subject to subfreezing conditions.

3.4.1 *Testing of Surface-Controlled Subsurface-Safety Valves.* Each surface-controlled, or other remotely controlled, subsurface-safety valve installed in a well shall be tested in accordance with Appendix E of API RP 14B, when installed or reinstalled, at least monthly for the first 3 months, and thereafter at intervals not to exceed 6 months. If the device does not operate properly, it shall be promptly removed, repaired, reinstalled, or replaced, and tested to ensure proper operation.

3.5 *Subsurface-Controlled Subsurface-Safety Valves.* Tubing installations in wells completed from single-well and multiwell satellite caissons or jackets and ocean floor completions may be equipped with a subsurface-controlled subsurface-safety valve in lieu of surface- or other remotely controlled subsurface-safety valves.

3.5.1 *Inspection and Maintenance of Subsurface-Controlled Subsurface-Safety Valves.* Each subsurface-controlled subsurface-safety valve installed in a well shall be removed, inspected, and repaired or adjusted as necessary and reinstalled at intervals not exceeding:

(1) 6 months for those valves not installed in a landing nipple.

(2) 12 months for those valves installed in a landing nipple.

3.6 *Tubing Plugs in Shut-in Wells.* A tubing plug shall be installed in lieu of, or in addition to, other subsurface-safety devices if a well has been shut in for a period of 6 months. Tubing plugs shall be set at a depth of 30 meters (98 feet) or more below the ocean floor. *In areas containing permafrost, each tubing-plug installation shall be approved by the District Supervisor on a case-by-case basis.* All retrievable plugs installed after the date of this Order shall be of the pump-through type. All wells perforated and completed but not placed on production shall be equipped with a subsurface-safety valve or tubing plug within 2 days after completion. A surface-controlled subsurface-safety valve of the pump-through type may be used as a pump-through tubing plug for the purpose of this subparagraph,

provided the surface control has been rendered inoperative. A shut-in well which is equipped with a tubing plug shall be inspected for leakage by opening the well to possible flow at intervals not exceeding 6 months. If a liquid leakage rate in excess of 400 cc/min or a gas leakage rate in excess of 7d m³/sec (15 cubic ft/min) is observed, the plug shall be removed, repaired, and reinstalled, or an additional tubing plug may be installed in lieu of removal and repair.

3.7 *Injection Wells.* A surface-controlled subsurface-safety valve or an injection valve capable of preventing backflow shall be installed in all wells placed in injection service after the effective date of this Order.

This requirement is not applicable if the District Supervisor concurs that the well is incapable of flowing. The lessee shall verify the no-flow condition of the well annually and submit an annual report certifying the no-flow status of the well.

3.8 *Temporary Removal for Routine Operations.* Each wireline or pumpdown-retrievable subsurface-safety device may be removed, without further authorization or notice, for a routine operation which does not require the approval of a Sundry Notice and Report on Wells (Form 9–331), for a period not to exceed 15 days. The well shall be identified by a sign on the wellhead stating that the subsurface-safety device has been removed. The removal of the subsurface-safety device shall be noted in the records as required by subparagraph 3.11g. The well shall be attended at the wellhead until the subsurface-safety device has been reinstalled, unless attendance has been waived by the District Supervisor.

3.9 *Additional Safety Equipment.* All tubing installations in which a wireline- or pumpdown-retrievable subsurface-safety device is installed after the effective date of this Order shall be equipped with a landing nipple, flow couplings to prevent internal abrasion, or other protective equipment, above and below, to provide for the setting of the subsurface-safety valve. The control system for all surface-controlled subsurface-safety valves shall be an integral part of the platform Emergency Shutdown System (ESD) as defined in API RP 14C, Appendix C, Section C1. In addition to the activation of the ESD system by manual action on the platform, the system may be activated by a signal from a remote location. Surface-controlled subsurface-safety valves shall close in response to shut-in signals from the ESD system or the fire loop, or both.

3.10 *Emergency Action.* All tubing installations open to hydrocarbon-bearing zones in which the subsurface-safety device has been removed, in accordance with the provisions of this Order, shall be identified by a sign on the wellhead stating the subsurface-safety device has been removed. A subsurface-safety device shall be available for each well on the platform. In the event of an emergency such as an impending storm, this device shall be properly installed as soon as possible with due consideration being given to personnel safety.

3.11 *Records.* The lessee shall maintain records for a minimum period of 5 years for each subsurface-safety device installed. These records shall be maintained in the nearest offshore field office for a minimum period of 2 years. The records may then be transferred to the onshore field office for the remaining 3 years of the 5-year retention period. These records shall be available for review by any authorized representative of the U.S. Geological Survey (USGS). The records to be maintained shall contain verification of:

a. The design, including make, model, and type. For subsurface-controlled valves, number of the spacers, size of beans, springs, and the pressure settings.

b. The devices having been manufactured in accordance with the quality-assurance requirements of ANSI/ASME–SPPE–1 (formerly ANSI/ASME–OCS–1) as required by paragraph 2.

c. The completion and return of the receiving report to the manufacturer as required by ANSI/ASME–SPPE–1.

d. The record of all configuration modifications to the certified design.

e. Installation at the required setting depth and in accordance with the manufacturer's instructions and API RP 14B.

f. The qualifications of the personnel who directed all installations and removals.

g. The results of tests required by this Order, the dates of removals and reinstallations, and the reasons for removals and reinstallations.

h. The completion and submission of all failure reports required by paragraph 6 and all investigation reports required by paragraphs OE–2520 and OE–2670 of ANSI/ASME–SPPE–1.

3.12 *Reports.* Well completion reports (Form 9–330) and any subsequent reports of workover (Form 9–331) shall include the type and the depth of the subsurface-safety devices.

4. *Design, Installation, and Operation of Production Safety Systems.* All production facilities, including separators, treaters, compressors, headers, and flowlines, shall be designed, installed, and maintained in a manner which will facilitate an efficient, safe, and pollution-free operation.

The lessee shall furnish evidence that the surface-safety systems and related equipment are capable of normal operation in those Areas which are subject to subfreezing conditions, and that all equipment and operating procedures take into account floating ice, *icing*, and other extreme environmental conditions that may occur in the Area.

4.1 *New Platforms.* New platform production facilities shall be protected with a basic and ancillary surface-safety system designed, analyzed, tested, and maintained in operating condition in accordance with the provisions of "API Recommended Practice for Analysis, Design, Installation, and Testing of Basic Surface Safety Systems on Offshore Production Platforms," API RP 14C, Second Edition, January 1978, except Section A9, "Pipelines," which will be covered under OCS Order No. 8, or subsequent revisions which the Chief, Conservation Division, has approved for use and the additional requirements of the Order. For this application, the word "should" contained in API RP 14C shall be read "shall," except for those contained in explanatory statements, sections 3.4c and 4.3a(4)(a)–(f). If processing components are to be utilized, other than those for which Safety Analysis Checklists (SAC's) are included in API RP 14C, the analysis technique and documentation specified therein shall be utilized to determine the effects and requirements of these components upon the safety system.

4.2 *Specification for Wellhead Surface-Safety Valves.* All wellhead Surface-Safety Valves (SSV's) required by subparagraph 4.1 which are installed on new installations after July 1, 1979, shall conform to "API Specification for Wellhead Surface Safety Valves for Offshore Service," API Spec 14D, Second Edition, November 1977, as amended by Supplement 1, March 1978, or subsequent revisions which the Chief, Conservation Division, has approved for use at the time of installation.

4.3 *Submittal of Safety-System Design and Installation Features.* Prior to installation, the lessee shall submit for approval to the District Supervisor, in duplicate, information relative to design and installation features, as indicated in subparagraphs a through g. This information shall also be maintained at the lessee's onshore field engineering office. All approvals are subject to field verifications. This information shall include:

a. A schematic flow diagram showing size, capacity, and design working pressure of separators, treaters, storage tanks, compressors, pipeline pumps, and metering devices.

b. A schematic flow diagram (reference API RP 14C, example: figure E1) and the related Safety Analysis Function Evaluation (SAFE) chart (reference API RP 14C, Subsection 4.3c). These diagrams and charts shall be developed in accordance with the provisions of API RP 14C and the additional requirements of this Order.

c. A schematic piping diagram showing the size and design pressure with reference to welding specification(s) or code(s) used. The maximum-allowable working pressures shall be determined in accordance with "API Recommend Practice for Design and Installation of Offshore Production Platform Piping System," API RP 14E, First Edition, August 1975, and Supplement 2, October 1977, or subsequent revisions which the Chief, Conservation Division, has approved for use. The recommendations contained in API RP 14E are acceptable for the design and installation of the platform piping system.

d. A diagram of the fire-fighting system.

e. Electrical system information including the following:

(1) A plan of each platform deck outlining any nonrestricted area, i.e., areas which are unclassified with respect to electrical equipment installations and outlining areas in which potential ignition sources, other than electrical, are to be installed. The area outline shall include the following information:

(a) Any surrounding production or other hydrocarbon source and a description of the deck, overhead, and firewall.

(b) Location of generators, control rooms, panel boards, major cabling or conduit

routes, and identification of the wiring method, including the identification of each wire and cable type that is utilized.

(2) Elementary electrical schematic of any platform safety-shutdown system with a functional legend.

(3) Classification of areas for electrical installations in accordance with the National Electrical Code, 1978 Edition, and with the "API Recommended Practice for Classification of Areas for Electrical Installations at Drilling Rigs and Production Facilities on Lands and on Marine Fixed and Mobile Platforms," API RP 500B, Second Edition, July 1973, or subsequent revisions which the Chief, Conservation Division, has approved for use.

f. The design and schematics of the installation and maintenance of all fire and gas detection systems shall include the following:

(1) Type, location, and number of detection heads.

(2) Type and kind of alarm, including emergency equipment to be activated.

(3) Method used for detection.

(4) Method and frequency of calibration.

(5) Name of organization to perform system inspection and calibration.

(6) A functional block diagram of the detection system, including the electric power supply.

g. Certification that the design for the mechanical and electrical systems were approved by registered professional engineers. After these systems are installed, the lessee shall submit a statement to the District Supervisor certifying that the complete installations conform to the approved designs or the lessee shall request approval of the "As-Built" changes.

5. *Additional Safety and Pollution-Control Requirements.* The following requirements modify or are in addition to those contained in API RP 14C.

5.1 *Design, Installation, and Operation.*

5.1.1 *Pressure Vessels.* Pressure vessels shall be designed, fabricated, stamped, and maintained in accordance with specific sections of the ASME Boiler and Pressure Vessel Code as listed below. The pressure vessels shall conform to the July 1, 1977, edition of the Code or subsequent revisions which the Chief, Conservation Division, has approved for use.

a. Pressure relief valves shall be designed, installed, and maintained in accordance with applicable provisions of sections I, IV, and VIII. The relief valves shall conform to the valve-sizing and pressure-relieving requirements specified in these documents; however, the relief valves shall be set no higher than the maximum-allowable working pressure of the vessel. All relief valves and vents shall be piped in such a way as to prevent fluid from striking personnel or ignition sources.

b. Steam generators shall be equipped with low-water-level controls in accordance with applicable provisions of sections I and IV.

c. The lessee shall determine and record the operating pressure ranges of all pressure-operated vessels in order to establish the pressure-sensor settings. The high-pressure shut-in sensor shall be set no higher than 10 percent above the highest operating pressure of the vessel. This setting shall also be sufficiently below the relief valve's set pressure to assure that the pressure source is shut in before the relief valve starts relieving. The low-pressure shut-in sensor shall activate no lower than 15 percent or 35 kPa (5 psi), whichever is greater, below the lowest pressure in the operating range.

d. All pressure or fired vessels used in the production of oil or gas, ordered after the effective date of this Order, shall conform to the requirements stipulated in the edition of the ASME Boiler and Pressure Vessel Code, sections I, IV, and VIII, as appropriate, in effect at the time the vessel is ordered. Uncoded vessels now in use shall have been hydrostatically tested to a pressure 1.5 times their work pressures.

The test date, test pressure, and working pressure shall be marked on the vessel in a prominent place. A record of the test shall be maintained by the lessee in the field area.

5.1.2 *Flowlines.*

a. All flowlines from wells shall be equipped with high- and low-pressure shut-in sensors located downstream of the well choke. All pressure sensors shall be equipped to permit testing with an external pressure source. The lessee shall determine and record the operating pressure ranges in order to establish pressure-sensor settings. The high-pressure shut-in sensor shall be set no higher than 10 percent above the highest operating pressure of the line; but, in all cases, it shall be set sufficiently below the maximum shut-in wellhead pressure or the gas-list supply pressure to assure actuation of the surface-safety valve. The low-pressure shut-in sensor shall be set no lower than 10 percent or 35 kPa (5 psi), whichever is greater, below the lowest operating pressure of the line in which it is installed.

b. If a well flows directly to the pipeline before separation, the flowline and valves from the well located upstream of, and including, the header inlet valve(s) shall be able to withstand the maximum shut-in pressure of the well, unless the flowline is protected by one of the following:

(1) A relief valve which vents into the platform flare scrubber or some other location approved by the District Supervisor.

(2) An additional automatic shutdown valve controlled by an independent high-pressure sensor. The platform flare scrubber shall be designed to handle, without liquid-hydrocarbon carryover to the flare, the maximum-anticipated flow of liquid-hydrocarbons which may be relieved to the vessel.

5.1.3 *Pressure Sensors.* Pressure sensors may be of the automatic- or nonautomatic-reset type. When the automatic-reset types are used, a nonautomatic-reset relay shall be installed. All pressure sensors shall be equipped to permit testing with an external pressure source.

5.1.4 *Emergency Shutdown System.* The manually operated ESD valve shall be quick-opening and nonrestricted to enable the rapid actuation of the shutdown system. ESD stations may utilize a loop of breakable synthetic tubing in lieu of a valve. The time for the safety system to effect platform shutdown shall not exceed 45 seconds after the automatic detection of an abnormal condition or the actuation of an ESD station. A schematic of the ESD system shall be posted at a prominent location on the platform. This schematic shall indicate the control functions of all safety devices.

5.1.5 *Engine Exhausts.* Engine exhausts shall be equipped to comply with the insulation and personnel-protection requirements of API RP 14C, Section 4.2c(4). Exhaust piping from internal-combustion engines shall be equipped with spark arrestors.

5.1.6 *Glycol-Dehydration Units.* A pressure relief system or an adequate vent shall be installed on the glycol regenerator, or at a location approved by the District Supervisor, which will prevent overpressurization of all glycol-dehydration units. The set pressure of the pressure-relief system shall be determined by the lessee and approved by the District Supervisor. The discharge of the relief valve must be vented in a nonhazardous manner. The glycol-dehydration unit shall be properly maintained to prevent overpressurization of the unit.

5.1.7 *Gas Compressors.*

a. *New Compressor Installations.* Each compressor installed after the effective date of this Order shall be equipped with the following protective equipment:

(1) A PSH, a PSL, a PSV, and an LSH to protect each interstage scrubber.

(2) An LSL to protect each interstage scrubber, unless the fluid is dumped through a choke restriction to another pressure vessel. An LSL shut-in control(s) installed in interstage scrubber(s) may be designed to actuate the automatic Shutdown Valve(s) (SDV's) installed in the scrubber dump line(s).

(3) A TSH on each compressor cylinder or other components as applicable.

(4) In addition to the provisions of API RP 14C, Subsection A8.3, PSH and PSL shut-in sensors and LSH shut-in controls protecting compressor suction and interstage scrubbers shall be designed to actuate automatic SDV's located in each compressor suction and fuel gas line so that the compressor unit and the associated vessels can be isolated from all input sources.

All automatic SDV's installed in compressor suction and fuel gas piping shall also be actuated by the shutdown of the prime mover.

b. *Small Compressor Installations.* Compressor installations of 745 kilowatts (1,000 horsepower) or less are excluded from those requirements of API RP 14C, A8.3d, which provide for installation of a blowdown valve (BDV) on the discharge line.

5.1.8 *Firefighting Systems.* Firefighting systems installed after the effective date of this Order shall conform to Subsection 5.2, "Fire Water Systems," of "API Recommended Practice for Fire Prevention and Control on Open Type Offshore Production Platforms," API RP 14G, First Edition, September 1978, or to subsequent revisions which the Chief, Conservation Division, has approved for use and to the additional requirements of this subparagraph.

A firewater system consisting of rigid pipe with firehose stations shall be installed. A fixed water-spray system shall be installed in the well bays. The system shall be installed to provide needed protection at all times in all areas where production-handling equipment is located.

Acceptable pump drivers include diesel engines, natural gas engines, and electric motors. Fuel or power shall be available for at least 30 minutes of run-time during platform shut-in time. If necessary, an alternate fuel supply shall be installed to provide for this pump-operating time.

A firefighting system using chemicals may be used or may be required in lieu of a water-spray system if the District Supervisor determines that the use of a chemical system provides equivalent fire-protection control. A diagram of the firefighting system showing the location of all firefighting equipment shall be posted in a prominent place on the platform or structure.

5.1.9 *Fire and Gas Detection System.*

a. Fire (flame, heat, or smoke) sensors shall be used in all enclosed high-hazard areas. Gas sensors shall be used in all inadequately ventilated, enclosed, high-hazard areas. A high-hazard area is defined as:

(1) Any enclosed area containing a gas source, except a meter house with adequate ventilation.

(2) A compressor building.

(3) Any nonsealed enclosed area within 25 feet of a producing well or service area of a producing well, unless the enclosed area does not contain an ignition source. A diagram of the detection system showing the location of all detection points shall be posted in a prominent place on the platform or structure.

b. All detection systems shall be capable of continuous monitoring. The systems shall be of the manual-reset type.

c. A fuel gas odorant and an automatic gas-detection and alarm system are required in enclosed, continuously manned areas of the facility.

d. The District Supervisor may require a gas detector or alarm in any potentially hazardous area.

e. Fire and gas detection systems shall be of a type as defined in the National Electrical Code, 1978 Edition, or subsequent revisions which the Chief, Conservation Division, has approved for use.

5.1.10 *Electrical Equipment.* The following requirements shall be applicable to all electrical equipment and systems:

a. All engines with ignition systems shall be equipped with a low-tension ignition system of a low-fire-hazard type and shall be designed and maintained to minimize the release of sufficient electrical energy to cause ignition of an external, combustible mixture.

b. All electrical generators, motors, and lighting systems shall be installed, protected, and maintained in accordance with the edition of the National Electrical Code and API RP 500B in effect at the time of approval.

c. At the time of approval, wiring methods shall conform to the National Electrical Code, 1978 Edition, or to the Institute of Electrical and Electronic Engineers (IEEE) "Recommended Practice for Electric Installation on Shipboard," IEEE Std. 45–1977, or subsequent revisions which the Chief, Conservation Division, has approved for use. Each conductor of a wire, a cable, or a bus bar shall be made of copper on all new installations constructed after the effective date of this Order.

d. An auxiliary power supply shall be installed to provide emergency power, capable of operating all electrical equipment required to maintain safety of operations, in the event a of failure in the primary electrical power supply.

e. The elementary electrical schematic of the platform safety-shutdown system required by subparagraph 4.3e(2) shall be posted in a prominent place on the platform or structure. This schematic shall indicate the control functions of all electrically actuated safety devices.

f. Maintenance of these systems shall be by qualified personnel.

5.1.11 *Erosion.* A program of erosion control shall be in effect for wells or fields having a history of sand production. The erosion-control program may include sand probes, X-ray, ultrasonic, or other satisfactory monitoring methods. An annual report, by lease, indicating the wells which have erosion-control programs in effect and the results of the programs shall be submitted by the first of December to the appropriate District Supervisor.

5.2 *General Platform Operations.*

a. Safety devices and safety systems on wells which are capable of producing shall not be bypassed or blocked out of service. Safety devices may be bypassed or blocked out of service if they are temporarily out of service due to startup, maintenance, or testing procedures, provided that personnel are monitoring the blocked-out functions. Any device on wells, vessels, or flowlines which is temporarily out of service shall be flagged.

b. When wells are disconnected from producing facilities and blind-flanged or equipped with a tubing plug, compliance is not required with the provisions of API RP 14C of this Order concerning:

(1) Installation of automatic fail-close SSV on wellhead assemblies.

(2) Installation of the PSH and the PSL shut-in sensors downstream of the choke in flowlines from wells.

(3) Installation of flow safety valves (FSV's) in header individual flowlines.

c. All open-ended lines connected to producing facilities shall be plugged or blind-flanged, except those lines designed to be open-ended, such as flare or vent lines.

5.3 *Simultaneous Platform Operations.* Prior to conducting activities simultaneously with production operations which could increase the possibility of occurrence of undesirable events, such as harm to personnel or to the environment or damage to equipment, a "General Plan for Conducting Simultaneous Operations" in a producing field shall be filed for approval with the District Supervisor. This plan shall be modified and updated by supplemental plans when actual simultaneous operations are scheduled. Activities requiring these plans are drilling, completion, workover, wireline, pumpdown, and major construction operations.

The "General Plan for Conducting Simultaneous Operations" shall include:

a. A narrative description of operations.

b. Procedures for the mitigation of potentially undesirable events including:

(1) The guidelines the lessee will follow to assure coordination and control of simultaneous activities.

(2) An indication of the person having overall responsibility at the site for the safety of platform operations.

The "Supplemental Plan for Conducting Simultaneous Operations" shall include:

a. A floor plan of each platform deck indicating critical areas of simultaneous activities.

b. An outline of any additional safety measures that are required for simultaneous operations.

c. Specification of any added or special equipment or procedural conditions imposed when simultaneous activities are in progress.

5.4 *Welding Practices and Procedures.* The following requirements are applicable to any welding practice or procedure performed on:

a. An offshore mobile-drilling unit during the drilling mode.

b. A mobile workover unit during any drilling, completion, recompletion, remedial, repair, stimulation, or other workover activity.

c. A platform, structure, artificial island, or other installation during any drilling, completion, workover, or production operation.

d. A platform, structure, artifical island, or other installation which contains a well open to a hydrocarbon-bearing zone.

For the purpose of this Order, the terms "welding" and "burning" are defined to include arc or acetylene cutting and arc or acetylene welding.

Each lessee shall file, for approval by the District Supervisor, a "Welding and Burning Safe Practices and Procedures Plan." The plan shall be filed within 90 days after the effective date of this Order and shall include the qualification standards or requirements for personnel and the methods by which the lessee will assure that only personnel meeting such standards or requirements are utilized. A copy of this plan shall be available in the field area. Any person designated as a welding supervisor shall be thoroughly familiar with this plan.

Prior to welding or burning operations, the lessee shall establish approved safe-welding areas. These areas shall be constructed of noncombustible or fire-resistant materials, be free of combustible or flammable contents, and be suitably segregated from adjacent areas. National Fire Protection Association Bulletin "Cutting and Welding Processes," No. 51B, 1971, or subsequent revisions which the Chief, Conservation Division, has approved for use, shall be used as a guide to designate these areas. A drawing showing the location of these areas shall be posted in a prominent place on the facility. All offshore welding and burning shall be minimized by onshore fabrication when feasible.

All welding equipment shall be inspected prior to beginning any welding or burning.

Welding machines located on production or process platforms shall be equipped with spark arrestors and drip pans. Welding leads shall be completely insulated and in good condition; oxygen and acetylene bottles secured in a safe place; and hoses leak-free and equipped with proper fittings, gauges, and regulators.

All welding which cannot be done in the approved safe-welding area shall be performed in compliance with the procedures outlined below:

a. Prior to the commencement of any welding or burning operation on a structure, the lessee's designated person-in-charge at the installation shall personally inspect the qualifications of the welder or welders to assure that they are properly qualified in accordance with the lessee-approved qualification standards or requirements for welders. The designated person-in-charge and the welders shall personally inspect the work area for potential fire and explosion hazards. After it has been determined that it is safe to proceed with the welding or burning operation, the designated person-in-charge shall issue a written authorization for the work.

b. During all welding and burning operations, one or more persons shall be designated as a Fire Watch. Persons assigned as a Fire Watch shall have no other duties while actual welding or burning operations are in progress. The Fire Watch shall not be a member of the welding crew. If welding is to be done in an area which is not equipped with a gas detector, the Fire Watch shall also maintain a continuous surveillance with a portable gas detector during welding.

c. Prior to any welding or burning operation, the Fire Watch shall have in his possession firefighting equipment in a usable condition. At the end of the welding operation, the equipment shall be returned to a usable condition.

d. No welding shall be done on piping, containers, tanks, or other vessels which have contained a flammable substance unless the contents have been rendered and determined to be safe for welding or burning by the designated person-in-charge.

e. If drilling, workover, or wireline operations are in progress on the platform, welding operations in other than approved safe-welding areas shall not be conducted unless the well(s) where these operations are in progress contain noncombustible fluids and the entry of formation hydrocarbons into the wellbore is precluded. All other provisions of this section shall also be applicable.

f. If welding or burning operations are conducted on wells or in the well-bay area, all producing wells shall be shut in at the surface-safety valve.

5.5 *Safety Device Testing.* The safety-system devices which are required by this Order shall be tested by the lessee at the interval specified below or more frequently if operating conditions warrant.

Testing shall be in accordance with API RP 14C, appendix D, and the following:

a. All PSV's shall be tested for operation at least annually. These valves shall be either bench-tested or equipped to permit testing with an external pressure source.

b. All Pressure Sensors-High/Low (PSHL) shall be tested at least once each calendar month, but at no time shall more than 6 weeks elapse between tests.

c. All SSV's shall be tested for operation and for leakage at least once each calendar month, but at no time shall more than 6 weeks elapse between tests. The SSV's shall be tested for operation in accordance with the test procedure specified in API RP 14C, appendix D, section D4, table D2, subsection L, and tested for leakage in accordance with subsection M. If the valve does not operate properly or any fluid flow is observed in step 3 of the leakage test, the valve shall be repaired or replaced.

d. All flowline FSV's shall be checked for leakage at least once each calendar month, but at no time shall more than 6 weeks elapse between tests. The FSV's shall be tested for leakage in accordance with the test procedure specified in API RP 14C, appendix D, section D4, table D2, subsection D. If the leakage measured in step 6 exceeds a liquid flow of 400 cc/min or a gas flow of 7 dm^3/sec (15 cubic ft/min), the FSV's shall be repaired or replaced.

e. All LSH and LSL controls shall be tested at least once each calendar month, but at no time shall more than 6 weeks elapse between tests. These tests shall be conducted by raising and lowering the liquid level across the level-control detector.

f. All automatic inlet SDV's which are actuated by a sensor on a vessel or a compressor shall be tested for operation at least once each calendar month, but at no time shall more than 6 weeks elapse between tests.

g. All SDV's located in liquid-discharge lines and actuated by vessel low-level sensors shall be tested for operation once each calendar month, but at no time shall more than 6 weeks elapse between tests.

h. The TSH shutdown controls installed in all compressors which are protected against abnormal pressures solely by temperature safety devices shall be tested semiannually and repaired or replaced as necessary.

i. All pumps for firefighting water systems shall be inspected and test-operated weekly.

j. All fire (flame, heat, or smoke) and gas detection systems shall be tested for operation and recalibrated semiannually, if necessary.

k. The lessee shall notify the District Supervisor when the lessee is ready to conduct a preproduction test and inspection of the integrated safety system. The lessee shall also notify the District Supervisor upon commencement of production in order that a post-production test and inspection of the integrated system may be conducted.

l. All other safety devices shall be tested annually and repaired or replaced as necessary.

5.6 *Records.* The lessee shall maintain records for a minimum period of 5 years for each surface-safety device installed. These records shall be maintained in the nearest offshore field office for a minimum period of 2 years. The records may then be transferred to the onshore field office for the remaining 3 years of the 5-year retention period. These records shall be available for review by any authorized representative of the U.S. Geological Survey (USGS). The records shall show the present status and history of each device, including dates and details of installation, inspection, testing, repairing, adjustments, and reinstallation. The records shall also include all failure and inventory reports required by paragraph 6 of this Order.

5.6.1 *Surface-Safety Valve and Associated Actuator Records.* Records for surface-safety valves and associated actuators which require compliance with paragraph 2 shall contain additional information showing verification of:

a. The devices having been manufactured in accordance with the quality assurance requirements of ANSI/ASME–SPPE–1 (formerly ANSI/ASME–OCS–1) as required by paragraph 2.

b. The completion and return of the receiving report to the manufacturer as required by ANSI/ASME–SPPE–1.

c. The completion and submission of all failure reports required by paragraph 6 and all investigation reports required by paragraphs OE–2529 and OE–2670 of ANSI/ASME–SPPE–1.

5.7 *Safety Device Training.* Prior to the commencement of production, the lessee shall ensure that all personnel engaged in installing, inspecting, testing, and maintaining these safety devices will have been qualified under a program as recommended by "API Recommended Practice for Qualification Programs for Offshore Production Personnel Who Work With Anti-Pollution Safety Devices," API RP T–2, revised October 1975, or subsequent revisions which the Chief, Conservation Division, has approved for use.

Documented evidence of the qualifications of individuals performing these functions shall be maintained in the field area.

Manufacturers' representatives need not be qualified in accordance with API RP T–2 if they are working on equipment supplied by their company and if they are directly supervised by a qualified person who is capable of evaluating the impact of the work on the total system.

On-the-job trainees working with safety devices shall be directly supervised by a qualified person.

At the time that the lessee submits the Plan of Development and Production, required by 30 CFR 250.34–2, the lessee shall submit an application for approval to the Chief, Conservation Division, describing the training to be conducted and the methods the lessee will utilize. The application shall include:

a. A designation of the lessee's representative who is responsible for training and coordinating training matters with the USGS.

6. *Failure and Inventory Reporting System (FIRS).* The USGS has established a safety and pollution-prevention device Failure and Inventory Reporting System (FIRS) to enhance the reliability and safety of operations in the OCS. This system applies to offshore structures, including satellites and jackets, which produce or process

hydrocarbons and includes the attendant portions of hydrocarbon pipelines, when physically located on the structure.

When the devices specified herein are used as a part of the production-safety and pollution-prevention system, the lessee shall:

a. Submit an initial inventory and periodic updates in accordance with the procedures described in subparagraph 6.1.3.

b. Report all device failures which occur. The report content and format shall be in accordance with the procedures described in subparagraph 6.1.4.

Inventory and failure data required by this Order shall be submitted to the USGS Conservation Manager in the appropriate regional office.

6.1 *Data and Reporting Requirements.*

6.1.1 *Format.* Inventory and failure data shall be submitted in a format containing the same information that is in the Safety Device Inventory Report (Form 9–1994) and the Safety Device Failure Report Form (Form 9–1995) and as outlined in the respective User's Instruction Booklets. Copies of the forms and booklets may be obtained from the USGS Conservation Manager in the appropriate regional office.

The specific method of submitting the required data may be selected from the following:

a. USGS Forms 9–1994 and 9–1995, using a standard coding convention (e.g., all letters capitalized, Z, I, letter O, number 0).

b. ADP card decks of standard 80-column cards.

c. Magnetic tapes which are 9-track, 800 BPI, unlabeled, blocking cannot exceed 1040 characters, odd parity, single gap (i.e., compatible with IBM equipment EBCDIC).

6.1.2 *Device Coverage.* Inventory and failure reports are to be submitted on the safety- and pollution-prevention devices on offshore structures, including satellites and jackets, which produce or process hydrocarbons, and hydrocarbon pipelines thereon. These reports shall be submitted on the following:

a. Blowdown Valve		(BDV)
b. Burner Flame Detector		(BSL)
c. Check Valve		(FSV)
d. Combustible Gas Detector		(ASH)
e. Emergency Shutdown Valve		(ESD)
f. Level Sensor	High	(LSH)
	Low	(LSL)
	Hi/Lo	(LSHL)
g. Pressure Sensor	High	(PSH)
	Low	(PSL)
	Hi/Lo	(PSHL)
h. Relief Valve		(PSV)
i. Shutdown Valve		(SDV)
j. Surface-Safety Valve		(SSSV)
k. Surface-Safety Valve		(SSV)
l. Temperature Sensor	High	(TSH)
	Low	(TSL)
	Hi/Lo	(TSHL)
m. Valve Actuator on, the shutdown valve, the blowdown valve, the surface-safety valves		(VA)

6.1.3 *Device Inventory Reporting.*

6.1.3.1 *Initial Inventory.*

a. For platforms in existence at the time this Order becomes effective, a complete inventory of the safety and pollution-prevention devices shall be submitted no later than 6 months after the effective date of this Order.

b. For platforms completed after this Order becomes effective, a complete inventory of the safety and pollution-prevention devices shall be submitted no later than 1 month after the initial platform production date.

6.1.3.2 *Inventory Updates.* An updating of or addition/deletion to the latest inventory shall be submitted on a monthly basis so as to maintain a current and accurate data base. The inventory will be updated by using the contents of the Safety Device Inventory Report (Form 9–1994) and the Safety Device Failure Report (Form 9–1995).

Inventory updating due to the addition, deletion, or changeout of a device is accomplished by the lessee's reporting of all the data required on the Safety Device Inventory Report (9–1994).

Whenever a device fails and is either replaced with a new device or "fixed" and put back into service, the inventory shall be updated to reflect this change. Inventory updating, due to the failure of a device, will be performed by the USGS, using the contents of the Safety Device Failure Report (Form 9–1995). Inventory updating information shall be received no later than 30 days following the month in which the device change was made.

6.1.3.3 *Inventory-Reporting Methods.* Inventory data shall be reported either on the Safety Device Inventory Reporting forms (Form 9–1994), punched cards, or magnetic tapes.

The reports shall contain all of the required information in the standard format as described in subparagraph 6.1.1.

6.1.3.4 *Inventory Verification.* The device inventory shall be verified by the lessee to ensure that the inventory data base is maintained on a current basis and that changes are being incorporated as they occur. The verification shall be accomplished no more frequently than once each 6-month period. When verification is required, the USGS will provide the lessee with a copy of the information on record, in the lessee's selected reporting format. The lessee shall review the information and either submit a letter stating that the information is correct, or make the appropriate corrections to the information provided by the USGS. The letter or appropriate corrections shall be received no later than 30 days following the month in which the inventory information which is to be verified was forwarded to the lessee.

6.1.3.5 *Inventory-Reporting Deviation.* A lessee may submit an inventory, update, or verification report differing from that described in subparagraph 6.1.3 when authorized by the USGS.

6.1.4 *Device Failure Reporting.*

6.1.4.1 *Failure-Data Submittal.* Device failure data shall be recorded as soon as possible after detecting the failure as defined in subparagraph 6.1.4.2. This data shall be received no later than 30 days following the month in which the failure was detected. This data must contain all of the required information and be submitted in the standard format either on Safety Device Failure Report forms (Form 9–1995), punched cards, or magnetic tape, as previously described in subparagraph 6.1.1. Information on the failed device must match that previously submitted in inventory reporting. A formal failure analysis is not required by this Order, but each failed device shall undergo sufficient test/disassembly to establish the basic cause(s) of the failure.

6.1.4.2 *Failure-Data Verification.* After receipt of the complete failure data from the lessees, a printout shall be made of all failures by manufacturer, model, and reported cause. Each manufacturer listed shall be furnished a copy of the printout containing the reported failures of his devices only. If he disagrees with the reported failure causes, he is invited to investigate the questioned causes in coordination with the reporting lessee and provide a coordinated reply within 30 days after receipt of the printout. If no reply is received within that time period, the originally reported causes shall be considered to be correct, and the data shall be evaluated accordingly.

6.1.4.3. *Failure Definition.* The safety and pollution-prevention device Failure and Inventory Reporting System does not differentiate between a malfunction and a failure. For the purpose of this program, a failure is defined as the inability of a device to perform its designed function within specified limits. A device is considered to have failed if it does not operate (perform its function) as required within the specified tests' tolerances.

A failure report is not required for:

a. Adjustments made within specified tolerances.

b. Adjustments required due to changes in operating conditions.

7. *Crane Operations.* Cranes shall be operated and maintained to ensure the safety of facility operations in accordance with the provisions of "API Recommended Practice for Operation and Maintenance of Offshore Cranes," API RP 2D, October 1972, or subsequent revisions which the Chief, Conservation Division, has approved for use. Records of inspection, testing, maintenance, and crane operators qualified in accordance with the provisions of API RP 2D shall be kept in the field area for a period of 2 years.

"API Specification for Offshore Cranes," API Specification 2C, February 1972, or subsequent revisions which the Chief, Conservation Division, has approved for use, shall be used as a guideline for the selection of cranes.

8. *Employee Orientation and Motivation Programs for Personnel Working Offshore.* The lessee shall make a planned, continuing effort to eliminate accidents due to human error. This effort shall include the training of personnel in their functions. A program to achieve safe and pollution-free operations shall be established. This program shall include instructions in the provision of "API Recommended Practice Orientation Program for Personnel Going Offshore for the First Time," API RP T–1, January 1974, or subsequent revisions which the Chief, Conservation Division, has approved for use. "API Employee Motivation Programs for Safety and Prevention of Pollution in Offshore Operations," API Bulletin T–5, September 1974, or subsequent revisions which the Chief, Conservation Division, has approved for use, shall be used as a guide in developing employee safety and pollution-prevention motivation programs.

9. *Requirements for Drilling Rigs.*

9.1 *Fixed Structures.* The following requirements contained in this Order are applicable to drilling rigs on fixed structures:

a. Subparagraph 5.1.10, "Electrical Equipment."

b. Subparagraph 5.4, "Welding Practices and Procedures."

c. Paragraph 6, "Employee Orientation and Motivation Programs for Personnel Working Offshore."

9.2 *Mobile Drilling Units.* The following requirements contained in this Order are applicable to drilling rigs on mobile drilling units:

a. Subparagraph 5.4, "Welding Practices and Procedures."

b. Paragraph 6, "Employee Orientation and Motivation Programs for Personnel Working Offshore."

10. *Departures.* All departures from the requirements specified in this Order shall be subject to approval, pursuant to 30 CFR 250.12(b).

Rodney A. Smith,
Oil and Gas Supervisor, Arctic Area.

Approved:

Don E. Kash,
Chief, Conservation Division.

DEPARTMENT OF THE INTERIOR

Geological Survey, Conservation Division, Western Region

ALASKA AREA, ARCTIC

OCS Order No. 7, Effective

Pollution Prevention and Control

This Order is issued pursuant to the authority prescribed in 30 CFR 250.11 and in accordance with 30 CFR 250.43. The lessee shall comply with the following requirements.

1. *Pollution Prevention.* During the exploration, development, production, and transportation of oil and gas, the lessee shall prevent pollution of the ocean. Furthermore, by the disposal of waste materials into the ocean, the lessee shall not create conditions which will adversely affect the public health, life, property, aquatic life, wildlife, recreation, navigation, commercial fishing, or other uses of the ocean.

1.1 *Liquid Disposal.*

1.1.1 *Drilling-Mud Components.* The lessee shall submit, as a part of the Application for Permit to Drill (Form 9–331 C), a detailed list of drilling-mud components including the common chemical or chemical trade name of each component, a list of the drilling-mud additives anticipated for use in meeting special drilling requirements, and the proposed method of drilling-mud disposal. The disposal of drilling mud is subject to the Environmental Protection Agency's permitting procedures, pursuant to the Federal Water Pollution Control Act, as amended. Approval of the method of drilling-mud disposal into the ocean shall be obtained from the District Supervisor; each request will be decided on a case-by-case basis.

1.1.2 *Hydrocarbon-Handling Equipment.* All hydrocarbon-handling equipment for testing and production such as separators, tanks, and treaters shall be designed and operated to prevent pollution. Maintenance or repairs which are necessary to prevent pollution of the ocean shall be undertaken immediately.

1.1.3 *Curbs, Gutters, and Drains for Fixed Platforms or Structures and Mobile Drilling Units.*

a. *Fixed Platforms, Structures, and Artificial Islands.* Curbs, gutters, and drains shall be installed in all deck areas to collect all contaminants in a closed sump. When open decks are used, drip pans or the equivalent shall be placed under equipment and piped to a closed sump. Closed sumps shall automatically maintain fluid at a level sufficient to prevent the discharge of oil into the ocean. Contaminants that are removed from sumps shall be disposed of in a manner which will not create pollution.

All walking and working surfaces shall be equipped with proper drainage to provide safety for personnel and to prevent pollution.

On artificial islands, all vessels containing hydrocarbons shall be placed inside an impervious berm. The volume enclosed by the berm must be in excess of the volume of the vessels containing hydrocarbons. In addition, the rig mat must be made impervious, and all drainage ditches must be directed away from the drilling rig to an impervious sump.

b. *Mobile Drilling Units.* Curbs, gutters, and drains which collect contaminants associated with the drilling operation on a mobile drilling unit shall be installed as required by subparagraph 1.1.3a.

Curbs, gutters, and drains which collect contaminants not associated with the drilling operations are subject to regulation by the U.S. Coast Guard.

1.1.4 *Dischargers from Fixed Platforms or Structures and Mobile Drilling Units.* Discharges from fixed platforms or structures and mobile drilling units, including sanitary waste, produced water, drilling mud, and deck drainage, are subject to the Environmental Protection Agency's permitting procedures, pursuant to the Federal Water Pollution Control Act, as amended.

1.2 *Solid Material Disposal.*

1.2.1 *Well Solids.* The disposal of drill cuttings, sand, and other well solids containing oil is subject to the Environmental Protection Agency's permitting procedures, pursuant to the Federal Water Pollution Control Act, as amended. Approval of the method of disposal of drill cuttings, sand, and other well solids shall be obtained from the District Supervisor.

1.2.1 *Containers.* Containers and other similar solid-waste materials shall not be disposed of into the ocean.

1.2.3 *Equipment.* Disposal of equipment into the ocean is prohibited except under emergency conditions. The location and description of any equipment disposed of into the ocean shall be reported to the District Supervisor and to the U.S. Coast Guard in accordance with paragraph 4 of OCS Order No. 1.

2. *Personnel, Inspections, and Reports.*

2.1 *Personnel.* The lessee's personnel shall be instructed in the techniques of equipment maintenance and operation for the prevention of pollution. Contractor personnel providing services offshore shall be informed in writing, prior to executing contracts, of the lessee's obligations to prevent pollution and of the provisions of this Order.

2.2 *Pollution Inspections.*

2.2.1 *Manned Facilities.* Manned drilling and production facilities shall be inspected daily to determine if pollution is occurring. Maintenance or repairs which are necessary to prevent pollution of the ocean waters shall be undertaken and performed immediately.

2.2.2 *Unattended Facilities.* Unattended facilities, including those equipped with remote control and monitoring systems, shall be inspected daily or at intervals prescribed by the District Supervisor to determine if pollution is occurring. Necessary maintanance or repairs shall be made immediately.

2.3 *Pollution Reports.* All spills of oil and liquid pollutants shall be reported orally to the District Supervisor and shall be confirmed in writing. All reports shall include the cause, location, volume of spill, and action taken. Reports of spills of more than 5.0 cubic meters (31.5 barrels) shall include information on the sea state, meteorological conditions, size, and appearance of slick. All spills of oil and liquid pollutants shall also be reported in accordance with the procedure contained in 33 CFR 153.203.

2.3.1 *Spills.* Spills shall be reported orally within the following time limits:

a. Within 12 hours, if spills are 1.0 cubic meters (6.3 barrels) or less.

b. Without delay, if spills are more than 1.0 cubic meters (6.3 barrels).

2.3.2 *Observed Malfunctions.* Lessees shall notify each other of observed pollution resulting from another's operation.

3. *Pollution-Control Equipment and Materials and Oil Spill Contingency Plans.* The lessee shall submit a description of procedures, personnel, and equipment that will be used in reporting, cleanup, and prevention of the spread of any pollution resulting from an oil spill which might occur during exploration or development activities. The following subparagraphs describe the minimum requirements for pollution-control equipment and procedures.

3.1 *Equipment and Materials.* Pollution-control equipment and materials shall be maintained by, or shall be available to, each lessee at an offshore location or at a location approved by the Supervisor. The equipment shall include containment booms, skimming apparatus, cleanup materials, and chemical agents which shall be available prior to the commencement of operations. The equipment and materials shall be inspected monthly and maintained in a state of readiness for use. The results of the inspections shall be recorded and maintained at the site.

3.2 *Oil Spill Contingency Plans.* The lessee shall submit an Oil Spill Contingency Plan for approval by the Supervisor, prior to the approval of an Exploration Plan or a Development and Production Plan. Oil Spill Contingency Plans shall be reviewed annually. All modifications of the Oil Spill Contingency Plan and the results from the review of the plan shall be submitted to the

Supervisor for approval. The Oil Spill Contingency Plan shall contain the following:

a. Provisions to assure that full resource capability is known and can be committed during an oil spill, including the identification and inventory of applicable equipment, materials, and supplies which are available locally and regionally, both committed and uncommitted, and the time required for deployment of the equipment.

b. Provisions for varying degrees of response effort depending on the severity of the oil spill.

c. Provisions of identifying and protecting areas of special biological sensitivity.

d. Establishment of procedures for the purpose of early detection and timely notification of an oil spill including a current list of names, telephone numbers, and addresses of the responsible person and alternates on call to receive notification of an oil spill; and the names, telephone numbers, and addresses of regulatory organizations and agencies to be notified when an oil spill is discovered.

e. Provisions for well-defined and specific actions to be taken after discovery and notification of an oil spill, including:

(1) Specification of an oil-spill-response operating team consisting of trained, prepared, and available operating personnel.

(2) Predesignation of an oil-spill-response coordinator who is charged with the responsibility and is delegated commensurate authority for directing and coordinating response operations.

(3) A preplanned location for an oil-spill-response operations center and a reliable communication system for directing the coordinated overall response operations.

(4) Provisions for disposal of recovered spill materials.

4. *Drills and Training.*

4.1 *Drills.* Drills for familiarization with pollution-control equipment and operational procedures shall be held by the lessee. The personnel identified as the oil-spill-response operating team in the Contingency Plan shall participate in these drills. The drills shall be realistic and shall include deployment of equipment. A time schedule with a list of equipment to be deployed shall be submitted to the Supervisor for approval. The drill schedule shall provide sufficient advance notice to allow U.S. Geological Survey (USGS) personnel to witness any of the drills. Drills shall be recorded, and the records shall be made available to USGS personnel. Where drill performance and results are deemed inadequate, the Supervisor may require an increase in the frequency or a change in the location of the drills until satisfactory results are achieved.

4.2 *Training.* The lessee shall ensure that training classes for familiarization with pollution-control equipment and operational procedures are provided of the oil-spill-response operating team. The supervisory personnel responsible for directing the oil-spill-response operations shall receive oil-spill-response instruction *suitable for all seasons.* The lessee shall retain course-completion certificates or attendance records issued by the organization where the instruction is provided. These records shall be available to any authorized representative of the USGS, upon request.

5. *Spill Control and Removal.* Immediate corrective action shall be taken in all cases where pollution has occurred. Corrective action taken under the lessee's Oil Spill Contingency Plan shall be subject to modification when directed by the Supervisor. The primary jurisdiction to require corrective action to abate the source of pollution shall remain with the Supervisor, pursuant to the provisions of this Order and the Memorandum of Understanding (MOU) between the Department of Transportation (U.S. Coast Guard) and the Department of the Interior (U.S. Geological Survey) dated August 16, 1971. The use of chemical agents or other additives shall be permitted only after approval by the Supervisor in accordance with Annex X, National Oil and Hazardous Substances Pollution Contingency Plan and in accordance with the previously mentioned MOU.

6. *Departures.* All departures from the requirements specified in this Order shall be subject to approval, pursuant to 30 CFR 250.12(b).

Rodney A. Smith,
Oil and Gas Supervisor, Arctic Area.

Approval:
Don E. Kash,
Chief, Conservation Division.

DEPARTMENT OF THE INTERIOR

Geological Survey, Conservation Division, Western Region

ALASKA AREA, ARCTIC

OCS Order No. 12, Effective

Public Inspection of Records

This Order is issued pursuant to the authority prescribed in 30 CFR 250.11 and in accordance with 30 CFR 250.34, 250.97, 252.6, and 43 CFR Part 2. Requests for information made under the Freedom of Information Act, 5 U.S.C. § 552, will be governed by the provisions of 43 CFR Part 2 (40 FR 7304, February 19, 1975).

1. *Filing of Reports.* All reports on Forms 9-152, 9-330, 9-331, 9-331 C, 9-1869, 9-1870 and the forms used to report the results of multipoint back-pressure tests shall be filed by the lessee in accordance with the following:

a. All reports submitted on these forms shall include a copy with the words "Public Information" shown on the lower right-hand corner. This copy of the form shall be made available for public inspection.

b. All items on the form not marked "Public Information" shall be completed in full, and such forms and all attachments thereto shall not be available for public inspection.

c. The copy marked "Public Information" shall be completed in full except that the items described in subparagraphs 2.1 through 2.4 below and the attachments relating to such items may be excluded.

2. *Availability of Records.* It has been determined that certain records pertaining to leases and wells in the OCS and submitted under 30 CFR 250 shall be made available for public inspection, as specified below, in the Area office.

2.1 *Form 9-152—Monthly Report of Operations.* All information contained on this form shall be available except the information required in the "Remarks" column.

2.2 *Form 9-330—Well Completion or Recompletion Report and Log.*

2.2.1 *Prior to Commencement.* Prior to commencement of production, all information contained on this form shall be available except:

a. Item 1a, Type of Well.

b. Item 4, Location of Well, at top production interval and at total depth.

c. Item 22, If Multiple Completion, how many.

d. Item 24, Producing Interval.

e. Item 26, Type Electric and Other Logs Run.

f. Item 28, Casing Record.

g. Item 29, Liner Record.

h. Item 30, Tubing Record.

i. Item 31, Perforation Record.

j. Item 32, Acid, Shot, Fracture, Cement Squeeze, Etc.

k. Item 33, Production.

l. Item 37, Summary of Porous Zones.

m. Item 38, Geologic Markers.

2.2.2 *After Commencement of Production.* After commencement of production, all information shall be available except Item 37, Summary of Porous Zones, and Item 38, Geologic Markers.

2.2.3 *5 Years' Elapsed Time.* If production has not commenced after an elapsed time of 5 years from the date of filing Form 9-330 as required in 30 CFR 250.33(b), excluding the total time that operations and production are suspended by direction of the Secretary of the Interior or his duly authorized representative, and further excluding the total time that operations and production are stopped or prohibited by Court order, all information contained on this form shall be available except Item 37, Summary of Porous Zones, and Item 38, Geologic Markers. Within 90 days prior to the end of the 5-year period, exclusive of exceptions noted above, the lessee shall file a Form 9-330 containing all information requested on the form except Item 37, Summary of Porous Zones, and Item 38, Geologic Markers, to be made available for public inspection. Objections to the release of such information may be submitted with the completed Form 9-330.

2.3 *Form 9-331—Sunday Notices and Reports on Wells.*

2.3.1 *"Request for Approval to."* When used as a "Request for Approval to" conduct operations, all information contained on this form shall be available except Item 4, Location of Well, at top production interval and at total depth, and Item 17, Describe Proposed or Completed Operations.

2.3.2 *"Subsequent Report of."* When used as a "Subsequent Report of:" operations, and after commencement of production, all information contained in this form shall be available, except information contained in Item 17 pertaining to subsurface locations and measured and true vertical depths for all markers and zones not placed on production.

2.4 *Form 9-331 C—Application for Permit to Drill, Deepen, or Plug Back.* All information contained on this form and the

location plat attached thereto shall be available except Item 4, Location of Well at Proposed Production Zone, and Item 23, Proposed Casing and Cementing Program.

2.5 *Form 9–1669—Quarterly Oil-Well-Test Report.* All information contained on this form shall be available.

2.6 *Form 9–1670—Semi-Annual Gas-Well-Test Report.* All information contained on this form shall be available.

2.7 *Multi-point Back-Pressure-Test Report.* All information contained in this report shall be available.

2.8 *Sales of Lease Production.* Information contained on the monthly U.S. Geological Survey computer printout showing sales volumes, value, and royalty on production of oil, condensate, gas, and liquid products by lease shall be made available.

2.9 *Availability of Inspection Records.* All accident-investigation reports, pollution-incident reports, facilities-inspection data, and records of enforcement actions are also available for public inspection.

2.10 *Availability of Data and Information Submitted by Lessees.* It has been determined that much information submitted by lessees, as a result of OCS Orders and OCS Notices to Lessees and Operators, is nonproprietary in nature or that release of such information is necessary for the proper development of the lease. This information will be made available for public inspection, except for those portions which the lessee shall designate, with the Supervisor's approval, as trade secrets and commercial or financial information which is privileged or confidential. The available information will include:

a. Notices of support activity.

b. Oceanographic and meteorological data collected from drilling units and production facilities during the period of operations.

c. Results of site surveys required prior to drilling or placement of platforms or structures, such as shallow geologic hazards surveys, archeological/cultural resource surveys, or other surveys related to the placement of platforms or structures.

d. Drawings, maximum environmental design criteria, and rated capability data of mobile drilling units and structures.

e. Oil Spill Contingency Plans.

f. Critical Operations and Curtailment Plans.

g. Other data required under 30 CFR 250.34.

2.11 *Expired Leases.* All information is available upon the expiration of a lease.

3. *Information Exempt from Public Inspection.* The information in subparagraphs 2.1 through 2.4 which has been restricted from public inspection is classified as geological and geophysical data. The release of this data is subject to the following restrictions.

3.1 *Leases Issued Prior to June 11, 1976.* For leases issued prior to June 11, 1976, the classified data is exempt from disclosure under exemption No. (9) of the Freedom of Information Act (5 U.S.C. 552(b)(9) and 43 CFR 2.13 subsection (c), *"Statutory Exemptions,"* (9)).

3.2 *Leases Issued After June 11, 1976.* For leases issued after June 11, 1976, the classified data is available in accordance with 30 CFR 250.97, *Public Inspection of Records*, as follows:

a. *Geophysical Data.* Geophysical data shall not be available for public inspection, except as provided in 2.10c, without consent of the lessee as long as the lease remains in effect or for a period of 10 years after the date of submission, whichever is less, unless the Supervisor, with the approval of the Director, determines that earlier release of this information is necessary for proper development of the field or area.

b. *Geological Data.* Geological data shall not be made available for public inspection without the consent of the lessee as long as the lease remains in effect or for a period of 2 years after the date of submission, whichever is less, unless the Supervisor, with the approval of the Director, determines that earlier release of such information is necessary for the proper development of the field or area. In accordance with 30 CFR 250.38, *Well Records*, data and well records shall be transmitted to the Supervisor upon request or, if not requested, within 30 days following completion of suspension of any well.

For the purpose of orderly release of data, in all cases the date of submission will be considered to be 30 days following such completion or suspension.

4. *Departures.* All departures from the requirements specified in this Order shall be subject to approval, pursuant to 30 CFR 250.12(b).

Rodney A. Smith,
Oil and Gas Supervisor, Arctic Area.

Approved:
Don E. Kash,
Chief, Conservation Division.

[FR Doc. 79-18419 Filed 6-12-79; 8:45 am]
BILLING CODE 4310-84-M

Federal Register

Wednesday
June 13, 1979

Part VI

Advisory Council on Historic Preservation

Handicapped Access to Historic Properties; Proposed Statement of Program Approach

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Handicapped Access to Historic Properties; Proposed Statement of Program Approach

AGENCY: Advisory Council on Historic Preservation.

ACTION: Proposed Statement of Program Approach.

SUMMARY: The Advisory Council on Historic Preservation offers this proposed statement of program approach for public comment. This statement was developed to respond to the review of agency regulations concerning handicapped access required by the Department of Health, Education and Welfare as it relates to historic properties. Because of the special issues presented in rendering such properties accessible to the handicapped while still maintaining the architectural features that are the basis for their significance, the Council has drafted this statement in an effort to establish a workable approach to meeting both federal policies satisfactorily.

COMMENTS DUE: July 13, 1979.

ADDRESS: Comments should be addressed to the Executive Director, Advisory Council on Historic Preservation, 1522 K Street NW., Suite 510, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Peter Smith, Acting Director, Office of Intergovernmental Programs & Planning, 202–254–3495; Katherine Raub Ridley, Legal Assistant, Office of Intergovernmental Programs & Planning, 202–254–3495.

PREAMBLE: The Advisory Council on Historic Preservation is interested in the special problems presented in making historic properties accessible to handicapped persons. Under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706), Federal agencies are required to publish regulations to ensure that federally assisted programs are accessible to the handicapped. Because historic properties will be affected through activities undertaken pursuant to such agency regulations, the Council believes there is a need to coordinate the Federal policies of access and historic preservation. Procedures that incorporate the program approach set forth below would ensure that activities undertaken to make historic properties accessible would not alter or destroy a historic property's significant features and would also serve as a basis for expediting agency responsibilities under Section 106 of the National Historic Preservation Act.

The Council is an independent Federal agency established by the National Historic Preservation Act of 1966 (16 U.S.C. 470) to advise the President and the Congress on matters relating to historic preservation, and to review and comment on Federal, federally licensed and federally assisted undertakings that affect properties listed or eligible for the National Register of Historic Places. Under Section 202 of the Act, the Council is vested with general coordination and advisory responsibilities on historic preservation matters, including the conduct of studies, recommendations for legislation and the provision of training and educational programs. Under Section 106 of the Act, the Council must be afforded an opportunity for comment when Federal, federally licensed or assisted undertakings affect National Register or eligible properties. The process for obtaining the Council's comments is set forth in the recently amended regulations for "Protection of Historic and Cultural Properties" (36 CFR Part 800). In certain circumstances, building alterations or structural changes to National Register properties undertaken in order to accomplish accessibility may be subject to the provisions of Section 106 and therefore require the comments of the Council. In such instances, the comments must be requested by the undertaking Federal agency.

Because the significance of historic properties is often the result of architectural features and associational values, building alterations or structural changes may impair the qualities that qualify the property as significant. For example, various Federal programs provide funding for buildings in historic districts, which may consist of 18th century rowhouses, the front door of which is reachable only by a steep staircase and whose doorframe is too narrow for wheelchair entry.

Such features are often both the reason for the building's architectural significance and the consequent award of Federal funds for restoration, as well as the source of difficulty in providing access.

In rare cases, it is conceivable that a historic property could not be modified in a way which would allow both access and retention of signficant features. This possibility has been the subject of considerable discussion. Opinion is divided as to whether, in such isolated cases, a waiver of access to a significant property would be appropriate.

This statement of approach is offered for public comment. It is expected that a final statement could serve as a basis for dealing with historically and culturally significant buildings in agency procedures implementing Section 504.

It is anticipated that technical guidelines on this subject will be published by the Technical Preservation Services Division, Office of Archeology and Historic Preservation, Heritage Conservation and Recreation Service, Department of the Interior. The guidelines will suggest appropriate treatments for specific problems commonly encountered in providing access to various types of historic buildings and structures through case studies.

Public comments are specifically requested on the following points.

(1) Among the alternatives to building alerations or structural changes, are any more or less preferable than others? If so, what is the general priority? For example, is use of an interpretive program about a second or third floor of a house museum preferable to provision for carrying?

(2) Are there particularly satisfactory solutions that have been found through experience with achieving access to historic structures?

(3) In the case of a private residence that has been awarded Federal funds for interior restoration work and may consequently be required to provide minimal public access, what is the most feasible form of access?

(4) Should a waiver of access be considered in certain circumstances where a historic property can not be rendered accessible without also impairing the qualities responsible for its significance? What criteria should be used to govern the decision? Proposed language is set forth in paragraph (4) below.

Statement: In the case of historic properties, program accessibility shall mean that when programs are viewed in their entirety, they are accessible to and useable by handicapped persons. A recipient of Federal assistance is not required to make building alterations or structural changes to historic properties where other methods are effective in achieving accessibility. The recipient shall make every effort to accomplish accessibility under Section (1). Only if there is no prudent and feasible alternative, shall a recipient consider building alterations (Section 2). A recipient shall exhaust Section 2 alternatives before proceeding to consider structural changes (Section 3). "Historic Properties" shall mean those properties listed or eligible for listing in

the National Register of Historic Places or architecturally, historically, or culturally significant properties designated under a statute of the appropriate State or local governmental body, including a single structure within a designated district.

(1) *Methods to Accomplish Program Accessibility without Building Alterations or Structural Changes.* The recipient shall investigate and utilize compliance methods which do not alter the historic character or architectural integrity of the property. Such methods may include, but are not limited to:

Reassigning programs to accessible locations within the facility.

Assigning persons to aid handicapped persons into or through an otherwise inaccessible facility.

Delivering programs or activities at alternative accessible sites operated by or available for such use by the recipient.

Adopting other innovative methods which comply with the intent of this section.

(2) *Methods to Accomplish Program Accessibility Resulting in Building Alterations.* Building alteration means those changes to the existing conditions and equipment of a building which do not involve any structural changes, but which typically improve and upgrade a building, such as alterations to stairways, doors, toilets, elevators, and site improvements.

The recipient must determine that program accessibility as outlined in section (1) above cannot be accomplished before considering building alterations. Building alterations shall be undertaken so as not to alter or destroy historically, architecturally, or culturally significant elements or features and shall comply with the "Secretary of the Interior's Standards for Rehabilitation" (36 CFR 67.7).

(3) *Methods to Accomplish Program Accessibility Resulting in Structural Changes.* Structural change means those changes which alter the structure of a historic building, including but not limited to its bearing walls and all types of post and beam systems in wood, steel, iron, or concrete.

The recipient must determine that program accessiblity as outlined in sections (1) and (2) above cannot be accomplished before considering structural changes. Structural changes shall be undertaken so as not to alter or destroy historically, architecturally, or culturally significant elements or features and shall comply with the Secretary of the Interior's Standards for Rehabilitation (36 CFR 67.7).

(4) *Modification or Waiver of Accessibility Standards.* The applicability of agency accessibility standards may be modified or waived on a case-by-case basis, where the recipient can demonstrate that, because of the nature of the activity, the provision of access would be infeasible or would substantially impair the historic, architectural, or cultural significance of the historic property.

Robert R. Garvey, Jr.,
Executive Director.

[FR Doc. 79-18429 Filed 6-12-79; 8:45 am]
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Federal Register

Wednesday
June 13, 1979

Part VII

Department of the Interior

Fish and Wildlife Service

Migratory Bird Hunting; Supplemental Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 20]

Migratory Bird Hunting; Supplemental Proposed Rulemaking

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Supplemental proposed rulemaking.

SUMMARY: This document supplements FR Doc. 79–4803, published on February 15, 1979, which notified the public that the U.S. Fish and Wildlife Service proposes to establish hunting season regulations for certain migratory game birds during 1979–80, and provided information on certain proposed regulations. Further information and clarification is provided relative to some regulatory items for which information was not available when the initial document was published. These relate to framework dates for waterfowl seasons; wood ducks; canvasbacks and redheads; zoning in Massachusetts, Pennsylvania, and Tennessee; certain goose seasons; the sandhill crane season in Colorado and areas in Wyoming; and several other issues.

DATES: All relevant comments received no later than June 21, 1979, for regulations proposed for Alaska, Puerto Rico, and the Virgin Islands will be considered. The comment period for early season proposed regulations will end on July 13, 1979, and that for late season proposals on August 20, 1979.

ADDRESS: Comments to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: John P. Rogers, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, 202–254–3207.

SUPPLEMENTARY INFORMATION: On February 15, 1979, the Fish and Wildlife Service published for comment in the **Federal Register** (44 FR 9928) a proposal to amend 50 CFR Part 20. That document dealt with the establishment of seasons, limits and shooting hours for migratory game birds under §§ 20.101 through 20.107 of Subpart K of 50 CFR Part 20. In that document, the Service indicated that additional proposals and considerations developed after publication of 44 FR 9928 would be available for public review. Consequently, this supplemental proposed rulemaking is the second in a series of proposed and final rulemaking documents for migratory bird hunting regulations effective during 1979–80. It deals specifically with a number of supplemental proposals and minor clarifications arising from comments received on the initial proposals, or from new information. These relate to framework dates for waterfowl seasons; wood ducks; canvasbacks and redheads; zoning in Massachusetts, Pennsylvania, and Tennessee; certain goose seasons; the sandhill crane season in Colorado and areas in Wyoming; and several other regulatory matters.

Review of Public Comments and the Service's Response

Forty-six letters dated on or prior to May 16, 1979, the closing date of the public comment period for the February 15, 1979, proposals, were received by the Service. These included letters from 20 State or Commonwealth conservation agencies, 16 from individuals, 7 from organizations, and 3 from waterfowl flyway councils. In some instances, the letters did not specifically mention the open comment period or regulatory proposals. However, because they were received during the comment period and generally related to migratory bird hunting regulations, they were treated as comments. Many communications addressed two or more topics, and in some cases, subjects outside the scope of regulations under consideration. An example of the latter are hunting season dates which are actually selected by State conservation agencies within the Federal framwork. Of the letters, 8 (5 from State conservation agencies and 3 from individuals) concurred with the proposals and offered no other suggestions. The remaining communications recommended modifications to the proposals, or new considerations.

General.

Comments on the procedures followed by the Service in developing the annual hunting regulations were received from Defenders of Wildlife (Defenders) and the Institute for Public Representation (Institute) of the Georgetown University Law Center, Washington, D.C., which identified itself as representing Defenders. Similar views were expressed by Defenders in a letter dated January 17, 1979, prior to the opening of the first comment period on regulations being proposed for the 1979–80 migratory bird hunting season. In essence, Defenders and the Institute asserted that consultations and communications between the Service and the four flyway councils during preparation of the hunting regulations are contrary to the Federal Advisory Committee Act, 5 U.S.C. App. 1, and to several court decisions dealing with *ex parte* communications in informal rulemaking. The two organizations recommended several changes in the Service's procedures for issuing the hunting regulations, including abandonment of Service/Flyway Council consultation activities.

Response. In reply to these claims by Defenders, Mr. James D. Webb, the Department's Associate Solicitor for Conservation and Wildlife, stated in a letter dated May 7, 1979:

"After a careful review and study of the points raised in your letter, I have concluded that the Flyway Councils are not functioning as "advisory committees" within the meaning of the Federal Advisory Committee Act. The Councils were not established as advisory committees by statute, reorganization plan, or the Service, nor are they being utilized in that capacity by the Service.

I have also concluded that the Service's contacts with the councils are in compliance with the requirements applicable to *ex parte* communications during informal rulemaking. In this regard, it is my understanding that communications between the Service and the Councils that relate to the substance or merits of the hunting regulations will be placed promptly in the public file for the regulations. In the case of written communications, the documents themselves will be placed in the public file. In the case of oral communications, written summaries which identify the source will be placed in the file."

In its comments, Defenders reiterated its concerns about a number of specific migratory bird subjects including waterfowl shooting hours, the hunting of mourning doves in September, and the status of certain species including the Tule white-fronted goose, canvasback, mallard, black duck, ring-necked duck, scaup, mergansers, sea ducks, goldeneye, and bufflehead. Defenders again recommended that shooting hours commence one-half hour after sunrise and end one-half hour before sunset so that hunters would have adequate light by which to identify birds in flight. An experiment for testing hunter ability to identify waterfowl was suggested.

Response. As noted previously (see 44 FR 9928, February 15, 1979) the matter of shooting hours was extensively reviewed and discussed during the regulatory process for the 1977–78 hunting season, including preparation of an environmental assessment made available to the public in August 1977. Copies of the assessment are still available upon request to the Office of Migratory Bird Management, U.S. Fish

and Wildlife Service, Department of the Interior, Washington, D.C. 20240. The Director, U.S. Fish and Wildlife Service, concluded on the basis of this assessment that the proposed shooting hours did not constitute a significant impact on the environment. Additional studies were initiated during the 1978–79 hunting season to evaluate the impact of shooting hours, running from one-half hour before sunrise to sunset, on protected species. These studies will be continued during the 1979–80 waterfowl hunting season. Also, cooperative State-Service studies were initiated last year to further evaluate the effects of hunting upon September dove nesting. These studies will continue for at least one more year. An environmental assessment on September dove hunting was prepared by the Service and made available to the public on July 18, 1977. Copies of the assessment are still available upon request to the Office of Migratory Bird management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Defenders' concerns about the status of specific waterfowl were summarized and discussed last year in the Federal Register (see 43 FR 22822; May 25, 1978). Most of the species they mention (see above) were addressed at that time. Others were addressed in the proposals published on February 15, 1979 (44 FR 9928), at which time it was noted that further studies or data gathering efforts were presently underway. Thus, consideration has been or is being given to all the species mentioned.

Substantive supplemental proposals and recommendations from the flyway councils, State conservation agencies, and other organizations, and individuals are addressed below under the specific numbered regulations categories listed in 44 FR 9928, February 15, 1979. Only those numbered items for which changes are proposed, or on which substantive comment was received, are listed.

Supplemental Proposals

The following proposals and other modifications are numbered to correspond with the numbered items published in the Federal Register of February 15, 1979.

1. *Shooting hours.* As noted previously, Defenders opposed retention of shooting hours for waterfowl extending from one-half hour before sunrise to sunset. The Mississippi Flyway Council and several States urged retention of these shooting hours. One hunter requested that consideration be given to establishing "standardized" shooting hours which would not change each day in reference to times of sunrise and sunset.

Response. As noted above, the issue of shooting hours has been discussed at length in an environmental assessment and in previous Federal Register publications. In summary, the Service has found no evidence that those portions of the shooting hours, to which objection is made, have a significant adverse effect on protected species. See the Federal Register dated March 10, 1977 (42 FR 13313) and July 22, 1977 (42 FR 37552) for further details. It is the view of the Service that no general modification of shooting hours is necessary or desirable at this time. The Service observes that time of day is not the only factor affecting ability of hunters to identify ducks in flight. Effective utilization of the point system to take advantage of low point birds requires that hunters defer shooting until they have identified the birds to be shot at. This requires judgment on the part of each individual hunter as to the exercise of his skills under different hunting circumstances. The Service notes that a number of States have established "standardized" shooting hours to which there is no objection as long as the actual shooting times are within the one-half hour before sunrise to sunset period. The Service does not consider it necessary or desirable to prescribe such arrangements by Federal regulation.

2. *Framework dates for ducks and geese in the continental United States.* The Upper Region of the Mississippi Flyway Council proposed that season framework dates for its member States begin with the Saturday closest to October 1 instead of October 1 (see Iowa, below), and end on the Saturday closest to January 20 instead of January 20. Also supporting the opening of the framework on the Saturday closest to October 1 was a petition submitted on behalf of 90 Minnesota waterfowl hunters, and a communication from the Minnesota Waterfowl Association, Inc.

Response. The Service notes that these framework dates are similar to those in the Central and Pacific Flyways. The Service proposes to consider this change based on further information and consultation with affected States and others.

Iowa proposed and the Upper Region of the Mississippi Flyway Council endorsed that it be permitted to hunt ducks for several days during the period September 20 through September 30; the days taken during this period to be subtracted from the total days allocated for the regular waterfowl hunting season which customarily begins no earlier than October 1. All ducks which may legally be taken during the regular season could be taken during the September period but the primary objective is to provide opportunity to harvest blue-winged teal which migrate early and are generally not available in Iowa during the regular season dates. The proposal was initiated by Iowa in 1978 as an alternative to the special September teal season available to some States but not to Iowa or other designated waterfowl production States. It was deferred pending further consideration by the Council and the Service. If approved, it would be subject to a three-year evaluation.

Response. The Service is of the view that this proposal should be considered for implementation on a trial basis in Iowa, on the grounds that it appears to have merit as a potentially desirable alternative to the special September teal season. The Service will consult further with Iowa regarding more specific details and will consider other comments and views on the matter.

The Lower Region of the Mississippi Flyway Council generally endorsed season framework dates of October 1 through January 20 for its member States but recommended that the framework date for Mississippi be extended to January 31, 1980, on an experimental basis. The recommendation is based on a belief that the migration of mallards and wood ducks into that State has been delayed in recent years because of agricultural and management practices in the northern United States. The Council recommended that the relaxation in Mississippi, if allowed, be monitored by a plan mutually agreeable to the Service and Mississippi. Alabama also wrote that it favored a duck hunting season framework which would run to the end of January. However, the Council recommendation is limited to the State of Mississippi.

Response. This recommendation will be given further consideration by the Service based on additional information and consultation with the State and the Flyway Council and comments from other interested parties.

Several other comments related to framework dates. Several hunters urged that seasons opening in September be permitted. One hunter asked that the waterfowl season be left unchanged.

A northern Michigan hunter requested that earlier goose seasons be allowed as the bulk of the migration has passed by the time the season opens. Maine urged that the Wednesday noon opening be reinstated on the ground that it would reduce opening day hunting pressure for the benefit of the resource and the public. No Atlantic Flyway Council

recommendation on the subject was received.

Response. The Service will further consider these recommendations based on additional information, and consultation, and in the light of comments from interested parties.

One individual in the Pacific Flyway expressed opposition to waterfowl seasons which in some years extend to January 23 on the ground that such seasons may have an adverse effect on duck breeding behavior.

Response. The Service has no information to indicate that such seasons are adverse to breeding duck biology. Further, duck populations in the Pacific Flyway have remained at generally satisfactory levels for many years, varying mainly as a result of changes in habitat quality and quantity.

4. *Wood ducks.* The Lower Region of the Mississippi Flyway Council has proposed that Kentucky, Mississippi, and Tennessee hunters be permitted to take two wood ducks during the special September teal season in addition to the four teal normally allowed. The main purpose of the request is to allow additional harvests of southern wood ducks, which appear to be subjected to low hunting pressure, prior to the influx of wood ducks breeding in northern areas. In support of the request, Kentucky has stated that the wood duck population in its State is very satisfactory, the species comprises less than 5 percent of the statewide duck harvest, and that additional opportunity for legal harvest of wood ducks is desirable.

Response. A similar proposal was presented along with justification by Tennessee in 1978. The Service is of the view that, pending more thorough and extensive review and consideration involving other States that participate in special September teal seasons, it is inadvisable at this time to expand such seasons to include species other than teal. An alternative approach to providing additional opportunity to harvest wood ducks produced in southern breeding areas is presently available. During the 1978–79 season, southern States in the Atlantic Flyway (Florida, North Caroline, South Carolina, and Virginia) and the Mississippi Flyway (Alabama, Arkansas, Georgia, Kentucky, Louisiana, Mississippi, and Tennessee) were allowed to designate, experimentally, up to 9 days of their regular duck season between October 1 and October 15, during which no special bag limit restrictions were placed on wood ducks. It is anticipated that this option will be continued in the 1979–80 hunting season.

11. *Canvasback and redhead ducks.* In the **Federal Register** dated February 15, 1979 (44 FR 9934), the Service announced receipt of a proposal from Virginia on behalf of the Atlantic Flyway Council. The proposal would provide for a subseason of 8 to 15 days on male canvasbacks and male redheads in portions of Virginia, Maryland, New York, and North Carolina where canvasbacks normally winter. In States selecting the point system, males of these species would be assigned 25 points; in States selecting conventional regulations, four male birds singly or in the aggregate of these species could be taken within the overall bag limit. A more recent communication from the Atlantic Flyway Council endorsed the proposal and provided additional details.

Response. The Service will further review the proposal and consider this on the basis of additional information and consultation and in the light of comments from interested parties.

The Central Flyway Council recommended that North Dakota and South Dakota be permitted the option of one canvasback or one redhead per day under conventional regulations or allocations of 100 points each for canvasbacks and redheads in the daily bag and possession limits statewide under the point system, except that specific areas of high canvasback use be closed to all duck hunting.

Response. The Service does not presently favor this proposal because: (1) No criteria are given for designating the areas of high canvasback and redhead use; (2) the prohibition of all duck hunting on these areas may represent an excessive and unnecessary restriction; and (3) the current year's survey data are not yet available for consideration. The Service favors continued use of the area closure concept should the results of the current year's surveys justify continued special protection of the two species.

Two other public comments were received on these species. Defenders of Wildlife expressed general concern about the status of canvasbacks. A sportsmen's club in Minnesota requested that consideration be given to abolishing the canvasback and redhead closure area in Sibley County, Minnesota, because few ducks of these species migrate through the area during the fall.

Response. The Service notes that hunting regulations for these species will be proposed later after all available information on breeding population size, habitat conditions, current production and harvest has been assembled and evaluated. Additional information is being solicited on the abundance and distribution of the two species in Sibley County.

12. *Zoning.* In the **Federal Register** dated February 15, 1979, the Service proposed to continue offering States in the Atlantic and Mississippi Flyways the option to divide their States into two zones for the purpose of establishing differential, full-length hunting seasons. The criteria for the experimental zoning studies were also described in detail.

Massachusetts proposes to initiate a zoning study which would meet the Service's criteria (also see "Other" item). The request is supported by a detailed plan, copies of which are available from the Massachusetts Division of Fisheries and Wildlife. Under the proposal, coastal and inland hunting zones would be established.

Pennsylvania asked that it be permitted to experimentally designate a Lake Erie Waterfowl Hunting Zone, defined as the Pennsylvania waters of Lake Erie and the adjoining land 150 yards inland from the Lake Erie shoreline. This request was also supported by a detailed plan, copies of which are available from the Pennsylvania Game Commission.

Tennessee, through the Lower Region of the Mississippi Flyway Council, asked that it be permitted to participate in experimental zoning of duck seasons in Lake and Obion Counties (or restricted areas in these counties) and the remainder of Tennessee. Ducks migrate into and depart from the Reelfoot Lake area earlier than elsewhere in Tennessee. Supporting data and information are given in a report available from the Tennessee Department of Wildlife and Fisheries.

Response. The Service has the zoning requests for Massachusetts, Pennsylvania, and Tennessee under consideration and will defer action for now pending additional information, consultation and comments from interested parties.

Two communications from the Chautauqua Lake Area Waterfowlers, New York, were critical of the duck seasons in effect during recent years because they did not coincide with peaks of waterfowl abundance.

Response. By agreement between the Service and the State, New York embarked upon a zoning study in the 1976 hunting season in which duck hunting seasons are set separately for three different zones in the upstate area of the State. The study is still underway and depending on its continuation, it appears that ample opportunity is available for the selection of season

dates desired by most hunters in each zone.

The Upper Region of the Mississippi Flyway Council recommended that Ohio be permitted to split its waterfowl seasons within each of its two zones for a new three-year experimental period commencing with the 1979–80 season. This change would enable seasons to be set to coincide with the availability of locally produced wood ducks and migrant waterfowl.

Similarly, the Upper Region of the Mississippi Flyway Council recommended that Illinois be permitted to establish its goose season in its South Zone and outside the Canada goose quota zone to run concurrently with the regular duck season. This change would simplify hunting regulations in most of the South Zone but not markedly alter the harvest of Canada geese, which occurs in the four southern counties comprising the quota zone. This modification would also be evaluated for a 3-year period.

Alabama reiterated is request that it be permitted to split the duck season in its South Zone, which is comprised of Baldwin and Mobile Counties. The Lower Region of the Mississippi Flyway Council offered no views on the proposal.

Response. The Service will consider these proposals for implementation in the 1979–80 hunting season based on further information, consultation, and comments from interested parties.

Two hundred ten persons signing a single petition requested the Service to change the boundary separating the North and South Zones of Missouri. They requested that the Lake of the Ozarks Region be transferred from the North to South Zones, stating that waterfowl do not migrate to the area until after the hunting season in the North Zone terminates.

Response. The Service notes that the three-year zoning study in Missouri will be going into its third year this season and that for evaluation purposes the zone boundaries should not be changed until the study period has ended and all available information examined.

13. *Goose and brant seasons.*—a. *Atlantic Flyway.* New Jersey has proposed that the snow goose season be continued at 70 days but that the daily bag limit be increased from 2 to 5. This is similar to a 1978 proposal by New Jersey and is based on a belief that the population is increasing and is beyond the capacity of wintering habitat to support it, resulting in damage to marshlands, crop depredations, starvation among the snow geese, and conflicts with other species. Delaware recommended that the season framework for snow geese be extended to January 31 and increased from 70 to 90 days so that the hunting season could be selected to better coincide with the period during which these geese damage agricultural crops and saltmarshes, and be contiguous with the 90-day hunting season for Canada geese in the Delmarva area. A representative of a New Jersey waterfowlers' association also favored raising the daily bag limit of snow geese to 5 birds as a means of generating additional hunting interest to control the population expansion.

Response. The Service is of the view that changes in seasons and bag limits for these geese should be considered in the light of information on production success which will not be available until later in the year. These geese nest in high Arctic areas where snow and ice conditions sometimes greatly limit annual production. Action on this request is deferred pending receipt of additional information on 1979 production.

New Jersey also proposed that Canada goose seasons and bag limits, extended to 90 days and 4 birds daily in southern New Jersey last year, be applied Statewide based on a belief that there are throughout the State increasing complaints about crop depredations.

Response. The same response provided above for the relaxation of snow goose regulations are also pertinent to this proposal for Canada geese. In addition, the Service believes that additional rationale and data should be provided to support New Jersey's recommendation for statewide application of more liberal Canada goose regulations.

b. *Mississippi Flyway.* For the Mississippi Valley Population (MVP) of Canada geese the Upper Region of the Mississippi Flyway Council has proposed harvest quotas in Illinois and Wisconsin in 1979 of 35,000 birds, a reduction from the 50,000 bird quota in effect last season.

Response. The Service customarily considers harvest recommendations from the Councils in the process of establishing hunting regulations for the MVP and certain other populations of Canada geese where the councils take the lead in acquiring information and monitoring the status of the populations involved. The Service has reviewed and concurs with the above proposal which is consistent with recommendations of the Council's MVP Committee, and with a flyway management plan recently developed for this population.

The Lower Region of the Mississippi Flyway Council has proposed that the harvest quota of 15,000 birds for MVP Canada geese in Kentucky be eliminated in accordance with a request from Kentucky because it has not been attained in past years. Kentucky would continue to monitor harvests in Ballard County where most of the goose hunting and harvest occurs.

Response. The Service will give further consideration to this proposal but is of the view that the harvest quota should be retained since it will not unduly restrict harvest in Kentucky.

c. *Central Flyway.* A South Dakota hunter has proposed that South Dakota be permitted to establish goose hunting zones in response to changes in goose distribution and migration apparently caused by reservoirs on the Missouri River, irrigation, and increased corn production.

Response. It appears that this proposal relates primarily to harvest management of the so-called Western Prairie Population of Canada geese. A management plan for this population was recently completed by the Service and the Canadian Wildlife Service and endorsed by the Central Flyway Council. The Service is of the view that the objectives outlined in the plan should provide the basis for any changes in management strategies, including zones, seasons, and harvests. At present the need for separate hunting zones is unclear.

d. *Pacific Flyway.* In the Federal Register dated February 15, 1979, the Service proposed goose seasons and limits generally similar to those in effect the previous year but stated that specific proposals would depend upon more current data and information. The Service also noted concern about the status of lesser snow geese which breed on Wrangel Island, U.S.S.R., and white-fronted geese. Also, it is possible that consideration of additional information for the endangered Aleutian Canada goose may require modifications in the protective measures recently in effect. The Service solicits further information on these various geese.

14. *Whistling swans.* Deleware has recommended that the Service prepare an environmental assessment to document the advisability of a hunting season on whistling swans in portions of the Atlantic Flyway.

Response. While the Service believes the hunting of whistling swans in portions of the Atlantic Flyway may be biologically justifiable, there is not, at this time, a consensus that hunting should be initiated and it does not appear to be a high priority management need.

15. *Sandhill cranes.* Colorado has requested that it be permitted to set its 37-day sandhill crane hunting season within the framework of the Saturday closest to October 1 and the Sunday closest to November 20. The slightly later season possible under this framework would better coincide with the presence of sandhill cranes in eastern Colorado. In recent years the Colorado harvest has averaged about 100 birds and it appears that this modification should result in little additional harvest. No whooping cranes have been observed in eastern Colorado in recent years, and the San Luis Valley where whooping cranes of the Grays Lake, Idaho, population stage during their fall migration, would remain closed to hunting.

Sandhill crane hunting in Wyoming is restricted to Goshen and Platte Counties in the eastern part of the State. Wyoming has requested that the eastern counties of Crook, Laramie, Niobrara, and Weston be added to this area, that the season be extended from 30 to 37 days, and that the framework be the same as that requested by Colorado. The Wyoming harvest of sandhill cranes has been only about 10 birds annually in recent years.

Response. The Service proposes to further consider these recommendations, taking into account any additional information and comments that may be developed.

20. *Woodcock.* Maine repeated its concern about the status of this species in the northeast, and suggested that consideration be given to shortening the hunting season framework in the Atlantic Region.

Response. The Service is aware of recent concern about the status of the woodcock population in the Atlantic Region. Investigations have recently been initiated aimed at better understanding their status and factors that may be affecting it. The Service is of the view that pending further progress with the investigation it would be desirable to avoid manipulations, including changes in hunting regulations, that might unnecessarily complicate interpretation of findings.

21. *Band-tailed pigeons.* California has requested that Alpine County be added to the 13 northern California counties which are offered an early hunting season for band-tailed pigeons. The area is frequently subjected to snowfall in late October which restricts harvest opportunities when late seasons are set.

Response. The Service is of the view that this change in California would be of little or no consequence in regard to the status of the Coastal band-tailed pigeon population. Consideration will be given to making this change pending additional information and comment.

22. *Mourning doves.* This February (44 FR 9936), the Service proposed to retain the same regulations which were in effect during the 1978–79 hunting season. Defenders of Wildlife repeated its concern about the hunting of mourning doves in September.

Response. As noted earlier, an environmental assessment has been prepared on dove hunting in September. Defenders' concerns have been addressed repeatedly in the Federal Register in the past, and the Service has embarked upon a cooperative nationwide study of mourning dove nesting in September and throughout the year. Information gathered in 14 States in 1978 indicates a mean daily survival rate of eggs and nestlings on hunted areas of 95.2 percent compared with 95.4 percent on non-hunted areas. This study is still underway. The Service is of the view that any changes in hunting regulations that might be considered should be based on the findings of the study.

25. *Migratory game birds in Puerto Rico and doves and pigeons in the Virgin Islands.* The Virgin Islands Department of Conservation and Cultural Affairs has requested that the proposed season framework for the Zenaida dove (*Zenaida aurita*) be changed to permit hunting prior to September 1.

Response. The Service notes that the provisions of the U.S.-Canada migratory bird treaty and the Migratory Bird Treaty Act prohibit hunting of designated migratory game birds, including the Zenaida dove, between March 10 and September 1 each year. A solicitor's opinion rendered in 1976 concluded that these treaty restrictions also applied to the Virgin Islands and Puerto Rico. These provisions appear to preclude consideration of the Department's request.

26. *Migratory game bird seasons for falconers.* In response to the Service's proposal to retain regulations in effect the past year, Maryland urged that consideration be given to allowing extended falconry seasons outside the framework dates applicable to other hunters using other means of taking. No other comments were received.

Response. The Service is of the view that it is desirable to maintain the previously established frameworks for several years in order to facilitate evaluation of falconry hunting seasons. It does not appear that this causes any significant hardship to falconers.

27. *Hawaii mourning doves.* The Hawaii Division of Fish and Game has requested that consideration be given to removing several migratory bird species found in Hawaii from the designated list of U.S. migratory game birds. The involved species, although legally defined as migratory, do not make true migratory movements in Hawaii. Justification for the request is that Hawaii would then have greater flexibility in setting hunting regulations for the mourning dove, the only migratory species in Hawaii for which hunting is allowed.

Response. The Service notes that the designated list of migratory game birds is based on species or groups of species identified and included in international migratory bird treaties with Canada, Mexico, Japan, and the U.S.S.R. The Service has no authority to make changes in the species covered.

Other. Massachusetts has requested that as an alternative to zoning, under which separate waterfowl hunting seasons may be set in different designated zones within States, it be permitted to divide a statewide waterfowl season into three segments, the request, if accepted, would be subject to a three-year evaluation. The State envisions that the three-way split season would result in no significant change in waterfowl harvest but would better satisfy hunters. Delaware supported the request that 3-way duck hunting season splits be permitted as an alternative to zoning.

Response. The Service proposes to consider this request for implementation on a trial basis on the ground that it appears to have merit as a potentially desirable alternative to zoning. A decision on this matter will be guided by additional information, consultation, and comment from interested parties.

Two individuals submitted comments on the point system as a means of establishing daily bag limits for waterfowl hunting. One individual recommended against the system and urged that it be abandoned because the order in which birds are taken influences the permissible number of birds allowed hunters. The second individual objected to apparent inequities between the number of canvasbacks and redheads which can be taken under point system and conventional regulations.

Response. The Service has recognized the problem for some time. There is no indication, however, that the point system has significantly increased the overall duck harvest. The Service believes that both conventional and point system options should be made

available to hunters in the three eastern flyways.

The Service notes further that it is not intended nor is it practical to make the point system exactly comparable to conventional regulations in terms of overall bag limits or bag limits for individual species. While the point system has some liberal aspects not possessed by conventional regulations, other aspects are more restrictive because of the way that birds already bagged count against the opportunity to bag others. From a practical standpoint, the inequities mentioned above are more apparent than real.

One individual recommended that the hunting season be closed on snow geese, without noting whether the lesser or greater snow goose was of particular concern.

Response. In either case, these species appear to be in excellent population status and the Service is of the view that there is no justification for closed seasons.

Public Hearings

The regulatory schedule published in the Federal Register dated February 15, 1979 (44 FR 9928), provided information on the two public hearings scheduled for reviewing the proposed 1979–80 hunting regulations and obtaining further public comments and recommendations. In order to further publicize these meetings, details on their date, location, and time are repeated.

Two public hearings pertaining to migratory bird hunting regulations being considered for the 1979–80 hunting seasons are scheduled. Both meetings will be conducted in accordance with 455 DM 1 of the Departmental Manual. On June 21 a public hearing for reviewing proposed hunting regulations for species for which early (opening prior to September 29) seasons are set will be held at 9 a.m. in the Auditorium of the Department of the Interior Building, on C Street, between 18th and 19th Streets NW., Washington, D.C. This hearing is scheduled primarily for the purpose of reviewing the status of mourning doves, woodcock, band-tailed pigeons, white-winged doves, rails, gallinules, and common snipe, and discussing proposed hunting regulations for these species plus regulations for sandhill cranes in some States; migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; mourning doves in Hawaii; September teal seasons; and special sea duck seasons in the Atlantic Flyway. On August 2 a public hearing for reviewing the status of other waterfowl and consideration of proposed regulations for those waterfowl and other migratory game birds for which regulations were not previously formulated will be held at 9 a.m. in the Auditorium of the General Services Administration Building, F Street, between 18th and 19th Streets NW., Washington, D.C. These deliberations will pertain to hunting seasons commencing September 29 or later. The public is invited to participate in both hearings.

Persons wishing to participate in these hearings should write the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, or telephone 202–254–3207. Those wishing to make statements should file copies of the statements with the Director before or during each hearing.

Public Comments Solicited

The Director intends that finally adopted rules be as responsive as possible to all concerned interests. He therefore desires to obtain the comments and suggestions of the public, other concerned government agencies, and private interests on these proposals.

Final promulgation of migratory bird hunting regulations for the continental United States, Puerto Rico, the Virgin Islands, and Hawaii for the 1979–80 season will take into consideration all comments received by the Director. Such comments, and any additional information received, including consideration of the Endangered Species Act of 1973, may lead the Director to adopt final regulations differing from these proposals. Interested persons are invited to participate in this rulemaking by submitting written comments on these supplemental proposals to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments received will be available for public inspection during normal business hours at the Service's office in Room 526A, Matomic Building, 1717 H Street, NW., Washington, D.C.

The comment period for the Service's initial proposals for the 1979–80 hunting regulations was open for 90 days, and ended on May 16, 1979. The Service is of the view that the public should be given the greatest possible opportunity to comment upon proposed regulations; however, it is essential that certain deadlines be met if the annual regulations are to be finalized and cooperating agencies and the public be informed of them. State conservation agencies proclaim companion hunting regulations, within Federal frameworks, and often must conduct public hearings, provide notices of proposed regulations for public comment, and print and distribute their regulations. Satisfying these requirements necessitates shorter public comment periods for the Service's supplemental proposals, particularly those which must be finalized early because of seasons opening in September. Consequently, the Service finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, for shorter comment periods. Accordingly, the Service prescribes the following public comment periods for these proposed supplemental regulations.

All relevant comments received no later than June 21, 1979, for regulations proposed for Alaska, Puerto Rico, and the Virgin Islands will be considered. The comment period for early season proposed regulations will end on July 13, 1979, and that for late season proposals on August 20, 1979. The Service will attempt to acknowledge received comments, but substantive response to individual comments may not be provided.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the Federal Register on June 13, 1975 (40 FR 25241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement.

Endangered Species Act Consideration

Prior to finalization of the 1979–80 migratory game bird hunting regulations, consideration will be given to provisions of the Endangered Species Act of 1973, and as amended, (16 U.S.C. 1531–1543; hereinafter the act) to insure that hunting does not jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with the conservation programs for those species. Consultations under section 7 of this act may cause changes to be made to proposals in this and future supplemental proposed rulemaking documents.

Non-toxic Shot Regulations

On January 12, 1978, the Service published in the Federal Register (44 FR 2629) proposed rules describing non-toxic shot zones for waterfowl hunting for hunting seasons commencing in 1979.

The intended effect of these non-toxic shot zones is to reduce the number of deaths to waterfowl caused by eating spent lead pellets. The final regulations will be published in the Federal Register shortly under § 20.108 of 50 CFR and will also be summarized in the Service's waterfowl regulations leaflets to be published late this summer.

Authorship

The primary author of this proposed rule is Henry M. Reeves, Office of Migratory Bird Management, working under the direction of John P. Rogers, Chief.

Exception From Executive Order 12044 and 43 CFR Part 14

As discussed in the Federal Register dated February 15, 1979 (44 FR 9929), the Assistant Secretary for Fish and Wildlife and Parks has concluded that the ever decreasing time frames in the regulatory process are mandated by the Migratory Bird Treaty Act and the Administrative Procedure Act. The regulatory process simply has no remaining slack in its timetable between the accumulation of critical summer survey data and the publication of the revised sets of proposed rulemakings. Compliance with the determination of significance and regulatory analysis criteria established under Executive Order 12044 would simply not be possible if the fall hunting season deadlines are to be achieved.

Consequently, the Assistant Secretary for Fish and Wildlife and Parks has approved the exemption of these regulations from the procedures of Executive Order 12044 and 43 CFR Part 14 which is provided for in section 6(b)6 and § 14.3(f), respectively.

Dated: June 8, 1979.

Lynn A. Greenwalt,

Director, Fish and Wildlife Service.

[FR Doc. 79-18016 Filed 6-12-79; 8:45 am]

BILLING CODE 4310-55-M

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Federal Register

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Wednesday, June 13, 1979

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/OHMO	USDA/FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
CSA	MSPB*/OPM*		CSA	MSPB*/OPM*
	LABOR			LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

*NOTE: As of January 1, 1979, the Merit Systems Protection Board (MSPB) and the Office of Personnel Management (OPM) will publish on the Tuesday/Friday schedule. (MSPB and OPM are successor agencies to the Civil Service Commission.)

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.

Rules Going into Effect Today

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Food and Drug Administration—

59966 12-22-7 / Nonclinical laboratory studies; good laboratory practice regulations

Next Week's Deadlines for Comments on Proposed Rules

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—

28906 5-17-79 / Apples grown in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont; Recommended decision; comments by 6-18-79

31189 5-31-79 / Fresh pears, plums, and peaches grown in California; proposed extension of grade and size requirements; comments by 6-19-79

31023 5-30-79 / Fresh pears, plums, and peaches grown in California; proposed extension of grade and size requirements; comments by 6-22-79

Animal and Plant Health Inspection Service—

24863 4-27-79 / Importation of horses; comments by 6-19-79

Commodity Credit Corporation—

29905 5-23-79 / Tobacco Loan Program; 1979 crop grade loan rates for flue-cured tobacco; comments by 6-22-79

[Corrected at 44 FR 30690, 5-29-79]

Farmers Home Administration—

23536 4-20-79 / Insured emergency loans; policies, procedures, authorizations; comments by 6-19-79

Federal Grain Inspection Service—

20184 4-4-79 / Grain standards; comments by 6-18-79

Forest Service—

22759 4-17-79 / Procedures for involving public formulation of standards criteria, and guidelines that apply to Forest Service programs; comments by 6-18-79

Rural Electrification Administration—

22746 4-17-79 / Rural Telephone Program; proposed revised bulletin; comments by 6-18-79

Soil Conservation Service—

25786 5-2-79 / Compliance with NEPA; general procedure; comments by 6-18-79

CIVIL AERONAUTICS BOARD

30104 5-24-79 / Air Carrier certificates; removal of restrictions; comments by 6-22-79

26121 5-4-79 / Direct marketing of charters by air carriers; comments by 6-18-79

18689 3-29-79 / Domestic Passenger-Fare Rulemaking to U.S. Mainland-Hawaii and Intra-Hawaii ratemaking entities; extension of developed policies; comments by 6-19-79

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

29136 5-18-79 / Additions to procurement list 1979; comments by 6-20-79

DEFENSE DEPARTMENT

Engineers Corps—

30288 5-24-79 / Implementation of water resource plans; evaluation of national economic development employment benefits; comments by 6-22-79

ENERGY DEPARTMENT

Economic Regulatory Administration—

27668 5-11-79 / Natural gas use by existing powerplants, temporary public interest exemption; comments by 6-22-79

22974 4-17-79 / Submission of reports to DOE by State regulatory authorities and nonregulated electric and gas utilities; comments by 6-18-79

Federal Energy Regulatory Commission—

29090 5-18-79 / Alternative fuel cost ceilings on incremental pricing under Natural Gas Policy Act of 1978; comments by 6-19-79

29101 5-18-79 / Natural Gas Policy Act of 1978, procedures to access civil penalties for knowing violations; comments by 6-18-79

ENVIRONMENTAL PROTECTION AGENCY

23005 4-23-79 / Attainment status redesignation request by State of Maryland; comments by 6-22-79

17310 3-21-79 / Clean Air Act; assessment and collection of noncompliance penalties; comments by 6-19-79

29933 5-23-79 / Proposed approval of administrative order issued by Connecticut Department of Environmental Protection to Housatonic Ever-Float Co.; comments by 6-22-79

29934 5-23-79 / Proposed approval of administrative order issued by the Commonwealth of Kentucky, Department for Natural Resources and Environmental Protection to Southwire Aluminum; comments by 6-22-79

29936 5-23-79 / Proposed approval of administrative order issued by Connecticut Department of Environmental Protection to Deitsch Laminating Co., Inc.; comments by 6-22-79

29932 5-23-79 / Texas emission offsets; approval and promulgation of implementation plans; comments by 6-22-79

FEDERAL COMMUNICATIONS COMMISSION

24587 4-26-79 / Allen, S. Dak., TV broadcast table of assignments; comments by 6-18-79

29127 5-18-79 / Aviation and marine services, use of marine VHF frequencies by aircraft; comments by 6-18-79

21021 4-6-79 / Changes in the rules relating to noncommercial education FM broadcast stations; reply comment date extended to 6-18-79

[Originally published at 43 FR 27662; 6-26-78]

21044 4-6-79 / FM broadcast station Ava, Ill.; proposed changes in Table of assignment; reply comments by 6-21-79

21045 4-6-79 / FM broadcast station in Beloit, Kans.; proposed changes in table of assignments; reply comments by 6-21-79

21046 4-6-79 / FM broadcast station in California, Missouri; proposed changes in table of assignments; reply comments by 6-21-79

21047 4-6-79 / FM broadcast station in Palmyra, Mo.; proposed changes in table of assignments; reply comments by 6-21-79

30134 5-24-79 / Marine vessel steering stations; availability of compulsory radiotelephone equipment; comments by 6-18-79

24588 4-26-79 / Nev. and Mo. FM broadcast table of assignments; comments by 6-18-79

25245 4-30-79 / Reconsideration of provisions on applications for certificates of compliance and Federal-State/local regulatory relationships; comments by 6-18-79

25244 4-30-79 / Television broadcast station in Dayton, Ohio; changes in table of assignments; comments by 6-18-79

21048 4-6-79 / Television broadcast station in Dillingham, Alaska; proposed changes in table of assignments; reply comments by 6-21-79

21050 4-6-79 / Television broadcast station in San Jose, Calif.; proposed changes in table of assignments; reply comments by 6-21-79

24589 4-26-79 / TV broadcast station in Orange Park, Fla.; comments by 6-18-79

FEDERAL RESERVE SYSTEM

23005 4-23-79 / Application of Equal credit opportunity to credit scoring; comments by 6-20-79

24984 4-27-79 / Bank holding companies and changes in bank control; comments by 6-20-79

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Education Office—

23008 4-23-79 / Eligibility of foreign medical schools under guaranteed student loan program; comments by 6-22-79

Food and Drug Administration—

22044 4-17-79 / Reimbursement for participation in administrative proceedings; comments by 6-18-79

22752 4-17-79 / Requirement for Estrogens labeling directed to the patient; comments by 6-18-79

23030 4-20-79 / Sodium stearoyl-2-lactylate; food additive provisions; comments by 6-18-79

Health Care Financing Administration—

23005 4-18-79 / Medical Assistance Program; Reasonable cost-related reimbursement for skilled nursing and intermediate care facility services; comments by 6-18-79

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

23004 4-18-79 / Mutual mortgage insurance and insured home improvement loans; proposed mortgagee approval eligibility requirement; comments by 6-18-79

Office of Assistant Secretary for Housing—Federal Housing Commissioner—

23000 4-20-79 / Delivery of one- to four-family properties occupied by tenants or former mortgagors; comments by 6-18-79

INTERIOR DEPARTMENT

Fish and Wildlife Services—

29128 5-18-79 / Endangered and threatened wildlife; review of status of ten birds and two mammals from Guam; comments by 6-17-79

Indian Affairs Bureau—

29036 5-22-79 / Education personnel; comments by 6-21-79

29032 5-22-79 / Indian education policies; comments by 6-21-79

29042 5-22-79 / Indian School equalization program; comments by 6-21-79

29034 5-22-79 / Transfer of Indian educations functions; comments by 6-21-79

INTERSTATE COMMERCE COMMISSION

23101 4-18-79 / Motor transportation of passengers incidental to transportation by aircraft; Savannah, Ga., airport terminal area; Petition to extend exempt zone; comments by 6-18-79

NATIONAL CREDIT UNION ADMINISTRATION

26115 5-4-79 / National Credit Union Administration Central Liquidity Facility; membership and lending; comments by 6-18-79

NUCLEAR REGULATORY COMMISSION

22748 4-17-79 / Public records; advance notice of proposed rulemaking; comments by 6-18-79

22480 6-6-79 / Yellowcake packaging and transportation accidents; comment period extended to 6-21-79

[Originally published at 44 FR 22391, 4-19-79]

PERSONNEL MANAGEMENT OFFICE

23030 4-20-79 / Merit pay system; implementation; comments by 6-19-79

SMALL BUSINESS ADMINISTRATION

23258 4-19-79 / Leverage to unincorporated small business investment companies; comments by 6-18-79

TRANSPORTATION DEPARTMENT

Coast Guard—

25003 5-3-79 / Special Anchorage Area, Lower Harbor, Marquette, Mich.; comments by 6-19-79

Materials Transportation Bureau—

23000 4-23-79 / Incorporation by reference provisions; comments by 6-22-79

National Highway Traffic Safety Administration—

30128 5-24-79 / Uniform tire quality grading; consumer information; comments by 6-25-79

TREASURY DEPARTMENT

Customs Service—

29916 5-23-79 / Revised customs form to facilitate entry of imported merchandise; comments by 6-22-79

Internal Revenue Service—

23683 4-23-79 / Exclusion from subpart F income of certain earnings of insurance companies; comments by 6-22-79

23680 4-23-79 / Provisions for investment in U.S. property by controlled foreign corporations; comments by 6-22-79

23541 4-20-79 / Qualified retirement plans; minimum participation standards; comments by 6-19-79

23262 4-19-79 / Tax treatment of grantors of certain options to buy or sell property; comments by 6-18-79

Next Week's Meetings

ACTUARIES, JOINT BOARD FOR ENROLLMENT

29696 5-23-79 / Advisory Committee on Actuarial Examinations, Dallas, Tx. (open), 6-20-79

AGING, FEDERAL COUNCIL

30765 5-29-79 / Long-Term Care Committee, Washington, D.C. (open), 6-21-79

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—

30142 5-24-79 / Flue-Cured Tobacco Advisory Committee, Raleigh, N.C. (open), 6-21-79

23858 4-23-79 / Beef research and information order, Pittsburgh, Pa. and Hapeville, Ga., 6-19 and 6-21-79

Forest Service—

32715 6-7-79 / National Forest System land resource management planning, Asheville, N.C. (open), 6-20 and 6-21-79

AIR QUALITY, NATIONAL COMMISSION

30174 5-24-79 / Washington, D.C. (open), 6-22-79

ARTS AND HUMANITIES, NATIONAL FOUNDATION

32324 6-5-79 / Architecture, Planning and Design Panel, Washington, D.C. (closed), 6-21 and 6-22-79

30494 5-25-79 / Humanities Panel, Washington, D.C. (closed), 6-21 and 6-22-79

32063 6-4-79 / Theatre Advisory Panel, Washington, D.C. (partially open), 6-21 through 6-23-79

CIVIL RIGHTS COMMISSION

32268 6-5-79 / Iowa Advisory Committee, Des Moines, Iowa (open), 6-21-79

32269 6-5-79 / Minnesota Advisory Committee (open), St. Paul, Minn. (open), 6-20-79

30403 5-25-79 / New Hampshire Advisory Committee, Plymouth, N.H. (open), 6-18-79

30708 5-29-79 / South Carolina Advisory Committee, Columbia, S.C. (open), 6-20-79

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration—

28835 5-17-79 / Mid-Atlantic Fishery Management Council, King of Prussia, Pa. (open), 6-19 and 6-20-79

32019 6-4-79 / South Atlantic Fishery Management Council, Ft. Pierce, Fla. (open), 6-19-79

COMMODITY FUTURES TRADING COMMISSION

32434 6-6-79 / State Jurisdiction and Responsibilities Advisory Committee, Delavan, Wis. (open), 6-21 and 6-22-79

CONSUMER PRODUCT SAFETY COMMISSION

31275 5-31-79 / Toxicological Advisory Board, Bethesda, Md. (open), 6-18-79

DEFENSE DEPARTMENT

Air Force Department—

29136 5-16-79 / USAF Scientific Advisory Board, Hanscom Air Force Base, Mass. (closed), 6-21 and 6-22-79

31279 5-31-79 / USAF Scientific Advisory Board, Washington, D.C. (closed), 6-18-79

Army Department—

32270 6-5-79 / Army Science Board, Washington, D.C. (closed), 6-20 and 6-21-79

Navy Department—

32270 6-5-79 / Naval Research Advisory Committee, Quantico, Va. and Washington, D.C. (partially open), 6-21 and 6-22-79

Office of the Secretary—

29954 5-23-79 / Defense Advisory Committee on Women in the Services, Washington, D.C. (open), 6-13 and 6-19-79

30148 5-24-79 / Defense Science Board Summer Study Panel on Comprehensive Test Ban, Arlington, Va. (closed), 6-19 and 6-20-79

24335 4-25-79 / Department of Defense Wage Committee, Washington, D.C. (closed), 6-19-79

28396 5-15-79 / Electron Devices Advisory Group, New York, N.Y. (closed), 6-20-79

ECONOMIC OPPORTUNITY, NATIONAL ADVISORY COUNCIL

31049 5-30-79 / Work Program for the Advisory Council 1980 Report, Berkeley, Calif. (open), 6-22 and 6-23-79

ENERGY DEPARTMENT

28706 5-16-79 / Committee on Materials and Manpower Requirements, Regulatory Impact Task Group, Houston, Tx. (open), 6-22-79

28706 5-16-79 / Committee on Unconventional Gas Sources, Tight Gas Reservoirs Task Group, Denver, Colo. (open), 6-22-79

Economic Regulatory Administration—

31701 6-1-79 / Fuel Oil Marketing Advisory Committee, Minneapolis, Minn. (open), 6-19 and 6-20-79

ENVIRONMENTAL PROTECTION AGENCY

31707 6-1-79 / Science Advisory Board, Technology Assessment and Pollution Control Committee, Washington, D.C. (open), 6-20 through 6-22-79

FEDERAL COMMUNICATIONS COMMISSION

31042 5-30-79 / Radio Technical Commission for Marine Services, Executive Committee Meeting, Washington, D.C. (open), 6-21-79

31042 5-30-79 / Radio Technical Commission for Marine Services, Special Committee No. 70, Washington, D.C. (open), 6-18 and 6-19-79

31042 5-30-79 / Radio Technical Commission for Marine Services, Special Committee No. 71, Washington, D.C. (open), 6-20-79

FEDERAL DEPOSIT INSURANCE CORPORATION

30425 5-25-79 / Advisory Committee on State and Federal Regulation of Banks, Washington, D.C. (open), 6-19 and 6-20-79

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

29160 5-18-79 / Washington, D.C. (open), 6-21-79

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Alcohol, Drug Abuse, and Mental Health, Administration—

28726 5-16-79 / Basic Sociocultural Research Review Committee, Washington, D.C. (partially open), 6-20 through 6-22-79

27746 5-11-79 / Cognition, Emotion, and Personality Research Review Committee, Washington, D.C. (closed), 6-17-79

27746 5-11-79 / Criminal and Violent Behavior Review Committee, Silver Spring, Md. (partially open), 6-20 through 6-22-79

27746 5-11-79 / Epidimiologic and Services Research Review Committee, Chevy Chase, Md. (partially open), 6-18 through 6-20-79

28726 5-16-79 / Mental Health Research Education Review Committee, Rockville, Md. (partially open), 6-21 through 6-23-79

27746 5-11-79 / Mental Health Small Grant Review Committee, Washington, D.C. (partially open), 6-21 through 6-23-79

Center for Disease Control—

31320 5-31-79 / Safety and Occupational Health Study Section, Rockville, Md. (partially open), 6-18 through 6-20-79

Education Office—

32741 6-7-79 / Accreditation and Institutional Eligibility Advisory Committee, Alexandria, Va. (open), 6-20 through 6-22-79

32479 6-6-79 / Bilingual education national advisory council, Washington, D.C. (open), 6-21 through 6-23-79

25270 4-30-79 / Advisory Committee on Accreditation and Institutional Eligibility, Alexandria, Va. (open), 6-20 through 6-22-79

29075 5-23-79 / National Advisory Council on Equality of Educational Opportunity, Chicago, Ill. (open), 6-21 and 6-22-79

27630 5-10-79 / Population Education Program, Atlanta, Ga. (open), 6-19-79

27630 5-10-79 / Population Education Program, Boston, Mass. (open), 6-19-79

27630 5-10-79 / Population Education Program, Chicago, Ill. (open), 6-19-79

27630 5-10-79 / Population Education Program, Dallas, Tx. (open), 6-19-79

27630 5-10-79 / Population Education Program, Denver, Colo. (open), 6-19-79

27630 5-10-79 / Population Education Program, Kansas City, Mo. (open), 6-19-79

27630 5-10-79 / Population Education Program, New York, N.Y. (open), 6-19-79

27630 5-10-79 / Population Education Program, Philadelphia, Pa. (open), 6-19-79

27630 5-10-79 / Population Education Program, Sacramento, Calif. (open), 6-19-79

27630 5-10-79 / Population Education Program, Seattle, Wash. (open), 6-19-79

28236 5-14-79 / Revision of provisions for grants to State educational agencies for educational improvement, resources, and support, all regions (open), 6-19-79

Food and Drug Administration—

29699 5-8-79 / Carcinogenic residues in food-producing animals; criteria and procedures for evaluating assays, Washington, D.C., 6-21 and 6-22-79

[Originally published at 44 FR 23536, 4-20-79]

28413 5-15-79 / Cardiovascular and Renal Drugs Advisory Committee, Rockville, Md. (open), 6-21 and 6-22-79

National Institutes of Health—

31320 5-31-79 / Panel for the Review of Laboratory and Center Operations, Washington, D.C. (open), 6-22-79

27265 5-9-79 / Aging Review Committee, Bethesda, Md. (partially open), 6-21 and 6-22-79

25265 4-30-79 / "Aplastic Anemia: a Stem Cell Disease," San Francisco, Calif. (open), 6-17 through 6-19-79

27266 5-9-79 / Biomedical Library Review Committee, Bethesda, Md. (partially open), 6-18 through 6-20-79

27497 5-10-79 / Bio-Psychology Study Section, Washington, D.C. (open), 6-20 through 6-22-79

27497 5-10-79 / Cardiovascular and Pulmonary Study Section, Bethesda, Md. (open), 6-19 through 6-23-79

29673 5-23-79 / Community Programs and Rehabilitation Work Group, Denver, Colo. (open), 6-21 and 6-22-79

29678 5-17-79 / Conference on the Management and Logistics of Blood Banking, St. Petersburg, Fla. (open), 6-21 and 6-23-79

27496 5-10-79 / Diagnostic Radiology Study Section, Bethesda, Md. (open), 6-19 through 6-21-79

27498 5-10-79 / Experimental Therapeutics Study Section, Chevy Chase, Md. (open), 6-20 through 6-23-79

27267 5-9-79 / Genetic Basis of Disease Review Committee, Bethesda, Md. (partially open), 6-18 and 6-19-79

27267 5-9-79 / General Clinical Research Centers Committee, Bethesda, Md. (partially open), 6-21 and 6-22-79

29680 5-17-79 / Minority Access to Research Careers Review Committee, Bethesda, Md. (open and closed), 6-21 and 6-22-79

29673 5-23-79 / National Diabetes Advisory Board, Bethesda, Md. (open), 6-19-79

27496 5-10-79 / Neurology A Study Section, Bethesda, Md. (open), 6-20 through 6-23-79

27496 5-10-79 / Neurology B Study Section, Washington, D.C. (open), 6-20 through 6-22-79

27496 5-10-79 / Nutrition Study Section, Bethesda, Md. (open), 6-20 through 6-22-79

27496 5-10-79 / Pathobiological Chemistry Study Section, Chevy Chase, Md. (open), 6-20 through 6-22-79

24230 4-24-79 / Sickle Cell Disease Advisory Committee, Bethesda, Md. (open), 6-21 and 6-22-79

Office of the Assistant Secretary for Health—

28106 5-14-79 / Health Services Advisory Committees, Washington, D.C. and Rockville, Md. (partially open), 6-20-79

INTERIOR DEPARTMENT

Land Management Bureau—

29430 5-15-79 / Ely District (Nevada) Grazing Advisory Board; Ely, Nev. (open), 6-20-79

29449 5-25-79 / Presentation of Nevada wilderness inventory findings, various cities in Nevada (open), 6-19 through 6-21-79

29172 5-24-79 / Salt Lake District Grazing Advisory Board, Randolph, Utah (open), 6-19 through 6-21-79

National Park Service—

31325 5-31-79 / Chickamauga and Chattanooga National Military Park, Chattanooga, Tenn. (open), 6-20-79

31325 5-31-79 / De Soto National Memorial, Bradenton, Fla. (open), 6-21-79

31326 5-31-79 / Fort Pulaski National Monument, Savannah, Ga. (open), 6-21-79

Office of the Secretary—

32484 6-6-79 / Outer Continental Shelf policy committee, North Atlantic Region, Boston, Mass. (open), 6-21-79

LABOR DEPARTMENT

Occupational Safety and Health Administration—

24252 4-24-79 / Servicing multi-piece ring wheels, Washington, D.C. (open), 6-19-79

METRIC BOARD

31061 5-30-79 / Meeting, Boston, Mass. (open), 6-21 and 6-22-79

31048 5-30-79 / Voluntary metric conversion, Boston, Mass. (open), 6-21-79

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

29784 5-22-79 / NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Washington, D.C., (open), 6-20 and 6-21-79

31049 5-30-79 / NASA Advisory Council (NAC), Space Science Advisory Committee, Washington, D.C. (open), 6-21 through 6-23-79

31049 5-30-79 / NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee, Washington, D.C. (open), 6-18 and 6-20-79

31754 6-1-79 / Space and Terrestrial Applications Steering Committee Proposal Evaluation Advisory Subcommittee, Hampton, Va. (closed), 6-18 through 6-22-79

NATIONAL SCIENCE FOUNDATION

31754 6-1-79 / Advisory Council Task Group No. 8, Cambridge, Mass. (open), 6-18-79

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32045 6-4-79 / HEW/NIH—Cancer Control Grant Review Committee, Bethesda, Md. (partially open), 6-10 through 6-12-79

32046 6-4-79 / HEW/NIH—General Medicine B Study Section, Bethesda, Md. (partially open), 6-27 through 6-30 meeting rescheduled to 6-28 through 6-30-79

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6-14-79
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Pages 34083-34460

Federal Register

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Briefings on How to Use the Federal Register—For details on briefings in Washington, D.C.; Los Angeles, and San Francisco, Calif., see announcement in the Reader Aids Section at the end of this issue.

34083 **Energy Emergency—Florida** Presidential memorandum

34089 **Steel Imports** Presidential proclamation extending import relief

34095 **Trade With Romania and Hungary** Presidential determination

34157 **Local Educational Agencies** HEW/OE proposes rules to govern the awarding of special grants to LEA with especially high concentrations of children from low-income families, comments by 8-13-79

34418, 34422 **Aircraft Accident/Incident Investigation Procedures** NTSB issues rules effective 8-14-79 and extends comment period (2 documents) (Part IV of this issue)

34097 **Interest on Deposits** FRS issues rule concerning temporary suspension of early withdrawal penalty; effective 4-11-79

34346 **National Pollutant Discharge Elimination System** EPA proposes revisions of rules, comments by 9-12-79 (Part III of this issue)

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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34213 **Arson Control Assistance Program** Justice/LEAA publishes draft proposed guidelines

34424 **Energy-Procurement** DOE issues rule; effective 6-14-79 (Part V of this issue)

34193 **Pesticides** EPA establishes temporary tolerance for 2-Chloro-*N*-(2,3-dimethylphenyl)-*N*-(1-methylethyl) acetamide

34194 **Toxic Substances** EPA issues summary of premanufacture notices

34167 **Toxic Substances** EPA proposes rules concerning fully halogenated chlorofluorocarbons, comments by 9-12-79

34192 **University Coal Research Laboratories Program** DOE issues notice of availability of program announcement; effective 6-13-79

34129 **Lighting of Barges** DOT/CG amends rules requiring use of flashing yellow light at the head of tows being pushed ahead

34132 **Fire Extinguishing Equipment** DOT/CG amends rules concerning wheeled semiportable fire extinguishers; effective 7-11-79

34440, 34443 **Tank Barges** DOT/CG proposes rules to prevent oil pollution, comments by 9-30-79 (2 documents) (Part VI of this issue)

34346 **Consolidated Permits Program** EPA solicits comments by 9-12-79 on draft application forms and accompanying instructions (Part III of this issue)

34244 **Hazardous Waste Management Program** EPA proposes rule to establish consolidated permit program requirements, comments by 9-12-79 (Part II of this issue)

34240 **Sunshine Act Meetings**

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Thursday, June 14, 1979

Presidential Documents

Title 3—

The President

Proclamation 4805 of June 12, 1979

Extension of Temporary Quantitative Limitation on the Importation Into the United States of Certain Articles of Stainless Steel or Alloy Tool Steel

By the President of the United States of America

A Proclamation

1. On June 11, 1976, by Proclamation 4445, the President proclaimed, pursuant to the Constitution and the statutes of the United States (including section 203 of the Trade Act of 1974 (19 U.S.C. 2253) (the Trade Act)), the imposition of temporary quantitative limitations on the importation into the United States of certain articles of stainless steel or alloy tool steel. These limitations were effective as to those articles entered, or withdrawn from warehouse, for consumption on or after June 14, 1976, and were to continue for a period of three years from that date unless earlier modified, or terminated. Proclamation 4445 was subsequently modified by Proclamation 4477 of November 16, 1976, Proclamation 4509 of June 15, 1977, and Proclamation 4559 of April 5, 1978. Import relief currently in effect under Proclamation 4445, as amended, with respect to articles provided for in items 923.20 through 923.28, inclusive, of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), is scheduled to terminate at the close of June 13, 1979, unless extended by the President pursuant to section 203(h)(3) of the Trade Act (19 U.S.C. 2253(h)(3)).

2. Pursuant to sections 203(i)(2) and (i)(3) of the Trade Act (19 U.S.C. 2253(i)(2) and (i)(3)), the United States International Trade Commission (USITC), on April 24, 1979, reported to the President (USITC Report 203–5) the results of its investigation under section 203(i) of the Trade Act (19 U.S.C. 2253(i)). The USITC advised that it was evenly divided on the question of the probable economic effect on the domestic industry concerned of the termination of the import relief provided for in items 923.20 through 923.28, inclusive, of the TSUS.

3. Section 203(h)(3) of the Trade Act (19 U.S.C. 2253(h)(3)) provides that any import relief provided pursuant to section 203 may be extended by the President, at a level of relief no greater than the level in effect immediately before such extension, if the President determines, after taking into account the advice received from the USITC under section 203(i)(2) of the Trade Act (19 U.S.C. 2253(i)(2)) and after taking into account the considerations described in section 202(c) of the Trade Act (19 U.S.C. 2252(c)), that such extension is in the national interest.

4. In accordance with section 203(h)(3) of the Trade Act (19 U.S.C. 2253(h)(3)), having taken into account the advice received from the USITC under section 203(i)(2) of the Trade Act (19 U.S.C. 2253(i)(2)), and the considerations described in section 202(c) of the Trade Act (19 U.S.C. 2252(c)), I have determined that the extension of the import relief provided for in items 923.20 through 923.28, inclusive, of the TSUS is in the national interest.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including section 203 of the Trade Act (19 U.S.C. 2253), and in accordance with Article XIX of the General Agreement on Tariffs and Trade (GATT) (61 Stat. (pt. 5) A58; 8 UST (pt. 2) 1786), do proclaim that—

(1) Items 608.52, 608.76, 608.78, 608.85, 608.88, 609.06, 609.07 and 609.09 in Part I of Schedule XX to the GATT are modified to conform with the Quantitative restrictions set forth in the Annex to this proclamation.

(2) Subpart A, part 2 of the Appendix to the TSUS is modified as set forth in the Annex to this proclamation.

(3) The authority to make changes in the quantitative restrictions provided for in this proclamation, as set forth in the Annex to this proclamation, is hereby delegated to the Special Representative for Trade Negotiations.

(4) This proclamation shall be effective as to those articles entered, or withdrawn from warehouse, for consumption on or after June 14, 1979, and before the close of February 13, 1980, unless the period of its effectiveness is earlier expressly modified or terminated.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of June, in the year of our Lord nineteen hundred and seventy-nine, and of the Independence of the United States of America the two hundred and third.

Jimmy Carter

ANNEX

Subpart A, part 2 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202) is modified—

(a) by deleting paragraph (i) of headnote 2(a) and inserting the following new paragraph (i):

"(i) The term *"restraint period"* refers to the 2-month period beginning June 14, 1979, and ending August 13, 1979, and thereafter to the three subsequent 2-month periods ending at the close of February 13, 1980;";

(b) by deleting headnotes 2 (b), (c), (d), (e), and (f);

(c) by inserting the following new headnote 2(b):

"(b) *Carryover.*—Whenever the quota quantity for item 923.22 or 923.26 has not been entered during any restraint period, the shortfall may be entered under the same item during the following restraint periods and not be counted against the quota quantity therefor. Whenever any quota quantity for a country or instrumentality under item 923.20, 923.21, or 923.23 has not been entered during any restraint period, the shortfall may be entered under the quota for that country or instrumentality under the same item during the following restraint periods and not be counted against the quota quantity therefor;";

(d) by inserting the following new headnote 2(c):

"(c) *Shortfall.*—During the second month of the third restraint period, should the Special Representative for Trade Negotiations determine that any quota quantity for a country or instrumentality under item 923.20, 923.21, or 923.23 is unlikely to be used during the remainder of the third restraint period or during the fourth restraint period, the Special Representative may modify the quota quantities for that item for the fourth restraint period by reallocating the shortfall to other suppliers, such modification to be effective with respect to articles entered, or withdrawn from warehouse, for consumption nonor after December 13, 1979. Notice of such modification is to be published in the *Federal Register* prior to December 13, 1979;";

(e) by redesignating headnote 2(g) as headnote 2(d); and

(f) by deleting items 923.20 through 923.26, inclusive, and inserting the following new items in lieu thereof:

Item	Articles	Quota Quantity (in short tons) Effective on or after— June 14, 1979	August 14, 1979	October 14, 1979	December 14, 1979
	Whenever, in any restraint period the respective aggregate quantity of articles specified below for items 923.20, 923.21, 923.22, 923.23, or 923.26 the product of a specified foreign country or instrumentality has been entered (whether, for tariff purposes, in schedule 6 or in parts 1, 2, and 3 of schedule 8), no article in such item the product of such country or instrumentality may be entered during the remainder of such restraint period:				
923.20	Sheets and strip of stainless steel (except razor blade steel) of the types provided for in items 608.85, 608.86, 608.06, 608.07, and 608.08:				
	Japan	7,341	8,022	8,757	9,071
	European Economic Community	3,082	3,249	3,852	3,783
	Canada	1,909	1,854	2,024	2,097
	Sweden	1,395	1,462	1,828	1,867
	Other:				
	Countries entitled to the rate of duty in rates of duty column numbered 1 (total)	835	885	898	881
	Other (total)	1	1	1	1
923.21	Plates of stainless steel of the types provided for in items 608.85 and 608.86:				
	Japan	1,186	1,205	1,227	1,261
	European Economic Community	889	882	898	895
	Canada	95	100	102	103
	Sweden	685	728	795	788
	Other				
	Countries entitled to the rate of duty in rates of duty column numbered 1 (total)	128	140	143	148
	Other (total)	None	None	None	None
923.22	Bars of stainless steel of the types provided for in item 608.52	4,800	5,200	5,500	5,800
923.23	Wire rods of stainless steel of the types provided for in items 608.76 and 608.78:				
	Japan	1,061	1,111	1,160	1,188
	European Economic Community	1,307	1,469	1,528	1,571
	Canada	None	None	None	None
	Sweden	742	777	812	838
	Other:				
	Countries entitled to the rate of duty in rates of duty column number 1 (total)	None	None	None	None
	Other (total)	None	None	None	None
923.26	Alloy tool steel of the types provided for in items 608.52, 608.76, 608.78, 608.85, 608.86, 608.06, 608.07, and 608.08 within the specifications of headnote 2(a)(iii)	4,100	4,600	4,800	5,000

[FR Doc. 79-18878
Filed 6-13-79; 2:55 pm]

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Presidential Documents

Memorandum of June 12, 1979

Energy Emergency—Florida

Memorandum for the Administrator of the Environmental Protection Agency

Based on a request submitted to me by the Governor of the State of Florida to extend my May 5, 1979 determination that a regional energy emergency continues to exist in the State of Florida of such severity that a temporary suspension of certain particulate and opacity control regulations which apply to fossil-fuel fired electric generating plants under the Florida Air Quality Implementation Plan may be necessary, and that other means of responding to the energy emergency may be inadequate, I hereby extend that determination for thirty days from June 5 to and including July 4, 1979. This extension is limited by the same conditions as my original determination.

If, during the extension, I find that a regional energy emergency no longer exists in Florida, I will direct that this extension be rescinded, and that all suspension orders issued by the Governor be terminated on the day of that rescission. Please continue to work with State officials to monitor carefully the residual oil supply in Florida, and to inform me if the emergency should cease to exist. You will continue to retain full authority to disapprove temporary suspension of regulations in Florida and to exercise your emergency powers authority under Section 303 of the Clean Air Act, when and if necessary. It is important to keep suspensions to an absolute minimum since Section 110(f) of the Clean Air Act limits each suspension to a maximum duration of 120 days.

I commend Governor Graham for his continued efforts in energy conservation and his commitment that no extension of any suspension will be granted if the result would be a violation of any national ambient primary or secondary air quality standard.

This determination shall be published in the Federal Register.

Jimmy Carter

THE WHITE HOUSE,
Washington, June 12, 1979.

[FR Doc. 79-18079
Filed 6-12-79; 2:56 pm]
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Presidential Documents

Presidential Determination No. 79-18 of June 1, 1979

Determination Under Subsections 402(d)(5) and (d)(5)(C) of the Trade Act of 1974—Continuation of Waiver Authority

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974, (Public Law 93-618, January 3, 1975; 88 Stat. 1978) (hereinafter "the Act"), I determine, pursuant to Subsections 402(d)(5) and (d)(5)(C) of the Act, that the further extension of the waiver authority granted by Subsection 402(c) of the Act will substantially promote the objectives of Section 402 of the Act. I further determine that continuation of the waivers applicable to the Socialist Republic of Romania and to the Hungarian People's Republic will substantially promote the objectives of Section 402 of the Act.

This determination shall be published in the Federal Register.

Jimmy Carter

THE WHITE HOUSE,
Washington, June 1, 1979.

[FR Doc. 79-18723
Filed 6-12-79; 2:51 pm]
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Rules and Regulations

Federal Register
Vol. 44, No. 118
Thursday, June 14, 1979

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Reg. 616]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period June 15–21, 1979. Such action is needed to provide for orderly marketing of fresh Valencia oranges for this period due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: June 15, 1979.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Valencia Orange Administrative Committee and upon other available information. It is hereby found that the action will tend to effectuate the declared policy of the act. This regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

The committee met on June 12, 1979, to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of Valencia oranges deemed advisable to be handled during the specified week. The committee reports the demand for Valencia oranges is weak.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 908.516 Valencia Orange Regulation 616.

Order. (a) The quantities of Valencia oranges grown in Arizona and California which may be handled during the period June 15, 1979, through June 21, 1979, are established as follows:

(1) District 1: 300,000 cartons;

(2) District 2: 200,000 cartons;

(3) District 3: Unlimited.

(b) As used in this section, "handled", "District 1", "District 2", "District 3", and "carton" mean the same as defined in the marketing order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: June 13, 1979.

D. S. Kuryloski,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-18868 Filed 6-13-79; 11:21 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Regulation Q, Docket No. R-0232]

Interest on Deposits; Temporary Suspension of Early Withdrawal Penalty

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Temporary suspension of the Regulation Q penalty normally imposed upon the withdrawal of funds from deposits prior to maturity.

SUMMARY: The Board of Governors, acting through its Secretary, pursuant to delegated authority, has suspended temporarily the Regulation Q penalty for the withdrawal of time deposits prior to maturity from member banks for depositors affected by the severe storms and tornadoes beginning on or about April 8, 1979, in the State of Arkansas.

EFFECTIVE DATE: April 11, 1979.

FOR FURTHER INFORMATION CONTACT: Paul S. Pilecki, Attorney, Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202/452-3281).

SUPPLEMENTARY INFORMATION: On April 11 and 13, 1979, pursuant to section 301 of the Disaster Relief Act of 1974 (42 U.S.C. § 5141) and Executive Order 11795 of July 11, 1974, the President, acting through the Administrator of the Federal Disaster Assistance Administration, designated the following counties of the State of Arkansas a major disaster area: Ashley, Bradley, Calhoun, Howard, Jackson, Nevada, Ouachita, and Polk. The Board regards the President's action as recognition by the Federal government that a disaster of major proportions has occurred. The President's designation enables victims of the disaster to qualify for special emergency financial assistance. The Board believes it appropriate to provide an additional

measure of assistance to victims by temporarily suspending the Regulation Q early withdrawal penalty.[1] The Board's action permits a member bank, wherever located, to pay a time deposit before maturity without imposing this penalty upon a showing that the depositor has suffered property or other financial loss in the disaster area as a result of the severe storms and tornadoes. A member bank should obtain from a depositor seeking to withdraw a time deposit pursuant to this action a signed statement describing fully the disaster-related loss. This statement should be approved and certified by an officer of the bank. This action will be retroactive to April 11, 1979, and will remain in effect until 12 midnight October 15, 1979.

Section 19(j) of the Federal Reserve Act (12 U.S.C. § 371b) provides that no member bank shall pay any time deposit before maturity except upon such conditions and in accordance with such rules and regulations as may be prescribed by the Board. The Board has determined it to be in the overriding public interest to suspend the penalty provision in § 217.4(d) of Regulation Q for the benefit of depositors suffering disaster-related losses within those geographical areas of the State of Arkansas officially designated a major disaster area by the President. The Board, in granting this temporary suspension, encourages member banks to permit penalty-free withdrawal before maturity of time deposits for depositors who have suffered disaster-related losses within the designated disaster area.

In view of the urgent need to provide immediate assistance to relieve the financial hardship being suffered by persons directly affected by the severe damage and destruction occasioned by the storms and tornadoes in the designated counties of Arkansas, good cause exists for dispensing with notice and public participation referred to in section 553(b) of Title 5 of the United States Code with respect to this action and public procedure with regard to this action would be contrary to the public interest. Because of the need to provide assistance as soon as possible and because the Board's action relieves a restriction, there is good cause to make the action effective immediately.

By order of the Board of Governors, acting through its Secretary, pursuant to delegated authority (12 CFR 265.2(a) (18)), June 8, 1979.

Theodore E. Allison,

Secretary of the Board.

[FR Doc. 79-18800 Filed 6-13-79; 8:45 am]

BILLING CODE 6210-01-M

[1] Sec. 217.4(d) of Regulation Q provides that where a time deposit issued prior to July 1, 1979, or any portion thereof, is paid before maturity, a member bank may pay interest on the amount withdrawn at a rate not to exceed that currently prescribed for a savings deposit and that the depositor shall forfeit three months of interest payable at such rate. Time deposits issued on or after July 1, 1979, will be subject to a new penalty rule (refer to 44 FR 32648).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 79-SO-39; Amdt. 39-3485]

Airworthiness Directives; Piper Model PA-28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: An emergency Airworthiness directive by priority mail was adopted on May 1, 1979, and made effective immediately upon receipt of the letter to all known U.S. operators of certain Piper Model PA-28 series airplanes. This directive requires repetitive checks until the Parker-Hannifin unions and fittings in the fuel system are retorqued, repaired, or replced within 100 hours time in service after receipt of the letter. This AD was needed to inspect for fuel leakage and/or fumes and to retorque, repair, or replace leaking unions to prevent a possible fire hazard.

DATES: This AD is effective June 8, 1979, and was effective upon receipt for all recipients of the emergency Airworthiness Directive dated May 2, 1979.

ADDRESSES: Piper Service Bulletin No. 638 may be obtained from Piper Aircraft Corporation, Lock Haven, Pennsylvania 17745, telephone (707) 748-6711. A copy of the bulletin is contained in the Rules Docket, Room 275, Engineering and Manufacturing Branch, FAA, Southern Region, 3400 Whipple Street, East Point, Georgia 30320, telephone (404) 763-7407.

FOR FURTHER INFORMATION CONTACT: John J. Lyness, Manufacturing Inspection Section, Engineering and Manufacturing Branch, Flight Standards Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320, telephone (404) 763-7280.

SUPPLEMENTARY INFORMATION: There have been reports of fuel leakage at the Parker-Hannifin unions installed in certain Piper Aircraft Corporation Model PA-28 series airplanes. Fuel leaks and/or fumes at these unions could possibly result in a fire. Since this condition is likely to exist or develop in other airplanes of the same type design, an emergency Airworthiness Directive was issued on May 2, 1979, which required checks prior to the next flight and prior to each flight thereafter until the Parker-Hannifin unions and fittings in the fuel system were retorqued, repaired, or replaced within 100 hours time in service after receipt of the letter.

Since a situation existed that required immediate corrective action, it was found that notice and public procedure thereon were impractical and contrary to the public interest, and good cause existed for making the AD effective immediately to all known U.S. operators of certain Piper Aircraft Corporation Model PA-28 series airplanes by the emergency Airworthiness Directive dated May 2, 1979. This condition still exists and is hereby published in the Federal Register.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive:

Piper Aircraft Corporation. Applies to the following Piper models of aircraft certified in all categories: PA-28-101, S/N 28-7616340 through 28-7916410; PA-28-181, S/N 28-7890276 through 28-7990429; PA-28-236, S/N 28-7911001 through 28-7911167; PA-28-201T, S/N 28-7921001 through 28-7921028; PA-28R-201, S/N 28R-7837150 through 28R-7837317; PA-28R-201T, S/N 28R-7803185 through 28R-7808373; PA-28RT-201, S/N 28R-7918001

through 28R-7918126; PA-28RT-201T, S/N 28R-7931001 through 28R-7931187.

Compliance is required as indicated, unless already accomplished.

To prevent a potential fire hazard, accomplish the following:

(a) Prior to the next flight after the effective date of this AD and prior to each flight thereafter until compliance with the requirements of paragraphs (b)(1) through (b)(7) have been accomplished, check for evidence of fuel leads, wetting, fuel stains, and/or fumes at inboard area of both wings and in the cabin area. Make appropriate maintenance record entry.

(b) If, as a result of checks required by paragraph (a), leakage, wetting, fuel stains or fumes are evident, accomplish the following prior to further flight:

(1) Gain access to all Parker-Hannifin unions (identified D1 or D1PH6) located at inboard areas of both wings, under the left cabin side panel and in the spar box area. For 201T models only, include vent line fitting at lower aft corner of the door.

(2) Torque each fitting to the requirements of Table I.

(3) Measure the distance between the face of union and face of tubing fitting. Refer to Figure I.

(4) If Torque and/or dimensions are not in accordance with the requirements of Table I and Figure I, comply with paragraph (c).

(5) Fill the airplane tanks full of fuel and run engine for three (3) to five (5) minutes on each tank.

(6) Inspect fittings for leakage and if no leaks are found, no further action is necessary except for the appropriate maintenance record entry.

(7) If leakage is still evident, comply with the requirements of paragraph (c).

(c) If as a result of checks or inspections required by this Airworthiness Directive, the fittings or unions are found damaged, they continue to leak, or they do not comply with the requirements of Table I and Figure I, correct in accordance with (1), (2), or (3) below and accomplish paragraphs (b)(4), (b)(5), and (b)(6).

(1) Remove the leaking union and replace it using a standard "AN" fitting as outlined in AC 43.13-1A, paragraphs 362 and 708, or

(2) Replace with Piper preswaged and presealed tube and union and apply thread lube as outlined in Table II. Carefully align the tube, snug up the nut finger tight, and tighten the nut one (1) to two (2) flats (⅙ to ⅓ of a turn). Maintain dimensional tolerance of Figure I, or

(3) Repair by using the same size Parker-Hannifin unions and fittings which have not been preswaged or presealed. Apply thread lube as outlined in Table II, snug up the nut finger tight, and using a tube wrench tighten the nut one and one-quarter (1¼) turns.

(d) Within the next 100 hours time in service after the effective date of this Airworthiness Directive, comply with the requirements of paragraphs (b)(1) through (b)(7), unless already accomplished.

(e) Checks specified in paragraph (a) may be accomplished by the pilot.

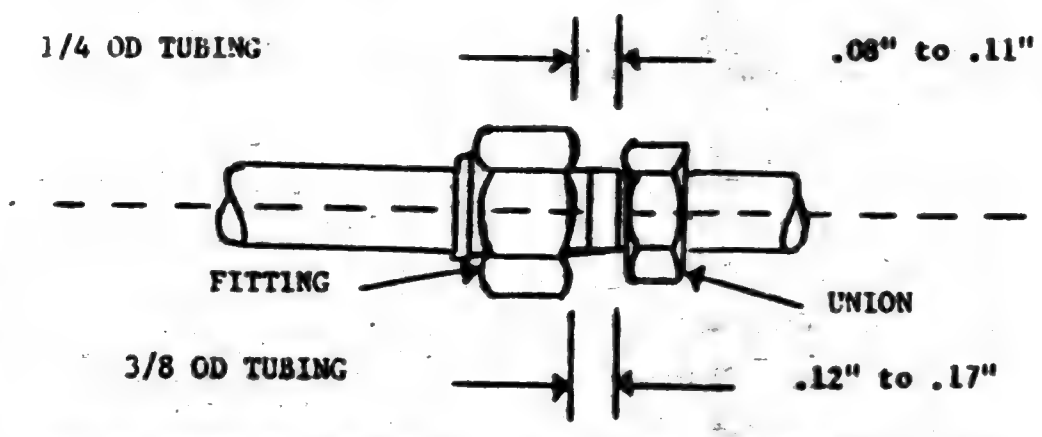
(f) Compliance with the provisions of this Airworthiness Directive may be accomplished in an equivalent manner approved by the Chief, Engineering and Manufacturing Branch, Southern Region.

Table I

Tube Size	Applied torque	Equipment
¼ OD	75–85 inch pounds.	Use a tubing crows foot.
⅜ OD	175–195 inch pounds.	Use a tubing crows foot.

Table II

Slip spray lubricant (Dupont), or equivalent.
Perulube (Parker-Hannifin), or equivalent.
Apply the lubricant to the male connector thread.
Do not allow lubricant to enter the throat of the connector seat or contact the ferrule seat face.



Piper Service Bulletin No. 638 pertains to this subject.

This amendment becomes effective June 8, 1979.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89)

Issued in East Point, Ga., on June 1, 1979.

Phillip M. Swatek,
Director, Southern Region.

[FR Doc. 79-18126 Filed 6-13-79; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 79-NE-07; Amdt. 39-3496]

Sikorsky S-61 Series Helicopters Certificated in All Categories; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: On April 21, 1979, a telegraphic airworthiness directive (AD) was issued requiring repetitive inspections of the honeycomb tail rotor blades and an inspection of the tail rotor gearbox of Sikorsky S-61 type helicopters equipped with honeycomb tail rotor blades. The AD also required the replacement of the components prior to further flight, if cracks were found. These cracks could lead to failures of these components and loss of control of the helicopter.

DATES: Effective date—June 14, 1979.

ADDRESSES: To obtain copies of the service bulletin referenced in the AD contact Sikorsky Aircraft Division of United Technologies Corporation, Stratford, Connecticut 06602.

FOR FURTHER INFORMATION CONTACT: William E. Garlock, Airframe Section, ANE-212, Engineering and Manufacturing Branch, Flight Standards Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone: (617) 273-7336.

SUPPLEMENTARY INFORMATION: On April 21, 1979, a telegraphic AD was adopted and made effective immediately to all known United States operators of Sikorsky S-61 type helicopters. This airworthiness directive required an initial dye penetrant inspection of the tail rotor blades and tail rotor gearbox mounting feet, repetitive visual inspections of the blades, and repetitive ultrasonic inspections of the blades with more than 1200 hours of service. It also required replacement of these components prior to further flight, if cracks were found.

This AD was necessary because of the failures found in a tail rotor blade and the tail rotor gearbox of an S-61L helicopter that was involved in a recent accident while in commercial operation. In the accident investigation, a laboratory examination revealed that a fatigue failure had caused the separation of part of tail rotor blade. This type of failure of the blade can cause the loss of control of the helicopter.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed for making and AD effective immediately to all known United States operators of Sikorsky model S-61 helicopters by individual telegrams dated April 21, 1979.

Since the telegraphic AD was issued, operators have recommended that it is not necessary to require a daily ultrasonic inspection in addition to the six hour interval ultrasonic inspection. The FAA agrees with this recommendation. The visual and ultrasonic inspections have therefore been revised to clarify these requirements.

These conditions still exist, and the telegraphic AD as revised is hereby published in the Federal Register as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator (14 CFR 11.89) § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, effective 1979, by addition of the following new AD:

Sikorsky Aircraft. Applies to S-61 series helicopters certificated in all categories, including FAA certificated military counterparts, equipped with P/Ns S6115-30001 or S6117-30001 series tail rotor blades.

To preclude the possibility of failure of the tail rotor blade, accomplish the following:

1. Inspect tail rotor blades, P/Ns S6115-30001 and S6117-30001, series for cracks in accordance with the following:

a. Prior to further flight, unless already accomplished, dye penetrant inspect the inboard 32 inch section in accordance with Sikorsky Aircraft Service Bulletin 61B15-26.

b. Thereafter, prior to the first flight of the day, conduct visual inspections of the blades in accordance with Sikorsky Service Bulletin 61B15-1E.

c. Within the next six hours time in service, unless already accomplished, ultrasonically inspect the blades for spar and skin cracks in accordance with Sikorsky Service Bulletin 61B15-26. Thereafter for blades with over 1200 hours time in service, inspect ultrasonically at intervals not to exceed six hours time in service in accordance with Sikorsky Service Bulletin 61B15-26.

2. Prior to further flight, unless already accomplished, perform a one-time dye penetrant or Zyglo inspection of the tail rotor gearbox mounting feet for cracks in accordance with Sikorsky Service Bulletin 61B15-26.

3. If a crack is found during the inspection of paragraph 1 or 2 above, replace the cracked blade or gearbox with a new or serviceable component, prior to further flight. A serviceable blade or gearbox is one that has been inspected in accordance with the subject service bulletins and found to be free of cracks.

4. Report in writing any cracks found during the inspections of paragraph 1 or 2 above to: Chief, Engineering and Manufacturing Branch, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803. Each report must include the length and location of the cracks and total time in service of the blade or gearbox. Reporting approved by the Office of Management and Budget under OMB No. 04-R0174.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Sikorsky Aircraft, Stratford, Connecticut 06602. These documents may also be examined at FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts, and at FAA Headquarters, 800 Independence Avenue, SW., Washington, D.C. A historical file on this AD which includes the incorporated material in full is maintained by the FAA at its Headquarters in Washington, D.C., and at the FAA, New England Headquarters, Burlington, Massachusetts.

Issued in Burlington, Massachusetts, on June 6, 1979.

Robert E. Whittington,

Director, New England Region.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on June 19, 1967.

[FR Doc. 79-18686 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 79-EA-18; Amdt. 39-3495]

Airworthiness Directives; Bendix

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to certain Bendix Models D-2000/D-2200 six and eight cylinder magnetos and requires a repetitive inspection of the distributor block bushings for movement between the bushing and the block. The purpose of the inspection is to preclude failure of the magneto in flight.

DATE: June 19, 1979. Compliance is required as set forth in the AD.

ADDRESSES: Bendix Service Bulletins may be acquired from the manufacturer at the Electrical Components Division, Sidney, New York 13838.

FOR FURTHER INFORMATION CONTACT: A. Farrar, Propulsion Section, AEA-214, Engineering and Manufacturing Branch, Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Tel. 212-995-2894.

SUPPLEMENTARY INFORMATION: There had been reports of failure of the right side of a D-2000 magneto in flight due to a detachment of the distributor gear bushing. This could lead to loss of both sides of the magnetos which incorporate the green blocks for movement between the bushing and the blocks. An emergency airmail transmittal had been distributed on April 19, 1979, to all known owners of airplanes incorporating the magneto. Since this deficiency affects air safety, notice and public procedure hereon are impractical and good cause exists for making the rule effective in less than 30 days.

Adoption of the Amendment

Accordingly, and pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by issuing a new airworthiness directive, as follows:

Applies to Bendix Model D-2000/D-2200 series (green distributor block only) six-and-eight-cylinder magnetos identified as follows:

Magneto	
Model	Part No.
D6LN-2031	10-382980-03
D6LN-2200	10-382920-51
D6LN-2230	10-382910-03
D6LN-2200	10-382920-51
D6RN-2230	10-382910-03
D6RN-2230	10-382910-12
D6LN-2230	10-382910-17
D6LN-2230	10-382910-03

These magnetos are installed on but not limited to the following aircraft engines or aircraft engine/aircraft combinations:

AVCO Lycoming engines	Installations
TIO-540-R2AD	
TIO-540-F2BD	
TIO-540-N2BD	
IO-720-B1BD	
IO-720-D1CD	
IO-720-D1CD	Piper, PA-36-375.
IO-720-B1BD	Cessna 414 per Riley STC SA2660-SW.

AVCO Lycoming engines	Installations
IO-720-B1BD	Rockwell 690B, 690C, and 690C modified by STC SA2991WE.
IO-720-B1BD	Rockwell 690F, 690FL and 690 FLP modified by STC SA 2991WE.

To detect loose distributor block bushings, accomplish the following within the next 10 hours in service after the effective date of this A.D. unless previously accomplished, and every 25 hours thereafter until green distributor blocks are replaced by comparable black distributor blocks with part numbers as follows:

P/N 10-382978 by 10-382998 and P/N 10-382976 by 10-382972, or equivalent FAA approved parts and procedures.

a. Remove the ventilator plugs, threaded bushing, or solid plug from both ends of the magneto housing, as applicable.

b. Remove gear axle retaining ring P/N 10-92815-37, plain washer P/N 10-50753, and felt washer P/N 10-50752 from both distributor gear axle positions.

c. Fabricate a ¼ in. round probe of non-metallic material, preferably wood dowel rod, approximately six inches long, with one end approximately ⅛ in. wide by ⅛ in. thick by 1 in. long to resemble a screw driver blade.

d. Insert the formed end of the tool thru the inspection hole at one end of the magneto housing and between two teeth of the distributor gear. Gently so as not to damage the gear teeth, attempt to push the gear back and forth sideways, while observing the corresponding bronze bushing in the distributor block. If there is no movement between the bushing and the block, insert the tool under the flat surface of the gear on its outside diameter. Exert pressure on the end of the tool to lift the gear towards the distributor block. Inspect for movement between the bushing and the block. If no bushing movement is detected by either of these two inspections, repeat the procedures at the gear bushing location at the opposite end of the magneto.

e. If no movement is detected, re-assemble the magneto per maintenance and overhaul instructions listed in Bendix publications L-928-1 and L-945 or other approved procedures.

f. If bushing movement is detected at either end, the distributor block must be replaced prior to further flight. When replacing distributor block, center the block relative to any lateral movement of block.

g. Tighten distributor block screws to a torque value of 25 to 30 inch lbs. Reassemble the magneto according to applicable instructions in D-2000/D-2200 series magneto over-haul publication, Bendix Form L-945 and tighten the magneto cover screws to a torque value of 30-35 in. lb. for black magnetos and 40-45 in. lb. for gray magnetos.

h. If replacing the green distributor block with a black distributor block, reidentify the magneto system P/N and magneto P/N by stamping the numeral 1 over the first digit of the dash number suffixes. For example:

System P/N-201 becomes -101; Magneto P/N-51 becomes -11.

Record magneto serial number in aircraft engine log. Equivalent methods of compliance must be approved by the Chief, Engineering and Manufacturing Branch, FAA Eastern Region. As permitted by FAR 21.197, aircraft may be flown to a base where maintenance required by this airworthiness directive can be accomplished.

Bendix Service Bulletin No. 608 pertains to this problem.

Effective Date: This amendment is effective June 19, 1979.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, 49 U.S.C. 1354(a), 1421, and 1423; Sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c); and 14 CFR 11.89.)

Issued in Jamaica, New York, on June 5, 1979.

Thomas C. Halleran,
Acting Director, Eastern Region.

[FR Doc. 79-18087 Filed 6-13-79; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 79-EA-4; Amdt. 39-3494]

Airworthiness Directives; Piper Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Piper PA-36-285 type airplanes and requires an inspection of the gusset welds on the fuselage where the engine mount is attached to the fuselage for cracks and alteration where necessary. The purpose of the requirement is to preclude failure of the weld and compromise of the engine structure.

DATE: June 19, 1979. Compliance is required as set forth in the AD.

ADDRESSES: Piper Service Bulletins may be acquired from the manufacturer at Piper Aircraft Corporation, 820 East Bald Eagle Street, Lock Haven, Pennsylvania 17745.

FOR FURTHER INFORMATION CONTACT: I. Mankuta, Airframe Section, AEA-212, Engineering and Manufacturing Branch, Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Tel. 212-995-2875.

SUPPLEMENTARY INFORMATION: There had been reports of cracks in the welds in the engine mount attachment brackets. The manufacturer has issued S/B 615 and a Modification Kit No. 763877 for an inspection and installation of reinforcement fitting and gussets which are welded to the mount junction. Since this deficiency affects air safety, notice and public procedure hereon are impractical and good cause exists for making the rule effective in less than 30 days.

Adoption of the Amendment

Accordingly, and pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by issuing a new airworthiness directive, as follows:

Piper Aircraft Corp. Applies to Model PA-36-285 serial numbers 36-7360001 through 36-7660135 airplanes certificated in all categories. To detect cracks in the engine mount attachment brackets, accomplish the following:

(a) Within the next 50 hours in service from the effective date of this AD, unless accomplished within the previous 50 hours in service, and at intervals thereafter not to exceed 100 hours in service from the last inspection, inspect welds for cracks on the aft side of the gussets on the fuselage where the engine mount is attached using dye check or fluorescent penetrant inspection procedures or equivalent.

(b) If cracks are found, install Piper Engine Mount Attachment Modification Kit No. 763877, or equivalent, prior to further flight. During the installation of the kit, inspect the welds for cracks on the forward side of the gussets on the fuselage where the engine mount is attached using dye check or fluorescent penetrant inspection procedures or equivalent. If cracks are found, remove weld from cracked area and reweld.

(c) Upon incorporation of Piper Modification Kit No. 763877 or equivalent, compliance with this AD may be cancelled.

(d) Equivalent inspections and repairs must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

(e) Upon submission of substantiating data by an owner or operator through an FAA Maintenance Inspector, the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region may adjust the inspection intervals specified in this AD.

Piper S/B No. 615 dated 9/21/78, pertains to this subject.

Effective date: This amendment is effective June 19, 1979.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, 49 U.S.C. 1354(a), 1421, and 1423; Sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c); and 14 CFR 11.89.)

Issued in Jamaica, New York, on June 5, 1979.

Thomas C. Halleran,
Acting Director, Eastern Region.

[FR Doc. 79-18089 Filed 6-13-79; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 78-EA-112; Amdt. 39-3403]

Airworthiness Directives; Piper Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Piper PA-24-400, PA-30 and PA-39 type airplanes and requires repetitive check for possible fuel selector valve leakage and repetitive check for ice contamination of the fuel supply. The purpose of the requirement is to preclude engine failure due to inadvertent fuel mismanagement or ice blockage.

DATE: June 19, 1979. Compliance is required as set forth in the AD.

ADDRESSES: Piper Service Bulletins may be acquired from the manufacturer at Piper Aircraft Corporation, 820 East Bald Eagle Street, Lock Haven, Pennsylvania 17745.

FOR FURTHER INFORMATION CONTACT: F. Covelli, Propulsion Section, AEA-214, Engineering and Manufacturing Branch, Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Tel. 212-995-2894.

SUPPLEMENTARY INFORMATION: There had been a report of an inflight failure due to leakage of fuel through the selector valve from one tank to another. There have also been reports of power failure due to ice blockage of the fuel lines and strainers.

Adoption of the Amendment

Accordingly, and pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by issuing a new airworthiness directive, as follows:

Piper

Applies to series PA-24-400 S/N 28-2 through 28-148; PA-30 S/N 30-2 through 30-2000; and PA-39 S/N 39-1 through 39-155 aircraft.

Part A

This part applies to all aircraft listed above. Compliance required within 50 hours of operation after the effective date of this AD and at each 50 hours of operation thereafter.

To prevent fuel mismanagement from interport leakage within the fuel selector valve causing fuel to transfer from one tank to another, accomplish checks in accordance with the Instructions paragraph in Piper Service Letter No. 851, Part A or an approved equivalent. Item 3 is to be *repeated* only twice. If drainage still exceeds one half (½) fluid ounce of fuel then comply with Item 5. Item 5 is maintenance and must be performed by a certified mechanic.

Part B

This part applies to the cited Models PA-30 and PA-39 aircraft.

If the airplane has been exposed to below freezing temperatures, compliance is required prior to the first flight of the day and after each refueling operation.

To eliminate water contamination of the aircraft fuel supply, accomplish a check in accordance with the Instructions paragraph of Piper Service Letter 851, Part B, Item 2a and 2b or an approved equivalent check.

Part C

This part applies to the cited Model PA-24-400 aircraft.

If the airplane has been exposed to below freezing temperatures, compliance is required prior to the first flight of the day and after each refueling operation.

To eliminate water contamination of the aircraft fuel supply, accomplish a check in accordance with the Instructions paragraph in Piper Service Letter No. 851, Part C, Item 2a or an approved equivalent check.

Upon submission of substantiating data through an FAA maintenance inspector, the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region, may adjust the repetitive intervals. The checks required by this AD may be performed by the pilot.

Equivalent checks, inspections, and maintenance must be approved by Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

Effective date: This amendment is effective June 19, 1979.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, 49 U.S.C. 1354(a), 1421, and 1423; Sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c); and 14 CFR 11.89.)

Issued in Jamaica, New York, on June 5, 1979.

L. J. Cardinali,

Acting Director, Eastern Region.

[FR Doc. 79-18686 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 78-RM-34]

Designation of Alternate Airway Segment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates V-211W, an alternate airway segment, between Durango and Cortez, Colorado. This airway provides an additional arrival and departure route for Durango to help reduce the congestion at this location.

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Everett L. McKisson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION:

History

On March 19, 1979, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate an east alternate segment to V-95 between Durango and Gunnison, Colorado (44 FR 16439). Also a west alternate segment to V-211 between Durango and Cortez. Since that time it has been determined that the proposed segment of V-952 could not be used at the desired altitudes. For this reason V-95 will not be changed at this time. With this exception, this amendment is the same as proposed in the notice. Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. The only comment received expressed no objection. Section 71.123 of Part 71 was republished in the Federal Register on January 2, 1979 (44 FR 307).

Rule

This amendment to Part 71 of the Federal Aviation Regulations adds a west alternate segment to V-211 from Durango, Colorado to Cortez, Colorado, via the INT of Durango 249°T (235°M) and the Cortez 150°T (136°M) radials.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 307) is amended, effective 0901 G.m.t., August 9, 1979 as follows:

Under V-211 all after "Cortez, Colorado, 115° radials;" is deleted and "to Cortez, including a W alternate via INT Durango 249° and Cortez 150° radials." is substituted therefor.

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this

action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on June 7, 1979.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-18639 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 79-EA-17]

Alteration of Federal Airways and Reporting Points

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: In a rule published in the Federal Register of June 4, 1979, Volume 44, page 31944, the effective date of August 9, 1979, is incorrect and is hereby changed to October 4, 1979, because of technical problems encountered in the installation process for the Calverton, N.Y., VORTAC.

EFFECTIVE DATE: June 14, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Everett L. McKisson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION: FR Doc. 79-17237 was published on June 4, 1979, (44 FR 31944) with an effective date of August 9, 1979, and alters several airways and a reporting point caused by the relocation of the Riverhead, N.Y. VORTAC to Calverton, N.Y. Technical problems arising from this relocation will not be resolved in time to flight check and commission the navigation aid prior to August 9, 1979. For this reason the effective date of this action is changed to October 4, 1979.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, FR Doc. 79-17237 as published on June 4, 1979, page 31944, is amended effective upon publication in the Federal Register as follows: In the "EFFECTIVE DATE" and in the "Adoption of the Amendment" "August 9, 1979," is deleted and "October 4, 1979." is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on June 7, 1979.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-18640 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 79-NE-1]

Designation of Airway Segments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment extends V-151 eastward from Providence, R.I., to Hyannis, Mass., via an intersection northwest of Hyannis on V-141, and extends V-203 eastward from Norwich, Conn., to Nantucket, Mass., via an intersection southwest of Nantucket on V-46. This action reduces the congestion in the Hyannis and Nantucket areas, additionally flight planning and communication time are reduced by designating two new routes as airways.

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Everett L. McKisson, Airspace Regulations Branch (ATT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION:

History

On May 7, 1979, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to extend V-151 eastward from Providence to the INT of Providence 079°T(094°M) and Hyannis 318°T(333°M) radials and to extend V-203 southeastward from Norwich to the INT of Norwich 120°T(134°M) and Nantucket 255°T(270°M) radials (44 FR 26748). Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. The comments received expressed no objection to the proposal. Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854. Section 71.123 of Part 71 was republished in the Federal Register on January 2, 1979, (44 FR 307).

The Rule

This amendment to Part 71 of the Federal Aviation Regulations adopts the rule as proposed and adds airway segments to V-151 and V-203. It extends V-151 to overlie V-141 from its described intersection to Hyannis and V-203 to overlie V-46 from its described intersection to Nantucket. By extending these airways to overlie present airways a reduction in flight planning and communication time is made without adjusting any controlled airspace. "Nantucket, Mass., 255°" under the proposed amendment in the notice should have been "Nantucket, Mass. 255°" the same as the proposal in the notice and is corrected herein. With these exceptions, this amendment is the same as initially proposed.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 307) is amended, effective 0901 G.m.t., August 9, 1979, as follows:

Under V-151

"From Providence, R.I.," is deleted and "From Hyannis, Mass., via INT Hyannis 318° and Providence, R.I., 079° radials; Providence;" is substituted therefor.

Under V-203

"From Norwich, Conn.," is deleted and "From Nantucket, Mass., via INT Nantucket 255° and Norwich, Conn., 120° radials; Norwich" is substituted therefor.

(Secs. 307(a), 313(a), and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854 (24 FR 9565); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C. on June 7, 1979

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-18618 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 79-RM-11]

Establishment of Transition Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Amendment establishes a 700' and a 1,200' transition area at New Town, North Dakota to provide controlled airspace for aircraft executing the new nondirectional radio beacon (NDB) standard instrument approach procedure developed for the New Town Municipal Airport, New Town, North Datota.

EFFECTIVE DATE: 0901 G.m.t. August 9, 1979.

FOR FURTHER INFORMATION CONTACT: David M. Laschinger, Operations, Procedures and Airspace Branch Air, Traffic Division, ARM-500, Federal Aviation Administration, Rocky Mountain Region, 10455 East 25th Avenue, Aurora, Colorado 80010; telephone (303) 837-3937.

SUPPLEMENTARY INFORMATION:

History

On April 19, 1979, the FAA published for comment a Notice of Proposed Rulemaking (NPRM) to establish a 700' and a 1,200' transition area at New Town, North Dakota (44 FR 23280). No objections were received in response to this Notice.

Rule

This Amendment to Subpart G of Part 71 of the Federal Aviation Regulations (FAR's) establishes a 700' and a 1,200' transition area at New Town, North Dakota. This action is necessary to provide controlled airspace for aircraft executing the new NDB standard instrument approach procedure to New Town Municipal Airport, New Town, North Dakota.

Drafting Information

The principal authors of this document are David M. Laschinger, Operations, Procedures and Airspace Branch, Air Traffic Division, and Daniel J. Peterson, office of Regional Counsel.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended effective 0901 G.m.t., August 9, as follows:

By amending Subpart G, § 71.181 by designating the following 700' and 1,200' transition areas:

New Town, North Dakota

That airspace extending upward from 700' above the surface within a 5-mile radius of the New Town Municipal Airport (latitude 47°57'59" N., longitude 102°28'36" W.) and within 3 miles each side of the 142° bearing from the New Town NDB (latitude 47°56'15" N., longitude 102°28'40" W.) extending from the 5-mile radius to the 8.5 miles southeast of the New Town NDB, and that airspace extending upward from 1,200' above the surface bounded on the east by the Minot, North Dakota 1,200' transition area and longitude 102°00'00" W., on the south and west by V71, on the north by V430 excluding the Williston, North Dakota 1,200' transition area.

(Sec. 307(a), Federal Aviation Act of 1958, as amended, (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c); 14 CFR 11.89).

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves and established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Aurora, Colo., on June 4, 1979.

M. M. Martin,

Director, Rocky Mountain Region.

[FR Doc. 79-18620 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 79-RM-09]

Establishment of Transition Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Amendment establishes a 700' and a 1,200' transition area at Watford City, North Dakota to provide controlled airspace for aircraft executing the new nondirectional radio beacon (NDB) standard instrument approach procedure developed for the Watford City Municipal Airport, Watford City, North Dakota.

EFFECTIVE DATE: 0901 G.m.t. August 9, 1979.

FOR FURTHER INFORMATION CONTACT: David M. Laschinger, Operations, Procedures and Airspace Branch, Air Traffic Division, ARM-500, Federal Aviation Administration, Rocky Mountain Region, 10455 East 25th Avenue, Aurora, Colorado 80010; telephone (303) 837-3937.

SUPPLEMENTARY INFORMATION:

History

On April 19, 1979, the FAA published for comment, A Notice of Proposed Rulemaking (NPRM) to establish a 700' and a 1,200' transition area at Watford City, North Dakota (44 FR 23280). No objections were received in response to this Notice.

Rule

This Amendment to Subpart G of Part 71 of the Federal Aviation Regulations (FAR's) establishes a 700' and a 1,200' transition area at Watford City, North Dakota. This action is necessary to provide controlled airspace for aircraft executing the new NDB standard instrument approach procedure to Watford City Municipal Airport, Watford City, North Dakota.

Drafting Information

The principal authors of this document are David M. Laschinger, Operations, Procedures and Airspace Branch, Air Traffic Division, and Daniel J. Peterson, office of Regional Counsel.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended effective 0901 G.m.t., August 9, 1979, as follows:

By amending Subpart G, § 71.181 by designating the following 700' and 1,200' transition areas:

Watford City, North Dakota

That airspace extending upward from 700' above the surface within a 5.5-mile radius of the Watford City Municipal Airport (latitude 47°47'58" N., longitude 103°15'24" W.) and within 3 miles each side of the 208° bearing from the Watford City NDB (latitude 47°47'58" N., longitude 103°15'09" W.) extending from the 5.5-mile radius to the 8.5 miles northwest of the Watford City NDB, and airspace extending upward from 1,200' above the surface bounded on the south by latitude 47°39'00" N., on the west and northwest by V465, on the northeast and east by V71 excluding Williston, North Dakota, 1,200' transition area.

(Sec. 307(a), Federal Aviation Act of 1958, as amended, (49 U.S.C. 1348(a)); sec. 6(c),

Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Aurora, Colo., on June 4, 1979.

M. M. Martin,

Director, Rocky Mountain Region.

[FR Doc. 79-18091 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 79-AL-7]

Revocation of Annette Island, Alaska, Control Zone

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment revokes the Annette Island, Alaska, control zone. Revocation of the control zone will allow more efficient use of the airspace. The requirement for the control zone no longer exists. The 700-foot transition area within a 14-mile radius of Annette Island VORTAC shall remain in effect to protect a special instrument approach procedure which utilizes the Annette Island VORTAC to Ketchikan airport.

EFFECTIVE DATE: 0901 G.m.t., August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Jerry M. Wylie, Operations, Procedures, and Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 14, 701 C Street, Anchorage, Alaska 99513, telephone 907-271-5903.

SUPPLEMENTARY INFORMATION: The purpose of this amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to revoke the Annette Island, Alaska, control zone. The Annette Island, Alaska, control zone was last described in § 71.171 of the Federal Aviation Regulations (44 FR 353) on January 2, 1979. All prescribed instrument approach procedures to Annette Island have been canceled and there is no longer a control tower in operation at the airport. Consequently, the requirement for a control zone no longer exists. The FAA believes that revocation of the control zone will allow more efficient use of this airspace. The aforementioned action will reduce the constraints and impact on the public in the affected airspace. Therefore, I find that notice and public procedure thereon are not necessary.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 353) is amended by revoking the Annette Island control zone.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 1134, February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, and anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Anchorage, Alaska, on June 1, 1979.

Robert L. Faith,

Director, Alaskan Region.

[FR Doc. 79-18095 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 79-SO-78]

Alteration of VOR Federal Airway

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment realigns Victor airway V-159 in the vicinity of Fort Lauderdale, Florida. This action provides an alternate route for traffic between Fort Lauderdale and Vero Beach, Florida and increases efficient use of the airspace by reducing congestion in the Palm Beach, Florida, area.

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. John Watterson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8526.

SUPPLEMENTARY INFORMATION:

History

On March 29, 1979, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to realign a segment of V-159 between Fort Lauderdale and Vero Beach, Florida, to provide for more efficient use of the airspace (44 FR 18088). Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to FAA. No objections were received. This amendment is that proposed in the notice. Subpart C of Part 71 was republished in the Federal Register on January 2, 1979 (44 FR 307).

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) realigns a segment of V-159 between Fort Lauderdale and Vero Beach, Florida. The realignment provides more flexibility for traffic operations in the area and reduces the potential for traffic congestion in the Palm Beach, Florida area. This action improves ATC services and provides for more efficient use of the airspace.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 307) is amended, effective 0901 G.m.t., August 9, 1979, as follows:

Under V-159—"From Miami, Fla., INT Miami 327° and Palm Beach, Fla., 322° radials; Palm Beach; INT Palm Beach 328° and Vero Beach, Fla., 178° radials; Vero Beach;" is deleted and "From Fort Lauderdale, Fla., via Fort Lauderdale 329° and Vero Beach, Fla., 178° radials; Vero Beach;" is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a), and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69).

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on June 7, 1979.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-18682 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 79-AL-5]

Rescission of Reporting Point

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment rescinds HAPIT as a compulsory reporting point at the intersection of bearings from Ocean Cape, Alaska, Nondirectional Radio Beacon (NDB) and Cape Spencer, Alaska, NDB. This action relieves pilots of the responsibility of reporting at this position without being asked to do so by air traffic control. This action also helps to simplify chart depiction.

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Everett L. McKisson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION: The purpose of this amendment to Part 71 is to rescind the HAPIT reporting point in Alaska. This action will relieve a burden on pilots using Amber 1 and Blue 37 airways who have been required to report their position at this location without being asked to do so. Because this action merely rescinds a reporting point in accordance with the requirements of current air traffic control procedures without altering any route structure or designated airspace, it is a minor matter on which the public would have no particular desire to comment. Therefore, notice and public procedure thereon are unnecessary.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to be by the Administrator, § 71.211 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 650) is amended, effective 0901 G.M.T., August 9, 1979, as follows:

HAPIT: title and text is deleted.

(Secs. 307(a), and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69).

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on June 7, 1979.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-18683 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 79-RM-05]

Establishment of Transition Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes a 700' and 1,200' transition area at Hettinger, North Dakota to provide controlled airspace for aircraft executing the new nondirectional radio beacon (NDB) standard instrument approach procedure developed for the Hettinger Municipal Airport, Hettinger, North Dakota.

EFFECTIVE DATE: 0901 G.m.t., August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Pruett B. Helm, Operations, Procedures and Airspace Branch, Air Traffic Division, ARM-500, Federal Aviation Administration, Rocky Mountain Region, 10455 East 25th Avenue, Aurora, Colorado 80010; telephone (303) 837-3937.

SUPPLEMENTARY INFORMATION:

History

On Monday, March 19, 1979, the FAA published for comment (44 FR 16438) a proposal to establish a 700' and 1,200' transition area at Hettinger, North Dakota. In the NPRM, it was noted that a typographical error was made in the description of the 700' transition area. In the fourth line it showed the 132° bearing; this should read the 157° bearing. This error was considered minor and is corrected in the final rule. The only comment received was from W. L. Marcy of the Experimental Aircraft Association (EAA), Rocky Mountain Region Chapter 301, objecting to the following:

a. The proposed 1,200' transition area could restrict VFR traffic and force VFR traffic to fly at relatively unsafe altitudes.

b. Off-airway IFR operations at large distances from an IFR airport as low as 1,500' AGL is unduly hazardous and creates an excessive area which must be monitored by ATC.

c. The 1,200' transition area is excessive in size.

In consideration of the objections by W. L. Marcy of the EAA, Rocky Mountain Chapter 301, is was disclosed that:

a. VFR aircraft are not restricted from controlled airspace as they can operate in controlled airspace in accordance with FAR 91.105. Additionally, the establishment of controlled airspace with its increased meteorological requirements will enhance aviation by virtue of enabling the air traffic control system to provide separation and enhance the pilot's responsibility when meterorological conditions permit, to see and avoid other traffic, terrain, or other obstacles, regardless of type of flight plan and whether or not under control of radar facility.

b. The minimum obstruction clearance altitude (MOCA) is 1,000' above the highest obstacle within a horizontal distance of 5 statue miles from the course to be flown. The 1,200' transition floor is designed to provide controlled airspace to assure air safety and allow flexibility to utilize all available airspace for all traffic control purposes.

c. The 1,200' transition area was designed to give the air traffic control system the flexibility to allow the IFR pilot to transition from the surrounding en route structure and navigational aids for expeditious routing and fuel economy to execute the new NDB standard instrument approach procedure developed for Hettinger Municipal Airport, Hettinger, North Dakota.

Rule

This amendment to Subpart G of Part 71 of the Federal Aviation Administration regulations (FAR's) establishes 700' and 1,200' transition areas at Hettinger, North Dakota to provide controlled airspace for aircraft transitioning from the existing en route structure, navigational aids to execute the new NDB standard instrument approach procedure developed for the Hettinger Municipal Airport, Hettinger, North Dakota.

Drafting Information

The principal authors of this document are Pruett B. Helm, Operations, Procedures and Airspace

Branch, Air Traffic Division, and Daniel J. Peterson, Office of Regional Counsel.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended effective 0901 G.M.t., August 9, 1979, as follows:

By amending Subpart G, § 71.181 to establish the following transition area to read:

Hettinger, North Dakota

That airspace extending upward from 700' above the surface within a 5.5 mile radius of the Hettinger Municipal Airport (latitude 46°00'48" N., longitude 102°39'00" W.), and within 3 miles each side of the 157° bearing from the Hettinger NDB (latitude 46°00'59" N., longitude 102°39'35" W.) extending from the 5.5 mile radius area to 8.5 miles southeast of the Hettinger NDB, and that airspace extending upward from 1,200' above the surface bounded on the north by V-2, on the east by V-169, on the south by V-128, and on the west by the Bowman, North Dakota 1,200' transition area excluding the Bismark, North Dakota 1,200' transition area.

(Sec. 307(a) Federal Aviation Act of 1958 (49 U.S.C. 1348 (a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c); and 14 CFR 11.69).

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Aurora, Colo., on June 5, 1979.

M. M. Martin,

Director, Rocky Mountain Region.

[FR Doc. 79-18838 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 79-RM-29]

Establishment and Alteration of Transition Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Amendment alters the existing 700' transition area and establishes a 1,200' transition area at Moab, Utah to provide controlled airspace for aircraft executing the new VOR/DME Runway 23 standard instrument approach procedure developed for Canyonlands Field Airport, Moab, Utah and additional controlled airspace for air traffic control purposes.

EFFECTIVE DATE: 0901 GMT August 9, 1979.

FOR FURTHER INFORMATION CONTACT: David M. Laschinger, Operations, Procedures and Airspace Branch, Air Traffic Division, ARM-500, Federal Aviation Administration, Rocky Mountain Region, 10455 East 25th Avenue, Aurora, Colorado 80010; telephone (303) 837-3937.

SUPPLEMENTARY INFORMATION:

History

On March 26, 1979, the FAA published for comment a Notice of Proposed Rulemaking (NPRM) to alter the 700' transition area and establish a 1,200' transition area at Moab, Utah. Two letters of objection were received as a result of this circular. The United States Air Force objected to the proposal based upon potential effect on military training routes. However, subsequent coordination resulted in the withdrawal of their objection. W. L. Marcy from the Experimental Aircraft Association (EAA), Chapter 301, objected to the proposal contending the following:

a. The 700' transition area as proposed is much larger than it needs to be.

b. With the establishment of a 1,200' transition area, VFR traffic attempting to traverse this region in IFR conditions, and therefore flying at 1,200' AGL or less, will be constrained to fly circuitous routes along canyons and washes, and dangerously near peaks and ridges which are often awash with severe up and downdrafts.

c. The FAA should consider the number of IFR flights per year anticipated at Canyonlands Field, the percentage of that number that may require the use of off-airway controlled airspace for holding purposes, the number of VFR operations per year at all five airports within this area, and the number of these operations that can be expected to be rerouted, curtailed, or canceled by being forced to avoid controlled airspace in IFR conditions.

d. The 1,200' transition area should be reduced and changed to a level floor zone appropriate to the needs of IFR flight and the ability of the ATC radar system to monitor it.

In consideration of the objections of Mr. Marcy it was disclosed:

a. The proposed 700' transition area was designed to contain arriving IFR operations below 1,500 feet above the surface and departing IFR operations until they reach 1,200 feet above the surface. Therefore, the size is deemed appropriate.

b. The establishment of controlled airspace, with its increased meteorological requirements, will enhance aviation safety by virtue of enabling the air traffic control system to provide separation and enhance the pilot's responsibility when meteorological conditions permit, to see and avoid other traffic, terrain or other obstacles, regardless of type of flight plan and whether or not under control of a radar facility.

c. The minimum obstruction clearance altitude (MOCA) is 1,000' above the highest obstacle within a horizontal distance of 5 statute miles from the course to be flown. The 1,200' transition floor is consistent with FAA policy to provide controlled airspace to assure air safety and allow flexibility to utilize all available airspace for air traffic control purposes.

Rule

This amendment to Subpart G of Part 71 of the Federal aviation Regulations (FAR's) alters the 700' transition area and establishes a 1,200' transition area at Moab, Utah. This action is necessary to provide controlled airspace for aircraft executing the new VOR/DME Runway 33 standard instrument approach procedure to Canyonlands Field Airport, Moab, Utah and additional controlled airspace for air traffic control purposes.

Drafting Information

The principal authors of this document are David M. Laschinger, Operations, Procedures and Airspace Branch, Air Traffic Division, and Daniel J. Peterson, office of Regional Counsel.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71 is amended effective 0901 G.M.T., August 9, 1979, as follows:

By amending Subpart G, § 71.181 by designating the following 700' and 1,200' transition areas:

Moab, Utah

That airspace extending upward from 700' above the surface within a 10 mile radius of the Canyonlands Field Airport, Moab, Utah (latitude 38°45'34.3" N., longitude 109°44'08.1" W.) and within 7 miles northeast and 10 miles southwest of the Moab VOR (latitude 38°45'23" N., longitude 109°44'35" W.) 301° radial extending from the 10 mile radius area to 18.5 miles northwest of Moab, Utah; and that airspace extending upward from 1,200' above the surface bounded on the north by

V-134, on the east by V-187W, on the south by V-244 and on the west by V-206, excluding the Price, Utah and Grand Junction, Colorado transition areas and all Federal airways.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69).

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Aurora, Colo., on June 4, 1979.

M. M. Martin,

Director, Rocky Mountain Region.

[FR Doc. 79-18801 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket Number 79-CE-7]

Designation of Transition Area—Emmetsburg, Iowa

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to designate a 700-foot transition area at Emmetsburg, Iowa, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Emmetsburg, Iowa Airport, based on the Non-Directional Radio Beacon (NDB), a navigational aid being installed on the airport. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Dwaine E. Hiland, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-537, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: An instrument approach procedure to the Emmetsburg, Iowa Airport, is being established based on a Non-Directional Radio Beacon (NDB), a navigational aid being installed on the airport. This radio facility provides new navigational guidance for aircraft utilizing the airport. The establishment of an instrument approach procedure based on this approach aid entails the designation of a transition area at Emmetsburg, Iowa, at an above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Discussion of Comments

On pages 21815 and 21816 of the **Federal Register** dated April 12, 1979, the Federal Aviation Administration published a Notice of Proposed Rule Making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Emmetsburg, Iowa. Interested persons were invited to participate in this rule making proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rule Making.

Accordingly, Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1979, (44 FR 442), is amended effective 0901 G.M.T. August 9, 1979, by adding the following new transition area:

Emmetsburg, Iowa

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Emmetsburg Airport (latitude 43°06'12" N., longitude 94°42'24" W.) and within 3 miles each side of the 121° bearing from the Emmetsburg NDB (latitude 43°06'04" N., longitude 94°42'25" W.), extending from the 5-mile radius area to 8½ miles southeast of the airport and within 3 miles each side of the 326° bearing from the Emmetsburg NDB extending from the 5-mile radius area to 8½ miles northwest of the airport.

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); sec. 11.69 of the Federal Aviation Regulations (14 CFR 11.69)).

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Kansas City, Missouri, on June 1, 1979.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 79-18802 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 79-WA-7]

Designation of Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates a very short segment of a Canadian airway V367 for a distance of less than 5 miles from the International Falls, Minnesota, VORTAC to the U.S./Canadian boundary on a direct radial to the Sioux Lookout, Ontario, radio beacon. This action would help to provide air traffic services, published radial/bearing and minimum altitudes on a route that is presently being used without these advantages.

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Everett L. McKisson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION: The purpose of this amendment to Part 71 is to designate the United States segment of Canadian airway V-367 between International Falls and Sioux Lookout as requested by the Canadian Government. This segment of airway is relatively short and is in an area that is presently designated as controlled airspace in Part 71; therefore, this action will add no new controlled airspace. Thus, it is a minor matter on which the public would have no particular desire to comment. Therefore, notice and public procedure are unnecessary.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 307) is amended, effective 0901 G.m.t., August 9, 1979 by adding the following:

"V-367 From International Falls, Minnesota, to Sioux Lookout, Ontario, Canada, excluding the portion within Canada."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a));

sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89).

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on June 7, 1979.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-18609 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 79-EA-74]

Designation of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates the Stone Harbor, N.J., transition area. This action lowers the floor of controlled airspace outside the United States to permit a lower minimum en route altitude to accommodate helicopter activity to and from oil rig sites east of the state of New Jersey.

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. John Watterson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION:

History

On May 3, 1979, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate a Stone Harbor, N.J., transition area (44 FR 25665). This action would lower the floor of controlled airspace from 2,000 feet MSL to 1,200 feet MSL. Such action would permit a reduction in the available minimum en route altitude from 2,300 feet MSL to 1,500 feet MSL to accommodate IFR helicopter over water operations to and from oil rig sites east of the state of New Jersey. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received. Section 71.181 was republished in the Federal Register on January 2, 1979 (44 FR 442).

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates a Stone Harbor, N.J., transition area to lower the floor of controlled airspace to permit a reduction in minimum en route altitude from 2,300 feet MSL to 1,500 feet MSL. This reduction would permit the use of lower altitudes to accommodate IFR helicopter over water operations to and from off-shore oil rig sites.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 442) is amended, effective 0901 G.M.T., August 9, 1979, as follows:

Under § 71.181 add—"Stone Harbor, N.J. That airspace extending upward from 1,200 feet MSL beginning at Lat. 39°10'00" N., Long. 74°40'00" W.; to Lat. 38°48'00" N., Long. 74°08'00" W.; to Lat. 38°39'00" N., Long. 74°48'00" W.; to point of beginning."

(Secs. 307(a), 313(a), and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510; Executive Order 10854 (24 FR 9565); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89).

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on June 7, 1979.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-18604 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 79-GW-3]

Alternation of VOR Federal Airway V-17

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment rescinds a segment of V-17E between San Antonio, Tex., and Austin, Tex., and also establishes a standard west alternate (V-17W) between McAllen, Tex., and Laredo, Tex. This alternate airway helps to expedite the movement of air traffic northwest of McAllen. V-17E is not used north of San Antonio.

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Everett L. McKisson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8715.

SUPPLEMENTARY INFORMATION:

History

On April 12, 1979, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to rescind a segment of V-17E between San Antonio, and Austin, because it is not used and designate a segment of V-17W between McAllen, and Laredo to help expedite the movement of air traffic northwest of McAllen. (44 FR 21814).

Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. The comments received expressed no objection to the proposal. Section 71.123 of Part 71 was published in the Federal Register on January 2, 1979, (44 FR 307).

The Rule

This amendment to Part 71 of the Federal Aviation Regulations rescinds an unused segment of alternate airway between San Antonio and Austin. This will help to reduce chart clutter and possible confusion in that area. This amendment also designates a new segment of alternate airway between McAllen and Laredo to help reduce congestion and increase air traffic handling capability in that area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 307) is amended, effective 0901 G.m.t., August 9, 1979 as follows:

Under V-17 "Laredo, Tex.;" is deleted and "Laredo, Tex., including a W alternate;" is substituted therefor. Also, "Austin, including an east alternate via the INT of San Antonio 056° and Austin 211° radials, and also" is deleted and "Austin," is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89).

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on June 6, 1979.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-18026 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 79-GL-7]

Designation of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to designate controlled airspace near Warroad, Minnesota to accommodate a new instrument approach into Warroad International Airport (Swede Carlson Field), Warroad, Minnesota, established on the basis of a request from the Warroad Airport officials to provide that facility with instrument approach capability.

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Doyle W. Hegland, Airspace and Procedures Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, Telephone (312) 694-4500, Extension 456.

SUPPLEMENTARY INFORMATION: The intended effect of this action is to insure segregation of the aircraft using this approach procedure in instrument weather conditions and other aircraft operating under visual conditions. The floor of the controlled airspace in this area will be lowered from 1200' above ground to 700' above ground. The development of the proposed instrument procedures necessitates the FAA to lower the floor of the controlled airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700 foot controlled airspace. In addition, aeronautical maps and charts will reflect the area of the instrument procedure which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Discussion of Comments

On page 22471 of the Federal Register dated April 16, 1979, the Federal Aviation Administration published a Notice of Proposed Rule Making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Warroad, Minnesota. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rule Making.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective August 9, 1979, as follows:

In § 71.181 (44 FR 442), the following addition should be made to the existing Warroad, Minnesota transition area:

Warroad, Minnesota

That airspace extending upward from 700 feet above the surface within a 6 statute mile radius (5.3 nautical miles) of the Warroad International, Swede Carlson Field (latitude 48°55'15"N., longitude 95°20'30"W., estimated) excluding that area north of latitude 49° (Canadian airspace) and within three statute miles (2.5 nautical miles) each side of the 106° true bearing from the Warroad International, Swede Carlson Field, extending from the six statute mile (5.3 nautical miles) radius to 8.5 statute miles (7 nautical miles) east southeast of the airport.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); sec. 11.61 of the Federal Aviation Regulations (14 CFR 11.61).)

The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing to the Federal Aviation Administration, Attention: Rules Docket Clerk (AGL-7), Docket No. 79-GL-7, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

Issued in Des Plaines, Ill., on June 6, 1979.

Wayne J. Barlow,

Acting Director, Great Lakes Region.

[FR Doc. 79-18130 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 79-GL-3]

Designation of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to designate controlled airspace near Neilsville, Wisconsin to accommodate a new non-directional beacon (NDB) Runway 27 instrument approach into Neilsville Municipal Airport, Neilsville, Wisconsin, established on the basis of a request from the Neilsville Airport officials to provide that facility with instrument approach capability.

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Doyle W. Hegland, Airspace and Procedures Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, Telephone (312) 694-4500, Extension 456.

SUPPLEMENTARY INFORMATION: The intended effect of this action is to insure segregation of the aircraft using this approach procedure in instrument weather conditions and other aircraft operating under visual conditions.

The floor of the controlled airspace in this area will be lowered from 1200' above ground to 700' above ground. The development of the proposed instrument procedures necessitates the FAA to lower the floor of the controlled airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700 foot controlled airspace. In addition, aeronautical maps and charts will reflect the area of the instrument procedure which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Discussion of Comments

On page 20448 of the Federal Register dated April 5, 1979, the Federal Aviation Administration published a Notice of Proposed Rule Making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Neilsville,

Wisconsin. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rule Making.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective August 9, 1979, as follows:

In § 71.181 (44 FR 442), the following addition should be made to the existing Neillsville, Wisconsin transition area:

Neillsville, Wisconsin

That airspace extending upward from 700 feet above the surface within a five (5) mile radius of Neillsville Municipal Airport (latitude 44°33'15" N., longitude 90°30'45" W.) and within three (3) miles each side of the 092° bearing from the Neillsville Airport, extending from the five (5) mile radius area to eight (8) miles east of the airport.

(Sec. 307(a), Federal Aviation Act of 1958 (47 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); sec. 11.61 of the Federal Aviation Regulations (14 CFR 11.61)).

The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing to the Federal Aviation Administration, Attention: Rules Docket Clerk (AGL-7), Docket No. 79-GL-3, 2300 East Devon Avenue, Des Plaines, Illinois.

Issued in Des Plaines, Ill., on June 8, 1979.

Wayne J. Barlow,

Acting Director, Great Lakes Region.

[FR Doc. 79-18126 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71, 73

[Airspace Docket No. 79-NW-2]

Establishment of Temporary Restricted Areas and Alteration of Continental Control Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments establish temporary joint use restricted areas in the Yakima, Wash., area to contain a military joint readiness exercise called BRAVE SHIELD 20. This action provides for the safe and efficient use of the navigable airspace by prohibiting unauthorized flight operations of nonparticipating aircraft within the temporary restricted areas during the hours this area is activated August 16 through August 23, 1979.

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Lewis W. Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION:

History

On April 23, 1979, the FAA proposed to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to establish Temporary Restricted Areas identified as R-6714A, R-6714B, R-6714C, R-6714D, R-6714E, R-6714G and R-6714H in the Fort Lewis/Yakima, Wash., area to contain a military joint service exercise known as BRAVE SHIELD 20. Since these restricted areas penetrate the Continental Control Area, they are added to Subpart D of Part 71 to provide controlled airspace for the duration of their designation (44 FR 23677). Interested persons were invited to participate in the rulemaking by submitting written comments on the proposal to the FAA. No comments were received. Sections 71.151 and 73.67 were republished in the Federal Register on January 2, 1979 (44 FR 344 and 716).

The Rule

These amendments to Parts 71 and 73 of the Federal Aviation Regulations designate Temporary Restricted Areas in the vicinity of Yakima, Wash., to protect nonparticipating aircraft during the time that BRAVE SHIELD 20 readiness exercise is in operation. In addition, the airspace at above 14,500 feet MSL within these Temporary Restricted Areas during the designated period is included in the Continental Control Area. Headquarters Tactical Air Command has provided certification that the requirements of the National Environmental Policy Act has been met.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart D of Part 71 and Subpart B of Part 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as republished (44 FR 344 and 716) is amended, effective 0901 G.M.T., August 9, 1979 as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

§ 71.151 [Amended]

Under § 71.151 (44 FR 344) the following temporary restricted areas are added for the duration of their time of designation from 0001 local time August 16, 1979 to 2359 local time August 23, 1979.

R-6714E BRAVE SHIELD 20, Wash.
R-6714F BRAVE SHIELD 20, Wash.
R-6714G BRAVE SHIELD 20, Wash.
R-6714H BRAVE SHIELD 20, Wash.

PART 73—SPECIAL USE AIRSPACE

§ 73.67 [Amended]

Under § 73.67 (44 FR 716) the following temporary restricted areas are added:

R-6714E BRAVE SHIELD 20, Wash.

Boundaries. Beginning at Lat. 46°37'00" N., Long. 120°20'00" W.; to Lat. 46°36'00" N., Long. 120°29'00" W.; to Lat. 46°35'00" N., Long. 120°36'00" W.; to Lat. 46°36'00" N., Long. 120°31'00" W.; to Lat. 46°39'00" N., Long. 119°57'00" W.; to Lat. 46°34'30" N., Long. 120°15'00" W.; along the western boundary of R-6714A to point of beginning.
Designated altitudes. 200 feet AGL up to and including 6,000 feet MSL.
Time of designation. Continuous, 0001 August 16 to 2359, local time, August 23, 1979.
Controlling agency. Federal Aviation Administration, Seattle ARTC Center.
Using agency. U.S. Air Force Tactical Air Command/USAF Readiness Command (TAC/USAFRED), Langley Air Force Base, Va. 23665.

R-6714F BRAVE SHIELD 20, Wash.

Boundaries. Beginning at Lat. 46°39'00" N., Long. 119°57'00" W.; to Lat. 46°36'00" N., Long. 119°19'00" W.; to Lat. 46°32'00" N., Long. 119°15'00" W.; to Lat. 46°46'00" N., Long. 119°15'00" W.; to point of beginning.
Designated altitudes. 15,000 feet MSL up to and including FL 200.
Time of designation. Continuous, 0001 August 16 to 2359, local time, August 23, 1979.
Controlling agency. Federal Aviation Administration, Seattle ARTC Center.
Using agency. U.S. Air Force Tactical Air Command/USAF Readiness Command (TAC/USAFRED), Langley Air Force Base, Va. 23665.

R-6714G BRAVE SHIELD 20, Wash.

Boundaries. Beginning at Lat. 46°34'30" N., Long. 120°15'00" W.; to Lat. 46°39'00" N., Long. 119°57'00" W.; to Lat. 46°46'00" N., Long. 119°15'00" W.; to Lat. 46°46'00" N., Long. 119°03'00" W.; to Lat. 46°40'00" N., Long. 118°57'00" W.; to Lat. 46°30'00" N., Long. 119°22'00" W.; to Lat. 46°27'00" N., Long. 119°41'00" W.; to Lat. 46°28'00" N.,

Long. 120°00'00" W.; thence along the southern boundaries of R-6716C/B and the eastern boundaries of R-6714B/A to the point of beginning, but excluding the airspace at and below 2,200 feet MSL within a 1½ NM radius of Vantage, Wash., Airport, and within a corridor extending northward from the airport and conforming to the boundaries of the Columbia River.

Designated altitudes. 200 feet AGL up to and including FL 200.

Time of designation. Continuous, 0001 August 16 to 2359, local time, August 23, 1979.

Controlling agency. Federal Aviation Administration, Seattle ARTC Center.

Using agency. U.S. Air Force Tactical Air Command/USAF Readiness Command (TAC/USAFRED), Langley Air Force Base, Va. 23665.

R-6714H BRAVE SHIELD 28, Wash.

Boundaries. Beginning at Lat. 46°27'00" N., Long. 119°41'00" W.; to Lat. 46°39'00" N., Long. 119°22'00" W.; to Lat. 46°40'00" N., Long. 118°57'00" W.; to Lat. 46°20'00" N., Long. 119°15'00" W.; to point of beginning.

Designated altitudes. 15,000 feet MSL up to and including FL 200.

Time of designation. Continuous, 0001 August 16 to 0001, local time, August 23, 1979.

Controlling agency. Federal Aviation Administration, Seattle ARTC Center.

Using agency. U.S. Air Force Tactical Air Command/USAF Readiness Command (TAC/USAFRED), Langley Air Force Base, Va. 23665.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.85.)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on June 7, 1979.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-18811 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71, 73

[Airspace Docket No. 78-EA-73]

Alteration of Federal Airways and Restricted Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments divide the Warren Grove, N.J., restricted area (R-5002) into five areas and increase the overall restricted airspace. They also alter airways to bypass or exclude the restricted areas. These actions permit greater use of the separate areas for military and nonmilitary use.

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT:
Mr. Everett L. McKisson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION:

History

On March 28, 1979, the FAA proposed to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to increase the size of the Warren Grove, N.J., restricted area and divide it into five areas, and to alter several airways to bypass or exclude the restricted areas (44 FR 18043). Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. The comments received expressed no objection to the proposal except for one commentor who objected to that part of the proposal to expand R-5002B over a small part of the Garden State Parkway which is occasionally used as a VFR flyway. Action is taken herein to reduce the proposed expansion of R-5002B to the extent that it will not conflict with this flyway. This reduction is satisfactory to the objector and to the military proponent. This rule is the same as the Notice of Proposed Rule Making (NPRM) except that the size of R-5002B is reduced as stated above and the alteration of V-44 is an addition of a south alternate via the proposed route rather than the realignment of the present airway between Atlantic City and Deer Park. Retention of the present alignment of V-44 will permit the use of this shorter route when the restricted areas are not in use. Because these changes from the NPRM merely retain the segment of V-44, renumber the new segment as V-44S and reduce the proposed size of R-5002B, they are minor matters on which the public would have no particular desire to comment. Therefore, notice and public procedure thereon are unnecessary. § 71.123 of Part 71 and § 73.50 of Part 73 were published in the Federal Register on January 2, 1979 (44 FR 307, 702) and amended (44 FR 1087).

Since these actions involve in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

The Rule

These amendments to Parts 71 and 73 of the Federal Aviation Regulations alter the Warren Grove restricted area by enlarging it and dividing it into five separate areas and alter V-44, V-229, V-1, V-16, and V-312 airways to bypass or exclude the Warren Grove restricted areas. Alignment of a segment of V-44E via the INT of Atlantic City, N.J., 055°T (055°M) and Deer Park, N.Y., 209°T (221°M) radials and the realignment of a segment of V-229 via the INT of Atlantic City 055°T (055°M) and Kennedy, N.Y., 194°T (205°M) radials cause these airways to bypass the restricted areas sufficiently to permit their simultaneous use. Segments of these airways are reduced slightly in width. Dividing the restricted areas provide for a greater use of the airspace by permitting different areas (upper, lower, side by side) to be used for military and nonmilitary operation at the same time.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as republished (44 FR 307, 702) and amended (44 FR 1087) is further amended, effective 0901 G.m.t., August 9, 1979 as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

§ 71.123 [Amended]

In § 71.123; Under V-1 "R-5002 is excluded." is deleted and "R-5002A, R-5002C and R-5002D are excluded during their times of use." is substituted therefor.

Under V-16 "The airspace within R-5002A, R-5002C and R-5002D is excluded during their times of use." is added.

Under V-44 all after "Atlantic City;" is deleted and "INT Atlantic City 048° and Deer Park, N.J., 209° radials, including a south alternate via INT Atlantic City 055° and Deer Park 209° radials; to Deer Park. The airspace within R-4001B, R-5002A, R-5002B and R-5002E is excluded during their times of use. The airspace within V-139, V-308 airways is excluded. The airspace below 2,000 feet MSL outside the United States is excluded." is substituted therefor.

Under V-229 "INT of Atlantic City 048° and Kennedy, N.Y., 195° radials;" is deleted and "INT of Atlantic City 055° and Kennedy, N.Y., 194° radials;" is substituted therefor. All after "Burlington, Vt., 160° radials;" is deleted and "Burlington. The airspace within R-5002A, R-5002B and R-5002E is excluded during their times of use. The airspace within V-139, V-306 airways; the airspace below 2,000 feet MSL outside the United States and the airspace above 7,000 feet MSL between the INT of Atlantic City 055° and Kennedy 194° radials and Kennedy is excluded." is substituted therefor.

Under V-312 "R-5002" is deleted and "R-5002D" is substituted therefor.

PART 73—SPECIAL USE AIRSPACE

§ 73.50 [Amended]

In § 73.50 R-5002 Warren Grove, N.J., title and text is deleted.

R-5002A Warren Grove, N.J., is added as follows:

R-5002A Warren Grove, N.J.

Boundaries: Beginning at lat. 39°43'25" N., long. 74°17'37" W.; to lat. 39°38'25" N., long. 74°24'20" W.; to lat. 39°38'30" N., long. 74°29'30" W.; to lat. 39°30'20" N., long. 74°30'00" W.; to lat. 39°44'50" N., long. 74°24'40" W.; to lat. 39°44'50" N., long. 74°19'20" W.; to the point of beginning.
Designated altitudes: Surface to 14,000 feet MSL.
Time of designation: Sunrise to sunset, Tuesday through Saturday; other days by NOTAM 48 hours in advance.
Controlling agency: Federal Aviation Administration, New York ARTCC.
Using agency: Commander, 108th Tactical Fighter Wing, New Jersey Air National Guard, McGuire AFB, N.J.

R-5002B Warren Grove, N.J., is added as follows:

R-5002B Warren Grove, N.J.

Boundaries: Beginning at lat. 39°41'00" N., long. 74°20'52" W.; to lat. 39°40'10" N., long. 74°20'15" W.; to lat. 39°38'50" N., long. 74°21'20" W.; to lat. 39°36'00" N., long. 74°26'30" W.; to lat. 39°36'00" N., long. 74°27'30" W.; to lat. 39°37'00" N., long. 74°28'50" W.; to lat. 39°38'30" N., long. 74°29'30" W.; to lat. 39°38'25" N., long. 74°24'20" W.; to the point of beginning.
Designated altitudes: 1,000 feet MSL to 14,000 feet MSL.
Time of designation: Sunrise to sunset Tuesday through Saturday; other days by NOTAM 48 hours in advance.
Controlling agency: Federal Aviation Administration, New York ARTCC.
Using agency: Commander, 108th Tactical Fighter Wing, New Jersey Air National Guard, McGuire AFB, N.J.

R-5002C Warren Grove, N.J., is added as follows:

R-5002C Warren Grove, N.J.

Boundaries: Beginning at lat. 39°39'20" N., long. 74°30'09" W.; to lat. 39°40'30" N., long. 74°30'40" W.; to lat. 39°44'50" N., long. 74°27'30" W.; to lat. 39°44'50" N., long. 74°24'40" W.; to the point of beginning.
Designated altitudes: Surface to 3,000 feet MSL.
Time of designation: Sunrise to sunset, Tuesday through Saturday; other days by NOTAM 48 hours in advance.
Controlling agency: Federal Aviation Administration, New York ARTCC.
Using agency: Commander, 108th Tactical Fighter Wing, New Jersey Air National Guard, McGuire AFB, N.J.

R-5002D Warren Grove, N.J., is added as follows:

R-5002D Warren Grove, N.J.

Boundaries: Beginning at lat. 39°44'50" N., long. 74°24'40" W.; to lat. 39°45'20" N., long. 74°23'45" W.; to lat. 39°45'50" N., long. 74°20'00" W.; to lat. 39°44'50" N., long. 74°19'20" W.; to the point of beginning.
Designated altitudes: Surface to 4,000 feet MSL.
Time of designation: Sunrise to sunset, Tuesday through Saturday; other days by NOTAM 48 hours in advance.
Controlling agency: Federal Aviation Administration, New York ARTCC.
Using agency: Commander, 108th Tactical Fighter Wing, New Jersey Air National Guard, McGuire AFB, N.J.

R-5002E Warren Grove, N.J., is added as follows:

R-5002E Warren Grove, N.J.

Boundaries: Beginning at lat. 39°43'25" N., long. 74°17'37" W.; to lat. 39°41'00" N., long. 74°20'52" W.; to lat. 39°40'10" N., long. 74°20'15" W.; to the point of beginning.
Designated altitudes: 3,500 feet MSL to 14,000 feet MSL.
Time of designation: Sunrise to sunset, Tuesday through Saturday; other days by NOTAM 48 hours in advance.
Controlling agency: Federal Aviation Administration, New York ARTCC.
Using agency: Commander, 108th Tactical Fighter Wing, New Jersey Air National Guard, McGuire AFB, N.J.

(Secs. 307(a), 313(a) and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a) and 1510); Executive Order 10854 (24 FR 9565); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on June 7, 1979.

R. Keith Potts,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-18814 Filed 6-13-79; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Parts 71, 73

[Airspace Docket No. 78-RM-36]

Designation of Restricted Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments designate a restricted area at Blanding, Utah, to contain the launching and patterns of Advanced Strategic Air Launched Missiles (ASALM). These actions provide for the safe and efficient use of the navigable airspace by prohibiting unauthorized flight operations within the restricted area during its time of designation.

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. John Watterson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone (202) 426-8525.

SUPPLEMENTARY INFORMATION:

History

On may 10, 1979, the FAA proposed to amend Parts 71 and 73 of Federal Aviation Regulations (14 CFR Parts 71 and 73) to designate a restricted area identified as R-6410, Blanding, Utah, to contain the launching and patterns of Advanced Strategic Air Launched Missiles (ASALM) (44 FR 27494). Since the restricted area would penetrate the Continental Control Area, the FAA proposed to list it under § 71.151 to provide controlled airspace above 14,500 feet MSL. The affected airspace would be prohibited to nonparticipating aircraft during its time of use by the military. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to FAA. No objections were received. Sections 71.151 and 73.64 were republished in the Federal Register on January 2, 1979 (44 FR 344 and 713).

The Rule

These amendments to Parts 71 and 73 of the Federal Aviation Regulations designate restricted area airspace at

Blanding, Utah, to protect nonparticipating aircraft during the time that the area is used for the launching patterns of Advanced Strategic Air Launched Missiles (ASALM). Additionally, the airspace at and above 14,500 feet MSL within the restricted area is included in the Continental Control Area during its time of designation. The U.S. Army has advised that the requirements of the National Environmental Policy Act (NEPA) have been met.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as republished (44 FR 344 and 713) are amended, effective 0901 G.m.t., August 9, 1979 as follows:

Under § 71.151 (44 FR 344), the following restricted area is added: "R–6410, Blanding, Utah"

Under § 73.64 (44 FR 713), the following is added:

"R–6410 Blanding, Utah

Boundaries. Beginning at Lat. 37°34'08" N., Long. 109°34'16" W.; to Lat. 37°16'10" N., Long. 109°16'00" W.; to Lat. 37°11'40" N., Long. 109°25'15" W.; to Lat. 37°32'36" N., Long. 109°36'54" W.; to point of beginning.

Designated altitudes. Surface to unlimited.

Time of designation. To be activated by NOTAM at least 12 hours in advance.

Controlling agency. Federal Aviation Administration, Denver Air Route Traffic Control Center.

Using Agency. Deputy for Air Force, Armament Development and Testing Center, White Sands Missile Range, New Mex."

(Secs. 307(a), 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69).

Note: The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on June 7, 1979.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-18688 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 78-RM-32]

Alteration of Restricted Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters Restricted Area R–7001 from its current designated hours and date to "Intermittent," and divides the restricted area vertically as R–7001A and R–7001B. There is no change to the current lateral and vertical limits of the restricted area.

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Lewis W. Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8525.

SUPPLEMENTARY INFORMATION: On March 1, 1979, the FAA proposed to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to alter the description of Restricted Area R–7001 by changing the time of designation to "Intermittent" (44 FR 11559). At the present time it is designated as "From 0430 to 2400 local time, March 1 through November 30." Also, R–7001 is vertically segmented as R–7001A and R–7001B. The lateral and vertical limits of the restricted area remain the same. Interested persons were invited to participate in the rulemaking proceeding by submitting comments on the proposal to the FAA. No objections were received. The amendment is the same as that proposed in the notice. Section 73.70 was republished in the **Federal Register** on January 2, 1979 (44 FR 718).

The Rule

The purpose of this amendment to Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is to change the time of designation of R–7001A and R–7001B from its present designation "From 0430 to 2400 local time March 1 through November 30." to "Intermittent." This action will give the U.S. Army more flexibility for training, and increased air-to-ground firing.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as republished (44 FR 718) is amended, effective 0901 G.m.t., August 9, 1979, as follows:

R–7001 Guernsey, Wyo., is rewritten as follows:

R–7001A Guernsey, Wyo.

Boundaries. Beginning at Lat. 42°27'30" N., Long. 104°52'30" W.; to Lat. 42°27'30" N., Long. 104°42'30" W.; to Lat. 42°22'30" N., Long. 104°42'30" W.; to Lat. 42°20'00" N., Long. 104°52'30" W.; to the point of beginning.

Designated altitudes. Surface to but not including 8,000 feet MSL.

Time of designation. Intermittent, 24 hours in advance by NOTAM.

Controlling agency. Federal Aviation Administration, Denver ARTCC.

Using agency. Adjutant General, State of Wyoming.

R–7001B Guernsey, Wyo.

Boundaries. Beginning at Lat. 42°27'30" N., Long. 104°52'30" W.; to Lat. 42°27'30" N., Long. 104°52'30" W.; to Lat. 42°27'30" N., Long. 104°42'30" W.; to Lat. 42°22'30" N., Long. 104°42'30" W.; to Lat. 42°20'00" N., Long. 104°52'30" W.; to the point of beginning.

Designated altitudes. 8,000 feet MSL to 23,500 feet MSL.

Time of designation. Intermittent, 24 hours in advance by NOTAM.

Controlling agency. Federal Aviation Administration, Denver ARTCC.

Using agency. Adjutant General, State of Wyoming.

(Secs. 307(a), 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69).

Note: The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of regulatory evaluation.

Issued in Washington, D.C. on June 7, 1979.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-18494 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 79-NW-3]

Temporary Restricted Area Designation and Alteration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates a temporary restricted area in the vicinity

of Fort Lewis, Wash., and alters the Fort Lewis restricted areas R-6703A, B, C and D temporarily by changing their upper limits to include 9,000 feet MSL to contain a major military exercise (BRAVE SHIELD 20). This action provides for the safe and efficient use of the navigable airspace by prohibiting unauthorized flight operations of nonparticipating aircraft within the joint use restricted airspace during the time the areas are in use from August 16 to August 23 inclusive.

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT:
Mr. Everett L. McKisson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3715.

SUPPLEMENTARY INFORMATION:

History

On April 23, 1979, the FAA proposed to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to designate a temporary restricted area in the vicinity of Fort Lewis and alter the present four restricted areas there temporarily to contain a major military exercise for approximately ten days (44 FR 23878). Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. Section 73.67 of Part 73 was published in the Federal Register January 2, 1979, (44 FR 716).

The Rule

This amendment to Part 73 of the Federal Aviation Regulations (14 CFR Part 73) designates a temporary restricted area R-6703 Subarea E and alters restricted areas R-6703 Subareas A, B, C and D to contain the BRAVE SHIELD 20 military exercise. This action provides for the safe and efficient use of the navigable airspace by prohibiting unauthorized flight operations of nonparticipating aircraft within the joint use restricted airspace during the times the areas are in use. Headquarters Tactical Air Command has provided certification that the requirements of the National Environmental Policy Act have been met.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 73 § 73.67 of the Federal Aviation Regulations (14 CFR Part 73) as republished (44 FR 716) is amended, effective 0901 G.M.T., August 9, 1979, as follows:

1. In R-6703 Subarea A, under Designated altitudes, "except from 0001 PDT August 16 to 0001 PDT August 24, 1979, during which time it is surface to 9,000 feet MSL." is added.

2. In R-6703 Subarea B, under Designated altitudes, "except from 0001 PDT August 16 to 0001 PDT August 24, 1979, during which time it is surface to 9,000 feet MSL." is added.

3. In R-6703 Subarea C, under Designated altitudes, "except from 0001 PDT August 16 to 0001 PDT August 24, 1979, during which time it is surface to 9,000 feet MSL." is added.

4. In R-6703 Subarea D, under Designated altitudes, "except from 0001 PDT August 16 to 0001 PDT August 24, 1979, during which time it is surface to 9,000 feet MSL." is added.

5. In R-6703 Subarea E is added as follows:

Boundaries. Beginning at Lat. 47°04'35"N., Long. 122°41'05"W.; to Lat. 47°04'21"N., Long. 122°42'15"W.; to Lat. 46°59'47"N., Long. 122°47'09"W.; to Lat. 46°54'23"N., Long. 122°47'07"W.; to Lat. 46°52'50"N., Long. 122°44'07"W.; to Lat. 46°52'50"N., Long. 122°42'05"W.; to Lat. 46°54'11"N., Long. 122°39'12"W.; to Lat. 46°54'50"N., Long. 122°35'28"W.; to Lat. 46°56'07"N., Long. 122°34'11"W.; to Lat. 46°56'33"N., Long. 122°33'09"W.; to Lat. 46°59'43"N., Long. 122°32'32"W.; to Lat. 47°01'00"N., Long. 122°31'37"W.; to Lat. 47°01'46"N., Long. 122°31'36"W.; to Lat. 47°03'38"N., Long. 122°35'36"W.; to Lat. 47°04'42"N., Long. 122°36'15"W.; to point of beginning.

Excluding the airspace 2,000 feet AGL and below within a 1NM radius of the center of the town of Yelm, (Lat. 46°56'30"N., Long. 122°36'20"W.) and within a ⅛ NM radius of the center of the town of Roy, (Lat. 47°05'00"N., Long. 122°32'30"W.); the airspace 1,000 feet AGL and below within a ½NM radius of the center of the town of Nisqually, (Lat. 47°03'40"N., Long. 122°41'50"W.) and within a ½NM radius of the center of the town of Rainier, (Lat. 46°53'10"N., Long. 122°41'05"W.) and within a 1NM radius of the center of the Western Airpark Airport, (Lat. 46°55'29"N., Long. 122°33'02"W.) and within a ½NM radius of the center of the Flying Carpet Airport, (Lat. 46°57'55"N., Long. 122°47'45"W.).

Designated altitudes. 800 feet AGL to and including 9,000 feet MSL.

Time of designation. From 0001 PDT August 16 to 0001 PDT August 24, 1979.

Controlling agency. Federal Aviation Administration, McChord Approach Control.

Using agency. U.S. Air Force Tactical/Readiness Command, Langley AFB, Va.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on June 7, 1979.

B. Keith Potts,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-18513 Filed 6-13-79; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 19241; Amdt. No. 1150]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Information Center (APA–430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, may be ordered from Superintendant of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The annual subscription price is $135.00.

FOR FURTHER INFORMATION CONTACT: Lewis O. Ola, Flight Procedures and Airspace Branch (AFS–730), Aircraft Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4 and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). in developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, or contrary to the public interest, and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. By amending § 97.23 VOR-VOR/DME SIAPs identified as follows:

** * * Effective August 9, 1979:*

Hayward, CA—Hayward Air Terminal, VOR-A, Amdt. 6
Hayward, CA—Hayward Air Terminal, VOR/DME/B, Amdt. 1
Danville, IL—Vermilion County, VOR Rwy 21, Amdt. 8
Danville, IL—Vermilion County, VOR/DME Rwy 3, Amdt. 6
Springfield, KY—Lebanon-Springfield, VOR/DME Rwy 11, Original
Fond du Lac, WI—Fond du Lac County, VOR/DME Rwy 18, Amdt. 4
Fond du Lac, WI—Fond du Lac County, VOR/DME Rwy 36, Amdt. 4

** * * Effective July 26, 1979:*

Fayetteville, AR—Drake Field, VOR-A, Amdt. 18
Kendallville, IN—Kendallville Municipal, VOR-A, Amdt. 2
Ironwood, MI—Gogebic County, VOR Rwy 9, Amdt. 8
Ironwood, MI—Gogebic County, VOR/DME Rwy 27, Amdt. 4
Sparta, MI—Sparta, VOR-A, Amdt. 1
Tecumseh, MI—Al Meyers, VOR-A, Amdt. 4
Corvallis, OR—Corvallis Muni, VOR-A, Amdt. 4
Corvallis, OR—Corvallis Muni, VOR-B, Amdt. 2
Corvallis, OR—Corvallis Muni, VOR/DME Rwy 17, Amdt. 2
Corvallis, OR—Corvallis Muni, VOR/DME Rwy 35, Amdt. 5
Newport, OR—Newport Muni, VOR-A, Amdt. 1
Newport, OR—Newport Muni, VOR/DME Rwy 16, Amdt. 4
Roseburg, OR—Roseburg Muni, VOR-A, Amdt. 3
Beaumont, TX—Beaumont Muni, VOR/DME Rwy 12, Original
Beaumont, TX—Beaumont Muni, VOR/DME Rwy 30, Amdt. 1
Houston, TX—William P. Hobby, VOR/DME or TACAN Rwy 4, Amdt. 12

** * * Effective July 12, 1979:*

Spokane, WA—Spokane Int'l, VOR Rwy 3, Amdt. 12

** * * Effective June 5, 1979:*

Chattanooga, TN—Lovell Field, VOR Rwy 32, Amdt. 13

2. By amending § 97.25 SDF-LOC-LDA SIAPs identified as follows:

** * * Effective August 9, 1979:*

Danville, IL—Vermilion County, LOC Rwy 21, Original
Glasgow, KY—Glasgow Municipal, SDF Rwy 7, Amdt. 2
Muskegon, MI—Muskegon County, LOC Rwy 23, Original
Temple, TX—Draughon-Miller Muni, LOC BC Rwy 33, Amdt. 5
Fond du Lac, WI—Fond du Lac County, SDF Rwy 36, Amdt. 3

** * * Effective July 26, 1979:*

Fayetteville, AR—Drake Field, LOC Rwy 16, Amdt. 7
Beaumont—Port Arthur, TX—Jefferson County, LOC BC Rwy 29, Amdt. 14
Houston, TX—William P. Hobby, LOC BC Rwy 22, Amdt. 19

** * * Effective July 12, 1979*

Enid, OK—Enid Woodring Muni, LOC Rwy 35, Amdt. 1
Spokane, WA—Spokane Int'l, LOC Rwy 3, Amdt. 2

3. By amending § 97.27 NDB/ADF SIAPs identified as follows:

** * * Effective August 9, 1979:*

French Lick, IN—French Lick Municipal, NDB Rwy 26, Amdt. 4
Washington, IN—Daviess County, NDB Rwy 18, Amdt. 4
Glasgow, KY—Glasgow Municipal, NDB Rwy 7, Amdt. 3
Warroad, MN—Warroad Intl-Swede Carlson Field, NDB Rwy 31, Original
Fond du Lac WI—Fond du Lac County, NDB Rwy 9, Amdt. 3
Neillsville, WI—Neillsville Municipal, NDB Rwy 27, Original

* * * *Effective July 26, 1979:*

Kankakee, IL—Greater Kankakee, NDB Rwy 4, Amdt. 4, cancelled
Patterson, LA—Harry P. Williams Memorial, NDB Rwy 5, Amdt. 5
Houston, TX—William P. Hobby, NDB Rwy 4, Amdt. 29

* * * *Effective June 4, 1979:*

Olathe, KS—Johnson County Industrial, NDB Rwy 35, Amdt. 1

4. By amending § 97.29 ILS–MLS SIAPs identified as follows:

* * * *Effective August 9, 1979:*

Temple, TX—Draughon-Miller Muni, ILS Rwy 15, Amdt. 5

* * * *Effective July 26, 1979:*

Miami, FL—Miami International, ILS Rwy 27L, Amdt. 18
Beaumont-Port Arthur, TX—Jefferson County, ILS Rwy 11, Amdt. 17
Galveston, TX—Scholes Field, ILS Rwy 13, Amdt. 4
Houston, TX—Houston Intercontinental, ILS Rwy 14, Amdt. 5
Houston, TX—William P. Hobby, ILS Rwy 4, Amdt. 30
Houston, TX—William P. Hobby, ILS Rwy 13, Amdt. 4

* * * *Effective July 12, 1979:*

Oxnard, CA—Oxnard, ILS Rwy 25, Amdt. 3

* * * *Effective June 4, 1979:*

Olathe, KS—Johnson County Industrial, ILS Rwy 35, Amdt. 1

* * * *Effective May 30, 1979:*

Wilmington, DE—Greater Wilmington, ILS Rwy 1, Amdt. 14

5. By amending § 97.31 RADAR SIAPs identified as follows:

Note.—The FAA published an amendment in Docket No. 19154, Amdt. No. 1136 to Part 97 of the Federal Aviation Regulations (Vol 44 FR No. 87 page 28788; dated Thursday, May 17, 1979) under § 97.31 effective June 28, 1979, which is hereby amended as follows:

Fairbanks, AK—Fairbanks INTL, Radar-1, Original. Change Effective Date to June 14, 1979.

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.49(b)(3))

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C. on June 8, 1979.

James M. Vines,
Chief, Aircraft Programs Division.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on May 12, 1969.

[FR Doc. 79-18560 Filed 6-13-79; 8:45 am]
BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

[Regulation ER-1130; Amdt. 66; Docket 29387]

14 CFR Part 288

Exemption of Air Carriers for Military Transportation

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This final rule establishes a 3.11 percent fuel surcharge rate applicable to the minimum military charter rates (ER–1045, December 27, 1977) for foreign and overseas air transportation services performed for the Department of Defense (DOD) and procured by the Military Airlift Command (MAC). This surcharge amendment is effective May 1, 1979, and is triggered by an increase in the average fuel price for the participating MAC carriers of 5.65 cents per gallon—from 41.31 cents per gallon to 46.96 cents per gallon.

DATES: Adopted: June 7, 1979. Effective: June 7, 1979.

FOR FURTHER INFORMATION CONTACT: James E. Gardner, Domestic Fares and Rates Division, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, Phone: 202–673–5364.

SUPPLEMENTARY INFORMATION: As indicated in ER–1024 (42 FR 58902, November 11, 1977), dated November 3, 1977, the Board monitors fuel price changes and will establish a fuel surcharge rate adjustment when the average price of fuel for participating MAC carriers changes one cent or more per gallon. ER–1111, effective March 21, 1979, established a fuel surcharge of 1.40 percent based on January 1979 data.

The Board has completed its review of the latest available fuel cost data as reported on C.A.B. Form 41, Schedule P–12(a) for foreign and overseas MAC air transportation services for the month of April 1979, and is establishing surcharge provisions in Part 288 of its Economic Regulations (14 CFR Part 288) applicable to the rates established for those services.[1] The basis for issuing this surcharge amendment is the increase in average fuel price for the participating MAC carriers of 5.65 cents per gallon—from 41.31 cents per gallon reflected in the currently effective base rates to the latest reported average price of 46.96 cents per gallon.

The attached Appendix sets forth the results of the surcharge rate computation for the reported fuel price changes for commercial and military fuels consumed in military charter service for the month of April 1979, and the rate impact of the changes in current average fuel prices from those reflected in the base rates. Accordingly, we will establish the fuel surcharge rate applicable to the current base final rates, effective May 1, 1979, to increase the Category B and Category A rates by 3.11 percent.

In our notice of Final Action on Revised Procedures for Part 288 Fuel Surcharge Amendments, Docket 29759, December 22, 1978, we stated that "in the event that we are unable to issue a fuel surcharge amendment reasonably within the customary period of time after the fuel reports are filed, we shall examine our established procedure and determine whether any modifications are warranted at that time."

Our last two fuel surcharge rule amendments were effective three months apart—December 21, 1978 and March 21, 1979, and the carriers had to wait between seven and eleven weeks from the time fuel prices escalated to the level which triggered the surcharge amendment procedure to the date when the revised rates became effective. Fuel prices are now increasing more frequently and at a much steeper rate than in the past so that any significant time lapse between the time fuel prices escalate and the time revised MAC rates become effective can work a hardship on the carriers. Therefore, in order to reduce this time lapse, we find it reasonable to make this and future fuel surcharge amendments effective the first day of the month following the month of the latest fuel price report used as a basis for determining a revised fuel surcharge. Since the fuel surcharge determined here is based on reported data for the month of April 1979, the revised surcharge shall become effective May 1, 1979.

In view of the present need for a fuel surcharge to the minimum rates set forth in Part 288, we find that good cause

[1] This and future surcharge amendments will be made applicable to the minimum MAC rates established in ER–1045, effective December 27, 1977, until such time as new final base rates may be established.

exists for adopting these amendments without notice and public procedure and for making them effective on less than thirty (30) days' notice.

In consideration of the foregoing, the Board amends Part 288 of its Economic Regulations (14 CFR Part 288), as follows:

1. Amend § 288.7(a) by amending the paragraph following the tables so as to reflect an additional proviso, and amend the proviso to paragraphs (d) (1) and (2) to read as follows:

§ 288.7 Reasonable level of compensation.

* * * * *

(a) * * *

* * * * *

Provided, That subject to the provisions of § 288.8, the minimum rates set forth above shall not be applicable to passengers or cargo carried on a particular trip in excess of the amount that the contract calls for DOD to supply and the carrier to provide space: *And provided further,* That if a carrier performs a one-way charter flight carrying nonmilitary traffic for a nonmilitary user, the carrier may charter the return flight of that aircraft to DOD at a published one-way charter traffic rate that is in fact available to the general public for equivalent services: *Provided, however,* That the total minimum compensation pursuant to the rates set forth in paragraph (a)(1) above for services performed on or after May 1, 1979, with regular jet, wide-body jet and DC–8–61/63 aircraft shall be increased by a surcharge of 3.11 percent.

* * * * *

(d) * * *

(1) * * *

(2) * * *

Provided, That the total minimum compensation pursuant to the rates specified in paragraphs (a)(1) and (a)(2) of § 288.7 shall be increased by a surcharge of 3.11 percent for services performed on or after May 1, 1979.

* * * * *

(Secs. 204, 403 and 416 of the Federal Aviation Act of 1958, as amended; 72 Stat. 743, 758 and 771, as amended; 49 U.S.C. 1324, 1373 and 1386.)

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

Appendix.—MAC Long-Range Carriers

[Computation of fuel surcharge based on April 1979 P–12(a) fuel data reports]

Carriers	April 1979 P–12(a) data			Price per gallon used in latest surcharge computation [1] (cents)	Currently effective base average price [2] (cents)	Percent price increase (decrease) current/base (percent)	Fuel cost as a percent of total economic cost [3] (percent)	Fuel price change impact on base economic costs (percent)	Rate impact weighting factor [4] (percent)	Base rate impact for fuel price change (percent)
	Cost	Gallons	Average cost per gallon (cents)							
Alitl	$236,998	474,176	49.97	45.43	45.68	9.39	37.25	3.50	4.26	0.186
Capitol	44,667	96,536	46.35	43.25	39.96	16.40	32.36	5.31	1.49	0.079
Flying Tiger	1,043,476	2,406,825	43.35	42.37	40.32	7.51	27.81	2.09	18.91	0.395
Northwest	87,371	196,638	43.99	42.66	40.69	8.11	29.34	2.38	16.82	0.400
Pan American	84,095	183,388	45.86	45.84	41.21	11.28	34.27	2.74	25.95	0.711
Seaboard	95,481	189,908	46.51	43.46	45.98	1.15	32.23	0.37	9.81	0.036
Trans Int'l	862,437	1,117,661	49.43	42.74	40.65	21.60	30.01	6.48	13.07	0.847
World	845,446	1,862,569	50.25	44.54	42.83	17.32	29.50	5.11	8.57	0.439
Totals	2,979,991	6,345,601	46.96	43.65	41.31		28.51		100.00	3.110

[1] ER–1111.
[2] Averaged per gallon fuel costs used in determining currently effective base rates (ER–1045) as set out in ER–1024.
[3] ER–1099, Appendix B.
[4] ER–1099, Appendix D.

[FR Doc. 79-18648 Filed 6-13-79; 8:45 am]

BILLING CODE 6320-01-M

14 CFR Part 323

[Regulation PR–207; Procedural Regulations Amendment No. 1]

Terminations, Suspensions and Reductions of Service; Notice of Approval by the General Accounting Office

AGENCY: Civil Aeronautics Board.

ACTION: Final Rule.

SUMMARY: This final rule gives notice that the General Accounting Office has approved the reporting requirements contained in a regulation which governs (1) notices of terminations, suspensions, and reductions of air transportation by air carriers, and (2) objections asking the Board to prohibit those terminations, suspensions or reductions that appear to affect essential air transportation (PR–200, 44 FR 20635, April 6, 1979). This approval is required under the Federal Reports Act, and was transmitted to the Civil Aeronautics Board by letter dated May 29, 1979.

DATES: Adopted: June 6, 1979. Effective: June 6, 1979.

FOR FURTHER INFORMATION CONTACT: Clifford M. Rand, Chief, Data Requirements Division, Office of Economic Analysis, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673–6044.

SUPPLEMENTARY INFORMATION: A line was inadvertently dropped from the summary of Regulation PR–207 published in 44 FR 33397, June 11, 1979. The corrected summary appears above.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79–18650 Filed 6–13–79; 8:45 am]

BILLING CODE 6320–01–M

14 CFR Part 385

[Regulation OR–148A; Finalization of Interim Rule; Docket 34666; Dated June 7, 1979]

Delegations and Review of Action Under Delegation: Nonhearing Matters

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. June 7, 1979.

AGENCY: Civil Aeronautics Board.

ACTION: Finalization of Interim Rule.

SUMMARY: By OR–148,[1] the Board delegated authority to the Directors of the Bureau of Pricing and Domestic Aviation (now Bureau of Domestic Aviation) and the Bureau of International Aviation to grant or deny applications of air carriers, intrastate air carriers and foreign air carriers for temporary authority to provide substitute service during any work stoppage in the domestic and foreign markets normally served by the struck carrier. These grants of authority were reflected in 14 CFR 385.13(qq) and 385.26(u). The Board also requested comments on these final rules by ODR–16.[2]

[1] 44 FR 13668, March 15, 1979.
[2] 44 FR 15733, March 15, 1979.

A comment was filed by United Air Lines, which objected to the rules as an unwarranted intermeddling in labor disputes. Its objection is not, however, relevant to the rule, which merely delegates the authority to implement established Board policy. In any event, we are unpersuaded that the underlying policy should be changed. We refer to out rationale in Order 79–5–40, which confirmed exemptions granted to carriers during the strike against United Air Lines. Accordingly, the final rules will remain in the form in which they were issued.

DATE: Adopted: June 7, 1979.

FOR FURTHER INFORMATION CONTACT: Richard B. Dyson, Office of the General Counsel, Civil Aeronautics Board, Washington, D.C. 20428, phone: (202) 673–5442.

(Sections 102, 204, 401, 402, 403 and 416 of the Federal Aviation Act of 1958, as amended; 92 Stat 1708; 72 Stat. 743, 758; 49 U.S.C. 1302, 1324, 1371, 1372, 1373 and 1386.)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-18012 Filed 6-13-79; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Government National Mortgage Association

24 CFR Part 300

[Docket No. R–79–657]

List of Attorneys-in-Fact

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: This amendment updates the current list of attorneys-in-fact by amending Paragraph (c) of 24 CFR 300.11. These attorneys-in-fact are authorized to act for the Association by executing documents in its name in conjunction with servicing GNMA's mortgage purchase programs, all as more fully described in Paragraph (a) of 24 CFR 300.11.

EFFECTIVE DATE: July 16, 1979.

ADDRESSES: Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410. Telephone: (202) 755–5003.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Linane, Office of General Counsel, on (202) 755–7186.

SUPPLEMENTARY INFORMATION: Notice and public procedure on this amendment are unnecessary and impracticable because of the large volume of legal documents that must be executed on behalf of the Association.

§ 300.11 [Amended]

1. Paragraph (c) of § 300.11 is amended by adding the following names to the current list of attorneys-in-fact:

Name and Region

Elizabeth Brouwer-Ancher, Philadelphia, Pennsylvania
Mark Spencer, Philadelphia, Pennsylvania
Marie A. Thompson, Philadelphia, Pennsylvania

(Sec. 309(d), National Housing Act, 12 U.S.C. 1723a(d), and sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d))).

Issued at Washington, D.C., June 4, 1979.

R. Frederick Taylor,

Acting Executive Vice President, Government National Mortgage Association.

[FR Doc. 79-18021 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

24 CFR Part 1914

[Docket No. FI 5556]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, Federal Emergency Management Agency. [1]

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fifth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638–8620.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Federal Insurance Administrator has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the food map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

Section 1914.6 is amended by adding in alphabetical sequence new entries to the table.

[1] The functions of the Federal Insurance Administration, U.S Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979)

§ 1914.6 List of eligible communities.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified
Pennsylvania	Bucks	West Rockhill, township of	421123–A	June 1, 1979, emergency.	Sept. 13, 1974.
Connecticut	New Haven	Ledyard, town of	090157–A	Aug. 22, 1979, emergency, Apr. 2, 1979, suspended, June 1, 1979, reinstated.	May 27, 1977.
Kansas	Allen	Unincorporated areas	200568–A	June 4, 1979, emergency.	May 24, 1977.
Missouri	Boone	do	290034–A	do	Apr. 25, 1978.
North Carolina	Hoke	do	370397	do	June 12, 1978.
Pennsylvania	Union	West Buffalo, township of	422106	do	Nov. 1, 1974.
Massachusetts	Bristol	Norton, town of	250060–A	June 1, 1979, suspension withdrawn.	June 28, 1974 and May 10, 1977.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.)

Issued: June 6, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18543 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

24 CFR Part 1915

[Docket No. 5555]

List of Withdrawal of Flood Insurance Maps Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, Federal Emergency Management Agency.[1]

ACTION: Final Rule.

SUMMARY: This rule lists communities where Flood Insurance Rate Maps or Flood Hazard Boundary Maps published by the Federal Insurance Administration, have been temporarily withdrawn for administrative or technical reasons. During that period that the map is withdrawn, the insurance purchase requirement of the National Flood Insurance Program is suspended.

EFFECTIVE DATES: The date listed in the fifth column of the table.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, Office of Flood Insurance, (202) 755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The list includes the date that each map was withdrawn, and the effective date of its republication, if it has been republished. If a flood prone location is now being identified on another map, the community name for the effective map is shown.

The Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended, requires, at Section 102, the purchase of flood insurance as a condition of Federal financial assistance if such assistance is:

(1) For acquistion and construction of buildings, and

(2) For buildings located in a special flood hazard area identified by the Secretary of Housing and Urban Development.

One year after the identification of the community as flood prone, the requirement applies to all identified special flood hazard areas within the United States, so that, after that date, no such financial assistance can legally be provided for acquisition and construction of buildings in these areas unless the community has entered the program. The denial of such financial assistance has no application outside of the identified special flood hazard areas of such flood-prone communities.

Prior to July 1, 1975, the statutory requirement for the purchase of flood insurance did not apply until and unless the community entered the program and the special flood hazard areas were identified by the issuance of a flood insurance map. However, after July 1, 1975, or one year after identification, whichever is later, the requirement applies to all communities in the United States that are identified as having special flood hazard areas within their community boundaries, so that, no such financial assistance can legally be provided for buildings in these areas unless the community has entered the program.

The insurance purchase requirement with respect to a particular community may be altered by the issuance or withdrawal of the Federal Insurance Administration's (FIA's) official Flood Insurance Rate Map (FIRM) or the Flood Hazard Boundary Map (FHBM). A FHBM is usually designated by the letter "E" following the community number and a FIRM by the letter "R" following the community number. If the FIA withdraws a FHBM for any reason the insurance purchase requirement is suspended during the period of withdrawal. However, if the community is in the Regular Program and only the FIRM is withdrawn but a FHBM remains in effect, then flood insurance is still required for properties located in the identified special flood hazard areas shown on the FHBM, but the maximum amount of insurance available for new applications or renewal is first layer coverage under the Emergency Program, since the community's Regular Program status is suspended while the map is withdrawn. (For definitions see 24 CFR Part 1909 et seq.).

As the purpose of this revision is the convenience of the public, notice and public procedure are unnecessary, and cause exists to make this amendment effective upon publication. Accordingly, Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended as follows:

1. Present § 1915.6 is revised to read as follows:

§ 1915.6 Administrative withdrawal of maps.

(a) *Flood Hazard Boundary Maps (FHBM's).* The following is a cumulative list of withdrawals pursuant to this part:

[1] The functions of the Federal Insurance Administration, U.S. Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

40 FR 5140
40 FR 17015
40 FR 20708
40 FR 46102
40 FR 53570
40 FR 56972
41 FR 1478
41 FR 50990
41 FR 13262
41 FR 17728
42 FR 9986
42 FR 20633
42 FR 60626
42 FR 60978
43 FR 24659
44 FR 816
44 FR 6988
44 FR 10496
44 FR 20926
44 FR 34139

(b) *Flood Insurance Rate Maps (FIRM's).* The following is a cumulative list of withdrawals pursuant to this part:

40 FR 17015	42 FR 60978
41 FR 1478	43 FR 24659
42 FR 46501	44 FR 20926

2. The following additional entries (which will not appear in the Code of Federal Regulations) are made pursuant to § 1915.6:

State, community name, and number	County	Hazard ID date	Rescission date	Reason
Kansas, Mission Woods, City 200172	Johnson	10-1-76	5-11-79	1
Kansas, Spring Hill, City, 200178	Johnson	2-6-76	5-11-79	1
Louisiana, Ashland, Vil, 220283	Natchitoches	8-13-76	5-11-79	1
Louisiana, Boyce, TN, 220147A	Rapides	4-5-74	5-11-79	1
Louisiana, Converse, Vil, 220288	Sabine	8-20-76	5-11-79	1
Louisiana, Epps, Vil, 220283	West Carroll	9-4-76	5-11-79	1
Louisiana, Evergreen, TN, 220284	Avoyelles	9-20-76	5-11-79	1
Louisiana, Forest, Vil, 220286	West Carroll	11-26-76	5-11-79	1
Louisiana, Forest Hill, Vil, 220287	Rapides	11-12-76	5-11-79	1
Louisiana, Grambling, TN, 220288	Lincoln	11-19-76	5-11-79	1
Louisiana, Grayson, Vil, 220329	Caldwell	8-13-76	5-11-79	1
Louisiana, Greenwood, TN, 220292	Caddo	4-26-76	5-11-79	1
Louisiana, Heflin, Vil, 220343	Webster	3-26-76	5-11-79	1
Louisiana, Hessmer, Vil, 220294	Avoyelles	11-19-76	5-11-79	1
Louisiana, Keatchi, TN, 220297	DeSoto	11-12-76	5-11-79	1
Louisiana, Kilbourne, Vil, 220298	West Carroll	9-11-76	5-11-79	1
Louisiana, Martin, Vil, 220372	Red River	11-12-76	5-11-79	1
Louisiana, McNary, Vil, 220299A	Rapides	12-17-76	5-11-79	1
Louisiana, Noble, Vil, 220301	Sabine	8-13-76	5-11-79	1
Louisiana, North Hodge, Vil, 220341	Jackson	11-5-76	5-11-79	1
Louisiana, Olla, TN, 220343	LaSalle	11-12-76	5-11-79	1
Louisiana, Pioneer, Vil, 220344	West Carroll	9-4-76	5-11-79	1
Louisiana, Pleasant Hill, Vil, 220344	Sabine	8-6-76	5-11-79	1
Louisiana, Powhatan, Vil, 220306	Natchitoches	10-20-76	5-11-79	1
Louisiana, Sikes, Vil, 220310	Winn	4-26-76	5-11-79	1
Louisiana, Simpson, Vil, 220311	Vernon	8-6-76	5-11-79	1
Louisiana, Tullos, TN, 220309	LaSalle	8-11-76	5-11-79	1
Louisiana, Vivian, TN, 220351	Caddo	3-26-76	5-11-79	1
Louisiana, Woodworth, Vil, 220260	Rapides	3-26-76	5-11-79	1
Missouri, Fair Grove, City, 290351	Greene	6-27-76	5-11-79	1
New Mexico, Corona, Vil, 350089	Lincoln	6-4-76	5-11-79	1
New Mexico, Cuba, Vil, 350085	Sandoval	12-31-76	5-11-79	1
New Mexico, Encino, Vil, 350108A	Torrance	4-15-76	5-11-79	1
New Mexico, San Ysidro, Vil, 350138	Sandoval	7-2-76	5-11-79	1
New Mexico, Vaughn, TN, 350119	Guadalupe	7-6-76	5-11-79	1
New Mexico, Willard, Vil, 350109	Torrance	8-6-76	5-11-79	1
New Jersey, Tavistock, Boro, 340544	Camden	11-29-74	5-11-79	1
Oklahoma, Eldorado, TN, 400372	Jackson	7-6-76	5-11-79	1

KEY TO SYMBOLS

E—The community is participating in the Emergency Program. It will remain in the Emergency Program without an FHBM.

C—The community is participating in the Emergency Program. It will be converted to the Regular Program without an FIA map.

R—The community is participating in the Regular Program.

1. The Community appealed its flood-prone designation and FIA determined the Community would not be inundated by a flood having a one-percent chance of occurrence in any given year.

1A. FIA determined the Community would not be inundated by a flood having a one-percent chance of occurrence in any given year.

2. The Flood Hazard Boundary Map (FHBM) contained printing errors or was improperly distributed. A new FHBM will be prepared and distributed.

3. The Community lacked land-use authority over the special flood hazard area.

4. A more accurate FIA map is the effective map for this community.

5. The FHBM does not accurately reflect the Community's special flood hazard areas (i.e., sheet flow flooding, extremely inaccurate map, etc.). A new FHBM will be prepared and distributed.

6. The Flood Insurance Rate Map was rescinded because of inaccurate flood elevations contained on the map.

7. The Flood Insurance Rate Map was rescinded in order to re-evaluate the mudslide hazard in this Community.

8. The T&E or H&E Map was rescinded.

9. A revision of the FHBM within a reasonable period of time was not possible. A new FHBM will be prepared and distributed.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.)

Issued: June 6, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18562 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

24 CFR Part 1917

[Docket No. FI-3994]

Final Flood Elevation Determination for the City of St. Peter, Nicollett County, Minn., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of St. Peter, Nicollett County, Minnesota.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the City of St. Peter, Nicollett County, Minnesota.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of St. Peter, Nicollett County, Minnesota, are available for review at the City Hall, 227 South Front Street, St. Peter, Minnesota.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755-5581 or Toll Free Line (800) 424-8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of St. Peter, Nicollett County, Minnesota.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Minnesota River	St. Julien Street (extended)	756
	Broadway Avenue (State 99)	
	Downstream	758
	Upstream	759
	Locust Street (extended)	760
	Jackson Street	761
	Upstream Corporate Limits	763

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18287 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

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24 CFR Part 1917

[Docket No. FI-2558]

Final Flood Elevation Determination for the Borough of Sellersville, Bucks County, Pa., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Borough of Sellersville, Bucks County, Pennsylvania.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the Borough of Sellersville, Bucks County, Pennsylvania.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Borough of Sellersville, Bucks County, Pennsylvania, are available for review at the Municipal Building, 140 East Church Street, Sellersville, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Borough of Sellersville, Bucks County, Pennsylvania.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
East Branch Perkiomen Creek	Downstream Corporate	302
	Limits Main Street Bridge	305
	Upstream Corporate Limits	306

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18288 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

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24 CFR Part 1917

[Docket No. FI-2570]

Final Flood Elevation Determination for the Town of North Providence, Providence County, R.I., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of North Providence, Providence County, Rhode Island.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the Town of North Providence, Providence County, Rhode Island.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of North Providence, Providence County, Rhode Island, are available for review at the bulletin board at the Town Hall, 2008 Smith Street, North Providence, Rhode Island.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Town of North Providence, Providence County, Rhode Island.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Woonasquatucket River.	Greystone Avenue	113
	Smith Street	105
	Redeem Street (Extended)	99
	Allendale Street	99
	Southwest Corporate Limits	72
West River	Pinewood Drive	186
	Apartment Roadway	178
	Brook Farm Road	164
	West River Parkway	139
	Mineral Spring Avenue	121
	Alexander Street (Extended)	110
	Douglas Avenue	90
	South Corporate Limits	81
East Branch West River.	Conlier Street	150
	Brook Farm Road	141
	Side Drive (Extended)	137
	Brook Dale Road	135
Lincoln Downs Brook	Angell Road	181
	Benjamin Drive	169
	Mineral Spring Avenue	167
	Alexander Street	150
	Lexington Avenue	117
Upper Canada Pond Brook.	Garfield Street	92
	Charles Street	91
	Mineral Spring Avenue	92
	Southeast Corporate Limits	90

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963)

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18939 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

24 CFR Part 1917

[Docket No. FI-3866]

Final Flood Elevation Determination for the Town of Lyndon, Caledonia County, Vt. Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of Lyndon, Caledonia County, Vermont.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the Town of Lyndon.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Lyndon, are available for review at Town Hall, 24 Main Street, Lyndonville, Vermont.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755-5581 or Toll Free Line (800) 424-8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Town of Lyndon, Vermont.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to then National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Passumpsic River	Railroad Bridge	699
	U.S. 5	707
	Vermont 122	708
	At confluence with Millers Run.	709
	U.S. 5	709
	Vermont 114	711
	Railroad Bridge	716
	Vermont 114	717
	TH 38	718
	TH 40	741
	Vermont 114	782
Calendar Brook	Route 5	734
Hawkins Brook	TR 68	699
	TH 5	706
Millers Run	Vermont 122	709
	I-91	714
	TH 31	718
Wheelock Branch	BA 10	708
	I-91	708
	TH 1	709
	TH 52	709

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963).

Issued: June 1, 1979

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18940 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

24 CFR Part 1917

[Docket No. FI-3432]

Final Flood Elevation Determination for the County of Douglas, Wash. Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the County of Douglas, Washington.

These base (100-year) flood elevations are the basis for the flood plain management measures that the

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the County of Douglas, Washington.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the County of Douglas, Washington, are available for review on the bulletin board in the Courthouse, Douglas County, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program (202) 755-5581 or Toll Free Line (800) 424-8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the County of Douglas, Washington.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community of individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed based flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Douglas Creek	Burlington Northern Railroad at Palisades.	871
	U.S. Route 2 Bridge at Douglas.	2,370
Kummer Draw	Douglas Avenue	2,374

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[FR Doc. 79-18911 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 306

General Regulations Governing United States Securities

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: The purpose of this amendment of the General Regulations governing United States securities is to extend the tables contained in the appendix to Subpart E to provide decimal factors for daily interest computations for interest payable on a semiannual or annual basis for interest rates of up to 12 percent per annum.

EFFECTIVE DATE: June 14, 1979.

FOR FURTHER INFORMATION CONTACT: A. E. Martin, Attorney-Advisor, Bureau of the Public Debt, (202) 376-0636.

SUPPLEMENTARY INFORMATION: Tables I and II in the appendix to Subpart E of the regulations provide decimal factors which are used to compute daily accrued interest on a security, based on the annual interest rate paid thereon. Both Table I, which provides the decimal factors for interest payable on a semiannual basis, and Table II, which provides the decimal factors for interest payable on an annual basis, now only cover interest rates extending to 6 percent per annum. In view of current interest rates being paid on United States securities, these tables are being extended to cover interest rates of up to 12 percent per annum.

Accordingly, Department of the Treasury Circular No. 300, Fourth Revision, dated March 15, 1973 (31 CFR, Part 306), is hereby amended by the deletion of Tables I and II in the Appendix to Subpart E and the addition of new Tables I and II.

The foregoing amendment was effected under authority of the Second Liberty Bond Act (40 Stat. 288, as amended; 31 U.S.C. 752, et seq.) and 5 U.S.C. 321. Since this amendment involves the fiscal policy of the United States and does not meet the Department's criteria for significant regulations, it has been determined that notice and public procedures thereon are unnecessary.

Dated: June 5, 1979.

Paul H. Taylor,
Fiscal Assistant Secretary.

BILLING CODE 4810-39-M

TABLE I-DECIMAL FOR 1 DAY'S INTEREST ON $1,000 AT VARIOUS RATES OF INTEREST, PAYABLE SEMIANNUALLY OR ON A SEMIANNUAL BASIS IN REGULAR YEARS OF 365 DAYS AND IN LEAP YEARS OF 366 DAYS (TO DETERMINE APPLICABLE NUMBER OF DAYS, SEE "COMPUTATION OF INTEREST ON SEMIANNUAL BASIS")

Rate per annum (percent)	Half-year of 184 days	Half-year of 183 days	Half-year of 182 days	Half-year of 181 days
1/8	$0.003396739	$0.003415301	$0.003434066	$0.003453039
1/4	.006793478	.006830601	.006868132	.006906077
3/8	.010190217	.010245902	.010302198	.010359116
1/2	.013586957	.013661202	.013736264	.013812155
5/8	.016983696	.017076503	.017170330	.017265193
3/4	.020380435	.020491803	.020604396	.020718232
7/8	.023777174	.023907104	.024038462	.024171271
1	.027173913	.027322404	.027472527	.027624309
1 1/8	.030570652	.030737705	.030906593	.031077348
1 1/4	.033967391	.034153005	.034340659	.034530387
1 3/8	.037364130	.037568306	.037774725	.037983425
1 1/2	.040760870	.040983607	.041208791	.041436464
1 5/8	.044157609	.044398907	.044642857	.044889503
1 3/4	.047554348	.047814208	.048076923	.048342541
1 7/8	.050951087	.051229508	.051510989	.051795580
2	.054347826	.054644809	.054945055	.055248619
2 1/8	.057744565	.058060109	.058379121	.058701657
2 1/4	.061141304	.061475410	.061813187	.062154696
2 3/8	.064538403	.064890710	.065247253	.065607735
2 1/2	.067934783	.068306011	.068681319	.069060773
2 5/8	.071331522	.071721311	.072115385	.072513812
2 3/4	.074728261	.075136612	.075549451	.075966851
2 7/8	.078125000	.078551913	.078983516	.079419890
3	.081521739	.081967213	.082417582	.082872928
3 1/8	.084918478	.085382514	.085851648	.096325967
3 1/4	.088315217	.088797814	.089285714	.089779006
3 3/8	.091711957	.092213115	.092719780	.093232044
3 1/2	.095108696	.095628415	.096153846	.096685083
3 5/8	.098505435	.099043716	.099587912	.100138122
3 3/4	.101902174	.102459016	.103021978	.103591160
3 7/8	.105298913	.105874317	.106456044	.107044199
4	.108695652	.109289617	.109890110	.110497238
4 1/8	.112092391	.112704918	.113324176	.113950276
4 1/4	.115489130	.116120219	.116758242	.117403315
4 3/8	.118885870	.119535519	.120192308	.120856354
4 1/2	.122282609	.122950820	.123626374	.124309392
4 5/8	.125679348	.126366120	.127060440	.127762431
4 3/4	.129076087	.129781421	.130494505	.131215470
4 7/8	.132472826	.133196721	.133928571	.134668508
5	.135869565	.136612022	.137362637	.138121547
5 1/8	.139266304	.140027322	.140796703	.141574586
5 1/4	.142663043	.143442623	.144230769	.145027624
5 3/8	.146059783	.146857923	.147664835	.148480663
5 1/2	.149456522	.150273224	.151098901	.151933702
5 5/8	.152853261	.153688525	.154532967	.155386740
5 3/4	.156250000	.157103825	.157967033	.158839779
5 7/8	.159646739	.160519126	.161401099	.162292818
6	.163043478	.163934426	.164835165	.165745856
6 1/8	.166440217	.167349727	.168269231	.169198895
6 1/4	.169836957	.170765027	.171703297	.172651934
6 3/8	.173233696	.174180328	.175137363	.176104972
6 1/2	.176630435	.177595628	.178571429	.179558011
6 5/8	.180027174	.181010929	.182005495	.183011050
6 3/4	.183423913	.184426230	.185439560	.186464088
6 7/8	.186820652	.187841530	.188873626	.189917127

Rate per annum (percent)	Half-year of 184 days	Half-year of 183 days	Half-year of 182 days	Half-year of 181 days
7	.190217391	.191256831	.192307692	.193370166
7 1/8	.193614130	.194672131	.195741758	.196823204
7 1/4	.197010870	.198087432	.199175824	.200276243
7 3/8	.200407609	.201502732	.202609890	.203729282
7 1/2	.203804348	.204918033	.206043956	.207182320
7 5/8	.207201087	.208333333	.209478022	.210635359
7 3/4	.210597826	.211748634	.212912088	.214088398
7 7/8	.213994565	.215163934	.216346154	.217541436
8	.217391304	.218579235	.219780220	.220994475
8 1/8	.220788043	.221994536	.223214286	.224447514
8 1/4	.224184783	.225409836	.226648352	.227900552
8 3/8	.227581522	.228825137	.230082418	.231353591
8 1/2	.230978261	.232240437	.233516484	.234806630
8 5/8	.234375000	.235655738	.236950549	.238259669
8 3/4	.237771739	.239071038	.240384615	.241712707
8 7/8	.241168478	.242486339	.243818681	.245165746
9	.244565217	.245901639	.247252747	.248618785
9 1/8	.247961957	.249316940	.250686813	.252071823
9 1/4	.251358696	.252732240	.254120879	.255524862
9 3/8	.254755435	.256147541	.257554945	.258977901
9 1/2	.258152174	.259562842	.260989011	.262430939
9 5/8	.261548913	.262978142	.264423077	.265883978
9 3/4	.264945652	.266393443	.267857143	.269337017
9 7/8	.268342391	.269808743	.271291209	.272790055
10	.271739130	.273224044	.274725275	.276243094
10 1/8	.275135870	.276639344	.278159341	.279696133
10 1/4	.278532609	.280054645	.281593407	.283149171
10 3/8	.281929348	.283469945	.285027473	.286602210
10 1/2	.285326087	.286885246	.288461538	.290055249
10 5/8	.288722826	.290300546	.291895604	.293508287
10 3/4	.292119565	.293715847	.295329670	.296961326
10 7/8	.295516304	.297131148	.298763736	.300414365
11	.298913043	.300546448	.302197802	.303867403
11 1/8	.302309783	.303961749	.305631868	.307320442
11 1/4	.305706522	.307377049	.309065934	.310773481
11 3/8	.309103261	.310792350	.312500000	.314226519
11 1/2	.312500000	.314207650	.315934066	.317679558
11 5/8	.315896739	.317622951	.319368132	.321132597
11 3/4	.319293478	.321038251	.322802198	.324585635
11 7/8	.322690217	.324453552	.326236264	.328038674
12	.326086957	.327868852	.329670330	.331491713

TABLE II - DECIMAL FOR 1 DAY's INTEREST ON $1,000 AT VARIOUS RATES OF INTEREST, PAYABLE ANNUALLY OR ON AN ANNUAL BASIS, IN REGULAR YEARS OF 365 DAYS AND IN LEAP YEARS OF 366 DAYS

RATE PER ANNUM percent)	REGULAR YEAR, 365 DAYS	LEAP YEAR, 366 DAYS
1/8	.003424658	.003415301
1/4	.006849315	.006830601
3/8	.010273973	.010245902
1/2	.013698630	.013661202
5/8	.017123288	.017076503
3/4	.020547945	.020491803
7/8	.023972603	.023907104
1	.027397260	.027322404
1 1/8	.030821918	.030737705
1 1/4	.034246575	.034153005
1 3/8	.037671233	.037568306
1 1/2	.041095890	.040983607
1 5/8	.044520548	.044398907
1 3/4	.047945205	.047814208
1 7/8	.051369863	.051229508
2	.054794521	.054644809
2 1/8	.058219178	.058060109
2 1/4	.061643836	.061475410
2 3/8	.065068493	.064890710
2 1/2	.068493151	.068306011
2 5/8	.071917808	.071721311
2 3/4	.075342466	.075136612
2 7/8	.078767123	.078551913
3	.082191781	.081967213
3 1/8	.085616438	.085382514
3 1/4	.089041096	.088797814
3 3/8	.092465753	.092213115
3 1/2	.095890411	.095628415
3 5/8	.099315068	.099043716
3 3/4	.102739726	.102459016
3 7/8	.106164384	.105874317
4	.109589041	.109289617
4 1/8	.113013699	.112704918
4 1/4	.116438356	.116120219
4 3/8	.119863014	.119535519
4 1/2	.123287671	.122950820
4 5/8	.126712329	.126366120
4 3/4	.130136986	.129781421
4 7/8	.133561644	.133196721
5	.136986301	.136612022
5 1/8	.140410959	.140027322
5 1/4	.143835616	.143442623
5 3/8	.147260274	.146857923
5 1/2	.150684932	.150273224
5 5/8	.154109589	.153688525
5 3/4	.157534247	.157103825
5 7/8	.160958904	.160519126
6	.164383562	.163934426
6 1/8	.167808219	.167349727
6 1/4	.171232877	.170765027
6 3/8	.174657534	.174180328
6 1/2	.178082192	.177595628
6 5/8	.181506849	.181010929
6 3/4	.184931507	.184426230
6 7/8	.188356164	.187841530

RATE PER ANNUM percent)	REGULAR YEAR, 365 DAYS	LEAP YEAR, 366 DAYS
7	.191780822	.191256831
7 1/8	.195205479	.194672131
7 1/4	.198630137	.198087432
7 3/8	.202054795	.201502732
7 1/2	.205479452	.204918033
7 5/8	.208904110	.208333333
7 3/4	.212328767	.211748634
7 7/8	.215753425	.215163934
8	.219178082	.218579235
8 1/8	.222602740	.221994536
8 1/4	.226027397	.225409836
8 3/8	.229452055	.228825137
8 1/2	.232876712	.232240437
8 5/8	.236301370	.235655738
8 3/4	.239726027	.239071038
8 7/8	.243150685	.242486339
9	.246575342	.245901639
9 1/8	.250000000	.249316940
9 1/4	.253424658	.252732240
9 3/8	.256849315	.256147541
9 1/2	.260273973	.259562842
9 5/8	.263698630	.262978142
9 3/4	.267123288	.266393443
9 7/8	.270547945	.269808743
10	.273972603	.273224044
10 1/8	.277397260	.276639344
10 1/4	.280821918	.280054645
10 3/8	.284246575	.283469945
10 1/2	.287671233	.286885246
10 5/8	.291095890	.290300546
10 3/4	.294520548	.293715847
10 7/8	.297945205	.297131148
11	.301369863	.300546448
11 1/8	.304794521	.303961749
11 1/4	.308219178	.307377049
11 3/8	.311643836	.310792350
11 1/2	.315068493	.314207650
11 5/8	.318493151	.317622951
11 3/4	.321917808	.321038251
11 7/8	.325342466	.324453552
12	.328767123	.327868852

[FR Doc. 79-18278 Filed 6-13-79; 8:45 am]
BILLING CODE 4810-40-C

INFORMATION SECURITY OVERSIGHT OFFICE

32 CFR Parts 2000 and 2001

Re-titling of Chapter; Deletion of Obsolete Regulation; Designation of Published Regulations

AGENCY: Information Security Oversight Office.

ACTION: Final rules.

SUMMARY: Executive Order 12065 (43 FR 28949, July 3, 1978) provided for the classification, downgrading, declassification and safeguarding of national security information. The executive order is intended to increase openness in Government by limiting classification and accelerating declassification but at the same time, provide improved protection in the interest of national security. The executive order provides for the Information Security Oversight Office (ISOO) to develop and promulgate directives to implement the Order. This document makes technical and editorial changes to the chapter in which the directives are and will be published.

EFFECTIVE DATE: June 14, 1979.

FOR FURTHER INFORMATION CONTACT: Robert W. Wells, (202) 633-6880.

SUPPLEMENTARY INFORMATION: Information Security Oversight Office administrative procedures will be published at a later time. The regulations published on October 5, 1978 (43 FR 46280) set forth guidelines to agencies on original and derivative classification, downgrading, declassification and safeguarding of national security information.

Title 32 of the Code of Federal Regulations is amended as follows:

CHAPTER XX—INFORMATION SECURITY OVERSIGHT OFFICE

1. The title of Chapter XX is revised by deleting the present heading "Interagency Classification Review Committee" and inserting "Information Security Oversight Office."

PART 2000—ADMINISTRATIVE PROCEDURES [RESERVED]

2. In Chapter XX, "Part 2000—Administrative Procedures" is deleted and reserved.

PART 2001—NATIONAL SECURITY INFORMATION; CLASSIFICATION; DECLASSIFICATION AND DOWNGRADING; SAFE GUARDING; IMPLEMENTATION AND REVIEW; GENERAL PROVISIONS

3. The regulations appearing at 43 FR 46280, October 5, 1978 are designated as "Part 2001—National security information; classification; declassification and downgrading; safeguarding; implementation and review; general provisions."

4. The authority citation for Part 2001 is:

Authority: Sec. 6-204, E.O. 12065, 43 FR 28949, July 3, 1978.

Michael T. Blouin,
Director, Information Security Oversight Office.

June 12, 1979.

[FR Doc. 79-18629 Filed 6-13-79; 8:45 am]
BILLING CODE 6820-97-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 80 and 95

[CGD 79-108]

Pilot Rules for Inland Waters and for Western Rivers; Flashing Yellow Light at the Head of Tows Being Pushed Ahead

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: This document amends the regulations governing the lighting of barges by requiring the use of a flashing yellow light at the head of barges being pushed ahead on Inland Rules waters and by making the Western Rivers Rules requirement for flashing yellow lights more flexible.

EFFECTIVE DATE: This amendment is effective on May 1, 1980, but compliance with it is optional immediately.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Liana, Office of Marine Environment and Systems (G-WLE-4/73), Department of Transportation, Washington, DC 20590, (202) 426-4958.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking on this subject was published on July 18, 1978 (43 FR 30256). Interested persons were given until August 14, 1978 to submit comments.

Drafting Information

The principal persons involved in the drafting of this rule are Chris Liana, Project Manager, Office of Marine Environment and Systems, and Michael Mervin, Project Counsel, Office of the Chief Counsel.

Discussion of Comments

We received six letters of comment in response to the notice of proposed rulemaking. Three of these favored the proposal and three were generally opposed.

One comment suggested that there might be insufficient justification for the new requirement, and questioned whether the 1973 accident cited in the preamble to the notice of proposed rulemaking was the only basis for the proposed rule. The 1973 accident, which caused three deaths, was cited because it was the particular incident prompting the change in the lighting requirements. Other similar accidents, although not frequently involving fatalities, occur regularly. A search of the reported accidents for 1977, for example, revealed at least three such accidents causing personal injury and property damage. In addition, other preventable incidents may not have been reported, especially where damage was minor or in the case of "close calls".

Two commented that the proposed language allowing the horizontal arc of visibility to extend to either on the beam or up to 2 points abaft the beam was not clear. We agree and have reworded that provision to eliminate the confusion.

One commented that the flashing yellow light would not increase safety because pleasure boat operators would steer toward it rather than away from it. We disagree. The danger this requirement attempts to counter is that the tow may not be seen at all. We believe that the flashing yellow light is the most effective way to draw attention to the tow, and that once it is seen, it will be properly identified.

One comment objected to the proposed requirement for a flashing yellow light at the head of barges being towed alongside. We reviewed that part of the proposal and agree that barges being towed alongside do not pose the same hazard (of not being seen) as do barges being pushed ahead, and so we are not requiring the use of a flashing yellow light at the head of barges being towed alongside.

Two commented that a flashing yellow light at the head of a tow could be confused with the intermittent flashing yellow light carried by submarines. We disagree. The flash characteristic for tows (50 to 70 flashes per minute) is sufficiently different from the flash characteristic for submarines (one flash per second for 3 seconds

followed by a 3 second off period) to make mistaken identity very unlikely.

The proposed rule expressed arcs of the horizon in points of the compass. This has been changed to read in degrees in keeping with modern navigation rule practice.

Evaluation

This final rule has been reviewed under the Department of Transportation's "Improving Government Regulations, Regulatory Policies and Procedures" (44 FR 11034, February 26, 1979). A final evaluation of the rule has been prepared, and has been included in the public docket. A copy of this evaluation is available for examination at the Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street SW, Washington, DC 20590.

In consideration of the foregoing, Parts 80 and 95 of Title 33 of the Code of Federal Regulations are amended as follows:

PART 80—PILOT RULES FOR INLAND WATERS

1. In § 80.16, by adding a sentence at the end of paragraph (f) and by revising paragraph (g) to read as follows:

§ 80.16 Lights for barges, canal boats, scows and other nondescript vessels on certain inland waters on the Atlantic and Pacific coasts.

* * * * *

(f) Barges, canal boats or scows must when being propelled by pushing ahead of a steam vessel, display a red light on the port bow and a green light on the starboard bow of the head barge, canal boat or scow, carried at a height sufficiently above the superstructure of the barge, canal boat or scow as to permit said sidelights to be visible; and if there is more than one barge, canal boat or scow abreast, the colored lights must be displayed from the outer side of the outside barges, canal boats or scows. Additionally, a flashing yellow light must be displayed at the forward end of the tow, so placed to be as nearly as practicable on the centerline of the tow.

(g)(1) The colored sidelights referred to in this section shall be fitted with inboard screens so as to prevent them from being seen across the bow, and of such character as to be visible on a dark night, with a clear atmosphere, at a distance of at least 2 miles, and so constructed as to show a uniform and unbroken light over an arc of the horizon of 10 points of the compass, and so fixed as to throw the light from right ahead to 2 points abaft the beam on either side.

(2) The flashing yellow light must—

(i) be visible on a dark night with a clear atmosphere at a distance of at least 2 miles;

(ii) flash 50 to 70 times per minute; and

(iii) be constructed to show a uniform light over an arc of the horizon from right ahead to at least 90 degrees, but no more than 112.5 degrees on each side of the tow.

* * * * *

2. In § 80.16a, by substituting for the word "amber" in paragraph (b) the word "yellow" and by revising paragraph (j) to read as follows:

§ 80.16a Lights for barges, canal boats, scows and other nondescript vessels on certain inland waters on the Gulf Coast and the Gulf Intracoastal Waterway.

* * * * *

(b) When one or more barges, canal boats, scows, or other vessels of nondescript type not otherwise provided for, are being towed by pushing ahead of a steam vessel, or by a combination of pushing ahead or towing alongside of a steam vessel, such tow must be lighted by a flashing yellow light at the extreme forward end of the tow, so placed as to be as nearly as practicable on the centerline of the tow, a green light on the starboard side of the tow, so placed as to mark the maximum projection of the tow to starboard, and a red light on the port side of the tow, so placed as to mark the maximum projection of the tow to port.

* * * * *

(j) The flashing yellow light must—

(1) be visible on a dark night with a clear atmosphere at a distance of at least 2 miles;

(2) flash 50 to 70 times per minute; and

(3) be constructed to show a uniform light over an arc of the horizon from right ahead to at least 90 degrees, but no more than 112.5 degrees on each side of the tow.

* * * * *

PART 95—PILOT RULES FOR WESTERN RIVERS

3. In § 95.29, by substituting for the word "amber" in paragraph (a) the word "yellow" and by revising paragraph (d) to read as follows:

§ 95.29 Lights for barges towed ahead or alongside.

(a) When one or more barges are being towed by pushing ahead of a steam vessel, or by a combination of pushing ahead and towing alongside of a steam vessel, such tow must be lighted by a flashing yellow light at the extreme forward end of the tow, so placed as to be as nearly as practicable on the centerline of the tow, a green light on the starboard side of the tow, so placed to mark the maximum projection of the tow to starboard, and a red light on the port side of the tow, so placed to mark the maximum projection of the tow to port.

* * * * *

(d) The flashing yellow light must—

(1) be visible on a dark night with a clear atmosphere at a distance of at least 2 miles;

(2) flash 50 to 70 times per minute; and

(3) be constructed to show a uniform light over an arc of the horizon from right ahead to at least 90 degrees, but no more than 112.5 degrees on each side of the tow.

* * * * *

(33 U.S.C. 353, 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b))

Dated: June 4, 1979.

R. H. Scarborough,

Vice Admiral, U.S. Coast Guard Acting Commandant.

[FR Doc. 79-18604 Filed 6-13-79; 8:45 am]
BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD 79-075]

Drawbridge Operation Regulations; Lake Washington, WA

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: At the request of the State of Washington Department of Transportation (DOT) the Coast Guard is amending the telephone requests procedure contained in the regulations governing the operation of the pontoon bridge across Lake Washington between Foster Island and Evergreen Point to delete the "Toll Office" as the place to call and insert the "Highway Radio" in its stead. This is due to the closing of the Toll Office as of June 22, 1979. The change from call letters "KOW" to "KOH" for the Seattle Marine Operator Station was also requested by the Washington DOT.

EFFECTIVE DATE: This amendment is effective on June 14, 1979.

FOR FURTHER INFORMATION CONTACT: Frank L. Teuton, Jr., Chief, Drawbridge Regulations Branch (G-WBR/73), Room 7300, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-0942).

SUPPLEMENTARY INFORMATION: Since this action merely brings the regulation into conformity with present circumstances, and does not change the operating procedures for the bridge, the Coast Guard finds good cause under 5 U.S.C. 553(b)(B) for not issuing a general notice of proposed rulemaking. So that the regulatory revision may be concurrent with the change that it reflects, the Coast Guard finds good cause under 5 U.S.C. 553(d)(3) for making it effective in less than 30 days.

Drafting Information

The principal persons involved in drafting this rule are: Frank L. Teuton, Jr., Project Manager, Office of Marine Environment and Systems, and Coleman Sachs, Project Attorney, Office of the Chief Counsel.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

In consideration of the foregoing, Part 117 of Title 33 of the Code of Federal Regulations is amended by revising § 117.801(b)(1) to read as follows:

§ 117.801 Lake Washington, Wash.; pontoon bridge between Foster Island and Evergreen Point, Wash.

* * * * *

(b) * * *

(1) Telephone requests for bridge openings will be directed as collect calls to the Highway Radio. The call may also be made by direct telephone communication, through the Seattle Marine Operator, Station KOH, or through other marine wire or radiotelephone service.

* * * * *

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5).)

Dated: June 8, 1979.

R. H. Scarborough,

Vice Admiral, U.S. Coast Guard Acting Commandant.

[FR Doc. 79-18697 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 5664

[N-058648]

Nevada; Revocation of Public Land Orders No. 3501, No. 3574, and No. 3814

AGENCY: Bureau of Land Management (Interior).

ACTION: Final rule.

SUMMARY: This order revokes three public land orders which withdrew 15,216 acres of land for the proposed Moapa Valley Pumping Project. This action will restore the lands to operation of the public land laws, including the mining laws.

EFFECTIVE DATE: July 13, 1979.

FOR FURTHER INFORMATION CONTACT: Louis B. Bellesi, 202-343-8731.

By virtue of the authority contained in section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Orders No. 3501 of December 2, 1964, No. 3574 of March 26, 1965, and No. 3814 of September 7, 1965, which withdrew the following described lands for use by the Bureau of Reclamation for the proposed Moapa Valley Pumping Project are hereby revoked:

Mount Diablo Meridian

T. 14 S., R. 65 E.
- sec. 13, NE¼, N½NW¼, SE¼NW¼, N½SE¼, SE¼SE¼;
- sec. 15, N½NE¼;
- sec. 16, SW¼;
- sec. 22, SE¼NE¼;
- sec. 24, E½NE¼, SW¼NE¼, SE¼SW¼, SE¼;
- sec. 25, NE¼SE¼;
- sec. 35, W½NW¼;
- sec. 36, Lots 6 and 7.

T. 13 S., R. 66 E.
- sec. 32, S½;
- sec. 33, S½.

T. 14 S., R. 66 E.
- sec. 4, All;
- sec. 5, All;
- sec. 8, E½;
- sec. 9, All;
- sec. 10, W½;
- sec. 15, All;
- sec. 16, All;
- sec. 17, E½;
- sec. 18, Lots 1, 2, 3, 4, and E½W½;
- sec. 19, All;
- sec. 20, N½, N½S½;
- sec. 21, N½, SE¼;
- sec. 22, E½;
- sec. 23, W½NW¼, SW¼, SW¼SE¼;
- sec. 25, SW¼SW¼;
- sec. 26, W½NE¼, N½NW¼, SE¼NW¼, NE¼SW¼, S½SW¼, SE¼;
- sec. 27, S½NW¼, SW¼, S½SE¼;
- sec. 28, N½NE¼, SE¼NE¼;
- sec. 31, Lot 2 and SE¼NW¼, NE¼SW¼, NW¼SE¼, S½SE¼;
- sec. 34, N½, SW¼, W½SE¼;
- sec. 35, N½, NE¼SE¼;
- sec. 36, W½, SW¼SE¼.

T. 15 S., R. 66 E.
- sec. 1, Lot 2 and SW¼NE¼, SE¼NW¼, NW¼SE¼, SE¼SE¼;
- sec. 3, Lots 3, 4, and S½NW¼;
- sec. 4, Lots 1, 2, 3, 4, and S½N½, N½SW¼, SW¼SW¼;
- sec. 5, Lots 1, 2, 3, 4, and S½NE¼, SW¼NW¼, N½SE¼;
- sec. 6, Lots 1 and 7;
- sec. 8, S½NE¼, NW¼NW¼;
- sec. 9, S½NE¼.

T. 15 S., R. 67 E.
- sec. 7, Lot 1 and SE¼NE¼, NE¼SE¼, SW¼SE¼;
- sec. 8, SW¼NW¼, N½SW¼, SE¼SW¼;
- sec. 14, W½;
- sec. 15, NE¼, N½NW¼;
- sec. 16, NE¼SE¼, SW¼SE¼;
- sec. 17, N½NW¼, SW¼NW¼, NW¼SW¼, SE¼SW¼;
- sec. 20, N½NE¼;
- sec. 21, W½E½, N½NW¼;
- sec. 22, E½NE¼;
- sec. 23, SE¼NW¼;
- sec. 26, N½NW¼, SE¼NW¼;
- sec. 26, E½E½;
- sec. 34, SW¼NW¼, W½SW¼;
- sec. 35, NE¼SE¼;
- sec. 36, NW¼SE¼, SE¼SE¼.

T. 16 S., R. 67 E.
- sec. 3, Lot 3 and SW¼NE¼, W½SE¼.

T. 15 S., R. 68 E.
- sec. 31, Lot 4, SE¼SW¼.

T. 16 S., R. 68 E.
- sec. 6, Lots 3, 4, 5, 6, 7, and SE¼NW¼, E½SW¼;
- sec. 7, Lots 1, 2, and E½NW¼.

Containing approximately 15,216 acres in Clark County.

2. At 10 a.m., on July 13, 1979, the lands shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. All valid applications received at or prior to 10 a.m., on July 13, 1979, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m., on July 13, 1979, the lands will be open to location under the United States mining laws. They have been open to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, 300 Booth Street, Reno Nevada 89509.

Guy R. Martin,

Assistant Secretary of the Interior.

June 7, 1979.

[FR Doc. 79-18813 Filed 6-8-79; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5665

[OR-16933]

Oregon; Revocation of Public Land Order No. 2883

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This order revokes a public land order which withdrew 40 acres of

land as a seismological observatory for use by the Department of the Air Force. This action will restore the land to operation of the public land laws, including the mining and mineral leasing laws.

EFFECTIVE DATE: July 13, 1979.

FOR FURTHER INFORMATION CONTACT:
Louis B. Bellesi, 202–343–8731

SUPPLEMENTARY INFORMATION:

By virtue of the authority contained in section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 2883 of January 18, 1963, which withdrew the following described public land for use by the Department of the Air Force as a seismological observatory, is hereby revoked:

Willamette Meridian

T. 8 S., R. 44 E.,
Sec. 28, NE¼NE¼

Containing 40 acres in Baker County.

2. At 10 a.m., on July 13, 1979, the land shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. All valid applications received at or prior to 10 a.m., on July 13, 1979, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m., on July 13, 1979, the land will be open to location under the United States mining laws and to applications and offers under the mineral leasing laws.

Inquires concerning the land should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Guy R. Martin,
Assistant Secretary of the Interior.
June 7, 1979.

[FR Doc. 79-18518 Filed 6-13-79; 8:45 am]
BILLING CODE 4310-84-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 25, 34, 76, 95, 108, 162, 181, and 193

[CGD 77-036]

Wheeled Semiportable Fire Extinguishers

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: This document amends the firefighting and fire protection equipment requirements to allow limited use of wheeled semiportable fire extinguishers on merchant vessels, offshore structures, and mobile offshore drilling units. Previous regulations contained a blanket prohibition against the approval and use of wheeled extinguishers. In certain vessel operations, however, wheeled extinguishers can be used effectively in conjunction with non-wheeled extinguishers to provide increased fire protection capability. On offshore structures, a prohibition against wheeled extinguishers is unnecessary. These amendments also include stowage and installation requirements for wheeled semiportable extinguishers.

EFFECTIVE DATE: These amendments become effective on July 11, 1979.

ADDRESS: The final evaluation for these regulations is available for examination and copying at the Marine Safety Council (G-CMC/81), U.S. Coast Guard, Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590 (202) 426–1477.

FOR FURTHER INFORMATION CONTACT:
Frank K. Thompson, Office of Merchant Marine Safety (G–MMT/83), Room 8213, U.S. Coast Guard, Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590 (202 426–2174).

SUPPLEMENTARY INFORMATION: The Coast Guard published a notice of proposed rule making in the November 9, 1978 issue of the **Federal Register** (43 FR 52201). Interested persons were invited to submit comments on the proposed amendments before December 26, 1978. Only one comment was received in response to the notice and the commenter was in favor of the proposal.

These amendments have been reviewed under the Department of Transportation's "Regulatory Policies and Procedures" (44 FR 11034, February 26, 1979). They have been determined to be non-significant regulations.

The principal persons involved in drafting these rules are: Frank K. Thompson, Office of Merchant Marine Safety; and William R. Register, Office of the Chief Counsel.

In consideration of the foregoing, the proposed amendments published in the November 9, 1978 **Federal Register** are adopted without change as set forth below.

Dated: June 4, 1979.
R.H. Scarborough,
Vice Admiral, U.S. Coast Guard, Acting Commandant.

Chapter I of Title 46, Code of Federal Regualtions is amended as follows:

Subchapter C—Uninspected Vessels

PART 25—REQUIREMENTS

1. In § 25.30–20, by adding new paragraphs (b)(3) and (b)(4) to read as follows:

§ 25.30–20 Fire extinguishing equipment required.

* * * * *

(b) * * *

(3) The frame or support of each Type B-III fire extinguisher required by paragraph (b)(2)(ii) of this section must be welded or otherwise permanently attached to a bulkhead or deck.

(4) If an approved semiportable fire extinguisher has wheels and is not required by this section, it must be securely stowed when not in use to prevent if from rolling out of control under heavy sea conditions.

Subchapter D—Tank Vessels

PART 34—FIRE FIGHTING EQUIPMENT

2. By adding a new § 34.50–20 to read as follows:

§ 34.50–20 Semiportable fire extinguishers—TB/ALL.

(a) The frame or support of each size III, IV, and V fire extinguisher required by Table 34.50–10(a) must be welded or otherwise permanently attached to a bulkhead or deck.

(b) If a size III, IV, or V fire extinguisher has wheels and is not required by Table 34.50–10(a), it must be securely stowed when not in use to prevent it from rolling out of control under heavy sea conditions.

Subchapter H—Passenger Vessels

PART 76—FIRE PROTECTION EQUIPMENT

3. By adding a new § 76.50–20 to read as follows:

§ 76.50–20 Semiportable fire extinguishers.

(a) The frame or support of each size III, IV, and V fire extinguisher required by Table 76.50–10(a) must be welded or otherwise permanently attached to a bulkhead or deck.

(b) If an approved size III, IV, or V fire extinguisher has wheels and is not required by Table 76.50–10(a), it must be

securely stowed when not in use to prevent it from rolling out of control under heavy sea conditions.

Subchapter I—Cargo and Miscellaneous Vessels

PART 95—FIRE PROTECTION EQUIPMENT

4. By adding a new § 95.50–20 to read as follows:

§ 95.50–20 Semiportable fire extinguishers.

(a) The frame or support of each size III, IV, and V fire extinguisher required by Table 95.50–10(a) must be welded or otherwise permanently attached to a bulkhead or deck.

(b) If an approved size III, IV, or V fire extinguisher has wheels and is not required by Table 95.50–10(a), it must be securely stowed when not in use to prevent it from rolling out of control under heavy sea conditions.

Subchapter I–A—Mobile Offshore Drilling Units

PART 108—DESIGN AND EQUIPMENT

5. By adding a new § 108.496 to read as follows:

§ 108.496 Semiportable fire extinguishers.

(a) The frame or support of each size III, IV, and V fire extinguisher required by Table 108.495(a), except a wheeled size V extinguisher provided for a helicopter landing deck, must be welded or otherwise permanently attached to a bulkhead or deck.

(b) If the following semiportable fire extinguishers have wheels, they must be securely stowed when not in use to prevent them from rolling out of control under heavy sea conditions:

(1) Each size V extinguisher required for a helicopter landing deck.

(2) Each size III, IV, and V extinguisher that is not required by Table 108.495(a).

Subchapter Q—Specifications

PART 162—ENGINEERING EQUIPMENT

§ 162.039–3 [Amended]

6. In § 162.039–3, by deleting the words "as a stationary unit" from paragraph (a), and by deleting the words "arranged for stowage in a fixed location (wheeled units not permitted)," from the first sentence of paragraph (b).

Subchapter T—Small Passenger Vessels (Under 100 Gross Tons)

PART 181—FIRE PROTECTION EQUIPMENT

7. By adding a new § 181.30–12 to read as follows:

§ 181.30–12 Semiportable fire extinguishers.

(a) The frame or support of each semiportable fire extinguisher permitted under § 181.30–10(b) in lieu of a portable fire extinguisher required by Table 181.30–01(a) must be welded or otherwise permanently attached to a bulkhead or deck.

(b) If an approved semiportable fire extinguisher has wheels and is not required by Table 181.30–01(a), it must be securely stowed when not in use to prevent it from rolling out of control under heavy sea conditions.

Subchapter U—Oceanographic Vessels

PART 193—FIRE PROTECTION EQUIPMENT

8. By adding a new § 193.50–20 to read as follows:

§ 193.50–20 Semiportable fire extinguishers.

(a) The frame or support of each size III, IV, and V fire extinguisher required by Table 193.50–10(a) must be welded or otherwise permanently attached to a bulkhead or deck.

(b) If an approved size III, IV, or V fire extinguisher has wheels and is not required by Table 193.50–10(a), it must be securely stowed when not in use to prevent it from rolling out of control under heavy sea conditions.

(46 U.S.C. 375, 390b, 416, 481, and 526p; 49 U.S.C. 1655; 49 CFR 1.46.)

[FR Doc. 79-18698 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 74, 78

[Docket No. 21505; RM-2208]

Expanding the Frequencies Available for Use by Cable Television Relay Service Stations and Setting Aside 13.15–13.20 GHz for Usage by Television and Cable Television Relay Service Pickup Stations on a Coequal Basis; Correction

AGENCY: Federal Communications Commission.

ACTION: First Report and Order in Docket No. 21505.

SUMMARY: The FCC is expanding the number of frequencies available for use by stations in the Cable Television Relay Service (CARS) from 12.7–12.95 GHz to 12.7–13.20 GHz. The band 13.15–13.20 GHz is set aside for use by Television and Cable Pickup stations in one hundred metropolitan areas.

EFFECTIVE DATE: July 6, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Melvin Muray, Spectrum Allocation Division, Office of Science and Technology (202) 632–6350.

In the matter of Amendment of Parts 2 and 78 of the Commission's rules and regulations to Expand the Frequencies Available for use by Cable Television Relay Service Stations and, Amendment of Parts 74 and 78 of the Commission's rules and regulations to set aside 13.15–13.20 GHz for usage by Television and Cable Television Relay Service Pickup Stations on a coequal basis and, an inquiry to determine public interest and need to establish similar technical standards for both the Cable Television Relay Service and the Broadcast Auxiliary Service in the 12.7–13.20 GHz band, Docket No. 21505, RM–2208.

Released: June 5, 1979.

In FR Doc. 79–17498 appearing at page 32377 in the issue of Wednesday, June 6, 1979, in the third column on page 32380, paragraph 24 of the Commission's First Report and Order in Docket No. 21505, FCC 79–309, released June 1, 1979, is corrected as follows:

"1. Substitute *Office of Science and Technology* in lieu of *Office of Chief Engineer.*"

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 79-18620 Filed 6-13-79; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 90

[Docket No. 21350]

Private Land Mobile Radio Service; Simplifying Certain Procedures for Filing Applications; Correction

AGENCY: Federal Communications Commission.

ACTION: Erratum.

SUMMARY: The FCC amends its rules to delete paragraph (g) of § 90.494 of its rules to eliminate the requirement for

prior Commission approval for the addition of control points, and to bring this section of the rules into conformity with the Commission's action in Docket 21350, FCC 78-839.

EFFECTIVE DATE: January 22, 1979.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eugene C. Bowler, Private Radio Bureau, Room 5120, (202) 632-6497.

Released: June 8, 1979.

In the matter of amendment of Part 90 of the Commission's rules to simplify certain procedures for filing applications, Docket No. 21350.

In its Report and Order adopted December 7, 1978, and released December 15, 1978, (FCC 78-839), and published at 43 FR 59071, December 19, 1978 and 44 FR 27994, Monday, May 14, 1979, the Appendix is corrected by the deletion of paragraph (g) of § 90.463, of the Commission's rules. The Appendix is corrected to read:

Part 90 is amended as follows:

Section 90.463 is amended by the deletion of paragraph (g) and the substitution of (Reserved)

§ 90.463 Transmitter control points.

(a) * * *

* * * * *

(g) [Reserved]

Federal Communications Commission.

William J. Tricarico,

Secretary.

Note.—Rules changes herein will be covered by T.S.V(78)-1.

[FR Doc. 79-18519 Filed 6-13-79; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 44, No. 118
Thursday, June 14, 1979

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Ch. IX]

[Docket No. AO-362]

Ruby Seedless Grapes Grown in California; Recomended Decision and Opportunity To File Written Exceptions to Proposed Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This recommended decision proposes a marketing agreement and order regulating the handling of Ruby Seedless grapes grown in California. It provides interested persons with the opportunity to file written exceptions concerning the recommendations made in this decision. The proposed order would: Establish a committee of growers for local administration; authorize grade, size, quality, maturity, pack, and container regulations; and allow the committee to engage in production and marketing research and development projects financed by handler assessments. The primary objective is to authorize establishment of minimum quality requirements for Ruby Seedless grapes shipped to market. Consumers would thereby be assured of satisfactory quality and growers would benefit from an expanded market.

DATE: Written exceptions to this recommended decision may be filed by July 16, 1979.

ADDRESSES: Written exceptions should be filed in duplicate with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250. All written submissions will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, Fruit Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, Phone: (202) 447-5975.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing: Issued November 24, 1978, and published in the Federal Register (43 FR 56045) on November 30, 1978.

PRELIMINARY STATEMENT: Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to a proposed marketing agreement and order regulating the handling of Ruby Seedless grapes (also referred to herein as "this variety" and "grapes") grown in California.

This notice of filing of this decision and of opportunity to file exceptions thereto is issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "act", and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The proposed marketing agreement and order, herefinafter referred to collectively as the "order", were formulated on the record of a public hearing held at Reedley, California, February 1–2, 1979. Notice of the hearing was published in the November 30, 1978, issue of the Federal Register. The notice set forth a proposed order submitted by the "Proponents for Ruby Seedless Marketing Order" on behalf of producers and handlers of Ruby Seedless grapes grown in the proposed production area.

Material issues. The material issues presented on the record of the hearing are as follows:

(1) The existence of the right to exercise Federal jurisdiction in this instance;

(2) The need for the proposed regulatory program to effectuate the declared purposes of the act;

(3) The definition of the commodity and the determination of the production area to be covered by the proposed order;

(4) The identity of the persons and the marketing transactions to be regulated; and

(5) The specific terms and provisions of the proposed order including:

(a) The definition of the terms used herein which are necessary and incidental to attain the declared policy and objectives of the act;

(b) The establishment, maintenance, composition, procedures, powers, duties, and operation of a committee which shall be the local administrative agency for assisting the Secretary in the administration of the proposed order;

(c) The authority to incure expenses and the procedure to levy assessments on handlers to obtain revenue for paying such expenses;

(d) The authority to establish production and marketing research and market development projects;

(e) The method of regulating the handling of Ruby Seedless grapes grown in the production area;

(f) The authority for inspection and certification of shipments of regulated grapes;

(g) The establishment of requirements for handler reporting and recordkeeping;

(h) The requirement of compliance with all provisions of the proposed order and with regulations issued under it; and

(i) Additional terms and conditions as set forth in § .62 through § .71 of the Notice of Hearing published in the Federal Register of November 30, 1978 (43 FR 56045) which are common to all marketing agreements and marketing orders, and certain other terms as set forth in § .72 through § .74 which are common to marketing agreements only.

Findings and conclusions. The following findings and conclusions on the material issues are based on the record of the hearing:

(1) Ruby Seedless grapes are grown commercially in five counties in the San Joaquin Valley in California. Principal areas of production are Fresno and Tulare counties. The primary outlets for this variety are the fresh table grape markets within the State of California, in other States, and export. This variety is not ordinarily grown for drying into raisins or for sale to wineries, though some minor quantities may be disposed of in these outlets. Small quantities of this variety are also canned or frozen, though the market for frozen grapes appears to be still in the early stages of development.

Harvesting of the grapes begins in the early part of August. Since all grapes do not mature at the same time, the vineyards are usually picked three times. The first picking accounts for

about 25 percent of the production of a given vineyard; the second picking for about 60 percent; and the final picking for the remainder.

Current packing practices in the Ruby Seedless grape industry make it impracticable to separate the grapes on the basis of the intended market; i.e., intrastate, interstate, or export. The grapes may be harvested and packed at the vineyard or they may be harvested and transported to a central location for packing. Subsequent to packing, the grapes are precooled. Immediately thereafter they may be shipped or they may be placed in cold storage for later shipment. Some of the grapes may be held in storage for as long as six months. Generally, a handler does not know the destination of the grapes at the time they are packed.

Ruby Seedless grapes are marketed in the major market areas in the United States. In addition, they are shipped to such countries as England, Canada, New Zealand, and to Hong Kong, Singapore, and the Caribbean Islands. The record indicates that the movement of grapes in the channels of commerce is so intermingled as to make it impracticable to differentiate between those shipped only to destinations within the production area and those shipped in interstate and foreign commerce. Any handling of Ruby Seedless grapes for the fresh market exerts an influence on all other handling of such grapes. Sellers of Ruby Seedless grapes, as with any other commodity, seek to conduct their business so as to secure the best return for the grapes they have for sale. The seller continually surveys the available markets in order to take advantage of the best possible opportunity to market grapes. Markets within the State of California provide opportunities to dispose of grapes the same as do markets in other States, or for export; and the sale of a quantity of grapes in a market within California exerts an influence on sales of such grapes in a market in any other State. If shipments of grapes to markets outside California were regulated while those within the State were unregulated, growers and handlers would likely attempt to market within the State all the lower quality grapes which could not be shipped under regulation. This would depress the price of Ruby Seedless grapes in California markets to a level below that prevailing in markets outside the State. The existence of a lower price level for grapes marketed within California would tend to depress the price for such grapes sold in interstate markets. Buyers generally have ready access to market information and knowledge of prices in one market is used in bargaining for the same commodity to be shipped into other markets, including markets outside California. Some grapes are initially shipped to larger markets, such as Los Angeles, and later reshipped from there to markets located outside California. Thus, it is concluded that the shipment and sale of Ruby Seedless grapes, whether to a market within the State of California or outside thereof, affect the price of all such grapes grown in the production area. Therefore, it is found that the handling of this variety of grapes grown in the production area is either in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce. Hence, except as hereinafter otherwise provided, all handling of Ruby Seedless grapes grown in the production area should be subject to the authority of the act and the order.

(2) Ruby Seedless grapes were first produced on a commercial basis in 1968. Currently there are about 1,000 acres planted. All of this acreage is not in full production, however, it is expected that it will be within the next two years. During the hearing, it was indicated that 500 to 600 acres of new Rudy Seedless grape vineyards would be planted in early 1979. The records indicates that there is sufficient rootstock available to plant an additional 5,000 acres; thus, the potential exists to increase the acreage of this variety at a rapid rate.

This grape has a number of characteristics that make it desirable as a fresh market table grape. It is seedless, and has the red color of the Emperor, a fresh market seeded variety. The absence of seeds is a desirable quality in grapes for fresh market. The berries are firm, and have good storage quality. The vines are vigorous and more productive than the Emperor variety. Ruby Seedless grapes can be harvested over a relatively longer period than other varieties of table grapes. However, this variety may produce fruit which fails to have desirable fresh market quality attributes unless proper cultural and packing practices are followed. In recent marketing efforts, growers and handlers found that shipment of grapes manifesting desirable berry and bunch sizes, color and types of pack could be marketed most advantageously. As greater numbers of growers and handlers become involved in producing and marketing the Rudy Seedless variety, quality control on a voluntary basis would be extremely difficult if not impossible.

It is particularly important in view of the prospective increase in production which will have to be absorbed by the market, that demand not be adversely affected by the marketing of poor quality grapes. The use of authority to establish quality requirements could be used to assure consumers that the grapes offered in the market place are of satisfactory quality. In the absence of such regulation, grapes of low quality, lacking in flavor, small in size, and off-color could be marketed. Marketing of such grapes would tend to destroy the reputation of the variety with consumers and with wholesalers, retailers, and others at all levels in the marketing channel. Shipment of unsatisfactory grapes tends to depress prices, demoralize the market, and reduce grower returns. The establishment of regulations with respect to grade, quality, size, and maturity such as are contemplated under the order would provide a method whereby orderly marketing could be promoted. Also authority to establish minimum standards of quality or maturity, or both, as permitted by the act, during any period when prices are above the parity level could promote orderly marketing in the public interest. All such actions would tend to effectuate the declared policy of the act.

The containers used in the shipment of Rudy Seedless grapes are mainly those which have been developed for the shipment of other varieties of table grapes. Concern was expressed that, in the absence of authority to regulate containers, containers closely resembling the standard containers could be used. A multiplicity of containers with different dimensions and capacities could result in buyer confusion and in a loss of trade confidence. Regulation of the size, capacity, dimensions, markings, and pack of containers used in the marketing of Rudy Seedless grapes could provide a means of enabling buyers and handlers alike to know the quantity of grapes covered by prices quoted, thereby tending to increase trade confidence and stability in the marketing of the fruit. The order should include authority to regulate markings on containers. The record indicates that such regulation could be used to assure that containers are properly marked as to weight of contents and the name of the variety. Weight is an important consideration in the sale of grapes. The requirement for marking the variety name on the containers would discourage improper identification of any container of Ruby Seedless grapes as a possible means of circumventing order requirements. It is not intended that any such regulation be used to exercise any control over proprietary brand labels, or the content

or design of any such labels. Furthermore, container regulations are not intended to discourage experimental use, under research authority, of new containers of superior design, construction, or material. The order provides for such contingency in § .45.

The proposed order would not prevent any person from planting the Rudy Seedless variety or from increasing existing acreage. Similarly, the order would not prevent any person from becoming a handler of the fruit.

The hearing record includes information on production and packing costs for Ruby Seedless grapes illustrating the substantial investment involved in vineyard establishment and in producing and marketing these grapes. In addition to the establishment of the vineyard, production demands sizable annual outlays for pruning, thinning, disease and pest control, and soil and water management. Hence, growers and handlers have a substantial interest in the establishment and maintenance of stable markets.

Exercise of the authority to regulate the quality of shipments and to establish uniform containers for such shipments could assure that unsatisfactory, low quality fruit would not undermine the market; this should encourage production of this variety of grape. Consumers would benefit by having an additional seedless table grape of uniform quality in the marketplace which, due to its storage qualities, would be available to them over a longer portion of the year.

In view of the foregoing, it is concluded that the proposed order could be used to establish orderly marketing conditions for Ruby Seedless grapes which, consistent with the declared policy of the act, would be in the public interest.

(3) The term "grapes" should be defined in the order to identify the commodity to be regulated. The term, as used in the order, means Rudy Seedless grapes. This variety of grape was originally developed at the University of California at Davis, California, in 1939. The commercial introduction and application of the name Ruby Seedless occurred in 1968. The grape is seedless with a distinctive red color, and is easily distinguished from other varieties of grapes. A representative of the Federal-State Inspection Service testified that the characteristics of Ruby Seedless grapes are different from those of any other variety of grape and there is no problem in identifying this variety.

The term "production area" should be defined in the order to mean the State of California. The evidence of record indicates that Ruby Seedless grapes are now produced in five California counties, but that they could be grown throughout most of the State. Other varieties of table grapes are grown in at least 26 of California's 57 counties and when wine and raisin variety grapes are included, grapes are grown in at least 42 of the 57 counties. In the future Ruby Seedless grapes may be grown in any of the areas suitable for production of grapes. Moreover, grapes are transported freely from one area to another and could be packed and handled at a location remote from that in which they were produced. Consequently, the production area should encompass the entire State. Therefore, it is concluded that the State of California is the smallest regional production area that is practicable consistently with carrying out the declared policy of the act.

(4) The term "handler" is synonymous with "shipper" and should be defined, as hereinafter set forth in the order, to identify the persons who would be subject to regulation under the program. Such term should apply to any person, except a common or contract carrier transporting grapes owned by another person, who performs any of the activities within the scope of the term as hereinafter defined. It should also apply to any person who causes such activities to be performed. Thus, any person who is responsible for the sale, consignment, delivery, transportation, or in any other way places Ruby Seedless grapes in the current of commerce should be a handler under the proposed order.

The term "handle" is defined in the proposed order to identify specific marketing functions which place Ruby Seedless grapes in the current of commerce within the production area or from within the production area to any point outside such area.

Specifically, the term should be defined as follows: "Handle" and "ship" are synonymous and mean to sell, consign, deliver, or transport grapes or cause grapes to be sold, consigned, delivered, or transported in the current of commerce between any point within the production area and any point outside thereof, or within the production area: *Provided*, That the term handle shall not include the sale of grapes on the vine, or the transportation or delivery of grapes from the vineyard where grown to a packing facility located within such area for preparation for market.

Principally, three methods are employed in packing grapes. Grapes may be "field packed" directly from the vine into the container (a lug holding approximately 23 pounds) which is secured to the top of a portable pack stand and carried through the vineyard from vine to vine by the harvest worker. The worker selects and harvests mature grapes from the vine, trims each bunch with a scissors type of shear to remove immature and defective berries, and places the bunches directly into the lug, or in some instances first places the bunches into plastic bags each of which hold about two pounds, and then places the bags (11 to 12) into the lug. To complete the packing process, a "paper curtain" is placed over the grapes and a wooden slatted lid is placed on the lug. Field packed fruit is delivered to a cooling or cold storage facility where it is precooled or stored until shipped.

Another method of packing grapes utilizes a portable packing shed, moveable from site to site, consisting of an arrangement of scales and roller conveyors built on wheels. In the vineyard grapes are harvested and placed in "pick boxes". Packers at the packing shed remove the grapes from these boxes, trim them to remove undesirable berries and place them into the 23 pound lug shipping containers. Thus, the packing crew is in one location which is an advantage from the standpoint of supervision. This method also enables the salvage of cull fruit which may have economic value. A disadvantage is the expense of the extra labor involved in placing the fruit into and removing it from the pick boxes. After packing at the portable packing shed, the grapes are shipped to market or to cold storage facilities for precooling or holding for shipment.

The third packing method involves the use of a central packinghouse, a permanent installation. Grapes are harvested and placed stem up into pick boxes which contain 20 to 40 pounds, then moved by truck to the packinghouse. There, packers are located at individual stations equipped with a pack stand, scales, and packing supplies such as lug boxes, bags, and curtains. Each packer packs from a pick box, removing the bunches, trimming each to remove undesirable berries, and placing the bunches into 23 pound lugs. The lugs then move down a conveyor for lidding. After lidding, the lug is ready for shipment to market, or to cold storage facilities for cooling or holding.

Basically the foregoing describes the manner in which grapes are prepared for market. It is during these stages of preparation that grapes can be most conveniently graded, sized, and otherwise packed to meet any requirements of the order. It is therefore

concluded that grapes should meet any such requirements before being handled as the term "handle" is herein defined. However, it would be impractical to require grapes to meet regulatory requirements prior to the time they have been prepared for market. Hence, the activities and the movement which are necessary to facilitate such preparation should be exempt from the definition. Thus, the sale of grapes on the vine, and the transportation or delivery from the vineyard where the grapes are grown to a packing facility located within the production area for preparation for market should be excluded from the term.

The record indicates that grapes often are precooled or stored in cold storages prior to being placed in marketing channels. Hence, precooling and storage, if performed, should be considered as being a part of preparation for market of the grapes involved.

Although the record indicates that prior to being placed in the channels of commerce most grapes are prepared for market as heretofore described, some grapes may be shipped directly to market from the vineyard by the producer. In the event a producer transports grapes from the vineyard directly to the market, he would be placing the grapes in the current of commerce. In such instances, it is incumbent upon the producer to see that the grapes comply with all applicable requirements prior to such handling. Persons who purchase grapes on the vine and have them harvested and place them in maket channels likewise are performing the handling function and are responsible for compliance with all order requirements.

It was indicated that in many instances grapes are sold through commission merchants. In such cases, the commission merchants should make certain that the grapes meet the requirements of the order prior to their movement into marketing channels. However, the fact that the person with the proprietary interest in the grapes employs a commission merchant to sell such grapes would not absolve such person of responsibility for seeing to it that the grapes meet applicable requirements as the commission merchant may only be acting as agent of the person who holds proprietary interest. Persons with the proprietary interest in the grapes under whose direction preparation for market takes place normally are in the best position to assure that packed grapes meet any regulatory requirements prescribed under an order. Shipment of grapes which have by-passed any stage of normal preparation should nonetheless be required to comply with requirements of the order. Persons who ship an grapes which do not meet regulatory requirements should be accountable for the violation. It is necessary that persons who sell, consign, deliver, or transport or who cause grapes to be sold, consigned, delivered, or transported in the channels of commerce be responsible for compliance with order requirements to assure its effectiveness.

(5)(a) Certain terms and provisions of the proposed order should be defined and explained for the purpose of designating specifically their applicability and limitations whenever they are used.

"Secretary" should be defined to mean not only the Secretary of Agriculture of the United States, the official charged by law with the responsibility for programs of this nature, but also, to recognize the fact that it is physically impossible for the Secretary to perform personally all functions and duties imposed upon him by law, any other officer or employee of the United States Department of Agriculture who is, or who may hereafter be, authorized to act for the Secretary.

"Act" should be defined to provide the correct legal citation for the Agricultural Marketing Agreement Act of 1937, as amended. This is the statute under which the proposed regulatory program is to be operative and avoids the need for referring to the citation throughout the order.

The definition of "person" should follow the definition of that term as set forth in the act. This will insure that the term will have the same meaning in the order as it has in the act.

"Producer" is synonymous with "grower" and should be defined to mean any person engaged in a proprietary capacity in the production of Ruby Seedless grapes for market. This definition is necessary for such purposes as determining eligibility of persons to vote for, and to serve as, members or alternate members of the Ruby Seedless Grape Committee, and to identify those eligible to vote in any referendum.

The term "fiscal year" should be synonymous with "crop year" and should be defined to mean the period with respect to which financial records of the Ruby Seedless Grape Committee—the agency which would administer the program locally—are to be maintained. The period should fix the beginning of each fiscal year at such time as would afford the committee time to plan and recommend any needed regulations for a crop year and encompass a period during which all of the production of any given season is likely to be handled. Furthermore, the period should allow sufficient time prior to harvest each year for the committee to organize and develop information necessary to its functioning during the fiscal year. The evidence of record indicates that at present such fiscal year should be the 12 month period beginning April 1 of a year and ending March 31 of the following year. However, it may develop that for reasons not now apparent, it would be desirable to establish a fiscal year other than the one beginning April 1. Therefore, authority should be included in the order to provide that the committee may prescribe a different fiscal period, subject to the approval of the Secretary. It should be recognized that if at some future dates there is a change in the fiscal year, such change could result in a transition year being more or less than 12 months. Also, since the order, if issued, will be issued after April 1, 1979, and the initial fiscal year would end on March 31, 1980, the initial fiscal year will be less than a full 12 month period.

The term "committee" should be defined to identify the administrative agency—the Ruby Seedless Grape Committee—established under the provisions of the order. Such a committee is authorized by the act, and the definition thereof, as hereinafter set forth, is merely to avoid the necessity of repeating the full name each time it is used.

"District" should be defined in the order to mean the State of California. Such a definition forms a basis for nomination and selection of committee members. At present, the production of Ruby Seedless grapes is located in a relatively compact area in five counties in the central Joaquin Valley in California, with most of that production coming from two counties. However, this variety of grape eventually may be produced over a much wider area within the State. In such event, the order should provide for redistricting the production area into a number of smaller districts if this is deemed necessary to achieve proper and equitable representation among producers.

The term "pack" should be defined in the order to mean the placement of grapes into containers for shipment as fresh grapes, or the specific arrangement of grapes within a particular type and size of container by size of grape, weight, grade, or any combination thereof, for shipment as fresh grapes. A

definition of pack is needed in conjunction with proposed authority to facilitate description of regulations and to assist inspection and certification.

"Container" should be defined in the order as follows: "Container means any box, lug, crate, carton, or any other receptacle used in the packing of grapes for shipment as fresh grapes, and includes the dimensions, capacity, weight, markings, and any pads, liners, lids, and any or all appurtenances thereto or parts thereof. The term also applies, in the case of grapes packed in consumer packages, to the master receptacle and to any and all packages therein". A definition of this term is needed to serve as a basis for differentiation among the various shipping receptacles in which grapes are shipped to the fresh market. The evidence of record indicates that the committee will likely adopt those container regulations currently effective under California law. However, the order should provide for establishment of different regulations applicable to containers or packages within a container as recommended by the committee and approved by the Secretary if it is found that any such regulations would tend to effectuate the declared policy of the act.

"Part" and "subpart" should be defined in the order to make clear the meaning of such terms whenever they are used throughout the order. Consistent with the Code of Federal Regulations, "part" should mean collectively the order regulating Ruby Seedless grapes grown in California and all rules and regulations issued thereunder. Likewise, the recommended order and the various subdivisions of the rules and regulations would each be referred to as subparts of the part.

(b) It is desirable to establish an agency to administer the order locally as an aid to the Secretary in carrying out the purposes of the order and of the act. A committee consisting of nine members would be appropriate and the term "Ruby Seedless Grape Committee" would be a proper identification of the agency and reflect its character. The committee should be composed of eight producer members and one public member, with an alternate for each member. At present, the Ruby Seedless grape industry is located in a relatively compact area. Some of the growers are also handlers of grapes. Under provisions of the proposed order, a grower who performs handler functions does not lose the grower status. Hence, the record indicates it is unnecessary to provide for handlers as such on the committee. It was testified without opposition that changes in the industry may make it desirable to enlarge the committee at some future time and the order should provide for this. It is therefore concluded that authority should be included whereby the Secretary could, upon recommendation of the committee, change the number of producer member positions on the committee. In the event any such change is made, the order should allow appropriate changes in the quorum requirements contained in § 22.

In addition to the eight grower members on the committee, there should be an individual to serve as a public member. A public member could bring the viewpoint of the general public into committee deliberations. This could be particularly valuable in helping the committee to plan, implement, and evaluate marketing objectives. In addition, a public member could act as an intermediary and improve the understanding of the grape industry by the general public. The public member would thus serve an important purpose beneficial to the industry and the general public. Hence, the authority to change the number of committee members is not to be used to abolish the position of public member. It was testified by the proponent group that should the Ruby Seedless grape industry increase as anticipated, there are likely to be handlers of grapes who are not growers. It was advanced that it might be appropriate to provide that through rulemaking procedures the committee could be restructured to include such persons. However, no basis for qualificiations, nominating procedure and allocation of handler membership is provided in the record. It is therefore concluded that if in the future a need for such restructuring is manifest, this need would be more appropriately dealt with by an amendatory proceeding. Thus, authority to restructure the committee to include handler members is not included in the recommended order.

It is appropriate to specify in the order a term of office for members (and alternates) of the committee. The record indicates that a desirable term would be two fiscal years beginning April 1 of an odd numbered year and ending on the second succeeding March 31. In the event that the recommended order becomes effective, the term of office of the initial committee members should commence on the date such members are selected by the Secretary and end March 31, 1981.

So that there will be a committee at all times, members and alternates, after selection and qualification should continue to serve until their respective successors are selected and have qualified and the order should so provide. A term of office beginning April 1 would begin sufficiently in advance of the time when grape harvesting begins (about four months) to permit the committee to meet and organize; consider the prospective crop and marketing situation; develop an appropriate marketing policy; and consider the need for any administrative changes.

Each person selected to serve on the committee as a producer member should be an individual who is a producer, or an officer or employee of a corporate producer or other type of business unit engaged in the production of grapes. The public member should be a resident of the production area and should not be engaged in or have a financial interest in the production, processing, financing, or marketing (except as a consumer) of Ruby Seedless, or any other variety of grapes.

The order should provide for submission of the names of nominees for initial members of the Ruby Seedless Grape Committee by the group responsible for initiating the request for the order. This group was the "Proponents for Ruby Seedless Marketing Order." The record indicates that this group intends to secure such names by conducting nomination meetings among all known Ruby Seedless grape producers. Any nominations resulting from such meeting should be filed with the Secretary no later than the effective date of the order, should the order be promulgated. In the event no such nominations are made, the Secretary should be authorized to select the initial committee members from among qualified persons. A meeting for the purpose of nominating successors for poroducer members of the committee should be held, or caused to be held, by the committee not later than February 15 of each odd numbered year. Such meeting should be held at such time and place as will result in maximum grower participation. If the production area is divided into districts at some future date, the committee should consider whether or not meetings should be held in each district and act accordingly. The order should provide that only growers, including duly authorized representatives of growers, who are present at nomination meetings may participate in nominations. Each grower should be entitled to cast one vote for each nominee regardless of the number of business units in which that grower may be involved. A grower, including officers, or employees of such a grower, should be eligible to fill only

one position on the committee. The order should provide that the committee may appoint a subcommittee to locate prospective nominees for the public member and alternate member positions for consideration by the committee. While the subcommittee should function to identify possible candidates for the public member position, the committee should make the final nominations.

The order should provide that the members of the committee shall be selected by the Secretary from those nominated or from among other qualified persons. It should also provide that in the event nominations are not made within the time and in the manner hereinafter specified, the Secretary may select members and alternates without regard to nominations. Such selection should, of course, be from qualified persons as provided in the order.

The order should require that any person selected by the Secretary as a member or alternate shall qualify by promptly filing a written acceptance after being notified of selection.

The order should provide a method of filling any vacancies on the committee, including selection by the Secretary if nominations to fill any vacancies are not made as hereinafter provided. There may be vacancies caused by the death, removal, resignation, or disqualification of a member or alternate. It is important to maintain full membership on the committee, thus the order should require the committee to nominate a person to fill a vacancy on the committee within a reasonable time after such vacancy occurs. In the event the committee should fail to so nominate, the order should authorize the Secretary to fill such vacancy without regard to nominations.

The order should provide that an alternate member shall be selected for each member of the committee. Each alternate selected should have the same qualifications for membership as the member. There could be occasions when a committee member is unable to attend a meeting or meetings. Provisions for alternates would help assure a quorum at meetings, and thus permit the committee to conduct business when members are absent. Moreover, in the event of death, removal, resignation, or disqualification of a member, the alternate should act until a new member is nominated and selected. The order should provide that, in the event a producer member and that member's alternate are both unable to attend a committee meeting, such member or the committee members present at the meeting should be permitted to designate any other producer alternate to serve in such member's place in the event such action may be necessary to secure the required quorum.

The chairman of the committee, or the committee should be authorized under the order to request attendance at meetings by any alternate without regard to the expected or actual attendance of the member. Likewise, the chairman or committee should be authorized to request any alternate to perform other necessary duties in conjunction with the order.

The committee should be given those specific powers which are set forth in Section 8c(7)(C) of the act. Such powers are necessary to enable an administrative agency of this character to function.

The committee's duties, as set forth in the recommended order, are necessary for the discharge of its responsibilities. These duties are generally similar to those specified for administrative agencies under other programs of this character. It should be recognized that these specified duties are not necessarily all-inclusive, and it may develop that there are other appropriate duties the committee may need to perform.

The order should provide that at least six members of the committee or alternates acting for members, are necessary to constitute a quorum and any action by the committee shall require the concurring vote of a majority of the members present. However, any committee actions relative to expenses and assessments or recomendations for regulations pursuant to §§ .50 through .55 should require at least six concurring votes. This requirement would insure that actions pertaining to committee expenses and regulations have substantial industry support. The record indicates there may be occasions where action should be taken but such action does not warrant the expense of an assembled meeting and the inconvenience to committee members of the travel involved. In such cases, it would be appropriate to authorize the committee to vote by telephone, telegraph, or by other means of communication. To enable this, the order should authorize such voting. However, actions so taken should require at least eight votes of which not less than six shall be affirmative. Any action relative to regulations pursuant to §§ .50 through .55 or assessments pursuant to § .41 should be taken at assembled meetings.

The order should provide that members of the committee, and alternates when acting as members, shall be reimbursed for out-of-pocket reasonable expenses incurred in performing committee business. It would be unfair to expect members to personally cover such expenses incurred on behalf of the industry. Primarily, most expenses would be incurred in attending committee meetings; however, there may be instances when a member or alternate would be assigned specific duties by the committee, and incur expenses in performance of such duties. In any such case, the member or alternate should be reimbursed for any reasonable expenses involved in performing such duties.

The order should include a provision whereby the committee may prepare and submit to the Secretary an annual report as soon as practicable after the end of each crop year. Any such report should be made available to any grower, handler, or any other person who requests a copy. The report should review the administrative, financial, regulatory and research activities of the committee. It should also include information on shipments, prices, available marketing information, and any other appropriate information that is available.

(c) The committee should be authorized under the order to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each fiscal year. Such a provision is necessary to assure the maintenance and functioning of the committee and should include the funding of any committee activities as the Secretary may determine to be appropriate. Necessary expenses include such items as salaries for administrative employees, travel expenses, rent, utilities, equipment and supplies. These are expenses ordinarily associated with the operation of a business entity and are likely to be incurred in the operation and functioning of the committee. The comittee should be required to prepare a budget showing estimates of income and expenditures necessary for the administration of the order during a fiscal year. Such budget, including an analysis of its components, should be submitted to the Secretary for approval prior to or near the beginning of each fiscal year. Any such budget should also include a recommendation to the Secretary of a rate of assessment designed to secure the income required for such fiscal year. The order should provide for assessment of handlers for maintenance and functioning of the committee throughout the period the order is in effect irrespective of whether particular provisions thereof are suspended or are inoperative. The act

authorizes the Secretary to approve the incurring of expenses by the administrative agency established under an order and requires the order to contain provisions requiring handlers to pay their pro rata shares of such expenses.

The rate of assessment should be established by the Secretary on the basis of the committee's recommendation, and other available information. In the event that an assessment rate is established which does not generate sufficient income to pay the approved expenses, the Secretary should be authorized to increase such assessment rate in order to secure sufficient funds. Any such increase should be applicable to all grapes handled during the applicable fiscal year.

While the order should require each handler to pay to the committee a pro rata share of the expenses as the Secretary finds are reasonable and likely to be incurred by the committee during each fiscal year, provision should be made for financing previous to the time assessment income is available from assessments to defray expenses. Since the recommended fiscal year begins on April 1 and any assessment revenue would not be received by the committee until after grapes are handled (mid-August), the committee should be authorized to accept advance payment of assessments or to borrow money to pay expenses due before assessment income is received. In addition, the committee should be authorized to carry over any excess assessment funds, with the approval of the Secretary, into subsequent fiscal years, as a reserve. If excess assessment funds collected from handlers during a fiscal year are not carried over as a reserve, handlers should be entitled to a proportionate refund of any such excess funds. Such refund may be made by direct payment to a handler or by crediting such amount against such handler's assessment in the subsequent fiscal year. However, the order should provide that any such refund can be applied to offset any outstanding obligation due the committee from such handler. Funds carried in such reserve should not be allowed to exceed approximately one fiscal year's expense. Such funds should be available for all approved expenses during any fiscal year including those falling due prior to the time assessment income from that year is available; to cover any deficit in a fiscal year when assessment income is less than expenses; to defray expenses during any period when any or all of the provisions of the order may be suspended or are inoperative; and to cover necessary liquidation expenses in the event the order is terminated. Upon termination of the order, handlers would be entitled to a refund of their equities. However, should the order be terminated after many years of operation, it may be difficult to determine handler equities with precision. Therefore, the order should provide that in such event, the funds may be disposed of in such manner as the Secretary determines to be appropriate, but to the extent practicable any such funds shall be returned pro rata to the handlers from whom such funds were collected.

The order should provide authority to permit the committee, with the approval of the Secretary, to levy a late payment charge or interest, or both, on assessments that are not paid by the time specified by the committee. Nonpayment of assessments can have an adverse effect on the operation of the committee and may require it to borrow money and pay interest to continue operation. It is not fair for one handler to pay assessments on time while another does not. Delinquent accounts are costly to collect and time consuming and should be avoided if at all possible. By paying the obligation when due, handlers would not be subject to either the late payment charge or interest. The record indicates that any late payment charge and/or interest rate applicable to delinquent assessments should be established by issuance of appropriate rules and regulations recommended by the committee and approved by the Secretary.

All funds received by the committee under the order should be used solely for the purposes of the order. The Secretary should be authorized to require the committee, at any time, to account for all receipts and disbursements. Also, when any person ceases to be a member or alternate of the committee, such person should be required to account for all funds, property and other assets for which such person is responsible and to deliver to the committee any such funds, property, and assets. Such person should execute appropriate assignments and other instruments as may be appropriate to vest in the committee the right to all such funds and property and all claims vested in such person.

(d) The order should provide authority, as hereinafter set forth, for the establishment of production research and marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of Ruby Seedless grapes. This authority is intended to permit research into propagation and cultural practices as well as marketing and distribution. It does not authorize any form of paid advertising because such advertising for Ruby Seedless grapes is not authorized by the act. Since the Ruby Seedless grape is a relatively new variety of grape and its production is expected to increase rapidly in the immediate future, research relative to pruning, fertilization, cultivation and pest control would be appropriate areas for research. With respect to research on marketing and distribution of such grapes, container and other packaging research should be included.

The foregoing are merely examples of the kinds of research that the committee may wish to undertake. They are not intended to be all inclusive. It is not possible to anticipate all the problems that may arise which may require research. Hence, it is desirable for the order to contain all the authority of the act so the committee may engage in any research projects relative to production and marketing designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of Ruby Seedless grapes.

The Committee should be empowered to engage in or contract for such projects, to spend funds for such purposes and to consult and cooperate with other agencies in the conduct of research projects. Approval by the Secretary would be required prior to engaging in any research project.

A representative of the California Table Grape Commission testified in opposition to inclusion in the proposed order of authorization for the committee to engage in marketing research and development projects. The Commission conducts advertising and research under the authority of the California Agricultural Code. The funds for such projects are obtained through assessments levied on grape producers. Under section 65501 of this code, if (a marketing agreement or) a marketing order under the jurisdiction of the United States Department of Agriculture contains provisions substantially similar to those in the California code, the code is inapplicable to any producer, shipper, or other person covered under the Federal marketing agreement or order.

Section 608c(6)(I) of the Agricultural Marketing Agreement Act of 1937, as amended, provides, in part, that inclusion in a Federal marketing order of provisions for research and marketing promotion shall not be deemed to preclude, preempt, or supersede any

such provisions in any State program covering the same commodity.

The evidence of record indicates that the proponent group have no objection to payment of assessments to the California Table Grape Commission. It was suggested at the hearing that the California Table Grape Commission and the Ruby Seedless grape industry could effect a memorandum of understanding to assure the Commission that the Federal order was not intended to preempt the provisions relative to production and market research and promotion. Since as heretofore noted, the wording of the act relative to this subject clearly indicates there is no preemption, any agreement between the Commission and the Ruby Seedless grape industry would be outside the authority and scope of the marketing order.

(e) The declared policy of the act is to establish and maintain such orderly marketing conditions for Ruby Seedless grapes, among other commodities, as will tend to establish parity prices to growers and be in the public interest. The regulation of the handling of Ruby Seedless grapes, as proposed to be authorized in the order, would provide a means for carrying out such policy.

To facilitate the operation of the program each year the committee should submit a marketing policy report to the Secretary. The report should be for the ensuing season and should be submitted by the committee prior to making any recommendations relative to regulations for such season. In developing its marketing policy, the committee should give consideration to factors which affect the production and marketing of Ruby Seedless grapes. Any such policy should be announced prior to the beginning of the harvesting period. The reason for such timely announcement is so growers and handlers will be apprised of the grade, maturity, color, size, pack, or container regulations that are likely to be in effect for the upcoming season and can plan accordingly.

The factors set forth in the recommended order which the committee should consider in developing its marketing policy are those that are appropriate and necessary for a proper evaluation of the overall supply and market outlook.

In considering its marketing policy, the committee needs to know the expected quantity and quality of the forthcoming crop. The committee should also have similar information about other varieties of table grapes. At present, almost all of the Ruby Seedless grapes produced are sold in the fresh market. However, in the future, quantities of these grapes may be sold for freezing or canning, dried into raisins, or sold to the wineries, therefore the expected demand conditions for such grapes should include an appraisal of the current and prospective conditions in all outlets. Information relative to the trend and level of consumer income and supplies of competing commodities should be included because of the influence such factors might exert on shipments of grapes. Since certain regulations are permitted only when the price to growers is below parity, the committee should indicate in its marketing policy the expected price for Ruby Seedless grapes and the relationship of any such price to the parity price. In addition to the foregoing information, the committee should include in its marketing policy report any other factors likely to have a bearing on the marketing of grapes.

The Ruby Seedless Grape Committee, as the local administrative agency under the proposed order, should be authorized to recommend regulations designed to effectuate the declared policy of the act and as provided in the order. As previously mentioned, authority for regulations should include grade, size, quality (including color), maturity, or any combination thereof, for grapes grown in the production area. The committee should also be authorized by the order to recommend regulations relative to the size, capacity, weight, dimensions, markings, or pack of any container or containers used in the handling of such grapes. In addition, the committee should have the authority to recommend such other terms and conditions as may be incidental to, and not inconsistent with, the regulatory authority, as hereinafter set forth, which may be necessary to effectuate the provisions of the order. It is appropriate that the committee should have the responsibility for recommending regulations to be considered by the Secretary and that the Secretary look to the committee for such recommendations.

The regulation of the grade, size, quality (including color), and maturity of grapes is a basic function of the proposed marketing order. The shipment of low grade, small size, and otherwise poor quality grapes destroys consumer confidence and depresses financial returns to growers.

The evidence of record indicates that the U.S. Standards for Grades of Table Grapes could serve as a basis for regulation under the order. It is intended that any minimum grade and quality standard could be made effective regardless of whether the price for Ruby Seedless grapes is above or below parity.

A number of attributes are related to quality in grapes. Maturity of grapes is an important element in palatability and may be determined by measuring the soluble solids. Color is an important factor because consumer selection of grapes is likely to be influenced by the "eye appeal" of the fruit. Uniformity of size of the individual grapes in a bunch is a significant factor in a consumer's decision to buy or not to buy. Small berries, referred to in the trade as "water berries" or "shot berries", are often immature and either sour or completely lacking in flavor. It is in the public interest to establish quality and maturity standards to prohibit the marketing of grapes that are materially disfigured, decayed, improperly colored and otherwise unacceptable.

Section 608c(6)(I) of the act authorizes inclusion in a marketing order of terms and conditions to fix size, capacity, weight, dimensions, or pack of the container or containers used in the handling of grapes. The Ruby Seedless grape industry is expected to increase substantially in the future. Marketing the increased production will demand trade confidence. Suitable containers, the different sizes of which are readily distinguishable one from another, could be mandated by regulation. Hence, authority should be included to regulate containers to the extent necessary as permitted by the act to maintain trade confidence, establish orderly marketing and improve returns to growers.

The recommended order should provide for modification, suspension, or termination of any regulation whenever such action would tend to advance the objectives of the act and the order. The order should authorize such based upon a recommendation of the committee, or other information available to the Secretary. The need for this authority is obvious in that there likely will be times when due to changes in circumstances, a given regulation would not tend to effectuate the declared policy of the act and thus should be modified, suspended, or terminated, as applicable.

The evidence of record indicates that the order should exempt grapes for certain uses from payment of assessments, quality, and container regulations, and inspection and certification requirements. Specifically, shipment of grapes for consumption by charitable institutions, for distribution by relief agencies or for commercial processing into products do not affect the marketing of grapes in commercial fresh fruit market channels.

Consequently, such shipments should be exempt from order requirements. At the present time, minor quantities of Ruby Seedless grapes are processed into raisins, frozen, or used in the production of wine. The order should also include discretionary authority to exempt the handling of grapes for such specified purposes or in such minimum quantities as may be found consistent with good administration. Grapes handled in gift packages, sold by a producer at his own roadside stand, or those shipped for use in conjunction with marketing research and development projects, are examples of handling which should be eligible for exemption from assessments, quality and container regulations, or inspection and certification requirements or a combination thereof. However, to prevent possible abuse of the exemption provisions, the committee should have authority to prescribe approriate rules, regulations, and safeguards to prevent grapes handled under exemptions from entering the channels of commerce for fresh grapes or for some purpose other than the specific purpose authorized, if such action is necessary.

The record indicates that there may be times when grapes held in storage will deteriorate and no longer meet the minimum quality requirements. It is likely that such grapes would be disposed of for commercial processing into products under the exemption provisions. In addition, in any grape packing operation there often is a quantity of cull fruit remaining after packing. Any such cull fruit may be disposed of to exempt uses under the exemption provisions. However, should abuses occur, such as diversion to non-exempt channels, the committee should have authority to establish appropriate controls. Such controls may include a requirement that handlers agree to observe specified requirements and comply with established safeguards to handle grapes under any such exemption.

(f) Inspection and certification of shipments are necessary to assure that the handling of grapes complies with regulations effective under the proposed order. The Federal-State Inspection Service has inspectors in the production area. At the hearing, a representative of this agency indicated that the agency is in a position to provide any necessary inspection and certification.

Responsibility for obtaining inspection would fall upon the handlers. All grapes should be inspected prior to handling. However, there may be some occasions when inspectors are not available in a reasonable time to perform the required inspection. Consequently, the order should provide that in such cases the inspection requirement may be waived. Subject to approval of the Secretary, the committee should prescribe rules and regulations governing the issuance of waivers of inspection to prevent the abuse of such provision. Moreover, any such waiver should not release the handler from complying fully with any other order requirements.

Grapes are perishable and may deteriorate over time, particularly if preventive steps are not taken. Therefore, the order should authorize establishment of a maximum time an inspection certificate is valid. Such authority could be used as necessary to require that grapes be inspected within a specified time prior to shipment, and if the grapes are not shipped within such time would be subject to reinspection.

The order should require that handlers furnish the committee a copy of the inspection certificate applicable to each lot of grapes. The certificates contain considerable data of value to the committee in conducting program operations which would otherwise have to be obtained by requiring reports from handlers. The certificates also can be used as a basis for assesement billing. This requirement may be accomplished by having the Federal-State Inspection Service forward to the committee a copy of each inspection certificate issued on Ruby Seedless grapes. The order should authorize the committee to enter into an agreement with the Federal-State Inspection Service for the required inspection and collect from handlers their respective pro rata share of inspection costs. The benefits of the order, including inspection, will accrue to the industry generally. Under a committee contract, it is contemplated that the inspection fee would be set as a uniform fee per carton or lug regardless of where or how many cartons or lugs are inspected at a particular time.

(g) The committee should have authority, with the approval of the Secretary, to require that handlers submit to the committee such reports and information as it may need to perform its functions and fulfill its responsibilities under the order. Handlers have the necessary information in their possession and the requirement that they furnish it to the committee in the form of reports should not constitute an undue burden.

Reports are needed by the committee for such purposes as determining whether handlers are complying with order requirements; to aid in determining and collecting program assessments; and to enable computations of statistical data for use in marketing policy development and recommendations for regulations.

It is anticipated that information needed may include: the name of the shipper and the shipping point; identification of the carrier; date and time of shipment; number of containers in a shipment; destination of shipment; and inspection certificate or waiver of inspection applicable to the shipment. The foregoing, however, should not be construed as a complete list of information the committee might require. It is not possible at this time to anticipate every type of report or kind of information which the committee may find necessary for the proper conduct of operations under the order. Therefore, the order should authorize the committee, with the approval of the Secretary, to require each handler to furnish such information as it finds necessary for it to perform its duties under the order.

The order should require each handler to maintain such records of the grapes received and disposed of as may be necessary to verify the reports such handler submits to the committee. All such records should be maintained for two fiscal years after the fiscal year in which the transactions occurred.

The record indicates that the inspection certificate and shipping manifest applicable to each shipment of grapes would likely contain most of the information the committee would need, in the ordinary course of operations. Thus, the submission of reports directly by handlers should be kept to a minimum. As hereinafter specified in the order, all reports and records submitted by handlers for committee use should be kept confidential in the custody of a committee employee and the contents disclosed to no person other than the Secretary and persons authorized by the Secretary. Under certain circumstances, release of information compiled from reports may be helpful to the committee and to the industry generally in planning operations under the order. However, any information released should be on a composite basis, and such release of information should disclose neither the identity of the person furnishing the information nor such person's individual operations. This is necessary to prevent disclosure of information that may affect the trade or financial position or business operations of individual handlers.

(h) Except as provided in the recommended order, no handler should be permitted to handle Ruby Seedless grapes, the handling of which is prohibited by such order or prohibited

by any regulations issued under such order. If the program is to operate effectively, compliance with its requirements is essential and no handler should be permitted to evade any of its provisions. Any such evasion on the part of even one handler could be demoralizing to those handlers who are in compliance and could impair the effective operation of the program.

(i) The provisions of §§ —.62 through —.71 as contained in the notice of hearing published in the Federal Register on November 30, 1978, (43 FR 56045) and hereinafter set forth in the recommended order, are common to marketing agreements and orders now operating. All such provisions are incidental to and not inconsistent with the act and are necessary to effectuate the other provisions of the recommended marketing order and marketing agreement and to effectuate the declared policy of the act. The evidence of record supports inclusion of each such provision. Those provisions which are applicable to both the marketing agreement and the marketing order, identified by section numbers and heading are as follows: § —.62 Right of the Secretary; § —.63 Effective time; § —.64 Termination; § —.65 Proceedings after termination; § —.66 Effect of termination or amendment; § —.67 Duration of immunities; § —.68 Agents; § —.69 Derogation; § —.70 Personal liability; and § —.71 Separability. Those provisions applicable to the marketing agreement only are: § —.72 Counterparts; § —.73 Additional parties; and § —.74 Order with marketing agreement.

Rulings on briefs of interested parties. At the conclusion of the hearing the Administrative Law Judge fixed March 12, 1979, as the final date for interested persons to file proposed findings and conclusions and written arguments or briefs based upon the evidence received at the hearing.

Two briefs were filed, both by the "Proponents For Ruby Seedless Marketing Order", the group that requested the hearing. One brief urged that the provision of the order authorize container regulations to the full extent permitted by the Act. Specific reference was made to the industry practice of packaging grapes in poly (film) bags, and to the testimony of an opposition witness who maintained that the regulation under the California State code applicable to packaging of table grapes would be sufficient. A review of the evidence of record with respect to container regulation is found to support petitioners position and provisions of the proposed order reflect such conclusion. This brief also urges that the order include to the extent possible, all the authority permitted by the Act for production and marketing research and development. Reference was made to the testimony of a representative of the California Table Grape Commission who testified that § —.45 should be stricken from the proposed order as it would negate the Commission's authority to collect research assessments on Ruby Seedless grapes. The record indicates that proponents of the order do not object to payments of Commission assessments and the Agriculture marketing Agreement Act of 1937, as amended, under which the order would be effective, specifically provides that the inclusion in a Federal marketing order of provisions for research and marketing development shall not be deemed to preclude, preempt or supersede any State program covering the same commodity. A review of the record supports a finding that authority for production research and marketing research and development should be included in the order, and the order reflects that conclusion.

The other brief contends that persons who were producers on April 3, 1979, should be entitled to participate in the voting for nominees to fill member and alternate positions on the committee. It also suggests that such date could be used as a guide in establishing the date of planting for eligibility or producers to vote in a referendum. The term "producer" is defined in the order and those who qualify as a producer under that definition at the time the voting occurs would be eligibile to vote for nominees to fill producer positions on the committee. As to the suggestion that April 3, 1979, be used to determine eligibility of producers for voting in any referendum on the proposed order, the conduct of referenda is governed by "Subpart—Procedures for the Conduct of Referenda in Connection with Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended" (7 CFR 900.400–900.407). Under such procedure persons eligibile to vote would be those who at the time of the referendum qualify as producers in terms of the definition of "producer" contained in the order and also were producers of the commodity during a "representative period" specified by the Secretary in a referendum order. The record ontains no evidence supporting any particular date or dates determining a representative period. In the event the proposed order is presented to producers in a referendum, the referendum order which would be published with the Secretary's Decision will specify beginning and ending dates determining the "representative period" for purposes of that referendum. The Secretary may, if he so chooses, observe the suggested date in establishing the representative period.

General Findings. Upon the basis of the evidence introduced at such hearing, and the record thereof, it is found that:

(1) The marketing agreement and order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The said marketing agreement and order regulate the handling of Ruby Seedless grapes grown in the production area in the same manner as, and are applicable only to persons in the respective classes of commercial or industrial activity specified in, a proposed marketing agreement and order upon which a hearing has been held;

(3) The said marketing agreement and order are limited in their applicability to the smallest regional production area which is practicable, consistenly with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the peoduction area would not effectively carry out the declared policy of the act;

(4) There are no differences in the production and marketing of Ruby seedless grapes grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of Ruby Seedless grapes grown in the production area, as defined in said marketing agreement and order, is in the current of interstate of foreign commerce or directly burdens, obstructs, or affects such commerce.

Recommended marketing agreement and order. The following marketing agreement and order [1] are recommended as the detailed means by which the foregoing conclusions may be carried out.

Definitions

§ —.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the Department who is or who may hereafter be authorized to exercise the powers or to perform the duties of the Secretary of Agriculture.

§ —.2 Act.

"Act" means Public Act No. 10, 73rd Congress (May 12, 1933) as amended

[1] The provisions identified with asterisks (***) apply only to the proposed marketing agreement and not to the proposed marketing order.

and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

§ —.3 Person.

"Person" means any individual, partnership, corporation, association or any other business unit.

§ —.4 Production area.

"Production area" means the State of California.

§ —.5 Grapes.

"Grapes" means all strains of Ruby seedless grapes grown in the production area.

§ —.6 Producer.

"Producer" is synonymous with "grower" and means any person engaged in a proprietary capacity in the production of grapes for the fresh market.

§ —.7 Handle.

"Handle" and "ship" are synonymous and mean to sell, consign, deliver, or transport grapes or cause grapes to be sold, consigned, delivered, or transported in the current of commerce between any point within the production area and any point outside thereof, or within the production area: *Provided*, That, the term handle shall not include the sale of grapes on the vine or the transportation or delivery of grapes from the vineyard where grown to a packing facility located within such area for preparation for market.

§ —.8 Handler.

"Handler" and "shipper" are synonymous and mean any person (except a common or contract carrier transporting grapes owned by another person) who handles grapes.

§ —.9 Fiscal year.

"Fiscal year" is synonymous with "crop year" and means the 12 month period beginning April 1 of any year and ending on March 31 of the following year, both dates inclusive, or such other period as the committee, with the approval of the Secretary, may prescribe.

§ —.10 Committee.

"Committee" means the Ruby seedless Grape Committee established pursuant to § —.20.

§—.11 District.

"District" means the State of California, or such other districts as may be prescribed pursuant to § .21(1).

§—.12 Pack.

"Pack" means (a) the placement of grapes into a container for shipment to market as fresh grapes, or (b) the specific arrangement of grapes within a particular type and size of container by size of grape, weight, grade, or any combination thereof, for shipment as fresh grapes.

§—.13 Container.

"Container" means a box, lug, crate, carton, or any other receptacle used in packing grapes for shipment as fresh grapes and includes the dimensions, capacity, weight, markings, and any pads, liners, lids, and any or all appurtenances thereto or parts thereof. The term applies, in the case of grapes packed in consumer packages, to the master receptacle and to any and all packages therein.

§—.14 Part and subpart.

"Part" means the Order Regulating the Handling of Ruby Seedless Grapes Grown in California and all rules and regulations and supplementary orders issued thereto. The aforesaid Order Regulating the Handling of Ruby Seedless Grapes Grown in California shall be in a "subpart" of such part.

Administrative Body

§—.20 Establishment and membership.

There is hereby established a Ruby Seedless Grape Committee consisting of nine members, each of whom shall have an alternate who shall have the same qualifications as the member. Eight members shall be growers (producer members), and one shall be a public member. Producer members and their alternates shall be growers or employees of growers. Each member and alternate shall meet the eligibility requirements set forth in § .22. The Secretary, on recommendation of the committee, may change the number of members on the committee.

§—.21 Term of office.

The term of office of each member and alternate member of the committee shall be for two fiscal years beginning on April 1 of an odd numbered year and ending on March 31 of an odd numbered year. Members and alternate members shall serve in such capacities for that portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified.

§—.22 Eligibility.

Each producer member of the committee shall, at the time of selection and during the term of office, be a producer in the district for which selected. The public member of the committee, at the time of selection and during the term of office, shall not have a financial interest in or be associated with the production, processing, financing or marketing (except as consumers) of Ruby Seedless or any other variety of grapes.

§—.23 Nominations.

(a) *Initial members.* Nominations for each of the initial members, together with nominations for the initial alternate members for each position, may be submitted to the Secretary by the committee responsible for promulgation of this part. Such nominations may be made by means of a meeting or meetings of the growers in the production area. Such nominations, if made, shall be filed with the Secretary no later than the effective date of this part. In the event nominations for initial members and alternate members of the committee are not filed pursuant to, and within the time specified in this section, the Secretary may select such initial members and alternate members without regard to nominations, but selections shall be on the basis of the representation provided in § .20.

(b) *Successor members.* (1) The committee shall hold or cause to be held, not later than February 15 of each odd numbered year, a meeting or meetings of growers in each district for the purpose of designating nominees for successor producer members and alternate members of the committee. These meetings shall be supervised by the committee which shall prescribe such procedure as shall be reasonable and fair to all persons concerned.

(2) Only growers who are present at each such nomination meeting, or who are represented by duly authorized representatives approved by the committee, may participate in the nomination and election of nominees for producer members and their alternates. Each grower in attendance, or authorized representative of a grower, shall be entitled to cast only one vote, regardless of the number of business units the grower may represent, for each nominee to be selected.

(3) A particular grower, including officers or employees of such grower, shall be eligible for membership as member or alternate to fill only one position on the committee.

(4) Nominations for public member and alternate shall be made by the committee. The committee may appoint a subcommittee to select prospective nominees for the public member and alternate member positions on the

committee. The committee shall prescribe such procedure for the selection and voting for each candidate as shall be fair to all persons concerned.

§ —.24 Selection.

From the nominations made pursuant to § .23, or from other qualified persons, the Secretary shall select the nine members of the committee and an alternate for each such member.

§ —.25 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in § .23, the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of the representation provided for in § .20.

§ —.26 Acceptance.

Any person selected by the Secretary as a member or as an alternate member of the committee shall qualify by filing a written acceptance with the Secretary promptly after being notified of such selection.

§ —.27 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in the manner specified in § .23 and § .24. If the names of the nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of the representation provided for in § .20.

§ —.28 Alternate members.

An alternate member shall act in the place of the member during such member's absence and may be assigned other program duties by the chairman or the committee. In the event of the death, removal, resignation, or disqualification of a member, the alternate shall act for the member until a successor for such member is selected and has qualified. In the event that both a producer member and that member's alternate are unable to attend a committee meeting, the member or committee members present may designate any other alternate to serve in such member's place at that meeting provided such action is necessary to secure a quorum.

§ —.30 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;

(c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ —.31 Duties.

The committee shall have, among others, the following duties:

(a) To select a chairman and such other officers as may be necessary, and to define the duties of such officers;

(b) To appoint such employees, agents, and representatives as it may deem necessary, and to determine compensation and to define the duties of each;

(c) To submit to the Secretary as soon as practicable after the beginning of each fiscal period a budget for such fiscal year, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such year;

(d) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(e) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to growers and handlers for examination at the office of the committee;

(f) To cause its books to be audited by a competent public accountant at least once each fiscal year and at such times as the Secretary may request;

(g) To act as intermediary between the Secretary and any grower or handler;

(h) To investigate and assemble data on the growing, handling, and marketing conditions with respect to grapes;

(i) To submit to the Secretary the same notice of meetings of the committee as is given to its members;

(j) To submit to the Secretary such available information as he may request;

(k) To investigate compliance with the provisions of this part; and

(l) With the approval of the Secretary, to divide the production area into districts, and to redefine such districts, and, further, to apportion the representation on the committee among the districts or to reapportion such representation among the districts.

§ —.32 Procedure.

(a) Six members of the committee, or alternates acting for members, shall constitute a quorum and any action of the committee shall require the concurring vote of the majority of those present: *Provided,* That actions of the committee with respect to expenses and assessments, or recommendations for regulations pursuant to §§ .50 through .54 shall require at least six concurring votes.

(b) The committee may vote by telephone, telegraph, or other means of communication, and any vote cast by telephone shall be confirmed promptly in writing: *Provided,* That voting other than in an assembled meeting shall require two-thirds affirmative vote of the committee in order to constitute approval and at least eight votes must be cast. If an assembled meeting is held, all votes shall be cast in person. Recommendations for regulation pursuant to § .51 and recommendations for assessments pursuant to § .41 may be made only at an assembled meeting.

§ —.33 Expenses and compensation.

The members of the committee, and alternates when acting as members, shall serve without compensation but shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part: *Provided,* That the committee at its discretion may request the attendance of one or more alternates at any or all meetings notwithstanding the expected or actual presence of the respective members and may pay expenses as aforesaid.

§ —.34 Annual report.

The committee may, as soon as is practicable after the close of each crop year, prepare and mail an annual report to the Secretary and make a copy available to each grower and handler who requests a copy of the report.

Expenses and Assessments

§ —.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the committee for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part. The funds to cover such expenses shall be acquired in the manner prescribed in § .41.

§ —.41 Assessments.

(a) Each person who first handles grapes shall pay to the committee, upon

demand, such handler's pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the committee during a fiscal year. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each such person during a fiscal year in an amount designed to secure sufficient funds to cover the expenses which may be incurred during such year and to accumulate and maintain a reserve fund equal to approximately one fiscal year's expenses. At any time during or after a fiscal year, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later findings by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all grapes handled during the applicable fiscal year. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal year before sufficient operating income is available from assessments on the current year's shipments, the committee may accept the payment of assessments in advance, and may also borrow money for such purpose.

(c) Any assessment not paid by a handler within a period of time prescribed by the committee may be subject to an interest or late payment charge, or both. The period of time, rate of interest, and late payment charge shall be as recommended by the committee and approved by the Secretary. Subsequent to such approval, all assessments not paid within the period of time prescribed shall be subject to the interest or late payment charge, or both.

§ —.42 Accounting.

(a) If, at the end of a fiscal year, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in subparagraph (2) of this paragraph, it shall be refunded proportionately to the persons from whom it was collected: *Provided,* That any sum paid by a person in excess of his pro rata share of the expenses during any fiscal year may be applied by the committee at the end of such fiscal period to any outstanding obligations due the committee from such person.

(2) The committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal years as a reserve: *Provided,* That funds in the reserve shall not exceed approximately one fiscal year's expenses. Such reserve funds may be used (i) to defray expenses, during any fiscal year, prior to the time assessment income is sufficient to cover such expenses, (ii) to cover deficits incurred during any fiscal year when assessment income is less than expenses, (iii) to defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative, or (iv) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be diposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee under this part shall be used solely for the purpose specified and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in his possession to the committee, and shall execute such assignments and other instruments as may be necessary or appropirate to vest in the committee full title to all of the property, funds, and claims vested in such member pursuant to this part.

Research and Market Development

§ —.45 Production research, marketing research and market development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of grapes. The expense of such projects shall be paid by funds collected pursuant to § .41.

Regulations

§ —.50 Marketing policy.

Each season prior to making any recommendations pursuant to § .51, the committee shall submit to the Secretary a report setting forth its marketing policy for the ensuing marketing season. Such marketing policy report shall contain information relative to:

(a) The estimated total production of grapes within the production area;

(b) The expected general quality of grapes in the production area;

(c) The expected demand conditions for grapes;

(d) The expected shipments of grapes produced in the production area;

(e) The probable prices for grapes;

(f) Supplies of competing commodities;

(g) Trend and level of consumer income;

(h) Other factors having a bearing on the marketing of grapes; and

(i) The type of regulations expected to be recommended during the marketing season.

§ —.51 Recommendation of committee.

(a) Whenever the committee deems it advisable to regulate the handling of grapes in the manner provided in § .52, it shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the committee shall give consideration to current information with respect to the factors affecting the supply and demand for Ruby Seedless grapes during the period or periods when it is proposed that such regulation should be made effective. With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request. The committee shall promptly give adequate notice to the handlers and growers of any such recommendation submitted to the Secretary.

§ —.52 Establishment of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of grapes whenever the Secretary finds, from the recommendation and information submitted by the committee, or from other available information, that such regulations will tend to effectuate the declared policy of the act. Such regulations may:

(1) Limit during any period or periods the handling of any particular grade, size, quality, maturity, or any combination thereof, of grapes grown in the production area;

(2) Limit the handling of grapes by establishing in terms of grades, sizes, or both, minimum standards of quality or

maturity, or any combination thereof, during any period when season average prices are expected to exceed the parity level;

(3) Fix the size, capacity, weight, dimensions, markings, or pack of any container, or containers, which may be used in the handling of grapes.

(b) The committee shall be informed immediately of any such regulation issued by the Secretary and the committee shall promptly give notice thereof to handlers.

§ —.53 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § —.52 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds from the recommendations and information submitted by the committee, or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of grapes in order to effectuate the declared policy of the act, he shall modify, suspend, or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension.

§ —.54 Special purpose shipment.

(a) Except as otherwise provided in this section, any person may without regard to the provisions of §§ —.41, —.51, —.52, and —.54 and the regulations issued thereunder, handle grapes (1) for consumption by charitable institutions; (2) for distribution by relief agencies; or (3) for commercial processing into products.

(b) Upon the basis of recommendations and information submitted by the committee, or from other available information, the Secretary may relieve from any or all requirements, under or established pursuant to §§ —.41, —.51, —.52, and —.54, the handling of grapes for such specified purposes (including shipments to facilitate the conduct of marketing research and development projects established pursuant to § —.45), or in such minimum quantities or types of shipments, as may be prescribed.

(c) The committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it may deem necessary to prevent grapes handled under provisions of this section from entering the channels of trade for other than the specific purposes authorized by this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications and receive approval from the committee for authorization to handle grapes pursuant to this section, and that such application be accompanied by a certification by the intended purchaser or receiver that the grapes will not be used for any purpose not authorized by this section.

§ —.55 Inspection and certification.

(a) Whenever the handling of any variety of grapes is regulated pursuant to §§ —.52 or —.53, each handler who handles grapes shall, prior thereto, cause such grapes to be inspected by the Federal or Federal-State Inspection Service and certified as meeting the applicable requirements of such regulation: *Provided,* That inspection and certification shall not be required for grapes which previously have been so inspected and certified if such prior inspection was performed within such period as may be established pursuant to paragraph (b) of this section. Promptly after inspection and certification, each such handler shall submit or cause to be submitted, to the committee a copy of the certificate of inspection issued with respect to such grapes.

The committee may, with the approval of the Secretary, prescribe rules and regulations waiving the inspection requirements of this section where it is determined that inspection is not available: *Provided,* That all shipments made under such waiver shall comply with all regulations in effect.

(b) The committee may, with the approval of the Secretary, establish a period prior to shipment during which the inspection required by this section must be performed.

(c) The committee may enter into an agreement with the Federal and Federal-State Inspection Services with respect to the costs of the inspection required by paragraph (a) of this section, and may collect from handlers their respective pro rata share of such costs.

Reports

§ —.60 Reports.

(a) Each handler shall furnish to the committee at such times and for such periods as the committee may designate certified reports covering, to the extent necessary for the committee to perform its functions, each shipment of grapes as follows:

(1) The name of the shipper and the shipping point;

(2) The car or truck license number (or name of the trucker), and identification of the carrier;

(3) The date and time of departure;

(4) The number and type of containers in the shipment;

(5) The destination;

(6) Identification of the inspection certificate or waiver pursuant to which the fruit was handled.

(b) Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such times as it may prescribe, such other information as may be necessary to enable the committee to perform its duties under this part.

(c) Each handler shall maintain for at least two succeeding fiscal years after the end of the fiscal year in which the transactions occurred, such records of the grapes received and disposed of by such handler as may be necessary to verify the reports such handler submits to the committee pursuant to this section.

(d) All reports and records submitted by handlers pursuant to the provisions of this section shall be received by, and at all times be in custody of one or more designated employees of the committee. No such employee shall disclose to any person, other than the Secretary upon request therefor, data or information obtained or extracted from such reports and records which might affect the trade position, financial condition, or business operation of the particular handler from whom received: *Provided,* That such data and information may be combined, and made available to any person, in the form of general reports in which the identities of the individual handler furnishing the information is not disclosed and may be revealed to any extent necessary to effect compliance with the provisions of this part and the regulations issued thereunder.

Miscellaneous Provisions

§ —.61 Compliance.

Except as provided in this part, no person shall handle grapes, the shipment of which has been prohibited by the Secretary in accordance with the provisions of this part; and no person shall handle grapes except in conformity with the provisions of this part and the regulations issued under this part.

§ —.62 Right of the Secretary.

The members of the committee (including successors and alternates) and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject ot the continuing right of the

Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ —.83 Effective time.

The provisions of this part, and of any amendment thereto, shall become effective at such time as the Secretary may declare above his signature and shall continue in force until terminated in one of the ways specified in § .84.

§ —.84 Termination.

(a) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(b) The Secretary shall terminate the provisions of this part whenever he finds by referendum or otherwise that such termination is favored by a majority of the growers: *Provided,* That such majority has, during the current marketing season, produced more than 50 percent of the volume of grapes which were produced within the production area for shipment in fresh form. Such termination shall become effective on the first day of April subsequent to the announcement thereof by the Secretary.

(c) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ —.85 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the committee shall, for the purpose of liquidating the affairs of the committee, continue as trustee of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until dischanged by the Secretary;

(2) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; and

(3) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the committee and upon the trustees.

§ —.86 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued under this part; or

(b) Release or extinguish any violation of this part; or

(c) Affect or impair any rights or remedies of the Secretary or any other person with respect to any such violation.

§ —.87 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

§ —.88 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the United States Department of Agriculture, to act as agent or representative in connection with any of the provisions of this part.

§ —.89 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States:

(a) To exercise any powers granted by the act or otherwise; or

(b) In accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ —.70 Personal liability.

No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ —.71 Separability.

If any provisions of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ —.72 Counterparts.

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

§ —.73 Additional parties.

After the effective date hereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

§ —.74 Order with marketing agreement.

Each signatory handler hereby requests the Secretary to issue, pursuant to the act, an order providing for regulating the handling of Ruby Seedless grapes in the same manner as is provided for in this agreement.

A Draft Impact Analysis is available from Malvin E. McGaha, Fruit Branch, Fruit and Vegetable Divison, AMS, U.S. Department of Agriculture, Washington, D.C. 20250, Phone: (202) 447-5975.

Copies of this Recommended Decision are being mailed to known interested persons. Others may obtain copies from Fruit and Vegetable Division, AMS, Department of Agriculture, Washington, D.C. 20250 or from Charles Fequa, USDA-AMS, U.S. Federal Building, 1130 "O" Street, Room 3114, Fresno, California 93721.

Signed at Washington, D.C., on June 11, 1979.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

FR Doc. 79-18359 Filed 6-13-79; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Chapter 1]

Alteration of Philadelphia Terminal Control Area; Meeting

Correction

In FR Doc. 79-17480, published on page 32709, in the issue of Thursday, June 7, 1979, the heading should have appeared as set forth above.

BILLING CODE 1505-01-M

[14 CFR Ch. I]

[Summary Notice No. PR-79-6]

Petitions for Rule Making; Summary of Petitions Received and Dispositions of Petitions Denied

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rule making and of dispositions of petitions denied.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rule making (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rule making procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Publication of this notice and any information it contains or omits is not intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and be received on or before: August 14, 1979.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-24), Petition Docket No. ———, 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-24), Room 916, FAA Headquarters Building (FOB 10A), Federal Aviation Administration, 800 Independence Avenue SW, Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraghs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on June 8, 1979.

Carl B. Schellenberg,

Assistant Chief Counsel Regulations and Enforcement Division.

Petitions for Rulemaking

Docket No.	Petitioner	Description of the rule requested
176	Aircraft Owners and Pilots Association.	DESCRIPTION OF RULE To amend FAR 61.23 to extend the duration of a third class medical certificate from 24 months to 36 months for operations requiring a private or student pilot certificate. PETITIONERS' REASON FOR RULE Such a change would not abrogate aviation safety, but would save general aviation pilots some two and a half million dollars per year as well as ease FAA's workload in processing medical applications.

Petitions for Rulemaking: Denied

None during the period from June 1 through June 8, 1979.

[FR Doc. 79-18523 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

[14 CFR Part 71]

[Airspace Docket No. 79-CE-9]

Transition Area—New Madrid, Mo.; Proposed Alteration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rule Making (NPRM).

SUMMARY: This notice proposes to alter the 700-foot transition area at New Madrid, Missouri, to provide additional airspace for aircraft executing a new instrument approach procedure to the County Memorial Airport, New Madrid, Missouri, which is based on a nondirectional radio beacon (NDB), a navigational aid, being installed on the airport.

DATES: Comments must be received on or before July 20, 1979.

ADDRESSEES: Send comments on the proposal to: Federal Aviation Administration, Chief, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE—530, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Chief, Operations, Procedures and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Dwaine E. Hiland, Airspace Specialist, Operations, Procedures, and Airspace Branch, Air Traffic Division, ACE-537, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before July 20, 1979, will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedures and Airspace

Branch, 601 East 12th Street, Kansas City, Missouri 64106 or by calling (816) 374–3408. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMs should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) by altering the 700-foot transition area at New Madrid, Missouri. To enhance airport usage a new instrument approach procedure is being developed for the County Memorial Airport, New Madrid, Missouri, utilizing an NDB being installed on the airport as a navigational aid. The establishment of an instrument approach procedure based on this navigational aid entails alteration of the transition area at New Madrid, Missouri, at and above 700 feet above ground level (AGL) within which aircraft are provided additional air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Accordingly, Federal Aviation Administration proposes to amend Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1979, (44 FR 442) by altering the following transition area:

New Madrid, Missouri

That airspace extending upward from 700 feet above the surface within a 5-mile radius of County Memorial Airport (latitude 36°32'10"N, longitude 89°35'50"W); and within 2 miles each side of the Malden, MO, VOR 95° radial, extending from the 5-mile radius area to 8 miles east of the VOR, excluding the portion which overlies the Malden, MO, 700-foot floor transition area; and within 2.5 miles each side of the 360° bearing from the airport, extending from the 5-mile radius area to 6 miles north of the airport.

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.65 of the Federal Aviation Regulations (14 CFR 11.65)).

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Kansas City, Missouri, on June 1, 1979.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 79-18588 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

[14 CFR Part 71]

[Airspace Docket No. 79-CE-11]

Transition Area—Albia, Iowa; Proposed Designation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rule Making (NPRM).

SUMMARY: This notice proposes to designate a 700-foot transition area at Albia, Iowa, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Albia, Iowa, Municipal Airport utilizing the Ottumwa, Iowa, VORTAC as a navigational aid.

DATE: Comments must be received on or before July 20, 1979.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Chief, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE–530, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Chief, Operations, Procedures and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Dwaine E. Hiland, Airspace Specialist, Operations, Procedures, and Airspace Branch, Air Traffic Division, ACE–537, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before July 20, 1979, will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedures and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106 or by calling (816) 374–3408. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMs should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR, § 71.181) by designating a 700-foot transition area at Albia, Iowa. To enhance airport usage a new instrument approach procedure to the Albia, Iowa, Municipal Airport is being established utilizing the Ottumwa, Iowa, VORTAC as a navigational aid. The establishment of a new instrument approach procedure based on this navigational aid entails designation of a transition area at Albia, Iowa, at and above 700 feet above ground level (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Accordingly, Federal Aviation Administration proposes to amend Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1979, (44 FR 442) by adding the following new transition area:

Albia, Iowa

That airspace extending upward from 700 feet above the surface, within a six (6) mile radius of the Albia Municipal Airport (latitude 40°59'40" N, longitude 92°45'46" W).

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.65 of the Federal Aviation Regulations (14 CFR 11.65)).

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Kansas City, Missouri, on June 1, 1979.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 79-18689 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

[14 CFR Part 71]

[Airspace Docket No. 79-CE-12]

Transition Area—Maryville, Mo.; Proposed Designation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rule Making (NPRM).

SUMMARY: This notice proposes to designate a 700-foot transition area at Maryville, Missouri, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Maryville, Missouri, Memorial Airport utilizing the St. Joseph, Missouri, VORTAC as a navigational aid.

DATES: Comments must be received on or before July 20, 1979.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Chief, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-530, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the office of the Chief, Operations, Procedures and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Dwaine E. Hiland, Airspace Specialist, Operations, Procedures, and Airspace Branch, Air Traffic Division, ACE-537, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kanas City, Missouri 64106. All communications received on or before July 20, 1979, will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability fo NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedrues and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106 or by calling (816) 374-3408. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) by designating a 700-foot transition area at Maryville, Missouri. To enhance airport usage a new instrument approach procedure to the Maryville, Missouri, Memorial Airport is being established utilizing the St. Joseph VORTAC as a navigational aid. The establishment of a new instrument approach procedure based on this navigational aid entails designation of a transition area at Maryville, Missouri, at and above 700 feet above ground level (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IRF) and other aircraft operating under Visual Flight Rules (VFR).

Accordingly, Federal Aviation Administration proposes to amend Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1979 (44 FR 442) by adding the following new transition area:

Maryville, Missouri

That airspace extending upards from 700 feet above the surface, within a 51—mile radius of the Maryville Memorial Airport (latitude 40°21'00"N., longitude 94°54'45"W.)

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.65 of the Federal Aviation Regulations (14 CFR 11.65).)

Note.— The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant perparation of a regulatory evaluation.

Issued in Kansas City, Missuori, on June 1, 1979.

John E. Shaw.

Acting Director, Central Region.

[FR Doc. 79-18691 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

[14 CFR Part 71]

[Airspace Docket No. 79-ASW-16]

Proposed Alteration of Transition Area: Wichita Falls, Tex.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rule Making.

SUMMARY: The nature of the action being taken is to propose alteration of the transition area at Wichita Falls, Tex. The intended effect of the proposed action is to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Kickapoo Downtown Airpark. The circumstance which created the need for the action is the proposed establishment of a nondirectional radio beacon (NDB) 3.8 miles south of the airport.

DATES: Comments must be received by July 16, 1979.

ADDRESSES: Send comments on the proposal to: Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101.

The official docket may be examined at the following location: Office of the Regional Counsel, Southwest Region,

Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas.

An informal docket may be examined at the Office of the Chief, Airpace and Procedures Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Manuel R. Hugonnett, Airspace and Procedures Branch, ASW-536, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101; telephone: (817) 624-4911, extension 302.

SUPPLEMENTARY INFORMATION: Subpart G § 71.181 (44 FR 442) of FAR Part 71 contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft conducting IFR activity. Alteration of the transition area at Wichita Falls, Tex., will necessitate an amendment to this subpart

Comments Invited

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. All communications received on or before July 16, 1979, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views or arguments presented during such conferences must be also submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rule making (NPRM) by submitting a request to the Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, or by calling (817) 624-4911, extension 302. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMS should contact the office listed above.

The Proposal

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area at Wichita Falls, Tex. The FAA believes this action will enhance IRF operations at the Kickapoo Downtown Airpark by providing controlled airspace for aircraft executing proposed instrument approach procedures using the proposed NDB located 3.8 miles south of the airport. Subpart G of Part 71 was republished in the Federal Register on January 2, 1979 (44 FR 44).

The Proposed amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 442) by altering the Wichita Falls, Tex., transition area by adding the following:

Wichita Falls, Tex.

* * * and 3 miles each side of the 177° bearing from the Scotland RBN (latitude 33°47'24"N., longitude 98°29'10"W.) extending from the 20-mile radius area to 8.5 miles south of the RBN.

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979.) Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Fort Worth, Texas, on June 4, 1979.

Henry N. Stewart,

Acting Director, Southwest Region.

[FR Doc. 79-18680 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

[14 CFR Part 75]

[Airspace Docket No. 79-WA-2]

Realignment of Jet Route; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to Notice of proposed rulemaking.

SUMMARY: in a Notice of Proposed Rule Making (NPRM), published in the Federal Register of May 21, 1979, Vol. 44, page 29485, under the Proposed Amendment on page 29486 the substitution of "Des Moines, Iowa;" should have been "Kansas City, Mo.; Des Moines, Iowa;" as explained in the Summary and in the Proposal. This correction reflects the correct proposed amendment.

EFFECTIVE DATE: June 14, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Everett L. McKisson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION: Federal Register Document 79-15717 was published on May 21, 1979 (44 FR 29485) and proposed to realign Jet Route No. J-25 between Tulsa, Oklahoma, and Des Moines, Iowa, via Kansas City, Mo. The amendatory language under the heading of the Proposed Amendment should have contained the words "Kansas City, Mo." This action corrects that omission.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration, Federal Register Document 79-15717 as published in the Federal Register on May 21, 1979, starting on page 29485 is amended in the center column of page 29486 by deleting the first line (is deleted and "Des Moines, Iowa;" is) and substituting (is deleted and "Kansas City, Mo.; Des Moines, Iowa;" is) therefor.

(Secs. 307(a), 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65)

Issued in Washington, D.C., on June 7, 1979.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-18689 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

[16 CFR Part 433]

Amendment to Preservation of Consumers' Claims and Defenses

AGENCY: Federal Trade Commission.

ACTION: Placement of a staff summary of post-record comments and the final recommendations of the rulemaking staff and the Director of the Bureau of Consumer Protection on the Rulemaking Record, and announcement of the setting of a date for oral presentations before the Commission.

SUMMARY: The Federal Trade Commission has placed on the Rulemaking Record in the Amendment to the Preservation of Consumers' Claims and Defenses Trade Regulation Rule a summary of the comments filed by the public on the final reports of the staff and the presiding officer. In addition, the Commission has placed on the rulemaking record the final recommendations of the rulemaking staff and the Director of the Bureau of Consumer Protection on the rulemaking proceeding.

The Federal Trade Commission has also decided to afford interested parties the opportunity to make oral presentations before the Commission. Six prior participants have been invited to appear before the Commission. In addition, the Commission will consider requests from other interested parties. The participants in this meeting will be limited to persons who have participated in earlier stages of this proceeding.

DATES: Requests to participate in this oral presentation before the Commission at the meeting at 1 p.m. on July 10, 1979, must be received no later than June 29, 1979.

ADDRESSES: Send requests to participate in this oral presentation to: Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

The meeting will be held in Room 432, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: David H. Williams or Sarah Jane Hughes Federal Trade Commission (202) 724–1100.

SUPPLEMENTAL INFORMATION: Pursuant to § 1.13(h) of the Commission's Rules of Practice, comments were invited from the public on the final reports of the staff and the presiding officer in the rulemaking proceeding concerning the Amendment to the Preservation of Consumers' Claims and Defenses Rule.

The Commission has directed the rulemaking staff to prepare a summary of those comments. That summary has been placed on the rulemaking record in this proceeding for public inspection.

The Federal Trade Commission has also directed that the final recommendations of the rulemaking staff and the Director of the Bureau of Consumer Protection submitted to the Commission on the proposed rule after the conclusion of the post-record comment period specified in § 1.13(h) of the Commission's Rules of Practice be placed on the rulemaking record in this proceeding for public inspection.

The Federal Trade Commission has decided to allow interested parties to make oral presentations. Participation in this meeting before the Commission shall be restricted to persons who have participated in the proceeding to date. Participants will be permitted no more than thirty minutes to address comments to the Commission. The Commission reserves the right to limit the number of persons who may participate, as well as the amount of time allotted for comment, should such a need develop.

The prior participants in the proceeding who have been invited to appear include: (1) the American Bankers Association, Consumer Bankers Association, and Independent Bankers Association of America; (2) National Consumer Finance Association; (3) National Consumer Law Center; (4) Division of Consumer Affairs, Board of Governors of the Federal Reserve System; (5) National Credit Union Administration; and (6) Credit Union National Association. Other interested persons will have an opportunity to present their views.

Persons who desire to make such oral presentations to the Commission should submit a written request to the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580 no later than June 29, 1979. If feasible and not burdensome, persons filing requests to participate should submit 3 copies of their requests. Each request must state the extent and the nature of the prior participation in this proceeding by the person seeking to address the Commission.

No additional written comments may be submitted to the Commission. Oral presentation at the meeting must be restricted to the evidence already in the Rulemaking Record in this proceeding.

The meeting before the Commission will commence on July 10, 1979 in Room 432, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, at 1:00 p.m.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 79-18575 Filed 6-13-79; 8:45 am]

BILLING CODE 6750-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[24 CFR Part 1917]

[Docket No. FI-5636]

Proposed Flood Elevation Determinations for the Town of Redcliff, Eagle County, Colo., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Redcliff, Eagle County, Colorado.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program [NFIP].

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, Redcliff, Colorado.

Send comments to: Mr. Carlos Miranda, City Manager, Town of Redcliff, Box 100, Vail, Colorado 81657.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Town of Redcliff, Colorado, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Eagle River	Denver and Rio Grande Western Railroad (40 feet*).	8573
	Colorado State Highway 293 (20 feet*).	8580
	Railroad Access Road (20 feet*).	8597
	Pine Street (40 feet*)	8629
	Eagle Street (70 feet*)	8655
Turkey Creek	Colorado State Highway 293.	
	(80 feet**)	8639
	(30 feet*)	8639
	Eagle Street (20 feet*)	8644
	Private Bridge	
	(70 feet**)	8647
	(30 feet*)	8651
	Shrine Pass Road	
	(80 feet**)	8659
	(20 feet*)	8665

* Upstream from centerline.
** Downstream from centerline.

Source of flooding	Location	Depth in feet above ground
Turkey Creek	Area east of Eagle Street between Shrine Pass Road and the intersection of Eagle Street and Monument Street.	2
	Area west of Eagle Street along State Highway 293.	1
	Area along State Highway 293 west of intersection of State Highway 293 and Pine Street.	1

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18233 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-8539]

Proposed Flood Elevation Determinations for the Groton Long Point Association, New London County, Conn.; Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Groton Long Point Association, New London County, Connecticut.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Fire House, Groton Long Point, Connecticut.

Send comments to: Mr. Joseph Devine, President of the Groton Long Point Association, 69 Atlantic Avenue, Groton Long Point, Connecticut 06340.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755-5581 or Toll Free Line (800) 424-8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Groton Long Point Association, New London County, Connecticut in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Fishers Island Sound	Atlantic Avenue and Bridge Street.	11
	Shore avenue South and Sound Breeze Avenue.	11
	Shore Avenue and Sound Breeze Avenue.	11

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963.

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18234 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-8540]

Proposed Flood Elevation Determinations for the Town of Southbury, New Haven County, Conn.; Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 18, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management

Footnotes continued on next page

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Southbury, New Haven County, Connecticut.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Town Hall, 360 Main Street, Southbury, Connecticut.

Send comments to: Mr. Michael Kenney, First Selectman, Town of Southbury, Town Hall, 360 Main Street, Southbury, Connecticut 06488.

FOR FURTHER INFORMATION CONTACT: Mr. Richard W. Krimm, National Flood Insurance Program, (202 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determination of base (100-year) flood elevations for the Town of Southbury, New Haven County, Connecticut, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.4 (a).

These elevations, together with the flood plain management measures required by section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinaces that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Housatonic River	Downstream corporate limits	109
	Just downstream Shepaug Dam.	109
Pomperaug River	Just downstream River Road.	109
	Just upstream Old Railroad Embankment.	111
	About .8 mile upstream Old Railroad Embankment.	112
	About 1.2 miles downstream Dam.	136
	Just downstream Dam	143
	Just upstream Dam	153
	Just downstream Flood Bridge Road.	170
	About 0.29 mile upstream Flood Bridge Road.	175
	Just upstream Poverty Road	185
	Just Upstream Route 67	195
	Upstream corporate limits	206

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 Fr 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963)

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18228 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5541]

Proposed Flood Elevation Determinations for the City of Altamonte Springs, Seminole County, Fla., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Altamonte Springs, Seminole County, Florida.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 225 Newburyport Avenue, Altamonte Springs, Florida.

Send comments to: Mayor Norman C. Floyd, Sr., 225 Newburyport Avenue, Altamonte Springs, Florida 32701.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Altamonte Springs, Seminole County, Florida in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a)).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Footnotes continued from last page

Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Lake Adelaide	Entire Shoreline	61
Crancoe Roost	Entire Shoreline	61
Lake Destiny	Entire Shoreline	61
Lake Florida	Entire Shoreline	61
Lake Lotus	Entire Shoreline	64
North Lake	Entire Shoreline	62
Lake Orienta	Entire Shoreline	67
Pearl Lake	Entire Shoreline	61
Pot Lake	Entire Shoreline	66
Prairie Lake	Entire Shoreline	66
Spring Wood Lake	Entire Shoreline	91
Lake Tillie	Entire Shoreline	69
Trout Lake	Entire Shoreline	66
Little Wekiva River	Downstream from Seaboard Coast Line Railroad.	50
	Downstream from Montgomery Road.	85
Tributary A	Downstream from extended Richloe Drive.	42
Tributary B	Downstream from S.R. 434	47

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 26, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963)

Issued: June 1, 1979.

Gloria M. Jimenez

Federal Insurance Administrator.

[FR Doc. 79-18228 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-6542]

Proposed Flood Elevation Determinations for the City of Frostproof, Polk County, Fla., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Frostproof, Polk County, Florida.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 47 West Wall Street, Frostproof, Florida.

Send comments to: Mr. Dan H. Ruhl, Jr., City Manager, City of Frostproof, City Hall, 47 West Wall Street, Frostproof, Florida 33843.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Frostproof, Florida, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Reedy Lake-Lake IDA	1000 Feet East of the Intersection of Old State Highway 600 and State Highway 600.	81
	250 feet east of the Intersection of Chesney Boulevard and Lake Reedy Boulevard.	81
Lake Clinch	Charles Street Between Grace Street and Lelia Street.	110
	200 feet west of the Intersection of Palm Avenue and 1st Street.	110

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 26, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18227 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-6543]

Proposed Flood Elevation Determinations for the Village of Fairmont City, St. Clair County, Ill. Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA. [1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Village of Fairmont City, St. Clair County, Illinois.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Village Hall, 2601 North 41st Street, Fairmont City, Illinois.

Send comments to: Mr. John Wyrostek, Sr., Village President, Village of Fairmont City, Fairmont City Village Hall, 2601 North 41st Street, Fairmont City, Illinois 62201.

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

FOR FURTHER INFORMATION CONTACT:
Mr. Richard W. Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determination of base (100-year) flood elevations for the Village of Fairmont City, St. Clair County, Illinois, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968) (Pub. L. 90-448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.4 (a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Local runoff and ponding.	Area beginning 900 feet North of the Intersection of Kings Highway (Route 111) and Maryland Avenue; East of said intersection approximately 1,400 feet; South of said intersection along Kings Highway (Route 111) 3, 270 feet; West of intersection 1,500.	421
	Area located in the extreme Southeastern section of the Village of Fairmont City, South of the Tailing Pond.	421
	Area located North of the Township of East St. Louis; South of Fairmont Avenue (Route 40) and Railroad Avenue; West of 31st Street.	417

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963)

Issued: June 1, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[FR Doc. 79-18228 Filed 6-13-79; 8:45 am]
BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5544]

Proposed Flood Elevation Determinations for the Village of Mettawa, Lake County, Ill.; Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Village of Mettawa, Lake County, Illinois.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Village Hall, 850 River Woods Road, P.O. Box 847, Lake Forest, Illinois. Send comments to: Mr. James Getz, 850 River Woods Road, P.O. Box 847, Lake Forest, Illinois 60045.

FOR FURTHER INFORMATION CONTACT:
Mr. Richard W. Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determination of base (100-year) flood elevations for the Village of Mettawa, Lake County, Illinois, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968) (Pub. L. 90-448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.4 (a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Des Plaines River	Downstream corporate limits	659
	Just upstream of State Highway 60.	661
	Upstream corporate limits near Libertyville.	668

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963)

Issued: June 1, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[FR Doc. 79-18229 Filed 6-13-79; 8:45 am]
BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5150]

Revision of proposed Flood Elevation Determinations for the Town of Georgetown, Floyd County, Ind. Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Harard Mitigation, FEMA.[1]

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Georgetown, Floyd County, Indiana.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in 44 FR 10082 on February 16, 1979, and in the *New Albany Tribune* published on or about March 4, 1979 and March 11, 1979, and hence supersedes those previously published rules.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood base (100-year) elevations are available for review at the Town Hall, Georgetown, Indiana. Send comments to: Mr. Kennith Lone, President, Town of Georgetown, Town Hall, Georgetown, Indiana 47122. Attention: Mr. Larry Wetzel, Vice President.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the Town of Georgetown, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR 1917.4 (a)).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to quality or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevations in feet, national geodetic vertical datum
Georgetown Creek	Downstream corporate limits	694
	Just upstream of Main Street	698
	Just downstream of Georgetown-Lanesville Road	894
	Just upstream of Wells Road	708
	Just upstream of Baylor-Wiseman Road	728
	About 1,500 feet upstream from Baylor-Wiseman Road	738

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963)

Dated: June 1, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[FR Doc. 79-18520 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5545]

Proposed Flood Elevation Determinations for the Unincorporated Areas of Johnson County, Kans., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Unincorporated Areas of Johnson County, Kansas.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the County Court House, Olathe, Kansas. Send comments to: Mr. John J. Frankie, Chairman of the County Commissioners, Johnson County, County Court House, Olathe, Kansas 66061.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determination of base (100-year) flood elevations for the Unincorporated Areas of Johnson County, Kansas, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, (national geodetic vertical datum)
Kansas River	Downstream county boundary	766
	About 0.5 mile downstream of the Atchison, Topeka & Santa Fe Railway	772
	About 0.9 mile upstream of the Atchison, Topeka & Santa Fe Railway	778
	Just downstream of Wyandotte Street bridge	780
	About 3.0 miles upstream of Wyandotte Street bridge	786
	Upstream county boundary	788
Kill Creek	Just upstream of Old State Highway 10	790
	At City of DeSoto southern corporate limits	792

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

Source of flooding	Location	Elevation in feet, (national geodetic vertical datum)
Blue River	About 1.3 miles downstream of Kenneth Road.	867
	Just upstream of Kenneth Road.	874
	About 1.9 miles upstream of Kenneth Road.	881
	Just upstream of Missouri Pacific Railroad.	886
	Just downstream of Metcalf Avenue.	897
	Just downstream of U.S. Highway 69.	901

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18231 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5546]

Proposed Flood Elevation Determinations for the Unincorporated Areas of McCracken County, Ky. Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the unincorporated areas of McCracken County, Kentucky.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Mr. Buddy J. Smith, County Engineer's Office, McCracken County courthouse, Paducah, Kentucky. Send comments to: Mr. Buddy J. Smith, County Engineer or Mr. Raymond Schultz, County Judge Executive, County Courthouse, Paducah, Kentucky, 42001.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW, Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the unincorporated areas of McCracken County, Kentucky, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat, 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Black Branch	Just downstream of Mayfield Metropolis Road (KY. 780).	354
	Just downstream of New Hinkleville Road (US HWY 60).	362
	Approximately 250 feet upstream of Lightfoot Road.	376
Camp Creek	Just downstream of Harmoney Road.	349
	Approximately 100 feet upstream of Old Mayfield Road.	361
	Just downstream of Illinois Central Gulf Railroad.	369
	Approximately 180 feet downstream of Old Houser Road (Davis Road).	396
Champion Creek	Approximately 40 feet upstream of Illinois Central Gulf Railroad.	334
	Just downstream of Old Mayfield Road.	343
	Approximately 120 feet upstream of Clark Line Road.	362
Crooked Creek	Approximately 30 feet upstream of Buckner Lane.	372
	Just upstream of Pecan Drive	384
	Approximately 200 feet upstream of Interstate 24.	396
Island Creek	Lane Road	330
	Just downstream of Husbands Road.	330
Massac Creek	Approximately 500 feet upstream of Illinois Central Gulf Railroad.	336
	Approximately 300 feet downstream of Hinkleville Road (US 60).	344
	Confluence of Middle Fork Massac Creek.	351
	Approximately 150 feet upstream of Blandville Road (US 62).	361
	Just downstream of Lovelaceville Road.	379
	Approximately 50 feet upstream of Clinton Road.	390
Middle Fork, Massac Creek	Approximately 150 feet upstream of Blandville Road.	360
	Approximately 120 feet upstream of Hines Road.	381
	Approximately 130 feet upstream of Lovelaceville Road.	389
	Approximately 50 feet downstream of New Hope Church Road.	415
West Fork, Massac Creek	Approximately 100 feet upstream of Steel Road.	349
	Approximately 180 feet upstream of Woodville Road.	358
	Just upstream of Hinkleville Road (US 60).	377
	Just upstream of Old Hinkleville Road.	397
	Approximately 70 feet downstream of the upstream crossing of Biggs Road.	412
Ohio River	At the Western County Limits (River Mile 956.2).	331
	Approximately 600 feet upstream of Illinois Central Gulf Railroad at Interstate 24.	336
	At Jacobs Lane (Extended)	337
Perkins Creek	Approximately 200 feet upstream of Paducah and Illinois Railroad.	349
	Just upstream of Hinkleville Road.	366
	Approximately 270 feet upstream of Interstate 24.	380
	Approximately 120 feet upstream of Hanash Road.	389
	Approximately 100 feet upstream of Friendship Church Road.	377

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963).

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18232 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5547]

Proposed Flood Elevation Determinations for the City of Augusta, Kennebec County, Maine, Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Augusta, Kennebec County, Maine.

These base (100-year) flood elevations are the basis for the flood plain mangement measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Office of the City Engineer. Send comments to: Mr. Paul G. Poulin, City Manager of Augusta, City Hall, Angusta, Maine 04330.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National flood Insurance Program (202) 755-5581 or Toll Free Line (800) 424-8872, Room 5270, 451 Seventh Street, SW, Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Augusta, Kennebec County, Maine in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain mangement requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Kennebec River	Downstream Corporate Limits.	32
	Memorial Bridge	34
	Upstream Maine Central Railroad Bridge.	38
	Confluence of Riggs Brook	39
	Upstream Corporate Limits	44
Bond Brook	Confluence with Kennebec River.	36
	Mount Vernon Avenue	39
	Dunn's Pit Road	61
	U.S. Route 95	108
	Leighton Road	114

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28,1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963)

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18233 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5548]

Proposed Flood Elevation Determinations for the Town of Cornish, York County, Maine Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Cornish, York County, Maine.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Office of the Town Selectmen, Cornish, Main. Send comments to Mr. William Hoxie, Chairman of the Board of Selectmen of Cornish, Town Office, Cornish, Maine 04020.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755-5581 or Toll Free Line (800) 424-8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determination of base (100-year) flood elevations for the Town of Cornish, York County, Maine in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new

[1] The functions of the Federal Insurance Administration Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19,1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in in feet, national geodetic vertical datum
Saco River	1,000 feet upstream of downstream Corporate Limits.	279
	4,000 feet upstream of downstream Corporate Limits.	280
	Upstream of Route 5	281
	Confluence of the Ossipee River.	283
Ossipee River	Confluence with Saco River	283
	Upstream of Bridge Street	286
	1.11 miles upstream of Bridge Street.	291
	Downstream of South Hiram Road.	297
	1.08 miles upstream of South Hiram Road.	303
Little River	Downstream of confluence of Ossipee River.	286
	Downstream of Old Mill Dam.	308
	Downstream of School Street	351

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18234 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5549]

Proposed Flood Elevation Determinations for the Town of West Gardiner, Kennebec County, Maine, Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of West Gardiner, Kennebec County, Maine.

[1] The functions of the Federal Insurance Administration Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Town Office, West Gardiner, Maine.

Send comments to: Mr. Vern Libby, Chairman, Board of Selectmen, Town of West Gardiner, Town Office, West Gardiner, Maine 04345.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Town of West Gardiner, Kennebec County, Maine, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a)).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Cobbosseecontee Stream.	Eastern corporate limit	139
	Just upstream of Interstate 95.	139
	Just upstream of Pond Road	140
	Upstream side of Dennis Hill Road.	141
	Upstream side of State Routes 9 and 126.	142
	Upstream side of Collins Mill Road.	143
	Upstream side of Collins Mill Dam.	151
	5,000 feet upstream of Collins Mill Dam.	155
	8,450 feet upstream of Collins Mill Dam.	160
	At confluence with Hutchinson Pond Outlet Brook.	163
Cobbosseecontee Lake.	West Gardiner shoreline	170

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963.)

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18235 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5550]

Proposed Flood Elevation Determinations for the Town of Buckland, Franklin County, Mass. Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Buckland, Franklin County, Massachusetts.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Town Office, 17 State Street, Buckland, Massachusetts. Send comments to: Mr. Norman Sessions, Chairman, Board of Selectmen, Town of Buckland, Town Office, 17 State Street, Buckland, Massachusetts 01370.

FOR FURTHER INFORMATION CONTACT: Mr. Richard W. Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determination of base (100-year) flood elevations for the Town of Buckland, Franklin County, Massachusetts, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.4 (a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of Flooding	Location	Elevation in feet, national geodetic vertical datum
Clesson Brook	Confluence with Deerfield River.	405
	Just downstream of Ashfield Road (near Depot Road).	408
	Just downstream of Ashfield Road (north of confluence of Maynard Brook).	543
	Just upstream of Upper Road	598
Deerfield River	Just above New England Power Company Dam No. 8.	411
	Just upstream of Bridge of Flowers.	415
	Just upstream of U.S. Route 2.	428
	Just above New England Power Company Dam No. 4.	460
	Approximately 3,500 feet upstream of Clesson Brook.	469
	Upstream corporate limit	518

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963)

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18228 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5053]

Proposed Flood Elevation Determinations for the Town of Georgetown, Essex County, Mass. Under the National Flood Insurance Program; Correction

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Correction of proposed rule.

SUMMARY: This document corrects a proposed rule on base (100-year) flood elevations that appeared on page 6455 of the Federal Register of February 1, 1979.

EFFECTIVE DATE: February 1, 1979

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

The following corrections are made:

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 18, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Jackman Brook	Jewett Street	57
Porter Brook	Bailey Lane*	66

*At centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963)

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18227 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5551]

Proposed Flood Elevation Determinations for the Town of Millis, Norfolk County, Mass. Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Millis, Norfolk County, Massachusetts.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Office of the Town Clerk, Millis, Massachusetts. Send comments to: Mr. Charles Levine, Chairman of the Board of Selectmen of

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 18, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

Millis, Town Office, 64 Exchange Street, Millis, Massachusetts 02154.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Town of Millis, Norfolk County, Massachusetts in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Charles River	Downstream Corporate Limits.	123
	Norfold Road (Upstream)	127
	Myrtle Road (Upstream)	136
	Upstream Corporate Limits	138

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18236 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-8552]

Proposed Flood Elevation Determinations for the City of Flint, Genesee County, Mich. Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Flint, Genesee County, Michigan.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the City Hall, Department of Community Development, 1101 South Saganaw Street, Flint, Michigan. Send comments to: The Honorable James W. Rutorford, Mayor, City of Flint, City Hall, 1101 South Saganaw Street, Flint, Michigan 48502.

FOR FURTHER INFORMATION CONTACT: Mr. Richard W. Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determination of base (100-year) flood elevations for the City of Flint, Genesee County, Michigan, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet national Geodetic Vertical datum
Flint River	Downstream corporate limit	702
	About 1,000 feet upstream from Stephenson Street.	706
	Just downstream of Hamilton Dam.	708
	About 300 feet upstream of Stevens Street.	710
	Just above Utah Dam	716
	Upstream corporate limit	719
Swartz Creek	Mouth of Flint River	706
	Just upstream of Second Street.	708
	Just upstream of Court Street	710
	Just upstream of Lower Circle Road.	718
	Just upstream of Circle Road	725
	Just downstream of Bellenger Road.	737
	Just upstream of Bristol Road.	753
	Just upstream of private road located 1,100 feet upstream of Bristol Road.	756
	At upstream corporate limits	769
Gilkey Creek	Mouth of Flint River	713
	Just upstream of Lewis Street.	718
	Just downstream of Kearsley Park Boulevard.	718
	Just upstream of Longway Boulevard.	727
	About 1,150 feet upstream of Longway Boulevard.	729
	About 1,900 feet upstream of Longway Boulevard.	736
	Just upstream of Vernon Drive.	744
	Just upstream of Kelso Street.	750
	Just upstream of Chesole System.	752
	Upstream corporate limits	754
Kearsley Creek	Mouth at Flint River	717
	Just downstream of Kearsley Reservoir Dam.	718
	Above Kearsley Reservoir Dam.	736
	Upstream corporate limits	737
Thread Creek	Mouth at Swartz Creek	711
	Just upstream of Fenton Street.	715
	About 600 feet upstream of Grand Trunk Western Railroad.	723
	Just downstream of Twelfth Street.	728
	Just upstream of Grand Traverse Street.	732

Source of flooding	Location	Elevation in feet (national Geodetic Vertical datum
	Just upstream of Barton Street.	740
	Just downstream of Thread Lake Dam.	747
	Above Thread Lake Dam	751
	Just upstream of Dort Highway.	758
	Just upstream of Chambers Road.	769
	Upstream corporate limit	782
Crampton Drain	Confluence with Kearsley Reservoir.	738
	Upstream corporate limits	788
Robinson Drain	Mouth at Gilkey Creek	740
	Just upstream of Golf Course Bridge.	746
	About 1,300 feet upstream of State Highway 21.	769
West Branch Swartz Creek.	Downstream corporate limits	752
	Upstream corporate limits	753
Carman Creek	Confluence with Swartz Creek.	728
	Just downstream of State Highway 21.	730
	Just upstream of Grand Trunk Western Railroad.	736
	Just downstream of Crestbrook Lane.	742
	Just upstream of Crestbrook Lane.	747
	Just upstream of Hammerberg Road.	751
	Upstream corporate limits	753

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18239 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5195]

Revision of Proposed Flood Elevation Determinations for the City of Cambridge, Furnas County, Nebr., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Cambridge, Furnas County, Nebraska.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in 44 FR 7163 on February 6, 1979, and in the *Cambridge Clarion* published on or about February 15, 1979 and February 22, 1979, and hence supersedes those previously published rules.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood (100-year) elevations are available for review at the City Hall, Cambridge, Nebraska. Send comments to: The Honorable Charles B. Mousel, Mayor, City of Cambridge, City Hall, Cambridge, Nebraska 69022.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are list below for selected location in the City of Cambridge, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a)).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevations in feet, national geodetic vertical datum
Republican River	About 0.91 mile downstream of State Highway 47.	2,255
	Just downstream of State Highway 47.	2,282
	Just upstream of State Highway 47.	2,294
	About 0.93 mile upstream of State Highway 47.	2,270

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 20, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.)

Dated: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18240 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5053]

Proposed Flood Elevation Determinations for the City of Concord, Merrimack County, N.H. Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Concord, Merrimack County, New Hampshire.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Office of Planning and Engineering, City Hall, 41 Green Street, Concord, New Hampshire 03301. Send comments to: Mayor Gross or Mr. James Smith, City Manager, City Hall, 41 Green Street, Concord, New Hampshire.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW, Washington, D.C. 20410.

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 20, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Concord, Merrimack County, New Hampshire, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Merrimack River	Northeastern Corporate Limits (confluence with Soucook River).	204
	Just upstream of Manchester Street.	233
	Just upstream of Bridge Street.	235
	Just upstream of Seawall Falls Road.	252
Contoocook River	Just upstream of South Main Street.	310
	Just downstream of Contoocook Park Dam.	340
	Just upstream of Contoocook Park Dam.	363
	Just upstream of Horse Hill Road.	366
Soucook River	Just upstream of Pembroke Street.	230
	Approximately 250 feet upstream of Sheep Davis Road.	280
	Just downstream of Pittsfield Road.	304
The Outlet	Approximately 100 feet upstream Old Washington Street Bridge.	320
	Just downstream of New Washington Street Bridge.	336
	Just downstream of Island Road.	348
	Approximately 25 feet upstream of Island Road.	350

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963)

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18241 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5554]

Proposed Flood Elevation Determinations for the Unincorporated Areas of Watauga County, N.C. Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the unincorporated areas of Watauga County, North Carolina.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Planning and Inspection Department, Basement Level, Watauga County Courthouse, Boone, North Carolina. Send comments to: Mr. Gary McGee, County Manager, or Mr. H. Neal Blair, Subdivision Coordinator, Watauga County Courthouse, Boone, North Carolina 28607.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the unincorporated areas of Watauga County, North Carolina.

In accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of Flooding	Location	Elevation in feet, national geodetic vertical datum
East Fork	Just downstream of Secondary Road 1522.	3102
	Just upstream of Secondary Road 1524.	3121
Middle Fork	Just upstream of Secondary road 1522.	3104
	Just upstream of US 221–421.	3127
	Just upstream of Secondary Road 1542.	3146
Brushy Fork	Just upstream of Secondary Road 1117.	2683
	Just upstream of US 421	2728
	Just upstream of Secondary Road 1511.	2764
	Just downstream of Secondary Road 1375.	2870
	Just upstream of Secondary Road 1375.	2875
Cove Creek	Just downstream of Secondary Road 1149.	2841
	Just upstream of US Highway 321.	2869
	Just upstream of Secondary Road 1215.	2896
	100 feet downstream of Secondary Road 1217.	2723
Gap Creek	Just upstream of US Highway 421–221.	2990
	Just downstream of Secondary Road 1507.	3004
	100 feet upstream of Secondary Road 1507.	3027
Howard Creek	Just downstream of Secondary Road 1368.	3164
Watauga River	Just upstream of Secondary road 1557.	2919
	Just upstream of Secondary Road 1569.	2938
	Just upstream of Mill Ridge Road.	2990
South Fork New River	Just upstream of US 221–421.	3066

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

Source of Flooding	Location	Elevation in feet, national geodetic vertical datum
	Just upstream of paved road near confluence of Webber Creek.	3102
Mutton Creek	Approximately 40 feet downstream of Secondary route 1014.	3097
Webber Creek	Approximately 15 feet downstream of State Farm Road.	3103
	Just upstream of confluence with South Fork New River.	3102

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963)

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18098 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 161]

Tank Vessel Operations—Puget Sound

Correction

Note.—This document originally appeared in the Federal Register for June 12, 1979. It is reprinted in this issue to meet requirements for publication on an assigned day of the week. (See OFR notice 41 FR 32914, August 6, 1976.)

In FR Doc. 79-17355 appearing on page 32004 in the issue of Monday, June 4, 1979, make the following correction:

The formula appearing at the top of the first column of page 32005 now given as "V-F/KD" should have been given as "V-$\sqrt{}$KD."

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 762]

[FRL 1233-4; OTS-060005]

Toxic Substances Control Act; Fully Halogenated Chlorofluorocarbons

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: On March 17, 1978 the Environmental Protection Agency promulgated a rule (40 CFR Part 762; 43 FR 11318) which prohibited almost all of the manufacture and processing of fully halogenated chlorofluoroalkanes (hereinafter referred to as chlorofluorocarbons) for those aerosol propellant uses which are subject to the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 *et. seq.*). This action proposes an amendment to the essential use exemption for mold release agents (40 CFR 762.21 (b)) in order to specifically exclude spinnerette release agents.

DATES: Comments on the proposed amendments must be received by the Record and Hearing Clerk by September 12, 1979. An informal public hearing will not be held unless an interested party requests one. Request for a public hearing must be received by the Record and Hearing Clerk by September 12, 1979. Please include the referrence number OTS-060005 on all comments.

ADDRESS: Joni T. Repasch is the Record and Hearing Clerk for this rulemaking. For sending comments the official record of rulemaking is located in room 447 WSME, 401 M Street, S.W., Washington, D.C. 20460. Telephone: 202-755-0322. The record is available for viewing and copying from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: James D. Silverman, Control Action Division, Office of Toxic Substances (TS-794), U.S. Environmental Protection Agency, 401, M Street, S.W., Washington, D.C. 20460. Telephone: 202-755-9024.

SUPPLEMENTARY INFORMATION: The chlorofluorocarbon rule contains an essential use exemption (§ 762.21 (b)) for: Release agent for molds used in the production of plastic and elastomeric materials. Because questions have arisen about whether this exemption was intended to include spinnerette release agents, EPA has recently determined that such agents are exempted by the rule. However EPA is today proposing to revoke that exemption.

Since promulgation of the rule two companies have notified EPA that they produce spinnerette release agents which do not use chlorofluorocarbon aerosol propellants. According to one company, preliminary test results indicate that nonchlorofluorocarbon spinnerette release agents generally function as effectively as those containing chlorofluorocarbon propellants. If there is an alternative product available, there is no basis for maintaining the essential use exemption.

Accordingly, EPA is now proposing to amend the current rule to eliminate the exemption for spinnerette release agents. EPA specifically invites comments concerning the effectiveness, cost, and suitability of nonchlorofluorocarbon products as spinnerette release agents. Unless there is evidence that such alternatives are unsuitable EPA will eliminate the essential use exemption for spinnerette release agents propelled by chlorofluorocarbons.

The comment period for this rulemaking is 90 days instead of the usual 30 days for specialized amendments. This 90 day period will allow industry time to conduct additional tests of substitute products.

Under Executive Order 12044 EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Dated: June 7, 1979.

Douglas M. Costle,

Administrator.

EPA proposes to amend 40 CFR by amending Part 762 as follows:

PART 762—FULLY HALOGENATED CHLOROFLUOROALKANES

By amending § 762.21 (b) to read as follows:

§ 762.21 Essential use exemptions.

* * * * *

(b) Release agent for molds used in the production of plastic and elastomeric materials except for spinnerette release agents.

(Toxic Substances Control Act, Section 6, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605))

[FR Doc. 79-18099 Filed 6-13-79; 8:45 am]

BILLING CODE 6560-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 116a]

Title I, Elementary and Secondary Education Act; Awarding of Special Grants to Local Educational Agencies

AGENCY: Office of Education, HEW.

ACTION: Proposed regulations.

SUMMARY: The Commissioner proposes regulations to govern the awarding of special grants to local educational agencies (LEAs) with especially high

concentrations of children from low-income families. These special grants are authorized under the Education Amendments of 1978.

The primary purpose of these proposed regulations is to provide methods for the allocation of remaining special grant funds after all eligible counties in a State have received funds according to the statutory formula.

These proposed sections will be incorporated into the new proposed regulations that will be published in the near future for Title I of the Elementary and Secondary Education Act of 1965.

DATES: All comments on these proposed regulations must be received on or before August 13, 1979.

ADDRESSES: Written comments should be addressed to Ms. Carolyn Horner, Division of Education for the Disadvantaged, U.S. Office of Education, 400 Maryland Avenue, SW (Room 3642D, ROB-3), Washington, D.C. 20202.

All comments that are submitted will be available for public inspection at this address during and after the comment period between 8:30 a.m. and 4:00 p.m., Mondays through Fridays, except for Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Carolyn Horner, (202) 245-2638.

SUPPLEMENTARY INFORMATION:

A. Background

As amended by the Education Amendments of 1978 (Pub. L. 95-561), Section 117 of Title I of the Elementary and Secondary Education Act of 1965 ("the Act") authorizes special title I grants for local educational agencies (LEAs) in counties with especially high concentrations of children from low-income families (sec. 117; 20 U.S.C. 2722).

Section 117(b)(1) of the Act provides that each county—in a State other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands—that is eligible for a grant under title I of the Act for any fiscal year is entitled to an additional grant under section 117 for that fiscal year if—

(a) The number of children counted under section 111(c) of the Act for LEAs in the county exceeds five thousand; or

(b) The number of children counted under section 111(c) exceeds 20 percent of the total number of children aged five through seventeen in school districts of LEAs in the county.

In addition to the above criteria for determining whether a county is entitled to a special grant, section 117(b) provides that no State—other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands—shall receive less than one-quarter of 1 percent of the funds appropriated for special grants under section 117. However, the statute does not specify how those grant funds are to be allocated to counties in States in which there are no counties that meet the eligibility criteria in section 117(b)(1).

Similarly, the statute does not specify a method for allocating any remaining special grant funds after all eligible counties in a State have received the amount of special grant funds to which they are entitled under the formula in section 117(b)(3).

B. Overview of the Proposed Regulations

The proposed regulations specify—

(a) Which States are entitled to special grant funds under section 117 of the Act;

(b) The method for determining the amount of special grant funds that each State receives;

(c) The methods for allocating special grant funds to counties within each State that receives these funds;

(d) The method of making the special grants to LEAs; and

(e) The conditions that govern the use of special grant funds.

Sections 116a.34 and 116a.35 of the proposed regulations specify methods for allocating remaining special grant funds in a State after all eligible counties in that State have received the special grant funds to which they are entitled under the statutory formula.

In essence, these sections provide that, after each eligible county is allocated the amount of special grant funds to which it is entitled, the Commissioner allocates any remaining special grant funds on the basis of a plan that is—

(a) Proposed by the State educational agency (SEA); and

(b) Approved by the Commissioner.

Under the SEA plan these funds may be allocated to some otherwise ineligible counties, as well as to some or all of that State's eligible counties already funded under the statutory formula.

If the SEA and the Commissioner cannot agree on an allocation plan, the Commissioner allocates the remaining special grant funds to the counties in the State that are receiving a basic grant under part A of the title I statute. The Commissioner makes this allocation on the basis of the basic grant allocation method in the Act.

We would like to point out that the new proposed title I regulations describing evaluation requirements for title I programs, that were published in the Federal Register on February 7, 1979, used some of the same section numbers that are used in these proposed regulations. This problem will be solved by changing the section numbers for the title I evaluation requirements when they are published in final form.

C. Public Comments and Participation

While the Commissioner invites and encourages all interested persons to submit comments, suggestions, and recommendations concerning these proposed regulations, the Commissioner is particularly interested in receiving comments from people in the States that would be most affected by the allocation methods that are proposed in §§ 116a.34 and 116a.35. Those States are likely to include New Hampshire (which has no counties that meet the eligibility criteria in section 117(b)(1) of the Act) and Alaska, Delaware, Idaho, Iowa, Kansas, Maine, Montana, Nebraska, Nevada, North Dakota, South Dakota, Utah, Vermont and Wyoming (which will have special grant funds left over after all counties in the State that meet the statutory eligibility criteria have received the amount of special grant funds to which they are entitled under the formula in section 117(b)(3)).

Comments may be sent to the address in this notice.

D. Citations of Authority

As required by section 431(a) of the General Education Provisions Act (20 U.S.C. 1232(a)), a citation of statutory authority for each section of the proposed regulations has been placed in parentheses on the line following the text of each section. References to "Sec." in these citations of authority relate to sections of the Elementary and Secondary Education Act of 1965, as amended by several public laws including the Education Amendments of 1978 (Pub. L. 95-561).

Dated: March 16, 1979.

Ernest L. Boyer,

U.S. Commissioner of Education.

Approved: May 10, 1979.

Hale Champion,

Acting Secretary of Health, Education, and Welfare.

(Catalog of Federal Domestic Assistance No. 13.428 Educationally Deprived Children Local Educational Agencies)

It is proposed that Title 45 of the Code of Federal Regulations be amended by

adding new §§ 116a.32 through 116a.39 to Part 116a to read as follows:

Sec.
116a.32 States entitled to special grant funds under section 117 of the Act.
116a.33 Amount of special grant funds that each State receives.
116a.34 Allocation of special grant funds to counties within a State in which at least one county meets the statutory eligibility criteria.
116a.35 Allocation of special grant founds to counties within a State in which no country meets the statutory eligibility criteria.
116a.36 Submission of allocation plans.
116a.37 Commissioner's standard for approval of allocation plans.
116a.38 Method of making special grants.
116a.39 Use of special grant funds.

Authority: Section 117 of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978 (Pub. L. 95-561).

§ 116a.32 States entitled to special grant funds under section 117 of the Act.

Section 117(b) of the Act provides the each State—other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands—that is eligible for a grant under title I of the Act for any fiscal year is entitled to special grant funds from the amount appropriated under section 117(d) of the Act for the fiscal year.

(Sec. 117(b)(1); 20 U.S.C. 2722(b)(1))

§ 116a.33 Amount of special grant funds that each State receives.

The Commissioner determines the amount of special grant funds that a State receives under section 117 of the Act on the basis of the formula in section 117(b)(3) of the Act. However, each State that is entitled to special grant funds receives at least one-quarter of 1 percent of the funds appropriated under section 117(d) of the Act for that fiscal year.

(Sec. 117(b)(1), (2) amd (3); 20 U.S.C. 2722(b)(1), (2) and (3))

§ 116a.34 Allocation of special grant funds to counties within a State in which at least one county meets the statutory eligibility criteria.

(a) *General Rule.* Expect as provided in paragraph (b) of this section, special grant funds that are awarded to a State in which at least one county meets the eligibility criteria in section 117(b)(1) of the Act are allocated to the eligible counties within the State by the Commissioner in accordance with the formula in section 117(b)(3) of the Act.

(b) *Exceptions.* (1) Except as provided in subparagraph (2) of this paragraph, any special grant funds that remain unallocated—after all the counties in the State have been allocated the amount of special grant funds to which they are entitled under the statutory formula—are allocated to counties within the State by the Commissioner according to an allocation plan. This allocation plan must—

(1) Be submitted to the Commissioner by the SEA, according to the procedures described in § 116a.36; and

(2) Have the approval of the Commissioner, using the standards described in § 116a.37.

(2) If the SEA does not submit an allocation plan, or the Commissioner does not approve the plan that has been submitted, the Commissioner allocates the remaning special grant funds within the State to those counties that are receiving a basic grant under part A of title I of the Act. The Commissioner makes this allocation on the basis of the basic grant allocation method in section 111(a)(2) of the Act.

(Sec. 117(a) and (b); 20 U.S.C. 2722(a) and (b))

§ 116a.35 Allocation of special grant funds to counties within a State in which no county meets the statutory eligibility criteria.

(a) *General Rule.* Except as provided in paragraph (b) of this section, special grant funds that are awarded to a State in which no county meets the eligibility criteria in section 117(b)(1) of the Act are allocated to counties within the State by the Commissioner according to an allocation plan. This allocation plan must—

(1) Be submitted to the Commissioner by the SEA, according to the procedures described in § 116a.36; and

(2) Have the approval of the Commissioner, using the standards described in § 116a.37.

(b) *Exception.* If the SEA does not submit an allocation plan or the Commissioner does not approve the plan that has been submitted, the Commissioner allocates the special grant funds within the State to those counties that are receiving a basic grant under part A of title I of the Act. The Commissioner makes this allocation on the basis of the basic grant allocation method in section 111(a)(2) of the Act.

(Sec. 117(a) and (b); 20 U.S.C. 2722(a) and (b))

§ 116a.36 Submission of allocation plans.

(a) *States that may submit an allocation plan.* Each State for which special grant funds remain unallocated—after all the eligible counties in the State have been allocated the amount of special grant funds to which they are entitled under the statutory formula—may submit, for the Commissioner's consideration, a plan for allocation of these unallocated funds to counties within the State.

(b) *Submission through State educational agency.* Each State that chooses to submit an allocation plan shall do so through its SEA.

(c) *Elements of an allocation plan.* In order to be assured of consideration by the Commissioner, an allocation plan must include—

(1) A list of all counties in the State that meet the eligibility criteria in section 117(b)(1) of the Act, and the amount of special grant funds that each of those counties receives under the formula in section 117(b)(3) of the Act;

(2) A list of all counties in the State, and the amount of special grant funds—if any—that each county would receive under the proposed allocation plan; and

(3) A description of the proposed method for allocating the special grant funds to the counties in the State. This description must include—

(i) The reasons why this method is being proposed; and

(ii) How this method meets the statutory purpose of providing special grant funds to those counties with espically high concentrations of children from low-income families.

(Sec. 117(a) and (b); 20 U.S.C. 2722(a) and (b))

§ 116a.37 Commissioner's standards for approval of allocation plans.

In deciding whether to approve a proposed allocation plan the Commissioner considers the extent to which the proposed plan—

(a) Meets the requirements in § 116a.36;

(b) Would result in an allocation of special grant funds that meets the statutory purpose of providing special grant funds to those counties with especially high concentrations of children from low-income families; and

(c) Is reasonable in terms of local circumstances, including the distribution of children from low-income families within counties.

(Sec. 117(a) and (b); 20 U.S.C. 2722(a) and (b))

§ 116a.38 Method of making special grants.

(a) The Commissioner includes the amount of special grant funds that a State is entitled to for a particular fiscal year, as determined under § 116a.33, in the amount paid to that State under section 191 of the Act for that fiscal year.

(b) Under § 116a.34 or § 116a.35 the Commissioner allocated that special grant funds to counties within each State that receives special grant funds.

(c) Under the formula in section 117(b)(5) of the Act, the SEA shall distribute the special grant funds to LEAs in each county to which the Commissioner allocates special grant funds.

(Sec. 117(b)(5) and (c)(1); 20 U.S.C. 2722(b)(5) and (c)(1))

§ 116a.39 Use of special grant funds.

Each LEA that receives special grant funds under section 117 of the Act shall use those funds—

(a) To carry out activities that are described in the approved project application for title I basic grant funds that the LEA submitted under section 121 of the Act; and

(b) In accordance with the program requirements for title I basic grants in subpart 3 of title I of the Act.

(Sec. 117(c)(2); 20 U.S.C. 2722(c)(2)

[FR Doc. 79-17878 Filed 6-13-79; 8:45 am]

BILLING CODE 4110-02-M

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[BC Docket No. 79-136; RM-3170]

Television Broadcast Station in Oklahoma City, Okla.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rule Making.

SUMMARY: Comments invited on a proposal to assign television Channel 52 to Oklahoma City, Oklahoma. This would also make the channel available for use at Edmond, Oklahoma, as proposed by Satellite Outreach Ministries, Inc.

DATE: Comments must be filed on or before July 30, 1979, and reply comments must be filed on or before August 20, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Louis C. Stephens, Broadcast Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION:

Adopted: May 31, 1979.

Released: June 6, 1979.

By the Chief, Broadcast Bureau:

In the Matter of Amendment of Section 73.606(b), Table of Assignments, Television Broadcast Stations, (Oklahoma City, Oklahoma); BC Docket No. 79-136, RM-3170.

1. Satellite Outreach Ministries, Inc. has requested the assignment of Channel 52 to Edmond, Oklahoma, and states its intention to apply for a construction permit to build a television station there if this assignment is granted.

2. No television channels are now assigned to the small community of Edmond (1970 population of 16,633) which is located in Oklahoma County (pop. 527,717), near Oklahoma City. Petitioner has offered no real showing of the need for a television channel for Edmond, but there does appear to be a possible need for another channel at Oklahoma City. Moreover, if Channel 52 were assigned to Oklahoma City, petitioner could apply for it at Edmond under the "15-mile" rule (Section 73.607(b)).

3. The proposed assignment would meet all mileage separation requirements, and a station on Channel 52 at Oklahoma City would be subject to no site restrictions for separation purposes.

4. The eight television channels now assigned to Oklahoma City (pop. 366,481) include the five on which stations now operate (4, 5, 9, *13, and 25), one for which applications are pending but are "cut-off" (Channel 14) and two for which construction permits have been granted (Channels 34 and 43). If Channel 52 were assigned, there would remain two possible additional channel assignments for Oklahoma City or elsewhere in the area.

5. Consideration of the proposed assignment of Channel 52 to Oklahoma City appearing warranted in these circumstances, comments are invited on the following proposed amendment to Section 73.606(b), Table of Television Assignments:

City	Channel No.	
	Present	Proposed
Oklahoma City, Okla	4-, 5, 9-, *13+, 14-, 25-, 34-, 43+.	4-, 5, 9-, *13+, 14-, 25-, 34-, 43+, 52

6. Authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. For further information concerning this proceeding, contact Louis C. Stephens, Broadcast Bureau, (202) 632-6302. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Philip L. Verveer,

Chief, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections, 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Section 0.281(b)(6) of the Commission's Rules, IT IS PROPOSED TO AMEND the TV Table of Assignments, Section 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 79-18981 Filed 6-13-79; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Materials Transportation Bureau

[49 CFR Part 172]

[Docket No. HM-126A; Notice No. 79-9]

Display of Hazardous Materials Identification Numbers; Improved Emergency Response Capability

Correction

In FR Doc. 79-16984 appearing at page 32972 in the issue for Thursday, June 7, 1979, a portion of the comments of the Association of American Railroads (AAR) was reproduced on pages 32973-32975. These comments were printed in the same type size and style as the rest of the document preamble. Consequently, the comments of the AAR might be mistaken as representing the official views of the Materials Transportation Bureau. Users should be advised that the text beginning in the middle column on page 32973, from the heading "The Basic Requirements of a Hazard Information System" through the text in the middle column on page 32975, ending with the line "emergency units on the scene." is a partial quotation taken from the comments of the AAR.

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Part 652]

Mid-Atlantic Fishery Management Council; Public Hearings

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Public hearings on amendment to the Fishery Management Plan for the Surf Clam and Ocean Quahog Fisheries.

SUMMARY: The Mid-Atlantic Fishery Management Council prepared an amendment to the Fishery Management Plan for the Surf Clam and Ocean Quahog Fisheries that proposes major changes to the plan. Public hearings are announced for consideration of the changes.

DATES: The hearings will be held on the following dates: July 10, 11, 12, 17, 18, and 19, 1979.

ADDRESSES: The hearings will be at the following locations:

July 10—Holiday Inn, 300 Hathaway Road, New Bedford, MA 02710, (617) 997-1231.
July 11—Dutch Inn, Great Island Road, (Galilee) Narragansett, RI 02882, (401) 789-9341.
July 12—Stockton State College, Pomona, NJ 08240, (609) 652-1776.
July 17—Golden Eagle, Philadelphia Avenue on the Beach, Cape May, NJ 08204, (609) 884-5611.
July 18—Sheraton Fountainbleau Inn, 10100 Ocean Highway, Ocean City, MD 21842, (301) 524-3535.
July 19—Quality Inn Lake Wright, 6280 Northampton Blvd., Box 2048, Norfolk, VA 23502, (804) 461-6251.

All of the above public hearings will begin promptly at 7:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, North and New Streets, Dover, Delaware 19901, Telephone: 302-674-2331.

SUPPLEMENTAL INFORMATION: The Fishery Management Plan for the Surf Clam and Ocean Quahog Fisheries was approved by the Secretary of Commerce in November, 1977, for the period through September, 1979. The Council adopted an amendment to the plan that would extend it through December 1979. This amendment is being reviewed by the Secretary of Commerce. The Council adopted another amendment that would extend the plan through calendar year 1980 with the following changes:

1. The annual surf clam quota of 1.8 million bushels (approximately 90 million pounds of meats) would be continued as would be the provisions to allocate the quota by quarters and regulate fishing effort by restricting days fished. However, the amendment would revise the quarterly quotas for surf clams to be 400,000 bushels for October through December and January through March, and 500,000 bushels for April through June and July through September. A fishing week of no more than four days, Monday through Thursday, will be continued. To help spread the quarterly catch evenly throughout the entire quarter, each vessel will be restricted to 24 hours of fishing per week at the beginning of each quarter. If the Regional Director of the National Marine Fisheries Service determines that the quarterly quota will not be harvested, the weekly hours of fishing may be increased. The Regional Director may prohibit fishing if it is likely that the quarterly quota will be exceeded. Vessels would be required to start and stop fishing at uniform hours. A make-up day for bad weather would be permitted on the fishing day following the fishing day which the bad weather condition existed. The make-up day provision would be in effect only during the months of December, February, and March.

2. The amendment would continue the provisions of the plan regarding ocean quahogs except that the annual quota for ocean quahogs would be increased to 4.0 million bushels (approximately 40 million pounds of meats).

3. The prohibition on the entry of additional vessels into the surf clam fishery would be continued. The moratorium would not preclude replacement of vessels involuntarily leaving the fishery during the time when the moratorium is in effect.

4. The provision to close surf clam beds to fishing wherein over 60 percent of the clams are under 4⅛ inches in length and less than 15 percent are over 5⅛ inches in length would be continued. It is recommended that special measures be instituted to manage such closed areas when they are reopened to insure that such openings do not lead to premature closures in the fishery and to prevent overfishing of the newly opened beds.

5. Dredge size and number would be limited by the amendment to such

equipment on board and in use on the effective date of implementation. A minimum surf clam size limit of 4½ inches would be imposed, at least during 1980. The primary reason for these measures is to take into account the possible impacts of using 1980 as a base year for measuring harvesting sector performance upon which to base, at least in part, a possible future direct allocation system for the surf clam fishery. The dredge freeze was recommended by the Council's Surf Clam and Ocean Quahog Advisory Subpanel primarily to minimize changes from historical relative harvesting capacity during the base period. The surf clam size was recommended by the Subpanel in order to minimize the harvest of pre-recruit surf clams during the base period when there would be a great incentive to harvest the maximum volume of clams in order to improve harvesting performance. Council may amend the plan by removing the moratorium on the entry of new vessels into the surf clam fishery and replacing it with some type of vessel allocation system beginning with calendar year 1981. In the event that such a system is instituted, and, to the extent that an allocation formula could be based on performance, 1980 would be the base period for at least a portion of such calculations.

6. The licensing provisions of the plan would be continued. The reporting requirements would be continued with minor revisions.

In addition to the management measures summarized above that are related to extending the plan through 1980, the Council has been considering the recommendation of the New England Fishery Management Council that a special regime be established for the surf clam fishery in New England. There has been much discussion since the plan was developed relative to the New England surf clam fishery, whether it differed enough from the Mid-Atlantic fishery to warrant a separate regime, and if so, what form that separate regime should take. After much consideration, the Mid-Atlantic Council has developed an alternative for the management of the surf clam fishery in New England. The alternative provides for the establishment of a separate management regime in New England, that is, the area north of the dividing line between the Mid-Atlantic and New England Fishery Management Councils. In the northern area the moratorium on entry of vessels into the surf clam fishery and the effort and gear restrictions would not be in effect. A quota of 200,000 pounds of surf clams would be set for that area. The New England quota would be in addition to the quota for approximately 30 million pounds of surf clams set in the amended plan in the Mid-Atlantic. When half of that quota would be caught, the effort restrictions operating in the Mid-Atlantic area would be imposed. Any harvest of surf clams from the northern area would not be charged against the Mid-Atlantic surf clam quota. Vessels entering the New England fishery under this special provision would not be entitled to fish in the Mid-Atlantic area and would not accrue any rights to a future direct allocation system that might be established. Vessels with permits issued pursuant to the moratorium established by the original plan would be permitted to fish in the northern area, but their landings would be reported separate from their Mid-Atlantic landings and would not count toward any possible future direct allocation system base calculation. The Mid-Atlantic Council is interested in receiving comments on this alternative during the review process on this amendment so that this issue may be resolved when this amendment has been finalized.

Another combination of management measures has been proposed for consideration during public review process for this amendment by the Council's Surf Clam and Ocean Quahog Advisory Subpanel. That alternative would extend the plan to the end of 1981 with annual and quarterly quotas for surf clams and an annual quota for ocean quahogs identical to those in the Council's recommended alternative. Dredge size and number would be limited to that on board and in use as of January 1, 1980. The bad weather make-up day provisions are the same in the Subpanel's alternative as those in the Council's recommended alternative, except that the make-up day would be limited to one twelve hour period per week. The moratorium on entry of vessels into the surf clam fishery would also be extended.

The objectives of the plan and the management unit, all surf clams (*Spisula solidissima*) and all ocean quahogs (*Arctica islandica*) in the Atlantic fishery conservation zone, would remain unchanged. Hearings will be tape recorded and the tapes filed as an official formal transcript of proceedings. Summary minutes will be prepared on each hearing. Written comments should be submitted to the contact person listed above by July 27, 1979, to receive full consideration in the plan amendment process.

Dated: June 11, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-18501 Filed 6-13-79; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 44, No. 116
Thursday, June 14, 1979

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Marketing Agreement 146]

Peanuts; 1979 Crop; Incoming and Outgoing Quality Regulations and Indemnification

Pursuant to the provisions of sections 5, 31, 32, 34 and 36 of the marketing agreement regulating the quality of domestically produced peanuts heretofore entered into between the Secretary of Agriculture and various handlers of peanuts [30 FR 9402] and upon recommendation of the Peanut Administrative Committee established pursuant to such agreement and other information it is hereby found that the appended "Incoming Quality Regulation—1979 Crop Peanuts", "Outgoing Quality Regulation—1979 Crop Peanuts", and the "Terms and Conditions of Indemnification—1979 Crop Peanuts", which modify or are in addition to the provisions of sections 5, 31, 32 and 36 of said agreement will tend to effectuate the objectives of the Agricultural Marketing Agreement Act of 1937, as amended, and of such agreement and should be issued.

The Peanut Administrative Committee has recommended that the appended "Incoming Quality Regulation—1979 Crop Peanuts" "Outgoing Quality Regulation—1979 Crop Peanuts" and the "Terms and conditions of Indeminafication—1979 Crop Peanuts", be issued to implement and effectuate the provisions of the aforementioned sections of the marketing agreement. The 1979 peanut crop year begins July 1 and procedures and regulations for operations under the agreement should be established thereby affording handlers maximum time to plan their operations accordingly. The handlers of peanuts who will be affected hereby have signed the marketing agreement authorizing the issuance hereof, they are represented on the Committee which has prepared and recommended these quality regulations and terms and conditions of indemnification for approval.

Upon consideration of the Committee recommendation and other available information the appended "Incoming Quality Regulation—1979 Crop Peanuts", "Outgoing Quality Regulation—1979 Crop Peanuts", and the "Terms and Conditions of Indemnification—1979 Crop Peanuts" are hereby approved.

This regulation has not been determined significant under the Department's criteria implementing Executive Order 12044.

Dated: June 8, 1979.

D. S. Kuryloski,
Acting Deputy Director, Fruit and Vegetable Division.

Incoming Quality Regulation—1979 Crop Peanuts

The following modify section 5 of the peanut marketing agreement and modify or are in addition to the restrictions of section 31 on handler receipts or acquisitions of 1979 crop peanuts:

(a) *Modification of section 5, paragraphs (b), (c), and (d).* Paragraphs (b), (c), and (d) of section 5 of the peanut marketing agreement are modified as to 1979 crop farmers stocks peanuts to read respectively as follows:

(b) *Segregation 1.* "Segregation 1 peanuts" means farmers stock peanuts with not more than 2 percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold or decay and which are free from visible *Aspergillus flavus.*

(c) *Segregation 2.* "Segregation 2 peanuts" means farmers stock peanuts with more than 2 percent damaged kernels or more than 1.00 percent concealed damage caused by rancidity, mold or decay and which are free from visible *Aspergillus flavus.*

(d) *Segregation 3.* "Segregation 3 peanuts" means farmers stocks peanuts with visible *Aspergillus flavus.*

(b) *Moisture.* Except as provided under paragraph (e) *Seed peanuts,* no handler shall receive or acquire peanuts containing more than 10 percent moisture: *Provided,* That peanuts of a higher moisture content may be received and dried to not more than 10 percent moisture prior to storing or milling. On farmers stock, such moisture determinations shall be rounded to the nearest whole number; on shelled peanuts, the determinations shall be carried to the hundredths place and shall not be rounded to the nearest whole number.

(c) *Damage.* For the purpose of determining damage, other than concealed damage, on farmers stock peanuts, all percentage determinations shall be rounded to the nearest whole number.

(d) *Loose shelled kernels.* Handlers may separate from the loose shelled kernels received with farmers stock peanuts, those sizes of kernels which ride screens with the following slot openings: Runner—$^{13}/_{64}$ x $^{3}/_{4}$ inch; Spanish and Valencia—$^{13}/_{64}$ x $^{3}/_{4}$ inch; Virginia—$^{13}/_{64}$ x 1 inch. If so separated, those loose shelled kernels which do not ride such screens, shall be removed from the farmers stock peanuts and shall be held separate and apart from other peanuts and disposed of for inedible use as provided in paragraph (g) of the Outgoing Quality Regulation. If the kernels which ride the prescribed screen are not separated, the entire amount of loose shelled kernels shall be removed from farmers stock peanuts and shall be so held and so delivered or disposed of. The loose shelled kernels which ride the screens may be included with shelled peanuts prepared by the handler for inspection and sale for human consumption. For the purpose of this regulation, the term "loose shelled kernels" means peanut kernels or portions of kernels completely free of their hulls and found in deliveries of farmers stock peanuts.

(e) *Seed peanuts.* A handler may acquire and deliver for seed purposes farmers stock peanuts which meet the requirements of Segregation 1 peanuts. If the seed peanuts are produced under the auspices of a State agency which regulates or controls the production of seed peanuts, they may contain up to 3 percent damaged kernels and have visible *Aspergillus flavus,* and, in addition, the following moisture content, as applicable:

(1) for seed peanuts produced in the Southeastern and Virginia-Carolina areas, they may contain up to 11 percent moisture except Virginia type peanuts which are not stacked at harvest time may contain up to 12 percent moisture; and (2) for seed peanuts produced in the

Southwestern area, they may contain up to 10 percent moisture.

However, any such seed peanuts with visible *Aspergillus flavus* shall be stored and shelled separate from other peanuts, and any residual not used for seed shall not be used or disposed of for human consumption unless it is determined to be wholesome by chemical assay for aflatoxin. A handler whose operations may include custom seed shelling, may receive, custom shell, and deliver for seed purposes farmers stock peanuts and such peanuts shall be exempt from the Incoming Quality Regulation requirements and therefore shall not be required to be inspected and certified as meeting the Incoming Quality Regulation requirements and the handler shall report to the Committee as requested the weight of each lot of farmers stock peanuts received on such basis on a form furnished by the Committee. However, handlers who acquire seed peanut residuals from their custom shelling of uninspected (farmers stock) seed peanuts, or from another sheller or producer who has or has not signed the marketing agreement shall hold and/or mill such residuals separate and apart from other receipts or acquisitions of the handler and such residuals which meet Outgoing Quality Regulation requirements may be disposed of by sale to human consumption outlets and any portion not meeting such requirements shall be disposed of by sale as peanuts failing to meet human consumption requirements pursuant to paragraph (i) of the Outgoing Quality Regulation.

(f) *Oilstock.* Handlers may acquire for disposition to domestic crushing or export, to countries other than Canada and Mexico, farmers stock peanuts of a lower quality than Segregation 1 or grades or sizes of shelled peanuts or cleaned inshell peanuts which fail to meet the requirements for human consumption. The provision of section 31 of the marketing agreement restricting acquisitions of such peanuts to handlers who are crushers is hereby modified to authorize all handlers to act as accumulators and acquire, from other handlers or non-handlers, Segregation 2 or 3 farmers stock peanuts. Handlers may also acquire from other handlers shelled or fragmented peanuts originating from Segregation 2 or 3 farmers stock, or the entire mill production of shelled or fragmented peanuts from Segregation 1 farmers stock, or lots of shelled peanuts, originating from Segregation 1 peanuts and which have been positive lot identified as specified in paragraph (d) of the Outgoing Quality Regulation, which failed to meet the requirements for human consumption pursuant to paragraph (a) of the Outgoing Quality Regulation: *Provided,* That all such acquisitions are held separate from Segregation 1 peanuts acquired for milling or from edible grades of shelled or milled peanuts. Handlers may commingle the Segregation 2 and 3 peanuts or keep them separate and apart as provided in paragraph (j) of the Outgoing Quality Regulation. Further disposition or commingling of such peanuts shall be only as provided in paragraph (1) of the Outgoing Quality Regulation. Handlers who acquire farmers stock peanuts of a lower quality than Segregation 1 or grades or sizes of shelled peanuts or cleaned inshell peanuts which fail to meet the requirements for human consumption shall report such acquisitions as prescribed by the Committee. To be eligible to receive or acquire Segregation 2 or 3 farmers stock peanuts and shelled or "fragmented" peanuts originating therefrom, a handler shall pay to the Area Association a fee for the purpose of covering cost of supervision of the disposition of such peanuts.

(g) *Segregation 2 and 3 control.* To assure the removal from edible outlets of any lot of peanuts determined by Federal or Federal-State Inspection Service to be Segregation 2 or Segregation 3, each handler shall inform each employee, country buyer, commission buyer or like person through whom he receives peanuts, of the need to receive and withhold all lots of Segregation 2 and Segregation 3 peanuts from milling for edible use. If any lot of Segregation 2 or Segregation 3 farmers stock peanuts is not withheld but returned to the producer, the handler shall cause the Inspection Service to forward immediately a copy of the inspection certificate on the lot to the designated office of the handler and a copy to the Committee which shall be used only for information purposes.

(h) *Farmers Stock Storage and Handling Facilities.* Handlers shall report to the Committee, on a form furnished by the Committee, all storage facilities or contract storage facilities which they will use to store acquisitions of 1979 crop Segregation 1 farmers stock peanuts and all such storage facilities must be reported prior to storing of any such handler acquisitions. Handlers shall also report to the Committee, the locations at which they will receive or acquire 1979 crop farmers stock peanuts. All such storage facilities shall have reasonable and safe access to allow for inspection of the facility and its contents. All such storage facilities must be of sound construction, in good repair, built and equipped so as to provide suitable storage and sufficient safeguards to prevent moisture condensation and provide adequate protection for farmers stock peanuts. All breaks or openings in the walls, floors or roofs of the facilities shall have been repaired so as to keep out moisture. Elevator pits and wells must be kept dry and free of moisture at all times. Insect control procedures must be carried out in such a manner as to prevent undesirable moisture in the storage facilities. Any conditions in warehouses, elevators, pits, and other farmers stock handling equipment conducive to the growth or spread of *Aspergillus flavus* mold shall be corrected to the satisfaction of the Committee. The Committee may make periodic inspections of farmers stock storage and handling facilities and farmers stock peanuts stored in such facilities to determine if handlers are adhering to these requirements.

(i) *Shelled peanuts.* Handlers may acquire from other handlers, for remilling and subsequent disposition to human consumption outlets, shelled peanuts (which originated from "Segregation 1 peanuts") that fail to meet the requirements specified for human consumption in paragraph (a) of the Outgoing Quality Regulation. Any lot of such peanuts must be accompanied by a valid inspection certificate for grade factors, an aflatoxin assay certificate and must be positive lot identified. Transactions made in this manner shall be reported to the Committee by both the buyer and seller on a form provided by the Committee. Peanuts acquired pursuant to this paragraph shall be held and milled separate and apart from other receipts or acquisitions of the receiving handler and further disposition shall be regulated by paragraph (h)(1) of the Outgoing Quality Regulation.

Outgoing Quality Regulation—1979 Crop Peanuts

The following modify or are in addition to the peanut marketing agreement restrictions of section 32 on handler disposition of 1979 crop peanuts:

(a) *Shelled peanuts.* No handler shall ship or otherwise dispose of shelled peanuts for human consumption unless appropriate samples for pretesting have been drawn in accordance with paragraph (c) of this regulation, or which if of a category not eligible for indemnification are not certified "negative" as to aflatoxin, or which contain more than (1) a total of 1.50

percent unshelled peanuts and damaged kernels; (2) a total of 3.00 percent unshelled peanuts and damaged kernels and minor defects; (3) 9.00 percent moisture in the Southeastern and Southwestern areas; or 10.00 percent moisture in the Virginia-Carolina area; or (4) 0.10 percent foreign material in peanuts "with splits" and peanuts of U.S. grade, other than U.S. splits, or 0.20 percent foreign material in U.S. splits and other edible quality peanuts not of U.S. grade. The lot size of such peanuts in bulk or bags shall not exceed 200,000 pounds. Fall through in such peanuts shall not exceed 4 percent except that in peanuts other than "No. Two Virginia" fall through consisting of either split and broken kernels or whole kernels shall not exceed 3 percent and fall through of whole kernels in Runners or Virginias "with splits" shall not exceed 3 percent or 2 percent on Spanish "with splits". The term through" as used herein, shall mean sound split and broken kernels and whole kernels which pass through specified screens. Screens used for determining fall through in peanuts covered by this paragraph (a) shall be as follow:

Type	Screen openings	
	Split and broken kernels	Whole kernels
Runners	1 13/64 inch round	1 13/64 x ¾ inch slot
Spanish and Valencia	1 13/64 inch round	1 13/64 x ¾ inch slot
Virginia except "No. 2 Virginia"	1 13/64 inch round	1 13/64 x 1 inch slot
"No. 2 Virginia"	1 13/64 inch round only for split, broken and whole kernels.	

("No. Two Virginia" means Virginia type peanuts that meet requirements of U.S. No. 2 Virginia grade peanuts except for tolerances for: (1) damage or unshelled peanuts and minor defects; and (2) sound peanuts and portions of peanuts which pass through the prescribed screen. Such tolerances shall be the same as those listed heretofore in this paragraph. Runners, Spanish or Virginia "with splits" means shelled peanuts which do not contain more than (a) 15 percent splits, (b) for Spanish 2.00 percent whole kernels which will pass through 1 13/64 x ¾ slot screen; for Runners 3.00 percent whole kernels which will pass through 1 13/64 x ¾ inch slot screen; and for Virginias 3.00 percent whole kernels which will pass through 1 13/64 x 1 inch slot screen, and (c) otherwise meet specification of U.S. No. 1 grade).

(b) *Cleaned inshell peanuts.* No handler shall ship or otherwise dispose of cleaned inshell peanuts for human consumption: (1) with more than 1.00 percent kernels with mold present unless a sample of such peanuts, drawn by an inspector of the Federal or Federal-State Inspection Service, was analyzed chemically by laboratories approved by the Committee or by a U.S. Department of Agriculture laboratory (hereinafter referred to as "USDA laboratory") and found to be wholesome relative to aflatoxin; (2) with more than 2.00 percent peanuts with damaged kernels; (3) with more than 10.00 percent moisture; or (4) with more than 0.50 percent foreign material. The lot size of such peanuts in bags or bulk shall not exceed 200,000 pounds.

(c) *Pretesting shelled peanuts.* Each handler shall cause appropriate samples of each lot of edible quality shelled peanuts to be drawn by an inspector of the Federal or Federal-State Inspection Service. The gross amount of peanuts drawn shall be large enough to provide for a grade analysis, for a grading check-sample, and for three 48-pound samples for aflatoxin assay. The three 48-pound samples shall be designated by the Federal or Federal-State Inspection Service as "Sample No. 1", "Sample No. 2" and "Sample No. 3" and each sample shall be place in a suitable container and "positive lot identified" by means acceptable to the Inspection Service and the Committee. Sample No. 1 may be prepared for immediate testing or Sample No. 1, Sample No. 2, and Sample No. 3 may be returned to the handler for testing at a later date. However, before shipment of the lot to the buyer (receiver), the handler shall cause Sample No. 1 to be ground by the Federal or Federal-State Inspection Service or a USDA or designated laboratory in a "subsampling mill" approved by the Committee.

The resultant ground subsample from Sample No. 1 shall be of a size specified by the Committee and be designated as "Subsample 1–AB" and at the handler's or buyer's option, a second subsample may also be extracted from Sample No. 1. It shall be designated as "Subsample 1–CD". Subsample 1–CD may be sent as requested by the handler or buyer, for aflatoxin assay, to a laborator listed on the most recent Committee list of approved laboratories that can provide analyses results on such samples in 36 hours. Subsample 1–AB shall be analyzed only in USDA or designated laboratories. But Subsamples 1—AB and 1–CD shall be accompanied by a notice of sampling signed by the inspector containing, at least, identifying information as to the handler (shipper), the buyer (receiver) if known, and the positive lot identification of the shelled peanuts. A copy of such notice covering each lot shall be sent to the Committee office.

The samples designated as Sample No. 2 and Sample No. 3 shall be held as aflation check-samples by the Inspection Service or the handler and shall not be included in the shipment to the buyer until the analyses results from Sample No. 1 are known. Upon call from the USDA or designated laboratory or the Committee, the handler shall cause Sample No. 2 to be ground by the Inspection Service in a "subsampling mill". The resultant ground Subsample from Sample No. 2 shall be of the size specified by the Committee and it shall be designated as "Subsample 2–AB". Upon call from the USDA or designated laboratory or the Committee, the handler shall cause Sample No. 3 to be ground by the Inspection Service in a "subsampling mill". The resultant ground subsample from Sample No. 3 shall be of the size specified by the Committee and it shall be designated as "Subsample 3–AB". Subsamples 2–AB and 3–AB shall be analyzed only in USDA or designated laboratories and each shall be accompanied by a notice of sampling. A copy of each such notice shall be sent to the Committee office and the cost of delivery of Subsamples 2–AB and 3–AB to the laboratory and the cost of assay on them shall be at the Committee's expense.

All cost involved in sampling and testing Subsample 1–CD shall be for the account of the buyer of the lot and at his expense. The cost of assay on Subsample 1–AB and a portion of the cost (specified by the Committee) of drawing the three 48-pound samples, grinding of Sample No. 1 and preparation and delivery of Subsample 1–AB to the laboratory shall be for the account of the buyer. However, if the handler elects to pay for these costs, he shall charge the buyer the amount

specified by the Committee when he invoices the peanuts and, if more than one buyer, on a pro rata basis. Any remaining costs of drawing the three 48-pound samples, grinding of Sample No. 1 and preparation and delivery of Subsample 1–AB shall be for the account of the handler and shall be shown on the grade analysis certificate covering the lot. When any of the samples or subsamples have been lost, misplace, or spoiled and replacement samples are needed, the entire cost of drawing the replacement samples shall be for the account of the handler. The results of each assay shall be reported to the buyer listed on the notice of sampling and, if the handler desires, to the handler. If a buyer is not listed on the notice of sampling, the results of the assay shall be reported to the handler who shall promptly cause notice to be given to the buyer, of the contents thereof, and such handler shall not be required to furnish additional samples for assay.

(d) *Identification.* Each lot of shelled or cleaned inshell peanuts shipped or otherwise disposed of for human consumption shall be identified by positive lot identification procedures. For the purpose of this regulation, "positive lot identification" of a lot of shelled or inshell peanuts is a means of relating the inspection certificate to the lot covered so that there can be no doubt that the peanuts delivered are the same ones described on the inspection certificate. The crop year that is shown on the positive lot identification tags, or other means of positive lot identification, shall accurately describe the crop year in which the peanuts in the lot were produced. Such procedure on bagged peanuts shall consist of attaching a lot numbered tag bearing the official stamp of the Federal or Federal-State Inspection Service to each filled bag in the lot. The tag shall be sewed (machine sewed if shelled peanuts) into the closure of the bag except that in plastic bags the tag shall be inserted prior to sealing so that the official stamp is visible. Any peanuts moved in bulk or bulk bins shall have their lot identity maintained by sealing the conveyance and if in other containers by other means acceptable to the Federal or Federal-State Inspection Service and to the Committee. All lots of shelled or cleaned inshell peanuts shall be handled, stored, and shipped under positive lot identification procedures.

(e) *Reinspection.* Whenever the Committee has reason to believe that peanuts may have been damaged or deteriorated while in storage, the Committee may reject the then effective inspection certificate and may require the owner of the peanuts to have a reinspection to establish whether or not such peanuts may be disposed of for human consumption.

(f) *Inter-plant transfer.* Any handler may transfer peanuts from one plant owned by him to another of his plants or to commercial storage, without having such peanuts positive lot identified and certified as meeting quality requirements, but such transfer shall be only to points within the same production area and ownership shall have been retained by the handler. Upon any transferred peanuts being disposed of for human consumption, they shall meet all the requirements applicable to such peanuts.

(g) *Loose shelled kernels, fall through and pickouts.* (1) Loose shelled kernels which do not ride screens with the following slot openings: Runner—$^{13}/_{64}$ x $^{3}/_{4}$ inch; Spanish and Valencia—$^{13}/_{64}$ x $^{3}/_{4}$ inch; Virginia—$^{13}/_{64}$ x 1 inch; and fall through and pickouts shall be disposed of only by sale as domestic oil stock, by crushing, or as specified in paragraph (g)(3) hereinafter. For the purpose of this regulation: the term "non-edible quality peanuts" described in this paragraph means loose shelled kernels, fall through, and pickouts; the term "loose shelled kernels" means peanut kernels or portions of kernels completely free of their hulls, either as found in deliveries of farmers stock peanuts or those which fail to ride the screens (U.S. No. 1 screens) in removing whole kernels; the term "fall through" has the same meaning as in paragraph (a) of this regulation; and the term "pickouts" means those peanuts removed at the picking table, by electronic equipment, or otherwise during the milling process.

(2) All loose shelled kernels, fall through, and pickouts shall be kept separate and apart from other milled peanuts that are to be shipped into edible channels. Such categories may be kept separate or be commingled in the same lot and shall be bagged in suitable new or clean, used bags or placed in bulk containers acceptable to the Committee. Such peanuts shall be identified by positive lot identification procedures set forth in paragraph (d) but using a red tag, and such peanuts shall be inspected by the Federal or Federal-State Inspection Service and a certification made on each lot as to moisture and foreign material content. Such lot size, whether in bags or bulk, shall not exceed 200,000 pounds.

(3) In addition to disposition outlets specified in paragraph (g)(1), fall through that has been sampled and determined negative as to aflatoxin content may be disposed of for use as wild-life feed or bait for rodents in labeled containers approved by the Committee. Each category of non-edible quality peanuts described in paragraph (g)(1) and identified as prescribed in paragraph (g)(2) may be exported in bulk or bags to countries other than Mexico or Canada pursuant to the provisions prescribed for such disposition in paragraph (l)(1) or (l)(2) of this regulation or they may be moved to another handler for such disposition. Such peanuts may be disposed of to domestic crushing as "unrestricted" if they are certified negative as to aflatoxin content and may be commingled at the crusher with any other category of peanuts determined by paragraph (l)(1) of this regulation to be eligible for such "unrestricted" crushing. Non-edible quality peanuts described in paragraph (g)(1) which have not been certified negative as to aflatoxin are not eligible for "unrestricted" crushing but may be disposed of to domestic crushing as "restricted" and may be commingled at the crusher with any other category of peanuts described in paragraph (l)(2). Such non-edible quality peanuts may be disposed of to domestic crushing or export without supervision by the Area Association if they are held separate and apart from peanuts on which supervision is required. However, if non-edible quality peanuts described in paragraph (g)(1) are exported or crushed in commingle whith peanuts on which supervision is required, the handler shall cause the Area Association to supervise the commingling and fragmenting for disposition to export and the commingling and domestic crushing on all categories of peanuts included in such commingling. All movement and disposition of such inedible quality peanuts shall be reported by the handler as prescribed by the Committee.

Meal produced from peanuts which were disposed of to crushing as "restricted" shall be used or disposed of as fertilizer or other non-feed use. To prevent use of restricted meal for feed, handlers shall either denature it or restrict its sale to licensed or registered U.S. fertilizer manufacturers or firms engaged in exporting who will export such meal for non-feed use or sell it to the aforesaid fertilizer manufacturers. However, loose shelled kernels, fall through and pickouts and meal from such peanuts, in specifically identified lots not exceeding 200,000 pounds may be sampled by Federal or Federal-State Inspection Service or by the Area Association if authorized by the Committee, and tested for aflatoxin by laboratories approved by the Committee

or by a USDA laboratory, at handler's or crusher's expense, and if such meet Committee standards, the meals may be disposed of for feed use.

(4) Notwithstanding any other provisions of this regulation or of the Incoming Quality Regulation applicable to 1979 crop peanuts, a handler may transfer non-edible quality peanuts described in paragraph (g)(1) to another plant within his own organization or transfer or sell such peanuts to a crusher for crushing. Sales or transfer of restricted peanuts to domestic crushers who are not handlers under the agreement shall be made only on the condition that they agree to comply with the terms of this paragraph (g) and all other applicable requirements of this regulation, including the reporting requirements.

(h) *Peanuts failing quality requirements.*

(1) Handlers may sell to or contract with other handlers, for further handling, shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements for disposition to human consumption outlets heretofore specified in paragraph (a). Lots of peanuts disposed of in this manner must be accompanied by a valid grade inspection certificate, an aflatoxin assay certificate and must be positive lot identified. Transactions made in this manner shall be reported to the Committee by both the seller and buyer on a form provided by the Committee. Any such peanuts acquired by handlers pursuant to paragraph (i) of the Incoming Quality Regulation shall be held and milled separate and apart from other receipts or acquisitions of the receiving handler and further disposition shall be regulated by the requirements specified heretofore or pursuant to paragraph (h)(3) hereinafter.

(2) Handlers may blanch or cause to have blanched positive identified shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements of paragraph (a) of this regulation because of excessive damage, minor defects, moisture, or foreign material or are positive as to aflatoxin. Handlers who move such peanuts to a blancher shall report, to the Committee on a form furnished by the Committee, movement of each such lot and the title shall be retained by the handler until the peanuts are blanched and certified by an inspector of the Federal or Federal-State Inspection Service as meeting the requirements for disposal into human consumption outlets. To be eligible for disposal into human consumption outlets, such peanuts after blanching, must meet specifications for unshelled peanuts, damaged kernels, minor defects, moisture, and foreign material as listed in paragraph (a) of this regulation and be accompanied by an aflatoxin certificate determined to be negative by the Committee. Blanching under the provisions of this paragraph shall be performed only by those firms who agree to procedures acceptable to the Committee and who are approved by the Committee to do such blanching.

(3) Handlers may dispose of positive identified shelled peanuts (which originated from "Segregation 1 peanuts") which fail to meet the requirements of paragraph (a) of the Outgoing Quality Regulation: (a) to domestic crushing, (b) to export to countries other than Canada and Mexico, provided they meet fragmented requirements, (c) to crushers who are not handlers but are approved by the Committee, or (d) to other handlers for crushing or fragmenting and exportation. Each lot of such peanuts shall have been positive lot lot identified as prescribed in paragraph (d). Handlers may dispose of such peanuts as "unrestricted": *Provided*, That each lot has been sampled and assayed for aflatoxin as specified in paragraph (c) and determined to be negative as to aflatoxin by the Committee. Handlers who have acquired any such unrestricted peanuts from another handler or from their own operations may commingle such peanuts with those from their own operations at the crusher, or during the fragmenting operation or after fragmenting for further disposition as "unrestricted" pursuant to the provisions of paragraph (l)(1) of this regulation. Lots of peanuts covered by the provisions of this paragraph (h)(3), which have not been assayed for aflatoxin content or which have been assayed and determined to be unwholesome as to aflatoxin by the Committee, are not eligible for disposition as "unrestricted". Therefore, the disposition of such peanuts to export or domestic crushing shall be as "restricted". However, handlers who have acquired such restricted peanuts from another handler may commingle such peanuts with those from his own operations at the crusher, or during the fragmenting operation, or after fragmenting for further disposition as restricted pursuant to the provisions of paragraph (l)(2). Peanuts regulated by this paragraph (h)(3) may be disposed of to domestic crushing or export without supervision by the Area Association if they are held separate and apart from peanuts on which supervision is required. However, if any such peanuts are commingled with peanuts on which supervision is required, the handler shall cause the Area Association to supervise the commingling and fragmenting for disposition to export and the commingling and domestic crushing on all categories of peanuts included in such commingling. All movement and disposition of peanuts covered by the provisions of this paragraph shall be reported by the handler as prescribed by the Committee.

(4) Handlers may contract with PAC approved remillers for remilling shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements for disposition to human consumption outlets heretofore specified in paragraph (a) of the Outgoing Quality Regulation. Lots of peanuts moved under these provisions must be accompanied by a valid grade inspection certificate and an aflatoxin assay certificate and must be positive lot identified. Handlers who move such peanuts to an approved remiller shall report to the Committee, on a form furnished by the Committee, the movement of each such lot. The title of such peanuts shall be retained by the handler until the peanuts have been remilled and certified by the Federal or Federal-State Inspection Service as meeting the requirements for disposition to human consumption outlets specified in paragraph (a), and be accompanied by an aflatoxin certificate determined to be negative by the Committee. Remilling under these provisions may include composite remilling of more than one such lot of peanuts owned by the same handler. However, such peanuts owned by one handler shall be held and remilled separate and apart from all other peanuts. The residual peanuts resulting from remilling under these provisions shall be bagged and red-tagged and disposed of to domestic crushing by the approved remiller or they may be returned to the handler for disposition under the provisions of paragraph (g)(3) of the Outgoing Quality Regulation. Remilling under the provisions of this paragraph shall be performed only by those firms who agree to procedures acceptable to the Committee and who are approved by the Committee to do such remilling.

(i) *Residuals from seed peanuts.* Handlers who receive and custom shell for seed purposes farmers stock peanuts (which have not been inspected and certified as meeting the Incoming Quality Regulation) shall hold and mill peanuts acquired as residuals from such operations separate and apart from peanuts acquired as Segregation 1 farmers stock. Likewise, any such residuals received or acquired from a

handler or non-handler, shall be held and milled separate and apart in the same manner. Residuals that meet requirements of the Outgoing Quality Regulation may be disposed of by sale to human consumption outlets or to another handler and any portion in positive identifed lots not meeting such requirements: (1) may be handled and disposed of pursuant to the provisions of paragraph (h) of this regulation, Or; (2) shall be disposed of to domestic crushing or export pursuant to the provisions of paragraph (g).

(j) *Segregation 2 and 3 farmers stock disposition.*

(1) Handlers who have acquired Segregation 2 and 3 farmers stock peanuts pursuant to paragraph (f) of the Incoming Quality Regulation may commingle such peanuts or keep them separate and apart. The Segregation 3 farmers stock peanuts or commingled Segregation 2 and 3 farmers stock peanuts may be moved or disposed of in bags or bulk: (a) to other handlers for shelling, fragmenting, or crushing, or (b) to crushers who are not handlers but are approved by the Committee. Handlers may shell such peanuts and move or dispose of the shelled peanuts in bulk or bags: (a) to other handlers for fragmenting or crushing, or (b) to crushers who are not handlers but are approved by the Committee and further disposition shall be as provided hereinafter in paragraph (1)(2) for "restricted" export to countries other than Canada and Mexico, or for "restricted" domestic crushing. Prior to exportation, the shelled peanuts shall be certified by a Federal or Federal-State Inspection Service as meeting the requirements specified for "fragmented" peanuts in paragraph (1)(1) and shall be assayed for aflatoxin by a USDA laboratory approved by the Committee. Shelling, fragmenting, and crushing of Segregation 3 peanuts or commingled Segregation 2 and 3 peanuts shall be done only under the supervision of the area Associations and any such peanuts may be commingled with other categories of shelled peanuts for disposition to export or domestic crushing. However, if such further commingling occurs, the handler shall cause the Area Association to supervise the further commingling and fragmenting for disposition to export or the further commingling and domestic crushing. All movement and dispostion of Segragation 3 peanuts or commingled Segregation 2 and 3 peanuts and shelled or fragmented peanuts originating therefrom shall be reported by the handler as prescribed by the Committee.

(2) Handlers who have acquired Segregation 2 farmers stock peanuts pursuant to paragraph (f) of the Incoming Quality Regulation and held them separate and apart from Segregation 3 peanuts may commingle the Segregation 2 farmers stock with Segregation 1 farmers stock for disposition to domestic crushing or export as inedibles. The Segregation 2 farmers stock peanuts or commingled Segregation 1 and 2 farmers stock peanuts may be moved or disposed of in bulk or bags: (a) to other handlers for shelling, fragmenting, or crushing, or (b) to crushers who are not handlers but are approved by the Committee. Handlers may shell the Segregation 2 or commingled Segregation 1 and 2 peanuts and move or dispose of the shelled peanuts: (a) to another handler for fragmenting or crushing; or (b) to crushers who are not handlers but are approved by the Committee and further disposition shall be as provided in paragraph (1)(1) of this regulation. Prior to exportation the shelled peanuts shall be certified by a Federal or Federal-State Inspection Service as meeting the requirements specified for fragmented peanuts also in paragraph (1)(1). If the shelled peanuts from Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts are held separate and apart from Segregation 3 peanuts and any restricted categories of shelled peanuts, no aflatoxin assay shall be required. Shelling, fragmenting, and crushing of Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts shall be done only under the supervision of the Area Association. The shelled peanuts from Segregration 2 peanuts or commingled Segregation 1 and 2 peanuts may be further commingled with other categories of shelled peanuts for disposition to export or domestic crushing. However, if such further commingling occurs, the handler shall cause the Area Association to supervise the further commingling and fragmenting. All movement and disposition of Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts and shelled or fragmented peanuts originating therefrom shall be reported by the handler as prescribed by the Committee.

(k) *Segregation 1 farmers stock disposition.* (1) In addition to milling (shelling, cleaning etc.) Segregation 1 farmers stock peanuts for disposition to human consumption or seed outlets, handlers may dispose of Segregation 1 farmers stock peanuts to export or to other handlers for such disposition. All such dispositions to export shall be reported by the handler as requested by the Committee.

(2) In addition to the disposition outlets specified in paragraph (k)(1), handlers may dispose of Segregation 1 farmers stock peanuts in bags or bulk to other handlers for shelling, fragmenting, or crushing. Such peanuts may also be disposed of to crushers who are not handlers but are approved by the Committee. Handlers may commingle Segregation 1 farmers stock peanuts with Segregation 2 farmers stock peanuts or keep them separate and apart, and may shell such peanuts and move or dispose of the shelled peanuts in bulk or bags to other handlers for fragmenting or crushing. Such peanuts may also be disposed of to crushers who are not handlers but are approved by the Committee. However, the shelling, fragmenting and disposition of such Segregation 1 farmers stock peanuts shall be done only under the supervision of the Committee and the Area Association and all peanuts handled under the provisions of this paragraph (k)(2), for disposition to export or domestic crushing, shall be milled and disposed or pursuant to paragraph (j)(2) in lieu of the provisions specified in paragraphs (a), (b), (c), (d), (g), (h), and (i) of this regulation. The movement and disposition of all peanuts handled under the provisions of this paragraph (k)(2), shall be reported by the handler as prescribed by the Committee.

(l) *Handling, commingling, and disposition of shelled peanuts not meeting quality requirements for human consumption.* (1) The following categories of shelled peanuts may be disposed of to domestic crushing or to export as "unrestricted":

(a) The entire mill production of shelled peanuts from Segregation 1 farmers stock; pursuant to paragraph (k)(2).

(b) The entire mill production of shelled peanuts from Segregation 2, or commingled Segregation 1 and 2 farmers stock pursuant to paragraph (j)(2).

(c) Positive Lot Identified lots of shelled "peanuts failing quality requirements" determined negative as to aflatoxin pursuant to parargraph (h)(3).

(d) Positive Lot Identified Lots of loose shelled Kernels, fall through, or pickouts determined negative as to aflatoxin pursuant to paragraph (g) (1), (2), and (3).

(e) Positive Lot Identified lots of loose shelled kernels, fall through and pickouts commingled and determined negative as to aflatoxin pursuant to paragraphs (g) (2) and (3).

(f) Positive Lot Identified lots of seed peanut residuals determined negative as to aflatoxin pursuant to paragraph (i).

Handlers who acquire from other handlers or from their own operations any of the categories of shelled peanuts described heretofore in this paragraph may commingle such peanuts while fragmenting them or after they have been fragmented: (1) with any other category of peanuts described in this paragraph, and (2) with any category of "unrestricted" shelled peanuts acquired from CCC and determined by CCC to be eligible for such commingling for disposition to export to countries other than Canada and Mexico. However, such peanuts, prior to exportation, shall be certified as meeting fragmented requirements. For the purpose of this regulation, the term "fragmented" means that not more than 20 percent of the peanuts shall be whole kernels that ride the following screens, by type: Spanish 1⅝₄ x ¾ inch slot; Runner 1⅝₄ x ¾ inch slot; and Virginia 1⅝₄ x 1 inch slot. Handlers who acquire from other handlers or from their own operations any of the categories of shelled peanuts described heretofore in this paragraph may commingle such peanuts at the crusher: (1) with any other category of peanuts described in this paragraph, and (2) with any category of unrestricted shelled peanuts acquired from CCC and determined by CCC to be eligible for such commingling and the resultant meal may be disposed of without restriction. To be eligible for such unrestricted dispositions (crushing or export), such peanuts, before commingling and after commingling, shall be kept separate and apart from all "restricted" peanuts. Shelling, fragmenting, and crushing of Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts shall be done only under the supervision of the Area Association and if any shelled peanuts originating therefrom are commingled with any of the other categories of shelled peanuts described heretofore in this paragraph, the handler shall cause the Area Association to supervise the commingling and fragmenting and the commingling and crushing on all categories of peanuts included in such commingling. All movement and disposition of the categories of peanuts described heretofore in this paragraph shall be reported by the handler as prescribed by the Committee.

(2) The following categories of shelled peanuts may be disposed of to domestic crushing or to export as "restricted":

(a) The entire mill production of shelled peanuts from Segregation 1 farmers stock pursuant to paragraph (k)(2) of the Outgoing Quality Regulation.

(b) The entire mill production of shelled peanuts from Segregation 2 or commingled Segregation 1 and 2 farmers stock pursuant to paragraph (j)(2).

(c) The entire mill production of shelled peanuts from Segregation 3 or commingled Segregation 2 and 3 farmers stock pursuant to paragraph (j)(1).

(d) Postitive Lot Identified lots of shelled "peanuts failing quality requirements" pursuant to paragraph (h)(3).

(e) Postitive Lot Identified lots of loose shelled kernels, fall through, or pickouts pursuant to paragraphs (g) (1), (2), and (3).

(f) Positive Lot Identified lots of loose shelled kernels, fall through and pickouts commingled pursuant to paragraphs (g) (2) and (3).

(g) Positive Lot Identified lots of seed peanut residuals pursuant to paragraph (i).

Handlers who acquire, from other handlers or from their own operations, any of the categories of shelled peanuts described heretofore in this paragraph (1) (2) may commingle such peanuts while fragmenting them or after they have been fragmented with any other category of peanuts described in this paragraph and with any category of shelled peanuts acquired from CCC and determined by CCC to be eligible for such commingling with disposition to export to countries other than Canada and Mexico as "restricted". Prior to such exportation, the peanuts shall be certified as meeting the fragmented requirements and shall be assayed for aflatoxin by a USDA laboratory or a laboratory approved by the Committee. The handler's "in-land" bill of lading and his invoice covering the shipment shall include the following statement: "The peanuts covered by this bill of lading (or invoice) are limited to crushing only and may contain aflatoxin". Handlers who acquire, from other handlers or from their own operations, any of the categories of shelled peanuts described heretofore in this paragraph may commingle such peanuts at the crusher with any other category of peanuts described in this paragraph (1) (2) and with any category of shelled peanuts acquired from CCC and determined by CCC to be eligible for such commingling for "restricted" domestic crushing. Meal produced from peanuts disposed of to crushing as "restricted" shall be used or disposed of as fertilizer or other non-feed use, pursuant to the provisions of paragraph (g)(3). Shelling, fragmenting, and crushing of Segregation 2 peanuts, Segregation 3 peanuts and the entire mill production of Segregation 1 peanuts handled pursuant to paragraph (k), shall be done only under supervision of the Area Association and if any of such categories of peanuts are commingled with any of the other categories of shelled peanuts described heretofore in this paragraph, the handler shall cause the Area Association to supervise the commingling and fragmenting on all categories of peanuts included in such commingling. All movement and disposition of the categories of peanuts described heretofore in this paragraph shall be reported by the handler as prescribed by the Committee.

Terms and Conditions of Indemnification—1979 Crop Peanuts

For the purpose of paying indemnities on a uniform basis pursuant to section 36 of the peanut marketing agreement effective July 12, 1965, each handler shall promptly notify or arrange for the buyer to notify the Manager, Peanut Administrative Committee, of any lot of cleaned inshell or shelled peanuts, milled to the outgoing quality requirements and into one of the categories listed in the final paragraph of these terms and conditions, on which the handler has withheld shipment or storage or the buyer, including the user division of a handler, has withheld usage due to a finding as to aflatoxin content as shown by the results of chemical assay. To be eligible for indemnification, such a lot of peanuts shall have been inspected and certified as meeting the quality requirements of the agreement, shall have met all other applicable regulations issued pursuant thereto, including the pretesting requirements in (a) and (c) of the "Outgoing Quality Regulation—1979 Crop Peanuts", and the lot identification shall have been maintained. If the Committee concludes, based on assays to date or further assays, that the lot is so high in aflatoxin that it should be handled pursuant to these Terms and Conditions and such is concurred in by the Agricultural Marketing Service, the lot shall be accepted for indemnification. If the lot is covered by a sales contract, the lot may be rejected to the handler.

In an effort to make such eligible peanuts suitable for human consumption, and to minimize indemnification costs, the Committee and the Agricultural Marketing Service shall, prior to disposition for crushing cause all suitable lots to be remilled or custom blanched or both.

"Custom blanching" means the process which involves blanching

peanuts, and the subsequent removal of damaged peanuts for the purpose of eliminating aflatoxin from the lot. The process may be applied to either an original lot or the new lot which results from remilling. Custom blanching shall be performed only by those firms determined by the Committee to have the capability to remove the aflatoxin and who agree to such terms, conditions and rates of payment as the Committee may find to be acceptable.

If the Committee and the Agricultural Marketing Service conclude that such lot is not suitable for remilling or custom blanching, the lot shall be declared to crushing and shall be disposed of by delivery to the Committee at such point as it may designate. The indemnification payment for peanuts in such a lot shall be the indemnification value of the peanuts, as hereinafter provided. Transportation expenses (excluding demurrage) from the handler's plant or storage to the point within the Continental United States or Canade where the rejection occurred and from such point to a delivery point specified by the Committee shall be included in the indemnification payment if the lot is found by the Committee to be unwholesome as to aflatoxin after such lot had been certified negative as to aflatoxin prior to being shipped or otherwise disposed of for human consumption by the handler pursuant to requirements of the "Outgoing Quality Regulation—1979 Crop Peanuts". Payment shall be made to the handler as soon as practicable after delivery of the peanuts to the Committee. The salvage value for peanuts declared for crushing shall be paid to, and retained by, the Committee to offset indemnification expenses.

If it is concluded that the lot should be remilled or custom blanched, expenses shall be paid by the Committee on those lots which, on the basis of the inspection occurring prior to shipment, contained not more than 1.00 percent damaged kernels other than minor defects. Lots with damage in excess of 1.00 percent on such inspection shall be remilled without reimbursement from the Committee for milling or freight, but otherwise shall be indemnifiable the same as lots with not more than 1.00 percent damage.

The indemnification value of peanuts delivered to the Committee for indemnification shall be as listed in the next to last indemnification shall be as listed in the next to last paragraph of these terms and conditions.

The indemnification payment on peanuts declared for remilling, and which contain not more than 1.00 percent damaged kernels other than minor defects, shall be the indemnification value referable to the weights of peanuts lost in the remilling process and not cleared for human consumption, plus an allowance for remilling of two and one-half cents per pound on the original weight. Transportation expenses (excluding demurrage) from the handler's plant or storage to the point within the Continental United States or Canada where the rejection occurred and from such point to a delivery point specified by the Committee shall be included in the indemnification payment if the lot is found by the Committee to be unwholesome as to aflatoxin after such lot had been certified negative as to aflatoxin prior to being shipped or otherwise disposed of for human consumption by the handler pursuant to requirement of the "Outgoing Quality Regulation-1979 Crop Peanuts". On lots on which the remilling is not successful in making the lot wholesome as to aflatoxin and such lots of peanuts are declared for custom blanching after remilling, the indemnification payment shall be the blanching cost, plus the transportation costs from origin (whether handler or buyer premises) to point of blanching and on unsold lots from point of blanching to handler's premises and the indemnification value of the weight of reject peanuts removed from the lot. On lots which are custom blanched without remilling, the indemnification payment shall be determined in the same manner. However, no indemnification payments shall be paid on any lot of peanuts where the Committee determines that the custom blanched peanuts from such a lot have been sold at a price lower than the indemnification value on the original red skin lot at the time the indemnification claim was filed with the Committee.

Claims for indemnification of 1979 crop peanuts may be filed by any handler sustaining a loss as a result of a buyer withholding from human consumption a portion or all the product made from a lot of peanuts which has been determined to be unwholesome due to aflatoxin. The Committee shall pay, to the extent of the raw peanut equivalent value of the peanuts used in the product so withheld, such claims as it determines to be valid.

Payment shall be made to the handler claiming indemnification or receiving the rejected lot as soon as practicable after receipt by the Committee of such evidence of remilling or custom blanching and clearance of the lot for human consumption as the Committee may require and the delivery of the peanuts not cleared for human consumption to the delivery point designated by the Committee. If a suitable reduction in the aflatoxin content is not achieved on any lot which is remilled or custom blanched or both, the Committee shall declare the entire lot for indemnification. However, the Committee shall refuse to pay indemnification on any lot(s) where it has reason to believe that the rejection of the peanuts arises from failure of the handler to use reasonable measures to receive and withhold from milling for edible use those Segregation 3 peanuts tendered to him either directly by a producer or by a country buyer, commission buyer or other like person. Furthermore, any misrepresentation by a handler in reporting acquisition, composition or disposition of any lot or lots of peanuts by such handler shall cause indemnification payments with respect to any such claim filed with the Committee by the handler on 1979 crop peanuts to be withheld unless the Committee finds that such action was inadvertent.

Remilling may occur on the premises of any handler signatory to the marketing agreement or at such other plant as the Committee may determine. However, if the Committee orders remilling of a lot which has been found to contain aflatoxin prior to shipment from the locality of original milling, the Committee shall not pay freight costs should the handler move said lot to another locality for remilling.

Notice of claims for indemnification on peanuts of the 1979 crop shall be filed with the Committee no later than November 1, 1980.

Each handler shall include, directly or by reference, in his sales contract the following provisions:

Should buyer find peanuts subject to indemnification under this contract to be so high in aflatoxin as to provide possible cause for rejection, he shall promptly notify the seller and Manager, Peanut Administrative Committee, Atlanta, Georgia. Upon a determination of the Peanut Administrative Committee, confirmed by the Agricultural Marketing Service, authorizing rejection, such peanuts, and title thereto, if passed to the buyer, shall be returned to the seller and such peanuts shall be reoffered to the buyer to satisfy the covering contract, pending successful remilling and/or blanching. Or, if the buyer's or receiver's name is shown on the certificates covering a lot which, upon the pretesting sampling procedure prescribed in paragraph (c) of the outgoing quality regulation, exceeds Committee requirements for wholesomeness as to aflatoxin, such peanuts shall be offered to the buyer to satisfy the existing applicable contract, pending successful remilling and/or

blanching. Alternatively, seller may replace any rejected lot of peanuts with another lot, if he elects to do so.

Seller shall, prior to shipment of a lot of shelled peanuts covered by this sales contract, cause appropriate samples to be drawn by the Federal or Federal-State Inspection Service from such lot, shall cause the sample(s) to be sent to a USDA laboratory or if designated by the buyer, a laboratory listed on the most recent Committee list of approved laboratories to conduct such assay, for an aflatoxin assay and cause the laboratory, if other than the buyer's to send one copy of the results of the assay to the buyer. The laboratory costs shall be for the account of the buyer and buyer agrees to pay them when invoiced by the laboratory or, in the event the seller has paid them, by the seller.

Any handler who fails to include such provisions in his sales contract shall be ineligible for indemnification payments with respect to any claim filed with the Committee of 1979 crop peanuts covered by the sales contract.

In addition, should any handler enter into any oral or written sales contract which fixes the level of aflatoxin at which rejection may be made and hence conflicts with these terms and conditions, the handler doing so will not be eligible for indemnification payments with respect to any claim filed with the Committee on 1979 crop peanuts on or after the filing date of a claim under such contract, except upon the Committee's finding that acceptance of such contract was inadvertent; and for purposes of this provision a claim shall be deemed to be filed when notice of possible rejection is first given to the Committee.

Any handler who fails to conform to the requirements of paragraph (h) of the "Incoming Quality Regulation—1979 Crop Peanuts" shall be ineligible for any indemnification payments until such condition or conditions are corrected to the satisfaction of the Committee. Also any handler who fails to cause positive lot identification on any lot of peanuts to accurately reflect the crop year in which such peanuts were produced, pursuant to paragraph (d) of the Outgoing Quality Regulation, shall be ineligible for any indemnification payments until such violation is corrected to the satisfaction of the Committee.

Categories eligible for indemnification are as follows:

Cleaned Inshell Peanuts—

(1) U.S. Jumbos
(2) U.S. Fancy Handpicks
(3) Valencia—Roasting Stock [1]

[1] Inshell peanuts with not more than 25 percent having shells damaged by discoloration, which are cracked or broken, or both.

U.S. Grade Shelled Peanuts—

(1) U.S. No. 1
(2) U.S. Splits
(3) U.S. Virginia Extra-Large
(4) U.S. Virginia Medium

Shelled Peanuts With Splits—

(1) Runners with splits which do not contain more than 15 percent splits or 3 percent whole kernels which will pass through a 15/64 x ¾ slot screen.

(2) Spanish with splits which do not contain more than 15 percent splits or 2 percent whole kernels which will pass through a 15/64 x ¾ slot screen.

(3) Virginias with splits which do not contain more than 15 percent splits or 3 percent whole kernels which will pass through a 15/64 x 1 slot screen.

However, peanuts in any of the above categories shall not be eligible for indemnification if such peanuts: (1) were milled from seed peanut residuals as referred to in the last sentence of paragraph (e) of the Incoming Quality Regulation and paragraph (i) of the Outgoing Quality Regulation for 1979 Crop Peanuts; (2) failed the Outgoing Quality Regulation for 1979 Crop Peanuts due to excessive damage and minor defects and such peanuts were subsequently blanched or remove such excess damage and minor defects pursuant to paragraph (h) of such regulation; (3) when shipped for human consumption outlets contained more than a total of 1.25 percent unshelled peanuts and damaged kernels or a total of 2.00 percent unshelled peanuts, damaged kernels and minor defects; (4) were received or acquired from another handler pursuant to paragraph (i) of the Incoming Quality Regulation and were milled to meet requirements of the Outgoing Quality Regulation pursuant to paragraph (h) of such regulation.

For the purpose of paying indemnification, beginning August 1, 1979, the domestic market price for each category of peanuts shall be determined by averaging the price listed in the Peanut Market News, per category, each week on an accumulative season-to-date basis. Such weekly price calculations shall extend to March 31, 1980. After March 31, the season average price per category shall be applied during the remainder of the crop year.

The indemnification value for each category of peanuts eligible for indemnification shall be the domestic market price, less two cents per pound (on the pounds indemnified) except that the minimum indemnification value on all indemnifiable categories shall be 30 cents per pound.

The grade categories to which the indemnification values shall be applied are as follows:

Runners*	Virginias	Spanish
Jumbo	U.S. Extra Large	U.S. No. 1 (or larger)
Medium	U.S. Medium	Spanish with Splits
Select	U.S. No. 1	U.S. Splits
No. 1 [—18+16 screens]	Virginias with Splits	
Mill run with or without Splits	U.S. Splits	
U.S. Splits		

*Southeastern Peanut Association grades.

[FR Doc. 79-18539 Filed 6-13-79; 8:45 am]
BILLING CODE 3410-02-M

Forest Service

Forest Land and Resource Management Plan; Mt. Baker-Snoqualmie National Forest Whatcom, Skagit, Snohomish, King, and Pierce Counties, Washington; Intent To Prepare an Environmental Impact Statement

Pursuant to the National Environmental Policy Act of 1969 and the Forest and Rangeland Renewable Resource Planning Act of 1974, as amended by the National Forest Management Act of 1976, the Forest Service, Department of Agriculture, will prepare an Environmental Impact Statement for a Forest Land and Resource Management Plan for the Mt. Baker-Snoqualmie National Forest.

The Forest Plan will be prepared according to regulations being promulgated by the Secretary of Agriculture. The regulations will implement Section 6 of the National Forest Management Act of 1976.

A completed Land Use Plan for the Alpine Lakes Management Unit and subsequent legislation established the Alpine Lakes Wilderness and Intended Wilderness in July 1976. A planning

team is now in the process of developing a Wilderness Management Plan for the Alpine Lakes Wilderness and Intended Wildernesses and specific management direction for the nonwilderness lands. A Final Environmental Statement is planned to be filed with the EPA in June 1980 with implementation by September 1980. A Draft Environmental Statement on the Naches-Tieton-White River Land Management Plan was filed with the EPA in August 1977. This Plan will be carried through to completion as part of the Forest Plan.

The Forest Plan will replace all previous Plans and provide direction for all lands on the Mt. Baker-Snoqualmie National Forest.

The Forest Plan will be coordinated with local, county, State and other Federal agencies. Public involvement will be encouraged and sought throughout the planning process. Currently, the following public workshops are scheduled to help the Forest identify issues, concerns, and opportunities:

June 25, 1979, 7:00 p.m., Holiday Inn, 714 Lakeway Drive, Bellingham, Washington.
June 26, 1979, 7:00 p.m., Sherwood Inn, 400 N.E. 45th, Seattle, Washington.
June 27, 1979, 7:00 p.m., Town & Country Inn, 2009 Riverside Drive, Mt. Vernon, Washington.
June 28, 1979, 7:00 p.m., Holiday Inn, 3518, Pacific Hwy E., Tacoma, Washington.

Alternatives will be displayed in an Environmental Impact Statement and will include, at the minimum: (1) A no-action alternatives; (2) one or more alternatives which will result in eliminating all backlogs of needed treatment for the restoration of renewable resources; (3) an alternative which approximates the level of goods and services assigned by the Regional Plan; and (4) one or more alternatives formulated to resolve the major public issues or concerns.

R. E. Worthington, Regional Forester, Pacific Northwest Region, is the responsible official. Questions about the proposed action and Environmental Impact Statement should be directed to Don Culver, Land Management Specialist, Mt. Baker-Snoqualmie National Forest, (Phone 206-442-4888).

A Draft Environmental Impact Statement on the Forest Plan is scheduled to be filed by December 1981. The Final Environmental Impact Statement will be filed by December 1982.

Comments on this Notice of Intent for the Forest Plan should be sent to Don R. Campbell, Forest Supervisor, Mt. Baker-Snoqualmie National Forest, 1601 Second Avenue Building, Seattle, Washington 98101.

Frank J. Koppeky,
Acting Regional Forester.
June 6, 1979.

[FR Doc. 79-18546 Filed 6-13-79; 8:45 am]
BILLING CODE 3410-11-M

CIVIL AERONAUTICS BOARD

[Docket 33712]

Tiger International-Seaboard World Airlines, Inc. Acquisition Case; Postponement of Hearing and Date for Submission of Rebuttal Exhibits

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that the hearing in the above-entitled matter originally scheduled to begin on June 19, 1979 (44 FR 28959, May 8, 1979), will now be held beginning on July 9, 1979, at 9:30 a.m. (local time) in Room 1003, Hearing Room D, 1875 Connecticut Avenue, N.W., Washington, D.C. 20428.

The date for submission of rebuttal exhibits is accordingly extended until June 25, 1979.

Dated at Washington, D.C., June 8, 1979.

John J. Mathieu,
Administrative Law Judge.

[FR Doc. 79-18544 Filed 6-13-79; 8:45 am]
BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 6-79]

Port of Portland, Oreg.; Application for a Foreign-Trade Subzone at the Beall Pipe and Tank Corporation Facility in Portland

Notice is hereby given that an application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Portland (the Port), an Oregon public corporation and grantee of Foreign-Trade Zone No. 45, requesting a grant of authority to establish a special-purpose subzone at the Beall Pipe and Tank Corporation (Beall) facility, within the Columbia River Customs port of entry, some 4 miles south of the Port's recently approved general-purpose zone. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81) and the regulations of the Board (15 CFR Part 400). It was formally filed on May 30, 1979. The Port is authorized to make the application under § 307.850 of the Oregon Revised Statutes.

The proposal calls for the establishment of a special-purpose foreign-trade subzone, under the sponsorship of the Port, at Beall's steel pipe manufacturing facility at 12005 North Burgard Road, in Portland. The subzone would encompass the firm's entire plant facility, including two straight-seam and four spiral weld mills, on a 27-acre site near Terminal 4 on the Willamette River in northwest Portland.

The applicant indicates that the reason for requesting subzone status is to make the company, a subsidiary of the L. B. Foster Co., more competitive with foreign pipe manufacturers, allowing them to enter the export market and create additional employment at their Portland plant. Beall currently imports foreign coiled steel it states is of a thickness or quality unavailable in the western United States. Under subzone status, the firm intends to import foreign coiled steel of a thickness of .125 to .156 inches for the manufacture of pipe with a ten or more inch diameter, a product it states is currently unavailable from major West Coast pipe mills and presently being imported from foreign suppliers. Subzone procedures would provide the company with Customs cost savings that would help them in bidding on overseas projects. It expects a resulting increase in production initially calling for an additional 30 jobs at its plant.

In accordance with the Board's regulations, an Examiners Committee has been appointed to investigate the application and report thereon to the Board. The committee consists of Hugh J. Dolan (Chairman), Office of the Secretary, U.S. Department of Commerce, Washington, D.C. 20230; David J. Radcliffe, Assistant District Director for Inspection and Control, U.S. Customs Service, Federal Bldg., Room 193, 511 Northwest Broadway, Portland, Oregon 97209; and Colonel Terence J. Connell, District Engineer, U.S. Army Engineer District Portland, P.O. Box 2946, Portland, Oregon 97204.

Comments concerning the proposed subzone are invited in writing from interested persons and organizations. Comments may address § 400.807 of the Board's regulations, which gives the Board authority to exclude from zones operations detrimental to the public interest. This section would apply to cases in which zone activity is claimed to have an adverse impact on domestic industry. Comments should be addressed to the Board's Executive Secretary at the address below and be postmarked on or before July 6, 1979.

A copy of the Port's application is available for public inspection at each of the following locations:

Office of the Director, U.S. Dept. of Commerce District Office, 1220 S. W. 3rd Avenue, Room 618, Portland, Oregon 97204.
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Dept. of Commerce, Room 6628–B, 14th and E Streets NW., Washington, D.C. 20230.

Dated: May 30, 1979.

John J. Da Ponte, Jr.,
Executive Secretary, Foreign-Trade Zones Board.

[FR Doc. 79-18030 Filed 6-13-79; 8:45 am]
BILLING CODE 3510-25-M

Maritime Administration

[Docket No. S-642]

Aeron Marine Shipping Co., et al.; Application

In the matter of Aeron Marine Shipping Company, Aries Marine Shipping Company, Aquarius Marine Company, Atlas Marine Company, American Shipping, Inc., Pacific Shipping, Inc., and Worth Oil Transport Company.

The foregoing companies (herein referred to as the Berger Group) are holders of long-term operating-differential subsidy contracts. By letter of June 1, 1979, attorneys for the Berger Group advised that Leo V. Berger and Peter Constas, principals in each company of the Berger Group, and Aeron Marine Shipping Company, will form with other companies and individuals an affiliated limited partnership to be named Ariadne Company. Ariadne Company will operate a products tanker of 39,700 DWT in the U.S. coastwise and intercoastal trade, among other trades. A construction contract for the tanker has been entered into and delivery of the vessel is anticipated in 1981.

In view of the foregoing, the companies of the Berger Group request written permission of the Maritime Administration under section 805(a) of the Merchant Marine Act, 1936, as amended, for Ariadne Company to operate the above-described tanker in the domestic trade.

Any person, firm, or corporation having any interest (within the meaning of section 805(a)) in such application and desiring to be heard on issues pertinent to section 805(a) and desiring to submit comments or views concerning the application must, by close of business on June 22, 1979 file same with the Secretary, Maritime Administration, in writing, in triplicate, together with petition for leave to intervene which shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petitions for leave to intervene are received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsidies (ODS))

By Order of the Assistant Secretary for Maritime Affairs.

Dated: June 8, 1979.

James S. Dawson, Jr.,
Secretary.

[FR Doc. 79-18029 Filed 6-13-79; 8:45 am]
BILLING CODE 3510-15-M

Availability of Standard Specifications for Merchant Ship Construction

The Maritime Administration announces the publication of the latest edition of its Standard Specifications under the title, "Standard Specifications for Merchant Ship Construction", dated January 1979.

This document supersedes the previous issue dated December 1972. It has been updated to reflect changes in regulations, materials and technology that have affected the shipbuilding industry. It now shows all units of measurement in both the SI-Metric and English systems as a first step in the eventual transition to the SI-Metric system by the U.S. maritime industry.

The purpose of the Maritime Administration Standard Specifications is to provide guidance to the maritime industry in the preparation of detail ship specifications, especially where Construction-Differential Subsidy is involved. They are complete in all aspects of required contract work and embody the following pertinent features:

—Establish levels of quality as a bench mark for Construction-Differential Subsidy.

—Include standard text to reflect legal aspects of contract work.

—Indicate measures of standardization to encourage mass production techniques.

—Introduce the SI-Metric system of measurement to the U.S. shipbuilding industry.

It is intended to further update the Maritime Administration Standard Specifications periodically to reflect continuing technological developments and pertinent results of research and development efforts.

Copies of these latest Specifications are available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161. (Refer to Publication No. PB 290400). Purchase price is $19.00 per copy ($38.00 to a foreign address).

Dated: June 8, 1979.

By Order of the Maritime Subsidy Board/ Maritime Administration.

James S. Dawson, Jr.,
Secretary.

[FR Doc. 79-18028 Filed 6-13-79; 8:45 am]
BILLING CODE 3510-15-M

National Bureau of Standards

National Conference on Weights and Measures; Meeting

Notice is hereby given that the 64th annual meeting of the National Conference on Weights and Measures will be held on July 22–27, 1979, at the Red Lion Motor Inn in Portland, Oregon.

The National Conference on Weights and Measures is an organization of weights and measures enforcement officials of the States, counties, and cities of the United States. The annual meeting of the Conference brings together the enforcement officials, other government officials, and representatives of business, industry, trade associations, and consumer organizations for the purpose of hearing and discussing subjects that relate to the fields of weights and measures technology and administration.

Pursuant to authority in its Organic Act (15 U.S.C. 272(5)), the National Bureau of Standards acts as a sponsor of the National Conference on Weights and Measures in order to promote uniformity among the States in the complex of laws, regulations, methods, and testing equipment that comprises regulatory control by the States of commercial weighing and measuring.

The public is invited to attend. A registration fee of $30 per person has been established by the Conference Executive Committee to pay for

expenses of the meeting. Additional information concerning the Conference program and arrangements may be obtained from Mr. Harold F. Wollin, Executive Secretary, National Conference on Weights and Measures, National Bureau of Standards, Washington, DC 20234; telephone (301) 921–3677.

Dated: June 8, 1979.

Ernest Ambler,

Director.

[FR Doc. 79-18694 Filed 6-13-79; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council and Scientific and Statistical Committee and Advisory Panel; Amended Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

SUMMARY: The North Pacific Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94–265), will conduct meetings on June 28 and 29, 1979. Two additional agenda items to be discussed are: (1) Partial disapproval of Council's FMP for the High Seas Salmon Fishery off the Coast of Alaska East of 175° Longitude. Action needed to replace the ban on hand trolling in the Fisheries Conservation Zone, and (2) First consideration of amendment to FMP's for Gulf of Alaska Groundfish Fishery and Tanner Crab off Alaska to extend provisions through 1980.

FOR FURTHER INFORMATION CONTACT: North Pacific Fishery Management Council, P.O. Box 3136DT, Anchorage, Alaska 99510, Telephone: (907) 274–4563.

Dated: June 8, 1979.

Jack W. Gehringer,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 79-18695 Filed 6-13-79; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Army

Installation Environmental Impact Statement; Hawaii; Filing of Environmental Impact Statement

In compliance with the National Environmental Policy Act of 1969, the Army, on June 11, 1979 provided the Environmental Protection Agency a draft Environmental Impact Statement (EIS) concerning the ongoing missions at 35 separate Army installations located in the State of Hawaii. The alternatives of relocating the 25th Infantry Division from the Island of Oahu to the Island of Hawaii, eliminating live ordinance firing on Oahu, transferring all training to the Pohakuloa Training Area on the Island of Hawaii, and closing Army installations and relocating their missions are also analyzed.

Copies of the statement have been forwarded to concerned Federal, State, local and private agencies. Interested organizations or individuals may obtain copies from the Commander, U.S. Army Support Command, Hawaii, ATTN: Director of Engineering and Housing, Fort Shafter, Hawaii 96858.

In the Washington area, inspection copies may be seen, during normal duty hours, in the Environmental Office, Office of Assistant Chief of Engineers, Room 1E676, Pentagon, Washington, D.C. 20310, telephone: (202) 694–3434.

Bruce A. Hildebrand,

Deputy for Environment, Safety and Occupational Health OASA (IL&FM).

[FR Doc. 79-18680 Filed 6-13-79; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Channel Maintenance Project at Ogdensburg Harbor, N.Y., St. Lawrence County, N.Y.

AGENCY: U.S. Army Corps of Engineers, Buffalo District, DOD.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

PROPOSED ACTION: Ogdensburg Harbor is a Federally maintained project with channel depths of 19 feet and a lower basin depth of 21 feet, which was authorized and completed in 1935 except for a hard shoal area. Since then, the size of cargo vessels has increased in size requiring deeper channels to accommodate these larger ships. Currently, the accepted depth in the St. Lawrence Seaway is 27 feet. Therefore, the purpose of this study is to determine the feasibility of deepening the existing Federal channels, hard shoal area, and other non-Federal channels.

Alternatives Considered: a. The following alternatives have been considered to date.

(1) No action.—A no action alternative indicates no Corps participation in any improvements to the harbor.

(2) Removal of the Hard Shoal Area.—The authorized project depth in the lower basin is 21 feet, except for a hard shoal area in the southwest corner of the lower basin which has depths of from 18 to 21 feet. Plan 2 would dredge this area to the authorized depth of 21 feet. Removing the hard shoal area would benefit the Ogdensburg Bridge and Port Authority (OB&PA) by allowing existing bulk salt vessels to enter the lower basin with 18½-foot drafts for unloading and storage.

(3) Dredge Lower Basin to Seaway Depth.—This plan would involve dredging the lower basin area to 27 feet. This plan would give the OB&PA additional berthing space at their dock and provide unlimited access for seaway depth vessels along the lower basin shoreline.

(4) Dredge Lower Basin and Dike Hard Shoal Area.—The hard shoal area would be diked and the rest of the lower basin would be dredged to 27 feet. The dredged material would be dumped into a diked area.

(5) Dredge City Front Channel to 25 feet.—This plan would involve dredging the city front from 19 feet to 25 feet from the west end of the Augsbury Dock to the Port Authority 27-foot depth and widen the OB&PA channel from 250 feet to 350 feet.

(6) Dredge City Front Channel to 27 Feet.—This plan would involve dredging the city front channel from 19 feet to 27 feet actual depth. This plan would allow most of the petroleum tankers to dock plus deeper draft vessels carrying salt.

(7) Federal Maintenance of Seaway Depth at OB&PA.—The authorized project depth at the OB&PA channel area is 19 feet. In 1970, with the aid of New York State and the Economic Development Administration, the Port Authority improved their port facilities and dredged the 19-foot Federal channel to 27 feet from their dock to the main navigation channel in the St. Lawrence River. This plan would involve incorporation of this 27-foot depth into the Federal maintenance program.

(8) Extend OB&PS Seaway Depth Around Dock.—This plan would also involve dredging a 27-foot deep berthing channel, about 200 feet wide, along the north and east sides of the OB&PA dock. The hard shoal area would be diked as necessary to contain the dredged material.

(9) Extend OB&PA Channel 1,000 Feet Southerly.—This plan would involve extending OB&PA's 27-foot deep channel 1,000 feet southerly along the city front channel. A diked disposal area would be constructed in the hard shoal

area of the lower basin to contain the dredged material.

Public Involvement: A Public Meeting was held by the Corps in May 1976 to initiate the study and find who the study participants would be and what their interests are. Twenty-two persons were in attendance representing the following interests:

The Ogdensburg Bridge and Port Authority (OB&PA).
Local Longshoremen's Union.
Augsbury Corporation.
Black River-St. Lawrence Economic Development Commission.
St. Lawrence Chamber of Commerce.
Sea Grant Institute.
City of Ogdensburg.
Corps of Engineers.

The OB&PA is the primary proponent for the harbor improvements, as is the Augsbury Corporation. The longshoremen are interested in any improvements to the harbor that will attract more trade, hence, more job security. Because St. Lawrence County, of which Ogdensburg is a part, is an economically depressed area, the Black River-St. Lawrence Economic Development Commission, the St. Lawrence Chamber of Commerce, and the city of Ogdensburg have a keen interest in any improvements in the area that may give an uplift to the economy.

a. Meetings and Representatives—Since the inception of this study, numerous small meetings have been held to obtain information. The organizations and interested parties that participated in the meetings were selected on the basis of their interest, involvement and relation to the study.

b. Issues—Significant issues to be analyzed in the DEIS will include a determination of the extent, in degree and kind, to which the selected plan and any reasonable alternatives might positively or negatively impact upon the human and natural environments, to include fish and wildlife habitat areas, plants, water quality, aesthetic quality of the area, cultural resources, and the equitable distribution and stability of income.

c. Scoping Meeting—Due to extensive coordination and planning with other governmental agencies and concerned public already conducted, a scoping meeting will not be held.

d. Availability—This Draft Environmental Impact Statement will be made available to the public on or about 30 June 1979.

ADDRESS: Questions about the proposed action and the DEIS can be answered by: Philip E. Berkeley, U.S. Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY 14207 716-876-5454.

Dated: June 6, 1979.

Thomas R. Rheaume,

LTC, Corps of Engineers, Deputy District Engineer.

[FR Doc. 79-18646 Filed 6-13-79; 8:45 am]

BILLING CODE 3710-GF-M

Intent To Prepare a Revised Draft Environmental Statement (RDES) for a Recreation Complex on the Snyder and Winnebago Oxbow Lakes, Woodbury, County, Iowa

AGENCY: U.S. Army Corps of Engineers, Omaha District.

ACTION: Notice of Intent to Prepare a RDES.

SUMMARY: 1. The proposed recreation complex is located along and adjacent to the Missouri River between river miles 709.0 and 716.5 (1960 mileage). Two oxbow lakes, Snyder and Winnebago Lakes, which are abandoned Missouri River channels resulting from navigation channel construction, will be developed into a public recreation complex. The proposed recreation complex will feature typical water oriented types of recreation including fishing, power boating, water skiing, and swimming. Other nonwater types of recreation will include picnicking, camping, outdoor games; hunting, bird watching, nature study and sightseeing. The local sponsor for the project is the State of Iowa.

2. Reasonable alternatives include varying levels of recreational development and no action.

3. Any agency, organization, or individual desiring to participate in the RDES process is encouraged to do so by contacting the individual identified later in this notice. Public involvement to date has been limited to discussions with affected public bodies. No public meetings will be held prior to the filing of the RDES. A public meeting may, however, be scheduled subsequent to publication of the RDES if public interest indicates such a need. There are no significant issues which have been identified. The project is also subject to the Historic Preservation Act; the Endangered Species Act; the Fish and Wildlife Coordination Act; Executive Order 11988 on Flood Plains; and Executive Order 11990 on Wetlands.

4. There will be no scoping meeting.

5. The RDES should be available for public review in July 1979.

ADDRESS: Questions about the proposed action and RDES can be answered by: Richard Gorton; Chief, Environmental Analysis Branch; Omaha District, CE; 6014 United States Post Office and Courthouse; Omaha, Nebraska 68102.

Dated: June 8, 1979.

John E. Veleknadsky,

Chief, Planning Division, Omaha, District, CE.

[FR Doc. 79-18648 Filed 6-13-79; 8:45 am]

BILLING CODE 3710-GW-M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Sims Bayou, Texas Civil Works Flood Protection Project

AGENCY: Galveston District, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to Prepare a DEIS.

SUMMARY: 1. The proposed action to be addressed in the DEIS is flood protection for Sims Bayou in southeast Texas. The proposed project would provide improved flood protection to the watershed area including a portion of the City of Houston.

2. Alternatives to be considered in the DEIS include structural and nonstructural measures with two or more structural flood damage reduction plans, and no action.

3.a. Coordination of the project has included a public meeting, local public workshop sessions, and a preliminary evaluation by the U.S. Fish and Wildlife Service. The initial public meeting was held in Houston, Texas on 1 March 1975, to obtain public views and preferences. Alternative plans will be developed in accordance with Corps of Engineers' regulations, considering the views expressed by the public and agencies of the local, State, and Federal governments. Alternative solutions will be presented at another public meeting. The selected plan of improvement will be coordinated with all concerned prior to completion of a Feasibility Report.

b. Some important environmental considerations to be analyzed as a result of past coordination and participation include: (1) Archeological survey, (2) erosion control.

c. Coordination and consultation will continue with appropriate local, State, and Federal agencies and the interested public.

d. Other environmental consultation and review will be conducted in accordance with various laws and regulations.

4. A public meeting specifically to determine the scope of the DEIS is not planned at this time. However, the scoping process will be accomplished in conjunction with future public meetings and workshops and through all previous

and future input to studies for the project.

5. The DEIS is scheduled to be available to the public in October 1980.

ADDRESS: Questions about the proposed action and DEIS can be answered by Mr. C. R. Harbaugh, Chief, Environmental Resources Branch, Galveston District, Corps of Engineers, P.O. Box 1229, Galveston, Texas 77553, (713) 763–1211, extension 492.

Dated: June 7, 1979.

Hinton Y. Crockett, Jr.,

Major, Corps of Engineers Acting District Engineer.

[FR Doc. 79-18615 Filed 6-13-79; 8:45 am]

BILLING CODE 3710-GX-M

Intent To Prepare Draft Environmental Impact Statement for a Proposed Flood Control Project, Haikey Creek, Tulsa County, Okla.

AGENCY: U.S. Army Corps of Engineers, DOD Tulsa District.

ACTION: Notice of Intent to Prepare a Draft Environment Impact Statement (DEIS).

SUMMARY: The primary purpose for this project is to provide standard project flood protection to 39 single family residents in the Haikey Creek Watershed, Tulsa County, Oklahoma.

2. Reasonable Alternatives. The alternatives evaluated include: no action, flood plain evacuation, flood-proofing existing structures, upstream flood retarding dams, levees plus flowage easements, levee plus evacuation, levee plus channel, channel modifications, diversion and combination levees, channel and flowage assesments.

3. Scoping Process. a. Public Involvement. A comprehensive public involvement program was developed as a means of disseminating information and soliciting public involvement. A variety of techniques including formal public meetings, public hearings, public workshops, advisory committees and periodic statements to the local news media were employed to involve organizations, Federal, State, and local agencies, citizen committees, and the interested public in the planning studies.

b. Significant Issues Requiring Indepth Analysis. None.

c. Assisgnments. U.S. Fish and Wildlife Service is preparing a Coordination Act Report.

d. Environmental Review and Consultation Requirements. The draft statement will be circulated for review, and all comments will be incorporated into the final environmental statement.

4. Scoping meeting will not be held.

5. Estimated date when the DEIS will be available.

ADDRESS: Mr. Buell O. Atkins, Chief, Environmental Resources Branch, U.S Army Corps of Engineers, Tulsa District, PO Box 61, Tulsa OK 74121, (918) 581–7857.

Dated: June 6, 1979.

Richard W. Mattes,

Acting District Engineer.

[FR Doc. 79-18547 Filed 6-13-79; 8:45 am]

BILLING CODE 3710-39-M

DEPARTMENT OF ENERGY

National Petroleum Council, Task Group of the Committee on Unconventional Gas Sources; Meeting

Notice is hereby given that a task group of the Committee on Unconventional Gas Sources will meet in June 1979. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Unconventional Gas Sources will analyze the potential constraints in these areas which may inhibit future production and will report its findings to the National Petroleum Council. Its analysis and findings will be based on information and data to be gathered by the various task groups. The task group scheduling a meeting is the Devonian Shale Task Group. The time, location and agenda of the meeting follows:

The third meeting of the Devonian Shale Task Group will be held on Thursday, June 21, 1979, starting at 9:00 a.m., Conference Room, Continental Inn, 801 New Circle Road, N.W., Lexington, Kentucky.

The tentative agenda for the meeting follows:

1. Introductory remarks by Chairman and Government Cochairman.
2. Discussion of the report outline of the Devonian Shale Task Group.
3. Review of preliminary results of the Devonian Shale Task Group.
4. Review of the Devonian Shale Task Group's assignments.
5. Discussion of any other metters pertinent to the overall assignment of the Devonian Shale Task Group.

The meeting is open to the public. The chairman of the task group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the task group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Lucio A. D'Andrea, Office of Resource Applications, 202/633-8482, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room GA 152, DOE, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on June 7, 1979.

R. Dobie Langenkamp,

Deputy Assistant Secretary, Oil, Natural Gas and Shale Resources, Resource Applications.

June 7, 1979.

[FR Doc. 79-18477 Filed 6-13-79; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Refiners Crude Oil Allocation Program; Supplemental Notice of Allocation Period of April 1, 1979, Through Sept. 30, 1979

The notice specified in 10 CFR 211.65(g) of the refiners' crude oil allocation (buy/sell) program for the allocation period of April 1, 1979, through September 30, 1979, was issued March 30, 1979 (44 FR 21062, April 9, 1979). Subsequent to the publication of this Notice, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) assigned emergency allocations for the months of April, May, and June 1979, pursuant to 10 CFR 211.65(c)(2) to a number of refiner-buyers and issued supplemental buy/sell lists on April 11, 1979, (44 FR 24336, April 25, 1979) and May 16, 1979, (44 FR 29955, May 23, 1979). The ERA hereby issues a third supplemental buy/sell list for the allocation period of April 1, 1979, through September 30, 1979, which sets forth an emergency allocation for the months of June and July 1979, assigned pursuant to 10 CFR 211.65(c)(2), as amended on April 27, 1979, (44 FR 26060, May 4, 1979).

The supplemental buy/sell list for the allocation period April 1, 1979, through September 30, 1979, is set forth as an appendix to this notice. The list includes the name of the small refiner granted an emergency allocation for the months of June and July 1979 and its eligible refinery; the quantity of crude oil the refiner is eligible to purchase; the fixed percentage share for each refiner-seller; the quantity of crude oil that each

refiner-seller is obligated to offer for sale to refiner-buyers pursuant to the supplemental buy/sell notice for the April 1, 1979, through September 30, 1979, allocation period issued May 16, 1979; the new total sales obligation of each refiner-seller, which reflects each refiner-seller's obligation to sell to the refiner-buyer for the emergency allocation listed herein; and the total sales obligation for all refiner-sellers.

The allocation for the small refiner on the supplemental buy/sell list was determined in accordance with 10 CFR 211.65(c)(2). Sales obligations for refiner-sellers were determined in accordance with 10 CFR 211.65 (e) and (f).

The buy/sell list covers PAD Districts I through V, and amounts shown are in barrels of 42 gallons each, for the specified period. Pursuant to 10 CFR 211.65(f), each refiner-sellers shall offer for sale during an allocation period, directly or through exchanges to refiner-buyers, a quantity of crude oil equal to that refiner-seller's sales obligation plus any volume that the ERA directs the refiner-seller to sell pursuant to 10 CFR Section 21.65(j).

Pursuant to 10 CFR 211.65(h), each refiner-buyer and refiner-seller is required to report to ERA in writing or by telegram the details of each transaction under the buy/sell list within forty-eight hours of the completion of arrangements therefor. Each report must identify the refiner-seller, the refiner-buyer, the refineries to which the crude oil is to be delivered, the volumes of crude oil sold or purchased, and the period over which the delivery is expected to take place.

The procedures of 10 CFR 211.65(j) provide that if a sale is not agreed upon subsequent to the date of publication of this notice, a refiner-buyer that has not been able to negotiate a contract to purchase crude oil may request that the ERA direct one or more refiner-sellers to sell a suitable type of crude oil to such refiner-buyer. Such request must be received by the ERA no later than 20 days after the publication date of this supplemental buy/sell notice. Upon such request, the ERA may direct one or more refiner-sellers that have not completed their required sales to sell crude oil to the refiner-buyer.

In directing refiner-sellers to make such sales, ERA will consider the percentage of each refiner-seller's sales obligation for the allocation period that has been sold as reported pursuant to Section 211.65(h), as well as the refiner-seller or sellers that can best be expected to consummate a particular directed sale. If, in ERA's opinion, a valid directed sale request cannot reasonably be expected to be consummated by a refiner-seller that has not completed all or substantially all of its sales obligation for the allocation period, the ERA may issue one or more directed sales orders that would result in one or more refiner-sellers selling more than their published sales obligations for that allocation period. In such cases, the refiner-seller or sellers will receive a barrel-for-barrel reduction in their sales obligations for the next allocation period pursuant to 10 CFR 211.65(f)(3)(ii).

If the refiner-buyer declines to purchase the crude oil specified by ERA, the rights of that refiner-buyer to purchase that volume of crude oil are forfeited during this allocation period, provided that the refiner-seller or refiner-sellers have fully complied with the provision of 10 CFR 211.65.

Refiner-buyers making requests for directed sales must document their inability to purchase crude oil from refiner-sellers by supplying the following information to EPA:

(i) Name of the refiner-buyer and of the person authorized to act for the refiner-buyer in buy/sell program transactions.

(ii) Name and location of the refineries for which crude oil has been sought, the amount of crude oil sought for each refinery, and the technical specifications of crude oils that have historically been processed in each refinery.

(iii) Statement of any restrictions, limitations, or constraints on the refiner-buyer's purchases of crude oil, particularly concerning the manner or time of deliveries.

(iv) Names and locations of all refiner-sellers from which crude oil has been sought under the buy/sell notice, the refineries for which crude oil has been sought, and the volume and specifications of the crude oil sought from each refiner-seller.

(v) The response of each refiner-seller to which a request to purchase crude oil has been made, and the name and telephone number of the individual contacted at each such refiner-seller.

(vi) Such other pertinent information as ERA may request.

All reports and applications made under this notice should be addressed to: Chief, Crude Oil Allocation Branch, 20th Street Postal Station, P.O. Box 19028, Washington, D.C. 20036.

Copies of the decisions and orders assigning the emergency allocations listed herein, as well as the applications, may be obtained from: Economic Regulatory Administration, Public Information Office, 2000 M Street, N.W., Rm. B110, Washington, D.C. 20461 (202) 6344–2170.

The ERA Public Information Office also has available copies of pending applications for emergency allocations under the buy/sell program.

ERA requires each applicant for an emergency allocation to serve all refiner-sellers with a copy of its application. Comments on such application will be accepted by ERA if filed within eight days of service of the application.

This notice is issued pursuant to Subpart G of DOE's regulations governing its administrative procedures and sanctions, 10 CFR Part 205. Any person aggrieved hereby may file an appeal with DOE's Office of Hearings and Appeals in accordance with Subpart H of 10 CFR Part 205. Any such appeal shall be filed on or before July 16, 1979.

Issued in Washington, D.C. June 8, 1979.

Doris J. Dewton,

Acting Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

Appendix

The Buy/Sell list for the period April 1, 1979, through September 30, 1979, is hereby amended to reflect an emergency allocation for the months of June and July 1979, reductions in allocations previously issued and the resulting changes in sales obligations of refiner-sellers. The amended list sets forth the name of each refiner-seller, the volumes of crude oil that each such refiner-seller is required to offer for sale to refiner-buyers, emergency allocations for the months of June and July 1979, and reductions in allocations previously issued. The amended list does not reflect volumes sold by refiner-sellers for the April 1, 1979, through September 30, 1979, allocation period.

Crude Oil Allocation Program Sales Obligations for the Period Apr. 1, 1979–Sept. 30, 1979

Refiner-seller	Share*	Sales obligation as of May 16, 1979 (barrels)	New total (barrels)
Amoco Oil Co	.195	2,210,592	2,264,592
Atlantic Richfield Co	.077	1,694,888	1,668,128
Chevron U.S.A., Inc	.101	2,287,195	2,429,675
Cities Service Co	.085	1,169,880	1,197,864
Continental Oil Co	.004	91,749	94,884
Exxon Co., U.S.A	.069	1,618,888	1,691,588
Gary Refining & Marketing Co	.021	548,016	568,848
Gulf Refining & Marketing Co	.091	2,165,391	2,218,388
Marathon Oil Co	.022	488,888	474,172
Mobil Oil Corp	.064	1,574,371	3,648,585
Phillips Petroleum Co	.041	978,729	888,888
Shell Oil Co	.118	2,691,888	2,691,888
Sun Co	.055	1,354,154	1,388,197
Texaco Inc	.114	2,888,488	2,878,484
Union Oil Co. of California	.048	1,888,488	1,128,884
Total sales		88,491,388	88,188,888

*All Refiner-Sellers' percentage shares have been changed to reflect the Continental Oil Company and Exxon Company, U.S.A. Decision and Order dated March 28, 1979. Case numbers are FEE-0184 and FEE-0185.

Emergency Allocation for June and July 1979

Refiner	Refinery location	June 1979 allocation (barrels)	July 1979 allocation (barrels)
CRA, Inc	Coffeyville, Kans	542,880	498,932

REDUCTIONS IN ALLOCATIONS

ERA has been notified by three small refiners with June 1979 allocations (issued with the supplemental notice of May 16, 1979) that they have been able to purchase additional crude oil outside the Buy/Sell Program. This oil was not considered in determining these refiners' emergency allocations. Therefore, the June allocations for the three refiners will be reduced as follows:

Refiner	Original June allocation	Amended June allocation
National Cooperative Refinery Association	352,350	294,568
Southern Union Refining Company	114,330	0
Gulf States Oil and Refining Company	95,820	0

	(Barrels)
Total previously published allocations	22,431,369
Emergency allocation (June)	542,880
Emergency allocation (July)	498,932
Less:	
NCRA	117,782
Southern Union	114,330
Gulf States	95,820
	(327,932)
Total allocations	23,135,229

[FR Doc. 79-18478, Filed 6-13-79; 8:45 am]

BILLING CODE 6450-01-M

Action Taken on Consent Orders

AGENCY: Economic Regulatory Administration.

ACTION: Notice of Settlements.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice that Consent Orders were entered into between the ERA and the firms listed below during the month of May 1979.

The Consent Orders represents a settlement between the DOE and the firms involving a sum of less than $500,000 in the aggregate, excluding any penalties and interest. For Consent Orders involving sums of $500,000 or more, Notice will be separately published in the **Federal Register**. These Consent Orders are concerned exclusively with payment of the settlement amounts to injured parties for overcharges made by the specified companies during the time periods indicated below, through direct refunds or rollbacks of prices.

For further information regarding this Consent Order, please contact James C. Easterday, District Manager of Enforcement, Southeast District, Economic Regulatory Administration, 1655 Peachtree Street, NE, Atlanta, Georgia 30309, telephone number (404) 881–2661.

Firm name and address	Settlement amount	Product	Period Covered	Recipients of settlement
Wholesale LP Gas, Inc., Columbus, MS 39701.	65,000.02	Propane	11/1/73–3/31/74	Lampton Love, Lotten Butane, Northeast Butane, Amory Butane, United Propane, Borden Butane, Mann Propane, Gulf States Ceramic, Baker Gas & Oil, Putnam Gas, Tree Temper, Bell Liquified Petroleum, Benske Corp., Southern Gas, Aligas Service, Hadley Butane, Coombs Gas, Nanabee Gas, Hinton Oil, Sartain Gas, Kerr-McGee Chemical, Alcoa, Covington Propane, Ackerman Butane
Herrington LP Gas Co., Olive Branch, MS 38654.	22,017.20	Propane	11/1/73–4/30/78	Mid-South Galvanizing, B. F. Goodrich, Holiday Inn University, Modern Plastics, Holiday Inn Airport, Keene Corporation, Uniggers Corp., Residential Customers, Farm Customers
Super Oil Co., Johnson City, TN 37601.	152,911.43	Gasoline, Middle Distillates	11/1/73–10/31/74	Large Volume Jobbers, Tennessee Transport Resellers, Va. Transport Resellers, Tankwagon Resellers, North Caroline Transport Resellers, Super Outlets—Full Service, Mack Hopson, Tankwagon Consumers, Transport Consumers, Tankwagon Reseller/Retailer
Masson Operating Co., Natchez, MS 39120.	82,109.27	Crude Oil	9/1/73–3/31/77	Escrowed to ERA direct and through Ashland Oil, Inc. for distribution in a just and equitable manner in accordance with applicable laws and regulations.

Issued in Atlanta, Georgia on the 4th day of June 1979.

James C. Easterday,
District Manager.

Approved as to Legal Form:

L. F. Bittner,
Chief Enforcement Counsel.

[FR Doc. 79-18469 Filed 6-13-79; 8:45 am]

BILLING CODE 6450-01-M

Action Taken on Consent Orders

AGENCY: Economic Regulatory Administration.

ACTION: Notice of Agreements.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice that Consent Orders were entered into between the ERA and the firms listed below during the months of April and May 1979. The Consent Orders represent agreements between the DOE and the firms which involve a reduction of the selling prices for gasoline to be in compliance with the Federal Energy pricing regulations. These Consent Orders are concerned exclusively with the consenting firm's current compliance with the Mandatory Petroleum Allocation and Price Regulations and do not address the possible non-compliance with these regulations prior to the date of the audit. These Consent Orders require consenting firms to come into compliance with legal requirements by reducing selling prices to established lawful level for each grade of gasoline sold, to properly post maximum lawful selling prices and to properly maintain required records. All consenting firms are retailers of gasoline as defined in 10 CFR Section 212.31 of the Federal Energy guidelines.

For further information regarding these Consent Orders, please contact James C. Easterday, District Manager of Enforcement, 1655 Peachtree Street, NE, Atlanta, Georgia 30309, telephone number 404–881–2661.

Firm name and address	Reduction in ASP to achieve MLSP	Product	Period covered	Description of price reductions
Martinez & Mena Exxon, Miami, FL	.0274	Motor Gas	Current	Consumers/ End Users.
Brickell Ave, Miami, FL	.0057	do.	do.	Do.
Hallandale Amoco, Hallandale, FL	.0069	do.	do.	Do.
Pete's Exxon, Tampa, FL	.0462	do.	do.	Do.
Ray's Texaco Service, Tampa, FL	.0047	do.	do.	Do.
Westshore 66, Tampa, FL	.0057	do.	do.	Do.
Sandlake Texaco, Orlando, FL	.0010	do.	do.	Do.
Miller's Sandlake Mobil, Orlando, FL	.0095	do.	do.	Do.
South Trail Amoco, Orlando, FL	.0068	do.	do.	Do.
Chuck's Super Service, Orlando, FL	.0060	do.	do.	Do.
C&M Texaco, Orlando, FL	.026	do.	do.	Do.
Atlantic Beach Amoco, Atlantic Beach, FL	.006	do.	do.	Do.
University Gulf Service, Jacksonville, FL	.0000	do.	do.	Do.
Highland Shell, Jacksonville, FL	.0065	do.	do.	Do.
Grove Park Chevron, Jacksonville, FL	.0060	do.	do.	Do.
Otis Wells Mobil, Jacksonville, FL	.0130	do.	do.	Do.
Mbob Union 76, Jacksonville, FL	.0160	do.	do.	Do.
Hendricks Exxon, Jacksonville, FL	.0060	do.	do.	Do.
Wyatt Chevron, Gainesville, FL	.0040	do.	do.	Do.
O'Hara's Standard, Gainesville, FL	.0040	do.	do.	Do.
Royal Park Shell Ser., Gainesville, FL	.0040	do.	do.	Do.
Bell's Chevron Service, Jacksonville, FL	.0102	do.	do.	Do.
Airport Exxon, Jacksonville, FL	.0060	do.	do.	Do.
Central Gardens Exxon, Richmond, VA	.010	do.	do.	Do.
Walton's Texaco Service, Richmond, VA	.020	do.	do.	Do.
Circle 8 Texaco, Richmond, VA	.010	do.	do.	Do.
One Stop Auto Shop, Richmond, VA	.012	do.	do.	Do.
Gliasco Amoco, Richmond, VA	.020	do.	do.	Do.
Battlefield Route Exxon, Richmond, VA	.010	do.	do.	Do.
Springdale Shell, Richmond, VA	.010	do.	do.	Do.
River Road Service Center, Richmond, VA	.025	do.	do.	Do.
Huguenot Exxon Servicenter, Midlothian, VA	.020	do.	do.	Do.
Richardson's Texaco Service, Richmond, VA	.015	do.	do.	Do.
Shiloy Hills Texaco, Chamblee, GA	.0200	do.	do.	Do.
A. C. Couch Auto Service, Atlanta, GA	.0050	do.	do.	Do.
Johnson's American Service, Atlanta, GA	.0004	do.	do.	Do.
Piedmont Paces de Leon Std., Atlanta, GA	.0000	do.	do.	Do.
Roswell Windsor Shell Service, Atlanta, GA	.0001	do.	do.	Do.
Jim's Shell, Virginia Beach, VA	.010	do.	do.	Do.
Vaughan's Servicenter, Virginia Beach, VA	.005	do.	do.	Do.
Hammer's Texaco, Virginia Beach, VA	.007	do.	do.	Do.
World's Corner Exxon, Norfolk, VA	.010	do.	do.	Do.
Airport Exxon, Roanoke, VA	.005	do.	do.	Do.
Hershberger Shell, Roanoke, VA	.0100	do.	do.	Do.
Plantation Exxon, Hollins, VA	.0070	do.	do.	Do.
Salem Shell, Salem, VA	.0105	do.	do.	Do.
Hoover Chevron, Birmingham, AL	.000	do.	do.	Do.
Glass Gulf Service, Atlanta, GA	.0104	do.	do.	Do.
Joe Johnson's Gulf, Versailles, KY	.0140	do.	do.	Do.
Spankenberg Texaco, Versailles, KY	.0000	do.	do.	Do.
Parkway Exxon, Lexington, KY	.0000	do.	do.	Do.
Mellos Shell, Lexington, KY	.0120	do.	do.	Do.
West Frankfort Exxon, Frankfort, KY	.0000	do.	do.	Do.
Hurstbourne Standard, Louisville, KY	.0400	do.	do.	Do.
Hennegh's Gulf, Louisville, KY	.0134	do.	do.	Do.
Versailles Rd. Marathon, Lexington, KY	.0104	do.	do.	Do.
Parkway Gulf, Lawrenceburg, KY	.0405	do.	do.	Do.
Grade Lane Exxon, Louisville, KY	.0100	do.	do.	Do.
Backhaus & Sons Phillips 66, Louisville, KY	.005	do.	do.	Do.
Jeffersonville Exxon, Jeffersonville, IN	.0105	do.	do.	Do.
Hauenstein Standard, Jeffersonville, IN	.0210	do.	do.	Do.
Bob Doyle Standard Service, Shelbyville, KY	.0057	do.	do.	Do.
Georgetown & I-64 Shell, Georgetown, IN	.0157	do.	do.	Do.
Joe Davis Standard, Valley Station, KY	.0201	do.	do.	Do.
Eddie's Woodlee Texaco, Greensboro, NC	.0040	do.	do.	Do.
Raj Road Exxon Service, Greensboro, NC	.0112	do.	do.	Do.
Petit's Texaco, Greensboro, NC	.0207	do.	do.	Do.
Mt. Hope Texaco, Greensboro, NC	.0070	do.	do.	Do.
Shell Service Center, Charlotte, NC	.0110	do.	do.	Do.
John T. Huss Exxon, Charlotte, NC	.0027	do.	do.	Do.
Mallard's Texaco, Charlotte, NC	.0130	do.	do.	Do.
John O'Brien, Inc., Charlotte, NC	.0130	do.	do.	Do.
Subway Texaco, Charlotte, NC	.002	do.	do.	Do.
Vestavia Exxon, Birmingham, AL	.0005	do.	do.	Do.
Sandow Green Springs Amoco, Homewood, AL	.012	do.	do.	Do.
Paul Vestavia Texaco, Birmingham, AL	.013	do.	do.	Do.
Paul A. Costanzo Gulf, Birmingham, AL	.014	do.	do.	Do.
Green Valley Shell, Hoover, AL	.002	do.	do.	Do.
Carr's Gulf Station, Birmingham, AL	.010	do.	do.	Do.
Schiller's Amoco, Frankfort, KY	.0100	do.	do.	Do.

Issued in Atlanta, Georgia, on the 4th day of June, 1979.

James C. Easterday,

District Manager of Enforcement.

Approved as to legal form:

L. F. Bittner,

Chief Enforcement Counsel.

[FR Doc. 79-18448 Filed 6-13-79; 8:45 am]

BILLING CODE 6450-01-M

Century Oil Management, Inc.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department

of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

EFFECTIVE DATE: May 29, 1979.

COMMENTS BY: July 16, 1979.

ADDRESS: Send comments to: Jack L. Wood, District Manager of Enforcement, 111 Pine Street, San Francisco, CA 94111.

FOR FURTHER INFORMATION CONTACT: Jack L. Wood, District Manager of Enforcement, 111 Pine Street, San Francisco, CA 94111, phone: (415) 556–7200.

SUPPLEMENTARY INFORMATION: On May 29, 1979, the Office of Enforcement of the ERA executed a Consent Order with Century Oil Management, Inc., (COM) of Santa Ana, California. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

The Consent Order

COM, with its home office located in Santa Ana, California, is a firm engaged in the production and sale of crude oil, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR, Parts 210, 211, 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of COM, the Office of Enforcement, ERA, and COM entered into a Consent Order, the significant terms of which are as follows:

1. COM is the operator of the Judkins lease and Sentinal A Lease in Kern County, California.

2. COM produced 212,768 barrels of crude oil from the Judkins Lease during the period September 1, 1976 through April 30, 1978, which amount was sold to Coastal Independent Refining and Sebring Associates at exempt oil prices based upon certification of the lease as a stripper well property.

3. The DOE contends that the lease was not eligible for the stripper well exemption for any period prior to November 1, 1978 and that COM should not have received payments in excess of the lower and upper tier ceiling prices as prescribed by 10 CFR 212.73 and 212.74 during the period in question.

4. Payments received by COM from Coastal Independent Refining and Sebring Associates in excess of the applicable lower and upper tier ceiling price during the period September 1, 1976 through April 30, 1978 totaled $229,667.66 and $2,767.01, respectively.

5. COM produced approximately 26,105 barrels of crude oil from Sentinal A during the period January 1, 1976 through April 30, 1978 at upper tier prices based upon their BPCL certification of the lease.

6. The DOE contends that COM used an incorrect BPCL for the Sentinal A lease until May 1978 when the lease qualified for the stripper well exemption. Therefore, COM should not have received payments in excess of the lower tier ceiling price as prescribed by 10 CFR 212.73 during the period in question for the number of barrels stated in paragraph 5.

7. Payments received by COM in excess of the applicable lower tier ceiling price during January 1, 1976 through April 30, 1978 were from the following companies in the amounts shown: Witco Chemical—$2,196.55; San Joaquin Refining—$470.90; Coastal Independent Refining—$12,707.29; Century Resources Development—$2,579.90; and Hydrocarbons, Ltd.—$3,928.58.

8. COM, without admitting that it has violated any regulation or overcharged any customer, is willing to enter into the Consent Order and refund $324,315.89 plus interest at the rate set by DOE as a means of settling this dispute.

9. The provisions of 10 CFR 205.199J, including the publication of this Notice are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In this Consent Order, COM agreed to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified above, the sum of $324,315.89 plus interest in certified checks made payable to the United States Department of Energy. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refunded amount in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers of offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments.

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of indentifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

5. *Other Comments.* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notificaion of a claim to Jack L. Wood, District Manager of Enforcement, 111 Pine Street, San Francisco, California 94111. You may obtain a free copy of this Consent Order by writing to the same address or by calling 415–556–7200.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Century Oil Management, Inc. Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on July 16, 1979. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Los Angeles on the 5th day of June 1979.

Jack L. Wood,

District Manager of Enforcement.

[FR Doc. 79-18671 Filed 6-13-79; 8:45 am]

BILLING CODE 6450-01-M

J. R. Cone; Proposed Remedial Order

Pursuant to 10 C.F.R. § 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to J. R. Cone, P.O. Box 871, Lubbock, Texas 79408. This Proposed Remedial Order charges J. R. Cone with pricing violations in the amount of $1,870,403.11, connected with the sale of crude oil at prices in excess of those permitted by 10 C.F.R. 212, Subpart D during calendar years 1973, 1974, 1975, 1976 and 1977.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Wayne I. Tucker, District Manager, Southwest District Enforcement, Department of Energy, Economic Regulatory Administration, P.O. Box 35228, Dallas, Texas 75235, or by calling (214) 749–7626. On or before June 29, 1979, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, N.W., Washington, D.C. 20461, in accordance with 10 C.F.R. § 205.193.

Issued in Dallas, Texas, on the 5th day of June, 1979.

Wayne I. Tucker,

District Manager, Southwest District Enforcement.

[FR Doc. 79-18304 Filed 6-13-79; 8:45 am]

BILLING CODE 6450-01-M

Henry Petroleum Corp.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Henry Petroleum Corporation, 801 Petroleum Building, Midland, Texas 79701. This Proposed Remedial Order charges Henry Petroleum Corporation with the sale of crude oil at prices in excess of those permitted by 10 CFR 212 Subpart D in an amount of $138,056.41 during the period December 1, 1973 through May 31, 1979 in the states of Texas and New Mexico.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Wayne I. Tucker, District Manager, Southwest District Enforcement, Department of Energy, Economic Regulatory administration, P.O. Box 35228, Dallas, Texas 75235, or by calling (214) 749–7626. On or before June 29, 1979, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, N.W., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Dallas, Texas, on the 5th day of June, 1979.

Wayne I. Tucker,

District Manager, Southwest District Enforcement.

[FR Doc. 79-18305 Filed 6-13-79; 8:45 am]

BILLING CODE 6450-01-M

Russell G. Estes; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Russell G. Estes, 306 Petroleum Building, Midland, Texas 79701. This Proposed Remedial Order charges Russell G. Estes with pricing violations in the amount of $342,737.28 caused by their having made sale of crude oil at prices in excess of those allowed by 10 CFR 212, Subpart D during the calendar years 1973 through June 1977.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Wayne I. Tucker, District Manager, Southwest District Enforcement, Department of Energy, Economic Regulatory Administration, P.O. Box 35228, Dallas, Texas 75235, or by calling (214) 749–7626. On or before June 29, 1979, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, N.W., Washington, D.C. 20461, in accordance with 10 C.F.R. § 205.193.

Issued in Dallas, Texas, on the 5th day of June, 1979.

Wayne I. Tucker,

District Manager, Southwest District Enforcement.

[FR Doc. 79-18306 Filed 6-13-79; 8:45 am]

BILLING CODE 6450-01-M

RPL Oil Co.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to RPL Oil Company, P.O. Box 5458, Midland, Texas 79701. This Proposed Remedial Order charges RPL Oil Company with the sale of crude oil at prices in excess of those permitted by 10 CFR 212, Subpart D in an amount of $82,363.80 during calendar years 1973 and 1974.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Wayne I. Tucker, District Manager, Southwest District Enforcement, Department of Energy, Economic Regulatory Administration, P.O. Box 35228, Dallas, Texas 75235, or by calling (214) 749–7626. On or before June 29, 1979, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, N.W., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Dallas, Texas, on the 5th day of June 1979.

Wayne I. Tucker,

District Manager, Southwest District Enforcement.

[FR Doc. 79-18308 Filed 6-13-79; 8:45 am]

BILLING CODE 6450-01-M

Shell Oil Co.; Issuance of Final Decision and Order

On April 10, 1979 we issued a Proposed Decision and Order to Shell Oil Company that would permit, pursuant to the provisions of 10 CFR 212.78, market prices for the incremental crude oil from the Olinda Fee Four Enhanced Recovery Project in the Yorba Linda Field of Orange County, California (44 FR 22506, April 16, 1979). No comments or objections have been received with respect to this Proposed Decision and Order. Accordingly, on June 7, 1979, we issued a Decision and Order that permits market prices for incremental crude oil from the Olinda Fee Four Project.

A copy of the Decision and Order is available in the Public Docket Room, Room B–120, 2000 M Street, N.W., Washington, D.C., between 1:00 p.m. and 5:00 p.m., Monday through Friday, and in the Department of Energy Reading Room, Room GA–152, James Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

Issued in Washington, D.C., June 8, 1979.

Doris J. Dewton,

Acting Assistant Administrator, Office of Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-18309 Filed 6-13-79; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

University Coal Research Laboratories Program; Availability of Program Announcement for University Coal Research Laboratories Program

AGENCY: Department of Energy.

ACTION: Notice of availability of program announcement, reference No. ER 1006.

BACKGROUND: On May 1, 1979 the final rule covering the University Coal Research Laboratory Program of the Department of Energy was published in the **Federal Register**. This rule established the policies and procedures to be followed in the selection and designation of thirteen university coal research laboratories as authorized by Title VIII of Pub. L. 95–87, the Surface Mining Control and Reclamation Act of 1977, as amended by Section 604 of Pub. L. 95–617, the Public Utilities Regulatory Policies Act of 1978. The university coal research laboritories are established for the purpose of carrying out advanced research and training related to one or more problems of coal energy resources and conversion. At least one of the coal laboratories so designated must be located within each of the major coal provinces of the United States, including Alaska, but no more than one per State. Ten of the thirteen laboratories authorized must be located in states with abundant coal reserves and all the laboratories must be administered by institutions of higher education with experience and expertise in coal research and currently or potentially outstanding coal research programs with the capacity to establish and operate the coal laboratory.

The program announcement details the program objectives, eligibility requirements, the required content of the proposals, and the evaluation and selection criteria and procedures.

EFFECTIVE DATE: June 13, 1979.

POINT OF CONTACT: Copies of the program announcement are available by writing or telephoning: Mr. A. H. Frost, Jr., Contracting Officer, Contracts Division, Oak Ridge Operations Office, Post Office Box E, Oak Ridge, Tennessee 37830, 615–576–0642.

Dated at Washington, D.C., this 8th of June, 1979.

For the Department of Energy.

John M. Deutch,

Director of Energy Research.

[FR Doc. 79-18528 Filed 6-13-79; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Parker-Davis Project; Proposed Power Rate Adjustment

AGENCY: Western Area Power Administration (WAPA), Department of Energy.

ACTION: Notice of Proposed Power Rate Adjustment for Parker-Davis Project.

SUMMARY: The Western Area Power Administration is proposing an increase in Parker-Davis Project wholesale firm power rates and transmission service charges in order that project costs will be repaid within the time periods established by law. Proposed increases are as follows:

1. *Wholesale Firm Power Rate.* Increase the monthly capacity charge from $1.39 to $1.82 per kilowatt and the energy charge from 3.5 to 4.15 mills per kilowatthour. At 60 percent monthly load factor, the proposed rate will increase the average annual composite yield from 6.67 to 8.3 mills per kilowatthour, a 24 percent increase. For contract violations involving unauthorized overruns, the rate will be 10 times the aforementioned basic rate which is the same multiplier now in effect.

2. *Transmission Service.*—a. *Parker-Davis Project Electric Service Contract Commitments.* For firm transmission service, increase the annual transmission service charge 28 percent, from $5.30 to $6.80 per kilowatt of contract obligation, to the extent and at the times permitted under the terms of individual contracts. For nonfirm transmission service increase rates from 1.0 to 1.3 mills per kilowatthour.

b. *Colorado River Storage Project Southern Division Transmission System Commitments.* Implement a seasonal transmission service charge of $3.67 per kilowatt of contract rate of delivery. No charge has been made previously for such service.

A brochure explaining in detail the need for the proposed rate will be distributed to Parker-Davis contractors and other interested parties. Public Information and Comment Forums will then be held in accordance with the current WAPA procedures for public participation in general rate adjustments.

During the Public Information and Comment Forums, the standards as set forth in Title I of the Public Utility Regulatory Policies Act of 1978 (PURPA) (16 U.S.C. 2601 *et seq.*), will be discussed. Subsequent to the discussion of the standards set forth in Title I of PURPA, the WAPA will consider and made a determination concerning whether or not it is appropriate to implement each such standard to carry out the purposes of Title I. The determination shall be in writing, based on the findings included in such determination and upon the evidence presented at the forums, and available to the public.

DATES: The proposed rate is needed commencing October 1, 1979. However, in view of the time needed to properly accomplish procedural aspects, the effective date of the proposed rate is now estimated to be March 1, 1980. A Public Information Forum, at which the WAPA will outline the reasons for the rate increase, will be held in Las Vegas, Nevada on July 9, 1979. A Public Comment Forum, at which the public may comment on the proposed rate increase, will be held in Phoenix, Arizona on August 31, 1979. Written comments concerning this proposed rate adjustment, if they are to be considered, shall be received by the addresses below by no later than September 18, 1979.

ADDRESSES: Interested persons wishing to submit written comments pertaining to the proposed rate adjustment on the Parker-Davis Project shall mail three (3) copies of such comments to each of the following:

Mr. Robert A. Olson, Area Manager, Western Area Power Administration, Boulder City Area Office, 1600 Nevada Highway, P.O. Box 200, Boulder City, NV 89005.

Mr. Robert L. McPhail, Administrator, Western Area Power Administration, Department of Energy, P.O. Box 3402, Golden, CO 80401.

Mr. George S. Melsaac, Assistant Secretary for Resource Applications, Office of Resource Applications, Department of Energy, 12th and Pennsylvania Ave., NW., Washington, DC 20461.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Olson, Area Manager, Western Area Power Administration, Boulder City Area Office, 1600 Nevada Highway, P.O. Box 200, Boulder City, NV 89005, Telephone: (702) 293–8475.

SUPPLEMENTARY INFORMATION: Power rates for the Parker-Davis Project are established pursuant to the Department of Energy Organization Act of August 4, 1977 (42 U.S.C. 7101 *et seq.*); the Reclamation Act of 1902 (43 U.S.C. 372 *et seq.*), as amended and supplemented by subsequent enactments, particularly Section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and the Consolidated Parker Dam Power Project and Davis Dam Project Act (P.L. 373, May 28, 1954).

The Secretary of Energy delegated to the Assistant Secretary for Resource

Applications, by Delegation Order No. 0204–33, effective January 1, 1979 (43 F.R. 60636 (December 28, 1978)), the authority to develop, acting by and through the Administrator, and to confirm, approve, and place in effect on an interim basis, power and transmission rates; and to the Federal Energy Regulatory Commission, the authority to confirm and approve, on a final basis, or to disapprove such rates. This Order replaced Delegation Order No. 0204–4 (October 1, 1977), which had given certain authority to the Economic Regulatory Administration to confirm and approve or to establish rates.

Procedures for public participation in rate adjustments for power marketed by the WAPA were published in the Federal Register on March 23, 1978 (43 FR 12060 (March 23, 1978)). Subsequently, however, these procedures were amended on February 7, 1979, to accord with the Delegation Order No. 0204–33. These amendatory procedures titled, "Amendments to Procedures for Public Participation in General Adjustments in Rates for Power Marketed by the Western Area Power Administration," were published at 44 F.R. 7797 (February 7, 1979).

Issued at Golden, Colorado, June 7, 1979.

Robert L. McPhail,

Administrator.

[FR Doc. 79-18809 Filed 6-13-79; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1247–1]

Approval of Alternate Water Pollutant Testing Procedure; Total Manganese

In accordance with § 136.5, 40 CFR Part 136, "Guidelines for Test Procedures for the Analysis of Pollutants" (Federal Register, Vol. 41, No. 232, Wednesday, December 1, 1976, pp. 52780–52786), the Hach Chemical Company applied for approval of a new test procedure for the measurement of manganese. The new Hach procedure is a colorimetric procedure using prepackaged reagents based upon the same chemical reactions involved in the approved colorimetric procedure referenced in 40 CFR Part 136.

After a thorough review and evaluation by the Environmental Protection Agency (EPA) of the results of a comparability testing study, and other information submitted by the applicant in accordance with § 136.5, the EPA has designated the Hach procedure as an approved alternate procedure for nationwide use. All information submitted by the applicant is on file and available for public inspection to the extent consistent with 40 CFR Part 2 (EPA's regulation implementing the Freedom of Information Act), at the Environmental Monitoring and Support Laboratory, 26 West St. Clair Street, Cincinnati, Ohio 45268.

As an approved alternate test procedure, the Hach procedure is acceptable for use by any person required to use approved procedures under § 304(h) of the Clean Water Act Amendments of 1977. For such use, the procedure must be used in strict accordance with the method descriptions for manganese, periodate oxidation method, "Wastewater Analysis Handbook," Hach Chemical Company, p. 275 and p. 281.

For the analysis of total manganese, addition of acid and digestion as indicated in Footnote 15 of Federal Register, Vol. 41, No. 232, Wednesday, December 1, 1976, p. 52785, and § 4.1.4, p. 83 of "Methods for Chemical Analysis of Water and Waste," USEPA, 1974, is the required sample pretreatment. This approved alternate test procedure for total manganese is approved also for the determination of dissolved manganese after sample filtration through a 0.45 micron filter.

The approved method description and prepackaged reagents are available from the Director of Technical Information, Hach Chemical Company, P.O. Box 389, Loveland, Colorado 80537.

Dated: June 4, 1979.

Tom Murphy,

Acting Assistant Administrator for Research and Development.

[FR Doc. 79-18808 Filed 6-13-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1209–6]

Air Pollution Prevention and Control; Addition to the List of Categories of Stationary Sources

Section 111 of the Clean Air Act (42 U.S.C. 1857c–6) directs the Administrator of the Environmental Protection Agency to publish, and from time to time revise, a list of categories of stationary sources which he determines may contribute significantly to air pollution which causes or contributes to the endangerment of public health or welfare. Within 120 days after the inclusion of a category of stationary sources in such list, the Administrator is required to propose regulations establishing standards of performance for new and modified sources within such category. At present, standards of performance for 27 categories of sources have been promulgated.

The Administrator, after evaluating available information, has determined that glass manufacturing plants are an additional category of stationary sources which meets the above requirements. The basis for this determination is discussed in the preamble to the proposed regulation that is published elsewhere in this issue of the Federal Register. Evaluation of other stationary source categories is in progress, and the list will be revised from time to time as the Administrator deems appropriate. Glass manufacturing plants are included on the proposed NSPS priority list published August 31, 1978, in the Federal Register, required by section 111(f)(1). But since the priority list is not final, glass manufacturing plants are also being listed as indicated below at this time. Once the priority list is promulgated, all source categories on the promulgated list are considered listed under section 111(b)(1)(A), and separate listings such as this will not be made for those source categories. Accordingly, notice is given that the Administrator, pursuant to section 111(b)(1)(A) of the Act, and after consultation with appropriate advisory committees, experts, and Federal departments and agencies in accordance with section 117(f) of the Act, effective June 14, 1979, amends the list of categories of stationary sources to read as follows:

List of Categories of Stationary Sources and Corresponding Affected Facilities

* * * * *

Source Category

26. Glass manufacturing plants

* * * * *

Affected Facilities—Glass melting furnaces.

Proposed standards of performance applicable to the above source category appear elsewhere in this issue of the Federal Register.

Dated: May 22, 1979.

Douglas M. Costle,

Administrator.

[FR Doc. 79-18805 Filed 6-13-79; 8:45 am]

BILLING CODE 6560-01-M

[PP 8G2052/T210; FRL 1247–5]

Pesticide Programs; Establishment of a Temporary Tolerance

American Cyanamid Co., PO Box 400, Princeton, NJ 08540, submitted a pesticide petition (PP 8G2052) to the

Environmental Protection Agency (EPA). This petition requested that a temporary tolerance be established for combined residues of the herbicide 2-chloro-*N*-(2,3-dimethylphenyl)-*N*-(1-methylethyl) acetamide and its metabolite *N*-isopropyl-2,3-dimethyloxanilic acid in or on the raw agricultural commodity corn grain at 0.15 part per million (ppm). This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with an experimental use permit (241-EUP-90) that has been issued under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

An evaluation of the scientific data reported and other material showed that the requested tolerance was adequate to cover residues resulting from the proposed experimental use, and it was determined that the temporary tolerance would protect the public health. The temporary tolerance has been established for the pesticide, therefore, with the following provisions:

1. The total amount of the pesticide to be used must not exceed the quantity authorized by the experimental use permit.

2. American Cyanamid Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The firm must also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary tolerance expires May 22, 1980. Residues not in excess of 0.15 ppm remaining in or on corn grain after this expiration date will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the experimental use permit and temporary tolerance. This temporary tolerance may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicates such revocation is necessary to protect the public health. Inquiries concerning this notice may be directed to Ms. Willa Garner, Product Manager 23, Registration Division (TS–767), Office of Pesticide Programs, 401 M St., SW, Washington, DC 20460 (202/755–1397).

(Sec. 408(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(j)))

Dated: June 7, 1979.

Douglas D. Campt,

Director, Registration Division.

[FR Doc. 79–18599 Filed 6–13–79; 8:45 am]

BILLING CODE 6560–01–M

[PF–134; FRL 1247–3]

Pesticide Programs; Filing of Food/Feed Additive Petitions

Pursuant to section 409(b)(5) of the Federal Food, Drug, and Cosmetic Act, the Environmental Protection Agency (EPA) gives notice that the following petitions have been submitted to the Agency for consideration.

FAP 9H5217. ICI Americas Inc., Concord Pike and New Murphy Road, Wilmington, DE 19897. Proposes that 21 CFR 561 be amended by permitting residues of the insecticide pirimiphos-methyl [*O*-[2-(diethyl-amino)-6-methyl-4-pyrimidinyl] *O,O*-dimethyl phosphorothioate] in or on the feed commodity wheat screenings at 50 parts per million (ppm). PM12–Mr. Frank Sanders, Rm. E–335, 202/426–2635.

FAP 9H5221. Environmental Chemicals, Inc., 703 N. Lake Shore Drive, Barrington, IL 60010. Proposes that 21 CFR 193 be amended by permitting the combined residues of the insecticide *O,O,O',O'*-tetramethyl *O,O'*-thiodi-p-phenylene phosphorothioate and its metabolite *O,O,O',O'*-tetramethyl *O,O'*-sulfinyldi-p-phenylene phosphorothioate on the commodity potable water at 0.1 ppm. PM16–Mr. William Miller, Rm. E–343, 202/426–9458.

Interested persons are invited to submit written comments on these petitions. Comments may be submitted, and inquiries directed, to the designated Product Manager (PM), Registration Division (TS–767), Office of Pesticide Programs, EPA, 401 M St., SW, Washington, DC 20460, or by telephone at the numbers cited. Written comments should bear a notation indicating the petition number to which the comments pertain. Comments may be made at any time while a petition is pending before the Agency. All written comments filed pursuant to this notice will be available for public inspection in the Product Manager's office from 8:30 a.m. to 4:00 p.m. Monday through Friday.

Dated: June 7, 1979.

Douglas D. Campt,

Director, Registration Division.

[FR Doc. 79–18598 Filed 6–13–79; 8:45 am]

BILLING CODE 6560–01–M

[OTS–630002; FRL 1247–2]

Premanufacture Notices; Status Report for May 1979

AGENCY: Environmental Protection Agency (EPA).

ACTION: Monthly Summary of Premanufacture Notices.

SUMMARY: Section 5(d)(3) of the Toxic Subetances Control Act (TSCA) requires that EPA publish a list in the Federal Register at the beginning of each month reporting the premanufacture notices (PMN's) pending before the Agency and PMN's for which the review period has expired since publication of the last monthly summary. This is the report for May, 1979.

DATE: Interested parties wishing to file written comments on a specific chemical substance should submit those comments no later than 30 days before the expiration of the applicable review period.

ADDRESS: Written comments should bear the PMN number of the particular substance and should be addressed to the Document Control Officer (TS793), Office of Toxic Substances, EPA, 401 M St., SW., Washington, DC 20460.

Nonconfidential portions of the PMN's and other documents in the public record are available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday (excluding holidays), in Room E–447 at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Smith, Premanufacture Review Division (TS–794), Office of Toxic Substances, EPA, Washington, DC 20460, 202/426–8816.

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, any person who intends to manufacture or import a new chemical substance for commercial purposes in the United States must submit a notice to EPA at least 90 days before he begins manufacture or import. A new chemical substance is any chemical substance that is not on the inventory of existing chemical substances compiled by EPA under Section 8(b) of TSCA. On May 15, 1979, the Agency announced the availability of this inventory in the Federal Register (44 FR 28558), and set June 1, 1979 as the publication date of this inventory. Therefore, the section 5 requirements are effective for all new chemical substances manufactured or imported for a commercial purpose after July 1, 1979. Once EPA receives a PMN, the Agency normally has 90 days to review it. However, under section 5(c) of TSCA, EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that such an extension is necessary, the Agency will publish the reasons for the extension in the Federal Register.

The monthly status report required under section 5(d)(3) will identify (a) each chemical substance for which a PMN has been received and for which the review period has not expired; (b) each chemical substance for which the premanufacture review has expired since publication of the last monthly summary; and (c) each "new" chemical substance which has been in the review process for less than 30 days. Eventually the report will also identify each chemical which has been added to the inventory since the last monthly report.

(Sec. 5 of the Toxic Substances Control Act (90 Stat. 2012; 15 U.S.C. 2604).)

Dated: June 7, 1979.

Steven D. Jellinek,

Assistant Administrator for Toxic Substances.

Premanufacture Notices; Status Report for May 1979

I. Premanufacture Notices Received During Month: None.

II. Premanufacture Notices Still Under Review at the Beginning of the Month for Which Period Has Not Expired:

PMN Number	Identity/Generic Name	FR Citation	Expiration Date
5AH00478-0002-1	Isobutyric acid carbomonocyclic ester	44 FR 22310 (4/19/79).	July 4, 1979
5AH00478-0002-2	Propiophenone, ring substitute-2-methyl	do	Do.
5AH00478-0002-3	Butyronitrile, 2-(substituted phenyl)-3-methyl	do	Do.
5AH00478-0002-4	Benzyl alcohol, ring substituted-alpha-isopropyl	do	Do.

III. Premanufacture Notices Completing Review During the Month: None.

[FR Doc. 79-18095 Filed 6-13-79; 8:45 am]

BILLING CODE 6560-01-M

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Administration

Advisory Committee on Information Network Structure and Functions for the Executive Office of the President; Establishment

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I (1976)) and Office of Management and Budget Circular A-63 of March 1974, and after consultation with the General Services Administration, it has been determined that the establishment of the Advisory Committee on Information Network and Functions for the Executive Office of the President is in the public interest in connection with the performance of duties imposed on the Executive Office of the President by law.

The Committee will advise the Director, through the Director for Information Systems Facilities, on matters pertinent to the Office of Administration's plans for the establishment of a Communications Network for the Executive Office of the President.

The Committee will consist of not more than eleven members, with representation from both the public and private sector.

The Committee will function solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the act with the appropriate congressional committees and the Library of Congress.

Interested persons are invited to submit comments regarding the establishment of the Advisory Committee on Information Network and Functions for the Executive Office of the President. Comments should be addressed to Director for Information Systems Facilities, Office of Administration, Executive Office of the President, Washington, D.C. 20500, telephone (202-395-3096).

Dated: May 7, 1979

Richard M. Hardin,

Director, Office of Administration.

[FR Doc. 79-18096 Filed 6-13-79; 8:45 am]

BILLING CODE 3195-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for review and approval, if required, pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, NW., Room 10423; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before June 25, 1979. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Agreement No.: 10372.

Filing party: Russell T. Weil, Kirlin, Campbell & Keating, 1150 Connecticut Avenue, N.W., Suite 800, Washington, D.C. 20036.

Summary: Agreement No. 10372, between United States Lines, Inc. (USL) and Matson Navigation Company (Matson), is a Transportation and Transshipment Agreement whereby the parties, in response to Matson's intention to withdraw from direct service between California ports and the Territory of Guam, contemplate carriage under joint through rates and through bills of lading from California ports to Guam and from Honolulu, Hawaii to the Atlantic Coast of the U.S. and to Europe. Carriage between California ports and the Port of Honolulu will be performed by Matson and all other carriage will be performed by USL. Shipments destined to Guam will be transshipped at Honolulu and shipments destined to the Atlantic Coast of the U.S. and to Europe will be transshipped at California ports. The Agreement covers and is restricted to the transportation of (a) cargo moving in 40-foot non-refrigerated containers on chassis under through bills of lading issued by USL in the trade from (1) U.S. Pacific Coast ports to Guam, with transhipment at Honolulu, Hawaii; (2)

Honolulu, Hawaii, to U.S. Atlantic Coast ports, with transshipment at Oakland or Los Angeles, California, and (3) Honolulu, Hawaii, to ports in Europe with transshipment at Oakland or Los Angeles, California, and (b) empty 40-foot non-refrigerated containers on chassis from Honolulu to Oakland or Los Angeles, California. Matson shall concur in and shall comply with all the terms, conditions, rates, rules, regulations and transshipment routes of USL's Freight Tariff No. 64, FMC–F No. 64, Freight Tariff FMC–F No. 65, and Freight Tariff No. 1, FMC No. 37, except that when cargo is in Matson's possession pursuant to this agreement, it shall be subject to the provisions of Matson's Freight Tariff No. 16–D, FMC–F No. 171, and USL shall concur in the said Tariff No. 16–D. The through rates shall be apportioned as set forth in the agreement. The interchange of containers and chassis from USL to Matson and liability connected therewith shall be governed by the terms of FMC approved Agreement No. DC–66, as amended, except that no per diem shall be charged or paid on any equipment moved under this Agreement.

By Order of the Federal Maritime Commission.

Dated: June 11, 1979.

Francis C. Hurney,

Secretary.

[FR Doc. 79-18573 Filed 6-13-79; 8:45 am]

BILLING CODE 6730-01-M

[Amendment No. 12 to Commission Order No. 1 (Revised)]

Organization and Functions of the Federal Maritime Commission

The following amendment to Commission Order 1 (Revised) was made effective April 26, 1979:

"In order to facilitate the administrative flow of paperwork in the absence or preoccupation of the Managing Director and the Deputy Managing Director, section 8 of Commission Order No. 1 is hereby amended to delegate authority to the Secretary to sign routine documents for the Managing Director during such absence(s) by adding a new subsection 8.04 to read as follows:

'8.04 Authority, in the absence or preoccupation of the Managing Director and Deputy Managing Director, to sign travel orders, nondocketed recommendations to the Commission, and other routine documents for the Managing Director, consistent with the programs, policies, and precedents established by the Commission or the Managing Director.' "

Richard J. Daschbach,

Chairman.

[FR Doc. 18572 Filed 6-13-79; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each appliction, interested persons may expersa their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration or resources, decreased on unfair competition, conflicts of interest, or unsound banking practices." Any comment on an appliction that requests a hearing must include a statement of the reasons a written presentation would not sufficie in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than July 9, 1979.

A. *Federal Reserve Bank of Chicago,* 230 South LaSalle Street, Chicago, Illinois 60690:

1. American Fletcher Corporation, Indianapolis, Indiana (consumer finance and insurance activities; Indiana): to engage, through a subsidiary, Local Finance Corporation, in making or acquiring loans or other extensions of credit for personal, family, or household purposes; purchasing consumer installment sales finance contracts; and acting as agent with respect to life and disability insurance directly related to its extensions of credit and insurance which protects property taken as collateral in connection with such extensions of credit. These activities would be conducted from an office in Indianapolis, Indiana, serving an area within a three-mile radius of that office.

2. First Chicago Corporation, Chicago, Illinois (finance and leasing activities; Illinois): to engage, through a subsidiary, First Chicago Credit Corporation, in making full payout leases of personal property in accordance with the Board's Regulation Y; making or acquiring loans and other extensions of credit such as would be made by a finance company; and servicing such loans and other extensions of credit. These activities would be conducted from offices in Chicago, Skokie, Schaumburg, and Oak Brook, Illinois, serving the Chicago SMSA.

3. Northern Trust Corporation, Chicago, Illinois (trust company and investment advisory activities; Florida): to engage, through a subsidiary, Security Trust Company of Palm Beach, in performing or carrying on any one or more functions or activities that may be performed or carried on by a trust company (including activities of a fidiciary, agency, or custodial nature, and acting as investment or financial advisor) as authorized by Florida law, but without the power to accept deposits or make commercial loans. These activities would be conducted from an office in Palm Beach Florida, serving Palm Beach County, Florida, and the southern half of the Martin County, Florida, coastal area.

B. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, June 8, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-18536 Filed 6-13-79; 8:45 am]

BILLING CODE 6210-01-M

Central Wisconsin Bankshares, Inc.; Acquisition of Bank

Central Wisconsin Bankshares, Inc., Wausau, Wisconsin, has applied for the Board's approval under Section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 98.6 percent or more of the voting shares of Northern Security National Bank of Rhinelander, Pelican, Wisconsin. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than June 22, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, June 11, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-18637 Filed 6-13-79; 8:45 am]

BILLING CODE 6210-01-M

First Security Corp.; Acquisition of Bank

First Security Corporation, Salt Lake City, Utah, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 80 per cent of the voting shares of First Security Bank of Richfield, N.A., Richfield, Utah. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than July 9, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, June 8, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-18639 Filed 6-13-79; 8:45 am]

BILLING CODE 6210-01-M

Grand Ridge Bancorp.; Formation of Bank Holding Company

Grand Ridge Bancorporation, Grand Ridge, Illinois, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of The First National Bank of Grand Ridge, Grand Ridge, Illinois. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than July 6, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, June 8, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-18636 Filed 6-13-79; 8:45 am]

BILLING CODE 6210-01-M

Goodenow Bancorp.; Formation of Bank Holding Company

Goodenow Bancorporation, Wall Lake, Iowa, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Wall Lake Savings Bank, Wall Lake, Iowa. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than July 9, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, June 8, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-18641 Filed 6-13-79; 8:45 am]

BILLING CODE 6210-01-M

Koss-Winn Bancshares, Inc.; Formation of Bank Holding Company

Koss-Winn Bancshares, Inc., Buffalo, Iowa, has applied for the Board's approval under Section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 95 percent or more of the voting shares (less directors' qualifying shares) of Farmers Trust & Savings Bank, Buffalo Center, Iowa. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than July 9, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, June 8, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-18641 Filed 6-13-79; 8:45 am]

BILLING CODE 6210-01-M

Talen, Inc., Formation of Bank Holding Company

Talen, Inc., Edgerton, Wisconsin, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares (less director's qualifying shares) of First State Bank of Edgerton, Edgerton, Wisconsin. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of

Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than July 9, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, June 8, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-18543 Filed 6-13-79; 8:45 am]

BILLING CODE 6210-01-M

The Jefferson Co.; Formation of Bank Holding Company

The Jefferson Company, Jefferson, Texas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of The First National Bank of Jefferson, Jefferson, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than July 2, 1979. Any comments on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, June 8, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-18540, Filed 6-13-79; 8:45 am]

BILLING CODE 6210-01-M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report Proposals

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Review Staff, GAO, on June 8, 1979. See 44 U.S.C. 3512(c) and (d). The purpose of publishing this notice in the Federal Register is to inform the public of such receipts.

The notice includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed OSM requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before July 2, 1979, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

Department of the Interior

Office of Surface Mining

The Office of Surface Mining (OSM), Department of the Interior, requests clearance of additional recordkeeping and reporting requirements contained in 30 CFR Parts 776, 779, 784, 785, 786, 807, 816, 817 and 843. These additional recordkeeping and reporting requirements were identified by respondents and the General Accounting Office (GAO) staff during GAO's review for clearance of OSM's Permanent Regulatory Program. The Office of Surface Mining has determined that such information is necessary to perform its responsibilities under the Surface Mining Control and Reclamation Act of 1977, 33 U.S.C. 1201 et seq. and must be collected, submitted or retained. On March 13, 1979, the OSM published these requirements, subject only to review by GAO to assure that a minimum burden is imposed in the manner in which such information is proposed to be obtained. The requirements contained in each part are as follows:

30 CFR Part 776

Section 776.13(b) sets forth criteria by which 27 regulatory authorities shall review for approval or disapproval 2,000 applications for exploration of more than 250 tons of coal. OSM estimates 6 person hours per application for a total of 12,000 person hours. Section 776.17(b) requires persons submitting information to the regulatory authority that should be held in confidence, to request in writing, at the time of submission that such information not be disclosed. Such information is not to be made available to the public until after notice and a hearing has been afforded persons seeking or opposing disclosure of the information. OSM estimates 2,250 coal exploration operations will submit such a request and preparation of each request will take one person hour for a total of 2,250 person hours.

30 CFR Part 779

Section 779.21 requires 3,800 surface coal mine operations to submit to the regulatory authority, with the permit application, descriptions of the soil resources of the mine plan area and results of analysis, trials and tests where selected overburden materials will be used instead of or as a supplement to topsoil in the reclamation process. OSM estimates approximately 16 person hours per operation for a total of 60,800 person hours. Section 779.22 requires 3,800 surface coal mine operations to file maps and supporting narrative describing the conditions, capability, and productivity of the land within the proposed permit area. OSM estimates approximately 49 person hours per operation for a total of 186,200 person hours. These requirements will have to be met approximately once every five years.

30 CFR Part 784

Section 784.26 establishes permit application requirements so that the regulatory authority is provided with comprehensive and reliable information on the air quality impact. Plans for fugitive dust control are required on approximately 2,300 underground operations. OSM estimates 16 hours per plan, for a total of 36,800 hours. The provisions of this section must be satisfied by underground operations approximately once every five years.

30 CFR Part 785

Section 785.17(b)(3)(5) and (7) sets forth the information that permit applications must include if the area proposed to be mined contains prime farmlands. Approximately 1,000 permit applications will be on prime farmlands. OSM estimates approximately 40 hours per permit for a total of 40,000 person hours. This requirement must be met by affected applicants at least once every five years in most cases.

30 CFR Part 786

Section 786.15 implements the requirements that all information contained in a permit application, filed with the regulatory authority, be made

available to the public. OSM estimates one hour per 27 regulatory authorities and four hours per 6,100 coal mine operators, for a total of 24,427 hours. This requirement must be met only once. Section 786.25(b)(2) sets forth provisions by which the regulatory authority may grant reasonable extensions of time for commencement of surface coal mining and reclamation operation. Approximately 305 surface coal mining and reclamation operations will be affected. OSM estimates 8 hours per extension request for a total of 2,440 hours. An extension request is only required once a year. Section 786.25(b)(4) requires the operator to set forth in the permit extension time granted under § 786.25(b)(2) and give notice of such extension to the public. Approximately 305 surface coal mining and reclamation operations will be affected. OSM estimates 2 hours per notice, for a total of 610 hours. A notice for each operation is required only once after receiving extension from regulatory authority.

30 CFR Part 807

Section 807.11(d) requires 27 regulatory authorities to give approximately 1,830 notices of inspection of reclamation work for evaluation and to inspect such work annually. OSM estimates approximately 40 person hours per notice and inspection for a total of 73,200 person hours. Section 807.11(h)(ii) sets forth the procedures that approximately 27 State regulatory authorities must follow in conducting public hearings on performance bonds. OSM estimates approximately 4 person hours per hearing for a total of 108 person hours per year.

30 CFR Part 816

Section 816.49(i) requires the surface coal mine operation to submit to the regulatory authority, annually, modification plans of dams and impoundments. OSM estimates approximately 1,000 surface mine operations must submit such plans and that it will take each operation from 2 to 40 person hours per plan for a total of 2,000 to 40,000 person hours. Sections 816.52(a)(1) and (2) set forth the requirements that 3,040 surface coal mine operations must follow in ground water monitoring programs. OSM estimates 16 person hours per operation for a total of 48,640 person hours per year. Section 816.52(b)(1)(ii) requires approximately 3,040 surface coal mine operations to notify the regulatory authority and forward analytical results of sample collections where there are cases of noncompliance with the permit conditions or applicable standards and where NPDES permit effluent limitations have exceeded. OSM estimates 4 person hours per operation for a total of 12,160 person hours a year. Section 816.95 requires approximately 3,800 surface coal mine operations to submit an annual plan for fugitive dust control as an integral part of site preparation, coal mining and reclamation operations and specifies what measures should be included in the plan. OSM estimates 8 person hours per operation for a total of 30,400 person hours. Section 816.116 requires approximately 27 State regulatory authorities to develop measurement techniques for successful revegetatiion after consulting with appropriate State and Federal agencies and requires approximately 3,040 surface coal mie operations to conduct managment paractices and periodic revegetation measurements along the guidelines or techniques developed by the regulatory authority. OSM estimates 6 person hours per regulatory authority and 24 person hours per operation for a total of 73,176 person hours a year.

30 CFR Part 817

Section 817.49(i) requires the underground mine operation to submit to the regulatory authority, annually, modification plans of dams and impoundments. OSM estimates approximately 600 underground mine operations must submit such plans and that it will take each operation from 2 to 40 person hours per plan for a total of 1,200 to 24,000 person hours. Section 817.52(a)(1) and (2) set forth the requirements that 1,840 underground mine operations must follow in ground water monitoring programs. OSM estimates 16 person hours per operation for a total of 29,440 person hours per year. Section 817.52(b)(1)(ii) requires approximately 1,840 underground mine operations to notify the regulatory authority and forward analytical results of sample collection where there are cases of noncompliance with the permit conditions or applicable standards and where NPDES permit effluent limitations have been exceeded. OSM estimates 4 person hours per operation for a total of 7,360 person hours a year. Section 817.95 requires approximately 2,300 underground mine operations to submit an annual plan for fugitive dust control as an intergral part of site preparation operations, coal mining and reclamation operations and specifies what measures should be included in that plan. OSM estimates 8 person hours per operation for a total of 18,400 person hours a year. Section 817.116 requires approximately 27 State regulatory authorities to develop measurement techniques for successful revegetation, after consultation with appropriate State and Federal agencies, and requires approximately 1,840 underground mine operations to conduct managment practices and periodic revegetation measurements along the guidelines or techniques developed by the regulatory authority. OSM estimates 6 person hours per regulatory authority and 24 person hours per underground mine operation for a total of 44,376 person hours a year.

30 CFR Part 843

Section 843.14(c) allows the coal mine operator to designate an agent for service of notices or orders and to notify OSM's regional district or field office of such designation, in writing. OSM estimates approximately 2,000 coal mine operations must comply with this requirement and will take about one person hour to prepare such notice for a total of 2,000 person hours annually.

John M. Lovelady,

Assistant Director, Regulatory Reports Review.

[FR Doc. 79-18982 Filed 6-13-79; 8:45 am]
BILLING CODE 1910-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health

Advisory Committees to the National Cancer Institute; Meetings for the Review of Contract Proposals and Grant Applications

Pursuant to Public Law 92-463, notice is hereby given of the meetings of committees advisory to the National Cancer Institute.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual contract proposals and grant applications, as indicated. These proposals and applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals and applications, the disclosure of which would constitute a

clearly unwarranted invasion of personal privacy.

Mrs. Marjorie F. Early, Committee Management Officer, NCI, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will furnish summaries of the meetings and rosters of committee members, upon request. Other information pertaining to the meeting can be obtained from the Executive Secretary indicated. Meetings will be held at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205, unless otherwise stated.

Name of Committee: Clinical Trials Committee.
Dates: July 10, 1979.
Place: Building 31C, Conference Room 4, National Institutes of Health.
Times: Open: July 10, 8:30 a.m.–9:00 a.m. Closed: July 10, 9:00 a.m.–adjournment.
Closure Reason: To review research contract proposals.
Executive Secretary: Dr. Gerald U. Liddel. Address: Westwood Building, Room 820, National Institutes of Health. Phone: 301/496–7575.
(Catalog of Federal Domestic Assistance Number 13.395 National Institutes of Health)

Name of Committee: Large Bowel and Pancreatic Cancer Review Committee (Pancreatic Subcommittee).
Date: July 19, 1979.
Place: Tidewater Place, 1440 Canal Street, Suite 1521, New Orleans, Louisiana 70112.
Times: Open: July 19, 8:30 a.m.–10:00 a.m. Closed: July 19, 10:00 a.m.–adjournment.
Closure Reason: To review research grant applications.
Executive Secretary: Dr. William E. Straile. Address: Westwood Building, Room 853, National Institutes of Health. Phone: 301/496–7194.
(Catalog of Federal Domestic Assistance Number 13.393, 13.394, 13.395 National Institutes of Health)

Name of Committee: Clinical Cancer Program Project and Cancer Center Support Review Committee (Cancer Center Support Review Subcommittee).
Dates: July 19–20, 1979.
Place: Building 31C, Conference Room 6, National Institutes of Health.
Times: Open: July 19, 8:30 a.m.–10:00 a.m. Closed: July 19, 10:00 a.m.–6:00 p.m. Closed: July 20, 8:30 a.m.–adjournment.
Closure Reason: To review research grant applications.
Executive Secretary: Dr. Robert Manning. Address: Westwood Building, Room 803, National Institutes of Health. Phone: 301/496–7721.
(Catalog of Federal Domestic Assistance Number 13.397 National Institutes of Health)

Name of Committee: Biometry and Epidemiology Contract Review Committee.
Date: July 24, 1979.
Place: Landow Building, Conference Room A, 7910 Woodmont Avenue, Bethesda, Maryland 20014.
Times: Open: July 24, 8:30 a.m.–9:00 a.m. Closed: July 24, 9:00 a.m.–adjournment.
Closure Reason: To review research contract proposals.
Executive Secretary: Dr. Wilna A. Woods. Address: Westwood Building, Room 821, National Institutes of Health. Phone: 301/496–7153.
(Catalog of Federal Domestic Assistance Number 13.393 National Institutes of Health)

Dated: June 7, 1979.

Suzanne L. Fremeau,
Committee Management Officer, NIH.

[FR Doc. 79–18479 Filed 6–13–79; 8:45 am]
BILLING CODE 4110–08–M

Cause and Prevention Scientific Review Committee; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Cause and Prevention Scientific Review Committee, National Cancer Institute, June 29, 1979, Landow Building, Conference Room A, 7910 Woodmont Avenue, Bethesda, Maryland 20205. The meeting will be open to the public on June 29, from 9 a.m. to 9:30 a.m., to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Public Law 92–463, the meeting will be closed to the public on June 29, from 9:30 a.m. to adjournment, for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Marjorie F. Early, Committee Management Officer, National Cancer Institute, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Eugene Zimmerman, Executive Secretary, National Cancer Institute, Westwood Building, Room 826, National Institutes of Health, Bethesda, Maryland 20205 (301/496–7575) will furnish substantive program information.

Dated: May 29, 1979.

Suzanne L. Fremeau,
Committee Management Officer, NIH.

(Catalog of Federal Domestic Assistance Program No. 13.393, National Institutes of Health.)

[FR Doc. 79–18478 Filed 6–13–79; 8:45 am]
BILLING CODE 4110–08–M

Guidelines for the Laboratory Use of Chemical Substances Posing a Potential Occupational Carcinogenic Risk; Open Meeting

A public meeting was held on September 25 and 26, 1978, to discuss a working draft of a document being developed for the HEW Committee to Coordinate Environmental and Related Programs. As a result of this meeting and written comments received, this document has been revised. The revised draft document contains proposals to provide an approach for protecting laboratory workers and their work environment from chemical substances that may pose a carcinogenic risk. This approach is based on the implementation of specific work practices and engineering controls that are applicable to the laboratory workplace. To this end, the meeting objective is to answer questions or receive comments regarding the revised draft document. Written comments will also be considered if received by August 14, 1979.

The open meeting will be held on Tuesday, July 24, from 9:00 a.m. to 5:00 p.m. in Masur Auditorium, Building 10, National Institutes of Health, Bethesda, Maryland. Attendance by the public will be limited to space available. It is requested that individuals wishing to attend give advance notice to:

Ms. Ronda Rice, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709. Telephone: (919) 541–3506/FTS 629–3506.

A copy of the draft document and any additional information regarding the meeting may be requested from Ms. Rice.

Dated: May 29, 1979.

Suzanne L. Fremeau,
Committee Management Officer, NIH.

[FR Doc. 79–18480 Filed 6–13–79; 8:45 am]
BILLING CODE 4110–08–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Butte District Grazing Advisory Board; Meeting

Notice is hereby given, in accordance with Pub. L. 92-463, that a meeting of the Butte District Grazing Advisory Board will be held on Monday, July 16, 1979.

The meeting will begin at 9 a.m. in the meeting room of the Capri Motel, 220 North Wyoming Street, Butte, Montana.

The agenda for the meeting will include: (1) A review of proposed District range improvement projects for fiscal year 1980; (2) a discussion of the current status of allotment management planning in the Mountain Foothills Range Environmental Statement area; (3) a discussion of range betterment fund utilization for range improvements; (4) a discussion of range improvement funding under Sec. 5(a) of the Public Rangelands Improvement Act of 1978; (5) an update on the District's wilderness review program and its impact on AMP development; (6) arrangements for the next meeting.

The meeting is open to the public. Interested persons may make oral statements to the board between 1 and 2 p.m. on July 16, or file written statements for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, P.O. Box 908, Butte, Montana 59701 by July 12, 1979. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the board meeting will be maintained in the District Office and will be available for public inspection and reproduction, during regular business hours, within 30 days following the meeting.

Dated: June 7, 1979.

Jack A. McIntosh,
District Manager.

[FR Doc. 79-18568 Filed 6-13-79; 8:45 am]
BILLING CODE 4310-84-M

[Colorado 28022 -a Through -i]

Northwest Pipeline Corp.; Pipeline Application

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449), as amended (30 U.S.C. 185), Northwest Pipeline Corporation, P.O. Box 1526, Salt Lake City, Utah 84110, has applied for rights-of-way crossing approximately 11.2 miles of public land in Mesa County, Colorado. The rights-of-way are for the Coors Gathering System and are comprised of 4½" and 8 ⅝" o.d. natural gas lateral pipelines and well ties. The lands affected are described as:

T. 9 S., R. 98 W., 6th P. M.
Sec. 27: S½SW¼
Sec. 28: E½, NW¼
Sec. 29: NW¼, SW¼SW¼
Sec. 30: Lots 8, 12, S½NE¼, NW¼SE¼
Sec. 31: Lot 7
Sec. 32: W½NW¼, N½SW¼
Sec. 33: Lot 2
T. 10 S., R. 98 W., 6th P. M.
Sec. 5: SW¼
Sec. 28: SE¼SE¼
T. 8 S., R. 97 W., 6th P. M.
Sec. 28: SE¼
Sec. 35: SE¼NW¼, NW¼SW¼
T. 9 S., R. 97 W., 6th P. M.
Sec. 2: SW¼SW¼
Sec. 3: Lot 1, SE¼NE¼
Sec. 11: W½NW¼
Sec. 15: S½NE¼, N½SE¼, SE¼SE¼
Sec. 22: SW¼SW¼
Sec. 23: SE¼, SE¼NW¼
Sec. 26: W½SW¼
Sec. 29: E½
Sec. 33: N½NW¼
SEc. 35: NW¼NE¼, SE¼NW¼
Sec. 36: NW¼, E½SE¼
T. 10 S., R. 97 W., 6th P. M.
Sec. 1: Lots 1, 2, SE¼NW¼

The proposed pipelines will enable the applicant to convey natural gas from wellheads in the Roberts Canyon-Shire Gulch Field.

The purposes of this notice are: To inform the public that the Bureau of Land Management will be proceeding with the preparation of environmental and other analyses necessary for determining whether the application should be approved and, if so, under what terms and conditions; to allow interested parties to comment on the application, and allow any persons asserting a claim to the lands or having bona fide objections to the proposed natural gas pipeline right-of-way to file their objections in this office. Any person asserting a claim to the lands or having bona fide objections must include evidence that a copy thereof has been served on the applicant.

Any comment, claim, or objection must be filed with the Team Leader, Canon City-Grand Junction Team, Branch of Adjudication, Bureau of Land Management, Colorado State Office, Room 700, Colorado State Bank Building, 1600 Broadway, Denver Colorado 80202, as promptly as possible after publication of this notice.

Rodney A. Roberts,
Leader Canon City-Grand Junction Team, Branch of Adjudication.

[FR Doc. 79-18569 Filed 6-13-79; 8:45 am]
BILLING CODE 4310-84-M

[NM 30841]

New Mexico; Application

June 5, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Gas Company of New Mexico has applied for one 4-inch natural gas pipeline right-of-way across the following land:

New Mexico Principal Meridian, New Mexico
T. 20 S., R. 33 E.,
Sec. 27, SW¼NE¼ and E½NW¼.

This pipeline will convey natural gas across .237 of a mile of public land in Lea County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

Fred E. Padilla,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-18570 Filed 6-13-79; 8:45 am]
BILLING CODE 4310-84-M

[NM 30822, 30825, 30872, 30873, 30876, 30878, and 30879]

New Mexico; Applications

June 6, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for seven 4½-inch natural gas pipeline rights-of-way across the following lands:

New Mexico Principal Meridian, New Mexico
T. 28 N., R. 8 W.,
Sec. 20, SW¼SW¼;
Sec. 28, NW¼NW¼.
T. 30 N., R. 8 W.,
Sec. 18, SE¼SE¼;
Sec. 29, lot 4;
Sec. 30, lot 5.

T. 31 N., R. 9 W.,
Sec. 17, lots 3, 4, 5 and 6.
T. 30 N., R. 10 W.,
Sec. 22, lot 1;
Sec. 23, lots 3 and 4.
T. 31 N., R. 10 W.,
Sec. 27, lots 9 and 10.
T. 28 N., 11 W.,
Sec. 26, NE¼SW¼;
Sec. 29, W½NE¼, SE¼NE¼ and N½NW¼.

These pipelines will convey natural gas across 2.540 miles of public lands in San Juan County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

Fred E. Padilla,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-18681 Filed 6-13-79; 8:45 am]

BILLING CODE 4310-84-M

[NM 36877]

New Mexico; Application

June 5, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for one 4½-inch natural gas pipeline right-of-way across the following lands:

New Mexico Principal Meridian, New Mexico

T. 25 S., R. 31 E.,
Sec. 1, lot 4;
Sec. 2, lot 1 and S½NE¼
T. 24 S., R. 32 E.,
Sec. 30, lot 4, SW¼NE¼, E½SW¼ and NW¼SE¼;
Sec. 31, lot 1.

This pipeline will convey natural gas across 1.585 miles of public lands in Eddy and Lea Counties, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico.

Fred E. Padilla,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-18682 Filed 6-13-79; 8:45 am]

BILLING CODE 4310-84-M

[NM 9688]

New Mexico; Notice of Termination of Classification of Public Lands for Multiple-Use Management

June 4, 1979.

1. Pursuant to the regulations contained in 43 CFR 2461.5(c)(2), the classification and segregation of the following-described lands which appeared in the Federal Register of August 8, 1970 (FR Doc. 70-10340; 35 FR 12672-12673), is hereby terminated:

New Mexico Principal Meridian

GROUP I

Unit 02-12

T. 4 N., R. 17 W.,
Sec. 6, lots 4 and 12;
Sec. 7, E¼SW¼;
Sec. 8, SW¼NE¼, SE¼NW¼, W½NW¼ and S½;
Sec. 10, SE¼SW¼;
Secs. 11, 14, 15 and 17;
Sec. 18, lots 1, 2, NE¼, E½NW¼, SE¼SW¼ and S½SE¼;
Sec. 19, lot 2, NE¼NE¼ and SE¼NW¼;
Sec. 20, N½N½;
Sec. 21, N½, N½S½ and SW¼SE¼;
Sec. 22, N½, SW¼ and N½SE¼;
Sec. 23, N½NW¼, SW¼NW¼ and SE¼SW¼.
T. 4 N., R. 18 W.,
Sec. 1, lots 1, 2, 3, 4, 7, 8, 9, 10 and SE¼;
Sec. 5, lots 1 to 12 inclusive, N½S½ and SW¼SW¼;
Secs. 6 and 7;
Sec. 8, NW¼NW¼, S½NW¼ and SW¼;
Sec. 11, E½;
Sec. 12, NE¼ and E½SE¼;
Sec. 13 and 14;
Sec. 15, S½NE¼ and S½;
Sec. 17, W½ and S½SE¼;
Secs. 18, 19 and 20;
Sec. 21, N½ and N½S½;
Sec. 22, E½, NW¼, N½SW¼ and SE¼SW¼;
Secs. 23, 24 and 26;
Sec. 27, E½, E½NW¼ and SW¼;
Sec. 28, SE¼SE¼;
Sec. 29, E½NE¼, E½SW¼ and SE¼;
Sec. 30, lots 1, 2, NE¼ and E½NW¼;
Sec. 31, lots 1, 2, 3, 4, and E½W½;
Sec. 33, E½E½, SW¼NE¼, SE¼SW¼ and W½SE¼;
Sec. 34, W½NE¼, SE¼NE¼, W½ and SE¼;
Sec. 35.
T. 5 N., R. 18 W.,
Sec. 30.
T. 4 N., R. 19 W.,
Sec. 1, lots 1 to 12 inclusive, E½SW¼ and SE¼;
Sec. 3;
Sec. 4, lots 1 to 12 inclusive, N½S½, SW¼SW¼ and SE¼SE¼;
Secs. 5 and 6;
Sec. 7, lots 3, 4, E½ and E½SW¼;
Sec. 8, N½ and SW¼;
Sec. 9, N½NE¼;
Sec. 10, N½ and SE¼;
Sec. 11, W½SW¼;
Sec. 12, lots 1, 2, 3, 4, 5, NE¼ and E½NW¼;
Sec. 14, NW¼NW¼, S½SW¼, NE¼SE¼ and SW¼SE¼;
Sec. 15, NE¼NE¼ and W½SE¼;
Sec. 19, S½NE¼ and SE¼;
Sec. 20, SW¼NE¼, S½NW¼, SW¼ and W½SE¼;
Sec. 21, NE¼, SW¼NW¼, NW¼SW¼, SE¼SW¼, W½SE¼ and NE¼SE¼;
Sec. 22, SE¼NE¼, N½NW¼, SW¼NW¼ and SE¼;
Sec. 23, lots 1, 2 and W½NW¼;
Sec. 26, lots 1 to 10 inclusive and W½SE¼;
Sec. 27, lots 1 to 8 inclusive, E½NW¼, SW¼NW¼ and SE¼;
Sec. 28, NW¼NE¼, E½NW¼, NW¼SW¼, SE¼SW¼, S½SE¼ and NE¼SE¼;
Sec. 29, W½E½, NW¼, N½SW¼ and SE¼SW¼;
Sec. 30, NE¼ and N½SE¼;
Sec. 31, lots 2, 3, 4, NE¼NE¼ and SE¼SE¼;
Sec. 33, NE¼, E½NW¼, SW¼NW¼ and S½;
Sec. 34, W½NE¼, NW¼ and S½;
Sec. 35, SW¼ and W½SE¼.
T. 5 N., R. 19 W.,
Sec. 10, S½;
Sec. 12, N½;
Sec. 14;
Sec. 22, E½, N½NW¼ and W½SW¼;
Sec. 24;
Sec. 26, W½NW¼ and SW¼;
Sec. 34, S½;
Sec. 36, S½NW¼ and S½.
T. 4 N., R. 20 W.,
Sec. 14;
Sec. 19, E½E½, SW¼NE¼ and SW¼SE¼;
Sec. 20, lots 1, 2, 3, 4, E½NW¼, SW¼NW¼ and S½;
Secs. 21, 22, 23 and 24;
Sec. 25, lots 1, 2, 3, 4, N½ and E½SW¼;
Sec. 26, NE¼NE¼, W½E½, W½ and SE¼SE¼;
Secs. 27, 28, 29, 31, 33, 34 and 35.

Unit 02-13

T. 3 N., R. 14 W.,
Sec. 30, lots 1, 2, 3, 4, and E½W½.
T. 2 N., R. 15 W.,
Sec. 3, lots 1, 2, 3, NW¼NE¼ and S½N½.
T. 3 N., R. 15 W.,
Sec. 13, S½SW¼;
Sec. 14, W½NE¼, NW¼ and S½;
Sec. 15;
Sec. 21, E½SE¼;
Sec. 22, E½, E½NW¼ and SW¼;
Sec. 23;
Sec. 24, NW¼;
Sec. 25, NW¼ and S½;
Sec. 26;
Sec. 27, N½N½ and S½SE¼;
Sec. 28, N½NE¼;
Sec. 33, E½NE¼;
Sec. 34, N½, E½SW¼ and SE¼;
Sec. 35.

Unit 02-14

T. 1 N., R. 13 W.,
Sec. 7, lots 3, 4, E½SW¼ and SE¼;
Sec. 18, lots 1, 2, 3, E½NW¼ and NE¼SW¼.
T. 1 N., R. 14 W.,
Sec. 3;

Sec. 7, lot 4, E½E½, SE¼SW¼ and SW¼SE¼;
Secs. 8, 9, 10 and 11;
Sec. 13, N½ and N½S½;
Secs. 14 and 15;
Sec. 17, NE¼NE¼, S½N½ and S½;
Sec. 18, lots 1, 2, 3, 4, NW¼NE¼, S½NE¼, E½W½ and SE¼;
Sec. 19;
Sec. 23, N½ and N½S½;
Secs. 26 and 27;
Sec. 28, SE¼NE¼, W½ and E½SE¼;
Sec. 29;
Sec. 30; lots 1, 2, NE¼, E½NW¼, NE¼SW¼, N½SE¼ and SE¼SE¼;
Sec. 33, E½E½ and W½;
Secs. 34 and 35.

T. 1 N., R. 15 W.,
Sec. 9, SE¼;
Sec. 10, NE¼SW¼, S½SW¼ and SE¼;
Sec. 11, SW¼;
Sec. 12, S½SE¼;
Sec. 13;
Sec. 14, SE¼NE¼, NE¼SW¼, S½SW¼ and SE¼;
Sec. 15, N½ and NW¼SE¼;
Sec. 19, lots 2, 3, 4, SE¼NE¼, E½SW¼ and SE¼;
Sec. 20, W½NW¼, S½SW¼ and SE¼;
Sec. 21, SE¼NE¼, S½S½ and NE¼SE¼;
Sec. 22, S½NW¼ and S½;
Sec. 23, SW¼;
Sec. 24;
Sec. 26, N½NW¼;
Sec. 27, N½;
Sec. 28, N½ and SW¼;
Secs. 29, 30 and 31;
Sec. 33, W½NE¼, W½ and SE¼;
Sec. 34, E½NE¼ and S½;
Sec. 35, E½, S½NW¼ and SW¼.

T. 1 N., R. 16 W.,
Sec. 13, W½NE¼;
Sec. 25;
Sec. 26, E½E½.

T. 1 S., R. 14 W.,
Sec. 3, lots 1 to 12 inclusive and N½S½;
Sec. 4, lots 3, 6, 9 and E½SE¼;
Sec. 5, lots 1, 2, 3, 4, 5, 12 and NW¼SW¼;
Sec. 6, lot 1;
Sec. 7, lots 2, 3, 4, SE¼NW¼ and E½SW¼;
Sec. 17, E½, N½NW¼, SE¼NW¼ and NE¼SW¼;
Sec. 20, N½NE¼ and SW¼NE¼.

T. 1 S., R. 15 W.,
Secs. 1, 3, 4, 5, 9 and 10;
Sec. 11, N½, SW¼, N½SE¼ and SW¼SE¼;
Sec. 12, E½ and E½W½.

Unit 02–16

T. 6 N., R. 1 W.,
Sec. 18, lots 1, 2, 3, 4 and E½W½.

T. 6 N., R. 2 W.,
Sec. 6, lots 1, 2, SE¼NE¼ and SW¼SE¼;
Secs. 10, 12, 14, 18, 20, 22, 24, 26, 28, 30 and 34.

T. 6 N., R. 3 W.,
Sec. 2, lots 2, 3, SW¼NE¼ and SE¼NW¼;
Secs. 4, 6 and 8;
Sec. 10, E½ and SW¼;
Secs. 12, 14, 18, 20 and 22;
Sec. 24, E½ and E½W½;
Sec. 30;
Sec. 34, N½, SW¼, W½SE¼ and SE¼SE¼.

T. 7 N., R. 3 W.,
Secs. 4, 6, 8, 10, 18, 20, 22, 28, 30 and 34.

T. 6 N., R. 4 W.,
Secs. 4, 6, 8, 10, 12, 14 and 20;
Sec. 22, E½ and SW¼;
Secs. 24, 26, 28, 30 and 34.

T. 7 N., R. 4 W.,
Sec. 4, lots 1, 2, 3, 4, S½N½ and SE¼;
Sec. 6;
Sec. 10, S½;
Sec. 12;
Sec. 14, S½NE¼, W½ and SE¼;
Sec. 18, E½ and SE¼SW¼;
Sec. 20;
Sec. 22, E½ and NW¼;
Secs. 24, 26, 28, 30 and 34.

T. 5 N., R. 5 W.,
Secs. 4, 6, 8, 12, 14, 18, 20, 22, 24, 26, 28, 30 and 34.

T. 6 N., R. 5 W.,
Secs. 4, 8 and 10;
Sec. 12, E½, E½W½ and W½SW¼;
Secs. 14, 18, 20, 22 and 24;
Sec. 26, E½, E½W½ and W½SW¼;
Sec. 28, E½, N½NW¼ and SW¼;
Secs. 30 and 34.

T. 7 N., R. 5 W.,
Sec. 4, lots 1, 2, S½NE¼, NW¼SW¼, N½SE¼ and SE¼SE¼;
Sec. 10, W½ and SE¼;
Sec. 12;
Sec. 14, N½, N½S½, SW¼SW¼ and SE¼SE¼;
Sec. 20, E½E½, NW¼NE¼, NE¼NW¼, W½W½ and SE¼SW¼;
Sec. 22, W½ and SE¼;
Secs. 24, 26 and 28;
Sec. 30, lots 1, 2, E½ and E½NW¼;
Sec. 34.

T. 5 N., R. 6 W.,
Sec. 4, SE¼;
Sec. 6;
Sec. 10, E½;
Sec. 12, N½, SW¼, NE¼SE¼ and S½SE¼;
Sec. 14;
Sec. 20, E½NE¼, SW¼NE¼, W½ and SE¼;
Secs. 22, 24, 26, 28, 30 and 34.

T. 6 N., R. 6 W.,
Secs. 1, 3, 4 and 5;
Sec. 6, lots 5, 6, 7, S½NE¼, SE¼NW¼, E½SW¼ and SE¼;
Secs. 7, 8 and 9;
Sec. 10, S½NE¼;
Secs. 11 and 12;
Sec. 14, W½ and SE¼;
Secs. 15, 17, 18, 19, 20, 21, 23, 25 and 27;
Sec. 28, NE¼, S½S½ and NE¼SE¼;
Sec. 29;
Sec. 30 lots 3, 5, 9, 10, E½ and NE¼SW¼;
Secs. 31, 33, 34 and 35.

T. 7 N., R. 6 W.,
Secs. 1 and 3;
Sec. 4, S½N½ and S½;
Sec. 5;
Sec. 6, lots 1, 2, 3, 6, 7, S½NE¼, SE¼NW¼, E½SW¼ and SE¼;
Sec. 7;
Sec. 8, NE¼, N½NW¼ and S½SW¼;
Secs. 9 and 11;
Sec. 12, N½ and SW¼;
Sec. 13;
Sec. 14, N½ and N½S½;
Secs. 15, 17 and 19;
Sec. 20, E½NE¼;
Sec. 21;
Sec. 22, E½ and NW¼;
Secs. 23 and 25;
Sec. 26, S½NE¼, W½ and SE¼;
Secs. 27, 29, 31 and 33;
Sec. 34, N½NW¼, NE¼SW¼, S½SW¼ and NW¼SE¼;
Sec. 35.

T. 5 N., R. 7 W.,
Sec. 12;
Sec. 24, NE¼, E½NW¼, NW¼NW¼, N½SE¼ and SE¼SE¼.

T. 6 N., R. 7 W.,
Sec. 1;
Sec. 2, lots 1, 2, 5, 8, 10, 14 and SE¼NE¼;
Sec. 11, lots 1, 6 and 7;
Sec. 12, lots 1 to 12 inclusive, 14, 15, 16 and 17;
Sec. 13, lots 1, 2, 3, 4, 7, 9, 10, 11, 12, and 15;
Sec. 24, lot 1;
Sec. 25, lots 5, 6, 8, 12, 13, 14 and 15;
Sec. 34, lots 2 and 4;
Sec. 35, lots 1, 9, 10, 11, 13, 15 and 16;
Sec. 36, lots 1, 3, 4, 5, 8, 9, 12, 16, 17, E½E½ and NW¼NE¼.

The areas described above aggregate approximately 181,736.70 acres in Catron, Socorro and Valencia Counties.

2. The lands described above are relieved of the segregative effect at 10:00 a.m. on the 30th day following publication of this notice.

Billy M. Brady,

Acting State Director.

[FR Doc. 79-18639 Filed 6-13-79; 8:45 am]

BILLING CODE 4310-84-M

Roswell District Grazing Advisory Board; Meeting

In accordance with Section 403 of Pub. L. 94–579, the Federal Land Policy and Management Act, notice is given of the following Board meeting.

Name: Roswell District Grazing Advisory Board.

Date: July 19, 1979.

Place: Roswell District Office, 1717 West Second Stret, Roswell, New Mexico.

Time: 9 a.m. to 2 p.m.

Proposed Agenda:

9:00 to 9:30 a.m.—Election of Officers.
9:30 to 10:30 a.m.—Use of Range Betterment Funds.
10:30 to 12:00 noon—AMP development in the East Roswell Environmental Statement area.
1:00 to 1:30 p.m.—Public comment period.
1:30 to 2:00 p.m.—Agenda and time of next meeting.

This is the second meeting of the Board which shall serve to offer advice and make recommendations regarding commercial livestock grazing in the development of allotment management plans (AMP's) and the utilization of range-betterment funds with respect to commercial livestock grazing within the Roswell District.

June 6, 1979.

James H. O'Connor,

District Manager.

[FR Doc. 79-18637 Filed 6-13-79; 8:45 am]

BILLING CODE 4310-84-M

[U–42733]

Utah; Application

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), TCP

Gathering Co. has applied for an 8⅝ inch natural gas pipeline right-of-way across the following lands:

Salt Lake Meridian, Utah

T. 30 S., R. 25 E.,
Secs. 15, 16, 22, 23, 25, 26, and 36.
T. 30 S., R. 26 E.,
Sec. 31.
T. 31 S., R. 26 E.,
Secs. 5, 6, 8, 9, 10, and 11.

The right-of-way is needed for the applicant's gas gathering system located in San Juan County, Utah.

The purpose of this notice is to inform the public that the Bureau will be proceeding with the preparation of environmental and other analyses necessary for determining whether the application should be approved, and if so, under what terms and conditions.

Interested persons should express their interest and views to the Moab District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah, 84532.

Dell T. Waddoups,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-18585 Filed 6-13-79; 8:45 am]

BILLING CODE 4310-84-M

Utah, Allen Warner Valley Environmental Statement; Intent to Prepare an Environmental Statement and Conduct Scoping Meetings

Notice is hereby given that, in accordance with the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) Department of the Interior, plans to prepare a draft environmental statement (ES) on Nevada Power Company's proposed 2,500 megawatt (MW) Allen Warner Valley Energy System. The proposed energy system would involve: Development of the Alton Coal field (addressed in the Final Southern Utah Regional Coal ES); a coal processing facility; two coal slurry pipelines; a 55,000 acres-feet reservoir near St. George, Utah; a 500 MW power plant in Warner Valley, Utah; a 2,000 MW power plant east of Las Vegas, Nevada; and an electrical transmission system to California. Public lands within the states of Utah, Arizona, Nevada and California would be involved.

In accordance with the Council on Environmental Quality's regulations, a series of scoping meetings are scheduled. The purpose of these meetings it to identify the significant issues and alternatives to be analyzed in the ES. Meetings will be held as follows: July 25, 1979 in room A–3, Meeting Room Annex, Las Vegas Convention Center, 350 South Paradise Road, Las Vegas, Nevada; July 26, 1979 in room 220, Salt Palace, 100 South West Temple, Salt Lake City, Utah; and July 27, 1979 in the Auditorium of the Washington County Courthouse, 197 East Tabernacle, St. George, Utah. All meetings will begin at 7:00 p.m.

All interested agencies, organizations or persons desiring to assist in the scoping process should familiarize themselves with the proposed project and attend at least one of the scheduled meetings. Information on the proposed project may be obtained from the Cedar City District Office as noted below or from the applicant, Nevada Power Company, P.O. Box 230, Las Vegas, Nevada 89151. Those desiring to participate in the ES scoping process but unable to attend one of the above meetings should contact Mr. Jerry Meredith for further information at the following address:

Bureau of Land Management, Post Office Box 724, Cedar City, Utah 84720, Area Code 801–586–2401.

Dated: June 7, 1979.

William G. Leavell,

Associate State Director, Utah State Office.

[FR Doc. 79-18586 Filed 6-13-79; 8:45 am]

BILLING CODE 4310-84-M

[W-68238]

Wyoming; Application

June 7, 1979.

Notice is hereby given that pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Company of Colorado Springs, Colorado filed an application for a right-of-way to construct a 4½" O.D. pipeline, a 4' by 6' meter house and related metering and dehydration facilities for the purpose of transporting natural gas across the following described public lands:

Sixth Principal Meridian, Wyoming

T. 20 N., R. 92 W.,
Sec. 32, N½SW¼ and SW¼SW¼.

The proposed pipeline will transport natural gas from the Federal #1–32 Well located in the SW¼ of section 32, to a point of connection with an existing pipeline located in the N½ of section 31, all located within T. 20 N., R. 92 W., Sweetwater County, Wyoming. The proposed 4' by 6' meter house and related metering and dehydration facilities are to be located entirely within the proposed 50' right-of-way in the SW¼ of section 32, T. 20 N., R. 92 W., Sweetwater County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-18587 Filed 6-13-79; 8:45 am]

BILLING CODE 4310-84-M

[W-68239]

Wyoming; Application

June 8, 1979.

Notice is hereby given that pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Company of Colorado Springs, Colorado filed an application for a right-of-way to construct a 6⅝ O.D. natural gas pipeline for the purpose of transporting natural gas across the following described public lands:

Sixth Principal Meridian, Wyoming

T. 18 N., R. 98 W.,
Sec. 28, N½SW¼ and SE¼SW¼.

The proposed pipeline will transport natural gas from the Higgins Unit #12A Well located in the N½ of section 33, to a point of connection with an existing pipeline in the SW¼ of section 28, all within T. 18 N., R. 98 W., Sweetwater County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, Highway 187 N., P.O. Box 1869, Rock Springs, Wyoming 82901.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-18588 Filed 6-13-79; 8:45 am]

BILLING CODE 4310-84-M

[Wyoming 67876]

Wyoming; Application

June 5, 1979.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corporation of Salt Lake City, Utah filed an application for a right-of-way to construct nineteen 4½ inch O.D. pipelines for the purpose of transporting natural gas across the following described public lands:

Sixth Principal Meridian, Wyoming

T. 18 N., R. 111 W.,
Sec. 18.
T. 21 N., R. 111 W.,
Secs. 8 and 18.
T. 18 N., R. 112 W.,
Secs. 12, 14 and 30.
T. 19 N., R. 112 W.,
Secs. 2, 20 and 28.
T. 20 N., R. 112 W.,
Secs. 16, 24 and 36.
T. 21 N., R. 112 W.,
Secs. 20, 24 and 28.
T. 19 N., R. 113 W.,
Secs. 12 and 24.

The proposed pipelines will transport natural gas from the Wilson Ranch Well Numbers 5, 12, 17; Whiskey Butte Well Numbers 23, 25, 32, 33, 34; champlin 285 F-1, 206 C#1, 358 C#1, 358 G-1, 206 D-1; 7 Mile Gulch Well Numbers 9 and 11; Fabian Ditch 2-2 Well; Federal #1-24; Lansdale Fed. #28-1 Well; and the Bruff #1-14 Well to points of connection with Northwest Pipelines Moxa Arch gathering system all within Tps. 18 and 21 N., R. 111 W., and Tps. 18 and 19 N., R. 112 W., Sweetwater County, T. 18 N., R. 112 W., Uinta County, and Tps. 19 and 21 N., R. 112 W., and T. 19 N., R. 113 W., Lincoln County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, Highway 187 North, P.O. Box 1869, Rock Springs, Wyoming 82901.

Harold G. Stinchcomb,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-18680 Filed 6-13-79; 8:45 am]
BILLING CODE 4310-84-M

[W-85822 Amendment]

Wyoming; Application

June 6, 1979.

Notice is hereby given that pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Company of Colorado Springs, Colorado filed an application to amend their pending right-of-way to construct addition 4½" O.D. pipelines and related facilities consisting of three 4'x6' meter houses and dehydrators for the purpose of transporting natural gas across the following described public lands:

Sixth Principal Meridian, Wyoming

T. 18 N., R. 93 W.,
Sec. 10, SW¼NE¼, NE¼SW¼, S½SW¼ and NW¼SE¼;
Sec. 18, NE¼NE¼, S½NE¼, NE¼SW¼, S½SW¼ and NW¼SE¼;
Sec. 20, NE¼NE¼, S½NE¼, E½SW¼ and NE¼SE¼.

The proposed additional pipeline will transport natural gas from the Federal #20-18-93 well located in the SW¼SW¼ of section 20, the Marathon #3-16 well located in the SW¼SW¼ of section 16, and the Federal #2-10 well located in the SW¼SW¼ of section 10 to points of connection with Colorado Interstate Gas Company's extension of their proposed F-56 line extending from a point located in the SW¼ of section 2, all within T. 18 N., R. 93 W., Carbon County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Steet, P.O. Box 670, Rawlins, Wyoming 82301.

Harold G. Stinchcomb,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-18680 Filed 6-13-79; 8:45 am]
BILLING CODE 4310-84-M

[Wyoming 67937]

Wyoming; Application

June 5, 1979.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Panhandle Eastern Pipe Line Company of Brighton, Colorado filed an application for a right-of-way to construct a 4", 6" and 8" natural gas pipelines, and dehydration, launching and receiving facilities, and associated valve settings for pipeline junctions for the purpose of transporting natural gas across the following described public lands:

Sixth Principal Meridian, Wyoming

T. 26 N., R. 96 W.,
Sec. 18, lot 8;
Sec. 19, lots 2 and 5.
T. 22 N., R. 97 W.,
Sec. 26, NE¼SW¼ and N½SE¼.
T. 23 N., R. 97 W.,
Sec. 11, W½SW¼;
Sec. 14, NE¼, W½NW¼ and SE¼NW¼.
T. 25 N., R. 97 W.,
Sec. 14, W½NE¼.
T. 26 N., R. 97 W.,
Sec. 23, NW¼SE¼;
Sec. 24, SE¼NE¼ and N½SE¼.

The proposed pipelines will connect Davis J. T. Federal #1, Davis West Sheep Camp #1, Davis Forbes Federal #1, Davis Pickett Lake #2, Davis Pickett Lake #3, Davis Pickett Lake #4 Wells to expand a gathering system to transport natural gas to Colorado Interstate Gas Company's main transmission line. The dehydration, launching and receiving facilities and associated valve settings for pipeline junctions are all located within the proposed rights-of-way in T. 26 N., R. 96 W., Tps. 22, 23, 25, 26 N., R. 97 W., Sweetwater County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third

Street, P.O. Box 670, Rawlins, Wyoming 82301.

Harold G. Stinchcomb,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-18681 Filed 6-13-79; 8:45 am]
BILLING CODE 4310-84-M

[New Mexico 1239; Amdt. 1]

New Mexico; Termination of Classification of Public Lands for Multiple-Use Management

June 6, 1979.

1. Pursuant to the regulations contained in 43 CFR 2461.5(c)(2), the classification and segregation of the following-described lands which appeared in the Federal Register of August 7, 1970 (F.R. Doc. 70-10280; 35 F.R. 12619-12620), is hereby terminated:

New Mexico Principal Meridian

Unit 2-01

T. 1 N., R. 20 W.,
Sec. 36.
T. 2 N., R. 20 W.,
Sec. 36, E½.
T. 1 S., R. 20 W.,
Sec. 2, lots 1 to 16, inclusive and S½;
Sec. 16.

Unit 2-02

T. 1 S., R. 9 W.,
Sec. 2, lots 1 to 12, inclusive and NW¼SW¼.
T. 1 N., R. 18 W.,
Sec. 2;
Sec. 16, N½, SE¼SW¼ and SE¼;
Sec. 32.
T. 2 N., R. 18 W.,
Sec. 1, lot 2, SW¼NE¼, SE¼NW¼, NE¼SW¼ and NW¼SE¼;
Sec. 2;
Sec. 4, lots 2, 3, and 4;
Sec. 5, lot 1 and SE¼NE¼;
Sec. 6, lots 1 to 7, inclusive, S½NE¼ and SE¼NW¼;
Sec. 7, lots 1, 2, 3, E½ and E½SW¼;
Sec. 8, S½N½;
Sec. 9, N½N½;
Sec. 12, NW¼NE¼, S½NW¼, N½SW¼ and SW¼SW¼;
Sec. 13, N½NW¼ and SW¼NW¼;
Sec. 15, W½;
Sec. 16, E½, E½NW¼, SW¼NW¼, and SW¼;
Sec. 20, S½NW¼;
Sec. 21;
Sec. 22, W½;
Sec. 23, SE¼;
Sec. 27, W½;
Sec. 28, N½, NE¼SW¼ and SE¼;
Sec. 32;
Sec. 33, E½, SE¼NW¼ and SW¼;
Sec. 34, NW¼, W½SW¼ and SE¼SW¼;
Sec. 36.
T. 3 N., R. 18 W.,
Sec. 29, S½SW¼;
Sec. 31, lot 4, SE¼SW¼ and W½SE¼;
Sec. 32.
T. 1 N., R. 19 W.,
Sec. 2;
Sec. 16, N½, N½SW¼ and NW¼SE¼;
Sec. 36.
T. 2 N., R. 19 W.,
Sec. 1, lots 1, 2, 3, 4, SE¼NE¼, S½NW¼ and S½;
Sec. 11, E½, E½W½, NW¼NW¼ and SW¼SW¼;
Sec. 12, N½, N½SW¼ and SE¼;
Sec. 13, NE¼;
Sec. 14, W½E½ and W½;
Sec. 15, 16, 17, 32 and 36.
T. 3 N., R. 19 W.,
Sec. 24, E½, NE¼NW¼, W½W½ and SE¼SW¼;
Sec. 36, W½NE¼, NW¼ and S½.

Unit 2-03

T. 4 N., R. 8 W.,
Sec. 6, lots 3, 4, 6 and SE¼NW¼;
Sec. 7, lots 1 to 4 inclusive, NE¼, E½W½, N½SE¼ and SE¼SE¼.
T. 4 N., R. 9 W.,
Sec. 1, lots 1 to 4 inclusive, S½N½, NW¼SW¼, NE¼SE¼ and S½S½;
Secs. 2 and 5;
Sec. 6, lots 1, 2, 4, and 5;
Sec. 7, lots 1, 2, 3, 4, NE¼, E½W½, N½SE¼ and SW¼SE¼;
Sec. 9, E½, E½NW¼, SW¼NW¼ and SW¼;
Sec. 11, N½, SW¼, NE¼SE¼ and W½SE¼;
Sec. 12, E½NE¼ and E½NW¼;
Sec. 13, N½, SW¼, NE¼SE¼ and W½SE¼;
Sec. 14, N½NE¼;
Secs. 15, 16, and 17.
T. 5 N., R. 9 W.,
Secs. 1 and 2;
Sec. 3, lots 1, 2, 4, S½N½, N½SW¼, SE¼SW¼ and SE¼
Sec. 4, SE¼NE¼, NE¼SW¼, S½SW¼ and SE¼;
Sec. 5;
Sec. 6, lot 7, SE¼SW¼ and S½SE¼;
Secs. 7 and 9;
Sec. 10, N½NW¼ and NW¼SW¼;
Sec. 11;
Sec. 12, SW¼SW¼, NE¼SE¼ and SW¼SE¼;
Sec. 13;
Sec. 14, NW¼NE¼, S½NE¼ and SE¼;
Sec. 15;
Sec. 16, N½, W½SW¼, SE¼SW¼ and SE¼;
Sec. 17;
Sec. 19, lots 1, 2, 3, 4, NE¼, E½NW¼, NE¼SW¼, N½SE¼ and SE¼SE¼;
Sec. 21 NE¼NE¼, W½NE¼, NW¼ and S½;
Sec. 23;
Sec. 24, E½W½;
Sec. 25, E½, NE¼NW¼, W½NW¼ and SW¼;
Sec. 26, E½NE¼, NW¼NE¼, W½ and SE¼;
Sec. 27, N½, E½SW¼, SW¼SW¼ and SE¼;
Sec. 28;
Sec. 29, NE¼NE¼, N½NW¼, S½N½ and S½;
Sec. 30, N½NE¼, SE¼NE¼, SE¼SW¼ and SW¼SE¼;
Secs. 31, 32, 33, 35, and 36.
T. 4 N., R. 10 W.,
Secs. 1, 3, and 5.
T. 5 N., R. 10 W.,
Sec. 33;
Sec. 34, SW¼;
Sec. 35, NW¼NE¼, S½NE¼, NW¼ and S½.
T. 7 N., R. 10 W.,
Sec. 22, NW¼;
Sec. 28, NW¼NE¼, N½NW¼, and SW¼NW¼;
Sec. 32, W½NW¼.
T. 4 N., R. 11 W.,
Secs. 3, 10 and 13;
Sec. 14, NE¼ and S½;
Secs. 15 and 16;
Sec. 22, SW¼NW¼, SW¼ NW¼SE¼ and S½SE¼;
Secs. 23 and 25;
Sec. 26, NE¼, N½NW¼, SW¼NW¼ and S½;
Secs. 27, 32 and 33;
Sec. 34, S½N½ and S½;
Secs. 35 and 36.
T. 5 N., R. 12 W.,
Secs. 5 and 6;
Sec. 7, lots 1, 2, 3, 4, NE¼ and E½W½.
T. 6 N., R. 11 W.,
Sec. 32.
T. 6 N., R. 12 W.,
Sec. 35.
T. 7 N., R. 12 W.,
Sec. 19, lot 1;
Sec. 29.

Unit 2-06

T. 2 N., R. 1 E.,
Sec. 5, lots 1, 2, 3, and 4;
Sec. 6, lots 1, 2, 3, 4 and N½.
T. 3 N., R. 1 E.,
Sec. 6, lots 1, 4, 5, 6 and 7;
Sec. 7, lots 1, 2 and 3;
Sec. 18, lots 1, 2 and 3;
Sec. 19, lots 1, 2, 3, 4 and W½W½;
Sec. 30, lots 1, 2, 3, 4, NW¼NW¼, S½NW¼ and SW¼;
Sec. 31, lots 1, 2, 3, 4, 5, SW¼NE¼, NE¼NW¼, S½NW¼, SW¼ and W½SE¼.
T. 3 N., R. 1 W.,
Sec. 6, lots 1 to 7 inclusive, S½NE¼, SE¼NW¼, E½SW¼ and SE¼;
Sec. 8, N½N½;
Sec. 12, N½SE¼ and SW¼SE¼;
Sec. 13, lots 3, 4, 6, 7 and SW¼;
Sec. 14, N½NE¼, SW¼NE¼, NE¼NW¼ and S½NW¼;
Sec. 16;
Sec. 24, lots 1 to 6 inclusive, W½E½ and E½W½;
Sec. 25, lots 1, 2, 3, W½NE¼, W½, N½SE¼ and SW¼SE¼;
Sec. 36;
T. 1 N., R. 3 W.,
Sec. 4, lots 1, 2, 3 and 4;
Sec. 5, lots 2, 3, 4, 6, SW¼NW¼ and W½SW¼.
T. 2 N., R. 3 W.,
Sec. 32 lots 1 to 7 inclusive, SW¼NE¼, NW¼, N½SW¼ and NW¼SE¼;
Sec. 36, N½, N½SW¼, SW¼SW¼, NE¼SE¼ and S½SE¼.
T. 3 N., R. 3 W.,
Sec. 2.
T. 2 N., R. 4 W.,
Sec. 2;
Sec. 16, N½SW¼, NW¼SE¼ and S½SE¼.

Unit 2-08

T. 1 S., R. 1 W.,
Sec. 7, lots 1, 2 and 4;
Sec. 16, lots 1, 2, 3, 4, S½NW¼ and S½.
T. 1 S., R. 2 W.,
Sec. 12, lots 1, 2, 3 and SE¼NE¼.

Unit 2–09

T. 2 S., R. 1 E.,
Sec. 16.
T. 4 S., R. 1 E.,
Sec. 36.

Unit 2–10

T. 5 S., R. 1 E.,
Sec. 2.

Unit 2–11

T. 1 S., R. 4 E.,
Sec. 20, NE¼ and S½;
Sec. 21, N½SW¼ and NW¼SE¼;
Sec. 25, E½ and NE¼NW¼;
Sec. 26, SE¼NW¼, NE¼SW¼, SW¼SW¼ and NE¼SE¼;
Sec. 27, S½;
Sec. 28, S½;
Secs. 29 and 33;
Sec. 34, N½ and N½S½;
Sec. 35, SE¼NE¼ and SW¼NW¼.
T. 2 S., R. 4 E.,
Sec. 1, lots 1, 2, S½NE¼ and S½;
Sec. 3, S½;
Sec. 4;
Sec. 5, lot 1, SE¼NE¼ and SE¼;
Sec. 10, N½;
Sec. 11, E½E½;
Sec. 12;
Sec. 13, E½ and SW¼;
Sec. 24, E½.
T. 1 S., R. 5 E.,
Sec. 28, W½;
Secs. 30 and 31.
T. 2 S., R. 5 E.,
Sec. 4, N½;
Sec. 5, N½;
Secs. 6 and 19;
Sec. 30, lot 1, NE¼ and NE¼NW¼.
T. 3 S., R. 5 E.,
Sec. 3;
Sec. 4, E½SE¼;
Sec. 9, NE¼NE¼;
Sec. 10, W½NE¼ and NW¼;
Sec. 13, E½SE¼.
T. 4 S., R. 5 E.,
Sec. 10, NE¼;
Sec. 11, E½, NW¼ and N½SW¼;
Sec. 12, E½ and N½NW¼;
Sec. 13, E½;
Sec. 14, E½.
T. 3 S., R. 6 E.,
Secs. 4, 5 and 6;
Sec. 7, lots 1, 2, 3, 4 and E½W½;
Sec. 9;
Sec. 16, lots 1, 2, 3, 4 and E½W½;
Sec. 19, lots 1, 2, 3, 4, NE¼, E½W½ and N½SE¼;
Sec. 20, N½ and N½SW¼;
Sec. 21, SE¼;
Sec. 22, S½;
Sec. 24;
Sec. 26, W½;
Sec. 27;
Sec. 28, E½ and NW¼;
Sec. 29, E½, S½NW¼ and N½SW¼;
Sec. 30, lots 1, 2, 3, 4 and E½W½;
Sec. 31, lots 1, 2, 3, 4 and E½W½;
Sec. 33, NE¼;
Sec. 34;
Sec. 35, W½.
T. 4 S., R. 6 E.,
Sec. 1, lots 1, 2, 3, 4, S½N½, N½SW¼, SE¼SW¼ and SE¼;
Sec. 3, S½N½ and N½S½;
Sec. 4, S½N½ and N½S½;
Secs. 5 and 6;
Sec. 7, lots 1, 2, 3, 4 and E½W½;
Sec. 9, SW¼;
Sec. 10, SE¼;
Sec. 11, NW¼ and S½;
Sec. 12, NE¼
Sec. 14;
Sec. 18, lots 1, 2, 3, 4 and E½W½;
Secs. 19 and 20;
Sec. 24, N½ and SW¼;
Sec. 27, S½;
Sec. 28, S½;
Sec. 29, S½;
Sec. 30, lots 1, 2, 3, 4, E½W½ and SE¼;
Sec. 33, E½.

The areas described aggregate 101,960.29 acres in Catron, Socorro and Valencia Counties.

2. The lands in this notice are relieved of the segregative effect at 10:00 a.m. on the 30th day following publication of this notice.

Larry L. Woodard,

Acting State Director.

[FR Doc. 79-18583 Filed 6-13-79; 8:45 am]

BILLING CODE 4310-84-M

[2370; U-42637; (U-942)]

Utah; Order Providing for Opening of Public Lands

1. The purpose of this order is to restore to the operation of the applicable public land laws those public lands eliminated from the Dinosaur National Monument.

2. By Public Law 86–729, 74 Stat. 857, dated September 8, 1960, the Congress of the United States revised the boundary of the Dinosaur National Monument and eliminated the following described public lands from the Monument:

Salt Lake Meridian, Utah

T. 4 S., R. 23 E.,
Sec. 9, W½;
Sec. 16, W½;
Sec. 21, W½;
Sec. 28, S½NW¼, SW¼.
T. 3 S., R. 24 E.,
Sec. 25, W½;
Sec. 26, all;
Sec. 35, N½.

The area described aggregates 2,480.00 acres in Uintah County.

3. A portion of the above lands, as described in this paragraph, is subject to an existing Reclamation withdrawal as listed and is not open to entry or location but is open to mineral leasing.

Reclamation Withdrawal

T. 4 S., R. 23 E.,
Sec. 28, S½NW¼, SW ¼.
T. 3 S., R. 24 E.,
Sec. 25, W½;
Sec. 35, N½.
Total 880.00 acres.

4. Under the authority delegated by the Bureau of Land Management Order No. 701 dated July 23, 1964 (29 F. R. 10526), as amended, it is ordered that the lands described in paragraph 2 are restored at 10:00 a.m. July 20, 1979 to the operation of the public land laws, subject to valid existing rights, the provision of existing withdrawals, Bureau of Land Management Classification for Multiple Use Management, and the requirements of applicable law. All valid applications received at, or prior to, 10:00 a.m. on July 20, 1979, shall be considered as filed simultaneous at that time. Those received thereafter shall be considered in the order of filing.

Inquires concerning the lands shall be addressed to the State Director, Bureau of Land Management, University Club Building, 136 East South Temple, Salt Lake city, Utah 84111.

Dated: June 8, 1979.

William G. Leavell,

Associate State Director.

[FR Doc. 79-18584 Filed 6-13-79; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Reclamation

Meeker Dome Unit, Colorado—Colorado River Water Quality Improvement Program; Intent to Prepare an Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior proposes to prepare an enviormental assessment or statement on the Meeker Dome Unit. The purposes of the studies to be conducted for the Meeker Dome Unit, which is located in Rio Blanco County, Colorado, are to gain a better understanding of the quantity, sources, and mechanisms by which saline waters enter the White River and then to identify and analyze alternative methods that would eliminate the salt contribution to the river.

Environmental studies and preparation and processing of an environmental impact statement for this proposed project will be in accordance with provisions of the National Environmental Policy Act of 1969, and will be accomplished under the New Council on Environmental Quality (CEQ) regulations published in the Federal Register on November 29, 1978. Pursuant to these new CEQ regulations and in accordance with Office of Management and Budget Circular No. A–95, "Evaluation, Review and Coordination of Federal and Federally Assisted Programs," we are soliciting the active participation of Federal, State, and local agencies, affected private groups, and individuals in a scoping process for the determination of

significant environmental items to be analyzed.

A scoping session will be conducted to solicit information from all interested individuals and organizations to assist planners in determining the scope of issues to be addressed in environmental analyses and to identify the significant issues related to the Meeker Dome study. The scoping session will be held at 7:00 p.m., on June 19, 1979, in the Fairfield Center at 200 Main Street, Meeker, Colorado.

Inquiries should be addressed to J. F. Rinckel, Project Manager, Bureau of Reclamation, 761 Horizon Drive, Grand Junction, Colorado 81501.

Dated: June 8, 1979.

R. Keith Higginson,

Commissioner.

[FR Doc. 79-18124 Filed 6-13-79; 8:45 am]

BILLING CODE 4310-09-M

Negotiation of a Water Service Contract With the Shasta Dam Area Public Utility District; Intent To Initiate Negotiations on a Water Service Contract

The Department of the Interior, through the Bureau of Reclamation, intends to negotiate a water service contract with the Shasta Dam Area Public Utility District, Central Valley, California, which is located in the Toyon Pipeline Service Area of the Central Valley Project, California. The district has undergone substantial reorganization through the recent annexation of the entire area formerly served by the Summit City Public Utility District. Both districts have previously executed water service contracts with the United States, and a single water service contract will be negotiated superseding both previous contracts.

Provisions to be negotiated in the new contract will include the water quantity, rates, points of delivery, and transfer to the district of the operation and maintenance of the Toyon Pipeline. Contract terms and conditions will generally be written pursuant to the Reclamation Project Act of 1939 (53 Stat. 1187), as amended.

All meetings scheduled by the Bureau of Reclamation with the Shasta Dam Area Public Utility District for the purpose of discussing terms and conditions of the proposed contract shall be open to the general public as observers. Advance notice of such meetings shall be furnished only to those parties having previously furnished a written request for such notice to the office identified below at least 1 week prior to any meeting. The public is invited to submit written comments on the form of the proposed agreement not later than 30 days after the completed draft is declared to be available to the public. All written correspondence concerning the proposed operating agreement shall be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

For further information, please contact Ms. Cindy Cowden, Repayment Specialist, Division of Water and Power Resources Management, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, telephone No. (916) 474-4540.

Dated: June 5, 1979.

Orrin Ferris,

Acting Commissioner of Reclamation.

[FR Doc. 79-18131 Filed 6-13-79; 8:45 am]

BILLING CODE 4310-09-M

National Park Service

Monocacy National Battlefield; Availability of Assessment of Alternatives and Notice of Public Hearing

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared an assessment of alternatives for the General Management Plan for Monocacy National Battlefield. This assessment of alternatives and General Management Plan have been undertaken to direct future acquisition and development in a manner that will be in full compliance with applicable environmental and historical legislation.

The document includes a description of the environment, description of alternatives developed to answer the needs of an operating park, an assessment of the General Management Plan's impacts on the environment, and a discussion of land acquisition options and formulation of a land acquisition plan.

A public hearing on this issue shall be conducted July 9 at 7:30 p.m. in the Frederick County Council Hearing Room, Winchester Hall, 21 East Church Street, Frederick, Maryland 21701.

Written comments on this assessment of alternatives are invited and will be accepted for a period of 45 days following the publication of this notice. Written comments should be addressed to the Superintendent, Antietam National Battlefield Park, P.O. Box 158, Sharpsburg, Maryland 21782.

Copies of the assessment of alternatives are available from:

Antietam National Battlefield Park, P.O. Box 158, Sharpsburg, Maryland 21782.

National Park Service, National Capital Parks, 1100 Ohio Drive, SW., Washington, D.C. 20242.

Dated: June 11, 1979.

Manus J. Fish, Jr.,

Regional Director, National Capital Region.

[FR Doc. 79-18522 Filed 6-13-79; 8:45 am]

Billing Code 4310-70-M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Final Judgment in United States v. Leviton Manufacturing Co., Inc., et al. and Competitive Impact Statement Thereon

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), that a Proposed Final Judgment and Competitive Impact Statement, as set forth below, have been filed with the United States District Court for the District of Connecticut in Civil No. H-77-555, *United States of America v. Leviton Manufacturing Co., Inc., et al.*, (October 27, 1977). The proposed Final Judgment would terminate the Department of the Justice's civil antitrust suit involving the manufacture and sale of residential grade wiring devices throughout the United States.

The complaint alleged that beginning prior to 1962 and continuing thereafter until at least April, 1976 eight corporate and one individual defendant and certain co-conspirators engaged in a combination and conspiracy to restrain interstate commerce in the manufacture and sale of residential grade wiring devices throughout the United States.

The complaint sought a judgment by the court that the defendants had engaged in a combination and conspiracy in restraint of trade in violation of Section 1 of the Sherman Act together with an order by the court to enjoin and restrain the defendants from such conduct in the future.

Proceedings in this case were stayed pending disposition of a companion criminal prosecution, *United States v. Leviton Manufacturing Co., Inc., et al.*, Criminal No. H-77-77 (D. Conn.). Each of the defendants in the criminal case pleaded *nolo contendere* and was sentenced by United States District Judge M. Joseph Blumenfeld. The sentences included fines totalling $920,000 and periods of incarceration ranging from 30 to 90 days for 9 of the individual defendants.

Entry by the court of the proposed Final Judgment will terminate the civil

case, except insofar as the court will retain jurisdiction for such further proceedings as may be necessary or appropriate to interpret, modify or enforce the Judgment, or to punish violations thereof.

The proposed Final Judgment enjoins the defendants for a period of ten years from (1) directly or indirectly entering into any contract, or conspiracy with any other person engaged in the production or sale of wiring devices to raise, fix, maintain or stabilize prices, discounts or terms or conditions of sale of wiring devices to any third person; (2) communicating to or requesting from any manufacturer of wiring devices any information concerning past, present or future prices, price differentials, terms or conditions of sale, discounts, and actual or proposed pricing policies for the sale of wiring devices; and (3) continuing, maintaining, reviving or belonging to the Wiring Device Association or any other trade association consisting primarily of residential grade wiring device manufacturers.

The only exception to the broad prohibitions of the Judgment concern necessary communications in connection with (1) bona fide contemplated or actual purchase or sales transactions between the parties to such communications; and (2) a bona fide transaction involving the actual or proposed acquisition of any manufacturer of wiring devices.

The proposed Final Judgment also enjoins and restrains defendants George P. Byrne, Jr. and George P. Byrne, Inc., for a period of ten years, from directly or indirectly organizing, holding office in, or being employed by a trade association of wiring device manufacturers.

In addition to the prohibitions described above, the proposed Final Judgment requires certain affirmative actions designed to insure compliance with the Judgment and competitive prices in the future.

The proposed Final Judgment shall terminate ten years from the date of its entry.

In accordance with the Antitrust Procedures and Penalties Act of 1974, the Competitive Impact Statement describes the violations involved, explains the provisions of the proposed Final Judgement, discusses the remedies available to private litigants, outlines the procedures available for the modification of the Judgment and evaluates alternative relief proposals considered by the Goverment.

The proposed Final Judgment, a Stipulation and the Competitive Impact Statement are available for inspection and copying on request in the Legal Procedure Unit of the Antitrust Division, Room 7416, Department of Justice, Washington, D.C., 20530. They are also available for inspection in the Office of the Clerk of the United States District Court for the District of Connecticut, 450 Main Street, Hartford, Connecticut 06103.

Comments concerning the proposed Final Judgment are invited from members of the public within the 60 day statutory time period. Such comments should be directed to Joseph H. Widmar, Chief, Trial Section, Antitrust Division, United States Department of Justice, Washington, D.C. 20530.

Dated: June 1, 1979.

Charles F. B. McAleer,

Special Assistant for Judgment Negotiations.

U.S. District Court for the District of Connecticut

United States of America, Plaintiff, v. *Leviton Manufacturing Co., Inc.; Eagle Electric Manufacturing Co., Inc.; Slater Electric, Inc.; Circle F Industries, Inc.; Bell Electric Company, Inc.; John I. Paulding, Inc.; Triboro Electric Corp.; George P. Byrne, Inc.; and George P. Byrne, Jr.*, Defendants.

Civil Action No.: H–77–555.

Filed: June 1, 1979.

Stipulation

It is hereby stipulated by and between the plaintiff, United States of America, and each of the above-named defendants, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form attached hereto may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the defendants and filing that notice with the Court.

2. In the event plaintiff withdraws its consent hereto, or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall have no effect whatever and the making of this Stipulation shall be without prejudice to any consenting party in this or any other proceedings.

Dated: June 1, 1979.

For the Plaintiff: John H. Shenefield, *Assistant Attorney General;* William E. Swope, Charles F. B. McAleer, Joseph H. Widmar, and Peter A. Mullin, *Attorneys, United States Department of Justice.*

For the Defendants: Malcolm A. Hoffmann, *Attorney for Leviton Manufacturing Co., Inc.*, Gilbert S. Edelson, *Attorney for Eagle Electric Manufacturing Co., Inc.*, Lawrence Greenwald, *Attorney for Slater Electric, Inc.*, Sidney S. Rosdeitcher, *Attorney for Circle F Industries, Inc.*, Howard W. Fogt, Jr., *Attorney for Bell Electric Company, Inc.*, Laurence T. Sorkin, *Attorney for John I. Paulding, Inc.*, Bernard M. Elber, *Attorney for Triboro Electric Corp.*, John A. Sullivan, *Attorney for George P. Byrne, Inc. and George P. Byrne, Jr.*

U.S. District Court for the District of Connecticut

United States of America, Plaintiff, v. *Leviton Manufacturing Co., Inc.; Eagle Electric Manufacturing Co., Inc.; Slater Electric, Inc.; Circle F Industries, Inc.; Bell Electric Company, Inc.; John I. Paulding, Inc.; Triboro Electric Corp.; George P. Byrne, Inc.; and George P. Byrne, Jr.*, Defendants.

Civil Action No.: H–77–555.

Filed: June 1, 1979.

Final Judgment

Plaintiff, United States of America, having filed its complaint herein on October 27, 1977, and the plaintiff and the defendants, by their respective attorneys, having consented to the entry of this Final Judgment, without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or admission by any party with respect to any issue of fact or law herein:

Now, therefore, without any testimony being taken herein, and without trial or adjudication of any issue of fact or law herein, and upon the consent of all parties hereto, it is hereby

Ordered, adjudged and decreed:

I

This Court has jurisdiction of the subject matter herein and of the parties hereto. The complaint states a claim upon which relief may be granted against the defendants under Section 1 of the Sherman Act, 15 U.S.C. 1.

II

As used in this Final Judgment:

(A) "Person" means any individual, corporation, partnership, firm, association or other business or legal entity;

(B) "Manufacturing defendants" means all the corporate defendants named in the complaint except George P. Byrne, Inc.; and

(C) "Wiring devices" means current carrying electrical products that serve primarily as a connection or control point for an electrical circuit and certain products commonly used therewith which do not themselves carry an electrical current, including but not limited to, switches, receptacles, power outlets, caps, connectors, incandescent lampholders, wallplates, weatherproof boxes an covers, and combination devices (but not including fluorescent lampholders and dimmers), said products being sometimes known in the trade as residential grade wiring devices, as distinguished form a heavy-duty grade of wiring device sometimes known as specification grade wiring devices.

III

The provisions of this Final Judgment are applicable to all defendants herein and shall also apply to each of the corporate

defendants' officers, directors, agents, employees, domestic subsidiaries, successors and assigns, and to those persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise. The provisions of this Final Judgment shall not apply to any activities between a defendant corporation and a parent or subsidiary thereof.

IV

Each defendant is enjoined and restrained from:

(A) directly or indirectly entering into, adhering to, maintaining or furthering any contract, agreement, understanding, plan, program, combination or conspiracy with any other person engaged in the production or sale of wiring devices to raise, fix, stabilize or maintain prices, discounts or terms or conditions of sale of wiring devices to any third person;

(B) communicating to or requesting from any manufacturer of wiring devices any information concerning past, present or future prices, price differentials, terms or conditions of sale, discounts, and actual or proposed pricing policies for the sale of wiring devices, except necessary communications in connection with: (1) a bona fide contemplated or actual purchase or sales transaction between the parties to such communications; or (2) a bona fide transaction involving the actual or proposed acquisition of any manufacturer of wiring devices; and

(C) continuing, maintaining, reviving or belonging to the Wiring Device Association or any other trade association consisting primarily of residential grade wiring device manufacturers.

V

Defendants George P. Byrne, Jr., and George P. Byrne, Inc., are enjoined and restrained from directly or indirectly organizing, holding office in, or being employed by a trade association of wiring device manufactures.

VI

(A) Within sixty (60) days from the date of entry of this Final Judgment, each manufacturing defendant shall file with the Court and serve on the plaintiff an affidavit setting forth the announcement date, effective date, and percentage of change, if included in the announcement letter, of each published price list for wiring devices issued by such defendant during the period from April 1, 1976, to the date of this Final Judgment.

(B) Within sixty (60) days from the date of this Final Judgment, each manufacturing defendant shall: (1) conduct such review of its prices and terms and conditions of sale for wiring devices as is necessary to determine if each such price and term or condition of sale has been independently arrived at; (2) independently review, redetermine and reissue each such price or term or condition of sale not independently arrived at; and (3) file with the Court and serve on the plaintiff an affidavit certifying that each of its prices and terms or conditions of sale for wiring devices has been independently determined.

(C) For the period of five (5) years from the date of the entry of this Final Judgment, each manufacturing defendant shall prepare and maintain an affidavit of one of its officers or directors, within thirty (30) days of each change in its published prices, discounts, or terms or conditions of sale for wiring devices, stating that said officer or director has made reasonable inquiry and that to the best of his knowledge, information and belief said change was individually and independently arrived at and was not the result of any agreement, understanding or communication with any other manufacture of wiring devices.

VII

(A) Within ninety (90) days after the date of entry of this Final Judgment, each corporate defendant shall furnish a copy thereof to each of its officers and directors and to each of its employees having supervisory sales or pricing responsibility for wiring devices, and obtain and retain a written receipt therefor from each such person.

(B) Within one hundred twenty (120) days the date of entry of this Final Judgment each corporate defendant shall file with this Court and serve upon the plaintiff an affidavit as to the fact and manner of its compliance with subsection (A) of this Section VII.

(C) Each corporate defendant shall furnish a copy of this Final Judgment to each new officer or director and to each new employee having supervisory sales or pricing responsibility for wiring devices and shall maintain, for a period of ten (10) years, a written record, bearing the signature of such officer, director or employee, acknowledging receipt of a copy thereof.

(D) Each corporate defendant shall, on an annual basis, take affirmative steps to advise each of its officers and directors and each of its employees with supervisory sales or pricing responsibility for wiring devices of the company's and their personal obligations under this Final Judgment and of the criminal penalities for violation thereof. Such affirmative steps shall include, as a minimum, the distribution of a written directive explaining the antitrust laws and the obligations imposed by this Final Judgment and the holding of a meeting or meetings to review and explain the antitrust laws and this Final Judgment and the obligations imposed thereby.

(E) Each corporate defendant shall maintain a copy of each written directive distributed pursuant to Section VII (D) of this Final Judgment, including the date distributed and to whom sent and a written record of each meeting held pursuant to such section showing the date and place of the meeting, who was present and the agenda for the meeting.

VIII

Each manufacturing defendant shall require, as a condition of the sale or other disposition of all, or substantially all, of its total assets of its wiring devices business, that the acquiring party agree to be bound by the provisions of this Final Judgment. The acquiring party shall file with the Court, and serve upon the plaintiff, its consent to be bound by this Final Judgment.

IX

(A) For the purpose of determining or securing compliance with this Final Judgment, each corporate defendant shall permit duly authorized representatives of the Department of Justice, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant at its principal office, subject to any legally recognized privilege:

(1) to inspect and copy during the regular business hours of such defendant, who may have counsel present, all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant which relate to any matters contained in this Final Judgment; and

(2) to interview any officer, director or employee of such defendant regarding any matter contained in this Final Judgment, subject to the reasonable convenience of such defendant, and without restraint or interference therefrom, provided that such defendant and such officer, director or employee may have counsel present at any such interview.

(B) For the purpose of determining or securing compliance with this Final Judgment, defendant shall submit such reports in writing, under oath if so requested, with respect to any matter contained in this Final Judgment as may from time to time be requested in writing by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division.

(C) No information obtained by the means provided in this Section IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at any time information or documents are furnished by any defendant to plaintiff pursuant to this Section IX, and such defendant represents and identifies in writing the material in any such information or documents as being the type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the plaintiff shall give ten (10) days notice to such defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the defendant is not a party.

X

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or modification of any of the provisions thereof, for the enforcement of

compliance therewith, and for the punishment of violations thereof.

XI

This Final Judgment shall terminate ten (10) years from the date of its entry.

XII

Entry of this Final Judgment is in the public interest.

Dated at Hartford, Connecticut, this ——— day of ———, 1979.

M. Joseph Blumenfeld,
United States District Judge.

U.S. District Court for the District of Connecticut

United States of America, Plaintiff, v. *Leviton Manufacturing Co., Inc.; Eagle Electric Manufacturing Co., Inc.; Slater Electric, Inc.; Circle F Industries, Inc.; Bell Electric Co., Inc.; John I. Paulding, Inc.; Triboro Electric Corp.; George P. Byrne, Inc.; and George P. Byrne, Jr.*; Defendants.

Civil Action No.: H-77-555.

Filed: June 1, 1979.

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)-(h), the United States files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I—*Nature and Purpose of the Proceeding.*

This is a civil antitrust action brought by the United States against the above-named defendants pursuant to Section 4 of the Sherman Act, 15 U.S.C. 4, to enjoin them from continuing violations of Section 1 of the Sherman Act, 15 U.S.C. 1. The Complaint, which was filed on October 27, 1977, alleges that the above-named defendants and certain co-conspirators engaged in a combination and conspiracy beginning sometime prior to 1962 and continuing thereafter until at least April, 1976, to restrain interstate trade and commerce in the manufacture and sale of residential grade wiring devices throughout the United States. The Complaint seeks a judgment by the Court that the defendants have engaged in a combination and conspiracy in restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, together with an order by the Court to enjoin and restrain the defendants from such conduct in the future.

Proceedings in the case were stayed pending disposition of a companion criminal prosecution, *United States* v. *Leviton Manufacturing Co., Inc., et al.*, Criminal No. H-77-77 (D. Conn.). The criminal prosecution was initiated by a grand jury indictment returned on October 27, 1977 charging eight corporations and eleven individuals, including each of the defendants named in the civil case, with criminal violations of the Sherman Act arising out of the same conspiracy alleged in the civil complaint. Each of the defendants in the criminal case pleaded *nolo contendere* and was sentenced by United States District Judge M. Joseph Blumenfeld. The sentences included fines totalling $220,000 and periods of incarceration ranging from 20 to 90 days for 9 of the individual defendants. The last defendant was sentenced on March 10, 1978. The sentences have been served and the criminal case is now concluded.

II—*The Terms of the Alleged Conspiracy.*

Wiring devices are current carrying electrical products that serve primarily as a connection or control point for an electrical circuit, and certain products commonly used therewith which do not themselves carry an electrical current, including, switches, receptacles, power outlets, caps, connectors, incandescent lampholders, wallplates, weatherproof boxes and covers and combination devices. Wiring devices are sold in three channels of distribution—the distributor/contractor, the consumer, and the original equipment manufacturer (OEM) channels. In the distributor/contractor channel wiring devices are usually sold to electrical wholesale distributors who in turn resell to electrical contractors who install the wiring devices in buildings. In the consumer channel wiring devices are sold to electrical wholesale distributors, hardware wholesalers, buying cooperatives, mass merchandisers, chain stores, and others for eventual resale at the retail level to consumers for repair, replacement, and home improvement purposes. In the OEM channel wiring devices are sold to manufacturers of other products who use the wiring devices as component parts in their manufacturing process. Wiring devices are manufactured in two grades—specification grade and residential grade. In general, specification grade is a heavy-duty, more expensive grade commonly specified by architects for use in high rise residential, commercial and industrial buildings. Residential grade, on the other hand, is a general-use, less expensive grade commonly used in single family homes and light duty uses.

The above named defendants, except George P. Byrne, Jr. and George P. Byrne, Inc., are the principal manufacturers and sellers of residential grade wiring devices in the United States. These defendants sell wiring devices in each of the three channels of distribution described above. During the period charged in the Complaint, these defendants had total sales of wiring devices in excess of $1 billion. During 1975 alone, these defendants had sale of wiring devices totalling approximately $100 million.

George P. Byrne, Jr. is a lawyer who organizes and provides administrative services to trade associations. George P. Byrne, Inc. is a corporation organized by George P. Byrne, Jr. which provided administrative services to the Wiring Device Association (WDA), a now defunct trade association of residential grade wiring device manufacturers.

The Complaint alleges the defendants combined and conspired to unreasonably restrain interstate trade and commerce in the manufacture and sale of residential grade wiring devices in the United States from sometime prior to 1962 until at least April, 1976, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The alleged combination and conspiracy consisted of a continuing agreement, understanding and concert of action among the defendants and co-conspirators the substantial terms of which were to (1) raise, fix, maintain and stabilize the prices of residential grade wiring devices in the United States and (2) fix, maintain and stabilize the terms and conditions of sale thereof. In forming and effectuating the combination and conspiracy alleged in the Complaint, the defendants and co-conspirators: (1) agreed upon prices, discounts and terms and conditions of sale for wiring devices; (2) published price lists and adopted policies in accordance with such agreements; (3) organized and maintained the Wiring Device Association (WDA) to further and conceal the combination and conspiracy; (4) scheduled and held rump sessions of the WDA to discuss and agree upon prices, discounts and terms and conditions of sale for wiring devices and to police and enforce agreements regarding the same; (5) met at the offices of certain defendants and elsewhere and telephoned or otherwise contacted one another to discuss, agree upon, and convey agreements regarding, prices, discounts and terms and conditions of sale for wiring devices and to police and enforce such agreements; (6) mailed and otherwise transmitted to one another marked-up and published price lists and other price change information to implement agreements reached; and (7) met with, telephoned, and otherwise communicated with, certain non-conspirator wiring device manufacturers to convey agreements reached, induce subscription thereto and threaten economic reprisals for failure to follow such agreements. As alleged in the Complaint, the combination anc conspiracy had the following effects: (1) prices for wiring devices were raised, fixed, maintained and stabilized at non-competitive levels; (2) terms and conditions of sale for wiring devices were fixed, maintained and stabilized at non-competitive levels; (3) price competition in the sale of wiring devices through out the United States was restrained, suppressed and eliminated; and (4) purchasers of wiring devices were denied the benefits of full and open competition.

III—*Explanation of the Proposed Judgment.*

The United States and the defendants have stipulated that a Final Judgment, in the form filed with the Court, may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h). The proposed Final Judgment provides that entry of the Final Judgment shall be without admission by any party with respect to any issue of law or fact. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act entry of the proposed Final Judgment is conditioned upon the Court finding that its entry will be in the public interest.

The proposed Final Judgment enjoins the defendants for a period of ten years from (1) directly or indirectly entering into, adhering to, maintaining or furthering any contract, agreement, understanding, plan, program, combination or conspiracy with any other person engaged in the production or sale of wiring devices to raise, fix, maintain or stabilize prices, discounts or terms or conditions of sale of wiring devices to any

third person; (2) communicating to or requesting from any manufacturer of wiring devices any information concerning past, present or future prices, price differentials, terms or conditions of sale, discounts, and actual or proposed pricing policies for the sale of wiring devices; and (3) continuing, maintaining, reviving or belonging to the Wiring Device Association or any other trade association consisting primarily of residential grade wiring device manufacturers.

The only exception to the broad prohibitions of the Judgment concern necessary commmunications in connection with (1) bona fide contemplated or actual purchase or sales transactions between the parties to such communications; and (2) a bona fide transaction involving the actual or proposed acquisition of any manufacturer of wiring devices.

The proposed Final Judgment also enjoins and restrains defendants George P. Byrne, Jr. and George P. Byrne, Inc., for a period of ten years, from directly or indirectly organizing, holding office in, or being employed by a trade association of wiring device manufacturers.

In addition to the prohibitions described above, the proposed Final Judgment orders each manufacturing defendant (1) to file with the Court and serve on the plaintiff, within sixty days of the entry of the Final Judgment, an affidavit setting forth the announcement date, effective date and percentage of change, if included in the announcement letter, of each published price list for wiring devices issued by it during the period April 1, 1976 to the date of the Final Judment; (2) to conduct such review of its prices and terms and conditions of sale for wiring device as is necessary to determine if each such price and term or condition of sale has been independently arrived at, to independently review, redetermine and reissue each price or term or conditions of sale not independently arrived at, and file with the Court and serve on the Plaintiff within sixty days from the date of the Final Judgment an affidavit certifying that each of its prices and terms or conditions of sale for wiring devices has been independently arrived at; and (3) for a period of five years, prepare and maintain, within thirty days of each change in its published prices, discounts or terms or conditions of sale, an affidavit of one of its officers or directors that such officer or director has made reasonable inquiry and that to the best of his knowledge, information and belief said change was independently arrived at and was not the result of any agreement, understanding or communication with any other wiring device manufacturer.

The proposed Final Judgment also orders each corporate defendant to take certain affirmative steps to insure compliance with its provisions. Each corporate defendant is required to (1) furnish a copy of the Judgment to each of its officers and directors and each of its employees having supervisory sales or pricing responsibility for wiring devices within ninety days of the date of entry thereof; (2) obtain and retain a written receipt therefor from each such person; and (3) file with the Court and serve on the plaintiff an affidavit as to the fact and manner of its compliance with this provision. Thereafter, for a period of ten years, each corporate defendant is required to furnish a copy of the Final Judgment to each new officer and director and each new employee with supervisory sales or pricing responsibility for wiring devices and maintain a written record, bearing the signature of such officer, director or employee, acknowledging receipt thereof. Each corporate defendant is also required, on an annual basis, to take affirmative steps to advise each of its officers and directors and each employee with supervisory sales or pricing responsibility for wiring devices of the company's and their personal obligations under the Final Judgment and the criminal penalties for violation thereof. At a minimum, such affirmative steps shall include the distribution of a written directive explaining the antitrust laws and the obligations imposed by the Final Judgment and the holding of a meeting or meetings to review and explain the antitrust laws and the Final Judgment and the obligations imposed thereby. Each corporate defendant is required to maintain a copy of each such directive and a written record of each such meeting.

The proposed Final Judgment also orders each manufacturing defendant to require as a condition of the sale or other diposition of all or substantially all of its total assets of its wiring devices business that the acquiring party file with the Court and serve on the plaintiff its consent to be bound by the Final Judgment.

The proposed Final Judgment provides that for the purpose of determining or securing compliance therewith, each corporate defendant shall permit duly authorized representatives of the Department of Justice to (1) inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in its possession or under its control which relate to any matter contained in the Final Judgment; and (2) interview any officer, director or employee of such defendant regarding any matter contained in the Final Judgment. The defendants are also required to submit such reports in writing, under oath if so requested, with respect to any matter contained in the Final Judgment as may from time to time be requested by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division.

The proposed Final Judgment shall terminate ten years from the date of its entry.

IV—*Remedies Available To Private Litigants.*

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages such person has suffered, plus costs and reasonabole attorney's fees, as well as for equitable relief. The United States is informed that certain persons, including certain state Attorneys General have filed suits pursuant to Section 4 of the Clayton Act for money damages and equitable relief based on claims arriving out of the combination and conspiracy alleged in the complaint in this case and that these various suits have been consolidated before the Honorable Jack B. Weinstein, Judge of the United States District Court for the Eastern District of New York, under the caption, *In Re Wiring Device Antitrust Litigation*, M.D.L. No. 341 (E.D.N.Y.) by the Judicial Panel on Multi-District Litigation.

The entry of the proposed Final Judgement will neither impair nor assist any person in bringing or prosecuting any private antitrust claim arising out of the combination and conspiracy alleged in the Complaint. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgement, if entered, may not be used by any private plaintiff as *prima facie* evidence of any matter since it will have been entered before any testimony has been taken.

V—*Procedures Available for Modification of the Proposed Final Judgment.*

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to Joseph H. Widmar, Department of Justice, Antitrust Division, 10th & Constitution Avenue, N.W., Washington, D.C. 20530, within the 60-day period provided by the Act. The comments and the government's responses thereto will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to its entry if it should determine that some modification is appropriate and necessary to the public interest.

The proposed Final Judgment provides that the Court will retain jurisdiction over this action, and that the parties may apply to the Court for such orders as may be necessary or appropriate for its modification or enforcement.

VI—*Alternatives to the Proposed Final Judgment.*

The proposed Final Judgment will completely dispose of the United States' claim for injunctive relief. The only alternative available to the Department of Justice is a full trial of this case on the merits. Such a trial on the merits would require a substantial expenditure of public funds and judicial time. Since the relief obtained in the proposed Final Judgment is substantially similar to the relief the Department of Justice would expect to request and obtain after winning a trial on the merits, the United States believes no substantial purpose would be served by insisting on a trial on the merits and that entry of the proposed Final Judgment is in the public interest.

VII—Determinative Materials

There are no materials or documents which the United States considered determinative in formulating this proposed Final Judgment. Therefore, none are being filed along with this competitive Impact Statement.

Dated: June 1, 1979.

Peter A. Mullin,

Attorney, Department of Justice.

[FR Doc. 79-18671 Filed 6-13-79; 8:45 am]

BILLING CODE 4410-01-M

Attorney General

Proposed Consent Decree in Action Involving Discharge of Water Pollutants by Borden Incorporated

In accordance with Departmental Policy, 28 CFR § 50.7, 38 FR 19029, notice is hereby given that a proposed consent decree in *United States of America* v. *Borden, Inc.*, Civil Action No. 79-CV-121, has been lodged with the United States District Court for the Northern District of New York. The proposed consent decree requires Borden to pay a civil penalty of $22,000 for discharges from its Baninbridge, New York facility.

The proposed consent decree may be examined at the office of the United States Attorney, Room 300, U.S. Courthouse and Post Office Building, 100 South Clinton Street, Syracuse, New York 13201; at the Region II office of the Environmental Protection Agency, Enforcement Division, 26 Federal Plaza, New York, New York 10007; and at the Pollution Control Section, Land and Natural Resources Division of the Department of Justice, Room 2645, Ninth and Pennsylvania Avenue, N.W., Washington, D.C. 20530. A copy of the proposed decree may be obtained in person or by mail from the Pollution Control Section, Land and Natural Resources Division of the Department of Justice.

The Department of Justice will receive written comments relating to the proposed consent decree for a period ending July 16, 1979. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States of America* v. *Borden, Inc.*, Civil Action No. 79-CV-121, D. J. Ref. 90-5-1-1-1064.

James W. Moorman,

Assistant Attorney General, Land and Natural Resorces Division.

[FR Doc. 79-18668 Filed 6-13-79; 8:45 am]

BILLING CODE 4410-01-M

Proposed Consent Decree in Action to Enjoin Discharge of Water Pollutants

In accordance with Departmental Policy, 28 CFR § 50.7, 38 FR 19028, notice is hereby given that a proposed consent decree in *United States* v. *Copperweld Steel Corporation* has been lodged with the United States District Court for the Northern District of Ohio. The proposed decree would require Copperweld Steel Corporation to construct, by June 1, 1980, and to operate treatment facilities in order to achieve compliance with its NPDES permit and to pay a civil penalty of $30,000 upon entry of the judgment.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the proposed judgment. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and refer to *United States* v. *Copperweld Steel Corporation*, D.J. Ref. 90-5-1-1-962.

The proposed consent decree may be examined at the office of the United States Attorney, Room 400, United States Courthouse, Cleveland, Ohio 44114, at the Region V office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Pollution Control Section, Land and Natural Resources Division, Department of Justice, (Room 2625), Ninth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Pollution Control Section, Land and Natural Resources Division, Department of Justice.

James W. Moorman,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 79-18669 Filed 6-13-79; 8:45 am]

BILLING CODE 4410-01-M

Proposed Consent Decree in Action to Enjoin Discharge of Water Pollutants

In accordance with Departmental Policy, 28 CFR § 50.7, 38 FR 1902, a notice is hereby given that on May 30, 1979, a proposed consent decree in *United States* v. *City of Philadelphia*, was lodged with the United States District Court for the Eastern District of Pennsylvania. The proposed decree requires the City to complete its three sewage treatment plants on an expeditious schedule, to expend $2.165 million on water pollution control projects not currently required by law, and to cease ocean dumping of sludge by December 31, 1980.

The Department of Justice will receive for 30 days from the date of publication of this notice written comments relating to the proposed judgment. Comments should be addressed to the Assistant Attorney General for the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and refer to *United States* v. *City of Philadelphia*, D.J. Ref. 90-5-1-1-923.

The proposed consent decree may be examined at the office of the United States Attorney, Eastern District of Pennsylvania, U.S. Courthouse, Philadelphia, Pennsylvania; the Clerk of the District Court, Eastern District of Pennsylvania, U.S. Courthouse, Philadelphia, Pennsylvania; and the Pollution Control Section, Land and Natural Resources Division, Department of Justice, Room 2623, Department of Justice Building, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. A copy of the proposed consent judgment may be obtained in person or by mail from the Pollution Control Section.

James W. Moorman,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 79-18670 Filed 6-13-79; 8:45 am]

BILLING CODE 4410-01-M

Law Enforcement Assistance Administration

Proposed Change to Guide for Discretionary Grant Programs, M4500.1G, for Fiscal Year 1979

AGENCY: Law Enforcement Assistance Administration, Department of Justice.

ACTION: Publication of draft proposed guideline for the Arson Control Assistance Program.

SUMMARY: This proposed change is a draft addition to M4500.1G, *Guide for Discretionary Grant Programs*, and as such will be subject to the same regulations which govern that manual. It will not in any way impact upon the programs or regulations presently set out in M4500.1G, nor will it effect the eligibility of those individuals applying for previously announced programs.

FOR FURTHER INFORMATION CONTACT: Judith O'Connor, Program Manager, Arson Unit, Office of Criminal Justice Programs, Law Enforcement Assistance Administration, 633 Indiana Avenue, N.W., Washington, D.C. 20531.

SUPPLEMENTARY INFORMATION: The Law Enforcement Assistance Administration (LEAA) is proposing a new program as an addition to the Fiscal Year 1979 *Guide for Discretionary Grant Programs*, M4500.1G, as previously announced in the Federal Register on April 16, 1979. The Office of Criminal Justice Programs, LEAA, under the legislative authority of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3701,

et seq., has developed a draft program announcement for a discretionary grant program for arson control assistance. In order to ensure that interested organizations, agencies, and individuals have an opportunity to review and comment on the draft announcement, this notice and invitation to submit written views, comments, and specific recommendations are being provided. The final program announcement will also be published in the **Federal Register**. All comments, due 30 days from the publication date of this notice, will be considered in the publication of the final program announcement. Comments should be addressed to Judith O'Connor (see address above). The text of the proposed program announcement follows:

Arson Control Assistance Program

a. *Program Objective.* The objective of this program is to assist state, regional, county, and local efforts to reduce the number of deaths, the personal injury, and the economic loss related to arson, and to upgrade current knowledge regarding arson incidence and arson control approaches.

b. *Program Description.* (1) *Problem Addressed.* In terms of lives and property lost and the rate of incidence, arson has become America's fastest growing crime. A definite correlation has been drawn between the present limited capabilities of police, fire, and prosecutorial agencies in dealing with arson and the low deterrence level of the crime. Most police and fire departments lack the resources, expertise and manpower to adequately respond to the growing arson problem in their jurisdiction and prosecutors, for various reasons, are often reluctant to bring arson cases to trial. All too often there is little or no cooperation or coordination between the various agencies dealing with arson and valuable resources such as community groups and the insurance industry are not maximally involved. Extensive needs for training, data collection systems, equipment, manpower, and a framework for a coordinated arson control effort have been identified by and for each of the involved agencies. However, due to lack of funds, many of these needs go unanswered.

(2) *Results Sought.* (a) Improved capabilities of agencies involved with arson control at the state, regional, county, and local levels;

(b) Increased cooperation among those agencies involved with arson detection, investigation, and prosecution;

(c) Increased coordination of anti-arson efforts within the given jurisdiction;

(d) Increased sensitivity on the part of all involved agencies to the problem of arson and to the roles of all those engaged in combatting the crime;

(e) Improved data base and analytical capability regarding arson;

(f) Increased identification of arson fires;

(g) Increased arrest rates for arson cases;

(h) Increased prosecution rates for arson cases;

(i) Increased conviction rates for arson cases;

(j) Increased level of public awareness and participation in arson control efforts;

(k) Increased involvement on the part of the judiciary, the insurance industry, community groups, and others with interest in arson control; and

(l) Increased exchange of information.

c. *Program Strategy.* As part of the overall Department of Justice strategy to combat arson at the state and local levels, the investigative and prosecutorial expertise of federal criminal justice agencies will be integrated with the financial and technical assistance capabilities of LEAA. Grants to improve arson control capabilities will be made to state, regional, county, and local jurisdictions. Arson control in this contest includes but is not limited to such activities as detection, investigation, prosecution, prevention, and public education. Based on the recommendations of numerous studies and reports, it has been determined that a coordinated effort among police, fire, and prosecutorial agencies as well as all others in a given jurisdiction with interest in arson control is required to successfully combat the crime. Funds will be available to support programs constituting such an integrated approach.

Cooperation and coordination are the key words in this effort. Applicants must provide such documentation as letters of commitment and memoranda of agreement indicating involvement and participation on the part of all agencies (including but not limited to police, fire, and prosecution) connected with the overall arson control effort within that jurisdiction.

Particular attention will be paid to those applications demonstrating an innovative approach to dealing with arson.

d. *Application Requirements.* The following elements must be included in each project and described in Part IV of the application form. Selection of grantees will be based in large part on how well each of these elements is addressed.

(1) A detailed description of the arson problem in the area to be served, including such relevant data as incidence figures, dollar value of property loss, and personal injury;

(2) A description of the service area, including but not limited to geographical aspects, population figures, and types and numbers of building structures;

(3) A description of applicable laws, pending legislation, court or executive orders, etc., within or affecting the jurisdiction. In particular, this section should address the specific authorities, responsibilities, and constraints which these laws or orders place on the various agencies involved;

(4) A description of existing anti-arson efforts by police, fire, and prosecutorial agencies and others, including arrest and conviction rates, existing cooperative agreements, arson control-related activities of community groups, available services, gaps in such services, and any other relevant information;

(5) A description of how the planned approach will meet the needs identified in the assessment;

(6) A specific workplan, including timetable, describing the activities of the project and the results expected;

(7) An organization chart and job descriptions for all project personnel. Details concerning specific responsibilities and relevant authority must be provided;

(8) A network chart indicating the relationship between and among all involved agencies;

(9) Documented proof of cooperation and coordination among all involved agencies (including but not limited to police, fire, and prosecution). This should include any and all letters of commitment (to the roles and activities described in the application) and memoranda of agreement;

(10) Listing of past and present arson-related funding received from state or federal sources (in dollars and project type) and their relation to this project;

(11) Evidence that the state and local A–95 clearinghouses, regional planning unit, and state planning agency have received copies of the application. (Note: actual grant award is dependent upon receipt of comments from all of these agencies);

(12) An evaluation component, including a description of the system available to collect relevant data (see Evaluation Requirements section for further detail); and

(13) A detailed assumption-of-cost plan.

e. *Data Collection Effort.* In addition to the pre-award data requested above, grantees will be required to develop and maintain a collection system to gather relevant data from which accurate conclusions regarding overall program program performance can be drawn. Technical assistance will be available to aid in establishing or modifying this system. Use of the system should be directly tied in with the project's evaluation plan. Applicants are also asked to describe existing state and local reporting requirements.

f. *Dollar Range and Number of Grants.* Funds will be made available to arson control programs at the state, regional, county, and local levels. Up to four (4) grants, not to exceed $600,000 each, will be made to support state-level efforts; up to six (6) grants, not to exceed $200,000 each, will go to jurisdictions with populations at or over 100,000; and up to five (5) grants, not to exceed $125,000 each, will be made available to jurisdictions with populations below 100,000.

g. *Eligibility.* All state, regional, county, or local units of government, or sub-units thereof, or a combination of units at the same or different level may apply for funds. Sub-units must apply through their larger unit (i.e., a police department through its city government). In each case, unless the state waives the right, the state planning agency will serve as the grantee and the applicant will be the subgrantee.

h. *Application Deadline and Submission Procedures.* (1) All applications for fiscal year 1979 funds must be received no later than August 29, 1979. No applications will be considered if received after that date; and

(2) In addition to the copies of the application sent to the state and local A–95 clearinghouses, the regional planning unit, and the state planning agency, the original plus two (2) copies of the entire application package should be sent to: The Control Desk, GCMD/FMGAB, Office of the Comptroller, LEAA, 633 Indiana Avenue, N.W., Washington, D.C. 20531.

i. *Criteria for Selection.* (1) Applicants will be rated on the extent to which they respond to the requirements of this program description and, in particular, the Application Requirements section. Applicants must provide evidence of an administrative structure that has the capability and authority to effectively achieve the project's stated objectives;

(2) Applicants demonstrating existing independent efforts in coordinated arson control will receive preference over those which do not; and

(3) Only one grant will be awarded in any urban area (SMSA).

j. *Evaluation Requirements.* The projects funded under the Arson Control Assistance Program have been selected for intensive impact and cost-benefit evaluation. Therefore, each application must contain a separate Evaluation Plan which states the project's objectives in measurable terms, contains a specific evaluation methodology, and nominates for LEAA approval an evaluation subcontractor whose services are obtained in conformity with the requirements of LEAA Guideline Manual M7100.1 (effective edition). The costs of the evaluation shall be included in the project budget, identified as a separate grant activity on the application form, and shall not exceed fifteen (15) percent of the total project cost. Technical assistance will be available from LEAA in the development and conduct of the project evaluations.

In addition, an evaluation of the overall Arson Control Assistance Program is planned for fiscal year 1980. Grantees must attest to their willingness to share their data with the national evaluator as well as providing any other cooperation required to perform such an evaluation.

k. *Contact:* Arson Unit, Office of Criminal Justice Programs, Law Enforcement Assistance Administration, Room 1158, Washington, D.C. 20531 (202) 724–7661 or 724–7662.

Henry S. Dogin,

Administrator, Law Enforcement Assistance Administration.

[FR Doc. 79-18697 Filed 6-13-79; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL LABOR RELATIONS BOARD

Revision of Statement of Organization and Functions

AGENCY: National Labor Relations Board.

ACTION: Revision of statement of organization and functions.

SUMMARY: The National Labor Relations Board is revising its descriptions of the central and field organizations of the Board, listing all Board officials and their official job functions. An appendix to this document lists the locations of all regional and subregional offices, as well as the areas served by these offices.

EFFECTIVE DATE: June 14, 1979.

FOR FURTHER INFORMATION CONTACT: George A. Lest, Esquire, Associate Executive Secretary, National Labor Relations Board, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

National Labor Relations Board

*Organization and Functions**

The National Labor Relations Board is an independent agency created by the National Labor Relations Act, enacted July 5, 1935 (49 Stat. 449; 29 U.S.C. 151–166); as amended by the Labor Management Relations Act, 1947, enacted June 23, 1947 (61 Stat. 136; 29 U.S.C. 151–167); amended by an Act of October 21, 1951 (65 Stat. 601; 29 U.S.C. 158, 159, 188); as amended by the Labor-Management Reporting and Disclosure Act of 1959, enacted September 14, 1959 (73 Stat. 519; 29 U.S.C. 141, et seq.); and as amended by an Act of July 26, 1974 (88 Stat. 395–397; 29 U.S.C. 152, et seq.). The responsibilities and functions of the Agency under the statutes are carried out through an organization directed and controlled by the National Labor Relations Board and its General Counsel, who, in addition to independent authority under the statute, exercises other authority by delegation from the Board.

Description of Organization

Description of Central Organization

Sec. 201 *The Board.* The Board, composed of five Members, has its central and principal office in Washington, D.C. Each of the Members is appointed by the President, with the approval of the Senate, for a term of 5 years. One Member is designated by the President to serve as Chairman of the Board. The Board is created by virtue of the provisions of the National Labor Relations Act, 49 Stat. 449, as amended by the Labor Management Relations Act, 1947, 61 Stat. 136, and the Labor-Management Reporting and Disclosure Act, 1959, 73 Stat. 519.

The Board has two principal functions under the National Labor Relations Act, as amended: (1) The prevention of statutory defined unfair labor practices on the part of employers and labor organizations or the agents of either, and (2) the conduct of secret ballot elections among employees in appropriate collective-bargaining units to determine whether or not they desire to be represented by a labor organization.

The Board is further empowered by the Act:

*32 FR 9626, as amended by 37 FR 12826, as further amended by this document.

To conduct secret ballot elections among employees who have been covered by a union-shop agreement, when requested by 30 percent of the employees, to determine whether or not they wish to revoke their union's authority to make such agreements.

To determine in cases involving jurisdictional disputes which of the competing groups of workers is to be assigned the work task involved.

To conduct secret ballot elections among employees in national emergency situations.

The Board exercises full and final authority over the Office of the Executive Secretary, the Office of the Solicitor, and the Division of Information. The Board appoints administrative law judges and, subject to the provisions of the Administrative Procedure Act and section 4(a) of the National Labor Relations Act, as amended, exercises authority over the Division of Judges. Each Board Member exercises full and final authority over a staff of legal counsel, each staff being under the immediate supervision of the chief counsel of the respective Board Member.

The Board, with the General Counsel, approves the budget, opens new offices as deemed necessary, and appoints Regional Directors and Officers-in-Charge.

The Board establishes and publishes the Agency's Rules and Regulations and Statements of Procedure.

Sec. 201.1 *The Board's staff.* The Board's staff consists (in addition to its chief counsel and legal counsel referred to in sec. 201, above) of the Office of the Executive Secretary, the Office of the Solicitor, the Division of Judges, and the Division of Information.

Sec. 201.1.1 *Office of the Executive Secretary.* The Executive Secretary is the chief administrative and judicial management officer of the Board, represents the Board in dealing with parties to cases and communicates on behalf of the Board with labor organizations, employers, employees, Members of Congress, othe agencies, and the public. The Office of the Executive Secretary receives, dockets, and acknowledges all formal documents filed with the Board; issued and serves on the parties to cases all Board Decisions and Orders; and certifies copies of all documents which are a part of the Board's files or records.

Sec. 201.1.2 *Office of the Solicitor.* The Solicitor is the Board's chief legal officer and advises the Board on questions of law and policy; adoption, revision, or rescission of Rules and Regulations and Statements of Procedure; pending legislation amending or affecting the Act; litigation affecting the Board, etc. The Office of the Solicitor drafts advisory opinions and declaratory orders for the Board concerning whether the Board would assert jurisdiction in a particular case.

Sec. 201.1.3 *Division of Judges.* The Chief Administrative Law Judge supervises the operations of this division. Administrative law judges are responsible for the conduct of all hearings and for the preparation of all administrative law judges' decisions in unfair labor practice cases. The Chief Administrative Law Judge has final authority to designate administrative law judges who conduct hearings and make rulings; to assign dates for hearings presided over by administrative law judges; and to rule upon requests for extensions of time within which to file briefs, proposed findings, and conclusions.

Sec. 201.1.4 *Division of Information.* The Director of Information maintains liaison with the press and other communications media and prepares press and other types of public releases. The Director furnishes information to members of the general public who wish to be informed concerning the actions of the Board and the General Counsel and arranges for the distribution of decisions and weekly summaries of decisions.

Sec. 202 *The General Counsel.* The General Counsel is appointed by the President, with the approval of the Senate, for a term of 4 years. The General Counsel derives specific authority for some functions of the office from the provisions of section 3(d) of the National Labor Relations Act, as amended, and derives certain other authority by delegation from the Board (20 FR 2175, as amended at 23 FR 6966, 24 FR 666, and 26 FR 3911). By virtue of these combined authorities, the General Counsel exercises general supervision over attorneys employed by the Board (other than administrative law judges, legal counsel to Board Members, the Executive Secretary, and the Solicitor), and over the officers and employees in the regional offices. The General Counsel has final authority, on behalf of the Board, in respect to the investigation of charges and issuance of complaints under section 10 and in respect to the prosecution of such complaints before the Board; prosecutes, on behalf of the Board, injunction proceedings pursuant to section 10(e) and 10(j) of the Act; handles court of appeals proceedings to enforce or review Board orders, other miscellaneous court litigation, and efforts to obtain compliance with Board orders; and is responsible for the processing by field personnel of representation petitions under section 9 of the Act and jurisdictional dispute cases under section 10(k), and in the conduct of employee referenda under sections 209(b) and 203(c) of the Labor Management Relations Act, 1947.

The Deputy General Counsel is vested with the authority to speak and act for the General Counsel in all phases of the responsibilities of the office to the full extent permitted by law and is responsible for overall coordination of the General Counsel's organization. References to the General Counsel hereinafter may refer to either the General Counsel or Deputy General Counsel collectively.

Sec. 202.1 *The General Counsel's Washington Staff.* The General Counsel's Washington staff, reporting to the General Counsel and the Deputy General Counsel, consists of four main divisions: Division of Operations Management, Division of Advice, Division of Enforcement Litigation, and Division of Administration.

Sec. 202.1.1 *Division of Operations Management.* The Associate General Counsel for Operations Management assists in the coordination and integration of all operations in Washington and of Washington operations with the field offices; develops systematic methods for the integration of case processing activities in all field and Washington operational units and for the implementation of General Counsel and Board policies, including time and quality standards for case processing at all stages; and is responsible for continuing liaison with field offices and for supervising and coordinating both substantive and administrative phases of their operations.

Sec. 202.1.2 *Division of Advice.* The Associate General Counsel for Advice is responsible for legal research on and analysis of broad areas of labor law administration, for legal advice to Regional Directors on all unfair labor practice cases involving novel or difficult legal issues, including questions involving mandatory or discretionary injunction proceedings, for litigating injunction cases on appeal from a district court adjudication, for legal information retrieval systems, and for analyses and digests to be used by both the agency staff and the public.

Sec. 202.1.3 *Division of Enforcement Litigation.* The Associate General Counsel for Enforcement Litigation is responsible for all agency litigation in the United States Courts of Appeals and the Supreme Court of the United States, whether within the General Counsel's

statutory authorization or delegated by the Board, including contempt litigation and enforcement and review of Decisions and Orders of the Board, and is also responsible for miscellaneous litigation in Federal and state courts to protect the Agency's processes and functions.

The Office of Appeals is another principle part of the Division of Litigation. This Office reviews appeals from Regional Directors' refusals to issue complaints in unfair labor practice cases and recommends the action to be taken thereon by the General Counsel. Pursuant to request, the Director of the office may also hear informal oral presentations in Washington of argument by counsel or other representatives of the parties in support of, or in opposition to, the appeals.

Sec. 202.1.4 *Division of Administration.* The Director of Administration is responsible generally for the administrative management, support services, and fiscal functions of the General Counsel. These activities are carried out with the assistance of branches dealing with financial management, personnel, facilities and services, data systems, management and audit, security and safety, and library services. These functions, as applicable, are also performed on behalf of the Board and its Members.

Description of Field Organization

Sec. 203 *Regional offices.* There are 33 regional offices through which the Board conducts its business. Certain of the regions have subregional offices or resident offices in addition to the central regional office. The areas constituting the regions and the location of the regional, subregional, and resident offices are set forth in an appendix hereto. Each regional office staff is headed by a Regional Director appointed by the Board on the recommendation of the General Counsel and includes a Regional Attorney, Assistant to the Regional Director, field attorneys, field examiners, and clerical staff. Each subregional office is headed by an Officer-in-Charge appointed in the same manner as the Regional Directors. Each resident office is headed by a Resident Officer.

Sec. 203.1 *Regional Directors.* Under the general supervision of the Office of the General Counsel, the Regional Directors supervise a staff of attorneys and field examiners in the processing of representation, unfair labor practice, and jurisdictional dispute cases. The Regional Directors are empowered to issue notices of hearing in representation cases; issue complaints in unfair labor practice cases; conduct elections pursuant to agreement of the parties or direct elections pursuant to the decision making authority delegated by the Board to them under section 3(b) of the Act, and issue certification of representatives or certify the results of elections where appropriate; conduct employee referenda under section 209(b) and 203(c) of the Labor Management Relations Act; obtain settlement of unfair labor practice charges; obtain compliance with administrative law judge, Board, and court decisions; investigate and report on, or decide, objections to elections and challenges to determinative ballots; and otherwise act in behalf of the General Counsel in the discharge of the statutory and delegated functions of that office.

In addition, Regional Directors may initiate and prosecute in the district courts injunctions under section 10(1) of the Act. They also have authority to process petitions for unit clarification, for amendment of certification, and for rescission of a labor organization's authority to make an agreement pursuant to the proviso of section 8(a)(3).

Regional Directors are also responsible for the administrative management of their offices and of any subregional and resident offices in their regions and make initial determinations of FOIA requests for materials in their custody.

Sec. 203.2 *Regional Attorneys.* The Regional Attorneys are the principal legal advisers to the Regional Directors and, as the chief legal officers in the regions, exercise supervisory authority over office attorneys and field examiners in various aspects of their work. They may exercise any authority given attorneys and field examiners in the region.

Sec. 203.3 *Assistants to the Regional Directors.* The Assistants to the Regional Directors are responsible for overall supervision and coordination of investigations and compliance, exercise supervisory authority over office attorneys and field examiners in various aspects of their work, and provide assistance to the Regional Director with respect to various administrative functions.

Sec. 203.4 *Field attorneys.* The field attorneys are charged in general with the duty of performing all necessary legal services for the Regional Directors in the regions. They are directly responsible to the Regional Attorneys, and through them to the Regional Directors, for performance of these services. Under the direction of the Regional Attorneys, they:

(a) Investigate petitions concerning the representation of employees (including the taking of secret ballots of employees), in accordance with section 9(c) of the National Labor Relations Act;

(b) Conduct hearings in proceedings under section 9 of the National Labor Relations Act and section 7(b) of the Fair Labor Standards Act;

(c) Investigate charges of unfair labor practices under section 8 of the Act;

(d) Appear and participate as counsel in Board hearings and, when designated, in other Board litigation and proceedings;

(e) Prosecute any inquiry necessary to the functions of the General Counsel, have access to and the right to copy evidence, administer oaths and affirmations, examine witnesses, and receive evidence;

(f) Perform all necessary acts required of them in connection with the foregoing and the published rules and regulations of the Board.

Sec. 203.5 *Field examiners.* The field examiners in the regional offices are directly responsible to the Regional directors and work under their direction. Essentially, they:

(a) Investigate petitions concerning the representation of employees, in accordance with section 9 of the national Labor Relations Act, and conduct secret ballot elections where such procedure is required under the Act;

(b) Investigate charges of unfair labor practices under section 8 of the Act, have access to and the right to copy evidence, administer oaths and affirmations, examine witnesses, and receive evidence;

(c) Conduct hearings in proceedings under section 9 of the national Labor Relations Act and section 7(b) of the Fair Labor Standards Act;

(d) Perform all necessary acts required of them, in connection with the foregoing and the published rules and regulations of the Board.

Sec. 203.6 *Officers-in-Charge and Resident Officers.* The Officer-in-charge of a subregional office or the Resident Office of a resident office is directly responsible to the Regional director and, under their direction, supervises the processing of cases arising within the geographical area of the office. Under special delegation from the General Counsel, an Officer-in-Charge may be authorized to exercise the functions of the Regional director, subject to statutory limitations.

Effective date. This amended Description of organization shall be effective as of June 14, 1979.

Appendix—Regional and Subregional Offices

Alphabetical list of States showing location in relation to regions and subregions. (Note that respective region number follows subregion number to facilitate locating areas services.)

	Region and Subregion Nos.
Alabama	10,15
Alaska	19
Arizona	28
Arkansas	26
California	20, 21, 31, 32
Colorado	27
Connecticut	1, 2
Delaware	4, 5
District of Columbia	5
Florida	12, 15
Georgia	10
Hawaii	S-37 (20)
Idaho	19
Illinois	13, 14, 33
Indiana	9, 13, 25
Iowa	16, 33
Kansas	17
Kentucky	9, 25
Louisiana	15
Maine	1
Maryland	5
Massachusetts	1
Michigan	7, 30
Minnesota	18
Mississippi	15, 26
Missouri	14, 17
Montana	19
Nebraska	17
Nevada	31,32
New Hampshire	1
New Jersey	4, 22
New Mexico	26
New York	2, 3, 29
North Carolina	11
North Dakota	18
Ohio	8, 9
Oklahoma	16
Oregon	S-36 (19)
Pennsylvania	4, 6
Rhode Island	1
South Carolina	11
South Dakota	18
Tennessee	5, 10, 26
Texas	16, 23, 26
Utah	27
Vermont	1
Virginia	5
Washington	19, S-36 (19)
West Virginia	5, 6, 9
Wisconsin	18, 30
Wyoming	27
Puerto Rico	24
U.S. Virgin Islands	24

Areas Served by Regional and Subregional Offices*

(Listed in numerical order except that subregions appear directly under respective regions.)

Region 1. **Boston, Massachusetts. Services Maine, New Hampshire, Vermont, Massachusetts, and Rhode Island, and all Connecticut counties except Fairfield.**

Region 2. **New York, New York. Services Fairfield County in Connecticut and Bronx, New York, Orange, Putnam, Rockland, and Westchester Counties in New York.**

Region 3. **Buffalo, New York. Services all New York State Counties except the metropolitan area counties serviced by Regions 2 and 29.**

Persons may also obtain service at the resident office located in Albany, New York.

Region 4. Philadelphia, Pennsylvania. In Pennsylvania, services Adams, Berks, Bradford, Bucks, Carbon, Chester, Columbia, Cumberland, Dauphin, Delaware, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Monroe, Montgomery, Montour, Northampton, Northumberland, Perry, Philadelphia, Pike, Schuylskill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, and York Counties; in New Jersey, services Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem Counties; and in Delaware, services New Castle County.

Region 5. Baltimore, Maryland. Services Maryland and Virginia; the District of Columbia; Kent and Sussex Counties in Delaware; the city of Bristol in Sullivan County, Tenn; and, in West Virginia, Berkley, Grant, Hampshire, Hardy, Jefferson, Mineral, Morgan, and Pendleton Counties.

Persons may also obtain service at the resident office located in Washington, D.C.

Region 6. Pittsburgh, Pennsylvania. In Pennsylvania, services Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Cameron, Centre, Clarion, Clearfield, Clinton, Crawford, Elk, Erie, Fayette, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Lawrence, McKean, Mercer, Mifflin, Potter, Somerset, Venango, Warren, Washington, and Westmoreland Counties; in West Virginia, Barbour, Brooke, Doddridge, Hancock, Harrison, Lewis, Marion, Marshall, Monongalia, Ohio, Pocahontas, Preston, Randolph, Taylor, Tucker, Upshur, Webster, and Wetzel Counties.

Region 7. Detroit, Michigan. In Michigan, services Alcona, Allegan, Alpena, Antrim, Arenac, Barry, Bay, Benzie, Berrien, Branch, Calhoun, Cass, Charlevoix, Cheboygan, Clare, Clinton, Crawford, Eaton, Emmet, Genesee, Gladwin, Grand Traverse, Gratiot, Hillsdale, Huron, Ingham, Ionia, Iosco, Isabella, Jackson, Kalamazoo, Kalkaska, Kent, Lake, Lapeer, Leelanau, Lenawee, Livingston, Macomb, Mainistee, Mason, Mecosta, Midland, Missaukee, Monroe, Montcalm, Montmorency, Muskegon, Newaygo, Oakland, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Ottawa, Presque Isle, Roscommon, Saginaw, St. Clair, St. Joseph, Sanilac, Shiawassee, Tuscola, Van Buren, Washtenaw, Wayne, and Wexford Countries.

Region 8. Cleveland, Ohio. In Ohio, services Allen, Ashland, Ashtabula, Auglaize, Belmont, Carroll, Champaign, Columbiana, Coshocton, Crawford, Cuyahoga, Darke, Defiance, Delaware, Erie, Fulton, Geauga, Guernsey, Hancock, Hardin, Harrison, Henry, Holmes, Huron, Jefferson, Knox, Lake, Licking, Logan, Lorain, Lucas, Mahoning, Marion, Medina, Mercer, Miami, Morrow, Muskingum, Ottawa, Paulding, Portage, Putnam, Richland, Sandusky, Seneca, Shelby, Stark, Summit, Trumbull, Tuscarawas, Union, Van Wert, Wayne, Williams, Wood, and Wyandot Counties.

Region 9. Cincinnati, Ohio. In Ohio, services Adams, Athens, Brown, Butler, Clark, Clermont, Clinton, Fairfield, Fayette, Franklin, Gallia, Greene, Hamilton, Highland, Hocking, Jackson, Lawrence, Madison, Meigs, Monroe, Montgomery, Morgan, Noble, Perry, Pickaway, Pike, Preble, Ross, Scioto, Vinton, Warren, and Washington Counties; services all counties in Kentucky except Daviess and Henderson; in Indiana, services Clark, Dearborn, and Floyd Counties; and in West Virginia, services Boone, Braxton, Cabell, Calhoun, Clay, Fayette, Gilmer, Greenbrier, Jackson, Kanawha, Lincoln, Logan, McDowell, Mason, Mercer, Mingo, Monroe, Nicholas, Pleasants, Putnam, Raleigh, Ritchie, Roane, Summers, Tyler, Wayne, Wirt, Wood, and Wyoming Counties.

Region 10. Atlanta, Georgia. Services Georgia; in Tennessee, services Anderson, Bledsow, Blount, Bradley, Campbell, Carter, Clairborne, Clay, Cocke, Cumberland, Fentress, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Jackson, Jefferson, Johnson, Knox, Loudon, McMinn, Marion, Meigs, Monroe, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, Van Buren, Warren, Washington, and White Counties; in Alabama, services Autauga, Bibb, Blount, Calhoun, Chambers, Cherokee, Chilton, Clay, Cleburne, Colbert, Coosa, Cullman, DeKalb, Elmore, Etowah, Fayette, Franklin, Greene, Hale, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Lee, Limestone, Madison, Marion, Marshall, Morgan, Perry, Pickens, Randolph, St. Clair, Shelby, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, and Winston Counties.

Persons may also obtain service at the resident office in Birmingham, Alabama.

Region 11. Winston-Salem, North Carolina. Services North Carolina and South Carolina.

Region 12. Tampa, Florida. In Florida, services Alachua, Baker, Bradford, Brevard, Broward, Charlotte, Citrus, Clay, Collier, Columbia, Dade, DeSoto, Dixie, Duval, Flagler, Gadsden, Gilchrist, Glades, Hamilton, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Jefferson, Lafayette, Lake, Lee, Leon, Levy, Madison, Manatee, Marion, Martin, Monroe, Nassau, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinella, Polk, Putnam, St. Johns, St. Lucie, Sarasota, Seminole, Sumter, Suwanee, Taylor, Union, Volusia, and Wakulla Counties.

Persons may also obtain service at the resident offices in Coral Gables and Jacksonville, Florida.

Region 13. Chicago, Illinois. Services Cook, DuPage, Kane, Lake and Will Counties in Illinois, and Lake County in Indiana.

Region 14. St. Louis, Missouri. In Illinois, services Adams, Alexander, Bond, Brown, Calhoun, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, Edgar, Edwards, Effingham, Fayette, Franklin, Gallatin, Greene, Hamilton, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Macoupin, Madison, Marion, Massac, Monroe, Montgomery, Perry, Pike, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Scott, Shelby, Union, Wabash, Washington, Wayne, White, and Williamson counties; and in Missouri, services Audrain, Bollinger, Butler, Callaway, Cape Girardeau, Carter, Clark, Crawford, Dent, Dunklin, Franklin, Gasconade, Independent City of St. Louis, Iron, Jefferson, Knox, Lewis, Lincoln, Madison, Maries, Marion, Mississippi,

*Addresses and telephone numbers of the field offices can be found on pp. 329–332.

Monroe, Montgomery, New Madrid, Oregon, Osage, Pemiscot, Perry, Phelps, Pike, Ralls, Reynolds, Ripley, St. Charles, St. Francois, St. Louis, St. Genevieve, Scotland, Scott, Shannon, Shelby, Stoddard, Warren, Washington, and Wayne Counties.

Region 15. New Orleans, Louisiana. Services Louisiana; in Mississippi, services Adams, Amite, Claiborne, Clarke, Copiah, Covington, Forrest, Franklin, George, Greene, Hancock, Harrison, Hinds, Issaquena, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lamar, Lauderdale, Lawrence, Leake, Lincoln, Madison, Marion, Neshoba, Newton, Pearl River, Perry, Pike, Rankin, Scott, Sharkey, Simpson, Smith, Stone, Walthall, Warren, Wayne, Wilkinson, and Yazoo Counties; in Alabama, services Baldwin, Barbour, Bullock, Butler, Choctaw, Clarke, Coffee, Conecuh, Covington, Crenshaw, Dale, Dallas, Escambia, Geneva, Henry, Houston, Lowndes, Macon, Marengo, Mobile, Monroe, Montgomery, Pike, Russell, Washington, and Wilcox Counties; in the State of Florida, the counties of Bay, Calhoun, Excambia, Franklin, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, and Washington.

Region 16. Forth Worth, Texas. Services Oklahoma and the following counties in Texas: Anderson, Andrews, Angelina, Archer, Armstrong, Bailey, Baylor, Bell, Bordon, Bosque, Bowie, Brewster, Briscoe, Brown, Burnet, Callahan, Camp, Carson, Cass, Castro, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, Dickens, Donley, Eastland, Ector, Ellis, Erath, Falls, Fannin, Fisher, Floyd, Foard, Franklin, Freestone, Gaines, Garza, Glasscock, Gray, Grayson, Gregg, Hale, Hall, Hamilton, Hansford, Hardeman, Harrison, Hartley, Haskell, Hemphill, Henderson, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hunt, Hutchinson, Irion, Jack, Jeff Davis, Johnson, Jones, Kaufman, Kent, Kimple, King, Knox, Lamara Lamb, Lampasas, Leon, Limestone, Lipscomb, Llano, Loving, Lubbock, Lynn, Madison, Marion, Martin, Mason, McCulloch, McLennan, Menard, Midland, Milam, Mills, Mitchell, Montague, Moore, Morris, Motley, Nacogdoches, Navarro, Nolan, Ochiltree, Oldham, Palo Pinto, Panola, Parker, Parmer, Pecos, Potter, Presidio, Rains, Randall, Reagan, Red River, Reeves, Roberts, Robertson, Rockwall, Runnels, Rusk, Sabine, San Augustine, San Saba, Schleicher, Scurry, Schackelford, Shelby, Sherman, Smith, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Terry, Throckmortion, Titus, Tom Green, Trinity, Upshur, Upton, Van Zandt, Ward, Wheeler, Witchita, Wilbarger, Williamson, Winkler, Wise, Wood, Yoakum, and Young.

Persons may also obtain service at the resident office located in Tulsa, Oklahoma.

Region 17. Kansas City, Kansas. Services Nebraska and Kansas and the following counties in Missouri: Adair, Andrew, Atchison, Barry, Barton, Bates, Benton, Boone, Buchanan, Caldwell, Camden, Carroll, Cass, Cedar, Charlton, Christian, Clay, Clinton, Cole, Cooper, Dade, Dallas, Daviess, De Kalb, Douglas, Gentry, Greene, Grundy, Harrison, Henry, Hickory, Holt, Howard, Howell, Jackson, Jasper, Johnson, Laclede, Lafayette, Lawrence, Linn, Livingstone, McDonald, Macon, Mercer, Miller, Moniteau, Morgan, Newton, Nodaway, Ozark, Pettis, Platte, Polk, Pulaski, Putnam, Randolph, Ray, St. Clair, Slaine, Schuyler, Stone, Sullivan, Taney, Texas, Vernon, Webster, Worth, and Wright.

Region 18. Minneapolis, Minnesota. Services North Dakota, South Dakota, and Minnesota and the following counties in Iowa: Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Black Hawk, Boone, Bremer, Buchanan, Buena Vista Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clay, Clayton, Crawford, Dallas, Davis, Decatur, Delaware, Dickinson, Emmett, Fayette, Floyd, Franklin, Fremont, Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Ida, Iowa, Jasper, Jefferson, Johnson, Jones, Keokuk, Kossuth, Linn, Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Mills, Mitchell, Monona, Monroe, Montgomery, O'Brien, Osceola, Page, Palo Alton, Plymouth, Pocahontas, Polk, Pottawattamie, Poweshiek, Ringgold, Sac, Shelby, Sioux, Story, Tama, Taylor, Union, Van Buren, Wapello, Warren, Washington, Wayne, Webster, Winnebago, Winneshiek, Woodbury, Worth, and Wright; and the following counties in the State of Wisconsin: Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Douglas, Dunn, Eau Claire, Iron, Jackson, Pepin, Pierce, Polk, Price, Rusk, St. Croix, Sawyer, Taylor, Trempealeau, and Washburn.

Region 19. Seattle, Washington. Services Alaska, Montana, Idaho, and all counties in Washington except Clark.

Subregion 36. Portland, Oregon. Services Oregon and Clark County in Washington.

Persons may also obtain service at the resident office located in Anchorage, Alaska.

Region 20. San Francisco, California. Services the following counties in California: Butte, Colusa, Del Norte, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Francisco, San Mateo, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba.

Subregion 37. Honolulu, Hawaii. Services Hawaii.

Region 21. Los Angeles, California. Services the following counties in California: Imperial, Orange, Riverside, and San Diego, and that portion of Los Angeles County lying east of Harbor Freeway and south of Pasadena Freeway (Arroyo Boulevard, U.S. Highway 66).

Persons may also obtain service at the resident office located in San Diego, California.

Region 22. Newark, New Jersey. In New Jersey, services Bergen, Essex, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex, Union, and Warren Counties.

Region 23. Houston, Texas. In Texas, services Aransas, Atascosa, Austin, Bandera, Bastrop, Bee, Bexar, Blanco, Brazoria, Brazos, Brooks, Burleson, Caldwell, Calhoun, Cameron, Chambers, Coloredo, Comal, De Witt, Dimmit, Duval, Edwards, Fayette, Fort Bend, Frio, Galveston, Gillespie, Goliad, Gonzales, Grimes, Guadalupe, Hardin, Harris, Hays, Hidalgo, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Karnes, Kendall, Kenedy, Kerr, Kinney, Kleberg, La Salle, Lavaca, Lee, Liberty, Live Oak, McMullen, Matagorda, Maverick, Medina, Montgomery, Newton, Nueces, Orange, Polk, Real, Refugio, San Jacinto, San Patricio, Starr, Travis, Tyler, Uvalde, Val Verde, Victoria, Walker, Waller, Washington, Webb, Wharton, Willacy, Wilson, Zapata, and Zavala Counties.

Persons may also obtain service at the resident office located in San Antonio, Texas.

Region 24. Hato Rey, Puerto Rico. Services Puerto Rico and the U.S. Virgin Islands.

Region 25. Indianapolis, Indiana. Services Indiana, with the exception of Lake, Clark, Dearborn, and Floyd Counties, and Daviess and Henderson Counties in Kentucky.

Region 26. Memphis, Tennessee. Services Arkansas and the following counties in Tennessee: Bedford, Benton, Cannon, Carroll, Cheathamm, Chester, Coffee, Crockett, Davidson, Decatur, De Kalab, Dickson, Dyer, Fayette, Franklin, Gibson, Giles, Hardeman, Hardin, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Lake, Lauderdale, Lawrence, Lewis, Lincoln, McNairy, Macon, Madison, Marshall, Maury, Montgomery, Moore, Obion, Perry, Robertson, Rutherford, Shelby, Smith, Stewart, Sumner, Tipton, Trousdale, Wayne, Weakley, Williamson, and Wilson; also services the following counties in Mississippi: Alcorn, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Clay, Coahoma, De Soto, Grenada, Holmes, Humphreys, Itawamba, Lafayette, Lee, Leflore, Lowndes, Marshall, Monroe, Montgomery, Noxubee, Oktibbeha, Panola, Pontotoc, Prentiss, Quitman, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Washington, Webster, Winston, and Yalobusha.

Persons may also obtain service at the resident offices in Little Rock, Arkansas, and in Nashville, Tennessee.

Region 27. Denver, Colorado. Services Wyoming, Colorado, and Utah.

Region 28. Phoenix, Arizona. Services Arizona and New Mexico, and Culberson, El Paso, and Hudspeth Counties in Texas.

Persons may also obtain service at the resident offices in Albuquerque, New Mexico, and El Paso, Texas.

Region 29. Brooklyn, New York. In New York, services Kings, Nassau, Queens, Richmond, and Suffolk Counties.

Region 30. Milwaukee, Wisconsin. In Wisconsin, services the following counties: Adams, Brown, Calumet, Columbia, Crawford, Dane, Dodge, Door, Florence, Fond du Lac, Forest, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, Kewaunee, La Crosse, Lafayette, Langlade, Lincoln, Manitowoc, Marathon, Marinette, Marquette, Menominee, Milwaukee, Monroe, Oconto, Oneida, Outagamie, Ozaukee, Portage, Racine, Richland, Rock, Sauk, Shawano, Sheboygan, Vernon, Vilas, Walworth,

Washington, Waukesha, Waupaca, Waushara, Winnebago, and Wood; in Michigan, services the following counties: Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon, and Schoolcraft.

Region 31. Los Angeles, California. Services the following counties in California: Inyo, Kern, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura; that portion of Los Angeles County lying west of Harbor Freeway and north of Pasadena Freeway (Arroyo Boulevard, U.S. Highway 66); in Nevada, services Nye, Lincoln and Clark Counties.

Persons may also obtain service at the resident office located in Las Vegas, Nevada.

Region 32. Oakland, California. Services the following counties in California: Alameda, Alpine, Amador, Calaveras, Contra Costa, El Dorado, Fresno, Kings, Madera, Mariposa, Merced, Mono, Monterey, San Benito, San Joaquin, Santa Clara, Santa Cruz, Stanislaus, Tulare, Tuolumne; and the following counties in Nevada: Churchill, Douglas, Elko, Esmeralda, Eureka, Humboldt, Lander, Lyon, Mineral, Ormsby, Pershing, Storey, Washoe, and White Pine.

Region 33. Peoria, Illinois. In Illinois, services Boone, Bureau, Carroll, Cass, Champaign, De Kalb, De Witt, Douglas, Ford, Fulton, Grundy, Hancock, Henderson, Henry, Iroquois, Jo Daviess, Kankakee, Kendall, Knox, La Salle, Lee, Livingston, Logan, Macon, Marshall, Mason, McDonough, McHenry, McLean, Menard, Mercer, Morgan, Moultrie, Ogle, Peoria, Piatt, Putnam, Rock Island, Sangamon, Schuyler, Stark, Stephenson, Tazewell, Vermillion, Warren, Whiteside, Winnebago, and Woodford Counties; in Iowa, services Clinton, Des Moines, Dubuque, Jackson, Lee, Muscatine, Scott, and Louisa Counties.

Dated, Washington, D.C., June 7, 1979.

By direction of the Board.

George A. Lest,

Associate Executive Secretary, National Labor Relations Board.

[FR Doc. 79-18277 Filed 6-13-79; 8:45 am]

BILLING CODE 7545-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-335]

Florida Power & Light Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 32 to Facility Operating License No. DPR-67 issued to Florida Power & Light Company (the licensee), which revised the license and its appended Technical Specifications for operation of St. Lucie Plant, Unit No. 1 (the facility), located in St. Lucie County, Florida. The amendment is effective as of its date of issuance.

This amendment revises the Technical Specifications to incorporate changes resulting from Cycle 3 reload fuel, and deletes a license requirement for neutron shielding which has been satisfactorily completed.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

For further details with respect to this action, see (1) the applications for amendment dated November 9, 1978 and February 22, 1979, as supplemented April 30 and May 1, 10, 18, 22 and 23, 1979, (2) Amendment No. 32 to License No. DPR-67, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland this 27th day of May 1979.

For the Nuclear Regulatory Commission.

Robert W. Reid,

Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc. 79-18472 Filed 6-13-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

Jersey Central Power & Light Co.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 35 to Provisional Operating License No. DPR-16, issued to Jersey Central Power & Light Company (the licensee), which revised the Technical Specifications for operation of the Oyster Creek Nuclear Generating Station (the facility) located in Ocean County, New Jersey. The amendment is effective as of its date of issuance.

The amendment allows operation with one recirculation loop out of service using the more restrictive Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) limits (originally authorized by Amendment No. 30, dated March 14, 1978) with values extended to encompass higher exposure fuel. In separate actions relating to this facility, the Commission is: (1) Amending License No. DPR-16 to extend the applicability of the minimum water level safety limit to all modes of operation, and add a new safety limit in Section 2.1.F to require that two recirculation loops remain open during all modes of operation except with the reactor vessel head removed; and (2) Authorizing resumption of operation after a May 2, 1979, transient event involving license safety limits.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated May 24, 1979, and the licensee's submittals dated April 30, May 15 and 17, 1979, (2) Amendment No. 35 to License No. DPR-16, and (3) the Commission's related Safety Evaluation. All of these items and the Commission's separate actions described above are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Ocean County Library, Brick Township Branch, 401 Chambers Bridge Road, Brick Town, New Jersey 08723. A copy of items (2) and (3) in addition to the separate actions, may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission,

Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 30th day May, 1979.

For the Nuclear Regulatory Commission.

Dennis L. Ziemann,

Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 79-18073 Filed 6-13-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

Jersey Central Power & Light Co.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 36 to Provisional Operating License No. DPR-16, issued to Jersey Central Power & Light Company (the licensee), which revised the Technical Specifications for operation of the Oyster Creek Nuclear Generating Station (the facility) located in Ocean County, New Jersey. The amendment is effective as of its date of issuance.

The amendment modifies Section 2.1.D to extend the applicability of the minimum water level safety limit to all modes of operation, and add a new safety limit in Section 2.1.F to require that two recirculation loops remain open during all modes of operation except with the reactor vessel head removed. In separate actions relating to this facility, the Commission is: (1) Amending License No. DPR-16 to allow operation with the more restrictive Maximum Average Planar Linear Heat Generation Rate limits authorized by Amendment No. 30, dated March 14, 1978, extended to encompass higher exposure fuel in the reactor; and (2) Authorizing resumption of operation after a May 2, 1979, transient event involving license safety limits.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated May 10, 1979, (2) Amendment No. 36 to License No. DPR-16, and (3) the Commission's related Safety Evaluation. All of these items and the Commission's separate actions described above are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Ocean County Library, Brick Township Branch, 401 Chambers Bridge Road, Brick Town, New Jersey 08723. A copy of items (2) and (3) in addition to the separate actions may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 30th day of May 1979.

For the Nuclear Regulatory Commission.

Dennis L. Ziemann,

Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 79-18074, Filed 6-13-79; 8:45 am]

BILLING CODE 7590-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

[N-AR 79-24]

Accident Report, Safety Recommendations and Responses; Availability

Highway Accident Report

Overturn of Ross Ambulance Service Ambulance, State Route 116, Littleton, N.H., August 22, 1978 (NTSB-HAR-79-4).—The National Transportation Safety Board on June 8 released its formal report on the investigation of this accident. The accident occurred about 3:30 p.m. when an ambulance, transporting a cardiac patient to a hospital and traveling at a calculated speed of 90 to 95 mph, failed to negotiate a curve on Route 116 east of Littleton and rolled over. Two persons in the ambulance were killed and the driver was injured. The patient had died before the accident.

The Safety Board determined that the probable cause of this accident was loss of control of the ambulance, which had oversteer characteristics, by an unskilled driver at a high rate of speed. Contributing to the cause of the accident was the driver's lack of training in the operation of the ambulance at high speeds. The Board attributed the oversteer characteristic of the ambulance to a modification which had changed it from an all-purpose vehicle by a process which distributed a majority of an additional 1,530 pounds to the vehicle's rear axle.

During the investigation of this accident, the Safety Board last February 1 recommended that the National Highway Traffic Safety Administration require behind-the-wheel training in high-speed driving (H-79-1). NHTSA responded on April 2, stating that its emergency vehicle operator's course expressely omits training in high-speed driving techniques and that the agency must continue to emphasize "the importance of adhering to speed limits instead of tacitly approving disrespect for these laws by training the student to exceed them." (See 44 FR 24568, April 26, 1979.)

At the conclusion of the investigation, the Safety Board recommended that the National Committee on Uniform Traffic Laws and Ordinances, together with the American Bar Association, consider writing more specific criteria into the Uniform Vehicle Code provision for emergency vehicles exceeding posted speed limits. Included would be a medical determination of patient condition; operation of the vehicle by a certified ambulance driver; conditions of vehicle, traffic, roadway, and weather; and possible emergency speeds no more than 10 mph above posted limits. The Board also urged NHTSA and General Services Administration actions to improve emergency vehicle crashworthiness and retain original vehicle handling characteristics when modifications are made. (See 44 FR 30179, May 24, 1979, for recommendations H-79-27 through 30.)

Safety Recommendation Letters

Aviation

A-79-60.—During the last 5 years, the Safety Board issued seven safety recommendations (A-74-62 through 64 and A-77-5 through 8) to the Federal Aviation Administration regarding procedures involving the medical certification of airmen. These recommendations resulted from Board review of FAA medical records of airmen involved in aircraft accidents and the discovery of irregularities in those records. The Board has been concerned with the frequency of these irregularities; not only were they errors in the medical examination as performed by the Aviation Medical Examiner (AME) but also they were not detected by the reviewing authority, the Civil Aeromedical Institute.

During recent Safety Board investigations of both general aviation and air carrier accidents, the Board's review of the Airmen Medical Records revealed that discrepancies—demonstrating nonadherence to 14 CFR Part 67 and lack of quality control by AME's and by the Civil Aero-medical Institute—contine to persist despite revised computerized procedures. Because of the Board's concern regarding the continuing irregularities associated with airman medical certification, and because the Civil Aeromedical Institute's review of the medical certification process has not detected such irregularities, the Safety Board on June 5 recommended that the FAA:

Develop improved procedures to enhance the quality control function of the Civil Aeromedical Institute with respect to its capabilities for detecting physical disabilities in airmen and performance deficiencies of Aviation Medical Examiners. (Class II, Priority Action) (A–79–40)

A–79–42 and 43.—As the basis for issuing another recommendation letter to the FAA on June 8, the Safety Board cited three accidents, surrounded by different circumstances but all having one element in common with respect to air traffic control (ATC) operational control. The accidents cited were these:

On June 21, 1978, North Central Airlines Flight 57, a DC–9–30, and N51MW, a Cessna Citation, almost collided on runway 13 at LaGuardia Airport, Flushing, N.Y. North Central 57 was cleared by the tower ground controller to taxi on the runway and N51MW was cleared by the tower local controller for takeoff on the same runway.

On February 15, 1979, Delta Air Lines Flight 349, a Boeing 727–200, and Flying Tiger Lines Flight 74, a Boeing 747–100, almost collided on runway 9 right at O'Hare International Airport, Chicago, Ill. Delta 349 was cleared by the ground controller to cross the runway at the runway 14 right parallel taxiway intersection while Flying Tiger 74 was landing on runway 9 right after receiving a landing clearance from the local controller. Flying Tiger 74 was substantially damaged when the pilot veered off the runway.

On February 24, 1979, a Federal Express, Falcon Fan Jet and a Great Western Beechcraft Model 18 collided on runway 9 at Memphis International Airport, Memphis, Tenn. The Beechcraft had landed on runway 36R and the flight was cleared by the ground controller to taxi across runway 9. The Falcon Jet had been cleared to land on runway 9. The planes collided as the Beechcraft taxied across the runway. Both aircraft were damaged, but on one was injured.

In each case one airplane was controlled by the ground controller and the other airplane was controlled by the local controller. In two the these cases, the ground controller and local controller failed to effect the required coordination. In the third case no oral coordination was required; a local facility directive allowed the ground controller to clear aircraft across and active runway when the airport surface detection equipment and Brite radar displays were operating, and radar observations by the ground controller revealed that no traffic conflict existed. In all three of these mishaps, ATC had authorized the pilot to taxi on or across an active runway. In two of them, the reported visibility at the airport was more than adequate to enable the ground controller to maintain visual surveillance of his traffic, although hours of darkeness prevailed. In the other occurrence, reported visibility was ½ to 1 mile in daylight conditions.

Under the circumstances, each ground controller had the ability to maintain surveillance of those aircraft involved. However, inadequate visual serveillance of ground traffic movement appears to be a factor in two of the three mishaps.

Other findings of these investigations revealed that the pilots' visual surveillance while taxiing on the airport surfaces may have been lax. Like the controller, the pilot has responsibility to maintain visual surveillance outside the cockpit.

Although the Board is not able to identify specific changes in ATC procedures or equipment to resolve the problems evident in the Chicago and Memphis accidents, the seriousness and complexity of the problem warrant a safety study to examine all aspects of the runway incursion problem and to identify the corrective action needed. Accordingly, the Safety Board recommends that FAA:

Conduct a directed safety study, on a priority basis, to examine the runway incursion problem and to formulate recommended remedial action to reduce the likelihood of such hazardous conflicts. (A–79–42)

Alert all controller/pilot personnel that runway incursion mishaps represent a serious safety problem which requires their immediate attention. Special emphasis should be placed on the need for both groups to maintain greater visual surveillance in those taxi operations involving any runway crossing. (A–79–43)

Both recommendations are designated "Class II," priority action requested.

A–79–44.—The Safety Board has studied statistically its data files of 17,312 accidents which occurred from 1972 to 1976 and involved light, single-engine, fixed-wing aircraft (single-engine aircraft). As shown in the Board's soon-to-be released special study "Single-Engine, Fixed-Wing General Aviation Accidents, 1972–1976," single-engine aircraft accounted for approximately 72 percent of all general aviation flying hours from 1972 to 1976, about 81 percent of the accidents, 76 percent of the fatal accidents, and 69 percent of the fatalities. Clearly, single-engine aircraft accidents are the most significant segment of general aviation in terms of activity and loss.

Contingency table analyses were used to ascertain the role of the aircraft, the pilot, and the environment in single-engine aircraft accidents. All single-engine aircraft makes and models with more than 500 active aircraft in 1976 were included in the study, excluding those aircraft specifically designed and produced for aerial application flying. This resulted in the inclusion of 33 aircraft makes and models in the study.

Based on the results of this study, the Safety Board on June 5 recommended that FAA:

Generate, through a stratified sampling of general aviation pilots, the date, duration, aircraft make and model, the geographical location of the flight, and the flight time in IFR, high density altitude, and wind conditions, all on a per flight basis; the data collected should include the pilot's total time, time in each type aircraft flown, age, occupation, certificate, and medical waivers. (Class II, Priority Action) (A–79–44)

A–79–45 and 46.—On June 4 the Safety Board by recommendation letter confirmed and amplified the data given during a telephone recommendation on June 2 when the Board's Director, Bureau of Technology, contacted FAA's Associate Administrator for Aviation Standards. The Board recommended urgent actions regarding further inspection of DC–10 aircraft as a result of the then most recent findings of the Board's investigation of the American Airlines DC–10, N110AA, accident on May 25 at Chicago's O'Hare International Airport.

While complying with FAA's initial Airworthiness Directive requiring inspection of the engine pylon mounting structure of DC–10's, American found two of their aircraft, N106AA and N119AA, with damage to the pylon aft bulkhead (the structural element containing the spherical bearing which carries the aft attachment of the pylon to a mating clevis on the wing structure). This fitting provides the major reaction to vertical and side loads imposed on the pylon. The aft bulkhead fitting has a continuous flange on the forward side to which the main pylon structure is attached. The damage observed on both N106AA and N119AA was a crack in the center of the horizontal upper flange

directly beneath the attachment bearing. The crack on N106AA was reportedly 2 inches long and the crack on N119AA was reportedly 5 inches long. Investigation disclosed that apparently the crack in N106AA was caused by physical impact which likely occurred when the pylon was installed during previous maintenance. American had begun a program last fall to comply with Douglas Aircraft Co. Service Bulletins 54–48 and 54–50 when the aircraft were undergoing periodic checks at their maintenance facility in Tulsa, Okla. This maintenance was performed on N106AA on December 7, 1978, and on N119AA on March 19, 1979.

Compliance with these Service Bulletins requires that the pylon be lowered from the wing structure for installation of new bearings in the forward and aft bulkhead fittings. American Airline's procedures for removing and reinstalling the pylon consisted of lowering and raising the pylon with the engine still attached, by supporting the entire assembly by a forklift placed under the engine. Board personnal who observed this procedure noted that the forklift operator had limited control in the precise placement of the aft bulkhead fitting into the wing-mounted clevis during reinstallation of the pylon. Vertical misalignment of a fraction of an inch can result in the pylon aft bulkhead upper horizontal flange assembly striking the forward ear of the wing-mounted clevis, causing the flange to crack. The Board believes that this occurred on both N106AA and N119AA. The installation geometry of the pylon aft bulkhead and the lower wing structure is such that an inspector cannot observe the cracked area easily. Thus, any damage which has occurred as a result of the installation procedure is likely to be undetected.

While investigation of the accident involving N110AA is continuing, preliminary evidence indicates that the forward flange on the No. 1 pylon aft bulkhead fitting had failed completely. Metallurgical examination disclosed that there was a preexisting crack about 10 inches long in the same area where cracks were evident on the other two aircraft. N110AA had been subjected to the engine removal and reinstallation procedure on March 30 and had accrued 430 flight hours since that time.

Although the Douglas Service Bulletin specifies removal of the engine before removal and reinstallation of the pylon to wing attachment fittings, the Safety Board is aware that several operators are using the same procedure as American Airlines. The Safety Board is particularly concerned that other aircraft in the DC–10 fleet may have been damaged and that additional aircraft will be damaged as a result of actions which are presently being undertaken to correct deficiencies uncovered during the latest required inspections. The Safety Board, therefore, believes that urgent actions are required to prevent such damage from resulting in an accident and recommends that FAA:

Issue a telegraphic Airworthiness Directive to require an immediate inspection of all DC–10 aircraft in which an engine pylon assembly has been removed and reinstalled for damage to the wing-mounted pylon aft bulkhead, including its forward flange and the attaching spar web and fasteners. Require removal of any sealant which may hide a crack in the flange area and employ eddy-current or other approved techniques to ensure detection of such damage. (A–79–45)

Issue a Maintenance Alert Bulletin directing FAA Maintenance Inspectors to contact their assigned carriers and advise them to immediately discontinue the practice of lowering and raising the pylon with the engine still attached. Carriers should adhere to the procedure recommended by the Douglas Aircraft Company Service Bulletin which include removing the engine from the pylon before removing the pylon from the wing. (A–79–46)

Highway

H–79–33 through 35.—Three more "Class I, Urgent Action" recommendations were issued by the Safety Board last week—these, on June 7 after investigating a series of multiple-vehicle collisions which occurred on Interstate 75 near Charleston, Tenn., early last November. The collisions occurred under reduced visibility conditions primarily due to fog.

On November 5 at 8:45 a.m., the first of the series of collisions occurred. State police reported 61 vehicles were involved; three were tractor-semitrailer units. An estimated 15 other vehicles were involved but left the scene before being recorded by investigating personnel. That morning, the ambient temperature was 45° F, the air was calm, and it was clear and sunny. A local resident reported that the fog began to form at about 8 a.m. By 8:45 a.m. the fog had intensified and visibility was effectively reduced to zero. The fog covered a 2-mile section of I–75 immediately south of the Hiwassee River. Other sections of I–75 were clear and visibility was good.

Just before the first accident, a Tennessee Highway Patrol trooper was patrolling northbound on I–75 in the vicinity of milemarker 28. As the trooper entered the fog area, he heard the sounds of the first accident in the southbound lane. Crossing to the site of the collision, he heard sounds of other collisions occurring in both the northbound and southbound lanes. He immediately radioed for assistance and recommended closing I–75. He set flares and administered first aid. There were 16 accidents in all, 12 in the southbound lanes and 4 in the northbound lane. The first accident occurred at about 8:45 a.m. and the last at 9:30 a.m. I–75 was closed to southbound traffic at 9:15 and closed to northbound traffic sometime later. All traffic was detoured to State Route 11 which had clear visibility. When the fog cleared at 2:20 p.m., I–75 was reopened. No one was killed in this series of accidents, but 46 persons were injured.

On Sunday, April 15, 1979, at 7:45 a.m., another fog-related accident occurred at the same location. Eighteen vehicles were involved, four in the northbound lanes and 14 in the southbound lanes. Three persons were killed and 14 persons were injured. This accident is still being investigated.

I–75 in the area is a four-lane, divided, limited-access, asphalt-surfaced highway. Pavement markings were in good condition and roadway delineators were spaced at intervals of 200 feet on the right side of the road. The speed limit was posted at 55 mph with a minimum speed limit of 40 mph. Permanent fog warning signs were posted at milemarker 28 northbound and at milemarker 42 southbound. Both signs read "Extreme Dense Fog Area Next 5 Miles." At milemarker 29 northbound and 41 southbound additional warning signs were posted which read "Fog Area Next 4 Miles."

Four previous multiple-vehicle accidents in reduced visibility conditions have occurred at this location, two in 1974, one in 1976, and one in 1977. All four accidents happened between 7:20 a.m. and 11 a.m. on a Friday or Saturday.

In view of these findings, the Safety Board recommends that the Tennessee State Department of Safety:

Develop and implement a standing adverse weather and road condition plan that will include (1) a procedure for alerting public safety officials and the driving public of fog conditions through hazardous driving advisories on radio and television, (2) a procedure for the strategic and timely deployment of patrol units to affected areas, (3) criteria for the rapid closing of affected sections of highway and the rerouting of traffic, (4) mutual assistance compacts with local government entities for emergency aid, and (5) methods for the safe evacuation of vehicles trapped on affected sections of the highway. (H–79–33)

Determine the feasibility of installing an available fog detection and warning system at the Interstate 75 crossing of the Hiwassee River near Charleston, Tenn. (H–79–34)

Until such time as an automatic fog detection and warning device is installed, provide more frequent patrols on the affected section of Interstate 75 when fog is forecast so that the earliest practical warning may be available. (H–79–35)

Marine

M–69–56 through 58.—Last December 29 the outbound Liberian bulk carrier M/V WORLD NOBILITY and the inbound Liberian ore/bulk/oil carrier S/S PENNSYLVANIA GETTY collided at the mouth of the Chesapeake Bay about 15 nmi east of Norfolk, Va. The bow of the PENNSYLVANIA GETTY penetrated the No. 1 cargo hold on the forward port side of the WORLD NOBILITY. No deaths or injuries resulted from the accident; however, the vessels sustained an estimated $3 million damage.

Maneuvering a vessel in coastal waters requires the continuous collection, coordination, and evaluation of information. Vessel speed, course, position, and proximity to other vessels or obstructions are the critical information elements that a master must obtain to safely navigate his vessel. The Safety Board's analysis of this accident determined that although both vessels were adequately equipped to obtain the necessary information, neither vessel's navigation watch was sufficiently manned to fully use such data. This accident illustrates the need for mandatory regulations or standards that require specific manning levels for vessel navigation watches for various conditions regarding vessel location, traffic density, personnel qualifications, equipment limitations, and visibility. Accordingly, the Safety Board on June 8 recommended that the U.S. Coast Guard:

Develop navigation watchkeeping standards which quantify the minimum manning level needed for large oceangoing vessels to safely navigate within U.S. ports and their approaches, and amend the Navigation Safety Regulations (33 CFR Part 164) to incorporate these standards. (M–79–56)

Study the feasibility of relocating the Chesapeake Bay pilotage area so that vessels are not forced to transit areas of converging traffic without pilots on board. (M–79–57)

Reevaluate the proposed level of vessel traffic service in the Chesapeake Bay, and determine if an active, manned system is more appropriate because of the increased traffic density and the transit of vessels transporting liquefied natural gas and other hazardous cargoes. (M–79–58)

Each of the above recommendations is designated "Class II, Priority Action." The Safety Board's formal report on the investigation of this accident is now being processed for distribution and copies will be available in the near future.

Responses to Safety Recommendations

Aviation

A–72–171, 173, 174, 175, 176, 180, 181, and 186.—The Federal Aviation Administration on May 29 advised the Safety Board of actions taken with respect to these recommendations, issued in conjunction with the Board's 1972 special study, "Air Taxi Safety."

Recommendation A–72–171 asked FAA to expedite redrafting of 14 CFR Part 135 in its entirety, recognizing that commuter air carrier operators are separate entities from the smaller air taxi charter operators. FAA reports that Regulatory Review Program, "Air Taxi Operators and Commercial Operators," Amendments 121–147, 127–35 and Review of Part 135, effective December 1, 1978, issued last September 26 (copy attached to FAA's letter). FAA notes that the introductory material contained in pages 46742 through 46744 of this document explains rationale for regulatory actions affecting commuter air carrier operators and on-demand air taxi operators.

With reference to A–72–173, which recommended expediting proposed programs to assure the financial ability of each commuter air carrier and air taxi operator holding interline agreements to conduct safe operation, FAA says that proposed § 135.37, "Periodic Financial Status Review," was withdrawn since the more than 80 commenters on this proposal were almost unanimously opposed. FAA has general surveillance and investigative authority under the Federal Aviation Act and may secure access to any records (including financial records) of an operator when necessary to carry out its safety responsibilities. FAA determines that this specific rule is not required to insure safe air taxi and commuter operations.

Recommendation A–72–174 called for amendment to Part 135 to include qualification requirements applicable to the Director of Operations, Chief Pilot, Director of Maintenance, and Chief Inspector in all commuter air carrier operations. FAA notes that § 135.37 specifies the requirements for Director of Operations, Chief Pilot, and Director of Maintenance, and § 135.39 lists qualification requirements for management personnel. FAA does not believe that a requirement for Chief Inspector in all operations is necessary or would be productive because of the extreme variation in size and complexity of operations conducted under Part 135. As a basic requirement, Director of Maintenance assures a supervisory level of responsibility for maintenance. The FAA district office approves the maintenance system since they are familiar with the scope of the certificate holders' operations. Before approval, an evaluation is made to determine if safe operations can be conducted. FAA says that this system provides for necessary flexibility within each certificate holder's maintenance organization while assuring an equivalent level of safety.

Concerning A–72–175, calling for amendment of Part 135 to provide that a qualified individual be delegated by each commuter air carrier to act in the capacity of safety officer and to monitor all safety aspects of the overall flight and maintenance operations, FAA says that a separate position of safety officer was not proposed. FAA believes that the requirements for management personnel (§ 137.37), their qualifications, (§ 135.39), and their duties and responsibilities as specified in the manual required by § 135.23 preclude a specific requirement for a safety officer.

Recommendation A–72–176 asked FAA to amend Part 135 to require that the pilot-in-command in air taxi commuter air carrier operations hold a current airline transport pilot rating. FAA notes that § 135.243 specifies that no certificate holder may use a person, nor may any person serve, as pilot-in-command in passenger-carrying operations of a turbojet airplane having a passenger seating configuration, excluding any pilot seat, of 10 seats or more, or a multiengine airplane being operated by a commuter air carrier, unless that person holds an airline transport pilot certificate with appropriate category and class ratings and, if required, an appropriate type rating for that airplane.

Amendment of §§ 135.75 and 135.99 to clarify operating conditions and limitations for instrument flight rules (IFR) and visual flight rules (VFR) over-the-top carrying passengers was recommended by A–72–180. FAA says that § 135.181 contains performance requirements for aircraft operated over-the-top or in IFR conditions. FAA deleted § 135.75, Exception to second in command requirements: Limited IFR conditions; § 135.103, Exception to second in command requirements: IFR operations, is now applicable. FAA renumbered § 135.99, VFR over-the-top carrying passengers: operating limitations, as § 135.211. No change in content was made.

In answer to A–72–181, recommending amendment of § 135.143 to include a minimum equipment list to include procedures for continuing flight with inoperative equipment beyond terminal point, FAA states that § 135.179, Inoperable instruments and equipment for multiengine aircraft, contains the requirements for the use of an approved minimum equipment list.

Recommendation A–72–186 called for establishment of a standard program of utilizing manufacturers' recommended overhaul and inspection times on aircraft components, and powerplants and propellers. FAA states that Subpart J, Maintenance, Preventive Maintenance, and Alterations, provides for levels of inspection and maintenance requirements which consider aircraft complexity and seating capacity. Manufactuers' recommendations, as specifically applicable, are an integral part of this system.

Marine

M–78–63 through 68.—The U.S. Coast Guard on May 22 responded to recommendations issued last September 22 following investigation of the sinking of the M/V CHESTER A. POLING near Cape Ann, Mass., on January 10, 1977. (See 43 FR 47017, October 12, 1978.)

In response to M–78–63, which asked Coast Guard to require that a loading manual indicating proper cargo and ballast loading arrangements and procedures be prepared for each coastal tankship, Coast Guard agrees that loading information should be required on many coastal tankships, but not necessarily all vessels. The 1968 load line regulations required new ships engaged in both coastwise and international voyages to have loading information as a prerequisite to certification. The 1979 tankship regulations required all vessels 300 feet in length or longer, construction of which began after September 5, 1977, to have loading information. According to Coast Guard, some vessels under 300 feet and some existing vessels over 300 feet may require loading information. Tankships (excluding T–2 tankers) longer than 300 feet built before 1977 and holding domestic load line certificates have not been required to obtain loading manuals. Coast Guard will examine these vessels individually to determine the need for loading information.

Recommendation M–78–64 asked Coast Guard to study the feasibility of providing estimated hull stress information based on loading condition, sea state, and ship speed and relative heading in graphical form in coastal tankship loading manuals. Coast Guard notes that the feasibility of calculating hull stress with the mentioned parameters has been established, and indicates that the information cannot be reduced to a form suitable for inclusion in a loading manual. The problem is that loading methods deal with well defined measurable values while hull stress analysis deals with value ranges that are not readily measurable. Adding complexity to loading manuals will reduce their use and reliability. Also according to Coast Guard, due to the number and complexity of variables involved, meaningful hull stress information cannot be presented in a simplified loading manual. Coast Guard states, "Any addition to the current loading manual would not have prevented or mitigated the POLING casualty or one similar to it."

Concerning M–78–65, which recommended requiring that exposure suits be provided for each crewmember on vessels that routinely operate in areas of cold air or sea temperatures, Coast Guard reports publication of a notice of proposed rulemaking on June 8, 1978, dealing with exposure suits on Great Lakes vessels. Similar requirements are being contemplated for vessels in all services which routinely operate in areas of cold air and sea temperatures. The fractionalized approach is due to attempts by the Intergovenrmental Maritime Consultative Organization (IMCO) to adopt an international standard. Coast Guard is advancing many hypothermia protection concepts at IMCO. Totally enclosed lifeboats for all new ocean-going merchant vessels is one example. Coast Guard says it will develop unilateral requirements for U.S. vessels should IMCO fail to adopt the Coast Guard proposal.

Coast Guard concurs with recommendation M–78–66 which called for at least one inflatable liferaft to be stowed near each accomodation and working space on coastal tankships. Coast Guard reports that a regulatory project has been instituted to include coastal tankships under the existing regulations dealing with liferaft placement for widely separated accommodation and/or working spaces found in 46 CFR 33.05.

With reference to recommendation M–78–67, which asked Coast Guard to develop an effective method to insure that each merchant seaman is instructed and trained in the proper use of helicopter-borne rescue baskets, Coast Guard states that it has neither the funds, personnel, or authority to effectively train each merchant seaman. Coast Guard is accomplishing the following:

1. The new edition of "Manual for Lifeboatmen, Able Seamen, and Qualified Members of the Engine Department" will discuss helicopter evacuation and instructions on the use of rescue baskets. After publication in 1979, examination questions will be developed.
2. A standard hoist briefing message will be included in the Coast Guard addendum to the National SAR Manual.
3. Publish information on rescue equipment use in the Merchant Ship Search and Rescue Manual.
4. Publish information on use of rescue equipment in the AMVER Bulletin.
5. Review and suggest changes in the helicopter evacuation posters provided to the fishing fleet by the National Marine Fishers Service.
6. Initiate action to place a helicopter hoisting placard on the bridge of all inspected vessels 100 gross tons or over.

In answer to M–78–68, which recommended installation of a placard of simple user instructions suitable for emergency situations on each Coast Guard helicopter-borne rescue basket, Coast Guard reports development of a pictorial display for attachment to helicopter rescue baskets. Instruction will also be included in the Aviation Life Support Systems Manual.

M–79–51.—Letter dated May 9 from the International Association of Drilling Contractors informs the Safety Board that this recommendation has been forwarded to the Association's Offshore Committee for discussion at the Committee's next meeting, scheduled for mid-June. The recommendation asked the Association to recommend that its members use private meteorological services which provide the special information needed when engaged in weather-sensitive operations and was developed as a result of the sinking of the self-elevating mobile offshore drilling unit OCEAN EXPRESS in the Gulf of Mexico, April 14, 1978. (See 44 FR 24657, April 26, 1979.)

M–79–54.—Letter of May 24 from the Office of the Chief of Naval Operations, Department of the Navy, responds to a recommendation issued following investigation of the February 22, 1978, collision of U.S. Navy submarine tender L. Y. SPEAR and Liberian tanker ZEPHYROS in the lower Mississippi River. The recommendation asked the U.S. Navy to review and revise as necessary appropriate U.S. Navy directives and doctrine applicable to navigation on restricted waterways to ensure that Commanding Officers of vessels are provide adequate information and guidance regarding safe speeds and command relationships with

commerical pilots. (See 44 FR 27511, May 10, 1979.)

Navy notes that the Internation Regulations for Preventing Collisions at Sea, 1972, and, in the case, the Pilot Rules for Western Rivers, set forth explicit maneuvering rules for ships transiting the Mississippi River and that the situations described in this recommendation are adequately covered by these publications. Also, each Commanding Officer receives an extensive review of shiphandling techniques and Rules of the Road prior to assuming command. Navy notes that the accident was the result of a combination of factors including speed, large rudder angle orders, and effect of river current and states that the relationship of the Commanding Officer and the pilot is addressed in Navy Regulations, 1973, paragraph 0754, and is quite clear:

> A pilot is merely an advisor to the Commanding Officer. His presence onboard shall not relieve the Commanding Officer or any of his subordinates from their responsibility for the proper performance of the duties with which they may be charged concerning the navigation and handling of the ship.

Navy states, "The rules of safe navigation cannot overcome errors in shiphandling judgment. In this case, the relationship between the Commanding Officer and the pilot appeared to be less than optimal. It is doubtful that additional directives would have prevented this accident. Since there is longstanding guidance available which covers the safety recommendation in detail, additional action, other than that taken in the course of the U.S. Navy investigations, is not deemed necessary."

Railroad

R–78–54 through 56.—The Federal Railroad Administration on May 22 responded to the Safety Board's March 29 letter which provided comments on FRA's initial response of February 16 (44 FR 15818, March 15, 1979.) The recommendations resulted from investigation of the February 24, 1978, autotrain derailment on the Seaboard Coast Line Railroad track at Florence, S.C.

Recommendation R–78–56 asked FRA to revise 49 CFR 230.213, Axles, to establish specifications for manufacturing and testing locomotive axles to insure discovery of internal defects before being placed in service. Noting FRA's comments that the low failure rate of locomotive axles in 1977 suggests that present requirements of § 230.213 are adequate, the Safety Board pointed out that in 1978 FRA received seven reports of locomotive axle failure and in 1975 ten accidents were attributed to broken or bent axles; no differential is shown regarding car axles or locomotive axles. The Board said that these data aside, the laboratory analysis of the subject failed axle disclosed two types of voids and substandard conditions in yield strength and tempered steel. The Board believes that this analysis indicates that § 230.213 should be revised to establish minimum requirements of tensile strength and chemical elements, as well as stringent inspection and testing procedures to detect internal flaws.

In response to the Board's request for reconsideration of recommendation R–78–54, FRA notes that in 1977 there were approximately 160,000 axles in service and these account for only 1.2 percent (2 out of 163) of the accidents attributed to defective mechanical and electrical locomotive equipment. FRA says that because of the low failure frequency of the locomotive axles, no revision of § 230.213 is necessary to include a requirement for the manufacturing and testing procedures of axles. Further, FRA notes current industry requirements for locomotive axles are outlined in 23 pages of the industry manual covering the physical and chemical requirements and specific inspection procedures, including the use of both magna-glow and ultrasonic detection equipment when the axles are accepted.

With respect to R–78–55, which concerned testing of in-service locomotive axles, the Board feels that possibly the intent of this recommendation, as it applies to "in service," has been misunderstood. By "in-service" the Board refers to those occasions when axle assemblies are removed from the locomotive for such purposes as wheel turning and wheel or traction motor changeouts. It does not denote a condition of axle inspection wherein the assemblies are in place under the locomotive. The Board concurs with FRA's belief that ultrasonic testing is more reliable than magnetic particle testing. Thus, the Board perceives an irregularity in inspection requirements which mandate ultrasonic inspection of a newly manufactured axle, yet only require magnetic particle inspection of a reconditioned axle that has been exposed to stresses associated with heat, impact, and torque for thousands of miles.

In answer to the Board's comments, FRA notes that there are approximately 32,000 locomotives including MU equipment with 160,000 axles in service; an estimated one out of every four axles (40,000) is removed from service each year. FRA says that inspection of these axles, using specialized ultrasonic equipment requiring highly skilled professionals to interpret the results at the various repair facilities where work is perfomed, would be very burdensome; it takes a specialist in nondestructive testing to determine the presence of critical flaws in axles. Many axles have inclusions, most of which are not detrimental to the safe use of the axle, according to FRA. The costs per inspection would be about $50 per inspection for the 40,000 axles removed annually or $2 million. FRA believes that the expense for conducting such extensive tests in view of the extremely low failure rate appears to be unwarranted.

To clarify the intent of recommendation R–78–56, which concerned automatic detection of locomotive truck failure, the Board said it wanted to develop a method to reveal conditions such as a derailed wheel, excessive heat, or fractured components such as wheels, axles, hangers, or truck side frames while the train is en route. This recommendation stems from the fact that in the subject accident, the second locomotive unit was derailed for 17.5 miles without this condition being detected by train and engine crewmembers. FRA's response states that in view of the extremely low accident rate directly attributed to defective mechanical and electrical locomotive equipment, research and development of automatic devices for the detection of locomotive unit truck or component defects are not considered necessary.

R–78–58 and 59.—Letter of May 18 from the Secretary, U.S. Department of Transportation, responds to recommendations issued following investigation of the derailment of an Atlanta & Saint Andrews Bay Railway Company freight train at Youngstown, Fla., February 28, 1978. (See 43 FR 59557, December 21, 1978.)

In answer to recommendation R–78–58, which asked that DOT require that top and bottom shelf couplers be installed on all DOT 105 tank cars as soon as possible, the Secretary reports that FRA agrees that a retrofit program should be required so as to have appropriate Type-E top and bottom shelf couplers and Type-F top shelf couplers installed on all DOT Specification 105 tank cars at an early date. However, FRA feels that this requirement should be only part of a total effort that would result in DOT Specification 105 tank cars being equipped with steel jacket heads, and all new pressure tank cars having better structural strength.

increased puncture resistance and better thermal protection. A notice of proposed rulemaking is being developed covering these safety measures.

Recommendation R-78-59 asked DOT to expedite research to determine the safest position of hazardous materials tank cars and others in freight trains as contained in recommendation R-78-33 and promptly issue regulations for adequate braking and placement of such cars in freight trains. The Secretary reports that FRA is currently utilizing the Train Operations Simulator (TOS) model to analyze train makeup and train handling procedures. This mathematical computer model was initially developed by the Association of American Railroads under FRA sponsorship, and a copy was sent to the DOT Transportation Systems Center in Cambridge, Mass., to aid in the analysis of the placement and braking of cars and locomotive units in a train consist.

The Secretary further reports that in February 1979, FRA's Office of Safety compiled data on two train derailments involving hazardous materials tank cars. One incident involved the derailment of a Louisville and Nashville freight train at High Cliff, Tenn., December 13, 1978, when a tank car containing sulfuric acid derailed and leaked its contents. The other incident occurred at Pensacola, Fla., November 9, 1977, and involved the release of anydrous ammonia gas. Data on these two accidents was coded for input into the TOS, and the results are now being analyzed.

Additionally, the Secretary notes that the safe operation of a train is a conglomerate of different factors, e.g., the makeup of the train, track conditions, the curvature of the track, the ruling grade, train brake characteristics and other variables. "Scientific research is not sufficiently precise to translate railroad operational variables into quantitative methodology," the Secretary stated.

The Secretary also commented:

> It is conceivable that, through a process of shifting locomotive units and various car types in a train consist, repeated model, laboratory, and field testing could determine the optimal placement of hazardous materials cars for braking and overall train handling. However, such research would require extensive testing and commitment of funds and would take several years to complete. After completing this research and testing period, the FRA would have to develop a detailed cost-benefit analysis before it could promulgate new regulations for adequate braking and placement of hazardous materials cars in freight trains.

Consequently, FRA believes that it is not practicable or cost-effective to launch an expedited research program in this area. In these circumstances, FRA cannot promptly promulgate new regulations for adequate braking and placement of hazardous materials cars in freight trains.

Note.—Single copies of the Safety Board's accident reports are available without charge, as long as limited supplies last. Copies of the recommendations letter issued by the Board, response letters and related correspondence are also available free of charge. All requests for copies must be in writing, identified by report or recommendation number. Address inquiries to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

Multiple copies of accident reports may be purchased by mail from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22151.

(Secs. 304(a)(2) and 307 of the Independence Safety Board Act of 1974 (Pub. L. 93-633, 88 Stat. 2169, 2172 (49 U.S.C. 1903, 1906)))

Margaret L. Fisher,
Federal Register Liaison Officer.

June 11, 1979.

[FR Doc. 79-18580 Filed 6-13-79; 8:45 am]
BILLING CODE 4910-58-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Final Uniform Rules of Procedure for Boards of Contract Appeals Under the Contract Disputes Act of 1978

May 31, 1979.

AGENCY: Office of Federal Procurement Policy (OFPP), Office of Management and Budget.

ACTION: Notice of Final Uniform Rules of Procedure issued as guidelines for adoption by Boards of Contract Appeals.

SUMMARY: On November 1, 1978, the President signed into law Pub. L. 95-563, the Contracts Disputes Act of 1978. That Act, among other things, required the Office of Federal Procurement Policy to issue guidelines for the procedures of the agency Boards of Contract Appeals by March 1, 1979.

To achieve maximum uniformity for Government contract appeal practice, agency Boards of Contract Appeals are expected to adopt the Uniform Rules of Procedure except where minor variances are justified due to the individual Board's size or nature of its docket.

Proposed Uniform Rules of Procedure were published for comment in the January 25, 1979, Federal Register. Interim final Uniform Rules of Procedure, effective March 1, 1979, were published in the Federal Register of March 7, 1979, for additional comment. The additional comment period was considered necessary because of the significance of some of the changes made to then existing Rules. The interim final Rules were to become effective on June 1, 1979, unless changed.

This is to provide notice that the Uniform Rules of Procedure published March 7, 1979, together with the changes provided below, are now final guidelines for adoption by agency Boards of Contract Appeals.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Williamson, Associate Administrator for Acquisition Law (202) 395-3455.

James B. Cumis,
Acting Administrator.

Changes to Final Uniform Rules of Procedure

Rule 4 is changed to read as follows:

4. *Preparation, Content, Organization, Forwarding, and Status of Appeal File.* (a) Duties of Contracting Officer—Within 30 days of receipt of an appeal, or notice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board (through the) an appeal file consisting of all documents pertinent to the appeal, including:

(1) The decision from which the appeal is taken;

(2) The contract including specifications and pertinent amendments, plans, and drawings;

(3) All correspondence between the parties relevant to the appeal, including the letter or letters of claim in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered relevant to the appeal.

Within the same time above specified the ( ) shall furnish the appellant a copy of each document he transmits to the Board, except those in subparagraph (a)(2) above. As to the latter, a list furnished appellant indicating specific contractual documents transmitted will suffice.

(b) Duties of the Appellant—Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall transmit to the Board any documents not contained therein which he considers relevant to the appeal, and furnish two copies of

such documents to the government trial attorney.

(c) Organization of Appeal File—Documents in the appeal file may be originals or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(d) Lengthy Documents—Upon request by either party, the Board may waive the requirement to furnish to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when inclusion would be burdensome. At the time a party files with the Board a document as to which such a waiver has been granted he shall notify the other party that the document or a copy is available for inspection at the offices of the Board or of the party filing same.

(e) Status of Documents in Appeal File—Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision. However, a party may object, for reasons stated, to consideration of a particular document or documents reasonably in advance of hearing or, if there is no hearing, of settling the record. If such objection is made the Board shall remove the document or documents from the appeal file and permit the party offering the document to move its admission as evidence in accordance with Rules 13 and 20.

(f) Notwithstanding the foregoing the filing of the Rule 4 (a) and (b) documents may be dispensed with by the Board either upon request of the appellant in his notice of appeal or thereafter upon stipulation of the parties.

In Rule 12.1(c) change "20 days" to "60 days."

Change Rule 12.2(a) to read as follows:

"12.2(a) In cases proceeding under the SMALL CLAIMS (EXPEDITED) procedure, the following time periods shall apply: (1) Within ten days from the Government's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the SMALL CLAIMS (EXPEDITED) procedure, the Government shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any; remaining documents required under Rule 4 shall be submitted in accordance with times specified in that rule unless the Board otherwise directs;

(2) Within 15 days after the Board has acknowledged receipt of appellant's notice of election, the assigned administrative judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties: (i) Identify and simplify the issues; (ii) establish a simplified procedure appropriate to the particular appeal involved; (iii) determine whether the appellant wants a hearing, and if so, fix a time and place therefor; (iv) require the Government to furnish all the additional documents relevant to the appeal, and (v) establish an expedited schedule for resolution of the appeal."

Change Rule 12.3(a) to read as follows:

"12.3(a) In cases proceeding under the ACCELERATED procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. The Board, in its discretion, may shorten time periods prescribed elsewhere in these Rules, including Rule 4, as necessary to enable the Board to decide the appeal within 180 days after the Board has received the appellant's notice of election of the ACCELERATED procedure, and may reserve 30 days for preparation of the decision."

Change the first phrase of the first sentence of Rule 15 to read as follows:

"After an appeal has been docketed and complaint filed with the Board . . ."

Change the last sentence of Rule 15 to read as follows:

"Any discovery engaged in under this Rule shall be subject to the provisions of Rule 14(a) with respect to general policy and protective orders, and of Rule 33 with respect to sanctions."

Change Rule 21(f)(2) to read as follows:

A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

Insert the following in the second sentence of Rule 28 after the word "decision":

"(except those required for good cause to be held confidential and not cited as precedents)"

Change Rule 31 to read as follows:

"Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed or, in the case of a default by the Government, issue an order to show cause why the Board should not act thereon pursuant to Rule 33. If good cause is not shown, the Board may take appropriate action."

[FR Doc. 79-18817 Filed 6-13-79; 8:45 am]

BILLING CODE 3110-01-M

Contract Disputes; Final Uniform Rules of Procedure and Related Procurement Regulations; Final Approval of Text To Be Adopted; Proposed Text of Contract Disputes Clause

May 29, 1979.

AGENCY: Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Final text of uniform rules of procedure and related procurement regulations to be adopted; comments requested on text of contract disputes clause.

SUMMARY: On November 1, 1978, the President signed into law Public Law 95–563, the Contract Disputes Act of 1978. That Act, among other things, required certain changes to clauses and procurement regulations of the procuring agencies by March 1, 1979. To assure uniformity of language in the resulting changes, a suggested text of provisions to implement that Act was published at 44 FR 5219, January 25, 1979 for comment. After consideration of comments received and resulting changes to the suggested text, a set of interim final rules was published March 7, 1979. This set of interim final rules contains language to be used by the affected agencies when amending their regulations. This language was to become final June 1, 1979, unless changed before that time. This document gives notice that the interim final rule language is effective June 1, 1979, with the exception of the contract disputes clause which remains an interim clause. Comment is now invited on the new disputes clause set forth below.

DATES: Effective date of text which agencies are directed to adopt is June 1, 1979. Comments on the proposed

disputes clause should be received on or before August 1, 1979.

ADDRESS: Comments are to be submitted to the Office of Federal Procurement Policy, OMB, 726 Jackson Place, N.W., Room 9025, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas F. Williamson, Associate Administrator for Acquisition Law, (202) 395–3455.

James D. Currie,
Acting Administrator.

SUPPLEMENTARY INFORMATION: On November 1, 1978, the President signed into law Public Law 95–563, the Contract Disputes Act of 1978. That Act, among other things, required changes to clauses and procurement regulations of the procuring agencies by March 1, 1979. To assure uniformity of language in the resulting changes, a suggested text of proposed regulations and clause to be adopted by the affected agencies was published for comment January 25, 1979 (44 FR 5219). Suggested language of interim final regulations and clause, effective March 1, 1979, was published (for additional comments) March 7, 1979 (44 FR 12519). The language of the interim final regulations which the agencies are directed to adopt was to become final June 1, 1979, unless changed before that time. The language incorporated the changes required by Public Law 95–563 and reflect many of the comments received on the proposed text published January 25, 1979 (44 FR 5219).

This document provides notice that approval of the language which the agencies are directed to use in amending their regulations is effective as of June 1, 1979 except for the disputes clause which remains an interim clause.

Comment is now invited on a new Disputes Clause set forth below. The purposes of the changes reflected in the new Disputes Clause are to: (1) more clearly reflect the intent of the Contract Disputes Act with regard to the Payment of Interest, (2) change the time for certification of a claim exceeding $50,000, and (3) change the extent of a contractor's obligation to continue work pending resolution of a dispute arising in connection with a contract. The intent of the Disputes clause proposed here is to give the contractor the right to stop work under some circumstances pending resolution of a contract dispute.

It is proposed that the following text be used by the affected agencies in amending the Defense Acquisition Regulation and the Federal Procurement Regulations (32 CFR 7–103–12 and 41 CFR 1–7.102–12):

Proposed Disputes Clause

1. Section 7–103–12 of the Defense Acquisition Regulation and Section 1–7.102–12 of the Federal Procurement Regulations are amended to provide as follows:

The contracting officer shall insert the following clause in all contracts unless exempted by the head of the agency under 41 U.S.C. 603(c):

Disputes

(a) Failure of the parties after a reasonable time to reach an agreement on a request for the payment of money or adjustment of contract terms shall constitute a dispute that is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601, *et. seq.*). If a dispute arises relating to the contract, the contractor shall submit a claim in writing to the contracting Officer who shall issue a written decision on the dispute in the manner specified in DAR 1–314 (FPR 1–1318).

(b) In the case of claims for payment exceeding $50,000, or with any amendment causing the total request in dispute to exceed $50,000, the contractor shall certify, before settlement or decision of the contracting officer on the claim, as follows:

I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable.

(Contractor's Name)

(Title)

(c) The Government shall pay the contractor interect

(1) On the amount found due and unpaid on claims submitted under this clause;

(2) At the rates fixed by the Secretary of the Treasury, under the Renegotiation Act, Public Law 92–41;

(3) From the date the contracting officer receives the claim, until the Government makes payment.

(d) The decision of the Contracting Officer shall be final and conclusive and not subject to review by any forum, tribunal, or Government agency unless an appeal or action is timely commenced within the times specified by the Contract Disputes Act of 1978.

(e) The contractor shall comply with any decision of the contracting officer and proceed diligently with performace of this contract pending final resolution of any request for relief, claim, appeal, or action related to this contract, except where there has been a material breach of the contract by the Government; *provided,* however, that in any event the contractor shall proceed diligently with the performance of the contract where the head of the agency has made a written determination that continuation of work under the contract is essential to the National Defense or the Public Health and Safety.

[End of Clause]

[FR Doc. 79-18832 Filed 6-13-79; 8:45 am]
BILLING CODE 3110-01-M

PRESIDENT'S COMMISSION ON PENSION POLICY

Report of Staff Contacts

The President's Commission on Pension Policy has directed its staff to maintain and publish for the public a listing of contacts of a substantive nature made with individuals, organizations and groups interested in the activities of the Commission.

The following is the staff report of such contacts for the month of May.

Government Research Center-Municipal Finance Officers Association.
New York State University, Institute on Aging.
New York Bar Association.
City University of New York.
National Tax Association.
Andrus Gerontology Center, University of Southern California.
Stanford Research Institute.
Southwest Pension Conference.
Connecticut General.
Mathematica Policy Research, Inc.
Employee Benefit Research Institute.
Milwaukee County Board of Supervisors.
National Council of Senior Citizens.
Pennsylvania State Retirement System.
National Association of Counties.
Delwood Food, Inc.
National Governors' Association.
National Conference of State Legislatures.
Protect our Pensions Committee.
Edward H. Friend & Company Library.
Arthur Andersen Library.
Educational Conference of Health, Welfare & Pension Plans, Inc.
Institutional Investors.
ERISA Industry Committee.
Assocation of Private Pension & Welfare Plans.
Southern Pension Conference.
Interdepartmental Task Force on Women.
Randy Barber.
Harry Lamon.
Winklevoss Associates.
Staff of the United States Senate and the U.S. House of Representatives.
OMB and White House Staff.
Staff of the Social Security Administration.
Staff of the U.S. Department of Labor.

Signed at Washington, D.C. this 8th day of June 1979.

Thomas C. Woodruff,
Executive Director.

[FR Doc. 79-18825 Filed 6-13-79; 8:45 am]
BILLING CODE 6820-69-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1613, Amdt. No. 2]

Arkansas; Declaration of Disaster Loan Area

The above numbered Declaration (See 44 FR 23397) and Amendment #1 (See 44 FR 24967) are amended in accordance with the President's Declaration of April 11, 1979; to include Nevada and Jackson Counties in the State of Arkansas, and to make disaster relief loan assistance available as a result of severe storms and tornadoes beginning about April 8, 1979.

The Small Business Administration will accept applications for disaster relief loans from disaster victims in the above named counties and adjacent counties within the State of Arkansas. All other information remains the same; i.e., the termination date for filing applications for physical damage is close of business on June 11, 1979, and for economic injury until close of business January 11, 1980.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 30, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-18018 Filed 6-13-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1631, Amdt. No. 1]

Louisiana; Declaration of Disaster Loan Area

The above numbered Declaration (See 44 FR 27782) is a amended in accordance with the President's declaration of May 2, 1979, to include LaSalle, Pointe Coupee and St. Martin Parishes in the State of Louisiana. The Small Business Administration will accept applications for disaster relief loans from disaster victims in the above-named parishes and adjacent parishes within the State of Louisiana. All other information remains the same; i.e., the termination dates for filing applications for physical damage is close of business on July 2, 1979, and for economic injury until the close of business on February 4, 1980.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 11, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 18016 Filed 6-13-79; 8:45 am]

BILLING CODE 8025-01-M

Privacy Act of 1974; Proposed Revision to System of Records

AGENCY: Small Business Administration (SBA).

ACTION: Notice of Proposed Addition to System of Records.

SUMMARY: It is intended that the system of records entitled Automated Personnel History—SBA 030 (OMB System #32-45-0008) will be amended to include five additional items of information. These data apply only to temporary disaster employees. The intended result is increased efficiency of the Agency's ability to staff disaster offices.

DATES: Comments must be received on or before July 16, 1979.

FOR FURTHER INFORMATION, CONTACT: Charlene Alexander, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416 (202) 653-6608.

SUPPLEMENTARY INFORMATION: The new information to be collected includes: Disaster type and identification, disaster experience, performance rating and home telephone number.

This information will facilitate the hiring of the best possible people for working within the disaster program. The home phone number is needed to contact the individual when his/her services are desired.

This system of records was last published in its entirety on October 4, 1978 (43 FR 45968).

Accordingly, SBA proposes to amend SBA System of Records SBA 030, Automated Personnel History, September 23, 1977, 42 FR 48790, so that the paragraph describing the categories of records continued in the system will read as follows:

SBA 030

SYSTEM NAME:

Automated Personnel History

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Current status of all SBA employees including all data pertinent to that status. This system includes name, Social Security number, grade and salary title, organization, education, veterans preference, competitive level, date of birth, handicap code, health benefits, etc. For disaster employees, this system additionally includes disaster type and identification, disaster experience, performance rating, and home telephone number. This system includes all personnel actions affecting active SBA employees since May 1972, and also those of separated employees since that date.

* * * * *

Dated: June 6, 1979.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 79-18017 Filed 6-13-79; 8:45 am]

BILLING CODE 8025-01-M

[Proposed License No. 07/07-0081]

Siouxland Small Business Investment Co.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the regulations governing small business investment companies (13 CFR 107.102 (1979)), under the name of Siouxland Small Business Investment Company, 220 Badgerow Building, Sioux City, Iowa 51101, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act), and the Rules and Regulations promulgated thereunder.

The proposed officers and directors are as follows:

Harold W. McArthur, 206 Helen Street, Sioux City, Iowa 51106, Chairman of the Board, Director.

Francis J. Palmersheim, 227 Wedgewood Drive, So. Sioux City, Nebraska, 68776, President, Director.

Ken Jones, 301 Park, Yankton, South Dakota 57078, First Vice President, Director.

Morey J. Wheeler, 3716 Nebraska, Sioux City, Iowa 51105, Second Vice President, Director.

George T. Qualley, 220 Badgerow Bldg., Sioux City, Iowa 51105, Secretary, Director.

Don Wohlenberg, 1309 Oakwood Drive, Yankton, South Dakota 57078, Treasurer, Director.

Edward Bird, 413 E. 33rd Street, So. Sioux City, Nebraska 68776, Director.

Horst G. Blume, 809 Badgerow Bldg., Sioux City, Iowa 51101, Director.

Allen W. Bronson, 215 Lindewood, Sioux City, Iowa 51101, Director.

Charles D. Busskohl, 6905 Morningside, Sioux City, Iowa 51106, Director.

Densil M. Christiansen, 206 So. 5th Street, Pender, Nebraska 68047, Director.

James E. Dryden, 228 Broadmoor Drive, So. Sioux City, Nebraska, 68776, Director.

Leo R. Eriksen, 1203 First Avenue, So. Sioux City, Nebraska 68776, Director.

Edroy C. Flom, 2700 S. Martha, Sioux City, Iowa 51106, Director.

Derald Gellhaus, 502 James Place, Yankton, South Dakota 57078, Director.

Henry G. Heusinkveld, Boyden, Iowa 51234, Director.

Kelton Houts, 1729 S. Patterson, Sioux City, Iowa 51106, Director.

Jerod M. Knowles, 2510 "G" Street, So. Sioux City, Nebraska, 68776, Director.
Ronald D. Rapp, 2720 "G" Street, So. Sioux City, Nebraska 68776, Director.
Raymond F. Lynch, 312 Argonne, Sioux City, Iowa 51104, Director.
Ray V. Mitchell, 33 Ridgeview Road, Sioux City, Iowa 51104, Director.
Robert G. Prenger, 508 Covered Wagon Circle, So. Sioux City, Nebraska 68776, Director.
Leonard Stoller, Spirit Lake, Iowa 51360, Director.
Conrad D. VanZee, Rock Valley, Iowa 51247, Director.
Ione C. Vogel, 401 Catalina, Vermillion, South Dakota 57069, Director.

Each of the above individuals will own 4 percent of the Applicant's stock. There will be only one class of stock authorized; one million shares of common. Initially only $75,000 will be raised through the above shareholders. In addition it is anticipated that up to 20 organizer investors may purchase shares up to $5,000 per organizer, with a maximum of $100,000. The third stage of the capital acquisition program of the Applicant will be to offer 200,000 shares to the public, at $10 per share, with a maximum offering of $2.0 million. In addition, the offering would provide that in the event fewer than 40,000 shares were sold, for an aggregate investment by the public of $400,000, that the offering would be declared unsuccessful and that all funds would be returned to such investors, with interest. This offering will be registered with the Securities and Exchange Commission as a joint registration under the Securities Act of 1933 and the Investment Company Act of 1940.

Applicant proposes to conduct its operations principally in the states of Iowa, Nebraska and South Dakota in the area known as "Siouxland".

Applicant intends to follow a diversified investment policy.

Matters involved in SBA's consideration of the application include the general business reputation and character of shareholders and management, and the probability of successful operation of the new company in accordance with the Act and Regulations.

Notice is further given that any person may, not later than June 29, 1979, submit to SBA, in writing, comments on the proposed licensing of this company. Any such communications should be addressed to: Associate Administrator for Finance and Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published by the Applicant in a newspaper of general circulation in Sioux City, Iowa.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 8, 1979.

Peter F. McNeish,

Deputy Associate Administrator for Finance and Investment.

[FR Doc. 79-18813 Filed 6-13-79; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

Temporary Control of New York Harbor Vessel Traffic

Notice is hereby given concerning a change to the Captain of the Port, New York Order 1–79 issued effective 0001, 1 April 1979. That Order was published pursuant to the authority contained in Section 2 of the Port and Tanker Safety Act of 1978, (33 USC 1221, et seq.) and will remain in effect until the current strike which has curtailed New York Harbor tug boat operations is settled. Paragraph 2 of the section entitled "Directions Ordered" lists restrictions on controlled vessel movements on vessels operating within the Port of New York. The purpose of this change is to reduce the restrictions on vessels operating in the vicinity of Hell Gate.

In consideration of the foregoing, notice is given that paragraph 2 of the section of Captain of the Port, New York Order 1–79 entitled Directions Ordered is amended as follows:

Captain of the Port, New York, Order No. 1–79

1. By revising paragraph (2)(f)(iii), Directions Ordered, to read as follows:

Directions Ordered

2. The following restrictions on controlled vessel movements will apply to all vessels operating within the Port of New York upon implementation of this plan:

f. The Captain of the Port will permit vessel traffic within confined channels and basins only under favorable conditions of wind, visibility, vessel size and controllability, obstructions and other vessels, both moored and underway. In this regard:

(iii) No controlled vessel 400′ or greater, and/or with a draft of 27′ or greater may transit Hell Gate.

No controlled vessel less than 400′ and with draft less than 27′ may transit Hell Gate unless it transits within 30 minutes of slack water.

No barge greater than 300′ LOA may transit Hell Gate unless that barge has two tugs made up to it. In addition the barge must have a draft less than 27′. This transit must be conducted within 30 minutes of slack water. Empty tank barges may transit Hell Gate in any condition of tide and current provided the barge has the tug assistance required by this order.

Tank vessels that have discharged cargo at Bronx, NY terminals may be permitted to proceed in ballast through Hell Gate.

(Pub. L. 95–474 (33 USC 1223); 49 CFR 1.46(n)(4) (49 CFR 10063, 2/16/79); 33 CFR 160.35(b))

Dated: May 24, 1979.

James L. Fleishell,

Captain, U.S. Coast Guard, Captain of the Port, New York, N.Y.

[FR Doc. 18879 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

[Summary Notice No. PE–79–7B]

Petitions for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued: Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Correction.

SUMMARY: On May 31, 1979, the FAA published a notice summarizing petitions for exemption filed with the FAA (44 FR 31340). That notice incorrectly stated that Frontier Airlines, Inc. had petitioned for an exemption to operate B–737 aircraft with 115 passenger seats with 6 seats blocked. This notice corrects that error.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before: June 20, 1979.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–24), Petition Docket No. 18867, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–24), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426–3644.

SUPPLEMENTARY INFORMATION: Summary Notice No. PE–79–7 (44 FR 31340; May 31, 1979) inadvertently and incorrectly stated that Frontier Airlines, Inc. had petitioned for an exemption from 14 CFR 121.391 to permit operation of B–737 aircraft with 115 passenger seats using two flight attendants and blocking 6 seats in certain situations. The Frontier Airlines, Inc. petition was for operation of B–737 aircraft with 106 seats rather than 115.

The Correction

Accordingly, the Description of the Relief Sought in the Frontier Airlines, Inc. petition is hereby corrected to read: "To permit operation of B–737 aircraft with 106 passenger seats using two flight attendants and blocking 6 seats in certain situations."

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on June 8, 1979.

Carl B. Schellenberg,

Assistant Chief Counsel, Regulations and Enforcement Division.

[FR Doc. 79-18681 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE–79–8]

Petitions for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemptions received and of dispositions of petitions issued.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I) and of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Publication of this notice and any information it contains or omits is not intended to affect the legal status of any petition or its final dispositions.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: July 5, 1979.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–24), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–24), Room 916, FAA Headquarters Building (FOB 10A), 800 Indepdendence Avenue, SW., Washington, D.C. 20591; telephone (202) 426–3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on June 8, 1979.

Carl B. Schellenberg,

Assistant Chief Counsel, Regulations and Enforcement Division.

Petitions for Exemptions

Docket No.	Petitioner	Regulations affected	Description of relief sought
19239	Henson Aviation	14 CFR 121.503(d) and (e)	To allow their pilots to exceed the flight time limitations of 100 hours monthly and 1,000 hours annually.
19240	Rufus T. Rundlett	14 CFR 121.383(c)	To allow him to serve as pilot in command in air carrier operations after he has reached his 60th birthday.
19245	Newton L. Edwards	14 CFR 121.383(c)	To permit him to continue to serve as pilot in air carrier operations after reaching his 60th birthday on May 19, 1979.
19247	Air Indiana, Inc	14 CFR 12.437(a)	To permit the use of pilot Michael A. Chase as pilot in command of Air Indiana all-cargo aircraft without his holding an Airline Transport Pilot Certificate. Mr. Chase is presently 8 months from reaching the required age limit of 23.
19248	Trans World Airlines	14 CFR §§ 121.409(b)(2) and 121.441(a)(2)(i).	To permit pilot training in those maneuvers which best complement the TWA needs and satisfy the second-in-command pilot proficiency check each 24 calendar months.
19179	Air Line Pilots Assn.	14 CFR §§ 61.39(a)(1) and (b)	To permit Messrs. O. W. Porter, E. E. Harned, Jr., and H. S. Hart to take their flight test for an airline transport pilot certificate although there has been a time lapse of over 24 months since they have completed their written examinations. *Granted 6/1/79*
11144	American Airlines	14 CFR 121.99 and 121.351(a)	To extend the June 30, 1979, termination date of Exemption No. 1332, as amended, to permit continued operations over specified routes without maintaining two-way radio communications between each aircraft and the dispatch office along the routes. *Granted 6/4/79.*

[FR Doc. 79-18682 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

Materials Transportation Bureau

Grants and Denials of Applications for Exemptions

AGENCY: Materials Transportation Bureau, DOT.

ACTION: Notice of Grants and Denials of Applications for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted April 1979. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo-vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
		RENEWALS		
1662-X	DOT-E 1662	Greer Hydraulics, Inc., Los Angeles, Calif.	49 CFR 173.302(a)(1), 175.3	To ship a nonflammable gas in a hydraulic accumulator. (Modes 1, 2, 3, 4.)
2708-X	DOT-E 2708	Union Carbide Corp., Tarrytown, N.Y.; Gardner Cryogenics, Bethlehem, Pa.	49 CFR 173.315(a), 173.316	To ship a flammable liquefied compressed gas in a non-DOT specification cargo tank. (Mode 1.)
2767-X	DOT-E 2767	Raytheon Co., Andover, Mass.	49 CFR 173.302(a)(1), 175.3	To ship certain nonflammable compressed gas in a non-DOT specification pressure vessel. (Modes 1, 2, 3, 4.)
2767-P	DOT-E 2767	Mitsubishi International Corp., New York, N.Y.	49 CFR 173.302(a)(1), 175.3	To become a party to Exemption 2767. (See Application No. 2767-P). (Modes 1, 2, 3, 4.)
3548-X	DOT-E 3548	U.S. Department of Energy, Washington, D.C.	49 CFR 173.77, 173.85(a)	To ship certain Class A explosives in special composite bag/drum/wooden box packaging. (Modes 1, 2.)
4242-X	DOT-E 4242	U.S. Department of Defense, Washington, D.C.	49 CFR 173.87, 173.134	To ship certain pyrotoric mixture in a non-DOT specification aluminum pressure vessel. (Mode 1.)
4338-X	DOT-E 4338	Stauffer Chemical Co., Westport, Conn.	49 CFR 173.245a, 173.247	To ship corrosive liquids in DOT Specification 3AA2015 cylinders and DOT Specification 51 portable tanks. (Modes 1, 2, 3.)
4497-P	DOT-E 4497	Red Ball Supply Inc., Oklahoma City, Okla.	49 CFR 172.101, 173.315(a)	To become a party to Exemption 4497. (See Application No. 4497-P). (Mode 1.)
4945-X	DOT-E 4945	Gravner Limited, Slough, England	49 CFR 173.304	To ship a nonflammable, nonliquefied compressed gas in foreign-made non-DOT specification steel cylinders. (Modes 1, 2.)
5117-X	DOT-E 5117	U.S. Environmental Protection Agency, Washington, D.C.	49 CFR 173.346, 173.356, 173.366, 175.3, 175.30.	To ship certain Class B poisons in small glass vials overpacked in fiberboard boxes. (Modes 1, 2, 4, 5.)
5767-X	DOT-E 5767	Amchem Products, Inc., Ambler, Pa.	49 CFR 173.264, 173.245, 173.293, 173.272, 173.258.	To ship certain corrosive materials in a non-DOT specification steel portable tank, polyethylene lined. (Modes 1, 2.)
6466-X	DOT-E 6466	Monsanto Co., St. Louis, Mo	49 CFR 173.86(a)(1), 173.87	To ship a Class A explosive in DOT Specification 12H fiberboard boxes. (Mode 1.)
6497-X	DOT-E 6497	FMC Corp., Philadelphia, Pa.	49 CFR 173.365, 174.63(c)	To ship Class B poison solids in DOT Specification 56 metal portable tanks with certain exceptions. (Modes 1, 2.)
6531-X	DOT-E 6531	Tavoc, Inc., Chatsworth, Calif.	49 CFR 173.302(a)(1), 175.3	To manufacture, mark and sell non-DOT specification pressure vessels for shipment of nonflammable compressed gases. (Modes 1, 2, 4, 5.)
6557-X	DOT-E 6557	General Fire Extinguisher Corp., Northbrook, Ill.	49 CFR 173.3, 178.36-4(c), 178.37-4(c), 178.50-4(c).	To ship certain nonflammable compressed gases in cylinders complying with DOT Specification 3A, 3AA or 4B except for deviation from inspector's report. (Modes 1, 2, 3, 4, 5.)
6766-X	DOT-E 6766	DuBois Chemicals, Cincinnati, Ohio.	49 CFR 173.256	To ship a corrosive liquid in DOT Specification MC-311 and MC-312 cargo tanks. (Mode 1.)
6834-X	DOT-E 6834	FMC Corp., Philadelphia, Pa.	49 CFR 173.245(a)(4)	To ship phosphoric acid in DOT Specification 5 drums. (Mode 1.)
6932-X	DOT-E 6932	Ugine Kuhlmann, Paris, France	49 CFR 173.264(b)(4)	To ship anhydrous hydrofluoric acid in a non-DOT specification portable tank. (Modes 1, 3.)
7005-X	DOT-E 7005	Bignier Schmidt Laurent, Paris, France; Eurotainer Co., Paris, France; LOWACO, S.A., Geneva, Switzerland; Compagnie des Containers Reservoirs, Neuilly-sur-Seine, France; Transcontainer Leasing S.A., Geneva, Switzerland; Societe Anonyme Pour L'Industrie Chimique, Mulhouse, Cedex, France.	49 CFR 90.05-35; 49 CFR Part 173.	To ship certain flammable, corrosive, Class B poisons and combustible liquids and CPM-A materials in non-DOT specification portable tanks. (Modes 1, 2, 3.)
7024-P	DOT-E 7024	Cone Mills Corp., Greensboro, N.C.	49 CFR 173.249(a)(7)	To become a party to Exemption 7024. (See Application No. 7024-P). (Mode 1.)
7042-X	DOT-E 7042	Walter Kidde and Co., Belleville, N.J.	49 CFR 173.302(a)(1), 173.304(a)(1), (d)(3), 173.336(a)(2), 173.337(a)(1), 175.3.	To manufacture, mark and sell non-DOT specification aluminum cylinders for shipment of compressed gases and other hazardous materials. (Modes 1, 2, 3, 4.)
7239-X	DOT-E 7239	Atlas Powder Co., Dallas, Tex.	49 CFR 173.182(c)	To ship certain oxidizing materials in a collapsible rubber container. (Mode 1.)
7268-X	DOT-E 7268	Union Carbide Corp., Tarrytown, N.Y.	49 CFR 173.304(a)(1)	To ship a nonflammable compressed gas mixture containing ethylene oxide in a crosslinkable DOT Specification 39 cylinder. (Modes 1, 2, 3.)
7423-X	DOT-E 7423	Dow Chemical Co., Freeport, Tex.; Reade Manufacturing Co., Inc., Lakehurst, N.J.	49 CFR 173.154, 173.220(a)(2), 178.76(g)(5).	To ship certain flammable solids in a DOT Specification 56 aluminum portable tank. (Modes 1, 2, 3.)
7423-P	DOT-E 7423	The Metal Selling Corp., Putnam, Conn.	49 CFR 173.154, 173.220(a)(2)	To become a party to Exemption 7423. (See Application No. 7423-P).
7451-X	DOT-E 7451	Union Carbide Corp., Tarrytown, N.Y.	49 CFR 173.304, 173.315	To ship liquid argon in a non-DOT specification portable tank. (Modes 1, 3.)
7560-X	DOT-E 7560	Commercial Lovelace Motor Freight, Inc., Columbus, Ohio; Pacific Intermountain Express Co., Walnut Creek, Calif.; Gordons Transports, Inc., Memphis, Tenn.	49 CFR 173.841(e)	To transport Class B poisons, contained in a specially designed reusable overpack, in the same vehicle with foodstuff, feed or any other edible material. (Mode 1.)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
		RENEWALS—Continued		
7695-X	DOT-E 7695	General Dynamics, Fort Worth, Tex.	49 CFR 173.87, 173.92, 173.101, 173.102, 173.113, 173.3, 176.83, 177.848.	To ship partially dis-assembled aircraft with explosive components installed.
7720-X	DOT-E 7720	Mitsui O.S.K. Lines, Limited, and Sumitomo Shoji America, Inc., San Francisco, Calif.	49 CFR 173.119	To ship certain flammable liquid in non-DOT specification stainless steel portable tanks. (Modes 1, 2, 3.)
7824-X	DOT-E 7824	Petrolite Corp., St. Louis, Mo.	49 CFR 173.119	To ship certain flammable liquids in a marine portable tank where a DOT Specification 57 tank is permitted. (Modes 1, 3.)
7824-P	DOT-E 7824	Champion Chemicals, Inc., Houston, Tex.	49 CFR 173.119	To become a party to Exemption 7824. (See Application No. 7824-P). (Modes 1, 3.)
7848-X	DOT-E 7848	Southern Oxygen Supply Co., Atlanta, Ga.	49 CFR 173.315(a)	To ship liquefied, nonflammable gases in a non-DOT specification cargo tank designed and constructed in accordance with section VIII of the ASME Code. (Mode 1.)
7872-X	DOT-E 7872	Magna Corp., Houston, Tex.	49 CFR 173.122(a)(6)	To ship acrolein, inhibited in an insulated DOT Specification 51 portable tank. (Modes 1, 2, 3.)
8074-X	DOT-E 8074	Hugonnet, S.A., Paris, France	49 CFR Part 173	To ship certain flammable liquids, corrosive liquids, Poison B liquids, combustible liquids, and ORM-A materials in non-DOT specification ISO portable tanks. (Modes 1, 2, 3.)
8047-P	DOT-E 8047	Compagnie des Containers Reservoirs, Neuilly-sur-Seine Cedex, France; Eurotainer, Paris, France; Transcontainer Leasing, S.A., Geneva, Switzerland.	49 CFR Part 173	To become a party to Exemption 8047. (See Application No. 8047-P). (Modes 1, 2, 3.)
		NEW EXEMPTIONS		
8015-N	DOT-E 8015	Deguesa Central Transport Dept., Frankfurt, Germany.	49 CFR 173.266, 173.263, 173.352.	To ship certain oxidizers, corrosives and Class B poisonous materials in a non-DOT specification portable tanks. (Modes 1, 2, 3.)
8048-N	DOT-E 8048	Amoco Production Co., Tulsa, Okla.	49 CFR 172.101, 173.302(a)	To ship uninsulated natural gas in stainless steel, non-DOT specification cylinders. (Mode 1.)
8059-N	DOT-E 8059	Acurex Aerotherm, Mountain View, Calif.	49 CFR 173.302(a)(1), 175.3	To manufacture, mark and sell non-DOT specification filament-wound reinforced plastic aluminum lined cylinders for shipment of certain nonflammable compressed gases. (Modes 1, 2, 3, 4, 5.)
8086-N	DOT-E 8086	Boeing Aerospace Co., Seattle, Wash.	49 CFR 173.119	To ship certain flammable liquid in a non-DOT specification welded aluminum tank inside a wooden container. (Mode 1.)
8087-N	DOT-E 8087	Union Carbide Corp., Bound Brook, N.J.	49 CFR 173.154	To ship a water reactive solid in DOT Specification 56 portable tanks. (Mode 1.)
8108-N	DOT-E 8108	Fauvet-Girel, Paris, France	49 CFR 90.05-35; 49 CFR Part 173.	To ship certain hazardous materials in non-DOT specification intermodal portable tanks. (Modes 1, 2, 3.)
8109-P	DOT-E 8109	Lowsco, S.A., Geneva, Switzerland.	49 CFR 90.05-35; 49 CFR Part 173.	To become a party to Exemption 8109. (See Application No. 8109-P). (Modes 1, 2, 3.)
8132-N	DOT-E 8132	Rockwell International, Richland, Wash.	49 CFR 173.363, 173.365	To make a one-time shipment of a Class B poison solid in a non-DOT specification wooden box. (Mode 1.)
8163-N	DOT-E 8163	Fauvet-Girel, Paris, France	49 CFR Part 173	To ship certain flammable, corrosive, Class B poison and combustible liquids in non-DOT specification portable tanks. (Modes 1, 2, 3.)
8163-P	DOT-E 8163	Transports Internationaux Containers S.A., Paris, France.	49 CFR Part 173	To become a party to Exemption 8163. (See Application No. 8163-P). (Modes 1, 2, 3.)
8174-N	DOT-E 8174	Baltimore Airways, Inc., Glen Burnie, Md.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(7), 173.320(b).	To transport certain Class A, B, and C explosives in cargo-only aircraft. (Mode 4.)
8180-N	DOT-E 8180	Saracco Tank and Manufacturing Corp., San Francisco, Calif.	49 CFR 173.136(a)(3), 173.247(a)(7).	To manufacture, mark and sell non-DOT specification steel drums for shipment of corrosive materials and flammable liquids. (Modes 1, 2.)
		EMERGENCY EXEMPTIONS APPLICATIONS RECEIVED AND GRANTED		
EE8169-N	DOT-E 8169	Shell Oil Co., Houston, Tex.	49 CFR 173.358(a)(12), (14)	To transport an organic phosphate compound, liquid in DOT Specification tank motor vehicles and drums. (Mode 1.)

Denials

7705-X—Request by Varian Associates, Inc., Palo Alto, Calif.—To use heat sealed glass ampoule in a polyvinylchloride plastic outside container for analytical standards, denied April 16, 1979.

8100-N—Request by Ball Brothers, Inc., Anchorage, Alaska—To transport propane in DOT Specification 51 portable tanks aboard cargo-only aircraft C-82, denied April 5, 1979.

8122-N—Request by IBM Corporation, Princeton, N.J.—To ship hydrochloric acid mixture in non-DOT specification fiberglass reinforced plastic portable tanks by motor vehicle, denied April 16, 1979.

8131-N—Request by National Aeronautics and Space Administration, Washington, D.C.—To transport oxygen in a non-DOT specification welded pressure vessel described as a portable secondary oxygen life-support system, denied April 16, 1979.

Withdrawals

6525-P—Request by Zimmer Welding Supplies & Service Inc., Brooklyn, N.Y.—To become a party to Exemption 6525 for shipment of certain compressed gases in DOT Specification 3A or 3AA cylinders, withdrawn April 25, 1979.

J. R. Geotke,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportion Bureau.

[FR Doc. 79-18126 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-60-M

National Highway Traffic Safety Administration

Calendar of Meetings Open to the Public

Below is a list of NHTSA-sponsored meetings which are planned over the next 2 years and in which public interest or participation is expected. The list, which will be revised and republished periodically, is for planning. Meeting dates and places, particularly those scheduled for the second year, are subject to change.

June to July 1979

Public Meeting on National Driver Register Study (City location and dates below)

Purpose: The National Driver Register (NRD) functions as a central point for the exchange of information between States concerning the driving records of persons who apply for drivers' licenses. A State participates by sending the NRD a record of each license revocation or suspension, and by querying the NRD before it issues a license to an applicant. In this way, the States can avoid issuing licenses to persons whose recent driving records contains violations that should keep them off the road.

As the States have moved toward faster licensing procedures, the NRD's reliance on the mails has often made its use inconvenient. To examine this problem, and the overall question of the effectiveness of the NRD, Congress has directed the Department of Transportation to study the NRD and to report the results of this study by December 31, 1979.

The study will cover: (1) Information to be placed in the register; (2) the accessibility of such information (including privacy safeguards); (3) the necessary computer electronic equipment; (4) means of keeping information current; and (5) whether an NRD system can effectively operate on a State voluntary participation basis.

In order to solicit the views of States and local officials and other interested individuals, NHTSA will hold public meetings at the following times and places:

Monday, June 18, 1979, Sheraton Sand-Key Hotel, 1160 Gulf Blvd., Clearwater Beach, Florida, 1:00–4:00 p.m.

Tuesday, June 26, 1979, Brandywine Hilton Inn, Delaware Room, I-95 & Naamans Road, Claymont, Delaware (Wilmington), 1:00–4:00 p.m.

Friday, July 20, 1979, Del Webb's Towne House, 100 East Clarendan Avenue, Phoenix, Arizona, 9:00–12:00 noon.

Coordinator: Clay J. Hall, Traffic Safety Programs (NTS–11), 202–426–9561.

June 19–21, 1979

National Highway Safety Advisory Committee Meeting, Washington, D.C

Purpose: Progress reports of the Committee's task forces will be heard. Reports and recommendations for the Secretary, Department of Transportation, may be prepared.

Coordinator: Robert Doherty, Executive Secretariat (NOA–10), 202–426–2872.

June 1979

Child Passenger Protection Workshops (City locations and dates below)

Purpose: To assist interested organizations to inform parents of the importance of using restraint systems when their children are riding in automobiles. Meeting are scheduled as follows: June 21–22, Seattle; June 25–26, Berkley, CA.

Coordinator: Elaine Winestein, Traffic Safety Programs (NTS–14), 202–426–2180.

June to September 1979

Occupant Protection Workshops for State Officials (City locations and dates below)

Purpose: The NHTSA manual on safety belt usage prepared to assist States to develop comprehensive Safety Belt Usage programs will be introduced to appropriate State officials. Schedule: June 20–22, Albany, New York; June 25–28 Kansas City, Missouri; August—Baltimore; September 5–7, Denver; September 19–20, Seattle.

Coordinator: James L. Nichols, Office of Traffic Safety Programs (NTS–14), 202–426–2180

June to December 1979

NHTSA-Public-Industry Technical Meetings, EPA Environmental Laboratory Facility, Ann Arbor, Michigan.

Purpose: Technical, interpretative or procedural questions from the public and industry regarding NHTSA's bumper, vehicle safety and consumer information program will be answered. Questions may relate to the research and development, rulemaking, or enforcement (including defects) phases of these activities. Schedule: June 20; August 15; October 17; December 19.

Coordinator: Wm. H. Marsh, Executive Secretariat (NOA–10), 202–426–2872.

August 1979

Evaluation of Feasibility of a Single Beam Headlighting System; Final Contractor Briefing, Trans Point Building, Washington, D.C.

Purpose: To report results of a research study designed to determine the parameters of beam patterns for improved low beam headlamps.

Coordinator: Michael Perel, Research and Development (NRD–41), 202–755–8753.

August or September 1979

Results of Computer Analysis of Vehicle Side Structure, Washington, D.C.

Purpose: Research results from validation and application of the WRECKER program used in analyzing vehicle side structures will be presented. WRECKER is a computer program to do finite element analysis of automobile structures under crash loadings. The word is a nickname, not an acronym.

Coordinator: William T. Hollowell, Research and Development (NRD–12), 202–426–2992.

September 10–11, 1979

Public Meeting on Heavy Duty Truck Safety, Washington, D.C.

Purpose: To solicit comments and suggestions from the drivers, owners, manufacturers, as well as interested individuals and organizations on the adequacy of NHTSA's Five Year Rulemaking Plan as related to heavy duty truck safety.

Coordinator: Anees A. Adil, Rulemaking (NRM–11), 202–426–2715.

September 27–28, 1979

National Highway Safety Advisory Committee Meeting—Orientation for New Members, Cliffside Motor Inn, Harpers Ferry, West Virginia.

Purpose: Orientation session for newly appointed members of the Committee.

Coordinator: Robert Doherty, Executive Secretariat (NOA–10), 202–426–2872.

October 16–17, 1979

Biomechanics Advisory Committee Meeting, DOT Headquarters Building, Washington, D.C.

Purpose: This Committee reviews NHTSA's procedures, programs and projects requiring the use of live and deceased humans for research in order to validate the need for such use, to minimize the risk of injury to volunteers, and to assure the rights and dignity of the subjects.

Coordinator: Kathy Hasse, Executive Secretariat (NOA–10), 202–426–2872.

October 23–25, 1979

National Highway Safety Advisory Committee, DOT Headquarters Building, Washington, D.C.

Purpose: Progress reports of the Committee's task forces will be heard. Reports and recommendations for the Secretary of Transportation, may be prepared.

Coordinator: Robert Doherty, Executive Secretariat (NOA–11), 202–426–2872.

October 31–November 2, 1979

International Conference on Automotive Fuel Economy Research, Washington, D.C. (Sheraton-International Hotel, Arlington, Virginia).

Purpose: Automotive fuel economy research and technology will be exchanged.

Coordinator: James C. Shively, Research and Development (NRD–10) 202–426–1551

November 1979

Symposium on Side Impact Protection, Washington, D.C.

Purpose: To provide a public forum for the exchange of information on side impact protection and to inform the public, press, and industry of the status of the NHTSA rulemaking activities in upgrading side impact protection.

Coordinator: August Burgett, Rulemaking (NRM–12), 202–426–2802 or James Hackney, Research and Development (NRD–12), 202–426–4861.

November of December 1979

International Symposium on Automobile Ratings, Washington, D.C.

Purpose: To exchange information on the "state-of-the-art" of automobile ratings. The symposium will provide a forum for an in-depth examination of the various methods used to rate crashworthiness, damageability and ease of diagnosis and repair. Experienced technical experts, rating groups, insurance and auto industry representatives and consumer representatives will present their views on current and proposed ways used to rate automobiles.

Two-thirds of the time will be devoted to technical presentations, reviewing current and proposed methods of rating automobiles. One-third will be dedicated to developing requirements for the ratings.

Coordinator: Jack Gillis, Rulemaking (NRM–30), 202–426–1740.

November or December 1979

Public Hearing on Proposed Light Truck Average Fuel Economy Standard for Model Years' 1982–1984, Washington, D.C.

Purpose: Public comments on the proposed fuel economy standard for light trucks and vans for model years' 1982–1984 will be received.

Coordinator: Frank Turpin, Rulemaking (NRM–21), 202–472–6902.

December 3–5, 197

National Conference on Child Passenger Protection, Sheraton International Convention Center, Reston, Virginia.

Purpose: Specialists in the field of highway safety and child development will meet to exchange information on ways to increase the use of child restraints designed for motor vehicles.

Coordinator: Elaine Winestein, Traffice Safety Programs (NTS–14), 202–426–2180.

January 1980

Motorcycle Accident Factors Research, DOT Headquarters Building, Washington, D.C.

Purpose: Results of a research study to determine the causes of motorcycle accidents, the causes of injuries, the severity of the injuries and effective methods of reducing accidents, deaths, and injuries will be reported.

Coordinator: Nicholas G. Tsongos, Research and Development (NRD–32), 202–426–4820.

April 1980

Symposium on Vehicle Agressivity and Compatibility, Washington D.C.

Purpose: Research on vehicle aggressivity and improved compatibility will be presented. Techniques for testing compliance with vehicle compatibility requirements will be discussed.

Coordinator: James R. Hackney, Research and Development (NRD–12), 202–426–4862

November 1980

Symposium on Motor Vehicle Fuel Economy Research: Contractors' Coordination Meeting, Washington, D.C.

Purpose: Progress reports on the contracts which have been funded through the Automotive Fuel Economy Research Program will be given. How individual tasks fit into the research and rulemaking program and the thrust of the Automotive Fuel Economy Program will be explained.

Coordinator: Charles Gauthier, Research and Development (NRD–31), 202–426–2957.

Persons desiring additional information on a particular meeting may write or phone the coordinator indicated above.

Address for Meeting Coordinators: The Office of Rulemaking; The Executive Secretariat; The Office of Traffic Safety Programs, are located at: DOT Headquarters Building, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

The Office of Research and Development is located at: Trans Point Building, National Highway Traffic Safety Administration, 2100 Second Street, S.W., Washington, D.C. 20590.

Issued in Washington, D.C., on June 6, 1979.

Wm. H. March,
Executive Secretary.

[FR Doc. 79-18872 Filed 6-13-79; 8:45 am]
BILLING CODE 4910-59

INTERSTATE COMMERCE COMMISSION

[Notice No. 95]

Assignment of Hearings

June 11, 1979

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains

prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation of postponements of hearings in which they are interested.

MC–82841 (Sub-229F), Hunt Transportation, Inc., now assigned for hearing on July 12, 1979 (2 days), at Dallas, TX, in a hearing room to be later designated.

FD–29021F, Consolidated Rail Corporation (Conrail)—Discontinuance of Passenger trains Nos. 453–456 Between Vaparaiso, IN, And Chicago, IL, now assigned for hearing on June 25, 1979 3 days), at Chicago, IL, and will be held in Room No. 1944C, Everett McKinley Dirksen Bldg., 219 S. Dearborn St.

MC–2900 (Sub-342F), Ryder Truck Lines, Inc., now assigned for continued hearing on July 11, 1979 (3 days), at Birmingham, AL, in a hearing room to be later designated.

MC–107678 (Sub-69F), Hill & Hill Truck Line, Inc., now assigned for hearing on July 17, 1979 (9 days), at Denver, CO, is canceled and reassigned to July 17, 1979 (9 days), at Houston, TX, in a hearing room to be later designated.

MC–C–10166, North American Van Lines, Inc., Molloy Bros. Trucking, Inc. Aero Mayflower Transit Company, Inc., Dahill Moving & Storage Co., Inc. Paramount Moving & Storage Co., and Red Ball Van Lines, Inc.—Investigation And Revocation of Certificates, now assigned for hearing on June 26, 1979 at the Offices of the Interstate Commerce Commission, Washington, DC.

MC–115162 (Sub-424F), Poole Truck Line, MC–115311 (Sub-293F), J & M Transportation Co. Inc., now assigned for continued hearing on July 9, 1979 (3 days), at New Orleans, LA, and will be held at the Monteleone Hotel, 214 Royal Street.

MC–107678 (Sub-69F), Hill & Hill Truck Line, Inc., now assigned for hearing on July 17, 1979 (9 days), at Houston, TX, and will be held at Whitehall Hotel, 1700 Smith Street.

MC–123407 (Sub-478F), Sawyer Transport, Inc., now assigned for hearing on June 25, 1979 (5 days), at Denver, CO, and will be held in Division 2, Court of Appeals, U.S. Court House, 1929 Stout Street.

MC–128270 (Sub-33F), Redichs Interstate Inc., now assigned for hearing on June 25, 1979 (5 days), at Denver, CO, and will be held in Division 2, Court of Appeals, U.S. Court House, 1929 Stout Street.

MC–114457 (Sub-434F), Dart Transit Company, now assigned for hearing on June 20, 1979 (1 day), at Denver, CO, and will be held in Division 2, Court of Appeals, U.S. Court House, 1929 Stout Street.

MC–111545 (Sub-255F), Home Transportation Company, Inc., now assigned for continued hearing on July 17, 1979 (4 days), at Reno, NV, and will be held in Room 211, Bureau of Mines, University of Reno, Navada Campus, 1905 Evans, Ave.

MC–140247 (Sub-2F), Allstate Charter Lines, Inc., now assigned for hearing on July 23, 1979 (2 days), at San Francisco, CA, and will be held in Room 510, 5th Floor, 211 Main Street.

FF–514F, Southern Pacific Marine Transport, now assigned for hearing on July 25, 1979 (3 days), at San Francisco, CA, in Room 510, 5th Floor, 211 Main Street.

MC–115826 (Sub-361F), W. J. Digby, Inc., now assigned for hearing on June 21, 1979 (2 days), at Denver, CO, and will be held in Division 2, Court of Appeals, U.S. Court House, 1929 Stout Street.

MC–107678 (Sub-69F), Hill & Hill Truck Line Inc., now assigned for hearing on June 17, 1979 (9 days), at Houston, TX, and will be held in the White Hall Hotel, 1700 Smith Street.

MC–107295 (Sub-896F), Pre-Fab Transit Company, now assigned for hearing on July 16, 1979 (2 days), at Billings, MO, and will be held in Room No. 3033 Federal Bldg., 316 N. 26th Street.

MC–115931 (Sub-69F), Bee Line Transportation, Inc., now assigned for hearing on July 18, 1979, (3 days), at Billings, MO, and will be held in Room No. 3033 Federal Bldg., 316 N. 26th Street.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-18981 Filed 6-13-79; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29021F]

Consolidated Rail Corp. (Conrail)—Discontinuance of Passenger Trains Nos. 453–456 Between Valparaiso, IN, and Chicago, IL

AGENCY: Interstate Commerce Commission, Office of Policy and Analysis, Energy and Environment Branch.

ACTION: Notice of availability of draft environmental impact statement dealing with action contemplated in the above-entitled proceeding.

SUMMARY: On June 15, 1979 the Energy and Environment Branch will serve on the public and the Environmental Protection Agency (EPA) a copy of the draft environmental impact statement prepared in the above-entitled proceeding. Copies of this document will be available at the Washington headquarters and Chicago field office of the Interstate Commerce Commission. This notice is intended as a supplement to that which will be published by EPA (approximately one week later), if upon review it finds the subject statement to be acceptable for filing. It is hoped that this early notice will afford interested parties additional time to review the document before hearings on the matter, which are scheduled to commence in Chicago on June 25, 1979.

FOR FURTHER INFORMATION CONTACT:

Steve Botts (Washington, D.C. office) Telephone: 202–275–7917, or
Duty Officer (Chicago office) Telephone: 312–353–6125.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-18982 Filed 6-13-79; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Board Transfer Proceedings

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under Section 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application.

Protests against approval of the application, which may include request for oral hearing, must be filed with the Commission within 30—days after the date of this publication. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicants' representative(s), or applicants (if no such representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protestes must specify with particularity the factual basis, and the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synoposes form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

No. MC–FC–78171 filed May 29, 1979. By decision of June 7, 1979, the Motor Carrier Board approved the transfer to Furnal Truck Line, Inc., 503 1st Ave., North, Altoona, IA 50009 of operating rights held by Ray Burris Truck Line, Inc. (same address) in permits Nos. MC 142805 and MC 142805 Sub 1, issued March 10, 1978, and March 6, 1979,

authorizing dry soybean meal, from Redfield, IA, and points in Polk County, IA, to portions of MO, NE, and MN, under contract with Cargill, Inc., and A. E. Staley Manufacturing Company; soybean meal, from points in Polk County, IA, to Freeport, Rockford, Dixon, Mendota, Bushnell, Monmouth, Beardstown and Rock Island, IL, under contract with A. E. Staley; and defluorinated phostate from Rock Island, IL, to Baxter, IA, under contract with Gooch Feed Mill Corporation. Transferee holds no authority from the Commission, but owns transferor. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309.

H. G. Homme, Jr.,
Secretary.

[Fr Doc. 79-18580 Filed 6-13-79; 8:45 am]
BILLING CODE 7035-01-M

[Notice No. 98]

Motor Carrier Temporary Authority Applications

June 8, 1979.

The following are notices of filing of applications for temporary authority under Section 210(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the Federal Register publication no later than the 15th calendar day after the dae the notice of the filing of the application is published in the Federal Register. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "SUB" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Republication: Previously published March 8, 1979 in Federal Register. Purpose of republication is to show origin and destination points.

MC 140489 (Sub-18TA), filed January 29, 1979. Applicant: ROBERTS TRUCKING CO., INC., U.S. Highway South, P.O. Drawer G, Poteau, OK 74953. Representative: Prentiss Shelley (same as applicant). Contract carrier: irregular routes. (1) *Materials, equipment and supplies* used in the manufacture of clothing, bedspreads, curtains, draperies and similar soft goods, (2) *clothing, bedspreads, curtains, draperies and similar soft goods,* (except commodities in bulk, in tank vehicles) between points in the United States (except Alaska and Hawaii). Restricted to traffic destined to or shipped from the facilities of the Kellwood Company. Supporting shipper(s): Kellwood Company, 200 Sears Road, Perry, Georgia 31069. Send protests to: William H. Land, Jr., District Supervisor, 3106 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

By the Commission.
H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-18582 Filed 6-13-79; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 28799 (Sub-Nos. 7 and 8)]

Los Angeles & Salt Lake City Railroad Co. and Union Pacific Railroad Co.—Trackage Rights Over Southern Pacific Transportation Co. in Orange County and in Los Angeles/Long Beach Harbor, Calif.

Los Angeles and Salt Lake city Railroad Company (LASL) and Union Pacific Railroad Company (UP), 1416 Dodge Street, Omaha, NE, represented by Peter W. Hohenhaus and Mark A. Kalafut, of the same address, hereby give notice that on May 16, 1979, they filed with the Interstate Commerce Commission at Washington, D.C. two applications under 49 U.S.C. 11343, in Finance Docket No. 28799 (Sub-No. 7) and Finance Docket No. 28799 (Sub-No. 8), seeking approval of trackage rights over lines of Southern Pacific Transportation Company (SPT) described in detail below. LASL and UP seek these trackage rights as protective conditions in the event the Commission approves the application in Finance Docket No. 28799 (Sub-No. 1), St. Louis Southwestern Railway Company—Purchase (Portion)— William M. Gibbons, Trustee of the Property of Chicago, Rock Island and Pacific Railroad Company, Debtor. Notice of that application, as well as the directly related application, was published in the Federal Register on January 26, 1979, at 44 FR 5563 (1979).

Specifically UP and LA&SL propose to acquire trackage rights over the following portions of SPT's lines in the Orange County, CA area: (1) the Puente Branch between Bartolo, CA (at SPT's junction with UP's mainline) and Studebaker, CA, a distance of 7.3 miles; (2) the Santa Ana Branch between Studebaker, CA and approximately milepost 513, a distance of 15.4 miles (including operating rights over all trackage in Anaheim, CA, linking SPT's Santa Ana Branch with UP's Anaheim Branch), and the Tustin Branch from the junction with the Santa Ana Branch at South Anaheim to approximately milepost 513, a distance of 1.1 miles; and (3) the La Habra Branch from the junction with the Puente Branch at Los Nietos, CA to SPT's junction with UP's Anaheim Branch at Colima, CA a distance of 4.3 miles.

Applicants also seek bridge rights over segments of the following SPT branches to the Los Angeles/Long Beach Harbor area: Puenta, Santa Ana, La Habra and Wilmington. The requested trackage rights begin at the junction of UP's trackage near Redondo junction, continuing westward to an area referred to as Amoco (at approximately milepost 485.7), then southward on SPT's Wilmington Branch through an area referred to as Slauson Junction (at approximately milepost 487.5). The requested track continues southward on the Wilmington Branch to Dominguez Junction (at milepost 498.5). At this point, SPT's San Pedro Branch parallels the Wilmington Branch for approximately 1⅛ miles to the point of the Dolores Yard around Dominguez Street (at approximately milepost 498). It would appear either of these two tracks may be used for movements between Dominguez Junction and the crossover, returning through movements to the San Pedro Branch. The proposed rights continue southward on the San Pedreo Branch to a point referred to as the Thenard Tower (at approximately milepost 501.3) then eastward around the north leg of a wye to SPT's Long Beach Branch continuing to a point east of the UP Mead Yard (at approximately

SPT's milespost 503). The trackage rights over SPT's Puente Branch have an eastern terminus at Bartolo, connection at Los Nietos with SPT's La Habra Branch (at milepost 496.5), continuing to a connection with the Wilmington Branch at Slausson Junction (milepost 487.7).

These two applications will be consolidated for disposition with the applications in Finance Docket No. 28799 (Sub-Nos. 1–6). The latter matters are the subject of an oral hearing presently being conducted by Administrative Law Judge Peter A. Fitzpatrick. Future procedural matters in Finance Docket No. 28799 (Sub-Nos. 7 and 8) should be directed to Judge Fitzpatrick.

The Commission is accepting these applications for consideration, although they are deficient in several ways. LASL and UP, by decision served June 14, 1979, have been advised of the specific deficiencies and given 30 days to complete the application.

Persons may participate formally in the proceedings by submitting written comments regarding the applications. Such submissions shall include the designation both for these proceedings (F.D. No. 28799 (Sub-Nos. 7 and 8)) and F.D. 28799 (Sub-No. 1). The original and two copies shall be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 10423, not later than July 30, 1979 (45 days after the date the filing of the applications are published in the **Federal Register**. Written comments shall include the following: the person's position, e.g., party protestant or party in support, regarding the proposed transaction; and specific reasons why approval would or would not be in the public interest. Additionally, interested persons who do not intend to participate formally in the proceedings but who desire to comment thereon, may file statements and information as they may desire, subject to the same filing and service requirements. Persons submitting written comments to the Commission shall, at the same time, serve copies of such written comments upon the applicant, the Secretary of Transportation, and the Attorney General.

Dated: June 11, 1979.

By the Commission. Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Calpp and Christian. Commissioner Christian not participating.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-18525 Filed 6-13-79; 8:45 am]

BILLING CODE 7035-01-M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 118
Thursday, June 14, 1979

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., June 19, 1979.

PLACE: 2033 K Street, N.W., Washington, D.C., 5th floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Consideration of Application for Designation of Financial Futures Including Staff Response to Federal Reserve/Treasury Study:

ACE 90 Day T-Bill.
COMEX 90 Day T-Bill.
CBOT 4–6 Year Notes.
CME 4 Year Notes.

Petition of Dowdex Corporation for waivers of certain requirements of Commission Rule 32.12(a) which presently preclude Dowdex from granting dealer options on silver and copper.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey 254–6314.

[S–1189–79 Filed 6–12–79; 10:27 am]

BILLING CODE 6351–01–M

2

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., June 22, 1979.

PLACE: 2033 K Street, N.W., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

[S–1181–79 Filed 6–12–79; 10:27 am]

BILLING CODE 6351–01–M

3

FEDERAL DEPOSIT INSURANCE CORPORATION.

TIME AND DATE: 2 p.m. on Monday, June 18, 1979.

PLACE: Board Room, 6th Floor, FDIC Building, 550 17th Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Request by the Comptroller of the Currency for a report on the competitive factors involved in the proposed merger of National Community Bank of New Jersey, Rutherford, New Jersey, and Arcadia National Bank, Secaucus, New Jersey.

Recommendations with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities:

Hull, Towill, Norman, Barrett & Johnson, Augusta, Georgia, in connection with the liquidation of First Augusta Bank & Trust Company, Augusta, Georgia.

Kantrow, Spaht, Weaver & Walter, Baton Rouge, Louisiana, in connection with the liquidation of Republic National Bank of Louisiana, New Orleans, Louisiana.

Parsons, Canzona, Blair & Warren, Red Bank, New Jersey, in connection with the liquidation of The Bank of Bloomfield, Bloomfield, New Jersey.

Kaye, Scholer, Fierman, Hays & Handler, New York, New York, in connection with the receivership of American Bank & Trust Company, New York, New York.

Atkinson, Mueller & Dean, New York, New York, in connection with the liquidation of Franklin National Bank, New York, New York.

Kaye, Scholer, Fierman, Hays & Handler, New York, New York, in connection with the liquidation of Franklin National Bank, New York, New York.

Appeals pursuant to the Freedom of Information Act, from the Corporation's earlier denial or partial denial of requests for records.

Memorandum proposing the appointment of an agent for service of process in the State of Mexico.

Reports of committees and officers:

Minutes of the actions approved by the Committee on Liquidations, Loans and Purchases of Assets pursuant to authority delegated by the Board of Directors.

Reports of the Director of the Division of Bank Supervision with respect to applications or requests approved by him and the various Regional Directors pursuant to authority delegated by the Board of Directors.

CONTACT PERSON FOR MORE INFORMATION: Mr. Hoyle L. Robinson, Executive Secretary (202) 389–4425.

[S–1179–79 Filed 6–12–79; 10:27 am]

BILLING CODE 6714–01–M

4

AGENCY: Federal Deposit Insurance Corporation.

TIME AND DATE: 2:30 p.m. on Monday, June 18, 1979.

PLACE: Board Room, 6th Floor, FDIC Building, 550 17th Street, N.W., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Applications for Federal deposit insurance:

Citizens Bank of Northport, a proposed new bank to be located at 2100 McFarland Boulevard, Northport, Alabama, for Federal deposit insurance.

Seaport Citizens' Bank, a proposed new bank to be located at 639 Bryden Avenue, Lewiston, Idaho, for Federal deposit insurance.

Woodburn State Bank, a proposed new bank to be located at 110 South Pacific Highway, Woodburn, Oregon, for Federal deposit insurance.

Application for consent to merge and establish branches:

First State Bank, Waynesboro, Mississippi, an insured State nonmember bank, for consent to merge, under its charter and title, with Bank of Leakesville, Leakesville, Mississippi, and for consent to establish the three offices of Bank of Leakesville as branches of the resultant bank.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 43,943–L—Franklin National Bank, New York, New York.

Case No. 43,945–L—Franklin National Bank, New York, New York.

Recommendation with respect to payment for legal services rendered and expenses incurred in connection with liquidation activities:

Hughes, Hubbard & Reed, New York, New York, in connection with the liquidation of Franklin National Bank, New York, New York.

Recommendations with respect to the initiation or termination of cease-and-desist proceedings, termination-of-insurance proceedings, or suspension or removal proceedings against certain insured banks or officers or directors thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of

subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Personal actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

CONTACT PERSON FOR MORE INFORMATION: Mr. Hoyle L. Robinson, Executive Secretary (202) 389-4425.

[S-1179-79 Filed 6-13-79; 10:27 am]

BILLING CODE 6714-01-M

5

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, June 11, 1979, the Corporation's Board of Directors determined, on motion of Chairman Irvine H. Sprague, seconded by Director John G. Heimann (Comptroller of the Currency), concurred in by Director William M. Isaac (Appointive), that Corporation business required its addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a resolution revising certain delegations of authority with respect to liquidation activities.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter was eligible for consideration in a closed meeting by authority of subsection (c)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2)).

Dated: June 11, 1979.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1182-79 Filed 6-13-79; 10:01 am]

BILLING CODE 6714-01-M

6

OVERSEAS PRIVATE INVESTMENT CORPORATION: (Meeting of the Board of Directors).

TIME AND DATE: Meeting of the OPIC Board of Directors, Tuesday June 19, 1979, at 9 a.m. (closed session); 10:30 a.m. (open session).

PLACE: Offices of the Corporation, Seventh Floor Board Room, 1129 20th Street NW., Washington, D.C.

STATUS: The first part of the meeting from 9 a.m. to 10:30 a.m. will be closed to the public. The open portion of the meeting will start at 10:30 a.m.

MATTERS TO BE CONSIDERED: (Closed to the public 9 a.m to 10:30 a.m.).

1. Resumption of OPIC in Western Hemisphere Country.
2. Exception to Country List Requirement.
3. Finance project in Latin American Country.
4. Finance project in Sub-Sahara African Country.
5. Finance project in Central American Country.
6. Insurance project in Sub-Sahara African Country.
7. Insurance project in East Asia Country.
8. Claims Report.
9. Information Reports.

FURTHER MATTERS TO BE CONSIDERED: (Open to the Public 10:30 a.m.)

1. Approval of minutes of the previous Board meeting.
2. Confirmation of scheduled regular Board meetings.
3. Personnel matters.
4. Determination of countries qualifying as Eligible Developing Countries.
5. Inter-American Development Bank proposal for Multilateral Insurance Program for Latin America.
6. International Development Cooperation Administration.
7. Information Reports.

CONTACT PERSON FOR INFORMATION: Information with regard to this meeting may be obtained from the Secretary of the Corporation at (202) 632-1820.

Elizabeth A. Burton,

Corporate Secretary.

June 12, 1979.

[S-1186-79 Filed 6-13-79; 10:24 am]

BILLING CODE 3210-01-M

7

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 33236, June 8, 1979.

STATUS: Closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Monday, June 4, 1979.

CHANGES IN MEETING: Additional item.

The following additional item will be considered at a closed meeting scheduled for Wednesday, June 13, 1979, after the 10 a.m. open meeting:

Litigation matter.

Commissioners Loomis, Evans, and Pollack determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling or meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Mike Rogan at (202) 755-1606.

June 11, 1979.

[S-1185-79 Filed 6-13-79; 10:21 am]

BILLING CODE 8010-01-M

8

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of June 18, 1979, in Room 825, 500 North Capitol Street, Washington, D.C.

An open meeting will be held on Tuesday, June 19, 1979, at 10 a.m. Closed meetings will be held on Tuesday, June 19, 1979, immediately following the 10 a.m. open meeting, and on Thursday, June 21, 1979, at 9:30 a.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4) (8) (9)(A) and (10) and 17 CFR 200.402(a) (8) (9)(i) and (10).

Commissioners Loomis, Evans, and Pollack determined to hold the aforesaid meetings in closed session.

The subject matter of the open meeting scheduled for Tuesday, June 19, 1979, at 10 a.m., will be:

1. Consideration of whether to (1) rescind, as obsolete, Rule 17e-1 under the Investment Company Act of 1940, which permits affiliated brokers to receive commissions on over-the-counter transactions greater than the statutory maximum, if the commissions paid do not exceed the fixed commission rates for similar securities on specified stock exchanges, and (2) adopt proposed Rule 17e-2 under the Investment Company Act (redesignated as new Rule 17e-1), which would allow investment company directors to establish procedures which are reasonably designed to provide that the commission received by an affiliated broker in a stock exchange transaction is reasonable and fair

compared to the commissions received by other brokers in comparable transactions. For further information, please contact Mark B. Goldfus at (202) 755–0230.

2. Consideration of Municipal Securities Rulemaking Board proposed rule G–34 concerning product advertising of municipal securities. The proposed rule would (i) prohibit a municpal securities broker or dealer from publishing or causing to be published an advertisement concerning municipal securities that such professional knows or has reason to know is false and misleading, and (ii) require that all advertisements concerning municipal securities be approved in writing by appropriate supervisory personnel prior to first use, and that a separate record be maintained of such advertisements. For further information, please contact Marcia L. MacHarg at (202) 755–7128.

3. Consideration of whether to resubmit to Congress proposed legislation which would (1) amend the Securities Act of 1933 and Trust Indenture Act of 1939 to delete the exemptions for certain industrial development bonds, (2) make certain conforming amendments to the Securities Exchange Act of 1934, and (3) eliminate the "separate security" rubric currently established by Rule 131 under the Securities Act and Rule 3b–5 under the Securities Exchange Act. For further information, please contact Jennifer A. Sullivan at (202) 376–3584.

4. Consideration of whether to authorize the acquisition of two New Mexico public utility companies under Sections 9(a)(2) and 10 of the Public Utility Holding Company Act of 1935 by Estacado, Inc., a New Mexico corporation, and deny a request for hearing concerning said acquisition. For further information, please contact Grant G. Guthrie at (202) 523–5150.

5. Consideration of whether to issue a release about the use of arbitration clauses in broker-dealer customer agreements. For further information, please contact Justin Klein at (202) 523–3952.

The subject matter of the closed meeting scheduled for Tuesday, June 19, 1979, immediately following the 10 a.m. open meeting, will be:

Formal orders of investigation.
Access to investigate files by Federal, State, or Self-Regulatory Authorities.
Settlement of injunctive actions.
Freedom of Information Act appeals.
Insitution of injunctive actions.
Institution of administrative proceeding of an enforcement nature.
Personnel security matters.
Opinion.

The subject matter of the closed meeting scheduled for Thursday, June 21, 1979, at 8:30 a.m., will be:

Formal order of investigation.
Institution of administrative proceedings of an enforcement nature.

At times changes in commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Beverly Rubman (202) 755–1103.

June 11, 1979.

[S–1184–79 Filed 6–13–79; 10:31 am]

BILLING CODE 8010–01–M

Thursday
June 14, 1979

Federal Register

Part II

Environmental Protection Agency

Proposed Consolidated Permit Regulations

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Parts 122, 123, 124]

[FRL 1225-1]

Consolidated Permit Regulations: RCRA Hazardous Waste; SDWA Underground Injection Control; CAA Prevention of Significant Deterioration; CWA National Pollutant Discharge Elimination System; and Section 404 Dredge or Fill Programs

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This rule establishes consolidated permit program requirements governing the Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA), the Underground Injection Control (UIC) permit program under the Safe Drinking Water Act (SDWA), the National Pollutant Discharge Elimination System (NPDES) under the Clean Water Act (CWA), and the Prevention of Significant Deterioration (PSD) program under the Clean Air Act, for three primary purposes:

(1) To consolidate program requirements for the RCRA and SDWA programs with those already established for the NPDES program.

(2) To establish, for the first time, requirements for State programs under the RCRA, UIC and Section 404 programs.

(3) To consolidate permit issuance procedures for EPA-issued Prevention of Significant Deterioration permits under the Clean Air Act with those for the RCRA, UIC, NPDES and State 404 programs.

DATES: Comments must be received by September 12, 1979.

Public hearings to discuss and to receive comments on the proposed Consolidated Permit regulations, the proposed Underground Injection Control regulations (proposed at 44 FR 23738, April 20, 1979) under the Safe Drinking Water Act, and on the Consolidated Permit Application Forms, will be held in four cities, over three days in each city. The meetings are scheduled for the following places:

July 16, 17 *, 18, 1979, Dallas, Texas.
July 23, 24 *, 25, 1979, Washington, DC.
July 26 *, 27, 28, 1979, Chicago, Illinois.
July 30, 31 *, August 1, 1979, Seattle, Washington.

ADDRESSES: Interested persons may participate in this proposed rulemaking by submitting comments to Edward A. Kramer (A-2) Permits Division (EN-336), Office of Water Enforcement, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Due to the length and complexity of the regulations, all comments should be organized by page and section number. Because a number of program offices will be involved in the review of comments received, EPA requests that *four* copies of comments be submitted. A copy of all comments received will be available for review during normal business hours at the Environmental Protection Agency, Public Information Reference Unit, Room 2922, 401 M Street, SW, Washington, DC 20460.

Four public hearings have been scheduled at the following locations:

July 16, 17 *, 18, 1979, Northpark, Inn, 9300 North Central Expressway, Dallas, Texas.

July 23, 24 *, 25, 1979, HEW Auditorium, 330 Independence Avenue, S.W., Washington, DC.

July 26 *, 27, 28, 1979, Water Tower Hyatt, 800 North Michigan Avenue, Chicago, Illinois.

July 30, 31 *, August 1, 1979, EPA—Region X, 1200 6th Avenue, Seattle, Washington.

The format for each of the hearings will be the same. Each day in a series will be devoted to a separate subject: Day 1 will cover the proposed Part 146 UIC technical regulations, Day 2 and Day 3 will cover the proposed consolidated regulations, the application form, and proposed changes to the NPDES permit program regulations on application requirements. The evening session will cover all subjects. Following registration there will be a short presentation by EPA officials concerning the topic of that day's hearings, an opportunity for anyone in the audience to make a statement, and a question and answer session.

A court reporter will be present at each of the public hearings. Official transcripts will be available at cost.

Anyone requesting an evening session or wishing to make an oral statement at the Consolidated Permit Regulations and Application Form hearings should notify in writing, specifying the hearing and the city in which they are interested: Ms. Judith Shaffer, Permits Division (EN-336), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

Anyone wishing to make an oral statement at the hearings on the UIC regulations should notify in writing, specifying the hearing and the city in which they wish to make the statement: Ms. Sharon Gascon, Office of Drinking Water (WH-550), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

Pamphlets describing the proposed regulations and their impact on the various programs are available from the Environmental Protection Agency, Public Information Center (PM-215), 401 M St., SW, Washington, DC 20460. Please order by title and code.

- A Guide to New Regulations for NPDES (C-1).
- A Guide to the Underground Injection Control Program (C-2).
- A Guide to Consolidated Permit Programs (C-3).
- A Guide for States on Consolidated Permit Programs (C-4).
- A Guide to the Hazardous Waste Management Program (C-5).
- A Guide to the Dredge or Fill Permit Program (C-6).
- A Guide to the Consolidated Permit Application Form (C-7).

FOR FURTHER INFORMATION CONTACT: Edward A. Kramer (A-2), Office of Water Enforcement (EN-336), U.S. Environmental Protection Agency, Washington, D.C. 20460, (202) 755-0750.

SUPPLEMENTARY INFORMATION:

Background

The proposed rules integrate program descriptions, State program requirements and procedures for decision-making for four EPA regulatory programs: (1) the Hazardous Waste Management Program established under the Resource Conservation and Recovery Act (RCRA), (2) the Underground Injection Control (UIC) Program established under the Safe Drinking Water Act (SDWA), and (3) the National Pollutant Discharge Elimination System (NPDES) and 404 (Dredge or Fill) program established under the Clean Water Act (CWA). Also consolidated are permit issuance procedures for EPA-issued Prevention of Significant deterioration (PSD) permits under the clean Air Act. (CAA).

These proposed regulations are an important element of an Agency-wide effort to consolidate and make uniform procedures and requirements applicable to EPA and State-administered programs.

Work began in the early Fall of 1978 to consolidate permit program regulations for one existing program—the National Pollutant Discharge Elimination System (NPDES) under the Clean Water Act, and two new programs—the Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA) and the Underground

* Day and evening sessions.

Injection Control (UIC) program under the Safe Drinking Water Act. State program requirements under the section 404 Dredge or Fill program of the Clean Water Act were also included. In October of 1978, the Administrator established a Permits Consolidation Task Force to examine the benefits, costs and possible extent and range of permit consolidation that could be undertaken by EPA. The Task Force completed its examination and concluded in its Report to the Administrator that consolidation of permit activities could result in significant benefits for the environment, the regulated public and EPA. One of the Task Force recommendations to the Administrator was the continuation of development of consolidated permit program regulations, particularly procedural regulations, for the RCRA hazardous waste management, UIC, NPDES and 404 programs. The Task Force also recommended that procedures for issuance of Air PSD permits should be the same as those for the four above programs, where procedural requirements are shared.

These proposed regulations are the first step in EPA's effort to consolidate permit programs. The proposal focuses on consistency and unification, to the extent possible, between RCRA, UIC, and NPDES program definitions and descriptions, State program requirements and permit issuance procedures. The proposed regulations also consolidate State program requirements under section 404 of CWA (permits for discharges of dredged or fill material), and EPA permit issuance procedures for Air PSD program.

Draft consolidated application forms are published with these proposed regulations, so as to enable a more complete review of EPA's Permits Consolidated efforts. The Agency also intends to move in the direction of issuing a single consolidated permit for a facility that requires multiple EPA permits, which would cover all EPA permit requirements for the facility.

As the first expression of this process, the Agency has developed a single form for applying for permits under the Consolidated Permit regulations. This form appears as a notice for public comment in a separate part of today's Federal Register. The Consolidated Application form consists of a single part to collect general information from all applicants, followed by separate program-specific parts which collect information needed to issue permits under each program. Today's notice includes the general information part and parts for hazardous waste permits under RCRA and for certain water discharges under NPDES. The parts for the other permit programs will be developed in the near future, and will be incorporated into the consolidated application form when they are ready.

A set of NPDES regulations is also being proposed today as part of the Consolidated Application form package. These proposed NPDES regulations, which are closely tied to the proposed application form, are numbered to correspond with the Consolidated Permit regulations and the two should be read together. The preamble to the proposed conforming regulations contains a detailed discussion of the new NPDES application form requirements and their place in the entire NPDES permitting process.

Although nothing in these regulations would require States to undertake a reorganization of environmental permitting functions, EPA encourages States to begin or continue efforts toward "one-stop" permitting, or other forms of permit program consolidation.

The Agency anticipates a number of benefits to the environment, the regulated community, the general public and its own institutional efficiency in the Permits Consolidation effort:

• *Environmental Benefits:* Consolidation of procedures, regulations and permit review functions should result in more comprehensive management and control of wastes or residuals, and elimination of gaps in managing these wastes.

• *Regulatory Burden Reduction:* The use of uniform procedures and program requirements among EPA permit programs should result in more consistent and predictable requirements for the regulated community, and should reduce the costs of complying with multiple program requirements. The use of common program regulations, and future use of a single application form for EPA-issued permits should reduce the paperwork and increase efficiency in processing permits.

• *Institutional Benefits:* The Agency has already experienced greater coordination, sharing of information, and resolution of inconsistencies and overlaps among the various programs during the development of these proposed regulations. By October, 1979, the Agency will be establishing centralized permit-writing units in the Regions.

• *Public Participation Benefits:* Procedures and opportunities for public participation in permit program decisions and in State program approvals will became more uniform and predictable under these regulations. This should facilitate public involvement in the implementation of the RCRA, UIC, NPDES and 404 programs.

• *Resource Benefits:* EPA expects that consolidation of permit programs should result in some reduction in overall Agency permitting resource needs over the next few years, measured against what the expanding scope of EPA permit programs would otherwise require, particularly as implementation of the RCRA and UIC programs begins and the consolidated application form is utilized. If States adopt similar approaches, resource benefits could also be felt at the State level.

Organization of Proposed Regulations

The proposed regulations will revise 40 CFR 122, 123 and 124, presently used for NPDES program regulations. These Parts of the Code of Federal Regulations are being used because they already provide the skeleton for organizing permit regulations, namely:

Part 122—Program Descriptions.

Part 123—State Program Requirements.

Part 124—Procedures for Decision-making.

To structure the proposed regulations in an understandable format, parts 122, 123 and 124 have been organized into Subparts. Subpart A of each Part applies to each permit program included in that Part. Subsequent Subparts set forth program-specific requirements for the individual programs.

Although the Agency has attempted to unify and consolidate these proposed regulations, statutory and programmatic considerations preclude complete uniformity. Thus, to review the regulations for a particular program, one must read both the general subpart plus the applicable specific subpart.

In adopting the proposed format, the Agency considered various alternative formats for combining requirements for the covered programs. The Agency solicits comments on the proposed format and any alternative approaches.

The Agency recognizes that these regulations are long and complicated. However, if each program were to publish separate regulations, they would be approximately 40 percent larger in total. This savings has resulted from the formulation of generally applicable requirements for all programs.

Summary of Proposed Regulations

Proposed Part 122—Establishes program definitions and basic program requirements for the RCRA, UIC, NPDES and 404 programs. Part 122 also provides certain requirements for State programs.

to the extent Part 123 explicitly references Part 122 requirements. This Part spells out in detail who must apply for a permit; what terms, conditions and schedules of compliance must be incorporated into permits; when and how monitoring and reporting of permit compliance must be performed; when permits may be revised or reissued; and other requirements.

Proposed Part 123—Establishes the requirements for State programs. Each of the programs described in Part 122 may be administered by any State, in lieu of EPA, that has received the approval of the Administrator. In addition of the hazardous waste, UIC and NPDES programs, Part 123 governs State section 404 permit programs for discharges of dredged or fill material. After receiving the approval of the Administrator a State may issue section 404 permits, in lieu of the United States Army Corps of Engineers, in so called "Phase II and III" waters (sometimes referred to as traditionally non-navigable waters). In addition, Part 123 contains the procedures for State program approval, revision and withdrawal.

Proposed Part 124—Establishes the procedures to be followed in making permit decisions under the RCRA hazardous waste, UIC, PSD and NPDES permit programs, including procedures to enable public participation in permit decisions, consultation with State and Federal agencies, procedures for consolidated review and issuance of two or more permits to the same facility or activity, and mechanisms for appeal from permit decisions. Most requirements in Part 124 are only applicable where EPA is the permit-issuing authority. Part 123 requires States to comply with some of the Part 124 provisions, such as the public participation aspects of permit issuance.

Relationships Between Programs

The programs covered in these regulations overlap one another in two different ways. The first type of overlap occurs where different activities associated with a single source require permits under two or more of the programs covered by these regulations. For example, a facility may store hazardous waste in surface facilities, inject some of its waste into the ground, and have a discharge of other waste into surface waters. The basic reason for proposing these consolidated regulations is to assure that permit decisions are consistent, and that the procedures for permit issuance are efficient and coherent.

The second type of overlap occurs where the same activity is regulated under two or more of the statutes authorizing these regulations. For example, disposal of hazardous waste by well injection must have a permit under section 3005(a) of RCRA, a permit under section 1421(b) of SDWA and, if located in a State with an approved NPDES program, a permit under section 402(b)(1)(D) of the CWA. The following is a discussion of the approaches the Agency is proposing in this second area:

UIC/NPDES—Under section 402(b)(1)(D) of the CWA approved State NPDES programs are required to "control the disposal of pollutants into wells." The UIC program, likewise, requires States to establish programs for controlling well injections. EPA believes that these two requirements are complementary and that a single permit issued by a State to a well injector can satisfy the requirements of both acts.

Although EPA has required NPDES States to demonstrate the legal authority to issue permits for well disposal, it has never specified how States should exercise this authority. No technical requirements have been established under the NPDES program for well disposal; States are merely required to exercise their authority "to protect the public health and welfare and to prevent the pollution of ground and surface waters." EPA believes that the legal authority possessed by NPDES States can serve as the nucleus for development of State UIC programs. Therefore, in many instances, these States will be able to develop UIC programs without any further action by their State legislatures. Once a State develops regulations and other program components in accordance with UIC regulations under Part 146 (proposed at 44 FR 2378 (April 20, 1979)), and receives the approval of the Administrator under Part 123, a State-issued permit for well injection should satisfy both CWA and SDWA requirements.

UIC/RCRA—The UIC program imposes requirements on all well injection, while the hazardous waste program under RCRA imposes requirements on treatment, storage and disposal of hazardous waste. When materials which are hazardous wastes for purposes of the RCRA program are injected into a well, that well falls within the definition of a Hazardous Waste Management Facility (HWM) facility and, consequently, is subject to regulation under both programs.

To avoid any possible duplication and inconsistency in regulation, EPA proposes to regulate hazardous waste injection wells under the UIC program because it is specifically oriented toward underground injection as a technique of disposal. EPA believes that the degree of environmental protection afforded by the UIC regulations meets the requirements of RCRA. EPA has taken several actions to assure that hazardous waste is adequately covered under the UIC program. In cases where a site has both an injection well and surface facilites that treat, store or dispose of hazardous wastes, the surface facilities will be subject to a hazardous waste management program permit. The appropriate RCRA requirements will be applied through that mechanism. In cases where a well receives wastes accompanied by a manifest, the UIC controls will apply exclusively. Those controls, however, will incorporate the RCRA requirements for notification, manifest, recordkeeping and reporting.

However, any pits, ponds, lagoons, storage tanks or other surface facilities associated with an injection well that are used to treat of store hazardous waste are still required to obtain a RCRA permit. For further discussion of this approach, see the preamble to Subpart B of Part 122 of these regulations.

Another particular concern of the Agency was that the imposition of controls over hazardous waste under RCRA might make underground disposal of such waste more economically attractive in States that were not yet listed as requiring a UIC program. Under the UIC program, State program requirements are only triggered once a State has been listed by EPA. EPA has therefore decided to implement UIC controls over well injections on the same schedule as the RCRA hazardous waste program. All the remaining unlisted States will be listed by May of 1980 as needing a UIC program.

The UIC Program also proposes to ban all Class IV wells (i.e., wells owned or operated by generators of hazardous wastes or by hazardous waste management facilities that inject into or above underground sources of drinking water). Since the operators of these wells are subject to RCRA requirements, they will have to notify EPA under section 3010 of RCRA. The initial inventory of Class IV wells will be developed through the notification process under RCRA.

NPDES/RCRA—Publicly owned treatment works(POTW) which receive wastes defined as hazardous under the RCRA program are also point sources subject to the NPDES permit program of secion 402 of the CWA. This creates the possibility of duplicative regulation of

the same activity. In an effort to avoid this result, EPA is proposing a "permit by rule" under the RCRA program for publicly owned treatment works (POTW) which receives hazardous wastes and are regulated by the NPDES program. Under this proposal, POTW's would be "deemed to have a permit" for purposes of RCRA if the facility has an NPDES permit and if it adheres to the notification requirements of section 3010 of RCRA, as well as the manifest, recordkeeping and reporting requirements of 40 CFR Part 250 under sections 3001–3004 of RCRA. EPA believes that this approach accomplishes the protective goals of RCRA in a way which eliminates much of the administrative burden which parallel regulation would cause. For further discussion of this approach, see the preamble to Subpart B of Part 122.

Applicability of NEPA to the Consolidated Permit Programs

With the exception of EPA-issued permits for new sources, none of the permitting requirements under these regulations is subject to requirements of the National Environmental Policy Act (NEPA), 43 U.S.C. section 4332(2)(E). NPDES permits, other than for new sources as defined in section 306 of CWA, are removed from NEPA by the terms of section 511(c) of CWA. That section expressly exempts from NEPA requirements all actions taken by the Administrator pursuant to CWA, except issuance of permits to new sources and construction grants for publicly owned treatment works. PSD permits under the CAA are similarly exempted by statute from NEPA. See Energy Supply and Environmental Coordination Act of 1974, section 4(c)(1), 15 U.S.C. 793(c)(1).

EPA permits for hazardous waste facilities under RCRA are also not subject to the formal requirements of NEPA. The courts have recognized that Federal regulatory action taken by an agency with recognized environmental expertise, when circumscribed by extensive procedures, including public participation for evaluation environmental issues, constitutes the functional equivalent of NEPA's requirements. See *Portland Cement Assoc.* v. *Ruckelshaus*, 486 F.2d 375 (D.C. Cir. 1973), cert. den., 417 U.S. 921 (1974); *Maryland* v. *Train*, 415 F. Supp. 116, 122 (D. MD. 1976). EPA has determined that the procedures regarding EPA's issuance of RCRA permits clearly satisfy that standard.

The Agency also anticipates that the functional equivalence principle will apply to EPA-issued UIC permits, and that such permits are similarly exempt from formal NEPA requirements.

Finally, NEPA requirements do not apply to State-issued permits. *Chesapeake Bay Foundation, Inc.* v. *United States*, 453 F. Supp. 122 (E.D. Va. 1978).

The Agency believes that the proposed regulations will have a positive environmental impact by providing more comprehensive environmental review of facilities which require EPA permits under the NPDES, PSD, RCRA or UIC permit programs, particularly where two or more of these permits may be required for the same facility or activity. We believe that the possible transfer of various programs to State responsibility will not affect the stringency of program administration. The State programs must meet Federal Standards in order to receive Federal approval, and they will be subject to Federal oversight. While transfer of aspects of the 404 program to the States will eliminate the NEPA requirement for some 404 permits, it is unclear whether this transfer will lead to narrowed environmental review of the subject activities, since States are free to adopt a more stringent approach to regulation and many States have their own EIS-type requirements.

Previous Publication of Regulations for RCRA, UIC, and NPDES Programs

Portions of these proposed regulations have appeared previously in the Federal Register in either proposed or final form. Comments on any prior proposal will *not* automatically be considered part of the record of this proposal. Commenters should resubmit such comments as comments on this proposal if they want to make sure that EPA will consider them.

RCRA Program: Under the RCRA program, Guidelines for State Hazardous Waste Programs were proposed as Part IV of the February 1, 1978, Federal Register (43 FR 4366). These consolidated regulations contain changes which reflect comments on the February 1978, proposed guidelines. Because the consolidated regulations may surface issues on which the public has not had a chance to comment, the consolidated regulations are a reproposal of the RCRA Section 3006 guidelines.

UIC Program: Regulations for the UIC program were originally proposed on August 31, 1976, as 40 CFR Part 146. In response to numerous public comments, EPA has made significant changes in the regulations and has reproposed them for further public comment. (See 44 FR 23738 (April 20, 1979)). Many elements of the UIC program are now being proposed for inclusion in Parts 122, 123 and 124, while the technical criteria and standards by which the Director of an EPA or State-administered UIC program makes decisions continue to remain in Part 146.

NPDES Program: Subparts D of the proposed Parts 122 and 123, and Subparts D, E and F of proposed Part 124 are virtually identical to each of the contents of the NPDES Parts 122–124 which were recently promulgated. These NPDES regulations were made final after a comment period of 90 days during which over 500 comments were received. The comments were fully considered by the Agency, and the final NPDES regulations now occupy Parts 122–124. The consolidated permit program regulations, when finally promulgated, will incorporate and take the place of the final NPDES regulations in Parts 122–124. There are some minor changes to the Final NPDES regulations which occurred in the process of generalizing requirements for all programs in Subpart A. In addition, there are several new provisions applicable to the NPDES program, such as procedures for the withdrawal of State programs under Part 123, and new permit modification and confidentiality of information provisions under Part 122. These changes are highlighted in this preamble discussion.

Technical Requirements for RCRA, UIC, and NPDES Programs

Technical requirements and criteria which apply to decision-making under these three programs have been developed separately from Parts 122–124. These regulations set the standards for the actual contents of permits under the three programs and provide some of the technical bases for determining the adequacy of State programs and individual permit decisions.

RCRA Program: For the RCRA permit program, Parts 122–124 should be read, where appropriate, in conjunction with technical standards proposed under 40 CFR Part 250 on December 18, 1978, (43 FR 58946–58028) under sections 3001, 3002 and 3004 of RCRA prescribing (1) criteria for identifying and listing hazardous wastes, identification methods, and a hazardous waste list, (2) standards for generators of such waste for recordkeeping, labeling, containerizing and using a manifest, and (3) performance standards for hazardous waste management facilities including human health and environmental protection levels and design and operating standards as well as recordkeeping, monitoring, reporting,

contingency plans and training and financial responsibility requirements. These proposals together with those under section 3003, (April 28, 1978, FR 18506–18512), section 3005 (40 CRF Parts 122 and 124), section 3006 (40 CFR Part 123), section 3008 (August 4, 1978, FR 34738–34747), and section 3010 (July 11, 1978, FR 29908–29916) of RCRA and that of the Department of Transportation (May 25, 1978, FR 22828–22834) under the Hazardous Materials Transportation Act constitute the hazardous waste regulatory program under subtitle C of RCRA.

UIC Program: Technical criteria and standards for Underground Injection Control Programs under the SDWA were proposed as 40 CFR Part 146, on April 20, 1979 (44 FR 23738).

NPDES Program: NPDES criteria for decision-making will be located in 40 CFR Part 125, which was recently promulgated. In addition, effluent guidelines used in setting permit effluent limitations are located in 40 CFR Subchapter N.

404 Program: Interim final guidelines detailing the environmental concerns to be considered in evaluation of section 404 Permit applications (i.e., the section 404(b)(1) guidelines are set forth in 40 CFR Part 230; however revised guidelines will soon be proposed to amend Part 230. Procedures under section 404(c) for use of EPA's authority to prohibit or restrict disposal sites are detailed in 40 CFR Part 231 and regulations covering activities under section 208(b)(4) of CWA will be in 40 CFR Part 130.

Part 122

What does this Part do?

Subpart A of Part 122 provides both general and program-specific definitions for the EPA administration of RCRA hazardous waste, SDWA underground injection control, and CWA NPDES programs. In addition, all Subparts of Part 122 describe basic program elements for the three programs, including application requirements, standard permit conditions, permittee monitoring and reporting requirements and other requirements. Both the general Subpart (A) and the appropriate individual Subpart (B-D) must be consulted for a full description of any program.

Certain of these requirements are made applicable, as indicated in Part 123, to State programs which operate in lieu of EPA programs after receiving EPA approval. In the case of section 404, State programs operate in lieu of the Corps of Engineers program in so-called "Phase II and III" waters.

Subpart A

The major elements of Part 122, Subpart A are:

Program definitions (§ 122.3). Definitions for the RCRA, UIC, NPDES and 404 programs are set forth in § 122.3. Definitions applicable to all programs appear under "General Definitions," and those applicable only to a particular permit program are set forth separately.

Wherever possible, common definitions have been provided for the four programs. In some cases, where different definitions must be employed due to the differing statutofy requirements, differences between definitions for two or more programs are highlighted. For instance, the definitions of "State" and "person" under the three Acts are necessarilydifferent and are highlighted in § 122.3(a).

Both the RCRAand UIC programs propose to use a similar definition of "underground sources of drinking water" or "underground drinking water source" (USDW). Any aquifer or its portion qualifies as an USDW if:

(1) It is currently in use as a source of drinking water;

(2) It produces water with fewer than 10,000 mg.1 of total dissolved solids (TDS); or

(3) It is designated as an USDW by the Administrator or State (as appropriate).

Under the UIC program, however, flexibility is granted in the application of the definition to recognize those situations where the aquifer or its portion may technically meet the definition but in fact has no real potential to serve as a drinking water source. Therefore, in those instances where the aquifer or its portion does not currently and will not in the future serve as a source of drinking water, it need not be designated if:

(i) It is mineral, oil or geothermal energy producing;

(ii) It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical; or

(iii) It is so contaminated that it would be economically or technologically impractical to render the water fit for human consumption.

To balance the flexibility provided, the UIC program will require the designations of USDW's to be made after public hearing and subject to approval by the Administrator.

The RCRA program does not propose a similar degree of flexibility in the application of the definition. It is the Agency's judgment that where hazardous wastes are concerned, a stricter level of protection is prudent. Since little discretion is available, the HWM program also does not propose to require public hearings or review by the Administrator.

Both the NPDES and section 404 programs employ the concepts of best management practices (BMP's) and general permits. Because of the differences in the regulatory programs, differing definitions are applicable to these concepts (no definition of "general permit" is given for purposes of NPDES although EPA is considering formulating one). The public is invited to comment on whether it is appropriate to develop unified definitions for these concepts.

Signatories to permit program forms (§ 122.5). These regulations require that permit applications, except those for Class II wells under the UIC program, must be signed by a principal executive officer of at least the level of vice-president or equivalent official for partnerships or public facilities. Permit applications for Class II wells, reports required under Part 122, and certain requests for information forms may be signed by a duly authorized representative. Applications for permits for Class II wells under the Underground Injection Control program are distinguished from other applications due to the large numbers of small and physically dispersed Class II wells associated with oil and gas operations involving the injection of fluids. All signatories for permit program forms must represent that they have made sufficient inquiries to certify the truth of any statements made in the forms.

Duration of Permits; Continuation of Expiring Permits; Transferability of Permits (§ 122.6). This section establishes requirements for the duration of RCRA, UIC, 404 and NPDES permits, the continuation of expiring EPA-issued permits, and requirements that must be met by permittees who transfer ownership of their facilities.

NPDES and section 404 permits are required under the Clean Water Act to have fixed terms not to exceed five years. Neither RCRA nor the SDWA establish specific permit terms for hazardous waste or underground injection control permits. Section 122.6 proposes that RCRA and UIC permits may be issued with terms up to the life of the permitted facility. A lifetime permit was selected for these facilities so as to enable them to obtain more favorable financing, to avoid continuous facility siting problems and to save paperwork burdens on EPA or State permit writers. NPDES and 404 permits

will continue to be issued for terms that do not exceed five years. However, to insure a regular review of permits particularly where a RCRA, UIC, or 404 permit is issued to a facility or activity that requires an NPDES permit, review of each permit issued for a given facility or activity is required each time another permit for the same facility is modified, reissued or terminated. This review will thus coincide with the NPDES reissuance cycle and will be conducted for purposes of considering whether modification or revocation and reissuance of any other permit(s) is warranted. These proposed periodic reviews are mandatory on both EPA and approved States.

After reviewing a permit, a decision whether or not to modify the permit will be made by the EPA Regional Administrator or the State Director. Reasons for modifying a permit would include new information about human health or environmental risks, changes in the national standards, and changes in the type or volume of hazardous waste(s), injected fluids or pollutants. Facility siting will not be considered at the time of permit modification unless new information or standards indicate a threat to human health or the environment exists which was unknown at the time of permit issuance or unless new data has been developed since the time the permit was granted.

Regardless of whether another permit expires or is modified or terminated, review of single UIC or RCRA permits for a given facility is required in any event at least every five years and upon public request where information is submitted which indicates that grounds for permit modification exist.

The Agency solicits public comment on this approach to ensure comprehensive, regular review of permits. In particular, the Agency solicits comment on an alternative that was considered and rejected during the development of these regulations. Under this alternative, where multiple permits are required for a single activity or facility, all permits would be set to expire at the same time. Where only a single permit under any program is required, it would be subject to review and reissuance at the time that an additional permit under another program is required in the future. This option would assure that a comprehensive review of the permit(s) from the standpoint of all programs is accomplished concurrently and on a regular basis. It would insure regular review of multiple permit and public participation during the issuance/reissuance process because of the built-in expiration and reissuance of permits. In addition, this option would enable continuing EPA review of State-issued permits for the same facility or activity, if the requirement were made applicable to States.

Review and Modification or Revocation and Reissuance of Permits. Section 122.5 covers both modification and revocation and reissuance of permits. These are alternative means of accomplishing very similar results. Either action can be chosen by the State Director or the Regional Administrator as a means of changing the terms of a permit, if cause exists under § 122.9(e). In general, however, the Director would choose to revoke an existing permit and reissue a new permit when permit terms and conditions are to be extensively changed, or where the remaining term of the existing permit is short and it would be to the advantage of the permittee to obtain a new permit with a longer term. This latter situation will involve primarily the shorter term NPDES and 404 permits, since most, if not all, UIC and RCRA permits will be set for the life of the facility. Additional program-specific provisions for modification of NPDES permits are contained in Subpart D. Most modifications under this section require compliance with §§ 124.5 and 124.7, which require the issuance of a draft permit for permit modifications, thus initiating the public review process under Part 124. Such modifications are processed in the same manner as permits, except that public comment is sought only on the proposed modifications. However, certain minor modifications under § 122.9(g) do not require compliance with § 124.5, unless the modifications would render the permit less stringent or unless contested by the permittee. These minor modifications take effect immediately when issued, and do not require the preparation of a draft permit or public notice and comment. In addition, Section 404 permit modifications will be processed according to procedures set forth in Part 123, Subpart E.

Termination of permits. Section 122.10 specifies conditions under which permits will be terminated for cause by the permitting authority. While revocation and reissuance is a mechanism for changing permit terms and conditions in light of changed conditions, termination is essentially an enforcement mechanism. The term "termination", as it is used in Part 122, includes permit suspension or revocation under section 3008 of RCRA. Procedures for termination of RCRA permits are provided in 40 CFR Part 22 (proposed 43 FR 34738 (August 4, 1978)).

Conditions applicable to all permits (§ 122.11). Section 122.11 specifies general conditions applicable to all permits under the RCRA, UIC, NPDES and 404 programs. Additional specific conditions are also included in Subparts B–D, unique to the individual permit programs.

Schedules of Compliance. Section 122.12 specifies requirements for schedules of compliance leading to expeditious compliance with program requirements. For NPDES permits, these schedules of compliance lead the permittee to compliance with the CWA's statutory treatment deadline requirements, as well as other program requirements. For permits under the RCRA, UIC and 404 programs, schedules of compliance will be used to set timetables for expeditious compliance with program requirements. These schedules are required, under proposed § 122.12(a), to set interim compliance dates where the total schedules exceed nine months. Permittees are required to provide written notice to the Director of the permittee's compliance or noncompliance with interim or final requirements. For most EPA-issued permits this notice must be provided within 14 days of each interim or final date. However, UIC permits issued by EPA will require such notice within 30 days. This variation in the notice requirements for UIC permits results from an effort to make the UIC program requirements in these proposed regulations consistent with those that were proposed as Part 146 on April 20, 1979 (44 FR 23738). However, EPA requests comments on the most appropriate time for providing such notice, and whether the notice requirements for all programs should be the same.

In addition, proposed § 122.12 allows approved State programs to choose different intervals for interim compliance dates, and up to 30 days for providing written notice following an interim or final compliance date. Comments on this approach are also solicited.

Section 122.12 also provides for two alternate schedules of compliance in cases where an EPA permittee may choose to terminate operations rather than meet permit requirements. One schedule reflects the dates for the proposed termination of operations, and the other reflects dates for compliance with all permit requirements. Very specific requirements for these alternate schedules are proposed for NPDES permits issued by EPA, because NPDES permits are subject to statutory deadline requirements under the CWA. However,

because the UIC and RCRA programs are expected to encounter situations in which alternate schedules will be necessary to assist both the Regional Administrator and the permittee in making the decision to terminate operations or meet compliance, alternate schedule provisions are also provided for these programs. Comments are solicited on the use of alternate schedules for the UIC and RCRA programs.

Recording and Reporting of Monitoring Results. Section 122.14 establishes general requirements applicable to all permittees for the recording and reporting of monitoring results to the permitting authority.

Noncompliance Reporting (§ 122.15). This section outlines the general requirements for noncompliance reporting that must be met by both EPA Regional offices and approved States. Reports are required on a quarterly basis for major permits under the three programs, and on an annual basis for minor permits. Additional or more specific reporting requirements are provided in Subparts B–D.

Confidentiality of Information (§ 122.16). This section provides for claims of confidentiality by persons submitting information to EPA under these regulations. Such claims will be processed in accordance with the procedures set out in 40 CFR Part 2. Paragraph (b) describes forms, documents and other materials will not be given confidential treatment.

Relationship of Subpart A to the Final NPDES Regulations, Part 122

Certain elements of the NPDES program have been modified slightly in Subpart A of Part 122, as a result of the consolidation with the RCRA and UIC programs. Among these changes are the following:

Review and Modification or Revocation and Reissuance of Permits (§ 122.9)

Under these proposed Consolidated regulations, NPDES permits must be reviewed to determine whether cause exists for modification or revocation and reissuance every time that another permit for the same facility or activity is modified, revoked and reissued, or terminated, and when information is presented to the Director indicating that cause exists for action under § 122.9(e). The final NPDES regulations did not require this kind of review by the Director. (See § 122.31 of the NPDES regulations.)

Conditions Applicable to all Permits (§ 122.11)

The standard conditions spelled out in § 122.11 of these proposed consolidated regulations are very similar to those contained in § 122.14 of the final NPDES regulations; however, in certain cases the language has been adjusted to better reflect all programs. Additional conditions in § 122.68 uniquely applicable to NPDES permits are identical to their counterparts in the final NPDES regulations, § 122.14.

Confidentiality of Information (§ 122.16)

The confidentiality of information section is an expansion of provisions contained in § 124.131 of the final NPDES regulations (Public Access to Information), and incorporates references to the procedures of 40 CFR Part 2, for processing claims for confidential treatment.

Subpart B

Subpart B of Part 122 sets forth specific requirements for Hazardous Waste Management Programs to supplement the general requirements of Subpart A. This section will discuss those specific requirements after a brief description of EPA's overall efforts to implement Subtitle C of RCRA.

Subtitle C of RCRA creates a "cradle-to-grave" control system for the management of hazardous waste including appropriate monitoring, recordkeeping and reporting. Section 3001 requires EPA to define criteria and methods for identifying and listing hazardous wastes. Wastes which are identified or listed as hazardous by these means are then included in the management control system established under sections 3002 through 3006 and 3010. Those wastes which are not identified or listed will be governed by the requirements of Subtitle D of RCRA for the management of municipal solid waste.

Section 3002 requires EPA to define the standards applicable to hazardous waste generators. Section 3002 also requires establishment of a manifest system to track hazardous wastes from their generation to their ultimate disposition in a permitted treatment, storage or disposal facility.

Section 3003 requires EPA to define standards applicable to transporters of hazardous wastes to insure proper management of hazardous wastes during transportation. The Agency is exploring opportunities for integrating this program with proposed and existing Department of Transportation regulations on the transportation of hazardous materials.

Section 3004 requires EPA to develop performance standards for the location, design, construction and operation of hazardous waste treatment, storage and disposal facilities. Facilities, whether on or off the site of hazardous waste generation are covered by these standards and are required to obtain permits. Section 3004 standards comprise the criteria against which applications for permits will be evaluated.

Section 3005 requirements, as proposed in Part 124 of these regulations establish the procedures for obtaining a permit to construct and/or operate a hazardous waste treatment, storage or disposal facility.

Section 3006 requires EPA to issue guidelines for State programs and procedures by which States may seek authorization to carry out the hazardous waste program in lieu of the EPA-administered program. Regulations to implement section 3006 are proposed in Part 123.

Section 3010 regulations establish procedures by which any person generating or transporting hazardous waste, or owning or operating a facility for storage, treatment, and/or disposal of hazardous waste, must notify EPA of this activity within 90 days of promulgation of regulations defining a hazardous waste (section 3001). Section 3010 provides that no hazardous waste subject to Subtitle C regulation may be transported, treated, stored or disposed, unless this notification is timely given to EPA.

Table I appearing below cross references the numbered sections of RCRA to the Subpart designations to be used in the regulations:

Table I

Solid Waste Disposal Act (as amended) Subtitle C Numbering System

40 CFR Part 250, Subpart A (proposed at 43 FR 58946–58968 (Dec. 18, 1978))—Section 3001 Standards for Criteria, Identification, and Listing of Hazardous Wastes.
40 CFR Part 250, Subpart B (proposed at 43 FR 58960–58961 (Dec. 18, 1978))—Section 3002 Standards Applicable to Generators.
40 CFR Part 250, Subpart C—(proposed at 43 FR 18506–18512 (April 28, 1978))—Section 3003 Standards Applicable to Transporters.
40 CFR Part 250, Subpart D (proposed at 43 FR 58962–59028 (Dec. 18, 1978))—Section 3004 Standards for Owners and Operators of Treatment, Storage and Disposal Facilities.
40 CFR Part 122 and 124 Subparts A and B—Section 3005 Permits for Treatment, Storage and Disposal of Hazardous Waste.

40 CFR Part 123 Subparts A and B—Section 3006 Guidelines for Authorized State Programs.
40 CFR Part 250, Subpart G—(proposed at 43 FR 29908–29916 (July 11, 1978)—Section 3010 Preliminary Notification of Hazardous Waste Activities.

Application for a permit (§ 122.23)

The information requirements for a RCRA Hazardous Waste Management Facility permit will be divided into two parts (A and B). This approach is being taken in order to expedite and simplify the permit issuing process so that existing facilities may comply with the statutory requirement for attaining "interim" status [section 3005(e) of RCRA]. Additional discussion on this approach is included later in this Preamble. Section 122.23 of these regulations specifies the information that will be required in each part of the application and is discussed briefly here.

The Agency is now preparing the necessary forms that will be needed, as part of the effort to consolidate the application forms for the RCRA, NPDES and UIC programs. These forms appear as a notice for public comment elsewhere in today's **Federal Register**.

Part A of the application requirements is reflected in two sections (Forms 1 and 3) of the consolidated application form. These information requirements include: submission of a U.S. Geological Survey topographical map of the general area where the facility is located; a description of the hazardous waste handled and a brief description of how it will be handled; the annual quantity of each hazardous waste handled; and copies of all available drawings and specifications for the facility.

Part B of the application requires submission of detailed data concerning the geology, hydrology and engineering aspects of the HWM facility. A master plan including a detailed facility map also must be submitted. In addition, detailed information concerning such factors as financial responsibility, employee training, contingency plans, operation plans and closure plans, and plans for air and water monitoring must be submitted in enough detail to allow the permitting authority to determine if the RCRA section 3004 standards are met.

A separate application form will not be developed for Part B as part of the Consolidated Application form due to the detailed nature of the information required. In supplying Form B information, applicants must comply with the information requirements of this Subpart.

Existing facilities must submit Part A within 180 days of the date of promulgation of the regulations under section 3001 of RCRA (40 CFR Part 250, Subpart A). This requirement will be satisfied by submitting Form 1 and Form 3 of the Consolidated Application forms. This information will be used to determine the priority for requesting the submission of Part B for final determination of the permit application. For new facilities, both Part A and B application requirements must be submitted together, at least 180 days before physical construction is scheduled to start.

Permitting Requirements—General

With some exceptions (discussed later), any person who owns or operates or proposes to own or operate a facility for the treatment, storage or disposal of hazardous wastes as identified or listed in proposed 40 CFR 250, Subpart A, must obtain a RCRA hazardous waste management facility ("HWM facility") permit. Owners/operators of existing HWM facilities must meet this requirement by submitting Part A of the application requirements within 180 days of promulgation of 40 CFR Part 250, Subpart A and by submitting Part B and the remainder of the required information upon request of the permitting authority. Owners/operators of new HWM facilities must submit both parts of the information requirements no later than 180 days before the scheduled physical construction date for the facility for which the permit is sought. Part A will provide the Director with general information on the various HWM facilities in his/her area. Part B will furnish more detailed data necessary to bring the permitting effort to a conclusion.

EPA is today proposing this two-part application process with separate filing dates for existing facilities for the following reasons: First, the ready information which Part A (Forms 1 and 3 of the Consolidated Application Forms) will supply (See § 122.23(c)) will enable the State Director or the Regional Administrator to establish a system of priority review for HWM permits. He or she can review Part A forms to determine which facilities warrant prompt attention under 40 CFR Part 250, Subpart D (Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities) and can then require an earlier submission of Part B of these applicants. Hence, permits could be issued earlier to the facilities which are in greatest need of regulation. Because EPA expects that approximately 30,000 existing facility permits will have to be issued, it foresees a 5 year period for issuing all permits. Given this span of time, EPA believes this attempt to issue permits on a priority basis to be the most effective and efficient use of limited resources.

Second, the immediate submission of Part A which should not entail lengthy preparation on the part of owners and operators, will satisfy the "permit application" requirement for obtaining interim status under section 3005(e) of RCRA. Third, a later submission of Part B assures that the detailed information upon which permit decisions will be based is complete and current.

The owner/operator of an existing HWM facility is required to submit Part B of the permit application on the date established by the Director. The Director must give the owner/operator at least six months notice of the date for submission of Part B (§ 122.23(a)(2)). Submitting Part B on time will assure that a facility with interim status maintains interim status during permit review; conversely, failure to submit Part B on time will result in loss of interim status. Part B of the permit application, which must be signed by a appropriate official (§ 122.5), will not be considered to be submitted until all of the required information is supplied, except that the Director may waive submission of certain information upon request as authorized in § 122.23(d)(7).

With respect to determining which permit applications will receive priority review and action, the Director shall consider several factors. These factors include the amount and nature of the hazardous waste handled by the facility, the apparent adequacy of the facility's design and operation, and the environmental sensitivity of the geographic area in which the facility to be permitted is located.

A permit application for a new HWM facility must be submitted at least 180 days before the date on which physical construction is expected to begin (§ 122.25(b)). Actual time for processing of applications and for issuing of permits will vary depending on the degree of complexity and extent of public participation involved. Since physical construction of a new facility cannot begin until a final permit has been issued, the burden is on the applicant to submit an application far enough in advance of the physical construction date to enable the Director to satisfy all of the review requirements of the regulations and not jeopardize the planned construction dates. Within 30 days of receipt of an application, the

Director must determine whether the application is complete.

Establishing Permit Terms and Conditions

EPA is proposing to allow "minor" modifications to existing permits issued under RCRA that may be appropriate under limited circumstances, as stated in § 122.24, at the discretion of the Director. This limited modification shall only be granted if: (1) the Director has determined that a particular HWM facility is capable of handling the type or volume of waste proposed in the modification without violating any other terms and conditions of the section 3004 standards of RCRA, and (2) the HWM facility can demonstrate that it will receive these proposed wastes in a manner that cannot be anticipated through contract provisions or by other means available at the time of initial permit issuance.

The Director shall issue public notice in accordance with § 124.11 prior to or at the time of approving any minor modification. By requiring a public notice to be issued and the requirement that all applicable section 3004 standards be met, EPA believes that human health and the environment will be adequately protected while, at the same time, any unnecessary paperwork required of permit applicants will be reduced. Comments on this approach are solicited.

Permitting Requirements—Special Categories

These proposed regulations would not impose the detailed permit requirements of Subpart B upon several categories of HWM facilities, where EPA is the permit-issuing authority. Two classes of facilities, health care facilities and experimental facilities, would be required to obtain a "special permit" in lieu of the regular permit described above. Three other classes of facilities, special waste facilities, publicly owned treatment works accepting wastes under a manifest or other delivery document, and barges or other vessels accepting waste under a manifest or delivery document for ocean disposal, would be regulated under a "permit by rule" mechanism. Finally, injection wells which dispose of hazardous wastes and certain solid waste management facilities which accept small amounts of hazardous wastes would not fall under the permitting requirements of these regulations. States approved by EPA to administer hazardous waste programs are also authorized, but *not* required, to regulate such facilities in the same manner as EPA.

Special Permits—Health Care Facilities (§ 122.25(a))

Certain departments of hospitals and veterinary hospitals routinely produce wastes which fall under the broad definition of "hazardous waste" as set forth in proposed 40 CFR Part 250, Subpart A. These facilities when storing or otherwise treating such waste on their premises will be considered as HWM facilities. In most cases, however, health care facilities are closely regulated by existing State laws. EPA has concluded that detailed permitting requirements under RCRA are unnecessary for health care facilities which are complying with State law.

Specifically, these regulations require health care facilities which are operating under and complying with a comprehensive and enforced State law to submit only an abbreviated application. The application would describe the type of facility and would provide certain operational information, including certification that the facility is operating under a State license. If the application satisfies the requirements of this Subpart, EPA would issue a special permit. Because State law would be adequately controlling the treatment and storage of hazardous waste by the facility, the permit would impose no additional express controls.

Special Permits—Experimental Facilities (§ 122.25(b))

EPA is also proposing to issue special permits for "experimental facilities", i.e., facilities which are or would be engaged in technology advancing activities which are intended to improve the state-of-the-art for hazardous waste treatment, storage or disposal. As with health care facilities, the applications which owners/operators of experimental facilities should submit should be easy to prepare and limited in informational requirements. EPA is proposing the special permit mechanism for experimental facilities for two reasons. First, EPA seeks to encourage inquiry into new and innovative ways to handle hazardous wastes. Relieving some of the administrative prerequisites to operating such a facility may facilitate that end. Secondly, and equally important is the distinct possibility that the Part 250, Subpart D standards, which are designed primarily for typical containment facilities, might not apply functionally to facilities implementing a new technology for hazardous waste management. It would not be sensible to force an innovative facility to comply with informational or other requirements not suited to its design.

Of course, these facilities will be required to comply with all of the applicable standards of Part 250, Subpart D. Additionally, the regulations limit the term of such permits to one year (with an additional one year extension under certain conditions) and establish requirements for submission of full-evaluation reports.

Permit by Rule—Special Waste Facilities (§ 122.25(a))

Proposed 40 CFR Part 250, § 250.46, creates a special category for owners and operators of facilities which treat, store or dispose of "special wastes." Special wastes are hazardous portions of certain large volume wastes on which the Agency has limited information. These large volume wastes are cement kiln dust, utility waste (fly ash, bottom ash, and scrubber sludge) phosphate rock mining waste, beneficiation and processing waste, uranium mining wastes, other mining waste, and gas and oil drilling muds and oil production brines. In Part 250, Subpart D, EPA is proposing to exempt these facilities from compliance with generally applicable requirements in favor of certain special standards (40 CFR 250.46–1 through 6). EPA intends to propose comprehensive standards for these facilities when sufficient information on which to base a regulatory program becomes available.

Because the generally applicable performance standards do not apply to special waste facilities, EPA has determined that imposing the full permitting burden on members of this class serves no useful purpose. Consequently, in its place EPA is proposing to require only a "permit by rule." A permit by rule would simply mean that the owner or operator of a special waste facility would be deemed to have a permit, without having to submit any application for it, if the facility complied with the special waste facility standards of 40 CFR 250.46. After data is available to the Agency, this regulatory approach would be modified as appropriate.

Permit by Rule—Publicly Owned Treatment Works and Ocean Disposal Vessels (§ 122.26 (b) and (c))

EPA is also proposing to use the permit by rule mechanisms for two other HWM facilities, publicly owned treatment works which accept hazardous wastes under a hazardous waste manifest or other delivery document, and barges or other vessels which receive hazardous wastes under a manifest or delivery document for purposes of ocean disposal.

Similar to the situation of the special waste facilities, use of the permit by rule mechanism should save owners and operators of these types of HWM facilities from paperwork burdens which accompany the task of preparing and submitting permit applications.

EPA is eliminating the affirmative requirement to secure a permit for these facilities because they are currently regulated under other EPA water pollution control programs. Publicly Owned Treatment Works (POTW's) fall under the National Pollutant Discharge Elimination System (NPDES) permit system of the Clean Water Act and ocean dumping vessels come under the permit system of the Marine Protection, Research, and Sanctuaries Act. These ongoing programs should provide a degree of environmental protection equivalent to that of Part 250. In recognition of this fact, Part 250, Subpart D, specifically exempts both of these types of HWM facilities from its requirements (40 CFR 250.40(e), 43 FR 58996 (Dec. 18, 1978)).

Thus, a POTW or ocean disposal vessel would be deemed to have a permit if it operates in accordance with the NPDES and Ocean Dumping permits and if the owner or operator complies with the notification, manifest, recordkeeping and reporting requirements.

Underground Injection Wells Permitting

These regulations propose to relieve the activity of injecting hazardous waste into underground injection wells from RCRA permitting requirements. As in the case of POTW's and ocean disposal vessels, injection wells are technologically dissimilar to more conventional HWM facilities and, therefore, many performance standards of Part 250, Subpart D, are functionally inapplicable. Also, as in the case of POTW's and ocean disposal vessels, underground injection wells fall under an alternate Federal regulatory program. Consequently, Part 250, Subpart D, has been made specifically inapplicable to underground injection wells (40 CFR 250.46(e)).

The alternate regulatory program is the underground injection control (UIC) program of Title C of the Safe Drinking Water Act, which is proposed for public comment in these regulations and in 40 CFR Part 146 (proposed at 44 FR 23738 (April 20, 1979)). The UIC program requires that all hazardous waste injection wells comply with its minimum standards. Injection wells, including those injecting hazardous wastes, are exclusively regulated by those minimum standards. Thus, in an instance where one site contains surface facilities which treat, store or dispose of hazardous wastes, as well as a hazardous waste injection well, the surface facilities will be required to comply with the requirements of the RCRA program only and the injection well will be required to comply solely with the requirements of the UIC program.

But, in order to assure that these parallel regulatory efforts work together, the UIC program has included in 40 CFR 146.09 a subset of standards from the RCRA program regarding notification, reporting, recordkeeping and the manifest system. Injection wells which inject hazardous wastes, as a general matter, must comply with these RCRA-originated standards to assure that the informational system of that program successfully tracks all hazardous wastes.

In instances where the RCRA informational system requirements have already been met, for example, when the wastes received by the well are supplied by an on-site surface facility which has already complied with these requirements under the RCRA program, the well operator need not comply with the requirements a second time. Wastes received by such wells would not be "accompanied by a minifest or other delivery document" as stipulated in § 146.09.

The permit by rule mechanism is not needed because compliance with the notification, recordkeeping, reporting and manifest requirements of Part 250, Subpart D is provided in the UIC regulations themselves. The Agency has done so in 40 CFR 146.09; the permit by rule, thus, has become operationally unnecessary.

The Agency is well aware that section 3005(a) of RCRA asserts a broad permitting requirement for all HWM facilities. Despite this language, EPA is making a concerted effort to streamline its procedures and does not want to impose non-beneficial and duplicative regulations which seemingly do not further the goals of the statute. The Agency solicits comments on the adequacy of environmental protection which these alternate regulatory programs offer, on the appropriateness of establishing "special permits", "permits by rule", or the alternate mechanism to cover UIC wells, and on the legal and practical implications of the entire effort.

Solid Waste Disposal Facilities Which Receive Small Amounts of Hazardous Wastes

These regulations also exempt from RCRA permitting requirements certain solid waste disposal facilities which receive hazardous wastes in small quantities. These facilities are those which receive wastes exclusively from persons subject to 40 CFR 250.20 (proposed at 43 FR 58978, Dec. 18, 1978). Persons under § 250.20 are those who produce and dispose of no more than 100 kilograms (approximately 220 pounds) of hazardous waste in any one month; any retailer disposing of hazardous waste (other than waste oil); and certain farmers who dispose of pesticides and follow specified operating procedures.

40 CFR 250.40(c)(5) exempts these facilities from meeting any of the section 3004 standards for HWM facilities because they will be regulated as solid waste disposal facilities under Subtitle D of RCRA. Moreover, the relatively small amounts of hazardous wastes which these facilities would receive would not change their overall character as solid waste disposal facilities; nor would these facilities in any way provide an insufficient level of protection to human health and the environment (see preamble to 40 CFR Subpart D, 43 FR 58965). Thus, in the definitional section (§ 122.3(t)) of Subpart A of this Part, EPA is proposing to remove this class of facility from the scope of the term "hazardous waste management facility."

Interim Status (§ 122.23)

Section 3005(e) of RCRA provides a mechanism for existing facilities to continue receiving hazardous wastes prior to obtaining a permit under these regulations. That mechanism is "interim status." Under the terms of section 3005(e), a facility with interim status "shall be treated as having been issued a permit until such time as final administrative disposition of such application is made, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application." To qualify for interim status, a facility must have complied with the notification requirements of section 3010 of RCRA, and must have submitted Part A of the permit application. Moreover, during the interim status period, facilities must comply with a limited set of operating procedures (see 40 CFR 250.40(c)). EPA interprets Congressional intent, in providing interim status, as a means for allowing the continued receipt and handling of hazardous wastes by HWM facilities during the "start-up" period of

the RCRA program. Therefore, existing facilities which are participating in the program would not be subject to the general prohibition against treating, storing or disposing of hazardous wastes in the absence of a permit.

Because these regulations do not require site-specific permits for three classes of facilities (special waste facilities, certain POTW's, and ocean dumping vessels) these three classes of facilities need not submit a Part A application (Forms 1 and 3 of the Consolidated Application Forms) to qualify for interim status. EPA is proposing this approach because it would be contradictory for the agency to ease a requirement to avoid regulatory overlap on the one hand, and, then, to simply reinstitute the requirement for another reason. Consequently, for these classes of facilities, EPA intends to consider the submission of notification under section 3010 as satisfying the "permit application requirement" of section 3005(e). Section 3010 notifications supply the same information, although in lesser detail, as do Part A applications. More importantly, however, allowing interim status to these facilities is in keeping with the intentions of Congress.

These regulations also adjust the scope of coverage of section 3005(e) interim status. The statute specifically extends interim status, upon satisfaction of the prerequisites, to all HWM facilities in existence on the date of enactment of RCRA. EPA is extending the option to obtain interim status to HWM facilities in existence on the date of promulgation of regulations under section 3001 of RCRA. Again, EPA believes that this adjustment implements the intent of the legislation. Congress intended that the flow of wastes would not be interrupted during the start-up of the Federal progam. Indeed, the continued availability of disposal sites to take ever-increasing amounts of hazardous wastes can be termed realistically as a public health necessity. If EPA were to disallow the continued receipt of hazardous wastes by post-enactment facilities for all or a portion of the anticipated five years it will take to fully implement the permitting program, it could seriously disrupt ongoing hazardous waste control efforts. To do so would contradict the entire premise of the statute.

Moreover, it would be inequitable to interrupt operations of HWM facilities for which all possible steps to comply with new regulatory requirements have been taken.

EPA specifically requests comment on this implementation of section 3005(e).

Major Facilities (§ 122.3(b))

One of the primary administrative tasks which EPA will undertake once these regulations come into effect is the systematic review of permit applications received by approved States and of draft hazardous waste permits prepared by approved States. EPA will undertake this effort to assure routine compliance with these regulations and Part 250. However, it became apparent early during preparation of these regulations that this review function could overwhelm the Agency—approximately 30,000 RCRA permits will be issued under these provisions in the next five years. Consequently, recognizing administrative limitations on its review function, EPA does not intend to review permit applications and draft permits for facilities subject to a State program which are small, non-complex, and non-controversial. Instead, it intends to review these documents as they relate to "major" facilities. EPA will consider a facility to be "major" if it handles, or would handle, more than 5,000 metric tons of hazardous wastes per year. Permits for major facilities must be accompanied by fact sheets containing relevant information on the facility; permits for non-major facilities must be accompanied by a less detailed "statement of basis." (See §§ 124.8 through 124.9.)

EPA considers the use of a tonnage cutoff figure to establish the "major" character of a facility to be the most telling and straightforward way of reliably and simply accomplishing the objective. EPA considered other means of doing this, but found them less preferable. For example, EPA considered basing this determination on an analysis of the relative hazard of wastes received by each facility. As was discussed in the preamble to EPA's regulations defining "hazardous waste", (Part 250, Subpart A), the Agency was unsuccessful in this effort.

EPA requests comments from the public on the use of a volume criterion to distinguish major and non-major facilities. Moreover, EPA request comment on the selection of 5,000 metric tons per year as the criterion. EPA believes that use of this figure should result in review of facilities which truly warrant close attention. As EPA's data indicates that the median HWM facility handles about 1,100 metric tons of hazardous waste annually, EPA anticipates that, under this criterion, it would review approximately 10 percent of permit applications and draft permits processed by States.

EPA, however, recognizes that its information on the relative sizes of HWM facilities is incomplete. Because the utility of the 5,000 metric ton criterion is largely dependent upon the actual capacities of existing HWM facilities, the Agency intends to continue investigating its appropriateness. Information from the regulated community and other interested persons in this regard is solicited.

Other Environmental Factors

During the development of these regulations, the Agency recognized that certain "secondary" environmental impacts from factors including roadway traffic to and from facilities, access routes to facilities, noise, dust, odor, aesthetics, etc., were not amendable to control through the RCRA section 3004 standards nor by these regulations. Thus, these regulations do not address these general environmental issues. The Agency did consider the following options before deciding not to propose regulations in this area:

1. Require that an Environmental Impact Statement (EIS) be prepared. EPA has determined that the permitting process under section 3005 is not subject to the EIS requirement of section 102(2)(c) of the National Environmental Policy Act. A legal memorandum on this point has been prepared and will be made available upon request. The permitting process as specified in Part 124 of these regulations fully allows and encourages involvement of the public in section 3005 decision making. The Agency also has determined that the regulation of secondary environmental impacts is outside the scope of authority granted to the Agency by RCRA: States and local authorities can more suitably regulate these impacts.

2. Require applicants for permits to analyze the impact of the environmental factors outline above, and to submit a "Supplementary Environmental Analysis" (SEA) with the application for a permit. The SEA would be a part of the application, would be made public, and would be addressed during the permit application review process.

3. Same as Option 2, except EPA in granting permits to facilities would insert conditions in such permits based on the impact analyses of the SEA.

4. Require applicants for permits to certify that all State and local laws and ordinances regarding the environmental factors outlined above will be complied with.

Comments on these options, or suggestions for other options or approaches to this issue are solicitied.

Emergency Authorization (§ 122.26)

These regulations also provide the Director with emergency authority to respond appropriately to immediate hazards to the environment or to human health. They provide that, in such event, the Director may issue a temporary authorization to a permitted facility, not to exceed 90 days, to accept hazardous wastes not covered by a permit. The authorization may be oral or written. If oral authorization is given, it must be followed within five days with a written order. Emergency authorization can be rescinded at any time. EPA has included this proposed emergency authorization because it believes that the Director should have broad discretion to respond in a measured and effective way to emergency situations. The Agency requests comments on the propriety and scope on this emergency authority.

Subpart C—The UIC Program

Congress has authorized EPA in sections 1421–1424 of the Safe Drinking Water Act to establish by regulation: (1) minimum requirements for effective State UIC programs; and (2) a procedural mechanism whereby States may obtain EPA approval to operate all or part of such programs. Were States do not obtain EPA approval, EPA is empowered to establish and operate programs for those States.

As a result of the consolidation of the NPDES and RCRA programs with the UIC program, EPA examined the overlaps inherent in the three programs' statutory authority as described above. As a result, the Agency has decided to regulate injection wells primarily under the UIC program. Comments are solicited on the propriety of the Agency's assigning primary jurisdiction over underground injection control to the UIC program.

In addition, any well that injects hazardous waste could be regulated under RCRA. In those cases, also the Agency has chosen to regulate such wells under the UIC program and to apply certain RCRA requirements (e.g., closing of the manifest cycle) through the UIC regulations.

At one point in developing these regulations, EPA contemplated subjecting only wells that injected into, through or above underground sources of drinking water to these regulations. However, even wells which do not inject into, through or above underground sources of drinking water may cause fluid to move underground in such a fashion as to contaminate such sources. The Agency decided that the proper approach would be initially to bring all wells into the regulatory system so that every injection activity could be publicly known. Each well may then be classified properly, (see discussion below) resulting in requirements that the well injection practice be regulated or banned entirely or, where appropriate, not controlled at all.

Comments are solicited on the above approach. In addition, the Agency seeks data on off-shore injection operations and information on special problems that control of off-shore injection wells may pose, if any.

Listing of States

The UIC program becomes operative in a State only after the State has been listed by EPA under section 1422 of SDWA as needing a UIC program, and either the State obtains EPA approval of its program or EPA establishes a program for that State. State program requirements and approval procedures are set forth in Part 123.

On September 25, 1978, EPA listed 22 States as needing a UIC program: Arizona, Arkansas, California, Colorado, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Mississippi, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, West Virginia and Wyoming. See 43 FR 43420 (September 25, 1978). Since that time, Maryland has petitioned to be listed.

The Agency had initially intended to focus its efforts on these listed States and to phase in other States gradually. The purpose was to focus Agency resources and grant funds upon areas which appeared to have the most urgent need for such programs. However, as a result of its consolidation efforts, the Agency became aware of potentially different timetables for the listing of States under the UIC program and the establishment of RCRA programs in those States. States are expected to begin operating approved hazardous waste programs in mid-1980. This raises the possibility that some disposers of hazardous waste will seek to avoid RCRA requirements by injecting hazardous waste underground in unlisted States. To ensure consistency of coverage, the Agency has decided to list the remaining unlisted States in two stages by May of 1980.

Designation of Underground Drinking Water Sources (§ 122.33)

As part of developing its UIC program, the State must designate those aquifers which are to be protected as underground drinking water sources and those which are not. The criteria for designation are contained in Part 146, and are explained in detail in the Preamble discussion on Subpart A of this Part.

Section 122.33 specifies procedures for State designation of aquifers. All aquifers will automatically be designated as underground drinking water sources unless specifically excluded. Any exclusion must define the excluded area in geographic terms, rather than by name, to ensure that injectors have adequate notice as to whether or not they will be injecting above, into or through a designated underground drinking water source.

Classes of wells (§ 122.34)

The injection wells covered by the UIC regulations are divided into the following five classes:

(a) Class I includes industrial and municipal disposal wells and nuclear storage and disposal wells that inject below all underground sources of drinking water in the area.

(b) Class II includes all injection wells associated with oil and gas storage and production.

(c) Class III includes all special process injection wells, for example, those involved in the solution mining of minerals, *in situ* gasification of oil, shale, coal etc., and the recovery of geothermal energy.

(d) Class IV includes wells used by generators of hazardous wastes or hazardous waste management facilities to inject into or above underground sources of drinking water.

(e) Class V includes all other injection wells.

Due to basic differences in function and/or environmental effects of the above classes of wells, they are treated differently in many respects, as explained below.

Once a State UIC program is effective, all new Class I, II and III injection wells must obtain a permit to begin operation. All existing wells in these three Classes (except existing enhanced recovery and hydrocarbon storage wells) must also obtain permits within five years of the effective date of the program according to priority schedule to be established by the permitting authority.

Existing wells requiring a permit must be authorized by rule until the permit is applied for and processed. Such rules must apply the appropriate monitoring, reporting and abandonment requirements set forth in 40 CFR 146. Existing enhanced recovery and hydrocarbon storage wells may be authorized by rule for the life of the facility. These rules are to apply essentially the same requirements as permits under Class II. However, while

each permit is to establish a specific compliance schedule, rules are to set forth a general timetable for the attainment of applicable requirements.

To obtain a permit, owners or operators of wells must submit applications to the Director in accordance with the requirements of Subpart C of Part 122. Because most of the information relied upon by the Director to write a permit is in many cases already contained in State Files, only a few basic items of information must be contained in an application to a Director of a State-administered UIC program unless the Director requests further information (either because State files are incomplete or because the Director wishes to update the information). In the case of EPA-administered programs, the application must contain all the information which the Director needs to write the permit. Part 146 (proposed at 44 FR 23738 (April 20, 1979)) sets forth the information which a Director must consider when writing a permit.

A well may be covered by an area rather than an individual permit. To qualify for an area permit, the wells must be:

(1) Under the control of a single person;

(2) Of the same type (e.g., Frasch process, enhanced recovery, or salt water disposal);

(3) Within a single well field, project or site;

(4) Injecting into the same zone or aquifer; and

(5) Covered by the same application for a permit.

The requirements which apply to an individually permitted well apply equally to a well authorized by an area permit. However, under an area permit, new wells may be authorized administratively as long as they are under the control of the person holding the area permit, are essentially of the same construction and are intended for the same purposes as existing wells.

EPA requests comment on the advisability of the use of area permits. In particular, comment is solicited on whether the conditions (e.g., the use of "well field") have been properly framed to provide the intended relief from environmentally unproductive administrative burdens.

Section 122.42 contains two additional requirements of the UIC program. First, the permittee must notify the Director of his or her intention to cease operation and follow the Director's prescribed procedures for abandoning the well. Second, the permittee must maintain fiscal responsibility in some form to close, plug and abandon the well in a manner which does not endanger underground drinking water sources.

Temporary Authorization

The Agency has identified two types of situations where it may be necessary to authorize underground injection temporarily before permit-issuance procedures may be carried out.

The first situation is where an imminent hazard to human health or the environment may occur unless immediate injection is authorized. One example might be a spill or leak which would result in significant releases of hazardous wastes to the environment. While the Agency cannot predict all of the situations where this may occur, it has concluded that a temporary authorization should be available under the circumstances defined in these proposed regulations.

The other situation is where oil and gas production would be delayed, resulting in loss of such natural resources, unless reinjection of brine if immediately authorized. Temporary authorization in this situation is consistent with sections 1421(b)(2) and 1422(c), which provide that the UIC program may not interfere with oil and gas production except as necessary to protect underground sources of drinking water. The Agency proposes to allow temporary authorization in the above situation, provided that timely application for a permit could not have been made, and that the injection will not cause fluid movement to underground sources of drinking water.

Comments are solicited on both types of temporary authorizations. Are they well defined? Should certain criteria be added or deleted? Should temporary authorization be added for other situations?

Class IV wells

Class IV wells are expected to involve the injection of hazardous waste into or above underground drinking water sources, a practice which is inherently unsafe. Unlike the case of deep disposal wells, it is not possible to prevent endangerment of underground drinking water sources by establishing construction and operation requirements. EPA proposes, therefore, that existing class IV wells will be inventoried and closed, and that injection into new class IV wells will be prohibited.

Existing class IV wells are proposed to be authorized by rule until the time of their closure.

Comments are solicited on the Agency's proposed approach to class IV wells.

Class V wells

There are many types of class V wells, and Agency studies indicate the existence of perhaps a 250,000–500,000 such wells in the United States. The Agency is not presently in a position to determine which wells are safe or unsafe, and whether some of these wells should be either regulated or phased out. As a result, Directors of UIC programs will be required to inventory class V wells within their States, provide EPA with assessments of the impact of these wells, and recommend possible means of regulating them. If necessary, EPA will then amend these regulations to cover class V wells in a manner which will prevent endangerment of underground drinking water sources. In the meanwhile, immediate action will be required to address those wells that pose a significant risk to human health.

Class V wells will be authorized by rule pending amendment of these regulations to regulate such wells.

Comments are solicited on the need to regulate particular types of class V wells and how to do so. In particular, EPA solicits comments on whether special procedures for regulating class V wells should be provided.

Subpart D—Specific Requirements Applicable to the NPDES Program

Subpart D of Part 122 contains requirements which are identical to the final NDPES regulation, Part 122, as well as certain application requirements from final NPDES Part 124.

Part 123

What does this Part do?

This Part establishes the requirements for State NPDES, UIC, RCRA, (hazardous waste) and section 404 (discharges of dredged or fill material) programs and the process for approval, revision and withdrawal of State programs. While State programs are established and operated under State law, approved CWA, RCRA, or SDWA State programs implement Federal law. A permit issued by a State under State law after the program has been approved satisfies the Federal permit requirement.

Part 123 is divided into a general subpart (Subpart A) and program specific subparts (Subparts B–E). The requirements of Subpart A are generally applicable to all four of the State Programs covered by this Part. The other Subparts provide requirements

additional to those of Subpart A. Since EPA does not issue section 404 permits (these are issued by the Corps of Engineers in the absence of an approved State program), Part 122 does not contain a Subpart E. Part 123 Subpart E, therefore, contains the additional permit processing requirements applicable to State 404 programs.

Subpart A

Purpose and scope (§ 123.1). This section notes that Part 123 is related to, among others, Parts 122 and 124. However, only those sections of Parts 122 and 124 which are adopted by reference in Part 123 are applicable to State programs. Part 123 lists all the requirements applicable to State programs. In addition, applicable portions of Part 122 may, in turn, adopt requirements derived from other Parts of this Chapter.

The approach of the statutes authorizing the programs covered by this Part is that the Federal government should set minimum standards, with any State being given the freedom to impose any more stringent approach it deems appropriate. The only exception to this is in the hazardous waste program where Congress determined that the need for consistency between the States outweighs any one State's interest in hazardous waste regulation. This exception has been narrowly construed and is discussed further in the preamble discussion of Subpart B.

State programs are developed and implemented under State law. While this Part sets minimum requirements for State programs, it generally does not require that State authorities be worded or structured the same as the applicable Federal authorities. Nonetheless, the Agency encourages States to incorporate by reference, to the extent allowable under State law, Federal requirements, especially those which are technical in nature.

Elements of a program submission (§ 123.3). This section lists the contents of a complete State application for program approval. Each of the elements must be received by EPA before the formal statutory review starts. Each of the laws authorizing the State programs covered by this Part limits the time for EPA review of a State application for authorization. Therefore, it is necessary that EPA have complete information, organized in a particular way, about the State program before formal review commences. States are encouraged to consult with EPA in developing the submission.

Attorney General's Statement (§ 123.5). In understanding the requirements of State law, EPA gives great weight to the interpretations made by the State's Attorney General. Indeed, the Attorney General's Statement is necessary for EPA to adequately judge the legal basis for the State programs. EPA will develop a model Attorney General's Statement format for each of the programs.

Memorandum of Agreement with Regional Administrator (§ 123.6). The Memorandum of Agreement (MOA) between EPA and a State defines the basic working relationship between the agencies, thereby avoiding confusion and legal uncertainty which might otherwise exist.

The MOA may not be used as a substitute for adequate legal authority. While it may be appropriate for a State to give, in the MOA, its assurance that it will abide by certain requirements, the authority to do so must be present in State law.

Relationship Between Memorandum of Agreement and State/EPA Agreement

The State/EPA Agreement is an overall management tool which provides a way for the Regional Administrator and the State to coordinate and, to the maximum extent feasible, integrate program administered by EPA and the State, emphasizing problem-solving approaches to specific environmental problems. The State/EPA Agreement reflects important decisions on Environmental priorities, administrative problems, timing, responsibilities and allocation of resources. In FY 1980, the State/EPA Agreement is to cover programs under the Clean Water Act, Safe Drinking Water Act and Resource Conservation and Recovery Act. Other environmental programs will be added to the process in following years.

The Memorandum of Agreement, is a document signed by the Administrator and the State which formally sets forth the relationship between EPA and State in the administration of an approved State permit program and details specific procedures that must be followed by both parties in the development, issuance, review and enforcement of permits. The Memorandum of Agreement is one of the means by which EPA assures that State issued permits are consistent with the requirements of the appropriate Act and implementing regulations. Because of this, any proposed change to an MOA must be reviewed and agreed to the Administrator to assure it is consistent with the requirements of this Part.

The Memorandum of Agreement and the State/EPA Agreement should be consistent. This should not present a problem since they generally address different areas of the State/EPA relationship. The State/EPA Agreement should include the MOA. However, it may not override it in the instance of any inconsistency. If the State/EPA Agreement indicates that a change is needed in the MOA, the proposed change must be reviewed and agreed to by the Administrator.

Operational Requirements (§ 123.8). This section sets out, by cross referencing applicable sections of Parts 122 and 124, certain operational aspects of State permit programs. To demonstrate compliance with these sections, States do not need authorities identical to EPA's. Compliance may be shown by any set of authorities which enable the State Director to meet these requirements or requirements which are more stringent. Where these regulations require that certain activities be covered by permit, a State authority to regulate the activity by rule will not be approved.

Compliance evaluation programs (§ 123.9). States must have a systematic program for evaluating compliance with permit conditions and other program requirements. These programs must have the ability to evaluate reports submitted by permittees, to conduct inspection and to investigate evidence of violations submitted by the public.

Enforcement authority (§ 123.10). This section proposes that States should have an array of enforcement tools available. These must include a procedure for immediately responding to emergency situations endangering public health, injunctive relief, civil penalties and criminal fines. Each of these remedies is available to EPA where it is administering the program and States must have equivalent authorities.

The requirements for the programs vary slightly because each of the Federal acts have different provisions for EPA enforcement. For example, establishing the degree of criminal intent of the violator is a necessary element of any criminal prosecution. This section provides that the degree of criminal intent which the State must establish shall be no greater than that in the appropriate Act for EPA prosecution.

Likewise, the penalty amounts recoverable by the State shall be at least the same as those recoverable by EPA. See Table II.

Table II

Sanction	Maximum penalty amount			Intent		
	RCRA	UIC	NPDES/404	RCRA	UIC	NPDES/404
Civil penalty	$25,000	$5,000	$10,000	None	None	None.
Criminal fine	25,000—doubled for second offense.	10,000	25,000—doubled for second offense.	Knowingly	Willfully	Negligently.
Criminal fine for false reporting/tampering.	25,000	10,000	10,000	Knowingly	Willfully	Negligently.

EPA proposed to require States to have the maximum penalty amounts at least the same as those listed in Table I. States are encouraged to comment on this requirement. In particular, EPA is interested in finding out which States have existing programs which are unable to meet these requirements, what enforcement remedies are available to those States and what other legislative changes, if any, must be made by those States to meet the requirements of this Part.

The State need not always adopt the same terminology on degree of criminal intent. For example, if the burden of proof for establishing "criminal negligence" in State court is equivalent to that for establishing "negligence" in a criminal proceeding in Federal court, such State authority satisfies the requirements of this section.

Each of the three Acts implemented by these regulations provide citizens with the right to initiate legal action in Federal court to enforce permit requirements. This right exists even when a permit program is administered by a State after approval by EPA. The three Acts also provide citizens with the right to intervene in enforcement actions brought by EPA. However, EPA has concluded that requiring States to allow citizens to intervene in State enforcement actions is neither necessary to foster public involvement in permit enforcement nor required by law. Accordingly, these regulations do not provide that States must provide for citizen intervention in enforcement actions brought by States in State courts. Although there is some possibility than an inadequate State effort could thwart effective citizen involvement in enforcement of State issued permits, EPA believes that the opportunity for citizens to being enforcement actions in Federal courts makes that risk minimal. Comment on this point is invited. For further information on citizen involvement in enforcement, see the preamble to the recently promulgated NPDES permit program regulations (44 FR 32854).

Approval process (§ 123.12). The process for approving State programs was not stated in Subpart A because of the differences which exist between the statutes involved. Therefore, these are set out in the individual program subparts.

Withdrawal (§§ 123.14 and 123.15). These sections set forth the proposed criteria and process for withdrawal of State programs including the requirements for voluntary relinquishment of Federal program responsibility by a State. The criteria set out in § 123.14 are an elaboration of the criteria set out in each of the applicable Federal statutes.

It should be noted that program withdrawal is an extreme remedy which is likely to be employed only where all other efforts to insure that a State program complies with this Part have failed.

§ 123.15(a) sets out the basic process for voluntary relinquishment of Federal program responsibility by a State. It provides for a 180-day advance notice by the State accompanied by a plan for the orderly transfer of necessary information. It further provides for 30 days advance public notice of the transfer. These provisions may be modified by agreement.

§ 123.15(b) sets out a formal hearing process for withdrawing State programs (other than UIC programs, which are covered in Subpart C). This process may be initiated by the Administrator on his or her own motion or in response to a formal petition from any interested person. In order to avoid the need for the Agency to develop a new set of formal hearing procedures, this paragraph adopts by reference certain provisions from the regulations of Part 22 of this Chapter. (Part 22 regulations were proposed on August 4, 1978, 43 FR 34730, and will be promulgated shortly in essentially the form proposed. All citations are to the proposed version.)

Relationship of Subpart A to the Final NPDES Regulations

Certain elements of the NPDES program have been modified or added to in Subpart A, as a result of consolidation with the other programs. Comments are welcome on these changes or additions. For example, the criteria and process for withdrawal of State programs, including NPDES and section 404 programs, are new to these regulations. In addition, the proposed requirement that States have at least the same penalty amounts as EPA is a change from the existing requirement.

Subpart B

Subpart B of Part 123 establishes additional substantive and procedural requirements for State hazardous waste management programs under section 3006(a) of RCRA. This Subpart controls both "Authorization" and "Interim Authorization" of State programs under sections 3006 (b) and (c) of RCRA, respectively. Proposed Guidelines for State Hazardous Waste Programs were published as Part IV of the February 1, 1978 Federal Register (43 FR 4366). They are reproposed here.

EPA's response to several recurring substantial comments, received concerning the February 1, 1978, proposal, and discussions of certain program decisions, are set forth below.

Under section 3009 of RCRA, States may not impose any requirements less stringent than those under Subtitle C of RCRA. However, some latitude will be allowed in the degree of stringency of the State's criteria and standards during the interim authorization period. When "full" authorization (hereafter called "authorization") is approved under section 3006(b), the State's standards and criteria must be no less stringent than those promulgated by EPA under sections 3001–3005 of RCRA. See Table I.

For example, as a condition for such authorization, EPA expects such State programs to control at least the same universe of hazardous wastes as the Federal program. This may be accomplished most easily by adopting EPA's criteria and listings under section 3001 of RCRA, although such an adoption is not a requirement for authorization. See proposed 40 CFR Part 250, Subpart A, as referenced in Table I.

The State program also must control at least the same universe of generators and transporters and contain standards that are at least as stringent as those of the Federal program under sections 3002 and 3003 of RCRA, including recordkeeping, labeling, use of appropriate containers, reporting and management of a waste tracking (manifest) system using the Federal manifest format. See proposed 40 CFR Part 250, Subparts B and C, as referenced in Table I.

Finally, the State program must control at least the same universe of treatment, storage and disposal facilities and must not compromise the human health and environmental standards under section 3004 of RCRA. The adequacy of the State's general facility standards treatment, storage and disposal facility standards and special waste standards will be evaluated against those issued by EPA under section 3004 in order to determine if the State program is equivalent to the Federal program. See proposed 40 CFR Part 250, Subpart D, as referenced in Table I.

In addition, a State's past performance in responding to situations involving hazardous waste which may present an endangerment to health or the environment will be considered by EPA in deciding whether to approve State hazardous waste programs.

Comments or suggestions on the evaluation of the equivalence of State programs are solicited. One option under consideration is to require States to adopt the Part 250 regulations.

Another alternative requirement for authorization of a State hazardous waste program would be to require States to issue all hazardous waste permits under their jurisdiction within a set time frame, such as three or four years. EPA estimates that complete permit issuance without such a requirement will probably take at least seven years. On the other hand, State resources are limited, and the imposition of such a requirement could deter some States from seeking approval of their programs. Comments are solicited on this problem, and on alternative approaches.

Concurrent enforcement authority is provided EPA under § 3008(a)(2) of RCRA in States with either type of authorization. EPA can use this enforcement authority and will not hesitate, under appropriate circumstances, to enforce directly against any facility or activity violating the Federal standards.

Manifests. To satisfy the operational requirements specified in § 123.30, a State need not have an operating system for controlling manifests during the period of interim authorization. However, a State must have adequate legislative authority and should be capable of commencing routine operation of the manifest system, reporting, and recordkeeping immediately after full authorization. It is important for the regulated community to note that although the manifest system control is not a requirement for interim authorization, manifests must nevertheless be prepared and used in a State with interim authorization. In conjunction with the management of the information reported through the manifest system, the Agency is developing an Automated Data Processing (ADP) system which will be made available to the States. Use of the ADP system by the States is optional.

Free Movement of Hazardous Wastes. A decision by the United States Supreme Court (*City of Philadelphia* v. *New Jersey*, No. 77–404, June 23, 1978), invalidated New Jersey's ban on the importation of wastes for disposal on the grounds that it imposed an undue restraint on interstate commerce. Based on this decision, it is reasonable to assume that other present and future interstate waste importation bans would likewise be struck. The Agency, therefore, has chosen to propose a provision in these regulations which would deny authorization to any State with such a ban.

Furthermore, States should note that section 112 of the Hazardous Materials Transportation Act (HMTA) of 1974 (Pub. L. 93–633) prohibits a State (or its political subdivisions) from imposing requirements which are inconsistent with the Federal Department of Transportation (DOT) regulations. In addition, HMTA authorizes DOT to preempt any State requirement if such requirement places an unreasonable burden on commerce. DOT, however, can only preempt State regulations for which DOT has existing authority and standards. State regulations are not preempted if they afford an equal or greater level of protection to the public and do not unreasonably burden commerce. If preemption occurs, *only the standard* that places a burden on commerce would be preempted, *not the entire program.*

Partial Authorization. Approximately three-quarters of the comments received on partial authorization provision, which were included in the February 1, 1978 proposal, were opposed to partial authorization on the grounds that it would be burdensome and confusing to the regulated community. EPA understands these concerns and has decided not to include the "partial authorization" provision in this proposed rule. The Agency intends to enter into cooperative agreements with States to allow States to participate fully in the program as administered by EPA until such time as the State becomes eligible for authorization. Similar arrangements with several States have worked well for the NPDES program.

Interim Authorization. Section 3006(c) of RCRA (as recently amended by Pub. L. 95–609) provides for a "interim authorization" of State programs for up to two years "beginning on the date six months after the [*actual*] date of promulgation of regulations under sections 3002 through 3005." [Emphasis added.] This interim authorization could be granted to States with a hazardous waste program *substantially equivalent* to the Federal program existing "pursuant to State law before the date ninety days after the [*actual*] date of promulgation of regulations" under sections 3002 through 3005 [Emphasis added]. The recent amendment to RCRA (Pub. L. 95–609) allows the cutoff dates for the existence of State legislation and the onset of the interim authorization period to be related to the promulgation of the bulk of EPA's other Subtitle C regulations. Consequently, the phasing of the application for and initiation of interim authorization is now based on the actual promulgation date of regulations under section 3001 of RCRA, since EPA intends to use this section as the "trigger" for the Federal program. States are encouraged to begin evaluation of their legislation and regulations and to assess the adequacy of their programs. However, EPA will not be able to formally act on applications until after the promulgation of section 3001 regulations (40 CFR 250, Subpart A), due to the lack of a reference point against which EPA can judge a program. In granting interim authorization, EPA will require the State to prepare an "authorization plan" which will describe the additions or modifications to the State programs, including changes needed in State legal authority and a time schedule to achieve changes, so as to enable the State to become eligible for authorization.

The intent of RCRA as expressed in the legislative history of RCRA, was to allow States to develop and implement hazardous waste programs equivalent (not necessarily identical) to the Federal program, thus utilizing the police power of the States rather than creating another Federal bureaucracy to implement RCRA. (House Report No. 94–1491, September 9, 1976, p. 30.) State primacy is a common theme running through the legislative history. (Op. cit., pp. 5, 6, 24 and 29.) Interim authorization was specifically established under section 3006(c) in order to facilitate State assumption of the program. The requirement for interim authorization of "substantially equivalent" State programs was used "* * * (1) so that existing progress in the area of State hazardous waste law does not come to

an abrupt halt, as has been the situation with the passage of other environmental laws, and (2) to give such States that have begun developing or implementing a hazardous waste program sufficient time to bring such program into conformity with the Federal minimum standards." (Op. cit., p. 29). However, Congress neither defined what a "substantially equivalent" State program was, nor gave further directives as to how EPA was to set such "Federal minimum standards" without disrupting the progress of existing hazardous waste programs.

EPA's proposed approach to this problem (see § 123.12) is as follows: In order to implement RCRA's legislative intent of not disrupting the progress of existing programs, EPA's proposed *minimum* Federal standards for determining "substantial equivalence" (and therefore suitability for interim authorization) would require the States to implement (i.e., regulate and enforce) controls over at least either on-site or off-site disposal of hazardous wastes. (See § 123.32). Note that this is a *minimum* requirement and that during the two-year period States *must implement all* statutory and regulatory hazardous waste management authorities they possess. (For example, States with interim authorization which have the necessary authorities in existence to implement a manifest system and/or control of treatment and/or storage facilities *must do so.* See § 123.34(a)(2)).

Since it is clear that Congress intended this interim period to provide a "grace" period to the States to develop a program suitable for authorization of a full program, the major difference between "equivalent" (section 3006(b)) and "substantially equivalent" (section 3006(c)) State hazardous waste management programs is that the latter program would reflect some of the limitations of existing statutory authority at the State level. Similarly, the degree of stringency of a given regulation may, during this interim period, be less than Federal standards. This temporary relazation from strict "equivalence" to "substantial equivalence" and the corresponding latitude in degree of stringency for the interim period, EPA believes to be consistent with the intent of Congress to facilitate the entry by the maximum number of States into the interim hazardous waste management program, and ultimately, into a full program.

In the wake of such incidents as Love Canal, public pressure for State primacy is increasing. Many States are increasing their commitment of resources and developing programs; at this time, it appears to be more prudent for EPA to be as flexible as possible in order to build on existing State programs, than to hamper their development. The proposed approach should result in a greater degree of protection of public health and the environment than if EPA had to conduct the hazardous waste program in a large number of States.

Before reaching this conclusion, the Agency gave special consideration to two alternatives as requirements for interim authorization. The first was to require States to have authority to control either the on-site or off-site disposal of hazardous waste, while the second was to require authority for broader control. Analysis of current State legislative authority indicates that the first alternative would allow significantly greater State participation in the hazardous waste programs than would the second. Furthermore, it is expected that it will be easier for a State with interim authorization to upgrade its program than it would be for an unauthorized State to take over a full program. On the other hand, there could be a significant risk to public health and the environment in requiring States to control disposal but not treatment or storage. However, it is likely that the degree of protection of public health and the environment which States could offer by carrying out programs controlling disposal while building the other elements would exceed the degree of protection which EPA could offer in attempting to implement a large number of full programs in unauthorized States with limited resources.

Although EPA recognizes that control of treatment and storage facilities, full control of all disposal facilities, and other elements necessary for authorization of a full program (such as implementation of the manifest tracking system) are essential in a full comprehensive program of hazardous waste management, the vast majority of the environmental damage has resulted from improper disposal. EPA also recognizes that the proposed approach does involve some risk that direct control of certain portions of the complete hazardous waste management program could be deferred for as much as two years (the maximum duration of the interim authorization period). For example, according to data based on *national* averages, 80 percent of the quantity of hazardous wastes generated is disposed on-site. These on-site disposal facilites amount for about 90 percent of the total number of disposal facilities in the nation. Current information available to EPA on the status of State legislation and regulations in the 30 States which generate most of the hazardous wastes, indicates that as many as three of these States lack statutory or regulatory authority to control on-site disposal and as many as seven States lack statutory or regulatory authority to control treatment and/or storage. Similar problems might be encountered in the remaining smaller States.

The risk of non-regulation, however, is tempered by several factors. During the first six months after promulgation of section 3001 regulations, EPA will be reviewing proposed State programs as well as conferring "interim status" under section 3005(e) to *all* HWM facilities (see previous discussion of "interim status" under the RCRA portion of the Part 122 preamble). Receipt of the information necessary to confer "interim status" to facilities under section 3005(e) will provide EPA the basis for making an assessment of which facilities may be actual or potential violators of Federal standards under the section 3004 regulations (which call for an extensive set of requirements to be met. (see the interim status facility standards of 40 FR 250.40(c) proposed December 18, 1978, at 43 FR 58996). EPA is empowered by section 3008(a) of RCRA to take direct enforcement action against all hazardous waste management facilities or activities on a case-be-case basis regardless of the type of State authorization conferred. In especially egregious circumstances, EPA also can enforce under the imminent hazard provisions of section 7003 of RCRA. Finally, although direct State oversight of the manifest system is not a requirement for interim authorization, EPA can use its enforcement powers to follow up on noncompliance with national manifest requirements. (See previous discusion of "manifests" under RCRA portion of Part 123 in this Preamble).

Based on current information, it is expected that very few States will be in a position to undertake the full hazardous waste program when the Subtitle C regulations are promulgated. Additionally, some of those States which already have, or which will have, some type of hazardous waste programs when the regulations are promulgated would prefer to control the program from the beginning, rather than assuming a program that has been initiated by or operated concurrently with EPA. The proposed approach will minimize the disruption and uncertainty caused by changing administration of the program.

Comments are requested on the possible alternatives for EPA regulation of activities that are not regulated by the State during the interim authorization period. EPA recognizes the potential problems with this arrangement. This concept resembles that of "Partial Authorization", which EPA rejected for the reasons described above. The new concept also has drawbacks. First, the regulated community has strenuously contended that a single entity should carry out the entire program in a given State, arguing that a sharing of responsibility would result in confusion and duplication of effort for the agencies, and greatly increased complexity for regulated firms. Second, the availability of this arrangement could encourage some States capable of qualifying for authorization, to take over only selected program elements. Third, the delineation of responsibilities between the Region and the State would undoubtedly be a lengthy and difficult process. Finally, the existence of this arrangement could remove some of the incentive for strenuous State efforts toward authorization. However, this alternative would assure more comprehensive control of all hazardous waste facilities during the interim authorization period.

Comments are also requested on the alternatives of requiring control of all disposal, or additional elements of the requirements for full authorization under RCRA, and the impact this would have on State participation.

Federal Role After Program Approval. Many comments were received concerning the Federal role after a State has been authorized as outlined in the February 1, 1978 proposal. EPA has primary responsibility under RCRA for protecting public health and the environment and is charged with developing a consistent and effective national program to meet this responsibility. Thus, in authorizing State programs EPA's prime concern is to ensure that the State program is at least as effective in controlling at least the same universe of hazardous wastes as does the Federal program. The purpose of EPA's oversight activities, subsequent to authorization of a State program, is to ensure that State programs are being operated in accordance with these regulations.

Federal oversight of State programs is conducted in a number of ways. The Agency has encountered much interest and comment from States and others on three specific aspects: reporting, review of permits, and facility inspections.

With regard to reporting, the Agency has chosen to reduce the number and complexity of the reports required in these regulations. Quarterly reports that will be required are: a list of major facilities out of compliance, and a summary of international shipments of wastes. For States with Interim Authorization a semi-annual report on progress toward attaining authorization will be required. Finally, an annual report, including a list of permit actions completed and summary information on wastes managed (quantities, types, method of management) is also required. It should be recognized that EPA has a responsibility to develop and maintain a national data base on the generation and management of hazardous wastes. It may be necessary to negotiate additional reporting requirements in the Memorandum of Agreement in particular cases, such as in a State with an unproven program. The Memorandum of Agreement is a more flexible document than these regulations, and can be changed to accommodate expected changes in the need for nationally significant information.

Concerning review of permits, the Agency could not possibly review all permits issued by a State, nor is such a review necessary or desirable. Therefore, EPA will only review a sufficient number of permit applications and draft permits to assure that the State permit program is being operated in a sound manner consistent with the requirements of these regulations. Accordingly, these regulations require that authorized States forward to EPA copies of permit applications, and draft permits for major facilities only. (The definition for "major" facilities is discussed earlier in the preamble). Normally, the number of draft permits or permit applications reviewed by EPA should amount to about 10 percent of the total number of permits processed. In some cases, where a history of sound program administration by a State exists; EPA may agree to reduce this level of review even further. In others, for example, where a State program is new and inexperienced, the Regional Administrator may choose to review some minor permits as well. In either case, such agreements should be contained in the Memorandum of Agreement.

These regulations in § 123.38 specify the bases on which EPA will comment on permit applications and draft permits. Reasons for each comment will be given as well as recommendations for actions to be taken by the State Director to address each comment. The State Director is also provided with the opportunity to respond to EPA's comments.

In regard to EPA's conducting inspections of facilities, § 123.27 specifies the provisions which will be included in the Memorandum of Agreement, normally including notification before EPA conducts inspections, and opportunity for States to investigate situations where EPA has reason to believe that violations may be occurring.

Comments are solicited on the practicality and impact of these and other oversight procedures.

National Enforcement Information System. EPA is aware of the need to centralize reported information concerning hazardous wastes by both the Agency and authorized States. It is necessary for enforcement compliance monitoring purposes to have a single system which contains all this information. Therefore, EPA is considering requiring, as a condition of authorization, that each State applying for such authorization either (1) agree to insert its reporting data directly into EPA's national ADP system (discussed earlier in the preamble under *Manifests*) or (2) allow EPA to so input the data for the State. The National ADP system is being designed so that any such State may use this system for its own purpose. Comments are solicited on the advantages and disadvantages of such a requirement.

Subpart C

Subpart C sets forth additional requirements for State programs as well as the procedures EPA will use in taking the required approval, disapproval or partial approval actions on UIC programs under sections 1422(b) and (c) of SDWA.

Elements of an Approvable State UIC program. In order to obtain EPA approval for primacy, a State must demonstrate the ability, adequate legal authority and resources to implement the following program elements:

- Designate underground sources of drinking water within the State;
- Develop and maintain an inventory of injection wells;
- Issue permits or rules that incorporate requirements of Part 146;
- Issue permits which include conditions that incorporate UIC requirements for monitoring, recordkeeping and reporting by the permittee;
- Conduct a program of enforcement, inspection and surveillance of injection well facilities.

EPA-approval. The Administrator is to approve, disapprove or partially

approve State participation in the UIC program within 90 days of the receipt of a complete State application by the State. Prior to ruling on the application, EPA must also provide the opportunity for public comment and hearings.

A State need not develop a regulatory program for a type of injection well that does not exist in that State. In such case, however, the States must show it has adequate legal authority to initiate a control program should such wells seek to operate in the State in the future. Comments are solicited on this approach. EPA is particularly concerned whether States could develop a control program quickly enough to issue proper regulations where a new type of well injection operation commences in a State.

Unlike the other programs covered by this Part, EPA may in its discretion, approve a State UIC program in part. In the case of partial approval, the Agency's intention is to approve only a complete program by type of well. In other words, EPA would authorize a State to regulate, for example, Frasch process mines or hydrocarbon storage wells if it had the necessary legal authority and were prepared to carry out the full range of regulatory requirements applicable to such wells. However, the Agency does not intend to approve a portion of a State program if the program provides only for partial regulation, i.e., it provided for State issuance of permits to Frasch process wells but left enforcement up to EPA. The Agency believes that this approach is sensible from an administrative point of view and is least confusing to the regulated community and public. Comments are solicited on the advisability of this approach.

Finally, it should be noted that the 1977 amendments to the Safe Drinking Water Act have clarified State authority over Federal facilities within its boundaries (sections 1477(a) and 1422(b)(1)(D) of SDWA). Nonetheless, management of wells on Indian lands remains an EPA responsibility unless the State has adequate authority to implement the program (SDWA section 1477(c)).

In cases where the State is developing an application for primacy, EPA intends to promulgate the UIC program for which it is responsible (i.e., on Indian lands) at the same time as the approved State program becomes effective. In cases where a State program is disapproved, EPA will promulgate a UIC program within 90 days from disapproval in whole or in part. If a State informs EPA that the State does not intend to adopt a UIC program, EPA will promulgate the whole UIC program for the State within one year (270 days plus 90 days approval process) of the effective date of these regulations or of 40 CFR Part 148 (proposed at 44 FR 23738 (April 20, 1979)), whichever is later.

Oversight—EPA has a statutory duty to oversee State UIC Programs. To enable EPA to carry out this responsibility, Part 123 requires States to provide to the Agency the following:

- Access to State files and documents;
- Annual reports;
- Quarterly reports on the compliance status of major wells;
- A mid-course review after the first year of program operation to assess the requirement to perform corrective action in the area of review. The State analysis will be used by EPA to assess the associated costs and environmental benefits, and may result in appropriate changes in the requirement.

In addition, under SDWA the Agency is given the authority to enforce against program violations if the State fails to enforce adequately.

Procedures for the withdrawal of approval from a State program provide the State with the opportunity to present its case that withdrawal is not warranted. If the Administrator has cause to believe that a State is not in compliance with the SDWA or these regulations, he must give the State 30 days of notice to demonstrate its compliance. If not satisfied, the Administrator must convene a public hearing not less than 60 days after notice of the hearing. If, after the hearing, the Administrator concludes that the State is not in compliance, he must notify the State of the particulars. The State then has 90 days to give up the program or come into compliance. This process for withdrawal is different from the withdrawal process for the other programs covered by Part 123 because of the difference in the statutes involved.

Subpart D

This Subpart sets forth requirements which are unique to the NPDES which supplement the Subpart A requirements. For a further discussion of the NPDES requirements see the preamble to those regulations.

Subpart E

The first 14 sections (§§ 123.9–123.104) of this Subpart were promulgated in Part 123 of the NDPES regulations and, like Subpart D, are discussed in the preable to those regulations. The only exceptions are § 123.98, transmission of information to EPA, which has been changed and § 123.99, which is now contained, in changed form, in § 123.110. The remaining sections (§§ 123.105–123.112) are being proposed for the first time and were to be promulgated as Part 126 until the decision was made to incorporate it into these consolidated regulations. There will be no Part 126.

Although the final NDPES regulations specify that State section 404 programs must designate one agency to be responsible for issuing permits (§ 123.4(b)(1)), the Agency is reconsidering this position and invites further comment on this requirement (§ 123.95(a)). In particular, the Agency would like to receive comments on whether such a requirement would interfere with State efforts to coordinate and consolidate their own permit programs.

The following are major provisions of Subpart E:

Application procedures § 123.105. The specific information required of all applicants is discussed, as well as general application procedures. Public notice must be published for all permit applications, except when a draft permit must be prepared, and all permit denials. Since, in most instances, EPA and the public will review only permit applications, detailed application information is required.

Draft permits. Section 123.98(c) provides that the State section 404 programs may circulate permit applications for public and EPA review and comment, in most instances. However, in some cases the State will be required to reach a tentative determination and formulate a draft permit (where the tentative determination is to issue a permit) for public and EPA review and comment. (It should be noted that all the other programs covered by these proposed consolidated regulations are required to formulate draft permits in all cases.)

Draft State 404 permits are required for:

(1) Discharges which may affect the waters of another State;

(2) Major discharges;

(3) Discharges into critical areas such as National Parks and Wildlife refuges;

(4) General permits; and

(5) Discharges containing toxic pollutants in toxic amounts and hazardous substances in reportable quantities.

Comments are solicited on this list (which is also the list of activities for which EPA will not waive its right to review State permits). In particular, EPA would appreciate comments on the following issues:

(1) What discharges should be considered "major"? In this regard EPA is considering acreage limitations which might vary in different parts of the country. Other discharges may be considered major based on different criteria.

(2) Should the list of critical areas be expanded to include others?

(3) Are the criteria that toxic pollutants be present in *toxic amounts* and hazardous substances in *reportable quantities* proper? EPA believes that a cut-off is necessary since many discharges which contain trace quantities of these substances are not of concern. In addition, the criteria must be clearly defined and workable. On this basis, EPA rejected formulations of this language which were couched in terms of "significant" of "substantial" since these may not be readily meaningful in the context of a particular discharge.

Waivers. EPA solicits comments on the extent to which the Agency should continue to receive permit applications and permits from a State for those discharges the Agency has waived review.

General permits. Procedures for public notice of proposed general permits, review of proposed permits, issuance and enforcement are included in § 123.108.

Coordination procedures. The State Director must assure coordination of permit with appropriate Federal and Federal-State water-related planning and review processes, as required by section 404(h)(1)(H) of CWA. Requirements for implementing such coordination are in § 123.110.

Review procedures. All permit applications or draft permits are subject to review by EPA and the public (although under § 123.92 EPA may waive such review in many cases). During the review process, the Regional Administrator provides opportunity for comment by the Corps of Engineers, the Fish and Wildlife Service and the National Marine Fisheries Service, as well as from other interested Federal agencies, and these must be considered in his or her review.

Waters Subject to State Regulation

Under section 404(g)(1) of CWA, the Corps of Engineers will, in all cases, retain jurisdiction over dispsal of dredged or fill material into those waters of the United States, together with their adjacent wetlands, that are subject to the ebb and flow of the tide and/or are presently used, or may be susceptible to use for interstate transport or foreign commerce. A State may apply for a section 404 authority to regulate all other waters within the State. As a prerequisite for program approval (§ 123.93) an agreement is required between the State and the Corps of Engineers, which sets forth a description of those waters over which the Corps of Engineers will retain jurisdiction, and those waters over which the State will have jurisdiction.

Major Issues

(1) An earlier formulation of these regulations provided for preparation by the States of a draft and proposed permit prior to Federal review. Several reviewers expressed concern that processing procedures, and in particular, the processing schedule for permits, were unnecessarily lengthy and complex. EPA's specific concerns (based on comments received) included:

(a) The three-stage process would substantially extend the time required to process applications. The 1977 amendments to the CWA, together with its legislative history, establish a strong sense of Congressional insistence on the elimination of unnecessary delay in section 404 permit processing.

(b) Due to the nature of activities regulated under section 404, EPA believes that public participation and right to comment will usually be adequate if the permit application is circulated rather than a draft permit.

The proposed regulation has been redrafted to eliminate the "draft permit" and the "proposed permit" stages in most instances, except as described above, and thus to provide for public and agency review input during a single continuous period that normally will not exceed 90 days from receipt of the permit application. Safeguards were added to ensure that permit applications are complete. To ensure that there is adequate basis for review of specific projects provision was made for the Regional Administrator to require submission of additional information, including a draft or proposed permit where appropriate. EPA believes that this process more nearly accords with the overall Congressional emphasis on timely processing of section 404 permit applications, and is consistent with meaningful review. However, this approach differs from the other programs under this part, which require preparation of a draft permit in all cases as a basis for public comment. Comments on this issue are solicited.

(2) By far the most controversial issue raised in the review of this proposed regulation was the interpretation of section 404(f)(1)(A) of the Clean Water Act, as treated in § 123.107 of the proposal. Section 404(f)(1)(A) provides that discharges of dredge or fill material in connection with certain activities enumerated in section 404(f)(1)(A) through (F) are not subject to regulation under the 404 program, with the caveat in section 404(f)(2) that any discharge of such material incidental to any activity having as its purpose to bring an area of navigable waters into a use to which it was not previously subject, where the flow or circulation of navigable water may be impaired or the reach of such waters may be reduced, will require a 404 permit.

The background and legislative history of section 404(f)(1)(A) is exceedingly complex and has led to several schools of thought on what the section really means. At one extreme, proponents of a liberal interpretation argue that section 404(f)(1)(A) exempts all, or virtually all, discharges of dredged or fill material associated in any way with agricultural, silvicultural, and ranching activities, except where such activities are recaptured by section 404(f)(2). Under this view, neither the word "normal" nor the specific activities listed significantly limit the scope of the exemption. A more moderate view is that the word "normal" is intended to signify that the exempted farming, silvicultural, and ranching activities must be established and ongoing, and that the exemption only extends to the particular activities named in the statute or other activities of similar character. At the other extreme, proponents of a conservative interpretation take the view that section 404(f)(1)(A) refers to activites which do *not* involve discharges (either because no earth is moved, there is no point source, or no waters of the United States are involved), and that such activities are not merely exempt (e.g., still subject to (f)(2), but rather are excluded entirely from regulation under section 404. Under this view, activities which are not excluded will always need a permit. There are several variations of these interpretations which incorporate components of both the exclusion and exemption approaches and construe the listed activites in various ways. The interpretation of section 404(f) is exceptionally complex, especially since no one view is consistent with both the literal language of the statute and all the often ambiguous and conflicting legislative history.

These regulations follow a middle ground. Section 123.107 specifies that any discharge "that may result from" the named activities "is not prohibited by or otherwise subject to regulation," except when recaptured by the provisions of section 404(f)(2). The proposed

regulation defers to the language of the statute, which when taken literally, clearly contemplates that discharges of dredge or fill material may occur in conjunction with the activities listed in (f)(1)(A). The practical effect of this language is to assure that such activities are not subject to the permit requirement, whether or not any actual discharge or dredge or fill material is associated with them. Consistent with section 404(f)(2), however, the regulation precludes any such exemption where an activitiy involves the discharge of materials containing any section 307(a) toxic substance; or, any discharge incidental to an activity which converts waters of the Untied States to new uses, where flow or circulation may impaired or the reach of the waters reduced.

The proposed regulations interpret the exemption in 404(f)(1)(A) as applicable only to the activities *named* in the statute and other activities of essentially the same character as those named. This interpretation derives from the "such as" language of (f)(1)(A), which in EPA's view, precludes the extension of the exemption for "normal farming, silvicultural, and ranching activities" to activities that are unlike those named. Support for this position is seen in paragraphs (C) and (D) of subsection (f), which provide for specific farming and silvicultural exemptions in addition to those in (f)(1)(A). If (f)(1)(A) intended an across-the-board exemption for agricultural, silvicultural, or ranching practices, there would have been no need for the additional specific exemptions of (f)(1) (D) and (E).

Part 124—Procedures for Decision-making

What Does This Part Do?

Proposed Part 124 establishes the procedures EPA will use in issuing RCRA, UIC, PSD and NPDES permits either separately or in combination with each other. It sets the framework for receiving permit applications, writing draft permits, soliciting public comment on them, and issuing the final permit. Where NPDES permits are concerned, this Part also contains the procedures for conducting evidentiary hearings. These include both procedures for the traditional evidentiary hearing (Subpart E) and special procedures for "initial licensing" (Subpart F). (As discussed below, EPA believes that evidentiary hearings are not required for issuance or modification of RCRA, UIC and PSD permits.) Some of the requirements of this Part are made applicable by Part 123 to States with approved permit programs.

In addition, this Part includes procedures for issuing permits implementing the "prevention of significant deterioration" (PSD) provisions of the Clean Air Act. These procedures are very similar to those presently contained in 40 CFR 52.21(r). No parallel requirements have been included in Parts 122 and 123 because the established mechanisms for approving State programs under the Clean Air Act are somewhat different from those for approving other permit programs. Consolidating the procedures is the aspect of consolidation with most immediate benefit to those affected; EPA will explore the possibility of more comprehensive consolidation in the future.

Subpart A

Basic Permit Issuance Procedures

Under the permitting procedures established by the Part, permits must first be applied for in accordance with permit application requirements set forth in Part 122, (or 40 CFR 52.21 in the case of PSD permits). After receipt of a complete application a draft permit will be prepared under § 124.6. This permit must be accompanied by a "fact sheet," for "major" permits, explaining the basis for the draft permit in some detail under § 124.9. A "statement of basis" must be prepared for all other permits under § 124.8. Because there are practical limits to EPA's ability to explain each of the permits it issues in comprehensive detail, the discussion in the fact sheet or statement of basis should be proportional to the importance of the issues involved and the degree of controversy surrounding them. Modifications to permits and processed as draft permits in accordance with § 124.6, under the requirements of § 124.5 and § 124.7, except or minor modifications as described under § 122.9(g).

Under § 124.10, an "administrative record" must be assembled, containing appropriate supporting documents. When the draft permit has been formulated and public notice is issued under § 124.11, §§ 124.12 and 124.13 provide for a comment period and, in suitable cases, a public hearing. This process will provide a forum for any interested persons to bring forward any comments or questions they may have about the draft permit or its supporting materials. After the comment period has closed, EPA will prepare and issue the final permit under § 124.17. It will be accompanied by a response to all the significant comments received under § 124.19. This response to comments plus any additional supporting material will constitute a final administrative record for the final permit under § 124.20. When the final permit has been issued, there will be an opportunity under § 124.21 for discretionary review of RCRA, UIC and PSD permits by the Administrator. In the case of NPDES permits, there will also be an opportunity for an evidentiary hearing and opportunity for appeal to the Administrator following the evidentiary hearing under Subpart E or F.

A few of the provisions of Part 124, particularly those affording basic public participation in permit issuance, are applicable to State programs (except for State PSD programs). States must prepare a draft permit, provide public notice and opportunity for a hearing and allow the public 30 days to comment on the draft permit before final permit issuance. A statement of basis or fact sheet (for major permits) is also required.

Hearing Requirements for RCRA, UIC, PSD and NPDES Programs

The procedures for issuing RCRA, UIC and PSD permits are relatively more simple than those for NPDES permits both because the programs are newer and because the underlying statutes are not as detailed as the applicable provisions of the Clean Water Act. The major difference between the procedures for these three programs and those for the NPDES program is that no provision for the traditional form of evidentiary hearing is made for RCRA, UIC or PSD permits, while a full evidentiary hearing (under Subpart E or F) is required for NPDES permits.

Three Courts of Appeals have held that the Clean Water Act requires an evidentiary hearing before NPDES permits can be issued. However, these decisions rested largely on specific interpretations of the language of the Clean Water Act, and EPA does not believe that the other three statutes contain analogous provisions. To the extent the decisions expressed a broader concern for reasoned and documented decision-making, EPA shares that concern and believes there are alternative and preferable ways of satisfying it.

Unlike the Clean Water Act, the Resource Conservation and Recovery Act does not explicitly require any "hearing" at all before issuing permits. Section 3008(b) of RCRA provides what EPA interprets to be an adjudicatory hearing for permit revocation, but neither this section nor any other

provides any procedures for permit issuance.*

Similarly, there is no requirement in section 1422 of the Safe Drinking Water Act that any hearing is a prerequisite to EPA issuance of a UIC permit. Where Congress intends that a hearing must precede issuance of a permit, the intention is manifest in the language of the Act, as in the requirement for a hearing on the record for State permitting under section 1421(c)(2) (temporary permits) and section 1424 (interim permits). Additionally, since section 1421(b)(1) of SDWA authorizes State regulation of underground injection by rule as well as by permit, Congress could not have intended for informal rulemaking procedures to apply to the former, but trial-type procedures to apply to the latter.

Section 165 of the Clean Air Act does require a hearing before PSD permits are issued, but the text of the statute makes clear that a formal adjudicatory hearing was not intended. See 165(a)(2). No person who commented in the extensive rulemaking leading up to promulgation of EPA's current PSD regulations alleged that the statute required a formal hearing.

When the statute does not require any hearing at all, the traditional rule of thumb is that evidentiary procedures are not required even for licensing. EPA takes the silence of these statutes on necessary EPA permitting procedures (or the explicit rejection of adjudicatory hearings, in the case of PSD), as an invitation to the agency to develop permitting procedures that are expeditious and informal and still satisfy the requirements of due process and sound administrative procedure. Accordingly, EPA has developed the procedures in these proposed regulations which are described below. These should be enough to allow a thorough ventilating of the facts and policy choices at issue in any permit proceeding.

Coordination of One Permit Program With Another

A major purpose of these regulations is to provide as much coordination as feasible between the permit programs covered. To some extent, this should be accomplished simply by the parallel structure of these regulations in general, and of the common procedures in Part 124 in particular. In addition, these regulations provide several specific mechanisms for closer integration of permit decisions.

Under § 124.4, facilities or activities which will need a permit under more than one of the programs covered will be able to delay filing the applications due first in order to consolidate them with the application due last, by providing EPA with written notice of intent to delay the filing date. Part A applications under the RCRA program are excluded from this provision because the submission of a Part A RCRA application triggers interim status under section 3005 of RCRA, and interim status is only available for a limited period. PSD applications are also excluded from this provision. Because EPA is currently allocating increment on a first-come, first-served, basis (43 FR 26401, June 19, 1978), postponement of a source's application date could cause delay in processing later applications from other sources. This provision could also present an opportunity for abuse by applicants seeking unfairly to reserve increment in the future and to escape the requirements imposed for construction of a source that would affect certain non-attainment areas after July 1, 1979. Such an applicant could attempt to unfairly reserve increment and escape the July 1 deadline by claiming that since its full application had properly been postponed under this section, it should be treated as having been filed earlier. EPA specifically solicits comments on this exclusion of the PSD program. EPA solicits comments on this general approach, and whether there are certain other categories of permit applications that should not be delayed for purposes of consolidation.

The regulations provide explicitly for joint issuance of draft permits for a facility or activity which requires permits under more than one statute, joint comment periods, and joint hearings. Where EPA is issuing all the permits, it may elect to choose this consolidated route at any time. Where responsibility is divided between EPA and a State, the regulations encourage such joint proceedings by mutual agreement. EPA solicits comments on this approach, and whether there are certain other categories of permit applications that should not be delayed for purposes of consolidation.

These regulations also prescribe ways to coordinate the traditional evidentiary hearing portions of the NPDES procedures with the "hybrid" procedures that will be used to make RCRA, UIC and PSD permit decisions. Briefly, they allow the initial comment proceedings on the draft permit to become formal when that might avoid the need for a subsequent evidentiary hearing, and allow NPDES evidentiary hearings to consider matters relating to RCRA, UIC and PSD permit decisions which are indissolubly linked to the decision on the NPDES permit. They thus provide some limited flexibility to shift the consideration of issues back and forth between the two stages as circumstances dictate. Although stays based on cross-effects are possible under certain limited circumstances under § 124.16, the general pattern will be that RCRA and UIC permits will not be stayed while an evidentiary hearing on an NPDES permit issued to the same source is in progress. However, a stay of contested PSD permit term(s) is unavailable under proposed § 124.16. Review of a PSD permit is uniquely dependent on the resolution of earlier PSD applications because of the first-come, first-served allocation scheme being employed by EPA for these permits. The stay provisions of § 124.16 might seriously impede the ability of EPA to process later PSD applications expeditiously.

Where the new "initial licensing" procedures for NPDES permits can be used, a much greater degree of procedural consolidation should be possible. Here the regulations provide that all permits which have been consolidated with the NPDES permit shall simply be passed through the same procedures as the NPDES permit. EPA explicitly invites comment on whether this approach might "overjudicialize" the process of issuing RCRA, UIC or PSD permits, and on alternative approaches that might be acceptable.

Relationship of Subpart A to the Final NPDES Regulations, Part 124

The final NPDES regulations that were recently promulgated contain a number of requirements that are similar, but not identical, to those required for all three programs in Subpart A. Changes to the Part 124 procedures for the NPDES program are the result of an effort to provide uniform procedures for the issuance of permits that accommodate the programmatic and statutory requirements of all three permit programs. These changes include:

Consolidation of Applications. NPDES permit applications can now be consolidated under § 124.5 with permit applications for other programs, and application deadlines may be delayed for purposes of this consolidation.

Statement of Basis and Fact Sheet. The statement of basis required for

* One pre-proposal comment argued that the reference to "order" in section 3008(b) make a hearing necessary since the granting of an initial license may be an "order" under the APA. However, the term is clearly used in section 3008 as a synonym for the "compliance orders" described in paragraph (a), and nothing more. See, e.g., section 3008(c), which is entitled "Requirements of Compliance Orders" and then immediately uses "order" as a synonym.

NPDES permits under the Consolidated regulations is the same as that required under the final NPDES regulations (§ 124.33). However, the requirements for fact sheets required for major NPDES permits have been changed slightly to enable the establishment of common requirements. The changes were mostly in the nature of providing more general requirements than those applicable to NPDES fact sheets in the final NPDES regulations. Certain additional unique NPDES requirements for fact sheets are provided in Subpart D, and these are identical to those required under the final NPDES regulations.

Public Hearings. The public hearing requirements in § 124.13 of the consolidated regulations are considerably more detailed than those provided under the final NPDES regulations (see § 124.42), and contain additional requirements that are designed to provide procedural safeguards for the issuance of RCRA, UIC and PSD permits, which do not require evidentiary hearings. NPDES permits must nonetheless be subject to subsequent evidentiary hearings under Subpart E of these regulations where NPDES permit provisions are contested. Where related permit provisions are contested under NPDES, RCRA, UIC or PSD permits for the same facility or activity, these provisions may be consolidated in the NPDES evidentiary hearing to facilitate decision-making on the related issues.

Subpart B—Specific Procedures Applicable to RCRA Permits

One additional requirement for RCRA permits is provided in Subpart B. Public notice of the receipt of a permit application for a major hazardous waste management facility is required under § 124.31, in addition to the public notice of the issuance of a draft permit required under § 124.11. This additional notice will provide both States and the general public with early notice of a request to permit a hazardous waste management facility and should facilitate coordination with State programs regarding the issuance of a permit to a facility located in that State. The permitting and siting of these facilities is expected to be controversial in some areas of the country, and this section seeks to ensure full public participation in the permit decision process.

In addition, a summary of significant permit applications may be prepared and will be made available upon request.

Subpart C—Specific Procedures Applicable to PSD Permits

Incorporation of the PSD permit requirements into this Part is not meant to change the structure of the program currently set forth at 40 CFR 52.21. The procedures set forth at 40 CFR 52.21(r), which is the analogous provision of that section, are very similar to the ones in Subpart A.

One specific provision has been included in this Subpart. It provides that PSD applications from small sources shall be processed expeditiously under the existing Part 52 regulations.

In the past, determinations by EPA that a source was required to apply for a PSD permit have been litigated as final agency action. EPA believes that in most cases such litigation represents an avoidable waste of judicial time and conflicts with the principles of administrative primary jurisdiction. Accordingly, the approach implicitly adopted by these regulations is that the determination that a source must apply for a PSD permit is not reviewable when it is made. Instead, the source may challenge that threshold determination during the permit issuance process and a final decision will be made at the time of the final decision of other issues.

In some cases such as those in which the threshold determination raises purely legal issues, this course may not be appropriate. In most cases the Regional Administrator will be able to designate the threshold determination as final action subject to immediate judicial review by publishing it in the **Federal Register**. See section 307(b) of the Clean Air Act.

Subparts D, E and F—Specific Procedures Applicable to NPDES Permits

These Subparts contain a number of additional requirements for NPDES permit processing that are largely unique to the Clean Water Act and the NPDES program, including evidentiary hearing procedures. They incorporate without substantive change requirements contained in the final NPDES regulations that were recently promulgated.

Note.—The final regulations for Parts 122–124 will include a plan to evaluate it within five years of implementation. The plan will describe criteria for assessing the degree of success of the regulations. The sources of data that will be used to evaluate the regulations under these criteria, and the resources anticipated as necessary to gather and analyze the data and conduct the reviews.

The Environmental Protection Agency has determined that this document, except for the UIC and RCRA provisions, does not constitute a major regulation requiring preparation of an economic impact statement under Executive Order 12044.

Analyses of the environmental, economic and regulatory impacts of the entirety of Subtitle C, RCRA, Hazardous Waste Management (including the RCRA programs in Parts 122–124 proposed) and on the UIC program are being or have been performed.

Drafts of the Environmental Impact Statement and the Economic Impact Analysis on the RCRA program are available by contacting:

Ed Cox, Solid Waste Information Office, Environmental Protection Agency, 26 West St. Clair Street, Cincinnati, Ohio 42560 (513–684–8491).

In addition, copies of these RCRA documents are available for review in the EPA Library Reading Room, Room 2404, Waterside Mall, 401 M Street, SW., Washington, D.C., and in the EPA Regional Office libraries. Comments on these documents must be received on or before September 12, 1979. Final versions of these documents will be issued at the time of promulgation of the RCRA Part 250 regulations.

Comments and the following supporting documents on the UIC program will be available for public inspection and copying at a reasonable fee during normal business hours at the Environmental Protection Agency, Public Information Reference Unit, Room 2922, 401 M Street, S.W. Washington, D.C. 20460. Copies of the supporting documents will also be available for inspection and copying in the Library at the ten EPA Regional Offices.

The supporting documents are:

1. "Analysis of Costs Underground Injection Control Regulations, Class I and Class III."
2. "Methods and Costs for Inventory and Assessment of Injection Wells Covered Under Classes IV and V."
3. "Estimated Cost of Compliance, Proposed Underground Injection Control Program Regulations, Class II Wells."
4. "Draft Environmental Impact Statement-State Underground Injection Control Program, Proposed Regulation."
5. "Supplement to Draft EIS, Reproposed Regulations."

Dated: June 4, 1979.

Douglas M. Costle,
Administrator.

1. It is proposed to revise Parts 122, 123 and 124 as follows:

PART 122—PROGRAM DESCRIPTIONS: THE HAZARDOUS WASTE PERMIT PROGRAM; THE UNDERGROUND INJECTION CONTROL PROGRAM; THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM; AND THE 404 DREDGE OR FILL PROGRAM

Subpart A—General Program Requirements

Sec.
122.1 Purpose and scope.
122.3 Definitions.
122.4 State authorities.
122.5 Signatories to permit program forms.
122.6 Application for a permit.
122.7 Permit issuance; effect of a permit.
122.8 Duration of permits; continuation of expiring permits; and transferability of permits.
122.9 Review and modification or revocation and reissuance of permits.
122.10 Termination of permits.
122.11 Conditions applicable to all permits.
122.12 Schedules of compliance.
122.13 Establishing permit terms and conditions.
122.14 Recording and reporting of monitoring results and compliance by permittees.
122.15 Noncompliance reporting.
122.16 Confidentiality of information.

Subpart B—Additional Requirements for Hazardous Waste Programs Under the Resource Conservation and Recovery Act

122.21 Purpose and scope.
122.22 Law authorizing hazardous waste control program.
122.23 Application for a permit.
122.24 Establishing permit terms and conditions.
122.25 Special HWM facility permits.
122.26 Permits by rule.
122.27 Reporting requirements.
122.28 Emergency Authorization.

Subpart C—Additional Requirements for UIC Programs Under the SDWA

122.31 Purpose and scope.
122.32 Law authorizing UIC program.
122.33 Designation of underground drinking water sources.
122.34 Classification of injection wells.
122.35 Authorization of underground injection by rule.
122.36 Authorization of underground injection by permit.
122.37 Area permits.
122.38 Corrective action.
122.39 General Prohibition against movement of fluid into underground sources of drinking water.
122.40 Temporary Authorization.
122.42 Establishing UIC permit terms and conditions.
122.43 Noncompliance reporting.
122.44 Special Requirements for wells managing hazardous wastes.
122.45 Elimination of all class IV wells.
122.46 Inventory of class V wells.

Subpart D—Additional Requirements for National Pollutant Discharge Elimination System Programs Under Clean Water Act

122.61 Purpose and scope.
122.62 Law authorizing NPDES permits.
122.63 Exclusions.
122.64 Application for a permit.
122.65 Effect of an NPDES permit.
122.66 Duration of permits.
122.67 Prohibitions.
122.68 Additional conditions applicable to NPDES permits.
122.69 Applicable limitations, standards, prohibitions and conditions.
122.70 Calculation and specification of effluent limitations and standards.
122.71 NPDES requirements for recording and reporting of monitoring reports.
122.72 NPDES noncompliance reporting requirements.
122.73 Modification or revocation and reissuance of NPDES permits.
122.74 Termination of NPDES permits.
122.75 Disposal of pollutants into wells, into publicly owned treatment works or by land applications.
122.76 Concentrated animal feeding operations.
122.77 Concentrated aquatic animal production facilities.
122.78 Aquaculture projects.
122.79 Separate storm sewers.
122.80 Silvicultural activities.
122.81 New sources and new dischargers.
122.82 NPDES general permit program.
122.83 Special considerations under Federal law.

Appendix A—Point Source Categories and Permit Expiration Dates.

Authority: Resource Conservation and Recovery Act, 42 USC 6901 et seq.; Safe Drinking Water Act, 42 USC 300f et seq.; and Clean Water Act, 33 USC 1251 et seq.

Subpart A—General Program Requirements

§ 122.1 Purpose and scope.

(a) The regulations in this Part define three permit programs administered by EPA. They apply to the permit programs as they are administered by approved States, to the extent incorporated by reference in Part 123. These permit programs are:

(1) The Hazardous Waste Permit Program (the RCRA Program) under section 3005 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94–580, as amended by Pub. L. 95–609) (RCRA);

(2) The Underground Injection Control Program (the UIC Program) under section 1421 of the Safe Drinking Water Act (Pub. L. 93–523, as amended by Pub. L. 95–190) (SDWA); and

(3) The National Pollutant Discharge Elimination System (the NPDES Program) under sections 318, 402 and 405(a) of the Clean Water Act (Pub. L. 92–500, as amended by Pub. L. 95–217 and Pub. L. 95–576) (CWA).

(b) These regulations also apply to State section 404 programs under CWA as set out in Part 123.

(c) The consolidation of these permit programs into one set of regulations is authorized by sections 101(f) and 501(a) of the CWA, sections 1006 and 2002 of RCRA, and section 1450 of SDWA.

(d) The regulations in Parts 123, 124, 125, 146 and 250 also apply to the RCRA, UIC, NPDES and section 404 permit programs in the following manner:

(1) Part 123 describes the requirements for State participation in these programs;

(2) Part 124 describes the procedures for issuing permits. These procedures apply in their entirety to EPA and in part to approved States as described in Part 123; and

(3) Subchapter N of this Chapter and Parts 125, 146, and 250 describe technical criteria and standards for determinations under the NPDES, UIC and RCRA programs, respectively. They apply to both EPA and State programs. The technical criteria of 40 CFR Part 230 apply to State section 404 programs.

(e) The regulations in this Part and in Parts 123 and 124 establish the requirements for public participation in the State permit issuance process and in the approval of State RCRA, UIC, NPDES, and 404 programs. These requirements carry out the purposes of the public participation requirements of 40 CFR Part 25, and supercede the requirements of that Part as they apply to actions contained under Parts 122, 123 and 124.

§ 122.3 Definitions.

The following definitions apply to this Part and to Parts 123, 124 and 125. Terms not defined in this Part shall have the meaning given by the appropriate Act.

(a) General definitions

"Administrator" means the Administrator of the United States Environmental Protection Agency, or his/her designee.

"Application" means the EPA standard national forms for applying for a permit, including any subsequent additions, revisions or modifications to the form; or forms approved by EPA for use in approved States, including any approved modifications or revisions.

"Appropriate Act and/or Regulations" means the Clean Water Act (CWA); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA); the Safe Drinking Water Act (SDWA); the Clean Air Act (CAA); and applicable regulations

promulgated under these laws. This term is used to describe the application of general requirements to specific program activities under one or more of the above laws, as appropriate.

"Approved program" means a State program which has been submitted to and approved by EPA under Part 123 and the appropriate Act. An "approved State" is one administering an "approved program."

"Aquifer" means a geological formation, group of formations, or part of a formation that is capable of yielding useable quantities of groundwater.

"CWA" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act) Pub. L. 92–500, as amended by Pub. L. 95–217 and Pub. L. 95–576, 33 U.S.C. 1251 *et seq.*

"Contaminant" means any physical, chemical, biological or radiological substance or matter in water. "Contaminant" includes, but is not limited to or by, the term pollutant, as defined in this Part.

"Director" means the Regional Administrator, or the State Director, as defined in this section, as the particular context may require.

[*Comment:* Where there is no approved State program, the term "director" refers to the Regional Administrator. Where there is an approved State program, the term "director" normally refers to the State director. In some circumstances, however, EPA retains authority to take certain actions even where there is an approved State program; e.g., where EPA issued an NPDES permit prior to the approval of a State program, EPA may retain jurisdiction over that permit after program approval, see § 123.71 and § 123.91. In such cases, the term "director" means the Regional Administrator and not the State Director.]

"Environmental Protection Agency" ("EPA") means the United States Environmental Protection Agency.

"Facility or activity" means any facility or activity (including land or appurtenances thereto) that is subject to regulation under the RCRA, UIC, or NPDES programs.

"Ground water" means water in the saturated zone beneath the land surface.

"Hazardous waste" has the meaning given in section 1004(5) of RCRA as further defined and identified in 40 CFR Part 250, Subpart A, § 250.13 and .14 (proposed at 43 FR 58955–9).

"Interstate agency" means an agency of two or more States established by or under an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator under the appropriate Act and regulations.

"NPDES" ("National Pollutant discharge Elimination system") means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits pursuant to sections 402, 318, and 405 of CWA. The term includes any State or interstate program which has been approved by the Administrator.

"Owner or Operator" means the owner or operator of any facility or activity subject to regulation under the RCRA, UIC, NPDES or 404 programs.

"Permit" means a permit or equivalent control document that complies with all of the requirements and procedures of this part and Parts 123 and 124, issued by EPA or an approved State. In Part 124, references to "permit" may include permit modification, revocation or denial.

"Person" means an individual, corporation, partnership, association, State or municipality or Federal agency. Under RCRA and CWA, "person" also means a commission, political subdivision of a State, or interstate body. Under RCRA only, "person" also means a trust, firm or joint stock campany; and under SDWA only, "person" also means a company or federal agency, and includes officers, employees, and agency of any corporation, company, association, State municipality, or Federal agency.

"Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(1) Sewage from vessels; or

(2) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if such State determines that such injection or disposal will not result in the degradation of ground or surface water resources.

[*Comment:* The legislative history of the CWA indicates that "radioactive materials" as included within the definition of "pollutant" in section 502 of the CWA means only radioactive materials which are not encompassed in the definition of source, byproduct, or special nuclear materials defined by the Atomic energy Act (AEA(of 1954, as amended, and regulated under the AEA. Examples of radioactive materials not covered by the AEA and, therefore, included within the term "pollutant" or radium and accelerator produced isotopes. See *Train* v. *Colorado Public Interest Research Group, Inc.* 426 U.S. 1 (1976).]

"Publicly owned treatment works" or "POTW" means a treatment works as defined in section 212 of the Clean Water Act (CWA), which is owned by a State or municipality (as defined under § 122.3(d)), excluding any sewers or other conveyances not leading to a facility providing treatment.

"Regional Administrator" means the Regional Administrator of the appropriate Regional Office of the Environmental Protection Agency or the delegated representative of the Regional Administrator.

"Regulated activity" or "Activity subject to regulation" means any activity subject to regulation under the RCRA, UIC, or NPDES programs.

"RCRA" means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94–580, as amended by Pub. L. 95–609).

"SDWA" means the Safe Drinking Water Act (Pub. L. 95–523, as amended by Pub. L. 95–1900).

"Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of interim requirements (e.g., actions, operations, or milestone events) leading to compliance with the appropriate Act and regulations.

"Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

"Site" means the land or water area upon which a facility or activity is physically located or conducted, including but not limited to adjacent land used for utility systems, as repair, storage, shipping or processing areas, or other areas incident to the controlled facility or activity.

"State" means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands (except in the case of RCRA), and the Northern Mariana Islands (except in the case of (CWA).

"State Director" means the chief administrative officer of a State agency or interstate agency approved under Part 123 by EPA to administer a State program, or the delegated representative of the State Director. If responsibility is divided within a State agency or among two or more State or interstate agencies,

"State Director" means the administrative officer authorized to perform the particular procedure or function to which reference is made.

"Stratum" means a single sedimentary bed or layer, regardless of thickness, that consists of approximately the same kind of rock material. Strata is the plural of stratum.

"Total dissolved solids" ("TDS") means the total dissolved (filterable) solids as determined by use of the method promulgated at 40 CFR 136.3, Table I. (The method is described in EPA's "Methods for Chemical Analysis of Water and Wastes, 1974," pages 266–267.)

"Underground Drinking Water Source" or "Underground Source of Drinking Water," except as specified in § 146.04 means:

(1) An aquifer or its portion supplying drinking water for human consumption;

(2) An aquifer or its portion in which the groundwater contains less than 10,000 mg/1 total dissolved solids; or

(3) An aquifer or its portion designated as such by the Administrator or the Director;

[*Comment:* Both the RCRA and UIC programs will use this definition of underground source of drinking water (USDW). However, under the UIC program latitude is given to the responsible authority in designating USDW's (see §§ 122.33 and 146.04). As a balance to this latitude, designations under the UIC program must be made after public hearing and are subject to the approval of the Administrator.]

(b) Definitions applicable to RCRA program requirements

"Application, Part A" means that part of the application which a RCRA permit applicant must complete to qualify for interim status under section 3005(e) of RCRA and for consideration for a permit.

[*Comment:* Part A of the application consists of Form 1 (General Information) and Form 3 (Hazardous Waste Information Summary) as proposed in today's Federal Register as "Public Notice of the Consolidated Application Form."]

"Application Part B" means that part of the application which a RCRA permit applicant must complete to be considered for a permit.

[*Comment:* EPA is not proposing a specific form for Part B of the permit application.]

"Authorization" means authorization, or approval by EPA of a State program which has met the applicable requirements of section 3006(b) of RCRA and Part 123, Subparts A and B.

"Close Out" means the point in time at which Hazardous Waste Management facility owners/operators discontinue accepting hazardous waste for treatment, storage or disposal.

[*Comment:* This definition has been changed from the one included in 40 CFR Part 250, Subpart 250.41 (proposed at 43 FR 58006 (December 18, 1978)) so as to clearly indicate that close-out begins when the facility discontinues accepting hazardous wastes. Comments received on this provision, as well as those submitted on the Part 250 definition of "close-out", will be considered together and will be conformed when these regulations are finally promulgated.]

"Closure" means the act of securing a Hazardous Waste Management facility pursuant to the requirements of 40 CFR Part 250, § 250.43–7 (proposed at 43 FR 59004 (December 18, 1978)).

"Delivery Document" means a shipping paper (bill of lading, waybill, dangerous cargo manifest, or other shipping document) used in lieu of the original manifest to fulfill the recordkeeping requirements of 40 CFR Part 250, § 250.33 (proposed at 43 FR 16510 (April 28, 1978)).

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

A "Disposal facility" means any Hazardous Waste Management facility which disposes of hazardous waste.

"Existing HWM facility" means a Hazardous Waste Management facility which was in operation or under physical construction, on or before the date of promulgation of the regulations under § 3001 of RCRA, 40 CFR 250, Subpart A, (proposed at 43 FR 58954 (December 18, 1978)).

"Generator" means any person or Federal agency whose act or process produces hazardous waste identified or listed under 40 CFR Part 250, § 250.13 and .14 (proposed at 43 FR 58955–9 (December 18, 1978), provided, however, that certain producers may or may not be generators depending on whether they meet the criteria specified in 40 CFR Part 250, § 250.29 (proposed at 43 FR 58979 (December 18, 1978)).

A "Hazardous Waste Management facility" ("HWM facility") means any facility, land and appurtenances thereto used for the treatment, storage, and/or disposal of hazardous waste, except that solid waste disposal facilities which receives hazardous wastes only from persons subject to 40 CFR 250.29 shall not be considered HWM facilities.

[*Comment:* Persons subject to 40 CFR 250.29 are those who produce and dispose of no more than 100 kilograms (approximately 220 pounds) of hazardous wastes in any one month, retailers who dispose of hazardous wastes other than waste oil, and farmers who dispose of pesticides which are hazardous and who follow certain specified operating procedures.]

"In operation" means Hazardous Waste Management facilties that are actively treating, storing, or disposing of hazardous waste.

"Interim authorization" means authorization or approval by EPA of a State program which has met the applicable requirements of section 3006(c) of RCRA and Part 123, Subparts A and B.

The term "Major Hazardous Waste Management facility" means a facility used for the treatment, storage or disposal of hazardous waste at a rate equal to or greater than 5,000 metric tons per year.

[*Comment:* This definition is used in conjunction with the requirements for EPA's review of State issued permits in § 123.38, the issuance of public notices in § 124.11, and the issuance of fact sheets in § 124.8, and shall not be construed to mean that any of the application procedures or public hearing procedures are waived for any facility.]

"New HWM facility" means a Hazadous Waste Management facility which does not meet the definition of an existing facility as defined in this section.

"Off-site" means any site that does not meet the definition of "on-site" as defined in this section.

"On-site" means on the same or geographically contiguous property. Two or more pieces of property which are geographically contiguous and are divided by public or private right(s)-of-way are considered a single site.

"Physical construction" means excavation, movement of earth, erection of forms or structures, the purchase of equipment or any other activity involving the actual preparation of the Hazardous Waste Management facility.

"Storage" means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous wastes.

"Storage facility" means Hazardous Waste Management facility which stores hazardous waste, except for generators who store their own wastes on-site for less than 90 days for subsequent transport off-site, in accordance with regulations in 40 CFR Part 250, § 250.20(c)(2) (proposed at 43 FR 58978 (December 18, 1978)).

"Transporter" means a person or Federal Agency engaged in the transportation of hazardous waste by air, rail, highway or water.

"Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

"Treatment facility" means any Hazardous Waste Management facility which treats hazardous waste.

(c) Definitions applicable to UIC program requirements

"Approval in part" means action by the Administrator which authorizes a State to administer a UIC program covering less than all types of injection wells within the State. In order to be approved in part, the State program must meet all the requirements of Part 123 for those injection wells for which authorization is given.

[*Comment:* States which have not received full approval are not eligible to receive program grants under section 1443 of SDWA.]

"Area of review" means the area surrounding an injection well which is described according to the criteria set forth in § 146.06.

"Effective date of a UIC program" means the date that a State UIC program is approved or the date that a UIC program is established by the Administrator.

"Existing injection wells" means all injection wells other than new injection wells as defined in this section.

"Fluid" means material or substance which flows or moves whether semisolid, liquid, sludge or any other form or state.

"Injection well" means a well into which injection occurs, including the following types of injection wells (which are divided into the classes in § 122.34):

(1) "Air conditioning return flow well" means a well used to return to the supply aquifer the water used for heating or cooling in a heat pump.

(2) "Cesspool" means an underground device with an open bottom and often with perforated sides that receives wastes.

[*Comment:* The UIC requirements will *not* apply to single family residential cesspools.]

(3) "Cooling water return flow well" means a well used to inject water previously used for cooling.

(4) "Disposal well" means a well used for the disposal of waste into a subsurface stratum.

(5) "Drainage well" means a well used to drain surface fluid, primarily storm runoff, into a subsurface stratum.

(6) "Dry well" means a well that is used for the injection of wastes into the unsaturated zone above an underground drinking water source.

(7) "Enhanced recovery injection well" means a well used to inject fluids for the purpose of facilitating recovery of oil or natural gas.

(8) "Frasch process well" means a well used for the production of sulfur by the Frasch process.

(9) "Geothermal well" means a well used to inject fluids to extract heat from the earth's interior.

(10) "Hydrocarbon storage well" means: (i) a well used to inject hydrocarbons into an underground formation or reservoir for the purpose of storage or (ii) a well for the injection of fluids for the purpose of recovery of stored hydrocarbons.

(11) "In situ gasification well" means a well used for the injection of air and/or fuels to gasify by partial combustion fossil fuel such as coal, tar sands and oil shale.

(12) "Industrial waste disposal well" means a well used for the disposal of waste fluids from an industrial facility into a subsurface stratum.

(13) "Municipal disposal well" means a well used for the disposal of effluent or sludge from a municipal wastewater collection, storage or treatment facility into a subsurface stratum.

(14) "Nuclear disposal or storage well" means a well used for the injection of nuclear materials or wastes into a subsurface stratum, whether for temporary storage or ultimate disposal.

(15) "Produced fluid disposal well" means a well used for the injection of water or other fluids which are brought to the surface in connection with oil or natural gas production into a subsurface stratum other than the oil producing formation.

(16) "Recharge well" means a well used to artificially replenish the water in an aquifer.

(17) "Salt water intrusion barrier well" means a well used to inject water into a fresh water aquifer to prevent the intrusion of salt water into the fresh water.

(18) "Sand backfill well" means a well used to inject a mixture of water and sand, mill tailings or other solids into mined out portions of subsurface mines.

(19) "Septic system well" means (i) a well used to inject the waste or effluent from a multiple dwelling, community or regional septic tank; or (ii) a multiple dwelling, community or regional cesspool; or (iii) a septic tank system well used to dispose of hazardous wastes; but does not mean individual residential waste disposal systems.

(20) "Solution mining well" means (i) a well used to inject fluid containing leaching chemicals to effectuate in-situ leaching and subsequent recover of metals such as copper and uranium, or (ii) a well used for the injection of water or other fluids for the purpose of recovering minerals such as sodium chloride, potash and phosphate.

(21) "Subsidence control well (not for the purpose of oil and gas recovery)" means a well used to inject fluids into a non-oil gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water.

"Listed State" means a State listed by the Administrator under section 1422 of the SDWA as needing a State UIC program.

"New injection wells" means those wells which begin injection after a UIC program applicable to such wells becomes effective in the State.

"Underground injection" means the subsurface emplacement of fluids by well injection.

"Well injection" means the subsurface emplacement of fluids (except drilling muds, cement and similar construction materials) through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater then the largest surface dimension.

(d) Definitions applicable to NPDES program requirements

"Applicable standards and limitations" means all State, interstate and Federal standards and limitations to which a discharge or a related activity is subject under the CWA, including, but not limited to, effluent limitations, water quality standards, standards of performance, toxic effluent standards for prohibitions, best management practices, and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 308, 403 and 405 of CWA.

"Best management practices" ("BMPs") include treatment requirements, operating and maintenance procedures, schedules of activities, prohibitions of activities, and other management practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs may be imposed in addition to or in the absence

of effluent limitations, standards, or prohibitions.

"Contiguous zone" means the entire zone established by the United States under article 24 of the Convention on the Territorial Sea and the Contigous Zone.

"Direct discharge" means the discharge of a pollutant or the discharge of pollutants.

"Discharge" when used without qualification includes a discharge of a pollutant and a discharge of pollutants.

"Discharge of a pollutant" and "discharge of pollutants" each means: (i) Any addition of any pollutant or combination of pollutants to navigable waters from any point source, or

(ii) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft when being used as a means of transportation.

This definition includes discharges into waters of the United States from: surface runoff which is collected or channelled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other party which do not lead to treatment systems; and discharges through pipes, sewers, or other conveyances, leading into treatment systems owned in whole or in part by a third party other than a State or a municipality.

"Discharge Monitoring Report" ("DMR") means the EPA uniform national form, including any subsequent additions, revisions or modifications, for the reporting of self-monitoring results by permittees. DMRs must be used by approved States as well as by EPA.

[*Comment:* EPA will supply DMRs to any approved State upon request. The EPA national forms may be modified to substitute the State Agency name, address, logo and other similar information, as appropriate, in place of EPA's.]

"Effluent limitation" means any restriction imposed by the Director on quantities, rates, and concentrations of pollutants which are discharged from point sources into navigable waters, the waters of the contiguous zone or the ocean.

"Indirect discharger" means a non-municipal, non-domestic discharger introducing pollutants to a publicly owned treatment works which introduction does not constitute a "discharge of pollutants."

"Municipality" means a city, town, borough, county, parish, district, association or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of CWA.

"Navigable waters" means "waters of the United States, including the territorial seas". This term includes:

(1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(2) Interstate waters, including interstate wetlands;

(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, natural ponds, the use, degradation or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(i) Which are or could be used by interstate of foreign travelers for recreational or other purposes;

(ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

(iii) Which are used or could be used for industrial purposes by industries in interstate commerce;

(4) All impoundments of waters otherwise defined as navigable waters under this paragraph;

(5) Tributaries of waters indentified in paragraphs (1)–(4) of this section, including adjacent wetlands; and

(6) Wetlands adjacent to waters identified in paragraphs (1)–(5) of this section; ("Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalance of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(7) *Provided,* That treatment ponds or lagoons designed to meet the requirements of the CWA (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States.

[*Comment:* For purposes of clarity the term "waters of the United States" is primarily used throughout the regulations rather than "navigable water."]

"New discharger" means any building, structure, facility or installation (1) which on October 18, 1972, had never discharged pollutants and (2) which has never received a finally effective NPDES permits and (3) from which there is or may be a new or additional discharge of pollutants and (4) which does not fall within the definition of "new sources".

"New source" means any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(i) After promulgation of standards of performance under section 306 of the CWA which are applicable to such source, or

(ii) After proposal of standards of performance under section 306 of the CWA which are applicable to such source, but only if the standards are promulgated within 120 days of their proposal.

[*Comment:* See § 122.81 for the criteria and standards to be used in determining whether a source has begun construction within the meaning of this definitions, for the types of construction activities which result in new sources or new discharges, and for the effect of a new source determination.]

"Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

"Process waste water means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

"Sewage from vessels" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under section 312 of the CWA, except that with respect to commercial vessels on the Great Lakes this term includes graywater. For the purposes of this definition, "graywater" means galley, bath, and shower water.

"Sewage sludge" means the solids, residues, and precipitate separated from or created in sewage by the unit processes of a publicly owned treatment works. "Sewage" as used in this definition means any wastes, including wastes from humans, households, commercial establishments, industries, and storm water runoff, that are discharged to or otherwise enter a publicly owned treatment works.

"Variance" means any mechanism or provision under section 301 or 316 of CWA and Part 125, or in the applicable effluent limitation guidelines which

allow modification to or waivers of the effluent limitation requirements of CWA. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors and sections 301(c), 301(g), 301(h), and 316(a) of CWA, where appropriate.

"Waters of the United States"means navigable waters, as defined in this section.

(e) Definitions applicable to section 404 program requirements

"Best Management Practices" ("BMPs") means methods, measures, practices or design and performance standards to prevent or reduce the pollution of waters of the United States. BMPs include but are not limited to schedules of activities, prohibitions of practices, and maintenance procedures. BMPs developed by State section 404 Agencies must insure compliance with the section 404(b)(1) environmental guidelines, (40 CFR 230), and effluent limitations and prohibitions under section 307(a), and water quality standards.

"Cultivating" means physical means of soil treatment employed within established agricultural and silvicultural lands upon planted farm or forest crops to aid and improve their growth, quality and yield.

"Discharge of dredged material" means any addition of dredged material into waters of the United States. The term includes, without limitation, the addition of dredged material into waters of the United States and the runoff or overflow from a contained land or water disposal area. Discharges of pollutants into waters of the United States resulting from the subsequent onshore processing of dredged material that is extracted for any commercial use (other than fill) are not included within this term and are subject to section 402 of the Clean Water Act even though the extraction and deposit of such material may also require a permit from the Corps of Engineers.

"Discharge of fill material" means the addition of fill material into waters of the United States. The term generally includes without limitation, the following activities in waters of the United States: placement of fill that is necessary for the construction of any structure; the building of any structure or impoundment requiring rock, sand, dirt, or other materials for its construction; site-development fills for recreational, industrial, commercial, residential, and other uses; causeways or road fills; dams and dikes; artificial islands; property protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments; beach nourishment; levees; fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants and subaqueous utility lines; and artificial reefs.

"Disposal site" means that portion of the waters of the United States enclosed within fixed boundaries consisting of a water surface area (when present), a volume of water (when present), and a substrate area. In the case of wetlands on which water is not present, the disposal site consists of the wetlands surface area. Fixed boundaries may consist of fixed geographic point(s) and associated dimensions, or of a discharge point and specific associated dimensions.

"Dredged material means material that is excavated or dredged from waters of the United States.

"Fill material" means any material used for the primary purpose of replacing any water of the United States with dry land or of changing the bottom elevation of a waterbody. The term does not include any pollutant discharged into the water primarily to dispose of waste, as that activity is regulated under section 402 of CWA. The Director, in consultation with the section 402 permitting authority, will make determinations as to the primary purpose of proposed activities.

[*Comment:* In some instances the proposed activity will require both a section 402 and a section 404 permit. (e.g., diking an area of waters of the United States to fill it with municipal wastes.) Where this is the case, every attempt should be made to jointly process the permit application, including joint public notices and public hearings if necessary. Consideration is presently being given to changing the primary purpose test. Should this occur the above comment will no longer be applicable.]

"General permit" means either a State permit or a Corps of Engineers Army permit that is issued under section 404 of CWA after notice and opportunity for public hearing, on a local State, Regional or nationwide basis to authorize any discharges of dredged or fill material from clearly described categories of activities involving discharges of dredged or fill material that are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment.

"Harvesting" means physical measures employed directly upon farm, or forest crops to bring about their removal from farm lands or forest land, but does not include the construction of farm or forest roads.

"Impoundment" means a standing body of open water created by artificially blocking or restricting the flow or circulation of a water of the United States. As used in this regulation, the term does not include artificial lakes or ponds created by excavating and/or diking dry land areas to collect and retain water for such purposes as stock watering, irrigation, settling basins, cooling, or rice growing, and actually used for such purposes.

"Minor drainage" means construction and maintenance of facilities for the removal of excess soil moisture from drylands (uplands). It includes ditching and tiling incidental to the planting, cultivating, protecting, or harvesting of crops. The connection of such drainage ways from uplands to the waters of the United States is considered to be minor drainage. The discharge of dredged or fill material incidental to connecting an upland drainageway to water of the United States, adequate to the purpose of removing excess soil moisture incidental to the above activities is minor drainage. The term does not include discharges incidental to the construction of ditches or other drainage features which converts any water of the United States to farming, ranching, or silvicultural uses, nor does it include discharges incidental to the drainage of a forested wetland to convert it to any type of nonwetland forest.

"Navigable waters" and "Wetlands" are defined under the NPDES program definitions.

"Plowing" means all forms of primary tillage, including moldboard, chisel, or wide-blade, plowing, discing, harrowing; and similar physical means utilized on established farm land for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. The term does not include the redistribution of spoil, rock sand, or other superficial materials in a manner which changes any area of the waters of the United States to dryland. For example, the redistribution of surface materials by blading, grading, or other means to fill in wetland areas will require a permit whenever the affected areas lie within the waters of the U.S.

"Seeding" means the manual or mechanical sowing of seed and placement of seedlings for the production of farm or forest crops and includes the placement of soil beds for seeds or seedlings on established farm lands and forest lands.

"State regulated waters" means those waters of the United States in which the Corps of Engineers will suspend the

issuance of section 404 permits upon approval of a State's section 404 permit program by the Administrator under section 404(h). These waters shall be identified in the Memorandum of Agreement between the State and the Secretary as required by § 122.93.

[*Comment:* CWA section 404(g)(1) requires that the Secretary retain jurisdiction, for purposes of section 404 over the following waters:

(1) Waters which are subject to the ebb and flow of the tide;

(2) Those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark; and

(3) Wetlands adjacent to waters in (1) and (2).]

§ 122.4 State authorities.

Nothing in Parts 122–124 precludes more stringent State regulation of any activity covered by these Parts, except as provided for the RCRA program in § 123.33(c).

§ 122.5 Signatories to permit program forms.

(a) All permit applications, except for those submitted for Class II wells for the UIC program (see paragraph (b) below), shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.

(b) All reports required by permits or otherwise required by the Director, other requests for information made by the Director, and all permit applications submitted for Class II wells under § 122.36 for the UIC program shall be signed by a person designated in paragraph (a), or by a duly authorized representative of such person; if:

(1) The representative so authorized is responsible for the overall operation of the facility from which the regulated activity originates, e.g., a plant manager, superintendent or person of equivalent responsibility;

(2) The authorization is made in writing by the person designated under paragraph (a); and

(3) The written authorization is submitted to the Director.

(c) Any changes in the written authorization submitted to the permitting authority under paragraph (b) which occur after the issuance of a permit shall be reported to the Director by submitting a copy of a new written authorization which meets the requirements of paragraph (b) (1) and (2).

(d) Any person signing a document under paragraph (a) or (b) of this section shall make the following certification: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in the attached document, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

[*Comment:* Permit applications are being revised to incorporate this statement. Where a program document does not contain the statement, the certification must accompany the appropriate document.]

(e) This section is applicable to approved State programs (see § 123.8). States may adopt language that is equivalent to but not identical to, the certification statement in paragraph (d), if such equivalent language is approved by the Regional Administrator.

§ 122.6 Application for a permit.

(a) Any person who conducts or who proposes to conduct an activity for which a permit is required under this Part shall complete, sign, and submit an application to the Director as described in § 122.23, 122.36 and 122.64.

§ 122.7 Permit issuance; effect of a permit.

(a) The permit issuance process is initiated by the receipt of a complete application by the Director.

(b) The issuance of a permit does not: (1) convey any property rights of any sort, or any exclusive privileges; (2) authorize any injury to private property or invasion of other private rights, or any infringement of Federal, State, or local law or regulations, or (3) preempt any duty to obtain State or local assent required by law for the authorized activity.

(c) Any permittee who wishes to continue a regulated activity after the expiration date of a permit must apply for a new permit under the applicable sections of this Part, Part 124, and in the case of section 404 permits, Part 123, Subpart E.

§ 122.8 Duration of permits; continuation of expiring permits; transferability of permits.

(a) NPDES and section 404 permits shall be issued for a term not to exceed five years. Permits of less than five (5) years duration may be issued in appropriate circumstances (for example, see § 122.60). Except as provided in paragraph (c), the term of an NPDES permit shall not be extended beyond five years from its original date of effectiveness by modification, extension or other means.

(b) RCRA and UIC permits shall be issued for a period not to exceed the designed operating life of the facility (in the case of new facility) or the remainder of the designed operating life of the facility (in the case of an existing facility), except as provided in § 122.25(b) (RCRA Experimental Special Permits).

(c) *Continuation of expiring permits.* (1) Where EPA is the permit issuing authority, the terms and conditions of an expired permit are automatically continued under 5 U.S.C. § 558(c) pending issuance of a new permit if:

(i) The permittee has submitted a timely and sufficient application for a new permit under § 122.23, § 122.36, or § 122.64; and

(ii) The Regional Administrator is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit (e.g., where it is impracticable due to time and/or resource constraints).

(2) Permits continued under this paragraph remain fully effective and enforceable.

(3) Where the permittee is not in compliance with the terms and conditions of the expiring permit:

(i) The permit may be continued under this section pending a final determination by the Regional Administrator on the application for a new permit and enforcement action may be taken based upon the continued permit; or

(ii) The Regional Administrator may make a determination to deny the application for a new permit in accordance with the procedures specified in Part 124. The owner or operator would then be required to cease the activities authorized by the permit or be subject to enforcement action for operating without a permit.

(d) States authorized to administer the RCRA, UIC or NPDES programs may continue permits in a similar manner if so authorized by State law. However, a permit is not continued under Federal law where EPA originally issued the permit, but the State is the permitting

authority at the time the permit expired. In such case, the activity or facility is operating without a permit from the time the EPA-issued permit expires to the time that the State-issued permit is effective.

(e) *Transferability of permits.* A permit may be transferred to another person by a permittee if:

(1) The permittee notifies the Director of the proposed transfer;

(2) A written agreement containing a specific date for transfer of permit responsibility and coverage between the current and new permittees (including acknowledgement that the existing permittee is liable for violations up to that date, and that the new permittee is liable for violations from that date on) is submitted to the Director; and

(3) The Director within 30 days does not notify the current permittee and the new permittee, of his or her intent to modify, revoke and reissue or terminate the permit and to require that a new application be filed rather than agreeing to the transfer of the permit.

[*Comment:* A new application could be required under this paragraph where the change of ownership is accompanied by a change or proposed change in process, wastewater, or hazardous waste characteristics or a change or potential change in any circumstances that the permitting authority believes will affect the conditions or restrictions in the permit.]

§ 122.9 Review and modification or revocation and reissuance of permits.

(a) The Director shall review each issued UIC or RCRA permit at least once every five years to determine whether the permit should be modified or revoked and reissued for one or more of the causes listed in paragraph (e) of this section.

[*Comment:* The purpose of paragraph (a) is to ensure that RCRA and UIC permits are subject to comprehensive review at specified times and modification or revocation and reissuance as may be desirable to better carry out the statutory purpose(s). Accordingly, the Director is as free to propose and adopt permit modifications for a life-term permit as the result of such a review as he would be to propose and adopt new permit terms as the result of the expiration and reissuance of a fixed term permit. Permit modifications for cause during the term of a permit are also possible where cause exists under paragraph (e).]

(b) Where permits under two or more programs under this Part are issued for a single facility or activity, the Director shall review all the permits issued for that facility or activity whenever any one of the permits is reviewed pursuant to paragraph (a), or any one of the permits expires pursuant to § 122.8 or is terminated under § 122.10. The purpose of this review shall be to determine whether the permit should be modified or revoked and reissued for one or more of the causes listed in paragraph (e) of this section. The permit shall specify a date for review under this section whenever the date of expiration of another permit for the same facility or activity is available.

(c) The Director may review an issued permit at any time and shall review an issued permit on the request of any person who presents information which, if valid, would constitute cause for a modification or revocation and reissuance under paragraph (e) of this section.

(d) The Director may base his/her review on any or all of the following:

(1) Information submitted by the permittee in periodic reports;

(2) Information collected by the Director in inspections of the permitted facility;

(3) Information requested of the permittee, including all or part of the information which the Director might otherwise request in an application for the issuance or reissuance of a permit; or

(4) Any other pertinent information that the Director may obtain.

(e) Cause for modification or revocation and reissuance exists:

(1) Where there are material and substantial alterations or additions to the permitted operation which are not covered by the effective permit; provided that for NPDES permits, such alterations or additions do not constitute a replacement of the process or production equipment of an existing source, converting it to a new source under § 122.61.

[*Comment:* Such alterations or additions include but are not limited to material or substantial changes in the quantity (increase or decrease) or composition of the wastes, fluids or pollutants injected, discharged, treated, disposed or stored; changes in the injection, discharge, treatment, disposal or storage methods or other operational methods employed, production changes, relocation or combination of discharge points, changes in the nature or mix of products produced.

Certain reconstruction activities may cause the new source provisions for NPDES permits under § 122.61 to become applicable to the permittee. In such cases, the new source permit issuance procedures of § 122.64 and § 124.61 shall be followed instead of the modification or revocation and reissuance process and an EIS may be required for an EPA-issued new source permit.]

(2) Where the existence of any factor(s) which, if properly and timely brought to the attention of the Director, would have justified the application of different permit terms and conditions, but only if the requester show that such factors arose after the final permit was issued.

(3) Where the standards and/or regulations on which the permit was based have been changed by promulgation of amended standards and/or regulations or judicial decision after the permit was issued, except that NPDES permits may be modified during their terms for such reasons only to the extent set forth in § 122.73;

(4) Where an existing permittee proposed a change of ownership or control of the permitted activity or facility, and the Director determines under § 122.8 that modification or revocation and reissuance is appropriate;

(5) Where modification, revocation and reissuance or termination of another permit issued to the same facility or activity requires a modification or revocation and reissuance of the permit;

(6) Where the permit fails to apply any applicable requirements under the appropriate Act or regulations, which are in effect prior to the effective date of permit issuance; and

(7) For NPDES and section 404 permits only, where cause exists for termination under § 122.10 or § 122.74.

[*Comment:* The Director will generally base his/her decision on whether to modify, instead of revoking and reissuing a permit, where cause exists under paragraph (e) of this section, on the extent of the anticipated changes and on the length of the remaining term of the permit. For instance, where the remaining permit term is only two years, it may be desirable to revoke the existing permit and issue another permit incorporating the changes. See also § 122.60 for certain circumstances when NPDES permits will be revoked and reissued.]

(f) Except as provided for minor modifications under paragraph (g) of this section the modification or revocation and reissuance of permits under this section shall comply with § 124.5 and § 124.7.

(g) The following minor permit modifications shall not require public notice and opportunity for hearing under § 124.5 or § 124.7, unless they would render the permit less stringent, or unless contested by the permittee:

(1) Correction of typographical errors;

(2) A change requiring more frequent monitoring or reporting by the permittee;

(3) A change in an interim compliance date, provided the change would not exceed 120 days or would not interfere with attainment of a final compliance date; and

(4) A change in ownership or operational control of a facility where the Director determines that no major change of the permit is necessary under § 122.8(d).

(5) To the extent authorized under § 122.24, changes in quantities or types of wastes treated, disposed or stored which are within the capacity of the facility as permitted and, in the judgment of the Director, would not interfere with the operation of the facility or its capacity to meet conditions prescribed in the permit.

(6) To the extent authorized under § 122.24, changes in treatment, disposal or storage methods or operations which, in th judgement of the Director, are equivalent to or better than those on which their permit is based.

(7) Extension of the term of a State section 404 permit so long as the extension does not conflict with § 122.8(a).

(h) Minor modifications as defined in paragraph (g) of this section shall become immediately effective or effective on a date specified by the Director.

§ 122.10 Termination of permits.

(a) An issued permit may be terminated, in whole or in part, during its term for cause as specified in this section.

(b) Cause for termination includes:

(1) Violation of any term or condition of the permit or requirement of the appropriate Act by the permittee;

(2) Failure of the permittee to disclose fully all relevant facts or misrepresentation of any relevent facts by the permittee in the application or during the permit issuance process;

(3) Information indicating that the permitted activity poses a threat to human health or the environment;

(4) A change in ownership or control of a source which has a permit where required by the Director in accordance with § 122.8(e); or

(5) Other good cause.

[*Comment:* Termination under this section includes the suspension or revocation of a permit under section 3008 of RCRA. Procedures for termination or suspension and revocation of RCRA permits are provided in 40 CFR Part 22 (proposed at 43 FR 34739 (August 4, 1978).]

§ 122.11 Conditions applicable to all permits.

The following conditions apply to all permits and shall be incorporated into all permits either expressly or by reference.

[*Comment:* If not incorporated by reference, the inclusion of the requirements of this section into permits may require some wording changes. Where this is the case, the permit conditions should be worded substantially similar to the requirements of this section, and should be of equivalent force.]

(a) The permittee must comply with all terms and conditions of the permit whether they are directly stated or incorporated by reference.

[*Comment:* Any failure in compliance constitutes a violation of the appropriate Act and constitutes grounds for an enforcement action.]

(b) The permit shall be reviewed at times specified in § 122.9(a), (b) and (c), and may be modified, revoked and reissued or terminated during its term for cause as described in § 122.9(e) and § 122.10.

(c) Any permittee who knows or has any reason to believe that any activity has occurred or will occur which would constitute cause for modification or revocation and reissuance under § 122.9(e) must report his/her plans or such information to the Director so that the Director can decide whether action to modify or revoke and reissue a permit under § 122.9 will be required. The Director may require submission of a new application.

(d) Unless and until a permit is modified or revoked and reissued, a permittee must comply with the terms and conditions of the existing permit whether or not that existing permit would allow the permittee to begin the activity described in paragraph (c) of this section.

(e) The permittee shall allow the Director or an authorized representative, upon the presentation of credentials and such other document as may be required by law:

(1) Enter upon the permittee's premises where a regulated facility or activity is conducted or located, or where records must be kept under the terms and conditions of the permit;

(2) Have access to and copy, at reasonable times, any records or labels that must be kept under the terms and conditions of the permit;

(3) Inspect at reasonable times any facilities, equipment (including monitoring equipment) or operations regulated under the permit; and

(4) Sample at reasonable times any substances which the permittee is required to monitor under the permit, including any discharge of pollutants, hazardous wastes, and injected fluids.

(5) Sample at reasonable times any substances at any monitoring point which the permittee is required to monitor under the permit.

[*Comment:* This subparagraph includes both the sampling of pollutants, wastes and fluids which are discharged, treated, stored, disposed or injected and also the monitoring of surrounding environment, e.g., the sampling of adjacent parts of aquifers by use of monitoring wells.]

(f) The permittee shall furnish to the Director copies of records required to be kept under the terms and conditions of the permit upon request within a reasonable time, as specified in § 122.14.

(g) The permittee shall at all times maintain in good working order and operate efficiently all facilities and systems of treatment or control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the terms and conditions of the permit. Proper operation and maintenance includes but is not limited to effective performance based on designed facility removals, adequate funding, effective management, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures.

(h)(1) If, for any reason, the permittee does not comply with or will be unable to comply with any terms or conditions of a RCRA, UIC, or 404 permit, or the maximum daily or average weekly discharge limitations or standards of an NPDES permit, the permittee shall provide the Director with the following information:

(i) A description of the noncompliance and cause of noncompliance;

(ii) The period of noncompliance, including exact dates and times; and/or, if not corrected, the anticipated time the noncompliance is expected to continue;

(iii) Steps taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance; and

(2) The information required under subparagraph (1) shall be provided as follows:

(i) In the case of noncomplying activities which could constitute a threat to human health, welfare or the environment, the Director may require that the information required by subparagraph (1) be provided within 24 hours or five days from the time the permittee becomes aware of the circumstances. Where the Director requires 24 hour notice, if the information is provided orally, a written submission covering the information must be provided within five days of the time the permittee becomes aware of the circumstances covered by this paragraph. This requirement shall not apply to NPDES discharges subject to subparagraph (2)(ii).

[*Comment:* The Director may require a permittee to report noncompliance within 24 hours under paragraph (h)(2)(i) when the noncompliance involves CWA section 311 pollutants, toxic pollutants or pollutants which could cause a threat to public drinking water supplies; or, in the event of a release or discharge of hazardous waste, a fire or an explosion from a HWM facility that has the potential for damaging human health or the environment, the permittee shall report such an incident immediately after discovering it as required in 40 CFR Part 250, § 250.43–3(c).]

(ii) In the case of any discharges from an NPDES-permitted facility subject to any applicable toxic pollutant effluent standard under section 307(a), the information required by subparagraph (1) regarding a violation of such standard shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. If this information is provided orally, a written submission covering these points shall be provided within five days of the time the NPDES permittee becomes aware of the circumstances covered by this paragraph.

(3) Where a permittee orally reports a violation within 24 hours in accordance with paragraphs (h)(2)(i) or (ii), the Director may waive, on a case-by-case basis, the requirement that a written submission be provided within five days of the time the permittee becomes aware of the violation.

(4) In all cases not covered by subparagraph (2), information required under subparagraph (1) shall be provided in accordance with the requirements of § 122.15.

(i) The permittee shall take all reasonable steps to minimize any adverse impact on the environment resulting from noncompliance with the permit.

(j) The permittee shall halt or reduce its business activities whenever and to the extent necessary to maintain compliance with the terms of a permit.

(k) The permittee shall at all times comply with the requirements for testing, monitoring, recordkeeping, and reporting as specified in the permit and in applicable regulations. The permittee shall not falsify, tamper with or knowingly render inaccurate any monitoring device or method referred by the permit or regulations; or knowingly make a false statement, representations, or certification, in any document or record required under the permit or by regulations.

§ 122.12 Schedules of compliance.

(a) The permit shall specify a schedule of compliance leading to expeditious compliance, where appropriate.

[*Comment:* For NPDES permits, schedules of compliance are required where necessary to achieve compliance with applicable standards and limitations and other requirements. NPDES new dischargers, sources which recommence discharging after terminating operations and those sources which had been indirect dischargers which commence discharging into navigable waters do not qualify for compliance schedules under this section and are subject to § 122.61(d)(4). Schedules of compliance shall require compliance as soon as possible, but in no case later than the applicable statutory deadline under the CWA.]

(1) Except as provided in paragraph (b) and (d), if a permit establishes a schedule of compliance which exceeds 9 months from the date of permit issuance, the schedule of compliance in the permit shall set forth interim requirements and the dates for their achievement.

(i) In no event shall more than 9 months elapse between interim dates.

(ii) If the time necessary for completion of any interim requirements (such as the construction of a control facility) is more than 9 months and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

[*Comment:* Examples of interim requirements include: 1) let a contract for construction of required facilities; 2) commence construction of required facilities; 3) complete construction of required facilities; and 4) submit a complete Step 1 construction grant (for POTW's).]

(2) Except as provided in paragraph (d), no later than 14 days following each interim date and the final date of compliance, the permettee shall provide the Director with written notice of the permittee's compliance or noncompliance with the interim or final requirements.

(3)(i) The Director, upon request of the permittee, may modify, in accordance with § 122.9, a schedule of compliance in an issued permit if he/she determines good and valid cause exists for such revision, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control or remedy. However, in no case shall an NPDES compliance schedule be modified to extend beyond an applicable CWA statutory treatment deadline.

(ii) In the case of a POTW which has received a grant under section 202(a)(3) of CWA, to fund 100% of the costs to modify or replace facilities constructed with a grant for innovative and alternative wastewater technology under section 202(a)(2), the schedule of compliance for an NPDES permit may be modified to reflect the amount of time lost during construction of the innovative and alternative facility. In no case shall the compliance schedule be modified to extend beyond an applicable CWA statutory deadline for compliance.

(b) Where an applicant for an EPA-issued UIC or RCRA permit chooses to cease conducting regulated activities rather than taking steps to meet permit control requirements, the Director may establish two alternative schedules of compliance in the permit:

(1) A schedule leading to termination and/or proper closure in accordance with regulations under the appropriate Act or regulations by the predicted termination or closure date. If at any time the permittee chooses *not* to terminate his/her regulated activities and cease conducting regulated activities according to this schedule, the steps required under subparagraph (2) below shall be met; and

(2) A schedule which would result in compliance with the appropriate Act and regulations. In no event shall a permittee be authorized to operate without complying with this schedule, even where the permittee actually terminates his/her operations and later resumes these or other operations.

(c) A permittee may terminate its direct discharge by cessation of operation or discharge to a POTW rather than achieve applicable standards and limitations by the final date for compliance established in its permit or in CWA under the following circumstances:

(1) If the decision to terminate a direct discharge is made after issuance of a permit:

(i) The permit shall be modified or revoked and reissued to contain a schedule of compliance leading to termination of the direct discharge by a date which is no later than the statutory deadline; or

(ii) The permittee shall terminate direct discharge before noncompliance with any interim requirement specified in the schedule of compliance in the permit.

(2) If the decision to terminate a direct discharge is made before issuance of the permit, the permit shall contain a schedule leading to termination of the direct discharge by a date which is no later than the statutory deadline.

(3) If the permittee contemplates but has not made a final decision to terminate the direct discharge before the issuance of the permit, the permit shall contain alternative schedules leading to compliance as follows:

(i) The schedule shall contain an interim requirement requiring such a final decision no later than a date which allows sufficient time to comply with applicable limitations and standards in accordance with paragraph (iii), (i.e., a milestone event for commencement of construction of control equipment); and

(ii) A subsequent schedule leading to termination of the divide discharge by a date which is no later than the statutory deadline;

(iii) A subsequent alternative schedule leading to compliance with applicable standards and limitations, no later than the statutory date; and

(iv) A requirement that after the permittee has made a decision pursuant to paragraph (3)(i), it shall:

(A) Follow the schedule required by paragraph (3)(ii) if the decision is to terminate its discharge; or

(B) Follow the schedule required by paragraph (3)(iii) if the decision is not to terminate its discharger; and

(4) If the permittee has made a decision to terminate its direct discharge in accordance with this section, it shall not post a bond within 30 days of permit issuance, or the date of the decision, in the amount of the cost of compliance with applicable limitations and standards, payable to the permit issuing authority in the event that termination or compliance with applicable limitations and standards is not achieved by the statutory deadline or the date set forth in the permit, if earlier.

(5) In all cases, the permittee's decision to terminate his/her direct discharge of pollutants shall be evidenced by a Board of Director's resolution which has been made public or by such other means as EPA determines evidence a firm public commitment.

[Comment: A permittee may evidence a firm public commitment: (1) by a resolution of the Board of Directors signed by the Chairman of the Board and the Chief Executive Officer; (2) in the case of a public facility, by appropriate action by either the principal executive officer or elected official or (3) as otherwise appropriate for partnerships, sole proprietorship, etc.]

(6) Where a source recommences discharge after terminating operations, or where an indirect source commences direct discharge to navigable waters, any permit issued to such source shall require the source to meet all applicable standards and limitations as specified in § 122.61(d)(4).

(d)(1) Where agreed to in the Memorandum of Agreement, an approved State program may use intervals of up to one year (rather than 9 months) for establishing interim requirements under subparagraph (a)(1).

(2) State programs may provide for up to 30 days (rather than 14 days) for reporting compliance or non-compliance with interim or final requirements under subparagraph (a)(2).

§ 122.13 Establishing permit terms and conditions.

Permit terms and conditions shall be established in permits as set out in Subpart B through D, as appropriate.

§ 122.14 Recording and reporting of monitoring results and compliance by permittees.

(a) All permits shall include:

(1) Requirements concerning the proper use, maintenance, and installation, where appropriate, of monitoring equipment or methods (including biological monitoring methods where appropriate), and

[Comment: Generally installation of monitoring equipment is not required under the UIC program.*]*

(2) Required monitoring frequency, type and intervals sufficiently frequent to yield data which are representative of the monitored activity, including, where appropriate, continuous monitoring.

(b) Samples and measurements taken for the purposes of this Part shall be representative of the volume, weight, pressure or nature of the monitored activity.

(c) The permittee shall maintain records of all such monitoring information (including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records). Such records shall be retained by the permittee for three years. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee; or as requested by the Director. Such records shall include:

(1) The date, exact place and time of sampling, or measurements;

(2) The person(s) who performed the sampling or measurements;

(3) The date(s) analyses were performed;

(4) The person(s) who performed the analyses;

(5) The analytical techniques or methods used; and

(6) The results of such analyses.

(d) Permittees shall report the results of any monitoring specified in the permit to the Director on an EPA-approved form as often as required by the permit, but in no case less than once per year. Reporting frequency requirements will be based upon the minimum intervals specified in Subparts B–D, and, in addition, upon the impact of the regulated activity.

[Comment: NPDES permittees must report monitoring results on a Discharge Monitoring Report (DMR). NPDES permittees need not submit data on internal process of waste streams, or data collected by third parties unless it indicates a violation, but shall be identified as a supplement to the DMR.*]*

(e) The permittee shall provide the Director with written notice of the permittee's compliance or noncompliance with the interim and final compliance schedule requirements in accordance with § 122.12(a)(2) and (b)(2).

§ 122.15 Noncompliance reporting.

Reports shall be prepared and submitted by the Director as detailed below and in §§ 122.27, 122.43, 122.72 and 123.113.

(a) *Quarterly Report.* Narrative reports of noncompliance by major RCRA, UIC, NPDES and section 404 permittees shall be submitted using the following format:

(1) Name, location, and permit number of each noncomplying permittee;

(2) A brief description and date of each instance of noncompliance. Instances of noncompliance may include one or more of the following:

(i) Failure to complete construction elements;

(ii) Failure to complete or provide compliance schedule reports;

(iii) Noncompliance with applicable standards and limitations;

(iv) Failure to provide effluent, or other monitoring reports as required by the permit; and

(v) Deficient reports.

(3) A brief description and date(s) of action(s) taken by the Director to ensure compliance;

(4) Status of the instance of noncompliance with the date of the action or resolution; and

(5) Any information which tends to explain or mitigate an instance of noncompliance or to explain actions by the Director.

(b) *Annual Reports.* (1) Statistical reports shall be submitted on minor RCRA, UIC and NPDES permittees, where compliance has been reviewed by the Director, indicating number of noncomplying minor permittees, number of enforcement actions, and number of changes in permit status.

(2) Additional information for RCRA, UIC, NPDES and section 404 programs is detailed in §§ 122.27, 122.43, 122.72 and 123.113.

[*Comment:* For the distinction between "major" and "minor" permittees under RCRA see § 122.3(b) (definition of "major HWM facility"). The distinction between "major" and "minor" permittees for NPDES, UIC and section 404 is established in EPA's annual operating guidance for the EPA Regional Offices and the States.]

(c) Reports required under this section from the State Director shall be submitted to the Regional Administrator, and reports from the Regional Administrator shall be submitted to EPA Headquarters.

§ 122.16 Confidentiality of information.

(a) Except as provided in paragraph (b), any information submitted to EPA pusuant to these regulations may be claimed as entitled to confidential treatment by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. If a claim is asserted, the information will be disclosed only in accordance with the procedures in Part 2 of this title.

(b) The following information may not be accorded confidential treatment:

(1) The name and address of any permittee;

(2) Permits, draft permits, fact sheets, comments received by the permit issuing authority with respect to draft or proposed permits and statements of basis;

(3) In the case of section 402 and 404 permits under CWA, permit applications and effluent data; and

(4) In the case of UIC permits, any information applications and effluent data.

Subpart B—Additional Requirements for Hazardous Waste Programs Under the Resource Conservation and Recovery Act

§ 122.21 Purpose and scope.

(a) The requirements in this Subpart contain the specific elements and permit conditions for the RCRA hazardous waste permit program. They apply to EPA, and to approved States to the extent set forth in part 123. In case of inconsistencies between this Subpart and Subpart A of this Part, this Subpart is controlling.

(b) Six months after the date of promulgation of regulations under section 3001 of RCRA, 40 CFR 250, Subpart A (proposed at 43 FR 58954 (December 18, 1978)), the storage, treatment and disposal of hazardous waste is unlawful unless owners/operators of existing Hazardous Waste Management facilities have notified EPA under 40 CFR 250 Subpart G § 250.800 (proposed at 43 FR 2991 (July 11, 1978)), and have submitted a permit application in accordance with this Subpart and Part 124.

(c)(1) Any hazardous waste storage pits, ponds, or lagoons and/or storage tanks and any distribution systems which are associated with an underground injection well that receives hazardous waste(s) must obtain a RCRA permit.

(2) Any one/shore hazardous waste treatment or storage facilities associated with an ocean disposal operation must obtain a RCRA permit.

(3) Any surface impoundment associated with a wastewater treatment plant, other than a POTW, that treats and/or stores hazardous waste must obtain a RCRA permit for that part of the facility up to the point of discharge.

[*Comment:* See 40 CFR Part 250.45–3 (proposed at 43 FR 59011 (December 18, 1978)).]

(4) Any on-site treatment, storage, or disposal facilities for managing hazardous wastes resulting from treatment or control of wastewaters by a wastewater treatment plant, other than a POTW, must obtain a RCRA permit.

§ 122.22 Law authorizing hazardous waste control program.

Sections 3001 through 3005 of RCRA authorize EPA to promulgate regulations establishing a Federal hazardous waste management program. Section 3006 of RCRA authorizes EPA to promulgate guidelines for State assumption and operation of the hazardous waste management program (with EPA approval) in lieu of a Federal program.

[*Comment:* Regulations under Sections 3001, 3002, and 3004 are published at 40 CFR 250, Subparts A, B, and D, (proposed at 43 FR 58946 (December 18, 1978)). Regulations under Section 3003 are published at 40 CFR 250, Subpart C, (proposed at 43 FR 18506 (April 28, 1978)). Regulations under Section 3010 are published at 40 CFR 250, Subpart G, (proposed at 43 FR 29906 (July 11, 1978)).]

§ 122.23 Application for a permit.

(a) Any person who owns or operates an "existing HWM facility" as defined in § 122.3 of this Part, shall:

(1) Notify as required by 40 CFR Part 250, Subpart G (proposed at 43 FR 29911 (July 11, 1978)); and

(2) Submit Part A of the permit application within six months after the date the regulations under 40 CFR Part 250, Subpart A (proposed at 43 FR 58946 (December 18, 1978)) are promulgated, in order to qualify for interim status under RCRA. To satisfy the application deadline of this subsection, and to qualify for interim status under RCRA, an applicant shall submit only the information required in Part A of the application, or in the case of an application for a special HWM facility permit under § 122.25, the application shall contain the requirements specified in the appropriate subsection of § 122.25. The Director shall advise the applicant of the receipt of Part A of the application. This advisement shall signify the beginning of interim status if the application was timely submitted. A date for submission of Part B of the application shall be established by the Director at a later date. The Director shall provide at least six months notice for the submission of Part B of the application. Failure to submit an adequate Part B of the application by the date established by the Director shall result in automatic loss of interim status on such date.

[*Comment:* Owners or operators of existing HWM facilities under interim status who elect to modify these facilities must nevertheless meet the requirements of 40 CFR Part 250, Subpart D (proposed at 43 FR 58894 (December 18, 1978)) at the time that a permit is issued for the facility. Any modification made during interim status is therefore subject to the review of the Director at the time of permit issuance and is undertaken at the risk that additional changes to the facility will be required in order to meet the requirements of 40 CFR Part 250, Subpart D.]

(b) Owners/operators of new HWM facilities shall submit both a Part A and a Part B application at least 180 days before physical construction is expected to commence. No physical construction shall commence until a final permit is issued. In the case of an application for a special HWM facility permit under § 122.25, the application shall contain the requirements specified in the appropriate subsection of § 122.25.

(c) Part A of the Application shall include the following as a minimum:

(1) Name, title and address of the applicant; name and address of the facility;

(2) A description of the boundaries of the HWM facility, including a topographic map of the area for a distance of one mile (1.6km) beyond the boundaries of the HWM facility as required in the permit application forms. This map shall correspond to a 7½ minute series map published by the U.S. Geological Survey. If a 7½ minute series

map is not available, a 15 minute series map may be substituted.

(3) A detailed description of the hazardous waste to be handled at the HWM facility (name and common code) by its Department of Transportation (DOT) proper shipping name (49 CFR Part 172), § 172.101 (proposed at 43 FR 22631 (May 25, 1978)). If the DOT proper shipping name "NOT OTHERWISE SPECIFIED" (NOS) is used, the EPA name (as identified in 40 CFR Part 250, § 250.14 (proposed at 43 FR 58957–9 (December 18, 1978)) must be included after the DOT proper shipping name NOS. If no EPA name exists, then only the DOT proper shipping name NOS shall be used;

(4) The hazard class of each waste as identified or listed under DOT hazard class (49 CFR Part 172), § 172.101 (proposed at 43 FR 22631 (May 25, 1978)) or by the EPA characteristics (as identified in 40 CFR Part 250, § 250.13 (proposed at 43 FR 58955–7 (December 18, 1978)) if the DOT hazard class is not applicable. If the DOT hazard class "OTHER REGULATED MATERIAL" (ORM) is used, the EPA characteristic or property, as identified in 40 CFR Part 250, § 250.13 (proposed at 43 FR 58955–7 (December 18, 1978)) must be used after the DOT hazard class ORM;

(5) The annual quantity of each hazardous waste to be treated, stored or disposed by volume or weight, in either the metric or the English system;

(6) A brief description of how the hazardous waste is to be treated, stored or disposed of at the HWM facility; and

(7) For an existing HWM facility, copies of all available drawings and specifications for the HWM facility, its processes and equipment.

(d) Part B of the Application shall include the following as a minimum:

(1) A master plan for the HWM facility, including a topographic map with a scale of one inch (2.5 cm) equal to not more than 200 feet (60.8 m) and a contour interval not greater than five feet (1.5 m) for the area within one thousand feet (304 m) of the boundaries of the HWM facility and indicating any five-hundred-year flood prone areas. The master plan shall include a detailed description of:

(i) For a new HWM facility, or for modification to an existing facility, any structures, buildings, equipment and machinery to be used at the HWM facility including site preparation plans, design plans and specifications for treatment, storage or disposal facilities;

(ii) A detailed plan of operation and maintenance, including operating conditions, projected hours of operation, security and access control, plans for covering and compaction, plans for controlling odor, air, surface water and/or groundwater pollution, plans for controlling leachate production, plans for vector control and control of burrowing animals, and other related items;

(iii) The planned life of the HWM facility based on projected use and the expansion potential and plans for the use or disposition of the HWM facility after closure;

(iv) The contingency plan for emergency situations, including the procedures, equipment and facilities to be used, a listing of the fire departments, ambulance services, hospitals, and other emergency services that will serve the facility and the response time, the person responsible for implementing the contingency plan, the on-site plan for fire control, spill prevention control and countermeasure plans under section 311 of CWA, best management practices under sections 304(e) and 402(a)(1) of CWA (see 40 CFR Parts 125 and 151), and 40 CFR Part 250, § 250.43–3 (proposed at 43 FR 58001–2 (December 18, 1978));

(v) The plan for closure of the HWM facility, including the estimated cost of closure, post closure expenses, proposals for controlling access, steps that are planned to control leachate production, and the plan for maintenance of the HWM facility after final closure for disposal operations;

(vi) The plan for visual inspections of the HWM facility conditions and for monitoring air, surface water, and groundwater pollution, including the period after closure;

(vii) The plan for segregation of incompatible wastes and how wastes will be placed or located within the treatment, storage, or disposal facility; and

(viii) The plan for conducting trial burns at incinerator facilities as required under 40 CFR Part 250, § 250.45–1 (proposed at 43 FR 59006 (December 18, 1978)).

(2) A detailed description of site geology of the area within one thousand feet (304 m) of the boundaries of the HWM facility, including a description of physiography, soil depth and types including chemical and physical properties; and a detailed description of the geologic column including intrusive bodies, fluids, fractures, faults, joints, and fracture traces. Where access to adjacent properties for obtaining geological data is not reasonably available, data available from public sources may be substituted.

(3) For HWM disposal facilities and HWM surface impoundment facilities, a detailed description of the site hydrology and the hydrology of the area within one thousand feet (304 m) of the boundaries of the facility, including known or recorded springs, depth to ground water, thickness, extent, characteristics of aquifers, perched water zones, porosity and permeability of soils, directions and rate of flow of groundwater, recharge and discharge areas, drainage patterns and divides, distance to surface water, location of public, livestock, and private water supplies, background quality of groundwater as specified in 40 CFR Part 250, § 250.43–6(c)(1) (proposed at 43 FR 59005 (December 18, 1978)) and other related items. Where access to adjacent properties for obtaining hydrological data is not reasonably available, data available from public sources may be substituted.

(4) A description of the climate in the area, including average annual rainfall, average annual evapotranspiration rates, average annual wind speed, prevailing wind direction, and other factors that may affect water or air pollution.

(5) Position or job descriptions covering the persons responsible for the operation of the HWM facility, including education, training, and work experience requirements and a description of the training program to be used to prepare persons to operate and maintain the facility in a safe and environmentally adequate manner.

(6) A listing of the applicant's performance bonds, insurance carriers and policies, trust instruments, escrow accounts or other instruments which constitute continued financial responsibility in accordance with standards in 40 CFR Part 250, § 250.43–6 (proposed at 43 FR 59006–7 (December 18, 1978)).

(7) The Director, upon the written request of the applicant, may waive certain of the application requirements in Part B of the Application if he/she determines that the information is not applicable to the facility and is not needed to establish compliance with the standards in 40 CFR 250.42 and 250.43 (proposed at 43 FR 58999 (December 18, 1978)). A request for a waiver of certain Part B application information shall be submitted in writing by the applicant and shall state why the specified information is not needed to determine compliance with the standards in 40 CFR 250.42 and 250.43 (proposed at 43 FR 58999 (December 18, 1979)). The Director shall grant or deny the waiver request in writing, including a statement of the reasons for the decisions.

[*Comment:* Examples of where such waivers may be granted include the waiver of site geological information for facilities that only incinerate hazardous waste and dispose of any residues off-site, and site geological information for above-ground storage tanks that are not associated with any other treatment, storage, or disposal HWM facilities.]

(8) The Director shall determine whether or not an application of permit is complete and shall notify the applicant in writing of such determination within 30 days of receipt of such application. The application shall not be considered as submitted to the Director until it is in complete form.

(9) Where an approved State is the permit-issuing authority, the application must contain at least the information required under this section, paragraph (c), and paragraph (d) unless waived under § 122.23(d)(7).

§ 122.24 Establishing permit terms and conditions.

In addition to the terms and conditions specified in Subpart A of this Part, any RCRA permit shall include the following terms and conditions:

(a) Each of the applicable requirements specified in 40 CFR 250.43, 250.44, 250.45 and 250.46 (proposed at 43 FR 58999–59016 (December 18, 1978)), except where an alternative requirement is established and included in the permit in accordance with 40 CFR 250.43, 250.44, 250.45 and 250.46;

(b) Such additional requirements as the Director deems necessary to comply with the human health and environmental standards in 40 CFR 250.42 (proposed at 43 FR 58999 (December 18, 1978)) .

(c) Requirements alternative to those established in the regulations in accordance with the variance criteria incorporated in the notes in 40 CFR 250.43–45 (proposed at 43 FR 58999–59016 (December 18, 1978)).

(d) Provisions for minor modification to a permit under § 122.9(g) (5) and (6), where appropriate. The Director shall issue a public notice in accordance with § 124.11 prior to or at the time that he/she approves such minor modification.

(1) Minor modifications may be made under this paragraph only where the Director determines that a particular HWM facility has the capacity and equipment necessary to handle a variety of different types of hazardous waste without violating any other permit terms and conditions or the requirements specified in 40 CFR 250.43, 250.44, 250.45 and 250.46 (proposed at 43 FR 58999–59016 (December 18, 1978)), and where the facility can demonstrate that it will receive different quantities and/or types of hazardous wastes on an unpredictable basis.

(2) In modifying the permit under this paragraph, the Director may limit the types and/or quantities of hazardous wastes that can be the subject of minor modifications under § 122.9(g) (5) and (6).

[*Comment:* Provisions for minor modifications under this paragraph and § 122.9(g) (5) and (6) are not intended to be generally included in RCRA permits, but are appropriate only under certain limited circumstances as specified in this paragraph, and at the discretion of the Director. This paragraph does not apply where the types or quantities of wastes can be anticipated through contract provisions or by other means, making it possible to include provisions covering such wastes in the initial permit. Modifications not covered by this paragraph must comply with the applicable requirements of §§ 122.9, 124.5 and 124.7.]

(e) No HWM facility shall commence treatment, storage or disposal of hazardous waste in a modified or newly constructed facility until such construction or modification is complete; and

(1) The permittee has submitted to the Director a certified letter signed by the permittee and a registered professional engineer in the State where the facility is located, stating clearly that construction or modification of the facility has compiled with the permit, and in the case of incinerator facilities, a trial burn and result analysis has been completed and is submitted to the Director; and

(2) The Director has inspected the modified or newly constructed facility and finds that the facility is in compliance with all terms of the permit; provided that, the Director has notified the permittee, within *ten (10)* days of receipt of such letter, of his/her intent to inspect; and

(3) The Director authorizes commencement of treatment, storage, or disposal of hazardous waste.

(f) Where an approved State is the permit-issuing authority, the permit must establish such terms and conditions as are necessary to provide a degree of control and protection of human health and the environment equivalent to that required under this section.

§ 122.25 Special HWM facility permits.

(a) *Health Care Facility Special Permit.* (1) A person who owns or operates a health care facility which treats or stores hazardous waste may apply for a health care facility special permit if the following conditions are satisfied:

(i) The Health care facility is licensed under a State licensing law and such license requires compliance with requirements for the storage, sterilization, incineration, or treatment of all hazardous waste generated;

(ii) The State licensing law and control program provides for the adequate enforcement of the program by withholding or withdrawing the license of the health care facility where compliance with license requirements is not being achieved;

(iii) If incineration is used, the incinerator is operated under the terms and conditions of a license issued under applicable State law; and

(iv) The person owning or operating the health care facility submits a certification of compliance with an issued license signed by the appropriate State licensing official.

(2) An applicant for a health care facility special permit shall submit the following information:

(i) The name and address of the facility;

(ii) Certification signed by the appropriate State licensing authority specifying that the facility has an effective license and is in compliance with such license; and

(iii) A list of the hazardous wastes covered by the State license.

(3) The licensing law requirements of a State shall be judged against the applicable RCRA 3004 standards, 40 CFR 250, Subpart D (proposed at 43 FR 58982 (December 18, 1978)) to determine if an equivalent degree of control is provided.

(4) Whenever the conditions of subparagraph (1) are not being met, the health care facility loses eligibility for a special permit under this section.

[*Comments:* (1) Health care facilities include hospitals as defined by SIC Codes 8062 and 8069 and veterinary hospitals as defined by SIC Codes 0741 and 0742. See 40 CFR 250.14(b)(1)(i) (proposed at 43 FR 58958 (December 18, 1978)).

(2) Under § 123.29, States are authorized, but not required, to issue special facility permits in the same manner and covering the same facilities as those covered by EPA under this section.]

(b) *Experimental Special Permit.* (1) The Director may grant an experimental special permit to a person for the treatment, storage, or disposal of hazardous waste using advanced technology where the Director determines that such technology will significantly improve the state-of-the-art for hazardous waste treatment, storage or disposal.

(2) An applicant for an experimental special permit shall submit all of the

applicable information specified in § 122.23(c) and (d) and such other information as the Director may require including plans for the immediate termination of all acitvities if intended results are not achieved.

(3) In granting an experimental special permit, the Director shall require the submission of an evaluation of test results and shall set a specific date for its termination which shall not exceed one (1) year. An extension of no more than one additional year may be granted by the Director upon written request from the permittee, including the submission of such information as the Director may require, including a full evaluation of any test results from the facility for the period of operation.

[*Comment:* Under § 123.30, States are authorized, but not required, to issue experimental special permits in the same manner and covering the same facilities as those covered by EPA under this section.]

§ 122.26 Permits by rule.

(a) *Permit by Rule for HWM Facility Accepting Special Waste.* A facility which treats, stores, or disposes only special wastes and does not comingle different types of special wastes, as listed in 40 CFR 250.46 (proposed at 43 FR 59015 (December 18, 1978)), shall be considered as having a permit for the treatment, storage or disposal of such wastes if the owner/operator of the facility complies with all the applicable requirements for control of special wastes, as specified in 40 CFR 250.46, including the notes thereunder, (proposed at 43 FR 59015 (December 18, 1978)), and notifies EPA in accordance with 40 CFR Part 250, Subpart G (proposed at 43 FR 29906 (July 11, 1978)).

[*Comment:* Special wastes are: Cement Kiln Dust; Utility Waste (fly ash, bottom ash, scrubber sludge); Phosphate Rock Mining, Beneficiation, and Processing Waste; Uranium Mining Waste; Other Mining Waste; and Gas and Oil Drilling Muds and Oil Production Brines. These wastes, typically, are generated in large volumes and some portions are expected to be classified as hazardous under the Section 3001 standards. The Agency, however, has very little information on the composition, characteristics, and the degree of hazards posed by these wastes. Therefore, the Agency is proposing to remove the provision requiring facilities to obtain site-specific permits. Moreover, EPA requests comments on alternate approaches, such as the use of either a general permit (applicable to many sites, rather than only one site), or of special site-specific permits of the type proposed in § 122.25 of this Subpart. Finally, the Agency requests comments on the applicability of these approaches to assessing equivalency of State programs as required under Part 123].

[*Comment:* Under § 123.30, States are authorized, but not required, to issue permits by rule in the same manner and covering the same facilities or circumstances as those covered by EPA under this section.]

(b) *Permit by Rule for Ocean Disposal Barges or Vessels.* A barge or other vessel which accepts hazardous waste for ocean disposal shall be deemed to have an HWM facility permit if the following conditions are met:

(1) The owner or operator of the barge or vessel is authorized to ocean dump such waste under an ocean dumping permit issued to him or her under 40 CFR Subchapter H;

(2) The owner or operator of the barge or vessel complies with the terms of his or her ocean dumping permit; and

(3) The owner or operator of the barge or vessel complies with the following hazardous waste treatment, storage and disposal facility regulations, as applicable:

(i) 40 CFR Part 250, Subpart G (notification);

(ii) 40 CFR 250.43–5(a), (manifest system);

(iii) 40 CFR 250.43–5(b)(6)(recordkeeping); and

(iv) 40 CFR 250.43–5(c)(5)(i)–(iii)(A)–(F), (H); and (c)(6) (reporting).

[*Comments:* (1) Shoreside facilities of ocean disposal operations which handle hazardous wastes will require regular RCRA permits. However, disposal vessels which dump wastes into the ocean are adequately regulated by the Marine Protection, Research and Sanctuaries Act, as amended, 33 U.S.C. 1420 *et seq.* Even so, to assure the smooth operation of the manifest system, such facilities will have to comply with manifest, recordkeeping and reporting requirements.

(2) Under 123.30, States are authorized, but not required, to issue permits by rule in the same manner and covering the same facilities or circumstances as those covered by EPA under this section.]

(c) *Permit by Rule for Publicly Owned Treatments Works (POTWs).* A publicly owned treatment works (POTW) which accepts for treatment hazardous waste shall be deemed to have a HWM facility permit if the following conditions are met:

(1) The POTW has an NPDES permit;

(2) The POTW complies with the terms of its NPDES permit;

(3) The waste meets all Federal, State and local pretreatment requirements which would be applicable to such waste if it was being discharged into the POTW through a sewer, pipe or similar conveyances; and

(4) The owner/operator of the POTW complies with the following hazardous waste treatment, storage and disposal facility regulations, as applicable:

(i) 40 CFR Part 250, Subpart G (notification);

(ii) 40 CFR 250.43–5(a) (manifest systems);

(iii) 40 CFR 250.43–5(b)(6) (recordkeeping); and

(iv) 40 CFR 250.43–5(c)(5) (i)–(iii) (A)–(F), (H); and (c)(6) (reporting).

[*Comments:* (1) General pretreatment regulations are found at Part 403 of this Chapter and specific pretreatment requirements for industrial categories are found generally in Subchapter N of this Chapter (Effluent Guidelines and Standards). An industry generating hazardous waste and shipping waste to a POTW must provide all the treatment which would be required if the industry were discharging the waste directly into the treatment system. POTWs which receive wastes that may be classified as "hazardous" but which are solid or dissolved materials in domestic sewage do not come under these regulations because sections 1004(5) and 1004(27) of RCRA exclude these materials from the definition of "hazardous wastes." These POTWs are controlled under the NPDES system of the Clean Water Act. However, for those POTWs which receive hazardous waste for which a manifest or other delivery document is required, compliance with the manifest system, recordkeeping and reporting requirements is necessary to assure the smooth operation of the manifest system.

(2) Under § 123.30, States are authorized, but not required, to issue permits by rule in the same manner and covering the same facilities or circumstances as those covered by EPA under this section.]

§ 122.27 Reporting requirements.

In addition to the reporting requirements of § 122.15, the Director shall prepare the following reports:

(a) *Quarterly international shipment reports.* The Director shall submit two copies of a report within four weeks of the last day of March, June, September and December. The report shall contain a compilation of shipments which originated during the reporting quarter and were sent from generators and owners and operators of treatment, storage, and disposal facilities within the State to a location outside the jurisdiction of the United States. Such reports shall contain the generator or HWM facility identification code, name, address, and the information required by 40 CFR 250.23(c) (2)–(7) (proposed at 43 FR 58978 (December 18, 1978)).

(b) *Annual program reports.* The Director shall prepare two copies of a program report within four weeks of the last day of September. The report shall contain information (in a manner and form prescribed by the Administrator) on generators, transporters, the permit status of regulated facilities, and summary information on the quantities and types of hazardous wastes

generated, transported, stored, treated and disposed during the preceding year.

(c) Reports required under this section from the State Director shall be submitted to the Regional Administrator, and reports from the Regional Administrator shall be submitted to EPA Headquarters.

§ 122.28 Emergency authorization.

Notwithstanding any other provision of this Part or Part 124, in the event of an immediate hazard to human health or the environment (as determined by EPA, other Federal agencies or State or local authorized officials) the Director may issue temporary authorization to a permitted HWM facility to allow treatment, storage or disposal of hazardous waste not covered by a permit. Such authorization:

(a) May be oral or written. If oral, it shall be followed within 5 days by written authorization;

(b) Shall not exceed 90 days in duration;

(c) Shall clearly specify wastes to be received, and the manner and location of their treatment, storage or disposal;

(d) May be revoked by the Director at any time if he/she determines that revocation is appropriate to protect human health and the environment; and

(e) Shall be accompanied by a public notice published according to methods provided in § 124.11(a)(2) and specifying the:

(1) Name and address of the office granting the emergency authorization;

(2) Name and location of the permitted HWM facility;

(3) Brief description of the wastes involved;

(4) Brief description of the action authorized and reasons for authorizing it; and

(5) Duration of the authorization.

[*Comment:* Under § 123.39, States are authorized, but not required, to grant temporary authorization in the same manner and covering the same facilities or circumstances as those covered by EPA under this section.]

Subpart C—Additional Requirements for UIC Program Under the SDWA

§ 122.31 Purpose and scope.

(a) The regulations in this Subpart set forth the specific requirements for the UIC program. Additional general requirements have been set forth in Subpart A. In case of inconsistencies between this Subpart and Subpart A, this Subpart is controlling.

(b) SDWA provides for authorization of underground injections in listed States by permit or, where provided for by these regulations, by rule. This Subpart defines the types of activities subject to authorization by permit or rule, and sets forth the specific elements applicable to either type of authorization.

[*Comment:* References to Part 146, the technical regulations for the UIC program, appear frequently in this Subpart. These technical regulations were proposed on April 20, 1978 (44 FR 23738).]

§ 122.32 Law authorizing UIC program.

(a) Section 1421 of SDWA requires the Administrator to propose and promulgate regulations establishing (1) minimum requirements for UIC programs and (2) a procedural mechanism whereby States may obtain EPA approval to operate such programs.

(b) Section 1422 of SDWA requires the Administrator to list in the Federal Register "each State for which in his judgment a State underground injection control program may be necessary to assure that underground injection will not endanger drinking water sources" and to establish by regulation a program for EPA administration of UIC programs in the absence of a State program in a listed State.

(c) Section 1423 of SDWA provides procedures for EPA enforcement of UIC requirements where the State fails to enforce those requirements.

(d) Section 1445 of SDWA authorizes (1) such recordkeeping, reporting, and monitoring requirements "as the Administrator may reasonably require by regulation to assist him in establishing regulations under this title," and (2) a "right of entry and inspection to determine compliance with this title, including for this purpose, inspection, at reasonable times, of records, files, papers, processes, controls, and facilities * * *."

(e) Section 1450 of the SDWA authorizes the Administrator "to prescribe such regulations as are necessary or appropriate to carry out his functions" under SDWA.

§ 122.33 Designation of underground drinking water sources.

(a) The Director shall identify (by narrative description, illustrations, maps or other means) all aquifers or parts of aquifers which are not underground sources of drinking water, in accordance with the criteria contained in § 146.04. The Director shall propose this designation and provide opportunity for comment and a public hearing on it. All aquifers not so identified shall be designated underground sources of drinking water.

(b) Aquifers identified under paragraph (a) shall be described in geographic and/or geometric terms (such as vertical and lateral limits and gradient) which are clear and definite.

[*Comment:* Aquifers not identified under paragraph (a) of this section may be described by use of maps, where such information is available, or by narrative description. Identifications of aquifers in accordance with paragraph (a) should be accompanied by narrative descriptions of why those aquifers do not qualify for designation as underground sources of drinking water.]

(c) Where a UIC program is administered by a State, designation and identification by the State Director under this section shall be subject to the approval of the Administrator at the time of program approval under Part 123.

[*Comment:* Designation and identification subsequent to program approval shall be treated as program modifications under § 123.6(b)(8).]

§ 122.34 Classification of injection wells.

The Director shall classify injection wells as follows:

(a) Class I: Industrial and municipal disposal wells and nuclear storage and disposal wells which inject beneath the lowermost stratum containing an underground source of drinking water.

(b) Class II: Well injection of produced water or other fluids which are brought to the surface in connection with oil or natural gas production, well injection of fluids for enhanced recovery of oil or natural gas and well injection of fluids for storage of hydrocarbons.

(c) Class III: Well injection of fluids for special processes such as mining of sulfur by the Frasch process, well injection for solution mining of uranium, salt, potash, copper and other minerals, and well injection for in situ gasification of oil shale, coal, lignite, tar sands and other similar fuel sources, and well injection to recover gas thermal energy.

(d) Class IV: Wells used by generators of hazardous wastes and owners or operators of hazardous waste management facilities (as defined in § 122.3(b)) to inject into or above strata containing underground drinking water sources.

(e) Class V: Injection wells not included in Classes I, II, III or IV (examples are recharge wells such as subsidence control wells, air conditioning or cooling water return flow wells, and drainage wells; and waste disposal wells such as sand backfill wells, non-residential septic system wells, dry wells, and industrial and municipal waste disposal wells).

§ 122.35 Authorization of underground injection by rule.

(a) *Types of underground injections which may be authorized by rule.* The Director may authorize underground injections by rule in the following instances:

(1) Underground injection into all existing class I, II (except existing enhanced recovery and hydrocarbon storage) and III wells may be authorized by rule for a period up to 5 years from the effective date of the UIC program. All class I, II and III wells except enhanced recovery and hydrocarbon storage wells must be issued permits within five years in accordance with the permitting schedule established by the Director. All such authorizations by rule shall require compliance with the applicable monitoring, reporting and abandonment requirements of Part 146 as soon as possible but no later than one year after the authorization by rule.

(2) Underground injections into existing enhanced recovery and hydrocarbon storage wells may be authorized by rule, rather than by permit, for the life of the well. All such authorizations by rule shall require compliance with the applicable construction, abandonment, operating, monitoring, reporting, and financial responsibility requirements of Part 146 as soon as possible but no later than one year after the authorization by rule.

(3) Underground injections into existing class IV wells which have submitted the information required under § 146.42 shall be authorized by rule ending at the time of their closure under § 146.43(a). Such authorization shall require monitoring and reporting as set forth in § 146.44 within 90 days of the authorization.

[*Comment:* The operation of *new* Class IV wells shall be prohibited by rule. See § 122.45.]

(4) Underground injections into class V wells which have submitted the information required under §146.52 may be authorized by rule for a period ending at the time when new requirements promulgated by EPA became applicable.

(b) Owners or operators of underground injection facilities who have not complied with applicable rules are subject to enforcement action by the State or, where appropriate, EPA.

§ 122.36 Authorization of underground injection by permit.

(a) *Who must apply.* All underground injections into Class I, II (except existing enhanced recovery and hydrocarbon storage) or III wells in listed States must be authorized by permit.

(b) *Time to apply.* Any person who performs or proposes an underground injection for which a permit is required shall submit an application to the Director in accordance with the State UIC program (including the State permit plan under part 123) as follows:

(1) For existing injection wells, as expeditiously as practicable and in accordance with the schedule contained in State permit plan, but no later than four years from the effective date of the State UIC program.

(2) For new injection wells, a reasonable time before injection is expected to begin. Injection may not begin until the owner or operator has received a permit.

(c) *Contents of UIC application.* Applicants for UIC permits shall submit the following information to the Director:

(1) All applicants must submit the identity of the owner or operator of the injection operation, the location or proposed location of the injection well, and the purpose or function of the well.

(2) Applicants for State-issued permits for existing injection wells shall submit, in addition to the information required by subparagraph (1), such other information as the Director requires.

[*Comment:* In many States, most or all of the information which the Director must consider in writing permit conditions is already contained in State files. Part 146 Subparts B–D list the information which the Director must consider for various classes of wells. The Director may review the State files upon receipt of an application and then require the applicant to submit any applicable information which either is not contained in the State file or is in need of correction or updating. Only new information submitted by the applicant that is not already contained in State files is subject to the signatory requirements of §122.5.]

(3) Applicants for State-issued permits for new injection wells shall submit, in addition to the information required by subparagraph (1), all additional information which the Director will be required under Part 146 to consider for the applicable class of well. Certain maps, sections, and tabulations of wells within the area of review (see §§ 146.15, 146.25 and 146.36), may be included in the application by reference provided they are available to the Director and sufficiently identified to be retrieved.

(4) Applicants for EPA-issued permits shall submit, in addition to the information required by subparagraph (1), all additional information which the Director will be required under Part 146 to consider for the applicable class of well.

(d) *Mechanical integrity.* The Director shall issue no permits to wells which lack mechanical integrity as determined under § 146.08.

§ 122.37 Area permits.

(a) The Director may issue permits on a well-by-well basis or an area basis, provided that all injection wells covered by an area permit are:

(1) Within a single well field project, or site in a single State;

(2) Covered by the application for the permit;

(3) Of the same type as determined under § 122.34;

(4) Injecting into the same aquifer or zone; and

(5) Controlled by a single person.

(b) Area permits shall specify the boundary within which underground injections are authorized and shall identify by location each injection well covered by the area permit.

(c) A permittee may obtain administrative authorization from the Director for additional new injection wells within the permitted area without public notice and hearing:

(1) If the permittee notifies the Director of his/her intent to place an additional injection well within the permitted area and provides information on the location of the proposed well;

(2) If the permittee demonstrates to the satisfaction of the Director that the additional underground injection well is similar in construction to wells already covered by the area permits and will meet the operation requirements of Part 146; and

(3) Where authorization under this paragraph is obtained orally, the information in (1) and (2) must be provided in writing within 30 days.

[*Comment:* Such authorization of additional injection wells does not constitute a permit modification subject to § 122.9.]

§ 122.38 Corrective action.

(a) Where the Director's review of an application for a class I, II (other than existing) or III well indicates that the proposed injection well's area of review contains wells which are improperly completed and/or plugged or that the remedial actions proposed by the applicant are inadequate, he/she shall prescribe such steps or modifications as are necessary to prevent fluid migration ("corrective action"). In determining such steps or modifications, the Director shall consider the factors set forth in § 146.07.

(b) In the case of a new or existing class II injection well in an existing

injection field, the Director shall by rule (or by permit) require that where a source of leaking fluids may cause a significant risk to public health, the leak shall be corrected in the shortest reasonabale period of time or the operator shall cease injecting.

(c) In the case of an existing injection well which must be authorized by permit, the Director shall issue the permit with a condition that if any required corrective action is not accomplished within the shortest reasonable time, the permit shall be revoked.

(d) In the case of a new injection well authorized by permit, the operation shall not begin unless all required corrective action has been taken.

(e) In the case of a class I, II or III well which is authorized by rule, if any monitoring indicates the migration of injection or formation fluids into underground sources of drinking water, the Director shall prescribe such additional requirements for construction, corrective action, operation, monitoring or reporting (including closure of the injection well) as are necessary to prevent such migration.

[*Comment:* In the case of wells authorized by permit, such additional requirements may be imposed by modifying the permit in accordance with § 122.9.]

(f) If at any time the Director gains knowledge of a Class V well which presents a significant risk to the health of persons, he/she shall prescribe such action as necessary (including the immediate closure of the injection well) to remove such hazard.

§ 122.39 General prohibition against movement of fluid into underground sources of drinking water.

No class I, II or III well shall cause or allow movement of fluid into underground sources of drinking water.

§ 122.40 Temporary authorization.

(a) Notwithstanding any other provision of this Part, the Director may, in the following circumstances, temporarily authorize a specific underground injection which has not otherwise been authorized by rule or permit:

(1) An imminent and substantial hazard to human health or the environment will result unless temporary authorization is granted; or

(2) If a substantial and irretrievable loss of oil or gas resources will occur unless temporary authorization is granted to a Class II well; and

(i) Timely application for a permit could not have practicably been made; and

(ii) The temporary authorization will not result in the movement of fluids into underground sources of drinking water.

(b)(1) Any authorization under paragraph (a)(1) shall be for no longer than required to prevent the hazard or loss of such resources.

(2) An authorization under paragraph (a)(2) shall be for no longer than 90 days, except that if a permit application has been submitted prior to the expiration of the 90-day period, the Director may extend the authorization until the permit is granted or denied.

(c) Notice of any authorization under this paragraph shall be published in accordance with § 124.11 within 10 days of the authorization.

§ 122.42 Establishing UIC permit terms and conditions.

(a) Permit terms and conditions shall at a minimum establish, in addition to terms and conditions required under §§ 122.9 and 122.11, the following:

(1) Construction requirements as set forth in Part 146;

(2) Corrective action as set forth in § 122.38 and § 146.7;

(3) Operation requirements as set forth in Part 146;

(4) Monitoring and reporting requirements as set forth in § 122.12 and Part 146;

(5) Schedules of compliance. Schedules shall set forth dates which are as early as possible but no later than three years after the dates of permit issuance. No later than 30 days following each interim or final date, the permittee shall provide the Director with written notice of compliance or noncompliance with the interm of final requirements;

(6) Plugging and abandonment of injection wells. Where a permittee intends to cease underground injection, the permittee shall immediately notify the director and follow the procedures prescribed by the director for plugging and abandonment of the well; and

(7) Fiscal responsibility of permittees. The permittee shall maintain fiscal responsibility and resources, in the form of performance bonds or other appropriate form, to close, plug and abandon the underground injection operation in a manner prescribed by the Director.

[*Comment:* To assure that the well is constructed and operated in accordance with the requirements of Part 146, the permit should set forth the specific data on which the permit is based. For example, the permit should establish injection volumes and pressures which will assure compliance with the Part 146 operating requirements.

(b) The director may impose additional terms and conditions on a case-by-case basis if necessary to prevent the migration of fluids into underground sources of drinking water.

§ 122.43 Noncompliance reporting.

(a) The Director shall submit, as part of the quarterly report required under § 122.15(a), information concerning noncompliance by major underground injectors with permit requirements or the requirements of any applicable rule.

(b) The following shall be contained in the noncompliance report:

(1) *Failure to Complete Construction Elements.* Noncompliance shall be reported in the following circumstances:

(i) When an injector has failed to complete, by the date specified in the permit or rule, an element of the compliance schedule involving planning for construction (e.g., award of contract, preliminary plans, etc.) or a construction step (e.g., begin construction, attain operation level); and

(ii) The injector has not returned to compliance within 30 days from the date a report is due under Part 146.

(2) *Failure to Complete/Provide Compliance Schedule Reports.* Noncompliance shall be reported in the following circumstances:

(i) When an injector has failed to complete or provide a report required in the compliance schedule (e.g., progress reports, notification or compliance/noncompliance etc.); and

(ii) The injector has not submitted a complete report within 30 days from the date the report is due.

(3) *Noncompliance with Operational Requirements.* Noncompliance shall be reported in the following circumstances:

(i) When a permittee or an injector authorized by rule has violated an operational requirement and has not returned to compliance with applicable requirements within 45 days from the date notification of noncompliance under Part 146 was due; or

(ii) When the Director determines that a pattern of noncompliance with applicable operational requirements exists for any injector over a period of 12 months prior to the end of the current reporting period. This includes but is not limited to:

(A) Any violation of the same requirement in two consecutive quarters; and

(B) Any violation of one or more requirements in each of the four quarters comprising the 12-month period.

(4) *Failure to Report Data.* The State shall include in its report instances

where reports are received or the reports provided by the injector are so deficient as to cause misunderstanding on the part of the Director and impede the review of the status of compliance.

[*Comment:* Noncompliance reported under this paragraph shall be reported in successive reports until the noncompliance is resolved. This resolution of noncompliance shall also be reported. Once the noncompliance is reported as resolved, it need not appear in subsequent reports.]

(d) Where the State is the permit-issuing authority, the State Director shall submit any reports required under this section to the Regional Administrator. Where EPA is the permit-issuing authority, the Regional Administrator shall submit any reports required under this section to EPA Headquarters.

§ 122.44 Special Requirements for wells managing hazardous wastes.

(a) The owner or operator of any well that is used to inject hazardous wastes accompanied by a manifest or delivery document shall obtain authorization to inject as specified in §§ 122.35 and 122.36.

(b) In addition to the applicable requirements of this Part and Part 146 Subparts B-F, the Director shall, for each facility meeting the requirements of paragraph (a), require that the owner or operator comply with:

(1) The notification requirements of Part 250, Subpart G (proposed at 43 FR 29911 (July 11, 1978)); and

(2) The manifest system record-keeping, and reporting requirement of § 250.43–5(a), (b)(6), (c)(5)(i), (c)(5)(ii), (c)(5)(iii), (c)(5)(iii)(A)–(F) and (c)(5)(iii)(H), and (c)(6) (proposed at 43 FR 59003 (December 18, 1978)).

[*Comment:* Wells which inject hazardous wastes qualify as hazardous waste management facilities under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 *et. seq.* This section is designed to integrate regulatory coverage of these wells under RCRA and SDWA to avoid imposing inconsistent requirements.]

§ 122.45 Elimination of all class IV wells.

(a) *Existing class IV wells.* Existing class IV wells shall be inventoried and closed by the Director as described in §§ 146.42 and 146.43.

(b) *New class IV wells.* The Director shall by rule prohibit all new class IV wells immediately upon the effective date of the UIC program.

§ 122.46 Inventory of class V wells.

(a) The Director shall by rule require the owner/operator of any class V well to submit the information required in § 146.52.

(b) The Director shall, within two years of the effective date of the State program:

(1) Conduct an assessment of the contamination potential of class V wells;

(2) Conduct an assessment of the available corrective alternatives where appropriate and their environmental and economic consequences; and

(3) Submit a report to EPA containing items (1) and (2) as well as recommendations for appropriate regulatory approaches and remedial actions.

Any underground injection for which the required information is not submitted will not be authorized by either rule or permit and will thus be subject to appropriate enforcement action.

[*Comment:* Based on the submitted information, States shall develop reports and recommendations, which the Agency will use as a basis for promulgating minimum national requirements to bring class V wells under regulatory control.

The assessment mandated for class V wells represents solely the recognition that insufficient information is available to the Agency at this time. EPA has every intention of continuing to seek the necessary environmental and economic data.]

Subpart D—Additional Requirements for National Pollutant Discharge Elimination System Programs Under the Clean Water Act

§ 122.61 Purpose and scope.

(a) This Subpart sets forth additional requirements for the National Pollutant Discharge Elimination System (NPDES) program including permit programs under sections 402, 318 and 405 of the Act; it applies to the program as administered by EPA and, to the extent incorporated by reference in Part 123, by approved NPDES States.

(b) Section 402 of the Clean Water Act (CWA, formerly referred to as the Federal Water Pollution Control Act), (Pub. L. 92–500, as amended by Pub. L. 95–217 and Pub. L. 95–576) establishes the NPDES program. The NPDES program also includes permit program requirements under sections 318 and 405 of the Act. This program regulates the discharge of pollutants from point sources and related activities into the waters of the United States. All such discharges or activities are unlawful absent an NPDES permit. After a permit is obtained, a discharge not in compliance with all permit terms and conditions is unlawful.

§ 122.62 Law authorizing NPDES permits.

(a) Section 301(a) of CWA provides that "Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act, the discharge of any pollutant by any person shall be unlawful."

(b) Section 402(a)(1) of CWA provides in part that "the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, . . . upon condition that such discharge will meet either all applicable requirements under sections 301, 302, 306, 307, 308, and 403 of [the] Act, or prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of [the] Act."

(c) Section 318(a) of CWA provides that "The Administrator is authorized, after public hearings, to permit the discharge of a specific pollutant or pollutants under controlled conditions associated with an approved aquaculture project under Federal or State supervision pursuant to section 402 of this Act."

(d) Section 405 of CWA provides, in part, that "where the disposal of sewage sludge resulting from the operation of a treatment works as defined in section 212 of this Act (including the removal of in-place sewage sludge from one location and its deposit at another location) would result in any pollutant from such sludge entering the navigable waters, such disposal is prohibited except in accordance with a permit issued by the Administrator under section 402 of this Act."

(e) Sections 402(b), 318(b) and (c), and 405(c) of CWA authorize EPA approval of State permit programs for discharges from point sources, discharges to aquaculture projects, and disposal of sewage sludge.

(f) Section 404 authorizes EPA approval of State permit programs for the discharge of dredged or fill material.

(g) Section 304(i) of CWA provides that the Administrator shall promulgate guidelines establishing uniform application forms and other minimum requirements for the acquisitions of information from dischargers in approved States and establishing minimum procedural and other elements of approved State NPDES program.

(h) Section 501(a) of CWA provides that "The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this Act."

(i) Section 101(e) of the Act provides that "Public participation in the

development, revision, and enforcement of any regulation, standard, effluent limitation, plan or program established by the Administrator or any State under this Act shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish regulations specifying minimum guidelines for public participation in such processes."

§ 122.63 Exclusions.

(a) The following discharges do not require an NPDES permit:

(1) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when a vessel is being used as an energy or mining facility, a storage facility, or a seafood processing facility, or is secured to storage facility, or a seafood processing facility, or is secured to the bed of the ocean, contiguous zone, or waters of the United States for the purpose of mineral or oil exploration or development;

(2) Discharges of dredged or fill material into waters of the United States and regulated under section 404 of CWA.

(3) The introduction of sewage, industrial wastes or other pollutants into publicly owned treatment works by indirect dischargers.

[*Comment:* This exclusion applies only to the introduction of pollutants into publicly owned treatment works. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to apply for and receive permits until all discharges of pollutants to waters of the United States are eliminated. All applicable pretreatment standards promulgated under section 307(b) of CWA must also be complied with, and may be included in the permit to the publicly owned treatment works.

This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers of other conveyances owned by a State, municipality or other party not leading to treatment works. (See § 122.3(d)).]

(4) Any introduction of pollutants from agricultural and silvicultural activities, including runoff from orchards, cultivated crops, pastures, range lands, and forest lands, except that this exclusion shall not apply to:

(i) Discharges from concentrated animal feeding operations as defined in § 122.76;

(ii) Discharges from concentrated aquatic animal production facilities as defined in § 122.77;

(iii) Discharges to aquaculture projects as defined in § 122.78; and

(iv) Discharges from silvicultural point sources as defined in § 122.80.

(b) The exemption of a discharge from NPDES requirements in paragraph (a) of this section does not preclude State regulation of the exempted discharge under State authority, in accordance with section 510 of the CWA.

§ 122.64 Application for a permit.

(a) Any person who discharges or proposes to discharge pollutants, except persons covered by general permits under § 122.82 or excluded under § 122.63, shall complete, sign, and submit an application (which includes a BMP program if necessary under § 125.102) to the Director in accordance with Part 124.

(b) Persons currently discharging who have:

(1) Existing permits shall submit a new application under paragraph (c) of this section where facility expansions, production increases, or process modifications will:

(i) Results in new or substantially increased discharges of pollutants or a change in the nature of the discharge of pollutants, or

(ii) Violate the terms and conditions of the existing permit.

(2) Have expiring permits shall submit new applications at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Director.

(c) A person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the regional Administrator.

[*Comment:* Persons proposing a new discharge are encouraged to submit their applications well in advance of the 180 day requirement to avoid delay.]

(d) *Special provisions for applications from new sources.* (1) The owner or operator of any facility which may be a new source as defined in § 122.3(d) and which is located in a State without an approved NPDES program must comply with the provisions of this paragraph.

(2)(i) Before beginning any on-site construction as defined in § 122.81, the owner or operator of any facility which may be a new source must submit information to the Regional Administrator so that he or she can determine if the facility is a new source. The Regional Administrator may request any additional information needed to determine whether the facility is a new source.

(ii) The Regional Administrator shall make an initial determination whether the facility is a new source within 30 days of receiving all necessary information under subparagraph (2)(i) of this paragraph.

(3) The Regional Administrator shall issue a public notice in accordance with § 124.11 of the new source determination under subparagraph (2)(1) of this paragraph. The notice shall state that the applicant, if determined to be a new source must comply with the environmental review requirements of 40 CFR Part 6.900 *et seq.*

(4) Any interested person may challenge the Regional Administrator's initial new source determination by requesting an evidentiary hearing under Subpart E of Part 124 within 30 days of issuance of the public notice of the initial determination. The Regional Administrator may defer the evidentiary hearing on the determination until after a final permit decision is made, and consolidate the hearing on the determination with any hearing on the permit.

(e) *Applications for variances from and modifications of effluent limitations by non-POTWs.* A discharger which is not a publicly owned treatment works may request a variance from or modification of otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in this paragraph:

(1) A request for a variance based on the presence of "fundamentally different factors" from those on which the effluent limitations guideline was based, shall be made by the close of the public comment period under § 124.12. The request shall explain how the requirements of § 124.15 and 40 CFR Part 125, Subpart D have been met.

(2) A request for a variance from the BAT requirements for CWA section 301(b)(2)(F) pollutants (commonly called "non-conventional" pollutants) pursuant to section 301(c) of CWA because of the economic capability of the owner or operator; or pursuant to section 301(g) of CWA because of certain environmental considerations, where those requirements were based on effluent limitation guidelines, must be made by:

(i) Submitting an initial application to the Regional Administrator and the

State Director stating the name of the applicant, the permit number, the outfall number(s), the applicable effluent guideline, and whether the applicant is applying for a section 301(c) or section 301(g) modification or both. This application must have been filed not later than:

(A) September 25, 1978, for a pollutant which is controlled by a BAT effluent limitation guideline promulgated before December 27, 1977; or

(B) 270 days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 27, 1977;

(ii) Submitting a completed request demonstrating that the requirements of § 124.15 and the applicable requirements of Part 125 have been met no later than the close of the public comment period under § 124.12.

(iii) Requests for variance of effluent limitations based on other than effluent limitation guidelines, shall comply only with paragraph (ii) and need not submit an initial application under paragraph (i).

(3) An extension under CWA section 301(i)(2) of the statutory deadlines in sections 301(b)(1)(A) or (b)(1)(C) of CWA based on delay in completion of a publicly owned treatment work into which the source is to discharge must have been requested on or before June 26, 1978, or 180 days after the relevant publicly owned treatment works requests an extension under paragraph (f)(2) of this section, whichever is later. The request shall explain how the requirements of 40 CFR Part 125, Subpart J have been met.

(4) An extension under CWA section 301(k) from the statutory deadline of section 301(b)(2)(A) for best available control technology based on the use of innovative technology may be requested no later than the close of the public comment period under § 124.12 for the discharger's initial permit requiring compliance with the best available technology economically achievable. The request shall demonstrate that the requirements of § 124.15 and Part 125, Subpart C have been met.

(5) A modification under section 302(b)(2) of requirements under section 302(a) for achieving water quality related effluent limitations may be requested no later than the close of the public comment period under § 124.12 on the permit from which the variance is sought. The request shall demonstrate that the requirements of that section have been met.

(6) A variance under CWA section 316(a) for the thermal component of any discharge must be filed with a timely application for a permit under this section. If thermal effluent limitations are established under CWA section 402(a)(1) or are based on water quality standards the application shall be filed by the close of the public period under § 124.12. A copy of the application as required under 40 CFR Part 125, Subpart H shall be sent simultaneously to the appropriate State or interstate certifying agency. (See § 124.67 for special procedures for section 316(a) thermal variances.)

(f) *Applications for variances from and modifications of effluent limitations by POTW's.* A discharger which is a publicly owned treatment works (POTW) may request a modification of otherwise applicable effluent limitations under any of the following statutory provisions as specified in this paragraph:

(1) A preliminary application for a modification under CWA section 301(h) from requirements of CWA section 301(b)(1)(B) for discharges into marine waters must have been submitted to the Agency no later than September 25, 1978. A final application must be submitted in accordance with the filing requirements of 40 CFR Part 125, Subpart G, after that Subpart is promulgated, and shall demonstrate on its face that all the requirements of 40 CFR Part 125, Subpart G have been met. (See § 124.66 for special rules for CWA section 301(h) modifications.)

(2) An extension under CWA section 301(i)(1) from the statutory deadlines in CWA sections 301 (b)(1)(B) or (b)(1)(C) based on delay in the construction of POTWs must have been requested on or before June 26, 1978.

(3) A modification under CWA section 302(b)(2) of the requirements under section 302(a) for achieving water quality based effluent limitations may be requested no later than the close of the public comment period under § 124.12 on the permit from which the modification is sought.

(g)(1) Notwithstanding the time requirements in paragraphs (e) and (f), the Director may notify the applicant before a draft permit is published pursuant to § 124.6 that the draft permit will likely contain limitations which are eligible for variances or modifications. In such notice the Director may require the applicant as a condition of consideration of any potential variance request to submit an application explaining how the requirements of 40 CFR Part 125 applicable to the variance have been met and to require its submission within a specified reasonable time before the draft permit is formulated. This notice can be sent before the application under this section has been submitted.

[*Comment:* This paragraph is intended to reduce the time for permit issuance, especially in those cases where it is clear that a CWA variance or modification will be applied for.]

(2) A discharger who cannot file a complete request required under paragraphs (e)(2)(ii), (e)(2)(iii), (e)(3)(ii) or (e)(3)(iii) may request an extension to apply. Extensions shall be limited to the time the Director determines is necessary to satisfy the requirements of the appropriate regulations, but shall be no more than 6 months in duration. The request may be granted or denied in the discretion of the Director.

§ 122.65 Effect of an NPDES permit.

Compliance with a permit during its term constitutes compliance, for purposes of sections 309 and 505, with applicable standards and limitations of CWA, except for any standard imposed under section 307 for a toxic pollutant injurious to human health. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as described in §§ 122.9 and 122.73.

§ 122.66 Duration of permits.

No NPDES permit issued to a discharger within an industrial category listed in Appendix A of this Part, prior to the applicable permit expiration date listed in Appendix A, may be issued to expire after that date, unless:

(a) The permit incorporates effluent limitations and standards applicable to the discharger which are promulgated or approved under sections 301(b)(2) (C) and (D), 304(b)(2), and 307(a)(2) of CWA; or

[*Comment:* EPA is presently reviewing and revising effluent limitations for industries listed in Appendix A. In some cases, EPA may approve existing effluent limitations or choose not to develop new limitations. If EPA decides not to develop new effluent limitations it will publish notice in the Federal Register that the limitations are "approved" for the purpose of this regulation.]

(b) The permit incorporates:

(1) The "reopener clause" required by § 122.69(b)(1);

(2) Effluent limitations to meet the requirements of sections 301(b)(2) (A), (C), (D), (E) and (F) of CWA.

[*Comments:* (1) NPDES States are urged to issue short term permits expiring on or before the dates listed in Appendix A. This will ensure that all appropriate provisions of CWA, including compliance with the effluent limitations by the statutory deadlines, are met in permits issued after the promulgation

of effluent guidelines under sections 301(b)(2)(C) and (D), 304(b)(2) and 307(a)(2). Even if States issue long term permits with later expiration dates (in accordance with paragraph (b)(2), dischargers are legally required to meet all applicable statutory deadlines and requirements, including compliance with any promulgated EPA effluent guidelines defining "best conventional pollutant control technology" (BCT) and "best available control technology economically achievable" (BAT).

(2) A determination that a particular discharger falls within a given industrial category for purposes of setting a permit expiration date under paragraph (b) is not conclusive as to the discharger's inclusion in that industrial category for any other purposes, and does not prejudice any rights to challenge or change that inclusion at the time that a new permit based on that determination is formulated.]

§ 122.67 Prohibitions.

No NPDES permit shall be issued in the following circumstances:

(a) Where the terms or conditions of the permit do not comply with the applicable guidelines requirements of CWA, or regulations.

(b) Where the applicant is required to obtain a State or other appropriate certification under section 401 of CWA and § 124.53 and that certification has not been obtained or waived.

(c) By the State Director where the Regional Administrator has objected to issuance of the permit under § 123.90.

(d) Where the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States as required by section 401(a)(2) of CWA.

(e) Where, in the judgment of the Secretary, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge.

(f) For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste.

(g) For any discharge from a point source inconsistent with a plan or plan amendment approved under section 208(b) of CWA.

(h) For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:

(1) Prior to the promulgation of the guidelines under section 403(c) of CWA, unless the Director determines permit issuance to be in the public interest; or

(2) After promulgation of guidelines under section 403(c) of CWA, where insufficient information exists to make a reasonable judgment as to whether the discharge complies with any such guidelines.

(i) To a facility which is a new source or a new discharger, if the discharge from the construction or operation of the facility will:

(A) Cause or contribute to the violation of water quality standards if the point of discharge is located in a segment that was an effluent limitation segment (as defined in 40 CFR § 130.2(o)(2)) prior to the introduction of the discharge from the new source or new discharger; or

(B) Exceed the total pollutant load allocation if the discharge is into a water quality segment as defined in 40 CFR § 130.2(o)(1).

The owner or operator of a facility which is a new source or new discharger into a water quality segment must also demonstrate, at the time of applying for a permit that there are sufficient remaining pollutant load allocations to allow the discharge and that the facility is entitled to these allocations.

§ 122.68 Additional conditions applicable to NPDES permits.

The following conditions, in addition to those set forth in § 122.11, are applicable to all NPDES permits. They shall be either expressly incorporated into the permit or incorporated by reference.

(a) [Reserved]

[*Comment:* This paragraph is reserviced pending publication of a revised NPDES application form. This form, and accompanying regulations, are being proposed in today's Federal Register, as a separate part of the Permit Consolidation package. When finally promulgated, the regulations appearing with the revised NPDES form will be incorporated into the text of this section. The existing NPDES application forms should be utilized until the revised application form is available, except as otherwise provided in these regulations. See § 122.5.]

(b) If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under section 307(a) of CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation upon such pollutant in the permit, the Director shall institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

[*Comment:* Effluent standards or prohibitions esablished under CWA section 307(a) for toxic pollutants injurious to human health are effective within the time provided in the implementing regulations, even absent permit modification.]

(c) *Bypass.* (1) *Definitions.*

(i) "Bypass" means the intentional diversion of wastes from any portion of a treatment facility.

(ii) " Severe property damage" means substantial damage to property damage to the treatment facilities which would cause them to become inoperable or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. severe property damage does not mean economic loss caused by delays in production.

(2) *Conditions necessary for bypass.* Bypass is prohibited unless the following three conditions are met:

(i) Bypass is unavoidable to prevent loss of life, personal injury or severe property damage;

(ii) There are no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment down-time;

(iii) The permittee submits notice of an unanticipated bypass to the Director within 24 hours of becoming aware of the bypass (if this information is provided orally, a written submission must be provided within five days). Where the permittee knows or should have known in advance of the need for a bypass, this prior notification shall be submitted for approval to the Director, if possible, at least ten days before the date of the bypass.

[*Comment:* Fully efficient operation of treatment systems is required at all times. Although this generally requires the use of all portions of an existing treatment system, in some cases, maintenance necessary to ensure efficient operation may require bypassing portions of a system. Where such a bypass will not cause applicable effluent limitations or standards to be exceeded, it may be done without notification of the permitting authority. Where, however, a bypass is undertaken for reasons other than essential maintenance or where a bypass would cause effluent limitations or standards to be exceeded, it may be undertaken only in accordance with the provisions of this section.]

(3) *Prohibition of bypass.* The Director may prohibit bypass in consideration of the adverse effect of the bypass and the conditions set forth in paragraph (c)(2) of this section should have been provided by the treatment facility the bypass will not be allowed. If there is any doubt as to the necessity of the bypass or the availability of methods to reduce or eliminate the discharge, appropriate enforcement action may be taken.

(d) *Upset.* (1) *Definition.* "Upset" means an exceptional incident in which there is unintentional and temporary

noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(2) *Effect of an upset.* An upset shall constitute an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of paragarph (d)(3) are met.

(3) *Conditions necessary for a demonstration of upset.* A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An upset occurred and that the permittee can identify the specific cause(s) of the upset;

(ii) The permitted facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures;

(iii) The permittee submitted information within 24 hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five days); and

(iv) The permittee complied with any remedial measures required under § 122.11(i).

(4) *Burden of proof.* In any enforcement proceeding the permittee seeking to establish the occurrence of an upset shall have the burden of proof.

[*Comment:* Although in the usual exercise of prosecutorial discretion, Agency enforcement personnel should review any claims that noncompliance was caused by an upset, no determinations made in the course of the review constitute final Agency action subject to judicial review. Permittees will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with technology-based permit effluent limitations.]

(e) The permittee, in order to maintain compliance with its permit, shall control production and all discharges upon reduction, loss, or failure of the treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.

§122.69 Applicable limitations, standards, prohibitions, and conditions.

Each NPDES permit shall provide for and ensure compliance with all applicable requirements of CWA and regulations promulgated under CWA. For the purposes of this section, an applicable requirement is a statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit issued by a State with an approved NPDES program, or, in the case of a permit issued by EPA, which takes effect prior to the issuance of the permit except as provided in § 124.86(c). Permits shall ensure compliance with the following as applicable:

(a) Effluent limitations and standards under sections 301, 302, 303, 304, 307, 318 and 405 of CWA, including any interim final limitations and standards.

(b) For a discharger within any industrial category listed in Appendix A requirements under section 307(a)(2) of CWA, as follows:

(1) Prior to the applicable permit expiration date listed in Appendix A:

(i) If applicable standards or limitations have not yet been issued:

(A) The permit shall include conditions stating that, if an applicable standard or limitation is issued or approved under sections 301(b)(2) (C) and (D), 304(b)(2) and 307(a)(2) and such effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit shall be promptly modified or, alternatively, revoked and reissued in accordance with such effluent standard or limitation and any other requirements of CWA then applicable.

[*Comment:* The following language is an acceptable permit condition for the purposes of this section:

"This permit shall be modified, or alternatively, revoked and reissued, to comply with any applicable standard or limitation promulgated or approved under sections 301(b)(2) (C) and (D), 304(b)(2), and 307(a)(2) of the Clean Water Act, if the effluent standard or limitation so issued or approved:

(i) Contains different conditions or is otherwise more stringent than any effluent limitation in the permit; or

(ii) Controls any pollutant not limited in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of the Clean Water Act then applicable."]

(B) The Director shall promptly modify, or alternatively revoke and reissue, the permit to incorporate an applicable effluent standard or limitation under sections 301(b)(2) (C) and (D), 304(b)(2), and 307(a)(2) is issued or approved if such effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit.

[*Comment:* The requirements of this section are intended to assure compliance with the 1984 statutory deadline for the achievement of best available technology economically achievable for pollutants now listed under section 307(a)(1) of CWA. When a permit is modified or revoked and reissued pursuant to subparagraph (B), additional limitations may be included in the permit to assure achievement of applicable statutory requirements (e.g., best conventional pollutant control technology for "conventional" pollutants and best available technology economically achievable for "non-conventional" pollutants) by appropriate statutory deadlines.]

(ii) If applicable standards or limitations have been issued, the permit shall include those standards or limitations.

(2) Any permit issued after the applicable permit expiration date listed in Appendix A, the permit shall include effluent limitations and a compliance schedule to meet the requirements of sections 301(b)(2)(A), (C), (D), (E) and (F) of CWA, whether or not applicable effluent limitations guidelines have been promulgated or approved. Such permits need not incorporate the clause required by subparagraph (A) of this paragraph.

(c) Standards of performance for new sources under section 306 of CWA, including any promulgated interim final effluent limitations and standards.

(d) If the permit is for a discharge from a publicly owned treatment works, a condition requiring the permittee to:

(1) Provide adequate notice to the Director of the following:

(i) Any new introduction of pollutants into that POTW from an indirect discharger which would be subject to sections 301 or 306 of CWA if it were directly discharging those pollutants; and

(ii) Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

[*Comment:* For purposes of this paragraph, adequate notice shall include information on (1) the quality and quantity of effluent to be introduced into such POTW, and (2) any anticipated impact of such change in the quantity or quality of effluent to be discharged from such POTW.]

(2) Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under

section 307(b) of CWA and 40 CFR Part 403.

(3) Establish a local program when required by and in accordance with 40 CFR Part 403 to assure compliance with pretreatment standards to the extent applicable under section 307(b). The local program shall be incorporated into the permit as described in 40 CFR Part 403.

(4) Require any indirect discharger to such POTW to comply with the reporting requirements of sections 204(b), 307, and 308 of CWA, including any requirements established under 40 CFR Part 403.

(e) Any conditions imposed in grants made by the Administrator to POTWs under sections 201 and 204 of CWA which are reasonably necessary for the achievement of effluent limitations under section 301 of CWA.

[*Comment:* Among other things, this paragraph contemplates permit conditions embodying measures to protect the POTW against overloading and schedules of compliance which are consistent with, and determined from, construction grant award dates.]

(f) Any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under sections 301, 304, 306, 307, 318 and 405 where necessary to:

(1) Achieve water quality standards established under section 303 of CWA;

(2) Attain or maintain a specified water quality through water quality related effluent limits established under section 302 of CWA;

(3) Conform to the conditions of a State certification under section 401 of CWA where EPA is the permit issuing authority;

(4) Conform to applicable water quality requirements under section 402(a)(2) of CWA when the discharge affects a State other than the certifying State;

(5) Incorporate any more stringent limitations, treatment standards or schedules of compliance requirements established under Federal or State law or regulations in accordance with section 301 (b)(1)(C) of CWA;

(6) Ensure consistency with the requirements of a Water Quality management plan approved by EPA under section 208(b) of CWA;

(7) Incorporate section 403(c) criteria under Part 125, Subpart M for ocean discharges;

(8) Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors," under 40 CFR Part 125 Subpart D;

(9) Incorporate other requirements, or conditions, or limitations into a new source permit under the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* and section 511 of CWA, where EPA is the permit issuing authority.

(10) Establish on a case-by-case basis technology-based limitations controlling a pollutant not included in promulgated effluent limitations guidelines or standards in accordance with 40 CFR 125.2.

[*Comment:* Subparagraph (10) applies to all dischargers including new sources and new dischargers, even where covered by the protection period in § 122.81.]

(g) Best management practices to control or abate the discharge of pollutants where:

(1) Authorized under section 304(e) of the CWA for the control of toxic and hazardous pollutants from ancillary industrial activities;

(2) Numeric effluent limitations are infeasible, or

(3) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intents of CWA.

[*Comment:* Examples of best management practices which may be imposed under subparagraph (g)(2) include: (a) proper operator qualifications of treatment facility personnel (see Decision of the General Counsel No. 19), and (b) sludge-handling requirements (see Decision of General Counsel No. 33). Examples of best management practices which may be imposed under subparagraph (g)(3) include: (a) coal mining operation's diversion of water from an active coal mining area to prevent contact between water and iron pyrites which could react to form sulfuric acid and wastewaters with low pH values; (b) the construction of sheds over material storage piles to prevent rainfall from leaching materials from these piles and creating a source of pollution; (c) ditching and diversion of rainfall runoff for treatment prior to discharge; and (d) the use of solid, absorbent materials for cleaning up leaks and drips as opposed to washing these materials down a floor drain creating additional sources of pollution. Although these best management practices under subsections (2) and (3) would be required under the authority of *NRDC* v. *Costle*, (Runoff Point Sources) 568 F.2d 1369 (D.C. Cir. 1977) they are similar to those in subparagraph (g)(1) and Subpart K of 40 CFR Part 125 imposed for toxic and hazardous materials under section 304(e).]

(h) Requirements under section 405 of CWA governing the disposal of sewage sludge from publicly owned treatment works, in accordance with any applicable regulations.

(i) Where a permit is renewed or reissued, interim limitations, standards or conditions which are at least as stringent as the final limitations, standards or conditions in the previous permit (unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under §§ 122.9 or 122.73.)

Where effluent limitations were imposed under section 402(a)(1) of CWA in a previously issued permit and these limitations are more stringent than the subsequently promulgated effluent guidelines, this paragraph shall apply unless:

(1) The discharger has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations. In this case the limitations in the reissued permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by the subsequently promulgated effluent guidelines);

(2) In the case of an approved State, State law prohibits permit conditions more stringent than an applicable effluent guideline; or

(3) The subsequently promulgated effluent guidelines are based on best conventional pollutant control technology (section 301(b)(2)(E) of CWA).

(j) In the case of a permit issued to a facility that may operate at certain times as a means of transportation over water, a general condition that the discharge shall comply with any applicable regulations promulgated by the Secretary of the Department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, and storage of pollutants.

(k) Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired.

§ 122.70 Calculation and specification of effluent limitations and standards.

(a)(1) All NPDES permits shall impose final, and where necessary, interim effluent limitations, standards and prohibitions under §§ 122.11, 122.66 and 122.69 for each outfall or discharge point of the permitted facility, except as otherwise provided under § 122.69(g)(2) and paragraph (i) of this section.

(2) Except in the case of POTWs, permit limitations, standards or prohibitions shall be calculated based on the actual production and not the designed production capacity of the

facility where the promulgated effluent guideline limitations and standards are based on production.

[*Comment:* Where design capacity is not representative of actual production, permit limitations will be calculated to reflect a reasonable measure of actual production, such as the high month during the previous year, or the monthly average for the highest year of the previous five years, for facilities where such data is available. For new sources, or new discharges, actual production generally will be projected production based on market data, and permit limitations may require modification once actual production figures are available.]

(3) In the case of POTWs, permit limitations, standards or prohibitions shall be calculated based on design flow.

(b) All interim and final permit effluent limitations, standards or prohibitions established under §§ 122.11, 122.66 and 122.69 for a metal shall be expressed in terms of the total metal (i.e., the sum of the dissolved and suspended fractions of the metal) unless:

(1) The promulgated effluent limitation and standard under CWA specifies the limitation for the metal in the dissolved or valent form; or

(2) In establishing permit limitations on a case-by-case basis under § 122.69(1), it is necessary to express the limitation on the metal in the dissolved or valent form in order to carry out the provisions of CWA.

(c) For continuous discharges all interim and final permit effluent limitations, standards and prohibitions established under § 122.11, § 122.66 and § 122.69, including those necessary to achieve water quality standards, shall be stated as:

(1) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and

(2) Average weekly and average monthly discharge limitations for POTWs.

A "continuous discharge" means a discharge which occurs without interruption, except for infrequent shutdowns for maintenance, process changes or other similar activities throughout the operating hours of the facility.

The "Maximum daily discharge" is the total mass of a pollutant discharged during the calendar day or, in the case of a pollutant limited in terms other than mass pursuant to paragraph (d), the average concentration or other measurement of the pollutant specified during the calendar day or any 24-hour period that reasonably represents the calendar day for the purposes of sampling. The maximum daily discharge limitation may not be violated during any calendar day.

The "average monthly discharge limitation" is the total mass, and concentration in the case of POTWs, of all daily discharges sampled and/or measured during a calendar month on which daily discharges are sampled and measured, divided by the number of daily discharges sampled and/or measured during such month. The average monthly discharge limitation may not be violated during any calendar month.

The "average weekly discharge limitation" is the total mass and concentration of all daily POTW discharges during any calendar week on which daily discharges are sampled and/or measured, divided by the number of daily discharges sampled and/or measured during such calendar week. The average weekly discharge limitation may not be violated during any calendar week.

[*Comment:* Calculations for all such limitations which require averaging of measurements or of daily discharges, shall utilize an arithmetic mean average, unless otherwise specified or approved by the Director.]

(d) Paragraph (c) is not applicable:

(1) For pH, temperature, radiation or other pollutants which cannot be appropriately expressed by mass; or

(2) Where applicable promulgated effluent guideline limitations, standards or prohibitions are expressed in other terms than mass, e.g., as concentration levels.

(e) Except as provided in paragraph (g), effluent limitations imposed in permits shall not be adjusted for pollutants in the intake water.

(f)(1) Upon request of the discharger, effluent limitations or standards imposed in a permit will be calculated on a "net" basis, i.e., adjusted to reflect credit for pollutants in the discharger's intake water, if the discharger demonstrates that its intake water is drawn from the same body of water into which the discharge is made and if:

(i)(A) The applicable effluent limitations and standards contained in Subchapter N of this Chapter specifically provide that they shall be applied on a net basis; or

(B) The discharger demonstrates that pollutants present in the intake water will not be entirely removed by the treatment systems operated by the discharger; and

(ii) The permit contains conditions requiring the permittee to conduct additional monitoring (i.e., for flow and concentration of pollutants) as necessary to determined continued eligibility for and compliance with any such adjustments.

The discharger shall notify the Director if this monitoring indicates that eligibility for an adjustment under this section has been altered or no longer exists. In such case, the permit shall be modified or revoked and reissued under §§ 122.9 or 122.73.

(2) Permit effluent limitations or standards adjusted under this paragraph shall be calculated on the basis of the amount of pollutants present any treatment steps have been performed on the intake water by or for the discharger. Adjustments under this paragraph shall be given only to the extent that pollutants in the intake water which are limited in the permit are not removed by the treatment technology employed by the discharger. In addition, effluent limitations or standards shall not be adjusted when the pollutants in the intake water very physically, chemically or biologically from the pollutants limited by the permit. Nor shall effluent limitations or standards by adjusted when the discharger significantly increases concentrations of pollutants in the intake water, even though the total amount of pollutants might remain the same.

(h) Discharges which are not continuous, as defined in paragraph (c), shall be particularly described and limited, considering the following factors, as appropriate:

(1) Frequency (e.g., a batch discharge shall not occur more than once every 3 weeks);

(2) Total mass (e.g., not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge);

(3) Maximum rate of discharge of pollutants during the discharge (e.g., not to exceed 2 kilograms of zinc per minute); and

(4) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure (e.g., shall not contain at any time more than 0.1 mg/l zinc or more than 250 grams (¼ kilogram) of zinc in any discharge).

(i) Where permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards of discharges of pollutants may be imposed on internal waste streams prior to mixing with other streams or cooling water streams. In such instances, the monitoring required by Subpart C shall also be applied to the internal waste streams.

[*Comment:* Limits on internal waste streams will only be imposed in exceptional circumstances, such as where the final discharge point is inaccessible (e.g., under 10 meters of water), where the wastes at the point of discharge are so diluted as to make monitoring impracticable, or where the interferences among pollutants at the point of discharge would make detection and/or analysis impracticable.]

§ 122.71 NPDES requirements for recording and reporting of monitoring reports.

(a) To assure compliance with permit terms and conditions, all NPDES permittees shall monitor as specified in the permit:

(1) The amount, concentration or other measurement specified in § 122.70 for each pollutant specified in the permit;

(2) The volume of effluent discharged from each point source; and

(3) According to test procedures for the analysis of pollutants meeting the requirements of paragraph (b);

(4) As otherwise specifically required in the permit, e.g., as required under § 122.70(g)(2).

(b)(1) Test procedures identified in 40 CFR Part 136 shall be utilized for pollutants or parameters listed in that Part, unless and alternative test procedure has been approved under the Part.

(2) Where no test procedure under 40 CFR Part 136 has been approved, the Director shall specifiy a test method in the permit.

(3) Notwithstanding paragraph (1), the Director may specify in a permit the test procedure used in developing the date on which an effluent limitations guideline was based, or specified by the standards and guidelines.

(4) Where a method approved under 40 CFR Part 136 for any pollutant or parameter was used in developing the applicable standards and limitations or is specified by the standards and limitations, the same method shall be specified in the permit.

(c) The sampling frequency and other monitoring requirements specified by the director under paragraph (b) shall, to the extent applicable, be consistent with monitoring requirements specified in a standard or effluent guideline on which the effluent limitations in the permit are based.

(d) If the permittee believes that the monitoring requirements specified by the director under paragraph (b) in any draft permit under § 124.31, are not sufficient to yield data representative of the volume of effluent flow and the quantity of pollutants discharged, it should request that additional monitoring requirements sufficient to yield such data be included in the final permit. Compliance with effluent limitations contained in the permit will be determined in accordance with the monitoring requirements specified in the permit which, when finally effective, are deemed to yield data representative of the volume of effluent flow and the quantity of pollutants discharged.

(e) The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this section shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

(f) The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document required to be maintained under this section or § 122.14 shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than six months per violation, or by both.

(g) If the permittee monitors any pollutant more frequently than required by the permit, using approved analytical methods, the results of this monitoring shall be reported and included in the calculation and reporting of the data submitted in the DMR. For purposes of this paragraph, "approved analytical methods" are those test procedures for the analysis of pollutants which conform to 40 CFR 136 or as specified in the permit.

(h) The CWA provides that any person who knowingly makes any false statement, representation, or certification in the monitoring report or notice of compliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than six months per violation, or by both.

§ 122.72 NPDES noncompliance reporting requirements.

(a) On the last working day of February, May, August, and November, the State director shall submit to the Regional Administrator information concerning noncompliance with NPDES permit requirements by major dischargers in the State in accordance with the reporting schedule contained in paragraph (g). The Regional Administrator shall submit such information and shall also prepare and submit information for EPA-issued permits to EPA Headquarters in accordance with paragraph (g).

(b) *Quarterly Reports.* The reports required by paragraph (a) shall include the following information:

(1) *Failure to complete construction elements.* Noncompliance shall be reported:

(i) When the permittee has failed to complete by the date specified in the permit, an element of the compliance schedule (e.g., award of contract, preliminary plans (e.g., begin construction or attain operational level)); and

(ii) The permittee has not returned to compliance by accomplishing the requirements of the permit within 30 days from the date a report is due under § 122.12(a)(2).

(2) *Failure to complete or provide compliance schedule reports.* Noncompliance shall be reported in the following circumstances:

(i) When the permittee fails to complete or provide a report required in the permit compliance schedule or under § 122.14 (e.g., progress reports or notification of compliance or noncompliance); and

(ii) The permittee has not returned to compliance by submitting the report within 30 day from the date it is due under § 122.12(a)(2).

(3) *Noncompliance with applicable standards and limitations.* Noncompliance shall be reported:

(i) When the permittee has violated an applicable standard or limitation and has not returned to compliance with the NPDES permit requirements within 45 days from the date that the DMR or notification of noncompliance under § 122.11(h) was due;

(iii) When a pattern of noncompliance with applicable standards or limitations as determined by the Director exists for any major discharger over a period of 12 months prior to the end of the current reporting period. This pattern of noncompliance is based on violation of monthly averages and excludes parameters where there is continuous monitoring. A pattern of noncompliance shall be reported whenever there is:

(A) Any violation of the same permit or limitation or standard in two consecutive quarters; and

(B) Any violation of one or more permit limitations or standards in each of four consecutive quarters; or

(iii) When, as determined by the Director, a significant discharge of a pollutant occurs, such as a discharge of a toxic or hazardous substance.

(4) *Failure to report effluent data.* Noncompliance shall be reported where the permittee has failed to provide a DMR within 30 days of the date it is due or where the permittee has exceeded

effluent limitations and has failed to report this noncompliance.

(5) *Deficient reports.* Noncompliance shall be reported where the required reports provided by the permittee are so deficient as to cause misunderstanding by the permit issuing authority and thus impede the review of the status of compliance.

(6) *Modifications to schedules of compliance under § 122.12(a)(3).* Noncompliance resulting from or constituting the basis for a modification under § 122.12(a)(3) shall be reported.

[*Comment:* Noncompliance reported under this paragraph shall be reported in successive reports until the noncompliance is resolved. The resolution of noncompliance shall be reported, and when the noncompliance is reported as resolved, it will not appear in subsequent reports.]

(c) The narrative information required under paragraph (b) shall:

(1) Include the information required under § 122.15(a);

(2) Provide separate lists for non-POTWs, POTWs and Federal permittees;

(3) Combine information concerning schedule and effluent noncompliance in a single entry for each permittee; and

(4) Alphabetize all narrative listings by permittee name. Where two or more permittees have the same name, the lowest permit number shall govern the order of entry, i.e., the lowest number shall be entered first.

(d) Statistical information shall be reported quarterly on all other instances of noncompliance with permit requirements by major dischargers not set forth in paragraph (b).

(e) *Annual reports.* For minor dischargers whose compliance has been reviewed by the permitting authority, statistical information on the types of noncompliance listed under paragraph (b) shall be reported annually. In additional, a separate list of minor dischargers which are one or more years behind in construction phases of the compliance schedule shall be submitted annually in alphabetical order by name and permit number.

(f) *Reporting schedules.* (1) The schedule for reporting of noncompliance by major dischargers under paragraphs (b), (c), and (d) shall be as follows:

Quarters covered by reports on noncompliance by major dischargers:	Dates for completion of reports
January	May 31*.
February	
March	
April	August 31*.
May	
June	
July	November 30*.
August	
September	
October	February 28*.
November	
December	

* Report made available to the public on this date.

(2) The annual reporting period for noncompliance by minor dischargers under paragraph (e) shall end at the end of the Federal fiscal year (currently September 30), with reports completed and available to the public no more than 60 days later.

(g) All reports prepared under this section shall be made available to the public for inspection and copying.

[*Comment:* The distinction between "major and minor" dischargers is established in EPA's annual operating guidance for the EPA Regional offices and the States.]

§ 122.73 Modifications or revocation and reissuance of NPDES permits.

In addition to the causes set forth in § 122.9(e), NPDES permit may be modified, or revoked and reissued for the following causes:

(a) Where water quality standards or EPA promulgated effluent limitations guidelines (including interim final effluent guidelines) are revised, withdrawn or modified, *but only when:*

(1) The permit term or condition requested to be modified or revoked was based on a promulgated effluent limitation guideline or a EPA approved or promulgated water quality standard;

(2)(i) EPA has revised, withdrawn or modified that portion of the effluent limitation guideline on which the permit term or condition was based; or

(ii) EPA has approved a State action with regard to a water quality standard on which the permit term or condition was based; and

(3) A request for modification or revocation and reissuance is filed in accordance with § 124.5 (or applicable State procedures meeting the requirements of § 124.5) within ninety (90) days after Federal Register notice of:

(i) Revision, withdrawal or modification of that portion of the effluent limitation guideline; or

(ii) EPA approval of a State action regarding a water quality standard.

(b) Judicial remand of EPA promulgated effluent limitations guidelines, if the remand concerns that portion of the guidelines on which the permit term or condition was based and the request is filed within 90 days of the judicial remand;

(c) Where any modification or revocation and reissuance of permits is specifically authorized by CWA, e.g., sections 301(c), (g), (h), (i) or (k).

(d) As necessary under §§ 122.66(b), 122.69(b) and 122.12(a)(3)(i) and (ii).

(e) Failure of an approved State to notify another State whose waters may be affected by the discharge from the approved State, as required by section 402(b)(3) of CWA.

(f) The following additional minor permit modifications for NPDES permits shall not require public notice and opportunity for hearing under § 124.5 or § 124.7 unless they would render the permit less stringent, or unless contested by the permittee:

(1) A change in the construction schedule for a discharger which is a new source. No such change shall affect a dischargers obligation to have all pollution control equipment installed and in operation prior to discharge under § 122.81; and

(2) Deletion of a point source outfall, where the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.

§ 122.74 Termination of NPDES permits.

In addition to the causes for termination set forth in § 122.10, NPDES permits may be terminated where there is a change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit (e.g., plant closure, termination of discharge by connection to a POTW, the promulgation of any applicable effluent standard or prohibition under section 307 of the Act, any change in State law that requires the reduction or elimination of the discharge, etc.

§ 122.75 Disposal of pollutants into wells, into publicly owned treatment works or by land applications.

(a) Where part of a discharger's process waste water is not being discharged into waters of the United States or contiguous zone because it is disposed into a well, into a POTW, or by land application thereby reducing the flow or level of pollutants being discharged into waters of the United States, applicable effluent limitations and standards for the discharge in an NPDES permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one of the following methods:

(1) If none of the waste from a particular process is discharged into waters of the United States, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be

eliminated from calculation of permit effluent limitations or standards;

(2) In all cases other than those described in paragraph (1), effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into waters of the United States, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under Part 125, Subpart D to make them more stringent if discharges to wells, publicly owned treatment works, or by land application change the character or treatability of the pollutants being discharged to receiving waters.

[*Comment:* This method may be algebraically expressed as:

$P = E \times N / T$

where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to waters of the United States, and T is the total wastewater flow.]

(b) Paragraph (a) shall not apply where promulgated effluent limitations guidelines:

(1) Control concentrations of pollutants discharged but not mass; or

(2) Specify a different specific technique for adjusting effluent limitations to account for well injection.

(c) Paragraph (a) does not alter a discharger's obligation to meet any more stringent requirements established under §§ 122.11, 122.68 and 122.69.

§ 122.76 Concentrated animal feeding operations.

(a) Concentrated animal feeding operations are point sources subject to the NPDES permit program.

(b) *Definitions.* (1) "Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

(i) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and

(ii) Crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

Two or more animal feeding operations under common ownership are considered, for the purposes of these regulations, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

(2) "Concentrated animal feeding operation" means an animal feeding operation which meets the criteria set forth in (b)(2) (i), (ii) or (iii) below:

(i) More than the numbers of animals specified in any of the following categories are confined:

(A) 1,000 slaughter and feeder cattle,

(B) 700 mature dairy cattle (whether milked or dry cows),

(C) 2,500 swine each weighing over 25 kilograms (approximately 55 pounds),

(D) 500 horses,

(E) 10,000 sheep or lambs,

(F) 55,000 turkeys,

(G) 100,000 laying hens or broilers (if the facility has a continuous overflow watering),

(H) 30,000 laying hens or broilers (if the facility has a liquid manure system),

(I) 5,000 ducks, or

(J) 1,000 animal units; or

(ii) More than the following numbers and types of animals are confined:

(A) 300 slaughter or feeder cattle,

(B) 200 mature dairy cattle (whether milked or dry cows),

(C) 750 swine each weighing over 25 kilograms (approximately 55 pounds),

(D) 150 horses,

(E) 3,000 sheep or lambs,

(F) 16,500 turkeys,

(G) 30,000 laying hens or broilers (if the facility has continuous overflow watering),

(H) 9,000 laying hens or broilers (if the facility has a liquid manure handling system),

(I) 1,500 ducks, or

(J) 300 animal units;

and either one of the following conditions are met: pollutants are discharged into waters of the United States through a man-made ditch, flushing system or other similar man-made device; or pollutants are discharged directly into navigable waters which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

Provided, however, that no animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a 25 year, 24 hour storm event.

(iii) The Director determines that the operation is a significant contributor of pollution to waters of the United States, in accordance with paragraph (c).

(3) The term "animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

(4) The term "man-made" means constructed by man and used for the purpose of transporting wastes.

(c) *Case-by-case designation of concentrated animal feeding operations.* (1) Notwithstanding any other provision of this section, any animal feeding operation may be designated as a concentrated animal feeding operation where it is determined to be a significant contributor of pollution to the waters of the United States. In making this designation the Director shall consider the following factors:

(i) The size of the animal feeding operation and the amount of wastes reaching waters of the United States;

(ii) The location of the animal feeding operation relative to waters of the United States;

(iii) The means of conveyance of animal wastes and process waste waters into waters of the United States;

(iv) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into waters of the United States; and

(v) Other such factors relative to the significance of the pollution problem sought to be regulated.

(2) No animal feeding operation with less than the numbers of animals set forth in subparagraphs (b)(2) (i) and (ii) above shall be designated as a concentrated animal feeding operation unless:

(i) Pollutants are discharged into waters of the United States through a man-made ditch, flushing system or other similar man-made device; or

(ii) Pollutants are discharged directly into waters of the United States which originate outside of the facility and passover, across, through the facility or otherwise come into direct contact with the animals confined in the operation.

(3) In no case shall a permit application be required from a concentrated animal feeding operation designated under this paragraph until there has been an onsite inspection of the operation and a determination that the operation should and could be regulated under the permit program.

§ 122.77 Concentrated aquatic animal production facilities.

(a) Concentrated aquatic animal production facilities, as defined in this

section, are point sources subject to the NPDES permit program.

(b) *Definitions.* (1) "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which contains, grows or holds:

(i) Cold water fish species or other cold water aquatic animals in ponds, raceways or other similar structures which discharge at least 30 days per year but does not include:

(A) Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

(B) Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.

(ii) Warm water fish species or other warm water aquatic animals in ponds, raceways or other similar structures which discharge at least 30 days per year, but does not include:

(A) Closed ponds which discharge only during periods of excess runoff; or

(B) Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

(2) "Cold water aquatic animals" include, but are not limited to, the *Salmonidae* family of fish, e.g., trout and salmon.

(3) "Warm water aquatic animals" include, but are not limited to the *Ameiuride, Centrarchidae* and *Cyprinidae* families of fish, e.g., respectively, catfish, sunfish and minnows.

(c) *Case-by-case designation of concentrated aquatic animal production facilities.* Any warm or cold water aquatic animal production facility not otherwise falling within the definitions provided in paragraph (b) may be designated as a concentrated aquatic animal production facility where the facility is determined to be a significant contributor of pollution to waters of the United States. In making this designation the Director shall consider the following factors:

(1) The location and quality of the receiving waters of the United States;

(2) The holding, feeding and production capacities of the facility;.

(3) The quantity and nature of the pollutants reaching waters of the United States; and

(4) Other such factors relating to the significance of the pollution problem sought to be regulated.

In no case shall a permit application be required from a concentrated aquatic animal production facility designated under this subparagraph until there has been an on-site inspection of the facility and a determination that the facility should and could be regulated under the permit program.

§ 122.78 Aquaculture projects.

(a) Discharges into aquaculture projects, as defined in this section, are subject to the NPDES permit program through section 318 of CWA, and in accordance with 40 CFR Part 125, Subpart B.

(b) *Definitions.* (1) "Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

(2) "Designated project area" means the portions of the waters of the United States within which the applicant for a permit plans to confine the cultivated species, using a method or plan or operation (including, but not limited to, physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants permitted under this part, and be harvested within a defined geographic area.

§ 122.79 Separate storm sewers.

(a) Separate storm sewers, as defined in this section, are point sources subject to the NPDES permit program. Separate storm sewers may be covered either under individual NPDES permits or under the general permit program (see § 122.82).

(b) *Definition.* "Separate storm sewer" means a conveyance or system of conveyances (including but not limited to pipes, conduits, ditches, and channels) primarily used for collecting and conveying storm water runoff and either:

(1) Located in an urbanized area as designed by the Bureau of Census according to the criteria in 39 FR 15202 (May 1, 1974); or

(2) Not located in an urbanized area but designated as a significant contributor of pollution under paragraph (c).

"Separate storm sewer" does not include any conveyance which discharges process wastewater or storm water runoff contaminated by contact with wastes, raw materials, or pollutant-contaminated soil, from lands or facilities used for industrial or commercial activities, into waters of the United States or into separate storm sewers. Such discharges are subject to the general provisions of this Part.

[Comment: Whether or not a system of conveyances is or is not a separate storm sewer for purposes of this Part shall have no bearing on whether or not the system is eligible for funding under Title II of CWA, see 40 CFR 35.925-21.]

(c) *Case-by-case designation of separate storm sewers.* The Director may designate a storm sewer not located in an urbanized area as a separate storm sewer. This designation may be made to the extent allowed or required by EPA promulgated effluent guidelines for point sources in the separate storm sewer category; or when:

(1) A Water Quality Management plan under section 208 of CWA, which contains requirements applicable to such point sources is approved; or

(2) A storm sewer is determined to be a significant contributor of pollution to the waters of the United States. In making this determination the following factors shall be considered:

(i) The location of the storm sewer with respect to waters of the United States;

(ii) The size of the storm sewer;

(iii) The quantity and nature of the pollutants reaching waters of the United States; and

(iv) Other such factors relating to the significance of the pollution problems sought to be regulated.

[*Comment:* An NPDES permit for discharges into waters of the United States from a separate storm sewer covers all conveyances which are a part of that separate storm sewer system, even though there may be several owners-operators of such conveyances. However, discharges into separate storm sewers from point sources which are not part of the separate storm sewer systems may also require a permit.]

§ 122.80 Silvicultural activities.

(a) Silvicultural point sources, as defined in this section, are point sources subject to the NPDES permit program.

(b) *Definitions.* (1) "Silvicultural point source" means any discernible, confined and discrete conveyance related to rock crushing, gravel washing, log sorting or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the United States.

[*Comment:* The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, and road construction and maintenance from which there is runoff during precipitation events. However, some of these activities (such as stream crossing for roads) may involve point source

discharges of dredged or fill material which may require a CWA section 404 permit (see 33 CFR 209.120).]

(2) "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel and riprap (see 40 CFR Part 436, Subpart B, and the effluent limitations guidelines pursuant thereto).

(3) "Log sorting and log storage facilities" means facilities whose discharges result from the holding of unprocessed wood, i.e. logs or roundwood with bark or after removal of bark in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking). (See 40 CFR Part 429, Subpart J, and the effluent limitations guidelines pursuant thereto.)

§ 122.81 New sources and new dischargers.

(a) *Definitions.* (1) "New source" and "new discharger" are defined in § 122.3(d).

(2) "Source" means any building, structure, facility or installation from which there is or may be a discharge of pollutants;

(3) "Existing source" means any source which is not a new source or a new discharger;

(4) "Site" means the land or water area upon which a source and its water pollution control facilities are physically located, including but not limited to adjacent land used for utility systems, repair, storage, shipping or processing areas, or other areas incident to the industrial, manufacturing or water pollution treatment processes;

(5) "Facilities or equipment" means buildings, structures, process or production equipment or machinery which form a permanent part of the new source and which will be used in its operation, provided that such facilities or equipment are of such value as to represent a substantial commitment to construct. It does not include facilities or equipment used in connection with feasibility, engineering and design studies regarding the source or water pollution treatment for the source.

(b) *Criteria and standards for new source determination.* (1) The following construction activities result in a new source as defined in § 122.3(d):

(i) Construction of a source on a site where another source(s) is not located, or

(ii) construction of a source on a site where another source is located, provided that the process or production equipment which causes the discharge of pollutants from the other source is totally replaced by this construction or the construction results in a new or additional discharge.

[*Comment:* The fact that a source is constructed on a site so that it shares or uses common land or water areas of another source for utility systems, repair, storage, or shipping does not prevent that source from being considered a new source.]

(2) The modification of an existing source by changing existing process or production equipment, replacing existing process or production equipment (except as provided in paragraph (b)(1)) or by the addition of such equipment on the site of the existing source which results in a change in the nature or quantity of pollutants discharged is not a new source under this section. Modifications of this nature are subject to the provisions of § 122.9(e)(1).

(3) Construction of a new source as defined under § 122.3(d) has commenced if the owner or operator has:

(i) Begun, or caused to begin as part of a continuous on-site construction program:

(A) Any placement, assembly, or installation of facilities or equipment;

(B) Significant site preparation work including clearing, excavation or removal of existing buildings, structures or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(ii) Entered a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering and design studies do not constitute a contractual obligation under this paragraph.

(c) *Requirement of an Environmental Impact Statement.* (1) The issuance of an NPDES permit to a new source:

(i) By EPA may be a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 33 U.S.C. 4321 *et seq.* and is subject to the environmental review provisions of NEPA as set out in 40 CFR 6, Subpart I. EPA will determine whether an Environmental Impact Statement (EIS) is required under § 124.64(d) and 40 CFR 6, Subpart I;

(ii) By an NPDES approved State is not a Federal action and therefore does not require EPA to conduct an environmental review.

(2) The EIS shall include a recommendation on whether the permit is to be issued or denied.

(i) If the recommendation is to deny the permit, the final EIS shall contain the reasons for the recommendation and list those measures, if any, which the applicant could take to cause the recommendation to be changed;

(ii) If the recommendation is to issue the permit, the final EIS shall recommend the actions which the permittee should take to prevent or minimize any adverse environmental impacts;

(3) The Regional Administrator shall issue or deny the new source NPDES permit following a complete evaluation of any significant beneficial and adverse environmental impacts and a review of the recommendations contained in the EIS.

(4)(i) No on-site construction of a new source for which an EIS is required shall commence before issuance of a final permit incorporating appropriate EIS-related requirements, or before execution by the applicant of a legally binding written agreement which requires compliance with all such requirements, unless such construction is determined by the Regional Administrator not to cause significant adverse environmental impact.

(ii) No on-site construction of a new source for which no EIS is required shall commence before 15 days following issuance of a negative declaration, unless such construction is determined by the Regional Administrator to not cause significant adverse environmental impacts.

(5) The permit applicant must notify the Regional Administrator of any on-site construction which begins before the times specified in subparagraph (4). If on-site construction begins in violation of this paragraph, the Regional Administrator shall advise the owner or operator that it is proceeding with construction at its own risk, and that such construction activities constitute grounds for denial of a permit. The Regional Administrator may seek a court order to enjoin construction in violation of this paragraph.

(d) *Effect of compliance with new source performance standards.* (1) Except as provided in paragraph (d)(2), any new discharger which commenced construction after October 18, 1972, or any new source which meets the applicable promulgated new source performance standards before the commencement of discharge, shall not be subject to any more stringent new source performance standards or to any more stringent technology-based

standards under section 301(b)(2) of CWA for the shortest of the following periods:

(i) Ten years from the date that construction is completed;

(ii) Ten years from the date the source begins to discharge process or other non-construction related wastewater; or

(iii) The period of depreciation or amortization of the facility for the purposes of section 167 or 169 (or both) of the Internal Revenue Code of 1954.

[*Comment:* The provisions of this paragraph do not apply to existing sources which modify their pollution control facilities or construct new pollution control facilities and achieve performance standards, but which are neither new sources or new dischargers or otherwise do not meet the requirements of this paragraph.]

(2) The protection from more stringent standards of performance afforded by paragraph (d)(1) of this section does not apply to:

(i) Additional or more stringent permit conditions which are not technology based, e.g., conditions based on water quality standards, or effluent standards or prohibitions under section 307(a); and

(ii) Additional permit conditions controlling pollutants not listed as toxic under section 307(a) of CWA or as hazardous under section 311 of CWA and which are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic or hazardous where control of those other pollutants has been specifically identified as the method to control the toxic or hazardous pollutant.

(3) Where an NPDES permit-issued to a source enjoying a "protection period" under paragraph (d)(1) will expire on or before the expiration of the protection period, such permit shall require the owner or operator of the source to be in compliance with the requirements of section 301 and any other then applicable requirements of CWA immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements shall be allowed.

(4) The owner or operator of a new source, a new discharger, a source recommencing discharge after terminating operations, or a source which had been an indirect discharger which commences discharging into navigable waters shall install and have in operating condition, and shall "start-up" all pollution control equipment required to meet the terms and conditions of its permits before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), the owner or operator must meet all permit terms and conditions.

(5) After the effective date of new source performance standards, in accordance with section 306(e) of CWA, it shall be unlawful for any owner or operator of any new source to operate such source in violation of those standards applicable to such source.

§ 122.82 NPDES general permit program.

(a) *Definitions.* (1) The term "separate storm sewer" is defined in § 122.79.

(2) The term "general permit program area" ("GPPA") means any area so designated under paragraph (c) of this section in which all owners or operators of separate storm sewers or other categories of point sources are subject to the same general NPDES permit, other than owners or operators of such sources to whom individual NPDES permits have been issued.

[*Comment:* All draft general permits for point sources other than separate storm sewers must be sent to the EPA Deputy Assistant Administrator for Water Enforcement during the public comment period for 90-day review. If the draft general permit does not meet the criteria of § 122.82(b)(2), the EPA Deputy Assistant Administrator may object to the issuance of the general permit within those 90 days. See §§ 123.79(g) and 124.7(a)(2).]

(3) The term "general permit" means an authorization to discharge which:

(i) Where issued by EPA, is published in the Federal Register;

(ii) Where issued by a State, is published in accordance with applicable State procedures; and

(iii) Is applicable to all owners and operators of separate storm sewers or other categories of point sources in a designated GPPA, other than owners and operators of such sources to whom individual NPDES permits have been issued.

(b) The Director may regulate the following discharges under general permits

(1) Separate storm sewers; and

(2) Such categories of point sources if there are a number of minor point sources operating in a geographical area that:

(i) Involve the same or substantially similar types of operations;

(ii) Discharge the same types of wastes;

(iii) Would require the same effluent limitations or operating conditions;

(iv) Would require the same monitoring requirements and

(v) In the opinion of the Director would be more appropriately controlled under a general permit than under an indivdual NPDES permit.

(c) Each general permit shall be applicable to a class or category of dischargers meeting the criteria of paragraph (b) within a GPPA designated by the Director.

(1) The GPPA shall correspond with existing geogrpahic or political boundaries such as:

(i) Designated planning areas under sections 208 and 303 of the Act;

(ii) Sewer districts or sewer authorities;

(iii) City, county or State political boundaries;

(iv) State highway systems;

(v) Standard metropolitan statistical areas as defined by the Office of Management and Budget;

(vi) Urbanized areas as defined by the Bureau of Census (see § 122.79(b)(1)); or

(vii) Any other appropriate divisions or combinations of the above boundaries which will encompass the sources subject to the same general permit.

(2) Any designation of any GPPA is subject to review by the Director at the expiration of the general permit for the GPPA, or if individual permits have been issued to all the owners and operators of the classes of point sources within the GPPA, or as necessary to address water quality problems effectively.

(3) NPDES General permits shall be issued in accordance with the applicable requirements of Part 124.

[*Comments:* The permit issuing authority is encouraged to provide as much actual notice of the draft general permit to the permittees as possible. This notice would be in addition to the public notice requirements in § 124.11(f) and could include notice in trade associations' journals and newsletters.]

(d) *Scope of NDPES General Permits.* (1) Each NDPES general permit shall cover all owners and operators of separate storm sewers or other designated categories of point sources in the GPPA for which the general permit is issued, except:

(i) As provided in paragraph (e); and

(ii) For owners and operators of separate storm sewers or other categories of point sources who are already subject to individual NPDES permits prior to the effective date of the general permit;

(2)(i) All sources not excluded from general permit coverage for these reasons are permittees subject to the terms and conditions of the general permit.

(ii) Sources excluded from NDPES general permit coverage solely because they already have an individual NPDES permit may request that the individual permit be revoked, and that they be

covered by the general permit. upon revocation of the individual NPDES permit, the general permit shall apply to such point sources.

(e) *Case-by-case designation.* (1) Under § 124.70, the Director may revoke a general permit as it applies to any person and require such person to apply for and obtain an individual NPDES permit. Interested persons may petition the Director to take action under this paragraph if one of the six cases listed below occurs. Cases where individual NPDES permits may be required include the following:

(i) The covered discharge(s) is a significant contributor of pollution;

(ii) The discharger is not in compliance with the terms and conditions of the general NDPES permit;

(iii) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants from the covered point source;

(iv) Effluent limitation guidelines are subsequently promulgated for point sources covered by the general NPDES permit;

(v) A Water Quality Management plan containing requirements applicable to such point sources is approved; or

(iv) The requirements of paragraph (b)(2)(i) through (iv) are not met.

(2) Where EPA is the permit issuing authority, the Regional Administrator may revoke a general permit as it applies to any person and require such person to apply for an individual NPDES permit if:

(i) There has been an on-site inspection of the facility and a determination that the point source should and could be regulated under an individual permit: and

(ii) The owner or operator has been notified in writing of the revocation of the general permit and that a permit application is required. This notice shall include an application form, a statement that the owner or operator has sixty days from receipt of notice to file the application, and a statement that the general permit no longer authorizes the owner or operator to discharge pollutants.

(3) Any owner or operator subject to a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit such application, with reasons supporting the request, to the Director no later than ninety days after the publication by EPA of the general permit in the Federal Register or the publication by a State in accordance with applicable State law. All such requests shall be granted by issuance of any individual permit if the reasons cited by the owner or operator are adequate to support the request.

(4) Where an individual NPDES permit is issued to an owner or operator otherwise subject to a general NPDES permit, the general permit as it applies to the individual NPDES permittee is automatically revoked on the effective date of the individual permit.

(5) Any owner or operator applying for an individual NPDES permit under this paragraph is subject to the procedures set forth in Part 124.

§ 122.63 Special considerations under Federal law.

Under section 301(b)(1)(C) of CWA, permits shall be consistent with and reflect requirements under applicable Federal laws other than CWA and to the extent authorized by law, requirements under Executive Orders. For permits issued by the Regional Administrator such Federal requirements include but are not limited to the following:

(a) *Executive Order 11990 (Protection of Wetlands).*

(b) *Executive Order 11988 (Preservation of Floodplains).*

(c) Sections 3, 4, and 5 of the *Wild and Scenic Rivers Act*, 16 U.S.C. 1273 *et seq.*

(d) The *National Historic Preservation Act of 1966*, 42 U.S.C. 4321 *et seq.* (and the related Executive Order 11593).

(e) The *Land and Water Conservation Act*, 16 U.S.C. 460, *et seq.*

(f) Section 7 of the *Endangered Species Act.* 16 U.S.C. 1531 *et seq.*

(g) Section 307 of the *Coastal Zone Management Act*, 16 U.S.C. 1451 *et seq.*

[*Comment:* NPDES permits must be consistent with approved coastal zone management plans by virtue of sections 307(c)(3)(A) (Federally issued permits) and 307(c)(1) (approval and oversight of State permit programs).]

(h) The *Solid Waste Disposal Act*, as amended by the *Resource Conservation and Recovery Act of 1976*, 42 U.S.C. 6901 *et seq.*

(i) The *Safe Drinking Water Act*, 42 U.S.C. 300f *et seq.*

(j) The *Marine Protection, Research, and Sanctuaries Act* (the *Ocean Dumping Act*), 33 U.S.C. 1401 *et seq.*

(k) The *Surface Mining Control and Reclamation Act of 1977*, 30 U.S.C. 1201 *et seq.*

(l) The *Fish and Wildlife Coordination Act*, 16 U.S.C. 661 *et seq.*

Appendix A.—*Point Source Categories and Permit Expiration Dates*

Point source category	Permit expiration dates
Adhesives	June 30, 1981
Aluminum Forming	June 30, 1981
Auto and Other Laundries	June 30, 1981
Battery Manufacturing	June 30, 1981
Coal Mining	December 31, 1980
Coil Coating	June 30, 1981
Copper Forming	June 30, 1981
Electric and Electronic Components	June 30, 1981
Electroplating	June 30, 1981
Explosives Manufacturing	June 30, 1981
Foundries	June 30, 1981
Gum and Wood Chemicals	June 30, 1981
Inorganic Chemicals	March 31, 1981
Iron and Steel	September 30, 1980
Leather Tanning and Finishing	September 30, 1980
Mechanical Products	June 30, 1981
Nonferrous Metals	December 31, 1980
Ore Mining	December 31, 1980
Organic Chemicals	March 31, 1981
Paint and Ink	December 31, 1980
Pesticides	June 30, 1981
Petroleum Refining	September 30, 1980
Pharmaceuticals	June 30, 1981
Photographic Supplies	June 30, 1981
Plastics Processing	June 30, 1981
Plastic and Synthetic materials	March 31, 1981
Porcelain Enamel	June 30, 1981
Printing and Publishing	December 31, 1981
Pulp and Paper	March 31, 1981
Rubber	March 31, 1981
Soaps and Detergents	June 30, 1981
Steam Electric	September 30, 1980
Textile Mills	March 31, 1981
Timber	September 30, 1980

PART 123—STATE PROGRAM REQUIREMENTS

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Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.; Safe Drinking Water Act, 42 U.S.C. 300f et seq.; Clean Water Act, 33 U.S.C. 1251.

Subpart A—General Program Requirements

§ 123.1 Purpose and scope.

(a) This part specifies procedural and other requirements which must be present in State programs in order to obtain approval of the Administrator under:

(1) Section 3006 (hazardous waste) of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, (Pub. L. 94–580, as amended by Pub. L. 95–609, hereinafter called RCRA);

(2) Section 1422 (underground injection control—UIC) of the Safe Drinking Water Act (Pub. L. 93–523, as amended by Pub. L. 95–190, hereinafter called SDWA);

(3) The National Pollutant Discharge Elimination System (NPDES) (sections 318, 402 and 405 of the Clean Water Act, Pub. L. 92–500, as amended by Pub. L. 95–217 and Pub. L. 95–576, hereinafter called CWA); and

(4) Section 404 (dredge and fill) of CWA.

[*Comment:* This Part should be read in conjunction with Parts 122 and 124 which provide general requirements of the Federal program and, by the references contained in this Part, to State programs.]

(b) A State program which conforms to the applicable requirements of this Part shall be approved by the Administrator.

(c) Upon approval of a State program the Administrator or the Secretary (in the case of section 404 programs) shall suspend the issuance of Federal permits for those activities subject to the approved State program.

(d) Any State program approved by the Administrator shall at all times be conducted in accordance with the requirements of this Part.

(e) In many cases States will lack authority to regulate activities on Indian lands. This lack of authority to regulate acitivities on Indian lands. This lack of authority does not impair a State's ability to obtain full program approval in accordance with this Part. However, States are required to exercise jurisdiction over Indian lands to the extent they are authorized to do so.

[*Comment:* Partial State programs are not allowed under RCRA, NPDES and section 404. However, failure of a State to regulate activities on Indian lands does not constitute a partial program. Similarly, a State can assume primary enforcement responsibility for the UIC program, notwithstanding § 123.51(e), where the State program is unable to regulate activities on Indian lands within the State. States are advised to contact the United States Department of Interior concerning authority over Indian lands. EPA or the Secretary, in the case of section 404 programs, will administer the program on Indian lands whenever the State lacks authority.]

(f) Except as provided in § 123.33(c), nothing in this Part precludes a State from:

(1) Adopting or enforcing requirements which are more stringent or more extensive than those required under this Part;

(2) Operating a program with a greater scope of coverage than that required under this Part.

[*Comment:* Where an approved State program has greater scope of coverage than required by Federal law the additional coverage is not part of the Federally approved program. For example, where a State requires permits for discharges into publicly owned treatment works, these permits are not NPDES permits.]

§ 123.2 Definitions.

The definitions in Part 122 apply to this Part.

§ 123.3 Elements of a program submission.

(a) EPA will not begin formal review of a proposed State program until it receives three copies of a complete program submission. EPA will notify the State within 30 days whether its submission is complete. If a submission made by a State is found to be incomplete, the statutory review period (i.e., the period of time allotted for EPA review under the appropriate Act) shall not begin until all the requested information is filed with EPA.

(b) If the State's submission is materially changed during the statutory review period, the review period shall recommence.

(c) The State and EPA may extend the review period by agreement.

(d) The submission shall contain the following elements:

(1) A letter from the Governor of the State requesting program approval;

(2) An Attorney General's Statement as required by § 123.5;

(3) A Memorandum of Agreement with the Regional Administrator as required by § 123.6;

(4) A complete program description, as required by § 123.4, describing how the State intends to carry out its responsibilities under this Part;

(5) Copies of the following forms the State intends to employ in its program: the permit form(s); the application form(s); standard reporting form(s) and the manifest form. Except as provided in Part 122, forms used by States need not be identical to the forms used by EPA or

the Secretary but should require the same basic information. The State need not provide copies of uniform national forms it intends to use but should note its intention to use such forms.

[*Comment:* States are encouaged to use uniform national forms established by the Administrator or the Secretary (in the case of section 404 programs). Uniform national forms may be modified to include the State Agency's name, address, logo and other similar information, as appropriate, in place of EPA's. NPDES States are required to use standard Discharge Monitoring Reports (DMR).]

(6) Copies of all applicable State statutes and regulations, including those governing State administrative procedures;

(7) In the case of section 404 programs a Memorandum of Agreement with the Secretary as required by § 123.93; and

(8) The showing required by § 123.40(d) (RCRA) and § 123.56(b) (UIC).

§ 123.4 Program description.

Any State that wishes to administer a program shall submit to the Administrator a complete description of the program it proposes to establish and administer under State law or under an interstate compact. The program description shall include the information below. Additional requirements for State program descriptions are detailed in §§ 123.34 (RCRA), 123.52 (UIC), and 123.95 (404).

(a) A description in narrative form of the scope, structure, coverage and processes of the State program.

(b) A description (including organization charts) of the organization and structure of the State agency or agencies which will have responsibility for administering the program including the information listed below. If more than one agency is responsible for administration of a program, their responsibilities must be delineated, their procedures for coordination set forth, and one of the agenices may be designated a "lead agency" to facilitate communications between EPA and the State agencies having program responsibility. Where the State proposes to administer a program of greater scope of coverage than is required by Federal law, the information provided under this paragraph shall indicate the resources dedicated to administering the Federally required portion of the program.

(1) A description of the State agency staff who will be engaged in carrying out the State program, including the number and occupations of the employees;

[*Comment:* The State need not submit complete job descriptions for every employee engaged in carrying out the State program.]

(2) An itemization of the proposed or actual costs of establishing and administering the program for the first two years after approval, including cost of the personnel listed in subparagraph (1), cost of administrative support, and cost of technical support.

(3) An itemization of the sources and amounts of funding, including Federal grant money, available to the State Director for the first two years after approval to meet the costs listed in subparagraph (2) identifying any restrictions or limitations upon this funding.

(4) Information on the number, size and character of the activities that will be regulated under the approved State program. (See §§ 123.34 (RCRA), 123.52 (UIC), and 123.95 (404)).

(c) A description of applicable State procedures, including permitting procedures and any State appellate review procedures;

(d) A general description of the State's priorities for issuance of permits and for enforcement, including a complete description of the State's compliance tracking and enforcement program.

[*Comment:* It is anticipated that a more specific identification of priorities will be contained in subsidiary State/EPA agreements such as annual grant agreements.]

§ 123.5 Attorney General's Statement.

(a) Any State desiring to administer a program covered by this Part shall submit a statement from the State Attorney General (or the attorney for those State or interstate agencies which have independent legal counsel), that the laws of the State, or the interstate compact, provide adequate authority to carry out the program described under § 123.4 and to meet the requirements of this Part. This statement shall include citations to specific statutes, administrative regulations, and, where appropriate, judicial decisions to support the analysis. The authorities cited by the State Attorney General or other legal officer shall be in the form of lawfully adopted State statutes and regulations which shall be in full force and effect at the time the statement is signed.

[*Comment:* To qualify as "independent legal counsel" the attorney signing the statement required by this section must have full authority to independently represent the State agency in court on all matters pertaining to the State program.]

(b) Where jurisdiction can be exercised over activities on Indian lands, the statement shall contain an appropriate analysis of the State's authority.

§ 123.6 Memorandum of Agreement with the Regional Administrator.

(a) Before the Administrator approves any State program, the State Director and the Regional Administrator shall execute a Memorandum of Agreement (MOA), which the Administrator shall approve before or at the time of program approval. In addition to the requirements of paragraph (b), the Memorandum of Agreement may include other terms, conditions, or agreements relevant to the administration and enforcement of the State's regulatory program which are not inconsistent with this Part. No Memorandum of Agreement shall be approved which contains provisions which restrict EPA's statutory oversight responsibility.

[*Comment:* The Administrator may delegate his or her authority to approve modifications of MOA's. In such cases, however, the Regional Administrator's decision would be subject to review by EPA Headquarters.]

(b) The Memorandum of Agreement shall include the following:

(1) Provisions for the prompt transfer of any pending permit applications or any other relevant information not already in the possession of the State Director (e.g., support files for permit issuance, compliance reports, etc.) from EPA to the State. Where existing permits are transferred to the State for administration, the Memorandum of Agreement shall contain provisions specifying a procedure for transferring responsibility for these permits.

[*Comment:* In many instances States will lack the authority to directly administer permits issued by the Federal government. However, a procedure may be established to transfer responsibility for these permits. For example, a State could issue permits identical to the outstanding Federal permits which could be simultaneously revoked.]

(2) Provisions specifying classes and categories of permit applications and permits that the Regional Administrator will receive from the State for review, comment and, where applicable, objection;

[*Comment:* The nature and basis of EPA review of State permits and permit applications differs between the programs governed by this Part. See §§ 123.26 (RCRA), 123.76 (NPDES) and 123.90 (404). In addition, EPA will issue guidance on the significant types of permits that will be subject to EPA review pursuant to these Memoranda of Agreement.]

(3) Provisions specifying the frequency and content of reports (e.g., see § 123.11), documents and other information which the State must submit to EPA; and provisions on program evaluations. The State shall allow EPA to routinely review State records, reports and files relevant to the administration and enforcement of the State program. State reports may be combined with grant reports where appropriate;

(4) Provisions on the State's enforcement program, including:

(i) Compliance monitoring by the State and by EPA. These may specify the basis on which the Regional Administrator may select facilities or activities within the State for EPA inspection. The Regional Administrator will normally notify the State at least seven (7) days before any such inspection;

(ii) Fiscal arragnements for effective litigation support for the State attorney general or other appropriate legal officers;

(5) Where appropriate, provisions for joint processing of permits by the State and EPA, for facilities or activities which require permits from both EPA and the State under different programs.

[*Comment:* To promote efficiency and to avoid duplication and inconsistency, States are encouraged to enter into joint processing agreements with EPA for permit issuance. Likewise, States are encouraged to consider steps to coordinate or consolidate their own permit programs and activities.]

(6) Provisions for modification of the Memorandum of Agreement.

(c) The Memorandum of Agreement and the State/EPA Agreement should be consistent. If the State/EPA Agreement indicates that a change is needed in the Memorandum of Agreement, the Memorandum of Agreement may be amended in accordance with the procedures set forth in this Part. The State/EPA Agreement may not override the Memorandum of Agreement.

[*Comment:* Detailed program priorities and specific arrangements for EPA support of the State program will change and are therefore more appropriately negotiated in the context of annual agreements rather than in the MOA. Where this is the case it may still be appropriate to specify in the MOA the basis for such detailed agreements, e.g., a provision in the MOA specifying that EPA will select facilities in the State for inspection annually as part of the State/EPA agreement.]

§ 123.7 Requirement to obtain a permit.

Except where an activity may be authorized by rule as provided in §§ 122.35, 123.54 (UIC) and 123.39 (RCRA), State permit programs must have a statute or regulation, enforceable in State courts, which prohibits the activity requiring a permit under the appropriate Act, except as authorized by a permit in effect under the State program. Where an activity may be authorized by rule there must be a similar statutory prohibition against such activities except as authorized by a rule in effect under the State program.

§ 123.8 Operational requirements.

State programs must have legal authority to implement each of the following provisions and must be administered in conformance with each of the following provisions:

(a) § 122.5—(Signatories);
(b) § 122.7—(Permit issuance);
(c) § 122.8 (a) and (b)—(Duration);
(d) § 122.9—(Permit review and modification);
(e) § 122.10—(Permit termination);
(f) § 122.11—(Permit conditions);
(g) § 122.12 (a) and (d)—(Schedules of compliance);
(h) § 122.14—(Recordkeeping/Reporting);
(i) § 122.15—(Noncompliance reporting);
(j) § 122.16(b)—(Confidential information);
(k) § 124.6 (a) and (b)—(Draft permit) except as provided in § 123.98(c)(2) for State section 404 programs;
(l) § 124.8—(Statement of basis), except as provided in § 123.98(c)(2) for State section 404 programs;
(m) § 124.9—(Fact sheets), except as provided in § 123.98(c)(2) for State section 404 programs;
(n) § 124.11—(Public notice);
(o) § 124.12—(Public comments and requests for hearings);
(p) § 124.19 (a) and (c)—(Response to comments);
(q) Such other provisions as are specified in §§ 123.39 (RCRA), 123.57 (UIC) and 123.73 (NPDES).

§ 123.9 Compliance evaluation programs.

(a) State programs shall have procedures for receipt, evaluation, recordkeeping and investigation for possible enforcement of all notices and reports required of permittees (or failure to submit such notices and reports).

(b) State programs shall have inspection and surveillance procedures to determine, independent of information supplied by operators and permittees, compliance or noncompliance with applicable program requirements, standards and limitations, filing requirements and permit terms or conditions, including the following:

(1) A program which is capable of making comprehensive surveys of all waters and/or activities subject to the State Director's authority in order to identify persons subject to regulation who have failed to comply with permit application or other filing requirements. Any compilation, index, or inventory of such activities shall be made available to the Regional Administrator upon request;

(2) A program for periodic inspections of the activities subject to regulation. These inspections shall:

(i) Determine compliance or noncompliance with issued permit terms and conditions and other program requirements;

(ii) Verify the accuracy of information submitted by permittees in reporting forms and other forms supplying monitoring data; and

(iii) Verify the adequacy of sampling, monitoring and other methods used by permittees to develop that information;

(3) A program for investigating evidence of violations of applicable program and/or permit requirements, which shall apply whether the evidence is indicated in the reports and notifications evaluated under paragraph (a) or by the survey, inspection, and surveillance activities provided in paragraph (b); and

(4) The State's enforcement program shall include procedures for receiving and ensuring proper consideration of evidence submitted by the public about violations. Public effort in reporting violations shall be encouraged, and the State Director shall make available information on reporting procedures.

(c) The State officers engaged in compliance evaluation activities shall have authority to enter any site or premises subject to regulation or in which records are kept in order to inspect, monitor or otherwise investigate suspected violations of the State program including suspected violations of permit terms and conditions;

[*Comment:* State programs which require a search warrant for entry conform with this requirement.]

(d) Investigatory inspections shall be conducted, samples shall be taken and other information shall be gathered in a manner (e.g., using proper "chain of custody" procedures) that will produce evidence admissible in an enforcement proceeding or in court.

§ 123.10 Enforcement authority.

(a) Any State agency administering a program shall have available the following remedies for violations of the appropriate Act:

(1) To restrain immediately and effectively any person by order or by

suit in State court from engaging in any unauthorized activity which is threatening or causing actual damage to public health or the environment, or, where EPA is authorized to take immediate action, to immediately notify the Regional Administrator by telephone of any unauthorized activity which is threatening or causing actual damage to public health or the environment;

(2) To sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement, including permit terms and conditions, without the necessity of a prior revocation of the permit;

[*Comment:* Subparagraph (a)(1) requires that States have a mechanism (e.g., an administrative order or a temporary restraining order) to stop any unauthorized activity endangering public health or the environment, or, alternatively, to notify EPA of the situation so it may act. Where EPA cannot act immediately, e.g., in a State with a fully approved UIC program, the second alternative is not acceptable. Subparagraph (a)(2) merely requires that states have authority to permanently enjoin unauthorized activities.]

(3) To assess or to sue to recover in court civil penalties for the violation by any person of any of the following:

(i) Any applicable permit term or condition;

(ii) Any notice or reporting requirement;

(iii) Any duty to allow inspection, entry, or other monitoring activites; or

(iv) Any rule, regulation, or order issued by the state.

(4) To seek criminal remedies, including fines, for the violation by any person of any applicable program requirement, including violations of permit terms or conditions.

(5) To seek criminal remedies, including fines, against any person who knowingly makes any false statement, representation or certification in any program form or any notice or report, including those required by the terms and conditions of any issued permit or who knowingly renders inaccurate any monitoring device or method required to be maintained by the State Director;

[*Comment:* In many States the State Director will be represented in State courts by the State Attorney General or other appropriate legal officer. While the State Director need not appear in court actions under this Subpart, he/she should have power to request that any of the above actions be brought.]

(b)(1) The maximum civil penalties and criminal fines that can be sought by the state under subparagraphs (a)(3), (4) and (5) of this section shall be at least the same as the maximum amounts that can be sought by the EPA under the appropriate Act. The maximum civil penalty or criminal fine shall be assessable for each instance of violation and, if the violation is continuous, shall be assessable up to the maximum amount for each day of violation.

[*Comment:* The Agency welcomes comments on this requirement. In particular, EPA is interested in determining whether there are any State statutes which meet all the requirements of the Part except the above subparagraph. Any State which believes this to be the case should, in addition, notify EPA of what, if any, criminal remedies are provided for under State law.]

(2) The burden of proof and degree of knowledge or intent required under state law for establishing violations under subparagraphs (a)(3), (4) and (5) shall be no greater than the burden of proof or degree of knowledge or intent EPA must provide when it brings an action under the appropriate Act;

[*Comments:* (1) For example, this requirement is not met if State law includes mental state as an element of proof for civil violations.

(2) Under CWA the Agency must establish that a violation was negligent or willful to maintain a criminal action. Under RCRA the degree of criminal intent for EPA prosecution is "knowingly" and under UIC "willful." Criminal prosecution under the State program shall require no greater burden of proof than that for EPA prosecution.]

(c) Any civil penalty assessed, sought or agreed upon by the State Director under subparagraph (a)(3) of this section shall be appropriate to the violation. A civil penalty agreed upon by the State Director in settlement of administrative or judicial litigation may be adjusted by a percentage which represents the likelihood of success in establishing the underlying violation(s) in such litigation. In the event that such a civil penalty, together with the costs of expeditious compliance, would be so severely disproportionate to the resources of the violator as to jeopardize continuance in business, the payment of the penalty may be deferred or the penalty may be forgiven in whole or part, as circumstances may warrant.

For a violation resulting from failure to meet a statutory or final permit compliance deadline, "appropriate to the violation" as used in this paragraph, means a penalty which is equal to:

(1) An amount appropriate to redress the harm or risk to public health or the environment; plus

(2) An amount appropriate to remove the economic benefit gained or to be gained from delayed compliance; plus

(3) An amount appropriate as a penalty for the violator's degree of recalcitrance, defiance, or indifference to requirements of the law; plus

(4) An amount appropriate to recover unusual or extraordinary enforcement costs thrust upon the public; minus

(5) An amount, if any, appropriate to reflect any part of the noncompliance attributable to the government itself; and minus

(6) An amount appropriate to reflect any part of the noncompliance caused by factors completely beyond the violator's control (e.g., floods, fires).

[*Comment:* In addition to the above, the State may have other enforcement remedies. The following enforcement options, while not mandatory, are highly recommended:

(i) Procedures for assessment by the State for the costs of an investigation, inspection, or monitoring survey which led to the establishment of the violation;

(ii) Procedures which enable the State to assess or to sue any persons responsible for the unauthorized activities for any expenses incurred by the State in removing, correcting, or terminating any adverse effects upon the human health and the environment resulting from the unauthorized activity, whether or not accidental;

(iii) Procedures which enable the State to sue for compensation for any loss or destruction of wildlife, fish or aquatic life, and for any other damages caused by unauthorized activity, either for the State for any residents of the State who are directly aggrieved by the unauthorized activity, or both; and

(iv) Procedures for the administrative assessment of penalties by the Director.]

§ 123.11 Progress reports.

States with interim authorization under RCRA (see § 123.32) and States listed as needing a UIC program (see § 123.51) shall submit information every six months in accordance with § 123.36 (RCRA) and § 123.55 (UIC) on the status and progress of State efforts to obtain approval.

§ 123.12 Approval process.

The process for EPA approval of State programs is set out in §§ 123.40 (RCRA), 123.58 (UIC), 123.83 (NPDES) and 123.104 (404).

§ 123.13 Procedure for revision of State programs.

(a) Program revision may be initiated at the request of either EPA or the State. Program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or supplemented. The State shall keep EPA fully informed of any proposed modifications to its basic statutory or regulatory authority, its forms, procedures or priorities.

(b) Revision of a State program shall be accomplished as follows:

(1) The State shall submit a modified program description, Attorney General's Statement, Memorandum of Agreement, or such other documents as are necessary under the circumstances.

(2) Whenever EPA determines that the proposed program modification(s) is substantial, the Agency shall issue public notice and provide an opportunity to comment for a period of at least 30 days. The public notice shall be mailed to interested persons and shall be published in enough of the largest newspapers in the State to provide Statewide coverage. The public notice shall summarize the proposed modifications and provide for the opportunity to request a public hearing. Such a hearing will be held if there is significant public interest.

(3) The program modification shall become effective upon the approval of the Administrator. Notice of any substantial modification shall be published in the Federal Register. Non-substantial program modifications may be approved by a lettter from the Agency.

[*Comment:* The Administrator is expected to delegate his or her authority in this regard to the Regional Administrator. The Regional Administrator's action would, however, be subject to review by EPA Headquarters.]

(c) Approved State programs shall notify EPA whenever the State proposes to transfer all or part of any program from the approved State agency to any other agency, and shall identify any new division of responsibilities among the agencies involved. If such change affects the State's ability to meet the requirements of this Part, the new agency is not authorized to administer the program until approved by the Administrator. Organizational charts required under § 123.4(b) shall be revised and resubmitted.

(d) Whenever the Administrator has reason to believe that circumstances may have changed with respect to a State program, he may request, and the State shall provide a supplemental Attorney General's Statement, program description, other document or information as necessary.

§ 123.14 Criteria for withdrawal of State programs.

(a) The Administrator may withdraw program approval where a State program no longer complies with the requirements of this Part and the State fails to take corrective action. Such circumstances include the following:

(1) Where the State's legal authority no longer meets the requirements of this Part, including:

(i) Failure of the State to promulgate or enact new authorities when necessary; and

(ii) Action by a State legislature or appellate level court striking down or limiting State authorities.

(2) Where the operation of the State program fails to comply with the requirements of this Part, including:

(i) Failure to exercise control over activities required to be regulated under this Part, including failure to issue permits;

(ii) Repeated issuance of permits which do not conform to the requirements of this Part; and

(iii) Failure to comply with the public participation requirements of this Part.

(3) Where the State's enforcement program fails to comply with the requirements of this Part, including:

(i) Failure to act on violations of permits or other program requirements;

(ii) Failure to seek and collect adequate enforcement penalties; and

(iii) Failure to inspect and monitor activities subject to regulation.

(4) Failure to comply with the terms of the Memorandum of Agreement required under § 123.5; and

(5) Such other criteria as provided in the applicable provisions of Subparts B–D.

§ 123.15 Procedures for withdrawal of State programs.

(a) A State with a program approved under this Part may voluntarily transfer program responsibilities required by Federal law to EPA (or to the Secretary in the case of 404 programs) by taking the following actions, or in such other manner as may be agreed upon with the Administrator.

(1) The State shall give the Administrator (and the Secretary in the case of Section 404 programs) 180 days notice of the proposed transfer and shall submit a plan for the orderly transfer of all relevant program information not in the possession of EPA (such as permits, permit files, compliance files, reports, permit applications, etc.) which are necessary for EPA (or the Secretary in the case of section 404 programs) to administer the program.

(2) Within 60 days of receiving the notice and transfer plan, the Administrator (and the Secretary in the case of section 404 programs) shall evaluate the State's transfer plan and shall identify any additional information needed by the Federal Government for program administration and/or identify any other deficiencies in the plan.

(3) At least 30 days before the transfer is to occur the Administrator shall publish notice of the transfer in the Federal Register and in enough of the largest newspapers in the State to provide Statewide coverage, and shall mail notice to all permit holders, permit applicants and other interested persons on appropriate EPA and State mailing lists.

(b) The following procedures apply when the Administrator orders the commencement of proceedings to determine whether to withdraw approval of a State program, other than a UIC program. The process for withdrawing approval of State UIC programs is set out in § 123.59.

(1) *Order.* The Administrator may order the commencement of withdrawal proceedings on his or her own initiative or in response to a petition from an interested person alleging failure of the State to comply with the requirements of this Part or of the appropriate Act as set forth in § 123.14. When the Administrator receives a petition to commence withdrawal proceedings he may conduct an informal investigation of the allegations to determine whether probable cause exists to commence proceedings under this paragraph. The Administrator's order commencing proceedings under this paragraph shall fix a time and place for the commencement of the hearing and shall specify the allegations against the State which are to be considered at the hearing. Within 30 days the State shall admit or deny these allegations in a written answer. The party seeking withdrawal of the State's program shall have the burden of coming forward with the evidence in a proceeding under this paragraph.

(2) *Definitions.* For purposes of this paragraph the definitions of §§ 22.03 (a), (b), (i), (j), and (p) of this Chapter apply in addition to the following:

(i) "Party" means the petitioner, the State, the Agency and any other person whose request to participate as a party is granted.

(ii) "Person" means the Agency, the State and any individual or organization having an interest in the subject matter or the proceeding;

(iii) "Petitioner" means any person whose petition for commencement of withdrawal proceedings has been granted by the Administrator.

(3) *Procedures.* The following provisions of Part 22 of this Chapter are applicable to proceedings under this paragraph:

(i) Section 22.02—(use of number/gender);

(ii) Section 22.04(c)—(authorities of Presiding Officer);

(iii) Section 22.06—(filing/service of rulings and orders);

(iv) Section 22.07 (a) and (b)—*provided*, that the time for commencement of the hearing shall not be extended beyond the date set in the Administrator's order without approval of the Administrator—(computation/extension of time);

(v) Section 22.08—however substitute "order commencing proceedings" for "complaint"—(Ex Parte contacts);

(vi) Section 22.09—(examination of filed documents);

(vii) Section 22.11 (a), (c) and (d), *provided*, motions to intervene must be filed within 15 days from the date the notice of the Administrator's order is first published—(intervention);

(viii) Section 22.16 *provided*, service shall be in accordance with subparagraph (4) of this paragraph, and *provided further*, the words "recommended decision" shall be substituted for the words "initial decision, except as provided in § 22.28" in § 22.18(c),—(motions);

(ix) Section 22.19 (a), (b) and (c)—(prehearing conference);

(x) Section 22.22—(evidence);

(xi) Section 22.23—(objections/offers of proof);

(xii) Section 22.25—(filing the transcript); and

(xiii) Section 22.26—(findings/conclusions).

(4) *Record of proceedings.* (i) The hearing shall be either stenographically reported verbatim or tape recorded, and thereupon transcribed, by an official reporter designated by the Presiding Officer;

(ii) All orders issued by the Presiding Officer, transcripts of testimony, written statements of position, stipulations, exhibits, motions, briefs or other written material of any kind submitted in the hearing shall be a part of the record and shall be available for inspection or copying, upon payment of costs, by the parties or any other persons in the Office of the Hearing Clerk. Inquiries may be made at the office of the Administrative Law Judges, Hearing Clerk, 401 M Street, S.W., Washington, D.C. 20460;

(iii) Upon notice to all parties the Presiding Officer may authorize corrections to the transcript which involve matters of substance;

(iv) An original and two (2) copies of all written submissions to the hearing shall be filed with the Hearing Clerk;

(v) A copy of each such submission shall be served by the person making the submission upon the Presiding Officer and each party of record. Service under this paragraph shall take place by mail or personal delivery;

(vi) Every submission shall be accompanied by an acknowledgement of service by the person served or proof of service in the form of a statement of the date, time and manner of service and the names of the persons served, certified by the person who made service; and

(vii) The Hearing Clerk shall maintain and furnish to any person upon request, a list containing the name, service address and telephone number of all parties and their attorneys or duly authorized representatives.

(5) *Participation by a person not a party.* A person who is not a party may, in the discretion of the Presiding Officer, be permitted to make a limited appearance by making oral or written statement of his position on the issues within such limits and on such conditions as may be fixed by the Presiding Officer, but he may not otherwise participate in the proceeding.

(6) *Rights of parties.* (i) All parties to the proceeding may:

(A) Appear by counsel or other representative in all hearing and pre-hearing proceedings;

(B) Agree to stipulations of facts which shall be made a part of the record.

(7) *Recommended decision.* (i) Within 30 days after the filing of proposed findings and conclusions, the Presiding Officer shall evaluate the record before him, the proposed findings and conclusions and any briefs filed by the parties and shall prepare a recommended decision, and shall certify the entire record, including the recommended decision, to the Administrator.

(ii) Copies of the recommended decision shall be served upon all parties.

(iii) Within 20 days after the certification and filing of the record and recommended decision, all parties may file with the Administrator exceptions to the recommended decision and a brief in support thereof.

(8) *Decision by Administrator.* (i) Within 60 days after the certification of the record and filing of the Presiding Officer's recommended decision, the Administrator shall review the record before him and issue his own decision;

(ii) If the Administrator concludes that the State has administered the program in conformity with the appropriate Act and regulations his decision shall constitute "final agency action" within the meaning of 5 U.S.C. 704.

(iii) If the Administrator concludes that the State has not administered the program in conformity with the appropriate Act he shall list the deficiencies in the program and provide the State a reasonable time, not to exceed 90 days, to take such appropriate corrective action as the Administrator determines necessary.

(iv) Within the time prescribed by the Administrator the State shall take such appropriate corrective action as required by the Administrator and shall file with the Administrator and all parties a statement certified by the State Director that such appropriate corrective action has been taken.

(v) The Administrator may require a further showing in addition to the certified statement that corrective action has been taken.

(vi) If the State fails to take such appropriate corrective action and file a certified statement thereof, the Administrator shall issue a supplementary order withdrawing approval of the State program. If the State takes such appropriate corrective action, the Administrator shall issue a supplementary order stating that approval of authority is not withdrawn.

(vii) The Administrator's supplementary order shall constitute final Agency action within the meaning of 5 U.S.C. 704.

(c) Withdrawal of authorization under this section and the appropriate Act does not relieve any person from complying with the requirements of State law.

§ 123.16 Sharing of information.

(a) Any information obtained or used pursuant to a State program shall be available to EPA upon request without restriction. If the information has been submitted to the State under a claim of confidentiality, the State must submit that claim to EPA when providing information under this Part. Any information obtained from a State and subject to a claim of confidentiality will be treated in accordance with the regulations in 40 CFR Part 2. If EPA obtains from a State information that is not claimed to be confidential, EPA may make that information available to the public without further notice.

(b) EPA may furnish information to States in order to implement these regulations. In the case of information claimed as confidential by submitters, State access will be subject to the rules in 40 CFR Part 2, Subpart B.

§ 123.17 Coordination with other programs.

(a) Initial issuance of State permits under this Part may be coordinated whenever possible and appropriate in timing and procedure with initial issuance of RCRA, NPDES, 404 and UIC permits whether they are controlled by

the State or EPA. If steps are taken to accomplish this coordination, they shall be addressed in the Memorandum of Agreement.

(b) The State director of any approved program which may affect the planning for and development of hazardous waste management facilities and practices shall consult and coordinate with agencies designated under section 4006(b) of RCRA as responsible for the development and implementation of State solid waste management plans under section 4002(b) of RCRA (40 CFR Part 256, proposed at 43 FR 39534–39548, August 22, 1978).

Subpart B—Additional Requirements for State Hazardous Waste Programs

§ 123.31 Purpose and scope.

This subpart describes additional substantive and procedural requirements for State hazardous waste programs under section 3006 of RCRA, and additional features of EPA's review of State hazardous waste programs. In case of any inconsistency between this Subpart and Subpart A, this Subpart is controlling.

§ 123.32 Interim authorization.

(a) Interim authorization may be granted only for the 24 months beginning on the date six months after the date of promulgation of regulations under section 3001 of RCRA at 40 CFR 250, Subpart A (proposed at 43 FR 58954, December 18, 1978). The Administator shall grant interim authorization under section 3006(c) of RCRA if the State's program complies with the requirements of Subparts A and B of this Part (except as provided in paragraph (b)), and the State:

(1) Controls by permit system at least on-site or off-site hazardous waste disposal facilities. The legislative authority to meet this requirement shall be effective no later than 90 days after the date of promulgation of 40 CFR 250, Subpart A, (proposed at 43 FR 58954–58968, December 18, 1978);

(2) Commits adequate resources, and has the administrative capability to process permits and conduct an effective enforcement program, including a program for compliance evaluation.

(b) To obtain interim authorization States need to show compliance with Subparts A and B of this Part, except that they need only show substantial compliance with §§ 123.8, 123.10 and 123.30(a), States need not comply with §§ 123.33 and 123.39 (b), (c) and (d).

[*Comment:* A program to control hazardous waste treatment or storage facilities is desirable but is not required for interim authorization. State, however, that States within interim authorization which have the necessary authorities in existence to implement a manifest system and/or control of treatment and/or storage facilities *must do so.*]

§ 123.33 Authorization.

(a) The Administrator will not grant authorization under section 3006(b) of RCRA to any State hazardous waste programs until after the date of promulgation of regulations under section 3001 of RCRA at 40 CFR 250, Subpart A (proposed at 43 FR 58954–58968, December 18, 1978), or of this Part, whichever is later.

(b) No partial programs will be approved. A State program must comply with all the requirements of Subparts A and B of this Part in order to obtain the approval of the Administrator.

(c) In order to obtain approval, a State program must be consistent with the Federal program and State programs applicable in other States. For purposes of this paragraph, the phrase "State programs applicable in other States" refers only to those hazardous waste programs which have received authorization under this Part. Any aspect of the State program which restricts, impedes, or operates as a ban on the free movement across the State border of hazardous wastes from or to other States for treatment, storage or disposal at facilities having hazardous waste permits under the Federal or an approved State program may be deemed inconsistent for purposes of this paragraph.

§ 123.34 Program description.

The State's program description shall meet the requirements of § 123.4 and include the following:

(a) In the case of a submission for interim authorization the State's program description shall contain the following:

(1) A general description and estimate of:

(i) The number, types and relative sizes of activities to be regulated by the State during the interim authorization period; and

(ii) If available, the total quantity of hazardous wastes expected to be disposed of annually from both in-State and out-of-State sources.

(2) An "authorization plan" which shall describe the additions or modifications necessary to the State program to qualify for authorization under this Part by the end of the interim authorization period. This plan shall include a schedule which the State proposes to achieve these additions or modifications, and shall describe the nature of and schedules for any changes in State legal authority, resource levels, the permit system and the surveillance and enforcement program which will be necessary during the interim authorization period in order to enable the State to become eligible for authorization.

(b) In the case of a submission for authorization, the State's program description shall include:

(1) A description of the State manifest system.

(2) A description of the types and relative sizes of regulated activities, including an estimate of the number of the following:

(i) Generators;

(ii) Transporters; and

(iii) On- and off-site storage, treatment and disposal facilities which must file for or have been issued a State permit.

(3) If available, an estimate of the annual quantities of hazardous wastes:

(i) Generated within the State;

(ii) Transported into or out of the State; and

(iii) Stored, treated, or disposed of: (A) on-site; and (B) off-site.

(c) Where more than one agency within a State has responsibility for administering the State program, an identification of a "lead agency" and a description of how the State agencies will coordinate their activities.

(d) The State's program description may include such other matters as the State deems relevant.

[*Comment:* A State's past performance in responding to situations involving hazardous waste which may present an endangerment to health or the environment will be considered by EPA in deciding whether to approve its hazardous waste programs.]

§ 123.35 Attorney General's statement for interim authorization.

In the case of a submission for interim authorization, the Attorney General's Statement shall certify that the State has legal authority to implement the program (see, § 123.32) and that the authorization plan (see § 123.34(a)(2)), if carried out, would provide the State with the legal authority to meet the requirements for authorization.

§ 123.36 Progress reports.

In accordance with the reporting requirement of § 123.11, the State Director of a State with interim authorization shall submit a semi-annual progress report to the EPA Regional Administrator within four weeks of the date six months after the date of conferral of interim authorization status, and at six month intervals thereafter

until the expiration of interim authorization. Such reports shall briefly summarize, in a manner and form prescribed by the Administrator, the State's compliance in meeting the requirements of the authorization plan, the reasons and proposed remedies for any delay in meeting milestones, and the anticipated problems and solutions for the next reporting period.

§ 123.37 Memorandum of Agreement.

In addition to the requirements of § 123.6, the Memorandum of Agreement shall include provisions on the following:

(a) The Regional Administrator or his designee may conduct inspections of all major HWM facilities in each Federal fiscal year for which the State has received interim authorization or authorization. The Regional Administrator and the State Director may agree to limitations regarding inspections of non-major HWM facilities, generators and transporters.

(b) The State Director shall agree to forward to the Regional Administrator copies of draft permits and permit applications for all major HWM facilities for review and comment. The Regional Administrator and the State Director may agree to limitations regarding review and comment of draft permits and/or permit applications for non-major HWM facilities.

(c) No limitation on EPA inspection of non-major HWM facilities, generators and transporters under paragraph (a), shall restrict EPA's right to inspect any HWM facility, generator or transporter it has cause to believe is not in compliance with RCRA; however, before conducting an inspection, EPA will normally allow the State a reasonable opportunity to conduct a compliance evalution inspection.

[*Comment:* The inspections conducted pursuant to paragraph (a) are intended to be routine compliance evaluation surveys. Except for major HWM facilities, EPA may agree to limit these routine inspections. However, paragraph (c) provides that EPA may inspect any facility, generator or transporter which the Agency has cause to believe is violating RCRA after affording the State the opportunity to investigate the situation.]

§ 123.38 EPA review of State permits.

(a) The Regional Administrator may comment on permit applications and draft permits within the time provided in the Memorandum of Agreement.

(b) Where a comment indicates that EPA believes issuance of the permit would be inconsistent with RCRA or regulations promulgated thereunder, it shall set forth:

(1) A statement of the reasons for the comment (including the section of RCRA or regulations promulgated thereunder that support the comment); and

(2) The actions that should be taken by the State Director in order to address the comments (including the terms and conditions which the permit would include if it were issued by the Regional Administraor).

(c) The Regional Administrator shall withdraw such a comment if satisfied that the State met or refuted his or her concerns.

§ 123.39 Operational requirements.

(a) In addition to meeting the requirements of § 123.8, any State hazardour waste permit program must have legal authority to implement each of the following provisions and shall be administered in accordance with each of the following provisions:

(1) Section 122.23—(Application for a permit);

(2) Section 122.24–(Establishing permit terms and conditions); and

(3) Section 122.27—(Reporting).

(b) State hazardous waste programs must have legal authority to control the facilities and activites covered by §§ 122.25 (special HWM facility permits), 122.26 (permits by rule), and 122.28 (emergency authorizations). States may choose to regulate these facilities and activities in the same manner as EPA under §§ 122.25, 122.26 and 122.28 or in a more stringent manner.

[*Comment:* An example of more stringent control would be the issuance of an individual permit rather than to authorize the activity by rule.]

(c) Any State program shall provide a degree of control over the generation and transportation of hazardous wastes equivalent to 40 CFR Part 250, Subparts B and C (proposed at 43 FR 58969, December 18, 1978, and 43 FR 18506, April 28, 1978, respectively), and shall include the management of manifests involving both intrastate and interstate transportation of hazardous waste. States shall take such measures as may be appropriate to ensure that interstate shipments of hazardous wastes are sent to and arrive at permitted HWM facilities. States must use the manifest format published by the Administrator in the Federal Register (40 CFR 250.22(h), proposed at 43 FR 58977 and 58980), but may supplement that format as appropriate to meet specific requirements or needs.

(d) The State process for identification and/or listing of hazardous waste and the standards applicable to owners and operators of hazardous waste storage, treatement and disposal facilities shall provide a degree of control equivalent to 40 CFR 250, Subpart A and D (proposed at 43 FR 58954–58966 and 58994–59022 respectively, December 18, 1978).

[*Comment:* Section 3006(b) does not require State programs to be identical to EPA's program, but only "equivalent." These regulations identify what is necessary for a program to be considered "equivalent" to the Federal program, and provide the State a degree of flexibility within the basic framework. The degree of flexibility accorded to States has been carefully set out in the regulations themselves. A program will be considered "equivalent" only if it meets all applicable requirements of Part 123.

To meet the requirements of this Part, States need not use the same language or structure as RCRA and its regulations. However, where allowable under State law, EPA encourage States to incorporate Federal requirements by reference.

The proposed regulations of 40 CFR Part 250 indicate, to an extent, certain requirements for State programs which are necessary in order to be deemed "equivalent." For example, 40 CFR 250.10(c), advises States that in order to be deemed equivalent "their programs [must] contain standards and procedures which identify as hazardous at least the same universe of wastes defined as hazardous" by EPA. In addition, the Agency is considering several alternative approaches for systematically judging equivalency with the 40 CFR Part 250 requirements, including requiring States to directly employ 40 CFR Part 250. For further information and discussion see the preamble to this Part.]

§ 123.40 Approval process.

(a) These regulations identify the procedures by which State Program applications for authorization or interim authorization will be developed and process. Except as exressly provided, each of these requirements apply both to requests for authorization and for interim authorization.

(b) Prior to submitting an application to EPA for approval of a State program, the State shall issue public notice of its intent to seek program approval from EPA. This public notice shall:

(1) Be circulated in a manner calculated to attract the attention of interested persons including:

(i) Publication in enough of the largest newspapers in the State to attract Statewide attention; and

(ii) Mailing to persons on the State agency mailing list and to any other persons whom the agency has reason to believe are interested;

(2) Indicate when and where the State's proposed submission may be reviewed by the public or discussed with agency officials in such

informational public meetings as the agency may choose to hold;

(3) Indicate the cost of obtaining a copy of the submission;

(4) Provide for a comment period of not less than 30 days during which interested members of the public can express their views on the proposed program;

(5) Provide that a public hearing will be held by the State or EPA if sufficient public interest is shown or, alternatively, schedule such a public hearing.

(i) Any public hearing to be held by the State on its application for authorization shall be scheduled no earlier than 30 days after the notice of hearing is published;

(ii) The State is not required to hold a separate public hearing on its application for interim authorization. If the State declines to hold a hearing, the State shall state in its notice of application that a public hearing will be held by EPA if sufficient public interest is shown. The State shall participate in any public hearing held by EPA in lieu of a State hearing (see § 123.62(e) (1) and (2));

(6) Indicate what type of authorization the State will seek and briefly outline the fundamental aspects of the State program and, where interim authorization is sought, of the authorization plan; and

(7) Indicate who an interested member of the public should contact with any questions.

(c) If the proposed State program is substantially modified after the public comment period provided in paragraph (b)(4) of this section, the State shall, prior to submitting its program to the Administrator, provide the opportunity for further public comment in accordance with the procedures of paragraph (b) of this section, *provided* that the opportunity for further public comment may be limited to those portions of the State's application which have been changed since the prior public notice.

(d) After complying with the requirements of (b) and (c) above the State may submit, in accordance with § 123.3, a proposed program to EPA for approval. The program submission shall include copies of all written comments received by the State, a transcript or recording of any public hearing which was held by the State and a responsiveness summary which identifies the public participation activities conducted, describes the matter presented to the public, summarizes significant comments received and responds to these comments, including explanations on what the State has done to accommodate these comments.

(e) Within ninety days from the date of receipt of a complete program submission, the Administrator shall:

(1) Make a tentative determination as to whether or not he expects to grant authorization to the State program or issue notice, in accordance with the procedures of paragraph (b) of this section, of a public hearing on the State's application for interim authorization. If the Administrator indicates that he may not approve the State program he shall include a general statement of his areas of concern. The Administrator shall give notice of this tentative determination in the Federal Register and in accordance with subparagraph (b)(1) of this Section;

(2) Schedule a public hearing to be held by EPA no earlier than 30 days after notice of the tentative determination of authorization or of a public hearing on interim authorization, *provided*, that if public interest in a hearing is not expressed, the hearing may be cancelled if a statement to this effect is included in the public notice;

(3) Afford the public 30 days after the notice to comment on the State's submission and the tentative determination; and

(4) Note the availability of the State submission for inspection and copying by the public.

(f) Within ninety days of the notice given pursuant to paragraph (e) of this section, the Administrator shall make a final determination whether or not to approve the State's program taking into account any comments submitted. The Administrator shall give notice of this final determination in the Federal Register and in accordance with subparagraph (b)(1) of this section. If the Administrator determines not to approve the State program, the notification shall include a concise statement of the reasons for this determination.

§ 123.61 Criteria for withdrawal.

In addition to the criteria set forth in § 123.14, any aspect of the State program which restricts, impedes or operates as a ban on the free movement across the State border of hazardous wastes from or to other States for treatment, storage or disposal at facilities having hazardous waste permits under an approved State or Federal program constitutes grounds for withdrawal of authorization.

Subpart C—Additional Requirements for State Underground Injection Control Programs

§ 123.61 Purpose and scope.

(a) This Subpart describes additional substantive and procedural requirements for State UIC programs authorized under sections 1421 and 1422 of SDWA. In case of any inconsistency between this Subpart and Subpart A, this Subpart is controlling.

(b) Each State listed in the Federal Register under section 1422(a) of SWDA shall submit to the Administrator a proposed State UIC program complying with § 123.3 of this Part within 270 days of the date of promulgation of these regulations or within 270 days of the date of listing under section 1422(a) of SDWA, whichever is later. The Administrator may, for good cause, extend the date for submission of a proposed State UIC program for up to an additional 270 days.

(c) EPA will establish a UIC program in any State which does not comply with paragraph (b) of this section. EPA will continue to operate a UIC program in such a State until the State receives approval of a UIC program in accordance with the requirements of this Part.

(d) Any State which desires to operate a UIC program but which is not listed by the Administrator under section 1422(a) of the SDWA may, nonetheless, make a submission for program approval in accordance with the requirements of this Part. In addition to meeting the requirements of § 123.3 of this Part, such a submission shall contain a petition from the Governor of the State requesting that the State be listed.

[*Comment:* States which are authorized to administer the NPDES permit program under section 402 of CWA are encouraged to rely on existing statutory authority, to the extent possible, in developing a State UIC program. Section 402(b)(1)(D) of CWA requires that NPDES States have the authority "to issue permits which . . . control the disposal of pollutants into wells." In many instances, therefore, NPDES States will have existing statutory authority to regulate well disposal which satisfies the requirements of the UIC program. Note, however, that CWA excludes certain types of well injections from the definition of "pollutant." If the State's statutory authority contains a similar exclusion it may need to be modified to qualify for UIC program approval.

Unlisted States are also encouraged to seek UIC approval prior to listing. If EPA determines that the State's program is fully approvable the State will be listed and approved at the same time.]

(e) Whenever a State UIC program is fully approved by EPA, the State

assumes primary enforcement authority under section 1422(b)(3) of SDWA. EPA retains primary enforcement responsibility whenever the State program is disapproved in whole or in part.

[*Comment:* States with fully approved programs have authority to enforce any violation of the underground injection control program. States which have partially approved programs have authority to enforce any violation of the approved portion. In either case, EPA retains authority to enforce violations of a State underground injection control program, except that, when a State has a fully approved program, EPA will not take enforcement actions without providing prior notice to the State and otherwise complying with section 1423 of SDWA.]

(f)(1) If a State can demonstrate that there are no underground injections within the State for one or more types of injection wells subject to SDWA, the State need not submit a program to regulate such injections. However, the State shall demonstrate adequate legal authority to initiate control over such injections should they occur in the future.

(2) State UIC programs may be approved in part or in full within the discretion of the Administration. (See § 122.3, Definition of "Partial Authorization").

§ 123.52 Program description.

(a) In addition to the requirements of § 123.4, the State's program description shall include:

(1) A State permit plan in accordance with paragraph (b) of this section. This permit plan satisfies the requirements of § 123.4(b)(4);

(2) A detailed description of how the State will implement the authorization of underground injection by rule in accordance with § 122.35, including the procedures which will be followed in promulgating such rules.

(3) a brief description and schedule for the State's program to establish and maintain a current inventory of injection wells which are required to be permitted under State law;

(4) A description of aquifers or parts thereof which the State has determined are underground sources of drinking water under § 122.33, a detailed description of the aquifers, or parts thereof, not designated, and a summary of the data upon which the exemptions are based.

(5) A description and schedule for the State's program to establish an inventory of Class V wells, to prohibit Class IV wells and to assess the need for a program to regulate Class V wells.

(b) The State Director shall develop a permit plan which assures that all injection wells within the State, except those authorized by rule, are issued a UIC permit as expeditiously as possible but no later than 5 years after approval of the State UIC program. The permit plan shall:

(1) Describe the State's priorities for issuing permits including the number of permits by class of injectors which will be issued each year over the first five years of operation of the program;

(2) Describe how the State will implement the mechanical integrity testing requirements of § 146.08 including the frequency of testing that will be required and the number of tests that will be reviewed by the State each year; and

(3) Describe how the State will notify injectors of the requirement for a permit and when to file permit applications (i.e, by individual notice, rule, regulation, or statute). The notice required by this paragraph shall clearly establish application filing deadlines as soon as possible but not later than 4 years after program approval for each injection well which must receive a permit.

(c) In determining the priorities required by subparagraphs (b)(1) and (b)(2) the Director shall consider the following factors:

(1) Injection wells known to be contaminating underground sources of drinking water;

(2) Injection wells known to be injecting fluids containing toxic or hazardous contaminants;

(3) Likelihood of contamination of underground sources of drinking water;

(4) Potentially affected population;

(5) Injection wells violating existing State requirements;

(6) Coordination with the issuance of permits required by other State or Federal permits programs;

(7) Age and depth of the injection well; and

(8) Expiration dates of existing State permits, if any.

§ 123.53 Attorney General's Statement.

In addition to the requirements of § 123.5, the State's Attorney General's Statement shall include an analysis of the legal authority for and enforceability of any rule prohibiting or authorizing well injections without a permit.

§ 123.54 Requirement to obtain a permit.

The State may authorize certain well injections by rule rather than by permit. Any authorization by rule shall comply with § 122.35.

§ 123.55 Progress reports.

In accordance with § 123.11, each State listed by the Administrator as needing a UIC program (see § 123.51(b)) shall submit to the Administrator six months after the date of promulgation of these regulations, or six months after the date of listing, whichever is later, a report describing the State's progress in developing a UIC program. If the Administrator extends the time for submission of a UIC program an additional 270 days, pursuant to § 123.51(b), the State shall submit a second report six months after the first report is due. The report shall be in a manner and form prescribed by the Administrator.

§ 123.56 Annual report.

(a) Each approved State shall submit each year a written report to the Administrator (in a manner and form prescribed by the Administrator) consisting of:

(1) The noncompliance information required under § 122.15(b) including a summary of violations during the preceding year;

(2) A summary of enforcement actions taken by the State Director including actions taken to enforce the ban on Class IV wells;

(3) A detailed description of the State's implementation of its program;

(4) Any necessary changes to the program description and the permit plan which more accurately reflect the State's progress in issuing permits;

(5) A list of all permits issued where an alternative for tubing and packer has been approved by the State Director under 40 CFR § 146.12;

(6) An updated inventory of active underground injection operations in the State; and

(7) A summary of all surface water and ground water contamination cases which may have been caused or affected by underground injection.

(b) In addition to the requirements of paragraph (a) of this section the State Director shall provide the Administrator within three months of the completion of the first year of State operation of the UIC program a supplemental report containing information on remedial actions taken by operators of Class II wells based upon these regulations (including information on the results of mechanical integrity testing and on evaluations of construction of nearby wells located within the area of review). The supplemental report required by this paragraph may be submitted along with the annual report if the time for reporting under this paragraph coincides with that of paragraph (a).

[*Comment:* EPA will issue further guidance on the preparation of the "mid-course assessment" required under this paragraph.]

§ 122.57 Operational requirements.

In addition to the requirements of § 123.8, State UIC programs shall have legal authority to implement each of the following provisions and shall be administered in accordance with each of the following provisions:

(a) Section 122.33—(Designation of aquifers);

(b) Section 122.35—(Authorization by rule);

(c) Section 122.36—(Authorization by permit);

(d) Section 122.37—(Area permits);

(e) Section 122.38—(Corrective action);

(f) Section 122.39—(General prohibition against movement of fluids into underground sources of drinking water);

(g) Section 122.42—(Permit terms);

(h) Section 122.43—(Reporting);

(i) Section 122.44—(Special requirements for wells managing hazardous wastes);

(j) Section 122.45—(Elimination of Class IV); and

(k) Section 122.46—(Inventory of Class V).

§ 122.58 Program approval process.

(a) Prior to submitting an application to the Administrator for approval of a State UIC program, the State shall issue public notice of its intent to adopt a UIC program and to seek program approval from EPA. This public notice shall:

(1) Be circulated in a manner calculated to attract the attention of interested persons. Circulation of the public notice shall include publication in enough of the largest newspapers in the State to attract Statewide attention and mailing to persons on appropriate State mailing lists;

(2) Indicate when and where the State's proposed program submission may be reviewed by the public;

(3) Indicate the cost of obtaining a copy of the submission;

(4) Provide for a comment period of not less than 30 days during which interested persons can comment on the proposed UIC program;

(5) Schedule a public hearing on the State program for no less than 30 days after notice of the hearing is published;

(6) Briefly outline the fundamental aspects of the State UIC program; and

(7) Indicate whom an interested member of the public should contact for further information.

(b) After complying with the requirements of paragraph (a) above any State may submit a proposed UIC program under section 1422 of SDWA and § 123.3 of this Part to EPA for approval. In accordance with § 123.3(d)(3), such a submission shall include a showing of compliance with paragraph (a) of this section including a responsiveness summary which identifies the public participation activities conducted, describes the matters presented to the public, summarizes significant comments received and responds to these comments.

(c) Upon determining that a State's submission for UIC program approval is complete the Administrator shall issue public notice of the submission, provide an opportunity to comment, and schedule a public hearing. This notice may specify that a public hearing will not be held unless sufficient public interest is expressed.

(d) Within 90 days of the receipt of a complete submission (as provided in § 123.3) or material amendment thereto, the Administrator shall by rule, either fully approve, disapprove, or approve in part the State's UIC program.

§ 122.59 Withdrawal process.

Approval of a State UIC program may be withdrawn and a Federal program established in its place where the Administrator determines, after holding a public hearing, that the State program is not in compliance with the requirements of SDWA and this Part.

(a) *Notice to State of Public Hearing.* If the Administrator has cause to believe that a State is not administering or enforcing its authorized program in compliance with the requirements of SDWA and this Part, he or she shall inform the State by registered mail of the specific areas of alleged noncompliance. If the State demonstrates to the Administrator within 30 days of such notification that the State program is in compliance, the Administrator shall take no further action toward withdrawal and shall so notify the State by registered mail.

(b) *Public Hearing.* If the State has not demonstrated its compliance to the satisfaction of the Administrator, within 90 days after notification, the Administrator shall inform the State Director and schedule a public hearing to discuss withdrawal of the State program. This hearing shall be convened not less than 60 days nor more than 75 days following the publication of the notice of the hearing. Notice of the hearing shall identify the Administrator's concerns. All interested parties shall be given opportunity to present written and oral testimony on the State's program at the public hearing.

(c) *Notice to State of Findings.* Where the Administrator finds after the public hearing that the State is not in compliance, he or she shall notify the State by registered mail of the specific deficiencies in the State program and of necessary remedial actions. Within 90 days of receipt of the above letter, the State shall either carry out the required remedial action or the Administrator shall withdraw program approval. If the State carries out the remedial action or, as a result of the hearing is found to be in compliance, the Administrator shall so notify the State by registered mail and conclude the withdrawal proceedings.

§ 122.60 State UIC program revisions.

Within 270 days of any amendment to Parts 122, 123, 124 or 146 which revises or adds any requirement respecting an approved State UIC program, the State shall submit such information as is specified by EPA showing that the State UIC program meets the revised or added requirement. Failure by the State to comply with this provision is cause for disapproval or partial disapproval of the State program.

Subpart D—Additional Requirements for State Programs Under the National Pollutant Discharge Elimination System

§ 122.71 Purpose and scope.

(a) This subpart describes additional requirements for State NPDES programs under sections 318, 402 and 405 of CWA. A State NPDES program will not be approved by the Administrator under section 402 of CWA unless it has authority to control the discharges specified in sections 318 and 405(a) of CWA. Permit programs under sections 318 and 405 will not be approved independent of a section 402 permit program.

(b) These regulations are promulgated under the authority of sections 304(i) and 101(e) of CWA, and implement the requirements of those sections.

(c) No partial NPDES programs will be approved by EPA. The State program must regulate (except as provided in § 122.63) all point source discharges of pollutants, discharges into aquaculture projects and disposal of sewage sludge which results in any pollutant from such sludge entering into any waters of the United States within the State's jurisdiction. NPDES authority may be shared by two or more State agencies but each agency must have Statewide jurisdiction over a class of activities.

Where more than one agency is responsible for issuing permits, each agency must make a submission meeting the requirements of § 123.3 before formal EPA review will commence.

[*Comment:* Although these regulations require States to administer complete programs, EPA recognizes that, as a matter of Federal law, a State may lack authority to exercise jurisdiction over discharges from facilities on Indian lands. The lack of such authority does not constitute grounds for refusal to authorize State administration of a program. However, to the extent that States have authority to exercise jurisdiction, they are required to do so.]

(d) After program approval EPA shall retain jurisdiction over any permits (including general permits) which it has issued unless arrangements have been made with the State in the Memorandum of Agreement for the State to assume responsibility for these permits. Retention of jurisdiction shall include the processing of any permit appeals, modification requests, or variance requests; the conduct of inspections, and the receipt and review of self-monitoring reports. If any permit appeal, modification request or variance request is not finally resolved when the Federally issued permit expires, EPA may, when agreed to by the State, continue to retain jurisdiction until the matter is resolved.

(e) In case of any inconsistency between this Subpart and Subpart A, this Subpart is controlling.

§ 123.72 Memorandum of Agreement.

(a) In addition to the requirements of § 123.6, the Memorandum of Agreement between the Regional Administrator and the State Director shall contain provisions specifying the extent to which EPA review of State-issued permits will be waived under sections 402 (d)(3), (e) or (f) of CWA. While the Regional Administrator and the State may agree to waive EPA review of certain "classes or categories" or permits, no waiver of review may be granted for the following discharges:

(1) Discharges into the territorial sea or contiguous zone;

(2) Discharges which may affect the waters of a State other than the one in which the discharge originates;

(3) Proposed general permits (see § 122.82);

(4) Discharges from publicly owned treatment works with a daily average discharge exceeding 1 million gallons per day;

(5) Discharges of uncontaminated cooling water with a daily average discharge exceeding 500 million gallons per day;

(6) Discharges from any major discharger or from any discharger within any of the 21 industrial categories listed in the Appendix A to Part 122;

(7) Discharges from other sources with a daily average discharge exceeding 0.5 (one half) million gallons per day, except that EPA review of permits for discharges on non-process wastewater may be waived, regardless of flow, with the prior concurrence of the EPA Deputy Assistant Administrator for Water Enforcement;

(b) Whenever a waiver is granted under paragraph (a), a statement that the regional Administrator retains the right to terminate the waiver, in whole or in part, at any time by sending the Director written notice of termination. The waiver shall not affect the duty of the State to supply EPA with copies of all permit applications, public notices and final permits.

§ 123.73 Operational requirements.

In addition to the requirements of § 123.8, State NPDES programs shall have legal authority to implement each of the following provisions and must be administered in conformance with each of the following provisions:

(a) Section 122.64 (e) and (f)—(Variance applications);

(b) Section 122.66—(Duration of permits);

(c) Section 122.67—(Prohibitions);

(d) Section 122.68—(Conditions applicable to all permits);

(e) Section 122.69—(Applicable limitations, standards, prohibitions and conditions);

(f) Section 122.70—(Calculation and specification of effluent limitations and standards);

(g) Section 122.71—(Recording/reporting of monitoring results);

(h) Section 122.72—(Non-compliance reporting);

(i) Section 122.73—(Modifications);

(j) Section 122.74—(Permit termination);

(k) Section 122.75—(Disposal into wells, etc.);

(l) Section 122.76—(Concentrated animal feeding operations);

(m) Section 122.77—(Aquatic animal production facilities);

(n) Section 122.78—(Aquaculture projects);

(o) Section 122.79—(Separate storm sewers);

(p) Section 122.80—(Silviculture);

(q) Section 122.82—(General Permits), *provided* States are not required to implement the general permit program under § 122.82. If a State chooses to issue general permits, such action is subject to the following conditions:

(1) Any general permit shall be issued in accordance with § 122.82;

(2) Prior to, or at the time of proposal of any general permit, the State Attorney General (or other legal officer as appropriate, see § 123.5) shall certify that the State has adequate legal authority to issue and enforce general permits;

(3) EPA shall have 90 days to review any proposed general permit; and

(4) All general permits, except those for separate storm sewers, may be objected to on EPA's behalf by the EPA Deputy Assistant Administrator for Water Enforcement. The State shall transmit a copy of any such proposed general permit to the EPA Deputy Assistant Administrator for Water Enforcement at the same time the proposed permit is transmitted to the enforcement Division Director;

(r) Section 124.56—(Fact sheets);

(s) Section 124.58—(Public notice);

(t) Section 124.59—(Comments from government agencies);

(u) Subparts A, B, C, D, H, I, J, K and L of Part 125; and

(v) 40 CFR Parts 129, 133 and Subchapter N.

§ 123.74 Control of disposal of pollutants into wells.

State NPDES permit programs must have authority to issue permits to control the disposal of pollutants into wells. Such authority shall enable the State Director to protect the public health and welfare and to prevent the pollution of ground and surface waters by prohibiting well discharges or by issuing permits for such discharges with appropriate permit terms and conditions.

[*Comment:* States which are authorized to administer the NPDES permit program under section 402 of CWA are encouraged to rely on existing statutory authority, to the extent possible, in developing a State UIC program under section 1422 of SDWA. Section 402(b)(1)(D) of CWA requires that NPDES States have the authority "to issue permits which . . . control the disposal of pollutants into wells." In many instances, therefore, NPDES States will have existing statutory authority to regulate well disposal which satisfies the requirements of the UIC program. Note, however, that CWA excludes certain types of well injections from the definition of "pollutant." If the State's statutory authority contains a similar exclusion it may need to be modified to qualify for UIC program approval.]

§ 123.75 Inspections, monitoring, entry and reporting.

Any State NPDES permit program shall provide adequate authority to inspect, monitor, enter, and require

reports to at least the same extent as required in section 306 of CWA.

§ 123.76 Receipt and use of Federal information.

Upon receiving EPA approval, the State agency administering a permit program shall be sent any relevant information which was collected by EPA. The Memorandum of Agreement under § 123.6 shall provide for the following, in such manner as the State Director and the Regional Administrator shall agree:

(a) Prompt transmission to the State Director from the Regional Administrator of copies of any pending permit applications or any other relevant information collected before the approval of the State permit program and not already in the possession of the State Director. Where existing permits are transferred to the State Director (e.g., for purposes of compliance monitoring, enforcement or reissuance), relevant information includes support files for permit issuance, compliance reports and records of enforcement actions.

(b) Procedures to ensure that the State Director will not issue a permit on the basis of any application received from the Regional Administrator which the Regional Administrator identifies as incomplete or otherwise deficient until the State Director receives information sufficient to correct the deficiency.

§ 123.77 Transmission of information to EPA.

(a) Each State agency administering a permit program shall transmit to the Regional Administrator copies of permit program forms and any other relevant information to the extent and in the manner agreed to by the State Director and the Regional Administrator in the Memorandum of Agreement and not inconsistent with this Part. The Memorandum of Agreement shall provide for the following:

(1) Prompt transmission to the Regional Administrator of a copy of any complete permit applications received by the State Director;

(2) Prompt transmission to the Regional Administrator of notice of every action taken by the State agency related to the consideration of any permit application, including a copy of each proposed or draft permit and any terms, conditions, requirements, or documents which are related to the proposed or draft permit or which affect the authorization of the proposed permit. For proposed permits the State program shall provide a period of time (up to 90 days) in which the Regional Administrator or, where appropriate, the EPA Deputy Assistant Administrator for Water Enforcement (see § 122.73(q)), may comment upon, object to, or make recommendations with respect to the proposed permit. A copy of any comment, objection or recommendation shall be sent to the permit applicant by the Regional Administrator. In the case of general permits, EPA shall have 90 days to comment upon, object to or make recommendations with respect to the proposed permit.

[*Comment:* Normally EPA review time is substantially less than 90 days. However, EPA reserves the right to take a full 90 days to supply specific grounds for objection where a general objection is filed within the review period of the Memorandum of Agreement.]

(3) Transmission to the Regional Administrator of a copy of every issued permit following issuance, along with any and all terms, conditions, requirements, or documents which are related to or affect the authorization of the permit.

(b) The State program shall provide for transmission by the State Director to EPA of:

(1) Notices from publicly owned treatment works under § 122.68 and 40 CFR Part 403, upon request of the Regional Administrator;

(2) A copy of any significant comments presented in writing pursuant to the public notice and a summary of any significant comments presented at any hearing on any draft permit if:

(i) The Regional Administrator requests this information; or

(ii) The proposed permit contains requirements significantly different from those contained in the tentative determination and draft permit; or

(iii) Significant comments adverse to the tentative determination and draft permit have been presented at the hearing or in writing pursuant to the public notice; and

(3) A quarterly noncompliance report in accordance with § 122.72.

(c) Within the time period agreed upon in the Memorandum of Agreement, (or 90 days in the case of proposed general permits), the Regional Administrator (or, where appropriate, the EPA Deputy Assistant Administrator for Water Enforcement) pursuant to the right to object provided in CWA and § 123.78, may comment upon, object to, or make recommendations on any proposed permit.

(d) The Regional Administrator may, by agreement with the State Director in the Memorandum of Agreement (see § 123.72) waive the right to review, object to, or comment upon proposed permits for classes, types or sizes of discharges within any category of point sources, including the right to receive information under paragraphs (a)(2) and (b)(2) of this section.

(e) Any State permit program shall keep such records and submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the State program complies with the requirements of CWA or of this Part.

§ 123.78 Objections to proposed permits.

(a)(1) Within the period of time provided under the Memorandum of Agreement, the Regional Administrator shall notify the State Director of any objection to issuance of a proposed permit (except as provided in subparagraph (2) of this paragraph for proposed general permits). This notification shall set forth in writing the general nature of the objection.

(2) Within 90 days following receipt of the proposed permit which has been objected to under subparagraph (1), or in the case of general permits within 90 days after receipt of the proposed general permit, the Regional Administrator, or, in the case of general permits other than for separate storm sewers, the EPA Deputy Assistant Administrator for Water Enforcement shall also set forth in writing and transmit to the State Director:

(i) A statement of the reasons for the objection (including the section of CWA or regulations that support the objection), and

(ii) The actions that must be taken by the State Director in order to eliminate the objection (including the effluent limitations and conditions which the permit would include if it were issued by the Regional Administrator).

[*Comment:* This paragraph, in effect, modifies any existing agreement between EPA and the State which provides less than 90 days for EPA to supply the specific grounds for an objection. However, where an agreement provides for an EPA review period of less than 90 days, EPA must file a general objection, in accordance with subparagraph (a)(1) within the time specified in the agreement. This general objection will be followed by a specific objection within the 90-day statutory period. This modification to the MOA's is necessary since the Clean Water Act of 1977 now requires EPA to provide detailed information concerning acceptable permit terms and conditions. To avoid possible confusion, MOA's should be changed to reflect this.]

(b) The Regional Administrator may object to the issuance of a proposed permit as being outside the guidelines and requirements of CWA. This

objection must be based upon one or more of the following grounds:

(1) The permit fails to apply, or to ensure compliance with, any applicable requirement of this Part;

[*Comment:* Under the provisions of this section, a permit not requiring the achievement of required effluent limitations by applicable statutory deadlines shall be subject to objection by the Regional Administrator.]

(2) In the case of any proposed permit for which notification to the Administrator is required under section 402(b)(5) of CWA, the written recommendations of an affected State have not been accepted by the permitting State and the Regional Administrator finds the reasons for rejecting the recommendations are inadequate;

(3) The procedures followed in connection with formulation of the proposed permit failed in a material respect to comply with procedures required by CWA or by regulations thereunder or by the Memorandum of Agreement;

(4) Any finding made by the State Director in connection with the proposed permit misinterprets CWA or any guidelines or regulations under CWA, or misapplies them to the facts;

(5) Any provisions of the proposed permit relating to the maintenance of records, reporting, monitoring, sampling, or the provision of any other information by the permittee are inadequate, in the judgment of the Regional Administrator, to assure compliance with permit conditions, including effluent standards and limitations required by CWA, by the guidelines and regulations issued under CWA, or by the proposed permit;

(6) In the case of any proposed permit with respect to which applicable effluent standards and limitations under sections 301, 302, 306, 307, 318, 403 and 405 of CWA have not yet been promulgated by the Agency, the proposed permit, in the judgment of the Regional Administrator, fails to carry out the provisions of CWA or of any regulations issued under CWA;

[*Comment:* The provisions of this subparagraph apply to determinations made pursuant to § 125.3(c)(2) in the absence of applicable guidelines and to best management practices under section 304(e) of CWA, which must be incorporated into permits as requirements under sections 301, 306, 307, 318, 403 or 405, as the case may be.]

(7) Issuance of the proposed permit would in any other respect be outside the requirements of CWA, or regulations issued under CWA.

(c) Prior to notifying the State Director of an objection based upon any of the grounds set forth in paragraph (b) of this section, the Regional Administrator:

(1) Shall consider all data transmitted pursuant to § 123.77;

(2) May, if the information provided is inadequate to determine whether the proposed permit meets the guidelines and requirements of CWA, request the State Director to transmit to the Regional Administrator the complete record of the permit proceedings before the State, or any portions of the record that the Regional Administrator determines are necessary for review. If this request is made within 30 days of receipt of the State submittal under § 123.77, it shall constitute an interim objection to the issuance of the permit, and the full period of time specified in the Memorandum of Agreement for the Regional Administrator's review shall recommence when the Regional Administrator has received such record or portions of the record; and

(3) May, in his or her discretion, and to the extent feasible within the period of time available under the Memorandum of Agreement, afford to every interested person an opportunity to comment on the basis for an objection;

(d) Within 90 days of receipt by the State Director of an objection by the Regional Administrator, the State or interstate agency or any interested person may request that a public hearing be held by the Regional Administrator on the objection. Following a request, the Regional Administrator shall provide public notice and hold a public hearing in accordance with the procedures of §§ 124.11 and 124.13 if warranted by significant public interest. A hearing shall be held whenever requested by the State or the interstate agency which proposed the permit.

(e) A public hearing held under paragraph (d) shall be conducted by an EPA panel in an orderly and expeditious manner. Members of this panel shall include the Regional Administrator, the Assistant Administrator for Enforcement, the General Counsel, or their respective representatives.

(f) At the conclusion of the public hearing the Regional Administrator shall reaffirm the original objection, modify the terms of the objection, or withdraw the objection, and shall notify the State of this decision.

(g) Where the Regional Administrator has objected to a proposed permit under this section, he or she may issue the permit in accordance with Parts 121, 122 and 124 and any other guidelines and requirements of CWA in the following circumstances:

(1) If no public hearing is held under paragraph (d) and the State does not resubmit a permit revised to meet the Regional Administrator's objection within 90 days of receipt of the objection; or

(2) If a public hearing is held under paragraph (d) and the State does not resubmit a permit revised to meet the Regional Administrator's objection or modified objection within 30 days of the date of the Regional Administrator's notification under paragraph (f) of this section.

[*Comment:* Where the time set out in this paragraph expires without acceptable State action, exclusive authority to issue the permit passes to EPA.]

(h) In the case of proposed general permits for discharges other than from separate storm sewers substitute "EPA Deputy Assistant Administrator for Water Enforcement" for "Regional Administrator" whenever it appears in paragraphs (b), (c), (d), (f), and (g).

§ 123.79 Prohibition.

Any State permit program shall provide that no permit shall be issued when the Regional Administrator has objected in writing under section 402(d) of CWA.

§ 123.80 Compliance evaluation programs.

In addition to the requirements of § 123.9, State compliance evaluation programs shall:

(a) Have procedures and ability for:

(1) The maintenance of a comprehensive inventory of all sources covered by NPDES permits and a forecast of all reporting requirements to the State agency;

(2) Initial screening (i.e., pre-enforcement evaluation) of all permit or grant-related compliance information to identify violations and to establish the priority for further substantive technical evaluation;

(3) Where warranted, a substantive technical evaluation following the initial screening of all permit or grant-related compliance information to determine the appropriate agency response;

(4) The maintenance of a management information system which supports the compliance evaluation activities of this Part.

(b) Provide for inspections of the facilities of all major dischargers (see *Comment* to § 122.72) at least annually.

§ 123.81 Continuing planning process.

Any State permit program shall have an approved continuing planning process under 40 CFR Parts 130 and 131

and shall assure that its approved planning process is at all times consistent with CWA.

§ 123.82 Agency board membership.

(a) Each State permit program shall ensure that any board or body which approves all or portions of permits shall not include as a member any person who receives, or has during the previous 2 years received, a significant portion of income directly or indirectly from permit holders or applicants for a permit.

(b) For the purposes of this section:

(1) "Board or body" includes any individual, including the Director, who has or shares authority to approve all or portions of permits either in the first instance, as modified or reissued, or on appeal.

(2) "Significant portion of income" shall mean 10 percent or more of gross personal income for a calendar year, except that it shall mean 50 percent or more of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving that portion under retirement, pension, or similar arrangement.

(3) "Permit holders or applicants for a permit" shall not include any department or agency of a State government, such as a Department of Parks or a Department of Fish and Wildlife.

(4) "Income" includes retirement benefits, consultant fees, and stock dividends.

(c) For the purposes of this section, income is not received "directly or indirectly from permit holders or applicants for a permit" where it is derived from mutual fund payments, or from other diversified investments over which the recipient does not know the identity of the primary sources of income.

§ 123.83 Approval process.

(a) After determining that a State program submission is complete, EPA shall publish notice of the State's application in the Federal Register, and in enough of the largest newspapers in the State to attract statewide attention, and shall mail notice to persons known to be interested in such matters, including all people on appropriate State and EPA mailing lists and all permit holders and applicants within the State. This notice shall:

(1) Provide a comment period of not less than 45 days during which interested members of the public may express their views on the State program;

(2) Provide for a public hearing within the State to be held no less than 30 days after notice is published in the Federal Register;

(3) Indicate the cost of obtaining a copy of the State's submission;

(4) Indicate where and when the State's submission may be reviewed by the public;

(5) Indicate whom an interested member of the public should contact with any questions; and

(6) Briefly outline the fundamental aspects of the State's proposed program, and the process for EPA review and decision.

(b) Within 90 days of the receipt of a complete program submission under § 123.3 the Administrator shall approve or disapprove the program based on the requirements of this Part and of CWA and taking into consideration all comments received. A responsiveness summary shall be prepared by the Regional Office which identifies the public participation activities conducted, describes the matters presented to the public, summarizes significant comments received and explains the Agency's response to these comments.

(c) If the Administrator approves the State's program he or she shall notify the State and publish notice in the Federal Register. EPA shall suspend the issuance of permits as of the date of program approval.

(d) If the Administrator disapproves the State program he or she shall notify the State of the reasons for the disapproval and of any revisions or modifications to the State program which are necessary to obtain approval.

Subpart E—Additional Requirements for State Programs Under Section 404 of the Clean Water Act

§ 123.91 Purpose and scope.

(a) This Subpart describes additional requirements, both procedural and substantive, for State permit programs under section 404 of the Clean Water Act (regulating discharges of dredged or fill material). Since EPA does not operate the section 404 program, there is no Subpart E to Part 122. Additional permit application and processing requirements applicable to State programs are set out in this Subpart.

(b) These regulations are promulgated under the authority of sections 101(e) and 501(a) of CWA.

(c) No partial section 404 programs will be approved by EPA. Except as provided in § 123.107, the State program must regulate all discharges of dredged or fill material into waters of the United States (as delineated in CWA section 404(g)(1)) within the State's jurisdiction.

(d) After program approval the Secretary shall retain jurisdiction over any permits (including general permits) which he or she has issued unless arrangements have been made with the State in the Memorandum of Agreement under § 123.93 for the State to assume responsibility for these permits. Retention of jurisdiction shall include the processing of any permit appeals, or modification requests; the conduct of inspections, and the receipt and review of self-monitoring reports. If any permit appeal or modification request is not finally resolved when the Federally issued permit expires, the Secretary, upon agreement with the State, may continue to retain jurisdiction until the matter is resolved.

[*Comment:* Under section 404(h)(5) of CWA, States are entitled, after program approval, to administer and enforce general permits issued by the Secretary. If the State chooses not to administer and enforce these permits, the Secretary retains jurisdiction until they expire.]

(e) In case of any inconsistency between this Subpart and Subpart A, Part 122 or Part 124, this Subpart is controlling.

(f) Compliance with a permit issued by a State approved under this Part during its term, including any activity conducted in compliance with a general permit, constitutes compliance for purposes of sections 309 and 505 of CWA, with sections 310, 307 and 403, except for any standard imposed under section 307(a)(5) of CWA.

§ 123.92 Memorandum of Agreement.

(a) In addition to the requirements of § 123.8, the Memorandum of Agreement between the regional Administrator and the State Director shall contain provisions on the scope of the waivers available under sections 404(b) or (l) of CWA. The Regional Administrator and the State, after consultation with the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service, may agree to waive Federal review of certain "classes or categories" of permits. No waiver may be granted for the following activities:

(1) Discharges which may affect the waters of a State other than one in which the discharge originates;

(2) Major dischargers;

[*Comment:* EPA will formulate guidance defining what discharges are "major" under this paragraph. Comments are welcome.]

(3) Discharges into critical areas including fish and wildlife sanctuaries, National and historical monuments, wilderness areas and preserves,

National and State parks and the designated critical habitat of threatened or endangered species.

[*Comment:* EPA is considering adding to this list of critical areas. Comments are welcome.]

(4) Proposed general permits; or

(5) Discharges known or suspected to contain toxic pollutants in toxic amounts or hazardous substances in reportable quantities.

(b) Whenever a waiver is granted under paragraph (a), the Memorandum of Agreement shall contain a statement that the Regional Administrator retains the right to terminate the waiver, in whole or in part, at any time by sending the Director written notice of termination. Notwithstanding any waiver, the State shall continue to supply EPA with copies of permit applications, public notices and final permits when requested by EPA. Nothing in this Section shall diminish the Administrator's authority under section 404(c) or the State's obligation under section 404(h)(1)(F) of CWA.

§ 123.93 Memorandum of Agreement with the Secretary.

In the case of section 404 programs the State shall enter into a Memorandum of Agreement with the Secretary, which shall include:

(a) An identification of those waters in which the Secretary will suspend the issuance of section 404 permits (pursuant to sections 404(g)(1) and (h)(2) of CWA) upon approval of the State program by the Administrator;

(b) Where an agreement is reached, procedures for joint processing of permits for activities which require both a section 404 permit from the State and a section 9 or 10 permit from the Secretary under the Rivers and Harbors Act of 1899.

(c) An identification of those individual and general permits, if any, issued by the Secretary, the terms and conditions of which the State intends to administer and enforce (including inspection, monitoring, and surveillance responsibilities) upon receiving approval of its program and a plan for transferring responsibility for these permits to the State.

[*Comment:* In many instances States will lack the authority to directly administer permits issued by the Federal government. However, procedures may be established to transfer responsibility for these permits. For example, a State could, in one action, issue permits identical to the outstanding Federal permits which could be simultaneously revoked. An individual Corps' permit may be transferred to a State only where the State has the authority to administer and enforce all terms and conditions of the Federal permit.]

(d) Procedures whereby the Secretary will transfer to the State pending section 404 permit applications and other relevant information, as specified in § 123.97.

(e) A provision stating that the State shall not issue any section 404 permit for a discharge which, in the judgment of the Secretary after consultation with the Secretary of the Department in which the Coast Guard is operating, would substantially impair anchorage or navigation.

(f) Those "classes or categories", if any, of proposed State permits for which the Secretary waives the right to review.

(g) Other matters not inconsistent with this Part that the Secretary and the State deem appropriate.

[*Comment:* Where an approved State permit program includes coverage of those traditionally navigable waters in which only the Secretary may issue section 404 permits (by virtue of section 404(g)(1) of CWA), the State is strongly encouraged to establish in this MOA, procedures for joint processing of Federal and State permits, including joint public notices and public hearings.]

§ 123.94 Attorney General's Statement.

In addition to the requirements of § 123.5, the State Attorney General's Statement shall contain:

(a) An analysis of the State's law prohibiting the taking of private property without just compensation, including any applicable judicial interpretations, and assurance that this will not adversely affect the successful implementation of the State's regulation of the discharge of dredged or fill material.

(b) A certification that upon program approval, the State will have authority to prohibit, deny, restrict, or withdraw the specification of disposal sites for the discharge of dredged or fill material in any defined area of those waters for which the State receives section 404 authority, including:

(1) Authority to apply the criteria contained in 40 CFR Part 230;

(2) Authority (similar to EPA's authority under section 404(c)) to prohibit the discharge of dredged or fill material into areas where such discharges would have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife or recreational areas;

[*Comment:* The above authority to prohibit, deny, restrict, or withdraw the specification of disposal sites should not be limited to situations where an application for a 404 permit has been made, but should also include the authority to designate areas which will not be available for disposal site specification, as described in 40 CFR 230.7(d). Nothing in subparagraph (b)(2) is intended to limit the Administrator's authority to take similar actions under section 404(c) of CWA.]

§ 123.96 Program description.

In addition to the requirements of § 123.4, the State's program description shall:

(a) Designate one agency to be responsible for issuing section 404 permits.

(b) Describe how the State section 404 agency will interact with other State and local agencies.

(c) Describe the categories and sizes of discharges of dredged or fill material for which the State Director proposes to issue permits. For each category, the following information shall be given:

(1) An estimate of the number of facilities within each category which must file for a permit; and

(2) An estimate of the number and percent of activities within each category for which the State has already issued a State permit or equivalent document regulating the discharge.

(d) Describe the specific best management practices requirements proposed to be used to satisfy the exemption provisions of section 404(f)(1)(E) of CWA for construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment in accordance with § 123.107.

(e) A description of how the State will coordinate its enforcement strategy with that of the Corps of Engineers and EPA.

§ 123.98 Inspections, monitoring, entry and reporting.

Any State permit program shall provide adequate authority to inspect, monitor, enter, and require reports to at least the same extent as required in section 308 of CWA.

§ 123.97 Receipt and use of Federal information.

Upon receiving EPA approval, the State agency administering a permit program shall be sent any relevant information which was collected by the Secretary. The Memorandum of Agreement under § 123.93 shall provide for the following, in such manner as the State Director and the Secretary shall agree:

(a) Prompt transmission to the State Director from the Secretary of copies of any pending permit applications or any other relevant information collected before the approval of the State permit program and not already in the possession of the State Director. Where existing permits are transferred to the

State Director (e.g., for purposes of compliance monitoring, enforcement or reissuance), relevant information includes support files for permit issuance, compliance reports and records of enforcement actions.

(b) Procedures to ensure that the State Director will not issue a permit on the basis of any application received from the Secretary which the Secretary has identified as incomplete or otherwise deficient until the State Director receives information sufficient to correct the deficiency.

§ 123.93 Transmission of information to EPA.

(a) Each State agency administering a section 404 permit program shall transmit by certified mail to the Regional Administrator, the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service copies of permit programs forms and any other relevant information to the extent and in the manner agreed to by the Director and the Regional Administrator in the Memorandum of Agreement under § 123.6. The Memorandum of Agreement shall provide for the following:

(1) Prompt transmission to the Regional Administrator of a copy of any complete permit applications received by the State Director. Where State law requires preparation of an environmental impact statement (EIS) or similar process, such EIS or other document shall accompany the permit application when transmitted to the Regional Administrator.

(2) Prompt transmission to the Regional Administrator of notice of every action taken by the State agency related to the consideration of any permit application, including a copy of each proposed permit and any terms, conditions, requirements, or documents which are related to the proposed permit or which affect the authorization of the proposed permit. The State program shall provide:

(i) A period of time (up to 90 days) in which the Regional Administrator may comment upon, object to, or make recommendations with respect to the permit application or the proposed permit. A copy of any comment, objection or recommendation shall be sent to the permit applicant by the Regional Administrator.

[*Comment:* Except as provided in paragraph (c), EPA review is usually restricted to permit applications; however, in some cases the Agency may request the State to prepare a proposed permit.]

(ii) Procedures for action by the State agency following a written objection by the Regional Administrator under section 404(j) of CWA.

(iii) For the transmission to the Regional Administrator of a copy of every issued permit following issuance, along with any and all terms, conditions, requirements, or documents which are related to or affect the authorization of the permit.

(b) Within the time period agreed upon the Memorandum of Agreement, the Regional Administrator, pursuant to the right to object provided in CWA and § 123.99, may comment upon, object to, or make recommendations with respect to any permit application or proposed permit. The Regional Administrator shall notify the State Director of his or her intent to comment upon or object to a permit application or a proposed permit within 30 days of receipt, however, if the State proposes to issue a permit which differs from that described in the permit application such approved permit shall be transmitted for review in accordance with this section and §§ 123.99 and 123.110. The Regional Administrator may notify the State that there is no comment but reserve the right to object based on any new information brought out by the public during the comment period or at a hearing.

(c)(1) For discharges listed in § 123.92(a), State section 404 programs shall comply with the draft permit requirements of §§ 124.6 (a) and (b), 124.8 and 124.9, as provided in § 123.8.

(2) For discharges not listed in § 123.92(a), EPA and public review shall be based on the permit application unless EPA requests the State to prepare a proposed permit under § 123.93(c)(2). For these discharges States need not comply with §§ 124.6 (a) and (b), 124.8 and 124.9.

§ 123.99 Objections to permits.

(a)(1) Within the period of time provided under the Memorandum of Agreement, the Regional Administrator shall notify the State Director of any objection to issuance of a permit. This notification shall set forth in writing the general nature of the objection.

(2) Within 90 days following receipt of a permit application or the proposed permit which has been objected to under subparagraph (1), the Regional Administrator shall also set forth in writing and transmit to the State Director:

(i) A statement of the reason(s) for the objection (including the section of CWA or regulations that support the objection), and

(ii) The actions that must be taken by the State Director in order to eliminate the objection (including the conditions which the permit would include if it were issued by the Regional Administrator).

(3) When the State Director has received an objection to a permit application or proposed permit under this section but has taken the steps required by the Regional Administrator to eliminate the objection, the revised permit shall be transmitted to the Regional Administrator for review. If no further objection is received from the Regional Administrator within 15 days of the receipt of the revised permit, the Director may issue the permit.

(b) Any objection under this section must be based upon one or more of the following grounds:

(1) The permit fails to apply, or to ensure compliance with, any applicable requirement of this Part;

(2) In the case of any proposed permit for which notification to the Administrator is required under section 404(h)(1)(E) of CWA, the written recommendations of an affected State have not been accepted by the permitting State and the Regional Administrator finds the reasons for rejecting the recommendations are inadequate;

(3) The procedures followed in connection with formulations of the proposed permit failed in a material respect to comply with procedures required by CWA, regulations and guidelines thereunder or by the Memorandum of Agreement;

(4) Any finding made by the State Director in connection with the proposed permit misinterprets CWA or any guidelines or regulations under CWA, or misapplies them to the facts.

(5) Any provisions of the permit application or the proposed permit relating to the maintenance of records, reporting, monitoring, sampling, or the provision of any other information by the permittee are inadequate, in the judgment of the Regional Administrator, to assure compliance with permit conditions, including water quality standards, required by CWA, by Part 230 guidelines issued under CWA, or by the proposed permit;

(6) In the case of any proposed permit with respect to which applicable standards and limitations have not yet been promulgated by the Agency, the proposed permit, in the judgment of the Regional Administrator, fails to carry out the provisions of CWA; or any regulations issued under CWA;

(7) The information contained in the permit application is insufficient to judge compliance with 40 CFR Part 230; or

(8) Issuance of a permit would in any other respect be outside the requirements of section 404 of CWA, or regulations implementing section 404 of CWA.

(c) Prior to notifying the State Director of an objection based upon any of the grounds set forth in paragraph (b) of this section, the Regional Administrator:

(1) Shall consider all data transmitted pursuant to §§ 123.98 and 123.110.

(2) Shall, if the information provided is inadequate to determine whether the permit application or proposed permit meets the guidelines and requirements of CWA, request the State Director to transmit to the Regional Administrator the complete record of the permit proceedings before the State, or any portions of the record or other information that the Regional Administrator determines are necessary for review. This request shall be made within thirty days of receipt of the State submittal under § 123.98. It shall constitute an interim objection to the issuance of the permit, and the full period of time specified in the Memorandum of Agreement for the Regional Administrator's review shall recommence when the Regional Administrator has received such record or portions. Alternatively, the Regional Administrator, within thirty days of receipt may request the State Director to supplement the application with specified new information (which may include a proposed permit or other information) and resubmit such amended application to EPA and the other Federal agencies under § 123.98. Such amended application (and/or proposed permit) shall be considered a new application for the purposes of Federal and public review procedures.

[*Comment:* It is anticipated that proposed permits will be requested only in exceptional and/or complex cases.]

(3) May, in his or her discretion, and to the extent feasible within the period of time available under the Memorandum of Agreement, afford to every interested person an opportunity to comment on the basis for an objection;

(d) Within 90 days of receipt by the State Director of an objection by the Regional Administrator, the State or any interested person may request that a public hearing be held by the Regional Administrator on the objection. Following a request, the Regional Administrator shall provide public notice and hold a public hearing in accordance with the procedures of §§ 124.12 and 124.13 if warranted by significant public interest. A hearing shall be held whenever requested by the State which proposed the permit.

(e) A public hearing held under paragraph (d) shall be conducted by an EPA panel in an orderly and expeditious manner. Members of this panel shall include the Regional Administrator, the Assistant Administrator for Enforcement, the General Counsel, the Assistant Administrator for Water and Waste Management, or their respective representatives.

(f) At the conclusion of the public hearing the Regional Administrator shall reaffirm the original objection, modify the terms of the objection, or withdraw the objection, and shall notify the State of this decision.

(g) Where the Regional Administrator has objected to a proposed permit under this section, the Secretary may issue the permit in accordance with the guidelines and regulations of CWA in the following circumstances:

(1) If no public hearing is held under paragraph (d) and the State does not resubmit a permit revised to meet the Regional Administrator's objection within 90 days of receipt of the objection; or

(2) If a public hearing is held under paragraph (d) and the State does not resubmit a permit revised to meet the Regional Administrator's objection or modified objection within 30 days of the date of the Regional Administrator's notification under paragraph (f) of this section.

(h) For purposes of this section any draft permit prepared under § 124.6 shall be considered a proposed permit.

§ 123.100 Prohibitions.

No permit shall be issued by the Director in the following circumstances:

(a) Where the terms or conditions of the permit do not comply with the requirements of CWA, or regulations and guidelines implementing CWA, including the section 404(b)(1) environmental guidelines. (40 CFR Part 230).

(b) Where the Regional Administrator has objected to issuance of the permit under section 404(j) of CWA and where such objection has not been satisfied or resolved.

(c) Where, in the judgment of the Secretary of the Army acting through the Chief of Engineers, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge.

(d) Where the proposed discharge would be into a defined area for which specification as a disposal site has been prohibited, restricted, denied, or withdrawn by the Administrator under section 404(c) of CWA, or by the State Director, and where such discharge would fail to comply with the Director's actions under those authorities.

§ 123.101 Enforcement authority.

In addition to the requirements of § 123.10, State section 404 programs shall include procedures which enable the State Director immediately and effectively to halt or eliminate any unauthorized discharges of dredged or fill material, including the authority to do each of the following:

(a) Issue a cease and desist or an interim protective order to any person responsible for, or involved in an unauthorized discharge.

(b) Sue in the appropriate State court to immediately restrain any person responsible for, or involved in an unauthorized discharge, and

(c) Immediately notify the Regional Administrator by telephone, and by subsequent written confirmation, of any actual or threatened endangerment to the public health and welfare resulting from any discharge of dredged or fill material.

§ 123.102 Continuing planning process.

Any State permit program shall have an approved continuing planning process under 40 CFR Parts 130 and 131 and shall assure that its approved planning process is at all times consistent with CWA.

§ 123.103 Agency board membership.

(a) Each State permit program shall ensure that any board or body which approves all or portions of permits shall not include as a member any person who receives, or has during the previous 2 years received, a significant portion of income directly or indirectly from permit holders or applicants for a permit.

(b) For the purposes of this section:

(1) "Board or body" includes any individual, including the Director, who has or shares authority to approve all or portions of permits either in the first instance, as modified or reissued, or an appeal.

(2) "Significant portion of income" shall mean 10 percent or more of gross personal income for a calendar year, except that it shall mean 50 percent or more of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving that portion under retirement, pension, or similar arrangement.

(3) "Permit holders or applicants for a permit" shall not include any department or agency of a State government, such as a Department of

Parks or a Department of Fish and wildlife.

(4) "Income" includes retirement benefits, consultant fees, and stock dividends.

(c) For the purposes of this section, income is not received "directly or indirectly from permit holders or applicants for a permit" where it is derived from mutual fund payments, or from other diversified investments which the recipient does not know the identity of the primary sources of income.

§ 123.104 Approval process.

(a) Within 10 days of receipt of a State section 404 program submission under § 123.3 of this Part, the Administrator shall provide copies of the State's submission to the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service.

(b) After determining that a State program submission is complete, EPA shall publish notice of the State's application in the Federal Register, and in enough of the largest newspapers in the State to attract Statewide attention, and shall mail notice to persons known to be interested in such matters, including all people on appropriate State, EPA and Corps of Engineers mailing lists and all permit holders and applicants within the State. This notice shall:

(1) Provide a comment period of not less than 45 days during which interested members of the public may express their views on the State program;

(2) Provide for a public hearing within the State to be held no less than 30 days after notice is published in the Federal Register;

(3) Indicate the cost of obtaining a copy of the State's submission;

(4) Indicate where and when the State's submission may be reviewed by the public;

(5) Indicate whom an interested member of the public should contact with any questions; and

(6) Briefly outline the fundamental aspects of the State's proposed program, and the process for EPA review and decision.

(c) Within 120 days of the receipt of a complete program submission under § 123.3, the Administrator shall approve or disapprove the program based on the requirements of this Part and of CWA and taking into consideration all comments received. A responsiveness summary shall be prepared by the Regional Office which identifies the public participation activities conducted, describes the matters presented to the public, summarizes significant comments received and explains the Agency's response to these comments.

(d) If the Administrator approves the State's section 404 program he or she shall notify the State and the Secretary and publish notice in the Federal Register. The Secretary shall suspend the issuance of section 404 permits by the Corps of Engineers within the State, except for those waters specified in section 404(g)(1) of CWA as identified in the Memorandum of Agreement between the State and the Secretary (see § 123.93).

(e) If the Administrator disapproves the State program he or she shall notify the State of the reasons for the disapproval and of any revisions or modifications to the State program which are necessary to obtain approval.

§ 123.105 Applicable conditions and requirements.

In addition to the requirements of § 122.11, each permit issued by the State Director shall provide for and ensure:

(a) That the discharge will be conducted in compliance with the section 404(b)(1) environmental guidelines (40 CFR Part 230), including conditions to ensure that the discharge will be conducted in a manner which minimizes adverse impact upon the physical, chemical, and biological integrity of the waters of the United States.

(b) That if a toxic effluent standard or prohibition for dredged material (including any schedule of compliance specified in such effluent standard or prohibition) is established under section 307(a) of CWA for a toxic pollutant present in the permittee's discharge and that standard or prohibition is more stringent than any limitation upon such pollutant in the permit, the State Director shall modify the permit to conform to the toxic effluent standard or prohibition and so notify the permittee.

(c) That the permit (other than general permits) shall include a detailed sketch, specifying location and boundaries of the proposed discharge site including a limitation of the quantity and type of dredged or fill material which may be discharged at that site. In open water sites, a delination of the disposal site shall be included.

(d) The State Director shall incorporate approved BMP's developed by a Statewide CWA section 208(b)(4)(B) regulatory agency into permits as provided in the agreement described in § 123.110(a)(1). Where BMP's were developed for application in a specific geographic area they shall only be incorporated into permits for that area. Where BMP's are less stringent than the conditions which are necessary to assure compliance with the 40 CFR Part 230, the BMP's shall be supplemented with additional and/or more stringent conditions incorporated into the 404 permit as necessary.

§ 123.106 General permits.

(a) General permits may be issued for activities which are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse affects on the environment. If several activities are grouped in one general permit their similarity should be established when the general permit is proposed.

(b) In addition to the conditions in § 122.11 each general permit issued by the State Director shall include, where applicable, the following conditions:

(1) Conditions specified in § 123.105 (a) and (b);

(2) The maximum quantity and type of material that may be discharged and the maximum extent that an area may be modified by a single operation;

(3) A specification of the activities covered by the general permit with emphasis on unique factors, if present;

(4) Geographic area to which the general permit applies, including a clear description of the type(s) of water(s) (with specific references to wetlands) in which the activity(ies) are permitted;

(5) BMP's necessary to assure that environmental effects will be minimal;

(6) limitations on construction of any structures including the following factors:

(i) Size and type of structure(s) permitted;

(ii) Specifications for conservation and environmental protection, including, to the maximum extent practicable, minimizing impairments to the biological, chemical and physical integrity of the waters of the United States;

(iii) Site restoration after the structure is completed.

(iv) Depth of fill permitted.

(7) Any other conditions deemed necessary by the State Director.

(c) The State Director shall require advance notification by persons or agencies intending to discharge dredged or fill material under a general permit, including the name of the discharger, the location, nature and duration of the discharge. Advance notification is required unless the Regional Administrator concurs in writing that it is unnecessary.

[*Comment:* EPA envisions that the information required can be submitted on a postcard. Submission of information should be construed as a notification not as an application for a permit. This information can be used to monitor the individual and cumulative environmental effects of the activities authorized by the general permit and provide a basis for determining whether its modification or termination is necessary.]

(d) After a general permit has been issued, activities falling within the scope of the permit do not require an individual permit unless the State Director determines, on a case-by-case basis, that the concerns of the aquatic environment as expressed in 40 CFR Part 230 indicate the need for an individual permit.

(e) In addition to grounds in §§ 122.9 and 122.10, the State Director may modify, revoke and reissue or terminate a general permit on the following grounds:

(1) If he determines that the effects of the activities authorized by it are having or will have a more than minimal individual or cumulative adverse affect on the environment; or

(2) If he determines that the permitted activities are more appropriately permitted by individual permits.

(f) The State Director shall provide public notice of amendment or termination of a general permit.

(g) The public notice for proposed general permits, including proposed amendments to general permits, shall include:

(1) Applicable statutory authority or regulations;

(2) A copy of the proposed permit, describing the activities and waters to be covered;

(3) A description of the estimated environmental effects of the permit;

(4) Name and water quality standards classification, if applicable, of the receiving waters into which the discharge is proposed, and a general description and location of the site of each proposed discharge;

(5) Any other available information which may assist the public in evaluating the likely environmental affects of the proposed activity, if any, upon the integrity of the receiving waters;

(6) Address and telephone number of the place where interested persons may obtain further information;

(7) Name and address of person to whom comments should be addressed, deadline for submission of comments; and

(8) A statement of the right to request a public hearing, and that a hearing will be held if there is significant public interest.

§ 122.107 Activities not requiring permits.

(a) Except as specified in paragraphs (b) and (c) of this section, any discharge of dredged or fill material that may result from any of the following activities is not prohibited by or otherwise subject to regulation under this section:

(1) Normal farming, silviculture and ranching activities such as plowing, seeding, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices.

The construction of any canal, ditch, dike or other waterway or structure which drains or otherwise significantly modifies a stream, lake, swamp, marsh, bay or any other wetland or aquatic area lying within the waters of the United States is not considered minor drainage, and any discharge of dredged or fill material into the waters of the United States incidental to the construction of any such structure or waterway requires a permit.

The discharge of dredged or fill material incidental to the management or rotation of crops on lands in current active use for farming is a normal farming practice not requiring a permit. However, a permit is required for any discharge of dredged or fill material made for the purpose of converting waters of the United States to farming, forestry, or ranching uses (e.g., discharge of dredged or fill material to erect a dike, dam, levee or other structure to divert, reduce or eliminate the flow of water into or through a wetland.

(2) maintenance, including emergency reconstruction of recently damaged parts of currently serviceable structures such as dikes, dams, levees, grions, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures. This exemption does not include maintenance that changes the character, scope, or size specific to the original fill design. Emergency reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for this exemption.

(3) Construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches. This particular provision does not apply to the construction of drainage ditches. Any discharge of dredged or fill material incidental to the modification of a stream bank or other shoreline area within a water of the United States to connect any such water to a water intake structure or water discharge structure shall be required to have a section 404 permit.

(4) Construction of temporary sedimentation basins on a construction site which does not include placement of fill material into waters of the United States. The term "construction site" refers to any site involving the erection of buildings, roads, and other discrete structures and the installation of support facilities necessary for construction and utilization of such structures. The term also includes any other land areas which involve land-disturbing and excavation activities, including quarrying or other mining activities, where an increase in the runoff of sediment is controlled through the use of temporary sedimentation basins.

(5) Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained, in accordance with best management practices, to assure that flow and circulation patterns and chemical and biological characteristics of waters of the United States are not impaired, that the reach of the waters of the United States is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized. These best management practices which must be applied to satisfy this provision shall include those detailed best management practices described in the State's approved program description pursuant to the requirements of § 123.95(d), and shall also include the following baseline provisions:

(i) Logging in streams is prohibited;

(ii) Permanent roads (for farming or forestry activities), temporary access roads (for mining, forestry, or farm purposes) and skid trails (for logging) shall be held to the minimum feasible number, width and total length consistent with the purpose of specific farming, silvicultural or mining operations;

(iii) All roads, temporary or permanent, shall be located sufficiently far from streams or other water bodies (except for portions of such roads which must cross water bodies) to avoid significant increases in sediment runoff;

(iv) The road fill shall be bridged or culverted to prevent the restriction of expected high flows;

(v) The discharge shall not disrupt the migration or other movement of those species of aquatic life inhabiting the water body;

(vi) Discharges into breeding and nesting areas for migratory waterfowl, spawning areas, and wetlands shall be avoided if practical alternatives exist;

(vii) The discharge shall consist of suitable material free from toxic pollutants in toxic amounts;

(viii) The discharge shall not take, or jeopardize the continued existance of, a threatened or endangered species as defined under the Endangered Species Act, or adversely modify or destroy the critical habitat of such species;

(ix) The fill shall be properly maintained during and following construction to prevent erosion and other non-point sources of pollution;

(x) Soil losses shall be held close to geological rates through careful selection of logging and farming methods, and through professional access route management;

(xi) A selective uneven-aged management cutting method should be employed on slopes, near streams, or in other sensitive areas unless the use of other forest management options would result in the same or less alteration of the chemical, physical and biological integrity of affected waters, including less sedimentation;

(xii) Vegetative disturbance shall be kept to minimum.

(xiii) Borrow material shall be taken from upland sources wherever feasible, and sufficient zones of vegetation adjacent to water bodies shall be preserved to filter out debris and sediment transported by runoff from nearby harvest sites and to prevent thermal pollution by preserving shade cover of water bodies.

(xiv) The discharge shall not occur in a component of the National Wild and Scenic River System;

(xv) Upon removal of temporary roads, any area of the waters of the United States whose bottom elevation has been altered by discharge of the road bed fill shall be restored to its original elevation;

(xvi) The use of pesticides and herbicides shall be avoided where possible and shall not be used in water bodies, including wetlands, in conjunction with road construction;

(xvii) All operators electing to qualify for the exemption must be familiar with and shall apply as appropriate to specific practices, professional management methods that are available from technical assistance, training and advice provided by the U.S. Forest Service, State Foresters, the Soil Conservation Service, the office of surface mining, or by similar recognized public sources of technical information and guidance.

(6) Any activity with respect to which a State has an approved program under section 208(b)(4)(B) of CWA which meets the requirements of subparagraphs (B) and (C) of that section.

(b) If any discharge of dredged or fill material resulting from the activities listed in paragraphs (a) (1)–(6) contains any toxic pollutant such discharge shall be subject to any effluent standard or prohibition established for such toxic pollutants pursuant to provisions of section 307 of CWA, and requires a permit under the State program.

(c) Any discharge of dredged or fill material into waters of the United States, incidental to any of the activities identified in paragraphs (a) (1)–(6) or to any other activity must have a permit if its purpose is to bring an area of the waters of the United States into a use to which it was not previously subject, where the flow or circulation of waters of United States may be impaired or the reach of such waters reduced.

[*Comment:* Where the proposed discharge will result in significant discernible alterations to flow or circulation, the presumption is that flow or circulation *may* be impaired by such alteration, and the activity shall be required to have a section 404 permit. Any discharge which converts any area of the waters of the United States to dry land or which connects any such waters to dry land through dikes, levees or other fills shall be deemed to thereby reduce the reach of the waters of the United States and must have a section 404 permit. For example, a permit will be required for the conversion of a cypress swamp to some other use or the conversion of lands from silvicultural to agricultural use when a discharge of dredged or fill materials is made into waters of the United States in conjunction with construction of dikes, drainage ditches or other works or structures used to effect such conversion. The reach of the waters of the United States shall not, however, be deemed to be reduced by a discharge which elevates the bottom of waters of the United States without converting it to dry land.]

(d) Federal projects which qualify under the criteria contained in section 404(r) of CWA are exempt from State section 404 permit requirements.

§ 123.108 Permit application.

(a) *Publicity and Preapplication Consultation.* The State Director is encouraged to establish and maintain a program to inform, to the extent possible, potential applicants for permits of the requirements of the State program and of the steps required to obtain permits for activities in State regulated waters. As part of this program, the State Director is encouraged to include pre-application consultation to assist applicants in understanding the requirements of 40 CFR Part 230 and in fulfilling permit application requirements.

(b) *Application for Permit.* Except where an activity is authorized by a general permit or is exempt from the permit requirement under § 123.107, any person who proposes to discharge dredged or fill material into State regulated waters shall complete, sign and submit an application to the State Director.

[*Comment:* State application forms are subject to EPA review and approval, see § 123.3.]

(c) *Content of Application.* A complete application shall include:

(1) A complete description of the proposed activity including (i) necessary drawings, sketches or plans (in cross section and plan view) showing the general and specific site location including site address and character of all proposed activities; (ii) size relationship of the proposed discharge to the size of the affected waters and depth of water in the area relative to the ordinary high water mark; (iii) the purpose and intended use of the proposed activity, scheduling of the activity and the names and addresses of property owners adjacent to the site and, if appropriate, the location and dimensions of adjacent structures;

(2) The source of the dredged or fill material and method of dredging used, if any; a description of the type, composition and quantity of the material; the proposed method of transportation and disposal of the material, including the type of equipment to be used.

(3) The use of any specific structures to be erected on the fill.

(4) Information about the discharge area needed to evaluate compliance within 40 CFR Part 230, including documentation concerning the following factors:

(i) A discussion of alternatives to the proposed discharge, including alternative disposal site, construction methods, and methods of discharge, and also including reasons for rejecting the alternatives;

(ii) Physical and chemical characteristics of the discharge site including the bottom and the receiving water;

(iii) Plants, fish, shellfish and wildlife in the discharge site which may be dependent on water quality and quantity;

(iv) Site characteristics of the affected and adjacent areas that may require protection or preservation;

(v) Uses of the disposal area which might affect human health and welfare; and

(5) A description of technologies or management practices by which the applicant proposes to minimize adverse environmental effects of the discharge.

[*Comment:* Guidelines for minimizing the adverse effects of discharges of dredged or fill material are found in 40 CFR Part 230.]

(6) A list of the approvals required by other Federal, interstate, State or local agencies for the work, including all approvals received or denials already made.

(7) One original set or one good quality reproducible set of drawings and maps, as specified below;

(i) A vicinity map identifying the map or chart from which the vicinity map was taken and showing the following:

(A) Location of the activity site including latitude and longitude and river mile, if known;

(B) Name of waterway;

(C) All applicable political (e.g., county, borough, town, city, etc.) boundary lines;

(D) Names of all major roads in the vicinity of the site including the road providing closest practicable access to the site;

(E) Graphic scale; and

(F) North arrow.

(ii) A plan view of the proposed activity showing the following:

(A) Existing shorelines;

(B) North arrow;

(C) Graphic or numerical scale;

(D) Ordinary high water mark of the body of the water;

(E) Location of known wetlands;

(F) Delineation of disposal site;

(G) Water depths around the project;

(H) Principal dimensions of the structure or work and extent of encroachment beyond the applicable high water line;

(I) Waterward dimension from an existing permanent fixed structure or object;

(J) Distances to nearby Federal projects, if applicable;

(K) Number of cubic yards, type of material, method of handling, and location of fill or spoil disposal area if applicable. If spoil material is to be placed in approved dumping grounds, a separate map showing the location of the dumping grounds should be attached. The drawing must indicate proposed retention levees, weirs, and/or other devices for retaining dredge or fill materials; and

(L) Location of structures, if any, in waters of the United States immediately adjacent to the proposed activity, including permit numbers, if known. Identify purposes of all structures.

(iii) An elevation and/or section view of proposed project showing the following:

(A) Same water elevations as in the plan view;

(B) Depth at waterward face of proposed work, or if dredging is proposed, show dredging grade;

(C) Dimensions from applicable ordinary high water mark for proposed fill, float or pile supported platform. Identify any structure to be erected thereon;

(D) Graphic or numerical scale;

(E) Cross-section of excavation or fill, including approximate side slopes;

(F) Elevation of spoil areas;

(G) Location of wetlands; and

(H) Delineation of disposal site.

(iv) Notes on all maps or drawings submitted, including:

(A) A list of names of adjacent property owners whose property also adjoins the water and are not shown on plan view;

(B) A statement of the purpose of proposed activity;

(C) A statement of datum used and elevation views. (Use mean low water, mean lower low water, National Ocean Survey Datum or National Geodetic Vertical Datum of 1929); and

(D) A title block for each sheet submitted identifying the proposed activity and containing the name of the body of water; river mile, if applicable; name of county, and State; names of applicant or agent; number of the sheet and the total number of sheets in set; and date the drawing was prepared.

§ 123.109 [Reserved]

§ 123.110 Coordination requirements.

(a) *General Coordination.* (1) The State Director shall develop an agreement with the agency designated to administer a Statewide CWA section 208(b)(4) regulatory program. Such an agreement shall include:

(i) A definition of the activities to be regulated by each program;

(ii) Arrangements for the agencies providing an opportunity to comment on perspective permits, BMP's and other relevant actions; and

(iii) Arrangements for incorporating BMP's developed by the section 208(b)(4) program into section 404 permits, where appropriate.

[*Comment:* Where such a CWA section 208(b)(4) program has been approved, no permit shall be required for activities for which the Administrator has approve BMP's under such approved program except as provided in § 123.107. Until such Section 208(b)(4) program has been approved by the Administrator under CWA section 208(b)(4)(C), a person proposing to discharge must obtain an individual permit or comply with a general permit.]

(2) States are encouraged to receive and use information developed by the Fish and Wildlife Service as part of the National Inventory as it becomes available.

(b) *Coordination with Other Federal and Federal-State Review Process.* To assure coordination of a permit with Federal and Federal-State water related planning and review processes, the State Director shall take the following actions:

(1) Assure that the impact of the proposed discharge will be consistent with the Wild and Scenic Rivers Act where the proposed discharge could affect portions of rivers designated wild, recreational, scenic or under consideration for such designation.

(2) Assure that the proposed discharge will be consistent with State water quality management planning under sections 208 and 303 of CWA.

(3) Consult the State agency(ies) with jurisdiction over fish and wildlife resources.

[*Comment:* Proposed discharges which are determined to be consistent with these authorities in (1)–(4) will nevertheless be denied section 404 permits if such discharge does not comply with other provisions of this Part and 40 CFR 230.]

The State Director shall furnish copies of the permit application to agencies consulted under this subsection.

(c) *Coordination with Other States.* If the proposed discharge may affect the quality of the waters of any State(s) other than the State in which the discharge occurs the State Director shall provide an opportunity for such State(s) to submit written comments within the public comment period on the effect of the proposed discharge on such State(s) waters, and to suggest additional permit conditions. If these recommendations are not accepted by the State Director, he shall notify the affected State and the Regional Administrator in writing of his failure to accept these recommendations, together with his reasons for so doing.

(d) *Review by Corps of Engineers, Fish and Wildlife Service, and National Marine Fisheries Service.* (1) All permit applications transmitted to the District Engineer, to the U.S. Fish and Wildlife Service, and to the National Marine Fisheries Service shall be accompanied by a statement that the agencies have 20 days from the date fo the receipt of the permit application to notify EPA whether they wish to comment. Failure to so notify EPA within 20 days may

constitute a waiver of the right to comment.

(2) In cases where the agencies have notified the Regional Administrator that they wish to comment, they should submit their evaluations and comments to the Regional Administrator within 50 days of receipt of the permit application. The agencies may request additional time. If the Regional Administrator finds that more time should be allowed he will advise the agencies of the new deadline. Written comments should normally be submitted within the initial 20 day period, or as soon as practicable thereafter.

(3) If any of these agencies feels that additional time is necessary to complete evaluation of any permit application, it shall notify the Regional Administrator, who may request an extension from the State Director. If the State Director allows additional time, the Regional Administrator shall notify the affected agencies.

(4) All comments from the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service will be considered by the Regional Administrator in accordance with provisions of this section. If the Regional Administrator does not adopt an objection of any such agency, he shall consult with the objecting agency(s). The final decision to object or to require permit conditions will be made by the Regional Administrator.

§ 123.111 Emergency procedures.

In an emergency situation the requirements for public notice and full Federal review may be waived with the concurrence of the Regional Administrator. An emergency is a situation which would result in an unacceptable hazard to life or severe loss of property if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under required procedures of this Part. Emergency permits shall include conditions for restoration of the disposal site.

§ 123.112 Reporting.

In accordance with the requirements of § 122.15, the State Director shall:

(a) Submit to the Regional Administrator a quarterly report on the last day of January, April, July, and October, which shall include:

(1) Any unauthorized discharges of dredged or fill material subject to the State's jurisdiction and a description of enforcement actions taken or contemplated;

(2) A description of investigations conducted to determine compliance with the conditions and limitations of any permits subject to the State's jurisdiction, including any enforcement actions taken against violators of permit terms or conditions.

(b) Submit to the Regional Administrator an annual report assessing the cumulative impacts of the State's permit program on the integrity of State-regulated waters. This annual report may be appended to the October quarterly report described in paragraph (a) as agreed in the Memorandum of Agreement, and shall include:

(1) The number and nature of individual permits issued by the State during the year. This should include the locations and types of water bodies where permitted activities are sited (e.g. wetlands, rivers, lakes, and any other categories which the Director and Regional Administrator may establish);

(2) The number of acres of each of the categories of waters in paragraph (b)(1) which were filled during the year (either by authorized or unauthorized activities);

(3) The number of acres of each of the categories of waters in paragraph (b)(1) which were protected under the State's authorities to prohibit, deny, restrict, or withdraw the specification of disposal sites for receiving dredged or fill material, as required by § 123.94.

(4) The number and nature of permits modified, revoked and reissued or terminated during the year;

(5) The number and nature of permits issued under emergency conditions, as provided in § 123.111;

(6) The approximate number of individuals in the State discharging dredged or fill material under general permits and an estimation of the cumulative impacts of these permitted activities.

PART 124—PROCEDURES FOR DECISION MAKING

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Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., Clean Air Act, 42 U.S.C. 1857 et seq.; and Clean Water Act, 33 U.S.C. 1251 et seq.

Subpart A—General Program Requirements

§ 124.1 Purpose and scope.

(a) This Part specifies the procedures EPA will follow in issuing and modifying NPDES, RCRA and UIC permits, and permits to implement the "prevention of significant deterioration" (PSD) provisions of the Clean Air Act.

(b) This Part is designed so that permits for a given facility under two or more of the listed programs can be processed either separately or in combination at the choice of the permitting authority. This will allow EPA to combine the processing of permits where greater efficiency is likely to result, but will not bind the Agency to follow that course in all cases. Consolidation of permits can take place either when the permit applications are submitted or when draft of final permits are issued even where permit applications have been submitted separately. Permit applications may recommend whether or not their permit applications should be consolidated in any given case.

(c) Subpart A specifies procedures applicable to all three permit programs. Subparts B–E provide procedures specific to the RCRA, PSD and NPDES permit programs. Subpart F provides a procedure based on the "initial licensing" provisions of the APA that can be used instead of Subparts A–E in appropriate cases.

(d) State administration of each of RCRA, UIC, NPDES and 404 permit programs can be approved by EPA under Part 123. Only selected portions of this Part apply to these approved State programs, as listed in § 123.8. (In the case of PSD programs, none of the provisions of Part 124 has been made applicable to States.) However, there is a need for coordination in making decisions when two or more such permits will be issued to an activity by both EPA and by a State. Accordingly, the regulations provide that applications may be jointly processed, joint comment periods and hearings may be held, and final permits may be drafted on a cooperative basis whenever EPA and a State agree to take such steps either in general or in an individual case. Such joint processing agreements may be provided in the Memorandum of Agreement developed under § 123.6.

§ 124.2 Definitions.

The definitions in Part 122 apply to this Part.

§ 124.3 Application for a permit.

(a) Any person who requires a permit under the RCRA, UIC, PSD or NPDES program shall complete, sign, and submit an application for each permit required to the Director in accordance with §§ 122.6, 122.23, 122.25, 122.36, and 122.64 or 123.105, or the applicable requirements of 40 CFR 52.21, except as provided in § 124.82 for NPDES general permits or for RCRA permits by rule under § 122.26.

(b) No permit shall be issued until the applicant has fully complied with the governing application filing requirements of this Part and Part 122. If an applicant fails or refuses to correct deficiencies in the application, the permit shall be denied or appropriate enforcement actions may be taken under the provisions of the appropriate Act. These provisions include sections 308, 309, 402(h) and 402(k) of the CWA, section 3008 of RCRA, and sections 1423 and 1424 of SDWA.

(c) Permit applications are designed to fit the normal situation for most applicants. However, if the Director determines that further information of a site visit is necessary in order to evaluate the application completely and accurately, the applicant shall be notified and a date shall be scheduled for receipt of the requested information or scheduling of any necessary site visit.

(d) Permit applications must comply with the signature and certification requirements of § 122.5.

(e)(1) Any application submitted by a new source, new HWM facility or new injection well, and any Part B application for an existing HWM facility for an EPA-issued permit shall be reviewed for completeness by the Director within 30 days of its receipt. Upon completing this review, the Director shall inform the applicant in writing whether or not the application is complete and list any required additional information. The requirements of this paragraph shall not preclude a Director from requesting additional information from the applicant at a later time for purposes of clarification, modification or supplementation of previously submitted data.

(2) In the event of such a deficiency, the date of receipt of the application shall be, for the purposes of this section, the date on which the Director received all relevant information.

§ 124.4 Consolidation of applications.

(a) Except as provided for RCRA permit applications (Part A only) under § 122.23, any facility or activity requiring a permit under two or more of the RCRA, UIC or NPDES programs which will be issued entirely by EPA may postpone the filing date for any application for such a permit to consolidate it with another application which has a later filing date:

(1) For up to 180 days, provided:

(i) The other application legally must be filed by the later filing date and it will be timely filed; and

(ii) The permit applicant notifies the Regional Administrator, in writing of his/her intent to postpone the filing date; or

(2) For up to two and one half years, provided the permit applicant obtains the written permission of the Regional Administrator to so consolidate the permits.

(b) Except as provided for RCRA permits applications (Part A only) under § 122.23, if an agreement between EPA and an approved State so provides, any

facility that requires two or more of an RCRA permit, a UIC permit or an NPDES permit, one or more of which will be issued by EPA and one or more of which will be issued by an approved State, may postpone the filing date for any application for such a permit:

(1) For up to 180 days, in order to consolidate it with another permit application which legally must be filed within that period and which will be timely filed, if such person notifies the Regional Administrator and the State Director in writing of his/her intent to postpone the filing date; or

(2) With the written permission of both the Regional Administrator and the State Director, for up to two and one half years in order to so consolidate it.

(c) When permit applications are filed together under this section, neither the Regional Administrator nor the State Director is required to issue the corresponding draft permits under § 124.6 at the same time. Conversely, draft permits for a given facility under the RCRA, UIC and NPDES programs may be issued at the same time even where the permit applications were filed at different times.

[*Comments:* (1) States are encouraged to consolidate applications, where they have been approved by EPA to administer two or more of the RCRA, UIC or NPDES programs. However they are not required to do so.

(2) This section does not apply to Air PSD permits.]

§ 124.5 Requests for modification or revocation and reissuance or termination of permits.

(a) If a permittee believes that a modification to or revocation and reissuance of a RCRA, UIC, PSD or NPDES permit is justified under §§ 122.9 or 122.10, (or section 52.21 in the case of a PSD permit) he/she may request a modification or revocation and reissuance or termination from the Director in writing. The request shall set forth all facts or reasons known to the permittee which may be relevant to a decision on the request.

(b) If the Director agrees that the modification or revocation and reissuance request under paragraph (a) appears justified, he/she shall prepare and formulate a draft permit under § 124.6 incorporating the changes. The Director may request additional information or, in appropriate cases, may require the submission of a new permit application.

(c) If the Regional Administrator, or where appropriate, the State Director decides that the modification or revocation and reissuance request under paragraph (a) does not appear justified, he/she shall reply to the permittee briefly setting forth in writing the reasons for that decision.

(d) When a request for a modification under this section is granted and a new draft permit is formulated, only those terms dependent on the request will be reopened. All other aspects of the permit will remain in force until the expiration of the permit. If the permit is revoked and reissued, the draft permit is subject to the same procedures as if the permit had expired and was being reissued.

(e) In the case of a proposed modification to an existing 404 permit initiated by the permittee which involves any change in applicable conditions or requirements under §§ 122.11 or 123.105, such proposed modification shall be treated as a permit application and shall be processed in accordance with all requirements of § 123.113.

§ 124.6 Draft permit.

(a) If a permit has been properly applied for, or the Director, after analyzing the information concerning a permit furnished under that Part and any other relevant information, shall tentatively decide whether to issue or deny the permit. If the tentative decision is to issue the permit, a draft permit shall be prepared containing at a minimum the following information:

(1) All conditions or requirements specified in § 122.11;

(2) For:

(i) RCRA permits, standards for treatment, storage or disposal and other permit terms and conditions which meet the requirements of § 122.24;

(ii) UIC permits, permit terms and conditions that meet the requirements of § 122.42;

(iii) PSD permits, permit terms and conditions that meet the requirements of 40 CFR 52.21;

(iv) NPDES permits, effluent limitations, standards, prohibitions and conditions required under § 122.60, including where applicable any conditions certified by a States agency under § 124.55, and all variances or other modifications that are to be included under § 124.64. All effluent limitations and standards shall be calculated and specified as required under § 122.70;

(v) 404 permits, permit terms and conditions that meet the requirements of § 123.105;

(3) All compliance schedules required by § 122.12; and

(4) All monitoring requirements required by § 122.14.

(b) All draft permits formulated under this section and § 124.7 shall be accompanied by a statement of basis or fact sheet under §§ 124.8 or 124.9. In addition, EPA-formulated draft permits shall be based on the administrative record required by § 124.9.

[*Comment:* Additional requirements for draft NPDES permits incorporating CWA section 301(h) modifications are set forth in § 124.57.]

(c) If the Regional Administrator determines under 40 CFR Part 6.900 that an Environmental Impact Statement shall be prepared for an NPDES new source, the public notice of the draft permit under this section shall not be given until a draft environmental impact statement is issued.

(d) *Consolidation of draft permits.* (1) If a facility or activity will require a permit under two or more of the RCRA, UIC, PSD or NPDES programs the Regional Administrator may issue consolidated draft permits whether or not the permits were applied for at the same time, provided the conditions for issuance of each seperate permit have been met. Whenever consolidated draft permits are issued the statements of basis (see § 124.8) or fact sheets (see § 124.9), administrative records (see § 124.10), public comment periods (see § 124.11) and any public hearings for those permits shall also be consolidated. However, the final permits need not all be issued together if in the judgment of the Regional Administrator, joint processing would result in unreasonable delay in the issuance of one or more permits.

(2) If a facility or activity will require two or more of a RCRA, UIC, PSD or NPDES permit, one or more of which is to be issued by EPA and one or more of which is to be issued by an approved State, the Regional Administrator and the State Director(s) may agree to issue the draft permits at the same time whether or not they were applied for at the same time. Whenever two or more draft permits are issued at the same time, administrative records (for EPA-issued permits only) should be consolidated for highly significant permits and any public hearings for those permits shall also be consolidated. However, the final permits need not all be issued together if, in the judgment of either the Regional Administrator or the State Director, such consolidation would result in unreasonable delay in the issuance of one or more permits.

(3) The Director shall not, without the written consent of the permit applicant, consolidate issuance of a PSD permit with issuance of any other permit under this section when to do so would delay

issuance of the PSD permit more than one year from the date of application.

(4) Whenever draft permits including an NPDES permit are consolidated under this subsection, and the Regional Administrator elects to make the special "initial licensing" provisions of Subpart F applicable to the NPDES permit, any permits with which that NPDES permit was consolidated shall likewise be processed under Subpart F.

(e) The decision to deny a permit which has been applied for shall be made through the same procedures as any other decision on a permit. A draft notice of intent to deny will be issued and made available for public comment, accompanied by a fact sheet or statement of basis. A response to comments and final decision will then be prepared. Appropriate appeals may then be made under this Part.

§ 124.7 Other draft permits.

(a) The Director may formulate a draft permit or notice concerning a RCRA, UIC, PSD or NPDES permit without having received an application, as provided in this section.

(1) If the Director decides that a permit should be:

(i) Modified or revoked and reissued under § 122.9, the Director shall formulate a draft permit containing the provisions required under § 124.6.

(ii) Terminated under § 122.10, the Director shall issue a notice of intent to terminate the permit.

(2) NPDES general permits under § 122.62 shall be proposed in draft form, shall contain the designation of the General Permit Program Area (under § 122.62(a)(2)), and, except for general permits for storm sewers, shall be sent to the EPA Deputy Assistant Administrator for Water Enforcement for concurrence or objection during the public comment period. No final permit shall be issued if the EPA Deputy Assistant Administrator for Water Enforcement objects to the general permit. Such objections must be made within 90 days from the public notice for the draft general permit under § 124.56(b).

(b) Any draft permit formulated under paragraph (a) shall be based on the administrative record as defined in § 124.10 and § 124.62 (for NPDES permits only).

[*Comment*: Public comment and hearings under §§ 124.12 and 124.13 pertaining to permit modifications will be limited to the terms of the proposed modification.]

(c) In the case of a proposed modification to an existing 404 permit initiated by the State Director which involves any change in applicable conditions or requirements under §§ 122.11 or 123.105, such proposed modification shall be treated as a permit application and shall be processed in accordance with all requirements of § 123.113.

§ 124.8 Statement of Basis.

A statement of basis shall be prepared for every draft permit formulated under § 124.6 for which a fact sheet is not required under § 124.9. The statement of basis shall briefly describe the derivation of the terms and conditions of the permit and the reasons for them. The statement of basis shall be part of the administrative record and shall be sent to the applicant and to interested State and Federal agencies and to other members of the public on request.

§ 124.9 Fact Sheet.

(a) A fact sheet shall be prepared for every draft permit for a major HWM facility, UIC facility, or NPDES discharger, for every NPDES general permit under § 122.62 and NPDES draft permit that incorporates a variance or modification, and for every draft permit which the Director finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the major facts and the significant factual, legal, methodological and policy questions considered in setting the terms of the draft permit. The Director shall send this fact sheet to the applicant, to interested State and Federal agencies, and to any other person on request. Any of these persons may waive their right to receive a fact sheet for any classes and categories of permits.

(b) The fact sheet shall include, where applicable:

(1) A brief description of the type of facility or activity which is proposed to be permitted;

(2) The type and quantity of wastes, pollutants or fluids which are proposed to be treated, stored, disposed of, discharged, emitted or injected;

(3) A brief summary of the basis for the proposed permit conditions including reference to applicable statutory or regulatory provisions and, for EPA permits, appropriate supporting references to the administrative record required by § 124.10, and § 124.62 (for NPDES permits only);

(4) Reasons why any requested variances, modifications, or alternatives to required standards do or do not appear justified;

(5) A description of the procedures for deciding on the final permit including:

(i) The beginning and ending dates of the comment period required under § 124.12 and the address where comments will be received;

(ii) Procedures for requesting a hearing and the nature of that hearing; and

(iii) Any other procedures by which the public may participate in the formulation of the final permit.

(6) Name and telephone number of a person to contact for additional information.

(c) "Major permit" means:

(1) In the case of an NPDES permit, any permit for dischargers on the state-by-state list of major dischargers;

(2) In the case of a UIC permit, any permit to an underground injection well identified as a major permit in EPA's annual operating guidance for EPA Regional Offices and States; and

(3) In the case of a RCRA permit, a permit for a major HWM facility as defined in § 122.3(b).

§ 124.10 Administrative record for EPA-issued permits.

(a) Decisions by the Regional Administrator to formulate a draft permit under § 124.6 shall be made only on the basis of the administrative record defined in this section.

(b) The record for formulating a draft permit under § 124.6 shall consist of:

(1) The initial application and any supporting data furnished by the applicant;

(2) The draft permit;

(3) The statement of basis under § 124.8 or any fact sheet under § 124.9;

(4) All documents cited in the fact sheet or statement of basis, unless they are published materials which are generally available, (in which case they should be specifically referenced);

(5) Other documents contained in the supporting file for the permit, including correspondence, telephone and meeting memoranda, compliance reports, etc.

(6) For NPDES permits only, any environmental assessment, Environmental Impact Statement, negative declaration, or environmental impact appraisal that may have been prepared.

(c) The record for formulating a draft permit under § 124.7 shall consist of the draft permit, the statement of basis required by § 124.8 or fact sheet prepared under § 124.9 and all documents cited in the fact sheet or the statement of basis.

(d) Material readily available at the issuing Regional Office or published material which is generally available, and which is included in the administrative record under the

standards of paragraphs (b) and (c), does not need to be physically included in the same file as the rest of the record as long as it is specifically referenced in the statement of basis or the fact sheet.

[*Comments*: (1) The administrative record for draft permits under this section will comprise the bulk of the material for the final administrative record.

(2) See also § 124.62 for additional NPDES administrative record requirements.]

§ 124.11 Public notice of permits.

(a) Notices shall be circulated in a manner designed to inform interested persons of a hearing or determination dealing with permit denial or issuance. Notice of a draft permit shall allow at least 30 days for public comments and notice of a hearing shall be given 30 days before the hearing.

[*Comment*: In the discretion of the Director, this could also include press releases or the use of any other forum or medium to elicit public participation.]

(b) Notice of the formulation of any draft permit formulated under § 124.6 and notice of an initial new source determination under § 124.61, notice of receipt of a section 404 application and notice of all hearings required by § 124.13 shall be given by the Director:

[*Comment*: Notice of receipt of a section 404 permit application is required only where no draft permit is formulated. See § 123.98(c).]

(1) By mailing a copy of the notice to:

(i) The applicant;

(ii) Any other agency which has issued or will issue a RCRA, UIC, PSD or NPDES permit to the activity in question;

(iii) To any State agency responsible for plan development under sections 208(b)(2) or 303(c) of the Clean Water Act;

(iv) For NPDES permits only, to the U.S. Army Corps of Engineers, to Federal and State agencies with jurisdiction over fish, shellfish and wildlife resources and to other appropriate governmental authorities including any affected state;

(v) For 404 permits only:

(A) To the Regional Director of the Federal Aviation Administration, if the discharge involves the construction of structures which may affect aircraft operations or for purposes associated with seaplane operations;

(B) To any adjacent property owner;

(C) To any State agency(ies) responsible for administering water quality, fish, shellfish and wildlife resources and State Section 404 programs in the affected state, if the proposed discharge may effect the waters of any State(s) other than the State in which the work is to be done;

(2) By mailing a copy of the notice to any person on a mailing list developed:

(i) From those who request to be in the list;

(ii) By soliciting persons for "area lists" from participants in past permit proceedings in that area; and

(iii) By notifying the public as to the availability of such notices through periodic press publication and notices in such publications as Regional and State funded newsletters, environmental bulletins, or State Law Journals. The mailing list may be updated from time to time by requesting an indication of continued interest in being on the mailing list; and

(3) By any of the following methods:

(i) By application of a notice meeting the requirements of paragraph (c) in a daily or weekly newsletter within the area affected by the facility or activity;

(ii) By posting a copy of the information required under paragraphs (c) and (d) at the principal office of the municipality or political subdivision affected by the facility or activity, and by posting a copy at the United States Post Office serving those premises;

(iii) By any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it; or

(iv) Where the program is being administered by an approved State, in any other manner constituting legal notice to the public under State law.

(4) Any person otherwise entitled to receive notice under subparagraph (1) of this paragraph may waive their right to receive notice for any classes and categories of permits.

(c) All public notices issued under this Part shall contain the following information:

(1) Name and address of the office processing the application or conducting the hearing;

(2) Name and location of the facility or activity to be permitted, except in the case of NPDES general permits under § 122.82;

(3) Name of the person, and address and telephone number where interested persons may obtain further information, including copies of the draft permit and statement of basis or fact sheet or, for section 404 permits only, copies of the application and proposed permit, if required.

(4) For EPA-issued permits, the location of the administrative record required by §§ 124.10 and 124.62 (for NPDES permits only) and the times at which it will be open for public inspection;

(5) For NPDES permits only, (i) a general description of the location of each existing or proposed discharge point, including the receiving water;

(ii) If the applicant has submitted data and information in accordance with CWA section 316(a) for a thermal variance, a statement to that effect. The notice shall state that all data submitted by the application are available as part of the administrative record for public inspection during office hours. The notice shall also state that any person may comment in writing under § 124.12 upon the applicant's desired alternative effluent limitations and may also request a hearing; and

(6) For 404 permits only, applicable statutory authority and regulations;

(7) Any additional information considered necessary or proper.

(d) Public notice mailed to persons identified in paragraphs (b)(1) and (b)(2) shall contain the information required by paragraph (c) and the following information:

(1) A brief description of the applicant's activities or operations that are involved in the facility or activity described in the application and a statement whether the application pertains to a new or existing facility or activity.

(2) A summary of major terms of the draft permit;

(3) Brief description of the comment procedures required by § 124.12, and the time and place of any public hearing that will be held; and

(4) For NPDES permits only, if the discharge is from a new source, a statement of the Regional Administrator's decision as to whether an Environmental Impact Statement will be or has been prepared; and

(5) For 404 permits only:

(i) The purpose of the proposed activity and intended use, including a description of the type of structures, if any, to be erected, and a description of the type, composition and quantity of materials to be changed and means of conveyance; and any proposed conditions and limitations on the discharge;

(ii) Name and water quality standards classification, if applicable, of the receiving waters into which the discharge is proposed, and a general description and location of the site of each proposed discharge.

(iii) Any other available information which may assist the public in evaluating the likely environmental impact of the proposed activity, if any, upon the integrity of the receiving waters.

(6) A statement of the right to request a public hearing.

(7) Any other procedures by which the public may participate in the formulation of the final permit.

(e) In addition to the information required under paragraphs (c) and (d) above, the public notice of a public hearing held under § 124.13 shall contain the following information:

(1) Reference to the date of previous public notice relating to the permit;

(2) Date, time and place of the hearing; and

(3) In the case of mailed public notice, a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(4) For 404 permits only, a summary of major issues raised to date during the public comment period.

(f) Public notice issued under this section may describe more than one permit and more than one permitted activity. No public notice shall be given in cases where a request for permit modification is denied, but written notice of that denial shall be given the person requesting such modification. Public notice of the draft permit may be issued at the same time public notice of a hearing is given.

§ 124.12 Public comments and requests for hearings.

(a) During the public comment period provided under § 124.11(a), any interested persons may submit written comments and may request a public hearing. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in preparing the final permit and shall be responded to as provided in § 124.19.

(b) Written comments may be submitted: (i) For all permits except those section 404 permits for which no draft permit is required (see § 123.98(c)), on the draft permit and accompanying statement of basis or fact sheet or other portions of the administrative record;

(ii) For 404 permits for which no draft permit is required (see § 123.98(c)), on the permit application or amended application (including proposed permit where required).

(c) Where the Director finds a significant degree of public interest in a draft permit or permits, he/she shall hold a public hearing to consider the permit or permits. Public notice of that hearing shall be given as specified in § 124.11. Where a state authority other than the Director is required under State law to hold hearings, on permits, it rather than the Director may hold hearings under this paragraph.

(d) Any person may submit oral or written statements at hearings held under this section. Reasonable limits may be set upon the time allowed for oral statements.

§ 124.13 Public hearings.

(a)(1) When a public hearing will be held under § 124.13 and EPA is the permitting authority, the Regional Administrator shall designate a Presiding Officer for the hearing who shall be responsible for its scheduling and orderly conduct. The Regional Administrator may also designate an EPA panel to take part in the hearing. The membership of the panel in general should consist of EPA employees having special expertise in an area related to the issues to be addressed at the hearing. For this reason, the membership of the panel may change as different issues are presented for discussion. The Regional Administrator may also designate EPA employees who will not or possibly will not serve on the hearing panel to provide staff support to the panel as needed.

(2) Joint EPA-State hearings on permits subject to this Part, one or more of which will be issued by EPA and one or more of which will be issued by an approved state, may be held either as provided in § 124.4 or otherwise by agreement in individual cases. Where joint hearings are held with a State agency, the Presiding Officer and the panel members may be employees of either EPA or the State. The Presiding Officer, any panel members and any panel support staff shall be chosen by agreement of EPA and the State.

(b) At any hearing under this section, any person may submit oral or written statements and data concerning the proposed permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required.

(c) The Presiding Officer and any panel member may question any person participating in the hearing. Persons in the hearing audience, including other hearing participants, may submit written questions to the Presiding Officer for the Presiding Officer to ask the participants, and the Presiding Officer may, after consultation with the panel, and at his/her sole discretion, ask these questions, or allow a member of the panel to ask them.

(d) Participants in the hearing shall submit for the hearing record such additional material as the hearing panel may request within 10 days following the close of the hearing, or such other period of time as is ordered by the Presiding Officer. Participants may also submit additional information for the hearing record on their own accord within 10 days after the close of the hearing.

(e) The hearing shall be either stenographically reported verbatim or tape recorded.

§ 124.14 Cross-examination and other supplementary procedures.

(a) No cross-examination shall be permitted at any hearing held under § 124.13. However, any participant in such a hearing may submit a request for cross-examination after the hearing has closed. The request shall be received by EPA within one week after a full transcript of the panel hearing becomes available and shall specify:

(1) The disputed issue(s) of material fact regarding which cross-examination is requested. This shall include an explanation of why the questions at issue are factual, rather than of an analytical or policy nature, the extent to which they are in dispute in the light of the record made thus far, and the extent to which and why they can reasonably be considered material to the decision on the application for modification; and

(2) The person(s) a participant desired to cross-examine, and an estimate of the time necessary. This shall include a statement as to why the cross-examination requested can be expected to result in resolving the issue of material fact involved.

(b) As expeditiously as practicable after receipt of all requests for cross-examination under paragraph (a) of this section, the Presiding Officer, after consultation with the hearing panel, shall issue an order either granting or denying each such request, which shall be disseminated to all persons requesting cross-examination and all persons to be cross-examined. If any request for cross-examination is granted, the order shall specify:

(1) The issues on which cross-examination action is granted;

(2) The persons to be cross-examined on each issue;

(3) The persons allowed to conduct cross-examination;

(4) Time limits as appropriate for the examination of witnesses by each cross-examiner; and

(5) The date, time and place of the supplementary hearing where cross-examination shall take place.

(c) No later than the time set for requesting cross-examination, a hearing participant may request that alternative methods of clarifying the record (such as the submittal of additional written

information) be used in lieu of or in addition to cross-examination. The Presiding Officer shall issue an order granting or denying such request at the time he issues (or would have issued) an order under paragraph (b) of this section. If the request is granted, the order shall specify the alternative provided and any other relevant information (e.g., the due date for submitting written information).

(d) In issuing any order under paragraph (b), the presiding officer:

(1) May determine that one or more participants have the same or similar interests and that to prevent unduly repetitious cross-examination, they should be required to choose a single representative for purposes of cross-examination. In such a case, the order shall simply assign time for cross-examination by that single representative without identifying the representative further.

(2) Shall consider the extent to which the issues raised are likely to be the subject of an evidentiary hearing under Subpart E and shall deny cross-examination with respect to any such issues. The presiding officer may grant cross-examination to the extent he/she finds such a grant would be likely to avoid the need for an evidentiary hearing.

(3) May require, as a precondition to ruling on the merits of such request, alternative means of clarifying the record to be used whether or not a request to do so has been made under paragraph (b). The person requesting cross-examination shall have one week to comment on the results of utilizing such alternative means, following which the Presiding Officer, as soon as practicable, shall issue an order granting or denying such person's request for cross-examination.

(e) The Presiding Officer and at least one member of the original hearing panel shall preside at the supplementary hearing. During the course of the hearing, the Presiding Officer shall have authority to modify any order issued under paragraph (b) of this section. A verbatim transcript shall be made of this hearing.

§ 124.15 Obligation to raise points and provide information during the comment period.

All persons, including applicants, who believe any of the terms of a draft permit is not appropriate, must raise all reasonably ascertainable issues and submit all arguments and factual grounds supporting their position, including all supporting material by the close of the public comment period (including any public hearing period) required by § 124.12.

§ 124.16 Reopening of comment period.

If any information or arguments submitted during the public comment period, including information or arguments whose submission is required under § 124.15, appears to raise substantial new questions concerning a permit, the Regional Administrator may conclude that one of the following actions is necessary for an informed decision:

(a) Formulation a new draft permit, appropriately modified, under § 124.6.

(b) Preparation a fact sheet or revised fact sheet under § 124.9 and reopening of the comment period under § 124.12; or

(c) Reopening of the comment period under §124.12 to give interested persons an opportunity to comment on the information or arguments submitted.

In each case the notice required by § 124.11 shall be given.

§ 124.17 Issuance and effective date of permits.

(a) After the close of the public comment period (including any public hearing period) required by § 124.12 on a draft permit, the Regional Administrator shall prepare and issue a final permit and shall serve notice of that action on the applicant, and on each person who has submitted written comments or requested notice of the issuance of the final permit. This notice shall include reference to the procedures available to appeal a RCRA, UIC or PSD permit determination or to contest an NPDES permit determination.

(b) A permit shall become effective 30 days after the service of notice of the decision under paragraph (a), unless:

(1) A later effective date is specified in the decision; or

(2) Review is requested under § 124.21 (RCRA, UIC and PSD permits) or a request for an evidentiary hearing is granted under § 124.75 (NPDES permits).

§ 124.18 Stays of contested permit terms.

(a) *Stays.* (1) If a request for review of a RCRA or UIC permit under § 124.21 or § 124.60 is granted, the force and effect of the contested permit terms shall be stayed and shall not be subject to judicial review pending final agency action.

(2) Uncontested terms which are not severable from those contested shall be stayed together with the contested terms under subsection (a). Stayed provisions shall be designated by the Regional Administrator. All other provisions of a permit shall remain in full force and effect, and the permittee shall be subject to all these provisions.

(b) *Stays based on Cross-Effects.* (1) No stay may be granted based on the grounds that an appeal to the Administrator under § 124.21 will likely result in changes to a permit granted to a facility or activity under one statute that will in turn make changes to a permit under some other statute advisable, unless each of the permits involved has been appealed to the Administrator and he/she has accepted the appeal.

(2) If terms and conditions of a RCRA or UIC permit are marked down for reconsideration in an evidentiary hearing on an NPDES permit under § 124.82 then the affected terms and conditions shall be stayed pending both the presiding officer's recommended decision as to them and any action on any recommended changes by the Regional Administrator. Any decision by the Regional Administrator on the presiding officer's recommendation shall be treated like the issuance of a permit for purpose of § 124.17.

(3) No stay of an NPDES, RCRA or UIC permit issued by EPA shall be granted based on the staying for any reason of any such permit issued by a State except at the discretion of the Regional Administrator and upon written request from the State Director.

[*Comment:* NPDES stay provisions are provided in § 124.60.]

§ 124.19 Response to comments.

(a) At the time that any final permit is issued, the Director shall issue a response to comments for that permit. This response to comments shall contain:

(1) A specific indication of which provisions of the draft permit have been changed in the final permit, and the reasons for the change; and

(2) A brief description of and response to all significant comments on the draft permit of the permit application (for section 404 permits only) raised during the public comment period, or during any hearing.

(b) For EPA-issued permits, any documents cited in the response to comments shall be included in the administrative record for the final permit as defined in § 124.20.

(c) The response to comments shall be available to the public.

[*Comment:* If new points are raised or new material supplied during the public comment period, EPA may document its response to those matters by adding new material to the administrative record.]

§ 124.20 Administrative record for final permit where EPA is the permitting authority.

(a) Decisions of the Regional Administrator to issue a final permit under § 124.17 shall be made on the basis of the administrative record defined in this section.

(b) The administrative record for any final permit shall consist of the administrative record for the draft permit and

(1) All comments received during the public comment period provided under § 124.12;

(2) The tape or transcript of any hearing(s) held under § 124.13.

(3) The response to comments required by § 124.19;

(4) For NPDES new source permits only, any final Environmental Impact Statement;

(5) Other documents contained in the supporting file for the permit, including correspondence, telephone and meeting memoranda, compliance reports, etc.; and

(6) The final permit.

(c) The additional documents required under paragraph (b) shall be added to the record as soon as feasible after their receipt or publication by the Agency.

(d) This section applies to all final RCRA, UIC, PSD and NPDES permits where the draft permit was subject to the administrative record requirements of § 124.10.

(e) Material readily available at the issuing Regional Office or published materials which are generally available, and which are included in the administrative record under the standards of this section or of § 124.19 ("Response to Comments"), do not need to be physically included in the same file as the rest of the record as long as it is specifically referenced in the administrative record or in the response to comments.

§ 124.21 Appeal of RCRA, UIC and PSD permits.

(a) Within 30 days after a RCRA, UIC or PSD permit has been issued under § 124.17, any person who filed comments on that permit or participated in the public hearing may petition the Administrator to review any term or condition of the permit. The thirty day period within which a person may request review under § 124.17 begins with the postmark date of notice of the Regional Administrator unless a later date is specified in such notice. The petition shall include a statement of the reasons supporting such review, including a demonstration that any points being raised were raised during the public comment period as required by § 124.12 and where appropriate, a showing that the term or condition in question is based on

(1) A finding of fact or conclusion of law which is clearly erroneous, or

(2) An exercise of discretion or policy which is important and which the Administrator should, in his discretion, review.

(b) The Administrator may also decide on his or her own initiative to review any term or condiditon of any RCRA, UIC or PSD permit issued under this Part.

(c) Within a reasonable time following the filing of the petition for review, the Administrator shall issue an order either granting or denying the petition for review. To the extent review is denied, the terms and conditions of the permit become the final decison of the agency. Public notice of any grant of review or a decision by the Administrator to take review under paragraph (b) shall be given as provided in § 124.11. Any such notice shall set forth a briefing schedule for the appeal and shall state that any interested person may file an amicus brief. Notice of denial of review shall be sent to the person(s) requesting review.

(d) The Administrator may defer consideration of an appeal under this section until the completion of proceedings under Subpart E or F relating to an NPDES permit issued to the same source.

(e) A petition to the Administrator under paragraph (a) of this section is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final decision of the agency.

(f)(1) For purposes of judicial review under the appropriate Act, final agency action occurs when a final RCRA, UIC or PSD permit is issued by EPA after Agency review procedures are exhausted. A final permit shall be prepared and issued by the Regional Administrator (i) when the Administrator issues notice to the parties that review has been denied if review is denied; (ii) when the Administrator issues a decision if review is not denied and the Administrator does not remand the proceedings or (iii) upon the completion of remand proceedings if the proceedings are remanded, unless the Administrator's Regional order specifically provides that appeal of the remand decision will be required in order to exhaust administrative remedies.

(2) Notice of any final action regarding a PSD permit shall promptly be published in the Federal Register.

§ 124.22 Additional time after service by mail.

Whenever a party or interested person has the right or is required to do some act or take some proceeding within a prescribed period after the service of notice or other paper upon him or her by mail, three days shall be added to the prescribed time.

Subpart B—Specific Procedures Applicable to RCRA Permits

§ 124.31 Public notice of receipt of application and availability of summary.

(a) Upon receipt of a complete RCRA permit application, including both Part A and Part B, for major HWM facilities as defind in § 122.3(b), the Regional Administrator shall issue a public notice that an application has been received.

(b) This notice, as a minimum shall be distributed to the following:

(1) The appropriate State agency in the State where the proposed hazardous waste management facility will be located;

(2) The chief executive or legislative office of any county or municipality within a 10 mile (16 km.) radius of the proposed facility;

(3) The public library serving the location of the facility;

(4) The applicant;

(5) Any person on the mailing list referred to in Section 124.11, and

(6) Anyone else requesting it.

(c) The public notice shall include the following as a minimum:

(1) Name and address of the facility seeking a permit;

(2) Where complete copies of the application are available for inspection;

(3) The name of a person in the EPA Regional office who can be contacted for information or questions; and

(4) A statement that comments may be submitted in writing to EPA on the content of the application, the adequacy of the information submitted, recommendations regarding approval or disapproval of the permit, possible permit conditions, and other related matters during the period of permit review by EPA, and

(5) A statement whether or not a summary of the application will be prepared and when any such summary will be made available to persons requesting it.

(6) That after issuance of a draft permit, all interested persons will be given an opportunity to comment in accordance with § 124.11.

Subpart C—Specific Procedures Applicable to PSD Permits

§ 124.41 Procedures for small sources.

(a) The procedures in Subpart A shall not apply to a source whose increased allowable emissions are less than 50 tons a year, 1,000 pounds a day, or 100 pounds an hour. Instead, to the extent practicable, the Regional Administrator shall make every effort to observe the following schedule:

(1) Completion of the required analyses and notice of the tentative decision to issue or deny the permit within 30 days after receipt of a complete application; and

(2) Completion of the public participation process, to the extent required by § 52.21(r)(3), within 45 days after receipt of a complete application.

(b) At the time the Regional Administrator gives notice of his/her tentative decision, he/she shall also open the comment period, if necessary, for 30 days. If no response is received after 15 days, no public hearing shall be held. If no supportable concerns are received during the scheduled 30-day public comment period (or the public hearing, if one is held) the Regional Administrator shall issue a final decision.

Subpart D—Specific Procedures Applicable to NPDES Permits

§ 124.51 Purpose and scope.

(a) This Subpart sets forth additional requirements and procedures for decisionmaking for the NPDES program.

(b) Decisions on NPDES variance requests will ordinarily be made during the permit issuance process. Permit modifications and other changes in permit terms will be made generally through the same procedures that apply in making decisions on initial permits. Each such decision must move through the same procedures of notice-and-comment and potential hearings as the basic permit.

§ 124.52 Permits required on a case-by-case basis.

(a) Various sections of Part 122, Subpart D allow the Director to determine, on a case-by-case basis, that certain concentrated animal feeding operations (§ 122.70), concentrated aquatic animal production facilities (§ 122.77), separate storm sewers (§ 122.79), and certain other facilities covered by general permits (§ 122.82) that do not generally require an individual permit may be required to obtain an individual permit because of their contribution to water pollution.

(b) Whenever the Regional Administrator decides that an individual permit should be required under this section, the Regional Administrator shall inform the discharger in writing of that decision, the reasons underlying it and shall include an application form in such notice. The discharger must then apply for a permit under § 122.64 within 60 days of such notice. The question whether the initial designation was proper will remain open for consideration during the public comment period under § 124.11 and any subsequent hearing.

§ 124.53 State certification.

(a) Under section 401(a)(1) of CWA, EPA may not issue a permit until a certification is granted or waived in accordance with that section by the State in which the discharge originates or will originate.

(b) When an application is received which does not include a State certification, the Regional Administrator shall forward the application to the certifying State agency with a request that certification be granted or denied.

(c) If State certification has not been received by the time the draft permit is prepared, the Regional Administrator shall send the certifying State agency:

(1) A copy of a draft permit;

(2) A statement that the EPA cannot issue or deny the permit until the certifying State agency has granted or denied certification under § 124.55, or waived its right to certify; and

(3) A statement that the right to certify will be deemed waived unless exercised within a specified reasonable time which shall not exceed 60 days from the date the draft permit is sent to the State unless the Regional Administrator finds that unusual circumstances require a longer time.

(d) Any State certification shall be issued or denied within the reasonable time specified under § 124.53(c)(3). The State shall provide notice of its action, including a copy of any certification, to the applicant and the Regional Administrator.

(e) A State certification shall be made in writing and shall include:

(1) The terms and conditions which will result in compliance with the applicable provisions of sections 208(e), 301, 302, 303, 306, and 307 of CWA and with appropriate requirements of State law;

(2) Where the State certifies a draft permit instead of an application, any conditions, more stringent than those in the draft permit, which the State finds necessary to comply with the requirements listed in subparagraph (1). For each such condition, the provision of CWA or State law which forms the basis for the condition shall be identified. Failure to provide such a statement shall be deemed a waiver of the right to certify with respect to such condition; and

(3) A statement with respect to each term and condition of the draft permit of the extent to which such term or condition can be made less stringent without violating the requirements of State law including water quality standards. Failure to provide such a statement shall be deemed a waiver of the right to certify with respect to any such less stringent condition which may be established during the EPA permit issuance process.

[*Comment:* The requirement of paragraph (e)(3) of this section is necessary to enable the certification to serve its statutory function without requiring continual recertification to the State. For example, a State might certify that a draft permit containing a technology-based limitation of 300 kg/day of BOD will meet State water quality standards and other State law requirements. However, if during the permit issuance process EPA decides that 400 kg/day is the appropriate technology requirement, it is not clear at present whether the previous State certification continues to be valid. It would be impracticable and would add to delay in permit issuance if EPA resubmitted such permits to the State each time the EPA considered setting a less stringent limitation than contained in the draft permit. The requirement that States clearly identify what conditions are necessary to meet State law will simplify the permit issuance process and make certification more useful. However, States may not require EPA to adopt less stringent requirements. See § 124.54.]

§ 124.54 Special provisions for State certification and concurrence on applications for section 301(h) modifications.

(a) Where an application for a permit incorporating a request under 301(h) of CWA is submitted to the State, the appropriate State official shall either:

(1) Deny the request for the modified permit under section 301(h) (and so notify the applicant and EPA); and if the State is an approved NPDES State and the permit is due for reissuance, proceed to process the permit application under normal procedures; or

(2) Forward a certification meeting the requirements of this Subpart to the Administrator or a person designated by the Administrator.

(b) Where EPA issues a tentative determination on the request for modification permit under CWA section 301(h), and no certification has been received under paragraph (a), the Administrator or a person designated by

the Administrator shall forward the tentative determination to the State in accordance with § 124.53(b) specifying a reasonable time for State certification and concurrence. If the State fails to deny or grant certification and concurrence under paragraph (a) within such reasonable time, certification will be deemed to be waived and the State will be deemed to have concurred in the issuance of a modified permit under CWA section 301(h).

(c) Any certification provided by a State under paragraph (a)(2) shall constitute the State's concurrence (as required by section 301(h)) in the issuance of the section 301(h) modified permit subject to any conditions specified therein by the State.

[*Comment:* CWA section 301(h) certification/concurrence under this section will not be forwarded to the State by EPA for recertification after the permit issuance process. Accordingly, States must specify any conditions required by State law including water quality standards, in the certification.]

§ 124.55 Effect of State certification.

(a) Where certification is required under section 401(a)(1) of CWA, no final permit shall be issued:

(1) If certification is denied, or

(2) Unless the final permit incorporates any requirements specified in the certification under § 124.53(d)(1) and (2).

(b) If the State law upon which a certification is based changes, or if a State court stays, vacates or remands a certification, a State which has issued a certification under § 124.53 may issue a modified certification or notice of waiver and forward it to EPA. If the modified certification is received prior to final Agency action on the permit, the permit shall be issued consistent with any more stringent conditions which are based upon State law identified in such certification. If the certification or notice of waiver is received after final Agency action on the permit, the Regional Administrator may modify the permit only to the extent necessary to delete any conditions based on a condition in a certification found invalid by a State court.

(c) A State may not condition a certification or deny a certification on the grounds that State law requires a less stringent condition. The Regional Administrator shall disregard any such certification conditions, and will consider such denials of certification to constitute waivers of certification.

[*Comment:* State certification rights proceed from the authority of States under section 510 of CWA to set more stringent limitations than those require[d] by CWA. States may not require EPA to disregard or downgrade Federal requirements.]

(d) A permit may be modified during Agency review in any manner consistent with a certification meeting the requirements of § 124.53(d). No such modifications shall require EPA to submit the permit to the State for recertification.

(e) Review and appeals of conditions specified by the State shall be made through the applicable procedures of the State and may not be made through the procedures in this Part.

§ 124.56 Fact sheets.

(a) In addition to the requirements of § 124.9, NPDES fact sheets shall contain the following:

(1) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable guideline or standard provisions as required under § 122.69 and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed;

(2) Where appropriate, a sketch or detailed description of the location of the discharge described in the application;

(3) For EPA-issued NPDES permits, the results of any State certification under § 124.53.

(b) In addition to the requirements of § 124.9, the Director shall send all fact sheets for NPDES permits to the District Engineer of the Corps of Engineers, to the Regional Director of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, to other interested State and Federal agencies (including EPA where the draft permit is prepared by the State), and to any other person on request. Any of these persons may waive their right to receive notice for any classes and categories of permits.

§ 124.57 Requirements for NPDES draft permits incorporating section 301(h) modifications.

Sections 124.6, 124.7, 124.8, 124.9, 124.10 and 124.56 are applicable to draft permits incorporating section 301(h) modifications except that the terms "Administrator or a person designated by the Regional Administrator" shall be substituted for the term Director, as appropriate.

§ 124.58 Public notice.

(a) In addition to the information required under § 124.11 (c) and (d), mailed public notice of an NPDES draft permit for a discharge where a CWA section 316(a) application has been filed under § 122.64(e) shall include:

(1) A statement that the thermal component of the discharge is subject to effluent limitations under sections 301 or 306 of CWA and a brief description including a quantitative statement of the thermal effluent limitations proposed under sections 301 or 306; and

(2) A statement that a section 316(a) application has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under section 316(a) and a brief description including a quantitative statement of the alternative effluent limitations, if any, included in the application.

(3) If the applicant has filed an early screening application under § 125.72 for a section 316(a) variance, a statement that the applicant has submitted such a plan.

(b) Notice of the formulation of a draft general permit under § 122.82 shall include:

(1) The requirements of § 124.11 (c) and (d), shall be concurrently published in a daily or weekly newspaper within the area affected by the discharge and in the Federal Register for EPA-issued permits in a manner constituting legal notice under State law for State issued permits.

(2) The public notice for general permits shall also include:

(i) A brief description of the types of activities or operations to be covered by the general permit;

(ii) A map or description of the General Permit Program Area; and

(iii) The basis for choosing the General Permit Program Area.

(3) The Director shall use all other reasonable means to notify affected dischargers of the draft general permit.

(c) A public notice of an evidentiary hearing under Subpart E shall contain the information required under § 124.11(c), (e)(1) and (e)(3) and a mailed public notice shall also include:

(1) Reference to any public hearing under § 124.12 on the disputed permit;

(2) Name and address of the person(s) requesting the evidentiary hearing;

(3) Brief description of the permit terms and conditions which have been contested and for which the evidentiary hearing has been granted;

(4) Brief description of the nature and purpose of the hearing including the following declarations:

(i) Any person seeking to be a party must file a request to be admitted as a party to the hearing within 15 days of the date of publication of this notice;

(ii) Any person seeking to be a party may, subject to the requirements of § 124.76, propose material issues of fact or law not already raised by the original requester or another party;

(iii) The terms and conditions of the permit(s) at issue may be amended after the evidentiary hearing and any person interested in those permit(s) must request to be a party in order to preserve any right to appeal or otherwise contest the final administrative determination.

(5) Names or organizational description of the EPA employees who shall constitute "Agency trial staff" and the "decisional body" under § 124.78 who are subject to the *ex parte* communication rules.

(6) The name, address and office telephone number of the Regional Hearing Clerk.

(d) A public notice for a draft permit that will be processed under Subpart F shall include the information in paragraphs (c) and a statement that any hearing will be held under the non-adversary procedures for initial licensing. In addition, a mailed public notice shall include:

(1) The information in paragraph (d) except that a public hearing under paragraph (d)(2) is discretionary with the Regional Administrator;

(2) A statement that the permit will be processed under the nonadversary procedures for initial licensing of Subpart F, together with a brief description of those procedures. This description shall state explicitly the manner and timing for any person to request a hearing on the permit. If EPA has decided on its own motion to hold a hearing, the notice shall so state, and shall also contain the information required by § 124.41(f);

(3) A statement that written comments on the draft permit and, in the case of a section 301(h) application, the tentative determination to grant or deny the application submitted to EPA within thirty (30) days of the date of the notice will be considered by EPA in making a final decision on the application. This 30-day period may be extended up to 60 days *sua sponte* or on request of an interested party;

(4) In the case of the public notice of the draft permit or denial of an application for a modified permit under section 301(h) shall include:

(i) A summary of the information contained in the application; and

(ii) A summary of the tentative determination prepared under § 124.114(f).

(e) A notice of a grant of a panel hearing requested under Subpart F shall include the applicable information from paragraph (d). In addition, the mailed public notices shall include:

(1) Name and address of the person requesting the hearing, or a statement that the hearing is being held by order of the Regional Administrator, and the name and address of each known party to the hearing;

(2) Names or organization description of the EPA employees who shall constitute the "decisional body" and the "Agency trial staff," under § 124.78 who are subject to the *ex parte* communication rules;

(3) A statement whether the recommended decision will be issued by the Presiding Officer or by the Regional Administrator;

(4) The due date for filing a written request to participate in the hearing under § 124.117;

(5) The due date for filing comments under § 124.118; and

(6) The name, address, and office telephone number of the Regional Hearing Clerk.

§ 124.59 Terms requested by the Corps of Engineers and other governmental agencies.

(a) During the comment period for an NPDES draft permit, if the District Engineer advises the Director in writing that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant so notified. If the District Engineer advises the Director that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the Director shall include the specified conditions in the permit. Review or appeal of denial of a permit or of conditions specified by the District Engineer shall be made through the applicable procedures of the Corps of Engineers, and may not be made through the procedures provided in this Part.

(b) If during the comment period the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any other State or Federal Agency with jurisdiction over fish, wildlife or public health advises the Director in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish or wildlife resources, the Director may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of CWA.

(c) In appropriate cases the Director may consult with one or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the statement of basis, the fact sheet or the draft permit.

§ 124.60 Issuance and effective date of NPDES permits.

In addition to the requirements of § 124.17, the following provisions apply to NPDES permits.

(a) If a request for an evidentiary hearing is granted under §§ 124.75 or 124.111(a)(3) regarding the initial permit issued for a new source or a new discharger, or if a petition for review of the denial of a request for an evidentiary hearing with respect to such a permit is timely filed with the Administrator under § 124.101, the applicant shall be without a permit for the proposed new source or new discharge, pending final Agency action under § 124.101.

(b) Whether or not a draft NPDES permit was formulated or final permit was issued, the Regional Administrator, at any time prior to the rendering of an initial decision in an evidentiary hearing on that permit, may withdraw the permit in whole or in part and formulate a new draft permit under § 124.7 addressing the portions so withdrawn. The new draft permit shall proceed through the same process of public comment and opportunity for a public hearing, etc. as would apply to any other draft permit subject to this Part. Any portions of the permit which are not withdrawn and which are not stayed under § 124.60 shall remain in effect.

(c)(1) If a request for a hearing is granted in whole or in part under §§ 124.75 or 124.111(a)(3) regarding a permit for an exisiting source, or if a petition for review of the denial of a request for an evidentiary hearing with respect to such a permit is timely filed with the Administrator under § 124.101, the force and effect of the contested provisions of the final permit shall be stayed and shall not be subject to judicial review under section 509(b) of CWA, pending final Agency action under § 124.101. The Regional Administrator shall serve notice, in accordance with § 124.75, on the discharger and all parties identifying the terms of the final permit which are not contested and therefore are enforceable obligations of the discharger.

(2) Where effluent limitations are contested, but the underlying control technology is not, the notice shall identify the installation of the technology in accordance with the permit compliance schedules (if uncontested) as an uncontested, enforceable obligation of the permit.

(3) Where a combination of technologies is contested, but a portion of the combination is not contested, such portion shall be identified as uncontested if compatible with the combination of technologies proposed by the requester.

(4) A term or condition, otherwise uncontested, shall not be identified as uncontested if it is inseverable from a contested term or condition.

(5) Uncontested terms and conditions shall become enforceable 30 days after the date of such notice, provided, however, that if a request for an evidentiary hearing on a term or condition was denied and the denial is appealed under § 124.101, then such term or condition shall become enforceable upon the date of the notice of the Administrator's decision on the appeal if the denial is affirmed, or shall be stayed, in accordance with this section, if the Administrator reverses the denial and grants the evidentiary hearing on such permit term.

(6) Uncontested terms and conditions shall include:

(i) Permit requirements for which an evidentiary hearing has been requested but the hearing has been denied;

(ii) Preliminary design and engineering studies or other requirements necessary to achieve the final permit term or conditions which do not entail substantial expenditures;

(iii) Permit conditions which will have to be met regardless of which party prevails at the evidentiary hearing;

(iv) Where the discharger proposed a less stringent level of treatment than that contained in the final permit, any permit conditions appropriate to meet the levels proposed by the discharger, if the measures required to attain such less stringent level of treatment are consistent with the measure required to attain the limits proposed by the Agency; and

(v) Construction activities such as segregation of waste streams or installation of equipment which would partially meet the final permit terms or conditions and could also be used to achieve the discharger's proposed alternatives terms and conditions.

(d) Where an evidentiary hearing is granted under § 124.75 on an application for a renewal of an existing permit, all provisions of the existing permit, as well as uncontested provisions of the new permit, shall continue in full force and effect until final Agency action under § 124.101. Upon written request from the applicant, the Regional Administrator may modify the existing permit to delete requirements which unnecessarily duplicate uncontested provisions of the new permit.

[Comment: The following examples demonstrate the application of paragraphs (c) and (d):

Example 1: The discharger requests and is granted an evidentiary hearing on its contention that the EPA's proposed effluent limitation for total suspended solids (TSS) at level X is too stringent and should be relaxed to level Y. Treatment technology A attains level Y whereas technology A plus B is necessary for level X. In this case, the discharger's obligation to install technology A is effective 30 days after service of the notice under § 124.75(b) and this obligation is not stayed by virtue of the contest as to the need for additional technology B. The discharger would be required to comply with all portions of the compliance schedule relating to design, construction and attainment of technology A, but would obtain a stay of such provisions with respect to technology B. This is true even if the schedule does not separate the two technologies. The discharger must of course also perform all basic work such as segregation of waste streams, site preparation, monitoring, reporting and initial construction because this will be necessary regardless of the outcome of the contest. The additional obligations of technology B are stayed.

Example 2: The same facts as in Example 1 except that a public interest group has also requested and been granted participation in the evidentiary hearing. The group intends that TSS level X is too lenient and should be tightened to level Z. Treatment technology C, which is inconsistent with both A and B technologies, is required for level Z. In this case the discharger's obligation to install technologies A, A and B or C are all stayed. The discharger's obligations to perform basic work such as segregation of waste streams, site preparation, monitoring, reporting and perhaps initial construction are not stayed because they are unaffected by the contest.

Example 3: The discharger requests an evidentiary hearing on two issues: that the permits total suspended solids (TSS) limit and pH limit are each too strict. The Regional Administrator grants the evidentiary hearing on the TSS issue but denies it on the pH claim. The TSS and pH technologies are independent and severable and the discharger does not appeal the denial of hearing on the pH control technology is not stayed and becomes effective 30 days after service of the Regional Administrator's notice under § 124.75(b). If the underlying technology for the TSS limit is at issue, the TSS limitation is stayed. However, as described in Example 1 and 2, the discharger's obligations to perform all work unaffected by the stay (e.g., segregation of waste streams, site preparation, initial construction, etc.) are not stayed.

Example 4: The same facts as in Example 3 that the equipment required for attaining the pH limit is achieved by the installation of the TSS equipment. In this the Regional Administrator may determine that the pH permit term is inseverable from the TSS contest and thus the limits for both parameters would be stayed by virtue of the hearing on TSS, although as noted in the preceding examples, the discharger's obligations to perform all work unaffected by the stay are not stayed. Noted however, that if the pH limit is achievable in an inexpensive and temporary alternative such as additional chemical treatment in the discharger's existing equipment, then the Regional Administrator may determine that the pH permit term is severable and refuse to stay the pH term.

Example 5: The same facts as in Example 3 except that the discharger appeals (to the Administrator) the Regional Administrator's denial of the evidentiary hearing on Issue No. 2 (the pH limit). In this case the pH limitation is also stayed (with the exceptions noted in the preceding examples) at least until the Administrator's decision on such appeal. If the Administrator affirms the denial of the evidentiary hearing on the pH limit then upon service of notice under § 124.75(b) the stay terminates. If the Administrator reverses and thus grants the evidentiary hearing on the pH term then the stay continues until final Agency action.

(e) When issuing a finally effective permit under Subpart F, the Regional Administrator shall extend the permit compliance schedule to the extent required by a stay under this section; provided that no such extension shall be granted which would:

(1) Result in the violation of an applicable statutory deadline; or

(2) Cause the permit to expire more than five years after issuance under § 124.17(a).

[Comment: Extensions of compliance schedules will not automatically be granted for a period equal to the period the stay is in effect for an effluent limitation. For example, if both the Agency and the discharger agree that a certain treatment technology is required by the Act where guidelines do not apply, but a hearing is granted to consider the effluent limitations which the technology will achieve, requirements regarding installation of the underlying technology will not be stayed during the hearing. Thus, unless the hearing extends beyond the final compliance date in the permit, it will not ordinarily be necessary to extend the compliance schedule. However, where application of an underlying technology is challenged, the stay for installation requirements relating to that technology would extend for the duration of the hearing.]

(f) For purposes of judicial review under section 509(b) of CWA, final administrative action on a permit does not occur unless and until a party has requested and exhausted its Administrative remedies under Subparts E and F and § 124.101. Any party which neglects or fails to seek review under § 124.101 thereby waives its opportunity to exhaust available Agency remedies.

§ 124.61 Final environmental impact statement.

No final NPDES permit for a new source shall be issued until at least 30 days after the date of issuance of a final Environmental Impact Statement if one is required under 40 CFR 6.916.

§ 124.62 Administrative Record.

Whether or not a draft or final permit was prepared subject to these regulations, the Regional Administrator, in any case where it appears during the course of an evidentiary hearing on a permit that significant new factors affecting that permit should be considered, may withdraw the contested terms subject to the hearing and issue a new draft permit addressing those terms under §§ 124.8 or 124.7. Uncontested terms shall remain in effect. The new draft permit shall proceed through the same process of public comment and opportunity for a public hearing, etc., as would any other draft permit.

§ 124.63 Decision on Variances and Modifications.

(a) The Director may grant or deny the following modifications or variances (subject to EPA objection under § 123.78 for State permits):

(1) Extensions under CWA section 301(i) based on delay in completion of a publicly owned treatment works;

(2) After consultation with the Regional Administrator, extensions under CWA section 301(k) based on the use of innovative technology; or

(3) Variances under CWA section 316(a) for thermal pollution.

(b) The State Director may deny, or forward to the Regional Administrator with a written concurrence or submit to EPA without recommendation a completed application for:

(1) A variance based on the presence of "fundamentally different factors" from those on which an effluent limitations guideline was based;

(2) A variance based on the economic capability of the applicant under section 301(c) of CWA;

(3) A variance based upon certain water quality factors under CWA section 301(g); or

(4) A modification of CWA section 302(b)(2) requirements under section 302(a) (water quality related effluent limitations).

(c) The Regional Administrator may deny, or may forward to the EPA Deputy Assistant Administrator for Water Enforcement with recommendation for approval, an application for a variance listed in paragraph (b) which is forwarded by the State Director, or submitted to the Regional Administrator by the applicant where EPA is the permitting authority.

(d) The EPA Deputy Assistant Administrator for Water Enforcement may approve or deny any variance application submitted under paragraph (c). If the EPA Deputy Assistant Administrator approves the variance, the Director may formulate a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that determination under § 124.54.

§ 124.64 Procedures for variances and modifications where EPA is the permit issuing authority.

(a) In States where EPA is the permit issuing authority and an application for a variance or modification is filed as required by § 122.64, the application shall be processed as follows:

(1) If at the time an application for a variance or modification is submitted the Regional Administrator has received an application under § 124.3 for issuance or renewal of that permit but has not yet formulated a draft permit under § 124.6 covering the discharge in question, the Regional Administrator after obtaining any necessary concurrence of the EPA Deputy Assistant Administrator for Water Enforcement under § 124.63, shall set forth a tentative determination on the request at the time the draft permit is formulated as specified in § 124.6, unless this would significantly delay the processing of the permit. In that case the processing of the variance or modification request may be separated from the permit in accordance with paragraph (3), and the processing of the permit shall proceed without delay.

(2) If at the time an application for a variance or modification is filed the Regional Administrator has formulated a draft permit under § 124.6 covering the discharge in question, but that permit has not yet become final, administrative proceedings concerning that permit may be stayed and the Regional Administrator shall formulate a new draft permit including a tentative determination on the request, and the fact sheet required by § 124.9. However, if this will significantly delay the processing of the existing permit or the Regional Administrator for other reasons considers combining the variance request and the existing permit inadvisable, the request may be separated from the permit in accordance with paragraph (3), and the administrative disposition of the existing permit shall proceed without delay.

(3) If the permit has become final and no application under § 124.3 concerning it is pending or if the variance or modification request has been separated from a permit as described in paragraphs (1) and (2), the Regional Administrator shall formulate a new draft permit under § 124.6. This permit shall be accompanied by the fact sheet required by §§ 124.9 and 124.56 except that the only matters considered shall relate to the requested variance.

§ 124.65 Appeals of modifications and variances.

(a) Normally, the appeals of permit determinations are handled in one proceeding, either State or Federal. When a State issues a permit in which EPA has made a variance determination, a separate appeal on that determination is possible. In such cases, requests for appeal on the EPA permit conditions must be filed under Subpart F after the public notice of the grant or denial of the variance. If the owner or operator is challenging issues in a State proceedings on the same permit, the Regional Administrator will decide, in consultation with State officials, which case will be heard first.

(b) Appeals of modifications or variance determinations shall be governed by Subpart F unless the Regional Administrator determines that consolidation with an evidentiary hearing under Subpart E will expedite consideration of the issues presented.

[*Comment:* The panel proceedings of Subpart F will generally be utilized when there is a State issued permit and only the variance issues are in the Federal forum.]

(c) *Stays for section 301(g) variances.* Under the authority of CWA section 301(j)(2), if a request for an evidentiary hearing is granted regarding a variance under CWA section 301(g), or if a petition for timely review of the denial of a request for an evidentiary hearing is timely filed with the Administrator under § 124.101 with respect to such a variance, any otherwise applicable standards and limitations under section 301 of CWA shall not be stayed unless:

(1) In the judgment of the Regional Administrator, the stay or the variance sought will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity, or synergistic propensities; and

(2) In the judgment of the Regional Administrator, there is a substantial likelihood that the discharger will succeed on the merits of its appeal; and

(3) The discharger files any bond or other appropriate security which is required by the Regional Administrator to assure timely compliance with the requirements from which a variance is sought in the event that the appeal is unsuccessful.

(d) Stays for variances or modifications other than section 301(g) are granted pursuant to § 124.60.

§ 124.66 Special procedures for discharge into marine waters section 301(h).

(a) Where it is clear on the face of a section 301(h) application that the discharge is not entitled to a modification, the application shall be denied.

(b) In the case of all other section 301(h) applications the Administrator, or a person designated by the Administrator may either:

(1) Give written authorization to an applicant to submit information required by Part 125, Subpart G or the final application by a date certain, not to exceed 9 months, if:

(i) The applicant proposes to submit new or additional information and the applicant demonstrates that:

(A) The applicant made consistent and diligent efforts to obtain such information prior to submitting the final application;

(B) The failure to obtain such information was due to circumstances beyond the control of the applicant; and

(C) Such information can be submitted promptly; or

(ii) The applicant proposes to submit minor corrective information and such information can be submitted promptly; or

(2) Make a written request of an applicant to submit additional information by a date certain, not to exceed 9 months, if such information is necessary to issue a tentative determination under § 124.114(g).

All additional information authorized or requested under this paragraph which is timely received, shall be considered part of the original application.

(c) Applications for modifications under Section 301(h) shall be processed independently of any pending application for the issuance or reissuance of a permit requiring the applicant to meet effluent limitations based on secondary treatment under section 301(b)(1)(B).

(d) No modified permit shall be issued granting a section 301(h) modification unless the appropriate State officials have concurred or waived concurrence pursuant to § 124.54. In the case of a permit issued to an applicant in an approved State, the State Director may:

(1) Revoke any existing permit as of the effective date of the EPA-issued modified permit; and

(2) Co-sign the modified permit, if the Director has indicated an intent to do so in the written concurrence.

(e) Appeals of determinations under section 301(h) shall be governed by Subpart F of this Part.

§ 124.67 Special procedures for decisions on thermal variances (section 316(a)).

(a) Except as provided in § 124.66 the only issues connected with issuance of a particular permit on which EPA will make a final agency decision before the final permit is issued under §§ 124.17 ands 124.60 are whether alternative effluent limitations would be justified under CWA section 316(a) and whether cooling water intake structures will use the best available technology under section 316(b). Applicants who wish an early decision on these issues should request it and furnish supporting reasons at the time their applications are filed under § 122.64. The Regional Administrator will then decide whether or not to grant it. If it is granted, both the early decision on CWA section 316 (a) or (b) issues and the grant of the balance of the permit shall be considered permit issuance under these regulations, and shall be subject to the same requirements of public notice and comment and the same opportunity for an evidentiary hearing.

(b) If the Regional Administrator, on review of the administrative record, determines that the information necessary to decide whether or not an alternative effluent limitation under CWA section 316(a) should be granted to a source is not likely to be available by the time a decision on permit issuance must be made, the Regional Administrator may issue a permit under § 124.17 for a term of up to five years. This permit shall require that the point source achieve the effluent limitations initially proposed for the control of the thermal component of the discharge no later than the date otherwise required by applicable legal requirements. However, the permit shall also afford the permittee an opportunity to file a demonstration under CWA section 316(a) after conducting such studies as are required under 40 CFR Part 125, Subpart H.

[*Comment:* A New discharger may not commence operation in violation of the thermal effluent limitation which are initially proposed unless and until the CWA section 316(a) variance request is finally approved.]

(b) Any hearing scheduled under paragraph (a) shall be publicized as required by § 124.11 and shall be held enough in advance of the final compliance date specified in the permit to allow the permittee to take necessary measures to comply by that date in the event its request for modification of thermal limits is eventually denied after the hearing is concluded.

(c) Whenever the Regional Administrator defers the determination under CWA section 316(a), any determination under section 316(b) may be deferred.

Subpart E—Evidentiary Hearings for EPA Issued NPDES Permits

§ 124.71 Applicability.

The regulations in this Subpart govern all evidentiary hearings conducted by EPA under section 402 of CWA, except as otherwise provided in Subpart F. An evidentiary hearing is available to challenge any permit issued under § 124.17 except for a general permit. Persons affected by a general permit may not challenge the terms and conditions of a general permit; but may instead apply for a individual NPDES permit under § 122.64 as authorized in § 122.82 and then request an evidentiary hearing on the issuance or denial of an individual permit. In certain cases, evidentiary hearings may also be held on the terms of RCRA, UIC and PSD permits that are very closely linked with the terms of NPDES permits as to which a hearing has been granted. See § 124.74(b)(2).

§ 124.72 Definitions.

For the purpose of this Subpart, the following definitions are applicable:

(a) "Judicial Officer" means a permanent or temporary employee of the Agency appointed as a Judicial Officer by the Administrator under these regulations and subject to the following conditions:

(1) A Judicial Officer shall be a licensed attorney. A Judicial Officer shall not be employed in the Office of Enforcement or the Office of Water and Waste Management, and shall not participate in the consideration or decision of any case in which he or she performed investigative or prosecutorial functions.

(2) The Administrator may delegate any authority to act in an appeal of a given case under this Subpart to a Judicial Officer who, in addition, may perform other duties for EPA, provided that the delegation shall not preclude a Judicial Officer from referring any motion or case to the Administrator when the Judicial Officer decides referral would be appropriate. The Administrator, in deciding a case, may

consult with and assign the drafting of preliminary findings of fact and conclusions and/or a preliminary decision to any Judicial Officer.

(b) "Party" means the EPA trial staff under § 124.78 and any person whose request for a hearing under § 124.74 or whose request to be admitted as a party or to intervene under §§ 124.79 or 124.117 has been granted.

(c) "Presiding Officer" means an Administrative Law Judge appointed under 5 U.S.C. 3105 and designated to preside at the hearing.

(d) "Regional Hearing Clerk" means an employee of the Agency designated by a Regional Administrator to establish a repository for all books, records, documents and other materials relating to hearings under this subpart.

§ 124.73 Filing and submission of documents.

(a) All submissions authorized or required to be filed with the Agency under this Subpart shall be filed with the Regional Hearing Clerk, unless the regulations provide otherwise. Submissions shall be considered filed on the date on which they are mailed or delivered in person to the Regional Hearing Clerk.

(b) All such submissions shall be signed by the person making the submission, or by an attorney or other authorized agent or representative.

(c)(1) All data and information referred to or in any way relied upon in any such submissions shall be included in full and may not be incorporated by reference, unless previously submitted as part of the administrative record in the same proceeding, except for State or Federal statutes and regulations, judicial decisions published in a national reporter system, officially issued EPA documents of general applicability, and any other material which is generally available or of peripheral relevance, in which case the party relying on it shall file a written undertaking to make copies available as directed by the Regional Administrator or the Presiding Officer.

(2) If any part of the material submitted is in a foreign language, it shall be accompanied by an English translation verified under oath to be complete and accurate, together with the name, address, and a brief statement of the qualifications of the person making the translation. Translations of literature or other material in a foreign language shall be accompanied by copies of the original publication.

(3) Where relevant data or information is contained in a document also containing irrelevant matter, either the irrelevant matter shall be deleted and only the relevant data or information shall be submitted or the relevant portions shall be briefly indicated.

(4) The failure to comply with the requirements of this section or any other requirement in this Subpart may result in the exclusion from consideration of any portion of the submission which fails to comply. If the Regional Administrator or the Presiding Officer, on motion by any party or *sua sponte*, determines that a submission fails to meet any requirement of this Subpart, the Regional Administrator or Presiding Officer shall direct the Hearing Clerk to return the submission with a copy of the applicable regulations indicating those provisions not complied with in the submission. The party proposing to submit any rejected materials shall have 14 days to correct the errors and resubmit, unless the Regional Administrator or the Presiding Officer determines that there is good cause to allow a longer time.

(d) The filing of a submission shall not mean or imply that it in fact means all applicable requirements or that it contains reasonable grounds for the action requested or that the action requested is in accordance with law.

(e) The original of all statements and documents containing factual material, data, or other information shall be signed in ink and shall state the name, address and the representative capacity of the person making the submission. The signing shall comply with the signature and certification procedures of § 122.5.

§ 124.74 Requests for evidentiary hearing.

(a) Within 30 days following the service of notice of the Regional Administrator's issuance of a final permit under § 124.17, any interested person may submit a request to the Regional Administrator under paragraph (b) for an evidentiary hearing to reconsider or contest the terms of that permit. If such a request is submitted by a person other than the permittee, the person shall simultaneously serve a copy of the request on the permittee.

(b)(1) In accordance with § 124.78, such requests shall state each legal or factual question alleged to be at issue, and their relevance to the permit decision, together with a designation of the specific factual areas to be adjudicated and the hearing time estimated to be necessary for that adjudication. Information supporting the request or other written document relied upon to support the request shall be submitted as required by § 124.73 unless it is already in the administrative record required by § 124.20.

[*Comment*: This paragraph allows the submission of requests for evidentiary hearings even though both legal and factual issues may be raised, or only legal issues may be raised. In the latter case, because no factual issues were raised, the Regional Administrator would be required to deny the request. However, on review of the denial, the Administrator is authorized by § 124.101(a)(1) to review policy or legal conclusions of the Regional Administrator. EPA is requiring an appeal to the Administrator even of purely legal issues involved in a permit decision to ensure that the Administrator will have an opportunity to review any permit before it will be final and subject to judicial review.]

(2) Persons requesting an evidentiary hearing on an NPDES permit under this section may also request an evidentiary hearing on a RCRA, UIC or PSD permit. Such a request is subject to all the requirements of paragraph (1) and in addition will only be granted if each of the following conditions is met:

(i) Processing of the RCRA, UIC or PSD permit at issue was consolidated with the processing of the NPDES permit as provided in § 124.8(d);

(ii) The standards for granting a hearing on the NPDES permit are met; and

(iii) It is likely that the issues raised concerning the NPDES permit will be resolved in a way that makes modification of the RCRA or UIC permit appropriate.

(c) Such requests shall also contain:

(1) The name, mailing address and telephone number of the person making such request;

(2) A clear and concise factual statement of the nature and scope of the interest of the requester;

(3) The names and addresses of all persons whom the requester represents; and

(4) A statement by the requester that, upon motion of any party, or *sua sponte* by the Presiding Officer and without cost or expense to any other party, the requester shall make available to appear and testify, the following:

(i) The requester;

(ii) All persons represented by the requester; and

(iii) All officers, directors, employees, consultants and agents of the requester and the persons represented by the requester.

(5) Specific references to the contested permit terms and conditions, as well as suggested revised or alternative permit terms and conditions (not excluding permit denial) which, in the judgment of the requester, would be

required to implement the purposes and policies of CWA.

(6) In the case of challenges to the application of control or treatment technologies identified in the statement of basis or fact sheet, identification of the basis for the objection, and the alternative technologies or combination of technologies which the requester believes are necessary to meet the requirements of CWA.

(7) Specific identification of each of the discharger's obligations which should be stayed if the request is granted. If the request contests more than one permit term or condition then each obligation which is proposed to be stayed must be referenced to the particular contested term warranting the stay.

(d) The Regional Administrator (upon notice to all persons who have already submitted hearing requests) may extend the time allowed for submitting hearing requests under this section for good cause.

§ 124.75 Decision on request for a hearing.

(a) Following the expiration of the time allowed by § 124.74 for submitting a request for an evidentiary hearing, the Regional Administrator shall determine whether the request shall be granted, denied or granted in part and denied in part. The Regional Administrator shall grant a request either in whole or in part only if the request conforms to the requirements of § 124.74, and sets forth material issues of fact relevant to the issuance of the permit.

(b) If the Regional Administrator grants a request for an evidentiary hearing, in whole or in part, the Regional Administrator shall state and identify the permit terms and conditions which have been contested by the requester and for which the evidentiary hearing has been granted. Permit terms and conditions which are not contested or for which the Regional Administrator has denied the hearing request shall not be affected by or considered at, the evidentiary hearing. The Regional Administrator shall specify these terms and conditions in writing in accordance with § 124.60(e).

(c) If the Regional Administrator grants a request for an evidentiary hearing in whole or in part, in regard to a particular proposed permit, then any other request for an evidentiary hearing in regard to that permit shall be treated as a request to be a party and the Regional Administrator shall grant any such request which meets the requirements of paragraph (a).

(d) If a request for a hearing is denied in whole or in part, the Regional Administrator shall briefly state the reasons. That denial is then subject to review by the Administrator under § 124.101.

§ 124.76 Obligation to raise issues and submit evidence before a final permit is issued.

No evidence shall be submitted by any party to a hearing under this Subpart that was not submitted to the administrative record required by § 124.20 as part of the formulation of and comment on a draft permit, unless good cause is shown for the failure to submit it. No issues, shall be raised by any such party that were not submitted to the administrative record required by § 124.20 as part of the formulation of and comment on a draft permit unless good cause is shown for the failure to submit them. Good cause includes the case where the party seeking to raise the new issues, or introduce new information, shows that it could not reasonably have ascertained the issues or made the information available within the time required by § 124.15.

§ 124.77 Notice of hearing.

Public notice of the grant of an evidentiary hearing regarding a permit shall be given as provided in § 124.58(c) and in addition by mailing a copy to all persons who commented on the draft permit or submitted a request for a hearing. Before the issuance of such notice the Regional Administrator shall designate the Agency trial staff and the members of the decisional body (as defined in § 124.78).

§ 124.78 Ex parte communications.

(a)(1) No interested person outside the Agency or member of the Agency trial staff shall make or knowingly cause to be made to any members of the decisional body an *ex parte* communication relevant to the merits of the proceedings.

(2) No member of the decisional body shall make or knowingly cause to be made to any interested person outside the Agency or member of the Agency trial staff an *ex parte* communication relevant to the merits of the proceedings.

(3) A member of the decision body who receives or who makes or knowingly causes to be made a communication prohibited by the Regional Hearing Clerk, for the public hearings, all such written communications or memoranda stating the substance of all such oral communications together with all written responses and memoranda stating the substance of all oral responses.

(b) Upon receipt by any members of the decision making body of an *ex parte* communication knowingly made or knowingly caused to be made by a party in violation of this section, the person presiding at the stage of the hearing then in progress may, to the extent consistent with justice and the policy of CWA require the party to show cause why its claim or interest in the proceedings should not be dismissed, denied, disregarded or otherwise adversely affected on account of such violation.

(c) The prohibitions of this section begins to apply upon issuance of the notice of the grant of a hearing under §§ 124.77 or 124.116. This prohibition terminates at the date of final Agency action.

(d) For purposes of this section, the following definitions shall apply:

(1) "Agency trial staff" means those Agency employees, whether temporary or permanent, who have been designated by the Agency under §§ 124.77 or 124.116 as available to investigate, litigate and present the evidence, arguments and position of the Agency in the evidentiary hearing or non-adversary initial licensing hearing. Appearance as a witness does not necessarily require a person to be designated as a member of the Agency trial staff;

(2) "Decisional body" means any Agency employee who is or may reasonably be expected to be involved in the decisional process of the proceeding including the Administrator, Judicial Officer, Presiding Officer, the Regional Administrator (if he does not designate himself as a member of the Agency trial staff) and any of their direct support staff participating in the decisional process. In the case of a nonadversary initial licensing proceeding, the decisional body shall also include the panel members whether or not permanently employed by the Agency;

(3) "*Ex parte* communication" means any communication written or oral relating to the merits of the proceeding between the decisional body and an interested person outside the Agency or the Agency trial staff where such communication was not originally filed or stated in the administrative record or in the hearing. *Ex parte* communications do not include:

(i) Communications between Agency employees other than the Agency trial staff and the members of the decisional body;

(ii) Discussions between the decisional body and either

(A) Interested persons outside the Agency; or

(B) The Agency trial staff, *if* all parties have received prior written notice of such proposed communications and have been given the opportunity to be present and participate therein.

(4) "Interested person outside the Agency" includes the permit applicant, any person who filed written comments in the proceeding, any person who requested the hearing, any person who requested to participate or intervene in the hearing, any participant or party in the hearing and any other interested person not employed by the Agency at the time of the communications and the attorney of record for such persons.

§ 124.79 Additional parties and issues.

(a) Any person may submit a request to be admitted as a party within 15 days after the date of mailing, publication or posting of notice of the grant of an evidentiary hearing, whichever occurs last. The Presiding Officer shall grant such requests as meet the requirements of §§ 124.74 and 124.78. Such request must specifically identify those issues already raised which the requester seeks to address at the hearing.

(b) After the expiration of the time prescribed in paragraph (a) any person may file a motion for leave to intervene as a party. This motion must meet the requirements of §§ 124.74 and 124.78 and set forth the grounds for the proposed intervention provided, however, that no factual or legal issues in addition to those raised by timely hearing requests may be proposed except for good cause. Any motion to intervene must also contain a verified statement showing good cause for the failure to file a timely request to be admitted as a party. The Regional Administrator, or the Presiding Officer if one has been assigned, shall grant such motion only upon an express finding on the record that:

(1) Extraordinary circumstances justify granting the motion;

(2) The intervenor has consented to be bound by:

(i) Prior written agreements and stipulations by and between the existing parties, and

(ii) All orders previously entered in the proceedings; and

(3) Intervention will not cause undue delay or prejudice the rights of the existing parties.

§ 124.80 Filing and service.

(a) An original and one (1) copy of all written submissions relating to an evidentiary hearing filed after the notice of hearing is published shall be filed with the Regional Hearing Clerk.

(b) The party filing any submission shall serve a copy of such submission upon the Presiding Officer and each party of record. Service shall be by mail or personal delivery.

(c) Every submission shall be accompanied by an acknowledgment of service by the person served or proof of service in the form of a statement of the date, place, time, and manner of service and the names of the persons served, certified by the person who made service.

[*Comment:* A signed statement that an attached list of persons were mailed the submission is sufficient to meet the requirements of this paragraph. Certified mail is not required.]

(d) The Regional Hearing Clerk shall maintain and furnish to any person upon request, a list containing the name, service address and telephone number of all parties and their attorneys or duly authorized representatives.

§ 124.81 Assignment of administrative law judge.

No later than the date of mailing, publication or posting of the notice of a grant of an evidentiary hearing, whichever occurs last, the Regional Administrator shall refer the proceeding to the Chief Administrative Law Judge who shall make an assignment of an Administrative Law Judge to serve as Presiding Officer for the hearing.

§ 124.82 Consolidation and severance.

(a) The Administrator, Regional Administrator or Presiding Officer, has the discretion to consolidate, in whole or in part, two or more proceedings to be held under this Subpart, whenever it appears that a joint hearing on any or all of the matters in issue would expedite or simplify consideration of the issues and that no party would be prejudiced thereby. Consolidation shall not affect the right of any party to raise issues that might have been raised had there been no consolidation.

(b) If the Presiding Officer determines consolidation is not conducive to an expeditious, full and fair hearing, any party or issues may be severed and heard separately.

§ 124.83 Prehearing conferences.

(a) The Presiding Officer, *sua sponte*, or at the request of any party, may direct the parties or their attorneys or duly authorized representatives to appear at a specified time and place for one or more conferences before or during a hearing, or to submit written proposals or correspond for the purpose of considering any of the matters set forth in paragraph (c).

(b) The Presiding Officer shall allow a reasonable period before the hearing begins for the orderly completion of all prehearing procedures and for the submission and disposition of all prehearing motions. Where the circumstances warrant, the Presiding Officer shall call a prehearing conference, to inquire into the use of available procedures contemplated by the parties and the time required for their completion, to establish a schedule for their completion, and to set a tentative date for beginning the hearing.

(c) In conferences held, or in suggestions submitted, under paragraph (a), the following matters may be considered:

(1) The necessity or desirability of simplification, clarification, amplification or limitation of the issues.

(2) The admission of facts and of the genuineness of documents, and the possibility of stipulations with respect to facts.

(3) The consideration of and ruling upon objections to the introduction into evidence at the hearing of any written testimony, documents, papers, exhibits, or other submissions proposed by a party, except that the administrative record required by § 124.20 shall be received in evidence subject to the provisions of § 124.85(d)(2). Notwithstanding the foregoing, at any time before the end of the hearing any party may make, and the Presiding Officer shall consider and rule upon, motions to strike testimony or other evidence other than the administrative record on the grounds of relevance, competency or materiality.

(4) The identification of matters of which official notice may be taken.

(5) The establishment of a schedule which includes definite or tentative times for as many of the following as are deemed necessary and proper by the Presiding Officer:

(i) The submission of narrative statements of position on each factual issue in controversy;

(ii) The submission of written testimony and documentary evidence (e.g., affidavits, data, studies, reports and any other type of written material) in support of such statements; or

(iii) The written requests to any party for the production of additional documentation, data, or other information relevant and material to the facts in issue.

(6) The grouping of participants with substantially like interests for purposes of eliminating duplicative or repetitive

development of the evidence and making and arguing motions and objections.

(7) Such other matters as may expedite the hearing or aid in the disposition of the matter.

(d) At a prehearing conference or within some reasonable time set by the Presiding Officer, each party shall make available to all other parties the names of the expert and other witnesses it expects to call. At its discretion or at the request of the Presiding Officer, a party may include a brief narrative summary of any witness's anticipated testimony. Copies of any written testimony, documents, papers, exhibits, or materials which a party expects to introduce into evidence, and the administrative record required by § 124.20, shall be marked for identification as ordered by the Presiding Officer. Witnesses, proposed written testimony and other evidence may be added or amended only upon a finding by the Presiding Officer that good cause existed for failure to introduce the additional or amended material within the time specified by the Presiding Officer. Agency employees and consultants shall be made available as witnesses by the Agency to the same extent that production of such witnesses is required of other parties under § 124.74(c)(4). (See also § 124.85(b)(16)).

(e) The Presiding Officer shall prepare a written prehearing order reciting the actions taken at the prehearing conference and setting forth the schedule for the hearing, unless a transcript has been taken and accurately reflects these matters. The order shall include a written statement of the areas of factual agreement and disagreement and of the methods and procedures to be used in developing the evidence and the respective duties of the parties in connection therewith. This order shall control the subsequent course of the hearing unless modified by the Presiding Officer for good cause shown.

§ 124.84 Summary determination.

(a) Any party to an evidentiary hearing may move with or without supporting affidavits and briefs for a summary determination in his or her favor upon all or any part of the issues being adjudicated on the basis that there is not genuine issue of material fact for determination. Any such motion shall be filed at least 45 days before the date set for the hearing, unless upon good cause shown such motion may be filed at any time before the close of the hearing.

(b) Any other party may, within 30 days after service of the motion, file and serve a response to it or a countermotion for summary determination. When a motion for summary determination is made and supported, a party opposing the motion may not rest upon mere allegations or denials but must show, by affidavit or by other materials subject to consideration by the Presiding Officer, that there is a genuine issue of material fact for determination at the hearing.

(c) Affidavits shall be made on personal knowledge, shall set forth facts that would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

(d) The Presiding Officer has the discretion to set the matter for oral argument and call for the submission of proposed findings, conclusions, briefs or memoranda of law. The Presiding Officer shall rule on the motion not more than 30 days after the date responses to the motion are filed under paragraph (b) of this section.

(e) If all issues of material fact are decided on a motion for summary determination, no hearing will be held and the Presiding Officer shall thereupon prepare an initial decision under § 124.89. If the motion for summary determination is denied or if only a partial summary determination is granted, the Presiding Officer shall issue a memorandum opinion and order, interlocutory in character, and the hearing will proceed on the remaining issues. Appeals from interlocutory rulings are governed by § 124.90.

§ 124.85 Hearing procedure.

(a)(1) The permit applicant always bears the burden of persuading the Agency that a permit authorizing pollutants to be discharged should be issued and not denied. This burden does not shift.

(2) The Agency has the burden of going forward to present an affirmative case in support of any challenged term or condition of a final permit.

[*Comment:* In many cases the documents contained in the administrative record, in particular the fact sheet or statement of basis and the response to comments should adequately discharge this burden.]

(3) Any hearing participant who, by raising material issues of fact, contends:

(i) That particular terms, conditions or requirements in the permit are improper or invalid, and who desires either:

(A) The inclusion of new or different terms, conditions or requirements; or

(B) The deletion of such terms, conditions or requirements; or

(ii) That the denial or issuance of a permit is improper or invalid, shall have the burden of going forward to present an affirmative case.

(b) The Presiding Officer shall have the authority and duty to conduct a fair and impartial hearing, to take action to avoid unnecessary delay in the disposition of the proceedings, to maintain order and all powers necessary to these ends, including the power to:

(1) Arrange and issue notice of the date, time and place of hearings and conferences and;

(2) Establish the methods and procedures to be used in the development of the evidence;

(3) Prepare, after considering the views of the participants, written statements of areas of factual disagreement among the participants;

(4) Hold conferences to settle, simplify, determine or strike any of the issues in a hearing, or to consider other matters that may facilitate the expeditious disposition of the hearing;

(5) Administer oaths and affirmations;

(6) Regulate the course of the hearing and govern the conduct of participants;

(7) Examine witnesses;

(8) Identify and refer issues for interlocutory decision under § 124.90;

(9) Rule on, admit, exclude, or limit evidence;

(10) Establish the time for filing motions, testimony and other written evidence, briefs, findings, and other submissions;

(11) Rule on motions and other procedural matters pending before him, including but not limited to motions for summary determination in accordance with § 124.84;

(12) Order that the hearing be conducted in stages in cases where the number of parties is large or the issues are numerous and complex;

(13) Take any action not inconsistent with the provisions of this subpart for the maintenance of order at the hearing and for the expeditious, fair and impartial conduct of the proceeding;

(14) Provide for the testimony of opposing witnesses to be heard simultaneously or for such witnesses to meet outside the hearing to resolve or isolate issues or conflicts;

(15) Order that trade secrets be treated confidential business information in accordance with § 122.16 and 40 CFR Part 2.

(16) Allow such cross-examination as may be required for a full and true disclosure of the facts. No cross-examination shall be permitted on questions of law or policy, or regarding matters (such as the validity of effluent limitations guidelines) that are not subject to challenge in an NPDES

proceeding. No Agency witnesses shall be required to testify or be made available for cross-examination on such matters. In determining whether cross-examination shall be permitted the Presiding Officer shall consider whether it is not likely to result in clarifying or resolving a disputed issue of fact material to the decision, and whether the issue can be more economically clarified in other ways. The party seeking cross-examination has the burden of demonstrating that this standard has been met.

(c) All direct and rebuttal evidence at an evidentiary hearing shall be submitted in written form, unless, upon motion and good cause shown, the Presiding Officer determines that oral presentation of the evidence on any particular fact will materially assist in the efficient identification and clarification of the hearing issues. Written testimony shall be prepared in narrative form. To the extent that testimony is to be submitted in writing, the Presiding Officer may set dates for the filing of such evidence with the Regional Hearing Clerk as follows:

(1) The participant with the burden of going forward to present an affirmative case upon an issue (as defined in § 124.85(a) of these regulations) shall file his direct testimony first.

(2) All participants other than participants specified in the preceding subsection shall file their direct testimony on said issue not later than twenty days after the date of the filing of the testimony under the preceding subsection.

(3) All rebuttal testimony shall be filed no later than thirty days after the date of the filing of the testimony under paragraph (c)(1).

(d)(1) The Presiding Officer shall admit all relevant, competent and material evidence, except evidence that is unduly repetitious. Evidence may be received at any hearing even though inadmissible under the rules of evidence applicable to judicial proceedings. The weight to be given evidence shall be determined by its reliability and probative value.

(2) The administrative record required by § 124.20 shall be admitted and received in evidence. Any party may move that a sponsoring witness be provided for a portion or portions of the administrative record. The Presiding Officer, upon finding that the standards for cross-examination of § 124.85(b)(3) have been met and that the administrative record taken as a whole indicates legitimate doubt about such portion of the record, shall grant such motion and direct the appropriate party to produce such witness. If a sponsoring witness cannot be provided, the Presiding Officer may reduce the weight afforded the appropriate portion of the record as a factual statement accordingly.

[*Comment:* Receiving the administrative record into evidence automatically serves several purposes: (1) it documents the prior course of the proceeding; (2) it provides a record of the views of affected persons for consideration by the agency decision-maker; and (3) it provides factual material for use by the decision-maker. Subject to § 124.78, parties are free to contest the factual portions of the administrative record in the hearing, and to argue that portions of it should not be given weight unless sponsored by a witness who will be available for cross-examination.]

(3) Whenever any evidence or testimony is excluded by the Presiding Officer as inadmissible, all such evidence or testimony existing in written form shall remain a part of the record as an offer of proof. The party seeking the admission of oral testimony may make an offer of proof, which shall consist of a brief statement on the record describing the testimony excluded.

(4) Where two or more parties have substantially similar interest and positions, the Presiding Officer may limit the number of attorneys or other party representatives who will be permitted to cross-examine and to make and argue motions and objections on behalf of such parties. Attorneys may, however, engage in cross-examination relevant to matters not adequately covered by previous cross-examination.

(5) Rulings of the Presiding Officer on the admissibility of evidence or testimony, the propriety of cross-examination, and other procedural matters shall appear in the record and shall control further proceedings, unless reversed as a result of an interlocutory appeal taken under § 124.90.

(6) All objections shall be made promptly or be deemed waived. Parties shall be presumed to have taken exception to an adverse ruling. No objection shall be deemed waived by further participation in the hearing.

(e) Parties may at any time stipulate to relevant facts or to settlement. However, all settlements to which the Agency is a party must be approved by the Deputy Assistant Administrator for Water Enforcement in accordance with § 124.103.

§ 124.86 Motions.

(a) Any party may make a motion, (including a motion to dismiss a particular claim on a contested issue), to the Presiding Officer about any matter relating to the proceeding. All motions shall be filed and served as provided in § 124.80 except those made on the record during an oral hearing before the Presiding Officer.

(b) Within 10 days after service of any written motion, any party to the proceeding may file a response to the motion. The time for response may be shortened to 3 days or extended for an additional ten days by the Presiding Officer for good cause shown.

(c) Notwithstanding § 122.68, any party may file with the Presiding Officer a motion seeking to apply to the permit any regulatory or statutory requirement issued or made available after the issuance of the permit under § 124.17. The Presiding Officer shall grant any motion to apply a new statutory requirement unless he or she finds it contrary to legislative intent. The Presiding Officer may grant a motion to apply a new regulatory requirement where appropriate to carry out the purposes of CWA, and where no party would be unduly prejudiced thereby.

§ 124.87 Record of hearings.

(a) All orders issued by the Presiding Officer, transcripts of oral hearings or arguments, written statements of position, written direct and rebuttal testimony, and any other data, studies, reports, documentation, information and other written material of any kind submitted in the proceeding shall be a part of the record of the hearing, and shall be available except as provided in § 122.16 to the public in the office of the Regional Hearing Clerk promptly upon receipt in that office.

(b) Evidentiary hearings shall be either stenographically reported verbatim or tape recorded, and thereupon transcribed. After the hearing, the reporter shall file with the Regional Hearing Clerk:

(i) The original of the transcript; and

(ii) The exhibits received or offered into evidence at the hearing.

(c) The Regional Hearing Clerk shall promptly notify each of the parties of the filing of the certified transcript of proceedings. Any party who desires a copy of the transcript of the hearing may obtain a copy of the hearing transcript from the Regional Hearing Clerk and upon payment of costs.

The Presiding Officer shall allow witnesses, parties, and their counsel an opportunity to submit written proposed corrections of the transcript of any oral testimony taken at the hearing, pointing out errors that may have been made in transcribing the testimony, as are required to make the transcript conform to the testimony.

Except in unusual cases, no more than thirty days shall be allowed for submitting such corrections from the day a complete transcript of the hearing becomes available.

§ 124.88 Proposed findings of fact and conclusions; brief.

Within 45 days the certified transcript is filed, any party may file with the Regional Hearing Clerk proposed findings of fact and conclusions and a brief in support thereof, each containing appropriate reference to the record. A copy of any such findings, conclusions and brief shall be contemporaneously served upon every other party and the Presiding Officer. The Presiding Officer, for good cause shown, may extend the time for filing the proposed findings and conclusions and/or the brief. The Presiding Officer may allow reply briefs.

§ 124.89 Decisions.

(a) The Presiding Officer shall review and evaluate the record, including the proposed findings and conclusions, any briefs filed by the parties and any interlocutory decisions pursuant to § 124.90 and shall issue and file his initial decision with the Regional Hearing Clerk. The Regional Hearing Clerk shall immediately serve copies of the initial decision upon all parties (or their counsel of record) and the Administrator.

(b) The initial decision of the Presiding Officer shall automatically become the final decision thirty (30) days after its service unless within such time.

(i) A party files a petition for review by the Administrator pursuant to § 124.101; or

(ii) The Administrator *sua sponte* files a notice that he or she will review the decision pursuant to § 124.101; or

(c) If a hearing has been granted on terms or conditions of a RCRA, UIC or PSD permit under the standards set forth in § 124.74(b)(2), the initial decision of the Presiding Officer to those terms and conditions shall be in the form of recommendations to the Regional Administrator for changes to the RCRA, UIC or PSD permit. The Regional Administrator shall modify the RCRA, UIC or PSD permit to the extent he or she considers appropriate, and explain his or her reasons for rejecting any recommendations of the Presiding Officer, within thirty days of receipt of the Presiding Officer's recommendations. The permit as modified may be appealed to the Administrator as provided in § 124.21.

§ 124.90 Interlocutory appeal.

(a) Except as provided in this section, appeals to the Administrator may be taken only under § 124.101. Appeals from orders or rulings may be taken under this section only if the Presiding Officer, upon motion of a party, certifies those orders or rulings to the Administrator for appeal on the record. Requests to the Presiding Officer for certification must be filed in writing within ten days of service of notice of the order, ruling, or decision and shall state briefly the grounds relied on.

(b) The Presiding Officer may certify an order or ruling for appeal to the Administrator if:

(1) The order or ruling involves an important question on which there is substantial ground for difference of opinion; and

(2) Either:

(i) An immediate appeal of the order or ruling will materially advance the ultimate completion of the preceeding, or,

(ii) A review after the final order is issued will be inadequate or ineffective; and,

(3) Such an appeal is necessary to prevent exceptional delay, expense or prejudice to any party.

(c) To the extent an appeal under this section involves issues of law, the Administrator shall refer those issues to the General Counsel for determination subject to his or her approval.

(d) If the Administrator decides that certification was improperly granted, he or she shall decline to hear the appeal. The Administrator shall accept or decline all interlocutory appeals within 30 days of their submission; if the Administrator takes no action within that time, the appeal shall be considered dismissed. When the Presiding Officer declines to certify an order or ruling to the Administrator for an interlocutory appeal, it may be reviewed by the Administrator only upon appeal from the initial decision of the Presiding Officer, except when the Administrator determines, upon motion of a party and in exceptional circumstances, that to delay review would not be in the public interest. Such motion shall be made within five days after receipt of notification that the Presiding Officer has refused to certify an order or ruling for interlocutory appeal to the Administrator. Ordinarily, the interlocutory appeal will be decided on the basis of the submissions made to the Presiding Officer. The Administrator may, however, allow briefs and oral argument.

(e) The Presiding Officer may stay the proceeding pending a decision by the Administrator upon an order or ruling certified by the Presiding Officer for an interlocutory appeal, or upon the denial of such certification by the Presiding Officer. Only in exceptional circumstances will proceedings be stayed.

(f) The failure to request an interlocutory appeal shall not foreclose a party from taking exception to an order or ruling in an appeal under § 124.101.

§ 124.101 Appeal to the Administrator.

(a)(1) Within 30 days after service of an initial decision, or the denial in whole or in part of a request for an evidentiary hearing, any party or requester, as the case may be, may appeal any matter set forth in such initial decision or denial, any adverse order or ruling to which the party objected during the hearing by filing with the Administrator notice of appeal and petition for review. Proof of service upon all parties shall accompany such filing. The petition shall include a statement of the supporting reasons for such exceptions and, where appropriate, a showing that the initial decision contains:

(i) A finding of fact or conclusion of law which is clearly erroneous, or

(ii) An exercise of discretion or policy which is important and which the Administrator should, in his discretion, review.

(2) Within 15 days after service of a petition for review under paragraph (a)(1), any other party to the hearing in question may file a responsive petition.

(3) Policy or legal conclusions made in the course of denying a request for an evidentiary hearing may be reviewed and changed by the Administrator in an appeal under this section.

(b) Within 30 days of an initial decision or denial of an evidentiary hearing the Administrator may, *sua sponte*, review such decision. Within seven (7) days after the Administrator has decided under this section to review an initial decision or the denial of an evidentiary hearing, notice of that decision shall be served by mail upon all affected parties and the Regional Administrator.

(c) Within a reasonable time following the filing of the petition for review, the Administrator shall issue an order either granting or denying the petition for review. When the Administrator grants a petition for review or determines under paragraph (b) to review a decision, the Administrator may notify the parties that only certain issues shall be briefed.

(d) Notwithstanding the grant of a petition for review or a determination under paragraph (b) to review a decision, the Administrator may summarily affirm without opinion an initial decision or the denial of an evidentiary hearing.

(e) To the extent an appeal under this section involves issues of law, the Administrator shall refer those issues to the General Counsel for determination subject to his approval.

(f) A petition to the Administrator under paragraph (a) for review of any initial decision or the denial of an evidentiary hearing is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final decision of the Agency.

(g)(1) If a party timely files a petition for review or if the Administrator *sua sponte* orders review, then, for purpose of judicial review under section 509(b) of CWA, final Agency action on an issue occurs after EPA review procedures are exhausted and the Administrator's decision is issued as follows:

(i) If the Administrator denies review or summarily affirms without opinion as provided in § 124.101(d), then the initial decision or denial becomes the final Agency action and occurs upon the service or notice of such decision.

(ii) If the Administrator issues a decision without remanding the proceeding then the final permit, redrafted as required by the Administrator's decision, shall be reissued and served upon all parties to such appeal in accordance with paragraph (2).

(iii) If the Administrator issues a decision remanding the proceeding then final Agency action occurs upon completion of the remanded proceeding, including any Administrator appeals therefrom.

(2) For purposes of judicial review under section 509(b) of CWA, final agency action occurs 10 days after a final permit is issued. After Agency review procedures are exhausted a final permit shall be prepared and issued by the Regional Administrator:

(i) When the Administrator issues notice to the parties that review has been denied if review is denied;

(ii) When the Administrator issues a decision if review is not denied and the Administrator does not remand the proceedings; or

(iii) Upon the completion of remand proceedings if the proceedings are remanded unless the Administrator's remand order specifically provides that appeal of the remand decision will be required in order to extend administrative remedies.

(h) The petitioner may file a brief in support of the petition within 21 days after the Administrator has granted a petition for review. Any other party may file a responsive brief within 21 days of service of a brief in support of the petition. The petitioner may file a reply brief within 14 days of service of the responsive brief and any person may file an *amicus brief* for the consideration of the Administrator. If the Administrator determines, *sua sponte*, to review an initial Regional Administrator's decision or the denial of an evidentiary hearing, the Administrator shall notify the parties of the briefing schedule.

(i) Review by the Administrator of an initial decision or the denial of an evidentiary hearing shall be limited to issues specified under paragraph (a) of this section, except after notice to all parties, the Administrator may raise and decide other matters which he or she considers material on the basis of the record.

§ 124.102 Applicability of subpart E.

(a) All the provisions of this subpart except § 124.78, § 124.83(c)(3) and § 124.86(d)(1) concerning the automatic receipt of the administrative record into evidence shall apply to all hearings for which the notice of hearing under § 124.77 is issued after the effective date of these regulations, *provided* that the Presiding Officer at any such proceeding may vary or suspend any of the terms of these regulations during a six-month transitional period after their effective date to avoid inconvenience or injustice.

(b) Section 124.78 and the provisions of §§ 124.83(c)(3) and 124.86(d)(1) for automatic receipt of the administrative record into evidence shall apply to all hearings regarding a permit which was based on an administrative record under §§ 124.20 and 124.82.

§ 124.103 EPA headquarters approval of stipulation or consent agreement.

No evidentiary hearing under Subpart E may be resolved, settled or decided, in either whole or substantial part, by the stipulation or consent of the parties thereto, unless and until the stipulation or consent is approved and signed by the Deputy Assistant Administrator for Water Enforcement.

No stipulation or consent without such approval and signature shall bind EPA or have any force or effect or be filed in any proceeding.

Subpart F—Non-Adversary Procedures for NPDES Initial Licensing

§ 124.111 Applicability.

(a) Except as set forth in this Subpart, this Subpart applies in lieu of, and to the complete exclusion of, Subparts A through E in the following cases:

(1) In all proceedings for the issuance of a modified permit under section 301(h) of the Clean Water Act, except that in such proceedings:

(i) The terms "Administrator or a person designated by the Administrator" shall be substituted for the term "Regional Administrator"; and

(2) In any proceedings for the issuance of any other NPDES permit which constitutes "initial licensing" under the Administrative Procedure Act, where the Regional Administrator elects to apply this Subpart and explicitly so states in the public notice of the draft permit. If an NPDES draft permit is processed under this Subpart, any other draft permits which have been consolidated with the NPDES draft permit under § 124.6(d) shall likewise be processed under this Subpart.

(3) The parties to an evidentiary hearing that would otherwise be held under Subpart E may agree to conduct that hearing in accordance with this Subpart. Any applicant for an NPDES permit which is not an initial licensee may request when requesting an evidentiary hearing under § 124.74 that its application be processed under the procedures of this Subpart. If the Regional Administrator agrees with this request, and if a hearing is granted the notice of the hearing issued under § 124.116 shall include a statement that the permit will be processed under the procedures set forth in this Subpart unless a written objection is received within 30 days stating the reasons. If no such objection is received, the application shall be processed in accordance with §§ 124.117–124.121 of this Subpart, except that any reference to a draft permit shall be taken as referring to the final permit. If an objection is received, Subpart E shall be applied instead.

(b) "Initial licensing" includes both the first grant of an NPDES permit to a discharger that has not previously held a NPDES permit and the first decision on any variance applied for by a discharger.

§ 124.112 Relation to other subparts.

The following provisions of Subparts A through E apply to procedures under this Subpart:

(a)(1) Sections 124.1 through 124.11.

(2) Section 124.18;

(3) Section 124.22.

(c)(1) Section 124.54 "Terms requested by the Corps of Engineers and other Government Agencies".

(2) Section 124.61 "Final environmental impact statement".

(3) Section 124.6e "Decision on variances and modifications".

(d)(1) Section 124.72 "Definitions".

(2) Section 124.73 "Filing".

(3) Section 124.78 "Ex parte communications".

(4) Section 124.80 "Filing and service".

(5) Section 124.85(a) (Burden of proof);

(6) Section 124.86 "Motions"; and

(7) Section 124.87 "Record of hearings".

(8) Section 124.90 "Interlocutory appeal".

§ 124.113 Public notice regarding draft permits and permit conditions.

Public notice of the formulation of a draft permit under this Subpart shall be given as provided in §§ 124.11 and 124.56. At the discretion of the Regional Administrator, the comment period specified in this notice may include an opportunity for a public hearing under § 124.12.

§ 124.114 Request for hearing; request to participate in a hearing.

(a) By the close of the comment period set forth in § 124.113, any person may request the Regional Administrator to hold a panel hearing on the draft permit by submitting a written request containing the following:

(1) A brief statement of the interest of the person requesting the hearing;

(2) A statement of any objections to the draft permit;

(3) A statement of the issues which such person proposes to raise for consideration at such hearing; and

(4) Statements meeting the requirements of § 124.74(c)(1)–(5).

(b) Whenever (1) a written request satisfying the requirements of paragraph (a) of this section has been received and presents genuine issues of material fact, or (2) the Regional Administrator determines *sua sponte* that a hearing under this Subpart is necessary or appropriate, the Regional Administrator shall serve written notice of the determination on each person requesting such hearing and the applicant, and shall provide public notice of the determination in accordance with § 124.56(e). If the Regional Administrator determines that a request filed under paragraph (a) of this section does not comply with the requirements of paragraph (a) or does not present genuine issues of fact, the Regional Administrator may deny the request for the hearing and shall serve written notice of such determination on all persons requesting the hearing.

(c) The Regional Administrator may also decide before a draft permit is issued that a hearing should be held under this Part. At the discretion of the Regional Administrator the notice may provide for a hearing under § 124.13 before a panel hearing is held, provided that no cross-examination under § 124.14 shall be permitted. When such a hearing is to be held, the notice of the formulation of the draft permit under § 124.113 shall so state.

§ 124.115 Effect of denial of, or absence of, request for hearing.

If no request for a hearing is made under § 124.114, or if all such requests are denied under that section, the draft permit shall be treated procedurally as if it were a recommended decision issued under § 124.124 of this Subpart, except that for purposes of §§ 124.125 and 124.126 the term "hearing participant" or "person who participated in the hearing" shall be construed to mean the applicant and any person who submitted comments under § 124.56(d).

§ 124.116 Notice of hearing.

(a) Upon granting a request for a hearing under § 124.114 the Regional Administrator shall promptly publish a notice of the hearing as required under § 124.56(e). The mailed notice shall include a statement which indicates whether the Presiding Officer or the Regional Administrator will issue the recommended decision.

§ 124.117 Request to participate in hearing.

(a) Each person desiring to participate in any hearing noticed under this section, shall file a motion to participate with the Regional Hearing Clerk by the deadline set forth in the notice of the grant of the hearing. The request shall include:

(1) A brief statement of the interest of the person in the proceeding;

(2) A brief outline of the points to be addressed;

(3) An estimate of the time required; and

(4) The requirements of § 124.74(c)(1)–(5).

(5) If the request is submitted by an organization, a non-binding list of the persons to take part in the presentation. As soon as practicable, but in no event later than two weeks before the scheduled date of the hearing, the Presiding Officer shall make a hearing schedule available to the public and shall mail it to each person who requested to participate in the hearing.

§ 124.118 Submission of written comments on draft permit.

(a) No later than 30 days before the scheduled start of the hearing (or such other date as may be set forth in the notice of hearing), each party shall file all of its comments on the draft permit, based on information in the administrative record and any other information which is or reasonably could have been available to that person. All comments shall include any affidavits, studies, data, tests or other materials relied upon for making any factual statements in the comments.

(b)(1) Written comments filed under paragraph (a) shall constitute the bulk of the evidence submitted at the hearing. Oral statements at the hearing should be brief and in the nature of argument. They shall be restricted either to points that could not have been made in written comments, or to emphasize points which are made in the comments, but which the participant believes can be more effectively argued in the hearing context.

(2) Notwithstanding the foregoing, within two weeks prior to the deadline specified in paragraph (a) for the filing of main comments, any party who has filed a request to participate in the hearing may move to submit all or part of its comments orally at the hearing in lieu of submitting written comments and the Presiding Officer shall, within one week, grant such motion if the Presiding Officer finds that such person will be prejudiced if required to submit such comments in written form.

(c) Parties to any hearing may submit written material in response to the comments filed by other participants under paragraph (a) at the time they appear at the panel stage of the hearing under § 124.120.

§ 124.119 Presiding officer.

(a)(1) Upon the granting of a request for hearing the Regional Administrator shall, as soon as practicable, request that the Chief Administrative Law Judge assign an Administrative Law Judge as Presiding Officer. The Chief Administrative Law Judge shall thereupon make such assignment.

(2) If all parties to the hearing waive in writing their statutory right to have the persons identified in paragraph (a) preside at the hearing, the Regional Administrator shall name a lawyer permanently or temporarily employed by the Agency and without prior connection with the proceeding to serve as Presiding Officer.

(b) It shall be the duty of the Presiding Officer to conduct a fair and impartial hearing. The Presiding Officer shall have the authority:

(1) Conferred by § 124.85(b)(1)–(15), § 124.83 (b) and (c), and;

(2) To receive relevant evidence, provided that all comments, under

§ 124.118, the record of the panel hearing under § 124.120, and the administrative record, as defined in § 124.10 (or in the case of voluntary use of these procedures under § 124.111(a)(3), the administrative record for the final permit under § 124.20 and § 124.62) shall be received in evidence.

§ 124.120 Panel hearing.

(a) A Presiding Officer shall preside at each hearing held under this Subpart. An EPA panel shall also take part in the hearing. The panel shall consist of three or more EPA temporary or permanent employees having special expertise in areas related to the hearing issue, at least two of whom shall not have taken part in preparing the draft permit. If appropriate for the evaluation of new or different issues presented at the hearing, the panel membership may change or may include persons not employed by the EPA.

(b) At the time of the hearing notice pursuant to § 124.116, the Regional Administrator shall designate the persons who shall serve as panel members for the hearing and the Regional Administrator shall file with the Regional Hearing Clerk the name, address and area of expertise of each person so designated. The Regional Administrator may also designate EPA employees who will provide staff support to the panel but who may or may not serve as panel members. Such designated persons shall be subject to the *ex parte* rules in § 124.78. The Regional Administrator may also designate Agency trial staff as defined in § 124.78 for the hearing.

(c) At any time before the close of the hearing, the Presiding Officer, after consultation with the panel, may request that any person having knowledge concerning the issues raised in the hearing and not then scheduled to participate therein appear and testify at the hearing.

(d) The panel members may question any person participating in the panel hearing. Cross-examination by persons other than panel members shall not be permitted at this stage of the proceeding except where the Presiding Officer determines, after consultation with the panel, that such cross-examination would expedite consideration of the issues. However, the parties may submit written questions to the Presiding Officer for the Presiding Officer to ask the participants, and the Presiding Officer may, after consultation with the panel, and at his or her sole discretion, ask these questions.

(e) At any time before the close of the hearing, any person may submit to the Presiding Officer written questions specifically directed to any person appearing or testifying in the hearing. The Presiding Office, after consultation with the panel may, at his sole discretion, ask the written question so submitted.

(f) Within ten days after the close of the hearing, any of the participants shall submit such additional written testimony, affidavits, information or material as such participant deems relevant or which the panel may request of such participant. These additional submissions shall be filed with the Regional Hearing Clerk and shall be a part of the hearing record.

§ 124.121 Opportunity for cross-examination.

(a) Any participant in a panel hearing may submit a written request to cross-examine on any issue of material fact. The motion shall be submitted to the Presiding Officer within 15 days after a full transcript of the panel hearing is filed with the Regional Hearing Clerk and shall specify:

(1) The disputed issue(s) of material fact regarding which cross-examination is requested. This shall include an explanation of why the questions at issue are factual, rather than of an analytical or policy nature, the extent to which they are in dispute in light of the record made up to that stage of the record, and the extent to which they are material to the decision on the application; and

(2) The person(s) a participant desires to cross-examine, and an estimate of the time necessary. This shall include a statement as to why the cross-examination will result in resolving the issue of material fact involved.

(b) After receipt of all motions for cross examination under paragraph (a) of this section, the Presiding Officer, after consultation with the hearing panel, shall promptly issue an order either granting or denying each such request. If any request for cross-examination is granted, the order shall be served on all hearing participants and shall specify:

(1) The issues on which cross-examination is granted;

(2) The persons to be cross-examined on each issue;

(3) The persons allowed to conduct cross-examination;

(4) Time limits for the examination of witnesses by each cross-examiner; and

(5) The date, time and place of the supplementary hearing at which cross-examination shall take place.

In issuing this ruling, the Presiding Officer may determine that one or more participants have the same or similar interests and that to prevent unduly repetitious cross-examination, they should be required to choose a single representative for purposes of cross-examination. In such a case, the order shall simply assign time for cross-examination by that single representative without identifying the representative further. If said participants with the same or similar interests shall fail to designate such single representative, then the Presiding Officer shall divide the assigned time among the representatives of such participants or issue such other order as justice may require.

(c) The Presiding Officer and to the extent possible, the members of the hearing panel shall be present at the supplementary hearing. During the course of the hearing, the Presiding Officer shall have authority to modify any order issued under paragraph (b) of this section. A record will be made under § 124.87.

(d)(1) No later than the time set for requesting cross-examination, a hearing participant may request that alternative methods of clarifying the record (such as the submission of additional written information) be used in lieu of or in addition to cross-examination. The Presiding Officer shall issue an order granting or denying such request at the time he issues (or would have issued) an order under paragraph (b) of this section. If the request is granted, the order shall specify the alternative provided and any other relevant information (e.g., the due date for submitting written information).

(2) In passing on any request for cross-examination submitted under paragraph (a) of this section, the Presiding Officer may, as a precondition to ruling on the merits of such request, require alternative means of clarifying the record to be used whether or not a request to do so has been made under the immediately preceding paragraph. The person requesting cross-examination shall have one week to comment on the results of utilizing such alternative means, following which the Presiding Officer, as soon as practicable, shall issue an order granting or denying such person's request for cross-examination.

(e) The provisions of § 124.85(d)(2) apply to proceedings under this Subpart.

§ 124.122 Record for final permit.

(a) The record on which the final permit shall be based in any proceeding under this Subpart (other than a proceeding by consent of the parties under § 124.111(a)(3)) consists of:

(1) The administrative record compiled under § 124.20;

(2) Any material submitted under § 124.78 relating to *ex parte* contracts.

(3) All notices issued under § 124.113;

(4) All requests for hearings, and rulings on those requests received or issued under § 124.114;

(5) Any notice of hearing issued under § 124.116;

(6) Any request to participate in the hearing received under § 124.117;

(7) All comments, submitted under § 124.118, any motions made under that section and the rulings on them, and any comments filed under § 124.113(b)(9);

(8) The full transcript and other material received into the record of the panel hearing under § 124.120;

(9) Any motions for, or rulings, on cross-examination filed or issued § 124.121;

(10) Any motions for, orders for and the results of, any alternatives to cross-examination under § 124.121;

(11) The full transcript of any cross-examination held; and

(b) In any proceedings under this Subpart involving a permit which is not an initial license and which are conducted under § 124.111(a)(3), the record for decision shall consist of:

(1) The administrative record under § 124.20 or § 124.62;

(2) All requests for hearing submitted under § 124.74, and all rulings on those requests; and

(3) The items specified in subparagraphs (a)(4) through (a)(11) of this section.

§ 124.123 Filing of brief, proposed findings of fact and conclusions of law and proposed modified permit.

Unless otherwise ordered by the Presiding officer, each party may, within 20 days after all requests for cross-examination are denied or after a transcript of the full hearing including any cross-examination becomes available, submit proposed findings of fact; conclusions regarding material issues of law, fact, or discretion; a proposed modified NPDES permit (if such person is urging that the draft permit should be modified); and a brief in support thereof; together with references to relevant pages of transcript and to relevant exhibits. Within 10 days thereafter each party may file a reply brief concerning matters contained in opposing briefs and containing alternative findings of fact; conclusions regarding material issues of law, fact, or discretion; and a proposed modified permit. Oral argument may be held at the discretion of the Presiding Officer on Motion of any party or sua sponte.

§ 124.124 Recommended decision.

The person named to prepare the decision shall, as soon as practicable after the conclusion of the hearing, evaluate the record of the hearing and prepare and file a recommended decision with the Regional Hearing Clerk. That person may consult with, and receive assistance from, any member of the hearing panel in drafting the recommended decision, and may delegate the preparation of the recommended decision to the panel or to any member or members of it. This decision shall contain findings of fact, conclusions regarding all material issues of law, and a recommendation as to whether and in what respect the draft permit shall be modified. After the recommended decision has been filed, the Regional Hearing Clerk shall serve a copy of such decision on each party and upon the Administrator.

§ 124.125 Appeal from or review of recommended decision.

(a)(1) Within 30 days after service of the recommended decision, any party may take exception to any matter set forth in such decision or to any adverse order or ruling of the Presiding Officer to which such party objected, and may appeal such exceptions to the Administrator as provided in § 124.101. Except that references to "initial decision" will mean recommended decision under § 124.124.

§ 124.126 Final decision.

As soon as practicable after all appeal proceedings have been completed, the Administrator shall issue a final decision. Such final decision shall include findings of fact; conclusions regarding material issues of law, fact, or discretion, as well as reasons therefor; and a modified NPDES permit to the extent appropriate. It may accept or reject all or part of the recommended decision. The Administrator may delegate some or all of the work of preparing this decision to a person or persons without substantial prior connection with the matter. The Administrator or his designee may consult with the Presiding Officer, members of the hearing panel or any other EPA employee in preparing the final decision. The Hearing and Record Clerk shall file a copy of the decision on all hearing participants.

§ 124.127 Final decision if there is no review.

If no party appeals a recommended decision to the Administrator, and if the Administrator does not elect to review it, the recommended decision is deemed the final decision of the Agency upon the expiration of the time for filing any appeals.

§ 124.128 Delegation of authority; time limitations.

(a) The Administrator may delegate to a Judicial Officer any or all of his or her authority to act under this Subpart.

(b) The failure of the Administrator, Regional Administrator or Presiding Officer to do any act within the time periods specified herein shall not be construed as a waiver or in derogation of any rights, powers or authority of the United States Environmental Protection Agency.

(c) Upon a showing by any party that it has been prejudiced by a failure of the Administrator, Regional Administrator, or Presiding Officer to do any act within the time periods specified herein, the Administrator, Regional Administrator, or Presiding Officer, as the case may be, may grant such party such relief of a procedural nature (including extension of any time for compliance or other action) as may be appropriate.

§ 124.129 EPA headquarters approval of stipulation or consent agreement.

No non-adversary initial licensing hearing under Subpart F may be resolved, settled or decided, in either whole or substantial part, by the stipulation or consent of the parties thereto, unless and until the stipulation or consent is approved and signed by the Deputy Assistant Administrator for Water Enforcement.

No stipulation or consent without such approval and signature shall bind EPA or have any force or effect or be filed in any proceeding.

[FR Doc. 79-18294 Filed 6-13-79; 8:45 am]
BILLING CODE 6560-01-M

Thursday
June 14, 1979

Federal Register

Part III

Environmental Protection Agency

Draft Consolidated Permit Application Forms and Proposed National Pollutant Discharge Elimination System Regulations

ENVIRONMENTAL PROTECTION AGENCY

[FRL-1233-8]

Draft Application Forms for EPA Programs

AGENCY: Environmental Protection Agency.

ACTION: Publication of draft application forms.

SUMMARY: Elsewhere in today's Federal Register, EPA is proposing regulations to consolidate certain permit programs administered by the Agency. As part of this initiative, EPA is developing a single set of forms and instructions to be used for applying for permits issued under the consolidated permits program.

This notice solicits public comments on draft of several parts of the consolidated permit application form and accompaning instructions. When complete, the consolidated application form will consist of a general form asking for information common to all programs within the consolidated permits program (including an identification of the facility and a general description of the pathways by which pollutants are released to the environment), followed by specific forms tailored to the different programs.

The forms included today are: (1) A general form for applicants for EPA permits; (2) a form to apply for National Pollutant Discharge Elimination System (NPDES) permits under the Clean Water Act for concentrated animal feeding operations and aquatic animal production facilities; (3) a form for existing industrial dischargers applying for NPDES permits under the Clean Water Act; and (4) a form for hazardous waste management facilities (HWM facilities) which require hazardous waste storage, treatment or disposal permits under the Resource Conservation and Recovery Act.

Additional forms will be published for public comment in the future to reflect the application requirements of other programs within the consolidated permits initiative.

DATES: Comments must be received on or before September 12, 1979 to be considered.

A pamphlet describing the proposed regulations and their relationship to the new NPDES application form has been prepared, titled "A Guide to the Consolidated Permit Application and Conforming NPDES Regulations" (C-7). This pamphlet, and six other pamphlets describing the final NPDES regulations, the proposed consolidated permit regulations and other proposed regulations pertaining to the consolidated permit programs are available from the Environmental Protection Agency, Public Information Center (PM-215), 401 M St., SW., Washington, D.C. 20460.

Meetings open to the public to discuss and receive comments on the consolidated application form are scheduled for four cities. These same meetings will also serve as a forum to receive comments on other aspects of the consolidated permits program, including the consolidated permit program regulations which are proposed elsewhere in today's Federal Register, and reproposed part 146 of the Underground Injection Control (UIC) regulations published on April 20, 1979 at 44 FR 23738. Both the RCRA and the NPDES portions of this consolidated application form will be discussed on the second and third day of each meeting.

These meetings will be held at the following places and dates:

July 16, 17*, 18, 1979, Northpark Inn, 9300 North Central Expressway, Dallas, Texas.
July 23, 24*, 25, 1979 HEW Auditorium, 330 Independence Avenue SW., Washington, D.C.
July 26*, 27, 28, 1979, Water Tower Hyatt, 800 North Michigan Avenue, Chicago, Illinois.
July 30, 31*, August 1, 1979 EPA Region X, 1200 6th Avenue, Seattle, Washington.

At each public meeting, registration will be held from 8:30 to 9:00 a.m. and comments will be received from 9:00 a.m. until concluded, or no later than 5:00 p.m. In addition, an evening session will be held on the dates noted with an asterisk above, from 7:30 until concluded. Anyone wishing to make an oral statement at the meetings should notify the following person in writing, specifying the meeting dates and the city in which they are interested: Ms. Judith Shaffer, Permits Division (EN-336), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

ADDRESSEE: Comments should be addressed to: Edward A. Kramer (A-1), Permits Division (EN-336), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 (202) 755-0750.

FOR FURTHER INFORMATION CONTACT: Edward A. Kramer (A-1), Permits Division (EN-336), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 (202) 755-0750.

*Day and evening sessions.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the interest of regulatory reform, the Agency is presently consolidating its permit programs wherever feasible. The goal of this effort is to eliminate gaps and overlaps among the programs, to insure consistency of regulatory approaches of the various programs, and to provide the regulated community with uniform procedures. Although statutory constraints preclude complete uniformity, the Agency believes that the goal of consolidation should be pursued to the extent possible.

The Agency has already begun its consolidation efforts by proposing consolidated regulations elsewhere in today's Federal Register for five programs: The Hazardous Waste Permit Program under sections 3005 and 3006 of the Resource Conservation and Recovery Act (RCRA), the Underground Injection Control (UIC) program under sections 1421-1423 of the Safe Drinking Water Act (SDWA), the National Pollution Discharge Elimination System (NPDES) permit program under section 402 of the Clean Water Act (CWA), the permit program for dredged or fill material under section 404 of the CWA, and the prevention of significant deterioration (PSD) program under the Clean Air Act.

During the preparation of the consolidated regulations, many overlaps, gaps and inconsistencies in regulatory coverage were discovered and eliminated by the various EPA program offices responsible for each program. In addition, procedures for approving State programs, applying for permits, issuing permits, and other similar matters were made consistent to the extent permitted by law and sound policy.

EPA is now taking another major step in its consolidation effort by developing a single set of application forms and instructions for the following four programs:

(1) Hazardous waste;

(2) Underground injection control (UIC);

(3) Discharges to surface water (NPDES, with separate parts designed for existing industrial dischargers, new industrial sources and discharges, publicly owned treatment works, and concentrated animal feeding facilities); and

(4) Prevention of Significant Deterioration (PSD) for new sources under section 165 of the Clean Air Act.

The fifth program covered by the consolidated permit program regulations, the section 404 dredge or fill program, is not included in EPA's

consolidated application form project at this time since EPA does not issue those permits.

The family of forms for the consolidated permit program is as follows, including those parts that are reserved for addition in the future:

Form 1—General Information
Form 2—Discharges to Surface Water (NPDES Permits)
a. Publicly Owned Treatment Works [Reserved]
b. Concentrated Animal Feeding Operations and Aquatic Animal Production Facilities.
c. Existing Manufacturing, Commercial, Mining, and Silvicultural Operations
Form 3—Hazardous Waste Information Summary (RCRA Permits)
Form 4—Underground Injection of Fluids (UIC Permits) [Reserved]
Form 5—Proposed Facilities (PSD new sources, NPDES new sources and new dischargers, and new injection wells)
a. Compliance with Other Environmental Laws [Reserved]
b. Application for PSD and NPDES Permits [Reserved]
c. New Source Applicability Questionaire (PSD and NPDES) [Reserved].

Forms 1, 2b, 2c and 3 and associated instructions are included in today's public notice. The forms and instructions which are reserved in this package will be developed according to the following schedule:

	Federal Register Notice	Final Form
Form 2a	December 1978	July 1980
Form 4	August 1980	April 1981
Form 5	December 1979	July 1980

The goals of the consolidated application form are to:

(1) Reduce paperwork burdens upon applicants and resource burdens upon EPA and State officials in the preparation and review of applications under more than one permit program.

(2) Insure consistency of application requirements.

(3) Insure that applicants consider and report, at a single time and in a uniform manner, all pathways by which they release pollutants to the environment. This will make clear to the applicant and to EPA (or an approved State) precisely which programs apply, resulting in proper regulation of all sources of pollution as required by the various statutes. It will also facilitate the development by permit writers of consistent permit conditions under the various programs.

The consolidation effort is an EPA initiative. States are encouraged, but not required, to consolidate their programs. EPA hopes that today's notice will set a positive example for States to follow.

EPA's consolidation effort is limited by the fact that in many cases some programs will be operated by EPA's Regional offices while others will be operated by States, sometimes by different offices in a State. Thus, for example, an applicant might be required to apply to EPA for an NPDES and UIC consolidated permit, to one State agency for a hazardous waste permit, and to another State agency for a PSD permit.

To minimize this problem, EPA intends to actively encourage further consolidation of programs. EPA also intends to notify applicants by letter as to which Federal and State offices operate which programs. In addition, permit program coordinators will be available in each EPA Regional office to assist permit applicants in this regard. Special coordinators for new sources have already been established in each EPA Region and are listed at 44 FR 23306 (April 19, 1979).

The Agency has determined that the best way to consolidate application forms is to combine common elements in a general part and leave program-unique elements to specific parts. The alternative of developing a single form encompassing all programs was rejected as being too unwieldy and potentially confusing.

To ensure that the forms are understandable, the questions and instructions are being drafted to be as concise and clear as possible and to require as brief a response as possible. Different colors will be used in the final forms for each program to help distinguish them.

In addition, the questions and instructions in the general form (Form 1) have been designed to enable an applicant to determine which additional forms are applicable. Further, once Form 5c is developed, applicants will be able to submit preliminary information to EPA and receive formal determinations of whether they are subject to the new source requirements of the PSD and NPDES programs. Of course, if an applicant remains unsure of which programs apply, he or she is encouraged to call, visit or write EPA's Regional representative for assistance.

Today's notice contains drafts of the general form, a RCRA form, two NPDES forms, and all associated instructions. After receipt of public comments, these will be altered if necessary. In addition, these forms must be approved by the Office of Management and Budget before EPA can use them. The forms which have not been included in today's notice will be published as drafts in future Federal Register notices, and incorporated into the consolidated permit application form when final.

II. General Form (Form 1)

This form requires submission of general identification information: name, address, phone number of the applicant (and of the facility, if different) the four Standard Industrial Classification (SIC) codes best describing the principal products of the facility, and the name and telephone number of the facility contact (e.g., plant manager). The type of ownership (Federal, State, private, etc.) must also be described.

In addition to identifying the facility, this form will be used as a guide to determine which specific forms must be completed by the applicant. The applicant is asked, by the use of brief questions requiring "yes" or "no" answers, whether it conducts certain activities, each of which requires a permit. In most cases, a "yes" answer will lead the applicant to the additional specific form necessary to obtain a permit for the activity. The applicant must also list any permits which it presently holds.

Finally, this form requires applicants to submit topographic maps of their facilities extending to at least one mile beyond property boundaries. The maps must show the location of each of the source's intake and discharge points, hazardous waste treatment, storage and disposal sites, and injection wells. These requirements will give an overview of the release of different wastes to the environment by each facility.

The Agency considered asking for other more detailed information in the general form. This could prove useful where more than one program solicits similar information. However, such information is generally not relevant to all of the programs. To avoid soliciting this information from applicants who need not submit it, the Agency decided to request it in the program-specific forms.

III. Hazardous Waste Form (Form 3)

Section 3001 of the Resource Conservation and Recovery act (RCRA) provides authority for determining whether a waste is hazardous and therefore whether it must be managed according to other provisions of RCRA. Regulations implementing this section of RCRA were proposed on December 18, 1978 (43 FR 58956).

Section 3010 of RCRA, requires any person who generates, transports, or owns or operates a facility that treats, stores or disposes of hazardous wastes to notify EPA of such activity within 90 days of promulgation of the section 3001

regulations. Regulations governing this notification were proposed at 43 FR 29908 (July 11, 1978), which require existing Hazardous Waste Management (HWM) facilities to provide the location and general description of their activities and wastes. Because this is a brief document which is not a part of an application for a permit, EPA decided to develop a separate form for notification.

Section 3004 of RCRA, and the implementing regulations which were proposed at 43 FR 58994 (December 18, 1978), address standards for owners and operators of hazardous waste treatment, storage and disposal facilities. These standards define the levels of proposed human health and environmental protection to be achieved by these facilities.

Section 3005 of RCRA requires permits for facilities which treat, store, or dispose of hazardous waste. Regulations to implement this permit program are proposed elsewhere in today's Federal Register as part of the consolidated permit program regulations. These regulations provide for three types of permits for HWM facilities: Regular permits, experimental special permits, and health care special permits.

A. *Regular Permits*

The proposed RCRA regulations establish information requirements for applications for regular permits. For administrative convenience, proposed §§ 122.23 (c) and (d) divide these information requirements into two parts (Part A and Part B). The Part A requirements of the regulations will be implemented by Form 1 and Form 3 of the consolidated permit application, while Part B requirements will be satisfied by direct submission of the required information to the permitting authority (no separate form will be developed). Table I describes the schedule for submission of information required to obtain a regular permit.

1. *Part A Requirements (Forms 1 and 3).* Form 1 is discussed in Part II of this preamble. The information required in Form 3 of the permit application focuses on the nature and quantity of hazardous waste handled at the facility, but also includes: (1) Data such as the zoning of the area in which the facility is located and the type of RCRA permit sought; (2) a detailed description of the facility, including available design and operation drawings and specifications for the facility, and its hazardous waste treatment, storage and disposal processes, techniques and equipment; (3) detailed and specific identification, description and quantification of the wastes to be handled at the facility; and (4) the processes or technologies to be applied for the treatment, storage or disposal of hazardous wastes at the facility. These date requirements reflect the intent and content of proposed §§122.23(c)(3–7).

2. *Part B Requirements (No Application Form). The date and information required by Part B information requirements is site and process specific. The Agency decided not to develop a specific form for Part B since the information required is not readily adaptable to a standard format.*

The specific requirements of Part B, which appear as § 122.23(d) in the proposed consolidated permit program regulations elsewhere in today's Federal Register, include administrative, hydrological, design and operational data on the facility. When sumitted by an applicant, the specific facility and site data required by Part B will be compared to the standards and criteria required by section 3004 of RCRA (40 CFR 250.40 through 250.46, proposed on December 18, 1978 at 43 FR 58994).

The date requirements of Part B include:

(a) Treatment, storage and disposal data: The facility's structures, operating and maintenance plans, emergency or contingency plans, leachate and other pollution control measures, planned life of operation, closure and post-closure maintenance and uses, programs for monitoring and visual inspections during and after use, plans for segregation of incompatible wastes, and plans for incinerator trial burns at appropriate facilities.

(b) Facility site data: The geology, climate, and hydrology [Within 290 m (100 ft) of the facility boundaries] are required in terms of their possible relation to air and water pollution.

(c) Facility staffing data: Information on expected performance and related training of persons responsible for operation of the HWM facility. This data will help EPA to assess operational and maintenance safety of the facility and the associated risks.

(d) Financial responsibility data: Data which supplies evidence of continued financial responsibility, such as performance bonds, insurance carriers/policies, trusts, escrow accounts or other instruments.

These data are usually needed to determine the human health, environmental and economic risk associated with the decision to issue or deny a permit. However, proposed §122.23(d)(7) allows that, on written request and justification from the applicant, any of the information requirements in Part B may be waived if the Director determines that this information is not needed to establish compliance with standards in proposed §§ 250.42–250.46.

B. *Experimental Special Permits*

Owners or operators of experimental facilities which are intended to advance the state of the art for hazardous waste treatment, storage or disposal may seek one-year experimental special permits. These permits may be extended up to one additional year.

Applicants must submit Part A requirements (Forms 1 and 3) and Part B requirements according to the schedule in Table 1. However, certain items may not be relevant. In these cases, certain Part B requirements may be waived.

C. *Health Care special Permits*

Owners or operators of health care facilities that treat or store hazardous waste may apply for health care special permits.

To qualify for this special permit, the following conditions must be met:

(1) The facility must be licensed under a State law that requires compliance with requirements for storage, sterilization, incineration, or treatment of all hazardous waste generated.

(2) The State law must provide for the enforcement of the requirements of the licensing program.

(3) If an incinerator is used, it must be operated under the terms and conditions of a license under applicable State law.

(4) The facility must submit a certification statement indicating compliance with an issued license signed by the appropriate State licensing official.

Applicants for these permits need not submit Part B information. They are also exempt from certain items in Form 3, as described in the instructions.

D. *Interim Status*

The preparation and review of permit applications are expected to take a substantial period of time. Therefore, HMM facilities which were in operation or under physical construction prior to the date of promlugation of section 3001 regulations are eligible for interim status. To qualify for this status, the facility must fulfill the notification requirements of section 3010, and submit Forms 1 and 3 of the consolidated permit application no later than 180 days from the date of promulgation of section 3001 regulations.

Under interim status, the facilities will be treated as having been issued valid permits, thus allowing their continued operation until required to complete the application process by filing Part B information and a final permit is issued. Facilities granted interim status are subject to certain minimum criteria

under section 3004 of RCRA. See proposed 40 CFR 260.40 (43 FR 58946, December 18, 1978). Facilities which do not meet the above conditions (e.g., new facilities) must submit both Part A (Forms 1 and 3) and Part B information prior to permit issuance.

Table I summarizes the types of permits for which applications must be made, the type of forms to be used and the date by which application must be submitted.

Table I—*Summary of RCRA § 3005 Application Requirements*

Permit for which application is submitted	Type of applicant	Deadline for submission of part A (forms 1 and 3)	Deadline for submission of part B (no form provided)
Regular RCRA Permit (Interim Status)	Owner/operator of Existing HWM Facility	A	B
Regular RCRA Permit	Owner/operator of New HWM Facility	C	C
Experimental Special Permit (Interim Status)	Owner/operator of Existing HWM Facility	A	B
Experimental Special Permit	Owner/operator of New HWM Facility	C	C
Health Care Special Permit (Interim Status)	Owner/operator of Existing HWM Facility	A	Not required.
Health Care Special Permit	Owner/operator of New HWM Facility	C	Not required.

A: No later than 180 days after final promulgation of regulations under section 3001 of RCRA.
B: As required by the Director (upon at least six months notice to the applicant).
C: No later than 180 days before physical construction is expected to begin.

E. *Impacts of RCRA Application Reporting Requirements.*—The requirement to obtain a RCRA permit is expected to place an economic and workload burden on approximately 30,000 owners or operators of regulated HWM facilities. The impact on applicants who must complete Form 3 is summarized in Table II. The estimates are considered to be overstated because several States already required submission of some of the same information in their State operated permit programs. In addition, some of the same information necessary for completion of the form may be available through such sources as the Department of Transportation shipping documents which depict the waste, and responsible companies that maintain daily operating logs.

Table II.—*Summary of Form 3 Impact*

	Storage	Treatment and disposal		Health care
		Onsite*	Offsite*	
Number of respondents	17,000	4,800	1,200	7,000
Frequency of response	Once	Once	Once	Once
Cost in work hours	2	27	5	1
Cost in dollars**	$44	$600	$110	$22

*Onsite means on the same or geographically contiguous property; offsite means *not* on the same property.
**Based on $22/hr.

The impacts of Part B requirements are addressed on page 95 of the Draft Subtitle C Economic Impact Analysis. Copies of this document can be obtained by writing Ed Cox, Solid Waste Information Office, Environmental Protection Agency, 26 West St. Clair Street, Cincinnati, Ohio 42560, telephone (513) 684–8491. In addition, copies of this document are available for review in the EPA Library Reading Room, 2404, Waterside Mall, 401 M St., SW., Washington, D.C. 20460, and in the EPA Regional office libraries.

IV. NPDES Forms (Forms 2b and 2c)

All applicants for EPA-issued NPDES permits must submit the general section (Form 1) plus the applicable specific section (Form 2a, 2b, 2c, or 5) of the consolidated application form. Applicants for State-issued permits must use State application forms, unless the State has adopted EPA's form without change.

Only the forms for existing industrial dischargers (Form 2c) and concentrated animal feeding operations and aquatic animal production facilities (Form 2b) are included in this notice. The Agency is also developing application forms for new sources and new dischargers (Form 5) and for publicly owned treatment works (Form 2a). It is expected that many of the considerations addressed in developing the form for existing industrial sources will also be relevant to those forms.

State application forms are not required to be identical to the EPA form, but they are subject to EPA approval prior to use (see the definition of "application" in 40 CFR 122.3 and the requirement of EPA approval in 40 CFR 123.73). To ensure consistency of approach, EPA has today proposed elsewhere in the Federal Register (§ 122.64(d)) minimum requirements for applications for NPDES permits, which would apply even where States use forms other than the EPA form. Of course, States are welcome to use EPA's format, substituting the State's name, address and logo, for EPA's.

Applicants should continue to use existing permit NPDES application forms until revised forms are made available.

The Agency is proposing elsewhere in today's issue of the Federal Register a set of conforming regulations for the NPDES program which establish the framework for the control of pollutants in general and section 307(a) toxic pollutants in particular through a strategy of application reporting and permitting. These regulations are preceded by a detailed preamble which explains the entire strategy. Included in that preamble is a discussion of how the application reporting requirements fit into the overall strategy, including an anaylsis of the basis for each requirement. That discussion will not be repeated here. However, the permit application requirements for existing industrial dischargers may be summarized as follows:

1. Applicants must report discharge levels of pollutants which have traditionally been of concern in the NPDES permit program.

2. Applicants must also report discharge levels of the 129 toxic pollutants listed under section 307(a) of the Clean Water Act (this list is an elaboration upon, but contains no addition to, the list of 65 toxic pollutants contained in the *NRDC Consent Decree* and referred to in section 301(b)(2)(C) of the Clean Water Act). For process wastewater streams discharged by sources in 36 industries, this reporting must be based on analyses conducted by using gas chromatography/mass

spectrometry (GC/MS) analytical techniques for most of the 115 organic chemicals on the toxics list. This analysis will be performed upon composite samples of the applicant's waste stream which have been collected over a 72-hour period. For non-process wastewater streams and sources in other industries, estimates will be accepted.

3. Applicants must describe the variability of the levels of pollutants that may be expected to occur during the term of the permit. Examples include batch process discharges and predictable changes in raw materials usage (e.g., a change by a coal-fired steam electric generating plant from one source of coal to another).

4. At their option, applicants may submit information on expected discharges of hazardous substances as defined under section 311 of the Clean Water Act. As described in proposed 40 CFR 117.12(b) (44 FR 10271, February 16, 1979), applicants who state that they expect to discharge pollutants in certain quantities and concentrations and show that adequate treatment equipment or management practices are or will be in place to control those discharges are eligible for exemption of those discharges from the requirements and penalties of section 311.

It should be noted that the Agency has made efforts to minimize reporting burdens upon applicants. Of course, reporting burdens are increased in some areas as a result of the increased emphasis on toxics required by the 1977 amendments to the Clean Water Act (see the background discussion in the preamble to the proposed conforming NPDES regulations elsewhere in today's Federal Register). However, certain requirements imposed by the expiring NPDES application form have been deleted, including the following:

1. Certain pollutants no longer must be reported (e.g., specific conductance, potassium, and settleable matter).

2. Applicants are no longer required to sample and analyze pollutants in their intake water. However, they must do so if they intend to seek credit for pollutants in their intake as provide by 40 CFR 122.70(g).

3. Applicants are no longer required to provide information on the raw materials used and the types and quantities of products produced, unless an applicable effluent guideline employs limits based on production, raw materials, or some other measure of operation. Where such guideline limits apply, the total amount of product produced or raw material used must be reported in order for the permit writer to apply the guideline.

Applicants are reminded that all information contained in an application for an NPDES permit is available to the public as required by section 401(j) of the Clean Water Act. In order to minimize collection of data which could compromise trade secrets, the Agency is requesting only end-of-pipe effluent data. If a permit writer determines, after reviewing an application, that other waste stream information (such as sensitive data concerning upstream process discharges) is required in a particular case, he or she will generally do so under section 308 of the Clean Water Act or equivalent State authority. The rules governing claims of confidentiality are contained in 40 CFR Part 2.

The economic and reporting impacts of these NPDES forms are discussed elsewhere in this issue of the Federal Register as part of the preamble to the proposed NPDES regulations implementing these NPDES application forms.

Comments: Comments are solicited on the layout of each form and on the clarity of all questions and instructions. Comments are also requested on EPA's approach towards consolidating its permit application forms, and suggestions are invited on ways to further reduce duplicative reporting of information.

Dated: June 4, 1979.

Douglas M. Costle,
Administrator.

Consolidated Permit Application Form

Form 1—General Information
Form 2—Discharges to Surface Water (NPDES Permits)
a. Publicly Owned Treatment Works [Reserved]
b. Concentrated Animal Feeding Operations and Aquatic Animal Production Facilities
c. Existing Manufacturing, Commercial, Mining, and Silvicultural Operations
Form 3—Hazardous Wastes Information Summary (RCRA Permits)
Form 4—Underground Injection of Fluids (UIC Permits) [Reserved]
Form 5—Proposed Facilities*
a. Compliance with Other Environmental Laws [Reserved]
b. Application for PSD and NPDES Permits [Reserved]
c. New Source Applicability Questionnaire (PSD and NPDES) [Reserved]

BILLING CODE 6560-01-M

* PSD new sources, NPDES new sources and new discharges, and new injection wells.

Please print or type (with an ELITE typewriter) in the shaded area only.

Form Approved
OMB No. 158—R00XX

FORM 1 GENERAL

U.S. ENVIRONMENTAL PROTECTION AGENCY

GENERAL INFORMATION

Consolidated Permits Program

(Refer to instructions for legal authorizations.)

ITEMS	AFFIX LABEL BELOW
II. FACILITY I.D. NO.	DRAFT PLEASE PLACE LABEL IN THIS SPACE
III. FACILITY NAME	
V. MAILING ADDRESS	
VI. FACILITY LOCATION	
VII. SIC CODES	

GENERAL: If a preprinted label has been provided, affix it in the designated space. Review the information carefully; if any of it is incorrect, cross through it and enter the correct data in the appropriate shaded area below. Also, if any of the preprinted data is absent (the area to the left of the label space lists the information that should appear), please provide it in the proper fill-in area below. If the label is complete and correct, you need not complete Items II, III, V, VI, and VII. Complete all items if no label has been provided.

I. POLLUTANT CHARACTERISTICS

INSTRUCTIONS: Complete questions A through J to determine whether you need to file any permit forms. If you answer no to every question, you are not required to submit any of these forms. If you answer yes to any of these questions, refer to the instructions before proceeding. Each of the terms in questions A through J printed in bold face type has a certain meaning; refer to the glossary in Section D of the instructions for definitions.

SPECIFIC QUESTIONS	MARK "X" YES	MARK "X" NO
A. Is the facility a publicly owned treatment works which results in a discharge to waters of the U.S.?	16	17
B. Does this facility (either existing or proposed) include a concentrated animal feeding operation or aquatic animal production facility which results in a discharge to waters of the U.S.?	18	19
C. Are there any operations now existing at the facility which result in a discharge to waters of the U.S. other than those described in A or B above?	20	21
D. Is this a proposed operation (other than those described in A or B above) which will result in a discharge to waters of the U.S.?	22	23
E. Do you own or operate a facility that treats, stores, or disposes of hazardous wastes?	24	25
F. Do you inject or propose to inject industrial, municipal or nuclear effluent below underground sources of drinking water?	26	27

SPECIFIC QUESTIONS	MARK "X" YES	MARK "X" NO
G. Do you inject or propose to inject any fluids related to oil and gas production, such as enhanced recovery, salt water disposal, or hydrocarbon storage?	28	29
H. Do you inject or propose to inject fluids for special process operations such as solution mining of minerals, in situ gasification of oil, shale, coal, etc., or the recovery of geothermal energy?	30	31
I. Is the facility a proposed stationary source in one of the 28 industrial categories listed in the instructions to this question that will potentially emit 100 tons per year of any air pollutant regulated under the Clean Air Act, and its emissions may affect or be located in an attainment area?	32	33
J. Is the facility a proposed stationary source which is NOT one of the 28 industrial categories listed in the instructions to this question, will potentially emit 250 tons per year of any air pollutant regulated under the Clean Air Act, and its emissions may affect or be located in an attainment area?	34	35

ADDITIONAL FORMS: You can obtain additional forms by calling or writing your EPA's Regional office (see Table 1 of the instructions).

II. FACILITY I.D. NUMBER	III. NAME OF FACILITY
1 2 F	

IV. FACILITY CONTACT	
A. NAME & TITLE (last, first, & job title)	B. PHONE (area code & no.)

V. FACILITY MAILING ADDRESS			
A. STREET OR P.O. BOX	B. CITY OR TOWN	C. STATE	D. ZIP CODE

VI. FACILITY LOCATION			
A. STREET OR ROUTE NUMBER	B. CITY OR TOWN	C. STATE	D. ZIP CODE

VII. SIC CODES (4-digit, in order of priority)

A. FIRST	C. THIRD
(specify)	(specify)
B. SECOND	D. FOURTH
(specify)	(specify)

Form Approved
OMB No. 158-R80XX

Continued from the front.

VIII. OWNER INFORMATION

A. NAME

B. TYPE OF OWNERSHIP (Enter the appropriate letter into the answer box; if 'Other', specify.)
F=FEDERAL M=PUBLIC (other than federal or state)
S=STATE I=INDIAN LAND
P=PRIVATE O=OTHER (specify)

C. PHONE (area code & no.)

D. STREET OR P.O. BOX

E. CITY OR TOWN

F. STATE

G. ZIP CODE

IX. EXISTING ENVIRONMENTAL PERMIT NUMBERS

A. NPDES (Discharges to Surface Water) — N

D. PSD (Air Emissions from Proposed Sources) — P

B. UIC (Underground Injection of Fluids) — U

E. OTHER (specify)

C. RCRA (Hazardous Wastes) — R

F. OTHER (specify)

X. MAP

Attach to this application a topographic map of the area extending to at least one mile beyond property boundaries. The map must show the outline of the facility, the location of each of your existing and proposed intake and discharge structures, each of your hazardous waste treatment, storage, or disposal facilities, and each well where you inject fluids underground. Include all springs, rivers, and all other surface water bodies in the map area. See the instructions for precise requirements.

XI. NATURE OF BUSINESS (provide a brief description)

DRAFT

XII. CERTIFICATION (see instructions)

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

A. NAME & OFFICIAL TITLE (type or print)

B. SIGNATURE

C. DATE SIGNED

COMMENTS FOR OFFICIAL USE ONLY

C

FORM 2a - NPDES: PUBLICLY OWNED TREATMENT WORKS

[Reserved. Until a new form and accompanying instructions are developed all applicants should continue to use the existing form, OMB No. 158-R0100, standard Form A.]

Please print or type in the shaded area only.

Form Approved OMB No. 158-R00XX

FORM 2B NPDES

U.S. ENVIRONMENTAL PROTECTION AGENCY

APPLICATION FOR PERMIT TO DISCHARGE WASTEWATER

CONCENTRATED ANIMAL FEEDING OPERATIONS AND AQUATIC ANIMAL PRODUCTION FACILITIES

Consolidated Permits Program

FACILITY I.D. NUMBER

I. GENERAL INFORMATION

A. TYPE OF BUSINESS	B. LEGAL DESCRIPTION OF FACILITY LOCATION		C. FACILITY OPERATING STATUS
☐ 1. CONCENTRATED ANIMAL FEEDING OPERATION (complete questions B,C, and Item II)	1. QUARTER	2. SECTION	☐ 1. EXISTING FACILITY
☐ 2. CONCENTRATED AQUATIC ANIMAL PRODUCTION FACILITY complete questions B,C, and Item III)	3. TOWNSHIP	4. RANGE	☐ 2. PROPOSED FACILITY

II. CONCENTRATED ANIMAL FEEDING OPERATION CHARACTERISTICS

A. TYPE & NUMBER OF ANIMALS IN OPEN CONFINEMENT & HOUSED UNDER ROOF

1. TYPE	2. NO. IN OPEN CONFINEMENT	3. NO. HOUSED UNDER ROOF

B. NO. OF ACRES FOR CONFINEMENT FEEDING & AVAILABLE FOR MANURE DISPOSAL

1. CONFINEMENT FEEDING

2. MANURE DISPOSAL

C If there is open confinement, has a runoff diversion and control system been constructed? ☐ YES (complete questions 1, 2, & 3 below) ☐ NO (go to Item IV)

1. What is the design basis for the control system?

☐ a. 10 YEAR, 24-HOUR STORM — INCHES ☐ b. 25 YEAR, 24-HOUR STORM — INCHES ☐ c. OTHER, (specify) — INCHES

2. Report the number of acres of contributing drainage. — ACRES

3. Report the design safety factor. — SAFETY FACTOR

III. CONCENTRATED AQUATIC ANIMAL PRODUCTION FACILITY CHARACTERISTICS

A. For each outfall, give the maximum daily flow, maximum monthly flow, and average monthly flow.

1. OUTFALL NO.	2. FLOW (gallons per day) a. MAXIMUM DAILY	b. MAXIMUM MONTHLY	c. AVERAGE YEARLY

B. Indicate the total number of ponds, raceways, and similar structures in your facility.

1. PONDS	2. RACEWAYS	3. OTHER

C. Provide the name of the receiving water and the source of water used by your facility.

1. RECEIVING WATER	2. WATER SOURCE

D. List the species of fish or aquatic animals held and fed at your facility. For each species, give the total weight produced by your facility per year in pounds of harvestable weight, and also give the maximum weight present at any one time.

1. COLD WATER SPECIES			2. WARM WATER SPECIES		
a. SPECIES	b. HARVESTABLE WEIGHT (pounds) (1) TOTAL YEARLY	(2) MAXIMUM	a. SPECIES	b. HARVESTABLE WEIGHT (pounds) (1) TOTAL YEARLY	(2) MAXIMUM

E. Report the total pounds of food fed during the calendar month of maximum feeding. — 1. MONTH — 2. POUNDS OF FOOD

IV. CERTIFICATION

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

A. NAME (print or type)	B. SIGNATURE	C. DATE SIGNED

EPA Form 5678-X (V-79)

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Please print or type in the shaded area only.

FACILITY I.D. NUMBER

Form Approved
OMB No. 158-XXX

FORM 2C NPDES

EPA

U.S. ENVIRONMENTAL PROTECTION AGENCY
APPLICATION FOR PERMIT TO DISCHARGE WASTEWATER
EXISTING MANUFACTURING, COMMERCIAL, MINING, AND SILVICULTURAL OPERATIONS
Consolidated Permits Program

I. PRINCIPAL PRODUCTS PRODUCED

A. Does a production-based effluent guideline limitation promulgated by EPA under Section 304 of the Clean Water Act apply to your facility?

☐ YES *(go to Question I-B)* ☒ NO *(go to Question II)*

B. If you answered 'Yes' to Question I-A, list the average and maximum quantities of the principal products that you actually produced per operating day *(for industries where an applicable effluent guideline is expressed in terms of raw materials or some other measure of your operation, list the raw materials or other measure of production)*. The figures provided must reflect a reasonable measure of actual production or consumption which is representative of the levels of activity expected over the next five years.

1. PRODUCT OR MATERIAL	2. QUANTITY PER DAY		
	a. MAXIMUM	b. AVERAGE	c. UNITS

II. LINE DRAWING

Attach a line drawing showing the water flow through the facility. Indicate each source of intake water, each major process, operation or area of production contributing to each discharge, and each treatment unit in place. Construct a water balance on the line drawing by indicating average flows of each point of intake and discharge, and indicate water losses to process or to atmosphere.

III. FLOWS, SOURCES OF POLLUTION, AND TREATMENT TECHNOLOGIES

A. For each outfall, indicate in mgd *(million gallons per day)* the average and maximum flow contributed by type of wastewater. Use your best estimate if no measurements are available. List all outfalls and attach additional sheets if necessary.

1. OUTFALL NUMBER *(list)*		2. FLOW *(in mgd)*				
		a. SANITARY WASTE	b. NONCONTACT COOLING WATER	c. STORM RUNOFF	d. PROCESS WASTE WATER	e. OTHER *(specify)*
	AVG					
	MAX					
	AVG					
	MAX					
	AVG					
	MAX					
	AVG					
	MAX					
	AVG					
	MAX					
	AVG					
	MAX					
	AVG					
	MAX					

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Section III continued from the front.

III. Complete the following table for each source of toxic pollutants or hazardous substances which is or may be discharged to waters of the United States by any means except an outfall as a result of any of the following: (1) Plant site runoff; (2) spillage or leaks; (3) sludge or waste disposal; (4) materials storage and handling or (5) loading and unloading areas.

1. SOURCE OF DISCHARGE (specify)	2. ESTIMATED FLOW (mgd)		3. RECEIVING WATER	4. TOXIC OR HAZARDOUS POLLUTANTS (list)	5. ESTIMATED CONCENTRATION		
	a. AVERAGE	b. MAXIMUM			a. AVERAGE	b. MAXIMUM	c. UNITS

DRAFT

C. Attach a copy of your Best Management Practices Program for controlling the above discharges.

☐ COPY ATTACHED ☐ COPY NOT ATTACHED *(explain below)*

D. Except for storm runoff, are any of the discharges described in Questions III–A or III–B noncontinuous?

☐ YES *(complete the following table)* ☐ NO *(go to Question III–E)*

1. OUTFALL OR SOURCE OF DISCHARGE (specify)	2. NO. OF DAYS/WEEK DISCHARGE OCCURS (specify average)	3. MONTHS IN WHICH DISCHARGE OCCURS (list)	4. VOLUME/OCCURRENCE (millions of gallons)	
			a. AVERAGE	b. MAXIMUM

FACILITY I D NUMBER

Continued from page 2.

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OMB No. 158-RXXX

E. For each outfall, describe which processes or operations contribute wastewater to the effluent and what treatment the resulting effluent receives. Attach additional sheets if necessary.

1. OUTFALL NO.	2. PROCESS OR OPERATION (specify)	3. TREATMENT (specify)

DRAFT

IV. IMPROVEMENTS

A. Are you now required by any Federal, State or local authority to meet any implementation schedule for the construction, upgrading or operation of wastewater treatment equipment or practices? This includes, but is not limited to, permit conditions, administrative or enforcement compliance schedule letters, stipulations, court orders, and grant or loan conditions.

☐ YES *(complete the following table)* ☐ NO *(go to Question IV–B)*

1. IDENTIFICATION OF CONDITION, ORDER, AGREEMENT, ETC	2. OUTFALL OR NONPOINT SOURCE AFFECTED	3. BRIEF DESCRIPTION OF PROJECT	4. FINAL COMPLIANCE DATE	
			a. REQUIRED	b. PROJECTED

B. Attach additional sheets describing any additional water pollution control programs *(or other environmental projects which may affect your discharge)* you now have underway or which you plan. Indicate whether each program is now underway or planned, and indicate your actual or planned schedules for construction.

☐ Mark 'X' if description of additional control programs is attached.

V. INTAKE AND EFFLUENT CHARACTERISTICS

See instructions before proceeding – Complete one table for each outfall – Annotate the outfall number in the space provided. Except for Part V–C, pollutant levels reported in this question must be based upon actual analyses conducted in accordance with the methods specified in the instructions, and may not be based upon estimates or conjecture. Column (1) in each table must be completed only if you are requesting credit for pollutants present in your intake water *(see instructions)*. NOTE: Tables V–A, V–B, and V–C are included on a separate sheet *(oversized sheet)*.

Continued from the front.

VI. VARIABILITY

A. Are your operations such that your raw materials, processes, and/or products can reasonably be expected to vary so that future concentrations of pollutants from each outfall may exceed five times the average values reported in Question V?

☐ YES *(complete Questions VI–B & VI–C)* ☐ NO *(go to Question VII)*

B. If you answered 'Yes' to Question VI–A, describe the reasons that the concentrations of pollutants can be expected to significantly vary from the levels reported in Question V, for each outfall where you expect such variations to occur.

C. If you answered 'Yes' to Question VI–A, describe in detail the range of levels of pollutants which you anticipate will be discharged from each outfall over the next five years, to the best of your ability at this time. Attach additional sheets if necessary.

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VII. BIOMONITORING DATA

A. Do you have any knowledge or reason to believe that biological monitoring tests for acute and/or chronic toxicity have been made on any of your discharges or on a receiving water in relation to your discharge within the last five years?

☐ YES *(go to Question VII–B)* ☐ NO *(go to Question VIII)*

B. If 'Yes' to Question VII–A, please identify the test and describe the results; and specify at which outfall or receiving water the tests were conducted.

VIII. DATA ON POLLUTANTS NOT REPORTED ELSEWHERE ON THIS FORM

Do you know of any analytical data collected within the last five years on the presence or levels of pollutants in your effluents in addition to those pollutants reported in Questions III–B or V?

☐ YES *(briefly describe this information below)* ☐ NO *(go to Question IX)*

Continued from page 4.
IX. DISCHARGES OF HAZARDOUS SUBSTANCES (OPTIONAL)

FACILITY ID NUMBER

Form Approved.
OMB No. 158-RXXX

FACILITY I D NUMBER

Form Approved
OMB No. 158–PXXX

Continued from page 4.

IX. DISCHARGES OF HAZARDOUS SUBSTANCES *(OPTIONAL)*

NOTE: Discharges identified under this Question may be eligible for exemption from the requirements and penalties of Section 311 of the Clean Water Act. See instructions.

A. Identify and describe any hazardous substance listed under Section 311 of the Clean Water Act which you discharge or may discharge in the future.

1. POINT OF DISCHARGE	2. HAZARDOUS SUBSTANCE	3. ORIGIN OR CAUSE OF DISCHARGE	4. FREQUENCY OF OCCURRENCE	5. CONCENTRATION			6. AMOUNT	7. ANALYTICAL METHOD OR BASIS OF ESTIMATION
				a. AVERAGE	b. MAXIMUM	c. UNITS		

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Section IX continued from the front.

B. List any treatment methods or management practices which are or will be used to control each discharge listed in (A) on the reverse. Attach additional sheets if necessary.

DRAFT

X. CONTRACT ANALYSIS INFORMATION

Were any of the analyses reported in this application performed by a contract laboratory or consulting firm?

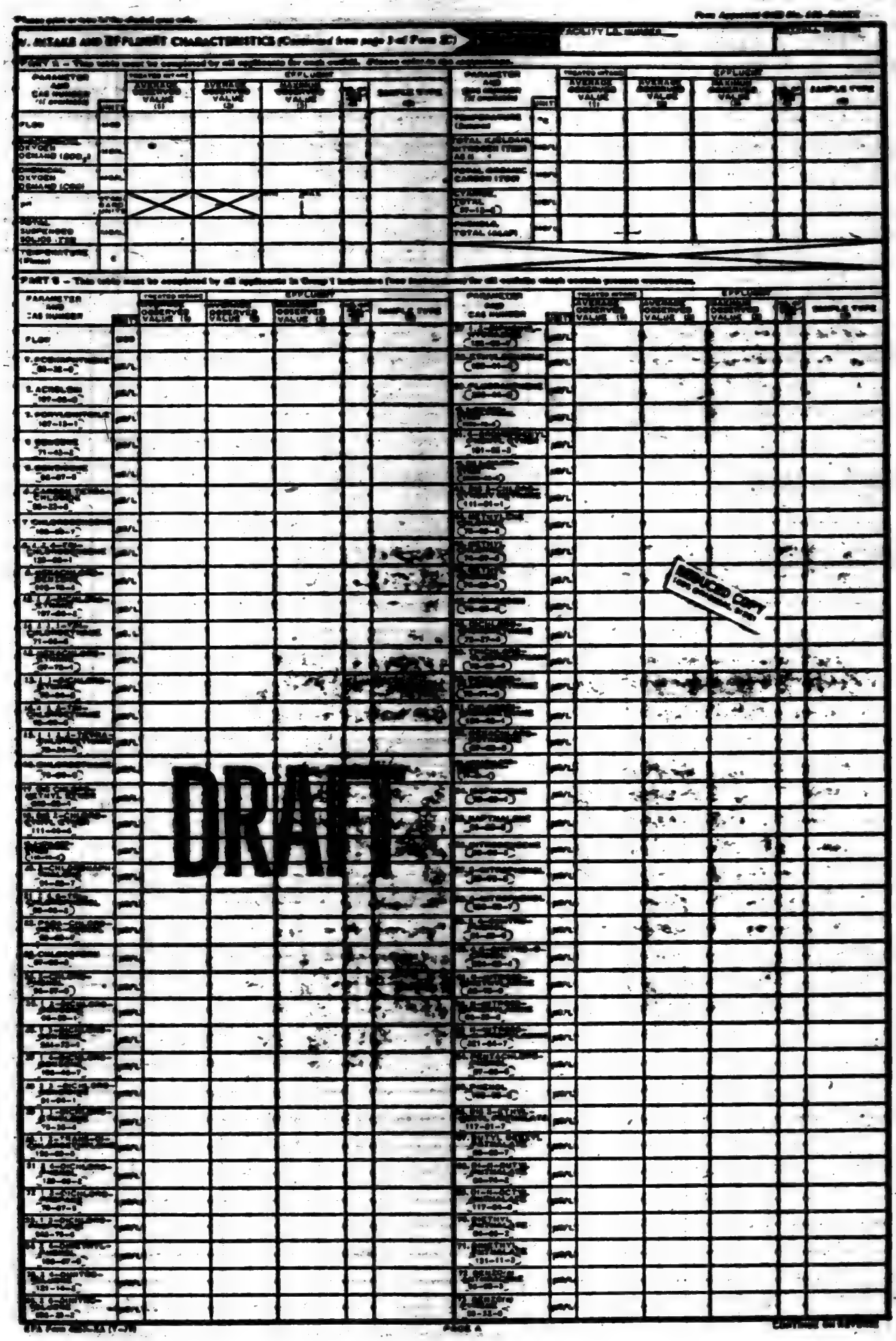
☐ YES *(List the name, address, & telephone number of each laboratory or firm below.)* ☐ NO *(go to Question XI)*

A. NAME	B. ADDRESS	C. TELEPHONE

XI. CERTIFICATION *(see instructions)*

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

A. NAME & OFFICIAL TITLE *(type or print)*	B. SIGNATURE	C. DATE SIGNED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SEE ORIGINAL FILE

PART B – Continued from the front.

PARAMETER AND CAS NUMBER	UNITS	TREATED INTAKE: AVERAGE OBSERVED VALUE (1)	EFFLUENT: AVERAGE OBSERVED VALUE (2)	EFFLUENT: MAXIMUM OBSERVED VALUE (3)	No. OF ANALYSES	SAMPLE TYPE
76. 3,4-BENZO-FLUORANTHENE (205-99-2)	µg/L					
77. BENZO(GHI) PERYLENE (191-24-2)	µg/L					
78. CHRYSENE (218-01-9)	µg/L					
79. DIBENZO(A,H) ANTHRACENE (53-70-3)	µg/L					
80. 1,2-DICHLOROBENZENE (95-50-1)	µg/L					
81. 1,3-DICHLOROBENZENE (541-73-1)	µg/L					
82. 1,4-DICHLOROBENZENE (106-46-7)	µg/L					
83. 3,3'-DICHLOROBENZIDINE (91-94-1)	µg/L					
84. DIETHYL PHTHALATE (84-66-2)	µg/L					
85. DIMETHYL PHTHALATE (131-11-3)	µg/L					
86. DI-N-BUTYL PHTHALATE (84-74-2)	µg/L					
87. 2,4-DINITROTOLUENE (121-14-2)	µg/L					
88. 2,6-DINITROTOLUENE (606-20-2)	µg/L					
89. DI-N-OCTYL PHTHALATE (117-84-0)	µg/L					
90. 1,2-DIPHENYLHYDRAZINE (as Azobenzene) (122-66-7)	µg/L					
91. ETHER, BIS (2-CHLOROETHYL) (111-44-4)	µg/L					
92. ETHER, BIS (2-CHLOROISOPROPYL) (39638-32-9)	µg/L					
93. ETHER, BIS (CHLOROMETHYL) (542-88-1)	µg/L					
94. ETHER, BIS (2-ETHYLHEXYL) (117-81-7)	µg/L					
95. ETHER, 4-BROMOPHENYL PHENYL (101-55-3)	µg/L					
96. ETHER, 4-CHLOROPHENYL PHENYL (7005-72-3)	µg/L					
97. FLUORANTHENE (206-44-0)	µg/L					
98. HEXACHLOROBENZENE (118-74-1)	µg/L					
99. HEXACHLOROBUTADIENE (87-68-3)	µg/L					
100. HEXACHLOROCYCLOPENTADIENE (77-47-4)	µg/L					
101. HEXACHLOROETHANE (67-72-1)	µg/L					
102. INDENO (1,2,3-CD) PYRENE (193-39-5)	µg/L					
103. ISOPHORONE (78-59-1)	µg/L					
104. NAPHTHALENE (91-20-3)	µg/L					
105. NITROBENZENE (98-95-3)	µg/L					
106. NITROSODIMETHYLAMINE (62-75-9)	µg/L					
107. NITROSODI-N-PROPYLAMINE (621-64-7)	µg/L					
108. NITROSODIPHENYLAMINE (86-30-6)	µg/L					
109. PHENANTHRENE (85-01-8)	µg/L					
110. PYRENE (129-00-0)	µg/L					
111. 1,2,4,5-TETRACHLOROBENZENE (95-94-3)	µg/L					
112. TOLUENE (108-88-3)	µg/L					
113. TRICHLOROETHYLENE (79-01-6)	µg/L					
114. VINYL CHLORIDE (75-01-4)	µg/L					

PARAMETER AND CAS NUMBER	UNITS	TREATED INTAKE: AVERAGE OBSERVED VALUE (1)	EFFLUENT: AVERAGE OBSERVED VALUE (2)	EFFLUENT: MAXIMUM OBSERVED VALUE (3)	No. OF ANALYSES	SAMPLE TYPE
115. ALDRIN (309-00-2)	µg/L					
116. DIELDRIN (60-57-1)	µg/L					
117. CHLORDANE (57-74-9)	µg/L					
118. 4,4'-DDT (50-29-3)	µg/L					
119. 4,4'-DDE (72-55-9)	µg/L					
120. 4,4'-DDD (72-54-8)	µg/L					
121. ALPHA-ENDOSULFAN (115-29-7)	µg/L					
122. BETA-ENDOSULFAN (115-29-7)	µg/L					
123. ENDOSULFAN SULFATE (1031-07-8)	µg/L					
124. ENDRIN (72-20-8)	µg/L					
125. ENDRIN ALDEHYDE (7421-93-4)	µg/L					
126. HEPTACHLOR (76-44-8)	µg/L					
127. HEPTACHLOR EPOXIDE (1024-57-3)	µg/L					
128. a-BHC-ALPHA (319-84-6)	µg/L					
129. b-BHC-BETA (319-85-7)	µg/L					
130. g-BHC-GAMMA (58-89-9)	µg/L					
131. d-BHC-DELTA (319-86-8)	µg/L					
132. PCB-1242 (53469-21-9)	µg/L					
133. PCB-1254 (11097-69-1)	µg/L					
134. PCB-1221 (11104-28-2)	µg/L					
135. PCB-1232 (11141-16-5)	µg/L					
136. PCB-1248 (12672-29-6)	µg/L					
137. PCB-1260 (11096-82-5)	µg/L					
138. PCB-1016 (12674-11-2)	µg/L					
139. TOXAPHENE (8001-35-2)	µg/L					
140. ANTIMONY (total) (7440-36-0)	mg/L					
141. ARSENIC (total) (7440-38-2)	mg/L					
142. BERYLLIUM (total) (7440-41-7)	mg/L					
143. CADMIUM (total) (7440-43-9)	mg/L					
144. CHROMIUM (total) (7440-47-3)	mg/L					
145. COPPER (total) (7440-50-8)	mg/L					
146. LEAD (total) (7439-92-1)	mg/L					
147. MERCURY (total) (7439-97-6)	mg/L					
148. NICKEL (total) (7440-02-0)	mg/L					
149. SELENIUM (total) (7782-49-2)	mg/L					
150. SILVER (total) (7440-22-4)	mg/L					
151. [illegible] (7440-31-5)	mg/L					
152. [illegible] (7440-28-0)	mg/L					

PART C – This table must be completed by all applicants for each outfall, based on either actual analyses or your best estimate. Fill out columns 1, 2, & 3 only if you mark "presence".
Please refer to the instructions.

POLLUTANT AND CAS NUMBER (if available)	UNITS	MARK "X": PRESENT	MARK "X": ABSENT	MARK "X": KNOWN	MARK "X": BELIEVED	TREATED INTAKE: AVERAGE VALUE (1)	EFFLUENT: AVERAGE VALUE (2)	EFFLUENT: MAXIMUM VALUE (3)
AMMONIA (as N) (7664-41-7)	mg/L							
ASBESTOS (1332-21-4)	mg/L							
BROMIDE (24959-67-9)	mg/L							
CHLORINE, TOTAL RESIDUAL	mg/L							
COLOR (specify units)								
FECAL COLIFORM	MPN							
FLUORIDE (16984-48-8)	mg/L							
NITRATE (as N) (14797-55-8)	mg/L							
NITRITE (as N) (14797-65-0)	mg/L							
OIL & GREASE	mg/L							
PHOSPHORUS (as P), TOTAL (7723-14-0)	mg/L							
RADIOACTIVITY	pCi/L							
SULFATE (as SO4) (14808-79-8)	mg/L							
SULFIDE (as S)	mg/L							
SULFITE (as SO3) (14265-45-3)	mg/L							
SURFACTANTS	mg/L							
ALUMINUM, TOTAL (7429-90-5)	mg/L							
BARIUM, TOTAL (7440-39-3)	mg/L							
BORON, TOTAL (7440-42-8)	mg/L							

PARAMETER AND CAS NUMBER (if available)	UNITS	MARK "X": PRESENT	MARK "X": ABSENT	MARK "X": KNOWN	MARK "X": BELIEVED	TREATED INTAKE: AVERAGE VALUE (1)	EFFLUENT: AVERAGE VALUE (2)	EFFLUENT: MAXIMUM VALUE (3)
COBALT, TOTAL (7440-48-4)	mg/L							
IRON, TOTAL (7439-89-6)	mg/L							
MAGNESIUM, TOTAL (7439-95-4)	mg/L							
MOLYBDENUM, TOTAL (7439-98-7)	mg/L							
MANGANESE, TOTAL (7439-96-5)	mg/L							
TIN, TOTAL (7440-31-5)	mg/L							
TITANIUM, TOTAL (7440-32-6)	mg/L							
[illegible] (7440-61-1)	µg/L							

OTHER POLLUTANTS (name and description)	UNITS (if applicable)	MARK "X": PRESENT	MARK "X": ABSENT	MARK "X": KNOWN	MARK "X": BELIEVED	TREATED INTAKE: AVERAGE VALUE (1)	EFFLUENT: AVERAGE VALUE (2)	EFFLUENT: MAXIMUM VALUE (3)

EPA Form [illegible] REVERSE

Please [illegible] type.

FORM 3 RCRA

See instructions before starting.

FOR OFFICIAL USE ONLY

APPLICATION APPROVED

DATE RECEIVED

LATITUDE

LONGITUDE

II. APPLICATION TYPE

III. FACILITY CONTACT

IV. TYPE OF OPERATION

V. ZONING

A. What is the zoning classification(s) for the facility?

B. If a zoning variance is required for your operation, has it been obtained?

VI. FACILITY DESCRIPTION

Provide a brief description of the nature of your business and the principal products or services provided by each operation listed in questions A.1 and A.2 of Section IV above.

VII. IF YOU OWN OR LEASE FACILITIES OTHER THAN THOSE DESCRIBED IN QUESTIONS A.1 AND A.2 OF SECTION IV ABOVE, PLEASE COMPLETE THE FOLLOWING:

A. A certificate of disclosure of ownership interests in the facility is attached.

B. A list of names and addresses of all persons who own or lease the facility is attached.

VIII. CERTIFICATION

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

A. NAME AND OFFICIAL TITLE (type or print)

EPA Form

Please print or type with an ELITE typewriter in the shaded area only.

Form Approved
OMB No. 158-R0078

FORM 3 RCRA

EPA

U.S. ENVIRONMENTAL PROTECTION AGENCY

HAZARDOUS WASTE INFORMATION SUMMARY

Consolidated Permits Program

(This information is required under Section 3005 of RCRA.)

I. FACILITY I.D. NUMBER

See instructions manual for guidance in completing this form.

FOR OFFICIAL USE ONLY

APPLICATION APPROVED	DATE RECEIVED (month, day, & year)	DATA REQUEST DATE	INDICATOR	PERMIT NUMBER
17	25		☐ MAJOR ☐ MINOR	

LATITUDE (deg., min., & sec.)	LONGITUDE (deg., min., & sec.)	UTM ZONE	UTM COORDINATES

COMMENTS

II. APPLICANT/FACILITY RELATIONSHIP (mark 'X')

☐ A. OWNED

☐ B. TO BE PURCHASED

☐ C. PRESENTLY RENTED OR LEASED, AGREEMENT EXPIRES- (mo., day, & yr.)

☐ D. TO BE RENTED OR LEASED FOR- (number of years)

III. FACILITY STATUS (mark 'X')

66 ☐ A. EXISTING OPERATION

67 ☐ B. TO BE MODIFIED

68 ☐ C. PROPOSED OPERATION

69 ☐ D. UNDER CONSTRUCTION

IV. TYPE OF PERMIT APPLICATION (mark 'X')

70 ☐ A. REGULAR

71 ☐ B. SPECIAL PERMIT – EXPERMENTAL

72 ☐ C. SPECIAL PERMIT – HEALTH CARE FACILITY

V. ZONING

A. What is the present zoning of the site?

B. If a zoning change is needed, what should the new zoning be?

DRAFT

VI. FACILITY DRAWINGS

Provide copies of all available drawings and specifications for the hazardous wastes management facility, its processes, and equipment.

VII. IF HEALTH CARE FACILITY

Owners/operators of HEALTH CARE facilities applying for special permit under Section 3005 of RCRA must provide the following

A. A certification signed by the appropriate state licensing authority specifying that the facility has an effective license and is in compliance with such license.

B. A list of hazardous wastes covered by this license.

VIII. CERTIFICATION

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

A. NAME (type or print)	B. SIGNATURE	C. DATE SIGNED

EPA Form 3456-X (Y-79)

GO TO CONTINUATION SHEET - ITEM IX

Print all type (with an ELITE typewriter) in the shaded area only.

Form Approved OMB NO. 158-R0078

U.S. ENVIRONMENTAL PROTECTION AGENCY

HAZARDOUS WASTE INFORMATION SUMMARY (continued)

Consolidated Permits Program

(This information is required under Section 3005 of RCRA.)

I. FACILITY I.D. NUMBER

IX. HAZARDOUS WASTES DESCRIPTION

INSTRUCTIONS

GENERAL: Each of the following instructions apply specifically to each part of Item IX. Before completing, photo copy as many copies as necessary of the reverse side, so that that you'll be able to list all your wastes.

A. WASTE NUMBER: Starting with '1', enter a number sequentially for each waste described.

B. HAZARDOUS WASTE NAME: Enter the common name of the waste described.

C. CONFIDENTIALITY CLAIM: If you wish to keep information about a specific waste confidential, mark 'X'.

D. WASTE DEFINITION CODE: Enter the appropriate code from Appendix C of the instructions manual.

E. HAZARD CLASS: Enter the appropriate EPA and DOT codes from the following lists.

1. DOT HAZARD CLASS CODES

EA=EXPLOSIVES A
EB=EXPLOSIVES B
EC=EXPLOSIVES C
FL=FLAMMABLE LIQUID
FS=FLAMMABLE SOLID
OX=OXIDIZER
NG=NONFLAMMABLE GAS
CL=CORROSIVE LIQUID
PA=POISON A
PB=POISON B
RM=RADIOACTIVE MATERIAL
OP=ORGANIC PEROXIDE
CH=CHLORINE
OL=OXYGEN, PRESSURIZED LIQUID
OR=OTHER REGULATED MATERIAL

2. EPA HAZARD CLASS CODES

B=BIOACCUMULATIVE
I=IGNITABLE
O=ORGANIC TOXICANT
C=CORROSIVE
R=REACTIVE
A=RADIOACTIVE
M=MUTAGENIC
N=INFECTIOUS
T=TOXIC

F. ACTION CODE: Enter the appropriate code(s) from the following list. S=STORE T=TREAT D=DISPOSE

G. AMOUNT: Enter the annual amount of waste handled to the nearest whole digit using any of units of measure described in 'H'. If the reported figure is greater than nine digits, enter '9' in every space.

H. UNITS OF MEASURE: Enter the appropriate code from the following list.

ENGLISH UNITS

P=POUNDS
T=TONS(short)
G=GALLONS
Y=CUBIC YARDS

METRIC UNITS

K=KILOGRAMS
M=TONNES(metric)
L=LITERS
C=CUBIC METERS

I. HANDLING CODE: Enter the appropriate code from the list provided in the instructions manual.

J. HANDLING TECHNIQUE: Briefly describe the technique used to handle the waste.

A. WASTE NO.	B. HAZARDOUS WASTE NAME				
C. CLAIM OF CONFIDENTIALITY	D. WASTE DEFINITION CODE	E. HAZARD CLASS 1. DOT 2. EPA	F. ACTION CODE	G. AMOUNT	UNIT OF MEASURE
I. HANDLING CODE	J. HANDLING TECHNIQUE				

DRAFT

A. WASTE NO.	B. HAZARDOUS WASTE NAME				
C. CLAIM OF CONFIDENTIALITY	D. WASTE DEFINITION CODE	E. HAZARD CLASS 1. DOT 2. EPA	F. ACTION CODE	G. AMOUNT	UNIT OF MEASURE
I. HANDLING CODE	J. HANDLING TECHNIQUE				

A. WASTE NO.	B. HAZARDOUS WASTE NAME				
C. CLAIM OF CONFIDENTIALITY	D. WASTE DEFINITION CODE	E. HAZARD CLASS 1. DOT 2. EPA	F. ACTION CODE	G. AMOUNT	UNIT OF MEASURE
I. HANDLING CODE	J. HANDLING TECHNIQUE				

EPA Form 2345-XA (Y-79)

PAGE OF

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Continued from the front.

I.D. NO. →

Form Approved OMB No. 158-R00XX

A. WASTE NO.	B. HAZARDOUS WASTE NAME				
C. CLAIM OF CONFIDENTIALITY	D. WASTE DEFINITION CODE	E. HAZARD CLASS 1. DOT	E. HAZARD CLASS 2. EPA	F. ACTION CODE	G. AMOUNT
I. HANDLING CODE	J. HANDLING TECHNIQUE				
A. WASTE NO.	B. HAZARDOUS WASTE NAME				
C. CLAIM OF CONFIDENTIALITY	D. WASTE DEFINITION CODE	E. HAZARD CLASS 1. DOT	E. HAZARD CLASS 2. EPA	F. ACTION CODE	G. AMOUNT
I. HANDLING CODE	J. HANDLING TECHNIQUE				
A. WASTE NO.	B. HAZARDOUS WASTE NAME				
C. CLAIM OF CONFIDENTIALITY	D. WASTE DEFINITION CODE	E. HAZARD CLASS 1. DOT	E. HAZARD CLASS 2. EPA	F. ACTION CODE	G. AMOUNT
I. HANDLING CODE	J. HANDLING TECHNIQUE				
A. WASTE NO.	B. HAZARDOUS WASTE NAME				
C. CLAIM OF CONFIDENTIALITY	D. WASTE DEFINITION CODE	E. HAZARD CLASS 1. DOT	E. HAZARD CLASS 2. EPA	F. ACTION CODE	G. AMOUNT
I. HANDLING CODE	J. HANDLING TECHNIQUE				
A. WASTE NO.	B. HAZARDOUS WASTE NAME				
C. CLAIM OF CONFIDENTIALITY	D. WASTE DEFINITION CODE	E. HAZARD CLASS 1. DOT	E. HAZARD CLASS 2. EPA	F. ACTION CODE	G. AMOUNT
I. HANDLING CODE	J. HANDLING TECHNIQUE				

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EPA Form 2245-XA (Y-79) REVERSE

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Consolidated Permit Application Form
Form 4—UIC: Underground Injection of Fluids [Reserved]
Form 5—PSD: Proposed Facilities (PSD New Sources, NPDES New Sources and New Dischargers, and New Injection Wells) [Reserved]

Instructions for Consolidated Permit Application

Table of Contents

A. General Instructions
B. Detailed Instructions
Form 1—General Information
Form 2—Discharges to Surface Water (NPDES Permits)
a. Publicly Owned Treatment Works [Reserved]
b. Concentrated Animal Feeding Operations and Aquatic Animal Production Facilities
c. Existing Manufacturing, Commercial, Mining, and Silvicultural Operations
Form 3—Hazardous Wastes Information Summary (RCRA Permits)
Form 4—Underground Injection of Fluids (UIC Permits) [Reserved]
Form 5—Proposed Facilities (PSD) New Sources, NPDES New Sources and New Dischargers, and New Injection Wells)
a. Compliance with Other Environmental Laws [Reserved]
b. Application for PSD and NPDES Permits [Reserved]
c. New Source Applicability Questionnaire (PSD and NPDES) [Reserved]
C. Activities Which Do Not Require Permits
D. Glossary
E. NPDES Sampling and Analytical Methods

Instructions For Consolidated Permit Application

Section A. General Instructions

Who must apply?

With the exceptions described in the next section, Federal laws require you to apply for and receive a permit as follows:

- *NPDES* (National Pollutant Discharge Elimination System under the Clean Water Act, 33 U.S.C. 1251). You may not discharge pollutants into the waters of the United States without an NPDES permit.
- *RCRA* (Resource Conservation and Recovery Act, 42 U.S.C. 6901). You must have a permit to treat, store, or dispose of hazardous wastes.
- *UIC* (Underground Injection Control under the Safe Drinking Water Act, 42 U.S.C. 300f). You may not inject fluids underground by gravity flow or pumping without a UIC permit.
- *PSD* (Prevention of Significant Deterioration under the Clean Air Act, 72 U.S.C. 7401). Most new or modified sources of air pollution which are located in or near an area which has attained the National Ambient Air Quality Standards for one or more pollutants must have a PSD permit.

The U.S. Environmental Protection Agency (EPA) is consolidating the above permits into a single permit program, although approved States operate some programs in place of EPA. You must use this application form to apply for a permit for those programs administered by the EPA. For those programs administered by approved States, contact the State environmental agency for the proper forms.

Form 1 of the EPA consolidated form collects general information applying to all programs and must be filled out by all applicants, regardless of whether your operation or activity requiring a permit is new or existing. In addition, you must fill out a supplemental form for each permit needed under each of the above programs. Item I of Form 1 provides a guide to the additional forms you need for your activities.

You should note that certain activities do not require a permit. These exclusions are summarized below, and described in greater detail in section C of these instructions. If you are not required to have a permit under any of the programs above, then you do not need to complete and return any forms.

If you have any questions about whether you need a permit under any of the above programs, contact the appropriate Regional office of the U.S. Environmental Protection Agency as indicated in Table 1.

Copies of application forms are available from all U.S. Environmental Protection Agency Regional offices.

Who Need Not Apply

The above statues and EPA's regulations exclude certain activities from requirements to apply for and obtain a permit. These exclusions are summarized below. If you think you may not need a permit, refer to section C of these instructions, where the regulatory and statutory exclusions governing the exclusions are described in greater detail.

Table 1—Addresses of EPA Regional Offices and States Within Their Jurisdiction

Region I

Regional Administrator, John F. Kennedy Federal Building, Room 2203, Boston, Mass. 02203, 617–223–7210, FTS 223–7210, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Region II

Regional Administrator, 26 Federal Plaza, Room 1009, New York, New York 10007, 212–264–2525, FTS 264–2525, New Jersey, New York, Virgin Islands, Puerto Rico

Region III

Regional Administrator, Curtis Building, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, 215–597–9814, FTS 597–9814, Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia

Region IV

Regional Administrator, 345 Courtland Street, N.E., Atlanta, Georgia 30308, 404–881–4727, FTS 257–4727, Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

Region V

Regional Administrator, 230 South Dearborn Street, Chicago, Illinois 60604, 312–353–2000, FTS 353–2000, Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Region VI

Regional Administrator, First International Building, 1201 Elm Street, Dallas, Texas 75270, 214–767–2600, FTS 767–2600, Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Region VII

Regional Administrator, 324 East 11th Street, Kansas City, Missouri 64106, 816–374–5493, FTS 374–5493, Iowa, Kansas, Missouri, Nebraska

Region VIII

Regional Administrator, 1860 Lincoln Street, Denver, Colorado 80203, 303–837–3895, FTS 327–3895, Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Region IX

Regional Administrator, 215 Fremont Street, San Francisco, California 94105, 415–556–2320, FTS 556–2320, Arizona, California, Hawaii, Nevada, Guam, American Samoa, Trust Territories

Region X

Regional Administrator, 1200 6th Avenue, Seattle, Washington 98101, 206–442–1220, FTS 399–1220, Alaska, Idaho, Oregon, Washington

a. *Discharges to water.* You are not required to obtain an NPDES permit for the following types of discharges:

- Sewage discharged from vessels (e.g., ships);
- Water, gas and other materials injected into a well to facilitate production of oil or gas production and disposed of in a well, where authorized by the State in which the well is located;
- Dredged or fill material subject to a permit under section 404 of the Clean Water Act;
- Discharges from properly functioning marine engines;
- Discharges conveyed directly to a publicly or privately owned waste treatment facility (however, discharges originating from publicly or privately owned waste treatment facilities are not excluded);

• Some discharges from separate storm sewers (discharges from storm sewers which receive industrial, municipal, and/or agricultural wastes which are considered by the permitting authority to be significant contributors to pollution are not excluded); or

• Animal feeding operations and aquatic animal production facilities below certain sizes.

b. *Hazardous wastes.* With certain exceptions, you are not required to obtain a RCRA Subtitle C permit if you:

• Are a generator or transporter storing hazardous wastes for less than 90 days;

• Are disposing of less than 100 kg of hazardous wastes per month;

• Are a farmer or retailer; or

• Operate publicly owned treatment works (POTW) and ocean disposal barges or vessels that accept hazardous waste designated as special waste. You will be subject to a *permit by rule* and are *not* required to submit an RCRA permit application.

c. *Underground injection of fluids.* You are not required to obtain a permit under this program if you:

• Inject into existing wells used to enhance recovery of oil and gas or to store hydrocarbons (note, however, that these underground injections are regulated by Federal rules); or

• Inject into or above an underground source of drinking water. However, you must notify EPA of your injection and submit certain required information on forms supplied by the Agency, and your operation will be phased out (see regulations proposed on April 20, 1979, 44 FR 23738.)

d. *Air emissions.* The following types of activities do not require a PSD (Prevention of Significant Deterioration) permit under the Clean Air Act:

• All existing sources;

• Members of the 28 industries listed in Table 2 of the instructions to item I of Form 1 which do not emit or have the potential (prior to control) to emit more than 100 tons per years of any air pollutant;

• Any other sources which do not emit or have the potential (prior to controls) to emit more than 250 tons per year of any air pollutant;

• Any other sources which do not emit or have the potential (prior to controls) to emit more than 250 tons per year of any air pollutant; or

• Proposed nonprofit health or education institutions exempted by a State.

Again, please note that these exclusions are more carefully defined in section C of these instructions. Before determining that you do not need any permits, refer to section C of these instructions because the statute for each of the programs above provides that *you may be heavily penalized if you do not apply for a permit where a permit is required.*

Upon your request, and based upon information supplied by you, EPA will determine whether you are required to obtain a permit for a particular activity. Contact the appropriate EPA Regional office listed in Table 1.

Where to File

The original of the application form should be mailed to the EPA Regional office having jurisdiction over the State in which the discharge is located (see Table 1).

If the State in which the facility is located has one or more Federally approved permit programs, you should contact the appropriate State agencies for the correct forms. You may obtain the addresses of the appropriate State agencies from your EPA Regional office (Table 1).

When to File

Because of statutory requirements, the deadlines for filing applications vary according to the type of facility you operate and the type of permit you need. In addition, if you need two or more permits, Federal regulations have been proposed which, if promulgated, may allow you to postpone filing one of them in order to consolidate your applications. [See 44 FR. (. 1979).]

A detailed guide to when you must file and whether you can postpone filing to consolidate applications appears in the instructions to item I of Form 1.

Fees

The U.S. EPA does not require a fee for applying for any permit under the consolidated permit program. However, some States are primarily responsible for administering certain permit programs, and these States may require a fee. You should check with the State administering the program to determine whether any fees are required.

Use of Information.

All information contained in this application will, upon request, be made available to the public for inspection and copying. A separate sheet entitled "Confidential Answers" must be used to set out information which is considered by the applicant to be methods and processes entitled to protection as trade secrets. The information must clearly indicate the item number to which it applies. Confidential treatment can be considered only for the information for which a specific written request of confidentiality has been made on the attached sheet.

However, the Clean Water Act requires that *all* information contained by the NPDES part of the application must be public information, and may not protected as confidential or privileged information, except in certain cases involving national security.

Completion of Forms

Unless otherwise specified in the following instructions, each item in each form submitted must be answered. To indicate that each item has been considered, enter "NA", for not applicable, where a particular item does not fit the circumstances or characteristics of your facility or activity.

If you have previously submitted information to the U.S. EPA or to an approved State agency which answers a question, either repeat the information in the space provided, or attach a copy of the previous submission. If you attach a copy of the previous submission, state that you are doing so in your answer to the question, and identify the attached information by the name of the facility, and the form and item number to which the submission refers.

If you have any questions on any item, contact your EPA Regional office.

Attachments and Supplemental Information

Some items in the form require narrative explanation. If more space is necessary to answer a question, attach a separate sheet entitled "Additional Information". Where a separate sheet is used or when other information is attached, identify it by the name of the facility, and the form and item number to which the explanation refers.

Financial Assistance for Pollution Control

There are a number of direct loans, loan guarantees, and grants available to eligible facilities for pollution control expenditures. These are provided by the Small Business Administration, the Economic Development Administration, and the Farmers Home Administration. Each U.S. EPA Regional office (Table 1) has a financial assistance coordinator who can provide you with additional information.

In addition, EPA's construction grants program under Title II of the Clean Water Act may be an additional source of assistance to publicly owned treatment works. Contact the

appropriate EPA Regional office for details.

Section B. Detailed Instructions

Form 1—General Information

This form must be completed by all applicants.

Item I. Answer each question to determine whether you need to fill out additional special forms for each permit program. Be sure to check the glossary in section D of these instructions for the legal definitions of the bold faced words.

Questions (I) and (J) refer to 28 industries which may be subject to prevention of significant deterioration (PSD) requirements under the Clean Air Act of 1977. These industries are listed in Table 2.

Table 2—The 28 Industrial Categories Subject to PSD Requirements under the Clean Air Act of 1977

Fossil fuel-fired steam generators of more than 250 million BTU per hour heat input
Coal cleaning plants (with thermal dryers)
Kraft pulp mills
Portland cement plants
Primary zinc smelters
Iron and steel mills plants
Primary aluminum ore reduction plants
Primary copper smelters
Municipal incinerators capable of charging more than 250 tons of refuse per day
Hydrofluoric acid plants
Nitric acid plants
Sulfuric acid plants
Petroleum refineries
Lime plants
Phosphate rock processing plants
Coke oven batteries
Sulfur recovery plants
Carbon black plants (furnace process)
Primary lead smelters
Fuel conversion plants
Sintering plants
Secondary metal production plants
Chemical process plants
Fossil fuel boilers (or combination thereof) totaling more than 250 million BTU per hour heat input
Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels
Taconite ore processing plants
Glass fiber processing plants
Charcoal production plants.

If you checked "no" to every question, then you do not need a permit, and you do not need to complete and return any of these forms.

If you checked "yes" to a question, you should note that federal regulations may exclude your activity from requirements to apply for and obtain a permit. Those exclusions are summarized in the General Instructions, and the regulations governing the exclusions are described in detail in section C of the instructions.

Note that the Federal statute for each program provides for serious penalties if you do not apply for a permit where a permit is required. If you have any doubt about whether you need to apply for a permit under any program, contact the appropriate EPA Regional office listed in Table 1.

If you checked "yes" to any box, and you determined that you are required to have a permit, then complete and file additional forms in accordance with Table 3.

Table 3.—*Forms and Filing Dates for Permits*

If you checked yes in item:	Then you must file:	By this deadline:
A	EPA Standard Form A, OMB No. 158-120100.	180 days before your present permit expires.
B	Forms 1 and 2b	180 days before your present permit expires, *or* 180 days prior to startup.
C	Forms 1 and 2c	180 days before your present permit expires.
D	[Reserved. Check with EPA Regional office for forms].	180 days prior to startup.
E	Forms 1 and 3	Existing facility: 180 days following publication of final regulations. New facility: 180 days before commencing physical construction. (See Glossary for definition of terms.)
F, G, or H	[Reserved]	You are not now required to apply for a permit. Future regulations will set requirements.
I or J	[Reserved. Check with EPA Regional office for forms].	You must obtain a Prevention of Significant Deterioration (PSD) permit before you commence construction. See 40 FR 26380 (June 19, 1979).

Federal regulations require you to file in accordance with the above deadlines. Regulations have recently been proposed, however, which when promulgated may allow postponement of certain filing requirements in order to consolidate applications [see 44 FR (, 1979)]. Until these regulations are promulgated, however, the above deadlines apply and may not be postponed.

See the General Instructions to determine where to file your completed application.

If you don't have all the permit forms you need, you can obtain them by writing or phoning your nearest EPA Regional office.

Item II. Facility Identification Number. A common number for each business establishment will help the U.S. EPA and State environmental agencies to consolidate all environmental activities and requirements affecting the business establishment. In addition, common identification numbers will help EPA and State environmental agencies speed up the processing of all information submitted under Federal and State environmental regulations.

The facility identification number requested here for private, municipal, and State-owned facilities is the Data Universal Numbering System, or otherwise called the DUNS Number, developed by Dunn and Bradstreet, Inc. Most business establishments in the United States have already been assigned DUNS numbers, including all types and sizes of business establishments, branches, factories, distribution centers and purchasing units. State and municipal facilities, including publicly owned treatment works, have also been assigned DUNS numbers.

In some cases, EPA can provide you with your DUNS number. If so, you can find your DUNS number preprinted on the upper left hand corner of the label used to mail these forms to you. If EPA did not provide you with your number on your mailing label and you need to find out the DUNS number for your business, you can obtain this information free of charge by calling the nearest office of Dunn and Bradstreet, Inc.

For Federal facilities, the General Services Administration (GSA) real property number should be used. All Federal facilities have already been assigned a real property number by GSA. If you don't know your number, call the nearest local office of GSA.

Fill in the number as follows:

- *State code*—In the first two positions of the number insert the U.S. Postal Service State Code for the appropriate State or territory in which the facility is located, such as PA, MD, NJ, NY, or MA;
- *DUNS or GSA Identifier and Number*—In the remaining positions after the State code insert a "D" for a private, municipal, or State-owned facility followed by the 9 digit DUNS number; *OR* insert a "G" for a Federally

owned facility followed by the GSA number.

Examples

1. Private facility ——— PAD784621382 in Pennsylvania
2. Federal facility ——— NTG284370158 in New York
3. State facility ——— CAD 302429824 in California

Item III. The facility is the distinct activity or installation, under the responsibility of the applicant, which is subject to one or more of the permit programs detailed in item I of this form. Name the facility as it is officially or legally referred to in order to distinguish it from similar entities in the same geographical area. Do not use colloquial names as a substitute for the official name.

Item IV. Give the name, title, and work telephone number of a person who is thoroughly familiar with the operation of the facility and with the facts reported in this application and can be contacted by reviewing offices if necessary.

Item V. Give the complete mailing address of the facility's main office, where correspondence should be sent. This often will not be the same address used to designate the location of the facility or activity.

Item VI. Give the address or location of the facility identified in Item III of this form.

Item VII. List the four most significant 4-digit standard industrial classification (SIC) codes describing the nature of your facility, in descending order of importance in terms of the principal products you produce. Also, specify each classification in words. These classifications may differ from the SIC codes describing the operation generating the discharge, air emissions, or hazardous wastes.

Standard industrial classification (SIC) code numbers are descriptions which may be found in the 1972 edition of the "Standard Industrial Classification Manual" prepared by the Executive Office of the President, Office of Management and Budget, which is available from the Government Printing Office, Washington, D.C. Do not use previous editions of the manual.

Item VIII–A. Give the name, as it is legally referred to, of the person, firm, public organization, or any other entity which owns or is directly responsible for the facility or activity described in this application. This may or may not be the same name as the facility or activity producing the discharge. Do not use colloquial names as a substitute for the official name.

Item VIII–B. Enter the appropriate letter to indicate the type of ownership. Indicate "public" for a facility solely owned by local government(s) such as a city, town, county, parish, etc.

Items VIII–C, D, E, F, and G. Enter the telephone number and address of the owner identified in item VIII–A.

Item IX. Give the number of each presently effective permit issued to the facility for each program, or if you have previously filed an application but have not yet received a permit, give the number of the application, if any. List any relevant environmental State or local permits or applications under "other".

Item X. Provide a topographic map or maps of the area extending at least to one mile beyond the property boundaries of the source which clearly show the following:

- The outline of the facility;
- The location and serial number of each of your existing and proposed intake and discharge structures;
- Each of the hazardous waste treatment, storage, or disposal facilities which you own or operate;
- Each well where you inject fluids underground; and
- All known wells, springs and surface water bodies in the area.

Where an intake or discharge structure, hazardous waste disposal site, or injection well associated with the facility is located more than one mile from the plant, include it on the map, if possible. If not, attach additional sheets describing the location of the structure, disposal site or well, and identify the U.S. Geological Survey map corresponding to your description.

On each map, include the map scale, a meridian arrow showing north, and latitude and longitude at the nearest whole second. On all maps of rivers, show the direction of the current, and in tidal waters, show the directions of the ebb and flow tides. The scale of the map shall have one inch equal to no more than 2000 feet. This corresponds to a 7½ minute series map published by the U.S. Geological Survey, which may be obtained through the U.S. Geological Survey Offices in Washington, D.C., Denver, Colorado, or Anchorage, Alaska. If a 7½ minute series map has not been published for your facility site, then you may use a 15 minute series map from the U.S. Geological Survey.

You may trace your map from a geological survey chart, or other map meeting the above specifications. If you do, your map should bear a note showing the number or title of the map or chart it was traced from. Include the names of nearby towns, water bodies, and other prominent points. An example of an acceptable location map is shown in Figure A of these instructions.

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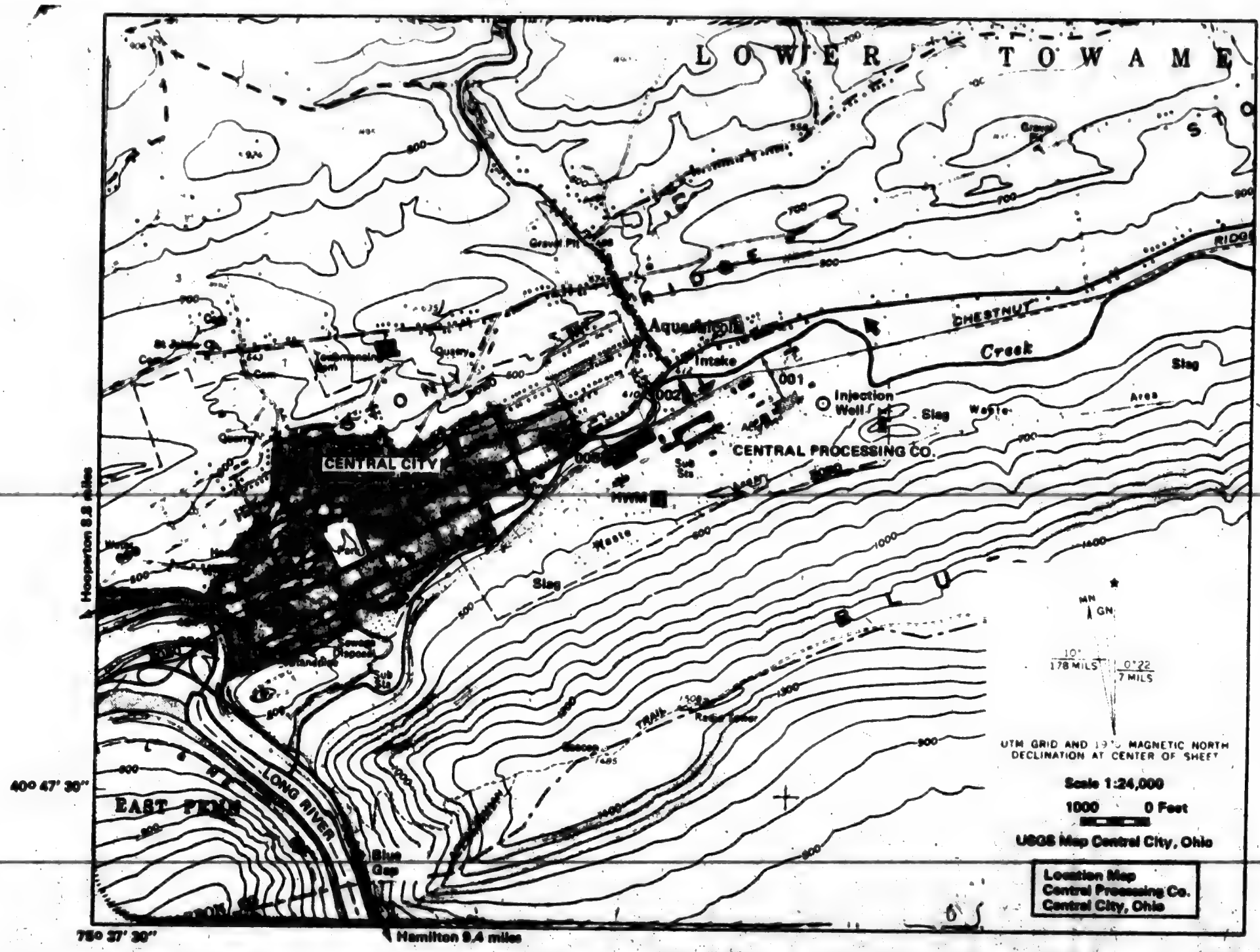

FIGURE A

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Note—The following illustrations are actual facsimiles.

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Item 3—

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Note.—This map is provided for purposes of illustration only, and does not represent any actual facility.

Item XI. Self explanatory.

Item XII. Federal statutes provide for severe penalties for submitting false information on this application form.

18 U.S.C. section 1001 provides that "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisonment not more than five years, or both."

Section 309(c)(2) of the Clean Water Act and section 113(c)(2) of the Clean Air Act each provide that "Any person who knowingly makes any false statement, representation, or certification in any application, * * * shall upon conviction, be punished by a fine or no more than $10,000 or by imprisonment for not more than six months, or both."

In addition, section 3008(d)(3) of the Resource Conservation and Recovery Act provides for a fine up to $25,000 or imprisonment up to one year for a first conviction for making a false statement in any application under the Act, and for double these penalties upon subsequent convictions.

Federal Regulations Require This Application to be Signed as Follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public facility, by either a principal executive officer or ranking elected official.

This application is not considered to be complete until it is signed by the appropriate official.

Form 2a—NPDES: Publicly Owned Treatment Works [Reserved. Until a new form and accompanying instructions are developed all applicants should continue to use the existing form, OMB No. 158–R0100, Standard Form A]

Form 2b—NPDES: Concentrated Animal Feeding Operations and Aquatic Animal Production Facilities

This form must be completed by all persons who checked "yes" to Item I–B in Form 1.

Note that not all animal feeding operations or fish farms are required to obtain NPDES permits. Exclusions are based on size and occurrence of discharge. See the description of these statutory and regulatory exclusions in section C of the instructions. In particular, for animal feeding operations, the size cutoffs are smaller for facilities where pollutants are discharged into waters of the United States by a man-made device, or are discharged because waters of the United States make direct contact with the facility. Also, a facility for laying hens or boilers is not "concentrated" unless it has a liquid manure handling system or continuous overflow watering.

For aquatic animal production facilities, the size cutoffs are based on whether the species are warm water or cold water, on the production weight per year in harvestable pounds, and on the amount of feeding in pounds of food (for cold water species). Also, only facilities which discharge at least 30 days per year, or only during periods of excess runoff (for warm water fish) are "concentrated" and required to apply for an NPDES permit.

Item I–A. See note above and sections C and D to the instructions to be sure that your facility is "concentrated".

Item I–B. Supply the quarter, section, township and range of your facility location.

Item I–C. Check "proposed" if your facility is not now in operation, or not now "concentrated" under the statutory definition.

Item II. Supply all information in item II if you checked (1) in item I–A.

Item II–A. Give the maximum number of each type of animal in open confinement or housed under roof held at your facility for a total of 45 days or more in any 12 month period.

Use the following categories for type of animals:

Slaughter Cattle
Feeder Cattle
Mature Dairy Cattle (milked or dry)
Swine (each weighing over 55 pounds)
Horses
Sheep
Lambs
Turkeys
Laying Hens*
Broilers*
Ducks

*Application for permit is not required unless facility has a liquid manure handling system or continuous overflow watering.

Item II–B. (1) Give only the area used for the animal confinement or feeding facility. Do not include area used for growing or operating feed.

(2) Provide the number of acres of land that are owned or leased by the facility for manure disposal.

Item II–C. Check "yes" if any system for collection of runoff has been constructed. Supply the information under (1), (2), and (3) to the best of your knowledge.

Item III. Supply all information in item III if you checked (2) in item I–A.

Item III–A. Outfalls should be numbered to correspond with the map submitted as required by Form 1. Values given for flow should be representative of your normal operation. The maximum daily flow is the maximum flow occurring over a 24-hour period. The maximum monthly flow is the average daily flow in the consecutive 30-day period of highest flow. The average yearly flow is the average flow over a calendar year.

Item III–B. Give the total number of discrete ponds or raceways in your facility. Under "other", give a descriptive name of any structure which is not a pond or a raceway but which results in discharge to waters of the United States.

Item III–C. Use names corresponding to the map attached with Form 1.

Item III–D. The names for fish species should be proper, common, or scientific names as given in special Publication No. 6 of the American Fisheries Society, "A List of Common and Scientific Names of Fishes from the United States and Canada". The values given for total weight produced by your facility per year and the maximum weight present at any one time should be representative of your normal operation.

Item III–E. The value given for maximum monthly pounds of food should be representative of your normal operation.

Item IV. The Clean Water Act provides for severe penalties for submitting false information on this application form.

Section 309(c)(2) of the Clean Water Act provides that "Any person who knowingly makes any false statement, representation, or certification in any application, * * * shall upon conviction, be punished by a fine or no more than $10,000 or by imprisonment for not more than six months, or both."

Federal Regulations Require This Application To Be Signed as Follows:

(1) For cooperation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public facility, by either a principal executive officer or ranking elected official.

This application is not considered to be complete until it is signed by the appropriate official.

Form 2c—NPDES: Existing Manufacturing, Commercial, Mining and Silvicultural Operations

Public Availability of Submitted Information. Your application will not be considered complete unless you answer every question on this form. Where an item does not apply to you, enter "NA" (for not applicable) to show that you considered the question.

Under Federal statutes and regulations, you may not withstand any information requested in this form as confidential (except in certain cases involving national security). Federal statutes also require that all information submitted on this form must be made available to the public.

Definitions. All significant terms used in these instructions and in the form are defined in the glossary found in section D of the instructions.

Item I–A. All effluent guidelines promulgated by EPA appear in the Federal Register and are codified yearly in 40 CFR Subchapter N. If you are unsure whether you are affected by a promulgated effluent guideline, check with your EPA Regional office (Table 1). You must check "yes" if an effluent guideline affecting you has been promulgated, even if the guideline limitations are being contested in court. If you believe that a promulgated effluent guideline has remanded for reconsideration by a court and does not apply to your operations, you may check "no", but you must identify the guideline in question in item I–B. In addition, you may check "no" here if an effluent guideline has been promulgated but the limits are not expressed in terms of production.

If you improperly check "no", and do not provide the production information required in item I–B, then this application will not be considered to be complete.

Item I–B. This item must be completed only if you checked "yes" to item I–A. The production information requested here is necessary to apply effluent guidelines promulgated by EPA under section 304 of the Clean Water Act, and *you may not withhold it as confidential.*

List the principal products produced (or if the effluent guideline is expressed in terms such as raw materials consumed or services provided, list the appropriate materials or services) and the average and maximum quantities produced or consumed per operating day at the facility. The production figures provided must reflect a reasonable measure of actual operation (such as the high month during the last twelve months, or the highest year of the last five years), which represents the level of activity expected over the next five years. Report quantities in the units of measurement normally used by your industry.

Where several similar articles are produced, use a broader term which will include all or most of the specific ones, e.g., use "costume jewelry" to designate the production of bracelets, earrings, and pins.

All terms used to describe production, etc, must correspond to the terms used in the applicable effluent guideline.

Item II. Self explanatory. An example of an acceptable line drawing appears in Figure B to these instructions.

Item III–A. Complete to the best of your ability, and base your answers on actual flow measurements whenever available. Where unavailable, you may use your best estimates. Each term is defined in the Glossary.

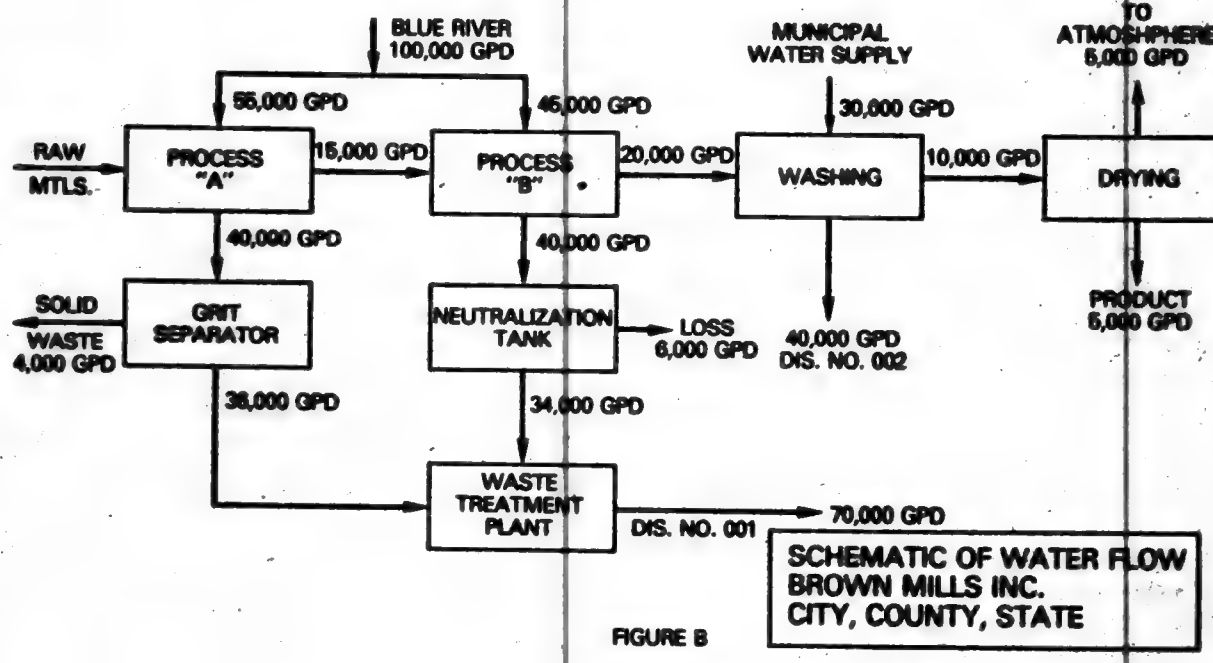

FIGURE B

For storm runoff, base your entry under "maximum flow" upon the 10-year 24-hour rainfall event. You may enter UNK (for unknown) for the average flow under this heading if no data on the average flow is available and you are unable to make an estimate.

In addition, specify any other source of wastewater discharged from any outfall.

Item III–B. You must complete this item to the best of your ability for discharges of toxic or hazardous pollutants to waters of the United States from ancillary industrial activities. Ancillary activities include:

(1) Plant site runoff.
(2) Spillage or leaks.
(3) Sludge or waste disposal.
(4) Materials storage and handling.
(5) Loading and unloading areas.

Describe the source of the discharge (e.g., drainage from truck loading stations, or runoff from Slag Dump #4), your estimate of the average and maximum total flow of the discharge, the frequency of the discharge (e.g. once per week or twice per month), the average and maximum concentration of the pollutant in the discharge (to the best of your knowledge), and the receiving water affected.

Where no measurements or historical data are available, use estimates.

As used in this question, toxic and hazardous pollutants are those pollutants listed under sections 307(a) and 311 of the Clean Water Act. The section 307(a) toxic pollutants include all pollutants listed in item V–B of this Form, plus cyanide, asbestos and 2,3,7,8 Tetrachlorodibenzo-p-dioxin (TCDD). The section 311 hazardous substances, which include many of the toxic pollutants, are listed at 43 FR 10474 (March 13, 1978) and 44 FR 10266 (February 16, 1979).

Under recent amendments to section 311 of the Clean Water Act, you may be eligible to be exempted from the requirements and liabilities of section 311 for the discharges of hazardous substances which you list here. If you desire such exemption, you must also complete item VIII of this Form.

Item III–C. 40 CFR 125.104 requires each person discharging toxic or hazardous pollutants to waters of the United States from ancillary industrial activities to prepare a Best Management Practices program. As required by the regulation, attach a copy of your BMP program to the application. The BMP program must address the discharges you described in item III–B, and meet the specifications below. A BMP program must include the following:

- Statement of Policy
- Spill (Incident) Control Committee
- Spill Reporting and Notification
- Materials Inventory
- Employee Training
- Visual Inspections
- Preventive Maintenance
- Housekeeping
- Materials Compatability
- Security.

In addition, at your option, the BMP program may include the following:

- Monitoring
- Non-destructive Testing
- Labeling
- Covering
- Vehicle Positioning
- Pneumatic and Vacuum Conveying
- Secondary Containment
- Flow Diversion Systems Vapor/Dust Control
- Sealing
- Mitigation/Cleanup Procedures
- Treatment of Spilled Material
- Ultimate Disposal Techniques.

Additional technical guidance on BMP programs is contained in the publication "NPDES Best Management Practices Guidance Document" available for review and copying at EPA Regional offices.

Item III–D. Federal regulations define a "continuance discharge" as a discharge which occurs without interruption, except for infrequent shutdowns for maintenance, process changes, or other similar activities throughout the operating hours of the facility. As used in this question, a "noncontinuous discharge" is any discharge which is not a continuous discharge.

Exclude discharges resulting from storm runoff in your answer to this question.

Item III–E. Provide for each outfall a brief description of the processes contributing to the effluent and the pollution control technologies and practices currently in use, including in-plant recycle and reuse of wastewater streams. Indicate sizes, flow rates, and retention times for each treatment unit. If no treatment is provided, enter "none."

Example: Outfall 001. 1.5 mgd wastestream generated from blast furnace operations, furnaces #6 and #7. Treatment consists of primary sedimentation using one 24-foot clarifier (8-hour retention) followed by recycle over evaporative cooling tower. 0.1 mgd blowdown treated with high pressure filters. Clarifier underflow is treated by digestion and vacuum filtration. Final sludge disposal is by incineration.

Item IV–A. If you check "yes" to this question, complete all parts of the chart.

- Clearly identify the permit condition, administrative or enforcement order, enforcement compliance schedule letter, stipulation, court order, or grant or loan condition that requires you to meet an implementation schedule for installing, upgrading, or operating wastewater treatment equipment or practices or any other environmental programs which may affect your discharges.
- Identify each discharge within the scope of each condition, order, stipulation, or letter identified in the first column where you are now or will be required to complete a control program.
- For each discharge identified, describe the project required. Attach additional sheets if necessary.
- For each project described, list the date for final compliance as required by the condition, order, stipulation, or letter, and the date by which you now project that compliance will be achieved.

Item IV–B. Self explanatory. You are not required to submit a description of future water pollution control projects if none are planned.

Items V–A, B, and C. These items require you to submit information on the pollutant characteristics of wastewater discharged from each outfall. All parts of this question must be answered once for each outfall. You are not required to complete these items for discharges you identified in item III–B.

Your answers to parts (A) and (B) of this question must report the actual results from samples collected and analyzed in accordance with the methods specified in 40 CFR Part 136 (these methods are summarized in section E of these instructions). No estimates are acceptable for these two parts. While you may make estimates in your response to part (C) of this item, actual analyses are preferred. If you have analytical data on the levels of pollutants required by part (c), you must report it.

You Must Make an Entry Next to Each Pollutant to Show You Considered it. Where You do not Find a Pollutant to be Present, Insert in Column 3 "L.T." or "<" (Less Than) The Detection Limit of the Analytical Method. (An appropriate entry would be "L.T. 10 μg/L.")

As established by 40 CFR § 122.63(a)(2), the detection limit of the

analytical method is the least stringent of the following:

• Ten micrograms per liter;

• The detection limit (or lowest appropriate concentration) specified in the applicable analytical method promulgated under section 304(h) of the Clean Water Act (these detection limits are included in section E of these instructions); or

• The detection limit as determined by the permittee for the applicable analytical method. For this purpose, the detection limit is the lowest concentration giving a signal-to-noise ratio of five to one or less, in accordance with any generally accepted procedure for determining the level of background noise. This detection limit may be based on either a laboratory standard or an individual sample.

All values you report must be representative of your discharge during the twelve months of operation preceding the date you submit this form. Where actual analyses are required, choose a time for sampling that is representative of your normal operation. All operations and processes which contribute waste water should be operating normally, to the extent feasible. Also, your treatment system should be operating properly with no system upsets. Where you make estimates, estimate pollutant levels which reflect your normal operation, without upsets. The permitting authority, at its discretion, may require you to conduct additional sampling and analysis to further characterize your waste streams.

The three parts of this question must be completed as follows:

a. Part V–A must be completed by all applicants for all outfalls, including outfalls containing only noncontact cooling water or storm runoff. All values reported must be based on actual analyses conducted in accordance with section E of the instructions.

b. Part V–B must be completed only by all applicants in Group I industries (see Table 4), and only for those outfalls containing process wastewater (defined in the Glossary). If the information requested in this chart is available for other outfalls as well, you may use this part in lieu of "other" under Part V–C. All values reported must be based on actual analyses conducted in accordance with 40 CFR Part 136 (see section E of the instructions).

The Effluent Guidelines Division of EPA has collected and analyzed samples from some plants for the pollutants listed in Part V–B of this question in the course of its BAT development program. If your effluents were sampled and analyzed as part of this BAT development project in the last two years you may use this data to answer Part V–B of this Form: *Provided,* That the permitting authority approves, *And provided,* That no process change or change in raw materials or operating practices has occurred since the samples were taken that would make the analyses unrepresentative of your current discharge.

Table 4—The 38 Industrial Categories Classified as Group I for NPDES Application Form Requirements

1. Adhesives and Sealants
2. Aluminum Forming
3. Auto and Other Laundries
4. Battery Manufacturing
5. Coal Mining
6. Coil Coating
7. Copper Forming
8. Electric and Electronic Compounds
9. Electroplating
10. Explosives Manufacturing
11. Foundries
12. Gum and Wood Chemicals
13. Inorganic Chemicals Manufacturing
14. Iron and Steel Manufacturing
15. Leather Tanning and Finishing
16. Mechanical Products Manufacturing
17. Nonferrous Metals Manufacturing
18. Ore Mining
19. Organic Chemicals Manufacturing
20. Paint and Ink Formulation
21. Pesticides
22. Petroleum Refining
23. Pharmaceutical Preparations
24. Photographic Equipment and Supplies
25. Plastic and Synthetic Materials Manufacturing
26. Plastic Processing
27. Porcelain Enameling
28. Printing and Publishing
29. Pulp and Paperboard Mills
30. Rubber Processing
31. Soap and Detergent Manufacturing
32. Steam Electric Power Plants
33. Textile Mills
34. Timber Products Processing
35. Asbestos Manufacturing
36. Ferroalloys

c. Part V–C must be completed by all applicants for all outfalls, including outfalls containing only noncontact cooling water or storm runoff. Your answers should be based on actual analyses conducted in accordance with 40 CFR Part 136 (section E of the instructions), but your best estimate will be acceptable in the absence of analyses.

For each pollutant in this part, check "present" or "absent" and indicate whether you base this assertion on actual analyses or upon your own best judgment. If you check "present", complete columns (1) through (3) in the manner described below.

In the space marked "other" at the end of this part, identify the following pollutants if present:

• Pollutants listed in Part V–B if you are in a Group I industry (see Table 4) and if the outfall does not contain any process waste water;

• Pollutants listed in Part V–B discharged from the outfall if you are not in a Group I industry (see Table 4);

• Any pesticide not listed elsewhere in item V for which an analytical method has been promulgated in 40 CFR Part 136.

The meaning of each column heading in each of the three parts to this question is as follows:

Column 1. *This column is optional.* It must be completed only if you desire credit for pollutants present in your intake water when permit limitations are calculated. Under 40 CFR 122.70(f), you are not eligible to receive credit unless you meet the following conditions:

• The intake water is drawn from the same body of water to which it is discharged;

• A promulgated effluent guideline affecting your facility provides that limitations shall be applied on a net basis, or the pollutants present in your intake water will not be entirely removed by your treatment systems;

• Each pollutant in your intake water for which you desire credit does not vary physically, chemically, or biologically from the pollutant as it appears in your outfall; and

• The concentrations of pollutants in the intake water does not increase significantly in the discharge even if the total amount of pollutants remains the same.

Under Federal regulations, credit for pollutants present in intake waters must be calculated on the basis of the amount of pollutants present after any treatment steps have been performed on the intake water.

Complete this column in the same manner described for column (2) below.

Column 2. Specify the arithmetic average of the results of all analyses that you are reporting. These must be analyses performed during the twelve months preceding the date that this application is submitted.

If you are completing Part V–C of this item and are not basing your answers to that part on actual analyses, estimate the average value for the pollutant over a 24-hour period.

Column 3. Specify the highest of all the analyses you are reporting. If you are reporting only one analysis, enter N.A. for not applicable. If you are completing Part V–C of this item and are

not basing your answers to that part on actual analyses, estimate the maximum value expected for the pollutant over a 24-hour period.

Column 4 (Parts A and B only). Specify the number of analyses performed on your effluent during the last twelve months that form the basis of the values you reported in columns (2) and (3).

Column 5 (Parts A and B only). Specify the type of samples that were analyzed to form the basis of the values you reported in columns (1)–(3). Your entry must conform to the sample type specified in section E of the instructions, although where a choice is given, select the method that will most appropriately describe your waste stream.

Note that 40 CFR 122.66(a) establishes a limitation for each pollutant in your discharge based upon the average concentration value or detection limit you report in column (2) of this item, unless the pollutant is otherwise limited in an NPDES permit. Where you do not identify a pollutant as being present, this limitation is based on the detection limit of the method (as specified in section E of the instructions or as described earlier in the instructions to this item).

Item VI–A. For this item, consider only those variations which may result in concentrations of pollutants in effluents which may exceed five times the values you reported in item V. These variations may be part of your routine operations, or part of your regular cleaning cycles.

Do Not Consider Variations Which Are the Result of Upsets or Bypasses.

Increased levels of pollutants which are discharged as a result of upsets or bypasses are regulated separately under 40 CFR 122.66(k), (l), and (m), and will not be considered here.

Item VI–B. Examples of the types of variations to be described here include:

- Changes in raw or intermediate materials;
- Changes in process equipment or materials;
- Changes in product lines;
- Chemical reactions between pollutants in waste streams, if significant;
- Variation in removal efficiencies of pollution control equipment, if significant; and
- Variation of concentrations of pollutants in intake water.

You may indicate other types of variations was well, except those which are the result of upsets or bypasses. After receipt of your application, the permitting authority may require you to further investigate or document variations you report here.

Item VI–C. Base your answer upon your knowledge of your processes, raw materials, past and projected product ranges, etc., or upon any testing conducted upon your effluents which indicates the range of variability that can be expected in your effluent over the next five years.

Example: Outfall 001 discharges water used to clean six 500-gallon tanks. These tanks are used for formulation of dispersions of synthetic resins in water (adhesives). Usage of toxic pollutants which can be expected in the next 5 years are:

1. Copper acetate inhibitor, ½ lb. per tank
2. Dibutyl phthalate, 50 lbs. per tank
3. Toluene, 5 lbs. per tank
4. Antimony oxide, 1 lb. per tank.

Based on normal cleaning, an average of 1% and a maximum of 3% of the contents of each tank is collected and discharged once every two weeks in the 150 gallons of water used for cleaning. Treatment (pH adjustment, flocculation, filtration) removes 95% of metals and 50% of organic compounds.

Items VII–A and B. Self explanatory.

Item VIII. This item asks for information concerning pollutants which are not specifically asked about elsewhere in this Form. If you or any other person has conducted examinations (including analyses) of your effluents within the last five years which resulted in data on the presence or levels of such pollutants in your waste stream, briefly describe those programs here. Use additional sheets of necessary.

Include the approximate dates the investigations were conducted, and estimate the volume of your material concerning pollutants not reported elsewhere in this application. Include brief descriptions of the following types of investigations:

- Identification or quantification of GC/MS or GC peaks not reported elsewhere in this application;
- Identification or quantification of other pollutants by other analytical methods; and
- Identification or quantification of other pollutants through formulation or by mass balances of raw or intermediate materials.

Item IX. This item is optional. You must, however, complete it if you wish to exclude certain discharges of hazardous substances from the liabilities and requirements of section 311 of the Clean Water Act (CWA). Section 311 of the CWA establishes reporting requirements, civil penalties and clean-up cost liabilities for spills of oil and hazardous substances.

The list of hazardous substances, which overlaps with the section 307(a) toxics list to some extent, presently includes 299 pollutants. They may be found at 43 FR 10474 (March 13, 1978) and 44 FR 10260 (February 16, 1979).

A number of these hazardous substances are compounds which dissociate in water. To obtain exclusions for these compounds, each ion resulting from the dissociation must be reported in this section of this Form.

Section 311(a)(2) of the Clean Water Act excludes the following from section 311 requirements: "(A) discharges in compliance with a permit under section 402 of this Act, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of this Act, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of this Act, which are caused by events occurring within the scope of relevant operating or treatment systems."

For an in-depth discussion of these exclusions, refer to regulations proposed at 44 FR 10271 (February 16, 1979).

If you list and describe a hazardous substance in this question of the NPDES application form in order to avoid the penalties and requirements of section 311 of the CWA, then the discharge becomes subject to the NPDES requirements of the CWA. As a result, the permitting authority may set technology-based limitations in a permit under sections 301 and 304 of the CWA for the discharge of the pollutant; otherwise the application-based limitations specified in 40 CFR 122.66(a)(2) will apply.

In Order to be Excluded From 311 Liability for Hazardous Substance Discharge, You Must Identify the Hazardous Substances in This Question and Complete all Parts of This Question.

Item. IX–A. For each outfall or nonpoint source where you desire a discharge of a hazardous substance to be excluded from section 311 of the CWA, identify the point at which the discharge enters or will enter navigable waters (this may include nonpoint sources as well as outfalls). For each point of discharge, identify the hazardous substances which are or will be discharged. If you previously identified the substance elsewhere in

this Form, you must also identify it here to obtain an exclusion.

In the third column, identify the origin or source of the discharge of each hazardous substance you identified. If the discharge is or may be the result of normal process operations, indicate the process that is or may be generating the discharge. If the discharge is or may be the result of other causes, such as washdown of leaks and spills from storage areas, runoff and leachate from materials storage areas, or discharges that could be caused by tank ruptures or chemical spills, then specify the cause in detail.

In the fourth column, indicate the frequency that the pollutant is or is projected to be discharged, e.g., continuously, once a day, or potentially 3 times per year.

For each substance, indicate the amount of the substance that is or which may be discharged, based on the concentration of the substance and the highest expected flow. Base all your concentrations and mass figures on actual analyses if possible, but if the discharge is only a potential one or if it cannot be measured, use your best estimate. In the last column, identify the analytical method or the basis of the estimate used to develop the concentration and amount figures reported in the proceeding two columns.

Item IX–B. For each outfall or nonpoint source you listed in item IX–A, describe your present or planned treatment system or management practice to treat or eliminate the discharge. If any part of the treatment system is or will be installed specifically to control discharges identified in this item, this should be specified in the description. (Examples of a management practice are holding ponds to contain materials discharged from ruptured tanks, followed by treatment or disposal, and diversion of wastes by ditching around storage areas to facilitate collection, followed by treatment and disposal.)

Item X. Self explanatory.

Item XI. The Clean Water Act provides for severe penalties for submitting false information on this application form.

Section 309(c)(2) of the Clean Water Act provides that "Any person who knowingly makes any false statement, representation, or certification in any application, * * * shall upon conviction, be punished by a fine or no more than $10,000 or by imprisonment for not more than six months, or both."

FEDERAL REGULATIONS REQUIRE THIS APPLICATION TO BE SIGNED AS FOLLOWS:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public facility, by either a principal executive officer or ranking elected official.

This application is not considered to be complete until it is signed by the appropriate official.

FORM 3—RCRA: Hazardous Waste Management Facility Permit

Public availability of submitted information. Your answer to every question asked on this form is necessary to write a hazardous waste management (HWM) facility permit.

In general, all information contained in the HWM Facility Permit Application is considered to be open to the public. However, an applicant may claim confidential status for any information submitted to EPA pursuant to section 3005 of RCRA (proposed as 40 CFR Parts 122 and 124). Such claim must be made at the time of submission, by stamping the words "Confidential Business Information" on each page containing such material. If no claim is asserted, the information will be disclosed only in accordance with procedures established in Title 18 of the U.S. Code.

Definitions. Terms used in these instructions and in Form 3 are defined in the glossary found in section D of the instructions.

Applicants for special RCRA permits. Applicants for Health Care Facility Special Permits must complete *only* items I, II, III, IV, V, and VI on Form 1, and *only* items I, VII–A and VII–B on Form 3. Applicants for Experimental Facility Special Permits must complete all items in Form 1 and Form 3.

For additional definitions and procedures to use in applying for RCRA permits, refer to regulations pursuant to section 3005 of RCRA and proposed as 40 CFR Parts 122 and 124.

Item I. Enter the Facility Identification Number provided by EPA which can be found in the upper left hand corner of the label used to mail these forms to you. The Facility I.D. number for private, municipal, and State-owned facilities is the Data Universal Numbering System, or otherwise called the DUNS Number, developed by Dunn and Bradstreet, Inc.

In the event that EPA did not provide an I.D. number (DUNS Number) on your mailing label, one can be obtained by contacting your nearest office of Dunn and Bradstreet, Inc. or your EPA Regional office.

For Federal facilities, the General Services Administration (GSA) real property number is used in lieu of the DUNS Number. All Federal facilities have been assigned a real property number by GSA. In the event that EPA did not provide an I.D. number on your mailing label, one can be obtained by contacting the nearest local office of GSA.

Item II. Check the box that best describes the relationship of the applicant to the facility. Relevant definitions:

- Ownership—legal right to possession.
- Purchase—to acquire (property) legally by means other than inheritance.
- Rent—use of another's property in return for regular payments.
- Lease—a contract granting use or occupation of land or holdings during a specified period in exchange for rent.

In addition, modifications to RCRA permits are addressed in proposed § 122.9(e), which appears elsewhere in today's Federal Register. It should be noted that certain minor modifications listed under § 122.9(g) may not require public notice and opportunity for hearings.

Item III. Check the box that best describes the current status of the facility.

Item IV. Check the box that best describes the type of permit that is desired. The two types of permits that require applications are the following:

A. Regular Permits
B. Special Permits
- Experimental Facility
- Health Care Facility.

Note.—Permits by rule will be granted to facilities listed in § 122.28(a) of regulations pursuant to section 3005 of RCRA and proposed elsewhere in today's Federal Register. *No application* is required for permits by rule.

Item V. In the space provided, indicate:

A. The present zoning of the site.

B. What new zoning classification should be if a change is required.

Item VI. Only existing HWM facilities (see Glossary) are required to provide copies of all available drawings and specifications of the HWM facility, its processes, and equipment. Also indicate the *date* the HWM facility came into operation or under physical construction.

Item VII. Only owners/operators of health care facilities (HCF) that treat and/or store hazardous waste are

eligible for a special permit under section 3005 of RCRA. The following information must be provided:

A. A certification statement signed by appropriate State licensing authority indicating that the facility has an effective licensee as specified under § 122.25(a) of regulations pursuant to section 3005 of RCRA proposed elsewhere in today's Federal Register.

B. A list of hazardous wastes covered by the State licenses.

Item VIII. An authorized representative of the applicant should sign and date the permit application, thereby certifying to the validity of all responses and data submitted to EPA. Under section 3008(d) of RCRA, "Any person who knowingly makes any false statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with this subtitle shall, upon conviction, be subject to a fine of not more than $25,000 for each day of violation, or to imprisonment not to exceed 1 year, or both. If the conviction is for a violation committed after a first conviction of such a person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than 2 years, or by both."

Item IX. Each of the following instructions apply specifically to each part of item IX.

A. *Waste number.* Wastes must be numbered sequentially beginning with number (1).

B. *Hazardous waste name.* Provide the proper Department of Transportation (DOT) shipping name of each hazardous waste that is stored, treated, or disposed of at the facility. The DOT proper shipping names are listed in the Code of Federal Regulations, 49 CFR 172.101 (proposed at 43 FR 22631 (May 25, 1978)). If the proper shipping name is not included in the DOT list and the term "Not Otherwise Specified" (NOS) is indicated, the EPA hazardous waste name as listed in 40 CFR 250.14 must be used after the DOT proper shipping name. Both references may be obtained by contacting the appropriate EPA Regional office responsible for issuing the permit. If the waste cannot be located in either of these lists, and it is determined to be a hazardous waste under the procedures established by the section 3001 regulations, then use the common name or chemical name of the waste, and so indicate by placing an asterisk (*) before the name of the waste.

If all wastes cannot be specified on a single sheet, additional copies may be requested from the solid waste representative in the EPA Regional office which is responsible for issuing hazardous waste management facility permits in your State.

C. *Confidentiality claim.* If you wish to claim confidential status for this information, mark an X in this box (see item titled *"Public Availability of Submitted Information"*).

D. *Waste definition code (common code).* Enter the waste definition code associated with each "hazardous waste name" listed in item IX–B. A unique code number has been assigned to each EPA hazardous waste listed in 40 CFR 250.14 and to each DOT hazardous waste material listed in 49 CFR 127.101 (proposed at 43 FR 22631 (May 25, 1978)).

Note.—These codes are not included in this notice, but they will be made part of EPA's final instruction manual.

E. *Hazard class.* List the hazard class by its Department of Transportation (DOT) category name, as identified or listed in the Hazardous Waste Materials Table in the *Code of Federal Regulations*, 49 CFR 172.101 (proposed at 43 FR 22631 (May 25, 1978)). For the DOT hazard class "OTHER REGULATED MATERIAL" (ORM), use the EPA characteristics identified in § 250.14 of regulations pursuant to section 3001 of RCRA and proposed as 40 CFR Part 250 in 43 FR 58957, December 18, 1978. The hazard class is simply a systematic means of identifying substances with similar characteristics.

Enter the assigned code listed below corresponding to the appropriate classification.

The DOT hazard classes and assigned codes are:

EA—Explosives A
EB—Explosives B
EC—Explosives C
FL—Flammable liquid
FS—Flammable solid
OX—Oxidizer
CL—Corrosive liquid
NG—Nonflammable gas
PA—Poison A
PB—Poison B
RM—Radioactive material
OP—Organic peroxide
CH—Chlorine
OL—Oxygen pressurized liquid.

The EPA classification system and data input codes include:

I—Ignitable waste
C—Corrosive waste
N—Infectious waste
R—Reactive waste
A—Radioactive waste
T—Toxic waste
O—Organic toxicant
M—Mutagenic
B—Bioaccumulative

F. *Action code.* Indicate the type of action(s) or function(s) employed at the facility in relation to each hazardous waste. The appropriate code(s) are listed below:

S—Store hazardous waste
T—Treat hazardous waste
D—Dispose of hazardous waste

G. *Amount.* For each hazardous waste that the facility stores, treats, and/or disposes, indicate the quantity handled on an annual basis. Use the units of measure shown in (H) below.

H. *Unit of measure.* For each amount indicated, the units are to be specified using the abbreviations of English or metric units shown below:

English Units	*Metric Units*
P—Pounds	K—Kilograms
T—Tons	M—Tonnes
G—Gallons	L—Liters
Y—Cubic Yard	C—Cubic Meters

I. *Handling code.* Enter the handling code(s) listed below that most closely represent the technique(s) used at the facility to store, treat, or dispose of hazardous waste. For each hazardous waste, and for each applicable action code (see F above) enter the most appropriate handling code listed below. This code is intended to supplement (H) below, which is the handling technique.

(1) Storage

S01	Tank truck/rail
S02	Missile silo
S03	Underground storage
S04	Concrete drum
S06	Other (specify)

(2) Treatment

(a) Thermal Treatment Process

T07	Modular incinerator
T08	Rotary kiln incinerator
T09	Fluidized bed incinerator
T10	Cement kiln incinerator
T11	Multiple hearth incinerator
T12	Electrical utility boiler
T13	Liquid injection incinerator
T14	Sludge incinerator
T15	Chemical waste incinerator
T16	Process heater
T17	Lime kiln
T18	Wood waste incinerator
T06	Other (specify)

(b) Chemical Treatment Process

T19	Cyanide destruction
T20	Chemical oxidation
T21	Chemical precipitation
T22	Chemical reduction
T23	Neutralization
T24	Pyrolysis
T25	Degradation
T26	Chlorination
T27	Chemical fixation
T28	Detoxification
T29	Absorption mound
T30	Absorption field
T31	Ion exchange
T06	Other (specify)

(c) Physical Treatment Process

1. Liquid-solids separation

T32 Centrifugation
T33 Clarification
T34 Filtration
T35 Flocculation
T36 Sedimentation
T37 Decanting
T38 Coagulation
T39 Flotation
T40 Foaming
T41 Thickening
T42 Open pit (seepage pit)*
T43 Concrete basin*
T44 Surface impoundment*
T45 Holding tank*
T00 Other (specify)

2. Removal of Specific Components

T46 Blending
T47 Catalysis
T48 Distillation
T49 Evaporation
T50 Solvent
T51 Stripping
T52 Absorption—molecular sieve (activated carbon)
T53 Crystallization
T54 Sand filter
T55 Dialysis
T56 Electrodialysis
T57 Leaching
T58 Reverse osmosis
T00 Other (specify)

(d) Biological Treatment

T59 Activated sludge
T60 Aerobic lagoons
T61 Anaerobic lagoons
T62 Spray irrigation
T63 Thickening filters
T64 Waste stabilization pond
T65 Septic tank*
T66 Aerobic tank*
T00 Other (specify)

(e) Other

T67 Electron irradiation
T68 Air stripping
T00 Other (specify)

(3) Disposal

D69 Chemical waste landfill
D70 Soil incorporation
D71 Ocean disposal
D72 Deep well injection
D73 Dilution/dispersion
D74 Open burning/burial
D75 Encapsulation
D76 Open pit
D77 Encasement (cement)
D78 Missile silo*
D79 Waste digestor
D80 Cave
D00 Other (specify).

*These techniques are considered *storage* if they are covered and there is no discharge to air or groundwater.

J. *Hazardous waste handling technique.* Briefly describe the technique used at the facility in storing, treating, or disposing of hazardous wastes. For each different material and action, identify the specific technique used. Example responses include the following:

- Sink-float separation; decant and evaporate.
- Shredding, rotary kiln incineration, dispose residuals in hazardous waste landfill.
- Evaporation, centrifuge and pyrolysis.
- Containerize in steel drums and cover with earth.
- Containerize and store in missile silo.
- Neutralize hazardous solution and reprocess.
- Use ion exchange resin; recover concentrates.

Form 4—UIC: Underground Injection of Fluids [Reserved]

Form 5—PSD: Proposed Facilities (PSD New Sources, NPDES New Sources and New Dischargers, and New Injection Wells) [Reserved]

Section C. Activities Which Do Not Require Permits

I. *National Pollutant Discharge Elimination System (NPDES) Permits under the Clean Water Act.* You are not required to obtain an NPDES permit if your discharge is in one of the following categories, as provided by the Clean Water Act (CWA) and by the NPDES regulations (40 CFR Parts 122–125, promulgated on June 7, 1979). However, under section 510 of the CWA, a discharge exempted from NPDES requirements may still be regulated by a State authority and so you should check with your State environmental agency to determine whether you need a State permit.

A. *Discharges from Vessels.* Discharges of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, and any other discharge incidental to the normal operation of a vessel do not require NPDES permits. However, discharges of rubbish, trash, garbage, or other such materials, discharged overboard do require permits, and so do other discharges when the vessel is operating in a capacity other than as a mean of transportation, such as when the vessel is being used as an energy of mining facility, a storage facility, or a seafood processing facility, or is secured to the bed of the ocean, contiguous zone, or waters of the United States for the purpose of mineral or oil exploration or development.

B. *Dredged or Fill Material.* Discharges of dredged or fill material into waters of the United States do not need NPDES permits if the dredging or filling is regulated under section 404 of the CWA.

C. *Discharges into Publicly Owned Treatment Works (POTW).* The introduction of sewage, industrial wastes, or other pollutants into a POTW does not need an NPDES permit. You must comply with all applicable pretreatment standards promulgated under section 307(b) of the CWA, which may be included in the permit issued to the POTW. If you have a plan or an agreement to switch to a POTW in the future, this does not relieve you of the obligation to apply for and receive an NPDES permit until you have stopped discharging pollutants into waters of the United States. Also, you do need an NPDES permit for introduction of pollutants to privately owned treatment works which discharge into waters of the United States, and for other discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other party not leading to treatment works.

D. *Discharges from Agricultural and Silvicultural Activities.* Any introduction of pollutants to waters of the United States from agricultural and silvicultural activities, except as described below, does not require an NPDES permit. This includes runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but does not include the exceptions described below.

(1) Discharges from Concentrated Animal Feeding Operations.

A lot or facility is an animal feeding operation if it meets the following conditions:

(i) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and

(ii) Crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

Two or more animal feeding operations under common ownership are a single animal feeding operation if they adjoin each other or if they use a common area or system for disposal of wastes.

An animal feeding operation is required to have an NPDES permit if it is a "concentrated animal feeding operation", which means that it has been designated as a "concentrated animal feeding operation" under 40 CFR 122.76(c), or that it meets one of the criteria in (i) or (ii) below:

(i) More than the numbers of animal specified in any of the following categories are confined:

(A) 1,000 slaughter and feeder cattle,
(B) 700 mature dairy cattle (whether milked or dry cows),
(C) 2,500 swine each weighing over 55 pounds,
(D) 500 horses,
(E) 10,000 sheep or lambs,
(F) 55,000 turkeys,
(G) 100,000 laying hens or broilers (if the facility has continuous overflow watering)
(H) 30,000 laying hens or broilers (if the facility has a liquid manure handling system),
(I) 5,000 ducks, or
(J) 1,000 animal units (see definition below); or

(ii) One of the following conditions are met: Pollutants are discharged into water of the United States through a man-made ditch, flushing system or other similar man-made device; or pollutants are discharged directly into navigable waters which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation; and more than the following numbers and types of animals are confined:

(A) 300 slaughter or feeder cattle,
(B) 200 mature dairy cattle (whether milked or dry cows),
(C) 750 swine each weighing over 55 pounds,
(D) 150 horses,
(E) 3,000 sheep or lambs,
(F) 16,500 turkeys,
(G) 30,000 laying hens or broilers (if the facility has continuous overflow watering),
(H) 9,000 laying hens or broilers (if the facility has a liquid manure handling system),
(I) 1,500 ducks, or
(J) 300 animal units (see definition below).

No animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a 25 year, 24 hour storm.

The term "animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers: The number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

(2) Discharges from Concentrated Aquatic Animal Production Facilities.

An aquatic animal production facility is required to have an NPDES permit if it is a "concentrated aquatic animal production facility", as defined below or as designated under 40 CFR 122.77(c).

"Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which contains, grows, or holds:

(i) Cold water fish species or other cold water aquatic animals in ponds, raceways or other similar structures which discharge at least 30 days per year but does not include:

(a) Facilities which produce less than 20,000 harvest weight pounds of aquatic animals per year; and

(b) Facilities which feed less than 5,000 pounds of food during the calendar month of maximum feeding.

(ii) Warm water fish species or other warm water aquatic animals in ponds, raceways or other similar structures which discharge at least 30 days per year, but does not include:

(a) Closed ponds which discharge only during periods of excess runoff; or

(b) Facilities which produce less than 100,000 harvest weight pounds of aquatic animals per year.

"Cold water aquatic animals" include, but are not limited to, the *Salmonidae* family of fish, e.g., trout and salmon.

"Warm water aquatic animals" include, but are not limited to, the *Ameiuridae, Centrarchidae*, and *Cyprinidae* families of fish, e.g., respectively catfish, sunfish and minnows.

(3) Discharges to Aquaculture Projects.

Discharges to aquaculture projects, as defined below, require NPDES permits.

"Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

"Designated project area" means the portions of the waters of the United States within which the applicant for a permit plans to confine the cultivated species, using a method or plan or operation (including, but not limited to, physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants permitted under this part, and be harvested within a defined geographic area.

(4) Discharges from Silvicultural Point Sources.

Discharges from non-point source silvicultural activities do not require NPDES permits. These activities include nursery operations, site preparations, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, and road construction and maintenance from which there is runoff from precipitation. However, some of these activities, such as stream crossings for roads, may involve point source discharges of dredged or fill material which may require a section 404 permit. See 33 CFR 209.120.

Discharges from silvicultural point sources do require NPDES permits. A silvicultural point source is any discernable, confined, and discrete conveyance which discharges pollutants into waters of the United States and which is related to rock crushing and gravel washing facilities, or to log sorting and log storage facilities, as defined below, which are operated in connection with silvicultural activities.

"Rock crushing and gravel washing facilities" are facilities which process crushed and broken stone, gravel and riprap (see 40 CFR Part 436, Subpart B, and the effluent limitations guidelines for these facilities).

"Log sorting and log storage facilities" are facilities whose discharges result from the holding of unprocessed wood, e.g., logs or roundwood with bark or after removal of bark in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking). (See 40 CFR Part 429, Subpart J, and the effluent limitations guidelines for these facilities.)

II. *Hazardous Waste Permits Under the Resource Conservation and Recovery Act (RCRA).* You are not required to obtain an RCRA Subtitle C permit, if you are in one of the following categories:

(1) Generators and transporters who store hazardous waste for less than 90 days.

(2) Persons who produce and dispose of less than 100 kilograms (approximately 220 pounds) per month of hazardous waste. Persons are exempted provided they comply with the provisions of 40 CFR 250.20—Standards Applicable to Generators of Hazardous Waste (proposed at 43 FR 58970 on December 18, 1978). These provisions require that any hazardous waste generated, no matter how small the quantity, be disposed of either in (i) a solid waste facility which has been permitted or otherwise certified by the State as meeting the criteria of section 4004 of RCRA; or (ii) a treatment, storage, or disposal facility permitted by the Director under 40 CFR Parts 124 and 125, or permitted by an authorized State program under 40 CFR Part 123.

(3) Retailers who dispose of any quantity of hazardous waste other than waste oil. This exclusion only applies if the hazardous waste is disposed of in accordance with the provisions of 40 CFR 250.29 (described in (2) above). This exclusion does not extend to gasoline stations and companies that accumulate more than 100 kilograms of waste oil per month.

(4) Farmers who dispose of any quantity of hazardous waste: *Provided,* That they comply with the provisions of 40 CFR 240.29. These provisions require farmers to (i) dispose of all waste pesticide in accordance with instructions on the pesticide label or, in the absence of label instructions, dispose of the pesticide in accordance with the procedures and criteria specified in 40 CFR Parts 165 and 257; and (ii) triple rinse each pesticide container after it has been emptied and use the rinsate as make-up water in the tank mix or, at an application rate consistent with pesticide labeling, on crop lands: *Provided, however,* That the pesticide must be registered for the particular crops and such application must be consistent with criteria established in 40 CFR Part 257; and (iii) dispose of all other hazardous wastes in accordance with the provisions described in (2) above.

(5) Publicly owned treatment works (POTW), ocean disposal barges or vessels that receive manifested hazardous wastes and facilities that treat, store or dispose of hazardous wastes designated as special waste as defined in 40 CFR 240.46 shall be considered as having a permit if the requirements proposed in 40 CFR 122.26 are met. Therefore, the owners and operators of these facilities do not need to apply for an RCRA permit.

III. *Underground Injection Control Permits Under the Safe Drinking Water Act.* [Reserved]

IV. *Prevention of Significant Deterioration Permits Under the Clean Air Act.* [Reserved]

Section D. Glossary

Note.—This Glossary includes terms used in the instructions and in Forms 1, 2b, 2c, and 3. Additional terms will be included in the future when other forms are developed to reflect the requirements of other parts of the consolidated permit program.

"Aliquot" means a sample of specified volume used to make up a total composite sample.

"Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

(i) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and

(ii) Crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

Two or more animal feeding operations under common ownership are a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

"Animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers: The number of slaughter and feeder cattle multiplied by 1.0 plus the number of mature dairy cattle multiplied by 1.4 plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

"Application" means the EPA standard national forms for applying for a permit, including any subsequent additions, revisions or modifications to the form; or forms approved by EPA for use in approved States, including any approved modifications or revisions.

"Application, Part A" means that part of the consolidated permit application form which an RCRA permit applicant must complete to qualify for interim status under section 3005(e) of RCRA and for consideration for a permit. Part A consists of Form 1 (General Information) and Form 3 (Hazardous Waste Information Summary).

"Application, Part B", means that part of the application which an RCRA permit applicant must complete to be considered for a permit. EPA is not developing a specific form for Part B of the permit application.

"Approved program" means a State program which meets the requirements of 40 CFR Part 123 and which has been submitted to and approved by EPA under the appropriate Act. An "approved State" is one administering an "approved program."

"Aquifer" means a geological formation, group of formations, or part of a formation that is capable of yielding useable quantities of groundwater.

"Area of review" means the area surrounding an injection well which is described according to the criteria set forth in 40 CFR 146.06.

"Area permit" means a UIC permit applicable to a geographical area, rather than to a specified well, under 40 CFR 122.37.

"Attainment area" means for any air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator to be reliable) not to exceed any national air quality standard for such pollutant. Standards have been set for sulfur oxides, particulate matter, nitrogen dioxide, carbon monoxide, ozone, lead and hydrocarbons.

"Authorization" means authorization, or approval by EPA of a State program which has met the applicable requirements of section 3006(b) of RCRA and 40 CFR Part 123, Subparts A & B.

"Batch" process or operation means a process or operation which occurs as a series of single, discrete operations.

"Best Management Practices" ("BMP") means methods, measures, or practices to prevent or reduce the contribution of pollutants to waters of the United States. For purposes of these forms and instructions, BMPs include treatment requirements, operating and maintenance procedures, schedules of activities, prohibitions of activities, and other management practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs do not include actual plant process design, and related operating decisions. BMPs may be imposed in addition to or in the absence of effluent limitations, standards or prohibitions.

"Biological monitoring test" means any test which includes the use of aquatic algal, invertebrate, or vertebrate species to measure acute or chronic toxicity, and any biological and/or chemical measure of bioaccumulation.

"Bypass" means the intentional diversion of wastes from any portion of a treatment facility.

"Composite sample" is a sample made up of a number of individual aliquots collected over a period of time.

"Concentrated animal feeding operation" means an animal feeding operation which meets the criteria set forth in (b)(2)(i), (ii) or (iii) below:

(i) More than the numbers of animal specified in any of the following categories are confined:

(A) 1,000 slaughter or feeder cattle,

(B) 700 mature dairy cattle (whether milked or dry cows),

(C) 2,500 swine each weighing over 55 pounds,

(D) 500 horses,

(E) 10,000 sheep or lambs,

(F) 55,000 turkeys,

(G) 100,000 laying hens or broilers (if the facility has a continuous overflow watering)

(H) 30,000 laying hens or broilers (if the facility has a liquid manure system),

(I) 5,000 ducks, or

(J) 1,000 animal units; or

(ii) More than the following numbers and types of animals are confined:

(A) 300 slaughter or feeder cattle,

(B) 200 mature dairy cattle (whether milked or dry cows),

(C) 750 swine each weighing over 55 pounds,

(D) 150 horses,

(E) 3,000 sheep or lambs,

(F) 16,500 turkeys,

(G) 30,000 laying hens or broilers (if the facility has continuous overflow watering),

(H) 9,000 laying hens or broilers (if the facility has a liquid manure handling system),

(I) 1,500 ducks, or

(J) 300 animal units;

and either one of the following conditions are met: Pollutants are discharged into water of the United States through a man-made ditch, flushing system or other similar man-made device; or pollutants are discharged directly into navigable waters which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

Provided, however, That no animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a 25 year, 24 hour storm event; or

(iii) The Director determines that the operation is a significant contributor of pollution to waters of the United States, in accordance with 40 CFR 122.76(c).

"Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which contains, grows or holds:

(i) Cold water fish species or other cold water aquatic animals in ponds, raceways or other similar structures which discharge at least 30 days per year but does not include:

(i) Facilities which produce less than 20,000 harvest weight pounds of aquatic animal per year; and

(ii) Facilities which feed less than 5,000 pounds of food during the calendar month of maximum feeding.

(2) Warm water fish species or other warm water aquatic animals in ponds, raceways or other similar structures which discharge at least 30 days per year, but does not include:

(i) Closed ponds which discharge only during periods of excess runoff; or

(ii) Facilities which produce less than 100,000 harvest weight pounds of aquatic animals per year.

"Contact cooling water" means water used to reduce temperature which comes into contact with a raw material, intermediate product, waste product, or finished product.

"Contiguous zone" means the entire zone established by the United States under article 24 of the convention of the Territorial Sea and the Contiguous Zone.

"Continuous discharge" means a discharge which occurs without interruption, except for infrequent shutdowns for maintenance, process changes or other similar activities throughout the operating hours of the facility.

"CWA" means the Clean Water Act (formerly referred to the Federal Water Pollution Control Act) Pub. L. 92-500, as amended by Pub. L. 95-217 and Pub. L. 95-576, 33 U.S.C. 1251 *et seq.*

"Detection limit" means the lowest concentration of a substance that has a signal-to-noise ratio of five-to-one or less.

"Direct discharge" means the discharge of pollutants as defined below.

"Director" means the Regional Administrator, or the State Director as defined in this section.

[Comment: Where there is an approved State program, the term "Director" normally refers to the State Director. In some circumstances, however, EPA retains authority to take certain actions even where there is an approved State program; e.g., where EPA issued an NPDES permit prior to the approval of a State program, EPA may retain jurisdiction over that permit after program approval. See 40 CFR 123.71 and 123.91. In such cases, the term "Director" means the Regional Administrator and not the State Director.]

"Discharge" when used without qualification includes a discharge of a pollutant and a discharge of pollutants.

"Discharge of a pollutant" and "discharge of pollutants" each means:

(i) Any addition of any pollutant or combination of pollutants to navigable waters other than the territorial sea, from any point source, or

(ii) Any addition of any pollutant or combination of pollutants to the waters of the territorial sea, the contiguous zone or the ocean from any point source other than a vessel or other floating craft when being used as a means of transportation.

This definition includes discharges into waters of the United States from: surface runoff which is collected or channelled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other party which do not lead to treatment systems; and discharges through pipes, sewers, or other conveyances, leading into treatment systems owned in whole or in part by a third party other than a State or a municipality.

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

"Disposal facility" means any Hazardous Waste Management facility which disposes of hazardous waste.

"Effective date of a UIC program" means the date that a State UIC program is approved or the date that a UIC program is established by the Administrator.

"Effluent limitation" means any restriction imposed by a State or the Administrator on quantities, rates, and concentrations of pollutants which are discharged from point sources into navigable waters or the waters of the contiguous zone or the ocean.

"Environmental Protection Agency" ("EPA") means the United States Environmental Protection Agency.

"Existing HWM facility" means a Hazardous Waste Management facility which was in operation or under physical construction, on or before the date or promulgation of the regulations under § 3001 of RCRA, 40 CFR Part 250, Subpart A (proposed at 43 FR 58954 (December 18, 1978)).

"Existing source" means any source which is not a new source or a new discharger.

"Existing injection wells" means all injection wells other than new injection wells as defined in this Glossary.

"Facilities or equipment" means buildings, structures, process or production equipment or machinery which form a permanent part of the new source and which will be used in its operation, provided that such facilities or equipment are of such value as to represent a substantial commitment to construct. It does not include facilities or equipment used in connection with feasibility, engineering and design studies regarding the pollution treatment for the source.

"Facility or activity" means any activity or facility (including land or appurtenances thereto) that is subject to regulation under the RCRA, UIC, or NPDES programs.

"Farmer" means a person whose principal business is operating a farm,

which is a piece of land on which crops or animals are raised.

"Fluid" means material or substance which flows or moves whether semisolid, liquid, sludge or any other form or state.

"General information form" or "Form 1" means the consolidated permit application form containing general information which is common to several EPA permit programs.

"Generator" means any person or Federal agency whose act or process produces hazardous waste identified or listed under 40 CFR Part 250, §§ 250.13 and .14 (proposed at 43 FR 58955 (December 18, 1978)). Certain producers are specifically exempted from the § 3002 regulations. These are discussed in section C of the instructions and in 40 CFR Part 250, § 250.29 (proposed at 43 FR 58979 (December 18, 1978)).

"Grab composite sample" means a combination of grab samples collected over a specified sampling period.

"Grab sample" means an individual sample collected at a randomly—selected time over a period of time not exceeding 15 minutes.

"Group I industry" means any of the industries listed in Table 4 of the instructions as being in Group I.

"Group II industry" means any industry listed in Table 4 of the instructions as being in Group II.

"Gross limitation" means a limitation which is not adjusted to reflect credit for pollutants in a discharger's intake water.

"Ground water" means water in the saturated zone beneath the land surface.

"Hazardous substance" means any of the substances designated as hazardous in 40 CFR Part 118.

"Harzardous waste" means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may (A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or (B) pose substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed; or as further defined and identified by 40 CFR Part 250, Subpart A, §§250.13 and .14 (proposed at 43 FR 58955 (December 18, 1978)).

"Hazardous waste management facility" ("HWM facility") means any facility, land and appurtenances thereto used for the treatment, storage, and/or disposal of hazardous wastes except that solid waste disposal facilities which receive hazardous wastes only from persons subject to 40 CFR 250.29 shall not be considered HWM facilities.

[*Comment:* Persons subject to 40 CFR 250.229 are those who produce and dispose of no more than 100 kilograms (approximately 220 pounds) of hazardous wastes in any one month, retailers who dispose of hazardous wastes other than waste oil, and farmers who dispose of pesticides which are hazardous and who follow certain specified operating procedures.]

"In operation" applies to Hazardous Waste Mangement facilities actively treating, storing or disposing of hazardous waste.

"Indirect discharger" means a non-municipal, non-domestic discharger introducing pollutants to a publicly owned treatment works which introduction does not constitute a "discharge of pollutants."

"Injection" means the subsurface emplacement of fluids through a well.

"Injection well" means a well into which well injection occurs, including 21 types of injection wells covered by the UIC program which are divided into the classes in 40 CFR 123.34.

"Interim authorization" refers to authorization or approval by EPA of a State program which has met the applicable requirements of section 3006(c) of RCRA and 40 CFR Part 123, Subparts A and B.

"Listed State" means a State listed by the Administrator under section 1422 of the SDWA as needing a State UIC program.

"Man-made" means constructed by man and used for the purpose of transporting wastes.

"Mgd" means millions of gallons per day.

"Municipality" means a city, village, town, borough, county, parish, district, association, or other public body created by or under State law and having jurisidiciton over disposal of sewage, industrial wastes, or other waste, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA.

"Lease" means a contract granting use or occupation of land or holdings during a specified period in return for rent.

"National Pollutant Discharge Elimination System" ("NPDES") means the national program for issuing, conditioning, modifying, revoking, denying, monitoring, and enforcing permits for the discharge of pollutants from point sources into the waters of the United States under sections 402, 318, and 405 of the CWA. The term includes any State of inter-state program which has been approved by the Administrator under section 208 of the CWA.

"Navigable waters" means "waters of the United States, including the territorial seas." This term includes:

(1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(2) Interstate water, including interstate wetlands;

(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats and wetlands, the use, degradation or destruction of which affect or could affect interstate or foreign commerce including any such waters:

(i) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

(iii) Which are used or could be used for industrial purposes by industries in interstate commerce;

(4) All impoundments of waters otherwise defined as navigable waters under this paragraph;

(5) Tributaries of waters identified in paragraphs (1)–(4) of this section, including adjacent wetlands; and

(6) Wetlands adjacent to waters identified in paragraphs (1)–(5) of this section: *provided*, That waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States.

[*Comment:* For purposes of clarity the term "waters of the United States" is primarily used throughout the form and instructions rather than "navigable waters."]

"Net" limitations are effluent limitations which are adjusted to reflect credit for pollutants in a discharger's intake water.

"New discharger" means any building, structure, facility or installation: (1) Which on October 18, 1972, had never discharged pollutants; (2) which has never received a finally effective NPDES permit; (3) from which there is or may be a new or additional discharge of pollutants; and (4) which does not fall within the definition of "new source".

"New HWM facility" means a Hazardous Waste Management facility which does not meet the definition of an existing facility as defined in this Glossary.

"New injection wells" means those wells which begin injection after an applicable UIC program becomes effective in the State.

"New source" means any building, structure facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(i) After promulgation of standards of performance under section 306 of the Clean Water Act which are applicable to such source, or

(ii) After proposal of standards of performance under section 306 of the Clean Water Act which are applicable to such source, but only if the standards are promulgated within 120 days of their proposal.

[*Comment:* See 40 CFR 122.81 for the criteria and standards to be used in determining whether a source has begun construction within the measuring of this definition, for the types of construction activities which result in new sources or new discharges, and for the effect of a new source or new discharger determination.]

"Non-contact cooling water" means water used to reduce temperature which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

"Nonpoint source" means any source of discharge to waters of the United States which is not a point source.

"Off-site" means any site that does not meet the definition of "on-site" as defined in this Glossary.

"On-site" means on the same or geographically contiguous property. Two or more pieces of property which are geographically contiguous and are divided by public or private right(s)-of-way are considered a single site.

"Outfall" means a point source as defined in this Glossary.

"Owner or operator" means the owner or operator of any facility or activity subject to regulation under the RCRA, UIC or NPDES programs. Where a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

"Ownership" means the legal right to possession.

"Permit" means a permit or equivalent control document issued by EPA or an approved State. In 40 CFR Part 124, references to "permit" may include permit modification, revocation or denial.

"Physical construction" means excavation, movement of earth, erection of forms or structures, the purchase of equipment of any other activity involving the actual preparation of the facility to treat, store or dispose of hazardous waste.

"Point source" means any discernible, confined conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

"Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rocks, sand, cellar dirt, and industrial, municipal, and agriculture waste discharged into water. It does not mean:

(1) Sewage from vessels; or

(2) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposal of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if such State determines that such injection or disposal will not result in the degradation of ground or surface water resources.

[*Comment:* The legislative history of the CWA indicates that "radioactive materials" as included within the definition of "pollutant" in section 502 of the CWA means only radioactive materials which are not encompassed in the definition of source, byproduct, or special nuclear materials defined by the Atomic Energy Act (AEA) of 1954, as amended, and regulated under the AEA. Examples of radioactive materials not covered by the AEA and, therefore, included within the term "pollutant" are radium and accelerator produced isotopes. See *Train* v. *Colorado Public Interest Research Group, Inc.* 426 U.S. 1 (1976).]

"Prevention of significant deterioration" (PSD) means the national permitting program under section 165 of the Clean Air Act (CAA) (42 U.S.C. 1857 et seq.), to prevent emissions of any pollutant regulated under the CAA from significantly deteriorating air quality in areas where the concentration of pollutant is lower than the applicable National Ambient Air Quality Standard.

"Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product.

"Publicly owned treatment works" or "POTW" means a treatment works as defined in section 212 of the Clean Water Act (CWA), which is owned by a State or municipality (as defined by section 502(4) of the CWA). This definition includes any sewers that convey waste water to such a treatment works, but does not include pipes, sewers or other conveyances not connected to a facility providing treatment.

"Purchase" means to acquire (property) legally by means other than inheritance.

"Retailer" means a person engaged wholly in the business of selling directly to a consumer.

"Rent" means use of another's property in return for regular payment.

"RCRA" means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94-580, as amended by Pub. L. 95-609).

"Sanitary Wastes" means human body wastes and wastes from toilets and other receptacles intended to receive or retain domestic wastes, including showers.

"Schedule of compliance" means a schedule of remedial measures including an enforceable sequences of actions, operations, or milestone events leading to compliance with the appropriate Act and regulations.

"SDWA" means the Safe Drinking Water Act (Pub. L. 93-523, as amended by Pub. L. 95-1900).

"SDWA pollutant" means any pollutant for which a Primary Drinking Water Standard has been issued under 40 CFR Part 141.

"Separate storm sewer" means a conveyance or system of conveyances (including but not limited to pipes, conduits, ditches, and channels) primarily used for collecting and conveying storm water runoff and either:

(i) Located in an urbanized area as designed by the Bureau of Census according to the criteria in 39 FR 15202 (May 1, 1974); or

(ii) Not located in an urbanized area as designed by the Bureau of Census according to the criteria in 39 FR 15202 May 1, 1974); or

The term "separate storm sewer" does not include any conveyance which discharges process water or storm water runoff contaminated by contact with wastes, raw materials, or pollutant contaminated soil, from lands or facilities used for industrial or commercial activities, into waters of the United States or into separate storm sewers. Such discharges are subject to the general provisions of 40 CFR 122.45.

"Sewage from vessels" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated

under section 312 of the CWA, except that with respect to commercial vessels on the Great Lakes this term includes graywater. For the purposes of this definition "graywater" means galley, bath, and shower water.

"Sewage sludge" means the solids, residues, and precipitate separated from or created in sewage by the unit processes of a publicly owned treatment works. "Sewage" as used in this definition means any wastes, including wastes from humans, households, commercial establishments, industries, and storm water runoff, that are discharged to or otherwise enter a publicly owned treatment works.

"Site" means the land or water area upon which an activity is physically conducted or located, including but not limited to adjacent land used for utility systems, as repair, storage, shipping or processing areas or other areas incident to the control process or activity.

"Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Clean Water Act, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

"Source" means any building, structure, facility or installation from which there is or may be a discharge or emission of pollutants.

"State" means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands (except in the case of RCRA), and the Northern Mariana Islands (except in the case of CWA).

"Stationary Source" means any building, structure, facility, installation, or operation (or combination thereof) which is located on one or more contiguous or adjacent properties, which is owned or operated by the same person (or by persons under common control) and which emits or may emit any air pollutant.

"Storage" means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous wastes.

"Storage facility" means any Hazardous Waste Management facility which stores hazardous waste, except for generators who store their own wastes on-site for less than 90 days for subsequent transport off-site, in accordance with regulations in 40 CFR Part 250, § 250.20(c)92) (proposed at 43 FR 58976 (December 18, 1978)).

"Storm water runoff" means water discharged as a result of rain, snow, or other precipitation.

"Toxic pollutant" means any pollutant listed under section 307(a) of the CWA.

"Transporter" means a person or Federal Agency engaged in the transportation of hazardous waste by air, rail, highway or water.

"Treatment" when used in connection with treatment of hazardous waste, means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

"Treatment facility" means any hazardous waste management facility which treats hazardous waste.

"Underground injection" means the subsurface emplacement of fluids by well injection, as defined by this Glossary.

"Underground source of drinking water" or "USDW" means any underground aquifer not identified by the Director as a non-USDW in accordance with 40 CFR 146.4.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

"Waters of the United States" means navigable waters, as defined in this Glossary.

"Well injection" means the subsurface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension, whenever a principal function of the dug well is the subsurface emplacement of fluids.

"Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include playa lakes, swamps, marshes, bogs, and similar areas such as sloughs, prairie potholes, wet meadows, prairie river overflows, mudflats, and natural ponds.

Section E. NPDES Sampling and Analytical Methods

I. *Sampling.* EPA has not yet promulgated many sampling methodologies under section 304(h) of the CWA. This section gives some general guidance on good sampling techniques; contact your EPA or State permitting authority for more detailed guidance or for answers to specific questions. Where the approved methods referenced in Table 5 include requirements on how samples should be collected and preserved, follow the requirements whenever you use those methods.

A. *General considerations.* 1. Choose a time for sampling that is representative of your normal operation. All operations and processes which contribute wastewater should be in normal operation, to the extent feasible. Also, your treatment system should be operating properly with no system upsets.

2. The sample should be collected where the wastewater is well mixed: near the center of the flow channel, where turbulence is at a maximum.

3. The location for sampling should be adequate for the collection of a representative sample; the site specified in the permit if there is one.

4. Sampling for ponds and lagoons should be by composite samples unless past studies have proved that the retention time is long enough that the discharge is homogeneous.

5. The volume of the collected sample should be sufficient to perform all required analyses, including quality control and split sampling. Consult the laboratory receiving the sample and the methods in Table 5 for specific volume requirements.

6. Sample containers must be made of appropriate materials and cleaned thoroughly to prevent any contamination or change in volume of the sample. See the methods in Table 5 for specific requirements.

7. All samples must be preserved by refrigeration at 4°C from the time of collection (and during collection for composite samples) until the time of analysis.

B. *Types of Samples.* 1. Grab—An individual sample collected at a randomly-selected time over a period of time not exceeding 15 minutes. The sample volume must be at least 100 ml, and adequate for all required analyses. Grab samples are analyzed separately, and the average is computed with flow-weighted values.

2. Grab composite—A series of grab samples collected over the sampling period, and composited prior to analysis. For volatile organic toxics, follow the compositing method in the appropriate methods in Table 5.

3. 24-hour composite—A composite of samples collected at periodic intervals, over a 24-hour period. The composite must be flow proportional, with either the time interval between aliquots or the volume of aliquots proportional to the stream flow at the time of sampling, or to the total stream flow since the last aliquot. The number of aliquots shall be no less than eight, and in all cases as specified by the methods in Table 5. The minimum volume of each aliquot is 100 ml. The sample collection may be done either by manually collecting the periodic aliquots or by using an automatic sampler. More than eight aliquots will be required when the wastewater loading is highly variable.

For periods of flow less than 24 hours, collect flow proportional aliquots over the entire period of flow, with no less than eight aliquots.

4. 72-hour composite—May be collected in the following three ways:

a. A continuous composite, wth the same requirements as specified in (3) above for 24-hour composites, except that there shall be no less than 24 aliquots collected in the 72-hour period; or

b. Three consecutive 24-hour composites collected as specified in (3) above, combined prior to analysis in either equal volumes or flow proportional volumes; or

c. For non-volatile organic toxic pollutants, three consecutive 24-hour composites collected as specified in (3) above, each extracted with methylene chloride according to the methods in Table 5 at the conclusion of each 24-hour compositing period, with the three extracts combined for further sample preparation and analysis.

II. *Analytical Methods.* The following table represents the analytical methods promulgated under 40 CFR Part 136 as of May 1979. Revisions and additions to the methods will be proposed starting in Summer 1979 (see footnote 14), and when these changes are final, they will be incorporated into the table.

The following table has been included in these instructions for the convenience of permit applications, but it does not constitute the official listing of approved methods. Refer to 40 CFR Part 136 for the complete listing, which includes a brief description of each method, as well as some further details of analytical procedures in footnotes.

Alternate test procedures to those listed here and in 40 CFR Part 136 may be approved for use on an individual basis or for nationwide use. Refer to 40 CFR Part 136 for prodedures and requirements concerning application for approval of alternate test procedures.

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TABLE 5

PROMULGATED ANALYTICAL METHODS

Parameter (units)	Sample type	Analytical Methods—References									
		1974 EPA Methods[1]*		14th ed., Standard Methods[2]		Pt. 31, 1975 ASTM[3]		USGS Methods[4]		Other Approved Methods	
		Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit
Biochemical Oxygen Demand (BOD_5)(mg/l)	24 hour composite	-	-	543	-	-	-	-	-	17[6]	-
Chemical Oxygen Demand (COD)(mg/l)	24 hour composite	20	5 mg/l	550	10 mg/l	472	-	124	-	610[7] 17[6]	5 mg/l -
pH (Standard Units)	Grab	239	-	460	-	178	-	129	-	606[7]	-
Total Suspended Solids (TSS) (mg/l)	24 hour composite	268	10 mg/l	94	-	-	-	-	-	-	-
Temperature (°C)	Grab	286	-	125	-	-	-	31[8]	-	-	-
Total Kjeldahl Nitrogen (as N) (TKN) (mg/l)	24 hour composite	165 175 182	0.03 mg/l 1 mg/l 0.05 mg/l	437	0.02 mg/l	-	-	122	-	612[7]	-
Total Organic Carbon (TOC) (mg/l)	24 hour composite	236	1 mg/l	532	1 mg/l	467	2 mg/l	4[9]	1 mg/l	-	-
Cyanide, Total (mg/l)	Grab	40 40	1 mg/l 0.02 mg/l	361 361	1 mg/l 0.02 mg/l	503 503	1 mg/l -	85	0.01 mg/l	22[6]	-
Phenols, Total (4AAP) (mg/l)	Grab	241	0.005 mg/l	582	0.007 mg/l	545	0.005 mg/l	-	-	-	-

*All footnotes are at the end of the table.

Parameter (units)	Sample type	Analytical Methods—References									
		1974 EPA Methods[1]		14th ed., Standard Methods[2]		Pt. 31, 1975 ASTM[3]		USGS Methods[4]		Other Approved Methods	
		Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit
Volatile toxic pollutants[13,14]	72 hour grab composite	-	-	-	-	-	-	-	-	-	-
Acid, base-neutral, pesticides organic toxic pollutants (13,14)	72 hour composite or 3 24-hour composites	-	-	-	-	-	-	-	-	-	-
Antimony, Total (mg/l)	24 hour composite	94	0.5 mg/l	-	-	-	-	-	-	-	-
Arsenic, Total (mg/l)	24 hour composite	9 95	0.01 mg/l 0.002 mg/l	283 159	0.03 mg/l 0.0025 mg/l	-	-	31[10] 37[10]	0.005mg/l 0.001mg/l	-	-
Beryllium, Total (mg/l)	24 hour composite	99	0.025 mg/l	152 177	0.03 mg/l 0.005 mg/l	-	-	53	0.01 mg/l	-	-
Cadmium, Total (mg/l)	24 hour composite	101	0.025 mg/l	148 182	0.025 mg/l 0.01 mg/l	345	0.05 mg/l	62	0.025 mg/l	619[7] 37[6]	0.1 mg/l -
Chromium, Total (mg/l)	24 hour composite	105	0.1 mg/l	148 192	0.1 mg/l -	345 286	0.2 mg/l -	78 77	-	619[7]	1 mg/l
Copper, Total (mg/l)	24 hour composite	108	0.1 mg/l	148 196	0.1 mg/l 0.03 mg/l	345 293	0.1 mg/l 0.65 mg/l	83	0.05 mg/l	619[7] 37[6]	0.1 mg/l -
Lead, Total (mg/l)	24 hour composite	112	0.5 mg/l	148 215	0.5 mg/l -	345	0.34 mg/l	105	0.001 mg/l	619[7]	1 mg/l
Mercury, Total (mg/l)	24 hour composite	118	0.0002 mg/l	156	-	338	0.0002 mg/l	51[10]	0.0001 mg/l	-	-
Nickel, Total (mg/l)	24 hour composite	141	0.15 mg/l	148	0.1 mg/l	345	0.08 mg/l	115	0.001 mg/l	-	-

Parameter (units)	Sample type	Analytical Methods—References									
		1974 EPA Methods[1]		14th ed., Standard Methods[2]		Pt. 31, 1975 ASTM[3]		USGS Methods[4]		Other Approved Methods	
		Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit
Selenium, Total (mg/l)	24 hour composite	145	0.002 mg/l	159	0.0025 mg/l	-	-	-	-	-	-
Silver, Total (mg/l)	24 hour composite	146	0.06 mg/l	148 243	0.06 mg/l -	-	-	142	0.001 mg/l	619[7] 37[6]	0.1 mg/l -
Thallium, Total (mg/l)	24 hour composite	149	0.05 mg/l	-	-	-	-	-	-	-	-
Zinc, Total (mg/l)	24 hour composite	155	0.02 mg/l	148 265	0.015 mg/l -	345	0.02 mg/l	159	0.01 mg/l	619[7] 37[6]	0.1 mg/l -
Ammonia (as N) (mg/l)	24 hour composite	158 159 165 168	0.05 mg/l 1 mg/l 0.03 mg/l 0.01 mg/l	410 412 416	- 0.02 mg/l 0.01 mg/l	237	-	116	-	614[7]	0.05 mg/l
Asbestos[14] (fibers/l)	24 hour composite	-	-	-	-	-	-	-	-	-	-
Bromide (mg/l)	24 hour composite	14	2 mg/l	-	-	323	50 mg/l	58	1 mg/l	-	-
Chlorine, Total Residual (mg/l)	Grab	35 55	- -	310 322 332 329	1 mg/l - - -	278	-	-	-	-	-
Color (platinum cobalt units)	24 hour composite	39 36	- 1 unit	66 64	- 1 unit	-	-	82	-	-	-

Parameter (units)	Sample type	Analytical Methods—References									
		1974 EPA Methods[1]		14th ed., Standard Methods[2]		Pt. 31, 1975 ASTM[3]		USGS Methods[4]		Other Approved Methods	
		Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit
Fecal Coliform (number per 100 ml)	Grab	-	-	922 937	2.2 per 100 ml -	-	-	45[5]	1 per 100 mg	-	-
Fluoride mg/l	24 hour composite	65 59 61	0.1 mg/l 0.1 mg/l 0.05 mg/l	389 391 393 614	- 0.2 mg/l 0.05 mg/l 0.1 mg/l	307 305	0.1 mg/l -	93	0.1 mg/l	-	-
Nitrate (as N) (mg/l)	24 hour composite	201 197 207	0.01 mg/l 0.1 mg/l 0.05 mg/l	427 620 423	0.1 mg/l 0.5 mg/l 0.002 mg/12	350	1 mg/l	119	-	614[7] 28[6]	0.1 mg/l 1 mg/l
Nitrite (as N) (mg/l)	24 hour composite	215	0.01 mg/l	434	0.001 mg/l	-	-	121	-	-	-
Oil and Grease (mg/l)	Grab or Grab composite	229	5 mg/l	515	-	-	-	-	-	-	-
Phosphorus, Total (as P) (mg/l)	24 hour composite	249 256	0.01 mg/l 0.001 mg/l	476 481 624	- 0.01 mg/l 0.001 mg/l	384	0.01 mg/l	130	-	621[7]	0.01 mg/l
Radioactivity Alpha-Total (pCi/l)	24 hour composite	-	-	648	-	591	500 pCi/l	75, 78 (10,11)	-	-	-
Alpha-Counting Error (pCi/l)	24 hour composite	-	-	648	-	594	-	79[10]	-	-	-
Beta-Total (pCi/l)	24 hour composite	-	-	648	-	601	500 pCi/l	75, 78 (10,11)	-	-	-
Beta-Counting Error (pCi/l)	24 hour composite	-	-	648	-	606	-	79[10]	-	-	-
(a) Radium-Total (pCi/l)	24 hour composite	-	-	661	-	661	1 pCi/l	-	-	-	-

Parameter (units)	Sample type	Analytical Methods—References									
		1974 EPA Methods[1]		14th ed., Standard Methods[2]		Pt. 31, 1975 ASTM[3]		USGS Methods[4]		Other Approved Methods	
		Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit
(b) ^{226}Ra (pCi/l)	24 hour composite	-	-	667	-	-	-	81[10]		-	-
Sulfate (as SO_4) (mg/l)	24 hour composite	277 279	- 10 mg/l	493 496	10 mg/l 1 mg/l	424 425	20 mg/l 10 mg/l	-	-	624[7] 623[7]	- -
Sulfide (as S) (mg/l)	24 hour composite	284	1 mg/l	505 503	1 mg/l 0.1 mg/l	-	-	154	0.5 mg/l	-	-
Sulfite (as SO_3) (mg/l)	24 hour composite	285	2 mg/l	508	2 mg/l	435	3 mg/l	-	-	-	-
Surfactants (mg/l)	24 hour composite	157	0.025 mg/l	600	0.025 mg/l	494	-	11[9]	0.025 mg/l	-	-
Aluminum, Total (mg/l)	24 hour composite	92	1 mg/l	152 171	0.9 mg/l 0.006 mg/l	-	-	19[10]	0.0 mg/l	-	-
Barium, Total (mg/l)	24 hour composite	97	0.4 mg/l	152	0.3 mg/l	-	-	52	0.1 mg/l	-	-
Boron, Total (mg/l)	24 hour composite	13	0.1 mg/l	287	0.1 mg/l	-	-	-	-	-	-
Cobalt, Total (mg/l)	24 hour composite	107	0.2 mg/l	148	0.15 mg/l	345	0.25 mg/l	80	-	37[6]	-
Iron, Total (mg/l)	24 hour composite	110	0.12 mg/l	148 208	0.1 mg/l 0.02 mg/l	345 326	0.1 mg/l 0.05 mg/l	102	0.1 mg/l	619[7]	0.1 mg/l
Magnesium, Total (mg/l)	24 hour composite	114	0.007 mg/l	148	0.007 mg/l	345	0.05 mg/l	109	0.05 mg/l	619[7]	0.01 mg/l
Molybdenum, Total (mg/l)	24 hour composite	139	0.3 mg/l	-	-	350	0.001 mg/l	-	-	-	-

Parameter (units)	Sample type	Analytical Methods--References									
		1974 EPA Methods[1]		14th ed., Standard Methods[2]		Pt. 31, 1975 ASTM[3]		USGS Methods[4]		Other Approved Methods	
		Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit
Manganese, Total (mg/l)	24 hour composite	116	0.05 mg/l	148 225 227	0.05 mg/l 0.3 mg/l 0.05 mg/l	345	0.04 mg/l	111	0.05 mg/l	619[7]	0.1 mg/l
Tin, Total (mg/l)	24 hour composite	150	4 mg/l	-	-	-	-	65[10]	0.05mg/l	-	-
Titanium, Total (mg/l)	24 hour composite	151	2 mg/l	-	-	-	-	-	-	-	-
Pesticides[12] (ug/l)	24 or 72 hour composite	-	-	555	(13)	529	(13)	30[9]	(13)	-	-
2,3,7,8 Tetrachloro dibenzo-p-dioxin (TCDD)[14] (ug/l)	72 hour composite or 3 24-hour composites	-	-	-	-	-	-	-	-	-	-

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Footnotes

(1) *Methods for Chemical Analysis of Water and Waste*, 1974.

(2) *Standard Methods for the Examination of Water and Waste Water*, 14th Edition, 1976.

(3) *Annual Book of Standards, Part 31, Water*, 1975, by American Society for Testing and Materials.

(4) Unless otherwise noted, Brown, E., Skougstad, M. W., and Fishman, M. J. "Methods for Collection and Analysis of Water Samples for Dissolved Minerals and Gases," U.S. Geological Survey Techniques of Water-Resources Inventory, book 5, Ch. A 1 (1970).

(5) Slack, K. V., and others, "Methods for Collection and Analysis of Aquatic Biological and Microbiological Samples", U.S. Geological Survey Techniques of Water-Resources Inv., book 5, Ch A 4 (1973).

(6) American National Standards on Photographic Processing Effluents, April 2, 1975.

(7) "Official Methods of Analysis of the Association of Official Analytical Chemists" methods manual, 12th ed. (1975).

(8) Stevens, H. H., Ficke, J. F., and Smoot, G. F. "Water Temperature-Influential Factors, Field Measurement and Data Presentation", U.S. Geological Survey Techniques of Water Resources Inventory, book 1 (1975).

(9) Goerlitz, D., Brown, E. "Methods for Analysis of Organic Substances in Water", U.S. Geological Survey Techniques of Water-Resources Inv., book 5, Ch. A 3 (1972).

(10) Fishman, M. J., and Brown, Eugene "Selected Methods of the U.S. Geological Survey for Analysis of Wastewaters" (1976) open-file report 76-177.

(11) The method found on p. 75 measures the dissolved portion and the method on p. 78 measures suspended. Therefore, the two results must be added together to get "total".

(12) Methods available from the Environmental Monitoring and Support Laboratory, the U.S. Environmental Protection Agency, Cincinnati, Ohio 45268.

(13) See referenced methods for detection limits of individual pesticides and organic toxic pollutants. In most cases, the 10 μg/l limit in 40 CFR § 122.66(a)(2)(ii)(A) will apply.

(14) Methods for the analysis of the 114 organic toxic pollutants and asbestos are being developed by the Agency's Office of Research and Development. The methods for analysis of organic pollutants will include:

(1) Gas chromatography/mass spectrometry (GC/MS) screening protocol for qualitative analysis for all 114 organic toxics. (An earlier version of this protocol has been used in the screening phase of developing national effluent guidelines.)

(2) Gas chromatography (GC) and liquid chromatography (LC) methods for twelve classes of the organic pollutants, which are being developed by EMSL, Cincinnati and by Effluent Guidelines Division contractors.

(3) Quantitative GC/MS, consisting of quality assurance procedures for use with the GC/MS screening protocol which will make it a quantitative method.

By early Summer 1979 the Agency expects to propose for comment the GC/MS screening protocol and the GC and LC methods developed by EMSL, Cincinnati. Shortly thereafter, the Agency will propose methods for sampling and preservation, and for determining the detection limit of an analytical method, and will update the references used in the existing methods. The other methods described above, as well as a new method for total metals using Inductively Coupled Argon Plasma (ICAP), and a method for asbestos analysis, will be proposed for comment about six months later.

The analysis for organic toxic pollutants required by item V-B of Form 2c will be satisfied by using either the proposed GC/MS screening protocol followed by quantification of those organic toxic pollutants identified as present using the proposed GC or LC methods; or by using the proposed quantitative GC/MS method.

[FR Doc. 79-18206 Filed 6-13-79; 8:45 am]

BILLING CODE 6560-01-M

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Parts 122, 123, 125]

[FRL-1233-7]

National Pollutant Discharge Elimination System; Revision of Existing Regulations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: The Environmental Protection Agency is today proposing regulations under the Clean Water Act (CWA) for the National Pollutant Discharge Elimination System (NPDES). In addition, a revised NPDES application form is being published today in draft form in a public notice elsewhere in this Federal Register. The proposed regulations and the revised application form are intended to improve control of toxic pollutant discharges under the NPDES program.

To achieve proper control of toxic pollutant discharges, it is necessary to insure first, that dischargers are aware of the nature of their discharges and second, that they take all necessary actions to control their discharges. Today's proposed regulations implement this approach as follows:

1. Proposed § 122.94(d) establishes minimum requirements for applications to EPA for NPDES permits. The requirements are also made applicable to approved NPDES States by proposed § 123.73(a). These include requirements for certain applicants to analyze their process wastewater discharges for all toxic pollutants listed under section 307(a) of the CWA. In particular, certain applicants will be required for the first time to determine the levels or organic toxic pollutants in certain of their waste streams by analyzing 72-hour composite samples.

2. Proposed § 122.66(a)(2) provides that any pollutant which is reported or required to be reported in the application may not be discharged in excess of five times the average level reported in the application (or five times the detection limit of the analytical method if the pollutant is not detected) whenever the pollutant is not otherwise limited in the permit. This requirement is a modified version of the August 21, 1978 (43 FR 37078) proposal that pollutant discharges be limited to reported levels. (This regulation was originally proposed as § 122.14(a), but has been renumbered as § 122.66(a) in order to conform with the new numbering system of EPA's consolidated permit program regulations, which appear elsewhere in today's Federal Register.) Proposed § 122.66(a)(3) provides a mechanism for demonstrating that a multiple other than five is appropriate for the purposes of proposed § 122.66(a)(2).

3. The proposed regulations also contain a provision designed to implement the recent amendments to section 311(a)(2) of the CWA (Pub. L. 95-576, November 2, 1978). These provide that discharges of hazardous substances listed under section 311 are exempted from the penalties and requirements of section 311 if they are properly covered by the NPDES program. EPA proposed regulations on February 16, 1979 (44 FR 10271) which set forth in detail the requirements for exemptions. Proposed § 122.04(d)(18) provides permit applicants the opportunity to submit the necessary information for obtaining exemptions from the liabilities and requirements of section 311.

4. The proposed regulations also contain several other provisions which help implement the application, permit-writing, monitoring and reporting aspects of toxic pollutant control.

DATES: Comments must be received on or before September 12, 1979.

Meetings open to the public to discuss and receive comments on these proposed regulations and on the consolidated application form are scheduled for four cities. These same meetings will also serve as a forum to receive comments on two other aspects of the consolidated permits program, namely, the consolidated permit regulations which are proposed elsewhere in today's Federal Register, and reproposed Part 146 of the underground injection control (UIC) regulations published on April 20, 1979 at 44 FR 23738. The proposed conforming NPDES regulations will be discussed on the second and third day of each meeting.

These meetings will be held at the following places and dates:

July 16, 17,* 18, 1979, Dallas Texas.
July 23, 24,* 25, 1979, Washington, D.C.
July 26,* 27, 28, 1979, Chicago, Illinois.
July 30, 31,* August 1, 1979, Seattle, Washington.

ADDRESSES: Interested persons may participate in this proposed rulemaking by submitting comments to Edward A. Kramer (A-1), Permits Division (EN-336), Office of Water Enforcement, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Please indicate clearly which regulation is referred to in all comments.

A copy of all public comments will be available for inspection and copying at EPA Public Information Reference Unit, Room 2922 (EPA Library), 401 M Street, SW., Washington, D.C. 20460. EPA's Public Information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

Four public hearings have been scheduled at the following locations:

July 16, 17,* 18, 1979, Northpark Inn, 9300 North Central Expressway, Dallas, Texas.
July 23, 24,* 25, 1979, HEW Auditorium, 330 Independence Avenue, SW., Washington, D.C.
July 26,* 27, 28, 1979, Water Tower Hyatt, 800 North Michigan Avenue, Chicago, Illinois.
July 30, 31,* August 1, 1979, EPA—Region X, 1200 6th Avenue, Seattle, Washington.

At each public meeting, registration will be held from 8:30-9:00 a.m. and comments will be received from 9:00 a.m. until concluded, but no later than 5:00 p.m. In addition, an evening session will be held on the dates noted with an asterisk above, from 7:30 p.m. until concluded. Anyone wishing to make an oral statement should notify the following in writing, specifying the city and the date on which they wish to speak:

Ms. Judith Shaffer, Permits Division (EN-336), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

A pamphlet describing the proposed regulations and their relationship to the new NPDES application form has been prepared, titled "A Guide to the Consolidated Permit Application and Conforming NPDES Regulations" (C-7). This pamphlet, and six other pamphlets describing the final NPDES regulations, the proposed consolidated permit regulations and other proposed regulations pertaining to the consolidated permit programs are available from the Environmental Protection Agency, Public Information Center (PM-215), 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Edward A. Kramer (A-1), Office of Water Enforcement (EN-336), Environmental Protection Agency, Washington, D.C. 20460, (202) 755-0750.

SUPPLEMENTARY INFORMATION:

I. *Introduction*

II. *Background*

A. 1977 Amendments to the CWA: Revision of Permit Strategy.

B. 1978 Amendments to the CWA: Exemption of Hazardous Substance Discharges Covered by NPDES from the Requirements of Section 311 of the CWA.

III. *Permitting Strategy*

* Day and evening sessions.

A. General Scheme: Interrelation of Guidelines, Standards and Case-by-Case Designation of Limits.
B. Outline of Permit-Writing Procedure.
1. General.
2. Proposed § 125.3(c)(4): Use of Toxicity Units as Technology-Based Limits.
C. The Use of Limits on Indicators to Control Toxic Pollutants.
D. Proposed § 125.3(g): Requirement that Indicators used to Control Toxics be Limited to BAT Levels.
IV. *Proposed § 122.64(d): Minimum Requirements for Applying for NPDES Permits*
A. General Considerations.
B. Detailed Discussion of the Proposed Reporting Requirements.
C. Organic Toxic Pollutants.
1. The Problem.
2. Development of Test Methods for Organic Toxic Pollutants.
3. Waste Stream Variability.
4. Cost Considerations.
a. Exemption of Certain Industries from the Requirement of Analyze for Toxic Pollutants.
b. Exemption of Non-Process Wastewater Discharges from Toxic Pollutant Analyses.
D. Pollutant Discharges Which are Not Present in the Sampled Waste Stream.
E. Identification of Substances Identified as Hazardous Under Section 311 of the CWA.
V. *Proposed § 122.68(a): Application—Based Limits*
VI. *Monitoring and Reporting*
A. Typical Monitoring Scheme.
B. Additional Monitoring When Indicator Limits are Violated.
VII. *Economic and Resource Impacts of Applications Reporting Requirements*
A. Unit Costs of Sampling and Analysis.
1. Sampling and Analysis of 115 Organic Toxics.
2. Sampling and Analysis of Pollutants Other Than the Organic Toxic Pollutants.
B. Unit Reporting Costs.
C. Total Incremental Costs of Complying with Proposed Application Requirements.
D. Economic Impacts Upon Selected Industries.
E. Impact of Reporting Requirements Upon Independent Laboratory Capability.
VIII. *Miscellaneous Total Cost Estimates for Reporting Which is Not Required by Proposed Requirements*
A. Optional Application Reporting of Hazardous Substance Discharges.
B. Compliance Monitoring Costs.

I. Introduction

On June 7, 1979 EPA promulgated regulations in 40 CFR Parts 122–125 for the National Pollutant Discharge Elimination System (NPDES) permit program established by the Clean Water Act (CWA). These regulations substantially revised the former NPDES regulations.

The revised NPDES regulations did not implement all of the provisions contained in the original proposal of August 21, 1978 (43 FR 37078). In particular, they did not implement proposed § 122.14(a) (renumbered here as § 122.68(a)), which proposed that the discharge of any pollutant which was required to be reported in an NPDES application would be limited to the reported level. Many commentors on that provision remarked that they could not properly analyze the impact of the proposal until the revised application form became available. EPA agreed with these comments and withdrew the proposed requirement from final promulgation. Section 122.14(a) was reserved for reproposal pending public notice of the application form, which is accomplished today.

Elsewhere in today's Federal Register, EPA is proposing a set of regulations to consolidate all of its permit programs. In addition to NPDES, the proposed consolidated permit program regulations cover the Hazardous Waste program under the Resources Conservation and Recovery Act and the Underground Injection Control program under the Safe Drinking Water Act. While the substance of the NPDES regulations is largely unaffected by their incorporation into the proposed consolidated permit program regulations, the various provisions of the NPDES regulations are reordered and renumbered. Today's proposal of conforming NPDES regulations follows the organization and numbering system of the proposed consolidated permit program regulations.

Today's proposal addresses the issues which were deferred by the reservation of § 122.14(a) in the final NPDES regulations (now § 122.68(a)) as follows:

1. Proposed § 122.64(d) establishes minimum application reporting requirements for existing industrial dischargers seeking NPDES permits from EPA, and proposed § 123.73(a) makes these requirements applicable to States which operate NPDES programs ("approved NPDES States"). These requirements are reflected in EPA's revised application form, a draft of which is published in a public notice elsewhere in today's Federal Register. Among other requirements, § 122.64(d) requires the identification and reporting of toxic pollutants [listed under section 307(a) of the CWA] in certain waste streams discharged by applicants in certain industries. As described below in the permitting strategy discussion (section III), this information will assist permit writers in setting permit limits.

Provision is also made in this section for applicants to report discharges of hazardous substances listed under section 311 of the CWA; however, such reporting is not mandatory. However, as discussed below, many applicants may want to report these pollutants to take advantage of recent amendments to section 311(a)(2) of the CWA which now allows exclusion of these discharges from all requirements of section 311 whenever they are adequately covered by the NPDES program.

2. Proposed § 122.68(a)(2) provides that the discharge of any pollutant which is reported or required to be reported in the application is limited to five times the reported average level (or five times the pollutant's detection limit if the pollutant is not detected or reported) whenever the pollutant is not otherwise limited in the permit. This proposal is a modification of the August 21, 1978 proposal (in § 122.14(a)) that pollutants be limited to reported levels. This modification, as discussed below in detail, is designed to account for normal waste stream variability which assuring that, in general, pollutant discharges will not rise above reported levels. Proposed § 122.68(a)(3) further provides that a applicant may apply for limits based upon a multiplier greater than five if the applicant demonstrates, through prescribed procedures, that the variability of a particular waste stream warrants a different factor.

Another significant provision included in today's proposal, proposed § 125.3(g), is designed to implement the Agency's strategy for controlling discharges of toxic pollutants. This provision is discussed in section III–D of this preamble.

Today's proposal does not complete the regulation of toxic pollutants under NPDES. New application forms and associated requirements for publicly owned treatment works (POTW's) and for new industrial sources are currently being developed and will be proposed in the near future. Many of the issues addressed in the development of the proposed application requirements for existing industrial dischargers will be relevant to these other dischargers. The Agency will strive for consistency of requirements wherever feasible.

II. Background

A. 1977 Amendments to CWA: Revision of Permit Strategy.—The first round of five-year NPDES permits issued to industrial dischargers began in 1973–1974. The permit strategy focused on assuring permittees' compliance with the CWA's deadline of July 1, 1977 for achievement of best practicable control technology currently available (BPT) and of various water quality and other standards required by section 301(b)(1)(C) of the Clean Water Act. Effluent guidelines promulgated under section 304 of the CWA focused on BPT-level limitations of a set of pollutant parameters which had traditionally been of concern in the field of water pollution control.

In December 1977, Congress amended the Clean Water Act (Pub. L. 95–217) to require increased emphasis upon the control of toxic pollutants listed under section 307(a). The Clean Water Act of 1977 established an initial list of toxic pollutants which included 65 compounds and classes of compounds which reflected a list of pollutants contained in a consent decree in *Natural Resources Defense Council v. Train*, 8 ERC 2120 (D.D.C. 1976), amended on March 9, 1979. (The list of 65 compounds and classes of compounds potentially includes thousands of specific compounds, and the task of analyzing for all of these pollutants would be overwhelming for the Agency and for the regulated community. EPA has revised the list of the 129 specific toxic pollutants which are the most persistent, prevalent, and toxic.) By July 1, 1984 (with certain exceptions), discharges of toxic pollutants must be reduced to levels which reflect the best available technology economically achievable (BAT). In most cases, BAT will be a more stringent standard than BPT.

The 1977 amendments also established a category of "conventional pollutants" for which the "best pollution control technology" ("BCT") must be achieved. BCT determinations involve the use of a cost test (under section 304(b)(4)(B) of the CWA), which in some cases may result in less stringent requirements than BAT (but no less stringent than BPT). As required by the amendments, the Agency has listed pH, fecal coliform, total suspended solids (TSS) and biochemical oxygen demand (BOD) as conventional pollutants (43 FR 32857, July 28, 1978). At the same time, the Agency also proposed to list chemical oxygen demand (COD), phosphorus, and oil and grease as conventional pollutants. The final decision whether to list these as conventional pollutants will be announced in the Federal Register, in the near future.

All pollutants other than toxic pollutants and conventional pollutants are commonly referred to as "nonconventional pollutants". Nonconventional pollutants are subject to BAT by July 1, 1984 or within three years after limitations are established, whichever is later, but in no case later than July 1, 1987 (section 301(b)(2)(F) of the CWA). The Clean Water Act also provides that BAT limits for nonconventional pollutants may be modified (to no less stringent a limit than BPT) under section 301(c) or (g) if the discharger can make certain economic or environmental demonstrations. These modifications are not allowed by the CWA for toxic or conventional pollutants.

The 1977 Amendments' increased emphasis on the control of toxic pollutants requires a revision of Agency priorities for water pollution control efforts. This revision is being conducted in two complementary areas.

(1) The Agency is currently developing effluent guidelines which establish BAT levels for toxic pollutants in certain industrial subcategories. Guidelines are being developed first for a selected list of industrial categories, agreed on in the NRDC Consent Decree, which are believed to present the most serious threat of toxic pollutant discharges. The guidelines are scheduled to be promulgated in stages, with the last guidelines scheduled to be promulgated by May 1981.

(2) Where promulgated effluent guidelines do not address a particular class of discharges or a particular class or pollutants, section 402(a)(1) of the CWA authorizes the Agency to set permit limits on a case-by-case basis. In such cases, permit writers must use any available guidance and their own best judgment to apply the relevant factors listed in section 304(b) of the CWA to the case at hand. See 40 CFR 125.3. The new emphasis on toxic pollutants now requires the development of the ability to set such case-by-case permit limits on toxic metals plus 115 organic toxic pollutants when guidelines are not available. This presents a whole new range of technical issues, requiring revision of the permit writing strategy (including the application requirements).

Because the Agency has needed time to implement the 1977 amendments, it developed a "second-round" permit policy. The policy is set forth in detail in EPA's Policy and Guidance for Issuing the Second Round of NPDES Permits to Industrial Dischargers (July 1978), which may be obtained from the contact person above. The major feature of the policy is the issuance of short-term (less than five years) permits containing BPT limitations to sources in certain industries, with expiration dates scheduled for eighteen months after the original NRDC Consent Decree schedule for promulgation of effluent guidelines. The first of these short-term permits will expire in mid-1980, at which time the new application will be used and the new permitting strategy will be applied.

The Agency's increased emphasis on the control of toxic pollutants also requires the Agency to close a significant loophole in the NPDES program. Where a particular pollutant is not specifically limited in the permit, there is no regulatory mechanism in place to insure that its discharge will be limited. Consider the situation where an applicant receives a permit containing technology-based limitations on those pollutants reported at significant levels in an application form. If the applicant discloses a small amount of a pollutant in an application (and therefore a specific permit limit is not set for the pollutant), and the applicant is later found to be discharging large amounts of that pollutant, no specific permit limit would be violated. This situation has occurred in the past, and has resulted in large unregulated discharges of toxic pollutants. While the Agency continues to maintain its general policy that pollutants may not be discharged except as authorized by a permit, it has endeavored to specify this requirement for pollutants reported or required to be reported in the application by imposing "application-based limits" (proposed §122.68(a)(2)) on those pollutants.

B. 1978 Amendments to the CWA: Exemption of Hazardous Substance Discharges Covered by NPDES from the Requirements of Section 311 of the CWA

On November 2, 1978, the President signed further amendments to the Clean Water Act (Pub. L. 95–576). Section 311(a)(2) was amended to provide that all discharges of hazardous substances which are adequately covered under the NPDES program are exempt from the requirements and penalties of section 311 of the CWA. (See discussion below in section IV–E. See also the proposed hazardous substance regulations at 44 FR 10271, February 16, 1979.) As a result of the amendment of section 311(a)(2), the Agency was required to revise its NPDES application requirements to allow applicants the opportunity to report discharges of hazardous substances. When pollutants are

exempted from section 311 requirements in this way, they become subject to NPDES requirements. Permit conditions for reported hazardous substances will be established in a similar manner as conditions for toxic pollutants (discussed immediately below).

III. Permitting Strategy

This section explains how the new permitting strategy for toxics will work. The nex section discusses the proposed application requirements and shows how they fit into this strategy.

A. General Scheme: Interrelation of Guidelines, Standards and Case-by-Case Designations of Limits

Under section 402(a)(1) of the CWA, each permit must contain conditions to assure that all discharges will meet all applicable requirements of the CWA. These requirements include the technology-based requirements such as BAT and BCT (sections 301(b)(2) and 307(a)) as well as requirements based upon water quality standards, pollutant load allocation and other standards (sections 301(b)(1)(C), 208(e) and 307(a) of the CWA). The permit must be consistent with the most stringent applicable requirements.

Each State is required to establish standards for certain pollutants in its various water quality basins. In addition, EPA has promulgated effluent standards and prohibitions in 40 CFR Part 129 for six of the section 307(a) toxic pollutants. Whenever a pollutant is covered by any such standard, the permit writer must set a permit limit consistent with the standard.

However, when BAT-level permits addressing section 307(a) toxic pollutants begin to be issued in mid-1980, many States will not yet have established numerical water quality standards for most of the toxic pollutants. Similarly, the Agency will not have promulgated effluent standards or prohibitions under section 307(a) for most of the toxic pollutants. Even when standards are available, the pemit writer must consider the Act's technology-based requirements as well. If a technology-based requirement is more stringent for a particular pollutant in a particular waste stream than the applicable water quality or toxicity standard, the technology-based requirement must be applied.

Because the 1977 amendments emphasize BAT control of section 307(a) toxic pollutants and because water quality standards have not yet been established for most of the toxics, the permitting strategy has focused upon insuring the installation of BAT technology to control the toxics. Of course, where water quality or other standards apply, they will be included in permits as well.

The Agency has developed a dual approach to setting technology-based limits as provided for in section 402(a)(1) of the CWA. The chief source of technology-based limits is the effluent limitations guidelines, which are promulgated under sections 301 and 304 of the CWA and made applicable to entire classes (generally industry subcategories) of dischargers. Where guidelines do not completely cover a particular waste stream or particular pollutants in the waste stream, the permit writer must use his or her best professional judgment to set appropriate limits. This case-by-case approach, authorized by section 402(a)(1), allows permit writers to assure that all significant pollutant parameters are limited, so that EPA may focus its guidelines development on the most severe toxic pollutant discharges.

Under the amended NRDC Consent Decree, the Agency is initially developing effluent guidelines, which focus upon toxic pollutants, for thirty-four industries. These are:

Adhesives and Sealants.
Aluminum Forming.
Auto and Other Laundries.
Battery Manufacturing.
Coal Mining.
Coil Coating.
Copper Forming.
Electric and Electronic Compounds.
Electroplating.
Explosives Manufacturing.
Foundries.
Gum and Wood Chemicals.
Inorganic Chemicals Manufacturing.
Iron and Steel Manufacturing.
Leather Tanning and Finishing.
Mechanical Products Manufacturing.
Nonferrous Metals Manufacturing.
Ore Minning.
Organic Chemicals Manufacturing.
Paint and Ink Formulation.
Pesticides.
Petroleum Refining.
Pharmaceutical Preparations.
Photographic Equipment and Supplies.
Plastics and Synthetic Materials Manufacturing.
Plastic Processing.
Porcelain Enamelling.
Printing and Publishing.
Pulp and Paperboard Mills.
Rubber Processing.
Soap and Detergent Manufacturing.
Steam Electric Power Plants.
Textile Mills.
Timber Products Processing.

New BAT guidelines for these industries will be developed and promulgated in stages. Several are scheduled for promulgation in 1979, and the last three will be promulgated by mid-1981. Thus, guidelines will be available in many cases to permit writers when short-term permits expire and permittees submit new applications.

However, as mentioned above, case-by-case determinations will be used to write permits for those discharges which are not covered by guidelines. These occur in several types of situations.

1. Where part or all of an applicant's operation is not in one of the 34 industrial categories listed in the NRDC Consent Decree, BAT guidelines for toxics will generally not have been promulgated. (In some cases, however, existing BAT guidelines may be adequate, such as where the only significant toxics in an industry are metals. In addition, effluent guidelines for some additional industries will be developed after the guidelines for the 34 industries covered by the Consent Decree are completed.)

2. Even within the 34 industrial categories, the NRDC Consent Decree gives EPA further authority to set priorities. Subparagraph 8(a) of the Decree allows EPA to exclude from guidelines development up to 5% of the sources within each subcategory. Further, subparagraph 8(a) allows EPA to exclude entire categories or subcategories where the amount and toxicity of each pollutant in the discharge does not justify developing national regulations in accordance with the Decree's schedule (even though some plants in the category or subcategory may pose a threat of toxic discharges). Similarly, a guideline for a particular subcategory may exclude particular pollutants if the frequency of their occurrence at toxic levels does not justify developing a national regulation for them (even though some individual plants may discharge significant quantities of these pollutants). Excluded industries will generally not be covered by adequate toxics BAT guidelines, although, as mentioned above, existing BAT guidelines may be sufficient in some instances.

3. The Decree was recently modified to extend the schedule for guidelines development. Thus, it is likely that certain short-term permits will expire prior to promulgation of applicable guidelines.

B. Outline of Permit-Writing Procedure

1. *General.* Upon receipt of a permit application, the permit writer will generally develop permit limits in the following manner:

a. The permit writer will first review the permit application. The reported SIC code and other relevant process or product related information (as

explained in section IV of this preamble) will be reviewed to determine the applicant's subcategory and to decide whether a guideline applies to the subcategory. The permit writer will next determine whether any of the plant's processes generating a discharge are not covered by the guideline. If the plant or a particular process does not appear to be covered by a guideline, it may be necessary to request further information from the applicant before setting limits.

b. Upon obtaining all necessary information, including file data and other sources of data on discharges for the facility, the permit writer will determine whether any pollutant not regulated by an applicable guideline is being discharged in a significant amount, requiring the development of specific permit limits (rather than relying upon the proposed § 122.66(a)(2) application-based limits provision) for the pollutant. The permit writer will thus have developed an informal list of pollutants for which additional control is required. These will include the section 307(a) toxic pollutants which have been reported in the application to be present at significant levels.

c. Permit limits must then be set to insure adequate reduction of these pollutants. Permit writers will use all available information to insure that permits reflect the appropriate technological standards. This information includes treatability studies currently being developed by EPA. These studies will demonstrate what levels are achievable for each toxic pollutant by use of certain types of treatment equipment (singly or in combination) for certain types of waste streams.

2. *Proposed 125.3(c)(4): Use of toxicity units as technology-based limits.* One drawback of the testing requirements for an NPDES application proposed in § 122.64(d)(16) is that the pollutants which are required to be tested constitute only a small portion of the total universe of pollutants. As a result, the effluent data reported in an application may show that no section 307(a) toxic pollutants are present, even though other pollutants are being discharged in toxic quantities.

Additional chemical testing beyond the pollutants listed in proposed § 122.64(d)(16) is not required because analytical methods for these additional pollutants have not yet been developed by the Agency. However, biomonitoring tests are a useful tool to determine whether a waste stream is significantly toxic, regardless of the pollutant(s) causing the toxicity.

While biomonitoring tests are not required as part of an NPDES application, permit writers have authority to require them under section 308 of the CWA or equivalent State authority. EPA believes it is appropriate to exercise this authority when there is a significant likelihood that a waste stream is toxic, based upon past biomonitoring tests, fish kills near the applicant's plant or similar plants elsewhere, the general character of the discharge as determined by chemical analysis, or other relevant factors. Permit writers are encouraged to use biomonitoring as a tool to supplement chemical analyses as part of the process of applying for an NPDES permit.

If a biomonitoring test is conducted and a significant level of toxicity is detected in a waste stream, the permit writer has several options. He or she can require the applicant to further analyze its waste stream to determine the cause of the toxicity and, if certain pollutants are thereby discovered which are believed to cause the toxicity, the permit writer may limit those pollutants directly. If treatability information is lacking for those pollutants, the permit writer may require the applicant to perform treatability studies under section 308 of the CWA or equivalent State authority.

If the permit writer is unable to trace the toxicity problem to specific pollutants, he or she may still require the applicant to conduct treatability studies, such as pilot plant studies, on the effectiveness of known treatment technologies in reducing the toxicity of the applicant's effluent. If a particular technology or series of technologies effectively reduces the toxicity, the permit writer may set limits reflecting that reduction. These may be toxicity-based limits such as LC_{50} numbers, provided that the toxicity-based limits reflect BAT.

(Note that toxicity-based limits, like other broad parameters such as BOD and COD, may be regulated in permits pursuant to sections 402 and 502(11) of the CWA, and may be necessary in some cases to achieve water quality standards.)

EPA intends to publish in the near future a biomonitoring protocol which explains more fully how biomonitoring may be used as part of the NPDES permitting strategy. This protocol will be a revised version of the May 1, 1978 draft which has been previously circulated to the public, and which may still be obtained from the contact person identified above.

C. *The Use of Limits on Indicators to Control Toxic Pollutants*

As in the past, permit writers may set limits on each pollutant which is discharged at significant levels. However, a new permitting strategy is required to reduce discharges of many of the organic toxic pollutants to BAT levels. The problem of setting specific permit limits upon specific organic pollutants is twofold:

1. Permit writers and industrial dischargers have not focused upon organic pollutants to any great extent in the past. The Agency has begun to develop treatability studies for all the organic toxic pollutants. These treatability studies will demonstrate which control equipment is effective in removing organic toxic pollutants. The Agency anticipates that the permit writer and the discharger will usually agree based upon these studies and other available information, that a certain piece or combination of treatment equipment will achieve BAT control for the toxic pollutants in the discharge. However, the lack of a historical data base will often preclude agreements upon precise numbers representing the levels of the toxic pollutants in effluents leaving the treatment equipment. This may result in protracted disputes over numerical limitations despite a general agreement upon appropriate technologies, and could cause serious delay in implementing the CWA's requirements.

2. Sampling and analysis for organic pollutants is much more expensive than it has been for pollutants traditionally regulated by the NPDES program. If organic pollutants are limited in the permit, the cost of periodic compliance monitoring can be very high and possibly unaffordable in some cases (see the detailed discussions of analytical methods and associated costs below in sections V-C and VII-A).

The Agency encourages the direct limitation of specific toxic pollutants wherever feasible, such as where only a few toxics are present in the waste stream and where sufficient data exists to allow agreement between the permit writer and applicant on achievable levels. In addition, direct limitation of a toxic pollutant will be necessary where the discharge of the pollutant is significant.

However, as described above, the Agency believes that it may not always be feasible to directly limit each toxic which is present in a waste stream. As a result, the Agency has developed an alternative approach to directly limiting toxic pollutants. This alternative approach centers upon setting limitations on certain more commonly regulated parameters which can be

relatively easily agreed upon and which will not result in greatly increased compliance monitoring costs. This approach has been applied to a certain degree in the past (e.g., certain BPT guidelines which limit certain metals insure the installation of technology which also removes other metals). In developing new toxics-oriented BAT guidelines, this approach will be used even more than in the past. Similarly, permit writers may use this approach in setting case-by-case permit limits under section 402(a)(1).

The Agency uses the term "indicator" to denote a parameter which is limited in a permit based on treatment for removal of toxic pollutants, in lieu of specific limits on each toxic pollutant. Thus, once the appropriate BAT technology for reducing toxic pollutants has been identified, limits on properly selected indicators can be used to require permittees to attain the same degree of control over toxic pollutants as specific limits on toxic pollutants would require.

Indicators will generally be parameters or specific pollutants which are generally familiar. Some of the pollutant parameters which may be used as indicators are: Total suspended solids (TSS), biochemical oxygen demand (BOD), chemical oxygen demand (COD), total organic carbon (TOC), total Kjeldahl nitrogen (TKN), total phosphorus, cyanide, certain metals and ammonia. Most of these have been frequently limited in permits in the past. Further, most of them may be analyzed by methods which cost substantially less than the methods used to measure many specific pollutants (especially organic toxic pollutants).

However, the Agency recognizes that the use of indicators is not appropriate in all cases. In some situations, EPA may not be able to identify an indicator. For example, current information indicates that chloroform is best treated by steam or air stripping. If a waste stream contains no pollutants in significant quantitites except for chloroform and several metals, it may not be possible to require chloroform control by the use of any indicator. In that case, it will be necessary to specify a limitation for chloroform.

Another situation where specific limitations on toxics are required is where any combination of indicator limits could also be met by installation of an alternate treatment technology which would not sufficiently treat the toxic pollutants. If appropriate limits on indicator pollutants would allow the installation of controls which will not remove toxic pollutants, then the toxic pollutant must be controlled directly, or other indicator pollutants must be selected.

One potential problem associated with the indicator approach is that a plant may change its process in a manner which reduces or eliminates the indicator without affecting the indicated toxics. This would allow toxics discharges to take place without being detected by monitoring the indicator.

Another deficiency of indicators is their relative lack of sensitivity to short-term fluctuations of specific toxic pollutants. This means that if many organic constituents of a waste stream are discharged at unusually low levels, a particular organic toxic pollutant could be discharged at an unusually high level without causing a violation of an indicator limit. However, the Agency believes that the risk of an unacceptably high discharge of a particular toxic pollutant is not great so long as proper treatment equipment is installed and is operated and maintained properly. In addition, application-based limits under proposed § 122.68(a)(2) remain as a basis of liability for significantly increased discharges of any individual pollutant. This provision may be supported by permit requirements of occasional monitoring for all or some organic toxics or of additional monitoring when indicator limits are violated. Furthermore, permits may require biomonitoring tests to provide additional safeguards against toxicity (see discussion below on monitoring in section VI).

As noted above, however, the use of indicators is not a required part of EPA's strategy for regulating toxic pollutants, but rather an additional mechanism to allow more rapid agreement on BAT controls and appropriate permit limits. This mechanism has the added benefit of minimizing compliance monitoring costs. Permit writers may still apply direct limits on toxic pollutants as the circumstances warrent, and are encouraged to do so whenever technically and economically feasible.

D. *Proposed § 125.3(g): Requirement That Indicators Used to Control Toxics Be Limited to BAT Levels*

The indicator strategy relies on the principle that limits on indicator parameters will insure the installation and operation of BAT-level equipment to achieve BAT-level reduction of other pollutants, especially of organic toxic pollutants. For the strategy to work, BAT limits must be set for indicators which are used to indirectly control toxic pollutants. This principle has also been expressed in prior Agency documents, including the Federal Register notice listing conventional pollutants (43 FR 32858 (July 28, 1978)) and EPA's *Policy and Guidance for Issuing the Second Round of NPDES Permits to Industrial Dischargers (July, 1978)). Proposed § 125.3(g) establishes this principle in regulatory form.*

Therefore, proposed § 125.3(g) provides that conventional pollutants (such as BOD and TSS) which are used as indicators for toxics are subject to BAT and are not subject to BCT cost tests. Similarly, nonconventional pollutants (such as COD and TOC) which are used as indicators for toxics are also subject to BAT and are not eligible for modifications under sections 301(c) and 301(g) of the CWA.

A potential problem with the concept of indicators is that if it is abused, it could subvert Congressional intent to set BCT limits for conventional pollutants and to allow variances for nonconventional pollutants. To minimize any such abuse, the regulations set a number of tests linking indicators to toxics which must be satisfied before a conventional or nonconvention pollutant can be regulated as an indicator pollutant.

To use conventionals or nonconventionals as indicators to control toxics to BAT levels, permit writers must identify (in the permit and in the accompanying statement of basis or fact sheet required by §§ 124.8 and 124.9) which toxics are intended to be controlled by each indicator, unless the indicator is established by an applicable effluent guideline. In addition, permit writers must be able to justify indicator limits by demonstrating that the indicator limits will result in installation of treatment equipment which constitutes BAT for toxic pollutant discharges. This will insure that conventional and nonconventional pollutants are not limit to levels which are more stringent than is required to achieve BAT-level reduction of toxic pollutants. It should be noted that in many instances, conventional and nonconventional pollutants will be limited to BAT levels because of other requirements of the CWA, even if they are not use as indicators. This will occur where BCT for a conventional is the same as BAT or where a source fails to meet the section 301(c) or (g) criteria for modifications from BAT for a nonconventional pollutant.

Nonmodifiable BAT limits for conventionals and nonconventionals where they are used as toxic indicators will not result in the imposition of stricter controls than are authorized by the CWA. For example, where an

indicator is a conventional pollutant, the treatment installed to meet the indicators's BAT limit is the same treatment as would be installed to meet the BCT limit for the conventional plus the BAT limits for specific toxics covered by the indicator. While the conventional pollutant may be reduced to levels more stringent than required by BCT, this would occur in any event as the result of the required installation of BAT technology to control the toxics, if they were being regulated directly. The method used to require the installation of BAT technology (direct limitation of toxics or the use of indicators) will not affect ultimate level of pollution control.

Comments on all aspects of the indicator approach and suggestions on other alternatives are welcome.

IV. Proposed § 122.64(d): Minimum Requirements for Applying for NPDES Permits

A. General Considerations

Generally, the Agency believes that dischargers have a duty to be aware of any significant pollutant levels in their discharges. Under existing application requirements, applicants must examine their waste streams and processes in a manner that reflects existing considerations in water pollution control. Proposed §§ 122.64(d) and 123.73(a) (which makes § 122.64(d) applicable to States) increase the requirements to reflect the new emphasis on toxic pollutant discharges.

Specifically, the proposed application reporting requirements will serve two major functions:

1. Like the requirements of the existing application, they will generate the information which permit writers need to set permit limits which accurately reflect the achievable pollutant reductions for each discharger.

2. They will establish the basis for application-based limits under proposed § 122.66(a)(2): Any pollutant which is reported or required to be reported in the application and is not otherwise limited in the permit is limited to five times the reported level (or five times the pollutant's detection limit, if the pollutant was not detected).

As previously noted, EPA's NPDES application form (a draft of which is published in a public notice elsewhere in today's Federal Register will implement the new requirements where EPA operates the NPDES program. While States must also apply these requirements in developing their application forms, they need not use EPA's application format or language. Of course, they may and are encouraged to conform to EPA's approach.

It is important to note that any effluent data which is contained in a permit application must be made available to the public. This is explicitly required by section 402(j) of the CWA and is not subject to change be EPA. However, EPA has taken two steps to make certain that this requirement is administered reasonably. First, product information (e.g. the amount of product produced per year) must be reported only where the information is needed to apply a production-based effluent guideline limitation (as opposed to, e.g., the use of concentration-based guideling or the case-by-case development of individualized permit limits). Second, only end-of-pipe effluent data must be reported. If the permit writer needs additional information (e.g., process discharges upstream of a treatment system), he or she will generally request it under section 308 of the CWA (or equivalent State authority), which provides that proprietary information may be claimed as confidential in appropriate circumstances (which are set forth in 40 CFR Part 2).

Applicants will be required to report their pollutant discharges in several ways. (In addition, intake water data must be reported by those applicants who seek credit for pollutants in their intakes under 40 CFR 122.70(g).)

First, all applicants will submit effluent data for pollutants which have traditionally been of concern in the field of water pollution control: the conventional pollutants, certain nonconventional pollutants (including those which can function as indicators for toxic pollutants) and certain toxic pollutants (including cyanide, total phenols and certain metals). While some of this information may be based upon estimates, most of it must be based upon sampling and analyzing the discharge.

Second, certain applicants must analyze and submit effluent data for certain waste streams for the toxic pollutants. Estimates of toxic pollutant discharges must be submitted for all waste streams which are not analyzed.

Third, applicants will be required to identify pollutant discharges which may occur during the term of the permit at more than five times the average levels found in the analyzed waste stream. This may be based on knowledge or expectation that certain processes or raw materials will be used at some point during the life of the permit (e.g., batch processes, changed processes, raw materials substitutions and periodic discharges). This requirement appears only as a provision in EPA's application form which is public noticed elsewhere in today's Federal Register and is not established as a minimum application requirement in proposed § 122.64(d), since a similar requirement appears in proposed § 122.66(a)(3) (discussed in section V of this preamble).

Fourth, in accordance with recent amendments to section 311 of the CWA, each applicant will be given the opportunity, at its option, to anticipate discharges (including occasional spills) of hazardous substances (designated by the Administrator under section 311 of the CWA) which are not otherwise identified in the application.

The information discussed in the preceding paragraphs will help insure that (1) permit limits adequately address all pollutants which may be discharged by applicants (whether or not the pollutants are detected in the waste streams which the applicant has analyzed) and (2) applicants are exempted from section 311 requirements as provided by section 311(a)(2) of the CWA and proposed 40 CFR 117.12.

Applicants are also required to identify any other relevant information which they possess, such as biomonitoring data and analyses of discharge levels of pollutants not otherwise required to be reported in the application. The permit writer may then request any of the identified data which he or she believes will help to choose appropriate permit limits.

The Agency recognizes that the proposed list of pollutants for which effluent data must be provided is not exhaustive. For example, there are many section 311 hazardous pollutants (or ions of such pollutants) which are not listed as toxic pollutants under section 307(a). Similarly, three contaminants for which primary drinking water standards have been promulgated in 40 CFR Part 141 are not on the toxics list.

The omission of specific reporting requirements for these and most other nonconventionals has been required by constraints upon Agency resources. Consistent with the NRDC Consent Decree and the 1977 amendments, the Agency has concentrated its limited resources upon the worst problem, that is, the section 307(a) toxic pollutants. Thus, effluent guidelines as well as Agency development of both test methods and treatability studies are presently focusing upon the toxics. However, *the proposed list of pollutants to be reported should not be viewed as static.* The Agency intends to develop test methods and treatability studies on pollutants of concern which are not now on the toxics list. This development process has already begun, with initial

emphasis being placed upon section 311 hazardous substances. Reporting requirements will be expanded as additional test methods are developed and treatability studies are completed.

The general requirement that applicants identify information which they have in their possession but are not required to submit, plus the invitation that applicants submit information on hazardous substances, may lead to identification and control of significant discharges which are not specifically required to be reported. Furthermore, permit writers may require applicants to submit additional information where necessary. This may include additional testing, such as biomonitoring tests to assess the relative toxicity of a waste stream. See § 122.64(d)(20).

The Agency strongly recommends that permit writers require applicants to perform biomonitoring tests as part of the application process in appropriate situations. Such tests could include acute and chronic aquatic toxicity tests and tests for bioaccumulation. The Agency is also evaluating the use of specific screening tests for carcinogenicity, mutagenicity and teratogenicity. Factors relevant to requiring biomonitoring include past history of fish kills, previous biomonitoring results indicating toxicity, the nature of the applicant's process, and the applicant's industrial category. This information is useful for setting permit limits where reported effluent data for the toxics is insufficient (see discussion in section III–B(2) above) and for establishing priorities for permit issuance.

Finally, it should be noted that even without direct permit controls on many pollutants, their levels will often be reduced incidentally by the treatment equipment installed to reduce toxic pollutants to BAT levels.

B. *Detailed Discussion of the Proposed Reporting Requirements*

The new emphasis on toxic pollutants has caused the proposed addition of a number of organic compounds to the list of pollutants required to be reported by the expiring form. (For the sake of simplicity in this discussion, compounds such as cyanide and the perchlorinated hydrocarbons will be grouped with the organics.) In addition, certain changes are proposed in the reporting requirements for asbestos, metals (13 of which are now classified as toxic pollutants) and various other pollutants. These changes include both additions to and deletions from the list as well as changes in the nature of reporting requirements for certain pollutants retained on the list.

Additions and deletions were made for various reasons. Some parameters were deleted (e.g., specific conductance and settleable matter) because they are not sufficiently sensitive or because they overlapped other more useful parameters. Others such as chloride, calcium, potassium, and sodium, were deleted because they are relatively nontoxic and the levels and amounts found in industrial discharges are generally not of concern. Algicides and chlorinated organic compounds were deleted since the test methods for these general parameters specify analyses for specific toxic pollutants listed under section 307(a), which are now required to be reported individually.

Additions include the organic toxic pollutants, as well as total Kjeldahl nitrogen (TKN) and total organic carbon (TOC), which are expected to be particularly useful as indicator pollutants.

The requirements of the existing application form include quantitative reporting for certain pollutants, qualitative (presence or absence) for others, and qualitative followed by quantitative reporting (if the pollutant is present) for still others. In the existing form, qualitative reporting may always be based upon estimates.

The new requirements follow this pattern to some extent. However, most pollutants must now be reported quantitatively. Other pollutants which are not found in most waste streams or which are less significant may be reported qualitatively, and, if present, quantitatively.

Analyses are required for pollutants which are expected to be useful as indicator pollutants and (with two exceptions noted below) for toxic pollutants which are likely to be found in a waste stream. For other pollutants, which are either not of overriding importance environmentally or which do not frequently appear in significant concentrations, estimates are permitted. However, applicants are expected to use analyses whenever they are unable to make reliable estimates.

Two pollutants on the toxics list may be reported in all cases on the basis of estimates. These are asbestos and 2,3,7,8-Tetrachlorodibenzo-p-dioxin(TCDD). Asbestos is excluded from testing requirements because its analytical method is both very expensive and highly controversial. TCDD is excluded because it is so highly toxic that it would be against the public interest to promote the routine shipping of analytical standards of TCDD, which are necessary for quantitative analysis. Instead, EPA is investigating other approaches to determine where this particular pollutant can be expected to be found.

The pollutant reporting requirements are summarized in the following three tables:

Table I—Pollutants Reportable Under Existing Requirements but Deleted in Proposed Requirements.

Algicides.
Calcium
Chloride.
Chlorinated Organic Compounds.
Organic Nitrogen.
Potassium.
Settleable Matter.
Sodium.
Specific Conductance.

Table II—Pollutants not Reportable Under Existing Requirements But Added in Proposed Requirements

Pollutant	Proposed reporting requirement
Asbestos	Qualitative/Quantitative.*
Dioxin	Qualitative/Quantitative.*
Toxic organics (except asbestos, cyanide and dioxin)	Quantitative for Group I** for process wastewater discharges. Qualitative/Quantitative for Group II and non-process waste-water discharges from Group I.
TKN	Quantitative.
TOC	Quantitative.

*"Qualitative/Quantitative" means a qualitative determination of whether the pollutant is present based on estimates or analyses, followed by quantification only if the pollutant is present.

**"Group I industries are the 34 industries covered by the NRDC consent agreement (listed in section III—A of this preamble), plus asbestos manufacturing and ferroalloys. All other applicants are in Group II. The basis for the groupings is discussed below in the discussion of organic toxic pollutants.

Pollutants Retained From Existing Form

Pollutant	Existing requirement	Proposed requirement
Aluminum, Total	•	•
Ammonia	•	•
Antimony	Qualitative	••
Arsenic	•	••
Barium, Total	Qualitative	•
Beryllium, Total	•	••
BOD,	Quantitative	Quantitative.
Boron, Total	Qualitative	•
Bromide	Qualitative	•
Cadmium, Total	•	••
Chromium, Total	•	••
Cobalt, Total	Qualitative	•
COD	Quantitative	Quantitative.
Color	Qualitative	•
Copper, Total	•	••
Cyanide, Total	•	Quantitative.
Fecal Coliform	Qualitative	•
Fluoride	Qualitative	•
Iron, Total	Qualitative	•
Lead, Total	•	••
Magnesium, Total	Qualitative	•
Manganese, Total	Qualitative	•
Mercury, Total	•	••
Molybdenum, Total	Qualitative	•
Nickel, Total	•	••
Nitrate	Qualitative	•
Nitrite	Qualitative	•
Oil and grease	•	Quantitative.
Pesticides	Qualitative	•
pH	Quantitative	Quantitative.
Phenols, Total	Qualitative	•

Pollutants Retained From Existing Form—Continued

Pollutant	Existing requirement	Proposed requirement
Radioactivity	Qualitative	•
Residual Chlorine	•	•
Selenium, Total	•	••
Silver, Total	Qualitative	••
Sulfate	Qualitative	•
Sulfide	Qualitative	•
Surfactants	Qualitative	•
Temperature	Quantitative	Quantitative.
Thallium, Total	Qualitative	••
Total Phenols	•	Quantitative.
Tin	Qualitative	•
Titanium	Qualitative	•
TSS	Qualitative	Qualitative.
Zinc	•	••

*Qualitative/Quantitative. This means a qualitative determination of whether the pollutant is present based on estimates or analyses, followed by quantification only if the pollutant is present.

**Group I process wastewater discharges: Quantitative. All other dischargers: Qualitative/Quantitative.

C. *Organic Toxic Pollutants.*

1. *The Problem.* Organic toxic pollutants have not traditionally been of concern in the field of water pollution control. However, under the 1977 amendments, they have become the focus of the agency's water pollution control efforts (they comprise 115 of the 129 toxics listed under section 307(a)). Their control requires consideration for the first time of various technical and economic issues. The issues and their proposed resolutions are discussed below.

There are several features associated with the analytical methods for organic chemicals that make these chemicals more difficult and expensive to analyze than other pollutants. Many of the comments on the August 21, 1978 proposal of the NPDES regulations emphasized these aspects, which are summarized below.

(a) Methods of sampling and analyzing for most organics are in their relative infancy compared to those used for other pollutants. (However, 40 CFR Part 136 test methods have already been promulgated for several organics on the toxic pollutants list under section 304(h) of the CWA. These are cyanides, total phenols, pentachlorophenol, some pesticides and several chlorinated organics). The American Society of Testing Materials does not yet have standardized methods for many such pollutants, and achievability of a high degree of precision and accuracy for such analyses is not universally acknowledged. The Agency has not yet promulgated test methods for most of the organic toxics although it intends to propose such methods for incorporation into 40 CFR Part 136 by early Summer 1979. However, EPA has had a draft screening protocol since 1977, which has been used extensively in developing information for effluent guidelines. Copies of the draft protocol may be obtained by contacting the Analytical Methods Coordinator, Effluent Guidelines Division (WH-552), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

(b) In many industries, the level of any particular toxic pollutant in a waste stream may fluctuate widely even within short periods of time. This is caused by a number of factors, including varying feedstocks, variations in the process, variations in the efficiencies of the treatment systems, chemical reactions of pollutants in the waste stream, the periodic use of different cleaning fluids (often of a composition known only to the manufacturer), and other causes which prevent a steady state. These factors make it difficult to report pollutant discharge levels which are representative of the waste stream.

(c) The costs of sampling and analyzing for the 115 organic toxic pollutants are high when compared to costs for measuring the more traditional pollutants. A typical cost for sampling and analyzing an outfall may be expected to be in the vicinity of $4,500 as explained more fully in the discussion of costs in section VII below. The total cost of sampling and analysis for plants with many outfalls will be much higher. Further, if frequent waste characterizations are required subsequent to permit issuance, compliance monitoring costs could in some cases become unaffordable. While the indicator approach will greatly reduce monitoring costs, permit writers may require occasional monitoring of specific organic toxics or additional monitoring when indicator limits are violated (see discussion below in section VI).

In designing both the application requirements and the permitting strategy, the Agency focused its efforts on accounting for waste stream variability and on minimizing dischargers' costs without sacrificing the goals of the CWA.

2. *Development of Test Methods for Organic Toxic Pollutants.* The Agency intends to propose sampling and analytical methods for all of the organic toxic pollutants under section 304(h) of the CWA in the Summer of 1979 and to promulgate them by the time applicants begin to use the revised application form. (As noted previously, test methods have already been promulgated for several organic toxics.) Two alternative analytical methods will be provided. One method is quantitative GC/MS (gas chromatography/mass spectrometry). The alternate provides for identification or "screening" (presence/absence) of organic toxics by GC/MS followed by GC (or liquid chromatography—LC—in certain cases) quantification of those pollutants which have been identified.

Applicants will be given the choice of using either analytical method. Quantitative GC/MS is the less expensive method for waste streams containing many of the organic toxic pollutants. It also overcomes pollutant interferences that can in some instances make GC or LC analysis difficult to use reliably.

The Agency has not promulgated approved methods for sampling; however, some general guidance is provided in section E of the instructions to the consolidated application form (the instructions appear along with the consolidated application form as a public notice elsewhere in this Federal Register). Certain aspects of sampling methodology may be proposed for inclusion in 40 CFR Part 136 in the near future. However, it is not possible to specify sampling methods which cover every specific situation in detail. Good sampling techniques depend largely on the qualification and experience of the person conducting or providing on-site supervision of the applicant's sampling. The Agency therefore encourages, and has assumed in its costs analysis (section VII below), that each applicant will employ at least one experienced independent contractor to perform its sampling activities.

3. *Waste Stream Variability.* Waste stream variability consists of both short-term and long-term variations. The latter, which applies to metals and other inorganic pollutants as well as to organics, is addressed in the next section. This discussion focuses on the short-term aspects of variability.

Short-term fluctuations in levels of a pollutant are generally smaller in BPT-treated waste streams than in untreated waste streams. Since the Clean Water Act required dischargers to install BPT treatment by July 1, 1977, most applicants have installed BPT equipment; thus the variability problems associated with raw waste streams have been somewhat mitigated. Some sources that have not installed BPT equipment as required by the CWA may argue that they may be forced to incur additional expenses in trying to accurately characterize their raw or inadequately treated waste streams. In such situations, any additional expense will be the result of their own failure to install BPT equipment.

Even where BPT has been installed, some short term variability may be expected. The Agency is addressing this

problem for organic toxics by requiring a single flow proportional composite sample taken over a 72-hour period (for certain pollutants, such as volatile organics, periodic grab samples of the discharge taken over the 72-hour period will be necessary). This procedure, which the Agency has used in collecting samples in its effluent guidelines development, helps minimize the effect of short-term fluctuations upon the measured value, and will contribute greatly to a more accurate representation of the discharger's waste stream.

Seventy-two hour composites will not provide a perfectly representative picture of the applicant's waste stream. However, experience in developing effluent guidelines shows that 72-hour composites are adequate to the purposes of the permitting strategy: setting permit limits for pollutants which are present at significant levels, and imposing application-based limits.

The decision to use a single 72-hour composite sample resulted from the Agency's judgment that the incremental benefits of requiring further sampling and obtaining a slightly better picture of the range of potential variability do not justify the imposition of the significantly greater costs which would result from either (1) extending the length of time for sampling, or (2) increasing the required number of samples (e.g., consecutive or nonconsecutive 24-hour composites). Similarily, the Agency believes that a 72-hour composite yields a significantly better picture of the waste stream than a single 24-hour composite, thereby justifying the resulting increase in sampling costs. Comments and data are invited on the Agency's choice of the single 72-hour composite sample for use in analyzing organic toxic pollutants, and on what techniques are necessary to preserve such samples.

The Agency recognizes that certain dischargers may wish to go beyond the requirement of a 72-hour composite sample. For example, they may analyze two or more composite samples, in which case they must report the arithmetic average as well as the maximum level of the analyses. The application-based liability provision of proposed § 122.68(a)(2) will apply to the arithmetic average of the reported levels.

4. *Cost Considerations.* Costs are minimized by exempting certain applicants (based on industry category) from analyzing for organic toxic pollutants and by exempting all applicants from conducting such analyses for non-process wastewater outfalls.

(a) *Exemption of Certain Industries from the Requirement to Analyze for Toxic Pollutants.* Industries are required to test for toxic pollutants on the assumption that such pollutants are likely to be present in their waste streams. The Agency's sampling of the 34 NRDC Consent Decree industries has generally revealed toxic pollutants in their discharges. In certain plants, the Agency did not discover significant levels of toxic pollutants. However, the Agency only sampled a few plants per subcategory in most cases, and the Agency does not feel that its sampling was sufficient to exclude all plants within any of the 34 categories or their subcategories from requirements to test for toxic pollutants as part of an application for a permit.

As a result, all plants within the 34 industries will be required to test for toxic pollutants, with exceptions of TCDD and asbestos for reasons explained in section IV–B. To avoid needless duplication, however, where EPA's Effluent Guidelines Division or its contractors analyzed the waste stream of a plant as part of EPA's project to develop new BAT guidelines for toxic pollutants, then the new application form provides that the plant may submit that data (where the data is acceptable) in lieu of testing again. Such data may be submitted only where conditions at the plant have not changed to the extent that the Effluent Guidelines Division's data no longer represent the discharge of the plant.

The Agency has not yet begun to develop BAT guidelines to regulate discharges of toxic pollutants in industries beyond the 34 included in the NRDC Consent Decree. Moreover, existing BPT and BAT guidelines development for these industries did not focus upon organic toxics. As a result, the Agency's sampling for such pollutants in preparation of those guidelines has been limited. However, the sampling data collected to date reveals that, in addition to the 34 NRDC industries, at least the following industries are likely to discharge organic toxic pollutants:

Ferrolloys. Effluent testing has revealed the presence of at least phenols and cyanide. See pages 59–118 of EPA's Development Document for this industry (EPA 440/1–73/008, August 1975). Effluents from blast furnaces may also contain polynuclear aromatic hydrocarbons.

Asbestos Manufacturing. Effluents may contain at least phenols, cyanide and asbestos. In addition, high levels of COD and TOC (Development Document 440/1–74/035, August 1974) may reflect the presence of other toxic pollutants. It should be noted, however, that since most sources in this category have already achieved zero discharge of process wastewater, the analytical requirements for this category will have minimal impact. See pages 47–55 of the Development Document (EPA 440/1–73/017, October 1973).

Applicants from these two industries must also sample and analyze for all the toxic pollutants in all discharges which contain process wastewater.

Applicants who are required to analyze for the toxic pollutants discharged from outfalls containing process wastewater (sources in the 34 NRDC industries, plus the asbestos and ferroalloys industries) are referred to as Group I applicants. All other applicants, referred to as Group II applicants, are generally exempt from analyzing for the organic toxic pollutants. However, they must analyze for any such pollutants which they know or have reason to believe may be present in their waste streams, and of course, permit writers have authority under section 308 of the CWA or similar State statutes to require such analyses on a case-by-case basis.

The list of Group I industries as set forth above is not final. As noted above, the Agency's information on organic toxics outside of the 34 industrial categories is presently limited. Further investigation may reveal that presently exempted industries or waste streams should not be exempted. (The industrial categories being considered for possible inclusion in Group I include Fertilizer, Concrete Products and Cement.) As information is developed, certain industries may be added to the Group I list, and applicants from those industries would then be required to analyze for the organic toxics when they apply for a new permit. It is also possible that some applicants who are now required to analyze for organics may be exempted in the future as more complete data becomes available.

When promulgated, § 122.64(d)(16) and the final revised application form may contain a different list of Group I and II industries from today's proposed list. Comments are solicited on inclusions and exclusions of all industries, no matter how they are classified in this proposal.

Several commenters upon the August 21, 1978 proposed NPDES regulations suggested that, in certain industries, only certain organic toxic pollutants should be required to be analyzed and reported. The Agency has considered

this approach but has not accepted it for two reasons.

First, Agency sampling of plants to date reveals considerable plant-to-plant variations of toxic pollutant in waste streams, even within industrial subcategories. In addition, this sampling has demonstrated that waste streams often contain pollutants which are not easily predicted by analyzing raw materials or production processes. As a result, it is not possible, based upon existing data, to predict with a high degree of confidence that any Group I discharger need not analyze for all the organic toxics.

Second, the commenters' suggested approach would probably not result in significant cost savings over the proposed requirements. The cost of collecting a sample would remain approximately the same no matter how many toxic pollutants were excluded. As for savings in analytical costs, if only a few pollutants need to be analyzed for, GC analysis without prior GC/MS screening might be used. However, even then, the savings realized by eliminating GC/MS screening would be partially offset by increased GC costs over those incurred when GC is preceded by GC/MS screening. Even if quantitative GC/MS is used, only a minor cost reduction could be achieved, and only in those cases where entire fractions (classes into which the organic toxics are divided for purposes of conducting GC/MS analysis) are excluded.

The Agency believes that the burden of determining the nature of pollutants discharged lies with the discharger, not with the Agency. While Agency experience analyzing waste steams as part of its BAT development project indicates that not all of the toxic pollutants will be found in every waste stream, this same experience leads the Agency to conclude that it is impossible at this time to determine which pollutants will be present in which waste stream, and most importantly, which pollutants will never be present. As a result, all indistries with a demonstrated potential for discharging toxic pollutants are required to analyze their waste streams containing process wastewater for all of the toxic pollutants.

However, the Agency is aware that in some waste streams in some industries, there may be a low likelihood that certain toxic pollutants will be present. The Agency invites comments and supporting data indicating which industries can omit analysis of which pollutants and demonstrating what the cost savings would be. In addition, the Agency solicits comments on the suggestion by one trade organization that it and other groups perform representative sampling for an industry to demonstrate that no toxics are present in particular classes of discharges within the industry. These comments should address how much investigation is necessary and what type of results would justify exclusion of the industry (or of a subcategory) from testing requirements for certain toxic pollutants. The Agency is particularly interested in this information as it pertains to relieving the testing burdens on small businesses.

It should be noted that although Group II applicants are not required by these regulations to analyze for the organic toxics, they may be required to do so by permit writers in particular situations under the authority of section 308 of the CWA, or equivalent state authority. For example, a Group II applicant may be required to conduct boimonitoring tests to determine the toxicity of its effluent. If the results reveal some evidence of toxicity, the applicant may then be required by the permit writer to analyze for the organic toxics. Such requirements are within the discretion of EPA and State permit writers, as set forth in proposed § 122.64(d)(20).

(b) *Exemption of Non-Process Wastewater Discharges from Toxic Pollutant Analyses.* All applicants are not required to sample and analyze non-process wastewater discharges for the toxic pollutants, provided that those discharges are not combined with process wastewater discharges. The exemption applies to discharges such as non-contact cooling water, surface runoff and sanitary wastes. The decision to exempt such discharges from testing requirements was based upon the facts that they are usually (although not always) nontoxic and that even when they contain toxic pollutants, those pollutants are often so diluted by large quantities of discharge water as to be analytically undetectable. However, these waste streams must be analyzed for parameters such as COD, BOD, and TOC, which will provide some information concerning discharges of organics. In addition, further information will be submitted as described in section IV–E below.

While these waste streams are not required to be tested for the toxic pollutants, all applicants are required to estimate any amounts which may be present. In addition, permit writers may require additional testing under section 308 of the CWA, or equivalent state authority.

D. *Pollutant Discharges Which Were Not Identified in the Sampled Waste Stream*

Applicants for EPA-issued permits will be required to supplement the required effluent data reporting by identifying pollutant discharges at levels which were not revealed by the required waste stream analysis and which may exceed five times the reported levels. The purpose of this requirement is to help the permit writer account for long-term waste stream variability.

Many waste stream fluctuations can be predicted to some degree. A coal-fired steam electric generating plant which obtains its coal from several different sources can often predict within a range that its effluent will at times contain pollutants (such as toxic metals) which are present in the various types of coal. Similarly, a plant which operates various batch processes can often predict the range and the types of pollutants that can be expected to be discharged as a result of those processes.

Not all waste stream variability is predictable. For example, changes in production methods several years after permit issuance may not have been predictable at the time of application. In such cases, § 122.11(c) of the consolidated permit program regulations provides that the permittee must notify the Director when it knows or has reason to believe that such changes have occurred or will occur. Where these changes result in a permit violation (including exceedance of the application-based limit), the permit may be modified under §§ 122.9(e) and 122.78.

Applicants are also required to identify any relevant analytical data or other information which they know to be available concerning pollutants which are not required to be reported by proposed § 122.64(d). The permit writer may request submission of any identified information which may be of assistance in writing the permit.

E. *Identification of Substances Identified as Hazardous Under Section 311 of the CWA*

Section 311 of the CWA contains strict penalties, reporting requirements and other provisions to prevent discharges (including spills) of oil and hazardous substances. In 40 CFR Part 116, the Agency has identified 200 substances as hazardous (some of these substances are on the section 307(a) toxics list as well). See 43 FR 10474 (March 13, 1978) and 44 FR 10266 (February 16, 1979).

Until recently, the section 311 provisions unnecessarily overlapped with section 402. It was possible that a discharge or spill of a hazardous substance through an outfall which was either in compliance with a permit or reviewed by the permit issuing authority but not controlled by the permit at all would constitute a discharge of "harmful quantities" of the substance under section 311, resulting in section 311 penalties.

To eliminate the overlap between sections 311 and 402, Congress amended section 311 in late 1978 to exempt discharges covered under the NPDES program. The amendments also deleted the standard of " harmful quantities" referred to above and introduced in its place the concepts of "reportable quantities" and "quantities which may be harmful."

Exemptions from the requirements and penalties of section 311 were provided for in three situations:

"(A) discharges in compliance with a permit under section 402 of this Act, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of this Act, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of this Act, which are caused by events occurring within the scope of relevant operating or treatment systems." Section 311(a)(2) of the CWA, as amended in November 1978.

The Agency proposed regulations on February 16, 1979 which clarify the exemption, 40 CFR 117.12 (44 FR 10271). The proposal is explained in a detailed preamble to those regulations, which will not be repeated here. However, the exemption strategy may be summarized as follows:

1. Discharges of hazardous substances which may be predicted to result from normal operating procedures should be regulated through the NPDES system. This includes typical discharges such as process wastewater or non-contact cooling water. It may also include tank ruptures or other atypical events which may be controlled through the requirements of the NPDES program.

2. Spills of hazardous substances which either cannot be or have not been identified by the discharger in advance and controlled properly (either through new permit requirements or through already existing operating or treatment systems) remain subject to the requirements and penalties of section 311.

3. Dischargers should be given the opportunity to obtain section 311 exemptions by expressly seeking NPDES coverage. This is done by allowing applicants for NPDES permits to identify all discharges or potential discharges which may occur and to demonstrate the adequacy of treatment systems (or management practices such as spill diversion or containment) to control such discharges.

Proposed § 122.64(d)(19) and EPA's draft revised application form provide the applicant the option of identifying present and anticipated discharges of hazardous substances. The instructions which accompany the application form describe in detail the nature of the information to be submitted.

V. Proposed § 122.68(a): Application-Based Limits

Proposed § 122.68(a) is a reproposal of § 122.14(a) (proposed on August 21, 1978, 43 FR 37078). Proposed § 122.68(a) states that permittees are bound by two sets of limits: (1) For pollutants specifically limited in a permit, the technology-based, water quality-based or other limit set forth in the permit; and (2) for all pollutants which are reported or required to be reported in the application but which are not specifically limited in a permit, a limit which is a multiple of the reported average level (or a multiple of the detection limit of the method if the pollutant is not detected). Proposed § 122.68(a)(2) sets the multiple at five for most cases, but proposed § 122.68(a)(3) provides a mechanism for applying for a multiple other than five for particular effluents. Permittees who exceed the application-based limits established by § 122.68(a)(2) are subject to the same consequences (e.g., enforcement or permit modification) as any other type of permit violation.

No explicit limits are set for pollutants which are not required to be reported in the application. However, as noted above, the list of reportable pollutants may be expanded in the future, and BAT control equipment for the toxic pollutants will also serve to control many non-reported pollutants in the interim. Furthermore, the permitting authority may always modify a permit for cause, including the situation where biomonitoring tests identify a discharge as significantly toxic despite the installation of BAT equipment designed to control the reported pollutants. See §§ 122.9(e) and 122.73 of the proposed consolidated permit program regulations.

The factor of five for reportable pollutants was developed as a general measure of the magnitude of variation of pollutant levels normally found in waste streams. In recognition of the fact that the levels of pollutants in some waste streams may vary by a factor of more than five, § 122.68(a) includes a provision allowing permittees to demonstrate through testing that another multiplier is appropriate.

When a pollutant is not detected in a waste stream or is not reported as required in an application, the application-based limits under § 122.68(a)(2) are established as a multiple of the detection limit of the analytical method. Detection limits are usually included in the test methods promulgated under 40 CFR Part 136 (these limits are summarized in section E of the instructions to the consolidated application form, which appears as a public notice elsewhere in today's Federal Register). Where an approved method does not specify a detection limit, the detection limit may be determined by the applicant using standard analytical practices.

The proposed regulations also specify a detection limit of 10 μg/l (10 ppb) as the lowest level of detection that will be applied. In many cases, the actual detection limit is lower than 10 μg/l if a highly sensitive detector is used (e.g., electron capture), but for the purposes of the application-based limit, the detection limit is set to reflect the use of the least sensitive approved method.

The concept of an application-based limit was originally raised in the August 21, 1978 proposal of § 122.14(a), which provided that "[t]he permittee shall not discharge any pollutants for which information was requested in the application except as expressly authorized by the permit" and explained further in a comment that "the permit may specify that discharge levels for [the reported] pollutant are not to exceed the levels reported in the application." Today's proposal, which is less strict to account for normal variability of pollutant levels in waste streams, continues the philosophy that dischargers are responsible for their discharges and should not be permitted to significantly increase pollutant discharges above reported levels.

The reason for introducing a multiplier in today's proposal is not to allow permittees to increase their discharges, but to provide a sensible ceiling in acknowledgment of normal waste stream variability. The Agency believes that the multiple of five will ensure that pollutant discharges do not significantly increase from reported levels, without burdening permittees with technologically unreasonable limits. As

stated above, where the multiple of five does not adequately reflect the innate variability of pollutant levels in a waste stream, the proposed regulation affords the discharger the opportunity to demonstrate through testing that another multiplier is appropriate.

The application-based limit is clearly authorized by the Clean Water Act. Section 101(a)(1) of the CWA declares "the national goal [is] that the discharge of pollutants into the navigable waters be eliminated by 1985." Allowing dischargers to increase their pollutant discharges would contravene that goal. The application-based limit is also consistent with the technology-based requirements of section 301(b) of the CWA. Clearly, any level of pollution control which the applicant is already attaining is achievable through BAT or BCT.

The multiplier approach to establishing limitations for pollutants reported in an application form but which are not specifically limited in a permit was developed after extensive consideration of alternative approaches. The principal alternatives are:

1. Limit discharges to the levels reported in an application (as in the August 21, 1978 proposal of § 122.14(a));

2. Set pollutant-specific limits which would apply to all dischargers, e.g., no discharger shall discharge pollutant Y at concentrations greater than Z mg/l;

3. Allow applicants to choose a limit for each pollutant to which they would be willing to be held;

4. Limit applicants to reported levels of certain indicator pollutants only; or

5. Establish a biomonitoring-based overall toxicity limit.

All of these alternatives have certain advantages and certain disadvantages.

The first alternative would provide maximum environmental protection by minimizing allowable discharges. However, as mentioned previously, normal waste stream variability precludes the strict approach of limiting pollutants to reported levels.

The second alternative has the virtue of simplicity and clarity. Unfortunately, this approach cannot be supported by existing effluent data. Therefore, this option was rejected, at least for the present.

The third alternative also holds a certain attraction for its simplicity. Its deficiency lies in its leniency. It would be an ideal method for dischargers willing to accept reasonably low limits. However, for those dischargers who wished to circumvent liability by selecting inordinately high limits, protracted disputes would be unavoidable. This option is analogous to allowing applicants to select their own permit limits and, in the opinion of the Agency, would not lead to effective control of toxic pollutants.

The fourth alternative would serve to restrict excessive discharges of certain toxic pollutants in some instances. However, its utility is limited. While indicators are valuable in certain cases in helping to regulate the installation of BAT equipment to control specific toxics which have been identified in some waste streams, they cannot be applied effectively in all situations to ensure that discharges of the 129 toxic pollutants will not increase significantly from reported levels. As a result, this option was rejected.

The last major alternative considered was to set an overall toxicity limit on each waster stream based upon biomonitoring tests required of each applicant. While biomonitoring has certain uses, tests on complex waste streams to determine characteristics other than acute toxicity, such as chronic toxicity, carcinogenicity, and mutagenicity, are not well established. Further, biomonitoring for acute toxicity is not effective in detecting or limiting large discharges of pollutants which occur at low concentrations, such as in waste streams which are diluted after treatment by large volumes of noncontact cooling water. Further, the cost of conducting biomonitoring tests to determine chronic toxicity, carcinogenicity, and mutagenicity would be much higher than the costs of pollutant analyses required by proposed § 122.64(d). As a result, this alternative was also rejected. As explained in section III–B(2) of this preamble, however, biomonitoring tests are very useful in many instances. They will therefore play an important role in the Agency's strategy for implementing BAT-level control of toxic discharges.

After considering the other alternatives and finding them inadequate, the Agency selected the multiplier approach. The principal remaining issue is the selection of a multiplier which is justifiable both analytically (accounts for variability) and environmentally (protects against significant increases in discharges of toxic pollutants).

Several commenters on the NPDES proposal of August 21, 1978 recommended the multiplier approach and suggested appropriate multipliers despite the fact that the Agency did not specifically raise this issue in the proposal. The suggestions were as follows:

1. A major industrial discharger expressed its support of proposed § 122.14(a) (renumbered in today's proposal as § 122.66(a)) and the accompanying comment, but suggested that permits contain the following language:

"For all pollutant(s) for which discharge is not limited or authorized in this permit by explict numerical effluent limitations, the permittee shall limit discharges to the amount declared at the time of permit application plus the additional amount or margin otherwise prescribed by the paragraph. If in the permit application the quantity of discharge was declared as a true measurement of discharge or was not otherwise identified, the permittee shall limit the discharge of such pollutant to an amount no more than fifty (50) percent greater than the average amount declared in the application. If in the permit application the presence of such pollutant was declared but the quantity of discharge was only estimated, the permittee shall limit the discharge of such pollutant to a level no more than one hundred (100) percent greater than, or twice the average amount estimated in the application." (Emphasis in the original).

2. Another commenter suggested that permittees be allowed to discharge pollutants which are not otherwise limited "so long as the levels of the pollutants in the discharge are within an order of magnitude (i.e., a factor of ten) of the levels set forth in the application."

3. Another commenter did not suggest a specific multiplier but stated that "variability factors should be comparable to those applied to annual averages used in effluent limitation guideline development for several industries."

A fourth commenter suggested that the application-based limit should simply reflect the "margin of error of both flow and analytical techniques."

In developing the multiplier used in this proposal, the Agency recognized that developing a single all-encompassing factor to describe the upper limit of pollutant variability in all kinds of industrial waste streams would be extremely difficult, if not impossible. A large factor, e.g., several orders of magnitude, could be used, but at the expense of abandoning the original purpose of the regulations, to protect against significant increases in discharges of pollutants not specifically limited in permits.

The Agency then decided to take the more practical approach of selecting a multiplier high enough to account for the variability of pollutants in waste streams that has been observed for the general case, and to provide an opportunity for each discharger with an unusually high range of variability to demonstrate its case and to qualify for a different factor.

Variability in the levels of pollutants found in waste streams is largely a result of the following:

1. The degree to which the sample taken from the waste stream is representative of the waste stream;

2. The accuracy and precision of the analytical method;

3. Fluctuations of pollutants in waste streams due to varying amounts of the substance in the raw material or as the result of the process; variations in the use of cleaners, algicides, solvents, etc.; effects of chemical reactions taking place in waste streams; and other factors.

With good sampling and analytical practices, the maximum margin of error resulting from the first two sources of variation above should be no more than ±100%. Since all of the Agency's studies of variability to date are based on actual samples, this margin of error is largely subsumed within the variability factors described below.

The Agency has analyzed in depth the long and short term variability of pollutant levels in the discharges of each of four plants in the pesticides industry. Table IV presents the variability factors developed in this study demonstrating the relationship between the daily maximum and the long-term average values for several pollutants. The number of observations is in parentheses.

Table IV.—Variability Factors in the Pesticides Industry

[Relationships between daily maximum and long-term average values]

	BOD	COD	TSS	Pesticide chemicals
Plant:				
3	———	———	———	9.4 (244)
21	7.7(354)	———	5.4 (360)	8.9 (341)
28	———	1.8 (62)	———	12.2 (62)
41	2.8 (96)	1.5 (121)	2.5 (122)	———
Weighted average	4.6 (106)	1.8 (213)	4.7 (482)	7.8 (877)

The samples used to develop the above data were collected on a 24-hour basis. The test requirements for determining limits for organic pollutants for the purpose of § 122.68(a) will be a 72-hour Composite sample (or 3 consecutive 24-hour samples), which should have a substantial mitigating effect upon the variability factors for pesticides described above.

An analysis of the discharges of the same plants to determine the relationship between the long-term average and the 30-day average yielded variability factors of 1.1 to 1.5 for BOD, COD, and TSS and of 1.3 to 1.6 for the pesticides.

The Agency has frequently used multipliers in the past to describe plant-to-plant variations in developing effluent guidelines. Typically, effluent guidelines contain daily maximum limits which are several times the mean of the results of samples collected and analyzed from several plants in the subcategory. These multipliers are selected so that the discharge on any particular day may be predicted with a high degree of confidence to be below the daily maximum limits.

Multipliers in most of the guidelines promulgated to date have been in the range of 1½ to 3, which generally have been used to set daily maximum limits for traditionally regulated pollutants. Specific organic pollutants are often subject to the wider ranges of variability. Therefore, the multipliers of 1½ to 3 are almost certainly too low for purposes of proposed § 122.68(a)(2).

It should be noted, however, that the function of a multiplier in effluent guidelines is slightly different than its function in proposed § 122.68(a)(2). On the one hand, guidelines are based upon analyses of several samples, allowing a smaller multiplier to be used than is justified by the minimum requirement of one single sample used by an applicant. On the other hand, guideline multipliers must account for variability between plants so that a single limit may be made uniformly applicable throughout a subcategory, while proposed § 122.68(a)(2) need only account for the variability of a pollutant in a single waste stream. Overall, this latter difference implies the use of a smaller multiplier in proposed § 122.68(a)(2) than is used in developing effluent guidelines.

After considering the above, and after consultation with industrial groups, environmental groups, and with Federal and State permit writers, the Agency determined that a multiplier of five is appropriate to describe the normal variation of pollutants in most waste streams.

While the Agency has selected the multiplier of five based upon the best available data for the purpose of this proposal, it recognizes that its data base is incomplete. The Agency solicits comments and data on waste stream variability in various industries and on the question of whether different multipliers should be applied to different industries. Comments are also solicited on the question of whether different multipliers should be applied depending upon the reported levels (e.g., a higher multiplier when pollutants are reported at low concentrations and a lower multiplier when pollutants are reported at high concentrations).

In any case, the Agency recognizes that certain waste streams may be so variable that the reported levels may be exceeded by more than the finally promulgated multiplier. If the applicant believes that this may be the case, §122.68(a)(3) of today's proposal provides an opportunity to demonstrate through testing and statistical analysis that a higher multiplier is appropriate.

In developing an alternative multiplier, proposed § 122.68(a)(3) requires the submission of ten data points (24-hour samples analyzed for the pollutant of concern), and a statistical analysis to develop a limit representing an upper 99% confidence bound for the pollutant. Based on the ten data points, an acceptable computation of the upper confidence bound is:

$$L = \exp(\bar{Y} + 2.96S),$$

where

$$L = \exp(\bar{Y} + 2.96S),$$

where

$$\bar{Y} = \frac{1}{10} \sum_{i=1}^{10} \ln X_i;$$

$$S^2 = \frac{1}{9} \sum_{i=1}^{10} (\bar{Y} - \ln X_i)^2;$$

L is the upper 99% confidence bound;

L is the upper 99% confidence bound;
X is the pollutant concentration of each data point;
ln is the natural logarithm; and
exp( ) is the antilogarithm.

The statistical interpretation of L is that a future concentration measurement of the particular pollutant will not exceed L with a confidence of 99%.

The equation described above is based on the classic two-sample statistical confidence region where the underlining distribution is lognormal and the first sample has size ten and the second has size one. The result of the equation is a confidence region with expectation being 99%. This general approach has been the basis of many effluent limitations guidelines and many limitations in negotiated permits [i.e.,

those for which no effluent guidelines existed) for the past five years. Over this period of time, the two major assumptions most closely examined in this methodology have been: (1) The assumption of lognormality; and (2) the size of the confidence associated with the region.

The Agency's experience in analyzing the data for each of the effluent guidelines it has promulgated has shown that in all cases the plant effluent data was lognormal or that the lognormal distribution overestimated the variability of actual plant effluent data. Thus, even where the data was not lognormal, the assumption of lognormality benefited the permittee.

Historically, the 99% level has been shown to be conservative enough to act as a control of the permittee's treatment system and liberal enough to allow normal operating variability without the risk of violation, except in the most severe cases. In addition, the risk to the permittee has been further reduced by the recent promulgation of a new "upset" provision in the NPDES regulations (§ 122.14(1) of the NPDES regulations, renumbered as § 122.66(c) in the proposed consolidated permit regulations which appear elsewhere in today's Federal Register). This provision provides permittees with an affirmative defense to enforcement actions brought for noncompliance with permit limits, based on factors beyond the control of the permittee. Thus the risk of being held liable for violations due to normal variations in effluents has been reduced to well beneath one per cent.

The Agency is also considering other procedures for demonstrating an alternative multiplier. We request comments on the methodology described here, and invite suggestions on other mechanisms to minimize the number of samples required and to make the most efficient use of this data to accomplish the goals of proposed § 122.66(a).

VI. Monitoring and Reporting

A. *Typical Monitoring Scheme*

Specific monitoring requirements are not contained in the NPDES program regulations promulgated on June 7, 1979. These regulations require in § 122.22 (renumbered as § 122.14 in the proposed consolidated regulations) that monitoring requirements be established in permits, but leave the permit writer the discretion to establish the type and frequency of monitoring requirements which are most appropriate to the particular discharger (although it should be noted that future effluent guidelines may specify monitoring requirements).

Similarly, today's proposal, while clarifying in proposed § 122.71(a)(1) that monitoring requirements may be set for pollutants controlled by application-based limits, does not set specific monitoring requirements. However, for the purpose of demonstrating the range of choices available to permit writers under the new permitting strategy, a typical monitoring scheme (assuming the absence of a monitoring requirement specified by an effluent guideline) is presented below.

Typically, permittees will be required to monitor all pollutants which are specifically limited in the permit on a periodic basis to insure compliance with the permit limits. This conforms to existing practices. Monitoring costs will thus be substantially the same as at present except in those situations where a permit contains limits for specific organic toxics which require GC or GC/MS analysis.

Where the indicator approach is used, the permittee may be required to occasionally analyze for some or all of the toxic pollutants to insure that the treatment equipment is being operated and maintained properly and is adequately removing the toxics, and to help insure compliance with the application-based limit of § 122.66(a)(2). This monitoring will usually (but not always) be required only for those pollutants reported as present at significant levels in the application. Monitoring for the organic toxics might be based upon 24-hour composite samples for this purpose, resulting in lower costs than the 72-hour application sampling requirement imposes.

Permits might also make waste characterization requirements contingent upon other events. For example, as discussed in the next section of this preamble, a violation of a certain permit limit may be used to trigger a requirement to monitor for some or all toxic pollutants.

Another type of monitoring which may be required of permittees is biological monitoring, such as acute aquatic toxicity LC_{50} tests (appropriate test methods are contained in EPA's *Methods for Measuring the Acute Toxicity of Effluents to Aquatic Organisms*, EPA–600/4–78–012). These acute toxicity tests are generally less expensive than waste characterizations for organic pollutants. Therefore, some permit writers may require waste characterizations only sparingly but require acute toxicity tests on a more frequent basis. If the results of such tests indicate that a discharge is acutely toxic, the Director may then require the permittee to conduct a full waste characterization or take some other necessary action to detect the source of the toxicity. This authority is provided by section 308 of the CWA or similar State authority (see the Decision of EPA's General Counsel, January 11, 1979).

B. *Additional Monitoring When Indicator Limits are Violated*

One of the problems with using limits on indicator pollutants to control discharges of toxics is that a violation of a limitation on one or more indicator pollutants is not necessarily linked to an increased discharge of toxic pollutants. The response of the permitting authority and the discharger to any permit violation depends on the seriousness of the violation, which is not immediately apparent when a limitation on an indicator is violated. A violation that is accompanied by an increased discharge of toxics will require corrective action much greater in speed and extent than a violation of the indicator pollutant alone.

The Agency is considering addressing this problem by establishing a general regulation requiring permittees to conduct additional monitoring when they violate permit limitations on indicator pollutants. Under this requirement, each permit would contain a clause which would trigger a monitoring progam when certain permit limits are violated. This program would include monitoring appropriate for each site to determine the cause of the violation, necessary corrective measures, and the extent to which the violation resulted in discharges of toxic pollutants. Monitoring requirements might include an analysis for specific toxic pollutants, an effluent scan, or biological monitoring tests for acute toxicity. Under this scheme, each violation of an indicator limit would be evaluated on a case-by-case basis by the permitting authority to determine whether or not the additional monitoring program is necessary.

The authority to require additional monitoring is already available under section 308 of the CWA or similar State authority. However, the scheme outlined above would establish a monitoring program for each permittee at the time the permit is issued, rather than at the time the violation occurs. Because the monitoring program is clearly laid out and agreed to in advance, the permittee will be prepared to put it into effect as soon as the permitting authority determines that it is necessary.

The information generated by the monitoring program will allow an in-depth assessment of the seriousness of

the violation. A large discharge of toxic pollutants might cause a relatively small violation of a limit for an indicator pollutant, while a much greater violation might be accompanied by no increase in toxic pollutants. Information on the toxicity of the effluent will enable the permitting authority to decide the extent of further action needed to mitigate the effects of the violation and to determine whether additional permit limits are necessary to prevent future violations.

A regulation establishing this monitoring requirement has not been proposed in today's Federal Register (although a similar provision will appear in the proposed effluent limitations guidelines for the leather tanning industry), because the Agency has not yet developed a detailed scheme for implementing this provision. The Agency intends to determine precisely which monitoring techniques will be required and what criteria permitting authorities will use to determine whether a violation should trigger the monitoring. During this process, the Agency will consider how the information will be used and what the costs will be.

The Agency requests comments on the potential value of the scheme outlined above, and asks for suggestions on the most practical way to implement such a scheme.

VII. Economic and Resource Impacts of Application Reporting Requirements

A. *Unit Costs of Sampling and Analysis*

The incremental costs imposed by the new sampling and analysis requirements consist of the following two elements: (1) Costs imposed by the new requirement that certain applicants sample and analyze certain wasted streams for 115 organic toxic pollutants, and (2) costs imposed by the revision of existing reporting requirements for pollutants other than the organic toxics, including additions to and deletions from the current list of pollutants which must be reported and changes in the nature of reporting for certain pollutants retained on the list.

1. *Sampling and analysis of 115 organic toxics.* Sampling consists of 72-hour composites (and a series of grab samples for volatile organics). Analysis consists of either GC/MS screening (identification) followed by GC (or in the case of polynuclear aromatic hydrocarbons, LC) quantification, or GC/MS quantification alone.

Cost data was developed from a variety of sources, which yielded figures over a relatively large range. The rapidly declining trend of these costs, resulting from laboratories' increased usage of and familiarity with the analytical methods, suggests that the costs estimated in this proposal will decrease by the time the revised application requirements become effective. However, the Agency's costs estimates are based upon present-day unit prices, as of Spring 1979. The discussion below provides a brief review of available data followed by the Agency's estimates.

(a) *Sampling Costs.* Sampling costs will vary significantly, depending upon the choice of personnel involved in the operation. While some applicants will have in-house sampling capability (or at least partial capability), others may have to rely completely on the use of more expensive independent contractors.

The analysis below assumes that sampling will be performed manually rather than by automation. Manual sampling is more labor-intensive and costlier than automated sampling, but it is necessary in certain situations where automated equipment cannot be used (e.g., where flammable or explosive vapors may be present or where very large samples are required). Since automated sampling can be used in many cases, the total cost of sampling is overestimated here.

Using current prices, the approximate sampling cost breakdown in the case of complete reliance upon independent contractors (assuming the use of a 4-person sampling team for a 4-day sampling trip) is as follows:

Technicians @$60/day, shifts = $240 × 4	× 3	sampling $960
Supervisor @$120/day = 120 × 4		480
Reports (1 person-day, supervisor)		120
Overhead on contract salaries (150%)		2340
Equipment set up on site, 2 man-days		160
Disposable equipment, sample container preparation		130
Sample air transport		100
Subtotal, less personnel air fares, local travel and per diem		4290
Personnel air fare (estimated average) = $600/ea.		600
Personnel per diem/local travel = $50/day/person		800
Total		5690

Costs in a number of these categories, such as salaries, overhead rates and travel distances may vary significantly. However, the Agency believes that $5690 is a reasonable estimate of the discharger's cost to have an independent 4-man team to undertake a 4-day sampling trip.

The situation described above is the most expensive case. By using an experienced contract supervisor (and possibly contract sampling equipment) together with in-house technicians, sampling costs may be reduced by approximately $2650 because of reduced overhead, travel, and per diem expenses. (The presence of the supervisor will insure that the sampling results are sufficiently reliable for purpose of the application, offsetting a potential lack of experience by house technicians in this type of sampling.) This leaves a net sampling cost of approximately $3200 per 72-hour manual composite sample.

A sampling team can sample at least two (and possibly three) outfalls (or an intake plus one or two outfalls) simultaneously, depending on their proximity and on the sampling techniques required for each. While equipment costs must be duplicated, personnel-related costs need not be. Thus, the estimated cost per sample for two outfalls is $1600. If three outfalls can be sampled simultaneously, sampling costs per outfall decline further. For the purpose of computing the total incremental cost of complying with the proposed application requirements (section VII–C below), an average sampling cost of $2500 per sample will be assumed.

(b) *Cost of Analysis of GC/MS Screening Followed by GC Quantification.* For the purpose of determining GC/MS screening and GC quantification costs, it is assumed that applicants will forward their samples to independent laboratories for analysis.

The Agency has received data on GC/MS screening costs from several sources. Unit costs for over 2,000 analyses conducted as part of the effluent guidelines development have been decreasing steadily and presently start at a large-volume price of approximately $700. Industry estimates range widely ($400 to $4,000) due to differing assumptions concerning the "average" complex effluent, the degree of quality control which they anticipated might be required by the application requirements, standardization procedures and other factors. Independent laboratories have most frequently cited figures in the range of $1,000 to $2,000. Manufacturers of GC/MS equipment contend that recent improvements in technology, such as reductions of the time required to perform an analysis, have reduced the cost to as low as $400 per sample.

The above data, together with the fact that increased volume and improved technology have been steadily reducing costs, indicate that $750 may be a reasonable estimate of GC/MS screening costs. However, the Agency is assuming, for purposes of assessing the impact of its reporting requirements, that the cost will be $1,000.

Unlike GC/MS screening, which has a relatively fixed cost regardless of the number of pollutants analyzed (although

moderate cost reduction is obtainable by eliminating entire classes of pollutants from the analysis). GC or LC quantification costs are roughly proportional to the numbers of pollutants to be analyzed, as described below.

Ten to fifteen different GC or LC procedures may be needed to analyze for all 115 organic toxic pollutants. It is not possible to predict in advance how many of these organic pollutants will be found in a given effluent and how many of these could be analyzed by the same procedure.

The plant surveys which EPA has conducted as part of its project to develop new BAT effluent guidelines for toxic pollutants in 34 industries indicate that the number of organic toxic pollutans found in a given effluent varies widely (0–50), averaging about 5 organic toxic compounds per waste stream. Information is insufficent to allow assumption as to how many of these might in a particular situation be analyzed by using the same GC or LC procedures. It is therefore assumed that each of five pollutants would have to be determined by a different procedure at a cost ranging from $50 to $100 each (based upon sources of information similar to those used to generate GC/MS cost data). The Agency has assumed $75 per pollutant. Thus, for example, if five organic toxics have been identified by the GC/MS screening, about $375 must be expended to quantify those pollutants using GC and LC methods.

(c) *Cost of Analysis by GC/MS Quantification.* GC/MS Quantification may be approximately twice as expensive as GC/MS screening due to a need to repeat certain portions of the analysis using reference standards. The Agency assumes that the method used will require duplicate analyses and thus estimates the cost of GC/MS quantification as $2,000 (double the qualitative cost).

GC/MS screening followed by GC or LC quantification is less expensive than GC/MS quantification whenever the applicant's waste stream contains relatively few organic toxic pollutants. based on the above GC or LC estimate of $75 per pollutant, whenever GC/MS screening identifies more than 13 organic toxic pollutants, then GC/MS quantification becomes more cost-effective than GC or LC quantification. For example, treated discharges will, in most instances, be less expensive to analyze than those which are untreated or inadequately treated. The method of quantification selected by the applicant may depend on its assessment of how complex its waste stream is.

For purposes of computing the total incremental cost of complying with the proposed application requirements (section VII–C below), it will be assumed that all applicants will use quantitative GC/MS at $2,000 per analysis. Adding $2,000 for analysis to the assumed average sampling cost of $2,500, the average cost of sampling and analyzing the toxic organics will be assumed to be $4,500 per outfall.

2. *Sampling and analysis of pollutants other than the organic toxic pollutants.* The methods for analyzing for most of the pollutants other than the organic toxics (e.g., metals, ammonia, and other inorganic pollutants) are well established. Cost data for these pollutants is therefore more certain than the cost data for organic pollutants.

For sampling, today's proposal will result in little or no incremental cost for the inorganic pollutants over the cost of existing application requirements. Although certain pollutants formerly reported on a qualitative basis will now be required to be reported quantitatively, sampling techniques and their associated costs will remain substantially the same. Further, sampling for both the organic toxic pollutants and the other reported pollutants will usually be done at the same time and involve similar methods of collection (although a shorter interval and different preservation methods will be used for the inorganic pollutants). Therefore, any differences in sampling costs for the pollutants other than the organic toxics will be easily accounted for within the range of variability associated with the more expensive sampling costs for the organic toxic pollutants.

For analysis, the cost will increase somewhat from present requirements for the inorganic pollutants. These result from requirements that applicants analyze for certain pollutants (BOD, COD, TSS, total cyanide, and total phenols), whereas the old application allowed submission of estimates (although it should be noted that for these parameters, applicants usually submitted analytical data). In addition, new analytical costs will be incurred from a requirement to test for two pollutants not required to be reported by the present application, TOC And TKN. This increase in cost will be more than offset by the deletion of reporting requirements for certain other pollutants (algicides, calcium, chloride, chlorinated organic compounds, organic nitrogen, potassium, settleable matter, sodium, and specific conductance), and by the use of estimates instead of actual testing for certain other pollutants which presently are required to be tested.

The Agency estimates that incremental sampling and analysis costs for pollutants other than the organic toxics will range from $180 to $400. For purposes of computing the total incremental economic impacts in section VII–C below, an incremental cost of $300 is assumed.

B. *Unit Reporting Costs*

The preparation of the information which is required by proposed § 122.64(d) will require staff time, resulting in costs in addition to the analytical testing costs. These reporting costs include data development, collection and compilation by various levels of the applicant's staff (clerical, administrative and professional) and review by legal advisors, professional supervisors and managers.

The unit reporting costs will vary, depending on the nature and extent of the applicant's relevant activities and on the applicability of various reporting requirements to the applicant.

The chief factors are:

1. Group I dischargers will expend greater effort to study waste stream variability (including an examination of processes and raw materials) than Group II dischargers. Many Group I dischargers will also carefully study their waste streams and sites for potential discharges, leaks or spills of toxic pollutants in order to obtain exclusions from section 311 liabilities and requirements. Group II applicants, who are not generally expected to have significant pollutant discharges beyond the more traditional parameters, will be relatively unconcerned by these considerations.

2. Major dischargers will generally have more complex operations than minor dischargers. For major dischargers, large numbers of different processes may create complex waste streams which are then discharged through several outfalls. These considerations will require major dischargers to expend significantly more resources than minor dischargers.

The unit reporting costs of the new application form are summarized in Table V.

Table V.—*Unit Reporting Costs of New Application Form*

[Hours/source]

Type of question	Group I discharger		Group II discharger	
	Major	Minor	Major	Minor
General information	3	2	3	2
Environmental engineering data	22	8	16	6
Analysis of effluents	34	26	21	6
Graphics	4	4	4	4
Discharges not from outfalls	13	7	9	2
Variability analysis	26	14	4	2
Section 311 discharges	26	10	4	3
Total	128	71	61	25

In order to assess the incremental reporting impact of the new form over the old form, the total unit reporting costs of the old form were also assessed. It should be noted that the reporting cost assessments performed for Office of Management and Budget on the original NPDES application form indicated an unusually low unit cost of completing that form. This low original baseline cost is attributable to the fact that a large portion of the NPDES application requirements would be fulfilled in many cases by submitting applications completed under the old Refuse Act Permit Program (RAPP) administered by the U.S. Army Corps of Engineers. When the NPDES program came into being, these RAPP applications were often accepted as NPDES applications, so that the reporting costs of the original form were reported as incremental costs. For this reason, the total cost of the old form was recalculated.

These recalculated unit reporting costs are summarized in Table VI.

Table VI.—*Unit Reporting Cost of Old Application Form*

[Hours/source]

Type of question	Group I discharger		Group II discharger	
	Major	Minor	Major	Minor
General information	3	2	3	2
Environmental engineering data	44	18	36	18
Analysis of effluents	17	7	14	4
Graphics	4	4	4	4
Discharges not from outfalls	0	0	0	0
Variability analysis	0	0	0	0
Section 311 discharges	0	0	0	0
Total	68	31	57	28

The reporting burdens imposed by the proposed application requirements are comparable to those imposed by the expiring form. A number of unnecessary and burdensome requirements in the expiring application form have been deleted, but these deletions are largely offset by expanded requirements in some cases (such as projections of the variability of waste streams), and by new requirements in others (such as the optional requirement for reporting hazardous substances to gain exemptions from section 311).

Table VII.—*Incremental Unit Costs of New Application Form*

	Group I discharger		Group II discharger	
	Major	Minor	Major	Minor
Old form cost	$1,855	$795	$1,520	$665
New form cost	3,690	1,990	1,625	560
Incremental cost	1,835	1,224	105	105

The hourly reporting costs shown in Tables V and VI were translated into dollars by determining the time spent answering each type of question shown in those tables by three levels of personnel: Clerical (assumed to be $10/hour), mid-level business and technical ($25/hour), and professional, legal and managerial ($50/hour).

Based on the above, the incremental unit reporting cost of the new form is presented in Table VII.

Table VII illustrates that while the unit reporting cost of the new form is generally greater than the cost for the old form, the new form focuses reporting requirements on those industries with the greatest potential for toxic discharges (Group I). Note, however, that the incremental cost savings shown above for Group II minor dischargers is probably overstated since many of these dischargers completed a special "short form" rather than the complete NPDES application form analyzed above.

C. *Total Incremental Costs of Complying With the Proposed Application Requirements*

This section discusses the total additional costs imposed by the application requirements of proposed § 122.64(d) over those imposed by existing requirements. Section VIII of this preamble will also discuss other reporting costs which are not imposed by the proposed application requirements, including (1) the extra costs incurred by applicants who choose to analyze for section 311 hazardous substances, and (2) new monitoring costs (after permit issuance) which permit writers might be expected to impose, on a case-by-case basis, as a result of the new emphasis on the control of toxic pollutants.

The Agency has computed the total incremental costs of its new requirements by multiplying the unit costs derived in sections VII–A and VII–B above by the number of applicants or activities which are expected to incur those costs. The facts, estimates and assumptions used to compute the total incremental costs of the form are summarized in Table VIII.

Table VIII.—*Basis For Calculating Incremental Costs*

	Group I dischargers		Group II dischargers		Total
	Major	Minor	Major	Minor	
Number of dischargers	2,767	11,600	1,548	27,862	43,777
Number of intakes tested	1,383	5,800	672	13,931	21,886
Number of process wastewater outfalls	4,150	5,800	1,716	13,931	25,597
Number of process wastewater outfalls	5,534	11,600	2,580	27,862	47,576

1. *Number of applicants.* The number of existing industrial dischargers who will use the new application form is based upon the Agency's records of dischargers who presently have permits and may be expected to reapply upon permit expiration.

It should be noted that some dischargers will have had their effluents tested by EPA as part of EPA's effluent guidelines development program. Where such testing was consistent with the proposed application requirements, those test results may be reported and the applicants need not perform the analyses on its own. However, the analysis below assumes all applicants will do their own testing so that the estimated total cost is probably overestimated.

2. *Number of outfalls per applicant.* The Agency has estimated the average number of outfalls per discharger, based upon information received from EPA's Regional offices and from State offices. Major dischargers have, on the average, two nonprocess wastewater outfalls and one and a half process wastewater outfalls (i.e., 50% of major dischargers have one process wastewater outfall, and the remainder have two). On the average, minor dischargers have one nonprocess wastewater outfall and one half of a process wastewater outfall each. These are averages used for computation of total impacts; particularly plants may differ significantly. For example, certain major dischargers have as many as 20 process wastewater outfalls.

3. *Number of intakes to be tested by applicants.* In addition to sampling and analyzing outfalls, some applicants will be examining their intakes to obtain credit for pollutants in their intakes under § 122.70(g) of the consolidated permit program regulations. This credit is available only under certain circumstances, e.g., where the intake source is the same body of surface water (as opposed to a well, piped-in supply or other source) that receives the discharge for which the credit is sought. Another factor tending to reduce the total number of influent analyses is that plants with many outfalls generally have only one source of surface water influent (e.g., a single adjacent stream or lake). In light of the above considerations, the Agency has estimated that one half of all applicants will sample and analyze one intake point.

Based on the number of dischargers, tested intakes, process wastewater outfalls and nonprocess wastewater outfalls summarized above, Table IX sets forth subtotals and totals of all the costs imposed by the regulations over the next five years.

Table IX.—*Total Incremental Costs of Proposed Application*

	Group I dischargers		Group II dischargers		Total
	Major	Minor	Major	Minor	
Cost of sampling and analyzing for organic toxics	$84,600,000	$33,600,000	0	0	$78,440,000
Incremental cost of sampling and analyzing for pollutants other than organic toxics	3,000,000	7,140,000	$1,374,000	$16,232,000	27,746,000
Incremental reporting cost					16,994,000
Total incremental cost					123,139,000

The total incremental cost of complying with the proposed application requirements is approximately $123 million. The annualized cost (spreading the application costs over the five year duration of NPDES permits) is approximately $24.6 million per year.

While most small businesses subject to the NPDES program will be minor dischargers sustaining minimal reporting burdens, some will have highly toxic, variable or complex discharges which will increase the difficulty of preparing applications. While the Agency has concluded that these application requirements will not force closures (see section VII–D below), certain small businesses may find the proposed requirements burdensome. As described in section IV of this preamble, the Agency has sought to minimize burdens consistent with the requirements of the CWA (particularly the 1977 amendments). Comments are solicited on how reporting requirements for small businesses may be reduced without sacrificing the objectives and requirements of the CWA.

D. *Economic Impacts Upon Selected Industries*

The Agency conducted an analysis of the economic impact of the revised application reporting requirements upon Group I dischargers with process wastewater discharges (upon whom the chief burden of the new requirements fall). The analysis focused primarily on those facilities which will be most affected: Marginal, small volume facilities in Group I industries. The analysis was conducted for five industries—leather tanning, wood preserving, electroplating, foundries, and iron and steel. The first four industries were selected because many of the plants are small and thus more sensitive to newly imposed cost burdens than other industries. The iron and steel industry was selected to examine the analytical costs of a typical plant which contains a large number of process wastewater outfalls, resulting in correspondingly large analytical costs. No industry was discovered which consisted predominantly of small firms with more than one process wastewater outfall.

Costs vary significantly from plant to plant depending on the number of outfalls at a particular plant. The combined analytical and reporting costs for a plant with one process wastewater outfall will be small, on the order of $5,000, while the cost to a steelmaking facility with 10 process wastewater outfalls may be as high as $25,000.

The impact on prices, profits, and plant closures should be small for most industries although impacts may be significant in individual cases. The key economic indicators that were examined to estimate economic impacts are the ratios of testing costs to sales, to profits, and to total pollution control investment. The ratio of testing cost to sales indicates impact on price increases while the ratio of testing cost

to profit provides a rough indication of impact on profits and even closures. Table X summarizes the results for average small plants in each industry analyzed during the year that the permit application is submitted.

Table X.—*Economic Impacts of Testing Costs*

(figures in percentages)

Industry	Ratio of testing costs to—		
	Sales	Profits	Pollution control cost
Small tanneries	0.11	6	1.4
Wood preservers	3	N/A	0.7
Electroplaters (1–4 person job shops)	5.6	70	N/A
Foundries (10 person shops)	2	40	N/A
Iron and Steel	N/A	N/A	1–2

The economic data for the leather tanning, wood preserving, and foundry industries were obtained from economic impact analyses which have been or which are being prepared in support of forthcoming BAT effluent guidelines. Data for the steel and electroplating industries were taken from an earlier estimate developed when BPT guidelines and secondary treatment guidelines respectively were promulgated. The data is the best which the Agency currently has at its disposal.

One shortcoming of the Agency's data and analysis is the inability to separate direct dischargers from indirect dischargers in most of the industries. Since our data base includes direct dischargers and the data indicates a possible impact on some small dischargers, the Agency decided to use this data in its analysis. Economic impacts will be overstated since many small facilities are not direct dischargers, and thus are not subject to NPDES requirements. In addition, many small facilities do not discharge process wastewater, and thus are not affected by these application requirements. The Agency requests additional information of economic impacts on small facilities, and on alternatives for minimizing these impacts.

1. *Leather Tanning Industry.* In 1977, the leather tanning industry consisted of 400 plants, of which 186 had effluent discharges. Of these, only 18 were direct dischargers; 170 were indirect dischargers. All but a few of these dischargers have only one process wastewater outfall. The average value of sales per establishment was about $3.5 million in 1977. The pretax return on sales has varied between 4.5 and 6.5 percent over the last several years. The direct dischargers are considerably larger than the average plant in the industry. For example, a small cattlehide chrome tannery has sales of $5 million. Although the new BAT guidelines have not yet been promulgated, it appears that BAT investment costs for this plant will be between $350,000 and $450,000. In this context, the application cost is small when viewed against either sales (0.11%) or BAT investment costs (1.4%). These percentages decrease significantly for larger facilities with sales of $16 million and BAT investment costs of about $675,000.

The effect on profits will be more noticeable. After-tax profits will be reduced by about 6 percent for a small tannery during the year that the permit application is submitted. Larger tanneries will be affected much less, with a profit reduction of about 1.5 %, although profit reductions are smaller by a factor of five if the application costs are spread over a five-year period. In all cases, the costs of waste stream testing will not affect the Agency's preliminary analysis for its forthcoming effluent guidelines that all existing direct discharges for the leather tanning industry are financially viable and should not close as a result of environmentally related expenditures.

2. *Wood Preserving Industry.* The wood preserving sector of the timber products processing industry contains only one direct discharger; thus the impact of the new requirements on this sector is slight. However, the Agency has developed considerably more economic data on this industry than for other similarly sensitive industries. Therefore, the Agency has studied the impact which the new reporting requirements would have upon wood preservers if they were direct dischargers. This analysis will serve with the foundry and electroplater analyses as an indication of the impact of the testing requirements upon small direct dischargers in other industries for which economic data bases are not as fully developed by the Agency.

The wood preserving industry also provides a good example of the impact of the testing requirements on a potential closure candidate. The industry has one highly vulnerable plant, based on a survey conducted in preparation of the Agency's BAT effluent guidelines. The testing costs for that plant are about 30% of sales and actually exceed expected profits. However, the testing costs are about 0.7% of the cost of pollution control investment. Thus, the dominant investment decision is whether to install the pollution control equipment, not whether to test the waste stream for toxic pollutants. On the other hand, these decisions are somewhat independent because the testing costs must be incurred at an earlier time and because business loans are less likely to be available to finance testing costs.

3. *Electroplating Industry.* The electroplating industry has a large number of small facilities. The average value of sales was $650,000 per establishment in 1977. According to a job shop survey which the Agency performed in 1977, 40% of the 3,000 job shops covered by Agency regulations were facilities with one to four employees. 90% of these discharge to POTW's. Since we were not able to separate indirect from direct dischargers, the assumption was made that direct dischargers are distributed among the different size groups in similar proportions to indirect dischargers. Based on a limited survey, it was concluded that average sales of facilities with one to four employees are about $89,000 while average profits are about $7,000. The application cost is thus about 5.6% of sales and 70% of profits for these small shops during the year that the permit application is submitted. Larger electroplaters will be affected much less, although there may also be significant impacts on sales and profits of some of the large facilities.

4. *Foundry Industry.* An analysis of the foundry industry also indicates that some smaller facilities may have difficulty absorbing the application cost. The Agency's financial data is only preliminary, but what is available shows that facilities with 10 or fewer employees (about 20% of the industry) have average sales of $250,000 and average profits of $12,400. The foundry industry is similar to the electroplating industry in that a large proportion (about 50%) of foundries discharge to POTW's, so that no application costs will be incurred for these facilities. Further, foundries with fewer than 10 employees rarely discharge process waste water, so that most facilities will not be required to test for toxic pollutants. Because of this, impacts are overstated, but for some of these smaller facilities, the application costs are about 2% of sales and 40% of profits during the year that the permit application is submitted.

5. *Steel Industry.* The Agency also examined the impact of the application form on the steel industry since some plants in the industry have a large number of process wastewater outfalls which must each be tested. Waste stream testing costs appear to be between 1 and 2% of BAT pollution control investment for a steel making

facility with 20 process waste water outfalls. Note that this is a worst case assumption; almost all steel facilities have less than ten process waste water outfalls, and most have three or less. Waste stream testing costs relative to pollution control should not be a significant factor in either plant closings or price increases in the industry, but the cost of waste stream testing could place a burden on small marginal facilities with numerous process wastewater outfalls.

The Agency is actively seeking information to more accurately characterize the overall sales, profits, pollution control investments, and typical numbers of process wastewater outfalls at plants in order to more accurately project impacts for the industries examined above. We also seek additional information on availability of loans to businesses to help finance testing costs, and on the aibility of applicants to pass through these costs.

The Agency also invites comments and data on the impacts of the testing requirements on industries other than those discussed above:

E. Impact of Reporting Requirements Upon Independent Laboratory Capability

Several commenters upon the August 21, 1978 proposed NPDES regulations suggested that the analytical requirements to implement the NPDES strategy would exceed laboratory capacity. The comments referred specifically to capacity to perform GC/MS analysis, since GC/MS is a fairly recent technological development. The Agency has investigated this matter and concluded that laboratory GC/MS capacity be sufficient to meet expected demand. However, current supply appears to be tight, and some delays in obtaining analytical services from laboratories may occur.

The application will require analysis by either quantitative GC/MS (for which we are assuming two runs through the machine), or by qualitative GC/MS (one run) followed by quantitative GC. Since the number of process wastewater outfalls and intakes to be tested for the Group I applicants is estimated to be 17,433, the number of GC/MS runs should be somewhere between 17,000 and 35,000. Analysis of the permit expiration dates for the Group I applicants indicates that the majority of GC/MS tests will be performed between October 1979 and December 1980. The average demand rate for GC/MS tests is projected to be between 1200 and 2300 analyses per month over this period.

Current laboratory experience indicates that a GC/MS instrument can perform at least 20 sample analyses per month on single shifts and 40 per month on double shifts. A recent manufacturer's survey of available laboratories identified 98 GC/MS systems in 55 laboratories which are capable of performing the required analyses. Current laboratory capacity potential thus appears to be about 2,000 analyses per month on a single shift basis and 4,000 analyses per month on a double shift basis. This capacity is in addition to the in-house GC/MS capacity which many industries and universities have for research and other purposes.

Thus, existing capacity exceeds expected demand. Further, some growth can be anticipated; GC/MS capability in service laboratories has doubled over the past two years. This swift increase is also a reflection of how easily additional laboratory capacity can become available to meet demand.

Thus, sufficient capacity appears to exist, especially if the existing equipment is used on a double shift basis. The Agency solicits comments on the current availability of laboratories with GC/MS capability and on the level of capacity growth which may occur over the next few years.

VIII. Miscellaneous Cost Estimates for Reporting Which is Not Required By Proposed Requirements

A. Optional Application Reporting of Hazardous Substance Discharges

Reporting of section 311 hazardous substances is optional; only those seeking exemptions from the requirements and penalties of section 311 will analyze or estimate levels of discharges of these substances. Although such reporting is not required by the proposed application requirements, the Agency has considered the associated costs to provide applicants with an estimate of what such optional reporting will cost.

The Agency has designated 299 hazardous substances (40 CFR Part 117, published at 43 FR 10474, March 13, 1978 and at 44 FR 10022, February 16, 1979). Many of these are also listed under section 307(a) as toxic pollutants. Since proposed § 122.64(d)(16) will require toxic pollutants to be analyzed and reported by all applicants who are likely to have such pollutants in their waste streams, it is assumed for this analysis that no incremental costs from the section 311 exemption option will result with respect to hazardous substances on the toxic pollutants list.

The remaining hazardous substances include many substances which dissociate into ions in water. Of these ions, all but about thirty will be required to be reported by proposed § 122.64(d)(16). If an applicant sought an exemption for all of the remaining thirty ions, the incremental cost for sampling and analysis would be approximately $150.

Seventy-four hazardous substances are not on the toxics list and do not dissociate. Virtually all of these are organics and may be analyzed by GC and GC/MS techniques. For the purpose of analytical cost estimation, the Agency assumes that these substances will be present at significant levels only in the process wastewater discharges from Group I industries.

Thirty-six of the 74 hazardous substances may be analyzed by straightforward extension of the GC/MS protocol which will be proposed in the near future. Significant modifications (e.g. chromatographic column changes or extraction solvent changes) might be required in order to analyze the remaining 38 compounds by the GC/MS method.

Also, 45 of the 74 compounds may be effectively decomposed during conventional secondary biological treatment and 7 more compounds are likely to be effectively removed from the effluent during secondary treatment by adsorption onto other materials. (Only 13 of the compounds which are not decomposed or adsorbed during secondary treatment cannot be detected by the GC/MS method.) A large percentage of industrial dischargers met BPT by installation of some form of conventional biological treatment, so the prospects that these substances will appear in an effluent meeting BPT permit limits due to unanticipated, but routine, low-level sources appear to be low. The Agency is therefore assuming that most applicants will not analyze for all hazardous substances, especially since estimates are acceptable for these substances in the application form. Rather, the discharger most likely will analyze for a few materials known to be involved in some phase of its operations plus an even smaller number of suspected low-level contaminants.

By rough analogy to the average of 5 toxic pollutants found in process wastewater outfalls from primary industries (although the number found has ranged up to 50 in some cases), the Agency is assuming that an industrial discharger may suspect that an average of 3 of the non-dissociated hazardous substances and 4 of the dissociated ions may be present in a given effluent and

elect to analyze for them in order to seek an exemption from section 311 liabilities.

The discharger may analyze for the non-dissociated pollutants by using either GC or GC/MS techniques. The use of quantitative GC methods for 3 pollutants at a cost of $75 per pollutant leads to an overall cost of $225. If the suspected pollutants are among those analyzable by the GC/MS method, the added cost should be no more than 10% greater than that for the organic toxic pollutants because the additional analysis can be done at the same time. The total projected analytical cost for the organic toxics required to be analyzed by the application form plus the additional non-dissociated hazardous substances is about $2,200 per sample, using quantitative GC/MS. The incremental cost of analyzing for the hazardous substances (including ions) is about $300.

Since sampling for the hazardous substances will also usually be conducted in conjunction with sampling for the organic toxic pollutants, the Agency projects little or no incremental sampling cost for the hazardous substances.

If it is assumed that one half of Group I dischargers test their process waste water outfalls for hazardous substances and that one half of these also test their intakes in order to obtain credit under § 122.70(g), the optional reporting of hazardous substances will result in a total incremental analytical cost of $3,715,000.

Some additional reporting costs will also be incurred by these applicants, which have been included in section VII–B above.

The Agency has begun to examine the incremental treatment costs for those seeking to comply with section 402 and avoid section 311 liability. Preliminary investigation indicates that, in the majority of cases, the same treatment used to control the toxic pollutants in a particular discharge will also be capable of controlling the hazardous pollutants in that discharge. In such cases, the incremental treatment costs for the hazardous substance would be insignificant. When the hazardous substance regulations which were proposed on February 18, 1979 are finally promulgated, they will contain an expanded discussion of these incremental treatment costs.

B. *Compliance Monitoring Costs*

As mentioned in the discussion on monitoring (section VI above), no specific compliance monitoring requirements are set forth in either the NPDES program regulations promulgated on June 7, 1979 or in the regulations proposed today. However, it is anticipated that the new emphasis on toxics will result in new permit requirements to periodically monitor for certain toxic pollutants. Even where indicator pollutants are used to regulate toxic pollutants, occasional waste characterizations will generally be useful to insure the proper control of toxic pollutants and to support the application-based limit of § 122.66(a)(2).

It is not possible to predict the extent to which permit writers will require monitoring of toxics in permits. This monitoring will be required on a case-by-case basis and will depend largely on the nature of the permittee's waste stream (especially as revealed by the data reported in the application).

If it is assumed that all Group I majors are issued permits requiring annual organic toxics monitoring as described above and that one-half of these permittees monitor one intake each in order to obtain credit under § 122.70(g), then the total incremental annual monitoring cost will be $24,806,5000 ($4500 times 4150 process wastewater outfalls and 1383 intakes).

Note.—Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A–107 require the preparation of economic impact statements for major regulations, defined as those with incremental annual impacts exceeding one hundred million dollars. As demonstrated in this preamble, the Environmental Protection Agency has examined costs and economic impacts as part of its decision-making process. It has determined, based on this analysis, that this document does not constitute a major regulation requiring the preparation of a separate economic impact statement. However, it believes that the detailed analysis contained in section VII of this preamble complies with the spirit and purpose of the executive orders and OMB circular.

Dated: June 4, 1979.

Douglas M. Costle,
Administrator.

PART 122—THERMAL DISCHARGES

§ 122.64 [Amended].

1. Section 122.64 is amended by renumbering paragraphs (d), (e), (f), and (g) as (e), (f), (g), and (h), respectively, and by adding a new paragraph (d) as follows:

* * * * *

(d) Existing manufacturing, commercial, mining, and silvicultural dischargers applying for NPDES permits shall provide the following information to the Director, using the application form provided by the Director:

[*Comment*—Permit application requirements for POTW's, new sources and new dischargers will be developed and proposed for addition to this paragraph at a future date.]

(1) Name, address, and telephone number of the applicant and the facility for which the application is submitted, if different.

(2) Identity and telephone number of applicant's authorized agent for the facility.

(3) Type of facility ownership (e.g. State, Federal, private).

(4)Up to four SIC codes which best reflect the principal products or services provided by the facility.

(5) A brief description of the nature of the business.

(6) A listing of all permits or construction approvals received or applied for under any of the following permit programs:

(i) NPDES permit program.

(ii) Underground injection control (UIC) permit program.

(iii) Hazardous waste permit program.

(iv) Prevention of significant deterioration (PSD) permit program.

(v) Air new source—nonattainment permit program.

(vi) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval.

(vii) Ocean dumping permits.

(viii) Other relevant environmental permits, including State permits.

(7) A topographic map depicting the facility and each of its intake and discharge structures, each of its hazardous waste treatment, storage, or disposal facilities, each well where fluids from the facility are injected underground, and all known wells, springs, and surface water bodies in the area. The topographic map shall extend to at least one mile beyond the property boundaries of the source.

(8) The average and maximum daily rate of production or material used where applicable effluent guideline limitations promulgated under section 304 of the CWA are based on products, raw materials, or some other measure of operation. The units reported must be consistent with the units used in the applicable effluent guideline, and the data reported must reflect the actual operation of the plant as required by § 122.70(a)(2).

(9) A line drawing of the water flow through the facility indicating each source of intake water, each process, operation, or production area contributing to each discharge, and each treatment unit in place. A water balance must be indicated on the line drawing, showing intake and discharge flows, and

losses to process, atmosphere, or elsewhere.

(10) A listing of the average and maximum flows contributed by each type of waste stream to each outfall (including, but not limited to, sewage, noncontact cooling water, process wastewater, and storm runoff).

(11) A description of discharges which do not occur from an outfall and which contain toxic pollutants listed under section 307(a) or hazardous substances listed under section 311 which are or may be discharged as a result of unchanneled plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage. The description of such discharges shall include the source of the discharge, the estimated flow of the discharge, the receiving water, an identification of the toxic or hazardous pollutants, and estimated concentrations of each such pollutant.

(12) If the discharges described in subparagraphs (d) (10) and (11) are not continuous as defined in § 122.70(c), a description of the volume and frequency of each discharge occurrence (except for storm runoff and spillage or leaks).

(13) A copy of the applicant's Best Management Practices Plan, as required by § 125.104(c).

(14) For each outfall, a description of each process, operation, or production area which contributes to the effluent and a description of the treatment the resulting effluent receives.

(15) A description of any compliance schedules to which the facility is subject for construction, upgrading or operation of waste treatment equipment, including identification of abatement schedules, a description of each project, and a description of the present status of compliance with the schedule.

(16) A description of pollutant characteristics of the effluent discharged from outfalls (and the intake water where credit is desired under § 122.70(g) for pollutants present in the intake) as follows:

(i) for every applicant, quantitative data collected in accordance with analytical methods specified in 40 CFR Part 136 for every outfall for the following pollutants:

Biochemical Oxygen Demand (BOD_5).
Temperature (both winter and summer)
Chemical Oxygen Demand
Total Organic Carbon
pH
Total Suspended Solids
Total Cyanide
Total Phenols (4AAP)
Total Kjeldahl Nitrogen (as N)(TKN).

(ii) In addition, for all applicants in all industrial categories listed in Appendix A to this part and for all applicants in the asbestos industry (SIC 3292 and 3293) and in the ferroalloys industry (SIC 3313), quantitative data collected in accordance with analytical methods specified in 40 CFR Part 136 for all outfalls containing process wastewater for all pollutants on the section 307(a) list of toxic pollutants, except for cyanide, asbestos, and 2,3,7,8, Tetrachlorodibenzo-p-dioxin (TCDD).

(iii) In addition, for every applicant, data collected in accordance with analytical methods specified in 40 CFR Part 136 or on the basis of the applicant's best estimate for every outfall for the following pollutants:

Ammonia (as N), Asbestos, Barium, Total, Boron, Total, Bromide, Chlorine, Total Residual, Color, Fecal Coliform, Fluoride, Nitrate (as N), Nitrite (as N), Oil and Grease, Phosphorus (as P), total, Radioactivity, Sulfate (as SO_4), Sulfide (as S), Sulfite (as SO_3), Surfactants, Aluminum, Total, Cobalt, Total, Iron, Total, Magnesium, Total, Molybdenum, Total, Manganese, Total, Tin, Total, Titanium, Total.

2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)

Any pollutant specified in paragraph (d)(16)(ii) of this section for all waste streams not required to be tested by that subparagraph. Any pesticide not required to be tested elsewhere by this paragraph for which an analytical method is specified in 40 CFR Part 136.

(iv) The name, address, and telephone number of each contract laboratory or consulting firm which performed any of the analyses required by this subparagraph.

(17) A description and a summary of results of biological monitoring tests, if any, which have been conducted within the last five years upon the discharge or upon the receiving water in relation to the facility.

(18) A description of any additional data of which the permittee is aware concerning the presence or levels in its discharges of any pollutants which are in addition to those pollutants reported under paragraphs (d)(11) and (d)(16) of this section.

(19) At the applicant's option, information required by 40 CFR 117.12(b)(2)(i) to obtain exclusions from the requirements and penalties of section 311 of the CWA.

(20) Such other information as the Director may require to assess the discharges of the facility and to determine whether to issue an NPDES permit.

[*Comment*—Such additional information may include biomonitoring tests to assess the relative toxicity of discharges to fish and other aquatic life, and requirements to determine the cause of such toxicity].

* * * * *

§ 122.66 [Amended].

2. Section 122.66 is amended by deleting the comment following paragraph (a) and by revising paragraph (a) to read as follows:

(a) (1) No permittee shall discharge any pollutant at a level which exceeds any specific permit limitation for that pollutant.

(2) Except as provided in § 122.66(a)(3), if a permittee has reported or has been required to report the level of any pollutant concentration in its application and the permit does not specifically limit that pollutant, discharges of that pollutant shall be limited to:

(i) Five times the average value reported in the application; or

(ii) If the pollutant was not detected or not reported as required, five times the highest of the following concentrations:

(A) Ten micrograms per liter;

(B) The detection limit (or lowest appropriate concentration) specified in the applicable analytical method specified in 40 CFR Part 136; or

(C) A detection limit for the applicable analytical method as determined by the permittee. For the purposes of this paragraph, the detection limit shall be the lowest concentration with a signal-to-noise ratio of five to one or less, in accordance with any generally accepted procedure for determining the level of background noise. The determination of this detection limit may be based on either a laboratory standard or an individual sample.

[*Comment*—The level of background noise is measured as the net difference in instrument response between the highest and lowest peaks in the baseline response of the instrument. The instrument's baseline is found where there is nothing causing an overall increase or decrease in instrument response. The level of signal is measured as the net response above the median baseline level.]

(3)(i) For the purposes of § 122.66(a)(2), an applicant may apply to the Director for application-based limitations reflecting a factor other than five. Each such application shall include the following:

(A) Ten 24-hour composite samples analyzed for the pollutant in accordance with methods specified in 40 CFR Part 136;

(B) An appropriate statistical analysis providing an upper 99% confidence bound for the concentration of each pollutant of concern; and

(C) such other data as may be required to determine the variability of the pollutant in an effluent.

(ii) Each such demonstration shall be submitted within 180 days following the date of submission of an NPDES application form. Prior to the Director's approval of any factor other than five, the requirements of § 122.68(a)(2) shall apply.

* * * * *

§ 122.70 [Amended].

3. Section 122.70 is amended by revising paragraph (c)(1) to read follows:

* * * * *

(c) * * *

(1) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works (although limitations established under § 122.68(a) (2) and (3) shall apply only as a maximum daily discharge limitation; and

* * * * *

§ 122.70 [Amended].

4. Section 122.70 is amended by revising paragraph (d) by replacing the period at the end of paragraph (d)(2) with "; or", and by adding a new paragraph (d)(3) to read as follows:

* * * * *

(d) * * *

(3) Limitations established by §§ 122.68(a) (2) and (3), which shall be applied on the basis of concentration.

* * * * *

§ 122.71 [Amended].

5. Section 122.71 is amended by revising paragraph (a)(1) to read as follows:

(a) * * *

(1) The amount, concentration, or other measurement specified in § 122.70 for each pollutant specified in the permit, including, where additional monitoring is specified in the permit, pollutants limited under § 122.68(a)(2);

* * * * *

PART 123—STATE CERTIFICATION OF ACTIVITIES REQUIRING A FEDERAL LICENSE OR PERMIT

§ 123.73 [Amended].

6. Section 123.73 is amended by revising paragraph (a) to read as follows:

* * * * *

(a) Section 122.64 (d), (f), (g)—(Applications for permits and variances);

* * * * *

PART 125—NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

§ 125.3 [Amended].

7. Section 125.3 is amended by adding new paragraphs (c)(4) and (g) to read as follows:

* * * * *

(c) * * *

(4) Limitations developed under paragraph (c)(2) of this section may be expressed, where appropriate, in terms of toxicity (e.g. "Permittee's LC_{xx} shall not be less than X": *Provided* That it is shown that the limits reflect the application of the appropriate technological or other standard as required by section 301(b) of the CWA.

* * * * *

(g) The Director may set a permit limit for a conventional pollutant at a level more stringent than the best conventional pollutant control technology (BCT), or a limit for a nonconventional pollutant, which limit shall not be subject to modification under section 301 (c) or (g) of the CWA where:

(1) Effluent limitations guidelines specify the pollutant as an indicator for a toxic pollutant; or

(2)(i) The limitation reflects BAT-level control of discharges of one or more toxic pollutants which are present in the waste stream, and a specific BAT limitation upon the toxic pollutant(s) is not feasible for economic or technical reasons;

(ii) The permit identifies which toxic pollutants are intended to be controlled by use of the limitation; and

(iii) The statement of basis or fact sheet required by § 124.8 or § 124.9 sets forth the basis for the limitation, including a finding that compliance with the limitation will result in BAT-level control of the toxic pollutant discharges identified in subparagraph (2) of this paragraph and a finding that it would be economically or technically infeasible to directly limit the toxic pollutant(s).

[*Comments.*—Toxic pollutants identified under this subparagraph remain subject to the application-based limits of § 122.68(a)(2). The authority of this paragraph is in addition to that established by sections 208(e), 301(b)(1)(C), 302, 401, and 510 of the CWA.]

[FR Doc. 79-18288 Filed 6-13-79; 8:45 am]
BILLING CODE 6560-01-M

Thursday
June 14, 1979

Federal Register

Part IV

National Transportation Safety Board

Transportation Accidents; Investigations, Hearings and Reports

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Parts 831 and 845

Investigations, Hearings and Reports on Transportation Accidents/Incidents

AGENCY: National Transportation Safety Board.

ACTION: Final Rule.

SUMMARY: Part 831 of the Board's Rules of Practice is revised to limit its scope to aircraft accident/incident investigation procedures. In order to accomplish that change, Subparts C, D and E of Part 831 have been removed from that Part and relocated in Subparts B, C, and D of Part 845. As revised, Part 845 contains a common set of rules for accident/incident hearings and reports applicable to both aircraft and surface accidents/incidents.

EFFECTIVE DATE: June 14, 1979.

FOR FURTHER INFORMATION CONTACT: Fritz L. Puls, General Counsel, National Transportation Safety Board, 800 Independence Avenue, S.W., Washington, D.C. 20594, 202-472-6033.

SUPPLEMENTARY INFORMATION: Part 831 presently contains the Board's rules applicable to aircraft accident investigations, including the field investigation, public hearings, and Board reports. Part 845 contains the Board's rules for surface transportation accident hearings. The Board has concluded that it should have one set of rules for all of its accident hearings and reports. To this end, the provisions of Subparts C, D, and E of Part 831 have been combined with Part 845 in revised Part 845.

Nearly all of the changes in existing language are made for the purpose of clarification. The current provisions of Subpart B of Part 831, Field Investigation, will be retained with minor modifications and be the single subject of revised Part 831. The regulation will be applicable to both the investigation of accidents and incidents. Revised § 831.9, Parties to the field investigation, now makes it clear that designations, if made, are limited to those types of organizations listed therein. By the insertion of a note, it is emphasized that passengers and insurers (in air transportation) are not eligible to be parties to a field investigation. In time, when surface field investigation procedures become more standardized, it is anticipated that Part 831 will be amended to include references to the other modes of transportation.

The only new provision included in revised Part 845 is found in Subsection D, namely, § 845.23 concerning prehearing conferences. The Board recognizes that surface accidents may on occasion require expedited hearings. In such situations, all the requirements concerning availability of exhibits, witness lists, and areas of questioning may not be available at the time of the prehearing conference. Authority is therefore granted the Chairman of the Board of Inquiry for an expedited hearing to modify, as appropriate, such requirements.

Because these amendments relate solely to corrections and minor procedural matters, the Board has found that notice and public procedure thereon are unnecessary.

Accordingly, Parts 831 and 845 of Title 49 of the Code of Federal Regulations are amended, effective June 14, 1979, as follows:

1. By revising Part 831 to read as follows:

PART 831—AIRCRAFT ACCIDENT/INCIDENT INVESTIGATION PROCEDURES

Sec.

831.1 Applicability of part.
831.2 Responsibility of Board.
831.3 Authority of Director.
831.4 Nature of investigation.
831.5 Request to withold information.
831.6 Right of representation.
831.7 Investigator-in-charge.
831.8 Authority of Board representatitves.
831.9 Parties to the field investigation.
831.10 Access to and release of aircraft wreckage, records, mail, and cargo.
831.11 Flow and dissemination of accident information.
831.12 Recommendations.

Authority: Title VII, Federal Aviation Act of 1958, as amended, 72 Stat. 781, as amended by 76 Stat. 921 (49 U.S.C. 1441 et seq); and the Independent Safety Board Act of 1974, Pub. L. 93-633, 88 Stat. 2166 et seq. (49 U.S.C. 1901 et seq.).

§ 831.1 Applicability of part.

Unless otherwise specifically ordered by the National Transportation Safety Board (Board), the provisions of this part shall govern all aircraft accident or incident investigations, conducted under the authority of Title VII of the Federal Aviation Act of 1958, as amended, and the Independent Safety Board Act of 1974. Rules applicable to aircraft accident hearings and reports are set forth in Part 845.

§ 831.2 Responsibility of Board.

(a) The Board is responsible for the organization, conduct and control of all accident investigations involving civil aircraft, or civil and military aircraft, within the United States, its territories and possessions. It is also responsible for investigation of accidents which occur outside the United States, and which involve U.S. civil aircraft or civil and military aircraft, at locations determined to be not in the territory of another state (i.e., in international waters).

(b) Certain field investigations are conducted by the Federal Aviation Administration (FAA), pursuant to a request to the Secretary of the Department of Transportation, effective February 10, 1977 (see appendix to Part 800 of this chapter),[1] but the Board determines the probable cause of such accidents. Under no circumstances shall investigations conducted by the Board be considered joint investigations in the sense of sharing responsibility. However, in the case of an accident or incident involving civil aircraft of U.S. registry or manufacture in a foreign state which is a signator to Annex 13 to the Chicago Convention of the International Civil Aviation Organization, the state of occurrence is responsible for the investigation. If it occurs in a foreign state which is not bound by the provisions of Annex 13 to the Chicago Convention, the conduct of the investigation shall be in consonance with any agreement entered into between the United States and the foreign state.

§ 831.3 Authority of Director.

The Director, Bureau of Accident Investigation, subject to the provisions of § 831.2, may order an investigation into any accident or incident involving a civil aircraft.

§ 831.4 Nature of investigation.

Aircraft accident or incident investigations are conducted by the Board in order to determine the facts, conditions, and circumstances relating to each accident or incident and the probable cause thereof and to ascertain measures which will best tend to prevent similar accidents or incidents in the future. The investigation includes the field investigation, report preparation, and, where ordered, the public hearing.

§ 831.5 Request to withhold information.

Any person may make written objection to the public disclosure of information contained in any report or document filed, or of information obtained by the Board, stating the grounds for such objection. The Board,

[1] The authority of a representative of the Federal Aviation Administration during such field investigations shall be the same as that of a Board investigator under this part.

on its own initiative or if such objection is made, may order such information withheld from public disclosure when, in its judgment, the information can be withheld under the provisions of an exemption to the Freedom of Information Act (Pub. L. 93-502, amending 5 U.S.C. 552) and its release is not found to be in the public interest (see Part 801).

§ 831.6 Right of representation.

Any person interrogated by an authorized representative of the Board during the field investigation shall be accorded the right to be accompanied, represented, or advised by counsel or by any other duly qualified representative.

§ 831.7 Investigator-in-charge.

The designated investigator-in-charge organizes, conducts, and controls the field phase of investigation. He shall assume responsibility for the supervision and coordination of all resources and of the activities of all personnel, both Board and non-Board, involved in the onsite investigation.

§ 831.8 Authority of Board representatives.

Upon demand of an authorized representative of the Board and presentation of credentials issued to such representative, any Government agency, air carrier, airman, or person engaged in air commerce or in any phase of aeronautics, and any other person having possession or control of any aircraft, aircraft engine, propeller, appliance, air navigation facility, equipment or any pertinent records and memoranda, including all documents, papers, and correspondence now or hereafter existing and kept or required to be kept, shall forthwith permit inspection, photographing, or copying thereof by such authorized representative for the purpose of investigating an aircraft accident, overdue aircraft, study, or investigation pertaining to safety in air navigation or the prevention of accidents. Authorized representatives of the Board may interrogate any person having knowledge relevant to an aircraft accident/incident, overdue aircraft, study, or special investigation.

§ 831.9 Parties to the field investigation.

(a) The investigator-in-charge may, on behalf of the Director, Bureau of Accident Investigation, designate parties to participate in the field investigation. Parties to the field investigation shall be limited to those persons, Government agencies, companies, and associations whose employees, functions, activities, or products were involved in the accident or incident and who can provide suitable qualified technical personnel to actively assist in the field investigation.

(b) Participants in the field investigation shall be responsive to the direction of the appropriate Board representative and may be relieved from participation if they do not comply with their assigned duties or if they conduct themselves in a manner prejudicial to the investigation.

(c) No party to the field investigation designated under § 831.9(a) shall be represented by any person who also represents claimants or insurers. Failure to comply with this provision shall result in loss of status as a party.

(d) Section 701(g) of the Federal Aviation Act of 1958, as amended, provides for the appropriate participation of the Administrator in Board investigations. Thus, the FAA will normally be a party to field investigations and will have the same rights and privileges and be subject to the same limitations as other parties.

§ 831.10 Access to and release of aircraft wreckage, records, mail, and cargo.

(a) Only the Board's accident investigation personnel and persons authorized by the investigator-in-charge or the Director, Bureau of Accident Investigation, to participate in any particular investigation, examination or testing shall be permitted access to aircraft wreckage, records, mail, or cargo which is in the Board's custody.

(b) Aircraft wreckage, records, mail, and cargo in the Board's custody shall be released by an authorized representative of the Board when it is determined that the Board has no further need of such wreckage, mail, cargo, or records.

§ 831.11 Flow and dissemination of accident information.

(a) Release of information during the field investigation, particularly at the accident scene, shall be limited to factual developments, and shall be made only through the Board Member present at the accident scene, the representative of the Board's Office of Public Affairs, or the investigator-in-charge.

(b) All information concerning the accident or incident obtained by any personnel participating in the field investigation shall be passed to the investigator-in-charge, through appropriate channels. Upon approval of the investigator-in-charge, parties to the investigation may relay to their respective organization information which is necessary for purposes of prevention or remedial action. Under no circumstances shall accident information be released to, or discussed with, unauthorized persons whose knowledge thereof might adversely affect the investigation.

§ 831.12 Recommendations.

Any person, Government agency, company, or association whose employees, functions, activities, or products were involved in an accident under investigation may submit to the Board, prior to its determination of probable cause, recommendations as to the proper conclusions to be drawn from the evidence produced during the course of the accident investigation.

2. By revising Part 845 to read as follows:

PART 845—RULES OF PRACTICE IN TRANSPORTATION; ACCIDENT/INCIDENT HEARINGS AND REPORTS

Sec.

845.1 Applicability.
845.2 Nature of hearing.
845.3. Sessions open to the public.

Subpart A—Initial Procedure

845.10 Determination to hold hearing.
845.11 Board of inquiry.
845.12 Notice of hearing.
845.13 Designation of parties.

Subpart B—Conduct of Hearing

845.20 Powers of chairman of board of inquiry.
845.21 Hearing officer.
845.22 Technical panel.
845.23 Prehearing conference.
845.24 Right of representation.
845.25 Examination of witnesses.
845.26 Evidence.
845.27 Recommendations by parties.
845.28 Stenographic transcript.
845.29 Payment of witnesses.

Subpart C—Board Reports

845.40 Accident report.
845.41 Requests for reconsideration and modification.

Subpart D—Public Record

845.50 Public docket.
845.51 Investigation to remain open.

Authority: Sec. 304(b) of the Independent Safety Board Act of 1974, Pub. L. 93-633, 88 Stat. 2169 (49 U.S.C. 1903(b)).

§ 845.1 Applicability.

Unless otherwise specifically ordered by the National Transportation Safety Board (Board), the provisions of this part shall govern all transportation accident investigation hearings conducted under the authority of section 304(b) of the Independent Safety Board Act of 1974 (49 U.S.C. 1903(b)) and accident reports issued by the Board.

§ 845.2 Nature of hearing.

Transportation accident hearings are convened to assist the Board in determining cause or probable cause of an accident, in reporting the facts, conditions, and circumstances of the accident, and in ascertaining measures which will tend to prevent accidents and promote transportation safety. Such hearings are factfinding proceedings with no formal issues and not adverse parties and are not subject to the provisions of the Administrative Procedure Act (Pub. L. 89–554, 80 Stat. 384 (5 U.S.C. 554)).

§ 845.3 Sessions open to public.

(a) All hearings shall normally be open to the public (subject to the provision that any person present shall not be allowed at any time to interfere with the proper and orderly functioning of the board of inquiry).

(b) Sessions shall not be open to the public when evidence of a classified nature or which affects national security is to be received.

Subpart A—Initial Procedure

§ 845.10 Determination to hold hearing.

The Board may order a public hearing as part of an accident investigation whenever such hearing is deemed necessary in the public interest: *Provided* that if a quorum of the Board is not immediately available in the event of a catastrophic accident, the determination to hold a public hearing may be made by the Chairman of the Board.

§ 845.11 Board of inquiry.

The board of inquiry shall consist of a member of the Board who shall be chairman of the board of inquiry, a hearing officer, the Director of the Bureau of Accident Investigation, or his designee, and, where appropriate, the General Counsel or his designee. Assignment of a member to serve as the chairman of each board of inquiry shall be determined by the Board. The board of inquiry shall examine witnesses and secure, in the form of a public record, all known facts pertaining to the accident or incident and surrounding circumstances and conditions from which cause or probable cause may be determined and recommendations for corrective action may be formulated.

§ 845.12 Notice of hearing.

The chairman of the board of inquiry shall designate a time and place for the hearing which meets the needs of the Board. Notice to all known interested persons shall be given.

§ 845.13 Designation of parties.

(a) The chairman of the board of inquiry shall designate as parties to the hearing those persons, agencies, companies, and associations whose participation in the hearing is deemed necessary in the public interest and whose special knowledge will contribute to the development of pertinent evidence.

(b) No party shall be represented by any person who also represents claimants or insurers. Failure to comply with this provision shall result in loss of status as a party.

Subpart B—Conduct of Hearing

§ 845.20 Powers of chairman of board of inquiry.

The chairman of the board of inquiry, or his designee, shall have the following powers:

(a) To designate parties to the hearing and revoke such designations;

(b) To open, continue, or adjourn the hearing;

(c) To determine the admissibility of and to receive evidence and to regulate the course of the hearing;

(d) To dispose of procedural requests or similar matters; and

(e) To take any other action necessary or incident to the orderly conduct of the hearing.

§ 845.21 Hearing officer.

The hearing officer, upon designation by the Chairman of the Board, shall have the following powers:

(a) To give notice concerning the time and place of hearing;

(b) To administer oaths and affirmations to witnesses; and

(c) To issue subpenas requiring the attendance and testimony of witnesses and production of documents.

§ 845.22 Technical panel.

The Director, Bureau of Accident Investigation, shall designate members of the Board's technical staff to participate in the hearing and initially develop the testimony of witnesses.

§ 845.23 Prehearing conference.

(a) Except as provided in paragraph (d) of this section for expedited hearings, the chairman of the board of inquiry shall hold a prehearing conference with the parties to the hearing at a convenient time and place prior to the hearing. At such prehearing conference, the parties shall be advised of the witnesses to be called at the hearing, the areas in which they will be examined, and the exhibits which will be offered in evidence.

(b) Parties shall submit at the prehearing conference copies of any additional documentary exhibits they desire to offer. (Copies of all exhibits proposed for admission by the board of inquiry and the parties shall be furnished to the board of inquiry and to all parties, insofar as available at that time.)

(c) A party who, at the time of the prehearing conference, fails to advise the chairman of the board of inquiry of additional exhibits he intends to submit, or additional witnesses he desires to examine, shall be precluded from introducing such evidence unless the chairman of the board of inquiry determines for good cause shown that such evidence should be admitted.

(d) *Expedited hearings.* When time permits, the chairman of the board of inquiry may hold a prehearing conference. In the event that an expedited hearing is held, the requirements in paragraphs (b) and (c) of this section concerning the identification of witnesses, exhibits or other evidence may be waived by the chairman of the board of inquiry.

§ 845.24 Right of representation.

Any person who appears to testify at a public hearing shall be accorded the right to be accompanied, represented, or advised by counsel or by any other duly qualified representative.

§ 845.25 Examination of witnesses.

(a) Witnesses shall be initially examined by the board of inquiry or its technical panel. Following such examination, parties to the hearing shall be given the opportunity to examine such witnesses.

(b) Materiality, relevancy, and competency of witness testimony, exhibits, or physical evidence shall not be the subject of objections in the legal sense by a party to the hearing or any other person. Such matters shall be controlled by rulings of the chairman of the board of inquiry on his own motion. If the examination of a witness by a party is interrupted by a ruling of the chairman of the board of inquiry, opportunity shall be given to show materiality, relevancy, or competency of the testimony or evidence sought to be elicited from the witness.

§ 845.26 Evidence.

The chairman of the board of inquiry shall receive all testimony and evidence which may be of aid in determining the cause of accident. He may exclude any testimony or exhibits which are not pertinent to the investigation or are merely cumulative.

§ 845.27 Recommendations by parties.

Any party may submit proposed conclusions and recommendations to be drawn from the testimony and exhibits submitted at the hearing. Such recommendations shall be submitted within the time specified by the presiding officer at the close of the hearing, and shall be made a part of the public file. Parties to the hearing shall serve copies of such recommendations on all other parties to the hearing.

§ 845.28 Stenographic transcript.

A verbatim report of the hearing shall be taken. Copies of the transcript may be obtained by any interested person from the Board or from the court reporting firm preparing the transcript upon payment of the fees fixed therefor. (See Part 801, Appendix—Fee Schedule.)

§ 845.29 Payment of witnesses.

Any witness subpenaed to attend the hearing under this part shall be paid such fees for his travel and attendance as shall be certified by the hearing officer.

Subpart C—Board Reports

§ 845.40 Accident report.

(a) The Board will issue a detailed narrative accident report in connection with the investigation into those accidents which the Board determines to warrant such a report. The report will set forth the facts, conditions and circumstances relating to the accident and the probable cause thereof, along with any appropriate recommendations formulated on the basis of the investigation.

(b) The probable cause and facts, conditions, and circumstances of all other accidents will be reported in a manner and form prescribed by the Board.

§ 845.41 Requests for reconsideration or modification.

(a) Requests for reconsideration or modification of the Board's findings and determination of probable cause by parties to an investigation or hearing or other persons having a direct interest in the accident investigation will be entertained only if based on the discovery of new evidence or on a showing that the Board's findings, as to the facts, conditions, and circumstances of the accident, are erroneous. Such requests shall be in writing. Requests which are repetitious of recommendations made pursuant to § 845.27, or of positions previously advanced, and requests by parties to the hearing who fail to submit recommendations pursuant to § 845.27 will not be entertained. Any such requests based on the discovery of new matter shall: Identify the new matter; shall contain affidavits of prospective witnesses, authenticated documents, or both, or an explanation of why such substantiation is unavailable; and shall state why such new matter was not available prior to Board's adoption of its findings. Requests based on the claim of erroneous findings shall set forth in detail the grounds relied upon.

(b) If a request for reconsideration or modification is filed by a party to a hearing, designated under § 845.27, copies of such request and any supporting documentation shall be served on all other parties similarly designated.

Subpart D—Public Record

§ 845.50 Public docket.

(a) The public docket shall include all factual information concerning the accident. Recommendations submitted pursuant to § 845.27 by interested persons, and requests for reconsideration and modification submitted pursuant to § 845.41 and the Board's rulings thereon, shall also be placed in the public docket.

(b) The docket shall be established as soon as practicable following the accident, and material shall be added thereto as it becomes available. Where a hearing is held, the exhibits will be introduced into the record at the hearing.

(c) A copy of the docket shall be made available to any person for review at the Washington office of the Board. Copies of the material in the docket may be obtained, upon payment of the cost of reproduction, from the Public Inquiries Section, Bureau of Administration, National Transportation Safety Board, Washington, D.C. 20594.

§ 845.51 Investigation to remain open.

Accident investigations are never officially closed but are kept open for the submission of new and pertinent evidence by any interested person. If the Board finds that such evidence is relevant and probative, it shall be made a part of the docket and, where appropriate, parties will be given an opportunity to examine such evidence and to comment thereon.

Approved by the National Transportation Safety Board on June 5, 1979.

James B. King,

Chairman.

[FR Doc. 79-18077 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-58-M

NATIONAL TRANSPORTATION SAFETY BOARD

[49 CFR Part 830]

Proposed Limitation of Accident Reporting Requirements

AGENCY: National Transportation Safety Board.

ACTION: Extension of comment period.

SUMMARY: This action extends the time for filing comments on proposed amendments to Part 830 that would revise the Board's requirements for reporting aircraft accidents and incidents and certain other occurrences in the operation of aircraft, when they involve civil aircraft of United States registry. The extension is from the current July 2, 1979, deadline to August 3, 1979.

DATE: Comments must be received on or before August 3, 1979.

ADDRESS: Written comments may be submitted to the General Counsel, National Transportation Safety Board, 800 Independence Ave., S.W., Washington, D.C. 20594.

FOR FURTHER INFORMATION CONTACT: Fritz L. Puls, General Counsel, National Transportation Safety Board, 800 Independence Avenue, S.W., Washington, D.C. 20594. 202–472–6034.

SUPPLEMENTARY INFORMATION: On May 3, 1979, the Safety Board issued a notice of proposed rulemaking, 44 FR 25889, proposing to revise Part 830 of its rules pertaining to the notification and reporting of aircraft accidents or incidents and overdue aircraft. Proposed amendments to Part 830 included a change in the definition of the term "fatal injury," the inclusion of a definition of the term "incident," and the addition of five types of incidents for which the Board must receive notifications.

On May 11, 1979, the editor of *Business and Commercial Aviation*, a publication that serves the general aviation community, requested an extension of the comment period to August 3 in order to provide readers of the publication with information on the NPRM that would enable them to submit informed and meaningful comments. The editor pointed out that the copy lead time on many monthly publications is 30 days.

The Safety Board believes that a substantive interest in increasing the amount of informed public participation in this rulemaking effort has been shown and that the comment period should be extended to August 3 in order to benefit from that interest. The Board also believes that an extension of the comment period is consistent with the public interest.

Therefore, the period for submission of comments in response to the proposals at 44 FR 25889 is extended to August 3, 1979.

Approved by the National Transportation safety Board on June 5, 1979.

James B. King,
Chairman.

[FR Doc. 79-18578 Filed 6-13-79; 8:45 am]
BILLING CODE 4910-58-M

Thursday
June 14, 1979

Federal Register

Part V

Department of Energy

Procurement; Research and Development, Construction and Other Products and Services

DEPARTMENT OF ENERGY

41 CFR Ch. 9

Procurement of Research and Development, Construction and Other Products and Services.

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy establishes the Department of Energy Procurement Regulation (DOE–PR) as a final rule with this notice. The DOE–PR is a comprehensive body of regulations governing the Department's procurement of Research and Development, Construction and other products and services. The DOE–PR follows the Federal Procurement Regulations, implementing and supplementing them as necessary to accomplish the Department's mission. The DOE–PR applies as prescribed in § 9–1.004, thereof, except for those procurement actions in progress and too far along to permit implementation of these regulations.

This notice sets forth a summary of revisions to the DOE–PR as proposed on April 14, 1978 and announces the availability of the final DOE–PR. A copy of the DOE–PR has been filed with the Office of the Federal Register, and the full text will soon be published in *the Code of Federal Regulations* (CFR).

EFFECTIVE DATE: June 30, 1979.

ADDRESS: Please address requests for copies of the DOE–PR to Thomas Ruppert, Procurement Policy Branch (PR–211), Procurement and Contracts Management Directorate, Room 308 RB, 400 1st Street NW., Washington, D.C. 20585. Please mark "Request for DOE–PR," on the outside of the envelope.

FOR FURTHER INFORMATION CONTACT:

Thomas Ruppert, Procurement Policy Branch (PR–211), Policy and Procedures Division, Procurement and Contracts Management Directorate, Department of Energy, 400 1st Street NW., Washington, D.C. 20585, Room 308 RB, Telephone 202–376–1759.

Robert Forst, Office of General Counsel, AGC for Procurement, Germantown, Maryland, Department of Energy, Washington, D.C. 20545, Telephone 301–353–4394.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Statutory and Regulatory Requirements.
III. Availability of the Procurement Regulation.
IV. Summary, by Major Category, of the Public Comments Received and Responses Thereto.
V. Summary of Revisions to the DOE–PR As Proposed on April 14, 1978.

I. Background

Under Section 644 of the Department of Energy Organization Act (hereinafter referred to as the Act) (Pub. L. 95–91, 91 Stat. 565, 42 U.S.C. 7254), the Secretary of the Department is authorized to prescribe such procedural rules and regulations as he may deem necessary or appropriate to effectuate the functions vested in him. Additionally, public notice of such rules and regulations is required by the Act (42 U.S.C. 7191) in accordance with the Administrative Procedure Act, as amended (5 U.S.C. 551, et. seq.).

On April 14, 1978, the Department published in the Federal Register (43 FR 15853) the proposed Procurement Regulations in their entirety.

II. Statutory and Regulatory Requirements

Pursuant to Section 501 of the Department of Energy Organization Act (42 U.S.C. 7191) relating to the opportunity for oral presentations on proposed regulations, the Department has determined that no substantial issues of fact or law exists and that this procurement regulation is unlikely to have a substantial impact on the nation's economy, or large numbers of individuals or businesses, such as would warrant the oral presentation of views. This is so because the DOE–PR primarily follows the Energy Research and Development Administration Procurement Regulations (ERDA–PA), which were made effective in September 1977. The ERDA–PR has been the primary procurement regulation since the Department of Energy's activation on October 1, 1977 due to the fact that most of DOE's procurement activities are carried out to perform functions transferred from ERDA. One significant change is Subpart 9–1.54 of the DOE–PR entitled "Organizational Conflict of Interest," which has been revised in its entirety to conform to the Organizational Conflict of Interest final rule, published on Janurary 11, 1979 (44 FR 2556).

Approximately 130 public comments were received from nineteen organizations and/or individuals. Of these, only one requested an oral exchange of views. We believe that little purpose would be served by an oral exchange and that adequate public participation has been assured through the consideration of written comments.

Note.—The Department has determined that this regulation does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821, as amended, and OMB Circular A–107. The Department has also determined that the regulation will not affect the quality of the environment and that the requirements of section 7(c)(2) of the Federal Energy Administration Act of 1974, Pub. L. 93–275, does not apply.

The DOE–PR is not a significant regulation likely to have a major impact within the meaning of Department of Energy Order 2030, 12/18/78, paragraph 9, because, among other things, the regulation, modified as described herein, has essentially been in effect as the ERDA–PR to govern ERDA procurement functions transferred to DOE since activation of DOE on October 1, 1977. A major purpose of the DOE–PR is to extend regulatory coverage to the comparatively less extensive procurement activities transferred to DOE from agencies other than ERDA.

III. Availability of the Procurement Regulation

The Department of Energy will offer free distribution of the DOE–PR to all subcribers to the Federal Register who make application within 45 days of the date of publication of the notice in the Federal Register and to the general public at nominal cost. Federal Register subscribers should furnish their Federal Register mailing label along with their requests. Please address requests for copies of the DOE–PR to Thomas Ruppert, Procurement Policy Branch (PR–211), Procurement and Contracts Management Directorate, Room 308 RB, 400 1st Street NW., Washington, D.C. 20585. Please mark "Request for DOE–PR," on the outside of the envelope.

The Department of Energy has filed a full text copy of the DOE–PR with the Office of the Federal Register where it may be inspected or copied.

IV. Summary, by Major Category, of the Public Comments Received, and Responses Thereto

Approximately 130 comments were received on the proposed rulemaking from trade associations, industry, universities and other interested members of the general public. All comments received were categorized, reviewed and analyzed relative to their applicability and appropriateness for adoption. The distribution of the comments were generally as follows:

40% of the comments received were related to Part 9–50 and 9–15.50 "Operating and On-Site Service Contracts," and "Contract Cost Principles and Procedures."

35% of the comments received were related to Part 9–9 "Patents, Data and Copyrights."

The remaining 25% of the comments were spread over several parts.

The following is a summary of the major comments received in each of those categories and their disposition:

Part 9-50 and 9-15.50 "Operating and On-Site Service Contracts" and "Contract Cost Principles and Procedures":

Comment: 9-50.104(g) would require Government owned laboratories and other on-site contractors, to publicize proposed procurement actions of $100,000 and above in the Commerce Business Daily. The cost-effectiveness of this requirement is questioned, if applied in every case.

Response: 9-50.104(g) has been reserved pending review of the OFPP implementation of Pub. L. 95-507, Amending the Small Business Act and the Small Business Investment Act of 1958.

Comment: It is not appropriate to mandate use of GSA supply sources by DOE cost-type contractors.

Response: Not adopted. 9-50.505 and 9-5.902 require that contractors meet their requirements from Government sources when it is economically advantageous. This is a mandate only when economically advantageous and is considered to provide appropriate flexibility.

Comment: Under 9-50.704-2(a), delete the requirement for submission of a safety and health management implementation plan. Universities are already subject to OSHA and Federal radiation protection standards.

Response: Not adopted. The specific reporting requirements are not duplicative and are designed to assure the protection of personnel in the performance of specific projects, which involve potentially hazardous situations.

Comment: Several comments were received concerning the applicability of the cost principles and procedures published as Subpart 9-15.50 in the April 14, 1978 Federal Register.

Response: To clarify this point the cost principles and procedures were transferred to 9-50.15 and are applicable only to operating and on-site service contracts. The coverage now contained in Subpart 9-15.50 contains cost principles and procedures to be used as guidance by Government contracting personnel in the negotiation and administration of contracts. The basic cost principles for commercial contractors and educational institutions are contained in applicable parts of FPR 1-15.2 and FPR 1-15.3 as supplemented and modified by DOE-PR 9-15.2 and DOE-PR 9-15.3. A new paragraph was added as DOE-PR 9-15.205-80 which provides that Facilities Capital Cost of Money (CAS-414) is not an allowable cost under DOE contracts, since DOE has elected not to change its previous pricing policies for CAS-414 as authorized by FPR Temporary Regulation #40.

Comment: Several comments were received concerning the definition of an operating contract, which includes Government-owned laboratories and facilities located on University-owned sites, and operated by the University. The comments recommended that the definition be clarified to clearly exclude those contracts which provide for the operation of, what Universities identify as, an Organized Research Unit.

Response: Further clarification is not considered necessary, as DOE-PR 9-50.001 is considered quite clear as to what an operating contract is, and when the provisions of DOE-PR 9-50 are applicable.

Comment: Several comments received recommended that contracts with educational institutions use the cost principles contained in OMB Circular A-21, in lieu of the coverage in DOE-PR 9-50 for the operation of Government-owned laboratories and facilities by educational institutions.

Response: Not adopted. These laboratories and facilities are, normally, not units which are an integral part of a campus, but rather are autonomous units which stand alone. Since the Government is, normally, reimbursing the total allowable cost of the operation, special cost treatment is considered necessary, as set forth in DOE-PR 9-50.

Comment: Few Universities have the capability to audit subcontractors, as required in DOE-PR 9-50.704-9.

Response: It is pointed out that this clause also provides that the prime contractor may arrange, through the contracting officer, to have the Government provide such audit services, if the circumstances warrant. Therefore, no change has been made in this clause.

Comment: Some educational institutions commented that bid and proposal costs should not be considered as unallowable costs, as set forth in DOE-PR clause 9-50.794-12(a)(3).

Response: Under an operating contract, the workload of the facility is controlled by the Government, and the operating contractor is not required to search out work to be performed. The cost of preparing any proposals required by the contract, are considered as an allowable cost to the contract.

Comment: The Government should not have the right to direct the contractor to commence legal action or take over any suits affecting the contractor, as provided for in 9-50.794-31.

Response: This contract provision covers operating contracts which are normally on a cost reimbursement basis, where the Government is paying the total cost. This particular clause concerns claims filed against the contractor or which the contractor may have against others and, therefore, is a matter for appropriate cognizance of the contracting officer.

Comment: A comment was received to the effect that is was not considered feasible to establish a separate and distinct financial system to administer a single contract per DOE-PR 9-50.704-6.

Response: This clause does not intend that a separate "system" be established, but only that a "separate and distinct set of accounts, records and documents" be maintained to identify the costs under a contract. The system, employed by the contractor, must be satisfactory to DOE, and be in accordance with generally accepted accounting principles and consistently applied.

Comment: Comments were received covering DOE-PR 9-50.704-30, Limitation of Price and Contractor Performance (multi-year contracts), and DOE-PR 9-50.704-40 cancellation (multi-year contracts), recommending further clarifications of the provisions.

Response: After review of these two clauses it was determined, that the clauses be dropped from the regulation, therefore, no clarification is required.

Part 9-9 "Patents, Data and Copyrights":

Comments on Part 9-9, "Patents, Data and Copyrights," were directed to both substantive and procedural aspects. In general, the comments regarding substance were similar in subject matter to those received in response to ERDA proposed regulations on "Patents, Data and Copyrights," issued on October 15, 1975, 40 FR 48308. These comments were published in ERDA Report 76-10, January 1976 (available from the Superintendent of Documents, Government Printing Office, price $1.05). About 40% of the comments, then as now, suggested changes which cannot be accommodated because they conflict with the statutory provisions which govern DOE patent policy, § 152 of the Atomic Energy Act of 1954, as amended, and § 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (Nonnuclear Act), and because they conflict with the patent provisions of the Federal Procurement Regulations (FPR) which DOE is required to follow to an extent not inconsistent with these statutes.

Another 40%, or so, of the comments both then and now, relate to substantive matters such as licensing of background patents and proprietary data, and the extent of the contractor's minimum license rights. The comments pertaining to those matters were carefully considered in connection with the issuance of the final regulations on "Patents, Data and Copyrights" on July 13, 1977, 42 FR 36120. Those final regulations adopted or accommodated a number of substantive and procedural suggestions from the public.

The final regulations on "Patents, Data and Copyrights" issued on July 13, 1977 by ERDA, were republished verbatim in the proposed DOE-PR issued on April 14, 1978. This elicited the comments on substance duplicative of earlier comments referred to above, and in addition, brought forth comments on procedural aspects. Some of the procedural comments have been adopted or accommodated in the regulations being issued in the final rule. For example, the suggestion to permit university contractors having DOE-approved technology transfer programs and written procedures for reviewing papers to prescreen such papers for patentable subject matter, was implemented in DOE Procurement Letter 79-5 of February 28, 1979, and are incorporated in § 9-9.109-6(h)(6). Also, the suggestion to delay submittal of confirmatory licenses or assignments until waivers are acted upon has been adopted. See § 9-9.109-6(i)(5)(ii)(c).

Editorial changes have been made to clarify the language. For example, in § 9-9.109-6(d)(1) a waiver determination is now stated to be initiated when the written request provides the detailed information set forth in § 9-9.109-6(e). The language in § 9-9.109-6(d)(2) has been clarified to provide that a new waiver request covering a contract modification or extension will be required in those contracts where, through the modification or extension, the purpose, scope, cost, or other factors upon which the original waiver was granted have been substantially changed.

Other changes include § 9-9.107-4(a)(7)—clarification to reflect the practice that provisions of the type used in access permits (10 CFR Part 725) may be applicable to contractors as well as other persons requiring restricted data in their contracts, business, trade or profession; § 9-9.202-3(e)(2)(f)—deletion of language referring to optional paragraph (g) to clarify that proprietary data withheld under paragraph (e) of the "Rights in Technical Data" (long form) clause may be inspected, even though proprietary data was either not furnished or required to be furnished under optional paragraph (g) of the "Rights in Technical Data" (long form) clause.

Comments on other parts:

Comment: A university objected to numerous provisions, related to operating contracts, of the proposed rulemaking on the basis that they provide for unilateral Government direction or control (e.g. 9-50.704-2—stop work for safety and health and 9-50.801—termination for default). In view of the university, such provisions are inconsistent with the desired Government-University partnership in the conduct of work statement missions.

Response: It is considered appropriate to employ the referenced provisions which provide for unilateral Government direction particularly in operating contracts where Government is responsible for all of the costs.

Comment: To avoid misinterpretation, replace § 9-4.5106 with the following sentence:

"Compensation for personal services of professional staff, must be in accordance with the Office of Management and Budget Circular A-21, revised."

Response: Adopted.

Comment: To be consistent with Part 25 CFR, Title 31 (42 FR 62927), change the minimum amount of annual support necessary to justify a letter of credit from $250,000 to $120,000.

Response: Adopted.

Comment: Section 9-4.52 "Federal Contract Research Centers," inappropriately distinguishes between Federally Funded Research and Development Centers (FFRDC's) and Federal Contract Research Centers (FCRC's).

Response: Section 9-4.52 was deleted in its entirety.

Comment: It was recommended that a special set of clauses be developed, specifically, for research and development cost-reimbursement contracts with educational institutions.

Response: Not adopted. Universities must compete with the private sector for such contracts. There is considered to be no appropriate basis for special treatment in terms of contract clauses.

Comment: Two commentators expressed concern over DOE cost-sharing provisions as set forth in 9-4.59, "Cost Participation." In one case, the concern was cost sharing requirements in various stages of multi-phase projects. In the second case, the concept of cost sharing was objected to in its entirety.

Response: Not adopted. The present coverage, in 9-4.59, provides adequate flexibility to address varying cost sharing arrangements in multi-phase projects. DOE believes that cost sharing is entirely appropriate where the principal purpose of research, development and demonstration efforts is ultimate commercialization or industrial utilization, and when there are reasonable expectations that the performer will receive present or future economic benefit beyond the instant contract.

Comment: In 9-10.250 "Corporate Co-Sureties," eliminate the bar to Reinsurance Agreements in connection with construction contracts.

Response: Adopted.

Comment: Revise Subpart 9-23, "Subcontracting Policies and Procedures" to provide for mutual agreement on changes in subcontract approval levels under cost type contracts.

Response: Not adopted. The approval of a contractor's purchasing system is a Government prerogative where Government money is essentially being spent. It is essential that the contracting officer have the authority to adjust subcontract approval levels, as necessary, to assure proper expenditure of public funds. There were some comments received that were not considered appropriate for adoption because they are of a non-substantive nature, and pertain to subject matter which is considered to be: (i) Adequately covered in the DOE-PR as drafted, or in the Federal Procurement Regulations; (ii) not in consonance with the established policies of DOE, other Federal agencies or the legislation governing DOE's predecessor organizations; or (iii) a procedural matter which would be more appropriately reflected in DOE Handbooks or other issuances.

A summary of revisions to the DOE-PR as proposed on April 14, 1978 follows:

Summary of Revisions to the DOE-PR as Proposed on April 14, 1978

Part Affected, and Summary of Revisions

9-1.003—Cites the Headquarters officials with whom coordination is affected in more general terms by deleting the specific reference to the "Controller, and interested program personnel" and replacing it with "* * * and any other appropriate Headquarters Officers".

9-1.004—Clarifies applicability of the regulation by specifically excluding "real property". Also excluded are the DOE "assistance programs" which are

governed by the DOE Assistance Regulations, 10 CFR Part 600 and procurements made with non-appropriated funds. In cases of procurements which obligate non-appropriated funds the FPR & DOEPR are used for guidance. The subsection has been revised by the addition of a new paragraph which defines DOE assistance instruments.

9-1.805(a)—Cites cross reference to FPR 1-1.805(a) as a basis for exclusion of subject matter which bears a security classification from the requirements of certain DOE policies and procedures.

9-1.808(a)—Parenthetical reference to "counsel", "controller" and "interested program personnel" has been deleted to expand the meaning of the phrase "other officials".

9-1.808-2—Limits the HPA's deviation authority to deviations which do not involve the cost principles contained in Parts 9-15, 9-50.15 and 9-50.704. Deviations which involve cost principles require approval of the Senior Procurement Official, Headquarters. The requirement for mandatory coordination with the "controller" has been deleted and text has been clarified to require request for deviations to be submitted "by letter".

9-1.951—The subparagraph has been amended to reflect change made in 9-1.003.

9-1.954—The term "Procurement Letters" has been replaced; the term "Acquisition Policy Letters" and a subparagraph has been added to indicate the type of guidance set forth in such letters. Change in the designation has been made to prevent confusion of the abbreviation for Procurement Letters, PL with the abbreviation of Public Law. The subsection has also been revised to reflect the change in coordination requirements addressed in 9-1.003 above. The requirement to distribute Procurement Handbooks to all recipients of the DOE-PR has been deleted to permit distribution on an as needed basis.

9-1.955—The listing of DOE organizational elements designated as "procuring activities" and their corresponding HPAs has been deleted. Internal documents will be issued to identify the various HPAs. The subsection has been revised to reflect this change by deleting all text following the first sentence.

9-1.956—Subparagraph (c) revised by deleting "and grant officers" to reflect the exclusion of financial assistance matters from the DOE-PR.

9-1.302-3—Adds a new section which establishes the DOE approval procedures which must be complied with prior to entering into a contract with Government employees or business concerns substantially owned or controlled by Government employees.

9-1.313—This subsection has been revised to indicate that information relative to essential contract file documents is contained in the current Acquisition Policy Letters. The subsection as revised requires file documents to contain the information and supporting data identified in the Acquisition Policy Letters.

9-1.317—Paragraph has been added to set forth the agency (DOE) procedures for processing suspected cases of collusive bidding or false certification as contemplated by FPR 1-1.317(f).

9-1.354(a)—Subsection has been revised to delete the reference to close-out requirements for "grants" and "cooperative agreements" to reflect the exclusion of financial assistance matters from the DOE-PR.

9-1.404-1—Subsection has been revised by deletion of subparagraphs (a) through (c) and revision of the last sentence in the introductory paragraph to indicate that the appointment of Contracting Officers will be in accordance with the requirements of current Acquisition Policy Letters.

9-1.404-2—Subsection has been deleted. Information relative to Contracting Officer designation is now covered in current Acquisition Policy Letters.

9-1.405—Subparagraph (a) has been revised to clarify that the Government is not generally bound by commitments made to "contractors" as well as prospective contractors by persons to whom procurement authority has not been delegated.

9-1.452—The reference set forth in this subsection has been corrected to read 10 CFR Part 1040.

9-1.602—The phrase "suspended, or declared ineligible" has been inserted in the first sentence of the subparagraph to more clearly indicate the requirements for establishment and maintenance of the DOE Consolidated List of Debarred, Ineligible, and Suspended Contractors.

9-1.606-53—Procedural guidance has been added which more succinctly sets forth the information which must be included in a "notice of proposed debarment".

9-1.606-54—The citation referenced in this subsection has been changed to 10 CFR 708.117, "Hearings" to more closely align the reference to the subject matter of the subsection. Also the term "agency" has been inserted between the words "final" and "authority."

9-1.7—This Subpart has been reserved to permit review of the recently issued Office of Federal Procurement Policy implementation of PL 95-507.

9-1.8—The Subpart on Labor Surplus Areas has been expanded to set forth the basic DOE policy with regard to awards of contracts to LSA concerns.

9-1.807—Reporting requirements applicable to awards to LSA concerns have been clarified by making specific reference to the DOE reporting forms, and describing their application. The subsection has been revised to specifically indicate that Department offices shall maintain records of awards made to labor surplus area concerns.

9-1.901—The phrase "and shall be applied to cost-type contractor procurement" has been deleted because it is covered in the remaining text.

9-1.1003—Adds a subsection which makes specific reference to the synopses requirements stipulated in FPR 1-1.1003-2.

9-1.1004—Adds a requirement for synopses of awards of classified contracts where such contract awards can be described with sufficient information of an unclassified nature to be of advantage to industry or to the Government.

9-1.1204—The cross reference to "9-1.313(b)(6)" has been eliminated and the phrase "the contract file shall" has been inserted in lieu thereof to conform to the change made in 9-1.313.

9-1.13—The subpart has been reserved for the same reasons as stated under 9-1.7.

9-1.50—This subpart has been deleted; the subject matter contained therein is planned for inclusion in a Department Handbook.

9-1.51—The title of this subpart has been changed to read "Consideration in Selecting Award Instrument-Procurement Contract, Grant or Cooperative Agreement" and the text has been completely modified to reflect the requirements of the Federal Grant and Cooperative Agreement Act of 1977 (P.L. 95-224) and to incorporate the DOE policies on Financial Assistance as set forth in the DOE Assistance Regulations (10 CFR 600 et. seq.).

9-1.5300—A cross reference to subpart 9-16 has been added for clarification.

9–1.54—This subpart has been completely revised to incorporate the DOE policies on Organizational Conflicts which was published as a final rule on January 11, 1979 (44 FR 2556).

9–2.1—A new Subpart entitled "Use of Formal Advertising" has been added.

9–2.106—Adds a new subsection which vests responsibility for the establishment and maintenance of a procurement management assistance review program with the Director, Procurement and Contracts Management Directorate.

9–2.201—The suggested language for an option provision has been deleted from this subsection and the percentage guidelines formerly set forth have been replaced with a statement that the option quantity should bear a reasonable relationship to the initial firm quantity. A cross reference has been added which refers to the option coverage in 9–1.5303.

9–2.202–50—Deleted—FPR is considered to contain sufficient guidance.

9–2.203–3—Subsection title has been changed to more clearly reflect the subject matter set forth therein. "Trade Journals" has been added as a category requiring written authority prior to inserting paid advertising therein.

9–2.406–3—Second sentence has been revised to make specific reference to alleged mistakes in bids and to indicate the authority of Senior Procurement Official to redelegate his authority in this area.

9–2.5—New subpart added to establish the HPA as the approval authority for the use of the two-step formal advertising method of procurement.

9–3.150–1—The subparagraph has been revised to provide "unsolicited proposals" the same level of protection which is provided to other proposals.

9–3.150–2a—Provides instructions on procedures proposers are to follow to ensure the protection of confidential proposal information.

9–3.150–2(b)—Subparagraph has been revised to delete the definition of "Proprietary data." The definition is set forth in 9–9.201(b).

9–3.150–4(b)—Approval levels changed for the determination to use outside agencies to assist with proposal evaluations.

9–3.150–5—Subsection title has been changed to more clearly reflect the subject matter set forth therein. Provides for debriefings to be normally held after announcement of the selection decision and prior to award of the contract.

9–3.204—Incorporates a cross reference to the negotiation procedures applicable to architect-engineer services.

9–3.212—Subsection has been deleted.

9–3.215—Subpart has been clarified with respect to the use of the authority of Section 162 of the Atomic Energy Act of 1954, as amended.

9–3.303—Approval authority for the execution of determinations and findings pursuant to section 30d(c)(11) (FPR 1–3.211) has been changed to Senior Procurement Official, Headquarters.

9–3.404–50—A new subparagraph (a) has been added to designate the Senior Procurement Official, Headquarters as the approval official for Lump Sum A–E contracts which provide for reimbursement of certain costs. Subsequent paragraphs have been redesignated "b" through "h" vs "a" through "g." A cross reference has also been added to the end of this subsection which refers to 9–3.806–2.

9–3.405—A section heading has been added to indicate subject matter of the subsections.

9–3.405–5(b)—Exemptions to the statutory fee limitations available to DOE are limited to former AEC type functions and those of the Bonneville Power Administration.

9–3.405–50(a)—The reference to "negative" fees has been deleted from subparagraph (1) and the need to seek contractor comments on evaluation findings has been eliminated.

9–3.405–50(c)—Subparagraph has been revised to make specific reference to the fee "schedules" set forth in the Procurement Handbook. FPR 1–3.407–2 is referenced for fee limitations. The use of Weighted Guidelines (WGL) is authorized for contracts performed in commercial facilities.

9–3.405–50(g)—Subparagraph reworded to state that the contractor should be given an opportunity to present matters to the board or fee determination official on its own behalf. The requirement for agreement by the parties on a specific number of days constituting reasonable notice has been deleted.

9–3.406—The first sentence of paragraph (b) of the subsection was reworded to delete the statement pertaining to definitization of letter contracts within 120 days. DOE policies relative to letter contract definitizatien are set forth in paragraph (c) of the subsection.

9–3.600—The scope of the Subpart on small purchases procedures has been revised to reflect the requirements of Public Law 95–507. Subsection 9–3.603–1 and 9–3.603–2 have been reserved for the reasons set forth in 9–1.7. A new subsection 9–3.601 is added reserving procurements under $10,000 for small business except in certain circumstances. Subsection 9–3.603–3 has been redesignated as 9–3.604–3.

9–3.604—A new subsection heading is set forth for proper identification.

9–3.605—A new subsection heading is set forth for proper identification.

9–3.805—Subparagraphs (c), (d) and (e) of this subsection have been substantially revised to be consistent with current selection procedures specified in internal directives.

9–3.805–50—Subparagraph (a)(1) has been revised to clearly indicate that dollar thresholds for Source Selection procedures will be based upon the anticipated total sum of all awards, all phases or options, an all cost shares regardless of derivation. The terms "grants" and "cooperative agreements" have been deleted for the reasons stated in 9–1.354(a).

Subparagraph (b) has been revised to clarify the use and applicability of SEB procedures on contracts which are expected to exceed $5 million.

Subparagraph (f) has been revised to permit the use of consultants, and contractors as selection advisors when deemed appropriate.

9–3.805–51—Subparagraph (b) has been revised to be consistent with FPR and to recognize the separate justification procedures provided for certain recompetitions or extensions, unsolicited proposals and Special Research Contracts (SRCs). Also recognized is the fact that Program Opportunity Notices and Program Research and Development Announcements are competitive solicitations.

Subparagraph (c)(1) has been modified to state that small purchase procedures should be used in the case of justification for non-competitive procurement for small purchases.

In subparagraph (d) coordination and approval requirements for the justification to enter into noncompetitive procurements have been streamlined by deletion of the requirement that the controller concur in such determinations when the estimated value of the proposed procurement is in excess of $500.

In addition, approval levels under (d)(1) C and D have been changed.

9–3.807–1—This subparagraph authorizing HPAs to approve the findings required by FPR 1–3.807–1 (b)(1), has been deleted.

9–3.807–3—The certification requirements for current cost or pricing data have been clarified relative to on-site services contractors and educational institution contracts covered by OMB Circular A–21 or FPR 1–1.53.

9–3.809–2—Cross references have been added to identify the parts of the FPR and DOE–PR which set forth statutory limitations on fees applicable to cost-type contracts and architect-engineer contracts. The applicability of the "fee curve" to on-site contractors for performance of support reviews has also been clarified.

9–3.814–1—The requirements that the Head of the Procuring Activity obtain the coordination of appropriate Headquarters officials prior to authorizing a waiver to FPR 1–3.814 on transactions involving foreign governments or agencies thereof has been deleted.

9–3.901 The last sentence of paragraph (c) of the subsection has been revised to more clearly indicate that the provisions of the subsection apply only to those functions being performed by DOE which were formerly performed by AEC.

9–3.1210—Subsection has been added to require the submission of a consolidated Cost Accounting Standards Board report.

9–4.4—Adds a new subpart to part 9–4 which provides guidance on the procurement of utility services for GOCO facilities. The subject matter of this new subpart was formerly covered in subpart 9–50, subsection 9–50.401. The subpart has been modified to except telecommunications from utility services covered, and specifies that proposed contracts for utility services which meet certain criteria are to be submitted to the utility element in the Directorate of Administration for Headquarters' review and approval.

The approval threshold for utility services agreements which require Headquarters review has been increased from $5,000 to $10,000.

Subparagraph 9–4.411–3(a) has been reserved, pending determination of authority with respect to all elements of DOE.

9–4.901—Deletes in its entirety since adequately covered in the FPR.

9–4.902—Adds the term "unique" to make consistent with the FPRs.

9–4.904—Deletes definition of "Unsolicited Proposals" and type of information not considered to constitute unsolicited proposals, i.e. advertising material, commercial product offerings, commercial service offerings, contributions, technical correspondence, and capability statements. The purpose for the deletions is to conform the definition of unsolicited proposals to the FPR. There is no change from the April 14, 1978 version of the DOE-PR regarding the treatment of unsolicited proposals falling under the provisions of Subpart 9–4.51, Special Research Contracts with Educational Institutions.

9–4.905—Deletes in its entirety since adequately covered in the FPR.

9–4.906—Deletes in its entirety since adequately covered in the FPR.

9–4.908—Adds a paragraph (b) to indicate the mailing address to which unsolicited proposals should be sent.

9–4.909—Adds "Receipt" to Title to make consistent with FPR. The section has been revised to delete information pertaining to receipt, review, evaluation factors, and evaluation of unsolicited proposals which is adequately covered in FPR 1–4.909. Revises the designation of the activity which must approve decisions to support unsolicited proposals which involve support services. Paragraph 9–4.909(g) (1) (ii) has been revised to delete the requirement for controller concurrence with justification for acceptance of an unsolicited proposal since funds availability is determined based upon the "FUNTS" system. Paragraph 9–4.909(i) is expanded to add "absent any specific delegation" to the beginning of the second sentence to indicate that there may be circumstances where such authority is vested in the field through the delegation process.

9–4.952—Title expanded to include data and copyright as well.

9–4.1000—Deletes statement that this subpart does not apply to the procurement of professional architect-engineer services by DOE contractors since the intention is that they will, in fact, so apply.

9–4.1004–1—Adds to general policies and procedures for selection as contained in the FPR, policies concerning selection of contractors by board process as contained in internal DOE Directives. The purpose is to provide awareness of the FPR implementation process within DOE.

9–4.1004–3(a)—Deletes 9–4.1004–3(a)(7) "adequacy of firms accounting system" § 9–4.1004–3(a)(9) "willingness to grant the Government principals or exclusive rights in resulting inventions" since they are considered either inappropriate or too restrictive to be included among the general qualification criteria.

9–4.1004–52—The phrase "and management data" was added to the type of information which may be requested from A-Es during initial discussions which lead toward A-E selection.

9–4.1004–53—The title of the section was revised to read "Use of requests for supplemental information" in order to more clearly reflect the subject matter of the section. Also the first paragraph was revised to indicate that supplemental information may be solicited as a means of initiating the discussion phase of the A-E selection process.

9–4.1004–54—A requirement has been added that the selection official provide complete documentation of the selection decision in the event a firm other than the highest ranked firm is selected. Provision has also been included for the discarding of SF 255s received from firms with which written or oral discussions were not held 90 days after award.

9–4.1004–55—The title of the subsection has been revised to read "Late submission of qualification and performance data." Also the term "submission" has been substituted for the word "proposal" in the first line of the paragraph. This is to recognize that the procedures governing late proposals do not apply to the selection process governing architect-engineer services.

9–4.1005–50—The last sentence of the paragraph has been revised to more clearly indicate that the waiver from the six percent A–E fee limitation is granted only for those DOE functions which were formerly performed by AEC or BPA.

9–4.51—Subpart title has been changed to "Special Research Contracts with Educational Institutions" vs "Special Research Agreements with Educational Institutions," and the terms "agreements" and "support agreements" have been changed to the term "contract" where appropriate. These modifications reflect the requirements of Public Law 95–224.

9–4.5100—Dollar ceiling has been changed from $500,000 to $1,000,000 and procedural guidance has been added relative to the use of grants or cooperative agreements under Public Law 95–224.

9–4.5106–2(a)—Subparagraphs (a) (1) and (a) (2) have been revised to delete the reference to "support." The terms "funded" and "funding" have been used instead.

9–4.5106–3—Cross reference to 9–3.150–4 has been added to subparagraph (a)

and a new subparagraph (d) has been included to make specific reference to the policies for avoidance of organizational conflicts when reviews are conducted by nongovernment employees.

9–4.5106–4—This section has been revised in its entirety. Guidelines for calculation of compensation for professional employees have been deleted and OMB Circular A–21, as amended, has been referenced in lieu thereof.

9–4.5106–5—The reference to "support" has been replaced with the terms "fund" or "funding" wherever appropriate.

9–4.5106–6—The reference to "support" has been replaced with the terms "fund" or "funding" wherever appropriate. Also paragraph (c) has been revised to delete the requirement that contracts transferred between field offices be renumbered in accordance with 9–52.100, since Part 9–52 has been reserved.

9–4.5107–1—The dollar ceiling has been changed from $500,000 to $1,000,000. The term "support" is deleted throughout the text and replaced by "funding", "fund" or "Government" as appropriate.

9–4.5108—The procedures for transfer of title to equipment to nonprofit educational or research institutions have been revised to reflect the changes promulgated by Public Law 95–224.

9–4.5108–3—A new subsection has been added to delineate the requirements for the reporting of excess Government property.

9–4.5109–1—The reference to "support" has been replaced with the term "funding".

9–4.5109–2—Procedures for reporting of Energy R&D projects have been revised to reflect a change in the form used to make such reports and report distribution requirements. The title of the paragraph has been redesignated as "Notice of Energy R&D Projects."

9–4.5109–5—A sentence has been added which requires consideration of the relative value of special reports vs the anticipated cost of such reports. The section has been clarified to indicate that special reports must be requested through the Contracting Officer.

9–4.5109–7(a)—The submission due date for the final report has been redefined as "three months after completion of the work" vs "when the contract is completed." In addition the number of copies to be distributed has been changed.

9–4.5111—The title of the section has been changed to "Extension of Contracts" vs "Extension of Agreement".

9–4.5111–1—Submission requirements for renewal proposals have been revised. Renewal proposals are to be transmitted to the DOE field office which has jurisdiction over the contract rather than to the Senior Procurement Officer, Headquarters. The restriction against DOE personnel requesting or informally stimulating renewal requests has been deleted. Renewal proposals are to be submitted not later than "4 months" before the date of contract expiration rather than "3 months." If a renewal proposal has not been received 4 months prior to the contract expiration date, the Contracting Officer is to determine status and take appropriate action. The term "cumulative DOE support ceiling" has been replaced by the term "cumulative Government ceiling."

9–4.5111–3—The references to "support" have been replaced by the terms "funding" and "Government", as appropriate.

9–4.5112–2—Paragraph (d) of this subsection has been revised to update references by incorporation of a reference to Public Law 95–224.

9–4.5112–3—The dollar threshold for the use of letter of credit procedures has been reduced from $250,000 to $120,000. The reference to the Treasury Fiscal Requirements Manual has also been corrected.

9–4.5112–4—Subparagraph (a)(4) has been clarified to exclude the purchase of general-purpose equipment with a cost of less than $500.00 from the notification requirements.

9–4.5112–5(a)—Responsibilities for the conduct of audits has been clarified by revising the first sentence of the subparagraph as follows: ". . . auditing of participating contractors shall be initiated by the Contracting Officer administering the contract."

9–4.52—Deletes the Subpart on Federal Contract Research Centers (FCRCs) in its entirety since adequate policy guidance is considered available without creating a separate Subpart for this category of contractors.

9–4.5402(c)—Deletes reference to the Senior Procurement Official, Headquarters since this authority has been delegated to the head of the procuring activity.

9–4.5505—The instructions for use of price escalation provisions with multiyear contracts have been clarified by indicating that such provisions "may" be used when "unreasonable" contingencies are likely to be included for labor and material cost.

9–4.5700—This section has been revised to clarify the applicability of the Subpart. The phrase "of competitive concept proposals" has been deleted and the phrase "for award or support of proposal" added to provide the flexibility for using either a procurement contract or assistance instrument, i.e. grant or cooperative agreement depending on its purpose as defined in Public Law 95–224.

9–4.5701—The reference to "not-for-profit or nonprofit organizations" has been deleted since there is no distinction for purposes of this Subpart. The term "pilot plants" has also been deleted since its definition is already encompassed in the term "Demonstration Projects". The last sentence of this section has been revised to exclude nuclear energy resources from the applicability of this subpart since this subpart is restricted to non-nuclear energy sources.

9–4.5702–1—The need to give special attention in synopsis notices to small business and minority business concerns is highlighted by the addition of the phrase ". . . and socially and economically disadvantaged concerns". This treatment is in consonance with Public Law 95–224 as implemented by the Office of Federal Procurement Policy in the April 20, 1979 Federal Register.

9–4.5702–3—Subparagraph (f) has been deleted since financial capabilities of the potential participants are not considered an appropriate Federal support criteria. The subsequent subparagraphs (g) through (i) have been redesignated as (f) through (h).

9–4.5702–5—A new subparagraph (d) has been added to include submission of applicable "representations and certifications" with proposals. The former subparagraph (d) was redesignated as subparagraph (e).

9–4.5702–6—A new paragraph has been added to provide for the use of "Alternate procedures for consideration of late proposals," as set forth in FPR 1–3.802–2. The late proposal provision permits consideration of late proposals if among other things the proposal offers a significant cost or technical advantage to the Government.

9–4.5703–1(a)(7)—The subsection on cooperative agreement has been expanded to describe the various types of instruments, i.e. procurement contracts, grants or cooperative agreements that may be awarded and/or supported depending on the

intended relationship and the purpose to be accomplished. This is in accordance with Public Law 95-224. The subsection describes the appropriate regulations to be followed depending on the specific circumstances involved.

9-4.5704(b)(1)—Adds "aggregate of expected award values, plus costs shared by the contractor and/or other parties" and deletes "when an individual proposal" to reflect the realistic value of the proposed award and/or support and to subject it to the appropriate selection procedures commensurate with its anticipated value.

9-4.5704(b)(2)—Adds the requirement to utilize the SEB Handbook procedures under certain circumstances when anticipated award and/or support is not expected to exceed the SEB dollar threshold for the purpose of insuring impartial, equitable and thorough evaluation of each proposal.

9-4.5704(c)—Adds a criterion for cost realism and probable cost to the Government.

9-4.5704(e)—Deletes the paragraph concerning selection official and refers to the provisions of 9-3.805-50 which details who the selection official will be depending on dollar threshold of the anticipated award and/or support.

9-4.5800—Adds a paragraph (b) to describe the various types of instruments, e.g., procurement contracts, grants or cooperative agreements that may be awarded and/or supported depending on the intended relationship and the purpose to be accomplished. This is in accordance with Pub. L. 95-224. The subsection describes the appropriate regulations to be followed depending on the specific circumstances involved.

9-4.5802-4(a)(11)—Deletes "commit" in second line and adds "obligate" to emphasize the role required of the signatory authority.

9-4.5803 and 9-4.5803-1—Deletes entire section regarding "forms of assistance and participation", since restated and amplified in new Section 9-4.5800(b).

9-4.5803-2—Renumbered as 9-4.5803.

9-4.5804(a)(2)—Expands this subsection to emphasize the availability for use of alternate late proposal procedures as provided for in FPR 1-3.802-2 when large number of awards are anticipated. This is in recognition of the fact that many small concerns may not be totally familiar with Government regulations in the area of submission of proposals and may be precluded from consideration for award even though they have an advantageous proposal unless this procedure is utilized.

9-4.5804(b)—"Selection panel" replaces "evaluation criteria" as 9-4.5804(b) and "evaluation criteria" becomes new 9-4.5804(c). Adds reference to the required approvals and procedures contained in Sections 9-3.150-4 and 9-3.805-50(f), when engaging prime management or operating contractor personnel in the selection process. This reemphasizes confidentiality of their involvement in the process and further, forbids the use of this information for improper purposes.

9-4.5804(c)—Adds several new illustrations of evaluation elements that may be considered as evaluation criteria, e.g., cost realism and probable cost to the government to assure that potential proposors have performed adequate analysis and review in their proposal preparation.

9-4.5804(d)—"Program policy factors" is renumbered from 9-4.5804(c) to 9-4.5804(d) and couched in more positive terms, e.g., that factors will be predetermined in the notice to accomplish greater clarity in the intent of this subsection.

9-4.5804(e)—Deletes subsection on "Selection Official" and refers to DOE-PR 9-3.805-50. As herein, selection officials are designated based on dollar threshold.

9-4.5804(f)(1)—Revises this section by deleting "receiving office" and adding "selection panel" in its place to reflect the use of panels in this process.

9-4.5804(f)(2)—Adds this subsection to prescribe procedures to be employed if a proposal does not meet predetermined requirements.

9-4.5901—Deletes 9-4.5901(a) since 9-4.5901(b) adequately describes the types of situations in which cost participation may be required.

9-4.5901(e)—Deletes the term "pilot plant" since the terminology is adequately defined under "demonstration" technologies programs, etc.

9-5.902—A cross reference has been added to the appropriate provisions of the DOE PMR. Also a provision has been added which states that the authority for authorization to use GSA sources of supply may be redelegated to the level of Contracting Officer.

9-5.1001(a)—Part 101-14 of the Federal Property Management Regulations has been reentitled as "National Stockpile" vs "Strategic Critical and Other Materials" to reflect the change made in the referenced document.

9-5.3—This subpart has been added and states the policy pertaining to the use of excess personal property is contained in referenced FPR provisions.

9-5.5106-1—The following sentence was added to clarify the applicable provisions of the Economy Act. "Such work on services will be performed by other government agencies unless it can be shown that it can be performed more conveniently or more cheaply by private industry, in which case it would be performed by competitive solicitation."

9-5.5106-5—The previously cited temporary Comptroller General Decision reference has been replaced with the permanent citation. Also, reference to a modifying Comp Gen decision has been added.

9-5.5201-2—Subparagraph has been revised to update references to standards and Public Law. Cross references have been added to FPMR 101-38.9 and DOE PMR 109-38.51.

9-5.5201-2(a)—Reference to applicable provisions of the DOE PMR has been added. Under paragraph (b) of this citation, the last sentence has been revised to enumerate the specific types of Vehicles covered and the previously cited temporary regulation, G-28, has been replaced with the citation Pub. L. 94-163. Under paragraph (c) of this citation the following has been added: "Requisition for sedans, station wagons and certain types of light trucks shall be submitted through Headquarters as outlined in 9-5.5201-6. Requisitions for all other types of vehicles may be submitted directly to GSA." In paragraph (d), a reference to DOE PMR 109-38.9 has been added.

9-5.5201-3—The individual identified to receive a copy of the waiver request has been changed. The procedures for direct purchase of vehicles has been clarified by the addition of a new penultimate sentence which indicates that the head of the procurement agency may authorize direct purchase of general purpose trucks by DOE contractors. Also the term "clearance" has been replaced with the word "waiver" throughout the subsection. A reference to DOE PMR 109-38.51 was also added.

9-5.5201-5—Authority to make arrangements for obtaining forfeited or abandoned vehicles from GSA has been assigned to the Chief, Property and Equipment Management Branch, Headquarters vs. the Senior Procurement Official, Headquarters.

9-5.5201-6—Various revisions were made to update and improve clarity. A cross reference to DOE PMR was added. Subparagraph establishes

requisite procedural guidance for acquisition of fuel-efficient vehicles and identifies the responsibilities of the Chief, Property Management Branch, Headquarters. A Requirement for submission of forecast of needed vehicles by October 15th of each year was added.

9–5.5202–3—A cross reference to the DOE PMR was added. The reference to DOE EM 0260 was updated to read DOE Order 1340.

9–5.5206–5(b)—Cross reference to DOE PMR 109–25.302.2 has been added to the penultimate sentence.

9–5.5206–5(a)—Same as 9–5.5206–5(b) above.

9–5.5206–9—New subparagraph (d) has been added which makes cross reference to DOE PMR 109–38.3 and 109–38.6.

9–5.5206–11—Subparagraph (c) of the subsection has been revised to reflect a change in the mailing address of the Hq. U.S. Army Materiel Development and Readiness Command.

9–5.5206–15—A cross reference to the DOE PMR has been added.

9–5.5207–1—The phrase "for a given program" has been added to clarify the authority of the "Senior Program Official or designee."

9–6.1—The paragraph reference numbers have been changed to correspond with those contained in the FPR.

9–7.102–50—The phrase "whether incorporated by reference or otherwise" has been inserted after the phrase "or other provisions of the contract," and the phrase beginning with "contractor's technical proposal" has been identified as subpart "(e)" of the clause.

9–7.102–52—The word "appropriate" has been inserted between the phrase "Insert the" and the "clause set forth." Also the reference to section "9–9.103–1" has been revised to read "section 9–9.103."

9–7.102–53—The contract clause entitled "Notice and assistance regarding patent and copyright infringement" has been deleted from the required clauses and has been re-established as a clause to be used when applicable under 9–7.103–4.

9–7.103—The intent of the introductory paragraph to the "clauses to be used when applicable" has been clarified by indicating that the clauses listed thereunder shall be used when applicable in addition to "or in place of counterpart clauses in FPR 1–7.103."

9–7.103–4—See note pertaining to 9–7.102–53 above.

9–7.103–54—The clause entitled "Organizational conflicts of interest" has been deleted in favor of the clauses set forth in the new section 9–1.54. This change was made throughout this subpart 9–7.

9–7.103–56—The clauses entitled "Preservation of individual occupational radiation exposure records," as set forth under 9–50.704–41, has been added as a clause to be used when applicable.

9–7.104–50—The applicability of the "Priorities, Allocations, and Allotments" clause has been clarified.

9–7.2 through 9–7.8—The order in which the clauses appear in these subsections has been changed to make their order consistent with the arrangement of the clauses in the other sections of this subpart 9–7.

9–7.202–4—Provides instructions for modification of paragraph (a)(1)(i) the clause entitled "Allowable cost, fee and payment" by insertion of the phrase "as supplemented or modified by 9–15.2 (41 CFR 9–15.2) after the reference (41 CFR 1–15.2). "Cross references have also been made to the DOE or FPR sections which pertain to on-site service contracts, contracts with educational institutions and on-site construction and architect-engineer contracts.

9–7.202–59—The "Stop work order" clause has been included as one of the required clauses to be used in cost reimbursable cost-type contracts.

9–7.203–57—See comment pertaining to 9–7.103–56 above.

9–7.303–56—See comment pertaining to 9–7.103–56 above.

9–7.403–74—See comment pertaining to 9–7.103–56 above.

9–7.603–57—See comment pertaining to 9–7.103–56 above.

9–7.603–58—The clause entitled "Safety and Health," as set forth in 9–50.704–2, has been added as a clause to be used when applicable.

9–7.603–59—Instructions have been added to insert the clause entitled "Privacy Act" (FPR 1–1.327–5) when appropriate.

9–7.604–52—A clause entitled "Wage Determinations" has been added. The clause may be added to the SF19 when applicable.

9–7.704–50—The "limitation of price and contractor performance (multi-year contract)" clause has been added. Clause is patterned after the clause in the DAR.

9–7.704–51—The clause entitled "Cancellation (multi-year contracts)" has been added. As in the case above, the clause is patterned after the DAR.

9–7.704–53—See comment pertaining to 9–7.103–56 above.

9–7.704–54—See comment pertaining to 9–7.603–58 above.

9–7.802–18—The clause entitled "Payment of interest on architect-engineer claims" has been redesignated as 9–7.802–14 and the paragraph number has been reserved.

9–7.802–19—The clause entitled "Utilization of minority business enterprises" has been deleted and the paragraph number has been reserved for the reason set forth in 9–1.7.

9–7.803–5—The clause entitled "Small business subcontracting program" has been deleted and the paragraph number has been reserved for the reason set forth in 9–1.7.

9–7.803–6—The clause entitled "Minority business enterprises subcontracting program" has been deleted and the paragraph number reserved for the reason set forth in 9–1.7.

9–7.803–54—See comment at 9–7.103.56 above.

9–7.803–55—See comment at 9–7.603–58 above.

9–7.804–3.—A new subparagraph has been added to set forth administrative data which is to be included as part of Item 6 of the Standard Form 252. The information depicted under this new subparagraph is procedural in nature.

9–7.804–51—See comment at 9–7.606–59 above.

9–8—Subsection titles have been added to paragraphs 9–8.211, 9–8.212, 9–8.307, 9–8.404, 9–8.501, 9–8.503 and 9–8.504. The subsection titles correspond to those set forth in the FPR.

9–8.206—A new heading was added: "Fraud and Other Criminal Conduct." Paragraph has been added to advise government personnel that "any evidence of fraud or other criminal conduct in connection with the settlement of a terminated contract" must be reported in accordance with 9–1.605–50.

9–8.404—Provision added which addresses Procedures after invoices or vouchers are discounted.

9–8.501–2—The approval authority to authorize sale of termination inventory to DOE has been raised to the level of the HPA.

9–8.601—A cross reference has been added to FPR 1–8.601.

9–8.700–2(a)—Cross references have been added to 9–7.802–4 and 9–8.751.

9–8.751—The term "contractor" has been changed to the term "architect-engineer" where applicable in the clause entitled "Termination article for cost-plus-a-fixed-fee architect-engineer contracts." Also the first sentence of paragraph (b) has been revised through the addition of the phrase "and does not cure such failure within a period of 10 days (or such larger period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure."

9–8.751(d)(4)—The last sentence has been revised to read as follows: If performance of the work under the contract is terminated for the default of the architect-engineer, no further payment beyond that amount due on completed work with appropriate fee payment shall accrue on account of the fixed-price.

9–9.107–4(a)—Subparagraph (7) has been clarified to reflect the practice that provisions of the type used in access permits (10 CFR 725) may be applicable to contractors as well as other persons requiring restricted data in their contracts, business, trade or profession.

9–9.107–5—The definition of "subject inventions" has been modified to conform with the definition of that term as set forth in FPR 1–9.107–5(a). Subparagraph 9–7.107–5(d)(2)(i) has been clarified by the insertion of the phrase "patent application" between the phrase "after the filing" and "or within 2 months after submission," and the requirement for preparation of a written decision with respect to first use of an invention or its reduction to practice has been revised.

9–9.107–6—Subparagraph (g) of the Patent Rights clause, short-form, has been amended to stipulate a period of time by which DOE Patent Counsel must respond and rule on a request for publication. The maximum delay which is authorized is 160 days unless a longer period is mutually agreed to. The change reflects policies expressed in Procurement Letter 78–11, dated June 30, 1978.

9–9.109–6(d)(1)—The first sentence of the paragraph has been clarified by making specific reference to the information set forth in paragraph 9–9.109–6(e). A waiver determination is now stated to be initiated when the written request provides the detailed information set forth in 9–9.109–6(e).

9–9.109–6(d)(2)—The language has been clarified to provide that a new waiver request covering a contract modification or extension will be required in those contracts where, through the modification or extension, the purpose, scope, cost or other factors upon which the original waiver was granted have been substantially changed.

9–9.109–6(h)—A new paragraph 9–9.109–6(h)(6) has been added to permit university contractors having DOE-approved technology transfer programs and written procedures for reviewing papers, to prescreen such papers for patentable subject matter. The procedure stipulated in this new paragraph was implemented by DOE Procurement Policy Letter 79–5 dated February 28, 1979.

9–9.109–6(i)(5)(ii)(C)—Language has been added to this paragraph which permits delay of a submittal of confirmatory licenses or assignments until a pending waiver request has been acted upon.

9–9.202–3(e)(2)(f)—The language which referred to optional paragraph (g) has been deleted to clarify that proprietary data withheld under paragraph (e) of the "Rights in Technical Data" (Long Form) clause may be inspected even though proprietary data was either not furnished or required to be furnished under optional paragraph (g) of the "Rights in Technical Data" (Long Form) clause.

9–10.109—The requirement for a legal sufficiency review as to the acceptability of the surety and adequacy of the bond has been clarified. Also paragraph (b) has been revised to require receipt of bonds prior to award of contract.

9–10.5012—Subsection has been added to provide procedural guidance for the use of service type insurance policies.

9–12.100—Editorial changes have been made to this subsection by deletion of the phrase "in appropriate circumstances" from the first sentence and deletion of the phrase "and which may be applied pursuant to the provisions of such contracts" from the last sentence of the subsection.

9–12.102—Subsection has been added to provide procedural guidance for the approval of overtime, extra pay shifts and multishift work, and to more clearly indicate that the policies expressed in FPR1–12.102 are applicable to all DOE contracts including construction and procurements by operating and other on-site contractors.

9–12.604—Subsection has been added to indicate that challenges to the Contracting Officers determination relative to eligibility under the Walsh-Healey Act will be processed in accordance with agency protest against award procedures except that, depending upon the size of the business, the matter shall be submitted to the Department of Labor or the Small Business Administration for final resolution.

9–12.800—The subsection has been revised to indicate that the scope of subpart 9–12.8 also applies to DOE subcontracts and that it may be adapted to programs involving Federal assistance.

9–12.805–1—This subsection has been revised to reflect the transfer of responsibility for monitorship of labor compliance. In accordance with Executive Order 12086, dated Oct. 5, 1978, the Director of Federal Contract Compliance, DOL, has been designated the responsibility for carrying out the requirements of Executive Order 11246, as amended, and as implemented by 41 CFR Chapter 60.

9–12.805–51—Procedures for requesting pre-award compliance checks have been updated to reflect the change in monitorship responsibilities discussed above. Also the applicability of the requirement for conduct of pre-award labor clearance checks has been clarified by making specific reference to "modifications of existing contracts which constitute a new effort," "basic ordering agreements," "indefinite delivery contracts," and "letter contracts."

9–15—The Subpart has been revised by deleting the contract cost principles and procedures applicable to Operating and On-Site Services Contracts from this subpart. Contract cost principles and procedures as they relate to Operating and On-Site Services Contracts are now covered under § 9–50.15. This change was made in recognition of the fact that the cost principles related to the operation of DOE plants or laboratories differs considerably from the cost principles applicable to DOE's other contracts. The subsections deleted from this part and transferred to 9–50.15 are: 9–15.5004 through 9–15.5005–5, 9–15.5007–1 through 9–15.5007–3, 9–15.5008 through 9–15.5009–5, 9–15.5010–1 through 9–15.5010–4, 9–15.5010–7, 9–15.5012–13 and 9–15.5012–14. Subsections for which guidance is included under both § 9–15 and § 9–50.15 are 9–15.5006, 9–15.5007, 9–15.5010, 9–15.5010–5, 9–15.5010–6, 9–15.5010–8 through 9–15.5010–11 and 9–15.5010–14 through 9–15.5010–20. The subsection reference numbers have been changed as follows:

Former reference No.	New reference No.	New reference No.
	§ 9-15	§ 9-50.15
§ 9-15.5004		9-50.1504
9-15.5005		9-50.1505
9-15.5005-1		9-50.1505-1
9-15.5005-2		9-50.1505-2
9-15.5005-3		9-50.1505-3
9-15.5005-4		9-50.1505-4
9-15.5005-5		9-50.1505-5
9-15.5006	9-15.5004	9-50.1506
9-15.5007	9-15.5005	9-50.1507
9-15.5007-1		9-50.1507-1
9-15.5007-2		9-50.1507-2
9-15.5007-3		9-50.1507-3
9-15.5008		9-50.1508
9-15.5008-1		9-50.1508-1
9-15.5008-2		9-50.1508-2
9-15.5008-3		9-50.1508-3
9-15.5009		9-50.1509
9-15.5009-1		9-50.1509-1
9-15.5009-2		9-50.1509-2
9-15.5009-3		9-50.1509-3
9-15.5009-4		9-50.1509-4
9-15.5009-5		9-50.1509-5
9-15.5010	9-15.5006	9-50.1510
9-15.5010-1		9-50.1510-1
9-15.5010-2		9-50.1510-2
9-15.5010-3		9-50.1510-3
9-15.5010-4		9-50.1510-4
9-15.5010-5	9-15.5006-1	9-50.1510-5
9-15.5010-6	9-15.5006-2	9-50.1510-6
9-15.5010-7		9-50.1510-7
9-15.5010-8	9-15.5006-3	9-50.1510-8
9-15.5010-9	9-15.5006-4	9-50.1510-9
9-15.5010-10	9-15.5006-5	9-50.1510-10
9-15.5010-11	9-15.5006-6	9-50.1510-11
9-15.5010-12		9-50.1510-12
9-15.5010-13		9-50.1510-13
9-15.5010-14	9-15.5006-7	9-50.1510-14
9-15.5010-15	9-15.5006-8	9-50.1510-15
9-15.5010-16	9-15.5006-9	9-50.1510-16
9-15.5010-17	9-15.5006-10	9-50.1510-17
9-15.5010-18	9-15.5006-11	9-50.1510-18
9-15.5010-19	9-15.5006-12	9-50.1510-19
9-15.5010-20	9-15.5006-13	9-50.1510-20

Part Affected, and Summary of Revisions

9-15.000—The subsection has been redrafted to clarify the scope of the Subpart and to reflect the changes enumerated above.

9-15.101—Added to clarify applicability of DOE-PR 9-15 and FPR 1-15.

9-15.103—Retitled and revised to clarify what cost principles cover operating contracts with educational institutions. The guidance pertaining to the determination of overhead rate (subparagraphs 9-15.103 (b) and (c) has been transferred to 9-15.307.

9-15.205-60—A subsection has been added to indicate that DOE does not consider Facilities Capital Cost of Money as an allowable cost, i.e., DOE has selected Option 1 under the FPR Temporary Regulation #40.

9-15.307—Adds paragraph which includes prior language of 9-15.103 on overhead for educational institutions as well as adds reference to OMB Circular A-21.

9-15.50—As indicated in the introductory summary to § 9-15, the coverage of cost principles and procedures as they relate to Operating On-Site service contracts has been transferred to 9-50.15. The title of the subpart has been changed to "Contract Cost Principles and Procedures."

9-15.5000—The subsection has been revised to reflect the changes made to the section with respect to the deletion of cost principles as they relate to operating and on-site services contractors.

9-15.5001—The definition for "operating contract" and "on-site architect-engineer contract" have been deleted from the subsection, also the definition of "research and development contracts" has been clarified.

9-15.5002—The "Senior Procurement Official, Headquarters" has been assigned the responsibility for developing and revising the policy and procedure for the determination of allowable costs.

9-15.5003—The consultation and coordination requirements for approval of deviations from the subpart have been revised to reflect the authority of the Senior Procurement Official verus that of the Controller. Consultation with the Controller is no longer mandatory.

9-15.5004—The subject matter formerly set forth under § 9-15.5006 has been inserted under this subsection number.

9-15.5005—The subsection has been re-entitled "Direct and Indirect Costs" and establishes a cross reference to FPR 1-15.202 and 203. Information formerly set forth under the subsection has been relocated as indicated above.

9-15.5006—As indicated in the introductory summary to Subpart 9-15 this subsection now contains the information formerly set forth under 9-15.5010. Such information, to the extent that it is applicable to non operating and on-site service contracts has been transferred without change. Editorial corrections have been made to delete the references and cross references to operating and on-site service contracts.

9-16.804-4—A subsection has been added to identify the processing requirement for Small Business/Labor Surplus Set-Aside Review Form, DOE Form PR-415.

9-16.808—Relocates the Certificate of Appointment for Contracting Officers to the end of Part 16.

9-16.5000—The applicability of the subsection has been clarified by making specific reference to "contracts." The word "support" has been deleted throughout the subpart and replaced with the words "fund", "funding" or "Government" as appropriate. This has been done for consistency with Pub. L. 95-224.

9-16.5002-1—The title of the subsection has been changed to read "Special research contracts (SRC) with educational institutions" and the term "agreement" has been replaced with the term "contract" wherever it appeared through the subsection.

9-16.5002-1—Article I(a): The phrase "to the best of its ability" has been deleted from the first sentence.

9-16.5002-1—Article AII(a): Raises threshold for classifying an item as equipment from $200 to $300.

9-16.5002-1—Articles B-II and B-XXIX: Adds reference to FPR 1-15.3 for clarification.

9-16.5002-1—Article B-XVIII: Revises second sentence for clarification.

9-16.5002-1—Articles B-XXV and B-XXVI: The Articles have been reserved for future use.

9-16.5002-1—Article B-XXIX: A cross reference to FPR 1—15.3 has been added to footnote 2 of paragraph (a).

9-16.5002-1—Article B-XXX: Adds to the definition of "general-purpose equipment" the qualification that the item cost $500 or more.

9-16.5002-1—Article B-XXXVII: The clause entitled "Preservation of Individual Occupational Radiation Exposure Records" as set forth in 9-50.704-41 is to be inserted when appropriate.

9-16.5002-2—Paragraph 3(d) of outline: The coverage on insurance has been clarified by indicating that the contractor shall waive any right of action against the Government for loss covered by insurance.

9-16.5002-3—Article III Paragraph (d): The coverage on insurance has been clarified by indicating that the lessor shall waive any right of action against the contractor or the Government for loss covered by insurance.

9-16.5002-3—Adds Article XIV on equal opportunity and cross references to FPR 1-12.803-2.

9-17.101(b)(2)—DOE management currently has under consideration the extent of the delegation to be given to the Board of Contract Appeals under Public Law 85-804. Until a management decision is made, Board jurisdiction shall be limited to cases in this area arising out of former ERDA programs. This limitation preserves the present jurisdiction without extending it to other programs.

9-17.102 through 9-17.207-2—The term "Department" has been substituted for the word "agency" wherever the latter word appeared.

9-17.206-50—The reference to "10 CFR Part 703" has been deleted since the cite does not apply to DOE. Also the phrase "otherwise provides" has been added to the second sentence of paragraph (a) to more clearly indicate the type of hearing to which parties directly affected by the Act are entitled.

9-17.206-51—The reference to the "Board of Contract Appeals and Adjustments" has been changed to read "Contract Adjustments Board."

9-18.111—Subsection has been deleted.

9-18.112—The cross reference to Subpart 9-1.54 has been changed to assure compatibility with the revisions made to the organizational conflict of interest coverage.

9-18.283-1—The maximum charge for reproducing invitations, plans and specifications has been raised from $25 to $100; and a solicitation provision has been added for use when fees are non-refundable.

9-18.306-50(a)—The introductory sentence to the subsection has been revised to more clearly indicate the need for Government estimates.

9-18.701-51(a)(6)—The exception to the Davis-Bacon and Copeland Acts as it relates to demolition has been clarified.

9-18.701-51(a)(7)—Adds reference to FPR 1-18.703-2 for clarification and deletes the parenthetical reference to subcontracts.

9-18.701-52(a)(3)—The reference to work or services of a typical or recurring nature has been deleted and the subsequent paragraphs have been renumbered to fill the gap.

9-18.701-52(a)(4)—The subparagraph has been revised to clarify exemptions from the provisions of the Davis-Bacon Act.

9-18.701-52(a)(6)—Revised to more clearly show the work excluded from the "emergency work" category.

9-18.702-50—The subsection pertaining to Department of Labor approval has been deleted in its entirety, and Subsection 9-18.702 has been reserved.

9-18.704-3—The addressee for receiving wage determination requests has been changed from the regional officer of the Employments Standards Division, DOL to the Wage and Hour Division, Employment Standards Administration, DOL, Washington, D.C.

9-18.750-2(b)—The paragraph has been revised to exclude recurring maintenance such as patching surfaces.

9-18.750-2(e)—Revised for clarification of rehabilitation of facilities.

9-18.750-2(f)—Revised to more clearly indicate applicability of the Act to Printing.

9-18.750-2(g)(4)—The subsection has been retitled and revised to limit the example to telephone and utility systems.

9-18.750-2(h)(1)—The subsection has been revised to more specifically indicate that the erection of structures which are public works are covered even if such work is part of set-ups of device and/or processes.

9-18.51—A Subpart has been added to set forth DOE's policies relative to inspection services performed by A-E's. The subpart implements and supplements FPR 1-14 and establishes a requirement for providing written instructions to contractors who are delegated inspection authority.

9-23.104(b)—The criteria for initiation of a Contractor's Procurement System Review (CPSR) has been revised to indicate that such reviews will be initiated if it is expected that the contractor will during a 12-month period issue over $5,000,000 in subcontracts, utilizing Government funds, on a basis other than fixed-price, competitively awarded contracts.

9-23.104(c)—The approval authority for waiving CPSR has been changed to the Director, Office of Procurement Management.

9-23.104(e)—The reference to the DOE Handbook for Conduct of Contractor Procurement System Reviews has been deleted and the phrase "appropriate agency directives and guides" has been inserted.

9-23.104(f)—The addressee for receipt of "outlines of proposed CPSR reviews has been changed to the Director, Office of Procurement Management.

9-23.106(a)—The reference to the DOE Guide for Performance of CPSR has been changed to "appropriate DOE directives and guides."

9-23.107—Requirements for review of CPSR reports have been changed and the approval level for such reports has been changed to the Director, Office of Procurement Management. Also, the number of copies to be submitted has been changed to two and additional information pertaining to subcontract approval thresholds has been added.

9-23.106(b)—Subparagraph (5) has been redesignated as § 9-23.106(a) and (6) through (8) have been redesignated as (5) through (7), and the former paragraphs (c) through (f) have been redesignated as (d) through (g).

9-23.106(d)(i)—Deletes "notwithstanding 9-3.901."

9-23.106(e)—Information set forth in 9-23.109(b) has been transferred to explain procedures for safeguarding and distributing reports of Contract Procurement System Reviews.

9-23.109(b)—Information transferred to 9-23.106(e).

9-30.000—The phrase "for functions transferred to DOE from the agencies referred to in the FPR" has been deleted from the subsection.

9-30.102(c)(2)—Clarifies a policy governing exercise of the DOE loan guarantee authority by including "other DOE programs" as part of the criteria to be considered in authorizing loan guarantees.

9-30.501—Added to address authorizing progress payments based on percentage or stage of completion.

9-30.505—Added to address processing procedures for unusual progress payments.

9-30.517—Revised to show that the Senior Procurement Official, Headquarters, now approves contract financing office clearances.

9-30.701 (a) and (b)—Deletes reference to "defense" and "interest of national defense financing," respectively.

9-50.001(a)(1)(iii)—The subparagraph has been redrafted to enhance definition of "operating contracts" by deleting reference to construction contractor.

9-50.001(a)(2)—A parenthetical statement has been added to indicate that contracts for "management support reviews," "technical evaluations," etc., would not normally be considered as "on-site service contracts."

9-50.104—The subsection has been deleted.

9-50.108—The subsection has been revised to set forth DOE's policies with regard to Labor Surplus Area Concerns as it pertains to operating and on-site service contracts.

9-50.201(b)(4)—Revises correction of mistake procedure for clarification.

9-50.302-3(e)—The subsection has been deleted, since the subject is adequately covered in other sections of the DOE-PR. Subparagraphs (f) through (j) have been redesignated as (e) through (i).

9-50.302-3(i)—This subsection has been deleted.

9-50.302-5(a)(5)—The approval level for authorizing subcontract threshholds higher than $100,000 has been transferred to the Director, Office of Procurement Management.

9-50.303(a)—New paragraph (a) added to establish applicability. Existing paragraphs are redesignated (b) and (c).

9–50.304(a)—New paragraph (a) added to establish that the provisions of 9–50.303(a) apply. Existing paragraphs are redesignated (b) (c) and (d).
9–50.402—The Subpart has been retitled "Nuclear Material Transfers," and the reference to "source and special" has been deleted from subparagraph (a) of the subsection.
9–50.504(a)—The title of FPMR Part 101–14 has been corrected to read "National Stockpile."
9–50.506–3—Updates the reference to read "DOE Order 1340."
9–50.506–6(m)(1)—The reference to the FPMR has been corrected.
9–50.703–2—The subsection has been deleted and the Subsection number has been reserved. The revised Disputes clause is set forth in the FPR.
9–50.703–3—The former Subsection has been deleted and is now reserved.
9–50.704–2—Revised clause on "Safety and Health." Contracting Officer must notify the contractor of any noncompliance in writing.
9–50.704–2(b)—A requirement has been added for contractors to submit a management program and implementation plan to the contracting officer.
9–50.704–6(d)(3)(iii)—The period of time for which a waiver shall be in effect has been increased to a maximum of 20 years.
9–50.704–6(h)—The subparagraph of the clause has been revised to indicate that the obligations of DOE with respect to nuclear hazards indemnity will be unaffected by completion, termination, or expiration of the contract.
9–50.704–8(c)—Subparagraph has been restructured for clarification.
9–50.704–9—Provides new alternative for auditing subcontractors' records. May now arrange for an audit by the cognizant government audit agency.
9–50.704–12(b)—The term "work has been substituted for the term "contract" in the last sentence of this paragraph.
9–50.704–13(d)(8)—Expanded to explain the purpose of the personnel appendix and the modification procedures thereto. The dollar amount of employee compensation which requires Contracting Officer approval (§ 9–50.2002) has been raised to a maximum of $40,000.
9–50.704–14—Modifies title to focus on on-site service contracts. Also, as in 9–50.704–13, the dollar amount has been increased to $40,000. (§ 9–50.2002)
9–50.704–15—Deletes in its entirety and reserves.
9–50.704–16(d)(5)—Expanded to explain the purpose of the personnel appendix and the modification procedures thereto. The dollar amount requiring Contracting Officer approval has been raised to a maximum of $40,000 (§ 9–50.2002)
9–50.704–16(d)(19) & (20)—Deletes in their entirety and reserves.
9–50.704–16(e)(25)—Revised to read "Bidding expenses and costs of proposals" are unallowable costs.
9–50.704–17—The title of the clause has been revised by deletion of the parenthetical phrase.
9–50.704–18(b)—Clarifies treatment of accrued pension costs.
9–50.704.21—A new subparagraph (i) has been added to the Property clause which makes specific reference to the requirements of the DOE Property Management Regulations. The paragraph has been added to highlight the applicability of DOE's existing property management requirements.
9–50.704–22(b)—The reference to 9–3.850 has been changed to 9–50.704–24.
9–50.704–26—Expands requirements for nuclear safety. Includes a requirement for periodic training and qualification of personnel, coverage on operating and decommissioning facilities, a requirement for a comprehensive safety review and a requirement to submit plans for disposing of a facility and any associated nuclear/hazardous materials.
9–50.704–27(b)—The restriction on performing consulting services for more than one DOE contractor have been expanded by deletion of the word "atomic" and substituting the phrase "same or related" in its stead.
9–50.704–32—The clause entitled "Required bonds and insurance—exclusive of Government property" (cost-type contracts) has redrafted to make specific reference to the "Insurance Liability to Third Persons" clause and to delete the requirement that bonds and insurance policies be submitted to the Contracting Officer for approval. The clause now states that "the terms and conditions of any such bonds and insurance shall conform to the directions of the Contracting Officer".
9–50.704–41—Adds a clause on "Preservation of individual occupational radiation exposure records."
9–50.704–42—Adds a clause on "Key personnel."
9–50.704–48—The clause entitled "Small Business Subcontracting Program Reporting" has been added to reflect the DOE procedures for reporting contracts awarded to Small Business.
9–50.1200—Expands scope of "Labor Relations" to include subcontractors.
9–50.1205–1—Updates coverage to include current policy and organizational responsibilities for equal opportunity in employment.
9–50.1205–2—Revises to reflect change in 41 CFR Chapter 60.
9–50.1205–2(b)—Requires Contracting Officers to add solicitation notice in 41 CFR 60–4.2(d) and 4.3.
9–50.1207—Clarifies circumstances when subcontracts are applicable to the Service Contract Act of 1965.
9–50.1210–8—Revised to reflect correct title of the Office.
9–50.1212–1—The phrase "DOE contractors managing, operating, maintaining or constructing Government-owned facilities" has been replaced with the phrase "DOE on-site service and operating contractors."
9–50.1500—Coverage of cost principles and procedures relocated from 9–15.50. This change recognizes that the operation of a DOE plant or laboratory is significantly different from the normal educational institution research and development contract.
9–50.1503—Deletes consultation with the Controller on deviation actions.
9–50.1505–1(d)—Deletes the fourth sentence concerning "indirect cost" to ensure consistency with CAS 401.
9–50.1505–3—Adds a definition for allowable and reasonable costs (subparagraph (b)) and redesignates subsequent subparagraphs; also the parenthetical phrase in subparagraph 3(d) has been deleted and adds a subparagraph 3(f), "Cost accounting standards, if applicable."
9–50.1505–4(b)—Deletes reference to "DOE cost principles."
9–50.1506(i)—Revised to indicate the purpose of the personnel appendix.
9–50.1507–2—The title of the subsection has been revised. Examples of indirect costs have been deleted.
9–50.15—The conditions under which severance pay should not be offered have been clarified by stipulating that payments should not be made in the event an employee is offered employment with a replacement contractor where continuity of employment, with credit for length of service is preserved. Also subparagraph (e) has been deleted since the reference to educational institutions is no longer necessary.
9–50.1510–14(b)—Expanded to clarify the use of a personnel appendix and the allowability of compensation for personal services. The dollar amount of employee compensation which requires Contracting Officer approval has been increased to $40,000.
9–50.1801.3—Deleted in its entirety.
9–50.1804–1—Deletes the previous subpart and adds a statement on "Contract clauses."
9–51.101(a) (1) & (2)—Revised to indicate communications will be "through" certain offices en route to the Senior Procurement Official, Headquarters.
9–51.101(b)—Revised to clarify the DOE review process for contract actions.
9–51.102 (a) & (b)—Revised to further explain contract actions requiring advance Headquarter's review and approval.
9–51.103 (1) & (2)—Modifies the instructions for obtaining Headquarters advance approval by pointing to compliance with current Headquarters directives.
9–51.103–5—Modified for clarification.
9–51.301—Deletes the guidance pertaining to basic research lump sum contracts with foreign educational institutions.
9–51.602–2—Deletes previous coverage on justification of reported contracts.
9–52—Deleted in its entirety and reserved pending issuance of updated coverage on "Business Instrument Numbers and Procurement Request Numbers."
9–53—Deleted in its entirety and reserved pending issuance of updated coverage on "Contract Reporting."

Accordingly, the title of Chapter 9 in Title 41 CFR is revised to read, "Department of Energy".

In 41 CFR Chapter 9, the procurement regulations are adopted.

For the Department of Energy.

Dated: May 18, 1979.

M. J. Tashjian,

Director, Procurement and Contracts Management Directorate.

[FR Doc. 79–18574 Filed 6–13–79; 8:45 am]
BILLING CODE 6450–01–M

Thursday
June 14, 1979

federal register

Part VI

Department of Transportation

Coast Guard

New and Existing Tank Barges; Proposals for Prevention of Oil Pollution

V44/116 JE14 79 UMI

DEPARTMENT OF TRANSPORTATION

Coast Guard

[46 CFR Parts 30, 32, and 35]

[CGD 75-083]

Proposed Design Standards for Tank Barges to Prevent Oil Pollution

AGENCY: Coast Guard, DOT.

ACTION: Proposed Rule; withdrawal of prior proposed rule.

SUMMARY: the Coast Guard proposes to amend the tank vessel regulations to require double hull construction for all new tank barges designed to carry oil in bulk on the navigable waters of the United States and to prohibit these barges from carrying oil in the void spaces of their double hulls. A study sponsored by the Coast Guard shows that approximately 80 percent of the oil pollution caused by tank barges could have been prevented if these barges had double hull construction. Double hull construction on new tank barges will reduce the number of accidental discharges of oil due to hull damage.

DATES: 1. Written comments must be received on or before September 30, 1979. 2. The public hearings will be held on August 2, 1979, August 15, 1979, August 23, 1979, and September 7, 1979.

ADDRESSES: Written comments should be submitted to Commandant (G-CMC/81) (CGD 75-083), U.S. Coast Guard, Washington, D.C. 20590.

Comments will be available for examination at the Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Studies referred to in this document are appendixes to the Regulatory Analysis and Environmental Impact Statement (Regulatory Analysis) summarized in this document. Copies of the Regulatory Analysis are available for examination at this address.

The Coast Guard will hold 4 public hearings concerning this proposal in conjunction with the public hearings on the advance notice of proposed rule making appearing elsewhere in this issue of the Federal Register (See table of contents for page number). The first will be held on August 2, 1979, beginning at 9:00 a.m., in Room 2230, 400 7th Street, SW., Washington, DC 20590. The second will be held on August 15, 1979, beginning at 9:00 a.m., in the Olympic Hotel, Williamsburg Room, Fourth and Seneca Streets, Seattle, WA 98111. The third will be held on August 23, 1979, beginning at 9:00 a.m., in the Holiday Inn Superdome Downtown, Russel B. Long Room, 1111 Gravier Street, New Orleans, LA 70122. The Fourth will be held on September 7, 1979, beginning at 9:00 a.m., in the Stouffers Riverfront Towers, Jefferson A and B Rooms, 200 South Fourth Street, St. Louis, MO 63102.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Eugene K. Johnson, Merchant Marine Technical Division (G-MMT-1/82), U.S. Coast Guard, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-4431).

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Each comment should include the name and address of the person submitting the comment, reference the docket number (CGD 75-083), identify the specific section of the proposal to which each comment applies, and include sufficient detail to indicate the basis on which each comment is made. All comments received before expiration of the comment period will be considered before final action is taken on this proposal. Interested persons are invited to attend the hearings and present oral or written statements on this proposal. It is requested that anyone desiring to make an oral statement notify Captain Philip J. Danahy, at the address listed under ADDRESSES, at least 10 days before the scheduled date of the public hearing and specify the approximate length of time needed for the presentation. Oral statements at the public hearing will normally be scheduled to be heard in the order that requests are received. It is urged that a written summary or copy of the oral statement be included with that request.

Drafting Information

The principal persons involved in drafting this proposed rule are Lieutenant Commander Eugene K. Johnson, Project Manager, Office of Merchant Marine Safety, and Mr. Stanley M. Colby, Project Attorney, Office of Chief Counsel.

Discussion

Background and Withdrawal of Prior Proposed Rule

In the December 24, 1971 issue of the Federal Register (36 FR 24960), the Coast Guard published a notice of proposed rule making which, along with many other proposals, contained design standards to prevent pollution from tank barges on inland routes. One of these proposals called for double walls on the sides and ends of tank barges but not for double bottoms. The inland barge industry entered strong objection to the proposed requirement for double wall construction. The basis of the objection was that the Coast Guard had not adequately investigated the cost nor had it established a case that double walls would significantly reduce oil pollution. Due to these comments, the proposed requirement for double walls on inland tank barges was not included in the final rules published on December 21, 1972 (37 FR 28250) and this document withdraws that proposal (proposed § 155.305).

The Coast Guard, in cooperation with the Maritime Administration, entered into a study of costs and alternatives available to reduce oil pollution caused by tank barge hull damage. The joint Maritime Administration/U.S. Coast Guard "TANK BARGE STUDY," NTIS # COM-75-10284/AS, was completed in October 1974. As a basis for this study, a survey of tank barges damaged in a one year period was conducted and a fleet profile of the sizes and types of construction used for existing barges was developed. Data from the Pollution Incident Reporting System, established by the Coast Guard in December 1971 to implement Section 311 of the Federal Water Pollution Control Act, was used to determine the amount of oil spilled by tank barges in the inland waters.

Various alternative designs for preventing oil pollution from tank barges were developed by the Coast Guard for several size categories. These alternatives were evaluated for both new tank barges and retrofitting of existing tank barges.

The effectiveness of the various alternatives was evaluated by two methods. As the first method, the damage survey from the study was compared against each alternative to determine if pollution would be prevented by that alternative. The conclusion reached by this method was that double hulls with a 24 inch separation of the inner and outer hulls would be 96 percent effective in preventing pollution due to hull damage. As the second method, field reports for tank barges in the Coast Guard Merchant Vessel Casualty File were analyzed for the same time period used in the first method. Only reports of damage with ensuing pollution were used. The conclusion reached by this method was that double hulls would be 95% effective in preventing pollution due to hull damage. The second method also showed that bottom damage is important and has to be considered for effective design.

As a part of the 1974 Tank Barge Study, the life-cycle costs of the various alternatives were investigated by an outside contractor under a contract to the Maritime Administration. The Maritime Administration has updated these costs to 1978 levels and has calculated the additional costs for double hulls on ocean and coastwise tank barges.

Much of the information used in the joint study was supplied by the barge industry. Ample opportunity for comment on the results of the study was given by presenting most of the information in a paper, "Alternative Inland Tank Barge Designs for Pollution Avoidance", presented at the spring meeting of the Society of Naval Architects and Marine Engineers in May 1974 at Chicago, Illinois before the report was finished. Criticism of the study was that it used only a 1 year data base and that the pollution data was not good. The Pollution Incident Reporting System had been in operation only about 2 years at the time of the study. As with any new data system, problems occurred during implementation of the reporting procedures and early data in this system ranged from "not good" to "inadequate."

To identify the magnitude of oil pollution from tank barges and to determine the causes of that pollution, a contract was awarded by the Coast Guard to Automation Industries, Inc. on July 13, 1977. The final report, CG-M-2-78 "Tank Barge Oil Pollution Study," was submitted to the Coast Guard in February 1978. The following Coast Guard maintained data and file systems were used in the study: the Pollution Incident Reporting System (PIRS), Commercial Vessel Casualty Reporting System, Inspected Barge File, and District Penalty Files, for the years 1974 through 1976. The PIRS data was verified by sampling penalty files maintained in Coast Guard field offices and was found to be adequate, probably due to the maturity of the Pollution Incident Reporting System and the increased emphasis placed on pollution prevention in recent years.

For this 3 year period, the volume of oil spilled from tank barges was 173,971 barrels. This compares to a total of 288,704 barrels of oil spilled from tankships for the same period of which 178,571 barrels were spilled in a single incident, the ARGO MERCHANT. The oil spilled by tank barges occurred in the inland waters, harbors and near coastal waters of the U.S. These waters are ecologically very sensitive to oil pollution and are highly visible to the public.

Of the oil spilled by barges, approximately 85% of the total volume was spilled in a relatively small number of incidents which occurred during the barge transport of oil and usually involved hull damage. Based on the 1974 study, approximately 80% of the volume of tank barge oil pollution can be eliminated by a double hull construction standard with a 24 inch separation of hulls. The analysis discussed in the following paragraph established that the effectiveness of double hulls may be as high as 89% in reducing the volume of oil pollution from tank barges.

For the years 1973 through 1977, an analysis of the Pollution Incident Reporting System data and the Commercial Vessel Casualty Reporting System data has been performed by the Coast Guard. Of 184 hull damage incidents having spills of 500 gallons or greater which have a total volume of 178,500 barrels, 94% of the total volume for the period, 91 casualty reports were identified. These reports were analyzed to determine if the routes for which tank barges are certificated has an impact on the pollution potential of tank barges, and the analysis disclosed that the route for which a tank barge is certificated does not appear to influence the pollution potential.

Proposed Regulations

The regulations proposed in this document would be codified in 46 CFR Subchapter D (Tank Vessels) in a new Subpart 32.64. While the proposed regulations are intended to prevent pollution and could have been placed in 33 CFR Part 157, the regulations are design standards and should be in Subchapter D. The proposed regulations would only apply to tank barges that carry oil. The definitions of oil and crude oil are included in the proposal for facilitation in applying the regulations, since these definitions are not now contained in Subchapter D.

The proposed regulations would apply to new tank barges, which are defined as those constructed or converted under a contract awarded after December 31, 1979, or in the absence of a contract, where the actual construction or conversion of the barge begins after December 31, 1979. The December 31, 1979, proposed date was selected by the Coast Guard based on the time frame anticipated for publishing this notice, holding hearings and receiving written comments, evaluating all the comments and publishing final rules. This date will be changed if substantial delays are encountered.

Since the analyses performed indicate that double hulls are necessary for all barges regardless of the route they are certificated for, the proposed regulations would apply to inland and seagoing barges. However, it is proposed to limit the application of the requirements to product carriers of less than 30,000 DWT and crude oil carriers of less than 20,000 DWT. Since the pollution prevention regulations for tank vessels (33 CFR Part 157) apply to both tank ships and tank barges, they are considered sufficient to meet the environmental mandate of Congress for any tank ships and tank barges larger than the proposed tonnage limits. Tank barges of this size are limited to the same areas of operation as tankships due to their size.

The proposed regulations would require that cargo tanks be located a minimum of 24 inches from the hull of the barge. This separation was chosen based on the expected effectiveness of this separation developed in the 1974 Tank Barge Study and the Coast Guard's opinion that this is the minimum separation that would permit inspection of the spaces between the cargo tanks and the hull. A review of representative plans for existing double hull barges has shown that most of these barges are now built with cargo tanks located 24 to 30 inches from the hull even though present regulations would allow 15 inches. However, the 15 inch minimum now allowed for double bottoms was originally established for independent cylindrical tanks and not for a full double bottom.

In the void spaces between the hull and cargo tanks the internal structures would have to be arranged so that the spaces can be inspected. Sounding devices to detect leakage into the spaces and a means of pumping out the spaces would be required. An access to enter the space would also be required. If vents are installed, even though not required under § 32.55-45(b), the proposed regulations would require flame screens in the vents. This is considered necessary for safety reasons because of the possibility of cargo leakage into the spaces.

The proposed regulations would require that the double hull tank barges meet a minimum stability standard. If the space between the cargo tanks and the hull is not subdivided properly, a barge could sink or capsize with only minor damage to the hull. The proposed standard would require that the subdivision of the space be arranged so that the barge will remain afloat and not capsize after holing the hull anywhere except on a transverse watertight bulkhead. 33 CFR Part 157 (Subpart B)

also contains stability requirements for certain seagoing tank barges.

The proposed regulations would prohibit the carriage of oil in the spaces between the cargo tanks and the hull of the barge. However, for larger barges where ballast may be needed in the unloaded condition, these spaces could be used for ballast water. This prohibition would only apply to new tank barges if this becomes a rule but a similar prohibition for existing tank barges is being considered in the advance notice appearing elsewhere in this separate Part VI in today's Federal Register (see table of contents for page number).

Section 30.01–5 of Subchapter D would be revised to require foreign tank barges operating on the navigable waters of the United States to meet the requirements of Subpart 32.64. There does not appear to be any significant trade at this time that would be affected should this become a rule. The change is considered necessary to prevent the development of a new trade to avoid these proposed regulations.

In addition to the proposal in this document, an Advance Notice of Proposed Rulemaking, appearing in this issue of the Federal Register, solicits ideas on how the existing single hull tank barges may be regulated to (1) reduce oil pollution due to hull damage while these barges are in service; and (2) hasten the retirement of single hull tank barges from the fleet so that transition to a double hull tank barge fleet can be accomplished in a timely manner.

This proposal has been reviewed under Department of Transportation's "Regulatory Policies and Procedures" (44 FR 11034, February 26, 1979). A Draft Evaluation has been prepared, and is included in the public docket.

Economic Impact

The major economic impact of a requirement for double hulls on new tank barges is the increase in cost for double hull construction over single hull construction. The costs have been calculated for inland and seagoing tank barges. A trend to double hull construction for inland tank barges exists; therefore, the total additional cost for double hull construction for inland tank barges that might otherwise have been single hull construction is approximately 2.8 million dollars for the period 1979 to 1983 in 1978 present value dollars. By 1983 it is assumed from current trends that all inland tank barges would have been built double hull regardless of these regulations.

Seagoing tank barges would not have been built to double hull standards without these regulations. The cost per barge for a double hull ocean barge is considerably greater than for an inland tank barge. It is estimated that 7 single hull seagoing tank barges will be built in 1979. The estimated additional cost for double hulls on these 7 barges is about 7.1 million dollars. The total 1978 present value additional cost for double hulls on seagoing tank barges, to replace all existing single hull seagoing tank barges by 1999 is approximately 144.0 million dollars.

A detailed discussion of the costs is included as Chapter 4 of the Regulatory Analysis. The effects of the proposed regulations on the transport of oil and the reduction of oil pollution are also evaluated.

Summary of Regulatory Analysis

A single draft Regulatory Analysis and Environmental Impact Statement has been prepared for this notice of proposed rulemaking and the advance notice of proposed rulemaking for existing tank barges. This was done so that the scope of the Coast Guard's regulatory action to prevent oil pollution from barges is clearly presented and all applicable information is available to the public in a single document. All the major background studies are included as appendixes to the Regulatory Analysis.

The Regulatory Analysis establishes the need for regulations by carefully analyzing pollution and casualty data. The double hull design was selected based on effectiveness for preventing pollution due to hull damage which was established in the 1974 Tank Barge Study. The alternatives to double hull design are discussed and the reasons for the Coast Guard rejecting these alternatives are presented. Alternatives considered were:

(a) Publish no additional standards. (No action)

(b) Publish less stringent regulations than those proposed which included heavier scantlings either in selected areas or overall, double sides and ends, or tank size limits.

(c) Publish regulations more stringent than those proposed by requiring the carriage of oil in Type I or Type II barge hulls as currently defined in Coast Guard regulations.

(d) Reduce oil consumption or reduce the amount of oil transported by tank barges.

(e) Use a different mode of transportation for the movement of oil.

In consideration of the foregoing, it is proposed to amend Subchapter D of Title 46, Code of Federal Regulations, as follows:

PART 30—GENERAL PROVISIONS

1. By revising § 30.01–5(e) to read as follows:

§ 30.01–5 Application of regulations—TB/ALL.

* * * * *

(e) This subchapter applies to each foreign flag vessel that carries combustible or flammable liquid cargoes on the navigable waters of the United States, except if the vessel has on board a current and valid Safety Equipment Certificate, issued under its Government that is signatory to the International Convention for the Safety of Life at Sea, 1960 (16 UST 185, TIAS 5780), or a current and valid certificate of inspection, issued under its Government having reciprocal vessel inspection arrangements with the United States and vessel inspection laws similar to the inspection laws of the United States, the vessel must only meet the following:

(1) Subpart 32.64.

(2) Sections 35.01–1 and 35.01–60.

(3) If the vessel is involved in a marine casualty or accident when on the navigable waters of the United States, Subpart 35.15.

(4) Subpart 35.30, except § 35.30–15.

(5) Subpart 35.35.

* * * * *

PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

2. By adding a new Subpart 32.64 to follow Subpart 32.63 and to read as follows:

Subpart 32.64—Hulls for New Tank Barges—B/ALL

Sec.
32.64–3 Definitions.
32.64–5 Applicability.
32.64–10 Hull structure.
32.64–15 Subdivision and stability.

Authority: R.S. 4417a (46 USC 391a, as amended by Pub. L. 95–474, Port and Tanker Safety Act of 1978); 49 CFR 1.46(n)(4)

§ 32.64–3 Definitions.

As used in this Subpart:

"New tank barge" means a non-self-propelled vessel that carries oil in bulk and that is—

(a) Constructed or undergoes a major conversion under a contract awarded after December 31, 1979; or

(b) In the absence of a contract—

(i) Has the keel laid or is at a similar stage of construction after December 31, 1979; or

(ii) Major conversion is begun after December 31, 1979.

"Oil" includes oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

"Major conversion" means a conversion of an existing vessel which substantially alters the dimensions or carrying capacity of the vessel; or changes the type of vessel; or substantially prolongs its life; or which otherwise so alters the vessel that it is essentially a new vessel.

"Crude Oil" means any liquid hydrocarbon mixture occurring naturally in the earth, whether or not treated to render it suitable for transportation, and includes crude oil from which certain distillate fractions may have been removed, and crude oil to which certain distillate fractions may have been added.

§ 32.64–5 Applicability.

This subpart applies to new tank barges of less than 30,000 DWT except new tank barges of 20,000 DWT or more that carry only crude oil.

§ 32.64–10 Hull structure.

Each tank barge to which this subpart applies must be designed and constructed having—

(a) The outer boundary of each cargo tank at least 60 cm (24 inches) from the inner surface of the side, bottom, and fore and aft end hull plating; and

(b) In the spaces between the cargo tanks and the hull of the barge—

(1) Sufficient clearance between the internal structures to allow a person of average height and weight to inspect the hull;

(2) Sounding devices meeting § 56.50–90 of this chapter;

(3) Bilge pumps meeting § 56.50–55 of this chapter;

(4) An access of at least 38 cm. by 46 cm. (15" by 18") that may not be on a cargo tank boundary; and

(5) If vents are installed, flame screens, as defined in § 30.10–25 of this subchapter.

§ 32.64–15 Subdivision and stability.

The hull of each new tank barge under this subpart must be designed to retain, under any condition of loading, positive buoyancy and stability, 51 mm (2 inches) of positive metacentric height, after the bottom or side shell plating of the outer hull is holed anywhere on its girth except in way of a transverse watertight bulkhead.

Note.—There are additional requirements for seagoing tank barges in 33 CFR Part 157 (Subpart B).

PART 35—OPERATIONS

3. By adding a new § 35.01–60 to follow § 35.01–50 and to read as follows:

§ 35.01–60 Oil in void spaces of new tank barges—B/ALL.

A new tank barge under Subpart 32.64 of this subchapter may not carry oil as cargo in the void spaces between the hull and the cargo tanks.

(R. S. 4417a (46 USC 391a, as amended by Pub. L. 95–474, Port and Tanker Safety Act of 1978); 49 CFR 1.46(n)(4))

R. H. Scarborough,
Vice Admiral, U.S. Coast Guard, Acting Commandant.

June 11, 1979.

[FR Doc. 79-18555 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-14-M

[46 CFR Chapter I, Subchapter D and O]

[CGD 75–063a]

Proposal for Existing Tank Barges To Prevent Oil Pollution

AGENCY: Coast Guard, DOT.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard is proposing to accelerate the normal attrition of certain single hull tank barges certificated to carry oil and to reduce the number of oil pollution incidents resulting from hull damage to these barges while they continue in operation. A study sponsored by the Coast Guard has shown that approximately 80 percent of the oil pollution caused by tank barges could have been prevented if these barges had complete double hull construction. Analysis of the tank barge fleet profile indicates that normal attrition of single hull tank barges from the operating fleet would delay the total realization of this dramatic reduction in oil pollution until some time beyond the year 2020. This advance notice is intended to complement proposed design standards for new tank barges to reduce oil pollution in the navigable waters of the United States.

DATES: 1. Written comments must be received on or before September 30, 1979.

2. The public hearings will be held on August 2, 1979, August 15, 1979, August 23, 1979 and September 7, 1979.

ADDRESSES: Written comments should be submitted to Commandant (G–CMC/81), (CG 75–063a), U.S. Coast Guard, Washington, D.C. 20590. Comments will be available for examination at the Marine Safety Council (G–CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Studies referred to in this document are appendices to the Regulatory Analysis and Environmental Impact Statement (Regulatory Analysis) summarized in this document. Copies of the Regulatory Analysis are available for examination at this address.

The Coast Guard will hold four public hearings on this advance notice of proposed rulemaking in conjunction with the public hearings on the notice of proposed rulemaking appearing elsewhere in this issue of the Federal Register. The first will be held on August 2, 1979 beginning at 9:00 AM, in Room 2230, 400 Seventh St., S.W., Washington, D.C. 20590. The second will be held on August 15, 1979 beginning at 9:00 AM, in the Olympic Hotel, Williamsburg Room, Fourth and Seneca Sts., Seattle, WA 98111. The third will be held on August 23, 1979 beginning at 9:00 AM, in the Holiday Inn Superdome Downtown, Russel B. Long Room, 1111 Gravier Street, New Orleans, LA 70122. The fourth will be held on September 7, 1979 beginning at 9:00 AM, in the Stouffers Riverfront Towers, Jefferson A and B Rooms, 200 South Fourth Street, St. Louis, MO 63102.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Kenneth A. Rock, Merchant Vessel Inspection Division (G–MVI–2/83), U.S. Coast Guard, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 426–2190.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Each comment should include the name and address of the person submitting the comment, reference the docket number (CGD 75–063a), identify the specific section of the proposal to which each comment applies, and include sufficient detail to indicate the basis on which each comment is made. All comments received before expiration of the comment period will be considered before further action is taken on this proposal. Interested persons are invited to attend the hearings and present oral or written statements on this proposal. It is requested that anyone desiring to make an oral statement notify Captain Philip J. Danahy at the address listed under ADDRESSES at least ten days before the scheduled date of the public hearing and specify the approximate length of time needed for the presentation. Oral statements at the

public hearing will normally be scheduled to be heard in the order that requests are received. It is urged that a written summary or copy of the presentation be included with the request.

Draft Information

The principal persons involved in drafting this advanced notice are: Lieutenant Commander Theodore J. Sampson, Lieutenant Commander Kenneth A. Rock, Project Managers, Office of Merchant Marine Safety, and Mr. Stanley M. Colby, Project Attorney, Office of the Chief Counsel.

Background

Tank barges exist in a variety of configurations. Some are little more than compartmentized boxes having only a single layer of steel at any point on their hull. Others have end voids, full or partial double sides or bottoms, independent cargo tanks, or various combinations of these features. For the purpose of this advance notice, only a tank barge that has at least a complete double hull, including the end voids and double walls and bottoms, (but without a double deck) is considered a "double hull barge." All others are referred to as "single hull barges."

The current profile of the tank barge fleet shows that approximately 2130 single hull tank barges exist. Some are newly constructed while others were built in the early 1900's. Normal attrition of these tank barges from the fleet would find more than 50 percent still active in 1986, 25 percent still active in 2000, with total replacement not likely until after 2020. If the double hull tank barge construction requirements for new barges, proposed elsewhere in this issue of the **Federal Register** are to have a timely, appreciable effect on reducing the current volume of oil spilled by barges, it is clear that single hull tank barges will have to be removed from service at an accelerated pace.

In a notice of proposed rulemaking issued December 24, 1971, (36 FR 24960) this same problem was discussed. The accelerated phaseout of existing single hull barges would have been provided by a preclusion of the "rebuilding" of these vessels to original conditions, but allowing individual plate renewal or repair of damaged areas. As an alternate approach, the possibility of specifying a termination date for the use of single hull barges was proposed.

Numerous comments on the proposed approach and its alternatives were received. Comments from representatives of the barge operators, while supporting the intent of the regulations to prevent pollution, decried effecting the phaseout by proscribing the "rebuilding" of single hull barges. The alternate approach of a termination date found equal opposition. It was argued that existing single hull vessels should be allowed to continue in operation until no longer serviceable due to the economic effects upon individual companies and the inability to move the required amount of petroleum products without a tank barge fleet of adequate size.

Two commenters suggested that a joint committee of local Coast Guard and industry representatives be established in each port to act as judges of when a vessel was to be considered no longer serviceable. Such a committee is not a viable approach in that it would not provide equitable treatment nationwide for the various operators involved. Further, such a committee would be dilution of the responsibility vested by the Port and Tanker Safety Act of 1978 (92 Stat. 14800, 46 U.S.C. 391a) in the Secretary of Transportation and subsequently delegated to the Coast Guard.

Unfortunately no comments were received which offered alternate approaches to the accelerated retirement of single hull barges.

The methods of handling single hull barges which were published in that notice of proposed rulemaking were not without support. The new construction standards and "rebuild" phaseout mechanism were regarded by numerous private citizens and commenters representing environmental organizations as long overdue. The input received from Coast Guard field offices unanimously supported the phaseout of single hull barges, preferring the use of a termination date.

The suppositions of the commenters that accelerated attrition of existing tank barges could not be effected without severe economic impact on the industry and its ability to transport the nation's oil had to be examined. Both of these questions have been addressed in the Regulatory Analysis.

Since that proposed rule was published in 1971, many studies have been conducted that addressed the problem of oil pollution from tank barges. These studies have clearly shown a need to accelerate the normal attrition of single hull tank barges to achieve a timely realization of the potential reduction in oil pollution that a double hull tank barge fleet would provide. These studies have also shown that the considerable amount of oil pollution resulting from minor hull damage incidents requires mitigating action while awaiting the removal of single hull barges from service.

Discussion of the Proposals

This advance notice contains a comprehensive proposal affecting existing single hull tank barges. The Coast Guard is committed to reducing, in a timely fashion, the amount of oil pollution resulting from tank barges. However, the Coast Guard has made no firm commitment to the proposals advanced in this document. These proposals represent an initial effort to find a means to more rapidly realize the environmental benefits which will result from a double hull tank barge fleet, while not creating an undue burden upon the tank barge industry. Many assumptions and projections had to be made to evaluate the efficacy of this approach.

It is possible that some alternatives have been overlooked or that some assumptions are not valid. If these can be pointed out, this approach will then provide the starting point for improvement or refinement. If the comments received can identify an alternate method to achieve a total double hull tank barge fleet at an acceptable pace, and provide an equivalent reduction in oil pollution incidents from the single hull barges allowed to operate during the transition, this approach can be discarded in its entirety or the proposals herein can be modified accordingly. Comments are particularly requested with respect to benefits and feasibility of phasing out single hull barges within a time frame of less than twenty (20) years.

The first objective of this advance notice is to suggest a mechanism to accelerate the normal attrition of single hull tank barges from oil service. Single hull tank barges that are more than twenty years old would not be certificated for the carriage of oil after 1985. Exceptions would be made as follows:

1. Barges that have been constructed with end voids and double sides, or end voids and double bottoms, or independent cargo tanks would continue in normal, unrestricted operations until the vessel is no longer serviceable.

2. Barges converted to meet the construction provisions of paragraph 1, before the barge is twenty years old and before December 31, 1985, would be allowed the same privileges.

3. Existing single hull barges would be allowed to continue in operation without the conversion proposed in paragraph 2 until the vessel is no longer serviceable, provided the operator could demonstrate to the satisfaction of the Commandant of the Coast Guard that:

a. The properties of the particular cargo or cargoes to be carried would preclude or significantly retard, at the ambient temperatures anticipated on the vessel's route, the outflow of the product if the hull was breeched; and

b. The temperature of the product during transport would not exceed that critical for retaining the properties demonstrated in paragraph "a" above.

4. The Officer in Charge, Marine Inspection (OCMI) could grant exemptions to individual single hull barges for the carriage of oil if:

a. The vessel is a permanently moored barge; or

b. The vessel's operation is restricted to areas of little commercial vessel traffic where the vessel would not be exposed to any of the following rigors or hazards:

(i) Locking operations;

(ii) Fleeting operations;

(iii) Midstream operations;

(iv) Possible collision with a breakaway from an upstream barge fleeting operation or mooring area;

(v) Any navigational hazard or condition where improper operation or loss of control of the tank barge could likely result in a casualty that would breach the hull.

For example: A vessel would not be certificated to operate in an area having a hard or rocky bottom where even low energy groundings would be expected to penetrate the hull. Or, a vessel would not be certificated to operate in an area having fast currents, where any loss of vessel control could be expected to result in high energy groundings or collisions.

The second objective of this advance notice is to suggest a means to reduce the number of oil pollution incidents that are expected to result from minor hull damage to single hull tank barges. Therefore, it is proposed that no exisitng tank barges would be permitted to carry oil in rake ends, corner voids, or double wall or bottom voids after December 31, 1980.

As an incentive for barge operators to more rapidly convert to double hull barge fleets, the requirements of Title 46 CFR Subchapter O would be changed to make internal inspections of double hull tank barges coincide with drydocking inspections. This would generally have the effect of lengthening the interval between internal inspections. Additionally, inspection of void spaces on externally structured integral tanks could be used by the OCMI as justification for extending the required interval of both drydocking and internal inspections. This would eliminate the need for some gas-freeing operations currently required.

Considerations in Developing Regulations Proposed

Because the need to address tank barges as a significant source of pollution was questioned in 1971 when regulations were first proposed, valuable time has been lost to make a gradual transition to an environmentally safer tank barge fleet by 1985 (The Congressional target date for elimination of polluting discharges, mentioned in the Federal Water Pollution Control Act Amendments of 1972 (86 Stat. 816, 33 U.S.C. 1251)). From a practical viewpoint, it is unacceptable to impose 1985 as the limit for use of all single hull barges. The impact on the nation's ability to transport oil and upon the economic viability of the many operators of single hull barges could not be justified by the expected environmental gains. The date of 1985 has therefore been used as the point after which the environmental benefits of a double hull barge fleet will be increasingly noticeable. To achieve this, single hull barges beyond twenty years of age should be barred from oil service.

The age of twenty years was chosen for several reasons. The transition to a double hull tank barge fleet can be 75 percent completed within a six year period which is not significantly beyond the Congressional target date for elimination of water pollution. The number of barges which would require replacement as a result of this age selection would not exceed the capabilities of today's shipbuilding industry. Approximately 1,000 vessels would be eliminated from service in 1985. But, sufficient time would be provided during the six years between the publication date of the regulations and 1985 to build all needed replacements.

The number of barges to be constructed as replacements for those retired from service in each year after 1985 could also be attained and the number of replacements needed should decrease gradually. Thus, the shipbuilding industry would not have to gear up for a short-lived massive barge production effort. Further, operators of single hull tank barge fleets would be given time to recover capital invested in recently acquired single hull tank barges. Finally, transport related pollution incidents could be reduced significantly by removing vessels from service when they reach the age where analysis of pollution data has shown the likelihood of their becoming involved in a pollution incident is significantly greater than that of newer vessels.

Including the provisions to allow some vessels to continue in service, if they have double sides, double bottoms, or independent tanks would accommodate the 403 vessels so configured. The data analyzed from the Coast Guard Pollution Information Reporting System showed that these configurations, while not reducing the possibility of a transport pollution incident to a level acceptable for an entire tank barge fleet, do reduce the risk significantly when compared only with single hull tank barges.

A joint study by the Coast Guard and the Maritime Administration indicated that the cost of retrofitting vessels was not an economically feasible alternative for the entire single hull tank barge fleet. However, since that study was completed in 1974, there have been some vessels which have been retrofitted to provide double sides. Apparently this is, for some operators, an economically acceptable undertaking. Provision would be made, therefore, to allow this as an additional alternative to the proposed phase out.

It is recognized that there are some products, defined as oil, which have physical or chemical properties that make the probability of large spills occurring as a result of hull damage less likely. It appears that there may be an appreciable number of products which, with the proper precautions or operational procedures, could be safely transported in single hull barges. With adequate input from industry, it may be possible to generate a list of these products and then project the number of tank barges that are more than twenty years of age that could be used in such service. This could ease the economic impact by providing for barges more than twenty years old a value in excess of scrap value.

Similarly, an alternate use could be provided by allowing single hull vessels to be exempted by the OCMI if certificated for limited service. The low pollution incident ratios of some of the oldest barges indicate that some service may be allowed with little environmental risk when the vessels are restricted to certain limited operations.

The proposal prohibiting the carriage of oil in rake ends and void spaces would allow an early realization of the pollution prevention benefits that these empty spaces have been shown to provide. In view of the high incidence of damage to these areas that the various studies have shown, the carriage of oil in these spaces should be curtailed as soon as possible.

The revision of the internal inspection standards for double hull tank barges would ensure that the single hull tank barges (which have the greatest potential for becoming involved in a transport related oil pollution incident) would receive the most frequent examinations. This would also provide an economic incentive for more rapidly converting to a double hull fleet.

Economic Impact

The cost of the proposed regulations discussed in this document was basically computed by assessing the early replacement cost of single hull tank barges. A normal attrition curve was projected based upon recent retirement trends. The cost of barge replacement under normal conditions was compared with the cost of barge replacement under the imposed attrition of the proposal. Assumption were made that should assure that the projected costs will be greater than actual costs.

These proposals are estimated to cost approximately $222 million dollars, or a 31 percent increase over normal expenses for the tank barge industry. A detailed discussion of the costs, as well as the benefits, is included in chapter 4 of the Regulatory Analysis. The assessment of the benefits has been difficult to make in terms of a dollar figure that would offset the cost. Information concerning current costs to the tank barge industry incurred by response, recovery, and cleanup of tank barge oil spills is solicited. Likewise, comments concerning projection of the costs associated with the regulatory suggestions are welcome.

A single draft Regulatory Analysis and Environmental Impact Statement has been prepared for this advance notice of proposed rulemaking and the notice of proposed rulemaking for new tank barge construction appearing elsewhere in this issue of the Federal Register. This was done so that the scope of the Coast Guard's regulatory action to prevent oil pollution from barges is clearly presented and all applicable information is available to the public in a single document. All the major background studies are included as appendices to the Regulatory Analysis.

The Regulatory Analysis establishes the need for regulations by carefully analyzing pollution and casualty data. The double hull design was selected based on effectiveness for preventing pollution due to hull damage, which was established in the 1974 Tank Barge Study. The alternatives to double hull design are discussed and the reasons for the Coast Guard rejecting these alternatives are presented. Alternatives and considerations in developing the proposals for existing single hull tank barges are also detailed.

The impacts of these rulemakings on the industries' economies, on the nation's environment, and the nation's ability to transport oil are also addressed.

(R.S. 4417a (46 U.S.C. 391a, amended by Pub. L. 95-474, Port and Tanker Safety Act of 1978) 49 CFR 1.46(n)(4))

Dated: June 11, 1979.

R. H. Scarborough,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

[FR Doc. 79-18696 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-14-M

federal register

Thursday
June 14, 1979

Part VII

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; June 1979

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals; June 1979

June 11, 1979.

This report is submitted in fulfillment of the requirements of Section 1014(e) of the Impoundment Control Act of 1974 (Public Law 93-344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year with respect to which, as of the first day of the month, a special message has been transmitted to the Congress.

This month's report gives the status as of June 1, 1979, of 11 rescissions and 57 deferrals contained in the first nine special messages of FY 1979. These messages were transmitted to the Congress on October 2, November 30, December 7, December 12, 1978, January 31, February 14, March 15, April 4, and April 28, 1979.

Rescissions (Table A and Attachment A)

Congressional action has been completed on all FY 1979 rescission proposals. Table A summarizes the status of rescissions proposed by the President as of June 1, 1979, while Attachment A shows the history and status of each rescission proposed during FY 1979.

Deferrals (Table B and Attachment B)

As of June 1, 1979, $2,768.0 million in 1979 budget authority was being deferred from obligation and another $2.4 million in 1979 obligations was being deferred from expenditure. Table B summarizes the status of deferrals reported by the President, and Attachment B shows the history and status of each deferral reported during FY 1979.

Information From Special Messages

The special messages containing information on each of the rescissions and deferrals covered by the cumulative report are contained in the Federal Register of:

Wednesday, October 11, 1978 (Vol. 43, No. 197, Part III).
Wednesday, December 6, 1978 (Vol. 43, No. 235, Part III).
Wednesday, December 13, 1978 (Vol. 43, No. 240, Part VI).
Monday, December 18, 1978 (Vol. 43, No. 243, Part VI).
Monday, February 5, 1979 (Vol. 44, No. 25, Part VI).
Wednesday, February 21, 1979 (Vol. 44, No. 36, Part VII).
Tuesday, March 20, 1979 (Vol. 44, No. 55, Part VIII).
Monday, April 9, 1979 (Vol. 44, No. 69, Part VI).
Tuesday, May 1, 1979 (Vol. 44, No. 85, Part V).

James T. McIntyre, Jr.,
Director.

BILLING CODE 3110-01-M

Table A

STATUS OF 1979 RESCISSION PROPOSALS

	Amount (in millions of dollars)
Rescissions proposed by the President	$908.7 a/
Accepted by the Congress	-723.6 b/
Rejected by the Congress	-185.1 c/
Pending before the Congress	-0-

* *

Table B

STATUS OF 1979 DEFERRALS

	Amount (in millions of dollars)
Deferrals proposed by the President	$ 4,373.8
Routine Executive releases (-$1,588.9 million) and adjustments (-$7.8 million) through June 1, 1979*	-1,596.8
Overturned by the Congress	-6.6
Currently before the Congress	$ 2,770.4 d/

a/ This amount is net of a $6.0 million reduction proposed in a Small Business Administration rescission (R79-11A).
b/ Public Law 96-7.
c/ Of this amount, $51.0 million is presently deferred (D79-5S and D79-29A).
d/ This amount includes $2.4 million in outlays for a Department of the Treasury deferral (D79-25B).
* Detail does not add to total due to rounding.

PAGE 1 ATTACHMENT A - STATUS OF RESCISSIONS - FISCAL YEAR 1979 AS OF 06/04/79 14:30

AS OF JUNE 1, 1979 AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	RESCISSION NUMBER	AMOUNT PREVIOUSLY CONSIDERED BY CONGRESS	AMOUNT CURRENTLY BEFORE THE CONGRESS	DATE OF MESSAGE MO DA YR	AMOUNT RESCINDED	AMOUNT MADE AVAILABLE	DATE MADE AVAILABLE MO DA YR
DEPARTMENT OF ENERGY							
Energy Programs							
Fossil energy construction BA	R79- 2	50,000a		1 31 79			
DEPARTMENT OF ENERGY TOTAL BA		50,000					
DEPARTMENT OF HEALTH, EDUCATION AND WELFARE							
National Institutes of Health							
Buildings and facilities BA	R79- 3	37,000		1 31 79	37,000b		
Health Resources Administration							
Health resources BA	R79- 4	167,893		1 31 79	46,350b	121,543	3 28 79
Office of Education							
Special projects and training BA	R79- 5	22,365		1 31 79	12,500b	9,865	3 28 79
DEPARTMENT OF HEALTH, EDUCATION AND WELFARE TOTAL BA		227,253			95,850	131,408	
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT							
Housing Programs							
Subsidized housing programs BA	R79- 6	600,000		1 31 79	600,000b		
New Communities Development Corporation							
New community assistance grants BA	R79- 7	8,167		1 31 79	8,167b		
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TOTAL BA		608,167			608,167		
DEPARTMENT OF THE INTERIOR							
Bureau of Mines							
Helium fund BA	R79- 8	3,127		1 31 79	3,127b		
DEPARTMENT OF THE INTERIOR TOTAL BA		3,127			3,127		
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION							
Research and program management BA	R79- 9	2,400		1 31 79	2,400b		
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION TOTAL BA		2,400			2,400		
OTHER INDEPENDENT AGENCIES							
Foreign Claims Settlement Commission							

PAGE 3 ATTACHMENT A - STATUS OF RESCISSIONS - FISCAL YEAR 1979 AS OF 06/04/79 14:30

AS OF JUNE 1, 1979 AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		RESCISSION NUMBER	AMOUNT PREVIOUSLY CONSIDERED BY CONGRESS	AMOUNT CURRENTLY BEFORE THE CONGRESS	DATE OF MESSAGE MO DA YR	AMOUNT RESCINDED	AMOUNT MADE AVAILABLE	DATE MADE AVAILABLE MO DA YR
Payment of Vietnam prisoner of war claims	BA	R79-10	9,000c		1 31 79	8,000b	d	
Salaries and expenses	BA	R79- 1	75		11 30 78		75	3 13 79
Small Business Administration								
Salaries and expenses	BA	R79-11	14,665		1 31 79			
	BA	R79-11A	-6,000		3 15 79	6,065b	2,600	3 26 79
OTHER INDEPENDENT AGENCIES TOTAL BA			17,740			14,065	2,675	
TOTAL BA			900,692			723,609	134,083e	

FOOTNOTES

a. These funds are included in a deferral (D79-55) transmitted to the Congress on April 26, 1979.

b. Public Law 96-7.

c. This amount was initially deferred (D79-29) in a special message transmitted to the Congress on October 2, 1978.

d. $1.0 million of the $9.0 million proposed for rescission is included in a deferral (D79-29A) transmitted to the Congress on April 26, 1979.

e. In addition to these amounts, rescissions totalling $51.0 million were rejected by the Congress, but are now included in deferrals D79-55 and D79-29A (as indicated under footnotes a and d).

END OF REPORT

PAGE 1 ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1979 AS OF 06/01/79 14:16

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 06-01-79
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Military assistance	BA	D79-31	161,875		11 30 78	-161,875a			
International military education and training	BA	D79-35	24,312		12 7 78	-24,312a			
Foreign military credit sales	BA	D79-45	651,000		12 12 78	-601,690			49,310
FUNDS APPROPRIATED TO THE PRESIDENT TOTAL BA			837,187			-787,877			49,310
DEPARTMENT OF AGRICULTURE									
Foreign Agricultural Service									
Salaries & expenses (special foreign currency)	BA	D79- 1	415		10 2 78	-13			402
Agricultural Stabilization & Conservation Service									
Commodity credit corporation	BA	D79- 2	3,530		10 2 78				
	BA	D79- 2A			12 7 78	-3,530			
Forest Service									
Acquisition of lands for Wasatch National Forest	BA	D79-36	209		12 7 78				209
Timber salvage sales	BA	D79-37	5,500		12 7 78	-702			4,798
Expenses, brush disposal	BA	D79- 3	32,225		10 2 78				
	BA	D79- 3A		5,276	1 31 79				37,501

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 06-01-79
Restoration of forest lands	BA	D79- 4	48		10 2 78				48
DEPARTMENT OF AGRICULTURE TOTAL BA			41,927	5,276		-4,245			42,958
DEPARTMENT OF COMMERCE									
National Oceanic and Atmospheric Administration									
Operations, research, and facilities	BA	D79-47	500		1 31 79				500
Construction	BA	D79- 5	9,830		10 2 78				
	BA	D79- 5A		202	12 12 78	-10,032			
Promote and develop fishery products and research	BA	D79- 6	12,060		10 2 78	-5,481	-6,579b		
Fisheries loan fund	BA	D79- 7	5,429		10 2 78				
	BA	D79- 7A		208	1 31 79				5,637
United States Fire Administration									
Facilities	BA	D79-32	6,150		11 30 78	-6,150			
Maritime Administration									
Ship construction	BA	D79-33	157,000		11 30 78	-134,000			23,000
DEPARTMENT OF COMMERCE TOTAL BA			190,969	410		-155,663	-6,579		29,137
DEPARTMENT OF DEFENSE-MILITARY									
Procurement									
Shipbuilding and conversion, Navy	BA	D79-34	563,940		11 30 78				563,940

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 06-01-79
Research, Development, Test, and Evaluation									
Navy	BA	D79-53	107,964		4 4 79	-107,964a			
Military Construction									
Military construction, all services	BA	D79- 8	548,451		10 2 78	-467,592		374	81,233
DEPARTMENT OF DEFENSE-MILITARY TOTAL BA			1,220,355			-575,556		374	645,173
DEPARTMENT OF DEFENSE-CIVIL									
Corps of Engineers									
Alaska hydroelectric power development fund	BA	D79-10	5,450		10 2 78				5,450
Wildlife Conservation, Military Reservations									
Wildlife conservation, all services	BA	D79- 9	458		10 2 78				
	BA	D79- 9A		130	1 31 79	-38			550
DEPARTMENT OF DEFENSE-CIVIL TOTAL BA			5,908	130		-38			6,000
DEPARTMENT OF ENERGY									
Energy Programs									
Fossil energy construction	BA	D79-55	50,000c		4 26 79				50,000
	BA	D79-56	570		4 26 79				570
Strategic Petroleum Reserve	BA	D79-57	113,528		4 26 79				113,528
Uranium enrichment - operating expenses	BA	D79-48	63,000		1 31 79				63,000

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 06-01-79
DEPARTMENT OF ENERGY								
TOTAL BA		227,098						227,098
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE								
Alcohol, Drug Abuse & Mental Health Administration								
Construction & renovation, St. Elizabeths Hospital								
BA	D79-11	27,577		10 2 78				27,577
Social Security Administration								
Limitation on salaries and expenses								
BA	D79-12	1,725		10 2 78				1,725
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE								
TOTAL BA		29,302						29,302
DEPARTMENT OF THE INTERIOR								
Bureau of Land Management								
Oregon and California grant lands								
BA	D79-46	12,811		12 12 78				
BA	D79-46A		1,901	1 31 79				14,712
Heritage Conservation and Recreation Service								
Land and water conservation fund								
BA	D79-13	30,000		10 2 78				30,000
Geological Survey								
Exploration of National Petroleum Res. in Alaska								
BA	D79-54	1,792		4 4 79				1,792
Payments from proceeds, sale of water								
BA	D79-14	36		10 2 78				36
Bureau of Mines								

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 06-01-79
Drainage of anthracite mines								
BA	D79-15	1,700		10 2 78	-363			1,337
Office of Territorial Affairs								
Administration of territories								
BA	D79-38	25,000		12 7 78	-25,000			
Trust territory of the Pacific Islands								
BA	D79-16	12,000		10 2 78	-12,000			
DEPARTMENT OF THE INTERIOR								
TOTAL BA		83,339	1,901		-37,363			47,877
DEPARTMENT OF JUSTICE								
Legal Activities								
Salaries and expenses, Community Relations Service								
BA	D79-49	572		1 31 79				572
Federal Prison System								
Buildings and facilities								
BA	D79-17	25,300		10 2 78				
BA	D79-17A		11,865	11 30 78	-160			37,005
DEPARTMENT OF JUSTICE								
TOTAL BA		25,872	11,865		-160			37,577
DEPARTMENT OF LABOR								
Employment and Training Administration								
Employment and training assistance								
BA	D79-50	122,133		1 31 79				122,133
DEPARTMENT OF LABOR								
TOTAL BA		122,133						122,133

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 06-01-79
DEPARTMENT OF STATE									
Administration of Foreign Affairs									
Acquisition, operation, & maintenance of buildings	BA	D79-39	36,787		12 7 78				36,787
Other									
Emergency refugee and migration assistance fund	BA	D79-18	2,750		10 2 78				
	BA	D79-18A		9,500	11 30 78	-12,250			
DEPARTMENT OF STATE TOTAL	BA		39,537	9,500		-12,250			36,787
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Civil supersonic aircraft development termination	BA	D79-19	3		10 2 78				3
Facilities & equip. (Airport & airway trust fund)	BA	D79-20	290,176		10 2 78				
	BA	D79-20A		21,259	1 31 79				311,435
Federal Highway Administration									
Trust fund share of other highway programs	BA	D79-21	40,000		10 2 78				
	BA	D79-21A		14,169d	2 14 79				54,169
Overseas highway	BA	D79-22	13,100		10 2 78				13,100
Urban Mass Transportation Administration									
Urban mass transportation fund	BA	D79-51	968,616		1 31 79				968,616
DEPARTMENT OF TRANSPORTATION TOTAL	BA		1,311,895	35,428					1,347,323

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 06-01-79
DEPARTMENT OF THE TREASURY									
Office of the Secretary									
Antirecession financial assistance fund	BA	D79-23	2,205		10 2 78				
	BA	D79-23A		73	12 7 78	-50			2,228
	O	D79-40	5		12 7 78				
	O	D79-40A		3	1 31 79	-8			
State and local government fiscal assistance fund	BA	D79-24	78,489		10 2 78				
	BA	D79-24A		1,665	12 7 78	-530			79,624
	O	D79-25	2,404		10 7 78				
	O	D79-25A		1,562	12 7 78				
	O	D79-25B		11,835e	2 14 79	-14,154		7.5	2,432
Bureau of the Mint									
Construction of mint facilities	BA	D79-26	5,730		10 2 78				5,730
DEPARTMENT OF THE TREASURY TOTAL	BA		86,424	1,738		-580			87,582
TOTAL	O		2,409	13,400		-14,162		785	2,432
GENERAL SERVICES ADMINISTRATION									
Property Management and Disposal Activities									
Rare silver dollar program	BA	D79-27	2,123		10 2 78				2,123
Federal Preparedness Agency									
State and local preparedness	BA	D79-28	80		10 2 78				80
GENERAL SERVICES ADMINISTRATION TOTAL	BA		2,203						2,203

PAGE 8 — ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1979 — AS OF 06/01/79 14:16

AMOUNTS IN THOUSANDS OF DOLLARS / AGENCY/BUREAU/ACCOUNT	DEFERRAL NUMBER		AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB/AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 06-01-79
OTHER INDEPENDENT AGENCIES									
Foreign Claims Settlement Commission									
Payment of Vietnam prisoner of war claims		BA	10,945	1,000	10 2 78	-1,051		-9,000f	1,894
		BA			4 26 79				
	D79-29	BA							
	D79-29A	BA							
International Communication Agency									
Salaries & expenses	D79-41	BA	2,095		12 7 78				2,095
Acquisition & construction of radio facilities		BA	3,141	7,832	12 7 78				10,973
	D79-42	BA							
	D79-42A	BA			2 14 79				
Interstate Commerce Commission									
Payments for directed rail service	D79-30	BA	13,990		10 2 78				13,990
Small Business Administration									
White House conference on small business	D79-43	BA	1,600		12 7 78				1,600
Navaho & Hopi Indian Relocation Commission									
Salaries and expenses	D79-44	BA	12,000		12 7 78				12,000
Tennessee Valley Authority									
Tennessee Valley Authority fund	D79-52	BA	15,000		1 31 79				15,000
OTHER INDEPENDENT AGENCIES									
TOTAL BA			58,771	8,832		-1,051		-9,000	57,552
TOTAL O			4,282,920	75,080		-1,574,783	-6,579	-8,626	2,768,012
TOTAL			2,409	13,400		-14,162		705	2,432

FOOTNOTES

a. This amount is net of a release of $10,831 thousand that was made prior to the transmittal of this supplementary report.

e. This amount is net of a release of $2,957 thousand that was made prior to the transmittal of this supplementary report.

f. This amount was included in a rescission proposal (R79-10) transmitted to the Congress on January 31, 1979.

b. This amount was released before the special message containing the deferral was transmitted to Congress.

d. Impoundment resolution S. Res. 80 passed the Senate on March 13, 1979, rejecting this deferral.

c. This amount was included in a rescission proposal (R79-2) transmitted to the Congress on January 31, 1979.

[FR Doc. 79-18660 Filed 6-13-79; 8:45 am]

Reader Aids

Federal Register
Vol. 44, No. 116
Thursday, June 14, 1979

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
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DOT/FRA*	LABOR		DOT/FRA*	LABOR
CSA	HEW/FDA		CSA	HEW/FDA

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

*NOTE: As of June 14, 1979, the Urban Mass Transportation Administration and Federal Railroad Administration, Department of Transportation, will publish on the Monday/Thursday schedule.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.

Rules Going Into Effect Today

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Food and Drug Administration—

28323 5-15-79 / Hydrogenated fish oil; affirmation of GRAS status as indirect human food ingredient

LABOR DEPARTMENT

Mine Safety and Health Administration—

28588 5-15-79 / State grants; procedures and requirements for applying for, receiving, and administering

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last Listing June 12, 1979

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2½ hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between Federal Register and the Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them, as part of the General Services Administration's efforts to encourage public participation in Government actions. There will be no discussion of specific agency regulations.

WASHINGTON, D.C.

WHEN: July 6 at 9 a.m.
WHERE: Office of the Federal Register, Room 9409, 1100 L Street NW., Washington, D.C.
RESERVATIONS: Call Mike Smith, Workshop Coordinator, 202-523-5235.

LOS ANGELES, CALIFORNIA

WHEN: June 28 and 29 at 9:00 a.m. (identical sessions).
WHERE: Federal Building, Army Corps of Engineers Conference Room 7412, 300 N. Los Angeles Street
RESERVATIONS: Federal Information Center, 213-688-3800.

SAN FRANCISCO, CALIFORNIA

WHEN: June 28 and 29 at 9:00 a.m. (identical sessions).
WHERE: Federal Building, Room 2[illegible] 450 Golden Gate Avenue
RESERVATIONS: Call Mike Modena or Judy Barbee, Federal Executive Board, 415-556-0250.

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Federal Register

Book 1 of 2 Books
Friday, June 15, 1979

Highlights

34468 **Residual Fuel Oil** DOE/ERA adopts amendment to domestic crude oil allocation program, holds hearing, and requests comments; comments by 10-1-79, hearing 8-15-79, request to speak by 8-2-79

34603 **Gaseous Emissions** EPA gives additional information, holds hearing and extends comment period on proposed rules for 1983 and later model year heavy-duty engines; comments by 8-29-79, hearing 7-16 and 7-17-79

34472, 34473, 34475, 34511 **Natural Gas** DOE/FERC proposes amendments and promulgates other rules relating to lawful prices; (4 documents)

34605 **Medicaid Quality Control** HEW/HCFA proposes to amend rules to specify time periods for completion of case reviews

34479 **Social Security Benefits** HEW/SSA publish final rules regarding requirements to become entitled to benefits; effective 6-15-79

34606 **Financial Assistance Programs** HEW/SSA plans to amend rules regarding quality control system

34651 **Juvenile Justice and Delinquency Prevention** Justice requests comments on draft guideline on Youth Advocacy Initiative; comments by 8-14-79

FEDERAL REGISTER Published daily, Monday through Friday (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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Area Code 202-523-5240

Highlights

34784 **National Pollutant Discharge Elimination System** EPA establishes criteria for applications for permits which modifies requirements of secondary treatment under Clean Water Act; effective 6-22-79 (Part IV of this issue)

34754, 34780 **Day Care** HEW/Secy proposes revisions and holds meetings regarding services provided to children outside their homes, except the Headstart program; comments by 9-21-79, meetings in July and September 1979 (Part III of this issue) (2 documents)

34856 **Nursery Stock, Plants, and Seeds** USDA/APHIS proposes rules and holds hearing concerning prohibitions and restrictions regarding importation; comments by 9-13-79, hearing 8-21 and 8-22-79 (Part VII of this issue)

34840 **Glass Manufacturing Plants** EPA proposes rules and holds hearing on standards of performance for new stationary sources; comments by 8-14-79, hearing 7-9-79, request to speak by 6-29-79 (Part VI of this issue)

34466 **Irradiated Reactor Fuel** NRC establishes requirements for physical protection of spent fuel in transit; effective 7-16-79

34515 **Blood and Blood Components** HEW/FDA proposes to relieve restrictions on performance checks and calibrations of certain related equipment; comments by 8-14-79

34618 **Child Nutrition Programs** USDA/FNS publishes income poverty guidelines for determining eligibility for free and reduced-price meals and free milk; effective 7-1-79

34606 **Indochinese Refugee Assistance** HEW/SSA plans to develop rules on eligibility requirements, services for cash assistance, social services, employment services and training

34892 **Certain Toys** CPSC classifies as banned hazardous substances certain toys and other articles intended for use by children under 3 years of age (Part IX of this issue)

34698 **Sunshine Act Meetings**

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34702 Part II, Labor/ESA
34754 Part III, HEW/Secy
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Rules and Regulations

Federal Register
Vol. 44, No. 117
Friday, June 15, 1979

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 317

Appointment, Reassignment, Transfer and Development in the Senior Executive Service

AGENCY: Office of Personnel Management.

ACTION: Amendment to interim regulation.

SUMMARY: The amended interim regulations implement Sec. 413 of Title IV of the Civil Service Reform Act of 1978. They cover the conversion of employees to the Senior Executive Service.

DATES: Effective Date: June 15, 1979, and until final regulations are issued. Comment Date: August 14, 1979.

ADDRESS: Send written comments to the Associate Director, Executive Personnel and Management Development, Office of Personnel Management, Room 6R54, 1900 E Street, N.W., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Jack Vincent, (202) 632-6820.

SUPPLEMENTARY INFORMATION: Subpart B of Part 317 is being revised to cover appointment, reassignment, transfer, and development in the Senior Executive Service. Subpart B of Part 317 was issued on March 30, 1979 as an interim regulation. Comments on the interim regulations indicated that certain excepted service employees were not being given equitable conversion offers. The amendments to Subpart B set forth below extend the entitlement to a career appointment in the Senior Executive Service to excepted service employees currently in noncareer-type positions who previously had substantial career-oriented service under a career-type appointment and define career-type appointment.

1. In each of the following subsections:
317.302(a)(1)(v)
317.302(a)(1)(vi)
317.305(b)(3)
317.306(b)(3)
add: "or, as determined by the Office of Personnel Management, have substantially career-oriented service under career-type appointments as defined in § 317.304(a)(2).

2. At the end of each of the following subsections:
317.305(b)(3)(i)
317.306(b)(3)(i)
add: "The name of the individual and basis for approving the request must be published in the Federal Register."

3. In § 317.306(a)(3) following the words "served under a career appointment" add: "or career-type appointments."

4. In § 317.306(a) replace paragraph 2 with the following:

(2) A similar type of appointment ("career-type" appointment) in an excepted service position, as determined by the Office.

A career-type appointment is an appointment in the excepted service other than an appointment:

(i) To a Schedule C position established under Part 213 of this chapter;

(ii) To a position authorized to be filled by noncareer executive assignment under Part 305 of this chapter;

(iii) To a position authorized to be filled by noncareer executive assignment; or

(iv) To a position where the incumbent is traditionally changed upon a change in Presidential administrations.

Office of Personnel Management.

Beverly M. Jones,
Issuance Systems Manager.

Accordingly, Subpart B of Part 317 is revised to read as follows:

Subpart B—Regulatory Requirements of the Office of Personnel Management

§ 317.201 Regulatory requirements.

This subpart contains the regulations of the Office of Personnel Management which implement subchapter VIII of chapter 33 of title 5, U.S.C. and section 413 of title IV of the Civil Service Reform Act of 1978.

§ 317.301 Conversion coverage.

(a) *When applicable.* These conversion provisions apply during:

(1) The initial conversion to the Senior Executive Service to be completed by July 13, 1979; and

(2) Conversion to the Senior Executive Service following revocation of a Presidential exclusion under 5 U.S.C. 3132(e).

(b) *Employees covered.* This subpart covers:

(1) An employee serving in a position at the time it is designated a Senior Executive Service position;

(2) An individual appointed or reinstated to a position after it has been designated a Senior Executive Service position;

(3) An employee transferred, promoted, voluntarily reassigned or voluntarily demoted to a position after it has been designated a Senior Executive Service position;

(4) An employee involuntarily reassigned or involuntarily demoted to a position after it has been designated a Senior Executive Service position; and

(5) An employee serving in a position which meets the grade level but not the functional criteria for designation as a Senior Executive Service position.

(c) *Employees excluded.* The following employees are excluded from coverage of this subpart and are not entitled to conversion to the Senior Executive Service.

(1) An employee in a position designated as Senior Executive Service who is serving under a time limited appointment which will terminate before the operational date of the Senior Executive Service.

(2) An employee serving under a temporary promotion, detail, or temporary assignment in a position designated as Senior Executive Service unless the position which the employee encumbered on a permanent basis just prior to the current temporary action has been designated as Senior Executive Service.

§ 317.302 Conversion procedures.

(a) *Employees appointed prior to designation; employees involuntarily reassigned or demoted after designation—(1) Notice.* Each employee covered by this subpart who was

appointed prior to the designation of his or her position as a Senior Executive Service position, or who was involuntarily reassigned or involuntarily demoted to a position after it was designated a Senior Executive Service position, shall be given a written notice which includes the following information:

(i) A statement that the employee's position has been designated as either "general" or "career reserved";

(ii) A statement that the employee is being offered an appointment under the Senior Executive Service or that the employee is not being offered an appointment under the Senior Executive Service but will be separated from the civil service pursuant to § 317.305(b)(4) or § 317.306(b)(4); If the employee is offered conversion, the notice shall also include:

(iii) A statement that the employee has 90 calendar days from the date of receipt of the written notice to elect either to join the Senior Executive Service or to remain in his or her current appointment system;

(iv) Identification of the position, SES pay rate, and kind of appointment which the employee will receive if the employee elects to convert to the Senior Executive Service;

(v) For excepted appointees who have reinstatement eligibility to a position in the competitive service, or, as determined by the Office of Personnel Management, have substantial career-oriented service under career-type appointments as defined in § 317.304(a)(2), a statement that the employee may request conversion to career appointment;

(vi) For employees under limited executive assignment who have reinstatement eligibility to a position in the competitive service or, as determined by the Office of Personnel Management, have substantial career-oriented service under career-type appointments as defined in § 317.304(a)(2), and who are covered under § 317.306(b)(3), a statement that the employee may request conversion to career appointment;

(vii) A summary of the features of the Senior Executive Service (this can be accomplished by appending descriptive material prepared by the Office);

(viii) A statement that the employee must submit his or her decision with regard to paragraphs (a)(1) (iii), (v) and (vi) of this section, in writing, on or before the end of the notice period; and

(ix) A statement of the employee's right to appeal an action under this subpart to the Merit Systems Protection Board.

An employee whose involuntary reassignment or involuntary demotion to a designated position occurs less than 90 days before the operational date of the Senior Executive Service, shall be given this notice at the time of the personnel action. The employee shall have 90 calendar days from the date of receipt of the notice to make an election on conversion.

(2) *Pay.* Pay shall be set at an authorized SES pay rate. The pay rate given to an employee upon conversion shall not be less than the employee's basic payable salary just prior to conversion. An employee's payable salary upon conversion is subject to pay limitations, if any, imposed by chapter 53 of title 5, United States Code, or other statutes.

(3) *Freedom of choice.* The employee shall decide whether he or she accepts conversion to the Senior Executive Service. The employing agency shall not attempt to influence the employee's decision through coercion, intimidation or duress.

(4) *Employee's election.* On or before the end of the notice period, the employee shall signify in writing his or her decision to accept or to decline an appointment under the Senior Executive Service. An excepted or limited assignment employee covered under § 317.305(b)(3) or § 317.306(b)(3), respectively, shall also indicate whether he or she request conversion to career appointment. Failure to respond shall be deemed declination.

(b) *Employees receiving appointments after designation but before the operational date of the Senior Executive Service.*—(1) *Condition of appointment.* Each individual appointed, reinstated, transferred, promoted, voluntarily reassigned or voluntarily demoted to a position after it has been designated a Senior Executive Service position shall be required to accept conversion to the Senior Executive Service. The agency shall advise the individual of this requirement prior to the appointment or other personnel action. The individual shall signify his or her acceptance of conversion in writing at the time of the personnel action.

(2) *Notice.* At the time of the personnel action, or 90 days before the Senior Executive Service becomes operational, whichever is later, the agency shall give the employee a written notice which identifies the position, SES pay rate, and kind of appointment the employee will receive under the Senior Executive Service.

(3) *Pay.* Pay shall be set at an authorized SES pay rate. The pay rate given to a Federal employee who enters the Senior Executive Service without a break in service shall not be less than the employee's basic payable salary just prior to his or her entry into the Senior Executive Service. An employee's payable salary under the Senior Executive Service is subject to pay limitations, if any, imposed by chapter 53 of title 5, United States Code, or other statutes.

(c) *Employees whose positions are not designated Senior Executive Service positions. Notice.* Each employee covered by § 317.301(b)(5) shall be given a written notice advising the employee that his or her position is not designated a Senior Executive Service position; that the employee is not entitled to conversion to the Senior Executive Service; and that the employee has a right to appeal an action under this subpart to the Merit Systems Protection Board.

§ 317.303 Status of employees who decline voluntary conversion to the Senior Executive Service.

(a) An employee who declines conversion pursuant to § 317.302(a)(4) shall remain in his or her current appointment and pay system, and shall retain the grade, seniority, and other rights and benefits associated with such type of appointment and pay system. The employee may continue in the current SES position or be reassigned to another position within or outside the Senior Executive Service.

(b) The assignment of an employee who declines conversion under this subpart shall not result in the separation or reduction in grade of any other employee in the agency.

(c) Nothing in these regulations affects an agency's right to terminate a limited executive appointment pursuant to Civil Service Rule IX.

§ 317.304 Conversion of career and career-type appointees.

(a) *Coverage.* This section covers employees serving under:

(1) A career or career-conditional appointment; or

(2) A similar type of appointment ("career-type" appointment) in an excepted service position as determined by the Office.

A career-type appointment is an appointment in the excepted service other than an appointment:

(i) To a Schedule C position established under Part 213 of this chapter;

(ii) To a position authorized to be filled by noncareer executive assignment under Part 305 of this chapter;

(iii) To a position which meets the same criteria as a Schedule C position or a position authorized to be filled by non-career executive assignment; or

(iv) To a position where the incumbent is traditionally changed upon a change in Presidential Administrations.

(b) *Senior Executive Service appointment.* An employee covered by this section shall be converted to a Senior Executive Service career appointment. The employee may be assigned to either a "general" or a "career reserved" position.

§ 317.305 Conversion of excepted appointees.

(a) *Coverage.* This section covers employees serving under an excepted appointment in a position:

(1) In Schedule C of Subpart C of Part 213 of Title 5, Code of Federal Regulations;

(2) Filled by noncareer executive assignment under subpart F of Part 305 of Title 5, Code of Federal Regulations;

(3) In the Executive Schedule under subchapter II of chapter 53 of title 5, United States Code, other than a career Executive Schedule position; or,

(4) Filled under an authority equivalent to paragraph (a) (1), (2), or (3) of this section.

(b) *Senior Executive Service appointment.* An employee covered by this section shall be subject to one of the following actions.

(1) If the employee's position is designated a "general" position, the agency may convert the employee to a Senior Executive Service noncareer appointment. The employee may be assigned only to a "general" position.

(2) If the employee's position is designated a "career reserved" position, the agency may convert the employee to a Senior Executive Service noncareer appointment and assign the employee to a "general" position. The employee cannot remain in a "career reserved" position.

(3) If the employee has reinstatement eligibility to a position in the competitive service, or, as determined by the Office of Personnel Management, had substantial career-oriented service under a career-type appointment as defined in § 317.304(a)(2), the employee may request conversion to a career appointment. Such request must be made on or before the end of the notice period.

(i) If the request is approved by the Office, the agency will convert the employee to a Senior Executive Service career appointment. The employee may be assigned to a "general" or a "career reserved" position. The name of the individual and basis for approving the request must be published in the Federal Register.

(ii) If the employee's request for conversion to career is not approved by the Office, or if the employee elects not to make such a request, the agency will convert the employee to a Senior Executive Service noncareer appointment. The employee may be assigned only to a "general" position.

(4) In lieu of action under paragraph (b) (1), (2), or (3) of this section, the agency may separate the employee from the civil service.

§ 317.306 Conversion of employees under time limited appointments.

(a) *Coverage.* This section covers employees serving under:

(1) A limited executive assignment under Subpart E of Part 305 of Title 5, Code of Federal Regulations; or

(2) A similar type of time limited appointment in an excepted service position.

(b) *Senior Executive Service appointment.* An employee covered by this section shall be subject to one of the following actions.

(1) If the position in which the employee is serving under a limited executive assignment or similar type of time limited appointment will terminate within three years from the date of the proposed conversion action, the agency may convert the employee to a Senior Executive Service limited term appointment.

(2) If the position in which the employee is serving under a limited executive assignment or similar type of time limited appointment will not terminate within three years from the date of the proposed conversion action, the agency may convert the employee to a Senior Executive Service noncareer appointment and assign the employee to a "general" position.

(3) If the employee under a limited executive assignment has reinstatement eligibility to a position in the competitive service, or, as determined by the Office of Personnel Management, had substantial career-oriented service under a career-type appointment as defined in § 317.304(a)(2), and if immediately prior to the limited executive assignment and without a break in service the employee served under a career appointment or career-type appointment in a position now being designated a Senior Executive Service position then the employee may request conversion to a career appointment. Such request must be made on or before the end of the notice period.

(i) If the employee requests conversion to career, the agency will convert the employee to a Senior Executive Service career appointment. The employee may be assigned to a "general" or a "career reserved" position. The name of the individual and basis for approving the request must be published in the Federal Register.

(ii) If the employee does not request conversion to career, the agency will convert the employee as provided for in paragraphs (b) (1) and (2) of this section.

(4) In lieu of action under paragraph (b) (1), (2), or (3) of this section, the agency may separate the employee from the civil service.

[FR Doc. 79-18819 Filed 6-14-79; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR 729

[Amendment 1]

Peanuts; Acreage Allotments, Marketing Quotas, and Poundage Quotas for 1978 and Subsequent Crops

AGENCY: Agricultural Stabilization and Conservation Service, Department of Agriculture.

ACTION: Final rule.

SUMMARY: This amendment redefines peanut undermarketings to provide that all segregation 1 peanuts marketed or considered marketed from a farm will be considered in determining undermarketing credit for a farm and announces the basic penalty rate for the 1979 crop of peanuts. The revised definition of undermarketings is being made to prevent abuse of the undermarketing provision where all segregation 1 peanuts are marketed under contract rather than as quota peanuts.

EFFECTIVE DATE: June 15, 1979.

FOR FURTHER INFORMATION CONTACT: Paul P. Kume, Production Adjustment Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, D.C. 20013 (202) 447-4695.

SUPPLEMENTARY INFORMATION: Since producers have planted their 1979 crop of peanuts and are now entering into contracts with handlers under chapter 1446 of this title for the marketing of

additional peanuts and need to know the definition of undermarketing, I have determined that compliance with the notice of proposed rulemaking and public procedure of 5 U.S.C. 553 and the requirements of Executive Order 12044 is impracticable and contrary to the public interest. Accordingly, this notice is being issued without compliance with such procedure and requirements.

Final Rule

Accordingly, 7 CFR 729.3 (11)(1) is amended and 7 CFR 729.46(c) is added, effective for the 1979 and subsequent crops of peanuts, to read as follows:

1. Subparagraph (1) of paragraph (11) of § 729.3 is revised to read as follows:

§ 729.3 Definitions.

* * * * *

(11) *Undermarketings.*

(1) *Actual undermarketings.* The pounds by which the effective farm poundage quota exceeds the larger of (1) the total production of segregation 1 peanuts on the farm or (2) the marketing of quota peanuts from the farm.

* * * * *

2. Paragraph (c) is added to § 729.46 to read as follows:

§ 729.46 Penalty rate.

* * * * *

(c) *1979–80 Marketing Year.* The basic support price for quota peanuts for the 1979–80 marketing year is $420 per ton. Therefore, the basic penalty rate for the 1979 crop of peanuts is $504 per ton or 25.2 cents per pound.

(Secs. 301, 358, 358a, 359, 361–368, 373, 375, 377, 52 Stat. 38, as amended, 55 Stat. 88, as amended, 61 Stat. 658, 55 Stat. 90, as amended, 52 Stat. 62, as amended, 63, as amended, 64, 65, as amended, 66, as amended, 70 Stat. 206, as amended (7 U.S.C. 1301, 1358, 1358a, 1359, 1361–1368, 1372, 1373, 1375, 1377) and Secs. 801, 802, 803, 804, 805, 806, 91 Stat. 944 (7 U.S.C. 1358, 1358a, 1359, 1373, 1377).)

Note.—This regulation has been determined not significant under the USDA criteria implementing Executive Order 12044. These provisions are required to announce the basic penalty rate, which is based on the basic support rate announced February 15, 1979, for which an approved impact statement is available.

Signed at Washington, D.C., on June 11, 1979.

Ray Fitzgerald,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 79-18628 Filed 6-14-79; 8:45 am]

BILLING CODE 3410-05-M

7 CFR Part 760

Indemnity Payment Programs; Beekeeper Indemnity Payment Program (1978–1981) (Amendment 1)

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to amend the Beekeeper Indemnity Payment Program Regulations to provide that payment of indemnity claims filed after the effective date of this amendment will be conditioned upon there being funds available to the Department for the payment thereof.

EFFECTIVE DATE: June 15, 1979.

FOR FURTHER INFORMATION CONTACT: Robert M. Cook, Emergency and Indemnity Programs Division, ASCS, USDA, Room 4095, South Building, Washington, D.C. 20013, Telephone: (202) 447–7997.

SUPPLEMENTARY INFORMATION: The Beekeeper Indemnity Payment Program is authorized pursuant to section 804 of the Agriculture Act of 1970, as amended. The Food and Agriculture Act of 1977 extended authority for the program through September 30, 1981. It is not mandatory that this program be conducted.

The program is funded by separate annual appropriations. Unless further appropriations are made for this program, sufficient funds may not be available for indemnification under this program of bee losses.

Executive Order 12044 (43 FR 12661, March 24, 1978) requires at least a 60-day public comment period on proposed significant regulations except where the Agency determines that this is not possible or in the best interests of the producers. Since the period of extensive pesticide use has begun which will result in bee losses and funds are currently not available to indemnify such losses, it is in the best interests of beekeepers to publish this regulation immediately. Therefore, I have determined that compliance with the notice of proposed rulemaking and public procedure requirements of 5 U.S.C. 553 and the requirements of Executive Order 12044 is impossible and contrary to the public interest. Accordingly, this notice is issued without compliance with such procedure and requirements.

Final Rule

Accordingly, 7 CFR Part 760 is amended by adding a new § 760.119, effective for calendar year 1979 and subsequent years, to read as follows:

§ 760.119 Availability of funds.

Payment of indemnity claims filed after (effective date of amendment) will be contingent upon availability of funds to the Department to pay such claims.

(Sec. 804, 84 Stat. 1382 (7 U.S.C. 135b note); sec. 1(27), 87 Stat. 237 (7 U.S.C. 135b note); and sec. 207, 91 Stat. 921 (7 U.S.C. 135b note).)

Note.—This regulation has been determined to be not significant under the USDA criteria implementing Executive Order 12044. An approved impact analysis on the program regulations is available from Robert M. Cook (ASCS) (202) 447–7997.

Signed at Washington, D.C. on June 5, 1979.

Weldon B. Denny,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 79-18627 Filed 6-14-79; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 203]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period June 17–23, 1979. Such action is needed to provide for orderly maketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: June 17, 1979.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202–447–5975.

SUPPLEMENTARY INFORMATION: Findings. This regulation is issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee, and upon other information. It is hereby found that this action will tend to effectuate the declared policy of the act. This regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

The committee met on June 12, 1979, to consider supply and market conditions and other factors affecting the need for regulation and

recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons continues good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 910.503 Lemon Regulation 203.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period June 17, 1979, through June 23, 1979, is established at 320,000 cartons.

(b) As used in this section, "handled" and "carton(s)" mean the same as defined in the marketing order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: June 14, 1979.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-18804 Filed 6-14-79; 11:16 am]

BILLING CODE 3410-02-M

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7 CFR Parts 911 and 944

[Lime Regulation 20, Amendment 1; Lime Regulation 7, Amendment 1]

Limes Grown in Florida and Fruits, Import Regulations; Grade and Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: These amendments extend minimum grade and size requirements for limes grown in Florida, and for limes imported into the United States through April 30, 1980. Unless extended, these requirements would expire June 17, 1979. Extension of these requirements is designed to assure the continued shipment and importation of supplies of limes of acceptable grades and sizes for the rest of the 1979–80 season, in the interest of producers and consumers.

DATES: Effective June 18, 1979, through April 30, 1980.

FOR FURTHER INFORMATION CONTACT: Melvin R. McGaha, (202) 447–5975.

SUPPLEMENTARY INFORMATION: Findings. The amendment to the Florida lime regulation currently in effect (§ 911.341 Lime Regulation 20; 44 FR 24561) is issued under the marketing agreement, as amended, and Order No. 911, as amended (7 CFR Part 911; 43 FR 30319), regulating the handling of limes grown in Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The amendment to the lime import regulation currently in effect (§ 944.200 Lime Regulation 7; 44 FR 24561) is issued under § 8e (7 U.S.C. 608e–1) of this act. The grade and size requirements applicable to Florida lime shipments were recommended by the Florida Lime Administrative Committee, which locally administers this marketing order program. Notice of these proposed amendments was published in the May 10, 1979, issue of the Federal Register (44 FR 27424). No comments were received during the 25 days provided in the notice. It is hereby found that these actions will tend to effectuate the declared policy of the act. These amendments have not been determined significant under the USDA criteria for implementing Executive Order 12044.

These grade and size requirements reflect the Department's appraisal of the need for regulating limes during the period June 18, 1979, through April 30, 1980, based on the available supply and market demand conditions. Production of Florida limes for the 1979–80 season is expected to amount to a record 1,800,000 bushels, a level which indicates a complete recovery from the 1977 freeze. About 900,000 bushels of Florida limes are expected to be shipped to fresh markets in 1979–80, with the remainder of the crop being utilized in processing. Mexico is expected to continue supplying substantial quantities of limes to the U.S. market, during the 1979–80 season. More than adequate supplies of limes should be available to fill domestic fresh market demands.

Under these amendments, both Florida limes and imported limes would need to continue meeting the following minimum requirements: *True "seeded" limes*—U.S. No. 2 grade, except as to color, with no minimum size; and *Persian "seedless" limes*—U.S. Combination, Mixed Color, except that stem length is not considered a factor of grade, and a minimum diameter of 1⅝ inches. Florida limes shipped within the production area would be exempted from the grade requirements, if they have at least 42% juice content and are in containers not authorized for shipment of Florida limes out of the production area. Appropriate packing tolerances, with respect to the minimum size requirement, for limes smaller than 1⅝ inches apply. The requirements for imported limes are consistent with § 8e of the act. This section requires that when specified commodities, including limes, are regulated under a federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity.

The language in these amendments relating to the application of tolerances has been modified slightly for clarification purposes from that in the current regulations and in the notice. Such modifications are not substantive, and are intended to make such provisions easier to interpret and apply.

After consideration of all relevant matter presented, including the proposals in the notice and other available information, it is found that amendment of the regulations, as hereinafter set forth, is necessary to establish and maintain orderly marketing conditions, and that such action is in accordance with this marketing agreement and order, and will tend to effectuate the declared policy of the act.

It is hereby further found that it is impracticable and contrary to the public interest to postpone the effective date of this amendment until 30 days after publication in the Federal Register (5 U.S.C. 553), and good cause exists for making the provisions hereof effective as hereinafter set forth in that (1) shipments of Florida limes and imported limes are currently regulated by grade and size through June 17, 1979, and these regulatory requirements will expire at such time unless extended; (2) the Florida lime and lime import regulations should be extended to cover, insofar as practicable, all of this season's shipments of Florida limes, as well as all limes imported into the United States over a corresponding period, in order to effectuate the declared policy of the act; (3) notice of the proposed extension of the current regulations for limes grown in Florida and for limes imported into the United States was published in the May 10, 1979, issue of the Federal Register (44 FR 27424), and no comments

relating to the proposed amendments or their effective date were received during the 25 days provided; (4) the recommendations upon which the current regulation and this amendment for Florida limes are based were developed by the committee at an open meeting on April 4, 1979, after due notice thereof, and all interested persons present were given an opportunity to express their views; (5) the regulatory requirements herein specified for Florida limes and imported limes are the same as those in the proposed amendments, except for minor changes made for clarification purposes in the language relating to application of tolerances; (6) the requirements of the amended import regulation are imposed pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), which makes such import requirements mandatory; (7) such amendment to the import regulation imposes the same grade and size requirements on imports of limes as are being made applicable to the shipment of limes grown in Florida under the amendment to Lime Regulation 39, which is also to become effective June 18, 1979; (8) such amendments to the domestic and import regulation should become effective at as near the same time as is reasonable practicable; and (9) three days notice thereof, the minimum prescribed by said § 8e, is given with respect to this amendment to the import regulation.

Accordingly, it is found that § 911.341 Lime Regulation 39, and § 944.206 Lime Regulation 7, should be and are amended to read as follows:

§ 911.341 Lime Regulation 39.

(a) During the period June 18, 1979, through April 30, 1980, no handler shall handle:

(1) Any limes of the group known as true "seeded" limes (also known as Mexican, West Indian, and Key limes and by other synonyms), grown in the production area, which do not meet the requirements of at least U.S. No. 2 Grade for Persian (Tahiti) Limes, except as to color: *Provided*, That true limes, grown in the production area, which fail to meet the requirements of such grade may be handled within the production area, if such limes meet all other applicable requirements of this section and the minimum juice content requirement prescribed in the U.S. Standards for Persian (Tahiti) Limes, and are handled in containers other than the containers prescribed in § 911.329 for the handling of limes between the production area and any point outside thereof;

(2) Any limes of the group known as large-fruited or Persian "seedless" limes (including Tahiti, Bearss, and similar varieties) which do not grade at least U.S. Combination, Mixed Color: *Provided*, That stem length shall not be considered a factor of grade, and tolerances for fruit affected by decay and for fruit failing to meet the requirements for such grade in the U.S. Standards for Persian (Tahiti) Limes shall apply: *Provided further*, That Persian limes, grown in the production area, which fail to meet the requirements of such grade may be handled within the production area, if such limes meet all other applicable requirements of this section and meet the same minimum juice content requirement prescribed in the U.S. Standards for such limes and are handled in containers other than the containers prescribed in § 911.329 for the handling of limes between the production area and any point outside thereof; or

(3) Any limes of the group known as large-fruited or Persian "seedless" limes (including Tahiti, Bearss, and similar varieties) which are of a size smaller than 1¾ inches in diameter: *Provided*, That not more than 10 percent of the limes, by count, in any lot of containers may fail to meet the minimum size requirement: *Provided further*, That not more than 15 percent of the limes, by count, in any individual container containing more than four pounds of limes may fail to meet the minimum size requirement.

(b) Terms used in this section shall have the same meaning as in the marketing order, and terms relating to grade and diameter shall have the same meaning as in the U.S. Standards for Persian (Tahiti) Limes (7 CFR 2851.1000–1016).

§ 944.206 Lime Regulation 7.

(a) *Applicability to imports.* Pursuant to § 8e of the act, Part 944—Fruits; Import Regulations, the importation into the United States of any limes is prohibited during the period June 18, 1979, through April 30, 1980, unless such limes meet the minimum grade and size requirements specified in § 911.341 Lime Regulation 39.

(b) The Federal or Federal-State Inspection Service, Fruit and Vegetable Quality Division, Food Safety and Quality Service, United States Department of Agriculture, is designated as the governmental inspection service for certifying the grade, size, quality, and maturity of limes that are imported into the United States. Inspection by the Federal or Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of limes, is required on all imports. The inspection and certification services will be available upon application in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 2851) and in accordance with the Procedure for Requesting Inspection and Designating the Agencies to Perform Required Inspection or Certification (7 CFR Part 944; 43 FR 19340).

(c) *Minimum quantity exemption.* Any person may import up to 250 pounds of limes exempt from the requirements specified in this section.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: June 12, 1979, to become effective June 18, 1979.

D. S. Kuryloski,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-18971 Filed 6-14-79; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

Physical Protection of Irradiated Reactor Fuel in Transit

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Interim final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission has decided to establish requirements for protection of spent fuel in transit. A recent study suggests that the sabotage of spent fuel shipments has the potential for producing serious radiological consequences in areas of high population density. It will be some time before confirmatory research relative to the estimated consequences resulting from a successful act of sabotage on spent fuel can be completed. In the meantime, the Commission believes that interim requirements for the protection of such shipments should be issued immediately. This rule is subject to reconsideration or revision based on public comments received subsequent to its publication. Concurrently, the NRC is issuing guidance documentation (NUREG–0561) to assist licensees in the implementation of these requirements. The Public is invited to submit its views

and comments on both the Rule and the Guidance.

EFFECTIVE DATE: July 16, 1979.

DATE: Comment period expires August 17, 1979.

ADDRESSES: Written comments should be submitted to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

FOR FURTHER INFORMATION CONTACT: Mr. L. J. Evans, Jr., Regulatory Improvements Branch, Division of Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Phone (301) 427–4181.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission is amending 10 CFR 73 of its regulations to provide interim requirements for the protection of spent fuel in transit. This amendment is being published in effective form without benefit of public comment in the interest of the public health and safety.

Previous studies (NUREG–0194, Calculations of Radiological Consequences from Sabotage of Shipping Casks for Spent Fuel and High-Level Waste, February 1977; NUREG–0170, FES on the Transportation of Radioactive Material by Air and Other Modes, December 1977), estimated the health effects of a radiological release in a non-urban area resulting from a high-explosive assault on a spent fuel cask. The estimated risks were not considered so substantive as to warrant regulatory action. A subsequent study by Sandia Laboratories includes a chapter on the sabotage of spent fuel in urban areas of high population density (SAND–77–1927, Transport of Radionuclides in Urban Environs: A working Draft Assessment). This study suggests that the sabotage of spent fuel shipments has the potential for producing serious radiological consequences in areas of high population density. The Commission has concluded that, in order to protect health and to minimize danger to life and property (Sections 161b and 161i(3) of the Atomic Energy Act of 1954, as amended), it is prudent and desirable to require certain interim safeguards measures for spent fuel shipments. The interim rule would be in effect until the results of confirmatory research are available and analyzed.

The focus of concern is on possible successful acts of sabotage in densely populated urban areas. Because of the possibility that spent fuel shipments could be hijacked and moved from low population areas to high population areas, the interim requirements apply to all shipments even though the planned shipment route may not pass through densely populated urban areas.

Prior to publication of this rule, informal contact was made with the carriers primarily involved in spent fuel shipments as well as with other interested parties, and their comments are known to the staff. It was ascertained that the imposition of these requirements would probably double the cost per mile rate for these shipments for an increase of approximately $200,000 per year for the estimated 200 annual shipments involved.

Because spent fuel shipments are on-going and the time of sabotage cannot be predicted, the Commission is of the opinion that time is of the essence in this matter, and that health and safety considerations override the necessity for public comment before issuance of an effective rule. Accordingly, the Commission, for good cause, finds that notice and public procedure are unnecessary and contrary to the public interest.

Although this rule is being published in effective form without a prior public comment period, the public is invited to submit its views and comments. After reviewing these views and comments, the Commission may reconsider or modify the interim rule as it deems necessary.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendments to Title 10, Chapter I, Code of Federal Regulations, Part 73, are published as a document subject to codification.

1. Section 73.1 of 10 CFR Part 73 is amended by adding a new paragraph (b)(5) as follows:

§ 73.1 Purpose and scope.

* * * * *

(b) * * *

(5) This part also applies to shipments of irradiated reactor fuel of any quantity which has a total external radiation dose rate in excess of 100 rems per hour at a distance of 3 feet from any accessible surface without intervening shielding.

2. A new § 73.37 is added to 10 CFR Part 73 to read as follows:

§ 73.37 Requirements for physical protection of irradiated reactor fuel in transit.

(a) *General requirements.* Each licensee who transports or delivers to a carrier for transport irradiated reactor fuel in any amount that is exempt from the requirements of §§ 73.30 through 73.36 in accordance with § 73.5 shall make arrangements to assure that:

(1) The Nuclear Regulatory Commission is notified in advance of each shipment in accordance with § 73.72 of this Part, and that NRC has approved the route in advance of the shipment,

(2) Arrangements have been made with law enforcement agencies along the route of shipments for their response to an emergency or a call for assistance,

(3) The route is planned to avoid, where practicable, heavily populated areas,

(4) The shipment is scheduled where practicable without any intermediate stops except for refueling and obtaining provisions, and that at all stops at least one individual maintains surveillance of the transport vehicle,

(5) Individuals serving as escorts have successfully completed a training program in accordance with Appendix D of this Part,

(6) Procedures for coping with threats and safeguards emergencies have been developed.

(b) *Shipments by road.* For shipments by road, the licensee shall make arrangements to assure that:

(1) Each shipment is accompanied by (i) at least one driver and one escort in the transport vehicle, or (ii) at least one driver in the transport vehicle and two escorts in a separate vehicle,

(2) The transport or separate vehicle is equipped with a radiotelephone and CB radio or approved equal communications equipment and that calls are made at least every 2 hours to a designated location to advise of the status of the shipment,

(3) The transport vehicle is equipped with features that permit immobilization of the cab or the cargo-carrying portion of the vehicle.

(c) *Shipments by rail.* For shipments by rail, the licensee shall assure that:

(1) Each shipment is accompanied by at least one escort in the shipment car or in a separate car that will permit observation of the shipment car,

(2) Two-way voice communication capability is available and that calls are made at least every 2 hours to a designated location to advise of the status of the shipment,

(3) At least on escort maintains visual surveillance of the shipment car during periods when the train is stopped on sidings or in rail yards.

(d) If it is not possible to avoid heavily populated areas, the Commission may require, depending on individual circumstances of the shipment, additional protective measures.

(e) A period of 60 days from the effective date of the rule is allowed for the implementation of requirements that involve equipment modification or training.

3. A new Appendix D is added to 10 CFR Part 73 to read as follows:

Appendix D—Physical Protection of Irradiated Reactor Fuel in Transit, Training Program Subject Schedule.

Pursuant to the provision of § 73.37 of 10 CFR Part 73, each licensee who transports or delivers to a carrier for transport irradiated reactor fuel is required to assure that individuals used as shipment escorts have completed a training program. The subjects that are to be included in this training program are as follows:

Security Enroute

—Route planning and selection
—Vehicle operation
—Procedures at stops
—Detours and use of alternate routes

Communications

—Equipment operation
—Status reporting
—Contacts with law enforcement units
—Communications discipline
—Procedures for reporting incidents

Radiological Considerations

—Description of the radioactive cargo
—Function and characteristics of the shipping casks
—Radiation hazards
—Federal, State and local ordinances relative to the shipment of radioactive materials
—Responsible agencies

Response to Contingencies

—Accidents
—Severe weather conditions
—Vehicle breakdown
—Communications problems
—Radioactive "spills"
—Use of special equipment (flares, emergency lighting, etc.)

Response to Threats

—Reporting
—Calling for assistance
—Use of immobilization features
—Hostage situations
—Avoiding suspicious situations.

Effective date: July 16, 1979.

(Sec. 53, 161b, 161i, Pub. L. 83–703, 68 Stat. 930, 948, 949; Sec. 201, Pub. L. 93–438, 88 Stat. 1242–1243 (42 U.S.C. 2073, 2201, 5841))

Dated at Washington, D.C. this 12th day of June, 1979.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 79-18981 Filed 6-14-79; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 212

[Docket No. ERA-R-78-01]

Mandatory Petroleum Allocation Regulations; Amendments to Extend Current Provisions of Entitlements Program Relating to Residual Fuel Oil

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final Rule and Notice of Hearing and Request for Further Comments.

SUMMARY: On October 17, 1978, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) adopted amendments to the domestic crude oil allocation ("entitlements") program with respect to residual fuel oil in order to implement Congressional policy. These amendments, which were made effective for the period July 1, 1978 through June 30, 1979, provided for automatic reversion on July 1, 1979 to the residual fuel oil entitlements provisions previously in effect. We are hereby adopting amendments, effective July 1, 1979, which will extend through December 31, 1979 the effects of the current provisions of the entitlements program providing that imports of residual fuel into the East Coast market or the State of Michigan receive 50 percent of the per barrel entitlements runs credit and that an entitlement penalty ("reverse entitlements") shall only apply to domestically refined residual fuel oil which is transported by foreign flag tankers for sale or use in those markets. We are requesting further comments as to what entitlements provisions, if any, should be in effect with respect to residual fuel after December 31, 1979.

DATES: Further comments by October 1, 1979, 4:30 p.m.; requests to speak by August 2, 1979, 4:30 p.m.; hearing: August 15, 1979, 9:30 a.m.

ADDRESSES: All comments and requests to speak to: Department of Energy, Economic Regulatory Administration, Office of Public Hearing Management, Docket No. ERA-R-78-01B, Room 2313, 2000 M Street, NW., Washington, D.C. 20461. Hearing location: Room 2105, 2000 M Street, NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Office of Public Hearing Management), Economic Regulatory Administration, Room 2222 A, 2000 M Street, NW., Washington, D.C. 20461, (202) 254–5201.

William L. Webb (Office of Public Information), Economic Regulatory Administration, Room B 110, 2000 M Street, NW., Washington, D.C. 20461, (202) 634–2170.

Josette L. Maxwell (Regulations and Emergency Planning), Economic Regulatory Administration, Room 6202, 2000 M Street, NW., Washington, D.C. 20461, (202) 632–5133.

Douglas W. McIver (Entitlements Program Office), Economic Regulatory Administration, Room 6128, 2000 M Street, NW., Washington, D.C. 20461, (202) 254–8660.

Jack O. Kendall (Office of General Counsel), Department of Energy, Room 6A–127, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6739.

SUPPLEMENTARY INFORMATION:

I. Background
II. Amendments Adopted
III. Comment Procedures
IV. Other Matters

I. Background

On June 15, 1978 (43 FR 26551, June 20, 1978) we issued a further notice of proposed rulemaking and public hearing to amend the residual fuel oil provisions of the entitlements program. The proposed amendments generally would have provided for elimination of the reverse entitlements rule applicable to domestically refined residual fuel oil sold into the East Coast and would have increased entitlement benefits for residual fuel oil imported into the East Coast market. This proposal was cast as a further notice of proposed rulemaking, since three alternative amendments on the residual fuel oil progam had been proposed on December 23, 1976 (41 FR 56821, December 30, 1976).

A public hearing on the June 1978 proposal was held July 26 through 28, 1978 in Washington, D.C. Commenters representing a broad range of interests which might be affected by the proposed amendments presented their views at the hearing. We also received written comments on the proposal through August 25, 1978.

While we were considering the comments submitted in response to the June 1978 proposal, Congress initiated legislative proceedings on the subject of entitlements for residual fuel oil. These proceedings resulted in the inclusions of requirements under section 307 of the Act Making Appropriations for the Department of Interior and Other Related Agencies for the Fiscal Year Ending September 30, 1979 ("1979 Appropriations Act," Pub. L. 95–465) which in effect mandated the DOE to amend the entitlements program.

On October 17, 1978, we issued a final rule adopting amendments to implement the provisions of section 307. These

amendments provide for three changes in the residual fuel oil entitlements provisions to be in effect during the period July 1, 1979 through June 30, 1979: First, domestically refined residual fuel oil is not subject to an entitlement penalty unless transported by foreign flag tankers into the East Coast market; second, the entitlement benefit issuable for imports of residual fuel into the East Coast market is increased from 30 percent to 50 percent of the per barrel entitlements runs credit; and third, the scope of the residual fuel oil entitlements program is expanded, by amending the definition of East Coast market, to include the State of Michigan. The October 1978 final rule also provided for automatic reversion on July 1, 1979 to the residual fuel oil entitlements provisions which were in effect immediately prior to adoption of the rule.

Since the amendments described under section 307 were required to be implemented within 30 days of the 1978 Appropriations Act's date of enactment, opportunity for public comment prior to the adoption of the October 1978 final rule was impracticable. However, in the preamble to the final rule we announced our intent to keep open our pending rulemaking proceeding regarding entitlements for residual fuel oil in order to receive further comments through February 1, 1979. We requested that comments discuss the performance of the market under the October 1978 amendments and any further action which might be necessary or appropriate in view of the June 30, 1979 expiration date of the October 1978 amendments.

We received 33 comments in response to the October 1978 notice. After reviewing these comments, we determined that the provisions of section 307 of the 1979 Appropriations Act had been fully implemented. Therefore, we issued on February 14, 1979 a notice that no further action would be taken with respect to implementation of that statutory provision (44 FR 10702, February 19, 1979). We also indicated at that time our intention to continue our review of residual fuel oil market factors in order to determine whether any further action should be taken in this rulemaking proceeding to prevent automatic reversion on July 1, 1979 to the residual fuel oil entitlements provisions in effect prior to adoption of the October 1978 amendments.

Since the closing on February 1, 1979 of the period for further public comment in this rulemaking proceeding, several significant events have occurred. First, prices for imported crude oil have escalated rapidly, resulting in a reversal in the decline in the value of an entitlement runs credit. Second, the President has suspended fees and duties on all petroleum imports for the period April through June 1979 and delegated to the Secretary of Energy authority to extend this suspension for two additional 3-month periods. Finally, the President has announced the gradual deregulation of crude oil prices by September 30, 1981.

In view of the above considerations, we believe reversion on July 1, 1979 to the residual fuel oil entitlements provisions in effect prior to adoption of the October 1978 final rule could threaten the ability of historically import-dependent consumers to obtain adequate supplies of residual fuel oil in the current world market environment. It is our further belief that, in view of the relatively short time they have been in effect, the current residual fuel oil entitlements provisions should be extended through December 31, 1979 to provide continuity and stability during the present tight world market supply situation. In addition, extension of the current provisions beyond June 30, 1979 will permit opportunity for public comment as to any further action which may be necessary or appropriate after December 31, 1979.

II. Amendments Adopted

Under the amendments adopted today, imports of residual fuel oil into the Bureau of Mines East Coast Refining District and the State of Michigan will continue during the period July 1, 1979 through December 31, 1979 to be eligible to earn 50 percent of the per barrel entitlements runs credit. In addition, domestic refiners will continue during this period to receive 100 percent of an entitlements runs credit for each barrel of residual fuel oil it produces for sale into the East Coast market or the State of Michigan which is not shipped in a foreign flag tanker.

These changes are effectuated through the following specific amendments to the current entitlements program regulations:

We are eliminating the definition of "East Coast market" in 10 CFR 211.62 and adding a definition of "eligible market" which will include the Bureau of Mines East Coast Refining District and the State of Michigan. References elsewhere in the regulations to the term "East Coast market" are amended to read "eligible market" where appropriate.

The defined term "eligible product" is amended to continue the restriction that residual fuel oil which is processed in the refinery located in the U.S. Virgin Islands and then imported into the eligible market is not considered to be an "eligible product" and, therefore, is not eligible for imported product entitlements issuances. In contrast, residual fuel oil refined abroad, rather than in the U.S. Virgin Islands, and imported into the East Coast market by a U.S. Virgin Islands refiner will continue to qualify as an "eligible product" through December 31, 1979.

The definition of "national domestic crude oil supply ratio" is amended to provide for a 50 percent entitlement benefit for imports of eligible products during the period July 1, 1979 through December 31, 1979.

The reporting requirements in § 211.66 are amended to continue to make importers of record which are the ultimate consumers of the residual fuel oil, as well as those importing for resale, subject to this reporting requirement.

Section 211.67(a)(3) is amended to provide that for the period July 1, 1979 through December 31, 1979, the benefits granted to imported residual fuel oil will continue to be 50 percent of the per barrel crude oil entitlements runs credit. Subparagraph (d)(4) of that section is amended to continue the elimination of the exemption of the first 5,000 barrels per day of domestically produced residual fuel oil from the 50 percent entitlement penalty and to continue to provide for application of the 50 percent entitlement penalty only in that situation where residual fuel oil processed by a domestic refiner is transported by a foreign flag tanker for sale or use in the eligible market.

III. Comment Procedures

A. *Written Comments.* You are invited to participate in this proceeding by submitting data, views or arguments with respect to any matters relevant to this notice. All comments should be submitted by 4:30 p.m., e.s.t., October 1, 1979 to the appropriate address indicated in the "Addresses" section of this preamble and should be identified on the outside envelope and on documents submitted with the designation "Amendments to the Entitlements Program with Respect to Residual Fuel Oil," Docket No. ERA-R-78-01B. Ten copies should be submitted. All comments received by the ERA will be available for public inspection in the DOE Freedom of Information Office, Room GA-152, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

You should identify any information or data considered by you to be confidential and submit it in writing, one copy only. We reserve the right to determine the confidential status of the information or data and to treat it according to our determination.

B. *Public Hearing.* 1. *Procedure for requests to make oral presentation.* The time and place for the hearing are indicated in the "Dates" and "Addresses" sections of this preamble. If necessary to present all testimony, the hearing will resume at 9:30 a.m. on the next business day following the first day of the hearing.

You may make a written request for an opportunity to make an oral presentation. If so, you should describe the interest concerned; if appropriate, state why you are a proper representative of a group or class of persons that has such an interest; and provide a concise summary of the proposed oral presentation and a phone number where you may be contacted through the day before the hearing. If you are selected to be heard at the hearing, we will notify you before 4:30 p.m., August 7, 1979. You will be required to make 100 copies of your statement available in Room 2214, 2000 M Street, NW., Washington, D.C. 20461 by 4:30 p.m., August 14, 1979.

2. *Conduct of the hearing.* We reserve the right to select the persons to be heard at the hearing (in the event there are more requests to be heard than time allows), to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based upon the number of persons requesting to be heard.

An ERA official will be designated to preside at the hearing. This will not be a judicial-type hearing. Questions may be asked only by those conducting the hearing. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

You may also submit questions to be asked of any person making a statement at the hearing to the address indicated above for requests to speak by 4:30 p.m., August 7, 1979. If you wish to ask a question at the hearing, you may submit the question, in writing, to the presiding officer. The ERA or, if the question is submitted at the hearing, the presiding officer will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made. The entire record of the hearing, including the transcript, will be retained by the ERA and made available for inspection in the DOE Freedom of Information Office, Room GA-152, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., and in the ERA Office of Public Information, Room B-110, 2000 M Street, NW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. You may purchase a copy of the transcript from the reporter.

IV. Other Matters

A regulatory analysis of the potential impacts of the October 1978 amendments currently in effect was prepared and made publicly available on October 20, 1978. Since today's actions will continue the effectiveness of the current entitlements provisions relating to residual fuel oil, today's rule will not result in any significant changes in current prices or competitive factors in the marketplace. However, we have reviewed our October 1978 findings and are making revised findings publicly available in the ERA Office of Public Information, Room B-110, 2000 M Street, NW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

We have concluded that today's actions do not constitute a major federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act and, therefore, that the preparation of an Environmental Impact Statement for this proposal is not required under 10 CFR Part 208.

Section 553(d) of the Administrative Procedure Act requires that a substantive rule not become effective less than thirty days after its publication unless the agency promulgating the rule finds good cause to waive this requirement and publishes this finding together with the rule. As discussed above, we believe the current residual fuel oil entitlements provisions should be extended through December 31, 1979 to provide continuity and stability during the present tight world market supply situation. We believe such action is especially important to prevent the interruption of adequate supplies of residual fuel oil for historically import-dependent consumers. Therefore, we have determined that good cause is found to waive the section 553(d) requirement in order to make today's amendments effective July 1, 1979.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, 15 U.S.C. § 787 *et seq.*, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, 42 U.S.C. 6201 *et seq.*, Pub. L. 94-163, as amended, Pub. L. 94-385, and Pub. L. 95-70; Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*, Pub. L. 95-91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267)

In consideration of the foregoing, Part 211 of Chapter II, Title 10 of the Code of Federal Regulations is amended as set forth below, effective July 1, 1979. These amendments shall remain in effect through December 31, 1979.

Issued in Washington, D.C., June 10, 1979.

David J. Bardin,

Administrator, Economic Regulatory Administration.

1. Section 211.62 is amended by deleting the definition of "East Coast market"; revising the definitions of "eligible firm," "eligible product," and "national domestic crude oil supply ratio"; and adding a definition of "eligible market" in appropriate alphabetical order to read as follows:

§ 211.62 Definitions.

* * * * *

"Eligible firm" means any firm that imports an eligible product into the Bureau of Mines East Coast Petroleum Refining District or the State of Michigan for sale or use in those market areas, that is the importer of record under a license issued pursuant to Part 213 of this chapter and that owns the eligible product at the time of importation thereof pursuant to that license. Importation for the purpose hereof shall be as defined in paragraph (j) of § 213.27 of Part 213 of this chapter.

* * * * *

"Eligible market" means the geographical area coextensive with the Bureau of Mines East Coast Petroleum Refining District and the State of Michigan.

* * * * *

"Eligible product" means residual fuel oil imported into the eligible market in the period July 1, 1979 through December 31, 1979 except that an import of residual fuel oil into United States customs territory which has been processed in the U.S. Virgin Islands shall not be considered an eligible

product: *And provided,* That, Canadian residual fuel oil imported into the State of Michigan will qualify as an eligible product.

* * * * *

"National domestic crude oil supply ratio" means, for a particular month, the volume of deemed old oil (as defined in § 211.67(b)) included in the aggregate adjusted crude oil receipts of all refiners, decreased by a number of barrels of deemed old oil equal to the number of entitlements issuable to small refiners under § 211.67(e) and the number of entitlements issuable under §§ 211.67(a)(4) and 211.67(a)(5), divided by the sum of the total volume of the crude oil runs to stills for all refiners for that month and fifty percent (50%) of the total volume of imports of eligible products by eligible firms for that month. The calculation of the national domestic crude oil supply ratio for each month shall take into account entitlement purchase or sale requirements resulting from the correction of reporting errors pursuant to paragraph (j) of § 211.67.

* * * * *

2. Section 211.66 is revised in paragraph (j) to read as follows:

§ 211.66 Reporting requirements.

* * * * *

(j) *Monthly report by eligible firms.* On or prior to the fifth day of each month, commencing with the month of April 1979, each eligible firm that has imported an eligible product in the second month preceding that month shall file with the ERA a report certifying the following:

(1) The identity, volumes and ports of origin and entry of any eligible products imported by the eligible firm in that preceding month.

(2) That the eligible product was imported for sale or use in the eligible market.

(3) Such other information as the ERA may request.

* * * * *

3. Section 211.67 is revised in subparagraph (3) of paragraph (a) and in subparagraph (4) of paragraph (d) to read as follows:

§ 211.67 Allocation of domestic crude oil.

(a) *Issuance of entitlements.* * * *

(3) For each month in the period July 1, 1979 through December 31, 1979, each eligible firm that has imported an eligible product in that month shall be issued a number of entitlements equivalent to fifty percent (50%) of the number of entitlements that would be received by a refiner (without giving effect to the provisions of § 211.67(e)) in that month with respect to inclusion of a number of barrels of crude oil in that refiner's crude oil runs to stills equal to a number of barrels of that eligible product imported by that eligible firm. An eligible product is imported for purposes of this paragraph (a)(3) in the month, as specified on Customs Forms 7501 and 7505, as appropriate, in which importation takes place.

* * * * *

(d) *Adjustments to volume of crude oil runs to stills.* * * *

(4) For the period July 1, 1979 through December 31, 1979, paragraph (a)(1) of this section and the calculations for the national domestic crude oil supply ratio (but not for purposes of paragraph (e) of this section), the volume of crude oil runs to stills of any domestic refinery attributable to production of residual fuel oil transported in foreign flag tankers for sale (whether directly for consumption or for resale) or use in the eligible market (as defined in § 211.62) shall be reduced by fifty (50%) percent. Any export sales of residual fuel oil giving rise to a deduction under paragraph (d)(2) above shall not be considered as residual fuel oil production for purposes of this paragraph (d)(4).

* * * * *

[FR Doc. 79-18501 Filed 6-13-79; 10:25 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

18 CFR Parts 101, 104, 141, 201, 204 and 260

[Docket Nos. R-424 and R-448]

Order Establishing Interim Procedures

AGENCY: Federal Energy Regulatory Commission (FERC).

ACTION: Interim procedures.

SUMMARY: The United States Court of Appeals for the District of Columbia circuit remanded Order No. 530–B (41 FR 28474) to the FERC for further action not inconsistent with its opinion. Order No. 530–B set forth a rule which, *inter alia,* permitted tax normalization treatment for deferred taxes of regulated companies. This order continues the effectiveness of Order No. 530–B pending a final order by the Commission on remand.

EFFECTIVE DATE: June 8, 1979.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, (202) 275–4166, Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. (Reference Docket Nos. R–424 and R–448).

SUPPLEMENTARY INFORMATION:

In the matter of Part 101—Uniform System of Accounts For Public Utilities and Licensees (Class A and Class B); and Part 104—*Uniform System of Accounts For Public Utilities and Licensees (Class C and Class D);* and Part 141—Statements and Reports (Schedules); and Part 201—Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act (Class A and Class B); and Part 204—Uniform System of Accounts Prescribed for Natural Gas Companies Subject to The Provisions of the Natural Gas Act (Class C and Class D); and Part 260—Statement and Reports (Schedules).

By Order No. 530–B, issued July 6, 1978, in these proceedings, the Federal Power Commission [1], *inter alia,* set forth a rule permitting tax normalization treatment for deferred taxes of regulated companies. On appeal, the United States Court of Appeals for the District of Columbia Circuit remanded Order No. 530–B to the Commission for further action not inconsistent with its opinion,[2] which found (mimeo, p. 14) that the Commission orders before it "fail to (1) assess the consequences of its action for the industry, and (2) indicate fully and carefully the purposes behind the order".

The court's remand would require this Commission to further consider its action on the subject of tax normalization of the items contained in Order No. 530–B. The Commission is presently determining whether to seek further judicial review or, if not, remand to determine:

> how, in light of internal organizational considerations, it may best proceed to develop the needed evidence and how its prior decision should be modified in light of such evidence as develops. . . .[3]

In the interim, presiding law judges and participants in rate proceedings may be uncertain as to the proper standard to be followed regarding interperiod tax allocation in ongoing or prospective hearings. The court's remand did not reverse Order No. 530–B and, while we are not here anticipating the result that might ultimately be

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[1] This proceeding was commenced before the FPC. By the joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the FERC. The term "Commission", when used in the context of action taken prior to October 1, 1977, refers to the FPC; when used otherwise, the reference is to the FERC.

[2] *Public Systems, et al. v. FERC,* —— F2d ——, CADC Nos. 78-1268, *et al.,* issued February 16, 1979, rehearing denied, March 20, 1979.

[3] *FPC v. Transcontinental Gas Pipe Line Corp., et al.,* 423 U.S. 326, 331–33 (1976).

reached on remand, we believe that maintenance of the *status quo* under Order No. 530–B will be the most orderly administrative way to proceed during the interim period.

Unless and until the Commission changes its position on remand, we believe that it would be administratively wasteful to *require* all utilities seeking normalization of tax items, in accordance with Order No. 530–B, to file evidence to demonstrate that a tax deferral rather than a tax savings would occur under tax normalization. However, a utility will be *permitted* to introduce such evidence. Only in the event that the utility submits evidence on the issue will the Intervenors or Staff be allowed to submit evidence in support of or in opposition to such a showing, or will cross-examination on the issue be permitted.

Any final decision which requires a refund of amounts otherwise in excess of the just and reasonable rate level shall not require a refund of that portion of the rate related to interperiod tax allocation. That portion shall continue in effect, subject to refund, pending a final order in these dockets.

The Commission orders: Order No. 530–B shall remain in effect, as qualified above, as the Commission's interim policy regarding interperiod tax allocation (tax normalization) pending further judicial review of *Public System, supra,* or Commission action on remand.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79–18682 Filed 6–14–79, 8:45 am]

BILLING CODE 6450–01–M

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18 CFR Part 270

[Docket No. RM79–22; Order No. 23–A]

Regulated Sales of Natural Gas; General Rules and Definitions

AGENCY: Federal Energy Regulatory Commission.

ACTION: Interpretive rule.

SUMMARY: Although the Natural Gas Policy Act of 1978 (NGPA) sets maximum lawful prices for first sales of natural gas, the NGPA does not supersede or nullify the effectiveness of the price established under existing contracts. This interpretive rule states that the NGPA does not prohibit the amendment of an existing contract to collect any applicable NGPA rate.

DATES: Effective June 12, 1979.

ADDRESSES: All filings should reference Docket No. RM79–22 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Philip Yates, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 (202) 275–0427

Introduction

This interpretive rule addresses the extent to which existing contracts for the sale of natural gas may be amended to provide for the payment of some or all of the prices established under the NGPA. The Commission has considered this question in Docket No. RM79–22, the proceeding which resulted in Order No. 23, relating to the effect of the NGPA on price escalator clauses. In a proposed rule issued February 13, 1979, we took the same substantive position on contract modifications as we now adopt. The comments on the proposed rule which were relevant to this subject did not, as a general matter disagree with that position. Rather, the comments were directed at the related question of pipeline pass-through discussed below.

General Rule

Section 101(b)(5) of the NGPA provides that if any natural gas qualifies under more than one maximum lawful price, the highest price for which the gas is eligible becomes the applicable maximum lawful price. The Commission believes contractual amendments consistent with this section are permitted in both interstate and intrastate contracts. The most common, though not the only example of situations arising under the NGPA which illustrates this principle is when natual gas from a well subject to an existing contract is subsequently determined to be eligible for a higher price under sections 102, 103, 107 or 108 of the Act. If this occurs, the NGPA does not preclude parties from negotiating for and executing amendments providing for the payment of the higher price. This is true without regard to whether the contract was an "interstate" or "intrastate" contract.

Although the rule stated above applies in all cases, special attention should be given to contracts governed by section 105(b)(1) of the NGPA. That section applies to intrastate contracts under which the contract price on November 9, 1978, did not exceed the new gas price established in section 102 of the Act. For these contracts the maximum lawful price is the price under the terms of the contract as such contract was in effect on November 9, 1978.

With respect to these contracts, amendments may only be executed to provide for payment of any higher maximum lawful price for which natural gas sold under the contract is determined to be eligible. For example, assume that on November 9, 1978, natural gas was sold under an existing intrastate contract for $1.50/MMBtu, (or any price less than $2.06, the new natrural gas price in November). Since under section 105(b)(1), the price under the terms of the contract, ($1.50 per MMBtu) is the maximum lawful price, no contractual amendment could provide for a higher price. But if subsequent to enactment a well covered by the contract was determined to be a stripper well, under section 101(b)(5) the gas from that well would be eligible under both sections 105(b)(1) and 108. In that case the applicable mixiumum lawful price would be the stripper well price. Accordingly, an amendment providing for the payment of that higher price would be permitted. The same result would occur any time gas sold under the contract was determined to be eligible for any price higher than $1.50 per MMBtu (e.g., 102 new natural gas or 103 new onshore production well gas).

The operation of the rule on contracts governed by section 105(b)(2) of the Act is also worth noting. In these cases, the contract price exceeded the section 102 price on November 9, 1978, and the applicable maximum lawful price exceeded $2.06. Under section 105(b)(2), the ceiling price is the contract price plus the monthly inflation adjustment. Accordingly, if the contract did not already permit it, amendments to contracts subject to the maximum lawful price in 105(b)(2) could be executed to provide for the payment of the inflation adjustment. Also, amendments could be executed to provide for payment of the stripper well price established in section 1208 of the NGPA, if wells covered by the contract were determined to be eligible for that price.

Other general examples may be helpful. If contractual authorization does not exist in an interstate contract to collect the inflation adjustment provided in section 104 of the Act, the NGPA does not preclude an amendment providing for its payment. Similarly, the NGPA does not preclude amendments to interstate contracts to provide for the payment of prices under sections 102, 103, 107 and 108 if natural gas under the contract qualifies for those prices.

Two associated points should be noted. First, since collection of the higher price may be contractually authorized, amendments providing for the interim collection of such prices,

pursuant to Part 273 of the regulations, are similarly permissible. Second, for the same reasons, all contracts may be amended to provide for a clause authorizing the payment of the highest NGPA price for which any natural gas sold under the contract may become eligible, i.e., both interstate and intrastate contracts may be amended to include escalator clauses which reference the highest applicable NGPA prices.

Pass-through of NGPA Prices

In the preamble to the February 13, 1979, proposal, we indicated that pass-through of increased gas purchase costs resulting from contract modifications providing for a price not in excess of the maximum lawful price is permissible in the absence of fraud, abuse, or similar grounds. We also indicated that pass-through would not be precluded if modifications were negotiated in an arms length transaction.

A number of participants in Docket No. RM79–22 suggested that the Commission affirmatively state that contract modifications must be supported by additional consideration. Other comments suggested that the Commission define arms-length bargaining. Upon consideration of these comments, we have determined that it is neither useful nor necessary to impose the requirement or define that term. We note particularly the difficulties of defining arms-length bargaining because of the wide diversion of views expressed on this part. Accordingly, we are convinced that we should abandon our previous reference to that test.

Section 601(c)(2) of the NGPA provides that the Commission may not deny an interstate pipeline the recovery of maximum lawful prices paid by the pipeline unless ". . . the Commission determines that the amount paid was excessive due to fraud, abuse, or similar grounds." The Joint Statement (pg. 124) indicates that "[t]he conferees do not intend to guarantee passthrough of costs of natural gas purchases in cases of fraud or abuse as *determined by the Commission.*" [emphasis supplied] A number of comments requested that we define the term "fraud, abuse or similar grounds."

The statute and the statement quoted would permit the Commission to make the determination on a case-by-case basis, or to prescribe general rules defining in part or fully the phrase "fraud, abuse or similar grounds." We are aware that general guidance as to the circumstances that would constitute grounds for a determination of fraud abuse or similar grounds would be desirable. However, we believe that if such guidance or general rules can be developed, they must emerge from a number of individual cases in which the Commission considers this issue. Until sufficient experience under the law is acquired we believe that general statements concerning the application of the standard cannot be formulated with sufficient precision to assist those pipelines concerned with its application.

The Commission will revise section 270.205 of its regulations by adding a paragraph entitled "Modification of existing contracts." This paragraph will summarize the foregoing discussion.

(Natural Gas Act, as amended, 15 U.S.C. 717 *et. seq.*, Natural Gas Policy Act of 1978, Pub. L. 95–621, 92 Stat. 3350, Department of Energy Organization Act, Pub. L. 95–91, E. O. 12009, 42 FR 46267)

In consideration of the foregoing Part 270 of Subchapter H, Chapter I, Title 18, Code of Federal Regulations, is amended as set forth below. Because this is an interpretive rule, deferral of the effective date of the rule is not required. Accordingly, the rule will be effective immediately.

By the Commission. Commissioner Sheldon voted present.

Kenneth F. Plumb,
Secretary.

Section 270.205 is amended by redesignating paragraph (c) as paragraph (d) and by adding a new paragraph (c) to read as follows:

§ 270.205 Contractual authorization to collect NGPA rates.

* * * * *

(c) *Modification of existing contracts.* The NGPA does not prohibit the parties to an existing contract for the first sale of natural gas from amending or modifying such contract to permit the seller to charge and collect any applicable NGPA rate. If natural gas sold under such contract is subject to section 105(b)(1) of the NGPA and qualifies for no higher maximum lawful price under any other provision of the NGPA, no amendment or modification of such contract may provide authorization for a seller to charge and collect a price which exceeds the price under the terms of the contract as in effect on November 9, 1978.

[FR Doc. 79-18750 Filed 6-14-79; 8:45 am]
BILLING CODE 6450-01-M

18 CFR Part 271

[Docket No. RM79–3]

Ceiling Prices; High-Cost Natural Gas

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission promulgates final regulations implementing section 107(a) of the Natural Gas Policy Act of 1978, which deals with the maximum lawful price for deep, high-cost natural gas.

DATES: June 13, 1979.

ADDRESSES: All findings should reference Docket No. RM79–3 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Philip Yates, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, 202–275–4212.

SUPPLEMENTARY INFORMATION: On December 1, 1978, the Federal Energy Regulatory Commission issued Interim Regulations in Docket No. RM79–3 implementing the Natural Gas Policy Act of 1978 (NGPA). (43 FR 56448). Subpart G of Part 271 set forth regulations implementing section 107(a) of the NGPA, to provide incentive prices for deep, high-cost natural gas.

Section 107(b)(2)–(4) also authorized the Commission to establish incentive prices for gas from geopressured brine, occluded natural gas produced from coal seams, gas from Devonian shale, as well as gas produced from other conditions which have been determined by the Commission to present extraordinary risks or costs. However, due to statutory deadlines imposed by the NGPA, the Commission did not promulgate regulations to implement section 107(b).

During the 60-day comment period on the interim regulations, ten comments were received addressing the issuance of section 107(b) regulations. Some made general requests for expeditious promulgation, others suggested specific definitions for the particular categories listed in section 107(c).

The comments in favor of rapid implementation of section 107(b) took the position that incentive prices are required to maximize natural gas production. However, one comment indicated that the maximum lawful prices allowable under other provisions of the NGPA may provide sufficient incentives to produce adequate natural

gas supplies. Further, the comment suggested that it may be exceedingly difficult to determine what is "necessary" incentive pricing, and what is a windfall to a producer.

Concurrently with this final rulemaking, the Commission is issuing a notice of inquiry, requesting comments to assist it in a policy examination of rules implementing section 107(b) and (c) of the Natural Gas Policy Act of 1978. Additionally, we are requesting comments on a notice of proposed rulemaking issued today, in which we set forth proposed definitions for those categories specifically listed in section 107. The issues raised by the comments on the proposed definitions will be considered together with the responses to the notice of inquiry.

Eleven other comments were received on Subpart 271 G. Three made reference to the Commission's statement in the order of December 1, 1978, in Appalachian Exploration and Development, Inc., *et al.*, Docket No. CI76-590, *et al.*, that it intended to issue, in the near future, a "transitional rule governing the processing of all optional procedure cases [18 C.F.R. § 275] filed before December 1, 1978." On February 7, 1979, the Commission issued an Order Granting Rehearing For Purposes of Further Consideration in Docket No. CI76-590. We expect to consider a transitional rule in the near future.

Several comments requested that measurement of well depth in § 271.704 be made from the top of the "Kelly bushing" [1] rather than "surface of the ground." One rationale for this proposed change is that well logs refer to this point. More importantly for offshore wells the reference to the Kelly bushing will include the depth of the water in the measurement of the 15,000 foot depth.

Section 107 does not establish a cost-based maximum lawful price for deep wells. However, the costs involved in producing gas from deep wells is a factor which the Commission may consider in implementing the section. Recognizing the costs of constructing offshore drilling platforms, we believe that it is reasonable to conclude that it is consistent with the statute to include in the measurements of well depth, the depth of the water in which a producer must drill. In order to effectuate this conclusion, the Commission by this order amends § 270.102(6), which defines "surface location." Pursuant to this order, "surface location" will remain the same for onshore wells; i.e., the earth's surface. However, for wells drilled in permanent surface waters, the "earth's surface" means "the mean elevation of the surface of the water." In conformance with this amendment, § 271.704 is amended to require measurement of depth for section 107(a) purposes to be "from the surface location to the highest perforation point in the completion location."

Two other comments addressed the use of "true *vertical* depth" in § 271.704. It is asserted that all wells tend to corkscrew as they are drilled. Also, offshore wells are drilled directionally, to allow more undersea acreage to be tapped from one drilling platform. Since the cost of a well is determined by the length of the bore, and not the vertical depth of the highest penetration, these comments recommend replacing "true vertical depth" with a reference to actual well bore length.

There is validity to these statements regarding costs. However, Congress has explicitly adopted the standard of "true vertical depth" in section 101(b)(1) of the NGPA. Thus, the Commission is precluded from adopting a different standard in § 271.704.

The Joint Explanatory Statement of the Committee on Conference, at page 88, anticipated that "some new wells will produce from depths close to 15,000 feet, and some reentries will produce from depths below 15,000 feet, both possibly involving costs greater than normal . . ." The Statement went on to acknowledge that "[t]he Commission may determine that such wells should receive special price treatment under this section. . . ."

It appears that the wells described in the comments, like the wells described in the Statement, may qualify under section 107(c)(5), as natural gas "produced under such other conditions as the Commission determines to present extraordinary risks or costs." Accordingly, these comments will be considered in the notice of inquiry concerning section 107(c)(5), issued today. The Commission invites additional comments addressing this issue.

One other comment addressed § 271.704 of the interim regulations, requesting that the Commission's definition of deep, high-cost natural gas include wells begun before February 19, 1977, if redrilling the well entails substantial expense. Alternatively, the comment suggested such redrilled deep wells be classified as high-cost gas under section 107(c)(5). The Commission will not amend § 271.704 in the manner suggested; it is contrary to the plain language of section 107(a) and (c)(1), and inconsistent with the intent of the section as evidenced by the above quoted passage from The Joint Explanatory Statement of the Committee on Conference. The comment's alternative suggestion will be examined with comments elicited by the notice of inquiry addressing section 107(c)(5).

The regulations in Subpart G of Part 271 were originally proposed for comment in November of 1978 and issued as interim regulations on December 1, 1978 (43 FR 56448 (Dec. 1, 1978)). For 60 days thereafter comments were received and during that period public hearings were held on these regulations. By this process the Commission complied with the provisions of section 502(b) of the NGPA which requires that "[t]o the maximum extent practicable," an opportunity for the oral presentation of data, views, and arguments be afforded for certain regulations under the NGPA.

The amendments to Subpart G of Part 271 contained in this order rest upon considerations given to the information received during the above described, comment, and hearing process. Accordingly, the Commission finds that further notice and public procedure on these rules are unnecessary and impractical and that good cause exists to dispense with additional notice and procedure. Subpart G of Part 271, as amended, will be effective in 30 days as final regulations.

(Natural Gas Act, as amended, 15 U.S.C. 717, et seq.; Energy Supply and Environmental Coordination Act, 15 U.S.C. 791, *et seq.*; Natural Gas Policy Act of 1978, Pub. L. 95-621, 92 Stat. 3350; Department of Energy Organization Act, Pub. L. 95-91, E.O. 12009, 42 FR 46267)

In consideration of the foregoing, Subpart G of Part 271 of Subpart H, Chapter I, Title 18, Code of Federal Regulations, issued as interim regulations (43 FR 56448 (December 1, 1978)), are promulgated as final regulations and amended as set forth below, effective 30 days from the issuance of this order.

By the Commission.

Kenneth F. Plumb,

Secretary.

1. § 270.102 is amended by revising subparagraph (6) of paragraph (b) to read as follows:

§ 270.102 Definitions.

* * * * *

(b) * * *

(6) "Surface location" means the point on the Earth's surface from which drilling of a well is commenced except that in the case of a well drilled in

[1] The "Kelly bushing" is that part of the drilling rig which transfers the power from the rotary table to the pipe in the ground. For onshore wells, it may be as high as 20 feet from the surface of the ground.

permanent surface waters, "the Earth's surface" means the mean elevation of the surface of the water.

* * * * *

2. Section 271.704 is amended by revising it to read as follows:

§ 271.704 Special rule.

For purposes of determining depth under this subpart and section 107(c)(1) of the NGPA, measurement shall be the true vertical depth from the surface location to the highest perforation point in the completion location.

[FR Doc. 79-18738 Filed 6-14-79; 8:45 am]
BILLING CODE 6450-01-M

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18 CFR Part 275

[Docket No. RM79-3]

Commission Determinations and Review of Jurisdictional Agency Determinations

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rules.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing final regulations implementing section 503 (b) and (d) of the Natural Gas Policy Act of 1978 (NGPA) which deals with Commission review of jurisdictional agency determinations of the NGPA pricing category for natural gas.

EFFECTIVE DATE: July 16, 1979.

ADDRESSES: All filings should reference Docket No. RM79-3 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Philip Yates, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 275-4212.

I. Background

On December 1, 1978, the Federal Energy Regulatory Commission (Commission) issued interim regulations implementing the Natural Gas Policy Act of 1978 (NGPA) (43 F.R. 56448). In the 60-day comment period on the interim regulations, 28 comments were received on Part 275; some of the suggestions made by the comments have been incorporated into the final rule.

II. Discussion of Comments

Part 275 generally describes the procedures by which the Commission will review jurisdictional agency determinations. It reflects section 503 of the NGPA in setting forth the grounds on which determinations may be reversed or remanded. It also provides a 15-day protest procedure under which persons may object to determinations and submit documentary evidence relative to the determination. Finally, it establishes procedures for reopening and possibly vacating determinations on the basis of material facts which were either untrue or omitted from the record before the jurisdictional agency. Section 275.201 of the interim regulations provides that the Commission will publish a notice in the Federal Register of the receipt of a jurisdictional agency's determination, and specifies the contents of that notice. One comment requested that the notice contain the following additional information:

1. The rate schedule number, so that interested parties can inspect the producer's contract,
2. A summary by the state agency of information in its files inconsistent with its determination, and
3. The price sought and the statutory regulatory authority sought to be invoked.

The comment indicated that the rate schedule number is necessary so that interested parties may inspect contracts in the Commission's files to ascertain, "among other things, the nature of the contractual authority for the price sought." The inclusion of the rate schedule number will not be included at this time. However, the Commission is actively engaged in preparing an order establishing the proper procedure for examining questions of contractual authority. This issue will be more fully discussed in that order.

The comment's second request, for the publication of a summary by the jurisdictional agency of information inconsistent with its determination, is more properly addressed in connection with § 274.104, which contains the requirements of the jurisdictional agency's notice to the Commission. Section 274.104 does not presently require such a summary. The comment will be considered with other comments on that section.

However, if such a summary is required to be sent to the Commission, we do not believe that it should be included in the notice published in the Federal Register. The published notice is designed to bring to the attention of interested persons, through a synopsis of the basic facts, that a particular well has been determined to qualify for a certain NGPA pricing category. The notice itself, by definition, does not provide the public with enough information to permit a complete analysis. That information is available in the public files for inspection. For the Commission to provide in the notice the amount of information suggested for the thousands of jurisdictional agency determinations would be administratively infeasible and would place an impossible burden upon the Commission and the Federal Register.

The third request, for the price charged, is also unnecessary. The section of NGPA under which the determination is made is included in the notice. Reference to that NGPA section will show what price can be charged, assuming contractual authority exists to collect that price.

Section 275.201(d) of the interim regulations provides that the notice in the Federal Register shall provide that protests may be filed within 15 days of the Commission's public notice. Some comments recommended that this time limit be reduced from 15 days to 10 days, with an additional 10-day period provided for the filing of responses to protests.

The time period for protests was originally set by attempting to balance the need for adequate time for interested persons to review the determination and make filings, against the statutory requirement that the Commission act on determinations within 45 days. Since no protests have yet been received, and the comments are not based on arguments that the time limits are unreasonable, there is no reason to change this requirement. As more experience is gained under this section, we may determine that some adjustment in the time and procedures for protests may be necessary. At present, the 15-day period will not be changed; however, to make the regulations clearer, the 15-day limit has been made explicit in § 275.203(a).

One comment suggested that Part 275 be amended to provide that notice of a preliminary finding or a reopening of a determination be sent by all those persons who are purchasing gas at the wellhead to all those to whom the purchaser tenders payment for the gas. The concern underlying this request is valid. A subsequent purchaser of a well may not receive notice of a preliminary finding or reopening because the Commission will not be aware that the person who filed for the pricing determination is no longer the owner of the well.[1] However, without reaching the question of the Commission's legal authority to require such notice, we conclude that this is a matter to be

[1] Section 503(b)(3) requires that the notice be sent to "those parties identified in the notice [sent] to the Commission of [the pricing] determination.

resolved between the buyer and seller of a natural gas well. Thus, the Commission declines to require wellhead purchasers of natural gas to supply the notice requested by the comment.

Two comments suggested that the Commission include additional grounds for issuing a preliminary finding. One suggested that the Commission issue a preliminary finding if the Commission believes the jurisdictional agency determination may be unreasonable. Another suggested that a preliminary finding issue on the grounds of absence of contractual authority for the determination.

A preliminary finding is a required step under our regulations, before the Commission can issue an order reversing or remanding a jurisdictional agency determination. The statutory grounds for a reversal or remand are clear: (1) a reversal is required if the Commission finds that a determination is not supported by substantial evidence in the record upon which the determination was made. (Section 503(b)(1)(A)); and (2) a remand may occur if the Commission finds that its files contain information inconsistent with a determination. (Section 503(b)(1)(B)). A preliminary finding will not issue unless the Commission concludes that one of the statutory grounds for reversal or remand may exist. Neither of the comments' suggested grounds are included in the statutory grounds for remand or reversal. Thus, a preliminary finding cannot be issued solely because the Commission feels that a jurisdictional agency determination is unreasonable or that contractual authorization is lacking to collect the highest price allowable under an NGPA pricing category.

Several comments addressed the 45-day period in which the finding under § 275.202(b) may be made that the notice of the determination sent by the jurisdictional agency to the Commission is incomplete. One suggested that the 45-day period begin on the date the notice of determination is published in the **Federal Register**. Some indicated that such a finding could be made in a shorter time, others felt that the period was unnecessary, given the certification which must be filed under § 274.104(a)(5), stating that all required information has been supplied. Still others expressed the opinion that tolling the 45-day statutory time period by issuing an incomplete notice is an unwarranted intrusion by the Commission into state jurisdiction and that this provision is subject to administrative abuse.

The full 45-day period will be retained, beginning upon the receipt of the determination by the Commission. The full period is required because it is estimated that 40 to 50 thousand jurisdictional agency determinations will be filed in the first year of the NGPA. The beginning date for the 45-day period is statutorily required under section 503(b)(1)(B). The tolling provision is required because the certification required by § 274.104(a)(5) may not be accurate; the Commission must have time to reach its own conclusion as to the adequacy of the information filed by the jurisdictional agency. Finally, all the information required to be filed may be necessary for the Commission to make a "substantial evidence" determination, as required by section 503(b)(1)(A). If the information is not supplied, the jurisdictional agency's determination may not be supported by substantial evidence;[2] unless a tolling provision is provided, filings by jurisdictional agencies which lack material information would require reversal.

It is anticipated that once state agencies become familiar with the determination process, this section will be little used. However, at present, our experience has shown it to be necessary. It would be foolish to expect state agencies, in making their first determinations, to do so completely without error. In fact, it is remarkable how well most are performing.

One comment suggested that informal conferences after preliminary findings be eliminated because of the possibility of *ex parte* communication; instead, the commentor would allow only written filings. This suggestion is rejected; *ex parte* problems will be no more substantial in this context than in any other informal conference with staff.

Several comments address § 275.202(e), indicating confusion with respect to the procedures to be followed if the Commission makes a preliminary finding on its own motion. These comments are well taken. Section 275.202(e) is amended to make clear that the procedures which the Commission will follow after a preliminary finding are the same without regard to whether or not a protest has been filed. The only difference is that the Commission will issue a final order in any case in which both a protest was filed and a preliminary finding was made, whereas if the preliminary finding is made by the Commission on its own motion, the issuance of a final order is not required. If none is issued, § 275.202(e)(3) states that the jurisdictional agency determination will become final 120 days after the date of the preliminary finding.

A number of comments suggested that protests should be made under oath and that protestors should be limited to those persons who participated in the state agency proceeding, absent a showing of good cause for failure to participate. The Commission addressed both of these issues in the preamble to the interim regulations. We indicated that if the protest procedure was being abused, the oath requirement could be imposed. We also indicated that the Commission could not prescribe procedures applicable to jurisdictional agency determinations, and that the limited time within which the Commission must act would not allow for resolution of controversies over good cause for failure to appear before the jurisdictional agency. Again, until experience dictates the need for these types of changes, the position previously articulated in the preamble will be maintained.

Two commeats suggested that a preliminary finding not issue if a protest raises only harmless error. We believe that section 503(b)(2) now provides this discretion. Thus, there is no need for the regulation to be amended, because § 275.202(a)(1)(ii) tracks the language of the statute.

One jurisdictional agency suggested that it is inconsistent with the NGPA to permit protestors to submit information with their protest, and have that information become part of the "public records of the Commission," within the meaning of section 503(b)(1)(B). The Commission believes that it is not only consistent with the statute but is required by the framework of the NGPA. Section 501(a) requires the Commission to "issue . . . such rules and orders as it may find necessary or appropriate to carry out its functions under this Act." One of those functions is the review of jurisdictional agency determinations. It would be unreasonable for the Commission not to consider reliable evidence submitted by a protestor, within the 45-day statutory period, in reviewing a determination. Consequently, § 275.203(b)(3) will be retained.

Two comments would have the Commission remand all determinations that are required to be reopened, rather than have the Commission take initial jurisdiction of the matter. It is indicated that section 503 of the NGPA contemplates that initial jurisdiction for

[2] Although our practice has not been to declare a filing incomplete for a minor technical deficiency, the final rule in § 275.202(b)(1) has been amended to make clear that an incomplete notice will not be issued unless the deficiency is material.

pricing determinations lies with the jurisdictional agency.

Section 503(d) states that jurisdictional agency determinations, if no longer subject to review by the Commission or the courts, "shall thereafter be binding." However, the determination is *not* binding if it was based on (1) any untrue statement of material fact or (2) a misleading omission of material fact. The section does not indicate the procedure which should be utilized to ascertain whether the determination was based on such misinformation. Pursuant to the authority granted in section 501(a), the Commission has set out in § 275.205 what it considers to be the appropriate procedure for "reopening" jurisdictional agency determinations. Section 275.205(d) has been amended slightly to clarify the effect of an order vacating a jurisdictional agency determination.

The procedure set out entails four distinct steps: (1) an initial finding by the Commission, on its own motion or in response to a petition, that a material misstatement or omission may have occurred; (2) an opportunity for a presentation of views on that issues; (3) a determination by the Commission, based on the information supplied by all interested parties, whether the misstatement or omission occurred, and if so whether the determination should be vacated because the misstatement or omission was relied upon by the jurisdictional agency, and (4) if the determination is vacated, the Commission must then decide how much of the producer collections were in excess of the otherwise applicable maximum lawful price, and if appropriate, order that amount refunded.

In the process described above, the Commission will not make determinations which section 503(a)(1) assigns to jurisdictional agencies; we will merely vacate a determination based on a material misstatement or omission. The procedure will be free at that point to apply to the jurisdictional agency for a determination. Consequently, the flexibility of § 275.205(d) will be retained.

One comment would have the Commission preclude reopening a pricing determination if the material misinformation was supplied in good faith, to provide producers with truly final determinations. This suggestion is contrary to the statutory provisions of section 503(d), which make no reference to good faith, and is rejected.

The 10-day period in the last sentence of § 275.206(b) has been reduced to 5 days, because 10 days is the maximum time that is allowed for the processing of requests under the Freedom of Information Act, 5 U.S.C. § 522. The Commission requires some time to make the initial determination that the information will be released before notice of the release is given.

Finally, § 275.201(b) has been amended to delete the reference to "Part I" of FERC Form No. 121, since that form does not have a "Part I."

III. Public Procedures and Effective Date

The regulations in Part 275 were originally proposed for comment in November 1978 and issued as interim regulations on December 1, 1978 (43 FR 56448 (Dec. 1, 1978)). For 60 days thereafter comments were received and during that period public hearings were held on these regulations. By this process the Commission complied with the provisions of section 502(b) of the NGPA which requires that "[t]o the maximum extent practicable," an opportunity for the oral presentation of data, views, and arguments be afforded for certain regulations under the NGPA. The amendments to Part 275 contained in this order rest upon considerations given to the information received during the above described notice, comment, and hearing process. Accordingly, the Commission finds that further notice and public procedure on these rules is unnecessary and impractical and that good cause exists to dispense with additional notice and procedure, and to make Part 275, as amended, effective in 30 days as final regulations.

(Natural Gas Act, as amended, 15 U.S.C. 717, *et seq.*; Energy Supply and Environmental Coordination Act, 15 U.S.C. 791, *et seq.*; Natural Gas Policy Act of 1978, P.L. 95-621, 92 Stat. 3350; Department of Energy Organization Act, Pub. L. 95-91, E.O. 12009, 42 FR 46267)

In consideration of the foregoing, Part 275 of Subchapter H, Chapter I, Title 18, Code of Federal Regulations, issued as interim regulations (43 FR 56448 (Dec. 1, 1978)), are promulgated as final regulations and amended as set forth below, effective 30 days from the date of issuance of this final order.

By the Commission.

Kenneth F. Plumb,
Secretary.

1. Section 275.201(b) is amended by revising paragraph (b) to read as follows:

§ 275.201 Publication of notice from jurisdictional agency.

* * * * *

(b) certain information contained in FERC Form No. 121;

2. Section 275.202 is amended by revising subparagraph (b)(1), and revising paragraph (e) to read as follows:

§ 275.202 Commission review of final determination.

* * * * *

(b)(1) The notice forwarded to the Commission pursuant to Subpart A of Part 274 does not contain all the material information required in § 274.104(a) (4) and (5); and

* * * * *

(e) *Final orders*

(1) In any case in which a protest was filed with the Commission pursuant to this subpart and a preliminary finding was issued, the Commission shall issue a final order within 120 days after issuance of the preliminary finding.

(2) In any case in which no protest was filed with the Commission pursuant to this subpart, and a preliminary finding was issued, the Commission may issue a final order within 120 days after issuance of the preliminary finding.

(3) A final order issued under subparagraphs (1) or (2) shall either affirm, reverse, or remand the determination of the jurisdictional agency. Such order shall state the specific basis for the Commission's action. Notice of the issuance of such order shall be given to the jurisdictional agency, to participants in the proceeding before the jurisdictional agency, and to participants in the proceeding before the Commission under paragraph (d) of this section and under § 275.203.

(4) In the event that the Commission fails to issue a final order within 120 days after issuance of the preliminary finding, the determination of the jurisdictional agency shall become final.

3. § 275.203 is amended by revising paragraph (a) to read as follows:

§ 275.203 Protests to the Commission.

(a) *Who may file.* Any person may file a protest with the Commission with respect to a determination of a jurisdictional agency within 15 days after the publication of notice of that determination pursuant to § 275.201 of this subpart.

* * * * *

4. § 275.205 is amended by revising paragraph (d) to read as follows:

§ 275.205 Procedure for reopening determinations.

(d) *Final order of Commission.* Within 150 days after issuance of the notice under paragraph (c)(1) of this section, the Commission shall issue a final order. If the Commission finds that the grounds referred to in paragraph (a) of this

section exist, it shall vacate the determination, and if appropriate, order refund or other action. The right to collect the previously determined maximum lawful price shall terminate on the date of the order vacating the determination.

5. Section 275.206 is amended by revising the last sentence of paragraph (b) to read as follows:

§ 276.206 Confidentiality.

* * * * *

(b) * * * Before making any information public under this paragraph, the Commission shall provide at least 5 days notice to the person who submitted the information.

[FR Doc. 79-18727 Filed 6-14-79; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 79-169]

General Provisions; Changes in the Customs Field Organization; Section 101.3, Customs Regulations, Amended

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document changes the field organization of the Customs Service by: (1) Extending the existing port limits of the Puget Sound, Washington, port of entry to include Renton Municipal Airport and Seaplane Base on Lake Washington; (2) extending the existing port limits of the Buffalo-Niagara Falls, New York, port of entry to include the townships of Porter, Lewiston, and Wheatfield, located in Niagara County, New York; (3) extending the existing port limits of the Providence, Rhode Island, port of entry to include the townships of East Greenwich and North Kingstown, Rhode Island; and (4) abolishing the present port of entry of South Bend-Raymond, Washington, and extending the existing port limits of the port of entry of Aberdeen, Washington, to include the territory currently encompassed by the port of South Bend-Raymond.

EFFECTIVE DATE: July 16, 1979.

FOR FURTHER INFORMATION CONTACT: Robert Schenarts, Inspection and Control Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8151).

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, on December 14, 1978, Customs published a notice in the **Federal Register** (43 FR 58383), proposing to make the following changes in its field organization:

1. To extend the existing port limits of the Puget Sound, Washington, port of entry (Region VIII), to include Renton Municipal Airport and Seaplane Base on Lake Washington.

2. To extend the existing port limits of the Buffalo-Niagara Falls, New York, port of entry (Region I), to include the townships of Porter, Lewiston, and Wheatfield, located in Niagara County, New York.

3. To establish a combined port of entry of Owensboro-Paducah, Kentucky (Region IX), to include the corporate limits of both cities and the connecting highway known as Green River Parkway, south from Owensboro to the junction of the Western Kentucky Parkway, west to U.S. Highway 62, and west to Paducah, all in the State of Kentucky.

4. To extend the existing port limits of the Providence, Rhode Island, port of entry (Region I), to include the townships of East Greenwich and North Kingstown, Rhode Island.

5. To abolish the present port of entry of South Bend-Raymond, Washington (Region VIII), and extend the existing port limits of the Aberdeen, Washington, port of entry to include the territory currently encompassed by the port of South Bend-Raymond.

Comments

Interested parties were given until February 12, 1979, to submit comments regarding these proposed changes. No comments were received. After review of the proposal, it has been determined that to expedite the extensions of the existing Customs ports of entry, it would be advisable to separate the proposal to establish the new combined port of entry of Owensboro-Paducah, Kentucky, from the other proposed changes. Establishment of the Owensboro-Paducah, Kentucky, combined port of entry will be the subject of a separate document published in the Federal Register.

Changes in the Customs Field Organization

Under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949-1953 Comp., Ch. II), and pursuant to authority provided by Treasury Department Order No. 101-5 (44 FR 31057), the following changes in the Customs field organization are adopted:

Puget Sound, Wash.

The limits of the Puget Sound, Washington, port of entry (Region VIII), are extended to include Renton Municipal Airport and Seaplane Base. As extended, the geographical boundaries of the Puget Sound, Washington, port of entry include the following:

The ports of Seattle, Anacortes, Bellingham, Everett, Friday Harbor, Kenmore Air Harbor (sections 1, 2, 12, and 13 of Township 26 North, Range 3 East, West Meridian, and sections 1 to 18, inclusive, of Township 26 North, Range 4 East, West Meridian), Neah Bay, Olympia, Port Angeles, Port Townsend; Renton Municipal Airport and Seaplane Base (sections 7 and 18, Township 23 North, Range 5 East, West Meridian); and the territory in Tacoma beginning at the intersection of the westernmost city limits of Tacoma and The Narrows and proceeding in an easterly, then southerly, then easterly direction along the city limits of Tacoma to its intersection with Pacific Highway (U.S. Route 99), then proceeding in a southerly direction along Pacific Highway to its intersection with Union Avenue Extended and continuing in a southerly direction along Union Avenue Extended to its intersection with the northwest corner of McChord Air Force Base, then proceeding along the northern, then western, then southern boundary of McChord Air Force Base to its intersection, just west of Lake Mondress, with the northern boundary of the Fort Lewis Military Reservation, then proceeding in an easterly direction along the northern boundary of the Fort Lewis Military Reservation to its intersection with Pacific Avenue, then proceeding in a southerly direction along Pacific Avenue to its intersection with National Park Highway, then proceeding in a southeasterly direction along National Park Highway to its intersection with 224th Street, East, then proceeding in an easterly direction along 224th Street, East, to its intersection with Meridian Street, South, then proceeding in a northerly direction along Meridian Street to the northern boundary of Pierce County, then proceeding in a westerly direction along the

northern boundary of Pierce County to its intersection with Puget Sound, then proceeding in a generally southwesterly direction along the banks of the East Passage of Puget Sound, Commencement Bay, and The Narrows to the point of intersection with the westernmost city limits of Tacoma; including all points and places on the southern boundary of the Juan de Fuca Strait from the eastern port limits of Neah Bay to the western port limits of Port Townsend, all points and places on the western boundary of Puget Sound, including Hood Canal, from the port limits of Port Townsend to the northern port limits of Olympia, all points and places on the southern boundary of Puget Sound from the port limits of Olympia to the western port limits of Tacoma, and all points and places on the eastern boundary of Puget Sound and contiguous waters from the port limits of Tacoma north to the southern port limits of Bellingham, all in the State of Washington.

Buffalo-Niagara Falls, N.Y.

The limits of the Buffalo-Niagara Falls, New York, port of entry (Region I), are extended to include the townships of Porter, Lewiston, and Wheatfield, located in Niagara County, New York. As extended, the geographical boundaries of the Buffalo-Niagara Falls, New York, port of entry include the following:

All the territory within the corporate limits of the cities of Buffalo, Niagara Falls, Lewiston, Lackawanna, Tonawanda, and North Tonawanda, and the townships of Grand Island, Tonawanda, Amherst, Cheektowaga, Hamburg, West Seneca, and Orchard Park in the county of Erie, and the townships of Porter, Lewiston, Wheatfield, and Niagara, in the county of Niagara, all in the State of New York.

Providence, R.I.

The limits of the Providence, Rhode Island, port of entry (Region I), are extended to include the townships of East Greenwich and North Kingstown, Rhode Island. As extended, the geographical boundaries of the Providence, Rhode Island, port of entry include the following:

All the territory within the corporate limits of the city of Providence and the townships of Central Falls, Cranston, East Providence, Barrington, Pawtucket, Warwick, Woonsocket, Cumberland, Johnston, North Smithfield, Smithfield, Lincoln, West Warwick, East Greenwich, and North Kingstown, all in the State of Rhode Island.

South Bend-Raymond and Aberdeen, Washington

The South Bend-Raymond, Washington, port of entry (Region VIII), is abolished. The limits of the Aberdeen, Washington, port of entry (Region VIII), are extended to include the territory currently encompassed by the port of South Bend-Raymond. As extended, the geographical boundaries of the Aberdeen port of entry include the following:

The corporate city limits of Aberdeen, Hoquiam, and Cosmopolis; all the territory within the corporate limits of South Bend and Raymond; all points on the Willapa River lying between the corporate limits of South Bend and Raymond; and that part of U.S. Highway 101 which connects the city limits of Aberdeen, Hoquiam, and Cosmopolis to the corporate limits of South Bend and Raymond, all in the State of Washington.

Amendments to the Regulations

To reflect these changes, the table in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), is amended by:

1. Substituting "T.D. 79–169." for "T.D. 78–241." in the column headed "Ports of entry" in the Seattle, Washington, Customs district (Region VIII).

2. Substituting "(T.D. 79–169)." for "(T.D. 56512)." in the column headed "Ports of entry" in the Buffalo, New York, customs district (Region I).

3. Substituting "T.D. 79–169." for "T.D. 67–3." in the column headed "Ports of entry" in the Providence, Rhode Island, Customs district (Region I).

4. Deleting "South Bend-Raymond (T.D. 53578)." from the column headed "Ports of entry" in the Seattle, Washington, Customs district (Region VIII).

5. Substituting "T.D. 79–169." for "T.D. 56228." in the reference to "Aberdeen, including territory described in * * *" in the column headed "Ports of entry" in the Seattle, Washington, Customs district (Region VIII).

Inapplicability of Executive Order 12044

This document is not subject to the Treasury Department directive (43 FR 52120) implementing Executive Order 12044, "Improving Government Regulations", because the regulation was in the process of development before May 22, 1978.

Drafting Information

The principal author of this document was Lawrence P. Dunham, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: May 29, 1979.

Richard J. Davis,

Assistant Secretary of the Treasury.

[FR Doc. 79-18709 Filed 6-14-79; 8:45 am]

BILLING CODE 4810-22-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

20 CFR Part 404

Old-Age, Disability, Dependents' and Survivors' Insurance Benefits; Period of Disability

AGENCY: Social Security Administration, HEW.

ACTION: Final rule.

SUMMARY: These final regulations reorganize and restate in simpler language the rules on what is required to become entitled to social security benefits, when benefits begin and end, and how benefit amounts are determined. Also included are the rules we use to determine family relationships when benefits are sought as the worker's dependent or survivor. The relationship rules were formerly set out separately in Subpart L. Also included in these final regulations are two changes resulting from the 1977 Amendments to the Social Security Act and two changes resulting from court decisions interpreting the benefit entitlement provisions of the Act.

EFFECTIVE DATE: These amendments are effective June 15, 1979.

FOR FURTHER INFORMATION CONTACT: Ray Worley, Operational Policy and Procedures, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, 301–594–6813.

SUPPLEMENTARY INFORMATION:

Background

This final regulation is a recodification of the rules stating what entitles a person to social security benefits, when these benefits begin and end, how the benefit amounts are determined, and how we decide what family relationship a person has to the worker. The proposed recodification of these rules was published in the Federal Register with a Notice of Proposed Rulemaking on November 14, 1978 (43 FR 52936–52950). The primary purpose of this recodification is to restate the rules so that they will be easier for the public to understand and use. Other changes reflect two statutory amendments to the Social Security Act and two court decisions interpreting the Act.

One statutory amendment, reflected in section 404.336 of the final regulations, permits widows and widowers who remarry at age 60 or later to receive full widow's or widower's benefits after remarriage, instead of the one-half benefit reduction that was required

before the Act was amended. The other statutory amendment, reflected in sections 404.331 and 404.336 of the final regulations, permits divorced spouses to qualify for spouse's or surviving spouse's benefits if they were married to the worker for at least 10 years, instead of 20 years as formerly required. Both of these statutory changes are effective for months after December 1978.

Sections 404.331 through 404.333 of the final regulations reflect the June 1977 court decision in *Oliver* v. *Califano*. This decision requires that husband's benefits be provided for divorced husbands under the same rules as benefits are provided for divorced wives under the Act. Section 404.361 of the final regulations reflects the June 1976 Supreme Court decision in *Mathews* v. *Lucas*. This decision stated that a worker's natural child born out of wedlock who could inherit his or her personal property under applicable State law should be considered dependent upon the worker. The changes due to the court decisions apply as of the dates of the decisions.

Response to Public Comments

We received 49 comments: 16 from State government agencies, 5 from legal aid and civil rights groups, 8 from other public and private groups, and 20 from individuals. Virtually all of the comments were favorable. Several commenters, while commending the recodification effort, raised questions or made suggestions that resulted in our making a number of nonsubstantive changes in the final rules. These changes are intended to make the rules clearer and more readable.

Discussion of Major Comments

1. *Eliminate gender-based distinctions.* Several commenters pointed out that gender-based distinctions affecting benefit entitlement remained in the proposed regulations and recommended that they be removed. Specifically, the commenters recommended that husband's benefits be provided for the husband of an entitled individual who has a child of the individual in his care and that widower's benefits be provided for a surviving divorced husband. It was the view of the commenters that the Supreme Court decisions in *Weinberger* v. *Wiesenfield* and *Califano* v. *Goldfarb*, and the court decision in *Oliver* v. *Califano* require the payment of these benefits. We do not agree that these decisions provide authority for the payment of these additional benefits, and until the existing law is changed, we are unable to extend benefits as suggested by the commenters. We are aware that several gender-based distinctions remain in the Social Security Act, and as a matter of policy we have recommended the enactment of legislation which would eliminate these differences.

2. *Redefine contributions for support.* A commenter for a legal assistance organization recommended removing two provisions that were contained in proposed § 404.366(a) defining contributions for support. First, the commenter felt that the requirement that contributions must be made regularly and must be large enough to provide an important part of a claimant's ordinary living costs created an unnecessarily stringent standard for determining entitlement to child's benefits under section 216(h)(3)(C) of the Act. This statutory provision is reflected in § 404.355(d) of the final regulations. When it is necessary under this section of the Act to determine whether the insured had been contributing to the support of his child, we believe it is reasonable and appropriate to take into consideration the frequency of the contributions and the extent to which they provided assistance in meeting the costs of the child's support. For this reason we have not deleted this requirement from the final regulations.

The commenter also recommended removing the provision which stated that routine household services performed by the insured when the insured lives in the same household as the claimant are not contributions for support. It was felt that this provision was vague and that it discriminated against working mothers of children seeking benefits under section 216(h)(3)(C) of the Act. In reviewing the statute, we believe that the regulatory provision is unnecessary. The dependency test is met if the claimant was living with the insured at the appropriate time. See sections 404.355(d), 404.361, and 404.365. In those situations, the claimant does not have to show that contributions for support were received from the insured. For this reason, the sentence has been removed.

3. *Provide effective dates.* A commenter asked that the effective date of the regulatory provisions be included in the text of the regulations. This practice was followed in the past, but given the frequent changes in the Social Security Act, we decided not to retain this information. We believe that the regulations will be easier to use and more understandable if they reflect only the current rules. In situations where it is necessary to know the effective date of a rule, the information is readily available from other sources. We have, however, continued to provide the effective date of new rules in the preamble that accompanies proposed and final rulemaking documents.

A related comment indicated that there was some misunderstanding about the changes due to the *Oliver* decision. We stated in the Notice of Proposed Rulemaking that the changes would apply as of the date of the decision. The commenter has incorrectly concluded from this statement that we were not implementing that part of the June 1977 decision which affected a class of persons whose application for divorced husband's benefits had been denied after August 28, 1976. Because this part of the decision affected a relatively small number of identified individuals, its implementation is reflected only in our operating instructions.

4. *Permit oral applications.* A commenter recommended that the regulations and a long-standing SSA policy be changed to permit oral applications. Subpart G of the regulations sets out the rules we follow regarding applications, and we will consider this comment as part of the recodification of that subpart. So that persons reading Subpart D on benefits may more easily refer to the subpart on applications, a cross reference to that subpart has been included in section 404.302 of the final regulations.

Discussion of Miscellaneous Comments

1. *Definition of living with the insured.* A commenter pointed out that the proposed definition of living with the insured differed from the definition found in the former regulations in that it did not contain a reference to the right a parent may have to exercise parental control and authority. No change in the definition was intended, and in the final regulations we have revised § 404.366(c) to include this provision, which was inadvertently omitted from the proposed rule.

2. *Duration of marriage.* A commenter noted that the rules concerning the exemptions to the 9-month duration of marriage requirement for widow's and widower's benefits and for establishing relationship as a stepchild were not fully explained in the proposed regulations. Accordingly, §§ 404.335(a)(2) and 404.357 of the final regulations have been revised by inserting a statement explaining that the exceptions apply only if, at the time of the marriage, the insured was reasonably expected to live for nine months.

3. *Editorial comments.* In response to comments recommending that we use simpler language, shorter, single-subject

sections, and fewer cross-references, we have made a number of editorial changes in the final regulations. We have, for example, included three separate sections to explain who may be entitled to wife's or husband's benefits as a divorced spouse and who may be entitled to widow's and mother's benefits as a surviving divorced wife. We have also simplified the language in several sections and reviewed the use and need for cross-references. A number of commenters found proposed § 404.304 concerning the general rules used to determine benefit amounts difficult to understand. In the final regulations this section has been revised, and to clarify these rules we have included a definition of the term primary insurance amount.

4. *Comments beyond the scope of the Notice.* A number of comments were received that went beyond the scope of the Notice of Proposed Rulemaking or beyond the scope of our authority. These included:

(a) State the requirement for Supplementary Security Income benefits;

(b) Revise the retirement test; and

(c) Provide old-age benefits for the month in which the insured died.

Accordingly, the final rule is adopted as set forth below.

(Secs. 205 and 1102 of the Social Security Act, 53 Stat. 1368; 49 Stat. 647; 42 U.S.C. 405 and 1302.)

(Catalog of Federal Domestic Assistance Program Nos. 13.802-Social Security Disability Insurance; 13.803-Social Security Retirement Insurance; 13.804-Social Security Special Benefits for Persons Aged 72 and Over; 13.805-Social Security Survivors' Insurance.)

Dated: May 9, 1979.

Stanford G. Ross,

Commissioner of Social Security.

Approved: June 1, 1979.

Joseph A. Califano, Jr.,

Secretary of Health, Education, and Welfare.

Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

Subpart L [Reserved]

1. Subpart L is deleted and reserved.

2. Subpart D is revised to read as follows:

Subpart D—Old-Age, Disability, Dependents' and Survivors' Insurance Benefits; Period of Disability

General

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404.301 Introduction.
404.302 Other regulations related to this subpart.
404.303 Definitions.
404.304 General rules on benefit amounts.
404.305 When you may not be entitled to benefits.

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404.311 When entitlement to old-age benefits begins and ends.
404.312 Old-age benefit amounts.
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Authority: Subpart D is issued under sections, 202, 205, 216, 223, 228, 1102 of the Social Security Act, 49 Stat. 623, 53 Stat. 1368, 64 Stat. 492, 70 Stat. 815, 80 Stat. 67, 49 Stat. 647; Section 5, reorganization Plan No. 1 of 1953, 67 Stat. 631; 42 U.S.C. 402, 405, 416, 423, 428, and 1302; and 5 U.S.C. Appendix.

Subpart D—Old-Age, Disability, Dependents' and Survivors' Insurance Benefits; Period of Disability

General

§ 404.301 Introduction.

This subpart sets out what requirements you must meet to qualify for social security benefits, how your benefit amounts are figured, when your right to benefits begins and ends, and how family relationships are determined. These benefits are provided by title II of the Social Security Act. They include—

(a) *For workers,* old-age and disability benefits and benefit protection during periods of disability;

(b) *For a worker's dependents,* benefits for a worker's wife, divorced wife, husband, divorced husband, and child;

(c) *For a worker's survivors,* benefits for a worker's widow, widower, divorced wife, child, and parent, and a lump-sum death payment; and

(d) *For uninsured persons age 72 or older,* special payments.

§ 404.302 Other regulations related to this subpart.

This subpart is related to several others. Supart H sets out what evidence you need to prove you qualify for benefits. Subpart P describes what is needed to prove you are disabled. Subpart E describes when your benefits may be reduced or stopped for a time. Subpart G describes the need for and the effect of an application for benefits. Part 410 describes when you may qualify for black lung benefits. Part 416 describes when you may qualify for supplemental security income. Also 42 CFR Part 405 describes when you may qualify for hospital and medical insurance if you are aged, disabled, or have chronic kidney disease.

§ 404.303 Definitions.

As used in this subpart:

"Apply" means to sign a form or statement that the Social Security Administration accepts as an application for benefits under the rules set out in Subpart G.

"Eligible" means that a person would meet all the requirements for entitlement to benefits for a period of time but has not yet applied.

"Entitled" means that a person has applied and has proven his or her right to benefits for a period of time.

"Insured person" or "the insured" means someone who has enough earnings under social security to permit payment of benefits on his or her earnings record. The requirements for becoming insured are described in Subpart B.

"Permanent home" means the true and fixed home (legal domicile) of a person. It is the place to which a person intends to return whenever he or she is absent.

"Primary insurance amount" means an amount that is determined from the average monthly earnings creditable to the insured person. This term and the manner in which it is computed are explained in Subpart C.

"We" or "Us" means the Social Security Administration.

"You" means the person who has applied for benefits or the person for whom someone else has applied.

§ 404.304 General rules on benefit amounts.

This subpart describes how the highest monthly benefit amount you ordinarily could qualify for under each type of benefit is determined. However, the highest monthly benefit amount you could qualify for may not be the amount that you actually are paid each month. In a particular month, your benefit amount may be reduced or not paid at all. Under some circumstances, your benefit amount may be increased. The most common reasons for a change in the amount of your benefit payments are listed below:

(a) *Reductions based on age or earnings.* As explained in §§ 404.410–404.413, your old-age, wife's, husband's, widow's, or widower's benefits may be reduced if you choose to receive them before age 65. Also, as explained in §§ 404.415–404.417, deductions may be made from your benefits if your earnings or the insured person's earnings go over certain limits.

(b) *Overpayments and underpayments.* Your benefits may be increased or decreased for a time to make up for any previous overpayment or underpayment that was made on the insured person's record. For more information about this, see Subpart F.

(c) *Sole survivors.* If you are the only person entitled to a survivor's benefit on the insured's earnings record, the amount of your benefit may be increased. If you are entitled to child's or parent's benefits, the amount of your benefit will be increased to an amount equal to the minimum primary insurance amount. If you are entitled to widow's or widower's benefits, the amount of your benefit will be no less than $84.50 reduced for any months you were entitled before you became 62 years old.

(d) *Family maximum.* As explained in § 404.403, there is a maximum amount set for each insured person's earnings record that limits the total benefits payable on that record. If you are entitled to benefits as the insured's dependent or survivor, your benefits may be reduced to keep total benefits payable to the insured's family within these limits.

(e) *Government pension offset.* If you are entitled to wife's, husband's, mother's, father's, widow's or widower's benefits and receive a Government pension for work that was not covered under social security, your benefits may be reduced by the amount of that pension. Special age 72 payments are also reduced by the amount of a Government pension. For more information about this, see § 404.408(a) which covers benefits and § 404.384(c) which covers special age 72 payments.

§ 404.305 When you may not be entitled to benefits.

In addition to the situations described in § 404.304 when you may not receive a benefit payment, there are special circumstances when you may not be entitled to benefits. These circumstances are—

(a) *Waiver of benefits.* If you have waived benefits on religious grounds as described in § 404.1086, no one may become entitled to any benefits or payments on your earnings record and you may not be entitled to benefits on anyone else's earnings record; and

(b) *Insured's death by homicide.* You may not become entitled to any survivor's benefits or payments on the earnings record of a person if you were finally convicted of a felony for intentionally causing his or her death.

Old-Age and Disability Benefits

§ 404.310 Who is entitled to old-age benefits.

You are entitled to old-age benefits if—

(a) You are at least 62 years old;

(b) You have enough social security earnings to be "fully insured" as defined in § 404.109; and

(c) You apply; or you are entitled to disability benefits up to the month you become 65 years old. At age 65, your disability benefits automatically become old-age benefits.

§ 404.311 When entitlement to old-age benefits begins and ends.

(a) You are entitled to old-age benefits beginning with the first month covered by your application in which you meet all the other requirements for entitlement. (b) Your entitlement to benefits ends with the month before the month of your death.

§ 404.312 Old-age benefit amounts.

(a) If your old-age benefits begin at age 65, your monthly benefit is equal to the primary insurance amount. (b) If your old-age benefits begin after you become 65 years old, your monthly benefit is your primary insurance amount plus an increase for retiring after age 65. See § 404.282 for a description of these increases. (c) If your old-age benefits begin before you become 65 years old, your monthly benefit amount is the primary insurance amount minus a reduction for each month you are entitled before you

become 65 years old. These reductions are described in §§ 404.410–404.413.

§ 404.315 Who is entitled to disability benefits.

You are entitled to disability benefits while disabled before age 65 if—

(a) You have enough social security earnings to be "insured for disability," as described in § 404.116;

(b) You apply;

(c) You have a disability, as defined in § 404.1501, or you are not disabled, but you had a disability that ended within the 12-month period before the month you applied; and

(d) You have been disabled for 5 consecutive months. This 5-month waiting period begins with a month in which you were both insured for disability and disabled. Your waiting period can begin no earlier than the 17th month before the month you apply—no matter how long you were disabled before then. No waiting period is required if you were previously entitled to disability benefits or to a "period of disability" under § 404.320 anytime within 5 years of the month you again became disabled.

§ 404.316 When entitlement to disability benefits begins and ends.

(a) You are entitled to disability benefits beginning with the first month coverd by your application in which you meet all the other requirements for entitlement. If a waiting period is required, your benefits cannot begin earlier than the first month following that period. (b) Your disability benefits end with the earliest of these months: (1) the month before you become 65 years old; (2) the second month after the month your disability ends; or (3) the month before the month of your death.

§ 404.317 Disability benefit amounts.

Your monthly benefit is equal to the primary insurance amount. This amount is computed under the rules in Subpart C as if it were an old-age benefit, and as if you were 62 years old at the beginning of the 5-month waiting period mentioned in § 404.315(d). If the 5-month waiting period is not required because of your previous entitlement, your primary insurance amount is figured as if you were 62 years old when you become entitled to benefits this time. Your monthly benefit amount may be reduced if you receive workmen's compensation payments before you become 62 years old as described in § 404.408. Your benefits may also be reduced if you were entitled to other retirement-age benefits before you became 65 years old.

§ 404.320 Who is entitled to a period of disability.

(a) *General.* A period of disability is a continuous period of time during which you are disabled. If you become disabled, you may apply to have our records show how long your disability lasts. You may do this even if you do not qualify for disability benefits. If we establish a period of disability for you, the months in that period of time will not be counted in figuring your average earnings. If benefits payable on your earnings record would be denied or reduced because of a period of disability, the period of disability will not be taken into consideration.

(b) *Who is entitled.* You are entitled to a period of disability if you meet all the following conditions:

(1) You have or had a disability as defined in § 404.1501(b).

(2) You are "insured for disability", as defined in § 404.116 in the calendar quarter in which you became disabled, or in a later calendar quarter in which you were disabled.

(3) You file an application while disabled, or no later than 12 months after the month in which your period of disability ended. If you were unable to apply within the 12-month period after your period of disability ended because of a physical or mental condition as described in § 404.322, you may apply not more than 36 months after the month your disability ended.

(4) At least 5 consecutive months go by from the month in which your period of disability begins and before the month in which it would end.

§ 404.321 When a period of disability begins and ends.

(a) Your period of disability begins at the start of the first calendar quarter in which you were both disabled and insured for disability. Your period of disability may not begin after you become 65 years old. (b) Your period of disability ends on the last day of the month before the month in which you become 65 years old or, if earlier, the last day of the second month following the month in which your disability ended.

§ 404.322 When you may apply for a period of disability after a delay due to a physical or mental condition.

If because of a physical or mental condition you did not apply for a period of disability within 12 months after your period of disability ended, you may apply not more than 36 months after the month in which your disability ended. Your failure to apply within the 12-month time period will be considered due to a physical or mental condition if during this time—

(a) Your physical condition limited your activities to such an extent that you could not complete and sign an application; or

(b) You were mentally incompetent.

Benefits for Spouses and Divorced Spouses

§ 404.330 Who is entitled to wife's or husband's benefits.

You are entitled to benefits as the wife or husband of an insured person who is entitled to old-age or disability benefits if—

(a) You are the insured's wife or husband based upon a relationship described in §§ 404.345–404.346 and one of the following conditions is met:

(1) Your relationship to the insured as a wife or husband has lasted at least 1 year;

(2) You and the insured are the natural parents of a child; or

(3) In the month before you married the insured you were entitled to, or if you had applied and been old enough you could have been entitled to, any of these benefits or payments: Wife's, husband's, widow's, widower's, or parent's benefits; disabled child's benefits; or annuity payments under the Railroad Retirement Act for widows, widowers, parents, or children 18 years old or older;

(b) You apply;

(c) You are 62 years old or older; or you are the insured's wife and have "in your care", as defined in §§ 404.348–404.349, his child who is entitled to benefits on his earnings record and the child is either under 18 years old or disabled; and

(d) You are not entitled to an old-age or disability benefit based upon a primary insurance amount that is equal to or larger than the full wife's or husband's benefit.

§ 404.331 Who is entitled to wife's or husband's benefits as a divorced spouse.

You are entitled to wife's or husband's benefits as the divorced wife or divorced husband of an insured person who is entitled to old-age or disability benefits if—

(a) You are the insured's divorced wife or divorced husband and—

(1) You were validly married to the insured under State law as described in § 404.345; and

(2) You were married to the insured for at least 10 years immediately before your divorce became final;

(b) You apply;

(c) You are not married;

(d) You are 62 years old or older; and

(e) You are not entitled to an old-age or disability benefit based upon a primary insurance amount that is equal to or larger than the full wife's or husband's benefit.

§ 404.332 When wife's and husband's benefits begin and end.

(a) You are entitled to wife's or husband's benefits beginning with the first month covered by your application in which you meet all the other requirements for entitlement under § 404.330 or § 404.331.

(b) Your entitlement to benefits ends with the month before the month in which one of the following events first occurs:

(1) You become entitled to an old-age or disability benefit based upon a primary insurance amount that is equal to or larger than the full wife's or husband's benefit.

(2) You are the wife or husband and are divorced from the insured person unless you meet the requirements for benefits as a divorced wife or divorced husband as described in § 404.331.

(3) You are the divorced wife or divorced husband and you remarry. Your benefits will not end if your remarriage is to someone entitled to benefits as a widow, widower, father, mother, parent, or disabled child. If your remarriage is to someone entitled to benefits as a disabled child and the person recovers from the disability, your benefits will end with the same month as his or her benefits end.

(4) If you are under 62 years old, the child who was in your care is no longer entitled to child's benefits.

(5) The insured person dies or is no longer entitled to old age or disability benefits.

(6) If your benefits are based upon a deemed valid marriage, you marry someone other than the insured or someone else becomes entitled to the same benefits as described in § 404.346.

(7) You die.

§ 404.333 Wife's and husband's benefit amounts.

Your wife's or husband's monthly benefit is equal to one-half the insured person's primary insurance amount. The amount of your monthly benefit may change as explained in § 404.304.

§ 404.336 Who is entitled to widow's or widower's benefits.

You may be entitled to benefits as the widow or widower of a person who was fully insured when he or she died. You are entitled to these benefits if—

(a) You are the insured's widow or widower based upon a relationship described in §§ 404.345–404.346, and one of the following conditions is met:

(1) Your relationship to the insured as a wife or husband lasted for at least 9 months immediately before the insured died.

(2) Your relationship to the insured as a wife or husband did not last 9 months before the insured died, but at the time of your marriage the insured was reasonably expected to live for 9 months, and—

(i) The death of the insured was accidental. The death is accidental if it was caused by an event that the insured did not expect; it was the result of bodily injuries received from violent and external causes; and as a direct result of these injuries, death occurred not later than 3 months after the day on which the bodily injuries were received. An intentional and voluntary suicide will not be considered an accidental death;

(ii) The death of the insured occurred in the line of duty while he or she was serving on active duty as a member of the uniformed services as defined in § 404.1013(f) (2) and (3); or

(iii) You had been previously married to the insured for at least 9 months.

(3) You and the insured were the natural parents of a child; or you were married to the insured when either of you adopted the other's child or when both of you adopted a child who was then under 18 years old.

(4) In the month before you married the insured you were entitled to, or if you had applied and been old enough could have been entitled to, any of these benefits or payments: widow's, widower's, father's, mother's, wife's, parent's, or disabled child's benefits; or annuity payments under the Railroad Retirement Act for widows, widowers, parents, or children 18 years old or older;

(b) You apply, except that you need not apply again if—

(1) You are entitled to wife's or husband's benefits for the month before the month in which the insured dies and you are 65 years old or you are not entitled to either old-age or disability benefits; or

(2) You are entitled to mother's or father's benefits for the month before the month in which you become 65 years old;

(c) You are at least 60 years old; or you are at least 50 years old and have a disability as defined in § 404.1501(a) and—

(1) The disability started not later than 7 years after the insured died or 7 years after you were last entitled to mother's or father's benefits or to widow's or widower's benefits based upon a disability (which occurred last); and

(2) Your disability continued during a waiting period of 5 full consecutive months. This waiting period may begin no earlier than the 17th month before you applied; the fifth month before the insured died; or if you were previously entitled to mother's, father's, widow's, or widower's benefits the 5th month before your entitlement to benefits ended. If you were previously entitled to widow's or widower's benefits based upon a disability, the waiting period is not required;

(d) You are not entitled to an old-age benefit that is equal to or larger than the insured person's primary insurance amount; and

(e) You are unmarried unless you are a widow who has remarried after you became 60 years old; or if you are a widower, you have not remarried since the insured's death unless you remarried after you became 60 years old.

§ 404.336 Who is entitled to widow's benefits as a surviving divorced wife.

You may be entitled to widow's benefits as the surviving divorced wife of a person who was fully insured when he died. You are entitled to these benefits if—

(a) You are the insured's surviving divorced wife and—

(1) You were validly married to the insured under State law as described in § 404.345; and

(2) You were married to the insured for at least 10 years immediately before your divorce became final;

(b) You apply, except that you need not apply again if—

(1) You are entitled to wife's benefits for the month before the month in which the insured dies and you are 65 years old or you are not entitled to old-age or disability benefits; or

(2) You are entitled to mother's benefits for the month before the month in which you become 65 years old;

(c) You are at least 60 years old; or you are at least 50 years old and have a disability as defined in § 404.1501(b) and—

(1) The disability started not later than 7 years after the insured died or 7 years after you were last entitled to mother's benefits or to widow's benefits based upon a disability, whichever occurred last; and

(2) Your disability continued during a waiting period of 5 consecutive months. This waiting period may begin no earlier than the 17th month before you applied; the fifth month before the insured died; or if you were previously entitled to mother's, father's, widow's, or

widower's benefits, the 5th month before your previous entitlement to benefits ended. If you were previously entitled to widow's or widower's benefits based upon a disability, the waiting period is not required.

(d) You are not entitled to an old-age benefit that is equal to or larger than the insured person's primary insurance amount; and

(e) You are unmarried.

§ 404.337 When widow's and widower's benefits begin and end.

(a) You are entitled to widow's or widower's benefits under § 404.335 or § 404.336 beginning with the first month covered by your application in which you meet all the other requirements for entitlement.

(b) Your entitlement to benefits ends at the earliest of the following times:

(1) The month before the month in which you remarry except your benefits will not end if—

(i) You are the widow or widower and remarry when you are 60 years old or older; or

(ii) You marry someone entitled to: wife's, widow's, widower's, father's, mother's, parent's, or disabled child's benefits. However, if you are the widow or surviving divorced wife and marry a person entitled to disabled child's benefits and his disabled child's benefits end because he recovers from his disability, your benefits will end with the same month his benefits end.

(2) The month before the month in which you become entitled to an old-age benefit that is equal to or larger than the insured's primary insurance amount.

(3) If your widow's or widower's benefit is based upon a disability, the month before the third month after you recover from your disability (unless you are 65 years old then and would still be eligible by meeting the other requirements for these benefits).

(4) If you are entitled to benefits based upon a deemed valid marriage, the month before the month in which another person becomes entitled to the same benefits as described in § 404.346.

(5) The month before the month in which you die.

§ 404.338 Widow's and widower's benefits amounts.

Your widow's or widower's monthly benefit is equal to the insured person's primary insurance amount. The amount of your monthly benefit may change as explained in § 404.304. In addition, your monthly benefit will be reduced if the insured person had been entitled to old-age benefits that were reduced for age because he or she chose to receive them before becoming 65 years old. In this instance, your benefit is reduced, if it would otherwise be higher, to either the amount the insured would have been entitled to if still alive or 82½ percent of his or her primary insurance amount, whichever is larger.

§ 404.339 Who is entitled to mother's or father's benefits.

You may be entitled as the widow or widower to mother's or father's benefits on the earnings record of someone who was fully or currently insured when he or she died. You are entitled to these benefits if—

(a) You are the widow or widower of the insured and meet the conditions described in § 404.335(a)(1);

(b) You apply for these benefits; or you were entitled to wife's benefits for the month before the insured died;

(c) You are unmarried;

(d) You are not entitled to widow's or widower's benefits, or to an old-age benefit that is equal to or larger than the full mother's or father's benefit; and

(e) You have "in your care" the insured's child who is entitled to child's benefits because he or she is under 18 years old or is disabled. Sections 404.348 and 404.349 describe when a child is "in your care."

§ 404.340 Who is entitled to mother's benefits as a surviving divorced wife.

You may be entitled to mother's benefits as the surviving divorced wife of someone who was fully or currently insured when he died. You are entitled to these benefits if—

(a) You were validly married to the insured under State law as described in § 404.345(a) but the marriage ended in a final divorce and—

(1) You are the mother of the insured's child; or

(2) You were married to the insured when either of you adopted the other's child or when both of you adopted a child and the child was then under 18 years old;

(b) You apply for these benefits; or you were entitled to wife's benefits for the month before the insured died;

(c) You are unmarried;

(d) You are not entitled to widow's benefits, or to an old-age benefit that is equal to or larger than the full mother's benefit; and

(e) You have "in your care" the insured's child who is entitled to child's benefits because he or she is under age 18 or disabled and this child is your natural or adopted child who is entitled to child's benefits on the insured person's record. Sections 404.356 and 404.359 describe when a child is "in your care."

§ 404.341 When mother's and father's benefits begin and end.

(a) You are entitled to mother's or father's benefits beginning with the first month covered by your application in which you meet all the other requirements for entitlement.

(b) Your entitlement to benefits ends with the month before the month in which one of the following events first occurs:

(1) You become entitled to a widow's or widower's benefit or to an old-age benefit that is equal to or larger than the full mother's or father's benefit.

(2) The child in your care is no longer entitled to child's benefits.

(3) You remarry. Your benefits will not end if your remarriage is to someone entitled to old-age, disability, wife's, husband's, widow's, widower's, father's, mother's, parent's, or disabled child's benefits. If your remarriage is to someone entitled to disability or disabled child's benefits and the person recovers from the disability, your benefits will end with the same month his or her benefits end.

(4) If you are entitled to benefits based upon a deemed valid marriage, another person becomes entitled to benefits as the widow or widower as described in § 404.346(d).

(5) You die.

§ 404.342 Mother's and father's benefit amounts.

Your mother's or father's monthly benefit is equal to 75 percent of the insured person's primary insurance amount. The amount of your monthly benefit may change as explained in § 404.304.

§ 404.344 Your relationship by marriage to the insured.

You may be eligible for benefits if your are related to the insured person as a wife, husband, widow, or widower. To decide your relationship to the insured, we look first to State laws. The State laws that we use are discussed in § 404.345. If your relationship cannot be established under State law, you may still be eligible for benefits if your relationship as the insured's wife, husband, widow, or widower is based upon a "deemed valid marriage" as described in § 404.346.

§ 404.345 Your relationship as wife, husband, widow, or widower under State law.

To decide your relationship as the insured's wife or husband, we look to the laws of the State where the insured

had a permanent home when you applied for wife's or husband's benefits. To decide your relationship as the insured's widow or widower, we look to the laws of the State where the insured had a permanent home when he or she died. If the insured's permanent home is not or was not in one of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa, we look to the laws of the District of Columbia. For a definition of permanent home, see § 404.303. If you and the insured were validly married under State law at the time you apply for wife's or husband's benefits or at the time the insured died if you apply for widow's, widower's, mother's, or father's benefits, the relationship requirement will be met. The relationship requirement will also be met if under State law you would be able to inherit a wife's, husband's, widow's, or widower's share of the insured's personal property if he or she were to die without leaving a will.

§ 404.346 Your relationship as wife, husband, widow or widower based upon a deemed valid marriage.

(a) *General.* If your relationship as the insured's wife, husband, widow, or widower cannot be established under State law as explained in § 404.345, you may be eligible for benefits based upon a deemed valid marriage. You will be deemed to be the wife, husband, widow, or widower of the insured if, in good faith, you went through a marriage ceremony with the insured that would have resulted in a valid marriage except for a legal impediment. A legal impediment means only that there was a defect in the procedure followed in connection with the ceremony, or that a previous marriage of the insured had not ended at the time of the ceremony. For example, a defect in the procedure may be found where a marriage was performed through a religious ceremony in a country that requires a civil ceremony for a valid marriage. Good faith means that at the time of the ceremony you did not know that a legal impediment existed, or if you did know, you thought that it would not prevent a valid marriage.

(b) *Entitlement based upon a deemed valid marriage.* To be entitled to benefits as the result of a deemed valid marriage, you and the insured must have been living in the same houshold (see § 404.347) at the time the insured died, or if the insured is living, at the time you apply for benefits. If at the time you apply another person is or has been entitled to benefits as the wife, husband, widow, or widower of the insured, and such person's relationship to the insured was determined under State law as explained in § 404.345, you will not be entitled to benefits. Also, if after your entitlement, we find that another person is the wife, husband, widow, or widower of the insured under State law as explained in § 404.345, you entitlement will end with the month before the month in which this determination is made.

§ 404.347 "Living in the same household" defined.

You may be eligible for benefits as a wife, husband, widow, or widower because your relationship to the insured is based upon a deemed valid marriage, as described in § 404.346, only if you and the insured were living in the same household at the time you apply for wife's or husband's benefits or at the time the insured died if you apply for widow's, widower's, mother's, or father's benefits. Living in the same household means that you and the insured customarily lived together as husband and wife in the same residence. You may be considered to be living in the same household although one of you is temporarily absent from the residence. An absence will be considered temporary if it was due to service in the U.S. Armed Forces. An absence of less than 6 months is also considered temporary if neither you nor the insured were outside of the United States during this time and the absence was due to business or employment; or to confinement in a hospital, nursing home, other medical institution, or a penal institution. Other absences may be considered temporary if it is shown that you and the insured could have reasonably expected to live together in the near future.

§ 404.348 When a child living with you is "in your care".

To become entitled to wife's benefits before you become 62 years old or to mother's or father's benefits, you must have the insured's child "in your care." A child who has been living with you for at least 30 days is in your care unless—

(a) The child is in active military service;

(b) The child is 18 years old or older and not disabled;

(c) The child is 18 years old or older with a mental disability, but you do not actively supervise his or her activities and you do not make important decision about his or her needs, either alone or with help from your spouse; or

(d) The child is 18 years old or older with a physical disability, but it is not necessary for you to perform personal services for him or her. Personal services are service such as dressing, feeding and managing money that the child cannot do alone because of a disability.

§ 404.349 When a child living apart from you is "in your care".

(a) *In your care.* A child living apart from you is in your care if—

(1) The child lived apart from you for not more than 6 months, or the child's current absence from you is not expected to last over 6 months;

(2) The child is under 18 years old, you supervise his or her activities and make important decisions about his or her needs, and one of the following circumstances exist:

(i) The child is living apart because of school but spends at least 30 days vacation with you each year unless some event makes having the vacation unreasonable; and if you and the child's other parent are separated, the school looks to you for decisions about the child's welfare;

(ii) The child is living apart because of your employment but you make regular and substantial contributions to his or her support; see § 404.366(a) for a definition of "contributions for support";

(iii) The child is living apart because of a physical disability that the child has or that you have; or

(3) The child is 18 years old or older, and is mentally disabled but you supervise his or her activities, make important decisions about his or her needs, and help in his or her upbringing and development.

(b) *Not in your care.* A child living apart from you is not in your care if—

(1) The child is in active military service;

(2) The child is living with his or her other parent;

(3) The child is removed from your custody and control by a court order;

(4) The child is 18 years old or older, is mentally competent, and either has been living apart from you for 6 months or more, or begins living apart from you and is expected to be away for more than 6 months;

(5) You gave your right to have custody and control of the child to someone else; or

(6) You are mentally disabled.

Child's Benefits

§ 404.350 Who is entitled to child's benefits.

You are entitled to child's benefits on the earnings record of an insured person who is entitled to old-age or disability benefits or who has died if—

(a) You are the insured person's child, based upon a relationship described in §§ 404.355–404.359;

(b) You are dependent on the insured, as defined in §§ 404.360–404.365;

(c) You apply;

(d) You are unmarried; and

(e) You are under age 18; or you are 18 years old or older and have a disability that began before you became 22 years old; or you are under age 22 and a full-time student, as defined in § 404.367; or you become 22 years old in a month in which you are a full-time student and you have not completed the requirements for, or received, a degree from a 4-year college or university.

§ 404.351 Who may be reentitled to child's benefits

If your entitlement to child's benefits has ended, you may be reentitled on the same earnings record if you have not married and if you apply for reentitlement. Your reentitlement may begin with—

(a) The first month in which you are a full-time student and either you have not become 22 years old, or you become 22 years old in a month in which you are a full-time student and you have not completed the requirements for, or received, a degree from a 4-year college or university;

(b) The first month in which you are disabled, if your disability began before you became 22 years old; or

(c) The first month you are under a disability that began before the end of the 84th month following the month in which your benefits had ended because an earlier disability had ended.

§ 404.352 When child's benefits begin and end.

(a) You are entitled to child's benefits beginning with the first month covered by your application in which you meet all the other requirements for entitlement. (b) Your entitlement to benefits ends with the month before the month in which one of the following events first occurs:

(1) You become 18 years old, unless you are disabled or a full-time student. If you become 18 years old and you are disabled, your entitlement ends with the second month following the month in which your disability ends. If you become 18 years old and you are a full-time student who is not disabled, your entitlement ends with the last month you are a full-time student or, if earlier, the month before the month you become age 22. If the become age 22 in a month in which you are a full-time student and you have have not completed the requirements for, or received, a degree from a 4-year college or university, your entitlements will end with the month in which the quarter or semester in which you are enrolled ends. If the school you are attending does not have a quarter or semester system, your benefits will end with the month you complete the course, of if earlier, the first day of the third month following the month in which you become 22 years old.

(2) You marry. Your benefits will not end if you are 18 years old or older, disabled, and you marry a person entitled to child's benefits based on disability or a person entitled to old-age, divorced wife's, divorced husband's, widow's, widower's, mother's, father's, parent's, or disability benefits. If you are a woman entitled to child's benefits based on disability and you marry a man entitled to either child's benefits based on disability or disability benefits and he recovers from the disability, your benefits will end with the same month as his benefits end.

(3) The insured's entitlement to old-age or disability benefits ends for a reason other than death or the attainment of age 65.

(4) You die.

§ 404.353 Child's benefit amounts.

(a) *General.* Your child's monthly benefit is equal to one-half of the insured person's primary insurance amount if he or she is alive and three-fourths of the primary insurance amount if he or she has died. The amount of your monthly benefit may change as explained in § 404.304.

(b) *Entitlement to more than one benefit.* If you are entitled to a child's benefit on more than one person's earnings record, you will ordinarily receive only the benefit payable on the record with the highest primary insurance amount. If your benefit before any reduction would be larger on an earnings record with a lower primary insurance amount and no other person entitled to benefits on that record would receive a smaller benefit as a result of your entitlement, you will receive benefits on that record. If you are entitled to a child's benefit and to other dependent's or survivor's benefits, you can receive on the highest of the benefits.

§ 404.354 Your relationship to the insured.

(a) *General.* You may be related to the insured person in one of several ways and be entitled to benefits as his or her child—as a natural child, legally adopted child, stepchild, grandchild, stepgrandchild, or equitably adopted child. (b) *Use of State laws.* To decide your relationship to the insured, we look to the laws of the State where the insured had a permanent home when you applied, or where the insured had a permanent home when he or she died if you apply after his or her death. If the insured's permanent home is not or was not in one of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa, we will look to the laws of the District of Columbia. For a definition of permanent home see § 404.303. The State laws we use are the ones the courts would use to decide whether you could inherit a child's share of the insured's personal property if he or she were to die without leaving a will. If these laws would not permit you to inherit the insured's personal property as his or her child, you may still be eligible for child's benefits if you are related to the insured in one of the other ways described in §§ 404.355–404.359.

§ 404.355 Who is the insured's natural child.

You may be eligible for benefits as the insured's natural child if one of the following conditions is met:

(a) You could inherit the insured's personal property as his or her natural child under State inheritance laws as described in § 404.354.

(b) Before your birth, your mother or father entered into a deemed valid marriage with the insured as described in § 404.346.

(c) Your mother has not married the insured but the insured is your father and he has either acknowledged in writing that you are his child, been decreed by a court to be your father, or been ordered by a court to contribute to your support because you are his child.

(d) Your mother has not married the insured, but you have evidence other than the evidence described in paragraph (c) of this section to show that the insured in your natural father. Additionally, you must have evidence to show that the insured was either living with you or contributing to your support at the time you applied for benefits. See § 404.366 for an explanation of the terms "living with" and "contributing to your support". If the insured is not alive at the time of your application, you must have evidence to show that the insured was either living with you or contributing to your support when he died.

§ 404.356 Who is the insured's legally adopted child.

You may be eligible for benefits as the insured's child if you were legally adopted by the insured. If you were legally adopted after the insured's death

by his or her surviving spouse you may also be considered the insured's legally adopted child.

§ 404.357 Who is the insured's stepchild.

You may be eligible for benefits as the insured's stepchild if, after your birth, your natural or adopting parent married the insured. The marriage between the insured and your parent must be a valid marriage under State law or a deemed valid marriage as described in §§ 404.345–404.346. If the insured is alive when you apply, you must have been his or her stepchild for at least 1 year immediately preceding the day you apply. If the insured is not alive when you apply, you must have been his or her stepchild for at least 9 months immediately preceding the day the insured died. This 9-month requirement will not have to be met if the marriage between the insured and your parent lasted less than 9 months under the conditions described in § 404.335(a)(2).

§ 404.358 Who is the insured's grandchild or stepgrandchild.

(a) *Grandchild and stepgrandchild defined.* You may be eligible for benefits as the insured's grandchild or stepgrandchild if you are the natural child, adopted child, or stepchild of a person who is the insured's child as defined in §§ 404.355–404.357, or § 404.359. Additionally, for you to be eligible as a grandchild or stepgrandchild, your natural or adoptive parents must have been either deceased or under a disability, as defined in § 404.1501(a), at the time your grandparent or step-grandparent became entitled to old-age or disability benefits or died; or if your grandparent or stepgrandparent had a period of disability that continued until he or she became entitled to benefits or died, at the time the period of disability began.

(b) *Legally adopted grandchild or stepgrandchild.* If you are the insured's grandchild or stepgrandchild and you are legally adopted by the insured or by the insured's surviving spouse after his or her death, you are considered an adopted child and the dependency requirements of § 404.362 must be met.

§ 404.359 Who is the insured's equitably adopted child.

You may be eligible for benefits as an equitably adopted child if the insured had agreed to adopt you as his or her child but the adoption did not occur. The agreement to adopt you must be one that would be recognized under State law so that you would be able to inherit a child's share of the insured's personal property if he or she were to die without leaving a will. The agreement must be in whatever form, and you must meet whatever requirements for performance under the agreement, that State law directs. If you apply for child's benefits after the insured's death, the law of the State where the insured had his or her permanent home at the time of his or her death will be followed. If you apply for child's benefits during the insured's life, the law of the State where the insured has his or her permanent home at the time or your application will be followed.

§ 404.360 When a child is dependent upon the insured person.

One of the requirements for entitlement to child's benefits is that you be dependent upon the insured. The evidence you need to prove your dependency is determined by how you are related to the insured. To prove your dependency you may be asked to show that at a specific time you lived with the insured, that you received contributions for your support from the insured, or that the insured provided at least one-half of your support. These dependency requirements, and the time at which they must be met, are explained in §§ 404.361–404.365. The terms "living with", "contributions for support," and "one-half support" are defined in § 404.366.

§ 404.361 When a natural child is dependent.

If you are the insured's natural child, as defined in § 404.355, you are considered dependent upon him or her. However, if you are legally adopted by someone else during the insured's lifetime and after the adoption you apply for child's benefits on the insured's earnings record, you will be considered dependent upon the insured (your natural parent) only if he or she was either living with you or contributing to your support at one of these times—

(a) When you applied;

(b) When the insured died; or

(c) If the insured had a period of disability that lasted until he or she died or became entitled to disability or old-age benefits, at the beginning of the period of disability or at the time he or she became entitled to benefits.

§ 404.362 When a legally adopted child is dependent.

(a) *General.* If you were legally adopted by the insured before he or she became entitled to old-age or disability benefits, you are considered dependent upon him or her. If you were legally adopted by the insured after he or she became entitled to old-age or disability benefits and you apply for child's benefits during the life of the insured, you must meet the dependency requirements stated in paragraph (b) of this section. If you were legally adopted by the insured after he or she became entitled to old-age or disability benefits and you apply for child's benefits after the death of the insured, you are considered dependent upon him or her. If you were adopted after the insured's death by his or her surviving spouse, you may be considered dependent upon the insured only under the conditions described in paragraph (c) of this section.

(b) *Adoption by the insured after he or she became entitled to benefits.*

(1) *General.* If you are legally adopted by the insured after he or she became entitled to benefits and you are not the insured's natural child, stepchild, grandchild, or stepgrandchild, you are considered dependent upon the insured during his or her lifetime only if—

(i) Your adoption took place in the United States;

(ii) You began living with the insured before you became 18 years old; and

(iii) You were living with the insured in the United States and receiving at least one-half of your support from him or her for the year before he or she became entitled to benefits or became entitled to a period of disability that continued until entitlement to benefits began. If you were born within this 1-year period, the insured must have lived with you and provided at least one-half of your support for "substantially all" of the period that begins on the date of your birth. The "substantially all" requirement will be met if, at the time of the insured's entitlement, he or she was living with you and providing at least one-half of your support, and any period during which he or she was not living with you or providing one-half of your support did not exceed the lesser of 3 months or one-half of the period beginning with the month of your birth.

(2) *Grandchild of the insured or the insured's spouse.* If you legally adopted by the insured after he or she became entitled to benefits and you are the insured's grandchild or the grandchild of the insured's spouse, you are considered dependent upon the insured during his or her lifetime only if—

(i) Your adoption took place in the United States;

(ii) You began living with the insured before you became 18 years old; and

(iii) You were living with the insured in the United States and receiving at least one-half of your support from him or her for either the 1-year period before the month you applied or for one of the

periods described in paragraph (b)(1)(iii) of this section. If you were born within this 1-year period, the insured must have lived with you and provided one-half of your support for "substantially all" of the period that begins on the date of your birth. The term "substantially all" is defined in paragraph (b)(1)(iii) of this section.

(3) *Natural child and stepchild.* If you were legally adopted by the insured after he or she became entitled to benefits and you are the insured's natural child or stepchild, you are considered dependent upon the insured.

(c) *Adoption by the insured's surviving spouse.*

(1) *General.* If you are legally adopted by the insured's surviving spouse after the insured's death, you are considered dependent upon the insured as of the date of his or her death if—

(i) You were living in the insured's household at the time of his or her death;

(ii) You were not receiving regular contributions for your support from someone other than the insured or his or her spouse, or from any public or private welfare organization at the time of the insured's death; and

(iii) The insured had started adoption proceedings before he or she died; or if the insured had not started the adoption proceedings before he or she died, his or her surviving spouse began and completed the adoption within 2 years of the insured's death.

(2) *Grandchild or stepgrandchild adopted by the insured's surviving spouse.* If you are the grandchild or stepgrandchild of the insured and any time after the death of the insured you are legally adopted by the insured's surviving spouse, you are considered the dependent child of the insured as of the date of his or her death if—

(i) Your adoption took place in the United States;

(ii) At the time of the insured's death, your natural, adopting or stepparent was not living in the insured's household and making regular contributions toward your support; and

(iii) You meet the dependency requirements stated in § 404.364.

§ 404.363 When a stepchild is dependent.

If you are the insured's stepchild, as defined in § 404.357, you are considered dependent upon him or her if you were either living with or receiving at least one-half of your support from him or her at one of these times—

(a) When you applied;

(b) When the insured died; or

(c) If the insured had a period of disability that lasted until his or her death or entitlement to disability or old-age benefits, at the beginning of the period of disability or at the time the insured became entitled to benefits.

§ 404.364 When a grandchild or stepgrandchild is dependent.

If you are the insured's grandchild or stepgrandchild, as defined in § 404.356(a), you are considered dependent upon the insured if—

(a) You began living with the insured before you became 18 years old; and

(b) You were living with the insured in the United States and receiving at least one-half of your support from him for the year before he or she became entitled to old-age or disability benefits or died; or if the insured had a period of disability that lasted until he or she became entitled to benefits or died, for the year immediately before the month in which the period of disability began. If you were born during the 1-year period, the insured must have lived with you and provided at least one-half of your support for "substantially all" of the period that begins on the date of your birth. The term "substantially all" is defined in § 404.362(b)(1)(iii).

§ 404.365 When an equitably adopted child is dependent.

If you are the insured's equitably adopted child, as defined in § 404.350, you are considered dependent upon him or her if you were either living with or receiving contributions for your support from the insured at the time of his or her death. If your equitable adoption is found to have occurred after the insured became entitled to old-age or disability benefits, your dependency cannot be established during the insured's life. If your equitable adoption is found to have occurred before the insured became entitled to old-age or disability benefits, you are considered dependent upon him or her if you were either living with or receiving contributions for your support from the insured at one of these times—

(a) When you applied; or

(b) If the insured had a period of disability that lasted until he or she became entitled to old-age or disability benefits, at the beginning of the period of disability or at the time the insured became entitled to benefits.

§ 404.366 "Contributions for support," "one-half support," and "living with" the insured defined.

To be eligible for child's or parent's benefits, you must be dependent upon the insured at a particular time or be assumed dependent upon him or her. What it means to be a dependent child is explained in §§ 404.360–404.365 and what it means to be a dependent parent is explained in § 404.370(f). Your dependency upon the insured may be based upon whether at a specified time you were receiving "contributions for your support" or "one-half of your support" from the insured, or whether you were "living with" him or her. These terms are defined in paragraphs (a)–(c) of this section.

(a) *"Contributions for support".* The insured makes a contribution for your support if the following conditions are met:

(1) The insured gives some of his or her own cash or goods to help support you. Support includes food, shelter, routine medical care, and other ordinary and customary items needed for your maintenance. The value of any goods the insured contributes is the same as the cost of the goods when he or she gave them for your support. If the insured provides services for you that would otherwise have to be paid for, the cash value of his or her services may be considered a contribution for your support. An example of this would be work the insured does to repair your home. The insured person is making a contribution for your support if you receive an allotment, allowance, or benefit based upon his or her military pay, veterans' pension or compensation, or social security earnings.

(2) Contributions must be made regularly and must be large enough to meet an important part of your ordinary living costs. Ordinary living costs are the costs for your food, shelter, routine medical care, and similar necessities. If the insured person only provides gifts or donations once in a while for special purposes, they will not be considered contributions for your support. Although the insured's contributions must be made on a regular basis, temporary interruptions caused by circumstances beyond the insured person's control, such as illness or unemployment, will be disregarded unless during this interruption someone else takes over responsibility for supporting you on a permanent basis.

(b) *"One-Half Support".* The insured person provides one-half of your support if he or she makes regular contributions for your support and the amount of these contributions exceeds one-half of your ordinary living costs. Ordinary living costs are the costs for your food, shelter, routine medical care, and similar necessities. A contribution may be in cash, goods, or services. The insured is not providing at least one-half of your support unless he or she has done so for a reasonable period of time. Ordinarily, we consider a reasonable period to be the 12-month period immediately

preceding the time when the one-half support requirement must be met under the rules in §§ 404.362–404.364 (for child's benefits) or in § 404.370(f) (for parent's benefits). A shorter period will be considered reasonable under the following circumstances:

(1) At some point within the 12-month period, the insured person started providing at least one-half of your support on a permanent basis and this was a change in the way you had been supported up to then. In these circumstances, the time from the change, when the insured started providing one-half or more of your support, up to the end of the 12-month period may be considered a reasonable period. The change in your source of support must be permanent and not temporary. Changes caused by seasonal employment or customary visits to the insured's home are considered temporary.

(2) The insured provided one-half or more of your support for at least 3 months of the 12-month period, but was forced to stop or reduce contributions because of circumstances beyond his or her control, such as illness or unemployment, and no one else took over the responsibility for providing at least one-half of your support on a permanent basis. Any support you received from a public assistance program is not considered as a taking over of responsibility for your support by someone else. Under these circumstances, a reasonable period is that part of the 12-month period before the insured was forced to reduce or stop providing at least one-half of your support.

(c) *"Living with" the insured.* You are living with the insured if you ordinarily live in the same home with the insured and he or she is exercising, or has the right to exercise, parental control and authority over your activities. You are living with the insured during temporary separations if you and the insured expect to live together in the same place after the separation. Temporary separations may include the insured's absence because of active military service or imprisonment if he or she still exercises parental control and authority. However you are not considered to be living with the insured if you are in active military service or in prison.

§ 404.367 When are you a "full-time student".

You may be eligible for child's benefits if you are a full-time student. A full-time student means a person who is in full-time attendance at an educational institution. You will be considered a full-time student if all the following conditions are met:

(a) You attend an educational institution that is a school (including a technical, trade, or vocational school), junior college, college, or university that meets any one of the following conditions:

(1) It is operated or directly supported by the United States, or by any State, local government or by a political subdivision of any State or local government.

(2) It is approved by a State agency or subdivision of the State or accredited by a State or nationally-recognized accrediting body. A national recognized accrediting body is one determined to be such by the U.S. Commissioner of Education. A State-recognized accrediting body is one designated or recognized by a State as the proper authority for accrediting schools, colleges, or universities. Approval by a State agency or subdivision includes approval of a school, college, or university as an educational institution, or approval of one or more of the courses offered by a school, college or university.

(3) It is a nonaccredited school, college, or university, but its credits are accepted by at least three educational institutions that have been accredited by a State or nationally recognized accrediting body.

(b) You are enrolled in a noncorrespondence course and carrying a subject load that is considered full-time for day students under the practices and standards of the educational institution. If you are enrolled in a junior college, college, or university, your course of study must last at least 13 weeks. If you are enrolled in any other educational institution, your course of study must last at least 13 weeks and your scheduled attendance must be at least 20 hours a week. If your full-time attendance either begins or ends in a month, you will be considered a full-time student for that month. You will not be considered a full-time student in the month you graduate if you completed your course of study and stopped carrying a full-time subject load in a month before the month preceding the month you graduate.

(c) You are not being paid while attending the educational institution by an employer who has requested or required that you attend the educational institution.

§ 404.368 When may you be considered a full-time student during a period of nonattendance.

If you are a full-time student at an educational institution, your eligibility may continue during a period of nonattendance (including part-time attendance) if all the following conditions are met:

(a) The period of nonattendance is 4 consecutive months or less.

(b) You show us that you intend to resume your studies as a full-time student at the end of the period; or at the end of the period you are a full-time student.

(c) The period of nonattendance is not due to your expulsion or suspension from the educational institution.

Parent's Benefits

§ 404.370 Who is entitled to parent's benefits.

You may be entitled to parent's benefits on the earnings record of someone who has died and was fully insured. You are entitled to these benefits if all the following conditions are met:

(a) You are related to the insured person as his or her parent in one of the ways described in § 404.374.

(b) You are at least 62 years old.

(c) You have not married since the insured person died.

(d) You apply.

(e) You are not entitled to an old-age benefit equal to or larger than the parent's benefit amount.

(f) You were receiving at least one-half of your support from the insured at the time he or she died, or at the beginning of any period of disability he or she had that continued up to death. See § 404.366(b) for a definition of "one-half support." If you were receiving one-half of your support from the insured at the time of the insured's death, you must give us proof of this support within 2 years of the insured's death. If you were receiving one-half of your support from the insured at the time his or her period of disability began, you must give us proof of this support within 2 years of the month in which the insured filed his or her application for the period of disability. You must file the evidence of support even though you may not be eligible for parent's benefits until a later time. There are two exceptions to the 2-year filing requirement:

(1) If there is a good cause for failure to provide proof of support within the 2-year period, we will consider the proof you give us as though it were provided within the 2-year period. Good cause does not exist if you were informed of the need to provide the proof within the

2-year period and you neglected to do so or did not intend to do so. Good cause will be found to exist if you did not provide the proof within the time limit due to—

(i) Circumstances beyond your control, such as extended illness, mental or physical incapacity, or a language barrier;

(ii) Incorrect or incomplete information we furnished you;

(iii) Your efforts to get proof of the support without realizing that you could submit the proof after you gave us some other evidence of that support; or

(iv) Unusual or unavoidable circumstances that show you could not reasonably be expected to know of the 2-year time limit.

(2) The Soldiers' and Sailors' Civil Relief Act of 1940 provides for extending the filing time.

§ 404.371 When parent's benefits begin and end.

(a) You are entitled to parent's benefits beginning with the first month covered by your application in which you meet all the other requirements for entitlement.

(b) Your entitlement to benefits ends with the month before the month in which one of the following events first occurs:

(1) You become entitled to an old-age benefit equal to or larger than the parent's benefit.

(2) You marry, unless your marriage is to someone entitled to wife's, widow's, widower's, mother's, father's, parent's, or disabled child's benefits. If you marry a person entitled to these benefits, the marriage is disregarded unless you are a woman and marry someone entitled to disabled child's benefits, in which instance your benfits will end with the same month your spouse's benefits end should he recover from his disabilily.

(3) You die.

§ 404.373 Parent's benefit amounts.

Your parent's monthly benefit before any reduction that may be made as explained in § 404.304, is figured in one of the following ways:

(a) *One parent entitled.* Your parent's monthly benefit is equal to 82½ percent of the insured person's primary insurance amount if you are the only parent entitled to benefits on his or her earnings record.

(b) *More than one parent entitled.* Your parent's monthly benefit is equal to 75 percent of the insured person's primary insurance amount if there is another parent entitled to benefits on his or her earnings record.

§ 404.374 Parent's relationship to the insured.

You may be eligible for benefits as the insured person's parent if—

(a) You are the mother or father of the insured and would be considered his or her parent under the laws of the State where the insured had a permanent home when he or she died;

(b) You are the adoptive parent of the insured and legally adopted him or her before the insured person became 16 years old; or

(c) You are the stepparent of the insured and you married the insured's parent or adoptive parent before the insured became 16 years old. The marriage must be valid under the laws of the State where the insured had his or her permanent home when he or she died. See § 404.303 for a definition of "permanent home".

Special Payment at Age 72

§ 404.380 General.

Some older persons had little or no chance to become fully insured for regular social security benefits during their working years. For those who became 72 years old several years ago but are not fully insured, a "special payment" may be payable as described in the following sections.

§ 404.381 Who is entitled to special age 72 payments.

You are entitled to a special age 72 payment if—

(a) You became 72 years old before 1968 or you have credit for at least 3 quarters of social security work for each calendar year between 1966 and the year you became 72 years old (see Subpart B for a description of these work credits);

(b) You reside in one of the 50 states, the District of Columbia, or the Northern Mariana Islands;

(c) You apply; and

(d) You are a U.S. citizen or a citizen of the Northern Mariana Islands; or you are an alien who was legally admitted for permanent residence in the United States and who has resided here continuously for 5 years. Residence in the United States includes residence in the Northern Mariana Islands, Guam, American Samoa, Puerto Rico, and the Virgin Islands.

§ 404.382 When special age 72 payments begin and end.

(a) Your entitlement to the special age 72 payment begins with the first month covered by your application in which you meet all the other requirements for entitlement.

(b) Your entitlement to this payment ends with the month before the month of your death.

§ 404.383 Special age 72 payment amounts.

If both you and your spouse are entitled to the payment, the husband's payment amount is $83.70 and the wife's payment amount is $41.90. If you are entitled to the special payment but your spouse is not, your payment amount is $83.70. The special payment amounts of $83.70 and $41.90 are payable for months after May 1978; these amounts will increase because of cost-of-living increases that occur after 1978. The special payment may be reduced, suspended, or not paid at all as explained in § 404.384.

§ 404.384 Reductions, suspensions, and nonpayments of special age 72 payments.

(a) *General.* Special age 72 payments may not be paid for any month you receive public assistance payments. The payment may be reduced if you or your spouse are eligible for a government pension. In some instances, the special payment may not be paid while you are outside the United States. The rules on when special payments may be suspended, reduced, or not paid are provided in paragraphs (b)–(e) of this section.

(b) *Suspension of special age 72 payments when you receive certain assistance payments.* You cannot receive the special payment if supplemental security income or aid to families with dependent children (AFDC) payments are payable to you, or if your needs are considered in setting the amounts of these assistance payments made to someone else. However, if these assistance payments are stopped, you may receive the special payment beginning with the last month for which the assistance payments were paid.

(c) *Reduction of special age 72 payments when you or your spouse are eligible for a government pension.* Special payments are reduced for any regular government pension (or lump-sum payment given instead of a pension) that you or your spouse are eligible for at retirement. A government pension is any annuity, pension, or retirement pay from the Federal Government, a State government or political subdivision, or any organization wholly owned by the Federal or State government. Also included as a government pension is any social security benefit. The term govenment pension does not include workmen's compensation payments or

Veterans Administration payments for a service-connected disability or death.

(d) *Amount of reduction because of a government pension.* If your spouse is eligible for a government pension but is not entitled to the special payment, your special payment is reduced by the difference between the pension amount and the special payment amount due a wife. This is in addition to any reduction to be made in your payment if you are also entitled to, or eligible for, a government pension. If both you and your spouse are entitled to the special payment, each one's payment is first reduced by the amount of his or her own government pension (if any). Then, the wife's special payment is reduced by the amount that the husband's government pension exceeds the husband's special payment. The husband's special payment is also reduced by the amount that the wife's government pension exceeds the wife's special payment.

(e) *Nonpayment of special age 72 payments when you are not residing in the United States.* No special payment is due you for any month you are not a resident of one of the 50 States, the District of Columbia, or the Northern Mariana Islands. Also, payment to you may not be permitted under the rules in § 404.463 if you are an alien living outside the United States.

Lump-Sum Death Payment

§ 404.390 General.

If a person is fully or currently insured when he or she dies, a lump-sum death payment of $255 may be paid to the widow or widower of the deceased if he or she was living in the same household with the deceased at the time of his or her death. If the insured is not survived by a widow or widower who meets this requirement, all or part of the $255 payment may be made to someone else as described in § 404.392.

§ 404.391 Who is entitled to the lump-sum death payment as a widow or widower.

You are entitled to the lump-sum death payment as a widow or widower if—

(a) You are the widow or widower of the deceased insured individual based upon a relationship described in §§ 404.345 or 404.346;

(b) You apply for this payment within two years after the date of the insured's death. You need not apply again if, in the month prior to the death of the insured, you were entitled to wife's or husband's benefits on his or her earnings record; and

(c) You were living in the same household with the insured at the time of his or her death. The term "living in the same household" is defined in § 404.347.

§ 404.392 Who is entitled to the lump-sum death payment when there is no eligible widow or widower.

If the deceased individual is not survived by a widow or widower who meets the requirements of § 404.391, the lump-sum death payment shall be paid as follows:

(a) If all or part of the burial expenses of the deceased incurred by a funeral home remain unpaid, the funeral home may receive the lump-sum death payment to the extent of the unpaid expenses if—

(1) A person who has assumed the responsibility for paying these expenses applies for the lump-sum death payment within 2 years of the insured's death, asking that the payment be made to the funeral home; or

(2) At least 90 days have gone by since the death of the insured, no person has assumed responsibility for paying the burial expenses, and the funeral home director or other official of the funeral home applies for the payment.

(b) If all the burial expenses of the insured that were incurred by a funeral home have been paid, and any part of the lump-sum death payment remains, it may be paid to a person who paid these burial expenses and who applies for the payment within 2 years of the insured's death.

(c) If the body of the deceased is not available for burial, but expenses were incurred in connection with a memorial service or any other item for which expenses are customarily incurred in connection with disposing of a deceased's remains, the lump-sum death payment may be paid to a person who paid the expenses and applies for the payment within 2 years of the insured's death.

(d) If any part of the lum-sum death payment remains after payments have been made under paragraphs (a), (b), and (c) of this section, that part of the payment may be made to a person who applies within 2 years of the insured's death and who has paid other expenses of a burial in the following order of priority—

(1) Expenses of opening and closing the grave;

(2) Expenses of providing the burial plot; and

(3) Any remaining expenses in connection with the burial.

§ 404.393 Who is entitled to the lump-sum death payment when burial expenses are paid from the deceased's funds.

If funds of a deceased person were used to pay any of the burial expenses for which payment of the lump-sum can be made under the rules in § 404.392, the deceased person's estate may be entitled to the lump-sum death payment. If you apply for the payment on behalf of a person's estate, you must show you are the legal representative (administrator or executor) of the estate. If there is no legal representative and none will be appointed, you must agree to divide the payment among those who have a right to it under State law, or under foreign law, that applies where the deceased had his or her permanent home at death. We may also require that you get written approval to receive the payment from any of the deceased's closest relatives who are available. A person's closest relatives follow this order: widower or widow; children and the children of any deceased children; parents; brothers and sisters and the children of any deceased brothers and sisters; and other relatives by blood or adoption.

§ 404.394 Who is not entitled to the lump-sum death payment.

The following persons and organizations are not entitled to the lump-sum payment—

(a) The U.S. Government or a foreign government;

(b) Any person who has received or will receive repayment from any other source for the burial expenses he or she paid;

(c) Persons and organizations who are required by a contract to pay the burial expenses except for a tax-exempt, nonprofit home for the sick or aged that paid for burial of a deceased resident or guest or a tax-exempt, nonprofit fraternal organization that paid a member's burial expenses not covered by an express contract;

(d) An employer or organization that paid burial expenses of an employee or member under a plan, system, or general practice other than a home for the sick or aged or a fraternal organization mentioned in paragraph (c) of this section; and

(e) A person or organization that furnished goods or services for the burial unless the goods or services were furnished by—

(1) A State or a political subdivision of a State;

(2) An organization exempt from income tax under § 501(c)(3) or (13) of the Internal Revenue Code; or

(3) A funeral director in connection with burial of a close relative.

Subpart H [Amended]

3. Subpart H is amended by adding the phrase "or divorced husband" to the first sentences of §§ 404.723 and 404.728(a) so as to read as follows:

§ 404.723 When evidence of marriage is required.

If you apply for benefits as the insured person's husband or wife, widow or widower, divorced wife or divorced husband, we will ask for evidence of the marriage and where and when it took place.* * *

§ 404.728 Evidence a marriage has ended.

(a) *When evidence is needed that a marriage has ended.* If you apply for benefits as the insured person's divorced wife or divorced husband, you will be asked for evidence of your divorce.* * *

4. Subpart H is further amended by revising the first sentence of section 404.780(a) so as to read as follows:

§ 404.780 Evidence of "good cause" for exceeding time limits on accepting proof of support or application for a lump-sum death payment.

(a) *When evidence of "good cause" is needed.* We may ask for evidence that you had "good cause" (as defined in § 404.370(f)) for not giving us sooner proof of the support you received from the insured as his or her parent. We may also ask for evidence that you had "good cause" (as defined in § 404.621(b)) for not applying sooner for the lump-sum death payment. You may be asked for evidence of "good cause" for these delays if—* * *

[FR Doc. 79-18782 Filed 6-14-79; 8:45 am]

BILLING CODE 4110-07-M

Food and Drug Administration

[Docket No. 77F-0441]

21 CFR Part 177

Indirect Food Additives: Polymers Polyethersulfone Resins

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document amends the food additive regulations to provide for the safe use of polyethersulfone resins as articles or components of articles intended for repeated use in contact with food. ICI Americas, Inc., filed a petition for such use.

DATES: Effective June 15, 1979; objections by July 16, 1979.

ADDRESS: Written objections to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John J. McAuliffe, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St., SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: A notice published in the Federal Register of February 7, 1978 (43 FR 5071) announced that a food additive petition (FAP 7B3342) had been filed by ICI Americas, Inc., Wilmington, DE 19897, proposing that Part 177 (21 CFR Part 177), Subpart C, of the food additive regulations be amended to provide for the use of polyethersulfone resins as articles or as components of articles intended for repeated use in contact with food.

The Food and Drug Administration has evaluated data in the petition and other relevant material and concludes that the food additive regulations should be amended as set forth below to provide for the use of the petitioned additive.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 409, 72 Stat. 1785-1788 as amended (21 U.S.C. 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 177 is amended by adding new § 177.2440 to read as follows:

§ 177.2440 Polyethersulfone resins.

Polyethersulfone resins identified in paragraph (a) of this section may be safely used as articles or components of articles intended for repeated use in contact with food, at use temperatures not exceeding 212° F, in accordance with the following prescribed conditions:

(a) For the purpose of this section, polyethersulfone resins (poly(oxy-*p*-phenylenesulfonyl-*p*-phenylene) resins) (CAS Reg. No. 25667-42-9) consist of basic resins produced by the polymerization of the monopotassium phenate salt prepared from 4,4'-dichlorodiphenylsulfone such that the finished resins have a minimum number average molecular weight of 16,000, as determined by reduced viscosity in dimethyl formamide in accordance with ASTM Method D2857-70 (Reapproved 1977),[1] which is incorporated by reference.

(b) The basic resins identified in paragraph (a) of this section may contain optional adjuvant substances used in their production. These adjuvants may include substances described in § 174.5(d) of this chapter and the following:

List of substances	*Limitations*
Diphenylsulfone	Not to exceed 0.2 percent as residual solvent in the finished basic resin.
Dimethyl sulfoxide	Not to exceed 0.01 percent as residual solvent in the finished basic resin.

(c) The finished food-contact article, when extracted at reflux temperatures for 2 hours with the following four solvents, yields net chloroform-soluble extractives in each extracting solvent not to exceed 0.02 milligram per square inch of food-contact surface: distilled water, 50 percent (by volume) ethyl alcohol in distilled water, 3 percent acetic acid in distilled water, and *n*-heptane. (Note: In testing the finished food-contact article, use a separate test sample for each required extracting solvent.)

(d) In accordance with good manufacturing practice, finished food-contact articles containing the polyethersulfone resins shall be thoroughly cleansed before their first use in contact with food.

Any person who will be adversely affected by the foregoing regulation may at any time on or before July 16, 1979, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Four copies of all documents shall be submitted and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this regulation. Received objections may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective June 15, 1979.

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[1] Copies may be obtained from the American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103.

(Sec. 409, 72 Stat. 1785–1786 as amended (21 U.S.C. 348).)

Dated: June 11, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

Note.—Incorporation by reference was approved by the Director of the Office of the Federal Register on April 27, 1979 and is on file in the Federal Register Library.

[FR Doc. 79-18937 Filed 6-14-79; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervision Federal Prisoners; Correction

AGENCY: U.S. Parole Commission.

ACTION: Final rule; correction.

SUMMARY: This document further corrects and clarifies the final rule relating to Parole, Recommitting and Supervising Federal Prisoners appearing at 43 FR 38822, Thursday, August 31, 1978 as amended at 44 FR 3409, Tuesday, January 16, 1979 and corrected at 44 FR 31637, Friday, June 1, 1979.

EFFECTIVE DATE: Friday, June 1, 1979.

FOR FURTHER INFORMATION CONTACT: Michael A. Stover, phone (202) 724–7567.

SUPPLEMENTARY INFORMATION: In FR 78–24603 issue of Thursday, August 31, 1978 page 38822 in § 2.32(a)(1) the quotation marks should be removed around: Parole to the actual physical custody of the detaining authorities only.

In 2.32(a)(2) the quotation marks should be removed around: Parole to the actual physical custody of the detaining authorities or an approved plan.

In 2.32(b) the quotation marks should be removed around: Parole to the actual physical custody of the immigration authorities or an approved plan.

In 2.32(c) the quotation marks should be reinserted in the first sentence of that subsection as follows: As used in this section "parole to a detainer" means release to the "physical custody" of the authorities who have lodged the detainer.

Dated: June 11, 1979.

Cecil C. McCall,

Chairman, United States Parole Commission.

[FR Doc. 79-18937 Filed 6-14-79; 8:45 am]

BILLING CODE 4410-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1613

Equal Employment Opportunity in the Federal Government

AGENCY: Equal Employment Opportunity Commission.

ACTION: Interpretation of Commission regulation.

SUMMARY: This document sets forth the Commission's interpretation of the phrase "receipt of his [or her] agency's notice of final decision on his [or her] complaint" as used in the Commission's regulations governing the processing of a Federal EEO appeal from a final agency decision (29 CFR 1613.233(a), formerly 5 CFR 713.233(a)).

DATES: Notice of this interpretation is effective June 15, 1979.

SUPPLEMENTARY INFORMATION: Pursuant to Reorganization Plan No. 1 of 1978 (43 FR 19807 (May 9, 1978)), the administration and enforcement of equal opportunity in Federal employment vested in the Civil Service Commission pursuant to section 717 (b) and (c) of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–16 (b) and (c), were transferred to the Equal Employment Opportunity Commission as of January 1, 1979. 43 FR 60964 (December 29, 1978). The Commission adopted certain of the regulations of the Civil Service Commission which were codified at 5 CFR Part 713, and moved the regulations to Title 29, Part 1613, of the Code of Federal Regulations. 43 FR 60900 (December 29, 1978). In addition, certain technical changes were made in the regulations in order to reflect the transfer of authority with respect to Federal EEO from the Civil Service Commission to the Equal Employment Opportunity Commission.

The regulations adopted from the Civil Service Commission (43 FR 60900, December 29, 1978) provide that a complainant may appeal the final agency decision on a claim of discrimination to the EEOC, but the appeal must be filed within 15 days from receipt of the final agency decision. 29 CFR § 1613.233(a) (formerly 5 CFR § 713.233(a)). The date of receipt is crucial because it triggers the running of the time period within which the complainant must file his or her appeal. In many cases, however, evidence of receipt of the final agency decision is lacking. Accordingly, the Commission hereby adopts the presumption that in all cases in which evidence of the actual date of receipt is lacking, the final agency decision will be deemed to have been received 5 days following the date of the decision. This is a rebuttable presumption. 29 CFR § 1633.233(b).

Signed at Washington, D.C. this 12th day of June, 1979.

For the Commission.

Eleanor Holmes Norton,

Chair, Equal Employment Opportunity Commission.

[FR Doc. 79-18742 Filed 6-14-79; 8:45 am]

BILLING CODE 6750-06-M

29 CFR Part 1613

Equal Employment Opportunity in the Federal Government

AGENCY: Equal Employment Opportunity Commission.

ACTION: Interim revised regulations with comments invited for consideration in final rulemaking.

SUMMARY: The Equal Employment Opportunity Commission adopted certain of the regulations of the Civil Service Commission, which were codified at 5 CFR Part 713, with respect to equal employment opportunity in the federal government and moved the regulations to Title 29, Part 1613, of the Code of Federal Regulations. 43 FR 60900 (December 29, 1979). The Commission is now revising § 1613.221 and § 1613.233 of these regulations.

DATE: The interim regulations will become effective on June 22, 1979 and will remain effective until final regulations are issued. Written comments on the interim regulations must be received on or before August 15, 1979.

ADDRESSES: Interested persons are invited to submit written comments on the proposed revised regulations to Marie Wilson, Executive Secretariat, Equal Employment Opportunity Commission, 2401 E Street, Northwest, Washington, D.C. 20506. Copies of the comments submitted by the public will be available for review at the Social Sciences Library, Room 2003, EEOC, 2401 E Street, Northwest, Washington, D.C. 20506, between the hours of 9:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Constance L. Dupre, Associate General Counsel, EEOC, 2401 E Street, Northwest, Washington, D.C. 20506, 202–634–6595.

SUPPLEMENTARY INFORMATION: 29 CFR 1613.221(b)(1) currently provides that the decision of the agency shall be transmitted by letter to the complainant and his representative, but this section

does not contain any provision relating to proof of receipt. Therefore, the Commission is revising its regulations to require a method of delivery by the agencies which will allow proof of receipt to be established. The Commission is also revising § 1613.221(d) to require agencies to cite § 1613.233 (a) and (b) (concerning time limitations) in final agency decisions so as to ensure that complainants are fully aware of their appeal rights.

It should be noted that the form letters prescribed in FPM letter 713.21 are necessarily also modified by the adoption of the revision to § 1613.221(d).

Section 1613.233(a) currently requires that a complainant file his appeal not later than 15 calendar days after receipt of the agency decision. There has been some confusion on the part of the complainants as to whether they were required to file a brief or statement of reasons for their appeal within the fifteen days, or whether the filing of a notice of appeal was sufficient to preserve their appeal rights. Section 1613.233(a), as proposed, makes two changes. It provides that a complainant will have 20 days within which to file a "notice of appeal". This provision will be applied retroactivity to pending appeals. The revised regulation also provides for an additional 30 calendar days after the filing of a "notice of appeal" within which to submit a brief or statement in support of the appeal. The Commission has also reworded § 1613.233(b) to change its emphasis.

Prior to publication in the Federal Register, the proposed regulations were circulated to all affected federal agencies for comment. They were revised to incorporate certain agency suggestions received.

These regulations have been reviewed in accordance with Executive Order 12044. These regulations are not "substantial regulations" under section 2(e) of that Order nor do they require regulatory analysis under section 3 of that Order.

Pursuant to 5 U.S.C. 553(d)(3), the Commission finds that good cause exists for making these revised regulations effective in less than 30 days, in order to provide continuity of operation in the processing of Federal EEO appeals. The interim revised regulations appear below.

Signed at Washington, D.C. this 12th day of June, 1979.

For the Commission.

Eleanor Holmes Norton,

Chair Equal Employment Opportunity Commission.

PART 1613—EQUAL EMPLOYMENT OPPORTUNITY IN THE FEDERAL GOVERNMENT

29 CFR Part 1613 is amended by revising § 1613.221(b)(1) and (d) to read as follows:

§ 1613.221 Decision by head of agency or designee.

(a) * * *

(b)(1) The decision of the agency shall be in writing, shall reflect the date of its issuance, and shall be transmitted to the complainant and his or her representative either by certified mail, return receipt requested, or by any other method which enables the agency to show the date of receipt.

(c) * * *

(d) The decision letter shall inform the complainant of his or her right to appeal the decision of the agency to the Commission and shall include the text of 29 CFR § 1613.233 (a) and (b). The decision letter shall also inform the complainant of his or her right to file a civil action.

29 CFR Part 1613 is amended by revising § 1613.233 (a) and (b) to read as follows:

§ 1613.233 Time limit.

(a) Except as provided in paragraph (b) of this section, a complainant may file a notice of appeal at any time up to 20 calendar days after receipt of the agency's notice of final decision on his or her complaint. An appeal shall be deemed filed on the date it is postmarked, or, in the absence of a postmark, on the date it is received by the Commission. Any statement or brief in support of the appeal must be submitted to the Commission and to the defendant agency within 30 calendar days of filing the notice of appeal.

(b) The 20-day time limit within which a notice of appeal must be filed will not be extended by the Commission unless, based upon a written statement by the complainant showing that he or she was not notified of the prescribed time limit and was not otherwise aware of it or that circumstances beyond his or her control prevented the filing of a Notice of Appeal within the prescribed time limit, the Commission exercises its discretion to extend the time limit and accept the Appeal.

[42 U.S.C. 2000e-16; Reorg. Plan No. 1 of 1978]

[FR Doc. 79-18745 Filed 6-14-79; 8:45 am]

BILLING CODE 6570-06-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 67 and 68

[DoD Directive 1200.1] [1]

Allocation of Reserve Forces Units to and Determination of Manpower in Local Communities

AGENCY: Office of the Secretary of Defense.

ACTION: Final rule.

SUMMARY: This rule consolidates this Part 67 and 32 CFR Part 68 to update and clarify DoD policy and procedures regarding the allocation of Reserve forces units to local communities. These procedures outline certain factors for the Secretaries of the Military Departments to consider when formulating plans for the allocation of a Reserve unit to a local community. These procedures are to ensure that Reserve component units in local communities do not exceed the number that may reasonably be expected to be maintained at authorized strength.

EFFECTIVE DATE: April 21, 1979.

FOR FURTHER INFORMATION CONTACT: Colonel Giles A. Bax, Office of the Deputy Assistant Secretary of Defense (Reserve Affairs), The Pentagon, Washington, D.C. 20301, Telephone: 202-697-9328.

SUPPLEMENTARY INFORMATION: In FR Doc. 71-18188, appearing in the Federal Register (36 FR 23328) on December 11, 1971, the Office of the Secretary of Defense published Part 67 effective on July 14, 1978, which established a uniform procedure in the allocation of reserve forces units of the military departments to local communities in accordance with the reserve manpower potential. This rule updates the July 14, 1970 directive and incorporates Part 68 (DoD Directive 1200.10) which is being canceled as a separate action (44 FR 33309). Part 68 was entitled, "Determination of Manpower Available for Reserve Units in Specific Areas." This Part now includes the provisions of manpower determinations in accordance with 10 U.S.C. 2236(1).

Accordingly, we are revising Part 67, 32 CFR, Chapter I, reading as follows:

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[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120. Attention: Code 301.

PART 67—ALLOCATION OF RESERVE FORCES UNITS TO AND DETERMINATION OF MANPOWER IN LOCAL COMMUNITIES

Sec.
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Authority.—The provisions of this Part 67 issued under 5 U.S.C. 301.

§ 67.1 Purpose.

This Part consolidates into a single document § 67 and § 68 and provides standard procedures (a) in the allocation of Reserve forces units of the Military Departments to local communities in accordance with the Reserve manpower potential, and (b) for making manpower determinations in accordance with Title 10, U.S.C. Section 2234(1), Chapter 133.

§ 67.2 Applicability and Scope.

(a) The provisions of this Directive apply to the Office of the Secretary of Defense and the Military Departments. The term "Military Services," as used here, refers to the Army, the Navy, the Air Force, and the Marine Corps.

(b) Its provisions do not apply to actions involving Guard and Reserve units of the same Service being relocated within a 15-mile radius of the present location.

§ 67.3 Policy.

(a) Reserve component units located or to be located in a local community will not be larger than the number that may reasonably be expected to be maintained at authorized strength.

(b) The manpower potential of the area will be reviewed to determine if it is adequate to meet and maintain authorized strengths in accordance with 10 U.S.C. 2234(1) prior to granting approval for construction of a Reserve forces facility.

(c) Procedures in § 67.6 will be followed to comply with above policy.

§ 67.4 Responsibilities.

The *Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)* (ASD (MRA&L)), or designee, shall:

(a) Provide tentative approval when a Military Department formulates a plan for the allocation of a Reserve unit to a local community where a unit of that department did not formerly exist.

(b) Resolve cases where complete coordination cannot be effected under the procedures of paragraphs (a) and (b) of § 67.6.

(c) Make final construction determination with respect to the requirements of paragraph (e) of § 67.6 and 10 U.S.C. 2234(1).

§ 67.5 Limitation.

Nothing in this Part shall be construed in any way to limit the rights of the Governors of the several States to fix the location of units of the National Guard within their respective borders, as authorized by 32 U.S.C. 104(a), Chapter 1.

§ 67.6 Procedures.

(a) When a Millitary Department formulates a plan for the allocation of a Reserve unit to a local community where a unit of that department did not formerly exist, the Secretary of the Military Department concerned will consider the factors in paragraph (d), below, and coordinate such tentative location with the ASD (MRA&L), the Secretaries of the other Military Departments and, when appropriate, with the Governor of the State concerned.

(b) The Military Department may also, through command channels, utilize the advice of all military and civilian agencies concerned with Reserve facilities, including the State Reserve Forces Facilities Boards (DoD Directive 5126.24,[1] "Duties and Responsibilities of State Guard/Reserve Forces Facilities Boards," August 1, 1973), and the Reserve Forces Policy Board, Office of the Secretary of Defense.

(c) If complete coordination cannot be effected, the plan will be forwarded to the ASD (MRA&L) for resolution. The plan will include how the factors in paragraph (d), below, were considered. Final coordination must be completed prior to the announcement establishing a unit.

(d) When approval is sought for the construction of a Reserve forces facility for a unit or units, the Military Service concerned shall review the Reserve component manpower potential of the area to determine whether it is adequate to meet and maintain the authorized strengths (approved manning levels) of its Reserve component units considering the factors outlined below. This review shall address, but not be limited to:

(1) The manpower marked potential of the area to include: (i) The age and educational/skill distribution of the population;

(ii) The number of prior service personnel in the area by skills (requests for this information may be submitted directly to: Director, Defense Manpower Data Center, 300 N. Washington Street, Alexandria, VA 22314); and,

(iii) Any other manpower factors which would affect Reserve component participation in the area.

(2) The history of authorized and actual strengths of National Guard and Reserve units in the area; and the authorized strengths of units allocated to the area but not yet activated of all Reserve Components (Army and Air National Guard, and Army, Navy, Air Force, Marine Corps, and Coast Guard Reserve).

(3) Community attitude toward National Guard and Reserve units.

(4) Industrial and professional composition of the community as related to the skill requirements of the units.

(5) Projected growth and composition of the population.

(6) Environmental impact of unit location on the community.

(e) If a positive determination is made following the procedures in (d), above, the Military Service concerned shall coordinate this determination with other Services having Reserve component units in the area. Based on this coordinated determination, the following statement shall be included in project justification documents:

"The Reserve manpower potential to meet and maintain authorized strengths of all Reserve units in the area in which this facility is to be located has been reviewed in accordance with the procedures described in § 67. It has been determined, in coordination with all other Services having Reserve units in the area, that the number of units of the Reserve components of the Armed Forces presently located in the area, and those which have been allocated to the area for future activation, is not and will not be larger than the number that reasonably can be expected to be maintained at authorized strength."

(1) The above statement will be retained in the project file by the Reserve component concerned.

(2) Individual manpower determination statements will be consolidated by the Reserve components and included as a program statement when the military construction program is submitted to the Secretary of Defense for congressional review in accordance with 32 CFR § 246.

(f) Programing of construction projects and authorizations for construction will be in accordance with 32 CFR § 246.

PART 68—[Removed]

2. Part 68 is removed.

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA. 19120 Attention: Code 301.

Dated: June 12, 1979.

H. E. Loffdahl,

Director, Directive Division, Washington Headquarters Services, Department of Defense.

[FR Doc. 79-18726 Filed 6-14-79; 8:45 am]

BILLING CODE 3810-70-M

POSTAL SERVICE

39 CFR Part 111

Express Mail Metro Service—Additional Metropolitan Areas

AGENCY: Postal Service.

ACTION: Notice of additional expansion of temporary implementation for Express Mail Metro Service.

SUMMARY: Pursuant to prior notices in the Federal Register on April 19, 1979 (44 FR 23396) and on June 8, 1979 (44 FR 33068), the Postal Service hereby gives notice that temporary implementation of Express Mail Metro Service will be expanded to include the metropolitan areas of Atlanta, Georgia; Cleveland, Ohio; Detroit, Michigan; Houston, Texas; Miami, Florida; Minneapolis/St. Paul, Minnesota; New York, New York; Pittsburgh, Pennsylvania; Anaheim and San Diego, California; and Seattle, Washington.

Notice 77, *Express Mail Metro Service Directory*, for the selected metropolitan areas may be obtained at participating post offices.

EFFECTIVE DATE: June 25, 1979 and until such time as the Postal Rate Commission submits a recommended decision to the Governors of the Postal Service and resultant action is taken.

FOR FURTHER INFORMATION CONTACT: Walter (Cap) Neilson, (202) 245–5624.

(39 U.S.C. 401, 403, 404, 3621, 3623, 3641)

W. Allen Sanders,

Acting Deputy General Counsel.

[FR Doc. 79-18688 Filed 6-14-79; 8:45 am]

BILLING CODE 7710-12-M

39 CFR Part 111

Preparation for Mailing; Second-Class Bulk Mailings, Key Rate Second-Class Publications

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule amends postal regulations to require publishers of second-class publications, for which the key rate method of computing postage is used, to submit a statement on Form 3541, Statement of Mailing—Second-Class Publications, showing the number of subscribers' copies of an issue to each zone, at six month intervals, instead of the current twelve month interval. This rule also requires publishers to submit such a statement when there is a postage rate change. The purpose of the rule is to enable the Postal Service to compute key rates which reflect more up-to-date circulation data, increasing the likelihood that the proper postage can be calculated and collected.

EFFECTIVE DATE: July 16, 1979.

FOR FURTHER INFORMATION CONTACT: Ernest J. Collins at (202) 245–4749.

SUPPLEMENTARY INFORMATION: On December 11, 1978, the Postal Service published for comment in the Federal Register proposed changes to Part 125 of the Postal Service Manual as described above (43 FR 57924). Interested persons were invited to submit written comments concerning the proposed changes by January 10, 1979.

Written comments were received from three publications and an oral comment was received from another publication.

Two commenters disagreed with the proposed changes regarding when a new zone statement must be submitted. One of those commenters objected to the proposed requirement that publishers submit a new zone statement every six months. The commenter would prefer the Postal Service require a new zone statement only when there is a rate change or when the postmaster requests it.

The other commenter took the opposite view and objected to the proposed requirement that publishers submit a new zone statement when there is a postage rate change. The objection was on the grounds that, if a new zone statement is prepared every six months, the proper postage rates should be assessed regardless of rate changes.

One of the major causes of inaccurate postage payments when the key rate is used is the failure of publishers to submit a new zone statement when a change in zone distribution occurs between the time the key rate is computed and a mailing is made. If the publisher performs a periodic analysis of zone distribution any changes in that distribution should be discovered. For this reason, the Postal Service considers routine zone distribution analysis by publishers essential. We believe that every six months is a reasonable period for requiring a zone analysis. Although sometimes post offices will notice that there is a change in zone distribution when a mailing is made and request a publisher to submit a new zone analysis, reliance cannot be placed on post offices to always detect those changes.

Because key rates are based on postage rates as well as distribution, it seems apparent that a new key rate should be computed every time second-class postage rates change. To compute an accurate key rate, it is necessary to use both current postage rates and the most up-to-date zone distribution data.

The Postal Service recognizes that a rate change may occur close to the time when a publisher's semi-annual statement is due. We do not wish to unduly burden publishers by requiring the submission of a statement when there is a rate change and then requiring a routine semi-annual statement to be submitted a month or two later. Accordingly, the Postal Service has revised the final rule, in section 125.722 (which corresponds to section 125.73 of the proposal), to provide that when a new statement is filed because of a rate change the next semi-annual statement need not be filed until six months after the rate change statement was filed.

One comment was a suggestion that all post offices allow second-class publishers to use the key rate method of computing postage. The commenter complained that because all post offices do not permit postage computations based on the key rate, publishers are sometimes required to use two different methods for preparation of the Form 3541, one for key rate computation and another for regular computation.

The key rate should only be used when the zone distribution and circulation of a publication remain stable, when the volume of mail is large, and when the publisher submits accurate and timely data. Postmasters have the option of allowing a publisher to use the key rate because the local postmaster, using the above criteria, is best able to determine whether a publisher's use of the key rate is justified.

Another commenter voiced his support for the proposal provided that his statement of distribution could be submitted during November and May. We have no objection to the publisher submitting his statement during those months. Section 125.721 of the final rule, which was section 125.72 of the proposal, only requires that a statement of distribution be submitted at six month intervals; it does not specify particular months the statement must be submitted.

The fourth commenter mistakenly appeared to believe that the proposed regulation was intended to apply to controlled circulation publications.

However, the regulation applies only to second-class publications.

This regulation amends Chapter I of the Postal Service Manual. The Postal Service plans to replace Chapter I of the Postal Service Manual with the Domestic Mail Manual (see 44 FR 24432). Existing regulations which will be included in the Domestic Mail Manual have been reviewed, restructured and rewritten in order to make the Domestic Mail Manual easier to read and understand than the present Postal Service Manual. Sentence structure, grammar and language have been changed in many regulations to accomplish this goal. In keeping with the format of the Domestic Mail Manual, the Postal Service has reorganized, rewritten, and renumbered this regulation. None of these changes are intended to alter the substance of the regulation as it was proposed.

In view of the considerations discussed above, the Postal Service hereby adopts, as amended, the following revision of the Postal Service Manual:

PART 125—SECOND-CLASS BULK MAILINGS

In 125.7 revise .72 and add new .721, .722, .723 to read as follows; delete existing .73; and renumber .74 as .73, .741 as .731, .742 as .732, .743 as .733; and revise .731 to read as follows:

.72 *Statements of Distribution*

.721 *Semi-Annual Statements.* The publisher must submit twice each calendar year, at 6-month intervals, a Form 3541, showing the number of subscribers' copies of an issue mailed to each zone.

.722 *Other Statements.* The publisher must submit a Form 3541, showing the mailings to each zone at any time during the 6-month intervals when the volume of mailings to the zones varies, when there is an increase in the total number of copies, or when there is a postage rate change. When the form 3541 is filed because of a rate change, the semi-annual statement need not be filed until six months after the filing of the rate change statement.

.723 *Between Statements.* During the 6-month period or other intervals, the publisher need not complete the lines for zones 1 to 8 on Form 3541. The publisher must enter only total zone mailings on the "Total Copies" lines.

125.73 *Computation*

.731 *When To Compute.* A new key rate must be computed by the postmaster and used whenever a Form 3541 is submitted in accordance with 125.72.

These changes will be renumbered and incorporated in the Domestic Mail Manual upon its adoption. The Domestic Mail Manual will replace chapter I of the Postal Service Manual (See 44 FR 24432). The Postal Service Manual is incorporated by reference in the Federal Register (See 39 CFR 111.3).

(39 U.S.C. 401(2), 403.)

W. Allen Sanders,

Acting Deputy General Counsel.

[FR Doc. 79-18639 Filed 6-14-79; 8:45 am]

BILLING CODE 7710-12-M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 1-7, 1-10, 1-16

[FPR Amendment 200]

Miller Act Bonds and Bond Premiums

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This amendment of the Federal Procurement Regulations (FPR) modifies the requirement for Miller Act bonds and the payment of premiums. The amendment codifies the telegram sent to Executive Agencies on November 13, 1978, concerning Pub. L. 95-585 which increased the level at which Miller Act bonds are required from $2,000 to $25,000. The amendment also implements the Comptroller General Decision B-189402, October 12, 1977, which reversed an earlier position and now permits payment of full bond premiums if the contract specifically so provides. The intended effect of this amendment is to provide uniform administration of the two items and to permit contractors to recover the amount of premiums early in the performance of the contract.

EFFECTIVE DATE: This amendment is effective July 16, 1979, but may be observed earlier.

FOR FURTHER INFORMATION CONTACT: Philip G. Read, Director of Federal Procurement Regulations Directorate (APR), 703-557-8947.

PART 1-7—CONTRACT CLAUSES

Subpart 1-7.6 Fixed-Price Construction Contracts

Section 1-7.602-7 is amended to redesignate paragraph (e) of the clause prescribed by the section as paragraph (f), and to add a new paragraph (e) as follows:

§ 1-7.602-7 Payments to contractor.

Payments to Contractor

* * * * *

(e) If Miller Act (40 U.S.C. 270a-270e) performance or payment bonds are required under this contract, the Government shall pay to the Contractor the total premiums paid by the contractor to obtain the bonds. This payment shall be paid at one time to the contractor together with the first progress payment otherwise due after the contractor has (1) furnished the bonds (including coinsurance and reinsurance agreements, when applicable), (2) furnished evidence of full payment to the surety company, and (3) submitted a request for such payment. The payment by the Government of the bond premiums to the contractor shall not be made as increments of the individual progress payments and shall not be in addition to the contract price.

(f) Upon completion and acceptance of all work, the amount due the Contractor under this contract shall be paid upon the presentation of a properly executed voucher and after the Contractor has furnished the Government with a release of all claims against the Government, arising by virtue of this contract, other than claims in stated amounts as may be specifically excepted by the Contractor from the operation of the release. If the Contractor's claim to amounts payable under the contract has been assigned under the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), a release may also be required of the assignee.

PART 1-10—BONDS AND INSURANCE

Subpart 1-10.1—Bonds

1. Section 1-10.103-1 is amended to revise paragraph (a), as follows:

§ 1-10.103-1 Policy on use.

(a) The use of bid guarantees is required when a performance bond or a performance and payment bond is required.

* * * * *

2. Section 1-10.103-3 is amended to revise paragraph (a)(1), as follows:

§ 1-10.103-3 Invitation for bids provisions.

(a) When a bid guarantee is required, the invitation for bids shall contain:

(1) A statement that a bid guarantee is required with the bid and that identifies details which will enable bidders to determine the amount of the bid guarantee.

* * * * *

3. Section 1-10.104-1 is amended to revise paragraph (a), as follows:

§ 1-10.104 Performance bonds.

§ 1-10.104-1 Construction contracts.

(a) Under the Miller Act, as amended (40 U.S.C. 270a-270e), a performance bond shall be required in connection

with any construction contract exceeding $25,000 in amount, except that this requirement may be waived (1) by the contracting officer for work to be performed in a foreign country, if he finds that it is impracticable for the contractor to furnish such bond, and (2) as otherwise authorized by law.

* * * * *

(4) Section 1–10.105–1 is amended to revise paragraph (a), as follows:

§ 1–10.105 Payment bonds.

§ 1–10.105–1 Construction contracts.

(a) Under the Miller Act, as amended (40 U.S.C. 270a–270e), a payment bond shall be required in connection with any construction contract exceeding $25,000 in amount, except that this requirement may be waived (1) by the contracting officer for work to be performed in a foreign country, if he finds that it is impracticable for the contractor to furnish such bond, and (2) as otherwise authorized by law.

* * * * *

PART 1–16—PROCUREMENT FORMS

Subpart 1–16.4—Forms for Advertised Construction Contracts

Section 1–16.401 is amended to revise paragraphs (a) and (e), as follows:

§ 1–16.401 Forms prescribed.

* * * * *

(a) Invitation, Bid and Award (Construction, Alteration, or Repair) (Standard Form 19, July 1973 edition). Pending the publication of a new edition of the form, the following modifications are authorized.

(1) *Face of form.* (i) Under the section designated "Bid", change the second sentence to read, as follows: "The undersigned further agrees, if any contract award resulting from this bid exceeds $2,000, to comply with the provisions of Standard Form 19–A, Labor Standards Provisions Applicable to Contracts in Excess of $2,000."

(ii) Under the section designated "Award", line through or otherwise delete the block and the words "Notice to proceed will be issued upon receipt of acceptable payment and performance bonds."

(2) *Back of form.* The Examination of Records by Comptroller General clause, the Utilization of Small Business Concerns clause and the Utilization of Minority Business Enterprises clause shall be deleted in their entirety; the Convict Labor clause prescribed by § 1–12.204 shall be substituted for the Convict Labor Clause in Article 10; the Employment of the Handicapped clause in § 1–12.1304–1 shall be added as an additional article of the General Provisions; and the following clause shall be substituted for the Payments to Contractor clause in Article 6:

6. *Payments to contractor.* (a) Progress payments equal to the value of the work performed shall be made monthly or at more frequent intervals as determined by the Contracting Officer on estimates approved by him. Upon payment, therefor, title to the property shall vest in the Government, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all material and work upon which payments have been made. The Contractor will notify the Government when all work is complete. Final payment will be made after final acceptance.

* * * * *

(e) Bid Form (Construction Contract) (Standard Form 21, February 1979 edition). Pending the publication of a new edition of the form, the back of the form shall be modified as follows:

(1) Change the first sentence to read:

The undersigned agrees that, upon written acceptance of this bid, mailed or otherwise furnished within ———— calendar days (**calendar days unless a different period is inserted by the bidder) after the date of opening of bids, he will within 15 calendar days (unless a longer period is allowed) after receipt of the prescribed forms, execute Standard Form 23, Construction Contract, and give performance and payment bonds*, as required, on Government standard forms with good and sufficient surety.

(2) Add as a footnote:

*Performance and payment bonds shall be furnished when (1) the contract award resulting from this bid exceeds $25,000, or (2) bonds are specifically required by the Invitation for Bids (Standard Form 20).

* * * * *

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: May 30, 1979.

Clarence A. Lee, Jr.,

Acting Administrator of General Services.

[FR Doc. 79-18098 Filed 6-14-79; 8:45 am]

BILLING CODE 6820-61-M

National Archives and Records Service

41 CFR Part 101–11

[FPMR Temp. Reg. B–4]

Records Management; Transfer of Permanent Records

AGENCY: National Archives and Records Service, General Services Administration.

ACTION: Temporary regulation.

SUMMARY: This temporary regulation amends GSA regulations relating to the transfer of Federal agency records to the National Archives. Public Law 95–416, signed by the President on October 5, 1978, reduces the age to 30 years of records that the Administrator of General Services may direct and effect the transfer of to the National Archives and Records Service (NARS). In addition, the National Archives is authorized to accession records of any age offered by a Federal agency or the Congress and appraised by the National Archives as permanent and appropriate for deposit. The National Archives will determine which records over 30 years old are kept in agency space and how those records are being maintained.

DATES: Effective date: June 15, 1979. Expiration date: June 1, 1980. Comments due: August 14, 1979.

FOR FURTHER INFORMATION CONTACT: Adrienne C. Thomas, Director, Planning and Analysis Division, Office of the Executive Director, National Archives and Records Service, General Services Administration (NAA), Washington, DC 20408. 202–523–3214.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this regulation will not impose unnecessary burdens on the economy or on individuals and, therefore, is not significant for the purposes of Executive Order 12044.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c)).

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter B to read as follows:

Federal Property Management Regulations; Temporary Regulation B–4

To: Heads of Federal agencies.

Subject: Transfer of permanent records.

1. *Purpose.* This temporary regulation contains revised information concerning the age at which the Administrator of General Services may direct and effect the transfer of Federal agency records to the National Archives of the United States (NARS).

2. *Effective date.* This regulation is effective upon publication in the Federal Register (June 15, 1979).

3. *Expiration date.* This regulation expires June 1, 1980, unless revised or superseded earlier. Prior to that date, this regulation will be codified in the permanent regulations of GSA appearing in Title 41, CFR, Public Contracts and Property Management.

4. *Applicability.* The provisions of this regulation apply to all executive agencies.

5. *Background.*

a. Federal law (44 U.S.C. 2103) provides legal authority to the Administrator of General Services to ". . . direct and effect the transfer of the National Archives of the United States . . . records of a Federal agency that have been in existence for more than fifty years and determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the United States Government, unless the head of the agency which has custody of them certifies in writing to the Administrator that they must be retained in his custody for use in the conduct of the regular current business of the agency. . . ."

b. On October 5, 1978, the President signed Public Law 95-416 amending chapter 21 of Title 44, U.S.C. This law reduces the age at which Federal agency records may be transferred to the National Archives of the United States. The Administrator of General Services may direct the transfer of Federal records over 30 years old to the National Archives which are determined by the Archivist of the United States to be sufficiently valuable for preservation by the United States Government and are not required by the agency for the conduct of current business. In addition, 44 U.S.C. 2103 also authorizes the National Archives to accession records of any age offered by a Federal agency or the Congress and appraised by NARS as permanent and appropriate for preservation. Based on information provided on Standard Form 136, Annual Summary of Records Holdings, NARS will review Federal records over 30 years old which are currently retained in agency space and examine how those records are being maintained.

6. *Agency action.* FPMR 101-11.102-7 requires Federal agencies to report on Standard Form 136, the Annual Summary of Records Holdings. For fiscal year 1979, agencies should include in the "remarks" section of Standard Form 136 a description of all records under their control that are over 30 years old. Agencies should also provide inclusive dates and volume, specific location, and the type of equipment used to house the records. The location should indicate whether the records are in office space, an agency records center or storage area, or a special storage area established to house the historical records of the agency. Reference and non-record materials, and records that have been approved for disposal on Standard Form 115, Request for Records Disposition Authority, should not be included.

7. Effect on other directives. This regulation modifies the provisions of §§ 101.11.102-7, 101-11.411-2, and 101-11.411-3.

Dated: May 30, 1979.

Paul E. Goulding,

Acting Administrator of General Services.

[FR Doc. 79-18782 Filed 6-14-79; 8:45 am]

BILLING CODE 6820-26-M

Proposed Rules

Federal Register
Vol. 44, No. 117
Friday, June 15, 1979

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[7 CFR Part 301]

Witchweed Quarantine; Miscellaneous Amendments to Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would amend the supplemental regulations which designate generally infested regulated areas and suppressive regulated areas subject to the Witchweed Quarantine. It would remove, add, or extend parts of certain counties in North Carolina and South Carolina to the list of suppressive regulated areas. These changes appear to be necessary in order to prevent the spread of witchweed.

DATE: Comments must be received on or before August 10, 1979.

ADDRESS: Submit written data, views, or arguments to: H. V. Autry, Regulatory Support Staff, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: H. V. Autry, 301-436-8247.

SUPPLEMENTARY INFORMATION: All written submissions made pursuant to this notice will be made available for public inspection at the Federal Building, 6505 Belcrest Road, Room 633, Hyattsville, MD 20782, during regular hours of business, 8 a.m. to 4:30 p.m., Monday to Friday, except holidays, unless the person makes the submission to the Regulatory Support Staff, Plant Protection and Quarantine Programs, and requests that it be held confidential. A determination will be made whether a proper showing in support of the request has been made on grounds that its disclosure could adversely affect any person by disclosing information in the nature of trade secrets or commercial or financial information obtained from any person and privileged or confidential. If it is determined that a proper showing has been made in the support of the request, the material will be held confidential; otherwise, notice will be given of the denial of such request and an opportunity afforded for withdrawal of the submission. Requests for confidential treatment will be held confidential (7 CFR 1.27(c)).

Witchweed, is a parasitic plant which causes the degeneration of corn, sorghum, and other grassy crops. It has been found in the United States only in parts of North Carolina and South Carolina. Areas within these States have been designated as suppressive areas where a witchweed eradication program is currently being undertaken.

Surveys conducted by the United States Department of Agriculture and State agencies of North Carolina and South Carolina establish that witchweed has spread or is likely to spread to certain areas beyond the outer perimeter of the current designated suppressive areas. Therefore, in order to prevent the spread of witchweed and to facilitate its ultimate eradication, the current designated suppressive areas would be extended in the countries of: Brunswick, Columbus, Craven, Duplin, Lenoir, Onslow, Pender, Pitt, Richmond, Scotland, and Wayne in North Carolina; and Florence in South Carolina. Suppressive areas would be established in the formerly unregulated county of Beaufort in North Carolina. The surveys also establish that witchweed has been eradicated in parts of the following counties which would be deleted from the list of suppressive areas: Columbus, Duplin, Harnett Johnston, Lenoir, Onslow, Pender, Richmond, Scotland, and Wayne in North Carolina.

Other changes would also be made to reflect changes in property ownership. Certain property descriptions would also be revised in order to more accurately describe the regulated areas.

Accordingly, the list of regulated areas in the States of North Carolina and South Carolina specifically designated as generally infested areas and suppressive areas by § 301.80-2a of the Witchweed Quarantine and regulations (7 CFR 301.80-2a) would be amended to read as set forth below:

1. In § 301.80-2a relating to the State of North Carolina under suppressive area, the entire State would be redescribed to read as follows:

§ 301.80-2a Regulated areas; suppressive and generally infested areas.

* * * * *

North Carolina

(1) *Generally infested area.*

Robeson County. The entire county.

(2) *Suppressive area.*

Beaufort County. The Jefferson, Russell M., farm located on the southwest side of State Secondary Road 1809 and 0.8 mile southeast of the junction of said road and State Highway 32.

The Osborne, H. R., farm located on both sides of State Secondary Road 1809 and 0.5 mile southeast of the junction of said road and State Highway 32.

Bladen County. The entire county.

Brunswick County. The Babson, N. L., farm located on the west side of State Secondary Road 1321 and 0.4 mile south of its junction with State Highway 130.

The Bryant, Ottice, farm No. 1 located at the end of a farm road 1.0 mile west of State Secondary Road 1342, 2.5 miles northwest of said State Secondary Road and its junction with State Highway 211.

The Bryant, Ottice, farm No. 2 located on both sides of State Secondary Road 1342, 2.3 miles northwest of said road and its junction with State Highway 211.

The Hewett, Jr., R. B., farm located at the end of a farm road on the northeast side of State Secondary Road 1132, 0.4 mile northeast of said road and its intersection with N.C. Highway 130.

The Meares, Hobson, farm located on both sides of State Secondary Road 1125 and 2.0 miles south of the junction of said road with U.S. Highway 17.

The Register, W. C., farm located on the south side of State Secondary Road 1147 and 0.3 mile east of the junction of said road and State Secondary Road 1143.

The Register, W. T., farm located on the west side of State Secondary Road 1181 and 0.4 mile south of its junction of State Secondary Road 1147.

The Sanders, Albert C., farm located on the east side of State Secondary Road 1143 at the end of a dirt road located 0.5 mile south of the junction of State Secondary Roads 1143 and 1147.

The Smith, B. Coda, farm located on the west side of a dirt road and 0.8 mile north of its junction with State Secondary Road 1322, said junction being 0.1 mile west of the junction of State Secondary Road 1322 and State Secondary Road 1321.

The Todd, Lester, farm located on the east side of State Secondary Road 1143 at the end of a dirt road located 0.5 mile south of the junction of State Secondary Roads 1143 and 1147.

Columbus County. That part of the county lying north and west of a line beginning at a

point where State Highway 211 intersects the Bladen-Columbus County line, thence south along said Highway 211 to its intersection with State Secondary Road 1740, thence southwest and south along said State Secondary Road 1740 to its junction with U.S. Highways 74 and 76, thence west along said highways to its intersection with White Marsh Swamp, thence south along said swamp to its junction with Cypress Creek, thence southwest along said creek to its intersection with State Highway 130, thence northwest along said highway to its junction with State Secondary Road 1166, thence southwest along said road to its junction with State Secondary Road 1157, thence southwest along said road to its junction with U.S. Highway 701, thence south and west along said highway to its intersection with State Secondary Road 1314, thence west along said road to its junction with State Secondary Road 1346, thence southwest along said road to its junction with the North Carolina-South Carolina State line.

The Jacobs, Thomas, farm located 0.2 mile north of State Secondary Road 1847 and 1 mile northeast of the junction of said road 1847 with State Secondary Road 1740.

The Long, J. M., farm located on the southwest side of State Secondary Road 1113 and 0.4 mile northwest of its junction with State Secondary Road 1108.

The McLamb, H. M., farm located on the southwest side of State Secondary Road 1113 and 0.5 mile northwest of its junction with State Secondary Road 1108.

The Owen, J. A., farm located on the southwest side of State Highway 87 and 0.3 mile southeast of the intersection of said Highway 87 with the Bladen-Columbus County line.

The Shaw, Archie, farm located 0.2 mile southeast of State Secondary Road 1804 and 0.5 mile southeast of the junction of said Road 1804 with State Secondary Road 1808.

The Shaw, Charles H., farm located 0.1 mile north of State Secondary Road 1847 and 0.9 mile northeast of the junction of said Road 1847 with State Secondary Road 1908.

The Shipman, C. S., farm located on the east side of State Secondary Road 1909 and 0.6 mile southeast of the junction of said Road 1909 with State Secondary Road 1908.

The Spivey, D. M., farm located in the northeast corner of the intersection of U.S. Highway 701 and Gum Swamp.

The Suggs, Lacy, farm located at the end of a dirt road 0.5 mile southeast of the junction of said road with State Secondary Road 1108, said junction being 0.7 mile northeast of the junction of State Secondary Road 1108 and State Secondary Road 1118.

The Young, Grace, farm located on the west side of N.C. State Secondary Road 1914, and 0.2 mile south of the junction of said road with N.C. State Secondary Road 1904.

Craven County. The Chapman, Idel M., farm located on the west side of State Secondary Road 1459 and 0.1 mile north of junction of State Secondary Road 1463 with said road 1459 and 0.3 mile off west side of State Secondary Road 1459.

The Goodman, W. D., farm located on both sides of State Secondary Road 1263 and 2.6 miles east of its southern junction with State Secondary Road 1262.

The Hawkins, Annie A., farm located on both sides of State Secondary Road 1263 and 1 mile east of the junction of said Road 1263 with State Secondary Road 1262.

The Hawkins, Mattie, farm located on the west side of State Secondary Road 1263 and 1.2 miles east and north of its southern junction with State Secondary Road 1262.

The Hodges, Mary K., farm located on both sides of State Secondary Road 1263 and 2.2 miles east of its southern junction with State Secondary Road 1262.

The West, Gladys W., farm located on both sides of State Secondary Road 1263 and 1.4 miles east of its southern junction with State Secondary Road 1262.

The White, Raymond E., farm located on both sides of State Secondary Road 1263 and 0.2 mile east of its northern junction with State Secondary Road 1262.

Cumberland County. All of Cumberland County excluding the Fort Bragg Military Reservation, the area within the corporate limits of the city of Fayetteville, and the unincorporated communities of East Fayetteville and Bonnie Doone.

Duplin County. That area bounded by a line beginning at a point where State Secondary Road 1337 intersects the Duplin-Sampson County line, thence northeast along said road to its junction with State Highway 50, thence northwest along said highway to its junction with State Secondary Road 1355, thence northeast along said road to its junction with State Secondary Road 1332, thence northeast along said road to its junction with State Secondary Road 1304, thence southeast along said road to its intersection with Bear Swamp, thence east along said swamp to its junction with Goshen Swamp, thence southeast along said swamp to its intersection with State Secondary Road 1004, thence southeast along said road to its intersection with Nahunga Creek, thence southwest along said creek to its intersection with State Secondary Road 1301, thence northwest along said road to its junction with State Secondary Road 1346, thence southwest along said road to its junction with State Secondary Road 1385, thence west along said road to its junction with State Highway, 50, thence southeast along said highway to its junction with State Secondary Road 1900, thence southeast along said road to its junction with State Secondary Road 1003, thence east along said road to its junction with State Highway 11, thence south along said highway to its junction with State Secondary Road 1922, thence southwest along said road to its junction with State Secondary Road 1909, thence south along said road to its junction with State Secondary Road 1912, thence west along said road to its intersection with the Magnolia city limits, thence south, west, and north along said city limits to its intersection with State Secondary Road 1003, thence southwest along said road to its junction with State Secondary Road 1101, thence southeast along said road to its intersection with State Secondary Road 1102, thence southwest along said road to its junction with State Secondary Road 1126, thence west along said road to its intersection with State Secondary Road 1100, thence southeast along said road to its intersection with State Secondary Road 1102, thence south along said road to its junction with State Secondary Road 1129, thence southwest along said road to its intersection with State Secondary Road 1128, thence northwest along said road to its intersection with Duplin-Sampson County, thence north along said county line to the point of beginning.

The Alphin, Clara, farm located in the north junction of State Secondary Road 1004 and State Secondary Road 1505.

The Beard, Mary Lou, farm located on both sides of State Secondary Road 1981 and 0.6 mile west of the intersection of said road and the Northeast Cape Fear River.

The Bostic, Jake, farm located on both sides of State Secondary Road 1981 and 0.5 mile west of the intersection of said road and the Northeast Cape Fear River.

The Bradshaw, Gene A., farm located on the south side of State Secondary Road 1321 and 0.8 mile west of the junction of said road with State Secondary Road 1302.

The Bradshaw, Milton J., farm located at the northwest end of State Secondary Road 1980.

The Branch, Hall, farm located on the southeast side of State Highway 11 and 0.6 mile southwest of the junction of said higway and State Secondary Road 1004.

The Britt, Ben, farm located on the north side of State Secondary Road 1306 and 0.1 mile east of its junction with State Secondary Road 1361.

The Britt, Cornia, farm located on both sides of State Secondary Road 1545 and 0.5 mile east of the junction of said road and State Secondary Road 1564.

The Brock, Jack, farm located on both sides of State Secondary Road 1700 and 0.8 mile west of the intersection of said road and the Northeast Cape Fear River.

The Brown, George, farm located on the west side of State Secondary Road 1004 and 0.8 mile north of its junction with State Secondary Road 1504.

The Dail, Albert D., farm located on both sides of State Secondary Road 1524 and 0.1 mile north of the junction of said road and State Secondary Road 1525.

The Davis, Jimmie, farm located on the eas side of State Highway 111 and the south side of State Secondary Road 1546.

The Davis, Wenzell, farm located on the south side of State Secondary Road 1560 and 0.3 mile south of the junction of said road and State Secondary Road 1537.

The English, James Earl, farm located on the north side of State Secondary Road 1980 and 0.3 mile southwest of the junction of said road and State Secondary Road 1979.

The Garner, S. C., farm located on the south side of State Secondary Road 1306 and 0.5 mile west of the junction of said road and State Secondary Road 1511.

The Goodson, Emma, farm located on the south side of State Secondary Road 1501 and 0.3 mile west of the junction of said road and State Secondary Road 1505.

The Grady, E. C., farm located on both sides of State Secondary Road 1700 and 0.7

mile west of the intersection of said road and the Northeast Cape Fear River.

The Grady, Robert, farm located on the east side of State Secondary Road 1560 and the south side of State Secondary Road 1537.

The Grady, S. Leland, farm located on both sides of State Secondary Road 1700 and 0.6 mile west of the intersection of said road and the Northeast Cape Fear River.

The Green, Willie, farm located on both sides of State Secondary Road 1971, and 0.6 mile southwest of the junction of said road and State Highway 50.

The Harper, Milo, farm located on the northwest side of State Secondary Road 1539 and 0.6 mile northeast of the junction of said road and State Secondary Road 1540.

The Herring Estate, Jeff, farm located on the north side of State Secondary Road 1545 and 0.6 mile east of the junction of said road and State Secondary Road 1504.

The Horne, Harry, farm located on the south side of State Secondary Road 1961 and 0.8 mile west of the intersection of said road and State Secondary Road 1962.

The Howard, Henry, farm located on the north side of State Secondary Road 1700 and 0.8 mile west of the intersection of said road and the Northeast Cape Fear River.

The Hussey Estate, M. W., farm located on the east side of State Secondary Road 1560 and 0.2 mile south of the junction of said road and State Secondary Road 1537.

The Ivey, Jr., C. C., farm located on the east side of State Secondary Road 1361 and 0.3 mile south of its junction with State Secondary Road 1362.

The Ivey, Foy, No. 1, farm located on the north side of State Secondary Road 1306 and 0.3 miles east of its junction with State Secondary Road 1361.

The Ivey, Foy, No. 2, farm located on both sides of State Secondary Road 1004 and 0.1 miles south of its junction with State Secondary Road 1561.

The Jernigan, Cornelia, farm located on the west side of State Secondary Road 1360 and 0.4 mile south of its junction with State Secondary Road 1004.

The Johnson, Eldora, farm located on both sides of State Secondary Road 1123 and 1.2 miles west of the junction of said road and State Secondary Road 1103.

The Jones, Billy, farm located on both sides of State Secondary Road 1700 and 0.7 mile west of the intersection of said road and the Northeast Cape Fear River.

The Jones, H. A., farm located on south side of State Secondary Road 1700 and 0.7 mile west of the intersection of said road and the Northeast Cape Fear River.

The Jones, Nora, farm located on west side of State Secondary Road 1004 and 0.3 mile south of its junction with State Secondary Road 1305.

The Kalmar, J. N., farm located on the south side of State Highway 403 and 0.5 mile west of its junction with State Secondary Road 1304.

The Kennedy, Owen, farm located on the east side of State Secondary Road 1726 and the southeast side of State Secondary Road 1702.

The Kennedy, Sidney J., farm located on the east side of State Secondary Road 1718 and 0.2 mile south of the junction of said road and State Highway 41.

The King, W. E., farm located on the east side of State Secondary Road 1302 and 0.1 mile south of the junction of said road and State Secondary Road 1308.

The Kornegay, Byrus, farm located on the east side of State Highway 403 and 0.1 mile north of its junction with State Secondary Road 1360.

The Kornegay, Ethyl, farm located 0.2 mile east of State Secondary Road 1501 and 0.6 mile south of the intersection of said road and State Secondary Road 1519.

The Kornegay Estate, Isaac, located on the southwest side of State Secondary Road 1306 and 0.7 mile northwest of the junction of said road and State Secondary Road 1305.

The Lane, David, farm located 0.1 mile east of State Secondary Road 1369 and 0.1 mile south of its junction with State Highway 403.

The Lewis, Merle S., farm located on the east side of State Secondary Road 1004 and both sides of State Secondary Road 1506.

The Marshburn, Freeman J., farm located on both sides of State Secondary Road 1128 and 0.7 mile southeast of the intersection of said road and State Secondary Road 1129.

The Maxwell, Myra, farm located on the southeast side of State Secondary Road 1306 and the west side of State Secondary Road 1562.

The McCullen, Larry, farm located on the northeast side of State Highway 24 and 0.2 mile northwest of the junction of said highway and State Secondary Road 1904.

The McGowan, Woodell, farm located on the south side of State Secondary Road 1961 and 1.1 mile west of the intersection of said road and State Secondary Road 1962.

The Mercer, Cathleen, farm located on the south of State Secondary Road 1703 and 1.1 mile east of the intersection of said road and State Secondary Road 1704.

The Mercer, Herbert C., farm located on the south side of State Secondary Road 1703 and 0.7 mile west of the junction of said road and State Secondary Road 1732.

The Norris, Maggie T., farm located on the south side of State Secondary Road 1700 and 1.4 mile east of the intersection of said road and State Secondary Road 1701.

The Outlaw, Bennie F., farm located on both sides of State Secondary Road 1524 and north side of State Secondary Road 1525.

The Outlaw, Emma, farm located on the south of State Secondary Road 1509 and 0.5 mile southwest of the junction of said road and State Secondary Road 1510.

The Parrott, Jr., Mrs. Frank, farm located on the south side of State Secondary Road 1708 and 0.3 mile east of the intersection of said road and State Secondary Road 1704.

The Pate, Robert Lee, farm located on both sides of State Secondary Road 1357 and 0.9 mile southwest of the junction of said road and State Secondary Road 1308.

The Powell, William F., farm located on both sides of State Secondary Road 1128 and 0.2 mile southeast of the intersection of said road and State Secondary Road 1129.

The Precythe, Harold, farm located on the east side of U.S. Highway 117 and 0.1 mile south of the junction of said highway and State Secondary Road 1354.

The Rivenbark, George W., farm located on the northwest side of State Secondary Road 1131 and 0.4 mile southwest of the junction of said road and State Secondary Road 1128.

The Rouse, Beatrice S., farm located on both sides of State Secondary Road 1980 and at the west end of said road.

The Rouse, Jim, farm located on both sides of State Secondary Road 1537 and 0.3 mile north of the junction of said road and State Secondary Road 1308.

The Rouse, Rouka, farm located on the north side of State Secondary Road 1537 and the west side of State Secondary Road 1538.

The Shepard, J. T., farm located on both sides of State Secondary Road 1732 and 0.2 mile north of the junction of said road and State Secondary Road 1708.

The Smith, R. J., farm located on the north side of State Highway 11 and 1.2 miles east of the junction of said highway and State Highway 111.

The Smith, Sallie P., farm located on the northeast side of State Highway 111 and 0.8 mile southeast of the Duplin-Wayne County line.

The Stokes, Fred, farm located on the south side of State Secondary Road 1980 and 2.4 miles west of the junction of said road and State Secondary Road 1979.

The Stokes, William C., farm located at the southwest end of State Secondary Road 1980.

The Summerlin, D. C., farm located on the north side of State Secondary Road 1513 and 0.4 mile east of the junction of said road and State Secondary Road 1505.

The Summerlin, Lannie, farm located on the both sides of State Secondary Road 1359 and 0.3 mile southwest of its junction with State Secondary Road 1308.

The Summerlin, Oliver, farm located on the south side of State Highway 403 and 0.1 mile east of the corporate limits of the town of Faison.

The Sumner, India, farm located on the southwest side of State Highway 111 and 1.2 miles south of the intersection of said highway and State Secondary Road 1700.

The Sutton, Effie O., farm located on the northeast side of State Secondary Road 1004 and 0.7 mile northwest of its junction with State Secondary Road 1504.

The Turner, Lumas, farm located on the south side of State Secondary Road 1703 and 0.6 mile west of the junction of said road and State Secondary Road 1732.

The Walker, C. P., Estate, farm located on the west side of State Secondary Road 1308 and 1.2 miles north of its junction with State Secondary Road 1364.

The Whaley, Bennie, farm located on the southeast side of State Secondary Road 1931 and 0.2 mile northeast of the junction of said road and State Secondary Road 1800.

The Whitman, Herman E., farm located on the south side of State Secondary Road 1360 and 0.1 mile west of the junction of said road and State Road 1361.

The Whitman, Herman E., farm located on the north side of State Secondary Road 1360 and 0.8 mile of the intersection of said road and State Secondary Road 1361.

The Williams, McArthur, farm located on the south side of State Secondary Road 1931

and 1 mile west of the intersection of said road and State Secondary Road 1962.

The Wilson, Mammie, farm located on the east side of State Highway 111 and 1.0 mile south of the intersection of said highway and State Secondary Road 1700.

Green County. That area bounded by a line beginning at a point where State Highway 102 intersects State Highway 123 and extending south along State Highway 123 to its intersection with Contentnea Creek, thence northwest along said creek to its junction with Panther Swamp. Thence northerly along said Panther Swamp to its intersection with U.S. Highway 13–258, thence easterly along said highway to the point of beginning.

The Carmon, James E., farm located on the east side of State Secondary Road 1004 and 0.4 mile south of its junction with North Carolina Highway 102.

The Dixon, John, farm located on the east side of State Secondary Road 1004 at the junction on State Secondary Road 1405.

The Dixon, Sudie, farm located on the west side of State Secondary Road 1004 and 0.2 mile south of its junction of State Secondary Road 1405.

The Murphrey, Edward, farm located on the east side of State Secondary Road 1004 and 0.3 mile south of its junction with State Highway 102.

The Whitaker, J. H., farm located on the east side of State Secondary Road 1004 and 0.6 mile south of its junction with State Highway 102.

Harnett County. That area bounded by a line beginning at a point on the Harnett-Lee County line due west of the head of Barbecue Swamp and extending east to the head of said swamp, thence south and east along Barbecue Swamp to its intersection on State Secondary Road 1201, thence south and southeast along said road to its junction with State Highway 27, thence southeast along said highway to its junction with State Highway 24, thence southeast along said highway to its junction with State Secondary Road 1111, thence southwest along said road to its intersection with Harnett-Moore County line, thence northwest along the Harnett-Moore County line to its junction with the Moore-Harnett-Lee County line, thence northeast along the Harnett-Lee County line to the point of beginning.

That area bounded by a line beginning at a point where the Harnett-Cumberland County line and McLeod Creek intersect and extending northwest along said creek to its intersection with State Secondary Road 1117, then northeast, northwest and north along said road to its intersection with Anderson Creek, thence southeast along said creek to its intersection with the State Highway 210, thence northeast along said highway to its junction with State Secondary Road 2030, thence southeast along said road to its junction with State Secondary Road 2031, thence southwest along said road to its intersection with the Harnett-Cumberland County line, thence southwest and west along said county line to the point of beginning.

The Cook, A. L., farm located on the east side of State Secondary Road 1201 and 1.5 miles southeast of the junction of said road with State Secondary Road 1203.

The Gilchrist, Leonard W., farm located on the southeast side of State Secondary Road 1111, 0.4 mile north of the junction of said road with State Secondary Road 1110.

The Johnson, Sr., Jonah C., farm located at the junction of State Secondary Roads 1553 and 1555: The farm lies in the northeast portion of this junction.

The Keath, Vick, farm located on the east side of State Secondary Road 1293 and 0.7 mile southwest of the junction of said road with State Secondary Road 1114.

The McAden, J. L., farm located on southeast side of State Highway 27 and 0.6 mile southwest of the intersection of said highway with State Highway 87.

The Proctor, T. G., farm located on the northeast side of State Highway 27 at that point where said highway forms on overpass over State Highway 87.

The Thomas, Floyd, E., farm located on the northeast side of State Secondary Road 1146 and 0.2 mile north of the junction of said road with State Secondary Road 1117.

The Womack, E. H., farm located on east side of State Highway 27, and 1.0 mile north of the junction of said highway with State Highway 24.

Hoke County. The entire county excluding Fort Bragg Military Reservation.

Johnston County. The Baker, Mrs. Lula, farm located on the east side of State Highway 242 and 0.2 mile south of the intersection of said highway and State Secondary Road 1116.

The Blackman, Dewey, farm located on the south side of State Secondary Road 1146, and 0.4 mile east of the junction of said road with State Secondary Road 1145.

The Braswell, J. C., farm located on the east side of State Secondary Road 2519 and 0.4 mile north of the junction of State Secondary Roads 2519 and 2520.

The Davis, I. H., farm located on the southwest side of State Secondary Road 1197 and 0.1 mile southeast of the junction of said road with State Secondary Road 1198.

The Edwards, Archie, farm located on the south side of State Secondary Road 2542 and 0.6 mile south of the junction of said road with State Secondary Road 1007.

The Everett, Betty, farm located on the west side of State Secondary Road 2541 and 0.5 mile south of the junction of said road with State Secondary Road 1007.

The Everett, Betty, farm located on a farm road and 0.6 mile west of its junction with State Secondary Road 2541, said junction being 1.9 miles south of the junction of State Secondary Roads 2541 and 1007.

The Everett, Jaspar, farm located on a farm road and 0.5 mile west of its junction with State Secondary Road 2541, said junction being 1.9 miles south of the junction of State Secondary Roads 2541 and 1007.

The Hudson, Price, Estate farm located on a farm road and 0.4 mile north of its junction with State Secondary Road 1006, said junction being 0.8 mile northeast of the intersection of State Secondary Road 1006 with U.S. Highway 701.

The Johnson, Annie, farm located on the west side of State Secondary Road 1138 and 0.5 mile south of its junction with State Secondary Road 1144.

The Johnson, Corby, farm located on the southwest side of State Highway 50 and 0.4 mile southeast of the intersection of said highway and State Secondary Road 1124.

The Johnson, Floyd, farm located on the west side of State Secondary Road 1124 and 0.2 mile south of the intersection of said road and State Secondary Road 1122.

The Johnson, Wade, farm located on both sides of State Secondary Road 1144 and 0.2 mile west of the junction of said road with State Secondary Road 1138.

The Jones, U. E., farm located on the south side of State Secondary Road 1128 and 0.7 mile east of the junction of said road with State Secondary Road 1124.

The Martin, Emitt, farm located on the east of State Secondary Road 2519 and 0.3 mile north of the junction of State Secondary Roads 2519 and 2520.

The Martin, John L., farm located on the west side of State Secondary Road 1201 and 0.3 mile north of the juction of said road with State Secondary Road 1200.

The McArthur, Margaret, farm located on a farm road and 1.4 miles north of its junction with State Secondary Road 1109 and 0.9 mile west of the junction of said road with State Secondary Road 1006.

The Naylor, Mrs. Luby, farm located on the southwest side of State Highway 50 and 0.3 mile northwest of the intersection of said highway and State Secondary Road 1124.

The Smith, Clifton, farm located on the east side of State Highway 96 at the junction of said highway and State Secondary Road 1120.

The Summerlin, Everett L., farm located on the north side of State Secondary Road 1006, and 0.6 mile west of the junction of said road with State Secondary Road 1109.

The Tart, Allen, farm located on the southwest corner of the junction of State Highway 96 and State Secondary Road 1120.

The Williams, D. C., farm located on the south side of State Secondary Road 1128 and 0.3 mile east of the junction of said road with State Secondary Road 1124.

Jones County. The Franck, Mrs. Wilber, farm located on the south side of State Secondary Road 1116 and 1.9 miles west of junction of said road with State Secondary Road, 1115.

The Simpson, Eugene T., farm located on the south side of State Secondary Road 1116 and 2.5 miles west of the junction of said road at State Secondary Road 1115.

Lee County. The McGilvary, Aquilla, farm located north of State Secondary Road 1186 and 0.6 mile east of the junction of said road with State Secondary Road 1001.

Lenoir County. The Barber, Clarence, farm located on the both sides of State Secondary Road 1301 with 0.2 mile northeast of its junction with State Secondary Road 1302.

The Braxton, Clyde, Estate located on the both sides of State Secondary Road 1802 and 0.9 mile northeast of the junction of State Secondary Road. 1802 and State Highway 11.

The Brown, Nannie H., farm located in the southwest junction of State Secondary Roads 1152 and 1309.

The Carey, Jack, farm located on the both sides of State Secondary Road 1906 and 1.0 mile east of its junction with U.S. Highway 285.

The Carr, Lillian, farm located on the southwest side of State Secondary Road 1524 and 0.1 mile south of its junction with State Secondary Road 1528.

The Carter, Ephrom, farm located on the south side of State Secondary Road 1116 and 1.5 miles east of its junction with State Highway 11.

The Elmore, Lucy H., No. 1, farm located on the south side of State Secondary Road 1324 and 0.2 mile west of its junction with State Secondary Road 1333.

The Foss, Reginal D., farm located on the north side of State Secondary Road 1316 and 0.6 mile northwest of its junction with State Secondary Road 1318.

The Hamilton, C. W., farm located on the southeast side of State Secondary Road 1802 and 1.2 miles northeast of its junction with State Highway 11.

The Herring, Ben D., No. 1, farm located on the both sides of State Secondary Road 1330 and 0.2 mile west of the junction of State Secondary Roads 1330 and 1331.

The Herring, Ben D., No. 2, farm located on the west side of State Secondary Road 1310 and 0.3 mile south of its junction with State Secondary Road 1311.

The Herring, Lewis R., No. 1, farm located on the south side of State Secondary Road 1324 and 0.3 mile west of its junction with State Secondary Road 1333.

The Howard, Clarence, farm located on the south side of State Secondary Road 1105 and 0.1 mile east of its intersection with State Secondary Road 1118.

The Jarman, F. R., farm located on the southeast side of State Secondary Road 1311 and 0.7 mile southwest of its junction with State Secondary Road 1318.

The Jones, Edward S., farm located on the west side of U.S. Highway 258 and 0.3 mile north of its junction with State Secondary Road 1116.

The Joyner Farms, Inc., farm located on the both sides of State Secondary Road 1324 and 0.5 mile east of its junction with State Secondary Road 1335.

The Moody, Alton, farm located on the south side of State Highway 55 and 0.6 mile northeast of its junction with State Secondary Road 1161.

The Moye, Lenton G., farm located on the west side of State Secondary Road 1335 and 0.3 mile north of its junction with State Secondary Road 1324.

The Parrott Farms, Inc., farm located on the northwest side of State Secondary Road 1157 and 0.7 mile northwest of its intersection with State Highway 55.

The Rouse, Forrest, farm located on the northwest side of State Secondary Road 1143 and 2.9 miles northwest of its intersection with State Secondary Road 1154.

The Rouse, Jim W., farm located on the northeast side of State Secondary Road 1143 and 2.8 miles northwest of its intersection with State Secondary Road 1154.

The Rouse, Leon, farm located on the both sides of State Secondary Road 1307 and 0.4 mile southwest of its junction with State Secondary Road 1324.

The Singleton, Ruby S., farm located on the east side of State Secondary Road 1802 and 0.6 mile south of its junction with State Secondary Road 1801.

The Sutton, George Hodges, No. 1, farm located on the southwest junction of State Secondary Roads 1324 and 1307.

The Sutton, Iris, farm located on the east side of State Secondary Road 1152 and 0.6 mile south of its junction with State Secondary Road 1324.

The Sutton, John W., farm located on the southeast junction of State Secondary Roads 1330 and 1333.

The Sutton, M. L., farm located on the southeast side of State Secondary Road 1311 and 0.8 mile southwest of its junction with State Secondary Road 1318.

The Sutton, Nathan, farm located on the southeast side of State Secondary Road 1311 and 0.6 mile southwest of its junction with State Secondary Road 1318.

The Sutton, Norman, farm located on the northwest side of State Secondary Road 1308 at the end of Farm road located 0.3 mile southwest of junction of State Secondary Roads 1308 and 1324.

The Sutton, Prentice, farm located on the south side of State Secondary Road 1503 and 0.3 mile southeast of its intersection with State Secondary Road 1327.

The Sutton, Robert H., farm located on the south side of State Secondary Road 1324 and 0.2 mile east of its junction with State Secondary Road 1327.

The Sutton, Woodrow W., farm located on the north side of State Secondary Road 1331 and 0.5 mile west of its junction with State Secondary Road 1333.

The Taylor, Heber, farm located on the north side of State Secondary Road 1161 and 0.3 mile east of its juction with State Highway 55.

The Walters, H. F., farm located on both sides of State Secondary Road 1335 and 0.4 mile north of its junction with State Secondary Road 1324.

The Waters, Thomas, Estate located on both sides of State Secondary Road 1316 and 0.3 mile north of its junction with State Secondary Road 1317.

The Wood, C. W., farm located on the northwest side of State Secondary Road 1311 and 0.7 mile southwest of its junction with State Secondary Road 1318.

Moore County. The Bryant, R. E., farm located on both sides of State Secondary Road 1815 and 0.5 mile southwest of the junction of said road with U.S. Highway 15 501.

The Hardy, N. W., farm located on both sides of State Secondary Road 2007 and 0.2 mile southeast of the junction of said road with State Secondary Road 2005.

The Laton, William A., farm located on the east side of State Secondary Road 1004 and 0.3 mile north of the intersection of said road with State Secondary Road 1113.

The Marks, E. M., farm located on the south side of State Secondary Road 2019 and 2.5 miles east of the junction of said road and State Secondary Road 2018.

The McLaurin, Hattie J., farm located on the north side of N.C. Highway 211 and 0.5 mile west of the junction of said highway with State Secondary Road 2075.

The McNeill, Lena Bell, farm located on the northwest side of State Secondary Road 2077 and 0.5 mile southwest of the junction of said road with State Highway 211.

The Thomas, Claude and Ted, farm located on the west side of State Secondary Road 1128 and 0.5 mile northwest of the junction of said road with State Secondary Road 1122.

Onslow County. The Cox, Robert B., farm located on the southeast side of State Secondary Road 1224, and 0.7 mile from the junction of said road and State Secondary Road 1222.

The Lewis, L. Bryan, farm located on the southeast side of State Secondary Road 1224, and 0.9 mile from the junction of said road and State Secondary Road 1222.

The Marshburn, James B., farm located on the southeast side of State Secondary Road 1224, and 0.6 mile from the junction of said road and State Secondary Road 1222.

The McAllister, Henry, farm located on both sides of State Secondary Road 1316 and 1 mile southwest of said road and its junction with State Secondary Road 1306.

Pender County. That area bounded by a line beginning at a point where State Secondary Road 1104 intersects the Pender-Bladen County line, and extending northeast along said county line to its junction with Black River, thence southeast along said river to its intersection with State Highway 210, thence southwest along said highway to its junction with State Secondary Road 1103, thence southeast along said road to its junction with State Secondary Road 1104, thence southwest and northwest along said road to the point of beginning.

That area bounded by a line beginning at a point where Moore's Creek intersects State Highway 53, and extending east along said highway to its intersection with State Secondary Road 1121, thence south along said road to its intersection with State Secondary Road 1125, thence west along said road to its intersection with Moores Creek, thence northeast along said creek to the point of beginning.

That area bounded by a line beginning at a point where State Secondary Road 1517, junctions with U.S. Highway 117, and extending northwest along said highway to its intersection with Walker Swamp, thence northeast along said swamp to its junction with Pike Creek, thence southeast along said creek to its junction with the Northeast Cape Fear River, thence south along said river to its intersection with State Highway 210, thence southwest along said highway to its junction with State Secondary Road 1518, thence southeast along said road to its junction with State Secondary Road 1517, thence westerly along said road to the point of beginning.

The Alderman, Bessie, farm located on the north side of State Highway 53 and 0.1 mile west of its intersection with State Secondary Road 1121.

The Anderson, Julian W., farm located on both sides of State Secondary Road 1108 and

0.9 mile northwest of the junction of said road and State Secondary Road 1107.

The Armstrong, Willie, farm located 0.5 mile west of State Secondary Road 1408 and 0.3 mile south of the junction of said road with State Highway 210.

The Colvin, Alex, farm located on the northwest side of State Secondary Road 1120 and 1.4 miles southwest of the intersection of said road and U.S. Highway 421.

The Corbett, P. P. Estate, farm located 0.1 mile west of State Secondary Road 1202 and 0.2 mile north of its junction with State Secondary Road 1100.

The Kea, Leo, farm located 0.5 mile east of State Secondary Road 1105 and 1 mile southwest of the junction of said road and State Secondary Road 1104.

The Kea, Nora, farm located 0.1 mile west of the end of State Secondary Road 1106.

The Marshall, Milvin, farm located on the north side of State Secondary Road 1103 and 0.6 mile east of the southern junction of said road and State Secondary Road 1104.

The McCallister, Mary K., farm located 0.2 mile east of State Secondary Road 1105 and 1 mile southwest of the junction of said road and State Secondary Road 1104.

The McLendon, Evander, farm located 0.4 mile north of State Secondary Road 1411 and 0.3 mile east of its intersection with Pike Creek.

The Murphy, Henry, farm located 0.1 mile west of State Secondary Road 1121 and 0.4 mile north of its intersection with State Highway 58.

The Stringfield Estate, John, located on the southwest side of State Secondary Road 1517 and 1.4 miles east of the junction of said road and U.S. Highway 117.

The Thomas, Kenneth, farm located on the west side of State Secondary Road 1125 and 0.2 mile north of its junction with State Secondary Road 1121.

The Walker, Janie N., farm located on both sides of State Secondary Road 1125 and on the west side of State Secondary Road 1121.

The Williams, John H., and Heirs, farm located on the east side of State Secondary Road 1520 and 2.7 miles north of the junction of said road and State Highway 210.

Pitt County. That area bounded by a line beginning at a point where State Secondary Road 1919 intersects the Pitt-Craven County Line, thence southwest along said county line to its intersection with State Highway 118, thence westward along said highway to it's intersection with State Secondary Road 1753, thence northward along said road to its junction with State Secondary Road 1919, thence eastward to the point of beginning.

The Garris, Bruce E., farm located in the south junction of State Highway 118 and State Secondary Road 1916.

The Hodges, M. B., farm located on the east side of State Secondary Road 1907 and 1.1 miles north of State Highway 118.

Richmond County. The Autry, J. H., farm located on the north side of State Secondary Road 1803 and 0.7 miles east of Osborne.

The Beck, Lacy A., farm located on both sides of State Secondary Road 1607 and 0.4 mile southeast of the intersection of said road and State Secondary Road 1608.

The Bethea, Queen, farm located on the northeast side of State Secondary Road 1803 and 0.4 mile southeast of the intersection of said road and State Secondary Road 1825.

The Chappell, Fred, Jr., located on the northwest side of N.C. Highway 177 and 0.5 mile northeast of the junction of said road and State Secondary Road 1607.

The David, Ethel, farm located on both sides of State Secondary Road 1803, on the west side of the intersection of said road with State Secondary Road 1825.

The Davis, Cimon, farm located on the northwest side of N.C. Highway 38 and 0.5 mile northeast of the intersection of said road and State Secondary Road 1803.

The Davis, Katherine, farm located on the northeast side of State Secondary Road 1803 and 0.4 mile northwest of the intersection of said road and N.C. Highway 68.

The Dial, Dennic, farm located on the north side of State Secondary Road 1607 and 0.8 mile west of the intersection of said road and State Secondary Road 1608.

The Dumas, Elnora, farm located on the northeast side of State Secondary Road 1803 and 0.3 mile southeast of the intersection of said road and State Secondary Road 1825.

The Dumas, Reba, farm located on the northeast side of State Secondary Road 1803 and 0.3 mile northwest of said intersection of N.C. Highway 38.

The Elizhbugar, Charity, farm located on the northeast side of State Secondary Road 1008 and 2 miles northwest of its junction with State Secondary Road 1475.

The Godfrey, J. R., farm located on the northwest side of State Secondary Road 1318 and 0.2 mile north of its junction with State Secondary Road 1310.

The Hailey, Annie, farm located on the north side of State Secondary Road 1475 and 1.7 miles west of its junction with U.S. Highway 1.

The Hailey, Maria, farm located on the southwest side of State Secondary Road 1440 and 0.3 mile southeast of its junction with State Secondary Road 1433.

The Hamlet Gin & Supply Co., farm located on both sides of State Secondary Road 1803 and on the east side of the intersection of said road and State Secondary Road 1825.

The Ingram, Rome, farm located on the southwest side of State Secondary Road 1003 and 1.8 miles northwest of its junction with State Secondary Road 1475.

The Little, John, farm located on the southeast side of State Secondary Road 1442 and at the junction of said road with State Secondary Road 1476.

The McLaurin, Meta, farm located on the southwest side of State Secondary Road 1803 and 0.3 mile southeast of the intersection of said road and State Secondary Road 1825.

The McNeill, Dalton, farm located on the southwest side of State Secondary Road 1003 and 1.9 miles northwest of its junction with State Secondary Road 1475.

The Quick, Julius, farm located on the northeast side of State Secondary Road 1992 and 0.6 mile northeast of its junction with State Secondary Road 1994.

The Rush, Eli, farm located on the northwest side of State Secondary Road 1442 and 0.7 mile northeast of its junction with State Secondary Road 1439.

The Rush, James, farm located on the southeast side of State Secondary Road 1442 and 0.7 mile northeast of its junction with State Secondary Road 1439.

The Sorennen, Gladys, farm located on the southwest side of State Secondary Road 1803 and 0.4 mile northwest of the intersection of said road and N.C. Highway 38.

The Steen, Willard, farm located on the southwest side of State Secondary Road 1803 and 0.2 mile southeast of the intersection of said road and State Secondary Road 1825.

The Terry, Ruth, farm located on both sides of State Secondary Road 1442 and 0.2 mile northeast of its junction with State Secondary Road 1477.

The Terry, Tom, farm located on both sides of State Secondary Road 1442 and 0.3 mile northeast of its junction with State Secondary Road 1477.

The Terry, W. C., farm located on the west side of State Secondary Road 1424 at its junction with State Secondary Road 1507 at Roberdel, N.C.

The Thomas, Walter, farm located on both sides of U.S. Highway 220 and 0.4 mile northeast of its junction with State Secondary Road 1433.

The Wall, Ben, farm located on the northeast side of State Secondary Road 1440 and 0.4 mile southeast of its junction with State Secondary Road 1433.

The Waters, Will, farm located on both sides of State Secondary Road 1822 and 0.4 mile southwest of its junction with State Secondary Road 1607.

The Watkins, John Q., farm located on the southeast side of State Secondary Road 1476 and 0.3 mile northeast of its junction with State Secondary Road 1442.

The Watkins, Mosby, farm located on both sides of State Secondary Road 1476 and 0.2 mile northeast of its junction with State Secondary Road 1442.

The York, Will, farm located on the northeast side of State Secondary Road 1803 and 0.4 mile northwest of the intersection of said road and N.C. Highway 38.

Sampson County. The entire county.

Scotland County. That area bounded by a line beginning at a point where U.S. Highway 15–401 intersects the North Carolina-South Carolina State line and extending northeast along said highway to its junction with U.S. Highway 15A–401A, thence north along said highway to its junction with U.S. Highway 501, thence north along said highway to its intersection with U.S. Highway 15–401, thence southwest along said highway to its intersection with State Secondary Road 1300, thence northwest along said road to its junction with State Secondary Road 1110, thence northwest along said road to its junction with State Secondary Road 1324, thence north along said road to its junction with State Secondary Road 1345, thence northwest along said road to its intersection with State Secondary Road 1341, thence northeast along said road to its junction with State Secondary Road 1338, thence north along said road to its intersection with the southern boundary of the Sandhills Game Management Area, thence east along said

boundary to its intersection with U.S. Highway 15–1501, thence north along said highway to its intersection with the Scotland-Hoke County line, thence southeast along said county line to the Scotland-Robeson County line, thence south and southwest along said county line to the North Carolina-South Carolina State line, thence northwest along said State line to the point of beginning, excluding the area within the corporate limits of the city of Laurinburg and the town of East Laurinburg.

The Butler, Luther, farm located on the south side of State Secondary Road 1154 and 0.2 mile east of the junction of said road with State Secondary Road 1155.

The Calhoun, L. E., farm located on the south side of State Highway 79 and and 0.3 mile west of its junction with State Secondary Road 1118.

The Gibson, H. P., Estate, farm located on the north side of State Highway 79 and 0.4 mile west of its junction with State Secondary Road 1118.

McCoy, R. F., farm located on the east side of State Secondary Road 1346 and 0.4 mile north of its junction with State Secondary Road 1343.

The Morgan, J. D., farm located on the east side of State Secondary Road 1346 and 0.5 mile north of the junction of said road with State Secondary Road 1343.

The Morgan, J. D., farm located on both sides of State Secondary Road 1345 and 0.1 mile northwest of its junction with State Secondary Road 1342.

The Newton, Peter F., farm located at the intersection of State Secondary Roads 1334, 1336, and 1345.

The Sharpe, Preston, farm located on the south side of U.S. Highway 74 and 0.2 mile west of the junction of said highway with State Secondary Road 1153.

The Steele, J. D., farm located on both sides of State Secondary Road 1351 and 0.9 mile northwest of the junction of said road with State Secondary Road 1346.

Wayne County. That area bounded by a line beginning at a point where the State Highway 111 and State Highway 55 intersect, thence southwest and west along State Highway 55 to its intersection with State Secondary Road 1937, thence northerly on said road to its junction with State Secondary Road 1932, thence north on said road to the intersection with State Secondary Road 1120, thence easterly along said road to its junction with State Secondary Road 1915, thence east along a line projected from a point at the junction of State Secondary Roads 1120 and 1915 to the junction of said line with a point located at the junction of Sleepy Creek and Neuse River, thence east along said river to its intersection with State Highway 111, thence south along said highway to the point of beginning.

The Barwick, George, farm located on the east side of State Secondary Road 1931 and 0.1 mile south of its junction with State Secondary Road 1930.

The Baucom, Howard, farm located on the east side of State Secondary Road 1932 and 0.2 mile north of its junction with State Secondary Road 1927.

The Benton, Bernice L., farm located on the south side of State Secondary Road 1730 and 0.3 mile east of its junction with State Highway 111.

The Brock, Odell, farm located on the north side of State Secondary Road 1210 and 0.3 mile east of its junction with State Secondary Road 1209.

The Carraway, Ethel, farm located on the east side of State Secondary Road 1915 and 0.1 mile north of the junction of said road and State Secondary Road 1130.

The Casey, Emma, E., farm located 7 miles east of Goldsboro on the north side of U.S. Highway 70 and 0.4 mile east of the junction of State Secondary Road 1721 and said highway.

The Coor, O. S., farm located on both sides of State Secondary Road 1730 and 0.6 mile east of its junction with State Highway 111.

The Crawford, William P., farm located on the south side of State Secondary Road 1330 and 0.9 mile west of State Highway 581.

The Daly, N. B., farm located on the north side of State Secondary Road 1730 and 0.8 mile east of the junction of said road with State Highway 111.

The Dawson, L. A., farm located on the west side of State Highway 111 and 0.5 mile south of the junction of said highway and State Secondary Road 1730.

The Edwards, Julia, farm located in the northeast intersection of State Highway 111 and State Secondary Road 1745.

The Flowers, Willie, farm located on the north side of U.S. Highway 13 and 0.4 mile east of its junction with State Secondary Road 1207.

The Grady, Gertrude W., farm located on the south side of State Secondary Road 1741 and 0.7 miles east of its junction with State Secondary Road 1740.

The Grady, Mrs. Sim, farm located in the north junction of State Highway 111 and State Secondary Road 1730.

The Grady, Vernie C., farm located on the west side of State Secondary Road 1931 and 0.2 mile north of its intersection with State Secondary Road 1120.

The Grant, Maggie, Estate located on the west side of N.C. Highway 111 and 1.9 miles south of the junction of State Secondary Road 1730 with said highway.

The Grant, Nannie, farm located on both sides of State Secondary Road 1741 and 0.6 miles east of its junction with State Secondary Road 1740.

The Grantham, Barfield, farm located on the west side of State Secondary Road 1931 and 0.4 mile north of its intersection with State Secondary Road 1120.

The Gray, Albert, farm located on the east side of State Secondary Road 1719 and 0.9 mile south of its intersection with U.S. Highway 70.

The Green, Bessey, farm located at the southern end of the State Secondary Road 1741 and 1.3 miles east of its junction with State Secondary Road 1740.

The Griffin, McKinley, farm located on the north side of State Secondary Road 1737 and 0.2 mile east of its junction with State Secondary Road 1731.

The Griffin, Oliver H., farm located 0.6 mile north of Dudley and 0.2 mile west of U.S. Highway 117

The Griffin, W. A., farm located on the northeast side of State Secondary Road 1731 and 0.6 mile north of its junction with State Secondary Road 1737.

The Gurley, Clara Lee, farm located on the south side of State Secondary Road 1330 and 0.1 mile west of the junction of said road and State Secondary Road 1332.

The Haggin, Joe, No. 1, farm located on the east side of State Secondary Road 1931 and 0.7 mile north of its intersection with State Secondary Road 1120.

The Haggin, Joe, No. 2, farm located on the east side of State Secondary Road 1931 and 1.1 miles northeast of its intersection with State Secondary Road 1120.

The Ham, George E., farm located southeast of Seymour Johnson Air Base on the south side of State Secondary Road 1909 and 0.7 mile west of the junction of said road with State Secondary Road 1910.

The Herring, Charles F., farm located on the south side of State Secondary Road 1741 and 0.3 mile east of its junction with State Secondary Road 1740.

The Herring, Harmon, farm located on the south side of State Secondary Road 1734 and 0.4 mile east of its junction with State Secondary Road 1731.

The Herring, Thel, farm located on the west side of State Secondary Road 1711 and 0.4 mile north of its junction with U.S. Highway 70A.

The Hines, J. D., farm located on both sides of State Secondary Road 1230 and 0.8 mile east of the intersection of said road with State Highway 581.

The Hollaman, R. J., farm located on the northwest corner of State Secondary Road 1125 and 0.7 mile north of the junction of said road and State Secondary Road 1122.

The Humphrey, Josephine, farm located on east side of State Secondary Road 1932 and 0.2 mile north of its intersection with State Secondary Road 1120.

The Ivey, W. H., farm located on the south side of State Secondary Road 1734 and 0.3 mile east of its junction with State Secondary Road 1731.

The Johnson, J. R., farm located on the south side of State Secondary Road 1330 and 0.1 mile west of the junction of said road and State Secondary Road 1332.

The Jones, Mary, farm located on both sides of State Secondary Road 1730 and its junction with State Secondary Road 1731.

The Lane, Alfred, farm located on the south side of State Secondary Road 1730 and 0.4 mile east of its junction with State Highway 111.

The Lofton, Burt & Davis, King, farm located on the east side of State Secondary Road 1730 and 0.3 miles south of its junction with State Highway 55.

The McClenny, G. A. farm located on the south side of State Secondary Road 1907 and 0.1 mile west of the junction of said road with State Highway 581.

The McClenny, G. A., No. 2, farm located on both sides of State Secondary Road 1332 and 0.1 mile north of junction of said road and State Secondary Road 1330.

The Newsome, Paul, farm located on the east side of State Secondary Road 1719 and 1 mile south of its intersection with U.S. Highway 70.

The Oliver, Estella J., farm located on the west side of U.S. Highway 117 and 0.8 mile north of Brogden School.

The Oliver, H. H., farm located on the south side of State Secondary Road 1219 and 0.4 mile east of its junction with State Secondary Road 1218.

The Parks, Robert, farm located on the southeast side of State Secondary Road 1932 and 0.5 mile northeast of its intersection with State Secondary Road 1120.

The Perkins, Joe D., farm located on the northwest side of State Secondary Road 1711 and 0.2 mile southwest of the intersection of said road with U.S. Highway 70 Bypass.

The Price, James, farm located in the southeastern intersection of State Highway 111 and State Secondary Road 1745.

The Ray, Cora Pate, farm located on both sides of State Secondary Road 1730 and 0.8 mile west of its junction of State Secondary Road 1731.

The Raynor, A. B., farm located on the south side of U.S. Highway 13 and 0.1 mile east of its junction with State Secondary Road 1207.

The Raynor, Early, No. 1, farm located on the south side of U.S. Highway 13 and 0.3 mile east of its junction with State Secondary Road 1207.

The Raynor, Early, No. 2, farm located on the north side of State Secondary Road 1101 and 0.7 mile east of its intersection with State Secondary Road 1105.

The Raynor, Elester, farm located on the east side of State Secondary Road 1105 and 0.8 mile south of its intersection with U.S. Highway 13.

The Sasser, Rosa, farm located on both sides of State Highway 111 and 0.1 mile south of its junction with State Secondary Road 1912.

The Smith, Alfred, farm located on the north side of State Secondary Road 1330 and 0.9 mile west of the junction of said road and North Carolina Highway 581.

The Smith, Arnold, farm located on the southeast side of State Secondary Road 1932 and 0.5 mile northeast of its intersection with State Secondary Road 1120.

The Smith, Olivia, farm located on the southeast side of State Secondary Road 1122 and both sides of State Secondary Road 1124.

The Sutton, D. M., farm located on the east side of State Secondary Road 1731 and 0.9 mile north of the Neuse River.

The Sutton, Gordon, farm located on the south side of State Secondary Road 1730 and 1.6 miles east of its junction with State Highway 111.

The Talton, Lillian D., farm located on the south side of State Secondary Road 1730 and 0.6 mile east of its junction with State Highway 111.

The Tart, John, No. 1, farm located on the south side of U.S. Highway 13 and 0.7 mile east of its intersection with State Secondary Road 1105.

The Thornton, S. E., farm located on the southeast junction of State Secondary Roads 1210 and 1209.

The Turnage, W. H., farm located on the northwest side of State Secondary Road 1932 and 0.3 mile northeast of its junction with State Secondary Road 1927.

The Weaver, Luby W., farm located on both sides of State Secondary Road 1106 and 0.2 mile east of its junction with State Secondary Road 1101.

The Williams, Eddie, farm located on the north side of State Highway 581 and the east side of State Secondary Road 1236 at the junction of said roads.

The Wise, Ella, farm located on the south side of State Secondary Road 1208 and 1 mile west of its junction with State Secondary Road 1209.

Wilson County. The Eatmon, Ralph, farm located on both sides of State Secondary Road 1302 and 0.5 mile east of its intersection with State Secondary Road 1301.

2. In § 301.80–2a relating to the State of South Carolina under suppressive area, the description for Florence County is changed to add three properties in alphabetical order to read as follows:

South Carolina

(1) *Generally infeasted area.* None.

(2) *Suppressive area.*

* * * * *

Florence County.

* * * * *

The Canal Timber Company, farm located at the junction of State Secondary Highway 57 and State Secondary Highway 791. Said farm being on all sides of said junction.

* * * * *

Done at Washington, D.C. this 8th day of June, 1979.

Note.—This proposal has been reviewed under the USDA criteria established to implement E. O. 12044, "Improving Government Regulations." A determination has been made that this action should not be classified "significant under these criteria." A draft Impact Analysis is available from Plant Protection and Quarantine Programs, APHIS, Room 633, Federal Building, Hyattsville, MD 20782.

James O. Lee, Jr.,

Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Health Inspection Service.

[FR. Doc. 79-18378 Filed 6-14-79; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

[7 CFR Part 945]

Irish Potatoes Grown in Certain Designated Counties in Idaho and Malheur County, Oreg.; Proposed Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed regulation would require fresh market shipments of potatoes grown in certain counties in Idaho and Malheur County, Oregon, to be inspected and meet minimum grade, size, cleanliness, maturity and pack requirements during the period August 1, 1979 through August 15, 1980. The regulation would promote orderly marketing of such potatoes and keep less desirable sizes and qualities from being shipped to consumers.

DATE: Comments due July 16, 1979.

ADDRESSES: Comments should be sent to: Hearing Clerk, Room 1077 South Building, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written comments shall be submmitted, and they will be made available for public inspection at the office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Donald S. Kuryloski, Acting Deputy Director, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone: (202) 447-6393.

SUPPLEMENTARY INFORMATION: Marketing Agreement No. 98 and Order No. 945, both as amended (7 CFR Part 945), regulate the handling of potatoes grown in designated counties in Idaho and Malheur County, Oregon. It is effective under the Agricultural Marketing Act of 1937, as amended (7 U.S.C. 601–674). The Idaho-Eastern Oregon Potato Committee, established under the order, is responsible for its local administration.

This regulation is based upon recommendations made by the committee at its public meeting in Pocatello, Idaho, on May 31, 1979.

The proposed regulation is similar to those issued during past seasons. The grade, size, cleanliness, maturity, pack and inspection requirements recommended herein are necessary to prevent potatoes of low quality or undesirable sizes from being distributed to fresh market outlets. The specific proposed requirements would benefit consumers and producers by standardizing and improving the quality of the potatoes shipped from the production area, thereby promoting orderly marketing, and would tend to effectuate the declared policy of the act.

Exceptions would be provided to certain of these requirements to recognize special situations in which such requirements would be inappropriate or unreasonable.

A specified quantity of potatoes would be exempt from maturity requirements in order to (1) permit

growers to make test diggings without loss of the potatoes so harvested or (2) to allow a lot to be shipped which after regrading, meets the grade and size requirements but then fails to meet the maturity requirements, possibly due to further "skinning" as a result of running the potatoes over the grader again.

Shipments would be permitted to certain special purpose outlets without regard to minimum grade, size, cleanliness, maturity and pack requirements, provided that safeguards were met to prevent such potatoes from reaching unauthorized outlets. Since no purpose would be served by regulating potatoes used for charity purposes, such shipments would also be exempt. Certified seed and seed pieces cut from stock eligible for certification would be exempt, because requirements for this outlet differ greatly from those for fresh market.

Potatoes used for experimentation have special requirements and do not normally enter commercial channels of trade. Potatoes for most processing uses are exempt under the legislative authority for this part.

Requirements for export shipments differ from those for domestic markets. While the standard quality requirements are desired in foreign markets, smaller sizes are more acceptable. In commercial prepeeling, operators can use potatoes with surface defects which would be undesirable for the tablestock market, and smaller sizes are acceptable. Therefore, different requirements are proposed for export and prepeeling shipments.

In order to maximize the benefits of orderly marketing the proposed regulation should become effective on August 1, when the marketing season is expected to begin. Interested persons were given an opportunity to comment on the proposal at an open public meeting on May 31, where it was unanimously recommended by the committee. This proposal is similar to regulations in effect for past seasons. It is hereby determined that the period allowed for comments should be sufficient under these circumstances and will effectuate the declared policy of the act.

The proposal is as follows:

§ 945.337 [Removed]

Section 945.337 is removed and § 945.338 is added to Part 945 of Title 7 CFR to read as set forth below.

§ 945.338 Handling regulation.

During the period August 1, 1979, through August 15, 1980, no person shall handle any lot of potatoes unless such potatoes meet the requirements of paragraphs (a), (b), (c) and (d) of this section, or unless such potatoes are handled in accordance with paragraphs (e) and (f), or (g) of this section.

(a) *Minimum quality requirements.*—(1) *Grade. All varieties.* U.S. No. 2 or better grade.

(2) *Size.* (i) *Round red varieties.* 1⅞ inches minimum diameter.

(ii) *All other varieties.* 2 inches minimum diameter, or 4 ounces minimum weight.

(iii) *All varieties.* Size B if U.S. No. 1 grade.

(3) *Cleanliness. All varieties.* "Fairly clean."

(b) *Minimum maturity requirements.*—(1) *White Rose and red skin varieties.* Each season from August 1 through December 31, "moderately skinned"; thereafter no maturity requirements.

(2) *Norgold varieties.* Each season from August 1 through August 15, "moderately skinned"; thereafter "slightly skinned."

(3) *All other varieties.* "Slightly skinned."

(4) *Exceptions.* (i) Subject to compliance with subdivision (iii) of this subparagraph, any lot of potatoes not exceeding a total of 80 hundredweight of each variety may be handled for any producer without regard to the foregoing maturity requirements.

(ii) If an officially inspected lot of potatoes meets the foregoing maturity requirements, but fails to meet the grade and size requirements, the lot may be regraded. If, after regrading, such lot then meets the grade and size requirements but fails to meet the maturity requirements, as indicated by the applicable Federal-State inspection certificate, such lot if not exceeding 100 hundredweight shall be exempt from the foregoing maturity requirements if the handler complies with subdivision (iii) of this subparagraph.

(iii) Prior to each shipment of potatoes exempt from the foregoing maturity requirements, the handler thereof shall report to the committee the name and address of the producer of such potatoes, and each such shipment shall be handled as an identifiable entity.

(c) *Pack.* (1) When 50-pound containers (except master containers) of long varieties of potatoes are marked with a count, size or similar designation they must meet the count, average count and weight ranges for the count designation listed below.

Count	Range: Average count*	Range: Weight
Larger than 50 size	10 percent over or under	5 percent over or under	15 ounces or larger
Larger than:			
50 size	46 to 55	49 to 58	12 to 16.
60 size	54 to 66	57 to 63	10 to 14.
70 size	63 to 77	67 to 74	9 to 13.
80 size	72 to 88	76 to 84	8 to 13.
90 size	81 to 99	86 to 95	7 to 12.
100 size	90 to 110	96 to 106	6 to 10.
110 size	99 to 121	105 to 116	5 to 9.
120 size	108 to 132	114 to 126	4 to 8.
130 size	117 to 143	124 to 137	4 to 8.
140 size	126 to 154	133 to 147	4 to 8.
Smaller than 140 size	10 percent over or under	5 percent over or under	4 to 8.

*Applicable to lots.

The following tolerances by weight, are provided for potatoes in any lot which fail to meet weight range for the designated count:

(i) Not to exceed 5 percent for undersize; and

(ii) Not to exceed 10 percent for oversize.

(2) Potatoes packed in 50-pound cartons shall be U.S. No. 1 or better grade. However, potatoes of U.S. Extra No. 1 grade shall be no smaller than 110 size nor larger than 60 size.

(d) *Inspection.* (1) No handler shall handle potatoes unless such potatoes are inspected by either the Idaho Federal-State Inspection Service or Oregon Federal-State Inspection Service and are covered by a valid inspection certificate except when relieved of such requirement pursuant to paragraphs (e) and (f), or (g) of this section.

(2) Each lot moving by truck shall be accompanied by a copy of a valid inspection certificate.

(e) *Special purpose shipments.* (1) The minimum grade, size, cleanliness, maturity and pack requirements set

forth in paragraphs (a), (b) and (c) of this section shall not be applicable to shipments of potatoes for any of the following purposes:

(i) Charity;

(ii) Certified seed;

(iii) Seed pieces cut from stock eligible for certification as certified seed;

(iv) Experimentation; and

(v) Canning, freezing and "other processing" as hereinafter defined: Except shipments of potatoes for the purpose specified in this subdivision (v) shall be exempt from inspection requirements specified in § 945.65 and paragraph (d) of this section and from assessment requirements specified in § 945.42.

(2) The minimum grade, size, cleanliness, maturity and pack requirements set forth in paragraphs (a), (b) and (c) of this section shall be applicable to shipments of potatoes for each of the following purposes:

(i) *Export.* Except potatoes of a size not smaller than 1½ inches in diameter may be shipped if the potatoes grade not less than U.S. No. 2; and

(ii) *Prepeeling.* Except potatoes of a size not smaller than 1½ inches in diameter may be shipped if the potatoes grade not less than Idaho Utility or Oregon Utility grade.

(f) *Safeguards.* (1) Each handler making shipments of potatoes for charity, seed pieces cut from stock eligible for certification, experimentation, export, or for prepeeling pursuant to paragraph (e) of this section shall:

(i) First, apply to the committee for and obtain a Certificate of Privilege to make shipments for each purpose;

(ii) Upon request by the committee, furnish reports of each shipment pursuant to the applicable Certificate of Privilege;

(iii) At the time of applying to the committee for a Certificate of Privilege, or promptly thereafter furnish the committee with a receiver's or buyer's certification that the potatoes so handled are to be used only for the purpose stated in the application and that such receiver will complete and return to the committee such periodic receiver's reports that the committee may require.

(iv) Mail to the office of the committee a copy of the bill of lading for each Certificate of Privilege shipment promptly after the date of shipment;

(v) Bill each shipment directly to the applicable receiver.

(2) Each handler making shipments of potatoes for canning, freezing, or "other processing" pursuant to paragraph (e) of this section shall:

(i) First apply to the committee for and obtain a Certificate of Privilege to make shipments for processing;

(ii) Make shipments only to those firms whose names appear on the committee's current list of manufacturers of potato products;

(iii) Upon request by the committee, furnish reports of each shipment pursuant to the applicable Certificate of Privilege;

(iv) Mail to the committee's office a copy of the bill of lading for each Certificate of Privilege shipment promptly after the date of shipment;

(v) Bill each shipment directly to the applicable processor.

(3) Each receiver of potatoes for processing pursuant to paragraph (e) of this section shall:

(i) Complete and return an application form for listing as a manufacturer of potato products;

(ii) Certify to the committee and to the Secretary that potatoes received from the production area for processing will be used for such purposes and will not be placed in fresh market channels;

(iii) Report on shipments received as the committee may require and the Secretary approve.

(g) *Minimum quantity exception.* Each handler may ship up to, but not to exceed, five hundredweight of potatoes any day without regard to the inspection and assessment requirements of this part, but this exception shall not apply to any shipment that exceeds five hundredweight of potatoes.

(h) *Definitions.* The terms "U.S. Extra No. 1," "U.S. No. 1," "U.S. No. 2," "Size B," "fairly clean," "moderately skinned," and "slightly skinned," shall have the same meaning as when used in the United States Standards for Potatoes (7 CFR 2851.1540–2851.1566), including the tolerances set forth therein. The term "prepeeling" means the commercial preparation in a prepeeling plant of clean, sound, fresh potatoes by washing, peeling or otherwise removing the outer skin, trimming, sorting, and properly treating to prevent discoloration preparatory to sale in one or more of the styles of peeled potatoes described in § 2852.2422 of the United States Standards for Peeled Potatoes (7 CFR 2852.2421–2852.2433). The term "other processing" has the same meaning as the term appearing in the act and includes, but is not restricted to, potatoes for dehydration, chips, shoestrings, starch, and flour. It includes only that preparation of potatoes for market which involves the application of heat or cold to such an extent that the natural form or stability of the commodity undergoes a substantial change. The act of peeling, cooling, slicing, dicing, or applying material to prevent oxidation does not constitute "other processing." The terms "Idaho Utility" grade and "Oregon Utility" grade shall have the same meaning as when used in the standards for potatoes for the respective State. Other terms used in this section shall have the same meaning as when used in Marketing Agreement No. 98 and Order No. 945, both as amended.

(i) *Applicability to imports.* Pursuant to § 8e of the act and § 980.1 "Import regulations" (7 CFR 980.1), Irish potatoes of the long varieties imported during the effective period of this section shall meet the grade, size, quality and maturity requirements specified in paragraphs (a) and (b) of this section.

Dated: June 12, 1979.

Note.—This proposed regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

D. S. Kuryloski,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-18854 Filed 6-14-79; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL DEPOSIT INSURANCE CORPORATION

[12 CFR Part 309]

Routine Public Disclosure of Trust Department Annual Reports of Assets Filed by State Nonmember Insured Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed Amendment to existing Regulations.

SUMMARY: The Board of Directors of FDIC has voted to amend Part 309 of its regulations so as to allow for routine public disclosure of the Trust Department Annual Reports of Assets filed with the FDIC by State nonmember insured banks. All interested persons are invited to submit written comments on the proposed amendment.

DATES: Comments must be received by July 16, 1979.

ADDRESS: Comments should be addressed to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429.

FOR FURTHER INFORMATION CONTACT: Pamela E. F. LeCren, Attorney, legal Division (202–389–44553), or John Harvey, Review Section Chief (202–389–4620).

SUPPLEMENTARY INFORMATION: The FDIC currently obtains Trust Department Annual Reports of Assets from nonmember insured banks. The information compiled from these reports is used in a publication of statistical data on trust activities. The publication contains in some instances the data supplied by individual banks. The reports are themselves exempt from public disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)(8)), but may be disclosed at the FDIC's discretion. As it is the opinion of the Board of Directors of the FDIC that the public will be benefited by the release of this information and that State nonmember insured banks will not be harmed thereby, the Board of Directors proposes to make these reports available to the public on a routine basis. In order to do so, § 309.4(b) of FDIC's regulations must be amended to allow for such disclosure.

* * * * *

In consideration of the foregoing, the Board of Directors of the FDIC proposes to amend 12 CFR § 309.4(b)(1) by adding at the end thereof:

§ 309.4 Information made available for public inspection.

(b) * * *

(1) * * *

(v) Annual Trust Department Report of Assets for commercial banks and mutual savings banks.[*]

By order of the Board of Directors of the Federal Deposit Insurance Corporation 11th day of June, 1979.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 79-18691 Filed 6-14-79; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[File No. 791 0077]

Howard Johnson Co.; Consent Agreement With Analysis To Aid Public Comment

Correction

In FR Doc. 79-17289 appearing at page 32231 in the issue for Tuesday, June 5, 1979, on page 32232, third column, delete the first sentence of the first paragraph under the Analysis of Proposed Consent Order and insert the following:

"The Federal Trade Commission has accepted an agreement to a proposed consent order from Howard Johnson Company.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons."

BILLING CODE 1505-01

[*] Trust Department report number 8020/33.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[18 CFR Part 271]

[Docket No. RM79-44]

Ceiling Prices; High-Cost Natural Gas

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Inquiry.

SUMMARY: The Federal Energy Regulatory Commission (Commission) requests comments on what regulations should be promulgated for the implementation of section 107(b) of the Natural Gas Policy Act of 1978. Section 107(b) deals with the authority of the Commission to set incentive prices for high-cost natural gas.

DATES: Comments should be filed by July 16, 1979.

ADDRESSES: All filings should reference Docket No. RM79-44 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Philip Yates, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 (202) 275-4212.

The Federal Energy Regulatory Commission (Commission) gives notice that it is considering proposing regulations implementing all or portions of sections 107 (b) and (c) of the Natural Gas Policy Act (NGPA). It hereby invites comments, data, and suggestions from interested persons on the matters more fully set forth below.

Section 107(b) of the NGPA gives the Commission authority to "prescribe a maximum lawful price applicable to any first sale of any high-cost natural gas which exceeds the otherwise applicable maximum lawful price to the extent that such price is necessary to provide reasonable incentives for the production of such high-cost natural gas." Section 107(a) establishes a maximum lawful price for deep, high-cost natural gas, i.e., natural gas produced from wells the surface drilling of which began on or after February 19, 1977, if the production is from a completion location of more than 15,000 feet. Because of the limited time the Commission had to adopt interim regulations under the NGPA, only the rules necessary for determining whether or not natural gas qualified as deep, high-cost natural gas have been promulgated. However, section 107 authorizes the Commission to set prices for other categories of high-cost gas. Whether or not and how this authority should be implemented is the subject of this notice of inquiry.

In section 107(c) (2), (3), and (4) the term "high-cost natural gas" is defined to include natural gas determined to be "produced from geopressured brine," "occluded natural gas produced from coal seams," and natural gas "produced from Devonian shale." The Commission has addressed the appropriate definitions for these categories of gas in a Notice of Proposed Rulemaking issued today in this docket.

Section 121 of the NGPA provides that deep, high-cost gas, as well as the gas covered by the proposed definitions, will no longer be subject to price controls under the NGPA when the incremental pricing rule becomes effective. Section 201 of the NGPA requires that the Commission make that rule effective no later than November 8, 1979. Comments on the need or desirability of establishing incentive prices for categories listed in sections 107(c) (2) through (4) should discuss the limited period of applicability of such prices, and its effect on the position taken in the comments.

In addition to the specific categories of natural gas described above, section 107(c)(5) authorizes the Commission to establish incentive prices for any category of high-cost natural gas "produced under such other conditions as the Commission determines to present extraordinary risks or costs." It should be noted that any categories the Commission establishes under section 107(c)(5) are not included in section 121, and thus will remain subject to NGPA pricing regulation.

Comments concerning the implementation of section 107(c)(5) are solicited. Specifically, the Commission is interested in identifying those general categories of natural gas which interested persons believe should be considered under this provision and the price believed to be necessary to "provide reasonable incentives for the production" of that gas.

In this regard, the Commission received on March 9, 1979, a Petition of Rulemaking, in Docket No. RM79-27, filed by Exxon Corporation, for thirty-six producers and entitled "In the Matter of Determinations Whether Wells Drilled in More Than 500-foot Water Depth Should Be Determined to be 'High-Cost Gas' Under Section 107(c)(5) of the Natural Gas Policy Act." The petition requests that the Commission institute a rulemaking

proceeding to determine whether natural gas produced from new wells drilled on submerged land located beneath more than 500 feet of water should be classified as high-cost natural gas in order to "encourage the timely exploration in an area inherently risky and costly and involving long-term commitments of vast amounts of capital." The Commission also requests comments concerning this petition, copies of which are available at the Commission's Office of Public Information.

All submissions in response to this Notice of Inquiry should be accompanied by supporting data. Comments should include a description of the conditions which are believed to present extraordinary risks or costs. All comments suggesting an incentive price for any category of high-cost gas, including those categories specifically set forth in the statute, should include whatever economic analysis exists to support any suggested price, including the data supporting such analysis, and the methodology used to determine the suggested price. The Commission is particularly interested in receiving specific information for each category; comments should avoid general statements. Further, comments should not recommend a single incentive price for a group of categories, unless there are data supporting the need for that price with respect to each category.

Comment Procedures

Comments should be filed no later than July 16, 1979. Any interested person may submit to the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, data, comments, or suggestions in writing, concerning all or part of the matters raised in this notice. An original and 14 conformed copies should be filed with the Secretary of the Commission. Comments should indicate the name, title, mailing address, and telephone number of the person to whom communications concerning the proposal may be addressed. Comments should reference Docket No. RM79-44 on the outside of the envelope and on all documents submitted to the Commission. Written comments will be placed in the Commission's public files and will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426 during regular business hours.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18780 Filed 6-14-79; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[20 CFR Part 615]

Extended Benefits; Revision of Regulations

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This is a proposal to amend the Department of Labor's regulation on the computation of the National and State "on" and "off" indicators for an Extended Benefit period. The regulation is amended so as to eliminate weeks claimed for Federal-State Extended Benefits and State additional benefits from the computation of the indicators.

DATES: Comments: All comments on the changes in this proposal must be received on or before August 14, 1979. Proposed effective date: October 1, 1979.

ADDRESSES: Send comments on this proposal to Employment and Training Administration, U.S. Department of Labor, Room 7000, Patrick Henry Building, 601 D Street, NW, Washington, D.C. 20213.

All comments received will be available for public inspection during normal business hours, in Room 7000, at the above address.

FOR FURTHER INFORMATION CONTACT: James H. Manning, Chief, Division of Actuarial Services, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, Room 7410, Patrick Henry Building, 601 D Street, NW., Washington, D.C. 20213, telephone 202-376-7231.

SUPPLEMENTARY INFORMATION: The Federal-State Extended Unemployment Compensation Act of 1970 (Title II of Pub. L. 91-373; 84 Stat. 695, 708; 26 U.S.C. 3304 note) created a program of extended unemployment benefits (referred to as Extended Benefits) as a permanent part of the Federal-State Unemployment Compensation Program, for unemloyed individuals who have exhausted their rights to regular unemployment benefits under State and Federal unemployment conpensation laws. Extended Benefits are payable in a State during an Extended Benefit Period, which is triggered "on" when unemployment in the State or in all States collectively reaches the high levels set in the Act. The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when unemployment in the State is no longer at the high levels set in the Act.

National and State "on" and "off" indicators are triggered by the national or state "rate of insured unemployment", a term which is defined in section 203(f)(1) of the Act as meaning—

* * * the percentage arrived at by dividing—

(A) the average weekly number of individuals filing claims for weeks of unemployment with respect to the specified period, as determined on the basis of the reports made by all State agencies (or, in the case of subsection (e), by the State agency) to the Secretary, by

(B) the average monthly covered employment for the specified period.

Accordingly, the Department of Labor prescribed and published in Part 615 the method for determining the "average weekly number of individuals filing claims for weeks of unemployment" in 20 CFR 615.12(d)(2) and (e)(2) as follows:

(d)(2) *Method of computing the National indicator rate.* The seasonally adjusted weekly average number of weeks claimed in all States is computed in the following manner:

(i) The number of weeks claimed for regular compensation reported by all State agencies is compiled for the current week and for each of the preceding 12 weeks.

(ii) The National total of unadjusted weeks claimed for each week in the 13-week period obtained in subdivision (i) of this subparagraph is seasonally adjustment factor of factors developed and published by the Bureau of Labor Statistics of the U.S. Department of Labor.

(iii) To these seasonally adjusted weekly volumes of insured unemployment (weeks claimed) are added weeks claimed for additional compensation and for Extended Benefits for which there are no seasonal factors.

(iv) The resulting weekly totals are added for the 13 weeks and divided by 13 to obtain the average weekly volume for the 13-week period.

* * * * *

(e)(2) *Method of computing the State indicator rates.* The unadjusted weekly average number of weeks claimed in the State is computed in the following manner:

(i) The number of weeks claimed for regular compensaton, additional compensation, and Extended Benefits are added for the current week and for each of the preceding 12 weeks.

(ii) The weekly totals obtained in subdivision (i) of this subparagraph are added for the 13 weeks and divided by 13 to

obtain the average weekly volume for the 13-week period.

Claims for Extended Benefits and additional compensation were included in the calculations because of the broad wording of section 203(f)(1). At that time there was no precedent to look to for guidance and no data which would indicate how much impact the inclusion of Extended Benefit claims would have in prolonging an extended benefit period once it had started. Over the ensuing years enough data have been gathered to warrant a reconsideration of the matter.

Proposed Amendments

The proposed amendment revises the regulation so that only those weeks claimed for regular compensation are used in the calculation of National and State "on" and "off" indicators. Under the present regulation the inclusion of Extended Benefit and State additional benefit weeks claimed in the calculation of the indicator rate (1) renders inadequate use of the rate as an economic indicator, and (2) tends to define the level of unemployment differently for "on" and "off" triggers.

National Indicator

With respect to the National indicator, under the present regulation, Extended Benefit weeks claimed will be zero during a period in which no State is triggered "on," but in turn can add up to 20 percent more claims to the calculation during times when the National trigger is "on." As an economic indicator, this can change the rate quite abruptly at the time of triggering nationally or by large States. Further, a 4.5 percent "on" trigger includes Extended Benefit weeks claimed only for States that were previously "on," while the "off" trigger includes Extended Benefit weeks claimed for all States such that the "real" rate of unemployment is higher to trigger "on" than to trigger "off." This has the further effect of causing a national Extended Benefit period to begin sooner and end later than it would without the addition of Extended Benefit and additional compensation weeks claimed. The proposed change, therefore, deletes subsection (d)(2)(iii) from § 615.12.

State Indicator

Under the present regulation, State indicators can be affected both "on" and "off." They may be delayed triggering "on" because of the requirement that the current rate be 20 percent higher than the average of the 2 previous years' rates which may include Extended Benefit weeks claimed. State "off" triggers may be postponed since the indicator rate is increased by the inclusion of Extended Benefit and additional compensation weeks claimed. The proposed change deletes weeks claimed for additional compensation and Extended Benefits from subsection (e)(2)(i) of § 615.12.

In addition, subsection (e)(3) is changed to correct an error in a reference.

Note.—The Department of Labor has determined that this document does not contain a major proposal requiring preparation of a regulatory analysis under Executive Order 12044 and applicable guidelines.

This document was prepared under the direction and control of Robert B. Edwards, Administrator, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW, Washington, D.C. 20213.

Accordingly, 20 CFR 615.12 (d)(2) and (e)(2) and (e)(3) are proposed to be revised to read as follows:

§ 615.12 Determination of "on" and "off" indicators.

* * * * *

(d) * * *

* * * * *

(2) *Method of computing the National indicator rate.* The seasonally adjusted weekly average number of weeks claimed in all States is computed in following manner:

(i) the number of weeks claimed for regular compensation reported by all State agencies is compiled for the current week and for each of the preceding 12 weeks.

(ii) The national total of unadjusted weeks claimed for each week in the 13-week period obtained in subdivision (i) of this paragraph is seasonally adjusted, using the applicable seasonal adjustment factor or factors developed and published by the Bureau of Labor Statistics of the U.S. Department of Labor.

(iii) The resulting weekly totals are added for the 13 weeks and divided by 13 to obtain the average weekly volume for the 13-week period.

* * * * *

(e)(2) *Method of computing the State indicator rates.* The unadjusted weekly average number of weeks claimed in the State is computed in the following manner:

The number of weeks claimed for regular compensation for the current week and for each of the preceding 12 weeks are added and divided by 13 to obtain the average weekly volume for the 13-week period.

(e)(3) *Rates for preceding 2 years.* Determinations of State rates for the corresponding 13-week periods in the preceding 2 years shall be made in the same manner as provided in subsections (e) (1) and (2) of this section.

* * * * *

Signed at Washington, D.C., on June 12, 1979.

Ernest G. Green,

Assistant Secretary for Employment and Training.

[FR Doc. 79-18815 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 172]

[Docket No. 78N-0174]

Formic Acid, Sodium Formate, and Ethyl Formate; Proposed Affirmation of GRAS Status as Direct and Indirect Human Food Ingredients

Corrections

In FR Doc. 79-9171 appearing at page 18242 in the issue for Tuesday, March 27, 1979; make the following changes:

(1) On page 18243, second column, in the heading for the table, "or" should read "of".

(2) On page 18244, in the table, the third entry under Route now reading "i.v" should need "i.p".

(3) On page 18245, first column, second line of the paragraph which begins "Therefore", "(a)" should read "(s)".

(4) On page 18245, first column, the first line of the amendment numbered 1 should read:

"1. In § 172.515 *Synthetic Flavoring Substances*".

BILLING CODE 1505-01-M

[21 CFR Part 178]

[Docket No. 78N-0293]

Indirect Food Additives; Proposed Revocation of Uses of Hydrogenated 4,4'-Isopropylidenediphenolphosphite Ester Resins

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations for indirect food additives by terminating the listing of hydrogenated 4,4'-

isopropylidenediphenolphosphite ester resins. This proposal is based on a previous proposal issued on the initiative of the Food and Drug Administration (FDA) together with additional data not considered in that proposal.

DATE: Comments by August 14, 1979.

ADDRESS: Written comments to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John J. McAuliffe, Bureau of Foods (HFF–334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: An order published in the Federal Register of January 17, 1968 (33 FR 569) amended § 178.2010 (21 CFR 178.2010) (formerly 21 CFR 121.2566, before recodification published in the Federal Register of March 15, 1977 (42 FR 14302)) to provide for the use of hydrogenated 4,4'-isopropylidenediphenolphosphite ester resins in vinyl chloride polymer resins when such resins are used in the manufacture of rigid polyvinyl chloride bottles intended for contact with edible oils and all types of dressing for salads. The regulation was amended in the Federal Register of August 8, 1969 (34 FR 12885) to provide for the additional use of the additive in the manufacture of rigid polyvinyl chloride bottles intended for contact with dry foods of types VIII and IX, as described in table 1 of § 176.170(c) (21 CFR 176.170(c)). The regulation was further amended in the Federal Register of November 18, 1969 (34 FR 18382) to provide for the additional use of the additive in vinyl chloride-propylene copolymers complying with § 177.1980 (21 CFR 177.1980).

When the additive was first authorized for use under § 178.2010, and when the regulations were amended to provide for additional uses, available data indicated that the compound would be safe for those uses. Data subsequently became available to showing that a very closely related compound, one that shares a common reactant (hydrogenated bisphenol-A) in its synthesis with the compound in question, caused neurological hind-quarter paralysis when fed to dogs. In the absence of detailed knowledge as to the exact cause of the toxic effect (i.e., whether due to the actual compound, a reactant impurity, or a breakdown product), a notice of proposed rulemaking to revoke the listing of hydrogenated 4,4'-isopropylidenediphenolphosphite ester resins was issued in the Federal Register of April 16, 1974 (39 FR 13067). The agency has since received, in addition to the comments on that proposal, new toxicological data submitted by a manufacturer that have a direct bearing upon the safety of the compound in question and that were not available to those who commented on the first proposal. It is the purpose of the present proposal to review the comments to the original proposal, to address the implications of the new toxicological data, and to solicit further comments.

The two comments submitted in response to the request for comments to the original proposal and the Commissioner's replies to those comments are as follows:

1. The first comment argued two main points. First, the comment claimed that there was no public mention of any change in FDA's standards of toxicology or migration since the original order regulating the phosphite was issued, nor was there any indication in the proposal for revocation that the compound in question failed to meet any old or new requirements of toxicology or migration. The comment argued that any claims by FDA that the revocation of this compound's approval being carried out in order to exercise "all due caution" in favor of the consumer were redundant because FDA had already exercised "all due caution" by virtue of the fact that it saw fit to regulate this compound in the first place.

Second, the comment argued that no known properties of the organic phosphite in question justify revocation of its approval, and that the unfavorable properties of a "related compound" do not justify the revocation. Moreover, the comment claimed that the concepts of "related compound" and "chemical similarity" are open-ended and indefinite and thus should not have been used as a basis for the proposal to revoke.

As to the first point, the agency may reassess the status of a regulation on its own initiative under the general administrative provisions of § 10.25 (21 CFR 10.25). It has done so in the past and will continue to do so when a food additive regulation becomes suspect because of new or modified analytical techniques or data indicating a greater degree of toxicity than first suspected. This has been the case with the present compound.

There has been no change in the toxicology or migration standards used to evaluate the safety of the compound in question. The decision to issue a food additive regulation for the use of hydrogenated 4,4'-isopropylidenediphenolphosphite ester resins was based upon migration and toxicity data originally thought sufficient to ensure its safe use. However, after the regulation was issued, it was learned that the substance could migrate to a degree much greater than had been originally thought (possibly by as much as a factor of thirteen). This is due partly to the fact that the original migration levels, which were based on a measurement of the concentration of a chemical derivative (i.e., organophosphates) of the stabilizer, were improperly converted to the concentration of the stabilizer itself. A correction factor of 5 must be applied to obtain the actual concentration of the stabilizer. In addition, data became available after the substance was initially regulated that indicated that the migration level in water under certain conditions can be as high as 0.13 part per million (ppm) after the application of the correction factor. This level of possible migration is not considered safe in view of new toxicological findings about the stabilizer, as discussed below.

The new toxicological data resolve the question of whether the observed adverse effects and caused by the specific compound in question or by a related compound and thus render the comment's second objection moot. Screening studies were submitted by a manufacturer of the compound to establish the existence of any toxic component(s). Several substances were fed to dogs over a 90-day period. Among these were hydrogenated bisphenol-A and triphenylphosphite (component moieties of the stabilizer in question) and the compound itself, hydrogenated 4,4μ-isopropylidenediphenolphosphite ester resin. In these particular studies, 4 groups of dogs were exposed to hydrogenated 4,4Δ-isopropylidenediphenolphosphite ester resin at a level of 1,000 ppm in the diet. Results showed that in each of the 4 groups neurological hind-quarter paralysis occurred within 9 to 32 days. The dose level at which the neurotoxic effects would not occur was not established by these studies. (Copies of the report and data from these studies, as well as the data indicating higher than previously expected migration, are on file at the office of the Hearing Clerk (address above).) Therefore, to support a food additive regulation for this compound it would be necessary to conduct toxicological studies to determine a "no-effect" level to which appropriate safety factors could be applied to establish a safe level of use

for the stabilizer. Then it would be necessary to determine whether this safe level of use would be less than or greater than the level expected to migrate to food.

2. The second comment agreed that the toxicological data originally submitted to justify the "no extraction" level of 0.0001 milligram (mg) of organophosphates per square inch of food-contact surface may be inadequate and that the additive in question should be revoked on the basis of an inadequate showing of toxicological safety. The comment did not object specifically to the original proposed revocation, but to the justification given, namely, the earlier use (as mentioned in the April 1974 proposal to revoke) of data on one compound to incriminate another compound.

This objection is no longer pertinent due to the above-cited toxicological test results on the subject compound.

The agency has carefully considered the environmental effects of the proposed regulation and, because the proposed action will not significantly affect the quality of the human environment, has concluded that an environmental impact statement is not required. A copy of the environmental impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

In view of the newer estimates of increased migration and studies demonstrating toxic effects of the regulated phosphite stabilizer, the agency finds that there are insufficient data to prescribe safe conditions of use for the compound. Thus, having evaluated the relevant data, the agency concludes that § 178.2010 should be amended by revoking the authorization for the use of hydrogenated 4,4μ-isopropylidenediphenolphosphite ester resins.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), it is proposed that Part 178 be amended in § 178.2010 *Antioxidants and/or stabilizers for polymers* by deleting from the list of substances in paragraph (b) the item "Hydrogenated 4,4μ-isopropylidenediphenolphosphite ester resins * * *."

Interested persons may, on or before August 14, 1979, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments are to be submitted, except that individuals may submit single copies of comments. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Note.—In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: June 6, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-18573 Filed 6-14-79; 8:45 am]

BILLING CODE 4110-03-M

[21 CFR Part 184]

[Docket No. 78N-0186]

Dextrin; Affirmation of GRAS Status as a Direct and Indirect Human Food Ingredient

Corrections

In FR Doc. 79-9170 appearing at page 18246 in the issue for Tuesday, March 27, 1979; make the following changes:

(1) On page 18246, third column, sixth line of the first full paragraph, insert "with other linkages" after "linkages".

(2) On page 18246, third column, the second line from the bottom of the second full paragraph should read "(see § 136.110(c)(11) (21 CFR".

(3) On page 18247, second column, last line of the first full paragraph, "wright" should read "weight".

(4) On page 18248, third column, eighth line of § 184.1277(b)(1), insert "D" in front of "25""

(5) On page 18249, first column, insert footnote 1 (as it was omitted) directly above footnote 2.

"[1] Copies may be obtained from: National Academy of Sciences, 2101 Constitution Ave. NW., Washington, DC 20037."

BILLING CODE 1505-01

[21 CFR Part 606]

[Docket No. 78N-0439]

Calibration of Hematocrit Centrifuges and Vacuum Blood Agitators; Proposal on Calibration

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The FDA is proposing to amend the biologics regulations to require less frequent performance checks and calibrations of hematocrit centrifuges and vacuum blood agitators. This action is being taken because the equipment is rarely subject to significant malfunctions, and because if a malfunction does occur that could affect compliance with the requirements for donor protection and the product, it is usually audibly and/or visually obvious.

DATE: Comments by August 14, 1979.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert J. Meyer, Bureau of Biologics (HFB–620), Food and Drug Administration, Department of Health, Education, and Welfare, 8800 Rockville Pike, Bethesda, MD 20205, 301–443–1306.

SUPPLEMENTARY INFORMATION: Section 606.60(b) of the biologics regulations (21 CFR 606.60(b)) requires the observation, standardization, and calibration of equipment used in the collection, processing, compatibility testing, storage, and distribution of blood and blood components by specifying the frequency of performance checks and calibration. The use of accurate and reliable equipment is essential for compliance with the requirements for determining donor suitability and for the manufacture of products that are safe, pure, potent, and effective. To ensure that the hematocrit centrifuge and the vacuum blood agitator are operating correctly, § 606.60(b) requires that for each day of use a performance check be conducted by standardizing the equipment with a control cell preparation and a container of known mass or volume, respectively. However, both items of equipment are not subject to significant malfunctions during their operation, and any aberrations in their expected performance that could affect compliance with the requirements for donor protection and the product are usually audibly and/or visibly obvious. Therefore, the agency concludes that the required performance checks are excessive and subject blood facilities to an unnecessary quality control burden.

Accordingly, the FDA is proposing to amend § 606.60(b) to change the presently required performance checks and frequency of calibrations and to require instead that (1) the hematocrit centrifuge be standardized and calibrated with a control preparation

before initial use, after repairs or adjustments and annually and that the timer be calibrated every 3 months, and (2) the performance of the vacuum blood agitator be checked by observing the weight of the first container of blood filled for correct results each day of use and be standardized with a container of known mass or volume before initial use and after repairs or adjustments.

The agency concludes that the proposed performance checks and the frequency of calibration for the hematocrit centrifuge and the vacuum blood agitator would be adequate to determine that the equipment is performing in the manner for which it was designed to ensure compliance with the requirements concerning donor suitability and the manufacture of products that are safe, pure, potent, and effective.

§ 606.60 Equipment.

* * * * * * * * *

(b) * * *

Equipment	Performance check	Frequency	Frequency of calibration
*	*	*	*
Hematocrit centrifuge	Standardize with control preparation.		Before initial use, after repairs or adjustments, and annually. Timer every 3 mo
*	*	*	*
Vacuum blood agitator	Observe weight of the first container of blood filled for correct results.	Each day of use	Standardize with container of known mass or volume before initial use, and after repairs or adjustments.
*	*	*	*

Interested persons may, on or before August 14, 1979 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

The agency has carefully considered the environmental effects of the proposed regulation and, because the proposed action will not significantly affect the quality of the human environment, has concluded that an environmental impact statement is not required. A copy of the environmental impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

Therefore, under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), it is proposed that Part 606 be amended in § 606.60 by revising the entries for the hematocrit centrifuge and the vacuum blood agitator in the table in paragraph (b) to read as follows:

Dated: June 8, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-18858 Filed 6-14-79; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[23 CFR Parts 750 and 751]

[FHWA Docket No. 79–10, Notice 3]

Highway Beautification Program Reassessment; Amendment to Public Hearing Schedule and Procedures

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Hearing site change in Washington, D.C., and procedure modification.

SUMMARY: This amendment changes the location for a public hearing in Washington, D.C., from the Nassif Building to the Departmental Auditorium and changes procedures to permit a speaker to relinquish time to another under certain conditions.

FOR FURTHER INFORMATION CONTACT: Mr. Richard W. Moeller, Chief, Junkyard and Outdoor Advertising Branch, (202) 245–0021, or Mr. Edward Kussy, Deputy Assistant Chief Counsel for Right-of-Way and Environmental Law, (202) 426–0791. Office hours are 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA) announced in the Federal Register at 44 FR 28948, May 17, 1979, the schedule and procedures for a series of public hearings to be held for the purpose of soliciting comments from all interested parties who may wish to express their ideas about the future direction of the Highway Beautification Program, and in particular, the outdoor advertising and junkyard control programs as set forth in 23 U.S.C. §§ 131 and 136. The purpose of this Notice is to amend certain information included in the May 17 Notice of hearing schedules and procedures.

The Washington, D.C. hearing site has been changed. The hearing will not be held at the address listed in the May 17 Notice (Department of Transportation, Nassif Building, Room 2230, 400 Seventh Street, SW.). Instead, the hearing will be held in the Departmental Auditorium which is located on Constitution Avenue between 12th and 14th Streets, NW., Washington, D.C.

The hearing procedure noted in paragraph 2b of the Supplementary Information Section of the May 17 Notice has been modified in part. The procedure stated in part that " . . . Speakers may not relinquish their speaking time to others . . . ." That procedure is hereby revised to read as follows. "A speaker may relinquish his/her speaking time to another provided that any one speaker may speak only for himself/herself and no more than two other persons who have relinquished their time."

All other schedules and procedures remain as published on May 17.

Issued on: June 12, 1979.

John S. Hassell, Jr.,

Deputy Administrator.

[FR Doc. 79-18944 Filed 6-14-79; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

[29 CFR Ch. XXV]

Rules and Regulations for Fiduciary Responsibility; Eligible Individual Account Plans

AGENCY: Department of Labor.

ACTION: Notice of intent to propose a regulation.

SUMMARY: This document is a notice to interested persons that the Department of Labor has under consideration the publication of a proposed regulation which would clarify the definition of the term "eligible individual account plan." Under the Employee Retirement Income Security Act of 1974 such plans are not subject to certain restrictions with respect to the acquisition and holding of employer securities and employer real property. Any regulation which is adopted would affect participants and beneficiaries of certain pension benefit plans as well as the sponsors and fiduciaries of such plans. This notice is given in order to facilitate early public participation in the development of the regulation.

DATES: Written comments should be received by the Department of Labor on or before August 14, 1979.

ADDRESSES: Written comments (preferably, at least six copies) should be addressed to the Office of the Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, Washington, D.C. 20216. Attention: Section 407(d)(3) Notice. All comments received will be available for public inspection at the Public Documents Room, Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: William A. Schmidt, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, (202) 523-7931. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department of Labor (the Department) has under consideration the publication of a proposed regulation under Title I of the Employee Retirement Income Security Act of 1974 (ERISA) which would clarify the definition of the term "eligible individual account plan" under section 403(d)(3) of ERISA. By this notice, the Department is inviting public comment on certain issues which have arisen in the development of the regulation.

Statutory Provisions

Section 407(a) of ERISA prohibits an employee benefit plan from acquiring or holding any securities issued by, or real property leased to, an employer of employees covered by the plan, or an affiliate of such employer, unless the securities are qualifying employer securities or the real property is qualifying employer real property, as those terms are defined in sections 407(d) (4) and (5). Section 407(a) also provides that a plan may not acquire any qualifying employer securities or qualifying employer real property if immediately after the acquisition the fair market value of such investments exceeds 10 percent of plan assets. Further, section 407(a) provides that, subject to certain transitional rules, a plan may not hold such securities or real property if the fair market value of such investments exceeds 10 percent of plan assets. Under section 407(b) of ERISA, however, eligible individual account plans, as defined in section 407(d)(3), are exempt from the 10 percent limitation. Further, section 404(a)(2) of ERISA provides that in the case of an eligible individual account plan a fiduciary does not violate his obligation of prudence in the management of plan assets under section 404(a)(1)(B) (insofar as it requires diversification), or his obligation to diversify investments under section 404(a)(1)(C), by acquiring or holding qualifying employer real property or qualifying employer securities. In addition, section 408(e) of ERISA exempts eligible individual account plans from the prohibited transaction rules of section 406 with respect to the acquisition or disposition of qualifying employer securities and qualifying employer real property, provided such acquisition or disposition is for adequate consideration and no commission is charged with respect to the transaction.[1]

Section 407(d)(3)(A) of ERISA defines the term "eligible individual account plan" as:

> * * * an individual account plan which is (i) a profit-sharing, stock bonus, thrift, or savings plan; (ii) an employee stock ownership plan; or (iii) a money purchase plan which was in existence on the date of enactment of * * * [ERISA] and which on such date invested primarily in qualifying employer securities. Such term excludes an individual retirement account or annuity described in section 408 of the Internal Revenue Code of 1954.

[1] Section 4975(d)(22) of the Internal Revenue Code (the Code) exempts from the taxes imposed by sections 4975(a) and 4975(b) of the Code any transaction which is exempt from section 406 of ERISA by reason of section 408(e) thereof.

Section 407(d)(3)(B) provides that only those plans which explicitly provide for the acquisition and holding of qualifying employer securities or qualifying employer real property may be treated as eligible individual account plans.

An individual account plan is defined in section 3(34) of ERISA as "a pension plan which provides for an individual account for each participant and for benefits based solely upon the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account."

A pension plan other than an individual account plan is a "defined benefit plan" under section 3(35) of ERISA. Section 3(35) also contains rules for the treatment of plans which have some characteristics of defined benefit plans and some characteristics of individual account plans.

Discussion

In developing a regulation under section 407(d)(3), it has come to the attention of the Department that certain plans provide an individual account for each participant, but also are part of an arrangement under which each participant is guaranteed, among other things, a minimum rate of return on the amount contributed to his account or a minimum benefit (collectively referred to as "guarantee arrangements"). For example, a sponsoring employer may promise a participant a minimum rate of return on amounts contributed to his individual account. An employer may be maintaining such guarantees on an unfunded basis, in contemplation that the amount, if any, necessary to provide such a minimum rate of return would be paid from the general assets of the employer when the participant ceases to participate in the plan.

Other guarantee arrangements may provide a minimum benefit. For example, an employer may sponsor a plan which provides an individual account for each participant with benefits based on the participant's account balance. The employer also may sponsor a defined benefit plan which provides benefits to the extent necessary to ensure that benefits from both the individual account plan and the defined benefit plan are not less than a guaranteed minimum. Under such an arrangement ("floor plan arrangement"), each participant is, in effect, promised a minimum benefit which may be supplemented by a potential additional

benefit, the amount of which varies with the participant's account balance.[2]

A plan with individual accounts which is part of a guarantee arrangement may, therefore, provide a benefit derived from sources other than the balance of a participant's separate account. It appears that not only is such a plan not an eligible individual account plan, as defined in section 407(d)(3) of ERISA, because it is not, strictly speaking, any of the plans described therein, but it also is, in some respects, quite similar to a conventional defined benefit plan because of the promise of a specified benefit. If such a plan makes substantial investments in employer securities or real property, a participant may be more dependent on the continued financial well-being of his employer for receipt of a specified benefit than he would be under a conventional defined benefit plan that is subject to the 10 percent limitation on the acquisition and holding of qualifying employer securities and real property. For these reasons, it may be inappropriate to treat such a plan as an eligible individual account plan, which would be exempt from this percentage limitation. In this regard, the legislative history of the limitation indicates that Congress intended that a participant not be overly dependent on his employer for the receipt of a promised pension.[3]

Issues Under Consideration

This notice is being published in order to provide interested persons with an opportunity to submit written comments which will be considered by the Department in developing a proposed regulation clarifying the definition of the term "eligible individual account plan" for purposes of section 407(d)(3). In this regard, it should be noted that the Internal Revenue Service (Service) announced in Revenue Ruling 76–259,[4] that, in the case of a floor plan arrangement, a profit-sharing plan may be established and funded separately from a companion defined benefit plan. While the Department is considering, among other things, the treatment of this type of arrangement under section 407(d)(3), the resolution of that issue would relate only to Part 4, Title I of ERISA and section 4975 of the Code.[5] It is contemplated that any regulation which the Department may issue pursuant to this rulemaking proceeding would describe certain plans which are not eligible individual account plans because they are not profit-sharing, stock bonus, thrift or savings plans, employees stock ownership plans, or money purchase plans as those terms are used in section 407(d)(3) of ERISA. Therefore, such a regulation would not affect the issue of whether a plan which is part of a guarantee arrangement should be considered an individual account plan under section 3(34) of ERISA or section 414(i) of the Code, and would not affect the application of Rev. Rul. 76–259 to matters under the jurisdiction of the Service.

As a general framework for comments, the following is a list of issues under consideration by the Department. The list does not describe all issues relevant to the development of a regulation concerning eligible individual account plans, and comments on other matters raised by section 407(d)(3) also are invited.

A. *Kinds of Guarantee Arrangements*

1. What kinds of guarantees are made to participants in plans which provide a separate account for each participant, and how are those guarantees determined?

2. Under what circumstances does a plan which provides for individual accounts but also is part of a guarantee arrangement still provide a benefit derived solely from a participant's account balance?

B. *Treatment of Guarantee Arrangements Under ERISA*

1. Under what circumstances, if any, should a plan which provides a separate account for each participant, but which is part of a guarantee arrangement, be treated as an eligible individual account plan as defined in section 407(d)(3) of ERISA?

2. In the case of a floor plan arrangement:

(a) If the plan which provides for separate accounts is not treated as an eligible individual account plan because of the availability of a guaranteed benefit through the "floor plan," should the two plans be treated as separate plans, neither of which would qualify as an eligible individual account plan under section 407(d)(3)(A), or should the entire arrangement be treated as one plan for purposes of section 407(d)(3)(A)? Specifically, should each plan be subject to a 10 percent limitation on the acquisition or holding of qualifying employer securities and qualifying employer real property or should the 10 percent limitation be imposed only in the aggregate?

(b) To what extent is it necessary or appropriate to make assumptions concerning the level of investment performance of the plan which provides for separate accounts in determining the level of contributions necessary to fund the "guaranteed" benefit portion of the arrangement?

3. Are there instances in which the nature and extent of a guarantee should affect the treatment of a guarantee arrangement under section 407(d)(3)? For example, are there circumstances under which it is appropriate to consider the likelihood that benefits derived from the individual accounts will be "insufficient," so as to require the application of the guarantee, in determining whether the limitation of section 407(d)(3) should apply?

Written Comments

All interested persons are invited to submit written comments on the subject matter of this notice to the address and within the time period set forth above. Copies of plan documents, or relevant portions thereof, might be helpful to the Department in its consideration of various guarantee arrangements. In addition, data regarding the number of participants in guarantee arrangements, the value of the assets of plans which are part of such arrangements, and the amount invested by such plans in qualifying employer securities and qualifying employer real property would be of assistance to the Department in developing a proposed regulation. All comments will be made a part of the record of this proceeding and will be available for public inspection.

Signed at Washington, D.C., this 11th day of June, 1979.

Ian D. Lanoff,

Administrator of Pension and Welfare Benefit Programs, Labor Management Services Administration, Department of Labor.

[FR Doc. 79-18734 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-29-M

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[2] These arrangements sometimes are referred to as offset arrangements because the benefits from the defined benefit plan are "offset" by benefits from the individual account plan. The tax consequences of a floor plan arrangement are discussed in Rev. Rul. 76–259, 1976–2 C.B. 111, *Superseding* Rev. Rul. 68–502, 1968–2 C.B. 94.

[3] *See e.g.*, S. Rep. No. 127, 93d Cong., 1st Sess. 33 (1973); S. Rep. No. 383, 93d Cong., 1st Sess. 32–33, 100 (1973).

[4] Note 2, above.

[5] Effective, December 31, 1978 (44 FR 1065, January 3, 1979), section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred, with certain exceptions, the authority of the Secretary of the Treasury to issue regulations under section 4975 of the Code to the Secretary of Labor.

DEPARTMENT OF DEFENSE

Department of the Army

[33 CFR Part 209]

Administrative Procedures; Shipping Safety Fairways and Anchorages, Gulf of Mexico

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Corps of Engineers proposes to amend the regulations which establish the Galveston Entrance Fairway and Anchorage Areas in the Gulf of Mexico. The purpose of the proposed amendment is to facilitate the production and movement of oil and gas from wells located within the anchorage areas and surrounding area by permitting pipeline construction.

DATE: Comments must be received on or before July 16, 1979.

ADDRESS: HQDA, DAEN–CWO–N, Washington, D.C. 20314.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph T. Eppard (202) 693–6070.

SUPPLEMENTARY INFORMATION: Shipping safety fairways and anchorages have been established by the Department of the Army to control the erection of structures in shipping approaches to major coastal ports. Department of the Army permits are required for the construction of any structure in or over any navigable water of the United States pursuant to Section 10 of the River and Harbor Act of 1899 and for artificial islands and fixed structures located on the outer continental shelf in accordance with Section 4(e) of the Outer Continental Shelf Lands Act Amendments of 1953. The Corps in effect established the fairways and anchorages by denying permits for the erection of structures within certain designated areas. The Galveston Fairway and Anchorage Areas were established in 33 CFR 209.135 on 18 December 1968.

The Galveston District Engineer has received an application for a permit to construct a pipeline extending from the Galveston Anchorage Area across the Galveston Fairway and East Anchorage Area. The Corps proposes to delete a small portion of the anchorages at the southerly boundaries to facilitate the pipelines. The existing anchorage areas encompass approximately 140.7 square nautical miles. The proposed change would reduce this area by approximately 0.6 square nautical miles or six percent. The seaward boundary of the triangular easterly anchorage area would be relocated landward about 5 nautical miles, truncating the anchorage area to a more practical quadrangular shape. The eastward boundary of the westerly anchorage would be relocated landward approximately 0.5 nautical miles. The pipelines are required to accommodate the production and transmission of vitally needed oil and natural gas. The corps will continue to restrict the erection of platforms and other structures within the areas affected by this proposal.

The Corps of Engineers proposes to amend the regulations in 33 CFR 209.135 (d)(11) as set forth below:

§ 209.135 Shipping safety fairways and anchorage areas, Gulf of Mexico.

* * * * *

(d) The areas.

* * *

(11) Galveston Entrance Anchorage Areas. The areas enclosed by rhumb lines joining points at:

Latitude	Longitude
29°10'10"	94°28'10"
29°09'04"	94°28'12"
29°07'23"	94°28'45"
29°04'08"	94°48'12"
29°04'10"	94°28'10"

and rhumb lines joining points at:

29°10'23"	94°27'05"
29°22'10"	94°22'05"
29°16'23"	94°28'53"
29°10'23"	94°27'23"
29°10'23"	94°27'05"

* * * * *

(30 Stat. 1151, 33 U.S.C 403 and 43 U.S.C 1333(e). The Corps of Engineers has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A–107.

Dated: June 6, 1979.

Thorwald R. Peterson,

Colonel, Corps of Engineers, Executive Director, Engineer Staff.

[FR Doc. 79-18305 Filed 6-14-79; 8:45 am]

BILLING CODE 3710-03-M

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 1249–1]

Availability of Implementation Plan Revision for the State of New Hampshire

AGENCY: Environmental Protection Agency.

ACTION: Notice of Receipt of Plan for Proposed Rulemaking.

SUMMARY: This notice is to announce the receipt of a State Implementation Plan (SIP) revision for New Hampshire which is available for public review and comment.

Under the requirements of Part D of the Clean Air Act, the State of New Hampshire submitted to EPA on May 29, 1979 a revision to its SIP for certain areas designated as not attaining the National Ambient Air Quality Standards (NAAQS) for specific air pollutants. As required by the Act, the purpose of this revision is to implement new measures for controlling air pollution and to demonstrate that these measures will provide for attainment of the primary NAAQS as expeditiously as practicable, but no later than December 31, 1982 (in certain instances December 31, 1987). A Notice of Proposed Rulemaking describing the revision and EPA's intended approval or disapproval action will be published in the Federal Register at a later date.

DATES: See Supplementary Information.

ADDRESSES: Copies of the SIP revision are available for inspection at the following addresses: Environmental Protection Agency, Region I, Air Branch, Room 1903, J.F.K. Federal Building, Boston, Massachusetts 02203; Environmental Protection Agency, Public Information Reference Unit, 401 M Street, S.W., Washington, DC 20460; and the Air Pollution Control Agency, Department of Health and Welfare, State Laboratory Building, Hazen Drive, Concord, NH 03301.

WRITTEN COMMENTS SHOULD BE SENT TO: Frank J. Ciavattieri, Chief, Air Branch, Environmental Protection Agency, Region I, J.F.K. Federal Building, Room 1903, Boston, Massachusetts 02203.

FOR FURTHER INFORMATION CONTACT: Frank J. Ciavattieri, Chief, Air Branch, Environmental Protection Agency, Region I, J.F.K. Federal Building, Room 1903, Boston, Massachusetts 02203.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962), and on September 11, 1978 (43 FR 40412), pursuant to the requirements of Section 107 of the Clean Air Act, EPA designated areas in each state as non-attainment with respect to the criteria air pollutants. The non-attainment areas in New Hampshire are:

New Hampshire	CO	O_x	TSP Primary	TSP Secondary	SO_x
N.H. portion of Merrimack Valley S. N.H. Interstate AQCR 121		X			
Metropolitan Berlin			X		X
Metropolitan Keene				X	
Metropolitan Manchester	X			X	

Part D of the Clean Air Act requires each state to revise is SIP to meet specific requirements in the non-attainment areas. These SIP revisions were due on January 1, 1979 and must demonstrate attainment of the NAAQS, as expeditiously as practicable, but no later than December 31, 1982, or in limited instances for carbon monoxide and oxidants, no later than December 31, 1987. An 18-month extension may be granted for plans to demonstrate attainment of secondary standards for total suspended particulates.

On May 29, 1979 EPA received the revised SIP for New Hampshire and is currently reviewing the revision. The revision includes a CO attainment plan for Manchester; redesignation of Keene for TSP attainment; a request for an 18-month extension for Manchester TSP attainment plan; redesignation of AQCR 149 for O_x; Statewide strategies for control of O_x; New Source Review and Permit Requirements; Program for Prevention of Significant Deterioration (PSD); and public participation requirements. At the completion of this review, a notice will be published in the Federal Register proposing approval or disapproval of the revision.

All interested persons are advised that the proposed revision is available for review at the locations listed, and are invited to comment on its approvability. A file of documents explaining EPA's criteria for approval is also available at EPA offices. The proposed notice referred to above will announce the last day for public comment. This public comment period will end not less than 60 days from this date and not less than 30 days from the published date of EPA's proposal for approval or disapproval.

Dated: June 10, 1979.

William R. Adams, Jr.,

Regional Administrator, Region I.

[FR Doc. 79-18744 Filed 6-14-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Part 65]

[Docket No. VII-79-DCO-15; FRL 1247-6]

Proposed Approval of an Administrative Order Issued by the Iowa Department of Environmental Quality to Norris Construction Co., Ottumwa, Iowa

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an administrative order issued by the Iowa Department of Environmental Quality to Norris Construction Company. The order requires the company to bring air emissions from its asphalt plant in Ottumwa, Iowa into compliance with certain regulations contained in the federally-apporve Iowa State Implementation Plan (SIP) by June 15, 1979. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before July 16, 1979.

ADDRESSES: Comments should be submitted to Director, Enforcement Division, EPA, Region VII, 324 E. 11th, Kansas City, Missouri 64106. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Peter J. Culver or Henry F. Rompange, Environmental Protection Agency, Region VII, Enforcement Division, 324 East 11th Street, Kanasa City, Missouri 64106, telephone 816/374-2576.

SUPPLEMENTARY INFORMATION: Norris Construction Company operates an asphalt plant at Ottumwa, Iowa. The order under consideration addresses emissions from the asphalt plant at the facility, which are subject to subrule 400—4.4(2) Iowa Administrative Code, Asphalt batching plants. The regulation limits the emissions of particulates, and is part of the federally approved Iowa State Implementation Plan. The order requires final compliance with the regulation by June 15, 1979. The source has consented to the terms of the order. The source has satisfied increments 1 and 2 contained in the order.

Because this order has been issued to a major source of particulates emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under Section 113(d) of the Clean Air Act (the Act). EPA may approve the order only if it satisfies the appropriate requirements of this subsection.

If the order is approved by EPA, source compliance with its terms would preclude federal enforcement action under Section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Iowa SIP.

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the Federal Register the Agency's final action on the order in 40 CFR Part 65.

(42 U.S.C. 7413, 7601)

Dated: May 17, 1979.

David R. Alexander,

Acting Regional Administrator—Region VII.

In consideration of the foregoing, it is proposed to amend Part 65 of Chapter 1, Title 40, Code of Federal Regulations as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By amending the table in § 65.201 to reflect approval of the following order: Docket No. VII-79-DCO-15.

2. The text of the order reads as follows:

Before the Iowa Department of Environmental Quality, Air Quality Commission, Des Moines, Iowa

In the matter of: Norris Construction Co., Plant No. 51, Ottumwa, Iowa; *Order*, Docket No. 78-A-015 Revised.

Whereas employees of the Department of Environmental Quality conducted an inspection of the Norris Construction Co., a major source facility in Ottumwa, Iowa, on August 4, 1978, and determined that the emissions from the asphalt plant no. 51

exceeded the emission standards of subrule 400—4.4(2) I.A.C.;

Whereas the said subrule is a part of the federally-approved implementation plan applicable to Air Quality Control Region 091 in which the asphalt plant no. 51 in Ottumwa, Iowa, is located:

Whereas Norris Construction Co. has acknowledged that it is in violation of subrule 400—4.4(2) I.A.C. and has agreed to waive its rights to a contested case hearing under the Iowa Administrative Procedure Act and to waive its rights under section 455B.17 of the Iowa Code;

Whereas Norris Construction Co. is hereby given notice that in the event it fails to meet any requirement of this order, it will be subject to civil penalties for such noncompliance, and that if it fails to achieve final compliance as specified in Subparagraph A–5 by July 1, 1979, it shall be required to pay a noncompliance penalty under Section 120 of the Clean Air Act as amended (42 U.S.C. 7420) or under Iowa Law subsequently enacted to obtain delegation under that section;

Whereas after full consideration of relevant facts, including the seriousness of the violation and any good faith efforts to comply the source cannot immediately comply and compliance with the order below is reasonable and expeditious;

Therefore, it is ordered by the Air Quality Commission:

A. That Norris Construction Co. complete the following acts with respect to the asphalt plant no. 51 on or before the dates specified.

1. January 1, 1979—Submit final control plan. *Completed.*

2. February 1, 1979—Award bids and execute contracts for emission control equipment. *Completed.*

3. May 1, 1979—Initiate on-site construction or installation of emission control equipment.

4. June 15, 1979—Complete on-site construction or installation of emission control equipment.

5. June 15, 1979—Complete shakedown operations and preformance tests on system and achieve final compliance with subrule 400—4.4(2) I.A.C.

B. That specific interim requirements, prior to final compliance as specificed in Subparagraph A–5, are not feasible.

C. That Norris Construction Co. shall monitor such emissions and report such information as required by the Executive Director of the Department of Environmental Quality pursuant to subrule 400–2.1(6) (455B) I.A.C.

D. That Norris Construction Co., prior to the initiation of on-site construction or installation of emission control equipment required by paragraph A–3, obtain a permit for the proposed equipment or related control equipment from the Permits Section of the Air and Land Quality Division of the Department of Environmental Quality, as defined in subrule 400—3.1 I.A.C.

E. That Norris Construction Co. certify to the Chief of the Surveillance Section of the Air and Land Quality Division of the Department of Environmmental Quality no later than seven (7) days after the deadline for completing such increment of progress, whether such increment has been achieved; if an increment has not been achieved by the deadline date, a full report of the reasons why the increment was not achieved and of whether the failure is expected to put the subsequent deadline dates in jeopardy should be submitted.

F. That Norris Construction Co., 15 days prior to conducting the performance tests required by this order give notice of such scheduled test to the Chief of Surveillance Section to afford him an opportunity to have an observer present.

Dated: April 12, 1979.

Air Quality Commission.

Hal B. Richerson,

Chairman.

Dated: February 8, 1979.

Norris Construction Co.

M. G. Norris

President.

A public notice was published on March 2, 1979 in the Ottumwa Courier regarding this order, (and the schedule for compliance contained herein), and a public hearing was held before the Iowa Air Quality Commission on April 12, 1979 at the Department of Environmental Quality, Henry A. Wallace Building, 900 East Grand Avenue, Des Moines, Iowa.

Department of Environmental Quality, Des Moines, Iowa

In the matter of: Norris Construction Co., Plant No. 51, Ottumwa, Iowa; Waiver.

Norris Construction Co. acknowledges that it is in violation of subrule 400—4.4(2) I.A.C. and agrees to waive its rights to a contested case hearing under the Iowa Administrative Procedure Act and its rights under 455B.17 of the Iowa Code. Furthermore, Norris Construction Co. has reviewed Order 78–A–015, believes it to be a reasonable means to attain compliance with the applicable regulations in that it accords with the intentions of Norris Construction Co. regarding asphalt plant no. 51 in Ottumwa, Iowa, and it consents to the terms of the order. Finally, Norris Construction Co. acknowledges that compliance with Order 78–A–015 does not relieve it of the responsibility to comply with the provisions of the Rules of the Air Quality Commission.

Dated: February 8, 1979.

Norris Construction Co.

M. G. Norris.

[FR Doc. 79-18798 Filed 6-14-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Part 65]

Docket No. VII–79–DCO–11; FRL 1239–5]

Proposed Approval of an Administrative Order Issued by the Iowa Department of Environmental Quality to Northwestern State Portland Cement Co. Mason City, Iowa

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an administrative order issued by the Iowa Department of Environmental Quality (IDEQ) to Northwestern States Portland Cement Company (Northwestern). The order requires the company to bring air emissions from its waste dust silo vents in Mason City, Iowa into compliance with certain regulations contained in the federally approved Iowa State Implementation Plan (SIP) by July 1, 1979. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the Order.

The purpose of this notice is to invite public comment on the order as a delayed compliance order.

DATE: Written comments must be received on or before July 16, 1979.

ADDRESSES: Comments should be submitted to Director, Enforcement Division, EPA, Region VII, 324 East Eleventh Street, Kansas City, Missouri 64106. The State order, supporting material, and public comments received in response for this notice may be inspected and copies (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Peter J. Culver or Henry F. Rompage, EPA, Enforcement Division, 324 East Eleventh Street, Kansas City, Missouri 64106, telephone (816) 374–2576.

SUPPLEMENTARY INFORMATION: Northwestern operates a portland cement plant at Mason City, Iowa. The order under consideration addresses emissions from the waste dust silo vents at the facility, which are subject to subrule 400—43(2)a Process Weight Rate, Iowa Administrative Code. The regulation limits the emissions of particulates, and is part of the federally approved Iowa State Implementation Plan. The order requires final compliance with the regulation by July 1, 1979, through installation of a baghouse. The source has consented to the terms of the order. The source has satisfied increments A 1 and 2 contained in the Order.

Because this order has been issued to a major source of particulates emissions

and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under Section 113(d) of the Clean Air Act (the Act). EPA may approve the order only if it satisfies the appropriate requirements of this subsection.

If the order is approved by EPA, source compliance with its terms would preclude federal enforcement action under Section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Iowa SIP.

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the Federal Register the Agency's final action on the order in 40 CFR Part 65.

(42 U.S.C. 7413, 7601)

Dated: May 17, 1979.

David R. Alexander,

Acting Regional Administrator, Region VII

In consideration of the foregoing, it is proposed to amend Part 65 of Chapter 1, Title 40, Code of Federal Regulations as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By amending the table in § 65.201 to reflect approval of the following order: Docket No. VII-79-DCO-11.

2. The text of the order reads as follows:

Before the Iowa Department of Environmental Quality, Air Quality Commission, Des Moines, Iowa

In the matter of: Northwestern States Portland Cement Co., Mason City, Iowa; *Order;* Docket No. 78-A-027.

Whereas employees of the Department of Environmental Quality conducted an inspection of the Northwestern States Portland Cement Company, a major source facility in Mason City, Iowa, on September 28, 1978, and determined that the emissions from the waste dust silo vents exceeded the emission standard(s) of paragraph 400—4.3(2)a I.A.C.

Whereas the said paragraph is a part of the federally-approved implementation plan applicable to Air Quality Control Region 090 in which the Northwestern States Portland Cement Company in Mason City, Iowa, is located;

Whereas Northwestern States Portland Cement Company has acknowledged that it is in violation of paragraph 400—4.3(2)a I.A.C. and has agreed to waive its rights to a contested case hearing under the Iowa Administrative Procedure Act and to waive its rights under section 455B.17 of the Iowa Code;

Whereas Northwestern States Portland Cement Company is hereby given notice that in the event it fails to meet any requirement of this order, it will be subject to civil penalties for such noncompliance, and that if it fails to achieve final compliance as specified in Subparagraph A–5 by July 1, 1979, it shall be required to pay a noncompliance penalty under Section 120 of the Clean Air Act as amended (42 U.S.C. 7420) or under Iowa Law subsequently enacted to obtain delegation under that section;

Whereas after full consideration of relevant facts, including the seriousness of the violation and any good faith efforts to comply the source cannot immediately comply and compliance with the order below is reasonable and expeditious;

Therefore, it is ordered by the Air Quality Commission:

A. That Northwestern States Portland Cement Company complete the following acts with respect to the waste dust silo vents at its plant in Mason City, Iowa, on or before the dates specified.

1. December 18, 1978—Submit final control plan. *Completed.*

2. March 2, 1979—Award bids and execute contracts for emission control equipment.

3. April 23, 1979—Initiate on-site construction or installation of emission control equipment.

4. June 22, 1979—Complete on-site construction or installation of emission control equipment.

5. July 1, 1979—Complete shakedown operations and performance tests on system and achieve final compliance with paragraph 400–4.3(2)a I.A.C.

B. That specific interim requirements for emission reduction, prior to final compliance as specified in paragraph A–5, are not feasible.

C. That no specific monitoring prior to final compliance will be required.

D. That Northwestern States Portland Cement Company, prior to the initiation of on-site construction or installation of emission control equipment required by paragraph A–3, obtain a permit for the proposed equipment or related control equipment from the Permits Section of the Air and Land Quality Division of the Department of Environmental Quality, as defined in subrule 400—3.1 I.A.C.

E. That Northwestern States Portland Cement Company certify to the Chief of the Surveillance Section of the Air and Land Quality Division of the Department of Environmental Quality no later than seven (7) days after the deadline for completing each increment of progress, whether such increment has been achieved; if an increment has not been achieved by the deadline date, a full report of the reasons why the increment was not achieved and of whether the failure is expected to put the subsequent deadline dates in jeopardy should be submitted.

F. That Northwestern States Portland Cement Company, 15 days prior to conducting the performance tests required by this order give notice of such scheduled test to the Chief of Surveillance Section to afford him an opportunity to have an observer present.

Dated: March 15, 1979.

Air Quality Commission.

Hal B. Richerson,

Chairman.

Dated: January 5, 1979.

Northwestern States Portland Cement Co.

Jack MacNider.

A public notice was published on January 23, 1979 in the Mason City Globe-Gazette regarding this order, (and the schedule for compliance contained herein), and a public hearing was held before the Iowa Air Quality Commission on March 15, 1979 at the Department of Environmental Quality, Henry A. Wallace Building, 900 East Grand Avenue, Des Moines, Iowa.

Department of Environmental Quality; Des Moines, Iowa

In the matter of: Northwestern States Portland Cement Company, Mason City, Iowa; Waiver.

Northwestern States Portland Cement Company acknowledges that it is in violation of paragraph 400—4.3(2)a I.A.C. and agrees to waive its rights to a contested case hearing under the Iowa Administrative Procedure Act and its rights under 455B.17 of the Iowa Code. Furthermore, Northwestern States Portland Cement Company has reviewed Order 78–A–027, believes it to be a reasonable means to attain compliance with the applicable regulations in that it accords with the intentions of Northwestern States Portland Cement Company regarding the waste dust silo vents at its plant in Mason City, Iowa, and it consents to the terms of the order. Finally, Northwestern States Portland Cement Company acknowledges that compliance with Order 78–A–027 does not relieve it of the responsibility to comply with the provisions of the Rules of the Air Quality Commission.

Dated: January 5, 1979.

Northwestern States Portland Cement Co.

Jack MacNider.

[FR Doc. 79-18747 Filed 6-14-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Part 65]

[FRL 1247-7]

Proposed Delayed Compliance Order for Amoco Oil Co.

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: U.S. EPA proposes to issue an Administrative Order to Amoco Oil

Company. The Order requires the Company to bring its volatile organic material loading rack (the source) into compliance with Ohio Regulation AP–5–07(E), part of the federally approved Ohio State Implementation Plan (SIP). Because the Company is unable to comply with this regulation at this time, the proposed Order would establish an expeditious schedule requiring final compliance by July 1, 1979. Source compliance with the Order would preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act (Act) for violation of the SIP regulation covered by the Order.

The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on U.S. EPA's proposed issuance of the Order.

DATES: Written comments must be received on or before the thirtieth day from the date of this notice and requests for a public hearing must be received on or before the fifteenth day from the date of this notice. All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held after twenty-one days prior notice of the date, time, and place of the hearing has been given in this publication.

ADDRESSES: Comments and requests for a public hearing should be submitted to Director, Enforcement Division, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Material supporting the Order and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Mr. Roger M. Grimes, Attorney, Enforcement Division, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, at (312) 353–2082.

SUPPLEMENTARY INFORMATION: Amoco Oil Company owns a volatile organic material loading rack at Aurora, Ohio. The proposed Order addresses emissions from this facility, which is subject to AP–5–07(E) of the Ohio Implementation Plan. The regulation limits the emissions of volatile organic material and is part of the federally approved Ohio State Implementation Plan. The Order requires final compliance with the regulation by July 1, 1979, and the source has consented to its terms.

The proposed Order satisfies the applicable requirements of Section 113(d) of the Act. If the Order is issued, source compliance with its terms would preclude further U.S. EPA enforcement action under Section 113 of the Act against the source for violations of the regulation covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provisions of the Act (Section 304) would be similarly precluded.

Comments received by the date specified above will be considered in determining whether U.S. EPA should issue the Order. Testimony given at any public hearing concerning the Order will also be considered. After the public comment period and any public hearing, the Administrator of U.S. EPA will publish in the **Federal Register** the Agency's final action of the order in 40 CFR Part 65.

Dated: June 4, 1979.

John McGuire,

Regional Administrator, Region V.

In consideration of the foregoing, it is proposed to amend 40 CFR Chapter I, as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By amending the table in Section 65.400 to reflect approval of the following order:

§ 65.400 Federal Delayed Compliance Orders issued under Section 113(d)(1), (3), and (4) of the Act.

2. [insert entire contents of the Order]

U.S. Environmental Protection Agency, Region V

In the Matter of: AMOCO Oil Company, Aurora, Ohio; Proceeding Pursuant to Section 113(d) of the Clean Air Act, as Amended (42 U.S.C. Section 7413(d)).

Introduction

This Order is issued this date pursuant to Section 113(d) of the Clean Air Act, as amended, 42 U.S.C. Section 7401 *et seq.* (hereafter the "Act") and contains a schedule for compliance, interim control requirements, and reporting requirements. Public notice, opportunity for a public hearing, and thirty (30) days notice to the State of Ohio have been provided pursuant to Section 113(d)(1) of the Act.

Findings

1. On December 29, 1978, the United States Environmental Protection Agency (hereafter "U.S. EPA" or "Agency") issued a Notice of Violation (hereafter "NOV") to the Amoco Oil Company (hereafter "Amoco" or the "Company") pursuant to Section 113(a)(1) of the Act, 42 U.S.C. 7413(a)(1), for alleged violation of Ohio Air Pollution Control Regulation AP–5–07(E).

2. AP–5–07(E), creates certain requirements applicable to facilities which load volatile organic materials in specified quantities into certain tanks or tank trucks. (Regulation AP–5–07(E) has been recodified by the State of Ohio as Regulation 3745–21–07(E); however, this designation has not yet been made part of the Ohio plan. Consequently, this document will use the prior designation.)

3. AP–5–07(E), is part of the State of Ohio Implementation Plan, which was created under Section 110 of the Act, 42 U.S.C. 7410.

4. In satisfaction of Section 113(a)(4) of the Act, 42 U.S.C. 7413(a)(4), an opportunity to confer with the Administrator's delegate was extended to Amoco in the NOV. The conference was waived by Amoco.

5. After receipt of the NOV, Amoco stated that it intended to install an Edwards low temperature refrigeration vapor recovery unit by July 1, 1979, at its Aurora, Ohio, volatile organic materials loading facility.

6. It has been determined by the U.S. EPA that the Amoco Oil Company is unable to immediately comply with AP–5–07(E) of the State of Ohio Implementation Plan.

Order

After a thorough investigation of all relevant facts, including public comment, it is determined that the schedule for compliance set forth in this Order is as expeditious as practicable, and that the terms of this Order comply with Section 113(d) of the Act. Therefore, it is hereby Agreed and ordered that:

1. The Amoco Oil Company will comply with the State of Ohio Implementation Plan, AP–5–07(E), which requires the installation of a vapor collection and disposal system at the volatile organic material loading rack associated with Amoco Oil Company's Aurora, Ohio, facility in accordance with the following schedule:

a. February 23, 1979—Bids received.

b. March 5, 1979—Place equipment orders for process equipment.

c. April 30, 1979—Start construction on foundation.

d. June 15, 1979—Process equipment received; start construction and installation.

e. July 1, 1979—Complete installation and achieve compliance.

2. The Amoco Oil Company shall adopt and implement operation and maintenance procedures to maximize the control efficiency of the vapor collection and recovery system and submit a copy of such procedures to the U.S. EPA.

3. The Amoco Oil Company shall use the best practicable interim system of emission reduction at its Aurora, Ohio loading facility so as to minimize hydrocarbon emissions, avoid any imminent and substantial endangerment to the health of persons, and minimize product spillage.

4. The Amoco Oil Company shall comply with the following emission monitoring and reporting requirements on or before the dates specified below:

a. *Emission Monitoring*

(1) Amoco Oil Company shall, beginning as soon as reasonably practical, maintain a record of the quantity of gasoline which passes through the loading facility.

(2) Amoco Oil Company shall, by August 1, 1979 complete manufacturers performance tests on the vapor control equipment.

(3) Amoco shall, beginning as soon as reasonably practical, maintain a record of any malfunctions of the vapor collection and disposal system (including the reasons for such malfunctions) and the down-time of the system, whether caused by malfunctions or other causes.

b. *Reporting Requirements*

(1) No later than fifteen (15) days after any date for achievement of an incremental step of the compliance schedule specified in this Order, Amoco Oil Company shall notify U.S. EPA in writing of its compliance or noncompliance with the requirement.

Amoco Oil Company shall, by August 15, 1979, submit performance test results associated with start up of the vapor collection and disposal system.

If Amoco fails to complete any of the actions required by the dates specified in the Order, it shall include a detailed explanation of such failure in the notification required in this paragraph 4.b.(1).

(2) Amoco shall, beginning with the calendar quarter April–June, 1979, report on quarterly basis the information required to be maintained under paragraph 4.a. of this Order. Such reporting requirement shall terminate following Amoco's submission covering the calendar quarter April–June, 1980.

(3) All submittals, notifications and reports to U.S. EPA pursuant to this Order shall be made to Mr. Eric Cohen, Chief, Compliance Section, Enforcement Division, U.S. EPA, 230 South Dearborn Street, Chicago, Illinois 60604.

5. Amoco is hereby notified that it is the position of the U.S. EPA that failure to achieve final compliance by July 1, 1979, at the Aurora, Ohio loading facility may result in a requirement to pay a noncompliance penalty in accordance with Section 120 of the Act, 42 U.S.C. 7420. In the event of such failure, Amoco will be formally notified by the U.S. EPA, pursuant to Section 120(b)(3), 42 U.S.C. 7420(b)(3), and any regulations promulgated thereunder, of its noncompliance.

6. This Order shall be terminated in accordance with Section 113(d)(8) of the Act if the Administrator or his delegate determines on the record, after notice and hearing, that an inability to comply with regulation AP–5–07(E), Ohio Implementation Plan no longer exists.

7. Violation of any substantive requirement of this Order may result in one or more of the following actions:

a. Enforcement of such requirement pursuant to Section 113 (a), (b), or (c) of the Act, 42 U.S.C. 7413 (a), (b) or (c).

b. Revocation of this Order, after notice and opportunity for a public hearing, and subsequent enforcement of Ohio Implementation Plan regulation AP–5–07(E), in accordance with the preceding paragraph.

c. If such violation occurs on or after July 1, 1979, notice of noncompliance and subsequent action pursuant to Section 120 of the Act.

8. This Order is effective upon final promulgation in the Federal Register.

Date ———————

Administrator, U.S. Environmental Protection Agency

Consent To Order

The Amoco Oil Company, by the duly authorized undersigned, hereby consents to the requirements of this Order.

Date ———————

Amoco Oil Company

[FR Doc. 79–18745 Filed 6–14–79; 8:45 am]

BILLING CODE 6560–01–M

[40 CFR Parts 66 and 67]

[FRL 1245–1]

Assessment and Collection of Noncompliance Penalties

AGENCY: Environmental Protection Agency.

ACTION: Amendments to proposed rulemaking.

SUMMARY: In the Federal Register of March 21, 1979 (44 FR 17309), several portions of Appendix B to the Agency's proposed rules for the assessment and collection of a noncompliance penalty were not printed legibly. In order to avoid any confusion, EPA is reprinting this Appendix in its entirety.

In addition, EPA wishes to clarify some discrepancies that exist between the proposed Computer Program (Appendix C) and the Instruction Manual. Lastly, the Agency is proposing a minor change to the lump sum settlement calculation and offering for public comment an alternative data source for the appropriate rate of return on equity for certain sources. Each of these matters is discussed below.

DATES: In the March 21, Federal Register Notice, EPA provided for a 90 day public comment period, 30 days more than the Clean Air Act would require. EPA noted that the Act requires that the noncompliance penalty program take effect on August 7, 1979. For this reason, EPA stated that it would not be able to provide any further extension of time for the public to comment on the March 21 proposal.

For the two proposed amendments discussed below EPA is announcing a 30 day comment period. The amendments noted today are minor in nature and do not alter any of the fundamental aspects of the noncompliance penalty program as originally published. For this reason, EPA believes that 30 days affords the public ample time in which to comment on these two amendments. This 30 day comment period applies only to the two amendments that are being proposed today. It does not provide the public with additional time in which to comment on the March 21 proposal.

Thus, comments on the two amendments proposed today will be accepted until July 16, 1979. Comments on any other portion of the proposed rulemaking must be submitted to EPA on or before June 19, 1979, in order to be considered in the Agency's final rulemaking.

ADDRESS: Questions or comments on this proposal should be directed to the Director, Division of Stationary Source Enforcement, EN–341, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert Homiak, Attorney-Advisor, Division of Stationary Source Enforcement, Environmental Protection Agency at (202) 755–2581.

SUPPLEMENTARY INFORMATION: In the March 21, 1979, Federal Register, EPA published its proposed rules for the assessment and collection of noncompliance penalties under Section 120 of the Clean Air Act. Included as Appendix B to this rulemaking proposal was an Instruction Manual designed to inform sources how to calculate a penalty amount. The Manual contained several computer print-outs of the penalty calculations of a hypothetical company. Some of these computer print-outs did not reproduce legibly. This caused some confusion among people who have attempted to verify their own calculations with those produced by EPA's computer. Rather than reprinting only the illegible print-outs, EPA is reprinting the entire Instruction Manual.

EPA would also like to clarify a minor discrepancy between the proposed Instruction Manual and the Computer Program, which appeared as Appendix C to the proposed rule. The Instruction Manual indicates that a person using the computer program must enter only the equity share and the preferred stock share for a new investment. In actuality, the Computer Program also requires the entry of the debt share of the source's investment. Requiring explicit entry of the debt share of the investment reduces the chance of error in data entry. It in no way affects the magnitude of the penalty.

Another point that has caused some confusion is the inability of different computers to arrive at penalty figures

identical to those calculated by EPA's computer. Persons who anticipate using the computer program on their own computers should be cautioned that it will usually not be possible to reproduce exactly the calculations illustrated in the Instruction Manual. The large number of arithmetic operations needed to calculate the penalty payments will inevitably result in round-off errors within the computer itself. The magnitude and direction of these round-off errors will vary from computer to computer. However, in no case should there be a discrepancy of more than one-tenth of one percent. Differences larger than this are only likely to result from a faulty reproduction of the computer program.

Finally, EPA is proposing for comment two possible amendments to its March 21, 1979 proposal. A discussion of these changes follows.

A. Amount of Initial Penalty Payment

A fundamental precept of the noncompliance penalty calculation as it has been developed to date is that the total penalties paid by a source should equal the savings realized by that source. Since proposing its noncompliance penalty regulations on March 21, EPA has discovered that this attempt to recover the full economic value of noncompliance is compromised by EPA's current interpretation of Section 120(d)(3)(B) of the Act, which provides that the first penalty payment will not be due until 180 days after issuance of a notice of noncompliance. As presently formulated, EPA's economic model does not calculate earnings on the penalty payments delayed for the first six months of noncompliance. This means that the source pays total penalties less than economic savings realized from delayed compliance if it chooses to delay payment.

In order to enable capture of the total economic savings realized over the period of noncompliance, EPA is proposing to assess penalties based on the earnings a source realizes by delayig its initial payment for 180 days. Should the source make its first payment prior to the expiration of this 180 day period, the earnings calculation would be adjusted accordingly.

Adoption of this proposed change would require changes to the following pages of the Instruction Manual and Computer Program: III–17, III–19–22, IV–5, and IV–15.

These changes have been incorporated into both the Instruction Manual and Computer Program that are published today.

B. Use of All Manufacturing Average as Appropriate Discount Rate

In calculating the economic savings from noncompliance, EPA recognizes that the appropriate inflation rate and shareholders' return on equity (discount rate) are the long term future rates that apply to new investments. As presently formulated, the proposed noncompliance penalty regulations specify the use of the industry average return on equity as the discount rate in penalty calculations. These rates are reported in the Federal Trade Commission's (FTC's) *Quarterly Financial Report for Manufacturing, Mining and Trade Corporations.*

Because of the administrative difficulty involved in estimating the appropriate long term rates, EPA has found it necessary to rely on historical data. However, the use of historical data can result in relationships between the inflation rate and the equity rate that make little economic sense. It is possible for some industries to have historical rates of return that are less than or equal to the historical inflation rate. However, as profit-maximizing investors, source owners will seek out their most profitable investment opportunity. A source owner with an expected inflation rate that exceeds the anticipated rate of return from investing in his own business would be expected to make new investments in another alternative, one that would yield a rate of return in excess of the inflation rate.

Therefore, as an alternative to using the FTC industry average as the appropriate discount rate, EPA is proposing use of the higher of the industry average and the average rate of return for *all* manufacturing companies. This "all manufacturing" rate is published by the FTC in its *Quarterly Financial Report for Manufacturing, Mining and Trade Corporations.*

EPA believes that use of the industry "all manufacturing" rate of return is a reasonable representation of the equity-investor's opportunity cost if the actual return on equity for the industry is less than the inflation rate. If the investor's own industry is yielding a rate of return equal to or less than the inflation rate, the investor would find it more attractive to invest in a range of other industries. By investing funds which should have been used for pollution control over a broad spectrum of U.S. industry, the investor can realize a rate of return that approximates the "all manufacturing" rate. If investing in his own particular industry yields a higher rate of return than the "all manufacturing" rate, however, the proposal assumes the investor would continue to put his funds into that industry.

EPA's proposal today would not apply to regulated utilities or Federal, State and municipal facilities. These facilities would continue to use the data sources specified in EPA's March 21 proposal.

Adoption of this proposal will result in larger noncompliance penalty assessments against certain source categories, including the iron and steel industry. EPA is presently assessing the effects of this proposed alternative on the iron and steel industry. The results should be completed in about 3 weeks, and will be placed in the public docket for inspection as part of the Economic Impact Analysis. EPA solicits comment on the appropriateness of this approach.

Dated: June 5, 1979.

Douglas M. Costle,
Administrator.

[6560-01-M]

Appendix B

Clean Air Act

Section 120

Noncompliance Penalties

Instruction Manual

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I. INTRODUCTION

II. DATA REQUIREMENTS AND DATA SOURCES

III. USING THE COMPUTER PROGRAM

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Section I

Introduction

SECTION I

INTRODUCTION

This appendix describes the procedures used to calculate the noncompliance penalty imposed by the 1977 amendments to the Clean Air Act (the Act). The penalty, stipulated under Section 120 of the Act, removes the economic benefits which accrue to a firm from delaying investment in pollution control.

The method used to calculate the noncompliance penalty is based on the concept of costs avoided. The costs avoided by delaying the installation of pollution control equipment have two components. First, the firm benefits by delaying the capital expenditure needed for pollution control equipment. For this component, the cost avoided equals the return the firm expects on the money that should have been invested in pollution control equipment. That is, funds which should have been invested in pollution control equipment, but were not, can be invested in other assets, thus yielding a return. The second cost avoided through noncompliance results from the absence of operating and maintenance expenses for the equipment. In this case, the costs avoided equal the value of all operating and maintenance expense avoided plus the earnings on such costs avoided.

IMPLEMENTING THE NONCOMPLIANCE PENALTY

A detailed discussion of the economic rationale for the noncompliance penalty and the computational method used is contained in Appendix A, the Technical Support Document. This appendix is designed to aid the user in determining the appropriate data for calculating the penalty and to describe the computer program which performs the actual computation.

To the extent practicable, the computer program has been written to accept data as it appears in the source. However, it is necessary in some instances to adjust the data for entry. When this adjustment requires several computations, a worksheet has been provided.

Level Of Knowledge Required

The appendix has been written on the assumption that the user has had little formal training in business finance. Use of this manual and the computer program do not require a knowledge of the mathematical formulae in the Technical Support Document. It is assumed, however, that the reader is familiar with the discussion sections in the Technical Support Document.

Plan Of The Document

Section II describes the sources of data needed to calculate the penalty and how the various data items are converted to a form suitable for entry into the computer program. As an aid in exposition, a hypothetical noncomplying firm is described and relevant penalty calculations are illustrated.

Section III describes the procedures necessary to operate the computer. An example of an actual use of the program to calculate a penalty is included. This example will utilize data calculated in Section II.

Section IV describes the calculation of the post compliance settlement based on data used in Sections II and III.

Section V discusses the calculation of the penalty under special conditions. These conditions include investments financed with industrial development bonds and penalties for limited life facilities.

SECTION II

DATA REQUIREMENTS AND DATA SOURCES

Calculation of the noncompliance penalty requires a substantial amount of financial data. It is expected that most of this data, as well as the calculation itself, will be provided by the firm. This is in accordance with Section 120 of the Clean Air Act which will:

> "...require each person to whom is given under paragraph (3) to--
>
> (A) calculate the amount of the penalty owed (determined in accordance with subsection (d)(2)) and the schedule of payments (determined in accordance with subsection (d)(3) for each such source and, within forty-five days after the issuance of such notice or after the denial of a petition under subparagraph (B), to submit that calculation and proposed schedule, together with the information necessary for an independent verification thereof, to the State and to the Administrator".

However, some firms may not comply with the requirement. Section 120 further stipulates that if the firm fails to submit a calculation of the penalty, the State or the Administrator may contract with a third party to determine the penalty payments. This will require collection of data from several public sources. This section discusses the method used to collect data and prepare it for the calculation of the penalty.

CASE STUDY

As an aid to understanding the issues discussed in this and the next section, an example has been formulated involving a hypothetical fertilizer company. While this case will utilize data from an actual corporation, the firm is not in the fertilizer industry. The example was created to illustrate many of the features of the computer program and thus may be more complex than many "real life" situations. Data prepared in the case discussion below will be entered in the computer program to determine a penalty in Section III.

THE FERTILIZER COMPANY

On September 1, 1979 the Fertilizer Company was issued a notice of noncompliance with Section 120 of the Clean Air Act. The source of emissions was an incinerator used for the disposal of a waste by-product from the manufacture of the firm's most profitable product.

A preliminary engineering study had been performed in which it had been determined that compliance could be reached with an investment of $500,000. The investment would involve the purchase of a baghouse and modifications to the firm's incinerator in order to reduce particulate emissions.

In addition to the capital investment, it was estimated that $18,000 in operating and maintenance expense would be needed each year the pollution control equipment was operated. It was also estimated that $1,890 in pre-compliance maintenance expense was necessary to make the equipment operational.

Engineers for the Fertilizer Company believed that it would be at least eleven months before the equipment was installed and shake-down was completed. Because the waste could be safely stored for short periods, production of fertilizer would not be interrupted while the incinerator was being modified.

The Fertilizer Company is a publicly-owned corporation with assets of $770 million. The company is mainly financed with investment by the common stockholders but some preferred stock and long term debt also exists.

The firm, in accordance with the Act, had computed the penalty owed and a schedule of payments. It had also submitted the data used in calculating the penalty. The enforcement official now had to arrange the data in the order it would be requested by the computer and verify that it was from an appropriate source. The computer program would check the accuracy of the firm's penalty calculation.

Preparing Data For Entry Into The Program

The computer program will request data in a specific sequence. Although the data submitted by the firm can be verified in any order, it is useful to verify the data in the same way so that omissions are avoided. The following paragraphs follow the same sequence as is used to enter data into the computer program.

1. The number of months the source will be out of compliance. The period of noncompliance is measured from the day on which the notice of noncompliance is issued until the time standards are actually met.[1] This will include installation time and shakedown period for the equipment. If the firm indicates that compliance will be achieved in the first fifteen days of a month, it is assumed to be in compliance for the entire month. In the Fertilizer Company example, the firm stated that it will come into compliance in eleven months.

2. Limited Life Facility. The program calculates a penalty based on eventual compliance at the source. However, some firms will attain compliance by shutting down the source or by replacing it with a new source. This option is discussed in detail in Section V. For the Fertilizer Company, the source is not a limited life facility.

[1] This date cannot be before August 7, 1979.

3. Industrial Development Bonds. The calculation of the percentage of a pollution control investment financed by tax-exempt industrial development bonds is discussed in Section V. For the Fertilizer Company, none of the investment is financed by issuing tax-exempt bonds.

4. Schedule of capital investments. This is an estimate, provided by the firm, of monthly capital expenditures for the purchase and installation of the pollution control equipment. It is assumed that all capital expenditures are completed when compliance is achieved.

The sources which firms will use to estimate monthly expenditures include engineering estimates, quotations from manufacturers, or estimates by management. They will consist of not only the direct purchase cost, including sales taxes, but also site preparation, engineering design work, shipping costs and installation expense. All costs must be stated in terms of dollars as of the beginning of the noncompliance period. Thus, a firm which will comply eleven months late should not inflate the cost estimates to reflect price changes during the period of noncompliance. The computer program automatically takes this into account.

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The Fertilizer Company estimated that the total expenditure needed was $500,000. It submitted the data in Exhibit II-1 to justify the estimate. Expenditures to the manufacturer for the equipment will be made in three equal installments, during the second, fourth, and eleventh months of noncompliance. Each payment will thus be $166,666.67 ($500,000 ÷ 3).

5. Schedule of pre-compliance operating and maintenance expenditures and post-compliance annual operating and maintenance expense. These are costs the firm will incur for operation of the equipment. They may include operating and supervisory labor, power for equipment operation, supplies necessary for operation and a portion of the firm's overhead. If a by-product is created during equipment operation, disposal costs are included as an operating expense. If the by-product can be sold or used in another process, the value of the by-product should be subtracted from operating and maintenance expense.

In addition, operating and maintenance should include the incremental cost of changing plant operations to conform to the Act. For example, a firm forced to shift from high sulfur coal to low sulfur coal would include the increase in fuel costs as an operating expense. Operating expenses would also include the additional cost incurred if compliance requires shifting production to a less efficient or more expensive method.

EXHIBIT II-1

CALCULATION OF THE CAPITAL EXPENDITURE INPUT
FERTILIZER COMPANY[1]

1.	List price or estimated price of the equipment:	$485,908.65
2.	Less: Discount from manufacturer:	9,718.17
3.	Equals net price of equipment:	476,190.48
4.	Plus: Sales tax on equipment[2]:	23,809.52
5.	Plus: Freight and delivery charge:	0
6.	Equals estimated cost of equipment delivered:	$500,000.00
7.	Plus: Installation charge:	0
8.	Plus: Value of lost production:	0
9.	Plus: Cost of building modifications:	0
10.	EQUALS TOTAL CAPITAL EXPENDITURE:	$500,000.00

[1]This calculation uses Worksheet A in Attachment V.

[2]Some corporations subtract sales tax from revenue in the year of purchase. If this is the case, the sales tax is multiplied by (1 - Tax Rate) and subtracted from the cost of the equipment rather than added as in step four.

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EXHIBIT II-1
(CONTINUED)

Note: Line 6 divided by line 10 is the percentage of qualified investment for calculation of the investment tax credit.

QUALIFIED PERCENTAGE INVESTMENT TAX CREDIT:

$$\frac{\text{Line 6}}{\text{Line 10}} = \frac{\$500,000}{\$500,000} \times 10^{*} = 10\%$$

*If the depreciable life of the equipment is less than seven years, this figure must be adjusted as described on page II-16.

Sources for operating and maintenance expense are engineering reports, manufacturer specifications, estimates by owners or actual data from similar operations. Two different estimates of operating and maintenance expense are necessary--those incurred before compliance and those estimated for the period after compliance. These amounts should be stated in dollar terms as of the beginning of the noncompliance period. Dollar estimates should not be increased by an estimate of inflation.

The Fertilizer Company supplied the data in Exhibit II-2 as estimated pre-compliance operating and maintenance expense.

EXHIBIT II-2

ESTIMATE OF MONTHLY PRE-COMPLIANCE OPERATING AND MAINTENANCE EXPENSE FERTILIZER CORPORATION

PRE-COMPLIANCE OPERATING EXPENSE

Months 1-8		$ 0
Month 9		
Labor (10 hrs @ $10)	$100.00	$ 100.00
Month 10		
Labor (100 hrs @ $10)	1,000.00	
Power (1500 Kwh @ .0333 Kwh)	50.00	
Total		$1,050.00
Month 11		
Labor (50 hrs @ $10)	500.00	
Power (7200 Kwh @ .0333 Kwh)	240.00	
Total		$ 740.00

Pre-compliance monthly operating and maintenance expense cannot be larger than one-twelfth of the initial annual expense. For example, if the estimated initial annual expense is $15,000, no individual quarterly pre-compliance expenditure can be greater than $1,250 ($15,000 ÷ 12). If the pre-compliance operating and maintenance expense in a month is larger than the monthly equivalent of the initial annual expense, the computer program for calculating the penalty will not accept the data and will print an error message.[1]

For post-compliance operating and maintenance expense the Fertilizer Company supplied the data in Exhibit II-3.

[1] Monthly pre-compliance expenditures are used to adjust a penalty based on an estimate of the annual operating and maintenance expense throughout the life of the project. The requirement that pre-compliance expenditures be no more than one-twelfth of annual expense reflects the assumption that pre-compliance expenditures are similar to the annual expenditures avoided by noncompliance and do not include start-up costs and installation charges. These additional costs for installation and start-up should be included as a capital expenditure.

EXHIBIT II-3

POST-COMPLIANCE ANNUAL OPERATING AND MAINTENANCE EXPENSE

FERTILIZER COMPANY

1.	Annual Labor Expense 840 Hours x $10 per hour =	$8,400.00
2.	Power Cost 90000 Kwh x $.0333 per Kwh =	3,000.00
3.	Water Cost Gallons x $ per gallon =	0
4.	Raw Materials and Supplies 1000 lbs x $1 per Lb =	1,000.00
5.	Yearly Increase in Property Tax =	3,000.00
6.	Cost of Production Lost Due to Maintenance or Use of Equipment =	0
7.	Total Cost (1 + 2 + 3 + 4 + 5 + 6) =	$15,400.00
8.	Less: Value of By-Products 800 Lbs at $.50 per Lb =	400.00
9.	Annual Operating and Maintenance (7 - 8) =	$15,000.00

[1] This calculation uses Worksheet B in Attachment V.

EXHIBIT II-3

(CONTINUED)

Note: One-twelfth of line 9 is the maximum amount of any monthly pre-compliance expenditure.

$\frac{\text{Line 9}}{12}$ = $1,250 Maximum amount which may be entered as a pre-compliance monthly operating and maintenance expense.

6. Investment tax credit rate.[1] The investment tax credit is a percentage of the investment which can be used to directly reduce federal income tax. Although the federal tax credit for an investment is currently ten percent, this rate may have to be adjusted to reflect two restrictions in the revenue code:[2]

- Investments of less than seven years do not receive the entire ten percent.
- Certain investments do not qualify for the credit.

An investment with a depreciable life of less than seven years does not qualify for the maximum investment tax credit. Currently, percentages allowed for such investments are as follows:

[1] Information on the investment tax credit is contained in the Internal Revenue Service Code, Chapter 1, Subpart B--Rules for Computing Credit for Investment in Certain Depreciable Property.

[2] In addition to the two listed restrictions, investments financed with industrial development bonds qualify for only a portion of the credit when rapid amortization is used. This adjustment is made automatically by the computer program. Further, for the purposes of noncompliance penalties the entire investment tax credit as calculated is used regardless of taxable income amount.

Depreciable life (years)	Investment Tax Credit (percent)
Less than 3	0
At least 3 but less than 5	3.33
At least 5 but less than 7	6.67
7 or more	10.00

Items such as buildings and land are not usually allowable for purposes of computing the investment tax credit, so the percentage rate must be adjusted to yield a correct tax credit figure.[1] This adjustment is made by calculating the percentage of the investment qualifying for the tax credit and multiplying it by the percentage tax credit for equipment of similar depreciable life.

The state of Connecticut allows an investment tax credit to be applied against state taxes if the investment occurs in certain depressed areas. Because this credit reduces a tax deductible expense for federal income taxes, the credit must be adjusted to an after-tax basis. The adjustment is made by multiplying the state investment tax

[1] The Revenue Act of 1978 allows an investment tax credit for rehabilitation expenditures in connection with business and productive structures in use at least twenty years since first placed in service or since the last qualifying rehabilitation. Thus, the adjustment described above should be ignored for qualified rehabilitation investments.

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credit by one minus the marginal federal tax rate. The adjusted state credit is then added to the federal credit.[1]

For the Fertilizer Company, the entire investment qualifies for the investment tax credit. If $150,000 of the investment had not been qualified, only a seven percent credit would be allowed.[2]

If the Fertilizer Company had a depreciation tax life of five years and the entire investment qualified for the investment, only a 6.67 percent credit would be allowed.

7. Income tax rate. The income tax rate to be entered into the program must be the marginal rate--that is, the rate which the firm would pay on an additional dollar of income. The firm must estimate its marginal federal income tax rate and, where applicable, its marginal state and local income tax rates. The state and local tax rates should not include sales tax, inventory tax, charter tax

[1] The formula for determining the investment tax credit in a state having a tax credit is:

$$t_{ITC} = ITC_{FEDERAL} + \left[(1\text{-Tax Rate}_{FEDERAL}) * ITC_{STATE}\right]$$

This must be multiplied by one hundred for entry into the computer.

[2] Computed as $\frac{(\$500,000 - 150,000)}{500,000} \times 10\% = 7\%$.

or taxes on property. If any of these taxes are material to the analysis, they should be included in either the investment or operating and maintenance expenditures, as appropriate. Sales tax has already been shown to increase investment while property taxes would be included in operating and maintenance expense.

In most cases involving large firms, the marginal tax rate will be 46 percent.[1] Small corporations and some partnerships or privately owned firms could have lower rates. In many penalty calculations it will be necessary to adjust the state and local tax rates to reflect the fact that the state and local income taxes are also deductible from federal taxes. The steps for calculation are as follows.

[1] As of January 1979. This rate must be adjusted for future changes in the tax laws. The rate applicable to a firm is determined by the amount of taxable income expected in the next year. The ranges of taxable income and the corresponding marginal tax rate are shown below.

Taxable Income	Marginal Tax Rate
$0 - $25,000	17%
$25,000 - $50,000	20%
$50,000 - $75,000	30%
$75,000 - $100,000	40%
$100,000 and above	46%

- The marginal federal, state and local income tax rates are determined.
- The adjusted local tax rate given state taxes is computed[1].
- The local and state tax are adjusted for the federal tax.
- The effective tax rate is computed.

Exhibit II-4 contains a calculation of the tax rate for the Fertilizer Company.

[1] If the local tax is not deductible from the state tax, the numbers should be added.

EXHIBIT II-4

CALCULATION OF THE TAX RATE[1]
FERTILIZER CORPORATION

1. Marginal Federal tax rate.	46%
2. Marginal State tax rate.	5%
3. Marginal Local tax rate.	2%

CALCULATION OF ADJUSTED LOCAL TAX

(1 - State Tax Rate) x Local Tax Rate
= (1 - .03) x .02
= .95 x .02
= .019 = Adjusted Local Tax Rate.

CALCULATION OF ADJUSTED STATE AND LOCAL TAX

(1 - Federal Tax Rate) x (State Tax Rate + Adjusted Local Rate)
= (1 - .46) x (.05 + .019)
= .54 x .069
= .0373 = Adjusted Local and State Tax.

CALCULATION OF TAX RATE

100 x (Federal Tax Rate + Adjusted Local and State Tax)
= 100 x (.46 + .0373)
= 100 x .4973
= 49.73 = Tax Rate.

[1] This calculation uses Worksheet C in Attachment V.

8. Inflation rate. This is the estimated future increase in the capital and operating cost of pollution control equipment.[1] The inflation rate to be used in the Fertilizer Company penalty calculation is 8.3 percent. This was the compound rate of increase in the Chemical Engineering Plant Cost Inflation Index for the years 1972-1977.[2]

9. Discount rate. The discount rate is an estimate of the firm's cost of new equity capital. For a manufacturing firm, calculation of the discount rate requires averaging the twenty most recent quarters of the after-tax return on equity as reported for the firm's industry in Table 4 of the Federal Trade Commission's Quarterly Report for Manufacturing, Mining and Trade. Attachment I contains a copy of Table 4 for the year 1977.

[1] Chemical Engineering, McGraw Hill, Inc., April 28, 1975 and subsequent issues. The compound rate of increase is computed as:

$$\left(\left[\text{(Index in Final Year)} \div \text{(Index in Initial Year)}\right]^{1/N} - 1\right) \times 100$$

where N equals the number of years between the first and last years.

[2] The inflation rate of 8.3 percent is only applicable to the example described in the manual. Actual penalty determination will require calculation of the inflation rate using the above formula and the past Plant Cost Inflation Indices for the most recent twenty quarters.

The annual rates of return on equity after taxes are reported by the FTC in broad industrial categories. To categorize a firm, the Standard Industrial Classification Manual published by the Office of Management and Budget should be used.

The FTC does not report rates of return on equity for public utilities. For these organizations, the annual percent return on net worth published in the April Monthly Economic Letter by Citibank (New York) should be used instead. Attachment I includes a table listing this information for 1973 to 1977.

For the Fertilizer Company, the correct category to use is Chemicals and Allied Products. The calculation of the average return on equity for twenty quarters is shown in Exhibit II-5.

EXHIBIT II-5

FERTILIZER COMPANY
JULY 1978
AVERAGE RETURN ON EQUITY, CHEMICALS AND ALLIED PRODUCTS

YEAR	QUARTER	RETURN %
1973	1	14.4
	2	15.5
	3	14.8
	4	15.5
1974	1	18.1
	2	21.3
	3	18.9
	4	14.8
1975	1	14.2
	2	16.2
	3	15.6
	4	15.2
1976	1	16.6
	2	17.2
	3	15.3
	4	12.8
1977	1	14.9
	2	16.8
	3	14.8
	4	13.8
	Total:	316.7

Average: 15.84%

10. Interest rate. The interest rate is the estimated cost of new debt for the firm. Determination of the firm's interest rate requires two steps.

- The quality rating for the firm's bonds is found in Moody's Bond Record. If the firm does not have rated debt, an "A" rating is assumed. If it has more than one issue, that with the highest rating is used.

- The most recent monthly yield reported for bonds of the same rating is found in the Corporate Bond Yield Averages section of the Bond Record.

Bonds are rated by Moody's in a system ranging from a high of "Aaa" to a low of "C". The lowest average yield reported is "Baa"; a firm whose bonds have a rating of "Baa" or lower will use the yield reports for the "Baa" average. The bonds are listed in the Bond Record in alphabetical order by corporation. Convertible bonds are considered in the same manner as all other bonds.

Note that the interest rate is not taken from the so-called coupon rate on the bond. For example, in Table II-1, rates of 9.75 percent and 4.5 percent are listed. These are historical rates which were in effect at the time the bonds were issued. They do not reflect current market rates.

The Bond Record reports a number of different yields. If the firm is a utility, the Public Utility Average is used. If the firm is not a utility, the Industrial Bond average is used.

For the Fertilizer Company, the debt was not rated, so the industrial bond average for "A" bonds is used (8.76). Attachment II contains the average bond yields as reported in a recent issue of the Bond Record.

11. Preferred dividend rate. The method used for determining the preferred dividend rate is identical to that used to select the interest rate. The quality rating of the firm's preferred shares is found in Moody's Bond Record in the Preferred Stock section. If the stock is not rated, an "a" rating is assumed.

Average yields are reported for only "aa", "a", and "baa" preferred stocks issued by utilities. However, these figures should be used for non-utilities as well. If the stock has a rating of "baa" or lower, use the "baa" average yield. Preferred rated "aa" or higher should use the "aa" yield.

The latest monthly average is used and entered exactly as shown in the averages. Attachment III contains an example of the Bond Record preferred averages.

The Fertilizer Company's preferred stock is not rated so the yield entered for the penalty calculation is 8.88 percent, the rate found by using the return on "a" rated preferred stock.

12. Preferred stock share of investment. This is the percentage amount of preferred equity in the firm's capital structure. The capital structure of the firm is the dollar amount invested in the firm for periods over one year. Thus it does not include current liabilities or deferred federal income tax.

The preferred share of the investment is calculated using data contained in the firm's five most recent annual reports.[1] The procedure involves the following steps:

[1] This is available either directly from the firm or, for large corporations, in Moody's Industrial Manual. An advantage to using Moody's is that the percent equity is reported and can be used as a check on the calculation.

- The sum of all the firm's equity accounts on each year's balance sheet is added to the total of its long term debt. This total represents the firm's long term financing or its capital structure for that year. It will include paid-in capital, retained earnings, capital surplus, preferred stock and long term debt. If Treasury stock is shown as an asset on the balance sheet, it should be subtracted from the total capital.
- The dollar amount of all preferred stock shown in the equity section of the balance sheet for the year is divided by the total capital found in the previous step. This is the preferred share of the investment for the year.
- The preferred shares for each of the five most recent years are averaged to yield a preferred share for input to the penalty calculation.

13. Equity share of the investment. The sum of all equity accounts not used in the numerator of the preferred stock calculation is the amount of common equity in the capital structure each year. This sum is also divided by the yearly total capital found in step one yielding the equity share of the investment for the year. These figures are then averaged to yield an equity share for input to the penalty calculation.

The sum of the equity share of the investment and the preferred share of the investment cannot be greater than one hundred percent.

The hypothetical Fertilizer Company has the following balance sheet.

Table II-1

Fertilizer Company
Balance Sheet
December 31, 1978
(000's)

Assets	1976	Liabilities	
Cash	$18,881	Notes payable to bank	$122
Marketable Securities	60,552	Accounts payable & accruals	54,109
Notes & accts. rec.(net)	79,156	Preferred dividends payable	23
Income tax refunds		Income tax	28,335
Inventories	116,940	Current maturities long term debt	8,929
Prepaid expenses	4,290	TOTAL CURRENT LIABILITIES	$91,518
TOTAL CURRENT ASSETS	$279,819		
		Deferred fed. income taxes	57,663
Property-plant & equip.	828,703	4.5% debentures	21,531
Less: reserve for depreciation	423,554	9.75% notes	60,000
NET PROPERTY ACCOUNT	$405,149	Long term lease obligation	43,932
		Pollution control facil.rev.bds.	46,000
Const. funds held by trustee	3,913	Other long term debt	8,230
Other assets	83,495	4 1/2% preferredstock ($100 par)	22,044
		Common stock ($5 par)	100,000
		Capital surplus	58,236
		Retained earnings	262,799
		TOTAL STOCKHOLDERS' EQUITY	$423,079
		Less: Treasury Stock	477
		NET STOCKHOLDER'S EQUITY	$422,602
TOTAL	$772,376	TOTAL	$772,376

Exhibit II-6 illustrates the calculation of the equity and preferred share of the investment for a single year.

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EXHIBIT II-6

CALCULATION OF THE EQUITY AND PREFERRED SHARE OF THE INVESTMENT[1]
FERTILIZER COMPANY
(000's)

The first step in obtaining the equity and preferred share of the investment is to sum the equity and long term debt.[2]

4.5% debentures	$ 21,331
9.75% notes	60,000
Long term lease	43,932
Pollution control rev bonds	46,000
Other long term debt	9,836
4.5% preferred stock	22,044
Common stock	100,000
Capital surplus	98,236
Retained earnings	262,799
	$623,772
Less: Treasury Stock	(477)
Total long term capital	$623,295

[1] For the purposes of this example, preferred and equity share are calculated for one year only.

[2] Deferred taxes are not included in the calculation of the equity and preferred share of the investment.

EXHIBIT II-6
(CONTINUED)

The second step is to divide the preferred stock by the total long term capital.

$$\frac{\text{Preferred stock}}{\text{Total Long Term Capital}} = \frac{22,044}{623,295} = .035 \text{ or } 3.5\%$$

The third step is to sum all common equity accounts. Do not include the preferred stock. Divide this number by the total long term capital.

Common Stock	$100,000
Capital Surplus	98,236
Retained Earnings	262,799
Total	421,035
Less Treasury Stock	(477)
Total Common Equity	$420,558

$$\frac{\text{Total Common Equity}}{\text{Total Long Term Capital}} = \frac{\$420,558}{623,295} = .675 \text{ or } 67.5\%$$

Thus, 67.5 percent is the equity share of the investment and 3.5 percent is the preferred share of the investment.

14. Depreciation life in years. This is the number of years over which the firm's pollution control equipment will be depreciated for tax purposes. It is found by taking the lower limit on the asset depreciation range for the appropriate class of assets given in the Internal Revenue Service publication Revenue Procedure 77-10. If the lower limit is greater than ten years, the regulations require that ten years be used. If the lower limit contains a fractional part of a year, the program should be run with the year lower than the fraction. If the rounding reduces the investment tax credit, the depreciation life should be rounded up and the program run again. The calculation giving the lower penalty should be used.

15. The useful life in years. The useful life is used to determine the length of each replacement cycle in the penalty calculation. It is also provided by Revenue Procedure 77-10. Instead of using the lower limit, the asset guideline period is used. If this contains a fractional part of a year the number should be rounded up to the next integer. The useful life must always be greater than or equal to the depreciation life in years.

For the Fertilizer Company example, the "Asset Guideline Period" for chemicals and allied products is used. This is eleven years. Had it been 11.5 years, it would have been rounded up to twelve.

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Attachment I

TABLE 4. ANNUAL RATES OF PROFIT ON STOCKHOLDERS' EQUITY, BY INDUSTRY

(Percent)

Industry	Before income taxes 2/					After taxes				
	4Q 1976 1/	1Q 1977 1/	2Q 1977	3Q 1977	4Q 1977	4Q 1976 1/	1Q 1977 1/	2Q 1977	3Q 1977	4Q 1977
All Manufacturing Corporations	21.0	21.3	26.3	21.8	23.4	13.1	14.0	16.0	13.3	14.6
Nondurable Manufacturing Corporations	20.5	20.9	26.3	22.1	21.8	12.9	13.0	15.9	13.*	13.7
Food and Kindred Products	21.7	19.8	24.4	21.9	21.7	13.1	11.4	15.0	13.	13.4
Tobacco Manufactures	27.9	29.5	36.3	30.3	31.8	15.6	16.5	19.0	1*.*	1*.*
Textile Mill Products	9.3	13.2	15.*	17.6	19.1	5.3	6.*	7.0	*	11.1
Paper and Allied Products	17.*	17.4	21.6	19.9	18.5	10.9	11.2	14.1	1.*	12.*
Printing and Publishing	29.3	23.6	32.3	33.2	36.8	15.*	12.7	18.*	1*.	20.*
Chemicals and Allied Products	20.4	24.6	27.4	24.3	21.4	12.8	13.9	16.4	1*.*	11.*
Industrial chemicals and synthetics 1/	17.3	22.3	26.5	19.8	17.7	11.0	13.7	16.0	1*.*	11.*
Drugs 1/	25.5	29.5	29.6	29.0	27.4	16.5	18.4	18.8	18	1*
Petroleum and Coal Products	19.5	19.6	21.0	19.4	19.5	13.8	11.9	13.*	11.*	11.*
Rubber and Miscellaneous Plastics Products	20.5	21.4	26.3	18.*	17.7	11.*	12.*	1*.8	10.*	
Other Nondurable Manufacturing Corporations	21.8	21.0	27.3	24.8	28.5	11.4	10.4	15.6	1.*	
Durable Manufacturing Corporations	21.6	21.7	28.3	21.4	25.0	13.6	13.0	17.1	*.*	*.*
Stone, Clay and Glass Products	17.5	10.1	27.7	28.1	22.3	11.1	5.1	17.0	1*.	1*.*
Primary Metal Industries	8.7	7.2	13.9	-3.1	7.9	7.3	5.1	9.4	*.*	*.*
Iron and steel 1/	10.0	4.6	12.4	-9.6	9.5	7.9	3.5	8.8	-*.*	*.*
Nonferrous metals 1/	6.3	12.8	16.6	8.0	5.0	6.1	8.1	11.1	* .	*.*
Fabricated Metal Products	22.9	24.3	31.5	26.7	25.3	12.9	13.7	18.*	1*.*	1*.*
Machinery, except Electrical	24.2	24.2	29.2	26.2	28.3	15.5	15.8	17.8	16.*	17.*
Electrical and Electronic Equipment	25.3	23.2	29.2	26.2	28.7	14.5	12.9	16.*	1*.*	14.*
Transportation Equipment	25.3	20.9	36.9	20.5	29.2	15.*	18.6	22.1	1..*	16.*
Motor vehicles and equipment 1/	27.3	34.3	40.5	18.6	31.0	16.9	21.0	24.4	11.1	1*.*
Aircraft, guided missiles and parts 1/	21.0	24.4	28.1	26.1	28.3	12.0	14.0	1*.1	1*.*	1*.
Instruments and Related Products	23.8	26.3	26.4	29.4	32.7	13.9	15.0	15.*	17.*	1*.*
Other Durable Manufacturing Corporations	22.9	20.6	29.6	29.7	24.5	13.8	12.6	17.8	1*.*	1..*
All Mining Corporations	24.2	22.2	27.6	24.0	22.0	15.8	14.*	18.8	1*.	1
All Retail Trade Corporations	35.2	20.7	28.7	29.*	34.3	23.0	11.7	20.*	*.*	2*.*
All Wholesale Trade Corporations	23.5	23.7	28.9	28.9	20.6	14.9	15.2	19.5	1*.	1*

1/ Included in major industry above.
2/ Based on profit figure which includes net income (loss) of foreign branches and equity in earnings (losses) of non-consolidated subsidiaries, net of foreign taxes.
3/ Some of the rates in this column have been revised since their first appearance.
See footnotes to Tables A - E.

Attachment I
(Continued)

UTILITY AFTER-TAX RETURN ON EQUITY
(PERCENT)

	Electric Power and Gas	Telephone and Telegraph
1977	11.7	12.7
1976	11.5	11.5
1975	11.6	9.9
1974	10.9	9.8
1973	10.7	10.5

Source: Monthly Economic Letter, Citibank, New York, April 1978 and April issues of prior years.

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Attachment II

MOODY'S CORPORATE BOND YIELD AVERAGE

FOR FERTILIZER COMPANY 8.76

Moody's Corporate Bond Yield Averages

	Av. Corp.	Aaa	Corporate by Ratings Aa	A	Baa	Corporate by Groups P.U.	Ind.	R.R.		Public Utility Bonds Aaa	Aa	A	Baa		Industrial Bonds Aaa	Aa	A	Baa		Railroad Bonds Aaa	Aa	A
1972																						
June	8.00	7.23	7.31	7.89	8.39	7.82	7.98	7.98	June	7.23	7.71	7.77	8.31	June	6.93	7.11	7.37	8.01	June	—	7.72	7.96
July	8.06	7.21	7.89	8.71	8.23	7.89	7.99	8.08	July	7.02	7.98	7.82	8.36	July	6.93	7.17	7.39	8.01	July	—	7.75	7.93
Aug.	7.81	7.19	7.43	7.64	8.19	7.89	7.96	7.98	Aug.	7.41	7.49	7.64	8.22	Aug.	6.96	7.19	7.33	8.08	Aug.	—	7.79	7.93
Sept.	7.89	7.23	7.41	7.64	8.09	7.88	7.96	7.97	Sept.	7.41	7.48	7.61	8.01	Sept.	7.03	7.19	7.35	7.93	Sept.	—	7.84	7.98
Oct.	7.89	7.21	7.43	7.62	8.06	7.83	7.98	7.97	Oct.	7.48	7.98	7.65	7.91	Oct.	7.01	7.12	7.34	7.98	Oct.	—	7.71	7.91
Nov.	7.92	7.13	7.38	7.58	7.96	7.85	7.98	7.96	Nov.	7.38	7.42	7.58	7.86	Nov.	6.94	7.03	7.28	7.88	Nov.	—	7.72	7.87
Dec.	7.87	7.08	7.36	7.59	7.93	7.48	7.98	7.91	Dec.	7.36	7.38	7.48	7.76	Dec.	6.90	6.97	7.23	7.86	Dec.	—	7.72	7.79
1973																						
Jan.	7.49	7.15	7.37	7.63	7.96	7.72	7.97	7.97	Jan.	7.38	7.48	7.82	7.77	Jan.	6.96	7.04	7.28	7.89	Jan.	—	7.67	7.89
Feb.	7.57	7.22	7.47	7.68	7.97	7.86	7.96	7.98	Feb.	7.41	7.52	7.62	7.89	Feb.	7.04	7.12	7.35	7.98	Feb.	—	7.77	7.97
Mar.	7.62	7.29	7.49	7.68	8.02	7.84	7.43	7.94	Mar.	7.45	7.58	7.68	7.95	Mar.	7.12	7.20	7.44	7.94	Mar.	—	7.77	7.96
Apr.	7.62	7.26	7.49	7.64	8.00	7.84	7.43	7.98	Apr.	7.44	7.51	7.63	7.89	Apr.	7.05	7.13	7.44	8.00	Apr.	—	7.78	7.98
May	7.62	7.29	7.49	7.64	8.04	7.82	7.41	8.03	May	7.44	7.51	7.63	7.91	May	7.13	7.19	7.41	7.98	May	—	7.79	7.97
June	7.69	7.37	7.55	7.71	8.13	7.89	7.48	8.03	June	7.51	7.59	7.71	7.94	June	7.22	7.28	7.46	7.98	June	—	7.79	8.07
July	7.89	7.43	7.64	7.98	8.24	7.91	7.58	8.17	July	7.62	7.70	7.83	8.10	July	7.28	7.36	7.64	8.10	July	—	7.87	8.12
Aug.	8.04	7.69	7.84	8.11	8.33	8.08	7.68	8.22	Aug.	7.81	7.82	8.04	8.27	Aug.	7.56	7.72	7.98	8.26	Aug.	—	7.91	8.17
Sept.	8.08	7.83	7.88	8.11	8.33	8.09	7.68	8.17	Sept.	7.78	7.84	8.04	8.31	Sept.	7.66	7.73	7.99	8.25	Sept.	—	7.91	8.20
Oct.	7.98	7.89	7.94	7.98	8.21	8.04	7.78	8.24	Oct.	7.77	7.94	8.03	8.44	Oct.	7.43	7.63	7.88	8.13	Oct.	—	7.82	8.12
Nov.	8.01	7.97	7.98	8.07	8.23	8.11	7.91	8.22	Nov.	7.82	8.01	8.15	8.44	Nov.	7.50	7.67	7.88	8.17	Nov.	—	7.83	8.12
Dec.	8.03	7.98	7.98	8.11	8.29	8.17	7.94	8.28	Dec.	7.96	8.07	8.24	8.51	Dec.	7.59	7.69	7.89	8.29	Dec.	—	7.89	8.19
1974																						
Jan.	8.12	7.93	8.09	8.17	8.48	8.15	7.97	8.24	Jan.	8.09	8.15	8.36	8.68	Jan.	7.65	7.85	7.98	8.28	Jan.	—	7.98	8.28
Feb.	8.17	7.93	8.06	8.20	8.52	8.25	8.01	8.27	Feb.	8.01	8.20	8.42	8.68	Feb.	7.70	7.90	8.07	8.37	Feb.	—	8.00	8.28
Mar.	8.28	8.06	8.19	8.33	8.63	8.44	8.12	8.34	Mar.	8.16	8.33	8.46	8.81	Mar.	7.87	8.09	8.19	8.63	Mar.	—	8.09	8.32
Apr.	8.34	8.22	8.43	8.48	8.87	8.60	8.29	8.53	Apr.	8.36	8.56	8.77	9.04	Apr.	8.13	8.32	8.45	8.98	Apr.	—	8.10	8.42
May	8.71	8.37	8.53	8.83	9.08	8.83	8.47	8.73	May	8.47	8.71	8.89	9.22	May	8.36	8.44	8.66	9.26	May	—	8.46	8.68
June	8.80	8.61	8.73	8.97	9.27	9.08	8.68	8.89	June	8.58	8.83	9.02	9.48	June	8.34	8.57	8.83	9.68	June	—	8.46	8.68
July	9.15	8.72	8.91	9.48	9.68	9.34	8.98	9.05	July	8.82	9.17	9.66	9.72	July	8.80	8.85	9.13	9.72	July	—	8.77	8.98
Aug.	9.42	9.08	9.22	9.87	9.77	9.70	9.16	9.19	Aug.	9.08	9.53	10.08	10.14	Aug.	8.89	9.03	9.21	9.79	Aug.	—	8.99	9.19
Sept.	9.73	9.24	9.88	10.04	10.13	10.11	9.44	9.44	Sept.	9.36	10.05	10.45	10.39	Sept.	9.13	9.26	9.62	9.78	Sept.	—	9.14	9.34
Oct.	9.52	9.27	9.45	10.29	10.43	10.21	9.63	9.44	Oct.	9.39	9.93	10.73	11.02	Oct.	8.83	9.35	9.89	9.93	Oct.	—	9.22	9.71
Nov.	9.70	9.39	9.54	9.98	10.08	10.12	9.57	9.58	Nov.	9.18	9.54	10.44	11.30	Nov.	8.89	9.13	9.44	9.91	Nov.	—	9.72	9.79
Dec.	9.63	9.37	9.50	9.96	10.03	10.02	9.53	9.59	Dec.	9.42	9.37	10.27	11.40	Dec.	8.74	9.07	9.31	9.88	Dec.	—	9.80	9.97
1975																						
Jan.	9.45	9.52	9.13	9.81	10.01	10.16	9.10	9.22	Jan.	8.99	9.45	10.27	11.37	Jan.	8.65	8.81	9.25	10.03	Jan.	—	9.70	9.85
Feb.	9.43	9.61	8.91	9.51	10.02	9.82	9.01	9.32	Feb.	8.79	9.23	9.99	11.32	Feb.	8.44	8.69	9.03	9.98	Feb.	—	9.59	9.69
Mar.	9.36	9.67	8.91	9.37	10.02	9.87	9.01	9.23	Mar.	8.82	9.17	9.72	10.94	Mar.	8.42	8.67	9.01	10.01	Mar.	—	9.57	9.71
Apr.	9.30	9.68	8.19	9.62	10.38	9.88	9.20	9.38	Apr.	9.11	9.48	10.05	10.86	Apr.	8.78	8.89	9.22	10.39	Apr.	—	9.70	9.81
May	9.60	9.89	9.24	9.79	10.89	9.98	9.35	9.48	May	9.46	9.80	10.23	10.95	May	8.75	8.98	9.34	10.42	May	—	9.67	9.81
June	9.53	9.71	9.13	9.87	10.63	9.81	9.29	9.46	June	9.23	9.51	10.10	10.85	June	8.81	8.91	9.23	10.29	June	—	9.58	9.68
July	9.54	9.84	9.13	9.61	10.36	9.81	9.26	9.37	July	9.06	9.38	10.01	10.80	July	8.82	8.88	9.22	10.20	July	—	9.54	9.67
Aug.	9.61	9.91	9.23	9.88	10.39	9.93	9.29	9.41	Aug.	9.20	9.52	10.17	10.87	Aug.	8.89	8.94	9.24	10.31	Aug.	—	9.62	9.74
Sept.	9.67	9.93	9.34	9.74	10.41	9.98	9.35	9.42	Sept.	9.21	9.64	10.13	10.80	Sept.	8.88	9.06	9.28	10.25	Sept.	—	9.61	9.73
Oct.	9.63	9.86	9.33	9.72	10.42	9.94	9.32	9.40	Oct.	9.14	9.56	10.16	10.80	Oct.	8.87	9.08	9.28	10.24	Oct.	—	9.55	9.77
Nov.	9.55	9.78	9.22	9.64	10.34	9.93	9.27	9.38	Nov.	9.03	9.48	10.04	10.78	Nov.	8.52	8.89	9.24	10.22	Nov.	—	9.45	9.72
Dec.	9.57	9.79	9.29	9.67	10.36	9.97	9.30	9.37	Dec.	9.07	9.52	10.11	10.79	Dec.	8.51	8.89	9.23	10.33	Dec.	—	9.47	9.69
1976																						
Jan.	9.42	9.69	9.13	9.34	10.41	9.88	9.16	9.22	Jan.	8.86	9.29	9.99	10.53	Jan.	8.33	8.57	9.18	10.26	Jan.	—	9.43	9.63
Feb.	9.31	9.55	9.08	9.42	10.24	9.59	9.12	9.25	Feb.	8.89	9.16	9.71	10.31	Feb.	8.29	8.57	9.15	10.17	Feb.	—	9.38	9.54
Mar.	9.26	9.52	9.01	9.49	10.13	9.43	9.10	9.16	Mar.	8.76	9.12	9.67	10.17	Mar.	8.30	8.58	9.12	10.07	Mar.	—	9.28	9.47
Apr.	9.12	9.40	8.89	9.26	9.94	9.27	8.96	9.03	Apr.	8.59	9.00	9.53	9.95	Apr.	8.20	8.78	9.08	9.93	Apr.	—	9.23	9.37
May	9.16	9.50	8.98	9.27	9.82	9.31	9.00	9.08	May	8.73	9.08	9.55	9.91	May	8.43	8.78	9.09	9.81	May	—	9.14	9.17
June	9.16	9.53	8.99	9.26	9.88	9.35	9.15	9.19	June	8.84	9.07	9.54	10.01	June	8.40	8.71	9.07	9.76	June	—	9.12	9.11
July	9.08	9.50	8.91	9.16	9.82	9.28	8.98	9.05	July	8.78	9.02	9.47	9.90	July	8.33	8.59	8.91	9.73	July	—	9.04	9.11
Aug.	8.98	9.45	8.88	9.14	9.81	9.07	8.79	8.75	Aug.	8.64	8.88	9.33	9.87	Aug.	8.26	8.49	8.82	9.61	Aug.	—	8.98	9.06
Sept.	8.79	9.38	8.54	8.81	9.40	8.96	8.68	8.68	Sept.	8.57	8.89	8.90	9.47	Sept.	8.18	8.39	8.72	9.32	Sept.	—	8.88	8.98
Oct.	8.71	9.33	8.43	8.73	9.32	8.93	8.58	8.54	Oct.	8.48	8.78	8.79	9.41	Oct.	8.14	8.36	8.68	9.17	Oct.	—	8.82	8.92
Nov.	8.86	9.35	8.46	8.80	9.33	8.97	8.54	8.48	Nov.	8.38	8.68	8.76	9.34	Nov.	8.13	8.39	8.63	9.32	Nov.	—	8.72	8.88
Dec.	8.87	9.40	8.51	8.89	9.38	9.01	8.59	8.59	Dec.	8.55	8.83	8.82	9.31	Dec.	7.81	8.04	8.43	9.03	Dec.	—	8.87	8.99
1977																						
Jan.	8.61	9.38	8.38	8.63	9.48	8.98	8.56	8.57	Jan.	8.54	8.81	8.81	9.37	Jan.	7.97	7.98	8.28	8.98	Jan.	—	8.82	8.94
Feb.	8.68	8.84	8.36	8.69	9.52	8.98	8.53	8.58	Feb.	8.21	8.48	8.68	9.39	Feb.	7.86	8.06	8.33	9.04	Feb.	—	8.79	8.93
Mar.	8.51	8.78	8.28	8.53	9.32	8.86	8.38	8.38	Mar.	8.27	8.49	8.70	9.29	Mar.	7.92	8.07	8.49	9.04	Mar.	—	8.73	8.93
Apr.	8.49	8.84	8.28	8.38	9.37	8.85	8.33	8.37	Apr.	8.21	8.51	8.71	9.37	Apr.	7.86	8.03	8.38	8.97	Apr.	—	8.68	8.87
May	8.57	8.81	8.28	8.38	9.31	8.84	8.30	8.32	May	8.22	8.48	8.71	9.32	May	7.87	8.08	8.38	8.98	May	—	8.81	8.91
June	8.58	7.97	8.19	8.48	8.91	8.53	8.21	8.08	June	8.12	8.37	8.58	9.08	June	7.77	8.00	8.33	8.88	June	—	8.88	8.98
July	8.33	7.94	8.12	8.40	8.87	8.48	8.10	8.02	July	8.10	8.33	8.51	8.97	July	7.78	7.98	8.28	8.78	July	—	8.72	7.98
Aug.	8.34	7.93	8.17	8.40	8.88	8.47	8.11	8.03	Aug.	8.13	8.36	8.49	8.91	Aug.	7.82	7.97	8.30	8.78	Aug.	—	8.58	7.98
Sept.	8.31	7.88	8.15	8.37	8.90	8.43	8.10	8.03	Sept.	8.07	8.32	8.48	8.85	Sept.	7.76	7.97	8.27	8.74	Sept.	—	8.62	7.82
Oct.	8.42	8.04	8.26	8.48	8.89	8.58	8.27	8.07	Oct.	8.18	8.44	8.61	9.01	Oct.	7.88	8.08	8.35	8.77	Oct.	—	8.74	7.97
Nov.	8.40	8.08	8.26	8.46	8.95	8.61	8.26	8.10	Nov.	8.23	8.49	8.64	9.08	Nov.	7.93	8.29	8.48	8.94	Nov.	—	8.79	7.91
Dec.	8.34	8.19	8.40	8.47	8.99	8.65	8.43	8.10	Dec.	8.34	8.53	8.84	9.08	Dec.	8.04	8.23	8.49	8.90	Dec.	—	8.83	7.93
1978																						
Jan.	8.74	8.41	8.59	8.78	9.17	8.87	8.60	8.29	Jan.	8.32	8.76	8.92	9.27	Jan.	8.21	8.42	8.69	9.07	Jan.	—	8.93	8.04
Feb.	8.78	8.47	8.65	8.79	9.28	8.90	8.65	8.32	Feb.	8.87	8.79	8.97	9.29	Feb.	8.27	8.50	8.82	9.11	Feb.	—	8.98	8.13
Mar.	8.88	8.67	8.88	8.93	9.22	8.93	8.68	8.41	Mar.	8.57	8.79	8.98	9.27	Mar.	8.38	8.53	8.83	9.07	Mar.	—	9.19	8.39
Apr.	8.88	8.86	8.72	8.91	9.32	8.95	8.78	8.49	Apr.	8.88	8.84	9.09	9.34	Apr.	8.43	8.59	8.78	9.10	Apr.	—	9.06	8.45

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Attachment III

MOODY'S PUBLIC UTILITY PREFERRED STOCK YIELD AVERAGE

FOR FERTILIZER COMPANY 8.88

Moody's Public Utility Preferred Stock Yield Averages

"aa"

	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.
1978	---	---	---	---	---	---	9.38	9.55	9.64	9.63	9.31	9.33
1978	8.79	8.74	8.82	8.77	8.96	8.92	8.80	8.72	8.58	8.63	8.57	8.58
1977	8.36	8.23	8.21	8.18	8.14	8.03	7.91	8.02	7.95	8.08	8.15	8.16
1978	8.31	8.38	8.35	8.51	---	---	---	---	---	---	---	---

"a"

	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.
1975	---	---	---	---	---	---	10.39	10.46	10.72	10.77	10.23	10.23
1976	9.45	9.42	9.32	9.21	9.46	9.46	9.37	9.31	9.84	9.95	9.99	9.98
1977	8.89	8.89	8.75	8.81	8.64	8.47	8.23	8.30	8.32	8.39	8.56	8.59
1978	8.79	8.74	8.79	8.88	---	---	---	---	---	---	---	---

"baa"

	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.
1975	---	---	---	---	---	---	10.70	10.86	11.11	10.91	10.55	10.67
1976	9.78	9.57	9.73	9.62	9.76	9.79	9.74	9.67	9.45	9.39	9.39	9.15
1977	9.01	8.98	9.01	9.09	9.04	8.92	8.63	8.72	8.57	8.98	8.96	8.89
1978	9.17	9.17	9.24	9.34	---	---	---	---	---	---	---	---

NOTE: There is no "aaa" average because of the dearth of prime-quality preferred stocks. Yields are based on prices for the last Friday of each month.

Title	Moody's Rating	Dividend Dates	Par or Stated Value	Shares Outstanding (000's)	Current Call Price	Sinking Fund	(1)New Money Preferred
Alabama Power Co.							
4.20% Cum. preferred	"baa"	J. A. J & O1	100	264	105.00 (no change)	No	No
4.52% Cum. preferred	"baa"	J. A. J & O1	100	50	102.93 (no change)	No	Yes
4.60% Cum. preferred	"baa"	J. A. J & O1	100	100	104.20 (no change)	No	Yes
4.64% Cum. preferred	"baa"	J. A. J & O1	100	60	101.39 (to 5-1-79)	No	Yes
4.72% Cum. preferred	"baa"	J. A. J & O1	100	50	103.36 (to 9-1-80)	No	Yes
4.92% Cum. preferred	"baa"	J. A. J & O1	100	80	103.23 (no change)	No	Yes
5.20% Cum. preferred	"baa"	J. A. J & O1	100	70	104.98 (to 10-1-81)	No	Yes
5.28% Cum. preferred	"baa"	J. A. J & O1	100	50	105.34 (to 11-1-79)	No	Yes
9.24% Cum. preferred	"baa"	J. A. J & O1	100	100	108.46 (to 11-1-88)	No	Yes
*8.20% Cum. preferred	"baa"	J. A. J & O1	100	200	108.43 (to 1-1-82)	No	No
8.04% Cum. preferred	"baa"	J. A. J & O1	100	200	107.36 (to 4-1-82)	No	Yes
*8.16% Cum. preferred	"baa"	J. A. J & O1	100	300	109.44 (to 12-1-78)	No	Yes
*9.44% Cum. preferred, 1974 Series	"baa"	J. A. J & O1	100	250	110.89 (fr. 4-1-79)	No	Yes
*11% Cum. preferred	"baa"	J. A. J & O1	100	500	111.00 (fr. 1-1-81)	Yes	Yes
9% Cum. preferred	"baa"	J. A. J & O1	100	800	100.50 (fr. 9-1-82)	No	Yes
8.72% Cum. preferred	"baa"	J. A. J & O1	100	75	108.72 (fr. 12-1-82)	No	Yes
Depositary preferred	"baa"	J. A. J & O1	$3	16	------ ----------	---	---
AMAX Inc.							
*$3 Cv. preferred ser. B	"a"	M. J. S & D1	$50	2,000	*$33.00 (to 9-1-79)	No	Yes
American Airlines Inc.							
*$2.1875 Cum. preferred units	"baa"	J. A. J & O1	$25	8,000	25.00 (fr. 4-1-82)	Yes	Yes
American Telephone & Telegraph Co.							
*$4.00 Cum. conv. preferred	"aaa"	F. M. A & N1	50	27,423	50.00 (no change)	No	Yes
*$3.64 Cum. preferred	"aaa"	F. M. A & N1	50	10,000	103.12 (to 4-30-79)	Yes	Yes
*$3.74 Cum. preferred	"aaa"	F. M. A & N1	50	10,000	103.10 (to 1-31-84)	Yes	Yes
Appalachian Power Company							
4½% Cum. preferred	"baa"	F. M. A & N1	100	300	110.00 (no change)	No	No
4.50% Cum. Preferred	"baa"	F. M. A & N1	100	33	102.00 (no change)	Yes	Yes
*7.40% Cum. preferred	"baa"	F. M. A & N1	100	250	106.92 (to 2-1-82)	No	Yes
*8.12% Cum. preferred	"baa"	F. M. A & N1	100	150	107.70 (to 2-31-84)	No	Yes
8.32% Cum. preferred	"baa"	F. M. A & N1	100	200	108.32 (fr. 2-1-79)	No	Yes
Arizona Public Service Co.							
$1.10 Cum. preferred	"a"	M. J. S & D1	25	150	27.50 (no change)	No	No
$2.50 Cum. preferred	"a"	M. J. S & D1	50	103	51.00 (no change)	No	No
$2.36 Cum. preferred	"a"	M. J. S & D1	50	40	51.00 (no change)	No	Yes
$2.40 Cum. preferred, ser. A	"a"	M. J. S & D1	50	240	50.50 (no change)	No	Yes
$3.25 Cum. preferred, ser. E	"a"	M. J. S & D1	50	320	51.50 (to 2-28-83)	No	Yes
*$10.70 Cum. preferred, ser. I	"a"	M. J. S & D1	100	300	110.75 (fr. 12-1-80)	Yes	Yes
$8.32 Cum. preferred Ser. J	"a"	M. J. S & D1	100	500	103.32 (fr. 9-1-82)	No	Yes

Note: Moody's ratings are subject to change. Because of the possible time lapse between Moody's assignment or change of a rating and your use of this monthly publication, we suggest you verify the current rating of any security or issuer in which you are interested.

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Attachment IV

This attachment is IRS Revenue Procedure 77-10.

Revenue Procedure 77-10
Administrative, Procedural, and Miscellaneous

Reprinted from Internal Revenue Bulletin No. 12,
dated March 21, 1977

Department of the Treasury

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.

Rev. Proc. 77-10

SECTION 1. PURPOSE.

.01 The purpose of this Revenue Procedure is to restate, pursuant to sections 167(m) and 263(f) of the Internal Revenue Code of 1954, with certain substantive modifications as noted below, the asset guideline classes, asset guideline depreciation periods and ranges, and annual asset guideline repair allowance percentages for the Class Life Asset Depreciation Range (CLADR) System.

.02 This Revenue Procedure supersedes Rev. Proc. 72-10, 1972-1 C.B. 721, and the supplements and revisions of the asset guideline classes, periods, and repair allowance percentages published since the publication of Rev. Proc. 72-10. These Revenue Procedures are as follows:

73-2, 1973-1 C.B. 747
73-3, 1973-1 C.B. 749
73-23, 1973-2 C.B. 474
73-24, 1973-2 C.B. 475
73-25, 1973-2 C.B. 477
73-26, 1973-2 C.B. 479
73-27, 1973-2 C.B. 480
73-28, 1973-2 C.B. 482
73-30, 1973-2 C.B. 484
74-27, 1974-2 C.B. 480
74-28, 1974-2 C.B. 481
74-29, 1974-2 C.B. 482
74-30, 1974-2 C.B. 483
74-31, 1974-2 C.B. 487
74-32, 1974-2 C.B. 487
74-37, 1974-2 C.B. 491
74-50, 1974-2 C.B. 506
76-16, 1976-1 C.B. 556
76-17, 1976-1 C.B. 557
76-18, 1976-1 C.B. 559
76-27, 1976-2 C.B. 644
76-37, 1976-2 C.B. 659
77-2, 1977-3 I.R.B. 24
77-3, 1977-3 I.R.B. 24
77-8, 1977-10 I.R.B. 12

.03 In addition, certain changes are made in the numbering system of asset guideline classes to facilitate the understanding and use of the CLADR system.

Broad title headings and asset guideline class number designations for several related guideline classes have been deleted wherever feasible to eliminate confusion over the appropriate asset guideline class number designations.

The asset guideline classes for "Office Furniture, Fixtures, and Equipment," "Information System," and "Data Handling Equipment, except Computers," were established in Rev. Proc. 73-2 as asset guideline classes 70.11, 70.12, and 70.13, respectively. These classes have been redesignated asset guideline classes 00.11, 00.12, and 00.13, respectively. In addition, the asset guideline class for Industrial Steam and Electric Generation and Distribution Systems, designated asset guideline class 49.5, has been redesignated asset guideline class 00.4. The redesignations group these asset guideline classes with certain other asset guideline classes by types of depreciable assets rather than by the activity or the product of an activity.

.04 Numerous changes and modifications have been made to the language of the asset guideline class descriptions. These changes are not intended to modify the composition of the existing classes of Rev. Proc. 72-10.

.05 The following substantive modifications of the classes of Rev. Proc. 72-10 have been made:

(i) Assets used in the ginning of cotton have been reclassified from class 39.0 to class 01.1.

(ii) Assets used by plumbing contractors have been reclassified from class 70.2 to class 15.1.

(iii) The description of assets included in class 15.2, "Marine Contract Construction," has been modified to be consistent with Rev. Proc. 66-18, 1966-1 C.B. 646.

(iv) Subclass 49.121, "Electric Utility Nuclear Fuel Assemblies," is part of class 49.12, "Electric Utility Nuclear Production Plant," to which it is related. Assets included in subclass 49.121 are not separately subject to possible exclusion from an election to apply section 1.167(a)-11(b)(5)(v) of the regulations. See Section 2.02(i) of this Revenue Procedure.

SEC. 2. RULE OF APPLICATION

.01 The asset guideline classes, asset guideline periods and ranges, and annual asset guideline repair allowances percentages set forth are for use under the rules set forth in section 1.167(a)-11 of the Income Tax Regulations.

.02 It should be noted that the following special rules apply as specified:

(i) It is expressly provided that asset guideline classes and subclasses 00.4, 20.5, 30.11, 30.21, 32.11, 33.11, 33.21, 34.01, 35.11, 35.21, 36.11, 37.12, 37.32, 37.33, and 49.121 are part of existing activity classes to which the assets included in them relate as stated in the Revenue Procedures establishing these subclasses; therefore, assets included in these classes and subclasses are not separately subject to possible exclusion from an election to apply section 1.167(a)-11(b)(5)(v) of the regulations.

(ii) "Service assets," as defined in classes 50.1 and 70.21, the cost of which is properly deductible under section 162 of the Code, are not eligible property under the CLADR system. Further, service assets may be treated as mass assets as defined in section 1.47-1(e)(4) of the regulations. Service assets may be depreciated under a method not described in section 167(b)(1), (2), or (3), if the requirements of section 1.167(a)-11(b)(5)(v) are met.

(iii) If the asset guideline class repair allowance for class 32.1 is elected in accordance with section 1.167(a)-11(d)(2)(ii) of the regulations, "cold tank repairs," including refractory relining expenditures to glass furnaces, shall be treated as deductible repairs within the provisions and limitations of section 1.167(a)-11(d)(2)(iv)(a) dealing with the application of the asset guideline class repair allowance.

(iv) General rebuilding or rehabilitation costs for the special tools defined in class 30.11 that have been traditionally capitalized as the cost of a new asset are included in class 30.11.

(v) Asset guideline class 00.3, "Land Improvements," includes "other tangible property" that qualifies under section 1.48-1(d) of the regulations. However, a structure that is essentially an item of machinery or equip-

ment or a structure that houses property used as an integral part of an activity specified in section 48(a)(1)(B)(i) of the Code, if the use of the structure is so closely related to the use of the property that the structure clearly can be expected to be replaced when the property it initially houses is replaced, is included in the asset guideline class appropriate to the equipment to which it is related.

.03 Property that is used predominantly outside the United States may be eligible property if the requirements of section 1.167(a)-11(b)(2) of the regulations are met. In the case of property first placed in service and used predominantly outside the United States during the taxable year of election, an asset guideline period, but no asset depreciation range is in effect. Accordingly, such property shall not be treated as included in the same asset guideline class as property used predominantly inside the United States, for purposes of determining the asset depreciation period under section 1.167(a)-11(b)(4). Thus, for this purpose each asset guideline class described in this Revenue Procedure has an exact counterpart that consists of property otherwise includable within the class, but used predominantly outside the United States during the taxable year of election. Generally, for this purpose property is used predominantly outside the United States if such property is physically located outside the United States during more than 50 percent of days of the taxable year of election, beginning with the date the property is first placed in service. However, there are ten exceptions to this general rule and these are contained in section 48(a)(2) of the Code. The asset depreciation period for property, which is determined in the taxable year of election, will not be changed because of a change in predominant use after the close of such taxable year. Although treated as in a separate class for purposes of determining the asset depreciation period, property predominantly used outside the United States shall be included in the same asset guideline class as property predominantly used inside the United States for purposes of applying the asset guideline class repair allowance under section 1.167(a)-11(d)(2).

SEC. 3. ASSET GUIDELINE CLASSES AND PERIODS, ASSET DEPRECIATION RANGES, AND ANNUAL ASSET GUIDELINE REPAIR ALLOWANCE PERCENTAGES.

The asset guideline classes, asset guideline periods, asset depreciation ranges, and annual asset guideline repair allowance percentages are prescribed as set forth below:

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
	SPECIFIC DEPRECIABLE ASSETS USED IN ALL BUSINESS ACTIVITIES, EXCEPT AS NOTED:				
00.11	**Office Furniture, Fixtures, and Equipment:** Includes furniture and fixtures which are not a structural component of a building. Includes such assets as desks, files, safes, and communications equipment. Does not include communications equipment that is included in other CLADR classes	8	10	12	2
00.12	**Information Systems:** Includes computers and their peripheral equipment used in administering normal business transactions and the maintenance of business records, their retrieval and analysis. Information systems are defined as: 1) Computers: A computer is an electronically activated device capable of accepting information, applying prescribed processes to the information, and supplying the results of these processes with or without human intervention. It usually consists of a central processing unit containing extensive storage, logic, arithmetic, and control capabilities. Excluded from this category are adding machines, electronic desk calculators, etc. 2) Peripheral equipment consists of the auxiliary machines which may be placed under control of the central processing unit. Non limiting examples are: Card readers, card punches, magnetic tape feeds, high speed printers, optical character readers, tape cassettes, mass storage units, paper tape equipment, keypunches, data entry devices, teleprinters, terminals, tape drives, disc drives, disc files, disc packs, visual image projector tubes, card sorters, plotters, and collators. Peripheral equipment may be used on-line or off-line.				

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
	Does not include equipment that is an integral part of other capital equipment and which is included in other CLADR classes of economic activity, i.e., computers used primarily for process or production control, switching and channeling	5	6	7	7.5
00.13	**Data Handling Equipment, except Computers:** Includes only typewriters, calculators, adding and accounting machines, copiers, and duplicating equipment	5	6	7	15
00.21	**Airplanes (airframes and engines), except those used in commercial or contract carrying of passengers or freight, and all helicopters (airframes and engines)**	5	6	7	14
00.22	**Automobiles, Taxis**	2.5	3	3.5	16.5
00.23	**Buses**	7	9	11	11.5
00.241	**Light General Purpose Trucks:** Includes trucks for use over the road (actual unloaded weight less than 13,000 pounds)	3	4	5	16.5
00.242	**Heavy General Purpose Trucks:** Includes heavy general purpose trucks, concrete ready-mix truckers, and ore trucks, for use over the road (actual unloaded weight 13,000 pounds or more)	5	6	7	10
00.25	**Railroad Cars and Locomotives, except those owned by railroad transportation companies**	12	15	18	8
00.26	**Tractor Units For Use Over-The-Road**	3	4	5	16.5
00.27	**Trailers and Trailer-Mounted Containers**	5	6	7	10
00.28	**Vessels, Barges, Tugs, and Similar Water Transportation Equipment,** except those used in marine contract construction	14.5	18	21.5	6
00.3	**Land Improvements:** Includes improvements directly to or added to land, whether such improvements are section 1245 property or section 1250 property, provided such improvements are depreciable. Examples of such assets might include sidewalks, roads, canals, waterways, drainage facilities, sewers, wharves and docks, bridges, fences, landscaping, shrubbery, or radio and television transmitting towers. Does not include land improvements that are explicitly included in any other class, and buildings and structural components as defined in section 1.48-1(e) of the regulations. Excludes public utility initial clearing and grading land improvements as specified in Rev. Rul. 72-403, 1972-2 C.B. 102.		20		
00.4	**Industrial Steam and Electric Generation and/or Distribution Systems:** Includes assets, whether such assets are section 1245 property or 1250 property, providing such assets are depreciable, used in the production and/or distribution of electricity with rated total capacity in excess of 500 Kilowatts and/or assets used in the production and/or distribution of steam with rated total capacity in excess of 12,500 pounds per hour, for use by the taxpayer in his industrial manufacturing process or plant activity and not ordinarily available for sale to others. Does not include buildings and structural components as defined in section 1.48-1(e) of the regulations. Assets used to generate and/or distribute electricity or steam of the type described above of lesser rated capacity are not included, but are included in the appropriate manufacturing equipment classes elsewhere specified.				

Asset guideline class	Description of assets included	Asset depreciation range (in years) Lower limit	Asset guideline period	Upper limit	Annual asset guideline repair allowance percentage
	Steam and chemical recovery boiler systems used for the recovery and regeneration of chemicals used in manufacturing, with rated capacity in excess of that described above, with specifically related distribution and return systems are not included but are included in appropriate manufacturing equipment classes elsewhere specified. An example of an excluded steam and recovery boiler system is that used in the pulp and paper manufacturing industry	22.5	28	33.5	2.5
	DEPRECIABLE ASSETS USED IN THE FOLLOWING ACTIVITIES:				
01.1	**Agriculture:** Includes machinery and equipment, grain bins, and fences but no other land improvements, that are used in the production of crops or plants, vines, and trees; livestock; the operation of farm dairies, nurseries, greenhouses, sod farms, mushroom cellars, cranberry bogs, apiaries, and fur farms; the performance of agricultural, animal husbandry, and horticultural services	8	10	12	11
01.11	**Cotton Ginning Assets**	9.5	12	14.5	5.5
01.21	**Cattle, Breeding or Dairy**	5.5	7	8.5	
01.22	**Horses, Breeding or Work**	8	10	12	
01.23	**Hogs, Breeding**	2.5	3	3.5	
01.24	**Sheep and Goats, Breeding**	4	5	6	
01.3	**Farm Buildings**	20	25	30	5
10.0	**Mining:** Includes assets used in the mining and quarrying of metallic and nonmetallic minerals (including sand, gravel, stone, and clay) and the milling, beneficiation and other primary preparation of such materials	8	10	12	6.5
13.1	**Drilling of Oil and Gas Wells:** Includes assets used in the drilling of onshore oil and gas wells and the provisions of geophysical and other exploration services; and the provision of such oil and gas field services as chemical treatment, plugging and abandoning of wells and cementing or perforating well casings. Does not include assets used in the performance of any of these activities and services by integrated petroleum and natural gas producers for their own account	5	6	7	10
13.2	**Exploration for and Production of Petroleum and Natural Gas Deposits:** Includes assets used by petroleum and natural gas producers for drilling of wells and production of petroleum and natural gas, including gathering pipelines and related storage facilities	11	14	17	4.5
13.3	**Petroleum Refining:** Includes assets used for the distillation, fractionation, and catalytic cracking of crude petroleum into gasoline and its other components	13	16	19	7
13.4	**Marketing of Petroleum and Petroleum Products:** Includes assets used in marketing petroleum and petroleum products, such as related storage facilities and complete service stations, but not including any of these facilities related to petroleum and natural gas trunk pipelines	13	16	19	4

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
15.1	**Contract Construction Other than Marine:** Includes assets used by general building, special trade, and heavy construction contractors. Does not include assets used by companies in performing construction services for their own account	4	5	6	12.5
15.2	**Marine Contract Construction:** Includes assets used by general building, special trade, and heavy construction contractors predominantly in marine construction work. Does not include assets used by companies in performing marine construction services for their own account except for floating, self-propelled, and other drilling platforms and support vessels used in offshore drilling for oil and gas which are included whether used for their own account or others	9.5	12	14.5	5
20.1	**Manufacture of Grain and Grain Mill Products:** Includes assets used in the production of flours, cereals, livestock feeds, and other grain and grain mill products	13.5	17	20.5	6
20.2	**Manufacture of Sugar and Sugar Products:** Includes assets used in the production of raw sugar, syrup, or finished sugar from sugar cane or sugar beets	14.5	18	21.5	4.5
20.3	**Manufacture of Vegetable Oils and Vegetable Oil Products:** Includes assets used in the production of oil from vegetable materials and the manufacture of related vegetable oil products	14.5	18	21.5	3.5
20.4	**Manufacture of Other Food and Kindred Products:** Includes assets used in the production of foods and beverages not included in classes 20.1, 20.2 and 20.3	9.5	12	14.5	5.5
20.5	**Manufacture of Food and Beverages-Special Handling Devices:** Includes assets defined as specialized materials handling devices such as returnable pallets, palletized containers, and fish processing equipment including boxes, baskets, carts, and flaking trays used in activities as defined in classes 20.1, 20.2, 20.3, 20.4. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices	3	4	5	20
21.0	**Manufacture of Tobacco and Tobacco Products:** Includes assets used in the production of cigarettes, cigars, smoking and chewing tobacco, snuff, and other tobacco products	12	15	18	5
22.1	**Manufacture of Knitted Goods:** Includes assets used in the production of knitted and netted fabrics and lace. Assets used in yarn preparation, bleaching, dyeing, printing, and other similar finishing processes, texturing, and packaging, are elsewhere classified	6	7.5	9	7
22.2	**Manufacture of Yarn, Thread, and Woven Fabric:** Includes assets used in the production of spun yarns including the preparing, blending, spinning, and twisting of fibers into yarns and threads, the preparation of yarns such as twisting, warping, and winding, the production of covered elastic yarn and thread, cordage, woven fabric, tire fabric, braided fabric, twisted jute for packing, mattresses, pads, sheets, and industrial belts, and the processing of textile mill waste to recover fibers, flocks, and shoddies. Assets used to manufacture carpets, man-made fibers, and nonwovens, and assets used in texturing, bleach-				

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
	ing, dyeing, printing, and other similar finishing processes, are elsewhere classified	9	11	13	16
22.3	**Manufacture of Carpets, and Dyeing, Finishing, and Packaging of Textile Products:** Includes assets used in the production of carpets, rugs, mats, woven carpet backing, chenille, and other tufted products, and assets used in the joining together of backing with carpet yarn or fabric. Includes assets used in washing, scouring, bleaching, dyeing, printing, drying, and similar finishing processes applied to textile fabrics, yarns, threads, and other textile goods. Includes assets used in the production and packaging of textile products, other than apparel, by creasing, forming, trimming, cutting, and sewing, such as the preparation of carpet and fabric samples, or similar joining together processes (other than the production of scrim reinforced paper products and laminated paper products) such as the sewing and folding of hosiery and panty hose, the creasing, folding, trimming, and cutting of fabrics to produce nonwoven products, such as disposable diapers and sanitary products. Assets used in the manufacture of nonwoven carpet backing, and hard surface floor covering such as tile, rubber, and cork, are elsewhere classified	7	9	11	15
22.4	**Manufacture of Textured Yarns:** Includes assets used in the processing of yarns to impart bulk and/or stretch properties to the yarn. The principal machines involved are falsetwist, draw, beam-to-beam, and stuffer box texturing equipment and related high-speed twisters and winders. Assets, as described above, which are used to further process man-made fibers are elsewhere classified when located in the same plant in an integrated operation with man-made fiber producing assets. Assets used to manufacture man-made fibers and assets used in bleaching, dyeing, printing, and other similar finishing processes, are elsewhere classified	6.5	8	9.5	7
22.5	**Manufacture of Nonwoven Fabrics:** Includes assets used in the production of nonwoven fabrics, felt goods including felt hats, padding, batting, wadding, oakum, and fillings, from new materials and from textile mill waste. Nonwoven fabrics are defined as fabrics (other than reinforced and laminated composites consisting of nonwovens and other products) manufactured by bonding natural and/or synthetic fibers and/or filaments by means of induced mechanical interlocking, fluid entanglement, chemical adhesion, thermal or solvent reaction, or by combination thereof other than natural hydration bonding as occurs with natural cellulose fibers. Such means include resin bonding, web bonding, and melt bonding. Specifically includes assets used to make flocked and needle punched products other than carpets and rugs. Assets, as described above, which are used to manufacture nonwovens are elsewhere classified when located in the same plant in an integrated operation with man-made fiber producing assets. Assets used to manufacture man-made fibers and assets used in bleaching, dyeing, printing, and other similar finishing processes, are elsewhere classified	8	10	12	15
23.0	**Manufacture of Apparel and Other Finished Products:** Includes assets used in the production of clothing and fabricated textile products by the cutting and sewing of woven fabrics, other				

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
	textile products, and furs; but does not include assets used in the manufacture of apparel from rubber and leather	7	9	11	7
24.1	**Cutting of Timber:** Includes logging machinery and equipment and roadbuilding equipment used by logging and sawmill operators and pulp manufacturers for their own account	5	6	7	10
24.2	**Sawing of Dimensional Stock from Logs:** Includes machinery and equipment installed in permanent or well-established sawmills	8	10	12	6.5
24.3	**Sawing of Dimensional Stock from Logs:** Includes machinery and equipment installed in sawmills characterized by temporary foundations and a lack, or minimum amount, of lumber-handling, drying, and residue disposal equipment and facilities	5	6	7	10
24.4	**Manufacture of Wood Products, and Furniture:** Includes assets used in the production of plywood, hardboard, flooring, veneers, furniture, and other wood products, including the treatment of poles and timber	8	10	12	6.5
26.1	**Manufacture of Pulp and Paper:** Includes assets for pulp materials handling and storage, pulp mill processing, bleach processing, paper and paperboard manufacturing, and on-line finishing. Includes pollution control assets and all land improvements associated with the factory site or production process such as effluent ponds and canals, provided such improvements are depreciable but does not include buildings and structural components as defined in section 1 48-1(e)(1) of the regulations. Includes steam and chemical recovery boiler systems, with any rated capacity, used for the recovery and regeneration of chemicals used in manufacturing. Does not include assets used either in pulpwood logging, or in the manufacture of hardboard	10.5	13	15.5	10
26.2	**Manufacture of Converted Paper, Paperboard, and Pulp Products:** Includes assets used for modification, or remanufacture of paper and pulp into converted products, such as paper coated off the paper machine, paper bags, paper boxes, cartons and envelopes. Does not include assets used for manufacture of non-wovens that are elsewhere classified	8	10	12	15
27.0	**Printing, Publishing, and Allied Industries:** Includes assets used in printing by one or more processes, such as letterpress, lithography, gravure, or screen; the performance of services for the printing trade, such as book-binding, typesetting, engraving, photoengraving, and electrotyping; and the publication of newspapers, books, and periodicals	9	11	13	5.5
28.0	**Manufacture of Chemicals and Allied Products:** Includes assets used in the manufacture of basic chemicals such as acids, alkalies, salts, and organic and inorganic chemicals; chemical products to be used in further manufacture, such as synthetic fibers and plastics materials, including petrochemical processing beyond that which is ordinarily a part of petroleum refining; and finished chemical products, such as pharmaceuticals, cosmetics, soaps, fertilizers, paints and varnishes, explosives, and compressed and liquified gases. Does				

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
	not include assets used in the manufacture of finished rubber and plastic products or in the production of natural gas products, butane, propane, and byproducts of natural gas production plants	9	11	13	5.5
30.1	**Manufacture of Rubber Products:** Includes assets used for the production of products from natural, synthetic, or reclaimed rubber, gutta percha, balata, or gutta siak, such as tires, tubes, rubber footwear, mechanical rubber goods, heels and soles, flooring, and rubber sundries; and in the recapping, retreading, and rebuilding of tires	11	14	17	5
30.11	**Manufacture of Rubber Products—Special Tools and Devices:** Includes assets defined as special tools, such as jigs, dies, mandrels, molds, lasts, patterns, specialty containers, pallets, shells, and tire molds, and accessory parts such as rings and insert plates used in activities as defined in class 30.1. Does not include tire building drums and accessory parts and general purpose small tools such as wrenches and drills, both power and hand-driven, and other general purpose equipment such as conveyors and transfer equipment	3	4	5	
30.2	**Manufacture of Finished Plastic Products:** Includes assets used in the manufacture of plastics products and the molding of primary plastics for the trade. Does not include assets used in the manufacture of basic plastics materials nor the manufacture of phonograph records	9	11	13	5.5
30.21	**Manufacture of Finished Plastic Products—Special Tools:** Includes assets defined as special tools, such as jigs, dies, fixtures, molds, patterns, gauges, and specialty transfer and shipping devices, used in activities as defined in class 30.2. Special tools are specifically designed for the production or processing of particular parts and have no significant utilitarian value and cannot be adapted to further or different use after changes or improvements are made in the model design of the particular part produced by the special tools. Does not include general purpose small tools, such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devic	3	3.5	4	5.5
31.0	**Manufacture of Leather and Leather Products:** Includes assets used in the tanning, currying, and finishing of hides and skins; the processing of fur pelts; and the manufacture of finished leather products, such as footwear, belting, apparel, and luggage	9	11	13	5.5
32.1	**Manufacture of Glass Products:** Includes assets used in the production of flat, blown, or pressed products of glass, such as float and window glass, glass containers, glassware and fiberglass. Does not include assets used in the manufacture of lenses	11	14	17	12
32.11	**Manufacture of Glass Products—Special Tools:** Includes assets defined as special tools such as molds, patterns, pallets, and specialty transfer and shipping devices such as steel racks to transport automotive glass, used in activities as defined in class 32.1. Special tools are specifically designed for the production or processing of particular parts and have no significant utilitarian value and cannot be adapted to further or different use after changes or improvements are				

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
	made in the model design of the particular part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices	2	2.5	3	10
32.2	**Manufacture of Cement:** Includes assets used in the production of cement, but does not include any assets used in the manufacture of concrete and concrete products nor in any mining or extraction process	16	20	24	3
32.3	**Manufacture of Other Stone and Clay Products:** Includes assets used in the manufacture of products from materials in the form of clay and stone, such as brick, tile, and pipe; pottery and related products, such as vitreous-china, plumbing fixtures, earthenware and ceramic insulating materials; and also includes assets used in manufacture of concrete and concrete products. Does not include assets used in any mining or extraction processes	12	15	18	4.5
33.1	**Manufacture of Primary Ferrous Metals:** Includes assets used in the smelting and refining of ferrous metals from ore, pig, or scrap; the rolling, drawing, and alloying of ferrous metals; the manufacture of castings, forgings, and other basic products of ferrous metals; and the manufacture of nails, spikes, structural shapes, tubing, wire, and cable	14.5	18	21.5	8
33.11	**Manufacture of Primary Ferrous Metals—Special Tools:** Includes assets defined as special tools such as dies, jigs, molds, patterns, fixtures, gauges, and drawings concerning such special tools used in the activities as defined in class 33.1, manufacture of Primary Ferrous Metals. Special tools are specifically designed for the production or processing of particular products or parts and have no significant utilitarian value and cannot be adapted to further or different use after changes or improvements are made in the model design of the particular part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices. Rolls, mandrels, and refractories are not included in class 33.11 but are included in class 33.1	5	6.5	8	4
33.2	**Manufacture of Primary Nonferrous Metals:** Includes assets used in the smelting, refining, and electrolysis of nonferrous metals from ore, pig, or scrap, the rolling, drawing, and alloying of nonferrous metals; the manufacture of castings, forgings, and other basic products of nonferrous metals; and the manufacture of nails, spikes, structural shapes, tubing, wire, and cable	11	14	17	4.5
33.21	**Manufacture of Primary Nonferrous Metals—Special Tools:** Includes assets defined as special tools such as dies, jigs, molds, patterns, fixtures, gauges, and drawings concerning such special tools used in the activities as defined in class 33.2, Manufacture of Primary Nonferrous Metals. Special tools are specifically designed for the production or processing of particular products or parts and have no significant utilitarian value and cannot be adapted to further or different use after changes or improvements are made in the model design of the particu-				

Asset guideline class	Description of assets included	Asset depreciation range (in years) Lower limit	Asset guideline period	Upper limit	Annual asset guideline repair allowance percentage
	lar part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices. Rolls, mandrels, and refractories are not included in class 33.21 but are included in class 33.2	5	6.5	8	4
34.0	**Manufacture of Fabricated Metal Products:** Includes assets used in the production of metal cans, tinware, nonelectric heating apparatus, fabricated structural metal products, metal stampings, and other ferrous and nonferrous metal and wire products not elsewhere classified	9.5	12	14.5	6
34.01	**Manufacture of Fabricated Metal Products—Special Tools:** Includes assets defined as special tools such as dies, jigs, molds, patterns, fixtures, gauges, and returnable containers and drawings concerning such special tools used in the activities as defined in class 34.0. Special tools are specifically designed for the production or processing of particular machine components, products, or parts, and have no significant utilitarian value and cannot be adapted to further or different use after changes or improvements are made in the model design of the particular part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices	2.5	3	3.5	3.5
35.1	**Manufacture of Metalworking Machinery:** Includes assets used in the production of metal cutting and forming machines, special dies, tools, jigs, and fixtures, and machine tool accessories	9.5	12	14.5	5.5
35.11	**Manufacture of Metalworking Machinery—Special Tools:** Includes assets defined as special tools, such as jigs, dies, fixtures, molds, patterns, gauges, and specialty transfer and shipping devices, used in activities as defined in class 35.1. Special tools are specifically designed for the production or processing of particular machine components and have no significant utilitarian value and cannot be adapted to further or different use after changes or improvements are made in the model design of the particular part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices	5	6	7	12.5
35.2	**Manufacture of Other Machines:** Includes assets used in the production of such machinery as engines and turbines; farm machinery, construction, and mining machinery; general and special industrial machines including office machines and nonelectronic computing equipment; miscellaneous machines except electrical equipment and transportation equipment	9.5	12	14.5	5.5
35.21	**Manufacture of Other Machines—Special Tools:** Includes assets defined as special tools, such as jigs, dies, fixtures, molds, patterns, gauges, and specialty transfer and shipping devices, used in activities as defined in class 35.2. Special tools are specifically designed for the production or processing of particular machine components and have no significant utilitarian value and cannot be adapted to further				

Asset guideline class	Description of assets included	Asset depreciation range (in years) Lower limit	Asset guideline period	Upper limit	Annual asset guideline repair allowance percentage
	or different use after changes or improvements are made in the model design of the particular part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices	5	6.5	8	12.5
36.1	**Manufacture of Electrical Equipment:** Includes assets used in the production of machinery, apparatus, and supplies for the generation, storage, transmission, transformation, and utilization of electrical energy such as; electric test and distributing equipment, electrical industrial apparatus, household appliances, electric lighting and wiring equipment; electronic components and accessories, phonograph records, storage batteries and ignition systems	9.5	12	14.5	5.5
36.11	**Manufacture of Electrical Equipment—Special Tools:** Includes assets defined as special tools such as jigs, dies, molds, patterns, fixtures, gauges, returnable containers, and specialty transfer devices used in activities as defined in class 36.1. Special tools are specifically designed for the production or processing of particular machine components, products or parts, and have no significant utilitarian value and cannot be adapted to further or different use after changes or improvements are made in the model design of the particular part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices	4	5	6	
36.2	**Manufacture of Electronic Products:** Includes assets used in the production of electronic detection, guidance, control, radiation, computation, test, and navigation equipment or the components thereof including airborne application. Also includes assets used in the manufacture of electronic airborne communication equipment or the components thereof. Does not include the assets of manufacturers engaged only in the purchase and assembly of components	6.5	8.0	9.5	7.5
37.11	**Manufacture of Motor Vehicles:** Includes assets used in the manufacture and assembly of finished automobiles, trucks, trailers, motor homes, and buses. Does not include assets used in mining, printing and publishing, production of primary metals, electricity, or steam, or the manufacture of glass, industrial chemicals, batteries, or rubber products, which are classified elsewhere. Includes assets used in manufacturing activities elsewhere classified other than those excluded above, where such activities are incidental to and an integral part of the manufacture and assembly of finished motor vehicles such as the manufacture of parts and subassemblies of fabricated metal products, electrical equipment, textiles, plastics, leather, and foundry and forging operations. Does not include any assets not classified in manufacturing activity classes, e.g., does not include assets classified in asset guideline classes 00.11 through 00.4. Activities will be considered incidental to the manufacture and assembly of finished motor vehicles only if 75 percent or more of the value of the products produced under one roof are used for the manufacture and assembly of finished motor vehicles. Parts that are produced as a normal replacement stock complement in connection with the manufacture and as-				

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
	sembly of finished motor vehicles are considered used for the manufacture and assembly of finished motor vehicles. Does not include assets used in the manufacture of component parts if these assets are used by taxpayer not engaged in the assembly of finished motor vehicles ----	9.5	12	14.5	9.5
37.12	**Manufacture of Motor Vehicles—Special Tools:** Includes assets defined as special tools, such as jigs, dies, fixtures, molds, patterns, gauges, and specialty transfer and shipping devices, owned by manufacturers of finished motor vehicles and used in qualified activities as defined in class 37.11. Special tools are specifically designed for the production or processing of particular motor vehicle components and have no significant utilitarian value, and cannot be adapted to further or different use, after changes or improvements are made in the model design of the particular part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices ----------	2.5	3	3.5	12.5
37.2	**Manufacture of Aerospace Products:** Includes assets used in the manufacture and assembly of airborne vehicles and their component parts including hydraulic, pneumatic, electrical, and mechanical systems. Does not include assets used in the production of electronic airborne detection, guidance, control, radiation, computation, test, navigation, and communication equipment or the components thereof ----------	8	10	12	7.5
37.31	**Ship and Boat Building Machinery and Equipment:** Includes assets used in the manufacture and repair of ships, boats, caissons, marine drilling rigs, and special fabrications not included in asset guideline classes 37.32 and 37.33. Specifically includes all manufacturing and repairing machinery and equipment, including machinery and equipment used in the operation of assets included in asset guideline class 37.32. Excludes buildings and their structural components --------	9.5	12	14.5	8.5
37.32	**Ship and Boat Building Dry Docks and Land Improvements:** Includes assets used in the manufacture and repair of ships, boats, caissons, marine drilling rigs, and special fabrications not included in asset guideline classes 37.31 and 37.33. Specifically includes floating and fixed dry docks, ship basins, graving docks, shipways, piers, and all other land improvements such as water, sewer, and electric systems. Excludes buildings and their structural components ----------	13	16	19	2.5
37.33	**Ship and Boat Building—Special Tools:** Includes assets defined as special tools such as dies, jigs, molds, patterns, fixtures, gauges, and drawings concerning such special tools used in the activities defined in classes 37.31 and 37.32. Special tools are specifically designed for the production or processing of particular machine components, products, or parts, and have no significant utilitarian value and cannot be adapted to further or different use after changes or improvements are made in the model design of the particular part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices ----------	5	6.5	8	0.5

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
37.41	**Manufacture of Locomotives:** Includes assets used in building or rebuilding railroad locomotives (including mining and industrial locomotives). Does not include assets of railroad transportation companies or assets of companies which manufacture components of locomotives but do not manufacture finished locomotives	9	11.5	14	7.5
37.42	**Manufacture of Railroad Cars:** Includes assets used in building or rebuilding railroad freight or passenger cars (including rail transit cars). Does not include assets of railroad transportation companies or assets of companies which manufacture components of railroad cars but do not manufacture finished railroad cars	9.5	12	14.5	5.5
38.0	**Manufacture of Professional, Scientific, and Controlling Instruments:** Includes assets used in the manufacture of mechanical measuring, engineering, laboratory and scientific research instruments, optical instruments and lenses; surgical, medical, and dental instruments, equipment and supplies; ophthalmic goods, photographic equipment and supplies; and watches and clocks	9.5	12	14.5	5.5
39.0	**Manufacture of Athletic, Jewelry and Other Goods:** Includes assets used in the production of jewelry; musical instruments; toys and sporting goods; motion picture and television films and tapes; and pens, pencils, office and art supplies, brooms, brushes, caskets, etc.	9.5	12	14.5	5.5
	Railroad Transportation: Classes with the prefix 40 include the assets identified below that are used in the commercial and contract carrying of passengers and freight by rail. Assets of electrified railroads will be classified in a manner corresponding to that set forth below for railroads not independently operated as electric lines. Excludes the assets included in classes with the prefix beginning 00.1 and 00.2 above, and also excludes any non-depreciable assets included in Interstate Commerce Commission accounts enumerated for this class.				
40.1	**Railroad Machinery and Equipment:** Includes assets classified in the following Interstate Commerce Commission accounts: Roadway Accounts: (16) Station and office buildings (freight handling machinery and equipment only) (25) TOFC/COFC terminals (freight handling machinery and equipment only) (26) Communication systems (27) Signals and interlockers (37) Roadway machines (44) Shop machinery Equipment Accounts: (52) Locomotives (53) Freight train cars (54) Passenger train cars (57) Work equipment	11	14	17	10.5

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
40.2	**Railroad Structures and Similar Improvements:** Includes assets classified in the following Interstate Commerce Commission road accounts: (6) Bridges, trestles, and culverts (7) Elevated structures (13) Fences, snowsheds, and signs (16) Station and office buildings (stations and other operating structures only) (17) Roadway buildings (18) Water stations (19) Fuel stations (20) Shops and enginehouses (25) TOFC/COFC terminals (operating structures only) (31) Power transmission systems (35) Miscellaneous structures (39) Public improvements construction	24	30	36	5
40.3	**Railroad Wharves and Docks** Includes assets classified in the following Interstate Commerce accounts: (23) Wharves and docks (24) Coal and ore wharves	16	20	24	5.5
40.51	**Railroad Hydraulic Electric Generating Equipment**	40	50	60	1.5
40.52	**Railroad Nuclear Electric Generating Equipment**	16	20	24	3
40.53	**Railroad Steam Electric Generating Equipment**	22.5	28	33.5	2.5
40.54	**Railroad Steam, Compressed Air, and Other Power Plant Equipment**	22.5	28	33.5	7.5
41.0	**Motor Transport-Passengers:** Includes assets used in the urban and interurban commercial and contract carrying of passengers by road, except the transportation assets included in classes with the prefix 00.2	6.5	8	9.5	11.5
42.0	**Motor Transport-Freight:** Includes assets used in the commercial and contract carrying of freight by road, except the transportation assets included in classes with the prefix 00.2	6.5	8	9.5	11
44.0	**Water Transportation:** Includes assets used in the commercial and contract carrying of freight and passengers by water except the transportation assets included in classes with the prefix 00.2. Includes all related land improvements	16	20	24	8
45.0	**Air Transport:** Includes assets (except helicopters) used in commercial and contract carrying of passengers and freight by air. For purposes of section 1.167 (a)-11(d)(2)(iv)(*a*) of the regulations, expenditures for "repair, maintenance, rehabilitation, or improvement" shall consist of direct maintenance expenses (irrespective of airworthiness provisions or charges) as defined by Civil Aeronautics Board uniform accounts 5200, maintenance burden (exclusive of expenses pertaining to maintenance buildings and improvements) as defined by Civil Aeronautics Board uniform accounts 5300, and expenditures which are not "excluded additions" as defined by section 1.167(a)-11(d)(2)(vi) of the regulations and which would be charged to property and equipment accounts in the Civil Aeronautics Board uniform system of accounts	9.5	12	14.5	15

Asset guideline class	Description of assets included	Asset depreciation range (in years) Lower limit	Asset guideline period	Upper limit	Annual asset guideline repair allowance percentage
45.1	**Air Transport (restricted)** Includes each asset described in the description of class 45.0 which was held by the taxpayer on April 15, 1976, or is acquired by the taxpayer pursuant to a contract which was, on April 15, 1976, and at all times thereafter, binding on the taxpayer. This criterion of classification based on binding contract concept is to be applied in the same manner as under the general rules expressed in section 49(b)(1), (4), (5), and (8) of the Code	5	6	7	15
46.0	**Pipeline Transportation:** Includes assets used in the private, commercial, and contract carrying of petroleum, gas, and other products by means of pipes and conveyors. The trunk lines and related storage facilities of integrated petroleum and natural gas producers are included in this class. Excludes initial clearing and grading land improvements as specified in Rev. Rul. 72-403, 1972-2 C.B. 102, but includes all other related land improvements	17.5	22	26.5	3
	Telephone Communications: Includes the assets identified below and that are used in the provision of commercial and contract telephonic services such as:				
48.11	**Telephone Central Office Buildings:** Includes assets intended to house central office equipment, as defined in Federal Communications Commission Part 31 Account No. 212 whether section 1245 or section 1250 property	36	45	54	1.5
48.12	**Telephone Central Office Equipment:** Includes central office switching and related equipment as defined in Federal Communications Commission Part 31 Account No. 221	16	20	24	6
48.13	**Telephone Station Equipment:** Includes such station apparatus and connections as teletypewriters, telephones, booths, private exchanges, and comparable equipment as defined in Federal Communications Commission Part 31 Account Nos. 231, 232, and 234	8	10	12	10
48.14	**Telephone Distribution Plant:** Includes such assets as pole lines, cable, aerial wire, underground conduits, and comparable equipment, and related land improvements as defined in Federal Communications Commission Part 31 Account Nos. 241, 242.1, 242.2. 242.3, 242.4, 243, and 244	28	35	42	2
48.2	**Radio and Television Broadcastings:** Includes assets used in radio and television broadcasting, except transmitting towers	5	6	7	10
	Telegraph, Ocean Cable, and Satellite Communications (TOCSC) Includes communications-related assets used to provide domestic and international radio-telegraph, wire-telegraph, ocean-cable, and satellite communications services; also includes related land improvements.				
48.31	**TOCSC-Electric Power Generating and Distribution Systems:** Includes assets used in the provision of electric power by generation, modulation, rectification, channelization, control, and distribution. Does not include these assets when they are installed on customer's premises	15	19	23	

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
48.32	**TOCSC-High Frequency Radio and Microwave Systems:** Includes assets such as transmitters and receivers, antenna supporting structures, antennas, transmission lines from equipment to antenna, transmitter cooling systems, and control and amplification equipment. Does not include cable and long-line systems	10.5	13	15.5	
48.33	**TOCSC-Cable and Long-line Systems:** Includes assets such as transmission lines, pole lines, ocean cables, buried cable and conduit, repeaters, repeater stations, and other related assets. Does not include high frequency radio or microwave systems	21	26.5	32	
48.34	**TOCSC-Central Office Control Equipment:** Includes assets for general control, switching, and monitoring of communications signals including electromechanical switching and channeling apparatus, multiplexing equipment, patching and monitoring facilities, in-house cabling, teleprinter equipment, and associated site improvements	13	16.5	20	
48.35	**TOCSC-Computerized Switching, Channeling, and Associated Control Equipment:** Includes central office switching computers, interfacing computers, other associated specialized control equipment, and site improvements	8.5	10.5	12.5	
48.36	**TOCSC-Satellite Ground Segment Property:** Includes assets such as fixed earth station equipment, antennas, satellite communications equipment, and interface equipment used in satellite communications. Does not include general purpose equipment or equipment used in satellite space segment property	8	10	12	
48.37	**TOCSC-Satellite Space Segment Property:** Includes satellites and equipment used for telemetry, tracking, control, and monitoring when used in satellite communications	6.5	8	9.5	
48.38	**TOCSC-Equipment Installed on Customer's Premises:** Includes assets installed on customer's premises, such as computers, terminal equipment, power generation and distribution systems, private switching center, teleprinters, facsimile equipment, and other associated and related equipment	8	10	12	
48.39	**TOCSC-Support and Service Equipment:** Includes assets used to support but not engage in communications. Includes store, warehouse, and shop tools, and test and laboratory assets	11	13.5	16	
	Cable Television (CATV): Includes communications-related assets used to provide cable television (community antenna television services). Does not include assets used to provide subscribers with two-way communications services.				
48.41	**CATV-Headend:** Includes assets such as towers, antennas, preamplifiers, converters, modulation equipment, and program non-duplication systems. Does not include headend buildings and program origination assets	9	11	13	5
48.42	**CATV-Subscriber Connection and Distribution Systems:** Includes assets such as trunk and feeder cable, connecting hardware, amplifiers, power equipment, passive devices, directional taps, pedestals,				

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
	pressure taps, drop cables, matching transformers, multiple set connector equipment, and converters	8	10	12	5
48.43	**CATV-Program Origination:** Includes assets such as cameras, film chains, video tape recorders, lighting, and remote location equipment excluding vehicles. Does not include buildings and their structural components	7	9	11	9
48.44	**CATV-Service and Test:** Includes assets such as oscilloscopes, field strength meters, spectrum analyzers, and cable testing equipment, but does not include vehicles	7	8.5	10	2.5
48.45	**CATV-Microwave Systems:** Includes assets such as towers, antennas, transmitting and receiving equipment, and broad band microwave assets if used in the provision of cable television services. Does not include assets used in the provision of common carrier services	7.5	9.5	11.5	2
	Electric, Gas, Water and Steam, Utility Services: Includes assets used in the production, transmission and distribution of electricity, gas, steam, or water for sale, including related land improvements.				
49.11	**Electric Utility Hydraulic Production Plant:** Includes assets used in the hydraulic power production of electricity for sale, including related land improvements, such as dams, flumes, canals, and waterways	40	50	60	1.5
49.12	**Electric Utility Nuclear Production Plant:** Includes assets used in the nuclear power production of electricity for sale and related land improvements. Does not include nuclear fuel assemblies	16	20	24	5
49.121	**Electric Utility Nuclear Fuel Assemblies:** Includes initial core and replacement core nuclear fuel assemblies (i.e. the composite of fabricated nuclear fuel and container) when used in a boiling water, pressurized water, or high temperature gas reactor used in the production of electricity. Does not include nuclear fuel assemblies used in breeder reactors	4	5	6	
49.13	**Electric Utility Steam Production Plant:** Includes assets used in the steam power production of electricity for sale, combustion turbines operated in a combined cycle with a conventional steam unit and related land improvements	22.5	28	33.5	5
49.14	**Electric Utility Transmission and Distribution Plant:** Includes assets used in the transmission and distribution of electricity for sale and related land improvements. Excludes initial clearing and grading land improvements as specified in Rev. Rul. 72-403, 1972-2 C.B. 102	24	30	36	4.5
49.15	**Electric Utility Combustion Turbine Production Plant:** Includes assets used in the production of electricity for sale by the use of such prime movers as jet engines, combustion turbines, diesel engines, gasoline engines, and other internal combustion engines, their associated power turbines and/or generators, and related land improvements. Does not include combustion turbines operated in a combined cycle with a conventional steam unit	16	20	24	4

Asset guideline class	Description of assets included	Asset depreciation range (in years) Lower limit	Asset guideline period	Upper limit	Annual asset guideline repair allowance percentage
49.21	**Gas Utility Distribution Facilities:** Including gas water heaters and gas conversion equipment installed by utility on customers' premises on a rental basis	28	35	42	2
49.221	**Gas Utility Manufactured Gas Production Plants:** Includes assets used in the manufacture of gas having chemical and/or physical properties which do not permit complete interchangeability with domestic natural gas	24	30	36	2
49.222	**Gas Utility Substitute Natural Gas (SNG) Production Plant (naptha or lighter hydrocarbon feedstocks):** Includes assets used in the catalytic conversion of feedstocks of naphtha or lighter hydrocarbons to a gaseous fuel which is completely interchangeable with domestic natural gas	11	14	17	4.5
49.23	**Natural Gas Production Plant**	11	14	17	4.5
49.24	**Gas Utility Trunk Pipelines and Related Storage Facilities:** Excludes initial clearing and grading land improvements as specified in Rev. Rul. 72-403	17.5	22	26.5	3
49.25	**Liquefied Natural Gas Plant:** Includes assets used in the liquefaction, storage, and regasification of natural gas including loading and unloading connections, instrumentation equipment and controls, pumps, vaporizers and odorizers, tanks, and related land improvements. Also includes pipeline interconnections with gas transmission lines and distribution systems and marine terminal facilities	17.5	22	26.5	4.5
49.3	**Water Utilities:** Includes assets used in the gathering, treatment, and commercial distribution of water	40	50	60	1.5
49.4	**Central Steam Utility Production and Distribution:** Includes assets used in the production and distribution of steam for sale	22.5	28	33.5	2.5
50.0	**Wholesale and Retail Trade:** Includes assets used in carrying out the activities of purchasing, assembling, storing, sorting, grading, and selling of goods at both the wholesale and retail level. Also includes assets used in such activities as the operation of restaurants, cafes, coin-operated dispensing machines, and in brokerage of scrap metal	8	10	12	6.5
50.1	**Wholesale and Retail Trade Service Assets:** Includes assets such as glassware, silverware (including kitchen utensils), crockery (usually china) and linens (generally napkins, tablecloths and towels) used in qualified activities as defined in class 50.0	2	2.5	3	
70.2	**Personal and Professional Services:** Includes assets used in the provision of personal services such as those offered by hotels and motels, laundry and dry cleaning establishments, beauty and barber shops, photographic studios and mortuaries. Includes assets used in the provision of professional services such as those offered by doctors, dentists, lawyers, accountants, architects, engineers, and veterinarians. Includes assets used in the provision of repair and maintenance services and those assets used in providing fire and burglary protection services. Includes equipment or facilities used by cemetery organizations, news agencies, teletype wire services, frozen food lockers, and research laboratories	8	10	12	6.5

Asset guideline class	Description of assets included	Asset depreciation range (in years) Lower limit	Asset guideline period	Upper limit	Annual asset guideline repair allowance percentage
70.21	**Personal and Professional Services Service Assets:** Includes assets such as glassware, silverware, crockery, and linens (generally sheets, pilowcases and bath towels) used in qualified activities as defined in class 70.2	2	2.5	3	
79.0	**Recreation:** Includes assets used in the provision of entertainment services on payment of a fee or admission charge, as in the operation of bowling alleys, billiard and pool establishments, theaters, concert halls, and miniature golf courses. Does not include amusement and theme parks and assets which consist primarily of specialized land improvements or structures, such as golf courses, sports stadia, race tracks, ski slopes, and buildings which house the assets used in entertainment services	8	10	12	6.5
80.0	**Theme and Amusement Parks:** Includes assets used in the provision of rides, attractions, and amusements in activities defined as theme and amusement parks, and includes appurtenances associated with a ride, attraction, amusement or theme setting within the park such as ticket booths, facades, shop interiors, and props, special purpose structures, and buildings other than warehouses, administration buildings, hotels, and motels. Includes all land improvements for or in support of park activities, (e.g. parking lots, sidewalks, waterways, bridges, fences, landscaping, etc.) and support functions (e.g. food and beverage retailing, souvenir vending and other nonlodging accommodations) if owned by the park and provided exclusively for the benefit of park patrons. Theme and amusement parks are defined as combinations of amusements, rides, and attractions which are permanently situated on park land and open to the public for the price of admission. This guideline class is a composite of all assets used in this industry except transportation equipment (general purpose trucks, cars, airplanes, etc., which are included in asset guideline classes with the prefix 00.2), assets used in the provision of administrative services (asset guideline classes with the prefix 00.1), and warehouses, administration buildings, hotels and motels	10	12.5	15	12.5

SEC. 4. EFFECT ON OTHER DOCUMENTS.

Rev. Procs. 72-10, 73-2, 73-3, 73-23, 73-24, 73-25, 73-26, 73-27, 73-28, 73-30, 74-27, 74-28, 74-29, 74-30, 74-31, 74-32, 74-37, 74-50, 76-16 76-17, 76-18, 76-27, 76-37, 77-2, 77-3 and 77-8 are superseded for property placed in service in taxable years ending on or after March 21, 1977, the date of publication of this Revenue Procedure in the Internal Revenue Bulletin, in accordance with section 1.167(a)-11(b)(4) of the regulations. However, the taxpayer may at his option apply Rev. Proc. 72-10, as previously modified by the aforementioned documents, without regard to this Revenue Procedure for such property placed in service in a taxable year beginning before March 21, 1977, and ending on or after that date. Such option shall be exercised in making the election to apply section 1.167(a)-11 for such year and may not be revoked after the latest time for making such election.

The asset guideline classes, asset guideline depreciation periods and ranges, and asset guideline repair allowance percentages set forth in this Revenue Procedure will from time to time be supplemented and revised as provided by section 1.167(a)-11(b)(4) of the regulations. Taxpayers using this Revenue Procedure should apply it as supplemented and revised.

GPO 913-769

News Release

Department of the Treasury
Internal Revenue Service
Washington, DC 20224
Tel. (202) 964-4021

For Release: 12/30/77

IR-1924

Washington, D.C.--The Internal Revenue Service today announced a new procedure that reclassifies assets used in the offshore pipeline transportation of petroleum and natural gas for taxpayers who elect the Class Life Asset Depreciation Range system.

Revenue Procedure 78-5 , which is attached, makes a reclassification of offshore pipeline transportation assets of producers and others that affects the depreciation period and repair allowance percentage of such assets. The class for assets used by producers in the exploration for and production of petroleum and natural gas deposits now includes the offshore pipeline transportation assets of producers and others.

The new procedure, which will appear in Internal Revenue Bulletin No. 1978-5 , dated January 30, 1978 supplements and modifies related material previously published in Revenue Procedure 77-10.

x x x

PART III. ADMINISTRATIVE, PROCEDURAL, AND MISCELLANEOUS

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also Part I, Section 167; 1.167(a)-11.)

REV. PROC. 78-5

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to prescribe under section 1.167(a)-11 of the Income Tax Regulations a revised asset guideline class for assets used in the exploration for and production of petroleum and natural gas deposits to include assets used by petroleum and natural gas producers and others in the offshore pipeline transportation of oil and natural gas. These assets were formerly included in Class 46.0.

The revised asset guideline class, the associated asset guideline depreciation period and range, and annual asset guideline repair allowance percentage are set forth in Section 2 of this Revenue Procedure.

SEC. 2. ASSET GUIDELINE CLASS, ASSET GUIDELINE DEPRECIATION PERIOD AND RANGE, AND ANNUAL ASSET GUIDELINE REPAIR ALLOWANCE PERCENTAGE FOR ASSETS USED IN THE EXPLORATION FOR AND PRODUCTION OF PETROLEUM AND NATURAL GAS DEPOSITS.

The asset guideline class, asset guideline depreciation period and range, and the annual asset guideline repair allowance percentage are prescribed as set forth below.

(MORE)

Asset Guideline Class	Description of Assets Included	Asset Depreciation Range (in years) Lower Limit	Asset Guideline Period	Asset Depreciation Range (in years) Upper Limit	Annual Asset Guideline Repair Allowance Percentage
13.2	Exploration for and Production of Petroleum and Natural Gas Deposits: Includes assets used by petroleum and natural gas producers for drilling of wells and production of petroleum and natural gas, including gathering pipelines and related storage facilities. Also includes petroleum and natural gas offshore transportation facilities used by producers and others consisting of platforms (other than drilling platforms classified in Class 15.2), compression and pumping equipment, and gathering and transmission lines to the first onshore transshipment facility. The assets used in the first onshore transshipment facility are also included and consist of separation equipment (used for separation of natural gas, liquids, and solids), compression or pumping equipment (other than equipment classified in Class 49.23), and liquid holding or storage facilities (other than those classified in Class 49.25). Does not include support vessels	11	14	17	4.5

SEC. 3. EFFECT ON OTHER DOCUMENTS.

Rev. Proc. 77-10, 1977-1 C.B. 548 , is modified by the prescription of revised asset guideline class 13.2, Exploration for and Production of Petroleum and Natural Gas Deposits, with the associated asset guideline depreciation period and range and annual asset guideline repair allowance percentage as set forth in Section 2 of this Revenue Procedure. Class 13.2, as modified, now includes offshore transportation assets formerly included in Class 46.0.

SEC. 4 EFFECTIVE DATE.

The asset guideline class, asset guideline depreciation period and range, and the annual asset guideline repair allowance percentage for the activity class set forth in this Revenue Procedure are effective for property first placed in service in taxable years beginning after December 31, 1976.

Attachment V

WORKSHEETS

This attachment contains worksheets which can be used to calculate input data. Each worksheet will also contain reminders for points which may be overlooked in calculations.

WORKSHEET A

Calculation Of The Capital Expenditure Input

1.	List price or estimated price of the equipment =	$
2.	Less: Discount from manufacturer =	_____
3.	Equals net price of equipment =	
4.	Plus: Sales tax on equipment[1] =	
5.	Plus: Freight and delivery charge =	_____
6.	Equals estimated cost of equipment delivered =	
7.	Plus: Installation charge =	
8.	Plus: Valuo of lost production =	
9.	Plus: Cost of building construction or modifications =	_____
10.	Equals Total Capital Expenditure =	$_____

Note: Line 6 divided by line 10 is the percentage of qualified investment for calculation of the investment tax credit.

QUALIFIED PERCENTAGE INVESTMENT TAX CREDIT

$\frac{\text{Line 6}}{\text{Line 10}}$ = _____ X 10 = _____%

If thd depreciable life of the equipment is less than 7 years, this figure must be adjusted as described on page II-16.

[1] Some corporations subtract sales tax from revenue in the year of purchase. If this is the case, the sales tax is multiplied by (1 - Tax Rate) and subtracted from thc cost of the equipment rather than added as in step four.

WORKSHEET B

WORKSHEET C

WORKSHEET B

Operating And Maintenance Expense

1. Annual Labor Expense

_____ Hours X $_____ per hour = _____

2. Power Cost

_____ Kwh X $_____ per Kwh = _____

3. Water Cost

_____ Gallons X $_____ per gallon = _____

4. Raw Materials and Supplies

_____ lbs X $_____ per lbs = _____

5. Yearly increase in property tax = _____

6. Cost of production lost due to maintenance or use of equipment = _____

7. Total Cost (1 + 2 + 3 + 4 + 5 + 6) = _____

8. Less: Value of by-products

_____ lbs at $_____ per lbs = _____

9. Annual Operating and Maintenance (7-8) $_____

Note: Line 9 divided by 12 is the maximum amount of any monthly pre-compliance expenditure.

$\frac{\text{Line 9}}{12}$ = $_____ Maximum amount which may be entered as a pre-compliance monthly operating and maintenance expense.

BILLING CODE 6560-01-C

WORKSHEET C

Calculation Of Income Tax Rate

1. Marginal Federal tax rate. _____
2. Marginal State tax rate. _____
3. Marginal Local tax rate. _____

Calculation of Adjusted Local Tax.

(1 - State Tax Rate) x Local Tax Rate
= (1 - _____) x _____
= _____ x _____
= _____ = Adjusted Local Tax Rate.

Calculation of Adjusted State and Local Tax.

(1 - Federal Tax Rate) x (State Tax Rate + Adjusted Local Rate)
= (1 - _____) x (_____ + _____)
= _____ x _____
= _____ = Adjusted Local and State Tax.

Calculation of Tax Rate.

100 x (Federal Tax Rate + Adjusted Local and State Tax)
= 100 x (_____ + _____)
= 100 x _____
= _____ = Tax Rate.

Section III

USING THE COMPUTER PROGRAM

Gaining Access To The System

The computer program used to calculate the non-compliance penalty is written in the language FORTRAN. It is designed to operate on a time sharing computer. The method used to access, or load, the program on a particular computer system will vary slightly from that on any other system. The following description of the accessing procedure applies to EPA's Washington Computer Center. The procedure at other installations will be somewhat different.

1. Switch on the terminal. The on/off switch is usually located on the keyboard, but some models have switches on the top or back of the terminal.

2. Contact the computer system. This usually involves dialing the computer's number on a telephone and then connecting the telephone to a coupler. When a connect signal is obtained, push the Return key once more. The computer will then respond with an indication that contact is established.

3. Account and code number. At this time, the computer will ask for a user number, a password and an account number. This number is specific to the computer system and must be known beforehand. These are entered by typing on the keyboard and pressing the "return" key.

4. Running the program. The command
EXEC PENALTY:EPABOH,GREGION=200K
will start the program.

Additional questions will follow each data input (and "return"). Caution: When user demand is high, response time can be very slow. Be certain the computer has given you your complete prompt before answering input questions. A prompt is generally a two digit alpha-nureric job identifier and a question mark (e.g., 2B?)

Exhibit III - 1 illustrates the procedure used to access the computer.

Exhibit III-1

Entering The Data

Exhibit III-1

ACCESSING THE COMPUTER

ALPH
READY TO WCC

ALPHA System at COMNET

PLEASE ENTER: userid,password,account,term id
EPAANS,********

EPAANS/PNNC on line 28 at 17:49:1 , 3/ 5/79

?EXEC PENALTY:EPABOX,GREGION=200K

199: M2 SUBMITTED
?

ENTERING THE DATA

It is important in using a computer to understand that the computer requires a specific form of data entry. For example, if the item in question has the value of ten percent and the computer program is designed to accept a figure expressed in percentage terms, only the entry 10 is acceptable. Entries such as 10%, TEN, and .10 are all incorrect. The first two will result in an error message being typed at the terminal, followed by a command to re-enter the data. The third entry will be interpreted by the computer as 0.10 percent and used in the computation as that value. The result will be an incorrect figure for that penalty. If a wrong number is entered and the Return key has not been pushed, the mistake can be corrected by detecting the error and re-entering the number. To delete a number before the Return key is pushed, simply backspace the typing element (by pushing the Control and H keys simultaneously). If during data entry a wrong number is entered and the Return key is pushed, operation of the program can be halted by pushing the Break key. The computer will respond by printing OPTION?. To stop the program, type CANCEL. However, in most cases it will be more convenient to continue entering data, allow the computations to be made, and then change the erroneous value.

The following paragraphs discuss general rules to be followed in entering data into the computer program. Exhibit III - 2 contains an example of the completed entry for the Fertilizer Company. Figures which are underlined have been entered by the program user. After each line is entered the carriage return should be pressed. It should also be noted that each question asked by the computer must be answered. Thus, for example, if a firm has no debt and the interest rate is inapplicable, a zero must be entered for the interest rate. Certain questions asked by the computer refer to special types of analysis such as post-compliance settlements, limited life facilities and industrial development bonds. These special cases are discussed in a later chapter.

Exhibit III-2
ENTERING DATA

```
IS THIS A POST-COMPLIANCE SETTLEMENT CALCULATION (1=YES,0=NO)?0
IS THIS A LIMITED LIFE FACILITY (1=YES,0=NO)?0
ENTER PERCENTAGE OF TOTAL PROJECT FINANCED BY INDUSTRIAL
DEVELOPMENT BONDS?0

 1 HOW MANY MONTHS WILL THE SOURCE BE OUT OF COMPLIANCE?11

* * * IN EACH MONTH ENTER CAPITAL EXPENDITURES * * *
* * * THEN OPERATING AND MAINTENANCE EXPENSE   * * *

MONTH # 1 ?0,0
MONTH # 2 ?.66666.67,0
MONTH # 3 ?0,0
MONTH # 4 ?166666.67,0
MONTH # 5 ?0,0
MONTH # 6 ?0,0
MONTH # 7 ?0,0
MONTH # 8 ?0,0
MONTH # 9 ?0,100
MONTH # 10 ?0,1050
MONTH # 11 ?166666.66,740

TOTAL CAPITAL EXPENDITURE $ 500000

 2 INITIAL ANNUAL O+M EXPENSE?15000
 3 INVESTMENT TAX RATE?10
 4 INCOME TAX RATE?49.73
 5 INFLATION RATE?8.3
 6 DISCOUNT RATE?15.84
 7 INTEREST RATE?8.76
 8 PREFERRED DIVIDEND RATE?8.88
 9 PREFERRED SHARE OF INVESTMENT?3.5
10 EQUITY SHARE OF INVESTMENT?7.5
11 DEPRECIATION LIFE IN YEARS?9
12 USEFUL LIFE IN YEARS?11
```


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- Post-Compliance Settlement. This number is entered only as a 0 or 1. For the Fertilizer Company this is an initial calculation and a 0 is entered.

- Limited Life Facility. This number is entered as 0 or 1. For the Fertilizer Company this is not a limited life facility and a 0 is entered.

- Percent Financed by Industrial Development Bonds. This is entered as a percent. For the Fertilizer Company, a 0 is entered.

- Number of Months out of Compliance. This number is entered only as an integer. Fractions or decimals are not allowed. For the Fertilizer Company, compliance will be achieved in eleven months. This is entered as 11.

- Schedule of Capital Investments and Pre-Compliance Operating and Maintenance Expense. The program will ask for an estimate of such expenditures for each month which the firm will be out of compliance. If the firm will not make a pre-compliance capital expenditure in a particular month, a zero is entered. If no pre-compliance expenditures are to be made, the entire capital expenditure is entered in the last month.

For the Fertilizer Company, capital expenditures of $166,666.67 will be made in the second, fourth, and eleventh months. All other months will be entered as 0.

After entering the capital expenditure in each month, the user types a comma and then enters the operating and maintenance expense in each month. These are expenses to be incurred during the period of noncompliance on a month-by-month basis. If in any month a pre-compliance operating and maintenance expense is not incurred, a zero must be entered.

For the Fertilizer Company, pre-compliance operating and maintenance expenses will not be incurred in the first eight months. In the ninth month, the estimated expense is $100. In the tenth month it is $1,050. In the eleventh month it is $740. These are entered without dollar signs.

- Initial Annual O&M Expense. The initial annual operating and maintenance expense is the expense which would be incurred if the equipment were installed and operating. The program is designed to reject monthly pre-compliance expenditures larger than one-twelfth of the annual operating and maintenance expense. For the Fertilizer Company, operating and maintenance expenses are $15,000.

- Investment Tax Rate. This is entered as a percent and not as a decimal. Thus, for example, 7.5 percent would be entered as 7.5. The program is designed to test for data entered as a decimal and print an error message. In the Fertilizer Company example, the investment tax rate was 10 percent.

- Income Tax Rate. This is also entered as a percent. For the Fertilizer Company the tax rate is 49.73 percent.

- Inflation Rate. The inflation rate is entered as 8.3 percent.

- Discount Rate. This is entered as a percent. The lower bound for any discount rate used is the rate of inflation. The program will not accept discount rates lower than the rate of inflation and will print an error message.

  For the Fertilizer Company, the discount rate is the twenty quarter average after tax return on equity for the chemicals and allied products industry. This is calculated to be 15.84 percent.

- Interest Rate. The interest rate is entered as a percent. For the Fertilizer Company this is the average return on "A" rated industrial bonds. The latest reported average is 8.76 percent.

- Preferred Dividend Rates. This is entered as a percent. If the firm does not have preferred stock, both the dividend rate and the preferred share of the investment are entered as zero. For the Fertilizer Company this was the latest monthly average yield on "a" rated utility preferred stocks. It is entered as 8.88 percent.

- Preferred Share of Investment. The preferred share of the investment is entered as a percent. For the Fertilizer Company this was computed at 3.5 percent.

- Equity Share of Investment. This is entered as a percent. It was computed to be 67.5 percent for the Fertilizer Company. If the sum of the preferred share of the investment and the equity share of the investment is greater than 100 percent, an error message is printed.

- Depreciation Life in Years. This number must be entered as an integer. Decimals or fractions cannot be used. For the Fertilizer Company the depreciation life was nine years.

- Useful Life in Years. The useful life in years must also be entered as an integer. For the Fertilizer Company, the useful life is eleven years.

Exhibit III-3

Error Messages For Data Entry

The program for computing the noncompliance penalty was designed to test for errors in the data as it is entered into the computer. If the program detects an error, a message is printed informing the user and requesting that the mistake be corrected. Examples of such error messages follow.

1. Pre-Compliance Expenditure. As discussed in Section II, it is not possible to enter a pre-compliance monthly operating and maintenance expenditure which is larger than one-twelfth of the annual operating and maintenance expense. Exhibit III-3 shows an annual operating and maintenance expense of $15,000. The error message is printed because the user entered $2,000 for a pre-compliance expenditure.

Exhibit III-3

ERROR IN ENTERING PRE-COMPLIANCE O&M EXPENDITURES

```
 2 INITIAL ANNUAL O+M EXPENSE?5000
>>>>>>MONTHLY PRE-COMPLIANCE O+M EXPENSE CANNOT
      BE LARGER THAN ONE-TWELFTH ANNUAL O+M EXPENSE
      RE-ENTER DATA:
* * * IN EACH MONTH ENTER CAPITAL EXPENDITURES * * *
* * * THEN OPERATING AND MAINTENANCE EXPENSE   * * *

MONTH # 1 ?0,0

MONTH # 2 ?166666.67,0

MONTH # 3 ?0,0

MONTH # 4 ?166666.67,0

MONTH # 5 ?0,0

MONTH # 6 ?0,0

MONTH # 7 ?0,0

MONTH # 8 ?0,0

MONTH # 9 ?0,100

MONTH # 10 ?0,1050

MONTH # 11 ?166666.66,740

TOTAL CAPITAL EXPENDITURE $  500000

INITIAL ANNUAL O+M EXPENSE?15000
```

2. Equity and Preferred Share. The program will print an error message if the sum of the equity share of the investment and the preferred share of the investment are greater than 100 percent. This is illustrated in Exhibit III-4.

Exhibit III-4

EQUITY AND PREFERRED SHARE OF INVESTMENT GREATER THAN 100 PERCENT

```
 9 PREFERRED SHARE OF INVESTMENT?3.5
 10 EQUITY SHARE OF INVESTMENT?97.5
>>>>>SUM OF EQUITY SHARE OF INVESTMENT AND PREFERRED
     SHARE OF INVESTMENT CANNOT BE GREATER THAN 100%.
     ENTER EQUITY AND PREFERRED PERCENTAGES AGAIN.
PREFERRED SHARE OF INVESTMENT?3.5
EQUITY SHARE OF INVESTMENT?67.5
```


3. Entering Data As a Decimal. An error message will be printed if the investment tax rate is entered as a decimal. This is illustrated in Exhibit III-5.

Exhibit III-5

DATA ENTERED AS A DECIMAL AND THE CORRECTION

```
 3 INVESTMENT TAX RATE?.1
>>>>>THE DATA JUST ENTERED IS LESS THAN ONE PERCENT. DATA
     SHOULD BE ENTERED AS AN INTEGER NOT AS A DECIMAL. SEE
     SECTION 3 OF THE USER MANUAL FOR FURTHER INFORMATION.
     IF A DECIMAL IS CORRECT, RE-ENTER IT.
INVESTMENT TAX RATE?10
```

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4. Inflation Rate Higher Than Discount Rate. The program will print an error message if the inflation rate is higher than the discount rate. For this type of error the program allows the user to continue to enter data. At the end of data entry an error message is printed and the user can change either the inflation rate or the discount rate. This is illustrated in Exhibit III-6 where the discount rate of 15.84 percent was erroneously entered as 5.84 percent.

Exhibit III-6
ENTERING INFLATION RATE
THAT IS HIGHER THAN DISCOUNT RATE

```
5 INFLATION RATE?8.3
6 DISCOUNT RATE?5.84
7 INTEREST RATE?9.75
8 PREFERRED DIVIDEND RATE?8.88
9 PREFERRED SHARE OF INVESTMENT?32.5
10 EQUITY SHARE OF INVESTMENT?67.5
11 DEPRECIATION LIFE IN YEARS?5
12 USEFUL LIFE IN YEARS?11

>>>>>INFLATION RATE MUST NOT EXCEED THE DISCOUNT RATE
* * * NEW COMPUTATION * * *

HOW MANY CHANGES TO THE INPUT DATA (0=EXIT FROM PROGRAM)?1
SPECIFY WHAT YOU WANT TO CHANGE BY ITEM NUMBER.
     PRESS THE RETURN KEY AFTER EACH REQUEST.
?6
DISCOUNT RATE?15.84
```


Output From The Program

The output from the computer program will also require several responses from the user. In general, the output is structured in the following way.

- The amortization and depreciation method used in calculating the penalty is printed. For example, for the Fertilizer Company, rapid amortization and straight line depreciation are used.
- The program asks the user how many months will elapse between the first day of violation and the date of the first penalty payment.
- The program prints the quarterly penalty payments the firm must make during the period of noncompliance.
- The option to compute a lump sum settlement is offered. The user can specify the date for that payment.
- The program asks if changes to the input data are desired.

An example of the output for the Fertilizer Company appears in Exhibit III-7. Once again, the presence of underlining indicates data entered by the user.

Exhibit III-7

CALCULATION OF NONCOMPLIANCE PENALTY

```
STRAIGHT LINE, RAPID AMORTIZATION

HOW MANY MONTHS AFTER THE FIRST DAY OF
NONCOMPLIANCE WILL THE INITIAL PENALTY
PAYMENT BE MADE?
KA? 1

        MONTH        PAYMENT
          1          5214.65
          4          5319.64
          7          5426.75
         10          5536.01

DO YOU WISH TO SEE A LUMP SUM
SETTLEMENT? 1=YES,0=NO:
KA? 1
HOW MANY MONTHS AFTER THE FIRST DAY OF
NONCOMPLIANCE WILL THE LUMP SUM
SETTLEMENT BE MADE?
KA? 4
THE VALUE OF THE NONCOMPLIANCE PENALTY
COMPUTED AS OF   0 MONTHS AFTER THE DATE
OF NONCOMPLIANCE IS                    20342.32
                                       ********
```


The output printed in Exhibit III-6 illustrates only a few of the possible variations in penalty calculation possible with the computer program. The remainder of this section discusses in detail the output from the Fertilizer Company example and the program options available to alter that output.

1. Amortization and Depreciation Method. The computer program calculates the capital investment portion of the penalty using standard and rapid amortization. Under both types of amortization the program calculates the depreciation tax savings using straight line, sum-of-the-years-digits and double-declining balance depreciation methods. The formulae for these calculations are contained in the Technical Support Document. The program automatically chooses the method which will result in the lowest penalty. This method is then used to calculate the penalty shown.

2. Delay in the Penalty. The program asks the user how many months the first penalty payment will be delayed. The months of delay are calculated from the day a notice of noncompliance is issued until the first payment is made. Exhibit III-7 illustrated the payment made if the firm paid the first quarterly penalty on

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the day that the notice of noncompliance was issued. The first

the day that the notice of noncompliance was issued. The first quarterly payment was 5214.65. The second payment would be made ninety days later and it would equal the penalty shown for the number four (5319.64).

A more realistic example might involve a six-month delay in the first payment. In this case, the output would appear as in Exhibit III-8. The first penalty payment includes the amounts that should have been paid at the first, fourth and seventh months, discounted forward to the time of actual payment. Such discounting is required to keep the present value of all penalties paid equal to the present value of savings from non-compliance. The next quarterly penalty payment is due three months later, putting the firm back on the original penalty schedule. The present value of the payments in Exhibit III-8 is equal to the present value of the penalty payments in Exhibit III-7.

Exhibit III-8

SIX-MONTH DELAY IN PAYMENT OF PENALTY

```
    HOW MANY MONTHS AFTER THE FIRST DAY OF
    NONCOMPLIANCE WILL THE INITIAL PENALTY
    PAYMENT BE MADE?
?A? 6

          MONTH          PAYMENT
            7           16558.85
           10            5536.91
```


3. Lump Sum Settlement. A lump sum settlement is sometimes made instead of quarterly payments. For example, if the firm was going to be out of compliance for four quarters, it could either pay the four quarterly payments shown in the output or pay the lump sum settlement. In terms of present value, the amount eventually paid is the same in each case.

If the firm wishes to pay a lump sum settlement but will delay payment, the number of months of delay must be entered. Exhibit III-9 illustrates a seven month delay for the Fertilizer Company.

Exhibit III-9

SEVEN MONTH DELAY IN PAYMENT OF LUMP SUM SETTLEMENT

```
    DO YOU WISH TO SEE A LUMP SUM
    SETTLEMENT? 1=YES,2=NO:
?A? 1
    HOW MANY MONTHS AFTER THE FIRST DAY OF
    NONCOMPLIANCE WILL THE LUMP SUM
    SETTLEMENT BE MADE?
?A? 7
    THE VALUE OF THE NONCOMPLIANCE PENALTY
    COMPUTED AS OF    7 MONTHS AFTER THE DATE
    OF NONCOMPLIANCE IS                22164.17
```

Thus, for the Fertilizer Company, delaying the lump sum settlement seven months increased the settlement to 22,164.17 from the 20,342.32 shown in Exhibit III-7. The 1,821.85 difference between the lump sum settlement delayed seven months and the settlement paid on the date of noncompliance is the result of discounting the initial lump sum settlement forward to the time of actual payment.

Only a single payment is required if the first penalty payment is delayed longer than the firm is out of compliance. In this event, the firm will not make quarterly payments but will make one lump sum settlement. Exhibit III-10 shows the output from the program if a twelve-month delay in penalty payment occurs. The Fertilizer Company was out of compliance eleven months.

5. New Computation. The user has several options here. By typing in 0 (zero) and pushing the carriage return, the program can be terminated. Typing 999 will result in all of the data that is currently in the program being printed; the program will then once again ask if any changes are to be made. An example of typing 999 is shown in Exhibit III-11.

Exhibit III-10

PENALTY PAYMENT WHEN DELAY
IS LONGER THAN NONCOMPLIANCE PERIOD

```
   STRAIGHT LINE, RAPID AMORTIZATION

   HOW MANY MONTHS AFTER THE FIRST DAY OF
   NONCOMPLIANCE WILL THE INITIAL PENALTY
   PAYMENT BE MADE?
KG? 12

        MONTH        PAYMENT
          13        23564.57

   DO YOU WISH TO SEE A LUMP SUM
   SETTLEMENT? 1=YES,0=NO:
KG? 1
   HOW MANY MONTHS AFTER THE FIRST DAY OF
   NONCOMPLIANCE WILL THE LUMP SUM
   SETTLEMENT BE MADE?
KG? 12
   THE VALUE OF THE NONCOMPLIANCE PENALTY
   COMPUTED AS OF  12 MONTHS AFTER THE DATE
   OF NONCOMPLIANCE IS                    23564.58
                                          ********

   HOW MANY VARIABLES DO YOU WISH TO CHANGE ?
KG? 0
KG ENDED
```

Exhibit III-11
PRINTING DATA THAT HAS BEEN ENTERED IN PROGRAM

```
* * * NEW COMPUTATION * * *

HOW MANY CHANGES TO THE INPUT DATA (0=EXIT FROM PROGRAM)?999
NUMBER OF MONTHS OUT OF COMPLIANCE = 11

MONTH    CAPITAL EXPENDITURES     OPERATING MAINTENANCE
                                        EXPENSE
   1              0                        0
   2         166666.67                     0
   3              0                        0
   4         166666.67                     0
   5              0                        0
   6              0                        0
   7              0                        0
   8              0                        0
   9              0                      100
  10              0                     1050
  11         166666.66                   748
             ----------
TOTAL CAPITAL  500000
ANNUAL OM EXPENSE 15000

* * * DATA REQUIRED FOR POST-COMPLIANCE SETTLEMENT * * *

INVESTMENT TAX RATE= 10
INCOME TAX RATE = 49.73
INFLATION RATE = 8.3
DISCOUNT RATE = 15.84
INTEREST RATE = 8.76
PREFERRED DIVIDEND RATE= 8.88
PREFERRED SHARE OF INVESTMENT = 3.5
EQUITY SHARE OF INVESTMENT= 67.5
DEPRECIATION LIFE IN YEARS = 9
USEFUL LIFE IN YEARS = 11
```


If changes are desired in the input, the following steps must be taken.

- The number of changes desired must be entered.
- For each change, the computer will respond with a question mark. When the question mark is printed, type in the number of the item that you wish to change. (For example, 4 for the marginal income tax rate).
- The computer will print the name of the item. Enter the new data desired and push the carriage return.

The following is an example using the Fertilizer Company. Suppose that the interest rate, which has been entered as 8.76 percent, should be 9.76 percent and that the preferred share of the investment, which was entered as 3.5 percent, should be 10 percent.[1] Two changes are thus necessary.

[1] The equity share will remain at 67.5 percent. The program sums the equity and preferred shares and calculates automatically the debt share. Thus, the increase in preferred share from 3.5 to 10 percent while the equity share is held constant, will result in a decrease in debt share.

Exhibit III-11
ALTERING DATA IN THE PROGRAM

```
* * * NEW COMPUTATION * * *

HOW MANY CHANGES TO THE INPUT DATA (0=EXIT FROM PROGRAM)?2
SPECIFY WHAT YOU WANT TO CHANGE BY ITEM NUMBER.
     PRESS THE RETURN KEY AFTER EACH REQUEST.
?7
INTEREST RATE?9.76
?9
PREFERRED SHARE OF INVESTMENT?10
```

When the return key is pressed after entering the 10, the computation will be made using these new values. It should be noted that these new values permanently replace the previous values in the program.

BILLING CODE 1505-01-C

SECTION IV

CALCULATION OF THE POST-COMPLIANCE SETTLEMENT

The post-compliance settlement adjusts the penalty payment to reflect the firm's actual capital and operating expenditures rather than the estimates used in the original penalty calculation. For this purpose, six types of data are needed:

- A schedule of actual capital expenditures made by the firm in reaching compliance.
- A schedule of actual operating and maintenance expenditures made by the firm prior to compliance.
- A new estimate of post-compliance annual operating and maintenance expense based on the firm's experience prior to the post-compliance settlement.
- The number of months between the day of compliance and date of post-compliance settlement.
- A post-compliance settlement interest rate chosen by the Department of the Treasury.
- A listing of the actual penalty payments made by the firm and the months in which they were made.

In addition to these new data, it will be necessary to have available the financial parameters originally used to calculate the noncompliance penalty for the firm. To continue the example of the hypothetical Fertilizer Company, Exhibit IV-1 contains the data originally used to calculate the noncompliance penalty.

Exhibit IV-1

FERTILIZER COMPANY
July 1979

DATA USED FOR ORIGINAL NONCOMPLIANCE PENALTY CALCULATIONS[1]

* * * DATA REQUIRED FOR POST-COMPLIANCE SETTLEMENT * * *

INVESTMENT TAX RATE= 10
INCOME TAX RATE = 42.73
INFLATION RATE = 8.3
DISCOUNT RATE = 15.04
INTEREST RATE = 8.76
PREFERRED DIVIDEND RATE= 8.88
PREFERRED SHARE OF INVESTMENT = 3.5
EQUITY SHARE OF INVESTMENT= 67.5
DEPRECIATION LIFE IN YEARS = 9
USEFUL LIFE IN YEARS = 11

[1]Listed during original penalty calculation by typing 999 when changes in input data were requested.

Preparing New Data For Entry Into The Program

In order to calculate the post-compliance settlement, the computer program should be accessed in the manner described on pages III-1 to III-3. After the RUN command has been typed, the terminal will ask if the penalty calculation is for a post-compliance settlement. This is illustrated in Exhibit IV-2.

Exhibit IV-2

CALCULATING A POST-COMPLIANCE SETTLEMENT

03/28/79 EPA NON-COMPLIANCE PENALTY PROGRAM VERSION 1.0 16:19

IS THIS A POST-COMPLIANCE SETTLEMENT CALCULATION (1=YES,0=NO)?1

The computer program will then ask for data on the actual penalty payments made by the firm and the month in which each payment was made. The data are entered in the following order.

1. Number of penalty payments made by the firm. This is the actual number of payments made by the firm. If more than one payment is made in a month, they should be totalled and counted as one payment.

2. Month of the penalty payment. This is the number of the month in which the penalty payment is received by EPA, beginning with the month the firm is out of compliance. For example, a firm making a payment at the time notice of noncompliance is issued would enter a one. If a six-month delay in payment occurred, a seven would be entered.

3. Actual penalty payment. This is the dollar amount of the penalty actually received from the firm in each month. The payment entered should not include the 20 percent penalty for late payment. The data entered in the Fertilizer Company example is shown in Exhibit IV-3. As can be seen in the exhibit, these payments are identical to the penalties calculated in the last section and shown in Exhibit III-7.

Exhibit IV-3
ENTRY OF DATA ON ACTUAL PENALTY PAYMENTS

```
14. HOW MANY PENALTY PAYMENTS WERE MADE?
KB? 4
14. PAYMENT NUMBER 1: ENTER MONTH,AMOUNT
KB? 1,5214.93
14. PAYMENT NUMBER 2: ENTER MONTH,AMOUNT
KB? 4,5319.54
14. PAYMENT NUMBER 3: ENTER MONTH,AMOUNT
KB? 7,5420.73
14. PAYMENT NUMBER 4: ENTER MONTH,AMOUNT
KB? 10,5536.91
```

The terminal now asks for data on the Treasury interest rate, months out of compliance, limited life facilities, and financing with industrial development bonds. These data are entered in the following order.

1. Treasury interest rate. This is an annual interest rate set by the Secretary of the Treasury for the post-compliance settlement. It is entered as a percent. For the Fertilizer Company, the rate was chosen as 15.84 percent, which is the firm's return on equity.

2. Months out of compliance. This is the actual number of months the firm was out of compliance beginning on the date notice of noncompliance was issued and continuing until the firm demonstrates compliance was achieved.

3. Limited life facility. The limited life facility requires a slightly different method of calculation for the post-compliance settlement. This method is discussed in detail in the next section. For the Fertilizer Company, a zero is entered.

4. Industrial Development Bonds. This is an option explained in detail in the next section. For the Fertilizer Company, industrial development bonds were not sold. A zero is entered at the terminal. All four of the above data entries are shown in Exhibit IV-4.

Exhibit IV-4
ADDITIONAL QUESTIONS ASKED BY TERMINAL
DURING POST-COMPLIANCE SETTLEMENT CALCULATION

```
TREASURY INTEREST RATE?15.84
IS THIS A LIMITED LIFE FACILITY (1=YES,2=NO)?0

ENTER PERCENTAGE OF TOTAL PROJECT FINANCED BY INDUSTRIAL
DEVELOPMENT BONDS?0

1 HOW MANY MONTHS WAS THE SOURCE OUT OF COMPLIANCE?11
```


The computer program now requests data on the actual expenditures the firm made in order to reach compliance. These new data are entered in the following order.

1. Schedule of Actual Capital Expenditures. These are the payments the firm made, or capital costs the firm incurred, in each month during the period of noncompliance. They are entered in actual dollars as of the period the expenditure was made. No adjustment for inflation during the period of noncompliance should be made, since the program will automatically convert the actual dollars to real dollars as of the first day of noncompliance.

The sources for data on the actual monthly expenditures for noncompliance include cancelled checks to manufacturers and shippers, accounting entries in the firm's fixed asset accounts, or manufacturers invoices. The Fertilizer Company submitted the data in Exhibit IV-5 to show capital expenditures made during the period of noncompliance.

2. Schedule of Actual Operating and Maintenance Expense. This schedule indicates the actual pre-compliance expenditures made by the firm in each month. This data will be calculated by the firm from accounting information and will include labor, utilities, supplies, property taxes and the value of any by-

Exhibit IV 5

FERTILIZER COMPANY
CALCULATION OF ACTUAL CAPITAL EXPENDITURE

1.	List price or estimated price of the equipment =	$536,588.92
2.	Less: Discount from manufacturer	(10,731.78)
3.	Equals net price of equipment =	525,857.14
4.	Plus: Sales tax on equipment[1] =	26,292.86
5.	Plus: Freight and delivery charge =	0
6.	Equals estimated cost of equipment delivered	$552,150.00
7.	Plus: Installation charge =	0
8.	Plus: Value of lost production =	0
9.	Plus: Cost of building construction or modifications =	0
10.	Equals Total Capital Expenditure =	$552,150.00

The capital expenditures were made in three equal amounts of $184,050.00 starting in the month South of pre-compliance.

[1] Sales tax in this case was not deductible from income in the year of purchase

products. The Fertilizer Company submitted the data in Exhibit IV-6 for pre-compliance expenditures. These values are adjusted for inflation by the program.

The program is designed to print an error message if any monthly precompliance operating and maintenance expenditure is larger than one-twelfth of the new post-compliance operating and maintenance cost.[1] When this occurs, it is likely that equipment start up costs which should have been included in capital expenditures have been incorrectly charged to precompliance operating and maintenance expense. In such a case, precompliance capital expenditures and operating and maintenance expenses should be adjusted accordingly.

3. Estimate of Annual Operating and Maintenance Expenditures. Because the post-compliance settlement will occur before the new equipment has operated for a full year, it will be necessary to estimate post-compliance annual operating and maintenance expenses based on the firm's experience from compliance to the time of the post-compliance settlement. Those estimates should be in the actual dollars as of compliance. Thus, for the

[1] Precompliance operating and maintenance expenditures are used to adjust the operating and maintenance component of the penalty. Quarterly precompliance expenditures larger than one twelfth of the annual would result in negative penalties.

Exhibit IV-6

ACTUAL MONTHLY PRE COMPLIANCE OPERATING AND MAINTENANCE EXPENSE
FERTILIZER COMPANY
August 1, 1980

Pre-compliance Operating Expense

Months 1-9		$ 0
Month 10		
Labor (84 hrs @ $10)	$840.00	
Power (1200 Kwh @ .0333 Kwh)	39.96	
Total		$ 879.96
Month 11		
Labor (110 hrs @ $10)	$1100.00	
Power (6719 Kwh @ .0333 Kwh)	226.40	
Total		$1,326.40

Fertilizer Company, which will come into compliance in 1980, the estimate for post-compliance annual operating and maintenance expenses should be in 1980 dollars. The program will automatically deflate this number to real terms as of the date of noncompliance. The Fertilizer Company submitted the data in Exhibit IV-7 as an estimate of post-compliance annual operating and maintenance expenditures.

Entry of the actual expenditures by the Fertilizer Company is shown in Exhibit IV-8. In addition, the data used to calculate the original penalty, such as the investment tax rate, income tax rate, etc., are entered in exactly the same manner as entered for the original penalty calculation. This is also shown in Exhibit IV-8. Note that the entry for all data after the annual operating and maintenance expense is identical to Exhibit II, the initial penalty calculation.

Exhibit IV-7

Fertilizer Company

OPERATING AND MAINTENANCE EXPENSE
August 1, 1980

1.	**Annual Labor Expense**	
	1072 Hours X $10.87 per hour =	$11,538.32
2.	**Power Cost**	
	89991.5 Kwh X $.038 per Kwh	3,419.68
3.	**Water Cost**	
	____ Gallons X $ per gallon =	0
4.	**Raw Materials and Supplies**	
	1200 Lbs X $1.20 per lb. =	1,440.00
5.	**Yearly increase in property tax =**	0
6.	**Cost of production lost due to maintenance or use of equipment =**	0
7.	**Total Cost (1 + 2 + 3 + 4 + 5 + 6) =**	16,448.00
8.	**Less: Value of by-products**	
	800 Lbs. at $.56 per Lbs. =	(448.00)
9.	**Annual Operating and Maintenance (7-8)**	$16,000.00

Exhibit IV-8

DATA ENTRY FOR POSTCOMPLIANCE SETTLEMENT

THE FOLLOWING QUESTIONS ON CAPITAL EXPENDITURES AND OPERATING AND MAINTAINCE EXPENSE REFER TO THE ACTUAL CAPITAL EXPENDITURE AND O+M EXPENSE

* * * IN EACH MONTH ENTER CAPITAL EXPENDITURES * * *
* * * THEN OPERATING AND MAINTENANCE EXPENSE * * *

MONTH # 1? 20,0

MONTH # 2 ?0,0

MONTH # 3 ?0,0

MONTH # 4 ?0,0

MONTH # 5 ?0,0

MONTH # 6 ?0,0

MONTH # 7 ?0,0

MONTH # 8 ?0,0

MONTH # 9 ?184050,0

MONTH # 10 ?184050,879.96

MONTH # 11 ?184050,1324.40

TOTAL CAPITAL EXPENDITURE $ 552150

2 INITIAL ANNUAL O+M EXPENSE?16000
3 INVESTMENT TAX RATE?10
4 INCOME TAX RATE?49.78
5 INFLATION RATE?8.5
6 DISCOUNT RATE?15.68
7 INTEREST RATE?8.5
8 PREFERRED DIVIDEND RATE?8.5
9 DEBT/EQUITY RATIO OF INVESTMENT?3.5
10 EQUITY/DEBT RATIO OF INVESTMENT?67.5
11 DEPRECIATION LIFE IN YEARS?20
12 BUILDING LIFE IN YEARS?20

Output From The Post-Compliance Settlement Calculation

The output from the post compliance settlement calculation incorporates the data on penalty payments made by the firm and compares these payments to a penalty schedule based on actual expenditures made to achieve compliance. The output consists of two parts

- Printing of the penalty paid in each month and the penalty determined from actual expenditures. The difference between the actual penalty and the payment made by the firm is calculated in each month.

- The program allows the option of delaying the post-compliance settlement

The output from the post compliance settlement for the Fertilizer Company is shown in Exhibit IV 10. The first column prints the month in which a penalty payment was made or a penalty payment was required based on the post compliance penalty calculation. The second column contains the actual payment made by the firm. The third column is the penalty based on actual expenditures made coming into compliance.

The program next calculates the difference between the penalty payment in each month and the new penalty calculation based on actual expenditures. The difference between the payment made and the actual penalty is than charged interest at the rate specified by the Treasury for the number of months after payment that the firm remained out of compliance.

Exhibit IV-10

THE POST-COMPLIANCE SETTLEMENT

STRAIGHT LINE, RAPID AMORTIZATION

MONTH	PAID	PENALTY	DUE EPA	DUE FIRM
1	5214.65	8252.33	3037.68	0.0
4	5319.64	8418.44	3098.84	0.0
7	5426.75	8587.97	3161.22	0.0
10	5536.01	8760.88	3224.87	0.0

MONTHS FROM COMPLIANCE UNTIL SETTLEMENT= ?2

SETTLEMENT DUE EPA= 13896.23

The post-compliance settlement was calculated and paid two months after the Fertilizer Company came into compliance. For this reason, a 2 was entered when the program asked for the number of months between compliance and payment of the post-compliance settlement. Thus, the total post-compliance settlement paid by the firm to EPA is 13,896.23.

SPECIAL CONDITIONS

The preceding four sections enable the user to calculate the noncompliance penalty and post-compliance settlement when the source is privately owned and when compliance is achieved by modification of existing plant and equipment. In addition, it is assumed that financing would not involve industrial development bonds. Section V will expand the number of cases in which the penalty program is applicable and enable the user to compute the noncompliance penalty in the following situations.

- Plant and equipment necessary for compliance are financed through the sale of tax-exempt industrial development bonds.
- The source is operated by a local, state or federal government.
- The source has a limited useful life.

The noncompliance penalty in all three cases is calculated using the program PENALTY. However, it is necessary to modify some of the data entered into the program to reflect the unique characteristics of each of these situations. The following section describes special data requirements and modifications in data entry. It should be stressed that all data and data entry procedures discussed in the four previous sections are applicable to these special conditions except where specific changes are required.

INDUSTRIAL DEVELOPMENT BONDS

Industrial development bonds for pollution control equipment are used by firms in order to secure debt financing at an interest cost lower than the current rate on industrial bonds. This lower interest rate is possible because the development bonds are issued by a local or state government for the corporation and the interest payments received by the bond holder are exempt from federal income tax. The corporation pays the principal and interest payments, but because of the tax-exempt status of the interest, the interest charges are often several percentage points below corporate debt of similar quality.

The Revenue Act of 1978 requires that firms financing with industrial development bonds receive only one-half of the investment tax credit when rapid amortization is used. For firms financing in part with development bonds, a pro-rata portion of this financing should be applied to the facility for determining the investment tax

credit. The computer program will automatically pro-rate the investment tax credit. The user must provide two types of data.

- The percentage of the investment financed by industrial development bonds.
- Interest rate on development bonds.

Data are gathered for the calculation of the penalty in the same manner as described in Section II. In addition, the user must perform the following calculations.

1. Percent financed with industrial development bonds. This percentage is obtained by dividing the total issue of tax-exempt pollution control industrial development bonds by the capital investment.[1] In the Fertilizer Company example, the estimated capital investment was $500,000. If the firm sold $200,000 in industrial development bonds, the percentage entered would be forty. This would be entered as 40.

2. Interest rate on industrial development bonds. The interest rate used for pollution control industrial development bonds is published by Smith, Barney, Harris Upham & Co. in the Bond Markets Review. The review is published weekly and the current yield on bonds is printed on the last page.

[1] The firm may issue bonds in a volume much higher than the capital investment. In this case financing is entered as 100 percent. The program will not accept data higher than 100 percent.

For the Fertilizer Company example, the latest reported yield on pollution control industrial development bonds is 6.85 percent. This yield is entered as the interest rate in the penalty program.

There are thus only two changes in the data entered for industrial development bonds as opposed to the example described in Section III. A percentage of the project financed with tax-exempt bonds is entered, and the interest rate used is for pollution control industrial development bonds. All other data entry remains the same.

GOVERNMENT-OWNED FACILITIES

The use of the noncompliance penalty program for government facilities requires that all cash flows related to taxes be eliminated. In addition, no debt financing is considered and the discount rate is entered at ten percent. Exhibit V-1 shows the data entry procedure for non-complying sources owned by governments. Data labelled "no change" are calculated using the methods described in Section II.

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Exhibit V-1

DATA ENTRY FOR GOVERNMENT FACILITIES

DATA CATEGORY	PROGRAM ENTRY
Pre-compliance Capital Expenditures	No Change
Pre-compliance Operating and Maintenance	No Change
Annual Operating and Maintenance	No Change
Investment Tax Credit	0
Income Tax Rate	0
Inflation Rate	No Change
Discount Rate	10.0
Interest Rate	0
Preferred Dividend Rate	0
Preferred Share of Investment	0
Equity Share of Investment	100.0
Depreciation Life in Years	No Change
Useful Life in Years	No Change

Facilities with Limited Useful Lives

The noncompliance penalty computer program will calculate penalties for facilities with limited useful lives. In cases where a noncomplying facility is to be operated for a period of time and then retired, the current program may be used. Capital and operating and maintenance cost estimates are made based on what it would cost to bring the source into compliance and the calculation proceeds in the normal manner. In such cases there are no precompliance operating and maintenance expenditures and the total capital expenditure is entered in the last month. There is no post-compliance settlement.

In cases where the noncomplying source is to be replaced by a new, complying facility after some period of noncompliance, program inputs and operation will be slightly different than at present. In such cases, the program will

- ask if the calculation is for a limited life facility that is being replaced,
- request an estimate of the capital and annual operating expenses required to bring the old source into compliance,
- request a schedule of precompliance total capital expenditures (for productive capability plus pollution control equipment) required to build the new source,

- request a schedule of precompliance O&M expenditures (for productive capability and pollution control equipment) associated with the new source, and
- request an estimate of annual production costs including pollution control operating and maintenance expenses at the new source.

The program will then calculate the penalty based on the costs of compliance at the old source but will be adjusted for precompliance expenditures on the new source. Once the new source is in operation and the old source is retired (and, thus, full compliance is achieved), a postcompliance settlement can be made. Such a settlement will consider only changes in the precompliance expenditures associated with the new source relative to the estimates made when the initial penalty calculation was carried out.

APPENDIX C

CLEAN AIR ACT

SECTION 120

NONCOMPLIANCE PENALTIES

COMPUTER PROGRAM

```
C
C       THIS PROGRAM COMPUTES THE NONCOMPLIANCE PENALTY
C       PRESCRIBED IN SECTION 120 OF THE CLEAN AIR ACT.
C
C       IT WAS WRITTEN BY ROBERT L HAYES OF TCB FINANCIAL
C       CONSULTANTS, NASHVILLE, TENNESSEE, UNDER CONTRACT
C       WITH THE UNITED STATES ENVIRONMENTAL PROTECTION
C       AGENCY.
C
C       THE PROGRAM FOLLOWS CLOSELY THE FEBRUARY 1979
C       TECHNICAL SUPPORT DOCUMENT.
C
C
C VARIABLE DICTIONARY
C
C   VECTORS
C       AC(J)           ADJUSTED CAPITAL COMPONENT IN MONTH J
C       AO(J)           ADJUSTED O & M COMPONENT IN MONTH J
C       D(K,J)          DEPRECIATION FRACTION IN YEAR J, TYPE K
C       DEP(J)          DEPRECIATION TAX SAVINGS IN YEAR J
C       CSNFLO(J)       NET CASH FLOW IN YEAR J
C       CSHOUT(J)       TOTAL CASH OUTFLOW IN YEAR J
C       DEDUCT(J)       TOTAL DEDUCTIONS FOR TAX PURPOSES
C       DELTA(J)        RECOMPUTED PENALTY LESS AMOUNT PAID
C       DIV(J)          PREFERRED STOCK DIVIDENDS PAID
C                         AT END OF YEAR J
C       INT(J)          INTEREST PAID AT END OF YEAR J
C       M(J)            O & M EXPENSE AT END OF YEAR J
C       P(J)            PENALTY PAYMENT DUE IN MONTH J
C       PAID(J)         PENALTY ACTUALLY PAID IN MONTH J
C       PRIN(J)         PRINCIPAL REPAYMENT AT END OF
C                         YEAR J
C       PRNOUT(J)       PRINCIPAL OUTSTANDING AT THE BEGINNING
C                         OF YEAR J
C       PRECAP(J)       PRE-COMPLIANCE CAP EXP IN MONTH J
C       PREF(J)         PREFERRED STOCK REDEEMED AT END OF
C                         YEAR J
C       PRFOUT(J)       PREFERRED STOCK OUTSTANDING AT BEGINNING
C                         OF YEAR J
C       PROM(J)         PRE-COMPLIANCE O & M EXP IN MONTH J
C       QUART(J)        QUARTERLY PENALTY DUE IN MONTH J
C       SC(J)           EQUIVALENT CAPITAL COMPONENT IN MONTH J
C       SO(J)           EQUIVALENT O & M COMPONENT IN MONTH J
C       TAXSAV(J)       TAX SAVINGS ON TAX DEDUCTIBLE EXPENSE
C       X(J)            FRACTION OF CAPITAL SPENT PRIOR TO MONTH J
C       Y(J)            FRACTION OF O & M SPENT IN MONTH J
C       Z(J)            DELTA(J) ADJUSTED TO COMPLIANCE DATE
C
C   VARIABLES
C       A       DEBT FRACTION OF CAPITAL STRUCTURE
C       CUMDEP  FRACTION OF ASSET ALREADY DEPRECIATED
C       DBTSHR  DEBT SHARE OF CAPITAL INVESTMENT ($)
C       DD      MONTHS FROM COMPLIANCE DATE TO SETTLEMENT
C       DDIV    DUMMY INDICATING COSTS DIVIDED BY 1000
C       DLIM    DUMMY INDICATING LIMITED LIFE FACILITY
C       DLOOP   DUMMY INDICATING VARIABLES BEING CHANGED
C       DLUMP   DUMMY INDICATING A LUMP SUM SETTLEMENT
C       DPOST   DUMMY INDICATING POST-COMPLIANCE SETTLEMENT
C       E       DISCOUNT RATE
C       E1      DISCOUNT RATE ON MONTHLY BASIS
C       E4      DISCOUNT RATE ON A QUARTERLY BASIS
C       EI      EQUITY SHARE OF CAPITAL INVESTMENT ($)
C       F       PREFERRED STOCK FRACTION OF CAPITAL STRUCTURE
C       FIDB    FRACTION FINANCED BY INDUSTRIAL DEVELOPMENT BONDS
C       FRAPID  FRACTION OF DEPRECIATION SUBJECT TO RAPID
C                 AMORTIZATION
C       I       FORECAST INFLATION RATE
C       I1      INFLATION RATE ON MONTHLY BASIS
C       I4      INFLATION RATE ON A QUARTERLY BASIS
C       II      CAPITAL COST IN DOLLARS (INITIAL INVESTMENT)
C       IIOLD   CAPITAL COST FOR OLD FACILITY
C       J       INDEX INDICATING THE YEAR
C       K       INDEX INDICATING THE YEAR
C       L       PERIOD OF DELAYED COMPLIANCE(MONTHS)
C       LDPP    DELAY BEFORE INITIAL PENALTY PAYMENT (MONTHS)
C       LDTS    DUMMY INDICATING DEPRECIATION METHOD
C       MDS     MONTHS DELAY IN SETTLEMENT
C       MO      INITIAL ANNUAL O & M EXPENSE ($)
C       MOOLD   O & M COST FOR OLD FACILITY
C       MI2     INITIAL MONTHLY O & M EXPENSE ($)
C       NDFP    DEPRECIATION LIFE (YEARS)
C       NLOOP   NUMBER OF VARIABLES TO BE CHANGED
C       NPP     NUMBER OF PENALTY PAYMENTS ACTUALLY MADE
C       NUSE    USEFUL LIFE (YEARS)
C       NVAR    VARIABLE NUMBER BEING CHANGED
C       PVACR   PRESENT VALUE OF ANNUAL CAPITAL RELATED FLOWS
C       PVADJ   PRESENT VALUE OF CASH FLOWS ADJ FOR PRE-COMPL EXP
C       PVDLA   PRESENT VALUE OF DELAYED CASH FLOWS
C       PVIN    PRESENT VALUE OF INITIAL CASH FLOWS
C       PVOM    PRESENT VALUE OF O & M CASH FLOWS
C       PVPCE   PRESENT VALUE OF CASH FLOWS IN ALL CYCLES
C       PVPEN   PRESENT VALUE OF PENALTY
C       PVLPCE  PRESENT VALUE OF CASH FLOWS IN FIRST CYCLE
C       Q       EQUITY FRACTION OF CAPITAL STRUCTURE
C       R       INTEREST RATE FOR POST-COMPL SETTLEMENT
C       RDIV    PREFERRED STOCK DIVIDEND RATE
C       RINT    INTEREST RATE ON DEBT
C       SAVING  PRESENT VALUE OF ECONOMIC SAVINGS OF DELAY
C       SETTLE  POST-COMPLIANCE SETTLEMENT AMOUNT
C       TITC    INVESTMENT TAX CREDIT RATE(%)
C       TTR     MARGINAL INCOME TAX RATE (%)
C       ZDELAY  ZTOTAL ADJUSTED TO SETTLEMENT DATE
C       ZTOTAL  SUM OF Z(J) ADJUSTED TO COMPLIANCE DATE
C
C       OTHER VARIABLES BEGINNING WITH Z ARE USED TO CONVERT
C         FROM INTEGER TO REAL
C
C
C MAIN PROGRAM
C
C
      DIMENSION D(6,50),DEP(100),CSNFLO(100),DEDUCT(100)
      DIMENSION M(100),PRIN(100),PRNOUT(100),PREF(100)
      DIMENSION PRFOUT(100),INT(100),TAXSAV(100)
      DIMENSION CSHOUT(100),DELTA(100),Z(100)
      DIMENSION DIV(100),DF(100),PV(100)
      DIMENSION X(100),PRECAP(100),PROM(100),P(100)
      DIMENSION SC(100),SO(100),AC(100),AO(100),PAID(100)
      DIMENSION PVDTS(6),QUART(100),Y(100)
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C
C
      INTEGER DEPMET,DRAPID,DLOOP,DDIV,DLIM
      INTEGER CSHOUT,DEDUCT,DEP,DPOST,DLUMP
      REAL NDIV,NINT,NUSE,NDFP,NPP,NLOOP,NVAR,NOOLD,NPOST
      REAL NMO,NMI2,NMDS,NLDPP,NLDTS,NL,NJ,NK
      REAL M,MO,MI2,MOOLD,MDS,LDPP,LDTS,L,J,K
      REAL I,I1,I4,II,IIOLD,IDC,IDCOLD,IDCPP,IDCPOST
      REAL INT,MDIV,MINT,MUSE,MDFP,MPP,MVAR,MLOOP,MPOST
      REAL NPVDTS(6),NPVIN,NPVOM,NPVACR,NPVDLA,NPVADJ,NPVPEN
      REAL NPVPCE,NPVLPC,NPVTOT,NSAVING,NSETTLE,NPVSET
      REAL NPVSAV,NPVNET,NPVOLD,NPVDIF,NPVRAT,NPVPRE
      REAL NPVPOS,NPVPOT,NPVPPT,NPVPPS,NPVPPP,NPVPPO
      REAL NPVPPC,NPVPPL,NPVPPA,NPVPPB,NPVPPD,NPVPPE
      REAL NPVPPF,NPVPPG,NPVPPH,NPVPPI,NPVPPJ,NPVPPK
      REAL NPVPPM,NPVPPN,NPVPPQ,NPVPPR,NPVPPU,NPVPPV
      REAL NPVPPW,NPVPPX,NPVPPY,NPVPPZ,NPVPQA,NPVPQB
      REAL NPVPQC,NPVPQD,NPVPQE,NPVPQF,NPVPQG,NPVPQH
      REAL NPVPQI,NPVPQJ,NPVPQK,NPVPQL,NPVPQM,NPVPQN
      REAL NPVPQO,NPVPQP,NPVPQQ,NPVPQR,NPVPQS,NPVPQT
      REAL NPVPQU,NPVPQV,NPVPQW,NPVPQX,NPVPQY,NPVPQZ
      REAL NPVPRA,NPVPRB,NPVPRC,NPVPRD,NPVPRE,NPVPRF
      REAL NPVPRG,NPVPRH,NPVPRI,NPVPRJ,NPVPRK,NPVPRL
      REAL NPVPRM,NPVPRN,NPVPRO,NPVPRP,NPVPRQ,NPVPRR
      REAL NPVPRS,NPVPRT,NPVPRU,NPVPRV,NPVPRW,NPVPRX
      REAL NPVPRY,NPVPRZ,NPVPSA,NPVPSB,NPVPSC,NPVPSD
      REAL NPVPSE,NPVPSF,NPVPSG,NPVPSH,NPVPSI,NPVPSJ
      REAL NPVPSK,NPVPSL,NPVPSM,NPVPSN,NPVPSO,NPVPSP
      REAL NPVPSQ,NPVPSR,NPVPSS,NPVPST,NPVPSU,NPVPSV
      REAL NPVPSW,NPVPSX,NPVPSY,NPVPSZ,NPVPTA,NPVPTB
      REAL NPVPTC,NPVPTD,NPVPTE,NPVPTF,NPVPTG,NPVPTH
      REAL NPVPTI,NPVPTJ,NPVPTK,NPVPTL,NPVPTM,NPVPTN
      REAL NPVPTO,NPVPTP,NPVPTQ,NPVPTR,NPVPTS,NPVPTT
      REAL NPVPTU,NPVPTV,NPVPTW,NPVPTX,NPVPTY,NPVPTZ
      REAL NPVPUA,NPVPUB,NPVPUC,NPVPUD,NPVPUE,NPVPUF
      REAL NPVPUG,NPVPUH,NPVPUI,NPVPUJ,NPVPUK,NPVPUL
      REAL NPVPUM,NPVPUN,NPVPUO,NPVPUP,NPVPUQ,NPVPUR
      REAL NPVPUS,NPVPUT,NPVPUU,NPVPUV,NPVPUW,NPVPUX
      REAL NPVPUY,NPVPUZ,NPVPVA,NPVPVB,NPVPVC,NPVPVD
      REAL NPVPVE,NPVPVF,NPVPVG,NPVPVH,NPVPVI,NPVPVJ
      REAL NPVPVK,NPVPVL,NPVPVM,NPVPVN,NPVPVO,NPVPVP
      REAL NPVPVQ,NPVPVR,NPVPVS,NPVPVT,NPVPVU,NPVPVV
      REAL NPVPVW,NPVPVX,NPVPVY,NPVPVZ,NPVPWA,NPVPWB
      REAL NPVPWC,NPVPWD,NPVPWE,NPVPWF,NPVPWG,NPVPWH
      REAL NPVPWI,NPVPWJ,NPVPWK,NPVPWL,NPVPWM,NPVPWN
      REAL NPVPWO,NPVPWP,NPVPWQ,NPVPWR,NPVPWS,NPVPWT
      REAL NPVPWU,NPVPWV,NPVPWW,NPVPWX,NPVPWY,NPVPWZ
      REAL NPVPXA,NPVPXB,NPVPXC,NPVPXD,NPVPXE,NPVPXF
      REAL NPVPXG,NPVPXH,NPVPXI,NPVPXJ,NPVPXK,NPVPXL
      REAL NPVPXM,NPVPXN,NPVPXO,NPVPXP,NPVPXQ,NPVPXR
      REAL NPVPXS,NPVPXT,NPVPXU,NPVPXV,NPVPXW,NPVPXX
      REAL NPVPXY,NPVPXZ,NPVPYA,NPVPYB,NPVPYC,NPVPYD
      REAL NPVPYE,NPVPYF,NPVPYG,NPVPYH,NPVPYI,NPVPYJ
      REAL NPVPYK,NPVPYL,NPVPYM,NPVPYN,NPVPYO,NPVPYP
      REAL NPVPYQ,NPVPYR,NPVPYS,NPVPYT,NPVPYU,NPVPYV
      REAL NPVPYW,NPVPYX,NPVPYY,NPVPYZ,NPVPZA,NPVPZB
      REAL NPVPZC,NPVPZD,NPVPZE,NPVPZF,NPVPZG,NPVPZH
      REAL NPVPZI,NPVPZJ,NPVPZK,NPVPZL,NPVPZM,NPVPZN
      REAL NPVPZO,NPVPZP,NPVPZQ,NPVPZR,NPVPZS,NPVPZT
      REAL NPVPZU,NPVPZV,NPVPZW,NPVPZX,NPVPZY,NPVPZZ
      REAL NPVPAA,NPVPAB,NPVPAC,NPVPAD,NPVPAE,NPVPAF
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      REAL NPVPAY,NPVPAZ,NPVPBA,NPVPBB,NPVPBC,NPVPBD
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      REAL NPVPBQ,NPVPBR,NPVPBS,NPVPBT,NPVPBU,NPVPBV
      REAL NPVPBW,NPVPBX,NPVPBY,NPVPBZ,NPVPCA,NPVPCB
      REAL NPVPCC,NPVPCD,NPVPCE,NPVPCF,NPVPCG,NPVPCH
      REAL NPVPCI,NPVPCJ,NPVPCK,NPVPCL,NPVPCM,NPVPCN
      REAL NPVPCO,NPVPCP,NPVPCQ,NPVPCR,NPVPCS,NPVPCT
      REAL NPVPCU,NPVPCV,NPVPCW,NPVPCX,NPVPCY,NPVPCZ
      REAL NPVPDA,NPVPDB,NPVPDC,NPVPDD,NPVPDE,NPVPDF
      REAL NPVPDG,NPVPDH,NPVPDI,NPVPDJ,NPVPDK,NPVPDL
      REAL NPVPDM,NPVPDN,NPVPDO,NPVPDP,NPVPDQ,NPVPDR
      REAL NPVPDS,NPVPDT,NPVPDU,NPVPDV,NPVPDW,NPVPDX
      REAL NPVPDY,NPVPDZ,NPVPEA,NPVPEB,NPVPEC,NPVPED
      REAL NPVPEE,NPVPEF,NPVPEG,NPVPEH,NPVPEI,NPVPEJ
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      REAL NPVPGG,NPVPGH,NPVPGI,NPVPGJ,NPVPGK,NPVPGL
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      REAL NPVPBS,NPVPBT,NPVPBU,NPVPBV,NPVPBW,NPVPBX
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      REAL NPVPCE,NPVPCF,NPVPCG,NPVPCH,NPVPCI,NPVPCJ
      REAL NPVPCK,NPVPCL,NPVPCM,NPVPCN,NPVPCO,NPVPCP
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      REAL NPVPCW,NPVPCX,NPVPCY,NPVPCZ,NPVPDA,NPVPDB
      REAL NPVPDC,NPVPDD,NPVPDE,NPVPDF,NPVPDG,NPVPDH
      REAL NPVPDI,NPVPDJ,NPVPDK,NPVPDL,NPVPDM,NPVPDN
      REAL NPVPDO,NPVPDP,NPVPDQ,NPVPDR,NPVPDS,NPVPDT
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      REAL NPVPEG,NPVPEH,NPVPEI,NPVPEJ,NPVPEK,NPVPEL
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      REAL NPVPGI,NPVPGJ,NPVPGK,NPVPGL,NPVPGM,NPVPGN
      REAL NPVPGO,NPVPGP,NPVPGQ,NPVPGR,NPVPGS,NPVPGT
      REAL NPVPGU,NPVPGV,NPVPGW,NPVPGX,NPVPGY,NPVPGZ
      REAL NPVPHA,NPVPHB,NPVPHC,NPVPHD,NPVPHE,NPVPHF
      REAL NPVPHG,NPVPHH,NPVPHI,NPVPHJ,NPVPHK,NPVPHL
      REAL NPVPHM,NPVPHN,NPVPHO,NPVPHP,NPVPHQ,NPVPHR
      REAL NPVPHS,NPVPHT,NPVPHU,NPVPHV,NPVPHW,NPVPHX
      REAL NPVPHY,NPVPHZ,NPVPIA,NPVPIB,NPVPIC,NPVPID
      REAL NPVPIE,NPVPIF,NPVPIG,NPVPIH,NPVPII,NPVPIJ
      REAL NPVPIK,NPVPIL,NPVPIM,NPVPIN,NPVPIO,NPVPIP
      REAL NPVPIQ,NPVPIR,NPVPIS,NPVPIT,NPVPIU,NPVPIV
      REAL NPVPIW,NPVPIX,NPVPIY,NPVPIZ,NPVPJA,NPVPJB
      REAL NPVPJC,NPVPJD,NPVPJE,NPVPJF,NPVPJG,NPVPJH
      REAL NPVPJI,NPVPJJ,NPVPJK,NPVPJL,NPVPJM,NPVPJN
      REAL NPVPJO,NPVPJP,NPVPJQ,NPVPJR,NPVPJS,NPVPJT
      REAL NPVPJU,NPVPJV,NPVPJW,NPVPJX,NPVPJY,NPVPJZ
      REAL NPVPKA,NPVPKB,NPVPKC,NPVPKD,NPVPKE,NPVPKF
      REAL NPVPKG,NPVPKH,NPVPKI,NPVPKJ,NPVPKK,NPVPKL
      REAL NPVPKM,NPVPKN,NPVPKO,NPVPKP,NPVPKQ,NPVPKR
      REAL NPVPKS,NPVPKT,NPVPKU,NPVPKV,NPVPKW,NPVPKX
      REAL NPVPKY,NPVPKZ,NPVPLA,NPVPLB,NPVPLC,NPVPLD
      REAL NPVPLE,NPVPLF,NPVPLG,NPVPLH,NPVPLI,NPVPLJ
      REAL NPVPLK,NPVPLL,NPVPLM,NPVPLN,NPVPLO,NPVPLP
      REAL NPVPLQ,NPVPLR,NPVPLS,NPVPLT,NPVPLU,NPVPLV
      REAL NPVPLW,NPVPLX,NPVPLY,NPVPLZ,NPVPMA,NPVPMB
      REAL NPVPMC,NPVPMD,NPVPME,NPVPMF,NPVPMG,NPVPMH
      REAL NPVPMI,NPVPMJ,NPVPMK,NPVPML,NPVPMM,NPVPMN
      REAL NPVPMO,NPVPMP,NPVPMQ,NPVPMR,NPVPMS,NPVPMT
      REAL NPVPMU,NPVPMV,NPVPMW,NPVPMX,NPVPMY,NPVPMZ
      REAL NPVPNA,NPVPNB,NPVPNC,NPVPND,NPVPNE,NPVPNF
      REAL NPVPNG,NPVPNH,NPVPNI,NPVPNJ,NPVPNK,NPVPNL
      REAL NPVPNM,NPVPNN,NPVPNO,NPVPNP,NPVPNQ,NPVPNR
      REAL NPVPNS,NPVPNT,NPVPNU,NPVPNV,NPVPNW,NPVPNX
      REAL NPVPNY,NPVPNZ,NPVPOA,NPVPOB,NPVPOC,NPVPOD
      REAL NPVPOE,NPVPOF,NPVPOG,NPVPOH,NPVPOI,NPVPOJ
      REAL NPVPOK,NPVPOL,NPVPOM,NPVPON,NPVPOO,NPVPOP
      REAL NPVPOQ,NPVPOR,NPVPOS,NPVPOT,NPVPOU,NPVPOV
      REAL NPVPOW,NPVPOX,NPVPOY,NPVPOZ,NPVPPA,NPVPPB
      REAL NPVPPC,NPVPPD,NPVPPE,NPVPPF,NPVPPG,NPVPPH
      REAL NPVPPI,NPVPPJ,NPVPPK,NPVPPL,NPVPPM,NPVPPN
      REAL NPVPPO,NPVPPP,NPVPPQ,NPVPPR,NPVPPS,NPVPPT
      REAL NPVPPU,NPVPPV,NPVPPW,NPVPPX,NPVPPY,NPVPPZ
      REAL NPVPQA,NPVPQB,NPVPQC,NPVPQD,NPVPQE,NPVPQF
      REAL NPVPQG,NPVPQH,NPVPQI,NPVPQJ,NPVPQK,NPVPQL
      REAL NPVPQM,NPVPQN,NPVPQO,NPVPQP,NPVPQQ,NPVPQR
      REAL NPVPQS,NPVPQT,NPVPQU,NPVPQV,NPVPQW,NPVPQX
      REAL NPVPQY,NPVPQZ,NPVPRA,NPVPRB,NPVPRC,NPVPRD
      REAL NPVPRE,NPVPRF,NPVPRG,NPVPRH,NPVPRI,NPVPRJ
      REAL NPVPRK,NPVPRL,NPVPRM,NPVPRN,NPVPRO,NPVPRP
      REAL NPVPRQ,NPVPRR,NPVPRS,NPVPRT,NPVPRU,NPVPRV
      REAL NPVPRW,NPVPRX,NPVPRY,NPVPRZ,NPVPSA,NPVPSB
      REAL NPVPSC,NPVPSD,NPVPSE,NPVPSF,NPVPSG,NPVPSH
      REAL NPVPSI,NPVPSJ,NPVPSK,NPVPSL,NPVPSM,NPVPSN
      REAL NPVPSO,NPVPSP,NPVPSQ,NPVPSR,NPVPSS,NPVPST
      REAL NPVPSU,NPVPSV,NPVPSW,NPVPSX,NPVPSY,NPVPSZ
      REAL NPVPTA,NPVPTB,NPVPTC,NPVPTD,NPVPTE,NPVPTF
      REAL NPVPTG,NPVPTH,NPVPTI,NPVPTJ,NPVPTK,NPVPTL
      REAL NPVPTM,NPVPTN,NPVPTO,NPVPTP,NPVPTQ,NPVPTR
      REAL NPVPTS,NPVPTT,NPVPTU,NPVPTV,NPVPTW,NPVPTX
      REAL NPVPTY,NPVPTZ,NPVPUA,NPVPUB,NPVPUC,NPVPUD
      REAL NPVPUE,NPVPUF,NPVPUG,NPVPUH,NPVPUI,NPVPUJ
      REAL NPVPUK,NPVPUL,NPVPUM,NPVPUN,NPVPUO,NPVPUP
      REAL NPVPUQ,NPVPUR,NPVPUS,NPVPUT,NPVPUU,NPVPUV
      REAL NPVPUW,NPVPUX,NPVPUY,NPVPUZ,NPVPVA,NPVPVB
      REAL NPVPVC,NPVPVD,NPVPVE,NPVPVF,NPVPVG,NPVPVH
      REAL NPVPVI,NPVPVJ,NPVPVK,NPVPVL,NPVPVM,NPVPVN
      REAL NPVPVO,NPVPVP,NPVPVQ,NPVPVR,NPVPVS,NPVPVT
      REAL NPVPVU,NPVPVV,NPVPVW,NPVPVX,NPVPVY,NPVPVZ
      REAL NPVPWA,NPVPWB,NPVPWC,NPVPWD,NPVPWE,NPVPWF
      REAL NPVPWG,NPVPWH,NPVPWI,NPVPWJ,NPVPWK,NPVPWL
      REAL NPVPWM,NPVPWN,NPVPWO,NPVPWP,NPVPWQ,NPVPWR
      REAL NPVPWS,NPVPWT,NPVPWU,NPVPWV,NPVPWW,NPVPWX
      REAL NPVPWY,NPVPWZ,NPVPXA,NPVPXB,NPVPXC,NPVPXD
      REAL NPVPXE,NPVPXF,NPVPXG,NPVPXH,NPVPXI,NPVPXJ
      REAL NPVPXK,NPVPXL,NPVPXM,NPVPXN,NPVPXO,NPVPXP
      REAL NPVPXQ,NPVPXR,NPVPXS
```

```
C
C
C
      INTEGER DEPMET,DRAPID,DLOOP,DDIV,DLIN
      INTEGER DPRCAP,DPROM,DPOST,DD,DATA
      REAL II,I,ITC,I1,M0,M12,M9
      REAL INT,M,I4,LUMP,MONEN,MOOLD
      REAL E1,E4,M4,IACT,IACT1
C
CCCC  DATA INPUT
CCC
      KR=6
      KW=5
   90 WRITE(KW,7400)
      WRITE(KW,7401)
      WRITE(KW,7402)
 7400 FORMAT(5X,'IS THIS AN INITIAL PENALTY CALCULATION')
 7401 FORMAT(5X, 'OR A POST-COMPLIANCE SETTLEMENT CALCULATION?')
 7402 FORMAT(5X,'0=INITIAL, 1=POST-COMPLIANCE:')
      READ(KR,*)DPOST
      IF(DPOST)93,93,60
   60 WRITE(KW,7410)
      WRITE(KW,7411)
 7410 FORMAT(5X,'ITEMS 1 AND 2 SHOULD SHOW AMOUNTS ACTUALLY')
 7411 FORMAT(5X, 'EXPENDED')
C
   93 WRITE(KW,7422)
 7422 FORMAT(5X,'IS THIS A LIMITED LIFE FACILITY? 1=YES, 0=NO')
      READ(KR,*)DLIN
      IF(DLIN)97,97,95
   95 WRITE(KW,7425)
      WRITE(KW,7426)
 7425 FORMAT(5X,'ITEMS 1 AND 2 SHOULD SHOW COSTS FOR THE')
 7426 FORMAT(5X,'REPLACEMENT FACILITY')
C
   97 WRITE(KW,7535)
 7535 FORMAT(5X,'PERCENTAGE FINANCED BY INDUSTRIAL DEVELOP',
     C  'MENT BONDS=')
      READ(KR,*)FIDB
      FIDB=FIDB/100.
C
  100 DLOOP=1
      DO IV=1
      DATA=0
      RM=0.
 4000 FORMAT(F20.5)
 4001 FORMAT(I20)
 4002 FORMAT(I5,5F10.2)
 4006 FORMAT(10X)
  110 WRITE(KW,4005)
 4005 FORMAT(5X,29H 1. MONTHS OUT OF COMPLIANCE=)
      READ(KR,*)L
      WRITE(KW,4010)
      WRITE(KW,4011)
 4010 FORMAT(5X,'FOR EACH MONTH ENTER CAPITAL EXPENDITURE')
 4011 FORMAT(5X,'THEN OPERATING AND MAINTENANCE EXPENSE')
      WRITE(KW,6000)
      I1=0.
      DO 133 J=1,L
      WRITE(KW,4015)J
 4015 FORMAT(5X,'MONTH',I3,' ENTER CAPITAL, O & M')
  133 READ(KR,*)PRECAP(J),PROM(J)
      GO TO (210,3000),DLOOP
  210 WRITE(KW,4020)
 4020 FORMAT(5X,33H 2. INITIAL ANNUAL O & M EXPENSE=,F10.2)
      READ (KR,*)MONEY
      DO 212 J=1,L
  217 IF(PROM(J)-MONEY/12.)212,212,213
  212 CONTINUE
      GO TO (220,3000),DLOOP
  213 WRITE(KW,4025)
      WRITE(KW,4026)
 4025 FORMAT(5X,'PRE-COMPLIANCE O & M LARGER THAN ONE=')
 4026 FORMAT(5X,'TWELFTH OF ANNUAL O & M EXPENSE')
      GO TO 100
  220 WRITE(KW,4030)
 4030 FORMAT(5X,31H 3. INVESTMENT TAX CREDIT RATE=,F6.2)
      READ(KR,*)ITC
      IF(ITC-1.)223,227,227
  223 IF(ITC)227,227,224
  224 DATA=1
  227 ITC=ITC/100.
      GO TO (230,3000),DLOOP
  230 WRITE(KW,4040)
 4040 FORMAT(5X,20H 4. INCOME TAX RATE=,F6.2)
      READ(KR,*)TTR
      IF(TTR-1.)233,237,237
  233 IF(TTR)237,237,234
  234 DATA=1
  237 TTR=TTR/100.
      GO TO (240,3000),DLOOP
  240 WRITE(KW,4050)
 4050 FORMAT(5X,38H 5. FORECAST INFLATION RATE=,F6.2)
      READ(KR,*)I
      IF(I-1.)243,247,247
  243 IF(I)247,247,244
  244 DATA=1
  247 I=I/100.
      I1=(1.+I)**(1./12.)-1.
      GO TO (250,3000),DLOOP
  250 WRITE(KW,4060)
 4060 FORMAT(5X,18H 6. DISCOUNT RATE=,F6.2)
      READ(KR,*)E
      IF(E-1.)253,255,255
  253 IF(E)255,255,254
  254 DATA=1
  255 E=E/100.
      GO TO (256,3000),DLOOP
  256 IF(E-I)258,258,260
  258 WRITE(KW,4065)
 4065 FORMAT(5X,'DISCOUNT RATE NOT GREATER THAN INFLATION RATE')
      GO TO 240
  260 WRITE(KW,4070)
 4070 FORMAT(5X,18H 7. INTEREST RATE=,F6.2)
      READ(KR,*)RINT
      IF(RINT-1.)263,267,267
  263 IF(RINT)267,267,264
  264 DATA=1
  267 RINT=RINT/100.
      GO TO (270,3000),DLOOP
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  270   WRITE(KW,4080)                                                  00024500
 4080   FORMAT(5X,34H 8, PREFERRED STOCK DIVIDEND RATE=,F6.2)           00024600
        READ(KR,*)RDIV                                                  00024700
        IF(RDIV-1.)273,277,277                                          00024800
  273   IF(RDIV)277,277,274                                             00024900
  274   DATA=1                                                          00025000
  277   RDIV=RDIV/100.                                                  00025100
        GO TO (300,3000),DLOOP                                          00025200
  300   WRITE(KW,4090)                                                  00025300
 4090   FORMAT(5X,31H 9, EQUITY SHARE OF INVESTMENT=,F6.2)              00025400
        READ(KR,*)Q                                                     00025500
        IF(Q-1.)303,307,307                                             00025600
  303   IF(Q)307,307,304                                                00025700
  304   DATA=1                                                          00025800
  307   Q=Q/100                                                         00025900
        GO TO (280,3000),DLOOP                                          00026000
  280   WRITE(KW,4100)                                                  00026100
 4100   FORMAT(5X,26H10, PREFERRED STOCK SHARE=,F6.2)                   00026200
        READ(KR,*)F                                                     00026300
        IF(F-1.)283,287,287                                             00026400
  283   IF(F)287,287,284                                                00026500
  284   DATA=1                                                          00026600
  287   F=F/100.                                                        00026700
        GO TO (290,3000),DLOOP                                          00026800
  290   WRITE(KW,4110)                                                  00026900
 4110   FORMAT(5X,20H11, DEBT SHARE OF INVESTMENT=,F6.2)                00027000
        READ(KR,*)B                                                     00027100
        IF(B-1.)313,317,317                                             00027200
  313   IF(B)317,317,314                                                00027300
  314   DATA=1                                                          00027400
  317   B=B/100.                                                        00027500
        GO TO (328,3000),DLOOP                                          00027600
  324   IF(ABS(Q+F+B-1.)-.005)350,325,325                               00027700
  325   WRITE(KW,6000)                                                  00027800
        WRITE(KW,6500)                                                  00027900
 6500   FORMAT(5X,'EQUITY+PREFERRED+DEBT NOT = 100, TRY AGAIN')         00028000
        GO TO 300                                                       00028100
  350   WRITE(KW,4130)                                                  00028200
 4130   FORMAT(5X,22H12, DEPRECIATION LIFE=,I4)                         00028300
        READ(KR,*)NDEP                                                  00028400
        GO TO (320,3000),DLOOP                                          00028500
  320   WRITE(KW,4140)                                                  00028600
 4140   FORMAT(5X,16H13, USEFUL LIFE=,I4)                               00028700
        READ(KR,*)NUSE                                                  00028800
        GO TO (321,3000),DLOOP                                          00028900
  321   IF(DPOST)360,360,322                                            00029000
  322   WRITE(KW,4190)                                                  00029100
 4190   FORMAT(5X,'14, HOW MANY PENALTY PAYMENTS WERE MADE?')           00029200
        READ(KR,*)NPP                                                   00029300
        DO 412 J=1,100                                                  00029400
  412   PAID(J)=0.                                                      00029500
        IF(NPP)416,416,411                                              00029600
  411   DO 415 J=1,NPP                                                  00029700
        WRITE(KW,7420)J                                                 00029800
 7420   FORMAT(9X,'14, PAYMENT NUMBER',I3,': ENTER MONTH,AMOUNT')       00029900
        READ(KR,*)M9,PYMT                                               00030000
        IF(J-1)413,413,415                                              00030100
  413   LOPP=M9-1                                                       00030200
  415   PAID(M9)=PYMT                                                   00030300
  416   GO TO (417,3000),DLOOP                                          00030400
  417   WRITE(KW,7415)                                                  00030500

 7415   FORMAT(5X,'15, TREASURY INTEREST RATE=',F6.2)                   00030600
        READ(KR,*)R                                                     00030700
        IF(R-1.)403,407,407                                             00030800
  403   IF(R)407,407,404                                                00030900
  404   DATA=1                                                          00031000
  407   R=R/100.                                                        00031100
        GO TO (360,3000),DLOOP                                          00031200
  360   IF(OLIM)420,420,365                                             00031300
  365   WRITE(KW,7440)                                                  00031400
        WRITE(KW,7441)                                                  00031500
 7440   FORMAT(5X,'16, CAPITAL COST WHICH WOULD HAVE ',                 00031600
     C   'BEEN INCURRED')                                              00031700
 7441   FORMAT(5X,'    TO BRING EXISTING FACILITY INTO',                00031800
     C   ' COMPLIANCE')                                                00031900
        READ(KR,*)IIOLD                                                 00032000
  375   GO TO (385,3000),DLOOP                                          00032100
  385   WRITE(KW,7447)                                                  00032200
        WRITE(KW,7448)                                                  00032300
 7447   FORMAT(5X,'17, O & M COST TO KEEP EXISTING FACILITY')           00032400
 7448   FORMAT(5X,'    IN COMPLIANCE=')                                 00032500
        READ(KR,*)MOOLD                                                 00032600
        IF(DPOST)389,389,387                                            00032700
  387   MOOLD=MOOLD*(1.+I1)**L                                          00032800
  389   GO TO (420,3000),DLOOP                                          00032900
C                                                                       00033000
C                                                                       00033100
C                                                                       00033200
C       DATA CHECKS AND INITIALIZATIONS                                 00033300
C                                                                       00033400
C                                                                       00033500
C                                                                       00033600
C       COMPUTE MONTHLY AND QUARTERLY EQUIVALENT VALUES OF              00033700
C       E AND I FOR USE LATER IN THE PROGRAM.                           00033800
  420   E1=(1.+E)**(1./12.)-1.                                          00033900
        F3=(1.+E)**(.25)-1.                                             00034000
        I4=(1.+I)**(.25)-1.                                             00034100
        R1=(1.+R)**(1./12.)-1.                                          00034200
C                                                                       00034300
        MO=MONEW                                                        00034400
        IF(ABS(Q+F+B-1.)-.005)422,421,421                               00034500
  421   WRITE(KW,4500)                                                  00034600
        GO TO 100                                                       00034700
  422   DO 423 J=1,L                                                    00034800
        IF(PROM(J)-MO(12.)423,423,213                                   00034900
  423   CONTINUE                                                        00035000
C                                                                       00035100
        IF(MO)428,428,426                                               00035200
  426   IF(DPOST)140,140,145                                            00035300
  140   DO 427 J=1,L                                                    00035400
  427   Y(J)=12.*PROM(J)/MO                                             00035500
        GO TO 431                                                       00035600
  145   DO 146 J=1,L                                                    00035700
  146   Y(J)=(12.*PROM(J)*(1.+I1)**L)/(MO*((1.+I1)**(J-1))              00035800
        GO TO 431                                                       00035900
  428   DO 429 J=1,L                                                    00036000
  429   Y(J)=0.                                                         00036100
  431   CONTINUE                                                        00036200
        II=0                                                            00036300
        DO 153 J=1,L                                                    00036400
        IF(DPOST)125,125,130                                            00036500
  125   II=II+PRECAP(J)                                                 00036600
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        GO TO 153                                                       00036700
  130   II=II+PRECAP(J)/(1.+I1)**J                                      00036800
  153   CONTINUE                                                        00036900
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        COMOUT(J)=0.                                                    00042800
        DIV(J)=0.                                                       00042900
        DF(J)=0.                                                        00043000
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      GO TO 153                                                         00036700
  130 II=II*PRECAP(J)/(1.+I1)**J                                        00036800
  153 CONTINUE                                                          00036900
 6459 X(1)=0.                                                           00037000
      IF(II)6060,6060,6070                                              00037100
 6060 DO 6065 K=1,L                                                     00037200
 6065 X(K)=1.                                                           00037300
      GO TO 154                                                         00037400
 6070 DO 6077 K=2,L                                                     00037500
      IF(DPOST)6075,6075,6076                                           00037600
 6075 X(K)=X(K-1)+PRECAP(K-1)                                           00037700
      GO TO 6077                                                        00037800
 6076 X(K)=X(K-1)+PRECAP(K-1)/(1.+I1)**(K-1)                            00037900
 6077 CONTINUE                                                          00038000
      DO 6078 K=1,L                                                     00038100
 6078 X(K)=X(K)/II                                                      00038200
C                                                                       00038300
C                                                                       00038400
  154 IF(DLIM)432,432,430                                               00038500
  430 II=IIOLD                                                          00038600
      MO=MOLD                                                           00038700
  432 CONTINUE                                                          00038800
  440 IF(II-1000000.)445,450,450                                        00038900
  445 IF(MO-100000.)475,450,450                                         00039000
  450 II=II/1000.                                                       00039100
      DDIV=2                                                            00039200
      MO=MO/1000.                                                       00039300
      DO 460 J=1,L                                                      00039400
      PAID(J)=PAID(J)/1000.                                             00039500
      PRECAP(J)=PRECAP(J)/1000.                                         00039600
  460 PROM(J)=PROM(J)/1000.                                             00039700
      WRITE(KW,6060)                                                    00039800
      WRITE(KW,6060)                                                    00039900
      WRITE(KW,6060)                                                    00040000
 6060 FORMAT(5X,'NOTE THAT FIGURES BELOW ARE IN THOUSANDS')             00040100
  475 CONTINUE                                                          00040200
      IF(DATA)457,457,453                                               00040300
  453 WRITE(KW,6570)                                                    00040400
      WRITE(KW,6571)                                                    00040500
 6570 FORMAT(5X,'NOTE THAT AT LEAST ONE OF YOUR DATA ENTRIES')          00040600
 6571 FORMAT(5X,'HAS A PERCENTAGE VALUE OF LESS THAN ONE')              00040700
      DATA=0                                                            00040800
  457 CONTINUE                                                          00040900
      IF(E-1)480,480,483                                                00041000
  480 WRITE(KW,6065)                                                    00041100
      GO TO 100                                                         00041200
  483 CONTINUE                                                          00041300
      ZNDEP=NDEP                                                        00041400
      DO 490 J=1,100                                                    00041500
      DEP(J)=0.                                                         00041600
      Z(J)=0.                                                           00041700
      DELTA(J)=0.                                                       00041800
      CSHFLO(J)=0.                                                      00041900
      DEDUCT(J)=0.                                                      00042000
      M(J)=0.                                                           00042100
      PRIN(J)=0.                                                        00042200
      PRNOUT(J)=0.                                                      00042300
      PREP(J)=0.                                                        00042400
      PRPOUT(J)=0.                                                      00042500
      INT(J)=0.                                                         00042600
      TAXSAV(J)=0.                                                      00042700
      CSHOUT(J)=0.                                                      00042800
      DIV(J)=0.                                                         00042900
      DF(J)=0.                                                          00043000
      P(J)=0.                                                           00043100
      QUART(J)=0.                                                       00043200
  490 PV(J)=0.                                                          00043300
      DO 491 K=1,6                                                      00043400
      PVDTS(K)=0.                                                       00043500
      DO 491 J=1,50                                                     00043600
  491 D(K,J)=0.                                                         00043700
C                                                                       00043800
C                                                                       00043900
C     IF THIS IS A POST-COMPLIANCE CALCULATION,                         00044000
C     ADJUST CAPITAL AND O & M VALUES TO REFLECT                        00044100
C     INFLATION DURING THE NONCOMPLIANCE PERIOD                         00044200
C                                                                       00044300
      IF(DPOST)499,499,492                                              00044400
  492 DO 495 J=1,L                                                      00044500
      PRECAP(J)=PRECAP(J)/(1.+I1)**L                                    00044600
  495 PROM(J)=PROM(J)/(1.+I1)**L                                        00044700
      MO=MO/(1.+I1)**L                                                  00044800
C                                                                       00044900
C     BEGIN COMPUTING PENALTY                                           00045000
C                                                                       00045100
C                                                                       00045200
C     EQUATION (1) - EQUITY INVESTMENT                                  00045300
  499 EI=II+O                                                           00045400
C                                                                       00045500
C     EQUATION (2) - INVESTMENT TAX CREDIT                              00045600
      ITC=II*TITC*(1.-PIDB/2.)                                          00045700
C                                                                       00045800
C     DEPRECIATION CALCULATIONS FROM APPENDIX C                         00045900
C                                                                       00046000
      DTSMAX=0.                                                         00046100
      LDTS=99                                                           00046200
C                                                                       00046300
C     STRAIGHT LINE DEPRECIATION                                        00046400
  500 DO 550 J=1,NDEP                                                   00046500
      D(1,J)=1/ZNDEP                                                    00046600
  550 PVDTS(1)=PVDTS(1)+D(1,J)/(1.+E)**J                                00046700
      IF(PVDTS(1)-DTSMAX)600,600,560                                    00046800
  560 DTSMAX=PVDTS(1)                                                   00046900
      LDTS=1                                                            00047000
C                                                                       00047100
C     SUM OF YEARS DIGITS                                               00047200
  600 ZNS=ZNDEP*(ZNDEP+1)/2                                             00047300
      DO 650 J=1,NDEP                                                   00047400
      D(2,J)=(ZNDEP+1-J)/ZNS                                            00047500
  650 PVDTS(2)=PVDTS(2)+D(2,J)/(1.+E)**J                                00047600
      IF(PVDTS(2)-DTSMAX)700,700,660                                    00047700
  660 DTSMAX=PVDTS(2)                                                   00047800
      LDTS=2                                                            00047900
C                                                                       00048000
C     DOUBLE DECLINING BALANCE                                          00048100
  700 IF(NDEP-1)800,800,705                                             00048200
  705 CUMDEP=0                                                          00048300
      DO 750 J=1,NDEP                                                   00048400
      IF (NDEP-2*J+2) 725,710,710                                       00048500
  710 D(3,J)=(1-CUMDEP)*2/ZNDEP                                         00048600
      PVDTS(3)=PVDTS(3)+D(3,J)/(1.+E)**J                                00048700
      GO TO 750                                                         00048800
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  725   D(3,J)=E(1-CUMDEP)/(ZNDEP-J+1)                                    00048900
        PVDTS(3)=PVDTS(3)+D(3,J)/(1.+E)**J                                00049000
  750   CUMDEP=CUMDEP+D(3,J)                                              00049100
        IF(PVDTS(3)-DTSMAX)800,800,760                                    00049200
  760   DTSMAX=PVDTS(3)                                                   00049300
        LDTS=3                                                            00049400
C                                                                         00049500
C       RAPID AMORTIZATION                                                00049600
  800   IF(NDEP-15)790,795,795                                            00049700
  790   FRAPID=1.                                                         00049800
        GO TO 799                                                         00049900
  795   FRAPID=15./ZNDEP                                                  00050000
  799   DO 810 K=6,6                                                      00050100
        DO 801 J=1,NDEP                                                   00050200
        D(K,J)=D(K-3,J)*(1.-FRAPID)                                       00050300
  801   PVDTS(K)=PVDTS(K)+D(K,J)/(1.+E)**J                                00050400
        DO 805 J=1,5                                                      00050500
        D(K,J)=D(K,J)+FRAPID/5.                                           00050600
  805   PVDTS(K)=PVDTS(K)+(FRAPID/5.)/(1.+E)**J                           00050700
        PVDTS(K)=PVDTS(K)-TITC-FIDB/2.                                    00050800
        IF(PVDTS(K)-DTSMAX)810,810,808                                    00050900
  808   DTSMAX=PVDTS(K)                                                   00051000
        LDTS=K                                                            00051100
  810   CONTINUE                                                          00051200
C                                                                         00051300
C                                                                         00051400
C       EQUATION (3) - DEPRECIATION TAX SAVINGS                           00051500
  900   DO 950 J=1,NDEP                                                   00051600
  950   DEP(J)=II*D(LDTS,J)*TTR                                           00051700
C                                                                         00051800
C       EQUATION (4) - DEBT SHARE OF INVESTMENT                           00051900
        DBTSHR=II*B                                                       00052000
C                                                                         00052100
C       INITIAL PRIN OUTSTANDING EQUALS DEBT SHARE                        00052200
        PRNOUT(1)=DBTSHR                                                  00052300
C                                                                         00052400
C       EQUATION(11) - PREFERRED STOCK SHARE OF INVESTMENT                00052500
        PRFSHR=II*F                                                       00052600
C                                                                         00052700
C       INITIAL PREFERRED OUTSTANDING IS PREFERRED SHARE                  00052800
        PRFOUT(1)=PRFSHR                                                  00052900
C                                                                         00053000
C                                                                         00053100
C       THE FOLLOWING SECTION CALCUALATES THE ANNUAL CAPITAL-             00053200
C       RELATED CASH FLOWS                                                00053300
C                                                                         00053400
        DO 1100 J=1,NDEP                                                  00053500
C                                                                         00053600
C       EQUATION (5) - PRINCIPAL PAYMENT                                  00053700
        PRIN(J)=D(LDTS,J)*II*B                                            00053800
C                                                                         00053900
C       COMBINING EQUATIONS (8) AND (9)                                   00054000
        PRNOUT(J+1)=PRNOUT(J)-PRIN(J)                                     00054100
C                                                                         00054200
C       EQUATION (7) - INTEREST CASH FLOW                                 00054300
        INT(J)=RINT*PRNOUT(J)*(1-TTR)                                     00054400
C                                                                         00054500
C       EQUATION (12) - PREFERRED STOCK REDEMPTION                        00054600
        PREF(J)=D(LDTS,J)*II*F                                            00054700
C                                                                         00054800
C       COMBINING EQUATIONS (14) AND (15)                                 00054900
        PRFOUT(J+1)=PRFOUT(J)-PREF(J)                                     00055000
C                                                                         00055100
C       EQUATION (13) - PREFERRED STOCK DIVIDEND PAYMENT                  00055200
        DIV(J)=RDIV*PRFOUT(J)                                             00055300
C                                                                         00055400
 1100   CONTINUE                                                          00055500
C                                                                         00055600
C       NOTE: EQUATION (17), O & M, IS COMBINED BELOW WITH                00055700
C       EQUATIONS (21) AND (22)                                           00055800
C                                                                         00055900
C       DISCOUNTING CASH FLOWS                                            00056000
C                                                                         00056100
C       EQUATION (18) - INITIAL CASH FLOW                                 00056200
        PVIN=II+G-ITC                                                     00056300
C                                                                         00056400
C       COMBINING EQUATIONS (19) AND (20) - ANNUAL CAPITAL                00056500
C       RELATED                                                           00056600
        PVACR=0                                                           00056700
        DO 1200 J=1,NDEP                                                  00056800
 1200   PVACR=PVACR+(-DEP(J)+PRIN(J)+INT(J)+PREF(J)+DIV(J))/             00056900
     C  (1.+E)**J                                                         00057000
C                                                                         00057100
C       EQUATIONS (17),(21)AND (22) COMBINED - O AND M                    00057200
        PVOM=0                                                            00057300
        DO 1300 J=1,NUSE                                                  00057400
        M(J)=M0*(1.+I)**J                                                 00057500
 1300   PVOM=PVOM+M(J)*(1.-TTR)/(1.+E)**J                                 00057600
C                                                                         00057700
C       EQUATION (23) - PRESENT VALUE OF FIRST CYCLE FLOWS                00057800
        PVIPCE=PVIN+PVACR+PVOM                                            00057900
C                                                                         00058000
C                                                                         00058100
C       EQUATION (24) - PRESENT VALUE OF FLOWS FOR ALL CYCLES             00058200
        PVPCE=PVIPCE*(1./(1.-((1.+I)/(1.+E))**NUSE))                      00058300
C                                                                         00058400
C       EQUATION (26) - PRESENT VALUE OF DELAYED FLOWS                    00058500
        PVDLA=PVPCE*((1.+I1)/(1.+E1))**L                                  00058600
C                                                                         00058700
C       EQUATION (27) - ECONOMIC SAVINGS CALCULATION                      00058800
        SAVING=PVPCE-PVDLA                                                00058900
C                                                                         00059000
C                                                                         00059100
C                                                                         00059200
C                                                                         00059300
C       CONVERT SAVINGS INTO A MONTHLY PENALTY                            00059400
C                                                                         00059500
C       EQUATION (33) AND (34) - MONTHLY SAVINGS EQUIVALENTS              00059600
 6025   SC(1)=((E1-I1)/(1.+E1))*(PVIN+PVACR)*                             00059700
     C    (1./(1.-((1.+I)/(1.+E1))**NUSE))                               00059800
        SU(1)=((E1-I1)/(1.+E1))*PVOM*(1./(1.-((1.+I)/(1.+E))              00059900
     C  **NUSE))                                                          00060000
 6040   DO 6050 K=1,L                                                     00060100
        SC(K)=SC(1)*(1.+I1)**(K-1)                                        00060200
 6050   SU(K)=SU(1)*(1.+I1)**(K-1)                                        00060300
C                                                                         00060400
C       EQUATION (35) - ADJUSTED SAVINGS EQUIVALENT                       00060500
 6080   DO 6100 K=1,L                                                     00060600
        AC(K)=(1.-X(K))*SC(K)                                             00060700
        AO(K)=(1.-Y(K))*SO(K)                                             00060800
        IF(AO(K))6090,6100,6100                                           00060900
 6090   AU(K)=0                                                           00061000
 6100   CONTINUE                                                          00061100
C                                                                         00061200
C       EQUATION (36) - PRESENT VALUE OF ADJUSTED SERIES                  00061300
        IF(NO-1)6315,6315,6312                                            00067200
 6312   DO 6314 J=2,NO                                                    00067300
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 6100   CONTINUE                                                          00061100
C                                                                        00061200
C       EQUATION (36) = PRESENT VALUE OF ADJUSTED SERIES                 00061300
        PVADJ=0.                                                         00061400
        DO 6150 K=1,L                                                    00061500
 6150   PVADJ=PVADJ+(AC(K)+AD(K))/((1.+E1)**(K-1))                       00061600
C                                                                        00061700
C       EQUATIONS (38) & (39) = PENALTY PAYMENT SERIES                   00061800
        DENOM=0.                                                         00061900
        DO 6175 K=1,L                                                    00062000
 6175   DENOM=DENOM+((1.+I1)/(1.+E1))**(K-1)                             00062100
        P(1)=PVADJ/DENOM                                                 00062200
        DO 6200 K=1,L                                                    00062300
 6200   P(K)=P(1)*(1.+I1)**(K-1)                                         00062400
C                                                                        00062500
C                                                                        00062600
C       PRINT OUT THE DEPRECIATION METHOD                                00062700
        WRITE(KW,6000)                                                   00062800
        WRITE(KW,6000)                                                   00062900
        GO TO (6210,6215,6220,6225,6230,6235),LDTB                       00063000
 6210   WRITE(KW,6211)                                                   00063100
 6211   FORMAT(5X,'STRAIGHT LINE, STANDARD AMORTIZATION')                00063200
        GO TO 6240                                                       00063300
 6215   WRITE(KW,6216)                                                   00063400
 6216   FORMAT(5X,'SUM OF YEARS DIGITS, STANDARD AMORTIZATION')          00063500
        GO TO 6240                                                       00063600
 6220   WRITE(KW,6221)                                                   00063700
 6221   FORMAT(5X,'DOUBLE DECLINING BALANCE, STANDARD AMORTIZATION')     00063800
        GO TO 6240                                                       00063900
 6225   WRITE(KW,6226)                                                   00064000
 6226   FORMAT(5X,'STRAIGHT LINE, RAPID AMORTIZATION')                   00064100
        GO TO 6240                                                       00064200
 6230   WRITE(KW,6231)                                                   00064300
 6231   FORMAT(5X,'SUM OF YEARS DIGITS, RAPID AMORTIZATION')             00064400
        GO TO 6240                                                       00064500
 6235   WRITE(KW,6236)                                                   00064600
 6236   FORMAT(5X,'DOUBLE DECLINING BALANCE, RAPID AMORTIZATION')        00064700
 6240   CONTINUE                                                         00064800
C                                                                        00064900
C                                                                        00065000
        PVPEN=0.0                                                        00065100
        DO 6300 K=1,L                                                    00065200
 6300   PVPEN=PVPEN+P(K)/(1.+E1)**(K-1)                                  00065300
        WRITE(KW,6000)                                                   00065400
C                                                                        00065500
CC                                                                       00065600
C       COMPUTE QUARTERLY PENALTY AMOUNTS AND PRINT THEM                 00065700
        IF(DPOST)7190,7190,6308                                          00065800
 7190   WRITE(KW,7601)                                                   00065900
        WRITE(KW,7602)                                                   00066000
        WRITE(KW,7603)                                                   00066100
 7601   FORMAT(5X,'HOW MANY MONTHS AFTER THE FIRST DAY OF')              00066200
 7602   FORMAT(5X,'NONCOMPLIANCE WILL THE INITIAL PENALTY')              00066300
 7603   FORMAT(5X,'PAYMENT BE MADE?')                                    00066400
        READ(KR,*)LDPP                                                   00066500
 6308   ZL=L                                                             00066600
        Z0=0                                                             00066700
        NQ=AINT((ZL-.01)/3.)+1                                           00066800
        DO 6310 J=1,NQ                                                   00066900
 6310   Z0=Z0+((1.+I0)/(1.+E4))**(J-1)                                   00067000
        QUART(1)=PVPEN/Z0                                                00067100
        IF(NQ-1)6315,6315,6312                                           00067200
 6312   DO 6314 J=2,NQ                                                   00067300
 6314   QUART(3*J-2)=QUART(3*J-5)*(1.+I4)                                00067400
 6315   CONTINUE                                                         00067500
C                                                                        00067600
C       CALCULATE BASE FOR LUMP SUM SETTLEMENT                           00067700
        SETTLE=0.                                                        00067800
        DO 6316 J=1,L                                                    00067900
 6316   SETTLE=SETTLE+QUART(J)/(1.+E1)**(J-1)                            00068000
C                                                                        00068100
        IF(LDPP)7150,7150,6317                                           00068200
 6317   DO 6335 J=1,LDPP                                                 00068300
        QUART(LDPP+1)=QUART(LDPP+1)+QUART(J)*(1.+E1)**(LDPP-J+1)         00068400
 6335   QUART(J)=0.                                                      00068500
 7150   IF(DPOST)7151,7151,6390                                          00068600
 7151   WRITE(KW,6000)                                                   00068700
        WRITE(KW,7550)                                                   00068800
 7550   FORMAT(5X,'      MONTH       PAYMENT')                           00068900
        DO 6343 J=1,50                                                   00069000
        IF(QUART(J))6343,6343,6340                                       00069100
 6340   WRITE(KW, 7505)J,QUART(J)                                        00069200
 6343   CONTINUE                                                         00069300
        WRITE(KW,6000)                                                   00069400
C                                                                        00069500
C                                                                        00069600
        WRITE(KW,7560)                                                   00069700
        WRITE(KW,7561)                                                   00069800
 7560   FORMAT(5X,'DO YOU WISH TO SEE A LUMP SUM')                       00069900
 7561   FORMAT(5X,'SETTLEMENT? (=YES,0=NO)')                             00070000
        READ(KR,*)DLUMP                                                  00070100
        IF(DLUMP)7299,7299,6380                                          00070200
C                                                                        00070300
C       COMPUTE THE VALUE OF THE NONCOMPLIANCE PENALTY MDB               00070400
C       MONTHS AFTER THE DATE OF NONCOMPLIANCE                           00070500
 6380   WRITE(KW,7575)                                                   00070600
        WRITE(KW,7576)                                                   00070700
        WRITE(KW,7577)                                                   00070800
 7575   FORMAT(5X,'HOW MANY MONTHS AFTER THE FIRST DAY OF')              00070900
 7576   FORMAT(5X,'NONCOMPLIANCE WILL THE LUMP SUM')                     00071000
 7577   FORMAT(5X,'SETTLEMENT BE MADE?')                                 00071100
        READ(KR,*)MDB                                                    00071200
C                                                                        00071300
 7195   SETTLE=SETTLE*(1.+E1)**MDB                                       00071400
 7199   WRITE(KW,7200)                                                   00071500
 7200   FORMAT(5X,'THE VALUE OF THE NONCOMPLIANCE PENALTY')              00071600
        WRITE(KW,7201)MDB                                                00071700
 7201   FORMAT(5X,'COMPUTED AS OF',I4,' MONTHS AFTER THE DATE')          00071800
        WRITE(KW,7203)SETTLE                                             00071900
 7203   FORMAT(5X,'OF NONCOMPLIANCE IS',20X,F13.2)                       00072000
        WRITE(KW,7205)                                                   00072100
 7205   FORMAT(57X,8H=========)                                          00072200
        GO TO 7299                                                       00072300
C                                                                        00072400
C                                                                        00072500
C       COMPUTE POST-COMPLIANCE SETTLEMENT                               00072600
C                                                                        00072700
C                                                                        00072800
 6390   ZTOTAL=0.0                                                       00072900
 6395   DO 6350 J=1,100                                                  00073000
        DELTA(J)= PAID(J)-QUART(J)                                       00073100
 6355   Z(J)=DELTA(J)*(1.+R1)**(L-J+1)                                   00073200
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 6350   ZTOTAL=ZTOTAL+Z(J)                                                00073300
C                                                                        00073400
       WRITE(KW,7580)                                                    00073500
 7580  FORMAT(1X,'MONTH     PAID   PENALTY   DUE EPA   DUE FIRM')        00073600
       DO 6440 J=1,100                                                   00073700
       ZE=0                                                              00073800
       ZF=0                                                              00073900
       IF(QUART(J))6410,6410,6420                                        00074000
 6410  IF(PAID(J))6440,6440,6420                                         00074100
 6420  IF(DELTA(J))6450,6450,6460                                        00074200
 6450  ZE=-DELTA(J)                                                      00074300
       GO TO 6430                                                        00074400
 6460  ZF=DELTA(J)                                                       00074500
 6430  WRITE(KW,6002)J,PAID(J),QUART(J),ZE,ZF                            00074600
 6440  CONTINUE                                                          00074700
       WRITE(KW,6000)                                                    00074800
       WRITE(KW,7755)                                                    00074900
 7755  FORMAT(5X,'MONTHS FROM COMPLIANCE UNTIL SETTLEMENT=')             00075000
       READ(KR,*)DD                                                      00075100
       ZDELAY=ZTOTAL*(1.+R1)**DD                                         00075200
       WRITE(KW,6000)                                                    00075300
       IF(ZDELAY)6461,6461,6465                                          00075400
 6461  ZDELAY=-ZDELAY                                                    00075500
       WRITE(KW,7756)ZDELAY                                              00075600
 7756  FORMAT(5X,'SETTLEMENT DUE EPA=',F10.2)                            00075700
       GO TO 6475                                                        00075800
 6465  WRITE(KW,7757)ZDELAY                                              00075900
 7757  FORMAT(5X,'SETTLEMENT DUE FIRM=',F10.2)                           00076000
 6475  CONTINUE                                                          00076100
C                                                                        00076200
C                                                                        00076300
C                                                                        00076400
C      CREATE THE OPTION TO CHANGE SOME OF THE VARIABLES                 00076500
C                                                                        00076600
       WRITE(KW,6000)                                                    00076700
       WRITE(KW,6000)                                                    00076800
       WRITE(KW,6000)                                                    00076900
 7299  CONTINUE                                                          00077000
       WRITE(KW,7300)                                                    00077100
 7300  FORMAT(5X,'HOW MANY VARIABLES DO YOU WISH TO CHANGE ',            00077200
     C '?')                                                              00077300
       READ(KR,*)NLOOP                                                   00077400
       IF(NLOOP)99999,99999,2700                                         00077500
 2700  IF(NLOOP-999)2800,2710,2710                                       00077600
 2710  WRITE(KW,7501)                                                    00077700
 7501  FORMAT(5X,'1, PRECOMPLIANCE EXPENDITURES')                        00077800
       WRITE(KW,7502)                                                    00077900
 7502  FORMAT(5X,'      MONTH      CAPITAL          O & M')              00078000
       DO 2715 J=1,L                                                     00078100
       IF(DPOST)2712,2712,2714                                           00078200
 2712  ZC=PRECAP(J)                                                      00078300
       ZM=PROM(J)                                                        00078400
       GO TO 2715                                                        00078500
 2714  ZC=PRECAP(J)*(1.+I1)**L                                           00078600
       ZM=PROM(J)*(1.+I1)**L                                             00078700
 2715  WRITE(KW,7505)J,ZC,ZM                                             00078800
 7505  FORMAT(10X,I2,F15.2,F15.2)                                        00078900
       IF(DLIN)2719,2719,2718                                            00079000
 2718  ZM=RM*NEW                                                         00079100
       GO TO 2724                                                        00079200
 2719  IF(DPOST)2720,2720,2723                                           00079300
 2720  ZM=RM                                                             00079400
       GO TO 2724                                                        00079500
 2723  ZM=RM*(1.+I1)**L                                                  00079600
 2724  WRITE(KW,6020)ZM                                                  00079700
       ZTITC=100.*TITC                                                   00079800
       WRITE(KW,6030)ZTITC                                               00079900
       ZTTM=100.*TTM                                                     00080000
       WRITE(KW,6040)ZTTM                                                00080100
       ZI=100.*I                                                         00080200
       WRITE(KW,6050)ZI                                                  00080300
       ZE=100.*E                                                         00080400
       WRITE(KW,6060)ZE                                                  00080500
       ZRINT=100.*RINT                                                   00080600
       WRITE(KW,6070)ZRINT                                               00080700
       ZRDIV=100.*RDIV                                                   00080800
       WRITE(KW,6080)ZRDIV                                               00080900
       ZQ=100.*Q                                                         00081000
       WRITE(KW,6090)ZQ                                                  00081100
       ZF=100.*F                                                         00081200
       WRITE(KW,6100)ZF                                                  00081300
       ZB=100.*B                                                         00081400
       WRITE(KW,6110)ZB                                                  00081500
       WRITE(KW,6130)NDEP                                                00081600
       WRITE(KW,6140)NUSE                                                00081700
       IF(DPOST)2735,2735,2725                                           00081800
 2725  WRITE(KW,7524)                                                    00081900
 7524  FORMAT(5X,'14, PENALTY PAYMENTS')                                 00082000
       WRITE(KW,7525)                                                    00082100
 7525  FORMAT(5X,'      MONTH       PAYMENT')                            00082200
       DO 2733  J=1,100                                                  00082300
       IF(PAID(J))2733,2733,2730                                         00082400
 2730  WRITE(KW,7505)J,PAID(J)                                           00082500
 2733  CONTINUE                                                          00082600
       ZM=RM*100.                                                        00082700
       WRITE(KW,7519)ZM                                                  00082800
       WRITE(KW,6000)                                                    00082900
 2735  GO TO 7299                                                        00083000
 2800  DLOOP=2                                                           00083100
       IF(DPOST)2811,2811,2805                                           00083200
 2805  DO 2809 J=1,L                                                     00083300
       PRECAP(J)=PRECAP(J)*(1.+I1)**L                                    00083400
 2809  PROM(J)=PROM(J)*(1.+I1)**L                                        00083500
       II=II*(1.+I1)**L                                                  00083600
       MO=MO*(1.+I1)**L                                                  00083700
 2811  IF(DDIV-1)2820,2820,2812                                          00083800
 2812  II=II*1000.                                                       00083900
       MO=MO*1000.                                                       00084000
       DO 2815 J=1,L                                                     00084100
       PAID(J)=PAID(J)*1000.                                             00084200
       PRECAP(J)=PRECAP(J)*1000.                                         00084300
 2815  PROM(J)=PROM(J)*1000.                                             00084400
       DDIV=1                                                            00084500
 2820  WRITE(KW,7310)                                                    00084600
 7310  FORMAT(5X,'TYPE NUMBER OF VARIABLE:')                             00084700
       READ(KR,*)NVAR                                                    00084800
       GO TO (110,210,220,230,240,250,260,270,                           00084900
     C  300,280,290,350,320,322,417,365,385),NVAR                        00085000
 3000  NLOOP=NLOOP-1                                                     00085100
       IF(NLOOP)820,820,2820                                             00085200
 99999 STOP                                                              00085300
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[FR Doc. 79-18996 Filed 6-14-79; 8:45 am]

BILLING CODE 6560-01-C

[40 CFR Part 52]

[FRL 1

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pennsylvania has submitted a plan to attain the National Ambient Air Quality Standards for Total Suspended Particulates, Carbon Monoxide, Photochemical Oxidants, Sulfur Dioxide, and Nitrogen Dioxide in unclassified areas of the Commonwealth of Pennsylvania. This plan was submitted to the Administrator of EPA by the Pennsylvania Department of Environmental Protection (PADER) to satisfy the requirements of Part D of the Clean Air Act as amended in 1977. In addition, PADER has submitted a request for an extension under section 172(a) of the Act.

EPA is proposing to approve the plan's designation of areas, emission inventory, Pennsylvania's request for an extension, and is to approve in part and disapprove in part the proposed control strategy.

DATE: Comments on this proposed rule and on the proposed public hearing must be received on or before July 16, 1979.

ADDRESSES: Comments may be submitted to Thomas C. Voltaggio, Chief, Air Programs Branch, Region III, Environmental Protection Agency, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106.

Copies of the plan are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106.

Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, Fulton Building, 3rd and Locust Streets, Harrisburg, Pennsylvania 17120.

Public Information Reference Unit, EPA, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Mr. Thomas C. Voltaggio, Chief, Air Programs Branch, Environmental Protection Agency, Region III, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, 215/597-9370.

SUPPLEMENTARY INFORMATION:

Background

Section 110(a)(2)(I) of the Act requires that each State submit to the Administrator of EPA a plan which provides for implementation, maintenance, and enforcement of the primary and secondary national ambient air quality standards in each air quality control region (or portion thereof) within such State. Section 172(a) of the Act requires that each plan submitted to satisfy the requirements of Part D of the Act shall provide for the attainment of each national primary ambient air quality standard as expeditiously as practicable but no later than three years from the date of approval of the plan. The Administrator may extend the three-year period for no more than two years for any air quality control region if he finds that such region has complied with all requirements and commitments pertaining to it in the applicable implementation plan and that it is impossible to attain the standard within the three-year period.

[40 CFR Part 81]

Commonwealth of Pennsylvania; Section 107 Attainment Status Designations

[FRL 1248-2]

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Commonwealth of Pennsylvania has revised its air quality attainment designation for the Monongahela Air Basin, with respect to sulfur dioxide, from nonattainment to unclassifiable. On December 29, 1978, Pennsylvania submitted this revision to the Administrator of the Environmental Protection Agency, along with supporting information for promulgation under Section 107(d).

EPA proposes to promulgate this designation change submitted by Pennsylvania. The purpose of this notice is to solicit public comments on this proposed action.

DATE: Comments on this proposed designation change should be submitted on or before July 16, 1979.

ADDRESSES: Copies of the associated support material are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106.

Pennsylvania Department of Environmental Resources, Bureau of Air Quality and Noise Control, 200 North Third Street, Fulton Building, 10th floor, Harrisburg, PA 17120.

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

All comments should be addressed to:

Mr. Howard R. Heim, Jr., Chief (3AH10), Air Program Branch, U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Curtis Building, 10th floor, Philadelphia, PA 19106, Attn: 107PA-1.

FOR FURTHER INFORMATION CONTACT:

Mr. Harold A. Frankford (3AH12), U.S. Environmental Protection Agency, Region III, Curtis Building, 10th floor, 6th & Walnut Streets, Philadelphia, PA 19106, (Phone) 215/597-8392.

SUPPLEMENTARY INFORMATION:

Background

Section 107(d) of the Clean Air Act requires the States to submit to the Administrator a list identifying all air quality control areas, or portions thereof, that have not attained the National Ambient Air Quality Standards. The Act further requires that the Administrator promulgate this list, with such modifications as he deems necessary, as required by Section 107(d)(2) of the Act. On March 3, 1978, the Administator promulgated nonattainment designations for Pennsylvania for total suspended particulates (TSP), sulfur dioxide (SO_2), carbon monoxide (CO), ozone (O_3) and oxides of nitrogen (NO_x) (43 FR 8962). These designations were effective immediately and public comment was solicited. On September 12, 1978, in response to the comments received, the Administrator revised and amended certain of the original designations (43 FR 40502). The Act also provides that a State, from time to time, may review and revise its designations list and submit these revisions to the Administrator for promulgation (Section 107(d)(5) of the Act). The criteria and policy guidelines governing these revisions and the Administrator's review of them are the same that were used in the original designations and which are summarized in the Federal Register on March 3, 1978 (43 FR 8962), September 11, 1978 (43 FR 40412) and September 12, 1978 (43 FR 40502). Pennsylvania has revised its original designations list and on December 29, 1978, submitted these revisions to EPA.

In support of this redesignation request for the Monogahela Valley Air Basin with respect to sulfur dioxide, the Commonwealth of Pennsylvania provided air quality data showing that no violations of either the primary or secondary SO_2 standards occurred during calendar year 1978. The State also indicated that attainment of standards is supported by emission reductions in the area over the past year. In addition, results of an ongoing modeling study indicate no violations of the primary annual SO_2 standard for the base year (1978) and for the situation assuming all sources in compliance with the existing SIP limitations. Until the modeling study is complete and additional air quality data are available, the State has chosen to designate the Monongahela Valley Air Basin as "cannot be classified." In view of the fact that SO_2 emission reductions have occurred, that current air quality meets primary and secondary SO_2 standards, and that modeling of all sources in compliance with the existing SIP does not show violations of the SO_2 standards, it is EPA's proposed determination that a revision to the existing SIP by July 1, 1979, is not necessary.

Request for Public Comment

In view of the rapidly approaching (July 1, 1979) date by which the Administrator must make final determinations on nonattainment SIP's and in view of the fact that the issues pertaining to this proposed redesignation are straightforward and well defined, the Regional Administrator feels justified to limit the public comment period to 30 days. All comments received on or before July 16, 1979 will be considered. The Regional Administrator will consider extending the comment period if a prospective commenter provides adequate justification for such extensions.

All comments should be addressed to:

Mr. Howard R. Heim, Jr., Chief (3AH10), Air Program Branch, U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Curtis Building, 10th Floor, Philadelphia, PA 19106, Attn: 107PA-1.

(Secs. 107(d), 171(2), 301(a), Clean Air Act, as amended (42 U.S.C. 7407(d), 7501(2), 7601(a)))

Dated: May 30, 1979.

Jack J. Schramm,
Regional Administrator.

[FR Doc. 79-18748 Filed 6-14-79; 8:45 am]
BILLING CODE 6560-01-M

[40 CFR Part 86]

[FRL 1249-2]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Gaseous Emission Regulations for 1983 and Later Model Year Heavy-Duty Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Additional Information Relating to Proposed Rule, Notice of Public Hearing, and Notice of Extension to Comment Period.

SUMMARY: In proposed regulations for 1983 and later model year heavy-duty engines published on February 13, 1979 (44 FR 9464), approximate numerical values were given for the proposed standards for hydrocarbons and carbon monoxide because EPA had not completed its baseline testing. EPA has completed that testing, and exact numerical values derived from the testing are contained in this notice. EPA

has also completed sufficient testing of 1979 engines to provide a numerical value for the proposed 1983 oxides of nitrogen standard.

A public hearing has been scheduled for the submission of testimony relating to (1) the proposed standards contained in today's notice, and (2) the supporting material which has been placed in the public docket. Additionally, both the closing date for the record of the May 14–15, 1979 public hearing (44 FR 22131), and the closing date for the comment period which was specified as June 13, 1979 in the February 13, 1979 proposal, have been extended to June 29, 1979.

DATES: The hearing will be convened at 8:30 A.M., July 16, 1979 and reconvened at 8:30 A.M., July 17, 1979. Sessions will be adjourned at 5:00 P.M. each day, or at a later time if necessary to complete the business of the hearing.

LOCATION: All sessions of the hearing will be held at the West Bank Holiday Inn, 2900 Jackson Road, Ann Arbor, Michigan 48103.

PUBLIC COMMENT: The record of the July 16–17, 1979 hearing will be left open for 30 days following the close of the hearing to allow submission of rebuttal and supplementary information. Relevant comments received by close of day August 16, 1979 will be considered. The scope of materials which may be submitted at the hearing or during the ensuing 30 day comment period is limited to those aspects of the February 13, 1979 proposal directly affected by the supplementary information contained n today's notice and the supportive material which has been placed in the public docket.

FOR FURTHER INFORMATION CONTACT: Mr. Chester J. France, Emission Control Technology Division, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, Phone: (313) 668–4338.

SUPPLEMENTARY INFORMATION: Section 202(a)(3)(A)(ii) of the Clean Air Act, as amended (the Act), provides that "regulations applicable to emissions from [heavy-duty] vehicles or engines manufactured during and after model year 1983, in the case of hydrocarbons and carbon monoxide, shall contain standards which require a reduction of at least 90 per cent * * * from the average of the actually measured emissions from heavy-duty gasoline-fueled vehicles or engines, or any class or category thereof, manufactured during [1969]."

EPA implemented a 1969 model year baseline test program in order to generate the data needed to define standards representing the 90% reduction. At the time of the February 13, 1979 proposal, this test program had not been completed. However, based on the data then available, approximate standards representing the required 90% reductions in hydrocarbon (HC) and carbon monoxide (CO) emissions were included in the proposal as follows: 1.4 grams per brake horsepower-hour (g/BHP-hr) for HC, 14.7 g/BHP-hr for CO, 1400 parts per million of carbon (ppm C) for idle HC, and .55 percent for idle CO. EPA also included "lower limits" for the above standards, and stated that standards more stringent than the lower limits would not be promulgated without reproposing. The lower limits specified in the proposal were .76 g/BHP-hr for HC, 11.4 g/BHP-hr for CO, 530 ppm C for idle HC, and .30 percent for idle CO.

EPA has now completed its 1969 baseline test program, in which 23 engines were tested for transient emissions and 19 engines were tested for idle emissions. Each baseline engine was tested two or more times using the EPA transient and idle test procedures. The average of the tests for each engine was used to represent emissions from all engines of that type sold in 1969. In combining individual engine results into the final baseline, the emissions from each engine were given a weighting factor. The weighting factor corresponded to the fraction of total sales represented by each engine using the combined sales of all the test engines as a base. The test samples represent approximately 80 percent of the 1969 heavy-duty engine market.

Based on the data generated by this testing, the proposed standards representing 90% reductions from sales-weighted 1969 baseline emissions levels are 1.3 g/BHP–hr for HC, 15.5 g/BHP–hr for CO, 970 ppm C for idle HC and .47 percent for idle CO. Since these standards are above the lower limits identified in the February 13, 1979 proposal, they do not provide a reason for EPA to repropose.

The February 13, 1979 proposal indicated that EPA intended to set an oxides of nitrogen (NO_x) standard for 1983 which would not substantially increase the stringency of the current NO_x standard. The proposal also indicated that EPA intended to base such a standard on testing of 1979 gasoline engines. Manufacturers were invited to submit ideas on how to derive such a standard. At the time of the proposal, no specific numbers for the NO_x standard were proposed.

EPA has now completed the testing of 4 gasoline and 2 diesel engines (certified to the 1979 Federal standards) using the transient test procedure. Based upon that sample, EPA has calculated a numerical level representing the 1983 proposed NO_x standard. Though the February 13, 1979 proposal indicated that a sales-weighted average would form the basis for the standard, by its nature as an average, such a basis would create a standard more stringent than the current NO_x standard for approximately half of the engines. Therefore, the following procedure has been used to derive the level identified in this notice.

The transient test data for the 6 engines tested were first deteriorated by adding the certification deterioration factors (D.F.'s) for each engine to the NO_x transient test results. A level corresponding to the mean plus two standard deviations from the mean was then determined from this deteriorated data. Finally, that value was multiplied by a factor corresponding to the ratio of the current NO_x standard to the single highest NO_x emission rate exhibited by the six engines as tested on the current procedure. This factor compensates for the fact that current engines are certified somewhat below rather than at the current standard.

In order to compare emissions on the current test procedure to the current standard, the NO_x equivalent of the current 10 g/BHP–hr HC plus NO_x Federal standard was required. An equivalent NO_x level of 9 g/BHP–hr was developed in the EPA report, "An Examination of Interim Emission Control Strategies for Heavy-Duty Vehicles" (a regulatory support document for the 1979 heavy-duty engine regulations).

The following table lists the test data and the calculations using the above described procedure to establish the proposed standard. As indicated, the level of the proposed NOx emissions standard is 10.7 g/BHP-hr.

Heavy-Duty Engine NOx Emissions

Engine	Year	Fuel	HC+NOx Cert. D.F.	NOx Emissions g/BHP-hr: Proposed procedure	Current procedure
CAT-3208	1979	Diesel	0.0	5.65	[1]9.59
DDA 6V-92T	1979	Diesel	0.0	6.00	
GM 454	1979	Gas	0.0	8.62	9.73
GM 350	1979	Gas	0.0	6.58	7.76
GM 292	1979	Gas	0.0	8.74	8.82
IHC 446	1980	Gas	[2]0.55	5.25	5.17

Mean of determined data for proposed procedure=5.82
Standard deviation=1.52
Mean plus two standard deviation=8.86
Compositing factor=8/8.22=1.082
Proposed standard=8.86 X 1.082=10.7

[1] Caterpillar Data.
[2] HC D.F.=0.0.

Testing of 1979 engines is not yet completed. EPA plans to test 10 to 20 additional 1979 gasoline and diesel engines prior to finalizing the 1983 standard. If that testing indicates, by applying the above calculation method, that the NOx standard should be higher than 10.7 g/BHP-hr, the increase will be included in the final rule. However, under no circumstances will EPA promulgate a final NOx standard below this level without reproposing. Therefore, the level of 10.7 g/BHP-hr for NOx should be considered as the proposed standard, and comments regarding the technological feasibility of achieving the proposed standard should be directed at this level. EPA believes this level is consistent with the originally stated intent of setting a standard that would not substantially increase the stringency of the current NOx standard.

A tabulation of engine test data making up the final HC and CO baseline has been prepared and is available in the public docket for this rulemaking proposal (OMSAPC-78-4). This docket is located at the Environmental Protection Agency, Central Docket Section, Waterside Mall, Room 290B (EPA Library), 401 M Street, S.W., Washington, D.C. 20460. (As provided in 40 CFR Part 2, EPA may charge a reasonable fee for copying services.) In addition, by separate letter dated May 8, 1979, summaries of the engine test data have been made available to heavy-duty engine and vehicle manufacturers and associations, and to other parties which have expressed an interest in the February 13, 1979 proposal.

A detailed technical report on the HC and CO baseline has also been prepared, and is now available in the public docket. This report includes discussions of vehicle/engine selection and procurement, engine testing, and data compilation and standards computation. (It should be noted that the "cycle validation criteria" used for the baseline test program were revised from the criteria originally proposed on February 13, 1979. In particular, the stringency of the "regression line tolerances" was relaxed somewhat. The report contains a full description of these revisions.) Copies of the technical report are also available through the Director, Emission Control Technology Division, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105.

Section 307(d)(5) of the Act requires the Administrator to "give interested persons an opportunity for the oral presentation of data, views, or arguments * * *" relating to the February 13, 1979 proposal. A public hearing was held on May 14–15, 1979 (44 FR 22131) to provide this opportunity. However, to provide an opportunity for specific comment on the additional information relating to proposed standards provided by this notice, and the material supportive to the development of those standards which has been placed in the public docket, a second public hearing has been scheduled for July 16–17, 1979, as discussed earlier. The scope of this hearing will be limited to those aspects of the February 13, 1979 proposal directly affected by this additional information and supportive material. Developmental data and other information relating to alternative test cycles to the proposed transient test procedure will be acceptable for submission at the July 16–17, 1979 hearing and during the ensuing comment period.

Opportunity for public comment on all other aspects of the proposed rule was provided during the May 14–15, 1979 hearing. The record for that hearing was scheduled to close on June 14, 1979. However, EPA has received requests from manufacturers for an extension of this closing date. EPA is therefore keeping the record of the May 14–15, 1979 hearing open through June 28, 1979. The date of closing for the public comment period which was specified as June 13, 1979 in the original proposal is also extended to June 28, 1979. This closing date applies to the submission of comments on all aspects of the February 13, 1979 proposal not directly affected by the additional information and supportive material discussed in today's notice.

Participation in the July 16–17 Public Hearing

Any person desiring to make a statement at the hearing or to submit material for inclusion in the record of the hearing should provide written notice of such intention, together with a copy of the proposed statement or material for inclusion in the record. All such documents should be submitted to EPA no later than Friday, July 6, 1979, at the following address: Administrator, Environmental Protection Agency, Attention: Director, Emission Control Technology Division, 2565 Plymouth Road, Ann Harbor, MI 48105. It is strongly requested, but not required, that at least 150 copies accompany any documents which cannot be submitted prior to the start of the hearing.

Participants are advised to adhere to these guidelines if possible. Documents submitted late may not receive full staff consideration prior to the hearing. Further, participants who submit documents on the scheduled day of appearance, without the requested 150 copies, may be rescheduled for a later time or session of the hearing if duplication of the documents cannot be completed by EPA prior to the scheduled time of appearance.

Mr. Charles L. Gray is hereby designated as the Presiding Officer for the hearing. He will be responsible for maintaining order, excluding irrelevant or repetitious material, scheduling presentations, and, to the extent possible, notifying participants of the time at which they may appear. The hearing will be conducted informally. Technical rules of evidence will not apply.

Dated: June 12, 1979.

Douglas M. Costle,
Administrator.

[FR Doc. 79-18798 Filed 6-14-79; 8:45 am]
BILLING CODE 6560-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration

[42 CFR Part 431]

Medicaid Quality Control

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Notice of Decision to Develop Regulations.

SUMMARY: We are proposing to amend the Medicaid regulations on Medicaid Quality Control (MQC) to specify time periods for completion of reviews of the cases in the monthly MQC samples. We are also requiring a monthly report on eligibility and payment error findings. No time period requirements for review completion are imposed under current regulations. The purpose of these regulations is to ensure timely completions of MQC reviews and submittal of information on these reviews. The regulations will also improve program management of the quality control system at both State and Federal levels.

FOR FURTHER INFORMATION, CONTACT: Carlton Stockton, Medicaid Bureau, Health Care Financing Administrator, Department of Health, Education and Welfare, 330 C Street, SW., Washington, D.C. 20201, (202) 472–3790.

Dated: April 4, 1979.

Leonard D. Schaeffer,

Administrator, Health Care Financing Administration.

[FR Doc. 79-18709 Filed 6-14-79; 8:45 am]

BILLING CODE 4110-35-M

Social Security Administration

[45 CFR Part 11]

Indochinese Refugee Assistance; Eligibility Requirements, Coverage and Scope of Services for Cash Assistance, Medical Assistance, Social Services, Employment Services and Training for Refugees—Including Federal Financial Participation

AGENCY: Social Security Administration, HEW.

ACTION: Notice of Decision to Develop Regulations.

SUMMARY: The Social Security Administration plans to publish regulations to carry out Section 2 of the Indochina Migration and Refugee Assistance Act of 1975, as amended, which authorizes cash assistance, medical assistance, social services, and special training programs for Indochinese refugees. When the Indochinese Refugee Assistance Program was established in 1975, we decided to issue program guidelines by administrative instructions because the program was to be temporary. Because of the continued growth of these programs and because we expect additional Indochinese refugees to be admitted, we are developing regulations to establish a more formal and uniform base for program operations and management.

The Department of Health, Education, and Welfare has classified the proposed regulation as policy significant.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Hofeling, 330 C Street, S.W., Washington, D.C. 20201, telephone (202) 245–8817.

Dated: June 11, 1979.

Stanford G. Ross,

Commissioner of Social Security.

[FR Doc. 79-18741 Filed 6-14-79; 8:45 am]

BILLING CODE 4110-07-M

[45 CFR Part 205]

Financial Assistance Programs; Quality Control System

AGENCY: Social Security Administration, HEW.

ACTION: Notice of Decision to Develop Regulations.

SUMMARY: We are proposing to amend the Aid to Families with Dependent Children (AFDC) and adult assistance (under titles I, X, XIV, or XVI of the Social Security Act) program regulations on Quality Control (QC) to specify time periods for completion of reviews of the cases in the monthly QC samples. We will also require States to submit, on a monthly basis, the individual sample case review data. No time requirements for the completion of reviews of individual sample cases are imposed under current regulations. The purpose of these regulations is to ensure timely completion of QC reviews and submittal of information on these reviews. The regulations will also improve program management of the quality control system at both State and Federal levels.

The Department of Health, Education, and Welfare has classified the proposed regulations as technical.

FOR FURTHER INFORMATION CONTACT: Sean Hurley, 330 C Street, SW, Washington, D.C. 20201, Telephone (202) 245–8999.

Dated: May 19, 1979.

Stanford G. Ross,

Commissioner of Social Security.

[FR Doc. 79-18740 Filed 6-14-79; 8:45 am]

BILLING CODE 4110-07-M

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 74 and 78]

[Docket No. 21505; RM-2200]

Requiring Type Acceptance for Transmitting Equipment Used in Bands, A, B, and D by Television Auxiliary Stations; Also Proposing Standards to Govern the Radiation Characteristics of Antennas Used by Stations in Cars and Broadcast Auxiliary; Correction

AGENCY: Federal Communications Commission.

ACTION: Erratum.

SUMMARY: This document corrects the Commission's Further Notice of Proposed Rulemaking which was published in the Federal Register of June 6, 1979 concerning similar technical standards for both Cable Television Relay Service and Broadcast Auxiliary Service. In FR Doc. 79-17499, paragraph 25, for additional information, persons were instructed to contact Mel Murray at the Office of Chief Engineers. This document corrects the office designation as set forth below.

DATES: Nonapplicable.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Melvin Murray, Spectrum Allocation Division, Office of Science and Technology, (202) 632–6350.

Erratum

[44 FR 32420]

Released: June 5, 1979.

In the matter of Amendment of Parts 2 and 78 of the Commission's Rules and Regulations to Expand the Frequencies Available for use by Cable Television Relay Service Stations and, Amendment of Parts 74 and 78 of the Commission's Rules and Regulations to set aside 13.15–13.20 GHz for usage by Television and Cable Television Relay Service Pickup Stations on a coequal basis and, an inquiry to determine public interest and need to establish similar technical standards for both the Cable Television Relay Service and the Broadcast Auxiliary Service in the 12.7–13.20 GHz band; Docket No. 21505; RM–2200.

Paragraph 25 of the Commission's Further Notice of Proposed Rule Making in Docket No. 21505, FCC 79–310, released June 1, 1979, is corrected as follows:

1. Substitute *Office of Science and Technology* in lieu of *Office of Chief Engineer.*

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 79-18668 Filed 6-14-79; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Part 611]

Foreign Fishing for Billfish, Oceanic Sharks, Wahoo and Mahimahi in the Pacific Ocean

AGENCY: National Oceanic and Atmospheric Administration/ Commerce.

ACTION: Amendments to the Preliminary Management Plan for Billfish, Oceanic Sharks and Associated Species in the Pacific Ocean (PMP); and proposed implementing regulations.

SUMMARY: The plan and proposed regulations apply to vessels of foreign nations engaged in longline fishing which results in the catching of billfish, oceanic sharks, wahoo or mahimahi (dolphin fish) in the fishery conservation zone (FCZ) of the Pacific Ocean. Comments are requested on the proposed regulations and draft regulatory analysis.

DATE: Comments are invited until August 12, 1979.

ADDRESS: Comments may be submitted in writing to: Mr. Gerald V. Howard, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, California 90731. Telephone: 213-548-2575.

FOR FURTHER INFORMATION AND COPIES OF THE DRAFT REGULATORY ANALYSIS CONTACT: Mr. Gerald V. Howard (see address stated above).

SUPPLEMENTARY INFORMATION:

a. Background.

The proposed regulations would implement the Preliminary Management Plan for Billfish, Oceanic Sharks and Associated Species in the Pacific Ocean (PMP), as amended. The PMP applies to foreign longline fishing, pursuant to a Governing International Fishery Agreement, which results, or can reasonably be expected to result, in the catching of billfish, oceanic sharks, wahoo and mahimahi (dolphin fish) in the FCZ of the Pacific Ocean (excluding the FCZ seaward of Alaska).

The Fishery Conservation and Management Act of 1976, as amended (the Act) states, in part, " * * * no foreign fishing is authorized within the fishery conservation zone * * * unless such foreign fishing * * * is conducted under . . . a valid and applicable permit * * *". (The Act, section 204(a)). The definition of "fishing" includes " * * * any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish * * *." (The Act, section 3(9)(c)).

A foreign longline fishery for tuna has been conducted in the Pacific Ocean for many years. Although the primary target species is tuna, incidental catches of billfish, sharks, wahoo and mahimahi are unavoiable in this fishery. The Act provides for the management of all "fish". "Highly migratory species", as defined in § 611.2(x) of this Part, are specifically excluded from the definition of "fish". Other pelagic species such as billfish, oceanic sharks, wahoo and mahimahi are not considered highly migratory under the Act. The purpose of this PMP, as amended, is to establish a conservation and management plan for these pelagic species.

The PMP was prepared pursuant to the authority of section 201(h) of the Act, and a final environmental impact statement (EIS) was filed with the Environmental Protection Agency on June 2, 1978. Proposed implementing regulations and the approved PMP were published on July 21, 1978 for public comment (43 FR 31374). Several of the comments received stated that further recognition should be given to the special social and economic impacts of the plan on various areas of the Pacific, particularly American Samoa. The Comments also reflected some misunderstanding about actions vessels must, or may, take in order to comply with the implementing regulations. In response to the comments, the proposed regulations were withdrawn on September 14, 1978 (43 FR 41062). Amendments to the PMP were developed and a draft supplemental EIS/PMP was filed with the Environmental Protection Agency on March 15, 1979.

b. The Amendments and Proposed Regulations

The amendments and proposed implementing regulations incorporate five major changes to the PMP as originally approved.

1. The area covered by the PMP has been divided into five fishing areas. The optimum yield (OY), expected domestic harvest, and total allowable level of foreign fishing (TALFF) for each species has been specified for each of the five fishing areas: mainland west coast; the State of Hawaii and Midway Island; American Samoa; Guam and the Northern Mariana Islands; and U.S. possessions. The major purposes of this change are (a) recognition of varying social, economic and recreational interests in these areas; and (b) closer adherence to a major objective of the PMP, which is maintenance of the status quo with respect to total catches for the species concerned.

Division of the FCZ into five fishing areas restricts retention of billfish, oceanic sharks and associated species to amounts based on historical harvest in each area. Under the original PMP, foreign vessels could have harvested the entire TALFF for a particular species in one area covered by the PMP, thus upsetting the historical balance of catch and, depending upon where the fish are harvested, adversely affecting the economic, recreational, or social interests recognized in the PMP.

2. The fishery has been expanded to include wahoo and mahimahi. These species are often taken in conjunction with billfish and oceanic sharks, by the same vessels and gear. They have been included in order that the PMP will address all of the species harvested by similar gear in the FCZ.

3. The managment unit includes the Northern Mariana Islands, to which the Act is now applicable.

4. An amount of fish has been set aside in a "reserve" to accommodate the possibility that domestic catches will exceed the estimated levels. The amount of fish which will be harvested by domestic fishermen is in part dependent upon wide fluctuations in availability. This factor, combined with uncertainty about the extent to which U.S. vessels having the capacity will actually harvest these species has led to establishment of reserve amounts to help assure that the OY will not be exceeded if the amount of U.S. harvest is underestimated. A reserve for sharks has been established in the Hawaii and Midway Island fishing area because of indications that a U.S. shark fishery may be developing in that area.

5. The reporting and inspection requirements have been modified and clarified to avoid misunderstandings reflected in the comments received. Reporting requirements have been minimized; the number of ports where the holds of fishing vessels may be sealed has been increased; and provisions has been made for the Administrator, Western Pacific Program Office, National Marine Fisheries Service (NMFS), to authorize alternatives to hold sealing in special circumstances. Use of logbooks combined with notices (see § 611.4 of

this Part) is one of the alternatives which may be considered in situations where hold sealing may be impracticable.

c. *The Proposed Implementing Regulations.* These regulations apply only to foreign longline vessels "fishing" (as defined in § 611.2(r) of this part) in the FCZ. Longline vessels in transit through the FCZ would not be subject to the requirements of this section or the other provisions of Part 611.

Any foreign vessel desiring to engage in longline fishing in the FCZ of the Pacific Ocean must possess a permit for that purpose, whether or not the billfish, oceanic sharks, wahoo, or mahimahi caught will be retained.

Permits are required even though the foreign longline vessel is rigged and fishes primarily for the purpose of taking highly migratory species over which the United States does not exercise exclusive fishery management authority. Any foreign nation whose vessels wish to retain billfish, oceanic sharks, wahoo, or mahimahi caught in the FCZ must also hold a national allocation from the total allowable level of foreign fishing (TALFF) for the applicable species and fishing area.

The PMP establishes the OY, U.S. harvesting capacity, and TALFF for billfish, oceanic sharks, wahoo, and mahimahi, as shown on Table 1 of the PMP amendments.

The TALFF's are established on an annual basis. The PMP establishes the TALFF's and reserves for 1979 and 1980. The regulations implement the 1979 TALFF's (to be prorated on the basis of the number of months remaining after the effective date of final regulations). TALFF's established for 1980 will be implemented by amendment to Part 611 prior to the 1980 fishing season. The FMP also provides for reassessment of the OY and U.S. harvesting capacity in May of 1980 on the basis of updated information related to status of stocks, estimated and actual performance of domestic and foreign fleets, and other relevant factors. This provision will also be implemented by 1980 amendments to Part 611. Foreign longline vessels holding applicable permits may fish as authorized under these regulations throughout the FCZ beyond 12 miles from the baseline used to measure the U.S. territorial sea. Until the applicable national allocation is reached, vessels of a nation holding an oceanic shark, wahoo, or mahimahi allocation may retain oceanic sharks, wahoo, or mahimahi caught in the applicable fishing area beyond 12 nautical miles from the baseline used to measure the U.S. territorial sea.

However, the proposed regulations establish retention and non-retention zones for billfish within each fishing area (see Table I of § 611.81(b)(2) of the proposed regulations). National allocations for species of billfish must be taken outside non-retention zones. Even if a foreign nation has a billfish allocation, all billfish caught by foreign vessels within the non-retention zones must be returned to the sea without removing the fish from the water. Billfish caught in non-retention zones are not counted against national allocations.

When a national allocation for a species of billfish or oceanic sharks is reached, any additional catch of that species must be returned to the sea without removing the fish from the water. When a national allocation for wahoo or mahimahi is reached, additional catch of these species are treated as a prohibited species (see 50 CFR 611.13).

d. *Boundaries of Fishing Areas.* A new Figure 5 has been added to Appendix II, Area Codes § 611.9 of this Part showing approximate boundaries of fishing areas of the Pacific. This Figure 5 is currently incomplete as to the outer limits of the FCZ in some areas. It is recognized that national allocations in these areas cannot be enforced until boundaries are specified.

e. *Regulatory Analysis.* A draft regulatory analysis of the proposed regulations has been prepared. Among the alternatives considered were taking no action, implementing the PMP as originally proposed, prohibiting all retention of billfish in the FCZ, and establish areas closed to any taking of billfish and associated species. The major reasons for the regulatory approach selected include: (1) considerations of foreign policy and consistency with U.S. international posture in relation to highly migratory species; (2) recognition of special economic, social and recreational interests in various fishing areas of the FCZ; and (3) minimizing reporting and recordkeeping requirements consistent with research and enforcement needs.

The Assistant Administrator has made an initial determination under section 201 of the Act that the PMP and proposed amendments conform to the national standards, the other requirements of the Act, and other applicable law.

The PMP is amended as follows:

1. In II.B1., insert "the Northern Mariana Islands," between "Guam," and "and other . . .".

2. IN II.B.2. substitute the following for the original first paragraph: "2. Biological systems—The foreign catch of bill-fish, sharks, and related species generally occurs as incidental catch in high seas tuna operations, for example, incidental to longlining. In some areas of the Pacific, foreign vessels target on bill fish. The by-catch of sharks probably is discarded at sea. The tuna, billfish, oceanic sharks, and related species taken by foreign fishing vessels are listed in the following table:"

3. Add to the end of the table in II.B.2. the following:

Related species: Wahoo dolphin *(Acanthocybium solandri Coryphaena hippurus; and C. equisetis).*

4. In II.B.3.:

(a) add after the second sentence in the first paragraph: "Wahoo and dolphin (hereafter called mahimahi) also are of recreational and commercial value to U.S. fishers."

(b) add after the second sentence of the fifth paragraph: "Wahoo and mahimahi also are caught by foreign vessels based in American Samoa and are delivered for consumption in local markets. The amount caught within 200 miles of American Samoa is small, but total deliveries may be as high as 300–400 Mt. per year."

(c) add to the end of the fifth paragraph: "The domestic fishery in the Northern Mariana Islands presently is quite small but is expected to grow rapidly."

5. In II.B.4.:

(a) revise second paragraph to read, "First, any actions taken under this preliminary management plan will not be effective in conserving oceanwide stocks of billfish, sharks and related species unless complementary actions are taken by other nations under an international management regime. These species are harvested primarily outside the FCZ. Foreign catches within the FCZ constitute a very small portion of total Pacific Ocean catches of billfish, oceanic sharks, and related species. Thus, regulations governing foreign harvest of these species within the FCZ is unlikely to have any impact on total catches of these species or on status of the stocks."

(b) in the first sentence of the fourth paragraph, substitute "stocks of billfish, oceanic sharks and related species" for "billfish and shark stocks"; and in the second sentence of the fourth paragraph, substitute "billfish, oceanic sharks, and related species" for "billfish and sharks"; and in the same sentence, substitute "availability of these species" for "availability of billfish and sharks".

(c) add a sixth paragraph as follows:

"Fifth, the private sector economy of American Samoa is dependent on

continued U.S. cannery operations, which in turn are dependent on continued deliveries of tuna by foreign longliners. Foreign longliners also catch and deliver to American Samoa billfish, wahoo, and mahimahi. This provides additional income for the vessels and provides foodfish for local consumption. Thus, it is in the interest of the U.S. to maintain such deliveries to the extent consistent with the FCMA."

6. In II.C.1.a.:

(a) substitute "stocks of billfish, oceanic sharks, and related species" for "billfish and shark stocks" in the first sentence of the first paragraph; and substitute "species" for "billfish and sharks" in the third sentence of the first paragraph.

(b) immediately after the listing of oceanic sharks, add:

"The other species covered by this plan are: Wahoo mahimahi *(Acanthocybium solandri Coryphaena hippurus; and C. equisetis)*

also add immediately after the paragraph ending "throughout the FCZ." the following: "Similarly, virtually no information is available on stock size, structure, or availability for wahoo and mahimahi."

7. In II.C.1.b., add the following:

(8) Wahoo is a circumtropical species. Generally they are found between 30°N and 31°S in the Pacific. They usually are found close to land; they are not abundant in the open ocean.

(9) Mahimahi are cosmopolitan in tropical and subtropical waters, but no information is available on stock structure or centers of abundance.

8. In II.C.1.c.(1), add to the first paragraph:

"Total Pacific Ocean shark catches have been as high as 132,000 MT, of which only a portion is of the oceanic shark species covered by this plan. Ocean-wide mahimahi catches averaged about 14,600 MT per year 1971–75, but no estimates of wahoo catch are available."

9. In II.C.1.c.(2).:

(a) substitute the following for the first sentence of the second paragraph:

"In California, a harpoon fishery harvested about 350 MT of swordfish in 1975, with an ex-vessal value of about $2.7 million, but the 1971–75 average harvest was about 223 MT (see Table 10).

(b) substitute the following for the fourth and fifth sentence in the fourth paragraph:

"It is estimated that only 9% of total average annual landings of sharks were of the oceanic shark species covered by this plan."

(c) add to the fifth paragraph, "Commercial vessels harvest substantial amounts of wahoo and mahimahi in Hawaii. The Northern Marianas commercial fishery is very limited and there are few data on harvests."

10. In II.C.1.c.(3), substitute the following for the fourth and fifth paragraphs:

"The Southwest Fisheries Center-Honolulu Laboratory completed recently an analysis of foreign longline data to estimate catch and effort by foreign longline in the FCZ in the period 1971–75. The analysis shows that foreign billfish and shark catches in most areas of the FCZ declined steadily in that period. Foreign catch estimates are summarized in Table 3."

11. In II.C.1.c.(4).:

(a) revise the second sentence of the first paragraph to read: "The recreational catch in Hawaii is not recorded officially."

(b) substitute the following for the first two sentences of the third paragraph:

"The recreational fishery in Hawaii has been growing rapidly, and a recent study by the Southwest Fisheries Center-Honolulu Laboratory indicates that previous estimates understated considerably the domestic catch especially of blue marlin. Recreational catch exceeds by far the commercial catch, although many billfish caught by anglers are subsequently sold. In addition, the social and economic values of the recreational fishery exceed those of the commercial fishery."

(c) add a new last paragraph:

"There is no documented recreational fishery in American Samoa. In the Northern Mariana Islands, there is some recreational fishing, but no estimates of catch and effort are available."

12. In II.C.1.d., add at end of section:

Northern Mariana Islands

Domestic commercial: 4 vessels 35–72 feet in length, type of gear unknown.

Foreign commercial: Unknown number of Japanese and possibly Korean longliners.

Domestic commercial: 97 outboards 12–25 feet in length (1975); and three charter vessels.

13. In II.C.2.b. (2), add the following:

(h) *Wahoo and mahimahi.* No estimates of MSY for these species can be derived using the production model; however, there is no indication that these species are overfished on an oceanwide or a localized basis. Therefore MSY is considered to equal or exceed historical levels of fishing.

14. In II.C.2.c.:

(a) revise the sentence in the third paragraph to read: "A summary of recent estimated catches of billfish, oceanic sharks, and related species is presented in Table 3."

(b) delete the last sentence of the section.

15. In II.C.3., substitute in the first sentence of the second paragraph the phrase "billfish, oceanic sharks, and related species" for "billfish and sharks".

16. In II.C.3., substitute the following for the portion of the section beginning with "Optimum yield (OY) for the FCZ . . ." and ending ". . . available for all portions of the FCZ.":

It also is necessary, however, to recognize the variety of social and economic conditions in different areas of the FCZ. Only striped marlin and swordfish are caught by domestic vessels off the West Coast; and no foreign longlining has been documented in that area of the FCZ. All billfish species as well as wahoo and mahimahi are quite important to domestic recreational and commercial interests in Hawaii, but sharks are not very important domestically. Foreign fishing in the Hawaii portion of the FCZ has been declining in recent years. Domestic fishing for billfish, wahoo and mahimahi appears to be increasing rapidly in Guam and the Northern Marianas; here too, however, sharks are of no domestic importance at this time. There is little domestic fishing in American Samoa. Rather, the economy of American Samoa is dependent on foreign longliners deliveries of tuna, and large amounts of wahoo and mahimahi are caught by foreign longliners (mainly outside the FCZ) and enter local food markets.

To accommodate these differences, it is necessary to derive OY on a subarea basis, viewing each portion of the FCZ as a separate management area. This can be done on a consistent basis by defining OY for each subarea as the average annual total catch, by species, in each subarea. These determinations would be based on 1971–75 data, where available; the survey of Hawaii recreational and commercial catches of 1976; and preliminary data for areas such as Guam and the Northern Marianas, which have not collected catch data in the past. The resulting OY's are summarized in Table 4.

17. In II.C.4.:

(a) substitute the following for the first sentence of the first paragraph: "Domestic commercial and recreational catch data were summarized in Table 1."

(b) revise the end of the first sentence of the second paragraph to read: ". . ., the extent to which U.S vessels will harvest the OY in each subarea is defined as the average annual domestic catch in the subarea (Table 1) plus 10% for increased participation in the fishery. The 10% increase factor is justified by the rapid increases in the number of vessels registered in California, Hawaii, Guam, and the Northern Marianas, and by the planned development of additional berthing facilities in Guam and the Northern Marianas. Expected domestic harvests are summarized in Table 5."

(c) delete the remainder of this section.

18. Add a new section II.C.5. as follows:

5. *Reserve and TALFF.* As indicated, domestic catches are highly variable and may exceed the average catch considerably in any single year. Domestic interests will not be affected by this plan, however, it is appropriate to establish unallocated "reserves" of billfish in the event domestic harvests exceed present estimates. this would provide some degree of control against fishing beyond OY in the FCZ. For blue marlin, which is such an important target species for domestic fishing and which is overfished, the "reserve" would be 8.8 MT and 23.9 MT for Hawaii and the Guam-Northern Marianas area. For other species of billfish in the FCZ around Hawaii and the Guam-Northern Marianas area, the "reserves" would be 10% of the difference between OY and expected domestic harvest. No "reserves" would be needed around American Samoa and U.S. Possessions throughout the Pacific because domestic fishing pressure is so light. Expected U.S. harvest on the West Coast is sufficient to take the OY, thus, no "reserves" would be set up there.

Total allowable levels of foreign fishing (TALFF's) for each subareas are then derived by the formula:

OY—expected U.S. harvest—"reserve"=TALFF.

The TALFF's are summarized by subarea in Table 6.

19. Renumber present II.C.5. to II.C.6.

20. In new II.C.6.a., revise first sentence to read "The previous section specifies the TALFF for each species in each of the five subareas of the FCZ covered by this plan."

21. In new II.C.6.b., add two new subsections as follows:

(6) Within 50 nautical miles of the major Northern Mariana Islands, i.e., Rota, Aquijan, Tinian and Saipan Islands.

(7) Within 12 nautical miles of the remaining Northern Mariana Islands.

22. Substitute the following for II.6.d.:

d. Other limitations, conditions and requirements:

(1) A foreign longline fishing vessel which will not fish in the FCZ will not be affected by the PMP. The operator is not required to obtain a permit and has full freedom to transit the FCZ with billfish, oceanic sharks, and other species on board.

(2) A foreign longline fishing vessel which intends to fish in the FCZ must obtain a permit, and when that vessel is fishing in the FCZ, it shall be a rebuttable presumption that all billfish, oceanic sharks, wahoo, and mahimahi on board that vessel, were caught in the FCZ. A vessel may (but is not required to) request U.S authorities to arrange an inspection of its hold *before fishing* in the FCZ to determine the amount of billfish, oceanic shark, wahoo, and mahimahi caught outside the FCZ, and thus rebut the presumption. A vessel also may report prior to fishing in the FCZ its catch of billfish, oceanic sharks, wahoo, and mahimahi outside the FCZ, and may arrange for an inspection of its catches when unloading to verify the accuracy of this report and of logs maintained during their fishing operations. Ports where it may be possible to arrange inspections include Honolulu and Kahului, Hawaii; Pago Pago, American Samoa; Agana, Guam; Saipan, Northern Mariana Islands; and San Diego, California.

(3) Foreign vessels which fish exclusively outside the FCZ are not required to maintain logs or provide data to the U.S. Foreign vessels which fish in the FCZ are required to maintain logs and provide data to the U.S., but only with respect to their operations in the FCZ. However, documentation (e.g., logbooks) concerning fishing and catches outside the FCZ may be requested by U.S. authorities as evidence to substantiate radio reports of catches prior to entering the FCZ to fish.

(4) The requirement to release fish by cutting the line or leader without removing the fish from the water would apply only to billfish which are caught in a non-retention zone or to billfish and oceanic sharks which are caught after that particular species allocation has been reached. The requirement does not apply to wahoo, mahimahi or other non-billfish species; when release of these species is required, it would be permissible to bring the fish aboard the vessel and remove the hook before returning the fish to the ocean.

(5) The National Marine Fisheries Service will prepare the logbook form to be used by foreign vessels.

23. Substitute new Tables 3, 4, 5, and 6 for original Tables 3–6 and renumber original Table 9 to Table 7.

Table 3.—*Estimated Average Annual Catch by Portion of the FCZ*

[In metric tons]

Location	Sword-fish	Blue marlin	Black marlin	Striped marlin	Sailfish/ spearfish	Sharks	Wahoo	Mahimahi
Hawaii (including Midway Islands):								
Domestic [1]	5.4	648.6	96.2	61.8	23.2	———	288.8	165.0
Foreign [2]	98.2	63.4	2.5	161.4	20.4	1,111.6	———	———
Total	98.6	612.0	97.7	223.2	43.7	1,111.6	288.8	165.0
West Coast (California):								
Domestic	[3] 318.4	———	———	[4] 43.2	———	[5] 27.6	———	———
Foreign [2]	———	———	———	———	———	———	———	———
Total	318.4	———	———	[4] 43.2	———	27.6	———	———
Guam and Northern Marianas:								
Domestic [6]	0.2	2.7	———	0.3	0.3	———	6.4	4.2
Foreign [2]	3.9	24.2	6.6	4.7	5.6	91.9	unk.	unk.
Total	4.1	26.9	0.6	5.0	5.6	91.9	6.4	4.2
American Samoa:								
Domestic	———	———	———	Not available	———	———	———	———
Foreign [2]	2.4	34.9	5.3	7.8	2.2	101.6	2.0	2.6
Total	2.4	34.9	5.3	7.8	2.2	101.6	2.0	2.6
Possessions:								
Domestic	———	———	———	Not available	———	———	———	———
Foreign [2]	28.1	114.4	6.2	48.6	14.3	689.4	unk.	unk.
Total	28.1	114.4	6.2	48.6	14.3	691.4	———	———
Grand total	456.6	788.2	109.8	285.6	65.8	1,299.1	297.2	171.2

[1] Based on SWFC-Hon Lab survey of 1976 catches.
[2] Based on SWFC-Hon. Lab analysis of foreign longline catches, 1971–75.
[3] 1973–77 average 4, 1972–76 average.

Table 4.—*OY for Billfish, and Oceanic Sharks, and Related Species, by Species, by Area*

[In metric tons]

Area	Swordfish	Blue marlin	Black marlin	Striped marlin	Sailfish/spearfish	Sharks	Wahoo	Mahimahi
West coast	318.4	0	0	43.2	0	27.8	0	0
Hawaii and Midway Islands	93.6	812.0	97.7	223.2	42.7	1,111.8	288.9	105.0
Guam and Northern Marianas	4.1	26.9	0.6	5.0	4.8	31.9	6.4	4.2
American Samoa	2.4	34.9	5.3	7.8	2.2	101.8	2.0	2.0
Possessions	28.1	114.4	6.2	46.6	14.3	851.4	0	0
Total	446.6	788.2	109.8	325.8	64.0	1,824.1	297.3	111.2

Table 5.—*Expected Domestic Harvest, by Species, by Area*

[In metric tons]

	Swordfish	Blue marlin	Black marlin	Striped marlin	Sailfish/spearfish	Sharks	Wahoo	Mahimahi
West Coast	350.2	0	0	47.5	0	0	0	0
Hawaii (including Midway Islands)	5.9	603.4	104.7	97.9	23.4	0	317.8	115.5
Guam and Northern Marianas	0.2	3.0	0	0.3	0.2	0	7.0	4.6
American Samoa	0	0	0	0	0	0	0	0
Possessions	0	0	0	0	0	0	0	0
Total	356.3	606.4	104.7	115.7	23.6	0	324.8	120.1

Table 6.—*OY, Expected Domestic Harvest, and TALFF, by Species, by Area*

[In metric tons]

	OY	Expected domestic harvest	Reserve	TALFF
A. West Coast:				
Swordfish	318.4	350.2	0	0
Striped marlin	43.2	47.5	0	0
Sharks	27.8	30.4	0	0
B. Hawaii (including Midway Islands):				
Swordfish	93.6	5.9	8.8	78.9
Blue marlin	812.0	603.4	8.6	0
Black marlin	97.7	104.7	0	0
Striped marlin	223.2	97.9	15.5	139.8
Sailfish/spearfish	42.7	23.4	1.9	17.4
Sharks	1,111.8	0	111.1	1,000.6
Wahoo	288.9	317.8	0	0
Mahimahi	105.0	115.5	0	0
C. Guam and Northern Marianas:				
Swordfish	4.1	0.2	0.4	3.5
Blue marlin	26.9	3.0	23.9	0
Black marlin	0.6	0	0.1	0.5
Striped marlin	5.0	0.3	0.5	4.2
Sailfish/spearfish	4.8	0.2	0.5	4.1
Sharks	31.9	0	0	31.9
Wahoo	6.4	7.0	0	0
Mahimahi	4.2	4.6	0	0
D. American Samoa:				
Swordfish	2.4	0	0	2.4
Blue marlin	34.9	0	0	34.9
Black marlin	5.3	0	0	5.3
Striped marlin	7.8	0	0	7.8
Sailfish/spearfish	2.2	0	0	2.2
Sharks	101.8	0	0	101.8
Wahoo	2.0	0	0	2.0
Mahimahi	2.0	0	0	2.0
E. Possessions:				
Swordfish	28.1	0	0	28.1
Blue marlin	114.1	0	0	114.4
Black marlin	6.2	0	0	6.2
Striped marlin	46.6	0	0	46.6
Sailfish/spearfish	14.3	0	0	14.3
Sharks	851.4	0	0	851.4
Wahoo	0	0	0	0
Mahimahi	0	0	0	0

Signed in Washington, D.C. this 8th day of June, 1979.

Authority: 16 U.S.C. 1801 *et seq.*

Jack W. Gehringer,

Deputy Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

(A) It is proposed to add the following § 611.81 to CFR Part 611, Subpart F:

§ 611.81 Pacific billfish, oceanic sharks, wahoo and mahimahi.

(a) *Purpose.*—(1) *General.* This section regulates all foreign longline fishing conducted under a Governing International Fishery Agreement which involves the catching of any species of billfish, oceanic sharks, wahoo or mahimahi (dolphin fish) in the Fishery Conservation Zone (FCZ) of the United States in the Pacific Ocean, excluding the portion of the FCZ seaward of the State of Alaska.

(2) *Species Definitions.* For the purposes of this section, the following terms have the following meanings: (A) "mahimahi" means "dolphin fish" (*Coryphaena hippurus* and *C. equisetis*); and (B) "oceanic sharks" means sharks of the families *Carcharhinidae, Alopiidae, Sphyrnidae,* and *Lamnidae.*

(b) *Authorized Fishery.*— (1) *Fishing Areas.* For the purposes of this section, the FCZ of the Pacific Ocean (excluding the FCZ seaward of Alaska) is divided into five fishing areas: West Coast, Guam and Northern Mariana Islands, Hawaii and Midway Islands, American Samoa, and U.S. Possessions.

(2) *Zones.* The fishing areas are comprised of the following "Billfish retention" and "Billfish non-retention" zones (each zone is measured from the baseline used to measure the U.S. territorial sea.):

Table I

Fishing area	Billfish retention zones	Billfish non-retention zones
West Coast	Beyond 100 nautical miles	Between 12 and 100 nautical miles.
Guam and Northern Mariana Islands	(1) Beyond 50 nautical miles from Guam, Rota, Tinian, Aguijan and Saipan; and (2) beyond 12 nautical miles of the remaining Northern Mariana Islands.	Between 12 and 50 nautical miles from Guam, Rota, Tinian, Aguijan, and Saipan.
Hawaii and Midway Islands	(1) Beyond 100 nautical miles from the islands of Hawaii, Kahoolawe, Kauai, Lanai, Maui, Molokai, Niihau, and Oahu and (2) beyond 50 nautical miles from the remaining islands of the State of Hawaii and Midway Island.	(1) Between 12 and 100 nautical miles from the islands of Hawaii, Kahoolawe, Kauai, Lanai, Maui, Molokai, Niihau and Oahu; and (2) between 12 and 50 nautical miles from the remaining islands of the State of Hawaii and Midway Island.
American Samoa	Beyond 12 nautical miles from American Samoa	No non-retention zone.
U.S. Possessions	Beyond 12 nautical miles from any other possession of the United States	No non-retention zone.

(3) *General.* Foreign vessels subject to this section are authorized to fish in the FCZ of the Pacific Ocean beyond 12 miles from the baseline used to measure the U.S. territorial sea, subject to the requirements of this section.

(i) *Non-Retention Fishery.* Except as provided in paragraph (b)(3)(ii) of this section, and in section 611.80 of this Part, all billfish, oceanic sharks, wahoo, mahimahi and other fish caught by foreign vessels in the course of fishing under this section shall be returned to the sea in accordance with the requirements of paragraph (c) of this section.

(ii) *Retention Fishery.* Foreign vessels fishing subject to this section may retain billfish, oceanic sharks, wahoo and mahimahi to the extent that retention is authorized by pargraphs (b)(4) and (5) of this section.

(4) *Total Allowable Level of Foreign Fishing (TALFF); National Allocations; and Reserves.*

(i) *Total Allowable Level of Foreign Fishing (TALFF) and National Allocations.*

(A) The total amount of each species of billfish, oceanic sharks, wahoo and mahimahi which may be caught and retained in each fishing area by foreign vessels subject to this section is limited to the TALFF's set out in Table I of this paragraph for each applicable fishing area, and to the amount of the applicable national allocation.

Table I.—*Pacific Billfish and Oceanic Sharks TALFF and Reserve by Fishing Areas September Through December 1979 (Metric Tons)*

[Fishing areas]

Species		West Coast	Hawaii (including Midway)	Guam and N. Marianas	American Samoa	Possessions
Swordfish	TALFF	0	26.3	1.2	0.8	9.4
	Reserve	0	2.9	0.1	0	0
Blue Marlin	TALFF	0	0	0	11.6	25.4
	Reserve	0	2.9	5.9	0	0
Black Marlin	TALFF	0	0	0.2	1.8	2.1
	Reserve	0	0	0.03	0	0
Striped Marlin	TALFF	0	46.6	1.4	2.6	15.5
	Reserve	0	5.2	0.2	0	0
Sailfish/Spearfish	TALFF	0	5.8	1.4	0.7	4.8
	Reserve	0	.6	0.2	0	0
Sharks	TALFF	0	333.2	10.6	33.8	216.9
	Reserve	0	40.0	0	0	0
Wahoo	TALFF	0	0	0	0.7	0
	Reserve	0	0	0	0	0
Mahimahi	TALFF	0	0	0	0.7	0
	Reserve	0	0	0	0	0

(B) No foreign vessel subject to this section may retain billfish caught within the billfish non-retention zones set out in Table I of paragraph (b)(2) of this section.

(ii) *Reserves.* (A) *Amounts.* The amounts of fish held in reserve are shown in paragraph (b)(4)(i), Table I of this section.

(B) *Apportionment to TALFF.* (1) As soon as possible after September 1, the Regional Director, Southwest Region, shall determine the amount of fish of each species for which a reserve has been established which has been harvested to date by U.S. vessels in each applicable fishing area. (2) If the Regional Director determines that the amount of fish of a species harvested by vessels of the United States in an area is less than 80 percent of the estimated U.S. harvest for that species in that fishing area, the Regional Director, Southwest Region, shall apportion to TALFF the entire amount of the reserve for the applicable species in the applicable fishing area. (See Table 6 of the FMP, as amended, for estimated U.S. harvest by species and area.)

(C) *Notice.* The Assistant Administrator shall publish in the Federal Register a notice of determinations made under paragraph (b)(4)(ii)(B) of this section.

(5) *Cancellation of Authority to Retain.* (i) The authority of a foreign vessel to retain an applicable species is cancelled: (A) when the national

allocation for the applicable species is reached; or (B) at the date and time specified in the notification issued by the Assistant Administrator under paragraph (b)(5)(ii) of this section.

(ii) The Assistant Administrator shall determine, on the basis of the information specified in § 611.15(b) of this Part, when the TALFF or optimum yield (OY) for a billfish species, oceanic sharks, wahoo or mahimahi will be reached. At least forty-eight hours before the applicable TALFF or OY will be reached, the Assistant Administrator shall notify both the affected foreign nation(s) and the designated representative for any affected fishing vessel that authority to retain the applicable species is cancelled.

(iii) Any cancellation under this section hall remain in effect until a new or increased allocation becomes available.

(iv) The closure provisions of § 611.15 of this Part do not apply to foreign vessels fishing subject to this section.

(c) *Prohibited Species.* (1) *General.* The following are prohibited species undes this section:

(i) All species of fish over which the United States exercises exclusive fishery management authority and for which there is no national allocation;

(ii) All billfish, oceanic sharks, wahoo and mahimahi caught in excess of any OY, TALFF or national allocation; and

(iii) All billfish caught in a billfish non-retention zone. (See Table I of paragraph (b)(2) of this section).

(2) *Treatment.* (i) All prohibited species shall be treated in accordance with § 611.13 of this Part.

(ii) *Additional Requirements for Billfish and Oceanic Sharks.* Unless otherwise specifically instructed by a U.S. observer or authorized officer, all prohibited billfish and oceanic sharks must be released by cutting the line (or by other appropriate means) without removing the fish from the water.

(3) *Rebuttal of Presumption.* Foreign vessels fishing subject to this section may rebut the presumption of § 611.13(c) of this Part by: (A) storing all prohibited species caught outside the FCZ in a separate part of the vessel hold which can be sealed; and arranging inspection and sealing of the vessel's hold by U.S. authorities before commencing fishing in the FCZ or in billfish non-retention zones; or (B) other reasonable means which may be authorized by the Administrator of the Western Pacific Program Office if, in consultation with the U.S. Coast Guard, the Administrator determines that special circumstances warrant alternative arrangements.

(4) *Procedure for Hold Sealing.* (i) Inspection and sealing of a foreign vessel's hold may be arranged by contacting the Administrator, Western Pacific Program Office (Southwest Region, National Marine Fisheries Service, Post Office Box 3830, Honolulu, Hawaii 96812, telephone 808-946-2181) at least 48 hours in advance of the date for which inspection is requested.

(ii) Ports at which such inspections may be made are Honolulu and Kahului, Hawaii; Pago Pago, American Samoa; Agana, Guam; Saipan, Northern Mariana Islands; and San Diego, California.

(iii) Additional ports for hold inspections may be arranged with the Administrator of the Western Pacific Program Office.

(5) *Other Requirements.* The designation of ports for hold inspection and sealing does not modify any port entry arrangements or requirements (if any) of Governing International Fishery Agreements or the notification requirements of any other laws or regulations of the United States.

(d) *Statistical Reporting.* (1) *Retention fishery.* The operator of each vessel of a foreign nation with an allocation for billfish, oceanic sharks, wahoo or mahimahi shall comply with all of the requirements of § 611.9 of this Part, except that the daily cumulative catch log required by § 611.9(d) must be in the format illustrated in Appendix I of this § 611.81, and shall contain the following information:

(i) Name and call sign of the vessel;

(ii) Permit number;

(iii) Date;

(iv) Number and weight (in kilograms) of each species (by species code) of billfish, oceanic sharks, wahoo, and mahimahi caught and retained;

(v) Number of each species (by species code) of billfish, oceanic sharks, wahoo, mahimahi and other fish caught and released, and whether each fish released was alive or dead at the time of release;

(vi) Noon-day location of vessel, to the nearest tenth of a degree of longitude and latitude;

(vii) Number of hooks set by type of bait.

(2) *Non-Retention Fishery.* The operator of each vessel of a foreign nation without an allocation fishing subject to this section is exempt from the reporting requirements of § 611.9(d) and (e) of this Part, but shall provide a quarterly report containing the following information for the applicable quarter:

(i) Name and call sign of the vessel;

(ii) Permit number;

(iii) Time period covered by the report;

(iv) Total number of each species (by species code) of billfish, oceanic sharks, wahoo, mahimahi and other fish caught;

(v) Number of each species (by species code) of billfish, oceanic sharks, wahoo, mahimahi and other fish released, and whether each fish was alive or dead at time of release;

(vi) Average daily number of hooks set by type of bait;

(vii) Total number of days fished in the FCZ, by area code set forth in § 611.9, Appendix II.

(3) All reports by vessels fishing subject to this section in areas designated by code numbers 61–64, (see § 611.9, Appendix II of this Part) shall be submitted to: Administrator, Western Pacific Program Office, Southwest Region, National Marine Fisheries Service, Post Office Box 3830, Honolulu, Hawaii 96812, telephone 808-946-2181.

(4) All reports by vessels fishing subject to this section in areas designated by code numbers 71–74 (see § 611.9, Appendix II of this Part) shall be submitted to: Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731, telephone 213-548-2575.

(5)(i) The weekly catch report shall be submitted in accordance with the schedule in § 611.9 of this Part.

(ii) The quarterly catch report shall be submitted not later than 30 days from the end of the calendar year quarter for which the report is being made.

(Appendix I, Daily Cumulative Catch Log. Reserved.)

(3) It is further proposed to amend 50 CFR 611 as follows:

(1) Section 611.9, Appendix II, *add:* Figure 5. Fishing Areas of the Pacific Billfish, Oceanic Shark and Associated Species Fishery.

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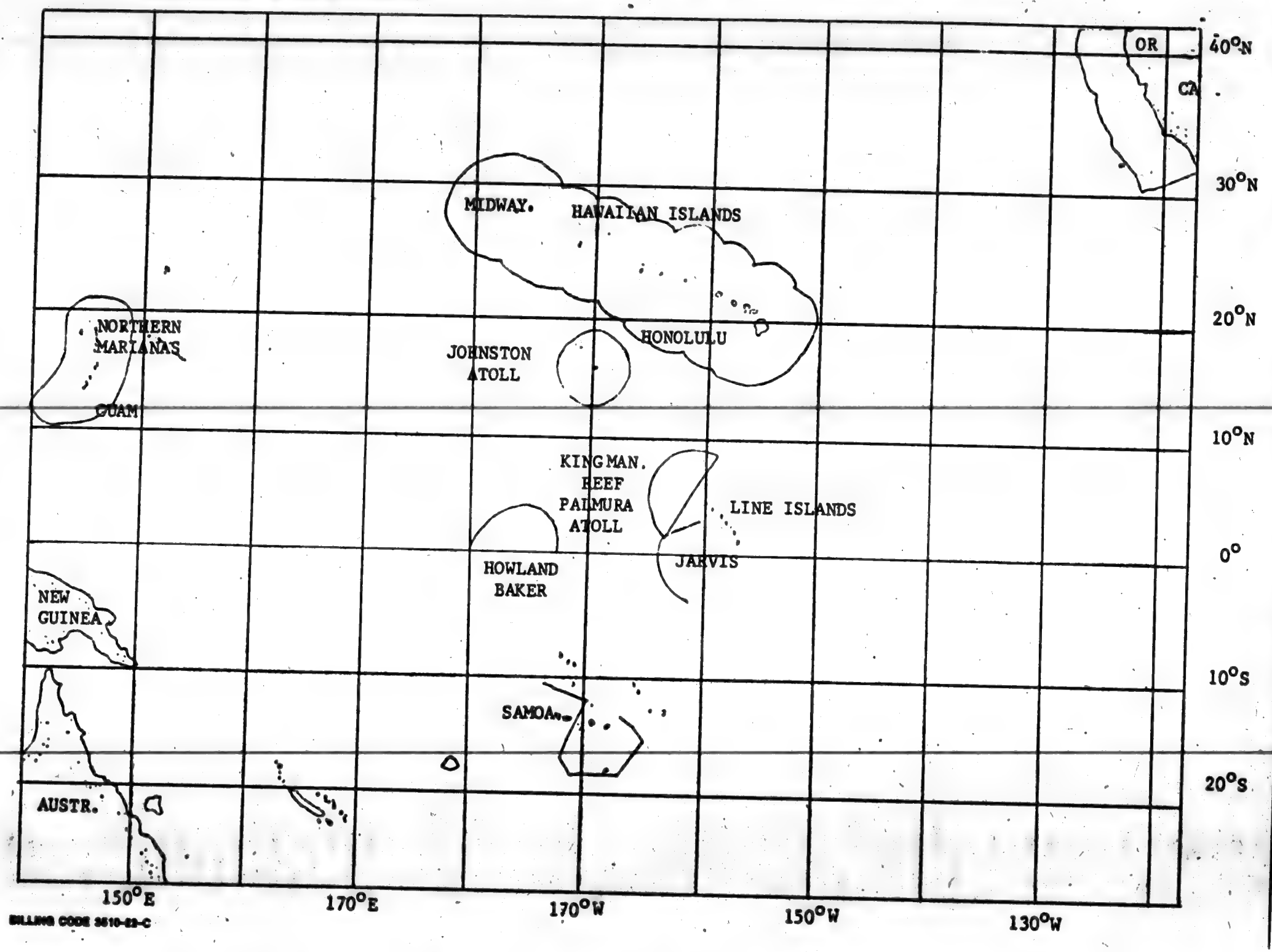
Figure 5. Approximate Boundaries of Fishing Areas of the Pacific Billfish, Oceanic Shark, and Associated Species Fishery



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(2) Section 611.9, Appendix II, under "Area Codes-Pacific", *add* "86 Other U.S. Possessions and Territories FCZ"; and amend the line beginning "81" by *adding* "and Midway Island" between the words "Islands" and "FCZ".

(3) Section 611.9, Appendix I—Species Codes II. Pacific Ocean Fishes, Finfishes, add:

Code	
699	Shortfin [illegible] ..... Equaliformes

(4) Section 611.20, Table I, add the following:

Fishery	Species	Species code	TALFF (metric tons)
Pacific billfish and Sharks	Swordfish	254	[1]37.7
	Blue Marlin	250	[1]37.8
	Black Marlin	259	[1]4.1
	Striped Marlin	251	[1]66.1
	Sailfish/Spearfish	252	[1]12.7
	Sharks	293, 295, 296, 297.	[1]584.5
	Wahoo	255	0.7
	Mahimahi (dolphin fish)	237, 238	0.7

(5) Section 611.50(a) is amended by *adding* between the words "fishing" and "conducted", the phrase "for pelagic armorheads and alfonsins".

[FR Doc. 79-18956 Filed 6-14-79; 8:45 am]

BILLING CODE 3510-22-M

OFFICE OF MANAGEMENT AND BUDGET

Improving Government Regulations; OMB Directives Covered by Executive Order 12044; Semiannual Agenda of Upcoming Action

June 8, 1979.

AGENCY: Office of Management and Budget.

ACTION: Publication of semiannual agenda of regulations.

SUMMARY: The Office of Management and Budget is publishing the semiannual agenda of upcoming action on OMB directives covered by Executive Order 12044, Improving Government Regulations. This action is in accordance with OMB's internal guidelines for implementing Executive Order 12044, as published in the Federal Register on February 28, 1978.

FOR FURTHER INFORMATION CONTACT: See agency contact person listed for each entry in the agenda, c/o Office of Management and Budget, 726 Jackson Place, N.W., Washington, D.C. 20503.

James T. McIntyre, Jr.,
Director.

Office of Management and Budget Agenda for Upcoming Actions on OMB Directives

Directive under development	Opportunity for public participation	Completion date	Reasons for review and major issues
Revision of Federal Management Circular 73-8, "Cost principles for educational institutions."	1. Draft of revised Circular published in FEDERAL REGISTER March 10, 1978. 2. Approximately 300 comment letters received from Members of Congress; Federal agencies; university administrators; faculty members, professional associations, and members of the public. 3. During December special briefings on a final draft of the Circular were held with university representatives, Federal agencies, and congressional staff members. These meetings were open to the public.	Revised Circular issued as Circular No. A-21 on Mar. 6, 1979 (rather than January 1979 as previously anticipated.	1. Circular is being revised at the urging of Congress to clarify existing cost principles in order to "bring spiraling indirect cost rates under control" and on recommendations for changes suggested by the Department of Health, Education, and Welfare. 2. Major issues— ● Adequate documentation of personnel costs. ● Paperwork burden imposed by accountability requirements. ● Methods of allocating indirect costs. *Contact Person:* John J. Lordan, Financial Management Branch(202), 395-[illegible]
Revision of Circular A-40, "Management of Federal Reporting Requirements." This Circular sets forth the requirements for seeking OMB approval for reporting and recordkeeping requirements.	1. Comments on issues may be received at any time. 2. Publication of proposed circular, June 1979, rather than March, as previously reported.	August, rather than June 1979, as previously reported.	Circular A-40 is being reviewed in order to reorganize, update, and clarify the existing circular. The circular is based on the Federal Reports Act of 1942. 1. Should guidelines of President's reporting burden reduction program or significant portions of them be incorporated into the circular? 2. Should circular be tested in subject matter to public reporting? 3. Are all terms defined? Are definitions clear? *Contact Person:* Stanley Morris, Regulatory Policy and Reports Management, 395-[illegible]

BILLING CODE 3510-22-C

Office of Management and Budget Agenda for Upcoming Actions on OMB Directives—Continued

Directive under development	Opportunity for public participation	Completion date	Reasons for review and major issues
Revision of Circular No. A-108, "Responsibilities for the maintenance of records about individuals by Federal agencies."	1. Comments on issues may be submitted at any time. 2. Proposed revisions will be published in the FEDERAL REGISTER and circulated to interested parties for comment.	September, rather than July 1979, as previously reported.	Circular No. A-108 was issued pursuant to the Privacy Act of 1974, for which OMB has oversight responsibility. This review is part of the Presidential Privacy Initiative, undertaken in response to the recommendations of the Privacy Protective Study Commission. Specific issues to be reviewed are: 1. Extension of the applicable provisions of the Act to certain recipients of discretionary Federal grants. 2. Strengthening the administration of the routine use provision of the Privacy Act. 3. Assignment of Privacy Act oversight and development of new information systems to one office in each department and agency. 4. Establishment of guidelines on the responsibility, training and appointment of the system managers required by the Act. 5. Adoption of mechanisms to improve oversight of the privacy implications of new Federal information systems at an early stage in the planning process; and 6. Promulgation of baseline standards for Federal regulations which require private sector recordkeepers to report personal information about their clients, customers, or employees to the government. It should be noted that OMB carries out its Privacy Act oversight through guidelines as well as Circular A-108. The issues listed above may be addressed in guidelines rather than Circular A-108. Public comment will be sought on any revision or additions to the guidelines. *Contact Person:* Leslie Greenspan, Information Systems Policy, 395-3785.
Revision of Circular A-106, Reporting Requirements in Connection with Federal Compliance with Pollution Control Standards. This circular sets forth the procedures to be followed by Federal agencies in carrying out the provision of Sections 1-4 and 1-5 of Executive Order No. 12088 pertaining to the control of pollution from Federal facilities.	1. Comments may be received at any time.	September rather than May 1979, as previously reported.	Circular 1-106 is being reviewed to clarify the procedures that must be followed by Federal agencies in controlling pollution at Federal facilities pursuant to Executive Order 12088. 1. Are the requirements for agency information on pollution control clear? 2. Does the schedule for agency reporting allow sufficient time for project review? 3. Does the schedule for reporting insure that all projects that are needed will be included? 4. Are the information requirements for EPA's evaluation of agency proposals clear and adequate? *Contact Person:* Kathleen O'Halloran, Natural Resources, 395-6227.
Revision of OMB Circular No. A-102, "Uniform administrative requirements for grants-in-aid to State and local governments".	Proposed revision was published for comment in the FEDERAL REGISTER on October 18, 1978.	July, rather than May 1979, as previously reported.	1. Proposed revision will bring the circular into line with Treasury requirements. 2. Major issue— ● Whether to reimburse recipients only for amounts which have been actually been paid to contractors. *Contact Person:* John J. Lordan, Financial Management Branch/GRD, 395-6823.
Revision of OMB Circular No. A-102, "Uniform Administrative Requirements for Grant-in-Aid to State and Local Governments" to call for coordinated audits, and to incorporate a standard audit guide.	1. Comment by Federal agencies requested on December 6, 1978. 2. Publication for comment in the FEDERAL REGISTER expected in July, rather than in April, 1979 as previously reported.	September rather than May, 1979, as previously reported.	1. Continuation of the long-term goal of grant standardization, and placing greater reliance on State and local governments. 2. Major issues— ● One guide would replace almost one hundred now in use. ● Emphasis on total audit of an organization, rather than grant by grant audits. *Contact Person:* John J. Lordan, Financial Management Branch/GRD, 395-6823.
Revision of Procurement Standards attachment to OMB Circular No. A-102, "Uniform Administrative Requirements for Grants-In-Aid to State and local Governments."	1. Public meeting held on January 16, 1979. 2. Published for comment in the FEDERAL REGISTER on December 6, 1978.	June rather than May 1979, as previously reported.	1. Attachment being revised to reduce administrative cost, paperwork, and other factors which contribute to inefficiency and delay in implementing programs. 2. Major issues— ● Rescinds nonconforming provisions of current agency subordinate regulations. ● Creates a grantee procurement review certification program to reduce Federal agency review of individual procurement. *Contact Person:* Jack Nadel, Office of Federal Procurement Policy, 395-6196.

Office of Management and Budget Agenda for Upcoming Actions on OMB Directives—Continued

Directive under development	Opportunity for public participation	Completion date	Reasons for review and major issues
Revision of Federal Management Circular No. 74-4, "Cost principles applicable to grants and contracts with State and local governments."	1. Proposed revision concerning expenses of officials has been circulated for comment to all the major public interest groups. 2. Extensive discussions on the interest issue have taken place with State and local officials and representatives of public interest groups. 3. Publication for comment in the FEDERAL REGISTER is expected in June 1979; however, publication of the interest issue is dependent upon comments received from Federal agencies.	October rather than April 1979, as previously reported.	The circular is being revised at the request of State, local and Federal officials. *Major issues*— 1. Whether to recognize travel cost of local legislators and chief executives as an expense when their work directly benefits grant programs. 2. Whether to recognize interest incurred in borrowing to construct building site as a reimbursable cost. *Contact Person:* John J. Lordan, Financial Management, 395-6823.
Revision of OMB Circulars No. A-102 and A-110 to include a set of standard legal assurances for grants to State and local governments, universities, hospitals, and other nonprofit organizations.	Publication for comment in the FEDERAL REGISTER expected in July, rather than February 1979, previously reported.	October, rather than May 1979, as previously reported.	1. Update of assurances in OMB Circular No. A-102 is needed because of the changes that have taken place in Executive Orders and Acts of Congress. Inclusion of standard assurances in OMB Circular No. A-110 will further the goal of standardization and simplification for grantees. 2. Major issue— ● Standardization of assurance language, assurance formats and forms. *Contact Person:* John J. Lordan, Financial Management Branch/SRD, 395-6823.
A new OMB circular covering "Principles for determining costs of grants and contracts with certain non-profit organizations."	1. Proposed circular was published for comment in the FEDERAL REGISTER on April 28, 1977. 2. Recirculated to Federal agencies and interested parties in October 1978.	July rather than February 1979, as previously reported.	1. Proposed Circular was developed to assist nonprofit agencies by providing single set of cost principles as part of Federal effort to standardize and simplify grant procedures. 2. Major issues— ● Methods of allocating indirect costs. ● Uniform set of allowable costs. *Contact Person:* John J. Lordan, Financial Management Branch/SRD, 395-6823.
Revision of Circulars A-102 and A-110	Publication for comment in the FEDERAL REGISTER expected in July 1979.	October 1979	1. Closeout attachment being revised as the result of reports that substantial amounts of funds advanced to grantees but not spent for program purposes are being held by grantees. 2. Major issues— ● Prompt refund of unspent cash advances. ● Greater specificity of closeout requirements. *Contact Person:* John J. Lordan, Financial Management Branch/SRD, 395-6823.
Revision of Circular A-110, "Uniform Administrative Requirements for grants and agreements with universities, hospitals, and other nonprofit organizations."	Publication for comment in the FEDERAL REGISTER expected in September 1979.	December 1979	Property management attachment is being revised to make it consistent with Circular A-21 and to further the goal of simplification of grant requirements and reduced paperwork. *Contact Person:* John J. Lordan, Financial Management Branch/SRD, 395-6823.
Revision of Circular A-73, "Audit of Federal Operations and Programs."	Proposed revision will be published in the FEDERAL REGISTER for comment in June 1979 and circulated to interested parties for comment.	August 1979	Circular A-73 will be revised to expand the section dealing with audit followup. Specific criteria will be provided Federal agencies to assure the timely and proper resolution of audit findings and any attendant collection actions. *Contact Person:* John J. Lordan, Financial Management Branch/SRD, 395-6823.
Revision of Circular 73-8,"Coordinating indirect cost rates and audits at educational institutions."	Proposed revisions will be published in the FEDERAL REGISTER for comment in June 1979.	October 1979	1. Circular will be released under its original designation of OMB Circular A-88. 2. Proposed revision is based in part on recommendations made by an interagency task force chaired by the Department of Health, Education, and Welfare. 3. The proposed revision would continue the existing policy of relying on a single agency to act for all agencies in auditing educational institutions and in negotiating their indirect cost rates. It would add to those duties the responsibility to followup on audits by: ● Assuring correction of systems deficiencies; and, ● Negotiating appropriate monetary recoveries. *Contact Person:* John J. Lordan, Financial Management Branch/SRD, 395-6823.

[FR Doc. 79-18726 Filed 6-14-79; 8:45 am]
BILLING CODE 6325-01-M

Notices

Federal Register
Vol. 44, No. 117
Friday, June 15, 1979

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Rural Rental Housing Loan Policies, Procedures, and Authorizations; Memorandum of Understanding Between Farmers Home Administration and Administration on Aging

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The Farmers Home Administration (FmHA), gave Notice on May 18, 1979, of the selection of the 10 counties for participation in the Joint FmHA and Administration on Aging (AOA) demonstration effort to provide congregate housing projects with adequate support services in rural areas. This Notice extends the timetable by seven days for submission in final form of all preapplication to the FmHA State Director and also extends by seven days the timetable for complete review and submission of the preapplication to the FmHA National Office by the FmHA State Director.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Conn, telephone: 202–447–7207.

SUPPLEMENTARY INFORMATION: On May 18, 1979, FmHA published in the Federal Register (44 FR 29181) a Notice of the selection of the 10 counties for participation in the Joint Farmers Home Administration and Administration on Aging's demonstration effort to provide congregate housing projects with adequate support services in rural areas. In an effort to provide additional time for the preparation of all applicant proposals and subsequent review by the FmHA and the AOA, the date for submission of all preapplciations in final form to the FmHA has been extended from June 15 until June 22, 1979, and the date for submission of all recomended preapplications to the National Office for review by FmHA and AOA has been extended from June 80 until July 6, 1979. These two changes reflect the only changes in the Notice of May 18, 1979.

(42 U.S.C. 1480; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.279)

Dated: June 12, 1979.

Gordon Cavanaugh,
Administrator, Farmers Home Administration.

[FR Doc. 79-18807 Filed 6-14-79; 8:45 am]
BILLING CODE 3410-07-M

Food and Nutrition Service

Child Nutrition Program; Income Poverty Guidelines for Determining Eligibility for Free and Reduced-Price Meals and Free Milk

Pursuant to sections 9 and 17 of the National School Lunch Act, as amended (42 U.S.C. 1785 and 42 U.S.C. 1766), and sections 3 and 4(e) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1772 and 1773(e)), the income poverty guidelines for determining eligibility of children for free and reduced-price meals in the National School Lunch Program (7 CFR Part 220), Child Care Food Program (7 CFR Part 226), and commodity only schools (7 CFR 210.15(a)) and for free milk in the Special Milk Program (7 CFR Part 215) during the period July 1, 1979–June 30, 1980 are prescribed by the Secretary in the following tables.

Under the legislation and applicable regulations, schools and institutions which charge for meals separately from other fees are required to serve free meals and free milk to all children from families whose incomes are at or below 25 percent above the applicable family size income level indicated by the Secretary's guidelines. Schools and institutions which charge for meals separately from other fees are required to serve reduced-price meals to all children from families whose incomes are at or below 95 percent above the applicable family size income level in the guidelines.

Each state agency is required to prescribe income guidelines for both free and reduced-price meals and free milk by family size for use by schools and institutions in the State. The State guidelines for free meals and for free milk must be 25 percent above the applicable family size income level prescribed by the Secretary. The State guidelines for reduced-price meals must be established at 95 percent in excess of the Secretary's guidelines.

For the convenience of State agencies, the tables also show the Secretary's income poverty guidelines when increased by 25 percent and when increased by 95 percent. The increased figures represent the levels to be prescribed by State agencies in determining eligibility for free meals and free milk, and the mandatory levels for reduced-price meals, respectively. The Secretary's guidelines, when increased by 25 percent, shall be the prescribed level for free meals and free milk. Guidelines for the Island of Guam are identical to those established for the State of Hawaii.

Income Poverty Guidelines July 1, 1979—June 30, 1980

Family size	Secretary's guidelines	Guideline levels when increased by 25 pct	Guideline levels when increased by 95 pct
48 States, District of Columbia, Territories Excluding Guam			
1	[illegible]	[illegible]	[illegible]
2	4,880	6,040	9,420
3	5,900	7,400	11,500
4	7,150	8,940	13,940
5	8,310	10,390	16,200
6	9,470	11,840	18,470
7	10,630	13,290	20,730
8	11,790	14,740	22,990
Each additional family member	1,160	1,450	2,260
Alaska			
1	4,580	5,740	8,950
2	6,040	7,550	11,780
3	7,490	9,360	14,610
4	8,940	11,180	17,430
5	10,390	12,990	20,260
6	11,840	14,800	23,090
7	13,290	16,610	25,900
8	14,740	18,430	28,740
Each additional family member	1,450	1,810	2,830
Hawaii and Guam			
1	4,240	5,300	8,270
2	5,570	6,960	10,860
3	6,900	8,630	13,460
4	8,230	10,290	16,050
5	9,560	11,950	18,640
6	10,890	13,610	21,240
7	12,220	15,280	23,830
8	13,550	16,940	26,420
Each additional family member	1,330	1,660	2,590

The Secretary's income poverty guidelines are determined by adjusting the nonfarm income poverty guidelines prescribed by the Office of Management and Budget to reflect the change between the 1978 average of the Consumer Price Index of March 1979. As specified in Section 8 of Public Law 95–627, the most current procedures of the office of Management and Budget are used to make this adjustment for price level changes and to make necessary adjustments to determine guidelines applicable to Hawaii, Guam, and Alaska.

"Income", as the term is used in this notice is similar to that defined in the Bureau of the Census report, "Characteristics of the Low-Income Population: 1971," Current Population Reports, series P–60, No. 86, December 1972. "Income" means income before deductions for income taxes, employees' social security taxes, insurance premiums, bonds, etc. It includes the following:

(1) Monetary compensation for services, including wages, salary, commissions, or fees; (2) net income from nonfarm self-employment; (3) net income from farm self-employment; (4) social security; (5) dividends or interest on savings or bonds, income from estates or trusts, or net rental income; (6) public assistance or welfare payments; (7) unemployment compensations; (8) Government civilian employee, or military retirement, or pensions or veterans' payments; (9) private pensions or annuities; (10) alimony or child support payments; (11) regular contributions from persons not living in the household; (12) net royalties; and (13) other cash income. Other cash income would include cash amounts received or withdrawn from any source including savings, investments, trust accounts, and other resources which would be available to pay the price of a child's meal.

"Income", as the term is used in this notice, does not include any income or benefits received under any Federal program which are excluded from consideration as income by any legislative prohibition, for example, income received by volunteers for services performed in the National Older Americans Volunteer Program as stipulated in the Domestic Volunteer Services Act of 1973, Public Law 93–113, Title IV, c 418 (87 Stat. 413, 42 U.S.C. 5058); nor does the term include income used for the following special hardship conditions which could not be reasonably anticipated or controlled by the household:

(1) Unusually high medical expenses; (2) shelter costs in excess of 30 percent of income as defined herein; (3) special education expenses due to the mental or physical condition of a child; and (4) disaster or casualty losses. Furthermore, the value of assistance to children or their families shall not be considered as income if prohibited by the authorizing legislation, e.g., the National School Lunch Act, the Child Nutrition Act of 1966, and the Food Stamp Act of 1964.

In applying guidelines, school food authorities may consider both the income of the family during the past 12 months and the family's current rate of income to determine which is the better indicator of the need for free and reduced-price meals; *Provided, however,* That children whose parents or guardians become unemployed shall be eligible for free or reduced-price meals or free milk during the period of unemployment, if the loss of income causes the current rate of family income to be within the eligibility criteria of the school food authority.

Effective date: This notice shall become effective July 1, 1979.

Dated: June 11, 1979.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 79-18838 Filed 6-13-79; 8:45 am]

BILLING CODE 3410-30-M

Rural Electrification Administration

Development of Direct Buried Field Splice Closures for Buried Telephone Cables

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice.

SUMMARY: The Rural Electrification Administration (REA) is notifying interested parties that funds are available for the partial financing of a research and development project to develop and make available on the market a direct burial splice closure for buried telephone cable that will:

1. Eliminate damage from direct exposure to rain, snow, ice, storms, floods, temperature extremes, sunlight and minimize damage from other natural forces;

2. Be dependable and craftible; and

3. Eliminate much of the need for above-ground pedestals, which have high maintenance cost and are a form of visual pollution.

The notice outlines the type of proposal the REA is particularly interested in funding and sets forth the basic standards which will be used in determining which proposal if any, will ultimately be funded by the REA.

Dated: June 12, 1979.

Joseph Vellon,

Acting Administrator.

NOTICE: Notice is hereby given that, in accordance with all applicable laws and regulations, applications will be accepted from all interested and eligible parties for a grant to partially fund the development of a direct buried field splice closure system for buried telephone cable.

Background

The Rural Electrification Administration (REA) is a federal lending agency which finances electric and telephone facilities in rural areas. The REA was established on May 11, 1935, by Executive Order of the President as an emergency relief program. Statutory authority was provided by the Rural Electrification Act of 1936, which established REA as a lending agency with responsibility for developing a program for rural electrification. On October 28, 1949, amendment to the Act authorized REA to make loans to improve and extend telephone service in rural areas.

Telephone loans may be made to telephone companies, to public bodies and to cooperative nonprofit, limited-dividend or mutual associations. The agency also provides engineering and management assistance to its borrowers. Under Section 11 of the Rural Electrification Act and under the Federal Grant and Cooperative Agreement Act of 1977, the Administrator is authorized to make such expenditures as are appropriate and necessary to carry out the provisions of the Rural Electrification Act.

It has been determined by appropriate telephone program officials that there is a need to assist REA telephone borrowers by stimulating the industry in perfecting a buried telephone cable splice closure system. Although there have been significant advances made in the field of direct buried cable design and methods of construction, there has been no comparable advancement in the development of splice closures either above or below ground.

In recent years the public has been demanding a buried cable splice closure that would be more pleasing in appearance or, better yet, "out of sight." The ideal closure should reduce damage from exposure to the elements, resist damage from vandalism, and should not be a source of visual environmental

pollution. At the same time, it is important that these features be provided without a significant increase in cost.

Currently known direct burial splice cases are unreliable due primarily to craftibility problems. For this reason telephone companies have relied on using above ground pedestals for splice protection, regardless of their higher overall initial installation cost, unsightly appearance, high trouble rates and vulnerability to vandalism.

In an effort to assist its telephone borrowers in providing better service to their customers, REA needs to take a leadership role in the development of an improved direct burial splice closure that will be dependable and craftible. The availability of such an item would result in direct savings to REA borrowers since both initial installation cost and maintenance costs would be greatly reduced.

REA is unable to develop this splice closure "in-house" due to a lack of research personnel and the necessary research and development facilities.

Therefore, a total of $180,000 has been made available for a grant to an eligible and capable state or local agency, nonprofit institution, university, or other public or private organization to partially fund the cost of developing, testing and proving the craftibility and marketability of the buried splice case. Proposals submitted in response to this notice should include in the budget outline the amount and sources of funding to be made available by the prospective grantee in support of the project.

Objectives and Outline

The objective of this project is the design of an improved direct burial splice closure that will:

1. Eliminate damage from direct exposure to rain, snow, ice, steams, floods, temperature extremes and sunlight, and minimize damage from other natural forces;

2. Be dependable and craftible; and

3. Eliminate much of the need for above ground pedestals, which have high maintenance cost and are a form of visual pollution.

The design and development of the splice case shall be in conformance with the following requirements and performance specifications:

1. The completed closure shall meet all requirements in REA Specification PE-74 (copies available from REA on request). In addition, the closure should meet other listed requirements contained herein.

2. The closure series shall accept cables from 0.2" to 4" outside diameter.

3. The closures series shall allow for straight, branch and butt splice configurations. These are deined as follows:

Straight—An opening is provided for only one cable to enter each end of the closure.
Branch—Openings are provided for two cables to enter each end of the closure.
Butt—Openings are provided such that two or more cables enter one end of the closure and no cables enter the other end of the closure.

Note: All splice closure shall be capable of accommodating at least 4 buried service wires.

4. The closure shall have optional provisions to accommodate single or double jacketed cable or a mixture of both.

5. The closure must be fire retardant and not emit toxic fumes if scorched or burned.

6. The closure together with its filling compound shall exclude moisture from the splice bundle.

7. Assembly of the splice case shall be a one-man operation. Special training of over 2 hours shall not be required for a telco craftsperson to assemble the closure.

8. The splice closure kit shall contain all materials that will be needed to close the splice. This should include all tapes, mechanical strength bars, fasteners, etc. All materials called for in the installation instructions must be included in the kit, with the exception of telco standard shield bonding connectors and harnesses.

9. No external heat or power sources shall be needed for assembly.

10. The use of specialized tools or equipment not normally at the craftsperson's disposal should be avoided, unless justifiable by the overall cost of the system, or for protection from tampering.

11. The final closing of the closure shall use a minimal number of screws, bolts or locking devices. The tightening shall not be critical as to sequence and torque.

12. The completed closure must meet the corrosive test requirements in the specifications mentioned above.

. The closure must be rodent proof and resistant to environmental damage.

14. The splice case design shall permit the use of cable shield bonding clamps and harnesses of the types and conductivity complying with REA Specification PE-33.

15. The closure must be rigid. When a uniform distributed weight of 200 pounds is placed on the upper rigid surface of the closure for 15 minutes, the diameter of the closure must not deform more than 10 percent at both −18° C and +38° C. The encapsulant or filling compound shall not fracture.

16. If the closure design is based on the use of inside-out filling materials, it is desirable, but not essential, that it form a watertight seal with the cable jacket and with itself if split halves or screw on types are used. If it uses an outside—in filling material, then a watertight seal at the cable jacket is a requirement.

17. The filling material must be chemically compatible with all splicing connectors shown in the "REA List of Materials" as well as cable filling and floodent materials covered in REA Specifications PE-39 and PE-52.

18. The filling compound must also be chemically compatible with the cable conductor insulations and cable jackets of REA Specification PE-39.

19. Buried splice closures for use with feeder cable, distribution cable junctions, or service entrance junctions shall be re-enterable. Re-enterability shall not require solvents for the filling compound. Access to center pairs should not require a longer period of time than the original filling operation.

20. Except as outlined in Paragraph 18, the filling compound shall adhere to outer cable jackets covered in REA Specification PE-39.

21. The filling compound shall not be two or more parts, requiring field mixing. It should not become rigid and must be able to be applied between −18°C and 50°C use metric without external heat.

22. How well the cable filling compound has been cleaned from conductors shall not be critical to splice case performance.

23. A chart shall be set up relating closure size to recommended cable size. When using the largest size cable recommended for a closure, the complete conductor splice bundle (including splice locator if used) shall not occupy more than 75 percent of the splice closure working volume.

Note: A splice locator is not part of the closure design.

24. The splice closure shall be clearly marked as to the manufacturer, model number and date of manufacture.

25. Clear and concise installation instructions shall be included.

26. Methods of testing the completed splice, from wire connection to completed splice shall be included in the instructions.

27. A Material Safety Data Sheet regarding the filling compound must be submitted to REA for review and all packaging shall be properly labeled as

to any safety precautions required when using the compound.

Craftability Test

The splices closure must pass craftability testing as follows:

Ten splice are to be completed by ten different craftspersons selected by REA, using only the instruction sheets provided with the splice kits. Splice kits shall be forwarded by the Grantee to addresses provided by REA.

These completed closures shall then be tested in accordance with selected tests outlined specified in Item 20 above.

Upon passing the craftability test, the Grantee will be required to test the ten (10) completed closures against the design and development requirements and performance specifications outlined in above.

Application Procedures

An original and two copies of the application for a grant shall be submitted on Form AD-623, "Application for Federal Assistance (Non-Construction Programs)." Copies of this Form may be obtained from:

Contracting Officer, Rural Electrification Administration, U.S. Dept. of Agriculture, Room 4024 South Agri. Bldg., Washington, D.C. 20250, Phone (202) 447-8140.

The completed application must be received at the above address no later than 45 days after publication of this notice.

Applications should include:

1. Project Summary (See Below)
2. Project Description (See Below)
3. Location where project will be conducted
4. Time schedule for completion
5. Capability of the applicant to conduct the project, based on:
   a. Qualifications of staff;
   b. Availability of necessary facilities, staff and other resources; and
   c. Previous experience in similar projects.
6. Budget statement, in detail, for entire grant period, including funds to be used other than approved grant funds.
7. Provisions for submitting a final report to REA which:
   a. Outlines the results of the project;
   b. Explains how the objectives were met;
   c. Includes copies of printed materials and other by-products of the project; and
   d. Provides a financial statement showing amount actually expended under each budget heading listed in the original project plan.

Project Summary

The Project Summary should be one or two pages long and should focus on overall objectives and goals, relevance and significance of the project and the applicants approach to the project.

The Project Summary is not intended for publication, so it should be written in language which will be meaningful to others in the field of telecommunications.

Project Description

The project summary should be followed by a more detailed statement of the research to be undertaken and how it will relate to the program objectives. Such a statement should include:

objectives and expected significance; relation to the present state of knowledge in the field and to previous work done on this project and to related work in progress elsewhere; and a bibliography of pertinent literature. A description of experimental methods and procedures should be included. Brevity is desirable, but not at the sacrifice of important information needed for evaluation. To the extent possible, the project description should conform to the following outline:

1. *Introduction.* State the overall objectives, review the most significant previous work and describe the current status of research in the field of buried splice closures.

2. *Rationale.* Present concisely the rationale behind the proposed plan. Discuss any novel ideas or extra contributions expected, if any.

3. *Methodology.* Give details of the development plan, including a description of the experiments or other work proposed; methods and techniques to be employed; the kinds of results expected; and the means by which the data will be analyzed and interpreted. Include a discussion of problems that might be encountered. Point out any procedures, situations or materials that may be hazardous to personnel and the precautions to be exercised. Indicate a tentative schedule for the completion of the project.

4. *Facilities and Equipment.* Describe the facilities available for this project. List major items of instrumentation and equipment which will be made available for the necessary design, testing and other research and development activities.

5. *Collaborative Arrangements.* If the proposal requires collaboration with other organizations, describe the extent of collaboration and provide evidence to assure application reviewers that the organizations involved are in agreement.

Proposal Review and Evaluation

Proposals received as a result of this notice will be evaluated for technical excellence by an ad hoc committee in REA consisting of individuals who are considered expert in the field of telecommunications systems. Proposals will also be reviewed by members of the Management Services Division Staff to assure conformance with government-wide grant policies. Applicants who have not previously done so must furnish the basic organizational information and assurances prescribed in Appendix I.

Applications (proposals) will be evaluated under the following criteria:

1. Technical excellence of the proposal, including the suitability and feasibility of the proposed approaches and methodology
2. Probable effectiveness in achieving the project objectives
3. Qualifications of the project leader and other assigned personnel
4. Adequacy of available or obtainable facilities, equipment, instrumentation and technical support.

Grant Award and Administration

The proposal judged most meritorious under the above criteria will be awarded a grant not to exceed one hundred thousand dollars ($100,000). In order to provide optimum freedom for research and development activities, the grant will be awarded under terms and conditions which are as minimal and flexible as possible, consistent with the need to ensure that Federal funds are wisely spent for the intended purposes. The grant will be administered under the provisions of OMB Circular A-102 or A-110, with necessary modifications and additional general provisions as negotiated.

Patent Rights

The following patent provisions will apply to any grant awarded as a result of this notice:

The rights to any patentable items, processes or inventions resulting from this grant will accrue to the grantee. However, the Government shall reserve a royalty-free, non-exclusive license to such items, processes or inventions for Government purposes. Furthermore, since the primary purpose of this grant is to stimulate the industry for the benefit of REA borrowers, the Grantee, as holder of these patent rights, agrees to license other interested capable manufacturers, at a reasonable fee, to manufacture and market such patented

items required to assure the availability of the closure system on the open market.

The Rural Electrification Administration expects to announce the recipient and the amount of grant award, if any, within seventy-five (75) days after publication of this notice.

Appendix I

Organizational Information and Assurances

A. Federal Standards.

1. OMB standards. Although not specifically applicable to research support under grants, Subpart 1–1.12 of the Federal Procurement Regulations (FPR) establishes the policy that contracts shall be awarded only to responsible prospective contractors. It prescribes minimum standards and requires acceptable evidence of a contractor's ability to obtain equipment, facilities, and personnel. Comparable standards applicable to colleges and universities, hospitals, and other quasi-public and private nonprofit organizations are contained in three attachments to OMB Circular A–110. These are:

F—Standards for Financial Management Systems,
O—Procurement Standards, and,
N—Property Management Standards.

2. Title VI of the Civil Rights Act of 1964. Title VI of the Civil Rights Act of 1964 provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federeal financial assistance. A USDA regulation implementing this requirement is published at 7 CFR Part 15, Subpart A. Every submitting organization is required to have an Assurance of Compliance (see format below) on file with REA before a grant may be made to that organization.

Prospective grantees may reproduce the Assurance of Compliance format. The "applicant" referred to in the form is the organization itself whose Chief Executive Officer or comparable official should sign the Assurance. The name and title of the organization and of the official should be typed on the form. The signed original should be mailed as in 3, below. Once a properly executed form has been filed with REA, it will cover all future proposals to REA. Acceptance of a subsequent grant constitutes affirmation that the Assurance of Compliance will be fully applicable to the grant.

B. Prospective Grantee Organizational Information.

The following information is to be submitted: (a) The commonly-used name of the organization, together with the legal (registered) name, if different, and mailing address.

(b) Organization type. Indicate the organizational type, e.g., private university, etc. If a U.S. college or university, show the Federal Interagency Committee on Education (FICE) code and category of control or affiliation as shown in the most recent DHEW Education Directory of Colleges and Universities.

(c) Federal Employer Identification No. Employer identification number as assigned by Internal Revenue Service.

(d) Congressional District.

(e) Organization Affiliations. Describe relationship of the organization to a parent organization or to subsidiaries or other affiliates. If the organization is a successor in interest to a predecessor or if changes in organizational affiliation are anticipated, describe briefly.

(f) Statement of Purposes and Powers. Enclose an official or published statement of the major purposes of the organization and certify as required in C, below, as to the powers which have been granted to it to enter into contractual relationships and/or to accept grants (e.g., articles or incorporation, terms of reference, or by-laws).

(g) Key officials. List the name, title, address, and telephone number of the following officials and their alternates (if any):

(1) Chief Executive Officer;

(2) Authorized Organizational Representative; and

(3) Business Officer.

(h) Affiliations of Key Officials. If the organization is other than a college or university or a State of local government, indicate whether or not each official listed in (g) above is affiliated with any Federal, State, or local agency or with any college or university. If so, describe such affiliation.

(i) Whether or not the organization currently is a grantee or contractor of any component of the U.S. Department of Health, Education, and Welfare.

NOTE—This information will assist in implementing certain interagency procedures for which DHEW is the lead agency.

(j) A copy of the most recent indirect cost agreement negotiated between the organization and some Federal agency or, if lacking such an agreement, an indirect cost rate proposal.

(k) If other than a college or university or a State or local government, also submit the following:

(1) A certified statement of financial condition covering at least the preceding 2 years; and

(2) Bank or other references.

C. Required Certifications.

In addition to the basic information described above, REA requires that a prospective grantee organization submit a certification substantially as follows, signed by the Chief Executive Officer or authorized organizational representative:

(a) I certify that (name of institution or organization) has legal authority to accept grants as evidenced by the attached (describe document), and the requisite policies, procedure, and personnel to ensure stewardship of Federal funds and management of Federally supported projects, specifically including standards for financial management, procurement, and property management, which meet those described in Attachments F, O, and N to OMB Circular A–110 (Note: in the event this is not the case, list exceptions and provide a realistic estimate of when such standards might be met.)

(b) Each proposal will be consistent with the policies and goals of ———— and will be submitted in accordance with its procedure and pursuant to appropriate authority.

(c) In the event that a grant is awarded as a result of any such proposal, I agree that ———— will:

(1) Make available the necessary facilities, equipment, services, and personnel to conduct the project substantially as outlined in the proposal or such modifications thereof as may be mutually agreed;

(2) Conduct such project oversight as may be appropriate, manage the Federal funding with probity and prudence, and comply with the terms and conditions of the grant; and

(3) Comply with applicable laws and regulations.

(d) I further affirm that the "Assurance of Compliance with Department of Agriculture Regulations under Title VI of the Civil Rights Act of 1964," attached, will be fully applicable to any such grants.

_____
(Signature.)

_____
(Typed name and title.)

_____
(Date.)

Assurance of Compliance With the Department of Agriculture Regulations Under Title VI of the Civil Rights Act of 1964

_____ (hereinafter called the "Applicant") hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 and all requirements imposed by or pursuant to the Regulations of the Department of Agriculture, 7 CFR Part 15, Subpart A, issued pursuant thereto, to the end that, in accordance with Title VI of that Act and the regulations, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department of Agriculture; and hereby gives assurance that it will immediately take any measures necessary to effectuate this agreement.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Department, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in the assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf the Applicant.

Dated: _____

_____

(Applicant.)

By _____

(Signature of director, administrative-technical representative or research coordinator.)

_____

_____

_____

(Applicant's Mailing address.)

[FR Doc. 79-18731 Filed 6-14-79; 8:45 am]

BILLING CODE 3410-15-M

CIVIL AERONAUTICS BOARD

Compania de Aviacion "Faucett," S. A.; Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed under Subpart Q of the Board's Procedural Regulations

Notice is hereby given that, during the week ended CAB has received the applications listed below, which request the issuance, amendment, or renewal of certificates of public convenience and necessity or foreign air carrier permits under Subpart Q of 14 CFR Part 302.

Answers to foreign permit applications are due 28 days after the application is filed. Answers to certificate applications requesting restriction removal are due within 14 days of the filing of the application. Answers to conforming applications in a restriction removal proceeding are due 28 days after the filing of the original application. Answers to certificate applications (other than restriction removals) are due 28 days after the filing of the application. Answers to conforming applications or those filed in conjunction with a motion to modify scope are due within 42 days after the original application was filed. If you are in doubt as to the type of application which has been filed, contact the applicant, the Bureau of Pricing and Domestic Aviation (in interstate and overseas cases) or the Bureau of International Aviation (in foreign air transportation cases).

Subpart Q Applications

Date filed	Docket No.	Description
June 5, 1979	35755	Compania de Aviacion "Faucett," S. A., c/o John S. Lowe, Esq., Rhoads and Lowe, 1211 Connecticut Avenue, N.W., Washington, D. C. 20036. Application of Compania de Aviacion "Faucett," S.A. pursuant to section 402 of the Act for amendment of its foreign air carrier permit so as to: a. Add thereto authority: To engage in scheduled foreign air transportation with respect to persons between Iquitos (Peru), the intermediate point Panama City, Panama, and the terminal point Miami, Florida; b. Otherwise conform the permit to the terms of the aeronautical agreement between the Republic of Peru and the United States. Answers to the Application due on July 3, 1979.
June 6, 1979	35756	Ozark Air Lines, Inc., Lambert-St. Louis International Airport, St. Louis, Missouri 63145. Application of Ozark Air Lines, Inc. requests the Board pursuant to Section 401 of the Act for amendment of its certificate of public convenience and necessity for Route 107 so as to authorize it to engage in nonstop scheduled air transportation of persons, property, and mail in the following city-pair markets between: Boston — Miami, Fort Lauderdale New York — Miami, Fort Lauderdale, Orlando, Tampa, West Palm Beach Newark — Fort Lauderdale, Orlando, Tampa, Miami, West Palm Beach Philadelphia — Miami, Fort Lauderdale Pittsburgh — Miami, Fort Lauderdale Washington — Miami Indianapolis — Tampa, Fort Lauderdale Cincinnati — Miami Columbus — Fort Lauderdale, Tampa St. Louis — Sarasota, West Palm Beach, Jacksonville, Daytona Answers due on June 22, 1979.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 79-18732 Filed 6-14-79; 8:45 am]

BILLING CODE 6320-01-M

Federal Express Corp.; Application for Tariff-Filing Authority: Pickup and Delivery Zone

June 8, 1979.

In accordance with Part 222 (14 CFR Part 222) of the Board's Economic Regulations, notice is hereby given that the Civil Aeronautics Board has received an application, Docket 35758, from Federal Express Corporation to file tariffs for pickup and delivery service for points beyond 25 miles of the airport being served.

Under the provisions of § 222.3(c) of Part 222, interested persons may file an answer in opposition to this application on or before July 2, 1979. An executed original and nineteen copies of such answer shall be addressed to the Docket Section, Civil Aeronautics Board.

Washington, D.C. 20428. It shall set forth in detail the reasons for the position taken and include such economic data and facts as are relied upon. The answer shall be served upon the applicant and state the date of such service.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-18666 Filed 6-14-79; 8:45 am]

BILLING CODE 6320-01-M

Newark Show-Cause Proceeding

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 79-6-79, Newark Show-Cause Proceeding.

SUMMARY: The Board is proposing, on its own initiative, to grant nonstop authority to any fit, willing and able applicant desiring to serve any domestic or overseas-Newark International Airport market that files an illustrative service proposal within 21 days and whose fitness can be established by officially noticeable data. The Board tentatively found that increased service to Newark is consistent with the public convenience and necessity since the concentration of schedules at other New York Airports has discouraged the use of the Newark Airport by passengers who would otherwise find this Airport comparably or more conveniently located. Further, the Board tentatively determined that this proposal would support the efforts of local and regional planning and airport authorities to promote the use of the underutilized Newark facility as a response to the overcrowding at LaGuardia and Kennedy Airports. Finally, the Board tentatively concluded on the basis of a concurrently published environmental assessment that its proposed action would not be a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the Environemtal Policy Act. The complete text of this order is available as noted below.

DATES: Applications: Any fit, willing and able carrier whose fitness can be established by officially noticeable data on file with the Board may file, and serve on all parties listed below, an application accompanied by an illustrative service proposal for any domestic or overseas-Newark market no later than July 5, 1979.

Objections: All interested persons having objections to the Board issuing the proposed authority shall file, and serve upon all parties listed below, and any affected applicant, no later than July 30, 1979, statements of objections, together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections.

ADDRESSES: Applications, objections or additional data should be filed in Docket 35805, Docket Section, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Susan B. Jollie, Trial Attorney, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; (202) 673-5010.

SUPPLEMENTAL INFORMATION: Applications and Objections should be served upon the Port Authority of New York and New Jersey, the Tri-State Regional Planning Commission, the Mayor of Mewark, New Jersey, and the governor of New Jersey.

The complete text of Order 79-6-79 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, NW., Washington, D.C. Persons outside the metropolitan Washington, D.C., area may send a postcard request for Order 79-6-79 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: June 11, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-18667 Filed 6-14-79; 8:45 am]

BILLING CODE 6320-01-M

[Docket No. 33220]

Yucatan Service Case; Cancellation of Hearing

The hearing set herein for 14 June 1979 (44 FR 24899, 27 April 1979) is cancelled since no party has advised the presiding administrative law judge on or before 8 June 1979 that it wishes to be heard, as required by the notice of hearing.

Dated at Washington, D. C., 11 June 1979.

Rudolf Sobernheim,

Administrative Law Judge.

[FR Doc. 79-18668 Filed 6-14-79; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Special Censuses

The Bureau of the Census conducts a program whereby a local or State government can contract with the Bureau to conduct a special census of population. However, because of the need to avoid conflicts with activities involving the conduct of the 1980 census, no additional special censuses will be conducted during the period from August 1, 1979 to January 1, 1981. The Bureau is, therefore, not accepting requests for cost estimates for special censuses at this time. Beginning in the fall of 1980 the Bureau will resume accepting such requests.

The content of a special census is ordinarily limited to questions on household relationship, age, race, and sex, although additional items may be included at the request and expense of the sponsor. The enumeration in a special census is conducted under the same concepts which govern the decennial census.

Summary results of special censuses are published semiannually in the *Current Population Reports*—Series P-28, prepared by the Bureau of the Census. For each area which has a special census population of 50,000 or more, a separate publication showing data for that area by age, race, and sex is prepared. If the area has census tracts, these data are shown by tracts.

The data shown in the following table are the results of special censuses conducted since June 30, 1978, for which tabulations were completed between April 1, 1979 and April 30, 1979.

Dated: June 12, 1979.

Daniel B. Levine,

Acting Director, Bureau of the Census.

State/place special area	County	Date of census	Population
Alabama: Hamilton city	Marion	January 22	4,999
Arizona: Lake Havasu City	Mohave	January 16	13,524
Arkansas: Diamond City town	Boone	January 16	858
Illinois: Woodridge village	DuPage	August 23	19,997
North Dakota: Washburn city	McLean	January 15	1,745

[FR Doc. 79-18669 Filed 6-14-79; 8:45 am]

BILLING CODE 3510-07-M

1977 Census of Manufactures Supplemental Inquiry of Consumption of Materials, Parts, Containers, and Supplies; Determination

In conformity with title 13, United States Code, sections 193 and 225, and due notice having been published on March 29, 1979 (44 FR 18719), I have determined that the data received from this supplement will provide basic statistical data for use in preparing the input-output tables. These tables provide the benchmark for the regular gross national product estimates. The input-output tables also indicate the intermediate flows of goods and services among industry groups. Knowledge of the intermediate flows of goods and services facilitates the study of the impact of changes in the relative importance of the final markets on various industries and the labor forces. These data are also of importance in the computation of the net output per employee-hour indexes, prepared by the Bureau of Labor Statistics (BLS). (The numerator of these indexes is from the Bureau of Economic Analysis studies of net output and the denominator is from BLS studies of employee-hours.) Additionally, the data will be of use in the development of the new Producer Price Index (formerly the Wholesale Price Index). These data are not available from other governmental or nongovernmental sources.

This survey is a supplement to the 1977 Census of Manufactures and will request supplementary information on materials consumed. Data will be collected from a sample of manufacturing establishments and the selection of establishments will be determined on an industry-by-industry basis. This procedure insures that the reporting burden will not fall on the smaller establishments that generally consume a smaller portion of materials for production purposes.

Copies of the report forms are available upon request to the Director, Bureau of the Census, Washington, D.C. 20233.

I have, therefore, directed this supplement be conducted for the purpose of collecting the data hereinabove described.

Dated: June 12, 1979.

Daniel B. Levine,

Acting Director, Bureau of the Census.

[FR Doc. 79-18681 Filed 6-14-79; 8:45 am]

BILLING CODE 3510-07-M

1977 Census of Mineral Industries Supplemental Inquiry of Supplies Used; Determination

In conformity with title 13, United State Code, sections 193 and 225, and due notice having been published on March 23, 1979 (44 FR 17765), I have determined that the data received from this supplement will provide basic statistical data for use in preparing the input-output tables. These tables provide the benchmark for the regular gross national product estimates. The input-output tables also indicate the intermediate flows of goods and services among industry groups. Knowledge of the intermediate flows of goods and services facilitates the study of the impact of changes in the relative importance of the final markets on various industries and the labor forces. These data are also of importance in the computation of the net output per employee-hour indexes, prepared by the Bureau of Labor Statistics (BLS). (The numerator of these indexes is from the Bureau of Economic Analysis studies of net output and the denominator is from BLS studies of employee-hours.) Additionally, the data will be of use in the development of the new Producer Price Index (formerly the Wholesale Price Index). These data are not available from other governmental or nongovernmental sources.

This survey is a supplement to the 1977 Census of Mineral Industries and will request supplementary information on supplies used. Data will be collected from a sample of mineral establishments and the selection of establishments will be determined on an industry-by-industry basis. This procedure insures that the reporting burden will not fall on the smaller establishments that generally consume a smaller portion of supplies for production purposes.

Copies of the report forms are available upon request to the Director, Bureau of the Census, Washington, D.C. 20233.

I have, therefore, directed this supplement be conducted for the purpose of collecting the data hereinabove described.

Dated: June 12, 1979.

Daniel B. Levine,

Acting Director, Bureau of the Census.

[FR Doc. 79-18682 Filed 6-14-79; 8:45 am]

BILLING CODE 3510-07-M

Economic Development Administration

Petitions by Ten Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing from ten firms: (1) H. Freeman & Son, Inc., 33rd & Arch Streets, Philadelphia, Pennsylvania 19104, a producer of men's suits and coats (accepted June 4, 1979); (2) Columbian Rope Company, 1 Columbian Drive, Auburn, New York 13021, a producer of rope (accepted June 5, 1979); (3) Alps Sportswear Manufacturing Company, Inc., 15 Union Street, Lawrence, Massachusetts 01840, a producer of men's sweaters (accepted June 5, 1979); (4) Renee Manufacturing Company, Inc., 6634 Woodland Avenue, Philadelphia, Pennsylvania 19142, a producer of women's tops, pants and skirts (accepted June 6, 1979); (5) Paterson Cloaks & Suit Company, Inc., 238 Lewis Street, Paterson, New Jersey 07503, a producer of women's coats (accepted June 6, 1979); (6) L. W. Foster Sportswear Company, Inc., Hancock & Westmoreland Streets, Philadelphia, Pennsylvania 19140, a producer of men's suits and sportcoats (accepted June 6, 1979); (7) David Witherspoon, Inc., 901 Old Maryville Pike, P.O. Box 800, Knoxville, Tennessee 37901, a recycler of scrap metal with an affiliate producing steel bars (accepted June 6, 1979); (8) Dante Jewels, Inc., 580 Fifth Avenue, New York, New York 10036, a producer of jewelry (accepted June 7, 1979); (9) Cody Knitting Mill, Inc., 1130 Wyckoff Avenue, Brooklyn, New York 11227, a producer of women's sweaters (accepted June 7, 1979); and (10) Reece Foods, Inc., 336 West Marion Street, Mt. Victory, Ohio 43340, a processor of mushrooms (accepted June 7, 1979).

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93-618) and § 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315).

Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request

a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than June 25, 1979.

Jack W. Osburn, Jr.,

Chief, Trade Act Certification Division, Office of Eligibility and Industry Studies.

[FR Doc. 79-18730 Filed 6-14-79; 8:45 am]

BILLING CODE 3510-24-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1979; Proposed Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Deletion from Procurement List.

SUMMARY: The Committee has received a proposal to delete from Procurement List 1979 a commodity produced by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 18, 1979.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77.

It is proposed to delete the following commodity from Procurement List 1979, November 15, 1978 (43 FR 53151):

Class 7520

Pencil, Mechanical, 7520-00-634-3475

C. W. Fletcher,

Executive Director.

[FR Doc. 79-18873 Filed 6-14-79; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1979; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1979 commodities to be produced by and service to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 18, 1979.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement List 1979, November 15, 1978 (43 FR 53151):

NO NSN

Toothbrush, Aspiration

Class 8445

Belt, Trousers, Cotton Webbing with Clip
8445-01-068-8239
8445-01-068-8340

SIC 7399

Packaging—Canteen Water Disposable, 1-Quart (8465-01-082-6854)

C. W. Fletcher,

Executive Director.

[FR Doc. 79-18874 Filed 6-14-79; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1979; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1979 commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: June 15, 1979.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On March 2, 1979 and April 16, 1979 the Committee for Purchase from the Blind and Other Severely Handicapped published notices (44 FR 11821 and 44 FR 22508) of proposed additions to Procurement List 1979, November 15, 1978 (43 FR 53151).

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

Accordingly, the following commodities are hereby added to Procurement List 1979:

Class 7530

Folder, File
7530-00-286-8571
7530-00-286-7286

Folder Set, File
7530-00-286-7080
7530-00-286-7244
7530-00-286-7253
7530-00-286-7287
7530-00-286-8570

Class 8530

Catheter, Male, External
8530-00-NIB-0001 A
8530-00-NIB-0001B
(Total requirements for Veterans Administration only)

Class 7930

Glass Cleaner, 7930-00-801-5910

C. W. Fletcher,

Executive Director.

[FR Doc. 79-18875 Filed 6-14-79; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Army Department

Intent To Prepare a Draft Environmental Impact Statement for a Proposed Bank Stabilization Permit, Colorado River, near Blythe, Calif.

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. Permit applicant proposes to emplace 4,000 linear feet of rock riprap to stabilize the bank of a 144-acre parcel prior to residential development.

2. Alternatives include no project, or alternative methods of erosion protection such as bulkheading.

3. Scoping Process:

a. Affected Federal, State, and local agencies, affected Indian tribes, and other interested private organizations

and parties are invited to participate. A Draft Environmental Impact Statement will be sent or made available to all interested parties and all comments will be addressed in the Final Environmental Impact Statement.

b. Significant issues include shortage of adequate housing, public recreational access to the Colorado River, and wildlife habitat.

4. No scoping meeting will be held.

5. DEIS estimated to be available to the public 1 July 1979.

ADDRESS: Questions about the proposed action and DEIS can be answered by:

Glenn A. Emigh, Environmental Resources Branch, U.S. Army Corps of Engineers, Los Angeles District, P.O. Box 2711, Los Angeles, California 90053.

Dated: May 18, 1979.

Gwynn A. Teague,
Colonel, CE, District Engineer.

[FR Doc. 79-18880 Filed 6-14-79; 8:45 am]
BILLING CODE 3710-XX-M

Office of the Secretary

Defense Science Board Task Force on Naval Surface Ship Vulnerability; Advisory Committee Meeting

The Defense Science Board Task Force on Naval Surface Ship Vulnerability will meet in closed session on 12 July 1979, The Pentagon, Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

A meeting of the Defense Science Board Task Force on Naval Surface Ship Vulnerability has been scheduled for 12 July 1979 to review, evaluate, and summarize the vulnerability of naval surface ships with consideration of their effectiveness in carrying out future naval missions.

In accordance with 5 U.S.C. App. I § 10(d) (1976), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1976), and that accordingly this meeting will be closed to the public.

H. E. Lofdahl,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

June 12, 1979.

[FR Doc. 79-18732 Filed 6-14-79; 8:45 am]
BILLING CODE 3810-70-M

Per Diem, Travel and Transportation Allowance Committee; Publication of Per Diem Rate Changes

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DoD.

ACTION: Publication of Changes in Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 86. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Canal Zone, and possessions of the United States. Bulletin Number 86 is being published in the Federal Register to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: June 12, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick W. Weiser, 325-9330.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the Federal Register now constitute the only notification of changes in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

Civilian Personnel Per Diem Bulletin Number 86

To the Heads of Executive Departments and Establishments

Subject: Table of maximum per diem rates in lieu of subsistence for United States Government civilian officers and employees for official travel in Alaska, Hawaii, the Commonwealth of Puerto Rico, the Canal Zone, and possessions of the United States.

1. This bulletin is issued in accordance with Memorandum for Heads of Executive Departments and Establishments from the Deputy Secretary of Defense dated August 17, 1966, SUBJECT: Executive Order 11294, August 4, 1966, "Delegating Certain Authority of the President to Establish Maximum Per Diem Rates for Government Civilian Personnel in Travel Status" in which this Committee is directed to exercise the authority of

the President (5 U.S.C. 5702(a)(2)) delegated to the Secretary of Defense for Alaska, Hawaii, the Commonwealth of Puerto Rico, the Canal Zone, and possessions of the United States. When appropriate and in accordance with regulations issued by competent authority, lesser rates may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletin Number 85 except in the case identified by an asterisk which rate is effective on the date of this Bulletin. The date of this Bulletin shall be the date the last signature is affixed hereto.

3. Each Department or Establishment subject to these rates shall take appropriate action to disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this Bulletin are:

Locality	Maximum rate
Alaska:	
Adak [1]	$0.65
Anchorage	62.00
Annette	61.00
Barrow	94.00
Bethel	84.00
College	60.00
Cordova	78.00
Deadhorse	110.00
Delta Junction	59.00
*Dutch Harbor	62.00
Elelson AFB	60.00
Elmendorf	62.00
Fairbanks	60.00
Ft. Greely	59.00
Ft. Richardson	62.00
Ft. Wainwright	60.00
Galena	52.00
Juneau	60.00
Ketchikan	61.00
King Salmon	62.00
Kodiak	66.00
Kotzebue	91.00
Murphy Dome	60.00
Nostak	91.00
Nome	60.00
Noorvik	91.00
Petersburg	61.00
Shemya AFB [1]	11.00
Shungnak	91.00
Sitka-Mt. Edgecombe	61.00
Skagway	61.00
Spruce Cape	66.00
Tanana	90.00
Valdez	70.00
Wainwright	79.00
Wrangell	61.00
Other	62.00
American Samoa	54.00
Canal Zone	50.00
Guam, M.I	54.00
Hawaii:	
Hawaii	56.00
Kauai	52.00
Maui	45.00
Molokai	54.00
Oahu	58.00
Other	46.00
Johnston Atoll	15.00
Midway Islands [1]	9.65
Puerto Rico:	
Aguadilla (incl. CG Air Station Borinquen)	60.00
Bayamon:	
12-16—5-15	66.00
5-16—12-15	52.00
Dorado	54.00
Fajardo:	
12-16—5-15	66.00
5-16—12-15	52.00
Ft. Buchanan (incl. GSA Service Center, Guaynabo):	
12-16—5-15	66.00
5-16—12-15	52.00
Mayaguez	60.00
Ponce (incl. Ft. Allen CG)	66.00
Roosevelt Roads:	
12-16—5-15	66.00
5-16—12-15	52.00
Sabana Seca:	
12-16—5-15	66.00
5-16—12-15	52.00
San Juan (incl. San Juan Coast Guard Units):	
12-16—5-15	66.00
5-16—12-15	52.00
Other	52.00
Virgin Islands of U.S.:	
12-1—4-30	66.00
5-1—11-30	52.00
Wake Island [1]	17.00
Other localities	15.00

[1] Commercial facilities are not available. This per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meal, and incidental expenses.

H. E. Lofdahl,

Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

June 12, 1979.

[FR Doc. 79-18798 Filed 6-14-79; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF ENERGY

Requests for Interpretation Filed With the Office of General Counsel; Months of April and May 1979

Notice is hereby given that during the months of April and May 1979, the requests for interpretation listed in the Appendix to this notice were filed pursuant to 10 CFR Part 205, Subpart F with the Office of General Counsel, Department of Energy (DOE). Notice of subsequently received requests will be published at the end of each calendar month. Copies of the requests for interpretion listed herein are on file in and should be obtained from the DOE's Public Reading Room, Information Access Office, Room GA-152, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-5968.

The statement of issue that follows

each request for interpretation listed in the Appendix is not intended to be definitive or final. Rather, the issue statement should be regarded as the initial restatement by the DOE of the question that appears to have been presented for resolution. The issue may, of course, be refined and modified during the interpretative process.

Interested parties may submit written comments on the listed interpretation requests on or before July 16, 1979. Comments should be identified on the outside envelope and on documents submitted with the file number of the interpretation request and all comments should be filed with the Office of General Counsel, Department of Energy, Room 1111, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461, Attention: Diane Stubbs. Aggrieved parties, as defined in 10 CFR 205.2, will continue to receive actual notice of pending interpretation requests in accordance with the current practice of the Office of General Counsel.

For further information contact Diane Stubbs, Office of General Counsel, 12th and Pennsylvania Avenue, NW., Room 1111, Washington, D.C. 20461, (202) 633-9070.

Everard A. Marseglia, Jr.,
Assistant General Counsel for Interpretations and Rulings.
June 11, 1979.

Appendix.—List of Requests for Interpretation Received by the Office of General Counsel

[Months of April and May 1979]

Dated Received	Name and location of requestor	File No.
April 2	Triad Oil Co., Gene A. Farber, Evans, Farber & Fransbergar, 249 Pacific Avenue, San Francisco, Calif. 94133. Issue: Does a wholesale purchaser-reseller qualify as a new purchaser entering into business in May 1978 within the meaning of Paragraph (h)(3) of Standby Regulations Activation Order No. 1 and 10 CFR 211.13[illegible] if it purchased certain assets from a commission agent that had gone out of business six months earlier?	A-398
April 3	Edmondson Oil, Harold Hancock, P.O. Box 818, South Boston, Va. [illegible]	A-399
	Issue: Does a wholesale purchaser-reseller's failure to meet the payment obligations of its predecessor constitute a breach of the normal business practice rule (10 CFR 210.62) for which the supplier may suspend deliveries of motor gasoline?	
April 13	Texaco, Inc., Stephen H. Bard, 2000 Westchester Ave., White Plains, N.Y. 10650.	A-400
	Issue: Where high sulfur crude oil is desulfurized in Caribbean or other foreign refineries, is such desulfurized crude regarded as "crude oil" for purposes of the entitlements program (10 CFR 211.67) if it is imported into the United States?	
April 13	The Gulf Companies, Karen M. Richardson, P.O. box 2725, Houston, Tex. 77001.	A-401
	Issue: Do the amendments to 10 CFR 212.93, 41 FR 54919 (December 16, 1976), effective December 1, 1976, give a refiner the option of calculating increased costs of purchased product in accordance with the amendments as of January 1976?	
April 13	Bert's Service and Dan's Service, Bert's Service, 1000 Washington Ave., So., Minneapolis, Minn. 55415.	A-402
	Issue: Are service station operators who purchase motor gasoline and resell it to end-users and pay substantially all operating expenses considered wholesale purchaser-resellers and retailers as those terms are defined in 10 CFR 211.51 and 212.31?	
April 13	Mobil Oil Corp., R. Bruce McLean, Edward L. Rubinoff, Akin, Gump, Hauer & Feld, 1333 New Hampshire Ave., NW., Washington, D.C. 20036.	A-404
	Issue: Is a refiner permitted by the Special Propane Rule of 10 CFR 212.83(2)(3) to pass through greater increased product costs to its retail and independent marketer classes of purchaser so long as it calculates its unrecouped increased costs in accordance with § 212.83(a)(1)?	
April 19	Amoco Oil Co., Gail Wickens, Eastern Region, P.O. Box 887, One North Charles Street, Baltimore, Md. 21203.	A-405
	Issue: Does the Standby Regulation Activation Order No. 1 apply to a non-branded independent marketer?	
April 26	Johnson Oil Co., Inc., Stephen G. Crockett, Robert G. Holt, Martineau, Rocker, Larsen & Kimball, 1600 Beneficial Life Tower, 36 South State Street, Salt Lake City, Utah 84111.	A-406
	Issue: May a reseller of crude oil terminate a supplier/purchaser relationship pursuant to 10 CFR 211.62 based upon the consent of both parties under the terms of a contract and a settlement agreement?	
April 27	Wilson A. Chase, Harvey E. Deutsch, Isaacson, Rosenbaum, Spiegleman & Friedman, P.C., Suite 2300, First of Denver Plaza Building, Denver, Colo. 80202.	A-407
	Issue: Is the right to an allocation transferred to a successor pursuant to 10 CFR 211.106(a) where a firm has established a new retail outlet on a site contiguous to the predecessor's and serves substantially the same market as the predecessor served?	
May 2	Hamilton Exxon Service Center, Terrence P. McMahon, Campbell, Warburton, Britton, Fitzsimmons & Smith, Eighth Floor, First National Bank building, Two West Santa Clara Street, San Jose, Calif. 95109.	A-408

Appendix.—List of Requests for Interpretation Received by the Office of General Counsel—Continued

[Months of April and May 1979]

Dated Received	Name and location of requestor	File No.
	Issue: Does a wholesale purchaser-reseller qualify as a new purchaser entitled to use the updated motor gasoline base period for product allocation specified under the Standby Regulation Activation Order No. 1, which amends 10 CFR 211.12(e)(2), if it purchased an existing service station which had been closed to the public during the preceding five months?.	
May 4	State of Alaska, Avrum M. Gross, Attorney General, Pouch K, State Capital, Juneau, Alaska 99811.	A–409
	Issue: (1) Is Cranke Point Field in Cook Inlet, Alaska, a "field" for the purposes of the Mandatory Petroleum Price Regulations so that all royalty oil in kind produced from that field would qualify for the highest posted price for that field regardless of the pipeline through which it was delivered for sale? (2) Whether the State has properly calculated lower tier ceiling prices for crude oil of 33° API gravity or less..	
May 11	Mobil Oil Corp., William C. Streets, 150 East 42nd Street, New York, N.Y. 10017.	A–410
	Issue: Does the fact that Mobil at one time lifted equity crude oil or otherwise received crude oil on a preferential basis in a particular country means that the disallowance provisions of 10 CFR 212.84 are applicable to arms-length transactions which occur after the termination of preferential treatment that had been extended to Mobil and its affiliated entities in that country?.	
May 11	Ethyl Corp., R. S. Silver, Research and Development Department, 1600 West Eighth Mile Road, Ferndale, Mich. 48220.	A–411
	Issue: Does a purchaser's use of motor gasoline used in fleet testing of a new "energy extending anti-knock mixture" constitute "energy production" as defined in 10 CFR 211.51 in order to qualify the purchaser for the allocation level of 100 percent of current requirements subject to an allocation fraction as specified in 10 CFR 211.103(c)(1)(i)?.	
May 15	LaJet, Inc., John Allen Chalk, P.O. Box 5186, Abilene, Tex. 79605	A–413
	Issue: Should payment received by a producer for the leasing of property to store domestic crude oil purchased from that producer in a first sale be considered in its ceiling price determinations under 10 CFR 212.31, 212.73 and 212.74?.	
May 18	Santa Clara County Service, Station Dealers Association, Paul R. Hay, 236 East California Drive, Sunnyvale, Calif. 94086.	A–414
	Issue: General interpretative questions regarding retail pricing of motor gasoline under Part 212, Subpart F..	
May 25	Siegel Oil Co., Larry Siegel, 1380 Zuni Street, Denver, Colo. 80204	A–415
	Issue: (1) Is a gasoline dealer that does not operate a service station entitled to increase its selling prices in sales of gasoline to wholesale-purchaser consumers to recover its vapor recovery system cost under 10 CFR 212.93(b)(1)(ii)(D)? (2) Is the cost for a spillage control system considered a vapor recovery system cost? (3) May such costs, if recoverable, be allocated between retail and non-retail sales of gasoline?.	
May 24	National Soft Drink Association, Thomas A. Daly, 1101 Sixteenth Street, NW., Washington, D.C. 20036..	A–416
	Issue: Are bottlers of soft drinks engaged exclusively in "agricultural production," as defined in 10 CFR 211.51, entitling them to 100 percent of current requirements for motor gasoline under 10 CFR 211.103(b), including gasoline used in distributing the soft drinks?.	
May 25	Energy Consumers and Producers Association, Patti Gibson, P.O. Box 1726, Seminole, Okla. 74868.	A–417
	Issue: May a crude oil producer redesignate a property subsequent to January 1, 1979, on a reservoir basis, where the property had previously been designated on a lease basis, in order to qualify the property for the additional price incentives for newly discovered crude oil under 10 CFR 212.78?.	

[FR Doc. 79-18609 Filed 6-14-79; 8:45 am]

BILLING CODE 6450-01-M

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meetings

In accordance with Section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6201 *et seq.*) notice is hereby provided of the following meetings:

I. A meeting of the Industry Advisory Board (IAB) to the International Energy Agency to be held on June 25, 1979, at the offices of the IEA, 2 rue Andre Pascal, Paris, France, beginning at 9:00 a.m. The agenda is as follows:

1. Opening remarks.
2. Matters arising from record note of IAB meeting on May 10, 1979.
3. Report on SEQ/SOM meeting of May 18, 1979.
4. Position of Reporting Companies under EEC competition regulations and U.S. Voluntary Agreement, including:
A. Attendance of IAB representatives at SEQ/SOM meetings during discussion of oil market developments.
B. Status of U.S. legislation and Voluntary Agreement after June 30, 1979.
5. Report by IEA on worldwide supply outlook and current situation in IEA member countries.
6. ISAG manpower considerations if a general or selective trigger is activated in the near term, including:
A. Full or partial ISAG with U.S. company participation.
B. Full or partial ISAG without U.S. company participation.
7. Operation of emergency allocation system if U.S. companies cannot participate.
8. Review IEA proposed amendment to Emergency Management Manual to allow established seasonality patterns to be taken into account in reallocation of oil between countries.
9. Report on ISAG Training Seminar at Duesseldorf on June 5-7.
10. Dispute Settlement Center.
11. Future work program and meeting schedule.

II. A meeting of Industry Advisory Board (IAB) to the International Energy Agency (IEA) to be held on June 25 1979, at the headquarters of the IEA, 2 rue Andre Pascal, Paris, France, beginning at 2:30 p.m. The purpose of this meeting is to permit attendance by representatives of the IAB at a meeting of the IEA Standing Group on Emergency Questions (SEQ) which is being held at Paris beginning at 2:30 p.m. on June 25, and at a joint meeting of the SEQ and the IEA Standing Group on the Oil Market (SOM), which is being held at Paris beginning at 10:00 a.m. on June 26. The agendas for the meetings are under the control of the SEQ and the SOM. The agenda for the SEQ meeting is as follows:

1. Approval of draft agenda.
2. Summary record of twenty-sixth meeting.
3. Dispute Settlement Center (revised proposal by the IAB).
4. Emergency Reserves.
A. Treatment of consumer stocks in IEA reporting system.
B. Emergency reserves of Participating Countries on January 1, 1979.
5. Demand Restraint.
A. Countercseasonal adjustments and time shift of demand in crisis management.
—IAB comments.
—EMM amendments.
B. In-depth review of United Kingdom.
C. Dates for Sweden, Norway, Canada, U.S. reviews.
6. The EEC Emergency Management System (presentation by DG XVII of the European Commission).
7. Seasonalization of trigger and allocation calculations.
A. Seasonalization of triger calculations. (Reactions by Participating Countries.)
B. Comments by the IAB on special crisis situations.
C. Emergency Management Manual amendment to allow ISAC/Allocation Coordinator to take established seasonality patterns into account in reallocation of oil between countries.
8. IAB and ISAG.
A. Role of IAB in advising IEA on matters concerning harmonization of IEA and EEC emergency management systems.
B. Quarterly oil forecast contributions by Reporting Companies.
C. Framework for antitrust clearances.
D. Report on ISAG Training Seminar at Duesseldorf, Germany, June 5-6.
E. Mini-ISAG in case of a selective trigger situation.
9. Special section of the Information System.
A. Base period final consumption—1st Quarter 1978–4th Quarter 1978 and preliminary 2nd Quarter 1978–1st Quarter 1979.
B. Quarterly oil forecast.
C. Questionnaire "A" and "B" reporting instructions.
10. Preparation for the Third Allocation Systems Test (AST–3).
A. Optimum design of allocation tests.
B. Optimum date for test.
C. Joint preparation by SEQ and IAB for AST–3 (working group to be set up for November, 1979).
D. Delay of product imbalance workshop.
11. Future meeting dates.
12. Any other business.

III. The agenda for the June 26 meeting of the SEQ and the SOM is as follows:

1. Adoption of the preliminary agenda.
2. Record of the third joint meeting.
3. Developments in the international oil market:
—Current supply/demand/stock situation and scenario update.
—Oil market developments.
4. Monitoring of IEA response to oil supply/demand situation:
—Update of countries' assessments (Questionnaire results).
—Possibilities for acceleration of demand restraint program.
5. Progress report on study of spot cargo markets and their effects on the international oil market.
6. Report on the operation of the emergency data system during the first half of 1979 (based on governments' input).
7. Future meeting dates and arrangements for future Questionnaire "A" and "B" submissions.
8. Any other business.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, this meeting will not be open to the public.

Issued in Washington, D.C., June 11, 1979.

Robert C. Goodwin, Jr.,
Assistant General Counsel, International Trade and Emergency Preparedness.

[FR Doc. 79-18659 Filed 6-13-79; 8:45 am]
BILLING CODE 6450-01-M

Economic Regulatory Administration

Freeport Minerals Co.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective date: June 4, 1979. Comments by: July 16, 1979.

ADDRESS: Send comments to: Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, TX 75235.

FOR FURTHER INFORMATION CONTACT: Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, TX 75235 (Phone) 214/749-7838.

SUPPLEMENTARY INFORMATION: On June 4, 1979, the Office of Enforcement of the ERA executed a Consent Order with Freeport Minerals Company of New York, New York. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

Because the DOE and Freeport Minerals Company wish to expeditiously resolved this matter as agreed and to avoid delay in the

payment of refunds, the DOE has determined that it is in the public interest to make the Consent Order with Freeport Minerals Company effective as of the date of its execution by the DOE and Freeport Minerals Company.

I. Consent Order

Freeport Minerals Company, with its home office in New York, New York, is a firm engaged in the production and sale of crude oil and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211, 212. The Office of Enforcement of the Economic Regulatory Administration (ERA) and Freeport Minerals Company entered into a Consent Order to resolve certain civil actions which could be brought by ERA as a result of its audit of the crude oil sales by Freeport Minerals Company and Brock Exploration Corporation from the Wilbert Minerals lease, Iberville, Louisiana. This Consent Order only settles those matters relative to Freeport's interest in the crude oil sold from the Wilbert Minerals lease. Settlement between ERA and Brock Exploration Corporation is the subject of separate action.

The significant terms of the Consent Order with Freeport Minerals Company are as follows:

1. The period covered by the audit was September 1, 1973, through December 31, 1975.

2. Freeport Minerals Company and Brock Exploration Corporation improperly applied the provisions of 10 CFR 212.73 and its predecessor, 6 CFR 150.354 when determining the prices to be charged for the crude oil sold from the Wilbert Minerals lease.

3a. Freeport Minerals Company agrees to refund to the DOE the initial sum of $7,738.37, plus interest. This amount will be refunded within 30 days of the effective date of the Consent Order, June 4, 1979.

3b. Freeport also agrees to refund its proportionate share (attributable to its overriding royalty) of any remaining overpayments (plus interest) that are finally determined by ERA to be owed by Brock Exploration Corporation in this matter. The method and disposition of the refund will be established upon final settlement.

4. The provisions of 10 CFR 205.199J, including the publication of this Notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

Refunded overcharges as described in I. 3a. above will be in the form of a certified check made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199l(a).

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the clain to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments.* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should sent your comments or written notification of a claim to Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, TX 75235. You may obtain a free copy of this Consent Order by writing to the same address or by calling 214/749-7628.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Freeport Minerals Company Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on July 16, 1979. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Dallas, TX on the 5th day of June 1979.

Wayne I. Tucker,

District Manager of Enforcement, Southwest District Office, Economic Regulatory Administration.

[FR Doc. 79-18687 Filed 6-14-79; 8:45 am]

BILLING CODE 6450-01-M

Lyon County Co-Operative Oil Co.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATE: Effective date: June 6, 1979. Comments by: July 16, 1979.

ADDRESS: Send comments to Robert D. Gerring, Central District Manager of Enforcement Department of Energy, 324 East 11th Street; Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Jeannine C. Fox, Chief, Refined Products Programs Management Branch, 324 East 11th Street, Kansas City, Missouri 64106. (phone) 816-374-5632.

SUPPLEMENTARY INFORMATION: On June 6, 1979, the Office of Enforcement of the ERA executed a Consent Order with Lyon County Co-Operative Oil Company of Marshall, Minnesota. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

Lyon County Co-Operative Oil Company (Lyon), with its home office located in Marshall, Minnesota, is a firm engaged in the marketing of motor gasoline and middle distillates to

resellers and end-users, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR, Parts 210, 211, 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Lyon, the Office of Enforcement, ERA, and Lyon entered into a Consent Order.

The Consent Order encompasses Lyon's sale of covered products during the period November 31, 1974. As more fully described in the Remedial Order issued July 25, 1977 and upheld in the Office of Hearing and Appeals Decision and Order issued December 14, 1978, and applies specifically to Lyon's sales of motor gasoline and middle distillates to non-member resellers and end-users.

II. Disposition of Refunded Overcharges

In this Consent Order, Lyon agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I. above, the sum of forty thousand dollars ($40,000) in five (5) installments scheduled over the first year the document is effective. Refunded overcharges will be in the form of a certified checks made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimants.* Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments.* The ERA invites interested persons to comment on the terms, conditions or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Robert D. Gerring, Central District Manager of Enforcement, Department of Energy, 324 East 11th Street, Kansas City, Missouri 64106. You may obtain a free copy of this Consent Order by writing to the same address or by calling 816–374–5932.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Lyon Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on July 18, 1979. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Kansas City, Missouri on the 6th day of June, 1979.

Robert D. Gerring,

District Manager of Enforcement.

[FR Doc. 79-18698 Filed 6-14-79; 8:45 am]

BILLING CODE 6450-01-M

Polaris Production Corp.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Polaris Production Corporation, P.O. Box 1749, Midland, Texas 79702. This Proposed Remedial Order charges Polaris Production Corporation (Polaris) with pricing violations in the amount of $297,902.55 caused by Polaris' having made sales of crude oil at prices in excess of those permitted by 10 CFR Part 212, Subpart D during the time period September 1, 1973 through April 30, 1977 in the State of New Mexico.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Wayne I. Tucker, District Manager, Southwest District Enforcement, Department of Energy, Economic Regulatory Administration, P.O. Box 35228, Dallas, Texas 75235, or by calling (214) 749–7628. On or before July 2, 1979, any aggrieved person may file a Notice of Objection with Office of Hearings and Appeals, 2000 M Street, NW., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Dallas, Texas, on the 6th day of June 1979.

Wayne I. Tucker,

District Manager, Southwest District Enforcement.

[FR Doc. 79-18699 Filed 6-14-79; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP79-65]

Equitable Gas Co.; Order Accepting for Filing and Suspending Proposed Rate Increase

Issued June 6, 1979.

On April 30, 1979, Equitable Gas Company (Equitable) filed tariff sheets [1] to effect an increase in the transportation rate set out under Rate Schedule X–2, applicable to Carnegie Natural Gas Company. Equitable's currently effective transportation rate for this service is 3.154 cents per Mcf, which has been in effect since 1964. In this filing, Equitable proposed a transportation rate for Carnegie of 18.2 cents per Mcf.

Equitable is primarily a gas distribution company operating in Pennsylvania, West Virginia and Kentucky with transmission facilities extending from West Virginia into Pennsylvania. Equitable makes one jurisdictional sale to Revere Natural Gas Company under Rate Schedule E–1. Total deliveries to Revere in 1978 were 108,481 Mcf (about 0.14% of total sales). In addition, Equitable renders a jurisdictional transportation service for Carnegie Natural Gas Company under Rate Schedule X–2. Deliveries thereunder constitute about 2% of transmission system deliveries.

Rate Schedule X–2 covers an exchange-transportation arrangement

[1] Third Revised Sheet Nos. 25 and 29 to FERC Gas Tariff First Revised Volume No. 2.

with Carnegie. The agreement provides that Carnegie may, from time to time, at its option, deliver up to 5,000 Mcf to Equitable and Equitable shall return an equal volume less 5% for leakage and unaccounted for gas. Carnegie pays 3.158 cents per Mcf delivered which represents the differential in value between gas delivered by Equitable and gas received by Equitable at a point more distant from the principal markets. The rate of 3.158 cents per Mcf has been in effect since 1954. The subject filing increases the rate from 3.158 cents to 16.2 cents per Mcf. This amounts to $198,539 per year.

Notice of the filing was issued on May 1, 1979, with comments due on or before May 17, 1979.

Based upon a review of Equitable's filing, the Commission finds that the proposed increase may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, we shall accept the tariff sheets for filing, grant waiver of the requirements of §§ 154.22 and 154.51, and suspend the effectiveness of the proposed rates until May 2, 1979. We shall also set the matter for hearing.

The Commission orders: (A) The effectiveness of Third Revised Sheet Nos. 25 and 29 to FERC Gas Tariff, First Revised Volume No. 2 is hereby suspended for one day, until May 2, 1979, at which time they will be made effective subject to refund.

(B) Equitable's case-in-chief in support of the proposed rate shall be filed with the Commission no later than July 6, 1979.

(C) Staff's statement of position shall be filed on or before August 3, 1979.

(D) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge (18 CFR 3.5(d)) shall convene a settlement conference in this proceeding to be held within 10 days after the service of Staff's statement of position in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The Presiding Administrative Law Judge is authorized to establish such further procedural dates as may be necessary and to rule on all motions (except motions to sever consolidate or dismiss) as provided for in the rules of practice and procedure.

(E) The Secretary shall cause prompt publication of this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18830 Filed 6-14-79; 8:45 am]

BILLING CODE 6450-01-M

Notice of Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

February 28, 1979.

On February 12, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

New Mexico Energy and Minerals Department, Oil Conservation Division

FERC Control Number: JD79-533
API Well Number: 30-015-22333
Section of NGPA: 103
Operator: Mesa Petroleum Co.
Well Name: Marquess Com #1
Field: Carlsbad South Morrow
County: Eddy
Purchaser: El Paso Natural Gas Co.
Volume: 20 MMcf.

FERC Control Number: JD79-534
API Well Number: 30-045-22587
Section of NGPA: 103
Operator: Mesa Petroleum Co.
Well Name: State Com #43
Field: Bianco Pictured Cliffs
County: San Juan
Purchaser: El Paso Natural Gas Co.
Volume: 45 MMcf.

FERC Control Number: JD79-535
API Well Number: 30-045-22586
Section of NGPA: 103
Operator: Mesa Petroleum Co.
Well Name: State Com 13A PC/MV
Field: Bianco Mesa Verde/Pictured Cliffs
County: San Juan
Purchaser: El Paso Natural Gas Co.
Volume: 154/218 MMcf.

FERC Control Number: JD79-536
API Well Number: 30-025-25652
Section of NGPA: 103
Operator: Mobil Oil Corp.
Well Name: Conoco—State #1
Field: North Vacuum Abo
County: Lea
Purchaser: Phillips Petroleum Co.
Volume: 9.0 MMcf.

FERC Control Number: JD79-537
API Well Number: 30-015-22548
Section of NGPA: 103
Operator: Yates Petroleum Corporation
Well Name: Kennedy JQ Com No. 1
Field: Kennedy Farms Morrow
County: Eddy
Purchaser: Transwestern Pipeline Co.
Volume: 288.186 MMcf.

FERC Control Number: JD79-538
API Well Number: 30-039-21621
Section of NGPA: 103
Operator: Kimbark Operating Co.
Well Name: St. Rances #1
Field: Blanco Mesaverde
County: Rio Arriba
Purchaser: Southwest Gas Corporation
Volume: 1131 MMcf.

FERC Control Number: JD79-539
API Well Number: 30-045-22571
Section of NGPA: 103
Operator: Kimbark Operating Co.
Well Name: Horton #3
Field: Blanco Pictured Cliffs
County: San Juan
Purchaser: Southwest Gas Corporation
Volume: 1000 MMcf.

FERC Control Number: JD79-540
API Well Number: 30-005-60018
Section of NGPA: 103
Operator: Marathon Oil Company
Well Name: State "27" Well No. 1
Field: Newmill Strawn South (Gas)
County: Chaves
Purchaser: Transwestern Pipeline Co.
Volume: .01 MMcf.

FERC Control Number: JD79-541
API Well Number: 30-025-25467
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: New Mexico "S" State, Well No. 37
Field: Wantz Abo Pool
County: Lea
Purchaser: El Paso Natural Gas Co.
Volume: 10.0 MMcf.

FERC Control Number: JD79-542
API Well Number: 30-025-25467
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: New Mexico "S" State, Well No. 37
Field: Wantz Granite Wash Pool
County: Lea
Purchaser: El Paso Natural Gas Co.
Volume: 1.0 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before July 2, 1979.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18836 Filed 6-14-79; 8:45 am]

BILLING CODE 6450-01-M

Notice of Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

February 28, 1979.

On February 26, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies

listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

New Mexico Energy and Minerals Department, Oil Conservation Division

FERC Control Number: JD79-543
API Well Number: None
Section of NGPA: 108
Operator: Southland Royalty Co.
Well Name: Hampton #3
Field: Aztec Pictured Cliffs
County: San Juan
Purchaser: Southern Union Gathering Co.
Volume: 4 MMcf.

FERC Control Number: JD79-544
API Well Number: None
Section of NGPA: 108
Operator: Southland Royalty Co.
Well Name: Hampton #2
Field: Aztec Pictured Cliffs
County: San Juan
Purchaser: Southern Union Gathering Co.
Volume: 6 MMcf.

FERC Control Number: JD79-545
API Well Number: None
Section of NGPA: 108
Operator: Southland Royalty Co.
Well Name: Hampton #1
Field: Aztec Pictured Cliffs
County: San Juan
Purchaser: Southern Union Gathering Co.
Volume: 5 MMcf.

FERC Control Number: JD79-546
API Well Number: None
Section of NGPA: 108
Operator: Southland Royalty Co.
Well Name: Harris #1
Field: Basin Dakota
County: San Juan
Purchaser: Gas Company of New Mexico
Volume: 2 MMcf.

FERC Control Number: JD79-547
API Well Number: None
Section of NGPA: 108
Operator: Southland Royalty Co.
Well Name: Jensen #1
Field: Blanco Pictured Cliffs
County: San Juan
Purchaser: Southern Union Gathering Co.
Volume: 8 MMcf.

FERC Control Number: JD79-548
API Well Number: None
Section of NGPA: 108
Operator: Southland Royalty Co.
Well Name: Alston #1
Field: Aztec Pictured Cliffs
County: San Juan
Purchaser: Southern Union Gathering Co.
Volume: 2 MMcf.

FERC Control Number: JD79-549
API Well Number: 30-045-23199
Section of NGPA: 103
Operator: Dugan Production Corp.
Well Name: Com #2
Field: Harper Hill Fruitland PC
County: San Juan
Purchaser: El Paso Natural Gas Co.
Volume: 30 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before July 2, 1979.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18606 Filed 6-14-79; 8:45 am]

BILLING CODE 6450-01-M

Notice of Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

June 5, 1979.

On May 17, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

United States Geological Survey—Louisiana

FERC Control Number: JD79-6570
API Well Number: 427114021800D1
Section of NGPA: 102
Operator: Aminoil Development, Inc.
Well Name: OCS-G-2421 Well No. A-13
Field: High Island A-330
County:
Purchaser: Natural Gas Pipeline Co. of America
Volume: 72 MMcf.

FERC Control Number: JD79-6571
API Well Number: 17-700-40304-00-51
Section of NGPA: 102
Operator: C & K Marine Production Company
Well Name: OCS-G-2531 No. 2
Field: West Cameron Block 41
County:
Purchaser: Transcontinental Gas Pipeline Corp.
Volume: 500 MMcf.

FERC Control Number: JD79-6572
API Well Number: 17-719-40121-00-S1
Section of NGPA: 102
Operator: Mesa Petroleum Co.
Well Name: West Delta Blk 62 Well A-5
Field:
County:
Purchaser: Tennessee Gas Pipeline Company
Volume: 1825 MMcf.

FERC Control Number: JD79-6573
API Well Number: 427114015500S1
Section of NGPA: 102
Operator: Aminoil USA, Inc.
Well Name: Well No. A-2
Field: High Island A-309
County:
Purchaser: Natural Gas Pipeline Company
Volume: 913 MMcf.

FERC Control Number: JD79-6574
API Well Number: 4271140175
Section of NGPA: 102
Operator: Shell Oil Company
Well Name: A-3
Field: High Island Area Blk. A-350
County:
Purchaser: Trunkline Gas Company
Volume: 4300 MMcf.

FERC Control Number: JD79-7142
API Well Number: 17-719-40132-00-S1
Section of NGPA: 102
Operator: Mesa Petroleum Co.
Well Name: West Delta Blk 62 Well A-6
Field:
County:
Purchaser: Tennessee Gas Pipeline Company
Volume: 2190 MMcf.

FERC Control Number: JD79-7143
API Well Number: 4271140276
Section of NGPA: 102
Operator: Shell Oil Company
Well Name: A-16
Field:
County:
Purchaser: Transcontinental Gas P/L Co.
Volume: 3500 MMcf.

FERC Control Number: JD79-7144
API Well Number: 17-719-40117-00-D1
Section of NGPA: 102
Operator: Mesa Petroleum Co.
Well Name: West Delta Blk 62 Well A-3
Field:
County:
Purchaser: Tennessee Gas Pipeline Company
Volume: 1825 MMcf.

FERC Control Number: JD79-7145
API Well Number: 427114023800S1
Section of NGPA: 102
Operator: Aminoil USA, Inc.
Well Name: A-5
Field: High Island Area Blk. A-309
County:
Purchaser: Natural Gas Pipeline Company
Volume: 1825 MMcf.

FERC Control Number: JD79-7146
API Well Number: 177214013301S2
Section of NGPA: 102
Operator: Arco Oil and Gas Company
Well Name: OCS-G-2137 D-9
Field:
County:
Purchaser: Southern Natural Gas Company
Volume: 550 MMcf.

FERC Control Number: JD79-7147
API Well Number: 17-719-40117-00-D2
Section of NGPA: 102
Operator: Mesa Petroleum Co.
Well Name: West Delta Blk 61 Well A-3D
Field:
County:
Purchaser: Tennessee Gas Pipeline Company
Volume: 1095 MMcf.

FERC Control Number: JD79-7148
API Well Number: 17-713-40024-00-S1
Section of NGPA: 102
Operator: Mesa Petroleum Co.
Well Name: South Pelto Blk 8 Well A-5
Field:
County:
Purchaser: Columbia Gas Transmission Corp.
Volume: 1825 MMcf.

FERC Control Number: JD79-7149
API Well Number: 4271140247
Section of NGPA: 102
Operator: Shell Oil Company
Well Name: A-12
Field:
County:
Purchaser: Trunkline Gas Company
Volume: 4000 MMcf.

FERC Control Number: JD79-7150
API Well Number: 17-719-40036-00-D1
Section of NGPA: 102
Operator: Mesa Petroluem Co.
Well Name: South Pelto Blk 8 Well A-7
Field:
County:
Purchaser: Columbia Gas Transmission Corp.
Volume: 650 MMcf.

FERC Control Number: JD79-7151
API Well Number: 17702404040051
Section of NGPA: 102
Operator: Exxon Corporation
Well Name: OCS-G 2560, No. A-1
Field:
County:
Purchaser: Columbia Gas Transmission Corp.
Volume: 500 MMcf.

FERC Control Number: JD79-7152
API Well Number: 17-719-40127-00-D1
Section of NGPA: 102
Operator: Mesa Petroleum Co.
Well Name: West Delta Blk 61 Well A-4
Field:
County:
Purchaser: Tennessee Gas Pipeline Company
Volume: 1095 MMcf.

FERC Control Number: JD79-7153
API Well Number: 4271140169
Section of NGPA: 102
Operator: Shell Oil Company
Well Name: A-2
Field:
County:
Purchaser: Trunkline Gas Company
Volume: 6700 MMcf.

FERC Control Number: JD79-7154
API Well Number: 17721400570151
Section of NGPA: 102
Operator: Arco Oil and Gas Company
Well Name: OCS-G 2943 No. C-30
Field:
County:
Purchaser: Southern Natural Gas Company
Volume: 45 MMcf.

FERC Control Number: JD79-7155
API Well Number: 17702403620051
Section of NGPA: 102
Operator: Shell Oil Company
Well Name: A-10
Field: West Cameron Block 565
County:
Purchaser: Natural Gas Pipeline Co. of America
Volume: 730 MMcf.

FERC Control Number: JD79-7156
API Well Number: 177024037000 D2
Section of NGPA: 102
Operator: Mobil Oil Corporation
Well Name: West Cameron Block 617, A-5C
Field:
County:
Purchaser: Northern Natural Gas Company
Volume: 2007 MMcf.

FERC Control Number: JD79-7157
API Well Number: 17-719-40125-00-D1
Section of NGPA: 102
Operator: Mesa Petroleum Co.
Well Name: West Delta Blk 61 Well A-7
Field:
County:
Purchaser: Tennessee Gas Pipeline Company
Volume: 1095 MMcf.

FERC Control Number: JD79-7159
API Well Number: 177024037000
Section of NGPA: 102
Operator: Mobil Oil Corporation
Well Name: West Cameron Block 617, A-5B
Field:
County:
Purchaser: Northern Natural Gas Company
Volume: 1110 MMcf.

FERC Control Number: JD79-7160
API Well Number: 177024043000S1
Section of NGPA: 102
Operator: Mobil Oil Corporation
Well Name: West Cameron Block 609, B-5A
Field:
County:
Purchaser: Northern Natural Gas Company
Volume: 6,606 MMcf.

FERC Control Number: JD79-6270
API Well Number: 177024044100S1
Section of NGPA: 102
Operator: Mobil Oil Corporation
Well Name: West Cameron Block 609, B-8
Field:
County:
Purchaser: Northern Natural Gas Company
Volume: 3,651 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before July 2, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18638 Filed 6-14-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. GP79-21]

State of New Mexico, Section 108 NGPA Determination, Phillips Petroleum Co., Santa Fe No. 124 Well, API Well No. 30-025-24126; Notice of Preliminary Finding

Issued June 7 1979.

On April 23, 1979, the Oil Conservation Division of the New Mexico Department of Energy and Minerals (New Mexico) submitted to this Commission a notice of determination concerning a well for which classification as a stripper well under section 108 of the Natural Gas Policy Act of 1978 (NGPA) is sought. The notice states that the Phillips Petroleum Company (Phillips) Santa Fe No. 124 well does not qualify as a stripper well. The Commission published New Mexico's notice of determination on May 4, 1979. The notice then was published in the Federal Register on May 14, 1979.

On May 22, 1979, Phillips filed a protest with this Commission (pursuant to 18 CFR 275.203 and 204) contending that New Mexico misinterpreted the qualifying requirements of the Commission's regulations. According to Phillips, New Mexico "erroneously relied on [18 CFR 271.804(d)(4)(ii)], which states that the Agency shall make a negative determination if the production data submitted by the applicant indicates that for a 12-month period the well produced a nonassociated gas at a rate exceeding an average of 60 Mcf per production day." Phillips requests that the Commission issue a preliminary finding that the negative determination by New Mexico is not supported by substantial evidence and that the Commission reverse New Mexico's determination pursuant to 18 CFR 275.202 and 503(b)(1) of the NGPA.

Generally, to qualify as a stripper well under Section 108, a well must have produced nonassociated natural gas at an average rate not greater than 60 Mcf per day of production during a 90-day period. The well also must have been producing at its maximum efficient rate of flow during the same period.

Under our interim regulations, nonassociated gas is gas produced from a well that does not produce more than certain small quantities of crude oil during the production period on which the determination is based. For a well producing an average of less than 30 Mcf of gas per day during the 90-day production period, the allowable quantity of crude oil is an average of 3 barrels or less per day during that period 18 CFR 271.803(b). Moreover, in the absence of applicable recognized conservation practices designed to maximize the ultimate recovery of natural gas established by a jurisdictional agency for determining the maximum efficient rate of flows of wells producing natural gas, a well which has produced nonassociated gas at an average rate of 60 Mcf per day or less during the 90-day period is presumed to

be producing at its maximum efficient rate of flow, if during the 12-month period ending concurrently with the 90-day period, the well produced nonassociated gas at an average rate of 60 Mcf per day or less. 18 CFR 271.804(d)(2).

The production records accompanying the notice of determination show that the average daily production of natural gas from the Santa Fe No. 124 well did not exceed 10 Mcf for either the relevant 90-day or 12-month period. Moreover, the production records show that the average daily production of crude oil from the well did not exceed 3 barrels for the qualifying 90-day period, although the average daily production of crude oil did exceed 3 barrels for the 12-month period.

The evidence indicates that the Santa Fe No. 124 well produced natural gas and crude oil within the allowable limits, as noted, during the relevant 90 day period which determines whether the gas is nonassociated gas within the meaning of the Commission's regulations pertaining to stripper wells. Thus, it appears that New Mexico's negative determination is not supported by substantial evidence as Phillips contends.

Accordingly, the Commission hereby makes a preliminary finding (pursuant to 18 CFR 275.203(a)(1)(ii)) that the determination by the Oil Conservation Division of the New Mexico Department of Energy and Minerals, that Santa Fe No. 124 well does not qualify as a stripper well under Section 108 of the NGPA, is not supported by substantial evidence in the record on which the determination was made.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18931 Filed 6-14-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket Nos. CI75-45, et al.]

Tenneco Oil Co., et al.; Order Setting Matter for Oral Argument, Denying Motion and Granting Intervention

Issued June 5, 1979.

Tenneco Oil Company, Placid Oil Company, Hunt Petroleum Corporation, Hunt Industries, Hunt Oil Company, Kewanee Oil Company, Tenneco Oil Company, Shell Oil Company, Ashland Oil Inc., TransOcean Oil, Inc., Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Trunkline Gas Company, Tennessee Gas Pipeline Company, Trunkline Gas Company, Southern Natural Gas Company, United Gas Pipe Line Company and Florida Gas Transmission Company, Southern Natural Gas Company, Tennessee Gas Pipeline Company, a Division of Tenneco Inc., and Tenneco Chemicals, Inc., Highland Resources; *Docket Nos.* CI75-45, CI75-89, CI75-90, CI75-97, CI75-98, CI75-99, CI75-105, CI75-904, CI75-107, CI75-122, CI75-128, CP73-330, CP75-330, CP75-19, CP76-23, CP75-119, CP75-129, CP75-148, CP75-316, CP75-151, CP75-252, CP75-182, CP75-256, CI-733.

On April 23, 1979, First Mississippi Corporation (FMC) filed an "emergency petition for extraordinary relief" in the above consolidated proceeding. The petition asks that the Commission sever from the proceeding the certificate applications in dockets No. CP75-330, CP75-316, CP75-99, CI75-98, CI75-97, and CI75-99 and reconsider its disapproval of interstate pipeline transportation of specified volumes of offshore natural gas for feedstock and process gas requirements at First Mississippi's AMPRO fertilizer plant at Donaldsonville, Louisiana. Among other things, FMC alleges that its AMPRO plant is deteriorating as a result of not being operated since its construction in 1977 and that other than the offshore gas for which FMC has a contract, there are not viable sources of gas for operating the plant.

On May 2, 1979, a letter order was sent to FMC concerning the need for information about the availability of gas to the AMPRO plant from onshore sources. In the letter, FMC was directed to supplement its petition by indicating (1) total gas supply available to the AMPRO plant from all onshore sources (including sources controlled by First Mississippi and its affiliates), (2) what conditions, if any, would make such sources inadequate or so impractical as to justify, as an alternative, the relief requested here, and (3) what efforts, if any, have been made to locate and obtain onshore gas for the AMPRO plant.

On May 18, 1979, FMC responded to the Commission's letter order with a filing indicating the various sources controlled by the Placid Group, FMC's partners in constructing the AMPRO plant.[1]

Upon review of FMC's May 18, 1979, response we find that it is not sufficient to allow a meaningful evaluation of whether the onshore gas available for the AMPRO plant and FMC's efforts to obtain such gas meet the criteria established in Opinion No. 10 for the relief provided therein.[2] FMC states, "There are no onshore supplies available for use in the AMPRO plant in substitution for the offshore South Marsh Island reserves . . ." From this statement, it is not clear to us whether there might be some gas available to reduce the amount of relief FMC says it needs, or whether FMC is unwilling to consider any source an adequate substitute unless it can provide the same amount of gas as the South Marsh Island reserve.

In response to the third question of the Commission's letter order FMC states in general that it engages in a continuing effort to locate new supplies. Nevertheless, there is no description of the nature or extent of FMC's effort to locate onshore gas for the AMPRO plant. FMC says that its exploration efforts are discussed and tabulated in Appendix I of its response. But this appendix lists only those reserves already controlled by FMC. It says nothing of any efforts to locate new reserves, much less of efforts to locate reserves specifically for the AMPRO plant.

FMC's response indicates that a significant amount of gas has been committed to other customers by FMC and its partners, the Placid Group, since Opinion No. 10 was issued. FMC, however, does not explain why none of this gas could have been made available to the AMPRO plant.

Further, FMC states simply that "it would have been difficult to persuade Transco to transport" any gas from onshore reserves to the AMPRO plant. FMC, however, does not explain whether it tried to negotiate with Transco in this regard and the results of those negotiations.

We are concerned about the allegations of the emergency conditions at the AMPRO plant and the need for special relief. We had hoped that the questions of FMC's qualification for special relief under Opinion No. 10 could be resolved on the basis of FMC's written submission. Unfortunately, we find, as discussed above, the information to be ambiguous. In an effort to resolve the matter with the expedition that the allegation of an emergency implies, we have decided to set this matter for oral argument. FMC will be expected to clarify the matters

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[1] The Placid Group includes Placid Oil Co., Hunt Oil Co., Hunt Petroleum Corp., Hunt Industries, Hamilton Brothers Oil Co., and Hamilton Brothers Exploration Co.

[2] In this regard, the Commission fully realizes that Opinion Nos. 10 and 10-A are pending review in the Court of Appeals. Any decision to grant FMC's request for relief could not in the Commission's view amount to a modification of Opinion Nos. 10 and 10-A. Rather, it would be an exemption to the requirements of those opinions based on the particular facts presented.

set-out above and to respond to questions by the Commission relevant to FMC's petition that it requires and qualifies for Opinion No. 10's special relief provisions.

Certain issues have been raised by Trunkline Gas Company (Trunkline) and by Associated Gas Distributors (AGD) and the Public Service Commission of the State of New York (PSCNY) in answers filed opposing FMC's petition (see discussion at page 4, *infra*). Among other things, Trunkline challenges FMC's assertion that if relief is granted, interstate gas supplies will not be significantly affected. Trunkline also asks whether FMC's alleged emergency could have been alleviated by using short-term or other gas supplies following completion of the AMPRO plant. AGD and PSCNY argue that the corrosion that has occurred at the AMPRO plant is reparable at a cost that is slightly more than one percent of the $80 million investment in the facility. AGD and PSCNY also suggest that FMC could use a different insulating method to mothball the plant until onshore gas is available. We believe these arguments raise significant questions that FMC should address at oral argument.

The oral argument concerning FMC's petition will be held on June 15, 1979. It will not be a judicial or evidentiary type proceeding. Any party, including Commission Staff, interested in participating may make a presentation at the hearing provided a written request to participate is received by the Secretary of the Commission prior to 4:30 p.m. on June 12, 1979. The request should include a reference to Docket Nos. CI75-45, *et al.*, as well as a concise summary of the proposed oral presentation and a phone number where the person making the request may be reached. An original and fourteen copies of the party's proposed statement to be presented must be filed with the Secretary of the Commission prior to 4:30 p.m. on June 14, 1979. The Commission may limit the length and substance of the oral presentations.

There will be no cross-examination of parties participating, but the Commission may, of course, ask questions of those appearing before it. Any further procedural rules will be announced at the oral argument.

On April 26, 1979, motions in support of FMC's pleading were filed by the Louisiana Delegation [3] and by United States Senator Thad Cochran on behalf of himself and United States Senator John C. Stennis and United States Representatives David Bowen, John Hinson, Trent Lott, G. V. Montgomery, and Jamie L. Whitten. Answers opposing FMC's petition were filed on May 18, 1979, by AGD and PSCNY jointly and on May 21, 1979, by Trunkline. As noted, we believe that certain issues raised in these answers should be discussed by FMC at oral argument.

On May 25, 1979, FMC filed a response to Trunkline's answer opposing FMC's petition. The Commission's Rules of Practice and Procedure do not provide for replies to answers. FMC's response, therefore, will not be considered.

On May 25, 1979, FMC also filed a "Motion Ne Recipiatur" in which it urged that Trunkline's answer opposing FMC's petition should not be received. FMC points out that Trunkline is a party to a contract for transportation of part of the South Marsh Island reserves and should not be heard to argue in favor of an effective abrogation of that contract. FMC says that denial of its petition will benefit Trunkline financially and, in support of its motion, advances the equitable doctrines of estoppel and "clean hands."

The arguments advanced by FMC must give way in this instance to the Commission's need to be fully informed on all issues pertaining to FMC's petition. FMC is seeking an exemption from our recent decision eliminating producer reservations with respect to offshore gas (Opinion Nos. 10 and 10-A). Before we decide whether to grant such a petition, we should hear arguments on all sides of the issues involved. FMC's motion that Trunkline should not be heard on this matter is therefore denied.

On May 3, 1979, notice was issued of FMC's petition for relief. Transcontinental Gas Pipe Line Corporation (Transco) petitioned to intervene on May 18, 1979. On May 25, 1979, FMC filed a pleading opposing Transco's petition to intervene on the ground that Transco lacks a direct interest in the outcome of this proceeding.

The Commission's Rules of Practice and Procedure do not require a petitioner to show "direct interest" for intervention to be granted. It is only required that the interest be of such nature that petitioner's participation may be in the public interest.[4] In the circumstances of this proceeding, we find that Transco meets this standard.

The Commission finds: (1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that FMC's petition for relief be set for oral argument in accordance with the procedures set forth in the body of this order and hereinafter detailed.

(2) FMC's motion that we reject Trunkline's answer to FMC's petition for relief should be denied for the reasons set forth in the body of this order.

(3) Participation by Transco in this proceeding may be in the public interest.

The Commission orders: (A) An oral argument before the Commission as described in the body of this order, will be held on June 15, 1979, at 10:00 a.m. in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

(B) This hearing is limited to the need for the relief requested by FMC and whether FMC qualifies for the special relief provided for in Opinion No. 10 as these issues are more specifically set out in the questions referred to above.

(C) FMC's motion to reject Trunkline's answer is denied.

(D) Transco is permitted to intervene subject to the rules and regulations of the Commission: *Provided, however,* that participation by Transco shall be limited to matters affecting asserted rights and interests as specifically set forth in the petition to intervene; and *Provided, further,* that the admission of Transco shall not be construed as recognition by the Commission that Transco might be aggrieved because of any order of the Commission entered in this proceeding.

By the Commission. *SMITH,* Commissioner, *concurs* with the decision to provide further explication of Applicants' efforts to develop alternative sources of natural gas, as a condition precedent to relief under Opinion No. 10, but believes that the procedure set out may deny procedural due process to intervenors.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-18632 Filed 6-14-79; 8:45 am]
BILLING CODE 6450-01-M

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[3] The Louisiana Delegation is composed of United States Senators Russell B. Long and J. Bennett Johnston, Jr., and United States Representatives Lindy B. Boggs, John B. Breaux, Jerry Huckaby, Claude Leach, Robert L. Livingston, Gillis W. Long, W. Henson Moore, and David C. Treen.

[4] 18 CFR 1.8(b)(3).

[Docket Nos. CP77-402 and CP77-435]

Transcontinental Gas Pipe Line Corp.; Notice of Proposed Change in FERC Gas Tariff

June 5, 1979.

Take notice that on May 31, 1979, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77001, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 2 for effectiveness on July 1, 1979:

1. *Rate Schedule X–157*
(Transportation Agreement between Transco and Florida Gas Transmission Company (Florida Gas), dated March 18, 1977, as amended August 30, 1978): First Revised Sheet Nos. 1417, 1419, 1420, 1421, 1426, 1428 and 1429

2. *Rate Schedule X–158*
(Transportation Agreement between Transco and Southern Natural Gas Company (Southern), dated April 5, 1977, as amended August 30, 1978): First Revised Sheet Nos. 1434, 1436, 1438, 1443, 1446 and 1447

3. *Rate Schedule X–159*
(Transportation Agreement between Transco and United Gas Pipe Line Company (United), dated May 20, 1977, as amended August 30, 1978): First Revised Sheet Nos. 1451, 1453, 1455, 1460, 1463 and 1464

Transco states that under the foregoing transportation arrangements, Transco provides transportation services for Florida Gas, Southern and United from a point of receipt on Transco's Central Louisiana Gathering System in the Pecan Island Area, Vermilion Parish, Louisiana to points of connection between the Transco system and these three pipelines, or to points of connection between Transco and other pipelines where delivery is made for such three pipelines' account. Transco further states that the principal purpose of the revised tariff sheets is to change the form of the rate for the transportation services rendered for Florida Gas, Southern and United from a demand charge based on a fixed daily Contract Demand Quantity to a commodity charge applied to the volume of gas actually transported for each of the three pipelines. The change in rate, Transco states, is in consideration for transportation services which Florida Gas and Sea Robin Pipeline Company propose to render for Transco pursuant to applications pending in Docket Nos. CP79–171 and CP79–172, utilizing, on a best efforts basis and without charge, a portion of their capacity in pipeline facilities jointly owned with Transco, extending from Shell Oil Company's production platform in Block 22, Vermilion Area, offshore Louisiana to a point of connection with Transco's Central Louisiana Gathering System in the Pecan Island Area, to assist Transco in delivering into its system gas supplies from Blocks 56 and 57, East Cameron Area which will be connected to Block 22 by pipeline facilities which Transco has been authorized to construct and operate in a certificate issued in Docket No. CP79–191.

Transco states that copies of the instant filing have been served upon Florida Gas, Southern and United.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 18, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-18872 Filed 6-14-79; 8:45 am]
BILLING CODE 6450-01-M

FEDERAL TRADE COMMISSION

Donaldson, Lufkin & Jenrette, Inc.; Early Termination of Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the 30-day waiting period of the premerger notification rules.

SUMMARY: Donaldson, Lufkin & Jenrette, Inc. is granted early termination of the 30-day waiting period provided by law and the premerger notification rules with respect to its proposed acquisition of certain voting securities of SEI Corporation. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to requests for early termination submitted by both parties to the transaction. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: June 6, 1979.

FOR FURTHER INFORMATION CONTACT: Malcolm R. Pfunder, Assistant Director for Evaluation, Bureau of Competition, Room 394, Federal Trade Commission, Washington, D.C. 20580 (202–523–3404).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act and § 803.11 of the rules implementing the Act permit the agencies, in individual cases, to terminate this waiting period prior to its expiration and to publish notice of this action in the Federal Register.

By direction of the Commission.
Carol M. Thomas,
Secretary.

[FR Doc. 79-18873 Filed 6-14-79; 8:45 am]
BILLING CODE 6750-01-M

Octane Certification and Posting

AGENCY: Federal Trade Commission.

ACTION: Extension of Time to Comply with Commission Rule.

SUMMARY: The Commission has responded to the petition of Amoco Oil Company requesting an extension of time to comply with the Commission's Octane Certification and Posting Rule. The Commission has granted the request for extension with respect to the posting requirements of the Rule until June 15, 1979.

EFFECTIVE DATE: June 1, 1979.

FOR FURTHER INFORMATION CONTACT: James Mills, Federal Trade Commission, PE–S–7317.

SUPPLEMENTARY INFORMATION: On March 30, 1979, the Commission published the Octane Certification and Posting Rule in the Federal Register (44 FR 19160). The Rule establishes procedures for determining, certifying and posting, by means of a label on the fuel dispenser, the octane rating of automotive gasoline intended for sale to consumers. The Rule took effect on June 1, 1979.

By letter, dated May 4, 1979, the Amoco Oil Company (Amoco) requested that the effective date of the Commission's Octane Certification and Posting Rule be extended from June 1 to June 15, 1979. Amoco has made a good faith effort to comply with the octane label posting provisions of the Rule by the effective date of June 1, 1979. However, due to circumstances beyond Amoco's control, Amoco will not be able to comply with the Rule until June 15, 1979.

Since Amoco has made a good faith effort to obtain and post labels in compliance with the Rule by the prescribed effective date and since the reasons Amoco could not post were beyond Amoco's control, the Commission has decided to grant to

Amoco an extension of the effective date of the duty to post under the Octane Certification and Posting Rule to June 15, 1979.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 79-18765 Filed 6-14-79; 8:45 am]

BILLING CODE 6750-01-M

Transmittal Rules; Early Termination of Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the 30-day waiting period of the premerger notification rules.

SUMMARY: Florida Power Corporation is granted early termination of the 30-day period provided by law and the premerger notification rules with respect to its proposed acquisition of certain assets of Amvest Corporation. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to requests for early termination submitted by both parties to the transaction. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: June 5, 1979.

FOR FURTHER INFORMATION CONTACT: Malcolm R. Pfunder, Assistant Director for Evaluation, Bureau of Competition, Room 394, Federal Trade Commission, Washington, D.C. 20580, (202-523-3404).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. section 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act and § 803.11 of the rules implementing the Act permit the agencies, in individual cases, to terminate this waiting period prior to its expiration and to publish notice of this action in the Federal Register.

By direction of the Commisson.

Carol M. Thomas,

Secretary.

[FR Doc. 79-18794 Filed 6-14-79; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

[Intervention Notice 92; Docket No. 7305]

Proposed Intervention in Rate Increase Proceeding; Maryland Public Service Commission, Chesapeake & Potomac Telephone Co.

The Acting Administrator of General Services seeks to intervene in a proceeding before the Maryland Public Service Commission involving an application of the Chesapeake and Potomac Telephone Company for an increase in its annual telephone rates. The Acting Administrator of General Services represents the interests of the executive agencies of the United States Government as users of utility services.

Persons desiring to make inquiries of GSA concerning this case should submit them, in writing, to Mr. Spence W. Perry, Assistant General Counsel, Regulatory Law Division, General Services Administration, 18th & F Streets, NW., Washington, DC 20405, telephone (202) 566-0726, on or before July 16, 1979, and refer to this notice number.

Persons making inquiries are put on notice that the making of an inquiry shall not serve to make any persons parties of record in the proceeding.

[Section 201(a)(4), Federal Property and Administrative Services Act, 40 U.S.C. 481(a)(4)]

Dated: June 4, 1979.

Paul E. Goulding,

Acting Administrator of General Services.

[FR Doc. 79-18827 Filed 6-14-79; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 79M-0145]

Abbott Laboratories; Premarket Approval of HAVAB

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the HAVAB (Antibody to Hepatitis A Virus ^{125}I (Human)/Hepatitis A Virus (Primate)) sponsored by Abbott Laboratories. After reviewing the Clinical Chemistry and Hematology Device Panel's recommendation, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by July 16, 1979.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Keith Lusted, Bureau of Medical Devices (HFK-402), Food and Drug Administration, Department of Health, Education, and Welfare, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

SUPPLEMENTARY INFORMATION: The sponsor, Abbott Laboratories, North Chicago, IL 60064, submitted an application for premarket approval of the HAVAB (Hepatitis A Virus ^{125}I (Human)/Hepatitis A Virus (Human)) to FDA on November 3, 1978. The application was reviewed by the Clinical Chemistry and Hematology Panel, an FDA advisory committee, which recommended approval of the application. On January 19, 1979, FDA approved the application by a letter to the sponsor from the Director, Bureau of Medical Devices, FDA.

A detailed summary of the information on which FDA's approval is based is available upon request from the Hearing Clerk (address above). Requests should be identified with the name of the device and the Hearing Clerk docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(g) of the act (21 U.S.C. 360e(g)) authorizes any interested person to petition for administrative review of the FDA decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of the FDA administrative practices and procedures regulations or a review of the application and the agency's action by an independent advisory committee of experts. A petition shall be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petition shall designate the form of review that the petitioner requests (hearing or independent advisory committee) and shall be accompanied by supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing any petition,

FDA will decide whether to grant or deny the petition by notice published in the Federal Register. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place of the review, and other details.

Petitioners may at any time on or before July 16, 1979, file with the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, four copies of each petition and supporting data and information, identified with the name of the device and the Hearing Clerk docket number found in brackets in the heading of this document.

Dated: June 5, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-18305 Filed 6-14-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 79M-0144]

Abbott Laboratories; Premarket Approval of CORAB

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the CORAB (Antibody to Hepatitis B Core Antigen ^{125}I (Human)/Hepatitis B Core Antigen (Human)) sponsored by Abbott Laboratories. After reviewing the Clinical Chemistry and Hematology Device Panel's recommendation, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by July 16, 1979.

ADDRESS: Request for copies of the summary of safety and effectiveness data and petitions for administrative review may be addressed to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Keith Lusted, Bureau of Medical Devices (HFK–402), Food and Drug Administration, Department of Health, Education, and Welfare, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7550.

SUPPLEMENTARY INFORMATION: The sponsor, Abbott Laboratories, North Chicago, IL 60064, submitted an application for premarket approval of the CORAB (Antibody to Hepatitis B Core Antigen ^{125}I (Human)/Hepatitis B Core Antigen (Human)) to FDA on November 3, 1978. The application was reviewed by the Clinical Chemistry and Hematology Panel, an FDA advisory committee, which recommended approval of the application. On January 19, 1979, FDA approved the application by a letter to the sponsor from the Director, Bureau of Medical Devices, FDA.

A detailed summary of the information on which FDA's approval is based is available upon request from the Hearing Clerk (address above). Requests should be identified with the name of the device and the Hearing Clerk docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(g) of the act (21 U.S.C. 360e(g)) authorized any interested person to petition for administrative review of the FDA decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of the FDA administrative practices and procedures regulations or a review of the application and the agency's action by an independent advisory committee of experts. A petition shall be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petition shall designate the form of review that the petitioner requests (hearing or independent advisory committee) and shall be accompanied by supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing any petition, FDA will decide whether to grant or deny the petition by notice published in the Federal Register. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place of the review, and other details.

Petitioners may at any time on or before July 16, 1979, file with the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, four copies of each petition and supporting data and information, identified with the name of the device and the Hearing Clerk docket number found in brackets in the heading of this document.

Dated: June 5, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-18306 Filed 6-14-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 79M-0103]

Barnes-Hind Pharmaceuticals, Inc.; Premarket Approval of Soft-Therm (Preserved Isotonic Saline)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces approval of the application for premarket approval under the Medical Device Amendments of 1976 of Soft-Therm (Preserved Isotonic Saline) sponsored by Barnes-Hind Pharmaceuticals, Inc. After reviewing the Ophthalmology Device Classification Panel's recommendation, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recomended in the submitted labeling.

DATE: Petitions for administrative review by July 16, 1979.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be addressed to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Keith Lusted, Bureau of Medical Devices (HFK–402), Food and Drug Administration, Department of Health, Education, and Welfare, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7550.

SUPPLEMENTARY INFORMATION: The sponsor, Barnes-Hind Pharmaceuticals, Inc., Sunnyvale, CA 94086, submitted an application for premarket approval of Soft-Therm (Preserved Isotonic Saline) to FDA on September 15, 1977. The application was reviewed by the Ophthalmology Device Classification Panel, an FDA advisory committee, which recommended approval of the application. On January 26, 1979, FDA approved the application by a letter to the sponsor from the Director of the Bureau of Medical Devices.

Before enactment of the Medical Device Amendments of 1976 (Pub. L. 94–295; 90 Stat. 539–583) (the amendments), soft contact lenses and solutions were regulated as new drugs. Because the amendments broadened the definition of

the term "device" in section 201 (h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)) (the act), soft contact lenses and solutions are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the Federal Register of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly considered new drugs.

Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of soft contact lenses or solutions comply with the records and reports provisions of 21 CFR Part 310, Subpart D, until these provisions are replaced by similar requirements under the amendments.

A summary of the information on which FDA's approval is based is available upon request from the Hearing Clerk (address above). Requests should be identified with the name of the device and the Hearing Clerk docket number found in brackets in the heading of this document.

The labeling of the Soft-Therm (Preserved Isotonic Saline) Solution, like that of other approved solutions for use with soft contact lenses, states that the solution is for use with several named brands of soft contact lenses. Such restrictive labeling may be revised to refer to other lenses, if the sponsor conducts necessary tests and obtains FDA's approval. FDA is considering alternatives to the current restrictive labeling requirements for soft contact lenses and solutions.

Opportunity for Administrative Review

Section 515(g) of the act (21 U.S.C. 360e(g)) authorizes any interested person to petition for administrative review of the FDA decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of the FDA administrative practices and procedures regulations or a review of the application and FDA's action by an independent advisory committee of experts. A petition shall be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petition must designate the form of review that the petitioner requests (hearing or independent advisory committee) and must be accompanied by supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing any petition, FDA will decide whether to grant to deny the petition by a notice published in the Federal Register. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may at any time on or before July 16, 1979 file with the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, four copies of each petition and supportng data and information, identified with the name of the device and the Hearing Clerk docket number found in brackets in the heading of this document. Received petitions may be seen in the above office from 9 a.m. to 4 p.m., Monday through Friday.

Dated: June 5, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-18307 Filed 6-14-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 79M-0101]

Barnes-Hind Pharmaceuticals, Inc.; Premarket Approval of Soft Mate Sterile Cleaning Solution for Soft Contact Lenses

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces approval of the application for premarket approval under the Device Amendments of 1976 of Soft Mate Sterile Cleaning Solutions for soft contact lenses sponsored by Barnes-Hind Pharmaceuticals, Inc. After reviewing the Ophthalmology Device Classification Panel's recommendation, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by July 16, 1979.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be addressed to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Keith Lusted, Bureau of Medical Devices (HFK-402), Food and Drug Administration, Department of Health, Education, and Welfare, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

SUPPLEMENTARY INFORMATION: The sponsor, Barnes-Hind Pharmaceuticals, Inc., Sunnyvale, CA 94086, submitted an application for premarket approval of the Soft Mate sterile cleaning solution for soft contact lenses to FDA on September 6, 1977. The application was reviewed by the Ophthalmology Device Classification Panel, an FDA advisory committee, which recommended approval of the application. On January 26, 1979, FDA approved the application by a letter to the sponsor from the Director of the Bureau of Medical Devices.

Before enactment of the Medical Device Amendments of 1976 (Pub. L. 94-295; 90 Stat. 539-583) (the amendments), soft contact lenses and solutions were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)) (the act), soft contact lenses and solutions are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the Federal Register of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly considered new drugs.

Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of soft contact lenses or solutions comply with the records and reports provisions of 21 CFR Part 310, Subpart D, until these provisions are replaced by similar requirements under the amendments.

A summary of the information on which FDA's approval is based is available upon request from the Hearing Clerk (address above). Requests should be identified with the name of the device and the Hearing Clerk docket number found in brackets in the heading of this document.

The labeling of the Soft Mate sterile cleaning solution for soft contact lenses, like that of other approved solutions for use with soft contact lenses, states that the solution is for use with several named brands of soft contact lenses. Such restrictive labeling may be revised to refer to other approved lenses, if the sponsor conducts necessary tests and obtains FDA's approval. FDA is considering alternatives to the current restrictive labeling requirements for soft contact lenses and solutions.

Opportunity for Administrative Review

Section 515(g) of the act (21 U.S.C. 360(e)(g)) authorizes any interested person to petition for administrative review of the FDA decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of the FDA administrative practices and procedures regulations or a review of the application and the agency's action by an independent advisory committee of experts. A petition must be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33 (b)). A petition must designate the form of review that the petitioner requests (hearing or independent advisory committee) and must be accompanied by supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing any petition, FDA will decide whether to grant or deny the petition by a notice published in the Federal Register. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may at any time on or before July 16, 1979 file with the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, four copies of each petition and supporting data and information, identified with the name of the device and the Hearing Clerk docket number found in brackets in the heading of this document. Received petitions may be seen in the above office from 9 a.m. to 4 p.m., Monday through Friday.

Dated: June 5, 1979.

William F. Randolph,

Acting Associate Commissiner for Regulatory Affairs.

[FR Doc. 79–18688 Filed 6–14–79; 8:45 am]
BILLING CODE 4110–03–M

[Docket No. 79H–0115]

Burton, Parsons & Co.; Premarket Approval of Preflex® and Flex-Care™ Solutions

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces approval of the application for premarket approval under the Medical Device Amendments of 1976 of the Preflex® and Flex-Care™ solutions as a two-part system sponsored by Burton, Parsons and Co., Washington, DC. After reviewing the Ophthalmology Device Classification Panel's recommendation, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by July 16, 1979.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be addressed to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Keith Lusted, Bureau of Medical Devices (HFK–402), Food and Drug Administration, Department of Health, Education, and Welfare, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7550.

SUPPLEMENTARY INFORMATION: The sponsor, Burton, Parsons and Co., Washington, DC 20021, submitted an application for premarket approval of Preflex® and Flex-Care™ solutions to FDA on March 24, 1978. The application was reviewed by the Ophthalmology Device Classification Panel, and FDA advisory committee, which recommended approval of the application. On February 23, 1979, FDA approved the application by a letter to the sponsor from the Director of the Bureau of Medical Devices.

Before enactment of the Medical Device Amendments of 1976 (Pub. L. 94–295; 90 Stat. 539–583) (the amendments), soft contact lenses and solutions were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)) (the act), soft contact lenses and solutions are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the Federal Register of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to insure continuation of premarket approval requirements for class III devices formerly considered new drugs.

Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of soft contact lenses or solutions comply with the records and reports provisions of 21 CFR Part 310, Subpart D, until these provisions are replaced by similar requirements under the amendments.

A summary of the information on which FDA's approval is based is available upon request from the Hearing Clerk (address above). Requests should be identified with the name of the device and the Hearing Clerk docket number found in brackets in the heading of this document.

The labeling of the Preflex® and Flex-Care™ solutions, like that of other approved solutions for use with soft contact lenses, states that the solution is for use with several named brands of soft contact lenses. Such restrictive labeling may be revised to refer to other approved lenses, if the sponsor conducts necessary tests and obtains FDA's approval. FDA is considering alternatives to the current restrictive labeling requirements for soft contact lenses and solutions.

Opportunity for Administrative Review

Section 515(g) of the act (21 U.S.C. 360e(g)) authorizes any interested person to petition for administrative review of the FDA decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of the FDA administrative practices and procedures regulations or a review of the application and FDA's action by an independent advisory committee of experts. A petition must be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petition must designate the form of review that the petitioner requests (hearing or independent advisory committee) and must be accompanied by supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing any petition, FDA will decide whether to grant or deny the petition by a notice published in the Federal Register. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may at any time on or before July 1, 1979 file with the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, four copies of each petition and supporting data and information, identified with the name of the device and the Hearing Clerk docket number found in brackets in the heading of this document. Received petitions may be seen in the above office from 9 a.m. to 4 p.m., Monday through Friday.

Dated: June 5, 1979.
William F. Randolph,
Acting Associate Commissioner for Regulatory Affairs.
[FR Doc. 79-18288 Filed 6-14-79; 8:45 am]
BILLING CODE 4110-03-M

[Docket No. 79H-0011]

Chlortetracycline Soluble Tablets for Animal Use; Drug Efficacy Study Implementation; Followup Notice and Opportunity for Hearing; Correction

AGENCY: Food and Drug Administration.
ACTION: Notice; Correction.

SUMMARY: FR Doc. 79-8286 appearing at page 19030 in the Federal Register for Friday, March 30, 1979 (44 FR 19030) is corrected in column two under paragraph V.1.a. *Indications for use* for calves and in column three under paragraph V.2.a. *Indications for use* for swine on page 19031 by adding "and *Salmonella* spp." after the word "*coli*".

FOR FURTHER INFORMATION CONTACT: Donald A. Gable, Bureau of Veterinary Medicine (HFV-100), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4313.

Dated: June 5, 1979.
Lester M. Crawford,
Director, Bureau of Veterinary Medicine.
[FR Doc. 79-18311 Filed 6-14-79; 8:45 am]
BILLING CODE 4110-03-M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meetings are announced:

Committee name	Date, time, place	Type of meeting and contact person
1. Hematology Devices Section and the Clinical Chemistry Section of the Clinical Chemistry and Hematology Devices Panel.	July 9, 9 a.m., Rm. 1409, 200 C St. SW., Washington, DC.	Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 5 p.m.; Kaiser Aziz (HFK-440), 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

General function of the Committee. The Committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons are encouraged to present data, information, or views, orally or in writing, on issues pending before the Committee. Those desiring to make formal presentations should notify Kaiser Aziz by June 29, 1979, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied upon, and also an indication of the approximate time required to make their comments.

Open committee discussion. The Committee will discuss current efforts by the Food and Drug Administration and the medical device industry to assure that currently marketed in vitro diagnostic radioassays for serum vitamin B_{12} determination are safe and effective.

Committee name	Date, time, place	Type of meeting and contact person
2. Physical Medicine Devices Section of the Surgical and Rehabilitation Devices Panel.	July 10 and 11, Claremont Hotel, Oakland, CA	Open public hearing July 10, 9 a.m. to 10 a.m.; open committee discussion July 10, 10 a.m. to 5 p.m. July 11, 9 a.m. to 5 p.m.; Johnsie W. Bailey (HFK-410), 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7236

General function of the Committee. The Committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons are encouraged to present data, information, or views orally or in writing, on issues pending before the Committee. Those desiring to make formal presentations should notify Johnsie Bailey by June 26, 1979, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied upon, and also an indication of the approximate time required to make their comments.

Open committee discussion. The Committee will discuss new designs and innovations of wheelchairs to reduce the failure rate and identify existing safety problems of wheelchairs. There will be a site visit to the Center for Independent Living to view a wheelchair prototype model, and to discuss the major problems experienced by wheelchair users due to malfunctions and breakdowns of the wheelchair. Also, the Committee will classify breath and voice operated control units, cast accessories, cast cutter blades, ambulation safety belts, foot supports and molds, prosthesis suspension harness, hip socket belts and buckets, and any additional devices.

Committee name	Date, time, place	Type of meeting and contact person
3. Antimicrobial Panel	July 20 and 21, 9 a.m., Conference Rm. K, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD (July 20); Holiday Inn, Bethesda, MD (July 21).	Open public hearing July 20, 9 a.m. to 10 a.m.; open committee discussion July 20, 10 a.m. to 4:30 p.m.; July 21, 9 a.m. to 4:30 p.m.; Lee Geissler (HFD-510), 5600 Fishers Lane, Rockville, MD 20857, 301-443-4057.

Committee name	Date, time, place	Type of meeting and contact person	General function of the Committee	Agenda—Open public hearing	Open committee discussion
4. Miscellaneous Internal Drug Products Panel	July 21 and 22, Holiday Inn, Bethesda, MD	Open public hearing July 21, 9 a.m. to 10 a.m.; open committee discussion July 21, 10 a.m. to 4:30 p.m., July 22, 8:30 a.m. to 3:30 p.m.; Armond Welch (HFD-510), 5600 Fishers Lane, Rockville, MD 20857, 301-443-4090.	*General function of the Committee.* The Committee reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.	*Agenda—Open public hearing.* Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. Those who desire to make such a presentation should notify the contact person before July 17, 1979, and submit a brief statement of the general nature of the data, information, or views they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.	*Open committee discussion.* The Committee will review data submitted in response to the over-the-counter (OTC) review's call for data for this panel (see also 21 CFR 330.10(a)(2)). The Panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

Committee name	Date, time, place	Type of meeting and contact person	General function of the Committee	Agenda—Open public hearing	Open committee discussion
5. Ophthalmic Drugs Subcommittee of the Anti-Infective and Topical Drugs Advisory Committee.	July 23, 9 a.m., Conference Rm. G, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.	Open public hearing 9 a.m. to 10 a.m.; open committee discussion 10 a.m. to 4:30 p.m.; Mary K. Bruch (HFD-148), 5600 Fishers Lane, Rockville, MD 20857, 301-443-4310.	*General function of the Committee.* The Committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in infectious diseases, dermatological disorders, and ocular disease.	*Agenda—Open public hearing.* Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee.	Open committee discussion. The Committee will review the labeling claims for reduction of intraocular pressure with drugs used in glaucoma: Diopine (dipivalyl epinephrine) NDA 18-230; and Vasocon-A (naphazoline HCl, antazoline) NDA 8-340.

Committee name	Date, time, place	Type of meeting and contact person	General function of the Committee	Agenda—Open public hearing
6. Dermatologic Drugs Subcommittee of the Anti-Infective and Topical Drugs Advisory Committee.	July 24, 9 a.m., Conference Rm. G, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.	Open public hearing 9 a.m. to 10 a.m.; open committee discussion 10 a.m. to 4:30 p.m.; Mary K. Bruch (HFD-148), 5600 Fishers Lane, Rockville, MD 20857, 301-443-4310.	*General function of the Committee.* The Committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in infectious diseases, dermatological disorders, and ocular disease.	*Agenda—Open public hearing.* Any interested persons may present data, information, or views, orally or in

writing, on issues pending before the Committee.

Open committee discussion. The Committee will discuss topical hydrocortisone—discussion of OTC panel recommendation that hydrocortisone be marketed over-the-counter; consideration of adrenal suppression as part of guidelines for testing topical corticosteroids; Dapsone—development of labeling for use in dermatitis herpetiformis.

Any interested person who wishes to be assured of the right to make a oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be obtained from the Public Records and Documents Center (HFC–18), 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., and Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

The Commissioner approves that scheduling of meetings at locations outside of the Washington, DC, area on the basis of the criteria of 21 CFR 14.22 of FDA's regulations relating to public advisory committees.

Dated: June 11, 1979.

William F. Randolph

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-18822 Filed 6-14-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 78N-0105]

GRAS Safety Review of Starter Distillate; Public Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is announcing that public hearings will be held on starter distillate so that data, information, and views can be presented orally to determine if it is generally recognized as safe (GRAS) or subject to a prior sanction.

DATE: Hearings will be held on July 16, 1979 for starter distillate.

ADDRESS: The hearings will be held in the Conference Room, Lee Building, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20014.

FOR FURTHER INFORMATION CONTACT:

Corbin I. Miles, Bureau of Foods (HFF–335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204, 202–472–4750, or George W. Irving, Jr., Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20014, 302–530–7033.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 12, 1979 (44 FR 2687), the Commissioner of Food and Drugs issues a notice advising the public that an opportunity would be provided for the oral presentation of data, information, and views at public hearings to be conducted by the Select Committee on GRAS Substances of the Life Sciences Research Office, Federation of American Societies for Experimental Biology (hereafter referred to as the Select Committee), concerning the safety of the following five categories of food ingredients and the Select Committee's tentative determination of whether or not they are GRAS or subject to a prior sanction: starter distillate, hydrochloric acid, tartrates, riboflavin, and propionates.

No requests were received for hearings on propionates, tartrates, and riboflavin. Accordingly, no hearings will be held on these food ingredients.

The Select Committee received a request for a hearing on hydrochloric acid from Morton Chemical Co., Woodstock Research Center, 1275 Lake Ave., Woodstock, IL 60098, but the request was subsequently withdrawn. No other requests for a hearing on hydrochloric acid were received, and accordingly no hearing will be held on this food ingredient.

The Select Committee received a request from Chr. Hansen's Laboratory, Inc., 9015 West Maple St., Milwaukee, WI 53214, asking for an opportunity to appear at a public hearing on starter distillate to make an oral presentation. No other requests were received for a hearing on starter distillate.

In accordance with the procedures set forth in the January 12, 1979 Federal Register notice, the agency announces that a hearing on starter distillate will be held at 10:30 a.m., on July 16, 1979, in the Conference Room of Lee Building, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20014. Those persons who have requested an opportunity to make oral presentations will be expected to complete their presentations within the period indicated and in accordance with the following schedule:

July 16, 1979, 10:30 a.m. to 11:15 a.m., Neil Dinesen, Chr. Hansen's Laboratory, Inc., Milwaukee, WI.—30 minutes.

Dated: June 11, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-18823 Filed 6-14-79; 8:45 am]

BILLING CODE 4110-03-M

Institute of Museum Services

National Museum Services Board; Meeting

The National Museum Services Board (NMSB) will hold an open meeting June 22–23 in Washington, D.C. to discuss future policy directions of the Institute of Museum Services (IMS), including the Institute's museum grants program, reauthorization, budget request, and regulations pertaining to the FY 1980 grants program. In addition, the Board will review grant applications for Fiscal Year 1979.

The Board will meet from 9:00 a.m. to 5:00 p.m. June 22 in the Subcommittee on Education and Labor Hearing Room #2261 of the Rayburn House Office Building, Independence Avenue and South Capitol Street; and from 9:00 a.m. to 12:15 p.m. June 23 in the Director's Conference Room of the National Air and Space Museum, 7th Street & Independence Avenue, S.W.

For further information, contact Sam Eskenazi or Loretta Ingraham, 202/472–3325.

Dated: June 12, 1979.

Lee Kimche,

Director.

[FR Doc. 79-18729 Filed 6-14-79; 8:45 am]

BILLING CODE 4110-24-M

Office of the Assistant Secretary for Health

National Council on Health Care Technology; Meeting

Correction

In FR Doc. 79–18077, published in the issue of June 11, 1979, on page 33497 make the following correction. On page 33497, the last line of the first full

paragraph, the telephone number should have read: "(202) 472–4248".

BILLING CODE 1505-01-M

Public Health Service

Occupational Safety and Health Field Research Project

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Center for Disease Control, PHS, HEW.

ACTION: Notice of Research Project Initiation.

SUMMARY: NIOSH announces that it is ready to begin data collection on a field research project entitled "Morbidity and Industrial Hygiene Study of Cement Workers". The study is designed to determine the risks of developing chronic lung disease in the cement industry in the United States. This project is part of the NIOSH industrywide research effort conducted under the Occupational Safety and Health Act of 1970.

This notice does not constitute a request for proposal.

DATES: Field work is scheduled to begin on or about July 15, 1979.

FOR FURTHER INFORMATION CONTACT: Alan L. Engelberg, M.D., Division of Respiratory Disease Studies, NIOSH, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, Telephone: (304) 599–7223.

SUPPLEMENTARY INFORMATION: On July 11, 1978, NIOSH published in the **Federal Register** (43 FR 29834) a list of proposed field research projects. That notice stated that more specific information would be provided to the public 6 weeks before starting field work on any of the proposed projects. Field investigation and data collection on the following study will begin on or about July 15, 1979:

Title: Morbidity and Industrial Hygiene Study of Cement Workers.

Project Officer: Alan L. Engelberg, M.D., Division of Respiratory Disease Studies, NIOSH.

Purpose: The purpose of this study is to determine the prevalence of lung disease in workers in the cement industry.

Background: The potential for lung disease among cement workers has been investigated for many years both in this country and abroad. The earliest studies searched primarily for fibrotic disease. Recent foreign studies searched primarily for fibrotic disease. Recent foreign studies suggest the possibility of an obstructive component to lung disease in these workers. This study will investigate the extent of both restrictive and obstructive lung disease and the relationship to occupational exposure to cement dust.

Study Description: The proposed study group will consist of approximately 2,500 workers from the cement industry.

A questionnaire covering occupational history, respiratory history and symptoms, and smoking history will be completed for each of the 2,500 workers.

Each of the 2,500 workers will be given a limited medical examination including a chest X-ray and spirometry test. Personal dust exposure data will be collected on a sub-group of these workers on days that will not coincide with the days chosen for their medical examinations. Participation in this study by employees is voluntary. The data from the study group will be compared with data from a comparison group of 3,000 workers from non-dusty industries. This comparison group will be selected as part of an ongoing NIOSH research project.

The NIOSH field research project described above will be conducted under the authority of section 20 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669) and in accordance with the provisions of Part 85a of Title 42, Code of Federal Regulations. The protocol for this type of project has been reviewed by the Office of Management and Budget and determined to be in compliance with the Federal Reports Act.

Dated: June 8, 1979.

Anthony Robbins,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 79-18081 Filed 6-14-79; 8:45 am]

BILLING CODE 4110-07-M

Occupational Safety and Health Field Research Project

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Center for Disease Control, PHS, HEW.

ACTION: Notice of Research Project Initiation.

SUMMARY: NIOSH announces that it is ready to begin data collection on a field research project entitled "Reproductive History Study of Women Pharmaceutical Research Workers". This project is part of the NIOSH industrywide research effort conducted under the Occupational Safety and Health Act of 1970.

This notice does not constitute a request for proposal.

DATES: Field work is scheduled to begin on or about July 15, 1979.

FOR FURTHER INFORMATION CONTACT: Cynthia Robinson, Division of Surveillance, Hazard Evaluations and Field Studies, NIOSH, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone: (513) 684–2761.

SUPPLEMENTARY INFORMATION: On September 20, 1978, NIOSH published in the Federal Register (43 FR 42306) a list of proposed field research projects. That notice stated that more specific information would be provided to the public 6 weeks before starting work on any of the proposed projects. Field investigation and data collection on the following study will begin on or about July 15, 1979.

Title: Reproductive History Study of Women Pharmaceutical Research Workers.

Project Officer: Cynthia Robinson, Divison of Surveillance, Hazard Evaluations and Field Studies, NIOSH.

Purpose: To determine if women working in a pharmaceutical research laboratory are experiencing adverse reproductive effects.

Background: In 1976 NIOSH received a Health Hazard Evaluation request from women employed at a pharmaceutical research laboratory. The request alleged employees who worked in the laboratory area were experiencing adverse reproductive effects. In response, NIOSH conducted a walk-through survey at the facility. The survey revealed that the potential exposures to the women employees included many organic chemicals used in the production and testing of various drugs. Some of the chemicals are known or suspected carcinogens, embryotoxins, teratogens, and mutagens. The present study will examine what effects, if any, the potential exposures in the laboratory have had upon the reproductive outcomes of women.

Study Description: The proposed study population has been defined as 600 women who worked at the research laboratory facility for at least 6 months between January 1, 1966 and June 8, 1977 and who were between the ages of 18 and 45. The exposed group will consist of about 200 women who worked in the laboratory area. The comparison group will consist of 400 randomly selected women who worked in the clerical and administrative areas of the facility. The women will be interviewed using a questionnaire covering demographic data, medical, reproductive, and

occupational histories. Participation by employees in this study is voluntary.

The NIOSH field research project described above will be conducted under the authority of section 20 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669) and in accordance with the provisions of Part 85a of Title 42, Code of Federal Regulations. The protocol for this type of project has been reviewed by the Office of Management and Budget and determined to be in compliance with the Federal Reports Act.

Dated: June 11, 1979.

John R. Froines,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. 79-18625 Filed 6-14-79; 8:45 am]

BILLING CODE 4110-87-M

INTERAGENCY REGULATORY LIAISON GROUP

Supplementary Agreement

I. Background

On September 28, 1977, four regulatory agencies charged with protecting the public and the environment from the adverse effects of toxic and hazardous substances—the Consumer Product Safety Commission (CPSC), the Environmental Protection Agency (EPA), the Food and Drug Administration (FDA) of the Department of Health, Education and Welfare, and the Occupational Safety and Health Administration (OSHA) of the Department of Labor—entered into an interagency agreement to increase their cooperative efforts as far as practicable to make the most efficient use of resources, achieve consistent regulatory policy, and improve the protection of the public health and environment. The agreement was published in the Federal Register of October 11, 1977 (42 FR 54856). Pursuant to the agreement, the four agencies formed the Interagency Regulatory Liaison Group (IRLG) to carry out their cooperative efforts.

The agencies now believe that the purposes of the original agreement will be better served by adding as a party to that agreement and as a full member of the IRLG a fifth agency that is charged with protecting the public and the environment from the adverse effects of toxic and hazardous substances: the Food Safety and Quality Service (FSQS) of the Department of Agriculture. FSQS already has participated in several IRLG activities.

II. Supplementary Agreement

The five agencies—CPSC, EPA, FDA, OSHA, and FSQS—hereby agree that FSQS is a party to the original interagency agreement and a full member of the IRLG.

The five agencies further agree that (a) whenever the original agreement (42 FR 54856) refers to "the four agencies" it is to be understood to be referring to all five agencies; (b) supplementary agreements of the kind referred to in Section IV.B. of the original agreement (42 FR at 54857) may be entered into by authorized representatives of any two, three or four of the five agencies; and (c) supplementary agreements of the kind referred to in Section IV.C. of the original agreement (42 FR 54857) may be entered into by authorized subordinate officials of the five agencies or of any two, three, or four of the agencies.

III. Agreement Authority

This supplementary agreement is entered into under the authority of the Economy Act of 1932, various provisions for interagency cooperation appearing in the legislative authorities of the five agencies, and Section IV of the original interagency agreement (42 FR at 54857).

IV. Effective Date

This agreement will take effect when it has been accepted by the five agencies.

For the Consumer Product Safety Commission:

Susan B. King,

Chairman.

For the Food and Drug Administration:

Donald Kennedy,

Commissioner.

For the Food Safety and Quality Service:

Carol Tucker Foreman

Assistant Secretary of Agriculture.

For the Environmental Protection Agency:

Douglas M. Costle,

Administrator.

For the Occupational Safety and Health Administration:

Eula Bingham,

Assistant Secretary of Labor.

May 24, 1979.

[FR Doc. 79-18310 Filed 6-14-79; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Serial No. I-4445]

Idaho; Notice of Termination of Proposed Withdrawal and Reservation of Lands

June 7, 1979.

Notice of an application, serial number I-4445, for withdrawal and reservation of lands was published as Federal Register Document No. 71-11972 on Page 15763 of the issue for August 18, 1971. The applicant agency has cancelled its application insofar as it involved the lands described below. Therefore, pursuant to the regulations contained in 43 CFR, Subpart 2091, such lands will be at 10:00 a.m. on July 16, 1979, relieved of the segregative effect of the above mentioned application.

The lands involved in this notice of termination are:

Boise Meridian

T. 2 N., R. 4 W.,
Sec. 22, NW¼NW¼, S½NE¼NW¼.

The area described aggregates 60 acres in Owyhee County.

William E. Ireland,

Acting Chief, Branch of L&M Operations.

[FR Doc. 79-18691 Filed 6-14-79; 8:45 am]

BILLING CODE 4310-84-M

Worland District Grazing Advisory Board Meeting

June 7, 1979.

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463), that a meeting of the Worland District Grazing Advisory Board will be held at 1:00 p.m., August 1, 1979, in the Hospitality Room of the Stockgrowers State Bank, 700 Big Horn Avenue, in Worland, Wyoming.

The agenda for this meeting includes (1) review of fiscal year 1979 range improvement projects, (2) range improvement projects proposed for fiscal year 1980, and (3) communication on maintenance and the Allotment Management Plan (AMP).

The meeting will be open to the public. Interested persons may make oral statements to the board, or file written statements for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 1700 Robertson, Worland, Wyoming 82401, by 4:30 p.m., July 27, 1979.

Summary minutes of this meeting will be on file in the district office and

available for public inspection (during regular business hours) within 30 days following the meeting.

John A. Kwiatkowski,

District Manager.

[FR Doc. 79-18902 Filed 6-14-79; 8:45 am]

BILLING CODE 4310-55-M

Fish and Wildlife Service

California Department of Fish and Game; Notice of Correction

Notice is hereby given that an error occurred in a notice published in the Federal Register, May 14, 1979, Vol. 44, Number 94, page 28115, concerning an application for an amendment to PRT 2-319 to take sea otters as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 18) and in a Notice of Correction published on May 29, 1979, Vol. 44, Number 104, page 30780. The applicant is the California Department of Fish and Game.

Item number three initally stated that the permit was for 100 sea otters and the first Notice of Correction stated that it was for 140 sea otters. This figure should read 240. This is the number of sea otters originally authorized to be taken in the permit. The amendment requested will not change the number of animals to be taken by the permittee, only some of the research activities to be carried out.

Concurrent with the publication of this notice in the Federal Register the Federal Wildlife Permit Office is forwarding copies of this notice to the Marine Mammal Commission and the Committee of Scientific Advisors.

The application has been assigned file number PRT 2-319A. Written data or views, or requests for copies of the complete application or for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240, on or before July 16, 1979. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such a hearing is at the discretion of the Director.

Dated: June 4, 1979.

Donald G. Donahoe,

Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79-18877 Filed 6-14-79; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Receipt of Application

The applicants listed below wish to be authorized to conduct the specified activity with the indicated Endangered Species:

PRT 2-4225

Applicant: Minnesota Zoological Garden, 12101 Johnny Cake Ridge Road, Apple Valley, Minnesota 55124.

The applicant requests a permit to import one (1) male captive born Bactrian camel (*Camelus bactrianus*) from the Calgary Zoo, Alberta, Canada for zoological exhibition and enhancement of propagation.

PRT 2-4246

Applicant: Dewey S. Bouldin, Route 2, Box 328, Ridgeway, Virginia 24148.

The applicant requests a permit to purchase in interstate commerce two (2) Scarlet-chested parakeets (*Neophema splendida*) from Herchel Frey, Pittsburgh, Pennsylvania for enhancement of propagation.

PRT 2-4268

Applicant: Thomas S. Carter, P.O. Box 875, Mertzon, Texas 76941.

The applicant requests a permit to purchase in interstate commerce four captive born masked bobwhite quail (*Colinus virginianus ridgwayi*) for enhancement of propagation.

PRT 2-4277

Applicant: Arlan R. Vaughn, 375 Midnight, Pueblo, Colorado 81005.

The applicant requests a permit to import two male Edward's pheasants (*Lophura edwardsi*) from British Columbia, Canada for enhancement of propagation.

PRT 2-4280

Applicant: Charles Sivelle, 41 Westcliff Drive, Dix Hills, New York 11746.

The applicant requests a permit to export in foreign commerce two male and two female white-eared pheasants (*Crossoptilon crossoptilon*) to Dr. Jesus Estudillo Lopez, Mexico City, Mexico for enhancement of propagation.

PRT 2-4287

Applicant: Zoological Society of Philadelphia, 34th Street and Girard Avenue, Philadelphia, Pennsylvania 19104.

The applicant requests a permit to import in the course of a commercial activity two (2) Indian rhinoceros from the Basel Zoological Garden, Switzerland for zoological exhibition and enhancement of propagation.

PRT 2-4272

Applicant: Chicago Zoological Park, Brookfield, Illinois 60513.

The applicant requests a permit to import on breeding loan one female Asian tapir (*Tapirus indicus*) from the Metropolitan Toronto Zoo, Ontario, Canada for zoological exhibition and enhancement of propagation.

Humane care and treatment during transport, if applicable, has been indicated by the applicant.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service, WPO, Washington, D.C. 20240.

Interested persons may comment on these applications within 30 days of the date of this publication by submitting written data, views, or arguments to the Director at the above address.

Dated: June 11, 1979.

Donald G. Donahoe,

Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79-18725 Filed 6-14-79; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit

Notice is hereby given that an Applicant has applied in due form for a permit to take sea otters as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 18).

1. Applicant: a. Name: Donald B. Siniff and John R. Tester.

b. Address: Department of Ecology and Behavioral Biology, University of Minnesota, Minneapolis, MN 55455.

2. Type of permit: Marine Mammal and Threatened Species.

3. Name and number of animals: Sea otter (Enhydra lutris nereis), 20; E.l. lutris, 300.

4. Type of Activity: Scientific research.

5. Location of activity: California and Alaska.

6. Period of activity: Three years.

The purpose of this application *is to gain additional knowledge concerning the population dynamics of the sea otter. Some experimentation with oiling and cleaning compounds, behavior after cleaning, and the effects of immobilization drugs will be carried out with sea otters in Alaska.*

Concurrent with the publication of this notice in the Federal Register the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

The application has been assigned file number PRT 2-4114. Written data or views, or requests for copies of the complete application or for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240, within 30 days of the

publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Director.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the United States Fish and Wildlife Service.

Documents submitted in connection with the above application are available for review during normal business hours in Room 534, 1717 H Street NW., Washington, D.C.

Dated: June 11, 1979.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office.

[FR Doc. 79-18728 Filed 6-14-79; 8:45 am]

BILLING CODE 4310-55-M

Threatened Species Permit; Receipt of Application

Applicant: Marc A. McKay, Rt. 8, Box 419–A, Jackson, Mississippi 39213.

The applicant wishes to apply for a Captive-Self Sustaining Population permit authorizing the purchase and sale in interstate commerce, for the purpose of propagation, those species of pheasants listed in 50 CFR 17.11 as T(C/P). Humane shipment and care in transit is assured.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2–4283. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address within 30 days of the date of this publication. Please refer to the file number when submitting comments.

Dated: June 4, 1979.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79-18729 Filed 6-14-79; 8:45 am]

BILLING CODE 4310-55-M

Geological Survey

Draft Environmental Assessment—Oil and Gas; Public Hearing

The Conservation Division of the U.S. Geological Survey will hold a hearing to receive public comments on its Draft Environmental Assessment of the Cache Creek exploratory oil and gas test well proposed by National Cooperative Refinery Association. The proposed well is located 7 miles southeast of Jackson, Wyoming, in the Teton National Forest on Federal Lease No. W–20066.

The public hearing will be held July 31 and August 1, 1979, in the Grand Room of the Ramada Inn in Jackson, Wyoming. The hearing sessions will commence at 7:00 p.m. on Tuesday, July 31, and at 9:00 a.m. and 1:00 p.m. on Wednesday, August 1. The sessions will continue until all present have had a chance to speak or until 10:00 p.m. for the evening session on July 31, 12:00 noon for the morning session, and 5:00 p.m. for the afternoon session on August 1. Interested individuals, representatives of organizations, and public officials wishing to appear at the hearing should write to:

Conservation Division, Central Region, U.S. Geological Survey, MS609, Attention: Floyd Johnson, Box 25046, Denver Federal Center, Denver, Colorado 80225

no later than July 20, 1979, and designate the session during which they wish to give their comments. Written comments from those unable to attend and from those wishing to supplement their oral presentations at the hearings will be considered if received at the above address on or before August 13, 1979.

All written statements received pursuant to this notice will also be included in the hearing record. Oral statements at the hearing will be limited to a period of 10 minutes. Individuals will be allotted time for the specific session requested in the order their requests are received. Once a session is filled, individuals will be assigned a time in the next available session. To the extent that time is available after presentation of oral statements by those who have given advance notice, the hearings officer will give others present an opportuniy to be heard in the order that their names appear on the session register.

Notice is also given that copies of the Cache Creek Draft Environmental Assessment will be available for public inspection during regular business hours at the following locations:

U.S Forest Service, Hoback District, 140 E. Broadway, Jackson, Wyoming.

U.S. Forest Service, Bridger-Teton National Forest, 340 N. Cache Street, Jackson, Wyoming.

U.S. Geological Survey, District Oil and Gas Office, 126 Elk Street, Rock Springs, Wyoming.

U.S. Geological Survey, Area Oil and Gas Office, 100 E. B Street, Casper, Wyoming.

U.S. Geological Survey, Conservation Division, Central Region, Building 85, Denver Federal Center, Denver, Colorado.

Jackson Public Library, Jackson, Wyoming.

Dated: June 12, 1979.

Hillary A. Oden,

Acting Chief, Conservation Division.

[FR Doc. 79-18840 Filed 6-14-79; 8:45 am]

BILLING CODE 4310-31-M

Outer Continental Shelf (OCS) Order No. 5 Production Safety Systems

By Federal Register Notice of May 18, 1979, revised OCS Orders were published for all OCS Areas to be effective July 1, 1979. This Order requires that surface- and subsurface-safety valves installed on new installations or replaced on existing installations after July 1, 1979, conform to the American National Standards Institute/American Society of Mechanical Engineers Standards "Quality Assurance and Certification of Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations" ANSI/ASME SPPE–1–1977.

Due to the comparatively low number of valve manufacturers certified to date to the ANSI/ASME SPPE standards and the number of applications currently pending for certification, the U.S. Geological Survey has determined that, in order to proceed with the implementation of the quality assurance requirements of OCS Order No. 5 in an orderly and responsible manner, a modification of the July 1, 1979, date referenced above is necessary. Therefore, the requirement as modified is as follows:

"All subsurface- and surface-safety valves installed on new installations or replaced on existing OCS installations after February 1, 1980, shall conform to the requirements of ANSI/ASME SPPE–1–1977. After July 1, 1979, all such valves ordered from manufacturers for installation after February 1, 1980, shall conform to the requirements of ANSI/ASME SPPE–1–1977.

For the purposes of this requirement, the term replacement is defined as occurring when that portion of the valve assembly containing the serial number is removed from inventory and a new certified valve is placed in the inventory.

For further information, contact Mr. Richard B. Krahl, Chief, Branch of Marine Oil and Gas Operations, Conservation Division, U.S. Geological Survey, National Center, Mail Stop 620, Reston, Virginia 22092, Telephone: (703) 860-7531.

Dated: June 13, 1979.

J. R. Balsley,
Acting Director.

[FR Doc. 79-18911 Filed 6-14-79; 8:45 am]
BILLING CODE 4310-31-M

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

Office of Juvenile Justice and Delinquency Prevention; Request for Comments on the LEAA Draft Guideline: Youth Advocacy Initiative

Notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, pursuant to the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, proposes to announce competitive action grants for the Youth Advocacy Initiative.

The Office of Juvenile Justice and Delinquency Prevention invites any interested comments and will consider such comments before the final publication of this guideline. This guideline is being announced for 60 days. A 60–90 day notification period will allow applicants time to develop applications and permit award of funds in the early Spring of 1980. All comments must be received on or before August 14, 1979.

For any additional information, please contact Ms. Bettina Wallach at (202) 724–7765, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, N.W., Washington, D.C. 20531.

Juvenile Justice and Delinquency Prevention Programs

Youth Advocacy

a. *Program Objectives.* Pursuant to the 1977 Amendments to the Juvenile Justice and Delinquency Prevention Act of 1974, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) is sponsoring a major program to develop, test and support methods of advocacy which stimulate and acilitate needed changes and enhanced accountability in the administration of juvenile justice, and the delivery of education and social services. The specific objectives are:

(1) To realize specific system reforms at the state and local levels leading to greater availability and better quality of services to youth by juvenile justice, education and social service agencies and institutions; and,

(2) To increase knowledge about elements essential to development and implementation of effective youth advocacy projects in order to facilitate replication of such projects in other states and localities.

b. *Program Description.* (1) *Background.* Youth advocacy is a process whereby the administration of juvenile justice, social service and education can be improved through the active support and representation of youth interests and needs by advocacy groups. Advocacy approaches which are the major thrust of this program include, but are not limited to: (1) Effective coalition building among public and private groups and organizations to impact the needs of youth; (2) meaningful youth participation in policy decisions affecting youth for the purpose of better defining youth needs and impacting on the policies, practices and utilization of funds in youth serving institutions.

(2) *Problem Addressed.* In an era of diminishing resources the effective use of existing funds takes on added significance. Moreover, advocacy on behalf of a disenfranchised population becomes of critical significance if they are to realize their fair share of available resources. In its passage of the JJDP Act of 1974, and in the 1977 Amendments, Congress recognized that the major youth serving institutions—the juvenile justice, educational and social service systems—have proven inadequate in meeting the needs of youth. This program is aimed at challenging policies and practices of youth serving institutions that systematically exclude youth from meaningful participation in programs that supposedly exist for them, and as a consequence provide services which are not responsive to the real needs of youth. These institutions have contributed to the inability of youth to survive and compete in society, and to their alienation, isolation and delinquency. The major areas of concern include: (a) Lack of accessibility to quality services, (b) lack of due process safeguards in agency proceedings (c) inequitable and improper classification and disposition of youth cases, (d) lack of accountability of agency officials, (e) adverse elements in statutes, agency regulations, and procedures affecting youth, and (f) lack of resources, and inequitable deployment of resources for youth programs.

(3) *Program Target.* The targets for this program are statutes, regulations, policies and practices of the juvenile justice system, education system and the social services system, which are insensitive or detrimental to the needs and best interests of youth.

(4) *Result Sought.* Results sought in this initiative are:

(a) *Juvenile Justice System Changes.* (1) The adoption of practices, procedures, policies, and statutes which provide accurate classifications and equitable disposition of cases handled by the juvenile justice system.

(2) Establishment of policies, practices, and statutes which safeguard the rights of youth, assure due process, strengthen family ties, and reduce inappropriate intervention into the lives of youth and their families.

(3) Adoption of statutes, policies, practices and procedures which provide for and safeguard the rights of institutionalized youth to quality rehabilitative services, education, vocational training and humane treatment.

(4) The allocation of new, and reallocation of existing Federal, state and local resources to increase and improve required services which reduce the inappropriate placement of juveniles outside of their homes and communities.

(b) *Social Service System Changes.* (1) Increase public support for increased resources for youth services, protection of the rights of youth, and quality services.

(2) Modification and adoption of procedures and eligibility criteria which increase access to social services for youth, and modification of those policies and practices of youth serving institutions which are adverse to the positive development of youth.

(3) Redefinition of agency priorities, and allocation of new and reallocation of existing public and private resources, to increase and improve appropriate services to which youth are entitled.

(4) Establishment of mechanisms for public accountability of youth serving agencies.

(c) *School System Changes.* (1) Modification of policies and practices which limit full educational opportunities for youth, e.g., tracking, ability-grouping.

(2) Adoption of school policies, procedures and practices which limit referrals of youth to the juvenile justice system.

(3) Adoption of school policies, procedures and practices which reduce pushouts and dropouts and limit the number of suspensions and expulsions.

(4) Establishment of policies, procedures and practices which provide for the protection of rights and assure due process in disciplinary actions.

(5) Establishment of innovative educational programs and approaches for youth who require special assistance.

(5) *Working Assumptions.* (a) Juvenile justice in the United States can be improved through advocacy in behalf of youth.

(b) Many problems associated with preventing juvenile delinquency and reducing youth crime involve youth serving institutions and organizations not located within the formal juvenile justice system. Therefore, advocacy activities must be aimed at the education system and the social services system as well as justice system agencies.

(c) Independent organizations employing methods of advocacy can stimulate and facilitate needed changes in juvenile justice agencies, social service agencies and schools. Such advocacy will complement and strengthen reform initiatives arising from within these agencies.

(d) Youth serving institutions' responses to the needs of youth will improve with meaningful youth involvement in the planning, operation and evaluation of policies and programs. Youth in the juvenile justice system, those alienated from school systems and those placed away from their families should play a vital role in youth advocacy programs.

c. *Program Strategy.* (1) *Program Design.* Applications are invited for action projects which influence one of the three systems described in b(4), i.e., juvenile justice, social service, or education. It is expected that by focusing on one system, other systems will also be impacted. Projects are to reflect the following characteristics:

(a) Selective, limited involvement in case advocacy for the purpose of contesting or establishing principles, policies and practices affecting classes of youth, as one element of the advocacy strategy is acceptable. Projects which focus *solely upon providing advocacy, representation or service to individual youth on a case by case basis will be considered unresponsive.*

(b) Goals and objectives must have primary impact upon: (1) Local juvenile justice, social service or education agencies or; (2) state legislatures, state elected and appointed officials and state juvenile justice, social service, or educational agencies. Applications that propose to focus on more than one state will not be considered; however, funds for coordination with other advocacy projects may be included in the budgets of both state and local projects.

(c) Projects must incorporate four key elements: (1) Organizational independence from the system(s) in which change will be sought; (2) extensive participation by influential and interested persons from various community sectors (government, business, political, industry, labor, churches, indigenous neighborhood groups, etc.); (3) extensive participation by youth of the population to be affected by the project in all aspects of the project, (e.g. staff, consultants, advisors, investigators, board members, negotiators, etc.); youth employed by projects must reside in neighborhoods having high levels of crime and socio-economic disadvantage; and (4) the employment of skillful staff, knowledgeable and experienced both with respect to the system in which change is sought and with respect to problems associated with system change and advocacy.

(d) Action plans must be specific and manageable with respect to anticipated change and must include but not be limited to the following:

(1) Community education activities which foster public understanding of the needs of youth, clarify the associated issues, and build consensus about what to do to meet these needs through the use of variety of communications and media techniques;

(2) Monitoring of public and private youth serving institutions to: protect the rights of youth, assure that existing laws and policies mandating appropriate services to which youth are entitled are enforced and, identify policies and practices which are harmful to youth;

(3) Review and analysis of existing and proposed statutes, and expert testimony to facilitate responsiveness of decision makers to the needs of youth for positive development; and,

(4) Approaches which utilize administrative negotiation to facilitate systems change.

(2) *Dollar Range, Duration of Grants.* The grant period for this program is three years with awards made in increments of 24 months and 12 months. Third year continuation awards are contingent upon satisfactory grantee performance in achieving stated objectives in the previous program year(s), availability of funds and compliance with the terms and conditions of the grants. Grants will range up to $200,000 for local projects and $300,000 for statewide projects for each project year with the amount of funding for each grant based upon: (a) the types of statutes, policies and practices to be addressed, (b) the potential for impact on large numbers of youth; and, (c) the cost-effectiveness of the project design. Funds for this program are allocated from the Juvenile Justice and Delinquency Prevention Act of 1974, as amended in 1977, and require no match. Grants may be terminated at any point for failure to meet program process objectives or grant requirements.

(3) *Applicant Eligibility.* Applications are invited from public and private non-profit agencies, and organizations which are in no way affiliated with the organizations, and institutions, they intend to impact.

(4) *Applicant Capability.* The applicant must: (a) demonstrate knowledge of and experience with juvenile justice and delinquency prevention issues, the system(s) in which changes are to be sought, and the problems, strategies and advocacy approaches necessary to meaningful change in youth serving institutions;

(b) have the demonstrated capability or experience to develop management and fiscal systems necessary for the administration of Federal funds; and,

(c) demonstrate the ability to generate public confidence and support for the proposed objectives.

d. *Application Requirements.* These requirements are to be used in lieu of Part IV—Program Narrative Instructions of the Federal Application Form 424. In order to be considered for funding, applications must include the following information. Applicants are requested to use the order outlined in this guideline:

(1) *Problem Definition and Data Needs.* (a) Provide statistical and qualitative documentation of the specific issues and problems to be addressed regarding the harmful effects on youth of the statutes, policies and practices that are to be targetted by the project. Describe the youth affected in terms of: Number, age range, sex, race, ethnic and economic status. Discuss anticipated difficulties and problem areas, together with recommended approaches for solutions.

(b) Provide a description of the area in which the project will operate in terms of: geographic boundaries, crime and delinquency rates, race/ethnic population and adult and youth unemployment rates.

(c) Provide a list of existing youth advocacy projects within the target jurisdiction, include a brief description of each, and indicate how coordination with these projects will be achieved in

order to complement existing programs and avoid any duplication of effort.

(d) Provide a description of the implementing organization as required in Paragraph c.(6), a copy of the governing by-laws, a list of board members, organizational chart, a description of experience with similar programs completed or now underway.

(e) Provide documentation with sufficient detail to make clear the applicant's public sanction for leadership, coordination, and standard setting.

(f) Describe the formal and informal decision-making structures which influence the systems targetted.

(g) Describe the social, economic and political relationships which will influence the targetted outcomes.

(h) Provide letters of written agreements which indicate the types of participation and resources available from the community sectors of political business, industry, labor, church, and indigenous neighborhood groups and organizations.

(i) Provide resumes of key staff and profiles of board members.

(2) *Project Objectives.* Project goal statements should be related to intended impact, and objective statements should be related to activities necessary to produce desired impact. Both statements should be written in measurable terms and specifically related to: (1) Specific statutes, policies, and practices which adversely effect large numbers of youth: (2) the target agencies, organizations, and local or state systems which will be affected, and (3) the specific problems addressed in *Problem Definition and Data Needs.*

(3) *Program Methodology.* The applicant must provide a definitive methodology with explanation of approaches and a detailed description of specific activities for implementing the project and achieving its objectives.

(a) Describe the advocacy strategies to be employed and the reason for believing that they will influence processes which shape the policies, programs, and practices in question as required in Paragraph c.(1)(d).

(b) Describe how the four elements required in Paragraph c.(1)(c) are incorporated in the proposed project design.

(c) Clearly describe the administrative and fiscal organizational structures, coordination mechanisms to be employed in implementation of the project, (including the role of other groups, agencies and systems in any phase of the project), and the information system which will be used to document change.

(4) *Workplan.* Prepare a detailed work schedule which outlines specific program objectives in relation to milestones, activities and timeframes for accomplishing the objectives. The workplan and budget should be prepared to allow for a three month start-up period.

(5) *Budget.* Prepare a budget of the total costs to be incurred in carrying out the proposed project over three years, with a detailed categorical itemization and narrative for the first two budget years. Include in the budget funds to support travel for three (3) staff persons (at least one must be a youth) to attend four (4) technical assistance and training sessions for the first grant period (two years) for an average of three (3) days per trip. Budget up to 15% of total projected outlays to cover the costs of a management information system. No match will be required for these grants. Travel budgeted for coordination with other advocacy projects must be confined to not more than two (2) trips over the two (2) year project period.

(6) *Management Information System.* Each application must include a proposed management information system. This system will seek aggregate data as opposed to information specific to individual groups or persons.

e. *Criteria for Selection of Projects.*

Applications will be rated and selected using the following criteria. Only those applications meeting criteria at the highest level will be considered for grant award.

(a) The extent to which applicants meet the capability and eligibility requirements as outlined in Paragraph c.(3)(4). (100 points)

(b) The extent to which the proposed project addresses the program targets of statutes, policies and practices and establishes that those selected for impact are harmful to large numbers of youth. (15 points)

(c) The extent to which the project design provides youth advocacy strategies and approaches which include youth, minorities, other citizen groups, and key leadership groups of the communities. (15 points)

(d) The extent to which the proposed activities are cost effective in relation to their potential for effecting changes in statutes, policies, and practices which adversely affect large numbers of youth and improve services to youth within youth serving institutions. (15 points)

(e) The extent to which the applicant demonstrates understanding of the problems associated with affecting change in the proposed program targets. (15 points)

(f) The extent to which the applicant demonstrates effective use of advocacy strategies, has available the skilled and experienced personnel essential to implementing these strategies, and establishes the ability to gain and maintain public support and confidence. (25 points)

(g) The extent to which the proposed strategy has the potential for modifying the targeted statutes, policies, priorities and practices. (15 points)

f. *Submission Requirements.*

(1) *Submission Procedures.* The Youth Advocacy initiative has been determined to be of national impact and awards will be made directly to the successful applicants. Applications must be submitted to the Office of Juvenile Justice and Delinquency Prevention in accordance with the form outlined in Appendix 2, Section 2, Paragraphs 4b and 5 Guide for Discretionary Grant Programs, M 4500.1G, September 30, 1978. Refer to Appendix 5, Part II and Part IV for instructions on how to prepare the budget, budget narrative and program narrative. Applicants must consult and coordinate the applications with the relevant State Planning Agencies as provided by M 4500.1G; Appendix 2, Section 2. Prior to submission of applications to the Office of Juvenile Justice and Delinquency Prevention, applicants must also submit applications to appropriate A–95 Clearinghouses in accordance with A–95 requirements. Letters of verification indicating appropriate contacts with State Planning Agencies and A–95 Clearinghouses must be included in the applications. Addresses are included in Appendices 1 and 2.

2. *Deadline for Submission of Applications.* One (1) original and two (2) copies of the application must be mailed or hand delivered to the Office of Juvenile Justice and Delinquency Prevention, LEAA, Room 442, 633 Indiana Avenue, NW., Washington, D.C. 20531, by ————. Applications sent by mail will be considered to be received on time if sent by registered or certified mail no later than ———— as evidenced by the U.S. Postal Service postmark on the original receipt from the U.S. Postal Service.

g. *Evaluation Requirements.* The projects funded under the program will be evaluated by an independent evaluator selected by the Office of Juvenile Justice and Delinquency Prevention. As stated in d. (6) *Application Requirements;* each applicant must submit a proposed management information system. The national evaluator will provide training and technical assistance in

implementing the management information system. All applicants must include assurances in their application agreeing to fully cooperate with the national evaluators.

h. *Technical Assistance.* Technical assistance will be provided to applicants in refining their application subsequent to final selection. Ongoing technical assistance in program implementation will be provided by OJJDP to the funded projects.

i. *Definitions.* (1) *Youth Advocacy*—is a method of positive intervention by individual advocates or by advocacy groups on behalf of large numbers of youth to assure that problems confronting youth are effectively solved or managed through existing youth serving entitles in the public, private and/or community sectors of society. A major objective of youth advocacy activities is to penetrate the blockages and obstacles between youth and service delivery systems which occur within complex social organizations. A further objective is the accomplishment of institutional (agency) change which results in improved service delivery to youths and reallocation of available resources. The level of effort required of advocacy in the representation process (negotiation, arbitration, contesting) is to support the needs and rights of youth as if they were the advocates' own.

(2) *Citizen Participation*—is active, continuous and meaningful involvement of youth, neighborhood residents and representatives of neighborhood organizations and city-wide institutions (minority, business, industry, labor, religious) in the planning, development and monitoring of programs affecting young people.

High Risk Communities—are communities where youth live that are characterized by high rates of crime and delinquency, high infant mortality rates, high unemployment and under employment, sub-standard housing, physical deterioration and low incomes.

(4) *Education System*—includes elementary, junior high schools and senior high schools, both public and private; also includes variations of the above as part of public educational systems or private educational systems or institutions (e.g. vocational schools, special education programs, including educational programs in juvenile correctional facilities, and alternative education prgrams); also, includes the governing bodies of the educational system (state/local boards of education, other authorities).

(5) *Social Service System*—(Youth Serving Agencies) includes the state and/or local private and public departments/agencies which provide services to youth (e.g. social services, welfare, mental health, health, employment, recreation, and others). Also includes private youth service bureaus, other service referral networks and specific services or programs such as crisis intervention, counseling, alcohol/drug treatment), coumminutiy-based prevention, treatment programs and others.

(6) *Juvenile Justice System*—refers to official structures, agencies, and institutions with which juveniles may become involved including, but not limited to, juvenile courts, law enforcement agencies, probation, aftercare, detention facilities, and correctional institutions.

(7) *Jurisdiction*—is any unit of general govenment such as a city, county, state township, borough, parish, village, or combination of such units.

(8) *Delinquency*—is the behavior of a juvenile, in violation of a statute or ordiance in a jurdisdiction, which would constitute a crime if committed by an adult.

(9) *Disposition*—is that procedure in the juvenile court process which results in the imposition of a sentence, e.g., probation or commitment.

(10) *Program*—refers to the National Youth Advocacy Initiative to establish programs supported by OJJDP and the overall activities related to implementing the Advocacy Program.

(11) *Project*—refers to the specific of advocacy activities at given site(s) designed to achieve the overall goal of improving services to youth and protection of the rights of youth.

(12) *Needs of Youth*—for the purposes of this Guideline is defined as family, education, employment, skills training, emotional support, health aids, medical care, legal advice and assistance in assuring recognition and enforcement of the rights of youth.

David D. West,

Acting Associate Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 79-18734 Filed 6-14-79; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-79-85-C]

Garden Creek Pocahontas Co.; Petition for Modification of Application of Mandatory Safety Standard

Garden Creek Pocahontas Company, P.O. Box 11430, Lexington, Kentucky 40575, has filed a petition to modify the application of 30 CFR 75.326 (airways and belt haulage entries) to its V.P. No. 6 Mine located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164. The substance of the petition follows:

1. The petitioner is developing its mine for use of longwall mining techniques.

2. Due to experience from other mines in the same coal bed and from early development of this mine the petitioner believes it will encounter large quantities of methane gas in the mine.

3. The methane gas will require large quantities of air for dilution.

4. Roof conditions and a maximum overburden of 2000 feet limit the number of airways that can be safely driven to supply these quantities of air.

5. For these reasons the petitioner requests permission to conduct air through the belt haulage entries to working places to assist in diluting the methane concentrations.

6. To provide the same measure of protection for its miners as provided by the standard, the petitioner proposed to install an early warning and telemetry system to detect carbon monoxide and excessive heat in the belt haulage entries.

Request for Comments

Persons interested in this petition may furnish written comments on or before July 16, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: June 7, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-18695 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-79-86-C]

Garden Creek Pocahontas Co.; Petition for Modification of Application of Mandatory Safety Standard

Garden Creek Pocahontas Company, P.O. Box 11430, Lexington, Kentucky 40575, has filed a petition to modify the application of 30 CFR 75.1103-4 (automatic fire warning devices) to its V.P. #6 Mine located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine safety and Health Act of 1977, Pub. L.

95–164. The substance of the petition follows:

1. The petitioner proposes the use of an alternative automatic fire warning system in the belt haulage entries of its mine.

2. Within each belt flight carbon monoxide (CO) sensors will monitor the air conducted in the entries. These sensors will transmit an alarm through a telementry system to a central location if levels of more than 5 ppm of CO occur. At levels of 10 ppm above the warning level, the mine will be evacuated.

3. In addition to the CO sensor at the belt drive unit, three (3) point heat sensors will be installed. These sensors will automatically actuate deluge-type water sprays when they detect a temperature rise indicating a fire.

4. The petitioner states that this alternative system will provide its miners the same measure of protection as the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before July 16, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: June 7, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-18559 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefit Programs

Notice of Proposed Exemption for Certain Transactions Involving Cochran Electric Co., Inc., Profit Sharing Trust

[Application No. D-241]

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt a loan from Cochran Electric Co., Inc. Profit Sharing Trust (the Trust) to Cochran Electric Co., Inc. (the Employer) which was entered into before the effective date of the Act, but after July 1, 1974, the date specified in the transition rules contained in section 414 and 2003 of the Act. The proposed exemption, if granted, would affect participants and beneficiaries of the Trust, the Applicant, and other persons participating in the transaction.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before July 16, 1979.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective January 1, 1975.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to: Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-241. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department of Labor, (202) 523-8330. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption from the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). The application was filed with both the Department and the Internal Revenue Service. However, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. The Employer is a Washington corporation engaged in the electrical contracting business in Seattle, Washington. As of December 31, 1974 the Trust had 17 participants and net assets of $630,000. Investment decisions are made by an investment committee composed of employees elected by the Trust participants.

2. Prior to the effective date of the Act, the Employer regularly borrowed funds from the Trust to purchase construction equipment. Loans were made in an amount equivalent to 80% of the purchase price of the equipment being financed. Each piece of equipment acquired served as collateral for its underlying loan and each loan agreement was recorded with the clerk of King County, Washington. Interest was charged at prevailing bank rates with loans being repaid in monthly installments ranging from 24 to 36 months.

3. On September 5, 1974, the Trust loaned the Employer $3,700 at 10½% interest (which was the prevailing bank rate for a similar type transaction at the time), payable in 24 equal monthly installments beginning September 30, 1974. The loan was secured by property valued at $4,400. All payments were made in a timely fashion and the loan was repaid in full as of September 30, 1976.

4. In summary, the applicant represents that the statutory criteria contained in section 408(a) of the Act have been satisfied as follows: (1) the interest rate paid to the Trust was identical to the prevailing bank rate at the time of the transaction, (2) the loan was adequately secured at all times, and (3) all payments on the loan were made on schedule, and the loan has been repaid in full to the Trust.

Finally, the applicant represents that the loan was entered into prior to the effective date of the Act without knowledge that the transaction would become prohibited on January 1, 1975. As soon as the applicant realized that the loan was a prohibited transaction, the applicant submitted a good faith request for a exemption instead of terminating the loan transaction.

Notice to Interested Parties

Within ten days after the notice of proposed exemption is published in the Federal Register, a copy of the notice and a statement that interested persons have a right to comment within the thirty day period set forth in the notice

will be provided to interested parties. Notice to interested parties will be mailed by first class mail or delivered to them by hand.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act, and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1. If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the loan of $3,700 by the Trust to the Employer that was entered into on September 5, 1974 and was repaid in September 1976. The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations are true and complete, and that the application accurately describes all material terms of the transaction.

Signed at Washington, D.C. this 8th day of June, 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 79-18607 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 79–27]

Employee Benefit Plans; Exemption From Prohibitions for Certain Transactions Involving Drug City, Inc., Profit Sharing Plan and Drug City, Inc., Pension Plan

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption would permit the sale of a one-third interest in a 40 acre parcel of unimproved real property by the Drug City, Inc. Profit Sharing Plan (the Profit Sharing Plan) and the Drug City, Inc. Pension Plan (the Pension Plan) (collectively, the Plans) to Martin Feldman, a trustee of both Plans and sole shareholder of Drug City, Inc. (the Employer), the sponsoring Employer of the Plans.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Sandler of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, (202) 523–8882. (This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On April 10, 1979 notice was published in the **Federal Register** (44 FR 21399) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for a transaction described in an application filed by the Employer. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition, the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. No public comments and no requests for a hearing were received by the Department.

This application was filed with both the Department and the Internal Revenue Service. However, the notice of pendency was issued and the exemption is being granted, solely by the Department because, effective December 31, 1978 section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interests of the participants and

beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plans and of their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plans.

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale of a one-third interest in a 40 acre parcel of real property legally described as the West one-half of the East one-half of the Southwest quarter of section 13, Township 49 South, Range 25 East, Collier County, Florida by the Plans to Martin Feldman, for an aggregate cash consideration of $59,667, each Plan receiving a portion of the consideration proportional to its fractional holding of the one-third interest, provided that the aggregate amount is not less than the fair market value of the one-third interest in the property.

The availability of this exemption is subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 8th day of June, 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 79-18928 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-207]

Notice of Proposed Exemption for a Transaction Involving the Profit Sharing Plan of Allied Investment Credit Corp.

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the loan of $24,852.21 by the Allied Investment Credit Corporation Profit Sharing Plan (the Plan) to the Allied Investment Credit Corporation (the Employer). The loan was entered into before the effective date of the Act, but after July 1, 1974, the date specified in the transition rules contained in sections 414 and 2003 of the Act. The proposed exemption, if granted, would affect the Employer and participants and beneficiaries of the Plan.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before July 16, 1979.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective January 1, 1975.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. D–207. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department of Labor, (202) 523–8530. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption from the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed by the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). This application was filed with both the Department and the Internal Revenue Service. However, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of the Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. The Plan is a profit sharing plan which as of June 10, 1975, had 4 participants.

2. The Employer is exclusively engaged in the commercial loan business. It makes commercial loans to local businessmen, usually in amounts not in excess of $15,000. The average loan is about $10,000. All loans are secured by a first lien upon all of the business assets of the borrower, and are also usually secured by real estate owned by the borrower of the principals thereof. The Employer has been engaged in this business for over 20 years and has always made a profit.

3. On December 3, 1974, the Plan loaned $24,852.21 to the Employer. This sum represented approximately 25 percent of the Plan's assets. The interest rate for the loan was 10 percent per annum. The Employer could have borrowed the funds from a bank for about 8 percent.

4. As security for the loan of December 3, 1974, and two loans make in 1973, which comprise a total principal amount of $88,985.75, the Plan has had assigned to it nine notes, together with

security agreements and real estate mortgages, which the Employer had received from its debtors. The balances due on the notes totaled $100,357. The security for the nine notes given to the Employer and subsequently assigned to the Plan was appraised at $356,500. In addition, the Plan received the personal guarantee of the Employer's major shareholders, who have about 85 percent of the funds in the Plan allocated to their individual accounts.

5. The Employer will have repaid the loan of December 3, 1974 in full, plus accumulated interest thereon, not later than July 1, 1979.

6. In summary, the applicant represents that the statutory criteria contained in section 408(a) of the Act have been satisfied as follows: (1) interest rate paid to the Plan was higher than the rate the Employer would have been charged by an independent bank for such a loan, (2) the loan was adequately secured at all times by the assignment to the Plan of nine highly-collateralized notes due the Employer, as well as the personal guarantee of the Employer's major shareholders, and (3) the loan will have been repaid in full not later than July 1, 1979.

Finally, the applicant represents that the loan was entered into prior to the effective date of the Act without knowledge that the transaction would become prohibited on January 1, 1975. As soon as the applicant realized that the loan was a prohibited transaction, the applicant submitted a good faith request for an exemption instead of terminating the loan transaction.

Notice to Interested Persons

Within ten days after receipt by the Employer of a copy of this notice of proposed exemption, written notice will be provided to all employee participants and other interested persons by means of personal delivery or first class mail.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which among other things require that a fiduciary discharge his duties respecting the Plan solely in the interest of the participants and beneficiaries of the Plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the Plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act, and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the Plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the Plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1. If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective January 1, 1975, to the loan agreement entered into on December 3, 1974, in which the Plan loaned $24,852.21 to the Employer. The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations are true and complete, and that the application accurately describes all material terms of the transaction.

Signed at Washington, D.C. this 8th day of June, 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 79-18608 Filed 6-14-79; 8:45 am]
BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 79-25]

Exemption From the Prohibitions Respecting a Transaction Involving Restated Coburn Optical Industries, Inc. Profit Sharing Plan and Trust (D-492)

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption enables the Restated Coburn Optical Industries, Inc. Profit Sharing Plan and Trust (the Plan) to sell certain parcels of real property to O. W. Coburn and/or Superior Investments, Inc., parties in interest with respect to the Plan.

FOR FURTHER INFORMATION CONTACT: Ronald D. Allen, Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, telephone (202) 523-8883. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On January 16, 1979, notice was published in the Federal Register (44 FR 3330) of the pendency before the Department of Labor (the Department) of an exemption from the provisions of sections 406(a)(1)(A) and (D) and 406(b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by sections 4975(a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A), (D) and (E) of the Code, for a transaction described in an application filed on behalf of the First National Bank and Trust Company of Muskogee, Oklahoma, Jim Liquidating Corp., and O. W. Coburn.

The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for

public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition, the notice stated that any interested person might submit a written request that a hearing be held relating to the requested exemption.

One public comment was received by the Department and subsequently withdrawn. No requests for a hearing were received by the Department.

The application was filed with both the Department and the Internal Revenue Service. However, the notice of pendency was issued and the exemption is being granted, solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interests of participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under sections 406(a)(1) (B), (C), and (E), 406(a)(2) and 406(b)(3) of the Act and section 4975(c)(1) (B), (C), and (F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, the procedures set forth in ERISA Proc. 75–1 (40 FR 18471, April 28, 1975) and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of participants and beneficiaries of the Plan.

Accordingly, the following exemption is hereby granted under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Proc. 75–1.

The restrictions of sections 406(a)(1) (A) and (D) and 406(b)(1) and (b)(2) of the Act and the taxes imposed by sections 4975(c)(1) (A), (D) and (E) of the Code shall not apply to the cash sale of the remaining twenty-one lots in the Indian Drive subdivision at a price not less than the greater of either the 1977 appraised value of $135,000 or the fair market value at the time of sale, nor to the cash sale of the Tastee Freeze located at 604 East Side Boulevard, Muskogee, Oklahoma, at a price not less than the greater of either $58,500, or the fair market value of the property at the time of sale from the Plan to either O. W. Coburn or Superior Investments, Inc.

The availability of this exemption is subject to the express conditions that the material facts and representations contained in the application are true and complete and that the application accurately describes all material terms of the transaction consummated pursuant to the exemption.

Signed at Washington, D.C., 8th day of June, 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor

[FR Doc. 79-18888 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 79–28; Application No. D–854]

Exemption From the Prohibitions for Certain Transactions Involving the Retirement Plan for Employees of King Chevrolet Co.

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption enables the Retirement Plan for Employees of King Chevrolet Company (the Plan) to sell a parcel of real property and the improvements thereon to King Chevrolet Company (the Employer).

FOR FURTHER INFORMATION CONTACT: Ronald D. Allen of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20216, (202) 523–8883. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On April 13, 1979, notice was published in the Federal Register (44 FR 22226) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of sections 406(a) 406(b) (1) and (2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of sections 4975(c)(1) (A) through (E) of Code, for transactions described in an application filed by the Citizens First National Bank of Tyler, Texas, the Trustee of the Plan, the Plan and the Employer. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. No public comments and no requests for a hearing were received by the Department.

This application was filed with both the Department and the Internal Revenue Service. However, the notice of pendency was issued and the exemption is being granted, solely by the Department because, effective December 31, 1978 section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 406(a) of the Act and section

4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things, require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the plan.

Therefore, the prohibitions of sections 406(a) and 406(b)(1) and (2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale by the Plan of real property, consisting of the land and building located at 517 West Irwin Street and legally described as lots 8, 9, and 10 in block 91, City of Tyler, Smith County, Texas, to the Employer for an aggregate cash consideration of $127,115, provided that this amount is not less than the fair market value of the property on the date of sale.

The availability of this exemption is subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 8th day of June, 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 79-18810 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-29-M

Office of the Secretary

[TA-W-5203]

Aberdeen Sportswear, Inc., Trenton, N.J.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 10, 1979 in response to a worker petition received on April 4, 1979 which was filed by the Amalgamated Clothing and Textile Workers' Union on behalf of workers and former workers producing men's outerwear (suits, jackets, shirts) at the Trenton, New Jersey plant of Aberdeen Sportswear, Incorporated. The investigation revealed that the plant produces primarily men's outer coats. It is concluded that all of the requirements have been met.

U.S. imports of men's and boys' non-tailored outer jackets increased both absolutely and relative to domestic production in 1977 compared to 1976 and increased absolutely in 1978 compared to 1977.

U.S. imports of men's, boys', women's, misses', juniors', and children's leather coats and jackets increased absolutely in 1977 compared to 1976 and increased both absolutely and relative to domestic production in 1978 compared to 1977.

A Departmental survey of Aberdeen's customers revealed that customers accounting for a significant proportion of the decline in Aberdeen's sales, in 1978 compared to 1977, increased purchases of imported outer coats during the same time period. Additionally, these customers have reduced orders placed with Aberdeen for delivery in 1979.

Conclusion

After careful reviw of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's outer coats produced at the Trenton, New Jersey plant of Aberdeen Sportswear, Incorporated contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of the Trenton, New Jersey plant of Aberdeen Sportswear, Incorporated who became totally or partially separated from employment on or after September 30, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 8th day of June 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-18807 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5-527, et al.]

Act III; Spartanburg, S.C., et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of

a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not late than June 29, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 29, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 8th day of June 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Act III (ILGWU)	Spartanburg, S.C	6/4/79	5/23/79	TA-W-5,527	Knitted cloth and fabrics for women's clothing.
Andrew Knit (ILGWU)	Tuscaloosa, Ala	6/4/79	5/23/79	TA-W-5,528	Women's jackets, vests, blouses, pants, skirts, dresses.
Armstrong Rubber Company, Southeastern Div. (URW).	Madison, Tenn	6/4/79	5/31/79	TA-W-5,529	Passenger car replacement tires and truck replacement tires.
Butte Knitting Mills (ILGWU)	Spartanburg, S.C	6/4/79	5/23/79	TA-W-5,530	Knitted cloth and fabrics for women's clothing.
Columbus Fashions, (ILGWU)	Columbus, GA	6/4/79	5/23/79	TA-W-5,531	Women's blouses, vests, skirts, jackets.
Debra Fashions (ILGWU)	Northport, Ala	6/4/79	5/31/79	TA-W-5,532	Women's blouses,vest, jackets, skirts.
Eutaia Fashions (ILGWU)	Eutaia, Ala	6/4/79	5/23/79	TA-W-5,533	Women's blouses, skirts, jackets, vests.
Greene Manufacturing Company (ILGWU)	Greenville, Tenn	6/4/79	5/23/79	TA-W-5,534	Women's blouses, skirts, jackets vests.
Jonathan Logan Transportation (ILGWU)	Spartanburg, S.C	6/4/79	5/29/79	TA-W-5,535	Knitted cloth and fabrics for women's clothing.
Kim Fashions (ILGWU)	Hialeah, Fla	6/4/79	5/29/79	TA-W-5,536	Women's blouses, pants, jackets.
Livingston Fashions (ILGWU)	Livingston, Ala	6/4/79	5/23/79	TA-W-5,537	Women's blouses, skirts, jackets, vests.
Lynn Fashions (ILGWU)	Brent, Ala	6/4/79	5/23/79	TA-W-5,538	Women's blouses, skirts, jackets, vests.
Margaret Fashions (ILGWU)	Panama City, Fla	6/4/79	5/23/79	TA-W-5,539	Women's blouses, skirts, vests.
Michael Fashions, Inc. (ILGWU)	Miami, Fla	6/4/79	5/29/79	TA-W-5,540	Women's blouses, pants, skirts.
Moncto Mining (workers)	Sharples, W. Va	6/4/79	5/25/79	TA-W-5,541	Mining of steam coal.
Nancy Fashions (ILGWU)	Spartanburg, S.C	6/4/79	5/23/79	TA-W-5,542	Knitted cloth and fabrics for women's clothing.
Oxford Fashions (ILGWU)	Oxford, Ala	6/4/79	5/22/79	TA-W-5,543	Women's blouses, skirts, jackets, vests.
Plaza Manufacturing (ILGWU)	Spartanburg, S.C	6/4/79	5/29/79	TA-W-5,544	Knitted cloth and fabrics for women's clothing.
Roanoke Fashions (ILGWU)	Roanoke, Ala	6/4/79	5/23/79	TA-W-5,545	Women's blouses.
Salem Sportswear Company (ACTWU)	Salem, Mo	6/4/79	5/29/79	TA-W-5,546	Men's and boy's jackets.
Sandra Fashions (ILGWU)	Sanford, Fla	6/4/79	5/23/79	TA-W-5,547	Women's blouses, skirts, jackets, vests.
Stevens Fashions (ILGWU)	Carrollton, Ala	6/4/79	5/23/79	TA-W-5,548	Women's blouses, skirts, vests, jackets.
Terrance Fashions, Inc. (ILGWU)	Miami, Fla	6/4/79	5/29/79	TA-W-5,549	Women's blouses, pants, skirts, jackets.

[FR Doc. 79-18888 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5112]

Adkins Coal Co., McDowell County, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 5, 1979 in response to a worker petition received on April 2, 1979 which was filed by the United Mine Workers of America on behalf of workers and former workers mining coal at the Adkins Coal Company, Adkins Truck Mine, McDowell County, West Virginia. The investigation revealed that the correct name of the company is the Adkins Coal Company and that the firm mines metallurgical coal. In the following determination, at least one of the criteria has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Norfolk and Western Railroad is the only rail source is McDowell County where Adkins Coal Company is located. There was a strike at Norfolk and Western which lasted from July 7, 1978 until October 10, 1978, which forced the mine to reduce its operations during this time. There also was a strike by the United Mine Workers of America from December 6, 1977 until March 27, 1978 which caused Adkins Coal to cease operations for the duration for the Strike.

When the months unaffected by strikes are compared, employment did not decline in 1978 compared to 1977. As a contractor, Adkins' sales and production are equal. Production of metallurgical coal increased during the first quarter of 1979 compared to the first quarter of 1977.

Conclusion

After careful review, I determine that all workers of the Adkins Coal

Company, McDowell County, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of June 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-18698 Filed 6-14-79; 8:45 am]
BILLING CODE 4510-28-M

[TA-W-5270 and 5271]

Allied Chemical Corp., Harewood Mine and Preparation Plant, Montgomery, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with sectioni 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 23, 1979 in response to a worker petition received on April 18, 1979 which was filed by the United Mine Workers of America on behalf of workers and former workers producing metallurgical coal at the Harewood Mine and Preparation Plant of Allied Chemical Corporation's Semet-Solvay Division, Montgomery, West Virginia. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Coke is metallurgical coal at a later stage of processing. Since a domestic article may be "directly competitive" with an imported article at a later stage of processing, imports of both coke and metallurgical coal can be considered in determining import injury to workers producing metallurgical coal at Allied Chemical's Harewood mine and preparation plant.

Evidence developed during the course of the investigation revealed that none of the customers of Allied Chemical's Harewood mine purchased imported metallurgical coal and only one customer purchased imported coke. That customer represented an insignificant proportion of the mine's sales in 1977 and 1978 and has not purchased coal from Harewood since April 1978, one year before layoffs at the mine and preparation plant took place.

Conclusion

After careful review, I determine that all workers of the Harewood Mine and Preparation Plant of Allied Chemical Corporation's Semet-Solvay Division, Montgomery, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 7th day of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-18700 Filed 6-14-79; 8:45 am]
BILLING CODE 4510-28-M

[TA-W-5144]

Apache Trucking Co.; Iaeger, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 5, 1979, in response to a worker petition received on April 2, 1979, which was filed by the United Mine Workers of America on behalf of workers and former workers of Apache Trucking Company, Iaeger, West Virginia, engaged in transporting coal.

Apache Trucking Company is engaged in providing the service of transporting coal by truck from a customer's mine to a tipple.

Thus, workers of Apache Trucking Company do not produce an article within the meaning of Section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Apache Trucking Company by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Apache Trucking Company and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any other company.

All workers engaged in transporting coal by truck at Apache Trucking Company are employed by that firm. All personnel actions and payroll transactions are controlled by Apache Trucking Company. All employee benefits are provided and maintained by Apache Trucking Company. Workers are not, at any time, under employment or supervision by customers of Apache Trucking Company. Thus, Apache Trucking Company, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of Apache Trucking Company, Iaeger, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-18701 Filed 6-14-79; 8:45 am]
BILLING CODE 4510-28-M

[TA-W-5007]

Aurora Products, Secaucus, N.J.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on March 21, 1979, in response to a worker petition received on March 16, 1979, which was filed on behalf of workers and former workers producing plastic toys and model kits at Aurora Products, Secaucus, New Jersey. The investigation revealed that the plant produces primarily electric race car sets, model kits and air hockey games. In the

following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

A Departmental survey of Aurora Products' customers for 1976, 1977 and 1978 revealed that none of the respondents purchased any imported electric race car sets, model kits or air hockey games in the 1976–1978 period.

Conclusion

After careful review, I determine that all workers of Aurora Products, Secaucus, New Jersey are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 4th day of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-18702 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5148]

B & G Trucking Co., Inc., Princeton, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 5, 1979, in response to a worker petition received on April 2, 1979, which was filed by the United Mine Workers of America on behalf of workers and former workers of B & G Trucking Company, Incorporated, Princeton, West Virginia, a contract hauler.

B & G Trucking Company, Incorporated is engaged in providing the service of transporting coal by truck from a customer's mine to a tipple and transporting rock.

Thus, workers of B & G Trucking Company, Incorporated do not produce an article within the meaning of section 222(3) of the Act. Therefore, they may be certified *only if* their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to B & G Trucking Company, Incorporated by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

B & G Trucking Company, Incorporated and its customers have no controlling interested in one another. The subject firm is not corporately affiliated with any other company.

All workers engaged in transporting coal by truck at B & G Trucking Company, Incorporated are employed by that firm. All personnel actions and payroll transactions are controlled by B & G Trucking Company, Incorporated. All employee benefits are provided and maintained by B & G Trucking Company, Incorporated. Workers are not, at any time, under employment or supervision by customers of B & G Trucking Company, Incorporated. Thus, B & G Trucking Company, Incorporated, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of B & G Trucking Company, Incorporated, Princeton, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-18703 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5,510 et al.]

Bethlehem Mine Corp.; Charleston, W. Va. et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 29, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 29, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 7th day of June 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Bethlehem Mines Corp., Kayford, Div. (U.M.W.A.)	Charleston, W. Va	5/21/79	5/16/79	TA-W-5,510	Mining of coal.

Appendix—Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Bethlehem Mines Corp., Boone Div. (U.M.W.A.).	Charleston, W. Va	5/21/79	5/16/79	TA-W-5, 511	Mining of coal.
Bethlehem Mines Corp., Nicholas Division (U.M.W.A.).	Charleston, W. Va	5/21/79	5/16/79	TA-W-5, 512	Mining of coal.
Elk Mark (workers)	Logan, W. Va	5/23/79	5/21/79	TA-W-5, 513	Mining of coal.
Big Fork Coal Company, Inc., Mine #9 (Southern Labor Union).	Summersville, W. Va	5/25/79	5/21/79	TA-W-5, 514	Mining of coal.
Brockton Stay Corp. (workers)	Haverhill, Mass	5/25/79	5/22/79	TA-W-5, 515	Shoe trees and vamps of leather and vinyl.
Gould, Inc., Industrial Battery Division (United Electrical, Radio & Machine Workers of Amer.).	Trenton, N.J	5/29/79	5/25/79	TA-W-5, 516	Stationary and motive power industrial batteries and parts.
Hatco Chemical Corp. (workers)	Fords, N.J	5/29/79	5/23/79	TA-W-5, 517	Synthetic lubricants and plasticizers.
Island Creek Coal Company, Mine #4 (workers).	Paintsville, Ky	5/29/79	5/21/79	TA-W-5, 518	Mining of coal.
Island Creek Coal Company, Mine #7 (workers).	Paintsville, Ky	5/29/79	5/21/79	TA-W-5, 519	Mining of coal.
J.S Coal Corp., Mine #3 (U.M.W.A.)	Raleigh County, W. Va	5/29/79	5/15/79	TA-W-5, 520	Mining of coal.
New Balance Athletic Shoe, Inc. (workers)	Lawrence, Mass	5/29/79	5/16/79	TA-W-5, 521	Athletic shoes for men, women and children.
Pharmaseal Corp. (company)	Toa Alta, P.R	5/29/79	5/22/79	TA-W-5, 522	Disposable medical supplies (plastic).
Pharmaseal Laboratory, Inc. (company)	Toa Alta, P.R	5/29/79	5/22/79	TA-W-5, 523	Disposable medical supplies (plastic).
Pharmaseal, Inc. (company)	Toa Alta, P.R	5/29/79	5/22/79	TA-W-5, 524	Disposable medical supplies (plastic).
Phelps Dodge Corporation (Teamsters)	Carolina, P.R	6/1/79	6/1/79	TA-W-5, 525	Telephone and high voltage cables.
Waldo Shoe Corporation (workers)	Belfast, Maine	5/29/79	5/22/79	TA-W-5, 526	Women's novelty shoes.

[FR Doc. 79-18705 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4747]

Bethlehem Steel Corp., Sparrows Point Shipyard, Sparrows Point, Md.; Revised Certification of Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 26, 1979, applicable to all workers of the Sparrows Point Shipyard of the Bethlehem Steel Corporation, Sparrows Point, Maryland. Notice of Certification was published in the Federal Register on March 30, 1979, (44 FR 19067).

On the basis of additional information, the Office of Trade Adjustment Assistance, on its own motion, reviewed the certification. The review of the case revealed that numerous layoffs occurred in certain Departments in May and June, 1978-of workers employed in the early phase of ship construction. These layoffs were not covered by the impact date of July 1, 1978.

The intent of the certification is to cover all workers who were affected by the decline in production of merchant vessels related to import competition. The certification, therefore, is revised to include workers in Departments 42, 82, 65, 58 and 75 who became separated from employment on or after May 1, 1978.

The revised certification applicable to TA-W-4747 is hereby issued as follows:

All workers in Departments 42, 82, 65, 58 and 75 of the Sparrows Point Shipyard of the Bethlehem Steel Corporation, Sparrows Point, Maryland, who became totally or partially separated from employment on or after May 1, 1978, and all other workers of the Sparrows Point Shipyard of the Bethlehem Steel Corporation, Sparrows Point, Maryland, who became totally or partially separated from employment on or after July 1, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 6th day of June 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-18706 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5162 and 5163]

Betty Coal Co., Betty Mine #13B, Betty Mine #8; Iaeger, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 6, 1979, in response to a worker petition received on April 2, 1979, which was filed by the United Mine Workers of America on behalf of workers and former workers mining metallurgical coal at the Betty Coal Company's Betty Mine #13B (TA-W-5162) and Betty Mine #8 (TA-W-5163), Iaeger, West Virginia. In the following determination, without regard to whether any of the criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Department's investigation revealed that the Betty Coal Company's customers export all of the coal they purchase from the subject firm, therefore any imports of coal or coke will have a negligible impact of employment.

Conclusion

After careful review, I determine that all workers of the Betty Coal Company's Betty Mine #13B and Bety Mine #8, Iaeger, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 8th day of June 1979.

James F. Taylor,

Director, Office of Management, Administrtion, and Planning.

[FR Doc. 79-18708 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5116 and 5116A]

Black Mountain Coal Co., Inc., T/A Algoma Energy Corp., No. 16 Mine, No. 12 Mine, McDowell County, W. Va.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 5, 1979, in response to a worker petition received on April 2, 1979, which was filed by the United Mine Workers of America on behalf of workers and former workers mining coal at Black Mountain Coal Company, Incorporated, Black Mountain Truck Mine, McDowell County, West Virginia. The investigation revealed that the Black Mountain Coal Company operates two mines, #16 Mine and #12 Mine, in McDowell County, West Virginia and the investigation revealed that in West Virginia the company operates under the title of the Black Mountain Coal Company, Incorporated, T/A Algoma Energy Corporation. It is concluded that all of the requirements have been met.

U.S. imports of metallurgical coal are negligible. However, in accordance with section 222 of the Trade Act of 1974 and 29 CFR 90.2, a domestic article may be "directly competitive" with an imported article at a later stage of processing. Coke is metallurgical coal at a later stage of processing. Therefore, imports of coke as well as imports of metallurgical coal should be considered in determining import injury to workers producing metallurgical coal.

U.S. imports of coke increased absolutely and relatively in 1977 compared to 1976 and in 1978 compared to 1977.

Black Mountain Coal Company is a contract mining operation and must deliver all of its coal to the larger coal company with whom it contracts. This larger coal company reduced the amount of its orders from Black Mountain as a result of declines in its own sales of metallurgical coal in 1978 compared to 1977. A Department survey established that one major customer sharply reduced its purchases of metallurgical coal from the larger coal company in 1978 compared to 1977 due to a decline in its owns sales of metallurgical coal to two large U.S. steel producers. This customer accounted for the preponderance of the decline in sales in 1978 compared to 1977 by the larger coal company for whom Black Mountain contracts. Further investigation revealed that these steel producers increased imports of coke in 1978 compared to 1977.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with metallurgical coal produced at the #16 Mine and the #12 Mine of the Black Mountain Coal Company, T/A Algoma Energy Corporation contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of the #16 Mine and the #12 Mine of the Black Mountain Coal Company, T/A Algoma Energy Corporation, McDowell County, West Virginia who became totally or partially separated from employment on or after January 12, 1979, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of June 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-18707 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5164]

Bowen Trucking Co., Bowen Mine, Maben, W. Va.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 6, 1979 in response to a worker petition received on April 2, 1979 which was filed by the United Mine Workers of America, District 29 on behalf of workers and former workers mining metallurgical coal at Bowen Trucking Company, Bowen Mine, Maben, West Virginia. It is concluded that all of the requirements have been met.

The petition was filed on behalf of workers mining metallurgical coal. In accordance with section 222 of the Trade Act and 29 CFR 90.2, a domestic article may be "directly competitive" with an imported article at a later stage of processing. Coke is metallurgical coal at a later stage of processing. Therefore, imports of coke as well as imports of metallurgical coal should be considered in determining import injury to workers mining metallurgical coal.

Although U.S. imports of metallurgical coal have been negligible, U.S. imports of coke increased absolutedly and relative to domestic production from 1976 to 1977 and from 1977 to 1978.

Bowen mines coal on a contract basis for a single coal company. A Departmental Survey of that coal company revealed that it had reduced its purchases of coal from Bowen as a result of a decline in its own sales of metallurgical coal to its customers. The Department of Labor also conducted a survey of the major customers purchasing metallurgical coal from the coal company. Several of these customers reduced purchases from the coal company and increased purchases of imported coke from 1977 to 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with metallurgical coal mined by Bowen Trucking Company, Bowen Mine, Maben, West Virginia contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Bowen Trucking Company, Bowen Mine, Maben, West Virginia who become totally or partially separated from employment on or after October 1, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 5th day of June 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-18708 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W 5218, 5222, and 5228]

Brady Cline Coal Co., Gauley Coal Sales Co., Margaret Peerless Coal Co., Summersville, W. Va.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigations were initiated on April 12, 1979 in response to worker petitions received on April 9, 1979 which were filed by the United Mine Workers of America on behalf of workers and former workers producing coal for Brady Cline Coal Company, Gauley Coal Sales Company and Margaret Peerless Coal Company, Summersville, West Virginia. It is concluded that all of the requirements have been met.

U.S. imports of metallurgical coal are negligible. However, in accordance with Section 222 of the Trade Act of 1974 and 29 CFR 90.2, a domestic article may be "directly competitive" with an imported article at a later stage of processing. Coke is metallurgical coal at a later stage of processing. Therefore, imports of coke as well as imports of metallurgical coal should be considered in determining import injury to workers producing metallurgical coal.

U.S. imports of coke increased in 1977 from 1976 and again in 1978 from 1977, both absolutely and relative to domestic production.

The Department of Labor conducted a survey of the major customers purchasing metallurgical coal from Brady Cline Coal Company and Margaret Peerless Coal Company. Some customers reduced purchases from Brady Cline and Margaret Peerless and increased imports of metallurgical coal and/or coke from 1977 to 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with metallurgical coal produced at Brady Cline Coal Company, Gauley Coal Sales Company and Margaret Peerless Coal Company contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Brady Cline Coal Company, Gauley Coal Sales Company and Margaret Peerless Coal Company engaged in employment related to the production of metallurgical coal who became totally or partially separated from employment on or after the respective impact dates (see below) are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

TA-W-	Facility	Impact date
5218	Brady Cline Coal Company.	
	Mine # 5	March 30, 1979.
	Mine # 7	December 22, 1978.
	Mine # 14	July 21, 1978.
5222	Gauley Coal Sales Company.	December 29, 1978.
5228	Margaret Peerless Coal Company.	March 1, 1979.

Signed at Washington, D.C. this June 8, 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-18709 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5193 and 5194]

Brierwood Shoe Corp., De Witt Division, Clarendon, Ark., and De Witt, Ark.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 6, 1979, in response to a worker petition received on April 3, 1979, which was filed on behalf of workers and former workers producing men's and boys' shoes at the DeWitt Division of Brierwood Shoe Corporation, Clarendon, Arkansas and DeWitt, Arkansas. It is concluded that all of the requirements have been met.

U.S. imports of men's dress and casual footwear, except athletic, increased absolutely and relative to domestic production from 1976 to 1977. Imports decreased absolutely but increased relatively from 1977 to 1978.

U.S. imports of youth's and boys' dress and casual footwear, except athletic, decreased absolutely and increased relative to domestic production from 1976 to 1977. Imports decreased absolutely and relatively from 1977 to 1978.

A survey of major customers of the DeWitt Division revealed that one major customer increased its purchases of imported men's and boys' footwear and decreased its purchases of footwear from DeWitt Division in 1978 compared to 1977.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's and boys' casual footwear produced at the DeWitt Division of Brierwood Shoe Corporation, Clarendon, Arkansas and DeWitt, Arkansas contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of the DeWitt Division of Brierwood Shoe Corporation, Clarendon, Arkansas and DeWitt, Arkansas who became totally or partially separated from employment on or after March 28, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 5th day of June 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-18710 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5219]

Buckeye Sugars, Inc., Ottawa, Ohio; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification

of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 12, 1979 in response to a worker petition received on April 9, 1979 which was filed by the United Steelworkers of America on behalf of workers and former workers producing refined beet sugar at Buckeye Sugars, Inc., Ottawa, Ohio. It is concluded that all of the requirements have been met.

United States imports of refined sugar increased in value in 1977 from 1976, declined in 1978 from 1977 and increased in January–March 1979 compared to January–March 1978.

A survey conducted by the U.S. Department of Commerce revealed that some customers who reduced purchases from Buckeye Sugars, Inc. in 1978 from 1977 purchased imported refined sugar during the same period. On April 4, 1979 the Department of Commerce issued a certification of eligibility to Buckeye Sugars, Inc. to apply for firm adjustment assistance under the Trade Act of 1974.

The annual beet acreage harvested by independent growers for buckeye Sugars, Inc. declined in crop year 1977 from crop year 1976 and declined again in crop year 1978 from crop year 1977. No beet acreage will be harvested for Buckeye Sugars in crop year 1979.

Sales of refined beet sugar by Buckeye Sugars, Inc. declined in 1978 from 1977. Buckeye Sugars will not conduct a sugar campaign in 1979.

Compared to the same quarter of the previous year, average employment of production workers by Buckeye Sugars declined during three consecutive quarters from the third quarter of 1978 through the first quarter of 1979.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with refined beet sugar produced at Buckeye Sugars, Inc., Ottawa, Ohio contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

"All workers of Buckeye Sugars, Inc., Ottawa, Ohio engaged in employment related to the production of refined beet sugar who became totally or partially separated from employment on or after July 3, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C. June 6, 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-18777 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5148]

Byars Trucking, McGraws, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 5, 1979, in response to a worker petition received on April 2, 1979, which was filed by the United Mine Workers of America on behalf of workers and former workers of Byars Trucking, McGraws, West Virginia, a contract hauler.

Byars Trucking was engaged in providing the service of transporting coal by truck from a customer's mine to a tipple. The company ceased operations in January 1979.

Thus, workers of Byars Trucking did not produce an article within the meaning of Section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Byars Trucking by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Byars Trucking and its customers had no controlling interest in one another. The subject firm was not corporately affiliated with any other company.

All workers engaged in transporting coal by truck at Byars Trucking were employed by that firm. All personnel actions and payroll transactions were controlled by Byars Trucking. All employee benefits were provided and maintained by Byars Trucking. Workers were not, at any time, under employment or supervision by customers of Byars Trucking. Thus, Byars Trucking, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of Byars Trucking, McGraws, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-18712 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5390]

Casey Manufacturing Co., Casey, Ill.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on May 15, 1979 in response to a worker petition received on May 14, 1979 which was filed on behalf of workers and former workers producing children's shoes at Casey Manufacturing Company, Casey, Illinois. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The average number of production workers at Casey Manufacturing increased in 1978 compared with 1977 and in each of the four quarters in 1978 compared to the same quarters of the

previous year. Casey experienced temporary declines in employment and production in early 1979 due to normal business fluctuations. Employment and production began increasing in March 1979 and have continued to increase to date.

Conclusion

After careful review, I determine that all workers at Casey Manufacturing Company, Casey, Illinois are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 5th day of June 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-18713 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5044]

Clausing Corp., Warsaw, Ind.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on March 28, 1979, in response to a worker petition received on March 23, 1979, which was filed by the United Steelworkers of America on behalf of workers and former workers producing lathes at Clausing Corporation, Warsaw, Indiana. It is concluded that all of the requirements have been met.

U.S. imports of engine lathes increased absolutely and relative to domestic production from 1976 to 1977 and decreased from 1977 to 1978. Despite the decrease, imports were greater in 1978 than in 1976.

The Department surveyed Clausing Corporation's major customers. Customers whose purchases of lathes from Clausing accounted for a significant proportion of its declines in production in 1978 increased their purchases of imported lathes in 1978 compared to 1977.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with lathes produced at the Warsaw, Indiana plant of Clausing Corporation contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

"All workers of Clausing Corporation, Warsaw, Indiana who became totally or partially separated from employment on or after March 21, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C. this 5th day of June 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-18714 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5169]

Coal King Corp., Beckley, W. Va.; Matthew Meade Mine, Shady Spring, W. Va.; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 6, 1979 in response to a worker petition received on April 2, 1979 which was filed on behalf of workers and former workers mining metallurgical coal at Matthew Meade Mine in Shady Spring, West Virginia of Coal King Corporation, Beckley, West Virginia.

The Notice of Investigation was published in the **Federal Register** on April 13, 1979 (44 FR 22209–10). No public hearing was requested and none was held.

During the course of the investigation, it was established that all workers of the Matthew Meade Mine of Coal King Corporation were separated from employment in November 1977. Section 223(b) of the Trade Act of 1974 states that no certification under this section may apply to any worker whose last total or partial separation from the firm or appropriate subdivision of the firm occurred more than one year prior to the date of the petition.

The date of the petition in this case is March 27, 1979 and, thus, workers terminated prior to March 27, 1978 are not eligible for program benefit under Title II, Chapter 2, Subchapter B of the Trade Act of 1974. The investigation of the Matthew Meade Mine is therefore terminated.

Signed at Washington, D.C. this 5th day of June 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-18715 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5170-5172 et al.]

Coal King Corp., Beckley, W. Va., et al.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of investigations regarding certifications of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 6, 1979 in response to a worker petition received on April 2, 1979 which was filed by the United Mine Workers of America on behalf of workers formerly mining metallurgical coal at the following mines of Coal King Corporation, Beckley, West Virginia: Bonnie Beth Mine of Shady Spring, West Virginia; Tarrah Leigh Mine of Daniels, West Virginia; and LSQ #2 Mine of Daniels, West Virginia.

U.S. imports of metallurgical coal are negligible. However, coke is metallurgical coal in a later stage of processing, and is therefore "directly competitive" with metallurgical coal. U.S. imports of coke increased on an absolute basis and relative to domestic production in 1977 compared to 1976 and in 1978 compared to 1977.

Coal King Corporation sold all of its coal to one preparation plant. A Labor Department survey of the major customers who bought the coal from the preparation plant revealed that these customers significantly decreased purchases of metallurgical coal from that firm while increasing purchases of imported coke in 1978 as compared to 1977.

Conclusion

After a careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with metallurgical coal produced at the Bonnie Beth Mine, Shady Spring, West Virginia; the Tarrah Leigh Mine, Daniels, West Virginia; and the LSQ #2 Mine,

Daniels, West Virginia of Coal King Corporation contributed importantly to the decline in sales or production and to the total or partial separation of workers of these mines. In accordance with the provisions of the Act, I make the following certifications:

"All workers of the following mines of Coal King Corporation of Beckley, West Virginia who became totally or partially separated from employment on or after the indicated impact date are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

TA-W-	Mine location	Impact date
5170	Bonnie Beth Mine; Shady Spring, WV.	Oct. 6, 1978.
5171	Terrah Leigh Mine; Daniels, WV	Sept. 22, 1978.
5172	LSO No. 2 Mine; Daniels, WV	June 2, 1978.

Signed at Washington, D.C. this 5th day of June 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-18718 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5173]

Coolridge Equipment & Mining Co., Shady Spring, W.Va.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 6, 1979 in response to a worker petition received on April 2, 1979 which was filed by the United Mine Workers of America on behalf of workers and former workers of Coolridge Equipment and Mining Company, Shady Spring, West Virginia who mine coal at the L & F Strip Mine, Raleigh County, West Virginia. It is concluded that all of the requirements have been met.

U.S. imports of metallurgical coal are negligible. However, coke is metallurgical coal in a later stage of processing, and is therefore "directly competitive" with metallurgical coal. U.S. imports of coke increased on an absolute basis and relative to domestic production in 1977 as compared to 1976 and in 1978 as compared to 1977.

Coolridge Equipment and Mining Company is a mining contractor which sells all its coal to a single coal company. A Departmental survey of that coal company revealed that it had reduced its purchases of coal as a result of a decline in its own sales of metallurgical coal to large U.S. steel producers. A secondary survey revealed that several of these steel producers had increased imports of coke in 1978 compared to 1977.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with metallurgical coal mined by Coolridge Equipment and Mining Company of Shady Spring, West Virginia, at the L & F Strip Mine in Raleigh County, West Virginia contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

"All workers of Coolridge Equipment and Mining Company, Shady Spring, West Virginia who became totally or partially separated from employment on or after December 1, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C. this 5th day of June 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-18717 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5437]

Cooper-Wise, Maplewood, N.J.; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974 (19 U.S.C. 2273), an investigation was initiated on May 21, 1979 in response to a worker petition received on May 18, 1979 which was filed on behalf of workers and former workers producing pocket knives at Cooper Wise, Maplewood, New Jersey.

During the course of the investigation, it was established that all workers at the Cooper Wise, Maplewood, New Jersey plant were previously certified eligible under TA-W-3294. Since all workers separated, totally or partially, form the Cooper Wise, Maplewood, New Jersey plant on or after December 10, 1977 (impact date), and before October 20, 1980 (expiration date) are covered by an existing certification, a new investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 8th day of June 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-18718 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5174]

Crescent Sea Food Products Co., Paterson, N.J.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 6, 1979 in response to a worker petition received on April 4, 1979 which was filed on behalf of workers and former workers wholesaling fresh and frozen fish at Crescent Sea Food Products Company, Paterson, New Jersey. The investigation revealed that the company was also engaged in the distribution and filleting of fresh fish. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Evidence developed during the course of the investigation revealed that the Crescent Sea Food Products Company is almost exclusively engaged in the wholesaling and distribution of fresh and frozen fish. Crescent was primarily engaged in the purchase of fish for resale. Filleting fish, which was the only production work Crescent performed, accounted for a minor portion of the firm's sales.

Conclusion

After careful review, I determine that all workers of Crescent Sea Food Products Company, Paterson, New

Jersey are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 5th day of June 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-18719 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5221]

Cyclops Corp., Detroit Strip Division, Hamden, Conn.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 12, 1979 in response to a worker petition received on April 10, 1979 which was filed by the United Steelworkers of America on behalf of workers and former workers producing cold rolled carbon steel strip at the Hamden, Connecticut plant of the Detroit Strip Division of the Detroit Steel Corporation. The investigation revealed that the correct name of the firm for which the petition was filed is the Detroit Strip Division of the Cyclops Corporation. In the following determination, at least one of the criteria has not been met:

That sales or production, or both, of the firm or subdivision have decreased absolutely.

Plant sales and production of cold rolled carbon steel strip increased in 1978 compared to 1977 and continued to increase in the first quarter of 1979 compared to the like quarter in 1978.

Conclusion

After careful review, I determine that all workers of the Detroit Strip Division of the Cyclops Corporation in Hamden, Connecticut are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 5th day of June 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-18720 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5206]

Diego Trucking Co., Glen Jean, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 22 of the Act must be met.

The investigation was initiated on April 10, 1979, in response to a worker petition received on March 30, 1979, which was filed by the United Mine Workers of America on behalf of workers and former workers of Diego Trucking Company, Glen Jean, West Virginia, engaged in coal transporting.

Diego Trucking Company is a contractor engaged in subcontracting the service of transporting coal by truck from a customer's mine to a tipple.

Thus, workers of Diego Trucking Company do not produce an article within the meaning of Section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Diego Trucking Company by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Diego Trucking Company and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any other company.

All workers engaged in subcontracting coal transporting operations at Diego Trucking Company are employed by that firm. All personnel actions and payroll transactions are controlled by Diego Trucking Company. All employee benefits are provided and maintained by Diego Trucking Company. Workers are not, at any time, under employment or supervision by customers of Diego Trucking Company. Thus, Diego Trucking Company, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of Diego Trucking Company, Glen Jean, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 8th day of June 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-18721 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5090]

Essex Group, Inc., Wire Assembly Division, Lafayette, Ind.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on March 30, 1979 in response to a worker petition received on March 26, 1979 which was filed by the International Association of Machinists and Aerospace Workers on behalf of workers and former workers producing automotive wire harness assemblies at the Lafayette, Indiana plant of the Wire Assembly Division of Essex Group, Incorporated. It is concluded that all of the requirements have been met.

U.S. imports of automotive wire harnesses increased in value in 1978 from 1977.

All production activities by the Lafayette, Indiana plant of the Wire Assembly Division of Essex Group, Inc. were discontinued in March 1979. After the closing of the Lafayette plant, production of wire harnesses manufactured by the plant was transferred to a Canadian wire harness assembly plant operated by the Division.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with automotive wire harness assemblies produced at the Lafayette, Indiana plant of the Wire Assembly Division of Essex Group, Inc. contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

"All workers of the Layette, Indiana plant of the Wire Assembly Division of Essex Group, Inc. who became totally or partially separated from employment on or after September 18, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C. this 8th day of June 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-[illegible] Filed 6-14-79; 8:45 am]

BILLING CODE [illegible]

LEGAL SERVICES CORPORATION

Grants and Contracts

June 15, 1979.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355 88 Stat. 378, 42 U.S.C. 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least 30 days prior to the approval of any grant application or prior to entering into a contract or prior to the intiation of any other project, the Corporation shall announce publicly * * * such grant, contract or project."

The Legal Services Corporation hereby announces publicly that it is considering the grant application submitted by: Utah Legal Services, Inc. in Salt Lake City, Utah to serve Carbon, Daggett, Duchesne, Emery, Grand, San Juan, Uintah, Beaver, Garfield, Iron, Kane, Millard, Piute, Sanpete, Sevier, Wayne and Washington Counties.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the Regional Office of the Legal Services Corporation at: Legal Services Corporation, Denver Regional Office, 1726 Champa Street, Suite 500, Denver, CO 80202.

Dan J. Bradley,

President.

[FR Doc. 79-[illegible] Filed 6-14-79; 8:45 am]

BILLING CODE 6820-35-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Museum Advisory Panel; Amended Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel to the National Council on the Arts which appeared in the Federal Register, Vol. 44, No. 104, Tuesday, May 29, 1979, page 30783 is amended as follows:

The portion of this meeting which will be open to the public has been changed from June 11, 1979, from 9 a.m. to 5 p.m. to June 12, 1979, from 9 a.m. to 5 p.m.

The remaining sessions of this meeting on June 11, 1979, from 9 a.m. to 5 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register March 17, 1977, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

June 8, 1979.

[FR Doc. 79-[illegible] Filed 6-14-79; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on the La Crosse Nuclear Power Plant; Meeting

The ACRS Subcommittee on the La Crosse Nuclear Power Plant, will hold a meeting on June 30, 1979 in Room 1046, 1717 H St., N.W., Washington, DC 20555.

The purpose of this meeting is to review the overall condition of the reactor plant, and the status of the NRC systematic evaluation. Notice of this meeting was published on May 24, 1979 (44 FR 30177).

In accordance with the procedures outlined in the Federal Register on October 4, 1978 (43 FR 45926), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows: *Saturday, June 30, 1979, 8:30 a.m. until the conclusion of business.*

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full Committee.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff, the Dairyland Power Cooperative, et al., and their consultants, pertinent to this review.

The Subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether any aspects need to be reviewed by the full Committee.

In addition, it may be necessary for the Subcommittee to hold one or more closed sessions for the purpose of exploring matters involving proprietary information. I have determined, in accordance with Subsection 10(d) of Pub. L. 92-463, that, should such sessions be required, it is necessary to close these sessions to protect proprietary information (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Mr. John C. McKinley

(telephone 202/634-3265), between 8:15 a.m. and 5 p.m., EDT.

Background information concerning items to be considered at this meeting can be found in documents on file and available for public inspection at the NRC Public Document Room, 1717 H Street, N.W., Washington, DC 20555 and at the La Crosse Public Library, 800 Main Street, La Crosse, WI 54601.

Dated: June 11, 1979.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 79-18604 Filed 6-14-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-454 and 50-455]

Commonwealth Edison Co., Byron Station, Units 1 and 2; Special Prehearing Conference

Take notice that a special prehearing conference in this proceeding will be held on Wednesday, July 25, 1979, at 9:30 a.m., at the Industrial Commission Courtroom (4th Floor), Winnebago County Courthouse, 400 West State Street, Rockford, Illinois.

Those petitioners who have made adequate statements of their interest in the proceeding are reminded that, pursuant to § 2.714(b), no later than 15 days prior to the holding of this prehearing conference, they must "file a supplement to [their petitions] which must include a list of those contentions [the petitioners seek] to have litigated . . . and the bases for each contention [must be] set forth with reasonable specificity."

Members of the public may request permission to make a limited appearance pursuant to § 2.715(a) of the Commission's Rules of Practice, 10 CFR Part 2. A person making a limited appearance does not become a party but may state his position on the issues and may raise relevant questions which he wishes to have answered by the parties. Limited appearances will be received at the July 25 prehearing conference at the discretion of the Board within such limits and on such conditions as may be set by the Board.

Dated at Bethesda, Maryland this 8th day of June 1979.

Edward Luton,

Chairman.

[FR Doc. 79-18606 Filed 6-14-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-456 and 50-457]

Commonwealth Edison Co., Braidwood Nuclear Power Station, Units 1 and 2; Special Prehearing Conference

Take notice that a special prehearing conference in this proceeding will be held Thursday, July 26, 1979, at 9:30 a.m., at the City Council Chamber, City Hall, 150 West Jefferson Street, Joliet, Illinois.

Those petitioners who have made adequate statements of their interest in the proceeding are reminded that, pursuant to § 2.714(b), no later than 15 days prior to the holding of this prehearing conference, they must "file a supplement to [their petitions] which must include a list of those contentions [the petitioners seek] to have litigated . . . and the bases for each contention [must be] set forth with reasonable specificity."

Members of the public may request permission to make a limited appearance pursuant to § 2.715(a) of the Commission's Rules of Practice, 10 CFR Part 2. A person making a limited appearance does not become a party but may state his position on the issues and may raise relevant questions which he wishes to have answered by the parties. Limited appearances will be received at the July 26 prehearing conference at the discretion of the Board within such limits and on such conditions as may be set by the Board.

Dated at Bethesda, Maryland this 8th day of June 1979.

Edward Luton,

Chairman.

[FR Doc. 79-18607 Filed 6-14-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-255]

Consumers Power Co.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 49 to Provisional Operating License No. DPR-20, issued to Consumers Power Company (the licensee), which revised Technical Specifications for operation of the Palisades Plant (the facility), located in Covert Township, Van Buren County, Michigan. The amendment is effective as of its date of issuance.

The amendment increases the enrichment limit for fuel assemblies in the new and spent fuel storage racks.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated December 18, 1978, and supplement thereto dated January 12, 1979, (2) Amendment No. 49 to License No. DPR-20, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Kalamazoo Public Library, 315 South Rose Street, Kalamazoo, Michigan 49006. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 29th day of May, 1979.

For the Nuclear Regulatory Commission.

Dennis L. Ziemann,

Chief, Operating Reactors Branch #2, Division of Operating Reactors.

[FR Doc. 79-18608 Filed 6-14-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-267]

Public Service Co. of Colorado; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 21 to Facility Operating License No. DPR-34, issued to Public Service Company of Colorado, which revised Technical Specifications for operation of the Fort St. Vrain Nuclear Generating Station, located in

Weld County, Colorado. The amendment is effective as of its date of issuance.

The amendment revised the Technical Specifications to: (1) Modify the fire protection system for the three room complex, the Auxiliary Electric Room, the 480 Volt Switchgear Room and the congested cable areas; this constitutes Stage III fire protection implementation; (2) Convert the Interim Alternate Cooling method to the final Alternate Cooling Method; (3) Test the reactor building louver system on a quarterly basis; (4) Eliminate the manual isolation of the high pressure helium supply from the helium circulator buffer supply header; and (5) add two firewater booster pumps to the firewater system to provide adequate capacity to operate a circulator water turbine and supply emergency cooling water for safe shutdown cooling.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action see: (1) the applications for amendment dated December 11, 1978, September 8, 1978, April 2, 1979, November 16, 1977, and October 5, 1978, (2) Amendment No. 21 to License No. DPR-34, and (3) the Commission's related Safety Evaluation. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., 20555, and at the Greeley Public Library, City Complex Building, Greeley, Colorado 80631.

A copy of items (2) and (3) may be obtained upon request addressed to the United States Nuclear Regulatory Commission, Washington, D.C. 20555. Attention: Director, Division of Project Management, Office of Nuclear Reactor Regulation.

Dated at Bethesda, Maryland, this 8th day of June, 1979.

For The Nuclear Regulatory Commission

William P. Gammill,

Assistant Director for Standardization and Advanced Reactors, Division of Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 79-18600 Filed 6-14-79; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-15803 File No. SR-BSECC-79-3]

Self-Regulatory Organizations; Proposed Rule Change, Boston Stock Exchange Clearing Corp.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. 94-29, 16 (June 4, 1975), notice is hereby given that on April 9, 1979 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change imposes a 2 cents per share charge on members of Boston Stock Exchange Clearing Corporation ("BSECC") on trades made through the Intermarket Trading System ("ITS"), other than those executed on the Boston Stock Exchange ("BSE") as a result of commitments to trade received at the BSE.

Statement of Basis and Purpose

The proposed rule change would amend the proposed rule change, SR-BSECC-79-1, filed on March 8, 1979, and published at 44 FR 21512. The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of the proposed rule change ("Rule Change") is to reimburse the clearing agency for certain additional costs which it incurs in connection with the clearance and settlement of trades made through ITS. The Rule Change imposes a fee for trades other than trades on the Boston Stock Exchange made through the ITS of 2 cents per share on settled transactions.

The Rule Change related to the capacity of the BSECC to facilitate the prompt and accurate clearance and settlement of securities transactions by enabling it to carry on its functions in a profitable manner. The clearing agency will incur additional expenses in connection with ITS trades principally for the additional personnel required to report and reconcile ITS trades.

The Rule Change is effective from its filing with the Commission until six months from March 8, 1979. However, the BSECC has also filed, contemporaneously with the filing of the Rule Change, an additional proposed rule change, to be considered by the Commission pursuant to section 19(b)(2) of the Securities Exchange Act of 1934, which would adopt the substance of the Rule Change on a permanent basis.

On August 30, 1978, the BSECC filed a rule change to impose a fee to recover both the personnel and finance expenses associated with the Boston Stock Exchange's participation in ITS. In addition to the 2 cents per share fee, the August 30, 1978 rule change imposed a fee equal to the interest rate, charged at the time of any ITS trade by the BSECC's principal lender, times the dollar amount of any such trade. *See* Securities Exchange Act Rel. No. 15120 (September 1, 1978), 43 FR 40968. The Commission summarily abrogated the August 30, 1978 rule change. *See* Securities Exchange Act Rel. No. 15192 (September 26, 1978), 43 FR 46391.

As indicated, in contrast to the August 30, 1978 rule change, the Rule Change is principally designed to recover personnel expenses, is effective for a limited period of time, and has been submitted to the Commission contemporaneously with a proposed rule change, to be considered pursuant to Section 19(b)(2), which would adopt the substance of the Rule Change on a permanent basis. The Rule Change is an interim measure to allow the BSECC to recover certain costs associated with clearing and settling ITS transactions while the Commission considers, pursuant to Section 19(b)(2), the questions such a fee raises regarding the financing of the costs of implementing and operating national market system facilities.

No comments have been or are to be solicited; however, an organization representing specialists on the floor of the Boston Stock Exchange has expressed opposition to the amendment.

No burden on competition is expected.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L St., NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before July 6, 1979.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

June 6, 1979.

[FR Doc. 79-18819 Filed 6-14-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-15905, File No. SR-NASD-79-2]

Self-Regulatory Organizations; Proposed Rule Change By National Association of Securities Dealers, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. 94-29, 16 (June 4, 1975), notice is hereby given that on June 1, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

NASD's Statement of the Terms of Substance of the Proposed Rule Change

The following is the text of proposed new Part IV of Schedule D of Article XVI of the Association's By-Laws, which replaces in full existing Part IV of Schedule D and existing Section 4 of Schedule G of Article XVIII of the Association's By-Laws

IV. Schedule of Charges

A. System Services

1. NASDAQ Level 1 Service. The charge to be paid by the subscriber for each terminal receiving NASDAQ Level 1 Service is $8.75 per month.

2. NASDAQ Level 2/3 Service. The charge to be paid by the subscriber for each terminal receiving NASDAQ Level 2 or NASDAQ Level 3 Service shall be $150 per month and $0.01 per quotation request, plus equipment related charges as detailed in Parts B, C and D below. Equipment related charges include an installation charge, a terminal charge and conversion, removal and relocation charges.

3. Consolidated Quotation Service. The charge to be paid by the subscriber for each terminal receiving Consolidated Quotation Service shall be $50 per month and $0.01 per quotation request plus the monthly charges established by the NYSE and AMEX for receiving last sale information and bid/ask quotations plus equipment related charges as detailed in Parts B, C and D below. Equipment related charges include an installation charge, a terminal charge and conversion, removal and relocation charges.

4. Transaction Reporting for Listed Securities. The charge to be paid by the subscriber for transactions required to be reported under Schedule G of the By-Laws shall be $0.10 per transaction reported, plus equipment related charges as detailed in Parts B, C and D below. Equipment related charges include an installation charge, a terminal charge and conversion, removal and relocation charges. There shall be no charge for transactions reported in writing in conformance with Schedule G.

B. Equipment Charges

The charge for using NASDAQ terminal equipment shall be $180 per month for the first terminal and $125 per month for each additional terminal where all terminals are located on the same premises.

C. Special Options

1. Receive only printer option		$175/month
2. Spare terminal equipment (uninstalled).	CRT/Keyboard-uninstalled (no cabling provided) usable only as a spare replacement for an already installed terminal for Level 2 or 3 Service.	
	Keyboard	$20/month
	CRT display	$30/month
3. Special CRT	For each special CRT ordered to replace the standard NASDAQ CRT, in addition to all other charges specified above.	$45/month
4. Local posting	Permits subscriber to use NASDAQ level 2 terminals to enter quotations simultaneously into an internal computer system.	$50/month

D. Installation, Conversion, Removal or Relocation

Upon installation, conversion, removal or relocation of terminal equipment, the subscriber shall pay the following charges:

1. Control unit	New installation or complete removal	$225/unit
	Relocation to new address (interoffice)	$225/unit
	Relocation within same address (intraoffice)	$200/unit
2. CRT terminal	New installation of complete removal:	
	Units 1–5	$175/terminal
	Units 6–10	$150/terminal
	Units 11 and over	$125/terminal
	Relocation to new address (interoffice):	
	Units 1–5	$200/terminal
	Units 6–10	$175/terminal
	Units 11 and over	$150/terminal
	Relocation within same address (intraoffice):	
	Units 1–15	$125/terminal
	Units 6–10	$110/terminal
	Units 11 and over	$105/terminal
	Conversion charge for replacement of standard CRT with the special CRT option (9-inch).	$25/unit
3. Local posting system option	New installation or complete removal	$150
	Relocation of new address (interoffice)	$175
	Relocation within same address (intraoffice)	$100
4. Receive only printer	New installation or complete removal	$175
	Relocation to new address (interoffice)	$200
	Relocation within same address (intraoffice)	$125

E. Other Services

1. Daily Reports to Newspapers. Reports for regular public release, such as market summary information for newspaper publication, shall be produced in a format acceptable to most publishers without charge. Should such information be transmitted to another location at the request of any firm, a charge may be imposed for such services by the Corporation.

2. Other Requests for Data. The Corporation may impose and collect

compensatory charges for data from the System, supplied upon request, where there is no provision elsewhere in this Part IV for charges for such service or sale.

3. Correspondents. The charge for registration and display of a correspondent firm for a registered market maker shall be $3.50 per month for each correspondent displayed per security.

F. Partial Month Charges

The charges for the month of commencement or termination of service will be a pro rata share of the full monthly charge computed by dividing the number of business days the service was provided during that month by a standard 20 business day month.

G. Late Fees

All NASDAQ charges which are past due for 60 days or more shall be subject to a late fee of 10% of the amount past due.

H. Minor Modifications in Charges

In order to compensate for minor variations in annual net income, the Board of Governors may increase or decrease the total charges in this Schedule by 10 percent from the base charges as adopted on ——— upon filing such change with the Commission pursuant to Section 19(b)(3) of the Act.

NASD's Statement of Basis and Purpose of Proposed Rule Change

The NASDAQ System was purchased by the Association on February 9, 1976. This decision by the Association's Board of Governors was based on (1) the financial soundness of the System; (2) the belief that Association ownership would allow more economical upgrading of the System and benefit regulatory functions related to the System; and (3) the probability that System charges to subscribers could be reduced after repayment of the loan used to buy the System.

Experience has demonstrated the financial soundness of the System, and upgrading of the System's functions has continued to keep pace with the industry's needs. Plans for further enhancements necessitated by the emergence of a National Market System have been considered and incorporated into the future budget for the NASDAQ System.

Experience has also demonstrated that the Association's goal of reduction of NASDAQ System charges to its users has now become fully attainable. During the past two years of System operation the Association has been able to accumulate from System charges a reserve to cover unforeseen operational expenses. During this same period, the Association has refunded $2.3 million to System users.

In order to fulfill its stated goal of reduction in System rates, the Association's Board, with the assistance of the NASDAQ Board and its Rate Review Committee, developed and proposed a revised rate structure for NASDAQ services which reduces the charges now being paid by all users of the NASDAQ System and revises and simplifies the structure of charges by placing a greater emphasis on usage based charges. The Board reviewed projected revenues and expenses for the next five years and arrived at a revenue projection which it believed sufficient to support operation of the System, implement future System development projects and to maintain a level of retained earnings equal to one year's expenses which will provide adequate working capital. The details of this projection are set forth in Exhibit 2.

The five year projection includes estimates for all projects and expenses which can reasonably be foreseen at this time. Even at the levels of expenditure necessary to implement the foregoing, the Association found that the cost savings experienced by it in operating the System over the past several years will permit an overall reduction of $5 million per year during the next five years without adverse impact on the System. Although the percentage of reduction under the proposed rule change will vary among individual System users, there will be an overall reduction in costs of approximately 32 percent to system users.

In order to assure a fair allocation of the reduction among all subscribers,[1] the Board adopted a simplified rate structure based on recovering the cost of Level 2 and 3 equipment and communication expenses and allocation of all other administrative and operating costs among all system users and services.

Level 1 charges are reduced from $20 for the first terminal and $10 for each additional terminal to one charge of $8.75 per terminal. For Levels 2 and 3 service, the standard, high and unlimited usage plans are eliminated and replaced by a terminal charge, a service charge and a usage charge. The terminal charge is $180 per month for the first terminal and $125 per month for each additional terminal. NASDAQ Level 2 or 3 service is $150 per month per terminal and CQS is $50 per month per terminal. The usage charge is $0.01 per quotation request with no maximum charge. The stock listing charge of $5 per month for each security in which a market maker is registered in excess of 5 per terminal has been eliminated. The charge for registration and display of a correspondent firm for a registered market maker has been reduced from $5 to $3.50 per month for each correspondent displayed per security. Special equipment charges, trade reporting charges and installation, removal and relocation charges remain the same except for minor changes.

The proposed rate structure also contains a provision which authorizes the Association's Board to increase or decrease the rates by a maximum of 10 percent. Changes in rates made pursuant to this provision will be filed pursuant to Section 19(b)(3) of the Act, and shall be effective upon filing with the Commission. This limited flexibility in the rate structure is intended to permit minor modifications in the rates to cover annual adjustments for fluctuations in revenues.

Section 15A(b)(5) provides that an association of brokers and dealers shall not be registered as a national securities association unless the Commission determines that the rules of the association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls.

Comments from the membership were neither solicited nor received.

The Association believes that no burden on competition is imposed by the proposed rule change. Although the percentage of reduction under the proposed rule change will vary among individual system users, there will be an overall reduction in costs of approximately 32 percent to System users. Thus, the charges now being paid by all users of the NASDAQ System will be reduced and the structure of the charges revised and simplified by placing a greater emphasis on usage based charges.

Within 35 days of the date of publication of this notice in the Federal Register, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and

[1] NASDAQ issuers will not participate in the reduction in light of the fact that funds derived from NASDAQ issuers are Association revenues which are intended to provide a limited sharing by the NASDAQ companies of the Association's costs in connection with the regulation of the trading markets in NASDAQ-quoted securities. NASDAQ issuers do not and have not participated in the cost of operating and maintaining the System.

publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six (6) copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying at the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before July 16, 1979.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

June 8, 1979.

[FR Doc. 79-18620 Filed 6-14-79; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 10720; 812-4479]

Steinroe Cash Reserves, Inc.; Application Pursuant to Section 6(c) of the Act for Order of Exemption From Rules 2a–4 and 22c–1 Under the Act

June 5, 1979.

In the matter of Steinroe Cash Reserves, Inc., 150 South Wacker Drive, Chicago, Illinois 60606.

Notice is hereby given that Steinroe Cash Reserves, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on May 23, 1979, for an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Rules 2a–4 and 22c–1 under the Act to the extent necessary to permit Applicant to compute its net asset value per share, for the purpose of effecting sales, redemptions and repurchases of its shares, to the nearest one cent on a share value of one dollar. Applicant represents that in all other respects, its protfolio securities will be valued in accordance with the views of the Commission, set forth in Investment Company Act Release No. 9786 (May 31, 1977) ("IC–9786"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is a "money market" fund that seeks to obtain maximum current income consistent with preservation of capital and the maintenance of liquidity by investing in short-term money market instruments such as United States government obligations and commercial paper. Applicant states that it values United States government obligations with a maturity of more than 60 days at the most recent bid price or yield equivalent at the time of valuation and other money market securities with a maturity of more than 60 days at a fair value using a procedure determined in good faith by Applicant's Board of Directors. Applicant represents that this procedure includes the use of a matrix prepared by its investment adviser which classifies money market instruments according to various characteristics, including type, maturity and quality, assigning valuations to each such security based on yield equivalent quotations obtained by the investment adviser from dealers. If the adviser believes that such a valuation does not represent a fair value, it presents, for approval by a committee of Applicant's Board of Directors, such other valuation (which may be a "readily available market quotation") as the adviser considers to represent a fair valuation. Applicant further states that securities having maturities of 60 days or less from the date of valuation are valued on an amortized cost basis. Applicant represents that it determines net asset value for purposes of effecting sales, redemptions and repurchase of its shares as of the close of trading on each day the New York Stock Exchange is open for trading.

Rule 22c–1 under the Act provides, in part, that no registered investment company issuing any redeemable security shall sell, redeem, or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a–4 under the Act provides, as here relevant, that "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption shall be determined with reference to (1) current market value for portfolio securities with respect to which market quotations are readily available and (2) for other securities and assets, fair value as determined in good faith by the board of directors of the registered company. In IC–9786 the Commission expressed its view that it is inconsistent with Rule 2a–4 for certain money market funds to "round off" calculations of their net asset value of $1.00, because such a calculation might have the effect of masking the impact of changing values of portfolio securities and therefore might not "reflect" its portfolio valuation as required by Rule 2a–4.

Section 6(c) of the Act provides, in part, that the Commission may, upon application, exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act and the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant requests an exemption to permit it to maintain its net asset value at $1.00 per share by rounding off its calculation of net asset value to the nearest cent. Applicant submits that the granting of such exemption would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant represents that many shareholders, including both financial institutions and individuals, have advised Applicant that they strongly favor a stable $1.00 net asset value per share, and that its management believes that a stable $1.00 net asset value would benefit Applicant and its shareholders because:

1. Shareholders would have the convenience of being able to determine the value of their holdings simply by knowing the number of shares they own. Consequently, their maintenance of investment records would be simplified.

2. Applicant could be more competitive with the increasing number of money market mutual funds that attempt to maintain a $1.00 net asset value per share.

3. Shareholders and potential shareholders generally are not concerned with the minor differences which might occur between yield achieved through "market" pricing and the yield computed by using the "penny

rounding" valuation method described herein.

4. If the net asset value were in fact maintained at a constant price, there would be no realization of nominal capital gains and losses that might otherwise occur with a "floating" net asset value.

Applicant represents that to maintain the stability of its net asset per share at $1.00, its Board of Directors may reduce or suspend the payment of dividends on Applicant's shares if the net asset value per share should decline below $.997 and may supplement such dividends with other distributions if the net asset value per share should arise above $1.003. Applicant states that, in addition, in order to maintain the stability of its price per share, Applicant will adhere to the following conditions:

1. Applicant's Board of Directors, in supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, undertakes (as a particular responsibility within the Board's overall duty of care owed to Applicant's shareholders) to assure, to the extent reasonably practicable, taking into account current market conditions affecting Applicant's investment objective, that Applicant's net asset value per share as computed for purposes of effecting sales, redemptions and repurchases of its shares, rounded to the nearest one cent, will not deviate from $1.00.

2. Applicant will seek to maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable price per share, and Applicant will not (i) purchase an instrument with a remaining maturity greater than one year, or (ii) maintain a dollar-weighted average portfolio maturity in excess of 120 days.

3. Applicant's purchases of portfolio investments will be limited to the following:

a. Securities issued or guaranteed by the United States government.

b. Obligations issued or guaranteed by agencies or instrumentalities of the United States government.

c. Certificates of deposit and bankers' acceptances of United States banks having total assets in excess of $1 billion and of foreign branches of such United States banks.

d. Commercial paper at time of purchase rated Prime-1 by Moody's Investors Service, Inc. ("Moody's"), A–1 by Standard & Poor's Corporation ("S&P") or, if unrated, issued or guaranteed by a corporation with outstanding debt rated Aa or better by Moody's or AA or better by S&P.

e. Corporate notes, bonds, and debentures rated Aa or better by Moody's or AA or better by S&P at time of purchase.

f. Repurchase agreements pertaining to securities issued or guaranteed by the United States government or its agencies or instrumentalities, provided that such agreements are limited to transactions with financial institutions believed by Applicant's investment adviser to present minimal credit risks.

Notice if further given that any interested person may, not later than July 2, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 79-[illegible] Filed 6-14-79; 8:45 am]
BILLING CODE 8010-01-M

[Release 34–16067; File No. SR–NASD–78–14]

National Association of Securities Dealers, Inc., Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94–29, 16 (June 4, 1975) notice is hereby given that on May 14, 1979 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Text of Proposed Rule Change

The following is the full text of the proposed amendments to Article III, Section 2 and Article XVI, Section 3 and Schedule D thereunder of the By-Laws of the National Association of Securities Dealers, Inc. ("Association"). Brackets ([ ]) indicate deletions; *Italics* indicate new material.

By-Laws

Article III

Section 2

(a) Each member shall promptly furnish all information or reports requested by the Board of Governors in connection with the determination of the amount of admission fees, dues, assessments or other charges payable by members during any given fiscal year.

(b) Each member shall report promptly such information in connection with securities for which quotations are displayed on the NASDAQ System as the Board of Governors deems appropriate.

Article XVI

Section 3 (First Paragraph)

Taking into account relevant matters including the type of business done, securities traded, and service rendered, the Board of Governors may publish operating rules for the automated quotations systems, establish reasonable qualifications and classifications for registered market makers and other subscribers, provide standards for authorized securities, *require members to report promptly such information with respect to authorized securities as the Board of Governors deems appropriate* and specify and publish the charges to be collected from subscribers [by the operator of automated quotations systems]. Services shall be provided to members on a nondiscriminatory basis and at reasonable and uniform rates designed to encourage maximum utilization by all members, with due allowance for the geographic remoteness of members or their branch offices receiving service outside of the 48 contiguous states.

Schedule D

Part I

Section C.3.(c)

(iii) Reports of All Members.

(1) Each member shall report to the NASDAQ Department in New York City by 4:30 p.m. Eastern Time, each business day, its transactions of block-size in NASDAQ securities, other than convertible debentures, for which such member is not registered with the NASDAQ System as a market maker and which are executed with persons other than registered NASDAQ market makers in that security.

(2) "Block-size" shall mean 10,000 shares or more executed at a price of $1 or more.

(3) The report of each transaction shall include the following information:

a. Security name and NASDAQ symbol;

b. Number of shares;

c. Whether the transaction was a purchase or sale;

d. Whether the transaction was executed as principal, agent or dual agent; and

e. The name of the contra-broker/dealer or if the contra-side is a retail account, the symbol, "RA."

NASD's Statement on Purpose of Proposed Rule Change

The amendments to Article III, Section 2 and Article XVI, Section 3 of the By-Laws would give the Board of Governors specific authority to require members to report information related to NASDAQ securities. Currently, NASDAQ market makers are required to report, through the NASDAQ System, their daily volume in those securities in which they are registered market makers, but volume in NASDAQ securities that does not involve registered market makers is presently not required to be reported. The Association believes that volume reports as to block-size transactions constitute meaningful information for investors which should be incorporated into the NASDAQ volume data released for publication.

The proposed amendment to Schedule D would require all members who are not registered market makers to transmit, via telephone, Telex, TWX, their block-size purchases and sales in NASDAQ securities, other than convertible debentures, to the NASDAQ Department in New York City. The volume would be entered into the System and the data would be included in the individual security statistics, the aggregate NASDAQ statistics and the NASDAQ regulatory reports.

Members would report only that volume involved in principal or agency transactions of block-size executed with others who, at the time of execution of the transaction, were not registered market makers in the NASDAQ security. A block is defined as a transaction involving 10,000 shares or more, executed at a price of $1 or more.

For each transaction that meets or exceeds the definition of block-size a firm would report the following information:

1. Security name and NASDAQ symbol;
2. Number of shares;
3. Whether the transaction was a purchase or sale;
4. Whether the transaction was executed as principal, agent or dual agent; and
5. The name of the contra-broker/dealer or if the contra-side is a retail account, the symbol, "RA".

Members would be required to report their block purchases and sales by 4:30 p.m. Eastern Time in order to have the data entered into the System prior to the 4:45 p.m. Eastern Time volume cutoff deadline.

The Board of Governors has also proposed a technical amendment to Article XVI, Section 3 of the By-Laws to reflect the acquisition of the NASDAQ System by the Association. The amendment would delete a reference to the responsibility of the operator of the NASDAQ System to collect charges from subscribers since this function is now performed by the Association.

NASD's Basis Under the Act for Proposed Rule Change

Section 11A(a)(1) of the Act provides:

> The Congress finds that * * * [i]t is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure . . . the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities * * *

Section 15A(b)(6) of the Act, which applies to registered securities associations, requires that "[t]he rules of the association [be] designed * * * to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest * * *" These provisions give the Association authority to require that all members report their volume in NASDAQ securities in order to provide more complete information to the investing public. Accordingly, the proposed amendments are consistent with the requirements of the Act.

Comments Received From NASD Members, Participants or Others on Proposed Rule Change

Comments from members were solicited in Notice to Members 78-8. Six comment letters were received. One expressed no objection to the rule change, and the others expressed general concern over the additional reporting burden. Specific questions focused on the need to report convertible bond transactions when trading activity is negligible. The Board of Governors considered these comments meritorious and, in view of the fact that volume in convertible debentures, although released by the Association, is not generally published, the Board eliminated this requirement. Two members questioned the need of reporting the name of the contra-broker/dealer. The Association requires this information in order to prevent double reporting. Finally, two comment letters expressed the view that the reporting of total volume for NASDAQ securities might mislead the public by giving the impression that all trading occurred over the NASDAQ System. The Association does not believe the public will be misled, since the inclusion of non-market maker volume in the volume release will more accurately disclose the changes of ownership in NASDAQ securities. The NASDAQ staff in New York City will maintain a log of all telephone reports and will enter volume from non-NASDAQ market makers into the NASDAQ System under a special code to identify it as block volume from non-registered market makers.

NASD's Statement on Burden on Competition

The Association has determined that the proposed rule changes do not impose a burden on competition which is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, four comment letters expressed the view that the block volume reporting requirement would impose an operational and financial burden that would not be outweighed by the value of the information received. Three of these commentators, however, were concerned primarily with the reporting of convertible bond transactions in amounts greater than $100,000. After considering these comments, the Board of Governors decided not to require the reporting of block transactions in convertible debentures.

Only one member complained specifically that the proposed changes with regard to equity securities would require it to implement new operational and supervisory procedures. The member estimated that it experiences no more than one trade per month of the kind covered by the proposal, out of several hundred thousand transactions per year. The Association recogizes that

any change in reporting requirements necessarily requires some time and cost to implement. But since, as all commentators agreed, the daily number of reportable transactions per member will be relatively small, the Association has concluded that the reporting requirement does not outweigh the benefits of dissemination of more complete information to the public.

The proposed changes would not affect the present requirement that registered NASDAQ market makers report daily volume in the securities in which they are registered market makers. This volume is reported through the market maker's terminal. NASDAQ market makers who handle block transactions in securities for which they are not registered market makers will transmit their daily block volume figures in the same manner as do non-NASDAQ market makers: via telephone, Telex, or TWX. This method was chosen because the NASDAQ System cannot technically accommodate the entry of block volume data by non-registered market makers. The Board of Governors has concluded that the difference in reporting methods does not outweigh the benefits of dissemination of more complete information to the public.

On or before July 20, 1979, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of the filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

All submissions should refer to the file number referenced in the caption above and should be submitted on or before July 16, 1979.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

June 11, 1979.

[FR Doc. 79-18855 Filed 6-14-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-15918; June 11, 1979; File No. SR-PSE-79-6]

Pacific Stock Exchange Inc.; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, (June 4, 1975), notice is hereby given that on June 4, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Exchange's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange Incorporated ["PSE"] hereby requests to amend Rule VI, Section 37 by incorporating Commentary .03 as follows (brackets indicate deletions; italics indicate additions):

Rule VI. Exchange Options Trading

Trading Halts and Suspensions

Sec. 37. No Change.

Commentary:

.01 No Change.

.02 No Change.

.03 Pursuant to this rule, whenever a regulatory halt takes place on an exchange where more than 50 percent of the total volume in the underlying security over the past six months has been traded, trading in the options class will be halted coincident with the halt in the underlying security.

A situation may arise where a halt in the underlying security occurs and there is a delay in receiving the announcement by the proper Exchange authority. In such a situation, option transactions effected during the halt in the underlying security will be voided.

A regulatory halt includes trading halts for such reasons as dissemination of information concerning the company and suspension of trading by a regulatory body because of trading irregularities. It would not include, for instance, a trading halt because of an imbalance in orders at a specialist post.

Exchange's Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of the proposed rule change is to clarify the timing of the implementation of a trading halt in the event of a regulatory halt in the underlying security.

The proposed rule change promotes just and equitable principles of trade and fosters greater accuracy in trading halts and suspensions to prevent fraudulent and manipulative acts and practices as provided in Section 6(b)(5) of the Act.

Comments have neither been solicited nor received from members on the proposed rule change.

The proposed rule change imposes no burden upon competition.

On or before July 20, 1979, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file referenced in the captain above and should be submitted on or before July 6, 1979.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

June 11, 1979.

[FR Doc. 79-18694 Filed 6-14-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 6078/June 7, 1979]

Regional Processing of Registration Statements on Form S-18

In Securities Act Release No. 6049 (April 3, 1979) [44 FR 21562] the Commission announced the adoption of Form S-18, a simplified form available to certain corporate issuers for the registration of securities to be sold to the public for cash not exceeding an aggregate offering price of $5 million. At that time the Commission indicated that processing of Form S-18 registration statements in the Commission's nine Regional Offices would be permitted subsequent to a brief training program. The first segment of the training program has been completed. The Regional Offices located in Atlanta, Boston, Chicago, Denver and Los Angeles will accept Form S-18 filings beginning on June 15, 1979. After completion of the second training program, the Regional Offices in Fort Worth, New York, Seattle and Washington will accept Form S-18 filings beginning September 15, 1979.

For further information contact Paul A. Belvin, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202-755-1290).

By the Commission.

George A. Fitzsimmons,

Secretary.

June 7, 1979.

[FR Doc. 79-18693 Filed 6-14-79; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 672]

Certain Foreign Passports; Validity

Costa Rica and Morocco are added to the list of countries which have entered into agreements with the Government of the United States whereby their passports are recognized as valid for the return of the bearer to the country of the foreign-issuing authority for a period of at least six months beyond the expiration date specified in the passport.

In addition, travel documents issued by the Government of the Trust Territory of the Pacific Islands are considered to be valid for the return of the bearer to the Trust Territory for a period of six months beyond the expiration date specified therein.

This notice amends Public Notice 633 of October 19, 1978 (43 FR 48751).

Dated: June 1, 1979.

Hume A. Horan,

Acting Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 79-18694 Filed 6-15-79; 8:45 am]

BILLING CODE 4710-06-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 28905 (Sub-No. 18) and (Sub-No. 19)]

Consolidated Rail Corp. Acquisition of Baltimore & Ohio Railroad Co. Trackage and Acquisition of Chesapeake & Ohio Railway Trackage

Consolidated Rail Corporation (Conrail), Six Penn Center Plaza, Philadelphia, PA 19104, on May 16, 1979, filed with the Interstate Commerce Commission at Washington, DC, and the Commission has accepted, applications under 49 U.S.C. 11343 (formerly section 5(2) of the Interstate Commerce Act) for authority to purchase (a) in F.D. No. 28905 (Sub-No. 18), the line of railroad owned by the Baltimore and Ohio Railroad (B&O) from CB Junction to Clearfield, PA, subject to a reservation of trackage rights in the B&O to permit continued operation of its local and overhead freight trains, and (b) in F. D. No. 28905 (Sub-No. 19), the line of railroad owned by the Chesapeake and Ohio Railway Company (C&O) between Kanauga and Hobson, OH, a distance of 9.0 miles, in Gallia and Meigs County, OH, subject to a reservation in the C&O of trackage rights for the continued operation of its freight trains to serve power plant at Chesire, OH.

The proposed transactions allegedly involve no change in the operations of either Conrail, B&O, or C&O, and no change in service to the public and no effect on the employees of any of the railroads. The stated purpose of the transactions is to permit Conrail, principal user of the involved lines, to gain control of the dispatching of trains and the maintenance of each line.

Conrail's attorney is Charles E. Mechem, 1138 Six Penn Center Philadelphia, Philadelphia, PA 19104.

These applications were filed in response to the applications in Finance Docket No. 28905 (Sub-No. 1) *et. al., CSX Corp.-Control-Chessie System, Inc., and Seaboard Coast Line Industries, Inc.* In Finance Docket No. 28905 (Sub-No. 1), CSX Corporation (CSX) seeks to acquire control of the rail carriers subsidiary to Chessie System, Inc. (CSI), and Seaboard Coast Line Industries, Inc. (SCLI), by CSX engaging in a merger with CSI and SCLI. Notice of this application, as well as the directly related applications, was published in the Federal Register on February 15, 1979, at 44 Fed. Reg. 9639 (1979). The lines sought to be purchased by ConRail in Finance Docket No. 28905 (Sub-Nos. 18 and 19) are portions of CSI property.

These two applications will be consolidated for disposition with the applications in Finance Docket No. 28905 (Sub-No. 1) *et. al.* The latter matters will be the subject of an oral hearing to commence on June 25, 1979, before Administrative Law Judge David H. Allard. Interested parties will be advised when a prehearing conference on the applications in Finance Docket No. 28905 (Sub-Nos. 18 and 19) will be held.

The Commission will exercise its authority under 49 U.S.C. 11345 and waive the initial decision in these proceedings. The determination of the merits of the applications will be made by the entire Commission.

Conrail operates a railroad system serving the following states: CT, DE, IL, IN, KY, MD, MA, MI, MO, NY, OH, PA, RI, VA, NV, WV, DC, and two Canadian provinces.

The applications and exhibits are available for inspection in the Public Docket Room at the offices of the Interstate Commerce Commission in Washington, DC.

Because Conrail's applications themselves seek proposed conditions to approval of the application in Finance Docket No. 28905 (Sub-No. 1), the Commission will entertain no requests for affirmative relief to Conrail's proposals. Parties may only participate in direct support of, or direct opposition to, Conrail's applications as filed.

In filing comments pursuant to directions given in the last paragraph of this notice, interested persons must state specifically which application is the subject of the comments. Persons must file separate comments if they wish to comment on each application. In addition, commentators must also state specifically whether they intend to participate in the oral hearings or whether they wish only to be placed on the service list to receive all notices and decisions issued by the Commission. Failure to state an intention to

participate will result in the commentator being placed in the latter category.

Interested persons may participate formally in a proceeding by submitting written comments regarding the applications. Such submissions shall indicate the particular proceeding designation (F.D. No. 28905 (Sub-No. 18) or F.D. No. 28905 (Sub-No. 19)), and the original and ten copies shall be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, not later than 45 days after the date notice of the filing of the application is published in the Federal Register. Such written comments shall include the following: the person's position, e.g., party protestant or party in support, regarding the proposed transaction, and specific reasons why approval would or would not be in the public interest. Additionally, interested persons who do not intend to participate formally in a proceeding but who desire to comment, may file such statements and informaton as they may desire, subject to the filing and service requirements specified. Persons submitting written comments to the Commission shall, at the same time, serve copies of such written comments upon Conrail and B&O in Finance Docket No. 28905 (Sub-No. 18), Conrail and C&O in Finance Docket No. 28905 (Sub-No. 19), the Secretary of Transportation, and the Attorney General.

Dated June 11, 1979.

By the Commission. Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-18798 Filed 6-14-79; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29009 (Sub-Nos. 1, 2, 3, and 4)]

Norfolk & Western Railway Co.; Acquisition of Interest in the Louisville & Nashville Railroad Co.; Leasehold Control of Carolina, Clinchfield & Ohio Railway; Acquisition of Stock Interest in the Winston-Salem Southbound Railroad Co. and in Detroit, Toledo & Ironton Railroad Co.

Norfolk and Western Railway Company (N&W), 8 North Jefferson Street, Roanoke, VA 24042, on May 16, 1979, filed with the Interstate Commerce Commission at Washington, DC, four applications under 49 U.S.C. 11343 to acquire certain properties of the rail carrier subsidiaries of Chessie System, Inc., and Seaboard Coast Line Industries, Inc., as conditions to approval of the application in Finance Docket No. 28905 (Sub-No. 1), *et al., CSX Corporation—Control—Chessie System, Inc., and Seaboard Coast Line Industries, Inc.*, of which notice of acceptance of the application was published in the Federal Register on February 15, 1979, 44 FR 9839. N&W has filed its four applications as inconsistent applications to the proposal in Finance Docket No. 28905 (Sub-No. 1). The Commission has accepted N&W's applications conditioned upon the submission on or before August 14, 1979, of certain specified information otherwise required to be filed with the applications pursuant to 49 CFR Part 1111. By decision served May 10, 1979, the Commission granted to N&W this extension of time to file information.

N&W's attorney is John S. Shannon, Vice President-Law, Norfolk and Western Railway Company, 8 North Jefferson Street, Roanoke, VA 24042.

N&W's applications are as follows: (1) In Finance Docket No. 29009 (Sub-No. 1), N&W seeks to acquire a 50 percent interest in the lines of the Cumberland Valley Subdivision of Louisville and Nashville Railroad Company (L&N). The acquisition would be achieved through the creation of a joinly owned N&W–L&N subsidiary which would acquire and operate the lines as agent for N&W and L&N. The Cumberland Valley Subdivision of L&N's Corbin Division serves the Harman-Middlesboro coal fields in eastern Kentucky. The principal lines and branches of L&N'S Cumberland Valley Subdivision extend from Corbin, KY, to Norton, VA, via Loyall, KY; from Loyall to Lynch, KY; between Harbell and Hagans, KY; and between Harlan and Glenbrook, KY. N&W's point of interchange with L&N's Cumberland Valley Subidivision of its Corbin Division is at Norton, VA. (2) In Finance Docket No. 29009 (Sub-No. 2), N&W seeks to acquire all of the rights and properties of the Clinchfield Railroad Company (Clinchfield) and thereby acquire control over the Carolina, Clinchfield and Ohio Railway Company (CC&O). The Clinchfield is an unincorporated lessee organization, controlled by Seaboard Coast Line Railroad Company (SCL) and the L&N, which owns a leasehold interest in substantially all of the properties of CC&O. N&W proposes to operate the Clinchfield as a separate property in a manner similar to that of its present operation under SCL and L&N. N&W would grant overhead trackage rights to SCL and L&N over CC&O to and from Elkhorn City, KY. The principal line of the Clinchfield extends from Elkhorn City, KY, to Spartanburg, SC, via Dante and St. Paul, VA, and Kingsport, Johnson City and Erwin, TN. N&W's point of interchange with Clinchfield is at St. Paul, VA. (3) In Finance Docket No. 29009 (Sub-No. 3), N&W seeks to acquire all of the stock of the Detroit, Toledo and Ironton Railroad Company (DT&I) which the Baltimore and Ohio Railroad Company (B&O) will obtain if its joint application in Finance Docket No. 28480, now pending before the Commission, is approved. In Finance Docket No. 28499, N&W and B&O filed a joint application for each to purchase one-half of the stock of DT&I owned by Pennsylvania Company (PennCo). PennCo owns substantially all of the stock of DT&I. If the transactions in Finance Docket Nos. 28499 and 29009 (Sub-No. 3) are approved, N&W would own substantially all of the stock of DT&I. N&W proposes no changes in DT&I's present rail operations and facilities. N&W's interchange points with DT&I are at Detroit (Oakwood Junction), MI, and Delta, Toledo, Napoleon, Leipsic, Lima, Glen Jean, and Ironton, OH. (4) In Finance Docket No. 29009 (Sub-No. 4), N&W seeks to purchase all of the stock of the Winston-Salem Southbound Railway Company (WSSB) owned by the SCL, and thereby acquire 100 percent control over WSSB. N&W and SCL each presently own 50 percent of the outstanding stock of WSSB. N&W proposes to maintain WSSB as a separate operating subsidiary. WSSB operates 95 miles of line in North Carolina, the principal line extending from Winston-Salem via Lexington, High Rock and Albemarle to Wadesboro, NC. N&W's point of interchange with WSSB is at Winston-Salem, NC.

Those persons filing comments on one or more of N&W's inconsistent applications, pursuant to instructions in the last paragraph of this notice, must specifically state which subnumber is the subject of the comments. These applications will be consolidated for disposition with the applications in Finance Docket No. 28905 (Sub-No. 1), *et al.* Commentators, including those who wish to become parties, must address each application separately, however, in order to participate in its consideration.

N&W is the ony initiating applicant in these four applications. The Commission's Railroad Consolidation Procedures, however, define "applicants" to include all carriers with properties directly involved in the transaction, other than those carriers over which trackage rights are sought. Therefore the following carriers are considered applicants to one or more of

these applications, even though their inclusion is involuntary: Louisville and Nashville Railroad Company, 908 West Broad Street, Louisville, KY 40202; Winston-Salem Southbound Railway Company, Clinchfield Railroad Company, and Carolina, Clinchfield and Ohio Railway Company, all of 500 Water Street, Jacksonville, FL 32202; Seaboard Coast Line Railroad Company, 3600 West Broad Street, Richmond, VA 23230; the Baltimore and Ohio Railroad Company, 2 North Charles Street, Baltimore, MD 21201; and Detroit, Toledo and Ironton Railroad Company, One Parklane Boulevard, Dearborn, MI 48126.

N&W's properties are located in IL, IN, IA, KY, MD, MI, MO, NE, NY, NC, OH, PA, VA, WV, and in the Province of Ontario, Canada.

The applications and exhibits are available for inspection in the Public Docket Room at the offices of the Interstate Commerce Commission in Washington, D.C.

Any protestant who proposes to file traffic studies as evidence in opposition to these applications shall use studies that relate to the calendar year January 1, 1977, through December 31, 1977.

Because these applicaitons are themselves proposed conditions to approval of the applications in Finance Docket No. 28905 (Sub-No. 1), *et al.*, the Commission will entertain no requests for affirmative relief to N&W's proposals. Interested parties may only participate in direct support of, or direct opposition to, the applications as filed.

The Commission will exercise its authority under 49 U.S.C. 11345(e) and waive the initial decision in these proceedings. The determination of the merits of the applications will be made by the entire Commission.

All commentators must state specifically whether they intend to participate in the hearings on these applications, or whether they wish only to be placed on the service list to receive all Commission notices and decisions. Failure to indicate an intention to participate formally will result in the commentator being placed in the latter category.

Interested persons may participate formally in a proceeding by submitting written comments regarding an application. Such submissions shall indicate the proceeding designation (Finance Docket No. 29009 (Sub-Nos. 1, 2, 3, or 4)), and the original and ten copies shall be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, not later than 45 days after the date notice of the filing of the application is published in the Federal Register. Any written comments shall include the following: the person's position, *e.g.*, party protestant or party in support, regarding the proposed transaction, and specific reasons why approval would or would not be in the public interest. Additionally, interested persons who do not intend to participate formally in a proceeding but who desire to comment, may file such statements and information as they may desire, subject to the filing and service reuqirements specified. Persons submitting written comments to the Commission shall, at the same time, serve copies of such written comments upon the applicants, the Secretary of Transportation and the Attorney General.

Dated: June 11, 1979.

By the Commission, Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-18756 Filed 6-14-79; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 28961 (Sub-No. 1)]

Southern Railway Co., Eastern Kentucky Railway Co., and Western Florida Railway Co.—Acquisition of Properties—Chessie System, Inc., and Seaboard Coast Line Industries, Inc.

Southern Railway Company (Southern), 920 15th Street, N.W., Washington, DC 20005, Eastern Kentucky Railway Company (EKR), 2600 Citizens Plaza, Louisville, KY 40202, and Western Florida Railway Company (WFR), 1500 American Heritage Life Building, Jacksonville, FL 32202, on May 16, 1979, filed with the Interstate Commerce Commission at Washington, DC, a joint application under 49 U.S.C. §§ 11343–11345 (formerly section 5(2) of the Interstate Commerce Act) seeking imposition by the Commission of certain conditions to any Commission approval of the pending application in Finance Docket No. 28905 (Sub-No. 1), *CSX Corporation—Control—Chessie System, Inc., and Seaboard Coast Line Industries, Inc.*, notice of which was published in the Federal Register on February 15, 1979, 44 FR 9839. The Commission has accepted the application, conditioned on the submission by applicants on or before August 14, 1979, of certain specified material required to be included in the application pursuant to the Commission's Railroad Consolidation Procedures, 49 CFR Part 1111. Applicants have filed the application in response to the Commission's directive contained in the Federal Register notice accepting the application in Finance Docket No. 28905 (Sub-No. 1) that all inconsistent applications to that proceeding had to be filed by May 16, 1979.

Applicants' attorneys are R. Allen Wimbish, Southern Railway Company, P.O. Box 1808, Washington, DC 20013, and Charles A. Horsky, Covington and Burling, 888 Sixteenth Street, N.W., Washington, DC 20006.

EKR and WFR are recently incorporated railroad companies established by Southern to facilitate several requested conditions if the consolidation application in Finance Docket No. 28905 (Sub-No. 1) is approved. Although they have no assets, liabilities, or income presently, these two companies would become carriers if the requested conditions are imposed, the Chessie/Seaboard consolidation is consummated, and the relevant acquisitions by EKR and WFR are consummated.

Southern, EKR, and WFR are the initiating parties in the application, but the Commission's Railroad Consolidation Procedures defines "applicants" to include all carriers with properties directly involved in the transaction, other than those carriers over which trackage rights are sought. The following carriers, therefore, are considered applicants also, although their inclusion in the application is involuntary:

Kentucky and Indiana Terminal Railroad (KIT), 2910 Northwestern Parkway, Louisville, KY 40212, Detroit, Toledo and Ironton Railroad Company (DTI), One Parklane Boulevard, Dearborn, MI 48126, the Baltimore and Ohio Railroad Company (B&O), 2 North Charles Street, Baltimore, MD 21201, Seaboard Coast Line Railroad Company (SCL), 3600 West Broad Street, Richmond, VA 23230, and Louisville and Nashville Railroad Company (L&N), 908 West Broad Street, Louisville, KY 40202.

By their application Southern, EKR, and WFR seek to acquire the following properties, rights, and interests from railroad subsidiaries of Chessie System, Inc., and Seaboard Coast Line Industries, Inc.:

(a) Acquisition by Southern of the Louisville and Nashville Railroad Company's (L&N) line from Louisville (Youngtown Yard), KY, to Hammond (State Line), IN, including South Hammond Yard and other yards at Bloomington and Lafayette, branch lines between Orleans and Paoli, IN, between Wallace Junction and Midland, IN, between Monon and Indianapolis, IN,

and all other appurtentant trackage, yards, rail properties, and rail facilities.

(b) Acquisition by Southern of the L&N's (former Monon Railroad) ownership interest in and right to operate over properties of the Chicago and Western Indiana Railroad Company (CWI) and the Belt Railway Company of Chicago (BRC).

(c) Acquisition by Southern of perpetual trackage rights over certain trackage of The Baltimore & Ohio Chicago Terminal Railroad Company (BOCT).

(d) Acquisition by Southern of sole control of the Kentucky & Indiana Terminal Railroad Company (KIT) through acquisition of the stock and other ownership interests in KIT of the Baltimore and Ohio Railroad Company (B&O) and of the L&N.

(e) Acquisition by Southern of joint control with the Norfolk and Western Railway Company (N&W) of the Detroit, Toledo and Ironton Railroad Company (DTI) through acquisition by Southern of B&O's 50 percent stock interest should the Commission approve the pending N&W/B&O application for joint control of DTI (Finance Docket No. 28499 (Sub. No. 1)).

(f) Acquisition by Southern of the Seaboard Coast Line Railroad Company's (SCL) line from Jacksonville, FL, via Sanford and Orlando, FL, to Uceta Yard in or near Tampa, FL, including the classification yard and piggyback facility at Uceta Yard and other yards at Sanford, Orlando, Lakeland, and Winston, branch lines from Deland Junction to Deland, FL, from Sanford to Aloma and Beck Hammock, FL, and from Haines City to Waverly, FL, and all appurtenant trackage, yard, properties, and facilities.

(g) Acquisition by Eastern Kentucky Railway Company (EKR) of all trackage, rail properties, yards, and appurtenant facilities constituting L&N's Cumberland Valley Subdivision (with the exception of lines between Cumberland Gap, TN, and Norton, VA), and certain locomotives now used in operations on the Cumberland Valley Subdivision.

(h) Acquisition by Southern of joint control with L&N of EKR through acquisition by Southern of 50 percent of the stock of EKR.

(i) Acquisition by Southern of perpetual trackage rights over trackage of EKR, in lieu of Southern's present trackage rights over L&N, between Cumberland Gap, TN, and Middlesboro, KY.

(j) Acquisition by Western Florida Railway Company (WFR) of certain trackage, rail properties, yards, and appurtenant facilities, including port facilities, constituting SCL's Tampa Division (with the exception of the main line and certain branch lines to be acquired by Southern between Jacksonville and Tampa, branch lines between Sanford and Umatilla, FL, between Orlando and Tavares, FL, and between Sanford and Dr. Phillips and Groveland, FL, and the line between Zephyrhills, FL, and Yeoman Yard in or near Tampa, FL, via Plant City, FL), and certain locomotives and specialized equipment now used in operations in the Tampa Division.

(k) Acquisition by WFR of perpetual trackage rights for the sole purpose of handling traffic originating at or destined to Central, Park, and Tenoroc, FL, over trackage of Southern between Auburndale, FL, and Uceta Yard.

(l) Acquisition by WFR of perpetual trackage rights over trackage of SCL between Central, FL, and Yeoman Yard in or near Tampa, FL, and between Tenoroc and Winter Haven, FL.

(m) Acquisition by Southern of joint control with SCL of WFR through acquisition by Southern of 50 percent of the stock of WFR.

Persons filing comments pursuant to instructions given in the last paragraph of this notice must state which of the lettered paragraphs above relating to Southern's proposed conditions are the subject of the comments, by referring to the letter designation specifically. For example, if a commentator wishes to opppose Southern's requests in paragraphs (a), (d), and (j), that person should identify those paragraphs in the comments.

Rail properties operated by Southern are located in AL, GA, IL, IN, KY, MS, NC, SC, TN, VA, and DC. Properties proposed to be operated by WFR are located in FL. Properties proposed to be operated by EKR are located in KY, VA, and TN.

If the application were approved in its entirety, Southern would acquire directly the following lines: Louisville (VI Tower), KY to Hammond (State Line), IN, main line (296.8 miles); Monon, IN, to Michigan City, IN, branch line (59.6 miles); Monon, IN, to Indianapolis, IN, branch line (82.0 miles); Wallace Jct., IN, to Midland, IN, branch line (42.0 miles); Orleans, IN, to Paoli, IN, branch line (7.6 miles); Jacksonville, FL, to Tampa, FL (Uceta Yard), main line (238.6 miles); Deland Jct., FL, to Deland, FL, branch line (10.0 miles); Stanford, FL, to Beck Hammock and Aloma, FL, branch line (27.8 miles); and Haines City, FL, to Waverly, FL, branch line (10.0 miles). Principal points of interchange on these lines would be Chicago, IL (Hammond, IN, via connections), Lafayette, IN, Louisville, KY, and FJ Junction (Jacksonville, FL).

Southern would acquire control through stock ownership of KIT which owns and operates 26.9 miles of track classified as main line and 69.25 miles of track classified industrial, yard, and sidd track, leases 26.22 miles of track, owns and operates jointly 4.92 miles of track, and operates jointly but does not own 3.22 miles of track. KIT interchanges traffic with linehaul railroads only in Louisville, KY.

Southern would also acquire trackage rights over approximately 170 miles of trackage owned or operated by BOCT in the Chicago terminal area. Also in the Chicago terminal area, Southern would obtain from L&N the former Monon's rights to operate, as a part owner, over approximately 25 miles of CWI trackage and over approximately 10 miles of BRC trackage.

WFR would acquire approximately 625 miles of track in Florida. In general, these lines extend north, south, and west of Tampa along the western coast of Florida. In addition, WFR would obtain trackage rights over Southern between Auburndale and Uceta Yard and over SCL between Tenoroc and Winter Haven.

EKR would acquire approximately 250 miles of line in eastern Kentucky, of which 23.6 miles (between Evarts and Glenbrook) are not operated currently. These lines include main line between Corbin and Loyall, KY (67.5 miles), between Loyall, KY, and Hagans, VA (20.7 miles), and between Harbell, KY, and Cumberland Gap, TN (13.9 miles).

The application and exhibits are available for inspection in the Public Docket Room at the office of the Interstate Commerce Commission in Washington, DC. As noted, applicants have until August 14, 1979, to submit certain information. This extension of time to file was granted by decision in Finance Docket No. 28961, served May 10, 1979. Included in that decision was approval to late-file directly related securities applications. When filed, these securities applications will be docketed as Finance Docket No. 28961 (Sub-Nos. 2, 3, and 4). The applications in Finance Docket No. 28961 (Sub-Nos. 1 through 4) will be consolidated for disposition with the application in the Chessie/Seaboard proceeding.

Any protestant who proposes to file traffic studies as evidence in opposition to any of the proposals in this application shall use studies that relate to the calendar year January 1, 1977, through December 31, 1977.

Because this application is itself filed in the form of conditional proposals to the consolidation application in Finance Docket No. 28905 (Sub-No. 1), the Commission will entertain no requests for affirmative relief in response to Finance Docket No. 28961 (Sub-No. 1). Parties' participation will be limited to direct support of or direct opposition to the various requested conditions as filed.

By statute the evidentiary phase of these proceedings must be concluded by February 15, 1981. The initial decision will be waived, and the determination of the merits of the applications will be made by the entire Commission, pursuant to 49 U.S.C. 11345(e).

Interested persons may participate formally in a proceeding by submitting written comments regarding the application. Such submissions shall indicate the proceeding designation (F.D. No. 28961 (Sub No. 1)), and the original and ten copies thereof shall be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, not later than 45 days after the date notice of the filing of the application is published in the Federal Register. Such written comments shall include the following: the person's position, *e.g.*, party protestant or party in support, regarding the proposed transaction, and specific reasons why approval would or would not be in the public interest. Additionally, interested persons who do not intend to participate formally in a proceeding but who desire to comment thereon, may file such statements and information as they may desire, subject to the filing and service requirement specified herein. Persons submitting written comments to the Commission shall, at the same time, serve copies of such written comments upon the applicant, the Secretary of Transportation, and the Attorney General. Each commentator shall indicate clearly whether it seeks to be considered a formal party or whether it wishes only to receive all notices and decisions issued by the Commission. All commentors who do not specifically indicate their intention to participate formally in the proceeding will be placed in the latter category.

Dated: June 11, 1979.

By the Commission, Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-18737 Filed 6-14-79; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 28115 (Sub-No. 5)]

Boston & Maine Corp.; Reorganization, Exemption Under 49 U.S.C. 10505 From 49 U.S.C. 11343-11347

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Boston and Maine Corporation, pursuant to the authority of its Reorganization Trustees and approval of the Reorganization Court, and the Northern Railroad intend to enter into a settlement agreement and a new lease. A petition was filed on January 17, 1979, seeking exemption from 49 U.S.C. §§ 11343–11347, which requires prior consideration and approval of the transaction by the Interstate Commerce Commission. Boston and Maine Corporation is seeking an exemption from these sections pursuant to 49 U.S.C. § 10505 on the basis that prior Commission review of the transaction is unnecessary.

DATES: Comments must be received on or before July 16, 1979.

ADDRESS: Send comments to the: Office of the Secretary, Interstate Commerce Commission, 12th St. and Constitution Ave., NW., Washington, DC 20423. The docket number should be indicated in the top right hand corner of all statements. All written statements will be available for public inspection during regular business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Michael Erenberg, 202–275–7245.

SUPPLEMENTARY INFORMATION: On January 17, 1979, a petition was filed by the Boston and Maine Corporation (B&M) pursuant to 49 U.S.C. 10505, seeking to have its settlement agreement and new lease with the Northern Railroad (Northern) exempted from the requirement of obtaining prior Commission approval under 49 U.S.C. 11343–11347.

The B&M is the assignee of a lease ("Lowell Lease") entered into on December 30, 1889, between the Northern and the Boston and Lowell Railroad Corporation. The lease provided in pertinent part that the B&M shall make annual rental payments of $189,104.00; maintain the Northern property in as good condition as it was when the lease was entered into; at the termination of the lease, certain personal property must be returned in as good condition as it was when the lease was entered into; and, to pay certain real estate and franchise taxes assessed upon the Northern's property.

The present lease expires on December 31, 1979; the B&M will not be able to comply with the provision requiring that certain of the Northern's originally leased personal property be returned, due to the passage of time. In addition, since March 12, 1970, the B&M has not made any payments to the Northern. It was on that date that the B&M's creditors, seeking its reorganization, filed an involuntary petition in bankruptcy with the United Stated District Court for the District of Massachusetts (Reorganization Court).

On November 22, 1977, the Northern filed an objection to the B&M's petition which requested that the Reorganization Court set the priority of its creditors claims in accordance with a proposed schedule. In lieu of that petition, the Northern submitted its own proposal under which it would have priority over the First Mortgage Bondholders. In veiw of the B&M's desire to continue its operations over the Northern's property and in an effort to resolve the impasse, the Reorganization Court in an Order dated December 19, 1978, granted the Reorganization Trustees authority to enter into a cettlement agreement with the Northern and to enter into a new lease subject to the Court's approval and that of any governmental agency having jurisdiction over this transaction.

The Transaction

The Reorganization Trustees of the B&M and the Northern have agreed that it is in their best interests and that of the public to settle Northern's outstanding claims. These claims state that the Northern is the legal title owner of real, personal and mixed property leased to the B&M; that the B&M is in arrears to the Northern for the use of its property for the period March 12, 1970 to the date of the proposed agreement and from the date of the proposed agreement to December 31, 1989 and; for the B&M's failure to maintain the Northern property to satisfactory standards.

The new lease will be substantially the same as the "Lowell Lease" and is contingent upon approval of the settlement agreement. The lease changes are as follows:

1. The new lease will not contain the provision requiring the B&M to return all personal property originally leased from the Northern.

2. The original lease required the B&M to maintain the property and return it in the same condition without exception. The proposed lease will require the B&M to spend a minimum of $20,000 per year to maintain the Northern property to either Federal Railroad Administration Class 1 Track Standards or the present condition of the property, whichever is greater.

3. The annual rental payments of $188,109.00 would be reduced to $80,000.00 per year.

In consideration of the settlement agreement, the Northern agrees that all claims it now has or will ever have against the B&M for breaches of the lease shall be forever settled upon payment of $1,200,000.

The reorganization Trustees, in order that they may effectuate the settlement and the new lease, proposed to the Reorganization Court that they be allowed to withdraw the needed monies from Restricted Funds. By Order dated May 20, 1977, the Reorganization Court approved the request but made it subject to repayment.

Finally, the B&M will still be responsible for all federal, state, and local taxes, past due, present and future, including interest. One exception to that involves a 1969 Federal Income Tax Lien, totalling $24,461.00 which the Northern will waive.

The Statute

When two carriers enter into a lease, whereby one carrier will operate the other carriers treat and equipment, they must first seek the approval and authority of the Commission under 49 U.S.C. 11343. To seek Commission approval an application must be filed in compliance with the ICC *Railroad Acquisition, Control, Merger, Consolidation, Coordination Project, Trackage Rights and Lease Procedures*, 49 C.F.R. Part 1111 (1977) (Railroad Consolidation Procedures). B&M has requested an exemption from 49 U.S.C. 11343 so that it will not have to file an application under the Consolidation Procedures.

We can exempt a matter related to a rail carrier under 49 U.S.C. 10505. This section provides:

(a) In a matter related to a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under this subchapter, the Commission shall exempt a person, class of persons, or a transaction or service because of the limited scope of the transaction or service, when the Commission finds that the application of a provision of this subtitle—

(1) is not necessary to carry out the transportation policy of section 10101 of this title;

(2) would be an unreasonable burden on a person, class of persons, or interstate and foreign commerce; and

(3) would serve little or no useful public purpose.

(b) the Commission may begin a proceeding under this section on its own initiative or on application by the Secretary of Transportation or an interested party. The Commission may specify the period of time during which the exemption is effective.

(c) The Commission may revoke an exemption, to the extent it specifies, when it finds that application of a provision of this subtitle to the person, class, or transportation is necessary—

(1) to carry out the transportation policy of section 10101 of this title;

(2) to achieve effective regulation by the Commission; and

(3) to serve a useful public purpose.

(d) The Commission may act under this section only after an opportunity for a proceeding.

The Reorganization Trustees of the B&M believe that because the new lease will be substantially a mirror image of the present lease and because the proposed effective date of the new leave is January 1, 1978, we should exempt them from the requirements of the Railroad Consolidation Procedures. The Reorganization Trustees are also of the opinion that the proposed new lease will be in the public interest.

Before granting an exemption, we are required to provide the opportunity for a proceeding. This request for comments on the requested exemption of the proposed transaction is that opportunity. All comments filed in response to this notice, along with B&M's petition, will be used to determine whether or not the exemption under 49 U.S.C. 10505 should be granted.

This proceeding is instituted under the authority of 49 U.S.C. 10505 and pursuant to 4 U.S.C. 553, 559.

This proceeding is not a major Federal action significantly affecting energy consumption or the quality of the human environment.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-18505 Filed 6-14-79; 8:45 am]
BILLING CODE 7035-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1216-6]

Petition to Remove 1,1,1-Trichloroethane and Methylene Chloride from List of Toxic Pollutants

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of receipt and proposed denial of petition to remove 1,1,1-trichloroethane and methylene chloride (dichloromethane) from list of toxic pollutants under section 307(a) of the Clean Water Act, as amended, 33 U.S.C. 1317(a).

SUMMARY: This action gives notice of receipt of a petition from the Dow Chemical Company to remove 1,1,1-trichloroethane and methylene chloride from the toxic pollutant list. It reviews information available to the agency regarding these chemicals, and proposes that 1,1,1-trichloroethane and methylene chloride be retained on the toxic pollutant list.

DATES: Public comments on this petition will be received on or before August 14, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth M. Mackenthun, Director, Criteria and Standards Division (WH-585), Office of Water Planning and Standards, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 (202-755-0100).

SUPPLEMENTARY INFORMATION: This notice responds to a petition dated August 2, 1978 from Dow Chemical U.S.A. requesting that 1,1,1-trichloroethane, found under the general class chlorinated ethanes, and methylene chloride, found under the general class halomethanes, be removed from the toxic pollutant list. The argument presented by Dow was that these compounds fail to meet EPA's criteria for listing chemicals as toxic pollutants under section 307(a)(1) of Pub. L. 92-500. The petition also asserted that leaving these substances on the list dilutes the Agency's efforts and diverts attention from more serious environmental issues, introduces unwarranted barriers to the introduction of new products containing the compounds, and results in needless expenditures of funds by industry and Government for expensive monitoring, analysis, and reporting.

In support of its assertion that 1,1,1-trichloroethane does not meet EPA criteria for listing under section 307(a), Dow made the following assertions:

(1) 1,1,1-trichloroethane is not persistent in the aquatic environment.

(2) There is no evidence cited for the carcinogenicity or teratogenicity of 1,1,1-trichloroethane and it has only moderate fish toxicity.

In support of its petition, Dow chemical submitted the following references:

(1) Dilling, W.L. et al. 1975. Evaporation rates and reactivities of

methylene chloride, chloroform, 1,1,1-trichloroethane, trichloroethylene, tetrachloroethylene, and other chlorinated compounds in dilute aqueous solution. Environmental Science and Technology. 9:833.

(2) Rampy, L.W. et al. 1977 (abstract). Results of long-term inhalation toxicity studies on rats of 1,1,1-trichloroethane and perchloroethylene formulations. Presented at International Congress of Toxicology, Toronto, Canada, Apr., 1977.

(3) Schwetz, B.A. et al. 1975. The effect of maternally inhaled trichloroethylene, perchloroethylene, methyl chloroform, and methylene chloride on embryonal and fetal development in mice and rats. Toxicology and Applied Pharmacology 32:84.

In support of its assertion that methylene chloride does not meet EPA criteria for listing under section 307(a), Dow made the following assertions:

(1) Methleny chloride is not persistent in the aquatic environment. Removal mechanism is mainly by volatilization.

(2) Methylene chloride is the least toxic of the chloromethanes. No evidence has been cited for the carcinogenicity or teratogenicity of this compound from the results of laboratory animal studies. There is no reason to consider methylene chloride a potential human carcinogen based on the results of an epidemiology study.

(3) Methylene chloride has only low fish toxicity.

(4) Methylene chloride is not likely to be found in significant quantities in surface or ground water except as a result of accidental spills. Most end uses of this compound involve processes and applications where losses to the environment occur predominantly as vapors and nearly all of the small amount that does enter the aquatic environment rapidly evaporates.

In support of its petition, Dow Chemical submitted the following references:

(1) Dilling, W.L. et al. 1975. Evaporation rates and reactivities of methylene chloride, chloroform, 1,1,1-trichloroethane, trichloroethylene, tetrachloroethylene, and other chlorinated compounds in dilute aqueous solutions. Environmental Science and Technology. 9:833.

(2) Schwetz, B.A. et al. 1975. The effect of maternally inhaled trichloroethylene, perchloroethylene, methyl chloroform, and methylene chloride on embryonal and fetal development in mice and rats. Toxicology and Applied Pharmacology. 32:84.

Klimmer, O.R. 1970. Working Paper "Dichloromethane." Paper presented to the meeting of the Committee on Foreign Substances in Food of Deutsche Forschungsgemeinschaft. Bad Godesberg. July 5, 1968.

(4) Farber, H.A. 1978a. Update on methylene chloride. Dow Chemical Company report. July 18, 1978.

(5) Farber, H.A. 1978b. Remarks by Dr. Hugh A. Farber at the New York City press briefing on the results of the Dow methylene chloride toxicology study. Dow Chemical Company report. July 18, 1978.

(6) Anonymous. Solvent clears cancer test. Dow Chemical News Release. July 18, 1978.

Background

The Clean Water Act of 1977 (the Act) directed the Administrator to publish as toxic pollutants those substances listed in table 1 of Committee Print Number 95–30 of the Committee on Public Works and Transportation of the House of Representatives. Substances on this list were classified as toxic pollutants pursuant to section 307(a) on January 31, 1978 (43 FR 4109). The list contained as item 15, "Chlorinated ethanes (including 1,2-dichloroethane, *1,1,1-trichloroethane* and hexachloroethane)" and as item 38, "Halomethanes (other than those listed elsewhere; includes *methylene chloride*, methyl chloride, methyl bromide, bromoform, dichlorobromomethane, trichlorofluoromethane and dichlorodifluoromethane)."

The Act also authoirizes the Administrator to add to or remove from such list any pollutant. In revising the toxic pollutant list, the Administrator is directed to take into account the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms, and the nature and extent of the effect of the pollutant on such organisms. It is not necessary that a pollutant meet any particular criteria within these categories in order to be listed under section 307.

The legislative history of the Clean Water Act of 1977 indicates Congress' clear intent that the Administrator have "the widest latitude" in designating pollutants as toxic and that "no pollutant listed in House Report 95–30 should be deleted without a clear finding that delisting will not compromise adequate control over the discharge of toxic pollutants" (Cong. Rec. daily ed. S. 19649). Thus, for instance, a pollutant which demonstrates high acute toxicity but low persistence may be listed under section 307, or conversely, a pollutant with low acute toxicity but high persistence may be so listed.

The Agency in 1979 published guidance on factors to be addressed in petitions to revise the toxic pollutant list (44 FR 18279 March 27, 1979). The purpose of this notice was to provide guidance relating to the information necessary to support any petition to the Environmental Protection Agency for a change in the toxic pollutant list.

The factors to be addressed by a petitioner include, but are not necessarily limited to, the following:

(1) Toxicity of the pollutant:

a. acute (96-hour LC50) toxicity to freshwater and marine organisms;

b. maximum acceptable toxicant concentration to freshwater and marine organisms;

c. embryo-larval and egg-fry tests on freshwater organisms;

d. information on dose-related, lethal or chronic sub-lethal effects on man, nonhuman mammals, vertebrates including aquatic vertebrates, and other aquatic organisms;

e. information relating to known or suspected carcinogenicity, teratogenicity, and mutagenicity in man or in other animals.

(2) Persistence of a pollutant including mobility and degradability in water of the substance.

(3) Bioconcentration, bioaccumulation, and biomagnification of a pollutant or of its degradation products or metabolites.

(4) Synergistic propensities and effects of the pollutant.

(5) Water solubility and octanol-water partition coefficient determinations for the pollutant.

(6) Extent of point source discharges into water including qualitative presence and quantitative concentrations of the pollutant in effluents, ambient water, benthic sediments, fish and other plant and animal aquatic organisms.

(7) Potential exposure of persons to the pollutant through drinking water, surface water, fish or shellfish consumption. Potential exposure of aquatic organisms and wildlife to the pollutant.

(8) Annual production of the pollutant in the United States.

(9) Use patterns.

(10) The capability of analytical methods to identify and quantitatively determine the presence of the pollutant in ambient water or wastewaters.

If data for any of the above are not known, the petition should indicate this fact. All significant information that is known to the petitioner regarding either a quantitative or qualitative measure for description of the above information factors, or that may relate to an assessment of the merit of the petition,

shall be submitted as a part of the petition.

The compounds on the list of 65 were themselves chosen on the basis of different sets of criteria. These criteria are described in Committee Print Number 95–32, Hearings before the Subcommittee on Investigations and Review of the Committee on Public Works and Transportation, U.S. House of Representatives, pages 389–405. Each of the 65 toxic pollutants was classified in one of three priority lists based upon three sets of overlapping criteria. The criteria described in the Committee Print Number 95–32 for the first two priority lists are:

Priority List I contains those chemicals for which human exposure via the water route gives rise to the greatest concern. This list contains some 28 substances and/or generic categories. Essentially chemicals on the Priority List Number I satisfy the following criteria:

(1) There is known occurrence of these compounds in point source effluents, in aquatic environments, in fish, and/or drinking water.

(2) There is substantial evidence of carcinogenicity, mutagenicity, and/or teratogenicity in human epidemiological studies or in animal bioassay systems.

(3) There is also a likelihood that point source effluents contribute substantially to human hazards, at least locally.

Priority List II contains 18 compounds and/or generic categories. These 18 satisfy the same first criteria as those on Priority List I, i.e., there is known occurrence in point source effluents, in aquatic environments, in fish and/or drinking water. However, the evidence with respect to the toxicity of these compounds differs from Priority List I. In some cases the evidence of carcinogenicity, mutagenicity, and teratogenicity is based primarily upon structural similarity to compounds in List I, or upon mutagenic activity in bacterial screening systems, in the absence of adequate confirmation in mammalian systems. In other cases, the testing has given some evidence regarding the carcinogenicity, mutagenicity, or teratogenicity, but these results presently appear to be incomplete or equivocal. Also, for these compounds the possibility of significant human exposure attributable to the point source effluent is judged to be less than that for compounds in List I. This judgment could be based on a relatively small volume of effluents, or relatively low propensity to persist in water or accumulate in organisms. In addition, several compounds included in List II are included on the basis of serious toxic effects other than carcinogenicity, mutagenicity, or teratogenicity, combined with evidence for substantial release in effluents and likely exposure of humans and aquatic organisms. These other toxic effects primarily refer to toxicity to aquatic organisms.

1,1,1-Trichloroethane as a member of the generic category "chlorinated ethanes" and methylene chloride as a member of the generic category "halomethanes" are both found on priority list II.

The following sections of this notice state and elaborate on the assertions used by Dow to support its request to remove 1,1,1-trichloroethane and methylene chloride from the toxic pollutant list and also present the Agency's response to these assertions.

1,1,1-Trichloroethane

Persistence

Dow Chemical states in its petition that 1,1,1-trichloroethane is not persistent in the aquatic environment and the removal mechanism from agitated surface waters is mainly by volatilization with a minor amount removed by hydrolysis.

They base these conclusions on a Dow study by Dilling et al., 1975 which suggests that 1,1,1-trichloroethane in a concentration of 1 ppm volatilizes from water to the extent of 50 percent in 17 minutes when stirred in an open container at a rate of 200 rpm and a temperature of approximately 25 degrees C.

Although the study shows that volatilization is a major pathway by which 1,1,1-trichloroethane is lost from water, there are reasons why this chemical could be more persistent in nature than is indicated by the experimentally—determined half-life. These reasons include differences in environmental and laboratory conditions, retransport of 1,1,1-trichloroethane from the atmosphere to water, and decreased volatilization rates in stagnant waters.

Dilling et al., 1975 caution that it is difficult to use their experimental data to predict actual loss rates from surface waters, where concentrations of 1,1,1-trichloroethane detected are significantly lower than those used experimentally. They also point out that variations in the amount of stirring/agitation (which directly influences loss rate) and free air space may account for different loss rates from environmental and experimental water systems.

The volatilization of 1,1,1-trichloroethane from water can be reversible because this chemical is stable in the atmosphere and is retransported to surface waters via precipitation. Tropospheric half-lives of 20 weeks (Pearson and McConnell, 1975) to 8 years (McConnell and Shiff, 1978) indicate that 1,1,1-trichloroethane is highly stable in the troposphere. Dilling et al. (1976) estimated the decomposition rate of 1,1,1-trichloroethane under simulated atmospheric conditions to be less than 5 percent after 23.5 hrs. (5 ppm NO_x) indicating stability in the atmosphere. 1,1,1-Trichloroethane has been detected in rainwater in the U.S. and in England (Pearson and McConnell, 1975) (Su and Goldberg, 1976) and is thus retransported to surface waters in this manner.

Dow stated that 1,1,1-trichloroethane is partially insoluble in water having a solubility of 700 mg/1 and is hydrolytically reactive having a half-life of approximately 415 days at 20 degrees C. Dow did not cite the source from which it got the data on the water solubility and hydrolytic half-life of 1,1,1-trichloroethane.

Various solubility and hydrolysis constants have been reported for 1,1,1-trichloroethane. Hardie (1964) reports the solubility of 1,1,1-trichloroethane in water at 20 degrees C to be 4,400 mg/1 (4,400 ppm) and a U.S. EPA (1976) study reported a solubility of 1,332 mg/1 at 25 degrees C. Hydrolytic half-lives of 6 to 9 months have been reported for 1,1,1-trichloroethane, indicating that this chemical has low hydrolytic reactivity (Dilling et al., 1975 Pearson and McConnell, 1975).

The appreciable water solubility of 1,1,1-trichloroethane coupled with its low rate of hydrolysis indicate a potential for greater persistence of this chemical in stagnant water.

Dow cites acetic and hydrochloric acids as the major hydrolytic products. Another potentially hazardous hydrolytic product of 1,1,1-trichloroethane is 1,1–dichloroethylene. 1,1–Dichloroethylene (vinylidene chloride), a known animal carcinogen with a water solubility of 2,500 mg/1 (Maltoni, 1977; Patty, 1963; Maltoni et al., 1977), has been reported as a minor product of hydrolysis at 25 degrees C by Dilling et al. (1975).

Pearson and McConnell (1975) report that at a lower temperature (10 degrees C) and under slightly alkaline conditions (pH 8), the major hydrolytic end product is vinylidene chloride.

The experimental evidence indicates that 1,1,1-trichloroethane, even though short-lived in water due to volatilization, has the potential for increased persistence and toxicity in the aquatic environment because of its appreciable water solubility, its long hydrolytic half-life, and its potentially hazardous, appreciably soluble hydrolytic product, vinylidene chloride.

Toxicity

Dow Chemical stated in its petition that no evidence has been cited for the carcinogenicity or teratogenicity of 1,1,1-

trichloroethane and that the compound has only moderate fish toxicity. They cited as evidence a National Cancer Institute (NCI, 1977) study (unpublished), a Dow report by Rampy et al. (unpublished), and a report by Schwetz et al., 1975. Dow did not present data on fish toxicity. They conluded that 1,1,1-trichloroethane does not meet EPA's criterion of toxicity for designating it a Toxic Pollutant under Section 307(a)(1) of Pub L. 92–500.

The 1977 NCI carcinogenic bioassay of 1,1,1-trichloroethane (cited by Dow as failing to establish any relationship between the dosage groups, the species, sex type, type of neoplasm, or site of occurrence) was considered inconclusive by the NCI, due to poor survival of treated animals.

Due to the problems associated with this study, the NCI Clearing House on Environmental Carcinogens concluded that the carcinogenicity of 1,1,1-trichloroethane could not be determined (NCI Clearing House minutes 3–25–77). A two-year carcinogenesis animal bioassay is being repeated at the National Cancer Institute.

The study cited by Dow of Rampy et al. (unpublished), which reported no increased tumor incidence in rats after 1,1,1-trichloroethane (1750 or 875 ppm) inhalation exposure, suffers from several drawbacks:

(1) The study doesn't show that animals were given highest does of 1,1,1-trichloroethane that they could tolerate. No adverse effects were observed at any point in the 12 month treatment period in animals treated with 1,1,1-trichloroethane, even at the higher does. NCI recommends that cancer studies be conducted with a known maximum tolerated doses (MTD), determined from a subchronic study. Maximum tolerated doses should be selected for each sex of each species used in the chronic study.

(2) Animals were treated for only 12 months. The NCI recommends that the test agent be given for the greater part of the animals' life spans to insure sufficient time to produce a maximum response. The carcinogen bioassay program at NCI usually requires a 24 month treatment period for both mice and rats.

(3) Only one animal species (Sprague-Dawley rats) was tested. NCI recommends the use of 2 species and both sexes of each species. A negative response in one species is not sufficient evidence to show that 1,1,1-trichloroethane is not carcinogenic.

Positive responses in two *in vitro* systems currently used to detect chemical carcinogens, indicate that 1,1,1-trichloroethane has the potential for carcinogenicity in animals. Fischer rat embryo cells (F1706) transformed by 1,1,1-trichloroethane produced fibrosarcomas in all animals (8/8) receiving injections of the cells (Price et al., 1978). Based on these results, 1,1,1-trichloroethane is a suspected carcinogen.

Another *in vitro* study of the mutagenicity of this chemical provided additional evidence that 1,1,1-trichloroethane is a potential carcinogen. 1,1,1-Trichloroethane was mutagenic to *Salmonella typhimurium* TA100 in the presence and absence of metabolic activation (Simon et al., 1977). Its mutagenic potency was similar to that of trichloroethylene, a know animal carcinogen (NCI, 1976).

The fact that 1,1,1-trichloroethane-transformed cells produced fibrosarcomas *in vivo* and the fact that 1,1,1-trichloroethane was mutagenic in the *Salmonella* test (McCann and Ames, 1976) indicate that 1,1,1-trichloroethane is suspect as an animal carcinogen.

Dow cites the teratology study by Schwetz et al., 1975 as evidence that 1,1,1-trichloroethane has no adverse effects on developing embryos and fetuses.

Schwetz et al. exposed pregnant mice and rats to 875 ppm 1,1,1-trichloroethane vapors for 7 hours daily on days 6–15 gestation. The authors concluded that this dose, which is twice the maximum allowable excursion limit for human industrial exposure, caused no maternal, embryonal or fetal toxicity, nor did it elicit a teratogenic response.

The Agency agrees with Dow's assertion that the Schwetz study presents no evidence of the teratogenicity of 1,1,1-trichloroethne. The Schwetz study highlights the need for further evaluation of the embryotoxic, fetotoxic, and teratogenic properties of this chemical. The Agency advises repeating the study at higher doses since increases in the incidence of certain fetal anomalies were observed in treated animals, although they were not considered statistically significant from controls. Although practical, the concentration of 1,1,1-trichloroethane tested was low.

Dow stated that 1,1,1-trichloroethane has only moderate fish toxicity but did not submit any aquatic toxicity data to support its assertion. Evidence available to the Agency indicates that 1,1,1-trichloroethane is toxic to marine and freshwater organisms, including commercially and recreationally important species in the United States. It is soluble in water at a level (4,400 mg/1) well above its toxicity to aquatic organisms, and therefore has the potential for toxicity under environmental conditions. The experimental results of acute toxicity test in fresh water and saltwater fish are presented below in Table 1.

Table 1.—*Acute Toxicity Test Results for 1,1,1-trichloroethane in Freshwater and Marine Aquatic Organisms*

Organism	Toxic effect	Test condition	Conc. (mg/1)	Reference
Bluegill (*Lepomis macrochirus*)	LC50 (96 hr)	Static	69.7	U.S. EPA, 1978a
Fathead minnow (*Pimephales promelas*)	LC50 (96 hr)	Static	105	Alexander et al., 1978
		Flow-through	52.8	
	EC50 (96 hr)	Flow-through	11.1	Alexander et al., 1978
Sheepshead minnow (*Cyprinodon variegatus*)	LC50 (96 hr)	Static	70.9	U.S. EPA, 1978a
Dab (*Limanda limanda*)	LC50 (96 hr)	Flow-through	33	McConnell et al., 1975

Contrary to Dow's assertion, 1,1,1-trichloroethane does meet EPA's criteria of toxicity for designating it a Toxic Pollutant based on the acute toxicity of 1,1,1-trichloroethane to freshwater and marine organisms and on information relating to the mutagenicity and suspected carcinogenicity of this chemical.

Usual and Potential Presence of the Compound in Water

Available evidence indicates that 1,1,1-trichloroethane is found in U.S.

water. It is estimated that 454,230 pounds of 1,1,1-trichloroethane are discharged into water annually (U.S. EPA, 1979a). The primary sources of waterborne 1,1,1-trichloroethane are effluents from publicly owned treatment works and direct industrial discharges to surface waters. Dow Chemical submitted data, which showed that when the drinking water of 14 cities was sampled and analyzed, all cities were found to have levels of 1,1,1-trichloroethane. The majority of these cities had 1 μg/1 or less 1,1,1-trichloroethane and 1 sample showed 17 μg/1 (reference unknown). Additional evidence shows that 1,1,1-trichloroethane has been detected in industrial effluents, surface waters, and drinking water (U.S. EPA, 1979d; U.S. EPA, 1977; Kopfler, et al., 1976). A concentration of 1,1,1-trichloroethane as high as 7,100 μg/1 has been detected in one industrial effluent (U.S. EPA, 1979d). Although 1,1,1-trichloroethane is found in water, the extent and severity of water contamination by this chemical can't be assessed without further monitoring.

Annual U.S. Production of the Pollutant and Use Patterns

1,1,1-Trichloroethane is produced in large volume and has several dispersive uses. The United States produced an estimated 600 million pounds of 1,1,1-trichloroethane in 1977 for use in metal degreasing and cleaning, for use as an intermediate in the manufacture of vinylidene chloride, for miscellaneous uses, and for exports (U.S. EPA, 1979a).

Methylene Chloride

Persistence

Dow Chemical states in its petition that methylene chloride is not persistent in the aquatic environment and that the removal mechanism from agitated natural water bodies is mainly through volatilization. Dow submitted a laboratory study by Dilling, et al. 1975 which showed that a system containing a 1 mg/l concentration of methylene chloride in water when stirred at 200 rpm in an open container at 25 degrees C lost 50 percent of its methylene chloride in less than 30 minutes and 90 percent of the compound in less than 90 minutes. In an attempt to simulate environmental conditions with respect to the presence of sediments, dissolved solids, or the presence of other pollutants, clay, limestone, sand, salt, peat moss, and kerosene were added to this laboratory system with little effect on the evaporation or disappearance rate of methylene chloride. While this study demonstrates the high volatility of methylene chloride from a stirred aqueous system under laboratory conditions, one cannot extrapolate this degree of volatilization to all natural water bodies under a variety of actual environmental conditions. For example this laboratory system is probably not predictive for a stagnant natural water body whereas this model might simulate conditions in fast flowing rivers or streams. Several field studies on methylene chloride volatilization from the aquatic environment must be performed before a definitive statement on its persistence can be made.

Toxicity

Dow Chemical states in its petition that methylene chloride does not meet reasonable toxicity criteria for listing chemicals under section 307. The following information based on data which was submitted by the Dow Chemical Co. and available to EPA in the literature questions this assertion and indicates that methylene chloride is toxic both to aquatic life and to humans and non-human mammals.

Dow Chemical states that no evidence has been cited for the carcinogenicity or teratogenicity of methylene chloride. They submitted a report by Klimmer (1970) in which the results of a study of Mosinger (1966) were reported. This chronic toxicity study involved both rats and hamsters in a two-year exposure to methylene chloride via pharyngeal tube administration. No abnormal incidence of tumors, no adverse effects on fertility and the pups of F_1 and F_2 generations, and no other adverse effects on the parent generation were observed. However in this study, methylene chloride was administered not as the pure compound but as a mixture with water and ground coffee so that the potential toxic effect of the compound alone could not be assessed. In addition, Mosinger's study was not submitted to the Agency for evaluation of the data and the test protocol used. The reported results of this study are therefore insufficient for toxicity evaluation of methylene chloride.

Dow also described a newly released *interim* report on another two-year chronic toxicity study on methylene chloride (Farber, 1978a,b; Anonymous, 1978). This study is being conducted by Dow and supported by four other companies. Rats and hamsters were exposed to methylene chloride vapor at 0, 500, 1,500, 3,500 ppm concentrations for 6 hours per day, 5 days per week, for 104 weeks to simulate lifetime exposure in human workers. Dow reported no increase in *malignant* tumors compared to controls in either species at any level of exposure. However, a significant increase in *benign* mammary tumors for both sexes in the rats were observed, especially at the higher methylene chloride exposure levels. Dow claimed that this increase in benign tumor formation for the treated rat groups was due to the rat strain used in the study which is prone to spontaneously develop benign and malignant tumors. Microscopic examination of the livers from the methylene chloride exposed rats showed some toxic effects although Dow claimed that these effects were not severe enough to be life-shortening. The Carcinogen Assessment Group (CAG) of the Agency will review the final report of this study when it is made available by Dow in September of 1979 (personal communication from Dr. Hugh A. Farber) to assess the adequacy of the data and experimental protocol. At that time a carcinogenic or unit risk calculation on methylene chloride will be performed by CAG (U.S. EPA, 1979b). Only then will the Agency be able to comment on Dow's conclusion from this study that the chemical should not be considered a potential human carcinogen.

A bioassay for carcinogenicity has been undertaken by the National Cancer Institute in a 2-year chronic gavage study with rats and mice. Again CAG will review this study when it is available (September, 1981) and another unit risk assessment will be performed at that time (U.S. EPA, 1979b).

Dow reported on a human epidemiological study (Friedlander, et al., 1978) conducted by the Eastman-Kodak Company. This study has been reviewed by CAG. This study involved examination of the mortality of male Kodak employees continuously exposed to methylene chloride vapor in the work environment for periods of up to 30 years. Air levels were measured at 5 intervals between 1959 and 1975 and were in the range of 30-120 ppm. From this study, Dow concluded that the mortality pattern of the study group was consistent with industrial controls (other Kodak employees). Dow also concluded that this study showed no increase in the incidence of cancer-related or other causes of death in the study group and was less than the New York State male population. CAG (U.S. EPA, 1979b) agrees with these conclusions, namely "no increase in neoplasms or heart disease or any other causes of death were found compared to 3 control groups, other Kodak employees, New York State males, and United States males". It should be noted however that the Kodak study does not reveal any

data on cancer incidence among living workers.

In a supporting document, Dow reports a joint human health study with Celanese Fibers Company (Anonymous, 1978). This study is in progress. Dow asserts that preliminary results of this study show no adverse effects related to methylene chloride exposure. Analysis of data is continuing with a final report anticipated by the end of 1978. To date, the Agency has not received this report an any comment on Dow's conclusion must be based on the Agency's review of the final report.

There is suggestive evidence for methylene chloride carcinogenicity based on marginally positive pulmonary adenoma response in a 24 week study in strain A mice (Theiss, 1977). At present, this has been the only positive mammalian *in vivo* test for carcinogenicity reported in the literature. The chemical was administered by interpertoneal injection 3 times per week for a total of 16 or 17 injections at doses of 0, 10, 400 and 800 mg/kg. The data obtained from this study is judged qualitatively informative but quantitatively inadequate for carcinogenic risk extrapolation.

Other suggestive evidence for carcinogenicity is based on positive responses in two short term tests. Methylene chloride was mutagenic in at least one bacterial strain, *Salmonella* TA 100, when the compound was run in the Ames test (Simon, et al., 1977). Methylene chloride demonstrated mutagenicity in this system without the requirement of metabolic activation and was approximately 8 times as potent as 1,1,1-trichloroethane and trichloroethylene, the latter compound being a known animal carcinogen.

A second test, an *in vitro* test of cell transformation, was performed using Fischer rat embryo cell line F 1706 (Price, et al., 1978). Methylene chloride transformed the cells and these transformed cells produced, when injected, fibrosarcomas in 5 out of 5 rats. Again methylene chloride was more potent than 1,1,1-trichloroethane and trichloroethylene in this test.

In summary, there are not adequate studies that completely describe the carcinogenic potential of methylene chloride. The data base for this compound is neither extensive of adequate. A long term animal bioassay is required and two are currently in progress at NCI and Dow Chemical Co. When final results from these tests are available, carcinogenic risk assessments will be performed for methylene chloride. Suggestive evidence for carcinogenicity is based on one positive animal bioassay and two *in vitro* tests one of which demonstrates mutagenic potential for the compound as well.

Dow asserts that a study by Schwetz, et al. (1975) has demonstrated that methylene chloride does not cause significant maternal, embryonal, or fetal toxicity, and is not teratogenic in mice or rats. The Agency agrees with this interpretation of the study. However, some minor toxic effects were observed in both dams and fetuses for both species during and after exposure to the chemical (inhalation of 1225 ppm, 7 hours per day on days 6–15 of gestation). Pregnant mice experienced an 11 to 15 percent increase in mean body weight. The absolute liver weights of pregnant females of both species were elevated compared to controls. Elevated carboxyhemoglobin content was observed in pregnant females of both species. In addition exposure to the chemical did cause effects on embryonal and fetal development in both species as evidenced by an increase in the incidence of variation of sternum development (both species) and an increase in soft tissue anomalies (rats).

Other questions arise from the above study. For pregnant rats, the daily intake of methylene chloride via inhalation was calculated to be approximately 800 mg/kg. Methylene chloride demonstrated an oral LD50 value of 945 mg/kg in the rat (Marhold, 1977). This datum when considered with the calculated daily intake of 800 mg/kg in the teratogenicity study suggests that the most sensitive and/or appropriate route of methylene chloride administration, i.e., oral, should also be used in assessing the toxicity and/or teratogenicity of the compound in rats. In addition, exposure data for other potentially more sensitive species should be gathered before a final determination of teratogenic potential can be determined for methylene chloride.

Dow assets that methylene chloride has only low fish toxicity. Dow did not submit any aquatic life toxicological data with its petition to support this assertion. Data available to the Agency (U.S. EPA, 1978a) show a moderate degree of methylene chloride toxicity toward aquatic life. Acute toxicity values (48 and 96 hour LC50 values) ranged from 224 mg/1 for the water flea, *Daphnia magna*, and the bluegill, *Lepomis macrochirus*, to 331 mg/1 for the sheepshead minnow, *Cyprinodon variegatus*.

Usual and Potential Presence of the Compound in Water

Dow asserts that with the exception of accidental spills, methylene chloride is not likely to be found in significant quantities in surface or ground waters. Dow submitted no monitoring data to support this assertion. The following information, available to EPA suggests that this assertion is inaccurate.

Even though methylene chloride is quite volatile with a vapor pressure of 426 mm Hg at 25 degrees C (Hardie, 1964), its potential for solubility in water, particularly stagnant and cool water bodies, is great (solubility of 19,800 mg/1 at 25 degrees C (Hardie, 1964)). Methylene chloride is one of the ten halogenated methanes identified in United States' finished drinking waters as of 1975 by the U.S. Environmental Protection Agency (U.S. EPA, 1975). In EPA's Region V Organics Survey at 83 sites, the Agency reported concentrations of methylene chloride in 8 percent of the finished municipal water sites with a median concentration for all sites surveyed of less than 1 ug/1 and a maximum concentration found of 7 ug/1 (U.S. EPA, 1975). U.S. EPA's National Organic Monitoring Survey (NOMS) conducted in 1976 and 1977 sampled 113 water supplies representing various sources and treatments (U.S. EPA, 1978b,c). Methylene chloride was found in 15 of 108 water supplies tested with a mean concentration for all positive samples of 6.1 ug/1.

Annual United States Production of the Pollutant and Use Patterns

Methylene chloride has a significant potential for environmental contamination because it is produced in large amounts in the U.S. (538,241,000 lbs in 1976) and because most of its uses are dispersive in nature (U.S. EPA, 1979c). Of the 580,577,000 lbs consumed in the U.S. in 1976, 470,547,000 lbs or 81% was discharged into the environment as airborne emissions as a result of its production and uses (U.S. EPA, 1979c). The compound's primary uses are as a paint remover, a solvent in plastic processing, an aerosol vapor pressure depressant, and a metal degreaser. Each of these uses are approximately 100 percent dispersive via volatilization involving high human exposure. Most of the chemical is released into home and factory air through these uses. The number of workers exposed is estimated at 2,500,000 (U.S. EPA, 1979b).

In 1976, approximately 27,000 lbs. of methylene chloride was discharged into the aquatic environment as a result of the chemical's production. Of this

amount, 90% was discharged directly into waterways and the balance injected into deep wells. Methylene chloride discharges from these production plants to publicly owned treatment works (POTWs) and to land-destined waste are believed to be negligible (U.S. EPA, 1979c). However, data on total direct aquatic discharges and discharges to POTWs from methylene chloride uses are not available, so that complete assessment of methylene chloride aquatic discharges cannot be made at this time.

Historically, annual growth for methylene chloride has been 8 to 10 percent over the past 10 years. Projections for future annual growth are 10 percent with prospects for even higher growth rates being achieved as new end-uses develop and existing ones expand (U.S. EPA, 1979c). Therefore the potential for increased annual environmental discharges exists.

Other Considerations

The petition states that leaving 1,1,1-trichloroethane and methylene chloride on the list of Toxic Pollutants dilutes the Agency's efforts and diverts attention from more serious environmental issues, introduces unwarranted barriers to the introduction of new products containing the compounds, and results in needless expenditures of funds by industry and Government for expensive monitoring, analysis, and reporting.

Listing chemicals under section 307(a) does not preclude a company from producing, marketing, and selling a product. The purpose of the section 307 list of toxic pollutants is to focus attention on the potential environmental harm which might result if such pollutants are discharged to the aquatic environment and to control such harmful discharges through the development and implementation of appropriate effluent limitations. Since 1,1,1-trichloroethane and methylene chloride are on the section 307(a) toxic pollutant list, they may be subject to effluent limitations sooner than if they were nonconventional pollutants, and they are not eligible for waivers on water quality or eocnomic grounds. However, 1,1,1-trichloroethane and mentylene chloride would be subject to BAT effluent limitations whether they are classified as toxic or nonconventional pollutants.

In summary 1,1,1-trichloroethane meets several of EPA's criteria for listing it as a Toxic Pollutant:

(1) It is acutely toxic to freshwater and marine organisms.

(2) There is evidence relating to its mutagenicity and suspected carcinogenicity.

(3) There is limited evidence of its presence in effluents, ambient water, and aquatic organisms.

(4) It has been detected in some drinking water supplies and there is potential for exposure of humans through drinking water and surface water.

(5) Annual production of 1,1,1-trichloroethane in the U.S. exceeds 600 million pounds.

In summary, methylene chloride meets several of EPA's criteria for listing it as a Toxic Pollutant:

(1) Methylene chloride does not persist in water under laboratory conditions but its large potential for solubility in water and lack of data for its persistence under field conditions warrant further study.

(2) Evidence exists for its carcinogenicity in at least two animal species. Results from one chronic toxicity test will not be available for Agency review and subsequent cancer risk calculations until September 1981.

(3) Evidence exists for its mutagenicity.

(4) One study submitted by the petitioner did not demonstrate teratogenicity although skeletal and soft tissue anomalies were found in two laboratory animal species.

(5) A human epidemiological study involving long term, low level exposure to the chemical via inhalation does not show the involvement of methylene chloride in cases of mortality but does not give information on contribution to incidences of cancer and other diseases in living workers. The results of another epidemiological study are preliminary and an Agency review of the study is expected pending receipt of the final results.

(6) Aquatic life toxicity is moderate.

(7) Methylene chloride has been found in some finished U.S. drinking waters.

(8) Discharges of this chemical into the environment represent a substantial percentage of its production and consumption volume. As methylene chloride use rises, increased environmental discharges can be expected.

Based on the physical and/or toxicological properties of 1,1,1-trichloroethane and methylene chloride and their large annual production volume and dispersive uses as discussed in this report, it is proposed that 1,1,1-trichloroethane and methylene chloride should remain on the toxic substances list under the general classification of chlorinated ethanes and halomethanes, respectively.

Dated: May 30, 1979.

Douglas M. Costle,

Administrator.

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[FR Doc. 79-18603 Filed 6-14-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1247-6; PP 9G2121/T211]

Pesticide Programs; Notice of Establishment of a Temporary Tolerance for [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl)alanine methyl ester]

Ciba-Geigy Corp., Agricultural Div., PO Box 11422, Greensboro, NC 27409, submitted a pesticide petition (PP 8G2121) to the Environmental Protection Agency (EPA). This petition requested that a temporary tolerance be established for residues of the fungicide [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl)alanine methyl ester] in or on the raw agricultural commodity potatoes at 0.05 part per million (ppm). This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with an experimental use permit (100-EUP-1) that has been issued under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

An evaluation of the scientific data reported and other material showed that the requested tolerance was adequate to cover residues resulting from the proposed experimental use, and it was determined that the temporary tolerance would protect the public health. The temporary tolerance has been established for the pesticide, therefore, with the following provisions:

1. The total amount of the pesticide to be used must not exceed the quantity authorized by the experimental use permit.

2. Ciba-Geigy Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The firm must also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary tolerance expires January 30, 1981. Residues not in excess of 0.05 ppm remaining in or on potatoes after this expiration date will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the experimental use permit and temporary tolerance. This temporary tolerance may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicates such revocation is necessary to protect the public health. Inquiries concerning this notice may be directed to Mr. Henry Jacoby, Product Manager 21, Registration Division (TS-767), Office of Pesticide Programs, 401 M St., SW, Washington, DC 20460 (202/755-2562).

(Statutory Authority: Section 408(j) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 346a(j)]).

Dated: June 7, 1979.

Douglas D. Campt,

Director, Registration Division.

[FR Doc. 79-18749 Filed 6-14-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1248-1; DPP-30431]

Issuance of Experimental Use Permits

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 464-EUP-55. Dow Chemical Company, Midland, Michigan 48640. This experimental use permit allows the use of 350 gallons of the herbicide Lontrel (700# a.e. of 2,4-D and 175# a.e. of 3,6-dichloro-2-pyridinecarboxylic acid) on wheat and barley to evaluate control of broadleaf weeds. A total of 1,400 acres is involved; the program is authorized only in the States of Montana, Nebraska, North Dakota, South Dakota, and Washington. The experimental use permit is effective

from May 7, 1979 to March 31, 1981. This permit is being issued with the limitation that all crops will be destroyed or used for research purposes only. (PM-23—Robert Ikeda, Room: E-351, Telephone: 202/755-1397)

No. 20964-EUP-11. Zoecon Corporation, Palo Alto, California 94304. This experimental use permit allows the use of 50 pounds of the insecticide methoprene on various mosquito breeding sites to evaluate control of mosquitoes. A total of 2,650 acres is involved; the program is authorized only in the States of Arizona, Arkansas, California, Florida, Georgia, Illinois, Louisiana, Minnesota, New Jersey, New Mexico, New York, North Carolina, Tennessee, Texas and Utah. The experimental use permit is effective from April 26, 1979 to April 25, 1980. (PM-17—Adam Heyward, Room: E-229, Telephone: 202/426-9425)

No. 27586-EUP-15. U.S. Department of Agriculture, Forest Service, Washington, D.C. 20250. This experimental use permit allows the use of 7 pounds of the insecticides α-cubebene, 4-methyl-3-heptanol, and α-multistratin in urban and forest areas to evaluate control of the Elm bark beetle. A total of 20,000 traps is involved; the program is authorized only in the States of California, Colorado, Connecticut, Delaware, District of Columbia, Illinois, Massachusetts, Michigan, Minnesota, New York, North Carolina, Rhode Island, South Carolina, South Dakota, Virginia, and Wisconsin. The experimental use permit is effective from March 30, 1979 to October 1, 1979. (PM-17—Adam Heyward Room: E-229, Telephone: 202/426-9425)

Interested parties wishing to review the experimental use permits are referred to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, S.W., Washington, D.C. 20460. The descriptive paragraph for each permit contains a telephone number and room number for information purposes. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate permit may be made conveniently available for review purposes. The files will be available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday.

STATUTORY AUTHORITY: Section 5 of the Federal Insecticide, Fungicide, and Rodenticide, Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136)

Dated: June 7, 1979.

Douglas D. Campt,

Director, Registration Division.

[FR Doc. 79-18730 Filed 6-14-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1249-7; PF-133]

Pesticide Programs; Notice of Filing of Pesticide Petitions

Pursuant to section 408(d)(1) of the Federal Food, Drug, and Cosmetic Act, the Environmental Protection Agency (EPA) gives notice that the following petitions have been submitted to the Agency for consideration.

PP 9F2205. BASF Wyandotte Corp., 100 Cherry Hill Road, PO Box 181, Parsippany, NJ 07054. Proposes that 40 CFR 180 be amended by establishing a tolerance for the combined residues of the fungicide 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione and its dichloroaniline-containing metabolites in or on the raw agricultural commodity strawberries at 10 parts per million (ppm). The proposed method for determining residues is by gas chromatography using an electron capture detector.
PM21-Mr. Henry Jacoby, Rm. E-305, 202/755-2562.

PP9F2206. Boots Hercules Agrochemicals Co., 910 Market St., Wilmington, DE 19899. Proposes that 40 CFR 180 be amended by establishing tolerances on the combined residues of the herbicide diethatyl-ethyl [*N*-chloroacetyl-*N*-(2,6-diethylphenyl) glycine ethyl ester] and its major metabolites, *N*-chloroacetyl-*N*-(2,6-diethylphenyl) glycine ethyl ester glutahione conjugate and *N*-chloroacetyl-*N*-(2,6-diethylphenyl) glycine ethyl ester cysteine conjugate in or on the raw agricultural commodities sugar beet roots and sugar beet tops at 0.05 ppm and soybeans at 0.2 ppm. The proposed analytical method for determining residues is a gas chromatography method.
PM23-Ms Willa Garner, Rm. E-353, 202/755-7012.

Interested persons are invited to submit written comments on these petitions. Comments may be submitted, and inquiries directed, to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M St., SW, Washington, DC 20460, or by telephone at the numbers cited. Written comments should bear a notation indicating the petition number to which the comments pertain. Comments may be made at any time while a petition is pending before the Agency. All written comments filed pursuant to this notice will be available for public inspection in the Product Manager's office from 8:30 a.m. to 4:00 p.m. Monday through Friday.

Dated: June 11, 1979.

Douglas D. Campt,

Director, Registration Division.

[FR Doc. 79-18731 Filed 6-14-79; 8:45 am]

BILLING CODE 6560-01-M

Availability of Environmental Impact Statements

AGENCY: Office of Environmental Review, Environmental Protection Agency.

PURPOSE: This Notice lists the Environmental Impact Statements which have been officially filed with the EPA and distributed to Federal Agencies and interested groups, organizations and individuals for review pursuant to the Council on Environmental Quality's Regulations (40 CFR Part 1506.9).

PERIOD COVERED: This Notice includes EIS's filed during the week of June 4 to June 8, 1979.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this Notice is calculated from June 15, 1979 and will end on July 30, 1979. The 30-day wait period for final EIS's will be computed from the date of receipt by EPA and commenting parties.

EIS AVAILABILITY: To obtain a copy of an EIS listed in this Notice you should contact the Federal agency which prepared the EIS. This Notice will give a contact person for each Federal agency which has filed an EIS during the period covered by the Notice. If a Federal agency does not have the EIS available upon request you may contact the Office of Environmental Review, EPA for further information.

BACK COPIES OF EIS'S: Copies of EIS's previously filed with EPA or CEQ which are no longer available from the originating agency are available from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Kathi Weaver Wilson, Office of Environmental Review A-104, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, (202) 755-0780.

SUMMARY OF NOTICE: Appendix I sets forth a list of EIS's filed with EPA during the week of June 4 to June 8, 1979, the Federal agency filing the EIS, the name, address, and telephone number of the Federal agency contact for copies of the EIS, the filing status of the EIS, the

actual date the EIS was filed with EPA, the title of the EIS, the State(s) and County(ies) of the proposed action and a brief summary of the proposed Federal action and the Federal agency EIS number if available. Commenting entities on draft EIS's are listed for final EIS's.

Appendix II sets forth the EIS's which agencies have granted an extended review period or a waiver from the prescribed review period. The Appendix II includes the Federal agency responsible for the EIS, the name, address, and telephone number of the Federal agency contact, the title, State(s) and County(ies) of the EIS, the date EPA announced availability of the EIS in the **Federal Register** and the extended date for comments.

Appendix III sets forth a list of EIS's which have been withdrawn by a Federal agency.

Appendix IV sets forth a list of EIS retractions concerning previous Notices of Availability which have been made because of procedural noncompliance with NEPA or the CEQ regulations by the originating Federal agencies.

Appendix V sets forth a list of reports or additional supplemental information on previously filed EIS's which have been made available to EPA by Federal agencies.

Appendix VI sets forth official corrections which have been called to EPA's attention.

Dated: June 12, 1979.

William N. Hedeman, Jr.,

Director, Office of Environmental Review.

Appendix I—EIS's Filed with EPA During the Week of June 4 to 8, 1979

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Coordinator, Environmental Quality Activities, Office of the Secretary, U.S. Department of Agriculture, Room 412A, Washington, D.C. 20250, (202) 447–3965.

Forest Service

Final

Boulder Planning Unit Land Mgmt. Plan, Boundary, Bonner County, Idaho, June 5: Proposed are eight alternatives for a land and resource management plan for the 58,000 acre Boulder Planning Unit, Idaho Panhandle National Forests in Boundary and Bonner Counties, Idaho. This revised final statement replaces the original final EIS, #70542, filed 5–22–77. This statement reflects changes in allocations for timber, big game summer range, and dispersed recreation. Roadless areas contiguous to the Boulder Unit have been reevaluated to determine whether they should be recommended for inclusion in the national wilderness preservation system. (USDA–FS–ADM–01—04—76—22). Comments made by: COE, DOI, EPA, FPC, State, and local agencies, individuals. (EIS Order No. 90569.)

Final Supplement

Oregon Dunes NRA Management Plan, Siuslaw National Forest, Coos, Douglas, and Lane Counties, Oreg., June 4: This statement supplements final EIS #70042, filed 1–11–77 concerning a management plan for the Oregon Dunes National Recreation area located in Coos, Douglas, and Lane Counties, Oregon. The purpose of the supplement is to: (1) delete references for the nonwilderness recommendation, (2) update information regarding land status, and (3) to indicate that the implementation of the management plan will recognize the reevaluation process, and that no developments or activities will be permitted on the unroaded areas which would adversely affect wilderness values that may be present. (USDA–FS–R6—FES(ADM)–75—01—SUPP.) (EIS Order No. 90554.)

U.S. ARMY CORPS OF ENGINEERS

Contact: Mr. Richard Makinen, Office of Environmenatl Policy, Attn: DAEN–CWR–P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, NW, Washington, D.C. 20314, (202) 272–0121.

Draft

Folly Beach, beach erosion control, Charleston County, S.C., June 7: Proposed is a beach erosion control and hurricane protection project for Folly Beach on Folly Island, Charleston County, South Carolina. The improvements include restoration and periodic renourishment of a countinuous reach of beach for 16,860 feet, which would require 684,000 cubic yards of fill material. A berm 25 feet wide would be constructed along the entire length of the project. Additional sanitary facilities will also be constructed. (Charleston District.) (EIS order No. 90571.)

Final

West Des Moines-Des Moines Flood Protection, Polk County, Iowa, June 4: This statement proposes a Plan for Flood Protection for the Cities of West Des Moines and Des Moines, near the confluence of the Raccoon River and Walnut Creek in Polk County, Iowa. The project will protect an area of approximately 927 acres from the standard project flood of these watercourses. Project elements include refurbishment of existing levees and construction of new levees along the north bank of Jordon Creek. The original draft, No. 50416, filed 3–25–75, was replaced by revised draft No. 61241, filed 8–23–76. (Rock Island District.) Comments made by: EPA, DOI, USDA, DOT, HUD, AHP, HEW, State, and local agencies, groups and businesses. (EIS order No. 90556.)

Final

Fifth Unit Installation, Hartwell Lake, Savannah River, Hart County, S.C.: Anderson County, Ga., June 4: Proposed is the installation of an 80,000 kilowatt fifth generating unit at Hartwell Dam located on Hartwell Lake in Hart County, Georgia and in Anderson County, South Carolina. The installation would include modification and additions to the existing power intake works and powerhouse structure downstream; addition of a transformer and tower on the transformer deck; and oil circuit breakers, high voltage bus insulators, disconnect switches, turning tower, and pull-off tower at the switchyard. The original draft, No. 60302, filed 3–29–76 was replaced by revised draft, No. 61177, filed 10–30–76. (Savannah District) Comments made by: EPA, USDA, HEW, HUD, AHP, FERC, and State agencies. (EIS Order No. 90555.)

Final Supplement

Corpus Christi Ship Channel, M/D (FS–1), Aransas, Nueces, and San Patricia Counties, Tex., June 4: This statement supplements a final EIS No. 60074, filed 1–19–76. The proposed action involves use of the Tule Lake area from the Tule Lake turning basin to Viola turning basin for disposal of dredged material from maintenance of the Corpus Christi Ship Channel, Texas. The project provides deep draft navigation channels extending from the Gulf of Mexico through a jettied entrance channel in Aransas Pass to a turning basin at Harbor Island and thence across Corpus Christi Bay to turning basins at La Quinta, Corpus Christi, Avery Point, Chemical, Tule Lake, and Viola. This project is located in Aransas, Nueces, and San Patricia Counties, Texas. (Galveston District) Comments made by: DOC, DOI, EPA, USDA, AHP, DOT, State, and local agencies, individuals. (EIS Order No. 90569.)

Department of Commerce

Contact: Dr. Sidney R. Galler, Deputy Assistant Secretary, Environmental Affairs, Department of Commerce, Washington, D.C. 20230, 202–377–4335.

Nat'l Oceanic and Atmospheric Admin.

Draft supplement

Surf Clam and Ocean Quahog Industries, FMP (DS–2), Atlantic Ocean, June 8: This statement supplements final EIS, No. 71292, filed Oct. 17, 1977. Proposed is amendment No. 2 to the Surf Clam and Ocean Quahog FMP for the Northwest Atlantic Ocean. This amendment would extend the current FMP through the end of calendar year 1980. The FMP remains in the existing form which includes: Rebuilding the declining Surf Clam populations; minimize short-term economic dislocations to the extent possible; and prevent the harvest of Ocean Quahog from exceeding maximum sustainable yield and direct the fishery toward maintaining optimum yield. (EIS Order No. 90573.)

Department of Energy

Contact: Dr. Robert Stern, Acting Director, NEPA Affairs Division, Department of Energy, Mail Station E–201 GTN, Washington, D.C. 20545, 202–376–5996.

Bonneville Power Administration

Draft supplement

BPA Okanogan Area Service, Facility Location (DS–2), Okanogan, Douglas County, Wash. June 8: This statement supplement the final EIS on the BPA 1976 Fiscal Year

program, No. 80040, filed March 14, 1975. Proposed are facility locations for transmission facilities to serve the Okanogan Valley area of Okanogan and Douglas Counties, Washington. The preferred alternative extends for 68 miles from the Chief Joseph Substation in Okanogan County to the Tonasket Substation in Douglas County. (DOE/EIS-0040-DS-1.) (EIS Order No. 90574.)

Environmental Protection Agency

Contact: Mr. Eugene Wojcik, Chief, EIS section, Region V, Environmental Protection Agency, 230 South Dearborn Street, Chicago, IL 60604, 312-353-2157.

Final

Metropolitan Area WWT Facilities, Columbus, Franklin County, Ohio, June 8: The subject action is the approval of the facilities plans for the city of Columbus in Franklin County, Ohio to expand and upgrade wastewater collection, treatment, and disposal facilities within the Columbus metropolitan area. The proposed project includes selection of additional liquid treatment facilities for sewage processing; construction of two sludge incinerators and dewatering facilities; and construction of separate sanitary sewer interceptors. (EPA-5-OH-Franklin-Columbus-WWTP+INT-79.) Comments made by: COE, HEW, DOI, DOT, State and local agencies, individuals. (EIS Order No. 90575.)

General Services Administration

Contact: Mr. Carl W. Penland, Acting Director, Environmental Affairs Division, General Services Administration, 18th and F Streets NW., Washington, D.C. 20405, 202-566-1416.

Draft

Key West Naval Air Station, Disposal of Property, Monroe County, Fla., June 5: Proposed is the disposition by GSA of surplus Federal properties at the Naval Air Station located at Key West, Monroe County, Florida. The Action will include portions of the Harry S. Truman Annex and Trumbo Point, Annex. It will also include the former Coast Guard Station at the north end of the Truman Annex. The properties include approximately 123 acres of land and improvements. The major alternatives considered include: (1) No action or delayed action; (2) disposition alternatives; and (3) reuse alternatives. (N-FLA-635-G-EIS-D-1.) (EIS Order No. 90558.)

Department of HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Room 7274, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, 202-755-6308.

Draft

Sunblest Subdivision, Mortgage Insurance, Fishers, Hamilton County, Ind., June 7: Proposed is the issuance of HUD home mortgage insurance for the Sunblest Subdivision located in Fishers, Hamilton County, Indiana. The insurance will apply to the installation of all infrastructure (sewers, water, roads) for the development of the first 502 residential building lots and for the acquisition of the entire 653.60 acre tract. The final project will consist of 545.80 acres developed for residential use and 113 acres developed for commercial industrial use. (HUD-R05-EIS-79-07.) (EIS Order No. 90566.)

Final

Lexington South Development, Eagan, Dakota County, Minn., June 6: Proposed is the issuance of HUD home mortgage insurance for a portion of the Lexington South Development located in Eagan, Dakota County, Minnesota. The area to be developed encompasses approximately 448 of the total 1,108 acre Lexington site. This EIS discusses the cumulative impacts of Lexington South and a related, nearby development known as Blackhawk Park for which a separate EIS will be prepared. (HUD-R05-EIS-79-12-(F).) Comments made by: COE, AHP, EPA, State and local agencies. (EIS Order No. 90561.)

Blackhawk Park Planned Unit Development, Eagan, Dakota County, Minn., June 6: Proposed is the issuance of HUD home mortgage insurance for the Blackhawk Park planned unit development located in Eagan, Dakota County, Minnesota. The insurance will apply to 542 acres of the 603 acre site which will be developed to provide a mixture of land uses and housing types. (HUD-R05-79-14-(F).) Comments made by: DUC, DOT, AHP, DOI, EPA, State agencies. (EIS Order No. 90562.)

Section 104(H)

The following are community development block grant statements prepared and circulated directly by applicants pursuant to section 104 (H) of the 1974 Housing and Community Development Act. Copies may be obtained from the office of the Appropriate local executive. Copies are not available from HUD.

Draft

High Service Transmission Main, Alexander City, Tallapoosa County, Ala., June 4: Proposed is the issuance of CDBG funds for the construction of a water main to connect the proposed new water treatment facility near Lake Martin, to the presently existing Alexander City Water Distribution System. The water main will be of adequate size to provide the households, businesses, and industries in Alexander City, Tallapoosa County, Alabama with sufficient potable water for their daily needs and will also provide fire protection. The alternatives considered include: (1) No action, (2) enlargement of present facilities, and (3) construction of new facilities with a new source of supply. (HUD-6-79-NH-01-0001.) (EIS Order No. 90557.)

Department of the Interior

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256 Interior Bldg., Department of the Interior, Washington, D.C. 20240 (202) 343-3891.

Bureau of Land Management

Draft

East Roswell Grazing Management Program, Chaves, Lea, and Eddy Counties, N. Mex., June 8: Proposed is the implementation of a livestock grazing management program for the East Roswell area located in Chaves, Lea and Eddy Counties, New Mexico. The plan would: Exclude approximately 6,800 acres from livestock grazing; allocate 106,111 aums of forage to livestock and 2,[illegible] aums to big game animals; set a maximum forage utilization-level of 40 to 60 percent; treat approximately 54,300 acres with chemicals to control brush; develop grazing management systems; and specify livestock facilities necessary to implement systems. (DES-79-30.) (EIS Order No. 90563.)

Randolph Planning Unit Grazing Management Plan, Rich County, Utah, June 6: Proposed are livestock grazing management plans for the Randolph Planning Unit in Rich County, Utah. The purpose is to provide for the 140,296 acres, sustained, long term, productive use of natural resources which will be accomplished in two phases. The first phase includes: Allocation of 22,360 aums of livestock forage on 19 allotments; allotmentwide continuous grazing authorized on 15 allotments; and unchanged grazing management on 4 allotments. The second phase includes an increase of livestock forage on a sustained basis to 35,241 aums and long term management consisting of livestock grazing, vegetation treatments, fences, water developments, and cattleguards. (DES-79-31.) (EIS Order No. 90564.)

Draft Three Corners Area Grazing Management, Sweetwater County, Colo. and Uintah and Daggett Counties; Utah, June 6: Proposed is a grazing management program for 190,536 acres of public lands in the Three Corners planning unit located in Sweetwater County, Colorado and Uintah and Daggett Counties, Utah. The plan includes the following AUM allocations: 15,708 for cattle, 3,655 for sheep, 9,694 for deer, 4,834 for elk, and 378 for antelope. The plan also proposes to: Reserve one allotment for big game use, continue present allotment-wide grazing on 17 allotments, continue improved management on four allotments with existing amps, and implement improved management on 17 allotments. Other developments include: 30 miles of fencing, 52 water developments, and 1,620 acres of sage brush control. (DES-79-32). (EIS Order No. 90565.)

Department of Transportation

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street S.W., Washington, D.C. 20590, (202) 426-4357.

Federal Highway Administration

Final

Pine to Trade Street, Front Street bypass, Salem, Marion County, Oreg., June 7: The purpose of the proposed project is to divert through traffic around the Salem central business district by building connections at Ferry and Trade Streets and Division Street

to Front Street; increasing the capacity of Front Street by relocating existing railroad tracks and widening to six lanes and making traffic improvements on one or more of the alternatives north of Division Street. This project is located in the city of Salem, Marion County, Oreg. (FHWA-OR-EIS-78-06—F.) Comments made by: EPA, COE, DOT, DOE, DOI, State and local agencies, individuals, and groups. (EIS Order No. 90566.)

Final Supplement

I-393 Interchange, Fort Eddy Road, Concord, Merrimack County, N.H., June 5: This statement supplements final EIS, No. 40644, filed 5-21-74 concerning a proposed interchange on I-393 (formerly designated as relocated US-4, US-202, and NH-9) in Concord City, Merrimack County, New Hampshire. The recommended location is at relocated Fort Eddy Road. The proposed interchange is a partial cloverleaf facility which will service both east and westbound traffic to and from the bypass. This interchange will relieve traffic congestion at the Fort Eddy Road Bridge Street intersection and provide an alternate route for commercial traffic. (FHWA-NH-EIS-73-01-FS.) Comments made by: USDA, HUD, DOT, EPA, DOI, State and local agencies, groups, individuals, and businesses. (EIS Order No. 90559.)

Veterans Administration

Contact: Mr. Willard Sitler, Director, Environmental Affairs Office (66), Veterans Administration, 810 Vermont Avenue, Washington, D.C. 20420 (202) 389-2526.

Final

National Cemetary, Indiantown Gap, Lebanon County Pa., June 7: This action proposes the construction of a 675 acre national cemetery to be located on land on the south perimeter of the Fort Indiantown Gap Military Reservation in Lebanon County, 22 miles northeast of Harrisburg, Pennsylvania. The proposed development will include space for approximately 312,000 gravesites, an administration building, maintenance complex, memorial center, commital service buildings and other associated cemetery facilities. The proposed national cemetery will be an integral part of the national cemetery system and will provide burial benefits for approximately 1,500,000 veterans living within the service range of the facility. Comments made by: COE, USA, USDA, VA, DOI, USN, EPA, DOT, State and local agencies. (EIS Order No. 90567.)

EIS's Filed During the Week of June 4 to 8, 1979

[Statement Title Index—by State and County]

State	County	Status	Statement title	Accession No.	Date filed	Orig. agency No.
South Carolina	Charleston	Draft	Folly Beach, Beach Erosion Control	90571	06-07-79	COE
	Anderson	Final	Fifth Unit Installation, Hartwell Lake, Savannah River.	90558	06-04-79	COE
Alabama	Tallapoosa	Draft	High Service Transmission Main, Alexander City	90557	06-04-79	HUD
Atlantic Ocean		Supple	Surf Clam and Ocean Quahog Industries, FMP (DS-2).	90575	06-08-79	DOC
Colorado	Sweetwater	Draft	Three Corners Area Grazing Management	90569	06-08-79	DOI
Florida	Monroe	Draft	Key West Naval Air Station, Disposal of Property	90556	06-05-79	GSA
Georgia	Hart	Final	Fifth Unit Installation, Hartwell Lake, Savannah River.	90559	06-04-79	COE
Idaho	Bonner	Final	Boulder Planning Unit Land Mgmt. Plan	90560	06-05-79	USDA
	Boundary	Final	Boulder Planning Unit Land Mgmt. Plan	90560	06-05-79	USDA
Indiana	Hamilton	Draft	Sunblest Subdivision, Mortgage Insurance, Fishers	90562	06-07-79	HUD
Iowa	Polk	Final	West Des Moines—Des Moines Flood Protection	90555	06-04-79	COE
Minnesota	Dakota	Final	Lexington South Development, Eagan	90561	06-08-79	HUD
		Final	Blackhawk Park Planned Unit Development, Eagan.	90563	06-08-79	HUD
New Hampshire	Merrimack	Supple	I-393 Interchange, Fort Eddy Road, Concord	90566	06-05-79	DOT
New Mexico	Chaves	Draft	East Roswell Grazing Management Program	90568	06-08-79	DOI
	Eddy	Draft	East Roswell Grazing Management Program	90568	06-08-79	DOI
	Lea	Draft	East Roswell Grazing Management Program	90568	06-08-79	DOI
Ohio	Franklin	Final	Metropolitan Area WWT Facilities, Columbus	90570	06-08-79	EPA
Oregon	Marion	Final	Pine to Trade Street, Front Street Bypass, Salem	90565	06-07-79	DOT
	Coos/Douglas/Lane	Supple	Oregon Dunes NRA Management Plan, Siuslaw National Forest.	90554	06-04-79	USDA
Pennsylvania	Lebanon	Final	National Cemetery, Indiantown Gap	90567	06-07-79	VA
Utah	Uintah/Daggett	Draft	Three Corners Area Grazing Management	90569	06-08-79	DOI
	Rich	Draft	Randolph Planning Unit Grazing Management Plan	90564	06-08-79	DOI
Texas	Arkansas/Nueces/San Patricio	Supple	Corpus Christi Ship Channel, M/D (FS-1)	90553	06-04-79	COE
Washington	Okanogan/Douglas	Supple	BPA Okanogan Area Service, Facility Location (DS-2).	90574	06-08-79	DOE

Appendix II.—*Extension/waiver of review periods on EIS's filed with EPA*

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Waiver/ extension	Date review terminates
None.					

Appendix III.—*EIS's filed with EPA which have been officially withdrawn by the originating agency*

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Date of withdrawal
None.				

Appendix IV.—Notice of official retraction

Federal agency contact	Title of EIS	Status/number	Date notice published in "Federal Register"	Reason for retraction
None.				

Appendix V.—Availability of reports/additional information relating to EIS's previously filed with EPA

Federal Agency Contact	Title of Report	Date made available to EPA	Accession No.
U.S. DEPARTMENT OF DEFENSE, ARMY			
Col. Charles E. Sell, Chief of the Environmental Office Headquarters DAEN-ZCE, Office of the Assistant Chief of Engineers, U.S. Department of the Army, Room 1E676, Pentagon, Washington, DC 20310, (202) 694-4269.	National Training Center: Fort Irwin Site, Fort Irwin, California.	05/08/79	09572.

Appendix VI.—Official correction

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	correction
None.				

[FR Doc. 79-18940 Filed 6-14-79; 8:45 am]
BILLING CODE 6560-01-M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 117
Friday, June 15, 1979

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

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1

June 13, 1979.

COUNCIL ON ENVIRONMENTAL QUALITY.

TIME AND DATE: Thursday, June 21, 1979, 11:30 a.m.

PLACE: Conference Room, 722 Jackson Place, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Old Business.
2. Status Report on Agricultural Lands Study.
3. Briefing on status of agency Endangered Species Act consultations involving proposed Pittston refinery.
4. Briefing on status of agency NEPA implementing procedures.
5. Briefing on Synfuels legislation.

CONTACT PERSON FOR MORE INFORMATION: Foster Knight, 395–4616.

[S–1191–79 Filed 6–13–79; 3:01 pm]

BILLING CODE 3125–01–M

2

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Wednesday, June 20, 1979 at 10 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:
Compliance. Personnel.

* * * * *

DATE AND TIME: Thursday, June 21, 1979, at 10 a.m.

STATUS: Portions of this meeting will be open to the public and portions will be closed.

MATTERS TO BE CONSIDERED:

Setting of dates for future meetings.
Correction and approval of minutes.
Thresholds for review of Presidential disclosure reports.
Convention financing regulations.
1980 Elections and related matters.
Financial control and compliance manual for Presidential candidates.
Budget execution report.
Pending legislation.
Appropriations and budget.
Classification actions.
Routine administrative matters.

Portions closed to the public:

Any matters not concluded on June 20, 1979.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred S. Eiland, Public Information Officer, Telephone: 202–523–4065.

Marjorie W. Emmons,
Secretary to the Commission.

[S–1188–79 Filed 6–13–79; 3:32 pm]

BILLING CODE 6715–01–M

3

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Published June 11, 1979, 44 FR 33547.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: June 13, 1979, 10 a.m.

CHANGE IN MEETING: Addition to the agenda meeting of June 13, 1979.

Item No., Docket No., and Company

M–1. RM79– , Small Power Production and Cogeneration Facilities—Qualifying Status.

M–10. GP79– , State of Montana Section 102 NGPA Determination Shell Oil Company Eight Wells.

CP–4(B). RM79– , Final Part 284 Regulation Under The Natural Gas Policy Act of 1978.

Kenneth F. Plumb,
Secretary.

[S–1190–79 Filed 6–13–79; 3:42 pm]

BILLING CODE 6740–02–M

4

FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 44, No. 113, Page 33548, June 11, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m., June 14, 1979.

PLACE: 1700 G Street NW., Sixth Floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Franklin O. Bolling, (202–377–6677).

CHANGES IN THE MEETING:

The following items have been added to the agenda for the open meeting:

Consideration of Collateralization of Bank Advances.

Consideration of Bank Board Resolution Regarding Executive Order 12044.

No. 247, June 13, 1979.

[S–1189–79 Filed 6–13–79; 3:45 pm]

BILLING CODE 6720–01–M

5

FEDERAL RESERVE SYSTEM (BOARD OF GOVERNORS).

TIME AND DATE: 10 a.m., Wednesday, June 20, 1979.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of their routine nature, no substantive discussion of the following item is anticipated. These matters will be resolved with a single vote unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed extension of the Survey of Six-Month Money Market Time Deposits (FR 2042).
2. Proposed extension of the Survey of Debits to Demand and Savings Deposits Accounts (FR 2573).
3. Report to the Comptroller of the Currency regarding the competitive factors involved in the proposed merger of The Peoples Bank, Cave City, Kentucky, with The New Farmers National Bank of Glasgow, Glasgow, Kentucky.
4. Proposed amendments to Regulation F (Securities of Member Banks) to maintain substantial similarity with rules of the Securities and Exchange Commission.

Discussion Agenda

1. Proposed regulation prescribing, among other things, certain exceptions for interlocking relationships that would otherwise be prohibited by Title II of the Financial Institutions Regulatory and Interest Rate Control Act. (Proposed earlier for public comment; docket no. R–0139).
2. Proposed revised amendments to Regulation H (Membership of State Banking Institutions in the Federal Reserve System) to require that State member banks that effect certain securities transactions for customers provide confirmation and maintain certain records with respect to such transactions. (Proposed earlier for public comment; docket no. R–0142).
3. Any agenda items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board: (202) 452–3204.

Dated: June 13, 1979.

Griffith L. Garwood,
Deputy Secretary of the Board.

[S–1187–79 Filed 6–13–79; 11:44 am]

BILLING CODE 6210–01–M

Reader Aids

Federal Register

Vol. 44, No. 117

Friday, June 15, 1979

INFORMATION AND ASSISTANCE

Questions and requests for specific information may be directed to the following numbers. General inquiries may be made by dialing 202-523-5240.

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/OHMO	USDA/FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
DOT/UMTA*	MSPB/OPM		DOT/UMTA*	MSPB/OPM
DOT/FRA*	LABOR		DOT/FRA*	LABOR
CSA	HEW/FDA		CSA	HEW/FDA

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

*NOTE: As of June 14, 1979, the Urban Mass Transportation Administration and Federal Railroad Administration, Department of Transportation, will publish on the Monday/Thursday schedule.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.

Rules Going Into Effect Today

CIVIL AERONAUTICS BOARD

28656 5-16-79 / Revocation of reporting data pertaining to freight loss and damage claims by certificated route air carriers

FEDERAL EMERGENCY MANAGEMENT AGENCY

31176 5-31-79 / Transfer and redesignation of Federal Insurance Administration regulations

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Food and Drug Administration—

28321 5-15-79 / Ferric ammonium ferrocyanide; revision of standard

INTERIOR DEPARTMENT

Fish and Wildlife Service—

29695 5-23-79 / National Bison Range and Satellite Areas; sport fishing regulations

NATIONAL CREDIT UNION ADMINISTRATION

27379 5-10-79 / Fees paid by Federal credit unions

List of Public Laws

Last Listing June 12, 1979

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202-375-3030).

H.R. 2805 / Pub. L. 96-19 To make technical and conforming changes to the financial disclosure provisions in the Ethics in Government Act of 1978. (June 13, 1979; 93 Stat. 37) Price: $.70.

S. 348 / Pub. L. 96-20 To authorize the President of the United States to present on behalf of the Congress a specially struck gold medal to Ben Abruzzo, Maxie Anderson, and Larry Newman. (June 13, 1979; 93 Stat. 45) Price: $.60.

S. 613 / Pub. L. 96-21 Authorizing the President of the United States to present a gold medal to the widow of Hubert H. Humphrey. (June 13, 1979; 93 Stat. 46) Price: $.60.

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**See the April 1979 Federal Register Index for the list of independent agencies in each volume.*

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Minimum Wages for Federal and Federally Assisted Construction

Part III—HEW/Sec'y:
Day Care; Proposed Revisions and Meetings

Part IV—EPA:
Modification of Secondary Treatment Requirements for Discharges Into Marine Waters

Part V—Interior/BLM:
Management of Off-Road Vehicle Use on Public Lands

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Friday
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Federal Register

Part II

Department of Labor

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General Wage Determination Decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General Wage Determination Decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and Supersedeas Decisions to General Wage Determination Decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the Modifications and Supersedeas Decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 224–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing General Wage Determination Decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and Supersedeas Decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Construction Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Wage Determination Decision.

Modifications to General Wage Determination Decisions

The number of the decisions being modified and their dates of publication in the Federal Register are listed with each State.

Alabama	
AL78–1044	Apr. 28, 1978.
AL78–1060	Sept. 22, 1978.
District of Columbia	
DC78–3098	Dec. 15, 1978.
Florida	
FL77–1060	May 20, 1977.
FL78–1024	Feb. 2, 1979.
Illinois	
IL78–2039; IL78–2129	Oct. 27, 1978.
IL78–2143; IL78–2165	Dec. 8, 1978.
IL79–2027; IL79–2028; IL79–2029; IL79–2031; IL79–2033	May 4, 1979.
IL79–2034; IL79–2035; IL79–2037; IL79–2038	May 11, 1979.
IL79–2094	Oct. 20, 1979.
Indiana	
IN79–2002; IN79–2003; IN79–2004	Jan. 26, 1979.
Iowa	
IA78–4100; IA78–4101; IA78–4102; IA78–4103; IA78–4104; IA78–4105; IA78–4106; IA78–4107; IA78–4108; IA78–4109; IA78–4110; IA78–4111; IA78–4112	Nov. 24, 1978.
Kansas	
KS78–4006; KS78–4009	Feb. 3, 1978.
Michigan	
MI79–2020	June 1, 1979.
Virginia	
VA78–3074; VA78–3075; VA78–3076	Nov. 3, 1978.
Wisconsin	
WI78–2146	Oct. 27, 1978.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the Federal Register are listed with each State.

Supersedeas Decision numbers are in parentheses following the numbers of the decisions being superseded.

Colorado	
CO78–5109(CO79–5117); CO78–5110(CO79–5118); CO78–5111(CO79–5119); CO78–5112(CO79–5120)	July 14, 1978.
Illinois	
IL78–2105(IL79–2051)	Oct. 20, 1978.
IL78–2123(IL79–2054)	Oct. 27, 1978.
Kansas	
KS77–4047(KS79–4007)	Feb. 25, 1977.
KS78–4007(KS79–4008)	Feb. 3, 1978.
Michigan	
MI79–2045(MI79–2057)	May 4, 1979.
Minnesota	
MN77–2032(MN79–2052)	Mar. 4, 1977.
MN77–2065(MN79–2053)	Apr. 22, 1977.

Cancellation of General Wage Determination Decisions

None

Signed at Washington, D.C. this 8th day of June 1979.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

DECISION NO. IX78-3098 - Mod. # 6 (43 FR 58723 - December 15, 1978) District of Columbia Maryland - Montgomery & Prince George's

Fringe Benefits Payments

Basic Hourly

MODIFICATIONS P. 2

MODIFICATIONS P. 1

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Decision No. AL78-1044 - Mod. #1 (43-FR-18446 - April 28, 1978) Baldwin, Choctaw, Clarke, Conecuh, Escambia, Mobile, Marengo, Monroe, Washington, and Wilcox Counties, Alabama					
DESCRIPTION OF WORK: Heavy Construction excluding Sewer and Water Line Construction					
Omit: Baldwin, Choctaw, Clarke, Conecuh, Escambia, Marengo, Monroe, Washington and Wilcox Counties.					
Decision #AL78-1080 - Mod. #2 (43 FR 43152 - September 22,1978) Calhoun County, Alabama					
Change:					
Carpenters	8.31	.50		.07	
Millwrights	8.81	.50		.07	
Sheet metal workers	10.80	.79	1.07	.11	

District of Columbia; Maryland - Montgomery & Prince George's Counties, and D. C. Training School; Virginia - Independent City of Alexandria & Arlington	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
HEAVY CONSTRUCTION EXCLUDING WATER AND SEWER LINES:					
All Counties					
BUILDING CONSTRUCTION:					
Excluding Alexandria, Virginia					
Boilermakers	$12.875	1.07	1.00		.04
Cement masons	11.04	1.055	.70		.11
Grinding machine	11.29	1.055	.70		.11
Terrazzo and Mosaic Workers	12.35	.70	.95		.04
Steamfitters	11.48	1.00	1.00		.16
Tile setters	12.25	.70	.95		.04
WATER AND SEWER LINES: (District of Columbia and Montgomery County Only)					
Cement masons	11.04	1.055	.70		.11
Decision # FL77-1060 - Mod. # 2 (42 FR-26093 - May 20, 1977) Polk County, Florida					
Omit:					
Electricians	10.80	5.5%	3%+3%	4%	.10
Add:					
Electricians:					
Industrial Manufacturing and production facilities (excl. retail food establishments); Hospitals (over 50 beds) excluding nursing homes and clinics; shopping malls with over 10 businesses; and any business complex with elevator or escalator system.					
Wiremen	10.80	5.5%	3%+3%	4%	.10
Cable splicer	11.30	5.5%	3%+3%	4%	.10
Other Building:					
Wiremen	9.57	5.5%	3%+3%	4%	.10
Cable splicer	10.07	5.5%	3%+3%	4%	.10
DECISION #FL79-1024 - Mod. #3 (44 FR 9865 - February 2, 1979) Alachua County, Florida					
Change:					
Decision #FL79-1149 - Mod. #2 as published in Federal Register of June 1, 1979 to read:					
Decision #FL79-1024 - Mod. #2					

MODIFICATIONS P. 3

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. IL78-2019 - MOD #1 (43 FR 50314 - October 27, 1978) Boone, Carroll, DeKalb, Jo-Daviess, Lee, Ogle, Stephenson, Whiteside & Winnebago Counties, Illinois					
CHANGE:					
ASBESTOS WORKERS					
Boone, Ogle, Stephenson & Winnebago Counties	$12.90	.85	.90		.07
CEMENT MASONS:					
Boone & Winnebago Counties	11.78	.55	1.00		
ELECTRICIANS:					
Boone, DeKalb, Winnebago, Stephenson, Ogle, Lee, Jo-Daviess (Warren, Rush, Nora, Stockton, Wards, Grove, Pleasant Valley, Barrenman Twps.); Carroll Co.: (Cherry Grove, Shannon, Rock Creek, Lima,					
CHANGE:					
ELECTRICIANS:					
Wysox, Elkhorn, Grove Twps.); Whiteside Co: (Genesee, Jordan, Hopkins, Sterling, Hume, Montgomery, Tampico, Hahnaman Twps. Twps.)	$12.96	.50	3%+.80		1%
PLASTERERS:					
Boone & Winnebago Counties	11.23	.55	1.00		
DECISION NO. IL78-2128 - MOD #7 (43 FR 50323 - October 27, 1978) Clark, Clay, Coles, Crawford, Cumberland, Douglas, Edgar, Edwards, Effingham, Fayette, Jasper, Lawrence, Richland, Wabash & Wayne Counties, Illinois					
CHANGE:					
CEMENT MASONS:					
Crawford, Lawrence & Wabash Counties					
Cement Masons & Plasterers	$11.05	.80	.80		
ELECTRICIANS:					
Coles & Cumberland Cos; Southern ½ of Douglas Co; Twps. of Bishop, Douglas, Lucas, Maccasin, St. Francis, Summit & Teutopuis in Effingham Co.	13.50	.50	3%+.40		.35%
PLUMBERS & STEAMFITTERS:					
Clark, Crawford, Edgar & Richland Counties	13.85	.60	1.00		.10

MODIFICATIONS P. 4

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. IL78-2143 - MOD #2 (43 FR 57781 - December 8, 1978) Bond, Calhoun, Clinton, Greene, Jersey, Macoupin, Madison, Monroe, Montgomery, St. Clair, and Washington Counties, Illinois					
CHANGE:					
LABORERS: HIGHWAY CONSTRUCTION					
ZONE I					
Area 3 - St. Clair Co. - Belleville					
Laborers	$10.60	.50	.80		.035
ZONE II					
Area 4 - Randolph Co. - Chester					
Laborers	10.30	.60	1.00		.035
ADD:					
LABORERS HIGHWAY CONSTRUCTION					
ZONE II					
Area 5 - Bond Co: Pocahantas					
Washington Co: Ashley					
Macoupin Co: Gillespie					
Laborers	11.50		.40		.035
Asphalt Raker	11.60		.40		.035
Brick Mason Tenders	12.00		.40		.035
Men working on the bottom of Sewers	11.75		.40		.035
Dynamite Men	12.925		.40		.035
Macoupin Co: Shipman					
Laborers	11.45		.45		.035
Asphalt Rakers	11.55		.45		.035
Brick Mason Tenders	11.95		.45		.035
Men working on the botton of Sewers	11.70		.45		.035
Dynamite Men	12.875		.45		.035
Area 6					
Monroe Co: Columbia					
Laborers	11.05	.50	.35		.035
Asphalt Rakers	11.15	.50	.35		.035
Brick Mason Tenders	11.55	.50	.35		.035
Men working on the bottom of Sewers	11.30	.50	.35		.035
Dynamite Men	12.475	.50	.35		.035

MODIFICATIONS P. 5

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. IL78-2166 - MOD #3 (43 FR 57767 - December 8, 1978) Adams, Brown, Cass, Hancock, Mason, Menard, Pike, Schuyler & Scott Counties, Illinois					
CHANGE:					
CEMENT MASONS:					
Adams, Brown, Cass, Hancock, Mason, Menard, Pike, Schuyler & Scott Counties	$11.78	.55	1.00		
ELECTRICIANS:					
Adams, Brown, Cass, Hancock, Mason, Menard, Pike, Schuyler & Scott Counties	12.96	.50	3%+.80		1%
PLASTERERS:					
Adams, Brown, Cass, Hancock, Mason, Menard, Pike, Schuyler & Scott Counties	11.23	.55	1.00		

MODIFICATIONS P. 6

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. IL78-2167 - MOD #3 (43 FR 57768 - December 8, 1978) Bureau, Carroll, Henry, Jo-Daviess, Lee, Ogle, Stephenson, Whiteside & Winnebago Counties, Illinois					
CHANGE:					
ASBESTOS WORKERS					
Boone, Ogle, Stephenson & Winnebago Counties	$12.90	.85	.90		.07
CEMENT MASONS:					
Boone & Winnebago Counties	11.78	.55	1.00		
ELECTRICIANS:					
Boone, DeKalb, Winnebago, Stephenson, Ogle, Lee, Jo-Daviess (Warren, Rush, Nora, Stockton, Wards, Grove, Pleasant Valley, Barrenman Twps.); Carroll Co.: (Cherry Grove, Shannon, Rock Creek, Lima,					
CHANGE:					
ELECTRICIANS:					
Wysox, Elkhorn, Grove Twps.); Whiteside Co: (Genesee, Jordan, Hopkins, Sterling, Hume, Montgomery, Tampico, Hahnaman Twps. Twps.)	$12.96	.50	3%+.80		1%
PLASTERERS:					
Boone & Winnebago Counties	11.23	.55	1.00		

DECISION NO. IL78-2166 - MOD #3 (43 FR 57767 - December 8, 1978) Kankakee County, Illinois	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
BRICKLAYERS, STONEMASONS, Marble Setters, Terrazzo Workers, Tile Setters, Pointers, Caulkers & Cleaners	$12.60	.80	.75		
CEMENT MASONS	12.60	.80	.75		
CARPENTERS:					
Building Carpenters, Millwrights, Soft Floor Layers & Piledrivermen	12.72	.65	.80		.01
Residential	7OEJR	.65	.80		.01
ELECTRICIANS:					
Building	13.80	.80	3%+.70		.2 of 1%
LABORERS:					
Unskilled	10.77	.65	.60		.035
Semi-Skilled	10.97	.65	.60		.035
Skilled	11.17	.65	.60		.035
PLASTERERS	12.40	.80	.75		
DECISION NO. IL79-2027 - MOD #1 (44 FR 26413 - May 4, 1979) Adams, Brown and Pike Counties, Illinois					
CHANGE:					
CARPENTERS:					
Adams County					
Carpenters & Soft Floor Layers	$11.30	.65	.45		.02
Millwrights & Piledrivermen	11.55	.65	.45		.02
ELECTRICIANS:					
Adams County	11.77	.50	3%+1.00		1%
PLUMBERS & STEAMFITTERS	12.85	.35	.60		.05
DECISION NO. IL79-2029 - MOD #1 (44 FR 26419 - May 4, 1979) Fulton, Hancock, McDonough & Schuyler Counties, Illinois					
CHANGE:					
LABORERS:					
Hancock & McDonough Counties:					
Unskilled	10.87	.55	.60		.035
Semi-Skilled	11.07	.55	.60		.035
Skilled	11.27	.55	.60		.035
PAINTERS:					
Hancock & McDonough Counties					
Brush	11.50				
Structural Steel & Spray	12.00				
PLUMBERS & STEAMFITTERS:					
Fulton & McDonough Counties	13.22	.35	.35	4%	

DECISION NO. IL79-2031 - MOD #1 (44 FR 26424 - May 4, 1979) Bureau, LaSalle, Livingston, Marshall, Putnam and Woodford Counties, Illinois	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
CARPENTERS:					
Remainder of Livingston County:					
Carpenters, Soft Floor Layers	$12.61	.40	.75		.05
Millwrights, Piledrivermen	13.11	.40	.75		.05
ELECTRICIANS:					
Northern Half and Central Sourthern part of LaSalle Co. Walnut; Ohio, LaMoille, Clarion, Bureau, Dover, Verlin and Westville, Townships in Bureau County	13.93	.88	3%+.70		.2 of 1%
Vicinity of LaSalle - S.W. part of County; Remainder of Putnam County; Ariepe, Concord Fairfield, Cold, Greenville, Hall, Indianatown, Leepertown, Macon, Manilus, Milo, Mineral, Neponset, Princeton, Sibley Wheatland, and Wayner Townships, in Bureau County	13.80	.50	3%+.50		.25%
LABORERS:					
LaSalle County					
Streator & Vicinity, LaSalle & Vicinity					
Unskilled	10.67	.55	.80		.035
Semi-Skilled	10.87	.55	.80		.035
Skilled	11.07	.55	.80		.035
Marseilles & Vicinity, Ottawa & Vicinity					
Unskilled	10.77	.45	.80		.035
Semi-Skilled	10.97	.45	.80		.035
Skilled	11.17	.45	.80		.035
Bureau, Livingston & Woodford Counties					
Unskilled	10.67	.55	.80		.035
Semi-Skilled	10.87	.55	.80		.035
Skilled	11.07	.55	.80		.035
Marshall County					
Unskilled	10.87	.55	.60		.035
Semi-Skilled	11.07	.55	.60		.035
Skilled	11.27	.55	.60		.035

DECISION NO. IL79-2033 - MOD #1
(44 FR 26432 - May 4, 1979)
McLean County, Illinois

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
BRICKLAYERS:					
Bricklayers, Stonemasons, Marble, Tile & Terrazzo Workers	$12.16	.70	1.00		
CEMENT MASONS	12.64	.75			
ELECTRICIANS:					
Remainder of County	12.85	.50	3%+.55		.002
LABORERS:					
Unskilled	10.67	.75	.60		.035
Semi-Skilled	10.87	.75	.60		.035
Skilled	11.07	.75	.60		.035
PLASTERERS	13.06				.01

DECISION NO. IL79-2034 - MOD #2
(44 FR 27856 - May 11, 1979)
Macon, DeWitt, Christian, Piatt, Moultrie, Shelby & Macoupin Counties, Illinois

CHANGE:					
ELECTRICIANS:					
Macoupin County:					
Remainder of County	$12.73	47	3%+.65	6%	.25%
Macon & Christian Counties; DeWitt County (Townships of Wapella, Barnett, Clintonia, Harp, DeWitt, Turnbridge, Texas, Creek and Nixon); Piatt County: (Townships of Goose Creek, Willow Branch, Cerro Gordo, Bement and Unity); Shelby County: (Townships of Moweaqua, Penn, Flat Branch, Pickaway, Todds Point, Rural, Ridge, Okaw, Tower Hill, Rose, Shelbyville, Oconee, Cold Spring, Lakewood, Clarkburg, Herrick, Dry Point and Holland)					

DECISION NO. IL79-2034 - MOD #2 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
ELECTRICIANS:					
Moultrie County: (Townships of Dora, Lovington, Marrowbone and Sullivan at the Illinois Masonic Home and Farm in East Nelson)	$13.50	.50	3%+.40		.35%
Remainder of Moultrie & Shelby Counties	13.50	.50	3%+.40		.35%
Remainder of Piatt County	13.45	.50	3%+.40		.3%
PLUMBERS AND STEAMFITTERS:					
Macon; DeWitt; Moultrie Counties: (Townships of Pana, Assumption and Radford in Christian County; West of Route #105 in Piatt County); Shelby County: (East of Route #105 in Piatt County)	13.75	.35	1.00		.15
ROOFERS:					
Macon; Shelby; Moultrie; DeWitt County: (Southern Half of County, including Clinton); Christian County: (Townships of Assumption; Pinkle, Dollville, Owaneea, Pana, Radford, Rosamond, Stonington, Velma, Vanderville & Willeys)	12.93	.30	.40		.02

DECISION NO. IL79-2036 - MOD #2
(44 FR 27864 - May 11, 1979)
Peoria and Tazewell Counties, Illinois

CHANGE:					
CEMENT MASONS	$11.86	1.00	1.00		.05
ELECTRICIANS	12.92	.50	3%+1.00		3/4 of 1%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. IL79-2037 - MOD #1 (44 FR 27867 - May 11, 1979) Alexander, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jefferson, Johnson, Marion, Massac, Perry, Pope, Pulaski, Saline, Union, White & Williamson Counties, Illinois					
CHANGE:					
CARPENTERS:					
Remainder of Counties:					
Carpenters, Piledrivermen, Millwrights & Soft Floor Layers	$10.90	.50	.60		.05
Marion County					
Carpenters, Piledrivermen & Soft Floor Layers	10.76	.65	.80		.03
Millwrights	11.11	.65	.80		.03
CEMENT MASONS:					
Centralia & Vicinity					
Cement Masons & Plasterers	11.25				.01
DECISION NO. IL79-2038 - MOD #1 (44 FR 26415 - May 4, 1979) Champaign and Vermilion Counties, Illinois					
CHANGE:					
CARPENTERS:					
Vermilion County:					
North of Rossville					
Carpenters, Soft Floor Layers Millwrights & Piledrivermen	12.72	.65	.80		.01
Remainder of County:					
Carpenters & Soft Floor Layers	12.395	.75	.80		.05
Millwrights & Piledrivermen	12.895	.75	.80		.05
CEMENT MASONS:					
Champaign County	12.575	.45	.25		.025
ELECTRICIANS:					
Champaign County	13.45	.50	3%+.40		.3%
Vermilion County	13.17	.50	3%+.30		.25%
SHEET METAL WORKERS	11.94	.60+c	.67		
POWER EQUIPMENT OPERATORS:					
Class I	12.20	.75	.75		.08
Class II	12.10	.75	.75		.08
Class III	11.90	.75	.75		.08
Class IV	8.00	.75	.75		.08

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. IL79-2038 - MOD #1 (44 FR 27871 - May 11, 1979) Sangamon County, Illinois					
CHANGE:					
CARPENTERS:					
Residential Housing - 1+2 Family Dwellings (except Building (high rise) or Steel Concrete Construction)	$ 9.20	.55	.45		.06
ELECTRICIANS:					
Building	13.17	.50	3%+.70		1/10 of 1%
PAINTERS:					
Brush & Roller	10.95	.50	.60		
Spray	11.45	.50	.60		
DECISION NO. IL79-2094 - MOD #4 (43 FR 49159 - October 20, 1978) DuPage, Grundy, Kane, Kendall, Lake, McHenry and Will Counties, Illinois					
CHANGE:					
ELECTRICIANS:					
DuPage County	$14.20	5%	9%	8%	1%
ELEVATOR CONSTRUCTION:					
DuPage, DeKalb, Lake and Will Counties					
Constructors	13.20	.745	.56	a+b	.025
Helpers	70%JR	.745	.56	a+b	.025
Helpers (Prob.)	50%JR	.745	.56	a+b	.025
PLASTERERS:					
Southern Kane, DeKalb and Kendall Cos.	12.22	.75	.70		
PLUMBERS, PIPEFITTERS & STEAMfitters:					
Will (City limits of Joliet) County; and Grundy (E. of RT. #47) County:					
Plumbers & Pipefitters	13.85	.85	.87		.10

MODIFICATIONS P. 11

DECISION NO. IN79-2002 - MOD #2
(44 FR 5606 - January 26, 1979)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Adams, Allen, Bartholomew, Benton, Blackford, Boone, Cass, Clinton, DeKalb, Delaware, Fountain, Fulton, Grant, Hamilton, Hancock, Hendricks, Howard, Huntington, Jay, Johnson, Madison, Marion, Miami, Monroe, Montgomery, Morgan, Noble, Shelby, Steuben, Tippecanoe, Tipton, Wabash, Warren, Wells, White, & Whitley Cos., Indiana					
Change:					
Boilermakers	$13.25	1.175	1.00		.03
Bricklayers; Caulkers; Cleaners; Pointers; & Stonemasons:					
Benton, Clinton, Fountain, Tippecanoe, Warren, & White Cos.	11.99	.48	.60		.02
Blackford, Delaware, Hamilton, Jay, Madison, & Tipton Cos.	11.89	.30	.75		.01
Cass & Fulton Cos.	11.10	1.00	.40		
Howard & Miami Cos.	11.08	.95	1.00		.05
Shelby Co.	11.30				
Carpenters; Millwrights; Piledrivermen; & Soft Floor Layers:					
Adams, Cass, Fulton, Grant, Howard, Huntington, Miami, Tipton, Wabash, & Wells Cos.:					
Carpenters; Soft Floor Layers	11.23	.80	.60		.05
Millwrights	11.73	.80	.60		.05
Piledrivermen	11.43	.80	.60		.05
Bartholomew (Camp Atterbury), Boone, Fountain, Hamilton, Hancock, Hendricks, Johnson (excl. Edinburgh), Marion, Montgomery, Morgan (excl. Twps. of Washington & Baker), Shelby (Camp Atterbury Area, Moral, & Van Buren Twps.), & Warren Cos.:					
Carpenters; Millwrights	13.15	.75	.85		.08

MODIFICATIONS P. 12

DECISION NO. IN79-2002 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Cement Masons:					
Benton, Cass, Clinton, Fountain, Howard, Miami, Montgomery, Tippecanoe, Warren, & White Cos.	$10.75	.60	.75		
Boone, Hamilton (S. ½ of Co., N. to new Rte. Indiana Hwy. #32 incl. Noblesville), Hancock (Southern & Western part of Co., N. to but not incl. town of Wilkinson, & E. to, but not incl. town of Fortville), Hendricks, Johnson, Marion, Morgan (N ½), & Shelby (ending at Pleasant View) Cos.	11.16	.75	.75		.04
Fulton Co.	11.23	.85	.80		.04
Electricians:					
Adams, Allen, DeKalb, Huntington, Noble, Steuben, Wells, & Whitley Cos.	12.70	.50	3%+.50		.06
Bartholomew, Boone, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Montgomery, Morgan, & Shelby Cos.	13.25	4%	7%		½
Blackford, Delaware, & Jay Cos.	12.40	.50	3%+.30		.2%
Fountain & Warren Cos.	13.17	.50	3%+.50		.25%
Ironworkers:					
Adams, Allen, Blackford, DeKalb, Delaware (Northeastern 1/3 of Co.), Grant (Excluding Southwestern portion), Huntington, Jay, Noble, Steuben, Wabash, Wells, & Whitley Cos.	12.35	1.00	1.70		.02
Lathers:					
Benton, Cass, Clinton, Howard, Montgomery, Tippecanoe, Warren, & White Cos.	11.29	.55	.35		.01

MODIFICATIONS P. 13

MODIFICATIONS P. 14

DECISION NO. IN79-2002 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Marble Setters; Terrazzo Workers; & Tile Setters:					
Blackford, Delaware, Hamilton, Jay, Madison, & Tipton Cos.:					
Tile Setters	$11.60	.50	.75		.01
Boone, Hancock, Hendricks, Johnson, Marion, Montgomery, & Morgan Cos.:					
Marble Setters; Tile Setters	12.61	.50	.55		.04
Terrazzo Workers	12.35	.50	.55		.03
Cass & Fulton Cos.	10.49	1.00	.90		.02
Howard & Miami Cos.	11.08	.95	1.00		.05
Marble Setters' Finishers; Terrazzo Workers' Finishers; & Tile Setters' Finishers:					
Adams, Bartholomew, Blackford, Boone, Clinton, Delaware, Fountain, Grant, Hamilton, Hancock, Hendricks, Howard, Huntington, Jay, Johnson, Madison, Marion, Monroe, Montgomery, Morgan, Tippecanoe, Tipton, Wabash, & Wells Cos.:					
Marble Setters' Finishers & Tile Setters' Finishers	10.40				
Painters:					
Adams, Allen, DeKalb, Grant, Huntington, Noble, Steuben, Wabash, Wells (N ½ to & incl. Bluffton), & Whitley Cos.:					
Brush; Paperhangers; Rollers; & Tapers	9.90	.60	.85		.12
Sandblasters; Spray; Steamcleaning & Pressure Waterblasting	10.90	.60	.85		.12

DECISION NO. IN79-2002 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Blackford, Cass, Delaware, Fulton, Howard, Jay, Madison, Miami, Tipton, & Wells (To the South City limits of Bluffton) Cos.:					
Brush; Taping	$9.95		.70		
Pressure Cleaning Equipment; Sandblasters; Spray	10.95		.70		
Boone, Hamilton, Hancock, Hendricks, Johnson, Marion, Morgan (N ½), & Shelby Cos.:					
Brush; Drywall Tapers & Finishers; Rollers	11.24	.78	.48		
Sandblasters; Spray	12.24	.78	.48		
Plasterers:					
Bartholomew & Shelby Cos.	11.00				
Boone, Hamilton (So. ½ No.. to new Indiana Rte.. #32), Hancock (So. & Western part No. to State Rd. #234 & E. to Co. Rd. #300 - W.), Hendricks, Johnson, Marion, & Morgan (N ½) Cos.	11.52	.80			.01
Fulton Co.	10.99	.85	.90		.04
Plumbers; Steamfitters:					
Benton, Clinton, Fountain, Montgomery, Tippecanoe, Warren, & White Cos.	13.85	.60	1.00		.10
Roofers:					
Benton, Cass, Clinton, Fountain, Montgomery, Tippecanoe, Warren, & White Cos.:					
Composition, Damp & Waterproof	12.20	.60	.38		
Slate, Tile, & Asbestos	12.45	.60	.38		
Sheet Metal Workers:					
Adams, Allen, Blackford, Cass, DeKalb, Grant, Howard, Huntington, Jay, Miami, Noble, Steuben, Wabash, Wells, & Whitley Cos.	12.57	.50+g	.60		.12

MODIFICATIONS P. 15

DECISION NO. IN'9 2002 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and or Appr. Tr.
Benton, Clinton, Fountain, Montgomery, Tippecanoe, Warren, & White Cos.	$12.15	.70+g	.55		.05
Fulton Co.	11.88	.75	.625		.07
Truck Drivers:					
Benton, Cass, Clinton, Fountain, Howard, Miami, Montgomery, Tippecanoe, Tipton, Wabash, Warren, & White Cos.					
Pickups when Hauling Equipment, etc.	8.23	$20.00h	$34.00h	i	
Helpers: Greaser; Tiremen	8.33	20.00h	34.00h	i	
Single Axle-straight Trucks; Warehousemen	8.38	20.00h	34.00h	i	
Mechanics	8.68	20.00h	34.00h	i	
Tandem Axle & Dog-eg Straight Trucks	8.48	20.00h	34.00h	i	
Bituminous Distributors	8.53	20.00h	34.00h	i	
Tri axles, Semis	8.68	20.00h	34.00h	i	
Bartholomew, Blackford, Delaware, Grant, Hamilton, Hancock, Jay, Madison, & Monroe Cos.:					
Group 1	$9.65	$35.50a	$23.00a	b & c	
Group 2	9.70	35.50a	23.00a	b & c	
Group 3	9.75	35.50a	23.00a	b & c	
Group 4	9.80	35.50a	23.00a	b & c	
Group 5	9.85	35.50a	23.00a	b & c	
Group 6	9.90	35.50a	23.00a	b & c	
Group 7	10.00	35.50a	23.00a	b & c	
Group 8	10.05	35.50a	23.00a	b & c	
Group 9	10.10	35.50a	23.00a	b & c	
Group 10	10.15	35.50a	23.00a	b & c	
Group 11	10.30	35.50a	23.00a	b & c	

MODIFICATIONS P. 16

DECISION NO. IN'9 2002 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and or Appr. Tr.
Power Equipment Operators: Adams, Allen, Benton, Blackford, Cass, Clinton, DeKalb, Delaware, Grant, Hamilton, Hancock, Howard, Huntington, Jay, Johnson, Madison, Marion, Miami, Shelby, Steuben, Tippecanoe, Tipton, Wabash, Wells, White, & Whitley Cos.:					
Group 1	12.70	.55	.65		.10
Group 2	11.75	.55	.65		.10
Group 3	9.65	.55	.65		.10
Group 4	8.55	.55	.65		.10
Add:					
Cement Masons:					
Bartholomew & Shelby Cos.	11.00				

DECISION NO. IN'9 2003 - MOD. #2
44 FR 5614 - January 26, 1979

Brown, Clark, Crawford, Dearborn, Decatur, Fayette, Floyd, Franklin, Harrison, Henry, Jackson, Jefferson, Jennings, Lawrence, Ohio, Orange, Randolph, Ripley, Rush, Scott, Switzerland, Union, Washington, & Wayne Cos., Indiana					
Change:					
Asbestos Workers:					
Dearborn, Fayette, Franklin, Ohio, Ripley, Switzerland, & Union Cos.	14.26	.75	1.00		.02

MODIFICATIONS P. 17

MODIFICATIONS P. 18

DECISION NO. IN79-2003 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Randolph & Wayne Cos.	$12.87	.55	1.50		.02
Boilermakers:					
Brown, Crawford, Decatur, Fayette, Franklin, Henry, Jackson, Jennings, Lawrence, Ohio, Orange, Randolph, Ripley, Rush, Union, Washington & Wayne Cos.	13.25	1.175	1.00		.03
Bricklayers; Caulkers; Cleaners; Pointers; & Stonemasons:					
Clark, Floyd, & Harrison Cos.	11.44	.50	.40		.01
Dearborn, Decatur, & Ripley Cos.	11.35		.30		
Henry & Randolph Cos.	11.85	.50	.75		.01
Cement Masons; Plasterers:					
Brown, Jackson, Jefferson, Jennings, Lawrence, Orange, Scott, & Washington Cos.	11.00				
Electricians:					
Brown Co.	12.40	.50	3%+.70		.01
Crawford, Lawrence, & Orange Cos.	13.43	.50	3%		4%
Dearborn, Ohio, & Switzerland Cos.:					
Up to & incl. 18 mi. radius from Hamilton Co. Court House, Cincinnati, Ohio	13.50	.70	3%+.60		4%
Over 18 mi. radius up to & incl. 21 mi. radius from Hamilton Co. Court House, Cincinnati, Ohio	13.80	.70	3%+.60		4%
Over 21 mi. radius up to & incl. 25 mi. radius from Hamilton Co. Court House, Cincinnati, Ohio	13.90	.70	3%+.60		4%
Over 25 mi. radius from Hamilton Co. Court House, Cincinnati, Ohio	14.05	.70	3%+.60		4%
Decatur, Jennings, Ripley, & Rush Cos.	13.85	4%	7%		4%

DECISION NO. IN79-2003 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Fayette, Franklin, Henry, Randolph, Union, & Wayne Cos.	$12.40	.50	3%+.30		.2%
Elevator Constructors:					
Brown, Decatur, Henry, & Rush Cos.:					
Elevator Constructors	11.92	.745	.56	a&b	.035
Clark, Crawford, Floyd, Harrison, Jackson, Jefferson, Jennings, Lawrence, Orange, Scott, & Washington Cos.:					
Elevator Constructors	11.895	.745	.56	a&b	.035
Dearborn, Fayette, Franklin, Ohio, Ripley, Switzerland, Union, & Wayne Cos.:					
Elevator Constructors	12.36	.745	.56	a&b	.035
Randolph Co.:					
Elevator Constructors	11.635	.745	.56	a&b	.035
Ironworkers:					
Dearborn, Decatur (Rem. of Co.), Fayette (S/E 2/3), Franklin (Rem. of Co.), Jefferson (NE Tip), Jennings (N/E 1/3), Ohio, Ripley, Switzerland (Rem. of Co.), & Union (S 1/3) Cos.:					
Ornamental; Structural	13.08	1.00	1.45		.03
Reinforcing	12.18	1.00	2.25		.02
Randolph (N part of Co. excluding Union City but including Winchester) Co.	12.35	1.00	1.70		.02
Marble Setters; Terrazzo Workers; Tile Setters:					
Henry & Randolph Cos.:					
Tile Setters	11.60	.50	.75		.01
Marble Setters' Finishers; Terrazzo Workers' Finishers; & Tile Setters' Finishers:					
Brown, Fayette, Franklin, Henry, Jackson, Jennings, Randolph, Rush, Union, & Wayne Cos.:					
Marble Setters' Finishers; Tile Setters' Finishers	10.40				
Terrazzo Workers' Finishers	10.55				

DECISION NO. IN79-2003 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Plumbers & Steamfitters:					
Dearborn, Ohio & Ripley Cos.:					
Plumbers; Gas Fitters	$13.82	1.05	1.20		.07
Roofers:					
Dearborn, Ohio & Ripley Cos.:					
Roofers	14.32		.85		.01
Pitch	15.32		.85		.01
Sheet Metal Workers:					
Clark, Floyd, & Harrison Cos.	12.28	.90+a	1.26		.15
Crawford, Jefferson, Scott, & Switzerland Cos.	13.53	.90+a	1.26		.15
Dearborn & Ohio Cos.	12.835	1.06	.85		.06
Power Equipment Operators:					
Fayette, Henry, Randolph, Rush, Union, & Wayne Cos.:					
Group 1	12.70	.55	.65		.10
Group 2	11.75	.55	.65		.10
Group 3	9.65	.55	.65		.10
Group 4	8.55	.55	.65		.10
Truck Drivers:					
All Counties, except Crawford					
Group 1	9.65	$35.50a	$23.00a	b & c	
Group 2	9.70	35.50a	23.00a	b & c	
Group 3	9.75	35.50a	23.00a	b & c	
Group 4	9.80	35.50a	23.00a	b & c	
Group 5	9.85	35.50a	23.00a	b & c	
Group 6	9.90	35.50a	23.00a	b & c	
Group 7	10.00	35.50a	23.00a	b & c	
Group 8	10.05	35.50a	23.00a	b & c	
Group 9	10.10	35.50a	23.00a	b & c	
Group 10	10.15	35.50a	23.00a	b & c	
Group 11	10.30	35.50a	23.00a	b & c	

DECISION NO. IN79-2004 - MOD #2
(44 FR 5621 - January 26, 1979)
Clay, Daviess, Greene, Knox, Martin, Parke, Putnam, Sullivan, Vanderburgh, Vermillion & Vigo Counties, Indiana

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
BOILERMAKERS	$13.25	1.175	1.00		.03
CARPENTERS; Millwrights; Pile-drivermen; & Soft Floor Layers:					
Clay (N. of Hwy 246 including Brazil), Parke (except east of Twps. of Jessup, Rosedale, Carbondale, & Portland), Vermillion (South of Summit Grove) & Vigo Cos.:					
Millwrights	13.15	.75	.85		.08
CEMENT MASONS:					
Daviess, Knox & Martin Cos.	11.05	.80	.80		
ELECTRICIANS:					
Clay, Greene, Knox (Electrical contracts over $5,000.00), Parke, Sullivan & Vigo Cos.	12.80	.50	3%+.70		.01
Daviess, Martin & Vanderburgh Cos.	13.45	.50	3%		½%
Knox (Electrical contracts under $5,000.00) Co.	12.40	.50	3%+.70		.01
Putnam Co.	13.25	4%	7%		½%
Vermillion Co.	13.17	.50	3%+.50		.25%
IRONWORKERS (except Vanderburgh Co.)	11.85	1.00	1.30		.10
MARBLE SETTERS' FINISHERS & Tile Setters' Finishers:					
Remaining Cos.	10.40				
PAINTERS:					
Parke & Vermillion Cos.:					
Brush; Paperhangers; Tapers	10.65			.50	
Sandblasting	12.65			.50	
Spray	12.15			.50	
PLASTERERS:					
Daviess, Knox & Martin Cos.	11.05	.80	.80		
Vanderburgh Co.	12.38				
PLUMBERS; Steamfitters: Clay, Greene, Knox (N. of Hwy #50), Parke, Putnam, Sullivan, Vermillion & Vigo Cos.	13.85	.60	1.00		.10
OMIT:					
TERRAZZO WORKERS' FINISHERS: Parke, Vermillion, & Vigo Cos.	$ 7.40	.40	.70		.01
ADD:					
TERRAZZO WORKERS' FINISHERS: Clay, Daviess, Greene, Knox, Martin, Parke, Putnam, Sullivan, Vermillion & Vigo Cos.	10.55				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Decision #IA78-4100-Mod. #2 (43 FR 55161-November 24,1978) Building Black Hawk County, Iowa					
CHANGE:					
Bricklayers & Stonemasons	$10.86	.45	.85		.01
Electricians:					
Electricians	13.19	.45	3%		3/4%
Cable Splicer	13.59	.45	3%		3/4%
Tile Setters	10.63	.45			
Decision #IA78-4101-Mod. #2 (43 FR 55162-November 24, 1978) Building Carro Gordo County, Ia					
CHANGE:					
Electricians	13.16	.45	3%		3/4%
Decision #IA78-4102-Mod. #2 (43 FR 55164-November 24,1978) Building Clinton County, Iowa					
CHANGE:					
Carpenters:					
Carpenters	11.00	.60	.90		.04
Piledrivermen	11.30	.60	.90		.04
Painters:					
Brush	11.52	.60	1.00		.20
Spray, Structural steel	12.02	.60	1.00		.20
Soft Floor Layers	11.00	.60	.90		.04
Decision #IA78-4103-Mod. #2 (43 FR 55165-November 24,1978) Building Des Moines, County, Ia					
CHANGE:					
Bricklayers & Stonemasons	13.00		.20		
Carpenters:					
Carpenters	11.55	.75	.90		.04
Millwrights & Piledrivermen	12.25	.75	.90		.04
Electricians	13.40	.55	3%		3/4%
Ironworkers	$12.25	.55	1.05		.06
Painters:					
Group 1-Brush	10.45		.25		
Group 2-Rollers	10.55		.25		
Group 3-Sign	10.95		.25		
Group 4- Structural steel over 25 ft. from the ground or floor bridges, water towers & Stege work	11.15		.25		
Group 5-Spray gun & sandblasting	11.45		.25		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Decision #IA78-4104-Mod. #2 (43 FR 55166-November 24,1978) Building Dubuque County, Iowa					
CHANGE:					
Electricians	12.25	.75	3%+.50		.09
Decision #IA78-4105-Mod. #2 (43 FR 55168-November 24,1978) Building Johnson County, Iowa					
CHANGE:					
Plumbers and Steamfitters	13.25	.60	.70		.13
Decision #IA78-4106-Mod. #2 (43 FR 55169-November 24,1978) Building Linn County, Iowa					
CHANGE:					
Carpenters:					
Carpenters	11.26	.55	.55		.08
Piledrivermen	11.61	.55	.55		.08
Plumbers and Steamfitters	13.25	.60	.70		.13
Soft Floor Layers	11.26	.55	.55		.08
Decision #IA78-4107-Mod. #2 (43 FR 55171-November 24,1978) Building Polk County, Iowa					
CHANGE:					
Carpenters:					
Carpenters	$11.00	.74	.81		.11
Millwrights; Piledrivermen	11.35	.74	.81		.11
Ironworkers	11.52	.78	1.02		.04
Painters:					
Group 1-Brush, roller, drywall finisher	11.52		.80		.05
Group 2-Spray; Structural steel sandblasting; swing stage	12.02		.80		.05
Group 3-Paperhangers	11.77		.80		.05
Group 4-Stack; Tower work over 100 feet	12.62		.80		.05
Plumbers & Steamfitters	13.20	.60	1.05		.15

MODIFICATIONS P. 23

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Decision #IA78-4108-Mod. #3 (43 FR 55173-November 24,1978) Building Pottawattamie Cty. I					
CHANGE:					
Ironworkers	10.65	.50	.55	1.00	.05
Plasterers	11.53	.57	.50		
Roofers:					
Slate, tile	10.10	.70	.20		
Composition	10.40	.70	.20		
Decision #IA78-4109-Mod. #3 (43 FR 55174-November 24,1978) Building Scott County, Iowa					
CHANGE:					
Glaziers	11.49	.70	1.00		.02
Ironworkers	13.87	.75	.375		.11
Laborers:					
Group 1	10.52	.50	1.00		.035
Group 2	10.77	.50	1.00		.035
Group 3	11.02	.50	1.00		.035
Painters:					
Brush, roller	11.52	.60	1.00		.20
Spray; Structural steel	12.02	.60	1.00		.20
Decision #IA78-4110-Mod. #2 (43 FR 55175-November 24,1978) Building Story County, Iowa					
CHANGE:					
Carpenters:					
Carpenters; Piledrivermen	10.82		.81		
Millwrights	11.17		.81		
Ironworkers	$11.52	.78	1.02		.04
Laborers:					
Group 1	8.225	.30	.135		.05
Group 2	8.375	.30	.135		.05
Group 3	8.425	.30	.135		.05
Group 4	8.475	.30	.135		.05
Group 5	8.575	.30	.135		.05
Group 6	8.725	.30	.135		.05
Painters:					
Group 1- Brush; roller; drywall finisher	11.52		.80		.05
Group 2- Paperhangers	11.77		.80		.05
Group 3- Spray; Structural steel; Sandblasting	12.02		.80		.05
Group 4- Work over 100 ft.; stack	12.62		.80		.05
Plumbers & Steamfitters	13.20	.60	1.05		.15

MODIFICATIONS P. 24

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Decision #IA78-4111-Mod. #2 (43 FR 55177-November 24,1978) Building Webster County, Iowa					
CHANGE:					
Electricians	11.95	.45	3%+.50		3/4%
Ironworkers	11.52	.78	1.02		.04
Painters:					
Group 1-Brush, drywall finishers, rollers	11.52		.80		.05
Group 2-Paperhangers	11.77		.80		.05
Group 3-Spray	12.02		.80		.05
Plumbers and Steamfitters	13.20	.60	1.05		.15
Decision #IA78-4112-Mod. #3 (43 FR 55178-November 24,1978) Building Woodbury County, Iowa					
CHANGE:					
Carpenters:					
Carpenters	10.30	.72	.36		.03
Millwrights and Pilodrivermen	10.80	.72	.36		.03
Electricians	12.81	.50	3%+.60		3/4%
Painters:					
Group 1- Brush	$10.76	.77	.70		
Group 2-Spray; all swing work all work higher than 40 ft..-scaffords, jacks,ladders, etc pressure roller, sandblasting structural steel over 25 ft.	11.26	.77	.70		

MODIFICATIONS P. 25

MODIFICATIONS P. 26

Decision NO. KS78-4008-Mod. #5
(43 FR 4812-February 3,1978)
Building Sedgwick County, Kansas

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Asbeston Workers	$11.96	.945	.85		.02
Bricklayers and Stonemasons	11.23	.50	.50		.02
Carpenters:					
Carpenters	10.35	.50			
Millwrights and Piledrivermen	10.65	.50			
Electricians	11.50	.75	3%+.50		1%
Ironworkers	10.83		.75	.53	.02
Laborers:					
Group 1-Common laborers	7.60	.50	.50		.03
Group 2-Power tool operators compactors, concrete breakers, chipping tools, drilling tools, concrete saws, mechanically operated georgia buggy, mason tenders, plaster tenders, mortar mixers for plasterers, mason and cement finishers, all stocking scafford, clean up for masons (building & wrecking), sand and concrete gun nozzleman, powderman	7.80	.50	.50		.05
Plasterers	10.50				
Glaziers	9.72	.75	.65	13.17%	.05
ADD:					
Cable Splicer	11.75	.75	3%+.50		1%

Decision NO. KS78-4009-Mod. #6
(43 FR 4812-February 3,1978)
Building Shawnee County, Kansas

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Bricklayers; Stonemasons	$11.39	.40	.25		
Carpenters:					
Carpenters	10.05	.40	.60		.05
Millwrights	10.55	.40	.60		.05
Piledrivermen	10.425	.40	.60		.05
Glaziers	9.95	.75	.81	1.89	.04
Laborers: (Building Construction)					
General Laborers	8.10	.40	.55	.25	.05
Power Tool Oprs., compactors concrete breakers, chipping tools, drilling tools, concrete saws, mechanically operated georgia buggy	8.30	.40	.50	.25	.05
Mason tenders, plaster tenders mortar mixers for plasterers, masons and cement finishers, all stocking scafford, clean up for masons (building & wrecking)	8.40	.40	.50	.25	.05
Sand and concrete gun nozzleman, powderman	8.50	.40	.50	.25	.05
Lathers	11.10		.20		
Plumbers, Pipefitters	12.63	.80	1.00		.04
Roofers, flat, slate & tile dampproofers and waterproofers	12.16		.60	a	
Roofers working in pitch, tar or creosote, coal	13.01		.60	a	
FOOTNOTE:					
a- after 6 months of employment $.26; after 5 years $.52.					
Sheet Metal Workers	11.99	3%.50	1.29		.04

MODIFICATIONS P. 27

DECISION #MI79-2020 - MOD. #1 (44 FR 31842 - June 1, 1979) Statewide, Michigan	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE: Power Equipment Operators: Highway Construction					
ZONE 1 Wayne, Monroe, Washtenaw, Oakland, Macomb & Genesee					
Class 1	$10.44	.95	1.50	11%	.05
Class 2	10.22	.95	1.50	11%	.05
Class 3	9.77	.95	1.50	11%	.05
Class 4	9.63	.95	1.50	11%	.05
ZONE 2 Saginaw, Bay, Gratiot, Midland, Clare, Arenac, Gladwin, Isabella, Huron Tuscola & Sanilac					
Class 1	9.44	.95	1.50	11%	.05
Class 2	9.10	.95	1.50	11%	.05
Class 3	8.65	.95	1.50	11%	.05
Class 4	8.40	.95	1.50	11%	.05
ZONE 3 Remainder of State					
Class 1	10.44	.95	1.50	11%	.05
Class 2	10.10	.95	1.50	11%	.05
Class 3	9.65	.95	1.50	11%	.05
Class 4	9.40	.95	1.50	11%	.05
Decision NO. VA78-3074-Mod. #3 (43 FR 51588-November 3,1978) Henrico and the independent City of Richmond, Virginia					
CHANGE:					
Bricklayers and Stonemasons	$10.45	.70	.30		.02
Cement Masons	8.80				
Cement MasonsMachine Man	8.90				
Ironworkers-Structural, Reinforcing & Ornamental:					
Zone 1- up to 10 miles from Capital Square	10.50	.55	.75		.05
Zone 2- from 10 miles to 30 mile radius	10.875	.55	.75		.05

MODIFICATIONS P. 28

VA78-3074 Con't	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Zone 3- from 30 miles and beyond	$ 11.125	.55	.75		.05
Laborers:					
Unskilled	5.95	.25	.25		.05
Tenders, Motorized Georgia Buggy Operators, Nozzlemen (gunite or sandblasting), Concrete saw operators, Air Tool & Vibrators operators	6.05	.25	.25		.05
Mortar Mixers, Hod Carriers, Pipelayers, Caulkers, Marble & Tile & Terrazzo Workers Helpers	6.20	.25	.25		.05
Burners (wrecking)	6.30	.25	.25		.05
Floor, Base & Terrazzo Grinders	6.35	.25	.25		.05
Wagon Drill, Air Trac & Similar Drills	6.45	.25	.25		.05
Powderman	6.70	.25	.25		.05
Lathers:					
Plasterer & Drywall Finish	9.99		.20		.01
Sheet Rock Applicator	8.29		.20		:01
Marble, Tile & Terrazzo Workers	8.65				
Millwrights	10.60	.50	.45		.01
Painters:					
Brush, Paperhangers, Tapers & Finishers	8.55				
Structural Steel, Swing Stage & Bosun Chair	8.80				
Scafford or other Hazard work over 50'	8.80				
Spray	9.05				
Sandblasting, Elevated tanks, Smoke Stacks & All Towers	9.20				
Plasterers	10.20				
POWER EQUIPMENT OPERATORS:					
Group 1	9.95	.575	.50		.08
Group 2	7.90	.575	.50		.08
Group 3	6.40	.575	.50		.08
Group 4	6.20	.575	.50		.08
Group 5	6.01	.575	.50		.08

MODIFICATIONS P. 29

MODIFICATIONS P. 30

Decision NO.VA78-3075-Mod. #2 (43 FR 51590-November 3,1978) York and the Cities of Hampton and Newport News (including Langley AFB, Fort Eustis and Fort Monroe), Virginia	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Bricklayers and Stonemasons	$ 9.75				
Carpenters and Soft Floor Layers	9.30	.50	.45		.02
Cement Masons:					
Cement Masons	8.50				
Machine and Scaffold Men	8.60				
Electricians:					
Zone 1-within a 16 air mile radius of 7812 Warwick Blvd., Newport News:					
Wiremen	10.20	.60	8%	1%	
Cable Splicer	10.45	.60	8%	1%	
Zone 2- beyond a 16 air mile radius of 7812 Warwick Blvd., Newport News:					
Wiremen	11.20	.60	8%	1%	
Cable Splicer	11.45	.60	8%	1%	
Laborers:					
Unskilled	5.95	.25	.25	.05	
Tenders, Motorized Georgia Buggy Operators, Nozzlemen, (gunite or sandblasting), Concrete saw operators, Air					

VA78-3075 Con't	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Tool and Vibrator Operators	$ 6.05	.25	.25		.05
Mortar Mixers, Hod Carriers, Pipelayers, Caulkers, Marble, Tile & Terrazzo Worker Helpers	6.20	.25	.25		.05
Burners (wrecking)	6.30	.25	.25		.05
Floor, Base,& Terrazzo Grinder	6.35	.25	.25		.05
Wagon Drill and Air Trac	6.45	.25	.25		.05
Powdermen	6.70	.25	.25		.05
Lathers	10.50		.25		
Painters:					
(York County from a point on north shore of Queens Creek at the intersection of York River due west to a point on the eastern shore of James River including all cities therein the cities of Hampton and Newport News:)					
Brush and Roller	8.00		.35		
Paperhanger, Taper, Spray, Roller with a 6' handle or over structural steel to 74' from the ground up, Swing Stage, under 40', sandblasting	8.35		.35		
Swing Stage over 40',spray apoxy	8.60		.35		
Epoxy brushed or rolled	8.25		.35		
All work over 74' from ground	8.50		.35		
Bituminous Coatings, Hot Creosite	9.40		.35		
REMAINDER OF COUNTY OF YORK:					
Brush and Roller	8.60		.35		
Paperhanging, Taper, spray, Roller with a handle 6'or over structural steel 74' from the ground up, swing stage under 40', sandblasting	8.95		.35		
Swing Stage over 40', Epoxy Sprayed	9.20		.35		
Epoxy Brushed or Rolled	8.85		.35		

MODIFICATIONS P. 31

VA78-3075 Con't	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
All work over 74' from the ground	$ 9.10		.35		
Bituminous Coatings, Hot Creosote	10.00		.35		
Piledrivermen and Dockbuilders	8.55	.50	.45		.02
Plasterers	10.71				
Roofers Composition	6.45				
POWER EQUIPMENT OPERATORS:					
Group 1	9.95	.575	.50		.08
Group 2	7.90	.575	.50		.08
Group 3	6.40	.575	.50		.08
Group 4	6.20	.575	.50		.08
Group 5	6.01	.575	.50		.08
Modification NO. VA78-3076- Mod. #2 (43 FR 51592- November 3,1978) The cities of Chesapeake, Portsmouth, and Virginia Beach,VA					
CHANGE:					
Bricklayers	$10.08	.60	.20		.03
Carpenters and Soft Floor Layers	9.30	.50	.46		.02
Laborers:					
Unskilled	5.95	.25	.25		.05
Tenders, Motorized Georgia Buggy Operators, Nozzlemen (gunite or sandblasting), Concrete saw operators, Air Tool and Vibrator Operators	6.05	.25	.25		.05
Mortar Mixers, Hod Carriers, Pipelayers, Caulkers, Marble, Tile and Terrazzo Workers Helper	6.20	.25	.25		.05
Burners (wrecking)	6.30	.25	.25		.05
Floor, Base and Terrazzo Grinder	6.35	.25	.25		.05
Wagon Drill and Air Trac	6.45	.25	.25		.05
Powdermen	6.70	.25	.25		.05
Lathers	10.50		.25		
Line Construction:					
Linemen and Cable Splicer	10.20	.60	8%		1%

MODIFICATIONS P. 32

VA78-3076 Con't	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Painters:					
Brush and Roller	$ 8.50		.40		
Structural Steel from the ground to 74'	9.00		.40		
Spray, Paperhangers anf glove wor	8.85		.40		
Any work over 74' from the ground	9.80		.40		
Bituminous Coating & Hot Creosite	10.15		.40		
Swing stage under 40', Rollers with 6' handles & over, Epoxy brushed or rolled	8.75		.40		
Swing stage over 40'	9.00		.40		
Epoxy sprayed	9.10		.40		
Sandblasting	9.25		.40		
Piledrivermen & Dockbuilders	8.55	.50	.45		.02
Plumbers & Steamfitters	10.30	.80	.75		.09
Roofers Composition	6.45				
Sheet Metal Workers	9.80	.45	.55		.005
POWER EQUIPMENT OPERATORS:					
Group 1	9.95	.575	.50		.08
Group 2	7.90	.575	.50		.08
Group 3	6.40	.575	.50		.08
Group 4	6.20	.575	.50		.08
Group 5	6.01	.575	.50		.08
DECISION NO. WI78-2146 - MOD #2 (43 FR 50360 - October 27, 1978) Milwaukee, Ozaukee, Waukesha and Washington Counties, Wisconsin					
CHANGE:					
CARPENTERS	$11.87	1.10	1.00	.51	.08
MILLWRIGHTS	12.68	1.10	1.00	.51	.08
PILEDRIVERMEN	12.57	1.10	1.00	.51	

SUPERSEDEAS DECISION

STATE: Colorado

COUNTIES: Adams, Arapahoe, Boulder, Clear Creek, Denver, Douglas,

DECISION NO. CO79-5117

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SUPERSEDEAS DECISION

STATE: Colorado

COUNTIES: Adams, Arapahoe, Boulder, Clear Creek, Denver, Douglas, Eagle, Elbert, Gilpin, Grand, Jefferson, Lake, Larimer, Morgan, Park, Summit, and Weld

DECISION NUMBER: CO79-5117 DATE: Date of Publication

Supersedes Decision No. CO78-5109 dated July 14, 1978, in 43 FR 30437

DESCRIPTION OF WORK: Building projects (does not include single-family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 12.14	.55	$ 1.37		.02
BOILERMAKERS	12.30	.85	1.00		
BRICKLAYERS; Stonemasons:					
Eagle County	11.63	.85	.95		.06
Boulder and Grand Counties	10.23	.85	.95		.05
Elbert, Lake and Park Counties	10.65	.35	.95		.05
Larimer County	10.73	.85	1.05		.05
Remaining Counties	11.63	.85	.95		.06
CARPENTERS:					
Adams, Arapahoe, Boulder, Clear Creek, Denver, Douglas, Elbert, Grand, Gilpin, Jefferson and Park (Northern Area) Counties					
Area (a) Denver Metropolitan Area including Louisville, Golden, Boulder and Longmont, basing points					
Zone I (0 to 20 miles)	10.565	.90	.95	.85	.085
Zone II (20 to 50 miles)	11.88	.90	.95	.85	.085
Zone III (50 miles and over)	13.21	.90	.95	.85	.085
Morgan and Weld Counties:					
Area (b) Denver Northeastern Area of Colorado including Greeley, Loveland and Fort Morgan basing points					
Zone I (0 to 20 miles)	10.565	.90	.95	.85	.085
Zone II (20 to 50 miles)	11.88	.90	.95	.85	.085
Zone III (50 miles and over)	13.21	.90	.95	.85	.085
Larimer County (S.E. portion within Loveland basing point, Zone 1)	10.065	.80	.90	.75	.08

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS: (Cont'd)					
Larimer (Remainder of County), Eagle, Lake, Park (South 40 miles) and Summit Counties					
Zone I (0-30 miles from P.O. in Leadville or Fort Collins)	$ 9.82	.90	.95	.85	.07
Zone II (30-60 miles from P.O. in Leadville or Fort Collins)	10.32	.90	.95	.85	.07
Zone III (All work outside of the 60 mile radius from P.O. in Leadville or Fort Collins)	10.57	.90	.95	.85	.07
CEMENT MASONS:					
Cement Masons	10.68	.52	1.15		.11
Working with composition materials and color	11.18	.52	1.15		.11
Working on scaffold, swing stage, or temporary platform over 25'	10.93	.52	1.15		.11
DRYWALL INSTALLERS	9.29	.78	.85	.65	.07
ELECTRICIANS:					
Elbert and Park Counties Electricians	10.95	.42	3%+.50		.015
Larimer, Morgan and Weld Cos. Electricians	9.00	.70	3%+1.25		3/10%
Remaining Counties					
Electricians	13.00	.70	3%+1.25		3/10%
Cable Splicers	13.25	.70	3%+1.25		3/10%
ELEVATOR CONSTRUCTORS	11.71	.895	.69	a	.035
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.895	.69	a	.035
GLAZIERS	12.15				
IRONWORKERS:					
Structural, Ornamental, and Reinforcing	11.60	1.04	1.25		.12
LATHERS	12.04				.01

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MARBLE SETTERS:					
Elbert, Lake and Park Cos.	$ 9.86	.50	.50		.04
Remaining Counties	10.89	1.00	1.00		.04
MILLWRIGHTS	11.51	.90	.85		.135
PAINTERS:					
Park County (Southern half)					
Brush, Roller, Taper, hand texture	8.94	.70	.50		.04
Steel and Paperhanger	9.44	.70	.50		.04
Spray	9.69	.70	.50		.04
Steel Spray	10.19	.70	.50		.04
Remaining Counties including Wy of Park County*					
Brush, Roller and Drywall Finisher	11.15	.70	1.00		.07
Spray; Swing Stage, Paperhangers	11.75	.70	1.00		.07
PLASTERERS	12.04				.01
PLUMBERS; Steamfitters:					
Southern portions of Douglas, Elbert and Park Counties*	9.05	.60	.75	1.17	.08
Boulder County	11.25	.80	1.05	.65	.10
Remaining Counties (including Northern portions of Douglas, Elbert and Park Counties)	11.17	.80	1.05	.75	.08
ROOFERS:					
Eagle and Southern portions of Lake, Jefferson, Park, Douglas and Elbert Counties**	7.91	.42	.10		
Remaining Counties including Northern portions of Lake, Park, Jefferson, Douglas and Elbert Counties	10.97	.80			.08
SHEET METAL WORKERS	11.95	3%+.64	1.41		.09
SOFT FLOOR LAYERS	10.38	.40	.75	.30	.10
SPRINKLER FITTERS	12.10	.75	1.05		.08

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TERRAZZO WORKERS	$ 10.89	$1.00	$1.00		.04
TILE LAYERS:					
Elbert, Lake and Park Counties	9.86	.50	.50		
Remaining Counties	10.89	1.00	1.00		.04
TILE, MARBLE & TERRAZZO HELPERS:					
Helpers	7.85	.90	.85	.50	
Floor Grinders	8.00	.90	.85	.50	
Base Grinders	8.55	.90	.85	.50	

*Park County dividing Line:
Line from the S.W. corner of Jefferson County to the S.E. corner of Lake County

**Area South of Lake County to a point 2 miles north of the City of Leadville to a point 1/2 mile north of the City of Limon at the west border of Lincoln County

FOOTNOTE:
a. Employer contributes 8% basic hourly rate for over 5 years' service and 6% basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit. Six Paid Holidays: A through F.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

LABORERS	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
				H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1	ZONE 2	ZONE 3				
Group 1	$ 5.60	$ 6.05	$ 6.50	.55	.65	.05	
Group 2	8.29	8.74	9.19	.55	.65	.05	
Group 3	8.57	9.02	9.47	.55	.65	.05	
Group 4	8.79	9.24	9.69	.55	.65	.05	
Group 5	8.84	9.29	9.74	.55	.65	.05	
Group 6	9.09	9.54	9.99	.55	.65	.05	

LABORERS

Group 1: Watchman tending Heaters and Pumps

Group 2: Building Construction Laborer

Group 3: Laborers - Underpinning and Shoring eight (8) feet or more below working surface.
Power Tool Operators of all mechanical, air, gas and electrical tools, including Self-propelled Buggies and Cement Finishers Tenders. Laborers preparing and placing of stone or any other aggregate in sand bed to be used as exposed face of Tilt-up Panels.
Burners on Demolition and Welders, Gunnite Nozzleman and Sandblasters.

Group 4: Pipelayers on Building Construction

Group 5: Jackhammer Operator for Underpinning and Shoring over twelve (12) feet below working surface, Bellers and Stemmers on Caisson Work.

Group 6: Tender, Mason and Plaster

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
(Other than for work in tunnels, shafts, and raises)	Zone 1*	Zone 2*				
Group 1	$ 9.25	10.00	.79	1.00	.45	.07
Group 2	9.60	10.35	.79	1.00	.45	.07
Group 3	9.95	10.70	.79	1.00	.45	.07
Group 4	10.10	10.85	.79	1.00	.45	.07
Group 5	10.25	11.00	.79	1.00	.45	.07
Group 6	10.40	11.15	.79	1.00	.45	.07
(For work in tunnels, shafts, and raises)						
Group 1	9.40	10.15	.79	1.00	.45	.07
Group 2	9.75	10.50	.79	1.00	.45	.07
Group 3	9.85	10.60	.79	1.00	.45	.07
Group 4	10.10	10.85	.79	1.00	.45	.07
Group 5	10.25	11.00	.79	1.00	.45	.07
Group 6	10.65	11.40	.79	1.00	.45	.07

POWER EQUIPMENT OPERATORS
(Other than for work in Tunnels, Shafts and Raises)

Group 1: Air Compressor; Asphalt Screed; Oiler; Brakeman; Drill Operator - smaller than Williams MF and similar; Helper to Heavy Duty Mechanic and/or Welder; Operators of 5 or more light plants, Welding Machines, Generators, single unit conveyor; Pumps; Vacuum Well Point System; Tractor, under 70 HP with or without attachments Rodman, Chainman, Grade Checker

Group 2: Conveyor, handling building materials; Ditch Witch and similar Trenching Machine; Fireman or Tank Heater, road; Forklift; Haulage Motor Man; Pugmill; Portable Screening Plant with or without a spray bar; Screening Plants, with classifier; Self-propelled Roller, rubber-tired under 5 tons

Group 3: Asphalt Plant; Backfiller, Bituminous Spreader or Laydown Machine; Cableway Signalman; Caisson Drill; Williams MF, similar and larger; C.M.I. and similar; Concrete Batching Plants; Concrete finish Machine; Concrete Gang Saws on concrete paving; Concrete Mixer, less than 1 yd.; Concrete Placement Pumps, under 8 inches; Distributors, Bituminous Surfaces; Drill, Diamond or Core; Drill Rigs, rotary, churn, or cable tool; Elevating Graders, Equipment Lubricating and service Engineer; Engineer Fireman; Grout Machine; Gunnite Machine; Hoist, 1 drum; Hydraulic Backhoes, wheel mounted under 3/4 yd.; Loader, Barber Green, etc.; Loader up to and including 6 cu. yds.; Machine Doctor; Mechanic; Motor Grader/Blade, rough; Road Stabilization Machine; Rollers, self-propelled, all types over 5 tons; Sandblasting Machine; single unit portable crusher, with or without washer; Tie Tamper, wheel mounted; Tractor, 70 HP and over with or without attachments; Trenching Machine Operator; Welder; Winch on truck; Instrument Man

Group 4: Cable operated Crane, track mounted; Cable operated power Shovels, Draglines, Clamshells, and Backhoes, 5 cu. yds. and under; Concrete Mixer over 1 cu. yd.; Concrete Paver 34E or similar; Concrete Placement Pumps, 8 inches and over; Crane, 50 tons and under; Hoist, 2 drums; Hydraulic Backhoe, 3/4 yd. and over; Loader, over 6 cu. yds.; Mechanic-welder, heavy duty; Mixer mobile; Motor Grader/blade, finish; Multiple unit portable Crusher, with or without washer; Piledriver; Scrapers, single bowl under 40 cu. yds.; Self-propelled Hydraulic Crane; Tractor with sideboom; Truck mounted Hydraulic Crane

POWER EQUIPMENT OPERATORS (Cont'd)
(Other than for work in Tunnels, Shafts and Raises)

Group 5: Cable operated power Shovels, Draglines, Clamshells and Backhoes over 5 cu. yds.; Crane, over 50 tons carrier mounted; Derrick; Electric rail type Tower Crane; Hoist, 3 drum or more; Quad Nine and similar push unit; Scrapers - single bowl including pups 40 cu. yds. and tandem bowls and over

Group 6: Cableway; Climbing Tower Crane; Crawler or truck mounted Tower Crane; Wheel Excavator, Tower Crane, truck type

POWER EQUIPMENT OPERATORS (Cont'd)
(For work in Tunnels, Shafts and Raises)

Group 1: Brakeman

Group 2: Motorman

Group 3: Compressor (900 CFM and over) serving Tunnels, Shafts and Raises

Group 4: Air Tractors; Grout Machine; Gunnite Machine; Jumbo Form; Mechanic; Welder

Group 5: Concrete Placement Pumps, 8" and over discharge; Mechanic-Welder, heavy duty; Mucking Machines and Front End Loaders, underground; Slusher; Mine Hoist Operator

Group 6: Mole

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		Fringe Benefits Payments

TRUCK DRIVERS

Group 1: Pickups; Helpers; Scalemen; Checkers; Spotters; Dumpmen

TRUCK DRIVERS	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1	ZONE 2				
Group 1	$8.78	9.28	.84	.63	.30	
Group 2	8.88	9.38	.84	.63	.30	
Group 3	8.98	9.48	.84	.63	.30	
Group 4	9.03	9.53	.84	.63	.30	
Group 5	9.08	9.58	.84	.63	.30	
Group 6	9.13	9.63	.84	.63	.30	
Group 7	9.18	9.68	.84	.63	.30	
Group 8	9.23	9.73	.84	.63	.30	
Group 9	9.33	9.83	.84	.63	.30	
Group 10	9.38	9.88	.84	.63	.30	
Group 11	9.48	9.98	.84	.63	.30	
Group 12	9.63	10.13	.84	.63	.30	
Group 13	9.68	10.18	.84	.63	.30	
Group 14	9.78	10.28	.84	.63	.30	
Group 15	9.88	10.38	.84	.63	.30	
Group 16	9.98	10.48	.84	.63	.30	
Group 17	10.08	10.58	.84	.63	.30	
Group 18	10.28	10.78	.84	.63	.30	

TRUCK DRIVERS

Group 1: Pickups; Helpers; Scalemen; Checkers; Spotters; Dumpmen

Group 2: Dump Trucks, to and including 6 cu. yds.; Sweepers; Flat Rack, single axle; Liquid and Bulk Tankers, single axle; Warehouse men; Washers; Greasemen; Servicemen; Ambulance Drivers

Group 3: Dump Trucks, over 6 cu. yds. to and including 14 cu. yds.; Flat Rack, tandem axle; Battery Men; Mechanics' Helpers; Material Checkers; Cardex Men; Expeditors; Man Haul Shuttle Truck or Bus

Group 4: Straddle Truck; Lumber Carrier; Liquid and Bulk Tankers, tandem axle

Group 5: Fork Lift Driver; Fuel Truck; Grease Truck; Combination Fuel and Grease

Group 6: Distributor Truck Driver; Cement Mixer, Agitator Truck to and including 10 cu. yds.; Liquid and Bulk Tankers, semi or combination

Group 7: Multi-purpose Truck; Speciality and Hoisting

Group 8: Dump Trucks, over 14 cu. yds. to and including 29 cu. yds.; High Boy, Low Boy, Floats, semi; Cab operated Distributor Truck Driver, semi; Liquid and Bulk Tankers, Euclid, Electric or similar; Truck Drivers, Dumptor type Youngbuggy, Jumbo and similar type equipment

Group 9: Truck Driver, Snow Plow

Group 10: Cement Mixer, Agitator Truck, over 10 cu. yds., to and including 15 cu. yds.

Group 11: Dump Trucks, over 29 cu. yds. to and including 39 cu. yds.

Group 12: Cement Mixer, Agitator Truck, over 15 cu. yds.

Group 13: Dump Trucks, over 39 cu. yds. to and including 54 cu. yds.; Tireman

Group 14: Mechanic

Group 15: Dump trucks, over 54 cu. yds. to and including 79 cu. yds.

Group 16: Heavy Duty Diesel, Mechanic, Body Men, Welders or Combination Men

Group 17: Dump Trucks, over 79 cu. yds. to and including 104 cu. yds.

Group 18: Dump Trucks, over 104 cu. yds.

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ZONE DESCRIPTIONS

LABORERS

CITIES within ZONES 1, 2, and 3:

Boulder	Denver	Dillon
Eagle	Golden	Port Collins
Port Morgan	Leadville	Granby
Greeley	Littleton	Vail

ZONE 1 - That area encompassed by 0 to 30 driving miles from the Main Post Office

ZONE 2 - That area encompassed by 30 to 70 driving miles from the Main Post Office

ZONE 3 - That area encompassed by 70 driving miles and over from the Main Post Office

Power Equipment Operators and Truck Drivers

A. Counties entirely within Zone 1:

Boulder	Denver	Douglas
Clear Creek	Gilpin	Jefferson
Larimer	Morgan	Weld

B. Counties entirely within Zone 2:

Grand Lake Park Summit

C. Legal description of the portion sof Adams, Arapahoe, Eagle and Elbert Counties which are included within Zone 1, as follows:
All of Adams, Arapahoe, Wlbert Counties lying west of the Township line between R59W and R60W of the 8th Guide Meridian West; and all of Eagle County lying West of the Township line between R80W and R81W of the 10th Guide Meridian West

D. Legal description of the portions of Adams, Arapahoe, Eagle and Elbert Counties which are included within Zone 2, as follows:
All of Adams, Arapahoo, Elbert Counties lying East of the Township line between R59 and R60W of the 8th Guide Meridian West, and all of Eagle County lying East of the Township line between R80W and R81W of the 9th Guide Meridian West

SUPERSEDEAS DECISION

STATE: Colorado COUNTY: El Paso
DECISION NUMBER: C079-5118 DATE: Date of Publication
Supersedes Decision No. C078-5110 dated July 14, 1978, in 43 FR 30443
DESCRIPTION OF WORK: Building projects (does not include single-family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 12.14	.55	$ 1.37		
BOILERMAKERS	12.30	.85	1.00		.02
BRICKLAYERS; Stonemasons	10.65	.85	.95		.04
CARPENTERS:					
Zone I (0-30 miles from Post Office in Colorado Springs)	9.82	.90	.95	.85	.07
Zone 2 (30 miles and over from Post Office in Colorado Springs)	10.32	.90	.95	.85	.07
CEMENT MASONS:					
Cement Masons	10.68	.52	1.15		.11
Working with Composition materials and color	11.18	.52	1.15		.11
Working on temporary platform over 25'	10.93	.52	1.15		.11
DRYWALL INSTALLERS	9.29	.78	.85	.65	.07
ELECTRICIANS	11.50	.72	30+.65		.015
ELEVATOR CONSTRUCTORS	11.71	.895	.69	a	.035
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.895	.69	a	.035
GLAZIERS	12.15				
IRONWORKERS:					
Structural, Ornamental, and Reinforcing	11.60	1.04	1.25		.12
LATHERS	11.94				.01
MARBLE SETTERS	9.86	.50	.50		
MILLWRIGHTS	11.51	.90	.85		.135
PAINTERS:					
Brush and Roller; Tapersh, hand texture	9.69	.70	.50		.04
Paperhangers; Steel brush	10.19	.70	.50		.04
Spray Painters	10.44	.70	.50		.04
Steel, Spray	10.94	.70	.50		.04
PLASTERERS	12.04				.01
PLUMBERS; Pipefitters	10.60	.80	1.05	1.60	.10
ROOFERS	9.93	.52	.40		

DECISION NO. C079-5118 Page 2

DECISION NO. C079-5118 Page 3

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SHEET METAL WORKERS	$ 11.95	30+.64	$ 1.41		.09
SOFT FLOOR LAYERS	10.38	.40	.75	.30	.10
SPRINKLER FITTERS	12.10	.75	1.05		.08
TERRAZZO WORKERS	10.89	1.00	1.00		.06
TILE SETTERS	9.86	.50	.50		
TILE, MARBLE & TERRAZZO HELPERS:					
Helpers	7.85	.90	.85	.50	
Floor Grinders	8.00	.90	.85	.50	
Base Grinders	8.55	.90	.85	.50	

FOOTNOTES:
a. Employer contributes 8% of basic hourly rate for over 5 years' service; 6% basic hourly rate for 6 months to 5 years service as Vacation Pay Credit. Six Paid Holidays: A through F.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day;
D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

LABORERS	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
				H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1	ZONE 2	ZONE 3				
Group 1	$ 5.60	$ 6.05	$ 6.50	.55	.65	.05	
Group 2	8.29	8.74	9.19	.55	.65	.05	
Group 3	8.57	9.02	9.47	.55	.65	.05	
Group 4	8.79	9.24	9.69	.55	.65	.05	
Group 5	8.84	9.29	9.74	.55	.65	.05	
Group 6	9.09	9.54	9.99	.55	.65	.05	

ZONE 1 - That area encompassed by 0 to 30 driving miles from the Main Post Office in Colorado Springs.
ZONE 2 - That area encompassed by 30 to 70 driving miles from the Main Post Office in Colorado Springs.
ZONE 3 - That area encompassed by 70 driving miles and over from the Main Post Office in Colorado Springs.

LABORERS

Group 1: Watchmen tending Masters and Pumps

Group 2: Building Construction Laborer

Group 3: Laborers - Underpinning and Shoring eight (8) feet or more below working surface.
Power Tool Operators of all mechanical, air, gas and electrical tools, including Self-propelled Buggies and Cement Finishers Tenders. Laborers preparing and placing of stone or any other aggregate in sand bed to be used as exposed face of Tilt-up Panels.
Burners on Demolition and Welders, Gunnite Nozzleman and Sandblasters.

Group 4: Pipelayers on Building Construction

Group 5: Jackhammer Operator for Underpinning and Shoring over twelve (12) feet below working surface, Rollers and Stemmers on Caisson Work.

Group 6: Tender, Mason and Plaster

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
(Other than for work in tunnels, shafts, and raises)					
Group 1	$ 9.25	.79	1.00	.45	.07
Group 2	9.60	.79	1.00	.45	.07
Group 3	9.95	.79	1.00	.45	.07
Group 4	10.10	.79	1.00	.45	.07
Group 5	10.25	.79	1.00	.45	.07
Group 6	10.40	.79	1.00	.45	.07
(For work in tunnels, shafts, and raises)					
Group 1	9.40	.79	1.00	.45	.07
Group 2	9.75	.79	1.00	.45	.07
Group 3	9.85	.79	1.00	.45	.07
Group 4	10.10	.79	1.00	.45	.07
Group 5	10.25	.79	1.00	.45	.07
Group 6	10.65	.79	1.00	.45	.07

POWER EQUIPMENT OPERATORS
(Other than for work in Tunnels, Shafts and Raises)

Group 1: Air Compressor; Asphalt Screed; Oiler; Brakeman; Drill Operator - smaller than Williams HF and similar; Helper to Heavy Duty Mechanic and/or Welder; Operators of 5 or more light plants, Welding Machines, Generators, single unit conveyor; Pumps; Vacuum Well Point System; Tractor, under 70 HP with or without attachments Rodman, Chainman, Grade Checker

Group 2: Conveyor, handling building materials; Ditch Witch and similar Trenching Machine; Fireman or Tank Heater, road; Forklift; Haulage Motor Man; Pugmill; Portable Screening Plant with or without a spray bar; Screening Plants, with classifier; Self-propelled Roller, rubber-tired under 5 tons

Group 3: Asphalt Plant; Backfiller, Bituminous Spreader or Laydown Machine; Cableway Signalman; Caisson Drill; Williams HF, similar and larger; C.M.I. and similar; Concrete Batching Plants; Concrete finish Machine; Concrete Gang Saws on concrete paving; Concrete Mixer, less than 1 yd.; Concrete Placement Pumps, under 8 inches; Distributors, Bituminous Surfaces; Drill, Diamond or Core; Drill Rigs, rotary, churn, or cable tool; Elevating Graders, Equipment Lubricating and service Engineer; Engineer Fireman; Grout Machine; Gunnite Machine; Hoist, 1 drum; Hydraulic Backhoes, wheel mounted under 3/4 yd.; Loader, Barber Green, etc.; Loader up to and including 6 cu. yds.; Machine Doctor; Mechanic; Motor Grader/Blade, rough; Road Stabilization Machine; Rollers, self-propelled, all types over 5 tons; Sandblasting Machine; single unit portable crusher, with or without washer; Tie Tamper, wheel mounted; Tractor, 70 HP and over with or without attachments; Trenching Machine Operator; Welder; Winch on truck; Instrument Man

Group 4: Cable operated Crane, track mounted; Cable operated power Shovels, Draglines, Clamshells, and Backhoes, 5 cu. yds. and under; Concrete Mixer over 1 cu. yd.; Concrete Paver 34E or similar; Concrete Placement Pumps, 8 inches and over; Crane, 50 tons and under; Hoist, 2 drums; Hydraulic Backhoe, 3/4 yd. and over; Loader, over 6 cu. yds.; Mechanic-welder, heavy duty; Mixer mobile; Motor Grader/blade, finish; Multiple unit portable Crusher, with or without washer; Piledriver; Scrapers, single bowl under 40 cu. yds.; Self-propelled Hydraulic Crane; Tractor with sideboom; Truck mounted Hydraulic Crane

POWER EQUIPMENT OPERATORS (Cont'd)

POWER EQUIPMENT OPERATORS (Cont'd)
(Other than for work in Tunnels, Shafts and Raises)

Group 5: Cable operated power Shovels, Draglines, Clamshells and Backhoes over 5 cu. yds.; Crane, over 50 tons carrier mounted; Derrick; Electric rail type Tower Crane; Hoist, 3 drum or more; Quad Nine and similar push unit; Scrapers - single bowl including pups 40 cu. yds. and tandem bowls and over

Group 6: Cableway; Climbing Tower Crane; Crawler or truck mounted Tower Crane; Wheel Excavator, Tower Crane, truck type

POWER EQUIPMENT OPERATORS (Cont'd)
(For work in Tunnels, Shafts and Raises)

Group 1: Brakeman

Group 2: Motorman

Group 3: Compressor (900 CFM and over) serving Tunnels, Shafts and Raises

Group 4: Air Tractors; Grout Machine; Gunnite Machine; Jumbo Form; Mechanic; Welder

Group 5: Concrete Placement Pumps, 8" and over discharge; Mechanic-Welder, heavy duty; Mucking Machines and Front End Loaders, underground; Slusher; Mine Hoist Operator

Group 6: Mole

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$ 8.78	.84	.63	.30	
Group 2	8.88	.84	.63	.30	
Group 3	8.98	.84	.63	.30	
Group 4	9.03	.84	.63	.30	
Group 5	9.08	.84	.63	.30	
Group 6	9.13	.84	.63	.30	
Group 7	9.18	.84	.63	.30	
Group 8	9.23	.84	.63	.30	
Group 9	9.33	.84	.63	.30	
Group 10	9.38	.84	.63	.30	
Group 11	9.48	.84	.63	.30	
Group 12	9.63	.84	.63	.30	
Group 13	9.68	.84	.63	.30	
Group 14	9.78	.84	.63	.30	
Group 15	9.88	.84	.63	.30	
Group 16	9.98	.84	.63	.30	
Group 17	10.08	.84	.63	.30	
Group 18	10.28	.84	.63	.30	

TRUCK DRIVERS

Group 1: Pickups; Helpers; Scalesmen; Checkers; Spotters; Dumpmen

Group 2: Dump Trucks, to and including 6 cu. yds.; Sweepers; Flat Rack, single axle; Liquid and Bulk Tankers, single axle; Warehouse men; Washers; Greasemen; Servicemen; Ambulance Drivers

Group 3: Dump Trucks, over 6 cu. yds. to and including 14 cu. yds.; Flat Rack, tandem axle; Battery Men; Mechanics' Helpers; Material Checkers; Cardex Men; Expeditors; Man Haul Shuttle Truck or Bus

Group 4: Straddle Truck; Lumber Carrier; Liquid and Bulk Tankers, tandem axle

Group 5: Fork Lift Driver; Fuel Truck; Grease Truck; Combination Fuel and Grease

Group 6: Distributor Truck Driver; Cement Mixer, Agitator Truck to and including 10 cu. yds.; Liquid and Bulk Tankers, semi or combination

Group 7: Multi-purpose Truck; Speciality and Hoisting

Group 8: Dump Trucks, over 14 cu. yds. to and including 29 cu. yds.; High Boy, Low Boy, Floats, semi; Cab operated Distributor Truck Driver, semi; Liquid and Bulk Tankers, Euclid, Electric or similar; Truck Drivers, Dumptor type Youngbuggy, Jumbo and similar type equipment

Group 9: Truck Driver, Snow Plow

Group 10: Cement Mixer, Agitator Truck, over 10 cu. yds., to and including 15 cu. yds.

Group 11: Dump Trucks, over 29 cu. yds. to and including 39 cu. yds.

Group 12: Cement Mixer, Agitator Truck, over 15 cu. yds.

Group 13: Dump Trucks, over 39 cu. yds. to and including 54 cu. yds.; Tireman

Group 14: Mechanic

Group 15: Dump trucks, over 54 cu. yds. to and including 79 cu. yds.

Group 16: Heavy Duty Diesel, Mechanic, Body Men, Welders or Combination Men

Group 17: Dump Trucks, over 79 cu. yds. to and including 104 cu. yds.

Group 18: Dump Trucks, over 104 cu. yds.

SUPERSEDEAS DECISION

STATE: Colorado COUNTIES: Delta, Garfield, Gunnison, Mesa, Montrose and Pitkin

DECISION NUMBER: C079-5119 DATE: Date of Publication

Supersedeas Decision No. C078-5111 dated July 14, 1978, in 43 FR 30451

DESCRIPTION OF WORK: Building Projects (does not include single family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 12.14	.55	$ 1.37		
BOILERMAKERS	12.30	.85	1.00		.02
BRICKLAYERS; Stonemasons:					
Pitkin County	9.70	.60	.70	.25	.05
Remaining Counties	10.50	.85	.95		.05
CARPENTERS:					
Post Office basing points in the Cities of Leadville, Fort Collins, Glenwood Springs, Grand Junction, Gunnison and Montrose					
Zone I (0-30 miles from nearest basing point)	9.82	.90	.95	.85	.07
Zone II (30-60 miles from nearest basing point)	10.32	.90	.95	.85	.07
Zone III (60 miles and over from nearest basing point)	10.57	.90	.95	.85	.07
CEMENT MASONS:					
Cement Masons	10.68	.52	1.15		.11
Working with composition materials and color	11.18	.52	1.15		.11
Working on scaffold, swing stage or temporary platform over 25'	10.93	.52	1.15		.11
DRYWALL INSTALLERS	9.29	.78	.85	.65	.07
ELECTRICIANS:					
Electricians	12.40	.72	3%+.25		1½
Cable Splicers	12.65	.72	3%+.25		1½
ELEVATOR CONSTRUCTORS	11.71	.895	.69	a	.035
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.895	.69	a	.035
GLAZIERS	12.15				

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
IRONWORKERS:					
Structural, Ornamental and Reinforcing	$ 11.60	$1.04	$ 1.25		.12
LATHERS	11.94				.01
MARBLE & TILE SETTERS, TERRAZZO WORKERS	10.89	1.00	1.00		.04
MILLWRIGHTS	11.51	.90	.85		.135
PAINTERS:					
Brush, Roller and Drywall Finishers	11.15	.70	1.00		.07
Paperhangers, Spray, Swing Stage	11.75	.70	1.00		.07
PLASTERERS	12.04				.01
PLUMBERS	13.00	.80	1.05		.10
ROOFERS	9.93	.52	.40		
SHEET METAL WORKERS	11.95	304.64	1.41		.09
SOFT FLOOR LAYERS	10.38	.40	.75	.30	.10
SPRINKLER FITTERS	12.10	.75	1.05		.08
TILE, MARBLE & TERRAZZO HELPERS:					
Helpers	7.85	.90	.85	.50	
Floor Grinders	8.00	.90	.85	.50	
Base Grinders	8.55	.90	.85	.50	

FOOTNOTE:
a. Employer contributes 8% of basic hourly rate for over 5 years' service and 6% basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit. 6 Paid Holidays: A through F.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

LABORERS	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
				H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1	ZONE 2	ZONE 3				
Group 1	$ 5.60	$ 6.05	$ 6.50	.85	.65		.05
Group 2	8.29	8.74	9.19	.85	.65		.05
Group 3	8.57	9.02	9.47	.85	.65		.05
Group 4	8.79	9.24	9.69	.85	.65		.05
Group 5	8.84	9.29	9.74	.85	.65		.05
Group 6	9.09	9.54	9.99	.85	.65		.05

ZONE 1 - That area encompassed by 0 to 30 driving miles from the Main Post Office in each of the following Cities: Aspen, Glenwood Springs, Grand Junction, Dunnison, Montrose, Naturita and Rifle
ZONE 2 - That area encompassed by 30 to 70 driving miles from the Main Post Office of the above named Cities.
ZONE 3 - That area encompassed by 70 driving miles and over from the Main Post Office of the above named Cities.

LABORERS

Group 1: Watchmen Tending Heaters and Pumps

Group 2: Building Construction Laborers

Group 3: Laborers - Underpinning and Shoring eight (8) feet or more below working surface.
Power Tool Operators of all mechanical, air, gas and electrical tools, including Self-propelled Buggies and Cement Finishers Tenders. Laborers preparing and placing of stone or any other aggregate in sand bed to be used as exposed face of Tilt-up Panels.
Burners on Demolition and Welders, Gunnite Nozzleman and Sandblasters.

Group 4: Pipelayers on Building Construction

Group 5: Jackhammer Operator for Underpinning and Shoring over twelve (12) feet below working surface, Rollers and Stemmers on Caisson Work.

Group 6: Tender, Mason and Plaster

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
(Other than for work in tunnels, shafts, and raises)	Zone 1*	Zone 2*				
Group 1	$ 9.25	10.00	.79	1.00	.45	.07
Group 2	9.60	10.35	.79	1.00	.45	.07
Group 3	9.95	10.70	.79	1.00	.45	.07
Group 4	10.10	10.85	.79	1.00	.45	.07
Group 5	10.25	11.00	.79	1.00	.45	.07
Group 6	10.40	11.15	.79	1.00	.45	.07
(For work in tunnels, shafts, and raises)						
Group 1	9.40	10.15	.79	1.00	.45	.07
Group 2	9.75	10.50	.79	1.00	.45	.07
Group 3	9.85	10.60	.79	1.00	.45	.07
Group 4	10.10	10.85	.79	1.00	.45	.07
Group 5	10.25	11.00	.79	1.00	.45	.07
Group 6	10.65	11.40	.79	1.00	.45	.07

POWER EQUIPMENT OPERATORS
(Other than for work in Tunnels, Shafts and Raises)

Group 1: Air Compressor; Asphalt Screed; Oiler; Brakeman; Drill Operator - smaller than Williams MP and similar; Helper to Heavy Duty Mechanic and/or Welder; Operators of 5 or more light plants, Welding Machines, Generators, single unit conveyor; Pumps; Vacuum Well Point System; Tractor, under 70 HP with or without attachments Rodman, Chainmen, Grade Checker

Group 2: Conveyor, handling building materials; Ditch Witch and similar Trenching Machine; Fireman or Tank Heater, road; Forklift; Haulage Motor Man; Pugmill; Portable Screening Plant with or without a spray bar; Screening Plants, with classifier; Self-propelled Roller, rubber-tired under 5 tons

Group 3: Asphalt Plant; Backfiller, Bituminous Spreader or Laydown Machine; Cableway Signalman; Caisson Drill; Williams MP, similar and larger; C.M.I. and similar; Concrete Batching Plants; Concrete finish Machine; Concrete Gang Saws on concrete paving; Concrete Mixer, less than 1 yd.; Concrete Placement Pumps, under 8 inches; Distributors, Bituminous Surfaces; Drill, Diamond or Core; Drill Rigs, rotary, churn, or cable tool; Elevating Graders, Equipment Lubricating and service Engineer; Engineer Fireman; Grout Machine; Gunnite Machine; Hoist, 1 drum; Hydraulic Backhoe, wheel mounted under 3/4 yd.; Loader, Barber Green, etc.; Loader up to and including 6 cu. yds.; Machine Doctor; Mechanic; Motor Grader/Blade, rough; Road Stabilization Machine; Rollers, self-propelled, all types over 5 tons; Sandblasting Machine; single unit portable crusher, with or without washer; Tie Tamper, wheel mounted; Tractor, 70 HP and over with or without attachments; Trenching Machine Operator; Welder; Winch on truck; Instrument Man

Group 4: Cable operated Crane, track mounted; Cable operated power Shovels, Draglines, Clamshells, and Backhoes, 5 cu. yds. and under; Concrete Mixer over 1 cu. yd.; Concrete Paver 34E or similar; Concrete Placement Pumps, 8 inches and over; Crane, 50 tons and under; Hoist, 2 drums; Hydraulic Backhoe, 3/4 yd. and over; Loader, over 6 cu. yds.; Mechanic-welder, heavy duty; Mixer mobile; Motor Grader/blade, finish; Multiple unit portable Crusher, with or without washer; Piledriver; Scrapers, single bowl under 40 cu. yds.; Self-propelled Hydraulic Crane; Tractor with sideboom; Truck mounted Hydraulic Crane

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POWER EQUIPMENT OPERATORS (Cont'd)
(Other than for work in Tunnels, Shafts and Raises)

Group 5: Asphalt Plant Mixerman; Backfiller, Trench; Boring Machine, 12 inches and over; Caisson Drill, over 4 ft. bucket; Concrete Batching Plant, multiple; Concrete Mixer, 1 yd. and over; Concrete Placement Pumps, 8 inches and over; Crane, over 50 tons; Derrick Boat; Hoist, 2 drums; Hydraulic Backhoe, over 3/4 yd.; Loader, over 6 cu. yds.; Mechanic-welder, heavy duty; Mixer mobile; Motor Grader/blade, finish; Multiple unit portable Crusher, with or without washer; Piledriver; Scrapers, single bowl under 40 cu. yds.; Self-propelled Hydraulic Crane; Tractor with sideboom; Truck mounted Hydraulic Crane

Group 6: Boring Machine, 12 inches and over; Caisson Drill, over 4 ft. bucket; Derrick Boat; Hoist, 3 drums and over; Mechanic-welder, heavy duty; Piledriver; Scrapers, single bowl 40 cu. yds. and over; Tractor with sideboom

TRUCK DRIVERS	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	Zone 1*	Zone 2*				
Group 1	$ 9.25	10.00	.79	1.00	.45	.07
Group 2	9.60	10.35	.79	1.00	.45	.07
Group 3	9.95	10.70	.79	1.00	.45	.07
Group 4	10.10	10.85	.79	1.00	.45	.07
Group 5	10.25	11.00	.79	1.00	.45	.07
Group 6	10.40	11.15	.79	1.00	.45	.07
Group 7	10.55	11.30	.79	1.00	.45	.07
Group 8	10.70	11.45	.79	1.00	.45	.07
Group 9	10.85	11.60	.79	1.00	.45	.07
Group 10	11.00	11.75	.79	1.00	.45	.07
Group 11	11.15	11.90	.79	1.00	.45	.07
Group 12	11.30	12.05	.79	1.00	.45	.07
Group 13	11.45	12.20	.79	1.00	.45	.07
Group 14	11.60	12.35	.79	1.00	.45	.07
Group 15	11.75	12.50	.79	1.00	.45	.07
Group 16	11.90	12.65	.79	1.00	.45	.07
Group 17	12.05	12.80	.79	1.00	.45	.07
Group 18	12.20	12.95	.79	1.00	.45	.07
Group 19	12.35	13.10	.79	1.00	.45	.07
Group 20	12.50	13.25	.79	1.00	.45	.07
Group 21	12.65	13.40	.79	1.00	.45	.07
Group 22	12.80	13.55	.79	1.00	.45	.07
Group 23	12.95	13.70	.79	1.00	.45	.07
Group 24	13.10	13.85	.79	1.00	.45	.07
Group 25	13.25	14.00	.79	1.00	.45	.07
Group 26	13.40	14.15	.79	1.00	.45	.07
Group 27	13.55	14.30	.79	1.00	.45	.07
Group 28	13.70	14.45	.79	1.00	.45	.07
Group 29	13.85	14.60	.79	1.00	.45	.07
Group 30	14.00	14.75	.79	1.00	.45	.07
Group 31	14.15	14.90	.79	1.00	.45	.07
Group 32	14.30	15.05	.79	1.00	.45	.07
Group 33	14.45	15.20	.79	1.00	.45	.07
Group 34	14.60	15.35	.79	1.00	.45	.07
Group 35	14.75	15.50	.79	1.00	.45	.07
Group 36	14.90	15.65	.79	1.00	.45	.07
Group 37	15.05	15.80	.79	1.00	.45	.07
Group 38	15.20	15.95	.79	1.00	.45	.07
Group 39	15.35	16.10	.79	1.00	.45	.07
Group 40	15.50	16.25	.79	1.00	.45	.07
Group 41	15.65	16.40	.79	1.00	.45	.07
Group 42	15.80	16.55	.79	1.00	.45	.07
Group 43	15.95	16.70	.79	1.00	.45	.07
Group 44	16.10	16.85	.79	1.00	.45	.07
Group 45	16.25	17.00	.79	1.00	.45	.07
Group 46	16.40	17.15	.79	1.00	.45	.07
Group 47	16.55	17.30	.79	1.00	.45	.07
Group 48	16.70	17.45	.79	1.00	.45	.07
Group 49	16.85	17.60	.79	1.00	.45	.07
Group 50	17.00	17.75	.79	1.00	.45	.07

POWER EQUIPMENT OPERATORS (Cont'd)
(Other than for work in Tunnels, Shafts and Raises)

Group 5: Cable operated power Shovels, Draglines, Clamshells and Backhoes over 5 cu. yds.; Crane, over 50 tons carrier mounted; Derrick; Electric rail type Tower Crane; Hoist, 3 drum or more; Quad Nine and similar push unit; Scrapers - single bowl including pups 40 cu. yds. and tandem bowls and over

Group 6: Cableway; Climbing Tower Crane; Crawler or truck mounted Tower Crane; Wheel Excavator, Tower Crane, truck type

POWER EQUIPMENT OPERATORS (Cont'd)
(For work in Tunnels, Shafts and Raises)

Group 1: Brakeman

Group 2: Motorman

Group 3: Compressor (900 CFM and over) serving Tunnels, Shafts and Raises

Group 4: Air Tractors; Grout Machine; Gunnite Machine; Jumbo Form; Mechanic; Welder

Group 5: Concrete Placement Pumps, 8" and over discharge; Mechanic-Welder, Heavy duty; Mucking Machines and Front End Loaders, underground; Slusher; Mine Hoist Operator

Group 6: Mole

TRUCK DRIVERS	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1	ZONE 2				
Group 1	$8.78	9.28	.84	.63	.30	
Group 2	8.88	9.38	.84	.63	.30	
Group 3	8.98	9.48	.84	.63	.30	
Group 4	9.03	9.53	.84	.63	.30	
Group 5	9.08	9.58	.84	.63	.30	
Group 6	9.13	9.63	.84	.63	.30	
Group 7	9.18	9.68	.84	.63	.30	
Group 8	9.23	9.73	.84	.63	.30	
Group 9	9.33	9.83	.84	.63	.30	
Group 10	9.38	9.88	.84	.63	.30	
Group 11	9.48	9.98	.84	.63	.30	
Group 12	9.63	10.13	.84	.63	.30	
Group 13	9.68	10.18	.84	.63	.30	
Group 14	9.78	10.28	.84	.63	.30	
Group 15	9.88	10.38	.84	.63	.30	
Group 16	9.98	10.48	.84	.63	.30	
Group 17	10.08	10.58	.84	.63	.30	
Group 18	10.28	10.78	.84	.63	.30	

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TRUCK DRIVERS

Group 1: Pickups; Helpers; Scalemen; Checkers; Spotters; Dumpmen

Group 2: Dump Trucks, to and including 6 cu. yds.; Sweepers; Flat Rack, single axle; Liquid and Bulk Tankers, single axle; Warehouse men; Washers; Greasemen; Servicemen; Ambulance Drivers

Group 3: Dump Trucks, over 6 cu. yds. to and including 14 cu. yds.; Flat Rack, tandem axle; Battery Men; Mechanics' Helpers; Material Checkers; Cardex Men; Expeditors; Man Haul Shuttle Truck or Bus

Group 4: Straddle Truck; Lumber Carrier; Liquid and Bulk Tankers, tandem axle

Group 5: Fork Lift Driver; Fuel Truck; Grease Truck; Combination Fuel and Grease

Group 6: Distributor Truck Driver; Cement Mixer, Agitator Truck to and including 10 cu. yds.; Liquid and Bulk Tankers, semi or combination

Group 7: Multi-purpose Truck; Speciality and Hoisting

Group 8: Dump Trucks, over 14 cu. yds. to and including 29 cu. yds.; High Boy, Low Boy, Floats, semi; Cab operated Distributor Truck Driver, semi; Liquid and Bulk Tankers, Euclid, Electric or similar; Truck Drivers, Dumptor type Youngbuggy, Jumbo and similar type equipment

Group 9: Truck Driver, Snow Plow

Group 10: Cement Mixer, Agitator Truck, over 10 cu. yds., to and including 15 cu. yds.

Group 11: Dump Trucks, over 29 cu. yds. to and including 39 cu. yds.

Group 12: Cement Mixer, Agitator Truck, over 15 cu. yds.

Group 13: Dump Trucks, over 39 cu. yds. to and including 54 cu. yds.; Tireman

Group 14: Mechanic

Group 15: Dump trucks, over 54 cu. yds. to and including 79 cu. yds.

Group 16: Heavy Duty Diesel, Mechanic, Body Men, Welders or Combination Men

Group 17: Dump Trucks, over 79 cu. yds. to and including 104 cu. yds.

Group 18: Dump Trucks, over 104 cu. yds.

ZONE DEFINITIONS
Power Equipment Operators and Truck Drivers

A. Counties entirely within Zone 1:
Delta Garfield Mesa

B. Counties entirely within Zone 2:
Gunnison Pitkin

C. Legal description of the portion of Montrose County which is included within Zone 1, as follows:
All of Montrose County lying north of the North line of Ouray County and said North line extended West to the Township line between R11W and R12W, said part lying East of said Township line of the New Mexico Principal Meridian

D. Legal description of the portion of Montrose County which is included within Zone 2, as follows:
All of Montrose County except that part lying north of the North line of Ouray County and said North line extended West of said Township line between R11W and R12W, said point being East of said Township line of the New Mexico Principal Meridian

SUPERSEDEAS DECISION

STATE: Colorado

COUNTIES: Las Animas, Otero and Pueblo

SUPERSEDEAS DECISION

STATE: Colorado

COUNTIES: Las Animas, Otero and Pueblo

DECISION NUMBER: C079-5120

DATE: Date of Publication

Supersedes Decision No. C078-5112 dated July 14, 1978, in 43 FR 30447

DESCRIPTION OF WORK: Building Projects (does not include single family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 12.14	.55	$ 1.37		
BOILERMAKERS	12.38	.85	1.00		.02
BRICKLAYERS	10.72	.85	.75		.07
CARPENTERS	9.82	.90	.95	.85	.07
CEMENT MASONS:					
Cement Masons	10.60	.52	1.15		.11
Working with composition material and cobbs	11.18	.52	1.15		.11
Working on scaffold, swing stage or temporary platform over 25'	10.65	.52	1.15		.11
DRYWALL INSTALLERS	9.29	.78	.85	.85	.07
ELECTRICIANS:					
Zone I (0-12 miles from P. O.)					
Electricians	11.40	.72	3%+.80		1%
Cable Splicers	12.54	.72	3%+.80		1%
Zone II (12-30 miles from P.O.)					
Electricians	11.80	.72	3%+.80		1%
Cable Splicers	12.94	.72	3%+.80		1%
Zone III (30-40 miles from P.O.)					
Electricians	12.15	.72	3%+.80		1%
Cable Splicers	13.29	.72	3%+.80		1%
Zone IV (Over 40 miles from P.O.					
Electricians	13.38	.72	3%+.80		1%
Cable Splicers	14.42	.72	3%+.80		1%
Electrical contracts under $20,000 in Zones III and IV	9.65	.72	3%+.80		1%
ELEVATOR CONSTRUCTORS	11.71	.895	.69	a	.035
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.895	.69	a	.035
GLAZIERS	12.15				
IRONWORKERS:					
Structural; Ornamental and Reinforcing	11.60	1.04	1.25		.12
LATHERS	10.80				.01

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MARBLE & TILE SETTERS, TERRAZZO WORKERS	$ 10.26	.90	.85		.04
MILLWRIGHTS	11.51	.90	.85		.135
PAINTERS:					
Brush, roller, tapers, hand texture	8.82	.50	.50		.04
Steel, brush; Paperhangers	9.32	.50	.50		.04
Spray, Tapers using Automatic tools	9.82	.50	.50		.04
Steel, Spray	10.32	.50	.50		.04
PLASTERERS	12.04				.01
PLUMBERS:					
Zone I (0-15 miles from P.O.)	12.27	.80	1.05		.08
Zone II (15-20 miles from P.O.)	12.84	.80	1.05		.08
Zone III (20-40 miles from P.O.)	13.27	.80	1.05		.08
Zone IV (Over 40 miles from P.O.)	14.295	.80	1.05		.08
ROOFERS	9.93	.52	.40		
SHEET METAL WORKERS	11.95	3%+.64	1.41		.09
SOFT FLOOR LAYERS:					
Las Animas and Otero Counties	10.38	.40	.75	.30	.10
Pueblo County	9.00	.40	.75	.30	.05
SPRINKLER FITTERS	12.10	.75	1.05		.08
TILE, MARBLE & TERRAZZO HELPERS:					
Helpers	7.83	.90	.85	.50	
Floor Grinders	8.00	.90	.85	.50	
Base Grinders	8.55	.90	.85	.50	

FOOTNOTE:

a. Employer contributes 6% of basic hourly rate for over 5 years' service and 4% of basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit. 6 Paid Holidays: A through F.

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

LABORERS	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
				H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1	ZONE 2	ZONE 3				
Group 1	$ 5.60	$ 6.05	$ 6.50	.55	.65		.05
Group 2	8.29	8.74	9.19	.55	.65		.05
Group 3	8.57	9.02	9.47	.55	.65		.05
Group 4	8.79	9.24	9.69	.55	.65		.05
Group 5	8.84	9.29	9.74	.55	.65		.05
Group 6	9.09	9.54	9.99	.55	.65		.05

ZONE 1 - That area encompassed by 0 to 30 driving miles from the Main Post Office in each of the following Cities: Pueblo, La Junta and Trinidad

ZONE 2 - That area encompassed by 30 to 70 driving miles from the Main Post Office in the above named Cities

ZONE 3 - That area encompassed by 70 driving miles and over from the Main Post Office in the above named Cities.

LABORERS

Group 1: Watchman tending Heaters and Pumps

Group 2: Building Construction Laborer

Group 3: Laborers - Underpinning and Shoring eight (8) feet or more below working surface.
Power Tool Operators of all mechanical, air, gas and electrical tools, including Self-propelled Buggies and Cement Finishers Tenders. Laborers preparing and placing of stone or any other aggregate in sand bed to be used as exposed face of Tilt-up Panels.
Burners on Demolition and Welders, Gunnite Nozzleman and Sandblasters.

Group 4: Pipelayers on Building Construction

Group 5: Jackhammer Operator for Underpinning and Shoring over twelve (12) feet below working surface, Bellers and Stemmers on Caisson Work.

Group 6: Tender, Mason and Plaster

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
(Other than for work in tunnels, shafts, and raises)	Zone 1*	Zone 2*				
Group 1	$ 9.25	10.00	.79	1.00	.45	.07
Group 2	9.60	10.35	.79	1.00	.45	.07
Group 3	9.95	10.70	.79	1.00	.45	.07
Group 4	10.10	10.85	.79	1.00	.45	.07
Group 5	10.25	11.00	.79	1.00	.45	.07
Group 6	10.40	11.15	.79	1.00	.45	.07
(For work in tunnels, shafts, and raises)						
Group 1	9.40	10.15	.79	1.00	.45	.07
Group 2	9.75	10.50	.79	1.00	.45	.07
Group 3	9.85	10.60	.79	1.00	.45	.07
Group 4	10.10	10.85	.79	1.00	.45	.07
Group 5	10.25	11.00	.79	1.00	.45	.07
Group 6	10.65	11.40	.79	1.00	.45	.07

POWER EQUIPMENT OPERATORS
(Other than for work in Tunnels, Shafts and Raises)

POWER EQUIPMENT OPERATORS
(Other than for work in Tunnels, Shafts and Raises)

Group 1: Air Compressor; Asphalt Screed; Oiler; Brakeman; Drill Operator - smaller than Williams MF and similar; Helper to Heavy Duty Mechanic and/or Welder; Operators of 5 or more light plants, Welding Machines, Generators, single unit conveyor; Pumps; Vacuum Well Point System; Tractor, under 70 HP with or without attachments; Rodman, Chainman, Grade Checker

Group 2: Conveyor, handling building materials; Ditch Witch and similar Trenching Machine; Fireman or Tank Heater, road; Forklift; Haulage Motor Man; Pugmill; Portable Screening Plant with or without a spray bar; Screening Plants, with classifier; Self-propelled Roller, rubber-tired under 5 tons

Group 3: Asphalt Plant; Backfiller, Bituminous Spreader or Laydown Machine; Cableway Signalman; Caisson Drill; Williams MF, similar and larger; C.M.I. and similar; Concrete Batching Plants; Concrete finish Machine; Concrete Gang Saws on concrete paving; Concrete Mixer, less than 1 yd.; Concrete Placement Pumps, under 8 inches; Distributors, Bituminous Surfaces; Drill, Diamond or Core; Drill Rigs, rotary, churn, or cable tool; Elevating Graders, Equipment Lubricating and service Engineer; Engineer Fireman; Grout Machine; Gunnite Machine; Hoist, 1 drum; Hydraulic Backhoes, wheel mounted under 3/4 yd.; Loader, Barber Green, etc.; Loader up to and including 6 cu. yds.; Machine Doctor; Mechanic; Motor Grader/Blade, rough; Road Stabilization Machine; Rollers, self-propelled, all types over 5 tons; Sandblasting Machine; single unit portable crusher, with or without washer; Tie Tamper, wheel mounted; Tractor, 70 HP and over with or without attachments; Trenching Machine Operator; Welder; Winch on truck; Instrument Man

Group 4: Cable operated Crane, track mounted; Cable operated power Shovels, Draglines, Clamshells, and Backhoes, 5 cu. yds. and under; Concrete Mixer over 1 cu. yd.; Concrete Paver 34E or similar; Concrete Placement Pumps, 8 inches and over; Crane, 50 tons and under; Hoist, 2 drums; Hydraulic Backhoe, 3/4 yd. and over; Loader, over 6 cu. yds.; Mechanic-welder, heavy duty; Mixer mobile; Motor Grader/blade, finish; Multiple unit portable Crusher, with or without washer; Piledriver; Scrapers, single bowl under 40 cu. yds.; Self-propelled Hydraulic Crane; Tractor with sideboom; Truck mounted Hydraulic Crane

POWER EQUIPMENT OPERATORS (Cont'd)
(Other than for work in Tunnels, Shafts and Raises)

Group 5: Cable operated power Shovels, Draglines, Clamshells and Backhoes over 5 cu. yds.; Crane, over 50 tons carrier mounted; Derrick; Electric rail type Tower Crane; Hoist, 3 drum or more; Quad Nine and similar push unit; Scrapers - single bowl including pups 40 cu. yds. and tandem bowls and over

Group 6: Cableway; Climbing Tower Crane; Crawler or truck mounted Tower Crane; Wheel Excavator, Tower Crane, truck type

POWER EQUIPMENT OPERATORS (Cont'd)
(For work in Tunnels, Shafts and Raises)

Group 1: Brakeman

Group 2: Motorman

Group 3: Compressor (900 CFM and over) serving Tunnels, Shafts and Raises

Group 4: Air Tractors; Grout Machine; Gunnite Machine; Jumbo Form; Mechanic; Welder

Group 5: Concrete Placement Pumps, 8" and over discharge; Mechanic-Welder, heavy duty; Mucking Machines and Front End Loaders, underground; Slusher; Mine Hoist Operator

Group 6: Mole

TRUCK DRIVERS	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1	ZONE 2				
Group 1	$8.78	9.28	.84	.63	.30	
Group 2	8.88	9.38	.84	.63	.30	
Group 3	8.98	9.48	.84	.63	.30	
Group 4	9.03	9.53	.84	.63	.30	
Group 5	9.08	9.58	.84	.63	.30	
Group 6	9.13	9.63	.84	.63	.30	
Group 7	9.18	9.68	.84	.63	.30	
Group 8	9.23	9.73	.84	.63	.30	
Group 9	9.33	9.83	.84	.63	.30	
Group 10	9.38	9.88	.84	.63	.30	
Group 11	9.48	9.98	.84	.63	.30	
Group 12	9.63	10.13	.84	.63	.30	
Group 13	9.68	10.18	.84	.63	.30	
Group 14	9.78	10.28	.84	.63	.30	
Group 15	9.88	10.38	.84	.63	.30	
Group 16	9.98	10.48	.84	.63	.30	
Group 17	10.08	10.58	.84	.63	.30	
Group 18	10.28	10.78	.84	.63	.30	

TRUCK DRIVERS

Group 1: Pickups; Helpers; Scalemen; Checkers; Spotters; Dumpman

Group 2: Dump Trucks, to and including 6 cu. yds.; Sweepers; Flat Rack, single axle; Liquid and Bulk Tankers, single axle; Warehouse men; Washers; Greasemen; Servicemen; Ambulance Drivers

Group 3: Dump Trucks, over 6 cu. yds. to and including 14 cu. yds.; Flat Rack, tandem axle; Battery Men; Mechanics' Helpers; Material Checkers; Cardex Men; Expeditors; Man Haul Shuttle Truck or Bus

Group 4: Straddle Truck; Lumber Carrier; Liquid and Bulk Tankers, tandem axle

Group 5: Fork Lift Driver; Fuel Truck; Grease Truck; Combination Fuel and Grease

Group 6: Distributor Truck Driver; Cement Mixer, Agitator Truck to and including 10 cu. yds.; Liquid and Bulk Tankers, semi or combination

Group 7: Multi-purpose Truck; Speciality and Hoisting

Group 8: Dump Trucks, over 14 cu. yds. to and including 29 cu. yds.; High Boy, Low Boy, Floats, semi; Cab operated Distributor Truck Driver, semi; Liquid and Bulk Tankers, Euclid, Electric or similar; Truck Drivers, Dumptor type Youngbuggy, Jumbo and similar type equipment

Group 9: Truck Driver, Snow Plow

Group 10: Cement Mixer, Agitator Truck, over 10 cu. yds., to and including 15 cu. yds.

Group 11: Dump Trucks, over 29 cu. yds. to and including 39 cu. yds.

Group 12: Cement Mixer, Agitator Truck, over 15 cu. yds.

Group 13: Dump Trucks, over 39 cu. yds. to and including 54 cu. yds.; Tireman

Group 14: Mechanic

Group 15: Dump trucks, over 54 cu. yds. to and including 79 cu. yds.

Group 16: Heavy Duty Diesel, Mechanic, Body Men, Welders or Combination Men

Group 17: Dump Trucks, over 79 cu. yds. to and including 104 cu. yds.

Group 18: Dump Trucks, over 104 cu. yds.

*ZONE DESCRIPTIONS

SUPERSEDEAS DECISION

STATE: Illinois
DECISION NUMBER: IL79-2051
COUNTY: Cook
DATE: Date of Publication

*ZONE DESCRIPTIONS
Power Equipment Operators and Truck drivers

A. Counties entirely within Zone 1:
Otero Pueblo

B. Portions of Las Animas County which are included within Zone 1, as follows:
All of Las Animas County lying west of the Township line between R59W and R60W of the 7th Guide Meridian West.

C. Portions of Las Animas County which are included within Zone 2, as follows:
All of Las Animas County lying East of the Township line between R59W and R60W of the 7th Guide Meridian West.

SUPERSEDEAS DECISION

STATE: Illinois COUNTY: Cook
DECISION NUMBER: IL79-2051 DATE: Date of Publication
Supersedes Decision No.: IL78-2105, dated October 20, 1978 in 43 FR 49165
DESCRIPTION OF WORK: Building (Including Residential), Heavy and Highway Construction Projects

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$13.01	.91	.99		.05
BOILERMAKERS	13.05	1.05+.40	1.00	5%	.03
BRICKLAYERS & STONEMASONS	11.71	.90	.85		.05
CARPENTERS:					
Building, Heavy & Highway Carpenters & Soft Floor Layers	11.50	.98	1.08		.08
Millwrights & Piledrivermen	11.50	.98	1.08		.08
CEMENT MASONS					
Building	11.25	1.25	1.15		.05
Heavy & Highway	11.25	1.25	1.15		.05
ELECTRICIANS	13.15	8.81%	11.67%	.80	.76%
ELEVATOR CONSTRUCTORS:					
Constructors	13.20	.895	.56	a+b	.025
Helpers	70%JR	.895	.56	a+b	.025
Helpers (Prob.)	50%JR	.895	.56	a+b	.025
GLAZIERS	11.89	.48	.89		.01
IRONWORKERS:					
Structrual & Reinforcing	12.30	1.24	1.22		.10
Ornamental	12.10	.75	.905		.10
Riggers & Machinery Movers	9.80	.75	1.725	1.30	.15
Red Book Fence Erector	9.07	.75	.905		.10
LATHERS	11.52	.58	.645		.04
LINE CONSTRUCTION:					
Linemen	13.30	7.00%	6.50%	7.00%	.025%
MARBLE SETTERS	12.73	.80			
MARBLE SETTERS' FINISHERS & Polisher	9.00	.62		.33	
PAINTERS:					
Brush, Decorators, Paperhangers & Tapers	10.85	.575	.65		.013
PLASTERERS	10.87	.875	.92		.045
PIPEFITTERS	14.10	.85	1.12		.03
PLUMBERS	12.50	.75	.82		.10
POINTERS, CAULKERS & CLEANERS	11.60	1.10	.90		

DECISION NO. IL79-2051

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS:					
Composition & Waterproofers	$12.30	1.16	.90		.03
Slate & Tile	12.07	1.16	.75		.02
SHEET METAL WORKERS	12.95	.90	.73	.50	.07
SPRINKLER FITTERS	12.50	.95	1.05		.15
SURVEY CREW:					
Layout Technician	11.95	.80	.30		
Instrument Man	9.87	.80	.30		
Rodman	8.18	.80	.30		
TERRAZZO WORKERS	8.95	.30	.30		
TILE SETTERS	10.85	.425	.45625		
TILE SETTERS' FINISHERS	8.10	2.45d	3.40d		
TRUCK DRIVERS:					
Building & Residential					
2-3 Axle Trucks	10.15	29.00c	33.00c		
4 Axle Trucks	10.40	29.00c	33.00c		
5 Axle Trucks	10.60	29.00c	33.00c		
6 Axle Trucks	10.80	29.00c	33.00c		
Heavy and Highway					
2-3 Axle Trucks	10.05	.80	.85		
4 Axle Trucks	10.30	.80	.85		
5 Axle Trucks	10.50	.80	.85		
6 Axle Trucks	10.70	.80	.85		

PAID HOLIDAYS: (WHERE APPLICABLE)
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day;
E-Thanksgiving Day; F-Day after Thanksgiving Day; G-Christmas Day

FOOTNOTES:
a. 7 Paid Holidays A through G
b. Employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years. Employer contributes 6% of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years
c. Per week per employee
d. Per Day

DECISION NO. IL79-2051

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
CLASS 1					
Common Laborers, Plasterer Laborers, Pumps for DeWatering & other Unclassified Laborers	$ 9.20	.57	1.10		
CLASS 2					
Cement Gun Laborers	9.275	.57	1.10		
CLASS 3					
Scaffold Laborers & Chimney Laborers over 40'	9.30	.57	1.10		
CLASS 4					
Windlass & Cement Gun Nozzle Laborers - Gunite	9.30	.57	1.10		
CLASS 5					
Stone Handlers & Derrickmen	9.40	.57	1.10		
CLASS 6					
Jackhammermen	9.425	.57	1.10		
CLASS 7					
Concrete Vibrator, Plumbers' Laborer & Chain Saw Operator	9.45	.57	1.10		
CLASS 8					
Firebrick & Boiler Setters' Laborers	9.52	.57	1.10		
CLASS 9					
Chimney Laborers on Firebrick, Caisson Diggers & Well Point System Men	9.55	.57	1.10		
CLASS 10					
Boiler Setter Plastic Laborers	9.65	.57	1.10		
CLASS 11					
Jackhammer on Firebrick Only	9.755	.57	1.10		

DECISION NO. IL79-2051

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
WRECKING LABORERS:					
General Laborers	$ 8.47	.57	1.10		
Wallmen, Wreckers, Burners, Air Hammermen	9.12	.57	1.10		
Smokestack or High Man	9.47	.57	1.10		
LANDSCAPE WORK:					
Highway Construction Only:					
Landscape Plantsmen	6.18			e	
Maintenance Men	5.87			e	
Truck Driver - Tractor Trailer (3 Axle or more) and Equipment Operator	6.66			e	
Truck Driver - 2 Axle	6.26			e	

FOOTNOTE:
e. Six paid holidays; New Year's Day; Memorial Day; July Fourth Labor Day; Thanksgiving Day; Christmas Day

DECISION NO. IL79-2051

ILL-12-PEO-1

POWER EQUIPMENT OPERATORS: BUILDING & RESIDENTIAL CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	$13.25	1.10	1.10	.60	.05
CLASS II	11.95	1.10	1.10	.60	.05
CLASS III	10.80	1.10	1.10	.60	.05
CLASS IV	9.55	1.10	1.10	.60	.05

CLASS I - Asphalt Plant, Asphalt Spreader, Auto-grad, Batch Plant, Benoto (requires two engineers), Boiler & Throttle Valve, Caisson Rigs, Central Redi-mix Plant, Combination Backhoe Breaker (Truckmounted), Conveyor, Concrete Paver, Concrete Placer, Concrete Tower, Cranes (all), Durricks (all), Grader, Elevating, Grouting Machines, Highlift Shovels or Front End Loader 2½ yd. & over, Hoists, One, Two & Three Drum, Hoists, Two & Three, Drum, Hoists, Two Tugger One Floor, Hydraulic Boom Trucks, Locomotives (all), Mechanic, Motor Patrol, Pile Drivers & Skid Rig, Post-hole Digger, Pre-stress Machine, Pump Cretes Dual Ram (requiring frequent lubrication & water), Pumpcretes, Squeese Cretes, - Screw Types Pumps, Cysum Bulker & Pump, Rock Drill (self-propelled), Rock Drill (truck mounted), Scoopes - Tractor Drawn, Slipform Paver, Straddle Buggies, Tournapull, Tractor with Boom & Side Boom, Trenching Machines

CLASS II - Boiler, Bulldozers, Broom All Power Propelled, Concrete Mixer (2 bag & over), Conveyor Portable, Forklift Truck Greaser Engineer, Highlift Shovels or Front End Loaders under 2½ yd., Hoists, Automatic, Hoists All Elevator, Hoists, Tugger Single Drum, Roller, All, Steam Generators, Stone Crushers, Tractor, All Winch Trucks with "A" Frame

CLASS III - Air Compressor - small 150 & under (1) to 5 not to exceed a total of 300 ft.), Air Compressor - large over 150, Combination - Small Equipment Opr., Generators under & over 50 KW Heaters, Mechanical Pumps, over 3" (1 to 3 not to exceed a total of 300 ft.), Pumps, Well Points, Welding Machines (2 through 5), Winches, 4 Small Electric Drill Winches

CLASS IV - Oilers

DECISION NO. 11.79-2051

III-10-PEO-2-3

POWER EQUIPMENT OPERATORS: SEWER, HEAVY & HIGHWAY CONSTRUCTION

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	$12.20	1.00	1.00	.50	.05
CLASS II	11.65	1.00	1.00	.50	.05
CLASS III	10.90	1.00	1.00	.50	.05
CLASS IV	9.80	1.00	1.00	.50	.05
CLASS V	8.80	1.00	1.00	.50	.05

CLASS I - Asphalt Plant, Asphalt Heater & Planer Combination, Asphalt Spreader, Autograde, Belt Loader, Caisson Rigs, Central Redimix Plant, Concrete Breaker (truck mounted), Concrete Conveyor, Concrete Paver over 27E cu. ft., Concrete Placer, Concrete Tube Float, Cranes, All Attachments, Cranes, Linden, Peco & Machines of alike nature, Derricks, Traveling, Dredges, Euclid Loader, Elevating Type, Cradall, & Mechanics of a like nature, Derricks, All Derrick Boats, Derricks, Traveling, Dredges, Euclid Loader, Elevating Type Gradall, and Mechanics of a like nature, 1 cu. yd. & over, Mucking Machine, under 1 cu. yd., Piledrivers & Skid Rig, Pre-stress Machine, Pump Cretes Dual Ram (requiring frequent lubrication & water), Rock Drill Crane Type, Slip Form Paver, Straddle Buggies, Tractor w/boom Tractaire w/attachments, Trenching Machine, Undergound Boring &/or Mining Machine under 5 ft., Wheel Exactor Widener (Apsco)

CLASS II - Mechanic-welder, Batch Plant, Bituminous Mixer, Bulldozer, Combination Backhoe Front End Loader Machine, Concrete Breaker of Hydro-hammer, Concrete Grinding Machine, Concrete Mixer or Paver 7S Series to & including 27 cu. ft., Concrete Spreader, Concrete Curing Machine, Burlap Machine, Belting Machine & Sealing Machine, Finishing Machine, Concrete Grader, Motor Patrol Auto Patrol, Form Grader, Pull Grader, Subgrader, Highlift Shovels or Front End Loader, Hydraulic Boom Trucks (all attachments), Locomotives, Dinky, Pump Cretes; Squeeze Cretes; Srew Type Pumps Cypsum Bulker & Pump, Rock Drill (self-propelled), Roto-tiller, Seaman, etc. Self-propelled Scoops; Tractor Drawn, Self-propelled Compactor, Spreader, Chipstone, etc., Scraper, Tank Car Heater, Tractor, Push, Pulling Sheeps Foot, Disc., Compactor, etc. Tug Boats

DECISION NO. 11.79-2051

POWER EQUIPMENT OPERATORS (Cont'd)

CLASS III - Boilers, Boiler & Throttle Valve, Brooms, All Power Propelled, Cement Supply Tender, Compressor Throttle Valve, Concrete Mixer (2 bags & over) Conveyor, Portable, Fireman on Boiler, Forklift Trucks, Greaser Engineer, Grouting Machine Hoists, Automatic, Hoists, All Elevators, Hoists, Tugger, Single Drum, Jeep Diggers, Pipe Power Saw, Concrete, Power-Driven, Pug Mills, Rollers, All, Steam Generators, Stone Crushers, Stump Machine, Winch Truck with "A" Frame, Work Boats, Tamper, Form Motor Driven

CLASS IV - Air Compressors, All, Generators, Heaters, Mechanical, Light Plants, all (1 through 5), Pumps, All, Pumps Well Points, Tractaire, Welding Machines (2 through 6)

CLASS V - Oilers

SUPERSEDEAS DECISION

STATE: Illinois

COUNTIES: Henderson, Henry, Knox Mercer, Rock Island, Stark & Warren

SUPERSEDEAS DECISION

STATE: Illinois

COUNTIES: Henderson, Henry, Knox
Mercer, Rock Island, Stark & Warren

DECISION NO. IL79-2054

DATE: Date of Publication

Supersedes Decision No. IL78-2123, dated October 27, 1978, in 43 FR 50308

DESCRIPTION OF WORK: Building Construction Projects, (excluding single family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
Stark County	$13.01	.91	.99		.05
Remainder of Counties	12.07	.45	.85		.10
BOILERMAKERS	11.45	.95	1.00		.03
BRICKLAYERS:					
Rock Island and Mercer Counties					
Bricklayers and Stonemasons	11.90	.65	1.30		.04
Marble, Tile, Terrazzo Workers	11.50	.50	1.30		
Plasterers	13.00				
Henry County					
Bricklayers, Stonemasons and Plasterers	12.10		.75		
Stark County					
Bricklayers and Stonemasons	12.10		.75		
Plasterers	11.20	.80	.90		.03
Marble, Tile, Terrazzo Workers	12.15	.70	1.16		.01
Marble and Tile Finishers	11.85	.60	.25		
Terrazzo Finishers and Floor Machine Operator	11.98	.60	.25		
Knox and Warren Counties					
Bricklayers, Stonemasons, Cement Blocklayers, Pointers, Cleaners & Caulkers	12.40	.70	1.16		.01
Henderson County					
Bricklayers, Stonemasons, Cement Blocklayers, Pointers, Cleaners & Caulkers	12.40	.70	1.16		.01
Marble, Tile, Terrazzo Workers	12.15	.70	1.16		.01
Marble and Tile Finishers	11.85	.60	.25		
Terrazzo Finishers and Floor Machine Operator	11.98	.60	.25		
CARPENTERS:					
Stark County					
Carpenters and Soft Floor Layers	12.61	.40	.75		.05
Millwrights and Piledrivermen	13.11	.40	.75		.05
Knox, Henderson and Warren Cos.					
Carpenters and Soft Floor Layers	12.61	.40	.75		.05
Millwrights and Piledrivermen	13.11	.40	.75		.05

DECISION NO. IL79-2054

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS: (Cont'd)					
Rock Island, Henry & Mercer Cos.					
Carpenters & Soft Floor Layers	$12.01	.60	.90		.06
Piledrivermen	10.71	.45	.70		.04
Millwrights	13.40	.60	1.00		.25
CEMENT MASONS:					
Rock Island, Mercer, & Eastern Half of Henry Co.	12.02	.70	.60		
Stark Co. and Remainder of Henry County	11.65		.75		
Knox and Warren Counties					
Cement Masons & Plasterers	11.80	.50	.25		
Henderson County					
Cement Masons:					
Northern Half of Co.	11.12	.70	.60		
Central & Southern Half of County	10.78				
ELECTRICIANS:					
Knox, Henderson, Warren Cos. Townships of Ohio Grove, North Henderson & Sups in Mercer County	12.92	.50	3%+1.00		3/4%
Stark Co.; Townships of Essex, Valley & West Jersey	12.92	.50	3%+1.00		3/4%
Henry Co: (Townships of Annawan, Burns, Cambridge, Galva, Kewanee, Weller & Westerfield & the Remainder of Stark Co.	13.80	.50	3%+.50		.25%
Rock Island and Remainder of Henry County & Mercer Cos.	12.49	.55	7.5%		.03
ELEVATOR CONSTRUCTORS:					
Rock Island, Mercer, Henry and Knox Counties					
Constructors	11.57	.495	.32	4%+a+b	.02
Helpers	8.10	.495	.32	4%+a+b	.02
Helpers (Prob.)	5.785	.495	.32	4%+a+b	.20
GLAZIERS:					
Stark County	12.33	.55	.60		.01
Remainder of Counties	10.59	.70	1.00		.02

DECISION NO. IL79-2054

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
IRONWORKERS:					
Mercer, Henderson, Warren & All Areas West & Southwest of Galesburg	$12.40	.55	.90		.06
Stark Co. and All Area South and East of Galesburg in Knox County	12.825	.65	.925		
Rock Island and Henry Counties; & within Galesburg & All Area North of City in Knox County	13.87	.75	.375		.11
LABORERS:					
Stark County - Western ½					
Unskilled	9.84	.40	.60		.035
Semi-Skilled	10.04	.40	.60		.035
Skilled	10.24	.40	.60		.035
Eastern Half of Stark County					
Unskilled	10.07	.40	.60		.035
Semi-Skilled	10.27	.40	.60		.035
Skilled	10.47	.40	.60		.035
LATHERS:					
Knox County	11.75				.01
Stark County	11.92	.40	.40		.01
Rock Island, Mercer & Henry Counties	12.68		.20		.01
PAINTERS:					
Rock Island, Henry, Mercer, Henderson, Stark and Warren Counties; West of line extending from N. E. corner to S. W. corner of Knox County					
Brush and Roller	10.62	.55	.85		.18
Spray and Structural Steel	11.12	.55	.85		.18
Remainder of Knox County					
Brush and Paperhangers	10.10	.55	.15		
Structural Steel	10.35	.55	.15		
PLASTERERS:					
Stark County	11.20	.80	.90		.03
Rock Island and Mercer Counties	13.00				
PLUMBERS & STEAMFITTERS:					
Stark County	12.70	.51	1.05		.15
Remainder of Counties	12.45	.54	1.41		.20

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS:					
Stark County	$12.85	.70	.40		.025
Rock Island, Henry & Mercer Counties	12.65	.65	.80		
Remainder of Counties	10.20				
SHEET METAL WORKERS:					
Stark County	11.24	.65	.99		.06
Henderson County	11.03	.55	.55		.12
Remainder of Counties	11.23	.55	.55		.12
SPRINKLER FITTERS	12.10	.75	1.05		.08

PAID HOLIDAYS: (WHERE APPLICABLE)
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:
a. Six Paid Holidays: A through F.

b. Employer contributes 4% of regular hourly rate to Vacation Pay credit for employee who has worked in business more then 5 years. Employer contributes 2% of regular hourly rate to Vacation Pay credit for employee who has worked in business less than 5 years.

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LABORERS: ROCK ISLAND & MERCER COUNTIES	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
UNSKILLED	$10.32	.50	1.00		.035
SEMI-SKILLED	10.72	.50	1.00		.035
SKILLED	11.02	.50	1.00		.035

UNSKILLED - Common Laborer, Carpenter Tender, Rod & Chain Man, Flagman, Gravel Boxmen, Dumpmen & Spotters, Form Handlers, Material Handlers, Fencing Laborers Cleaning Lumber, Material Checkers, Dispatchers, Landscapers, Unloading Explosives, Laying of Sod, Planting of Trees, Removal of Trees, Asphalt Plant Laborers, Wrecking Laborers, Writers of Scale Tickets, Scalemen (Permanent-Potable or Temporary Plant), Deck Hand.

SEMI-SKILLED - Laying & Jointing of Telephone Conduit, Darco & Jackhammer Operator, Mechanical Tamper and Air Space, Wagon & Hand Drill, Vibrator Operator, Operator on Power Tools used under the Jurisdiction of Laborers, Cement Jumper; Puddler, Form Setter Helpers, Power & Hand Saw (when clearing timber), Center Strip, Reinforcing in Concrete, Wire Mesh, Concrete Saw, Mortar Mixer, Prime Mover or any Mechanical Device taking the place of Concrete Buggy or Wheelborrow, Sand Point Setter, Asphalt Kettleman, Mastic Asphalt Mixerman or other preparations used on joints, Sheeting Hammer Divers (2-Men) Back up man or Joint Man with Pipelayers, Laborer in Ditch or Tunnel on Sewer and Water Main & Telephone Conduit Gas Distribution Men, Pipe Setters on Laterals, Drain Tiles, Culvert Pipe & Storm Sewer Connections to Catch Basins, Manholes or Maine Line, Handling of Materials treated with Oil, Coreosote, Asphalt and/or any Foreign Material harmful to skin or clothing, Chloride Handlers, the Unloading & Laborers w/steel Workers and Re-bard, Tunnel Helpers in Free Air, Batch Dumpers, Tank Cleaners, Cofferdam Workers, Bankmen on Floating Plant

SKILLED - String (1-man), Head Form Setter, Dynamite Man, Asphalt Raker, Tunnel Miner, Pipelayer on Sewer & Water, Gunnite Nozzle Man, Welders, Cutters, Burners & Torchman, Screedman on Asphalt Pavers, Lutemen, Curb Asphalt Machine Operator, Laser Beam Operator, Concrete Burning Machine Operator, Coring Machine Operators, Head Brade Man

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LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
HENRY COUNTY					
UNSKILLED	$10.44	.55	.80		.035
SEMI-SKILLED	10.64	.55	.80		.035
SKILLED	10.84	.55	.80		.035
KNOX, HENDERSON & WARREN COS.					
UNSKILLED	10.07	.45	.60		.035
SEMI-SKILLED	10.27	.45	.60		.035
SKILLED	10.47	.45	.60		.035

UNSKILLED - Common Laborer, Carpenter Tenders, Tool Cribmen, Firemen or Salamander Tenders, Flagmen, Gravel Box Men, Dumpmen & Spotters, Form Handlers, Fencing Laborers, Cleaning Lumber, Pitmen, Material Checkers, Dispatchers, Landscapers, Unloading Explosives, Laying of Sod, Planting of Trees, Asphalt Plant Laborers, Wrecking Laborers, Writer of Scale Tickets, Fire Shop Laborers, Fireproofing Laborers, Janitors, Wrecking-Dismantling Building, Wallmen & Housemovers, Driving of Stakes, Stringlines for all Machinery

SEMI-SKILLED - Handling of Materials treated with Oil, Creosote, Asphalt or any Foreign Material, Track Laborers, Cement Handlers, Chloride Handlers, the Unloading and Laborers w/steel Workers & Rebars, Concrete Workers (wet), Tunnel Helpers in Free Air, Batch Dumpers, Mason & Plasterer Tenders & Material Wheelers, Kettlemen & Tarmen; Tank Cleaners, Plastic Installer, Scaffold Workers, Material, Buggies or Motorized unit used for Wet Concrete or Handling of Building Materials, Laborers w/dewatering Systems, All Sewer Workers plus depth, Rod of Chainmen with Land Surveyors, Vibrator Operators, Mortar Mixer Operator, Cement Silica, Clay, Fly Ash, Lime & Plasters, Handlers (bulk or bag), Cofferdam Workers plus depth, (on concrete paving) Placing Cutting & trying or Reinforcing, Deck Hand & Shore Laborers, Bankmen on Floating Plant, Asphalt Workers w/machine, Asphalt Raker, Grader Checker

SKILLED - Dynamite Men or Blasters, Caisson Workers plus depth, Gunnite Nozzle Men, Leadmen on Sewer Work, Welders, Cutters, Burners, Trochmen, Chain Saw Operators, Jackhammer & Drill Operators Layout Man, Steel Form Setters (Street & Highway); Air Tamping Hammerman, Signal Man on Crane, Concrete Saw Operator, Screenman on Asphalt Paver, Laborers Tending Machines w/hot Materials are used, Multiple Concrete Duct-Leadmen, Lutemen, Crib Asphalt Machine Operator, Ready-Mix Scaleman, Portable or Temporary Plant, Laborers Handling Waterplate or similar Materials, Laser Beam Operator, Coring Machine Operator

DECISION NO. 1L79-2054

POWER EQUIPMENT OPERATORS

KNOX, HENDERSON, WARREN, STARK COUNTIES; & EASTERN ½ of HENRY CO.	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$13.08	.45	.80		.05
GROUP 2	12.88	.45	.80		.05
GROUP 3	12.505	.45	.80		.05
GROUP 4	12.23	.45	.80		.05
GROUP 5	11.62	.45	.80		.05

GROUP 1 - Cranes, Escalated Rate on Crane, Derricks, Booms, $.01 per hour, per foot after 80 feet or Boom including jib, Overhead Cranes, Gradall, Cherry Pickers (and similar types over 15 ton lifting capacity require oiler), Mechanics, Central Concrete Mixing Plant Operator, Road Pavers (27E-Dual Drum-Tri Batchers), Blacktop Plant Operators and Plant Engineers, 3 Drum Hoist, Derricks, Hydro Cranes, Shovels Skimmer Scoops, Koehring Scoopers, Draglines, Backhoe, Hoptoes-Crane-Type that require Oilers, Derrick Boats, Pile Drivers and Skid Rigs, Clamshells, Locomotive Cranes, Dredge (all types), Motor Patrol, Power Blades Dumore-elevating and similar types Tower Cranes (crawler mobile) and Stationary, Crane-Type Backfiller, Drott Yumbo and similar types considered as Cranes, Casisson Rigs (require oilers) Dozer, Tourna-dozer, Work Boats, Ross Carrier and Helicopter

GROUP 2 - Trench Machine, Pumperete-Belt Crete-Squeeze-Screw Type Pumps and Gypsum Bulker and Pump, Dinkeys, Power Launches, Tournapulls (all), Multiple Unit Earth Movers, $.25 per hour for each Scoop over one, Scoops (all sizes), Push Cats, Endloaders (all types), Side Boom, P-H one Pass Soil-Cement Machine (all similar types), Wheel Tractors (industrial or Farm Types w/dozer-hoe-end-loader or other attachments), Pugmill with Pump Backfillers, Asphalt Surfacing Machine, Euclid Loader, Forklifts, Formless Finishing Machine, Jeeps w/Ditching Machine or other attachments, Tunneluger, Rock Crushers, Automatic Cement and Gravel Batching Plants, Mobile Drills (soil testing and similar types), (requiring oiler), Flaherty Spreader or similar types (require oiler), Heavy Equipment Greaser (top greaser on spread), Curries and similar type, 1 and 2 Drum Hoists (Buck Hoists and similar types Freight and Passenger Elevators Chicago Boom, Boring Machine and Pipe Jacking, Machine Hydro Boom, Starting Engineer on Pipeline, C.M.I. and similar types (require oiler) Straw Blower, Hydro Seeder and F.W.D and similar types

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POWER EQUIPMENT OPERATORS (CONT'D)

GROUP 3 - Tractor (Track Type) without power unit pulling Rollers, Rollers on Asphalt, Brick or Macadam, Concrete Breakers, Concrete Spreaders, Mule Pulling Roller, Center Stripper, Cement Finishing Machines, Barber Greene or similar Loaders, Vibro Tamper (all similar types), Self-Propelled, Winch or Boom Truck, Mechanical Bull Floats, Mixer over 3 Bags to 27E, Tractor Pulling Power Blade or Elevating Grader, Porter Rex Rail, Clary Screed, Pugmill (without pump) Screed Man on Laydown Machine, Firemen on Spray Machine on Paving

GROUP 4 - Air Compressor, All Air and Steam Valves, Power Subgrader, Oil Distributor, Straight Tractor, Trac-Air without attachments, Curb Machines, Truck Crane Oilers, and Truck Type Hoptoe Oilers

GROUP 5 - Herman Nelson Heater, Dravo, Warner, Silent Glo and similar types, One Engineer will Operate 1-3 and After 3, Two Operators will be required, Self-Propelled Concrete Saws, Assistant Heavy Equipment Greaser on Spread, Roller, 5 tons and under on Earth or Gravel, Form Grader, Pump 1 or 2, Generator (1) or (2), Welding Machine (1) or (2) - 300 amp. or over, Mixer (3) Bag and under (standard capacity), Bulk Cement Plant, Crawler Crane and Skid Rig Oilers

DECISION NO. 11,79-2054

POWER EQUIPMENT OPERATORS:

ROCK ISLAND, MERCER & WESTERN ½ of HENRY COUNTY

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$11.80	.65	.80		.08
CLASS 2	11.80	.65	.80		.08
CLASS 3	10.40	.65	.80		.08
CLASS 4	10.40	.65	.80		.08
CLASS 5	9.35	.65	.80		.08

CLASS 1 - Crane, Shovel, Clamshell Dragline Backhoe, Derrick Tow Crane, Cable Way, Concrete Spreader (servicing two pavers), Asphalt Spreader, Asphalt Mixer Plant Engineer, Dipper Operator, Dipper Dredge Craneman, Dual Purpose Truck (boom or winch), Levermen or Enginemen (Hydraulic Dredge), Mechanic, Paving Mixer with tower attached (two operators required), Pile Driver, Boom Tractor, Stationary Portable or Floating Mixing Plant, Trenching Machine (over 40 H.P.), Cleaning and Priming Machine, Backfiller, (Throw Bucket), Locomotive Engineer, Qualified Welder, Tow or Push Boat, Concrete Paver, Seaman Trav-L-Plant or similar Machine, CMI Autograder or similar Machine, Slip Form Paver, Caisson Augering Machine, Mucking Machine, Asphlat Heater-Planer Unit Hydraulic Cranes, Mine Hoists

CLASS 2 - Athey, Barber-Green, Euclid or Hasin Loader, Asphalt Pug Mill, Fireman and Driver, Concrete Pump, Concrete Spreader (servicing one paver), Bulldozer, End Loader, Elevating Grader, Group Equipment Greaser, LeTourneaupul and similar Machines, DW-10, Straddle Carrier, Hyster Winch and similar Machines, Motor Patrol, Power Blade Push Car, Tractor pulling Elevating Grader or Power Blade, Tractor Operating Scoop or Scraper Tractor with Power Attachment, Roller on Asphalt or Blacktop, Single Drum Hoists, Jaeger Mixer and Place Machine, Pipe Bending Machine, Welding Machines (3 or 4), Fuller Kenyon Cement Pump or Similar Machines, Automatic Cement and Gravel Batch Plants (one stop set-up), Seaman Pulvi-Mixer or Similar Machines, Self-Propelled Sheep Foot Roller or Compactor (used in conjunction with a grading spread), Asphalt Spreader Screed Operator Apsco Spreader, or Similar Machine, Slusher, Forklift (over 6,000 lb. cap. or working at heights above 28 ft.) Conveyors, Chip Spreader, Work Boat.

DECISION NO. 11,79-2054

POWER EQUIPMENT OPERATORS: (CONT'D)

CLASS 3 - Asphalt Booster, Fireman and Pump Operator at Asphalt Plant, Compressor (500 cu. ft. and over), Concrete Finishing Machine, Form Grader With Roller on Earth, Mixers (3 bag to 16E), Power Operated Bull Float, Tractor Without Power Attachment, Dope Pot (Agitating Motor), Dope Chop Machine, Distributor (back end), Flexplane or similar machines, Portable Machine Fireman, Hydrohammer, Power Winch on Paving Work, Self-Propelled Roller or Compactor (other than provided for above), Pump Operator (more than one well-point pump) Crusher Operator, Trench Machine (40 H.P. and under), Power Subgrader (on forms) or similar machines, Forklift (6000 or less cap.) Gypsum Pump, Conveyor over 20 H.P., Fuller Kenyon Cement Pump or Similar Machines.

CLASS 4 - Air Compressor (275 c.f.m. or over) Driver on Truck Crane or similar machines, Light Plant Mixers (1 or 2 bags), Power Batching Machine (Cement Auger or Conveyor), Boiler (engineer or fireman), Water Pumps, Welding Machine, Mechanical Broom, Automatic Cement and Gravel Batch Plants (two or three stop set-up), Small Rubber - Tired Tractors (not including Backhoes or End Loaders), Self-Propelled Curing Machine.

CLASS 5 - Oiler, Mechanic's Helper, Mechanical Heater (other than steam boiler), Belt Machine, Small Outboard Motor Boats (Safety Boat and Life Boat), Engine Driven Welding Machine, and Small Tractors (used to unroll or roll wire mesh)

DECISION NO. IL79-2054

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS					
GROUP I	$10.80	.65	20.00a		
GROUP II	11.20	.65	20.00a		
GROUP III	11.40	.65	20.00a		

GROUP I - Drivers on 2 Axle Trucks hauling less than 9 tons, Air Compressor and Wedling Machine including those pulled by separate units, Truck Driver Helpers, Warehouseman, Mechanic Helpers, Greasers & Firemen, Pick-up Trucks when hauling Materials, Tools, or men to and from and on the jobs site, Fork Lifts up to 6,000 lbs., capacity.

GROUP II - 2 or 3 Axle Trucks Hauling more than 9 tons, but hauling less than 16 tons, A-frame Winch Trucks, Hydrolifts Trucks, or similar equipment when used for transpotation purposes, Fork Lifts over 6,000 lb. capacity, Winch Trucks, 4-Axle combination units, Ticket Writers

GROUP III - 2,3 or 4 Axle Trucks hauling 16 tons or more, Driers on Oil Distributors, Water Pulls, Mechanics & Working Foreman, 5-Axle or more combination units, Dispatchers

FOOTNOTES

a. Per Week Per Employee

SUPERSEDEAS DECISION

STATE: Kansas COUNTY: Leavenworth
DECISION NO.: KS79-4066 DATE: Date of Publication
Supersedes Decision No. KS78-4007, dated February 3, 1978 in 43 FR 4808
DESCRIPTION OF WORK: Building Construction Projects, (does not include single family homes and garden type apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$12.67	.60	1.55		.05
BOILERMAKERS	12.00	1.15	1.00		.03
BRICKLAYERS; Stonemasons	11.025	.80	.35	1.00	
CARPENTERS; Millwrights and Pile-drivermen	12.30	.50	.40		.06
CEMENT MASONS	11.675	.65	.50		
ELECTRICIANS:					
Zone 1 - Delaware, Kickapoo, High Prairie and Leavenworth Townships)	12.77	.54	3%+.51	.95	.10
Zone 2 - Remainder of County	12.75	.45	3%+.65		.05
ELEVATOR CONSTRUCTORS	11.97	.745	.56	3%+a	.025
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.745	.56	3%+a	.025
ELEVATOR CONSTRUCTORS' HELPERS (PROJ.)	50%JR				

FOOTNOTES: a-Employer constributes 8% of basic hourly rate for over 5 years service and 6% of basic hourly rate for 6 mos. to 5 years as vacation Pay Credit. Also 6 paid holidays.

GLAZIERS	10.72	.61	.89	18.7%	.04
IRONWORKERS	11.60	.75	1.40	1.00	.05
LABORERS:					
General laborers	7.65	.50	.45	.25	.05
Power tool operators, compactors, concrete breakers, chipping tools, drilling tools, concrete saws, mechanically operated georgia buggy	7.85	.50	.45	.25	.05
Mason tenders, plaster tenders, mortar mixers for plasterers, masons and cement finishers, all stocking scaffold, clean up for masons (building & wrecking)	7.95	.50	.45	.25	.05
Sand and concrete gun nozzleman powderman	8.05	.50	.45	.25	.05
LABORERS (Site Preparation and Grading):					
Group 1	6.85	.35	.35		.05
Group 2	7.00	.35	.35		.05
Group 3	7.10	.35	.35		.05
Group 4	7.25	.35	.35		.05
Group 5	7.35	.35	.35		.05

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CLASSIFICATION DEFINITIONS

CLASSIFICATION DEFINITIONS

LABORERS:

Group 1 - Board mat weavers and cable tiers, georgia buggy (manually operated, mixerman-no skip lift, nailers, salamander tenders, track man, tractor swamper, truck dumper, wire mesh setter, water pump up to 4 inches, and all other general laborer including flagman

Group 2 - Air tool operators, cement handlers (bulk), chain saw, georgia buggy (mechanically operated) grade man, hot mastic kettlemen, crusher feeder, joint man, jute man, mason tender, material batch hopper and scale man, mixer man, pier hole man working 10 ft. deep, pipelayer-drainage (concrete and/or corrugated metal), signal man (crane), truck dumper - dry batch, vibrator operator, wagon and churn drill operator

Group 3 - Asphalt raker, barco tamper (concrete saw, creosote material - handling and applying, nozzle burner (cutting torch and burning bar)

Group 4 - Conduit pipe, tile and duct line setter, form setter and liner on concrete paving, powderman, sandblasting and gunnite nozzleman, sanitary sewer pipe layer; steel plate structure erectors; water and gas distribution lines

Group 5 - Leadmen or pusher

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS	12.55	.40			
LINE CONSTRUCTION:					
Zone 1 - Southwest 2/3 of Leavenworth County					
Lineman	11.07	.45	3%		4%
Cable splicers	11.62	.45	3%		4%
Groundman, over 1 year	6.89	.45	3%		4%
Groundman, 1st year	5.22	.45	3%		4%
Powderman	9.18	.45	3%		4%
Line Truck & Equipment Operators:					
1st year	7.05	.45	3%		4%
2nd year	8.43	.45	3%		4%
Over 2 years' experience	9.18	.45	3%		4%
Zone 2 - Remainder of Leavenworth County					
Lineman	13.26	.45	3%+.15		4%
Lineman operator	12.34	.45	3%+.15		4%
Groundman powderman	9.20	.45	3%+.15		4%
Groundman	8.74	.45	3%+.15		4%
Groundman (1st 6 mos.)	7.48	.45	3%+.15		4%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MARBLE AND TILE SETTERS	12.65	50	4.25%		
MARBLE AND TILE SETTERS' HELPERS	9.65				
PAINTERS:					
Zone 1 - Northern 2/3 of County					
Brush, roller, tapers	8.95	.55	.70		
Spray	9.45	.55	.70		
Zone 2 - Remainder of County					
Brush, roller, tapers	8.70	.30	.35		
Spray	9.70	.30	.35		
PLASTERERS	13.10				
PIPEFITTERS	12.98	.67	1.50		.10
PLUMBERS	13.89	.97	1.15		.12
POWER EQUIPMENT OPERATORS (Building Construction):					
Group 1	10.60	.75	1.00	.75	.10
Group 2	10.35	.75	1.00	.75	.10
Group 3	8.95	.75	1.00	.75	.10
Group 4	9.45	.75	1.00	.75	.10
Group 5	9.70	.75	1.00	.75	.10
Group 6	10.85	.75	1.00	.75	.10
Group 7	11.10	.75	1.00	.75	.10
Group 8	10.60	.75	1.00	.75	.10
Group 9	11.00	.75	1.00	.75	.10
Group 10	11.10	.75	1.00	.75	.10
Group 11					
(a)	10.35	.75	1.00	.75	.10
(b)	10.10	.75	1.00	.75	.10
(c)	10.10	.75	1.00	.75	.10
(d)	9.20	.75	1.00	.75	.10

CLASSIFICATION DEFINITIONS

POWER EQUIPMENT OPERATORS

GROUP 1 - Asphalt paver and spreader; asphalt plant mixer operator; asphalt plant operator; backfillers; backhoe, all types; barber-green loader (similar type); blade-power, all types; boats-power; boilers (2); boring machines (all types); cable ways; cherry pickers (all types); chip spreader; concrete ready-mixed plant,portable (job site); concrete mixer paver; crane overhead; crusher, rock; derricks and derrick cars (power operated); ditching machines; dozers; dredges-any type power; gradeall-similar type; hoist, endless chain power operator with power travel; loaders-all types; mechanic and welders; mucking machine; orange peels; pumps-material-all types; push cats; scoops-all types; self-propelled rotary drill; shovel, power; side boom; skimmer scoop; tonthole machine; throttle man

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS CONTD:

GROUP 2 - Boilers (1); brooms-power operator (all types); chip spreader (front man); clef plane operator; compressor (1) 105' or over; compressors (2) 105 ft. or over not more than 20' apart; compressors-tandem (any sizes); compressors single, truck mounted; concrete saws, self-propelled; crab-power operator; curb finishing machine; elevator; finishing machine; firemen on rigs; flex plane, floating machine; form grader; greaser; hoist, endless chain-power operated; hopper-power operated; hydra hamner (all types); lad-a-vator-similar typel rollers-all types; siphons, jets and jennies; sub-grader; tractors over 50 h.p.

GROUP 3 - Oiler

GROUP 4 - Fork lift-masonry; oiler driver-all types

GROUP 5 - "A" frame trucks; fork lift-all types and sizes (except masonry); mixers (with side loaders); pumps (with well points) dewatering systems, test or pressure pumps; tractors (except when hauling material) less than 50 h.p.

GROUP 6 - Clamshells, 80 ft. of boom or over (including jib); crane or rigs, 80 ft. of boom or over (including jib); draglines, 80 ft. of boom or over (including jib); pile drivers, 80 ft. of boom or over (including jib)

GROUP 7 - Crane or rigs, over 200 ft of boom

GROUP 8 - Hoists-each additional drum over 1 drum

GROUP 9 - Master mechanic

GROUP 10 - Crane-tower or climbing

GROUP 11 - Ready Mixed Concrete Plants:

(a) Crane operator.
(b) Loader operator
(c) Plant man
(d) Conveyor operator

POWER EQUIPMENT OPERATORS (CONTD) Site Preparation and Grading	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	10.10	.50	1.00	.75	.10
Group 2	9.85	.50	1.00	.75	.10
Group 3	9.60	.50	1.00	.75	.10
Group 4	8.60	.50	1.00	.75	.10
Group 5	9.10	.50	1.00	.75	.10
Group 6	10.35	.50	1.00	.75	.10
Group 7	10.60	.50	1.00	.75	.10
Group 8	10.10	.50	1.00	.75	.10

CLASSIFICATION DEFINITIONS

POWER EQUIPMENT OPERATORS:

GROUP 1 - Asphalt paver and spreader, asphalt plant console operator, auto grader, backhoe, blade operator, all types, boilers - 2; booster pump or dredge, boring machine (truck or crane mounted), bulldozer operator, clam-shell operator, compressor maintenance operator - 2; concrete plant operator, central mix, concrete mixer, paver, crane operator, derrick or derrick trucks, ditching machine, dragline operator, dredge engineman, dredge operator, drill cat with compressor mounted on cat, drilling or boring machine, rotary, self-propelled, high loader-fork lift, hoisting engine - 2 active drums, locomotive operator, standard gauge, mechanics and welders, field or shop, maintenance operator, mucking machine, piledriver operator, pitman crane operator, pump-2, quad-trac, scoop operator all types, scoops in tandem, self-propelled rotary drill (Leroy or equal - not air tac); shovel operator, side discharge spreader, sideboom cats, skimmer scoop operator, slip-form paver (CMI, REX, or equal), throttle man, truck crane welding machine maintenance operator - 2

GROUP 2 - A-frame truck asphalt hot mix silo, asphalt plant fireman, drum, or boiler, asphalt plant mixer operator, asphalt plant man, asphalt roller operator, backfiller operator, chip spreader, concrete batch plant, dry power operator, concrete mixer operator, skiploader, concrete pump operator, crusher operator, elevating grader operator, greaser, hoisting engine-1 drum, latourneau rooter, multiple compactor, pavement breaker, self-propelled, of the hydra-hammer or similar type, power shield, pug mill operator, stump cutting machine, towboat operator, tractor operator over 50 h.p.

GROUP 3 - Boilers - 1 chip spreader (front man), churn drill operator, compressor maintenance operator - 1, concrete saws, self-propelled, conveyor operator, distributor operator, finishing machine operator, firemen, oiler, float operator, form grader operator, pump, pump maintenance operator, other than dredge, roller operator, other than high type asphalt, screening and washing plant operator, self-propelled street broom or sweeper, siphons and jets, sub-grading machine operator, tank car heater operator operators - combination boiler and booster, tractor, 50 h.p. or less, without attachments, vibrating machine operator, not hand, welding machine maintenance operator-1

GROUP 4 - Mechanic's helpers, oiler

GROUP 5 - Oiler, driver, all types

GROUP 6 - Clamshells, 3 yds. capacity or over, crane or rigs, 80 ft. of boom or over (including jib), draglines, 3 yds. capacity or over, piledrivers, 80 ft. of boom or over (including jib), shovels, 3 yds. capacity or over

GROUP 7 - Cranes or rigs, over 200 ft. of boom (including jib)

GROUP 8 - Hoists (each additional drum over 1 drum)

Men working in tunnels or shafts (not air shafts or coffer dams) of twenty-five (25) ft. or more in length or depth will be paid fifty cents (50¢) per hour above the regular classification

TRUCK DRIVERS
CLASSIFICATION DEFINITIONS

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS	11.60	.75	.75		.14
SHEET METAL WORKERS	9.96	.75	.625		.08
SPRINKLER FITTERS	11.93	.75	1.05		.08
TERRAZZO WORKERS	12.31	5%	4.25%		
TRUCK DRIVERS:					
Building Construction:					
Group 1	9.325	.75	1.00		
Group 2	9.375	.75	1.00		
Group 3	9.45	.75	1.00		
Group 4	9.575	.75	1.00		
Group 5	9.475	.75	1.00		
Group 6	9.675	.75	1.00		
Group 7	9.525	.75	1.00		
Group 8	9.425	.75	1.00		

TRUCK DRIVERS (Building Construction) (CONTD)

CLASSIFICATION DEFINITIONS

Group 1 - Warehousemen and stock man
Group 2 - Flat Beds, pick-ups, dump trucks, under 10 yds.
Group 3 - Dump trucks, 10 yds. and over, steel trucks, semi truck drivers
Group 4 - Straddle trucks, wheel tractors (when used for towing), hydro lift trucks, hydraulically operated aerial lifts, heavy hauling, a-frame winch and fork lifts, heavy excavating (dumpter, euclid, etc.), double bottom units (20 tons cap. and over)
Group 5 - Distributor truck drivers and operators, oilers, greasers and mechanics' helpers
Group 6 - Mechanics
Group 7 - Transit mix, 5 yds. and over
Group 8 - Transit mix, under 5 yds.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS:					
Site Preparation and Grading					
Group 1	8.89	.75	1.00	.75	
Group 2	9.09	.75	1.00	.75	
Group 3	9.40	.75	1.00	.75	
Group 4	9.85	.75	1.00	.75	
Group 5	8.665	.75	1.00	.75	

TRUCK DRIVERS
CLASSIFICATION DEFINITIONS

Group 1 - One team, station wagons, pickup trucks, material trucks, single axle, tank wagon drivers, single axle
Group 2 - Material trucks, tandem, two teams, semi-trailers, winch truck-fork trucks, distributors drivers and operators, agitator and transit mix, tank wagon drivers, single axle, tank wagon drivers tandem or semi-trailers, Insley wagon, dump trucks, excavating, 5 cu. yds. and over, dumpsters, half-tracks, speedace, euclids and other similar excavating equipment
Group 3 - A-frame, lowboy, and boom truck driver
Group 4 - Mechanics and welders
Group 5 - Mechanics' helpers, oilers and greasers

WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.

[FR Doc. 79-18510 Filed 6-14-79; 8:45 am]
BILLING CODE 4510-27-C

SUPERSEDEAS DECISION

STATE: Kansas COUNTY: Sedgwick
DECISION NO.: KS79-4067 DATE: Date of Publication
Supersedes Decision No. KS77-4047 dated February 25,1977 in 42 FR 11212
DESCRIPTION OF WORK: Residential projects consisting of single family homes and garden type apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers	$ 8.50				
Carpenters	6.16				
Cement Masons	6.38				
Elevator Constructors'	10.42	.745	.56	3%+a	.02
Elevator Constructors' Helper	70%JR	.745	.56	3%+a	.02
Elevator Constructors' Helper (Prob)	50%JR				
Electricians	6.94				
Ironworkers	10.48		.50	.53	.02
Laborers	4.29				
Lathers	10.40		.20		
Painters	6.06				
Plasterers	9.75				
Plumbers and Pipefitters	7.00				
Roofers	4.50				
Sheet Metal Workers	5.48				
Soft Floor Layers	7.00				
Truck Drivers	4.30				
Power Equipment Operators:					
Backhoe	6.00				
Bulldozer	5.25				
Finishing Machine	5.25				
Graders	5.50				
Oiler	6.33				
Rollers	5.63				
Scrapers	6.25				
Shovels	5.50				
Trenching Machines	5.00				

FOOTNOTE:
a- Employer contributes 8% of basic hourly rate for over 5 years service; and 6% of basic hourly rate for 6 months to 5 years as Vacation Pay Credit. Also 6 paid holidays.

SUPERSEDEAS DECISION

STATE: Michigan COUNTIES: INGHAM, EATON, CLINTON
DECISION NO. MI79-2057 DATE: Date of Publication
Supersedes Decision No. MI79-2045 dated May 4, 1979, in 44 FR 26463
DESCRIPTION OF WORK: Residential Construction Projects consisting of single family homes and garden type apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS/BLOCKLAYERS	$ 9.46				
CARPENTERS	7.53				
CEMENT MASONS/FINISHERS	8.78				
DRYWALL WORKERS:					
Hangers	8.00				
Tapers/Finishers	8.94				
ELECTRICIANS	8.47				
LABORERS:					
Common	5.79				
Landscape	3.00				
PAINTERS	7.10				
PLUMBERS/PIPEFITTERS	8.49				
ROOFERS	8.00				
SOFT FLOOR LAYERS/CARPET LAYERS	7.39				
SHEET METAL WORKERS	6.10				
TRUCK DRIVERS	7.36				
POWER EQUIPMENT OPERATORS:					
Bulldozer Operators	9.94				
Backhoe Operators	9.55				
Crane Operators	9.82				
Grader	9.82	.90	1.25	11%	.05
Paver	9.82	.90	1.25	11%	.05
Roller Operators	9.82	.90	1.25	11%	.05

SUPERSEDEAS DECISION

STATE: Minnesota COUNTIES: See Below
DECISION NUMBER: MN79-2056 DATE: Date of Publication

SUPERSEDEAS DECISION

STATE: Minnesota
DECISION NUMBER: MN79-2056
Supersedes Decision Nos. MN77-2032 dated March 4, 1977, in 42 FR 12616 and MN77-2065 dated April 22, 1977, in 42 FR 21027
DESCRIPTION OF WORK: Heavy and Highway Construction Projects

COUNTIES: See Below
DATE: Date of Publication

COUNTIES: Big Stone, Chippewa, Douglas Grant, Kandiyohi, Lac Qui Parle, Pope, Renville, Stevens, Swift & Traverse

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS	$ 8.80	.35	.20		
CEMENT MASONS-FINISHERS	8.78				
LABORERS:					
Unskilled	6.05				
Form Setters (curb,walk pavement)	6.30				
Pipelayers	6.26				
TRUCK DRIVERS:					
Single Axle or 2 Axle Unit	7.39	.35	.20		
Tandem Axle or 3 Axle Unit	7.83	.35	.20		
Five Axle Unit, Semi Trailer	8.17	.35	.20		
Bituminous Distributor	7.83	.35	.20		
Over 8 cu. yds. up to & including 12 cu. yds.	7.83	.35	.20		
Tractor Operator (Wheel type)	7.25	.35	.20		
Machinery Hauling including Operating Winches	8.26	.35	.20		
Truck Mechanic	8.16	.35	.20		
POWER EQUIPMENT OPERATORS:					
Power Actuated Augers & Boring Machine	8.49	.35	.20		
Asphalt, Bituminous Plant	8.84	.35	.20		
Backhoe	8.63				
Bituminous Spreader & Finishing Machine	8.52	.35	.20		
Bituminous Spreader Finishing Machine Screedman	8.52	.35	.20		
Bulldozer	7.81				
Concrete Distributor & Spreader, Finishing Machine	8.04				
Conveyors	7.25	.35	.20		
Crane, Derrick, Dragline	8.30				
Crushing Plant, Gravel Washing, Crushing & Screening Plant	8.52	.35	.20		
Front End Loader	7.94				
Grader or Motor Patrol	8.17				
Roller, Base	6.64				
Roller, Finish	7.83	.35	.20		
Scraper	8.38				
Tractor	7.90				
Truck Crane	9.32	.35	.20		
Tournapull	7.74				
Mechanic or Welder	8.52	.35	.20		

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Federal Register

Friday
June 15, 1979

Part III

Department of Health, Education, and Welfare

Office of the Secretary

HEW Day Care Requirements—Proposed Rules; Public Meetings

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

[45 CFR Part 71]

HEW Day Care Regulations

AGENCY: Office of the Secretary.

ACTION: Proposed rules.

SUMMARY: The Department of Health, Education, and Welfare proposes revisions to the Federal Interagency Day Care Requirements. The proposed regulations apply to all HEW funded day care services provided to children outside their own homes, except the Headstart program. (The Headstart program has its own regulations). Requirements for day care centers, for day care homes, and for State agencies administering out-of-home day care services are included. In addition to the requirements, the proposed regulations will include appendices which contain recommendations and examples for day care centers and day care homes, and for State agencies, as well as a description of the Federal role in certain areas relating to day care services.

DATES: Comments must be received on or before September 21, 1979. [For a list of public meetings on this proposed rule see F.R. Doc 79-18482 in this part of this Federal Register.]

ADDRESS: Send comments in writing to: Sylvester Ligsukis, Director, Day Care Task Force, Office of the General Counsel, HEW, Room 716-E, 200 Independence Avenue, S.W., Washington, D.C. 20201, (202) 245-6734

FOR FURTHER INFORMATION CONTACT: Sylvester Ligsukis (202) 472-7462.

SUPPLEMENTARY INFORMATION:

GENERAL INFORMATION

Background

The Federal Interagency Day Care Requirements (FIDCR)

The history of the Federal Interagency Day Care Requirements, known as the "FIDCR", began in 1967, with the enactment of the Economic Opportunity Amendments of 1967, P.L. 90-222. That legislation added a provision to the 1964 Economic Opportunity Act which directed the Secretary of HEW and the Director of the Office of Economic Opportunity to work towards a common set of day care program standards and regulations for child day care funded under programs within their jurisdictions (Section 522(d)). In 1968, HEW and OEO, with the approval of the Labor Department, jointly promulgated the FIDCR; they are located at 45 CFR Part 71.

The FIDCR were made applicable to day care programs receiving funds under the Social Security Act, the Economic Opportunity Act, the Manpower Development and Training Act, and, at the discretion of State and local education agencies, Title I of the Elementary and Secondary Education Act.

The FIDCR define day care as a comprehensive and coordinated set of activities necessary for providing care and protection to children outside their own homes. The requirements address eleven major day care service areas. These areas include types of facilities providing care, grouping of children, and the physical environment of day care facilities. The FIDCR also contain requirements for educational, social, health, and nutritional services, for staff training, and for program administration, coordination, and evaluation.

In 1972, Congress affirmed the FIDCR, amending section 522(d) of the Economic Opportunity Act to require that any standards applied to HEW or OEO day care programs be "no less comprehensive" than the 1968 requirements. Congress again amended Section 522(d) (now recodified as Section 582 (d) of the Headstart Follow Through Act) in 1975 to reflect the abolishment of the Office of Economic Opportunity. The requirement to work towards a common set of standards and regulations for child day care is now applicable only to HEW supported day care programs.

Day Care Under the Social Security Act

In 1974, in Pub. L. 93-647, Congress enacted title XX of the Social Security Act. Title XX authorizes cooperative Federal-State programs for the provision of social services to certain low income individuals. A State may choose to offer day care services under its social services program. The title XX legislation required States to implement a modified version of the 1968 day care requirements as a condition of receiving Federal reimbursement of payment for day care services under title XX and under title IV-A (social services in the territories, and supportive services in the Work Incentive (WIN) program) and title IV-B (child welfare services) of the Social Security Act (the Act). For those programs, in section 2002(a)(9)(A) of the Act, Congress modified the FIDCR to make educational services optional rather than mandatory, and to allow for the relaxation of certain FIDCR staffing requirements.

Congress also directed the Secretary of HEW to set staffing requirements for children under the age of three.

Congress has amended the day care provisions of Pub. L. 93-647 on several occasions since they became effective in October, 1975. In 1976, and again in 1977, Congress authorized an extra $200 million dollars in title XX funds to be made available to States at a matching rate of 100 percent, if used for day care services. Moreover, since 1974, Congress has made significant changes in title XX day care provisions which relate to staffing requirements. In 1975, 1976 and 1977 Congress passed legislation suspending the enforcement of Federal child/staff ratio requirements for children under the age of six in day care centers and group day care homes. Instead, States were permitted to enforce their own staffing standards for that age group, if those standards were no lower than those imposed by the State on September 15, 1975, and if, for any day care facility, they were no lower than those actually applied in the facility on that date. This Congressional "moratorium" on staffing requirements for children under 6 years of age remained in effect from October 1, 1975 to September 30, 1978. (HEW has extended the moratorium, by regulation, until the promulgation of revised day care regulations in final form. 44 FR 16399 (March 19, 1979).)

In 1976, Congress amended title XX to permit States, under certain specified conditions, to waive Federal staffing standards for *all* age groups in facilities in which not more than 20% (or for day care centers, not more than 5) of the children were receiving assistance under title XX. In order to qualify for the waiver the facility was required to comply with applicable State staffing standards. A State could use this title XX waiver authority only in cases where it was not feasible to furnish care for title XX eligible children in a facility which did meet Federal staffing requirements. In 1976, Congress also made a change in title XX day care provisions by requiring States to count the children of a family day care provider in determining compliance with applicable staffing standards, only if the children were under age six.

Development of New HEW Day Care Regulations

Section 2002(a)(9)(B) of title XX required the Secretary to submit to Congress a report on the appropriateness of the day care requirements. That section also

authorized the Secretary to "... by regulation, make such modifications in the [day care requirements] ... as he determines are appropriate", no sooner than 90 days after the submission of the "Appropriateness Report". HEW transmitted the Appropriateness Report to Congress in June, 1978.

In April 1978, the Department published a Notice of Intent to issue regulations governing HEW supported child day care services in the Federal Register, 43 FR 81 (April 28, 1978). The Notice of Intent identified certain major issues surrounding the development of new HEW day care regulations. It also raised some basic questions concerning the appropriate roles of HEW, and of State and local governments, with respect to the establishment and enforcement of day care standards, policies, and requirements for HEW supported child day care.

The Notice explained that in developing HEW day care regulations we would seek the widespread and active participation of the public. And, since last spring we have met informally with representatives of the day care community—providers, parents, State administrators, child advocates, and child welfare experts. We have also carefully studied numerous written suggestions and comments received in response to the Notice of Intent.

The proposed regulations, to be discussed in detail below, are based, in part, on what we have learned from these public contacts. They also reflect consideration of data from several studies of child day care, including our 1978 Appropriateness Report; a 5 year National Day Care Study commissioned by HEW, and prepared by Abt Associates; a 1979 HEW Report on Out-of-Home Child Day Care Monitoring by the Administration for Public Services, Office of Human Development Services (OHDS); and a Comparative Licensing Study completed in 1979 by the Administration for Children, Youth, and Families of OHDS.

Policy Background and Assumptions

Our proposed day care requirements are based on the following assumptions:

- The Federal government shares in the responsibility for providing leadership to enhance the emotional, physical, social, and intellectual development of children in day care.
- Federal leadership can be expressed in many different ways: regulations, education, resource materials, technical assistance, training aids, and model programs and model laws.
- Regulations for Federally funded day care are an important part of a total statement of national day care policy. However, regulations cannot be the full embodiment of that policy.
- Day care regulations should establish basic standards to protect children from harm, ensure that they are cared for in a healthy environment, and enhance their well-being.
- States may set day care policies which go beyond requirements established in Federal regulations.
- Federal regulations should leave room for decision making and the exercise of judgment by States, operators, and parents of children in day care.
- The Federal government should see that States adhere to Federal day care requirements by monitoring and providing assistance to the States. States should see that operators adhere to Federal requirements by monitoring and providing assistance to day care operators.
- The Federal government should conduct a review of the day care regulations within 36 or 48 months after they take effect.

Structure of the Proposed Regulations

The proposed day care requirements are divided into two subparts. Subparts A and B include sections defining certain terms used in the requirements, and provisions concerning applicability of the requirements. Subpart A contains requirements for day care centers which govern the major day care program elements, including program of activities, health and safety, physical environment, staff training, group composition, parent involvement, social services, and nutrition. We have proposed requirements in these areas both for day care centers and, where appropriate, for State agencies.

Subpart B of the proposed regulations includes requirements for day care homes and for State agencies, in the same program areas as for centers.

Both subparts contain requirements governing the overall administration and implementation of Federal day care requirements by State agencies, including Federal financial participation (FFP) provisions as well as provisions for monitoring, waiver, rates of payment, and future review by HEW of the requirements.

In many cases, our proposed requirements for day care homes and day care centers, though directed at the same goal, are not identical. Rather we have tried to develop regulations which are sensitive to the distinctive characteristics of each kind of day care. Requirements on a day care center—typically organized to serve larger numbers of children—may be inappropriate when applied to a day care home, which provides care in a family-like setting, in a caregiver's own home, for a small number of children. We are seeking public comment on our approach to requirements for the major forms of day care.

- Should the requirements for centers and homes remain separate?
- Should centers and homes be subject to the same requirements?
- Should some requirements be the same for home and center care?
- Which requirements should be the same?

We recognize that many of the issues surrounding the revision of HEW day care requirements are complex, sensitive, and controversial. For some of these difficult issues we have set forth options (alternative requirements) for public consideration. In this way we hope to obtain specific and focused guidance on which approach we should ultimately adopt in our final day care requirements.

Finally, we have included two Appendices with the proposed requirements (one for centers, and one for homes), which contain examples to illustrate the meaning of the requirements. The Appendices also include recommendations on steps day care facilities and State agencies may take voluntarily beyond the requirements to provide day care of high quality. The Appendices also contain a statement of the Federal role with respect to each day care program area.

Section Analysis

The proposed rules are set out below, followed in some instances by a brief discussion, and specific questions to to which the public is encourage to respond. The public is requested to specify the number of the section in the proposed regulations to which their comments refer.

Definitions (§ 71.4 and § 71.44)

Text of the Proposed Rule

As used in these regulations, the term:

Caregiver means a person who provides direct care, supervision, and guidance to children in a day care facility.

Day care means the care, supervision, and guidance of a child, on a regular basis, for periods of less than 24 hours per day, in a place other than the child's own home.

Day care center means a place in which day care is provided to 13 or more children.

Day care facility means a day care home or a day care center.

Day care home means a private residence in which day care is provided to 12 or fewer children.

Early and Periodic Screening, Diagnosis and Treatment (EPSDT) means a component of each State's medical assistance program mandated under title XIX of the Social Security Act (Medicaid) which provides preventive child health services to eligible low income children.

Family day care home means a day care home serving 6 or fewer children.

Group day care home means a day care home serving 7 to 12 children.

State agency means the agency that receives Federal funds for day care services and that has ultimate responsibility for the conduct of the day care services program.

Discussion

The above definitions section warrants no discussion here. However, public comments or suggested additions to the list are welcome and will be considered.

Applicability (§ 71.6 and § 71.46)

Text of the Proposed Rule

The regulations in this part apply to day care under the following HEW assisted programs:

- Social Security Act
  —Title IV–A (Social Services to Guam, Puerto Rico, Virgin Islands, and the Northern Marianas; and the Work Incentive Program (WIN))
  —Title IV–B (Child Welfare Services)
  —Title XX (Social Services)
- Title I, Elementary and Secondary Education Act (ESEA)
- Title V, Community Services Act (Follow-Through)
- Special Projects Act, Education Amendments of 1978 (Preschool Partnership)
- Adult Education Act (Adult Education)
- Education of the Handicapped Act (Education for the Handicapped)
- Title IV, Part C, Elementary and Secondary Education Act (Improvement in Local Educational Practices)
- Indian Elementary and Secondary School Assistance Act (Indian Elementary and Secondary School Assistance)
- Vocational Education Amendments of 1963 (Vocational Education)
- Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, Developmental Disabilities Services and Facilities Construction Act of 1970, Developmentally Disabled Assistance and Bill of Rights Act of 1975. (Developmental Disabilities Special Projects)

Discussion

We propose to apply these day care requirements to all HEW programs under which Federal financial assistance is provided for the care of children outside of their own homes. The regulations will not apply to the Headstart program, which has its own performance standards. Day care arrangements made by parents whose child care costs are taken into account under the title IV–A (AFDC) provision for work related expenses are not covered by these regulations.

Moreover, the proposed regulations do not apply to kindergarten programs. If a program provides both kindergarten *and* day care, the regulations will apply, but only to the day care services receiving Federal funds.

HEW lacks the authority to make these regulations applicable to Federally supported day care programs which are not under the Department's jurisdiction. However, we encourage other Federal agencies supporting day care to study and comment on the proposed regulations and, where possible, to adopt them for their programs

Office of Education Waiver (§ 71.6 and § 71.46)

Text of the Proposed Rule

The Commissioner of the Office of Education, Department of Health, Education, and Welfare may waive the requirements of this part for any day care program administered by the Office of Education. The Commissioner may also impose additional requirements for those programs.

Discussion

We propose to allow the Commissioner of the Office of Education discretion to waive the application of these requirements for any day care program under his or her jurisdiction, and to apply additional requirements for those Office of Education programs, where her or she so chooses. The waiver authority would be used in the case of a unique type of demonstration day care program designed to meet special educational goals.

Program of Activities for Children

Text of the Proposed Rule

Day Care Center (§ 71.10)

A day care center shall establish a planned program of age-appropriate activities which promotes the social, intellectual, emotional, and physical development of the children it serves. The planned program of activities shall be in writing, and shall contain a description of the daily activities children engage in and how those activities meet the developmental needs of the children.

Day Care Home (§ 71.50)

A day care home shall establish a planned program of age-appropriate activities which promotes the social, intellectual, emotional, and physical development of the children it serves. The plan shall be in writing, and shall contain a brief description of the children's activities in the home.

State Agency (§ 71.10 and § 71.50)

The State agency shall provide information and technical assistance to day care facilities on establishing and maintaining a planned program of age-appropriate activities.

Discussion

We propose to require a planned program of activities for children which promotes their social, intellectual, emotional, and physical development. We do not propose to specify the details of the program, but to require only that it include activities which are appropriate to the ages of children served. In addition, we propose to require that day care centers have a written plan for a program of activities which describes how the activities meet children's developmental needs. Day care homes would also be required to have their plans in writing. A day care home's plan would contain a brief description of the children's activities. Along with this requirement we have included in the Appendices examples of the kinds of activities which would be included in a day care center or day care home program.

At the same time, we propose to require that State administering agencies offer assistance to each facility in establishing and maintaining a program of activities.

We have chosen this approach, rather than to mandate the content of each day care program, in order to provide maximum flexibility to facility operators, and to the States, to create innovative day care programs which meet the developmental needs of

children of different ages cared for in a variety of different individual settings and types of communities. Under the proposed regulation, States would be free to specify further, more detailed requirements for an acceptable program of activities. For example, some States currently mandate the availability of indoor and outdoor activities and of appropriate toys and materials.

Questions for Public Consideration

- Should day care homes be required to have written program plans?
- Should we mandate any specific activities or curricula for day care facilities?

Training

Text of the Proposed Rule

Day Care Center (§ 71.12)

(1) A day care center shall provide to caregivers who have no previous experience or training in child care an on-site orientation on how to care for children in groups. This orientation shall occur before the caregiver assumes caregiving responsibilities.

(2) Each caregiver shall regularly participate in specialized training related to child care. Specialized training for each caregiver shall begin as early as possible, but in no case later than 6 months after initial employment.

Day Care Home (§ 71.52)

Each caregiver shall regularly participate in specialized training related to child care. Specialized training for each caregiver shall begin as early as possible, but in no case later than 6 months after caregiving duties begin.

State Agency (§ 71.12 and § 71.52)

Option A

The State agency shall establish and implement a statewide plan for providing or purchasing specialized training for day care personnel. The plan shall specify the nature and extent of the training required for day care center staff and day care home caregivers.

or

Option B

Same as option A, except that the specialized training shall address the following areas:

- Child Growth and Development
- Child Care Programming and Activities in Day Care Centers and Day Care Homes
- Day Care for Bilingual Children
- Handling Behavior Problems
- Health and Safety Practices
- Working with Parents
- Working with Developmentally Disabled Children and other Handicapped Children
- Nutrition and Good Eating Habits
- Design and Use of Space
- Community Health and Social Service Resources

Discussion

The National Day Care Center Study found a critical relationship between specialized caregiver training and the quality of the day care children receive. We propose to mandate specialized training related to child care for all day care personnel working directly with children in day care centers and day care homes. Our proposal does not contain an entry level training requirement and would not preclude the hiring of previously untrained or inexperienced individuals. We would, however, require that all caregivers, regardless of their previous education or work experience, begin to participate in specialized training, on a continuing basis, within 6 months of employment. In addition, we require day care centers to provide orientation in working with children in groups to each new caregiver without prior experience or training before the caregiver takes on child care responsibilities.

To support this requirement for regular specialized training of caregivers we are proposing two options for a training requirement applicable to State agencies. Under both proposed options a State agency must develop and implement a statewide plan for making training available to day care personnel. The plan must specify the kinds of training and the amount of training which the State requires of caregivers. The plan must also specify where the training is available.

Under option A the State agency determines the subject areas of the training available to day care personnel. However, HEW recommends several general areas which the plan should cover. Under option B, HEW mandates the general areas which the plan should cover—for example, child development and growth, child care programming, first aid, and nutrition. Under both options we recommend that a State agency make available innovative and flexible training opportunities which take into consideration the needs and time limitations of the caregivers in the State.

Our proposed training requirements do not mandate that caregivers participate in any specific number of training hours. Nor do they mandate the frequency or the source of the specialized training. Rather, they allow day care operators and State agencies to develop training content and training opportunities to fit the particular needs both of individual caregivers and day care programs.

Questions for Public Consideration

- Should the Federal government mandate the number of hours a caregiver must spend in specialized training? If so, what is a reasonable number of hours to require?
- Should the Federal government specify the subjects to be covered in specialized training? If so, what subjects should we mandate?
- Should our requirement for specialized training be different for caregivers in day care homes?
- Should we have an entry-level training requirement for caregivers? If so, what should the requirement be? Should it be different for centers and homes?

Nutrition

Text of the Proposed Rule

Day Care Center (§ 71.14)

Option A

A day care center shall provide adequate and nutritious meals and snacks prepared in a safe and sanitary manner

or

Option B

A day care center shall provide an adequate and nutritious breakfast (at parent request) and lunch prepared in a safe and sanitary manner. Snacks shall be provided both mid-morning and mid-afternoon. When children are in care during evening and night hours, the center shall provide an adequate and nutritious evening meal.

Day Care Home (§ 71.54)

Option A

A day care home shall provide adequate and nutritious meals and snacks prepared in a safe and sanitary manner.

or

Option B

A day care home shall provide an adequate and nutritious breakfast (at parent request) and lunch prepared in a safe and sanitary manner. Snacks shall be provided both mid-morning and mid-afternoon. When children are in care during evening and night hours, the home shall provide an adequate and nutritious evening meal.

State Agency (§§ 71.14 and 71.54)

The State agency shall make the consultative services of a qualified nutritionist or food service specialist available to day care homes.

Discussion

We propose two options for a nutrition requirement for day care centers and day care homes. Under both options (as under the current FIDCR), we require day care facilities to provide nutritious meals and snacks and to prepare them with attention to safety and sanitation. Option B specifies when meals and snacks must be provided to children in care and includes an additional option under which breakfast is required only at parent request. We do not mandate the specific content of the meals and snacks in either option, however we do offer in the Appendices several examples of what constitutes nutritious meals and snacks and how they may be provided, as well as several recommendations which suggest additional activities to promote sound nutrition in a day care setting. We also propose to mandate that State agencies make the services of a qualified nutrition specialist available to day care facilities.

Questions for Public Consideration

- Should the Federal government mandate the specific type and amount of food provided to children in day care?
- Should the Federal government mandate that day care facilities provide breakfast to children in care? Should the provision of breakfast be required only at parent's request?

Health and Safety of Children in Care

Text of the Proposed Rule

Day Care Center (§ 71.16)

(1) A day care center shall have on record for each enrolled child, within 30 (or 60) days of enrollment, a statement from a licensed health practitioner that the child has received a health assessment and all immunizations appropriate to his or her age. The statement for each child shall:

(i) Indicate any special precautions for diet, medication, or activity;

(ii) Indicate that the immunizations are in accordance with recommendations of the U.S. Public Health Service or the American Academy of pediatrics;

(iii) Indicate that the health assessment is in accordance with the standards of the American Academy of Pediatrics, or the EPSDT National Recommended Health Assessment Plan; and

(iv) Be updated according to the recommended schedule for routine health supervision of the American Academy of Pediatrics, or the EPSDT National Recommended Health Assessment Plan.

(2) A day care center shall have plans to respond to illness and to emergencies including fire, serious injury and ingestion of poison. These plans shall be in writing.

(3) A day care center shall not dispense medications to a child without the written consent of his or her parent. All medications shall be dispensed in accordance with instructions from a parent or physician. Medications shall be kept in labelled containers out of the reach of children.

(4) (Option A) A day care center shall provide information to parents, as needed, concerning child health services available in the community, and shall refer them to the needed health services.

or

(Option B) Same as option A, except that in addition to informing and referring, a day care center shall assist parents in obtaining needed child health services, and follow-up to assure that health care is secured.

Day Care Home (§ 71.56)

(1) A day care home shall have on record for each enrolled child, within 30 (or 60) days of enrollment, a statement from a licensed health practitioner that the child has received a health assessment and all immunizations appropriate to his or her age. The statement for each child shall:

(i) Indicate any special precautions for diet, medication, or activity;

(ii) Indicate that the immunizations are in accordance with recommendations of the U.S. Public Health Service or the American Academy of Pediatrics;

(iii) Indicate that the health assessment is in accordance with the standards of the American Academy of Pediatrics or the EPSDT National Recommended Health Assessment Plan; and

(iv) Be updated according to the recommended schedule for routine health supervision of the American Academy of Pediatrics, or the EPSDT National Recommended Health Assessment Plan.

(2) A day care home shall have plans to respond to illness and to emergencies including fire, serious injury, and ingestion of poison.

(3) A day care home shall not dispense medications to a child without the written consent of his or her parent. All medications shall be dispensed in accordance with instructions from a parent or physician. Medications shall be kept in labelled containers out of the reach of children.

(4) A day care home shall provide information to parents, as needed, concerning child health services available in the community, and shall refer parents to the needed health services.

State Agency (§ 71.26 and § 71.56)

Option A

(1) The State agency shall provide information to each day care facility about the availability of health services in the community, and about how the services may be obtained.

(2) The State agency shall establish and maintain health standards for day care personnel.

or

Option B

This option would include the two requirements in option A and would also include the following requirement:

(3) The State agency shall make arrangements (links) which assure that children in day care who are eligible for Federal, State, or locally funded health services receive those services when needed.

Discussion

For yound children cared for in groups there is often serious risk of injury and infectious disease. Several of the proposed health requirements are directed at minimizing these risks to the childrens' health. Others are aimed at making existing child health services more readily accessible to children in day care. We propose to require that day care facilities develop plans for handling illnesses and emergencies, and for dispensing and storing medications.

In addition, we propose to require that facilities acquire, within 30 (or 60) days of a child's enrollment, a statement for each child indicating that the child has had a health assessment in accordance with standards of the Medicaid Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program of the American Academy of Pediatrics (AAP). The health assessment includes as health history, and vision and hearing screenings. Also, the required statement must indicate that the child has had the immunizations recommended by the AAP or U.S. Public Health Service. The statement must also note any special dietary or medication needs of the child, and any need for restrictions on his or her activities. The statement must be

updated in accordance with the AAP's recommended shcedule. (Both the AAP and EPSDT recommend a health assessment every two years for children three years old and older and more frequently for younger children.)

We propose to mandate that day care centers and day care homes inform parents about available community health services, and refer them to those services when needed. We also include an option under which, in addition to informing and referring, a day care center (but not a day care home) assists parents in obtaining needed child health services, and follows up to determine whether parents have been able to secure the health care their children need.

The proposed health requirements place on State agencies the responsibility for establishing and implementing health standards for persons working in day care facilities. The State agency must also furnish information about available community health services to each day care facility.

We include an option under which State agencies must make arrangements in order to assure that children in day care who are eligible for health services under any existing Federal, State, or locally funded program, obtain those services. This option does not require the creation of new health resources for day care children. Rather, we simply require State agencies to make use of already existing publicly funded child health programs for the children in HEW assisted day care who are now eligible for the programs. Our examples for this option emphasize the creation of cooperative arrangements, between tne State agency and a range of existing public and private community health resources as a means of making needed health resources accessible to children eligible for and in need of those services. Finally, we include in the Appendices several recommendations for facilities about good health and safety practices. Our examples and recommendations for State agencies encourage the provision of technical assistance to operators about day care health and safety.

Questions for Public Consideration

- Should the Federal government specify standards for the health' assessment and list the immunizations children in day care should receive?
- Should there be Federal standards for the health of day care personnel?
- Should the Federal government require that State agencies or providers identify a person responsible for coordinating health services for children in day care?
- Should the State agency be required to provide health services to children if those services are not otherwise available in the community?
- Should we require that children be immunized before enrollment in a day care facility? If not, how long after enrollment should immunizations be required?
- Should the health assessment and immunization requirement apply to the caregivers own children in a day care home?

Physical Environment

Text of the Proposed Rule

Day Care Center (§ 71.18)

A day care center shall meet State and local requirements for licensing or approval, and applicable State and local codes relating to health, sanitation, and building and fire safety.

Day Care Home (§ 71.58)

A day care home shall meet State and local requirements for licensing, registration, or approval, and any State or local health, sanitation, and building and fire safety codes applicable to residential occupancy.

State Agency (§ 71.18 and § 71.58)

The State agency shall assure that each day care facility meets applicable State and local requirements for licensing or approval, and applicable State and local codes relating to health, sanitation, and building and fire safety. The State agency shall assure that standards for day care centers which specifically address transportation, swimming, and equipment safety exist in the State, and that each day care facility meets those standards.

Discussion

Recent HEW studies have shown that serious and potentially dangeous deficiencies in safety and sanitation (for example, no fire or smoke alarms or fire extinguishers) now exist in some day care facilities supported by HEW funds. The proposed requirement mandates that each facility meet all applicable State and local requirements which address physical environment.

Under the proposed regulations it is the State agency's responsibility to assure that all State and local requirements are met in each day care facility. In addition, State agencies are required to see that swimming, transportation, and equipment safety are specifically addressed in State or local day care requirements, and that day care facilities meet the State requirements in these particular areas.

In the proposed rules we do not specify Federal requirements for physical environment which States must adopt in their codes. Rather, we require only that States adhere to their own State (and local) safety and sanitation requirements.

Questions for Public Consideration

- Should the Federal government require States to address specific areas, such as transportation safety, in their codes?
- Should the Federal government specify detailed physical environment requirements in these regulations? If so, what should those requirements be?

Social Services

Text of the Proposed Rule

Day Care Center (§ 71.20)

Option A

A day care center shall provide information to parents, as needed, concerning social services available in the community and refer parents to needed social services.

or

Option B

Same as option A except that, in addition to informing and referring, a day care center shall assist parents in obtaining social services, and follow up to assure the services are secured.

Day Care Home (§ 71.60)

A day care home shall provide information to parents, as needed, concerning social services available in the community, and refer them to needed social services.

State Agency

Option A

(1) The State agency shall provide information to each day care facility about the availability of social services in the community and about how the services may be obtained.

or

Option B

(1) Same as option A.

(2) The State agency shall make arrangements (links) which assure that children in day care who are eligible for Federal, State or locally funded social services receive those services when needed.

Discussion

We wish to develop a social services requirement which provides assistance

to parents in obtaining the social services which their children need, without placing an undue burden on day care facilities or duplicating social services that children already receive.

We propose to require both day care homes and day care centers to inform parents about necessary social services, and to refer them to those services. We also include an option which requires day care centers (but not day care homes) to help parents to obtain services by contacting agencies and making appointments for parents when necessary. In addition, under the second option, we require centers to follow up with parents to see if a needed social service has been secured.

Under either option facilities would, of course, be free to go beyond our requirement and, for example, provide a service not available elsewhere in the community.

At the same time we propose to mandate that State agencies furnish day care facilities with the information and assistance which the facilities need to enable them to provide meaningful information and referral to parents of children in day care. As an option, we propose to require that State agencies, in addition to providing information and assistance to facilities, also assume the responsibility for arranging for necessary services for children in day care who are eligible for existing Federal, State, or locally funded services.

As in the case of the proposed option B for a health requirement on State agencies, option B for social services does not mandate States to create new social service resources for children in day care. The examples and recommendations which we provide for State agencies encourage the use of existing resources and services, including day care centers with social service staff. The examples and recommendations emphasize the need for coordination of these existing resources in the delivery of sevices to children in day care centers and homes.

Parent Involvement

Text of the Proposed Rule

Day Care Center (§ 71.22)

A day care center shall:

Option A

(1) Provide parents with opportunities to observe the center and to discuss their children's needs before enrollment;

(2) Inform parents about the day care program and its policies;

(3) Regularly offer parents opportunities to observe their children, meet with caregivers, and advise and comment on their children's needs; and

(4) Regularly exchange information with parents about their children.

or

Option B

In addition to subsections (1)–(4) above, a day care center would also be required to:

(5) Maintain for a period of three years any monitoring reports or evaluations of the center prepared by and received from Federal, State, or local authorities;

(6) Provide parents upon request the opportunity to review any of the reports or evaluations referred to in paragraph (5) above; and

(7) Make available to parents upon request pending or approved applications for funds for the current program year filed with any Federal, State, or local authorities.

Day Care Home (§ 71.62)

A day care home shall:

(1) Provide parents with opportunities to observe the home and to discuss their children's needs before enrollment;

(2) Inform parents about the day care program and its policies;

(3) Regularly offer parents opportunities to observe their children, and talk about their children's needs; and

(4) Regularly exchange information with parents about their children.

State Agency (§ 71.22 and § 71.62)

(1) The State agency shall provide information and technical assistance to day care facilities on working with parents.

(2) The State agency shall offer parents their choice of day care facility whenever administratively feasible. The State agency shall make a copy of the HEW day care requirements available to parents using HEW-funded day care.

Discussion

There is general recognition of the fundamental right of parents of children in day care to be informed about their children's development and about the day care program. However, there has been controversy over the question whether parent involvement in making decisions about general day care program policy should be mandated. We require day care facilities to provide parents with information about the day care program. In addition, we require a facility to offer parents regular opportunities to observe their children, and consult with staff about them. Moreover, the facility must allow parents to visit, and talk about their children's needs, *before* they enroll the children in the program. We do not propose to require that day care facilities involve parents in general program policy making. We invite public comment on the possible advantages and disadvantages of requiring day care facilities to provide for the involvement of parents in making decisions which specifically concern their own children.

Under option B, we propose additional requirements for day care centers which mandate that centers maintain, for a period of three years, monitoring reports and evaluations of the center prepared by Federal, State, or local authorities, and pending or approved applications for public funds. This option allows parents to review these documents on request, and is intended to assist parents in deciding whether to enroll and maintain their children in a day care center.

For State agencies we have proposed a requirement under which assistance would be offered to facilities in working with parents. We have also included a proposal under which State agencies are required to permit parents, whenever possible, to choose the day care facility for their children. Under the proposal, agencies would also be required to make copies of Federal day care requirements available to parents of children in day care. We recommend that States develop ways for parents to be involved in the evaluation of their children's day care programs.

Questions for Public Consideration

- Should the Federal government require day care facilities to provide parents with opportunities to be involved in decision making about general program policy (e.g., hiring and personnel practices, funding, etc.)?
- Should day care centers be required to maintain and make available to parents monitoring and evaluation reports, and applications for public funding?

Group Composition

Text of the Proposed Rule

Day Care Center (§ 71.24)

(a) *Group Size*

(1) A day care center shall meet the following group size requirements at all times of the day, except during lunch, naptime, and special activities, such as field trips and playground activities: (The numbers are scheduled enrollment figures.)

Infant and Toddlers	0–2½ years
Option A	8
or	
Option B	10
Preschoolers	**2½–4 years**
Option A	14
or	
Option B	16
Preschoolers	**4–6 years**
Option A	18
or	
Option B	20
School Age	**6–10 years**
Option A	16
or	
Option B	18
School Age	**10–14 years**
Option A	20
or	
Option B	State Requirements

(2) Compliance with the group size requirements in paragraph (a)(1) above shall be determined on a group or cluster basis rather than a room or center-wide basis.

(3) For mixed age groups, group size shall be based upon the age of the youngest child in the group, if the children in the youngest age category make up twenty percent or more of that group. If children in the youngest age category make up less than twenty percent of that group, the groups size for the next highest age category shall be required.

(b) *Staffing Requirements*

(1) A sufficient number of staff shall be present at the center at all times and shall be assigned so as to protect the health and safety of the children at the center.

(2) A day care center shall meet the following staffing requirements:

(Option A) At all times of the day:

or

(Option B) Averaged over the course of the day: (The numbers are scheduled enrollment figures.)

Infants and Toddlers	0–2½ years
Option A	1:4
or	
Option B	1:5
Preschoolers	**2½–4 years**
Option A	1:7
or	
Option B	1:8
Preschoolers	**4–6 years**
Option A	1:9
or	
Option B	1:10
School Age	**6–10 years**
Option A	1:16
or	
Option B	1:18
School Age	**10–14 years**
Option A	1:20
or	
Option B	State Requirements

(3) Compliance with the staffing requirements in paragraph (b)(2) above shall be determined using the total number of hours children are scheduled to be at the center and the total number of hours staff are scheduled to work directly with children.

(4) To calculate the required staff hours, divide the total scheduled child hours for each age category by the age appropriate staffing requirement in number (b)(2) above.

(5)(i) Staffing requirements in paragraph (b)(2) above may be met by averaging the staff required for the 2½ to 4 and 4 to 6 years old age categories. (For example, if a center determines that it needs 5 caregivers to meet the staffing requirement for its 2½ year old children at the center, and 10 caregivers for its 5 year old children at the center, the center would meet the staffing requirement so long as it had 15 caregivers scheduled to care for children in both categories. It need not necessarily assign 5 caregivers to care for its 2½ year old children, nor assign 10 caregivers to care for its 5 year old children.)

(ii) Staffing requirements in paragraph (b)(2) above may be met by averaging the staff required for the 6 to 10 and 10 to 14 year old age categories.

(6) (Option A) Hours scheduled to be spent providing direct care to children by a volunteer may be counted toward meeting the staffing requirements, if the volunteer participates in specialized child care training.

or

(Option B) Hours scheduled to be spent providing direct care to children by a volunteer may be counted toward meeting the staffing requirements, if the volunteer works 10 hours or more each week and participates in specialized child care training.

(7) Hours scheduled to be spent providing direct care to children by a staff member who performs non-caregiving duties, such as a cook or a driver, may be counted toward meeting the staffing requirements, if he or she participates in specialized child care training.

(8) A day care center shall obtain substitutes in care of caregiver absences.

Day Care Home (§ 71.64)

Family Day Care Home

(1) At least one caregiver shall be present at all times.

(2) In a family day care home that serves children of all ages, including children under the age of 24 months, the group size at any given time shall not exceed 5. No more than two of these children may be under the age of 24 months. The caregiver's own children younger than six and not yet in first grade shall count towards the group size requirement.

(3) In a family day care home that serves children under the age of 24 months only, the group size at any given time shall not exceed 3. There may be no other children in the home besides the caregiver's own children over the age of 6 years.

(4) In a family day care home that serves no children under 24 months, the group size at any given time shall not exceed six. The caregiver's own children younger than six and not yet in first grade shall count towards the group size requirement.

Group Day Care Home

(1) At least two caregivers shall be present at all times.

(2) In a group day care home that serves children of all ages, including children under 24 months, the group size at any given time shall not exceed 10. No more than two of these children may be under the age of 24 months. The caregivers' own children younger than six and not yet in first grade shall count towards the group size requirement.

(3) In a group day care home that serves no children under the age of 24 months, the group size at any given time shall not exceed 12. The caregivers' own children younger than 6 and not yet in first grade shall count towards the group size requirement.

Discussion

Day Care Centers

The staff standards in the 1968 FIDCR, and in the title XX statute and regulations, have been the focus of sustained controversy. The availability

of sufficient staff to provide care and supervision to children is fundamental to quality day care. At the same time, caregiver/child ratio has been identified as the single most important factor in determining the cost of providing day care services. Some State administrators and day care operators regard the caregiver/child ratios in the current Federal day care requirements, particularly those that apply to children under the age of 6, as unnecessarily stringent and costly. As indicated earlier, the controversy surrounding the title XX staffing requirements led Congress to impose a moratorium on the under 6 year old requirements, and to allow waiver of Federal staffing requirements for all age groups in certain day care facilities.

In 1974, HEW commissioned a nationwide study of day care centers. The National Day Care Study (NDCS), released in March 1978, concentrated on day care provided in centers to children 3 to 5 years of age. The findings of the NDCS indicate that less emphasis on child/staff ratios, and a greater emphasis on the size of groups in which children are cared for can lead to a less costly Federal staffing requirement, without any decrease in the quality of care children receive. In addition, the NDCS report made recommendations for policies to be used in applying group size and staffing requirements.

The current requirements do not state whether group size and staffing requirements are based on scheduled enrollment or on actual attendance of children. One recommendation in the National Day Care Study was that group size and staffing requirements be determined on the basis of scheduled enrollment of children rather than their actual attendance. Our proposed regulations adopt this suggestion. We believe that the use of scheduled enrollment will simplify staffing calculations for facilities and State agencies.

We also propose to require that group size requirements in paragraph (a)(1) in the proposed requirements apply at all times of the day except during lunch, nap time, and special activities, such as field trips and playground activities. For example, under option B for infants and toddlers in paragraph (a)(1), children under 2½ years old in a day care center could never be cared for in groups larger than 10, except during the parts of the day specified above.

We propose two alternatives for a requirement relating to how the staffing requirements in paragraph (b)(2) must be met. Under option 1 they would be met at all times of the day on a continuous basis. Under option 2, the staffing requirements do not have to be met at any given point during the day. Rather, a center meets the requirements if, on the average for the day it schedules the correct amount of staff time. For example, a center could schedule less than the required number of staff hours during one part of the day, if it schedules a correspondingly greater number of staff hours during another part of the day.

Under paragraphs (b)(3) and (b)(4) a center would use the total number of hours children are enrolled at the center and the total number of hours staff are scheduled to work directly with children in figuring staffing needs. In calculating required staff time, the child hours in each age category would be divided by the appropriate requirement in paragraph (b)(2).

Paragraph (b)(5) above allows for flexibility in making staff assignments. It also provides assurance that younger children are adequately supervised. Under that paragraph, the center determines the staff hours required in paragraph (b)(2) for each age group. The center could then assign staff required for children from 0–2½ years old, 2½–6 years old, and 6 years and older within those age groupings as it saw fit.

The center would then have three staffing pools from which to make assignments: one staffing pool must be used for children 0–2½ years old; another staffing pool must be used for children 2½–6 years old; the third staffing pool must be used for children over 6 years.

Furthermore, to clarify what staff time may be counted in calculating staffing requirements, we propose, as one alternative, to allow *all* staff hours spent providing direct care to children, including time spent by volunteers, cooks, and others to be counted. We also include an option, suggested by the NCDS, under which volunteer hours could be counted only if the volunteer regularly spends at least 10 hours per week working directly with children. Under either alternative, the time spent by any volunteers or other non caregiver staff could not be counted unless they participate in specialized training in child care. The proposed group composition regulation requires that day care centers find substitutes to replace absent staff scheduled to provide direct care to children.

We include a proposal which addresses group size and staffing requirements for groups containing children of different ages. Under the proposal, where a center director places a child with a group of older children (for example, a 2 year old with 3 and 4 year old children) the group size and staffing requirement of the youngest child (or 2 year old) applies if the youngest children make up more than 20 percent of the group. The requirements for the next older age group (or 3 year olds) would apply if the youngest children make up less than 20 percent of the group. In developing a requirement for mixed age groups, we wish to be sensitive to the individual developmental needs of children, whatever their chronological age. For example, we do not wish to discourage a center from placing older, more mature 2 year olds with a 3 to 4 year old group where that would be sensible and appropriate, and not merely for the sake of convenience. At the same time we wish to ensure that the needs of the younger children can be met in any mixed age group.

The proposed staffing requirements mandate that an adequate number of adults to protect their physical safety, be with children at all times. Thus, we recognize that under some circumstances—for example, on field trips or when children are swimming—more staffing than that required in paragraph (b)(2) may be necessary to protect children. In the proposed group size and staffing requirements set forth in paragraphs (a)(1) and (b)(2) above, we include two options for each age group. These proposed requirements are presented in terms of scheduled enrollment.

Requirements for Infants and Toddlers

The National Day Care Study contains a finding that, for infants and toddlers, *both* staffing requirements *and* group size are strongly associated with indicators of quality care. The NDCS also suggests that the current 4 children to 1 adult staffing requirement should be retained for infants and toddlers.

Unlike the current regulations which treat children up to 3 years old as infants and toddlers, the proposed regulations include in the infant and toddler category children from 0–2½ years. For these children we include two staffing options for public consideration.

Each of the options contain staffing requirements which, because they are based on enrollment and not actual attendance, are at least as stringent as those in the current title XX regulations, except that the present 1 child to 1 adult requirement for children 0 to 6 weeks old has been dropped. Current Federal standards applicable to infants and toddlers do not include group size requirements. We have proposed two group size options for children 0–2½

years old. We recognize that children of different ages within the broad 0–2½ year age category have different needs. We recommend that centers arrange groups of infants and toddlers so that younger children are cared for in smaller groups, with more adults, than older children.

Requirements for Preschool Children

The options which we are proposing for group size and staffing requirements for preschool children are based upon alternatives recommended in the National Day Care Study. However, unlike the NDCS, which treated children from 3 up to 6 years old alike, we have decided to establish requirements for children 2½ to 4 years old which are separate from those applicable to children who are 4 to 6 years old.

The National Day Care Study suggests that each of the proposed options for 2½ to 6 years olds would produce good quality day care with some cost reduction. Each option A has a better impact on children; each option B could result in greater cost savings. Each option contains staffing requirements less stringent than those in the 1968 and title XX day care requirements. However, each also calls for group size limits which are lower than those in the current requirements.

Requirements for School Aged Children

Congress has taken a particular interest in the staffing and group size requirements for school-age children 6 years and over. The ratios permitted for such children by Congress in the title XX legislative were: 1 adult to 15 children for 6 to 10 year olds, and 1 adult to 20 children for 10 to 14 year olds. As explained above, HEW has the authority to change these requirements.

For each school age category, option A reflects the Congressionally established group size and staffing requirements. We have also proposed for public comment, a further less stringent, option for school-aged children between 6 and 10, and an option under which there is no Federal requirement for children 10 and older. Instead, centers are required to meet State requirements for those children.

As an alternative to the proposed staffing requirements discussed above, we could require adoption of the staffing recommendations included in an appendix to the Child Fire Life Safety Code of the National Fire Protection Association. The Code bases its fire safety standards for day care centers on the following staff to child ratios:

Age	Staff ratio
0 to 2	1:3
2 to 3	1:5
3 to 5	1:10
5 to 7	1:12
7 and older	1:15

For children of some age categories, the Child Life Safety Code recommends staffing requirements which are more stringent than those in our proposed requirements; for others they are less stringent.

Day Care Homes

Our proposed group composition requirement recognizes two types of day care homes, family and group. In both family and group day care homes there may not be more than 6 children with one caregiver at any caregiver's own children who are younger than 6 years old and not attending first grade.

One exception to this requirement is when a home cares for children under 24 months. In those cases there may not be more than 5 children with one caregiver at any given time, including a caregiver's own children who are younger than 6 years old and not attending first grade.

In any event, there may not be more than 2 children under the age of 24 months in a day care home which also includes older children, except that there may be up to three children under 24 months in a home in which there are no other children besides the caregiver's own children 6 years or older.

Questions for Public Consideration

- What practical problems would result from computing child/staff ratios and group size on the basis of enrollment rather than on attendance? e.g. would a new record system be required?
- Should the staffing requirements apply at all times or on a daily basis?
- What rules should apply when younger children are grouped with older children?
- Should we allow centers the flexibility to average staffing requirements on a center wide basis across age groups?
- Are the age categories which we have proposed appropriate?
- Should we make any special provision for full day, summer and vacation programs for school age children?
- Should we limit the number of children under 24 months old who may be cared for in a day care home which includes older children?
- Are the staff/child ratios suggested in the Child Fire Safety Code preferable to the staffing requirements proposed in paragraph (b)(2)?

Monitoring (§ 71.20 and § 71.70)

Test of the Proposed Rule

Option A

The State agency must determine each facility's compliance with the requirements of this part at least annually.

or

Option B

Same as option A plus the requirement that:

The State agency shall make an on-site visit to a day care facility whenever the State has reason to believe that the facility fails to meet the requirements of this part.

Discussion

The proposed regulations place the responsibility for monitoring day care facilities on the States. The Federal government would monitor State performance.

Under the proposed regulation States would be required to make an annual review of each facility's compliance with Federal, State, and local day care requirements. The review need not be done through an onsite visit to each facility but could be made through a monitoring system which includes an examination of a facility's records and facility self-evaluation supplemented by on-site visits each year to different facilities in the State.

We have included an option under which, in addition to annual compliance determinations described above a State would be require to visit a facility if it had reason to believe that the facility does not meet Federal requirements—for example, if the State has received complaints from parents.

Questions for Public Consideration

- Should the Federal government spell out a more detailed monitoring requirement for States?
- Should annual on-site visits to all day care facilities be mandated?

Availability of Federal Financial Participation (FFP) (§ 71.32 and § 71.72)

Text of the Proposed Rule

(a) FFP is available in the costs of day care services, only if the care meets the requirements of this part.

(b) The care is considered to meet the requirements of this part if:

(1) It is provided by a facility which:

(i) Meets applicable State standards for licensing, registration, or approval; and

(ii) Has been approved by the State agency as meeting the requirements of this part, or has submitted to the State agency a plan of correction acceptable to the State agency for any requirement that the facility has been found not to meet. The State agency may accept a plan of correction only if the plan specifies a reasonable time period for meeting the requirements of this part. The facility must meet the requirements of this part within the time period specified in its plan of correction; and

(2) The State agency meets its requirements as provided in this part, or has submitted to HEW a plan of correction acceptable to HEW for any requirement that the State agency has been found not to meet. HEW will accept a plan of correction only if the plan specifies a reasonable time period for meeting the requirements of this part. The State agency must meet the requirements of this part within the time period specified in its plan of correction.

Discussion

Under title XX of the Social Security Act there can be no Federal reimbursement of State child day care costs unless the day care has been furnished in a facility which meets all Federal requirements. We propose, in accordance with the title XX statute, to require, as a condition of Federal financial participation (FFP), that child day care services be furnished in facilities which meet all applicable State requirements for licensing, registration, and approval and which have been approved by State agencies as meeting Federal day care requirements. We proposed to allow FFP in State expenditures for day care services provided by facilities which do not meet the Federal day care requirements only if the facilities have submitted plans satisfactory to the administering agency for meeting the Federal requirements.

Under the proposal whether a plan of correction is accepted for any particular facility is a matter for State agency discretion. However, we would require, as an FFP condition, that each plan of correction accepted by an agency specify a reasonable period of time within which Federal requirements would be met. The facility must implement its plan within the specified time period to continue to be eligible for Federal funds.

We do not intend by this proposal to permit the "waiver" by State agencies of any Federal day care requirements. Rather, in proposing this requirement, we seek to allow for the continuation of FFP for a reasonable period of time with respect to facilities which may not fully meet Federal standards, but which evidence a clear intent to meet all standards as promptly as possible and under a fixed time schedule. We believe that allowing some opportunity for State agencies to work with facilities to improve their programs before Federal funds are withdrawn will ultimately benefit children and families in need of Federally assisted day care services.

Further, our proposed FFP requirements include a provision under which FFP in a State's day care costs would also be conditioned on the State's meeting its responsibilities under this part. HEW could approve a plan of correction for any requirements which a State has been found not to meet. Again, the plan must be implemented within a reasonable time period for FFP to continue.

Questions for Public Consideration

- Should we specify detailed criteria for plans of correction?
- Are there any requirements, in addition to State standards, which facilities should be required to meet without provision for a plan of correction?

Rates of Payment (§ 71.34 and § 71.74)

Text of the Proposed Rule

In establishing rates of payment for child day care services, the State agency shall take into account the costs to the facility of meeting the requirements of this part.

Discussion

States have traditionally had a great deal of discretion in determining the rates to be paid to facilities furnishing day care to children eligible for HEW assisted day care services. Concerns have been raised about whether the amounts which States offer to providers are sufficient to cover the costs of meeting Federal day care requirements. We do not propose to dictate to States how much they must pay to providers.

However, we do propose to require that States take into consideration the costs associated with our requirements in setting day care rates of payment. A State could recognize local variations in costs to particular facilities (or types of facilities), or it could use a reasonable statewide cost standard. Costs would be reviewed periodically to reflect any changes resulting from inflation or otherwise.

Again, our requirement does not mandate that States actually pay any particular amount to day care providers. Rather, we simply require that States consider and acknowledge the costs of meeting Federal requirements as part of their rate setting procedures.

Questions for Public Consideration

- Should States be specifically required to make public how they have taken the costs of meeting Federal requirements into account in setting rates of payment?
- Should the Federal government develop a model rate setting procedure as guidance for States?

State Agency Waiver (§ 71.36)

Text of the Proposed Rule

The State agency may waive the staffing requirements at § 71.24(b) for a day care center in which not more than 10% of the children in the center are children whose care is paid for wholly or in part with Federal funds, if the day care center meets applicable State staffing requirements.

Discussion

We propose to build a provision into our requirements under which States would be permitted to waive grouping requirements for day care centers in which not more than 10% of the children are recieiving HEW assisted care. A center would not be eligible for the waiver unless it met all applicable State staffing requirements *and* all other Federal requirements, including group size requirements proposed in § 71.24(a). In allowing for this waiver we seek to encourage centers not otherwise willing to offer care to HEW assisted children to enroll small numbers of those children, without being subject to Federal grouping requirements. We believe this will help to promote socio-economic integration in those day care centers.

Clearly we expect States to exercise this waiver authority in a responsible manner. Accordingly, States must, first and foremost, see that the interests of the children in centers not meeting Federal grouping requirements are protected.

Questions for Public Consideration

- Should we allow waiver of grouping requirements for day care homes serving only a few HEW assisted children as well as for day care centers?

Future Review of Day Care Regulations (§ 71.38 and § 71.78)

Text of the Proposed Rule

The Secretary will review the effectiveness of these regulations. As part of this review, 36 (or 48) months after the effective date of these regulations, the Secretary will publish a notice of opportunity for public comment on the effectiveness of the regulations. The Secretary will assess the comments and publish the results of the review and assessment in the Federal Register.

Discussion

We propose to undertake a review of these Federal day care regulations in 3 (or 4) years after they take effect. The review may or may not result in revisions to the regulations. Moreover, this requirement would not preclude HEW from making appropriate changes in the regulations before the review begins.

State Agency Advisory Council (§ 71.40 and § 71.80)

Text of the Proposed Rule

Day Care Center (§ 71.40)

The State agency shall establish a Day Care Advisory Council to advise on the interpretation and implementation of HEW day care requirements.

Day Care Home (§ 71.80)

The State Agency Advisory Council required to be established under section 71.40 of this part shall advise on the interpretation and implementation of HEW day care requirements for day care homes as well as day care centers.

Discussion

We propose to require that the State agency establish an advisory council to assist States in interpreting and implementing the HEW day care requirements. Councils exist in many States now and have been considered effective in assisting States to upgrade the quality of day care.

Questions for Public Consideration

- Should the State agency be required to establish a State Agency Advisory Council?
- If so, should the Federal government specify who should be represented on the Council?

Effective Date (§ 71.40 and § 71.80)

Text of Proposed Rule

These regulations will take effect six months from the date of publication in final form in the Federal Register, except that the following requirements will take effect one year from that date.

(a) The training requirements at § 71.12 and § 71.52;

(b) The requirements at § 71.56(a)(4) on day care homes to inform and refer parents to child health services; and

(c) The requirements at § 1.60(a) on day care homes to inform and refer parents to social services.

Discussion

We recognize that States and day care facilities need time to learn about the revised day care requirements and to make plans for putting them into effect. In particular, we believe that the training requirement will take time to fully implement. Accordingly, we propose to delay the effective date of the new regulations for six months from the date of their publication in the Federal Register in final form. The training requirements at § 71.12 and § 71.52 would not take effect until a year after final promulgation. We also propose to allow a year for day care homes to meet the information and referral requirements in our health and our social services provisions. This delay should allow caregivers in day care homes adequate time to learn about available resources and about how to develop the ability to provide effective referral for parents of children in their care.

Questions for Public Consideration

- Should we allow more than 6 months for States and providers to meet all the requirements. If so, for which requirements, in addition to the one included in our proposed rule, should we allow further time?
- Is one year sufficient for implementation of the training requirements? Is one year too much time?
- Is one year sufficient for implementation of the health and social services requirements on day care home to inform parents about and refer them to needed services? Is one year to much time?

Regulatory Analysis

In accordance with the requirements of Executive Order No. 12044, the Department has prepared a Regulatory Analysis of these proposed rules. This analysis is available from the Department.

Dated: May 31, 1979.

Frank Peter S. Libassi,

General Counsel, Department of Health, Education, and Welfare.

Dated: June 7, 1979.

Joseph A. Califano, Jr.,

Secretary, Department of Health, Education, and Welfare.

The Department of Health, Education, and Welfare proposes to revise Part 71 of Title 45 of the Code of Federal Regulations, as set forth below:

PART 71—HEW DAY CARE REQUIREMENTS

Subpart A—Day Care Center Requirements

Sec.
71.4 Definitions.
71.6 Applicability.
71.8 Office of Education Waiver.
71.10 Program of Activities for Children.
71.12 Training.
71.14 Nutrition.
71.16 Health and Safety of Children in Care.
71.18 Physical Environment.
71.20 Social Services.
71.22 Parent Involvement.
71.24 Group Composition—Day Care Center.
71.30 Monitoring.
71.32 Availability of Federal Financial Participation (FFP).
71.34 Rates of Payment.
71.36 State Agency Waiver.
71.38 Future Review of Day Care Regulations.
71.40 State Agency Advisory Council.
71.42 Effective Date.

Subpart B—Day Care Home Requirements

Sec.
71.44 Definitions.
71.46 Applicability.
71.48 Office of Education Waiver.
71.50 Program of Activities for Children.
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71.58 Physical Environment.
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71.62 Parent Involvement.
71.64 Group Composition—Day Care Home.
71.70 Monitoring.
71.72 Availability of Federal Financial Participation (FFP).
71.74 Rates of Payment.
71.76 Future Review of Day Care Regulations.
71.80 State Agency Advisory Council.
71.82 Effective Date.
Appendix A—Day Care Center.
Appendix B—Day Care Home.

Authority: Title XX of the Social Security Act, Section 2002(a)(9)(B), 42 U.S.C. 1397a(a)(9)(B); and Title V of the Headstart, Economic Opportunity, and Community Partnership Act of 1974 (Headstart-Follow Through Act), Section 582(d), 42 U.S.C. 2932(d).

Subpart A—Day Care Center Requirements

§ 71.4 Definitions.

As used in these regulations, the term:

Caregiver means a person who provides direct care, supervision, and guidance to children in a day care facility.

Day care means the care, supervision, and guidance of a child, on a regular basis, for periods of less than 24 hours per day, in a place other than the child's own home.

Day care center means a place in which day care is provided to 13 or more children.

Day care facility means a day care home or a day care center.

Day care home means a private residence in which day care is provided to 12 or fewer children.

Early and Periodic, Screening, Diagnosis and Treatment (EPSDT) means a component of each State's medical assistance program mandated under title XIX of the Social Security Act (Medicaid) which provides preventive child health servides to eligible low income children.

Family day care home means a day care home serving 6 or fewer children.

Group day care home means a day care home serving 7 to 12 children.

State agency means the agency that receives Federal funds for day care services and that has ultimate responsibility for the conduct of the day care services program.

§ 71.6 Applicability.

The regulations in this part apply to day care under the following HEW assisted programs:

(a) Social Security Act

—Title IV–A (Social Services to Guam, Puerto Rico, Virgin Islands, and the Northern Marianas; and the Work Incentive Program (WINP))

—Title IV–B (Child Welfare Services)

—Title XX (Social Services)

(b) Title I, Elementary and Secondary Education Act (ESEA)

(c) Title V, Community Services Act (Follow-Through)

(d) Special Projects Act, Education Amendments of 1978 (Preschool Partnership)

(e) Adult Education Act (Adult Education)

(f) Education of the Handicapped Act (Education for the Handicapped)

(g) Title IV, Part C, Elementary and Secondary Education Act (Improvement in Local Educational Practices)

(h) Indian Elementary and Secondary School Assistance Act (Indian Elementary and Secondary School Assistance)

(i) Vocational Education Amendments of 1963 (Vocational Education)

(j) Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, Developmental Disabilities Services and Facilities Construction Act of 1970, Developmentally Disabled Assistance and Bill of Rights Act of 1975 (Developmental Disabilities Special Projects).

§ 71.8 Office of Education Waiver.

The Commissioner of the Office of Education, Department of Health, Education, and Welfare may waive the requirements of this part for any day care program administered by the Office of Education. The Commissioner may also impose additional requirements for those programs.

§ 71.10 Program of Activities for Children.

(a) *Day Care Center*

A day care center shall establish a planned program of age-appropriate activities which promotes the social, intellectual, emotional, and physical development of the children it serves. The planned program of activities shall be in writing, and shall contain a description of the daily activities children engage in and how those activities meet the developmental needs of the children.

(b) *State Agency*

The State agency shall provide information and technical assistance to day care centers on establishing and maintaining a planned program of age-appropriate activities.

§ 71.12 Training.

(a) *Day Care Center*

(1) A day care center shall provide caregivers who have no previous experience or training in child care, an on-site orientation on how to care for children in groups. This orientation shall occur before the caregiver assumes caregiving responsibilities.

(2) Each caregiver shall regularly participate in specialized training related to child care. Specialized training for each caregiver shall begin as early as possible, but in no case later than 6 months after initial employment.

(b) *State Agency*

Option A

The State agency shall establish and implement a statewide plan for providing or purchasing specialized training for day care center personnel. The plan shall specify the nature and extent of the training required for day care center staff.

or

Option B

Same as option A, except that the specialized training shall address the following areas:

(1) Child Growth and Development

(2) Child Care Programming and Activities

(3) Day Care for Bilingual Children

(4) Handling Behavior Problems

(5) Health and Safety Practices

(6) Working with Parents

(7) Working with Developmentally Disabled Children and other Handicapped Children

(8) Nutrition and Good Eating Habits

(9) Design and Use of Space

(10) Community Health and Social Service Resources

§ 71.14 Nutrition.

(a) *Day Care Center*

Option A

A day care center shall provide adequate and nutritious meals and snacks prepared in a safe and sanitary manner.

or

Option B

A day care center shall provide an adequate and nutritious breakfast (at parent's request) and lunch prepared in a safe and sanitary manner. Snacks shall be provided both at mid-morning and mid-afternoon. When children are in care during evening and night hours, the center shall provide an adequate and nutritious evening meal.

(b) *State Agency*

The State agency shall make the consultative services of a qualified nutritionist or food service specialist available to day care centers.

§ 71.16 Health and Safety of Children in Care.

(a) *Day Care Center*

(1) A day care center shall have on record for each enrolled child, within 30 (or 60) days of enrollment, a statement from a licensed health practitioner that the child has received a health assessment and all immunizations appropriate to his or her age. The statement for each child shall:

(i) Indicate any special precautions for diet, medication, or activity;

(ii) Indicate that the immunizations are in accordance with recommendations of the U.S. Public Health Service or the American Academy of Pediatrics;

(iii) Indicate that the health assessment is in accordance with the

standards of the American Academy of Pediatrics, or the EPSDT National Recommended Health Assessment Plan; and

(iv) Be updated according to the recommended schedule for routine health supervision of the American Academy of Pediatrics, or the EPSDT National Recommended Health Assessment Plan.

(2) A day care center shall have plans to respond to illness and to emergencies including fire, serious injury, and ingestion of poison. These plans shall be in writing.

(3) A day care center shall not dispense medications to a child without the written consent of his or her parent. All medications shall be dispensed in accordance with instructions from a parent or physician. Medications shall be kept in labelled containers out of reach of children.

(4) (OPTION A) A day care center shall provide information to parents, as needed, concerning child health services available in the community, and shall refer parents to the needed health services.

or

(OPTION B) Same as option A, except that in addition to informing and referring, a day care center shall assist parents in obtaining needed child health services, and follow-up to assure that health care is secured.

(b) *State Agency*

Option A

(1) The State agency shall provide information to each day care center about the availability of child health services in the community, and about how the services may be obtained.

(2) The State agency shall establish and maintain health standards for day care center personnel.

or

Option B

This option would include two requirements in option A and would also include the following requirements:

(3) The State agency shall make arrangements (links) which assure that children in day care centers who are eligible for Federal, State, or locally funded health services receive those services when needed.

§ 71.18 Physical environment.

(a) *Day Care Center*

A day care center shall meet State and local requirements for licensing or approval, and applicable State and local codes relating to health, sanitation, and building and fire safety.

(b) *State Agency*

The State agency shall assure that each day care center meets applicable State and local requirements for licensing or approval, and applicable State and local codes relating to health, sanitation, and building and fire safety. The State agency shall assure that standards for day care centers which specifically address transportation, swimming, and equipment safety exist in the State, and that each day care center meets those standards.

§ 7120 Social services.

(a) *Day Care Center*

Option A

A day care center shall provide information to parents, as needed, concerning social services available in the community, and refer parents to needed social services.

or

Option B

Same as option A except that, in addition to informing and referring, a day care center shall assist parents in obtaining social services, and follow up to assure that the services are secured.

(b) *State Agency*

Option A

(1) The State agency shall provide information to each day care center about the availability of social services in the community and about how the services may be obtained.

or

Option B

(1) Same as option A

(2) The State agency shall make arrangements (links) which assure that children in day care centers are eligible for Federal, State, or locally funded social services receive those services when needed.

§ 71.22 Parent involvement.

(a) *Day Care Center*

A day care center shall:

Option A

(1) Provide parents with opportunities to observe the center and to discuss their children's needs before enrollment;

(2) Inform parents about the day care program and its policies;

(3) Regularly offer parents opportunities to observe their children, meet with caregivers, and advise and comment on their children's needs; and

(4) Regularly exchange information with parents about their children.

or

Option B

In addition to subsections (1)–(4) above, as day care center would also be required to:

(5) Maintain for a period of three years any monitoring reports or evaluations of the center prepared by and received from Federal, State, or local authorities;

(6) Provide parents upon request the opportunity to review any of the reports or evaluations referred to in paragraph (5) above; and

(7) Make available to parents upon request pending or approved applications for funds for the current program year filed with any Federal, State, or local authorities.

(b) *State Agency*

(1) The State agency shall provide information and technical assistance to day care centers on working with parents.

(2) The State agency shall offer parents their choice of day care facility whenever administratively feasible. The State agency shall make a copy of the HEW day care requirements available to parents using HEW funded day care.

§ 71.24 Group composition—day care center.

(a) *Group Size*

(1) A day care center shall meet the following group size requirements at all times of the day, except during lunch, naptime, and special activities, such as field trips and playground activities: (the numbers are scheduled enrollment figures.)

Infants and Toddlers	0–2½ years
Option A	8
or	
Option B	10
Preschoolers	**2½–4 years**
Option A	14
or	
Option B	16
Preschoolers	**4–6 years**
Option A	18
or	
Option B	20
School Age	**6–10 years**
Option A	16
or	
Option B	18
School Age	**10–14 years**
Option A	20
or	
Option B	State Requirements

(2) Compliance with the group size requirements in paragraph (a) (1) above shall be determined on a group or cluster basis rather than a room or center-wide basis.

(3) For mixed age groups, group size shall be based upon the age of the youngest child in the group, if children in the youngest age category make up twenty percent or more of that group. If children in the youngest age category make up less than twenty percent of that group, the group size for the next highest age category shall be required.

(b) *Staffing Requirements*

(1) A sufficient number of staff shall be present at the center at all times and shall be assigned so as to protect the health and safety of the children at the center.

(2) A day care center shall meet the following staffing requirements

(OPTION A) At all times of the day:

or

(OPTION B) Averaged over the course of the day: (The numbers are scheduled enrollment figures.)

Infants and Toddlers	0–2½ years
Option A	1:4
or	
Option B	1:5
Preschoolers	**2½–4 years**
Option A	1:7
or	
Option B	1:8
Preschoolers	**4–6 years**
Option A	1:9
or	
Option B	1:10
School Age	**6–10 years**
Option A	1:16
or	
Option B	1:18
School Age	**10–14 years**
Option A	1:20
or	
Option B	State Requirements

(3) Compliance with the staffing requirements in paragraph (b)(2) above shall be determined using the total number of hours children are scheduled to be at the center and the total number of hours staff are scheduled to work directly with children.

(4) To calculate the required staff hours, divide the total scheduled child hours for each age category by the age appropriate staffing requirement in paragraph (b)(2) above.

(5) (i) Staffing requirements in paragraph (b)(2) above may be met by averaging the staff required for the 2½ to 4 and 4 to 6 year old age categories. (For example, if a center determines that it needs 5 caregivers to meet the staffing requirement for its 2½ year old children at the center, and 10 caregivers for its 5 year old children at the center, the center would meet the staffing requirement so long as it had 15 caregivers scheduled to care for children in both categories. It need not necessarily assign 5 caregivers to care for its 2½ year old children, nor assign 10 caregivers to care for its 5 year old children.)

(ii) Staffing requirements in paragraph (b)(2) above may be met by averaging the staff required for the 6 to 10 and 10 to 14 year age categories.

(6) (OPTION A) Hours scheduled to be spent providing direct care to children by a volunteer may be counted toward meeting the staffing requirements, if the volunteer participates in specialized child care training.

or

(OPTION B) Hours scheduled to be spent providing direct care to children by a volunteer may be counted toward meeting the staffing requirements, if the volunteer works 10 hours or more each week and participates in specialized child care training.

(7) Hours schedled to be spent providing direct care to children by a staff member who performs non-caregiving duties, such as a cook or a driver, may be counted toward meeting the staffing requirements, if he or she participates in specialized child care training.

(8) A day care center shall obtain substitutes in case of caregiver absences.

§ 71.30 Monitoring.

Option A

The State agency must determine each center's compliance with these requirements at least annually.

or

Option B

Same as option A plus the requirement that: The State agency shall make an on-site visit to a day care center whenever the State has reason to believe that the facility fails to meet the requirements of this part.

§ 71.32 Availability of Federal financial participation (FFP).

(a) FFP is available in the costs of day care services, only if the care meets the requirements of this part.

(b) The care is considered to meet the requirements of this part if:

(1) It is provided by a center which:

(i) Meets applicable State standards for licensing, registration, or approval; and

(ii) Has been approved by the State agency as meeting the requirements of this part, or has submitted to the State agency a plan of correction acceptable to the State agency for any requirement that the facility has been found not to meet. The State agency may accept a plan of correction only if the plan specifies a reasonable time period for meeting the requirements of this part. The center must meet the requirements of this part within the time perod specified in its plan of correction;

and

(2) The State agency meets its requirements as provided in this part, or the State agency has submitted to HEW a plan of correction acceptable to HEW for any requirement that the State agency has been found not to meet. HEW will accept a plan of correction only if the plan specifies a reasonable time period for meeting the requirements of this part. The State agency must meet the requirements of this part within the time period specified in its plan of correction.

§ 71.34 Rates of payment.

In establishing rates of payment for child day care services, the State agency shall take into account the costs to the day care center of meeting the requirements of this part.

§ 71.36 Waiver.

The State agency may waive the staffing requirements at § 71.24(b) for a day cae center in which not more than 10% of the children in the center are children whose care is paid for wholly or in part with Federal funds, if the day care center meets applicable State staffing requirements.

§ 71.38 Future review of day care regulations.

The Secretary will review the effectiveness of these regulations. As part of this review, 36 (or 42) months after the effective date of these regulations, the Secretary will publish a notice of opportunity for public comment on the effectiveness of the regulations. The Secretary will assess the comments and publish the results of

the review and assessment in the Federal Register.

§ 71.40 State Agency Advisory Council.

The State agency shall establish a day care advisory council to advise on the interpretation and implementation of HEW day care requirements.

§ 71.40 Effective date.

These regulations will take effect six months from the date of publication in final form in the Federal Register, except that the training requirements at § 71.12 will take effect one year from that date.

Subpart B—Day Care Home Requirements

§ 71.44 Definitions.

As used in these regulations, the term:

Caregiver means a person who provides direct care, supervision, and guidance to children in a day care facility.

Day care means the care, supervision, and guidance of a child, on a regular basis, for period of less than 24 hours per day, in a place other than the child's own home.

Day care center means a place in which day care is provided to 13 or more children.

Day care facility means a day care home or a day care center.

Day care home means a private residence in which day care is provided to 12 or fewer children.

Early and Periodic, Screening, Diagnosis and Treatment (EPSDT) means a component of each State's medical assistance program mandated under title XIX of the Social Security Act (Medicaid) which provides preventive child health services to eligible low income children.

Family day care home means a day care home serving 6 or fewer children.

Family day care home means a day care home serving 6 or fewer children.

Group day care home means a day care home serving 7 to 12 children.

State agency means the agency that receives Federal funds for day care services and that has ultimate responsibility for the conduct of the day care services program.

§ 71.46 Applicability.

The regulations in this part apply to day care under the following HEW assisted programs:

(a) Social Security Act

—Title IV–A (Social Services to Guam, Puerto Rico, Virgin Islands, and the Northern Marianas; and the Work Incentive Program (WIN))

—Title IV–B (Child Welfare Services)

—Title XX (Social Services)

(b) Title I, Elementary and Secondary Education Act (ESEA)

(c) Title V, Community Services Act (Follow-Through)

(d) Special Projects Act, Education Amendments of 1978 (Preschool Partnership)

(e) Adult Education Act (Adult Education)

(f) Education of the Handicapped Act (Education for the Handicapped)

(g) Title IV, Part C, Elementary and Secondary Education Act (Improvement in Local Educational Practices)

(h) Indian Elementary and Secondary School Assistance Act (Indian Elementary and Secondary School Assistance)

(i) Vocational Educational Amendments of 1963 (Vocational Education)

(j) Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, Developmental Disabilities Services and Facilities Construction Act of 1970, Developmentally Disabled Assistance and Bill of Rights Act of 1975 (Developmental Disabilities Special Projects).

§ 71.48 Office of Education waiver.

The Commissioner of the Office of Education, Department of Health, Education, and Welfare may waive the requirements of this part for any day care program administered by the Office of Education. The Commissioner may also impose additional requirements for those programs.

§ 71.50 Program of activities for children.

(a) *Day Care Home*

A day care home shall establish a planned program of age-appropriate activities which promotes the social, intellectual, emotional, and physical development of the children it serves. The plan shall be in writing, and shall contain a brief description of the children's activities in the home.

(b) *State Agency*

The State agency shall provide information and technical assistance to day care homes on establishing and maintaining a planned program of age appropriate activities.

§ 71.52 Training.

(a) *Day Care Home*

Each caregiver shall regularly participate in specialized training related to child care. Specialized training for each caregiver shall begin as early as possible, but in no case later than 6 months after caregiving duties begin.

(b) *State Agency*

Option A

The State agency shall establish and implement a statewide plan for providing or purchasing specialized training for day care home personnel. The plan shall specify the nature and extent of the training required for day care home caregivers.

or

Option B

Same as option A, except that the specialized training shall address the following areas:

(1) Child Growth Development

(2) Child Care Programming and Activities in Day Care Homes

(3) Day Care for Bilingual Children

(4) Handling Behavior Problems

(5) Health and Safety Practices

(6) Working with Parents

(7) Working with Developmentally Disabled Children and other Handicapped Children

(8) Nutrition and Good Eating Habits

(9) Design and Use of Space

(10) Community Health and Social Service Resources

§ 71.54 Nutrition.

(a) *Day Care Home*

Option A

A day care home shall provide adequate and nutritious meals and snacks prepared in a safe and sanitary manner.

or

Option B

A day care home shall provide an adequate and nutritious breakfast (at parent request) and lunch prepared in a safe and sanitary manner. Snacks shall be provided both mid-morning and mid-afternoon. When the children are in care during the evening and night hours, the home shall provide an adequate and nutritious evening meal.

(b) *State Agency*

The State agency shall make the consultative services of a qualified nutritionist or food service specialist available to day care homes.

§ 71.56 Health and safety of children in care.

(a) *Day Care Home*

(1) A day care home shall have on record for each enrolled child, within 30 (or 60) days of enrollment, a statement from a licensed health practitioner that the child has received a health assessment and all immunizations appropriate to his or her age. The statement for each child shall:

(i) Indicate any special precautions for diet, medication, or activity;

(ii) Indicate that the immunizations are in accordance with recommendations of the U.S. Public Health Service or the American Academy of Pediatrics;

(iii) Indicate that the health assessment is in accordance with the standards of the American Academy of Pediatrics or the EPSDT National Recommended Health Assessment Plan; and

(iv) Be updated according to the recommended schedule for routine health supervision of the American Academy of Pediatrics, or the EPSDT National Recommended Health Assessment Plan.

(2) A day care home shall have plans to respond to illness and emergencies including fire, serious injury, and ingestion of poison.

(3) A day care home shall not dispense medications to a child without the written consent of his or her parent. All medications shall be dispensed in accordance with instructions from a parent or physician. Medications shall be kept in labelled containers out of the reach of children.

(4) A day care home shall provide information to parents, as needed, concerning child health services available in the community, and shall refer parents to the needed health services.

(b) *State Agency*

Option A

(1) The State agency shall provide information to each day care home about the availability of health services in the community, and about how the services may be obtained.

(2) The State agency must establish and maintain health standards for day care home personnel.

or

Option B

This option would include the two requirements in option A and would also include the following requirement:

(3) The State agency shall make arrangements (links) which assure that children in day care homes who are eligible for Federal, State, or locally funded health services receive those services when needed.

§ 71.58 Physical environment.

(a) *Day Care Home*

A day care home shall meet State and local requirements for licensing, registration, or approval, and any State or local health, sanitation, and building and fire safety codes applicable to residential occupancy.

(b) *State Agency*

The State agency shall assure that each day care home meets State and local requirements for licensing, registration, or approval, and the requirements of State or local health, sanitation, building and fire safety codes applicable to residential occupancy. The State agency shall assure that standards for day care homes which specifically address transportation, swimming, and equipment safety exist in the State, and that each day care home meets those standards.

§ 71.60 Social services.

(a) *Day Care Home*

A day care home shall provide information to parents, as needed, concerning social services available in the community, and refer parents to needed social services.

(b) *State Agency*

Option A

(1) The State agency shall provide information to each day care home about the availability of social services in the community, and about how the services may be obtained.

or

Option B

(1) Same as option A.

(2) The State agency shall make arrangements (links) which assure that children in day care homes who are eligible for Federal, State, or locally funded social services receive those services when needed.

§ 71.62 Parent involvement.

(a) *Day Care Home*

A day care home shall:

(1) Provide parents with opportunities to observe the home and to discuss their children's needs before enrollment;

(2) Inform parents about the day care program and its policies:

(3) Regularly offer parents opportunities to observe their children, and talk about their children's needs; and

(4) Regularly exchange information with parents about their children.

(b) *State Agency*

(1) The State agency shall provide information and technical assistance to day care homes on working with parents.

(2) The State agency shall offer parents their choice of day care facility whenever administratively feasible. The State agency shall make a copy of the HEW day care requirements available to parents using HEW-funded day care.

§ 71.64 Group composition—day care home.

(a) *Family Day Care Home*

(1) At least one caregiver shall be present at all times.

(2) In a family day care home that serve children of all ages including children under the age of 24 months, the group size at any given time shall not exceed 5. No more than two of these children may be under the age of 24 months. The caregiver's own children younger than six and not yet in first grade shall count towards the group size requirement.

(3) In a family day care home that serves children under the age of 24 months only, the group size at any given time shall not exceed 3. There may be no other children in the home besides the caregiver's own children over the age of 6 years.

(4) In a family day care home that serves no children under 24 months the group size at any given time shall not exceed six. The caregiver's own children younger than six and not yet in first grade shall count towards the group size requirement.

(b) *Group Day Care Home*

(1) At least two caregivers shall be present at all times.

(2) In a group day care home that serves children of all ages, including children under 24 months, the group size at any given time shall not exceed 10. No more than two of these children may be under the age of 24 months. The caregiver's own children younger than size and not yet in first grade shall count towards the group size requirement.

(3) In a group day care home that serves no children under the age of 24 months, the group size at any given time shall not exceed 12. The caregiver's own children younger than 6 and not yet in first grade shall count towards the group size requirements.

§ 71.70 Monitoring.

Option A

The State agency must determine each facility's compliance with these requirements at least annually.

or

Option B

Same as option A plus the requirement that: The State agency shall make an on-site visit to a day care facility whenever the State has reason to believe that the facility fails to meet the requirements of this part.

§ 71.72 Availability of Federal financial participation (FFP).

(a) FFP is available in the costs of day care services, only if the care meets the requirements of this part.

(b) The care is considered to meet the requirements of this part only if:

(1) It is provided by a facility which:

(i) Meets applicable State standards for licensing, registration, or approval; and

(ii) Has been approved by the State agency as meeting the requirements of this part, or has submitted to the State agency a plan of correction acceptable to the State agency for any requirement that the facility has been found not to meet. The State agency may accept a plan of correction only if the plan specifies a reasonable time period for meeting the requirements of this part. The facility must meet the requirements of this part within the time period specified in its plan of correction;

and

(2) The State agency meets its requirements as provided in this part, or the State agency has submitted to HEW a plan of correction acceptable to HEW for any requirement that the State agency has been found not to meet. HEW will accept a plan of correction only if the plan specifies a reasonable time period for meeting the requirements of this part. The State agency must meet the requirements of this part within the time period specified in its plan of correction.

§ 71.74 Rates of payment.

In establishing rates of payment for child day care services, the State agency shall take into account the costs to the facility of meeting the requirements of this part.

§ 71.76 Future review of day care regulations.

The Secretary will review the effectiveness of these regulations. As part of this review, 36 (or 48) months after the effective date of these regulations, the Secretary will publish a notice of opportunity for public comment on the effectiveness of the regulations. The Secretary will assess the comments and publish the results of the review and assessment in the Federal Register.

§ 71.80 State Agency Advisory Council.

The State Agency Advisory Council required to be established under section 71.40 of this part shall advise on the interpretation and implementation of HEW day care requirements for day care homes as well as for day care centers.

§ 71.80 Effective date.

These regulations will take effect six months from the date of publication in final form in the Federal Register, except that the following requirements will take effect one year from that date:

(a) The training requirements at § 71.52;

(b) The requirements at § 71.56(a)(4) to inform parents about, and refer them to child health services; and

(c) The requirements at § 71.60(a) to inform parents about and refer them to social services.

Appendix A—Day Care Center

[Note.—The Appendix is to be included in the Code of Federal Regulations.]

This appendix contains examples to illustrate the meaning of the day care center requirements specified in Part 71, and recommendations on the steps day care centers and State agencies may take voluntarily, beyond those requirements. The Federal role is also specified.

Program of Activities for Children [§ 71.10]

Purpose

The intent of this requirement is to ensure that a day care program is more than custodial. Rather, the program must promote the social, intellectual, emotional, and physical development of the children served.

Requirements on Day Care Center

A day care center shall establish a planned program of age-appropriate activities which promotes the social, intellectual, emotional, and physical development of the children it serves. The planned program of activities shall be in writing, and shall contain a description of the daily activities children engage in and how those activities meet the developmental needs of the children.

Examples of What a Planned Program of Activities May Include

A planned program of activities may include:

- Conversation among children and caregivers;
- A pattern of daily activities which children can count on;
- An opportunity for child initiated play;
- Time for rest and play, including outdoor play when possible;
- Participation in a variety of activities, such as cooking, looking at books and magazines, taking walks, playing games and singing songs;
- An adequate supply of play materials for all children;
- Opportunities for school-aged children to participate in normal neighborhood activities;
- Opportunities for infants to crawl about freely;
- Holding and talking to infants;
- Feeding each infant according to his or her schedule; and
- Holding the infant while feeding.

Recommendations for Day Care Center

It is recommended that in developing and reviewing a program of planned activities, each day care center give careful consideration to the concerns of parents, the unique culture of the communities children come from, the individual needs of each child, and the special needs of children who are developmentally disabled or otherwise handicapped.

Requirements on State Agency

The State agency shall provide information and technical assistance to day care centers on establishing and maintaining a planned program of age-appropriate activities.

Examples of State Agency Technical Assistance

State agency technical assistance may include:

- Purchasing, providing or arranging consultation with a day care program specialist for day care centers; and
- Making manuals, pamphlets, and materials available to day care facilities to assist them in developing good programs in day care.

Recommendations for State Agency

It is recommended that each State agency establish or support local day care resource centers which loan equipment and materials to day care centers, and make available to day care centers information about community resources.

The Federal Role

HEW will make available:

- Research findings about the development of children and good day care programs; and
- Guides and publications describing model programs of activities.

Publications available from the Administration for Children Youth and Families, HEW:

Day Care #1: A Statement of Principles

Day Care #2: Serving Infants

Day Care #3: Serving Preschool Children
Day Care #4: Serving School Children
Day Care #8: Serving Children with Special Needs
The Ways Children Learn
More Than a Teacher
Preparing for Change
Away from Bedlam
The Vulnerable Child
A Setting for Growth
The Individual Child
Conditions for Learning
Language is for Communication

Training [§ 71.12]

Purpose

Continuous participation by caregivers in training related to child growth and development is critical to quality day care. The intent of this requirement is to ensure that children are cared for by individuals who develop and sustain the skills necessary to meet the children's needs.

Requirements on Day Care Center

(1) A day care center shall provide caregivers who have no previous experience or training in child care an on-site orientation on how to care for children in groups. This orientation shall occur before the caregiver assumes caregiving responsibilities.

(2) All caregivers shall regularly participate in specialized training related to child care. Specialized training for each caregiver shall begin as early as possible, but in no case later than 6 months after initial employment.

Example of How Specialized Training May Be Obtained

Caregivers may participate in specialized training courses purchased, provided, or arranged by the State agency.

Recommendations for Day Care Center

It is recommended that, in addition to having its staff participate in specialized training, each day care center provide regular on the job training to its staff.

Requirements on State Agency

Option A

The State agency shall establish and implement a statewide plan for providing or purchasing specialized training for day care personnel. The plan shall specify the nature and extent of the training required for day care center staff.

Recommendations for State Agency

It is recommended that specialized training for day care center staff consist of both instruction and supervised field experience, and that innovative, flexible opportunities for participating in training be made available.

It is also recommended that specialized training address the following areas:

- Child Growth and Development
- Child Care Programming and Activities
- Day Care for Bilingual Children
- Handling Behavior Problems
- Health and Safety Practices
- Health Education for Children
- Working with Parents
- Working with Developmentally Disabled Children and other Handicapped Children
- Nutrition and Good Eating Habits
- Design and Use of Space
- Community Resources for Health and Social Services

or

Option B

This option would be the same as option A, except that the list of training subject areas recommended under option A immediately above would be made mandatory.

Examples of Methods for the Delivery of Specialized Training

- Training sessions offered by State agency staff;
- Extension, television or correspondence courses in a child related subject;
- Specialized training sessions at a day care facility led by a child care specialist;
- Training provided by a family day care system or association;
- Child care courses offered by a college, vocational-technical school, or other adult education program;
- Training for a Child Development Associate (CDA) credential; or
- A series of seminars or workshops.

The Federal Role

HEW will provide materials and publications about training in day care, including CDA training programs and training opportunities under Vocational Education programs. HEW also supports the Child Development Associate Consortium, which awards a national credential to day care center caregivers.

Publications available from the Administration for Children, Youth and Families

Day Care #5: Staff Training
How to Become a Child Development Associate
Child Developent Associate Program: A Guide for Training
Child Development Associate Pilot Projects: Innovations in Training
A Prescriptive Guide to CDA Training Materials, Volumes 1 and 2

Nutrition [§ 71.14]

Purpose

The intent of this requirement is to ensure that children in day care receive meals and snacks which meet their nutritional needs while in care.

Requirements on Day Care Center

Option A

A day care center shall provide adequate and nutritious meals and snacks prepared in a safe and sanitary manner.

or

Option B

A day care center shall provide an adequate and nutritious breakfast (at parent's request) and lunch prepared in a safe and sanitary manner. Snacks shall be provided both mid-morning and mid-afternoon. When children are in care during evening and night hours, the center shall provide an adequate and nutritious evening meal.

Examples of How Nutritious Meals and Snacks May be Provided

Ways in which a day care center may provide nutritious meals and snacks include:

- Participating in the U.S. Department of Agriculture (USDA) Child Care Food Program when eligible;
- Offering meals and snacks prepared from the four food groups—dairy, meat, fruits and vegetables, and grain; or
- Following the standards of the National Research Council's Recommended Dietary Allowances; and
- Feeding infants formula received from parents.

Recommendations for Day Care Center

It is recommended that each day care center:

- Prepare and make available to parents written weekly menus for meals and snacks;
- Have menu plans periodically reviewed by a food service specialist;
- Recognize the personal, cultural, and ethnic food preferences of the children;
- Participate in the USDA Child Care Food Program when eligible.

Requirements on State Agency

The State agency shall make the consultative services of a qualified nutritionist or food service specialist available to day care centers.

Examples of Providing Consultation

Ways in which a State agency may make consultation available include:

- Providing or arranging for consultation from a USDA nutrition specialist for a facility which participates in the USDA Child Care Food Program;
- Providing the telephone number of a qualified nutritionist or food service specialist to answer questions about nutrition from caregivers.

Recommendations for State Agency

It is recommended that each State agency:

- Obtain and disseminate information on child nutrition to day care centers from the U.S. Public Health Service, Project Head Start, the U.S. Department of Agriculture, USDA Cooperative Extention Agents, schools of home economics, 4–H Centers, and local health programs, etc.;
- Furnish all dare care centers with sample menus; and
- Help and encourage eligible day care centers to participate in the USDA Child Care Food Program.

The Federal Role

The Department of Agriculture currently makes avaiable funding for food service in non-profit day care facilities (including family day care homes sponsored by a non-profit organization under its Child Care Food Program). USDA provides publications, assistance in obtaining food preparation equipment, and information about nutrition. HEW in consultation with the Department of Agriculture, will make available information and technical assistance in planning a nutrition program in day care. Information on how day care facilities can obtain financial and other assistance to support a high quality nutrition program is also available.

Publications available from the Administration for Children, Youth and Families, Head Start Bureau:

Nutrition: Better Eating for a Head Start

Nutrition Film: Jenny is a Good Thing—Leader's Guide

Nutrition Education for Young Children

Health and Safety of Children in Care [§ 71.16]

Purpose

The intent of this requirement is to protect children in day care from risks to their health and safety, and to assure children receive needed health services.

Requirements on Day Care Center

(1) A day care center shall have on record for each enrolled child, within 30 (or 60) days of enrollment, a statement from a licensed health practitioner that the child has received a health assessment and all immunizations appropriate to his or her age. The statement for each child must:

- Indicate any special precautions for diet, medication, or activity;
- Indicate that the immunizations are in accordance with recommendations of the U.S. Public Health Service or the American Academy of Pediatrics;
- Indicate that the health assessment is in accordance with the standards of the American Academy of Pediatrics or the EPSDT National Recommended Health Assessment Plan; and
- Be updated according to the recommended schedule for routine health supervision of the American Academy of Pediatrics, or the EPSDT National Recommended Health Assessment Plan.

(2) A day care center shall have plans to respond to illness and to emergencies including fire, serious injury, and ingestion of poison. These plans shall be in writing.

(3) A day care center shall not dispense medications to a child without the written consent of his or her parent. All medications shall be dispensed in accordance with instructions from a parent or physician. Medications shall be kept in labelled containers out of the reach of children.

(4) [OPTION A] A day care center shall provide information to parents, as needed, concerning health services available to the community, and shall refer parents to needed health services.

or

(OPTION B) Same as option A, except that in addition to informing and referring, a day care center shall assist parents in obtaining needed health services, and follow-up to assure that health care is secured.

Examples of Plans to Respond to Illness and Emergencies

Plans to respond to illness and emergencies may include provision for:

- Removing children from the day care center quickly in case of fire;
- Periodic fire drills;
- Contacting police, fire, rescue or poison control services;
- Contacting a health care source (such as a local health department or a Visiting Nurse Association) for advice about handling child illness or injury;
- Identifying what medical service would be used for serious illness or injury, how the child will be transported, and who will remain with the other children; and
- Informing parents about illness or emergency, and obtaining parental permission for emergency treatment.

Examples of Informing and Referring

A day care center may provide information to parents which it receives from State and local agencies about health services and how they may be obtained. A day care center may suggest to parents, when a health problem arises, agencies or clinics where health care is available.

Examples of Assisting and Following Up

A day care center may assist parents in obtaining needed health services by:

- Offering to make an appointment for the parent at the health agency; and
- Offering to arrange for transportation.

A day care center may follow-up to assure that health services are secured by:

- Checking back with the parent; or
- Calling the health agency with parent permission.

Recommendations for Day Care Center

It is recommended that a day care center:

- Establish a relationship with a health care professional who can advise on appropriate care for sick children;
- Have on hand first aid materials recommended by the American Red Cross;
- Display emergency numbers by each telephone;
- Provide for regular health education for children;
- Insure that facilities are free of lead-based paint;
- Require that children be immunized before enrollment in the facility;
- Have a procedure for reporting suspected cases of child abuse and neglect to the proper authorities;
- Provide an infant seat restraint for each child under 24 months, and a seat belt for each child 24 months or older where transportation is provided, and an adequate number of adults to supervise children being transported;
- Have an adequate number of adults to supervise children during swimming activities;
- Assure that all toys, playground equipment and other materials are safe for children;
- Assure that children brush their teeth regularly; and

• Maintain a record of each child's health history at the center.

Requirements on State Agency

Option A

(1) The State agency shall provide information to each day care center about the availability of child health services in the community, and about how the services may be obtained.

(2) The State agency shall establish and maintain health standards for day care center personnel.

or

Option B

This option would include the two requirements in option A and would also include the following requirement:

(3) The State agency shall make arrangements (links) which assure that children in day care who are eligible for Federal, State, or locally funded health services receive those services when needed.

Examples of State Agency Arrangements for Needed Health Services

Ways in which a State agency may arrange for needed health services for eligible children include:

• Making cooperative arrangements with existing public health resources such as the Early and Periodic Screening, Diagnosis and Treatment program (EPSDT) under Medicaid, or immunization and preventive health services funded under the Maternal and Child Health provisions of title V of the Social Security Act, and other public and private health clinics or providers, such as free care in Hill-Burton hospitals; or

• Reimbursing a day care center or association or other local agency (such as a coordinating council) for arranging and assuring the provision of health services for which children are eligible.

Recommendations for State Agency

It is recommended that the State agency assure that technical assistance is provided to day care facilities in health and safety practices.

The Federal Role

HEW will make available:

• Manuals and guides describing effective ways of coordinating EPSDT and other public health services with day care services;

• Guides and other resources about child health and safety; and

• Model plans for responding to illness and emergency.

Publications available from the Administration on Children, Youth and Families, HEW:

Health Services

Dental Services: A Guide for Dental Health Personnel

New Light on Old Problem: 9 Questions and Answers About Child Abuse and Neglect

Head Start Can Help Communities Fight Childhood Diseases with Immunizations (Spanish)

Head Start Can Help Communities Fight Childhood Diseases with Immunizations (English)

Day Care #6: Health Services

Day Care #7: Administration

Physical Environment [§ 71.18]

Purpose

The intent of this requirement is to ensure that children in day care are cared for in safe environments.

Requirements on Day Care Center

A day care center shall meet State and local requirements for licensing or approval, and applicable State and local codes relating to health, sanitation, and building and fire safety.

Requirements on State Agency

The State agency shall assure that each day care center meets applicable State and local requirements for licensing or approval, and applicable State and local codes relating to health, sanitation, building and fire safety. The State agency shall assure that standards for day care centers which specifically address transportation, swimming, and equipment safety exist in the State, and that each day care center meets those standards.

Recommendations for State Agency

It is recommended that a State agency:

• Promote the adoption of day care center physical environment standards which are reasonably in accord with HEW's Guides for Day Care Licensing.

• In conjunction with local agencies, periodically review and update State and local codes for health, sanitation, fire, and other safety requirements to ensure that the requirements are not contradictory, and that they are appropriate for day care centers.

The Federal Role

HEW will make available model licensing codes which address health and safety in day care centers.

Publications Available from the Administration for Children, Youth and Families:

The HEW Model Licensing Act

Young Children & Accidents in the Home (Spanish on hand)

Auto Safety and Your Child (Spanish and English)

Social Services [§ 71.20]

Purpose

The intent of this requirement is to assist parents of children in day care in locating and obtaining necessary social services.

Requirements on Day Care Center

Option A

A day care center shall provide information to parents, as needed, concerning social services available in the community and refer parents to needed social services.

or

Option B

Same as option A except that, in addition to informing and referring, a day care center shall assist parents in obtaining social services, and follow up to assure that services are secured.

Examples of Informing and Referring

A day care center may provide information to parents which it receives from State and local agencies about social services and how they may be obtained.

Day care center staff may talk with parents seeking social services, and suggest agencies or programs in the community.

Examples of Assisting and Following Up

A day care center may assist parents in obtaining social services by:

• Offering to make an appointment for the parent at the Social Service agency; or

• Offering to arrange for transportation.

A day care center may follow-up to assure that services are secured by:

• Checking back with the parent.

Recommendations for Day Care Center

It is recommended that at least one staff member in each day care facility be knowledgeable about social services commonly needed by the families it serves, about the Title XX social services delivered in its State, and about existing community resources and services.

Requirements on State Agency

Option A

(1) The State agency shall provide information to each day care center about the availability of social services

in the community and about how the services may be obtained.

or

Option B

(1) Same as option A

(2) The State agency shall make arrangements (links) which assure that children in day care centers who are eligible for Federal, State, or locally funded social services receive those services when needed.

Examples of Making Arrangements for Needed Social Services

Ways in which a State agency may arrange for social services for eligible children include:

- Providing services included in the State's Title XX social services plan to children in day care eligible for them;
- Contracting with a day care center or association or other local agency (such as a coordinating council or United Way) to link children with needed social services; or
- Making cooperative arrangements with other agencies that provide social services, such as mental health agencies.

The Federal Role

HEW will encourage mental health agencies and social services agencies funded by HEW to cooperate with State agencies responsible for children in day care.

Publications available from the Administration on Children, Youth and Families:

Responding to Individual Needs in Head Start (Pt. 1)

Raising a Family Alone

Parent Involvement [§ 71.22]

Purpose

The intent of this requirement is to ensure that parents receive information about and access to day care programs, and to encourage parental involvement in the operation of day care programs.

Requirements on Day Care Center

A day care center shall:

Option A

(1) Provide parents with opportunities to observe the center and to discuss their childrens' needs before enrollment;

(2) Inform parents about the day care program and its policies;

(3) Regularly offer parents opportunities to observe their children, meet with caregivers and advise and comment on their children's needs; and

(4) Regularly exchange information with parents about their children.

Option B

In addition to Subsection (1)–(4) above, a day care center would also be required to:

(5) Maintain for a period of three years any monitoring reports or evaluations of the center prepared by and received from Federal, State, or local authorities;

(6) Provide parents upon request the opportunity to review any of the reports or evaluations referred to in paragraph (5) above; and

(7) Make available to parents upon request pending or approved applications for funds for the current program year filed with any Federal, State, or local authorities.

Examples of Parent Involvement

Ways in which a day care center may involve parents include:

- Communicating regularly with parents;
- Organizing periodic meetings to enable parents to advise and comment on their children's needs and the day care program;
- Inviting parents to observe the day care program before and after enrollment;
- Having periodic parent-caregiver conferences; and
- Working with a parent advisory council to provide opportunities for advice and comment on the children's needs in the day care program.

Recommendations for Day Care Center

It is recommended that each day care center:

- Involve parents in evaluating the child care program;
- Provide parents with opportunities to be involved in general policy making;
- Provide parents with opportunities to review budgeting and funding activities;
- Develop parent education activities, in consultation with parents;
- Use parent skills to benefit the day care program;
- Provide information in the primary language of the parents.

Requirements on State Agency

(1) The State agency shall provide information and technical assistance to day care centers on working with parents.

(2) The State agency shall offer parents their choice of day care facility whenever administratively feasible. The State agency shall make a copy of the HEW day care requirements available to parents using HEW-funded day care.

Recommendations for State Agency

It is recommended that the State agency provide:

- Checklists for parents to assist them in assessing the quality of their children's day care.
- Procedures by which parents may raise concerns with the State agency about the day care provided their children; and
- Information and referral services that assist parents in locating and selecting day care facilities.

The Federal Role

HEW will provide material on parent involvement in day care to day care facilities and State agencies.

Publications helpful to parents available from the Administration for Children, Youth and Families:

Day Care for Your Children

Education for Parenthood (fact folder)

So you're Going to be a New Father (English and Spanish)

One Parent Families (English and Spanish)

Group Composition—Day Care Center [§ 71.24]

Purpose

Group composition—the number of caregivers and the number of children—has a crucial impact on day care quality. The intent of this requirement is to ensure sufficient numbers of adults to provide care and supervision to children, and to ensure that children are cared for in grouping arrangements which promote their development.

Requirements on Day Care Center

(a) *Group Size*

(1) A day care center shall meet the following group size requirements at all times of the day, except during lunch, naptime, and special activities, such as field trips and playground activities: (The numbers are scheduled enrollment figures.)

Infants and Toddlers	0–2½ years
Option A	8
or	
Option B	10
Preschoolers	**2½–4 years**
Option A	14
or	
Option B	16
Preschoolers	**4–6 years**
Option A	16
or	
Option B	20

School Age	6–10 years
Option A	16
or	
Option B	18

School Age	10–14 years
Option A	20
or	
Option B	State Requirements

(2) Compliance with the group size requirements in parapraph (a) (l) above shall be determined on a group or cluster basis rather than a room or center-wide basis.

(3) For mixed age groups, group size shall be based upon the age of the youngest child in the group, if children in the youngest age category make up twenty percent or more of that group. If children in the youngest age category make up less than twenty percent of that group, the group size for the next highest age category shall be required.

(b) *Staffing Requirements*

(1) A sufficient number of staff shall be present at the center at all times and shall be assigned so as to protect the health and safety of the children at the center.

(2) A day care center shall meet the following staffing requirements

(OPTION A) At all times of the day:

or

(OPTION B) Averaged over the course of the day: (The numbers are scheduled enrollment figures.)

Infants and Toddlers	0–2½ years
Option A	1:4
or	
Option B	1:5

Preschoolers	2½–4 years
Option A	1:7
or	
Option B	1:8

Preschoolers	4–6 years
Option A	1:9
or	
Option B	1:10

School Age	6–10 years
Option A	1:8
or	
Option B	1:18

School Age	10–14 years
Option A	1:20
or	
Option B	State Requirements

(3) Compliance with the staffing requirements in parargraph (b) (2) above shall be determined using the total number of hours children are scheduled to be at the center and the total number of hours staff are scheduled to work directly with children.

(4) To calculate the required staff hours, divide the total scheduled child hours for each age category by the age appropriate staffing requirement in paragraph (b) (2) above.

(5) (i) Staffing requirements in paragraph (b) (2) above may be met by averaging the staff required for the 2½ to 4 and 4 to 6 year old age categories. (For example, if a center determines that it needs 5 caregivers to meet the staffing requirement for its 2½ year old children at the center, and 10 caregivers for its 5 year old children at the center, the center would meet the staffing requirement so long as it had 15 caregivers scheduled to care for children in both categories. It need not necessarily assign 5 caregivers to care for its 2½ year old children, nor assign 10 caregivers to care for its 5 year old children.)

(ii) Staffing requirements in paragraph (b)(2) above may be met by averaging the staff required for the 6 to 10 and 10 to 14 year old age categories.

(6) (OPTION A) Hours scheduled to be spent providing direct care to children by a volunteer may be counted toward meeting the staffing requirements, if the volunteer participates in specialized child care training.

or

(OPTION B) Hours scheduled to be spent providing direct care to children by a volunteer may be counted toward meeting the staffing requirements, if the volunteer works 10 hours or more each week and participates in specialized child care training.

(7) Hours scheduled to be spent providing direct care to children by a staff member who performs non-caregiving duties, such as a cook or a driver, may be counted toward meeting the staffing requirements, if he or she participates in specialized child care training.

(8) A day care center shall obtain substitutes in case of caregiver absences.

Appendix B—Day Care Home

Note.—The Appendix is to be included in the Code of Federal Regulations.

This appendix contains examples to illustrate the meaning of the day care home requirements specified in Part 71, and recommendations on the steps day care homes and State agencies may take voluntarily, beyond those requirements. The Federal role is also specified.

Program of Activities for Children [§ 71.50]

Purpose

The intent of this requirement is to ensure that a day care program is more than custodial. Rather, the program must promote the social, intellectual, emotional, and physical development of the children served.

Requirements on Day Care Home

A day care home shall establish a planned program of age-appropriate activities which promotes the social, intellectual, emotional, and physical development of the children it serves. The plan shall be in writing, and shall contain a brief description of the children's activities in the home.

Examples of What a Planned Program of Activities May Include

A planned program of activities may include:

- Conservation among children and caregivers;
- A pattern of daily activities which children can count on;
- An opportunity for child initiated play;
- Time for rest and play, including outdoor play when possible;
- Participation in a variety of activities, such as cooking, looking at books and magazines, taking walks, playing games and singing songs;
- An adequate supply of play materials for all children;
- Opportunities for school-aged children to participate in neighborhood activities;
- Opportunities for infants to crawl about freely;
- Holding and talking to infants;
- Feeding each infant according to his or her schedule; and holding the infant while feeding.

Recommendations for Day Care Home

It is recommended that in planning activities for children, each day care home consider the concerns of the parents and the special needs of the children in the home.

Requirement on State Agency

The State agency shall provide information and technical assistance to day care homes on establishing and

maintaining a planned program of age-appropriate activities.

Examples of State Agency Technical Assistance

State agency technical assistance may include:

- Purchasing, providing, or arranging consultation with a day care program specialist for day care facilities; and
- Making manuals, pamphlets, and materials available to day care homes to assist them in developing good programs in day care.

Recommendations for State Agency

It is recommended that each State agency establish or support local day care resource centers which loan equipment and materials to day care facilities, and make available to day care facilities information about community resources.

The Federal Role

HEW will make available:

- Research findings about the development of children and good day care programs; and
- Guides and publications describing model programs of activities.

Publications available from the Administration for Children, Youth and Families:

Day Care #9: Family Day Care
An Adolescent in Your Home
Child Development in the Home
Fun in the Making
The Ways Children Learn
More than a Teacher
Preparing for Change
Away from Bedlam
The Vulnerable Child
A Setting for Growth
The Individual Child
Conditions for Learning
Language is the Communication

Training [§ 71.52]

Purpose

Continuous participation by caregivers in training related to child growth and development is critical to day care. The intent of this requirement is to ensure that children are cared for by individuals who develop and sustain the skills necessary to meet the children's needs.

Requirements on Day Care Home

All caregivers shall regularly participate in specialized training related to child care. Specialized training for each caregiver shall begin as early as possible, but in no case later than 6 months after caregiving duties begin.

Examples of How Specialized Training May be Obtained

Caregivers may participate in specialized training courses purchased, provided, or arranged by the State agency.

Recommendations for Day Care Homes

It is recommended that each day care home caregiver make use of magazines and other publications related to caring for children in a home.

Requirements on State Agency

Option A

The State agency shall establish and implement a statewide plan for providing or purchasing specialized training for day care personnel. The plan must specify the nature and extent of the training required for day care home caregivers.

Recommendations for State Agency

It is recommended that specialized training for day care home caregivers consist of both instruction and supervised field experience, and that innovative, flexible opportunities for participating in training be made available.

It is also recommended that specialized training address the following areas:

- Child Growth and Development
- Child Care Programming and Activities
- Handling Behavior Problems
- Health and Safety Practices
- Health Education for Children
- Working with Parents
- Working with Developmentally Disabled Children and other Handicapped Children
- Nutrition and Good Eating Habits
- Design and use of Space
- Community Resources for Health and Social Services

or

Option B

This option would be the same as option A, except that the list of training subject areas recommended under option A immediately above would be made mandatory.

Examples of Methods for the Delivery of Specialized Training

- Training sessions offered by State agency staff;
- Extension, television, or correspondence courses in a child related subject;
- Specialized training sessions at a day care facility led by a child care specialist;
- Training provided by a family day care system or association;
- Child care courses offered by a college, vocational-technical school, or other adult education program;
- Training for a Child Development Associate (CDA) credential; or
- A series or seminars or workshops.

The Federal Role

HEW will provide materials and publications about training in day care, including CDA training programs and training opportunities under Vocational Educational programs.

Publications available from the Administration for Children, Youth and Families:

Day Care #5: Staff Training

Nutrition [§ 71.54]

Purpose

The intent of this requirement is to ensure that children in day care receive meals and snacks which meet their nutritional needs while in care.

Requirements on Day Care Home

Option A

A day care home shall provide adequate and nutritious meals and snacks prepared in a safe and sanitary manner.

or

Option B

A day care home shall provide an adequate and nutritious breakfast (at parent request) and lunch prepared in a safe and sanitary manner. Snacks shall be provided both mid-morning and mid-afternoon. When children are in care during evening and night hours, the home shall provide an adequate and nutritious evening meal.

Examples of How Nutritious Meals and Snacks May be Provided

Ways in which a day care home may provide nutritious meals and snacks include:

- Participating in the U.S. Department of Agriculture (USDA) Child Care Food Program when eligible;
- Offering meals and snacks prepared from the four food groups—dairy, meat, fruits and vegetables, and grain;
- Following the standards of the National Research Council's Recommended Dietary Allowances; or
- Feeding infants formula received from parents.

Recommendations for Day Care Home

It is recommended that each day care home:

• Recognize the personal, cultural, and ethnic food preferences of children; and

• Join a day care home sytem or be sponsored by a USDA Child Care Food Program.

Requirements on State Agency

The State agency shall make the consultative services of a qualified nutritionist or food service specialist available to day care homes.

Examples of Providing Consultation

Ways in which a State agency may make consultation available include:

• Providing or arranging for consultation from a USDA nutrition specialist for a home which participates in the USDA Child Care Food Program;

• Providing the telephone number of a qualified nutritionist or food service specialist to answer questions about nutrition from caregivers.

Recommendations for State Agency

It is recommended that each State agency:

• Obtain and disseminate information on child nutrition to day care facilities from the U.S. Public Health Service, Project Head Start, the U.S. Department of Agriculture, USDA Cooperative Extension Agents, schools of home economics, 4–H Centers, and local health programs, etc.;

• Furnish all day care homes with sample menus; and

• Help and encourage eligible day care homes to participate in the USDA Child Care Food Program and assist in developing umbrella agencies where needed for such participation.

The Federal Role

The Department of Agriculture currently makes available funding for food service in non-profit day care facilities (including family day care homes sponsored by a non-profit organization) under its Child Care Food Program. USDA provides publications, assistance in obtaining food preparation equipment, and information about nutrition. HEW in consultation with the Department of Agriculture, will make available information about technical assistance in planning a nutrition program in day care. Information on how day care facilities can obtain financial and other assistance to support a high quality nutrition program is also available.

Publications available from the Administration for Children, Youth and Families:

Prenatal Care (English and Spanish)
Infant Care (English and Spanish)
Your Child From One to Six

Health and Safety of Children in Care [§ 71.56]

Purpose

The intent of this requirement is to protect children in day care from risks to their health and safety, and to assure that children receive needed health services.

Requirements on Day Care Home

(1) A day care home shall have on record for each enrolled child, within 30 (or 60) days of enrollment, a statement from a licensed health practitioner that the child has received a health assessment and all immunizations appropriate to his or her age. The statement for each child shall:

• Indicate any special precautions for diet, medication, or activity;

• Indicate that the immunizations are in accordance with recommendations of the U.S. Public Health Service or American Academy of Pediatrics;

• Indicate that the health assessment is in accordance with the standards of the American Academy of Pediatrics or the EPSDT National Recommended Health Assessment Plan; and

• Be updated according to the recommended schedule for routine health supervision of the American Academy of Pediatrics, or the EPSDT National Recommended Health Assessment Plan.

(2) A day care home shall have plans to respond to illness and to emergencies including fire, serious injury, and ingestion of poison.

(3) A day care home shall not dispense medications to a child without the written consent of his or her parent. All medications shall be dispensed in accordance with instructions from a parent or physician. Medications shall be kept in labelled containers out of the reach of children.

(4) A day care home shall provide information to parents, as needed, concerning child health services available in the community, and shall refer parents to the needed health services.

Examples of Plans to Respond to Illness and Emergencies

Plans to respond to illness and emergencies may include provision for:

• Removing children from the day care home quickly in case of fire;

• Periodic fire drills;

• Contacting police, fire, rescue or poison control services;

• Contacting a health care source (such as a local health department or a Visiting Nurse Association) for advice about handling child illness or injury;

• Identifying what medical service would be used for serious illness or injury, how the child will be transported, and who will remain with the other children; and

• Informing parents about illness or emergency, and obtaining parental permission for emergency treatment.

Examples of Informing and Referring

A day care home may provide information to parents which it receives from State and local agencies about child health services and how the services may be obtained.

Recommendations for Day Care Home

It is recommended that a day care home:

• Establish a relationship with a health care professional who can advise on appropriate care for sick children;

• Have on hand first aid materials recommended by the American Red Cross;

• Display emergency numbers by each telephone;

• Provide for regular health education for children;

• Ensure that facilities are free of lead-based paint;

• Require that children be immunized before enrollment in the facility;

• Have a procedure for reporting suspected cases of child abuse and neglect to the proper authorities;

• Provide an infant seat restraint for each child under 24 months, and a seat belt for each child 24 months or older where transportation is provided, and an adequate number of adults to supervise children being transported;

• Have an adequate number of adults to supervise children during swimming activities;

• Assure that all toys, playground equipment and other materials are safe for children; and

• Assure that children brush their teeth regularly.

Requirements on State Agency

Option A

(1) The State agency shall provide information to each day care home about the availability of child health services in the community, and how they may be obtained.

(2) The State agency shall establish and maintain health standards for day care personnel.

or

Option B

This option would include the two requirements in option A and would also include the following requirement:

(3) The State agency shall make arrangements (links) which assure that children in day care who are eligible for Federal, State or locally funded health services receive those services when needed.

Examples of State Agency Arrangements for Needed Health Services

Ways in which a State agency may arrange for needed health services for eligible children include:

• Making cooperative arrangements with existing public health resources such as the Early and Periodic Screening, Diagnosis and Treatment program (EPSDT) under Medicaid, or immunization and preventive health services funded under the Maternal and Child Health provisions of title V of the Social Security Act, and other public and private health clinics or providers, such as free care in Hill-Burton hospitals; or

• Reimbursing a day care home or association or other local agency (such as a coordinating council) for arranging and assuring the provision of health services for which children are eligible.

Recommendations for State Agency

It is recommended that the State agency assure that technical assistance is provided to day care homes in health and safety practices.

The Federal Role

HEW will make available:

• Manuals and guides describing effective ways of coordinating EPSDT and other public health services with day care services;

• Guides and other resources about child health safety; and

• Model plans for responding to illness and emergency.

Publications available from the Administration for Children, Youth and Families:

Day Care #6 Health Services
Day Care #9 Family Day Care

Physical Environment [§ 71.58]

Purpose

The intent of this requirement is to ensure that children in day care are cared for in safe environments.

Requirements on Day Care Home

A day care home shall meet State and local requirements for licensing, registration, or approval, and any State or local health, sanitation, and building and fire safety codes applicable to residential occupancy.

Requirements on State Agency

The State agency shall assure that each day care home meets State and local requirements for licensing, registration, or approval, and the requirements of State or local health, sanitation, and building and fire safety codes applicable to residential occupancy. The State agency shall assure that standards for day care homes which specifically address transportation, swimming, and equipment safety exist in the State, and that each day care home meets those standards.

Recommendations for State Agency

It is recommended that a State agency:

• Promote the adoption of day care home standards which are reasonably in accord with HEW's Guides for Day Care Licensing.

• In conjunction with local agencies, periodically review and update State and local codes for health, sanitation, fire, and other safety requirements to ensure that the requirements are not contradictory, and that they are appropriate for day care homes.

The Federal Role

HEW will make available model licensing codes which address health and safety in day care homes.

Publications available from the Administration for Children, Youth and Families:

Young Children & Accidents in the Home

HEW Model Licensing Act

Social Services [§ 71.60]

Purpose

The intent of this requirement is to assist parents of children in day care in locating and obtaining necessary social services.

Requirements on Day Care Home

A day care home shall provide information to parents, as needed, concerning social services available in the community, and refer parents to needed social services.

Examples of Informing and Referring

A day care home may provide information to parents which it receives from State and local agencies about social services and how they may be obtained.

Recommendations for Day Care Home

It is recommended that each day care home caregiver become familiar with local social service resources and agencies.

Requirements on State Agency

Option A

(1) The State agency shall provide information to each day care home about the availability of social services in the community, and about how the services may be obtained.

or

Option B

(1) Same as option A.

(2) The State agency shall make arrangements (links) which assure that children in day care homes who are eligible for Federal, State or locally funded social services receive those services when needed.

Examples of Making Arrangements for Needed Social Services

Ways in which a State agency may arrange for social services for eligible children include:

• Providing services included in the State's title XX social services plan to children in day care eligible for them;

• Contracting with a day care home or day care home association or other local agency (such as a coordinating council) to link children with needed social services; or

• Making cooperative arrangements with other agencies that provide social services, such as mental health agencies.

The Federal Role

HEW will encourage mental health agencies and social services agencies funded by HEW to cooperate with State agencies responsible for children in day care.

Publications available from the Administration for Children, Youth and Families:

A Handicapped Child in Your Home (English and Spanish)

Parent Involvement [§ 71.62]

Purpose

The intent of this requirement is to ensure that parents receive information about and access to day care programs, and to encourage parental involvement in the operation of day care programs.

Requirements on Day Care Home

A day care home shall:

(1) Provide parents with opportunities to observe the home and to discuss their childrens' needs before enrollment;

(2) Inform parents about the day care program and its policies;

(3) Regularly offer parents opportunities to observe their children, and to talk about their children's needs; and

(4) Regularly exchange information with parents about their children.

Examples of Parent Involvement

Ways in which a day care home may involve parents include:

- Arranging for brief communications when parents bring and pick up their children; and
- Inviting parents to observe the home while in operation.

Recommendations for Day Care Home

It is recommended that each day care home:

- Use parent skills to benefit the day care program when possible.

Requirements on State Agency

(1) The State agency shall provide information and technical assistance to day care homes on working with parents.

(2) The State agency shall offer parents their choice of day care facility whenever administratively feasible. The State agency shall make a copy of the HEW day care requirements available to parents using HEW-funded day care.

Recommendations for State Agency

It is recommended that the State agency provide:

- Checklists for parents to assist them in assessing the quality of their children's day care.
- Procedures by which parents may raise concerns with the State agency about the day care provided their children; and
- Information and referral services that assist parents in locating and selecting day care facilities.

The Federal Role

HEW will provide material on parent involvement in day care to day care homes and State agencies.

Publications available from the Administration for Children, Youth and Families:

Day Care for Your Children
Education for Parenthood
So You're Going to be a New Father (English and Spanish)
One Parent Families (English and Spanish)

Group Composition—Day Care Home [§ 71.64]

Purpose

Group composition—the number of caregivers and the number of children—has a crucial impact on day care quality. The intent of this requirement is to ensure sufficient numbers of adults to provide care and supervision to children, and to ensure that children are cared for in grouping arrangements which promote their development.

(a) *Family Day Care Home*

(1) At least one caregiver shall be present at all times.

(2) In a family day care home that serves children of all ages including children under the age of 24 months, the group size at any given time shall not exceed 5. No more than two of these children may be under the age of 24 months. The caregiver's own children younger than six and not yet in first grade shall count towards the group size requirement.

(3) In a family day care home that serves children under the age of 24 months only, the group size at any given time shall not exceed 3. There may be no other children in the home besides the caregiver's own children over the age of 6 years.

(4) In a family day care home that serves no children under 24 months the group size at any given time shall not exceed six. The caregiver's own children younger than six and not yet in first grade shall count towards the group size requirement.

(b) *Group Day Care Home*

(1) At least two caregivers shall be present at all times.

(2) In a group day care home that serves children of all ages, including children under 24 months, the group size at any given time shall not exceed 10. No more than two of these children may be under the age of 24 months. The caregiver's own children younger than six and not yet in first grade shall count towards the group size requirement.

(3) In a group day care home that serves no children under the age of 24 months, the group size at any given time shall not exceed 12. The caregiver's own children younger than 6 and not yet in first grade shall count towards the group size requirements.

[FR Doc. 79-18481 Filed 6-14-79; 8:45 am]
BILLING CODE 4110-92-M

[45 CFR Part 71]

Child Day Care Regulations; Public Meetings

AGENCY: Office of the Secretary, HEW.

ACTION: Proposed rules, notice of public meetings.

SUMMARY: The Department of Health, Education, and Welfare will conduct public meetings to review proposed HEW child day care regulations. The proposed regulations would apply to all HEW assisted day care services provided to children outside their homes except the Headstart program. The proposed regulations contain requirements for State agencies administering out-of-home day care services operators. They would specify the type of day care services HEW wished to purchase for children served with its funds. The oral and written comments received at the meetings will be considered in the drafting of the final regualtions.

DATES: Public meetings will be held in 10 cities and the District of Columbia. See Supplementary Information section for the address of each meeting.

FOR FURTHER INFORMATION CONTACT: See Supplementary Information section for the person to contact in each region and in Washington, D.C.

SUPPLEMENTARY INFORMATION: The schedule of meetings is set forth below. The date and location of each meeting is provided in addition to the name and address of the person to contact for further information.

Region I

July 19, 1979, Boston, Massachusetts
Contact: Ms. Tina Burrell, Administration for children, Youth and Families, Room 2000, John F. Kennedy Federal Building, Government Center, Boston, Massachusetts 02203. Telephone (617) 223-6450.

Region II

July 25, 1979, New York, New York
Contact: Ms. Gloria Sanger, Administration for Public Services, Federal Building, 26 Federal Plaza, New York, New York 10007. Telephone (212) 264-4628.

Region III

July 10, 1979, Philadelphia, Pennsylvania
Contact: Mr. Donald Barrow, Administration for Public Services, P.O. Box 13716, 3535 Market Street, Philadelphia, Pennsylvania 19101. Telephone (215) 596-6776.

Region IV

July 19, 1979, Memphis, Tennessee
Contact: Mr. James K. Vaughn, Administration for Public Services, 101 Marietta Tower, Suite 903, Atlanta, Georgia 30323. Telephone (404) 242-2128.

Region V

July 23, 1979, Chicago, Illinois
Contact: Ms. Ruth Born or Ms. Thelma Thompson, Administrator for Children, Youth and Families, 300 South Wacker

Drive, 15th Floor, Chicago, Illinois 60606. Telephone (312) 353–6503.

Region VI

July 23, 1979, San Antonio, Texas
Contact: Mr. Pat Murphy, Administration for Children, Youth and Families, 1200 Main Tower Building, Dallas, Texas 75205. Telephone (214) 767–2976.

Region VII

July 11, 1979, St. Louis, Missouri
Contact: Mr. Al Byers, Administration for Public Services, 601 East 12th Street, Kansas City, Missouri 64106. Telephone (816) 374–5975.

Region VIII

July 9, 1979, Denver, Colorado
Contact: Ms. Oneida Little, Administration for Public Services, Federal Office Building, Room 9017, 19th and Stout Streets, Denver, Colorado 80202. Telephone (303) 327–2144.

Region IX

July 26, 1979, Los Angeles, California
Contact: Mr. Warren Jones, Administration for Public Services, HEW Regional Office, 50 United Nations Plaza, San Francisco, California 94102. Telephone (415) 556–7806.

Region X

July 26, 1979, Seattle, Washington
Contact: Ms. Enid Welling, Administration for Public Services or Ms. Margaret Sanstad, Administration for Children, Youth and Families, Arcade Plaza Building, 1321 Second Avenue, Mail Stop 620, Seattle, Washington 98101. Telephone (206) 399–0526.

September 10, 1979, Washington, D.C.
Contact: Ms. Nina Sazer, Chief, Public Participation Task Force, Office of the General Counsel, Room 716E, 200 Independence Avenue, S.W., Washington, D.C. 20201. Telephone (202) 472–7461.

These meetings are being held to solicit the views and comments of individuals and organizations with respect to issues raised by the proposed day care regulations. Requests to participate in the meetings should be made in writing to the above addresses and should include the name, address and telephone number of the participant and organization represented, if any, as well as the issues each participant would like to address. Each participant will have the opportunity to submit a written statement and other data for the record. In the event that time does not permit all interested persons to make oral presentations, persons will be selected to assure that all points of view are fairly represented. The meetings will be conducted in an informal manner.

In addition, individuals or organizations wishing to sponsor a State or local meeting to review the proposed regulations may write to the above addresses to request information which will assist them in planning meetings.

Persons who are unable to attend the meetings may submit statements in writing to: Sylvester Ligsukis, Director, Day Care Task Force, U.S. Department of HEW, Office of the General Counsel, Room 716E, 200 Independence Avenue, S.W., Washington, D.C. 20201. Telephone (202) 245–6734.

Dated: May 31, 1979.

Frank Peter S. Libassi,

General Counsel, Department of Health, Education and Welfare.

Dated: June 7, 1979.

Joseph A. Califano, Jr.,

Secretary, Department of Health, Education, and Welfare.

[FR Doc. 79-18682 Filed 6-14-79; 8:45 am]
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Federal Register

Friday
June 15, 1979

Part IV

Environmental Protection Agency

Modification of Secondary Treatment Requirements for Discharges Into Marine Waters

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 125

[1214-3]

Modification of Secondary Treatment Requirements for Discharges Into Marine Waters

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Final rule.

SUMMARY: This final rulemaking establishes the criteria which will be applied by EPA in acting upon applications for issuance of a National Pollutant Discharge Elimination System ("NPDES") permit which modifies the requirements of secondary treatment under section 301(h) of the Clean Water Act ("the Act"), 33 U.S.C. 1311(h).

EFFECTIVE DATE: 1:00 P.M. Eastern time on June 22, 1979.

FOR FURTHER INFORMATION CONTACT: Scott Berdine, 301(h) Task Force, Office of Water Program Operations (WH-546), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, 202/426-8973.

SUPPLEMENTARY INFORMATION: In 1972 the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*) was amended to require all publicly owned treatment works ("POTWs"), to achieve by July 1, 1977, secondary treatment as defined by EPA (see sections 301(b)(1)(B) and 304(d)(1) of the Act). In 1973, EPA defined secondary treatment in terms of four parameters—biochemical oxygen demand (BOD), suspended solids (SS), pH and fecal coliform bacteria—and established national uniform minimum effluent limitations for these pollutants to be attained by all POTWs by the 1977 deadline (38 FR 22298, August 17, 1973, as amended by 41 FR 30785, July 26, 1976 (deletion of fecal coliform bacteria limitations)).

Since the enactment of the 1972 amendments and the promulgation of EPA's secondary treatment regulations, a number of municipalities, primarily from the West Coast, argued to both Congress and EPA that secondary treatment of municipal ocean discharges is not necessary to protect the marine environment or to assure the attainment and maintenance of water quality in ocean waters.

Those same municipalities contended that secondary treatment traditionally has been defined in terms of pollutant parameters and levels of pollutant reduction which are important for freshwater ecology where the discharge of oxygen-demanding wastes and sedimentation of suspended solids results in distinct environmental degradation, but which have little significance for oceanic and saline estuarine waters where wastes are rapidly assimilated and dispersed by strong currents and tidal action. POTW discharges located in West Coast estuaries exhibiting a high degree of flushing also argued that secondary treatment provides no significant environmental benefit because discharges are rapidly oxygenated, dispersed and carried into the open ocean. On this basis, these municipalities have maintained that they should be exempted from the Act's secondary treatment requirement, and the associated capital, maintenance, and operating costs. These municipalities also claimed that they had accumulated sufficient evidence to demonstrate the scientific basis for exemptions from secondary treatment requirements.

As a result of their testimony, Congress, in amending the Clean Water Act in 1977, added section 301(h), which allows a municipal marine discharger to present its case to EPA. Section 301(h) provides that the Administrator, upon application of a POTW and with the concurrence of the State, may issue an NPDES permit which modifies EPA's secondary treatment requirements if the applicant: (1) discharges into certain ocean and estuarine waters; and (2) demonstrates, to the satisfaction of the Administrator, that the modification will not result in any increase in the discharge of toxic pollutants or otherwise impair the integrity of the receiving waters.

EPA's proposed regulations governing both the criteria and procedures [1] to be used in implementing this provision were published on April 25, 1978 (43 FR 17484). On May 10, 1978, EPA announced public hearings, which were held on June 2, and June 3, 1978, in Washington, D.C. and Seattle, Washington, respectively, to receive comment on the proposal (43 FR 20024). Prior to publication of the proposal, EPA also solicited written comments and held a public meeting in San Francisco to receive oral and written comments on how it should implement the statutory criteria of section 301(h) prior to proposal of regulations (43 FR 4675, February 3, 1978). To the extent possible, pre-proposal comments were considered in developing the proposal.

In response to these requests for public participation, EPA received written and oral comments on its proposal from over a hundred groups and individuals. Based on these comments, a number of changes have been made to the proposal. A summary of the section 301(h) program is provided in Section I, below. Major generic changes, including EPA's response to comments, are discussed by topic in Section II below.

EPA also received a number of inquiries concerning various aspects of the section 301(h) program (e.g., the relationship between sections 301(h), 301(b)(2)(B) and 301(i), enforcement, and grant eligibility) which were not specifically addressed in the proposal. In response to these concerns, EPA has included Section III, which discusses how EPA intends to implement the section 301(h) program and how the section 301(h) program relates to other programs within EPA.

In response to requests that EPA provide justification for the key tests used in the section 301(h) process and to provide guidance to applicants, a draft Technical Support Document was developed and made available for public review and comment on March 21, 1979 (43 FR 17194). This document is discussed in Section IV.

The revisions and reorganization of individual sections are addressed in the section-by-section analysis in Section V. This section includes EPA's response to major comments received by EPA on the proposed regulations.

I. Program Summary

These regulations (40 CFR 125 Subpart G) establish the criteria and standards to be applied by EPA in acting upon section 301(h) applications for modifications to the requirements of secondary treatment for biochemical oxygen demand (BOD), suspended solids (SS), and pH. They also establish special permit conditions which must be imposed and terms and conditions required by the NPDES regulations under Part 122 of this Chapter. As explained in section III. A. of this preamble, these regulations were originally proposed as 40 CFR Part 233. Cross-references to the proposed regulation sections are provided throughout this preamble.

A. Scope

The opportunity to obtain a modification of applicable secondary treatment requirements is available only to publicly owned treatment works (POTWs), which do not include federal facilities. In order to be eligible for application, a POTW must have had an existing discharge into marine waters as

[1] The procedures governing section 301(h) decisionmaking are now found in 40 CFR Part 124.

of December 27, 1977. Additionally, the POTW must have submitted a preliminary application to EPA by September 24, 1978. Preliminary applications postmarked no later than September 25, 1978 were accepted as September 24th was a Sunday (43 FR 39399, September 5, 1978). POTWs which submitted preliminary applications are eligible to submit final applications as required by this Subpart, no later than September 13, 1979.

Although POTWs in communities which are considered to be Native Alaskan Villages or small coastal communities in Puerto Rico and the U.S. Territorial Possessions in the Caribbean and Pacific may apply if they so desire, a special policy has been adopted with respect to these communities as an alternative to their submitting completed section 301(h) applications. This policy was adopted to provide a better means than the section 301(h) program to assist these communities in addressing their sanitary and public health priorities in a manner consistent with their more limited economic resources and different degree of development. The regulations contain no other special provisions or exemptions based on size, location, or economic activity, and will be applied equally to all other eligible applicants. Applicants should keep in mind, however, that the amount of data and analyses required to obtain and maintain a section 301(h) permit will very likely vary with the size of the discharge, the amount and kind of industrial waste in the effluent and the nature of the receiving waters into which the waste is discharged. Accordingly, small, purely domestic POTWs discharging into open coastal waters may need less data to establish the merits of their case than that required of larger POTWs with industrial waste in their influent.

B. Application Requirements

Eligible POTWs have up to 90 days to submit a final and complete application to EPA. The final application must consist of: (1) a signed, completed NPDES application Standard Form A, Parts I, II, and III; (2) a completed application which corresponds to EPA's Application Format for Modification of the Requirements of Secondary Treatment; and (3) certification in accordance with 40 CFR § 122.5 that the information contained in the application and Standard Form A is true, accurate, and correct. The final application must be signed by either a principal executive officer of the POTW or a ranking elected official of the municipality. EPA will, on a limited basis, extend the time for submission of additional information, where the application is otherwise complete.

EPA has developed an Application Format, approved by the Office of Management and Budget, which, by establishing a specific and uniform information reporting system, will improve the review process and avoid unnecessary application expenses. Since a uniform format will enable the Agency to expedite its review of applications, applicants must adhere to this format.

EPA has prepared a Technical Support Document and has made it available for public review and comment. This document, which explains the technical rationale for certain requirements, is intended to provide guidance and background information on the regulation and application requirements. It is intended to be instructive, but will not serve as a substitute for meeting the requirements of these regulations; only the criteria in this Subpart will be used as the basis for final EPA decisions. Applicants must pass all "threshold" requirements (see discussion on "prohibitions", below) as a first step toward obtaining a modification.

An application may be based either on a current discharge or an improved discharge. A current discharge means the discharge as it exists (volume, composition and point of discharge) at the time the application is submitted. An improved discharge refers to a discharge as it is projected to exist at some future date following construction of planned improvements and/or implementation of operation and maintenance programs. In both cases applicants may submit only *one* proposal, not alternative proposals; and, most important, the discharge for which the modification is requested *must* be into ocean or saline estuarine waters.

C. Prohibitions on Issuance of a Section 301(h) Modified Permit

In addition to the eligibility requirements, a POTW must meet certain other requirements as a prerequisite for EPA issuing a modified permit under section 301(h). The applicant must meet all requirements set forth in this Subpart and applicable requirements of the NPDES Permit program as set forth in 40 CFR 122.

These requirements are "threshold" criteria which, if not met, will constitute grounds for denial of the modification. POTWs are advised to review these requirements and determine if one or more present a problem before undertaking the expense and time of preparing an application. EPA will not issue a modified permit for any discharge for which the applicant proposes to apply less than primary treatment, nor for the discharge of sewage sludge. Applicants currently meeting effluent limitations based on secondary treatment will not be considered for a modified permit for less than secondary treatment. A modification will not be granted where: (1) a State or local law, regulation or ordinance requires, at a minimum, secondary treatment, unless the definition of secondary treatment is less stringent than the EPA definition; or (2) there is a conflict with applicable Federal laws and Executive Orders.

D. Application Review Criteria

Section 125.58 contains definitions of terms which are important for a clear understanding of the application requirements and criteria. Sections 125.60 through 125.67 contain the criteria and application requirements which will be the basis for EPA review of applications for modification of secondary treatment requirements. These sections implement the eight statutory requirements in section 301(h)(1)–(8) of the Act. A brief discussion of the contents of the sections which are major factors in approving or denying an application follows.

Section 125.60 (formerly section 233.12)—Section 301(h)(1) of the Act provides that there must be an applicable State water quality standard specific to the pollutant for which the modification is requested. Under § 125.60, the applicant must demonstrate not only the existence of, but compliance with such standard under section 301(b)(1)(C) of the Act. Only State water quality standards approved by EPA under section 303 of the Act are considered water quality standards for purposes of section 301(h)(1).

EPA currently defines the minimum level of effluent quality attainable by secondary treatment in terms of BOD, suspended solids and pH. If a State has no water quality standard for BOD, the applicant may satisfy the requirements of section 301(h)(1) by demonstrating compliance with an approved standard for dissolved oxygen. Similarly, if a State has no standard for suspended solids, that requirement may be met by a showing that the applicant meets an approved standard or standards for turbidity, light transmission, light scattering or maintenance of the photic zone. If a State has not promulgated and obtained EPA approval of a water quality standard for BOD, suspended solids or pH (on an appropriate surrogate or related parameter) at the

time the final application is submitted, no modification may be granted for those pollutants. For purposes of determining such dischargers' compliance with section 301(b)(1), EPA will accept State certification that its standards are applicable to the territorial seas and contiguous zone.

Section 125.61 (formerly §§ 233.13–15). An applicant must demonstrate that its modified discharge will not interfere with the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife, and which allows recreational activities in and on the water. This requirement may pose significant difficulties for some applicants because of the complexities of determining and assuring protection of a balanced, indigenous population (BIP).

Several sections of the Application Format deal with factors affecting the physical transport, dispersion, and impact of pollutants, including the physical and spatial characteristics of the discharge plume, recreational activities, water supply, and marine biology. Since the request for a modification is limited to BOD, suspended solids, and pH, an analysis of impacts on State and Federal water quality requirements for these pollutants is mandatory.

The test for maintenance of a balanced, indigenous population requires a comparison of the ecological characteristics between sites with no pollution with those of the current or planned discharge. The BIP test for any biological parameter of concern is whether or not it falls within the range of natural variability found in comparable, but unpolluted habitats. Thus, the section 301(h) applicant must compare the biological conditions at the reference (control) site with those in the area immediately beyond the zone of initial dilution (ZID). The applicant must also survey conditions within the ZID. Certain ecological perturbations are not permissible within the ZID, *e.g.*, destruction or reduction of coral reefs, kelp beds, etc. Some biological alterations such as increases in the density of opportunistic species can occur within the ZID.

The Application Format includes a questionnaire that addresses specific kinds of biological perturbations. All of the data necessary to answer the questions must be included in a Biological Conditions Summary. The questions concern the occurence of: mass mortalities, disease epicenters, and toxic phytoplankton blooms near the outfall; adverse effects on fisheries and distinctive habitats; bioaccumulation of toxic materials; and changes in the structure and function of benthic, planktonic, demersal and intertidal communities. The extent of documentation required to answer the questions is dependent on the quality and quantity of the discharge and the characteristics of the receiving environment.

There are special requirements concerning the BIP test for certain situations. For saline estuarine discharges additional restrictions are placed on impacts within the ZID. These restrictions concern bioaccumulation, interference with migratory pathways, and alterations in benthic populations. For POTWs that plan to modify or relocate their discharge, an applicant must also show that any present, unacceptable impacts on the BIP will be alleviated by the proposed modification. For discharges into stressed waters, if environmental conditions are stressed by pollution from sources other than the applicant's discharge, the applicant must demonstrate that its discharge is not contributing to or enhancing the stressed condition and will not contribute to further degradation or retard recovery if the levels of pollution from other sources increase or decrease in the future.

The BIP test requirements are summarized in Table 1. The table divides applications into eight categories depending upon whether the applicant's discharge is into the ocean or an estuary, into stressed or unstressed waters, and whether the applicant's proposal is based on its current discharge or a planned improved discharge. The BIP test is least complicated for a current discharge through an ocean outfall into unstressed waters. The biological assessment necessary to support such an application is based on descriptive surveys within and beyond the zone of initial dilution and at the unstressed control sites. Additional requirements are placed on the other seven classes of applications. The most rigorous BIP test is placed on an applicant who proposes to modify his current discharge into stressed estuarine waters. Within each class of application the complexity of the BIP test is a function of effluent quantity and quality and the sensitivity of the receiving environment.

Table 1.—*Balanced Indigenous Population Requirements Based on Classification and Location of Discharge and the Nature of the Receiving Waters*

BIP requirements	Ocean outfall				Estuarine outfall			
	Current discharge		Improved discharge		Current discharge		Improved discharge	
	Unstressed waters	Stressed waters	Unstressed waters	Stressed waters	Unstressed waters	Stressed waters	Unstressed waters	Stressed waters
BIP Comparisons								
1. ZID boundary and unstressed control	X		X		X		X	
2. ZID boundary and stressed control		X		X		X		X
3. Stressed control and unstressed control		X		X		X		X
4. New ZID boundary control			X	X			X	X
BIP Predictions								
1. Impact on recovery and degradation		X		X			X	X
2. Improvements due to modifications			X	X			X	X
ZID Restrictions								
1. Major perturbations	X	X	X	X	X	X	X	X
2. Migration, benthos, bioaccumulation					X	X	X	X

"X" indicates balance, indigenous population requirements that must be addressed in the application depending upon conditions at the outfall location(s).

Section 125.62 (formerly § 233.16). An applicant must submit a monitoring program for biological, water quality and toxic pollutant parameters. The overall monitoring system must satisfy, to the extent practicable, four objectives: (1) to monitor effluent quality; (2) to assure compliance with pretreatment standards and programs to control the introduction of toxic pollutants from non-industrial sources; (3) to assure compliance with water quality standards; and (4) to measure the impact of the discharge upon indigenous populations of marine biota.

Since implementation of the monitoring program will be necessary only if a modified permit is issued under section 301(h), an applicant need not show that the program is in place at the time of application, but instead that it has the capability to implement the proposed program at the time a modified permit is issued.

The data generated by the biological monitoring program will be used by EPA to determine: (1) whether modification of the requirements of secondary treatment has adverse impacts on marine biota and ecosystems in ocean or estuarine waters; (2) whether, in any case where such adverse impacts are demonstrated, the discharger's modification should be revoked; and (3) whether upon its expiration, the discharger's modification should be extended. Similarly, the modification would be revoked if the water quality standards or toxic pollutant control requirements were violated. The monitoring program must focus on critical events (such as low flow conditions or periods of inadequate flushing, and spawning activity). The Biological Conditions Summary in the Application Format is a basis for identification and selection of the representative biota to be monitored.

An acceptable monitoring program must address not only the methods but also the frequency of monitoring and should be based on consideration of a number of factors, including the nature and volume of the wastes discharged, the nature of the receiving waters, and the nature of the ecosystem in the vicinity of the discharge. Thus a POTW which discharges toxic pollutants into an area where there are sensitive marine communities will be required to develop a more sophisticated monitoring program (requiring more frequent data gathering and analysis) than a POTW which discharges small amounts of purely domestic wastes into a relatively uninhabited area. In cases where toxic pollutants are detected in the applicant's discharge, additional requirements such as *in situ* bioassays and bioaccumulation studies are imposed.

Water quality and toxic pollutant monitoring programs must be designed in conjunction with the biological monitoring program. The purpose of the water quality monitoring program is to collect data on characteristics of the discharge and receiving water quality in order to ascertain compliance with effluent and water quality standards. The toxic pollutant monitoring program focuses on the chemical composition of the applicant's discharge during both wet and dry weather conditions. Its purpose is to aid in establishing cause and effect relationships regarding impacts on marine biota, as revealed by the biological monitoring program, and also to measure the effectiveness of all industrial pretreatment and non-industrial toxic pollutant reduction measures required by the applicant's toxic control program.

Section 125.63 (formerly § 233.17). An applicant must demonstrate that the modified discharge, by itself, will not result in additional requirements for pollutant reductions on any other point or non-point sources. This demonstration must be made by obtaining written certification from the State agency which establishes wasteload allocations, and also other agencies which advise the State agency in the wasteload allocation process.

Section 125.64 (formerly §§ 233.14(b), 233.18 and 233.19). A section 301(h) applicant must submit a program for the control of toxic pollutants from industrial and non-industrial sources. Industrial sources refer only to those sources of pollutants regulated under section 307 (b) or (c) of the Act which discharge into a POTW. Non-industrial sources means all other sources of toxic pollutants. Toxic pollutants refer to the specific list of pollutants published by the Administrator under section 307(a) of the Act.

The objective of the toxic control program is to control toxic pollutants and provide for their elimination from the applicant's discharge. It consists of a chemical analysis, an industrial pretreatment program, and a schedule of activities for the reduction and elimination of non-industrial sources of toxic pollutants.

All applicants must submit a chemical analysis, under wet and dry weather conditions, of their current discharge. Since this data is a basis for design and review of the industrial and non-industrial source control programs at least a preliminary analysis of the sources of toxic pollutants must accompany data resulting from the chemical analysis.

The industrial and non-industrial source control submissions are the main elements of the toxic control program. Because of the relationship between suspended solids and toxic pollutants, applicants who receive a section 301(h) modification may be required to implement a more rigorous pretreatment program than POTWs with secondary or greater treatment. Applicants who, on the basis of their chemical analysis and preliminary source identification, certify that they have no industrial sources of toxic pollutants, do not have to submit an industrial pretreatment program; however, all applicants are required to submit a program for the development of non-industrial source controls, to the extent practicable.

EPA will require an accelerated eighteen month schedule for implementing a pretreatment program for POTWs qualifying for a section 301(h) modification. This is because Federal pretreatment standards assume that toxic pollutants introduced into POTWs by industrial sources will receive at least secondary treatment before being discharged. In addition, secondary biological treatment systems normally provide an early warning of the discharge of many toxic pollutants by exhibiting upsets and inhibitions. Unlike such secondary treatment systems, less than secondary or primary treatment may allow discharges (accidental or otherwise) of highly toxic pollutants to go unnoticed and to cause significant stress to the marine environment; thus an accelerated schedule is required.

The schedule of compliance submitted by an applicant should include, as necessary to conform with 40 CFR Part 403, identification of industrial contributors, notification of pretreatment standards, submission of an industrial discharger inventory, or a quantitative and qualitative characterization of undesignated sources of toxic pollutants. It is critical that the completion date not extend beyond eighteen (18) months from the date of approval of the section 301(h) modification.

As part of the toxic control program, an applicant for a modified permit must demonstrate that it has a schedule of activities designed to eliminate, to the extent practicable, the entrance of toxic pollutants from non-industrial sources

into its facility. To assure compliance with this requirement, the applicant must furnish a schedule of activities for identifying and monitoring toxic pollutants from non-industrial sources and their potential impacts, along with an effective control program. Additionally, the applicant must demonstrate that it has the necessary technical capability and the necessary personnel and institutional arrangements to assure that these activities and programs are fully implemented according to schedule. The program period, like that for the pretreatment schedule, is eighteen months from the issuance of the modified permit.

The applicant must ascertain the practicability of implementing certain best management practices to control toxic pollutants which may be carried into combined sewers by stormwater runoff, including street and catch basin cleaning and trash pickup. The applicant must also initiate programs to control pesticide runoff, which may include diking, banning the sale and use of certain pesticides or requiring the adoption of non-chemical pest management practices.

Section 125.65 (formerly § 233.20). An applicant must demonstrate that there will be no new or substantially increased discharges of the pollutant to which the modification applies, above the volume of discharge specified in the modified permit. Since increases in either the volume of effluent discharged or in pollutant loadings may affect the impact of the discharge upon the quality of the receiving waters and marine biota or ecosystems, both volume of effluent and mass emission limitations are addressed in this section.

Effluent volumes and mass pollutant loadings will be limited to the applicant's projected five year discharge, only if those volumes and loadings are approved by EPA for a section 301(h) modified permit. There are no restrictions on service area or system configuration.

To assure that pollutant loadings from combined sewer overflows are adequately controlled, a POTW with combined storm and sanitary sewers should submit as part of its application an analysis of its combined sewer overflow situation. The analysis should, among other things, identify the corrective measures which will be taken to eliminate or minimize these discharges in the event a modification is granted.

Section 125.66 (formerly § 233.21). Under section 301(h)(8), any funds available to a POTW under Title II of the Act are to be used to achieve the degree of effluent reduction required by sections 201(b) and 201(g)(2)(A) or to carry out the requirements of section 301(h).

Under § 125.66, an applicant with an active grant under section 201 must submit a program which delineates the manner in which funds will be used to comply with the requirements of section 301(h). In order to be eligible for construction funding under 40 CFR Part 35, an applicant must have a plan based on secondary treatment, or greater if required under the existing permit, in order to assure that any works constructed for less than secondary treatment will be compatible with a cost-effective, secondary configuration. This will enable an applicant to complete secondary treatment construction with minimal additional problems, if secondary treatment proves necessary after reviewing monitoring data obtained by the applicant during the period of the permit.

The applicant's revised funding program must include provisions which assure that alternative waste management techniques will be studied and evaluated and that the works proposed for grant assistance will be cost-effective and will provide for application of Best Practicable Wastewater Treatment Technology (BPWTT) especially reclamation and recycling of wastewater, and confined pollutant disposal. An applicant will be eligible for Title II funds in developing monitoring, pretreatment, and toxic pollutant source control programs and other activities necessary to assure compliance with the requirements of section 301(h). Operation and maintenance costs for pretreatment, non-industrial source control, biomonitoring, and other programs, however, will not be federally funded.

Section 125.67. This is a new provision which lists the special conditions which may be required in a section 301(h) permit, but are not generally found in other section 402 permits, including compliance schedules, monitoring requirements and reporting requirements. These permit terms and conditions will be based on data contained in an applicant's submission for a section 301(h) modified permit.

E. 301(h) Decision Making

Permitting under section 301(h) will follow the procedures set forth in 40 CFR Part 124. (See section III.A., below).

II. Major Issues

A. Existing Discharge

1. *Definition of "existing discharge".* Section 301(h) states that an NPDES permit modifying EPA's secondary treatment requirements may be issued only "with respect to the discharge of any pollutant in an existing discharge from a publicly owned treatment works into marine waters." In its proposed regulations, EPA construed "existing discharge" not only to limit section 301(h) eligibility to POTWs with an existing marine discharge as of the December 27, 1977, enactment date of the provision, but also to require those dischargers to demonstrate compliance based on the nature, volume, and location of the discharge as of the September 24, 1978, statutory application date.

The "existing discharge" definition was the subject of more comment than any other aspect of the proposed regulations. Some commenters took the position that the proposed definition represented the only legally acceptable interpretation of the Act. Others, by contrast, argued that this definition was contrary to the legislative history and would, in effect, nullify section 301(h), in that virtually no coastal discharger would be able to meet the requirements for a modification without some improvement to its current treatment system, relocation of its outfall, or both.

In response to these comments, EPA has re-examined the legislative history on this point. It seems clear, on the one hand, that Congress did intend to limit section 301(h) eligibility to existing coastal dischargers. *e.g.*, 1977 Leg. Hist. at 257, 1047.[2] It is not as clear whether Congress meant to allow EPA to take into consideration future outfall and treatment system improvements in determining whether a permit modification should be granted. The communities which sought the modification provision had planned for and studied a less than secondary treatment alternative—in some cases for five or ten years—and had accumulated the data to make their case. In making the studies, many of these communities built in the assumption of improvements in their current systems which would allow them to utilize less than secondary treatment with minimal environmental impact.

In light of the foregoing, EPA believes that the most reasonable way to construe the term "existing discharge" is

[2] Citations are to the legislative history of the Clean Water Act of 1977, as reprinted in the Committee Print for the Committee on Environment and Public Works, Serial No. 95-14 (October 1978).

to allow consideration of thoroughly studied and *planned* outfalls and/or treatment system improvements in evaluating a section 301(h) application. Accordingly, EPA has revised the definition of "existing discharge" as follows. No POTW will be eligible for a section 301(h) modification unless, on December 27, 1977, it was an existing discharger into waters of the territorial sea, contiguous zone, or saline estuarine waters, as defined in § 125.59. Such an eligible POTW may base its application on either (1) the existing volume, nature, and location of its discharge; or (2) a proposed outfall and/or treatment improvement (e.g., upgrading treatment from primary to advanced primary or relocating an outfall which has been thoroughly planned and studied by the applicant).

This revised two-part definition implements Congressional intent in a more reasonable manner than would have been the case under the proposed definition. As Congress intended, it will limit eligibility for section 301(h) modifications to existing coastal dischargers, since it requires that an applicant have had an actual marine discharge as of December 27, 1977. In contrast to the proposed definition, it will not be so inflexible as to bar permit modifications for large categories of existing dischargers—a result Congress could hardly have intended.

For example, the proposed definition was so rigid that it would have excluded even dischargers making only minor treatment or outfall improvements necessary to meet statutory requirements; those POTWs would have been required, instead, to go to secondary treatment. Additionally, many coastal communities were on NPDES permit compliance schedules for construction of improvements necessary to meet State water quality standards or other requirements at the time that section 301(h) was enacted. Congress could not have ignored—or meant to exclude—these communities.

Many POTWs simply were not able to construct planned improvements in time to meet the September 24, 1978, deadline. It would serve no purpose to penalize these communities, especially where there had been some delay on the part of EPA in providing promised funds. Finally, it makes no sense to exclude any community which has thoroughly planned and studied a less than secondary alternative, regardless of the stage of construction. The real concern of section 301(h) is that dischargers have accumulated sufficient information to make their case to the Agency.

The revised definition of "existing discharge" removes one barrier to applying for a modification. It does not, however, relax the criteria to be applied in either granting a modification or complying with the requirements of the Act once a permit is issued. EPA believes that this course of action which offers communities an opportunity to present their case for a modification based on either existing systems or thoroughly studied and planned outfall and/or treatment system improvements, is more reasonable than completely eliminating these POTWs from consideration based on a less than unequivocal Congressional mandate.

EPA's two-part construction of the term "existing discharge" is based on its conviction that the most reasonable interpretation of the term should include preliminary studies, facilities planning, design, or construction in progress at the time the final section 301(h) regulations were promulgated. Thus applicants seeking a section 301(h) modification on the basis of a thoroughly studied and planned outfall or treatment system *improvement* will be expected to show, first, that there was an existing discharge as of December 27, 1977, and second, that such an improvement was in the planning, design or construction stage as of the publication date of these final regulations. This demonstration may be made in a number of ways, for example, by showing: (1) that the improvement was actually under construction; (2) that it was considered or being considered under a Step 1 grant under Title II; (3) that it was necessary to meet a condition in the applicant's existing NPDES permit (*e.g.*, a State water quality standard); or (4) that it was part of staged construction consistent with secondary treatment facilities.

As a practical matter, it is highly unlikely that applicants which have not already undertaken extensive studies of less than secondary treatment options will be able to complete a section 301(h) application or make the showings required by this Subpart.

A number of commenters suggested that EPA's proposed definition of "existing discharge" be broadened to include planned outfall/treatment system improvements, but only those which have been proposed and approved under Step 1, 2, or 3 grants issued under Title II of the Act. Since the Act does not require a section 301(h) determination to be based solely on data generated as part of a Title II grant, and since there may be communities which have undertaken to collect such data with their own funds, EPA has not placed such a limitation in the second part of the broadened "existing discharge" definition.

A few commenters suggested that EPA's definition of "existing discharge" be revised to allow POTWs which currently discharge into inland waters, but which are considering constructing, or now have under construction, an ocean or estuarine outfall, to apply for section 301(h) modifications. While the legislative history does not unequivocally define the term "existing discharge," it does state that Congress intended that section 301(h) modifications be limited to POTWs who were discharging into *marine* waters as of December 27, 1977. *e.g.*, 1977 Leg. Hist., at 257, 639. Therefore, the suggested definition is not consistent with Congressional intent.

In the preamble to the proposed regulations, EPA was concerned about the practical ramifications of construing the statutory term "existing discharge" to include outfall and treatment system improvements. In this connection, EPA requested commenters to address several issues, set out below. The following summarizes the comments received and EPA's responses.

2. *The difficulty of predicting the impacts of future outfalls or treatment system improvements.* EPA received numerous comments on the issue of whether it was possible to make an accurate predictive judgment as to whether future construction would enable an applicant to meet the stringent water quality, physical, chemical and biological criteria set forth in Subpart B of the regulations. Some commenters felt that the predictive judgments which would be associated with assessing section 301(h) applications based on proposed improvements would be no more difficult than those required to be made in other aspects of the NPDES permit program or EPA's construction grant program. Others felt that making predictions would be difficult, but that techniques such as modeling, extrapolation, and simulation could be utilized to predict impacts. Still others expressed the view that it would be extremely difficult, if not impossible, to accurately predict the impacts of future discharges on the marine environment.

A number of commenters suggested that the accuracy of predictive judgments would vary according to the specific assessment being made (*e.g.*, physical, chemical or biological) and the volume and composition of wastes being discharged, the nature of the receiving waters, and the nature of the affected ecosystem. Some commenters felt, for

example, that it would be fairly easy to calculate the chemical composition of the effluent from a proposed treatment system, and others felt that reasonably accurate assessments of waste dispersion and other physical impacts could be made using appropriate plume and dispersion models. On the other hand, there seemed to be some agreement that making accurate predictions of biological impact could be extremely difficult.

While it is more difficult to predict the effects of a proposed discharge on the marine environment, a certain amount of predictive judgment is required for assessing the effects of an existing as well as proposed discharge; both depend on several factors such as the amount of data available, the nature of the discharge, the receiving water, and the affected biota. For this reason, EPA has concluded that the difficulty of making accurate predictive judgments of environmental impacts does not, in itself, warrant exclusion of applications for section 301(h) modifications which are based on proposed outfall and treatment system improvements.

However, applicants seeking section 301(h) modifications based on future improvements should be aware that, as a result of greater difficulty in making predictive judgments of environmental impact, they bear an additional burden in demonstrating that their proposed discharge will meet the requirements of section 301(h) of the Act and § 125.61 of these regulations. EPA cannot, as suggested by some commenters, resolve questionable assessments of future impact in favor of issuing a permit, while allowing a more accurate assessment of impacts to be developed on the basis of monitoring data compiled during the life of the permit. The Act clearly requires that the necessary showings under section 301(h) be made at the time of application. Accordingly, if a section 301(h) applicant fails to demonstrate that its improved discharge will meet these requirements, its appication will be denied.

3. *Effect of pretreatment and non-industrial source control programs.* EPA also received a large number of comments on the question of the extent to which EPA should consider the effect of pretreatment and non-industrial source control programs in evaluating an applicant's section 301(h) application. Many commenters felt that both existing and future source control efforts should be evaluated by EPA, especially where the discharge of toxic pollutants could pose a problem.

EPA recognizes that the implementation of effective source control programs will reduce the amount of toxic pollutants in POTW effluent, and may therefore lessen the impact of the discharge on the marine environment. To the extent such programs are now in place and are causing an actual, measurable reduction of pollutants in the applicant's discharge, they will be considered in EPA's evaluation of the section 301(h) application. Where such programs are not operational, however, EPA believes that it is very difficult, if not impossible, to predict their effect on the chemical composition of a POTW's waste stream. Since most major Federal pretreatment standards will not be promulgated for several years (See consent decree entered in *Natural Resources Defense Council, Inc.* v. *Train*, 8 ERC 2120 (D.D.C. 1976) as modified by *Natural Resources Defense Council* v. *Costle*, 12 ERC 1833 (D.D.C. March 9, 1979), the Agency is unable at the present time, to predict the effect of Federal pretreatment standards on the composition of individual POTW effluent. Similarly, it is impossible to assess the impact of a non-industrial source control program on a municipal discharge until non-industrial sources of pollutants have been located, their contribution to the POTW has been ascertained, the degree to which they can be controlled has been determined, and an enforceable control program has been developed.

EPA recognizes, however, that some section 301(h) applicants may now be in a position to demonstrate that a given effluent limitation will in fact be achieved by a source control program which is based on their existing pretreatment rules and regulations. In order to make this showing, the applicant is required to provide evidence of its record of enforcement and the effectiveness of existing programs. In addition, an applicant must define and demonstrate that it has the ability to enforce additional control programs which will reduce, to a specified level, the amount of the pollutant introduced by each such source into the POTW. For example, if an applicant intends to demonstrate that it would meet a State water quality standard for cadmium through source control, it is required to identify all industrial and non-industrial sources of cadmium, to determine what volumes of cadmium they contributed to the POTW, to set specific limitations on the amount of cadmium which can be introduced by each source into the POTW (based on the final effluent limitations needed to comply with the water quality standard), and to develop a program for enforcing those limitations. These requirements are contained in revised sections 125.62 thru 125.64, and are discussed in the section-by-section analysis in Section V of this preamble.

4. *Completion of modifications.* EPA received virtually no comments concerning schedules for completion of improvements under a section 301(h) permit. Congress has directed that the section 301(h) process not delay the attainment of required pollution control objectives. H.R. Rep. 95–830, 95th Cong., 1st Sess. at 74, 79 (1977); S. Rep. 95–370, 95th Cong., 1st Sess. at 1, 50 (1977). Additionally, section 301(h) provides only for the modification of the requirements of section 301(b)(1)(B), and not the requirements of section 301(b)(2)(B). Given these considerations, section 125.59 requires that section 301(h) applicants demonstrate that they can complete such improvements as expeditiously as possible.

To assure that applicants provide sufficient information to allow EPA to determine whether improvements will be completed in a timely manner, § 125.59 has been revised to more clearly address construction schedules and Part G has been added to EPA's application format. This requires that the applicant set forth its proposed facilities planning, design and construction schedule (if any), an analysis of its ability to fund any necessary planning, design and construction according to the proposed schedule, and a history of its compliance or noncompliance with planning, design and/or construction schedules in its existing NPDES permit or an enforcement compliance schedule letter.

B. September 24, 1978 Application Deadline.

EPA received numerous comments on proposed § 233.32(b), which required applicants to submit a complete application for a modified permit (including all required supporting data) no later than September 24, 1978 (43 FR 17498) (Preliminary applications, postmarked no later than September 25, 1978, were accepted as September 24th was a Sunday (see 43 FR 39399)). Most of these comments suggested that the deadline for submission of applications should be relaxed to allow communities additional time to complete the physical, chemical and biological studies and to develop the source control programs required to comply with sections 301(h)(2), (5) and (6) of the Act.

The September 24, 1978 application date is imposed by section 301(j)(1)(A)

of the Act, and EPA is powerless to change this deadline. However, since section 301(h) criteria were not promulgated as of September 24, 1978, it would have been unreasonable to require a complete application by that date. Therefore, both the Notice of Application Filing Deadline (43 FR 39398, September 5, 1978) and these regulations provide that only a preliminary application must have been submitted by September 24, while a complete application must be submitted three months from the date of the publication of this Subpart. This two-phase application process is consistent with the approach used by EPA for other variance and modification provisions with a statutory application deadline (*e.g.*, sections 301 (g) and (c) of the Act, 33 U.S.C. 1311 (g) and (c)).

The three month requirement for submission of a complete section 301(h) application is based on section 304(a)(5)(B), of the Act, which requires EPA to publish regulations implementing section 301(h)(2) no later than June 27, 1978. Since that date is approximately three months before September 24, 1978, EPA has concluded that Congress intended section 301(h) applicants to have at least three months to prepare their applications after EPA published final regulations describing the nature of the data required.

Accordingly, section 301(h) applicants are required to submit, on or before September 13, 1979 a full application which, on its face, demonstrates that the applicant complies with section 301(h) and these regulations. Obviously an application which includes all the information requested by EPA in an appropriate level of detail will be considered adequate for this purpose. Where an application submitted on September 13, 1979 conclusively demonstrates that the applicant qualifies for a section 301(h) permit, EPA will issue a modified permit. On the other hand, if the application demonstrates on its face, that the applicant does not meet the requirements of section 301(h) and this Subpart, its application will be denied. In some cases an application may appear to indicate on its face that the requirements of section 301(h) can be met, but EPA will require some minimal additional information before a final decision can be made (e.g., information on matters peculiar to the applicant's outfall/treatment system configuration, discharge, or receiving waters, which are identified during the review process). In that event, the Agency may request that the necessary information be submitted, as expeditiously as practicable, as a supplement to the application. See generally § 124.55.

This limited opportunity to submit additional information following initial EPA review should not be construed as providing all POTWs submitting incomplete applications with an automatic extension of time in which to submit more data. The process described above is designed to be used only where an applicant submits a complete or substantially complete application, but where some small amount of additional data would be required to assure conclusively that the requirements of the Act and of this Subpart would be met. EPA expects that, as a practical matter, it will be used fairly infrequently.

EPA is aware that the time limitations set forth in these regulations may make it difficult for those applicants who have not previously assembled the required technical data to submit a complete section 301(h) application. However, the legislative history of the Act makes it clear that the relief afforded by section 301(h) was intended for those communities which had accumulated, or could accumulate on a timely basis, the information necessary to make their case for a modification. Additionally, applicants are reminded that section 301(h) was enacted on December 27, 1977, that EPA distributed a pre-proposal preliminary concept paper setting forth draft regulations implementing section 301(h) on March 16, 1978, and that the regulations were formally proposed on April 25, 1978; both the preliminary concept paper and the proposed regulations encouraged applicants to begin assembling the data necessary to support a section 301(h) application immediately, if they had not already done so. The unanticipated extension which resulted from the delay in promulgating this Subpart has also provided applicants with almost one year to gather and develop the information required by the application which has not sustantially changed from what appeared in the proposal.

C. Small Communities, Native Alaskan Villages and U.S. Territorial Possessions and Puerto Rico

1. *Small communities.* In its proposal, EPA expressly requested comment on the general issue of whether small dischargers or dischargers which have no known or suspected sources of toxic pollutants should be treated differently than larger dischargers with significant sources of toxic substances with respect to the extent or nature of the information which they must submit to EPA in applying for a modified permit. A number of commenters expressed the concerns that smaller communities, unlike larger municipalities, would be unable to accumulate the data required by the proposed regulations within the time required by the Act, would be unable to finance the collection of such data, or, in some cases, would be unable to "wade through (EPA's) regulations." These commenters suggested: (1) that EPA develop a separate, shorter application format for small dischargers; (2) that small dischargers be allowed to piggyback" section 301(h) applications submitted by larger communities discharging into similar types of waters, or (3) that EPA categorically relieve small POTWs of some of the information requirements of the proposed regulations. On the other hand, other commenters felt that all applications should be subject to the same requirements and evaluated by the same standards.

Section 301(h) does not authorize EPA to categorically exempt dischargers from any statutory requirement on the basis of size or volume. By omitting such an exemption, Congress recognized that the volume of a discharge in and of itself is not an indicator either of its toxicity or of its actual or potential effect on the marine environment.

However, as noted by several commenters, the inherent characteristics of many small POTWs or POTWs without sources of toxic pollutants will, as a practical matter, reduce the burden that section 301(h) places on them. For example, section 301(h)(5) of the Act and § 125.66 are not applicable to POTWs with no industrial sources of toxic pollutants (generally only small communities). Certain sections of the regulations, such as §§ 125.65(c) "Biological Assessment" and 125.61 "Monitoring Programs", recognize that the nature and volume of the applicant's discharge will affect the extent and type of showing which must be made to demonstrate compliance with this Subpart.

As noted above, applicants will be required to submit by September 13, 1979 an application which demonstrates, on its face, that the applicant's current discharge complies with (or that its improved discharge will comply with) section 301(h) and these regulations. Here, too, the characteristics of small POTWs and POTWs without sources of toxic pollutants may give them an inherent advantage over larger POTWs with major sources of toxic pollutants, since the failure to provide even minor portions of the required data is likely to be far more critical for a large applicant

than a small one with a non-toxic discharge.

Section 301(h), it should be noted, was enacted in response to Congressional testimony from a number of large West Coast POTWs which indicated that they had already accumulated the data necessary to demonstrate that a less than secondary treated discharge would not adversely affect the environment. As a result, the needs of many small communities for extended time and financial assistance to collect the data necessary to submit a complete application for modification have not been incorporated into the statutory scheme. EPA has attempted to accommodate these needs in its regulations insofar as possible within the confines of the statute.

2. *Native Alaskan Villages, U.S. Territorial Possessions and Puerto Rico.* In its proposed regulations, EPA solicited comments on how it should deal with 301(h) applications from coastal native villages in Alaska, and small communities in Puerto Rico and the U.S. territories in the Caribbean and Pacific. Generally, these communities generate very low volumes of wastewater, consisting mainly of domestic waste. Discharges, where they exist, are generally far apart; receiving waters are either very deep or subject to substantial dilution and flushing from tides, currents, or both.

Many of these native villages and territorial communities are not eligible for a modification even under EPA's revised regulations because they did not discharge into marine waters on December 27, 1977. In many cases, they have no existing collection and treatment systems, and wastes are transported from individual homes to beaches or tundra; in other cases, primitive collection systems which deposit sewage on beaches or in streams which flow into the ocean. Other communities, which *do* have ocean outfalls in place, may be limited in terms of available background data and their ability to acquire technical expertise needed to develop a section 301(h) application.

Additionally, as a practical matter, many of these communities operate on near subsistence economics and do not have the economic or technological ability to either build or maintain secondary treatment facilities. As noted, existing sewage treatment facilities are either non-existent or very primitive. In some areas, raw sewage is transported through the streets in open sewers directly to beaches or to the ocean; in others, over-the-water toilets are used to dispose of human wastes. In tropical climates, these open sewers and latrines serve as a breeding ground for disease vectors and intestinal parasites which afflict significant portions of the population, and they contaminate ground and surface waters and near-shore bathing areas. In many cases, the construction of secondary treatment facilities would divert funds away from projects (such as the construction of covered sewers) necessary to provide the basic public health protection which exists in most of the United States.

EPA received numerous comments on how it should handle this difficult issue. Some commenters suggested relaxing the amount and type of data which would be required from such communities in their section 301(h) applications. Other commenters suggested that no NPDES permits of any kind be issued to villages of less than 100 families with subsistence lifestyles. Many small communities simply urged the Agency to recognize their special status and to develop an intelligent solution to their wastewater treatment problems.

In response to these comments, EPA has adopted the following policy with respect to these communities. As an alternative to their submitting completed section 301(h) applications, the Agency will use its discretion in scheduling secondary treatment for Native Alaskan Villages and communities in Puerto Rico and the U.S. territorial possessions in the Caribbean and Pacific where industrial toxic wastes are not a factor, in cases where such course of action is determined to be in the interest of providing basic public health protection, and where any such delays will not result in unreasonable adverse water quality impacts. In such cases, attention will be given to planning wastewater treatment facilities for these communities with the objective of assuring that inadequacies in sewage collection or treatment which result in public health problems are remedied, and to examining alternatives to traditional secondary treatment, including individual systems and BPWTT options (including land treatment). Any of the Native Alaskan Villages and small communities in Puerto Rico and the U.S. territorial possessions in the Caribbean and Pacific that submitted preliminary applications and meet the requirements of § 125.59 may submit completed section 301(h) applications; however, it may be very difficult for these communities to adequately meet all of the applicable section 301(h) criteria for modifications as presented in this regulation.

The policy described above applies only to coastal native villages in the Trust Territory of the Pacific Islands, the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands, Puerto Rico and Native Alaskan Villages. Congress has indicated its concern for the particular problems of the insular territories (particularly in the context of Federal regulatory and funding programs) in the Territories Omnibus Act, 35 U.S. 600, February 6, 1909 and of Alaskan native villages in the Clean Water Act (section 113, 33 U.S.C. 1263). For this reason, and because these communities have unique economic and public health problems, the policy announced in this section will not be extended either to other coastal communities in the United States or to communities which generate large volumes of domestic and industrial wastes.

III. Other Issues

A. Incorporation Into NPDES Regulations

After the section 301(h) regulations were proposed as 40 CFR Part 233, on April 25, 1978, EPA proposed extensive revisions to the NPDES permit program regulations. (43 FR 37078, August 21, 1978). The NPDES proposal established four new Parts (40 CFR Parts 122, 123, 124 and 125). Part 125 established criteria and standards for the NPDES program and reserved Subpart H for section 301(h) criteria. The revised NPDES regulations were published in final form on June 7, 1979 (44 FR 32854) and reserved Part 125, Subpart G for section 301(h) criteria. Part 124 of the final NPDES regulations establish NPDES decisionmaking procedures and contain some sections which were originally proposed as Subpart C to Part 233, i.e., the appeal provisions for section 301(h) determinations.

EPA decided to incorporate section 301(h) permit procedures into Part 124 of the final NPDES regulations for the following reasons: (1) to consolidate all NPDES permit decisionmaking into one Part of 40 CFR; (2) to reduce possible confusion which could result in having two separate regulatory parts which deal with NPDES procedures; and (3) to respond to the concerns of some commenters by indicating, when, where and how section 301(h) permit modifications fit into the overall NPDES permitting process. Thus, by indicating that these regulations would be incorporated into reserved Subpart G of Part 125, the final NPDES regulations set the stage for today's section 301(h) regulations. Since these regulations are

part of the entire NPDES "package" (40 CFR Parts 121–125), other sections in these Parts may be applicable to section 301(h) decisionmaking and permit issuance, *e.g.* §§ 122.3 (definitions not otherwise covered by § 125.5), 122.5 (signatories), 122.14 (conditions applicable to all permits), etc. Today's regulation, therefore, must be read together with the recently published final NPDES regulations. Since section 301(h) is a federally run permit program, however, Part 123, *State Permit Program Requirements* is not applicable. For a further discussion of the final NPDES regulations as they may relate to section 301(h), see the preamble discussion on Parts 122 and 124.

B. Multiple Applications

A number of POTWs which submitted preliminary applications to EPA indicated that they intended to apply for a section 301(h) modification based on several alternatives (*e.g.*, several possible outfall locations or treatment systems), raising the issue of how decisions should be made where an applicant presents several treatment or discharge alternatives, more than one of which may meet the requirements of the Act and this part. A related issue is whether EPA will consider alternatives to the treatment/outfall system proposed in an application if the Agency finds that the proposed system does not meet the requirements of section 301(h) or this part.

EPA will not consider alternatives to the treatment system included in a POTW's application, nor will it allow applicants to submit other options. The Act and its legislative history make it clear that the applicant must have thoroughly planned and studied the alternatives and must demonstrate that it is entitled to a modification. This can only be achieved by a showing in its application that the proposal meets the requirments of the Act and these regulations. The Agency can either make this demonstration for the applicant nor consider multiple proposals or untimely applications. Accordingly each 301(h) applicant must submit a complete application containing its proposal not later than September 13, 1979.

C. Relationship of Section 301(h) and BPWTT.

A number of commenters suggested that a section 301(h) modified discharge should automatically be considered "Best Practicable Wastewater Treatment Technology" (BPWTT) for purposes of section 301(b)(2)(B) of the Act, which requires that POTWs comply with BPWTT by July 1, 1983. The legislative history of section 301(h) and the Act itself, however, make it clear that section 301(h) only authorizes a modification of the requirements of section 301(b)(1)(B) of the Act, and not of the BPWTT requirements of section 301(b)(2)(B). Furthermore, as noted in both the House Conference and Senate Reports on the 1977 Amendments, Congress clearly recognized that BPWTT *may* "require a degree of effluent reduction which is greater than that required under (Section 301(h)) of the Act." H.R. Rep. 95–830, 95th Cong., 1st Sess. 74 (1977); S. Rep. 95–370, 95th Cong., 1st Sess. 45 (1977).

At present, BPWTT is considered equivalent to secondary treatment. The Agency, however, is now considering expanding the definition of BPWTT to include specific effluent limitations for toxic pollutants and also to provide for the recycle and reuse of wastewater as required under section 201(g)(2)(A) of the Act and confined disposal of pollutants.

D. Section 301(i)(1) and Section 301(h) Permit Compliance Schedules

EPA received a number of inquiries during the comment period concerning compliance schedules in section 301(h) permits. Some commenters wanted to know what kinds of compliance schedules would be included in Section 301(h) permits and what action would be taken by EPA in the event of noncompliance. Others sought a clarification of the relationship between section 301(i)(1) municipal time extensions and the modification afforded by section 301(h). Still others raised more general questions concerning the legal basis for including compliance schedules extending beyond July 1, 1977 in section 301(h) permits.

1. *Sections 301(i)(1) and 301(h).* Sections 301(h) and 301(i) are independent provisions. Section 301(i)(1) authorizes EPA (or a State, where it has an approved NPDES permit program) to extend an existing municipal NPDES permit compliance schedule for achiving EPA's secondary treatment requirements. It does not address the issue of setting revised compliance schedules in section 301(h) permits.

Because sections 301(h) and 301(i)(1) are independant provisions, section 301(h) applicants which require a section 301(i)(1) extension in order to comply with the requirements of section 301(b)(1) (B) or (C) will not be deemed to have applied for such an extension merely by having submitted a section 301(h) application. There is no reason for applicants to be confused on this point, since in the interim final regulations implementing section 301(i), EPA expressly advised 301(h) applicants to apply for a section 301(i) extension if they felt they also met the criteria of section 301(h). (40 FR 21286, 21288 (May 16, 1978)).

As a general matter, EPA expects that most section 301(i) extension requests from section 301(h) applicants will be acted upon following EPA decision on the applicant's section 301(h) application, since a POTW which qualifies for a section 301(h) modification will not require a section 301(i) extension as well. Where a section 301(h) request is denied, the applicant may be eligible for a section 301(i)(1) extension, a section 309(a)(5)(A), administrative order, or be subject to possible enforcement action.

2. *Compliance schedules in section 301(h) permits.* EPA will establish revised compliance schedules for construction of improvements and for the implementation of source control programs necessary to meet the requirement of section 301(h). Accordingly, it will not be necessary for a section 301(h) applicant whose request for a modification is based on an outfall and/or treatment system improvement to demonstrate that it would also qualify for a section 301(i) time extension in order to be eligible for a section 301(h) permit. However, as noted above, in determining whether to grant a section 301(h) permit, EPA will consider (as it does under section 301(i)(1)) the applicant's record of compliance with its existing NPDES permit in determining whether it is likely to comply with requirements of section 301(a) on a timely and responsible basis.

One commenter suggested that EPA has no authority to issue a permit allowing compliance with section 301(h) after the July 1, 1977, date for achieving compliance with the secondary treatment requirements of section 301(b)(1)(B). This is an incorrect interpretation of the Act, since section 301(h) authorizes EPA to issue a permit which modifies the requirements of section 301(b)(1)(B) including the July 1, 1977 compliance deadline. Given that section 301(h) was not enacted until December 27, 1977, the commenter's interpretation would prevent EPA from issuing any section 301(h) permits.

E. Enforcement Policy

1. *Enforcement during section 301(h) decisionmaking process.* A number of commenters expressed concern that some section 301(h) applicants may attempt to utilize the section 301(h) application and decisionmaking process as a means of delaying any needed

planning, design or construction during the application decisionmaking period. It should be clear that EPA will not allow the section 301(h) process to be used as a mechanism for delay.

Section 125.59 of these regulations requires each applicant to submit, as part of its final application, a detailed description of the construction, if any, which it proposes to undertake to comply with the requirements of section 301(h), along with a detailed proposed schedule for all necessary planning, design and construction. The applicant must also (1) provide EPA with a copy of its current NPDES compliance schedule for construction of secondary treatment facilities; and (2) identify in detail all planning, design and construction activities which are common both to the applicant's existing plan for construction of secondary treatment facilities and its proposed plan for outfall and/or treatment system construction under section 301(h). EPA will use this information to determine how much planning, construction or design may proceed pending a decision on the section 301(h) modification and to formulate compliance schedules in the modified permit.

Some section 301(h) applicants, even if a 301(h) modification is granted, will need to complete planning, design or construction activities for treatment works which are less than secondary. Where such construction is compatible with full secondary treatment systems, the applicant can continue planning, design and construction without having to make a commitment to secondary treatment. EPA will require these applicants to proceed toward secondary treatment during the section 301(h) application decisionmaking process. Such applicants will be expected to meet all compliance requirements which are not affected by section 301(h) determinations or pending determinations.

Some section 301(h) applications may be based on present discharge volume, location and composition, and, therefore, the applicants cannot go forward with additional planning, design or construction until EPA has issued a decision. In general, EPA does not expect to initiate enforcement proceedings for construction related schedules against a POTW in this category pending Agency action on its final application for a modification. EPA may commence enforcement actions for activities unrelated to construction, such as violation of interim limits, poor operation and maintenance, reporting errors and omissions, and misrepresentation or falsification of data.

As noted earlier, an applicant's failure to continue planning, design or construction during the section 301(h) decisionmaking process will not only subject it to possible enforcement action, but also will draw into question the propriety of granting a section 301(h) modification. Congress' objective that the section 301(h) process not be protracted (see section II, above) cannot be achieved where POTWs obtaining section 301(h) modifications do not timely construct the improvements and implement the monitoring and source control programs on which these modifications are based. Not only does such delay postpone the achievement of the objectives of section 301(h), but it also deprives EPA of the long-term empirical monitoring data for use in decisionmaking on section 301(h) permit extensions or renewals. Accordingly, an applicant's record of planning, design and construction efforts during the section 301(h) decisionmaking period will be taken into account in determining whether a modified permit should be issued.

2. *Enforcement following denial of a section 301(h) modification.* POTWs which are denied section 301(h) modifications will be candidates for enforcement action unless they have obtained and are complying with, a section 301(i)(1) extension, or an administrative order under section 309(a)(5)(A), or comparable State order.

3. *Enforcement following issuance of a section 301(h) modification.* Violations of section 301(h) modifications will be among the highest priorities in EPA's municipal enforcement program. Compliance schedules will be closely monitored by the Agency and NPDES States; a permittee's failure to meet planning, design or construction schedules, or to comply with any monitoring, pretreatment or nonindustrial source control requirements will subject it to possible enforcement action, including revocation of its modified permit.

EPA will place major emphasis on the review of monitoring data collected as part of a modified permit requirement. Where monitoring data indicates adverse environmental impacts or a failure to attain required effluent limitations or water quality standards, the permittee will be required to identify the source of difficulty and correct it as expeditiously as possible. If it cannot do so, its modified permit will be subject to revocation, requiring the POTW to go immediately to secondary treatment or BPWTT.

IV. Technical Support Document

Several commenters suggested that many of the technical and scientific requirements which will be used to evaluate applications needed further justification and explanation. EPA agreed and on March 21, 1979, made available for public comment its Technical Support Document (44 FR 17194). A total of thirty-seven comments were submitted by various individuals and groups before the end of the thirty day comment period. Based on these, EPA has revised portions of the document to more clearly convey the intent of the section 301(h) regulations.

The purposes of the Technical Support Document are: (1) to provide further explanation and guidance on certain requirements of the regulations, and (2) to provide a rationale for those requirements. It is divided into sections that address (1) calculation of the zone of initial dilution, (2) physical oceanographic and water quality assessment procedures, (3) water quality and biological monitoring requirements, and (4) biological assessments. A final section discusses requirements of a monitoring program which must be implemented by applicants receiving modified permits.

The Technical Support Document is not published as part of these final regulations. All applicants, State agencies, and EPA regional offices have received copies of the March 21st version and will be provided with copies of the document as it was revised following the comment period. Other persons may obtain copies from:

301(h) Task Force, Office of Water Program Operations (WH-548), Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460, 202/426-8973.

V. Section-By-Section Anaylsis

Section 125.56 Scope and purpose (formerly § 233.2). This section has been changed to reflect the fact that this Part no longer contains the procedural regulations which will govern Agency action on applications for modified permits under section 301(h). These procedural regulations, which are based on the "initial licensing" [1] provisions of the Administrative Procedure Act ("APA"), 5 U.S.C. 551 *et seq.*, have been incorporated into the Agency's revised NPDES regulations at 40 CFR Part 124,

[1] The APA defines "licensing", in part, as any "agency process respecting the . . . limitation, amendment, modification, or conditioning of a license." 5 U.S.C. 551(8). A license includes a permit. 5 U.S.C. 551(8). Section 301(h) proceedings are initial licensing because they involve the first NPDES permits to be issued under section 301(h).

Subpart H (44 FR 32854). The decision to incorporate these regulations into the NPDES regulations was based on the conclusion that placing all procedures for decision-making regarding NPDES permits in one Part provides for greater clarity and consistency.

Section 125.56 also points out that permits received under this Subpart must contain special conditions and terms and conditions required under 40 CFR Part 122. These terms and conditions are discussed in this section-by-section analysis under section 125.67.

Section 125.57 Law authorizing issuance of a section 301(h) Modified permit (formerly § 233.3). This section is self-explanatory in that it simply restates the applicable legal authority under which these regulations are promulgated.

Section 125.58 Definitions (formerly § 233.1). Two major changes have been made in this section. First, all definitions which duplicate those contained in EPA's revised NPDES permit regulations (40 CFR 122.3) have been deleted. Second, as a result of public comment on this section and modifications which have been made in other parts of the regulations, a number of the remaining definitions have been clarified and several new definitions have been added.

EPA received numerous comments on its proposed definition of "balanced, indigenous population." Both the proposed and final regulations require applicants to demonstrate the existence of a balanced, indigenous population (BIP) of shellfish, fish and wildlife immediately beyond the boundary of the zone of initial dilution (ZID) of an outfall discharge. This demonstration is to be based on evidence that the composition, structure and function of the marine communities beyond the boundary of the zone of initial dilution and within the area potentially affected by the outfall discharge are comparable to (1) those of healthy marine communities existing in comparable but unpolluted waters, or (2) those of communities reasonably expected to become re-established in the polluted area from unpolluted waters if the source of pollution were removed. The second part of the definition which concerns re-establishment of communities is necessary because of its pertinence to proposed improved discharges and to discharges into waters that are stressed by sources of pollution other than the applicants discharge. In the final regulations, the definition of balanced, indigenous population has been adjusted for clarification, but the content, which is discussed further in § 125.61(a), remains essentially the same.

The new definitions which have been added to this section include "current discharge," "improved discharge," "preliminary application," "final application," "ocean," "primary treatment," and "stressed waters."

The definitions of "current" and "improved discharge" have been added as a result of EPA's revising its proposed construction of the statutory term "existing discharge." The definitions of "preliminary" and "final application" have been added as a result of the Agency's decision that preliminary, rather than final applications must have been filed by September 24, 1978. The term "ocean" has been defined to clarify an issue raised during the comment period, which is discussed below in this section. The definition of "stressed waters" was necessitated by the Agency's re-evaluation of this concept along with the test for a balanced, indigenous population; a discussion of this term is included in the Technical Support Document.

In response to comments from the public and EPA's regional offices, EPA has also provided a definition of the term "publicly owned treatment works." Consistent with the legislative history of the Act and other EPA regulations defining "POTW," it does not encompass Federal facilities. (See, *e.g.*, EPA's General Pretreatment Regulations, 40 CFR 403.3(m), (43 FR 27733, 27747, June 26, 1978); EPA's Wastewater Treatment Pond Regulations, 40 CFR 133.103 (43 FR 54464, October 7, 1977) (Preamble)). Accordingly, such facilities will not be eligible for section 301(h) modifications.

A number of commenters suggested that EPA should delineate the types of "saline estuarine waters" into which a POTW must discharge in order to be eligible for a section 301(h) modification. The legislative history of the Act indicates that strong currents and tidal movement, high flushing efficiency and thorough water circulation which insure adequate dispersion and seaward transport of wastewater are the key phenomena in defining applicable estuarine waters (*1977 Leg. Hist. 259*). Therefore, the definition of saline estuarine waters has been expanded to require a free connection with the ocean, net seaward exchange with ocean waters (*i.e.*, freshwater inflow) and salinities comparable to those of the ocean. This definition reflects the rapid dynamic exchange of wastewater with ocean waters which Congress indicated should be found in estuarine waters in order for an applicant to be considered for a section 301(h) modification. Generally, the only waters which can meet these requirements are located near the mouth of estuaries and have cross-sectional, annual mean salinity greater than or equal to 30% of ocean salinity (approximately 25 parts per thousand).

During the comment period, it came to EPA's attention that a number of open coastal waters inside the baseline of the territorial seas may have the characteristics of well-flushed open ocean waters and may therefore be appropriate receiving waters for a less-than-secondary discharge under section 301(h). Under the statutory definition of "territorial seas" (section 502(8) of the Act), dischargers into these areas would not be eligible for a modification for a "discharge into deep waters of the territorial seas." They also would not be eligible for a modification under the Agency's proposed definition of "saline estuarine waters" because that definition encompassed only "semi-enclosed" coastal waters. Because it may be possible to meet the requirements of section 301(h) in these waters, and because the legislative history of the Act indicates that Congress intended dischargers into these areas to be considered for modified permits, the regulations have been revised to make it clear that such dischargers will be eligible for a modification upon a showing that they can meet the requirements of this subpart.

Rather than revising its definition of "saline estuarine waters" to include open coastal waters inside the baseline, EPA has incorporated them in a new definition, "ocean waters". This term also includes the deep waters of the territorial seas and the waters of the contiguous zone, to emphasize that these waters have hydrological, ecological and geological characteristics much more akin to ocean than estuarine waters (primarily because of the absence of freshwater flow). This definition should not be confused with the definition of "ocean" in section 502(1) of the Act.

In response to public comment that EPA had not identified the "shellfish, fish and wildlife" for which a balanced, indigenous population must be shown to exist under section 301(h)(2), EPA has added a definition of this term in these final regulations.

One commenter suggested that EPA's proposed definition of "toxic pollutant" conflicted with the definition of "toxic pollutant" in section 502(13) of the Act. While section 502(13) provides a generic definition of "toxic pollutant", section

307(a) of the Act clearly states that the specific "list of toxic pollutants or combinations of pollutants subject to this Act shall consist of those toxic pollutants listed in Table 1 of Committee Print Numbered 95–30 of the Committee on Public Works and Transportation of the House of Representatives." That list was reprinted to identify the "toxic pollutants" under § 233.1(w) of the proposed regulations, and is expressly incorporated by reference in the final version of § 125.57 promulgated today.

Because there were a few pesticides identified in proposed § 233.1(w) which were not included in Table 1 of Committee Print Number 95–30, those substances have been defined in these final regulations as "pesticides". See § 125.57(j). Other sections of the regulations have been changed to reflect this distinction.

The same commenter also suggested that the Agency's definition of "pollutant" as BOD, suspended solids and pH, was inconsistent with the definition of the term in section 502(6) of the Act. Since some commenters apparently felt that the use of the general term "pollutant" caused some confusion in the regulations, EPA is using the term "traditional pollutant" to refer to BOD, suspended solids, and pH both in the definition section and in other sections of the regulations. This should not be confused with the definition of "conventional pollutant" as used in section 301(b)(2)(E), 304(b)(4), or 304(a)(4) of the Act.

Several commenters noted that there were some inconsistencies in both the regulations and the preamble concerning which State water quality standards EPA would consider applicable to a particular discharger for purposes of demonstrating compliance with proposed sections 233.12 through 233.15 and section 233.20. The definition of "water quality standards" has been revised to clarify that applicants will be required to show that they presently meet (or will meet on the basis of an improved outfall or treatment system) those State water quality standards in effect as of (*3 months after date of promulgation*). However, if during the section 301(h) decisionmaking period, EPA approves either State water quality standards for additional pollutants or more stringent State water quality standards, an applicant will be required to supplement its original application to show that it meets or will meet such new or revised standards.

Finally, one commenter suggested that the term "zone of initial dilution" was unnecessarily broad and should be revised to parallel "initial dilution" as calculated in the application form. EPA agrees that an applicant's zone of initial dilution could be inconsistent with the initial dilution achieved at any one time. To remedy this problem, the term "zone of initial dilution" has been redefined as "the region surrounding or adjacent to the end of the outfall pipe or diffuser parts as calculated according to instructions in the application format."

Section 125.59. General. This new section has been added to the regulations in order to consolidate in a single place the basic criteria which must be met by a section 301(h) applicant. A few of the criteria contained in this section appeared in the proposed regulations in other sections, or are required by Federal statutes other than the Clean Water Act. Others were suggested by comments or legislative history. Still others have been added as a result of EPA's revision of its proposed definition of "existing discharge."

In addition to meeting these threshold criteria, a section 301(h) applicant will, of course, be required to meet all other applicable requirements of the Act and 40 CFR 125.21. Thus no modification will be issued under this Subpart where, for example, the discharge for which a modification is requested would violate State water quality or treatment standards or other State requirements within the meaning of section 301(b)(1)(C), or where the applicant's discharge or outfall would impair anchorage and navigation under section 402(b)(6).

Paragraph (a). This new paragraph has been added as a result of EPA's revision of its proposed definition of the term "existing discharge". It provides that a section 301(h) permit application may be based on a current or an *improved* discharge into ocean or saline estuarine waters. A POTW applying on the basis of an improved discharge must still meet the threshold criteria, including having a discharge into marine waters as of December 27, 1977.

POTWs applying for section 301(h) permits should carefully consider whether or not to grant revisions to categorical pretreatment standards under section 307(b) of the Act and 40 CFR 403.7 since such revisions may significantly contribute to adverse impacts on the marine environment which would disqualify such POTWs from receiving a section 301(h) permit.

Paragraph (b). These provisions delineate grounds for denial of a modified permit under section 301(h). These grounds are referred to as "threshold criteria" in that an applicant should determine whether it complies with these "criteria" before undertaking the more costly process of compiling the information necessary for a complete application. The paragraph incorporates a number of provisions from the proposed regulations, along with several new provisions which have been added in response to comments on the proposal.

Subparagraph (b)(1). This provision restates the general premise of these regulations, that is, that a modified permit under section 301(h) may not be issued unless the applicant shows in its application that it meets all the requirements of these regulations.

Subparagraph (b)(2). This provision incorporates the requirements of EPA's National Pollutant Discharge Elimination System (NPDES) program found in 40 CFR Part 122.

Subparagraph (b)(3). This provision originally appeared in § 233.11(b)(2) of EPA's proposed section 301(h) regulations and remains essentially unchanged in these final regulations. The basis for this provision has been discussed above.

Subparagraph (b)(4). The requirement that section 301(h) applicants demonstrate that they will provide at least primary treatment of their wastewater is a new provision which, while suggested in the preamble to EPA's proposed regulations (43 FR 17485), was not actually included in the proposed regulations themselves. To make it clear that no modifications will be granted for the discharge of untreated, raw sewage, EPA has added this provision to the final regulations.

This requirement is based on a number of grounds. First, the legislative history provides clear evidence that section 301(h) was intended to allow municipal marine dischargers to provide less-than-secondary treatment, but was not intended to allow discharges with no treatment. Testimony during Congressional hearings on various proposed secondary treatment modification amendments further supports this position, since no POTW or other witness urged that a modification from secondary treatment requirements should be issued for a less-than-primary discharge.

Secondly, EPA believes, that primary treatment which removes up to 40% of suspended solids, plus floatables and oil and grease, is the absolute minimum level of municipal wastewater treatment which will adequately protect water quality.

Finally, the State of California, in response to extensive studies conducted in the waters off the coast of California on the effect of discharging municipal wastewater into marine waters, requires

that municipal ocean dischargers remove 75% of suspended solids, as well as floatables and oil and grease. 1978 Water Quality Control Plan for Ocean Waters of California, Chapters II.B., III.B., and IV (Table A). This would require POTWs to provide *more* than primary treatment. While the Agency has not required, as a minimum, either advanced primary treatment (*i.e.*, primary with chemical or polymer addition) or a combination of secondary and primary treatment, EPA like the State of California, considers that primary treatment alone, with its minimal suspended solids removal—even with a source control program—is environmentally inadequate for most municipal marine dischargers. Thus, a section 301(h) applicant seeking a modification based on only primary treatment will bear a particularly heavy burden in demonstrating to EPA that such treatment is sufficient to protect marine waters.

Subparagraph (b)(5). One commenter on EPA's proposed regulations suggested that the regulations be revised to clarify that a sewage sludge discharge would be eligible for a permit. EPA agrees that some clarification concerning the status of sewage sludge under section 301(h) is desirable; however, contrary to the commenter's suggestion, the appropriate clarification, stated in subparagraph (b)(5) of this section, is that EPA will not issue modified permits for the discharge of sewage sludge.

The commenter's suggestion that section 301(h) permits may be issued for the discharge of sewage sludge apparently stems from the June 1977 holding in *Pacific Legal Foundation* v. *Quarles*, 440 F. Supp. 316 (C.D. Cal. 1977), that because sewage sludge could not meet EPA secondary treatment requirements under section 301(b)(1)(B), it could not be discharged into ocean waters. Apparently, the commenter believes that Congress, in amending the Act in December 1977 to allow POTWs to seek to modify secondary treatment requirements for municipal wastewater, also intended to lift its 1972 prohibition on the discharge of sewage sludge by POTWs, by allowing the discharge of any sewage sludge which would meet the requirements of section 301(h).

The legislative history of the Act emphatically negates such an intent, for the following reasons:

(1) Section 301(h) was enacted to relieve ocean dischargers of the cost of building and maintaining land and energy intensive secondary wastewater treatment facilities where they could demonstrate that a less-than-secondary discharge would have no adverse impact on the marine environment. There is no evidence in the legislative history that the provision was enacted to reduce sludge handling or disposal costs for marine dischargers by permitting them to discharge sewage sludge.

(2) As discussed above, Congress under section 201, has prohibited the discharge of untreated sewage. Since sewage sludge is, basically, the material which is removed from raw sewage during the treatment process, allowing a POTW to discharge both treated effluent and sewage sludge, or sewage sludge alone, would be equivalent to allowing it to discharge untreated sewage.

(3) The National Commission on Water Quality Report to Congress, which was the basis for many of the 1977 Amendments to the Act, including section 301(h), speaks solely of municipal "wastewaters", and not municipal sludges, in recommending a secondary treatment modification for coastal dischargers. Similarly, references in the legislative history of section 301(h) to treatment, primary treatment, and the need for toxic pollutant removal, indicate that, in enacting section 301(h), Congress was concerned solely about municipal wastewater, not municipal sludge.

(4) A December 7, 1977 letter from EPA's Assistant Administrator for Water and Waste Management discussing the secondary treatment modification, reprinted in the Congressional Record of the floor debate on the conference bill on the 1977 Amendments, expressly sets forth EPA's understanding that the modification was applicable only to "sewage effluent", not sludge. This interpretation was neither rebutted nor contradicted during Congressional debate.

(5) During various Congressional hearings on secondary treatment modifications for marine dischargers, no witness testified that the 1972 Act should be amended to permit the discharge of sewage sludge, as opposed to less-than-secondary effluent.

(6) Approximately one month before the enactment of section 301(h), Congress amended the Marine Protection, Research and Sanctuaries Act of 1972, 33 U.S.C. 1301 *et seq.*, to prohibit the ocean dumping of sewage sludge which cannot meet EPA ocean dumping criteria—*i.e.*, sewage sludge which contains toxic pollutants, and, as a practical matter, *all* sewage sludge which is currently being dumped in the ocean—after December 31, 1981. It would be incongruous for Congress to ban dumping of such sewage sludge at dumpsites anywhere from twelve to more than one hundred miles from shore, while, at the same time, to allow it to be discharged through outfalls in nearshore coastal waters.

In light of these considerations, the Agency is unable to attribute to Congress, in enacting section 301(h), an intent to reverse its 1972 prohibition on the discharge of sewage sludge by POTWs.

EPA also notes that the marine environment has been significantly degraded in the two EPA sites currently used for the ocean dumping of sewage sludge. The State of California, which, as noted above, has studied extensively the impact of municipal discharges on coastal waters, not only requires 75% removal of solids from such discharges (which would have the practical effect of prohibiting the discharge of sewage sludge), but also expressly bans sewage sludge discharges into ocean waters. 1979 Water Quality Control Plan for Ocean Waters of California Chapter IV (Table A). For these additional reasons, EPA believes that a blanket prohibition against issuing section 301(h) permits for sewage sludge discharges is appropriate.

Subparagraph (b)(6). This new provision has been added to the regulations to clarify the status of State secondary treatment laws, regulations and ordinances under section 301(h). The Act and its legislative history make it clear that while Congress has authorized EPA to modify Federal secondary treatment requirements under section 301(h) of the Act, it has not authorized EPA to modify State secondary treatment requirements. Because a POTW must meet such requirements under section 301(b)(1)(C) of the Act, EPA will not issue a modified permit under this Subpart where a State has adopted a secondary treatment requirement (or more stringent effluent limitations as well as a treatment standard), unless such requirement is less stringent than existing Federal requirements.

Subparagraph (b)(7). This is, essentially, a new provision which prohibits the issuance of a permit in those instances where the applicant's discharge would violate the requirements of a Federal statute other than the Clean Water Act or an Executive Order. The list of potentially applicable statutes included in these regulations is intended to be illustrative, not exhaustive.

Applicants will be required to demonstrate in their section 301(h) applications that, as a minimum, their discharge will comply with the specific

statutes listed. Applicants in States with approved coastal zone management programs should consult Office of Coastal Zone Management Federal consistency regulations (43 FR 10517, March 13, 1978), for information on the proper form of certification and procedures for submission of the certification to the State or its designated coastal zone management agency.

For a discharge which occurs within a designated marine sanctuary, applicants should consult the regulations governing that sanctuary to determine whether the discharge is likely to be consistent with the procedures for certification. Regulations governing the Monitor and Key Largo Coral Reef Marine Sanctuaries are found in 15 CFR 924 and 929, respectively.

The Application Format, which is discussed in Section VI of this preamble, also requires that applicants provide information pertaining to requirements of the Endangered Species Act of 1973, as amended, 16 USC 1531 *et seq.* This information is necessary to assist EPA in determining whether the discharge of effluent pursuant to a modified permit may affect a threatened or endangered species or modify the critical habitat of such species.

Subparagraph (b)(8). This provision emphasizes the basic requirement that a section 301(h) applicant must have submitted a preliminary application and must submit a final application which demonstrates, on its face, that the applicant is entitled to a section 301(h) modified permit. The preliminary and final application requirements are delineated in detail in paragraphs (c) and (d) of this section.

Subparagraph (b)(9). In response to the question whether dischargers which are currently achieving effluent limitations based on secondary treatment may apply for a section 301(h) permit, this provision makes clear that such dischargers are ineligible for modified permits. Extensive discussion in the legislative history emphasizes that section 301(h) is a narrowly drafted provision which allows certain dischargers who meet the statutory criteria to obtain permits which modify the requirements of secondary treatment. There is no indication that Congress intended to enable dischargers who have attained effluent limitations based on secondary treatment to relax their efforts, in clear contradiction of the goals and policies stated in section 101 of the Act.

Former Section 233.11. Existing discharge into marine waters. This section has been deleted from the final regulation, primarily for organizational reasons. In reviewing comments on its proposed criteria under paragraph (a)(2)(ii) of this section, EPA determined that they were largely duplicative of requirements contained in proposed § 233.14(c) (now § 125.61), and therefore unnecessary. As discussed above, the requirements of proposed paragraph (b) have been modified in response to public comment and shifted to new § 125.59. Finally, the "stressed waters" concept of paragraph (a)(2)(ii) has been incorporated in § 125.61. The reason for this shift and the changes made in this concept in response to public comment are discussed in the section-by-section analysis of § 125.61 below.

Section 125.60. Existence and compliance with applicable water quality standards. (formerly § 233.12) Section 301(h)(1) requires, as a prerequisite to EPA granting any modified permit, that the applicant demonstrate that there is a water quality standard for the pollutant for which the modification is requested. This section is meant to assure that the pollutant for which a modification is granted is covered by a specific State water quality standard which adequately regulates such pollutant.

EPA's April 25, 1978, proposed regulations provided that applicants must demonstrate that their less-than-secondary discharge would comply with a State water quality standard for BOD, suspended solids (or their surrogates) and pH. The Agency also proposed to extend State water quality standards for the territorial seas to the contiguous zone for purposes of determining compliance with section 301(h)(1). The latter proposal was designed to overcome an apparent Congressional oversight; under section 303, State water quality standards may be adopted or promulgated only for interior waters and the territorial seas.

Public comment on this section reflected a general misunderstanding of both the statutory requirement and the Agency's proposed regulation. Several commenters, for example, stated it was inappropriate to evaluate modification requests based on BOD, suspended solids and pH, and that, instead, the proper basis for assessment was the impact of the discharge on marine biota. The statute requires both. Analyses of physical and biological factors in revised § 125.62 will be used as the basis for further evaluation of compliance with water quality standards.

Another commenter suggested that section 301(h) applicants should not be required to meet either State water quality standards for BOD, suspended solids (or their surrogates) and pH or any other State water quality standards. EPA disagrees. Although section 301(h) modifies the requirements of section 301(b)(1)(B) of the Act, it does not authorize any relaxation of section 301(b)(1)(C). Section 301(b)(1)(C) requires compliance with any limitation more stringent than that required by section 301(b)(1) (A) and (B), including limitations based on State water quality standards.

Another commenter suggested that only those State water quality standards which assure compliance with section 301(h)(2) should be considered applicable State water quality standards within the meaning of section 301(h)(1). The statute clearly imposes no such requirement. A more reasonable conclusion is that section 301(h)(2) has been included in this provision to assure that public water supplies, recreational interests and the marine environment would be adequately protected in cases where State water quality standards may not adequately protect (or were not adopted to protect) such water uses. Conversely, if States have adopted water quality standards or other water pollution control requirements which are more stringent than those required under section 301(h)(2), dischargers receiving modified permits are still subject to those standards and requirements.

The same commenter claimed that EPA failed to publish information identifying marine water quality standards, as required under section 304(a)(6). In fact, prior to proposal of the section 301(h) regulations, EPA published a notice of availability of its State-by-State list of marine water quality standards under section 304(a)(6) (43 FR 13914, April 3, 1978).

The same commenter also charged that EPA had exceeded its statutory authority by allowing contiguous zone dischargers to demonstrate compliance with section 301(h)(1) by showing that they could meet a State water quality standard for discharges into the territorial seas. He urged that only section 403(c) ocean discharge guidelines could be used to demonstrate compliance with the requirements of section 301(h)(1) in the contiguous zone, where State water quality standards do not apply.

The term "water quality standard" is a term of art in the Act, referring only to *State* water quality standards adopted or promulgated under section 303. It does not refer to other water quality based pollution control requirements, such as section 302 water quality related

effluent limitations, section 403(c) ocean discharge guidelines, or section 404(b) dredged material disposal guidelines. Furthermore, the legislative history of the Act makes it clear that, Congress, in using this statutory term of art in section 301(h), expressly intended to refer only to State water quality standards. H.R. Rep. 95–830, 95th Cong. 1st Sess. at 74, 96 (1977); S. Rep. 95–370, 95th Cong., 1st Sess. 45, 72 (1977). As noted in the April 25, 1978, regulatory preamble (43 FR 17488), EPA's proposed extension of State water quality standards to the contiguous zone for purposes of section 301(h)(1) was designed to resolve an internal inconsistency in the statute which would otherwise have prevented any contiguous zone discharger from qualifying for a section 301(h) modification. This construction is wholly consistent with the intent and purpose of the Act.

One commenter urged that a new paragraph be added to this section requiring applicants to demonstrate the existence of and compliance with a State water quality standard for coliform bacteria. Since fecal coliform bacteria is not a parameter used to define secondary treatment (41 FR 30785, July 28, 1976), such a requirement would not be within the scope of section 301(h)(1). However, if an applicable State water quality standard for coliform bacteria exists, section 301(h) permittees must meet any such standard; EPA issuance of a modified permit does not change the water quality standards requirements.

Section 125.61. Attainment or maintenance of water quality which assures protection of public water supplies, the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife, and allows recreational activities (formerly §§ 233.13 through 233.15.) This section consolidates in a single section the physical, biological, public water supply, recreational, and stressed waters criteria which were formerly contained in §§ 233.13 through 233.15 and 233.11(a)(iv) of EPA's proposed regulations. This organizational revision is intended to clarify the interrelationships between these requirements and eliminate unnecessary duplication of criteria.

Another organizational change has been made in these sections to alleviate apparent confusion during the comment period concerning the difference between regulatory criteria and application requirements, respectively. To clarify the distinction between these two parts of the regulation, the application requirements have been shifted to the application format.

A. *Physical Assessment.* In its April 25, 1978 regulations, EPA proposed to require applicants for a section 301(h) permit to demonstrate that they met the following physical oceanographic criteria:

(i) Initial dilution is of the order achieved by accepted designs of multiport ocean outfalls at 300 or more feet and is sufficient to meet applicable water quality standards necessary for the protection of marine communities in the environment affected by the discharge under the most demanding critical conditions which are likely to exist during the life of any modified permit issued under this part;

(ii) Dilution water is continuously supplied in an amount equal to the wastewater flow times the dilution water (sic);

(iii) Following initial dilution, the partially diluted wastewater is rapidly and permanently carried away from the outfall, nearshore water use areas, and areas of particular biological sensitivity; and

(iv) Water quality at the edge of the zone of initial dilution will protect fish, shellfish, and wildlife.

Inclusion of these physical criteria was intended to reflect Congress' intent that section 301(h) modifications be granted only for those marine waters which, because of their unique hydrological and geological characteristics, provide a high degree of initial dilution, dispersion and transport of wastewater and other physical oceanographic conditions which are conducive to the attainment of water quality which assures protection of public water supplies, recreational activities, and a balanced, indigenous population of shellfish, fish and wildlife. Thus, while compliance with the physical criteria contained in the proposed regulation would not, in and of itself, guarantee protection of valuable water uses and marine life, it would indicate the presence of a water quality regime which is likely to be compatible with the attainment or maintenance of those water quality objectives. For example, if partially diluted wastewater was not carried away from the outfall site, the shoreline and sensitive biological areas, or if initial dilution was insufficient to reduce pollutant concentrations below water quality standards, indigenous populations could well suffer adverse effects.

In EPA's proposed regulations, compliance with the physical criteria was to be based on an assessment of the physical oceanographic conditions in the vicinity of the applicant's outfall and the physical impact of its discharge. This physical assessment requirement served two other major functions in the proposed regulations. First, it identified the geographical area where water quality parameters and biological impacts should be measured (the edge of the "zone of initial dilution") under proposed § 233.14. Second, it provided an analysis of wastewater dispersion and transport which could be used to determine areas of potential public water supply, recreational, and biological impacts under proposed § 233.13.

The physical criteria and physical assessment contained in the regulations promulgated today are essentially unchanged from those in the proposed regulation. EPA has made certain minor changes in the physical criteria and assessment in response to public comment.

1. *Well-designed outfall.* In the proposed regulation, EPA required applicants to demonstrate that the initial dilution of their discharge was on the order of that achieved by accepted designs of multi-port ocean outfalls at 200 feet or more. The purpose of this provision was not to establish a minimum depth or a minimum dilution requirement. Rather, it was intended to require applicants to demonstrate, like the California communities which testified in support of section 301(h), that they had a well-designed outfall and diffuser system which provided initial dilution, dispersion and transport of wastewater appropriate to their discharge volume and site conditions. Because the proposed language apparently created confusion, it has been revised in these final regulations to better convey EPA's intent.

The requirement that an applicant have a "multi-port diffuser has been deleted because in some situations a single-port diffuser may be appropriate. In most waters, however, multiple port diffusers would be necessary to provide appropriate dilution, dispersion and transport of wastewater.

2. *Initial dilution.* The proposed regulation required that applicants demonstrate that their initial dilution, as calculated in the application format, would be sufficient to meet all applicable State water quality standards under the most demanding critical conditions likely to occur during the life of any modified permit. This provision was meant to require each applicant to demonstrate that, in addition to meeting State water quality standards under conditions dictated by the State, it would also meet applicable standards using a conservative dilution model and under assumed worst case conditions. This demonstration will provide additional assurance that physical

conditions at the outfall site are compatible with the attainment and maintenance of recreational water uses, public water supplies, and a balanced, indigenous population.

a. *Critical conditions.* In its proposed regulations, EPA identified the following three factors of principal importance in calculating initial dilution: ambient current, waste flow rate and ambient density stratification. The proposed regulation required applicants to predict initial dilution using a "worst case" assumption for each of these factors — *i.e.*, zero current, maximum waste flow, and highest stratification.

Several commenters objected to the requirement that worst case or extreme critical conditions be used in making initial dilution calculations. One commenter suggested that normal or average conditions be used, as more representative of the day-to-day initial dilution actually achieved. Still other commenters contended that "critical conditions" for each of the three factors were not adequately defined in the proposed regulation.

EPA does not agree that normal or average conditions should be used to calculate initial dilution. Initial dilution is a process of rapid turbulent mixing between wastewater discharged at depth and ambient seawater, which results from the density differential between fresh and saline waters. Because the initial dilution actually achieved at a discharge site is highly variable (depending on discharge characteristics and environmental conditions), measuring compliance with water quality standards on the basis of average initial dilution would mean that those standards might be exceeded 50% of the time. Furthermore, this formulation would be inconsistent with Congress' intent that water uses and marine life be protected under "assumed worst conditions."

EPA does agree, however, that the proposed regulations did not fully define "critical conditions" in a statistical sense, and accordingly has provided a more precise definition of that term in the regulations promulgated today. The final regulations permit the applicant, in calculating both the dilution factor and the zone of initial dilution, to use the worst ten percentile on a representative cumulative frequency distribution of data describing densities and currents. Applicants should not use this value, however, if they are aware of any scientific evidence which indicates that more conservative values should be used to protect designated water uses or a balanced, indigenous population. Nor should this value be used if the density and current data have not been obtained over a sufficient period of time to be representative of conditions which may occur during the life of the permit.

The use of ten percentile values will still result in a conservative prediction of initial dilution—*i.e.*, a value which is exceeded most of the time. Because the regulations require initial dilution values to be based on several factors, each taken at the worst ten percentile, the probability that the predicted initial dilution will be exceeded is likely to be greater than 90%. For this reason, an initial dilution value computed in the manner required by these regulations will provide EPA with a reasonable indication of whether a water quality regime is likely to be compatible with the protection of marine life, recreational interests and public water supplies even during "worst case" environmental conditions. The latter include periods of high wastewater flow, low background water quality, exceptional biological activity, low flushing and extreme high and low density stratification. As a result of comments received, a number of changes have been made with respect to the critical conditions calculation required by these final regulations, including:

i. *Zero current.* EPA's proposed definition of critical conditions required applicants to calculate initial dilution assuming zero current. Several commenters criticized this requirement as too restrictive; others argued that it ignored site-specific conditions, and was therefore meaningless.

EPA has eliminated the zero current assumption in revising the definition of critical conditions. Since currents do affect the initial dilution achieved by a discharge, the Agency believes it is reasonable to allow a modest amount of current (the lowest ten percentile) in predicting initial dilution.

The effect of incorporating currents at the lowest ten percentile on calculations of initial dilution will generally be fairly small. For a site with persistent, strong current, for example, allowing currents at the worst ten percentile could double the initial dilution values calculated with zero current; in cases where the worst ten percentile is in fact zero, it obviously will have no effect. Most values will lie somewhere between these two extremes. As noted above, when coupled with other environmental conditions at the worst ten percentile, this will still result in a conservative prediction of initial dilution.

ii. *Wastewater flow.* The proposed regulations required applicants to calculate initial dilution based on a range of wastewater flows, including minimum, average and maximum flow. This requirement was included to provide an estimate of the range of initial dilution values which might result from variations in flow rates.

In response to comment, EPA has re-examined this proposed requirement and has decided that since the *maximum* flow rate is the most critical flow condition for calculating initial dilution, initial dilution values based on average or minimum flows are not essential to an Agency determination of whether an applicant meets the physical criteria in this section. Accordingly, the final regulation requires that applicants calculate initial dilution using only the maximum flows representative of the worst two to three hours per day.

iii. *Vertical ambient density stratification.* A number of commenters requested that EPA more clearly define the vertical ambient density stratification conditions which will be considered critical for purposes of calculating initial dilution. In response to these comments, EPA has revised the final regulations to clarify that the most adverse stratification is the vertical density distribution which produces the largest difference in density over the height-of-rise of the wastewater plume.

For periods when the vertical density gradient is non-linear, the worst-case stratification may be difficult to estimate. Therefore, applicants should evaluate a substantial amount of data from both the discharge site and the nearby region before selecting a vertical density profile in predicting initial dilution.

(b) *Model for calculating initial dilution.* In its proposed regulations, EPA recommended that a specific mathematical plume model be used to calculate initial dilution. A number of commenters asked whether EPA would permit the use of other models and, if so, how the modeling results would be evaluated in the physical assessment.

There is no single model or set of models which is universally acknowledged as appropriate for making the computations required by these regulations. In recommending the use of a particular model in its proposed regulation, EPA was not suggesting that the Agency would not consider results obtained from using other methods. Rather EPA's intentions were (1) to provide applicants with the assurance that a particular method for computing initial dilution had Agency approval; (2) to establish a standard reference by which other models could be evaluated; and (3) to simplify and expedite EPA's application review process and

decision-making, since the Agency would not need to evaluate plume models, but only the results of those models.

In response to commenters' inquiries about other approved methods for calculating initial dilution, EPA in the section 301(h) Technical Support Document, has recommended two additional plume models. As noted above, applicants are not required to use those methods; if they use another method, however, they must describe that method in detail and demonstrate that the results are in general agreement with those which would be obtained through use of EPA's recommended methods.

(c) *Minimum initial dilution.* A number of commenters suggested that EPA establish a minimum dilution ratio to be met by all applicants (*e.g.* 50:1 or 100:1) in order to reduce what they characterized as the vagueness of this section.

The legislative history of section 301(h) indicates that Congress intended applicants to demonstrate that they would achieve "rapid dispersion (e.g., 45 seconds) of wastewater and wastewater constituents" (*1977 Leg. Hist. at 259*). In its April 25, 1978 regulations, EPA proposed that applicants fulfill this requirement by a showing that they could meet water quality standards after initial dilution—i.e., that wastewater dilution would be sufficiently rapid during the first minute or so of discharge to protect designated water uses.

Although EPA has taken initial dilution into account in developing its section 301(h) regulations, it has been unable to establish—either on the basis of legislative history or scientific considerations—a minimum dilution ratio which would allow all dischargers to meet State water quality standards or otherwise comply with sections 301(h)(2) and 101(a)(2) of the Act. For these reasons, EPA has not included a minimum dilution requirement in these final regulations.

d. *Zone of initial dilution.* In the proposed regulations, EPA required applicants to calculate, in the physical assessment section of the application format, the size, shape and location of the region encompassing all critical initial dilution configurations. This region, which EPA termed the "zone of initial dilution" (ZID), established a boundary beyond which State water quality standards and a balanced, indigenous population must be maintained. EPA received a number of comments on both the concept and method of calculation of the ZID.

One commenter expressed concerns that the calculation of the ZID does not take into account biological conditions within the ZID. EPA agrees that the methods it has proposed for calculating the ZID are strictly based upon physical characteristics of the discharge plume. Factors which affect the biological integrity of the immediate discharge site are not considered in ZID computation (except where State regulations require it).

In order to clarify the question of biological considerations, EPA has added criteria to the biological assessment section of the application format relating to (1) protection of a balanced, indigenous population and migratory pathways, and (2) the absence of ecologically significant bioaccumulation of toxic pollutants within the ZID of discharges into saline estuarine waters. Additional explanation has been provided in the case of ocean discharges, to point out that ecological alterations which might occur within the ZID of such discharges must not constitute major impacts affecting the balanced, indigenous population, nor may such impacts extend beyond the ZID. Therefore, applicants should be aware that while size and shape are important factors in the physical assessment of the ZID, biological conditions occurring within or beyond the ZID will be decisive in determining whether or not an application is approved.

In response to another commenter who suggested that any proposed ZID should conform to State requirements, the final regulations now require that the proposed ZID be no larger than that allowed by State regulations on mixing zones or initial dilution zones.

A number of commenters also suggested that EPA establish a maximum size for the zone of initial dilution. As noted above, the zone of initial dilution can only be calculated on a case-by-case basis, considering site-specific conditions, if it is to be useful to EPA in evaluating section 301(h) applications.

One commenter suggested that unless EPA established a maximum zone of initial dilution, dischargers, in an attempt to maximize the use of a zone of initial dilution in order to assure compliance with water quality standards, would build enormous diffuser systems which would potentially disrupt large areas of the marine environment. As a practical matter, economics, maintenance problems, and physical stability of the outfall will place practical limits on length of both the pipeline and the diffuser system. The requirements discussed in section 2.a.(ii), above, and required by § 125.61 of the regulations should similarly remove any incentive to create an abnormally large outfall and diffuser system simply to maximize the use of a ZID for purposes of these regulations.

In response to public comment, the Agency has clarified how EPA-recommended methods are to be used in calculating the ZID and has added an alternative, simplified method for computing the size and shape of the zone. This latter method will yield a technically sound estimate of the size of the zone of initial dilution which would otherwise be obtained by making the detailed calculations which are set forth in the application format. This alternative will simplify the application requirements for those POTWs which choose not to make the detailed calculations. However, applicants should note that in some cases (e.g., where there are strong, persistent currents), the simplified method may result in a smaller estimated ZID than that which would be arrived at through the detailed calculations. This simplified method sets the width of the ZID as approximately twice the depth of the water plus the width of the diffuser, and the length of the ZID as twice the depth plus the length of the diffuser.

3. *Wastewater/dilution water exchange.* EPA has made two changes in the proposed requirement that dilution water be "continuously supplied in an amount equal to the wastewater flow times the dilution water." First, the term "dilution water" in the proposed regulation should have read "dilution factor." This has been corrected in the final regulation. (See § 125.61(a)(1)(iii)). Second, because it is virtually impossible to demonstrate, as a statistical matter, that dilution water will be "continuously" supplied in the volumes specified, the final regulation has been revised to require applicants to show that the required wastewater/dilution water exchange will be achieved for a very large percentage of time.

4. *Transport and dispersion.* This section has been revised to clarify that applicants must demonstrate that solids, as well as other wastewater constituents, will be transported away from water use and biologically sensitive areas.

Some commenters questioned the level of detail and purpose of the questions in the physical assessment relating to this requirement. In response, EPA has made minor revisions to

provide more flexibility in data requirements.

5. *Protection of fish, shellfish and wildlife.* Because proposed § 233.14(c)(1)(iv) contained requirements which overlapped with those in other sections of the regulations, this section has been deleted from the final regulations.

6. *Other issues.* a. *Minimum depth limitation.* A number of commenters suggested that EPA establish a minimum depth criterion for ocean dischargers to reflect the fact that section 301(h) limits the availability of modified permits to dischargers into "deep" ocean waters (or other waters with hydrological and geological characteristics which are necessary to "allow compliance with sections 301(h)(2) and 101(a)(2)."

There is no minimum depth limitation, short of a very shallow one, which would conclusively preclude the attainment of these statutory objectives in every case. For example, a POTW with a low volume, essentially domestic flow might be able to meet these objectives in fifty feet of swiftly moving, well flushed ocean waters; for a larger discharger, two hundred feet might be required. As a result, EPA has been unable to establish a scientifically defensible minimum depth limitation for inclusion in the final regulations.

One commenter suggested that the term "deep" should be given a significance apart from designating ocean waters in which the requirements of sections 301(h)(2) and 101(a)(2) could be achieved. This commenter apparently believes that Congress had a specific minimum depth limitation in mind when it enacted section 301(h).

The only depth figure which appears in the legislative history of section 301(h) is "two hundred feet", *(see, e.g.,* 1977 Leg. Hist. at 259 and 322), the approximate depth of the outfalls of the California POTWs which testified in support of a modification of secondary treatment requirements for marine dischargers. However, there is no evidence that Congress intended this figure to establish a minimum depth for ocean discharges. Furthermore, such a limitation would automatically preclude all but approximately half a dozen ocean dischargers from even being considered for a modification.

Moreover, any minimum depth requirement which was not related to the objectives of sections 301(h)(2) and 101(a)(2) would lead to absurd results. For example, it would require EPA to deny a modified permit to POTWs which could demonstrate that their discharges would fully protect designated water user and marine life simply because they were not located in the requisite depth of water. POTWs with outfalls located in waters which were a few feet short of the requirement would be barred at the threshold even though, all other factors being equal, the depth differential would have no environmental significance. Some dischargers would have to relocate their outfalls, at substantial expense, even though the additional depth, *per se,* would not afford any additional environmental benefits. It is unlikely that Congress could have intended such results. Furthermore, there is considerable scientific knowledge to suggest that depths greatly in excess of two hundred feet may be unsatisfactory for purposes of sections 301(h)(2) and 101(a)(2), because they exhibit geophysical features which prevent adequate dispersion and transport of wastewater following initial dilution.

b. *Other requirements.* One commenter suggested that EPA (1) identify in its regulations those specific geological or hydrological conditions known to prevent effective wastewater dilution, transport, and dispersion (e.g., sills, fjords) and (2) prohibit modified discharges into waters with these characteristics. EPA has not adopted this approach because the effect of these various conditions—which are discussed in the Technical Support Document—must be determined on a case-by-case basis. Where such characteristics do prevent circulation and flushing adequate to protect designated water uses and marine life, the discharge will be unable to meet the requirements of this section and no modified permit will be granted.

B. *Public Water Supply Impact Assessment.* EPA's proposed regulations also required applicants to demonstrate that their discharge would not adversely affect public water supplies, based on an assessment of the effect of the discharge on desalinization plants with intakes located within a ten mile radius of the applicant's outfall.

Because of the limited applicability of this requirement, it was the subject of very few comments. One commenter did question EPA's use of a ten mile limit for identifying potential impacts on public water supplies. Although EPA believes that, as a general matter, a discharge will have no impact on public water supplies outside this limit, it is possible that under some hydrological or meteorological circumstances, wastewater components could be identified as far as ten miles from the discharge. Accordingly, in the final regulations published today, EPA is requiring applicants to assess the impact of their discharge on public water supplies based on the analysis of actual or projected wastewater transport and dispersion required by the physical assessment.

Except for this modification, and a few other clarifying changes, this section is essentially unchanged from the way it appeared in the proposed regulations.

C. *Biological Assessment.* Section 233.14(d) of EPA's proposed regulations required applicants to demonstrate the existence of a balanced, indigenous population of shellfish, fish, and wildlife, as defined in proposed § 233.1(h), immediately beyond the boundary of the zone of initial dilution. This demonstration was to be made by means of a biological assessment, consisting of a biological impact questionnaire supported by a thorough summary of biological conditions at the applicant's existing outfall site and appropriate control sites.

The showing that less than secondary treatment will not interfere with the attainment or maintenance of a balanced indigenous population is perhaps the most important and most difficult requirement under section 301(h)(2). EPA received extensive comments on this section, especially its definition of balanced, indigenous population, and the biological assessment requirement. In response to comment, the definition of balanced, indigenous population has been clarified; impact criteria have been established for the area within the ZID; and the questionnaire and biological conditions summary have been expanded and clarified. These changes, as well as EPA's responses to other comments, are discussed below.

1. *Definition of "balanced, indigenous population".* In its April 25, 1978 regulations, EPA proposed that an applicant demonstrate the presence of a balanced, indigenous population based on evidence indicating that the structure, composition and function of marine communities near the applicant's outfall were comparable to (1) those of healthy marine communities existing in nearby unpolluted waters; or (2) those of communities reasonably expected to repopulate the polluted area from unpolluted areas if the source of pollution were removed.

The first part of this definition reflected Congress' expectation that the existence or non-existence of a balanced, indigenous population would be demonstrated based on "comparative ecosystems . . . in nearby waters (and) evidence . . . (that) the ecosystems which exist in the areas of these outfalls

are identical to those which live in unpolluted environments" (1977 Leg. Hist. at 448). The second part of the definition incorporated Congress' intent that:

> . . . the interim water quality standards be that condition of aquatic life which existed in the absence of pollution . . . Restoration of aquatic ecosystems which existed prior to the introduction of pollution from man's activities is an important element of the restoration and maintenance of the biological, physical and chemical integrity of receiving waters. *(Id.)*

Although EPA received numerous comments on its proposed definition, none warranted substantive revision of the proposed regulations. Although the definition of balanced, indigenous population has been reworded for purposes of clarity in these final regulations, the content remains the same.

A number of commenters suggested that the balanced, indigenous population test be based on a comparison between the marine populations which would exist in the vicinity of the applicant's modified discharge and a secondary discharge, respectively. The Act clearly does not require such a comparison and the legislative history indicates that Congress did not intend such a comparison. *See e.g.*, 1977 *Leg. Hist.* at 448, 1052.

Other commenters objected to the requirement that the populations at the outfall site be measured against populations existing in an unpolluted environment. As discussed in section F, below, where applicants discharge into waters where adverse biological impacts are caused by sources of pollution other than the applicant's discharge, EPA believes it is appropriate to compare marine communities at the outfall site with those at a reference site under comparable environmental (and pollution conditions), but absent the applicant's discharge, to determine whether the applicant's discharge in any way contributes to the adverse impact. In those situations where the applicant's discharge is the sole source of the impact, however, the legislative history is clear that the applicant must demonstrate that "the ecosystems which exist in the areas of these outfalls are identical to those which live in unpolluted environments."

One commenter urged EPA to establish a deadline by which repopulation or re-establishment of natural communities would have to occur following the improvement of an applicant's discharge. EPA believes that existing data are inadequate to specify a time frame which would be appropriate for all discharges.

Still another commenter suggested that marine ecosystems at the outfall site be compared not to ecosystems which "might have existed since the beginning of time" but to ecosystems of more recent origin. Although no specific time period was suggested, the commenter apparently wanted EPA to date a balanced, indigenous population from some point in time after commencement of an applicant's discharge. As noted above, this would be contrary to Congress' intent that a balanced, indigenous population date from "prior to the introduction of pollution from man's activities."

2. *Impacts within the zone of initial dilution.* Neither section 301(h)(2) nor its legislative history specifies the location at which an applicant must demonstrate the existence of a balanced, indigenous population of marine life. If EPA had required that the demonstration were required to be made at the point of discharge, then it would be unlikely that any discharger could qualify for a modified permit. Therefore, in its April 25, 1978, regulations, EPA proposed to establish an area immediately surrounding the discharge in which some adverse biological impact would be allowable, but beyond which a balanced, indigenous population must be maintained. Because section 301(h) was enacted on the premise that the thorough flushing and dilution of wastewater provided by certain marine waters would allow assimilation of less-than-secondary discharges without adverse biological impact, the area chosen by EPA was the zone of initial dilution, that area of incomplete mixing betwsen effluent and seawater.

A number of commenters criticized EPA for failing to establish any controls on biological impacts within the zone of initial dilution, no matter how severe. EPA agrees that although a certain impact within the zone of initial dilution in the case of ocean discharges is inevitable, it should not be extreme or extend beyond the ZID. For saline estuarine discharges, balanced, indigenous populations and migratory pathways, must be maintained both within and beyond the zone of initial dilution.

In the final regulations promulgated today, therefore, EPA is requiring all applicants to demonstrate that their discharge does not cause major adverse biological impacts within the ZID, particularly impacts which are likely to affect marine life outside the ZID. Examples of unacceptable impacts would include, but are not limited to, the destruction of distinctive habitats of limited distribution (*e.g.*, coral reefs, nursery and spawning grounds, and shellfish, grass and kelp beds); the presence of disease epicenters; and the occurrence of phytoplankton blooms that result in serious oxygen depletion in the water column, causing the death of fish, shellfish or other marine organisms, or resulting in the accumulation of toxins in commercially harvested fish and shellfish.

EPA does not believe that the restrictions applicable to ocean dischargers will be sufficient to adequately protect estuarine communities. Estuaries are semi-enclosed, highly productive ecosystems subject to finite limitations on wastewater exchange and dilution, which serve as spawning and nursery grounds to numerous species of fish and shellfish. Due to their uniqueness estuaries are considered a resource of relatively greater biological significance than open coastal waters. In fact, commenting on EPA's proposed regulations, the National Oceanic and Atmospheric Administration (NOAA) stated that it knew of no coastal estuarine waters where it could confidently predict that a modification of secondary treatment requirements would not cause serious adverse impact.

For these reasons, EPA is requiring estuarine dischargers to demonstrate not only that there will be no extreme impacts within the zone of initial dilution, but also that both the area within the zone of initial dilution and the estuarine system as a whole will be only minimally impacted by their discharge. Three criteria must be met. First, the health, structure and function of the benthic community within the ZID must not differ substantially from that outside the ZID. Second, the ZID must not interfere with migratory pathways. Finally, toxic pollutants and pesticides must not accumulate in either sediments or biota within the ZID at levels which would cause adverse impacts.

EPA expects that only dischargers of predominately domestic wastes will be able to meet these criteria.

3. *Impacts outside the zone of initial dilution.* In its proposed regulations, EPA required applicants to establish the existence of a balanced, indigenous population at the "edge" of the ZID. Several commenters were apparently confused by this requirement.

In using the term "edge", EPA did not intend to suggest that applicants should restrict their biological assessment to a narrow line separating the interior of the ZID from the exterior. Since marine communities inhabit a much broader

area than the line marking the perimeter of the ZID, such a definition would obviously preclude a thorough examination of all aspects of the ecosystem.

Rather, it was EPA's intent to have applicants assess biological impacts beginning immediately outside the ZID, and extending as far as necessary to establish that a balanced, indigenous population existed everywhere outside the ZID.

As discussed in the section-by-section analysis of the public water supply impact assessment, above, and the recreational assessment, below, a number of commenters correctly noted that, as a result of wastewater dispersion and transport, a marine discharge may have adverse biological impacts far beyond the edge of the ZID. The final regulation published today has been clarified to require applicants to demonstrate that a balanced, indigenous population will be maintained not only immediately beyond the ZID, but also in any other areas outside the ZID affected or potentially affected by the applicant's discharge. Thus, where an applicant's discharge permits the maintenance of a balanced, indigenous population immediately beyond the boundary of the ZID, but adversely impacts an area at some greater distance, the applicant would be denied a modified permit under these final regulations.

One commenter suggested that applicants be required to measure biological impacts not at the edge of the ZID but at a point five hundred meters from the edge. Because no justification was given for using this distance, and because it would have the effect of substantially increasing the area in which adverse impact would be permitted, EPA has rejected this approach.

4. *Predicting biological impacts.* EPA received numerous comments on the issue of whether the impact of proposed outfall improvements on marine communities could be accurately predicted, and, if so, how much and what type of data applicants must submit in order to carry their burden of proof under section 301(h).

Some commenters felt that it was possible to make a reasonable predictive judgment about the biological impact of a future discharge. One stated that near-field and far-field dispersion models would predict initial dilution under any modified discharge condition and that an assessment of probable environmental effects could be based on these modeling data. Another suggested that "reasonable projections of actual impacts (could be extrapolated from the) large body of actual field data on outfalls of various capabilities and geographic areas." Other commenters, however, seriously questioned whether such predictions could be made with the degree of accuracy and certainty required by statute, and noted that, in any event, they would be less reliable than analyses of existing effects.

On the issue of data requirements and burden of proof, some commenters contended that applicants projecting future biological impacts should bear no greater burden of proof than applicants describing existing effects. Others suggested that applicants seeking a modified permit on the basis of proposed outfall improvements should be required only to make a general showing that adverse impact was improbable or unlikely. Still others observed that the applicant's burden of proof in these situations would be extraordinarily difficult.

EPA agrees that while the burden of proof for all dischargers is the same—i.e., all must demonstrate to EPA's satisfaction that they meet the criteria set forth in this section—the uncertainties inherent in predictive analyses will make it more difficult for POTWs seeking a modified permit based on outfall improvements to sustain this burden. As discussed in Section II.A.2., above, EPA believes that it is generally extremely difficult to make accurate predictive analyses of discharge impact.

Applicants seeking a modified permit based on treatment or outfall modifications should, therefore, be prepared to submit substantial additional data to compensate for the lack of direct, empirical evidence of impact (see section E below). As a general matter, this will require more than general extrapolations and comparisons, since the Act clearly requires detailed, site-specific analyses of biological impact.

5. *Bioaccumulation.* EPA received a number of comments urging that, since bioaccumulation might not be detected in field surveys, the Agency's regulations should require applicants to submit evidence that toxic pollutants and pesticides are not bioaccumulating in biota in the vicinity of their discharge. Some commenters urged simply that some type of bioaccumulation data be supplied. Others were more specific, suggesting that applicants be required to analyze representative aquatic organisms at the discharge site for tissue concentrations of toxic pollutants or for the levels of detoxifying enzyme systems.

In response to these comments, EPA has included a question in the marine biological assessment questionnaire requiring the applicant to determine if there is ". . . an abnormal body burden of any toxic material in marine organisms collected within or beyond the zone of initial dilution" (Question 7–8). The data necessary to support the applicant's response to this question will vary with the composition of the applicant's effluent. Where the chemical analysis required by section 125.64 indicates that the applicant's discharge contains no toxic pollutants or pesticides, or where the concentrations and mass emissions of such substances are extremely low, local environmental agencies should be contacted to ascertain whether bioaccumulation studies have been made for that biogeographic area and whether such studies have revealed any accumulation of toxic materials in the tissues of marine organisms. If bioaccumulation studies exist, the applicant should provide copies with its application, and include a comparison of the study populations with those present within and beyond the ZID. If no bioaccumulation studies exist, the applicant should provide a list of all laboratories, departments, and agencies which were contacted.

If the chemical assessment of the applicant's waste stream indicates that toxic materials are present, the applicant will be expected to conduct tissue analyses of marine organisms at the outfall site as part of its monitoring program if a modified permit is granted. The organisms should be examined for toxic pollutants and pesticides demonstrated to be present in the applicant's waste stream.

Given the extensive data already required in the biological assessment, combined with the lack of available standardized procedures for analysis of detoxifying enzyme systems, EPA does not find it necessary to require enzyme data, as suggested by one commenter.

EPA also disagrees with the implicit recommendation by certain commenters that all applicants, regardless of the characteristics of individual waste streams, be required to perform laboratory tissue analyses for all 65 toxic substances. Accordingly, EPA sees very little to be gained in requiring applicants to conduct tissue analyses for pollutants which do not show up in the chemical analysis. However, for applicants receiving modified permits, the biomonitoring program may include a requirement for tissue analysis.

Section 301(h) requires that applicants must establish a system for monitoring

the impact of their discharge on a representative sample of aquatic biota, to the extent practicable. Applicants who claim that in situ bioassays are not feasible must provide an alternate method of meeting this requirement.

6. *Use of bioassays.* In its proposed regulations, EPA required applicants to conduct a toxicity bioassay (96-hour LC_{50}) as part of a general wastewater characterization (43 FR 17506). During the comment period EPA received several inquiries as to how the results of the bioassay would be interpreted since its function in the decisionmaking process was not identified in the proposed regulation. Another commenter stated that "the only feasible way to determine the impact of pollutants on biota at this time is by the bioassay technique using a 96-hour TLM on a representative number of organisms."

In response to these comments, and suggestions that the bioassays be used for anything from an evaluative factor to a pass/fail criterion, EPA has re-examined its proposed bioassay requirements. There are two basic problems associated with running and interpreting bioassays on municipal waste discharged to the ocean, namely, conducting bioassays with fresh water effluents and marine organisms and correlating laboratory bioassay results with field impacts. EPA has developed procedures, using salts to adjust the salinity of the wastewater, which make it possible to run a bioassay which will accurately measure the acute toxicity of the wastewater. Nevertheless, EPA does not have sufficient information at the present time to correlate a particular laboratory bioassay result with the existence or non-existence of a balanced, indigenous population either within or immediately beyond the ZID. For this reason, and because other biological data requirements adequately provide the basis for evaluating ecological effects, the requirement that applicants run a 96-hour LC_{50} has been deleted from the wastewater characterization.

7. *Other issues.* Numerous commenters criticized the data required by EPA for the biological assessment as unnecessarily elaborate. One commenter contended that no biological assessment should be required where the applicant demonstrates compliance with applicable water quality standards. Other commenters characterized the proposed biological requirements as "extend(ing) beyond the realm of the standard outfall monitoring (and as) more relevant to a major research project." These commenters proposed that biological assessment of outfall effects be limited to: (1) acute data (fish kills, algae blooms), (2) chronic data (disease, abnormalities and bioaccumulation of toxics), and (3) an evaluation of "seasonal patterns of distributions and abundance."

Limiting the biological assessment to a few biological parameters would not provide the information necessary to make a section 301(h) determination. The requirement does "extend beyond the realm of standard outfall monitoring" as this is necessary to meet the requirements of section 301(h)(2). Compliance with applicable State water quality standards is essential and required by the statute, but Congress clearly intended applicants to make additional, direct, site-specific demonstrations under section 301(h)(2) of the existence of a balanced, indigenous population of shellfish, fish and wildlife.

D. *Recreational Impact Assessment.* In its proposed regulations implementing section 301(h)(2), EPA required an applicant to demonstrate, based on a detailed analysis of the impact of its discharge on existing and potential recreational activities within a three-mile radius of the outfall, that the discharge would permit the attainment or maintenance of water quality which would allow recreational activities, and comply with State water quality standards designed to protect recreational water uses.

Two changes have been made in this section in response to public comment.

1. *Impact area.* Several commenters questioned EPA's proposed requirement that recreational impacts be analyzed within a three-mile radius of the outfall. One commenter recommended that "this be reduced to that distance required to reduce pollutants to ambient receiving water conditions by mixing and dilution." Another suggested that the three (3) mile radius "is far too short, given the ability of finfish to be contaminated by an outfall and then travel or migrate far more than three miles from the outfall in a matter of hours" and urged that consideration of recreational fisheries with a radius of at least ten (10) miles be required.

Although under most circumstances the Agency would not anticipate adverse recreational impact beyond a three-mile radius, the limitation is somewhat arbitrary since adverse recreational impacts may occur in some circumstances beyond the three-mile boundary. Accordingly, in these final regulations, EPA has eliminated the requirement that applicants evaluate recreational impacts within a uniform geographical area, and instead will require applicants to analyze recreational impacts within the area of potential discharge impact, as identified in the analysis of wastewater dispersion and transport required by the physical assessment. This should provide a much better indicator of the actual areas where an applicant's discharge is likely to have an effect on recreational water uses.

2. *Federal, State and local restrictions on recreational activities.* EPA received conflicting comments on its proposed requirement that an applicant include in its recreational activities analysis a discussion of State, Federal or local restrictions on shellfishing and other recreational activities in the vicinity of its outfall. Some commenters felt that such restrictions (particularly shellfish closures) are routinely imposed on all sewage outfalls, irrespective of the degree of wastewater treatment provided, and should not be deemed a basis for denying a modification.

EPA agrees that it makes little sense to deny a modified permit on the basis of a shellfish closure, swimming ban or other recreational restriction which is imposed on an applicant's outfall simply because it is discharging municipal wastewater. However, there may be some circumstances where the level of treatment does affect the nature of the restriction. For example, a shellfish closure area for a raw discharge may be much larger than that imposed around a secondary discharge. In these cases, EPA believes it is appropriate to conclude that recreational restrictions are attributable to the applicant's level of treatment, that its less-than-secondary discharge has an adverse impact on recreational activities, and therefore that no modified permit should be granted. The proposed regulations have been revised to reflect this concept.

3. *Other issues.* Several commenters suggested that an applicant should not be required to submit a detailed inventory of recreational activities unless its discharge would violate State water quality standards. Since no modification will be issued for a discharge which does (or will) not comply with State water quality standards, the suggested approach makes little sense. Additionally, since the Act requires applicants to demonstrate that they will meet the requirements of section 301(a) *in addition to* water quality standards under section 301(b)(1)(C), Congress apparently meant that mere demonstration of compliance with State water quality standards would not

necessarily be sufficient to show compliance with sections 301(h)(2) and 102(a)(2). Accordingly, in the final regulations EPA has retained the requirement that all dischargers provide an in-depth analysis of the impact of their discharge on recreational activities.

E. *Additional application requirements for improved discharges.* As discussed in some detail in section II.A.2., above, these final regulations have been revised to allow POTWs to apply for a modified permit based on the projected impact of their discharge after completion of well-planned improvements in their outfall/diffuser system, in wastewater treatment, or both.

The regulations assume that proposed improvements are designed to alleviate adverse physical, recreational or biological impacts at the applicant's current site which would preclude granting a modified permit for its current discharge. They require applicants to (1) document those adverse impacts by completing a physical, biological, public water supply and recreational impact assessment for their current discharge; (2) provide final plans for all improvements and computations for any changes in discharge volume, flow rates, initial dilution or other factors which will result from such improvements and are likely to affect the impact of their discharge; and (3) demonstrate in detail how the completion of improvements will eliminate all identified impacts caused by their current discharge and assure compliance with the physical, biological, public water supply and recreational impact criteria contained in this section.

This analysis, however, should be tailored to site-specific conditions. Thus, for example, where natural conditions preclude certain recreational activities (*e.g.*, extremely cold water temperature limiting swimming and diving), the applicant need supply only a brief explanation under this section. On the other hand, where a discharge is located in an area currently used for, or conducive to, recreational activities, a much more extensive demonstration will be required.

One commenter proposed that the demonstration required under this section be based on a comparison of the impact of the applicant's less-than-secondary discharge with a secondary effluent. EPA disagrees. Consistent with the Act, its legislative history, and other sections of these regulations, the regulations promulgated today, like the proposed regulations, require the assessment under section 301(h)(2) to be made on the basis of the actual or projected impact of the applicant's discharge, not in comparision to the impact of a secondary discharge.

Where the improvements proposed by an applicant include outfall relocation, it should also prepare a physical, biological, public water supply and recreational assessment on its relocation site as well as its current site.

F. *Stressed waters.* In § 233.11(a)(iv) of its April 25, 1978 proposal, EPA proposed to prohibit modified discharges into marine waters which were already stressed. The theory was that where waters are already stressed by pollution, the need is for additional control, not less, for therefore, there should be no relaxation of secondary treatment requirements in such waters.

EPA received numerous comments on this section. Although several commenters supported EPA's approach, many criticized it as vague and illegal. Still other commenters charged that it was unfair because it could penalize applicants for pollution from sources over which they had no control.

In response to comment, EPA has fully re-evaluated its proposed regulation and its approach to the problem of stressed waters. The Agency has concluded that since the primary measurable indicator of whether waters are environmentally stressed is their inability to support a balanced, indigenous population, the existence or non-existence of stressed water conditions would be reflected in the biological assessment required by this section.

This approach does not, however, respond to the most difficult issue raised during the comment period—whether a modification should be issued for a discharge into waters which do not support a balanced, indigenous population, consistent with the objectives of section 301(h)(2) and 101(a)(2), as a result of sources of human perturbation other than the applicant's discharge (*e.g.*, other municipal and industrial outfalls and non-point sources of pollution). EPA agrees that since section 301(h) focuses on the effect of the applicant's discharge, as opposed to other human perturbations, a modified permit should not be denied simply because an applicant discharges into polluted waters. However, where the applicant's discharge contributes to, increases, or perpetuates the pollution and associated adverse impacts on recreational activities or marine like, or where it would contribute to such impacts if the levels of pollution from other sources were increased, it "jeopardize(s) the goal of attaining water quality which will provide for the protection (and) propagation of fish, shellfish and wildlife and allow recreation in and on the water". (1977 Leg. Hist. at 1052). Similarly, where the applicant's discharge would retard the recovery of marine life and water quality if the levels of pollution were reduced, it interferes with the "(r)estoration of aquatic ecosystems which existed prior to the introduction of pollution from man's activities. . .an essential aspect of assuring that future generations will have an adequate supply of basic life support resources." (1977 Leg. Hist. at 448). In such circumstances, the Act prohibits the issuance of a modified permit. These restrictions have been incorporated in paragraph (f) of § 125.61 of these regulations.

As a practical matter, it will be extremely difficult for most applicants discharging into stressed waters to demonstrate that their discharge will meet the requirements of section 125.61. As a factual matter, the discharge of additional pollutants into an already polluted marine environment virtually always increases or contributes to adverse impact; it is extremely difficult, as a practical matter, to demonstrate that it does not. Where, for example, an applicant claims that the failure to attain or maintain a balanced, indigenous population is due to pollution from other sources, it must (1) document the differences between the marine communities that currently exist in the vicinity of its outfall and the balanced, indigenous population that would exist in the absence of all sources of pollution; (2) demonstrate that its discharge is not contributing to the present biological degradation associated with stressed waters by comparing the marine populations at the outfall site with those at a similarly stressed control site (absent its discharge); and (3) demonstrate that its discharge will not contribute to further degradation of the biota if the level of pollution from other sources increases, and will not retard the recovery of the biota if the level of pollution from other sources decreases. This latter showing, which requires a predictive analysis of biological responses to future pollution, is so difficult that EPA is unable to provide specific guidance or suggested analytical procedures for making this demonstration.

In summary, while these final regulations do not prohibit the issuance of permits into stressed waters, and the criteria in § 233.11 of the proposed regulations have been deleted, the final regulations do require the applicant to make additional showings and may

require additional monitoring tasks regarding biological conditions if a permit is requested for discharge into stressed waters.

Section 125.62 Establishment of a monitoring system. (formerly § 233.16). EPA has adjusted it final regulations on monitoring to take into account improved discharges, new toxic control program requirements, and the approach for evaluating compliance with the balanced, indigenous population requirements. Plans for a monitoring program, along with a demonstration that it has the economic and technical resources and the personnel to implement the proposed programs immediately upon issuance of a section 301(h) permit, must accompany the application. Each monitoring program will depend on the specific site and discharge in question, and may be required to include: 1) field studies of the structure and function of the macrofaunal benthos and other biological communities that may be affected by the discharge; 2) if toxic pollutants or pesticides are identified in the applicant's discharge, in situ bioassays with caged organisms to establish effects on the survival and well-being of test specimens, and bioaccumulation of toxic substances; 3) studies of discharge effects on nearby fishery resources; 4) studies on biological effects of sediments heavily contaminated with toxic substances including pesticides; 5) water quality monitoring programs to establish compliance with applicable State water quality standards at the boundary of the zone of initial dilution and elsewhere; 6) chemical analyses of an applicant's discharge in order to measure effectiveness of its program in reducing toxic pollutants, including pesticides, in its discharge and to guide biological monitoring efforts.

Monitoring programs will vary in complexity depending on characteristics of the discharge and sensitivity of the receiving waters. For example, an applicant discharging into an estuary will be required to develop a more complex monitoring program, with more frequent sampling, than an applicant with a comparable discharge into the ocean. Though the regulations identify features common to all of the monitoring programs, the specific test procedures, organisms and sampling intervals must be chosen by applicants as appropriate for a particular waste stream and discharge site. EPA will review the monitoring program proposed in the application and determine whether it is adequate to assess discharge effects on the indigenous population. If the proposed program is not adequate, EPA will recommend necessary changes or additional procedures which an applicant shall adopt into its monitoring program.

To evaluate the actual impact of a discharge on an indigenous population, applicants must design field studies of the outfall area. These field studies must: (1) produce data which indicate whether or not the biological communities in the area of the outfall are remaining healthy and balanced, and (2) monitor specifically any community reported to be perturbed at the time of application.

To monitor the health and balance of indigenous populations, field studies must address the same parameters as the biological conditions summary. In this regard, the structure and function of the macrofaunal benthos must be monitored by all applicants. As appropriate, the following communities should also be monitored: demersal and pelagic fishes, macrofaunal benthos, phytoplankton, zooplankton, macroalgae and intertidal assemblages. Characteristics of communities that should be monitored include species composition, abundance, dominance, diversity and spatial stratification, particularly along depth contours. Changes in size frequencies, reproductive condition or incidence of disease in populations also should be reported. Sampling must be sufficiently frequent to detect changes in community composition, structure or function, especially where perturbed situations are known to exist. In the latter case, increased sampling may be in order.

Proposals for monitoring programs should include a rationale for the choice of sampling and analytical methods; the selection of test species used for *in situ* bioassays and bioaccumulation studies; the selection of biological communities to be monitored in the field; the location and frequency of field surveys, bioaccumulation studies, and bioassays; and the methods to be used in monitoring fishery resources near the outfall. The section 301(h) Technical Support Document contains additional guidance for the design of the biomonitoring program.

If data generated by field studies indicate that disruption of the balanced, indigenous population has resulted from discharge of less than secondary treated effluent, the Agency will determine whether an immediate remedy is possible through increased pretreatment, source control or other means. If not, or if there is doubt that increased control short of secondary treatment would alleviate the situation, the Agency must conclude that significant disruption of the population has occurred, and the modification will be revoked. Where the disruption can be relieved through additional controls, the permit holder will be required to design and implement these controls and to notify EPA of a time interval within which the disruption will cease. The permit holder also should increase monitoring activities. If at the end of the time interval the disruption still exists, the section 301(h) modification will be revoked.

The majority of comments received by EPA concerned the implementation date for biological monitoring and the details required for effective biological monitoring of various discharges. Commenters recommended a range of dates for implementation of monitoring programs. One commenter stated that "data from an EPA approved monitoring system must be available from at least five years" prior to the application. Another commenter suggested that monitoring programs be in effect by September 24, 1978. Another stated that a "firm commitment" to establish a monitoring system should be sufficient at time of application.

The commenter recommending five years of monitoring data as a prerequisite to any Agency decision on an application described several functions served by historical data. In the case of currently operating outfalls, such monitoring data would reveal actual impacts of the discharge on the marine environment. For new (and presumably improved) outfalls, past monitoring data would provide information about the water's flow characteristics, temperature and pH ranges and native marine life. EPA agrees that this type of information would be helpful in section 301(h) modification decisions but recognizes that such an extensive data base will not be available in many cases. Some of this information will be contained in the application in the Marine Biological Questionnaire, Biological Conditions Summary, and chemical assessment. This past data should be in a form suitable for scientific comparisons to data from planned studies.

Applicants need not install monitoring programs at the time of application since, for the purposes of section 301(h) monitoring, data are relevant only to those applicants actually receiving a section 301(h) modification. However, monitoring of the effects of modified secondary treatment requirements on the marine ecosystem must begin as soon as practicable after issuance of a section 301(h) modified permit. The mere

commitment to develop a monitoring program is insufficient to fulfill the statutory requirement for the demonstration that a monitoring program is established at the time of application.

EPA expects that the level of detail of the biological monitoring programs will reflect the specific nature of the applicant's discharge and the characteristics of the receiving marine ecosystem. Monitoring will be "continuous" in the sense that sampling will be conducted at regular intervals over the life of the project as dictated by the specific characteristics of the discharge and outfall site.

Several commenters suggested that a standardized monitoring program be conducted by all applicants at predefined intervals. EPA believes that so much variation exists among cases that adequate standardized monitoring requirements cannot be devised. Program design will be unique to each case.

Section 125.63. Effect of discharge on other point and nonpoint sources. (formerly § 233.17). EPA received two comments on this section. One stated that the regulation was vague. The other noted that the requirement that letters be obtained from agencies which have authority to *advise* in the *establishment*, as opposed to *establishing*, wasteload allocations would add additional delay and cost to the application process and would give advisory agencies a veto over State agencies which have authority to establish wasteload allocations. The latter commenter recommended that the OMB A–95 clearinghouse process be utilized to accommodate the input of advisory agencies.

While EPA believes that the regulations are sufficiently precise as written, the following narrative provides additional explanation. Section 301(h)(4) reflects Congress' concern that a relaxation of pollution control requirements for one or more dischargers in the same water body, particularly a partially enclosed water body such as an estuary, could force the remaining dischargers to utilize additional treatment, best management practices, or source controls to insure maintenance of water quality standards, uses, or compliance with other restrictions. Section 301(h)(4) is meant to assure that no modification will be granted which would have the effect of imposing additional pollution control requirements on other point and nonpoint sources discharging into the same water body.

Neither the statute nor this section should be construed as prohibiting EPA from imposing pretreatment or source control requirements on industrial or nonindustrial contributors to a POTW seeking a section 301(h) modification. Such a construction clearly would be inconsistent with sections 301(h)(2), 301(h)(5) and 301(h)(6) of the Act. Nor should section 301(h)(4) be interpreted as preventing EPA or a State from establishing additional or more stringent requirements for municipal or industrial dischargers independent of the section 301(h) process.

EPA's basic objective in requiring agencies which have an advisory role in the establishment of wasteload allocations to affirm that the issuance of a modified permit will meet the requirements of section 301(h)(4) is to assure that the diverse interests represented by such agencies are fully aired before the Agency. Since EPA must make the ultimate determination under section 301(h)(4), an adverse opinion of an advisory agency would not operate as an automatic veto of a favorable determination by a State agency with authority to establish wasteload allocations. It could, however, serve to point out deficiencies in the State agency's determination which might merit further investigation by EPA prior to making its final decision on issuance of a section 301(h) permit. EPA envisions that the agencies involved would include those which participate in a State's water quality management planning process, *e.g.*, a designated State or areawide planning agency under section 208 of the Act.

EPA considers the OMB A–95 clearance process, which does not always adequately surface opposition to a lead agency's determination, to be somewhat unsatisfactory, and therefore elects to retain the provision with minor changes for clarification.

125.64 *Toxic Control Program (formerly §§ 233.14(b), 233.18 and 233.19).* This new section incorporates the requirements for a chemical analysis, an enforceable industrial pretreatment program, and a program of activities for non-industrial source controls previously contained in three separate sections.

Under proposed § 233.14(b), applicants were required to perform a chemical assessment of the POTW effluent. Applicants had to show that the more stringent of the following requirements would be met, either: (1) their existing discharge would not exceed EPA water quality criteria both in the effluent or following initial dilution, depending upon whether the constituent criterion was for a synthetic organic chemical or a naturally occurring heavy metal; or (2) the toxic pollutant concentrations in their existing discharge are not greater than that achieved by secondary treatment (referred to as secondary equivalency).

After reviewing the public comments on the proposed regulation and re-evaluating the technical documentation, EPA determined that changes in the chemical assessment requirements were necessary. The above-mentioned requirement that the applicants meet EPA water quality criteria or secondary equivalency has been eliminated in the final regulation. Emphasis now is placed on implementation of toxics control programs by the applicant aimed at reducing toxic pollutant and pesticide concentrations in the POTW effluent after a section 301(h) modified permit is issued. However, the applicants still must submit the results of a chemical analysis with their application.

The toxic control program requirements are designed to reduce or eliminate the discharge of toxic pollutants into the applicant's wastewater collection system, develop and monitor toxic controls, and also monitor the discharge of toxic pollutants into the marine environment. The required control and monitoring programs in §§ 125.64 and 62, respectively, will be based on chemical analyses which identify toxic pollutants in the applicant's wastewater.

The toxic control program consists of the following general requirements:

1. Chemical analyses of the existing discharge effluent for the toxic pollutants and pesticides.

2. Analysis and identification of the sources of toxic pollutants in the wastewater, both industrial and non-industrial.

3. Development of source control programs to reduce or eliminate the discharge of toxic pollutants and pesticides from the wastewater.

4. Development of a monitoring program to determine the effectiveness of the source control program.

5. Development of a monitoring program to determine the impact of the identified toxic pollutants on the receiving water and marine environment.

The applicants shall submit in their final application a chemical analysis of the existing wastewater discharge (See Part E, section 1 of the Application Format). Analysis of 24-hour composite wastewater samples for wet and dry weather flows must be provided. Some municipalities have performed chemical analyses for toxic pollutants,

particularly heavy metals and pesticides, on existing effluents for some time. As a result, a data base may be available that characterizes some POTW effluents (in terms of types and concentrations of toxic pollutants) better than could be done with two 24-hour composite samples. Thus, applicants may supplement such data for those pollutants requested for the 24-composite sample, but must demonstrate that the alternate samples from which the concentrations are derived are representative of both wet and dry flow conditions.

All toxic pollutants and pesticides which are detected by the chemical analysis, even though the measurable concentrations are below the recognized limits of detection, must be incorporated in the toxic control program. These are referred to as "identified toxic pollutants." All applicants shall identify known and possible sources of the identified toxic pollutants, including industrial and non-industrial sources. At the same time, applicants shall submit programs (including implementation schedules) for the control of toxics from those sources.

The final element of the toxic control program is the applicant's monitoring program. The monitoring program should be able to determine: (1) if additional toxic pollutant coverage is needed; (2) the effectiveness of the source control programs; and (3) the impact of the discharge of toxic pollutants on the receiving waters. The chemical analysis requirements have been incorporated into the monitoring program (§ 125.62).

The toxic control program replaces compliance with EPA water quality criteria as a basis for evaluating applications. It does not prevent EPA from denying a section 301(h) permit if monitoring data shows that, because of the discharge of toxic pollutants, unacceptable bioaccumulation of toxics has occurred in the marine benthos and other organisms outside the zone of initial dilution (see Biological Assessment, § 125.61(c)). Also, it should be noted that revisions to the chemical assessment requirements will not allow an applicant to exceed either water quality standards for toxic pollutants or other substances, or federally promulgated water quality standards.

The Agency's review of applications will consider the quality of the toxics control program submitted by the applicant and its ability to implement it. The decision on whether or not to continue the section 301(h) modified permit will be based on the applicant's performance in operating the source control and monitoring programs, plus the reported results of the monitoring program. A more detailed discussion of comments made and EPA responses to previous individual sections now comprising the toxic control program requirements follows.

(A) *Chemical analysis (formerly § 233.14(b)).* In addition to a biological and physical assessment, the proposed regulations required applicants to perform a chemical assessment for toxic pollutants to show compliance with § 233.14. This assessment was required for a list of 65 toxic substances published by EPA under section 307(a) of the Act (43 FR 4108, January 21, 1978), plus six pesticides in EPA's *Quality Criteria for Water* that are not included in the list of 65 toxic substances. When generic classes of toxics are specified by compound, the list of 65 expands to 129 toxic substances.

For compliance purposes, the list was divided into two categories: (1) naturally occurring substances, such as metals; and (2) persistent organic compounds, such as PCBs. Regarding the first category, the proposed regulations required that no discharge could exceed the EPA-recommended criteria following initial dilution. For persistent organic compounds, EPA-recommended criteria were to be met in the sewage effluent with no allowance for dilution. In both cases, applicants were required to show that the effluent concentrations were equivalent to that achieved by secondary treatment. Under the proposed requirements, applicants would have had to meet the more stringent of the above limitations.

No chemical analysis was required for substances that the applicant could certify would not be in the POTW effluent. This provision was intended to provide relief to dischargers with little or no industrial inputs.

The secondary equivalency requirement was included in the proposed regulations based on Congressional statements that there should be no increase in the discharge of toxic pollutants as a result of the 301(h) modification. By including the secondary equivalency requirement, the Agency required applicants to show that the amount of toxic pollutants discharged would be no greater than that which would occur if secondary treatment was employed. The Agency recognized that this determination would be difficult since little information currently is available on the fate of many toxic pollutants when subjected to various secondary treatment technologies. Because of this, the proposed regulations stated that if the toxic pollutants removal efficiency of secondary treatment could not be determined, only compliance with EPA-recommended criteria would be required. Acknowledging the uncertainty of the proposed secondary equivalency requirements, EPA specifically solicited comments on this issue in the proposed regulations.

During the public comment period, EPA received many comments on the chemical assessment portion of the proposed regulation. Some commenters responded to specific issues raised in the proposed regulations, including: (1) secondary treatment equivalency for toxic pollutants; (2) predictive chemical analysis for proposed facilities; and (3) use of proposed pretreatment and nonindustrial source control programs in predicting the reduction in the toxic pollutants.

Additional comments on this section addressed the following issues: (1) use of an initial dilution concept to distinguish between heavy metals and synthetic organics; (2) the relationship of suspended solids discharge levels to toxic pollutants concentrations; (3) the development of water quality criteria by EPA; (4) the chemical assessment of bottom sediments; (5) analytical methods to measure toxic pollutant concentrations; (6) whether technology-based limitations are replaced by ambient water quality standards in the chemical assessment section; (7) whether dischargers have to meet State water quality standards for toxic pollutants or EPA-recommended water quality criteria; (8) the significance of pollutants not on the section 307(a) list of 65 toxic substances; and (9) whether toxic control programs should be applied to all dischargers, not just those applying for a section 301(h) modified permit.

The specific and general issues raised by commenters will be addressed in three broad categories: (1) secondary equivalency; (2) water quality criteria; and (3) general toxic pollutant issues.

(1) *Secondary equivalency.* As noted above, § 233.14(b) of the proposed regulation required applicants to show that: (1) their existing discharge would not exceed EPA water quality criteria either in the effluent following initial dilution or depending upon the nature of the toxic; or (2) toxic pollutant concentrations in their existing discharge would be equivalent to that attained by secondary treatment, whichever is more stringent.

Some commenters supported EPA's proposed secondary equivalency approach regarding toxic pollutant removal. In fact, they believed that more

stringent toxic pollutants limitations should be imposed in section 301(h) modified permits. However, the majority of comments were opposed to this part of the proposed regulation. They maintained that the legislative history of section 301(h) would not support EPA's position that toxic pollutant concentrations in less-than-secondary treatment facilities could never exceed that achieved by the application of secondary treatment. They believed that in no case would an applicant be able to meet the proposed requirements with anything less than secondary treatment technology.

Two principal arguments were presented against the secondary equivalency requirement as published in the proposed regulation. First, dischargers maintained they would still have to comply with State water quality standards, regardless of the treatment processes employed or whether the applicant received a section 301(h) modified permit. Thus, the secondary equivalency requirement would be unnecessary from the standpoint of environmental impact. Second, preliminary monitoring data submitted by some commenters indicated that toxic pollutant concentrations in chemical primary treatment process effluent were only 10–15 percent greater than in secondary treated effluent. Commenters believed this increase would not result in environmental degradation.

EPA proposed this requirement because it inferred from the legislative history that there should be no increase in the discharge of toxic pollutants as a result of section 301(h) modified permits. However, EPA agrees that requiring secondary equivalency would not have allowed any modification of secondary treatment requirements for many section 301(h) applicants. This clearly was not the outcome envisioned by Congress when they added section 301(h) to the Act. Therefore, EPA has decided not to apply the secondary equivalency requirement in the final regulations. However, under other parts of the final regulations, applicants still will be required to measure toxic pollutant concentrations in the treated sewage effluent and develop a program to prevent any adverse effects of toxic pollutants.

The proposed regulation required chemical analyses for toxic pollutants and pesticides in both settled and unsettled samples of the treated effluent. EPA anticipated that the results of both analyses could be used to estimate secondary equivalency. Some commenters said that, based on the settled sample analysis, secondary equivalency would be difficult to determine and impossible to verify. One commenter presented an alternate method for making the secondary equivalency determination, based on suspended solids analysis. After reviewing the comments, EPA concludes that good estimates of toxic pollutants removal through use of secondary treatment cannot be made at this time. Thus the secondary equivalency requirement is being removed from the final regulation.

In addition to the secondary equivalency requirement, EPA anticipated that settled and unsettled sample analyses could be used to determine solids accumulation on the seabed. However, EPA scientists have advised that, based on the existing technical data, a defensible correlation between settleable solids in POTW effluent and seabed deposition of settleable solids is not possible. As a result, EPA is eliminating the settled sample analysis from the chemical analysis requirements.

(2) *Water Quality Criteria.* (i) *Initial dilution.* The Agency received comments on part of the proposed regulation which required compliance with EPA-recommended criteria for the toxic pollutants and pesticides. The proposed regulations effectively would have made water quality criteria for the so-called synthetic organic pollutants into end-of-pipe effluent limitations. For heavy metals and potentially naturally occurring constituents, "initial dilution" was allowed.

Some commenters opposed the prohibition of "initial dilution" for synthetic organics, claiming that would place an additional and unnecessary safety factor on the water quality criteria. They argued that application factors had already been used to establish the water quality criteria in the first place. Establishing the additional no-dilution policy was tantamount to admitting that, in fact, EPA-recommended criteria for synthetic organics were not stringent enough to protect ambient marine waters.

Other commenters supported the Agency's "no initial dilution" policy. They believed the same policy should be applied to all toxic pollutants including heavy metals, because such substances are persistent, exhibit bioaccumulative properties and are not affected by biogeochemical processes. The application of this policy to a broad class of pollutants such as "synthetic organics" was also questioned. Some commenters questioned whether all the toxic pollutants and pesticides would have an effect on the marine environment.

EPA proposed the "no initial dilution" policy for synthetic organics because the long term impact of these pollutants on the marine environment is known to be independent of dilution associated with solids, oils, or surface slicks, and because they are readily accumulated in lipid fractions of marine organisms. Heavy metals were not grouped together with synthetic organics since heavy metals are found naturally in the marine environment, and many of the known effects are dilution dependent (except possibly for lead, cadmium, and mercury). California has made this distinction in its Ocean Plan since 1972. Further, EPA's proposed use of the numerical criteria for the toxic pollutants and pesticides exceeded the intended regulatory impact of those criteria under section 304(a) of the Act (see a discussion of EPA recommended criteria at 44 FR 15926, March 15, 1979). Because of this, no distinction is made between groups of toxic substances and pesticides which are naturally occurring and those classified as synthetic organic chemicals. Further, applicants will not have to demonstrate that their effluent does not exceed EPA water quality criteria (with or without dilution) for reasons described below.

(ii) *Analytical methods.* The Agency received comments on the analytical methods available to measure toxic pollutants in wastewaters. Commenters referred to the high cost of these procedures and the questionable accuracy of the proposed methods in measuring low toxic pollutant concentrations.

On June 16, 1978, EPA published a notice of availability of procedures to comply with the chemical assessment requirements of the proposed section 301(h) regulations (43 FR 26126). These procedures were contained in an EPA publication entitled *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants* (the screening protocol). Analytical procedures for heavy metals and traditional pollutants are those published in 40 CFR Part 136 (Guidelines Establishing Test Procedures for the Analysis of Pollutants); procedures for measuring synthetic organic chemicals are described in the screening protocol, but have not been promulgated by EPA in 40 CFR Part 136.

These procedures are designed for measuring pollutants concentrations in industrial effluents, not municipal effluents. Recognizing the potential difficulty of using the screening protocol to measure municipal effluents, EPA

asked applicants to provide quality assurance/quality control data along with reported results. While such data improves the statistical confidence of the reported results, it does not reduce the analytical limits of detectability for the toxic pollutants and pesticides below 10 mg/1. Since many existing water quality criteria recommended by EPA are more stringent than 10 mg/1, it would be impossible to ensure compliance with those criteria using the screening protocol.

Since quality assurance/quality control does not improve the analytical limits of detectability and because some EPA criteria are below the analytical limits of detectability, EPA will not require applicants to prove their effluents will not exceed water quality criteria for toxic pollutants and pesticides.

(iii) *Availability of Criteria.* Some commenters asked whether or not EPA would publish water quality criteria for the 65 toxic pollutants by the time section 301(h) regulations were promulgated. EPA originally had planned to publish these criteria by July 1978, but the schedule has been extended. EPA recently published a notice of availability of 27 draft criteria documents (44 FR 15926, March 15, 1979). We do not expect to publish final criteria documents for all 65 toxic substances until the end of this year, at the earliest.

EPA believes that the comments on the availability of published water quality criteria are no longer relevant, since applicants will not be required to compare the results of their toxics control monitoring program with EPA-recommended criteria. For the purposes of section 301(h), when such criteria are available, they will be used by EPA to evaluate the effectiveness of pretreatment control programs set up by the applicants. As noted earlier, EPA-recommended criteria will not be used by themselves to determine whether or not an applicant qualifies for a section 301(h) modified permit.

(3) *General Toxic Pollutant Issues.* (i) Comments were received on alternate methods to be used by applicants to certify that toxic pollutants are not in the POTW effluent. Presumably, small POTWs receiving little or no industrial effluent would be able to affirmatively demonstrate that they had no toxic pollutants in their effluent by characterizing the toxic pollutants (if any) in the industrial wastewater. This would enable the small POTW to avoid the costly chemical analyses required for most POTWs wastewaters. However, current monitoring data shows that we cannot make such assumptions about small POTWs. Only by conducting chemical analyses required in this regulation will it be possible to conclude that toxic pollutants are not present in POTW effluents. Therefore, all applicants for section 301(h) modified permits will have to perform chemical analyses on their wastewaters.

(ii) Comments were received on the relationship of toxic pollutants to disposition of settleable solids in the bottom sediments. Much field data on the effects of ocean outfalls on marine life relate to the accumulation of settleable solids near the ocean outfall. Commenters pointed out that compliance with ambient water quality criteria in the water column does not necessarily bear any relationship to the impact of wastewaters on the benthic sediments and associated marine life. Toxic pollutants which are relatively insoluble are retained in the suspended solids fraction of the wastewater. When all or part of this fraction settles to the bottom sediment, benthic communities and fish that feed on the benthos may bioaccumulate those toxics.

EPA believes that there is sufficient technical data available to justify its concern over benthic loading near sewage outfalls. EPA disagrees with commenters who maintain that there is little accumulation of toxics in the benthic sediments due to rapid dispersion of wastewaters by strong currents and tidal action. EPA agrees that benthic loading of toxic pollutants cannot be predicted based upon ambient water concentrations. Therefore, it has included a requirement for benthic sediment evaluations for toxic pollutants as part of the physical assessment and subsequent monitoring requirements.

(iii) Finally, comments were received on the presumptive applicability of section 304(a) water quality criteria to all territorial seas of the U.S. One commenter said there was no basis for assigning a threshold concentration for certain pollutants, and that no effective techniques exist for predicting the effects of pollutants on marine communities.

EPA's current policy on use of section 304(a) criteria in State water quality standards is discussed in two recent Federal Register notices (43 FR 29588; July 10, 1978 and 44 FR 15926; March 15, 1979). Although site-specific conditions may warrant use of criteria other than those recommended under section 304(a), EPA now believes those criteria are sufficiently stringent to protect marine communities in most biogeographic areas. EPA policy requires that State regulatory agencies must technically justify alternative criteria less stringent than EPA recommended criteria.

(b) *Enforceable pretreatment program (formerly section 233.18).* Since proposal of these regulations, EPA has promulgated General Pretreatment Regulations (43 FR 27736, June 26, 1978). This section has been changed as a result of those new requirements. Two major issues were raised during the comment period concerning EPA's proposed regulations implementing section 301(h)(5) of the Act (requiring a section 301(h) applicant to demonstrate that all applicable pretreatment requirements for sources discharging into its facility will be enforced):

(1) Should POTWs be allowed to grant revisions to their industrial users' National Pretreatment Standards to reflect treatment by the POTWs under § 403.7 of the General Pretreatment Regulations?

Since Congress provided in section 307(b) of the Act that POTWs can grant revisions to National Categorical Pretreatment Standards to reflect POTW removal, EPA cannot eliminate that option. However, POTWs should carefully consider whether to grant such revisions since they may significantly contribute to adverse impacts in the marine environment which would disqualify the POTWs application for a section 301(h) permit based on either the POTWs current discharge or an improved discharge.

(2) The time when section 301(h) applicants should be required to put a pretreatment program into effect—*i.e.*, prior to receipt of a section 301(h) permit, at the time a section 301(h) permit is issued, or within a reasonable time after issuance of a section 301(h) permit. One large POTW suggested that the time period for implementing the pretreatment program should be extended from eighteen to twenty-four months (or such additional period of time as EPA might allow) for all POTWs, because the proposed eighteen-month deadline was arbitrary, unattainable, and would force applicants to implement a less than comprehensive pretreatment program. No other large POTW with industrial contributors, objected to the proposed eighteen month deadline. The Agency does not view the eighteen month deadline as unreasonable, since it generally coincides with the scheduled promulgation of toxic pretreatment standards under the consent decree entered in *Natural Resources Defense Council, Inc., v. Train,* 8 ERC 2120

(D.D.C. 1976), as modified by *National Resources Defense Council* v. *Costle*, 12 ERC 1833 (D.D.C. March 9, 1979). It is imperative that national pretreatment standards for the control of sources discharging into these facilities be implemented as soon as possible after their promulgation because section 301(h) POTWs will not be utilizing secondary treatment to remove toxic pollutants.

Several commenters suggested that EPA postpone its decision on section 301(h) applications until the applicant's pretreatment program is actually implemented or until all national pretreatment standards have been promulgated. Because this course of action could unnecessarily delay decisions on section 301(h) applications, with resultant delays in treatment construction, EPA has determined not to adopt it.

Where an applicant (1) would discharge increased toxic pollutants as a result of less-than-secondary treatment and (2) receives waste from one of the twenty-one industries identified as subject to pretreatment requirements in 40 CFR Part 403, the final regulations require that a pretreatment program designed to control the introduction of toxic pollutants into the municipal system be established by the time of application. Such program is to address existing problems that the POTW has experienced with the introduction of toxic pollutants, including any problems that cause or substantially contribute to violation of any effluent limitations contained in a NPDES permit, interfere with sludge treatment or disposal, or violate any existing water quality standards. The program must contain provisions to sufficiently limit introduction of such pollutants into the municipal system and adequate legal authorities to enforce such limitations. In addition, the program must provide adequate funding levels and qualified personnel to effectively implement the pretreatment program. The regulations do allow additional time (up to the expected date of issuance of a modified permit) to complete this submission where the applicant can show it has made substantial effort towards obtaining the necessary legal authorities, funding, and personnel, but cannot complete these activities prior to submittal of its application due to time constraints imposed by State or local law. Finally, the regulations require that, within eighteen months of issuance of a modified permit, the POTW must have developed and must implement a pretreatment program in full compliance with the General Pretreatment Regulations. Such a program must contain a complete inventory of all industrial sources under the twenty-one categories of industry identified in 40 CFR Part 403, together with an inventory of other industrial sources which contribute non-domestic pollutants which pass through untreated or which interfere with the POTW, including interference with water reuse and recycling, beneficial uses of sludge, and sludge treatment and disposal. The inventory must include qualitative descriptions of the industrial contributor's discharges, together with a quantitative description of those discharges for all pollutants subject to control under an established national categorical pretreatment standard, or State or local pretreatment requirement. The POTW must obtain within eighteen months full legal authorities to enforce all existing, as well as prospective Federal, State or local pretreatment standards or requirements, together with adequate sources of funding and qualified personnel to effectively implement additional national categorical pretreatment standards or State and local requirements as they become effective.

(c) *Nonindustrial source control program (formerly § 233.19).* EPA received only a few comments on its proposed regulations implementing section 301(h)(6) of the Act, which requires section 301(h) applicants to demonstrate that non-industrial sources of toxic pollutants will be controlled to the extent practicable. Some commenters noted that it would not be "practicable" to remove some of the sources of toxic pollutants identified in the regulation due to institutional, economic, or legal constraints. Others suggested that the proposed regulations were not specific enough and did not require an applicant to demonstrate that it would exercise its best efforts to eliminate the introduction of toxic pollutants from non-industrial sources into its treatment facility.

EPA acknowledges that the statute does not require elimination of all non-industrial sources of toxic pollutants. It does, however, require that the applicant take all practicable measures designed "to eliminate" the input of toxic pollutants from non-industrial sources. This implies the need for a maximum source control effort, and the regulations have been revised to reflect this intent.

With respect to each non-industrial source of toxic pollutants identified by the applicant under § 125.64(d), the applicant has the responsibility for showing the economic, institutional or legal limitations of its program to reduce or eliminate that source of toxic pollutants together with an analysis of future activities designed to strengthen its source control program. In determining economic feasibility, the applicant must consider as an offset to the costs of source control any savings in capital or operating and maintenance expenses which may accrue as a result of being issued a section 301(h) modified permit.

EPA anticipates that the toxic pollutant control requirements set forth in these regulations will require many dischargers to develop innovative ways of reducing non-industrial sources of pollutants. It should be noted, however, that even where an applicant has controlled sources of toxic pollutants to the point necessary to comply with §§ 125.60–61, it would still be required to continue to exercise its best efforts to eliminate non-industrial sources of toxic pollutants under section 301(h)(6).

To provide further guidance to section 301(h) applicants in developing non-industrial source control programs, in these final regulations, at § 125.64(c)(4), EPA has expanded its proposed list of specific programs which should be undertaken to comply with section 301(h)(6).

Section 125.65. Increase in effluent volume or amount of pollutants discharged. (formerly § 233.20). Section 301(h)(7) of the Act provides that an applicant for a section 301(h) permit must demonstrate that there will be no new or substantially increased discharges of the pollutant to which the modification applies (*i.e.*, BOD, suspended solids, and pH) above the volume of discharge specified in the modified permit. Because both the volume of effluent discharged and pollutant loadings may adversely impact marine biota, the Agency chose in its proposed regulations to limit both the volume of wastewater discharged and the mass loadings of BOD and suspended solids. Consistent with the Agency's proposed definition of "existing discharge" in § 233.11; this section, as proposed, limited effluent volume to the applicant's existing design capacity and limited increases in volume to the applicant's existing service area. Mass emissions were similarly limited to the applicant's BOD and suspended solids loadings at the time of application. As a result, any increases in flow during the life of a section 301(h) permit would have to be accompanied by a reduction in BOD and suspended solids effluent concentrations so that total mass loadings would remain constant. To assure that

pollutant loadings from combined sewer overflows ("CSO") were adequately controlled, applicants with CSO problems were asked to submit an analysis of the overflow problem(s) and an explanation of the measures being taken to correct them.

Volume limitations. EPA received numerous comments on this section, particularly on its proposed restrictions on increases in flow. Some commenters suggested that limiting increases in discharge volume to the applicant's design capacity within the service area would amount to the establishment of a no-growth policy, and would greatly restrict a POTW's ability to function as a public service agency within the district. Other commenters urged that the term "substantial" in section 301(h)(7) assumed reasonable growth, and that section 301(h) permits should, therefore, allow increases in flow resulting from normal growth, regardless of whether the increased flow originated within the permittee's service area or would exceed design flow capacity at the time of application. Others suggested that EPA allow increases in flow resulting from the construction of facilities in Step 1, 2, or 3 grants which were proposed or approved at the time of application. Still others suggested that increases in flow during the life of the permit be regulated through the monitoring program required under section 301(h)(3). These commenters proposed that increases in flow resulting from normal growth patterns be allowed so long as the monitoring program indicated that they were not having an adverse impact on the marine environment.

EPA believes that under the proposed definition of "existing discharge" the flow restriction of the proposed regulation appropriately limited growth to the existing design capacity. However, in view of the changed final definition of "existing discharge"—which allows for "planned" as well as existing discharges—the proposed flow restrictions could result in a no-growth situation for a number of municipalities that are now at or near design capacity. Section 125.65 of the final regulations has been changed to allow for reasonable growth through the five-year period of a modified permit. Flows will continue to be limited to the applicant's existing design capacity, where such design capacity provides for normal growth during the life of the modified permit. If an applicant's current design capacity does not provide for normal growth, the applicant must develop a projection of the increased flows necessary to accommodate normal growth over the period of the modified permit, utilizing the analyses performed in Step 1 facilities planning or comparable studies.

A number of commenters supported the proposed flow restrictions because they would prevent the possibility of further adverse impact on the marine environment, and also because they seemed to encourage recycle/reuse/reclamation of wastewater and water conservation generally. Several commenters from water-poor areas suggested that rather than restricting discharge volume to existing flows, EPA require, as a condition of any section 301(h) permit issued, that the permittee study the feasibility and cost-effectiveness of water reuse/recycle/reclamation projects and that, upon renewal of any section 301(h) permit, EPA require discharge volumes to be reduced by the amount of wastewater which could be recycled/reused/reclaimed. Commenters from water-rich areas of the country argued that municipalities receiving a section 301(h) permit should not be required to recycle/reuse and reclaim water unless a need exists and unless recycle/reuse and reclamation is cost-effective. Otherwise, they contended, compliance with the requirements of section 301(h) might prove to be more costly than secondary treatment.

EPA agrees with the concerns expressed in these comments and accordingly has changed the proposed § 233.21. The revised provisions of § 125.66 emphasize that POTWs under active Step 1 grants consider reclamation, reuse, and recycling in addition to other flow and waste reduction measures. This is already required in the facilities planning regulations (§ 35.917 of Subpart E of Title 40). Additionally, the Agency has determined that such alternatives for section 301(h) dischargers should be compared with the cost of secondary treatment, not less-than-secondary treatment, in the Step 1 cost-effective analysis. EPA believes this policy is consistent not only with the goals of section 301(h), but also with Congress' intent that section 301(h) be used only as an interim—not a long-term—solution to the wastewater disposal problems of coastal dischargers. Furthermore, because it is expected to have the greatest impact on those communities which have a high demand for reused water (where water sale revenues can offset recycle/reuse systems costs, and thus make recycle/reuse a cost-effective alternative), EPA believes this policy will encourage recycle/reuse/reclamation of water where it is most necessary and economically realistic.

The final regulations have deleted the proposed requirement that flows be limited to existing service areas. This change is a consequence of allowing applications on the basis of planned discharges. However, any plan to regionalize treatment services that proposes to divert flow from a non-marine discharger to a less-than-secondary marine discharger must be cost-effective based upon the cost of full secondary treatment at the less-than-secondary site. Section 125.66, which concerns the use of Title II funds, has been revised to require the applicant for a modified permit to determine those costs.

Mass limitations. EPA received relatively few comments on its proposed restrictions on mass loadings. One commenter suggested that, in addition to imposing mass loading limitations on BOD and suspended solids, EPA also require applicants to meet mass emission limitations for toxic pollutants.

While section 301(h)(7) applies specifically to those pollutants for which a modification may be issued—*i.e.*, BOD, suspended solids and pH—to the extent that increases in mass loadings of suspended solids may result in increased quantities of toxic pollutants being discharged to the marine environment, the limitations on increases in suspended solids established under this section will restrict the amount of toxic pollutants discharged. Additionally, direct limitations on permissible discharges of specific toxic pollutants will be established by EPA under §§ 125.60 through 125.62 of these regulations. This approach is supported by the legislative history and will carry out both the letter and the intent of section 301(h)(7).

Combined sewer overflows. In addition to limiting volume and mass loading increases in treated wastewater, EPA's proposed regulations implementing section 301(h)(7) attempted to establish a mechanism for reducing or eliminating the discharge of combined sewer overflows by recipients of modified permits under section 301(h). Several commenters indicated that these discharges represent a major source of pollution in coastal waters and are a significant problem for some POTWs.

One way of eliminating or reducing the pollution caused by combined sewer overflows is to route part or all of the overflow through the POTW for treatment. Under its proposed regulations implementing section 301(h)(7), this option would not have been available to most POTWs if they

received a section 301(h) modification. However, to assure that the modification afforded by section 301(h) would not have the effect of delaying community efforts to minimize or eliminate combined sewer overflows by other means EPA proposed in § 233.20(b)(2) that applicants with combined sewers submit a schedule of activities designed to minimize existing overflows and to prevent increases in the amount of pollutants discharged.

EPA received two major comments on this section. One commenter stated that the restrictions on discharge volume and mass loadings imposed under § 233.20(b)(1) would prevent many communities from eliminating nearshore combined sewer overflow discharges by routing them through a section 301(h) treatment facility. The other commenter stated that section 301(h) should be used to minimize existing combined sewer overflows and eliminate them completely where possible.

The Agency agrees that in some cases it may be more environmentally sound to discharge combined sewer overflows through a well designed outfall after a minimum of primary treatment than to allow raw wastewater to overflow collection sewers into nearshore coastal waters. However, EPA believes that such discharges should be allowed under section 301(h)(7) only where the POTW has fully examined all other means of control stormwater inflow. Applicants should ensure that the resulting increase in volume and mass loadings would allow continued compliance with the requirements of sections 301(h) (1), (2) and (4) of the Act and §§ 125.60, 125.61, 125.63 and 125.65 of these regulations, as revised. Providing this additional alternative for reducing and eliminating combined sewer overflows should increase the likelihood that such discharge will in fact be materially limited or eliminated.

Under Program Requirements Memorandum No. 75–34, combined sewer overflow projects which have been throughly studied in the Step 1 process may be funded under Title II of the Act only after provision has been made for secondary treatment of dry-weather flows in the area. Since POTWs receiving section 301(h) modifications will not be constructing secondary treatment facilities, at least for the immediate future, this requirement could prevent or significantly delay funding to control combined sewer overflows from these facilities. To remove this economic disincentive to the correction of combined sewer overflow problems for POTWs receiving section 301(h) modified permits, EPA will waive this requirement for such POTWs.

Section 125.66. Utilization of grant funds under Title II of the Act. (formerly § 233.21). Section 301(h)(8) of the Act requires applicants to demonstrate that they will utilize any Title II funds available to them to comply with the requirement of sections 201(b), 201(g)(2)(A), or section 301(h) of the Act. The purpose of this provision is to allow EPA to fund certain planning, design and construction activities which would be required in order to comply with section 301(h).

In its proposed regulations EPA stated that projects needed to meet the requirements of section 301(h) would be grant-eligible only if the applicant satisfactorily demonstrated that alternative waste management techniques had been studied and evaluated and that the works proposed for grant assistance would be cost-effective and would provide for the application of BPWTT (including reclamation and recycling of wastewater and confined disposal of pollutants). Consistent with the legislative history of section 301(h) and EPA construction grant regulations, EPA noted in the preamble that while Title II funds would be available for the development of monitoring, pretreatment and source control programs, as well as other programs and construction necessary to assure compliance with the requirements of section 301(h), they would not be granted for operating and maintenance costs associated with such programs and construction.

Most comments which EPA received on this section supported the Agency's interpretation of the statute. A few commenters suggested, however, that the scope of activities eligible for funding should either be narrowed or broadened.

In response to these comments, § 233.21 of the proposed regulations has been revised to clarify the scope of activities eligible for Title II funding. Section 125.66 of these final regulations states that Title II funds are to be used for construction of treatment works necessary to ensure the applicants proposed discharge will meet the requirements of section 301(h) of the Act. The definition of construction as contained under section 212 of the Act includes preliminary planning, plan and specification as well as physical construction. Section 35.940–1 of Subpart E of this Chapter lists such costs as allowable project costs. Section 35.901 of the construction grant regulations states that the primary purpose of Federal grant assistance is to assist municipalities in meeting enforceable requirements of the Act, particularly applicable NPDES permit requirements. Thus the construction of less-than-secondary treatment works upon which the section 301(h) modification is based is grant-eligible.

Additionally, § 125.66 of these final regulations provides more detailed information concerning the revision of the scope of work of any active Step 1, Step 2 or Step 3 grant. Subsection (b)(1)(E) requires that a section 301(h) permittee have a program to complete facility planning for additions to the less than secondary treatment facility to bring the treatment works to full secondary treatment if needed. Planning for such additions must be in accordance with all applicable requirements of § 35.917 of Subpart E. Based upon the analysis of these alternative methods of upgrading to secondary treatment, the cost-effective combination of the less-than-secondary treatment system and additional facilities is to be established. This is required because the five year modification is considered temporary until the impact of the less than secondary treatment system and toxics control programs are verified by monitoring and biomonitoring programs. Should these monitoring programs indicate that secondary treatment is required, further delay due to planning requirements will be minimized. In addition, the cost of upgrading to secondary treatment must be known in order to determine whether it is cost-effective for non-marine dischargers to regionalize with a marine discharger and to evaluate wastewater reuse, recycling and reclamation as discussed in the preamble discussion on § 125.65.

Subsection (b)(2), which has been added to the final regulations requires that plans and specifications for the less than secondary facilities include provisions to ensure compatibility with additional facilities, should they be required at a later date. It is not intended that detailed plans and specifications be developed for the additional facilities at this time. Similarly, subsection (b)(3) has been added to provide for the compatibility of construction of the less-than-secondary facilities and any additional facilities required for upgrading to full secondary treatment.

No specific mention was made in the final regulations concerning eligibility of monitoring equipment for section 301(h). Eligibility of monitoring and laboratory equipment for pretreatment and NPDES permit purposes is already established

under Subpart E of this Chapter and Program Operations Memorandum 78-4.

One commenter suggested that Title II funds which had previously been allocated to a section 301(h) applicant for another purpose should be returned to the State and reissued under the State's then current priority list. Requiring section 301(h) dischargers to remit Title II funds previously granted to construct secondary treatment would, in EPA's opinion, be contrary to Congress' expectation, expressed in section 301(h)(8), that such funds would be diverted either to the achievement of BPWTT or the requirements of section 301(h).

Another commenter raised the issue of how section 201(g)(5) would fit into the Agency's assessment of the eligibility of particular projects for funding under section 301(h). Section 201(g)(5) which was added to the Act by the 1977 Amendments, requires EPA, in making any Title II grant from funds authorized for any fiscal year beginning after September 30, 1978, to assure that, in addition to the waste management techniques which must be studied under section 201(g)(2)(A), the grant applicant has evaluated innovative and alternative wastewater treatment processes and techniques. The requirements of this section also apply to section 301(h) dischargers. Not only is there nothing in the legislative history of the Act which would suggest that section 301(h) applicants were exempted from this provision, there is no logical reason for such an exemption. To clarify this point, section 125.66 of the final regulations requires section 301(h) applicants to demonstrate that any grants received from FY 1979 (or later) funds will meet the requirements of section 201(g)(5), in addition to those of section 201(g)(2)(A).

A number of commenters urged that Title II funds be made available to communities to assist them in filling out their section 301(h) applications. EPA disagrees. First of all, the Agency has no authority under the Act to provide federal funding for this purpose. Furthermore, there is nothing in either the language or the legislative history of section 301(h)(8) to suggest that Congress intended to allow Title II funds to be granted to section 301(h) applicants to assist them in gathering the technical and scientific data necessary to complete their applications. Section 301(h)(8) authorizes EPA to provide funding to "carry out the requirements of (Section 301(h))", not to determine whether applicants meet those requirements. Moreover, since section 301(h) is premised on the theory that communities have accumulated the data necessary to demonstrate their eligibility for a modification, it seems highly unlikely that Congress would have enacted a provision permitting EPA to grant Title II funds to collect such data.

Furthermore, since the Agency believes that the information required by the regulations and application is necessary to make an informed decision on the statutory criteria established by Congress, it is not possible to reduce the amount of data required.

Small communities with no, or very limited amounts of toxic pollutants in their discharges will in many cases be able to develop a section 301(h) application with less extensive data than will a larger discharger with significant sources of toxic pollutants. Thus, the costs of their applications should, as a practical matter, be lower than those of larger dischargers.

Section 125.67. Special permit conditions. This is a new section which delineates special conditions which will be required in permits issued under section 301(h). These conditions are to insure compliance with various provisions of the subpart and will be included in all section 301(h) permits in addition to all applicable terms and conditions required by 40 CFR 122.14 through 122.23.

VI. Application Format

Numerous comments have been received by EPA regarding the proposed Application for Modification of the Requirements of Secondary Treatment. Several changes have been made to the Application Format in response to these comments and to reflect changes which have been made in the regulations.

Most of the comments address three main areas of concern, namely, (1) time limitations for submittal of applications; (2) burdensome reporting requirements, particularly as they relate to small communities; and (3) use of a single application form for dischargers which vary substantially in size, complexity and nature of waste discharged.

The comments regarding the time limitations for submittal of applications are somewhat mooted by the fact that final regulations were not published as originally scheduled. As a result of this delay, EPA accepted preliminary applications which required that applicants submit a minimum of information.

Most commenters felt that the three month period for preparation of complete applications was too short, and they suggested that EPA either extend the deadline for submission of applications or implement a "two-stage" application review. As explained in section II.B., above, EPA has no authority to extend the statutory deadline for submission of applications. The Agency recognized, however, that since final regulations were not available for guidance, it would be unreasonable to expect applicants to submit complete final applications by that deadline. Therefore, the Agency accepted preliminary applications postmarked no later than September 25th, 1978 giving applicants substantial additional time to gather data for their final applications.

The suggestions that EPA employ a "two-stage" review process had two basic objectives: (1) to provide additional time for completing final applications, and (2) to require that EPA make an initial eligibility determination, based on a minimum amount of information, prior to a POTW incurring the additional cost of completing a final application.

EPA has not adopted the "two-stage" review process. However, by delineating a number of threshold criteria in § 125.59, these regulations should enable a POTW to determine whether it should incur the cost of applying for a section 301(h) modified permit.

The latter two concerns mentioned above, namely, concerns about burdensome reporting requirements and use of a single application form, are discussed together, as they raise similar questions. Several commenters suggested that the reporting requirements would be unduly burdensome for many small communities, particularly villages in Alaska, Puerto Rico and territorial possessions. This issue has been discussed extensively in a previous section of this preamble. (See discussion on small communities in section II, Major Issues).

A number of commenters suggested that a single application form was inappropriate for obtaining necessary and useful data from POTWs which vary substantially in size, complexity and nature of waste discharged. EPA recognizes that these variables exist but at the same time, believes that certain areas must be addressed in all applications in order for the Agency to make determinations based on sufficient information. Furthermore, this review can be completed more expeditiously if the data is presented in a reasonably uniform manner. For these reasons, EPA believes that a standard Application Format should be followed.

A number of other commenters either suggested specific questions which they felt should be included, or they asked specific questions regarding the basis for various technical requirements in the Application Format. EPA has attempted to respond to most of these suggestions in the Technical Support Document which was made available for review and comment prior to publication of these regulations. (See section IV for a discussion of the Technical Support Document).

Section F of the Application Format has been revised to delineate the information which must be provided by applicants. This information pertains to requirements of the Endangered Species Act of 1973, as amended. There is additional discussion of this change in the section-by-section analysis portion of this preamble.

Accordingly, 40 CFR Part 125 is amended by adding §§ 125.56 through 125.67 to this Subpart G which has been previously reserved.

These final section 301(h) regulations will be considered issued for purposes of judicial review at 1:00 p.m. Eastern time on June 22, 1979.

Note.—The Environmental Protection Agency has determined that this regulation, because it implements a statutory provision which eases rather than imposes, pollution control costs, does not constitute a regulation requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and under OMB Circular A–107.

Dated: June 4, 1979.

Douglas M. Costle,

Administrator.

Part 125 is amended by the addition of new Subpart G which reads as set forth below:

PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Subpart G—Criteria For Modifying the Secondary Treatment Requirements Under Section 301(h) of the Clean Water Act

Sec.

125.56 Scope and purpose.
125.57 Law authorizing issuance of a modified permit.
125.58 Definitions.
125.59 General.
125.60 Existence and compliance with applicable water quality standards.
125.61 Attainment or maintenance of water quality which assures protection of public water supplies, the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife, and allows recreational activities.
125.62 Establishment of a monitoring system.
125.63 Effect of discharge on other point and nonpoint sources.
125.64 Toxics control program.
125.65 Increase in effluent volume or amount of pollutants discharged.
125.66 Utilization of grant funds under Title II of the Act.
125.67 Special permit conditions.

Subpart G—Criteria For Modifying the Secondary Treatment Requirements Under Section 301(h) of the Clean Water Act

§ 125.56 Scope and purpose.

This Subpart establishes the criteria and standards to be applied by EPA in acting on section 301(h) requests for modifications to the secondary treatment requirements. It also establishes special permit conditions which must be imposed, in addition to terms and conditions required under Part 122, in any permit incorporating a section 301(h) modification of the secondary treatment requirement ("section 301(h) modified permit").

§ 125.57 Law authorizing issuance of a section 301(h) modified permit.

Section 301(h) of the Clean Water Act provides that:

The Administrator, with the concurrence of the State, may issue a permit under section 402 which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant in an existing discharge from a publicly owned treatment works into marine waters, if the applicant demonstrates to the satisfaction of the Administrator that—

(1) There is an applicable water quality standard specific to the pollutant for which the modification is requested, which has been identified under section 304(a)(6) of this Act;

(2) Such modified requirements will not interfere with the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife, and allows recreational activities, in and on the water;

(3) The Applicant has established a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable;

(4) Such modified requirements will not result in any additional requirements on any other point or nonpoint source;

(5) All applicable pretreatment requirements for sources introducing waste into such treatment works will be enforced;

(6) To the extent practicable, the applicant has established a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into such treatment works;

(7) There will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit;

(8) Any funds available to the owner of such treatment works under Title II of this Act will be used to achieve the degree of effluent reduction required by section 301 (b) and (g)(2)(A) or to carry out the requirements of this subsection.

For the purposes of this subsection the phrase "the discharge of any pollutant into marine waters" refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement and other hydrological and geological characteristics which the Administrator determines necessary to allow compliance with paragraph (2) of this subsection, and section 101(a)(2) of this Act.

§ 125.58 Definitions.

For the purpose of this Subpart:

(a) "Applicant" means an applicant for a modified NPDES permit under section 301(h) of the Act.

(b) "Application format" means EPA's "Application Format for Modification of the Requirements of Secondary Treatment" provided in Part II of this this regulation.

(c) "Balanced, indigenous population" means an ecological community which:

(1) Exhibits characteristics similar to those of nearby, healthy communities existing under comparable but unpolluted environmental conditions; or

(2) May reasonably be expected to become re-established in the polluted water body segment from adjacent waters if sources of pollution were removed.

(d) "Current discharge" means the volume, composition, and location of an applicant's discharge as of any time between December 27, 1977 and [3 months after date of publication] as designated by the applicant.

(e) "Final application" means a submission for a section 301(h) modified permit to EPA not later than [90 days after date of publication]. The final application shall contain:

(1) A completed application which corresponds to EPA's Application Format for Modification of the Requirements of Secondary Treatment;

(2) A signed, completed NPDES application Standard Form A, Parts I, II, and III; and

(3) The following certification: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in the attached document(s), and based on my inquiry of those individuals immediately responsible for obtaining the information, I am convinced that the information is true, accurate and correct. I am aware that there are significant penalties for submitting false information, including the possibility of

fine and imprisonment." (see § 125.59(d)(1)).

(f) "Improved discharge" means the volume, composition and location of an applicant's discharge following:

(1) Construction of planned outfall improvements, including, without limitation, outfall relocation, outfall repair, or diffuser modification; or

(2) Construction of planned treatment system improvements; or

(3) Implementation of a planned program to improve operation and maintenance of an existing treatment system; or

(4) Implementation of a planned program to eliminate or control the introduction of pollutants into the applicant's treatment works.

(g) "Industrial source" means any source of nondomestic pollutants regulated under section 307 (b) or (c) of the Act which discharges into a POTW.

(h) "Modified discharge"means the volume, composition and location of the discharge proposed by the applicant for which a modification under section 301(h) of the Act is requested.

(i) "Nonindustrial source" means any source of pollutants which is not an industrial source.

(j) "Ocean waters" means those coastal waters landward of the baseline of the territorial seas, and the deep waters of the territorial seas, or the waters of the contiguous zone.

(k) "Pesticides" means demeton, guthion, malathion, mirex, methoxychlor and parathion.

(l) "Preliminary application" means a submission to EPA postmarked no later than September 25, 1978, which contained, at a minimum, the name and address of the applicant and a statement that the applicant was seeking a modification of secondary treatment requirements under section 301(h) of the Act.

(m) "Primary treatment" means the first stage in wastewater treatment where substantially all floating or settleable solids, are removed by floatation and/or sedimentation.

(n) "Public water supplies" means water distributed from a public water system.

(o) "Public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves at least twenty-five (25) individuals. This term includes (1) any collection, treatment, storage and distribution facilities under the control of the operator of the system and used primarily in connection with the system, and (2) any collection or pretreatment storage facilities not under the control of the operator of the system which are used primarily in connection with the system.

(p) "Publicly owned treatment works" ("POTW") means a treatment works, as defined in section 212(2) of the Act, which is owned by a State, municipality or intermunicipal or interstate agency.

(q) "Saline estuarine waters" means those semi-enclosed coastal waters which have a free connection to the territorial sea, undergo net seaward exchange with ocean waters, and have salinities comparable to those of the ocean. Generally, these waters are near the mouth of estuaries and have cross-sectional annual mean salinities greater than twenty-five (25) parts per thousand.

(r) "Secondary treatment" means the term as defined in 40 CFR 133.102.

(s) "Shellfish, fish and wildlife" means any biological population or community that might be adversely affected by the applicant's modified discharge.

(t) "Stressed waters" means those receiving environments in which an applicant can demonstrate, to the satisfaction of the Administrator, that the absence of a balanced, indigenous population is caused solely by human perturbations other than the applicant's discharge.

(u) "Toxic pollutants" means those substances listed in Table 1 of Committee Print No. 95–30 of the Committee on Public Works and Transportation, House of Representatives, and published at 43 FR 4108 (January 31, 1978), as from time to time revised by the Administrator under section 307(a) of the Act.

(v) "Traditional pollutant" means biochemical oxygen demand ("BOD"), suspended solids ("SS") and pH.

(w) "State water quality standards" means applicable State water quality standards which have been:

(1) Approved or left in effect by the Administrator under section 303(a) or 303(c) of the Act; or

(2) Promulgated by the Administrator under section 303(b) or 303(c) of the Act, as of the date of any final application submitted under this Subpart.

(x) "Zone of initial dilution" ("ZID") means the region surrounding or adjacent to the end of the outfall pipe or diffuser ports, as calculated according to instructions in the application format, provided that it may not be larger than allowed by mixing zone restrictions in applicable State water quality standards.

§ 125.59 General.

(a) *Basis for application.* A final application for modified section 301(h) permit under this Subpart shall be based on either:

(1) A current discharge into ocean waters or saline estuarine waters; or

(2) An improved discharge into ocean waters or saline estuarine waters, *Provided,* That:

(i) The applicant demonstrates in its final application that such improvements have been thoroughly planned and studied as an alternative to secondary treatment and that it can expeditiously complete or implement such improvements; and

(ii) The applicant submits, as part of its final application, a proposed schedule for (A) the planning, design and staged construction of secondary treatment, and (B) such other improvements which will provide for the maximum amount of planning, design and construction which can be completed by the applicant pending a final decision on its application; and

(iii) The applicant has exercised its best efforts to comply with such schedule pending a final decision on its application.

(b) *Prohibitions:* No modified section 301(h) permit shall be issued:

(1) Where such issuance would not assure compliance with all applicable requirements of this Subpart;

(2) Where such issuance would not assure compliance with all applicable requirements of Part 122;

(3) Where the applicant's discharge was not actually flowing into ocean waters or saline estuarine waters as of December 27, 1977;

(4) For a discharge receiving less than primary treatment;

(5) For the discharge of sewage sludge;

(6) For any discharge for which there is as of September 13, 1979 an applicable State or local law, regulation or ordinance requiring secondary treatment of municipal wastewater, unless it can be shown that such law, regulation or ordinance is less stringent than secondary treatment, as defined in 40 CFR 133.102.

(7) Where such issuance would conflict with applicable provisions of other Federal laws, and, to the extent that they do not conflict with requirements of law, applicable provisions of Executive Orders. This includes situations where:

(i) The applicant's modified discharge is located in an area covered by an approved State coastal zone management program, and the applicant fails to provide certification under section 307(c) of the Coastal Zone Management Act of 1972, as amended,

16 U.S.C. 1456(c), that its discharge complies with such program;

(ii) The issuance of a section 301(h) modified permit would jeopardize the continued existence of an endangered or threatened species listed under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*, or would result in the destruction or modification of the habitat of such species; or,

(iii) The applicant's modified discharge is located in a marine or estuarine sanctuary designated by the Secretary of Commerce under Title III of the Marine Protection, Research and Sanctuaries Act, as amended, 16 U.S.C. 1431 *et seq.*, or the Coastal Zone Management Act, as amended; 16 U.S.C. 1461 *et seq.*, and the Secretary denies certification under either of these Acts;

(8) Where the applicant either did not submit a preliminary application or submits a final application which, on its face, did not demonstrate to the satisfaction of the Administrator that the applicant's modified discharge meets or will meet all the requirements of this Subpart; or,

(9) Where the applicant is currently meeting effluent limitations based on secondary treatment.

(c) *Preliminary application.* Each applicant for a section 301(h) modified permit under this Subpart must have submitted a preliminary application to EPA, postmarked no later than September 25, 1978, which contained, at a minimum, the name and address of the applicant and a statement that the applicant was seeking a modification of secondary treatment requirements under section 301(h) of the Act.

(d) *Final application.* All final section 301(h) applications shall be signed by either a principal executive officer of the POTW or ranking elected official of the municipality. (See also § 122.5(a)(3)).

(1) *Contents.* Each applicant for a modified permit under this Subpart shall submit a final application to EPA which shall contain:

(i) A signed, completed NPDES Application Standard Form A, Parts I, II, and III; and

(ii) A completed application which corresponds to EPA's Application Format for Modification of the Requirements of Secondary Treatment; and

(iii) The following certification:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in the attached document(s), and based on my inquiry of those individuals immediately responsible for obtaining the information, I am convinced that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(2) *Deadline and distribution.* The original and two copies of the final application must be submitted to the following no later than September 13, 1979:

(i) 301(h) Review Group, Office of Water Program Operations, 401 M Street, SW., Washington, D.C. 20460 (original);

(ii) The Regional Administrator for the EPA Region in which the applicant is located (one copy); and

(iii) The State or interstate agency (or agencies) authorized to provide certification/concurrence under § 124.21–124.23 (one copy).

(e) *Decisions on section 301(h) modifications.* (1) The decision to grant or deny a section 301(h) modification of the secondary treatment requirement shall be:

(i) Made by the Administrator, or a person designated by the Administrator, pursuant to § 124.55; and

(ii) Based on the applicant's demonstration that it has met all the criteria set forth in §§ 125.59–66.

(2) No section 301(h) modified permit shall be issued by the Administrator, or person designated by the Administrator:

(i) Until the appropriate State certification/concurrence is granted or waived pursuant to § 124.24; or

(ii) If the appropriate State denies certification/concurrence pursuant to §124.24.

(3) Any section 301(h) modified permit shall:

(i) Be issued in accordance with the procedures set forth in Part 124; and

(ii) Contain all applicable terms and conditions set forth in Part 122; and

(iii) Contain the special permit terms set forth in § 125.67.

(4) Appeals of any section 301(h) determination shall be governed by the nonadversary initial licensing procedures set forth in Part 124, Subpart I.

(5) At the expiration of the section 301(h) permit, the POTW should be prepared to support the continuation of the modification based on studies and monitoring performed during the life of the permit.

§ 125.60 Existence of and compliance with applicable water quality standards.

(a) *Criteria.* There must exist a State water quality standard or standards applicable to the pollutant(s) for which a section 301(h) modified permit is requested, including:

(1) State water quality standards for biochemical oxygen demand or dissolved oxygen;

(2) State water quality standards for suspended solids, turbidity, light transmission, light scattering or maintenance of the photic- zone; and

(3) State water quality standards for pH.

(b) *Application requirements.* To enable the Administrator to determine whether the applicant meets the criteria of paragraph (a), the applicant shall demonstrate in Part A Section 9 of its application that:

(1) An applicable State water quality standard(s) exists; and

(2) That the modified discharge will comply with those State water quality standard(s).

§ 125.61 Attainment or maintenance of water quality which assures protection of public water supplies, the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife, and allows recreational activities.

(a) *Physical characteristics of discharge.*—(1) *Criteria.* (i) The applicant's modified outfall and diffuser must be well designed, using accepted designs of outfall and diffuser systems, to provide appropriate initial dilution, dispersion and transport of wastewater, considering the volume of the discharge and site-specific physical and environmental conditions;

(ii) The initial dilution achieved by the applicant's modified discharge, as calculated in Part B, section 1 of the Application Format, must be sufficient to meet all applicable State water quality standards at and beyond the boundary of the zone of initial dilution during those conditions defined as critical in Part B, Sections 1–4, of the Application Format;

(iii) Dilution water must be supplied to that zone where entrainment takes place in an amount equal to the wastewater flow times the dilution factor as calculated in Part B, Section 1 of the Application Format;

(iv) Following initial dilution, the partially diluted wastewater and particulates must be transported and dispersed so as not to adversely affect water use areas (including recreational and fishing areas) and areas of biological sensitivity.

(2) *Application requirements.* To enable the Administrator to determine whether an applicant's modified discharge meets the criteria of paragraph (a)(1), the applicant shall provide the data on the physical characteristics and hydraulics of the outfall and on the physical

oceanographic conditions in the vicinity of the outfall required by Part B, Sections 1–4, of the Application Format.

(b) *Impact of discharge on public water supplies.*—(1) *Criteria.* (i) The applicant's modified discharge must allow for the attainment or maintenance of water quality which assures protection of public water supplies.

(ii) The applicant's modified discharge must not:

(A) Prevent a planned or existing public water supply from being used, or from continuing to be used, as a public water supply; or,

(B) Have the effect of requiring treatment over and above what would be necessary in the absence of such discharge in order to comply with local, State, and EPA drinking water standards.

(iii) The applicant's modified discharge must comply with all applicable State water quality standards or other requirements adopted or promulgated for the purpose of attaining or maintaining water quality which assures protection of public water supplies.

(2) *Application requirements.* To enable the Administrator to determine whether an applicant's modified discharge meets the requirements of paragraph (b)(1) of this section, the applicant shall provide the data on the impact of its outfall on existing and potential public water supplies required by the Public Water Supply Impact Assessment, Part B, section 5, of the Application Format.

(c) *Biological impact of discharge.*—(1) *Criteria.* (i) A balanced, indigenous population of shellfish, fish and wildlife must exist:

(A) Immediately beyond the zone of initial dilution of the applicant's modified discharge and;

(B) In all other areas beyond the zone of initial dilution where marine life is actually or potentially affected by the applicant's modified discharge.

(ii) Conditions within the zone of initial dilution must not contribute to extreme adverse biological impacts, including, but not limited to, the destruction of distinctive habitats of limited distribution, the presence of disease epicenters, or the stimulation of phytoplankton blooms which have adverse effects beyond the zone of initial dilution;

(iii) In the case of a modified discharge into saline estuarine waters the following additional restrictions are placed on impacts within the zone of initial dilution:

(A) Benthic populations within the zone of initial dilution must not differ substantially from the balanced, indigenous populations which exist immediately beyond the boundary of the zone of initial dilution;

(B) The discharge must not interfere with estuarine migratory pathways within the zone of initial dilution; and

(C) The discharge must not result in the accumulation of toxic pollutants or pesticides at levels which exert adverse effects on the biota within the zone of initial dilution.

(iv) The applicant's modified discharge must comply with all applicable State water quality standards or other requirements adopted or promulgated for the purpose of attaining or maintaining water quality which provides for the protection and propagation of fish, shellfish and wildlife.

(2) *Application requirements.* To enable the Administrator to determine whether an applicant's modified discharge meets the criteria of paragraph (c)(1) of this section, the applicant shall prepare a Biological Conditions Summary in accordance with the Marine Biological Assessment Part B, section 6, of the Application Format and shall answer all questions contained in the Marine Biological Assessment Questionnaire, part B, Section 7 of the Application Format, based on the summary.

(d) *Impact of discharge on recreational activities.*—(1) *Criteria.* (i) The applicant's modified discharge must allow for the attainment or maintenance of water quality which allows for recreational activities beyond the zone of initial dilution, including, without limitation, swimming, diving, boating, fishing and picnicking and sports activities along shorelines and beaches.

(ii) The applicant's modified discharge must comply with all applicable State water quality standards or other requirements adopted or promulgated for the purpose of attaining or maintaining water quality which allows for recreational activites.

(iii) There must be no Federal, State or local restrictions on recreational activities within the vicinity of the applicant's modified outfall unless such restrictions are routinely imposed around sewage outfalls. This exception shall not apply where the restriction would be lifted or modified, in whole or in part, if the applicant were discharging a secondary treatment effluent.

(2) *Application requirements.* To enable the Administrator to determine whether an applicant's modified discharge meets the criteria of paragraph (d)(1) of this section, the applicant shall provide the data on the impact of its discharge on recreational uses required by the Recreation Impact Assessment, Part B, section 8 of the Application Format.

(e) *Additional application requirements for application based on improved discharge.* If an applicant is applying for a section 301(h) modified permit on the basis of an improved discharge, it must submit in its final application:

(1) Final plans for such improvements in Part A, Section 10 of the Application Format;

(2) Computer modeling or other detailed analyses projecting changes in flow rates, flow patterns, composition, volume or other parameters or characteristics of the applicant's current discharge which are expected to result from such improvements at several milestone dates (including the statutory July 1, 1983 date) reflecting conditions of severe waste loadings;

(3) The assessments required by paragraphs (a) through (d) of this section based on its current discharge;

(4) Where the improved discharge involves outfall relocation, the assessments required by paragraphs (a) through (d) of this section for the relocation site; and,

(5) A detailed analysis of how the improvements planned by the applicant will, when completed and at the milestone(s) identified in paragraph (e)(2) above, eliminate, reduce or otherwise relieve any adverse impacts identified in paragraph (e)(3) of this section and assure compliance with the criteria contained in paragraphs (a) through (d) of this section.

(f) *Stressed waters.* If an applicant believes that its failure to meet the requirements of paragraphs (a) through (d) of this section is attributable to conditions resulting from human perturbations other than its modified discharge (including, without limitation, other municipal or industrial discharges, nonpoint source runoff and the applicant's previous discharges), the applicant must demonstrate, to the satisfaction of the Administrator, that its modified discharge does not or will not:

(1) Contribute to, increase, or perpetuate such stressed conditions;

(2) Contribute to further degradation of the biota or water quality if the level of human perturbation from other sources increases; and

(3) Retard the recovery of the biota or water quality if the level of human perturbation from other sources decreases.

§ 125.61 Establishment of a monitoring system.

(a) *General requirements applicable to all proposed monitoring programs.* (1) The applicant must have a biological monitoring program, a program for monitoring compliance with State water quality standards, and a toxics control monitoring program which meet the requirements of paragraphs (a) through (c) of this section;

(2) Each program must include a detailed description of sampling techniques, times, and locations (including appropriate control sites), analytical techniques, quality control and verification procedures to be used; and,

(3) The applicant must also demonstrate that it has the economic, personnel, technical and other resources to implement the proposed programs immediately upon issuance of a section 301(h) modified permit and to carry out the proposed programs for the life of the modified permit.

(4) Each proposed monitoring program submitted by the applicant under this section shall be subject to revision as determined by the Administrator prior to issuing any modified permit and during the term of any modified permit issued.

(b) *Biological monitoring program.*— (1) *Criteria.* (i) The biological monitoring program shall provide data adequate to evaluate the impact of the applicant's discharge on marine biota, taking into account critical environmental periods (e.g., runoff, spawning periods for fish and shellfish, and unusual oceanographic and meteorological events) and variability of the discharge anticipated during the life of the permit. It shall be keyed to the nature and volume of the applicant's discharge, the nature of the receiving water, and the nature of the marine life affected or likely to be affected as identified in the Biological Conditions Summary prepared under § 125.61(c)(2).

(ii) For applicants seeking a section 301(h) modified permit based on:

(A) A current discharge, the biological monitoring program shall be designed to demonstrate that the discharge currently complies and will continue to comply throughout the term of the modified permit with the requirements of § 125.61(c)(1).

(B) An improved discharge other than outfall relocation, the biological monitoring program shall be designed to collect baseline data on the current impact of the discharge, to monitor the impact of the discharge as improvements are completed, and, upon completion of all improvements, to demonstrate that the discharge complies with the requirements of § 125.61(c)(1).

(C) An improved discharge involving outfall relocation, the biological monitoring shall be conducted at both the current discharge site, until such discharge ceases, and the relocation site. The biological monitoring program at the current discharge site must be designed to measure the impact of the discharge as the toxics control program is implemented and any upgrading of treatment is completed. The biological monitoring program at the relocation site shall be designed to collect baseline data for a minimum of one year, to monitor the impact of the discharge as improvements other than outfall relocation are completed, and, upon completion of all improvements, demonstrate that the discharge complies with the requirements of § 125.61(c)(1).

(iii) The biological monitoring program shall include quarterly seasonal surveys of the structure and function of the macrofaunal benthos and those other biological communities most likely to be affected by the discharge.

(iv) Where the chemical analysis conducted under § 125.64(a)(1) of this Subpart or any subsequent chemical analysis of the applicant's discharge required to be conducted under paragraph (d) of this section identifies any toxic pollutants or pesticides in the applicant's discharge, the biological program shall include:

(A) *In situ* bioassays within and immediately beyond the zone of initial dilution and at appropriate reference sites. The bioassays must be conducted with appropriate sensitive marine organisms, and shall be designed to:

(*1*) Determine the accumulation of each identified toxic pollutant and pesticide in the organisms;

(*2*) Examine other adverse effects of the discharge on the organisms, including, death, growth abnormalities, and physiological stress.

(B) Sampling of sediments within and immediately beyond the boundary of the zone of initial dilution and other areas of solids accumulation (as identified in the physical assessment prepared under § 125.61(a)(1)), and at appropriate reference sites, for accumulation of each identified toxic pollutant and pesticide. If sampling indicates the existence of elevated or increasing levels of such pollutants or pesticides, the biological monitoring program must include a specific program for measuring the impact of such substances on, at a minimum, the macrofaunal benthos.

(v) Where the applicant's discharge may affect commercial or recreational fisheries, the biomonitoring program shall include periodic assessments of the condition and productivity of fisheries likely to be affected by the discharge.

(2) *Application requirements.* To enable the Administrator to determine whether an applicant's biomonitoring program meets the criteria of (b)(1), the applicant shall submit a proposed Biological Monitoring Program in Part C, Section 1 of its final application.

(c) *Water quality monitoring program.*(1) *Criteria.* (1) The water quality monitoring program shall provide data adequate to evaluate the applicant's compliance with applicable State water quality standards, taking into account critical environmental periods (e.g., runoff, spawning periods for fish and shellfish, and unusual oceanographic and meteorological events) and variability of the discharge anticipated during the term of the modified permit;

(ii) The water quality monitoring program shall be designed to measure the applicant's compliance with applicable State water quality standards:

(A) As required by State law;

(B) At the boundary of the zone of initial dilution; and

(C) At locations beyond the zone of initial dilution where impacts on marine life, recreational interests or public water supplies may occur.

(2) *Application requirements.* To enable the Administrator to determine whether an applicant's water quality monitoring program meets the criteria of (c)(1) of this section, the applicant shall submit a proposed Water Quality Monitoring Program in Part C, Section 2 of its final application.

(d) *Toxics control minitoring program* (1) *Criteria.* (i) The toxics control monitoring program shall provide data on the chemical composition of the applicant's discharge, which can be used to:

(A) Measure the effectiveness of the applicant's toxic control program in reducing toxic pollutants and pesticides in its discharge;

(B) Assist in implementing the toxics control program; and,

(C) Guide biological monitoring efforts under paragraph (b)(1)(iv) of this section.

(ii) The toxics control monitoring program shall provide for a chemical analysis of representative wet weather and dry weather discharges for toxic pollutants and pesticides.

(2) *Application requirements.* To enable the Administrator to determine whether an applicant's toxic control monitoring program meets the criteria of

(d)(1) of this section, the applicant shall submit a proposed Toxics Control Monitoring program in Part C, section 3 of its final application.

§ 125.63 Effect of discharge on other point and non-point sources.

(a) *Criterion.* No modified discharge may result in any additional requirements on any other point or nonpoint source.

(b) *Application requirements.* To enable the Administrator to determine whether an applicant's modified discharge meets the criterion of paragraph (a) of this section, the applicant shall submit in Part D of its final application, letters from each agency having authority to establish or to advise in the establishment of waste loadings or wasteload allocations for the waters into which the applicant proposes to discharge. These letters shall indicate whether the applicant's proposed discharge will result in any additional treatment, pollution control, or other requirement on any other point or nonpoint source (including combined sewers). The letter(s) shall include the basis for the agency's conclusion.

§ 125.64 Toxics control program.

(a) *Chemical analysis.*—(1) *Criteria.* The applicant shall submit at the time of application, a chemical analysis of its current discharge for all toxic pollutants and pesticides as defined in § 125.58(k) and (u). Analysis shall be performed on two 24 hour composite samples (one dry weather and one wet weather). Applicants may supplement or substitute additional chemical analysis data if documentation is provided to show that the composition of the wastewater samples typifies that which occurs during dry and wet weather conditions.

(2) *Application requirements.* To enable the Administrator to determine whether an applicant meets the criteria of paragraph (a)(1) the applicant shall provide the information required by Part E, Section 1 of the Application Format.

(b) *Identification of Sources of Toxic Pollutants* (1) *Criteria.* The applicant shall submit at the time of application, an analysis of the sources of toxic pollutants identified in section 125.64(a)(1). The applicant shall categorize the sources of the toxic pollutants according to industrial and non-industrial types.

The applicant shall include in § 125.64(c) and (d) programs to reduce or remove the identified toxic pollutants from the applicant's discharge.

(2) *Application requirements.* To enable the Administrator to determine whether an applicant meets the criteria of paragraph (b)(1) the applicant shall provide the information required by Part E, Section 1 of the Application Format.

(c) *Industrial pretreatment requirements.*—(1) *Criteria.* (i) An applicant which has known or suspected industrial sources of toxic pollutants shall have a pretreatment program capable of enforcing all applicable promulgated pretreatment standards which meets the requirements of 40 CFR 403.8(f) no later than the time the applicant's permit is modified, and which will be implemented no later than eighteen (18) months after issuance of the modified permit;

(ii) This requirement shall not apply to any applicant which has no known or suspected industrial sources of toxic pollutants and so certifies to the Administrator;

(iii) The proposed industrial pretreatment program submitted by the applicant under this section shall be subject to revision as determined by the Administrator prior to issuing any section 301(h) modified permit and during the term of any section 301(h) modified permit issued;

(iv) Implementation of all existing pretreatment requirements and authorities must be maintained through the period of development of any additional pretreatment requirements that may be necessary to comply with the requirements of this subpart.

(2) *Application requirements.* To enable the Administrator to determine whether an applicant not exempted by paragraph (c)(1)(ii) of this section meets the criteria of paragraph (c)(1), the applicant shall provide in Part E, Section 2 of its final application, a proposed pretreatment program which includes the following:

(i) The evidence required by 40 CFR 403.9(a)(1)–(4);

(ii) An inventory of sources which are subject or may be subject to the pretreatment program. Such sources shall include, but not be limited to, sources in the industrial categories identified in Appendix A, Part 122 of the National Pollutant Discharge Elimination System regulations. The inventory shall include a description of the methodology used to develop the inventory and the process to be used to ensure the inventory is kept accurate and current. At a minimum, the inventory shall include a qualitative description of the type of pollutants contributed by each identified source. In addition, for sources subject to promulgated national categorical pretreatment standards, State or local pretreatment requirements, the inventory shall include a summary of industrial compliance with the quantitative and qualitative information required by 40 CFR Part 403.12(b);

(iii) A schedule of compliance which demonstrates that the program will be implemented as soon as possible but in no event later than eighteen (18) months after issuance of a section 301(h) modified permit. The compliance schedule shall include, at a minimum, the following milestones and shall specify their initiation and completion dates:

(A) Completion of the wastewater characterization of industrial sources inventoried in the final application as required by 40 CFR 403.8(f)(2)(i–iii);

(B) Development of effluent limitations for prohibited pollutants (as defined by 40 CFR 403.5) contributed to the POTW by industrial sources;

(C) Notification of industrial sources of applicable pretreatment standards and sludge management requirements, as required by 40 CFR 403.8 (f)(2)(iii);

(D) Design of a compliance monitoring program, as defined by 40 CFR 403.8(f)(1)(v);

(E) Establishment of financial programs and revenue sources to ensure adequate funding to carry out the pretreatment program;

(F) Acquisition of all qualified personnel necessary to carry out the pretreatment program; and

(G) Submission of a request for pretreatment program approval without conditions (and removal credit approval if desired and eligible) as required by 40 CFR 403.9.

(iv) Provisions, if necessary, for requesting conditional acceptance of the pretreatment program pending the acquisition of funding and/or personnel for limited aspects which do not require immediate implementation, *Provided* the applicant:

(A) Has the authority, procedures, funding and personnel to fulfill its current enforcement responsibilities for all applicable promulgated pretreatment standards;

(B) Meets the requirements of 40 CFR 403.9(b)(1)–(3);

(C) Submits a schedule of compliance and evidence demonstrating it will have sufficient resources and qualified personnel to carry out the authorities and procedures in 40 CFR 403.8(f) as soon as possible but not later than eighteen (18) months after issuance of a section 301(h) modified permit;

(D) Submits a description of its record to date in enforcing existing applicable national, State and local pretreatment standards; and

(E) Has an approvable schedule of compliance for implementing its pretreatment program.

(d) *Nonindustrial source control program.*—(1) *Criteria.* (i) The applicant shall have at the time of application, a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into its treatment works to the extent practicable, which will be implemented no later than eighteen months after issuance of a section 301(h) modified permit.

(ii) Each proposed nonindustrial source control program submitted by the applicant under this section shall be subject to revision as determined by the Administrator prior to issuing any section 301(h) modified permit and during the life of any such permit issued.

(2) *Application requirements.* To enable the Administrator to determine whether an applicant's nonindustrial source control program meets the criteria of paragraph (d)(1) of this section, the applicant shall provide in Part E, section 3 of its final application a proposed nonindustrial source control program which includes the following:

(i) A schedule of activities for identifying nonindustrial sources of toxic pollutants, including:

(A) All nonindustrial sources, or categories of sources, which are introducing toxic pollutants into the applicant's treatment works; and,

(B) The specific toxic pollutants and volumes thereof generated by such sources or categories of sources.

(ii) A schedule of activities to determine practicability of controls, to include:

(A) An analysis of the control technologies available to the applicant, including treatment as well as control, at the sale, use, handling and disposal stage;

(B) An assessment of the effectiveness of such control technologies in eliminating or limiting the introduction of toxic pollutants from such source into the applicant's treatment facility; and

(C) An analysis of the legal, technological, socio-economic, and institutional impact of utilizing such control technologies.

(iii) A schedule for the development and implementation of control programs, to the extent practicable, for each nonindustrial source or category of sources identified under paragraphs (b)(1) and (d)(2)(i) of this section. Each such program shall include:

(A) A description of the program;

(B) A method for enforcing the program;

(C) A monitoring program which will measure compliance with and the effectiveness of the program; and

(D) A schedule for implementation.

(iv) A schedule for the development and implementation, to the extent practicable, of specific control programs, in addition to the programs for any other non-industrial source or sources identified under paragraph (b)(1) of this section. These programs shall include;

(A) A program for the development of best management practices to control urban stormwater runoff into combined sewers, including street cleaning, catch basin cleaning, trash pickup in both commercial and residential areas, and runoff controls at construction sites;

(B) A program to eliminate the discharge of waste oil from gas stations, service stations and garages into the applicant's treatment works, including programs to collect such waste oil for recycling or solid waste disposal;

(C) A program to control the introduction of herbicides, fungicides, insecticides and rodenticides into the applicant's treatment facility from residential, commercial and public works activities;

(D) A program for controlling sale, use, and/or disposal of certain household products containing toxic pollutants which, because of disposal practices, are likely to enter the applicant's treatment works (e.g., household paints, cleaning compounds); and

(E) A program to modify building and/or plumbing codes for new construction to limit the introduction of heavy metals from plumbing equipment into the applicant's treatment works.

(v) The schedules of activities shall include an assessment of the applicant's ability to provide the financial, staffing and other resources or arrangements which may be necessary to carry out the schedule of activities listed in paragraph (d)(2)(i) through (iv).

§ 125.65 Increase in effluent volume or amount of pollutants discharge.

(a) *Criteria.* No modified discharge may result in any new or substantially increased discharges of the pollutant to which the modification applies above the discaharge specified in the section 301(h) modified permit. The applicant shall provide data indicating that:

(1) There shall be no increase in effluent volume beyond the amount in the applicant's projected five year discharge;

(2) There shall be no increase in the mass loadings of any pollutant(s) for which a modification is requested over and above the amount in the applicant's projected five year discharge; and

(3) Where pollutant discharges are attributable in part to combined sewer overflows, the applicant shall minimize existing overflows and prevent increases in the amount of pollutants discharged.

(b) *Application requirements.* To enable the Administrator to determine whether the applicant meets the requirements of paragraph (a), the applicant shall demonstrate in Part F of its final application, compliance with paragraphs (a) (1) and (2) of this section, ans submit a schedule of activities designed to comply with paragraph (a)(3) of this section.

§ 125.66 Utilization of grant funds available under Title II of the Act.

(a) *Criteria.* (1) Any funds available to the applicant under Title II of the Act shall be used for:

(i) The construction of municipal treatment works necessary to ensure that the applicant's modified discharge will meet the requirements of this subpart; and

(ii) The application of best practicable wastewater treatment technology.

(2) The applicant shall prepare a revised scope of work and estimate of revised costs under any active Step 1, 2, or 3 Construction Grant awarded under 40 CFR Part 35, subpart E.

(3) The revised scope of work of any active grant awarded from funds authorized for any fiscal year beginning after September 30, 1978, shall be subject to the requirement to evaluate innovative and alternative technologies in accordance with 40 CFR Part 35, Subpart E.

(4) Any such revised scope of work and costs shall be subject to review and revision by the Administrator; such review shall not constitute approval, obligation, or award of a grant under 40 CFR Part 35.

(b) *Application requirements.* To enable the Administrator to determine whether an applicant can meet the requirements of paragraph (a) of this section the applicant shall submit as Part G of its final application a funding program which shall contain a proposed modified scope of work and estimate of revised costs for any active Step 1, 2, or 3 Construction Grants awarded under Part 35, Subpart E of this Chapter, which provides for the following:

(1) *Step 1 Grants.* (i) Application of the best practicable wastewater treatment technology (BPWIT);

(ii) Reclamation, recycle, and reuse of water and confined disposal of pollutants;

(iii) Development of a pretreatment program in accordance with the requirements of this part and 40 CFR 403 (see also 40 CFR 35.907);

(iv) An evaluation of flow and waste reduction methods including development of a non-industrial source program as required by § 125.64(d)(3) to reduce or eliminate the discharge of toxic substances to the municipal treatment works; and

(v) An analysis which establishes the cost effective combination of the proposed less-than-secondary treatment system and additional facilities required to provide for full secondary treatment (such additional facilities must be planned in accordance with the requirements of § 35.917 of 40 CFR Part 35, Subpart E).

(2) *Step 2 Grants.* Development of plans and specification for the proposed less-than-secondary treatment facilities including provision for future addition of facilities to provide for secondary treatment and BPWTT.

(3) *Step 3 Grants.* Construction of the proposed less-than-secondary facilities including provisions to ensure compatibility with future additions of facilities to provide for secondary treatment and BPWTT.

§ 125.67 Special conditions for section 301(h) modified permits.

Each section 301(h) modified permit issued shall contain, in addition to all applicable terms and conditions required by 40 CFR §§ 122.14 through 122.23, the following:

(a) Effluent limitations which will assure compliance with the requirements of this Subpart;

(b) A schedule or schedules of compliance for:

(1) Pretreatment program development required by § 125.64(c);

(2) Nonindustrial toxics control program required by § 125.64(d);

(3) Any construction required by § 125.66; and

(4) Control of combined sewer overflows required by § 125.65.

(c) Monitoring requirements that include:

(1) Biomonitoring program requirements of § 125.62(b);

(2) Water quality program requirements of § 125.62(c); and

(3) Toxic control monitoring program requirements of § 125.62(d).

(d) Reporting requirements that include:

(1) An annual report to the Enforcement Division Director on the results of the monitoring program required by paragraph (c);

(2) An annual report summarizing industrial compliance with the reporting requirements of 40 CFR 403.12(b). The report shall summarize for each industrial subcategory covered by national pretreatment standards:

(i) The number of sources reporting versus the number of sources inventoried in that subcategory;

(ii) The number of sources not in compliance with the pretreatment standard;

(iii) The number of sources with compliance schedules; and

(iv) What actions are being undertaken to develop compliance schedules for sources currently lacking but requiring a schedule.

(3) A report within 180 days of the final compliance date of a national pretreatment standard, summarizing the number of noncomplying sources in that industrial subcategory and what actions are being taken to bring non-complying sources into compliance (see industry reports required by 40 CFR 403.12(d)).

(4) An annual report on the public notification of noncomplying industries required by 40 CFR 403.8(f)(2)(vii).

[OMB No. 158—579003; Expires December 31, 1979]

Application Format for Modification of the Requirements of Secondary Treatment

Introduction

This application format consists of the following seven (7) parts, (A through G), sections and appendices which must be provided by the applicant to constitute a final application:

Part A. General

Section 1. Description of Treatment System.
Section 2. Effluent Limitations.
Section 3. Existing Discharge.
Section 4. State Secondary Treatment Requirements.
Section 5. State Coastal Zone Management Program.
Section 6. Marine and Estuarine Sanctuaries.
Section 7. Endangered or Threatened Species.
Section 8. Other Applicable Federal Requirements.
Section 9. Existence and Compliance with State Water Quality Standards.
Section 10. Improved Discharge Construction.

Part B. Technical Evaluation Information

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Appendix II. Oceanographic Data.
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Appendix III. Data on Ocean Discharge.
Subsection C—Saline Estuarine Discharge.
Appendix IV. Data on Estuarine Discharge.
Section 2. Compliance with BOD or DO.
Appendix V. DO demand resulting from disturbance of bottom.
Appendix VI. Description of more critical DO situation.
Section 3. Compliance with pH.
Appendix VII. Other considerations relative to pH.
Section 4. Compliance with Suspended Solids.
Appendix VIII. Compliance with State water quality standards.
Appendix IX. Description of experimental procedure used to compute amount and areal extent of SS accumulation on seabed.
Section 5. Public Water Supply Impact Assessment.
Appendix X. Assessment of Modified Discharge on Public Water Supplies.
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Appendix XI. Biological Conditions Summary.
Section 7. Biological Assessment Questionnaire.
Section 8. Recreational Impact Assessment.
Appendix XII. Assessment of Modified Discharge on Recreational Activities.

Part C. Description of Monitoring System

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Appendix XIII. Proposed Biological Monitoring Program.
Section 2. Water Quality Monitoring Program.
Appendix XIV. Proposed Water Quality Monitoring Program.
Section 3. Toxics Control Monitoring Program.
Appendix XV. Proposed Toxics Control Monitoring Program.

Part D. Letter(s) From State Concerning Impact of Modified Discharge on Other Point and Non-Point Sources

Appendix XVI. Letters from State Agencies Concerning Impact on Other Point and Non-Point Sources.

Part E. Toxic Control Program.

Section 1. Chemical Analysis.
Appendix XVII. Chemical Analysis of Toxic Pollutants and Pesticides and Source Identification Analysis.
Section 2. Pretreatment Program.
Appendix XVIII. Proposed Pretreatment Program.
Section 3. Non-Industrial Source Control Program.
Appendix XIX. Proposed Non-Industrial Source Control Program.

Part F. Effluent Volume and Mass Emissions

Appendix XX. Data on Effluent Volume and Mass Emissions.
Appendix XXI. Schedule of Activities to Control Combined Sewer Overflows.

Part G. Use of Title II Funds

Appendix XXII. Funding Program for Available Title II Funds.

Each part should be completed by the applicant to the best of its ability. When completed, this application must demonstrate, on its face, that the applicant's

modified discharge will meet the requirements of 40 CFR Part 125 and section 301(h) of the Act.

Part A—General

Section 1. Description of Treatment System

Please provide a detailed description of the treatment system and outfall configuration which you propose to utilize to satisfy the requirements of section 301(h) and 40 CFR Part 125.

If you are applying for a modification on the basis of an improved discharge within the meaning of 40 CFR 125.58, please also provide a detailed description of your current treatment system and outfall configuration.

Section 2. Effluent Limitations

Please identify the final effluent limitations for biochemical oxygen demand, suspended solids and pH on which your application for a modification is based:

Biochemical oxygen demand ———mg/l

Suspended solids ———mg/l

pH ———

Section 3. Existing Discharge

Did the publicly owned treatment works for which you are requesting a modification discharge into marine waters on or prior to December 27, 1977?

Yes ——— No ———

If "yes", please provide the start-up date of the facility's discharge, the discharge volume, and the exact location of the discharge.

If "no", please provide an explanation.

Section 4. State Secondary Treatment Requirements

Does your State or locality have a law, regulation or ordinance requiring secondary treatment of municipal wastewater?

Yes ——— No ———

If "yes", please attach a copy of such law, regulation or ordinance.

Section 5. State Coastal Zone Management Program

Is your modified discharge located in an area which is included in a State coastal zone management program(s) which has been approved under the Coastal Zone Management Act of 1972, as amended?

Yes ——— No ———

If "yes", attach a certification that your modified discharge will comply with such program(s).

Section 6. Marine and Estuarine Sanctuaries

Is your modified discharge located in a marine or estuarine sanctuary designated under Title III of the Marine, Protection, Research & Sanctuaries Act of 1972, as amended or under the Coastal Zone Management Act of 1972?

Yes ——— No ———

If "yes", please attach a certification from the Secretary of Commerce that the discharge is consistent with Title III and can be carried out within any applicable regulations promulgated thereunder.

Section 7. Endangered or Threatened Species

Please attach sufficient information to demonstrate that your modified discharge will not jeopardize the continued existence of an endangered or threatened species (as determined by the Secretary of the Interior under the Endangered Species Act of 1973, as amended), and will not result in the destruction or modification of the habitat of such species.

To assist EPA in determining whether the discharge of effluent pursuant to a permit issued under section 301(h) may affect a threatened or endangered species or modify the critical habitat of such species, an application must contain the following information:

(1) the names of any threatened or endangered species listed in 44 FR 3636 *et seq.* (January 17, 1979 or subsequently listed species) that inhabit, or obtain nutrients from, waters that will be affected by the proposed discharge;

(2) an indication whether the discharge will affect an area designated as Critical Habitat in 50 CFR Sections 17.95, 19.96 or Part 226;

(3) the applicant's evaluation of whether the proposed discharge may affect threatened or endangered species or modify a Critical Habitat (if a proposed discharge may affect waters inhabited by a threatened or endangered species, or used by such species to obtain nutrients, or if a proposed discharge may affect a Critical Habitat, the applicant's evaluation should contain a detailed analysis of the direct and indirect impacts of such discharge on threatened or endangered species).

Section 8. Other Applicable Federal Requirements

Are you aware of any Federal law, other than the Clean Water Act or the three statutes identified in Sections 5, 6 and 7, or an Executive Order, which is applicable to your discharge?

Yes——— No———

If "yes", please provide sufficient information to demonstrate that your modified discharge will comply with such law(s) or order(s).

Section 9. Existence and Compliance With State Water Quality Standards

Does a State water quality standard or standards, as defined in section 125.58(w) exist, as required by § 125.60(a) that is applicable to the pollutant or pollutants for which a modified permit is requested?

Yes——— No———

If "yes", please attach a certification from your State water pollution control agency and a demonstration that the water quality of your modified discharge meets or will meet the appropriate State water quality standard or standards. Include information on the State's mixing zone policy, criteria applied, and dilution or decay studies that were undertaken to demonstrate that the appropriate mixing and effluent concentration limitations were met.

Section 10. Improved Discharge Construction

Are you applying for a section 301(h) modification based on an improved discharge within the meaning of 40 CFR 125.58?

If "yes", please provide the following information:

A. Evidence that such improvements have been throughly planned and studied as an alternative to secondary treatment.

B. Evidence that you have the financial and technical resources necessary to complete or implement such improvements expeditiously.

C. A history of your previous efforts to comply with construction schedules in your existing NPDES permit (or an enforcement compliance schedule letter). If you have not met all required dates, please provide an explanation.

D. A proposed schedule for the staged planning, design and construction of (A) secondary treatment and (B) the improvements which you propose to make to meet the requirements of this part, which will maximize the amount of planning, design and construction which you can complete pending a final Agency decision on your application.

Part B—Technical Evaluation Information

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Subsection A—Initial Dilution.
Subsection B—Ocean Discharge.
Subsection C—Saline Estuarine Discharge.
Section 2. Compliance with BOD or DO.
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Section 4. Compliance with Suspended Solids.
Section 5. Public Water Supply Impact Assessment.
Section 6. Marine Biological Assessment.
Section 7. Biological Assessment Questionnaire.
Section 8. Recreational Impact Assessment.

General Instructions. In addition to providing the information required in this format, the applicant must include supplemental information as requested in various Sections of Part A.

Section 1. Physical Assessment

Subsection A. Initial Dilution

1–1. List the characteristics of the outfall diffuser system:

————angle of port orientation(s) from the horizontal, in degrees.

————port diameter(s) in meters to three significant figures, and the contraction coefficient of the orifice(s), if known.

————vertical distance between water surface and outfall port(s) centerline, in meters.

————density of effluent in grams per cubic centimeters at some reference temperature (degrees centigrade).

————number of ports.

————port spacing, meters; also explain in Appendix I the spatial arrangement of ports with respect to each other, and the seabed.

————design flow rate for each port if multiple ports are employed (m^3/sec).

1–2. Determine the flow rates representing the highest two to three hours during an average day of the seasonal critical periods identified in 1–3:

a. Maximum flow = ————m^3/sec.

b. Expected maximum flow at the end of the permit term = ————m^3/sec.

1–3. Provide ambient density gradient lines for the region of the outfall diffuser. Sufficient vertical data points must be given to allow an accurate representation by linear segments of the major features of the ambient density structure. Ambient stratification adversely effects initial dilution. The greatest density gradient over the height-of-rise of the plume will result in the lowest dilution period. Data can be evaluated by (1) comparing predictions for various density profiles or (2) predicting the density gradient over the height-of-rise of the plume and then using the greatest value (as explained in the Technical Support Document). Worst case conditions or those at the worst 10 percentile if sufficient data exists should be used. Since initial dilution predictions may be sensitive to the value of the density gradient, data accuracy should be consistent with generally accepted oceanographic practices. Density should be reported to five (5) significant figures. A set of data should be provided for each of the following critical environmental situations:

a. Periods of maximum hydraulic loading from the wastewater treatment facility.

b. Periods of low background water quality due to natural conditions including low DO, excessively high and low turbidity.

c. Periods of exceptional biological activity (*e.g.*, spawning, migration of anadromous or catadramous organisms, etc.)

d. Periods of low net circulation, low effective net flushing, or low intertidal mixing

e. Periods of minimum and maximum stratification.

1–4. Compute initial dilution for the flow rates identified in Section 1–2 and each of the critical environmental conditions given in Section 1–3. Currents equal to the lowest ten percentile of those measurements made near the discharge site during these periods may be used in computations.

Dilution is defined as the total volume of a parcel divided by the volume of waste it contains. Initial dilution is the flux-average dilution attained by the plume during its convective ascent through ambient water. Initial dilution may be calculated by the applicant. However, EPA will make calculations based on its own methods.[1] These methods are available upon request. If other methods are used, they, should be described in Appendix I and be in reasonable agreement with EPA calculations.

For the purposes of demonstrating impact on water quality, concentrations of waste constituents expected after initial dilution are:

$C_f = C_a + (C_e - C_a) / Sa$

Where:

C_f = final concentrations, C_e = effluent concentrations, C_a = ambient concentration, and Sa = predicted initial dilution.

1–5. If EPA methods of initial dilution prediction are used, check here.————

1–6. Of the initial dilutions listed in 1–4, which is most critical with respect to ambient DO requirements (See 2–7)? Explain in Appendix I.

1–7. Which is most critical for pH (See 3.3)? Explain in Appendix I.

1–8. Which is most critical for SS (See 4.5)? Explain in Appendix I.

[1] Teeter, A. M. and D. J. Baumgartner. Predictions of Initial Mixing for Municipal Ocean Discharges. EPA, Corvallis Environmental Research Laboratory Publication 043. Corvallis, Oregon, August 1978.

1–9. Provide in Appendix II an explanation of how the currents and ambient vertical density stratification in the vicinity of the outfall (using data provided in Appendices III and/or IV) may influence plume shape, trajectory, and seawater entrainment in the plume (or plumes if multiple diffusers are used). Methods cited above for initial dilution may be used. The applicant must demonstrate that coastal circulation processes supply dilution water in the amount of Sa x Q, where Q is the volumetric flux of treated wastewater, using oceanographic data discussed in Appendix II, III, or IV.

1–10. Estimate the boundary of the zone of initial dilution. This zone should bound those dilutions calculated for the flows and conditions described in Section 1–4. Use predicted plume trajectories or vertical height of rise for the critical conditions, whichever is greater, as the radial extent of the zone. Measure this distance horizontally from the discharge point(s) to the boundary of the zone. The maximum vertical height of rise will equal the water depth in most cases and is an acceptable value. The zone will then be a circle with a radius equal to the water depth in the case of a single port, or a rectangle whose width is equal to twice the depth of the water plus the width of the diffuser, and whose length is equal to twice the depth of the water plus the length of the diffuser. For purposes of compliance monitoring, a regularly shaped boundary (describing a cylinder, cube, etc.) extending vertically from the seabed to the sea surface would be acceptable. List the geometric description of the zone configurations indicating the margin for navigational error as a ± distance.

1–11. List the coordinates of the zone by latitude and longitude.

Subsection B. Ocean Discharge

1–12. If your discharge is into the ocean, provide in Appendix III an oceanographic report including:

a. Profiles with depth, representative of seasonal conditions, shall be provided for temperature, salinity, density and currents. These variables shall be given for the water column inshore of the diffuser (or pipeline end, in the case of no diffuser), over the diffuser (or end), but away from direct effluent effects, offshore of the end, and upstream and downstream of the center of the discharge. Conclusions should be drawn from direct and inferred current measurements as to the fate of material in the far field and as to plume dynamics. Oceanographic atlases or compendia of data may be used, or data

may be extrapolated from them if it is shown that they are representative of the outfall area.

b. Depending on applicable water quality standards and monitoring requirements, the following measurements shall be made simultaneously at the same stations as 1–12a, above, and additionally to monitor outfall effluents: BOD, DO, pH, suspended particulates, and light transmittance. As noted elsewhere, DO is a surrogate for BOD, and light transmittance and turbidity are surrogates for suspended solids and may be substituted where appropriate.

c. An assessment of the environmental effects of direct freshwater runoff from coastal areas is required. Runoff from estuaries may contain substances that affect measurements in the zone occupied by the outfall, hence the outfall may contribute less to the pollution load than would be the case if extraneous sources were not considered. The applicant should document the estuary mass emission rate if this situation occurs.

Subsection C. Saline Estuarine Discharge

1–13. If your discharge is to saline estuarine waters, provide in Appendix IV an oceanographic report describing the following characteristics:

a. Seasonal classification of the estuary in the vicinity of the discharge must be documented, preferably by the scheme devised by Hansen and Rattray.[3] If the Hansen-Rattray method is used, velocity and salinity data shall be presented so as to estimate pollutant flux past the outfall. Residence times of material in the vicinity of the outfall and in the estuary itself should be provided. If the Hansen-Rattray scheme is not used, *e.g.*, if the estuary is classified as "well-mixed," "partially-mixed," etc., data shall be presented to support the classification. The same calculations discussed above will be presented.

If deep estuaries, *e.g.*, fiords, are being considered, calculation of residence times throughout the water column will be given. Methods of deriving these estimates and their effect on relative pollutant distibution must be made with reference to the seasonal variation of plume configuration, *i.e.*, plume equilibrium position.

b. In conjunction with 1–13a, the freshwater budget is required to provide estimates of the non-tidal freshwater velocity, at the point of evaluation. Other uses of the freshwater budget are for calculations of flushing rates which require knowledge of tidal prisms and as input to numerical models which are discussed below. Generally, streams are gauged sufficiently above tidal effect so that the freshwater inflow can be estimated. Other estimates of runoff contributions below the gauging station are required.

If gauged stream data are not available for runoff estimates the method of estimating flow must be accompanied by a discussion of assumptions, estimates of errors and potential effect of errors.

c. Historical records of wind, tide height and tidal currents should be synthesized and a correlation made with the dispersion of surface and subsurface materials, and recirculation of material. Particular attention should be given to prevailing wind speed and direction, especially the onshore-alongshore-offshore component (as it affects the shoreward movement of surface materials), and the incidence of such events. Where possible, corrections to time of occurrence, elevations, speeds and directions should be cited with reference to NOAA current and tide table stations.

d. The effects of geographical and geomorphological features on spatial and temporal variations shall be evaluated with narrows and shoaling effects in mind.

e. Spatial and temporal scale-dependent phenomena within the outfall tidal excursion zone are to be evaluated.

f. If numerical models are used to support the modification request, complete documentation and seasonal verification at the point(s) in question must be supplied, as must methods employed to evaluate turbulent, advective, and other terms.

g. If hydraulic models are used to support the modification request, time-lapse photographs covering combinations of seasonal runoff and tidal conditions at the point(s) in question should be supplied if available. Documentations of methods employed to simulate wind, density, and velocity profiles will be required.

h. Background data on suspended solids contributions and estimates of deposition and resuspension to the estuary solids balance must be supplied.

Section 2. Compliance With BOD or DO

2–1. If the BOD of your effluent exceeds the BOD criteria described in 40 CFR 133.102(a), complete this section.

2–2. Provide applicable State water quality standards levels in receiving water. You may apply for a BOD modification if a value is entered in 2–2a or 2–2b below.

a. DO criteria ———

b. BOD criteria ———

Complete the appropriate subsection to show compliance with the criteria listed in 2–2a or 2–2b or both if applicable.

Dissolved Oxygen

2–3. Effluent sample point location ———. DO (mg/l) at sample point ———.

The location of effluent concentration measurement should be clearly indicated (*i.e.*, final clarifier overflow, final pump station). If disinfection is employed periodically, samples must be obtained for every comparable situation.

2–4. Travel time from sample point to diffuser ports:

a. Minimum flow ——— m^3/sec, time to flow ——— minutes.

b. Average flow ——— m^3/sec, time to flow ——— minutes.

c. Maximum flow ——— m^3/sec, time to flow ——— minutes.

d. Expected maximum flow at the end of the permit term ——— m^3/sec, time to flow ——— minutes.

Because anaerobic conditions in ocean outfalls may increase demand and adversely alter other chemical parameters, it is necessary to compute travel times at these flows. Applicants should enter the values for the flows indicated and compute the time to flow between the sample point and the diffuser ports.

2–5. Immediate dissolved oxygen demand (15 minutes) of the effluent after anaerobic incubation for times 2–4a through 2–4d, respectively.

a. ———.

b. ———.

c. ———.

d. ———.

The immediate dissolved oxygen demand (IDOD; APHA Standard Methods, 14th ed., except as modified to use representative seawater instead of distilled water for dilution) must be measured after anaerobic incubation at representative temperatures for the time periods computed in 2–4. This value is considered to be a conservative estimate of the oxygen demand exerted by the waste stream in the buoyant plume formed in the sea upon discharge from an ocean outfall. Show the data from which the IDOD's were calculated.

2–6. List background DO concentrations at appropriate depths and indicate possible influence by the ocean outfall for the critical environmental situations listed in question 1–3.

[3] Hansen, D. V. and M. Rattray, Jr. New dimensions in estuary classification. Limn. Ocean. 11:319–326. 1966.

2–7. Compute the influence on ambient DO using the largest IDOD presented in 2–5, the DO concentration presented in 2–6, and the corresponding Sa from question 1–4. Respond to question 1–6. Compute the following equation (all values in mg/l):

$DO_f = DO_a + (DO_s - IDOD - DO_a)/Sa$

where:

DO_f = final dissolved oxygen,
DO_a = background dissolved oxygen,
DO_s = dissolved oxygen of samples at final sampling point in the plant,
IDOD = immediate dissolved oxygen demand, per modified standard methods,
Sa = predicted average initial dilution.

2–8. Do the results of 2–7 meet the criteria for DO presented in 2–2? If not explain.

BOD

2–9. Determine the effluent BOD taken at times corresponding to flows presented in 2–4a, b, c, and d.

a. ————.
b. ————.
c. ————.
d. ————.

2–10. Compute the final BOD following initial dilution using the appropriate flows in 2–4.

a. ————.
b. ————.
c. ————.
d. ————.

2–11. Do the results of 2–10 meet the criteria for BOD presented in 2–2b? If not explain.

2–12. Provide in Appendix V, an analysis showing that BOD exerted *after* initial dilution will not result in subsequent depletion of DO below applicable standards for DO. Describe the oxygen demand resulting from periodic disturbance of accumulated sediments, and from steady demand of undisturbed sediments, in relation to 2–13.

2–13. The demand of oxygen in the bottom 2 meters of seawater for the critical 3 month period refers to the following data:

a. Ambient DO concentration ———— mg/l.
b. DO criteria ————.
c. What months of the year are represented? ————.

2–14. How often are the 2–2a criteria exceeded? ————.

2–15. Do you believe questions 2–2 through 2–13 adequately represent the most critical evaluation of possible adverse effects that may be associated with the BOD exerted by your discharge? If not, please describe in Appendix VI a more critical situation and demonstrate that your discharge will comply with applicable State water quality standards and not cause environmental damage.

Section 3. Compliance with pH

3–1. Does your effluent pH ever exceed nine or fall below six? If so, explain why and complete this section.

3–2. List the applicable State standard for pH in the vicinity of the discharge.

3–3. List pH's resulting from mixtures of receiving seawater and effluent according to the lowest initial dilution calculated in 1–4. Respond to question 1–7. Describe the method used in determining pH.

Values must be a time series, as deemed appropriate, based on the above experimental observations. The pH may change as a result of effluent dilution with seawater. Therefore, the applicant should provide results of pH measurement in tabular form (graphs of continuous measurement may be attached). Measurements should be made immediately after mixing and at three more times following mixing as determined by observing the rate of reaction of the waste and seawater.

3–4. Is the pH standard met? How often is the pH standard exceeded? Explain.

3–5. If you have evaluated other considerations regarding pH, please provide a detailed analysis in Appendix VII.

Section 4. Compliance With Suspended Solids

4–1. If the suspended solids of your effluent exceeds the suspended solids criteria described in 40 CFR 133.102(b) complete this section.

4–2. Have you received, or are you in the process of receiving an adjusted suspended solids effluent requirement from EPA by virtue of operating an approved wastewater treatment pond? (See 40 CFR 133.103).

YES ————, please explain.
NO ————, proceed to next question.

4–3. List the State water quality standard related to suspended solids applicable to the marine waters at the discharge point. Standards for suspended solids, water clarity, turbidity, light transmittance, depth of photic zone, or settleable solids are acceptable.

4–4. Determine the suspended solids content for the following flow conditions:

a. Minimum flow ———— m^3/sec, SS ———— mg/l.
b. Average flow ———— m^3/sec, SS ———— mg/l.
c. Maximum flow ———— m^3/sec, SS ———— mg/l.

4–5. Using the initial dilutions computed in 1–4, the ambient SS concentrations for the critical periods identified in 1–3, and corresponding SS in 4–4, compute the final suspended solids concentrations following initial mixing. Respond to question 1–8.

4–6. Do the final suspended solids concentrations meet the State water quality standard for suspended solids?
YES ———— NO ————
State does not have water quality standard for SS ————.

4–7. If the State does not have a water quality standard for SS, provide as Appendix VIII a detailed discussion of how your outfall discharge meets State water quality standards for water clarity, turbidity, light transmittance, depth of photic zone, or settleable solids. The information should relate to the critical condition explained in 1–8 and include the results of laboratory testing and field studies.

4–8 Describe in Appendix IX the experimental procedure used to compute the amount and areal extent of seabed accumulation of SS discharge under this modification.

If applicable water quality standards limit settleable solids, the applicant must experimentally determine the amount of settleable solids after appropriate initial mixing and a period of a quiescent settling. The mass of settleable material may be reported per unit volume of discharge or per unit volume of receiving water, whichever relates most directly to the applicable standard.

Water quality standards may limit the actual areal deposition [3] rate of settleable solids as a way to protect benthic communities from significantly altered sedimentary materials. An assessment of the accumulation of settleable solids must be provided in any event, in order to estimate the impact of deposited materials on oxygen levels.

The applicant must also provide an assessment of the long term fate of the sedimentary material within and outside the zone of initial dilution. It is important to assure that periodic sediment resuspension or continual drift of sediment loads will not result in deleterious accumulations in bays, estuaries, beaches, and oceanic topographic depressions. Data from seabed drifter studies, if available should be reported.

4–9. Does the discharge meet the settleable solids standards in all critical cases as identified in 1–3? Data must be

[3] As distinguished from a limit on the concentration of settleable solids in the water column.

provided to substantiate this assessment.

——— Yes,

——— No applicable standard; however the seabed accumulation is computed for use in evaluating oxygen demand at the seabed interface.

Section 5. Public Water Supply Impact Assessment

General Instructions. The applicant must prepare an assessment of the impact of its current discharge on existing and potential sources of public water supplies (Appendix X). As noted in § 125.61(e), applicants requesting a modified permit based on an improved discharge involving outfall relocation must submit a similar assessment for the relocation site.

The public water supply impact assessment must include, at a minimum:

5–1. Identification of the exact location of each planned or existing seawater intake which is being or will be used by a desalinization plant producing water for public water supplies and is likely to be affected by the applicant's modified discharge, based on the analysis of the transport and dispersion of the applicant's wastewater required by the Physical Assessment, Sections 1–4 of this part.

5–2. If any desalinization plant is identified under paragraph 5–1, a detailed assessment of:

(a) The impact of the applicant's modified discharge on water quality in the vicinity of the intake, considering the effect of tides, winds, currents and other meteorological or hydrological phenomena which affect the transport and dispersion of the applicant's modified discharge; and

(b) If the applicant's modified discharge has any impact on the water quality in the vicinity of the intake, the effect of that impact on the quality of the public water supply ultimately produced, including an analysis of whether it will continue to comply with local, State and EPA drinking water standards, and whether such compliance will require additional treatment.

5–3. An analysis of whether the applicant's modified discharge will comply with all applicable State water quality standards or other requirements adopted or promulgated for the purpose of attaining or maintaining water quality which assures protection of public water supplies.

Section 6. Marine Biological Assessment

General Instructions: To enable the Administrator to determine whether an applicant's modified discharge meets the criteria of § 125.61(b)(1), the applicant shall answer the Biological Assessment Questionnaire contained in Section 7 of this part of the application form, and shall prepare a Biological Conditions Summary (Appendix XI) that supports the response to the questionnaire. The organization of the Biological Conditions Summary should follow the format of the questionnaire. A section should be prepared for each question and it should include a synthesis of all data relevant to the issue.

The Biological Conditions Summary must examine ecological conditions at a minimum of three sites: within the zone of initial dilution, immediately beyond the boundary of the zone of initial dilution, and at a reference site that is comparable to the discharge site in all physical and chemical parameters except for the presence of ecologically significant human disturbances.

The basic requirements of § 125.61(b)(1) are the absence of extreme biological impacts within the zone of initial dilution, and the presence of a balanced, indigenous population immediately beyond the boundary of the zone. A balanced, indigenous population must also exist at any point beyond the boundary of the zone where impacts from the applicant's modified discharge might reasonably be expected to occur. A balanced, indigenous population will be considered present beyond the boundary of the zone if the applicant can demonstrate that biological conditions there fall within the natural range of variability observed at the reference site.

Section 125.61(b)(1) contains additional biological criteria for modified discharges into saline estuarine waters, for modified discharges into stressed waters, and for improved discharges. Applicants who propose a modified discharge into saline estuarine waters must demonstrate in their response to question 7–2 that their modified discharge will not cause substantial difference in benthic populations within and beyond the zone of initial dilution, will not interfere with migratory pathways within the zone, and will not result in the bioaccumulation of pollutants at levels which exert adverse effects on the biota within the zone.

Applicants who propose a discharge into stressed waters must demonstrate in their response to question 7–12 that their modified discharge will not increase or perpetuate adverse ecological alterations resulting from other sources of pollution.

Applicants who propose an improved discharge must demonstrate in their response to question 7–13 that the improvement will eliminate any adverse biological impacts attributable to their current discharge.

The other portions of the Biological Assessment Questionnaire address major ecological impacts of obvious concern. These include the occurrence of mass mortalities, disease epicenters, and phytoplankton blooms near the applicant's outfall; adverse effects on fisheries and distinctive habitats of limited distribution such as coral reefs and kelp beds; and the bioaccumulation of toxic materials. The questions also address more fundamental ecological characteristics that are likely to indicate a disruption of the natural structure and function of a balanced, indigenous population. These include species composition; patterns of diversity, abundance, and productivity; trophic structure; and the presence of pollution indicators, opportunistic, or nuisance species. Alterations in such ecological parameters may occur in benthic, phytoplankton, zooplankton, demersal, and intertidal assemblages. Sampling guidelines for each of these biological assemblages are cited in the 301(h) Technical Support Document.

The extent of documentation in the Biological Conditions Summary necessary to support the response to the Biological Assessment Questionnaire is dependent on the quality and quantity of the applicant's discharge and the sensitivity of the receiving environment. Because these factors vary greatly among potential 301(h) applicants, EPA has generally avoided specific, universal requirements for biological analyses. Applicants are given the flexibility to provide only those analyses that are warranted in individual cases.

Section 7. Biological Assessment Questionnaire

Is there reason to believe that the applicant's discharge may have caused or will cause:

7–1 Interference with the protection and propagation of a balanced, indigenous population of marine life characteristic of the biogeographic zone in which the outfall is located? YES ——— NO ———

7–2 Biological communities within the zone of initial dilution to be different from those that would naturally occur in the absence of the outfall? YES ——— NO ———

7–3 Differences in the structure and function of biological communities (e.g., vertical and horizontal stratification, species composition, abundance,

diversity, productivity, trophic structure, etc.) beyond the zone of initial dilution from those characteristics of the biogeographic zone in which the outfall is located? YES ——— NO ———

7–4 Increases in the abundance of any marine plant or animal organism (especially nuisance or toxic species, or phytoplankton whose blooms cause adverse ecological effects) within or beyond the zone of initial dilution not characteristic of the biogeographic zone in which the outfall discharge is located? YES ——— NO ———

7–5 Domination of marine communities within or beyond the zone of initial dilution by pollution resistant species (e.g., slime forming algae or bacteria, fouling, boring, nuisance or opportunistic species of finfish, invertebrates, etc.)? YES ——— NO ———

7–6 A deleterious effect on distinctive habitats of limited distribution such as kelp beds and coral reefs either within or beyond the zone of initial dilution? YES ——— NO ———

7–7 Within or beyond the zone of initial dilution, an increased incidence of disease in marine organisms? YES ——— NO ———

7–8 An abnormal body burden of any toxic material in marine organisms collected within or beyond the zone of initial dilution? YES ——— NO ———

7–9 Adverse effects on commercial or recreational fisheries within or beyond the zone of initial dilution? YES ——— NO ———

7–10 Mass mortality of fishes or invertebrates due to a typical growth of marine algae, anoxia or other conditions within or beyond the zone of initial dilution? YES ——— NO ———

7–11 Adverse ecological impacts either within or beyond the zone of initial dilution other than those addressed in the preceding questions? If so, please explain. YES ——— NO ———

The following question must be answered only by applicants who propose a discharge into stressed waters.

7–12 Is there reason to believe that the applicant's discharge has enhanced or will perpetuate adverse ecological alterations resulting from other sources of pollution? If so, please explain. YES ——— NO ———

The following question must be answered only by applicants who propose to improve their discharge in order to qualify for a 301(h) modification.

7–13 Will the proposed improvement eliminate adverse ecological impacts attributable to the applicant's existing discharge? If so, please explain. YES ——— NO ———

Section 6. Recreational Impact Assessment

General Instructions: The applicant must prepare an assessment of the impact of its modified discharge on existing and potential recreational activities (Appendix XII). The term recreational activities includes, but is not limited to, swimming, diving, wading, boating, fishing, and picnicking and sports activities along shorelines and beaches. As noted in § 125.61(e), applicants requesting a modified permit based on an improved discharge involving outfall relocation must submit a similar assessment for the relocation site.

The recreational impact assessment must include, as a minimum:

8–1. Identification of: (1) all existing or potential recreational activities affected and likely to be affected by the applicant's modified discharge, based on the analysis of the transport and dispersion of the applicant's wastewater required by the Physical Assessment, Section 1–4 of this part; (2) all existing and potential recreational activities at a reference site(s) of comparable, but unpolluted, environmental conditions; and (3) where the applicant claims that its inability to meet the requirements of § 125.61(d) is due to pollution from sources other than its discharge, all existing and potential recreational activities at a reference site(s) of comparable environmental conditions (including comparable pollution absent the applicant's discharge).

8–2. Within the area of impact, as identified by the applicant's analysis of the transport and dispersion of its discharge contained in the Physical Assessment, a detailed analysis of the following:

(a) The impact of the applicant's discharge on existing or potential recreational fishing, including both finfishing and shellfishing;

(b) State, Federal, or local restrictions on the harvesting or human consumption of shellfish or finfish;

(c) State, Federal or local limitations on the concentrations of toxic pollutants, pesticides or other substances in edible fish and shellfish harvested from within the area of impact;

(d) The impact of the applicant's discharge on recreational boating, swimming, wading, and picnicking and sports activities along shorelines and beaches; and

(e) State, Federal or local restrictions on water contact sports or other activities or on the recreational uses of shorelines and beaches.

8–3. An analysis of whether the applicant's discharge will comply with all applicable water quality standards or other requirements adopted or promulgated for the purpose of attaining or maintaining water quality which assures protection of recreational activities.

Part C—Description of Monitoring System

Table of Contents

Section 1. Biological Monitoring Program.
Section 2. Water Quality Monitoring Program.
Section 3. Toxics Control Monitoring Program.

General Instructions: The applicant must prepare as Part C of the application a description of the proposed monitoring system to meet the criteria of section 125.62 that would be implemented upon receipt of a section 301(h) modified NPDES permit. As noted in section 125.62(b)(ii) applicants requesting a modified permit based on an improved discharge involving outfall relocation must submit a monitoring plan for both the existing discharge site and the relocation site as well as control site(s).

The proposed monitoring plan must include proposed programs for monitoring to demonstrate compliance with the toxics control program established to meet the requirements of § 125.64, for monitoring biological impacts of the applicant's discharge(s) on marine biota to demonstrate compliance with § 125.61, and monitoring of compliance with State water quality standards as required by §125.60. Each proposed program must include a detailed description or references of sampling techniques, frequency and locations of sampling, analytical techniques and quality control methods. In addition, applicants must demonstrate that adequate economic, personnel, technical, and other resources are available to implement the proposed programs upon issuance of a modified permit and to carry out the proposed programs for the life of the modified permit.

Section 1. Biological Monitoring Program

The applicant must submit as Appendix XIII a proposed biological monitoring program designed to provide data adequate to evaluate the impact of

the applicant's discharge on marine biota. The biological monitoring program should allow for the development and understanding of variations in the marine biota over time and the causes of these variations, whether they are due to natural forces, the discharge itself, or other sources of pollutants. Therefore, the biological monitoring program should be designed so that observed changes in the marine biota can be correlated with the possible influencing factors of the applicant's discharge, including but not limited to variations in the wastewater flow and characteristics, and both normal and unusual meteorological and oceanographic conditions. The biological monitoring program should be keyed to the marine life affected or likely to be affected, as indicated in the biological conditions summary prepared under § 125.61(c)(2), and should emphasize those parameters most likely to impact the marine biota in the vicinity of the applicant's outfall.

The requirements of § 125.62(b) should lead to the development of a biological monitoring program which consists of:

1. Field surveys of biological communities and populations that permit comparisons with baseline conditions described in the Biological Conditions Summary;

2. An assessment of the condition and productivity of both commerical and recreational fisheries potentially affected by the applicant's discharge; and

3. *In situ* bioassays and fields surveys to determine bioaccumulation and survival of indicator organisms at various depths within and beyond the zone of initial dilution and at appropriate reference points. The proposed program should include detailed descriptions or references of sampling techniques, frequency and location of sampling and analytical methods, and rationales for the selection of indicator organisms and biological communities used for bioaccumulation studies and various field studies.

Section 2. Water Quality Monitoring Program

The applicant must submit as Appendix XIV a proposed water quality monitoring program designed to provide data adequate to evaluate the applicant's compliance with applicable State water quality standards. The water quality monitoring program should allow for the development and understanding of variations in water quality over time and the causes of these variations, whether they are due to natural forces, the discharge itself, or other sources of pollutants. Therefore, the water quality monitoring program should be designed so that observed water quality can be correlated with the possible influencing factors of the applicant's discharge, including but not limited to variations in the wastewater flow and characteristics, and both normal and unusual meteorological and oceanographic conditions. Emphasis should be placed on critical environmental periods such as spawning periods for fish and shellfish. The proposed program should include detailed descriptions or references of sampling techniques, frequency and location sampling, and analytical and quality control methods.

Section 3. Toxics Control Monitoring Program

The applicant must submit as Appendix XV a proposed toxics control monitoring program designed to demonstrate the effectiveness of the applicant's toxic control program in reducing those toxic pollutants and pesticides identified in the required analysis of its current discharge under § 125.64(a) for the toxic pollutants and pesticides identified in § 125.58 (k) and (s). Accordingly, the toxics control monitoring program should provide data on the chemical composition of the applicant's discharge which can be used to:

1. Measure the effectiveness of the applicant's pretreatment and non-industrial source control programs and procedures;

2. Assist in implementing the overall toxics control program efforts; and

3. Guide the biological monitoring program efforts.

The proposed program should include detailed descriptions of or references to sampling techniques, frequency and location of sampling, and analytical and quality control methods. The toxics control monitoring program should provide an understanding of variations over time of both the flow rate and toxic pollutant content of the applicant's discharge; accordingly, the program should be designed to provide data on both wet weather and dry weather flows.

Part D—Letter(s) From State Concerning Impact of Modified Discharge on Other Point and Non-Point Sources

General Instructions: The applicant must submit, as Appendix XVI of the application, letters from appropriate State agencies stating whether the applicant's modified discharge will result in any additional treatment, pollution control, or other requirement on any other point or non-point source. The letter(s) should include a detailed analysis of the facts and other considerations supporting the agency's conclusion, including a thorough analysis of existing and future waste loads and waste load allocations for the waters into which the applicant has discharged and will be discharging, and the effect of granting the proposed section 301(h) modification to other POTWs and other point and non-point source discharges into these waters.

Since waste load allocations are determined by the State, letter(s) should be secured from all State agencies which have any role in setting waste loadings or waste load allocations. These agencies include the State water pollution control agency, area-wide planning or management agency, coastal zone commission, and possibly other State-level agencies.

Part E—Toxic Control Program

Table of Contents

Section 1. Chemical Analysis.
Section 2. Pretreatment Program.
Section 3. Non-Industrial Source Control Program.

General Instructions: All applicants must submit as Appendix XVII an analysis of the wastewater or effluent from their current discharge, an analysis of known or suspected sources of toxics and pesticides in the wastestream, and proposed industrial pretreatment and non-industrial source control programs designed to address the control of the toxics identified by the chemical analysis. Applicants who can certify that there are no known or suspected industrial sources of the identified toxic pollutants currently or planned that would discharge into the POTW for which a modification is being requested are not required to develop a proposed industrial pretreatment program.

Section 1. Chemical Analysis

All applicants shall submit an analysis of the waste water or effluent from their current discharge for the toxic pollutants and pesticides listed in Table 1 below, and present the results of the analyses in Appendix XVII. All analyses shall be done on a 24-hour composite sample with incremental samples collected hourly. Both dry weather and wet weather flows of the effluent shall be sampled and analyzed. The dry weather flow sample shall be collected no less than 5 days following a rainfall of measureable intensity.

The pesticides and toxic pollutants shall be analyzed using the precedures presented in the document titled "Sampling and Analysis Procedures for

Screening of Industrial Effluents for Priority Pollutants" (April, 1977 or later revisions). This document is available at no charge to the applicant. Applicants should notify the person listed under "For Further Information Contact" at the front of the regulation for a copy of the document.

This document references the analytical procedures for measuring pesticides, heavy metals, cyanides and phenols listed in 40 CFR Part 136. Applicants must report data for all detectable pesticides and toxic pollutants, not just those reported to be greater than 10ug/1, as requested on page thirty of the "Sampling and Analysis" document. Applicants should provide quality control data collected during the analysis of the wastewater samples.

Applicants may substitute or provide additional data on the concentration of priority pollutants concentrations in their discharge for those found in the two composite samples. Information must be provided to demonstrate that the concentrations are those typical of wet and dry weather flows. Where these data are not available, applicants shall provide data on the two samples listed above.

In addition to complying with the requirements of § 125.64(b), the applicant must submit as a part of Appendix XVII an analysis of known or suspected sources of the toxics and pesticides identified through the chemical analysis of the waste stream. These sources should be categorized according to their specific industrial and non-industrial origin, where possible.

For the purposes of these regulations, toxic pollutants and pesticides include: (1) those substances identified in Table 1 of Committee Print 95–30 of the House of Representatives Committee on Public Works and Transportation; and (2) those pesticides identified in *Quality Criteria for Water, 1976* but not included in Committee Print 95–30. Following is the list of toxic pollutants and pesticides which applicants must include in their toxic control program.

Table 1

Pesticides:
- Mirex
- Guthion
- Methoxychlor
- Parathion
- Demeton
- Malathion

Toxic Pollutants:
- Acenaphthene
- Acrolein
- Acrylonitrile
- Aldrin/Dieldrin
- Antimony and compounds
- Arsenic and compounds
- Asbestos
- Benzene
- Benzidine
- Beryllium and compounds
- Cadmium and compounds
- Carbon tetrachloride
- Chlordane (technical mixture and metabolites)
- Chlorinated benzenes (other than dichlorobenzenes)
- Chlorinated ethanes (including 1, 2-dichloroethane, 1,1,1-trichloroethane, and hexachloroethane)
- Chloroalkyl ethers (chloromethyl, chloroethyl, and mixed ethers)
- Chlorinated naphthalene
- Chlorinated phenols (other than those listed elsewhere; includes trichlorophenols and chlorinated cresols)
- Chloroform
- 2-chlorophenol
- Chromium and compounds
- Copper and compounds
- Cyanides
- DDT and metabolites
- Dichlorobenzenes (1,2,- 1,3-, and 1,4-dichlorobenzenes)
- Dichlorobenzidine
- Dichloroethylenes (1,1- and 1,2-dichloroethylene)
- 2,4-dichlorophenol
- Dichloropropane and dichloropropene
- 2,4-dimethylphenol
- Dinitrotoluene
- Diphenylhydrazine
- Endosulfan and metabolites
- Endrin and metabolites
- Ethylbenzene
- Fluoranthene
- Haloethers (other than those listed elsewhere; includes chlorophenylphenyl ethers, bromophenylphenyl ether, bis (dichloroisopropyl) ether, bis-(chloroethoxy) methane and polychlorinated diphenyl ethers)
- Halomethanes (other than those listed elsewhere; includes methlene chloride, methylchloride, methylbromide, bromoform, dichlorobromomethane, trichlorofluoromethane, dichlorodifluoromethane)
- Heptachlor and metabolites
- Hexachlorobutadiene
- Hexachlorocyclohexane (all isomers)
- Hexachlorocyclopentadiene
- Isophorone
- Lead and compounds
- Mercury and compounds
- Naphthalene
- Nickel and compounds
- Nitrobenzene
- Nitrophenols (including 2,4,-dinitrophenol, dinitrocresol)
- Nitrosamines
- Pentachlorophenol
- Phenol
- Phthalate esters
- Polychlorinated biphenyls (PCBs)
- Polynuclear aromatic hydrocarbons (including benzanthracenes, benzopyrenes, benzofluoranthene, chrysenes, dibenzanthracenes, and indenopyrenes)
- Selenium and compounds
- Silver and compounds
- 2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)
- Tetrachloroethylene
- Thallium and compounds
- Toluene
- Toxaphene
- Trichloroethylene
- Vinyl chloride
- Zinc and compounds

Section 2. Industrial Pretreatment Program

All applicants shall submit, as Appendix XVIII, a proposed pretreatment program which complies with the requirements of § 125.64(c) (1) and (2) and which is designed to address the control of toxic pollutants identified by the chemical analyses of its current discharge, as required under § 125.64(a), and reported in Appendix XVII, Section 1 of this part of the application format. In lieu of such pretreatment program, applicants may certify, as provided under § 125.64(c)(1)(ii), that no known or suspected industrial sources of toxic pollutants currently exist or are planned for construction that would discharge into the POTW for which a modification is being requested. Applicants developing proposed pretreatment programs should assure that all of the criteria and application requirements listed under § 125.64 are thoroughly addressed and that the proposed program can be implemented after issuance of a modified permit.

Section 3. Non-Industrial Source Control Program

All applicants shall submit as Appendix XIX a proposed non-industrial source control program which complies with the requirements of § 125.64(d) (1) and (2) and is designed to address the control of toxics identified by the chemical analyses of its current discharge as required under § 125.64(a) and reported in Appendix XI, Section 1 of this part of the application format. Applicants should note that they are *not* exempt from this requirement by the exemption from developing a proposed pretreatment program under § 125.64(c)(1)(ii).

Part F—Effluent Volume and Mass Emissions

General Instructions: Under § 125.65, the applicant must submit, as Appendix XX, evidence that there shall be no increase in effluent volume or mass loadings of any pollutant(s) for which a modification is requested over and above that amount identified in the applicant's projected five year discharge. Also, where combined sewer overflows contribute in part to pollutant

discharges, the applicant must submit as a part of Appendix XXI a schedule of activities designed to minimize existing overflows and prevent increases in the amount of pollutants from this source.

Part G—Use of Title II Funds

General Instructions: The applicant must submit as Appendix XXII a funding program containing a proposed modified scope of work and estimates of revised costs for any funds available to the applicant under Title II of the Clean Water Act in a manner which complies with the requirements of § 125.66 (a) and (b). This submittal should cover any active Step 1, 2, or 3 construction grants awarded under 40 CFR Part 35 Subpart E which may be affected by an approval of the applicants request for a 301(h) modified permit.

[FR Doc. 79-18447 Filed 6-14-79; 8:45 am]
BILLING CODE 6560-01-M

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Friday
June 15, 1979

Federal Register

Part V

Department of the Interior

Bureau of Land Management

Management of Off-Road Vehicle Use on Public Lands

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8340

[Circular No. 2445]

Off-Road Vehicles, Use of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rulemaking provides for the management of off-road vehicle use on public lands. The rules have been developed because off-road vehicles, in some areas, have caused excessive damage to natural resources and conflicted with other more passive uses. Implementation of these rules will provide for continued off-road vehicle use under conditions that will protect natural resources, be less disruptive to the activities of other uses, and promote safety.

DATE: Effective July 16, 1979.

ADDRESS: Director (370), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Larry R. Young (202) 343–9353.

SUPPLEMENTARY INFORMATION: The principal author of this final rulemaking is Larry R. Young of the Bureau of Land Management (BLM), Washington Office, Division of Recreation, assisted by the staff of the Division of Legislation and Regulatory Management.

Final rulemaking covering off-road vehicle (ORV) use on public lands was first published in the Federal Register on April 15, 1974. On May 2, 1975 a court order declared that these regulations violated Executive Order 11644 and the National Environmental Policy Act of 1969. After the regulations were rectified to correct their shortcomings, a proposed rule was issued on July 28, 1976. Following this, on May 25, 1977, Executive Order 11644 was amended by Executive Order 11989. This amendment required further changes in the rulemaking. The amended proposed rule appeared in the Federal Register of July 7, 1978 with a comment period of 90 days. A final Environmental Statement pertaining to these and other Departmental off-road vehicle regulations was made available to the public by the Department of the Interior on April 21, 1978.

Although the format of these final regulations is the same as that of the proposed regulations, the numbering has been changed. This was done to conform to the recodified recreation regulations as published in the Federal Register of September 12, 1978 starting on page 40734.

Approximately 400 letters were received from individuals and groups. Many contained detailed analyses, comments and suggestions. These letters have been reviewed and analyzed. The following summarizes the comments and suggestions received and the actions taken on them.

Purpose

It was suggested that lands be designated for use of "one or more types of" off-road vehicles because one type might be acceptable while another might not, e.g., a motorbike vs. a snowmobile. Sections 8341.2(a) and 8342.1 provide adequate means for coping with such a situation.

Definitions

There were numerous suggestions to clarify terms. It was felt to be preferable to leave most of these terms to dictionary definitions and interpretation in the light of the specific circumstances to which they apply. However, one new term—"spark arrester" has been added to the definitions in the final regulations.

It was suggested that the exclusions in the definition of "Off-Road Vehicle" be eliminated. This cannot be done because it contradicts Executive Orders 11644 and 11989. To eliminate redundancy, however, the 3rd exclusion in this definition has been modified by the deletion of "except use authorized under § 8294.1 of this part". Another suggestion was that there be a 6th exclusion for vehicles being used for lawful mining activities.

Lawful mining activities, including the use of off-roads vehicles may be conducted in closed or limited areas where use is expressly authorized by the authorized officer or otherwise officially approved. This specific matter will be dealt with in greater detail in regulations relating to mining which are under consideration.

Authorized activities that require the use of off-road vehicles in closed or limited areas are covered by specific authorization in a contract, permit, lease, license or temporary permit. The kinds of activities covered by the exclusions in the definition of the term "off-road vehicle" are a grazing permittee using a pickup truck to haul supplies to livestock in the area or a right-of-way holder using a vehicle to inspect or make repairs to a right-of-way. Emergency or normal administrative activities requiring the use of off-road vehicles are also covered by the exclusion.

In the second sentence of the definition of "Limited areas and trails", the words "dates and" have been inserted between the words "allowed" and "times" as a result of one comment. This will help clarify the period of use.

Concern was expressed that farmers, ranchers and miners could be prevented from conducting their businesses as a result of the closure provisions of these regulations. Circumstances of this nature can be worked out with the authorized officer through the exclusion provided in § 8340.0–5(a)(3).

Penalties

The heading of § 8340.0–7 has been changed from "Enforcement" to "Penalties" to reflect more accurately the subject of the section.

There were many comments predicting that staffing will be inadequate to enforce the regulations which carry penalties for noncompliance. These comments also suggested that the regulations should require sufficient personnel for enforcement. Regulations establish programs, but do not determine personnel requirements or ceilings. It is expected that the programs established by these regulations will be adequately funded through the normal process of budgeting.

It was suggested that these regulations provide for interim penalties such as the impoundment of vehicles until offenders are brought to trial. The authority to establish penalties stems from the Federal Land Policy and Management Act of 1976. That Act does not provide for forfeiture, impoundment or pretrial penalties.

After reviewing the comments on this penalty section, it was agreed that the section did not clearly state that punishment is imposed only after conviction. In order to clarify this point, the first sentence of § 8340.0–7 was amended by inserting the word "conviction" between the words "arrest" and "and".

Regulations Governing Use

Numerous comments wanted the regulations to control hunting, firearms and registration as they relate to off-road vehicles. These are activities in which the States have traditionally established standards of control, and there is no intent to interfere in this function. Standards of control in these regulations have been limited to situations where the States either have no controls, or their controls may be

considered insufficient for off-road vehicle activities on public lands.

There was an intense interest shown in § 8341.1(f) which establishes the requirements for operating an off-road vehicle on public lands. Many people suggested that there be no licensing required at all. Others wanted a learner's permit to be the minimum requirement for operating an off-road vehicle. Still others wanted the exception, which begins with the third word of the paragraph, to be deleted. The requirements contained in the paragraph are believed to be the best way to protect the public safety as required by Executive Order 11644 while at the same time allowing supervised youngsters to participate in off-road vehicle activities.

There were a number of suggestions to delete § 8341.1(g)(1) which states that no person shall operate an off-road vehicle on public lands in a reckless, careless, or negligent manner. In addition, many wanted the terms "reckless", "careless", and "negligent" defined. This section is necessary to fulfill the Bureau of Land Management's obligation to protect public safety. These words carry their ordinary legal meaning as interpreted by the courts.

Some people suggested that § 8341.1(g)(2), which covers speed limits, be deleted. Others suggested that the regulations specify where speed limits will apply. Speed limits are necessary to preserve public safety. However, where they will be established is determined on the basis of specific on-the-ground needs.

It was suggested that § 8341.1(g)(4), which deals with damage to natural and cultural resources and other uses, be deleted because it gives the "bureaucrat" too much latitude. This section is essential if the land manager is to effectively carry out his responsibility to minimize damage on the public lands.

Concern was also expressed about the phrase "or likely to cause" in § 8341.1(g)(4). There are many situations in which damage can be predicted on the basis of past experience. It would be poor management to wait for damage to occur before taking corrective action.

A new paragraph has been inserted as § 8341.1(h). It covers the subject of yielding right-of-way. The former § 8341.1(h) has been renumbered § 8341.1(i).

Special Rules

In line with one suggestion, § 8341.2(a) has been changed to reflect that its provisions are applicable in the given situations notwithstanding the consultation provisions of § 8342.2(a).

There were some comments expressing concern about the words "causing or will cause adverse effects", in the first sentence of § 8341.2(a), and how they would be interpreted. The wording is essentially identical to the words and intent of Executive Order 11989, and cannot be changed. The interpretation of these words, as applied to specific field conditions, will be based on past experience.

In keeping with a number of suggestions to expand the list of items in the first sentence of § 8341.2(a), there has been added "threatened or endangered species, wilderness suitability, other authorized uses, or other resources". There were also people who felt the list was too broad. However, the section fulfills the intent of Executive Order 11989.

There were expressions of concern because there was no provision for public participation in § 8341.2(a). This paragraph provides the authorized officer with a tool to take timely emergency action. Adding a provision for public discussion would defeat this purpose. Public participation is provided in other actions by § 8342.2.

It was suggested that in addition to closing an area to use there be other options such as "restrict", "reroute", "limit", or "rehabilitate". These alternatives have not been included because Executive Order 11989 provides only for closure.

Section 8291.2(b) of the proposed regulations has been deleted because it was felt that this paragraph provides the authorized officer with authority that properly belongs to the Office of the Secretary.

It was suggested that there be provision for public participation under § 8341.2(b) which authorizes State Directors to close some public lands to off-road vehicle use. Lands which are closed by State Directors will be either designated or redesignated as regards off-road vehicle use under procedures contained in Subpart 8342. That section requires public participation.

Designation Criteria

There were many suggestions to establish criteria that would confine off-road vehicles to designated roads and trails. Executive Order 11644 provides for the designation of "areas and trails" rather than the more restrictive "roads and trails".

It was suggested that areas and trails should also be located to minimize damage to air quality. This idea has been incorporated into § 8342.1(a).

There were some suggestions that off-road vehicles be prohibited from the habitats identified in § 8342.1(b). Executive Order 11644 does not direct agencies to prohibit off-road vehicles in these habitats—only to minimize significant disruption of wildlife habitats.

It was suggested that § 8342.1(c) either be deleted or rewritten because it suggests that off-road vehicle activities rank last in priority—even to recreational uses that do not exist yet. The wording used in this section is identical to that used in section 2(a)(3) of Executive Order 11644.

There was some concern shown about allowing off-road vehicles in natural areas as provided in § 8342.1(d). Again, the wording of this section is essentially that of Executive Order 11644.

There was concern expressed about the interaction of the wilderness review and designations for off-road vehicle use. During the period of wilderness review, which is to be completed by October 21, 1991, and until Congress has determined otherwise, roadless areas of 5,000 acres or more and roadless islands "* * *" having wilderness characteristics " * * *" are to be managed "* * * in a manner so as not to impair the suitability of such areas for preservation as wilderness * * *". This matter will be addressed in the interim management policy for wilderness study areas currently under development. The regulations do, however, list wilderness suitability as a resource to be considered in determining whether an area should be closed or limited.

Designation Procedures

Action necessary to make designations is beginning immediately. Depending upon the availability of funds and manpower, all areas will be designated by 1987. The status of the public lands prior to designation is simply undesignated.

There was a large number of suggestions recommending that only those areas be marked where off-road vehicle use is permitted. Others suggested that only closed and limited areas and trails be marked. These specific suggestions have not been adopted. Instead, the rulemaking provides flexibility to the authorized officer to mark designations on the ground in the manner which will best inform the public. This reflects the intent of Executive Order 11644, and will permit marking some areas as open, some as limited and others as closed.

There were suggestions that maps of designated areas be made available to the public. This suggestion has been

incorporated into the last sentence of § 8342.2(b).

Monitoring Use

It was suggested that under § 8342.3(a), the effects to be monitored should be spelled out in the regulations. Executive Order 11644 does not direct doing this. In addition, a comprehensive list of possible effects on the various ecosystems could be almost limitless. However, off-road vehicle use will be monitored.

Temporary Action

Section 8292.3(b) of the proposed regulations has been excluded from these regulations since full authority to temporarily close lands from any use, including off-road vehicles, when necessary to protect the public or to assure proper resource protection, is contained in 43 CFR Part 8364. An example of the use of this authority is the temporary closure during a period of high fire danger or unsafe conditions of an area designated open to off-road vehicles. This authority is in addition to that contained in § 8341.2 which allows closure of lands designated open or limited due to the considerable adverse effects of off-road vehicles on the environment.

Vehicle Operations—Standards

One suggestion was that the Bureau of Land Management should confine itself to the management of public lands and not to the management of off-road vehicle equipment. Executive Order 11644 directs that operating conditions be prescribed for off-road vehicles on public lands.

Permits

There were several suggestions that the time requirement for filing applications be shortened to less than 120 days, and that the 50-vehicle requirement for permits be reduced. These requirements are actually a part of Subpart 8372 of this title and not Subpart 8340 which is under consideration here. An opportunity for making such a change will come when Subpart 8372 is considered for revision. However, the 120 days is needed to allow the authorized officer to complete all needed administrative work, including an environmental statement, if one is needed, before issuing a permit. This administrative activity is necessary to protect the public lands and the public that uses those lands. Editorial changes and corrections have been made as necessary.

Miscellaneous

Note.—The Department of the Interior has determined that this document is a significant rule, but does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Taylor Grazing Act (43 U.S.C. 315a), the Wild and Scenic Rivers Act (16 U.S.C. 1281c), the Endangered Species Act (16 U.S.C. 1531 et seq.), the Act of September 18, 1960, as amended (16 U.S.C. 670 et seq.), the Land and Water Conservation Fund Act (16 U.S.C. 4601–6a), the National Trails System Act (16 U.S.C. 1241 et seq.), and Executive Order 12044 (37 FR 2877, 3 CFR 2877), as amended by Executive Order 11989 (42 FR 26959) Part 8340, Group 8300, Subchapter H, Chapter II, Title 43 of the Code of Federal Regulations is revised as set forth below.

Guy R. Martin,

Assistant Secretary of the Interior.

June 4, 1979.

PART 8340—OFF-ROAD VEHICLES

Subpart 8340—General

Sec.

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Authority: 43 U.S.C. 1201, 43 U.S.C. 315a, 16 U.S.C. 1531 et seq., 16 U.S.C. 1281c, 16 U.S.C. 670 et seq., 16 U.S.C. 460 1–6a, 16 U.S.C. 1241 et seq., and 43 U.S.C. 1701 et seq.

Subpart 8340—General

§ 8340.0–1 Purpose.

The purpose of this part is to establish criteria for designating public lands as open, limited or closed to the use of off-road vehicles and for establishing controls governing the use and operation of off-road vehicles in such areas.

§ 8340.0–2 Objectives.

The objectives of these regulations are to protect the resources of the public lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.

§ 8340.0–3 Authority.

The provisions of this part are issued under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); the Taylor Grazing Act (43 U.S.C. 315a); the Endangered Species Act (16 U.S.C. 1531 et seq.); the Wild and Scenic Rivers Act (16 U.S.C. 1281c); the act of September 15, 1960, as amended (16 U.S.C. 670 et seq.); the Land and Water Conservation Fund Act (16 U.S.C. 460 1–6a); the National Trails System Act (16 U.S.C. 1241 et seq.) and E.O. 11644 (Use of Off-Road Vehicles on the Public Lands), 37 FR 2877, 3 CFR 74, 332, as amended by E.O. 11989 42 FR 26959 (May 25, 1977).

§ 8340.0–5 Definitions.

As used in this part:

(a) "Off-Road Vehicle" means any motorized vehicle capable of, or designed for, travel on or immediately over land, water, or other natural terrain, excluding: (1) any nonamphibious registered motorboat; (2) any military, fire, emergency, or law enforcement vehicle while being used for emergency purposes; (3) any vehicle whose use is expressly authorized by the authorized officer, or otherwise officially approved; (4) Vehicles in official use; and (5) any combat or combat support vehicle when used in times of national defense emergencies.

(b) "Public Lands" means any lands the surface of which is administered by the Bureau of Land Management.

(c) "Bureau" means the Bureau of Land Management.

(d) "Official Use" means use by an employee, agent, or designated representative of the Federal Government or one of its contractors, in the course of his employment, agency, or representation.

(e) "Planning System" means the approach provided in Bureau regulations, directives and manuals to formulate multiple use plans for the public lands. This approach provides for public participation within the system.

(f) "Open areas and trails" are designated areas and trails where off-road vehicles may be operated subject to the operating regulations and vehicle

standards set forth at Subparts 8341 and 8343 of this part.

(g) "Limited areas and trails" are designated areas and trails where the use of off-road vehicles is subject to restrictions deemed appropriate by the authorized officer. Restrictions may limit the number or types of vehicles allowed, dates and times of use, and similar matters. Limited areas and trails may be designated for special or intensive use, including, but not limited to, organized events, and may be subject to but not limited to, rules set forth at Subpart 8341.2.

(h) "Closed areas and trails" are designated areas and trails where the use of off-road vehicles is permanently or temporarily prohibited.

(i) "Spark Arrester" is any device which traps or destroys 80 percent or more of the exhaust particles to which it is subjected.

§ 8340.0-7 Penalties.

Any person who violates or fails to comply with the regulations of Subparts 8341 and 8343 is subject to arrest, conviction, and punishment pursuant to appropriate laws and regulations. Such punishment may be a fine of not more than $1,000 or imprisonment for not longer than 12 months, or both.

§ 8340.0-8 Applicability.

The regulations in this part apply to all public lands, roads, and trails under administration of the Bureau.

Subpart 8341—Conditions of Use

§ 8341.1 Regulations governing use.

(a) The operation of off-road vehicles is permitted on those areas and trails designated as open to off-road vehicle use.

(b) Any person operating an off-road vehicle on those areas and trails designated as limited shall conform to all terms and conditions of the applicable designation orders.

(c) The operation of off-road vehicles is prohibited on those areas and trails closed to off-road vehicle use.

(d) It is prohibited to operate an off-road vehicle in violation of State laws and regulations relating to use, standards, registration, operation, and inspection of off-road vehicles. To the extent that State laws and regulations do not exist or are less stringent than the regulations in this part, the regulations in this part are minimum standards and are controlling.

(e) No person may operate an off-road vehicle on public lands without a valid State operator's license or learner's permit. Exceptions are: (1) A person under the direct supervision of an individual 18 years of age or older who has a valid operator's license and who is responsible for the acts of the person supervised. (2) A person certified by State government as competent to drive off-road vehicles after successfully completing a State approved operator's training program. (3) Operation of an off-road vehicle in areas of Alaska designated by the Bureau's State Director for Alaska.

(f) Any person supervising a nonlicensed driver shall be responsible for the operation of the vehicle and shall be responsible for the actions of the driver.

(g) No person shall operate an off-road vehicle on public lands:

(1) In a reckless, careless, or negligent manner;

(2) In excess of established speed limits;

(3) While under the influence of alcohol, narcotics, or dangerous drugs;

(4) In a manner causing, or likely to cause significant, undue damage to or disturbance of the soil, wildlife, wildlife habitat, improvements, cultural, or vegetative resources or other authorized uses of the public lands; and

(5) During night hours, from a half-hour after sunset to a half-hour before sunrise, without lighted headlights and taillights.

(h) Drivers of off-road vehicles shall yield the right-of-way to pedestrians, saddle horses, pack trains, and animal-drawn vehicles.

(i) Any person who operates an off-road vehicle on public lands must comply with the regulations in this part, and in § 8341.2 as applicable, while operating such vehicle on public lands.

§ 8341.2 Special rules.

(a) Notwithstanding the consultation provisions in § 8342.2(a), where the authorized officer determines that off-road vehicles are causing or will cause considerable adverse effects upon soil, vegetation, wildlife, wildlife habitat, cultural resources, historical resources, threatened or endangered species, wilderness suitability, other authorized uses, or other resources, the authorized officer shall immediately close the areas or trails affected to the type(s) of vehicle causing the adverse effect until the adverse effects are eliminated and measures implemented to prevent recurrence. Such closures will not prevent designation in accordance with procedures in part 8342 of this subpart, but these lands shall not be opened to the type(s) of off-road vehicle to which it was closed unless the authorized officer determines that the adverse effects have been eliminated and measures implemented to prevent recurrence.

(b) Each State director is authorized to close portions of the public lands to use by off-road vehicles, except those areas or trails which are suitable and specifically designated as open to such use pursuant to Subpart 8342 of this part.

Subpart 8342—Designation of Areas and Trails

§ 8342.1 Criteria.

The authorized officer shall designate all public lands as either open, limited, or closed to off-road vehicles. All designations shall be based on the protection of the resources of the public lands, the promotion of the safety of all the users of the public lands, and the minimization of conflicts among various uses of the public lands; and in accordance with the following criteria:

(a) Areas and trails shall be located to minimize damage to soil, watershed, vegetation, air, or other resources of the public lands, and to prevent impairment of wilderness suitability.

(b) Areas and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats. Special attention will be given to protect endangered or threatened species and their habitats.

(c) Areas and trails shall be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors.

(d) Areas and trails shall not be located in officially designated wilderness areas or primitive areas. Areas and trails shall be located in natural areas only if the authorized officer determines that off-road vehicle use in such locations will not adversely affect their natural, esthetic, scenic, or other values for which such areas are established.

§ 8342.2 Designation procedures.

(a) *Public participation.* The authorized officer shall, to the extent practical, designate and redesignate areas and trails in conjunction with the Bureau planning system for the formulation of multiple-use management plans. Plans shall consider current and potential impacts of specific vehicle types on all resources and users in the region of the area under consideration. Prior to making designations or redesignations, the authorized officer

shall consult with interested user groups, Federal, State, county, and local agencies, local landowners, and other parties in a manner that provides an opportunity for the public to express itself and have those views taken into account.

(b) *Identification of designated areas and trails.* The authorized officer shall, after designation, take action by marking and other appropriate measures to identify designated areas and trails so that the public will be aware of locations and limitations applicable thereto. Public notice of designations or redesignations shall be given at the time of designation or redesignation through publication in the **Federal Register** and local news media. Copies of such notices shall be available to the public in local Bureau offices. The authorized officer will make available to the public appropriate informational material, including maps.

§ 8342.3 Designation changes.

Monitoring use. The authorized officer shall monitor effects of the use of off-road vehicles. On the basis of information so obtained, and whenever the authorized officer deems it necessary to carry out the objectives of this part, designations may be amended, revised, revoked, or other actions taken pursuant to the regulations in this part.

Subpart 8343—Vehicle Operations

§ 8343.1 Standards.

(a) No off-road vehicle may be operated on public lands unless equipped with brakes in good working condition.

(b) No off-road vehicle equipped with a muffler cutout, bypass, or similar device, or producing excessive noise exceeding Environmental Protection Agency standards, when established, may be operated on public lands.

(c) By posting appropriate signs or by marking a map which shall be available for public inspection at local Bureau offices, the authorized officer may indicate those public lands upon which no off-road vehicle may be operated unless equipped with a properly installed spark arrester. The spark arrester must meet either the U.S. Department of Agriculture—Forest Service Standard 5100–1a, or the 80-percent efficiency level standard when determined by the appropriate Society of Automotive Engineers (SAE) Recommended Practices J335 or J350. These standards include, among others, the requirements that: (1) the spark arrester shall have an efficiency to retain or destroy at least 80 percent of carbon particles for all flow rates, and (2) the spark arrester has been warranted by its manufacturer as meeting this efficiency requirement for at least 1,000 hours subject to normal use, with maintenance and mounting in accordance with the manufacturer's recommendation. A spark arrester is not required when an off-road vehicle is being operated in an area which has 3 or more inches of snow on the ground.

(d) Vehicles operating during night hours, from a half-hour after sunset to a half-hour before sunrise, shall comply with the following: (1) Headlights shall be of sufficient power to illuminate an object at 300 feet at night under normal, clear atmospheric conditions. Two- or three-wheeled vehicles or single-tracked vehicles will have a minimum of one headlight. Vehicles having four or more wheels or more than a single track will have a minimum of two headlights, except double tracked snowmachines with a maximum capacity of two people may have only one headlight. (2) Red taillights, capable of being seen at a distance of 500 feet from the rear at night under normal, clear atmospheric conditions, are required on vehicles in the same numbers as headlights.

Subpart 8344—Permits

§ 8344.1 Permit requirements.

Permits are required for certain types of ORV use and shall be issued in accordance with the special recreation permit procedures under part 8372 of this chapter.

[FR Doc. 79-18543 Filed 6-14-79; 8:45 am]
BILLING CODE 4310-84-M

Federal Register

Friday
June 15, 1979

Part VI

Environmental Protection Agency

Standards of Performance for New Stationary Sources, Glass Manufacturing Plants

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 60]

[FRL 1203-7]

Standards of Performance for New Stationary Sources; Glass Manufacturing Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The proposed standards would limit emissions of particulate matter from new, modified, and reconstructed glass manufacturing plants. The standards implement the Clean Air Act and are based on the Administrator's determination that glass manufacturing plants contribute significantly to air pollution. The intended effect is to require new, modified, and reconstructed glass manufacturing plants to use the best demonstrated system of continuous emission reduction, considering costs, nonair quality health and environmental impact, and energy impacts.

A public hearing will be held to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed standards.

DATES: *Comments.* Comments must be received on or before August 14, 1979.

Public Hearing. The public hearing will be held on July 9, 1979 beginning at 9:30 a.m. and ending at 4:30 p.m.

Request to Speak at Hearing. Persons wishing to present oral testimony at the hearing should contact EPA by June 29, 1979.

ADDRESSES: *Comments.* Comments should be submitted to Central Docket Section (A-130), United States Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Attention: Docket No. OAQPS 79-2.

Public Hearing. The public will be held at Office of Administration Auditorium, Research Triangle Park, North Carolina 27771. Persons wishing to present oral testimony should notify Mary Jane Clark, Emission Standards and Engineering Division (MD-13), Environmental Protection Agency, Rsearch Triangle Park, North Carolina 27711, telephone (919) 541-5271.

Standards Support Document. The support document for the proposes standards may be obained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Glass Manufacturing Plants, Background Information: Proposed Standards of Performance," EPA-450/3-79-005a.

Docket. A docket, number OAQPS 79-2, containing information used by EPA in development of the proposed standard, is available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday, at EPA's Central Docket Section (A-130), Room 2903 B, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Don R. Goodwin, Director, Emission Standards and Engineering Division (MD-13), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5271.

SUPPLEMENTARY INFORMATION:

Proposed Standards

The standards would apply to glass melting furnaces with glass manufacturing plants with two exceptions: day pot furnaces (which melt two tons or less of glass per day) and all-electric melting furnaces. No existing plants would be covered unless they were to undergo modification or reconstruction. Change of fuel from gas to fuel oil would be exempt from consideration as a modification and rebricking of furnaces would be exempt from consideration as reconstruction.

Specifically, the proposed standards would limit exhaust emissions from gas-fired glass melting furnaces to 0.15 grams of particulate matter per kilogram of glass produced for flat glass production; 0.1 g/kg (0.2 lb/ton) for container glass production; 0.2 g/kg (0.4 lb/ton) for wool fiberglass production; 0.1 g/kg (0.2 lb/ton) for pressed and blown glass production of soda-lime formulation; and 0.25 g/kg (0.5 lb/ton) for pressed and blown glass production of borosilicate, opal, and other formulations. A 15 percent allowance above the emission limits for gas-fired furnaces is proposed for fuel oil-fired glass melting furnaces and an additional proportionate allowance is proposed for furnaces simultaneously firing gas and fuel oil.

Summary of Environmental and Economic Impacts

Environmental Impacts

The proposed standards would reduce projected 1983 emissions from new uncontrolled glass melting furnaces from about 5,200 megagrams (Mg)/year (5,732 ton/year) to about 400 Mg/year (441 ton/year). This is a reduction of about 92 percent of uncontrolled emissions. Meeting a typical State Implementation Plan (SIP), however, would reduce emissions from new uncontrolled furnaces by about 3,700 Mg/year (4,079 ton/year), or by about 70 percent. The proposed standard would exceed the reduction achieved under a typical SIP by about 1,100 Mg/year (1,213 ton-year). This reduction in emissions would result in a reduction of ambient air concentrations of particulate matter in the vicinity of new glass manufacturing plants.

The proposed standards are based on the use of electrostatic precipitators (ESP's) and fabric filters, which are dry control techniques; therefore, no water discharge would be generated and there would be no adverse water pollution impact.

The solid waste impact of the proposed standards would be minimal. Less than 2 Mg (2.2 ton) of particulate would be collected for every 1,000 Mg (1,102 ton) of glass produced. These dusts can generally be recycled, or they can be landfilled if recycling proves to be unattractive. The current solid waste disposal practice among most controlled plants surveyed is landfilling. Since landfill operations are subject to State regulation, this disposal method would not be expected to have an adverse environmental impact. The additional solid material collected under the proposed standard would not differ chemically from the material collected under a typical SIP regulation; therefore, adverse impact from landfilling should be minimal. Also, recycling of the solids has no adverse environmental impact.

For typical plants in the glass manufacturing industry, the increased energy consumption that would result from the proposed standards ranges from about 0.1 to 2 percent of the energy consumed to produce glass. The energy required in excess of that required by a typical SIP regulation to control all new glass melting furnaces constructed by 1983 to the level of the proposed standards would be about 2,500 kilowatt-hours per day in the fifth year and is considered negligible. Thus, the proposed standards would have a minimal impact on national energy consumption.

Economic Impacts

The economic impact of the proposed standards is reasonable. Compliance with the standards would result in annualized costs in the glass manufacturing industry of about $8.5 million by 1983. For typical plants constructed between 1978-1983 capital costs associated with the proposed

standards would range from about $235,000 for a small furnace in the pressed and blown glass sector which melts formulations other than soda-lime to about $770,000 for a large pressed and blown glass furnace which melts soda-lime formulations. Annualized costs associated with the proposed standards would range from about $70,000/year to about $235,000/year for the furnaces mentioned above. Cumulative capital costs of complying with the proposed standards for the glass manufacturing industry as a whole would amount to about $28 million between 1978–1983. The percent price increase necessary to offset costs of compliance with the proposed standards would range from about 0.3 percent in the wool fiberglass sector to about 1.8 percent in the container glass sector. Industry-wide, the price increase would amount to about 0.7 percent.

The economic impact of the proposed standards may vary depending on the size of the glass melting furnace being considered. EPA is requesting comments specifically on the economic impact of the proposed standards with regard to a possible lower cut-off size for glass melting furnaces.

Rationale

Selection of Source and Pollutants

The proposed Priority List, 40 CFR 60.16, identifies various sources of emissions on a nationwide basis in terms of the quantities of emissions from source categories, the mobility and competitive nature of each source category, and the extent to which each pollutant endangers health or welfare. The sources on this proposed list are ranked in decreasing order. Glass manufacturing ranks 38th on the proposed list, and is therefore of considerable importance nationwide.

The production of glass is projected to increase at compounded annual growth rates of up to 7 percent through the year 1983. In 1975, over 17 million megagrams (18.8 million ton) of glass were produced; by 1983 this production rate is expected to increase by nearly 2.9 million Mg/year (3.2 million ton/year). Geographically, the glass manufacturing industry is relatively concentrated with plants currently located in 17 states. Total particulate emissions in the United States in 1975 were estimated to be about 12.4 million Mg/year (13.7 million ton/year); by the year 1983 new glass manufacturing plants would cause annual nationwide particulate matter emissions to increase by about 1,500 Mg/year (1,620 ton/year) with emissions controlled to the level of a typical SIP regulation.

On March 18, 1977, the Governor of New Jersey petitioned EPA to establish standards of performance for glass manufacturing plants. The petition was primarily motivated by the Governor's concern that the glass manufacturing industry might locate plants in other States rather than comply with New Jersey's air pollution regulations limiting emissions of particulate matter. The glass manufacturing industry is not geographically tied to either markets or resources. Only a few States have specialized air pollution standards for glass manufacturing plants in their SIP's, and these standards vary in the level of control required. Therefore, new glass manufacturing operations could be located in States which do not have stringent SIP regulations.

Glass manufacturing plants are significant contributors to nationwide emissions of particulate matter, especially when viewed as contributors to emissions in the limited number of States in which they are located. They rank high with regard to potential reduction of emissions. Since they are free to relocate in terms of both markets and required resources, the possibility exists that operations could be moved or relocated to avoid stringent SIP regulations, thereby generating economic dislocations. For these reasons, emissions of particulate matter from new glass manufacturing plants have been selected for control by NSPS.

Glass manufacturing plants also emit other criteria pollutants: sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide, and hydrocarbons. Carbon monoxide and hydrocarbon emissions from efficiently operated glass manufacturing plants, however, are negligible.

Nationwide, the largest aggregate emissions from glass manufacturing plants are NO_x. The techniques generally applicable to control NO_x produced by combustion are staged combustion, off-stoichiometric combustion, or reduced-temperature combustion. To date none of these techniques has been applied to the control of NO_x emissions from glass melting furnaces. Accordingly, there is no way of determining how effective they might be in such applications. Consequently, NO_x was not selected for control by standards of performance.

SO_x emissions result from combustion of sulfur-containing fuels and from chemical reactions of raw materials. In general there are two alternatives for control of SO_x emissions: (1) scrubbing of exhaust gases containing SO_x, and (2) reducing the sulfur content of fuel and raw materials. SO_x emissions from glass melting furnaces are in most cases already less than the emission limits of applicable SIP's for fuel burning sources. Flue-gas scrubbing for control of SO_x emissions from glass melting furnaces is not considered economically reasonable.

There are difficulties as well with the use of low-sulfur fuels or reduction of sulfur content of raw materials. Using low-sulfur fuel would not adequately address the problem of SO_x control for two reasons. Natural gas is the preferred fuel for glass melting furnaces. The only alternative fuel currently in use or projected for future use by the glass manufacturing industry is distillate fuel oil, which normally contains more sulfur than natural gas. The elimination of sulfur-containing fuel oil is not considered reasonable. Alternatively, standards of performance based solely on combustion of low-sulfur fuels could distort existing fuel distribution patterns, since low-sulfur fuels could be diverted to new facilities to meet NSPS in areas that have no difficulty attaining or maintaining the National Ambient Air Quality Standards (NAAQS) for SO_x. This would reduce the supply of low-sulfur fuels for existing facilities in areas that have great difficulty attaining or maintaining the NAAQS for SO_x. Consequently, standards of performance for SO_x emissions based on use of low-sulfur fuels do not seem reasonable.

Use of reduced-sulfur raw materials has not been demonstrated as a means of reducing SO_x emissions from glass melting furnaces. There is a wide variety of formulations, most of which are considered by the industry to be trade secrets. The present state of glass making is such that formula alterations of the type envisioned here would lead to glass of unpredictable quality. For these reasons, standards of performance for SO_x emissions from glass melting furnaces based on reduced-sulfur raw materials, or any other approach, do not seem reasonable and have not been proposed.

Selection of Affected Facility

Ninety-eight percent of the particulate matter emitted from glass manufacturing plants is emitted in gaseous exhaust streams from glass melting furnaces. Only two percent of the particulate matter emitted from glass manufacturing plants is emitted from raw material handling and glass forming and finishing. Therefore, the glass melting furnace has been selected as the affected facility.

The proposed standards would apply to all glass melting furnaces within glass manufacturing plants with two exceptions: day pot furnaces and all-electric melters. A day pot furnace is a glass melting furnace which is capable of producing no more than two tons of glass per day. These small glass melting furnaces constitute an extremely small percentage of total glass production and their control is not considered economically reasonable. Therefore, the regulation exempts day pot furnaces from the proposed standards.

Well operated and maintained all-electric furnaces have particulate emissions only slightly higher than fossil-fuel fired furnaces controlled to meet the proposed standards. Most of these furnaces are open to the atmosphere and do not have stacks. Thus, control and measurement of emissions from all-electric furnaces does not appear to be economically reasonable. Therefore, all-electric melting furnaces are not regulated by the proposed standards.

Selection of Format

Two alternative formats were considered for the proposed standards: mass standards, which limit emissions per unit of feed to the glass furnace or per unit of glass produced by the glass furnace; and concentration standards, which limit emissions per unit volume of exhaust gases discharged to the atmosphere.

Enforcement of concentration standards requires a minimum of data and information, decreasing the costs of enforcement and reducing chances of error. Furthermore, vendors of emission control equipment usually guarantee equipment performance in terms of the pollutant concentration in the discharge gas stream.

There is a potential for circumventing concentration standards by diluting the exhaust gases discharged to the atmosphere with excess air, thus lowering the concentration of pollutants emitted but not the total mass emitted. This problem can be overcome, however, by correcting the concentration measured in the gas stream to a reference condition such as a specified oxygen percentage in the gas stream.

Concentration standards would penalize energy-efficient furnaces, since a decrease in the amount of fuel required to melt glass decreases the volume of gases released but not the quantity of particulate matter emitted. As a result, the concentration of particulate matter in the exhaust gas stream would be increased even though the total mass emitted remained the same. Even if a concentration standard were corrected to a specified oxygen content in the gas stream, this penalizing effect of the concentration would not be overcome.

Primary disadvantages of mass standards, as compared to concentration standards, are that their enforcement is more costly and that the more numerous calculations required increase the opportunities for error. Determining mass emissions requires the development of a material balance on process data concerning the operation of the plant, whether it be input flow rates or production flow rates. Development of this balance depends on the availability and reliability of production figures supplied by the plant. Gathering of these data increases the testing or monitoring necessary, the time involved, and, consequently, the costs. Manipulation of these data increases the number of calculations necessary; e.g., the conversion of volumetric flow rates to mass flow rates, thus compounding error inherent in the data and increasing the chance for error.

Although concentration standards involve lower resource requirements than mass standards, mass standards are more suitable for regulation of particulate emissions from glass melting furnaces because of their flexibility to accommodate process improvements and their direct relationship to quantity of particulate emitted to the atmosphere. These advantages outweigh the drawbacks associated with creating and manipulated a data base. Consequently, mass standards are selected as the format for expressing standards of performance for glass melting furnaces.

The proposed standards express allowable particulate emissions in grams of particulates per kilogram of glass pulled. While emissions data referring to raw material input as well as data referring to glass pulled were used in the development of the standards, an examination of the several sectors of the glass manufacturing industry indicated that an emission rate based on quantity of glass pulled would be more representative of industry practice. Further, emissions are more dependent on pull rate than on rate of raw material input. Accordingly, the mass of glass pulled is used as the denominator in the proposed standards. Raw material input data could be employed to estimate glass pulled from a furnace if a quantitative relationship between raw material input and glass pulled were developed following good engineering methods.

Selection of the Best System of Emission Reduction and Emission Limits

Introduction

Particulate emissions from glass melting furnaces can be reduced significantly by the use of the following emission control techniques: electrostatic precipitators, fabric filters, and venturi scrubbers. Since these emission control techniques do not achieve the same level of control for glass melting furnace emissions within all sectors of the glass manufacturing industry, they are discussed separately for each sector.

Process modifications such as batch formulation alteration and electric boosting also may be capable of reducing particulate emissions from glass melting furnaces. The test data available for furnaces where process modifications are used as emissions reduction techniques indicate that emission reduction by process modification is indefinite with respect to the effectiveness of the techniques. Accordingly, the selection of the best system of emission reduction is based on the use of add-on emission reduction techniques of known effectiveness. However, there is nothing in this proposal nor is it the intent of this proposal to preclude the use of process modifications to comply with the proposed standards.

The glass manufacturing industry is divided into four principal sectors designated by Standard Industrial Classifications (SIC's). The container glass sector (SIC 3221) manufactures containers for commercial packing and bottling and for home canning by pressing (stamping) and/or blowing (air-forming) molten glass usually of soda-lime recipe. The pressed and blown glass, not elsewhere classified, sector (SIC 3229) includes such diverse products as: table, kitchen, art and novelty glassware; lighting and electronic glassware; scientific, technical, and other glassware; and textile glass fibers. Based on the differing rates of particulate matter emissions, it is necessary to subdivide the pressed and blown glass sector into plants producing glass from soda-lime formulations and plants producing glass from other formulation (primarily borosilicate, opal and lead). Glass manufacturing plants in the wool fiberglass sector are classified under mineral wool (SIC 3296); fiberglass insulation is a major product. The flat glass sector (SIC 3211) uses continuous glass forming processes, and materials almost exclusively of soda lime

formulation, to manufacture sheet, plate, float, rolled, and wire glass.

Each of the glass manufacturing sectors is unique both from a technical and an economic standpoint. Thus, uncontrolled particulate emission rate, furnace size, and the applicability of emission control techniques vary from one sector to another. Since the products manufactured by the different sectors of the glass manufacturing industry serve different markets, each sector is working in a different economic environment. For these reasons it was apparent that no single model furnace could adequately characterize the glass manufacturing industry. Accordingly, several model furnaces were specified in terms of the following parameters: production rate, stack height, stack diameter, exhaust gas exit velocity, exhaust gas flow rate, and exhaust gas temperature. The evaluation of these parameters may be found in the Background Information document. The model furnace production rate specified for the container glass sector was 225 Mg/day (250 ton/day). For pressed and blown glass furnaces melting soda-lime and other formulations two model furnace production rates were specified: 45 Mg/day (50 ton/day) and 90 Mg/day (100 ton/day). Model furnace production rates for the wool fiberglass and flat glass sector were 180 Mg/day (200 ton/day) and 635 Mg/day (700 ton/day), respectively.

Review of the performance of the emission control techniques led to the identification of two regulatory options for each sector. These options specify numerical emission limits for glass melting furnaces in each sector of the glass manufacturing industry. The environmental impacts, energy impacts, and cost and economic impacts of each regulatory option were compared with those associated with a typical SIP regulation and those associated with no control.

Container Glass

Uncontrolled particulate emissions from container glass furnaces are generally about 1.25 g/kg (2.5 lb/ton) of glass pulled. Emission tests (using EPA Method 5) on three container glass furnaces equipped with ESP's indicate an average particulate emission of 0.06 g/kg (0.12 lb/ton) of glass pulled.

Emission test data for container glass furnaces equipped with fabric filters are not available. However, emission test results for a pressed and blown glass furnace melting a soda-lime formulation essentially identical to that used for container glass indicate that emissions can be reduced to 0.12 g/kg (0.24 lb/ton) of glass pulled with a fabric filter. This fabric filter installation was tested with the Los Angeles Air Pollution Control District particulate matter test method (LAAPCD Method), which considers the combined weight of the particulate matter collected in water-filled impingers and of that collected on a filter. EPA Method 5 also uses impingers and a filter, but considers only the weight of the particulate matter collected on the filter. The LAAPCD Method collects a larger amount of particulate matter than does EPA Method 5, and, consequently, greater mass emissions would be reported for comparable tests. An emission level of 0.1 g/kg (0.2 lb/ton) as determined by EPA Method 5, could be achieved by a container glass furnace equipped with a properly designed and operated fabric filter.

EPA Method 5 tests of four furnaces equipped with venturi scrubbers indicated an average particulate emission of 0.21 g/kg (0.42 lb/ton) of glass pulled.

Based on the data cited above, an emission level of 0.1 g/kg (0.2 lb/ton) of glass pulled from container glass furnaces can be achieved with ESP's or fabric filters. An emission level of 0.2 g/kg (0.4 lb/ton) of glass pulled can reasonably be achieved with a venturi scrubber when operated at a pressure drop somewhat higher than the average of those scrubbers tested. ESP's and fabric filters could also be designed to achieve an emission level of 0.2 g/kg (0.4 lb/ton) of glass pulled.

On the basis of these conclusions, two regulatory options for reducing particulate emissions from container glass furnaces were formulated. Option I would set an emission limit of 0.1 g/kg (0.2 lb/ton), requiring a particulate emission reduction of somewhat over 90 percent as compared with an uncontrolled furnace. Option II would set an emission limit of 0.2 g/kg (0.4 lb/ton), requiring a particulate emission reduction of about 85 percent.

By 1983 approximately 1900 gigagrams (Gg)/year (2.1 million ton/year) of additional production is anticipated in the container glass sector. About 25 new container glass furnaces of about 225 Mg/day (250 ton/day) production capacity (the size of the model furnace) would be built in order to provide this additional production. If uncontrolled, these new container glass furnaces would add about 2,400 Mg/year (2,646 ton/year) to national particulate emissions by 1983. Compliance with a typical SIP regulation would reduce this impact to about 1,000 Mg/year (1,102 ton/year). Under Option I, emissions would be reduced to about 12 percent of those emitted under a typical SIP regulation. Under Option II, emissions would be reduced to about 30 percent of those emitted under a typical SIP regulation.

Ambient dispersion modeling indicates that under worst case conditions the annual maximum ground-level particulate concentration near an uncontrolled container glass furnace producing 225 Mg/day of glass would be less than 1 $\mu g/m^3$. The annual maximum ground-level concentration resulting from compliance with a typical SIP regulation, Option I, or Option II would also be less than 1 $\mu g/m^3$. The calculated maximum 24-hour ground-level particulate concentration near an uncontrolled container glass furnace producing 225 Mg/day of glass would be approximately 10 $\mu g/m^3$. The corresponding concentration for complying with a typical SIP regulation would be 5 $\mu g/m^3$. Under Option I, with an ESP or a fabric filter being employed for control, the maximum 24-hour ground-level concentration would be reduced to 1 $\mu g/m^3$. Under Option II, with the same techniques being employed, the concentration would be reduced to 2 $\mu g/m^3$. Use of a venturi scrubber to meet the Option II emissions limit would only reduce the concentration to 0 $\mu g/m^3$ due to the decreased stack height of a scrubber-controlled plant and the resulting increased building wake effects.

With one exception, standards of performance for container glass furnaces would have no water pollution impact. The exception would be the use of a venturi scrubber to comply with a standard based on Option II. Such a system, applied to a furnace producing 225 Mg/day of glass, would discharge about 0.5 m^3/hr of waste water containing about 5 percent solids. The waste water would probably be discharged directly to an available waste water treatment system. To date, however, only a few container glass furnaces have been controlled with venturi scrubbers; dry collection techniques have been preferred. Consequently, few container glass manufacturers would be expected to install venturi scrubbers on their furnaces to comply with a standard based on Option II. The overall water pollution impact would then be negligible.

The potential solid waste impacts of the regulatory options would result from collected particulate matter. Solid waste from container glass furnaces, other than collected particulate matter, is minimal since cullet is normally

recycled back into the glass melting process. Under a typical SIP regulation, about 1,400 Mg/year (1,543 ton/year) of particulate matter would be collected from the 25 new 225 Mg/day container glass furnaces projected to come on-stream during the 1978–1983 period. Compliance with standards based on Option I and Option II would add about 800 Mg/year (882 ton/year) and about 600 Mg/year (661 ton/year), respectively, to the solid waste collected under a typical SIP regulation. Option I would increase the mass of solids for disposal by about 60 percent over that resulting from compliance with a typical SIP regulation, and Option II would increase it by about 45 percent. The additional solid material collected under Option I or Option II would not differ chemically from the material collected under a typical SIP regulation. Collected solids either are recycled back into the glass melting process or are disposed of in a landfill. Recycling of the solids has no adverse environmental impact, and, since landfill operations are subject to State regulation, this disposal method also would not be expected to have an adverse environmental impact.

The potential energy impacts of the regulatory options would be due to the energy used to drive the fans in emission control systems and the energy used to charge the electrodes in ESP's. Since ESP's have been the predominant control system used in the industry, the energy requirements estimated for a typical SIP regulation, Option I, and Option II were based on the use of ESP's. The energy required to control particulate emissions from the 25 new container glass furnaces would be about 40 million kWh (22 thousand barrels of oil/year) for a typical SIP regulation for the new furnaces equipped with ESP's. This required energy would be about 0.2 percent of the total energy use in the container glass sector. There would be no energy impact associated with either Option I or Option II because the energy required to operate an ESP for Option I or Option II is essentially the same as the energy required to operate an ESP for a typical SIP regulation.

Incremental installed cost (cost in excess of a typical SIP regulation cost) in January 1978 dollars associated with Option I for controlling particulate emissions from a 225 Mg/day container glass furnace would be about $700 thousand for an ESP and about $1.2 million for a fabric filter. Incremental installed cost associated with Option II would be about $450 thousand for an ESP, and about $1 million for a fabric filter. The incremental installed cost of control equipment associated with Option I level of control would be about 1.6 times the incremental installed cost associated with Option II if ESP's were selected. If fabric filters were selected, the incremental installed cost associated with the Option I level of control would be about 1.2 times the incremental installed cost associated with Option II.

Incremental annualized costs associated with Option I for a 225 Mg/day furnace would be about $200 thousand/year and about $350 thousand/year for an ESP and a fabric filter, respectively. Incremental annualized costs associated with Option II would be about $130 thousand/year for an ESP, and about $300 thousand/year for a fabric filter. The incremental annualized cost associated with Option I would be about 1.5 times the incremental annualized cost associated with Option II if ESP's were used. If fabric filters were used the incremental annualized cost associated with Option I would be about 1.2 times the incremental annualized cost associated with Option II.

Based on the use of control equipment with the highest annualized cost (worst case conditions), a price increase of about 1.8 percent would be necessary to offset the cost of installing control equipment on a 225 Mg/day container glass furnace to meet the emissions limit of Option I. A price increase of about 1.5 percent would be necessary to comply with the emission limit of Option II.

Incremental cumulative capital costs for the 25 new 225 Mg/day container glass furnaces during the 1978–1983 period associated with Option I would be about $17 million if ESP's were used. Use of ESP's to comply with a standard based on Option II would require incremental cumulative capital costs of about $11 million for the same period. Fifth-year annualized costs for controlling container glass melting furnaces to comply with Option I would be about $5 million/year. To comply with Option II, fifth-year annualized costs would be about $3 million/year.

A summary of incremental impacts (in excess of impacts of a typical SIP regulation) associated with Option I and Option II is shown in Table 1. Air impacts, expressed in Mg/year of particulate matter emissions reduced, would approximate the quantity of particulate matter collected and disposed of as solid waste.

Table 1.—*Summary of Incremental Impacts Associated With Regulatory Options*

	Impacts			
	Air [1]	Water	Energy [2]	Economic [3]
Regulatory option:				
I	800	None	Negligible	~1.8
II	600	Negligible	Negligible	~1.5

[1] Mg/Yr. reduced.
[2] Barrels of oil/day.
[3] Percent price increase.

Consideration of the beneficial impact on national particulate emissions, the degree of water pollution impact, the small potential for adverse solid waste impact, the lack of energy impact, the reasonableness of cost impact, and the general availability of demonstrated emission control technology leads to the selection of Option I as the basis for standards for glass melting furnaces in the container glass sector.

Pressed and Blown Glass—Soda-Lime Formulation

Because the glass production rates, the furnace configurations, and the glass formulations melted in furnaces in this sector are very similar to those in container glass sector, the quantity and chemical composition of particulate emissions approximate those of container glass furnaces. On the basis of this similarity of process and emissions, the emission reduction techniques which have been shown to be effective for container glass furnaces would also be effective in reducing particulate emissions from furnaces in this sector.

Uncontrolled particulate emissions from pressed and blown glass furnaces melting soda-lime formulations are generally about 1.25 g/kg (2.5 lb/ton) of glass pulled from the furnace. Test data for a pressed and blown glass furnace melting a soda-lime formulation and equipped with a fabric filter indicate particulate emissions of 0.12 g/kg (0.24 lb/ton) of glass pulled using the

LAAPCD Method. No emissions data for pressed and blown glass furnaces equipped with ESP's are available. However, emission tests using EPA Method 5 on three container-glass furnaces equipped with ESP's indicate an average particulate emission rate of 0.06 g/kg (0.12 lb/ton) of glass pulled. Because of the similarities between this sector and the container glass sector, both ESP's and fabric filters would be expected to be capable of reducing emissions to about 0.1 g/kg (0.2 lb/ton) of glass pulled.

Based on the similarity of pressed and blown glass production methods in this sector to those of the container glass sector, as well as on test data available on container glass furnace emissions, two regulatory options were formulated. The regulatory options are identical to those formulated for container glass furnaces. Option I would set an emission limit of 0.1 g/kg (0.2 lb/ton) of glass pulled, which would require a particulate emission reduction of about 90 percent. Option II would set an emission limit of 0.2 g/kg (0.4 lb/ton) of glass pulled, which would require about 85 percent particulate emission reduction.

By 1983 approximately 310 Mg/year (342 ton/year) of additional production is anticipated in this glass manufacturing sector. About four new 45 Mg/day (50 ton/day) (small) and six new 90 Mg/day (100 ton/day) (large) furnaces would be built in order to provide this production. Emissions from the large furnaces would have to be reduced in order to comply with a typical SIP regulation, while small furnaces would meet a typical SIP regulation without reducing emissions. If uncontrolled, the four new small furnaces would add about 60 Mg/year (66 ton/year) to national particulate emissions by 1983, while the six new large furnaces would add about 230 Mg/year (254 ton/year). Compliance with a typical SIP regulation would reduce the impact of the new large furnaces to about 70 Mg/year (77 ton/year). Under Option I, these furnace emissions would be reduced to about 26 percent of those emitted under a typical SIP regulation. Under Option II, large furnace emissions would be reduced to about 53 percent of those emitted under a typical SIP regulation.

The small furnaces would be in compliance with a typical SIP regulation without control. Under Option I, emissions would be reduced to about 8 percent of uncontrolled emissions. Under Option II, emissions would be reduced to about 16 percent of uncontrolled emissions.

The effect of a typical SIP regulation for both 20 Mg/day (100 ton/day) and 45 Mg/day (50 ton/day) furnaces would be a reduction of about 48 percent of uncontrolled emissions. Under Option I, emissions would be reduced to about 16 percent of those emitted under a typical SIP regulation. Under Option II, emissions would be reduced to about 33 percent of those emitted under a typical SIP regulation.

Ambient dispersion modeling indicates that under worst case conditions the annual maximum ground-level particulate concentration near an uncontrolled pressed and blown glass furnace producing 45 Mg/day of glass would be less than 1 $\mu g/m^3$, as would the concentrations resulting from compliance with Option I or Option II. Corresponding annual maximum ground-level concentrations near an uncontrolled pressed and blown glass furnace producing 90 Mg/day of glass would also be less than 1 $\mu g/m^3$. Emissions from uncontrolled furnaces of either size in this sector would result in calculated maximum 24-hour ground-level concentrations of 3 $\mu g/m^3$. Under Option I this concentration would be reduced to below 1 $\mu g/m^3$. Under Option II it would be reduced to about 1 $\mu g/m^3$.

Since fabric filters and electrostatic precipitators are likely to be the control systems installed on furnaces in this sector to comply with standards, there would be no water pollution impact associated with standards based on either Option I or Option II.

Under a typical SIP regulation, no particulate matter would be collected from the four new 45 Mg/day pressed and blown glass furnaces projected to come on-stream during the 1978–1983 period. The six new 90 Mg/day furnaces would collect about 160 Mg/year (176 ton/year) under a typical SIP regulation. For the six 90 Mg/day furnaces the amounts collected in addition to those collected through compliance with a typical SIP regulation would be about 50 Mg/year (55 ton/year) for Option I and about 33 Mg/year (36 ton/year) for Option II. Compliance with standards based on Option I and Option II would result in the collection of about 72 Mg/year (79 ton/year) and about 68 Mg/year (75 ton/year), respectively, of solid waste from the four 45 Mg/day furnaces. Option I would increase the mass of solids for disposal by 100 percent and by about 21 percent over that required by a typical SIP regulation for 45 Mg/day and 90 Mg/day furnaces, respectively. Option II would increase the mass of solids for disposal by 100 percent and 21 percent over that required by a typical SIP regulation for 45 Mg/day and 90 Mg/day furnaces, respectively. The total masses of solids for disposal collected from all new furnaces would be about 122 Mg/year (135 ton/year) and 101 Mg/year (111 ton/year) for Option I and Option II, respectively.

The additional solid material collected under Option I and Option II would not differ chemically from the material collected under a typical SIP regulation. Collected solids either are recycled back into the glass melting process or are disposed of in a landfill. Recycling of the solids has no adverse environmental impact, and, since landfill operations are subject to State regulation, this disposal method also would not be expected to have an adverse environmental impact.

Since the four new 45 Mg/day furnaces would be in compliance with a typical SIP regulation without add-on controls, there would be no associated energy requirement. The estimated energy required to control particulates emissions from the four new 45 Mg/day furnaces projected to come on-stream in the 1978–1983 period to the levels required by both Option I and Option II would be about 1.5 million kWh (900 barrels of oil/year). The energy required to control particulate emissions from the six new 90 Mg/day furnaces would be 4.4 million kWh (2,800 barrels of oil/year) for a typical SIP regulation, Option I, or Option II if ESP's were installed.

The energy required to comply with the emission limits of the regulatory options would be about 0.5 percent of the total energy use in this glass manufacturing sector. The energy impacts of both Option I and Option II are negligible (~3 barrels of oil/day) for the new 45 Mg/day furnaces. There would be no energy impact associated with either Option I or Option II for the new 90 Mg/day furnaces beyond the impact associated with the requirements to meet a typical SIP regulation.

Incremental installed costs in January 1978 dollars associated with Option I for controlling particular emissions from a 45 Mg/day pressed and blown glass furnace melting soda-lime formulations would be about $749 thousand for an ESP and about $719 thousand for a fabric filter. Incremental installed costs associated with Option II would be about $645 thousand for an ESP, and about $675 thousand for a fabric filter. The incremental installed costs of control equipment associated with the Option I level of control would be about 1.1 times the incremental installed costs associated with Option II if ESP's were selected. If fabric filters were selected the incremental installed costs associated with the Option I level of

control would be about 1.1 times the incremental installed costs associated with Option II.

Incremental annualized costs for a 45 Mg/day furnace associated with Option I would be about $230 thousand/year for both ESP's and fabric filters. Incremental annualized costs associated with Option II would be about $205 thousand/year for an ESP, and about $215 thousand/year for a fabric filter. The incremental annualized costs associated with Option I would be about 1.1 times the incremental annualized costs associated with Option II if ESP's were used. If fabric filters were used, the incremental annualized costs associated with Option I would be about 1.1 times the incremental annualized costs associated with Option II.

Based on the use of control equipment with the highest annualized costs (worse case conditions), a price increase of about 0.6 percent would be necessary to offset the costs of installing control equipment on a 45-Mg/day pressed and blown glass furnace melting soda-lime formulations to meet the emission limits of Option I. A price increase of about 0.5 percent would be necessary to comply with the emission limits of Option II.

Incremental cumulative capital costs for the 1978–1983 period associated with Option I for the four new 45 Mg/day furnaces would be about $2.8 million if a fabric filter were used. Use of an ESP to comply with Option II would require incremental cumulative capital costs of about $2.6 million for the same period. Fifth-year annualized costs for controlling the furnace to comply with Option I would be about $910 thousand. To comply with Option II, fifth-year annualized costs would be about $815 thousand.

Incremental installed costs in January 1978 dollars associated with Option I for controlling particulate emissions from a 90 Mg/day pressed and blown glass furnace melting soda-lime formulations would be about $615 thousand for an ESP and about $770 thousand for a fabric filter. Incremental installed costs associated with Option II would be about $450 thousand for an ESP, and about $680 thousand for a fabric filter. The incremental installed costs of control equipment associated with the Option I level of control would be about 1.4 times the incremental installed costs associated with Option II, if ESP's were selected. If fabric filters were selected the incremental installed costs associated with the Option I level of control would be about 1.1 times the incremental installed costs associated with Option II.

Incremental annualized costs for a 90 Mg/day furnace associated with Option I would be about $175 thousand/year and about $235 thousand/ year for an ESP and a fabric filter, respectively. Incremental annualized costs associated with Option II would be about $130 thousand/year for an ESP, and about $205 thousand/year for a fabric filter. The incremental annualized costs associated with Option I would be about 1.3 times the incremental annualized costs associated with Option II if ESP's were used. If fabric filters were used the incremental annualized costs associated with Option I would be about 1.1 times the incremental annualized costs associated with Option II.

Based on the use of control equipment with the highest annualized cost, a price increase of about 0.8 percent would be necessary to offset the costs of installing control equipment on the large pressed and blown glass furnace melting soda-lime formulations to meet the emission limits of Option I. A price increase of about 0.5 percent would be necessary to comply with the emission limits of Option II.

Incremental cumulative capital costs for the 1978–1983 period associated with Option I for the six new 90 Mg/day furnaces would be about $3.7 million if ESP's were used. Use of ESP's to comply with Option II would require incremental cumulative capital costs of about $2.7 million for the same period. Fifth-year annualized costs for controlling these glass melting furnaces to comply with Option I would be about $1.1 million. To comply with Option II, fifth-year annualized costs would be about $790 thousand.

A summary of incremental impacts (in excess of impacts of the typical SIP regulation) associated with Option I and Option II is shown in Table II for both small and large furnaces. Air impacts, expressed in Mg/year of particulate matter emissions reduced, would approximate the quantity of particulate matter collected and disposed of as solid waste.

Table II.—*Summary of Incremental Impacts Associated With Regulatory Options*

	Impacts			
	Air [1]	Water	Energy [2]	Economic [3]
I	122	None	~3.0	~0.6
II	101	None	~3.0	~0.5

[1] Mg/Yr. reduced.
[2] Barrels of oil/day.
[3] Percent price increase.

Consideration of the beneficial impact on national particulate emissions, the lack of water pollution impact, the small potential for adverse solid waste impact, the reasonableness of energy and costs impacts, and the general availability of demonstrated emission control technology leads to the selection of Option I as the basis for standards for pressed and blown glass furnaces melting soda-lime formulations.

Pressed and Blown Glass—Other Than Soda-Lime Formulations

Uncontrolled particulate emissions from furnaces in this sector are about 5 g/kg (10 lb/ton) of glass pulled. Emission tests using EPA Method 5 on four furnaces melting borosilicate formulations and equipped with ESP's yielded a representative emission rate of about 0.50 g/kg (1.0 lb/ton) of glass pulled. A single emission test using EPA Method 5 on an ESP-controlled furnace melting fluoride/opal formulations yielded an emission rate of 0.17 g/kg (0.34 lb/ton) of glass pulled. EPA Method 5 tests of six ESP-controlled furnaces melting lead glass yielded a representative emission rate of 0.12 g/kg (0.24 lb/ton) of glass pulled. A single EPA method 5 emission test of an ESP-controlled furnace melting potash-soda-lead glass yielded an emission rate of 0.03 g/kg (0.06 lb/ton) of glass pulled. An EPA method 5 emission test on a furnace equipped with a fabric filter and melting soda-lead-borosilicate glass produced an emission rate of 0.17 g/kg (0.34 lb/ton) of glass pulled.

Upon consideration of the data cited above, an emission limit of 0.25 g/kg (0.5 lb/ton) of glass pulled was identified as a reasonable limit for control for pressed and blown glass furnaces melting other than soda-lime formulations. This limit was selected for Option I; it provides for about 95 percent particulate removal. Option II would set an emission limit of 0.5 g/kg (1.0 lb/ton) of glass pulled, which provides for a particulate removal of about 90 percent. Fabric filters and ESP's could be designed to achieve the levels of emission reduction required by either regulatory option.

By 1983 approximately 70 Gg/year (77,200 ton/year) of additional production is anticipated in this sector. One 45 Mg/day (50 ton/day) (small) furnace and two 90 Mg/day (100 ton/day) (large) furnaces would be built in order to provide this production. If uncontrolled, emissions from the one new small pressed and blown glass furnace melting formulations other than soda-lime would add about 90 Mg/year (100 ton/year) to national particulate

emissions by 1983, while the emissions from the two new large furnaces would add about 260 Mg/year (287 ton/year) during the same period.

Compliance with a typical SIP regulation would reduce the impact from the small furnace to about 27 Mg/year (30 ton/year). Control to the Option I emissions limit would reduce the emissions to about 17 percent of those emitted under a typical SIP regulation. With Option II emissions would be reduced to about 33 percent of those emitted under a typical SIP regulation.

Compliance with a typical SIP regulation would reduce the impact of the large furnances to about 47 Mg/year (52 ton/year). Under Option I, these emissions would be reduced to about 28 percent of those emitted under a typical SIP regulation. Under Option II, the large furnace emissions would be reduced to about 56 percent of those emitted under a typical SIP regulation.

The effect of a typical SIP regulation for both large and small furnaces would be a reduction of about 79 percent. Under Option I, emissions would be reduced to about 25 percent of those emitted under a typical SIP regulation. Under Option II, emissions would be reduced to about 50 percent of those emitted under a typical SIP regulation.

Ambient dispersion modeling indicates that under worst case conditions the annual maximum ground-level particulate concentration near an uncontrolled 45 Mg/day pressed and blown glass furnace melting formulations other than soda-lime would be less than 1 $\mu g/m^3$, as would be the concentrations resulting from compliance with a typical SIP regulation, Option I, or Option II. Corresponding annual maximum ground-level concentrations near a 90 Mg/day furnace also would be less than 1 $\mu g/m^3$

The calculated maximum 24-hour ground-level concentration near an uncontrolled 45 Mg/day furnace in this sector would be 11 $\mu g/m^3$. This concentration would be reduced to 3 $\mu g/m^3$ with a typical SIP regulation. With Options I and II, the concentrations would be reduced to 1 $\mu g/m^3$ or less. The calculated maximum 24-hour ground-level concentration near an uncontrolled 90 Mg/day furnance would be 14 $\mu g/m^3$. This concentration would be reduced to 3 $\mu g/m^3$ with a typical SIP regulation and to below 1 $\mu g/m^3$ with Option I; with Option II it would reach 2 $\mu g/m^3$.

Since fabric filters and ESP's are likely to be the control systems installed on furnaces in this sector to comply with standards, there would be no water pollution impact associated with standards based on either Option I or Option II.

Under a typical SIP regulation, about 64 Mg/year (71 ton/year) of particulate matter would be collected from the one new 45 Mg/day furnace projected to come on-stream in the 1978–1983 period. Compliance with standards based on Option I and Option II would add about 23 Mg/year (25 ton/year) and 18 Mg/year (20 ton/year), respectively, to the solid waste collected under a typical SIP regulation. Option I would increase the mass of solids by about 36 percent over that resulting from compliance with a typical SIP regulation, and Option II would increase it by about 28 percent.

Under a typical SIP regulation, about 210 Mg/year (232 ton/year) of particulate matter would be collected from the two new 90 Mg/day furnaces projected to come on-stream in the 1978–1983 period. Compliance with standards based on Option I and Option II would add about 34 Mg/year (38 ton/year) and 21 Mg/year (23 ton/year), respectively, to the solid waste collected under a typical SIP regulation. Option I would increase the mass of solids by about 16 percent over that resulting from compliance with a typical SIP regulation, and Option II would increase it by about 10 percent. The total mass of solids for disposal collected from all three new furnaces in this sector, associated with Option I and Option II, would be about 57 Mg/year (63 ton/year) and about 39 Mg/year (43 ton/year), respectively.

The additional solid material collected under Option I or Option II would not differ chemically from the material collected under the typical SIP regulation. Collected solids either are recycled back into the glass melting process or are disposed of in a landfill. Recycling of the solids has no adverse environmental impact, and, since landfill operations are subject to State regulation, this disposal method also is not expected to have an adverse environmental impact.

Since ESP's have been the predominant control system used in the industry and are anticipated as the predominant system to be used for new plants coming on-stream between 1978–1983 regardless of which regulatory option is selected, energy requirements estimated for the typical SIP regulation, Option I, and Option II are based on the use of ESP's.

The energy required to control particulate emissions from the new 45 Mg/day pressed and blown glass furnace melting formulations other than soda-lime to the level required by the typical SIP regulation would be about 2.7 million kWh (1,500 barrels of oil/year). The energy required to comply with the Option I and Option II emissions limits would be essentially the same as that required for meeting a typical SIP regulation.

Control to the level required by a typical SIP regulation of the two new 90 Mg/day pressed and blown glass furnaces melting formulations other than soda-lime and projected to come on-stream during the 1978–1983 period would require about 6.6 million kWh (3,700 barrels of oil/year) if an ESP were used. The energy requirements to achieve the Option I and Option II emission limits would be essentially the same as the requirements for meeting a typical SIP regulation.

The energy required to comply with the emission limits of the regulatory options would be about 0.1 percent of total energy use for all new furnaces in this glass manufacturing sector. Considering the small amounts of additional oil and electricity required and the slight increase in total energy use in this sector, the energy impacts of either Option I or Option II would be negligible.

Incremental installed costs in January 1978 dollars associated with Option I for controlling particulate emissions from a 45 Mg/day pressed and blown glass furnace melting formulations other than soda-lime would be about $760 thousand for an ESP and about $235 thousand for a fabric filter. Incremental installed costs associated with Option II would be about $320 thousand for an ESP, and about $180 thousand for a fabric filter. The incremental installed costs of control equipment associated with the Option I level of control would be about 2.4 times the incremental installed costs associated with Option II if ESP's were selected. If fabric filters were selected the incremental installed costs associated with the Option I level of control would be about 1.2 times the incremental installed costs associated with Option II level of control.

Incremental annualized costs for a 45 Mg/day furnace associated with Option I would be about $230 thousand/year and about $70 thousand/year for an ESP and a fabric filter, respectively. Incremental annualized costs associated with Option II would be about $85 thousand/year for an ESP, and about $60 thousand/year for a fabric filter. The incremental annualized costs associated with Option I would be about 2.4 times the incremental annualized costs associated with Option II if ESP's were used. If fabric filters were used the incremental annualized costs associated

with Option I would be about 1.2 times the incremental annualized costs associated with Option II.

Based on the use of control equipment with the highest annualized costs (worse case conditions), a price increase of about 0.4 percent would be necessary to offset the costs of installing control equipment on a 45 Mg/day pressed and blown glass furnace melting other than soda-lime formulations to meet the emission limits of Option I. A price increase of about 0.3 percent would be necessary to comply with the emission limits of Option II.

Incremental cumulative capital costs for the 1978–1983 period associated with Option I for the 45 Mg/day furnace would be about $235 thousand if an ESP were used. Use of an ESP to comply with Option II would require incremental cumulative capital costs of about $190 thousand for the same period. Fifth-year annualized costs for controlling this furnace in this sector to comply with Option I would be about $70 thousand. To comply with Option II, fifth-year annualized costs would be about $60 thousand.

Incremental installed costs in January 1978 dollars associated with Option I for controlling particulate emissions from a 90 Mg/day pressed and blown glass furnace melting other than soda-lime formulations would be about $800 thousand for an ESP and about $280 thousand for a fabric filter. Incremental installed costs associated with Option II would be about $140 thousand for an ESP, and about $180 thousand for a fabric filter. The incremental installed costs of control equipment associated with the Option I level of control would be about 5.7 times the incremental installed costs associated with Option II if ESP's were selected. If fabric filters were selected the incremental installed costs associated with the Option I level of control would be about 1.4 times the incremental installed costs associated with Option II.

Incremental annualized costs for a 90 Mg/day furnace associated with Option I would be about $245 thousand per year and about $85 thousand per year for an ESP and a fabric filter, respectively. Incremental annualized costs associated with Option II would be about $45 thousand per year for an ESP, and about $55 thousand per year for a fabric filter. The incremental annualized costs associated with Option I would be about 5.4 times the incremental annualized costs associated with Option II if ESP's were used. If fabric filters were used the incremental annualized costs associated with Option I would be about 1.5 times the incremental annualized costs associated with Option II.

Based on the use of control equipment with the highest annualized costs, a price increase of about 0.8 percent would be necessary to offset the costs of installing control equipment on the 90 Mg/day pressed and blown glass furnace melting formulations other than soda-lime to meet the emission limits of Option I. A price increase of about 0.5 percent would be necessary to comply with the emission limits of Option II.

Incremental cumulative capital costs for the 1978–1983 period associated with Option I for the two new 90 Mg/day furnaces would be about $500 thousand if fabric filters were used. Use of ESP's to comply with Option II would require incremental cumulative capital costs of about $300 thousand for the same period. Fifth-year annualized costs for controlling these glass melting furnaces to comply with Option I would be about $160 thousand. To comply with Option II, fifth-year annualized costs would be about $85 thousand.

A summary of incremental impacts (in excess of impacts of the typical SIP regulation) associated with Option I and Option II is shown in Table III for both small and large furnaces. Air impacts, expressed in Mg/year of particulate matter emissions reduced, would approximate the quantity of particulate matter collected and disposed of as solid waste.

Table III.—*Summary of Incremental Impacts Associated With Regulatory Options*

	Impacts			
	Air[1]	Water	Energy[2]	Economic[3]
Regulatory option:				
I	67 None	Negligible		~0.7
II	89 None	Negligible		~0.4

[1] Mg/Yr. reduced.
[2] Barrels of oil/day.
[3] Percent price increase.

Consideration of the beneficial impact on national particulate emissions, lack of water pollution impact, the small potential for adverse solid waste impact, the lack of energy impact, the reasonableness of cost impacts, and the general availability of demonstrated emission control technology leads to the selection of Option I as the basis for standards for pressed and blown glass furnaces melting formulations other than soda-lime.

Wool Fiberglass

Uncontrolled particulate emissions from wool fiberglass furnaces are generally about 5 g/kg (10 lb/ton) of glass pulled. The average emission from three furnaces in the wool fiberglass sector equipped with ESP's was 0.18 g/kg (0.36 lb/ton) of glass pulled. EPA Method 5 tests of three furnaces equipped with fabric filters indicated emissions of 0.2 g/kg (0.4 lb/ton), 0.26 g/kg (0.52 lb/ton), and 0.55 g/kg (1.1 lb/ton) of glass pulled. The test data cited indicate that an emission limit of 0.2 g/kg (0.4 lb/ton) of glass pulled could be met through the use of an ESP and that a limit of 0.4 g/kg (0.8 lb/ton) of glass pulled could be met through the use of either an ESP or a fabric filter.

On the basis of these conclusions, two regulatory options for reducing particulate emissions from wool fiberglass furnaces were formulated. Option I would set an emission limit of 0.2 g/kg (0.4 lb/ton) of glass pulled, which would provide for about 95 percent particulate removal. Option II would set an emission limit of 0.4 g/kg (0.8 lb/ton) of glass pulled, which would provide for about 90 percent removal of particulates.

By 1983 approximately 360 Gg/year (397,000 ton/year) of additional production is anticipated in the wool fiberglass sector. About six new wool fiberglass furnaces of about 180 Mg/day (200 ton/day production capacity (the size of the model furnace) would be built in order to provide this additional production. If uncontrolled, these new wool fiberglass furnaces would add about 1,800 Mg/year (1,984 ton/year) to national particulate emissions by 1983. Compliance with a typical SIP regulation would reduce this impact to about 210 Mg/year (232 ton/year). Under Option I, emissions would be reduced to about 33 percent of those emitted under a typical SIP regulation. Under Option II, emissions would be reduced to about 66 percent of those emitted under a typical SIP regulation.

Ambient dispersion modeling indicates that under worst case conditions the annual maximum ground-level particulate concentration near an uncontrolled wool fiberglass furnace producing 180 Mg/day of glass would be about 2 $\mu g/m^3$. The annual maximum ground-level concentrations resulting from compliance with a typical SIP regulation, Option I, or Option II would be less than 1 $\mu g/m^3$. The calculated maximum 24-hour ground-level particulate concentration near an uncontrolled wool fiberglass furnace producing 180 Mg/day of glass would be about 29 $\mu g/m^3$. The corresponding concentration for complying with a typical SIP regulation would be about 3 $\mu g/m^3$. Under Option I, with an ESP employed for control, the maximum 24-

hour ground-level concentration would be reduced to 2 $\mu g/m^3$. Under Option II it would be reduced to 3 and 4 $\mu g/m^3$ with the fabric filter and ESP, respectively.

Since fabric filters and ESP's are likely to be the control systems installed on wool fiberglass furnaces to comply with standards, there would be no water pollution impact associated with standards based on either Option I or Option II.

Under a typical SIP regulation, about 1600 Mg/year (1,764 ton/year) of particulate matter would be collected from the six new 180 Mg/day wool fiberglass furnaces projected to come on-stream during the 1978–1983 period. Compliance with standards based on Option I and Option II would add about 140 Mg/year (154 ton/year) and about 70 Mg/year (77 ton/year), respectively, to the solid waste collected under a typical SIP regulation. Option I would increase the mass of solids for disposal by about 9 percent over that resulting from compliance with a typical SIP regulation, and Option II would increase it by about 4 percent. The additional solid material collected under Option I or Option II would not differ chemically from the material collected under a typical SIP regulation. Collected solids either are recycled back into the glass melting process or are disposed of in a landfill. Recycling of the solids has no adverse environmental impact, and, since landfill operations are subject to State regulation, this disposal method also is not expected to have an adverse environmental impact.

The estimated energy required to control particulate emissions from the six new wool fiberglass furnaces expected to come on-stream in the 1978–83 period to comply with a typical SIP regulation would be about 6.8 million kWh (3,850 barrels of oil/year) if electrostatic precipitators were used. Complying with the emission limits of Option I and Option II with electrostatic precipitators would require about 6.9 million kWh (3,900 barrels of oil/year). The energy required would be about 0.3 percent of the total energy use in the wool fiberglass sector. The energy impacts of either Option I or Option II would be negligible—only about 50 barrels of oil/year.

Incremental installed costs in January 1978 dollars associated with Option I for controlling particulate emissions from a 180 Mg/day wool fiberglass furnace would be about $500 thousand for an ESP and about $70 thousand for a fabric filter. Incremental installed costs associated with Option II would be about $110 thousand and about $30 thousand for an ESP and a fabric filter, respectively. The incremental installed costs of control equipment associated with the Option I level of control would be nearly 5 times the incremental installed costs associated with Option II if ESP's were selected. If fabric filters were selected, the incremental installed costs associated with the Option I level of control would be aobut twice the incremental installed costs associated with Option II.

Incremental annualized costs associated with Option I for a 180 Mg/day wool fiberglass furnace would be about $155 thousand/year and about $20 thousand/year for an ESP and a fabric filter, respectively. Incremental annualized costs associated with Option II would be about $35 thousand/year for an ESP and about $10 thousand/year for a fabric filter. The incremental annualized costs associated with Option I would be about five times the incremental annualized costs associated with Option II if ESP's were used. If fabric filters were used, the incremental annualized costs associated with Option I would be about two times the incremental annualized costs associated with Option II.

Based on the use of control equipment with the highest annualized costs (worst case conditions), a price increase of about 0.3 percent would be necessary to offset the costs of installing control equipment on a 180 Mg/day wool fiberglass furnace to meet the emission limits of Option I. A price increase of about 0.1 percent would be necessary to complying with the emission limits of Option II.

Incremental cumulative capital costs for the six new 180 Mg/day wool fiberglass furnaces during the 1978–1983 period associated with Option I would be about $3 million if ESP's were used. Use of fabric filters to comply with Option II would require incremental cumulative capital costs of about $185 thousand for the same period. Fifth-year annualized costs for controlling wool fiberglass furnaces complying with Option I would be about $930 thousand. To comply with Option II, fifth-year annualized costs would be about $60 thousand.

A summary of incremental impacts associated with Option I and Option II is shown in Table IV. Air impacts, expressed in Mg/year of particulate matter emissions reduced, would approximate the quantity of particulate matter collected and disposed of as solid waste.

Table IV.—*Summary of Incremental Impacts Associated With Regulatory Options*

Regulatory option:	Impacts			
	Air [1]	Water	Energy [2]	Economic [3]
I	140 Mg/Yr.	Negligible		0.3
II	70 Mg/Yr.	Negligible		0.1

[1] Mg/Yr. reduced.
[2] Barrels of oil/day.
[3] Percent price increase.

Consideration of the beneficial impact on national particulate emissions, the lack of water pollution impact, the small potential for adverse solid waste impact, the reasonableness of energy and cost impacts, and the general availability of demonstrated emission control technology leads to the selection of Option I as the basis for standards for glass melting furnaces in the wool fiberglass sector.

Flat Glass

Uncontrolled particulate emissions from flat glass furnaces are about 1.5 g/kg (3.0 lb/ton) of glass pulled. There are no emissions test data for flat glass furnaces equipped with control devices available for evaluation. However, the soda-lime formulations melted in these furnaces are quite similar to those melted in container glass furnaces, as are the chemical composition and physical characteristics of the particulate emissions. The primary difference between container glass and flat glass furnaces is that the uncontrolled emission rates of flat glass furnaces are greater. Given the similarity of processes, glass formulations, and emissions it is expected that the percentage reduction in particulate emissions achieved by control of container glass furnaces also could be achieved with flat glass furnaces. This conclusion is supported by the performance guarantee underwritten by an ESP manufacturer for a flat glass facility which indicates at least 90 percent control efficiency. Thus, uncontrolled emissions from flat glass furnaces can be reduced with an ESP by at least 90 percent or to about 0.15 g/kg (0.3 lb/ton) of glass pulled.

The similarity of container glass and flat glass furnace formulations and emissions and the vendor guarantee noted above provide the basis for Option I. Option I would set an emission limit of 0.15 g/kg (0.3 lb/ton) of glass pulled, which would provide about 90 percent control. The Option II emission limit for furnaces in the other glass manufacturing sectors has been found to be twice the Option I limit. For

consistency, therefore, Option II would set an emission limit of 0.3 g/kg (0.6 lb/ton) of glass pulled, which would provide about 80 percent control.

By 1983 approximately 240 Gg/year (264,555 ton/year) of additional production is expected in the flat glass sector. One new flat glass furnace of about 635 Mg/day (700 ton/day) capacity (the size of the model furnace) would be built in order to provide this additional production.

If uncontrolled, this new flat glass furnace would add about 360 Mg/year (397 ton/year) to national particulate emissions by 1983. Compliance with a typical SIP regulation would reduce this impact to about 90 Mg/year (100 ton/year). Under Option I, emissions would be reduced to about 40 percent of those emitted under a typical SIP regulation. Under Option II, emissions would be reduced to about 80 percent of those emitted under a typical SIP regulation.

Ambient dispersion modeling indicates that under worst case conditions the annual maximum ground-level particulate concentration near an uncontrolled flat glass furnace producing 635 Mg/day of glass would be about 1 $\mu g/m^3$. The annual maximum ground-level concentrations resulting from compliance with a typical SIP regulation, Option I, or Option II, would be less than 1 $\mu g/m^3$. The calculated maximum 24-hour ground-level particulate concentration near an uncontrolled flat glass furnace producing 635 Mg/day of glass would be about 21 $\mu g/m^3$. The corresponding concentration for complying with a typical SIP regulation would be about 5 $\mu g/m^3$. Under Option I, this concentration would be reduced to about 2 $\mu g/m^3$. Under Option II it would be reduced to about 5 $\mu g/m^3$.

Since the ESP is likely to be the emission control system installed on flat glass furnaces to comply with standards, there would be no water pollution impact associated with standards based on either Option I or Option II.

Under a typical SIP regulation, about 270 Mg/year (298 ton/year) of particulate matter would be collected from the one new 635 Mg/day flat glass furnace projected to come on-stream in the 1978–1983 period. Compliance with standards based on Option I and II would add about 50 Mg/year (55 ton/year) and about 20 Mg/year (22 ton/year), respectively, to the solid waste collected under a typical SIP regulation. Option I would increase the mass of solids for disposal by about 20 percent over that resulting from compliance with a typical SIP regulation, and Option II would increase it by about 7 percent. The additional solid material collected under Option I or Option II would not differ chemically from the material collected under a typical SIP regulation. Collected solids either are recycled back into the glass melting process or are disposed of in a landfill. Recyling of the solids has no adverse environmental impact, and, since landfill operations are subject to State regulations, this disposal method also is not expected to have an adverse environmental impact.

Since the energy requirements for an electrostatic precipitator do not vary significantly over the range of emission reductions considered here, the estimate of energy required to control particulate emissions from the one new flat glass furnace would be about the same for compliance with a typical SIP regulation, Option I, or Option II—about 7.6 million kWh (4,300 barrels of oil/year). The energy required to comply with the emission limits of the regulatory options would be about 0.2 percent of the total energy use in the flat glass sector. There would be no incremental energy impact associated with either Option I or Option II as compared with a typical SIP regulation.

The incremental installed cost in January 1978 dollars associated with Option I for controlling particulate emissions from a 635 Mg/day flat glass furnace would be about $605 thousand. Incremental installed cost associated with Option II would be about $140 thousand. The incremental installed cost of control equipment associated with the Option I level of control would be somewhat more than four times the incremental installed cost associated with the Option II level of control.

Incremental annualized cost associated with Option I for a 635 Mg/day flat glass furnace would be about $190 thousand/year; the corresponding incremental annualized cost for Option II would be about $45 thousand/year. The incremental annualized cost associated with Option I would be more than four times the incremental annualized cost associated with Option II.

A price increase of about 0.4 percent would be necessary to offset the cost of installing an ESP on a 635 Mg/day flat glass furnace to meet the emission limit of Option I. A price increase of about 0.1 percent would be necessary to comply with the emission limit of Option II.

Incremental cumulative capital cost for the one new 635 Mg/day flat glass furnace during the 1978–1983 period associated with Option I would be about $605 thousand. Compliance with Option II would require an incremental cumulative capital cost of about $145 thousand for the same period. Fifth-year annualized costs for controlling the one new flat glass furnace to comply with Option I would be about $190 thousand. To meet the Option II emissions limit, fifth-year annualized costs would be about $45 thousand.

A summary of incremental impacts associated with Option I and Option II is shown in Table V. Air impacts, expressed in Mg/year of particulate matter emissions reduced, would approximate the quantity of particulate matter collected and disposed of as solid waste.

Table V.—Summary of Incremental Impacts Associated With Regulatory Options

	Impacts			
	Air[1]	Water	Energy[2]	Economic[3]
Regulatory option:				
I	320	None	Negligible	0.4
II	260	None	Negligible	0.1

[1] Mg/Yr. reduced.
[2] Barrels of oil/day.
[3] Percent price increase.

Consideration of the beneficial impact on national particulate emissions, the lack of water pollution impact, the small potential for adverse solid waste impact, the lack of energy impact, the reasonableness of cost impacts, and the general availability of demonstrated emission control technology leads to the selection of the Option I as the basis for standards for glass melting furnaces in the flat glass sector.

Summary

If uncontrolled, total particulate emissions from the 45 new glass melting furnaces projected to come on-stream between 1978 and 1983 would be about 5,200 Mg/year (5,732 ton/year). Compared to a typical SIP regulation, Option I would reduce particulate emissions by an additional 1,100 Mg/year (1,213 ton/year).

Ambient dispersion modeling indicates that the annual maximum ground-level particulate concentrations near uncontrolled glass melting furnaces would be 2 $\mu g/m^3$ or less. Both a typical SIP regulation and the Option I emission limits would reduce the annual maximum ground-level particulate concentrations to under 1 $\mu g/m$. The 24-maximum ground-level particulate concentrations near uncontrolled glass melting furnaces would be less than 30 $\mu g/m^3$, with a median concentration of about 11 $\mu g/m^3$. Under a typical SIP regulation these concentrations would be reduced to 5 $\mu g/m^3$ or less. Control to the Option I emission limits would

reduce the 24-hour maximum ground-level concentrations near glass melting furnaces to about 2 $\mu g/m^3$ or less.

The glass manufacturing process has minimal water pollution potential. Complying with a standard based on Option I would have a negligible water pollution impact, because control systems installed to meet Option I would not discharge waste water streams.

The amounts of solid waste generated in the control of particulates from glass melting furnaces would approximate the amount of particulate removed from exhaust gases. Compliance with a typical SIP regulation would produce 3,700 Mg (4,080 tons) of solid waste per year. Meeting the Option I emission limits would generate an additional 1,100 Mg/year (1,210 ton/year). Either recycling or landfilling would present minimal adverse environmental impact. Totally recycling the collected solids would have no adverse impact. Landfilling operations must meet State regulations, and therefore this disposal method would have limited potential for adverse environmental impact.

Implementing Option I would require about 1.6 million kWh of electricity to power the emission control equipment installed above the requirements for implementing a typical SIP regulation. To meet this power requirement electric utilities would require about 950 barrels of oil/year, or about 3 barrels/day. The energy that would be required to operate emission reduction sytems to meet a standard based on the Option I limits would be 2 percent or less of the total energy used in glass production.

Incremental cumulative capital costs to the glass manufacturing industry for controlling emissions from new glass melting furnaces projected to come on-stream during the 1978–1983 period to comply with a standard based on the Option I emission limits would be about $27.9 million. The fifth-year annualized costs to the glass manufacturing industry associated with compliance with the Option I emission limits would be about $8.4 million. An industry-wide price increase of about 0.7 percent would be necessary to offset the costs of installing control equipment to meet the emission limits of Option I.

Modification, Reconstruction, and Other Considerations

An exemption from provisions of the modification section (40 CFR § 60.14) is proposed for those plants which convert to fuel-oil firing, even though particulate emissions would more than likely be increased. The primary objective of the proposed standards is to control emissions of particulates from glass melting furnaces. The data and information supporting the standards consider essentially only those emissions arising from the basic melting process, not those arising from fuel combustion. It is not the prime purpose of these standards, therefore, to control emissions from fuel combustion per se. Consequently, since emissions from fuel combustion are small in comparison with those from the basic melting process, and a conversion of glass melting furnaces to firing oil rather than natural gas will aid in efforts to conserve natural gas resources, the standards proposed herein include a provision exempting fuel switching in glass melting furnaces from consideration as a modification. The proposed increment in emissions allowed fuel oil-fired glass melting furnaces is 15 percent, a small allowance; however, without this exemption there would be a large economic impact on the industry.

An exemption from reconstruction provisions (40 CFR § 60.15) is proposed for the cold refining (rebricking) of the melter of an existing furnace. Under 40 CFR § 60.15 the Administrator must be notified of intent to conduct such a procedure 60 days in advance of commencement, and will determine whether or not the rebricking constitutes a reconstruction. This rebricking procedure has been a routine operation in the glass manufacturing industry and would not generally be considered an opportunity to evade the provisions of the standard by unduly extending the useful life of an existing glass melting furnace. Therefore, the exemption of rebricking from reconstruction provision has been proposed.

Glass melting furnaces fired with number 2 fuel oil would be expected to exhibit a 10 percent increase in particulate emissions over those produced in gas-fired furnaces since particulates are formed by the combustion of oil. Similarly, furnaces fired with numer 4, 5, or 6 fuel oil would show a 15 percent increase in particulate emissions over those produced in gas-fired furnaces. This effect of fuel oil on furnace emissions being recognized, it is proposed that the emission limits for furnaces fired with fuel oil be the limits for gas-fired furnaces multiplied by 1.15. It is additionally proposed that simultaneously liquid and gas-fired furnaces have emission limits based on an equation, taking into consideraton the relative properties of the fuels being fired.

Selection of Performance Test Methods

The use of EPA Reference Method 5—"Determination of Particulate Emissions from Stationary Sources" (Appendix A, 40 CFR § 60, Federal Register, December 23, 1971) is required to determine compliance with the mass standards for particular matter emissions. Emission test data used in the development of the proposed standard were obtained either by the LAAPCD sampling method or by EPA Method 5. However, results of performance tests using Method 5 conducted by EPA on existing glass melting furnaces comprise a major portion of the data base used in the development of the proposed standard. EPA Reference Method 5 has been shown to provide a respresentative measurement of particulate matter emissions. Therefore, it has been included for determining compliance with the proposed standards.

Calculations applicable under Method 5 necessitate the use of data obtained from three other EPA test methods conducted previous to the performance of Method 5. Method 1—"Sample and Velocity Traverse for Stationary Sources" must be conducted in order to obtain representative measurements of pollutant emissions. The average gas velocity in the exhaust stack is measured by conducting Method 2—"Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube)." The analysis of gas composition is measured by conducting Method 3—"Gas Analysis for Carbon Dioxide, Oxygen, Excess Air and Dry Molecular Weight." These three tests provide data necessary in Method 5 for converting volumetric flow rate to mass flow rate. In addition, Method 4—"Determination of Moisture Conent in Stack Gases" is suggested as an accurate mode of predetermination of moisture content.

Since the proposed standards are expressed as mass of emissions per unit mass of glass pulled, it will be neccessary to quantify glass pulled in addition to measuring particulate emissions. Glass production in Mg shall be determined by direct measurement or computed from materials balance data using good engineering practices. The materials balance computation may constst of a process relationship between feed material input rate and the glass pull rate. In all materials balance computations, glass pulled from the furnace shall include product, cullet, and any waste glass. The hourly glass pull rate for a furnace shall be determined by averaging the glass pull rate over the time of the performance test.

Selection of Monitoring Requirements

To provide a convenient means for enforcement personnel to ensure that installed emission control systems comply with standards of performance through proper operation and maintenance, monitoring requirements are generally included in standards of performance. For glass melting furnaces the most straightforward means of ensuring proper operation and maintenance is to monitor emissions released to the atmosphere. EPA has established opacity monitoring performance specifications in Appendix B of 40 CFR § 60 for industrial sources with well-developed velocity and temperature profiles.

The best indirect method of monitoring proper operation and maintenance of compliance control equipment is the determination of exhaust gas opacity limits. Determining an acceptable exhaust gas opacity limit is not presently possible because the relationship between particulate emissions and corresponding opacity levels was not evaluated for glass melting furnaces. The data base for the particulate standards does not include information on opacity. Also, currently there are no continuous particulate monitors operating on glass melting furnaces; consquently, the data base necessary for developing an opacity-emission rate relationship is not available. Resolution of the sampling problems, development of performance standards for continuous particulate monitors, and obtaining a data base for developing an opacity-emission rate relationship would entail a major development program. For these reasons, continuous monitoring of particulate emissions from glass melting furnaces would not be required by the proposed standards.

Public Hearing

A public hearing will be held to discuss these proposed standards in accordance with Section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the ADDRESSES section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Docket address given in the ADDRESSES section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, D.C. (See ADDRESSES section of this preamble).

Miscellaneous

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The principal purposes of the docket are: (1) to allow interested persons to identify and locate documents so that they can intelligently and effectively participate in the rulemaking process, and (2) to serve as the record for judicial review. The docket requirement is discussed in Section 307(d) of the Clean Air Act.

As prescribed by Section 111 of the Act, this proposal of standards has been preceded by the Administrator's determination that emissions from glass manufacturing plants contribute to the endangerment of public health or welfare, and by publication of this determination in this issue of the **Federal Register**. In accordance with Section 117 of the Act, publication of these proposed standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the proposed regulation, including the designation of glass manufacturing plants as a significant contributor to air pollution which causes or contributes to the endangerment of public health or welfare, economic and technological issues, and on the proposed test method.

It should be noted that standards of performance for new sources established under Section 111 of the Clean Air Act reflect:

"Application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated." [Section 111(a)(1)]

Although there may be emission control technology available that is capable of reducing emissions below those levels required to comply with the standards of performance, this technology might not be selected as the basis of standards of performance because of costs associated with its use. Accordingly, these standards of performance should not be viewed as the ultimate in achievable emissions control. In fact, the Act requires (or has the potential for requiring) the imposition of a more stringent emission standard in several situations. For example, applicable costs do not necessarily play as prominent a role in determining the "lowest achievable emission rate" for new or modified sources locating in nonattainment areas; i.e., those areas where statutorily-mandated health and welfare standards are being violated. In this respect, Section 173 of the Act requires that new or modified sources constructed in an area which is in violation of the NAAQS must reduce emissions to the level which reflects the "lowest achievable emission rate" (LAER), as defined in Section 171(3), for such category of source. The statute defines LAER as that rate of emissions which reflects:

"(A) the most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or (B) the most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent."

In no event can the emission rate exceed any applicable new source perfomance standard [Section 171(3)].

A similar situation may arise under the prevention of significant deterioration of air quality provisions of the Act (Part C). These provisions require that certain sources (referred to in Section 169(1)) employ "best available control technology" (as defined in Section 169(3)) for all pollutants regulated under the Act. Best available control technology (BACT) must be determined on a case-by-case basis, taking energy, environmental, and economic impacts and other costs into account. In no event may the application of BACT result in emissions of any pollutants which will exceed the emissions allowed by an applicable standard established pursuant to Section 111 (or 112) of the Act.

In all events, State Implementation Plans approved or promulgated under Section 110 of the Act must provide for the attainment and maintenance of national ambient air quality standards (NAAQS) designed to protect public health and welfare. For this purpose, SIP's must in some cases require greater emission reductions than those required by standards of performance for new sources.

Finally, States are free under Section 116 of the Act to establish even more stringent limits than those established under Section 111 of those necessary to attain or maintain the NAAQS under Section 110. Accordingly, new sources may in some cases be subject to limitations more stringent than EPA's standards of performance under Section

111, and prospective owners and operators of new sources should be aware of this possibility in planning for such facilities.

EPA will review this regulation four years from the date of promulgation. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, and improvements in emission control technology.

An economic impact assignment has been prepared as required under Section 317 of the Act and is included in the Background Information Document.

Dated: May 22, 1979.

Douglas M. Costle,

Administrator.

It is proposed to amend Part 60 of Chapter I, Title 40 of the Code of Federal Regulations as follows:

Subpart CC—Standards of Performance for Glass Manufacturing Plants

Sec.

60.290 Applicability and designation of affected facility.
60.291 Definitions.
60.292 Standards for particulate matter.
60.293 Test methods and procedures.

Authority: Sections 111 and 301(a) of the Clean Air Act, as amended [42 U.S.C. 7411, 7601(a)], and additional authority as noted below.

§ 60.290 Applicability and designation of affected facility.

The affected facility to which the provisions of this subpart apply is each glass melting furnace within a glass manufacturing plant.

§ 60.291 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act and in Subpart A.

(a) "Glass manufacturing plant" means any plant which produces glass or glass products.

(b) "Glass melting furnace" means a unit comprising a refractory vessel in which raw materials are charged, melted at high temperature, refined, and conditioned to produce molten glass. The unit includes foundations, superstructure and retaining walls, raw material charger systems, heat exchangers, melter cooling system, exhaust system, refractory brick work, fuel supply and electrical boosting equipment, integral control systems and instrumentation, and appendages for conditioning and distributing molten glass to forming apparatuses.

(c) "Day pot" means any glass melting furnace designed to produce less than 1800 kilograms of glass per day.

(d) "All-electric melter" means a glass melting furnace in which all the heat required for melting is provided by electric current from electrodes submerged in the molten glass, although some fossil fuel may be charged to the furnace as raw material.

(e) "Glass" means flat glass; container glass; pressed and blown glass; and wool fiberglass.

(f) "Flat glass" means glass made of soda-lime recipe and produced into continuous flat sheets and other products listed in Standard Industrial Classification 3211 (SIC 3211).

(g) "Container glass" means glass made of soda-lime recipe, clear or colored, which is pressed and/or blown into bottles, jars, ampoules, and other products listed in SIC 3211.

(h) "Pressed and blown glass" means glass which is pressed and/or blown, including textile fiberglass, noncontinuous process flat glass, noncontainer glass, and other products listed in SIC 3229. It is separated into:

(1) Glass of soda-lime recipe; and

(2) Glass of borosilicate, opal, lead and other recipes.

(i) "Wool fiberglass" means fibrous glass of random texture, including fiberglass insulation, and other products listed in SIC 3296.

(j) "Recipe" means formulation of raw materials.

(k) "Glass production" means the weight of glass pulled from a glass melting furnace.

(l) "Rebricking" means cold replacement of damaged or worn refractory parts of the glass melting furnace. Rebricking includes replacement of the refractories comprising the bottom, sidewalls, or roof of the melting vefssel; replacement of refractory work in the heat exchanger; replacement of refractory portions of the glass conditioning and distribution system.

(m) "Soda-lime recipe" means raw material formulation of the following approximate proportions: 72 percent silica; 15 percent soda; 10 percent lime and magnesia; 2 percent alumina; and 1 percent miscellaneous materials.

§ 60.292 Standards for particulate matter.

(a) On or after the date on which the performance test required to be conducted by § 60.8 is completed, no owner or operator of a glass melting furnace subject to the provisions of this subpart shall cause to be discharged into the atmosphere, except as provided in paragraph (d) of this section:

(1) From any glass melting furnace, fired with a gaseous fuel, particulate matter at emission rates exceeding those specified in Table CC-1.

(2) From any glass melting furnace, fired with a liquid fuel, particulate matter at emission rates exceeding 1.15 times those specified in Table CC-1.

(3) From any glass melting furnace, simultaneously fired with gaseous and liquid fuel, particulate matter at emission rates exceeding those specified by the following equation;

$STD = X[1.15(Y) + (Z)]$

where:

STD = Particulate matter emission limit
X = Emission rate specified in Table CC-1
Y = Decimal percent of liquid fuel heating value to total (gaseous and liquid) fuel heating value

kilojoules

kilojoules
Z = (1 − Y)

(b) Conversion of a glass melting furnace to use of liquid fuel shall not be considered a modification for purposes of 40 CFR 60.14.

(c) Rebricking and the cost of rebricking shall not be considered reconstruction for the purposes of 40 CFR 60.15.

(d) This subpart shall not apply to day pots and all-electric melters.

Table CC-1—*Emission Rates*

Glass category	g of particulate/kg of glass produced
(1) Flat Glass	0.15
(2) Container Glass	.10
(3) Pressed and Blown Glass:	
(a) Other than soda-lime recipes (i.e., borosilicate, opal, lead, and other recipes, including textile fiberglass)	.25
(b) Soda-lime recipes	.10
(4) Wool Fiberglass	.20

§ 60.293 Test methods and procedures.

(a) Reference methods in Appendix A of this part, except as provided under § 60.8(b), shall be used to determine compliance with § 60.292 as follows:

(1) Method 5 shall be used to determine the concentration of particulate matter and the associated moisture content.

(2) Method 1 shall be used for sample and velocity traverses, and

(3) Method 2 shall be used to determine velocity and volumetric flow rate.

(4) Method 3 shall be used for gas analysis.

(b) For Method 5, the sample probe and filter holder shall be heated to 121°C (250°F). The sampling time for each run

shall be at least 60 minutes and the volume shall be at least 4.25 dscm.

(c) The particulate emission rate, E, shall be computed as follows:

$E = V \times C$

where:

(1) E is the particulate emission rate (g/hr),

(2) V is the average volumetric flow rate (dscm/hr) as found from Method 2; and

(3) C is the average concentration (g/dscm) of particulate matter as found from Method 5.

(d) the rate of glass production, P (kg/hr) shall be determined by dividing the weight of glass pulled in kilograms (kg) from the affected facility during the performance test by the number of hours (hr) taken to perform the performance test. The glass pulled in kilograms shall be determined by direct measurement or computed from materials balance by good engineering practice.

(e) The furnace emission rate shall be computed as follows:

$R = E/P$

where:

(1) R is the furnace emission rate (g/kg);

(2) E is the particulate emission rate (g/hr) from (c) above; and

(3) P is the rate of glass production (kg/hr) from (d) above.

[Sec. 114 of Clean Air Act as amended (42 U.S.C. 7414).]

[FR Doc. 79-18602 Filed 6-14-79; 8:45 am]

BILLING CODE 6560-01-M

Federal Register

Friday
June 15, 1979

Part VII

Department of Agriculture

Animal and Plant Health Inspection Service

Foreign Quarantine Notices; Public Hearing and Notice of Proposed Rulemaking

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[7 CFR Part 319]

Foreign Quarantine Notices; Public Hearing and Notice of Proposed Rulemaking

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule and public hearing.

SUMMARY: This document proposes to revise "Subpart—Nursery Stock, Plants, and Seeds" (7 CFR 319.37 through 319.37–28a) relating to prohibitions and restrictions on the importation of certain classes of nursery stock, and certain other classes of plants, roots, bulbs, seeds, and other plant products. This appears to be necessary to update regulations and to prevent the introduction into the United States of certain injurious plant diseases, insect pests, and other plant pests. This document also gives notice of a public hearing to consider this proposal.

DATES: Written comments must be received on or before September 13, 1979.

Public hearing: August 21 and 22, 1979.

ADDRESSES: Written comments should be submitted to the Hearing Officer, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 635, Federal Building, Hyattsville, MD 20782.

Public hearing location: Holiday Inn Hotel, Baltimore Washington International Airport, Templehoff Room, 6500 Elkridge Landing Road, Baltimore, MD 21240.

FOR FURTHER INFORMATION CONTACT: H. V. Autry, 301–436–8247.

SUPPLEMENTARY INFORMATION:

Written Comments and Public Hearing

Interested persons are invited to submit written comments concerning the proposal.

Comments should bear a reference to the date and page numbers of this issue of the Federal Register. All written comments made pursuant to this notice will be made available for public inspection in Room 635, Federal Building, Hyattsville, MD 20782, during regular hours of business.

The public hearing to consider the proposal will be held before a representative of the Animal and Plant Health Inspection Service on August 21 and 22, 1979, at 10 a.m., at the Holiday Inn Hotel, Baltimore Washington International Airport, Templehoff Room, 6500 Elkridge Landing Road, Baltimore, MD 21240. At the hearing, a representative of the Animal and Plant Health Inspection Service will present a statement explaining the purpose and basis of this proposal. Any interested person may appear and be heard either in person, by attorney, or other representative. Also, any interested person, his attorney, or other representative will be afforded an opportunity to ask relevant questions concerning the proposal.

Background

The Plant Quarantine Act and the Federal Plant Pest Act contain authority to prohibit or restrict the importation into the United States of any classes of nursery stock, and other classes of plants, roots, bulbs, seeds, or other plant products in order to prevent the introduction into the United States of certain diseases, insects, and other plant pests. Regulations promulgated in connection with this authority are contained in 7 CFR Parts 319, 321, 330, 351, and 352. This document relates only to a revision of the current subpart of Part 319 captioned "Subpart—Nursery Stock, Plants, and Seeds" (7 CFR 319.37 through 319.37–28a) which concerns the importation or offer for importation into the United States of any such classes of nursery stock, plants, roots, bulbs, seeds, or other plant products except for articles that are subject to Part 321, i.e., potatoes, or to other subparts of Part 319, e.g., fruits and vegetables, cut flowers, sugarcane, and rice.

In particular, sections 7 and 9 of the Plant Quarantine Act (7 U.S.C. 160, 162) contain authority to prohibit the importation of articles into the United States in order to prevent the entry of tree, plant, or fruit diseases, or injurious insects, new to or not widely prevalent or distributed within and throughout the United States, and sections 1, 5, and 9 of the Plant Quarantine Act (7 U.S.C. 154, 159, 162) contain authority to restrict the importation of articles into the United States in order to prevent the entry of injurious plant diseases or insect pests. However, this authority in the Plant Quarantine Act is not broad enough to cover certain other plant pests, such as nematodes and mites. One of the purposes of the Federal Plant Pest Act was to add authority to prohibit or restrict the importation of articles because of such other plant pests, and section 106 of the Federal Plant Pest Act (7 U.S.C. 150ee) is cited as authority for this purpose.

This document proposes numerous changes from the current "Subpart—Nursery Stock, Plants, and Seeds" including new concepts, much rewording in order to relate more clearly to the language of the Plant Quarantine Act and the Federal Plant Pest Act, and a general reorganization of material in order to provide a more logical arrangement.

The proposed regulations would divide the articles subject to the revised subpart into "prohibited articles" and "restricted articles." A "prohibited article" would be prohibited from being imported or offered for entry into the United States unless imported by the U.S. Department of Agriculture under specified conditions referred to below. The list of prohibited articles would represent those articles for which there does not appear to be a feasible method for inspection, treatment, or other procedures for preventing the possible introduction into the United States of any accompanying tree, plant, or fruit disease, of any injurious insects, or of any other plant pest, new to or not theretofore widely prevalent or distributed within and throughout the United States. A "restricted article" would be any article subject to the revised subpart other than a "prohibited article" and would be eligible for importation into the United States only in accordance with the restrictions contained in the revised subpart. It appears that all articles proposed to be defined as "restricted articles" from any foreign country or locality must necessarily be subject to restrictions for importation into the United States because any such articles could be the means of introducing injurious plant diseases and injurious insect pests. Further, such articles could be the means of introducing other plant pests.

Both the current subpart 319 captioned "Nursery Stock, Plants, and Seeds" and these proposed regulations relate only to articles "for or capable of propagation." Other subparts of 319 and 321 contain requirements with respect to the importation of other articles "for or capable of propagation," e.g., potatoes, sugarcane, rice, wheat, and corn, and Part 319 also contains requirements with respect to the importation of articles not "for or capable of propagation," e.g., cut flowers and fruits and vegetables.

The proposed regulations would prohibit or restrict the importation of articles "from" specified countries and localities. The term "from" as used in this context is defined to provide that an article is deemed to be "from" any country or locality in which it was grown since articles could become

affected with diseases or pests occurring in countries or localities in which grown. However, special provisions concerning the importation of certain articles "from" Canada are explained below in the discussion relating to the proposed section 319.37–14.

The term "spp." (species) as used in the current regulations and in the proposed regulations is intended to refer to "all species, clones, cultivars, strains, varieties, and hybrids" of the genus when listed with the genus name, e.g., *Actinidia* spp. Accordingly, a definition of species would be added to reflect this intent. This appears to be necessary because the risk of introducing diseases or pests would be similar for all of the species, clones, cultivars, strains, varieties, and hybrids of a genus.

One or more common names of articles are given in parentheses after most scientific names for the purpose of helping to identify the articles represented by such scientific names; however, (unless otherwise specified) a scientific name is intended to include all articles within the genus or species represented by the scientific name, regardless of whether the common name or names are as comprehensive in scope as the scientific name. It would be impossible to list common names for all of the articles included by the scientific names because some scientific names are given for which there are no known common names, and some scientific names are given for which there are clones, cultivars, strains, hybrids, or varieties without common names.

The term "disease" as used in the proposed regulations is used interchangeably to mean a "disease" or a "disease agent which incites a disease." In order to be precise, the term "disease" would therefore be defined to reflect this intent.

The current regulations prohibit or restrict the importation of articles into the continental United States, Guam, Hawaii, Puerto Rico, and the Virgin Islands of the United States, because the provisions of the Plant Quarantine Act and the Federal Plant Pest Act have been made applicable by law to Guam, Puerto Rico, and the Virgin Islands of the United States, in addition to the States and the District of Columbia. However, pursuant to Public Law 94–241 (90 Stat. 263 *et seq.*) and Presidential Proclamation 4534, the provision of these Acts are also made applicable to the Northern Mariana Islands. It appears that the proposed regulations should be made applicable to the Northern Mariana Islands for the same reasons they would be applicable to the States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands of the United States. Accordingly, under the provisions of this proposal the definition of United States would be amended to include the Northern Mariana Islands and consequently the regulations would also apply to the Northern Mariana Islands.

Proposed § 319.37(c) provides that an article refused importation for noncompliance with the requirements of the proposed subpart shall be promptly removed from the United States or abandoned by the importer for destruction, and that pending removal or abandonment, the article shall be subject to the immediate application of such safeguards against escape of injurious plant diseases, injurious insect pests, and other plant pests as the inspector determines necessary to prevent the introduction into the United States of such diseases or pests. Proposed § 319.37(c) also provides for seizure, destruction, or other disposal of any such article not promptly safeguarded, removed, or abandoned. These provisions are necessary to implement the provisions of section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff) which authorize emergency measures against prohibited and restricted articles which are not in compliance with the provisions of this subpart.

Proposed § 319.37–2 contains a list of articles from designated countries and localities which would be classified as prohibited articles and would be prohibited from being imported or offered for entry into the United States, except as otherwise provided in proposed § 319.37–2(c).

Each article listed in the following chart from the designated countries and localities is proposed to be added to the current list of prohibited articles because there does not appear to be any feasible method for inspection, treatment, or other procedures for preventing the possible introduction into the United States of accompanying tree, plant, or fruit diseases, or injurious insects, or other plant pests (listed in the chart), new to or not theretofore widely prevalent or distributed within and throughout the United States, and thereby preventing consequent injurious effects of such diseases, insects, or other plant pests, i.e., destruction or substantial reduction of the yield or marketability of the kind of listed article or products thereof.

Article (except seeds unless specifically mentioned) proposed to be added to the list of prohibited articles	Foreign country(ies) or locality(ies)	Tree, plant, or fruit disease, or injurious insect, or other plant pest determined as existing in the places named and capable of being transported with the article
Actinidia spp. (chinese gooseberry, kiwi)	Japan and Taiwan	*Puccinistrum actinidiae* Hiratsuuka (Rust).
Adonidia spp	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Allagoptera arenaria	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Areca spp	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Arenga spp. (sugarpalm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Arikuryroba spp. (arikury palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Borassus spp. (palmyra palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Caryota spp. (fishtail palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Chaenomeles spp. (flowering quince) not meeting the conditions for importation in proposed § 319.37–5(b).	All	*Monilinia fructigena* (Aderh. & Ruhl.) Honey (Brown rot of fruit).
Chrysalidocarpus spp. (butterfly palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Chrysanthemum spp. (chrysanthemum)	Europe, Argentina, Brazil, Hong Kong, Japan, Korea, Malaysia, New Zealand, People's Republic of China, and Republic of South Africa.	*Puccinia horiana* P. Henn. (White rust of chrysanthemum).
Cocos nucifera (coconut) (including seeds)	All except from Jamaica if meeting the conditions for importation in proposed § 319.37–5(f) (currently listed as prohibited only if destined to Hawaii).	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Cocos spp. (other than *Cocos nucifera*)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.

Article (except seeds unless specifically mentioned) proposed to be added to the list of prohibited articles	Foreign country(ies) or locality(ies)	Tree, plant, or fruit disease, or injurious insect, or other plant pest determined as existing in the places named and capable of being transported with the article
Corypha spp.	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Cycas spp. (quince) not meeting the conditions for importation in proposed § 319.37-5(b).	All	A diversity of diseases including but not limited to items 1, 18, 19, 20, and 21 listed in proposed § 319.37-5(b)(2).
Datura spp.	Colombia	Datura Colombian virus.
Dictyosperma spp. (*Princess palm*)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Elaeis spp. (oil palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Erianthus spp (plumegrass)	All	*Puccinia melanocephala* H. Syd. & P. Syd. (Sugarcane rust).
Fragaria spp. (strawberry)	Australia, Austria, Czechoslovakia, France, Great Britain, Italy, Japan, Lebanon, The Netherlands, New Zealand, Northern Ireland, Republic of Ireland, Switzerland, and Union of Soviet Socialist Republics.	*Phytophthora fragariae* Hickman (Red stele disease).
Gaussia spp. (Sumapalm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Gladiolus spp. (gladiolus)	Italy, Malta, and Portugal	*Uromyces transversalis* (Theum.) Wint. (Rust).
Hibiscus spp. (hibiscus, rosemallow)	Nigeria	Okra mosaic virus.
	Africa (currently listed as prohibited only from Sudan and Nigeria).	Cotton leaf curl virus.
Howeia belmoreana (Sentry palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Hydrangea spp. (hydrangea)	Japan	*Ascidium hydrangeae-paniculatae* Diesel.
Ipomoea spp. (sweetpotato)	All except Canada	A diversity of diseases including but not limited to the sweetpotato witches broom (little leaf); sweetpotato viruses of eastern Africa.
Juniperus spp. (juniper)	Austria	*Stigmina deflectans* (Karst) Ellis (Needlecast disease).
	Europe (currently listed as prohibited from Finland and Romania because of *Exosporium deflectans* (Karst).	*Phacidiopycnis pseudotsugae* (M. Wils) Hahn (Douglas fir canker).
Latania spp.	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Livistona spp. (fan palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Manihot spp. (cassava)	All except Canada	A diversity of diseases, insects, and other pests including but not limited to: *Monoychellus tanajoa* Bondar (Cassava mite); *Phenacoccus manihoti* Matile-Ferrero (Cassava mealybug); *Xanthomonas manihotis* (Arthaud-Berthet) Starr (Bacterial blight); Cassava brown streak virus; Cassava latent virus; Cassava African mosaic virus; Cassava common mosaic virus.
Mascarena spp.	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Morus spp. (mulberry)	India, and Union of Soviet Socialist Republics	A diversity of diseases including but not limited to: Mulberry dwarf; Mulberry curly little leaf agent; Mulberry mosaic agent.
Oryza spp. (rice) (Seeds are prohibited from importation into the U.S. See 7 CFR 319.55).	All	A diversity of diseases including but not limited to: Rice dwarf virus; Rice stripe virus; Rice yellow dwarf agent; Rice black-streaked dwarf virus; Rice tungro virus; Rice transitory yellowing virus; Rice orange leaf agent; Rice grassy stunt agent; Rice ragged stunt virus; Rice yellow mottle virus; *Melanomma glumarum* Mly. *Oospora oryzetorum* Sacc.; *Rhynchosporium oryzae* Hashioka & Yokogi; *Xanthomonas oryzae* (Uyeda & Ishiyama) Dowson.
Philadelphus spp. (mock orange)	Europe	Elm mottle virus.
Phoenix spp. (date)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Pritchardia spp.	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Ribes nigrum (black currant)	Australia, Province of British Columbia in Canada, New Zealand, and Europe (currently listed as prohibited from British Isles and Sweden).	Black currant reversion agent.
Salix spp. (willow)	Federal Republic of Germany (West), and German Democratic Republic (East).	*Erwinia salicis* (Day) Chester (Watermark disease).
Solanum spp. (potato) (including seeds)	All	Andean potato latent virus; Andean potato mottle virus; Potato mop top virus; Dulcamara mottle virus; Tomato blackring virus; Tobacco rattle virus; Potato virus Y (Tobacco veinal necrosis strain); Potato purple top wilt agent; Potato marginal flavescence agent; Potato purple top roll agent; Potato witches broom agent; Stolbur agent; Parastolbur agent; Potato leaflet stunt agent; Potato spindle tuber viroid.
Syringa spp. (lilac)	Europe	Elm mottle virus.
Trachycarpus spp. (windmillpalm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Ulmus spp. (elm) (including seeds)	Europe (currently listed as prohibited from Europe, Dominion of Canada and other foreign areas north of the United States, including Newfoundland, Labrador, St. Pierre, Miquelon, and islands adjacent thereto if destined to California, Nevada, or Oregon).	Elm mottle virus.
Veitchia spp.	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Vitis spp. (grape)	All except Canada (currently listed as prohibited from Europe because of *Marmor viticola* Holmes).	A diversity of disease agents, including but not limited to: Arabis mosaic virus; Flavescence-doree agent; Raspberry ringspot virus; Hungarian chrome mosaic virus; Strawberry latent ringspot virus; *Xanthomonas ampelina* Panagopoulos (Bacterial blight); Grapevine fanleaf virus and its strains; Grapevine leaf roll virus and its strains; Tomato black ring virus; Artichoke Italian latent virus; Grapevine vein necrosis virus.
Zizania spp. (wild rice)	All	A diversity of diseases including but not limited to: Rice dwarf virus; Rice stripe virus; Rice yellow dwarf agent; Rice black-streaked dwarf virus; Rice tungro virus; Rice transitory yellowing virus; Rice orange leaf agent; Rice grassy stunt agent; Rice ragged stunt virus; Rice yellow mottle virus; *Melanomma glumarum* Mly. *Oospora oryzetorum* Sacc.; *Rhynchosporium oryzae* Hashioka & Yokogi; *Xanthomonas oryzae* (Uyeda & Ishiyama) Dowson.

Each article listed in the following chart from the designated countries and localities is proposed to be deleted from the list of prohibited articles for the reasons specified in the chart:

Articles (excludes seeds unless specifically mentioned)	Foreign country(ies) or locality(ies) from which prohibited	Tree, plant, or fruit disease, or injurious insect, or other plant pest	Reason for deletion from prohibited list
Alnus spp. (alder)	China and Brazil	*Mycosphaerella alnicola* (Myoke) Ou (leaf spot).	Disease appears to be widely prevalent or distributed within and throughout the U.S.
Castanea (cactus) cuttings (without roots or branches) of 1.22 meters or less in length.	All except Canada	A diversity of plant diseases	Stem cuttings not exceeding such size apparently can be readily inspected.
Castanea spp. (chestnut) destined to California, Idaho, Oregon, or Washington.	All	*Endothia parasitica* (Murr.) P. J. Anders. and H. W. Anders. (Chestnut blight disease).	Disease appears to be widely prevalent or distributed within and throughout the U.S.
Castanopsis spp. (chinquapin) destined to California, Idaho, Oregon, or Washington.	All	*Endothia parasitica* (Murr.) P. J. Anders. and H. W. Anders. (Chestnut blight disease).	Disease appears to be widely prevalent or distributed within and throughout the U.S.
Corylus spp. (filbert, hazel, hazel nut, cobnut) destined to California, Oregon, or Washington.	Provinces east of Manitoba in Canada	*Cryptosporella anomala* (Pk.) Sacc. (Filbert blight).	Disease appears to be widely prevalent or distributed within and throughout the U.S.
Cocos nucifera (coconut) (including seeds) destined to Hawaii and meeting the conditions for importation in proposed § 319.57-5(f).	Jamaica	Cadang-cadang disease	Disease apparently does not exist in Jamaica.
Daphne spp	New Zealand	Daphne mosaic virus	Disease appears to be widely prevalent or distributed within and throughout the U.S.
Datura spp	England	Datura virus 1 Smith and d'Oliveira (Datura-viroids virus).	Disease appears to be widely prevalent or distributed within and throughout the U.S.
Dianthus spp. (carnation, Sweet William)	England	*Verticillium chrysosporium* W.	*Dianthus* spp. would not ordinarily be within the class of restricted articles because it appears there would not be significant risk of introducing *Verticillium chrysosporium* W. If imported under conditions in proposed § 319.37-5(d) or § 319.37-7.
Fruit and Nut Stocks except vegetatively produced understocks.	All except Canada	A diversity of plant pests	It appears that there would be no significant risk of introducing plant pests if imported in accordance with general conditions for restricted articles and in accordance with postentry quarantine conditions in § 319.37-7.
Hydrangea spp. (hydrangea)	Germany	Hydrangea-ringspot virus	Disease appears to be widely prevalent or distributed within and throughout the U.S.
Ilex spp. (holly)	England and France	Ilex-variegation virus	Disease does not appear to be in existence.
Nicotiana spp. (tobacco)	Australia and Great Britain	*Marmor tabaci* Holmes (Tobacco-necrosis virus).	Disease appears to be widely prevalent or distributed within and throughout the U.S.
Nut and fruit stocks	(See Fruit and Nut Stocks)		
Pelargonium spp. (geranium) (except stem cuttings).	All except Canada	*Marmor tabaci* Holmes (Tobacco-necrosis virus).	Disease appears to be widely prevalent or distributed within and throughout the U.S.
Pinus spp. (pine) Destined to California, Idaho, Montana, Oregon, Utah, or Washington.	Canada	*Rhyacionia buoliana* (Schiff). (European pine shoot moth).	Insect appears to be widely prevalent or distributed within and throughout the U.S.
Pinus spp. (pine) (5-leaved) destined to Massachusetts, Michigan, New York, West Virginia, or Wisconsin.	Canada	White pine blister rust	Disease appears to be widely prevalent or distributed within and throughout the U.S.
Planera (water elm, planer) destined to California, Nevada, or Oregon.	Europe and the Dominion of Canada and other foreign areas north of the United States including Newfoundland, Labrador, St. Pierre, Miquelon and islands adjacent thereto.	*Ceratocystis ulmi* (Buisman) C. Moreau (Dutch elm disease).	Disease appears to be widely prevalent or distributed within and throughout the U.S.
Primula spp. (primrose)	Australia and Great Britain	*Marmor tabaci* Holmes (Tobacco-necrosis virus).	Disease appears to be widely prevalent or distributed within and throughout the U.S.
Ribes spp. (currant, gooseberry) destined to Massachusetts, New York, West Virginia, or Wisconsin.	All	(White pine blister rust)	Disease appears to be widely prevalent or distributed within and throughout the U.S.
Seeds of all kinds in pulp	Canada	Fruit flies	It appears that fruit flies do not occur in Canada.
Sorbus spp. (mountain ash)	Southeastern Asia	*Taphrina piri* Kusano (leaf distortion fungus).	Disease does not appear to occur in Southeastern Asia.
Stem cuttings (without leaves, roots, sprouts, or branches) of 4 inches or less in diameter and six feet or less in length.	All except Canada	A diversity of plant diseases	Stem cuttings not exceeding such size apparently can be readily inspected.
Ulmus spp. (elm) destined to California, Nevada, or Oregon.	Europe and the Dominion of Canada, and other foreign areas north of the United States, including Newfoundland, Labrador, St. Pierre, Miquelon and islands adjacent thereto.	*Ceratocystis ulmi* (Buisman) C. Moreau (Dutch elm disease).	Disease appears to be widely prevalent or distributed within and throughout the U.S.
Wisteria (wisteria)	Australia	Mosaic disease	Disease does not appear to exist.
Zelkova destined to California, Nevada, or Oregon.	Europe, and the Dominion of Canada, and other foreign areas north of the United States including Newfoundland, Labrador, St. Pierre, Miquelon, and islands adjacent thereto.	*Ceratocystis ulmi* (Buisman) Moreau (Dutch elm disease).	C. Disease appears to be widely prevalent or distributed within and throughout the U.S.

Some additional tree, plant, or fruit diseases have been discovered with respect to articles that are currently prohibited from being imported or offered for entry into the United States because of other diseases, insects, or pests. These additional diseases would destroy or substantially reduce the yield or marketability of the kind of listed articles or products thereof, and therefore, would by themselves require an article to be prohibited from being imported or offered for entry into the United States. Accordingly, it is proposed to continue to prohibit the importation of these articles and also to add such additional diseases to the prohibited list as specified in the following chart:

Prohibited article (excludes seeds unless specifically mentioned)	Foreign country(ies) or locality(ies) from which prohibited	Discovered tree, plant, or fruit disease or injurious insect, or other plant pest determined as existing in the places named and capable of being transported with the prohibited article
Cocos nucifera (coconut) (including seeds) destined to Hawaii.	All except from Jamaica if meeting the conditions for importation in § 319.37-5(f).	Lethal yellowing disease.
Conifers	All except Canada	A diversity of tree, plant, and fruit diseases including but not limited to: *Guignardia laricina* (Saweda) Yamamoto & K. Ito (shoot blight of larch); *Chrysomyxa deformans* (Diet.) Jacz. (Spruce needle rust); *Coleosporium flexilum* (Alb. & Schw.) Wint. (Scotch pine blister rust); *Chrysomyxa abietis* (Wallr.) Ung. (Rust); *Phaeidiopycnis pseudotsugae* (M. Wils.) Hahn (Douglas fir canker); *Stigmina deflectans* (Karst.) Ellis (Needlecast disease); *Chrysomyxa ledi* (Alb. & Schw.) d By var. *Rhododendri* (DC) Savile. (Rhododendron-spruce needle rust).
Datura spp	Colombia	Datura Colombian virus.
	India	Datura distortion or enation mosaic virus.
Gossypium spp. (cotton)	All	Cotton virescence agent; small leaf virus.
Hydrangea spp. (hydrangea)	Japan	Aecidium hydrangeae-paniculatae Diet.
Juniperus spp. (juniper)	Europe	*Phaeidiopycnis pseudotsugae* (M. Wils.) Hahn (Douglas fir canker).
Malus spp. (apple) Not meeting the conditions for importation in proposed § 319.37-5(b).	All	Apple green crinkle virus; Apple chat fruit virus.
Morus spp. (mulberry)	China, Japan, India, and Union of Soviet Socialist Republics.	Mulberry dwarf; Mulberry curly little leaf.
Prunus spp. (almond, apricot, cherry, nectarine, peach, plum, prune) not meeting the conditions for importation in proposed § 319.37-5(b).	All	Cherry leaf roll virus; Cherry rusty mottle (European) agent; Apricot chlorotic leaf roll; Plum bark split virus; Arabis mosaic virus and its strains; Raspberry ringspot virus and its strains; Tomato blackring virus and its strains.
Pyrus spp. (pear) not meeting the conditions for importation in proposed § 319.37-5(b).	All	Pear blister canker virus; Pear bud and drop virus.
Ulmus spp. (elm) (including seeds)	Europe	Elm mottle virus.
Vitis spp. (grape)	All except Canada	A diversity of plant disease agents including, but not limited to: Arabis mosaic virus; Flavescence-dorée agent; Raspberry ringspot virus; Hungarian chrome mosaic virus; Strawberry latent ringspot virus; *Xanthomonas ampelina* Panagopoulos (Bacterial blight); Grapevine fanleaf virus and its strains; Grapevine leaf roll virus and its strains; Tomato black ring virus; Artichoke Italian latent virus; Grapevine vein necrosis virus.

Some tree, plant, or fruit diseases are proposed to be deleted from the prohibited list with respect to some articles from certain countries and localities that would remain on the prohibited list because of other listed diseases, insects, or plant pests. In this connection, it is proposed to delete for each of the articles listed in the following chart from the designated countries and localities, the following diseases for the reasons specified in the chart:

Prohibited articles (excludes seeds unless specifically mentioned)	Foreign country(ies) or locality(ies) from which prohibited	Tree, plant, or fruit diseases, or injurious insect or other plant pest	Reason for deletion from prohibited list
Datura spp		Datura-mosaic virus	Disease apparently does not exist.
	India and England	Datura virus 1 Smith and d'Oliveira (Datura-virosis virus).	Disease appears to be widely prevalent or distributed within and throughout the United States.
		Marmor tabaci var. *deformans* Holmes (Enation-mosaic strain of tobacco-mosaic virus).	Disease appears to be widely prevalent or distributed within and throughout the United States.
Hydrangea spp	Germany	Hydrangea-virescence virus	Disease appears to be widely prevalent or distributed within and throughout the United States.
Malus spp. (apple, crabapple)	All sources in all countries, except nurseries designated in accordance with current § 319.37-2a as producing material grown from parent plants that have been tested by the plant protection service of the country of origin and found apparently free of all disease of plant quarantine significance, including those diseases caused by viruses.	"Rosette" (Virus)	Disease apparently does not exist.
Prunus spp. (almond, apricot, cherry, nectarine, peach, plum, prune).	All sources in all countries, except nurseries designated in accordance with current § 319.37-2a as producing material grown from parent plants that have been tested by the plant protection service of the country of origin and found apparently free of all disease of plant quarantine significance, including those diseases caused by viruses.	Rigi cherry disease virus	Disease apparently does not exist.

The current regulations specify that all forest trees (not including seeds) are prohibited from being imported into the United States except from Canada. It appears that because of the diseases referred to in proposed § 319.37–2, listed with respect to conifers, there is a valid reason for prohibiting the importation of all conifer trees from all countries and localities except Canada. Further, it appears that there is a valid reason for prohibiting the importation of all of the non-conifer trees listed in proposed § 319.37–2 from the specified foreign countries and localities because of the diseases listed with respect to these trees. However, the prohibition for importation of "all" forest trees in the current regulations appears to be overly broad in that there does not appear to be adequate reason for prohibiting the importation of all those non-conifer trees not listed in proposed § 319.37–2.

Further, proposed § 319.37–2(b)(1) and (7) would specify classes of articles which would be on the prohibited list because of specified criteria relating to age. The current regulations prohibit the importation of such articles exceeding the "normal size" of such articles of certain ages. These criteria in the current regulations would be amended to impose restrictions based solely on specified ages because the risk of introduction of diseases or pests relates substantially to age.

Proposed § 319.37–2(b)(4) and (5) would impose limitations with respect to the maximum length and diameter of certain stem cuttings and certain cacti cuttings for importation into the United States. It appears that such articles within these limitations can be readily inspected and treated if necessary. Larger articles of these types would be difficult to inspect and treat because of size and density of growth, and therefore, would be classified as prohibited articles.

The current regulations in § 319.37–18(b) in essence permit herbaceous perennials to be imported in the form of root crown or clumps not more than 1 year old. This requirement was imposed because such articles are difficult to inspect if larger than the usual size of such articles 1 year old. Proposed § 319.37–2(b)(3) would be clarified to specify that such herbaceous perennials would be on the prohibited list if exceeding 102 millimeters (approximately 4 inches) in diameter. It appears that such plants exceeding this diameter would be more likely to harbor plant pests, and would be difficult to inspect and treat because of the density of small roots and stems found in such articles.

Further, proposed § 319.37–2(c) would permit prohibited articles to be imported into the United States if imported by the U.S. Department of Agriculture for experimental or scientific purposes, and imported under conditions specified on the permit and found by the Deputy Administrator to be adequate to prevent the introduction into the United States of any tree, plant, or fruit diseases, of any injurious insects, or of any other plant pests, i.e., conditions of treatment, processing, growing, shipment, or disposal.

The Plant Quarantine Act specifically authorizes such articles to be imported for experimental or scientific purposes by the U.S. Department of Agriculture pursuant to prescribed regulations. This is also consistent with the provisions of the Federal Plant Pest Act. In addition, the conditions for importation would be required to be specified on the permit in order to help assure that they would be understood and followed.

Proposed § 319.37–3 contains requirements with respect to permits for importation of restricted articles. Pursuant to the Plant Quarantine Act, restricted articles may not be imported except under permit.

The following articles other than articles for food, analytical, medicinal or manufacturing purposes, would be required to be imported pursuant to a written permit:

(1) Articles subject to treatment and other requirements of § 319.37–6;

(2) Articles subject to postentry quarantine;

(3) Bulbs of *Allium sativum* (garlic);

(4) Articles of *Cocos nucifera* (coconut); and articles (except seeds) of *Chrysanthemum* spp. (chrysanthemum) and *Dianthus* spp. (carnation, sweet William), from any country or locality except Canada;

(5) Lots of 13 or more articles (other than seeds, bulbs, and sterile cultures of orchid plants) from any country or locality except Canada;

(6) Seeds of trees or shrubs from any country or locality except Canada;

(7) Articles (except seeds) of *Fragaria* spp. (strawberry), *Malus* spp. (apple, crabapple), *Pyrus* spp. (pear), *Prunus* spp. (almond, apricot, cherry, nectarine, peach, plum, and prune), *Cydonia* spp. (quince), *Chaenomeles* spp. (flowering quince), and *Rubus* spp. (blackberry, boysenberry, cloudberry, dewberry, loganberry, raspberry), from Canada;

(8) Woody plants, shrubs, and trees (except seeds) grown out-of-doors in Prince Edward Island, Nova Scotia, the counties of Albert and Westmoreland in New Brunswick, the city of Richmond on Lulu Island in British Columbia, or Vancouver Island in British Columbia;

(9) Articles (except seeds) of *Castanea* spp. (chestnut) or *Castanopsis* spp. (chinquapin) destined to California or Oregon;

(10) Articles (except seeds) of *Pinus* spp. (pine) (5-leaved) destined to Wisconsin;

(11) Articles of *Ribes* spp. (currant, gooseberry) (including seeds) destined to Massachusetts, New York, West Virginia, or Wisconsin;

(12) Articles (except seeds) of *Planera* spp. (water elm, planer) or *Zelkova* spp. from Europe, Canada, St. Pierre, or Miquelon and destined to California, Nevada, or Oregon;

(13) Seeds of *Prunus* spp. (almond, apricot, cherry, nectarine, peach, plum, and prune) from Canada and destined to Colorado, Michigan, New York, Washington, or West Virginia;

(14) Articles (except seeds) of *Vitis* spp. (grape) from Canada and destined to California, New York, Ohio, Oregon, or Washington;

(15) Articles (except seeds) of *Corylus* spp. (filbert, hazel, hazelnut, cobnut) from provinces east of Manitoba in Canada and destined to Oregon or Washington;

(16) Articles (except seeds) of *Pinus* spp. (pine) from Canada and destined to California, Idaho, Montana, Oregon, or Utah; and

(17) Articles (except seeds) of *Ulmus* spp. (elm) from Canada and destined to California, Nevada, or Oregon.

All other articles would be permitted to be imported under an oral permit.

Articles included in categories 1, 2, 3, 4, 5, 6, and 8, in accordance with proposed § 319.37–14, would be permitted to be imported only at ports of entry with special inspection and treatment facilities because these articles present a substantial risk of carrying injurious plant diseases, injurious insect pests, or other plant pests at the time of importation.

It appears that a written permit for these articles would be helpful in order to assure that the importer understands that such articles would be permitted to be imported only at a port of entry with such special inspection and treatment facilities. Consequently, this would also help eliminate an unnecessary risk of introducing such diseases or pests into the United States because of the presence of such articles at a port of entry without such facilities.

Also, articles included in categories 4 and 7, except *Fragaria* spp., would be required to be accompanied at the time of importation by special certification representing special inspection activities

provided by the country of origin. It appears that a written permit for such articles would be helpful in order to help assure that these complex requirements would be understood and met.

Further, it appears that requiring articles included in categories 1 through 8 to be imported pursuant to written permits could help assure that such articles would not have to be unnecessarily destroyed or reshipped. In addition, since it is proposed that a written permit issued by the Plant Protection and Quarantine Programs would indicate the conditions on the permit under which an article would be eligible to be imported, there would be a record that could be checked in order to assure that the requirements of this subpart are understood and followed by the importer and employees of the Plant Protection and Quarantine Programs.

Articles included in categories 9 through 17 are subject to State quarantine requirements. The affected States have requested notification from the Plant Protection and Quarantine Programs of requests to import such articles destined to such States in order to assist with the enforcement of their requirements. It appears that the written permit procedures provide the most feasible means of gathering the necessary information for such States.

It is further proposed that prior to the issuance of a written permit an application must be made to the Plant Protection and Quarantine Programs and shall include the following information which appears to be necessary in order for the Plant Protection and Quarantine Programs to make a determination as to whether an article would be eligible for a written permit under this subpart, to respond to the applicant, and to make any necessary preparation for inspection or treatment:

(1) Name, address, and telephone number of importer;

(2) Approximate quantity and kinds (botanical designations) of articles intended to be imported;

(3) Country(ies) or locality(ies) where grown;

(4) Intended United States port of entry;

(5) Means of transportation, e.g., mail, airmail, express, air express, freight, airfreight, or baggage; and

(6) Expected date of arrival.

The proposed regulations provide that an application for a written permit should be submitted to the Plant Protection and Quarantine Programs at least 30 days prior to the arrival of the article at the port of entry. This would benefit the importer in that the Plant Protection and Quarantine Programs would have sufficient time to make sure the importer is aware of the requirements of this subpart and to help prevent the arrival at a port of entry of articles which are not eligible to be offered for importation at such a port of entry.

Under the proposed regulations, articles subject to the proposed subpart and not required to be imported under a written permit, would be eligible to be imported under an oral permit issued at a port of entry at the time of importation. These articles would be subject to inspection at the port of entry, and there does not appear to be a need for a written permit for these articles. In essence, requiring a written permit for these articles would appear to result in the generation of numerous additional papers and paperwork for Plant Protection and Quarantine Programs and the importer without any consequent protection with respect to preventing the introduction into the United States of injurious plant diseases, insect pests, or other plant pests.

The proposed regulations also state that restricted articles may not be imported, even if a permit has been issued unless an inspector at the port of entry determines upon inspection that no emergency measures pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) are necessary with respect to such article. In this connection section 105 of the Federal Plant Pest Act provides, in relevant part, that:

"(a) Except as provided in paragraph (c), the Secretary may, whenever he deems it necessary as an emergency measure in order to prevent the dissemination of any plant pest new to or not theretofore known to be widely prevalent or distributed within and throughout the United States, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, in such manner as he deems appropriate, any product or article of any character whatsoever, or means of conveyance, which is moving into or through the United States . . . and which he has reason to believe is infested or infected by or contains any such plant pest . . . Provided, That this paragraph shall not authorize such action with respect to any product, article, means of conveyance, or plant pest subject, at the time of the proposed action, to disposal under the Plant Quarantine Act."

"(b) Except as provided in paragraph (c), the Secretary may order the owner of any product, article, means of conveyance, or plant pest subject to disposal under paragraph (a), or his agent, to treat, apply other remedial measures to, destroy, or make other disposal of such product, article, means of conveyance, or plant pest, without cost to the Federal Government and in such manner as the Secretary deems appropriate. . . ."

"(c) No product, article, means of conveyance, or plant pest shall be destroyed, exported, or returned to shipping point of origin, or ordered to be destroyed, exported, or so returned under this section, unless in the opinion of the Secretary there is no less drastic action which would be adequate to prevent the dissemination of plant pests new to or not theretofore known to be widely prevalent or distributed within and throughout the United States. . . ."

The proposed regulations also state restricted articles may not be imported even if a permit has been issued unless all applicable requirements of the proposed subpart are met. In this connection it should also be noted that section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and section 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff) also authorize emergency measures against prohibited and restricted articles which are not in compliance with the regulations issued pursuant to such Acts.

In addition, the proposed regulations contain provisions for the withdrawal of permits by the Deputy Administrator if he determines that the holder of the permit has not complied with any conditions for the use of the permit. Due process requirements concerning such withdrawals are set forth in the proposed regulations.

Proposed § 319.37–4 contains requirements with respect to inspection and phytosanitary certificates of inspection.

The Plant Quarantine Act provides that at the time of importation all restricted articles from a country maintaining an official system of inspection for such articles must be accompanied by a phytosanitary certificate of inspection from an official of the country from which the importation is made, certifying that the article has been thoroughly inspected and is believed to be free from injurious plant diseases and insect pests. Most of the countries of the world have such a system of inspection, and therefore, most restricted articles would be required to be accompanied by such a certificate at the time of importation.

The Plant Quarantine Act, however, also provides that restricted articles imported from countries where no

official system of inspection is maintained may be imported under conditions and regulations as the Secretary may prescribe. Accordingly, in order to assure that all restricted articles would be inspected, proposed § 319.37–4 would require all restricted articles from countries where not official system of inspection if maintained to be inspected by and inspector of the Plant Protection and Quarantine Programs at the time of importation. Also, any restricted article accompanied by a phytosanitary certificate of inspection would be subject to inspection by Plant Protection and Quarantine Programs inspectors as necessary to assure that such restricted articles are free from injurious plant diseases, injurious insect pests, and other plant pests.

The proposed regulations also would require that a phytosanitary certificate of inspection be issued not more than 15 days prior to shipment of the restricted article from the country in which grown, in order for the certificate to be valid. This would help assure that restricted articles would be promptly shipped after inspection in the country in which grown, and consequently reduce the risk of such articles becoming infected or infested with injurious plant diseases, injurious insect pests, or other plant pests after inspection.

It should also be noted that the use of phytosanitary certificates of inspection was encouraged at the International Plant Protection Convention of 1951 in Rome of which the United States is a party. The proposed requirements relating to phytosanitary certificates of inspection, in addition to being in conformity with the provisions of the Plant Quarantine Act and the Federal Plant Pest Act, are in conformity with the International Plant Protection Convention.

Proposed § 319.37–5 contains special inspection and certification requirements to be performed by the plant protection service of the country in which the article was grown in order to prevent the introduction into the United States of the diseases and pests specified in proposed § 319.37–5 which could destroy or substantially reduce the yield or marketability of the kind of articles specified in proposed § 319.37–5, or products thereof.

Such inspection and certification would be performed by the foreign plant protection service because such pests and diseases which could accompany the specified articles would not be detectable at the port of entry, and there do not appear to be any other feasible methods of treatment or other procedures (except postentry conditions for *Dianthus* spp. (carnation, sweet William), and *Rubus* spp. (cloudberry, blackberry, boysenberry, dewberry, loganberry, raspberry)) for preventing the introduction into the United States of such diseases or pests.

The current regulations require all restricted articles (except seeds of herbaceous plants and except articles solely for food, analytical, medicinal, or manufacturing purposes) to be accompanied by a certificate of inspection from the plant protection service of the country of origin certifying that the restricted plant material covered by the certificate was grown on land on which no golden nematode is known to occur. Further, with respect to articles from a country where there golden nematode is known to occur the certificate must also state the date of the most recent inspection of the land for golden nematode.

The proposed regulations have changed the name of golden nematode to potato cyst nematodes (*Globodera rostrochiensis* (Woll.) Mulvey and Stone and *G. pallida* (Stone) Mulvey and Stone) because this is now the commonly accepted name for what was formerly known as golden nematode. The proposed regulations would require certain restricted articles as a condition of entry to be accompanied by a phytosanitary certificate of inspection certifying that such articles were grown on land which has been sampled and microscopically inspected by the plant protection service of the country in which grown and found free from such pests.

It appears that the only feasible means of detecting and preventing the introduction of potato cyst nematodes in addition to requiring the removal of growing media (see discussion below in connection with proposed § 319.37–8) is to require the plant protection service of the country in which grown to inspect the land on which the article is grown. It would not be feasible to permit such articles to be grown under postentry quarantine in lieu of such requirements because the nematodes could not be detected until well established on the land in which grown and it is extremely difficult to eradicate the pests once they have been introduced into the soil.

Also, the inspection and certification requirements are proposed to apply only restricted articles imported from the foreign countries or localities listed in proposed section 319.37–5 because these are the only foreign countries and localities where potato cyst nematodes are known to occur.

Further, it is proposed that seeds; unrooted cuttings; and articles solely for food, analytical, medicinal, or manufacturing purposes be expected from these requirements. It appears that there is no significant risk of introduction potato cyst nematodes with seeds or unrooted cuttings because potato cyst nematodes are soil inhabiting, and seeds and unrooted cuttings are produced without direct contact with the soil. Also, articles solely for food, analytical, medicinal or manufacturing purposes would not appear to present a risk of introduction of potato cyst nematodes because they would not appear likely to come in contact with the soil after importation.

Also, it is proposed that the foreign land on which such articles are grown must have been sampled and microscopically tested for such nematodes within 12 months preceding issuance of the accompanying phytosanitary certificate of inspection and found free from such nematodes. This would appear to assure ongoing detection programs for such nematodes and provide a reasonable assurance of detecting the presence of any potato cyst nemadotes which might otherwise accompany restricted articles imported into the United States.

It is proposed a condition of importation that any article (except seeds) of *Chaenomeles* spp. (flowering quince), *Cydonia* spp. (quince), *Malus* spp. (apple, crabapple), *Prunus* spp. (almond, apricot, cherry, nectarine, peach, plum, and prune), and *Pyrus* spp. (pear), (1) be accompanied by a phyosanitary certificate of inspection declaring that such article was grown in a nursery in Belgium, Canada, France, Federal Republic of Germany (West), The Netherlands, or Great Britain and found by the plant protection service of the country in which grown to be free of diseases specified inproposed § 319.37–5 based on the testing of parent stock by visual examination and indexing and declaring that such article was grown in a nursery free of any specified disease, and (2) be grown under postentry quarantine conditions specified in proposed § 319.37–7, unless grown in Canada.

It is also proposed as a condition of importation that any article (except seeds) of *Dianthus* spp. (carnation, sweet William) from Great Britain, and *Rubus* spp. (cloudberry, blackberry, boysenberry, dewberry, loganberry, raspberry) from Ontario, Canada, be required to be grown under postentry quarantine conditions specified in proposed § 319.37–7 unless accompanied by a phytosanitary certificate of inspection containing an accurate additional declaration that such article

was found by the plant protection service of the country in which grown to be free of diseases specified in proposed § 319.37–5, based on visual examinaton and indexing of the parent stock, and, in the case of an article of *Dianthus* spp., that it was grown in a greenhouse nursery free of such specified plant diseases.

Further, it is proposed as a condition of importation that any article (except seeds) of *Chrysanthemum* spp. (chrysanthemum) from Great Britain be accompanied by a phytosanitary certicate of inspection containing an accurate additional declaration that such article was found by the plant protection service of Great Britain to be free of the disease specified in proposed § 319.37–5 based on visual examination of the parent stock, and that it was grown in a greenhouse nursery free of such disease.

The diseases specified in proposed § 319.37–5 accompanying such articles usually would not be detectable at a port of entry. These articles are imported without leaves (except for plants of *Chrysanthemum* spp. and *Dianthus* spp.), without fruit, and without flowers; and the diseases, in most cases, are not detectable without an examination of the leaves, fruit or flowers. Further, such articles are shipped in a dormant condition rather than in a condition of active growth, and in many cases the disease would not be detectable in any part of the article (even with the leaves, fruit, and flowers) unless the article were in a period of active growth.

Indexing of the parent stock of any of these articles would indicate the presence of such diseases in the parent stock and the offspring, because the offspring originate from parts of the parent stock which would be infected with such disease if the parent stock were infected. Indexing is accomplished by conducting serological testing, or transmitting the juices from plants of the parent stock to other plants known to be susceptible to a disease, by grafting or otherwise. Indexing of a parent stock would not be required with respect to *Chrysanthemum* spp. because the associated disease would be readily detectable by visual examination if present in the parent stock. With respect to the other articles, the diseases in most cases would not be detectable without indexing. Also, it would not be practical to index the articles for importation because of the large number of articles being imported.

The disease specified in proposed § 319.37–5 in connection with these articles are known to occur in the countries from which these provisions would apply except that the diseases specified for *Chaenomeles* spp., *Cydonia* spp., *Malus* spp., *Prunus* spp., and *Pyrus* spp., are not known to occur in Canada, and that the disease specified for *Rubus* spp. is not known to occur in Ontario, Canada.

Articles of *Chaenomeles* spp., *Cydonia* spp., *Malus* spp., *Prunus* spp., and *Pyrus* spp. are grown out-of-doors because of their size and because they must be grown under natural climatic conditions in order to achieve normal development or to produce typical fruit. Since the articles are grown out-of-doors in countries and localities where such diseases are known to occur, there is a risk that such articles would be infected with such diseases after separation from the parent stock. In order to minimize the risk of becoming infected with such diseases, articles of *Chaenmeles* spp., *Cydonia* spp., *Malus* spp., *Prunus* spp., and *Pyrus* spp. as a condition of importation would be required to be grown in nurseries free of the specified diseases. This would also help assure that such articles would be grown within designated boundaries, and would be subject to ongoing programs of indexing. But because there would still be a slight risk of such articles becoming infected with such diseases after indexing and because such diseases would be detectable after a period of time, these articles also would be required to be grown under postentry quarantine conditions specified in proposed § 319.37–7.

Articles (except seeds) of *Chrysanthemum* spp. and *Dianthus* spp. would be required to be grown in greenhouse nurseries free of the specified diseases for these articles in order to provide protection against the natural spread of the specified diseases. *Rubus* spp. would not be required to be grown in a greenhouse nursery for such certification because the specified disease of concern with respect to *Rubus* spp., i.e., rubus stunt virus, is not known to occur in Ontario, Canada. However, since this disease occurs in other parts of Canada it appears that the findings and certification of the plant protection service of Canada are necessary as a precautionary measure in that the disease could spread to Ontario, Canada.

The regulations currently require as a condition of importation that trees, shrubs, and plants of *Malus* spp., *Pyrus* spp., and *Prunus* spp. originate from specified foreign nurseries which have been certified by the plant protection service of the country of origin as producing material of such genera from parent plants that have been tested by such plant protection service and found free from diseases caused by viruses. The current regulations contain a list of such nurseries located in Belgium, Great Britain, Canada, Germany, and The Netherlands. The protection afforded against the introduction into the United States of such diseases is provided by the visual examination and indexing of parent stock and certification thereof by the plant protection service of the country of origin, and there does not appear to be a need for certifying nurseries. The certification provisions would be performed only by the listed countries because these are the only countries that provide such service.

The current regulations prohibit the entry of *Cocos nucifera* from all foreign countries into the State of Hawaii because of Cadang-cadang disease. It is proposed to permit an article of *Cocos nucifera* (coconut) to be imported into the United States, including Hawaii, if found and certified by the plant protection service of Jamaica (Coconut Industry Board) to be of Malayan dwarf variety based on visual examination of parent stock. Cadang-cadang disease apparently does not occur in Jamaica and the Malayan dwarf variety appears to be the only variety which is resistant to lethal yellowing disease (other varieties are listed as prohibited articles). Lethal yellowing disease could destroy or substantially reduce the yield or marketability of coconut or other palms if introduced into areas of the United States where it does not occur. The variety of *Cocos nucifera* cannot be determined upon inspection at the time of entry. A determination as to variety can be made based on visual examination of parent stock because of the physical characteristics of the parent stock.

Also, *Cocos nucifera* (coconut) would only be permitted to be imported if found by the plant protection service of the government of Jamaica (Coconut Industry Board) to be a Malayan dwarf variety because this is the only country or locality known to provide such certification.

Proposed § 319.37–6 would require specified restricted articles from specified countries or localities to be treated at the time of importation, or in some cases to be either defoliated before arrival at the port of entry or treated at the time of importation. These articles pose significant risks of introducing diseases or pests specified in proposed § 319.37–6 which could substantially reduce the yield or marketability of such kinds of articles or products thereof. Also, these diseases or

pests are difficult to detect upon inspection or have been consistently found upon inspection to be accompanying such articles. Further, it appears that the introduction into the United States of such diseases or pests can be feasibly prevented by the specified treatment or defoliation.

The current regulations require seeds of alfalfa (*Medicago sativa)* from Europe to be treated with 8 ounces of Arasan 50 (50 percent Thiram) per 100 pounds of seeds to prevent the spread of infection with *Verticillium albo-atrum* (a wilt disease). It is proposed that seeds of alfalfa and related plants (i.e., *Medicago falcata, M. gaetula, M. glutinosa, M. media, M. sativa)* from Europe be required to be treated with Arasan 50 (50 percent Thiram) at a rate of 8 ounces (approximately 226.8 grams) per 100 pounds (approximately 45.36 kilograms) of seeds, (same as is currently required for *M. sativa*), or with a slurry of Arasan 50 Red at a rate of 8 ounces per pint of water per 100 pounds of seeds. These treatments are equivalent in strength.

Such treatment for seeds of *Medicago sativa* appears to be necessary and adequate to prevent the spread of infection with *Verticillium albo-atrum.* Such treatment is also proposed to be required for seeds of certain plants related to *Medicago sativa* (i.e., *M. falcata, M. gaetula, M. glutinosa, M. media*) because it appears that these articles are also frequently infected with *Verticillium albo-atrum.*

The current regulations also require plants of specific genera from any country or locality other than Canada, Europe, Asia Minor, and the countries of Africa bordering on the Mediterranean Sea, to be imported through the ports of entry at New York or Seattle or to be defoliated before arrival at any other port of entry.

These requirements were imposed in order to prevent the introduction into the United States of the citrus blackfly (*Aleurocanthus woglumi* Ashby). This pest is found on the leaves of host plants and defoliation of such plants appears to be adequate to prevent such pests from accompanying host plants. Also, the current regulations permit host plants to be imported through the ports of New York or Seattle without defoliation because the citrus blackfly will not survive in northern climates typical of New York and Seattle. However, it is proposed to discontinue permitting such host plants to be imported at these ports without defoliation or other treatment (referred to below) because these infested host plants can be readily move to southern areas of the United States where citrus blackfly can survive.

It is also proposed that such host plants be permitted to be imported without defoliation if treated at the port of entry with methyl bromide in accordance with the Plant Protection and Quarantine Treatment Manual (which has been incorporated by reference) because this appears to be adequate to prevent the introduction of citrus blackfly.

Also, it is proposed to make changes with respect to the scientific names for *Achras, Calocarpum,* and *Lucuma,* which are currently listed as hosts of citrus blackfly. The name *Achras* would be changed to *Manilkara,* and the names *Calocarpum* and *Lucuma* would collectively be changed to one name, *Pouteria.* These changes are proposed in order to conform to nomenclature currently accepted by the scientific community.

The current regulations further specify that any listed articles are subject to special requirements because of the citrus blackfly if from any foreign country or locality (other than Canada, Europe and Asia Minor, and countries in Africa bordering the Mediterranean Sea). Citrus blackfly is known to occur in countries and localities other than those specifically excepted from such requirements. In this connection, the list of areas excepted from such requirements would be clarified to more clearly describe the countries and localities in which citrus blackfly is not know to occur; i.e., Canada, Europe, and any other country or locality bordering on the Mediterranean Sea.

The proposed regulations would also require the following list of restricted seeds from the listed countries and localities to be treated at the time of importation because of the diseases or pests referred to in the proposed § 319.37–6.

Seeds	Country(ies) or locality(ies) from
Hibiscus spp. (hibiscus, rosemallow).	All.
Lathyrus spp. (sweet pea, peavine).	All except North America and Central America.
Lens spp. (lentil)	All except North America and Central America.
Vicia spp. (fava bean, vetch)	All except North America and Central America.
Glycine spp. (soybean)	Africa, Australia, Burma, Cambodia, China, Costa Rica, India, Indonesia, Japan, Korea, Laos, Malaysia, Nepal, New Caledonia; Papua New Guinea, Philippines, Sri Lanka (Ceylon), Taiwan, Thailand, Union of Soviet Socialist Republics, Venezuela; Vietnam, and the West Indies.
Dolichos spp. (lablab)	Africa, Australia, Burma, Cambodia, China, Costa Rica, India, Indonesia, Japan, Korea, Laos, Malaysia, Nepal, New Caledonia, Papua New Guinea, Philippines, Sri Lanka (Ceylon), Taiwan, Thailand, Union of Soviet Socialist Republics, Venezuela, Vietnam, and the West Indies.
Pachyrhizus spp. (yam bean root, jicama).	Africa, Australia, Burma, Cambodia, China, Costa Rica, India, Indonesia, Japan, Korea, Laos, Malaysia, Nepal, New Caledonia, Papua New Guinea, Philippines, Sri Lanka (Ceylon), Taiwan, Thailand, Union of Soviet Socialist Republics, Venezuela, Vietnam, and the West Indies.
Phaseolus spp. (bean)	Africa, Australia, Burma, Cambodia, China, Costa Rica, India, Indonesia, Japan, Korea, Laos, Malaysia, Nepal, New Caledonia, Papua New Guinea, Philippines, Sri Lanka (Ceylon), Taiwan, Thailand, Union of Soviet Socialist Republics, Venezuela, Vietnam, and the West Indies.
Pueraria spp. (Chinese yam)	Africa, Australia, Burma, Cambodia, China, Costa Rica, India, Indonesia, Japan, Korea, Laos, Malaysia, Nepal, New Caledonia, Papua New Guinea, Philippines, Sri Lanka (Ceylon), Taiwan, Thailand, Union of Soviet Socialist Republics, Venezuela, Vietnam, and the West Indies.
Vigna spp. (cowpea, adjang, asparagus bean, black-eyed pea, moth bean, mung bean).	Africa, Australia, Burma, Cambodia, China, Costa Rica, India, Indonesia, Japan, Korea, Laos, Malaysia, Nepal, New Caledonia, Papua New Guinea, Philippines, Sri Lanka (Ceylon), Taiwan, Thailand, Union of Soviet Socialist Republics, Venezuela, Vietnam, and the West Indies.

The treatment proposed to be required for each of these types of seeds is specified in proposed § 319.37–6 except for seeds of *Hibiscus* spp., (hibiscus, rosemallow), *Lathyrus* spp., (sweet pea, peavine), *Lens* spp., (lentil) and *Vicia* spp., (fava bean, vetch) which would be required to be treated with methyl bromide in accordance with the applicable provisions of the Plant Protection and Quarantine Treatment Manual which have been incorporated by reference. These treatments appear to be adequate to prevent the introduction into the United States of the diseases or pests referred to in proposed § 319.37–6.

Proposed § 319.37–7 designates articles from specified countries and localities which would be required to be grown under postentry quarantine as a condition of importation. Except as

otherwise provided in proposed § 319.37–5 with respect to *Dianthus* spp. (carnation, sweet William), and *Rubus* spp., (cloudberry, blackberry, boysenberry, dewberry, loganberry, raspberry), this appears to be necessary because there do not appear to be other feasible methods of inspection, treatment, or other procedures that could be performed at the port of entry or otherwise and be sufficient for the purpose of preventing the introduction of injurious plant diseases that could destroy or substantially reduce the yield or marketability of the kinds of listed article or the products thereof. A period of observation under postentry quarantine would be necessary in order to detect such diseases which could possibly accompany such articles.

Many of those articles which are listed in proposed § 319.37–7 would be required to be grown under postentry quarantine as a condition of importation if from certain countries or localities but would be listed in proposed § 319.37–2 as prohibited articles if from other countries or localities. Such articles listed in the prohibited list are from countries or localities where the diseases associated with such articles and listed in proposed § 319.37–2 are known to occur. Other than as explained above in the discussion concerning proposed § 319.37–5, such articles that would be subject to postentry quarantine requirements are from countries or localities where such diseases are not known to occur. However, because of the international movement of such articles and the natural spread of such diseases, the diseases could be carried to countries or localities where the diseases are not known to occur without being detected. Accordingly, it appears to be necessary to require such articles to be grown under postentry quarantine as a condition of importation as a precautionary measure in order to prevent the introduction of such diseases. For these reasons each article listed in the following chart from the listed countries and localities is proposed to be added to the current list of articles required to be grown under postentry quarantine as a condition of importation:

Article	Country(ies) or locality(ies)
Acacia spp. (acacia)	All except Canada, Australia, and Oceania.
Anemone spp. (anemone, windflower)	All except Canada, Federal Republic of Germany (West), and German Democratic Republic (East).
Datura spp.	Great Britain.
Fragaria spp. (strawberry)	All except Australia, Austria, Canada, Czechoslovakia, France, Great Britain, Italy, Japan, Lebanon, The Netherlands, New Zealand, Northern Ireland, Republic of Ireland, Switzerland, and Union of Soviet Socialist Republics.
Gladiolus spp.	All except Canada, Africa, Italy, Malta, and Portugal.
Hydrangea spp. (hydrangea)	Federal Republic of Germany (West) and German Democratic Republic (East).
Philadelphus spp. (mock-orange).	All except Canada and Europe.
Sorbus spp. (mountain ash)	Southeastern Asia.
Syringa spp. (lilac)	All except Canada and Europe.

Also, for reason, for reasons explained above in the discussion concerning proposed § 319.37–5, it is proposed that articles of *Chaenomeles* spp., *Cydonia* spp., *Malus* Prunus spp., and *Pyrus* spp., grown in Belgium, France, Federal Republic of Germany (West), The Netherlands, or Great Britain and otherwise meeting the conditions of proposed § 319.37–5 be required to be grown under postentry quarantine as a condition of importation.

In addition, for reasons explained above in the discussion concerning proposed § 319.37–5, it is proposed that plants of *Dianthus* spp. from Great Britain, and *Rubus* spp. from Ontario, Canada, be required to be grown under postentry quarantine as a condition of importation because of the diseases specified in proposed § 319.37–5 unless accompanied by an accurate additional declarations on the phytosanitary certificate of inspection as provided for in proposed § 319.37–5.

Seedling understocks of fruit and nut articles listed in proposed § 319.37–7(b) from all countries and localities except Canada are proposed to be added to the list of articles required to be grown under postentry quarantine as a condition of importation. It appears that the types of diseases associated with such articles would not be detectable at a port of entry but would be detectable under the postentry conditions specified in § 319.37–7(c) and that under such conditions these diseases would be prevented from being disseminated into the United States.

"Fruit and nut plants, buds, cuttings, scions, and vegetatively-produced understocks" together with "fruit and nut stocks" comprise "fruit and nut articles." The regulations currently list "fruit and nut plants, buds, cuttings, scions, and vegetatively-produced understocks" on the postentry list. Also, as noted above, it is proposed to add "fruit and nut stocks" to the postentry list. Accordingly, these items are proposed to be collectively listed as "fruit and nut articles." Also, this term would be clarified by listing such articles which are intended to be within this class.

Articles required to be grown under postentry quarantine, as a condition of importation, would be required to be grown under the supervision and control of a person who has signed a postentry quarantine agreement to comply with the following conditions:

(1) to grow such article or increase therefrom only on specified premises;

(2) to permit an inspector to have access to the specified premises for inspection of such article at all reasonable hours;

(3) to keep the article and any increase therefrom identified with a label showing the name of the article, port accession number, number of written permit, and date of importation;

(4) to keep the article separated from any domestic plant or plant product of the same genus by no less than 3 meters (approximately 10 feet); and from other imported plant or plant products by the same distance;

(5) to allow or apply remedial measures (including destruction) determined by an inspector to be necessary to prevent the spread of an injurious plant disease, injurious insect pest, or other plant pest; and

(6) to notify Plant Protection and Quarantine Programs when any abnormality of the article is noticed or if the article dies.

It appears that these conditions are necessary and adequate for the Plant Protection and Quarantine Programs to keep track of such articles and to take any necessary action to prevent the possible dissemination of injurious plant diseases.

It is further proposed to require articles to be grown under postentry quarantine, as a condition of importation, to be grown under such conditions for 2 years, except for *Chrysanthemum* spp. (chrysanthemum) (6 months) and *Dianthus* spp. (carnation, sweet William) (1 year). Based on experience it appears that the diseases associated with such articles would express their symptoms within these time limits.

It is also proposed to require a completed postentry quarantine agreement to accompany the application for a written permit for articles required to be grown under postentry quarantine conditions since both of these documents would be necessary for a determination as to whether a permit for importation should be issued for such articles.

Further, articles from certain countries and localities are proposed to be deleted from the list of articles required to be grown under postentry quarantine as a condition of importation.

Articles of *Juniperus* spp., (juniper) and *Ulmus* spp., (elm) from Canada would be deleted from the postentry list because diseases associated with such articles (such diseases are specified in the proposed prohibited list) are not known to occur in Canada and because Canada prohibits the importation of such articles from all countries and localities where such diseases are known to occur.

The articles in the following chart from the listed countries and localities are proposed to be deleted from the postentry quarantine list because such articles are proposed to be added to the prohibited list in proposed § 319.37–2:

Article	Country(ies) or locality(ies)
Actinidia spp. (Chinese gooseberry, kiwi).	Japan and Taiwan.
Cedrus spp. (cedar)	All other than Canada and Europe.
Chrysanthemum spp. (chrysanthemum).	Europe, Argentina, Brazil, Hong Kong, Japan, Korea, Malaysia, New Zealand, Peoples Republic of China and Republic of South Africa.
Datura spp.	Colombia.
Hibiscus spp. (hibiscus, rosemallow).	Africa (except Sudan and Nigeria).
Hydrangea spp. (hydrangea)	Japan.
Juniperus spp. (juniper)	All except Finland and Rumania.
Larix spp. (larch)	All other than Canada and Europe.
Morus spp. (mulberry)	India and Union of Soviet Socialist Republics.
Picea spp. (spruce)	All other than Canada, Japan, Siberia, and Europe.
Pinus spp. (pine) (2- or 3-leaved).	All other than Canada, Japan, and Europe.
Pseudotsuga spp. (Douglas fir).	All other than Canada and Europe.
Ribes nigrum (black currant)	Europe (except British Isles and Sweden) and Australia.
Salix spp. (willow)	Federal Republic of Germany (West) and German Democratic Republic (East).
Vitis spp. (grape)	All other than Canada and Europe.

The articles in the following chart from the listed countries and localities are proposed to be delisted from the postentry list because the plant disease or diseases which caused the article to be listed on the postentry list appear to be widely prevalent within and throughout the United States:

Article	Country(ies) or locality(ies) from	Plant disease which caused article to be listed
Alsophila spp. (fern).	All foreign countries except China and Brazil.	*Mycosphaerella* (Myriosa) *Cu alsophilae* (Leaf spot).
Daphne spp.	All foreign countries except Canada and New Zealand.	Daphne-mosaic virus.
Nicotiana spp. (tobacco).	All foreign countries except Australia, Great Britain, and Canada.	*Marmor tethale* Holmes (Tobacco necrosis virus).

The articles in the following chart from the listed countries and localities are proposed to be deleted from the postentry list for the reasons specified in the chart:

Article	Country(ies) or locality(ies)	Reason
Actinidia spp. (Chinese gooseberry, kiwi).	Australia and New Zealand.	On list because of *Puccinastrum actinidiae* Hiratsuka (Rust) which apparently does not exist in Australia and New Zealand, based on official reports from the governments of Australia and New Zealand.
Anthurium spp.	All	On list because of Anthurium mosaic virus which apparently no longer exist.
Boltonia spp.	Canada	On list because of Boltonia streak virus which apparently no longer exist.
Chrysanthemum spp. (chrysanthemum).	Great Britain if in compliance with conditions for importation in proposed § 319.37–5(c).	On list because of *Puccinia horiana* P. Henn. which apparently would not be present if conditions in proposed § 319.37–5(c) would be met.
Ilex spp. (holly).	All except Canada, England, and France.	On list because of Ilex-variegation virus which apparently does not exist.
Rubus spp. (cloudberry, blackberry, boysenberry, dewberry, loganberry, raspberry).	Ontario, Canada, if in compliance with conditions for importation in proposed § 319.37–5(e).	On list because of Rubus stunt virus which apparently would not be present if conditions in proposed § 319.37–5(e) would be met.
Waldsteinia spp. (waldsteinia).	All except Canada and Australia.	On list because of mosaic disease which apparently does not exist.

Proposed § 319.37–3 would provide requirements with respect to the importation of restricted articles in growing media. In general, if restricted articles were to be imported in their growing media, there would be a substantial risk of introducing any of a large number of injurious plant diseases, injurious insect pests, and other plant pests, which could not be detected by inspection and could not be eliminated without destruction of the restricted article. Accordingly, it is proposed to prohibit the importation or offer for entry into the United States of restricted articles unless free of soil, sand, earth or other growing media, except as explained below.

In addition, the terms "soil" and "earth" would be defined in the definition section of the proposed regulations in order to assure that these terms would be interpreted to include all of the "soil" and "earth" that presents such a risk of introducing such diseases and pests.

The current regulations specify that restricted articles may be imported in any gowing media (sand, soil, or earth) only if imported from Canada. It is proposed to permit restricted articles to be imported from Canada in growing media except from Newfoundland or from the Land District of South Saanich on Vancouver Island in British Columbia. Restricted articles in growing media from these specified places in Canada would not be permitted to be imported because it appears that there is a substantial danger that such restricted articles, if in such growing media, would introduce a potato cyst nematode, *Globodera rostochiensis* (Woll.) Mulvey and Stone, which is not discernible by inspection at the port of entry and cannot be eliminated without destruction of the restricted article.

It is also proposed to permit any restricted article growing solely in agar to be imported in such agar medium because it appears that the presence of diseases or pests which could be detected if the restricted article were imported with bare roots, would not be less detectable if in agar because agar is transparent or translucent.

It is further proposed to permit a restricted article which is a herbaceous plant or shrub to be imported in peat, sphagnum moss, or vermiculite growing media or in synthetic growing media or synethetic horticultural foams, i.e., plastic particles, glass wool, organic and inorganic fibers, polyurethane, polystyrene, polyethylene, phenol formaldehyde, ureaformaldehyde, of in accordance with the detailed criteria in proposed § 319.37–6(d). These criteria appear to be necessary in order to allow the importation of restricted articles in the above growing media or horticultural foams and still prevent the introduction into the United States of any of a wide variety of injurious plant diseases, injurious insect pests, or other plant pests, generally associated with articles in growing media. These criteria would assure that the restricted articles and their growing media would be free of injurious plant diseases, insect pests, or other plant pests because of being grown, stored, and shipped in isolation from such diseases or pests. Since there would be a great risk of introduction of such diseases or pests if any of the criteria were not strictly adhered to,

proposed § 319.37–8(d) would not only require the country of origin to certify compliance with these criteria, but as an added measure of safety, would require a Plant Protection and Quarantine Programs inspector to determine that such articles were produced in accordance with the specified procedures, and to endorse the phytosanitary certificate relating to such articles.

Proposed § 319.37–9 would specify what packing materials could be used for importation of restricted articles into the United States. Generally, packing materials can be the means of introducing into the United States any of a large number of injurious insect pests or other plant pests. Most such pests would not be detectable by inspection and could not feasibly be eliminated from the packing material. In addition, many such pests in the packing material could be transmitted to an accompanied restricted article. Also, many packing materials would because of their nature render articles difficult or impossible to inspect. Based on experience with respect to the examination of packing materials, it appears that those materials listed in proposed § 319.37–9 would present no significant risk of causing the introduction of injurious insect pests or other pests, provided that such materials are free from sand, soil, or earth, are not intermixed, and have not been used previously as packing material or otherwise. This proposed list of materials is the same as the current list except for three additions, two deletions, and three modifications. Ground rubber, paper, and quarry gravel would be added to the list because they apparently would present no significant risk of introducing such pests. Charcoal would be deleted from the list because it appears that it is difficult to detect the presence of many injurious plant diseases, insect pests, and other plant pests on or with articles packed in such material because charcoal often discolors such articles and there is often little contrast between charcoal and such diseases and pests.

Subsoil from Japan (other than that referred to below with respect to the Ryukyu Islands in Japan) would be deleted from the list. Under the current regulations subsoil from Japan has been permitted to be used as a packing material for lily bulbs only if, among other things, it was treated with DDT. However, under the laws administered by the Environmental Protection Agency, the use of DDT may not continue to be required, and there does not appear to be another insecticide adequate to destroy *Phyllobrotica* spp. and other insect pests, which have been found in such subsoil.

Also, under the current regulations, subsoil from the Ryukyu Islands in Japan may be used as packing material for lily bulbs only if certified by the plant protection service of Japan to have been dug from at least 2 feet below the soil surface, handled under special conditions, and treated with an insecticide. Under the laws of the Environmental Protection Agency there are no insecticides which may be feasibly used in connection with such subsoil. However, it appears, based on experience, that even without the use of an insecticide there is no significant risk of introducing undetectable diseases or pests in connection with the importation of lily bulbs in such subsoil, if such subsoil would come from at least 2 feet below the soil surface, and be sifted, dried, and stored in isolation from contamination with pests and diseases. Accordingly, such subsoil would be permitted to be used as packing material for lily bulbs if found and certified by the plant protection service of Japan to meet such conditions.

Other articles would not be permitted to be packed in such subsoil because there has not been sufficient testing to establish that this could be done without a substantial risk of introducing diseases or pests.

In addition, the current regulations specify that shavings are permitted to be used as packing material. This was inteded to refer to wood shavings and cork shavings and the list would be clarified to reflect this intent.

Further, the current regulations permit coral sand from Bermuda to be used as a packing material if accompanied by a valid certificate from the plant protection service of Bermuda certifying the sand to be free from surface soil. This was intended to prohibit the use of any soil in the packing material because soil can be accompanied by any of a host of injurious plant diseases, injurious insect pests, and other plant pests which would not be detectable at the port of entry. Accordingly, the proposed regulations are clarified to provide that the coral sand for packing material must be free from soil.

Proposed § 319.37–10 would require certain marking and identification information to be plainly and correctly borne at the time of importation on the outer container of a restricted article or directly on such article if not in a container. In order to comply with specified requirements of the Plant Quarantine Act, any restricted article for importation, including any article for importation by mail, would be required to bear at the time of importation the general nature and quantity of the contents; the country and locality where grown; the name and address of the shipper, owner, or person shipping or forwarding the article; and the name and address of the consignee (in the case of mail the consignee would be the Plant Protection and Quarantine Programs). Such restricted articles would also be required to bear the number of the written permit authorizing the importation, if one was issued. This would enable the inspector to check whether a valid permit was actually issued for the article in question. Further, a restricted article for importation other than by mail would be required to bear an identifying shipper's mark and number. This would enable an inspector to locate the restricted article at the port of entry by comparing the shipper's mark and number on available entry documents (e.g., manifest, waybill) with such information on the restricted article or container thereof.

The proposal would also require any restricted article for importation by mail to be mailed to the Plant Protection and Quarantine Programs at a port of entry designated in the list of ports of entry in proposed § 319.37–14. This appears to be necessary in order to prevent direct mailing to the intended recipient, and for the requirements of the proposed subpart to be met, e.g., inspection, treatment. The proposal would further require a package containing a restricted article for importation by mail to contain within each package a sheet of paper bearing the name, address, and telephone number of the intended recipient. This would permit the Plant Protection and quarantine Programs to be able to forward the package to the intended recipient. Also, inclusion of the telephone number of the intended recipient for mailed articles would permit Plant Protection and Quarantine Programs to contact the intended recipient for the purpose of obtaining any necessary clarifications for determining eligibility for importation of such articles. With respect to importation of articles other than by mail, this requirement is not necessary because the representative or agent of the intended recipient would be available at the port of entry to provide any necessary clarifications.

It is also proposed that shipments containing restricted articles be required to be accompanied by an invoice or packing list indicating the contents of the shipments. This appears necessary because such information on the outside of a package or on a restricted article could be rendered illegible, destroyed,

or lost because of handling during shipment. This requirement would not be an additional burden on importers since invoices and packing lists are required by the shipping industry and by the U.S. Customs Service.

Proposed § 319.37–11 would require the importer upon arrival at a port of entry of any shipment of any restricted article to promptly notify the Plant Protection and Quarantine Programs of such shipment's arrival by such means as a manifest, customs entry document, commercial invoice, waybill, a broker's document, or a notice form provided for that purpose. The current regulations require that the importer submit a completed Form PPQ–368 and an invoice or packing list at the time of arrival. The purpose of the current regulations and the proposed regulations in this regard is to assure that the Plant Protection and Quarantine Programs is advised that any restricted article has arrived at a port of entry. It appears that this can be accomplished by any document which would specify what is contained in a shipment, such as those documents specified in the proposed rule.

Proposed § 319.37–12 would prohibit a restricted article from being imported or offered for entry into the United States if packed in the same container as an article prohibited importation into the United States by Part 319 or 321. This appears necessary in order to prevent prohibited articles from transmitting to restricted articles tree, plant, or fruit diseases, injurious insect pests, or other plant pests which could not be detected by inspection and could not be eliminated without destruction of the restricted article.

Proposed § 319.37–13 relates to costs and charges in connection with the services of an inspector and costs and charges relating to inspection facilities and equpment used in connection with treatment of articles. This reflects the policy of the Plant Protection and Quarantine Programs with respect to costs and charges relating to the importation of articles subject to this subpart.

Proposed § 319.37–13 also contains provisions relating to where treatments shall be performed. Government operated special inspection facilities are located in close proximity to unloading areas for imported articles and, consequently, the use of government-operated facilities would be required in most cases for treatment of articles in order to prevent unnecessary movement. Treatment would be permitted to be performed at a nongovernmental facility only in cases of unavailability of government facilities and only if, in the judgment of an inspector, such articles can be transported to such nongovernmental facility without the risk of introduction into the United States of injurious plant diseases, injurious insect pests, or other plant pests. Also, it is proposed that treatment performed under this subpart would be required to be performed by or under the direction of an inspector in order to assure that any applicable treatment requirements would be met.

Proposed § 319.37–14 would require any restricted article required to be imported under a written permit pursuant to subsection (1) through (6) or (8) of proposed section 319.37–3, to be imported only at a port of entry designated by an asterisk in paragraph (b) of proposed § 319.37–14, and would permit any other restricted articles to be imported at any port of entry listed in paragraph (b) of proposed § 319.37–14. The ports of entry listed in paragraph (b) are those ports of entry where inspectors are stationed and authorized to take action in connection with the importation or offer for importation of articles which would be subject to the proposed subpart.

Those articles which would be required to be imported only at a port of entry designated by an asterisk appear to present a substantial risk of carrying injurious plant diseases, insect pests, or other plant pests at the time of importation. Accordingly, they would be required to be imported only at a port of entry designated by an asterisk because these ports of entry are the only ports of entry with special inspection and treatment facilities adequate for taking necessary action with respect to such articles in order to prevent the introduction of accompanying injurious plant diseases, injurious insect pests, or other plant pests.

In the current regulations, certain articles for importation from Canada are exempted from certain prohibitions or restrictions which would apply if such articles were imported from certain other foreign countries and localities. It appears that the importation from Canada of most articles subject to the proposed subpart poses little or no risk of introduction of injurious plant diseases, injurious insect pests or other plant pests that are not already widely prevalent or distributed within and throughout the United States. This is because such diseases and pests do not occur in Canada because of climatic conditions adverse to many such diseases and pests, and because of an effective Canadian inspection program for articles imported into Canada. For these reasons, the proposed regulations also contain numerous exemptions from prohibitions or restrictions with regard to articles for importation from Canada.

As noted above, in connection with the discussion concerning proposed § 319.37–4, restricted articles accompanied by a phytosanitary certificate of inspection are merely "subject" to inspection at ports of entry "as necessary" to assure the absence of injurious plant diseases, injurious insect pests, and other plant pests. Because of various risks of introducing such diseases or pests restricted articles are given various degrees of inspection at ports of entry. However, articles for importation from Canada and not requiring a written permit pursuant to paragraphs (a)(1), (2), (3), (4), (5), (6), or (8) of proposed § 319.37–3, are given the least amount of inspection which is commensurate with the risk of introducing diseases or pests. Accordingly, such articles from Canada are the only articles proposed to be allowed to be imported at the port of entry on the United States-Canadian border, which provide this minimal inspection.

It appears that the risk of introduction of diseases or pests would be the same for an article grown in a foreign country or locality other than Canada if it meets each of the following conditions:

1. It is imported into the United States directly from Canada after having been grown for at least 1 year in Canada,

2. It has never been grown in a country from which it would be a prohibited article, or grown in a country other than Canada from which it would be subject to conditions of § 319.37–5 or § 319.37–6,

3. It was not grown in a country or locality from which it would be subject to conditions of § 319.37–7 unless it was grown in Canada under postentry growing conditions equivalent to those specified in § 319.37–7, and

4. It was not imported into Canada in growing media.

Articles specified in items 2 through 4 appear to present a substantial risk of introducing diseases or pests and are either prohibited articles or would be required to be imported at a port of entry with special inspection and treatment facilities. Also, these articles would be required to be grown for at least 1 year in Canada in order to be considered as being solely from Canada. The added growing time would provide an opportunity for any accompanying diseases or pests to become readily detectable at the time of inspection relating to the issuance of the phytosanitary certificate of inspection. This would be an added precautionary

measure in order to allow the articles to be imported under conditions of minimal inspection at ports of entry on the United States-Canada border.

The proposed regulations would also make numerous other miscellaneous changes from the current regulations.

The proposed regulations would reflect certain changes which have occurred with respect to names or boundaries of countries. "Ceylon" is changed to "Sri Lanka," "Germany" is changed to "Federal Republic of Germany (West)" or "German Democratic Republic (East)," as appropriate, "North Ireland" is changed to "Northern Ireland," and "Trinidad" is changed to "Trinidad and Tobago."

The term "England" as used in the current regulations is proposed to be changed to "Great Britain," which includes England, Scotland, and Wales. This is because the term "England" as used in the current regulations was intended to include England, Scotland, and Wales, and because it appears that the reasons for imposing requirements with respect to England are also valid reasons for imposing requirements with respect to Scotland and Wales.

The term "Europe" is defined in the current regulations as "the continent of Europe, the British Isles, and the other islands on the European continental shelf." The term "other islands on the continental shelf" is proposed to be changed to "Iceland, the Azores, and the islands in the Mediterranean Sea", to clarify the intent in the current regulations. Also, the reasons for imposing requirements appear to be valid reasons for imposing requirements with respect to all of these places.

The term "Oceania," although used in the current regulations, is not defined. This term is commonly understood to include the islands of Micronesia, Melanesia, and Polynesia in the central and southern Pacific Ocean. However, this term is also sometimes construed to include Australia and New Zealand which are not part of these islands. In order to avoid confusion, the term "Oceania" is defined in the proposed regulations and does not include Australia or New Zealand. Further, Hawaii, which is part of Polynesia, is specifically excepted from the definition of "Oceania" since the term "Oceania" as used in the proposed subpart, relates only to foreign countries and localities.

Some articles which are proposed to be deleted from the prohibited list are prohibited from entering certain States because of State laws. Also, some articles which are proposed to be deleted from the postentry list are required to be grown under postentry quarantine as a condition of entry into such States. Since this information would be helpful to potential importers of these articles, it is proposed to include such information in notes at the end of the respective list of prohibited articles and postentry articles.

Some of the scientific names in the current regulations with respect to certain diseases, insects, or other pests, are proposed to be changed in order to conform to nomenclature currently accepted by the scientific community. Accordingly, the following chart explains the proposed changes and lists the article associated with the diseases or pests.

Article	Name in current regulations	Name in proposed regulations
Abies spp. (fir)	*Phomopsis pseudotsugae* Wilson (Douglas fir canker).	*Phacidiopycnis pseudotsugae* (M. Wils.) Hahn (Douglas fir canker).
Althaea spp. (althaea, hollyhock)	*Fuga gossypi* Holmes (Cotton leaf-curl virus)	Cotton leaf-curl virus.
Anemone spp. (anemone, windflower)	*Galla anemones* Holmes (Anemone-alloiophylly virus)	Anemone-alloiophylly virus.
Cedrus spp. (cedar)	*Phomopsis pseudotsugae* Wilson (Douglas fir canker).	*Phacidiopycnis pseudotsugae* (M. Wils.) Hahn (Douglas fir canker).
Datura spp	*Marmor labaci* var. *deformans* Holmes (Enation-mosaic strain of mosaic virus).	Datura distortion or enation mosaic virus.
Dianthus spp. (carnation, sweet William)	*Verticillium chlamydosporium* Wr	*Phialophora chlamydospora* (Wr.) U. Beyma (*Verticillium chlamydosporium* Wr.)
Euonymus spp. (euonymus)	*Marmor euonymi* Holmes (Euonymus mosaic virus)	Euonymus mosaic virus.
Hibiscus spp. (hibiscus, rosemallow)	Yellow-mosaic virus of okra	Okra yellow mosaic virus.
Hibiscus spp. (hibiscus, rosemallow)	Mosaic-disease virus of okra	Okra mosaic virus.
Hibiscus spp. (hibiscus, rosemallow)	*Fuga gossypi* Holmes (Cotton leaf-curl virus)	Cotton leaf-curl virus.
Juniperus spp. (juniper)	*Exosporium deflectans* Karst	*Stigmina deflectans* (Karst.) Ellis (Needlecast disease).
Larix spp. (larch)	*Phomopsis pseudotsugae* Wilson (Douglas fir canker).	*Phacidiopycnis pseudotsugae* (M. Wils.) Hahn (Douglas fir canker).
Lens spp. (lentil) seeds	A rust fungus (a form of *Uromyces fabae* (Pers.) d By).	*Uromyces viciae-fabae* (Pers.) Schroet. (rust).
Ligustrum spp. (privet)	*Marmor ligustri* Holmes (Ligustrum-mosaic virus)	Ligustrum mosaic virus.
Malus spp. (apple, crabapple)	*Physalospora piricola* Nose (Leaf, branch and fruit fungus).	*Guignardia piricola* (Nose) Yamomoto (Leaf, branch and fruit disease).
Malus spp. (apple, crabapple)	"Proliferation" (virus)	Apple proliferation agent.
Mangifera spp. (mango) seed	*Sternochetus mangiferae* F	*Cryptorhynchus mangiferae* F. (mango weevil).
Morus spp. (mulberry)	Mulberry mosaic virus	Mulberry mosaic agent.
Picea spp. (spruce)	*Chrysomyxa rhododendri* (DC) D By. (Rust causing a serious needel disease).	*Chrysomyxa ledi* (Alb. & Schw.) d By var. *rhododendri* (DC) Savile. (Rhododendron-spruce needle rust).
Picea spp. (spruce)	*Phomopsis pseudotsugae* Wilson (Douglas fir canker).	*Phacidiopycnis pseudotsugae* (M. Wils.) Hahn (Douglas fir canker).
Populus spp. (aspen, cottonwood, poplar)	*Pseudomonas rimaefaciens* Koning (Canker)	*Aplanobacter populi* Ride (Canker).
Prunus spp. (almond, apricot, cherry, peach, plum and prune	Pox-disease virus of sweet cherry	Plum pox (=Sharka).
Pseudotsuga spp. (Douglas fir)	*Phomopsis pseudotsugae* Wilson (Douglas fir canker).	*Phacidiopycnis pseudotsugae* (M. Wils.) Hahn (Douglas fir canker).
Pyrus spp. (pear)	*Physalospora piricola* Nose (Leaf, branch and fruit disease).	*Guignardia piricola* (Nose) Yamomoto (Leaf, branch and fruit disease).
Pyrus spp. (pear)	"Proliferation" (Virus)	Apple proliferation agent.
Ribes nigrum spp. (black currant)	*Acrogenus ribis* Burt. (Black current reversion disease virus).	Black currant reversion virus.
Rosa spp. (rose)	*Marmor flaccumfaciens* Holmes (Rose wilt virus)	Rose wilt virus.
Salix spp. (willow)	*Bacterium salicis* Day (Watermark disease)	*Erwinia salicis* (Day) Chester (Watermark disease).
Sorbus spp. (mountain ash)	Pyrus disease virus No. 1	Mountain ash variegation virus.
Vitis spp. (grape)	*Marmor vitícola* Holmes (Vine Mosaic virus)	Grapevine fanleaf virus and its strains.
Articles designated in § 319.37-5(a)	Golden nematode *Heterodera rostochiensis* Wr	*Globodera rostochiensis* (Woll.) Mulvey and Stone and *G. pallida* (Stone) Mulvey and Stone.

Accordingly, it is proposed to revise "Subpart—Nursery Stock, Plants, and Seeds" in 7 CFR Part 319 § 319.37—§ 319.37–28a) to read as follows:

PART 319—FOREIGN QUARANTINE NOTICES

Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds and Other Plant Products

Sec.

§ 319.37 Prohibitions and restrictions on importation; disposal of articles refused importation
§ 319.37–1 Definitions
§ 319.37–2 Prohibited Articles
§ 319.37–3 Permits
§ 319.37–4 Inspection and phytosanitary certificates of inspection
§ 319.37–5 Special foreign inspection and certification requirements
§ 319.37–6 Specific treatment and other requirements
§ 319.37–7 Postentry quarantine
§ 319.37–8 Growing media
§ 319.37–9 Approved packing material
§ 319.37–10 Marking and identity
§ 319.37–11 Arrival notification
§ 319.37–12 Prohibited articles accompanying restricted articles
§ 319.37–13 Treatment and costs and charges for inspection and treatment
§ 319.37–14 Ports of entry

Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products [1]

§ 319.37 Prohibitions and restrictions on importation; disposal of articles refused importation.

(a) Pursuant to section 7 of the Plant Quarantine Act (7 U.S.C. 160) and section 106 of the Federal Plant Pest Act (7 U.S.C. 150ee) the Secretary of Agriculture has determined that, in order to prevent the introduction into the United States from any foreign country or locality of certain tree, plant, and fruit diseases, or injurious insects, new to or not widely prevalent or distributed within and throughout the United States it is necessary to prohibit the importation into the United States of certain articles from foreign countries and localities. Accordingly; no person shall import or offer for entry into the United States any article designated in § 319.37–2(a) or (b) of this subpart from the designated foreign countries and localities, except as otherwise provided in § 319.37–2(c) of this subpart.

(b) Pursuant to sections 1 and 5 of the Plant Quarantine Act (7 U.S.C. 154, 159) and section 106 of the Federal Plant Pest Act (7 U.S.C. 150ee) the Secretary of Agriculture has determined that, in order to prevent the entry into the United States of certain injurious plant diseases, injurious insect pests, and other plant pests it is necessary to restrict the importation into the United States of certain articles from foreign countries and localities. Accordingly, no person shall import or offer for importation into the United States, or grow in the United States, any restricted article from any foreign country or locality unless in conformity with all of the applicable restrictions in this subpart.

(c) Any article refused importation for noncompliance with the requirements of this subpart shall be properly removed from the United States or abandoned by the importer for destruction, and pending such action shall be subject to the immediate application of such safeguards against escape of injurious plant diseases, injurious insect pests and other plant pests as the inspector determines necessary to prevent the introduction into the United States of such diseases or pests. If such article is not promptly safeguarded by the importer, removed from the United States, or abandoned for destruction, it may be seized, destroyed, or otherwise disposed of in accordance with section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

§ 319.37–1 Definitions.

Terms used in the singular form in this subpart shall be construed as the plural, and vice versa, as the case may demand. The following terms, when used in this subpart, shall be construed, respectively, to mean:

Deputy Administrator. the Deputy administrator of the Plant Protection and Quarantine Programs, animal and Plant Health Inspection Service, U.S. Department of Agriculture, or any other officer or employee of said Service to whom authority to act in his/her stead has been or may hereafter be delegated.

Disease. The term in addition to its common meaning, includes a disease, disease agent which incites a disease.

Earth. The softer matter composing part of the surface of the globe, in distinction from the firm rock, and including the soil and subsoil, as well as finely divided rock and other soil formation materials down to the rock layer.

Europe. The continent of Europe, the British Isles, Iceland, the Azores, and the islands in the Mediterranean Sea.

From. An article is considered to be "from" any country or locality in which it was grown. *Provided,* that an article imported into Canada from another country or locality shall be considered as being solely from Canada if it meets the following conditions:

(a) It is imported into the United States directly from Canada after having been grown for at least 1 year in Canada,

(b) It has never been grown in a country from which it would be a prohibited article or grown in a country other than Canada from which it would be subject to conditons of § 319.37–5 or 319.37–6,

(c) It was not grown in a country or locality from which it would be subject to conditions of § 319.37–7 unless it was grown in Canada under postentry growing conditions equivalent to those specified in § 319.37–7 [2], and

(d) It was not imported into Canada in growing media.

Indexing. (a) Serological testing, or (b) transmitting the juices from an article suspected of being infected with a particular disease to another article known to be susceptible to such disease, by grafting or otherwise, in order to determine the presence or absence of the disease in the article suspected of being infected with such disease.

Inspector. Any employee of the Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person, authorized by the Deputy Administrator to enforce the provisions of the regulations in this subpart.

Nursery Stock. All field-grown florist's stock, trees, shrubs, vines, cuttings, grafts, scions, buds, fruit pits, and other seeds of fruit and ornamental trees or shrubs, and other plants and plant products for propagation, except field, vegetable, and flower seeds, bedding plants, and other herbaceous plants, bulbs, and roots.

Oceania. The islands of Micronesia, Melanesia, and Polynesia (except Hawaii) in the central and southern Pacific Ocean.

Person. An individual, corporation, company, society, or association.

Phytosanitary certificate of inspection. A document relating to a restricted article, which is issued by a

[1] One or more common names of articles are given in parentheses after most scientific names (when common names are known) for the purpose of helping to identify the articles represented by such scientific names; however, unless otherwise specified, a reference to a scientific name includes all articles within the class represented by the scientific name regardless of whether the common name or names are as comprehensive in scope as the scientific name.

[2] Currently only *Chaenomoles* spp. (flowering quince), *Cydonia* spp. (quince), *Malus* spp. (apple, crabapple); *Prunus* spp. (almond, apricot, cherry, nectarines, peach, plum, prune) and *Pyrus* spp. (pear) are required to be grown in Canada under such equivalent conditions after importaton.

plant protection official of the country in which the restricted article was grown, which is issued not more than 15 days prior to shipment of the restricted article from the country in which grown, which is addressed to the plant protection service of the United States (Plant Protection and Quarantine Programs), which contains a description of the restricted article intended to be imported into the United States, which certifies that the article has been thoroughly inspected, is believed to be free from injurious plant diseases, injurious insect pests, and other plant pests, and is otherwise believed to be eligible for importation pursuant to the current phytosanitary laws and regulations of the United States, and which contains any specific additional declarations required under this subpart.

Plant Pest. The egg, pupal, and larval stages as well as any other living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured, or other products of plants.

Plant Protection and Quarantine Programs. The organizational unit within the Animal and Plant Health Inspection Service, U.S. Department of Agriculture delegated responsibility for enforcing provisions of the Plant Quarantine Act and the Federal Plant Pest Act, and regulations promulgated thereunder.

Prohibited article. Any class of nursery stock or other class of plant, root, bulb, seed, or other plant product designated in § 319.37–2(a) or (b).

Restricted article. Any class of nursery stock or other class of plant, root, bulb, seed or other plant product, for or capable of propagation, excluding any articles subject to any restricted entry orders in Part 321 (i.e. potatoes) or to any foreign quarantine notice in other subparts of Part 319, e.g., fruits and vegetables, cut flowers, sugarcane, rice, and excluding any prohibited articles listed in § 319.37–2(a) or (b).

Secretary. The Secretary of Agriculture, or any other officer or employee of the Department of Agriculture to whom authority to act in his/her stead has been or may hereafter be delegated.

Soil. The loose surface material of the earth in which plants, trees, and shrubs grow, in most cases consisting of disintegrated rock with an admixture of organic material and soluble salts.

Spp. (species). All species, clones, cultivars, strains, varieties, and hybrids, of a genus.

United States. The States, District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States.

§ 319.37–2 Prohibited articles.

(a) The following listed articles from the designated countries and localities are prohibited articles and are prohibited from being imported or offered for entry into the United States except as provided in § 319.37–2(c) of this subpart.

Prohibited article (except seeds unless specifically mentioned)	Foreign country(ies) or locality(ies) from which prohibited	Tree, plant, or fruit disease, or injurious insect, or other plant pest determined as existing in the places named and capable of being transported with the prohibited article
Acacia spp. (acacia)	Australia and Oceania	*Uromycladium tepperianum* (Sacc.) McAlp. (Rust).
Acer spp. (maple)	Japan	*Xanthomonas acernea* (Ogawa) Burk. (leaf diseases).
	Bulgaria, Great Britain, France, Federal Republic of Germany (West), German Democratic Republic (East), and Japan.	Maple-variegation virus.
Actinidia spp. (Chinese gooseberry, kiwi)	Japan and Taiwan	*Pucciniastrum actinidiae* Hiratsuka (Rust).
Adonidia spp	All	A diversity of diseases including, but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Aesculus spp (horsechestnut)	Czechoslovakia, Great Britain, Federal Republic of Germany (West), and German Democratic Republic (East).	Horsechestnut-variegation virus.
Allagoptera arenaria	All	A diversity of diseases including, but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Althaea spp. (althaea, hollyhock)	India	Hollyhock yellow-vein mosaic virus.
	Africa	Cotton leaf-curl virus
Anemone spp. (anemone, windflower)	Federal Republic of Germany (West) and German Democratic Republic (East).	Anemone alloiophylly virus.
Areca spp	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Arenga spp. (sugar palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Arikuryroba spp. (arikury palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Articles listed in § 319.37–2(b)	All except Canada	A diversity of diseases, insects, and other pests, including but not limited to: *Cactoblastis cactorum* (Berg); *Meteranium* spp.; *Opogona sacchari* (Bojer); *Chrysomyxa himalensis* Barclay (Spruce needle rust); *Ascotium mori* Barclay (Mulberry rust); *Pseudomonas fuscicola* Westhard. & Buis. (Bacterial stain); *Pucciniastrum areolatum* (Fr.) Oth. (Cherry-spruce rust).
Berberis spp. (barberry) (plants of all species and horticultural varieties not designated as resistant to black stem rust in accordance with § 301.38–1 of this chapter).	All	*Puccinia graminis* Pers. (Black stem rust).
Berberis spp. (barberry) destined to an eradication State listed in § 301.38–2a of this chapter (plants of all species and horticultural varieties designated as resistant to black stem rust in accordance with § 301.38–1 of this chapter.	All	*Puccinia graminis* Pers. (Black stem rust).
Berberis spp. (barberry) seed	All	*Puccinia graminis* Pers. (Black stem rust).
Borassus spp. (palmyra palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Caryota spp. (fishtail palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Chaenomeles spp. (flowering quince) not meeting the conditions for importation in § 319.37–5(b).	All	A diversity of plant diseases including but not limited to items 1, 21, and 28 listed in § 319.37–5(b)(2).
Chrysalidocarpus spp. (butterfly palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Chrysanthemum spp. (chrysanthemum) not meeting the conditions for importation in § 319.37—5(c).	Europe, Argentina, Brazil, Hong Kong, Japan, Korea, Malaysia, New Zealand, People's Republic of China, and Republic of South Africa.	*Puccinia horiana* P. Henn. (White rust of chrysanthemum).

Prohibited article (except seeds unless specifically mentioned)	Foreign country(ies) or locality(ies) from which prohibited	Tree, plant, or fruit disease, or injurious insect, or other plant pest determined as existing in the places named and capable of being transported with the prohibited article
Cocos nucifera (coconut) (including seeds) (Coconut seed without husks or without milk may be imported into the United States in accordance with § 319.56 of this Part).	All except from Jamaica if meeting the conditions for importation in § 319.37–5(f).	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Cocos spp. (other than *Cocos nucifera*)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Conifers	All except Canada	A diversity of diseases including but not limited to: *Bulgaria larchi* (Sawada) Yamamoto & K. Ito (Shoot blight of larch); *Chrysomyxa determans* (Dietl.) Jacz. (Spruce needle rust); *Cronartium flaccidum* (Alb. & Schw.) (Scotch pine blister rust); *Chrysomyxa abietis* (Wallr.) Ung. (Rust); *Phacidiopycnis pseudotsugae* (M. Wils.) Hahn (Douglas fir canker); *Scirrhia deflectens* (Karst.) Ellis (Needlecast disease); *Chrysomyxa ledi* (Alb. & Schw.) d By var. *rhododendri* (DC) Savile. (Rhododendron-spruce needle rust).
Corypha spp	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Cydonia spp. (quince) not meeting the conditions for importation in § 319.37–5(a).	All	A diversity of diseases including but not limited to items 1, 2, 19, 19, 20, 21, and 23 listed in § 319.37–5(b)(2).
Delura spp	Colombia	Delura Colombian virus.
Dictyosperma spp. (Princesspalm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Elaeis spp. (oil palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Erianthus spp. (plumegrass)	All	*Puccinia melanocephala* H. Syd. & P. Syd. (Sugarcane rust).
Eucalyptus spp	Argentina	Leaf chlorosis virus.
Euonymus spp. (euonymus)	Federal Republic of Germany (West) and German Democratic Republic (East).	Euonymus mosaic virus.
Fragaria spp. (strawberry)	Australia, Austria, Czechoslovakia, France, Great Britain, Italy, Japan, Lebanon, The Netherlands, New Zealand, Northern Ireland, Republic of Ireland, Switzerland, and Union of Soviet Socialist Republics.	*Phytophthora fragariae* Hickman (Red stele disease).
Fraxinus spp. (ash)	Europe	*Pseudomonas savastanoi* var. *fraxini* (Brown) Dowson (Canker and dieback disease of ash).
Gaussia spp. (fishtailpalm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Gladiolus spp. (gladiolus)	Africa	*Puccinia mocleanii* Doidge (Rust); *Uredo gladioli-kaulinae* Bub. (Rust); *Uromyces gladioli* P. Henn. (Rust); *U. rytherae* Syd. (Rust).
	Africa, Italy, Malta, and Portugal	*U. transversalis* (Thuem.) Wint. (Rust).
Gossypium spp	All	A diversity of diseases including but not limited to: cotton leaf curl virus; cotton virescence agent; small leaf virus.
Hibiscus spp. (hibiscus, rose mallow)	Trinidad and Tobago, and Nigeria	Okra mosaic virus.
	India	Okra yellow mosaic virus.
	Africa	Cotton leaf curl virus.
Howeia belmoreana (Sentry palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Hydrangea spp. (hydrangea)	Japan	*Aecidium hydrangeae-paniculatae* Dietel
Ipomoea spp. (sweetpotato)	All except Canada	A diversity of diseases including but not limited to: sweetpotato witches broom (little leaf); and sweetpotato viruses of eastern Africa.
Jasminum spp. (jasmine)	Belgium, Great Britain, Federal Republic of Germany (West), and German Democratic Republic (East).	Jasmine-variegation virus.
Latania spp	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Lens spp. seed (lentil)	South America	*Uromyces viciae-fabae* (Pers.) Schroet. (Rust).
Ligustrum spp. (privet)	Federal Republic of Germany (West) and German Democratic Republic (East).	Ligustrum mosaic virus.
Livistona spp. (fan palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Mahoberberis spp. (plants of all species and horticultural varieties not designated as resistant to black stem rust in accordance with § 301.38–1 of this chapter).	All	*Puccinia graminis* Pers. (Black stem rust).
Mahoberberis spp. destined to an eradication state listed in § 301.38–2(a) of this chapter (plants of all species and horticultural varieties designated as resistant to black stem rust in accordance with §301.38–1 of this chapter).	All	*Puccinia graminis* Pers. (Black stem rust).
Mahoberberis spp. seed	All	*Puccinia graminis* Pers. (Black stem rust).
Mahonia spp. (mahonia) (plants of all species and horticultural varieties not designated as resistant to black stem rust in accordance with §301.38–1 of this chapter.	All	*Puccinia graminis* Pers. (Black stem rust).
Mahonia spp. (mahonia) destined to an eradication state listed in § 301.38–2(a) in this chapter (plants of all species and horticultural varieties designated as resistant to black stem rust in accordance with § 301.38–1 of this chapter).	All	*Puccinia graminis* Pers. (Black stem rust).
Mahonia spp. seed	All	*Puccinia graminis* Pers. (Black stem rust).
Malus spp. (apple, crabapple) not meeting the conditions for importation in § 319.37–5(a).	All	A diversity of diseases including but not limited to items 1, 2, 3, 6, 7, 8, and 23 listed in § 319.37–5(b)(2).
	Japan	*Valsa mali* Miyabe and Yamada ex. Id. Miura (Branch canker fungus).
Mangifera spp. (mango) seed	All except North and South America	*Cryptorhynchus mangiferae* F. (Mango weevil).
Manihot spp. (cassava)	All except Canada	A diversity of diseases, insects, and other pests including but not limited to: *Monophlebus tenuipes* (Border) (cassava mite); *Planococcus manihotis* Matile-Ferrero (cassava mealybug); *Xanthomonas manihotis* (Arthaud-Berthet) Starr (Bacterial blight); Cassava brown streak virus; Cassava latent virus; Cassava African mosaic virus; Cassava common mosaic virus.
Mascarena spp	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Morus spp. (mulberry)	People's Republic of China, Japan, India, and Union of Soviet Socialist Republics.	A diversity of diseases including but not limited to: Mulberry dwarf; Mulberry curly little leaf agent; Mulberry mosaic agent.
Nannorrhops spp. (mazaripalm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.

Prohibited article (except seeds unless specifically mentioned)	Foreign country(ies) or locality(ies) from which prohibited	Tree, plant, or fruit disease, or injurious insect, or other plant pest determined as existing in the places named and capable of being transported with the prohibited article
Oryza spp. (rice) (seeds are prohibited by § 319.55)	All	A diversity of diseases including but not limited to: Rice dwarf virus; Rice stripe virus; Rice yellow dwarf agent; Rice black-streaked dwarf virus; Rice tungro virus; Rice transitory yellowing virus; Rice orange leaf agent; Rice grassy stunt agent; Rice ragged stunt virus; Rice yellow mottle virus; *Melanomma glumarum* Miy.; *Oospora oryzetorum* Saac.; *Rhynchosporium oryzae* Hashioka & Yokogi; *Xanthomonas oryzae* (Uyeda & Ishiyama) Dowson.
Persea spp. (avocado) seed	Mexico, Central and South America	*Heilipus lauri* Boh. (Avocado weevil); *Stenoma catenifer* Wals. (Avocado seed moth); *Conotrachelus* spp.
Philadelphus spp. (mock orange)	Europe	Elm mottle virus.
Phoenix spp. (date)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Populus spp. (aspen, cottonwood, poplar)	Europe	*Aplanobacter populi* Ride (Canker).
Pritchardia spp	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Prunus spp. (almond, apricot, cherry, nectarine, peach, plum, prune) not meeting the conditions for importation in § 319.37–5(b).	All	A diversity of diseases including but not limited to items 1 and 8 through 17 listed in § 319.37–5(b)(2).
Pyrus spp. (pear) not meeting the conditions for importation in § 319.37–5(b).	All	A diversity of diseases including but not limited to items 1 through 6, 21, and 23 listed in § 319.37–5(b)(2).
Quercus spp. (oak)	Japan	*Stereum hugenes* Imazeki (White rot); a gall-forming rust.
Ribes nigrum (black currant)	Australia, Province of British Columbia in Canada, Europe, and New Zealand	Black currant reversion agent.
Rosa spp. (rose)	Australia, Italy, New Zealand, and Republic of South Africa.	Rose wilt virus.
Salix spp. (willow)	Great Britain, The Netherlands, Federal Republic of Germany (West), and German Democratic Republic (East).	*Erwinia salicis* (Day) Chester (Watermark disease).
Seeds of all kinds when in pulp	All except Canada	Fruit flies, or other injurious insects.
Solanum spp. (potato) (including seeds)	All	Andean potato latent virus, Andean potato mottle virus; Potato mop top virus; Dulcamara mottle virus; Tomato blackring virus; Tobacco rattle virus; Potato virus Y (tobacco veinal necrosis strain); Potato purple top wilt agent; Potato marginal flavescence agent; Potato purple top roll agent; Potato witches broom agent; Stolbur agent; Parastolbur agent; Potato leaf-let stunt agent; Potato spindle tuber viroid.
Sorbus spp. (mountain ash)	Federal Republic of Germany (West) and German Democratic Republic (East).	Mountain ash variegation virus.
People's Republic of China, Japan, Philippine Islands, Oceania, Australia, and New Zealand.		*Taphrina piri* Kusano (Leaf distortion fungus).
Syringa spp. (lilac)	Europe	Elm mottle virus.
Trachycarpus spp. (windmillpalm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Ulmus spp. (elm) (including seeds)	Europe	Elm mottle virus.
Veitchia spp	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Vitis spp. (grape)	All except Canada	A diversity of diseases including but not limited to: Arabis mosaic virus; Flavescence-doree agent; Raspberry ringspot virus; Hungarian chrome mosaic virus; Strawberry latent ringspot virus; *Xanthomonas ampelina* Panagopoulos (Bacterial blight); Grapevine fanleaf virus and its strains; Grapevine leaf roll virus and its strains; Tomato black ring virus; Artichoke Italian latent virus; Grapevine vein necrosis virus.
Zizania spp. (wild rice)	All	A diversity of diseases including but not limited to: Rice dwarf virus; Rice stripe virus; Rice yellow dwarf agent; Rice black-streaked dwarf virus; Rice tungro virus; Rice transitory yellowing virus; Rice orange leaf agent; Rice grassy stunt agent; Rice ragged stunt virus; Rice yellow mottle virus; *Melanomma glumarum* Miy.; *Oospora oryzetorum* Saac.; *Rhynchosporium oryzae* Hashioka & Yokogi; *Xanthomonas oryzae* (Uyeda & Ishiyama) Dowson.

Note.—The States listed below prohit the entry into such States of articles (except seeds, unless specifically mentioned) of the genera listed for each State:

California: *Planera* spp. (water elm, planer); *Ulmus* spp. (elm); *Zelkova* spp.; *Castanea* spp. (chestnut); *Castanopsis* spp. (chinquapin); *Pinus* spp. (pine).
Idaho: *Pinus* spp. (pine).
Massachusetts: *Ribes* spp. (currant, gooseberry) (including seeds).
Montana: *Pinus* spp. (pine).
Nevada: *Planera* spp. (water elm, planer); *Ulmus* spp. (elm); *Zelkova* spp.
New York: *Ribes* spp. (currant, gooseberry) (including seeds).
Oregon: *Planera* spp. (water elm, planer); *Ulmus* spp. (elm); *Zelkova* spp. *Castanea* spp. (chestnut); *Castanopsis* spp. (chinquapin); *Corylus* spp. (filbert, hazel, hazelnut, cobnut); *Pinus* spp. (pine).
Utah: *Pinus* spp. (pine).
Washington: *Corylus* spp. (filbert, hazel, hazelnut, cobnut).
West Virginia: *Ribes* spp. (currant, gooseberry) (including seeds).
Wisconsin: *Pinus* spp. (pine) (5-leaved); *Ribes* spp. (currant, gooseberry) (including seeds).

(b) The following listed "articles" are prohibited from all foreign countries and localities except Canada:

(1) *Rhododendron* spp. (rhododendron and azalea) or other genera or species of similar slow growth habit, other than artificially dwarfed trees or shrubs—

(i) Exceeding 3 years of age if grown from seeds or cuttings; or

(ii) Exceeding 2 years of age after severance from the parent plant if produced by layers; or

(iii) Having more than 3 years' growth from the bud or graft if produced by budding or grafting.

(2) Any naturally dwarf or miniature form of tree or shrub exceeding 12 inches (approximately 305 millimeters) in height from the soil line.

(3) Herbaceous perennials imported in the form of root crowns or clumps exceeding 102 millimeters (approximately 4 inches) in diameter.

(4) Stem cuttings (without leaves, roots, sprouts, or branches) exceeding 102 millimeters (approximately 4 inches) in diameter or exceeding 1.83 meters (approximately 6 feet) in length.

(5) Cacti cuttings (without roots or branches) exceeding 153 millimeters

(approximately 6 inches) in diameter or exceeding 1.22 meters (approximately 4 feet) in length.

(6) Plants (other than stem cuttings, cacti cuttings, and artificially dwarfed plants) exceeding 305 millimeters (approximately 12 inches) in height from soil line to terminal growing point and whose growth habits simulate the woody character of trees and shrubs, including but not limited to cacti, cycads, yuccas, and dracaenas.

(7) Any tree or shrub or a type not listed above, other than an artificially dwarf tree or shrub, and—

(i) Exceeding 2 years of age if grown from seeds or cuttings; or

(ii) Exceeding 1 year of age after severance from the parent plant if produced by layers; or

(iii) Having more than 2 years' growth from the bud or graft if produced by budding or grafting.

(c) Any article listed as a prohibited article in paragraphs (a) or (b) of this section may be imported or offered for entry into the United States if:

(1) Imported by the United States Department of Agriculture for experimental or scientific purposes; and

(2) Imported under conditions found by the Deputy Administrator and specified on the permit to be adequate to prevent the introduction into the United States of tree, plant, or fruit diseases, or injurious insects, or other plant pests, i.e., conditions of treatment, processing, growing, shipment, disposal.

§ 319.37-3 Permits.

(a) The restricted articles (other than articles for food, analytical, medicinal, or manufacturing purposes) in any of the following categories may be imported or offered for importation into the United States only after issuance of a written permit by the Plant Protection and Quarantine Programs:

(1) Articles subject to treatment and other requirements of § 319.37-6;

(2) Articles subject to the postentry quarantine conditions of § 319.37-7;

(3) Bulbs of *Allium sativum L.* (garlic);

(4) Articles of *Cocos nucifera* (coconut); and articles (except seeds) of *Chrysanthemum* spp. (chrysanthemum) and *Dianthus* spp. (carnation, sweet William) from any country or locality except Canada;

(5) Lots of 13 or more articles (other than seeds, bulbs, sterile cultures of orchid plants) from any country or locality except Canada;

(6) Seeds of trees or shrubs from any country or locality except Canada;

(7) Articles (except seeds) of *Fragaria* spp. (strawberry), *Malus* spp. (apple, crabapple), *Pyrus* spp. (pear), *Prunus* spp. (almond, apricot, cherry, nectarine, peach, plum, prune), *Cydonia* spp. (quince), *Chaenomeles* spp. (flowering quince), and *Rubus* spp. (cloudberry, blackberry, boysenberry, dewberry, loganberry, raspberry), from Canada;

(8) Woody plants, shrubs, and trees (except seeds) grown out-of-doors in Prince Edward Island, Nova Scotia, the counties of Albert and Westmoreland in New Brunswick, the city of Richmond on Lulu Island in British Columbia, and Vancouver Island in British Columbia;

(9) Articles (except seeds) of *Castanea* spp. (chestnut) or *Castanopsis* spp. (chinquapin) destined to California or Oregon;

(10) Articles (except seeds) of *Pinus* spp. (pine), (5-leaved) destined to Wisconsin;

(11) Articles of *Ribes* spp. (currant, gooseberry), (including seeds) destined to Massachusetts, New York, West Virginia, or Wisconsin;

(12) Articles (except seeds) of *Planera* spp. (water elm, planer) or *Zelkova* spp. from Europe, Canada, St. Pierre, or Miquelon and destined to California, Nevada, or Oregon;

(13) Seeds of *Prunus* spp. (almond, apricot, cherry, nectarine, peach, plum, prune) from Canada and destined to Colorado, Michigan, New York, Washington, or West Virginia;

(14) Articles (except seeds) of *Vitis* spp. (grape) from Canada and destined to California, New York, Ohio, Oregon, and Washington;

(15) Articles (except seeds) of *Corylus* spp. (filbert, hazel, hazelnut, cobnut) from provinces east of Manitoba in Canada and destined to Oregon or Washington;

(16) Articles (except seeds) of *Pinus* spp. (pine) from Canada and destined to California, Idaho, Montana, Oregon, or Utah; and

(17) Articles (except seeds) of *Ulmus* spp. (elm) from Canada and destined to California, Nevada, or Oregon.

(b) Any restricted article not designated in paragraph (a) of this section may be imported or offered for importation into the United States only after issuance of an oral permit for importation issued by an inspector at the port of entry.

(c) An application for a written permit should be submitted to the Plant Protection and Quarantine Programs (Permit Unit, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, Hyattsville, MD 20782) at least 30 days prior to arrival of the article at the port of entry. The completed application shall include the following information:[3]

(1) Name, address, and telephone number of the importer;

(2) Approximate quantity and kinds (botanical designations) of articles intended to be imported;

(3) Country(ies) or locality(ies) where grown;

(4) Intended United States port of entry;

(5) Means of transportation, e.g., mail, airmail, express, air express, freight, airfreight, or baggage; and

(6) Expected date of arrival.

(d) After receipt and review of the application by Plant Protection and Quarantine Programs, a written permit indicating the applicable conditions for importation under this subpart shall be issued for the importation of articles described in the application if such articles under the conditions specified in the application appear to be eligible to be imported into the United States. Even though a written permit has been issued for the importation of an article, such article may be imported only if all applicable requirements of this Subpart are met and only if an inspector at the port of entry determines that no emergency measures pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150ee) are necessary with respect to such article.[4]

(e) An oral permit for importation of an article shall be issued at a port of entry by an inspector only if all applicable requirements of this Subpart are met, such article is eligible to be imported under an oral permit, and an inspector at the port of entry determines that no emergency measures pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150ee) are necessary with respect to such article.[4]

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[3] Application forms are available without charge from the Permit Unit, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, Hyattsville, MD 20782, or local offices which are listed in telephone directories.

[4] Section 105 of the Federal Plant Pest Act (7 U.S.C. 150ee) provides, among other things, that the Secretary of Agriculture may, whenever he deems it necessary as an emergency measure to order to prevent the dissemination of any plant pest new to or not theretofore known to be widely prevalent or distributed within and throughout the United States, seize, quarantine, treat, apply other remedial measures to, destroy, or dispose of, in such manner as he deems appropriate, subject to provisions in section 105(b) and (c) of the Act (7 U.S.C. 150ee) (b) and (c), any product or article, including any articles subject to this Subpart, which is moving into or through the United States, and which he has reason to believe was infested or infected by or contains any plant pest at the time of such movement. Section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Act (7 U.S.C. 150dd, 150ff) also authorizes emergency measures against prohibited and restricted articles which are not in compliance with the provisions of this subpart.

(f) Any permit which has been issued may be withdrawn by an inspector or the Deputy Administrator if he determines that the holder thereof has not complied with any condition for the use of the document. The reasons for the withdrawal shall be confirmed in writing as promptly as circumstances permit. Any person whose permit has been withdrawn may appeal the decision in writing to the Deputy Administrator within ten (10) days after receiving the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the person relies to show that the permit was wrongfully withdrawn. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for his decision as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict.

§ 319.37-4 Inspection and phytosanitary certificates of inspection.

(a) Any restricted article grown in a country maintaining an official system of inspection for the purpose of determining whether such article is free from injurious plant diseases, injurious insect pests, and other plant pests shall be accompanied by a phytosanitary certificate of inspection from the plant protection service of such country at the time of importation or offer for importation into the United States.

(b) Any restricted article accompanied by a valid phytosanitary certificate of inspection is subject to inspection by an inspector at the time of importation into the United States for the purpose of determining whether such article is free of injurious plant diseases, injurious insect pests, and other plant pests, and whether such article is otherwise eligible to be imported into the United States.

(c) Any restricted article grown in a country not maintaining an official system of inspection for the purpose of determining whether such article is free from injurious plant diseases, injurious insect pests, and other plant pests shall be inspected by an inspector at the time of importation into the United States for the purpose of determining whether such article is free of such diseases and pests and whether such article is otherwise eligible to be imported into the United States.

§ 319.37-5 Special foreign inspection and certification requirements.

(a) Any restricted article (except seeds; unrooted cuttings; and articles solely for food, analytical, or manufacturing purposes) from a country listed below, at the time of importation or offer for importation into the United States shall be accompanied by a phytosanitary certificate of inspection which shall contain an accurate additional declaration that such article was grown on land which has been sampled and microscopically inspected by the plant protection service of the country in which grown within 12 months preceding issuance of the certificate and found free from potato cyst nematodes, *Globodera rostochiensis* (Woll.) Mulvey and Stone and *G. pallida* (Stone) Mulvey and Stone: Algeria, Argentina, Austria, Azores, Belgium, Bolivia, Canada (only that portion comprising Newfoundland, and the Land District of South Saanich on Vancouver Island in British Colombia), Channel Islands, Chile, Columbia, Czechoslovakia, Denmark (including Faeroe Islands), Ecuador, Federal Republic of Germany (West), Finland, France, German Democratic Republic (East), Great Britain, Greece, Guernsey, Iceland, India, Ireland, Israel, Italy, Japan, Jersey, Lebanon, Luxembourg, Mexico, The Netherlands, New Zealand, Northern Ireland, Norway, Panama, Peru, Poland, Portugal, South Africa, Spain (including Canary Islands), Sweden, Switzerland, Union of Soviet Socialist Republics, Venezuela, and Yugoslavia.

(b)(1) Any article (except seeds) of *Chaenomeles* spp. (flowering quince); *Cydonia* spp. (quince); *Malus* spp. (apple, crabapple); *Prunus* spp. (almond, apricot, cherry, nectarine, peach, plum, prune); and *Pyrus* spp. (pear), at the time of importation or offer for importation into the United States, shall be accompanied by a phytosanitary certificate of inspection which shall contain an accurate additional declaration that such article was grown in a nursery in Belgium, Canada, France, Federal Republic of Germany (West), The Netherlands, or Great Britain, and found by the plant protection service of the country in which grown to be free of injurious plant diseases (i.e., for *Chaenomeles* items 1 and 21 listed in paragraph (b)(2) of this section, for *Cydonia* items 1, 18, 19, 20, and 21 listed in paragraph (b)(2) of this section; for *Malus* items 1, 3, 6, 7, 8, and 23 listed in paragraph (b)(2) of this section; for *Prunus* items 1 and 9 through 17 listed in paragraph (b)(2) of this section; for *Pyrus* items 1, 3, 4, 5, 21, and 23 listed in paragraph (b)(2) of this section) based on the testing of parent stock by visual examination and indexing, and that such article was grown in a nursery free of any such specified plant diseases.[5]

(2) List of diseases.

(i) *Monilinia fructigena* (Aderh. & Ruhl.) Honey (Brown rot of fruit).

(ii) *Guignardia piricola* (Nose) Yamomoto (Leaf, branch & fruit disease).

(iii) Apple proliferation agent.

(iv) Pear blister canker virus.

(v) Pear bud drop virus.

(vi) *Diaporthe mali* Bres. (Leaf, branch & fruit fungus).

(vii) Apple green crinkle virus.

(viii) Apple chat fruit virus.

(ix) Plum pox (=Sharka) virus.

(x) Cherry leaf roll virus.

(xi) Cherry rusty mottle (European) agent.

(xii) Apricot chlorotic leaf roll.

(xiii) Plum bark split virus.

(xiv) Arabis mosaic virus and its strains.

(xv) Raspberry ringspot virus and its strains.

(xvi) Tomato blackring virus and its strains.

(xvii) Strawberry latent ringspot virus and its strains.

(xviii) Quince sooty ringspot agent.

(xix) Quince yellow blotch agent.

(xx) Quince stunt agent.

(xxi) *Gymnosporangium asiaticum* Miyabe ex. Yamada (Rust).

(xxii) *Valsa mali* Miyabe and Yamada ex. Miura (Branch canker fungus).

(xxiii) Apple ringspot virus.

(c) Any article (except seeds) of *Chrysanthemum* spp. (chrysanthemum) from Great Britain shall at the time of importation or offer for importation into the United States be accompanied by a phytosanitary certificate of inspection containing an accurate additional declaration that such article was grown in a greenhouse nursery in Great Britain and found by the plant protection service of Great Britain to be free of white rust disease (caused by the rust fungus, *Puccinia horiana* P. Henn.)

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[5] In all of the listed countries, indexing of parent stock for species of *Prunus* not immune to plum pox (i.e., other than *Prunus avium, P. cerasus, P. mahaleb, P. padus, P. serotina, P. serrula, P. serrulata, P. subhirtella, P. laurocerasus, P. virginiana, P. effusa, P. sargentii, P. yedoensis)* is currently done only at government operated nurseries (research stations). In France all indexing of parent stock for all *Chaenomeles* spp., *Cydonia* spp., *Malus* spp., *Prunus* spp., and *Pyrus* spp. is currently done only at government operated nurseries (research stations).

based on visual examination of parent stock and that such article was grown in a greenhouse nursery free of such plant disease.

(d) Any article (except seeds) of *Dianthus* spp. (carnation, sweet William) from Great Britain shall be grown under postentry quarantine conditions specified in § 319.37–7(c) unless at the time of importation or offer for entry into the United States the phytosanitary certificate of inspection accompanying such article contains an accurate additional declaration that such article was grown in a greenhouse nursery in Great Britain and found by the plant protection service of Great Britain to be free of injurious plant diseases caused by *Phialophora cinerescoens* (Wr.) U. Beyma (*Verticillium cinerescens* Wr.) and carnation etched ring, "streak" and "fleck" viruses, based on visual examination and indexing of the parent stock and that such article was grown in a greenhouse nursery free of such plant diseases.

(e) Any article (except seeds) of *Rubus* spp. (cloudberry, blackberry, boysenberry, dewberry, loganberry, raspberry) from Ontario, Canada, shall be grown under postentry quarantine conditions specified in § 319.37–7(b) unless at the time of importation or offer for importation into the United States the phytosanitary certificate of inspection accompanying such article contains an accurate additional declaration that such article was found by the plant protection service of Canada to be free of rubus stunt virus based on visual examination and indexing of the parent stock.[6]

(f) Any article of *Cocos nucifera* (coconut) at the time of importation or offer for importation into the United States shall be accompanied by a phytosanitary certificate of inspection which shall contain an accurate additional declaration that such article was found by the plant protection service of Jamaica to be of Malayan dwarf variety (which is resistant to lethal yellowing disease) based on the visual examination of the parent stock.

§ 319.37–6 Specific treatment and other requirements.

(a) Seeds of *Hibiscus* spp. (hibiscus, rosemallow) and seeds of *Abelmoschus* spp. (okra), from any foreign country or locality, at the time of importation into the United States, shall be treated for possible infestation with *Pectinophora gossypiella* (pink bollworm) in accordance with the applicable provisions of the Plant Protection and Quarantine Treatment Manual.[7]

(b) Seeds of *Lathyrus* spp. (sweet pea, peavine); *Lens* spp. (lentil); and *Vicia* spp. (fava bean, vetch) from countries and localities other than those in North America and Central America, at the time of importation into the United States, shall be treated for possible infestation with insects of the family Bruchidae in accordance with the applicable provisions of the PPQ Treatment Manual.[7]

(c) Because of possible infestation with *Aleurocanthus woglumi* Ashby (citrus blackfly), any restricted article (other than seeds) of genera and species listed below from any country or locality (other than Canada, Europe, or any other country or locality bordering on the Mediterranean Sea) shall be (1) defoliated before arrival at a port of entry in the United States; or (2) treated in accordance with the applicable provisions of the PPQ Treatment Manual, at the time of importation into the United States.

Achras (see *Manilkara*)
Anacardium (cashew, marañon)
Annona (cherimoya, soursop, custard apple, sweetsop)
Ardisia
Bouvardia
Bumelia
Bursera
Buxus (boxwood)
Capsicum (pepper)
Cardiospermum (heartseed)
Cedrela
Cestrum
Cnidoscolus (tread-softly)
Coffea (coffee)
Crataegus (hawthorne)
Cydonia (quince)
Diospyros (persimmon)
Duranta (skyflower)
Eugenia (malay apple, Surinam Cherry)
Fraxinus (ash)
Hibiscus (hibiscus, rosemallow)
Hura (sandbox tree)
Ixora (ixora)
Jatropha (nettlespurge)
Lagerstroemia (crepe myrtle)
Magnolia (magnolia)
Mammea (mamey apple)
Mangifera (mango)
manilkara (Achras)(sapodilla)
Melia (chinaberry)
Myroxylon (balm tree)
Myrtus (myrtle)
Persea (avocado)
Plumeria (plumeria)
Populus (poplar, cottonwood, aspen)
Pouteria (Calocarpum)(sapote, mamey sapote)
Psidium (guava)
Punica (pomegranate)
Pyrus (pear)
Sapindus (soapberry)
Solandra (chalicevine)
Spondias (mombin, jobo plum, hog plum)
Strelitzia (bird of paradise)
Tabebuia (trumpet tree)
Vitis (grape)
Zingiber (ginger)

(d) Seeds of alfalfa and related plants (i.e., *Medicago falcata, M. gaetula, M. glutinosa, M. media, M. sativa)* from Europe, at the time of importation into the United States shall be treated for possible infection with *Verticillium alboatrum* by dusting with Arasan 50 (50 percent Thiram) at a rate of 6 ounces (approximately 226.8 grams) per 100 pounds (approximately 45.36 kilograms) of seeds, or by treating with a slurry of Arasan 50 Red at a rate of 8 ounces (approximately 226.8 grams) per pint (approximately 473.12 cubic centimeters) of water per 100 pounds (approximately 45.36 kilograms) of seeds.

(e) Seeds of *Glycine* spp. (soybean); *Dolichos* spp. (lablab); *Pachyrhizus* spp. (yam bean root, jicama); *Phaseolus* spp. (bean), *Pueraria* spp. (Chinese yam, kudzu bean, kudzu vine); and *Vigna* spp. (cowpea, catjang, asparagus bean, black-eyed pea, moth bean, azuki bean) from Africa, Australia, Burma, Cambodia, China, Costa Rica, India, Indonesia, Japan, Korea, Laos, Malaysia, Nepal, New Caledonia, Papua New Guinea, Philippines, Sri Lanka (Ceylon), Taiwan, Thailand, Union of Soviet Socialist Republics, Venezuela, Vietnam, or the West Indies, at the time of importation into the United States shall be treated for possible infection with *Phakopsora pachyrhizi* Syd. (soybean rust) by dusting with Patterson's Multipurpose Fungicide (a Zineb-Captan formulation) at the rate of 1.05 ounces (approximately 29.77 grams) actual Zineb per bushel (approximately 35.24 liters) or by treating with a slurry of Patterson's Multipurpose Fungicide at the rate of 0.74 ounces (approximately 20.98 grams) actual Zineb per bushel (approximately 35.24 liters) of seeds.

§ 319.37–7 Postentry quarantine.

(a) The following restricted articles from the designated countries and localities (1) may be imported or offered for importation into the United States only after a completed postentry quarantine agreement, as provided in paragraph (c) of this section, has been submitted to the Plant Protection and Quarantine Programs and (2) shall be grown under postentry quarantine conditions specified in paragraph (c) of this section:

[6] Such testing is done under the Raspberry Plant Certification Program of Ontario, Canada.

[7] The PPQ Treatment Manual was incorporated by reference on June 15, 1978, and is available upon request to the Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, and is on file at the Federal Register.

Restricted article (excluding seeds)	Foreign country(ies) or locality(ies) from which imported
Acacia spp. (acacia)	All except Canada, Australia, and Oceania.
Acer spp. (maple)	All except Belgium, Canada, Great Britain, France, Federal Republic of Germany (West), German Democratic Republic (East), and Japan.
Actinidia spp. (chinese gooseberry, kiwi)	All except Canada, Australia, Japan, New Zealand, and Taiwan.
Aesculus spp. (horse chestnut)	All except Canada, Czechoslovakia, Great Britain, Federal Republic of Germany (West), and German Democratic Republic (East).
Althaea spp. (althaea, hollyhock)	All except Canada, India, and Africa.
Anemone spp. (anemone, windflower)	All except Canada, Federal Republic of Germany (West), and German Democratic Republic (East).
Berberis spp. (barberry) destined to any State except the eradication States listed in § 301.38–2a of this chapter (plants of all species and horticultural varieties designated as resistant to black stem rust in accordance with § 301.38–1 of this chapter).	All.
Bromeliads spp. (bromeliads) destined to Hawaii	All.
Chaenomeles spp. (flowering quince) meeting the conditions for importation in § 319.37–5(b).	Countries listed in § 319.37–5(b) except Canada.
Chrysanthemum spp. (chrysanthemum)	All except Argentina, Brazil, Canada, Europe, Hong Kong, Japan, Korea, Malaysia, New Zealand, People's Republic of China and Republic of South Africa.
Crataegus monogyna Jacq. (hawthorne, thornapple, red haw)	Europe.
Cydonia spp. (quince) meeting the conditions for importation in § 319.37–5(b).	Countries listed in § 319.37–5(b) except Canada.
Datura	All except Canada, Colombia and India.
Dianthus spp. (carnation, sweet William)	Great Britain, unless exempted from postentry quarantine conditions pursuant to § 319.37–5(d), and all other countries and localities except Canada.
Eucalyptus spp. (eucalyptus)	All except Canada, Argentina, Sri Lanka (Ceylon), Uruguay, and Europe.
Euonymus spp. (euonymus)	All except Canada, Federal Republic of Germany (West), and German Democratic Republic (East).
Fragaria spp. (strawberry)	All except Australia, Austria, Canada, Czechoslovakia, France, Great Britain, Italy, Japan, Lebanon, The Netherlands, New Zealand, Northern Ireland, Republic of Ireland, Switzerland, and Union of Soviet Socialist Republics.
Fraxinus spp. (ash)	All except Canada and Europe.
Fruit and nut articles listed by common name in paragraph (b) of this section.	All except Canada.
Gladiolus spp. (gladiolus)	All except Canada, Africa, Italy, Malta, and Portugal.
Hibiscus spp. (hibiscus, rosemallow)	All except Canada, Trinidad and Tobago, India, and Africa.
Humulus spp. (hops)	All.
Hydrangea spp. (hydrangea)	All except Canada and Japan.
Jasminum spp. (jasmine)	All except Belgium, Canada, Great Britain, Federal Republic of Germany (West), and German Democratic Republic (East).
Ligustrum spp. (privet)	All except Canada, Federal Republic of Germany (West), and German Democratic Republic (East).
Mahoberberis spp. destined to any State except the eradication States listed in § 301.38–2a of this chapter (plants of all species and horticultural varieties designated as resistant to black stem rust in accordance with § 301.38–1 of this chapter).	All.
Mahonia spp. (mahonia) destined to any State except the eradication States listed in § 301.38–2a of this chapter (plants of all species and horticultural varieties designated as resistant to black stem rust in accordance with § 301.38–1 of this chapter).	All.
Malus spp. (apple, crabapple) meeting the conditions for importation in § 319.37–5(b).	Countries listed in § 319.37–5(b) except Canada.
Mespilus germanica L.	Countries listed in § 319.37–5(b) except Canada.
Morus spp. (mulberry)	All except Canada, People's Republic of China, Japan, India, and Union of Soviet Socialist Republic.
Nut and fruit articles (see fruit and nut articles)	
Passiflora spp. (passion fruit)	All except Canada.
Philadelphus spp. (mock orange)	All except Canada and Europe.
Populus spp. (aspen, cottonwood, poplar)	All except Canada and Europe.
Prunus spp. (almond, apricot, cherry, nectarine, peach, plum, prune) meeting the conditions for importation in § 319.37–5(b).	Countries listed in § 319.37–5(b) except Canada.
Pyrus spp. (pear) meeting the conditions for importation in § 319.37–5(b)	Countries listed in § 319.37–5(b) except Canada.
Quercus spp. (oak)	All except Canada and Japan.
Ribes nigrum spp. (black currant)	All except Australia, Canada, Europe, and New Zealand.
Rosa spp. (rose)	All except Australia, Canada, Italy, New Zealand, and Republic of South Africa.
Rubus spp. (cloudberry, blackberry, boysenberry, dewberry, loganberry, raspberry).	All unless exempted from postentry quarantine conditions pursuant to § 319.37–5(e).
Salix spp. (willow)	Europe except Great Britain, The Netherlands, the Federal Republic of Germany (West), and German Democratic Republic (East).
Sorbus spp. (mountain ash)	All except Australia, Canada, Federal Republic of Germany (West), German Democratic Republic (East), Japan, New Zealand, People's Republic of China, Philippine Islands, and Oceania.
Syringa spp. (lilac)	All except Canada and Europe.
Ulmus spp. (elm)	All except Canada and Europe.

NOTE.—California requires trees, plants, and shrubs of *Prunus* spp (almond, apricot, cherry, nectarine, peach, plum, prune) and plants of *Fragaria* spp. (strawberry) to be grown under postentry quarantine as a condition of entry into such State.

(b) *Fruit and Nut Articles* (common names are listed after scientific names).

Achras—(Synonym for *Manilkara*)
Annona—custard apple, cherimoya, sweetsop, sugarapple, soursop, bullock's heart, alligator apple, suncoya, ilama, guanabana, pond apple
Anacardium—cashew
Artocarpus—breadfruit, jackfruit
Averrhoa—carambola
Blighia—akee
Bouea—kundangan
Calocarpum—sapote
Carica—papaya, pawpaw
Carissa—natal plum
Carya—hickory, pecan
Castanea—chestnut
Ceratonia—St. Johnsbread
Chrysobalanus—coco plum
Chrysophyllum—starapple
Coccoloba—sea-grape, pigeon plum
Corylus—filbert, hazel, hazelnut, cobnut
Crataegus—hawthorne
Diospyros—persimmon, kaki, mabola
Durio—durian
Eriobotrya—loquat, Japanese medlar, Japanese plum
Euphoria—longan
Eugenia—roseapple, Malayapple, Curacaoapple
Feijoa—feijoa, pineapple guava
Ficus—fig
Garcinia—mangosteen, gourka
Juglans—walnut, butternut, heartnut, regranut, buartnut
Lansium—langsat
Litchi—lychee, leechee
Macadamia—macadamia nut, queensland nut
Malpighia—Barbados cherry
Mammea—mammeeapple, marney
Mangifera—mango
Manilkara—sapodilla

Melicoccus—honeyberry, mamoncilla, spanish lime, genip
Nephelium—rambutan, pulasan
Olea—olive
Persea—avocado, alligator pear
Phoenix—date
Phyllanthus—otaheite-gooseberry
Pistacia—pistachio
Pouteria—Lucuma
Psidium—guava, guayala
Punica—pomegranate, granada
Pyronia—quinpear
Rhodomyrtus—hill gooseberry, rose myrtle
Ribes (other than *Ribes nigrum*)—red currant, white currant, gooseberry
Spondias—yellow mombin, red mombin, hog plum
Syzygium—Malayapple, rose apple, java plum
Theobroma—cacao
Vaccinium—blueberry, cranberry
Ziziphus—jujube

(c) Any restricted article required to be grown under postentry quarantine conditions shall be grown under the supervision and control of a person who has signed a postentry quarantine agreement to comply with the following conditions for the period of time specified below:

(1) To grow such article or increase therefrom only on specified premises;

(2) To permit an inspector to have access to the specified premises for inspection of such article during regular business hours;

(3) To keep the article and any increase therefrom identified with a label showing the name of the article, port accession number, and date of importation;

(4) To keep the article separated from any domestic plant or plant product of the same genus by no less than 3 meters (approximately 10 feet); and from other imported plant or plant products by the same distance;

(5) To allow or apply remedial measures (including destruction) determined by an inspector to be necessary to prevent the spread of an injurious plant disease, injurious insect pest, or othr plant pest; and

(6) To notify Plant Protection and Quarantine Programs if any abnormality of the article is found or if the article dies. The above conditions apply to any such article for a period of 2 years after importation, except that they apply to an article of *Dianthus* spp. (carnation, sweet William) for 1 year after importation and to an article of *Chrysanthemum* spp. (chrysanthemum) for 6 months after importation.

(d) A completed postentry quarantine agreement shall accompany the application for a written permit for an article required to be grown under postentry quarantine conditions.[4]

§ 319.37-8 Growing media.

(a) Any restricted article at the time of importation or offer for importation into the United States shall be free of sand, soil, earth, and other growing media, except as provided in paragraphs (b), (c), or (d) of this section.

(b) A restricted article from Canada other than from Newfoundland or from the Land District of South Saanich on Vancouver Island in British Columbia may be imported in any growing medium.

(c) A restricted article growing solely in agar may be imported in such growing medium.

(d) A restricted article which is a herbaceous plant or shrub may be imported in peat, sphagnum moss, or vermiculite growing media, or in synthetic growing media or synthetic horticultural foams, i.e., plastic particles, glass wool, organic and inorganic fibers, polyurethane, polystyrene, polyethylene, phenol formaldehyde, ureaformaldehyde.

(1) If accompanied by a phytosanitary certificate of inspection containing an accurate additional declaration from the plant protection service of the country in which grown that the article was:

(i) Grown throughout its growing period only in a greenhouse with insect-proof screening on all vents and with automatic closing doors;

(ii) Grown in a greenhouse unit solely used for articles grown under all the criteria specified in this paragraph (d);

(iii) Grown in a greenhouse free of sand, soil, or earth;

(iv) Grown in a greenhouse where strict sanitary procedures are always practices, i.e., cleaning and disinfection of floors, benches and tools, the application of measures to protect against any injurious plant diseases, injurious insect pests, and other plant pests;

(v) Stored only in areas found by an official of the plant protection service of the country where grown to be free of injurious plant diseases, injurious insect pests, and other plant pests;

(vi) Shipped in containers found by such an official to be free of injurious plant diseases, injurious insect pests, and other plant pests; and

(vii) Inspected and found by such an official to have been grown, stored, packaged and shipped solely under conditions necessary to assure the absence of injurious plant diseases, injurious insect pests, and other plant pests; and

(2) If the accompanying phytosanitary certificate of inspection is endorsed by a PPQ inspector representing a finding that the conditions listed above are being met.

§ 319.37-9 Approved packing material.

Any restricted article at the time of importation or offer for importation into the United States shall not be packed in a packing material unless such packing material is free from sand, soil, or earth (except for sand, soil, or earth designated below); has not been used previously as packing material or otherwise; is not intermixed with other approved packing material; and is listed below:

Buckwheat hulls.
Coral sand from Bermuda, if the article packed in such sand is accompanied by a valid phytosanitary certificate of inspection containing an accurate additional declaration from the plant protection service of Bermuda that such sand was free from soil.
Excelsior.
Exfoliated vermiculite.
Ground cork.
Ground peat.
Ground rubber.
Paper.
Polymer stabilized cellulose.
Quarry gravel.
Sawdust.
Shavings—wood or cork.
Sphagnum moss.
Subsoil from Ryukyu Islands, Japan (only for lily bulbs accompanied by a phytosanitary certificate of inspection containing an accurate additional declaration from the plant protection service of Japan that such subsoil was dug from at least 2 feet below the soil surface, was sifted and dried, and was stored in isolation from injurious plant diseases, injurious insect pests, and other plant pests).
Vegetable fiber when free of pulp, including coconut fiber and Osmunda fiber, but excluding sugarcane fiber and cotton fiber.

§ 319.37-10 Marking and identity.

(a) Any restricted article for importation other than by mail, at the time of importation or offer for importation into the United States shall plainly and correctly bear on the outer container (if in a container) or the restricted article (if not in a container) the following information:

(1) General nature and quantity of the contents,

(2) Country and locality where grown,

(3) Name and address of shipper, owner, or person shipping or forwarding the article,

[4] Postentry quarantine agreement forms are available without charge from the Permit Unit, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, MD 20782, or local offices of the Plant Protection and Quarantine Programs which are listed in the telephone directories.

(4) Name and address of consignee,
(5) Identifying shipper's mark and number, and
(6) Number of written permit authorizing the importation if one was issued.

(b) Any restricted article for importation by mail shall be plainly and correctly addressed and mailed to the Plant Protection and Quarantine Programs at a port of entry listed in § 319.37–14, shall be accompanied by a separate sheet of paper within the package plainly and correctly bearing the name, address, and telephone number of the intended recipient, and shall plainly and correctly bear on the outer container the following information:
(1) General nature and quantity of the contents,
(2) Country and locality where grown,
(3) Name and address of shipper, owner, or person shipping or forwarding the article, and
(4) Number of written permit authorizing the importation, if one was issued.

(c) Any restricted article for importation (by mail or otherwise), at the time of importation or offer for importation into the United States shall be accompanied by an invoice or packing list indicating the contents of the shipment.

§ 319.37–11 Arrival notification.

Promptly upon arrival of any restricted article at a port of entry, the importer shall notify the Plant Protection and Quarantine Programs of the arrival by such means as a manifest, Customs entry document, commercial invoice, waybill, a broker's document, or a notice form provided for that purpose.

§ 319.37–12 Prohibited articles accompanying restricted articles.

A restricted article for importation into the United States shall not be packed in the same container as an article prohibited importation into the United States by this part or Part 321.

§ 319.37–13 Treatment and costs and charges for inspection and treatment.

The services of the inspector during regularly assigned hours of duty and at the usual places of duty shall be furnished without cost to the importer.* No charge will be made to the importer for Government owned or controlled special inspection facilities and equipment used in treatment, but the inspector may require the importer to furnish any special labor, chemicals, packing materials, or other supplies required in handling an importation under the regulations in this subpart. The Plant Protection and Quarantine Programs will not be responsible for any costs or charges, other than those indicated in this section. Any treatment performed in the United States on a restricted article shall be performed by an inspector or under an inspector's supervision at a government-operated special inspection facility, except that an importer may have such treatment performed at a nongovernmental facility if the treatment is performed at non-government expense under the supervision of an inspector and in accordance with any applicable treatment requirements of this subpart and in accordance with any treatment required by an inspector as an emergency measure in order to prevent the dissemination of any injurious plant disease, injurious insect pest, or other plant pest, new to or not theretofore known to be widely prevalent or distributed within and throughout the United States. However, treatment may be performed at a nongovernmental facility only in cases of unavailability of government facilities and only if, in the judgment of an inspector, such articles can be transported to such nongovernmental facility without the risk of introduction into the United States of injurious plant diseases, injurious insect pests, or other plant pests.

§ 319.37–14 Ports of entry.

(a) Any restricted article required to be imported under a written permit pursuant to paragraphs (a)(1), (2), (3), (4), (5), (6), or (8) of § 319.37–3 of this subpart, shall be imported or offered for importation only at a port of entry designated by an asterisk in paragraph (b) of this section; any other restricted article shall be imported or offered for importation at any port of entry listed in paragraph (b) of this section. Any restricted article from Canada and not required to be imported under a written permit pursuant to paragraphs (a)(1), (2), (3), (4), (5), (6), or (8) of § 319.37–3 of this subpart may be imported at any port of entry listed in paragraph (b) of this section, or at any Customs designated port of entry on the United States-Canada border (Customs designated ports of entry are listed in 19 CFR Part 101).

(b) List of ports of entry

Ports with special inspection and treatment facilities (plant inspection stations) are indicated by an asterisk (*).

Alabama

Mobile—Federal Building, Room 147, Corner St. Louis and St. Joseph Streets, P.O. Box 1413, Mobile, AL 36601.

Alaska

Anchorage—Annex P.O. Box 6191, International Airport, Anchorage, AK 99502.

Arizona

*Nogales—202 Border Inspection Station, 100 Terrace Avenue, Nogales, AZ 85621.
Phoenix—Sky Harbor Airport, 3300 Sky Harbor Boulevard, Phoenix, AZ 85034.
San Luis—U.S. Border Station, P.O. Box 37, San Luis, AZ 85349.
Tucson—Tucson International Airport, Tucson, AZ 85706.

California

Calexico—Federal Inspection Building, Room 223, 200 First Street, P.O. Box 660, Calexico, CA 92231.
*Los Angeles—9650 LaCienega Boulevard, Building D North, Inglewood, CA 90301.
(Airport)—World Way Center Post Office, International Arrivals Area, Satellite 2, P.O. Box 90429, Los Angeles International Airport, Los Angeles, CA 90009.
*San Diego—U.S. Border Station, P.O. Box 431, San Ysidro, CA 92073.
(Airport)—San Diego International Airport, San Diego, CA 92103.
*San Francisco—San Francisco International Airport, P.O. Box 8028, Airport Station, San Francisco, CA 94128.
101 Agriculture Building, Embarcadero at Mission Street, P.O. Box 7073, San Francisco, CA 94119.
*San Pedro—(See Los Angeles).
Travis AFB—P.O. Box 1448, Travis Air Force Base, Fairfield, CA 94535.

Colorado

Denver—Suite 102, 7100 West 44th Avenue, Wheat Ridge, CO 80033.

Connecticut

Wallingford—Federal Building, Room 205, P.O. Box 631, Wallingford, CT 06492.

Delaware

Dover AFB—Building 500 (USDA), Dover Air Force Base, DE 19901.
Wilmington—Federal Building, Room 1218A, 844 King Street, Box 03, Wilmington, DE 19801

District of Columbia

Dulles—International Airport (See Virginia).

Florida

Jacksonville—Federal Office Building, Room 521, 400 West Bay Street, P.O. Box 35003, Jacksonville, FL 32206.
Key West—Federal Building, Room 220, 301 Simonton Street, P.O. Box 1468, Key West, FL 33040.
*Miami—Miami Inspection Station, 3500 NW. 62nd Avenue, P.O. Box 592136, Miami, FL 33159.
Room 100F, FAA Building, 20th and Perimiter Road, Miami International Airport, Box 592647 AMF, Miami, FL 33159.

*Provisions relating to costs for other services of an inspector are contained in Part 354.

Pensacola—Federal Building, Room 312B, P.O. Box 12561, Pensacola, FL 32573.
Mail: 100 North Palafax Street, Pensacola, FL 32502.
Cape Canaveral—Canaveral Port Authority Building, SE Room, Intersection Avenue B and Second Street, P.O. Box 158, Cape Canaveral, FL 32920.
Port Everglades—Amman Building, Room 305, 611 Eisenhower Boulevard, P.O. Box 13033, Fort Lauderdale, FL 33316.
Tampa—Barnett Bank Office Building, Suite 414, 1000 N. Ashley Drive, P.O. Box 286, Tampa, FL 33601.
West Palm Beach—149 East Port Road, P.O. Box 10611, Riviera Beach, FL 33404.
(Airport)—Palm Beach International Airport, Port of Entry Building, West Palm Beach, FL 33406.

Georgia

Atlanta—Hapeville Branch Post Office, Basement, 650 Central Avenue, P.O. Box 82369, Hapeville, GA 30354.
Savannah—U.S. Court House & Federal Building, 125–129 Bull Street, Room 223, P.O. Box 9288, Savannah, GA 31402.

Hawaii

Hilo—General Lyman Field, Hilo, HI 96720.
*Honolulu—3179 Koapaka Street, P.O. Box 29757, Honolulu, HI 96820.
(Airport)—Honolulu International Airport, International Arrivals Building, Honolulu, HI 96819.
Wailuku, Maui—Federal Post Office Building, Room 221, Wailuku, HI 96793.

Illinois

Chicago—U.S. Custom House, Room 800, 610 South Canal Street, Chicago, IL 60607.
(Airport)— O'Hare International Arrivals Building, P.O. Box 66192, Chicago, IL 60666.

Louisiana

*New Orleans—New Orleans International Airport, P.O. Box 20037, Airport Mailing Facility, New Orleans, LA 70141.
F. Edward Hebert Building, P.O. Box 2220, New Orleans, LA 70176.

Maine

Bangor (Airport)—International Arrivals Building, Bangor International Airport, P.O. Box 1053, Bangor, ME 04401.
Portland—U.S. Courthouse, 156 Federal Street, Room 301, Portland, ME 04101.

Maryland

Baltimore—Appraisers Stores Building, Room 506, 103 South Gay Street, Baltimore, MD 21202.
(Airport)—Foreign Arrivals Building, Baltimore Washington International Airport, Baltimore, MD 21240.
Beltsville—Plant Germplasm Quarantine Center (for USDA shipments only), Building 320, Beltsville Agricultural Research Center, East, Beltsville, MD 20705.

Massachusetts

Boston—408 Atlantic Avenue, Room 710, Boston, MA 02210.
(Airport)—Logan International Airport, East Boston, MA 02128.

Michigan

Detroit—Federal Building, Room 924, 231 West Lafayette Street, Detroit, MI 48226.
(Airport)—Michael Berry, International Arrivals Terminal, Detroit Metropolitan Wayne County Airport, Detroit, MI 48242.

Minnesota

Duluth—Board of Trade Building, Room 420, 301 West First Street, Duluth, MN 55802.
St. Paul—Minneapolis-St. Paul International Airport, P.O. Box 1690, St. Paul, MN 55111.

Missouri

Kansas City (Airport)—Kansas City International Airport, P.O. Box 20085, Kansas City, MO 64195.
St. Louis International Airport—P.O. Box 858, St. Charles, MO 63301.

New Jersey

*Hoboken—209 River Street, Hoboken, NJ 07030.
McGuire AFB—Building 1706, Passenger Terminal, Customs Area, P.O. Box 16073, McGuire Air Force Base, NJ 08641.

New York

Albany—80 Wolf Road, Suite 503, Albany, NY 12205.
Buffalo—Federal Building, Room 1113, 111 West Huron Street, Buffalo, NY 14202.
New York—26 Federal Plaza, Room 1747, New York, NY 10007.
*Jamaica—John F. Kennedy International Airport, Plant Inspection Station, Cargo Building 80, Jamaica, NY 11430.
International Arrivals Building, Room 2315, John F. Kennedy International Airport, Jamaica, NY 11430.
Rouses Point—St. John's Highway Border Station, Room 118, Route 9B, P.O. Box 278, Rouses Point, NY 12979.

North Carolina

Morehead City—North Carolina Maritime Building, Room 216, 113 Arendell, Port Authority Terminal, P.O. Box 272, Morehead City, NC 28557.
Wilmington—Rural Route 6, Box 53D, Wilmington, NC 28401.

Ohio

Cleveland—Federal Building, Room 1749, 1240 East 9th Street, Cleveland, OH 44199.

Oregon

Astoria—Port Docks, P.O. Box 354, Astoria, OR 97103.
Coos Bay—U.S. Postal Services Building, 235 West Anderson Street, P.O. Box 454, Coos Bay, OR 97420.
Portland—Federal Building, Room 657, 511 NW. Broadway, Portland, OR 97209.

Pennsylvania

Philadelphia—Custom House, Room 1004, 2nd and Chestnut Streets, Philadelphia, PA 19106.

Puerto Rico

Mayaguez—P.O. Box 3200, Marina Station, Mayaguez, PR 00708.
Ponce—P.O. Box 68, Ponce Playa Station, Ponce, PR 00731.
Hato Rey—Federal Office Building and U.S. Court House, Room 200, Hato Rey, PR 00918.
*San Juan—Isla Verde International Airport, Foreign arrivals Wing, San Juan, PR 00913.

Rhode Island

Warwick—48 Quaker Lane, West Warwick, RI 02893.

South Carolina

Charleston—Room 513 Federal Building, P.O. Box 941, Charleston, SC 29402.

Tennessee

Memphis—Room 801 Mid Memphis Tower, 1407 Union Avenue, Memphis, TN 38104.

Texas

*Brownsville—Border Services Building, Room 224 (Gateway Bridge), East Elizabeth and International Boulevard, P.O. Box 306, Brownsville, TX 78520.
Corpus Christi—Suite 218 SAB Building, 804 Mesquite, P.O. Box 245, Corpus Christi, TX 78403.
Dallas-Fort Worth (Airport)—Dallas-Fort Worth Airport, P.O. Box 61063, Dallas-Fort Worth Airport, TX 75261.
Del Rio—U.S. Border Inspection Station, Room 135, International Bridge, P.O. Box 1227, Del Rio, TX 78840.
Eagle Pass—U.S. Border Station, 100 Garrison Street, P.O. Box P, Eagle Pass, TX 78852.
*El Paso—Cordova Border Station, Room 172–A, 3600 East Paisano, El Paso, TX 79905.
Galveston—U.S. Custom House Building, Room 217A, 18th and Strand Streets, P.O. Box 266, Galveston, TX 77553.
Hidalgo—U.S. Border Station, Bridge Street, P.O. Drawer R, Hidalgo, TX 78557.
Houston—U.S. Appraisers Stores Building, Room 210, 7300 Wingate Street, Houston, TX 77011.
*Laredo—La Posada Motel, Rooms L6–13, 1000 Zaragoza Street, P.O. Box 277, Laredo, TX 78040.
U.S. Border Station, 100 Convent Avenue, Laredo, TX 78040.
Port Arthur—Federal Building, Room 201, Fifth Street and Austin Avenue, P.O. Box 1227, Port Arthur, TX 77640.
Presidio—U.S. Border Station, International Bridge, P.O. Box 1001, Presidio, TX 79845.
Progreso—Custom House Building, Progreso International Bridge, Progreso, TX 78579.
Roma—International Bridge, P.O. Box 185, Roma, TX 78584.
San Antonio—International Satellite, Room 15–S, 9700 Airport Boulevard, San Antonio, TX 78216.

Virgin Islands of the United States

St. Thomas—U.S. Post Office Building, Room 202, P.O. Box 6119, Charlotte Amalie, Virgin Islands of the U.S. 00801.

(Airport)—Harry S. Truman Airport, Main Terminal Building, St. Thomas, Virgin Islands of the U.S. 00801.
St. Croix—P.O. Box 1548, Kingshill, St. Croix, Virgins Islands of the U.S. 00850.

Virginia

(Airport) (Chantilly)—Dulles International Airport, International Arrivals Area, P.O. Box 17134, Washington, DC 20041.
Newport News—P.O. Box 942, Newport News, VA 23607.
Norfolk—Room 211 Bank of Virginia Building, 870 North Military Highway, Norfolk, VA 23502.

Washington

Blaine—Custom House; Room 216, P.O. Drawer C, Blaine, WA 98230.
McChord AFB—MAC Terminal, P.O. Box 4116, McChord Air Force Base, Tacoma, WA 98458.
*Seattle—Federal Office Building, Room 9014, Seattle, WA 98104.
(Airport)—Seattle-Tacoma International Airport, Seattle, WA 98158.

Wisconsin

Milwaukee—International Arrivals Terminal, 5300 South Howell Avenue, Milwaukee, WI 53207.

Note.—This proposal has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations," and has been designated "significant." An approved Draft Impact Analysis is available from Plant Protection and Quarantine Programs, APHIS, Room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8247. The alternatives considered during the analysis are listed in the Draft Impact Analysis Statement.

Done at Washington, D.C., on 11th day of June 1979.

Thomas G. Darling,

Acting Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service.

[FR Doc. 79-18531 Filed 6-14-79; 8:45 am]
BILLING CODE 3410-34-M

Federal Register

Friday
June 15, 1979

Part VIII

Securities and Exchange Commission

Uniform Net Capital Rule; Financial Requirements For Brokers and Dealers (Futures Commission Merchants)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-15898]

17 CFR Part 240

Uniform Net Capital Rule

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission today has adopted previously proposed amendments to its uniform net capital rule and Appendices B and D thereto. The amendments primarily affect the financial requirements for brokers and dealers that are also futures commission merchants ("fcm") registered with the Commodity Futures Trading Commission. They are designed to conform the net capital rule with the minimum financial requirements of the Commodity Futures Trading Commission for fcm's, to avoid duplication, reduce regulatory burden, and coordinate regulation through uniform requirements as much as possible.

EFFECTIVE DATE: July 23, 1979.[1]

FOR FURTHER INFORMATION CONTACT: James G. Moody, Attorney Advisor, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549 (202) 376-8135.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced the adoption of certain amendments to Rule 15c3-1 (17 CFR 240.15c3-1) under the Securities Exchange Act of 1934, the uniform net capital rule, and Appendices B and D thereto. The amendments, which become effective on July 23, 1979, are substantially the same as those proposed in Securities Exchange Act Release No. 15426, December 21, 1978; 44 FR 1754, January 8, 1979.

Discussion

Rule 15c3-1, the uniform net capital rule (17 CFR 240.15c3-1), in general requires a broker or dealer to maintain a certain specified minimum "net capital" depending on the nature of its securities business and its circumstances.[2] The amount of net capital required unless the broker or dealer computes its net capital under subsection (f) of the rule depends upon its "aggregate indebtedness."[3] Paragraph (c)(2) of the rule defines "net capital" as the net worth of a broker or dealer adjusted by certain described items. Paragraph (c)(1) of the Rule defines "aggregate indebtedness" as the total money liabilities of a broker or dealer in connection with any transaction, with limited exclusions. The rule requires brokers or dealers to have sufficient cash or liquid assets to protect the cash or securities positions carried in their customers' accounts. The thrust of the rule is to ensure that a broker or dealer has sufficient liquid assets to cover current indebtedness.

Recently, the Commodity Futures Trading Commission (the "CFTC") made substantial revisions in its minimum financial and related reporting requirements imposed upon fcm's. The CFTC stated that it was amending its rules first to eliminate duplicative financial requirements imposed upon fcm's. The CFTC gave as another purpose for the revised regulations to "correct substantial deficiencies" which had existed in the CFTC's minimum capital rules.[4]

Although the CFTC amendments apply only to fcm's, about half of all commodity customer business in the futures industry is done by fcm's that are also registered with the Commission as brokers or dealers and are, therefore, subject to the uniform net capital rule.

As the CFTC noted in its release announcing the adoption of its new minimum financial requirements, it has incorporated by reference the Commission's haircuts on securities. The CFTC believed that its rule, before being amended, required unnecessary "safety factors" for open commodities transactions and created new standards which were first proposed in 1977 and 1978.[5] These, as well as other commodity related amendments to its rule, have been the subject of extensive study by that agency and by those who will be subject to it. After careful consideration, in the interests of minimizing duplicative regulation, the Commission is deferring to the expertise of the CFTC in the area of financial responsibility regulation and is amending its rule to conform in the main to those provisions of the CFTC's rule which deals with the commodities futures business.[6]

The amendments adopted herein are designed insofar as possible to provide uniformity and avoid duplicative requirements as well as additional reporting for fcm's which are also brokers or dealers. The Commission believes it is important to achieve uniformity in this area in the interest of fair and equitable regulation consistent with its regulatory responsibility.

Most of the amendments to the net capital rule will be found in Appendix B as amended (17 CFR 240. 15.c3-1b). The most significant of the adopted amendments is the substitution of the CFTC's so-called safety factors on futures for the haircut deductions currently required by Appendix B to the net capital rule.

The majority of the remaining changes to the net capital rule affect the treatment of receivables relating to commodities. For example, under the amendments the length of time margin calls are allowed to remain outstanding for under-margined customer futures accounts will be 3 business days by December 31, 1982. Margin can remain uncollected for up to 5 business days until December 31, 1980, 4 business days until December 31, 1982 and 3 business days thereafter before a charge is made to net capital. The net capital rule now allows 5 business days, a period which will remain unchanged for transactions in securities.

Another significant time differential from the way commodities are now treated involves deficits or debit ledger balances in unsecured customers', non-customers' and proprietary accounts related to commodities transactions which are the subject of calls for margin or other required deposits. Under the amendments, the amount of funds required may be included in net capital for one day. In addition, the length of time margin calls pertaining to commodity transactions are allowed to

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[1] A broker or dealer may conform to the amendments herein before July 23, 1979 if it so wishes.

[2] Rule 15c3-1(a).

[3] Brokers or dealers operating under paragraph (f) of Rule 15c3-1 determine their net capital requirement upon the "aggregate debit" items computed pursuant to the "Formula for Determination Reserve Requirement of Brokers and Dealers" as set forth at Rule 15c3-3a, 17 CFR 240.15c3-3a.

[4] 43 FR 39956, 39957, 39958 (September 8, 1978).

[5] Id. at 39957-39958.

[6] In general, the differences in the two rules will not affect broker-dealers who are fcm's. The CFTC believed that the "few differences" which might remain between the CFTC rule and the Commission rule would affect only fcm's which engage in a cash commodity, manufacturing or cooperative business/businesses "in which few, if any, FCM/broker-dealers engage." The CFTC has said that, in the case of each such difference of which it was aware, the Commission minimum financial requirements would be higher than the CFTC requirements. The CFTC said that, therefore, an fcm may be assured of compliance with the regulations of both agencies if it is in compliance with the Commission's. Some of the differences between the two rules include the treatment of certain unsecured receivables such as those in paragraph (c)(2)(ii)(A) of CFTC Rule 1.17 and certain inventories such as those in paragraphs (c)(2)(iv) (C) through (E). The CFTC will regard these as "current assets" for purposes of its rule. Appendix B requires their deduction from net worth.

remain outstanding for under-margined non-customer and omnibus commodity futures accounts has been reduced from 5 business days to 2 business days.

The amendments specify that receivables from a foreign clearing organization resulting from commodities transactions as well as stock held in a commodity clearing organization may be treated as net capital. Under the current Commission rule such items would generally be treated as assets not readily convertible into cash and would be deducted from net worth.

Next, for those brokers or dealers which have elected to operate under the alternative net capital provisions, the amendments will require securities brokers or dealers which are also fcm's to maintain net capital equal to 4 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the rules thereunder if such amount is greater than the alternative provisions would require it to maintain.

Finally, Appendix D which governs subordination agreements has been altered in several respects to conform its provisions to reflect the CFTC's requirements that an fcm on the alternative maintain net capital of 4% of the funds required to be segregated by the Commodity Exchange Act.

Because the subordinated loan provisions of Appendix D are being changed, it will be necessary to "grandfather" existing subordination loan agreements. Otherwise, existing loans would no longer met the requirements of Appendix D. The Commission has selected 5 years as the period after which the loan must conform to the new Appendix D, the same amount of time the Commission gave in 1975 when it adopted the present Appendix D.

As adopted the amendments define the terms "customer" and "non-customer" in Appendix B by incorporating the definitions of these terms which are in the General Regulations of the CFTC.

Statutory Basis and Competitive Considerations

Pursuant to the Securities Exchange Act of 1934 and particularly Sections 15(c)(93) and 23(a) thereof, 15 U.S.C. 78*o*(c)(3) and 78w(a), the Commission amends § 240.15c3–1 in Part 240 of Chapter II of Title 17 of the code of Federal Regulations in the manner set forth below, effective July 23, 1979. The Commission finds that any burden imposed upon competition by the amendments is necessary and appropriate in furtherance of the purposes of the Act, and particularly to implement the Commission's continuing mandate under section 15(c)(3) thereof, 15 U.S.C. 78*o*(c)(3), to provide minimum safeguards with respect to the financial responsibility of brokers and dealers.

Text of Amendments to §240.15c3–1

1. The introductory text of paragraph (a) and paragraphs (e) and (f) of § 240.15c3–1 are revised to read as follows:

§ 240.15c3–1 Net capital requirements for brokers or dealers.

(a) No broker or dealer shall permit his aggregate indebtedness to all other persons to exceed 1500 percentum of his net capital, except as otherwise limited by the provisions of paragraph (a)(1), or, in the case of a broker or dealer electing to operate pursuant to paragraph (f) of this section, no broker or dealer shall permit his net capital to be less than 4 percent of aggregate debit items as computed in accordance with § 240.15c3–3a of this chapter, or, if registered as a futures commission merchant, 4 percent of the funds required to be segregated pursuant to the Commodity Exchange Act, and the regulations thereunder, if greater, except as otherwise limited by paragraph (f) of this section, and every broker or dealer shall have the net capital necessary to comply with the following conditions, except as otherwise provided for in paragraph (f) of this section.

* * * * *

(e) *Limitation on withdrawal of equity Capital.* No equity capital of the broker or dealer or a subsidiary or affiliate consolidated pursuant to Appendix (C) (17 CFR 240.15c3–1c) whether in the form of capital contributions by partners excluding securities in the securities accounts of partners and balances in limited partners' capital accounts in excess of their stated capital contributions), par or stated value of capital stock, paid-in capital in excess of par, retained earnings or other capital accounts, may be withdrawn by action of a stockholder or partner, or by redemption or repurchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, nor may any unsecured advance or loan be made to a stockholder, partner, sole proprietor or employee if, after giving effect thereto and to any other such withdrawals, advances or loans and any Payments of Payment Obligations (as defined in Appendix (D) (17 CFR 240.15c3–1d) under satisfactory subordination agreements which are scheduled to occur within six months following such withdrawal, advance or loan, either aggregate indebtedness of any of the consolidated entities exceeds 1000 percentum of its net capital or its net capital would fail to equal 120 per centum of the minimum dollar amount required thereby or would be less than 7 percent of aggregate debit items computed in accordance with 17 CFR 240.15c3–3a, or, if registered as a futures commission merchant, 7% of the funds required to be segregated pursuant to the Commodity Exchange Act, and the regulations thereunder, if greater or in the case of any broker or dealer included within such consolidation if the total outstanding principal amounts satisfactory subordination agreements of the broker or dealer (other than such agreements which qualify as equity under paragraph (d) of this section) would exceed 70% of the debt-equity total as defined in paragraph (d). *Provided,* That this provision shall not preclude a broker or dealer from making required tax payments or preclude the payment to partners of reasonable compensation.

(f) *Alternative net capital requirement.* (1)(i) A broker or dealer who is not exempt from the provisions of 17 CFR 240.15c3–3 under the Securities Exchange Act of 1934 pursuant to paragraph (k)(1) or (k)(2)(i) may elect not to be subject to the limitations of paragraph (a) of this section respecting aggregate indebtedness as defined in paragraph (c)(1) of this section and certain deductions provided for in paragraph (c)(2) of this section. *Provided,* That in order to qualify to operate under this paragraph (f), such broker or dealer shall at all times maintain net capital equal to the greater of $100,000 ($25,000 in the case of a broker or dealer effecting transactions solely in municipal securities) or 4 percent of aggregate debit items computed in accordance with the Formula for Determination of Reserve Requirements for Brokers and Dealers (Exhibit A to Rule 15c3–3, 17 CFR 240.15c3–3a), or, if registered as a futures commission merchant, 4 percent of the funds required to be segregated pursuant to the Commodity Exchange Act, and the regulations thereunder, if greater, and shall notify the Examining Authority for such broker or dealer and the Regional Office of the Commission in which the broker or dealer has its principal place of business, in writing, of its election to operate under this provision. Once a broker or dealer has determined to operate pursuant to the provisions of this paragraph (f), he shall continue to

do so unless a change is approved upon application to the Commission.

(2) In the case of a broker or dealer who has consolidated a subsidiary pursuant to Appendix C (17 CFR 240.15c3–1c), such broker's or dealer's minimum net capital requirements shall be the sum of the greater of $100,000 or 4 percent of the parent broker's or dealer's aggregate debit items computed in accordance with 17 CFR 240.15c3–3a, or, if the parent is registered as a futures commission merchant, 4 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder, if greater, and the total of each consolidated broker or dealer subsidiary's minimum net capital requirements. The minimum net capital requirements of a subsidiary electing to operate pursuant to paragraph (f) of this section shall be the greater of $100,000 or 4 percent of its aggregate debit items computed in accordance with 17 CFR 240.15c3–3a, or, if registered as a futures commission merchant, 4 percent of the funds required to be segregated by the subsidiary pursuant to the Commodity Exchange Act and the regulations thereunder, if greater. Where the subsidiary which has been consolidated has not elected to operate pursuant to paragraph (f) of this section, its minimum net capital requirement is the greater of its requirements under paragraph (a) of this section or 6⅔ percent of its aggregate indebtedness.

* * * * *

2. Section 240.15c3–1b is revised to read as follows:

§ 240.15c3–1b Adjustments to net worth and aggregate indebtedness for certain commodities transactions (Appendix B to 17 CFR 240.15c3–1).

(a) Every broker or dealer in computing net capital pursuant to 17 CFR 240.15c3–1 shall comply with the following:

(1) Where a broker or dealer has an asset or liability which is treated or defined in paragraph (c) of 17 CFR 240.15c3–1, the inclusion or exclusion of all or part of such asset or liability for the computation of aggregate indebtedness and net capital shall be in accordance with paragraph (c) of 17 CFR 240.15c3–1, except as specifically provided otherwise in this Appendix B. Where a commodity related asset or liability is specifically treated or defined in 17 CFR 1.17 and is not generally or specifically treated or defined in 17 CFR 240.15c3–1 or this Appendix B, the inclusion or exclusion of all or part of such asset or liability for the computation of aggregate indebtedness and net capital shall be in accordance with 17 CFR 1.17.

Aggregate Indebtedness

(2) The term "aggregate indebtedness" as defined in paragraph (c)(1) of this section shall exclude with respect to commodity-related transactions:

(i) Indebtedness arising in connection with an advance to a non-proprietary account when such indebtedness is adequately collateralized by spot commodities eligible for delivery on a contract market and when such spot commodities are covered.

(ii) Advances received by the broker or dealer against bills of lading issued in connection with the shipment of commodities sold by the broker or dealer; and

(iii) Equity balances in the accounts of general partners.

Net Capital

(3) In computing net capital as defined in paragraph (c)(2) of this section, the net worth of a broker or dealer shall be adjusted as follows with respect to commodity-related transactions:

(i) *Unrealized profit or loss for certain commodities transactions.* (A) Unrealized profits shall be added and unrealized losses shall be deducted in the commodities accounts of the broker or dealer, including unrealized profits and losses on fixed price commitments and forward contracts; and

(B) The value attributed to any non-transferable commodity option shall be the difference between the option's striking price and the market value for the actual commodity or futures contract which is the subject of the option. In the case of a long call commodity option, if the market value for the actual commodity or futures contract which is the subject of the option is less than the striking price of the option, it shall be given no value. In the case of a long put commodity option, if the market value for the actual commodity or futures contract which is the subject of the option is more than the striking price of the option, it shall be given no value.

(ii) Deduct any unsecured commodity futures or option account containing a ledger balance and open trades the combination of which liquidates to a deficit or containing a debit ledger balance only: *Provided, however,* Deficits or debit ledger balances in unsecured customers', non-customers' and proprietary accounts, which are the subject of calls for margin or other required deposits which are outstanding one business day or less need not be deducted from net worth;

(iii) Deduct all unsecured receivables, advances and loans except for:

(A) Management fees receivable from commodity pools outstanding no longer than thirty (30) days from the date they are due;

(B) Receivables from foreign clearing organizations;

(C) Receivables from registered futures commission merchants or brokers, resulting from commodity futures or option transactions, except those specifically excluded under paragraph (3)(ii) of this Appendix B.

(iv) Deduct all inventories (including work in process, finished goods, raw materials and inventories held for resale) except for readily marketable spot commodities; or spot commodities which adequately collateralize indebtedness under paragraph (c)(7) of 17 CFR 1.17;

(v) Guarantee deposits with commodities clearing organizations are not required to be deducted from net worth;

(vi) Stock in commodities clearing organizations to the extent of its margin value is not required to be deducted from net worth;

(vii) Deduct from net worth the amount by which any advances paid by the broker or dealer on cash commodity contracts and used in computing net capital exceeds 95 percent of the market value of the commodities covered by such contracts.

(viii) Do not include equity in the commodity accounts of partners in net worth.

(ix) In the case of all inventory, fixed price commitments and forward contracts, except for inventory and forward contracts in the inter-bank market in those foreign currencies which are purchased or sold for further delivery on or subject to the rules of a contract market and covered by an open futures contract for which there will be no charge, deduct the applicable percentage of the net position specified below:

(A) Inventory which is currently registered as deliverable on a contract market and covered by an open futures contract—No charge.

(B) Inventory which is covered by an open futures contract or commodity option—5% of the market value.

(C) Inventory which is not covered—20% of the market value.

(D) Fixed price commitments (open purchases and sales) and forward contracts which are covered by an open futures contract or commodity option—10% of the market value.

(E) Fixed price commitments (open purchases and sales) and forward

contracts which are not covered by an open futures contract or commodity option—20% of the market value.

(x) [Reserved]

(xi) [Reserved]

(xii) Deduct for undermargined customer commodity futures accounts the amount of funds required in such such account to meet maintenance margin requirements of the applicable board of trade or, if there are no such maintenance margin requirements, clearing organization margin requirements applicable to such positions, after application of calls for margin, or other required deposits which are outstanding five business days or less until December 31, 1980, four business days or less until December 31, 1982, and three business days or less thereafter. If there are no such maintenance margin requirements or clearing organization margin requirements on such accounts, then deduct the amount of funds required to provide margin equal to the amount necessary after application of calls for margin, or other required deposits outstanding five days or less until December 31, 1980, four days or less until December 31, 1982, and three days or less thereafter to restore original margin when the original margin has been depleted by 50 percent or more. *Provided,* To the extent a deficit is deducted from net worth in accordance with paragraph (3)(ii) of this Appendix B, such amount shall not also be deducted under this paragraph (3)(xii).

(xiii) Deduct for undermargined non-customer and omnibus commodity futures accounts the amount of funds required in each such account to meet maintenance margin requirements of the applicable board of trade or, if there are no such maintenance margin requirements, clearing organization margin requirements applicable to such positions after application of calls for margin, or other required deposits which are outstanding two business days or less. If there are no such maintenance margin requirements or clearing organization margin requirements, then deduct the amount of funds required to provide margin equal to the amount necessary after application of calls for margin, or other required deposits outstanding two days or less to restore original margin when the initial margin has been depleted by 50 percent or more. *Provided,* To the extent a deficit is deducted from net worth in accordance with paragraph (3)(ii) of this Appendix B, such amount shall not also be deducted under this paragraph (3)(xiii).

(xiv) In the case of open futures contracts held in proprietary accounts carried by the broker or dealer which are not covered by a position held by the broker or dealer or which are not the result of a "changer trade" made in accordance with the rule of a contract market deduct:

(A) For a broker or dealer which is a clearing member of a contract market for the positions on such contract market cleared by such member, the applicable margin requirement of the applicable clearing organization;

(B) For a broker or dealer which is a member of a contract market, 150% of the applicable maintenance margin requirement of the applicable board of trade or clearing organization, whichever is greater;

(C) For all other brokers or dealers, 200% of the applicable maintenance margin requirement of the applicable board of trade or clearing organization, whichever is greater; or

(D) For open contracts for which there are no applicable maintenance margin requirement, 200% of the applicable initial margin requirement.

Provided, The equity in any such proprietary account shall reduce the deduction required by this paragraph (3)(xiv) if such equity is not otherwise includable in net capital.

(xv) *Options.* In the case of a broker or dealer which is a taker of a commodity option, the deduction shall be the amount of any commodity option premium which has been used to increase net capital (however, in the case of a broker or dealer which is a grantor of a commodity option, the deduction may be reduced by the amount of any commodity option premium which has not been previously recognized as income).

(xvi) In the case of a commodity option which is carried long by the broker or dealer as a taker of a commodity option which has value and such value is used to increase net capital, the deduction should be ten percent of the market value of the commodity which is the subject of such option, but in no event shall the deduction be greater than the value attributed to such option.

(xvii) Deduction 5% of all unsecured receivables includable under paragraph (3)(iii)(C) of this Appendix B used by the broker or dealer in computing "net capital" and which are not receivable from (A) a futures commission merchant registered as such with the Commodity Futures Trading Commission, or (B) a broker or dealer which is registered as such with the Securities and Exchange Commission.

(xviii) A loan or advance or any other form of receivable shall not be considered "secured" for the purposes of paragraph (3) of this Appendix B unless the following conditions exist:

(A) The receivable is secured by readily marketable collateral which is otherwise unencumbered and which can be readily converted into cash equal to or in excess of that part of the receivable which is shown in the broker's or dealer's records as secured; and

(B)(*1*) The readily marketable collateral is in the possession or control of the broker or dealer; or

(*2*) The broker or dealer has a legally enforceable, written security agreement, signed by the debtor, and has a perfected security interest in the readily marketable collateral within the meaning of the laws of the State in which the readily marketable collateral is located.

(xix) The term "cover" for purposes of this Appendix B shall mean cover as defined in 17 CFR 1.17(j).

(xx) The term "customer" for purposes of this Appendix B shall mean customer as defined in 17 CFR 1.17(b) (2). The term "non-customer" for purposes of this Appendix B shall mean non-customer as defined in 17 CFR 1.17(b) (4).

3. Paragraphs (b) (6) (iii), (7), (8), (10) (ii) (B) and (c) (2), (5), and (7) of § 240.15c3–1d are revised to read as follows:

§ 240.15c3–1d Satisfactory subordination agreements (Appendix D to 17 CFR 240.15c3–1).

* * * * *

(b)* * *

(6)* * *

(iii) The secured demand note agreement may also provide that, in lieu of the procedures specified in the provisions required by paragraph (b) (6) (ii) of this section, the lender with the prior written consent of the broker or dealer and the Examining Authority for the broker or dealer may reduce the unpaid principal amount of the secured demand note. *Provided,* That after giving effect to such reduction the aggregate indebtedness of the broker or dealer would not exceed 1000 per centum of its net capital or, in the case of a broker or dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3–1, net capital would not be less than 7% of aggregate debit items computed in accordance with 17 CFR 240.15c3–3a or, if registered as a futures commission merchant, 7% of the funds required to be segregated pursuant to the Commodity Exchange Act, and the regulations thereunder, if greater. *Provided, further,*

That no single secured demand note shall be permitted to be reduced by more than 15% of its original principal amount and after such reduction no excess collateral may be withdrawn. No Examining Authority shall consent to a reduction of the principal amount of a secured demand note if, after giving effect to such reduction, net capital would be less than 120% of the minimum dollar amount required by 17 CFR 240.15c3–1.

(7) *Permissive Prepayments.* A broker or dealer at its option but not at the option of the lender, may, if the subordination agreement so provides, make a Payment of all or any portion of the Payment Obligation thereunder prior to the scheduled maturity date of such Payment Obligation (hereinafter referred to as a "Prepayment"), but in no event may any Prepayment be made before the expiration of one year from the date such subordination agreement became effective: *Provided, however,* That the foregoing restriction shall not apply to temporary subordination agreements which comply with the provisions of paragraph (c) (5) of this Appendix D. No Prepayment shall be made, if, after giving effect thereto (and to all Payments of Payment Obligations under any other subordinated agreements than outstanding the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such Prepayment is to occur pursuant to this provision or on or prior to the date on which the Payment Obligation in respect of such Prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the broker or dealer, either aggregate indebtedness of the broker or dealer would exceed 1000 per centum of its net capital or its net capital would be less than 120 per centum of the minimum dollar amount required by 17 CFR 240.15c3–1 or, in the case of a broker or dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3–1, its net capital would be less than 7% of its aggregate debit items computed in accordance with 17 CFR 240.15c3–3a or if registered as a futures commission merchant, 7% of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder, if greater, or its net capital would be less than 120% of the minimum dollar amount required by paragraph (f) of 17 CFR 240.15c3–1. Notwithstanding the above, no Prepayment shall occur without the prior written approval of the Examining Authority for such broker or dealer.

(8) *Suspended Repayment.* (i) The Payment Obligation of the broker or dealer in respect of any subordination agreement shall be suspended and shall not mature if, after giving effect to Payment of such Payment Obligation (and to all Payments of Payment Obligations of such broker or dealer under any other subordination agreement(s) then outstanding which are scheduled to mature on or before such Payment Obligation) either (A) the aggregate indebtedness of the broker or dealer would exceed 1200% its net capital or, in the case of a broker or dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3–1, its net capital would be less than 6 percent of aggregate debit items computed in accordance with 17 CFR 240.15c3–3a or, if registered as a futures commission merchant, 6% of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder, if greater, or (B) its net capital would be less than 120 percent of the minimum dollar amount required by 17 CFR 240.15c3–1 including paragraph (f), if applicable. *Provided,* That the subordination agreement may provide that if the Payment Obligation of the broker or dealer thereunder does not mature and is suspended as a result of the requirement of this paragraph (b)(8) for a period of not less than six months, the broker or dealer shall thereupon commence the rapid and orderly liquidation of its business but the right of the lender to receive Payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of 17 CFR 240.15c3–1 and 240.15c3–1d.

* * * * *

(10)* * *

(ii)* * *

(B) The aggregate indebtedness of the broker or dealer exceeding 1500% of its net capital or, in the case of a broker or dealer which has elected to operate under paragraph (f) of 17 CFR 240.15c3–1, its net capital computed in accordance therewith is less than 4% of its aggregate debit items computed in accordance with 17 CFR 240.15c3–3a or, if registered as a futures commission merchant, 4% of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder, if greater, throughout a period of 15 consecutive business days, commencing on the day the broker or dealer first determines and notifies the Examining Authority for the broker or dealer, of the Examining Authority or the Commission first determines and notifies the broker or dealer of such fact;

* * * * * *

(c) * * *

(2) *Notice of maturity or accelerated maturity.* Every broker or dealer shall immediately notify the Examining Authority for such broker or dealer if, after giving effect to all Payments of Payment Obligations under subordination agreements then outstanding which are then due or mature within the following six months without reference to any projected profit or loss of the broker or dealer, either the aggregate indebtedness of the broker or dealer, either the aggregate indebtedness of the broker or dealer would exceed 1200% of its net capital or its net capital would be less than 120% of the minimum dollar amount required by 17 CFR 240.15c3–1, or, in the case of a broker or dearler who is operating pursuant to paragraph (f) of 17 CFR 240.15c3–1, its net capital would be less than 6% of aggregate debit items computed in accordance with 17 CFR 240.15c3–3a or, if registered as a futures commission merchant, 6% of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder, if greater, or less than 120% of the minimum dollar amount required by paragraph (f) of 17 CFR 240.15c3–1.

* * * * *

(5) *Temporary Subordinations.* For the purpose of enabling a broker or dealer to participate as an underwriter of securities or other extraordinary activities in compliance with the net capital requirements of 17 CFR 240.15c3–1, a broker or dealer shall be permitted, on no more than three occasions in any 12 month period, to enter into a subordination agreement on a temporary basis which has a stated term of no more than 45 days from the date such subordination agreement became effective. *Provided,* That this temporary relief shall not apply to a broker or dealer if, at such time, it is subject to any of the reporting provisions of 17 CFR 240.17a–11 under the Securities Exchange Act of 1934, irrespective of its compliance with such provisions or if immediately prior to entering into such subordination agreement either (i) the aggregate indebtedness of the broker or dealer exceeds 1000 per centum of its net capital or its net capital is less than 120% of the minimum dollar amount required by 17 CFR 240.15c3–1, or (ii) in the case of a broker or dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3–1, its net capital is less than 7 percent of aggregate debits computed in accordance with 17 CFR 240.15c3–3a or,

if registered as a futures commission merchant, 7% of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder, if greater, or less than 120% of the minimum dollar amount required by paragraph (f) of this section, or (iii) the amount of its then outstanding subordination agreements exceeds the limits specified in paragraph (d) of 17 CFR 240.15c3–1. Such temporary subordination agreement shall be subject to all the other provisions of this Appendix.

* * * * *

Subordination Agreements in Effect Prior to Adoption

(7) Any subordination agreement which has been entered into prior to December 20, 1978 and which has been deemed to be satisfactorily subordinated pursuant to 17 CFR 240.15c3–1 as in effect prior to December 20, 1978, shall continue to be deemed a satisfactory subordination agreement until the maturity of such agreement. *Provided,* That no renewal of an agreement which provides for automatic or optional renewal by the broker or dealer or lender shall be deemed to be a satisfactory subordination agreement unless such renewed agreement meets the requirements of this Appendix within 6 months from December 20, 1978. *Provided, further,* That all subordination agreements must meet the requirements of this Appendix within 5 years of December 20, 1978.

By the Commission.

George A. Fitzsimmons,

Secretary.

June 5, 1979.

[FR Doc. 79-18641 Filed 6-14-79; 8:45 am]

BILLING CODE 8010-01-M

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17 CFR Part 249

[Release No. 34-15939]

Forms, Securities Exchange Act of 1934

Focus Reporting System; Requirements for Financial Reporting

AGENCY: Securities and Exchange Commission.

ACTION: Rule amendment.

SUMMARY: The Commission today announced amendments to the financial and operational reporting requirements collectively known as the FOCUS reporting system by adopting the previously proposed Schedule of Segregation Requirements and Funds on Deposit in Segregation currently being used by the Commodity Futures Trading Commission for its registered futures commission merchants. This schedule will apply only to those brokers or dealers that are also futures commission merchants.

EFFECTIVE DATE: July 23, 1979.

FOR FURTHER INFORMATION CONTACT: James G. Moody, Attorney Advisor, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549, (202) 376–8135.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced the adoption of certain amendments to Part II of Form X–17A–5, a financial and operational combined uniform single report under the Securities Exchange Act of 1934. The amendments will revise the form so as to incorporate the Schedule of Segregation Requirements and Funds on Deposit in Segregation currently being used by the Commodity Futures Trading Commission.

Discussion

On December 17, 1975 the Commission adopted Form X–17A–5 (§ 249.617), the Financial and Operational Combined Uniform Single ("FOCUS") Report, to become effective on January 1, 1976.[1] Part II of Form X–17A–5 is a general purpose financial and operational report designed to obtain essential regulatory information on a quarterly basis and to develop financial statements in a format consistent with generally accepted accounting principles.

On September 1, 1978, the Commodity Futures Trading Commission (the "CFTC") amended its rules pertaining to the minimum financial and related reporting requirements imposed upon futures commission merchants.[2] Although the CFTC amendments apply only to futures commission merchants, about half of all commodity customer business in the futures industry is done by futures commission merchants that are also registered with the Commission as securities broker-dealers and are therefore subject to the FOCUS reporting requirements. Accordingly, the amendments adopted herein are designed to incorporate the Schedule of Segregation Requirements and Funds on Deposit in Segregation currently being used by the CFTC. This will enable brokers and dealers that are also futures commission merchants to satisfy the CFTC's reporting requirements by filing the amended Part II [3] of the FOCUS Report on a quarterly basis, thereby eliminating the need to make burdensome duplicate reports.

Statutory Basis and Competitive Considerations

Pursuant to the Securities Exchange Act of 1934 and particularly sections 15(c)(3), 17 and 23 thereof, 15 U.S.C. 78*o*(c)(3), 78q and 78w, the Commission hereby amends 17 CFR 249.617 of Chapter II of Title 17 of the Code of Federal Regulations in the manner set forth below. The Commission believes that any burden imposed upon competition by the amendments is necessary and appropriate in furtherance of the purposes of the Act, and particularly to implement the Commission's continuing mandate under section 15(c)(3) thereof, 15 U.S.C. 78*o*(c)(3), to provide minimum safeguards with respect to the financial responsibility of brokers and dealers.

§ 249.617 [Amended]

Text of Schedule

The Commission amends Part II of Form X–17A–5, a financial and operational combined uniform single report under the Securities Exchange Act of 1934, by adding the following schedule.

Financial and Operational Combined Uniform Single Report

Broker or Dealer—as of ————.

Schedule of Segregation Requirements and Funds in Segregation

Customers' regulated commodity futures accounts[**]

Segregation requirements

1. Net ledger balance:	
a. Cash	$————
b. Securities (at market)	————
2. Net unrealized profit (loss) in open futures contracts	————
3. Net equity (deficit) (Total of 1—plus or minus 2	————
4. Add: accounts liquidating to a deficit and accounts with debit balances with no open trades	————
5. Amount required to be segregated (Total of 3 & 4)	$————

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[1] Securities Exchange Act Release No. 11935, December 17, 1975; 40 FR 59706, December 30, 1975. Part IIA is an abbreviated version of Part II which is filed on a quarterly basis by brokers and dealers which neither clear transactions nor carry customer accounts. As these amendments were originally proposed, Part IIA would also have been amended to incorporate the CFTC's Schedule. However, since Part IIA is filed only by brokers and dealers which neither clear nor carry customer accounts, this additional information is unnecessary.

[2] 43 FR 39956 (September 8, 1978).

[3] The new Schedule will become page 10 of Part II. The current page 10 will become page 11 of Part II.

[**] The term "customer" shall mean "customer" as defined in 17 CFR 1.17(b)(2).

Funds on Deposit in Segregation

6. Deposited in segregated funds bank accounts:
   a. Cash.....
   b. Securities representing investments of customers' funds (at market).....
   c. Securities held for customers in lieu of cash margins (at market).....
7. Margins on deposit with clearing organizations of contract markets:
   a. Cash.....
   b. Securities representing investments of customers' funds (at market).....
   c. Securities held for customers in lieu of cash margins (at market).....
8. Settlement due from (to) contract market clearing organization.....
9. Net equities with other FCMs.....
10. Segregated funds on hand:
   a. Cash.....
   b. Securities representing investments of customers' funds (at market).....
   c. Securities held for customers in lieu of cash margins (at market).....
11. Total amount in segregation (Total of 6 through 10).....$
12. Excess funds (insufficiency) in segregation (11 minus 5).....$

By the Commission.

George A. Fitzsimmons,
Secretary.

June 5, 1979.

[FR Doc. 79-18942 Filed 6-14-79; 8:45 am]
BILLING CODE 6210-01-M

Friday
June 15, 1979

Federal Register

Part IX

Consumer Product Safety Commission

Method For Identifying Toys And Other Articles Intended For Use By Children Under 3 Years Of Age Which Present Choking, Aspiration, Or Ingestion Hazards Because Of Small Parts

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1500 and 1501

Method for Identifying Toys and Other Articles Intended for Use by Children Under 3 Years of Age Which Present Choking, Aspiration, or Ingestion Hazards Because of Small Parts

AGENCY: Consumer Product Safety Commission.

ACTION: Final regulation.

SUMMARY: The Commission is issuing a regulation that classifies as banned hazardous substances certain toys and other articles intended for use by children under 3 years of age. It covers products that the Commission believes present a choking, aspiration or ingestion hazard, based on their failure to comply with specified size criteria. By banning these products, the regulation is expected to reduce the risks to children under 3 from choking, aspirating, or ingesting small parts.

DATES: Products introduced into interstate commerce after January 1, 1980 are subject to the regulation.

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SUPPLEMENTARY INFORMATION:

I. Introduction

The Consumer Product Safety Commission believes that toys and other articles intended for use by children under 3 that contain parts small enough to be aspirated or ingested present an unreasonable risk of injury. The Commission is issuing a regulation that would classify such articles as banned hazardous substances.

The regulation requires that toys and other articles intended for very young children be tested in a specially designed device. The design of this device is based both on anthropometric measurements and on actual injury data. The device is intended to screen out items which are small enough to be ingested or aspirated by very young children. The test method in the regulation incorporates the Commission's "use and abuse" test methods; use and abuse testing will permit identification of small parts that may separate from a covered product during its lifetime.

The scope of the regulation is limited to toys and other articles intended for use by children under 3. The Commission believes that these very young children are particularly susceptible to small parts-related injuries because they are relatively unaware of risks and because they tend to place objects indiscriminately in their mouths. Frequently, too, adults believe that items intended for use by this age group are designed for unsupervised play.

The Commission is taking this action under its Federal Hazardous Substances Act authority to ban children's products which present an unreasonable risk of injury. The Commission's belief that an unreasonable risk of injury exists is supported by injury information which indicates that a substantial number of injuries related to small parts involves children in this age group and items intended for their use. The Commission recognizes that by limiting the scope of the regulation to only those items intended for very young children, it will not eliminate all small parts incidents. However, the regulation will eliminate some of these frequently unanticipated and potentially life-threatening injuries.

Certain items have been exempted from the regulation. These include articles which have functional, educational, or other value which outweighs the risk they present, and articles already covered under other Commission regulations. In addition to these specific exemptions, the Commission notes that articles intended only for use by older children are not within the scope of the regulation; examples of such products are discussed below.

The regulation includes a list of articles which the Commission believes are intended for children under 3 and thus within the scope of the regulation. In addition, the regulation contains a list of factors which the staff will consider before determining whether products not specifically listed are covered. The Commission recognizes, however, that in some cases questions may arise. Therefore, the regulation references a procedure which firms may use to provide information on the intended use of the product before the Commission staff takes enforcement action.

II. Background

The Commission regulates the safety of toys and other children's articles under the Federal Hazardous Substances Act (FHSA, 15 U.S.C. 1261 *et seq.*). Before the Commission began operating in May 1973, the Food and Drug Administration (FDA) regulated toy safety under FHSA authority.

In 1970 the FDA issued two toy safety regulations which addressed the aspiration, ingestion, and choking hazards presented by particular small parts in toys, such as noisemaking components in rattles (these regulations are now codified with the Commission's regulations at 16 CFR 1500.18(a)(1) and (2)). Under the authority of these regulations, the FDA and later the Commission took many actions against particular toys which contained loose, small objects that could injure children.

In January 1973 the FDA proposed for public comment a comprehensive regulation designed to (1) identify toys and other articles intended for use by children under 3 years of age which present a mechanical hazard from small parts, (2) identify mouth-actuated toys intended for use by children under 8 years of age which present a mechanical hazard from small parts, and (3) classify all such products as "banned hazardous substances" under the FHSA (38 FR 2179–80, Jan. 22, 1973).

The January 1973 proposed regulation used a truncated, hollow cylinder of specified dimensions to determine which products were too small (or had components that were too small). In addition, the proposal referenced "use and abuse" test procedures to simulate the "normal use" and "reasonably foreseeable damage or abuse" which are part of the statutory definition of a mechanical hazard (section 2(s) of FHSA, 15 U.S.C. 1261(s)).

Some products which are normally intended by the manufacturer for children over 3 years of age may not be readily recognized by the purchaser as potentially unsuitable for younger children due to the presence of small parts. The FDA proposal therefore provided an exemption for those products only if they had the "negative" label "Caution: Not Recommended for Children Under 3 Years Old." A similar exemption based on cautionary negative labeling was proposed for mouth-actuated toys "not generally recognized as being suitable for use only by children 8 years of age or older." The proposal contained additional exemptions for chalk, crayons, and books made entirely from paper because the FDA believed the developmental benefits that children derive from the use of these products outweigh the potential danger of their being aspirated or ingested.

In response to its proposal, the FDA received over 90 comments from manufacturers, distributors, trade associations, the American Academy of Pediatrics, and individual consumers. Many of these comments were extensive and extremely critical. They addressed: the very broad and undefined scope of

the regulation; the lack of documentation for establishing the size and configuration of the test device; the vagueness of the labeling provisions and the exaggerated size requirements of lettering; the adverse effect of negative labeling; and the adequacy of lead time for compliance. In addition, the comments included requests for 20 different product class exemptions.

On October 16, 1978 the Commission proposed for public comment a revised small parts banning regulation (43 FR 47684–88). In this revised proposal, the Commission took into account the comments received in response to the FDA's January 1973 proposal.

III. Proposed Regulation

The October 1978 revised proposed small parts regulation was based on current injury data. It used the same cylindrical test device that the January 1973 proposal used, but it defined the scope of the regulation more clearly. The following is a discussion of the October 1978 proposal:

A. Injury Data

The government and industry toy safety efforts directed at small parts have been effective in reducing the risk of injury presented by small parts on toys and other articles intended for use by children under 3 years of age.[1] Nevertheless, the Commission published the October 1978 proposal because of its preliminary finding that an unreasonable risk still exists which should be addressed by a mandatory and comprehensive regulation. In particular, the fact that many of the injuries are fatal to children supported the Commission's belief about the unreasonableness of the risk from small parts.

During calendar year 1976, more than 7,000 children under 10 years of age were treated in U.S. hospital emergency rooms for injuries related to small parts in toys. This is a Commission estimate which is based on data from a statistical sample of 119 hospitals comprising the National Electronic Injury Surveillance System (NEISS). A number of Commission efforts have led to additional injury information that focuses on the hazard which small parts present to children under 3:

(1) *Special study.* Between December 24, 1976 and February 9, 1977 the Commission's epidemiological staff conducted a special study of small parts injuries reported through NEISS. The staff investigated and analyzed the injuries and found 153, representing an estimated 3,800 nationwide injuries for that period. These were verified to be ingestions, throat lodgments, or foreign body lodgments in ears or noses. Forty-six percent of these injuries were to children under 3 years of age, and 79 percent of all choking incidents were to children under three. (The complete study, "Injuries Associated with Small Objects," is available from the Office of the Secretary.)

(2) *Bendix study.* In 1976 the Commission contracted with the Bendix Company to conduct an investigation into the size of toys/small parts which have caused choking deaths or incidents in children under the age of 6 years. Bendix solicited information from the membership of the National Association of Medical Examiners.

Death certificates and injury reports obtained by Bendix indicated that toys, toy parts, and other objects ranging in size from 9/16 inch to 1¾ inches in greatest diameter can produce fatal obstruction of the air passage. (Copies of this Bendix report are available from the Office of the Secretary.)

(3) *Data on deaths associated with small parts.* The staff has compiled data, from its own files and from those of the Bendix Company, on deaths associated with small parts. Between March 1973 and March 1977 the Commission received 113 death certificates in which the cause of death was related to small parts. Forty-five deaths were associated with 14 different types of children's toys and nursery products.

The following causes of death were among those revealed by the certificates: (1) lodgment of an object in the pharynx or larynx area of the throat which blocked the air passage and resulted in suffocation; (2) asphyxiation due to partial or total blockage of air to the lungs, resulting from either direct obstruction of the trachea (windpipe) by a foreign object or indirect obstruction by vomitus; (3) swallowed sharp or pointed objects which cut or pierced internal organs; (4) aspiration of an object into a bronchus or lung.

Approximately half of the victims in the Commission's death certificate file on small parts were under 3 years of age. In the Bendix Company data on deaths associated with choking, more than two-thirds of those who died were children under 3 years of age.

(4) *Other data bases.* The Commission also reviewed over 200 indepth investigations and consumer complaints in its files which involved injuries from small parts. These involved foreign body throat lodgments, ingestions, and aspirations, as well as foreign body ear and nose lodgments. The throat lodgments cut off the breathing of many of the victims, and some children survived only because an adult was present to remove the object. Other victims died of suffocation. All of the victims who aspirated objects required hospital in-patient treatment.

B. Statutory Framework

Under section 2(f)(1)(D) of the FHSA, the definition of "hazardous substance" includes "[a]ny toy or other article intended for use by children which the [Commission] by regulation determines * * * presents an electrical, mechanical, or thermal hazard." Under section 2(s) of the FHSA, "[a]n article may be determined to present a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness * * * because the article (or any part or accessory thereof) may be aspirated or ingested * * * or * * * because of any other aspect of the article's design or manufacture."

The Commission proposed to define as hazardous substances certain toys and other articles intended for use by children under 3 years of age, based on the small parts hazard they present. Following issuance of a final regulation defining them as "hazardous substances," toys that contain small parts, as defined in the regulation are automatically "banned hazardous substances" under section 2(q)(1)(A) of the FHSA, because they would be "toy[s] or other article[s] intended for use by children which [are] hazardous substance[s]."

Under section 3(e) of the FHSA, the Commission must follow the informal notice and comment rulemaking procedures of 5 U.S.C. 553 to determine that a toy presents a mechanical hazard, unless it elects alternative procedures. In this small parts proceeding the Commission has followed the 5 U.S.C. 553 procedures.

C. Scope

As proposed, the small parts regulation applied to nearly all toys and other articles intended for children under 3 years of age. All children and adults are potential victims of the hazard presented by small parts, but children under 3 are particularly susceptible.

Children under 3 indiscriminately put things into their mouths and do not have the knowledge of cause and effect relating to protecting themselves from potential hazards as does an older child

[1] In an effort to simplify the preamble discussion, the term toy(s) will be used inclusively for both toys and other articles intended for use by children.

or adult. (This is discussed fully in an April 17, 1978 staff report, entitled "Normal Developmental Behavior in Young Children and Their Relationship to Potential Hazards," which is available from the Office of the Secretary.) In addition, very small parts on toys that are intended for use by children under 3 usually serve a limited or no functional purpose.

Finally, it is easier to control the products to which children under 3 have access than to control the products to which older children have access. Children under 3 could, of course, encounter and choke on a coin, hairpin, or other adult item or on toys intended for use by their older brothers and sisters. However, the Commission's proposal was based on its belief that a regulation directed at toys intended to be used by children under 3 will have a positive impact in reducing injuries.

In determining which toys and other articles are intended for children under 3, the Commission proposed to consider such factors as the manufacturer's stated intent (such as on a label) if it is a reasonable one; the advertising, promotion, and marketing of the toy; and whether the toy is commonly recognized as being intended for children under 3. As proposed, none of these factors would necessarily be determinative. (It should be noted that products which are intended both for children under 3 and for older children would fall within the scope of the regulation.)

The proposed regulation covered all toys and other articles intended for use by children under 3 that were included in a long list of product categories. The list was developed from a number of sources including the Toy Manufacturers of America classification system, published commercial promotional materials, and a retail store survey conducted by the Commission staff. While this list was not intended to be exhaustive, the Commission believed that the vast majority of toys covered by the regulation would fall within at least one of these categories. Because of the very broad scope of the proposed regulation, the Commission expected the list of product categories to help industry representatives and consumers focus on the products being regulated. The Commission emphasized that, even if a toy did not fall within a category on the list, it would be covered by the regulation as long as it is intended for use by children under 3 and is not specifically excluded from coverage.

The Commission proposed exemptions for a number of products whose functional, educational, or other value outweigh any possible hazard from small parts. In some cases, compliance with the small parts regulation would mean drastic redesign of useful everyday products at substantial cost to the consumer. In other cases, compliance would be physically impossible because the product could not perform its function if redesigned.

As examples, books made of paper and writing materials are educational. Children's clothing and accessories, such as shoe lace holders and buttons, are functional. Modeling clay and fingerpaints cannot practicably be manufactured so that small bits of these substances will never break off. (Under the FHSA, any such products which are harmful to children because of their toxicity, as an example, are automatically banned.)

The Commission also proposed to exempt marbles and balloons from the small parts regulation. If the regulation covered marbles and balloons, these entire product types would be effectively banned. The Commission believed that the negative effect of removing traditional toys such as these from the selections available to consumers would outweigh the net safety gain. In any case, the Commission expressed its belief that marbles, when used in the game of "marbles," are generally intended for children over 3. However, the proposed regulation did cover any marbles which are part of a toy that is intended for children under 3.

Finally, the Commission proposed to exempt pacifiers and rattles from the small parts regulation. The Commission's existing regulations for these products both contain requirements which specifically address the risk of injury presented by small parts (see 16 CFR Part 1510 for the rattle regulation and 16 CFR Part 1511 for the pacifier regulation).

A comment to the January 1973 proposal had requested an exemption for vending machine products. This was based on the claim that these products are not intended for children under 3 because such children cannot activate the machines. The Commission expressed its belief that some vending machine products are nevertheless intended for children under 3, and the proposed regulation did not exempt vending machine products as a broad category. Instead, the Commission proposed to evaluate them individually as to whether they are intended for use by children under 3.

D. Regulatory Criteria

The Commission's October 1978 proposed regulation centered on a measuring device—a truncated, hollow cylinder—which separates toys and their components into two classes, according to their size and shape. The Commission proposed that a toy or component which fits entirely within the cylinder is to small for children under 3 and should be banned.

The same cylinder has been used as the basis of voluntary toy safety efforts by the FDA and by Commission staff members. In addition, the Toy Manufacturers of America (TMA) incorporated the cylinder into its Toy Safety Voluntary Product Standard PS 72–76 (1976).

The dimensions of the cylinder, as proposed, were identical to those proposed by FDA in January 1973. Data obtained by the Commission and analyses performed since 1973 confirmed that a cylinder with those dimensions is the most meaningful, effective, and practical way to identify toys and components that present unreasonable risks of choking, aspiration, or ingestion to children under 3 years of age.

The Commission staff first evaluated the relevant medical data found in the existing literature. These data on the actual dimensions of air and food passages in humans are sparse and alone are probably insufficient to support the determination that objects of a particular size are hazardous. However, the data proved useful in establishing certain approximate size boundaries.

The staff then evaluated the sizes and shapes of the objects known to be involved in choking, aspiration, or ingestion incidents in children under 3. Many of these objects were identified in the Bendix contract report. The staff found that the cylinder would "screen out" the vast majority of such objects.

The staff also evaluated a test device with dimensions used by the Commission (43 FR 22002, May 23, 1978) and the Canadian government to define hazardous rattles. This device also screened out many objects which were involved in actual choking, aspiration, or ingestion incidents. However, the rattle test device additionally screened out a large number of products not so involved and not otherwise believed by the staff to be hazardous. Based on this analysis, the Commission decided to incorporate the test cylinder into its proposed regulation.

A June 5, 1978 Commission staff report, entitled "Human Factors

Analysis of Ingestion, Aspiration, and Choking Injuries," discusses in some detail the link between the cylinder and the risks of injury it addresses. In particular, the report (which is available from the Office of the Secretary) traces the evolution of the cylinder and its dimensions.

Briefly, the design of the cylinder is derived from two screening devices originally proposed by the Toy Manufacturers of America. These devices consisted of a hollow sphere with an inside diameter of 1¼ inches and a long narrow cylinder having an inside diameter of ⅛ inch and a length of 2¼ inches. The purpose of the sphere and the cylinder was to eliminate objects which had been involved in ingestions, aspirations, and airway obstructions, such as small balls and slender pins. However, use of the two devices incorrectly implied that two separate and distinct problems existed. therefore, FDA combined the concepts of the two TMA devices into a single measuring tool, a truncated cylinder, which incorporated the dimensions of each.

The diameter of the cylinder is based upon a set of recommendations made by the Accident Prevention Committee of the American Academy of Pediatrics. As stated in this committee's correspondence, "an item having a 1¼ inch minimum width is not likely to . . . suddenly and completely obstruct the airway." The depth of the cylinder is based upon data and medical literature available to the Commission which indicate that the vast majority of objects involved in injuries to children under 3 years of age were less than 2¼ inches in length.

The regulation, as proposed, also referenced certain "use and abuse" test procedures which the Commission published in final form in the **Federal Register** on January 7, 1975 (40 FR 1484–85) and which appear at 16 CFR 1500.51 and 1500.52 (excluding the bite test procedure—section (c) of both provisions). These procedures are intended to simulate the normal use and reasonably foreseeable damage or abuse to which a toy for children under 3 would be subjected. As mentioned in the Background section above, this concept is contained in the statutory definition of a mechanical hazard.

Under the proposed regulation, toys (and detachable components) would be tested as potential small parts by being placed in the cylinder. They must be large enough so that they do not fit entirely within the cylinder. If a toy does not fit entirely within the cylinder, it would then be subjected to the referenced "use and abuse" procedures. The toy is again tested by being placed in the cylinder. In addition, any components or pieces that have become detached from the toy during the "use and abuse" procedures are separately tested in the cylinder. If any toy or any component or piece of a toy fails the test criteria (by being small enough to fit entirely within the cylinder), the toy is a banned hazardous substance.

E. Labeling

The regulation, as proposed in October 1978, did not contain any labeling requirements. The Commission considered and rejected the "negative" labeling approach that FDA used in its 1973 proposal. Because there was no attempt in the FDA proposal to define specific categories of toys to be covered, any toy not intended for children under 3, which contained small parts, had to be labeled with the warning "Caution: Not Recommended for Children Under 3 Years Old."

The 1973 labeling proposal, although never issued by the FDA or the Commission, prompted many manufacturers and importers to apply this label to many of their products. Such labeling was apparently designed to exempt products automatically from coverage of any final small parts regulation that might be applied to toys intended for children under 3.

As part of its October 1978 proposal, the Commission expressed its belief that the label has been used indiscriminately and without regard for the intentions of the original proposal. For example, certain items, such as squeeze toys and stuffed animals which are clearly intended for infants, have been distributed in commerce bearing the label.

In its proposal, the Commission strongly discouraged improper use of age labeling on children's products. The Commission proposed to disregard any label on a toy clearly intended for children under 3 that states otherwise. However, the Commission encouraged the use of proper age labeling, and proposed that such labeling be one factor it would consider before determining whether a particular toy is intended for use by children under 3 years of age (as discussed in the Scope section above). The Commission decided that a negative labeling requirement was not needed because the proposal clearly stated the intended scope of the regulation.

F. Effective Date

The Commission proposed that the final small parts regulation become effective six months after its issuance. This was based on the Commission's desire to make the regulation effective sooner than one year after its final issuance. The proposal was supported by the fact that the test cylinder has been available since 1973 to toy companies, most of which already produce complying products. The Commission sought comment especially on this proposal that the small parts regulation become effective six months after its publication in final form.

G. Economic Considerations

In its discussion of the October 1978 proposal, the Commission stated its expectation that the industry-wide economic impact of the small parts regulation would be small. The results of a standardized retail store survey suggested that the vast majority of toys and children's articles already meet the requirements of the proposed regulation. In part because of the existing voluntary standard and the specific exemptions of certain toys, only a small fraction of toys would be affected by the small parts regulation, as proposed.

Of those firms whose products did not then meet the requirements, the majority were expected to need only minor changes to bring their products into compliance. Frequently, the necessary adjustments would simply involve removal from the products of a small part which does not change the basic nature or function of the product. Alternatively, the manufacturer could redesign the product so that the small part is larger and thus complies with the regulation.

In some cases the regulation was expected to pose problems for manufacturers of products which contain small parts that a child can easily detach from a toy. The Commission expressed its belief that existing technology could solve such problems because nearly identical products exists which do not have such easily-detached small parts. More glue, rivets, or other similar solutions may be sufficient to bring a product into compliance, with only minor cost increases.

The Commission did not expect small businesses to face undue hardship in meeting the requirements of the regulation, as proposed. The economic considerations concerning the small parts proposal were fully discussed in the May 1978 staff report, entitled "Economic Assessment of the Proposed Small Parts Regulation," which is available from the Office of the Secretary.

H. Environmental Considerations

The Commission assessed the potential environmental impact of the small parts regulation, as proposed, and concluded that no potentially significant environmental impacts are associated with it. Therefore, the Commission decided that no environmental impact statement was necessary. (Copies of the environmental assessment are available from the Office of the Secretary.)

IV. Discussion of Public Comments

The Commission received 46 comments from the public on its October 1978 small parts proposed regulation. Eighteen of these came from industry and 17 came from individuals unaffiliated with any groups or organizations. Included among the 11 other comments were submissions from representatives of the medical profession and of state and local governments. All comments received are available for inspection in the Office of the Secretary.

The following discussion of the comments is categorized by subject. It does not correspond exactly with the discussion of the proposed regulation in section III, but it covers most of the same subjects.

A. Risk of Injury

1. *Injury data.* A number of commenters have asserted that the injury data cited by the Commission do not justify issuance of the small parts regulation. The most common comment was that many of the small products and components causing the deaths and injuries that were cited by the Commission would not be addressed by the regulation.

Based on the injury data which supported the proposed regulation, the Commission continues to believe that small parts present a serious hazard to children under 3 years of age. All of the available injury data, taken together, support the finding that the risk which small parts present to children under 3 is an unreasonable one.

For example, the NEISS data show the scope of the problem. Of the estimated 3,800 incidents uncovered during the 6-week special study of NEISS data on small parts injuries, 46 percent were to children under 3 and 79 percent of all life-threatening choking incidents were to children under 3. In addition, 68 percent of the NEISS injuries in the special study involving children's products involved products for children under 3 (if products exempted from the regulation are not counted, it is 64 percent).

The Commission's regulation will not eliminate all aspiration, choking and ingestion incidents. Some reported injuries were caused by household articles that are not intended for use by children under 3, including toys intended for use by older children. Other injuries may have resulted from misuse of the products that was not reasonably foreseeable.

By the same token, the NEISS data are not intended to pinpoint every injury which a proposed regulation might address. NEISS merely provides injury statistics which identify the broad categories of products and victims that are associated with injuries treated in hospital emergency rooms. The NEISS data relevant to the small parts regulation indicate that children under 3 bear a disproportionate share of the choking and other injuries caused by small parts. In conjunction with other injury data, the NEISS data support the finding that the risk which small parts present to children is an unreasonable one.

An example of other injury data which support the unreasonable risk finding is the significant number of deaths that small parts have caused to children under 3. The Commission's files contain 113 certificates on deaths caused by small parts. Of these, 45 were associated with various children's toys and nursery products, and approximately half of the victims in the 113 cases were under 3 years of age. A recent check of the Commission's death certificate data base reveals that at least 25 deaths from small parts involved products that are not exempt from the regulation.

Again, the Commission's regulation would not have prevented all of the deaths of children under 3 that were caused by small parts. Because products not intended for children caused some of the deaths, even a ban of all children's products involved in fatal incidents could not eliminate all risk. Nevertheless, the death certificate data support the existence of a serious risk from small parts. The Commission's regulation addresses a substantial portion of this risk in a fair, practical and effective way.

Injury statistics understate the risk of injury addressed by the small parts regulation. Even if every injury and death could be recorded and analyzed, incidents in which children under 3 barely escaped death and serious injury are unlikely to appear in statistical studies.

A parent who finds an infant choking on a teething ring and not breathing will immediately dislodge the ring. The infant may be fine in a few moments. Although death was nearly the tragic result, this incident would probably not show up in hospital emergency room records and would not be reported on a death certificate.

Such "close calls" are important indicators that a risk of injury from small parts exists. Although "close calls" are not routinely reported to the Commission, two mothers did describe such incidents in their official comments on the proposed small parts regulation. Both reports involved babies under six months and both involved crib toys. Although neither baby was injured, one or both could have choked to death on the small parts that came off the toys involved.

The Commission believes that it should not wait for deaths, injuries, or even "close calls" to occur before determining that a children's product presents an unreasonable risk of injury under the FHSA. As the Chairman of the National Commission on Product Safety said at a Senate subcommittee hearing in 1969, in testimony concerning toy safety amendments to the FHSA, "[w]hen your intelligence tells you that something will create an injury and it seems conceptually clear that an injury will occur, it is primitive to wait until a number of people have lost their lives or sacrificed their limbs before we attempt to prevent those accidents" (Hearing before the Consumer Subcommittee of the Committee on Commerce, April 16, 1969, pp. 31–32).

The Commission does know that small parts have caused the deaths of children under 3. By size and intended use, the Commission has categorized the products which present the greatest risk and which can be effectively regulated. Especially because deaths are involved, the Commission will not delay acting against the risk until every item in the category has been involved in a specific incident.

A trade association of firms associated with bulk vending products, the National Bulk Vendors Association (NBVA), has questioned whether such products present an unreasonable risk of injury to children under 3. NBVA has claimed that bulk vending products are not associated with particular small parts injury incidents.

The Commission believes that potential future incidents should be prevented, for the reasons discussed in this section. In addition, NBVA has stated that only two injury incidents in the Commission's data base might have involved bulk vending products. However, these two incidents were found in a 6-week special survey of

incidents in a sample of hospital emergency rooms. Therefore, each statistically represents many more emergency room incidents and many other incidents which would never show up in emergency room statistics. More importantly, products are generally categorized by type, not by method of distribution, for injury reporting purposes. The injuries associated with "bulk vending products" cannot therefore be accurately quantified using existing data.

2. *Legislative history of FHSA.* NBVA has made an additional argument, based on the legislative history of the FHSA, that vending machine products do not present an unreasonable risk of injury. As discussed under Statutory Framework (section III, B, above), the Commission is regulating small parts by classifying as "mechanical hazards" toys which are or which contain small parts. This classification must be based on a Commission finding that such toys present "an unreasonable risk of personal injury or illness."

NBVA's argument, based on its interpretation of the FHSA, is that "in contrast to electrical or thermal risks, mechanical risks are to be judged quantitatively before being classified as unreasonable risks." More specifically, NBVA has asserted that the Commission cannot classify a toy as a mechanical hazard merely because it is small. Rather, the Commission must also consider factors other than size.

The Commission agrees with all but a minor portion of MBVA's analysis of the legislative history. It is true that the definition of "electrical hazard" in the FHSA does not contain the "unreasonable risk" phrase. (Presumbly, any electrical risk is a serious one and a separate "unreasonable risk" finding is unnecessary.) However, the definition of "thermal hazard" does contain the same language about "unreasonable risk" that the definition of "mechanical hazard" contains.

The crucial point is that the Commission has not proposed to classify any toy as a mechanical hazard merely because of its size. As explained under Proposed Regulation (section III, above), the Commission has considered a number of factors. First, the Commission has identified the most vulnerable population at risk, children under 3. Because of the relative helplessness of these children and because of their propensity to place things in their mouths (as discussed in section III, C, above), the Commission's regulation is limited to toys and other articles intended for children under 3. If size were the only factor, the Commission would have banned all small toys intended for use by children of any age.

Another factor which the Commission has considered is the educational and functional value of the products potentially covered by the regulation. Some educational and functional products cannot be redesigned to comply with the regulation. Modeling clay is not modeling clay unless bits can break off. Buttons must be relatively small and are extremely useful on children's clothing. Therefore, the Commission granted exemptions for these and other products. If size were the Commission's only consideration, the regulation would have the practical effect of banning clay, paints, diaper pins, hair barrettes, and a host of other products.

Finally, the Commission has considered the severity of the injuries caused by the small toys. If a risk less severe than possible death were involved, the Commission may not have found it necessary to issue any small parts banning regulation at all.

NBVA's argument based on the FHSA legislative history might be convincing if the Commission had limited its consideration of factors to the size of the toys involved. However, the Commission has not done this. Instead, as required by the provisions of the FHSA, the Commission evaluated whether the toys it has regulated present an unreasonable risk of injury. The determination that they do is based on a careful consideration of such factors as the age of the children involved, the educational and functional value of the toys, the severity of the injuries involved, and the size of the toys.

B. Scope

1. *Products covered by regulation.* Many commenters have expressed views about the scope of the small parts regulation. A recurring comment from the toy industry was that the regulation does not clarify which toys and other articles are "intended for use by children under 3 years of age."

When proposing the small parts regulation in October 1978 the Commission provided a specific list of the toys which are covered. The Commission also listed the factors it would consider before determining which other toys might be intended for children under 3. As summarized above in the Scope section under Proposed Regulation (section III, C), these factors include the manufacturer's stated intent (such as on a label) if it is a reasonable one; the advertising, promotion, and marketing of the toy; and whether the toy is commonly recognized as being intended for children under 3.

Since none of the factors is determinative, many toy manufacturers expressed the concern that they will not know for certain whether their toys are covered by the regulation. Therefore, many suggested that the manufacturer's labeling should be conclusive on the question of whether a toy is intended for children under 3.

The Commission made a special effort to define clearly the scope of the small parts proposed regulation. The scope section (1501.2) included a lengthy list of the types of products that are definitely covered. This list was based on the Commission staff's retail survey of toys and children's articles. The Commission believes that this list covered most products which might reasonably be intended for children under 3.

The nature of any broad, generic regulation is that a few products will not be conclusively included in or excluded from the defined class. Therefore, the Commission has indicated factors to help determine fairly which "borderline" products might be covered by the regulation.

No single factor can determine conclusively whether a borderline toy is intended for children under 3. The manufacturer's labeling is undoubtedly one factor. If a toy's carton recommends "For children ages 2–5," it is likely that purchasers of that toy will give it to children of those ages. However, it is also likely that some purchasers will buy the toy for precocious children who are only one-and-one-half years old. Thus, despite the labeling, such a toy will actually be used by children for whom the manufacturer apparently does not intend it.

Similarly, the ways in which toys are packaged, promoted, and otherwise marketed will be factors in determining the age group for which they are intended. As an example, an exclusive import shop might be selling an expensive collector's item for adults or older children. A toy store might be selling inexpensive imitations of this item as toys for young children. In this example, place of sale and price would be important factors. The type and manner of advertising might also be factors.

Most marketing factors cannot be conclusive in determining whether a toy is intended for children under 3. Using the collector's item example, what would be the price cut-off and what would be the definitive description of what is an import shop and what is a toy store? In order to write a rule in which specific marketing factors clearly

separated toys intended for children under 3 from all other products, the Commission would have to disregard many subtle but relevant factors.

If the manufacturer's intent as stated on a label were solely determinative, hazardous toys that are genuinely intended for children under 3 could be intentionally or unintentionally mislabeled to fall outside of the Commission's small parts regulation.

Another deficiency with making labeling the sole and conclusive factor is that there are no industry-wide guidelines on age labeling. Consumers must contend with the differing practices of individual manufacturers. The Commission has observed at least one extreme example of how much these practices differ. On one page of a newspaper advertising supplement, a major toy retailer pictured and described a number of "baby dolls". In essence, these were the same dolls but were made by different companies. The manufacturers' age recommendations, which were also noted, were 3–8, 3–9, 2–up, 3–10, 3–up, 2–7, 1–7, and 2–8. Nevertheless, the Commission has every reason to believe that these baby dolls are all appropriate for use by children in the same age group.

The Commission believes that many factors are relevant to the determination of whether particular toys are intended for children under 3 and that none of these factors can be conclusive in isolation. In addition, manufacturers are not powerless to affect the marketing of their toys and are not ignorant of the way their toys are actually marketed.

Because of the importance of the factors, the Commission has decided to incorporate them into the small parts regulation. (They were discussed in the preamble to the small parts proposal.) Section 1501.2(b) of the final regulation below reflects this change.

The factors are most meaningful when they are carefully applied to the particular toys involved. Under a recently-amended procedure, the Commission's compliance and enforcement staff will be required to do this in every case, before initiating any enforcement action under the small parts regulation. The Commission believes that the scope of its small parts regulation is sufficiently clear. However, many commenters from the industry disagree. The procedure, along with the Commission's willingness to entertain requests for advice about the coverage of specific toys, addresses the strongly-stated industry comments that some toys are not clearly included in or excluded from the regulation.

Specifically, people and firms will have an opportunity to present written and/or oral evidence and arguments that enforcement action against their products would be unjustified. The longstanding practice of the Commission staff, which the Commission believes is a reasonable and important practice, has been to provide such an opportunity. Therefore, this procedure is now contained in staff enforcement guidelines.[2] The procedure (as contained in the guidelines, which are available from the Office of the Secretary), is summarized in the small parts regulation at § 1501.5 below.

Under the procedure, affected persons and firms will have the opportunity to present their arguments and evidence that a particular toy does not violate the regulation or that enforcement action is unwarranted. This opportunity is available anytime within 10 days of the time the staff sends them a "Letter of Advice" that their toys are noncomplying and that enforcement action might be necessary. The contentions will be addressed to the Area Office which sent the Letter of Advice. If the Area Office staff remains convinced that the toy is in violation of the regulation, its recommendation to initiate enforcement action (seizure, prosecution, or injunction), along with the firm's response to the Letter of Advice, must be made to the Commission or to a delegated staff member. The Commission has delegated this function to the Associate Executive Director for Compliance and Enforcement.[3]

This timely opportunity for submissions addresses the industry's concern that the regulation will be enforced against toys that are not intended for children under 3. At the same time, the ten-day period will not unduly delay necessary enforcement actions. (When required to protect the public safety in an emergency situation, the Commission may utilize more expeditious alternatives.) Especially because of the need for prompt consideration of the submissions, those that discuss the § 1501.2(b) factors will be particularly helpful.

2. *Expansion of scope.* One commenter—Edward M. Swartz, a Boston attorney who has been active in toy safety matters—has suggested that the Commission expand the scope of the small parts regulation to include toys foreseeably used by children up to age 5. Although this suggested change would almost surely result in some additional protection from hazardous toys, the Commission must reject it for the present time.

If the small parts regulation were broadened at this time, the scope of products covered would become uncertain. While most products intended for use by children under 3 are easily categorized as such, this may not be true for products intended for children between 3 and 5 years of age. In addition, although children 3 and older have been injured and endangered by small parts, a broadening of the regulation would require follow-up economic and injury data analyses to support an unreasonable risk of injury finding. Rather than delaying the present regulation, the Commission may consider as a separate regulatory possibility the protection of children 3 and older from the small parts hazard.

Other commenters suggested that polyurethane pellets, nut shells, and other toy stuffing materials be added to the scope of the small parts regulation. Since the integrity of covering materials will be tested under the use and abuse procedures, any stuffing materials that could pose a risk to children under 3 are already covered by the regulation. Neither the pellets nor shells nor any other stuffings need to be specifically or separately mentioned.

3. *Exemptions.* The Commission received numerous comments stating that particular products should or should not be exempted from the small parts regulation. As proposed, the following products were exempted: balloons; most marbles; books and other articles made of paper; writing materials; children's clothing and accessories; grooming, feeding, and hygiene products; records; modeling clay and similar products; paints; rattles; and pacifiers.

A few commenters suggested that marbles and balloons should be covered by the small parts regulation. As discussed in the Scope section under Proposed Regulation (section III. C), the Commission believes that marbles are not intended for use by children under 3 unless they are incorporated in a toy that is intended for such children. Therefore, the listing of marbles under exemptions was merely for clarification. They are not covered by the regulation (when sold on their own) and technically need not be exempted. In the final regulation they have been deleted from the list of exemptions.

Balloons represent a special situation. They cannot be regulated by the criteria in this regulation to address the small parts risk without being completely

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[2] Enforcement guidelines were filed as a part of the original document.

[3] Copies of the authority delegation were filed as a part of the original document.

banned. The Commission has therefore decided not to include balloons in the final banning regulation below, and may consider a separate regulatory action for them. If so, the Commission will consider the possibility of requiring cautionary labeling, as two commenters suggested. (One of these commenters singled out balloons shorter than six inches, but the Commission knows of no safety-related basis for this distinction.)

Aside from the specific exemptions, the Commission's proposed regulation excluded from coverage certain substances that could become exposed as a result of the use and abuse testing. These were bits of fabric, yarn, paper, and fuzz. The reason for these exclusions was that these fibrous-type materials cannot be meaningfully tested with the truncated cylinder when they are pulled off or out of a toy. For example, the bits of fuzz that can be "picked-off" a teddy bear and the clumps of yarn hair that can be plucked from a doll's head cannot be tested in the cylinder with any precision. The Commission does not expect these minor exclusions to affect the overall effectiveness of the regulation.

A number of commenters have named other substances that they believe should be similarly excluded from coverage if exposed during use and abuse testing. The Commission agrees that some of the additional fibrous-type substances named in the comments should be added because they present the same testing limitations as fabric, yarn, paper, and fuzz. Therefore, the parenthetical exclusion in the final regulation (§ 1501.4(b)(2)) has been modified to include elastic and string. Because cotton and wool are fabrics, and therefore already covered by the parenthetical exclusion, the requests to add them to the list are denied as unnecessary.

There are a number of other substances and products which commenters specifically discussed:

(a) *Foam and other porous materials, such as sponge.* These products break off in distinct "chunks" and can be tested. In addition, the Commission believes that they are particularly hazardous because they can lodge in a child's throat and then expand to make it difficult to dislodge them. The Commission has numerous reports of choking incidents associated with foam from playpen rails and playpen pads. In fact, one of the comments to the small parts regulation discusses just such a "close call" involving foam from a playpen. The Commission has not added to the regulation any exemption for foam or similar products.

(b) *Doll clothing and other accessories.* While accessories on children's clothing are functional, the same accessories on doll's clothing are not. A child may play with the button on his or her sweater, but this is different from playing with a button on a doll's sweater which is specifically and solely designed for play purposes. Therefore, doll's accessories are not exempt from the small parts regulation. Toy dishes are similarly not exempt.

(c) *Teddy bears.* One commenter seems to imply that a teddy bear should be exempt from the regulation because its psychological value is as great as the educational value of balloons or crayons. Since it would be virtually impossible to design crayons (which break into pieces) or balloons that comply with the regulation, they have been exempted. However, it is possible to design teddy bears that comply with the regulation. Therefore, the Commission has not banned teddy bears by issuing this regulation, and no exemption for them is needed.

(d) *Ohajikes.* A Japanese trade association has asked whether Ohajikes are covered by the regulation. The Commission has learned that these are the Japanese equivalent of marbles and are not intended for use by children under 3. Therefore, they are not included within the scope of the regulation, unless they are incorporated in a toy intended for this age group.

(e) *Craft items.* Because craft items are not intended for use by children under 3, no exemption from the regulations is necessary.

(f) *Bulk vending products.* At the time it proposed the small parts regulation, the Commission specifically solicited comments on the question of whether these products should be exempt. The American Academy of Pediatrics has commented that they should not be. The National Bulk Vendors Association (NBVA) has submitted an extensive set of comments arguing that they should be.

NBVA has asserted that many bulk vending products are not intended for children under 3. To the extent that this is true, the small parts regulation does not apply and the issue of an exemption does not arise. However, NVBA's comments have assumed that some bulk vending products do fall within the scope of the regulation. The comments include a request for an exemption for the category of bulk vending products, a category which is defined by methods of distribution rather than by nature of the product.

The regulation contains exemptions for certain specific products, such as balloons. After considering the products in the category and balancing numerous factors, the Commission has determined that an exemption for balloons is appropriate. Similarly, the Commission has exempted some broader categories of products, such as those made of paper. Because all such products have a common characteristic, the Commission can determine whether an exemption based on that characteristic is appropriate.

However, NBVA seeks an entirely different kind of exemption. The category of bulk vending products includes many different types of products and products made of many different substances. The only link is that they are sold in vending machines. Only if this link were a factor which related significantly to the risk presented would an exemption be appropriate. NBVA has submitted no data establishing such a link. The Commission does not see any such link and has therefore declined to grant the exemption.

The NBVA has asserted that children under 3 cannot operate vending machines, but his is not a relevant consideration. Even if children under 3 could not obtain bulk vending toys directly from the machines without assistance from an adult or older child, it is still possible that the toys are intended for use by children under 3. The crucial point is that children under 3 are unlikely to go into stores and buy any toys at all. Adults generally buy toys and give them to children in this age group. This is true whether the toy is bought from a salesperson at a toy store or from a machine. This factor does not in any way undermine the obvious fact that many toys are intended for children under 3.

The Commission is not convinced that an exemption based on the method of distribution of certain toys is justified or appropriate for the small parts regulation. This generic regulation covers the products in a particular category which present a particular unreasonable risk of injury. Unless there is a reason to exempt products from the category, based on some common characteristic of those products or on compelling economic considerations, an exemption would contradict the rationale of the regulation.

The NBVA has not provided any such reason or any such characteristic. NBVA's comments do contain assertions, but no data, concerning the economic impact the small parts regulation would have on bulk vending products. However, the Commission does not share the view that its

regulation will put members of the NBVA out of business. In its evaluation of a representative sample of bulk vended products, the Commission has found none that will be covered by the regulation. Even if some bulk vending products were banned by the small parts regulation in the future (because of new designs or changed marketing patterns), the Commission is not persuaded that the industry could not avoid serious harm by shifting away from those products.

(g) *Articles made of fabric, yarn, fuzz, and paper.* The proposed regulation excluded from the test procedure any piece or "bit" of paper, fabric, yarn, or fuzz that became detached from a toy as a result of use and abuse testing. As already discussed in this section, these exclusions (as well as exclusions for elastic and string) are contained in the final regulation (§ 1501.4 (b) (2)). They are based on the testing limitations posed by these bits of materials.

A number of commenters have suggested that products made of the same materials be added to the list of exempted products in § 1501.3. The Commission declines to do so because products made entirely of these materials present the same potential small parts risk as products made of all other materials. It is only bits of the materials which cannot be tested meaningfully and which have therefore been excluded in § 1501.4(b)(2). (For a different reason, products made of paper are already exempted. In addition, fuzz is, by definition, a bit of material and an entire product would not be made of fuzz.)

(h) *Other.* A number of other commenters supported exemptions that the Commission proposed. These included pencils and felt tip pens. The Commission has left these exemptions unchanged.

C. Regulatory Criteria

1. *Size and nature of test cylinder.* To comply with the Commission's small parts regulation, toys must be too large to fit totally within the test cylinder. Therefore, the larger the cylinder, the more stringent the test would be. One commenter has suggested that the Commission make the cylinder larger and another has suggested that it be made smaller, However, neither of these commenters provided any technical data concerning a more appropriate size. More specifically, the commenter who suggested a smaller device noted that he personally could not swallow an object 1¼ inches in diameter. However, objects this size enter the mouth and block the throat precisely because they cannot be swallowed. In fact, 19 percent of the throat lodgment incidents the Commission knows of involved objects between ¾ and 1¼ inches in maximum dimension.

Another commenter suggested that the test template the Commission has used for rattles be used in the small parts regulation. On the basis of data on choking deaths of children 0–6 years of age, a team of experts who wrote the Bendix report recommended use of the rattle template. However, the Commission believes that the truncated cylinder is more appropriate for screening out products that are too small for children under 3. The rattle template, if substituted into the regulation below, would ban many products that the Commission does not believe present an unreasonable risk of injury to such children.

In addition, Canada's Consumer Standards Directorate has informed the Commission about the size of its small parts test cylinder. The shape of Canada's cylinder is the same as the Commission's and the dimensions, recently changed to the metric system, are nearly the same. After considering the comments on the size of the proposed test cylinder, the Commission has decided not to change the dimensions for the final regulation.

Unlike the Commission's regulation, Canada's regulation specifies that a force of 1 pound be exerted on objects when they are inserted into the cylinder for testing. The Commission does not believe that such a requirement would result in any significant increase in protection for children under 3.

A human factors engineer for Arthur D. Little, Inc. has suggested that the proposed cylinder be used temporarily "with the assurance that in-depth research and analysis would follow to develop the necessary scientific information to reduce the risk of small parts and form the basis of a permanent standard." The Commission must agree that any test device can be continually refined and improved, based on continuing scientific study. However, the Commission believes that its existing regulation fairly and effectively addresses a significant portion of the small parts risk to children under 3. The regulation incorporates a test cylinder which is based on epidemiological data indicating the population at prime risk, medical data, death certificates in which the size of the offending object is reported, and injury reports in which the size of the offending object is reported (see discussion of regulatory criteria in section III, D, above). If newly-available data indicate that the regulation could be improved, there are adequate procedures for amending it.

The Arthur D. Little engineer has also suggested that the Commission replace the proposed cylinder with cylinders of graduated sizes that reflect the range of differences in size and function of a child's aerodigestive system during the first three years of life. The Commission has adopted this type of approach, as one example, in certain provisions of its use and abuse regulations. Based on the fact that a child's strength increases with age, these provisions are divided into three parts (0–18, 19–36, and 37–96 months) which have differing test criteria. However, a child's gaining of strength occurs gradually and continually, rather than in an abrupt or discrete process. Therefore, these test criteria represent a compromise between the existing data and practicality. The compromise is justified only because the relevant data indicated an increasing trend and several benchmarks on which the Commission could base the different levels of test criteria.

In contrast, substantially less is known about the sizes of children's mouths, throats, windpipes and other critical passages. No data currently indicate even that the passages increase in size with age. Without such data and without the necessary benchmarks, a series of cylinders, as suggested by the Arthur D. Little engineer, is impractical. Although the Commission believes it would take years to develop a method for measuring these passages, it will periodically consider whether any available data would permit adoption of the suggested approach.

Finally, the same engineer has raised a potential problem concerning "implied safety." If a toy meets the Commission's standard and nevertheless presents a risk to children, there may be a false sense of security by purchasers of the toy. The Commission does not believe that all toys meeting the regulation are safe. However, the fact that some people may believe this is not a sufficient reason to withhold issuance of a regulation which will increase the safety of many toys.

Commenting on a different aspect of the test device, a toy manufacturer has suggested that the absence of dimensional tolerances and material or hardness requirements for the cylinder could contribute to inaccurate results. The Commission's test cylinders are manufactured from acrylic plastic. However, the Commission believes that any test cylinder made of a material sufficiently rigid to maintain the stated dimensions will yield equivalent results.

Neither hardness nor material requirements are necessary.

On the issue of tolerances, the Commission's cylinders will be designed and constructed to ensure that they will be no larger than the specified dimensions. In contrast, the Commission advises manufacturers to ensure that their test cylinders are no smaller than the specified dimensions. Manufacturers can provide themselves with a margin of safety, and increase the likelihood that their toys will comply with the regulation when tested by the Commission, by using a test cylinder that is slightly larger than the specified dimensions.

2. *Use and abuse test procedures.* Incorporated as part of the small parts test procedure are the "use and abuse" test methods at 16 CFR 1500.51 and 52. A number of commenters have raised a question about how the tension test method should be applied to toys and toy components made of porous materials such as polyurethane foam. The commenters are concerned that a failure will occur at the site of the clamps used for testing, and that such a failure would lead to a ban of their toys. Such a ban would be unfair if the failure were caused by the nature of the clamps rather than by the weakness of the material being tested. To assure that this result does not occur, the Commission will not ban any toys based on failures occurring at clamp sites during performance of the tension test.

D. Statutory Approach

As proposed, the Commission's small parts regulation would classify all non-complying toys as "banned hazardous substances" under the FHSA. Many industry commenters have urged the Commission to substitute a two-stage banning procedure for the proposed procedure. The main basis for this comment seemed to be the concern that insufficient due process procedures would be available to permit manufacturers to contest questionable Commission judgments that their non-complying toys are intended for children under 3 and thus banned. (This comment is also discussed in section B(1), above.)

The Commission uses a two-stage procedure to ban certain toys, intended for children under 8 years of age, that present unreasonable risks due to sharp points or sharp edges. In the first stage, the Commission uses its regulations to define what edges and points are both sharp and accessible (16 CFR 1500.48 and .49). After evaluating the risk presented by these points and edges, the Commission must then decide whether they present an unreasonable risk of injury to children under 8. If so, the Commission must complete a second stage, an informal notice and comment rulemaking procedure, before determining that the toys are banned under the FHSA.

The Commission decided to regulate sharp points and sharp edges on toys intended for children under 8 years of age using this two-stage procedure because the sharp point and sharp edge test devices classified as sharp some points and edges that might not under all circumstances present an unreasonable risk of injury to children under 8. Because of the extremely broad scope of products covered, the Commission wanted to evaluate the edges and points classified as sharp on an individual basis before deciding that the toys containing them should be banned. In addition, the nature of the risks of injury involved—less than life-threatening lacerations, avulsions, and punctures—did not require that the more expeditious one-stage approach be used.

Before deciding on a statutory approach for small parts, the Commission considered many of the same factors it had considered before deciding in favor of a two-stage approach for sharp points and sharp edges. Despite some articulate comments from the industry favoring the same approach for small parts, the Commission believes that it should be basically a one-stage banning regulation, with a modification to address this industry concern. Specifically, the ten-day opportunity for submissions, discussed above, does provide affected persons and firms with an opportunity to present to the Commission staff any contentions that their noncomplying toys are not intended for children under 3, before they or their toys are subjected to any enforcement action. This effectively addresses industry's concern without imposing the delay that is inherent in a two-stage procedure.

There are a number of reasons why different procedures are justified for the small parts and sharp points/sharp edges regulations:

1. The severity of the risk from small parts is extreme, especially when compared to the risk from sharp points and sharp edges. Some avulsions, lacerations, and punctures are serious, but the Commission knows of no incidents in which children injured by a sharp point or edge did not recover. In contrast, a small part can totally cut off a child's air supply within a few moments, causing death or irreversible brain damage. The industry comments did not discuss the severity of the risk as a factor to consider.

2. If a small part exists, it presents a direct danger to children. This contrasts with the sharp points and edges regulations in which the location of the point or edge on the toy needs to be carefully evaluated before the Commission can be sure that an unreasonable risk is present. The added uncertainty of this factor is an additional reason for adopting the two-stage approach in those regulations.

3. The small parts regulation covers only toys intended for children under 3. This is a much smaller range than the 0–8 years age range covered by the sharp point and sharp edge regulations. As discussed above, the Commission believes that the regulation is sufficiently clear so that toys in this category are readily identifiable.

If an industry member needs advise on the applicability of the regulation to a particular toy, the Commission staff will be happy to provide it, either before or after the regulation becomes effective. (A particular example of this, one that concerns bulk vending products, is discussed under Economic Considerations (see item 1 under section F, below).) In addition, the Commission has a policy on the granting of emergency exemptions from regulations (16 CFR 1009.9; 43 FR 19215–16, May 4, 1978). In a qualifying situation, an industry member could escape liability for marketing what the Commission considers to be a noncomplying product.

E. Effective Date

Many commenters discussed the issue of the effective date of the small parts regulation. Manufacturers uniformly have expressed a preference that it coincide with the established marketing cycle of the toy industry, and should not impact the industry in mid-season, between June and October, when toys are being shipped. The manufacturers have objected to the proposed 6-month effective date, and have recommended instead that the small parts regulation become effective during the first part of calendar year 1980, or one year from the date of final publication in the Federal Register, whichever is later.

Non-industry commenters on the effective date, including local consumer protection offices, have urged the Commission to make the final regulation effective immediately. They have pointed out that this would keep dangerous toys off the market during the 1979 Christmas season.

The Commission believes that some lead time is necessary, even though evidence suggests that many toys

already meet the small parts regulation. If six months of lead time were provided, as the Commission proposed, the regulation would become final just before Christmas this year. Some of the many toys sold for Christmas might be covered, but the vast majority of such toys would have already been introduced into interstate commerce and would not be covered.

The potential added safety stemming from a pre-Christmas effective date must be balanced against the disruption to the marketplace which it could cause. In addition to the impact on the industry, consumers would not know which toys on the shelves were covered by the regulation and which were not. In fact, if the regulation became effective just before or during the Christmas buying season, toy purchasers might relax their vigilance against small parts hazards. They would likely assume, wrongly, that all the toys on the shelves were covered by the newly-effective small parts regulation.

After balancing all of the relevant considerations, the Commission has decided to make the small parts regulation effective on January 1, 1980 so that toys introduced into interstate commerce after that date will be covered.

F. Economic Considerations

Aside from comments on the effective date, the major comment on economic considerations came from the National Bulk Vendors Association. As representatives of the distributors, manufacturers, and operators of bulk vending equipment and products, NBVA has claimed that the small parts regulation could destroy their industry by banning up to 33 percent of the products currently sold; by forcing many of their members out of business; by causing loss of jobs among the 10,000 to 15,000 employees in the industry; and by making millions of dollars of equipment obsolete. NBVA has commented that "[t]he drastic economic impact of the regulation * * * outweighs any possible benefit which might accrue from banning small toy items."

It is of course possible that the small parts regulation will have some future adverse economic impact on a segment of the bulk vending industry. This was discussed in the May 1978 staff economic report referenced in the October 1978 proposal (see section III, G, above). However, NBVA's assertions seem clearly to be based on "worst case" economic projections and speculation. NBVA has not provided the Commission with specific data showing the likelihood that severe economic consequences will result.

As examples, the following points undercut NBVA's points on economic impact:

1. The Commission staff has obtained (in most cases from NBVA) and evaluated a large number of products which are dispensed by random selection bulk vending machines and which it believes are representative of the products dispensed by the machines. As discussed above, the Commission believes that none of these products is "intended for use by children under 3," according to the criteria which define the scope of the small parts regulation (§ 1501.2).

2. NBVA has claimed that adverse safety-related publicity might hurt the sales of vending machine toys which are not banned. However, this would be no more true for vending machine toys for children over 3 than for any other toys.

3. Bulk vended toys and novelties for all ages represent only 33 percent of the industry's total revenue from bulk vending operations, although for some individual firms the percentage is much higher (figures provided by NBVA). Based on the anticipated banning of some portion of these items, NBVA has claimed that the entire industry could be destroyed. This claim remains unsupported by the submission by NBVA of any data or convincing arguments. Therefore, it is just as possible that the bulk vending products unaffected by the Commission's regulation—gum balls, other food, complying items, and items for children over 3—would pick up the slack caused by any items banned in the future. It may even be that the shift to products not banned would stimulate machine manufacturing and employment, as obsolete machines are retrofitted or replaced.

4. The manufacture of toys and novelties sold in bulk vending machines apparently occurs largely in foreign countries. Even if employment in these industries were temporarily affected, non-U.S. markets could probably be developed.

G. Miscellaneous

1. A number of commenters expressed disagreement with the entire small parts regulation because it represents government interference in an area where parents have the responsibility to protect their children. Especially because deaths are occurring, the Commission believes that parental discretion alone is not sufficient to provide children under 3 with the protection they need and deserve.

2. A commenter has asked what percentage of defective products will be considered acceptable by the Commission. This raises the issue of whether a sampling plan is necessary. The Commission acknowledges that it is impossible to be 100 percent certain that every product will comply with the regulation. A test of every toy, especially with the use and abuse procedures, is impossible.

Nevertheless, the Commission will not use a specific sampling plan. If Commission testing indicates a violation, the Commission will perform additional testing and will examine a manufacturer's testing records. Before taking any enforcement action, the Commission will decide whether there is a violation which could affect significant numbers of the product. In addition, the Commission expects manufacturers to design their toys to exceed the minimum performance levels required by the regulation. Such design would likely eliminate the need for any sampling plan that sanctions the manufacture and distribution of non-complying toys.

3. NBVA has proposed that the Commission address the small parts risk by requiring cautionary labeling on bulk vending machines instead of by banning noncomplying bulk vended toys intended for children under 3. Bulk vending machine labeling is generally equivalent to package labeling for other toys and signs in stores where other toys are sold. The Commission believes that none of these alternatives would provide the same degree of protection as a ban of noncomplying toys. In addition, while the Commission encourages voluntary cautionary labeling, it would demand unrealistic staff resources to enforce any such mandatory requirements.

V. Final Regulation

In October 1971, the FDA proposed for public comment a regulation which addressed the aspiration, ingestion, and other risks of injury presented by certain dolls, stuffed animals, and similar toys (36 FR 19980, October 14, 1971). Based in part on its publication of the small parts regulation below, the Commission withdraws that FDA proposal.

The Commission finds that certain toys and other articles intended for use by children under 5 years of age present an unreasonable risk of injury to children in this age group. Before making this finding, the Commission balanced the relevant economic, epidemiological, and other considerations associated with the small parts regulation issued below.

The regulation, applicable to the very broad category of "toys and other articles intended for use by children under 3," covers many products. However, the only aspect of the toy which is regulated is the size (this should not be confused with the discussion of the scope of the regulation, section IV, A(2) above, where it is explained that size and other factors led to the Commission's determination that only certain products would be regulated). In addition, the size is regulated by a performance requirement so that toy design is affected as little as possible.

Also balanced against the broad scope of the small parts regulation is the severe risk that it addresses. Children under 3 die every year from small parts. This occurs, in part, because they indiscriminately put things in their mouths and lack the protective reactions and knowledge of older children and adults. Children over 3 and even adults choke to death on small parts, but the regulation below does not address the risk to them. Similarly, the regulation recognizes that children under 3 cannot be protected from every small part and the regulation does not include every product with which they may come into contact.

The Commission has exempted from the regulation certain products which do serve a functional, educational, or other positive need. There is widespread compliance with the regulation among toys currently on the market which are not exempted. Therefore, most toys for children under 3 will not have to be redesigned or modified in any way to comply with the size requirement. For those that do, it is reasonable to require that they be constructed large enough and sturdy enough so that they will not fracture, disassemble or otherwise expose children under 3 to hazardous small parts.

Available injury data show that chokings, aspirations, and ingestions are caused by the small size of certain toys intended for children under 3 that are on the market. The Commission expects the small parts regulation to address this risk. It is an unreasonable risk because the relatively small economic impact that would result from regulation of these products is far outweighed by the reduction of the risk that will also result from the regulation.

Accordingly, pursuant to provisions of the Federal Hazardous Substances Act (secs. 2(f)(1)(D), 2(q)(1)(A), 2(s), 3(e)(1) and 10, 74 Stat. 372, 374, 375 as amended 80 Stat. 1304–05, 83 Stat. 187–89 (15 U.S.C. 1261, 1262, 1269)), in accordance with the provisions of 5 U.S.C. 553, and under authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 92–573, sec. 30(a), 86 Stat. 1231 (15 U.S.C. 2079(a)), the Commission amends title 16, chapter II, subchapter C by adding a new paragraph (a)(9) to § 1500.18 and by adding a new part 1501, as follows:

PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES; ADMINISTRATION AND ENFORCEMENT REGULATIONS

§ 1500.18 Banned toys and other banned articles intended for use by children.

(a) *Toys and other children's articles presenting mechanical hazards.* Under the authority of section 2(f)(1)(D) of the act and pursuant to provisions of section 3(e) of the act, the Commission has determined that the following types of toys or other articles intended for use by children present a mechanical hazard within the meaning of section 2(s) of the act because in normal use, or when subjected to reasonably foreseeable damage or abuse, the design or manufacture presents an unreasonable risk of personal injury or illness:

* * * * *

(9) Any toy or other article intended for use by children under 3 years of age which presents a choking, aspiration, or ingestion hazard because of small parts as determined by Part 1501 of this chapter and which is introduced into interstate commerce after January 1, 1980. For purposes of this regulation, introduction into interstate commerce is defined as follows: A toy or children's article manufactured outside the United States is introduced into interstate commerce when it is first brought within a U.S. port of entry. A toy or children's article manufactured in the United States is introduced into interstate commerce (1) at the time of its first interstate sale, or (2) at the time of its first intrastate sale if one or more of its components and/or raw materials were received interstate, whichever occurs earlier. Part 1501 defines the term "toy or other article intended for use by children under 3," as used in this regulation, and exempts certain products from banning under this regulation.

PART 1501—METHOD FOR IDENTIFYING TOYS AND OTHER ARTICLES INTENDED FOR USE BY CHILDREN UNDER 3 YEARS OF AGE WHICH PRESENT CHOKING, ASPIRATION, OR INGESTION HAZARDS BECAUSE OF SMALL PARTS

Sec.
1501.1 Purpose.
1501.2 Scope.
1501.3 Exemptions.
1501.4 Size requirements and test procedure.
1501.5 Enforcement procedure.

Authority—Sec. 2(f)(1)(D), (q)(1)(A), (s), 3(e)(1), and 10; 74 Stat. 372, 374, 375 as amended 80 Stat. 1304–05, 83 Stat. 187–89 (15 U.S.C. 1261, 1262, 1269).

§ 1501.1 Purpose.

Section 1500.18(a)(9) of this chapter classifies as a banned hazardous substance any toy or other article intended for use by children under 3 years of age that presents a choking, aspiration, or ingestion hazard because of small parts. This Part 1501 describes certain articles that are subject to § 1500.18(a)(9); lists certain articles that are specifically exempted; and provides a test method for determining whether an article is hazardous to children under 3 because it, or one of its components that can be detached or broken off during normal or reasonable foreseeable use, is too small.

§ 1501.2 Scope.

(a) This regulation (§ 1500.18(a)(9) and the criteria described in § 1501.4 below) applies to all toys and other articles intended for use by children under 3 years (36 months) of age that are introduced into interstate commerce after the effective date. Such articles include, but are not to limited to: squeeze toys; teethers; crib exercisers; crib gyms; crib mobiles; other toys or articles intended to be affixed to a crib, stroller, playpen, or baby carriage; pull and push toys; pounding toys; blocks and stacking sets; bathtub, wading pool and sand toys; rocking, spring, and stick horses and other figures; chime and musical balls and carousels; jacks-in-the-box; stuffed, plush, and flocked animals and other figures; preschool toys, games and puzzles intended for use by children under 3; riding toys intended for use by children under 3; infant and juvenile furniture articles which are intended for use by children under 3 such as cribs, playpens, baby bouncers and walkers, strollers and carriages; dolls which are intended for use by children under 3 such as baby dolls, rag dolls, and bean bag dolls; toy

cars, trucks, and other vehicles intended for use by children under 3. In addition, such articles include any other toys or articles which are intended, marketed or labeled to be entrusted to or used by children under 3 years of age.

(b) In determining which toys and other articles are intended for use by children under 3 years (36 months) of age, for purposes of this regulation, the following factors are relevent: the manufacturer's stated intent (such as on a label) if it is a reasonable one; the advertising, promotion, and marketing of the article; and whether the article is commonly recognized as being intended for children under 3.

(c) This regulation does not apply to toys or articles which are solely intended for use by children 3 years of age or older. In addition, it does not apply to all articles to which children under 3 years of age might have access simply because of presence in a household. Certain articles which are specifically exempted from this regulation are listed in § 1501.3 below.

§ 1501.3 Exemptions.

The following articles are exempt from this regulation (§§ 1500.18(a)(9) and 1501.4 below):

(a) Balloons;

(b) Books and other articles made of paper;

(c) Writing materials such as crayons, chalk, pencils, and pens;

(d) Children's clothing and accessories, such as shoe lace holders and buttons;

(e) Grooming, feeding, and hygiene products, such as diaper pins and clips, barrettes, toothbrushes, drinking glasses, dishes and eating utensils;

(f) Phonograph records;

(g) Modeling clay and similar products;

(h) Fingerpaints, watercolors, and other paint sets;

(i) Rattles (as defined at 16 CFR 1510.2); and

(j) Pacifiers (as defined at 16 CFR 1511.2(a)).

§ 1501.4 Size requirements and test procedure.

(a) No toy or other children's article subject to § 1500.18(a)(9) and to this Part 1501 shall be small enough to fit entirely within a cylinder with the dimensions shown in Figure 1, when tested in accordance with the procedure in paragraph (b) of this section. In testing to ensure compliance with this regulation, the dimensions of the Commission's test cylinder will be no greater than those shown in Figure 1. (In addition, for compliance purposes, the English dimensions shall be used. The metric approximations are included only for convenience.)

(b)(1) Place the article, without compressing it, into the cylinder. If the article fits entirely within the cylinder, in any orientation, it fails to comply with the test procedure. (Test any detached components of the article the same way.)

(2) If the article does not fit entirely within the cylinder, subject it to the appropriate "use and abuse" tests of 16 CFR 1500.51 and 1500.52 (excluding the bite tests of §§ 1500.51(c) and 1500.52(c)). Any components or pieces (excluding paper, fabric, yarn, fuzz, elastic, and string) which have become detached from the article as a result of the use and abuse testing shall be placed into the cylinder, one at a time. If any such components or pieces fit entirely within the cylinder, in any orientation and without being compressed, the article fails to comply with the test procedure.

§ 1501.5 Enforcement procedure.

The Commission will enforce this regulation, unless it determines that an emergency situation exists, only in accordance with Chaper 2C—Letters of Advice/Notices of Noncompliance of the CPSC Enforcement Policy and Procedural Guides, issued in May 1979 and available from the CPSC's Office of the Secretary, 1111 18th Street, NW., Washington, D.C. 20207. Under the procedure described in this chapter, firms must be informed by letter that they or their products may be the subject of enforcement action and must be provided ten days within which to submit evidence and arguments that the products are not violative or are not covered by the regulation, prior to the initiation of enforcement action by the Commission or by its delegated staff member. The function of approving such enforcement actions is currently delegated by the Commission to the Associate Executive Director for Compliance and Enforcement (copies of the existing delegation documents are also available from the CPSC's Office of the Secretary).

Effective date: January 1, 1980.

Dated: June 12, 1979.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

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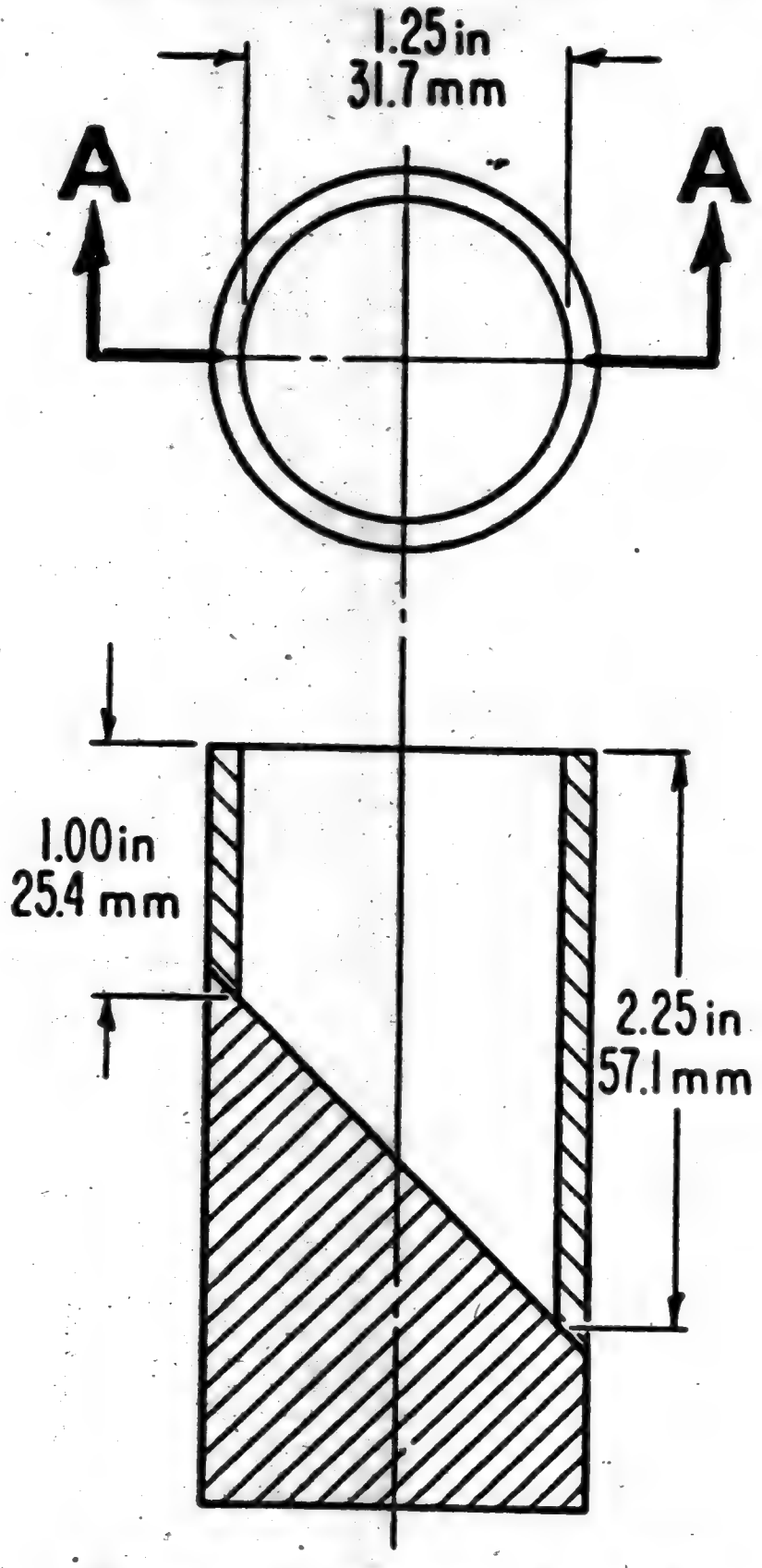

Section A-A

FIG 1-SMALL PARTS CYLINDER

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Friday
June 15, 1979

Federal Register

Part X

Department of the Interior

Bureau of Land Management

Off-Road Vehicle Use

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DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 420

Off-Road Vehicle Use

AGENCY: Bureau of Reclamation, Interior.

ACTION: Adoption of Amendments to final rules.

SUMMARY: On August 23, 1974, final regulations of the Bureau of Reclamation concerning off-road vehicles on Bureau of Reclamation lands became effective. These regulations have been reviewed in accordance with Executive Order 11989, May 24, 1977 (relating to off-road vehicles on public lands), which amends Executive Order 11644. These amendments fulfill requirements set forth in Executive Order 11989, and require all Bureau lands to be closed to off-road vehicle use unless designated "open" under the regulation.

DATE: These amendments become effective June 15, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. L. David Williamson, Senior Staff Assistant for Land Resources Management, Operation and Maintenance Policy Staff, Bureau of Reclamation, Washington, D.C. 20240 (202) 343–5204.

SUPPLEMENTARY INFORMATION: On August 22, 1978, proposed amendments to Title 43 CFR Part 420 were published in the Federal Register. These amendments were designed to bring the Bureau of Reclamation's regulations into agreement with provisions of Executive Orders 11644 and 11989. The three changes made by these amendments are: (1) add to the exclusions from Off-Road Vehicles (ORV) "combat vehicles used in support of national defense;" (2) add a restatement of Section 420.2 into Section 420.21 by inserting the phrase "All Bureau lands shall be closed to off-road vehicle use unless designated open;" and (3) make provisions for Bureau Regional Directors to order the closure of off-road vehicle lands under their jurisdiction when, in their opinion, considerable adverse effects are being caused by the vehicles.

Comments received generally supported these amendments except for the general closing of the lands, which was merely a restatement of rules already in effect (43 CFR 420.2). Since Reclamation's lands have been acquired or withdrawn from the public domain for the construction of water impoundment and distribution and for agricultural development, the unrestricted use of ORV's on these lands would be unwise. In fact, the nature of these lands and their intended use dictates that the majority of these lands be closed to such ORV use. For the above reasons, the amendment to the rules proposed in the Federal Register, page 37206, Vol. 43, No. 163, of Tuesday, August 22, 1978, are adopted, unchanged, as follows.

The impacts of the implemention of Executive Order 11644, as amended by Executive Order 11989 (42 FR 26959), are evaluated under final Environmental impact statement (FES 78–5) entitled "Departmental Implementation of Executive Order 11644, as amended by Executive Order 11989, pertaining to use of Off-Road Vehicles on the Public Lands." Bureau of Reclamation existing regulations for off-road vehicle use, as modified by these amendments, implement the Department of the Interior's policy which was evaluated in the final environmental impact statement, and require all Bureau lands to be closed to off-road vehicle use unless designated open under procedures of Section 420.21. Notice of the availability of this final environmental impact statement was published in the Federal Register on April 21, 1978, (FR Vol. 43 page 17063).

Primary author of this document is Mr. Terence G. Cooper, Staff Assistant for Land Resources Management, Operations and Maintenance Policy Staff, Bureau of Reclamation.

DETERMINATION OF SIGNIFICANCE: The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Dated: June 4, 1979.

Guy R. Martin,

Assistant Secretary of the Interior.

Pursuant to the authority of the Secretary of the Interior contained in Executive Order No. 11989 of May 24, 1977, Part 420 of Title 43 is amended as follows:

PART 420—OFF-ROAD VEHICLE USE

1. Paragraph (a) is amended by redesignating (5) "official use" vehicles as number (6) and adding a new paragraph (5) to read as follows:

§ 420.5 Definitions.

(a) * * *

(5) any combat or combat support vehicle when used in times of national defense emergencies; and (6) "official use" vehicles

* * * * *

2. Immediately following the section heading and preceding the words "The Regional Director shall . . . ," insert the following sentence: "All Bureau lands shall be closed to off-road vehicle use under Section 420.2 unless designated as open under the following procedures." Paragraph (c) is amended to read as follows:

§ 420.21 Procedure for designating areas of off-road vehicle use.

* * * * *

(c) The Regional Director will inspect designated areas and trails periodically to determine conditions resulting from off-road vehicle use. If he determines that the use of off-road vehicles will cause or is causing considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat, or cultural or historic resources of particular areas or trails of the public lands, he shall immediately close such areas or trails to the type of off-road vehicle causing such effects. No area or trail shall be reopened until the Regional Director determines that adverse effects have been eliminated and that measures have been implemented to prevent future recurrence. The public shall be notified of restrictions or closure in accordance with § 420.23.

[FR Doc. 79-18870 Filed 6-14-79; 8:45 am]

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35033 **Protection of Human Subjects** HEW/Sec'y publishes report in support of research involving human in vitro fertilization and embryo transfer; comments by 8–17–79

35058 **Work and Income of the Aged** HEW/Sec'y solicits applications from public and private non-profit agencies, organizations, and institutions for grant awards on policy-related research projects; applications by 8–2–79

34943 **Former Federal Prison Inmate Accident Compensation** Justice/Federal Prison Industries adopts procedures for determining claims for injuries sustained while working in prison; effective 6–18–79

34977 **Veterans Education** VA proposes regulation regarding criteria for measuring courses involving independent study; comments by 7–18–79

34994 **Motor Common Carriers** ICC proposes to amend regulations to permit option of binding estimates for the movement of shipper's household goods; comments by 7–18–79

34992 **Toxic Gases in Commercial Motor Vehicles** DOT/FHWA proposes establishment of definite exposure limits; comments by 8–17–79

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34960 **Federal Motor Carrier Drivers** DOT/FHWA changes criteria for placing drivers out of service; effective 6-18-79

35106 **New Construction and Substantial Rehabilitation Rental Projects** HUD/FHC proposes fair market rents for all market areas; comments by 7-3-79 (Part II of this issue)

35075, 35077 **Treasury Notes** Treasury/Sec'y invites tenders for notes of series U-1981 and series E-1983 (2 documents)

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34923 **Consumer Product Safety** CPSC adopts rules governing scope and conduct of investigations, inspections, and inquiries, and procedures for consent order agreements; comments by 7-18-79

35176 **Environmental Protection** EPA adopts rules on intergovernmental consultation to assist States in preparing implementation plan revisions under Clean Air Act; effective 6-18-79 (Part IV of this issue)

35158 **Environmental Protection** EPA proposes rules on uniform procedures for implementing National Enviromental Policy Act; comments by 7-18-79 (Part III of this issue)

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35102 **Sunshine Act Meetings**

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Rules and Regulations

Federal Register
Vol. 44, No. 118
Monday, June 18, 1979

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 78-CE-22-AD; Amendment 39-3491]

Airworthiness Directives; Beech Models E50, F50, G50, H50, J50, 55, A55, A55-S200 55-60, 55-A60-S600, 55-B60, 55-58, 70, C50, D50, D50A, D50B, D50C and D50E Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Revision of final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD), AD 79-01-02, Amendment 39-3365, applicable to the above Beech Model airplanes, by revising the applicability statement to except those airplanes modified in accordance with STC SA444SW. This revision is required because the powerplant changes incorporated by this STC are so extensive as to make the inspections prescribed by this AD unnecessary and inappropriate.

EFFECTIVE DATE: June 4, 1979.

FOR FURTHER INFORMATION CONTACT:
Donald L. Page, Aerospace Engineer, Engineering and Manufacturing Branch, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-3446.

SUPPLEMENTARY INFORMATION: Amendment 39-3365, AD 79-01-02 required various modifications and repetitive inspection of the powerplant installation and nacelles on certain Beech Model airplanes. Subsequent to this action, the FAA has determined that the modifications incorporated by STC SA444SW are so extensive as to make the inspections prescribed by the AD unnecessary and inappropriate.

Therefore, the agency is revising Amendment 39-3365 by amending the AD applicability statement to except those airplanes modified in accordance with STC SA444SW.

Since this amendment is relieving in nature and imposes no additional burden on any person, notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days after the date of publication in the Federal Register.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Amendment 39-3365 [44 FR 1079, 1080], AD 79-01-02, of section 39.13 of Part 39 of the Federal Aviation Regulations [14 CFR 39.13] is amended as follows:

(1) Delete the existing applicability statement and in its place add the following new applicability statement:

Beech: Applies to: (1) Models E50, F50, G50, H50, J50, 55, A55, A55-S200, 55-60, 55-A60, 55-A60-S600, 55-B60, 55-58, and 70 airplanes except those airplanes modified in accordance with STC SA444SW, and (2) those Models C50, D50, D50A, D50B, D50C, and D50E airplanes modified per STC SA76SW.

This amendment becomes effective on June 4, 1979.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended, [49 U.S.C. 1354(a), 1421 and 1423]; sec. 6(c) Department of Transportation Act [49 U.S.C. 1655(c)]; § 11.89 of the Federal Aviation Regulations [14 CFR 11.89].)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures [44 FR 11034; February 26, 1979]. A copy of the final evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing to Donald L. Page, Aerospace Engineer, Engineering and Manufacturing Branch, Federal Aviation Administration, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3446.

Issued in Kansas City, Missouri on June 4, 1979.

C. R. Melugin, Jr.,
Director, Central Region.

[FR Doc. 79-18908 Filed 6-15-79; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 79-CE-19-AD; Amendment 39-3492]

Airworthiness Directive; Cessna Models 500, 501, 550 and 551 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Cessna Models 500, 501, 550 and 551 airplanes. The AD requires repetitive inspections of the wing main spar cap web stems at wing station 37.0. This action is necessary to detect and monitor fatigue cracks that may exist or develop in this area which can impair the ability of the spar cap to carry design loads if not detected and an approved repair incorporated.

EFFECTIVE DATE: June 21, 1979.

COMPLIANCE SCHEDULE: As prescribed in the body of the AD.

ADDRESSES: Cessna Citation Service Letter SL 57-2, Rev. 2, dated May 1, and SL 550-57-1, Rev. 1, dated May 1, 1979, applicable to this AD, may be obtained from Cessna Aircraft Company, Marketing Division, Attention: Customer Service Department, Wichita, Kansas 67201; Telephone (316) 685-9111. Copies of these service letters are contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106 and at Room 916, 800 Independence Avenue, S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:
Vincent R. Reinert, Chief, Airframes Unit, Engineering and Manufacturing District Office Number 43, Room 238, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 942-4219.

SUPPLEMENTARY INFORMATION: The FAA has become aware through service reports and results of the manufacturer's full scale wing cyclic testing of crack potential in the spar cap web stem area at wing station 37.0 on Cessna Models 500, 501, 550 and 551 airplanes. The manufacturer has issued Cessna Citation Service Letters SL 57-2, Revision 2, dated May 1, 1979, and SL 550-57-1, Revision 1, dated May 1, 1979, which prescribe inspections to detect and monitor these cracks. If cracks in

this area are not detected and an approved repair incorporated, impairment of the ability of the spar cap to carry design loads could result. If cracks are found, reduced inspection intervals are specified in the service letter with an appropriate crack length limitation to permit continued safe operation of the airplane until an approved repair is incorporated. In addition, incorporation of the approved repair is required if the crack limitation is exceeded. Accordingly, since the condition described herein is likely to exist or develop on other airplanes of the same type design, the FAA is issuing an AD applicable to Cessna 500, 501, 550 and 551 airplanes making compliance with the inspection procedures set forth in Cessna Citation Service Letters SL 57–2, Revision 2, and SL 550–57–1, Revision 1, mandatory.

Since a situation exists that requires the expeditious adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive:

Cessna: Applies to Models 500, 501, 550 and 551 airplanes with 600 or more hours time-in-service.

Compliance: Required as indicated unless already accomplished.

(A) Within the next 100 hours time-in-service after the effective date of this AD and thereafter within each 600 hours time in service until the number of landings or time-in-service threshold for dye penetrant inspection in Table I is reached, visually inspect the upper and lower spar cap stems at Wing Station 37.0 in the areas specified in Cessna Citation Service Letter SL 57–2, Revision 2, dated May 1, 1979, or SL 550–57–1, Revision 1, dated May 1, 1979, as applicable for cracks and/or:

(B) Upon reaching or if at or beyond the dye penetrant inspection threshold specified in Table I, within 100 hours time-in-service or 100 landings, whichever occurs first, and thereafter within 600 hours time-in-service or 600 landings, whichever occurs first, dye penetrant inspect the upper and lower spar cap stem at Wing Station 37.0 in the areas specified in Cessna Citation Service Letter SL 57–2, Revision 2, dated May 1, 1979, or SL 550–57–1, Revision 1, dated May 1, 1979, as applicable, for cracks.

Table I

Model	Serial Nos.	Dye penetrant inspection threshold (Landings or time-in-service-hrs)
500	500–001 thru 500–349	4300
	500–350 and on	1300
501	501–001 and on	1300
550	550–001 and on	4300
551	551–001 and on	4300

(C) If, as a result of any inspection required by Paragraph A) or B) a crack of less than .3 inches in length is found in the upper spar cap stem, reduce the dye penetrant inspection interval on this spar cap to 200 landings or 200 hours time-in-service, whichever occurs first.

(D) If, as a result of any inspection required by Paragraph A) or B) a crack of less than .3 inches in length is found in the lower spar cap stem, reduce the dye penetrant inspection interval on this spar cap to 100 landings or 100 hours time-in-service, whichever occurs first.

Note.—The FAA encouraged compliance with the manufacturer's request that all cracks be reported to the Cessna Customer Service Department.

(E) If, as a result of any inspection required by Paragraph A), B), C) or D), a crack of .3 inches in length or longer is found in either spar cap, prior to further flight, repair or modify the wing in accordance with instructions obtained from Cessna Aircraft Company, Jet Marketing Division, Customer Service, P.O. Box 7706, Wichita, Kansas 67277.

(F) The time-in-service for initial and between repetitive inspections required herein may be adjusted up to 10 hours to facilitate accomplishing them concurrent with other scheduled maintenance on the airplane.

(G) Aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location where this AD can be accomplished.

(H) Any equivalent method of compliance with this AD must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Central Region.

Cessna Citation Service Letter SL 57–2, Revision 2 dated May 1, 1979, covers the subject matter of this AD.

This Amendment becomes effective June 21, 1979.

Secs. 313(a), 601 and 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and Sec. 11.89 of the Federal Aviation Regulations (14 CFR 11.89).

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing to FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri on June 4, 1979.

C. R. Melugin, Jr.,
Director, Central Region.

[FR Doc. 79-18947 Filed 6-15-79; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 79–SO–42; Amdt. 39–3480]

Airworthiness Directives; Piper Model PA–44–180 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) which requires the replacement, on both engines, of the engine primer lines on certain Piper PA–44–180 airplanes. This AD is prompted by reports of broken primer lines and cracked or broken fittings that result in fuel leakage creating a potential fire hazard.

DATE: Effective June 21, 1979.

Compliance required as indicated.

ADDRESSES:

The applicable service bulletin may be obtained from Piper Aircraft Corporation, 820 East Bald Eagle Street, Lock Haven, Pennsylvania 17745.

A copy of the Service Bulletin is contained in the AD Docket File and may be examined in Room 275, Federal Aviation Administration, Southern Region, 3400 Whipple Street, East Point, Georgia.

FOR FURTHER INFORMATION CONTACT:

Gil Carter, ASO–214, Propulsion Section, Engineering and Manufacturing Branch, FAA, Southern Region, P.O. Box 20636, Atlanta, Georgia 30320, telephone (404) 763–7435.

SUPPLEMENTARY INFORMATION: There have been reports of broken primer lines and cracked and broken fittings on Piper Model PA–44–180 series airplanes which result in fuel leakage into the engine compartment near the engine exhaust manifolds thus creating a potential fire hazard. Since this condition is likely to exist or develop in other airplanes of the same type design, an Airworthiness Directive is being issued which requires the installation of new engines primer lines on certain Piper PA–44–180 airplanes.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulation (14 CFR 39.13) is amended by adding the following new Airworthiness Directive:

Piper Aircraft Corporation: Applies to Model PA-44-180, serial numbers 44-7995001 through 44-7995130 airplanes certificated in all categories.

Compliance is required within the next 25 hours' time in service after the effective date of this AD or within 30 days after the effective date of this AD, whichever occurs first, unless already accomplished.

To prevent a potential fire hazard due to fuel leakage from failed primer lines and cracked and broken fittings, accomplish the following on both engines:

(a) Install the fuel primer modification kit, Piper Part Number 760 805V in accordance with Piper Service Bulletin 634 dated December 26, 1978, or later revision approved by the Chief, Engineering and Manufacturing Branch, Federal Aviation Administration, Southern Region.

(b) Make an appropriate maintenance record entry.

An equivalent method of compliance may be approved by the Chief, Engineering and Manufacturing Branch, Federal Aviation Administration, Southern Region.

This amendment becomes effective June 21, 1979.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89.)

Issued in East Point, Georgia, on June 4, 1979.

George R. La Caille,

Acting Director, Southern Region.

[FR Doc. 79-18560 Filed 6-15-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 79-SO-26]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Designation of Transition Area, Springfield, Kentucky

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Rule designates the Springfield, KY, Transition Area. It will afford protected airspace for IFR aircraft using the new public use instrument approach procedure established for that airport by lowering the base of controlled airspace from 1200 to 700 feet AGL.

EFFECTIVE DATE: August 9, 1979.

ADDRESS: Federal Aviation Administration, Chief, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

FOR FURTHER INFORMATION CONTACT: Gerald S. Collins, Airspace and Procedures Branch, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: 404-763-7646.

SUPPLEMENTARY INFORMATION: An instrument approach procedure has been developed to enable aircraft operating in Instrument Flight Rule (IFR) weather conditions to conduct a safe approach for landing at Springfield-Lebanon Airport, KY. Consequently, adequate controlled airspace is required to provide airspace protection for IFR use of the procedure. This action is designed to meet that requirement as well as change the operating status of Springfield-Lebanon Airport from VFR to IFR. Notice to this effect was published in the Federal Register Thursday, April 19, 1979 (44 FR 23259). No objections were received from this Notice.

Adoption of the Amendment

Accordingly, Subpart C, § 71.181 (44 FR 442) of Part 71 of the Federal Aviation Regulations (14 CFR 71) is amended, effective 0901 GMT, August 9, 1979, by adding the following:

Springfield, Kentucky

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Lebanon-Springfield Airport (Latitude 37°39'02"N., Longitude 85°14'30"W.); within 3 miles either side of the New Hope, Kentucky, VORTAC, 069° radial extending from the 6.5-mile radius area to 14 miles east of the VORTAC.

(Sec. 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)) and sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in East Point, Georgia, on June 8, 1979.

Lonnie D. Parrish,

Acting Director, Southern Region.

[FR Doc. 79-18559 Filed 6-15-79; 8:45 am]

BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1203

Information Security Program

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This amendment is necessary to comply with the provisions of Executive Order 12065, "National Security Information." This amendment sets forth guides and guidelines for classifying, declassifying and downgrading information and material under the NASA Information Security Program. This amendment also assigns responsibilities for the management and direction of the Program.

DATE: June 18, 1979.

ADDRESS: Director, Security Division, National Aeronautics and Space Administration, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Arnold K. Daue, telephone (202) 755-3400.

SUPPLEMENTARY INFORMATION: This regulation involves national security and is exempt from the procedures of 5 U.S.C. 553.

1. 14 CFR Part 1203 is amended by revising Subparts A through E and by adding new Subparts F and G.

PART 1203—INFORMATION SECURITY PROGRAM

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1203.101 Other applicable NASA regulations.

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1203.601 Responsibilities.
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Subpart G—Foreign Government Information

1203.700 Identification.
1203.701 Classification.
1203.702 Duration of classification.
1203.703 Declassification.

* * * * *

Authority: 42 U.S.C. 2451 et seq. and E. O. 12065.

Subpart A—Scope.

§ 1203.100 Legal basis.

(a) *E.O. 12065.* The responsibilities and authority of the Administrator of NASA with respect to the original classification of official information or material requiring protection against unauthorized disclosure in the interest of national defense or foreign relations of the United States (hereinafter collectively termed "national security"), and the standards for such classification, are established by Executive Order 12065 (43 FR 28949) and the Information Security Oversight Office Directive No. 1, September 29, 1978.

(b) *E.O. 10865.* Executive Order 10865 (24 FR 1583) requires the Administrator to prescribe by regulation such specific requirements, restrictions and other safeguards as the Administrator may consider necessary to protect:

(1) Releases of classified information to or within United States industry that relate to contracts with NASA; and

(2) Other releases of classified information to industry that NASA has responsibility for safeguarding.

(c) *The National Aeronautics and Space Act.* (1) Section 304(a) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2451 et seq.), states in part: "The Administrator shall establish such security requirements, restrictions, and safeguards as he deems necessary in the interest of the national security * * *"

(2) Section 303 of the Act states: "Information obtained or developed by the Administrator in the performance of his functions under this Act shall be made available for public inspection, except (i) information authorized or required by Federal Statute to be withheld, and (ii) information classified to protect the national security: *Provided,* That nothing in this Act shall authorize the withholding of information by the Administrator from the duly authorized committees of the Congress."

§ 1203.101 Other applicable NASA regulations.

(a) Subpart H of this Part, "Delegation of Authority to Make Determinations in Original Security Classification Matters."

(b) Subpart I of this Part, "NASA Information Security Program Committee."

(c) NASA Handbook 1620.3, "NASA Physical Security Handbook."

Subpart B—NASA Information Security Program

§ 1203.200 Background and discussion.

(a) In establishing a civilian space program, the Congress required NASA to "provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof," and for the withholding from public inspection of that information that is classified to protect the national security.

(b) To balance the public's interest in access to Government information with the need to protect certain national security information from unauthorized disclosure, Executive Order 12065 was promulgated. It designates the National Aeronautics and Space Administration as having certain responsibility for matters pertaining to national security, and confers on the Administrator of NASA, or such responsible officers or employees as the Administrator may designate, the authority for original classification of official information or material which requires protection in the interest of national security. It also provides for:

(1) Basic classification, downgrading and declassification guidelines;

(2) The issuance of directives prescribing the procedures to be followed in safeguarding classified information or material;

(3) A monitoring system to ensure the effectiveness of the Order;

(4) Appropriate administrative sanctions against officers and employees of the United States Government who are found to be in violation of the Order or implementing directive; and

(5) Classification prohibitions as discussed in § 1203.411.

(c) Executive Order 12065 requires the timely identification and protection of that NASA information the disclosure of which would be contrary to the best interest of national security. Accordingly, the determination in each case must be based on a judgment as to whether disclosure of information could reasonably be expected to result in identifiable damage to the national security.

§ 1203.201 Information security objectives.

The objectives of the NASA Information Security Program are to:

(a) Ensure that information is classified only when a sound basis exists for such classification and only for such period as is necessary.

(b) Prevent both the unwarranted classification and the overclassification of NASA information.

(c) Ensure the greatest practicable uniformity within NASA in the classification of information.

(d) Ensure effective coordination and reasonable uniformity with other Government departments and agencies, particularly in areas where there is an interchange of information, techniques or hardware.

(e) Provide a timely and effective means for downgrading or declassifying information when the circumstances necessitating the original classification change or no longer exist.

§ 1203.202 Responsibilities.

(a) The Chairperson, NASA Information Security Program Committee (Subpart I of this Part), is responsible for:

(1) Directing the NASA Information Security Program in accordance with NASA policies and objectives and applicable laws and regulations.

(2) Ensuring effective compliance with and implementation of Executive Order 12065 and the Information Security Oversight Office Directive No. 1 relating to security classification matters.

(3) Reviewing, in consultation with the NASA Information Security Program Committee, questions, suggestions, appeals and compliance concerning the NASA Information Security Program and making determinations concerning them.

(4) Coordinating NASA security classification matters with NASA installations, the Department of Defense, the Department of Energy and other Government agencies.

(5) Issuing Security Classification Guides for NASA programs and projects.

(6) Developing, maintaining and recommending to the Administrator guidelines for the systematic review covering 20-year old classified information under NASA's jurisdiction.

(7) Reviewing and coordinating with appropriate offices all appeals of denials of requests for records under sections 552 and 552a of Title 5, United States Code (Freedom of Information and Privacy Acts) when the denials are based on the records continued classification.

(8) Recommending to the Administrator appropriate administrative action to correct abuse or violations of any provision of the NASA Information Security Program, including notifications by warning letter, formal reprimand and to the extent permitted by law, suspension without pay and removal.

(b) All NASA employees are responsible for bringing to the attention of the Chairperson of the NASA Information Security Program Committee any information security problems in need of resolution, any areas of interest wherein information security guidance is lacking, and any other matters likely to impede achievement of the objectives prescribed herein.

(c) Each NASA official to whom the authority for original classification is delegated shall be accountable for the propriety of each classification (see Subpart H) and is responsible for:

(1) Ensuring that classification determinations are consistent with the policy and objectives prescribed above, and other applicable guidelines.

(2) Bringing to the attention of the Chairperson, NASA Information Security Program Committee, for resolution, any disagreement with classification determinations made by other NASA officials.

(3) Ensuring that information and material which no longer requires its present level of protection is promptly downgraded or declassified in accordance with applicable guidelines.

(d) Other Officials-in-Charge of Headquarters Offices are responsible for:

(1) Ensuring that classified information or material prepared within their respective offices is appropriately marked.

(2) Ensuring that material proposed for public release is reviewed to eliminate classified information.

(e) Directors of Field Installations and, for Headquarters, the Director, Headquarters Administration Division, are responsible for:

(1) Developing proposed Security Classification Guides.

(2) Ensuring that classified information or material prepared in their respective installations is appropriately marked.

(3) Ensuring that material proposed for public release is reviewed to eliminate classified information.

(4) Designating Security Classification Officers at their respective installations, to whom the responsibilities listed in paragraphs (e) (1), (2), and (3) of this section may be reassigned.

(f) The NASA Security Classification Manager, Security Division, NASA Headquarters, who serves as a member and Executive Secretary of the NASA Information Security Program Committee, is responsible for the NASA-wide coordination of security classification matters.

(g) The Director of Security is responsible for establishing procedures for the safeguarding of classified information or material (e.g., accountability, control, access, storage, transmission, marking, etc.) and for ensuring that such procedures are systematically reviewed and those which are duplicative or unnecessary are eliminated.

§ 1203.203 Degree of Protection.

(a) *General.* Upon determination that information or material must be classified, the degree of protection (security classification) commensurate with the sensitivity of the information must be determined. The lowest category of classification necessary to provide the appropriate degree of protection should be assigned. If the classifier has a reasonable doubt as to which security classification category is appropriate, or whether the material should be classified at all, the least restrictive designation should be used, or the information should not be classified.

(b) *Authorized Categories of Classification.* The three categories of classification, as authorized and defined in Executive Order 12065 are set out below. No other restrictive markings are authorized to be placed on NASA classified documents or materials except as expressely provided by statute or by NASA Directives.

(1) *Top Secret.* Top Secret is the designation applied to information or material the unathorized disclosure of which could reasonably be expected to cause exceptionally grave damage to the national security. Examples of exceptionally grave damage include armed hostilities against the United States or its allies; disruption of foreign relations vitally affecting the national security; the compromise of vital national defense plans or complex cryptologic and communications intelligence systems; the revelation of sensitive intelligence operations; and the disclosure of scientific or technological developments vital to national security.

(2) *Secret.* Secret is the designation applied to information or material the unathorized disclosure of which could reasonably be expected to cause serious damage to the national security. Examples of serious damage include disruption of foreign relations significantly affecting the national security; significant impairment of a program or policy directly related to the national security; revelation of significant military plans or intelligence operations; and compromise of significant scientific or technological develpments relating to national security.

(3) *Confidential.* Confidential is the designation applied to that information or material the unauthorized disclosure of which could reasonably be expected to cause identifiable damage to the national security.

Subpart C—Classification Principles and Considerations

§ 1203.300 General.

In general, the types of NASA-generated information and material requiring protection in the interest of national security lie in the areas of applied research, technology or operations.

§ 1203.301 Identification of information requiring protection.

Classifiers shall identify the level of classification of each classified portion of a document (including subject and titles), and those portions that are not classified.

§ 1203.302 Combination, interpretation or compilation.

An interrelationship of individual items, classified or unclassified, may result in a combined item requiring a higher classification than that of any of the individual items. Compilations of unclassified information are considered unclassified unless some additional significant factor is added in the process of compilation. For example: (a) The

way unclassified information is compiled may be classified; (b) the fact that the information is complete for its intended purpose may be classified; or (c) the fact the compilation represents an official evaluation may be classified. In these cases, the compilations would be classified.

§ 1203.303 Dissemination considerations.

The degree of intended dissemination, use of the information and whether the end purpose to be served renders effective security control impractical are considerations during the classification process. These factors do not necessarily preclude classification, but must be considered in order not to impose security controls which are impractical to enforce.

§ 1203.304 Internal effect.

The effect of security protection on program progess and cost and on other functional activities of NASA should be considered. Impeditive effects and added costs inherent in a security classification must be assessed in light of the detrimental effects on the national security interests which would result from failure to classify.

§ 1203.305 Restricted data.

Restricted Data or Formerly Restricted Data is so classified when originated, as required by the Atomic Energy Act of 1954, as amended. Specific guidance for the classification of Restricted Data is provided in "Classification Guides" published by the Department of Energy.

Subpart D—Guides for Original Classification

§ 1203.400 Specific classifying guidance.

Technological and operational information and material, and in some exceptional cases scientific information, falling within any one or more of the following categories must be classified if its unauthorized disclosure could reasonably be expected to cause identifiable damage to the national security. In cases where it is believed that a contrary course of action would better serve the national interests, the matter should be referred to the Chairperson, NASA Information Security Program Committee, for a determination. It is not intended that this list be exclusive; original classifiers are responsible for initially classifying any other type of information which, in their judgment, requires protection within the intent of Executive Order 12065:

(a) Information which provides the United States, in comparison with other nations, with a significant scientific, engineering, technical, operational, intelligence, strategic, tactical or economic advantage related to national security.

(b) Information which if disclosed would significantly diminish the technological lead of the United States in any military system, subsystem or component thereof, resulting in identifiable damage to such a system, subsystem or component thereof.

(c) Scientific or technological information in an area where an advanced military application that would in itself be classified is foreseen during exploratory development.

(d) Information which, if known, would: (1) Provide a foreign nation with an insight into the defense application or the war or defense plans or posture of the United States;

(2) Allow a foreign nation to develop, improve or refine a similar item of defense application;

(3) Provide a foreign nation with a base upon which to develop effective countermeasures;

(4) Weaken or nullify the effectiveness of a defense or military plan, operation, project, weapon system or activity which is vital to the national security.

(e) Information or material which is important to the national security of the United States in relation to other nations when there is sound reason to believe that those nations are unaware that the United States has or is capable of obtaining the information or material; i.e., through intelligence activities, sources, or methods.

(f) Information which if disclosed could be exploited in a manner prejudicial to the national security posture of the United States by discrediting its technological power, capability or intentions.

(g) Information which reveals an unusually significant scientific or technological "breakthrough" which there is sound reason to believe is not known to or within the state-of-the-art capability of other nations. If the "breakthrough" supplies the United States with an important advantage of a technological nature, classification also would be appropriate if the potential application of the information, although not specifically visualized, would afford the United States a significant national security advantage in terms of technological lead time or an economic advantage relating to national security.

(h) Information of such nature that an unfriendly government in possession of it would be expected to use it for purposes prejudicial to U.S. national security and which, if classified, could not be obtained by an unfriendly power without a considerable expenditure of resources.

(i) Information which if disclosed to a foreign government would enhance its military research and development programs to the detriment of U.S. counterpart or competitive programs.

(j) Operational information pertaining to the command and control of space vehicles, the possession of which would facilitate malicious interference with U.S. space mission, that might result in identifiable damage to the national security.

(k) Information which if disclosed could jeopardize the foreign relations or activities of the United States; for example, the premature or unauthorized release of information relating to the subject matter of international negotiations, foreign government information or information regarding the placement or withdrawal of NASA tracking stations on foreign territory.

(l) United States Government programs for safeguarding nuclear materials or facilities.

(m) Other categories of information which are related to national security and which require protection against unauthorized disclosure as may be determined by the Administrator. The Chairperson, NASA Information Security Program Committee, will promptly inform the Director, Information Security Oversight Office, General Services Administration (GSA) of such determinations.

§ 1203.401 Effect of open publication.

Public disclosure, regardless of source or form, of information currently classified or being considered for classification does not preclude initial or continued classification. However, such disclosure requires an immediate reevaluation to determine whether the information has been compromised to the extent that downgrading or declassification is indicated. Similar consideration must be given to related items of information in all programs, projects, or items incorporating or pertaining to the compromised items of information. In these cases, if a release were made or authorized by an official Government source, classification of clearly identified items may no longer be warranted. Questions as to the propriety of continued classification should be referred to the Chairperson, NASA Information Security Program Committee.

§ 1203.402 Classifying material other than documentation.

Items of equipment or other physical objects may be classified only where classified information may be derived by visual observation of internal or external appearance, structure, operation, test, application or use. The overall classification assigned to equipment or objects shall be at least as high as the highest classification of any of the items of information which may be revealed by the equipment or objects, but may be higher if the classifying authority determines that the sum of classified or unclassified information warrants such higher classification. In every instance where classification of an item of equipment or object is determined to be warranted, such determination must be based on a finding that there is at least one aspect of the item or object which requires protection. If mere knowledge of the existence of the equipment or object would compromise or nullify the reason or justification for its classification, the fact of its existence should be classified.

§ 1203.403 State-of-the-art and intelligence.

A logical approach to classification requires consideration of the extent to which the same or similar information available from intelligence sources is known or is available to others. It is also important to consider whether it is known publicly, either domestically or internationally, that the United States has the information or even is interested in the subject matter. The known state-of-the-art in other nations is an additional substantive factor requiring consideration.

§ 1203.404 Handling of unprocessed data.

It is the usual practice to withhold the release of raw scientific data received from spacecraft until it can be calibrated, correlated and properly interpreted by the experimenter under the monitorship of the cognizant NASA office. During this process, the data are withheld through administrative measures, and it is not necessary to resort to security classification to prevent premature release. However, if at any time during the processing of raw data it becomes apparent that the results require protection under the criteria set forth in this Subpart D, it is the responsibility of the cognizant NASA office to obtain the appropriate security classification.

§ 1203.405 Proprietary information.

Proprietary information made available to NASA is subject to examination for classification purposes under the criteria set forth in this Subpart D. Where the information is in the form of a proposal and accepted by NASA for support, it should be categorized in accordance with the criteria of § 1203.400. If NASA does not support the proposal but believes that security classification would be appropriate under the criteria of § 1203.400 if it were under Government jurisdiction, the contractor should be advised of the reasons why safeguarding would be appropriate, unless security considerations preclude release of the explanation to the contractor. NASA should identify the Government department, agency or activity whose national security interests might be involved and the contractor should be instructed to protect the proposal as though classified pending further advisory classification opinion by the Government activity whose interests are involved. If such a Government activity cannot be identified, the contractor should be advised that the proposal is not under NASA jurisdiction for classification purposes, and that the information should be sent, under proper safeguards, to the Director, Information Security Oversight Office, General Services Administration, Washington, D.C. 20405, for a determination.

§ 1203.406 Additional classification factors.

In determining the appropriate classification category, the following additional factors should be considered:

(a) *Uniformity Within Government Activities.* The effect classification will have on technological programs of other Government departments and agencies should be considered. Classification of official information must be reasonably uniform within the Government.

(b) *Applicability of Classification Directives of Other Government Agencies.* It is necessary to determine whether authoritative classification guidance exists elsewhere for the information under consideration which would make it necessary to assign a higher classification than that indicated by the applicable NASA guidance. Generally, the classification by NASA should not be higher than that of equivalent information in other departments or agencies of the Government.

§ 1203.407 Duration of classification.

(a) Except as permitted in paragraph (b) of this section, each original classification authority shall set a date or event for automatic declassification no more than six years later.

(b) Only officials with Top Secret classification authority listed in Subpart H may classify information for more than six years from the date of the original classification. This authority shall be used sparingly. In such cases, a declassification date or event, or a date for review, shall be set. This date or event shall be as early as national security permits and shall be no more than 20 years after original classification except as provided under the provisions of § 1203.603.

§ 1203.408 Assistance by installation security classification officers.

Installation Security Classification Officers, as the installation point-of-contact, will assist installation personnel in:

(a) Interpreting security classification guides and classification assignments for the installation.

(b) Answering questions and considering suggestions concerning security classification matters.

(c) Ensuring a continuing review of classified information for the purpose of declassifying or downgrading in accordance with Subpart E of this part.

(d) Reviewing and approving, as the representative of the contracting officer, the DD Form 254, Contract Security Classification Specification, issued to contractors by the installation.

§ 1203.409 Exceptional cases.

(a) In those cases where a person not authorized to classify information orginates or develops information which is believed to require classification, that person should safeguard the material as though it were classified until it has been evaluated and a decision made by an appropriate classifying authority. For NASA employees the classifying authority is normally the Installation Security Classification Officer. Persons other than NASA employees should forward, under appropriate safeguards, material in which NASA has primary interest to the NASA Information Security Program Committee, Security Division, Washington, DC 20546 for a classification determination.

(b) Information in which NASA does not have primary interest shall be returned promptly, under appropriate safeguards, to the sender in accordance with § 1203.405.

(c) Material received from another agency for a NASA security classification determination shall be processed within 30 days. If a classification cannot be determined during that period, the material shall be

sent, under appropriate safeguards, to the Director, Information Security Oversight Office, GSA, for a determination.

§ 1203.410 Prohibitions.

(a) Classification may not be used to conceal violations of law, inefficiency of administrative error; to prevent embarrassment to a person, organization or agency; or to restrain competition.

(b) Basic scientific research information not clearly related to the national security may not be classified.

(c) A product of non-government research and development that does not incorporate or reveal classified information to which the producer or developer was given prior access may not be classified under this Part 1203 until and unless the Government acquires a proprietary interest in the product. This Part 1203 does not affect the provisions of the Patent Secrecy Act of 1952 (35 U.S.C. 181–188).

(d) References to classified documents that do not disclose classified information may not be classified or used as a basis for classification.

(e) Classification may not be used to limit dissemination of information that is not classifiable under the provisions of this Part 1203 or to prevent or delay the public release of such information.

(f) No document originated on or after December 1, 1978, may be classified *after* NASA has received a request for the document under the Freedom of Information Act or the mandatory review provisions of this Part 1203, unless such classification is consistent with this Part 1203 and is authorized by the Administrator or Deputy Administrator. Documents originated before December 1, 1978, and subject to such a request may not be classified unless such classification is consistent with this Part 1203 and is authorized by the Chairperson, NASA Information Security Program Committee, or by an official with Top Secret classification authority. Classification authority under this provision shall be exercised personally, on a document-by-document basis.

(g) Classification may not be restored to documents already declassified and released to the public.

§ 1203.412 Classification guides.

(a) *General.* A classification guide, based upon classification determinations made by appropriate program and classification authorities, shall be issued for each classified system, program or project. Classification guides shall:

(1) Identify the information elements to be protected, using categorization and subcategorization to the extent necessary to ensure that the information involved can be readily and uniformly identified.

(2) State which of the classification designations (i.e., Top Secret, Secret or Confidential) apply to the identified information elements.

(3) State the duration of each such specified classification in terms of a period of time or future event. When such duration is to exceed six years, the decision must be made by an original Top Secret classification authority and the specific reason for prolonging classification beyond the six-year period shall be provided in the guidance in accordance with the provisions of § 1203.407. If the reason for prolonging classification beyond six years would be the only cause for classification of the guide or would raise the level of the classification of the guide, it need by recorded only on the record copy of the guide.

(4) Indicate specifically, that the designations, time limits, markings and other requirements of Executive Order 12065 are to be applied to information classified pursuant to the guide.

(5) Be approved personally and in writing by an official with original Top Secret classification authority; the identity of the official will be shown on the guide. Such approval constitutes an original classification decision. Normally, all guides will be approved by the Chairperson, NASA Information Security Program Committee, whose office will maintain a list of all classification guides in current use.

(b) *Review of Classification Guides.* Classification guides shall be reviewed by the originator for currency and accuracy not less than once every two years. Changes shall be in strict conformance with the provisions of this Part 1203 and shall be issued promptly. If no changes are made, the originator shall so annotate the record copy and show the date of the review.

Subpart E—Derivative Classification.

§ 1203.500 Use of derivative classification.

Derivative application of classification markings is a responsibility of those who incorporate, paraphrase, restate, generate in new form or respond to information which is already classified or those who apply markings in accordance with a security classification guide issued by an authorized classifier. Persons who apply derivative classifications shall take care to determine whether their paraphrasing, restating or summarizing of classified information has removed all or part of the basis for classification.

§ 1203.501 Applying derivative classification markings.

Persons who apply derivative classification markings shall:

(a) Respect original classification decisions;

(b) Verify the information's current level of classification so far as practicable before applying the markings; and

(c) Carry forward to any newly created documents the assigned dates or events for declassification or review and any additional authorized markings. Where checks with originators or other appropriate inquiries show that no classification or a lower classification than originally assigned is appropriate, the derivative document shall be issued unclassified or shall be marked accordingly.

Subpart F—Declassification and Downgrading

§ 1203.600 Policy.

Declassification of classified information shall be given emphasis comparable to that accorded classification. Information classified pursuant to Executive Order 12065 and prior orders shall be declassified as early as national security considerations permit. Decisions concerning declassification shall be based on the loss of the information's sensitivity with the passage of time or on the occurrence of a declassification event. When information is reviewed for declassification pursuant to this Part 1203 or the Freedom of Information Act, it shall be declassified unless the classification authority established pursuant to Subpart H determines that the information continues to meet the classification guidelines prescribed in § 1203.400 despite the passage of time.

§ 1203.601 Responsibilities.

Officials authorized original classification authority may declassify or downgrade information that is subject to the final classification jurisdiction of NASA and shall take such action in accordance with the provisions of this Subpart F.

§ 1203.602 Public interest vs. declassification.

It is presumed that information which continues to meet the classification requirements in § 1203.407(b) requires continued protection. In rare cases, however, the need to protect such

information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. When such questions arise concerning NASA information, they shall be referred to the Administrator; the Chairperson, NASA Information Security Program Committee; an official with Top Secret classification authority; or, in the case of Presidential papers, the Archivist of the United States. That official, after appropriate consultation with other agencies or Government components, will determine whether the public interest in disclosure outweighs the damage to national security that might be reasonably expected from disclosure and, if the determination is affirmative, declassify the information.

§ 1203.603 Systematic review for declassification.

(a) *General.* (1) Except for foreign government information as provided in Subpart G of this part, classified information constituting permanently valuable records of the Government, as defined by 44 U.S.C. 2103, and information in the possession and control of the Administrator of General Services, pursuant to 44 U.S.C. 2107 or 2107 note, shall be reviewed for declassification as it becomes 20 years old. Transition to systematic reviews at 20 years shall be implemented as rapidly as practicable and shall be completed by December 1, 1988.

(2) The Administrator may extend classification beyond 20 years, but only in accordance with §§ 1203.600, 1203.601 and 1203.602 and paragraph (b) of this section. This authority may not be delegated. When classification is extended beyond 20 years, a date no more than 10 years later shall be set for declassification or for the next review. That date and specified action shall be marked on the document. Subsequent reviews for declassification shall be set at no more than 10-year intervals unless a longer interval has been authorized by the Director of the Information Security Oversight Office.

(3) A request for extension of the period between subsequent reviews for specific categories of documents or information shall be submitted to the Chairperson, NASA Information Security Program Committee, and shall include personal certification that the classified information for which the waiver is sought was systematically reviewed as required, that a definitive date for declassification could not be determined, and that results of the review established an identifiable need to retain classification for a period in excess of 20 additional years and a recommendation concerning the interval before the next required review.

(4) The Chairperson, NASA Information Security Program Committee, shall designate experienced personnel to assist the Archivist of the United States in the systematic review of 20-year old U.S. originated information and 30-year old foreign information. Such personnel shall:

(i) Provide guidance and assistance to National Archives employees in identifying and separating documents and specific categories of information within documents which are deemed to require continued classification; and

(ii) Develop reports of information or document categories so separated, with recommendations concerning continued classification.

(b) *Systematic Review Guidelines.* The Chairperson, NASA Information Security Program Committee, shall develop, in coordination with NASA organizational elements, guidelines for the systematic review for declassification of 20-year old classified information under NASA's jurisdiction. (See § 1203.700, Foreign Government Information.) The guidelines shall state specific limited categories of information which, because of their national security sensitivity, should not be declassified automatically but should be reviewed item-by-item to determine whether continued protection beyond 20 years is needed. These guidelines are authorized for use by the Archivist of the United States and, with the approval of the Administrator, by an agency having custody of the information covered by the guidelines. All information, except foreign government information, not identified in these guidelines as requiring review and for which a prior automatic declassification date has not been established shall be declassified automatically at the end of 20 years from the date of original classification. The guidelines shall be reviewed at least every other year and revised as necessary unless earlier review for revision is requested by the Archivist of the United States. Copies of the declassification guidelines promulgated by NASA will be provided to the Information Security Oversight Office, GSA.

(c) *Systematic Review Procedures.* (a) All security classified records 20 years old or older, whether held in storage areas under installation control or in Federal Records Centers, will be surveyed to identify those that require scheduling for future disposition. Such scheduling must be accomplished by December 1, 1980.

(2) All NASA information or material in the custody of the National Archives and Records Service that is permanently valuable and more than 20 years old is to be systematically reviewed for declassification by the Archivist of the United States with the assistance of the personnel designated for the purpose pursuant to paragraph (a)(4)(i) of this section. The Archivist shall refer to NASA that information or material which NASA has indicated requires further review. In the case of 20-year old information or material in the custody of NASA installations, such review will be accomplished by the custodians of the information or material. The installation having primary jurisdiction over the information or material received from the Archivist or in its custody, shall proceed as follows:

(i) Classified information or material over which NASA exercises exclusive or final original classification authority and which is to be declassified in accordance with the systematic review guidelines developed under paragraph (b) of this section shall be so marked.

(ii) Classified information or material over which NASA exercises exclusive or final original classification authority and which, in accordance with the systematic review guidelines developed under paragraph (b) of this section, is to be kept protected, shall be listed by category by the responsible custodian and referred to the Chairperson, NASA Information Security Program Committee. This listing shall:

(A) Identify the information or material involved.

(B) Recommend classification beyond 20 years to a specific future event scheduled to happen or a specific period of time not to exceed 10 years or, in the alternative, recommend a subsequent review date not to exceed 10 years.

(C) State the reason for the recommended continued classification.

(iii) The Administrator shall consider and determine which category of information or material shall be kept classified and the dates for automatic declassification or subsequent review. The Archivist of the United States will be notified in writing of this decision.

(d) *Declassification by the Director of the Information Security Oversight Office.* If the Director of the Information Security Oversight Office, GSA, determines that NASA information is classified in violation of Executive Order 12065, the Director may require the information to be declassified. Any such decision by the Director may be appealed through the NASA Information Security Program Committee to the National Security Council. The

information shall remain classified until the appeal is decided or until 1 year from the date of the determination by the Director of the Information Security Oversight Office, whichever comes first.

§ 1203.604 Mandatory review for declassification.

(a) *Information covered.* All classified information, except as provided below, upon request by a member of the public or a Government employee or agency to declassify and release such information under the provisions of Executive Order 12065, shall be subject to review by the originating NASA organization for possible declassification in accordance with the procedures of this section. After review, the information or any reasonable segregable portion thereof that no longer requires protection shall be declassified and released unless withholding is otherwise warranted under applicable law.

(b) *Presidential Papers.* (1) Information less than 10 years old which was originated by the President, by the White House Staff, or by committees or commissions appointed by the President, or by others acting on behalf of the President, is exempted from mandatory review for declassification.

(2) Such information 10 years old or older is subject to mandatory review for declassification in accordance with procedures developed by the Archivist of the United States which provide for consultation with NASA in matters of primary subject interest to NASA.

(c) *Submission of requests for review.* Requests for mandatory review of classified information shall be submitted in accordance with the following:

(1) Requests originating within NASA shall, in all cases, be submitted directly to the NASA installation which originated the information.

(2) For most expeditious action, requests from other Governmental agencies or from members of the public should be submitted directly to NASA installations which originated the material, or, if the originating component is not known, the requestor may submit the request to:

(i) The Chairperson, NASA Information Security Program Committee; or the head of the NASA organization most concerned with the subject matter of the material requested; or

(ii) The office designated to receive requests for records under the Freedom of Information Act pursuant to Part 1206 of this chapter.

(d) *Requirement for processing.* (1) Requests which are submitted under the Freedom of Information Act shall be processed in accordance with Part 1206 of this chapter.

(2) Other requests for declassification review and release of information shall be processed in accordance with the provisions of this section, subject to the following conditions:

(i) The request is in writing and reasonably describes the information sought with sufficient particularity to enable the installation to identify it and does not involve a large number of documents originated by numerous classifying authorities and requiring extensive coordination for accomplishment of the requested review.

(ii) The requestor shall be asked to correct a request that does not comply with paragraph (d)(2)(i) of this section, to provide additional information or to narrow the scope of the request and shall be notified that no action will be taken until the requestor complies.

(iii) If the request requires the rendering of services for which fees may not be charged under Part 1206, but may be charged under 31 U.S.C. 483a (1976), the rates prescribed in § 1206.700 shall be used, if appropriate.

(e) *Processing of Requests.* Requests that meet the requirements of paragraph (d)(2) of this section will be processed as follows:

(1) NASA installation action upon the initial request shall be completed within 60 days.

(2) Receipt of the request shall be acknowledged promptly. The NASA installation shall determine whether, under the declassification provisions of this Part 1203, the requested information may be declassified and, if so, shall make such information available to the requestor, unless withholding is otherwise warranted under applicable law. If the information may not be released in whole or in part, the requestor shall be given a brief statement of the reasons for denial, a notice of the right to appeal the determination to the Chairperson, NASA Information Security Program Committee, National Aeronautics and Space Administration, Washington, DC 20546, and a notice that such an appeal must be filed within 60 days in order to be considered.

(3) All appeals of denials of requests for declassification shall be acted upon and determined finally within 30 days after receipt and the requestor shall be advised that the appeal determination is final. If continued classification is required under the provisions of this Part 1203, the requestor shall be notified of the reasons thereof.

(4) The declassification and release of foreign government information that is subjected to mandatory review under this section shall be determined only in accordance with § 1203.703.

(5) When a NASA installation receives a request for declassification of information in a document which is in the custody of the installation but was classified by another NASA installation or Government agency, the installation shall refer the request to the classifying installation or Government agency, with a copy of the document containing the information requested when practicable, and shall notify the requestor of the referral. When NASA receives such a referral, it shall process the request in accordance with the requirements of this section and, if so requested, shall notify the referring agency of the determination made on the request.

(f) *Prohibition.* No NASA installation in possession of a classified document may, in response to a request for the document under this section or under Part 1206 of this chapter, refuse to confirm the existence or nonexistence of the document unless the fact of its existence or nonexistence would itself be classifiable under this Part 1203.

(g) *Declassification of Transferred Documents or Material.*—(1) *Material Officially Transferred.* In the case of classified information or material transferred by or pursuant to statute or Executive Order to NASA in conjunction with a transfer of functions (not merely for storage purposes) for NASA's use and as part of its official files or property, as distinguished from transfers merely for purposes of storage, NASA shall be deemed to be the original classifying authority over such material for purposes of downgrading and declassification.

(2) *Material Not Officially Transferred.* When any NASA installation has in its possession classified information or material originated by an agency which has since ceased to exist and that information has not been officially transferred to another department or agency, or when it is impossible for the possessing NASA installation to identify the originating agency, and a review of the material indicates that it should be downgraded or declassified, the possessing NASA installation shall be deemed to be the originating agency for the purpose of declassifying or downgrading such material. If it appears probable that another agency or another NASA organization may have a substantial interest in whether the classification of any particular information should be maintained, the possessing NASA

installation shall not exercise the power conferred upon it by this paragraph, until after consultation with any other agency or NASA organization having an interest in the subject matter.

(3) *Transfer for Storage or Retirement.* (i) Insofar as practicable, classified documents shall be reviewed to determine whether or not they can be downgraded or declassified prior to being forwarded to records centers or to the National Archives for storage. Any downgrading or declassification determination shall be indicated on each document by appropriate markings.

(ii) Classified information transferred to the General Services Administration for accession into the Archives of the United States shall be downgraded or declassified by the Archivist of the United States in accordance with Executive Order 12065, the directives of the Information Security Oversight Office, GSA; and NASA guidelines.

(h) *Downgrading and Declassification Actions.*—(1) *Notification of changes in Classification or Declassification.* When classified material has been marked with specific dates or events for downgrading or declassification, it is not necessary to issue notices of such actions to any holders. However, when such actions are taken earlier than originally scheduled, or the duration of classification is shortened, the authority making such changes shall, to the extent practicable, ensure prompt notification to all addressees to whom the information or material was originally transmitted. The notification shall specify the marking action to be taken, the authority therefor, and the effective date. Upon receipt of notification, recipients shall effect the proper changes and shall notify addressees to whom they have transmitted the classified information or material.

(2) *Posted Notice.* If prompt remarking of large quantities would be unduly burdensome, the custodian may attach declassification, downgrading, or upgrading notices to the storage unit in lieu of the remarking action otherwise required. Each notice shall indicate the change, the authority for the action, the date of the action, and the storage units to which it applies. Items withdrawn from such storage units shall be promptly remarked. However, when information subject to a posted downgrading or declassification notice is withdrawn from one storage unit solely for transfer to another, or a storage unit containing such information is transferred from one place to another, the transfer may be made without remarking if the notice is attached to or remains with each shipment.

(i) *Foreign Relations Series.* In order to permit the State Department editors of *Foreign Relations of the United States* to meet their mandated goal of publishing 20 years after the event, NASA shall assist these editors by facilitating access to appropriate classified materials in its custody and by expediting declassification review of items from its files selected for publication.

Subpart G—Foreign Government Information

§ 1203.700 Identification.

In order to qualify as foreign government information, information must fall into one of the two following categories:

(a) Information provided to the United States by a foreign government or international organization of governments, such as the North Atlantic Treaty Organization (NATO), where the United States has undertaken an obligation, expressed or implied, to keep the information in confidence. The information is considered to have been provided in confidence if it is marked in a manner indicating it is to be treated in confidence or if the circumstances of the delivery indicate that the information be kept in confidence.

(b) Information requiring confidentiality produced by the United States pursuant to a written, joint arrangement with a foreign government or international organization of governments. A written, joint arrangement may be evidenced by an exchange of letters, a memorandum of understanding, or other written record of the joint arrangement.

§ 1203.701 Classification.

(a) Foreign government information that is classified by a foreign entity shall either retain its original classification designation or be marked with a United States classification designation that will ensure a degree of protection equivalent to that required by the entity that furnished the information. Original classification authority is not required for this purpose.

(b) Foreign government information that was not classified by a foreign entity but was provided to NASA with the expressed or implied obligation that it be held in confidence must be classified. Executive Order 12065 states a presumption of at least identifiable damage to the national security in the event of unauthorized disclosure of foreign government information. Therefore, such foreign government information shall be classified at least Confidential. However, at the time of classification, judicious consideration shall be given to the sensitivity of the subject matter and the impact of its unauthorized disclosure upon both the United States and the originating foreign government or organization of governments in order to determine the most appropriate level of classification. Levels above Confidential must be assigned by an original classification authority.

§ 1203.702 Duration of classification.

Foreign government information is exempt from the declassification and 20-year systematic review requirements of § 1203.603(b). Unless the guidelines for the systematic review of 30-year old foreign government information developed pursuant to § 1203.603(b) prescribe dates or events for declassification or for review for declassification:

(a) Foreign government information shall not be assigned a date or event for declassification unless such is specified or agreed to by the foreign entity.

(b) Foreign government information classified after December 1, 1978, shall be assigned a date for review for declassification at 30 years from the time the information was originated by the foreign entity or acquired or classified by NASA, whichever is earlier. Such information received undated shall be dated upon receipt.

§ 1203.703 Declassification.

(a) In weighing the public interest in disclosure against the need to protect foreign government information and confidential foreign sources, the need to protect such information shall be presumed to predominate.

(b) Following consultation with the Archivist of the United States and, where appropriate, with the foreign government or international organization concerned, and, with the assistance of the Department of State, NASA will issue guidelines for the systematic review of 30-year old foreign government information that will apply to foreign government information of primary concern to NASA. These guidelines are authorized for use by the Archivist of the United States and, with the approval of NASA, by an agency having custody of such information. The Chairperson, Information Security Program Committee, will initiate administrative functions necessary to effect review of these guidelines at least once every two years and submit recommendations to the Administrator based on these reviews. If, after applying the guidelines to 30-year old

foreign government information, a determination is made by the reviewer that continued classification is necessary, a date for declassification or for review no more than 10 years later shall be set. That action and date shall be marked on the document. Subsequent review dates shall be set at no more than 10-year intervals.

(c) Requests for mandatory review for declassification of foreign government information shall be processed and acted upon in accordance with the provisions of § 1203.603 except that foreign government information will be declassified only in accordance with the guidelines developed for that purpose under § 1203.702 and after consultation with other Government agencies with subject matter interest as necessary. In those cases where these guidelines cannot be applied to the foreign government information requested, the foreign originator normally should be consulted, through appropriate channels, prior to final action on the request. However, when the responsible NASA installation knows the foreign originator's view toward declassification or continued classification of the types of information requested, consultation with the foreign originator is not necessary.

(d) Requests for mandatory review for declassification of foreign government information which NASA has not received or classified shall be referred to the Government agency having a primary interest. The requestor shall be advised of the referral.

Robert A. Frosch,
Administrator.

[FR Doc. 79-18874 Filed 6-15-79; 8:45 am]
BILLING CODE 7510-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-2964]

Prohibited Trade Practices, and Affirmative Corrective Actions; Aluminum Company of America, et al.

AGENCY: Federal Trade Commission.

ACTION: Final Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, among other things, requires a Pittsburgh, Pa. producer of aluminum building products and its subsidiary, Alcoa Building Products, Inc., to cease disseminating or participating in the dissemination of advertisements which contain fuel reduction, heat loss reduction, energy savings or thermal insulation representations regarding residential aluminum siding. The order also requires that the R-value for insulating material be disclosed in advertisements which merely use the term "insulated aluminum siding" for descriptive purposes.

DATES: Complaint and order issued May 11, 1979.[1]

FOR FURTHER INFORMATION CONTACT: Paul R. Peterson, Director, 4R, Cleveland Regional Office, Federal Trade Commission, 1339 Federal Office Building, 1240 East Ninth St., Cleveland, Ohio, 44199, (216) 522-4207.

SUPPLEMENTARY INFORMATION: On Friday, January 12, 1979, there was published in the **Federal Register**, 44 FR 2600, a proposed consent agreement with analysis In the Matter of Aluminum Company of America, a corporation, and Alcoa Building Products, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions, or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows:

Subpart-Disseminating Advertisements, Etc.: § 13.1043 Disseminating advertisements, etc.

(Sec. 6, 38 Stat. 721; (15 U.S.C. 46). Interprets or applies sec. 5, 38 Stat. 719, as amended; (15 U.S.C. 45))

Carol M. Thomas,
Secretary.

[FR Doc. 79-18821 Filed 6-15-79; 8:45 am]
BILLING CODE 6750-01-M

16 CFR Part 13

[Docket No. C-2966]

Prohibited Trade Practices, and Affirmative Corrective Actions; General Motors Corporation

AGENCY: Federal Trade Commission.

ACTION: Final Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, among other things, requires a Detroit, Mich. motor vehicle manufacturer to cease misrepresenting the manufacturing source of engine options and the availability of standard or optional equipment. The order also requires the firm to make designated disclosures regarding the manufacturing source, ordering code, and availability of each engine option offered for the model years 1979 through 1981; notify dealers promptly of engine option substitutions; and provide them with the replacement parts and maintenance information necessary to service such equipment. Additionally, the company is prohibited from using any wholesale order system which could prevent dealers from designating specific options requested by purchasers.

DATES: Complaint and order issued May 18, 1979.[1]

FOR FURTHER INFORMATION CONTACT: Paul R. Peterson, Director, 4R, Cleveland Regional Office, Federal Trade Commission, 1339 Federal Office Bldg., 1240 East Ninth St., Cleveland, Ohio. 44199. (216) 522-4207.

SUPPLEMENTARY INFORMATION: On Friday, January 26, 1979, there was published in the **Federal Register**, 44 FR 5457, a proposed consent agreement with analysis In the Matter of General Motors Corporation, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions, or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows:

Subpart-Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; 13.10-1 Availability of merchandise and/or facilities; § 13.90 History of product or offering; § 13.160 Promotional sales plans; § 13.205 Scientific or other relevant facts; § 13.235 Source or origin; 13.235-35 History. Subpart-Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533-20 Disclosures. Subpart-Misrepresenting Oneself and Goods—

[1] Copies of the Complaint, and the Decision and Order filed with the original document.

[1] Copies of the Complaint, and the Decision and Order filed with the original document.

Goods: § 13.1572 Availability of advertised merchandise and/or facilities; § 13.1650 History of product; § 13.1745 Source or origin; 13.1745–60 Maker or seller; § 13.1750 Style or type.—Promotional Sales Plans: § 13.1830 Promotional sales plans. Subpart-Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1854 History of products; § 13.1866 Quality, grade or type; § 13.1895 Scientific or other relevant facts; § 13.1900 Source or origin.

(Sec. 6, 38 Stat. 721; (15 U.S.C. 46). Interprets or applies sec. 5, 38 Stat. 719, as amended; (15 U.S.C. 45))

Carol M. Thomas,

Secretary.

[FR Doc. 79-18919 Filed 6-15-79; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Docket No. C-2966]

Prohibited Trade Practices, and Affirmative Corrective Actions; Inland Empire Roofing Contractors Association

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, among other things, requires a Spokane, Wash. roofing association to cease entering into agreements with others to establish and maintain terms of guarantees, prices, or other conditions of sale in connection with the sale of roofs and related services; suggesting that members adhere to any particular price, guarantee, or other condition of sale; or limiting by any means a member's right to give any guarantee, price or other term or condition of sale to its customers. The association is also prohibited from investigating and/or policing its members with regard to prices charged and guarantees imposed in the sale of their products and services.

DATES: Complaint and order issued May 22, 1979. [1]

FOR FURTHER INFORMATION CONTACT: Thomas Armitage, Director, 10R, Seattle Regional Office, Federal Trade Commission, 28th Floor, Federal Bldg., 915 Second Ave., Seattle, Wash. 98174 (206) 442–4655.

SUPPLEMENTARY INFORMATION: On Monday, March 19, 1979, there was published in the **Federal Register**, 44 FR 16441, a proposed consent agreement with analysis In the Matter of Inland Empire Roofing Contractors Association, an unincorporated association, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions, or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR 13, are as follows:

Subpart-Coercing and Intimidating: § 13.367 Members. Subart-Combining or Conspiring: § 13.395 To control marketing practices and conditions; § 13.430 To enhance, maintain or unify prices; § 13.470 To restain or monopolize trade. Subpart-Controlling, Unfairly, Seller-Suppliers: § 13.530 Controlling, unfairly, seller-suppliers. Subpart-Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533–20 Disclosures; 13.533–60 release of general, specific or contractual constrictions, requirements, or restraints. Subpart-Maintaining Resale Prices: § 13.1165 Systems of espionage.

(Sec. 6, 38 Stat. 721; (15 U.S.C. 46). Interprets or applies sec. 5, 38 Stat. 719, as amended; (15 U.S.C. 45).)

Carol M. Thomas,

Secretary.

[FR Doc. 79-18922 Filed 6-15-79; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Docket No. C-2963]

Prohibited Trade Practices, and Affirmative Corrective Actions; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union

AGENCY: Federal Trade Commission.

ACTION: Final Order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, among other things, requires an Anchorage, Alaska labor union local to cease entering into agreements or understandings which restrict signatory construction companies to deal only with subcontractors who agree with the same terms and conditions binding between the union and the contractors. Additionally, the agreement would prohibit the local from taking any action that would discriminate or economically injure non-compliers.

DATES: Complaint and order issued May 9, 1979. [1]

FOR FURTHER INFORMATION CONTACT: Thomas Armitage, Director, 10R, Seattle Regional Office, Federal Trade Commission, 28th Floor, Federal Bldg., 915 Second Ave., Seattle Wash. 98174. (206) 442–4655.

SUPPLEMENTARY INFORMATION: On Wednesday, July 19, 1978 there was published in the **Federal Register**, 43 FR 31022, a proposed consent agreement with analysis In the Matter of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union 959, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions, or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows:

Subpart-Coercing and Intimidating: § 13.370 Suppliers and sellers. Subpart-Combining or Conspiring: § 13.390 To control employment practice; § 13.395 To control marketing practices and conditions.

(Sec. 6, 38 Stat. 721; (15 U.S.C. 46). Interprets or applies sec. 5, 38 Stat. 719, as amended; (15 U.S.C. 45).)

Carol M. Thomas,

Secretary.

[FR Doc. 79-18920 Filed 6-15-79; 8:45 am]

BILLING CODE 6750-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1118

Investigations, Inspections, and Inquiries Under the Consumer Product Safety Act

AGENCY: Consumer Product Safety Commission.

[1] Copies of the Complaint, and the Decision and Order filed with the original document.

[1] Copies of the Complaint, and the Decision and Order filed with the original document.

ACTION: Final rules.

SUMMARY: In this document, the Commission sets forth rules to govern the scope and conduct of investigations, inspections, and inquiries under the Consumer Product Safety Act as well as procedures for disposing of matters by consent order agreements. The rules state the manner in which officers or employees of the Commission are authorized to enter and inspect premises; to have access to and copy documentary evidence; and to obtain information. These rules are intended to provide the Commission with an effective and efficient method of conducting investigations, inspections, and inquiries in order to determine whether there has been compliance with the Consumer Product Safety Act and the standards, rules, and regulations issued under the Act. In addition, the rules will inform the public of the Commission's procedures and the safeguards available during investigational activities.

EFFECTIVE DATE: July 18, 1979.

FOR FURTHER INFORMATION CONTACT: Ronald G. Yelenik, Consumer Product Safety Commission, Directorate for Compliance and Enforcement, Washington, D.C. 20207, Telephone No. (301) 492-6629.

SUPPLEMENTARY INFORMATION: On August 9, 1978, the Consumer Product Safety Commission published proposed Nonadjudicative Rules of Procedure for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act in the **Federal Register** (43 FR 35440). The Commission invited the public to submit written comments regarding the rules by September 22, 1978.

The Commission received numerous written comments from businesses, trade associations, law firms and others. Most of the commenters support the purpose of the proposal. The rules issued below, in final form, reflect changes made in the proposed rules in response to questions and suggestions raised by commenters as well as changes suggested by the Commission staff. Following is a discussion of major comments received and the Commission's responses to them.

Discussion of Major Comments

Inspections and the Fourth Amendment

The majority of the comments refer to the recent Supreme Court decision in *Marshall v. Barlow's Inc* 436 U.S. 307 (1978), and the possible impact of this decision upon the proposed rules. In *Marshall v. Barlow's Inc.*, the Supreme Court held that non-consensual inspections which are conducted by the Occupational Safety and Health Administration (OSHA) without a warrant or its "functional equivalent" violate the Fourth Amendment of the United States Constitution. The Fourth Amendment states in pertinent part: "The rights of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated and no warrants shall issue, but upon probable cause * * *"

Several commenters expressed the view that proposed §§ 1118.2(a) (1) and (2) and 1118.2(d) are in conflict with the *Barlow* decision in that these subsections would authorize Commission officers and employees to enter and inspect premises without first obtaining a search warrant. The Commission believes that the commenters have improperly construed *Barlow*. The Supreme Court ruled that where an OSHA inspector in the course of his/her duties is refused entry and inspection to business premises, OSHA must obtain a search warrant or its "functional equivalent" to obtain entry. The Court, however, did not indicate that OSHA must procure a search warrant prior to refusal of entry and/or inspection. On the contrary, the opinion expressly anticipates that "the great majority of businessmen can be expected in normal course to consent to inspection without a warrant." 436 U.S. 307, 314 (1978). If voluntary entry is refused, *Barlow* requires that OSHA obtain either a search warrant or its functional equivalent if it wishes to enter and inspect.

Section 16 of the Consumer Product Safety Act (15 U.S.C. 2065) authorizes officers or employees of the Commission to conduct inspections at reasonable times and in a reasonable manner for purposes of implementing the Act. The Commission has carefully considered this provision in light of the Supreme Court's decision in *Barlow*. The Commission in § 1118.2 has provided for the use of search warrants or their functional equivalent in situations where entry and/or inspection has been refused. Therefore, the Commission believes that these rules follow the *Barlow* decision, and has made no change in the rules issued below.

Several commenters stated that proposed §§ 1118.2(a) (1) and (2) and 1118.2(d) should make clear that an individual has the right to request that a warrant be obtained, and that it is not a violation of the Act or the rules for any person or firm to refuse entry or inspection to a Commission officer or employee who does not present a lawfully obtained search warrant. The Commission believes that the rules as proposed, adequately reflect the rationale of the Supreme Court in *Barlow*. Accordingly, the Commission declines to make the suggested revisions. However, the Commission has revised proposed § 1118.2(c) to provide for the inclusion of a statement in the notice of inspection that "the inspection will be conducted and the information provided with the cooperation of the person or firm being inspected."

Conduct and Scope of Inspections

Several commenters expressed the view that proposed §§ 1118.2(a) (1) and (2) should be revised to state that Commission investigators do not have the authority to inspect certain areas of a firm's facilities such as offices, file rooms and supply space where consumer products are neither manufactured nor held. An analysis of the applicable legislative history indicates that the Commission has the authority, in accordance with its obligation to protect the public health and safety, to investigate and inspect these and other areas of a factory, warehouse or establishment. House Commerce Committee Report No. 92-1153 (1972) at p. 43, clearly states: "Such inspection may extend to any portion of any premises or facility which may relate to the safety of such products." Therefore, the Commission declines to adopt the suggested changes.

One commenter suggested that proposed § 1118.2 be modified to show that the inspectional authority of the Commission does not extend to retailers. Although retailers have been excluded from the recordkeeping requirements of § 16(b) of the Act, they have not been exempted from the inspection provisions of § 16(a). House Committee Rep. No 92-1153 p. 44 (1972). Section 16, which pertains to entry and inspection of premises, grants to the Commission broad authority to conduct on-site inspections of any establishment where consumer products are held in connection with their distribution in commerce. Since retailers are establishments within the meaning of § 16, they are therefore subject to inspection by the Commission. Accordingly, the Commission believes that it has the statutory authority to inspect the business premises of retailers, and therefore, declines to make the suggested change.

Several commenters contended that the Commission lacks statutory authority to have access to records, books, documents, papers, packaging or

labeling as as provided in proposed § 1118.2(a)(3), without first promulgating a rule requiring such information to be kept and made available. Careful analysis of § 16 of the CPSA clearly indicates that the sole limitation on the Commission's authority to have access to and copy records is that said records be " * * * appropriate books, records and papers relevant to determining whether such manufacturer, private labeler or distributor has acted or is acting in compliance with this Act and rules under this Act. 15 U.S.C. 2065 (1972)." Furthermore, the legislative history of § 16 of the Consumer Product Safety Act indicates that the broad remedial purposes of the Act, a public safety statute, authorizes the Commission to have access to all books, papers, records and other relevant information. The Commission concludes that such authority is not dependent upon the prior promulgation of a Commission rule requiring the establishment and maintenance of such information. Accordingly, the Commission declines to make any substantive changes in § 1118.2(a)(3) to reflect such a limitation.

One commenter expressed the opinion that the scope of proposed § 1118.2(a)(3), exceeds the Commission's statutory authority, in that it provides for the copying of printed information. The Commission believes that this view is unduly restrictive. When § 16, which relates to inspections and recordkeeping, is read in conjunction with § 19(a)(3) of the Act, which makes it unlawful to fail or refuse to permit the copying of records, it is apparent that the Commission has the authority to copy information which shows or relates to the firm's compliance with the Act and the rules. Therefore, the Commission declines to modify § 1118.2(a)(3) in the manner suggested.

Another commenter suggested that the language of proposed § 1118.2(a)(3) purports to authorize access to and copying of virtually any data, whether or not such data relates to the firm's compliance with the Act or rules. Although such was not the intent of this provision, the Commission recognizes that the language of this subsection may give such an impression. Accordingly, proposed § 1118.2(a)(3) has been revised in the following manner to authorize access to and copying of only relevant information: "(3) to have access to and to copy all relevant records, books, documents, papers, packaging or labeling which: (i) Are required by the Commission to be established, made or maintained, or (ii) show or relate to the production, inventory, testing, distribution, sale, transportation, importation, or receipt of any consumer product, or that are otherwise relevant to determining whether any person or firm has acted or is acting in compliance with the act and regulations, rules and others promulgated under the act, and * * *" The Commission believes that this language change will remove any possible ambiguity.

One commenter expressed the view that the Commission lacks statutory authority to inspect packaging and labeling of consumer products. The Commission believes that packaging and labeling are component parts of consumer products within the meaning of § 3(a)(1) of the CPSA (see 16 CFR 1115.4) and are therefore obtainable and subject to inspection to the same extent as other consumer products and components. Therefore, the Commission has not deleted "packaging" and "labeling" from § 1118.2(a)(3).

Several commenters argued that proposed § 1118.2(a)(4) exceeds the Commission's statutory authority in that it provides that the Commission may obtain information during the course of an on-site inspection by interviewing employees. These commenters would require the Commission to rely exclusively on compulsory process to obtain oral and/or written statements from employees. However, the Supreme Court in *Barlow* voiced the expectation that most inspections would be conducted with the consent of the person or firm involved. This expectation also applies to oral and written comments of employees. Although the Act and these rules provide methods for compelling answers to questions, the Commission expects that most questions will be answered by employees in a cooperative manner. To resort to compulsory process at the outset would create unjustified expense for both the Commission and the subject of the investigation. It may also generate antagonism and resistance towards the Commission. The Commission believes that employee cooperation should be sought and encouraged.

Another comment, similar to the preceding one, has stated that the seeking of oral information is intrusive, and that the same information is more easily obtainable by use of a subpoena. In response to the preceding comment, the Commission expressed its preference for relying on public cooperation in the first instance. The Commission does not believe it necessary at this time to change a long-standing regulatory enforcement procedure in the absence of compelling evidence that there has been an undue disruption of normal business activities. It is the practice of the staff to accommodate business firms to every extent possible to prevent the kind of disruptions referred to by the commenter. The Commission believes that the unnecessary issuance of compulsory process would be far more disruptive and expensive to the firms involved. Therefore, the Commission will continue first to seek and obtain oral information.

Other Comments

Definitions; Initiation of Investigations, Inspections and Inquiries

The Commission, on its own initiative, has, for the purpose of clarity, divided proposed § 1118.1(b) into two subsections: § 1118.1(b) and § 1118.1(c). Proposed § 1118.1(c) now appears as final § 1118.1(d).

One commenter objected to the phrase "includes but is not limited to" within the proposed definition of "investigation" in proposed § 1118.1(a)(1) (now final § 1118.1(a)(4)). The Commission believes that there should be no limitations on the types of investigations, inspections and inquiries that may be pursued in the future, so long as adequate notice and opportunity to be heard are afforded to the firms involved. The Commission has therefore declined the commenter's suggestion that the phrase be deleted.

Several commenters objected to the inclusion of retailers within the proposed definition of "firm" in proposed § 1118.1(a)(2) (now final § 1118.1(a)(3)). They argue that since retailers are excluded from the recordkeeping requirements of section 16(b), such retailers should not be included within the broad definition of "firm". Despite the fact that the recordkeeping requirement is not applicable to retailers, retailers are generally subject to the other provisions of the Act. Section 16(a)(1) of the Act authorizes the Commission to enter any establishment in which consumer products are held in connection with distribution in commerce. The definition of "distribution in commerce" includes holding consumer products for sale. Section 3(a)(6) of the Act defines a retailer as one to whom a consumer product is delivered or sold for purposes of sale or distribution to consumers. Thus, a retailer comes within the statutory scope of § 16(a)(1) of the Act. Therefore, the Commission declines to adopt the suggestion of the commenters to delete the word retailer from the definition of "firm". However, in order to clarify the applicability of the Act and

these rules to retailers, the Commission has added the following language to proposed § 1118.1(a)(2) "* * * except as otherwise provided by § 16(b) of the Act.

Trade Secrets

Several commenters have claimed that proposed § 1118.2 does not provide adequate protection against the disclosure of trade secrets and other confidential or proprietary information. The Commission points out that §§ 1118.2(c) and 3(c) of these rules exempt such information from disclosure to anyone except other officers or employees of the Commission who are concerned with enforcing or administering the Act. These two subsections paraphrase and restate the Commission's Freedom of Information Act Regulations, 16 CFR Part 1015 (42 FR 10490, February 22, 1977), the Freedom of Information Act and apply the maximum protection provided for under the FOIA (15 U.S.C. 552) to all information obtained by the Commission. Accordingly, the Commission declines to modify § 1118.2 of the final rules.

Samples

Several commenters, including a number of trade associations and manufacturers, objected to proposed § 1118.2(a)(4)(ii). The commenters claim that this subsection authorizes the Commission to obtain samples of consumer products without payment. The Commission did not intend this subsection to have such an effect. Section 27(f) of the Act provides that the Commission "may require any manufacturer, distributor or retailer of a consumer product to sell the product to the Commission at manufacturer's, distributor's or retailer's cost." Accordingly, the Commission has clarified final § 1118.2(a)(4)(ii) by adding the phrase "at manufacturer's, distributor's, or retailer's cost, unless voluntarily provided * * *"

Other commenters expressed the view that the Commission is only authorized to buy finished products and not components. Since § 3(a)(1) of the Act includes "components" within the definition of "consumer product" the Commission disagrees with the commenter. Therefore, the Commission believes that § 1118.2(a)(4) correctly interprets the statute and that the Commission has the authority to obtain components.

Compulsory Process

In order to clarify the fact that the Commission may initiate investigations, inspections or inquiries by either issuance of a notice of inspection or by seeking ex parte search warrants or using the compulsory processes enumerated in proposed § 1118.3, the staff has modified the language of § 1118.3 of the final rules.

One commenter objected to the language "including but not limited to" in proposed § 1118.3 as excessively broad. The Commission agrees with the commenter and has revised final § 1118.3 by adding the words "the following compulsory processes" after the phrase "including but not limited to."

Another commenter expressed the view that the use of the term "notice" in proposed § 1118.3(b) is unclear and could be construed to allow mail service of search warrants. Final § 1118.3(b) has been modified by deleting the words "of notice" from the subsection. Moreover, the phrase "the following compulsory processes" has been added to final § 1118.3(a) to make clear that the service involved refers solely to compulsory process and not to search warrants.

Several commenters suggested that proposed § 1118.3(b)(3) is probably unconstitutional in that it permits service of general or special orders by publication in the **Federal Register**. Other commenters stated that this means of service is unfair to small businessmen who do not subscribe to the **Federal Register**. The Commission is neither aware of any case law supporting the constitutional claim of the commenters, nor was any cited in the comment. However, in order to assure the commenter that service by publication will only be used as a last resort, the Commission has deleted the phrase "is impractical or" from final § 1118.3(b)(3). Therefore, the Commission does not believe that this form of service is unfair to small businessmen.

A few commenters complained that the date of service of compulsory processes in proposed § 1118.3(c) should be the date on which the document is received rather than the date on which the document is mailed. The commenters claimed that since it might take three or four days for process to be received by mail, such delay would unreasonably shorten the time period in which they are permitted or required to respond. Although the proposed rules provide for a three-day extension of time when service by mail is involved, the Commission believes that the commenter's views are well founded. The Commission has therefore modified § 1118.3(c) in the manner suggested by the commenter.

Subpoenas

One commenter suggested that proposed § 1118.4 is overbroad since it allows for discovery of documents beyond the authority granted in section 16 of the CPSA. The authority to issue subpoenas is granted by section 27(b)(3) of the CPSA. This section empowers the Commission to require the production of all documents relating to the execution of Commission duties. Accordingly, the Commission declines to make any change in final § 1118.4.

Investigational Hearings

Several commenters stated that the purpose of investigational hearings set forth in proposed § 1118.5(a) is too expansive in that it relates to "any matter under investigation." For this reason, the commenters claim that there is no guarantee that the hearings will be limited to matters in the public interest. The Commission did not intend that "any matter under investigation" be read in such a broad manner. Section § 1118.1 of these rules defines "investigation" as "an undertaking by the Commission to obtain information for implementing, enforcing or determining compliance with the Consumer Product Safety Act, and the regulations, rules and orders issued under that Act."

Therefore, the scope of an investigational hearing will be limited to the areas enumerated above, which are undoubtedly matters in the public interest. Moreover, a witness at an investigational hearing has the right to be represented by counsel and to object to any matter relevant to the hearing, as provided in § 1118.7(a.) In light of this built-in procedural safeguard and the inherent subject matter limitations of such investigations, the Commission believes that it is unnecessary to adopt the views of the commenters.

One commenter suggested that the language of proposed § 1118.5(a) be changed from "may order and by subpoena may compel" to "by subpoena may require" in order to comport with the statutory language of section 27(b)(3) of the CPSA. The Commission agrees with the commenter and has adopted the suggested language.

Another commenter expressed the opinion that only persons with legal training be allowed to preside at investigational hearings. Section 27(a) of the CPSA, which authorizes the Commission to conduct hearings provides no such limitation, either explicit or implicit, on the qualifications of presiding officials. However, the commenter can be assured that the

Commission will appoint persons with legal training to preside at Commission hearings when the Commission deems necessary. Therefore, the Commission declines to amend this section.

Another commenter argued that a Commissioner who participates in a hearing, investigation or inspection should be disqualified from participating in a subsequent decision on the same matter. The statutory language of section 27(a) of the CPSA provides that "a Commissioner who participates in * * * a hearing or other inquiry shall not be disqualified *solely* by reason of such participation from subsequently participating in a decision of the Commission in the same matter (emphasis added)." Accordingly, the Commission has decided not to incorporate the suggestion of the commenter. However, in order to clarify the meaning of proposed § 1118.5(b) and to track the language of the statute, the Commission has added the word "solely" to § 1118.5(b) of the final rules.

One commenter expressed the view that proposed § 1118.5(b) should be amended to provide that if a Commissioner is to participate in a Commission decision involving a matter in which he or she had previously participated at the investigational level, a written statement indicating why the Commissioner should not be disqualified should be included as part of the record. The Commission believes that the inclusion of such a written statement is unnecessary in view of the language of § 27(a) of the Act providing for a Commissioner to participate in a Commission decision after conducting a hearing or after inquiry regarding the same matter. Moreover, a person believing that a Commissioner has lost his or her objectivity may, of course, move to disqualify that Commissioner under the CPSC Adjudicative Rules, 16 CFR 1025.42(e)(2). Accordingly, the Commission declines to make the suggested change.

Another commenter claimed that proposed § 1118.5(d), which limits the release of the record of an investigational hearing in accordance with the Freedom of Information Act is in conflict with proposed § 1118.7(d) which allows any person who is required to appear at an investigational hearing or a deposition to obtain a copy of his/her testimony by paying the prescribed costs. To clarify that a person giving testimony may obtain a copy of the transcript, final § 1118.5(d) has been amended by adding the following language: " * * * except that any person required to give testimony or to be deposed may in accordance with § 1118.7(d) obtain a copy of his or her testimony or deposition."

Depositions

The Commission has modified proposed § 1118.6 in the same manner and for the same reasons stated in the comments pertaining to § 1118.5(d).

One commenter suggested that the language of proposed § 1118.6 should be modified to require that changes in depositions be made on the face of the document rather than on a separate document accompanying the deposition. The commenter's rationale for such suggestion is that the change would avoid the potential loss of such separate documents. The Commission concurs and has incorporated appropriate language into § 1118.6 of the final rules.

Several commenters objected to the language of proposed § 1118.6(b) which allows the Commission to reduce the time period in which a deposition must be signed to less than ten days. The commenters claim that such a practice may lead to harassment by the Commission. The Commission believes that circumstances may arise in which the public interest may require that a deposition regarding consumer safety be signed and submitted in less than ten days. However, the Commission has modified final § 1118.6(b) by providing that the Commission must state the reason for requiring a deposition to be signed in less than ten days.

Another commenter expressed the view that it is inappropriate for the Commission to establish rules of admissibility of evidence for the courts. The Commission agrees with this observation and has modified § 1118.6(b) of the final rules to clearly indicate that admissibility of such testimony in court is not governed by these rules.

Rights of Witnesses at Investigational Hearings and of Deponents at Depositions

The Commission, on its own initiative, has amended proposed §§ 1118.7(a)(4) and § 1118.7(e) to make clear that the conduct of witnesses at investigational hearings is subject to direction and regulation by the presiding official. The Commission believes that it has the statutory authority to so empower the presiding official.

The Commission has also substituted the term "representative" for the term "counsel" in final § 1118.7(a). The Commission believes that it is inappropriate to refer to laymen who are not admitted to practice before any bar as "counsel." Moreover, to insure that lay representatives have adequate knowledge of the business affairs of the firm, the Commission has limited persons who may serve as representatives to partners of the partnership or officers of the corporation whose activities are under investigation by the Commission during that proceeding.

Thirdly, the Commission, on its own initiative, has revised final § 1118.7(a)(4) to provide a witness or his or her attorney or representative with the opportunity to make a brief statement at the conclusion of the hearing regarding the position of the firm as to matters under investigation. Furthermore, the Commission has for the purpose of clarity, divided proposed § 1118.7(a)(4) into two subsections: § 1118.7(a)(4) and § 1118.7(a)(5).

Several companies and trade associations objected to the limitation in proposed § 1118.7(a)(1) which precludes individuals who have been subpoenaed to produce documentary evidence or give testimony at any investigational hearing or deposition from acting as counsel for another witness or deponent at the same proceeding. The Commission believes that the possibility exists that an individual who has been present during the testimony of a witness and is later called to testify at the same proceeding may be influenced by the previous testimony he or she has heard. Therefore, the Commission believes that the limitation of § 1118.7(a) is a reasonable one.

Several commenters expressed the view that proposed § 1118.7(a)(1) discriminates against firms with in-house counsel who normally testify regarding documents maintained by the firm. The Commission disagrees with the position of the commenters and suggests that another person could present the subpoenaed documents, thereby allowing the in-house counsel to act as legal representative of the firm. If the firm maintains more than one attorney, one lawyer could present the documents and another could act as counsel. Accordingly, the Commission declines to incorporate the suggested change in these rules.

One commenter stated that proposed §§ 1118.7(a)(3) and (4) do not provide a witness, deponent, their attorney or representative with the opportunity to object on the record to anything other than a question that has been posed. It was suggested that the right to object should be expanded to include any matter pertinent to the hearing. The Commission agrees with the commenter and has modified final § 1118.7(a)(1) to comply with the suggestion.

Another commenter suggested that proposed § 1118.7(b) be modified to require the Commission to issue a separate notice to firms under investigation, indicating the nature of the information to be sought from a deponent or witness at an investigational hearing. The Commission believes that administrative subpoenas issued pursuant to § 1118.3 serve this purpose. Such subpoenas specify in detail the information sought from each witness, the nature of the investigation, and all other factors relevant to the inquiry. Accordingly, the Commission declines to make the suggested modification.

One commenter stated that the term "reasonably available" in proposed § 1118.7(b), referring to the information to which a witness or deponent shall testify, is vague and may result in overreaching by the Commission. The Commission believes that this language, taken from similar provisions of the Federal Rules of Civil Procedure, adequately describes the matters to which a witness must testify, while providing the witness reasonable grounds for refusing to supply that information, if it is not available. Accordingly, the Commission has decided not to revise this subsection.

The same commenter suggested that the Commission be required "to notify the firm sufficiently in advance of the hearing or deposition of those matters and information to which testimony would be sought, to afford the firm a reasonable time to gather the requested * * * information for use of its agent or offices during his testimony." Under § 1118.10(a)(3), any firm may request an extension of time for the purpose of complying with compulsory processes, including investigational hearings and depositions. Therefore, the Commission believes that these rules provide an adequate period of time to gather requested information, and has therefore not modified this subsection.

Another commenter expressed the view that proposed § 1118.7(d) should provide that witnesses who testify under compulsory process should be allowed to keep a copy of their testimony at government expense. The Commission is of the opinion that the procedure contained in § 1118.7(d) by which a witness or deponents may obtain a copy of testimony given by paying the prescribed costs is adequate and reasonable. Such procedure comports with similar provisions of the Freedom of Information Act. Therefore, the Commission has not incorporated the suggested change in § 1118.7(d) of the final rules.

Written Interrogatories

One commenter questioned whether it was necessary for the rules to provide for both written interrogatories and general and special orders. After careful consideration, the Commission has concluded that no useful purpose will be served by providing for the use of written interrogatories. Any information obtainable through written interrogatories may also be obtained through general and special orders. Therefore, proposed § 1118.8 has been deleted. The number sequence of the rules which follow has been modified accordingly.

Modification of Terms for Compliance

The Commission believes that proposed § 1118.10(b)(2) and (3) both provide for an extension of time to limit or quash subpoenas and general or special orders. In order to eliminate this redundancy, § 1118.10(b)(2) has been deleted. Section 1118.10(b)(3) of the proposed rules now appears as final rule § 1118.9(b)(2).

Consent Order Agreements

The Commission on its own initiative has amended proposed § 1118.20(b) by adding subpart (4), which requires that a statement describing the alleged hazard, noncompliance or violation be included in a consent order agreement. This subpart was added in order to comport with provisions in the Interim Rules of Practice for Adjudicative Proceedings under the CPSA and the Flammable Fabrics Act, 42 FR 31431 (1977) (16 CFR Part 1025) and the Policy and Procedures Regarding Substantial Product Hazards, 16 CFR Part 1116 (43 FR 34988, August 7, 1978).

Additionally, the Commission believes that the language of proposed § 1118.20(b)(8) lacks clarity. The Commission has therefore modified this subsection to avoid any possible confusion.

One commenter suggested that the time period in which the Commission will notify a consenting party of its decision not to accept a consent order agreement on a final basis should be stated in proposed § 1118.20(c) of these rules. The Commission endeavors to inform a consenting party within a reasonable period of time of its decision not to accept agreements on a final basis. Accordingly, final § 1118.20(g) has been amended to provide that the Commission shall, within a reasonable time, issue and serve an order indicating its rejection of the consent agreement.

Another commenter observed that proposed § 1118.20(g) should include a provision requiring the Commission to state in writing the reasons for rejecting a proposal. The Commission does not believe that it is practicable for the Commission to set forth in detail the basis for rejecting a proposed agreement in each and every case. However, although the Commission declines to make the suggested change in § 1118.20(g) of the final rules, the Commission will make every effort to respond in writing where practicable.

On its own initiative, the Commission has revised the language of §§ 1118.20(f) and 1118.20(g) to clarify the procedure the Commission will follow in finally accepting or rejecting an agreement that has been tentatively accepted. If no public objections to the agreement are received within 15 days of placing the agreement on the public record in accordance with § 1118.20(e), the agreement is accepted by operation of law. Where the Commission receives one or more requests that it not finally accept an agreement, it shall make its final decision after considering the requests and reasons contained in them. The Commission's final decision will be made within a reasonable time following the end of the fifteen day comment period.

The Commission, on its own initiative, has added § 1118.20(h) to provide a procedure to vacate or modify an order issued pursuant to an agreement. The procedure is begun either by a petition filed by a party or by the Commission acting on its own initiative. The petition shall include the change sought and the reasons for it. The grounds for a petition are (1) false statements were relied upon by the Commission in accepting the agreement or (2) there has been a change in facts or law. Parties affected by the petition shall be allowed to submit a response to it. In deciding whether to grant the petition, the Commission shall consider the public interest.

Effective Date and Promulgation

Effective Date. These rules become effective July 18, 1979.

Promulgation

Accordingly, pursuant to the provisions of the Consumer Product Safety Act, §§ 16, 19 and 27, 86 Stat. 1222, 1224, and 1227, as amended, 90 Stat. 509; 15 U.S.C. 2065, 2068, and 2076, Chapter II of Title 16 is amended by adding a new Part 1118 as follows:

PART 1118—INVESTIGATIONS, INSPECTIONS AND INQUIRIES UNDER THE CONSUMER PRODUCT SAFETY ACT

Subpart A—Procedures for Investigations, Inspections and Inquiries

Sec.

1118.1 Definitions, initiation of investigations, inspections, and inquiries delegations.
1118.2 Conduct and scope of inspections.
1118.3 Compulsory processes and service.
1118.4 Subpoenas.
1118.5 Investigational hearings.
1118.6 Depositions.
1118.7 Rights of witnesses at investigational hearings and of deponents at depositions.
1118.8 General or special orders seeking information.
1118.9 Motions to limit or quash subpoenas and general or special orders and delegation to modify terms of compliance.
1118.10 Remedies for failure to permit authorized investigations.
1118.11 Nonexclusive delegation of power.

Subpart B—Consent Order Agreements

1118.20 Procedures for consent order agreements.

Authority: Sec. 16, Pub. L. 92-573, 86 Stat. 1222 (15 U.S.C. 2065); sec. 19, Pub. L. 92-573, 86 Stat. 1224 (15 U.S.C. 2068); sec. 27, Pub. L. 92-573, 86 Stat. 1227 (15 U.S.C. 2076); as amended by Pub. L. 94-284, 90 Stat. 509.

Subpart A—Procedures for Investigation Inspections, and Inquiries

§ 1118.1 Definitions, initiation of investigations, inspections, and inquiries and delegations.

(a) *Definitions.* For the purpose of these rules, the following definitions apply:

(1) "Act" means the Consumer Product Safety Act (15 U.S.C. 2051, *et seq.*).

(2) "Commission" means the Consumer Product Safety Commission.

(3) "Firm" means a manufacturer, private labeler, distributor, or retailer of a consumer product, except as otherwise provided by § 16(b) of the Act.

(4) "Investigation" is an undertaking by the Commission to obtain information for implementing, enforcing, or determining compliance with the Consumer Product Safety Act and the regulations, rules, and orders issued under the Act. The term investigation includes, but is not limited to, inspections (§ 1118.2), investigational hearings (§ 1118.5), and inquiries employing subpoenas (§ 1118.4), depositions (§ 1118.6), and general or special orders (§ 1118.9).

(5) The definition of the terms set forth in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) shall apply to this part 1118.

(b) *Initiation of Investigations and Inquiries.* Investigations and inquiries will be initiated by the Commission in any manner authorized by law.

(c) *Initiation of Inspections.* An inspection as described in § 1118.2 is initiated when the Commission or its delegate authorizes the issuance of a written notice of inspection, described in § 1118.2(c).

(d) *Delegations of Authority.* The Commission hereby delegates to the Associate Executive Director for Compliance and Enforcement; the Solicitor, the Directors of the Divisions of Enforcement; the Solicitor, the Directors of the Divisions of Enforcement, Product Defect Correction, and Regulatory Management; and the directors of area offices, the power to initiate inspections in the same manner as the Commission.

§ 1118.2 Conduct and scope of inspections.

(a) After an inspection is initiated as set forth in § 1118.1, an officer or employee duly designated by the Commission shall issue the notice of inspection (hereinafter: notice). Upon presenting the notice, along with appropriate credentials, to the person or agent in charge of the firm to be inspected, the Commission officer or employee is authorized for the purposes set forth in § 1118.1(a):

(1) To enter, at reasonable times, any factory, warehouse, or establishment in which consumer products are manufactured or held, in connection with distribution in commerce, or any conveyance being used to transport consumer products in connection with distribution in commerce; and

(2) To inspect, at reasonable times and in a reasonable manner, any conveyance or those areas of the factory, warehouse, or establishment where consumer products are manufactured, held, or transported and which may relate to the safety of those products; and

(3) To have access to and to copy all relevant records, books, documents, papers, packaging or labeling which: (i) Are required by the Commission to be established, made or maintained, or (ii) show or relate to the production, inventory, testing, distribution, sale, transportation, importation, or receipt of any consumer product, or that are otherwise relevant to determining whether any person or firm has acted or is acting in compliance with the Act and regulations, rules and orders promulgated under the Act, and

(4) To obtain: (i) Information, both oral and written, concerning the production, inventory, testing, distribution, sale, transportation, importation, or receipt of any consumer product, and the organization, business, conduct, practices, and management of any person or firm being inspected and its relation to any other person or firm; (ii) samples of items, materials, substances, products, containers, packages and packaging, and labels and labeling, or any component at manufacturer's, distributor's or retailer's cost unless voluntarily provided; and (iii) information, both oral and written, concerning any matter referred to in the Act and these rules.

(b) A separate notice shall be given for each inspection, but a notice is not required for each entry made during the course of the same inspection. Each inspection shall be commenced at and completed within a reasonable period of time.

(c) The notice of inspection shall include the name and address of the person or firm being inspected; the name and title of the Commission officer or employee; the date and time of the anticipated entry; pertinent extracts from the statutory provisions upon which the right to access is based; pertinent extracts from § 1118.2 of these rules setting forth the authority of Commission officers or employees and the types of information and items they are authorized to obtain; a statement that the inspection will be conducted and the information will be provided with the cooperation of the person or firm being inspected; a statement which sets forth the purposes of the inspection and the nature of the information and items to be obtained and/or copied; and a statement that those from whom information is requested should state in writing whether any of the information submitted is believed to contain or relate to a trade secret or other matter which should be considered by the Commission to be confidential in accordance with section 6(a)(2) of the Act (15 U.S.C. 2055(a)(2)) and whether any of the information is believed to be entitled to exemption from disclosure by the Commission under the provisions of the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations under that Act, 16 CFR Part 1015 (42 FR 10496, February 22, 1977) or as amended. Any statement asserting this claim of confidentiality must be in writing, and any request for exemption of the information from disclosure must be made in accordance with the

Commission's Freedom of Information Act regulations, 16 CFR Part 1015 (42 FR 10490, February 22, 1977) or as amended.

(d) If upon being presented with a notice by an officer or employee duly designated by the Commission, the person or agent-in-charge of the firm being inspected refuses to allow entry or inspection, the Commission may then seek a search warrant or take other appropriate legal action. If the person refuses to provide information, to allow access to or the copying of records, or to supply samples as provided in these rules, the officer or employee of the Commission shall complete the investigation to the extent that voluntary cooperation is provided. The Commission may take such additional action, including but not limited to seeking an ex parte search warrant, employing the compulsory process provided for in these rules, and/or taking other suitable legal action. If the person or agent in charge refuses to accept the notice upon its presentation, the officer or employee may affix the notice to a public entrance way on the premises and this shall constitute presentation of the notice.

§ 1118.3 Compulsory processes and service.

(a) In addition to or in lieu of authorizing the issuance of a notice, the Commission may elect either to seek an ex parte search warrant and/or use any other reasonable means authorized by law to initiate investigations, inspections, or inquires to obtain information for the purposes set forth in § 1118.1(a), including but not limited to the following compulsory processes:

(1) Subpoenas;

(2) Investigational hearings;

(3) Depositions; and

(4) General or special orders.

(b) Service in connection with any of the compulsory processes in § 1118.3(a) shall be effected:

(1) By personal service upon the person or agent in charge of the firm being investigated, inspected or inquired of; or

(2) By certified mail or delivery to the last known residence or business address of anyone being investigated, inspected or inquired of; or

(3) In the case of general or special orders where personal service, mailing or delivery has been unsuccessful, service may also be effected by publication in the **Federal Register**.

(c) The date of service of any form of compulsory process shall be the date on which the document is received by mail, delivered in person or published in the **Federal Register**. In computing a period of time in which a party is required or permitted to act, the day from which the time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday or legal holiday.

(d) These rules shall be referred to in any notice of compulsory process served upon a person or firm.

(e) Anyone submitting information in response to any of the compulsory processes referred to in §1118.3(a) should state whether any of the information submitted is believed to contain or relate to a trade secret or other matter which should be considered by the Commission to be confidential in accordance with section 6(a)(2) of the Consumer Product Safety Act (15 U.S.C. 2055(a)(2)) and whether any of the information is believed to be exempt from disclosure by the Commission under the provisions of the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations under that Act, 16 CFR Part 1015 (42 FR 10490, February 22, 1977) or as amended. Any claim of confidentiality must be in writing, and any request for exemption from disclosure must be made in accordance with the Commission's Freedom of Information Act regulations, 16 CFR Part 1015 (42 FR 10490, February 22, 1977), or as amended.

§ 1118.4 Subpoenas.

The Commission may issue to any person or firm a subpoena requiring the production of documentary evidence (subpoena duces tecum) and/or attendance and testimony of witnesses (subpoena ad testificandum) relating to any matter under investigation. Procedures regarding compliance with subpoenas and motions to limit or quash subpoenas are provided for in §1118.9.

§ 1118.5 Investigational hearings.

(a) The Commission by subpoena may require any person or firm to provide information at an investigational hearing. These hearings shall be for the purpose of taking the testimony, under oath, of witnesses and receiving documents and other data relating to any subject under investigation. The hearings shall be presided over by the Commission, by one or more of the Commissioners, by an administrative law judge, or by a duly designated officer or employee, who shall be referred to as the presiding official. The hearings shall be stenographically reported, and the transcript shall be made a part of the record.

(b) A Commissioner who participates in a hearing or other investigation, inspection, or inquiry shall not be disqualified solely by reason of that participation from subsequently participating in a Commission decision in the same matter.

(c) Investigational hearings shall be closed to the public, unless otherwise ordered by the Commission.

(d) The release of the record of the hearing shall be governed by the Freedom of Information Act (5 U.S.C. 552), the Commission's regulations under that Act, 16 CFR Part 1015 (42 FR 10490, February 22, 1977) or as amended and/or other applicable laws or regulations, except that a person required to give testimony or a deposition may, in accordance with §1118.7(d), obtain a copy of his or her testimony or deposition.

§ 1118.6 Depositions.

(a) The Commission by subpoena may require testimony to be taken by deposition at any stage of any investigation. Depositions may be taken before any person who is designated by the Commission and has the power to administer oaths. The person before whom the deposition is taken shall put the deponent under oath. The testimony given shall be reduced to writing by the person taking the deposition or under that person's direction and shall then be submitted to the deponent for signature unless the deponent waives the right to sign the deposition. All depositions shall be closed to the public, unless otherwise ordered by the Commission. The release of the record of such depositions shall be governed by the Freedom of Information Act (5 U.S.C. 552), the Commission's regulations under that Act, 16 CFR Part 1015 (42 FR 10490, February 22, 1977) or as amended and/or other applicable laws or regulations, except that the deponent may, in accordance with §1118.7(d), obtain a copy of his or her deposition.

(b) Any changes which the deponent desires to make shall be entered on the face of the deposition and shall state the reasons for such changes. The deposition shall then be signed by the deponent, unless the deponent waives the right to sign, cannot be found, or is unable or refuses to sign. The deponent must sign the deposition within 30 days of its submission to him or her, or within such shorter time period as the Commission may designate. Whenever a deponent is required to sign in less than ten days, the Commission shall notify the deponent of the reasons for such shorter time period.

If the deponent does not sign the deposition within the prescribed time period, the Commission designee shall sign it and state on the record the fact of the waiver of the right to sign or of the illness or absence of the deponent, or the deponent's inability or refusal to sign, together with the reason if any is given. The deposition may be used in any administrative proceeding, as provided by these rules, or any other proceeding, as allowed by applicable rules.

§ 1118.7 Rights of witnesses at investigational hearings and of deponents at depositions.

(a) Any person, agent, or officer of a firm, who is required to produce documentary evidence or give testimony as a witness at an investigational hearing conducted under provisions of § 1118.5 or as a deponent at a deposition taken under provisions of § 1118.6 may be accompanied by an attorney, or an officer or partner of the firm, who may act as representative for the witness or the deponent. However, a person who is subpoenaed to produce documentary evidence or give testimony at an investigational hearing or deposition cannot act as attorney or representative for another witness or deponent at the same proceeding. The term attorney refers to members of the bar of a Federal court or the courts of any State or Territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia. The witness or deponent and his or her attorney or representative may act as follows during the course of an investigational hearing or deposition:

(1) A witness or deponent may confer, in confidence, with his or her attorney or representative concerning any questions asked of the witness or deponent. If the witness, deponent, or his or her attorney or representative objects to a question or any other matter relevant to the investigational hearing or deposition, the objection and basis for it shall be stated on the record. In the case of an objection based upon self-incrimination, the privilege must be asserted by the witness or deponent. If a witness at an investigational hearing refuses to answer a question or provide other information, the presiding official shall have the authority to immediately order the witness to answer the question or provide the information requested, except in circumstances where, in the discretion of the presiding official an immediate ruling would be unwarranted and except where a refusal is based upon the privilege against self-incrimination. Otherwise all objections shall be ruled upon by presiding official at the time the objection is made.

(2) Objections timely made under the provisions of § 1118.7(a) shall be noted on the record, shall be treated as continuing, and shall be preserved throughout the proceeding without the necessity of repetition during similar lines of inquiry.

(3) Except as provided by § 1118.7(a), counsel for a witness or deponent may not interrupt the examination of the witness or the deponent by making objections or statements on the record.

(4) Upon completion of the examination, any witness at an investigational hearing may clarify on the record any of his or her answers, or, if the witness is accompanied by an attorney or representative, the attorney or representative may examine the witness on the record as to answers previously given. In addition, the witness or his or her attorney or representative may make a brief statement at the conclusion of the hearing giving his, her or the firm's position with regard to matters under investigation. In order to prevent abuse of the investigational process, the presiding official shall have the authority to impose reasonable limitations on the period of time allowed for objections, clarification of answers, and statements of position.

(5) Upon completion of all testimony, a deponent may clarify on the record any of his or her answers. The attorney or representative for a deponent may examine that deponent on the record to clarify answers previously given.

(b) Any person, agent, or officer who is required to appear in person at an investigational hearing or at a deposition shall testify as to matters and information known and/or reasonably available to the person or firm involved.

(c) Any person, agent or officer who is compelled by subpoena to appear in person at an investigational hearing or at a deposition shall receive the same fees and mileage allowances as are paid witnesses in the courts of the United States.

(d) Any person, agent, or officer who is required to appear at an investigational hearing or at a deposition shall be entitled to retain a copy of any document submitted by him or her and, upon payment of lawfully prescribed costs, in accordance with the Commission's regulations under the Freedom of Information Act, shall be entitled to procure a copy of his or her own testimony as recorded.

(e) The presiding official shall take all necessary action to regulate the course of the hearing, to avoid delay and to assure that reasonable standards of orderly and ethical conduct are maintained. The presiding official, for reasons stated on the record, shall immediately report to the Commission any instance in which a witness or his or her attorney or representative has refused to comply with the presiding official's directions or to adhere to reasonable standards of orderly and ethical conduct in the course of the hearing. The Commission shall take whatever action is appropriate under the circumstances.

§ 1118.8 General or special orders seeking information.

The Commission may require by the issuance of general or special orders any person or firm to submit in writing any reports and answers to questions as the Commission may prescribe. The reports or answers shall be made under oath, and shall be filed within the time prescribed by the Commission. Procedures regarding compliance with general or special orders and motions to limit or quash such orders are provided for in § 1118.9.

§ 1118.9 Motions to limit or quash subpoenas and general or special orders and delegation to modify terms for compliance.

(a) The Commission hereby delegates to the Associate Executive Director for Compliance and Enforcement; the Solicitor; the Directors of Divisions of Enforcement, Product Defect Correction, and Regulatory Management; and the General Counsel the authority:

(1) To negotiate and approve the terms of satisfactory compliance with subpoenas and general or special orders; (2) to impose conditions upon compliance with such compulsory processes; (3) and to extend the time for compliance and the time for filing motions to limit or quash.

(b) The person or firm served with a subpoena or general or special order may file a motion to limit or quash the subpoena or order. Any motion to limit or quash shall set forth the reasons why the subpoena or order should be limited or quashed and may be accompanied by memoranda, affidavits, or other documents submitted in support of the motion. The motion must be received in the Office of the Secretary of the Commission within 10 calendar days of receipt of the subpoena or order unless: (1) The subpoena or order provides for a different time; or (2) the Commission, for good cause shown, grants an extension of time to file a motion.

(c) Upon receipt of a motion to limit or quash, the Office of the Secretary shall

immediately notify and transmit a copy to the appropriate staff member. Unless a different period of time is specified in the subpoena or order, the staff shall file an answer with the Office of the Secretary within 10 calendar days after receipt of the motion. A copy of the answer shall be served upon the moving party or the counsel of the moving party. No reply to the answer will be permitted.

(d) All motions to limit or quash shall be ruled upon by the Commission. The Office of the Secretary shall serve the decision on a motion to limit or quash upon the moving party or the counsel for the moving party and shall furnish a copy of the decision to the appropriate staff member. The Commission's decision is a final decision. Motions for reconsideration will not be received.

§ 1118.10 Remedies for failure to permit authorized investigations.

In the event a person or firm fails to comply with any investigative process authorized by these rules, the Commission may seek appropriate action within its authority under the Consumer Product Safety Act (15 U.S.C. 2051, et seq.)

§ 1118.11 Nonexclusive delegation of power.

No provision contained herein delegating any of the Commission's powers shall be construed as limiting the authority of the Commission to exercise the same powers.

Subpart B—Consent Order Agreements

§ 1118.20 Procedures for consent order agreements.

(a) For the procedure to be followed regarding consent order agreements involving section 15 of the Act (15 U.S.C. 2064), refer to the Commission's regulations relating to substantial product hazards (16 CFR Part 1115). For all other consent order agreements under the Consumer Product Safety Act, the provisions set forth below are applicable.

(b) The consent order agreement is a document executed by a person, or firm (consenting party) and a Commission staff representative which incorporates both a proposed complaint setting forth the staff's charges and a proposed order by which such charges are resolved. A consent order agreement shall contain the following provisions, as appropriate:

(1) An admission of all jurisdictional facts by the consenting parties;

(2) A waiver of any rights to an administrative or judicial hearing and of any other procedural steps including any rights to seek judicial review or otherwise challenge or contest the validity of the Commission's order;

(3) A statement that the agreement is in settlement of the staff's charges and does not constitute an admission by the consenting party that the law has been violated;

(4) A statement describing the alleged hazard, non-compliance or violation.

(5) A statement that the Commission's order is issued under the provisions of the Act (15 U.S.C. 2051, et seq.); and that a violation of such order may subject the consenting party to appropriate legal action.

(6) An acknowledgment that the consent order agreement only becomes effective upon its final acceptance by the Commission and its service upon the consenting party;

(7) An acknowledgment that the Commission may disclose terms of the consent order agreement to the public;

(8) A statement that the consenting party shall comply with the provisions of the agreement and order;

(9) A statement that the requirements of the order are in addition to and not to the exclusion of other remedies under the Act.

(c) At any time in the course of an investigation, the staff, with the approval of the Commission, may propose to the person or firm being investigated that any alleged violation be resolved by an agreement containing a consent order. Additionally, such a proposal may be made to the Commission staff by such person or firm.

(d) Upon receiving an executed agreement, the Commission may: (1) provisionally accept it; (2) reject it and issue the complaint (in which case the matter will be scheduled for hearing in accordance with the Commission's Rules of Practice for Adjudicative Proceedings, 16 CFR Part 1025, June 21, 1977 or as amended) and/or (3) take such other action as it may deem appropriate.

(e) If the agreement is provisionally accepted, the Commission shall place the agreement on the public record and shall announce provisional acceptance of the agreement in the Federal Register. Any interested person may ask the Commission not to accept the agreement by filing a written request in the Office of the Secretary. Any request must be received in the Office of the Secretary no later than the close of business of the 15th calendar day following the date of announcement in the Federal Register.

(f) If no requests are received, the agreement shall be deemed finally accepted by the Commission on the 16th calendar day after the date of the announcement in the Federal Register. Notice of final acceptance will be given and the order issued within a reasonable time.

(g) If the Commission receives one or more requests that it not finally accept an agreement, it shall, within a reasonable time, either finally accept or reject the agreement after considering the requests. The Commission shall promptly issue and serve an order indicating its decision.

(1) If the agreement is accepted, the Commission shall issue the complaint and order. The order is a final order in disposition of the proceeding and is effective immediately upon its service on the consenting party under these rules. The consenting party shall thereafter be bound by and take immediate action in accordance with the final order.

(2) If the agreement is rejected, the order so notifying the consenting party shall constitute withdrawal of the Commission's provisional acceptance. The Commission may then issue its complaint, may order further investigation, or may take any action it considers appropriate.

(h) An agreement that has been finally accepted may be vacated or modified upon petition of any party or the Commission's own initiative. The petition shall state the proposed changes in the agreement and the reasons for granting the petition. The Commission may modify or vacate where (1) false statements were relied upon in accepting the agreement or (2) there are changed conditions of fact or law. In deciding whether to grant a petition, the Commission shall consider the public interest. A petitioner, or the Commission when acting on its own initiative, shall serve a copy of the petition or notice of reconsideration, respectively, on all parties. Parties affected by the petition or notice of reconsideration may file a response within 10 calendar days. No replies shall be accepted. The Commission shall decide the petition or notice of reconsideration within a reasonable time and, by order, shall indicate its decision and its reasons.

Dated: June 13, 1979.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 79-18888 Filed 6-15-79; 8:45 am]

BILLING CODE 6355-01-M

16 CFR Part 1700

Exemption From Child Resistant Packaging Standards for Potassium Supplements in Effervescent Tablets, Each Containing No More Than 25 Milliequivalents of Potassium

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission issues a final amendment under the Poison Prevention Packaging Act (PPPA) to exempt potassium supplements in effervescent tablet form, each tablet containing no more than 25 milliequivalents of potassium from the special packaging requirements imposed by the act. The Commission is taking this action because of the low incidence of accidental ingestions of this drug by children as well as the lack of potential for serious illness or injury from the drug.

EFFECTIVE DATE: This amendment is effective June 18, 1979.

FOR FURTHER INFORMATION CONTACT: Sandra Eberle, Directorate for Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207, (301) 492–6400.

SUPPLEMENTARY INFORMATION:

Background

Regulations issued under the Poison Prevention Packaging Act of 1970 (PPPA) (15 U.S.C. 1471–1476) establish child-protection packaging requirements for human oral prescription drugs in order to protect children from serious personal injury or illness resulting from handling, using, or ingesting these substances.

On September 13, 1973, the Commission received a petition from Mead Johnson, Evansville, Ind. (PP 74–18) to exempt its effervescent potassium supplement (K-Lyte) containing 25 milliequivalents (mEq) of potassium per tablet from the special packaging requirements of the human oral prescription drug regulation. On September 24, 1973, the Commission received a similar petition from Dorsey Laboratories, (PP 74–24) to exempt its effervescent potassium supplement, Klorvess, containing 20 mEq of potassium from the special packaging requirements of the human oral prescription drug regulation. The Commission granted both petitions, and proposed an exemption for potassium supplements in individually wrapped effervescent tablets, each tablet containing not more than 25 mEq of potassium.[1] (39 FR 5107, February 11, 1974.) At the same time, the Commission suspended the applicability of the special packaging requirement to this drug pending issuance of a final exemption, along with similar actions for a series of other drugs.

Potassium supplements are generally used to counter potassium deficiencies in the body caused by diuretics, diet deficiencies or other factors. Overdosages of potassium may result in listlessness, mental confusion, or muscle weakness in the extremities. Severe overdosages can result in cardiac arrest.

Response to Comments

Fifteen comments were received by the Commission in response to the proposed exemption; none discussed the specific issue of whether potassium supplements should be exempted. Some of the comments addressed the proposed exemptions of the other drugs listed in the February 11, 1974 Federal Register notice; these comments will not be discussed here.

Five comments discussed the general issue of whether any exemptions to the special packaging requirements should be granted. One commenter noted that exemptions should be granted only "with restraint" and that criteria other than toxicological issues should be examined. Two commenters suggested that manufacturers should be required to inform the public, through advertising and product labeling, of which drugs have been exempted and in what amounts. Other commenters envisioned the difficulties pharmacists might face in filling prescriptions for exempted drugs, in particular, in determining what quantities of a drug may be in regular packaging and what quantities require child-protection closures. Other respondents simply opposed any exemptions from the PPPA's requirements, citing the possibility of individual reactions, long term effects, and errors in compounding prescriptions, as justification for safety packaging for all oral prescription drugs. Some commenters expressed concern that consumers would be confused over the two categories of drug containers in the home; others felt that non-complying packaging would increase health care costs.

[1] On November 23, 1977, the Commission received an additional petition from Mead Johnson Laboratories (PP 78–1) to exempt its effervescent potassium supplement, Double-Strength K-Lyte (30 milliequivalents) from the special packaging requirements. Elsewhere in this issue of the Federal Register the Commission issues a proposed exemption from the child-resistant packaging requirements for potassium supplements in tablet form containing not more than 60 milliequivalents of potassium per tablet.

A summary of these comments and the Commission's detailed responses were published in the Federal Register on January 31, 1979 (44 FR 6340). In brief, the Commission determined that none of the general comments were convincing as to the point that exempting specific drugs which cannot cause serious personal injury or illness to children from the PPPA's special packaging requirements is unsafe or ill-advised.

Grounds for Exemption

The Commission bases its decision to issue a final exemption for potassium supplements in effervescent tablet form containing no more than 25 mEq of potassium per tablet, in part, on the lack of significant adverse experience reported by the National Clearinghouse for Poison Control Centers (NCPCC), the National Electronic Injury Surveillance System (NEISS), and other data sources, including in-depth investigations, death certificates, and consumer complaints on file at the Commission. Two cases of accidental ingestion of the substance were reported by the Commission's Poison Control Center Contract Data Base, but neither of these involved symptoms or required medical treatment.

The Commission also bases its decision on studies involving children exposed to effervescent potassium tablets containing 20 and 25 mEq of potassium conducted for Dorsey Laboratories and Mead Johnson, respectively. The studies indicate that children found the effervescent quality and the taste of the tablets repulsive; and consequently, did not ingest significant or toxic quantities of potassium. Of the 302 children studied by Mead Johnson, none consumed more than ½ tablet. Dorsey Laboratories evaluated the reactions of 200 children to their product and found that only one child ingested more than 1¼ tablets. The Commission's staff has analyzed and evaluated these test results and concur with the conclusion reached by the manufacturers that the substance's characteristics discourage ingestion by children.

The Commission has found potassium salts to be relatively low in toxicity. Normal blood plasma levels of potassium are 5 mEq/liters. Fainting and muscular weakness can occur at 7–8 mEq/liters and cardiac arrest at 9–10 mEq/liters. Commission scientists believe that ingestion of 1¼ 25 mEq tablets could yield plasma levels of 8 mEq/liters but only if one does not consider the fact that the normally functioning kidney rapidly eliminates excess potassium and maintains a

constant blood level unless a severe overdose is consumed very rapidly. Thus, even under a worst case situation, the expected blood plasma potassium level would be below the level associated with adverse toxic effects.

One of the petitioners, Dorsey Laboratories, cited from the scientific medical literature that potassium poisoning by ingestion is rare and that as much as 30 grams of the substance provides only gastric irritation. Acute toxicity by ingestion is unlikely since large doses induce only vomiting and, unless there has been prior kidney damage, absorbed potassium is excreted rapidly.

Comments From the Technical Advisory Committee

Nine responses on the petitions to exempt potassium supplements in effervescent tablets, each tablet containing no more than 25 mEq of potassium were received from the Technical Advisory Committee on Poison Prevention Packaging. Seven members recommended granting the petition on the basis of the low toxicity of the drug, the lack of injury data, and the fact that an amount sufficient to approach a toxic dose was not likely to be ingested by children. Of the two members recommending denial of the petition, one felt that more information was necessary, while the other noted that alternative packaging was available and that exemption from the regulations was unnecessary. That member of the TAC also noted that in one of the manufacturers' taste-tests, the one child who consumed more than 1¼ tablets was stopped from eating more than 1¾ tablets.

In response, the Commission believes that adequate information exists to make a decision on the petition in question. Regarding the availability of alternative packaging, the Commission points out that this is not a basis for denying exemption from the special packaging regulations. The requirement for special packaging is triggered because of a risk of serious personal injury or illness to children and the data indicates that this substance does not present such a risk. The Commission staff emphasizes that the blood serum level for the one child who ingested 1¾ tablets (approximately 1.4 grams of potassium) would be much lower than that expected to cause any serious personal injury or illness.

Finding

Having considered the petition and the comments on the proposal, human experience data from the National Clearinghouse for Poison Control Centers and the Commission's own data sources, the relatively low toxicity of the substance and children's inclination to ingest only small amounts, as well as having consulted with the Technical Advisory Committee on Poison Prevention Packaging established under section 6 of the Act, the Commission finds that potassium supplements in effervescent tablet form containing no more than 25 mEq of potassium per tablet does not create such a hazard to children that special packaging is required to protect them from serious personal injury or illness resulting from ingesting, handling, using the substance.

Effective Date

Since this rule grants an exemption, the delayed effective date provisions of the Administrative Procedure Act are inapplicable (5 U.S.C. 553(d)(1)). Accordingly, this exemption becomes effective on June 18, 1979.

Environmental Considerations

The Commission's interim rules for carrying out its responsibilities under the National Environmental Policy Act (see 16 CFR Part 1021; 42 FR 25494) provide that exemptions to an existing standard that do not alter the principal purpose or effect of the standard normally have no potential for affecting the environment and environmental review of exemptions from regulations is, therefore, generally not required. (Section 1021.5(b)(1).) The rules also state that environmental review of rules requiring poison prevention packaging is generally not required. (Section 1021.5(b)(3).)

With respect to this exemption of potassium supplements from poison prevention packaging, the Commission finds that the rule will have no significant effect on the human environment and that no environmental review is necessary.

Conclusion and Promulgation

Having considered the petition, the comments on the proposal, and other relevant material, the Commission concludes that the final rule should be adopted as set forth below.

Accordingly, pursuant to the provisions of the Poison Prevention Packaging Act of 1970 (Pub. L. 91–601, sections 2(4), 3, 5, 84 Stat. 1670–72; 15 U.S.C. 1471(4), 1472–1474) and under authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 92–573), section 30(a), 86 Stat. 1231, 12 U.S.C. 2079(a)), the Commission amends 16 CFR 1700.14 by adding a new paragraph (a)(10)(vi) as follows (the introductory portion of paragraph (a)(10), although unchanged, is included for context):

§ 1700.14 Substances requiring special packaging.

(a) * * *

(10) *Prescription drugs.* Any drug for human use that is in a dosage form intended for oral administration and that is required by Federal law to be dispensed only by or upon an oral or written prescription of a practitioner licensed by law to administer such drug shall be packaged in accordance with the provisions of § 1700.15 (a), (b), and (c), except for the following:

* * * * *

(vi) Potassium supplements in individually packaged effervescent tablets, each containing not more than 25 milliequivalents of potassium.

(Pub. L. 91–601, secs. 2(4), 3, Stat. 1670–72 (15 U.S.C. 1471(4)), 1472, 1474; Pub. L. 92–573, sec. 30(a), 86 Stat. 1231 (15 U.S.C. 2079(a)).)

Effective date: June 18, 1979.

Dated: June 13, 1979.

Sadye E. Dunn,
Secretary, Consumer Product Safety Commission.

[FR Doc. 79-18983 Filed 6-13-79; 8:45 am]
BILLING CODE 6355-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 9

Commission Review of Exchange Disciplinary or Other Adverse Action; Publication of Violations

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission is adopting a new regulation § 9.12 which prescribes the manner in which an exchange is to make public its findings and reasons for acting whenever a person has been suspended, expelled, or disciplined by, or denied access to, the exchange. Under the new rule, exchanges are required to post promptly at the exchange a notice of each such action and to retain a record of the notices for public inspection. This regulation implements Section 18 of the Futures Trading Act of 1978, which requires exchanges to make this information public.

EFFECTIVE DATE: July 18, 1979.

FOR FURTHER INFORMATION CONTACT: William F. Tueting or Toby Kaczensky, Division of Trading and Markets, Commodity Futures Trading

Commission, 2033 K Street, N.W., Washington, D.C. 20581, telephone (202) 254-8955.

SUPPLEMENTAL INFORMATION: The Commodity Futures Trading Commission is adopting a new § 9.12 to implement section 19 of the recently enacted Futures Trading Act of 1978, Pub. L. 95-405, 92 Stat. 865, 874-75 (October 1, 1978). That Section amends section 8c(1)(B) of the Commodity Exchange Act by replacing the requirement that an exchange keep confidential the notice and reasons for the exchange action in disciplinary and access denial proceedings with the statutory requirement that an exchange

"* * * make public its findings and the reasons for the exchange action in any such proceeding, including the action taken or the penalty imposed, but shall not disclose the evidence therefor, except to the person who is suspended, expelled, or disciplined, or denied access, and to the Commission." [1]

The Proposed Rule

The Commission sought public comment on a rule that was published in the Federal Register on February 1, 1979 (44 FR 6428). Under the proposed rule, almost all disciplinary actions were required to be made public by posting a notice near the trading floor and by making a written advisory available to the media as soon as the disciplinary action became effective or within five days after the affected person received notice of the action as provided in § 9.11. It was intended that publication in this manner would serve to deter others from violating exchange rules and to inform customers and members of the public who rely upon the futures markets of rule violations and disciplinary actions which may affect them.

The proposed rule also distinguished between those rule violations which were to be published in the above-described manner and certain minor infractions, that is, violations of rules of decorum, attire and similar rules which were to be subject only to limited publication. Under the proposed rule, an exchange could make these minor infractions public by maintaining a record of them at the exchange that would be available for public inspection.

[1] The Commission has previously adopted rules governing the procedures to be employed by exchanges for taking disciplinary actions. 17 CFR Part 8, 43 FR 41888 *et seq.* (September 18, 1978). Rules governing Commission review of exchange disciplinary and other adverse action have also been adopted. 17 CFR Part 9, 43 FR 58343 *et seq.* (December 20, 1978).

References in this document to Commission regulations (*e.g.*, § 9.11) are to Title 17 of the Code of Federal Regulations (*e.g.*, 17 CFR § 9.11 as published in the Federal Register).

The Comments

Six exchanges submitted comments in response to the proposal. While the exchanges generally supported the public policy underlying public disclosure of disciplinary actions, they suggested a number of amendments to the proposed rule. Based upon these comments as well as the Commission's independent re-evaluation of its proposal, the Commission has determined to adopt a regulation which differs in some respects from the proposed § 9.12. A discussion of the significant comments received and the major changes in the rule as adopted is set forth below.

(1) *Should disciplinary actions be made public before they become effective?*

The proposed requirement that exchanges make their findings public as soon as the disciplinary action is effective or within five days after notifying the affected person (as provided in § 9.11), whichever occurs first, evoked several comments. The exchanges did not believe disciplinary actions should be made public until after they become effective. One reason cited was that a person might appeal the exchange decision to the Commission. If the decision were reversed on appeal, the "harm" to the member caused by public disclosure could not be undone. Exchanges also asserted that the public purpose served by making the disciplinary actions public would still be achieved if disciplinary actions are published only after the disciplined person has exhausted his rights of appeal to the Commission and the penalty has been imposed.

The Commission does not believe that the publication of exchange penalties before they become effective will unfairly subject the disciplined member to harmful publicity. In the first place disciplinary penalties are often imposed as a result of a settlement to which both the exchange and the member agree. But even if the affected person wishes to contest the charges, he is still adequately protected under Commission rules since he must be afforded a hearing in which he will have the opportunity to present evidence and cross-examine witnesses. Furthermore, under both the proposed and the final versions of the rule, disciplinary information does not have to be made public until after the affected person has exhausted all rights of appeal within the exchange and the exchange action has become final.

Exchange disciplinary actions are, of course, somewhat analogous to administrative actions and judicial decisions. The Commission perceives no greater "harm" to an exchange member if the Commission should reverse the disciplinary action after the exchange's findings are made public than occurs when initial administrative or court decisions, which are a matter of public record, are reversed on appeal. Most importantly, the Commission finds that the public interest served by promptly disclosing disciplinary actions outweighs the private interest of the affected member. Among other things, speedy routine disclosure should help to prevent further rule violations by apprising all members of the self-regulatory efforts of the exchanges.[2] The Commission is therefore retaining the requirement that findings in exchange disciplinary actions be immediately made public.

(2) *Must all disciplinary actions be made public?*

Some exchanges commented that only the most serious violations and disciplinary actions should be made public. For example, it was suggested that only suspensions, expulsions, denials of access and rule violations of the magnitude of manipulation or attempted manipulation of a market should be disclosed. An alternative proposal was to expand the category of disciplinary actions and penalties for which limited publication is permitted by means of a record available at the exchange for inspection.

The plain language of section 8c(b) of the Act, as amended, requires an exchange to make public its findings whenever it suspends, expels, disciplines or denies any person access to the exchange. The Commission has determined, however, that it is not necessary to require exchanges to prepare an advisory to the media in connection with these actions since the press will have access to the information when it is posted at the exchange. The Commission has therefore modified its proposal by eliminating the requirement of an advisory to the media. Accordingly, § 9.12, as adopted, requires each exchange to make public all disciplinary actions by posting a notice at the exchange for a period of five days and thereafter to retain a record of the information for public inspection.

[2] As the Commission stated in its Federal Register release proposing § 9.12: "The general public and members of an exchange should be informed of the disciplinary actions taken by an exchange. Notice of these disciplinary actions would preclude an otherwise unknowing general public and/or members of an exchange from dealing with a member who has been suspended, expelled, or denied access to the exchange." 44 FR 6428 (February 1, 1979).

(3) *Effect of public disclosure of disciplinary actions on exchange rule enforcement programs.*

The Commission is disturbed by the comments of some exchanges that publication of less significant rule violations would have an adverse impact on their rule enforcement programs. One exchange stated that non-enforcement of its rules might be the most reasonable approach to such a requirement. Another commented that indiscriminate publication in the news media of every disciplinary action no matter how technical or minor the violation could lead to disrespect among exchange members for the actions of exchange disciplinary bodies. These comments are particularly troublesome since some exchanges viewed less significant rule violations as including all violations except those resulting in a suspension, expulsion or denial of access or violations of the magnitude of manipulation or attempted manipulation of a market.

In response to these comments, the Commission emphasizes that the publication requirements in Section 8c should not, and cannot, be read to relieve exchanges of their self-regulatory responsibilities under the Act. Exchanges may not relax self-regulatory programs or allow them to be circumvented by members who wish to avoid publication of disciplinary actions taken against them.

The Rule As Adopted

Regulation § 9.12 provides that whenever an exchange suspends, expels, or otherwise disciplines or denies any person access to the exchange, it must make its findings public. This rule applies to every disciplinary action within the meaning of § 9.12 regardless of whether the action is imposed pursuant to a settlement to which the disciplined person agrees or whether it is otherwise imposed by the exchange in accordance with its disciplinary procedures. Rule 9.12 also applies to all disciplinary penalties imposed for violations of rules of decorum attire or similar rules. It does not apply to warning letters issued pursuant to § 8.07(c), since warning letters issued in accordance with that section are not penalties and do not indicate that a finding of a violation has been made. See 43 FR 41956, 41963 (September 19, 1978).

In making its findings public an exchange must disclose at least the information contained in the notice called for by § 9.11(a)(1)–(4). An exchange is therefore required to make public: (1) The name of the person disciplined or denied access; (2) a statement of each rule found to have been violated or otherwise underlying the exchange's action or, in the event of a settlement, each rule which the exchange has reason to believe was violated; (3) the reason for the exchange's action; and (4) the action taken or penalty imposed.

In specifying the findings and reasons for the disciplinary action the exchange, at a minimum, should indicate the nature of the violation involved, *e.g.*, failure to meet minimum financial requirements or to have obtained a customer's consent to the execution of an offset trade in which the broker takes the other side. Where a person is found to have violated an exchange rule that encompasses several different types of violative conduct, the exchange should specify the particular violation that was committed. Thus, if a rule generally prohibits fictitious trades, it should be clear from the notice whether the disciplined person engaged in an accommodation trade, wash sale or some other type of fictitious trade. Of course, an exchange may also provide additional details, if it chooses, which might include dates, amounts (such as the number of contracts or accounts involved or the amount of undermargining) and the number of times a violation has occurred. Generally, the exchange should be guided by the public interest to be served by releasing this information. Where any serious violations are involved or where a particular market may be affected, an exchange should provide more information than would be required for a routine disciplinary matter. As provided in Section 8c(b) of the Act, as amended, an exchange may not disclose to the public the evidence underlying its findings.

For each disciplinary action or penalty subject to this regulation, the exchange is required to post a notice containing the required information in a conspicuous place on its premises to which the members and the public regularly have access. This notice must be posted as soon as the disciplinary action or penalty becomes effective or within five days after the exchange provides the notice required by § 9.11 to the person against whom the action was taken, whichever occurs first. After the notice has been posted for five consecutive business days it may be removed, but the exchange must maintain and make available for public inspection a record of the information in the notice.

This regulation is adopted pursuant to the Commission's authority in Sections 8a(5) and 8c of the Commodity Exchange Act, 7 U.S.C. 12a(5) and 12c (1976), as amended by the Futures Trading Act of 1978, Pub. L. No. 95-405 sec. 18, 92 Stat. 874–75 (1978). In consideration of the foregoing the Commission hereby adopts 17 CFR 9.12 to read as follows:

§ 9.12 Publication of disciplinary actions and rule violations.

Whenever an exchange suspends, expels, or otherwise disciplines or denies any person access to the exchange, it must make public its findings by disclosing at least the information contained in the notice required by § 9.11(a)(1)–(4) of this chapter. As soon as the disciplinary action becomes effective or within five days after an exchange provides the notice required by § 9.11 to the person against whom the action was taken, whichever occurs first, the exchange shall disclose the required information by posting a notice in a conspicuous place on its premises to which the members and the public regularly have access for a period of five consecutive business days. Thereafter, the exchange shall maintain and make available for public inspection a record of the information contained in the disciplinary notice.

Jane K. Stuckey,
Secretary to the Commission.
June 13, 1979.

[FR Doc. 79-18970 Filed 6-15-79; 8:45 am]
BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 1, 2

[Docket No. RM79-16]

Procedure for Submission of Settlement Agreements

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is promulgating a rule which contains procedures for the submission of settlement agreements and Commission treatment of contested and uncontested offers of settlement. The rule defines for the first time the information to be included in offers of settlement and prescribes settlement procedures that enable the Commission to expedite consideration of settlements filed directly with the Commission or

certified by the presiding officers. By streamlining settlement procedures, it is expected that parties to proceedings before the Commission will find the settlement process a more attractive alternative to litigation.

EFFECTIVE DATE: June 15, 1979.

FOR FURTHER INFORMATION CONTACT: Kenneth E. Richardson, Federal Energy Regulatory Commission, Office of Opinions and Review, 825 North Capitol Street, N.E., Room 9216–C, Washington, D.C. 20426, (202) 275–4200.

Background

On July 24, 1978, the Commission issued a Notice of Proposed Rulemaking on Settlement Agreements, in which the Commission advanced for public comment revised procedures for the submission of offers of settlements.[1] Twenty-eight responses[2] to the Commission's request for written comments were received. The majority of those commenting supported the Commission's proposed rulemaking, and several commentors offered helpful suggestions for clarifying the proposed procedures.

The purpose of the proposed rule is to define in the regulations for the first time information which shall be included in offers of settlement and to prescribe settlement procedures that enable the Commission to expedite consideration of settlements filed directly with the Commission or certified by Presiding Officers, particularly uncontested settlements. By improving our settlement procedures and reducing the length of time presently required for processing settlements of all types, it is our hope that participants in proceedings before the Commission will increasingly seek the benefits of the settlement process to avoid the alternative of costly and often times lengthy litigation before the Commission. The direct costs of regulation are borne most often by the ultimate consumer but indirect or nonquantifiable costs arising from litigation due to uncertainty and delayed managerial decisions or opportunities foregone may be suffered by shareholders as well.

The Commission wishes to emphasize the importance of voluntary settlements to the orderly and expeditious conduct of its business. During the period when responsibility for administering the Natural Gas Act and the Federal Power Act was in the hands of the Federal Power Commission, that agency had a strong policy favoring the disposition of cases through settlements. The FPC and the courts recognized that the Commission could not possibly cope with the flood of business engendered by its jurisdictional statutes if the outcome of a substantial proportion of that business were not the result of voluntary settlements entered into by the parties. *See, Mitchell Energy Corp.* v. *FPC*, 519 F. 2d 36, 40 (5th Cir. 1975); *Texas Eastern Transmission Corp.* v. *FPC*, 306 F. 2d 345, 347 (5th Cir. 1962). We adhere to that view.

Enactment of the Natural Gas Policy Act of 1978, 92 Stat. 3351 (1978), and other portions of the National Energy Act will increase substantially the volume of adjudicative business which this Commission, as successor to the Federal Power Commission, must handle under both the old and the new energy legislation. These developments would seem to make it even more important for those charged with carrying on the Commission's business to do so with a view towards promoting settlements whenever they are in the public interest.

The Commission's Administrative Law Judges have a special responsibility in this respect. Both the Commission's rules of practice and procedure (18 CFR 1.18) and the Administrative Procedure Act (5 U.S.C. 556(c)(6)) authorize Administrative Law Judges to call the parties to a dispute together for the purpose of settlement of the issues.

The Commission is particularly desirous of having its Judges attempt to secure settlements in all cases where settlement is possible and would be in the public interest. The Administrative Law Judges are encouraged to use all of the tools and resources at their command to that end.

Summary of the Rule

The new rule expands upon the present rules regarding settlements by requiring all offers of settlement to be filed with the Secretary and by providing a means of expeditious Commission consideration of contested and uncontested offers of settlement. While clarifying the procedure applicable to offers of settlements, the amended § 1.18(e) does not alter § 1.18(a) of the present rule which gives wide latitude to participates in any proceeding to hold conferences to provide the opportunity for the submission and consideration of offers of settlement. Any party to a proceeding may submit at any time an offer of settlement to all parties, or request a conference for consideration of a settlement offer. the rule does, however, eliminate the current clause in paragraph (e) permitting Submission at any time of offers of settlement to the commission (or to staff counsel for transmittal to the Commission). The new § 1.18(e) also sets forth the information which at a minimum must be submitted by persons filing offers of settlement. An offer of settlement must now include a proposed Commission order accepting the settlement. The new rule also retains the privilege afforded offers of settlement and proposed stipulations not agreed to.

The new portions of § 1.18(e) provide that once a hearing has been ordered until the time the Presiding Officer certifies the record to the Commission, an offer of settlement must be filed with the Secretary of the Commission for transmittal to the Presiding Officer assigned the case, or, if a Presiding Officer has not yet been assigned, to the Office Director responsible for the assignment.[3] Offers of settlement will be filed with the Secretary for transmission to the Commission if a hearing has not been ordered or the case has been certified by the Presiding Officer.

In order to expedite the process after an offer of settlement is filed, the present provisions (§ 2.1) that an offer of settlement be noticed for comment in the Federal Register are replaced by new service provisions. Section 1.17(b) of the regulations requires that papers filed with the Commission be served upon persons designated on the official service list. However, in order to strike a balance between the need for expedition and the desirability of giving notice to those persons most likely affected by such an offer, new § 1.18(e)(1)(vi) provides that all offers of settlement filed with the Secretary of the Commission shall be served on all persons who were required by the Commission's rules to be served with the applications or pleadings initiating the proceeding. All persons served shall also be informed at the time of service the date on which comments are due on the offer of settlement. This procedure provides a greater opportunity for those persons who are not parties to the proceeding but who are most likely to be interested in a settlement to be apprised of its terms. They will now receive actual notice rather than constructive Federal Register notice of settlement offers.

The due date for comments will no longer be delayed until after notice of

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[1] July 28, 1978, 43 FR 32814.

[2] Requests to file comments after the August 31, 1978, deadline are hereby granted.

[3] An Office Director is chosen rather than the Chief Administrative Law Judge because in certain cases the Commission may refer a matter to a Presiding Officer who is not an Administrative Law Judge and who is designated by the General Counsel or, for appeals for rulings of the Office of Hearings and Appeals, Department of Energy, by the Director of the Office of Opinions and Review.

the settlement offer is published in the Federal Register. Regardless of whether the settlement is filed for transmittal to the Commission or for transmittal to the Presiding Officer, comments on an offer of settlement must be filed with the Presiding Officer or the Commission, as appropriate, on or before 20 days of the filing of the offer of settlement. Replies are to be filed on or before 30 days after filing of the settlement offer. However, the Presiding Officer or the Commission may provide for a different deadline for comments or reply comments. Failure to file comments will be deemed a waiver of the right to file comments on the offer of settlement (§ 1.18(e)(2)). This time period for comments is shorter than the time which has been permitted previously.

The revision of the notice procedure is intended to reduce the time now consumed in obtaining comments necessary to determine whether a settlement is contested and to enable earlier review of a settlement for decision. If the comments indicate that a settlement offer is uncontested, or that at least a portion of it is uncontested and severable from the contested part of the settlement, the new rule permits quicker decisionmaking. If the settlement is transmitted to the Presiding Officer, the Officer is to certify the settlement and the filings and submittals and the formal record (if one is compiled) together with a statement that the settlement is uncontested (§ 1.18(e)(3)). the Commission will expedite consideration of uncontested settlements filed with the Secretary of the Commission for transmittal to the Commission or certified by a Presiding Officer.

Under the Commission's present rules, a Presiding Officer may certify a settlement even if the comments indicate that the settlement is contested. However, if the settlement is contested by a party to the proceeding, then the rule permits a Presiding Officer to certify a contested settlement or a contested portion of a settlement only in accordance with certain conditions imposed in order to assure that a sufficiently developed record exists on which a reasoned decision can be based. The Presiding Officer may certify such offer of settlement to the Commission only if the parties concur on a waiver of the initial decision or if no contested issue of material fact exists, if the Presiding Officer determines that the record contains substantial evidence to enable the Commission to reach a decision on the merits of contested issues, and if the parties have had an opportunity to exercise such rights as they may have with respect to the opportunity to present evidence and cross-examine opposing witnesses (§ 1.18(e)(4)(ii)). If these conditions are not present, the Presiding Officer may direct such further procedures as he deems appropriate, including certification of the settlement at a later time if the conditions are then met.

If the Commission staff is the only contesting participant, the Presiding Officer may exercise his discretion to certify the offer of settlement even if the above conditions are not met. In this regard, the Commission wishes to emphasize the importance it places on the role of the Commission staff in representing the public interest in proceedings before the Commission. The staff performs an important public function in developing the records and testing the case presented by the other parties. Where the staff has not had an opportunity to present evidence and to cross-examine the witnesses of other parties, the Commission expects that the Presiding Officer will consider very carefully the basis for certifying an offer of settlement opposed by the staff. In accordance with present procedure, this decision is left to the sound discretion of the Presiding Officer. However, the Commission would expect that in the exercise of this discretion the Presiding Officer will give careful consideration to the need to develop the record as well as the importance of expediting decision-making.

Settlements which are contested in whole or in part and which are filed with the Secretary for transmittal to the Commission may be considered and approved or disapproved if the record contains substantial evidence upon which to base a reasoned decision. If substantial evidence is lacking or the contested portion of the settlement cannot be severed from the remainder of the settlement for decision, the Commission may order proceedings before a Presiding Officer for receiving substantial evidence upon which a decision can reasonably be based or other appropriate procedures. (§ 1.18(e)(4)(i))

Section-by-Section Analysis and Comment Analysis

Section 1.18(e)(1)

This subparagraph is revised to provide new procedures for the filing offers of settlement with the Secretary of the Commission.

The new § 1.18(e) applies to offers of settlement filed on or after June 15, 1979 in any Commission proceeding other than a rulemaking of general applicability or an investigation under Part 1b of the Regulations. An offer of settlement includes any proposal to modify an offer of settlement.

Any participant to a proceeding may submit at any time an offer of settlement to the Secretary of the Commission or request a conference for purposes of discussing settlement. The Secretary will transmit the offer to the Presiding Officer, Office Director, or the Commissioners, as appropriate. A settlement offer must contain the offer itself, an explanatory statement, and references to documentary support for the offer. An offer of settlement shall also include a proposed Commission order accepting the settlement and disavowing any precedential value for the decision. The settlement offer must be served on all participants and on all persons required to be served with the applications or pleadings initiating the proceeding.

Any offer of settlement which is not approved by the Commission is privileged.

Florida Power & Light Company suggests that the Commission allow the party submitting an offer of settlement to include "any explanatory data it deems appropriate" in the offer of settlement. The definition of "offer of settlement" has been modified to include an "explanatory statement."

To avoid the confusion which Florida Power & Light foresees over what must be included in formal offers of settlement as opposed to preliminary offers of settlement prepared only for purposes of negotiation and conferences, the new rule provides for consideration by the Commission only of offers of settlement filed with the Secretary.

Exxon Corporation, Consolidated Edison Corporation, and Southern California Edison Corporation each noted that this section should provide more clearly that, before a hearing has been ordered, offers of settlement should be filed directly with the Commission and subparagraph (1)(ii) has been modified accordingly.

Exxon, Southern California Edison, and Tenneco also request that adjustments to offers of settlement, offers of settlement not agreed to, and accepted settlements be privileged, in the same manner that unaccepted offers of settlement are privileged. The Commission agrees, insofar as the comments refer to offers not approved by the Commission, and has changed the clause (v) to reflect this recommendation. The privilege cannot

be accorded to offers approved by the Commission.

Pennzoil Company, Tenneco Oil Company and Florida Power & Light Company request the Commission to change the word "participant" to "party". The term participant has been used as defined in § 1.1(f)(2) of the regulations, to include the Commission's staff, and to indicate a limited participation in proceedings by persons other than parties. The word "party" does not include staff.

The Public Service Commission of New York (PSNY), Tenneco, United Gas Company, and the Interstate Natural Gas Association of America (INGAA) [4] request that the Commission delete the sentence requiring the participants submitting the offer of settlement to "state whether the settlement is a package, with no severable parts, or whether any specific issues may be separated from the settlement for separate decision, should the need for a separate decision arise." The commentors believe that this requirement would hamper settlement negotiations, and could create contested issues which might otherwise more easily be settled. The Commission agrees that this could hinder settlement negotiations and accordingly accepts the recommendation to delete this sentence from the rule. However, we encourage those persons filing offers of settlement to decide and determine during negotiations if parts of settlements are severable and advise the Presiding Officer or Commission in order to permit a prompt decision on the uncontested parts of a settlement.

Section 1.18(e)(2)

This subparagraph provides for a date certain for the filing of comments and reply comments. It has been clarified to provide for the filing of comments on the offer of settlement with the Presiding Officer, if the offer of settlement has been filed for transmittal to the Presiding Officer, or with the Commission if the offer of settlement has been filed for transmittal to the Commission.

Exxon Corporation recommends that, rather than publishing a notice with the Federal Register, the Commission should allow each participant to comment on the offer of settlement within 10 days of its submission to the Presiding Officer or the Commission. The thrust of this recommendation is adopted. Notice in the Federal Register will no longer be required. Participants must submit comments to the Presiding Officer or to the Commission, as appropriate, within 20 days of the filing of the offer of settlement. An additional 10 days is allowed for filing reply comments. A participant's failure to file comments within that period of time will be deemed a waiver of its right to file comments.

Niagara Mohawk Power Corporation recommends that the comment procedure be used only if the settlement is opposed. Comments are necessary in order to determine if the offer of settlement is opposed or unopposed. It is important to note, however, that the participants may present their comments to the Presiding Officer orally, on the record. This procedure may be used in lieu of written comments to the Presiding Officer, and this procedure is encouraged.

Section 1.18(e)(3)

This subparagraph provides that uncontested offers of settlement before the Presiding Officer will be certified to the Commission together with the statement that the settlement is uncontested, any hearing record or pleadings which include support for the settlement offer. It also states that the Commission may approve uncontested offers of settlement upon a finding that the settlement appears to be fair and reasonable and in the public interest.

Florida Power & Light recommends that we change the language "the record, which shall include support for the offer of settlement" to "the evidentiary record as support for the offer of settlement." The company maintains that this change is necessary to insure that hearings are not held after an unopposed offer of settlement is filed. A modified version of this recommendation is adopted.[5]

Both PSNY and Niagara Mohawk seek clarification of the word "support" when used in reference to unopposed offers of settlement in this subparagraph. Under the rule as modified, certification of an uncontested offer of settlement must include whatever matter in the record or pleadings supports the offer. However, as recommended by PSNY, it is a matter for the Presiding Officer to determine to what extent a compromise requires support in order for the Commission to make an adequate evaluation of the unopposed offer of settlement. The rule is clear, however, that substantial evidence is not required as support for unopposed offers of settlement.

INGAA suggests that the Commission specifically disallow comments to the Commission on an unopposed offer of settlement once that unopposed offer of settlement is certified to the Commission. This is unnecessary, since nothing in the rule allows or can be interpreted to allow the filing of such comments after certification of an unopposed offer of settlement by Presiding Officer. INGAA suggests that a certified offer of settlement should become a final Commission order if no adverse comments are received by the Commission within 35 days of certification. Under the new regulation the Commission plans to expedite unopposed offers of settlement. The Commission should not be bound by the recommended restriction. The Commission reserves its discretion to review each settlement agreement certified to it.[6] The requirement that an offer of settlement include a proposed Commission order will assist the Commission in acting expeditiously on unopposed settlement.

Section 1.18(e)(4)

This subparagraph provides for the handling of contested offers of settlement. Those filed with the Commission may be decided on the merits if the record contains substantial evidence on which to base a reasoned decision. If it does not, or if the contested issues cannot be severed, the Commission will order further procedures to obtain sufficient evidence or other appropriate procedures.

If comments on an offer of settlement were filed with the Presiding Officer who then determines that the offer was contested, the Officer may certify all or part of such offer to the Commission. However, if an offer was contested by any party, it may be certified only if (A) all parties concur on a motion for omission of the initial decision or the Presiding Officer finds that no contested issue of material fact remains; (B) the Presiding Officer determines the record contains substantial evidence from which the Commission may reach a reasoned decision on the merits of the contested issues; and (C) all parties have had an opportunity to avail themselves of such rights as they may have with respect to the opportunity to present evidence and cross-examine

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[4] INGAA's comments were supported by Tennessee Gas Pipeline Company, East Tennessee Natural Gas Company, Midwestern Gas Transmission Company, El Paso Natural Gas Company, Northern Natural Gas Company, and Great Lakes Transmission Company. United Gas Company also supports INGAA's comments, but filed its own additional comments.

[5] Tennsco requests that the Presiding Officer be given full discretion to require additional evidence in support of an unopposed offer of settlement. This is permitted by the rule.

[6] For this reason, the Commission provided in this rule that the Presiding Officer merely certify the settlement agreement to the Commission, rather than issue an initial decision approving an unopposed offer of settlement.

opposing witnesses. Severable, uncontested issues may be certified immediately to the Commission for decision.

Northwest Pipeline suggested additional procedures in lieu of those provided in the proposed rule which the Commission believes would add unnecessary and time-consuming steps in the proposed procedure by providing for notice of "partial certification" of a settlement and by disallowing certification of uncontested portions over one participant's objections.

Continental Oil Company recommends that the Commission allow a Presiding Officer to certify an offer of settlement even if one participant refuses to present evidence, to cross-examine other witnesses, or to waive its right to further hearing, if the Presiding Officer decides that there is adequate record evidence to decide the contested issues on the merits. The purpose of the rule is to require that each participant agree to the proposed offer of settlement, seek the appropriate administrative remedies available to him before the Presiding Officer, or waive its right to those remedies. Thus the rule reflects Continental's suggestions. If a party objecting to a settlement declines to pursue his right to present evidence or cross-examine, the party has had an opportunity to exercise his rights and the Presiding Officer may then certify the contested settlement to the Commission. Unless every party does this, one party, who has not voiced an objection to the offer of settlement or pursued its procedural rights before the Presiding Officer, may seek to oppose an offer of settlement before the Commission and delay the decision-making process. It is this situation which the Commission wishes to eliminate by amending the procedures for the submission of settlement agreements.

INGAA and United Gas Company recommend that, in the event that a participant opposes an offer of settlement, the participant present evidence as to the "substantial adverse impact on the public interest that would result if that portion of the settlement objected to is not modified." The Commission rejects this recommendation. This would be inconsistent with statutory requirements, as it places the burden of going forward on the contested issue on the participant contesting the issue. Both the Natural Gas Act and the Federal Power Act provide that a person filing an application for a change in rates, or for a certificate, must bear the burden of coming forward with evidence and proving that the approval of its application is just and reasonable or in the public interest. An offer of settlement does not modify that burden. It is for the offeror, not the offeree, to show that approval of the offer of settlement would conform to statutory requirements. The new rule specifically provides that as long as there is substantial evidence in the record on which a reasoned decision can be made on the contested issues, *and* each of the participants have been afforded due process of law, no further proceedings before the Presiding Officer are necessary, and he may certify the offer of settlement to the Commission.

Section 1.18(e)(5)

This subparagraph reserves to participants their procedural rights in the event that the Commission does to approve an uncontested offer of settlement as it is certified or filed with the Commission. Several parties argue that the word "Substantially" be deleted from this subsection, so that a participant will be deemed to have reserved its rights to a hearing if the Commission imposes any condition upon an offer of settlement. The Commission agrees and has modifed the proposed rule accordingly.

Miscellaneous

Mobil Oil Company and the Missouri Public Utilities Company both suggest procedures for expedited Commission review of certified offers of settlement. The Commission intends to give special and expedited consideration to all offers of settlement, once they are certified or filed with this Commission. *See* § 1.18(e)(3).

Effective Date

Section 553(d)(3) of the Administrative Procedure Act requires publication of a rule in the **Federal Register** not less than 30 days before the effective date of a rule unless good cause exists for an earlier effective date. The Commission finds that good cause exists to waive the effective date provisions of the Administrative Procedure Act. The rule is intended to simplify and expedite the Commission's settlement procedures. Both the Commission and regulated parties have an interest in facilitiating the settlement process so that an expeditious handling of settlements can result. Such expedition will reduce the Commission's caseload and also resolve disputes between parties faster. Accordingly, the Commission rule is effective June 15, 1979 and applies to offers of settlement filed on or after that date. Offers of settlement filed before June 15, 1979 will be considered under the Commission's settlement procedures in effect prior to promulgation of this rule.

(Department of Energy Organization Act, 42 U.S.C. 7107 *et seq.*; E.O. 12009, 42 FR 46267; Administrative Procedure Act, 5 U.S.C. 551 *et seq.*; Natural Gas Act, 15 U.S.C. 717 *et seq.*; Federal Power Act, 16 U.S.C. 792 *et seq.*; Natural Gas Policy Act of 1978, Pub. L. 95-621, 92 Stat. 3350; Public Utilities Regulatory Policies Act of 1978, Pub. L. 95-617, 92 Stat. 317.)

In consideration of the foregoing, Parts 1 and 2, Subchapter A, Chapter I of Title 18 of the Code of Federal Regulations, is amended as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 1—RULES OF PRACTICE AND PROCEDURE

1. Section 1.18 is amended by revising paragraph (e) to read as follows:

§ 1.18 Conferences; offers of settlement.

* * * * *

(e) *Procedures for submission of offers of settlement to Commission*—(1) *General*—(i) *Scope.* This paragraph applies to offers of settlement filed on or after June 15, 1979 in any proceeding before the Commission other than a rulemaking of general applicability or formal or preliminary investigation under Part 1b of this chapter. For purposes of this paragraph, the term "offer of settlement" includes any proposal to modify an offer of settlement.

(ii) *Submission of offer.* Any participant to a proceeding may submit at any time an offer of settlement or request a conference for purposes of discussing settlement. An offer of settlement must be filed with the Secretary of the Commission. The Secretary will transmit such offer to the presiding officer if such offer is filed after a hearing has been ordered and before the time the presiding officer certifies the record to the Commission, except that if a presiding officer has not yet been assigned, such offer shall be transmitted to the Office Director responsible for assignment of the presiding officer. [Such Office Director will assign a presiding officer upon receipt of the offer.] In any other case, the Secretary shall transmit the offer of settlement to the Commission.

(iii) *Contents of offer.* [A] An offer of settlement shall include a document embodying the settlement offer, an explanatory statement, references (including record citations if there is a

record) to all documents, testimony, exhibits which provide support for the offer of settlement, and a list of all schedules, contracts, documents or data relevant to the settlement. An offer of settlement shall also include a proposed order of the Commission accepting the settlement, which order shall include the following provision:

The Commission's approval of this settlement shall not constitute approval of or precedent regarding any principle or issue in this proceeding.

(B) If it is a rate settlement that is being offered, the offer shall include the proposed settlement or tariff changes in a form suitable for inclusion in the filed rate schedules or tariffs together with a sufficient number of copies to conform with the filing requirements of these regulations.

(vi) *Service.* A copy of the offer of settlement shall be served on all participants listed on the official service list on file with the Secretary of the Commission and on all persons who were required by the Commission's regulations to be served with the applications or pleadings initiating the proceeding. The participant serving the offer of settlement shall notify those persons served of the date comments on the settlement are due.

(v) *Privilege.* Offers of settlement which are not approved by the Commission shall be privileged and shall not be admissible in evidence against any person claiming such privilege.

(2) *Comments.* Comment on an offer of settlement shall be filed with the Commission if the offer was transmitted to the Commission, or with the presiding officer in any other case. Comments may be filed on or before 20 days after the filing of the offer of settlement and reply comments may be filed on or before 30 days after filing of such offer, unless otherwise provided for by the Commission or the presiding officer. Failure to file comments will be deemed a waiver of the right to file comments on the offer of settlement.

(3) *Uncontested offers of settlement.* If comments on an offer were required to be filed with the presiding officer and such officer finds that the offer is uncontested, the presiding officer shall certify to the Commission the offer of settlement, a statement that the offer of settlement is uncontested, and any hearing record or pleadings which include support for the offer of settlement. If comments on an offer of settlement were required to be filed with the Commission, the Commission will determine whether the offer is uncontested. Any uncontested offer of settlement may be approved by the Commission upon a finding that the settlement appears to be fair and reasonable and in the public interest.

(4) *Contested offers of settlement.* (i) If comments on an offer of settlement were required to be filed with the Commission and the Commission determines the offer of settlement is contested in whole or in part, the Commission may reach a decision on the merits of the contested settlement issues if the record contains substantial evidence upon which to base a reasoned decision. If the Commission finds that the record is lacking in substantial evidence or that the contested issues cannot be severed from the offer of settlement, the Commission shall establish procedures before a presiding officer for the purpose of receiving substantial evidence upon which a decision on the contested issues can reasonably be based or take such other action as it determines to be appropriate. When contested issues are severable, the uncontested portions may be severed and decided in accordance with paragraph (e)(3) of this section.

(ii) If comments on an offer of settlement were filed with the presiding officer and such officer determines that the offer was contested in whole or part, such officer may certify all or part of such offer to the Commission; except that an offer contested by a party may be certified only if (A) either (*1*) all parties concur on a motion for omission of the initial decision as provided in § 1.30 of this chapter or (*2*) the Presiding Officer determines that there is no contested issue of material fact; (B) the presiding officer determines the record contains substantial evidence from which the Commission may reach a reasoned decision on the merits of the contested issues; and (C) all parties have had an opportunity to avail themselves of such rights as they may have with respect to the opportunity to present evidence and cross-examine opposing witnesses. When the contested issues are severable, the uncontested portions of the settlement may be certified immediately to the Commission for decision as provided in paragraph (e)(3) of this section.

(5) *Reservation of rights.* The procedural rights of each participant are reserved if the Commission does not accept and approve, or approves subject to condition, the unopposed portion of the offer of settlement.

* * * * *

§ 1.18 [Amended]

2. Section 1.18 is amended in paragraph (f) by adding at the end thereof the following sentence: "Proposed stipulations not agreed to are privileged and shall not be admissible in evidence against any counsel or person claiming such privilege."

§ 1.30 [Amended]

3. Section 1.30(c)(1), is amended in the first sentence thereof by inserting "(except as provided in § 1.18(e)(4))," before "all other parties."

§ 1.30 [Amended]

4. In § 1.30(c)(3), the proviso is amended by inserting "(except as provided in § 1.18(e)(4))" after the word "who".

PART 2—GENERAL POLICY AND INTERPRETATIONS

§ 2.1 [Amended]

5. In § 2.1(a)(1), clauses (i) (C), (D) and (H), and clause (vii)(F) are revoked.

[FR Doc. 79-18824 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

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18 CFR Part 281

[Docket No. RM 79-15]

Implementation of Section 401 of the Natural Gas Policy Act

Cross Reference: For a document on implementation of Section 401 of the Natural Gas Policy Act issued by the Federal Energy Regulatory Commission, see FR Doc. 79-16786 in the Proposed Rules section of this issue.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

20 CFR Parts 404, 422

[Regs. 4 and 22]

Reference Changes to Reflect Transfer and Recodification of Medicare Regulations

AGENCY: Social Security Administration, HEW.

ACTION: Final rule.

SUMMARY: On September 30, 1977, the regulations for the Medicare program under title XVIII of the Social Security Act, which were contained in 20 CFR Part 405, were redesignated as 42 CFR Part 405 (42 FR 52828). Therefore, we are modifying various references to 20 CFR Part 405 in the Social Security Administration's regulations to refer instead to 42 CFR Part 405.

As these are solely technical amendments which basically correct cross-references to reflect the recent redesignation of the Medicare regulations, we find that Notice of Proposed Rule Making and public comment in issuing these amendments are unnecessary, and good cause exists for waiving these requirements under the Administrative Procedure Act.

EFFECTIVE DATE: June 18, 1979.

FOR FURTHER INFORMATION CONTACT: Armand Esposito, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 301–594–7455.

(Secs. 205(a) and 1102 of the Social Security Act, as amended; 53 Stat. 1362, as amended, 49 Stat. 647, as amended; (42 U.S.C. 405(a) and 1302).)

(Catalog of Federal Domestic Assistance Programs No. 13.802, Social Security—Disability Insurance Benefits; 13.803 Social Security—Retirement Insurance; 13.804 Social Security—Special Benefits for Persons Aged 72 and Over; 13.805, Social Security—Survivors Insurance.)

Dated: May 21, 1979.

Stanford G. Ross,

Commissioner of Social Security.

Approved: June 12, 1979.

Joseph A. Califano, Jr.,

Secretary of Health, Education, and Welfare.

Parts 404 and 422 of 20 CFR Chapter III are amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950—)

§ 404.501 [Amended]

1. In § 404.501, paragraph (a)(7) is amended by changing the cross-reference from "(see §§ 405.350–405.351)" to "(see 42 CFR 405.350–405.351)."

§ 404.507 [Amended]

2. Section 404.507 is amended by changing the cross-reference in the first sentence from "(see §§ 404.506 and 405.355)" to "(see § 404.506 and 42 CFR 405.355)".

§ 404.924b [Amended]

3. Section 404.924b is amended by revising the last sentence in paragraphs (a) and (b) to read as follows: "In such hearing, the provisions of this Subpart J, Subpart F of Part 410, and Subpart N of Part 416 of this chapter and Subpart G of 42 CFR Part 405 shall be applied, as appropriate to such other claim."

PART 422—ORGANIZATION AND PROCEDURES

§ 422.130 [Amended]

4. Section 422.130 is amended by revising the last sentence in paragraph (a) to read as follows: "See 42 CFR Part 405, Subpart A, for conditions of entitlement to hospital insurance benefits and 42 CFR Part 405, Subpart B, for information relating to enrollement under the supplementary medical insurance benefits program."

§ 422.201 [Amended]

5. Section 422.201 is amended as follows:

(a) In paragraph (c), the cross references are changed from "§§ 405.720–405.750, §§ 405.1530–405.1570, and § 405.2060 of this chapter" to "42 CFR 405.720–405.750, 405.1530–405.1595, and 405.2060–405.2063";

(b) In paragraph (d), the cross-reference is changed from "see § 405.801 et seq." to "see 42 CFR 405.820–405.860"; and

(c) In paragraph (d) the cross-reference is changed from "see §§ 405.1809 et seq." to "see 42 CFR 405.1809–405.1890".

§ 422.203 [Amended]

6. Section 422.203 is amended as follows:

(a) In paragraph (a)(3), change the first cross-reference from "pursuant to § 405.1530 of this chapter" to "under 42 CFR 405.1531", and change the second cross-reference from "see § 405.1501(c) and (f)" to "see 42 CFR 405.1501(c) and (f)"; and

(b) In paragraph (b)(2), change the cross-references from "in section 405.1502 (b)(2), (c), (d)(2), and (e) (see §§ 404.916, 405.722, 405.1530, 405.1531, 405.2060, 410.631, and 416.1426 of this chapter)" to "in 42 CFR 405.1502(b)(2), (c), (d)(2), and (e) (see §§ 404.916, 410.631, and 416.1426 of this chapter and 42 CFR 405.722, 405.1530, 405.1531, and 405.2060)".

§ 422.205 [Amended]

7. Section 422.205 is amended as follows:

(a) In paragraph (a), the cross-reference "(see § 405.1532 of this chapter)" in the second sentence is changed to "(see 42 CFR 405.1532)" and the cross references following the last sentence are changed from "(For time and place of filing, see §§ 404.946, 405.722, 405.1562, 405.2060, 410.661, and 416.1462 of this chapter.)" to "(For time and place of filing, see §§ 404.946, 410.661, and 416.1462 of this chapter, and 42 CFR 405.724, 405.1562, and 405.2061.)";

(b) In paragraph (b), the cross-references in the first sentence are changed from "in accordance with §§ 404.947, 405.724, 405.2061, 410.662, 416.1463, or 416.1464 of this chapter" to "under §§ 404.947, 410.662, 416.1463, or 416.1464 of this chapter, or 42 CFR 405.724 or 405.2061"; and

(c) In paragraph (d), the cross-reference in this first sentence is changed from "as provided in Subpart O, Part 405 of this chapter in accordance with § 405.1563" to "under 42 CFR 405.1563".

§ 422.210 [Amended]

8. Section 422.210 is amended as follows:

(a) In paragraph (a), the cross-references in the second sentence are changed from "as provided in §§ 404.916e, 405.718d, 410.629e, or 416.1424d of this chapter" to "under §§ 404.916e, 410.629e, or 416.1424d of this chapter or 42 CFR 405.718d". The cross-reference in the sixth sentence is changed from "and § 405.1501(f)" to "and 42 CFR 405.1501(f)"; and

(b) In paragraph (c), the cross references in the third sentence are changed from "as set forth in §§ 404.916d, 405.718c, 410.629d, or 416.1424c of this chapter" to "under §§ 404.916d, 410.629d, or 416.1424c of this chapter or 42 CFR 405.718c".

9. Section 422.410 is amended by adding a new paragraph (k) to read as follows:

§ 422.410 Publications for sale.

* * * * *

(k) Health Care Financing Administration Rulings.

10. In § 422.430, paragraph (a)(3) is revised to read as follows:

§ 422.430 Materials available at district offices and branch offices.

(a) *Materials available for inspection.*

* * *

(3)(i) Social Security Administration regulations under the retirement, survivors, disability, and supplemental security income programs, i.e., Regulation No. 1 (Part 401 of this chapter), Regulations No. 4 (Part 404 of this chapter); Regulations No. 16 (Part 416 of this chapter); and Regulations No. 22 (this Part 422); and the Social Security Administration's regulations under Part B of title IV (Black Lung Benefits) of the Federal Coal Mine Health and Safety Act of 1969, Regulations No. 10 (Part 410 of this chapter); and (ii) Medicare Program regulations issued by the Health Care Financing Administration, 42 CFR Part 405.

* * * * *

§ 422.510 [Amended]

11. Section 422.510, paragraph (a), is amended as follows:

(a) By changing the cross-reference in the parenthetical phrase following the second sentence from "see § 405.102 of this chapter" to "see 42 CFR Part 405, Subpart A"; and

(b) By changing the cross-reference in the parenthetical phrase at the end of paragraph (a) from "see § 405.202 et seq. of this chapter" to "see 42 CFR Part 405, Subpart B".

[FR Doc. 79-18666 Filed 6-15-79; 8:45 am]

BILLING CODE 4110-07-M

DEPARTMENT OF JUSTICE

Federal Prison Industries

28 CFR Part 301

Inmate Accident Compensation; Final Rules

AGENCY: Federal Prison Industries, Justice.

ACTION: Final rules.

SUMMARY: This document contains final rules on the procedures for determining claims for inmate accident compensation of former Federal prison inmates for injuries sustained while working in prison. The rules authorize the Claims Examiner to make the initial determination on a claim for inmate accident compensation. The Claims Examiner now presents the claim to an Inmate Accident Compensation Committee. This practice occasions delays in the decision-making process due to difficulty in establishing a meeting time suitable to the Committee members or due to the difficulty in ensuring a quorum at the meeting. The final rules are intended to provide an earlier response to the claimant without affecting the quality of the review or placing any increased burden or responsibility on the claimant.

DATE: This amendment is effective June 18, 1979.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 910, 320 First Street, NW., Washington, D.C. 20534.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724-3062.

SUPPLEMENTAL INFORMATION: By virtue of the authority vested in the Attorney General by 18 U.S.C. 4126 and delegated by the Attorney General at 28 C.F.R. 0.99 to the Board of Directors of Federal Prison Industries, Inc., Part 301 of Chapter III of Title 28, Code of Federal Regulations is hereby amended as set forth below. As this amendment places no increased burden on a claimant but is an amendment of procedures, the provisions of the Administrative Procedures Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation and delay in effective date are inapplicable.

Under current regulations (§ 301.12), the initial determination of a claim for inmate accident compensation is made by an Inmate Accident Compensation Committee. Before a claim is considered by the Committee, a Claims Examiner compiles all available evidence on the claim, reviews and evaluates the evidence, schedules a meeting of the Inmate Accident Compensation Committee, and presents the merits of the claim with a recommended disposition. Experience has shown that in performing these functions, the Claims Examiner becomes thoroughly familiar with the claim and is qualified to make the initial determination on the merits of the claim. Accordingly, § 301.12 is amended to reflect that the Claims Examiner is empowered to make the initial determination on the merits of a claim for inmate accident compensation. In accord with this change, §§ 301.6, 301.13, 301.19(c), and 301.23 are also amended. Section 301.6 is amended to required that an FPI Form 43, an Administrative Form 19 and the findings of the local Board of Inquiry be forwarded to the Claims Examiner, Federal Prison Industries, Washington, D.C. and not to the Office of General Counsel and Review. Section 301.13 is amended by substituting "Claims Examiner" for "Committee" in the first sentence of § 301.13(a) and in the first and second sentences of § 301.13(b). These changes reflect the fact that the Claims Examiner now makes the initial determination. § 301.19(c) is amended by deleting reference to the Associate Commissioner, since the role of the Associate Commissioner, which remains unchanged, is fully set forth in § 301.20. Section 301.23 is amended to read that the "Claims Examiner", as opposed to the Commissioner of Industries, is advised with respect to the need for further medical or hospital treatment, as the Claims Examiner is responsible for authorizing and approving payment for such treatment on behalf of the Corporation. In this section the word "assigned" has been substituted for "employed", to better reflect inmate work status.

The amendments expedite the review process without affecting the quality of the review. A claimant who is dissatisfied with the decision may appeal the decision to the Inmate Accident Compensation Committee and may request a further review by the Associate Commissioner. The amendments allow for an earlier response to the claim as they eliminate the difficulty previously encountered in arranging a meeting-time of the Committee convenient to the members. They also eliminate delays due to a lack of a decision-making quorum at a scheduled meeting.

In consideration of the foregoing, Part 301 of Title 28, Code of Federal Regulations is amended as set forth below. The effective date of these rules is June 18, 1979.

Dated: June 6, 1979.

Norman A. Carlson,

Commissioner, Federal Prison Industries, Inc.

PART 301—INMATE ACCIDENT COMPENSATION

1. By revising § 301.6 to read as follows:

§ 301.6 Report of death.

If a work-related injury results in death, an FPI Form 43, an Administrative Form 19, and the findings of the local Board of Inquiry will be promptly forwarded to the Claims Examiner, Federal Prison Industries, Inc., Washington, D.C. 20534.

2. By revising §§ 301.12 and 301.13 to read as follows:

§ 301.12 Processing of claims.

(a) A claim for inmate accident compensation shall be determined by a Claims Examiner, appointed by the Commissioner, Federal Prison Industries, Inc., under authority delegated to him by the Board of Directors of Federal Prison Industries, pursuant to 28 CFR 0.99. In determining the claim, the Claims Examiner will consider all available evidence. Written notice of the decision, including the reasons therefor, together with information as to the right to appeal the decision, shall be mailed to the claimant at his or her last known address.

(b) Appeal of the decision rendered by the Claims Examiner may be made to the Inmate Accident Compensation Committee (hereinafter referred to as the "Committee") appointed by the Commissioner, Federal Prison Industries, Inc., under authority delegated to him by the Board of Directors of Federal Prison Industries pursuant to 28 CFR 0.99. The Committee shall consist of four members and four alternates, with any combination of

three thereof required to form a quorum for decision-making purposes.

§ 301.13 Request for hearing or reconsideration, disclosure.

(a) Any claimant not satisfied with the decision of the Claims Examiner shall, upon written request made within 30 days after the date of issuance of such decision or thereafter, upon a showing of good cause, be afforded an opportunity for either a hearing before the Committee, or Committee reconsideration of the decision. A claimant may request a hearing or reconsideration by writing to the Inmate Accident Compensation Committee, Federal Bureau of Prisons, Washington, D.C. 20534.

(b) Upon receipt of claimant's request, a copy of the information upon which the Claims Examiner's initial determination was based shall be mailed to the claimant at his or her last known address. Where the Claims Examiner determines the release of information to the claimant or to the claimant's beneficiary is not in the best interest of the claimant or his beneficiary, the Claims Examiner may release the information to the claimant's or beneficiary's representative or personal physician upon receipt of both a written authorization from the claimant or beneficiary and a written request from the representative or personal physician. If the individual concerned is mentally incompetent, insane or deceased, the next-of-kin or legal representative must authorize in writing the release of records to the representative or personal physician.

3. By revising § 301.19(c) to read as follows:

§ 301.19 Representation of claimant.

* * * * *

(c) A representative appointed in accordance with paragraph (a) of this section may make or give, on behalf of the claimant he or she represents, any request or notice relative to any proceeding before the Committee. A representative shall be entitled to present or elicit evidence or make allegations as to facts and law in any proceeding affecting the claimant he or she represents and to obtain information with respect to the claim of such claimant to the same extent as such party. Notice to any claimant of any administrative action, determination, or decision, may be sent to the representative of such claimant, and such notice or request shall have the same force and effect as if it had been sent to the claimant.

4. By revising § 301.23 to read as follows:

§ 301.23 Medical treatment required following discharge.

If medical or hospital treatment is required subsequent to discharge from the institution for an injury sustained while assigned to Federal Prison Industries, Inc., or to an institutional work assignment, claimant should advise the Claims Examiner and if the cost of such treatment is allowed by the Corporation, advice to this effect and instructions for obtaining such services will be forwarded. The Corporation will under no circumstances pay the cost of medical, hospital treatment, or any related expense not previously authorized by it.

(18 U.S.C. 4126, 28 CFR 0.99 and by Board of Directors of Federal Prison Industries, Inc.)

[FR Doc 79-18897 Filed 6-15-79; 8:45 am]

BILLING CODE 4410-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 367

[DoD Directive 5136.1] [1]

Assistant Secretary of Defense (Health Affairs); Revision of Reporting Relationship

AGENCY: Office of the Secretary of Defense.

ACTION: Revision of final rule.

SUMMARY: This revision changes the reporting relationship of the Assistant Secretary of Defense (Health Affairs) with the Secretary of Defense in that the ASD(HA) will now report directly to the Secretary of Defense instead of reporting through the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) on certain manpower and logistic matters.

EFFECTIVE DATE: May 31, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur H. Ehlers, Director for Organizational and Management Planning, Office of the Deputy Assistant Secretary of Defense (Administration), Washington, D.C. 20301, Telephone 202-695-4278.

SUPPLEMENTARY INFORMATION: In FR Doc. 79-5975 appearing in the **Federal Register** on February 28, 1979 (44 FR 11227) the Office of the Secretary of Defense published the Charter of the Assistant Secretary of Defense (Health Affairs) effective January 22, 1979. This revises § 367.4 which now reads as follows:

§ 367.4 Relationships.

(a) In the performance of assigned duties, the ASD(HA) shall:

(1) Report directly to the Secretary of Defense.

(2) Coordinate and exchange information with other DoD organizations having collateral or related functions.

(3) Use existing facilities and services, whenever practicable, to achieve maximum efficiency and economy.

(4) Represent the Secretary of Defense, as an ex officio member, on the Board of Regents of the Uniformed Services University of the Health Sciences.

(5) Provide policy guidance to, and exercise direction, authority, and control over the Office of Civilian Health and Medical Program of the Uniformed Services consistent with 10 U.S.C. Chapter 55 "Medical and Dental Care" and DoD Directive 5105.46 [1], "Civilian Health and Medical Program of the Uniformed Services," December 4, 1974.

(6) Provide policy guidance to, and exercise direction, control and authority over the Office of the Tri-Service Medical Information System.

(b) All DoD organizations shall coordinate all matters concerning the functions cited in § 367.3 with the ASD(HA).

June 13, 1979

H. E. Lofdahl,

Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

[FR Doc. 79-18850 Filed 6-15-79; 8:45 am]

BILLING CODE 3810-70-M

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA. 19120. Attention: Code 301.

COUNCIL ON ENVIRONMENTAL QUALITY

40 CFR Part 1517

Public Meeting Procedures of the Council on Environmental Quality

AGENCY: Council on Environmental Quality.

ACTION: Final Amendments to Procedures.

SUMMARY: These final amendments clarify and supplement the procedures followed by the Council in complying with the Government in Sunshine Act. The amendments reflect the Council's intention to conduct, open to public observation, bi-weekly meetings

involving Council discussions of agency business including, where appropriate matters outside the scope of these procedures. The amendments reflect the intent of the Council to conduct its official collegial business in accordance with the requirements of the Act. They also clarify that actions by the Council Chairman, acting as Director of the Office of the Environmental Quality, and Council actions involving advice to the President are outside the scope of the procedures.

EFFECTIVE DATE: June 18, 1979.

FOR FURTHER INFORMATION CONTACT: Foster Knight, Counsel, Council on Environmental Quality, 722 Jackson Place, N.W., Washington, D.C. 2006, tel: (202)395–4616.

SUPPLEMENTARY INFORMATION: On March 16, 1979 the Council published in the Federal Register proposed amendments to its procedures implementing the Government in Sunshine Act (44 FR 16024, March 16, 1979) and requested public review and comments by April 16, 1979. The Council received only two comments. These comments concisely summarize the background and issues raised by the proposed amendments, and therefore are reprinted below without enclosures.

The Conservation Fundation,
1717 Massachusetts Avenue, N.W., Washington, D.C., April 3, 1979.

Mr. Nicholas C. Yost,
General Counsel, Council on Environmental Quality, 722 Jackson Place, N.W., Washington, D.C.

Dear Mr. Yost: The comments below are offered in support of CEQ's amended rules for compliance with the Government in Sunshine Act (44 Fed. Reg. 16024, March 16, 1979). These are my personal views and are not necessarily those of the Conservation Foundation.

CEQ's proposed rules rest on the assumption that CEQ's primary role is advisor to the President, and the requirements of the role are such as the preclude application of the carrying out those tasks lying outside its advisory role. I have written extensively about CEQ and have concluded that CEQ's advisory role is truly unique and merits protection. [See, e.g., "The Council on Environmental Quality," *Environmental Law Reporter*, 3 ELR 50051 (August 1973); *A National Policy for the Environment: NEPA and its Aftermath* (Bloomington: Indiana University Press, 1976); "The Council on Environmental Quality: The Need to Take a Second Look," *Natural Resources Journal*, 16:357 (April 1976); and (with Alan S. Miller and Frederick R. Anderson), "Comments on the Performance of the Council on Environmental Quality," in "The Council on Environmental Quality, Responses to a Committee Questionnaire," United States Senate Committee on Interior and Insular Affairs, 95th Congress, 1st Session, January 1977 (Committee Print).]

When first established, CEQ was designed primarily to be an advisor to the president. It was not to become involved in the day-to-day decision making of federal agencies but it was to provide a general evaluation of federal programs and to recommend, when appropriate, changes in program direction. While emphasizing the advisory role, NEPA's architects anticipated a second role for the Council, that of environmental ombudsman. CEQ was intended to be the body within the government to which citizens could turn for objective information on the state of the environment. This role was elaborated upon in executive order 11514, which granted the Council the power to convene public hearings on matters of environmental significance.

NEPA and executive order 11514 thus established a role conflict for CEQ. On the one hand the Council was directed to advise the president confidentially concerning ongoing federal programs. On the other hand, it was supposed to be a source of public information on environmental problems. Shortly after its creation, the Council had to choose. It could be restrained in its public information activities and in its public involvement in environmental controversies, in order to assure its continued welcome at the White House; or it could publicly reveal its views on a broad range of issues and face the possibility of being removed from effective participation in the formation of White House policy. As Chairman Russell Train stated in House oversight hearings in December 1970:

> We cannot be, in a sense, the public ombudsman on environment and at the same time be the confidential advisors to the President on the development of policy. It is just an impossibility to fill both these roles.

CEQ is modelled explicitly after the Council on Edonomic Advisors. A study of the Council of Economic Advisors underscore the uncertainties and rivalries that characterize the *Economic Advice and Presidential Leadership: The Council of Economic Advisors*, Edward Flash concluded that the relationship between CEA and the president is moved more by the president's acceptance of CEA than by his dependence upon it, and it is more personal than institutional. The president relies on CEA for advice and CEA derives strength from its presidential affiliation, but this interdependence is asymmetric. For while the president is CEA's only source of strength, the president need not depend solely upon CEA for economic advice.

Because it has no constituency of its own, CEA has always sold its views rather than prescribed them; it lacks the power to impose its will on others. Its operations have been determined less by what the president wants it to do than by what he does not object to its doing.

The characteristics that Flash attributed to the CEA's presidential relationship would seem to apply in some measure as well as to the CEA's. The Council's advisory relationship with the president has limited its ability to take public actions. To preserve its entry to executive level deliberations, the Council has to be a "team player." The Council has wisely adopted the view that it cannot adopt tough public adversary stances concerning particular agency projects. Although in the Carter Administration the CEQ has been more outspoken than under previous administrations, it remains true that the Council's prevailing view is that more can be achieved through private exhortation than through public disparagement.

Based on this view of CEQ, I have concluded that the Council's amended guidelines strike the proper balance between the special advisory relationship CEQ has with the President and the requisites of the Government in Sunshine Act.

Sincerely yours,

Richard A. Liroff,
Senior Associate.

Pacific Legal Foundation,
1990 M Street N.W. Suite 500, Washington, D.C., April 16, 1979.

Mr. Nicholas C. Yost,
General Counsel, Council on Environmental Quality, 722 Jackson Place, N.W., Washington, D.C.

Dear Mr. Yost:

In re: Proposed Amendments to CEQ Sunshine Regulations (44 Fed. Reg. 16024 (March 16, 1979).

CEQ has proposed to explicitly remove from the coverage of its Sunshine regulations all business of the Council involving advice to the President. It has further proposed to limit its regulations to what it terms "official collegial Council business"—that is, business requiring affirmative votes of Council members. There is no justification in the Sunshine Act for either of these limitations. With one minor exception, the Act applies to all Council business regardless of subject matter. The requirements of the Act are not triggered by the actual castings of Council-member votes on items of business; any matter in which two or more Council members are involved, regardless of whether or not votes are taken, falls within the scope of 5 U.S.C. § 552b(b).

In support of PLF's position, I have attached copies of two documents filed in PLF's pending action against CEQ regarding the Council's past failure to observe the Sunshine Act (D.D.C. Civil No. 79–116).

Yours Truly,

Sam Kazman,
Attorney.

Enclosures: Plaintiff's Memorandum of Points & Authorities in Opposition to Defendants' Motion for Summary Judgement; Memorandum of *Amicus Curiae* Senator Lawton Chiles in Support of Plaintiff's Opposition.

The Council has carefully considered these comments and has determined that the proposed amendments, which are supported by the first of these comments, should be adopted. Therefore the Council is publishing the

amendments to its public meeting procedures without change.

June 13, 1979.

Charles H. Warren,

Chairman, Council on Environmental Quality.

Sections 1517.1, 1517.2 and 1517.3 are revised to read as follows:

§ 1517.1 Policy and scope.

Consistent with the policy that the public is entitled to the fullest information regarding the decisionmaking processes of the Federal Government, it is the purpose of this part to open the *collegial* meetings of the Council on Environmental Quality to public observation while protecting the rights of individuals and the ability of the Council to carry out its primary responsibility of providing advice to the President. Actions taken by the Chairman acting as Director of the Office of Environmental Quality and Council actions involving advice to the President are outside the scope of this part. In addition to conducting the meetings required by this part, it is the Council's policy to conduct, open to public observation, bi-weekly meetings involving Council discussions of Council business, including where appropriate, matters outside the scope of this part. This part does not affect the procedures set forth in Part 1515 pursuant to which records of the Council are made available to the public for inspection and copying, except that the exemptions set forth in § 1517.4(a) shall govern in the case of any request made to copy or inspect the transcripts, recording or minutes described in § 1517.7.

§ 1517.2 Definitions.

For the purpose of this part—

(a) The term "Council" shall mean the Council on Environmental Quality established under Title II of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347).

(b) The term "meeting" means the deliberations of at least two Council members where such deliberations determine or result in the joint conduct or disposition of official collegial Council business, but does not include deliberations to take actions to open or close a meeting under §§ 1517.4 and 1517.5 or to release or withhold information under §§ 1517.4 and 1517.7. "Meeting" shall not be construed to prevent Council members from considering individually Council business that is circulated to them sequentially in writing.

(c) The term "official collegial Council business" means any Council action which by statute, regulation, Executive Order, or internal Council procedures requires an affirmative vote of at least two Council members in order to be taken on behalf of the Council. It shall include the adoption of regulations and shall not include advice to the President, nor actions taken by the Chairman acting as Director of the Office of Environmental Quality under the Environmental Quality Improvement Act of 1970.

(d) "Director" means the Chairman of the Council on Environmental Quality acting as the head of the Office of Environmental Quality pursuant to the Environmental Quality Improvement Act of 1970, Pub. L. 91–224, 42 U.S.C. 4371–4374.

§ 1517.3 Open meeting requirement.

(a) Every portion of every meeting of the Council is open to public observation subject to the exemptions provided in §§ 1517.4. Members of the Council may not jointly conduct or dispose of the business of the Council other than in accordance with this part.

(b) The Council will conduct open to public observation a bi-weekly meeting involving Council discussions of Council business including where appropriate matters outside the scope of this part. Such meetings will be noticed pursuant to § 1517.6.

(c) Members of the public may attend open meetings of the Council for the sole purpose of observation and may not participate in or photograph any meeting without prior permission of the Council. Members of the public who desire to participate in or photograph an open meeting of the Council may request permission to do so from the General Counsel of the Council before such meeting. Members of the public may record open meetings of the Council by means of any mechanical or electronic device unless the Council determines such recording would disrupt the orderly conduct of such meeting.

(Pub. L. 94–409; (5 U.S.C. 552b (g)))

[FR Doc. 79–18971 Filed 6–15–79; 8:45 am]

BILLING CODE 3125–01–M

COMMUNITY SERVICES ADMINISTRATION

45 CFR Part 1061

Emergency Energy Conservation; Fiscal Year 1979 Crisis Intervention Program

AGENCY: Community Services Administration.

ACTION: Amendment of rule.

SUMMARY: The Community Services Administration is amending the rule on its FY 79 Crisis Intervention Program published at 44 FR 4481 to reflect comments received from the public and from grantees operating the program. In general the amendments provide for a thirty-day extension from May 31, 1979 to June 30, 1979 during which eligible individuals can be certified for assistance in crisis situations arising prior to June 1, 1979 and a consequent extension of program termination and reporting dates.

EFFECTIVE DATE: This final rule is effective July 18, 1979, as a thirty-day waiting period would have been impractical and contrary to the public interest.

FOR FURTHER INFORMATION CONTACT: CSA grantees and program beneficiaries: Appropriate CSA Regional Office. Others: Community Services Administration, Office of Community Action, 1200–19th Street, N.W., Washington, D.C. 20506. Telephone: (202) 632–6503; Teletypewriter: (202) 254–6218.

(Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.)

Graciela (Grace) Olivarez,

Director.

Part 1061 of Title 45 of the Code of Federal Regulations is amended as follows:

(1) Section 1061.52–4 is revised to read as follows:

§ 1061.52–4 Duration of program.

(a) Grants will be effective January 1, 1979 and will have a termination date of August 31, 1979.

(b) No grant funds may be committed by grantees to provide assistance to certified households after June 30, 1979; and funds may only be committed during the period June 1 to June 30, 1979 for winter-related energy emergencies which placed eligible households in a crisis situation prior to June 1, 1979.

(c) Administrative funds may be committed until August 31, 1979.

(d) Grant funds which remain uncommitted by the grantee after August 31, 1979 shall be deobligated and returned by check to CSA for refund to the U.S. Treasury.

§ 1061.52–11 [Amended]

(2) Section 1061.52–11(b) is amended as follows:

Delete the date in the third sentence which now reads "July 1, 1979" and insert "October 1, 1979."

[FR Doc. 79–18962 Filed 6–15–79; 8:45 am]

BILLING CODE 6315–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 79-373]

Delegation Authority for Commercial Time Standards

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: This action modifies the limitations in the delegation standard, Section 0.281(a)(7)(i), as it relates to the amount of political advertising matter proposed in application for radio licenses. Pursuant to the delegation rule, the Broadcast Bureau staff must refer to the Commission all applications in which a specified limit on commercial time proposals is exceeded. The rule as amended here permits additional time for political advertising in excess of the specified limit on commercial matter.

EFFECTIVE DATE: June 25, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202-632-7792).

SUPPLEMENTARY INFORMATION:

In the Matter of amendment of Part 0 of the Commission's rules concerning delegation authority for commercial time standards.

Adopted: June 7, 1979.

Released: June 13, 1979.

By the Commission: Commissioner Fogarty absent.

1. The Commission adopted a policy statement on April 26, 1976 (FCC-76-360), regarding the amount of time which can be devoted to political advertising in excess of the limits on commercial time for radio under the delegation standard in Section 0.281(a)(7)(i). We are taking this opportunity to codify that policy by amendment of our rules.

2. Section 0.281(a)(7)(i) provides that the staff has delegated authority to act on proposals for commercial time which do not exceed 18 minutes per hour, with exceptions up to 20 minutes per hour during no more than 10% of the station's total weekly hours of operation. Pursuant to the previously issued policy statement, the permissible limits for the proposal and for the exception have been extended during periods of high demand for political advertising by four additional minutes.[1] Also, instead of using the period of 10% of the station's total weekly hours of operation we now use the standard of 10% of the station's total operating hours in the applicable period when lowest-unit-charges[2] are mandated for political advertising. Thus in proposals pertaining to commercial matter, the new limits for delegated action by the staff during periods of high demand for political advertising are extended to permit up to an additional four minutes not to exceed 10% of the station's total operating hours in the lowest-unit-charge periods. In each case the additional time which must be devoted to purely political advertising applies both to non-seasonal (Section 0.281(a)(7)(i)) and seasonal (Section 0.281(a)(7)(ii)) markets. This change has not yet been incorporated into the delegation standard, Section 0.281(a)(7). The attached Appendix amends this section for the purpose of implementing the existing policy. The commencement of a separate rule making is not necessary to accomplish the amendment since the rule is procedural in nature. See Section 553(a)(3)(A) of the Administrative Procedure Act [5 U.S.C. 553(a)(3)(A)].

3. It is ordered, That effective June 25, 1979, Section 0.287(a)(7) of the Commission's Rules and Regulations is amended in the manner set forth in the Appendix.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. In Section 0.281, subparagraph (a)(7)(i) is amended, present subparagraph (a)(7)(iii) is redesignated (a)(7)(iv), and a new subparagraph (a)(7)(iii) is added to read as follows:

§ 0.281 Authority delegated.

* * * * *

(a) *Applications*

* * * * *

(7) *Programming:* commercial matter.

(i) Commercial AM and FM proposals in non-seasonal markets exceeding 18 minutes of commercial matter per hour, or providing for exceptions permitting in excess of 20 minutes of commercial matter per hour during 10 percent or more of the station's total weekly hours of operation.

(ii) * * *

(iii) During periods of high demand for political advertising proposals exceeding either: (a) an additional 4 minutes per hour of purely political advertising or (b) exceeding 10 percent of the station's total hours of operation in the applicable lowest-unit-charge period.

(iv) Commercial TV proposals exceeding 16 minutes of commercial matter per hour, or, during periods of high demand for political advertising, providing for exceptions permitting in excess of 20 minutes of commercial matter per hour during 10 percent or more of the station's total weekly hours of operation.

* * * * *

[FR Doc. 79-18982 Filed 6-15-79; 8:45 am]

BILLING CODE 6712-01-M

[1] Previously the permissible excess time during periods of high political demand was 22 minutes where the excess over 20 minutes is used for purely political advertising.

[2] The lowest-unit-charge periods are specified as 45 days preceding the date of a primary or primary runoff election and 60 days preceding the date of a general or special election.

47 CFR Part 1

[Gen. Docket No. 79-137; FCC 79-331]

Processing of Contested Broadcast Applications; Revised Procedures

AGENCY: Federal Communications Commission.

ACTION: Report and Order—Gen. Docket No. 79-137.

SUMMARY: The FCC adopted a Report and Order revising Part 1 of its rules and procedures to expedite the processing of contested broadcast applications, prior to and after designation for hearing. The amended rules, in substance, simplify and shorten the cut-off lists; eliminate the sending of "deficiency letters" as part of the processing procedure, except where the staff needs further information; restrict the predesignation voluntary amendments of applications; eliminate the current provision for predesignation issue pleadings; and require pleadings affecting issues to be filed with the Administrative Law Judge after designation. The Commission also modified its procedures for handling applicant showings dealing with community ascertainment surveys and financial qualifications. In connection with evaluating ascertainment surveys of community needs, the Commission modified the standards to be applied to all existing and future contested and uncontested applications by returning to the earlier policy requirement of "substantial compliance." A separate public notice containing the Commission's modified policy in this regard is being issued in conjunction with the Report and Order. The Report contains a section on implementation of the new procedures, which is intended to accomplish an orderly and equitable transition to the new procedures for the

vast majority of pending and new applicants.

The actions resulted from recommendations in a report entitled "Evaluation of Operation of New Predesignation Procedures in Processing of Broadcast Applications," and consideration of written comments on the report and the participation by the Commission, its staff and the public in a public symposium on the report.

Reconsideration petitions may be filed on or before July 18, 1979.

EFFECTIVE DATE: June 18, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Jerold L. Jacobs at (202) 632-6485.

Report and Order

Adopted: June 1, 1979.
Released: June 8, 1979.

By the Commission: Commissioner Brown concurring and issuing a Statement; Commissioner Jones absent.

In the matter of: revised procedures for the Processing of Contested Broadcast Applications; Amendments of Part 1 of the Commission's rules, Gen. Docket No. 79-137.

I. Introduction and Background

1. In its Report and Order on Adjudicatory Reregulation (Docket No. 20628), adopted March 17, 1976 (58 FCC 2d 885) and published in the **Federal Register** on April 8, 1976 (41 FR 14865), the Commission amended its procedures governing processing of contested broadcast applications in order to "reduce unwarranted 'delay' in the performance of its (adjudicatory) functions." In the "Conclusion" to the Report and Order, the Commission stated that it would "* * * continue to * * * (monitor) our processes to evaluate the results of these changes as well as to discover other sources of delay which can be eliminated." (*Report and Order*, supra, at para. 43; 58 FCC 2d 865, 878). In an effort to learn how the revised procedures were actually functioning in practice, the Commission, in 1978, contracted for a study and evaluation of the operation of the new procedures, with particular regard to their impact on the handling of mutually exclusive and other contested broadcast applications.

2. After the Contractor, Max D. Paglin,[1] submitted his Report entitled *"Evaluation of Operation of New Predesignation Procedures in Processing of Broadcast Applications,"* the Commission scheduled consideration of the Report and its recommendations for the Agenda of its Open Meeting of March 15, 1979. Upon such consideration and review, the Commission concluded, tentatively, that adoption of the recommended revisions in its pre-designation and post-designation procedures would eliminate the delay problems which the Report found had been experienced and would improve the efficiency and effectiveness of its broadcast application processing system.

3. In light of the provisions of the Administrative Procedure Act exempting rules of procedure and practice from the notice and comment requirements of its Section 553 (see 5 U.S.C. 553(b)), it appeared that a rulemaking proceeding was not required before revised regulations of the nature recommended in the Report were adopted. Nevertheless, the Commission desired first to have the comments, on an informal but expedited basis, of interested organizations, government agencies and persons, including representatives of the Federal Communications Bar Association, the American Bar Association, the Association of Federal Communications Consulting Engineers and other practitioners, citizens organizations, the National Telecommunications and Information Administration (NTIA) (U.S. Department of Commerce), the Administrative Conference of the United States and interested Congressional Committee staffs.

4. Accordingly, the Commission issued a Public Notice, dated March 15, 1979 (FCC 79-159) [2] releasing for informal public comment the Contractor's Report, together with an Executive Summary. Copies of the Report were sent to the above-mentioned groups for their information and comment, and it was stated in the Public Notice that additional copies were available for inspection and distribution in the Commission's Office of Public Affairs. The Notice requested that comments be submitted on or before April 6, 1979, in view of the existing situation with regard to application backlogs and delays, and the obvious need to take remedial action on an expedited basis. The Public Notice also stated the Commission's intention to hold a public symposium on April 17, 1979, after receipt of the written comments, to discuss the recommendations of the Report and to obtain, through a panel format, an exchange of views among the Commissioners, the staff, and outside groups on the proposed changes in the pre-designation and post-designation procedures.

5. Thereafter, by Public Notice dated March 22, 1979, the Commission announced that a public briefing session would be held on March 29 at the Commission's headquarters, in conjunction with the Federal Communications Bar Association's Continuing Legal Education Program. The briefing session was held as scheduled, at which the Contractor and members of the Commission's staff participated in answering questions and comments by the audience regarding the procedural revisions proposed in the Report, in an effort to assist those preparing to file written comments or intending to participate in the forthcoming symposium.

6. The Commission received written comments on the Report and its recommendations from thirteen organizations and interested practitioners and from two Government Agencies by the April 6th deadline.[3] Copies of the comments have been kept on file in the office of the Secretary for public inspection and reference.

7. On April 17, 1979, the Commission held a Public Symposium on the Report, as previously announced. The Commissioners were in attendance and participated in the questioning, and the presentations and colloquy were conducted by the Contractor and a panel composed of representatives of the Commission's Broadcast Bureau, the Office of Administrative Law Judges, the Federal Communications Bar Association and the American Bar Association. Following these presentations, other interested members of the Bar and the public were given an opportunity to comment on the Report's recommendations and to engage in an exchange of views with the panelists and the Commissioners. The proceedings were recorded and a

[1] The Contractor, Mr. Paglin, has had extensive experience with the Federal Communications Commission, serving some 28 years in positions of varied responsibilities, including that of trial attorney in Common Carrier and Broadcast, legal assistant to a Commissioner, Assistant General Counsel for Litigation, General Counsel, Executive Director and Special Assistant for Administrative Procedure.

[2] Copies of the Report and the Executive Summary will be available for inspection in the Office of Public Affairs, Room 202, at the Commission's headquarters.

[3] Comments have been received from: Federal Communications Bar Association; Association of Federal Communications Consulting Engineers; members of the Communications Committee, Administrative Law Section, American Bar Association (though not the organization's official position); National Association of Broadcasters; Association of Independent Television Stations, Inc.; National Telecommunications and Information Administration (NTIA); Administrative Conference of the U.S.; McKenna, Wilkinson & Kittner, Esqs.; Cohen & Berfield, Esqs.; Stambler & Shrinsky, Esqs. (Bruce Eisen, Esq.); James E. Greeley, Esq.; Media Access Project; Business Communications, Inc.; Office of Communication of the United Church of Christ (Earle K. Moore, Esq.).

transcript of the Symposium has been made a part of the public documentation in this matter. The written comments and the dialogue during the Symposium have afforded the Commission a valuable airing of views on the need for urgent revisions in the procedures by which contested broadcast applications are processed, in order to assure that the public's business is being handled efficiently and with dispatch. Some of the modifications suggested by the written and oral comments will be quite useful in accomplishing the objectives sought, and some will be adopted as indicated in more detail below.

II. Findings of Contractor's Report on Pre-Designation Procedures in Processing Contested Broadcast Applications

8. Before proceeding to a discussion of the Report's findings and recommendations, it should be noted that the Report was given wide dissemination to those organizations and persons whose activities and interests would be affected by its proposals, and whose expertise would be most beneficial to the Commission in commenting on the proposed revised procedures. Thus, it would seem unnecessary to reiterate in detail the Report's findings and conclusions as to what happened under the current pre-designation procedures. In the interest of brevity, therefore, the Contractor's Report, together with its Executive Summary, will be incorporated by reference and made a part of the documentation associated with this Docket.

9. As has already been indicated, the Commission has reviewed the Report and its recommendations and has accepted it as a valid evaluation of the current situation regarding the processing of contested broadcast applications. A brief summary of the Report's findings and conclusions would, however, be useful at this point to serve as background for the more detailed discussion of, and determination on the specific recommendations for procedural revisions dealt with below.

10. One of the principal aspects of the Commission's 1976 adjudicatory re-regulation effort was the amendment of its rules pertaining to the processing of mutually exclusive broadcast applications. It established a new pre-designation procedure whereby competing applicants would perfect their applications within a specified period after the cut-off date for the filing of mutually exclusive applications, and would participate in the framing of issues against each other before the applications were designated for hearing. The declared objective of these new procedures was to "promote the expeditious and early preparation of cases * * * and to "* * * encourage (the) earliest possible specification of issues and disclosure of (competitive) positions." Although it was realized that the new procedures would impose "a greater burden on the processing line staff with attendant manpower implications," the Commission felt that:

> * * * greater emphasis on pre-designation procedures will result in substantial time savings during the hearing process. Moreover, early preparation of their own cases and analysis of their opponent's case should result in greatly increased numbers of buy-outs and mergers. This early analysis of the strengths and weaknesses of cases can be expected to encourage early settlement with accompanying savings in time and money expended during a hearing. *(Notice of Proposed Rulemaking, Docket 20628,* FCC 75-1250, 40 F.R. 54436, 54439, November 14, 1975).

The procedures were also designed to function as a part of other modifications of the rules providing for rigid time limits for responses to "deficiency letters" sent out in the initial processing of the applications, proposals for narrow framing of issues in the designation order, and the shift of jurisdiction over interlocutory petitions to enlarge, modify or delete hearing issues from the Review Board to the Administrative Law Judges.

11. The Contractor's study involved an extensive analysis of the new pre-designation procedures as they have actually functioned in operation, and was based on close examination of Commission records and data, and comprehensive interviews and conferences with Commission staff and practicing attorneys who have had actual experience with the pre-designation procedures. In essence, the Report concluded that the current procedures for processing contested broadcast applications have failed to accomplish their intended purpose of eliminating delay and simplifying and expediting the pre-designation process; and that, in fact, the new procedures have resulted in greater delays and may, if allowed to continue in their present form, result in a serious breakdown of the system.

12. Accordingly, the Report recommended that the present procedures be replaced by a streamlined, expedited system of processing contested broadcast applications which eliminates or replaces those elements in the process which have resulted in extensive delays amounting to two years or more before such applications are even reached for designation for hearing. The recommendation would, in substance, simplify and shorten cut-off lists; eliminate the sending of "deficiency letters" as part of the processing procedure, except where the staff needs further information; restrict the pre-designation voluntary amendments of applications; eliminate the current provision for pre-designation issue pleadings; require pleadings affecting issues to be filed with the Administrative Law Judge after designation; and encourage the issuance of brief Memoranda Opinions and Orders of designation for hearing.

13. The Report also suggested an innovative approach for the handling of community ascertainment surveys and financial qualifications, as a further step in expediting the process. The Contractor recommended consideration of a procedure whereby, after the applicant makes a satisfactory threshold showing in its application of compliance with the Commission's requirements and policies for conducting a proper community ascertainment survey and in demonstrating financial capability to build and operate the proposed station—which showing passes the muster of Commission review—these two factors would no longer be subject to the adversary pleading or hearing process, absent a strong and persuasive showing by other parties of misrepresentation, gross omission or later developing circumstances.

14. These recommendations will be considered in the light of the written comments and the views expressed during the Symposium.

III. Discussion of Report's Recommendations for Procedural Revisions; Consideration of Comments in Written Filings and at the Public Symposium

15. The comments which were filed were unanimous in commending the Commission for undertaking this effort to improve its processing of broadcast applications, and urged the Commission to adopt new procedures as soon as possible, taking into consideration the views expressed in some of the comments as to suggested modifications.

16. The specific recommendations in the Report will now be addressed substantially in the order in which they appeared in the document.

A. Revision of Processing Line Procedures

17. *Revision of Cut-off List Procedures.*—The Report recommended that the existing cut-off list procedures and notices be repealed, and that there be substituted a simplified Public Notice system of publication of tenders, and, later, of acceptances for filing of applications. The Notice of Acceptance for Filing would contain an announcement that applications desiring to be considered as in conflict with those on the list, or petitions to deny, would have to be filed within a date certain and stated, i.e., that date being set on the basis of requiring filing within thirty days after publication in the **Federal Register**, plus "lag time" for transmittal to the **Federal Register** and publication.

18. The Federal Communications Bar Association (FCBA) approved of the proposal to revise the current cut-off procedures; however, they suggested that a specific cut-off date be specified in the Commission's Public Notice, i.e., 45 days from publication of the Notice of acceptance for filing of the lead application to govern the cut-off date for filing mutually exclusive applications and petitions to deny. They also contended that the Commission should delete the practice of publishing such Notices of Acceptance for Filing in the **Federal Register**, since it was not required by statute and only added a delaying factor. The Association of Independent Television Stations (AITV) also concurred in the proposal, but contended that the proposed time frame for preparation and filing of competing applications was too short, and that the Commission should provide at least 90 days from public notice of the *tender* of the first application for the filing of competing applications.

19. The Commission believes that the shortened cut-off list procedure recommended in the Report will serve to expedite the application processing system. It also agrees that specifying a date certain in the Commission's Public Notice for the filing of mutually exclusive applications and petitions to deny (which, in fact, was contemplated in the Report's recommendation) will be useful in alerting the interested segments of the public, and it will therefore incorporate this feature in the revised regulations. In order to make the modified process more effective and expeditious, the Commission will continue the present practice of periodic publication of notices regarding the tender of new applications and the acceptance of applications for filing, but will publish such lists on a more frequent basis.

20. During the Symposium, the additional suggestion was made by members of the Bar that the Commission consider dropping its current practice, as provided for in §§ 1.571–1.573 of the rules, of additionally publishing in the **Federal Register** the cut-off lists for AM, FM and TV applications. It was contended that the wide distribution of Commission public notices is sufficient to alert potentially interested persons and organizations, without the added delay of publication in the **Federal Register**, since the latter was not required by statute. It is true that our Public Notices are made available at Commission headquarters for distribution to the broadcast industry, the Bar, consulting engineers and the Washington offices of some citizens groups. In addition, our rules require the publication in local newspapers for specified repeated periods of announcements as to the filing of applications for new, modified or renewed broadcast facilities; and, where existing stations are the applicants, for broadcast announcements regarding the applications. These latter rules are obviously designed for the benefit and information of the local communities. The recommendations in the Report regarding expedited cut-off lists did not contemplate abandoning publication in the **Federal Register**, and we have no present information of the extent to which the **Federal Register**, is relied upon by the general public for information on the filing of broadcast applications. Although our Consumer Assistance Office maintains an extensive direct mailing list to citizens groups throughout the Nation on Commission activities and action, broadcast application filings are not part of such releases. Accordingly, and in the present circumstances, we will continue our current practice and will publish in the **Federal Register** the proposed new Public Notices regarding acceptance of applications, with the proposed announcement of a specific cut-off date for filing mutually exclusive applications and petitions to deny. We will leave open for future inquiry the question of the feasibility of deleting from our Rules the requirement for additional publication in the **Federal Register**.

21. *Elimination of "Deficiency Letters"*—The Report found that the existing practice of sending "deficiency letters" to mutually exclusive applicants as part of the processing procedure, as provided in § 1.571(k), was another cause of extensive delay in the ultimate processing of these applications to designation for hearing. It was estimated, on the basis of the information gathered in the Report, that elimination of the need for the staff to send out "deficiency letters" to applicants, and await responses, amendments and further analysis, could save anywhere between 60 and 100 days of processing time. It was also felt that elimination of this practice would discourage the filing of so-called "skeleton" applications, and would eliminate the burden on the staff of having to review such applications and correspond with the applicant on the existence of defects in the applications which require correction. The elimination of the regular sending of deficiency letters, as part of the pre-designation process, would, of course, not preclude the Commission or the staff from requiring the applicant to submit additional information where necessary, as prescribed by Section 308 of the Communications Act and § 1.514(b) of the rules. The Report also referred to the present practice of sending letters out on uncontested applications where further information was required or where the applications, as filed, were incomplete or insufficient, in order to permit these applicants to amend or cure the problem by further submissions. It was proposed that the Commission's present policy and practice in these types of unopposed applications be continued, in the discretion of the staff, so as to assist the applicant in obtaining a grant and instituting a new or expanded service in the community, where there is no opposition or conflict.

22. These proposals regarding the elimination of deficiency letters were strongly endorsed by FCBA in their written comments and in the Public Symposium; however, they stated that their position was based on the assumption that Commission requirements would be spelled out with clarity so that applicants would have sufficient information to file complete and adequate applications. There were further comments in the Symposium by one participant that the Commission should provide for at least one letter notice to the applicant as to the deficiencies in his proposal, but that thereafter he should be bound by his submissions.

23. The Commission will adopt the proposal as recommended in the Report, since we agree that elimination of the deficiency letters will not only discourage the filing of less than optimum applications, once the industry realizes that the staff will no longer be required to point out errors in the application, but it will also serve to

expedite the process. We are convinced from the contents of the Contractor's Report that the deficiency letters have been the cause of much delay, and their elimination should serve to expedite the application processing considerably. Accordingly, the rules will be amended to eliminate for the future the sending of deficiency letters in contested application situations. The staff will be given discretion to continue their present practices with regard to unopposed applications, where the circumstances appear to warrant such efforts.

24. *Revision of Application Amendment Procedures Pre-Designation and Post-Designation*—The Report detailed the reasons for the long delays experienced under the current amendment procedures, due to the back-logs, the extended time lags between cut-off and designation for hearing and the provisions of the rules (§ 1.522) allowing amendments prior to designation for hearing. It was found that, during the protracted period while the applications were pending, involving as much as a year or two, the applicants filed numerous amendments, due to changes in circumstances or to respond to opponents' issue petitions alleging defects in their applications. This then necessitated repetitive processing by the staff to re-examine the amended application to determine whether new matters were raised requiring additional deficiency letters or the specification of issues for hearing. Opposing applicants were likewise then required to scrutinize carefully the amended application to re-assess the competitive posture. In the latter situation, the amendments were sometimes followed by new petitions requesting additional issues on alleged defects in their opponent's amended cases, and this then led to a new cycle of cross pleadings, again requiring further consideration and evaluation by the staff. Even though these subsequent pleadings were not authorized by the rules, there appeared, in the early experience under the new procedures, to be no way to cut them off, short of Commission action designating the matter for hearing, particularly when the pleadings were usually accompanied by requests for waiver of the rules, which had to be entertained.

25. Another problem involved in the Commission's liberal amendment policy in mutually exclusive broadcast cases was expressed in terms of presenting a conflict of two public interest objectives—i.e., on the one hand, the Commission's desire to have a choice among applicants whose qualifications represented the optimum in ultimate service to the public; but, conversely, the liberal allowance of amendments encourages the filing initially of "skeleton applications" and constantly changes "the litigation facts," thus interfering with an early stabilization of the comparative factual situation which must ultimately go to hearing. The inevitable result of "the system" was to create more and more delay.

26. In the face of these circumstances, the Report recommended a substantial change in the voluntary amendment procedure. It recommended that the § 1.522 procedures for amendments to applications prior to hearing be revised to permit "amendments as of right" in only two situation—first, within a specified period (approximately 30–45 days) after public notice in the **Federal Register** of the acceptance for filing of the last-filed mutually exclusive application (i.e., pre-designation); and, second, within a similar specified period after publication in the **Federal Register** of the Order of Designation for Hearing (i.e., post-designation). The Report proposed that, with regard to pre-designation amendments, the Public Notice of Acceptance for Filing of applications mutually exclusive with the first filed applicants would have until a date certain and stated to file amendments as of right to their respective applications. With regard to post-designation amendments, the Report proposed that the Designation Order would specify a date of which the parties could file amendments to respond to hearing issued raised in the Order, that date being similarly between 30–45 days after publication in the **Federal Register**. The resolution of such issues would then be handled, as at present, by the Administrative Law Judge by way of motion for summary decision or other appropriate procedure. All other amendments were to be submitted to the presiding Administrative Law Judge, by petition for leave to amend, showing good cause.

27. It was also proposed in the Report that amendments required by § 1.65, to update an application, will be allowed at times other than those specified above, provided that no comparative advantage is claimed thereby; and, further, that amendments ordered by the Commission, pursuant to § 1.514(b), were not to be affected by these proposals. The objective of these restricted amendment rights was to discourage the filing of minimally acceptable applications and to eliminate the burden on the staff of having to review and analyze the applications repeatedly, each time they were amended, to see whether they raised new issues.

28. In their written comments to the Report, the Federal Communications Bar Association agreed in principle with the need for restricting voluntary amendments to pending applications, but disagreed with the proposal for a fixed period allowing amendments as of right following designation and allowing amendments as of right after the cut-off date. The Bar Association asserted that amendments should be allowed in both instances only for good cause shown, it being of the view that the "as of right" phrase might encourage post-designation amendments beyond those necessary to address matters of basic qualifications *first* raised in the designation order. A further comment by a member of the Bar in his written filing recommended that all amendments pertaining to basic qualifications should be permitted as of right until 30 days after designation. During the Symposium, a member of the Bar urged that amendments be allowed prior to designation, after advice from the staff in a deficiency letter, but that the applicant not be permitted to offer amendments regarding his basic qualifications after the matter was designation for hearing.

29. We have considered the proposals in the Report regarding pre-designation and post-designation amendments, and we propose to adopt the Report's recommendations regarding the restriction of amendments during the pre-designation phase of the pendency of the application. As is indicated in the Report in some detail, there is an urgent need, in the interests of expedition, to have a "stable application situation" for the staff to be able to work on the application as early as possible.[3] Likewise, we agree with the position taken in the Report as to the need to discourage the filing of "skeleton applications" and the need to avoid having the staff repeatedly review constantly amended applications. On the other hand, the proposal to allow one opportunity for amendment to any of the applications after the deadline for filing petitions against any *later* filed application[s] represents an effort to give the first filed applicant at least a fair opportunity to amend his application, after the filing by the competitor, but still to limit the filing of repeated amendments. We also agree

[3] In this connection, and because of past abuses, as also indicated in the Report, we are authorizing the staff hereafter to return without consideration unauthorized amendments and other pleadings not authorized by our Rules. Any late filed pre-designation amendment will be considered only upon a showing of good cause.

that, in the circumstances, the current requirements of §§ 1.65 and 1.514 of our rules will still apply in order to have the applicants keep their applications updated in accordance with then prevailing circumstances.

30. With regard to the proposals for revision in the post-designation procedures, the current system, which allows amendments of applications within 15 days after publication of the hearing order, is designed to eliminate the necessity for evidentiary hearings on designated issues which can be cured by amendments. On the other hand, as is indicated in the Report, there is also a need to secure a stable situation as soon as possible, so that the parties and the staff can proceed with the hearing on the remaining and necessary issues. We are inclined, however, to agree with the comments of FCBA that the Report's original proposal of automatic amendments after issuance of a hearing order, standing along, might still encourage the parties to file amendments on matters other than those first raised in the designation order. It would seem that this would also serve to defeat the efforts in the other proposals to encourage the initial filing of the best possible and most complete application. Nevertheless, we would want to accelerate and expedite the hearing process, and it is our view that setting a time limit after the designation order is issued for filing such amendments would enhance and expedite the process.

31. We will therefore adopt a modification of the Report's original proposal regarding the allowance of amendments post-designation—i.e., amendments will be allowed after the issuance of the designation order but must be filed within 30 days after publication of the order in the **Federal Register**, or a date certain to be specified in the order. A petition for leave to file an amendment which is not limited to an attempt to resolve an issue first raised in the designation order must be based on a showing of good cause. As is currently the practice, the petition for leave to amend, after designation, would be presented to the Administrative Law Judge for action; thereafter, an appropriate motion for summary decision or deletion of the issue after allowance of the amendment would be in order.

B. *Revision of Procedures for Handling Hearing Issues*

32. The Report describes in considerable detail how the 1976 procedures providing for pre-designation cross pleading on issues actually functioned in operation, the delay problems which were experienced, the inordinate level of litigiousness which the procedures seemed to encourage, the lack of decisional significance of many of the issues parties attempted to raise against their opponents, and the virtual defeat of the objectives originally intended of expediting the process. The Report also refers to the Commission's own ultimate realization of the abuses to which the new pre-designation issued pleading process had been put when, in the *Indianapolis* multi-party designation Order (In re *Peoples Broadcasting Corporation*, et. al., BC Docket Nos. 78–243–247), the Commission felt compelled to admonish the parties regarding the filing of petitions in the proceeding which were:

> * * * characterized by large numbers of unsupported requests for issues as well as numerous requests which can only be described as frivolous. Though totally without merit, these requests must be answered by opposing counsel, analyzed by our staff and ultimately considered by us. The time and energy wasted in this process in large part defeat the very aims which our new procedures seek to achieve * * *. (*Peoples Broadcasting, supra*, FCC 78–511, at para. 36; 68 FCC 2d——).

33. The Report pointed out the particularly adverse effect of these new procedures on those applicants with a high level of public interest qualifications (as traditionally recognized by the Commission and the Courts) but with limited resources. The opinion was expressed by practitioners that the pre-designation pleading procedures lent themselves to potential abuse by allowing one party, with substantial resources at his disposal, to "plead the others to death"; and that the process itself, in a hotly contested multi-party case, could force the withdrawal of the small, locally-owned and integrated, non-media applicant, or others who had ownership by minorities seeking entry into the field, even before the process had served its ultimate purpose of selection of the applicant who would best serve the public interest, based upon an adjudicatory record.

34. The Report accordingly recommended that the existing procedures for pre-designation pleadings and cross-pleadings to specify issues against opponents in mutually-exclusive and contested broadcast application cases (§§ 1.584 and 1.229) be repealed. To the limited extent that petitions to deny or motions to dismiss were filed against opponents' applications, they would be handled by the staff in the course of processing the applications upon the issues to be designated for hearing. The Report recommended that all pleadings relating to motions to enlarge, modify, or delete issues are then to be presented, after designation, to the presiding Administrative Law Judge, in accordance with § 1.243(K) of the rules.

35. The comments, with one exception, strongly endorsed the proposal to repeal the existing procedures regarding pre-designation issue pleading, contending that the current system contributed to extensive delays. The Comments also supported the recommendations that the presiding officers, who had familiarity with, and control of the case should handle the issues problem, and that the more significant ALJ rulings on such matters should be published in the manner and for the reasons described in the Report. The sole objection (by the Association of Independent Television Stations) was based on their contention that parties should have the opportunity, through the adversary process, to challenge defects in an opponent's case.

36. The Commission is persuaded by the Report and the comments that the pre-designation issue pleading process has not only not accomplished its original purposes—of expediting cases, simplifying issues and encouraging settlements—but has had the opposite effect. As the Report points out, the first two contested cases to go through the entire process from filing to designation under the new procedures (Vancouver and Indianapolis) [4] took two years for processing and involved a voluminous proliferation of pleadings on contested issues, amendments, etc. But when the Commission came to consider the cases on designation, the hearing Order rejected all but a handful of the issues requested by the parties as not being decisionally significant.

37. Accordingly, we accept the Report's recommendation and the urgings of the comments, and will direct the deletion of the pre-designation issue pleading procedures in all pending cases and in all future cases.[5] The rules will be revised as required. Parties will have an opportunity to renew requests for issues, where warranted, to the Administrative Law Judge, after designation, as indicated below. We would expect, however, that such requests would be limited to matters of substantial decisional significance. Petitions to deny

[4] In re *Rose Broadcasting Company*, et al., BC Docket Nos. 78–209, 211–212 (Vancouver); and *Peoples Broadcasting Corporation*, et al., BC Docket Nos. 78–243–247 (Indianapolis).

[5] The actual implementation of the revised procedures in pending cases is set forth below in Section IV of this Report and Order.

and motions to dismiss filed against applications, and other informal objections, will be handled by the staff in the course of application processing, as at present.[6]

38. All pleadings relating to motions to enlarge, modify or delete hearing issues are to be presented, after designation, to the presiding Administrative Law Judge in accordance with the existing § 1.243(k) of the rules, preferably at the pre-hearing conference stage and within 30 days after the designation order has been published in the **Federal Register**. The new procedures regarding post-designation settlement of the hearing issues shall become a part of the pre-hearing procedures methodology, set forth in §§ 1.246–1.251 and 1.291–1.298 (Interlocutory Actions in Hearing Proceedings). No other revisions of the regulations would appear to be required, for the authority presently exists in the Administrative Procedure Act and the Commission's Regulations for the ALJs to handle the hearing issues in the manner proposed.

39. It is contemplated that the Administrative Law Judges, using their existing authority, would make full use of the available and appropriate pre-hearing techniques, such as informal conferences, oral arguments, and submission by the parties of memoranda of law, to dispose expeditiously of all pending pleadings involving issues prior to the commencement of the evidentiary hearing. We would expect that such disposition would not only take cognizance of Commission policy as contained in the *Fidelity* and *Atlantic Broadcasting* cases, referred to more fully below, but would also apply strictly the test of substantial decisional significance to the outcome of the case, in ruling on requests for issues.

40. The Report also made the point, with which we agree, that in order that the effectiveness of the Commission's review process be enhanced, ALJ rulings on decisionally significant matters or complex issues at the interlocutory stage should normally be contained in written orders. However, in the interests of expedition, ALJs should be encouraged to avail themselves, where appropriate, of the discretion afforded by § 1.298(b), which provides that:

> In the discretion of the presiding officer, rulings on interlocutory matters may be made orally at the hearing. The presiding officer may, in his discretion, state his reasons on the record or subsequently issue a written statement of the reasons for his ruling, either separately or as part of the initial decision.

41. The Report also referred to the probable need for an expanded and regularized system of publishing those Memoranda Opinions and Orders by Administrative Law Judges on significant interlocutory matters. It was thought that, with the proposed expansion of consideration of issue pleadings by ALJs, there would be an increase in the number of rulings which might be useful as guides in other cases, both to other presiding officers and to the Bar, although not binding as precedent as such. It was also felt that publication and distribution of the more significant rulings might serve to advance consistency amongst ALJs in ruling on pleadings which involved similar problems.

42. We note that, after the comments and the discussion during the Symposium along these lines, the Office of Administrative Law Judges made arrangements, which were announced in a Public Notice, dated April 23, 1979 (P.N. 16682), to establish a file in the FCC Library for ready inspection containing a copy of each Order and each Memorandum Opinion and Order issued by the Administrative Law Judges. However, we believe that the recommendations in the Report for publication and distribution of significant rulings may better achieve the intended objectives. We will therefore direct the Executive Director, acting in conjunction with the Office of Administrative Law Judges and the Office of Public Affairs, to oversee the establishment of procedures to carry out these purposes in a manner they deem most efficient and cost-effective.

C. Reiteration of Commission Policy on Post-Designation Modification of Hearing Issues

43. The Report pointed out that as a central part of the proposed revised system of handling post-designation hearing issues, it was required that the Commission reiterate the policies expressed in *Fidelity Radio, Inc.*, 1 FCC 2d 661 (1965) and *Atlantic Broadcasting Co.*, 5 FCC 2d 717 (1966). Those cases established the parameters of the authority of the Review Board (and now, presumably, the ALJs) to consider or permit the enlargement, modification or deletion of hearing issues. The Commission there directed that subordinate officials should look to see whether specific reasons were stated for its action or inaction in a designation order; and that if the designation order contained a reasoned analysis of a particular matter, the subordinate officials were to be bound by that analysis, in the absence of additional information on the subject previously unknown to the Commission. However, where the designation order did not contain such reasoned analysis with respect to the merits of the particular matter, the subordinate official was to make such an analysis and rule on the merits of the petition so that the hearing could be conducted in an expeditious manner.

44. The Report recommended that if the Commission should adopt the recommendations for a simplified, streamlined designation process and for allowing the Administrative Law Judges to handle all post-designation petitions seeking to modify the issues designated for hearing, the principles of *Fidelity* and *Atlantic* should be re-emphasized as controlling in the circumstances, so as to preclude unnecessary relitigation of matters dealt with in the hearing Order. It was contemplated that staff review and Commission consideration of the application, its amendments and any pleadings filed, as expressed in the Memorandum Opinion and Order of designation for hearing would, in the interest of expedition, be observed at the further levels of litigation as dispositive, in the absence of demonstrated showings of information or data which were not before the Commission at the time of designation. The Report also recommended that, with the deletion of the pre-designation issue pleadings procedure, the Commission's order designating the applications for hearing could be quite brief and concise, thereby eliminating some of the delay encountered in the preparation of lengthy Memorandum Opinions required under the previous procedures.

45. The comments filed by FCBA and ABA supported the principle of continued emphasis on *Fidelity* and *Atlantic*. However, they were concerned that the additional recommendation for brief designation orders might work at cross purposes with the objectives of *Fidelity* and *Atlantic* to preclude further litigation. They recommended that the Memorandum Opinions and Orders of designation for hearing should continue the practice of "reasoned analysis" so as to serve the original objectives of the *Fidelity* case; and, further, that where there was no reasoned analysis in the designation order, the parties should be permitted to request issues before the Administrative Law Judge.

46. The Commission believes the discussion in the comments to be well taken. It proposes to direct the Broadcast Bureau processing staff to handle the preparation of designation

[6] To discourage needless filings, the rules will also be amended to emphasize that the failure to file an opposition or a reply to a petition or motion will not necessarily be construed as an admission of any fact or argument contained in a pleading.

orders with precision, dealing with the issues presented in a concise manner; but, at the same time, fully discussing the bases and rationale for rejecting an issue requested, for example, in a petition to deny. Likewise, there should be similar treatment of the "reasons then obtaining" for designating an issue for hearing, based on the application and other information before the staff for review. We would expect that a thorough staff review of the application would permit the making of findings indicating those areas where the applicant had made a satisfactory showing of compliance with Commission regulations and policies and so concluding in the designation order. Where an unresolved issue was presented, the reasons for including it as a ground for hearing would similarly be set out in the terms expressed in *Fidelity*. We do not necessarily see any conflict between adhering to the principles of *Fidelity*, where required, and the preparation of succinct findings in a Memorandum Opinion and Order designating a matter for hearing.

D. Revised Procedures for Review of Community Ascertainment Surveys and Financial Qualifications

47. These recommendations of the Report for revised approaches to the handling of ascertainment of community needs and financial qualifications sparked the most intense interest in the written comments and the Public Symposium. It should be noted that the Report prefaced its discussion and recommendations in these areas with a reference to the recent and current discussions and writings, as well as proposed legislation, relating to proposals for "deregulation" of radio broadcast stations in various contexts, including reassessing the need for ascertainment surveys; substantial revision in the comparative hearing process; and other proposals for "modernizing" and improving the regulatory system governing the licensing of broadcast stations. The Report stated that, until such time as the Commission issued revised policy formulations which were upheld by the Courts, or until legislation was passed, there were a number of specific procedural and organizational proposals which could be considered as interim measures designed to expedite the processing system. These measures would deal with the manner in which certain of the qualifying and comparative criteria are reviewed by the staff and litigated by the parties.

48. The Report stated further that its study and experience had shown that a great deal of adversarial time and effort was being spent on certain of the qualification factors which perhaps ought not to be the subject of contention amongst the contesting applicants in a multi-party case. Two of the qualification and comparative factors which the Report contended would lend themselves to new approaches were the community ascertainment surveys and financial qualifications.

49. *Revised Procedure for Review of Community Ascertainment Surveys*—At present, the Commission policies in this area are contained in its Regulations, Application Forms and in its *Primer on Ascertainment of Community Problems by Broadcast Applicants*, published in February 1971 (27 FCC 2d 650) after a rulemaking proceeding.

50. The Report found that, under the existing pre-designation procedures and issue pleading, the ascertainment surveys are often the subject of minute item-by-item attack by opponents as to sufficiency, compliance with Commission requirement and precedent, etc., as well as cross-examination during the hearing. Even after hearing and Initial Decision, questions as to the adequacy of the survey conducted by the Initial Decision grantee and compliance with the requirements of the *Primer* and its interpretations have been the subject of extensive review by the Review Board.

51. The Report therefore suggested that, until the Commission modifies its policies regarding the need for community needs ascertainment by radio and TV broadcast stations, consideration be given to a revision of its procedures so as to remove the community ascertainment survey showing from the adversary arena. Under the suggested revised procedure, applicants would be required to make a threshold showing in their applications of compliance with the basic requirements laid down by the Commission in the *Primer* as to the method of conducting a satisfactory and sufficient ascertainment survey and formulating the program proposal thereon, in the same manner as is presently required, with whatever extensions or modifications the Commission thought necessary in the light of past and recent experience. The applicants' showing in this area would then be examined for acceptability by the staff in its initial processing. If found deficient, an issue on ascertainment would be included in the hearing order; and, if not cured by post-designation amendment, the issue would go to evidentiary hearing. If found, however, to be satisfactory, the ascertainment survey could not then be made the subject of adversary pleading or testimony at the hearing stage, short of a persuasive showing, by motion before the ALJ to enlarge issues, of misrepresentation or gross omission of some decisionally significant area which would make the survey totally unacceptable, on the basis of facts not theretofore known to the Commission or the parties or not apparent on the face of the application. In other words, once an applicant has met the Commission's basic requirements, a competing party should be placed under a heavy burden of demonstrating that an ascertainment issue was critical to a valid decision in the case, before it could be added to the hearing. Any attempt to add a "comparative ascertainment efforts" issue, which has only rarely been done in the past, should likewise be required to demonstrate its vital role in the outcome of the case. The Report asserted that removal of the ascertainment process from the adversarial mode to a situation where only the applicant and the staff are involved would represent a substantial saving in time, money and effort over the existing procedure to the great benefit of the public and the Commission.

52. The written comments filed by FCBA, NAB, ABA and NTIA, and the discussions at the Symposium generally supported the approach and objectives of the Report's recommendation as a laudable effort to remove the ascertainment factor from the adversary arena, in the interests of eliminating delay and expediting the processing of contested broadcast applications. However, the thrust of the reaction from both the Commission staff and outside groups was that a critical element necessary for the success of expedited procedures here was that the Commission should reconsider its policy in *Voice of Dixie, Inc.*[7] In that case, the Commission indicated that it would require strict compliance with the requirements of the *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650 (1971). The comments stressed that, in order that the community ascertainment showings not be subjected to unnecessary litigation and time consuming delays for even trivial variations, the Commission should indicate that it was reconsidering the *Voice of Dixie* policy; and that it should direct the staff to return to the earlier standard that substantial compliance with the requirements of the primer

[7] *Voice of Dixie, Inc.*, 48 FCC 2d 1027 (1974); reconsideration denied, 47 FCC 2d 828 (1974).

would be the test for examining ascertainment showings to determine satisfactory compliance with Commission policy. It was pointed out that, as indicated in the Report, the ascertainment showings had been the source of much "nitpicking" in competitive multi-party cases, to no decisional avail but with considerable delay as a consequence. Accordingly, the parties urged the Commission to reconsider the policy declared in *Voice of Dixie*.

53. The Commission has given this matter very careful consideration, because of its importance in the efficient conduct of our adjudicatory process. We are likewise cognizant of contemporary efforts, of a related nature, which we have recently been considering in an effort to improve the entire process of the regulation of broadcast licensing. Indeed, on May 8, 1979, the Commission held an extensive open meeting in which it discussed with its staff the various possibilities of looking toward potential elimination of certain regulatory requirements in radio broadcasting.[8]

54. Upon such consideration we are convinced that, in the current circumstances, the regulatory process will, in fact, be improved and enhanced if we adopt the recommendations in the Report regarding the future procedures for the review of community ascertainment surveys, and if we reconsider the impact of some of our past regulatory policies. We will, however, adopt a modification of the criteria referred to in the Report's recommendation, described in para. 51, above. The test to be used regarding the nature of the showing required to reopen the question of the adequacy of the ascertainment survey, by way of a motion to enlarge issues, will be limited to misrepresentation or gross omission of some decisionally significant area which would make the survey totally unacceptable. As to our past regulatory policies, we have determined, from the contents of the Report and the presentations in the comments and the Symposium, that our policy in *Voice of Dixie*, requiring strict compliance with the *Primer* on ascertainment, should no longer be the criterion for passing upon the adequacy of an applicant's showing in this regard. Rather, we will return to the previous body of precedent which identified substantial compliance as being sufficient.[9] These criteria shall be applied at all levels of the adjudicatory process hereafter and to all pending applications and proceedings where the question arises.

55. For the guidance of all concerned, and for their more immediate reference and information, a separate Policy Statement will be issued encompassing these determinations. In light of the broad distribution of the Report and its recommendations in these areas, and the extensive comments by interested parties, we see no need for further notice and comment proceedings before implementing these new criteria. This Report and Order and the Policy Statement will, of course, be published in the **Federal Register**. Should there be any substantial need, the statute and our own procedures provide for the filing of petitions for reconsideration, though we must observe that a persuasive showing will need to be made as to why the matter should be reconsidered in these circumstances.

56. *Revised Procedure for Review of Financial Qualifications*—The Report recommended that a similar approach, as with ascertainment, be considered in the area of financial qualifications. Although the Communications Act provides that the Commission may make an affirmative finding that the applicant is financially qualified to construct the proposed station, the Commission's policies as to what showings are required to meet the basic test of financial qualifications have varied over time.[10]

57. Further, the Report stated that, although the applicant's financial showing is not one of the categories of comparative criteria in multi-party contested cases, the pre-designation issue pleading procedures have permitted some competing parties to attempt to raise questions about their opponent's finances which can only be characterized as litigation over trivia. The Report asserted that, after an applicant had passed the muster of staff review of his financial showing, the minute adversarial examination of his finances by his opponents, whether in the pre-designation stage or at the hearing, had proven not only to be non-productive in most instances, but had prejudiced those applicants who had limited resources to begin with, such as the small aspirants and minority groups. The question was therefore asked: Should not the factor of financial qualifications be a matter solely between the Commission and the applicant, since it is not likely to be a basis for comparative or relative merit, once the basic financial requirements for construction and operation are met. The Report accordingly recommended that financial qualification should not be made the subject of hearing issues as adversarial pleading, unless the initial staff review of the application indicated that the applicant was, in fact, incapable of effectuating his proposal, or if a persuasive and convincing showing to the same effect was made by an opponent after designation.

58. The Report therefore proposed that the Commission consider adopting a procedure similar to that suggested above for ascertainment, whereby the financial qualification showing would be removed from adversary contention, absent the demonstrated existence of defects in the applicant's proposal. In like manner, the mutually-exclusive applicants would be required to make a threshold showing in their applications of compliance with the Commission's requirements, as contained in its application forms and declared policies, of financial capability to construct and operate the proposed station. This showing would then be reviewed by the staff in the course of processing the applications; if found to be satisfactory, the statutory findings to the effect that the applicants are financially qualified would be recited in the designation order, and that would dispose of that qualification factor. If the staff review showed the applicant's financial proposal to be defective, a hearing issue in that regard would be specified, and if not cured by post-designation amendment, the issue would go to evidentiary hearing. Parties would be limited in raising questions about an opponent's financial qualifications to demonstrating in a persuasive and convincing manner, by motions before the ALJ to enlarge issues, that the opponent's proposal could not be realistically effectuated. Such motions would be based primarily on facts not apparent on the face of the application and its supporting documents or not theretofore known to the Commission or the parties. Under such a system, the Report contended, the application process should be far more efficient and expeditious, and, equally if not more important, the community should get its new service instituted more rapidly than at present.

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[8] See FCC News Release, May 8, 1979 (Mimeo No. 17380) entitled "FCC to Consider Full Range of Deregulation Options for Radio Broadcasting."

[9] *Greenfield Broadcasting Corp.*, 30 FCC 2d 774, 22 RR 2d 497 (1971); *New Broadcasting Corp.*, 37 FCC 2d 662, 25 RR 2d 561 (1972); *Mahoning Valley Broadcasting Corp.*, 39 FCC 2d 52, 25 RR 2d 673 (1972); *The Evening News Association*, 35 FCC 2d 368, 24 RR 2d 667 (1972); *The Outlet Co.*, 36 FCC 2d 355, 25 RR 2d 1077 (1972); and *RadiOhio, Inc.*, 36 FCC 2d 721, 26 RR 2d 327 (1972).

[10] See, e.g. Commission Public Notice, May 11, 1979, FCC 79-298, "New Financial Qualifications Standard For Broadcast Television Applicants," where the Commission changed the financial showing requirement for construction and operating costs from one year without revenues (the *Ultravision* test) to a 90 day requirement for new applicants.

59. The comments, with one exception, likewise supported the Report's recommendation on handling the financial qualifications factor, as did the presentations in the Symposium. We agree with the findings in the Report regarding the problems created by our current procedures in this area, and we will adopt the recommendation to institute the "threshold showings" criterion set forth in the Report.

60. To the extent that parties wish to contest the adequacy or correctness of the staff's initial conclusions as to the applicant's financial capabilities—using the Commission's financial requirements policy test—they will have the opportunity to present their contentions to the Administrative Law Judge by way of petitions to enlarge issues. The test to be used regarding the nature of the showing required to reopen the question of the adequacy of the applicant's finances will be similar to the criterion set forth in para. 54, above, *i.e.*, will be limited to a showing of misrepresentation or gross omission of some decisionally significant item which would render the proposal totally defective.

61. In this regard, some of the comments emphasized the need for the Commission to make substantive changes in its policies and to afford the industry with clearer guidelines, in these and other areas, as a means of enhancing the process. As indicated above, the Commission is currently in the process of re-examining the entire spectrum of its regulatory policies in broadcast licensing. We are of the opinion that any such revisions of substantive policy should await the completion of the Commission's deliberations in these areas. Meanwhile, we believe that a useful first step can be taken by adopting the revised procedures recommended in the Report for limiting the adversarial use of the community ascertainment and financial qualification factors, except in the circumstances indicated.

IV. Implementation of Revised Procedures

62. One remaining problem to be addressed is the manner and extent to which the revised procedures we are adopting are to be applied to pending applications which are already somewhere in the processing "pipeline," and which have been the subject of varying degrees and steps of processing.

63. We believe that the most orderly and equitable transition for the vast majority of applicants will result by applying the new procedures as follows:

(1) If an application has been accepted for filing under the existing procedures but has not yet appeared on a cut-off list, it will be placed on a new "Public Notice of Acceptance for Filing," and the time to file competing applications or petitions to deny will be specified in the Notice.

(2) If an application has already appeared on a cut-off list, and a competing application has been filed and accepted, but there has been no notification under existing §§ 1.522 and 1.584 of the rules of deadlines for filing amendments and issue pleadings, such applicants when reached for processing will be notified on an *ad hoc* basis and be given an opportunity to file amendments but not issue pleadings.

(3) Those mutually exclusive applications as to which deadlines have passed for the filing of amendments and issue pleadings under existing §§ 1.522 and 1.584 of the Rules, will be designated for hearing without further opportunity for pre-designation amendment.

(4) Applications tendered for filing but not yet accepted and all future applications will be fully subject to the new procedures.

64. Any questions concerning the procedural status of any case should be directly addressed to the processing staff of the Broadcast Bureau's Broadcast Facilities Division (tel. no. (202) 632–6485).

65. In addition, it should be noted that those applications filed prior to the effective date of the 1976 adjudicatory re-regulation rules, i.e., July 1, 1976 (as later amended) were to be governed by the prior procedures which, among other things, allowed only 15 days for amendments after designation for hearing. In the interest of uniform treatment, we will provide that *all* pending applications not yet designated for hearing will be afforded the post-designation amendment rights allowed under the new procedures.

66. With the adoption of the categories for implementation suggested above, the transition to the new and improved procedures for processing contested broadcast applications will be hastened.

V. Administrative and Personnel Resource Impact of Revised Procedures

67. In the course of his study, the Contractor presented the Commission with some separate data and recommendations dealing with the problems of staff resources and workload in the Broadcast Facilities Division devoted to application processing, in the Hearing Division and in the Office of Administrative Law Judges.

68. It was pointed out that, with the adoption of the expediting procedures which were recommended, it was likely that many more contested cases would be designated for hearing in a shorter period of time than at present. There was some apprehension expressed that caseloads for the Hearing Division and individual ALJs may be substantially increased when the backlogged applications begin to come through for hearing which might again result in delays, particularly in multi-party cases. The revised procedures on handling hearing issues might have a similar effect. Whether the latter would necessarily result in greater delays is not so certain, since no new responsibilities are being introduced. The Administrative Law Judges and the Hearing Division are already handling a considerable amount of such interlocutory matters as petitions on amendments and issues as part of the hearing process. In addition, we are confident that the proper use by the presiding officer of the available authority and techniques for control and expeditious handling of the hearing will serve to expedite the hearings and prevent undue delays. Likewise, the observance of discipline and restraint in all levels of processing, trial and review in the adjudicatory process—that is, a concentration on matters of substance and issues of vital decisional significance—is essential to the successful operation of these new procedures.

69. Nevertheless, to assure that the process does not again result in extensive delays, we are directing that an interim management oversight mechanism be set up, by the Executive Director working in conjunction with the Broadcast Bureau and the Office of Administrative Law Judges, to monitor the flow of cases being designated for hearing, the individual caseload levels and the phased progress of the hearings at the ALJ stage. Then, if it appears that hearing cases are getting bogged down or unduly delayed at certain stages because either the Hearing Division or the ALJs are becoming overburdened by their caseloads, the Commission will be in a position to take prompt steps to remedy the situation. Depending upon the needs shown to exist, such measures might take the form of emergency personnel assistance or more permanent organizational, procedural or personnel undertakings. We will expect the staff to keep us advised periodically of developments in the in the operation of the new procedures.

VI. Conclusion

70. During the Symposium, several of the participants expressed some skepticism as to the possible success of the recommeded procedures in accomplishing their objective of expediting the process. Their opinions were based on what they perceived as an unrealistic reliance on cooperation by the parties and their counsel in implementing the new procedures. Their position was that counsel's duty to his client required him to exhaust every available remedy and procedural device to fully protect the client's interests; thus, efforts to restrict his right to file pleadings on his client's behalf may not be successful.

71. The Report recites at length the consequences of our current procedures which have allowed just such latitude, probably because of concern for the requirements of "due process." Interviewees were quoted as characterizing the resultant delays of two years or more encountered in the processing of contested applications as "unconscionable," as well they might. We feel it incumbent upon us to observe, in response, that underlying all attempts at improvement in procedures, including those recommended in the Report, is the urgent need for the exercise of discipline and restraint by all concerned in the process. As the Report correctly points out, the public is entitled to have the Commission carry out its statutory mandate to "* * * conduct its proceedings in such manner as will best conduce to the proper dispatch of its business and to the ends of justice * * *" (Communications Act, Section 4(j).) To subject applicants and the public to delays of the magnitude shown in the Report, if it results from inefficiencies, inadequacies or defects in the process itself, amounts to an abnegation of the Commission's responsibility to serve the public. We believe that the effective and expeditious dispatch of the Commission's business is, in itself, an integral part of the public interest.

72. In the exigencies of the current situation of backlogs and delays, those who would use the Commission's process must recognize that practices and procedures originating in earlier and less critical eras must sometimes give way to the larger needs of the public interest, particularly at a time when the Commission's resources are burdened almost to the breaking point. The administrative hearing process itself, as well as some of its component parts, have come under attack as no longer serving their original purposes as an efficient method of regulatory decision-making. The time-honored procedures of trial-type evidentiary hearings, with extensive pleadings, discovery, cross-examination, etc., have been criticized as an outmoded mechanism for the resolution of issues presented to administrative agencies. In our 1976 adjudicatory re-regulation revisions, we took a number of steps which were designed to improve the hearing process. But, however that debate may ultimately be settled, by legislation or otherwise, it is clear that our procedures for handling contested broadcast applications can no longer be saddled with a philosophy of "trial by combat."

73. We agree with the Report's admonition that the pressures of current and future backlogs, and the urgency of seeking reforms to expedite the application process, require self-restraint; that the parties' showings and the Commission's consideration of "the record"—in all phases of application processing, hearings and the review stages— should be limited to matters of substance and to issues of fundamental decisional significance. To quote the Report, "What has been referred to as the 'flyspecking' of applications and evidentiary showings and lengthy litigation over frivolities should not be condoned, either by the ALJs, the Review Board or the Commission itself * * *" (Report, p. 40).

74. We would hope and expect that practitioners before the Commission and our staff will, in fact, lend their best efforts to this joint undertaking in our common interest and that of the public. The Commission, for its part, will give its utmost cooperation in attempting to assure the success of these and simular recommendations which will lead to reform and improvements in our procedures. We would welcome the assistance of all interested persons and organizations in a continuing effort to make the Commission's procedures more efficient and effective.

75. For the purposes of this particular proceeding, and to implement the revisions in procedures which the Commission is here adopting, there is attached an Appendix containing the specific amendments to our rules of practice and procedure designed to carry out the determinations of this Report and Order.

76. Authority for adoption of the amendments set out in the attached Appendix below is contained in Section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Because the amendments are procedural in nature, the prior notice and effective date provisions of 5 U.S.C. 553 are inapplicable.

77. Accordingly, it is ordered, effective June 18, 1979, that Part 1 of the rules is amended as set out in the Appendix below.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; (47 U.S.C. 154, 303.))

Federal Communications Commission.[1]

William J. Tricarico,

Secretary.

Appendix

Part 1 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 1.227(b)(1) is revised to read as follows:

§ 1.227 Consolidations.

(a) * * *

* * * * *

(b)(1) In broadcast cases, except as provided in subparagraph (5) of this paragraph, no application will be consolidated for hearing with a previously filed application or applications unless such application, or such application as amended, if amended so as to require a new file number, is substantially complete and tendered for filing by the close of business on the day preceding the day designated by Public Notice published in the **Federal Register** as the day any one of the previously filed applications is available and ready for processing.

* * * * *

2. Section 1.229 (b) and (d) are revised to read as follows:

§ 1.229 Motions to enlarge, change, or delete issues.

(a) * * *

* * * * *

(b) Such motions must be filed within 15 days after the issues in the hearing have been published in the **Federal Register**. In comparative broadcast proceedings (including comparative renewal proceedings), however, such motions shall be filed within 30 days after the designation order has been published in the **Federal Register**. Any person desiring to file a motion to modify the issues after expiration of the above specified periods shall set forth the reason why it was not possible to file the motion within the prescribed period. Except as provided in paragraph (c) of this section, the motion will be granted only if good cause is shown for the delay in filing. Motions for modification of issues which are based on new facts or newly discovered facts

[1] See attached Concurring Statement of Commissioner Brown.

shall be filed within 15 days after such facts are discovered by the moving party.

* * * * *

(d) Such motions, opposition thereto, and replies to oppositions shall contain specific allegations of fact sufficient to support the action requested. Such allegations of fact, except for those of which official notice may be taken, shall be supported by affidavits of a person or persons having personal knowledge thereof. The failure to file an opposition or a reply will not necessarily be construed as an admission of any fact or argument contained in a pleading.

3. In § 1.522, paragraph (a)(2) and paragraph (b)(2) are revised, and Note 1 is added as follows:

§ 1.522 Amendment of applications.

(a) * * *

(2) Subject to the provisions of §§ 1.525, 1.571(j), 1.572(b), 1.573(b), and 1.580, mutually exclusive broadcast applications may be amended as a matter of right by the date specified (not less than 30 days after publication) in the FCC's public notice announcing the acceptance for filing of the last-filed mutually exclusive application. Subsequent amendments prior to designation of the proceeding for hearing will be considered only upon a showing of good cause for late filing or pursuant to § 1.65 or § 1.514. Unauthorized or untimely amendments are subject to return by the FCC's staff without consideration.

(b) * * *

(2) In comparative broadcast cases (including comparative renewal proceedings), amendments relating to issues first raised in the designation order may be filed as a matter of right within 30 days after that Order is published in the **Federal Register**, or by a date certain to be specified in the Order.

* * * * *

Note 1—When two or more broadcast applications are tendered for filing which are mutually exclusive with each other but not in conflict with any previously filed applications which have been accepted for filing, the FCC, where appropriate, will announce acceptance of the earliest tendered application and place the later filed application or applications on a subsequent public notice of acceptance for filing in order to establish a deadline for the filing of amendments as a matter of right for all applicants in the group.

4. Section 1.564(c) is revised to read as follows:

§ 1.564 Acceptance of applications.

* * * * *

(c) At regular intervals the FCC will issue a Public Notice listing all applications and major amendments thereto which have been accepted for filing. Pursuant to §§ 1.571(c), 1.572(c), and 1.573(d), such notice shall be published in the **Federal Register** and shall establish a cut-off date (no less than 30 days from the date of publication) for the filing of mutually exclusive applications and petitions to deny. However, no application will be accepted for filing until a statement establishing compliance with the local notice requirements of § 1.580 has been received by the FCC.

5. In § 1.571, paragraph (a) and subparagraph (a)(1) are revised; subparagraph (a)(3) is deleted; paragraph (c) is revised; and paragraph (d) is deleted and designated [reserved].

§ 1.571 Processing of standard broadcast applications.

(a) Applications for AM broadcast facilities are divided into two groups.

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations. A major change is any increase in power, or any change in frequency, hours of operation, or station location: Provided, however, That the FCC may, within 15 days after the acceptance for filing of any other application for modification of facilities, advise the applicant that such application is considered to be one for a major change and therefore is subject to the provisions of §§ 1.580 and 1.1111 pertaining to major changes.

* * * * *

(3) [Deleted]

* * * * *

(c) Applications for new stations or for major changes in the facilities of authorized stations are processed as nearly as possible in the order in which they are filed. Such applications will be placed in the processing line in numerical sequence, and are drawn by the staff for study, the lowest file number first. Thus, the file number determines the order in which the staff's work is begun on a particular application or group of conflicting applications. In order that those applications which are entitled to be grouped for processing may be fixed prior to the time processing of the earliest filed application is begun, the Commission will periodically publish in the **Federal Register** a Public Notice listing applications which have been accepted for filing and announcing a date (not less than 30 days after publication) on which the listed applications will be considered available and ready for processing and by which all mutually exclusive applications and petitions to deny the listed applications must be filed.

(d) [Reserved]

* * * * *

6. Section 1.572(c) is revised to read as follows:

§ 1.572 Processing of television broadcast applications.

* * * * *

(c) Applications for television stations will be processed as nearly as possible in the order in which they are filed. Such applications will be placed in the processing line in numerical sequence, and will be drawn by the staff for study, the lowest file number first. In order that those applications which are entitled to be grouped for processing may be fixed prior to the time processing of the earliest filed application is begun, the FCC will periodically publish in the **Federal Register** a Public Notice listing applications which have been accepted for filing and announcing a date (not less than 30 days after publication) on which the listed applications will be considered available and ready for processing and by which all mutually exclusive applications and petitions to deny the listed applications must be filed.

* * * * *

7. Section 1.573(d) is revised to read as follows:

§ 1.573 Processing of FM and noncommercial educational FM broadcast applications.

* * * * *

(d) Applications for FM broadcast stations will be processed as nearly as possible in the order in which they are filed. Such applications will be placed in the processing line in numerical sequence, and will be drawn by the staff for study, the lowest file number first. In order that those applications which are entitled to be grouped for processing may be fixed prior to the time processing of the earliest filed application is begun, the FCC will periodically publish in the **Federal Register** a Public Notice listing applications which have been accepted for filing and announcing a date (not less than 30 days after publication) on which the listed applications will be considered available and ready for processing and by which all mutually exclusive applications and petitions to deny the listed applications must be filed.

* * * * *

8. In § 1.580, the section title is revised and paragraphs (i) and (j) are deleted

and reserved and redesignated as § 1.584 (see item 9 below).

§ 1.580 Local notice of the filing of broadcast applications.

* * * * *

(i) [Reserved]
(j) [Reserved]

* * * * *

9. Section 1.584 is retained as a Section number, but the title "Pleadings to Specify Issues" is deleted. The new title is "Petitions to Deny" and the new rule text reads as follows:

§ 1.584 Petitions to deny.

(a) Any party in interest may file with the Commission a petition to deny any application (whether as originally filed or if amended so as to require a new file number pursuant to §§ 1.571(j), 1.572(b), 1.573(b) or § 1.574(b)) for which local notice pursuant to § 1.580 is required: *Provided,* Such petitions are filed prior to the day such applications are granted or designated for hearing; but where the FCC issues a public notice pursuant to the provisions of §§ 1.571(c), 1.572(c) or § 1.573(d), establishing a "cut-off" date, such petitions must be filed by the date specified. In the case of applications for renewal of license, petitions to deny may be filed at any time up to the last day for filing mutually exclusive applications under § 1.516(e). Requests for extension of time to file petitions to deny applications for new broadcast stations or major changes in the facilities of existing stations or applications for renewal of license will not be granted unless all parties concerned, including the applicant, consent to such requests, or unless a compelling showing can be made that unusual circumstances make the filing of a timely petition impossible and the granting of an extension warranted.

(b) The applicant may file an opposition to any petition to deny, and the petitioner a reply to such opposition in which allegations of fact or denials thereof shall be supported by affidavit of a person or persons with personal knowledge thereof. The times for filing such oppositions and replies shall be those provided in § 1.45 except that as to a petition to deny an application for renewal of license, an opposition thereto may be filed within 30 days after the petition to deny is filed, and the party that filed the petition to deny may reply to the opposition within 20 days after the opposition is due or within 20 days after the opposition is filed, whichever is longer. The failure to file an opposition or a reply will not necessarily be construed as an admission of any fact or argument contained in a pleading.

(c) Untimely petitions to deny, as well as other pleadings in the nature of a petition to deny, and any other pleadings or supplements which do not lie as a matter of law or are otherwise procedurally defective, are subject to return by the FCC's staff without consideration.

10. In § 1.591, Note 1 is deleted, and paragraphs (b) and (c) are revised to read as follows:

§ 1.591 Grants without hearing of authorizations other than licenses pursuant to construction permits.

* * * * *

(b) In making its determinations pursuant to the provisions of paragraph (a) of this section, the FCC will not consider any other application, or any application if amended so as to require a new file number, as being mutually exclusive or in conflict with the application under consideration unless such other application was substantially complete and tendered for filing by: (1) The close of business on the day preceding the day designated by Public Notice published in the Federal Register as the day the listed application is to be available and ready for processing; or (2) the date prescribed in § 1.516(e) in the case of applications which are mutually exclusive with applications for renewal of license of broadcast stations.

(c) If a petition to deny the application has been filed in accordance with § 1.584 and the FCC makes the grant in accordance with paragraph (a) of this section, the FCC will deny the petition and issue a concise statement setting forth the reasons for denial and disposing of all substantial issues raised by the petition.

Concurring Statement of Commissioner Tyrone Brown

Re: Revised Procedures for the Processing of Contested Broadcast Applications; Amendments of Part 73 of the Commission's Rules

I fully support the thrust of the Commission's action in adopting revised rules and procedures to expedite the processing of contested broadcast applications for new facilities. By adopting the recommendations of the Contractor's Report we will, in substance, simplify and shorten the current cut-off list procedures; eliminate the sending of "deficiency letters" as part of the processing procedures, except where the staff needs further information; restrict the pre-designation voluntary amendment of applications; eliminate the current provision for predesignation issue pleadings; and require pleadings affecting issues to be filed with the Administrative Law Judge after designation.

I applaud the efforts and results of the Contractor, Max Paglin, who has performed yeoman's work and has produced a truly important procedural reform embodied in one of the best written documents I have seen in my tenure as a Commissioner. The current procedures encourage delay and waste of Commission and party resources and also have an adverse impact on applicants and petitioners who do not possess deep pockets. The procedural changes the Contractor recommends can be expected to ameliorate these problems and make a substantial dent in our current backlog of applications for new broadcast facilities. I endorse this part of the "Paglin Report" without reservation.

The second portion of the Contractor's Report causes me some concern and is the impetus for this concurring statement. Under the revised "procedures" adopted today, the Commission changes the groundrules for handling the review of applicants' community ascertainment and financial qualifications showings. Under the new procedures, applicants need only make a threshold showing of substantial compliance with FCC policies and rules to pass initial Commission muster.

Several points are worth emphasizing. First, the procedures and polices we have adopted today apply only to applications for *new* broadcast facilities against which mutually-exclusive applications or petitions to deny are filed. Except to the extent certain filing deadlines are conformed, no changes are intended in the procedures or policies applied to renewal applications.

Second, the requirement of a threshold showing of "substantial compliance" for *financial* showings causes me little concern because the adequacy of such showings is fairly easy to determine and we have been applying a "substantial compliance" test. However, the same is not the case with ascertainment.

At least since the decision in *Voice of Dixie, Inc.* 45 FCC 2d 1027, *recon. denied,* 47 FCC 2d 526 (1974), the Commission has applied a "strict compliance" test to measure the adequacy of ascertainment showings submitted by applicants for new facilities. The procedures adopted today purport to return to the pre-*Voice of Dixie* "substantial compliance" test as a measure of the adequacy of an applicant's ascertainment showing. Based upon the comments made on the Paglin proposals and my understanding of the standards applied before the *Voice of Dixie* case, I would have no problem with reversing that case and returning to a policy of "substantial compliance." In my opinion, the real purpose of ascertainment is to require that broadcasters have contact and dialogue with their communities. The mechanistic approach to ascertainment, and therefore the nit-picking approach to challenging ascertainment, serve no real purpose. Thus substantial compliance with the purpose of ascertainment should be all that we need require.

However, we must make clear what we mean by substantial compliance. There may be some confusion about the standard to be applied by our staff and in the adjudicative process in determining whether there has been substantial compliance. This is so because, while the test is intended to be that

applied before the *Voice of Dixie* decision, the Report and Order adopted today suggests otherwise in at least one passage. In adopting the Contractor's recommendation (with minor modifications) we noted that:

"The test to be used regarding the showing required to reopen the question of the adequacy of the ascertainment survey, by way of motion to enlarge issues, will be limited to *misrepresentation* or *gross omission* of some *decisionally significant* area which would make the survey *totally unacceptable*." (Par. 54; emphasis added).

My initial opinion was that this standard for *review* of the staff's action was one which would permit acceptance of ascertainment showings only minimally complying with the *Primer* and other Commission policies. For if the staff determined that the application substantially complied with our policies (a determination in which "only the applicant and the staff are involved") even if it did not, it seemed to me that a review standard requiring a showing of "misrepresentation or gross omission of some decisionally significant area which would make the survey totally unacceptable" in most instances precluded any further examination of the showing.

However, to the extent that that language suggested a standard other than that which existed prior to *Voice of Dixie*, it is not so intended by the Commission. In discussion at the meeting at which we adopted this Report the staff assured us that the review standard permitted an ALJ to enlarge issues if a showing was made that the applicant's ascertainment survey did not substantially comply with our policies. And the tests for substantial compliance are those applied before the *Voice of Dixie case*. (See *Report and Order*, note 9). Also reassuring are subsequent passages in the Report and Order at paragraph 54: "(W)e will return to the previous body of precedent which identified substantial compliance as being sufficient. These criteria shall be applied *at all levels of the adjudicative process* * * *" (emphasis added).

I am also concerned that insufficient notice was given to interested parties about the change in the Commission's policy regarding the acceptability of ascertainment showings. The focus of the Report and the discussions both outside and within the Commission have been on the procedural aspects of the Report and the efforts to ameliorate the backlog in applications for new broadcast facilities. Since the procedural changes as well as the Commission's reversal of the *Voice of Dixie* policy apply to petitions to deny new applications, I considered urging the Commission to submit the Report for further public comment with a special emphasis put on the ascertainment issue.

I am persuaded, however, that the backlog situation in processing our new applications compels us to move as quickly as possible and that we have technically complied with all notice and comment requirements. Moreover, those interested groups which have not commented in this proceeding but might have done so if it were clear that a change in the ascertainment compliance standard was intended, still have an opportunity to comment by filing for reconsideration of the Commission's action.

One final point. The changes made today are procedural in nature and are not intended to eliminate the substantive ascertainment requirements or the procedural requirements of the *Primer*. *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650 (1971). Nor are they intended to denigrate the requirement of substantial compliance with the *Primer*. Finally they are not intended to affect the ascertainment showings required of renewal applicants who are subject to the renewal *Primer*. *Ascertainment of Community Problems by Renewal Applicants*, 57 FCC 2d 248 (1975), *recon. granted in part*, 61 FCC 2d 1 (1976). The Commission is looking into the substance of ascertainment and the *Primer* requirements in another proceeding. I am sure the Commission intends the staff to apply the existing rules in the interim, and interested parties should be guided accordingly.

[FR Doc. 79-18910 Filed 6-15-79; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Materials Transportation Bureau

General Information, Regulations, and Definitions; Matter Incorporated by Reference

[Docket No. HM-22; Amdt. No. 171-48]

49 CFR Part 171

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to update the reference in 49 CFR 171.7(d)(1) to the ASME Boiler and Pressure Vessel Code in order to recognize the 1977 edition of the ASME Code and the addenda thereto through December 31, 1978.

EFFECTIVE DATE: July 18, 1979.

FOR FURTHER INFORMATION CONTACT: Delmer F. Billings, Standards Division, Office of Hazardous Materials Regulation, Department of Transportation, 2100 Second Street, S.W., Washington, D.C., 20590, telephone 202-755-4902.

SUPPLEMENTARY INFORMATION: On April 23, 1979, the MTB published a notice of proposed rulemaking in the **Federal Register** (44 FR 23880), proposing to update the ASME code reference in § 171.7(d). The basis for this proposal was a petition from the Compressed Gas Association requesting that the reference be updated to reflect current improvements in the standard. The MTB has reviewed the complete standard and concurs with the improvements except for the provisions on ultrasonic testing of welds (paragraph UW-11(a)(7)).

Since publication of this notice, the MTB has not received any comments on this docket. Therefore, the ASME code through 1977 and the addenda published thereto through December 31, 1978, will be referenced in § 171.7(d) with the exception of paragraph UW-11(a)(7) as proposed by the notice.

In consideration of the foregoing, Title 49, Code of Federal Regulations, § 171.7(d)(1) is revised to read as follows:

§ 171.7 Matter incorporated by reference.

* * * * *

(d) * * *

(1) ASME Code means section VIII (Division 1) and IX of the 1977 edition of the "American Society of Mechanical Engineers Boiler and Pressure Vessel Code," and addenda thereto through December 31, 1978, except paragraph UW-11(a)(7) of the code does not apply.

* * * * *

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53 and App. A to Part 1)

Note.—The Materials Transportation Bureau has determined that this final rule will not result in a major economic impact under the terms of Executive Order 12044 and DOT implementing procedures (44 FR 11034), nor an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.). A regulatory evaluation is available in the docket.

Issued in Washington, D. C. On June 7, 1979.

L. D. Santman,
Director, Materials Transportation Bureau.

[FR Doc. 79-18882 Filed 6-15-79; 8:45 am]
BILLING CODE 4910-60-M

Federal Highway Administration

49 CFR Part 395

[BMCS Docket No. MC-86; Amdt. No. 78-6]

Drivers Declared Out of Service

AGENCY: Federal Highway Administration, DOT.

ACTION: Final rule.

SUMMARY: The Federal Motor Carrier Safety Regulations (FMCSR) are being amended by changing the criteria by which a driver may be placed out of service. With some exceptions, upon detection, a driver will be declared out of service for 8 consecutive hours for not having drivers' logs current on the day of examination and the prior 7 consecutive days. In the past, drivers who complied with the request to produce a log and who were found to be

in violation of the hours of service rule were removed from service, while drivers who failed to produce a log were usually given a citation since no out of service criteria were violated. Thus, these drivers were allowed to continue highway operations in a possibly fatigued state. With this change, drivers failing to produce current logs will be placed out of service and not be allowed to continue driving on the highways.

EFFECTIVE DATE: June 18, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald J. Davis, Chief, Driver Requirements Branch, Regulations Division, Bureau of Motor Carrier Safety, [202) 426–9767, or Mr. Gerald M. Tierney, Attorney, Motor Carrier and Highway Safety Law Division, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking (NPRM) was published on March 8, 1979, at 44 FR 12717 setting forth a proposal to declare a driver out of service for 8 consecutive hours for not having produced a driver's log current on the day of examination and the prior 7 consecutive days. An exception was provided in the event that the only failing was not having a log current on the day of examination and the prior day. In those instances, it was proposed that the driver would be given the opportunity to update the logs to the current duty status. Essentially, the earlier proposal is being adopted.

Background

Under prior requirements, drivers who failed to produce logs upon request of a special agent of the Federal Highway Administration (FHWA) were not placed out of service but were merely cited for a violation of the hours of service regulations. Thus, in certain circumstances, the intent of the present hours of service regulations, which are designed to protect the driver and the motoring public by removing fatigued drivers from operating on the highways, was circumvented.

Upon review, several sources indicated that a problem existed in the area relating fatigued drivers, non-current logs and excessive driving times. For instance, the Bureau of Motor Carrier Safety (BMCS) statistics for 1976 and 1977 indicated that a significant percentage of drivers did not have current logs. Of the driver violations found during roadside inspections in the year 1976, 89 percent were categorized as "no log" violations and 11 percent were categorized as "log not current" violations. Similarly, in 1977, 19 percent were categorized as "no log" violations and 13 percent were categorized as "log not current" violations. In addition, it had come to our attention that several States having hours of service requirements also suspected that drivers were exceeding the driving limitations of the States. Moreover, the Department of California Highway Patrol has proposed a statute for introduction regarding drivers' hours of service. The California statute is intended to give a traffic officer authorization to place out of service a driver who does not possess records or who has exceeded the hours of service requirements. The proposed statute which provides for presumption of a violation of driving limits when records are not made available upon demand by authorized personnel should result in placing these drivers out of service for an appropriate rest period.

Comments to the NPRM

Approximately 40 comments were received concerning this proposal. These comments have been carefully considered. Approximately 60 percent of the respondents were in favor of the proposal indicating that this action would improve consistent enforcement of the FMCSR.

The Director believes, on the basis of information provided in this rulemaking, that there is a strong possibility that drivers who do not prepare the driver's log and violate hours of service requirements pose a threat to other users of the highway. The objective of the logging requirements is to permit drivers, carriers, and responsible Federal and State authorities to monitor the hours of service to ensure that drivers do not work or drive for longer periods than are permitted. The FMCSR limit the number of hours a driver may work or drive within any specific period. The purpose of the limitation of hours of service is to remove from the highways the risks to safety posed by a fatigued driver and thus help to ensure that people are not needlessly killed or injured in highway accidents caused by fatigued drivers of commercial trucks and buses. Neither a driver nor a carrier can ensure compliance with the hours of service rules unless there is a continuous record of the time the driver spent on the job. The Regulations require drivers to keep a record of their working and driving time in the form of a driver's log.

Some respondents commented that the proposal would discriminate between classes of drivers. For instance it was explained that self-employed drivers could suffer a direct economic penalty when placed out of service for 8 hours, while a driver employed by a carrier under an hourly rate would suffer no economic loss. The purpose of the proposed rule is not, indiscriminately penalize different classes of drivers monetarily or otherwise, but to remove from the highway those drivers that are likely to be operating in a fatigued condition. The Director is aware that various drivers will be affected differently. However, once a self-employed driver has been placed out of service for not having a driver's log, the proposed rule should serve as a deterrent to future noncompliance of the logging requirements.

Many commenters indicated that placing the drivers out of service would delay the freight being transported for an 8-hour period and indicated that such a delay would pose security problems for most commodities transported, and additional problems in the transportation of perishable goods. Questions were also raised concerning the responsibility for delayed claims filed against the motor carrier. At the present time, the FMCSR provide for two basic out of service actions. One involves placing a motor vehicle out of service for being operated in an imminently hazardous condition. The second involves placing drivers out of service for exceeding the hours of service requirements. When vehicles are placed out of service, the vehicle cannot be operated until designated repairs are accomplished. The driver is free to continue driving as long as the driver does not operate the vehicle declared out of service. When a driver has been placed out of service for violation of the driver out of service rules, the driver may not drive until in compliance with the hours of service requirements. However, the vehicle can be driven by another qualified driver to destination or to any point designated by the motor carrier. The only requirement posed by the current proposal is that the driver who is in violation of the logging requirements not drive until 8 hours off duty have accumulated.

Some respondents indicated that the change was unfair to operating motor carriers since the requirement of preparing a driver's log is basically the responsibility of the driver and placing the driver out of service, which delays the freight, places an undue burden upon the operating motor carrier and for this reason, the proposal should not be adopted. This argument is invalid. The present logging requirements found in §§ 395.8 and 395.9 of the FMCSR make it

clear that the preparation of the driver's logs is a dual responsibility involving the driver and the carrier. The Regulation requires a driver to prepare the log. In addition, the motor carrier has the responsibility to ensure that its drivers prepare the required logs. The driver is in many ways an extension of the motor carrier, and to separate the driver's from the carrier's responsibilities in log preparation is unreasonable. Failure of drivers to prepare logs or falsification of the entries makes both the carrier and the driver liable to prosecution. Affirmative action is required by the motor carrier to ensure that its employees follow the required regulations.

Concern was expressed by some commenters about drivers who do not have their log book with them at the time of the inspection because they are not required to prepare a log or because they may have lost their log book on the current trip. The proposed requirement that a driver be placed out of service for not having a log would only apply to drivers who are required to prepare logs. There are currently exemptions contained in the Safety Regulations for preparation of the driver's log and they are not affected by this change. For example, logs are not required for regularly employed drivers operating within a 50-mile radius of there terminal where they report for work, for certain drivers of lightweight vehicles or for drivers operating in the State of Hawaii. Also, drivers who are used for the first time or intermittently are not required to have logs available for the preceeding 7 days. A driver would not be placed out of service for failure to prepare the log if in one of the exempt categories. A driver who is required to prepare a log and fails to produce one, for any reason, including that the log was lost will be placed out of service.

A driver failing to have a log current on the day of examination and the prior day, but who has completed logs up to that time, will not be placed out of service but will be given the opportunity to prepare the logs to current status prior to continued examination. Several commenters stated for a shorter exception period. One commenter states this exception seemed to minimize the importance of current logs. Another added "If the log examination is made later in the day, the driver could be nearly 48 hours behind. Since the purpose of the log is to monitor actively and remove fatigued drivers from highways, this grant of an exemption period would not be stringent enought to prohibit a driver from failing to keep the log current." In an effort to determine if these comments have merit, it is the BMCS intention to evaluate the effects of this out of service criteria change during the summer months of 1979. If the results of the data so indicate, further rulemaking action will be considered.

One commenter indicated that a driver could be placed in double jeopardy, if the driver did not have logs and was placed out of service first by a Federal agent and then by State authorities which have adopted the FMCSR. This should not happen. Once a driver has been declared out of service by Federal authorities for failure to prepare the log, the driver may not reenter service until having been off duty for 8 consecutive hours and is in compliance with the logging requirements.

It has been requested that further consideration be given to placing drivers out of service who are transporting passengers. A bus driver who is on an extended charter or special operation and is placed out of service will cause undue hardships on passengers by causing a delay in transportation and could create serious problems concerning other factors such as hotel reservations and similar services. When a bus driver is placed out of service, consideration is usually given to the passengers. Bus inspections are normally performed at terminals or other locations where rest facilities are usually available to the passengers. The transportation of passengers, by its very nature, should impose upon the motor carrier and its driver a strong obligation to ensure that its operation is in full compliance. The consequences involving bus accidents cannot be minimized by providing an exemption in this rule by arguing that it may cause inconvenience to passengers. In addition, in 1977, only 6 drivers were cited for failing to prepare a daily log while transporting passengers.

Commenters addressed notification of the carriers in certain instances and questioned whether our policy in this matter has changed. It has not. The authority to declare drivers out of service as specified in § 395.13 authorizes the appropriate representatives of the Federal Highway Administration to notify motor carriers that drivers have been placed out of service. This does not imply that when drivers are placed out of service that the motor carrier will be contacted in each and every instance. It has been the policy of this Administration to notify carriers when their vehicles or drivers have been declared out of service only in specific cases. These instances involved vehicles transporting hazardous materials requiring the vehicle to be attended, vehicles transporting perishable commodities, tank vehicles transporting commodities requiring temperature control, vehicles transporting livestock, and instances which prevent the driver from returning to driving duties during the same day after having been placed out of service.

The majority of comments to this docket support the proposed change. Several drivers were in favor of this rule change. As one driver pointed out, an injustice is done to the conscientious driver who keeps an up-to-date log, if we continue to let other drivers continue in highway operations when only a citation is issued for no log. Another driver commented that this change would eventually eliminate no log drivers or cheaters and would help to remove fatigued drivers from the highway. Also, many carriers strongly supported the changes and indicated that they felt it will help them maintain the type of control necessary to keep operations legal and fatigued drivers off the road. The International Brotherhood of Teamsters applauded the effort and indicated that since we are not changing the basic hours of service requirements there will be no undue burden placed upon carriers or drivers. Also, the American Trucking Association, Inc., supported the change.

Rule Discussion

The FHWA is amending the FMCSR, with respect to the out of service criteria, to declare a driver out of service for failing to have a driver's log current on the day of examination and for the prior 7 consecutive days. An exception will be provided to the above in the event that the only failure is not having a log current on the day of examination and the prior day. In these instances the driver will be given the opportunity to prepare the logs to current status. Provided the driver does not refuse to prepare current logs and no other out of service criteria are violated, the driver may continue to drive.

A driver placed out of service would not be allowed to remain on duty. To the contrary, the driver would be required to be off duty for 8 consecutive hours to have the opportunity to obtain adequate rest before again operating a heavy commercial vehicle on our highways. When applicable, the consecutive 8 hour off duty period may include sleeper berth time.

An exception to this procedure would be invoked, and is provided in the rule change, for drivers transporting hazardous materials subject to § 397.5,

which requires the vehicle to be attended.

To determine the exact nature of the out of service violation, it is required that the driver explain the reason for being placed out of service in the remarks section of the log as provided in § 395.8(o).

This Final Rule is intended to further encourage drivers to maintain current logs and provide the FHWA with a more consistent rule designed to remove the potentially unsafe and fatigued driver from the public highway. A copy of the Final Regulatory Evaluation accompanying this rule, which examines the need for this regulatory action and assesses its potential impacts, is available in the public docket for review. As indicated later in this document, the FHWA has determined that the economic consequences of the Final Rule are not significant.

Accordingly, the Federal Motor Carrier Safety Regulations are amended as follows:

1. 49 CFR 395.13 is revised to read:

§ 395.13 Drivers declared out of service.

(a) Authority to declare drivers Out of Service. Every special agent of the Federal Highway Administration (as defined in Appendix B to this subchapter) is authorized to declare a driver out of service and to notify the motor carrier of that declaration, upon finding at the time and place of examination that the driver has violated the out of service criteria as set forth in paragraph (b) of this section.

(b) *Out of Service critieria.* (1) No driver shall drive or remain on duty in excess of the maximum periods permitted in this part.

(2) No driver, if required to have a driver's log under §§ 395.8 and 395.9, shall fail to have a log current on the day of examination and for the prior 7 consecutive days. Exception: A driver failing only to have possession of a log current on the day of examination and the prior day, but has completed logs up to that time, will be given the opportunity to prepare logs to current status.

(c) *Responsibilities of the motor carrier.* (1) No motor carrier shall:

(i) Require or permit a driver who has been declared out of service to operate a motor vehicle until that driver may lawfully do so under the rules in this part.

(ii) Require a driver who has been declared out of service for failure to prepare a daily log to operate a motor vehicle until that driver has been off duty for 8 consecutive hours and is in compliance with §§ 395.8 and 395.9. The consecutive 8-hour off-duty period may include sleeper berth time.

(2) A motor carrier shall complete the appropriate portion of the form provided and deliver the copy of the form either personally or by mail to the Director, Regional Motor Carrier Safety Office, Federal Highway Administration, at the address specified upon the form within 15 days following the date of examination. If a motor carrier sends the form to the Director by mail, delivery is made upon the date when it, or the envelope containing it, is postmarked.

(d) *Responsibilities of the driver.* (1) No driver who has been declared out of service shall operate a motor vehicle until that driver may lawfully do so under the rules in this Part.

(2) No driver who has been declared out of service, for failing to prepare a driver's log, shall operate a motor vehicle until having been off duty for 8 consecutive hours and is in compliance with §§ 395.8 and 395.9.

(3) A driver to whom a form has been tendered declaring the driver out of service shall within 24 hours thereafter deliver or mail the copy to a person or place designated by motor carrier to receive it.

(4) Section 395.13 does not alter the hazardous materials requirements prescribed in § 397.5 pertaining to attendance and surveillance of motor vehicles.

2. 49 CFR 395.8(o) is amended by adding the following sentence at the end of the present rule:

§ 395.8 Remarks.

(o) * * * Explain the reason for being placed out of service, pursuant to § 395.13.

Note.—The Federal Highway Administration has determined that this document does not contain a significant proposal according to the criteria established by the Department of Transportation pursuant to Executive Order 12044. A regulatory evaluation is available for inspection in the public docket and may be obtained by contacting Mr. Gerald J. Davis of the program office at the address specified above.

(49 U.S.C. 304, 1655(e); 49 CFR 1.48 and 301.60.)

Issued on: June 8, 1979.

Howard L. Anderson,

Associate Administrator for Safety.

[FR Doc. 79-18823 Filed 6-15-79; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

Taking of Marine Mammals Incidental to Commercial Fishing Operations—Permits, Etc.

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Interim final regulation.

SUMMARY: The intent of the amendment is to clarify the period during which observers remain aboard tuna purse seiners by defining the term "completed vessel trip" in regulations governing the taking of marine mammals incidental to tuna purse seine fishing in the eastern tropical Pacific Ocean during 1978, 1979, and 1980.

DATES: This regulation is effective June 18, 1979. Written comments may be submitted on or before July 18, 1979. Requests for a public hearing and justification for such a request must be received by July 9, 1979.

ADDRESSES: Submit comments and hearing requests to the Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street NW., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: William P. Jensen, Marine Mammal Program Manager, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C. 20235, telephone 202-634-7461.

SUPPLEMENTARY INFORMATION: Regulations governing the taking of marine mammals incidental to tuna purse seine fishing in the eastern tropical Pacific Ocean during 1978, 1979, and 1980 limit the incidental mortality of marine mammals permitted under the general permit. Annual mortality is estimated in accordance with methodology published in the Federal Register on October 4, 1976, March 11, 1977, and May 4, 1977 (41FR43723, 42FR13574, and 42FR22573), respectively.

This methodology utilizes kill-per-trip data for completed trips carrying NMFS observers and kill-per-day data reported by radio from observed vessels at sea.

The placement of observers on tuna vessels is designed to obtain a statistically valid sample for estimating total porpoise mortality. One hundred thirty completed trips annually is

considered a valid sample, however, a trip has not been defined for purposes of establishing when a trip is complete. Because of the importance of establishing what constitutes a completed trip, a clarifying definition is being promulgated which obligates a vessel certificate holder to carry an observer until the vessel returns to port and unloads more than 400 tons of any species of tuna or unloads an amount of any species of tuna equivalent to one-half of the vessels carrying capacity or has spent 40 days or more at sea from the date of departure. The regulations also provide that the NMFS regional director may give exemptions to the requirements for good cause.

The clarifying definition is being promulgated to be effective immediately to prevent any misunderstandings that may arise concerning fulfillment of the obligation to carry an observer. The efficient operation of the observer program is critical for monitoring the porpoise quotas. Good cause for waiver of the normal 30 day period between publication and the effective data therefore exists. However, public comment on the regulation will be accepted for 30 days after publication of the definition.

Under Executive Order 12044 (43FR23170) and Department of Commerce Administrative Order 218-7 (44FR2082), the Assistant Administrator for Fisheries has made an initial determination that this is not a significant regulation.

The primary author of this rulemaking is Mr. William P. Jensen, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, (202) 634-7461.

Regulation Promulgation

Accordingly, 50 CFR Chapter II, Part 216 is amended by revising § 216.24(d)(2)(iii)(A) to read as follows:

§ 216.24 Taking and related acts incidental to commercial fishing operations.

* * * * *

(d) * * *
(2) * * *
(iii) * * *

(A) The vessel certificate holder of each certificated vessel, who has been notified via certified letter from the National Marine Fisheries Service that he is required to carry an observer, shall notify the field office, Southwest Region, National Marine Fisheries Service, San Diego, California, telephone 714-293-6540 at least five days in advance of the vessel's departure on a fishing voyage to allow for observer placement. After a fishing voyage is initiated, the vessel certificate holder is obligated to carry an observer until the vessel returns to port and unloads more than 400 tons of any species of tuna or unloads an amount of any species of tuna equivalent to one-half of the vessel's carrying capacity; or has spent 40 days or more at sea from the date of departure. Further, the Regional Director, Southwest Region, may consider special circumstances for exemptions to this definition, provided written requests clearly describing the circumstances are received at least ten (10) days prior to the termination or the initiation of a fishing voyage. A response to the written request will be made by the Regional Director within five (5) days after receipt of the request. A vessel whose vessel certificate holder has failed to comply with the provisions of this section may not engage in fishing operations for which a general permit is required.

* * * * *

Dated: June 11, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-18879 Filed 6-15-79; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 44, No. 118
Monday, June 18, 1979

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

[10 CFR Part 490]

[Docket No. CAS-RM-79-110]

Emergency Building Temperature Restrictions: Notice of Intent Regarding Delegation of Implementation Authority to the States and Allocation of Federal Funds To Meet State Costs

AGENCY: Department of Energy.

ACTION: Notice of Intent.

SUMMARY: On June 1, 1979, the Department of Energy (DOE) published proposed regulations in the Federal Register (44 F.R. 31922) in connection with implementation of the President's "Standby Conservation Plan No. 2, Emergency Building Temperature Restrictions." In that notice DOE stated its intention to delegate to each state governor who requests such delegation a substantial portion of its authority under the Plan. This notice is intended to provide information as to the authorities and functions which DOE proposes to delegate to those states requesting delegation, and the formula by which Federal funds will be provided to the states to which delegation is made to meet the costs of State implementation activities.

DATES: Written comments must be received on or befor June 29, 1979, 4:30 p.m.

ADDRESS: Send comments to Docket Number [CAS-RM-79-110] Margaret Sibley, Conservation and Solar Applications, Department of Energy, 20 Massachusetts Avenue, N.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT:

Henry G. Bartholomew, Office of Buildings and Community Systems, Office of Conservation and Solar Applications, Department of Energy, 20 Massachusetts Avenue, N.W., Room 2221C, Washington, D.C. 20585, (202) 376-4470.

Mary Doyle, Office of General Counsel, 20 Massachusetts Avenue, N.W., Room 2221C, Washington, D.C. 20585, (202) 376-4100.

SUPPLEMENTARY INFORMATION: DOE hereby gives notice of its intent regarding delegation of implementation authority and allocation of Federal funds to the states and territories pursuant to Section 9(c) of "Standby Conservation Plan No. 2, Emergency Building Temperature Restrictions" (the Plan). On June 1, 1979, DOE published in the Federal Register (44 FR 31922) a Notice of Proposed Rulemaking and Public Hearings, containing proposed regulations in connection with implementation of the Plan. In that notice DOE stated its intention to delegate to each state Governor who requests such a delegation and through the states to local governments a substantial portion of its authority under the Plan.

DOE will enter into agreements with each state or territory whose Governor requests delegation of implementation authority. Under these agreements, the Governors will accept delegation of all of the following authorities and functions: (1) public education and outreach to inform all affected building owners and operators of their obligations under DOE regulations implementing the Plan; (2) distribution to building owners and operators of forms and instructions prepared by DOE; (3) response to questions from the public on compliance requirements and use of the forms; (4) selective inspection of buildings for compliance; and (5) compliance inspections in response to complaints of violations received from the public. The agreements may provide that the Governors may redelegate to units of local government some or all of the enumerated authorities and functions.

Requests for delegation of implementation authority may be submitted by letter from the Governor of a state or territory or his delegatee addressed to:

Secretary, Department of Energy, 1000 Independence Avenue, N.W., Washington, D.C. 20585, Attention: Emergency Building Temperature Restrictions Program, Office of Conservation and Solar Applications.

Federal funds in the amount of $6.7 million will be available for distribution to those states and territories to which delegation is made to meet the costs of state and local government activities under the agreements. The formula for allocation of these funds is as follows:

25 percent of the funds will be distributed in equal shares to states requesting delegation and 75 percent of the funds will be apportioned to the states and territories in shares which reflect each state's or territory's population in relation to the total population of the United States. Federal funds will be distributed to the States and territories in the following amounts:

BILLING CODE 6450-01-M

STATE ENFORCEMENT ALLOCATIONS

STATE/ TERRITORY	POPULATION (1978)*	25% EQUAL ALLOCATION TO ALL STATES	75% BASED ON POPULATION (STATES & TERRITORIES)	TOTAL STATE/ TERRITORY ALLOCATION
Alabama	3,742,000	$ 32,843	$84,841	$117,684
Alaska	403,000	32,843	9,137	41,980
Arizona	2,354,000	32,843	53,371	86,214
Arkansas	2,186,000	32,843	49,562	82,405
California	23,294,000	32,843	505,465	538,308
Colorado	2,670,000	32,843	60,536	93,379
Connecticut	3,099,000	32,883	70,263	103,106
Delaware	583,000	32,843	13,218	46,061
District of Columbia	674,000	32,843	15,281	48,124
Florida	8,594,000	32,843	194,848	227,692
Georgia	5,084,000	32,843	115,268	148,111
Hawaii	897,000	32,843	20,337	53,180
Idaho	878,000	32,843	19,907	52,750
Illinois	11,243,000	32,843	254,909	287,752
Indiana	5,374,000	32,843	121,843	154,686
Iowa	2,896,000	32,843	65,660	98,503
Kansas	2,348,000	32,843	53,235	86,078
Kentucky	3,498,000	32,843	79,309	112,152
Louisiana	3,966,008	32,843	89,920	122,763
Maine	1,091,000	32,843	24,736	57,579
Maryland	4,143,000	32,843	93,933	126,776
Massachusetts	5,774,000	32,843	130,912	163,755
Michigan	9,189,000	32,843	208,339	241,182
Minnesota	4,008,000	32,843	90,872	123,715
Mississippi	2,404,000	32,843	54,505	87,348
Missouri	4,836,000	32,843	109,645	142,488
Montana	785,000	32,843	17,798	50,641
Nebraska	1,565,000	32,843	35,483	68,326
Nevada	660,000	32,843	14,964	47,807
New Hampshire	871,000	32,843	19,748	52,591
New Jersey	7,327,000	32,843	166,123	198,966
New Mexico	1,212,000	32,843	27,479	60,322
New York	17,748,000	32,843	402,395	435,238
N.Carolina	5,577,000	32,843	126,446	159,289
North Dakota	652,000	32,843	14,783	47,626
Ohio	10,749,000	32,843	243,709	276,552
Oklahoma	2,880,000	32,843	65,297	98,140
Oregon	2,444,000	32,843	55,412	88,255
Pennsylvania	11,750,000	32,843	266,404	299,247
Rhode Island	935,000	32,843	21,199	54,042
S.Carolina	2,918,000	32,843	66,159	99,002
South Dakota	690,000	32,843	15,644	48,487
Tennessee	4,357,000	32,843	98,785	131,628
Texas	13,014,000	32,843	295,062	327,905
Utah	1,307,000	32,843	29,633	62,476
Vermont	487,000	32,843	11,042	43,885
Virginia	5,148,000	32,843	116,719	149,562
Washington	3,774,000	32,843	85,567	118,410
W. Virginia	1,860,000	32,843	42,171	75,014
Wisconsin	4,679,000	32,843	106,085	138,928
Wyoming	424,000	32,843	9,613	42,456
American Samoa	30,100		682	682
Canal Zone	40,000		2,152	2,152
Guam	95,900		2,174	2,174
Puerto Rico	3,205,000		72,666	72,666
Trust Territories of the Pacific Islands	125,500		2,845	2,845
Virgin Islands	94,900		2,152	2,152
TOTAL	221,632,400	$1,674,993	$5,024,999	$6,699,992

* Territories - 1976; Source: Bureau of Census

BILLING CODE 6450-01-C

If any state or territory does not request delegation of implementation authority, that state's or territory's share of Federal funds will be retained by DOE to meet the cost of Federal implementation and enforcement in that jurisdiction.

Comment is invited on this Notice of Intent regarding delegation of authority and allocation of Federal funds to the states. Interested parties may submit written comments with respect to the proposed action to: Docket Number CAS–RM–79–110, Margaret Sibley, Office of Conservation and Solar Applications, Department of Energy, 20 Massachusetts Avenue, NW., Room 2221C, Washington, D.C. 20585. Comments should be identified on the outside envelope and on the documents submitted with the designation: "Emergency Building Temperature Restrictions: State Delegation." Fifteen copies should be submitted.

All comments received by DOE will be retained by DOE and made available for public inspection in the DOE Reading Room, Room GA–152, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m. Monday through Friday. Comments should be received by June 29, 1979, 4:30 p.m., in order to be considered.

This notice of intent concerns a discretionary activity of DOE and is not a regulatory action for purpose of the notice and comment requirements of the Administration Procedure Act (5 U.S.C. 551) and the Department of Energy Organization Act (42 U.S.C. 7101).

Issued in Washington, D.C. on June 14, 1979.

Kelly C. Sandy III,

Acting Deputy Assistant Secretary, Conservation and Solar Applications.

[FR Doc. 79–18082 Filed 6–15–79; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 79–CE–14]

Transition Area—Kearney, Nebr.; Proposed Alteration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rule Making (NPRM).

SUMMARY: This Notice proposes to alter the 700-foot transition area at Kearney, Nebraska, to provide additional airspace for aircraft executing a new instrument approach procedure to the Kearney, Nebraska Municipal Airport which is based on a Non-Directional Radio Beacon (NDB), a navigational aid being installed 5.13 miles south of the airport by the City of Kearney, Nebraska.

DATES: Comments must be received on or before July 21, 1979.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Chief, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE–530, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Chief, Operations, Procedures and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Benny J. Kirk, Airspace Specialist, Operations, Procedures, and Airspace Branch, Air Traffic Division, ACE–538, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before July 21, 1979, will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedures and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106 or by calling (816) 374–3408. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMs should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Subpart C, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) by altering the 700-foot transition area at Kearney, Nebraska. To enhance airport usage, a new instrument approach procedure is being developed for the Kearney, Nebraska Municipal Airport utilizing an NDB being installed 5.13 miles south of the airport by the City of Kearney, Nebraska. The establishment of an instrument approach procedure based on this navigational aid entails alteration of the transition area at Kearney, Nebraska, at and above 700 feet above ground level (AGL) within which aircraft are provided additional air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Accordingly, Federal Aviation Administration proposes to amend Subpart C, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1979, (44 FR 442) by altering the following transition area:

Kearney, Nebraska

That airspace extending upward from 700 feet above the surface within a 9.5 mile radius of Kearney Municipal Airport (latitude 40°43'37"N, longitude 99°00'04"W.)

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); sec. 6(c), Department of transportation Act (49 U.S.C. 1655(c)); sec. 11.65 of the Federal Aviation Regulations (14 CFR 11.65).)

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Kansas City, Missouri, on June 6, 1979.

C. R. Melugin, Jr.,

Director, Central Region.

FR Doc. 79–18067 Filed 6–15–79; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

[16 CFR Part 1700]

Human Prescription Drugs in Oral Dosage Forms; Proposed Exemption of Potassium Supplements in Effervescent Tablet Form Containing Not More Than 50 Milliequivalents of Potassium

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes for public comment an exemption from child-protection packaging requirements for potassium supplements in the form of individually packaged effervescent tablets each containing not more than 50 milliequivalents of potassium. An exemption for effervescent potassium tablets containing not more than 25 milliequivalents of potassium is currently in effect. The Commission believes that child-protection packaging for the larger dose tablets is unnecessary to protect children from serious illness or injury, based on the absence of past adverse experience with effervescent potassium tablets and on test data indicating that their effervescence inhibits ingestion in dangerous amounts. Mead-Johnson Laboratories petitioned the Commission to take this action.

DATES: Comments, preferably in five copies, on this proposed exemption should be submitted on or before August 17, 1979. Comments and other relevant material received after this date will be considered only to the extent practicable.

If the Commission issues a final regulation concerning the exemption, the Commission proposes that the exemption become effective on the date the final regulation is published in the **Federal Register.**

ADDRESS: Comments should be addressed to the Office of the Secretary, Consumer Product Safety Commission, 1111 18th Street, N.W., Third floor, Washington, D.C. 20207. Copies may be examined in the Office of the Secretary as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Dr. Fred Marozzi, Division of Safety Packaging and Scientific Coordination, Directorate for Engineering and Science, Consumer Product Safety Commission, Washington, D.C. 20207, telephone 301–492–6477.

SUPPLEMENTARY INFORMATION On November 23, 1977, the Consumer Product Safety Commission received a petition (PP 78–1) from Mead-Johnson Laboratories, Evansville, Indiana, requesting an exemption from child-protection packaging requirements for "K-Lyte" double strength tablets. "K-Lyte" double strength is a potassium supplement in effervescent tablet form, each tablet containing 50 milliequivalents (mEq) of potassium. Potassium supplements are generally used to counter potassium deficiencies in the body, caused by use of diuretics, diet deficiencies, or other causes. Overdosages of potassium may result in listlessness, mental confusion, or muscle weakness in the extremities; severe overdosages can result in cardiac arrest.

Potassium supplements containing over 25 mEq of potassium are presently subject to the Commission's child-protection packaging requirements, set forth at 16 CFR 1700.14(a)(10). Potassium supplements such as "K-Lyte" single strength (25 mEq) tablets are currently exempted from these requirements at 16 CFR 1700.14(a)(10)(vi).[1] For the reasons stated below, the Commission has decided to propose an exemption for potassium supplements in individually packaged effervescent tablet form, containing no more than 50 mEq of potassium per tablet. The Commission, therefore, proposes to revise the existing exemption for potassium supplements to set a higher exemption level.

Grounds for Exemption

Mead-Johnson contends that the same grounds which justified an exemption for the "K-Lyte" single strength tablets support the current request. The company bases its petition on studies involving 302 young children exposed to the three flavors of "K-Lyte" single-strength, indicating that the tablet and/or effervescent characteristics of the products are repulsive to children. The company points out that the effervescent formulation is the same in the double strength tablets as it is in the single strength product. Additionally, the company bases its petition on the low acute toxicity of the drug and the absence of any recorded incidents of accidental overdosage of "K-Lyte" single strength by a child during twelve-and-one-half years of marketing experience.

The Mead-Johnson findings as to the lack of past adverse experience with "K-Lyte" single strength tablets have been largely confirmed by the Commission staff. A search of the data sources available to the Commission staff, including the National Electronic Injury Surveillance System; Department of Health, Education, and Welfare (DHEW) Poison Control Statistics, National Clearinghouse for Poison Control Centers; in-depth investigations; and death certificates and consumer complaints on file with the Commission revealed only 2 cases where "K-Lyte" or similar tablets containing potassium salts were ingested. No hospitalizations or symptoms were reported in either of the 2 cases.

The Commission staff also conducted a toxicological evaluation of "K-Lyte" double strength. The staff used the Mead-Johnson data showing that no child among 302 children ingested more than one-half tablet of the single-strength "K-Lyte" (most ingested considerably less) and Dorsey Laboratories data on testing of 200 children where only 1 child ingested more than 1¼ of their 20 mEq potassium tablets (an amount equal to approximately half of a double strength "K-Lyte" tablet). The use of these data is appropriate since "K-Lyte" double strength does not differ from the lower strength supplements in effervescence or taste, the properties which are said to inhibit ingestion. Based upon extrapolations from adult overdosage cases where prominent symptomatology was exhibited (i.e., the ability of the kidney to maintain normal potassium levels had been exceeded), the staff estimated that approximately 10% of an ingested dose of the drug had an additive effect upon the amount of potassium normally maintained in the blood plasma. In other than extreme overdosage situations in which the drug is consumed rapidly, the normally functioning kidney would prevent excess blood potassium levels from developing. Assuming that 10% of any ingested dose would have an additive blood level effect even in the absence of kidney overload, the staff concluded that if accidental ingestion by a child of one-half tablet of "K-Lyte" double strength should occur (i.e., approximately the equivalent of one single-strength tablet), the plasma concentration would not reach a level which would be hazardous.

Furthermore, based upon staff calculations, a 10 Kg child (22 lbs) would have to ingest a minimum of two double strength tablets before physiological effects such as listlessness and muscular

[1] On February 11, 1974, the Commission published a notice in the **Federal Register** (39 FR 5197) suspending the effective date of the child-protection packaging requirements for oral prescription drugs as they applied to potassium supplements which are individually packaged effervescent tablets, each containing not more than 25 milliequivalents of potassium. Elsewhere in this issue of the **Federal Register** the Commission issues a final rule exempting potassium supplements containing not more than 25 mEq of potassium from the child-protection packaging requirements.

weakness of extremities might be expected under these criteria. However, as noted earlier, no child ingested more than the equivalent of ½ double strength tablet, and only 4% of 500 children ingested more than the equivalent of a quarter tablet.

The staff calculations provide for a wide margin of safety since they are based upon a worst case analysis and do not take into consideration the fact that the kidney will rapidly eliminate excess potassium unless there is severe renal insufficiency or an extremely large dose has been ingested very rapidly.

The Commission also solicited the opinion of the Food and Drug Administration (FDA) on the exemption request. Based on the lack of adverse human experience and the deterrent qualities of the effervescence, FDA concluded that the exemption should be granted.

The Commission also solicited comments from the Technical Advisory Committee on Poison Prevention Packaging. Of the 7 members that commented on the petition, 5 recommended granting the exemption and 2 recommended denial, expressing concern for the toxic potential of potassium salts. The five members who recommended granting the petition pointed to the evidence showing children's distaste for the product and the lack of adverse effects reported on the lower strength potassium supplements.

Finding

Based on the lack of adverse human experience reported on the lower strength potassium supplements and the test data indicating that the effervescence of the drug inhibits child ingestion, the Commission finds that this drug in the dosage and form specified does not pose a risk of serious personal illness or injury to children. The Commission notes that while the available potassium is double that of the single strength product, the effervescent properties of the tablets are the same. The Commission emphasizes that this proposed exemption is limited to potassium supplements in individually packaged effervescent tablets, containing not more than 50 mEq of potassium and containing no other substance subject to the requirements for special packaging under 16 CFR 1700.14(a)(10). The applicability of the requirement of special packaging at 16 CFR 1700.14(a)(10) is not affected by this proposal. Products within the scope of this proposal must continue to be in special packaging until the effective date of any final regulation.

Environmental Considerations

The Commission's interim rules for carrying out its responsibilities under the National Environmental Policy Act (see 16 CFR Part 1021; 42 FR 25494) provide that exemptions to an existing standard that do not alter the principal purpose or effect of the standard normally have no potential for affecting the environment and environmental review of exemptions from regulations is, therefore, generally not required (§ 1021.5(b)(1)). The rules also state that environmental review of rules requiring poison prevention packaging is generally not required (1021.5(b)(3)).

With respect to this exemption of potassium supplements in effervescent tablet form from poison prevention packaging, the Commission finds that the rule will have no significant effect on the human environment and that no environmental review is necessary.

Conclusion and Promulgation

Having considered the petition, the studies of child behavior submitted by the petitioner, Poison Control Statistics from the DHEW National Clearinghouse for Poison Control Centers, and other human experience data and medical and scientific literature, and having consulted, pursuant to section 3 of the Poison Prevention Packaging Act (PPPA) of 1970, with the Technical Advisory Committee on Poison Prevention Packaging established in accordance with section 6 of the act, the Consumer Product Safety Commission concludes that an exemption from the special packaging requirements for potassium supplements in effervescent tablet form each containing not more than 50 mEq of potassium should be proposed as set forth below. Accordingly, pursuant to the provisions of the Poison Prevention Packaging Act of 1970 (Pub. L. 91–601, secs. 2(4), 3, 5; 84 Stat. 1670–72; 15 U.S.C. 1471(4), 1472, 1474) and under authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 92–572, sec. 30(a); 86 Stat. 1231; 15 U.S.C. 2079(a)), the Commission proposes that 16 CFR 1700.14 be amended by revising paragraph (a)(10)(vi), as follows (the introductory portion of paragraph (a)(10), although unchanged, is included for context):

§ 1700.14 Substances requiring special packaging.

(a) * * *

(10) *Prescription Drugs.* Any drug for human use that is in a dosage form intended for oral administration and that is required by Federal Law to be dispensed only by or upon an oral or written prescription of a practitioner licensed by law to administer such drug shall be packaged in accordance with the provisions of § 1700.15(a)(b), and (c) except for the following:

(vi) Potassium supplements in individually-packaged effervescent tablet form, each tablet of which contains not more than 50 milliequivalents of potassium.

Dated: June 13, 1979.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 79-18906 Filed 6-15-79; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[18 CFR Part 271]

[Docket RM79-44]

Ceiling Prices; High-Cost Natural Gas

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issued a notice of proposed rulemaking setting forth proposed definitions for natural gas produced from geopressured brine, from coal seams, and from Devonian shale.

DATES: Comments should be filed by July 16, 1979.

ADDRESSES: All findings should reference Docket No. RM79–44 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Philip Yates, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 275–4212.

On December 1, 1978, the Federal Energy Regulatory Commission issued Interim Regulations in Docket No. RM79–3 implementing the Natural Gas Policy Act of 1978 (NGPA) (43 F.R. 56448). Subpart G of Part 271 set forth regulations implementing section 107(a) of the NGPA, to provide incentive prices for deep, high-cost natural gas.

Section 107(b)(2)–(4) also authorized the Commission to establish incentive prices for gas from geopressured brine, occluded natural gas produced from coal seams, gas from Devonian shale, as well as gas produced from other conditions which have been determined by the Commission to present extraordinary

risks or costs. However, due to statutory deadlines imposed by the NGPA, the Commission did not promulgate regulations to implement section 107(b).

The Commission believes that precise definitions for Section 107(c)(2) through (4) are required; i.e., natural gas "produced from geopressurized brine," "from coal seams," and "from Devonian shale." Pursuant to section 121(b) of the NGPA, these categories will no longer be subject to price regulation after the effective date of the incremental pricing rule required by section 201 of the Act. This proposed rule suggests definitions for these categories which would be used to implement the deregulation provisions as well as for pricing determinations if incentive prices for these categories are established. We specifically invite comments on these definitions.

The procedures to be used to determine whether or not gas is subject to the deregulation provisions of section 121(b) of the NGPA will be similar to those now governing determinations of eligibility for prices under sections 102, 103, 107, and 108 of the NGPA. More specifically, applicants will make filings with the appropriate jurisdictional agency for a determination which will be subject to Commission review. Accordingly, notice is hereby given that the Commission intends to prescribe filing requirements similar to those established for other categories in Subpart B of Part 274. Comments are solicited on the specific documents, oath statements, etc. which should be submitted to support an application for determination for the categories covered by this proposal. The Commission will review these submissions and promulgate the filing requirements together with the appropriate definitions.

Interested persons are invited to submit written comments on the proposed regulations to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Comments should reference Docket No. RM79–44 on the outside of the envelope and on all documents submitted to the Commission.

Fifteen (15) copies should be submitted. All comments and related information recevied by the Commission by July 16, 1979, will be considered prior to the promulgation of the final regulations.

(Natural Gas Act, as amended, 15 U.S.C. 717, *et seq.* Public Utility Regulatory Policies Act of 1978, P.L. 95–617, Natural Gas Policy Act of 1978, P.L. 95–621, Department of Energy Organization Act, P.L. 95–91, E.O. 12009, 43 FR 46267).

In consideration of the foregoing, it is proposed to amend Part 271 of subchapter H, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

1. Subpart G of Part 271 is amended by adding the following sections:

§ 271.710 Definition of "natural gas produced from geopressured brine."

Natural gas produced from geopressured brine" means: natural gas dissolved insubsurface brine aquifers with reservoir geopressures substantially in excess of normal saltwater hydrostatic pressures, such geopressures being due, in part, to the formation waters bearing a portion of the weight of the sedimentary over overburden.

§ 271.720 Definition of "occluded natural gas produced from coal seams."

"Occluded natural gas produced from coal seams" means: natural gas released during a mechanical degradation process from entrapment between the seams and in the micropores of beds of coal.

§ 271.730 Definition of "natural gas produced from Devonian shale."

Natural gas "produced from Devonian shale" means: natural gas produced from the fractures, micropores and bedding planes of shales deposited during the Paleozoic Devonian Period as generally found in the subsurface of the Applachian Basin and in surface outcrops around its periphery. For the purpose of this definition, Devonian shale is defined as that shale stratigraphic interval that lies between the base on the Mississippian Berea Sand or, if absent, the base of the Osage Series, and the top of the Onondaga limestone formation or its chert equivalent, the top of the Hunton group of carbonates.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18963 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RM79–40]

[18 CFR Part 281]

Procedures for Evaluating the Economic Practicability and Reasonable Availability of Alternative Boiler Fuel for Larger Boiler Facilities

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Clarification.

SUMMARY: In the Federal Register of May 8, 1979 (44 FR 26894), the Federal Energy Regulatory Commission published a proposed rule (18 CFR Part 281, Subpart C) for determining when alternative boiler fuel is available for essential agricultural users. That proposal included a proposed deadline of June 15, 1979, by which users would be required to file petitions for rulemaking. In response to several inquiries about the June 15 deadline, the Commission wishes to emphasize that the requirement to file petitions for rulemaking by June 15 is nothing more than a proposal at this point. Therefore, these petitions need not be filed. In addition, the provision in final regulations published in the Federal Register of May 8, 1979 (44 FR 26855), which refers to this same requirement, has no present effect since Subpart C of Part 281 has not been issued as a final rule.

FOR FURTHER INFORMATION CONTACT: Mary Jane Reynolds, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 8000, Washington, D.C., 20426, (202) 275–4283.

June 8, 1979.

SUPPLEMENTARY INFORMATION: The Commission has had inquiries concerning the proposed filing requirements contained in its proposed rule for determining when alternative boiler fuel is available for essential agricultural users (Docket No. RM79–40). It is emphasized that the proposed deadline of June 15, 1979, by which users would be required to file petitions for rulemaking, is nothing more than a proposal at this point. All of the provisions of the proposed rule, including all filing dates, are subject to reevaluation by the Commission prior to the issuance of a final rule. No such final rule has been issued to date.

The Commission also has had a number of inquiries concerning the filing requirements of § 281.211(b)(1)(ii)(D) of its Final Regulation for the Implementation of Section 401 of the Natural Gas Policy Act (Order No. 29, Docket No. RM79–15, May 2, 1979).[1] That section would require an essential agricultural user "to which Subpart C applies" to file a copy of its petition for alternative fuel determination along with a request for classification of its

[1] On May 23, 1979, the American Bakers Association, the American Meat Institute, and the National Milk Producers Federation filed a joint request with the Commission for extension of time for the submitting of copies of petitions for alternate fuel determination.

essential agricultural use requirements as priority 2 entitlements.

Section 281.211(b)(1) requires these requests for classifications as priority 2 entitlements to be filed by June 15, 1979.

The "Subpart C" referred to is that part of the Commission's regulations being considered in Docket No. RM79–40. Since no rule has yet been issued in that docket, Section 281.211(b)(1)(ii)(D) has no present effect concerning requests for classification otherwise required by § 281.211(b)(1). Because "Subpart C" has not yet been issued, essential agricultural users filing requests under § 281.211(b)(1) are not presently required to file accompanying copies of petitions for alternate fuel determinations.

Accordingly, all interstate natural gas pipelines should consider informing their customers that June 15, 1979, is only a proposed deadline for filing petitions for alternate fuel determinations, that it is not yet in effect, and that it may be modified from the date proposed in Docket No. RM79–40, depending on what final rule is eventually issued. The pipelines should also inform their customers that 18 CFR § 281.211(b)(1)(ii)(D) does not yet affect any filings by essential agricultural users, since the "Subpart C", to which that section refers, has not yet been enacted. Finally, the pipelines should consider requesting that their distributor customers pass on to their essential agricultural customers (end-users) this clarification of the proposed rule in Docket No. RM 79–40 and the final rule in Docket No. RM79–15.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18788 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

VETERANS ADMINISTRATION

[38 CFR Ch. I]

Improving Government Regulations; Semiannual Agenda

AGENCY: Veterans Administration.

ACTION: Semiannual agenda of regulations, significant and nonsignificant, under development or review.

SUMMARY: This agenda announces the regulations, both significant and nonsignificant, that the Veterans Administration will have under development and review during the 6-month period from June 18, 1979 through December 16, 1979. The Veterans Administration's purpose in publishing this agenda is to give the public notice for comment on those regulations under development or review during this 6-month period.

DATE: Comments must be received on or before August 17, 1979.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420.

FOR FUTHER INFORMATION CONTACT: Mr. W.E. Stewart, Management Services (61), 810 Vermont Avenue, NW., Washington, DC 20420, (202–389–3770).

SUPPLEMENTARY INFORMATION: Comments should be addressed to Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington DC 20420. All written comments will be available for public inspection until August 27, 1979, at the above address, room 132, between the hours of 8 am and 4:30 pm Monday through Friday (except holidays). Persons visiting the VA Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit (271A) in room 132. Persons visiting or calling VA field stations will be informed that the records are available for inspection only in Central Office.

Executive Order 12044, "Improving Government Regulations" requires that executive agencies publish, every 6 months, in the **Federal Register** a semiannual agenda of regulations under development and review. The Veterans Administration's next semiannual agenda of regulations will be published in the December 17, 1979 issue of the **Federal Register.**

Approved: June 11, 1979.

By direction of the Administrator.

Rufus H. Wilson,

Deputy Administrator.

Legal authority	Title	Brief description	Knowledge official
	SIGNIFICANT REGULATIONS PROPOSED OR UNDER DEVELOPMENT		
Pub. L. 94–581, Veterans Omnibus Health Care Act of 1976, 10–21–76.	Protection of Patient Rights	Provides for VA policy dealing with informed patient consent related to all medical and prosthetic research, and to the maximum extent practicable, to all patient care furnished by VA health care facilities.	J. F. Beckenstein, (800) 389–3785.
Pub. L. 94–581	Mental Health Services	Provides for furnishing certain mental health services for members of the family of a veteran or of persons eligible for care under VAR 6054.	Do.
Pub. L. 94–581	Priorities for Medical Services	Provides a priority order for furnishing medical services to eligible veterans.	Do.
Pub. L. 94–581	Immunizations Under National Programs.	Provides authority for administering vaccines for immunizations as part of a national immunization program to veterans receiving care for any disability in a VA health care facility.	Do.
Pub. L. 94–581	Obtaining Vehicles for Special Driving Training Courses.	Provides for obtaining vehicles for driver training.	Do.
Pub. L. 94–581	Post Hospital Outpatient Dental	Provides for furnishing of outpatient dental care which is reasonably necessary to complete treatment of a non-service-connected disability which was begun while the veteran was receiving VA authorized hospital care.	Do.
Pub. L. 94–581	Prerequisites for Payments to State Homes.	Establishes prerequisites for payments or grants to state homes.	Do.
Pub. L. 95–202, G.I. Bill Improvement Act of 1977, 11–23–77.	Duty Periods Defined	Provides authority for furnishing VA medical benefits to persons who served as Women's Air Forces Service Pilots (WASPS) when the Secretary of Defense determines that service is considered active duty and issues the person a discharge from such service under honorable conditions.	Do.
Pub. L. 95–202	G.I. Bill Improvement Act and Post-Vietnam Era Veterans Educational Assistance Act.	To amend and augment appropriate VA Regulations to implement provisions of the G.I. Bill Improvement Act of 1977 and to adjust the education loan program.	June C. Schaeffer, (202) 389–3062.
Pub. L. 94–502, Veterans' Education and Employment Assistance Act of 1976, 10–15–76.	Post-Vietnam Era Veterans' Educational Assistance.	To provide joint DoD/VA regulations to implement those provisions of Pub. L. 94–502, which concern a voluntary education program for service members and veterans.	Do.
Pub. L. 95–476, Veterans' Housing Benefits Act of 1978, 10–18–78 and 38 U.S.C. 1810(e)(4).	Energy Conservation Home Improvement Loan Regulations and Home Improvement Loan Regulations for Alterations, Improvements, or Repairs.	To establish a home improvement loan program for energy conservation improvements including solar energy improvements and to revise the present home improvement loan program for alterations, improvements or repairs.	George D. Moorman, (202) 389–3042.

Legal authority	Title	Brief description	Knowledge official
SIGNIFICANT REGULATIONS PROPOSED OR UNDER DEVELOPMENT—Continued			
Pub. L. 95-476	Condominum Loan Regulations	To amend VA Regulations to include the Criteria for VA approval of existing, proposed, and converted condominium developments or projects.	Do.
Pub. L. 95-476	State Cemetery Grants	Authorizes a program of grants assistance to states for the establishment, expansion, and improvement of State veterans cemeteries.	C. W. Eyman, (202) 389-2313.
Pub. L. 95-521, Ethics in Government Act of 1978, 10-26-78.	Financial Disclosure for Executive Personnel.	Will require Federal employees in grades GS-16 and above to disclose in great detail each year their income, assets, debts, any gifts worth more than $250 not from their relatives and considerable other financial information.	Charles M. Johnston, (202) 389-3761.
(Listed in December 18, 1978, Semiannual Agenda of Regulations—These regulations are still under development and responsibility for them has been shifted to the office of the General Counsel.)			
SIGNIFICANT REGULATIONS SCHEDULED FOR REVIEW			
38 CFR 14.620	Power of Attorney and Delegation of Authority.	The procedures used by VA to delegate and record the authority exercised by VA officials in real estate transactions will be reviewed to reduce paperwork and improve efficiency.	James P. Kane, (202) 389-2189.
38 CFR 17.100	Transportation of Claimants and Beneficiaries.	Revises the conditions under which travel payment or reimbursement may be made by specifying that payment shall not be made unless certain requirements are met.	J. F. Fleckenstein, (202) 389-3785.
38 CFR 17.50b	Use of Public or Private Hospitals for Veterans.	Extends authority for furnishing hospital care on a contract basis in public or private hospitals in the Commonwealth of Puerto Rico and other possessions through December 31, 1981.	Do.
38 CFR21.1-21.735	Vocational Rehabilitation	To improve and modernize the Vocational Rehabilitation Program.	June C. Schaeffer, (202) 389-2092.
38 CFR 36.4300-36.4369	Loan Guaranty—Guaranty or Insurance of Home Loans to veterans.	Sets forth basic requirements for loan origination, loan service, and loan termination of VA guaranteed and insured home and condominium loans, and specifies the rights, duties and obligations of veterans, lenders, holders, builders, and other entities engaged in activities relating to the VA guaranteed and insured loan program.	George D. Moerman, (202) 389-3042.
(Listed in Semiannual Agenda Dated December 18, 1978—Review is continuing.)			
NON-SIGNIFICANT REGULATIONS PROPOSED OR UNDER DEVELOPMENT			
38 CFR 36.4275, 4315, 4600.	Partial payments made by obligors on VA home, mobile home and vendee loans.	To establish regulatory requirements in the home, mobile home and vendee loan regulations governing holder rights and responsibilities when holder receives a partial payment from an obligor.	Raymond L. Brodie, (202) 389-3668.
38 CFR 36.4263	Repairs to Repossessed Mobile Home Units.	To require holders to obtain VA prior approval of repairs to a repossessed mobile home unit if the repairs will cost more than $400.	Do.
38 CFR 36.4313	Attorney Fees	To increase the allowable attorney fees which may be paid to an attorney handling the foreclosure of a VA guaranteed or insured home or condominium loan.	Do.
38 CFR 36.4303	Reporting requirements on VA guaranteed and insured home and condominium loans.	To increase the allowable number of days which a lender may timely report a fully disbursed home or condominium loan to the VA and request a Certificate of Guaranty or Insurance.	George D. Moerman, (202) 389-3042.
NON-SIGNIFICANT REGULATIONS SCHEDULED FOR REVIEW			
38 CFR 1.450-1.455	Investigation	Covers investigation policies, jurisdiction, and regulations, pertaining to Central Office investigations.	William L. Rettew, (202) 389-3093.

(A radical change in subject regulations is required because of recent IG legislation. Therefore, information printed in the Semiannual Agenda of Regulations dated December 18, 1978, remains applicable.)

Legal authority	Title	Brief description	Knowledge official
	NON-SIGNIFICANT REGULATIONS SCHEDULED FOR REVIEW—Continued		
38 U.S.C. 210(c)	Applicability of Title VI of the Civil Rights Act.	Indicate that payment of VA burial benefits is subject to Title VI of the Civil Rights Act.	T. H. Spindle, (202) 389–3005.
38 CFR 3.12	Amendment of character of discharge rules.	Elimination, in most cases, of homosexual acts as grounds for considering other than honorable discharge to have been issued under dishonorable conditions.	Do.
38 CFR 3.57	Age of Recognition of adopted child or stepchild.	Eliminate present requirement that adoption or stepchild status must have occurred prior to age 18 before adopted or stepchild can be recognized as a child of a veteran.	Do.
38 CFR 3.310	Presumption that cardiovascular disease is service-connected in veterans with certain service-connected lower extremity amputation or amputations.	Ischemic heart disease or other cardiovascular disease developing in a veteran who has a service-connected amputation of one lower extremity at or above the knee or service-connected amputations of both lower extremities at or above the ankles.	Do.
38 CFR 3.401(a)	Effective date of award of aid and attendance or housebound benefits.	Amend current effective date regulations to clarify when an award of aid and attendance or housebound benefits is effective.	Do.
(Listed in Semiannual Agenda dated December 6, 1978—Review is continuing.)			
38 CFR 3.951	Twenty year rating protection	Amend current 20 year disability rating protection to extend protection only when; veteran has been in receipt of monetary award of 20 or more years.	Do.
38 CFR 6.79, 6.80, and 6.88.	United States Government Life Insurance Reinstatement.	Change in job titles to Assistant Director for Insurance. Make the necessary gender changes.	Murray Zuckerman, (215) 488–5733.
38 CFR 6.90	Physical Examinations and Inspections.	Enables a physician's assistant to make certain examinations for insurance purposes. Make the necessary gender changes.	Do.
38 CFR 8.0	National Service Life Insurance Eligibility.	To include the Modified Life at Age 70 plan. Make the necessary gender changes.	Do.
38 CFR 8.1	Definition of and criteria for "good health".	To make the required gender changes	Do.
38 CFR 8.3	Premiums	To include the 20-Payment Life plan where appropriate.	Do.
38 CFR 8.24	Application and Medical Evidence.	Change in job title to Assistant Director for Insurance. Make the necessary gender changes.	Do.
38 CFR 8.27	Cash value	States how long paid-up additions must be in force for cash values.	Do.
38 CFR 8.29	Extended Term and Paid-Up Insurance.	To make the necessary changes for the Modified Life at Age 70 plan.	Do.
38 CFR 8.33–8.36	Change in Plan	To make the necessary changes for the Modified Life at Age 70 plan and 20-Payment Life plan. Make the necessary gender changes.	Do.
38 CFR 8.64 and 8.65	Examinations	Enables a physician's assistant under certain conditions to make an examination. Changes the title to Director for the head of a regional office. Necessary gender changes made.	Do.
38 CFR 8.70	Claims Alleging Insurance where there is no Application for Insurance on file.	Changes the title of person charged with making original determinations as to valid contracts.	Do.
38 CFR 8.99c	Total Disability Income Provisions.	Provides for updated pamphlets dealing with premiums for the Total Disability Income Provisions. Add the 20-Payment Life plan where appropriate.	Do.
38 CFR 8.100	Insurance Provided by Special Legislation.	Makes the required gender changes	Do.
38 CFR 8.102	National Service Life Insurance Appropriations.	Provides for the 20-Payment Life plan where appropriate.	Do.
38 CFR 8.103	National Service Life Insurance Nonparticipating Funds.	Provides for the 20-Payment Life plan where appropriate. Makes the necessary gender changes.	Do.
38 CFR 8.106	National Service Life Insurance Policy Forms.	Updates the applicable forms. Includes the modified Life at Age 70 plan and the 20-Payment Life plan where appropriate.	Do.
38 CFR 8.110–8.113b	National Service Life Insurance issued on or after April 25, 1951.	Includes the Modified Life at Age 70 plan where appropriate. Makes the necessary gender changes.	Do.

Legal authority	Title	Brief description	Knowledge official
	NON-SIGNIFICANT REGULATIONS SCHEDULED FOR REVIEW—Continued		
38 CFR 13.1-13.111	Veterans Assistance—DVB Fiduciary Activities.	Administration of benefits due to incompetent adult beneficiaries or minors.	Charles F. Lee, (202) 389-3643.
(Listed in Semiannual Agenda dated December 8, 1978—Review is continuing.)			
38 CFR 14.633	Limitation of Recognition	To provide for suspension of agents and attorneys after notice and opportunity for hearing.	Martin D. Gusow, (202) 389-2440.
38 CFR 17.30	Definitions and Active Duty	Redefines the terms "Domiciliary Care," "Nursing Home Care," "Rehabilitative Services," and "VA Facility," and deletes the requirement of war service in determining a veteran's eligibility for state home care.	J. F. Fleckenstein, (202) 389-3785.
38 CFR 17.31	Duty Periods Defined	Provides for a change in title of organization from Coast and Geodetic Survey to National Oceanic and Atmospheric Administration.	Do.
38 CFR 17.38	Hospital or Nursing Home Care at Veterans' Memorial Hospital, Philippines.	Amends the VA regulation to delete the requirement of war service for United States veterans in the determination of veteran's eligibility for care of nonservice-connected disabilities at Veterans' Memorial Hospital, Manila, PI.	Do.
38 CFR 17.47	Eligibility for Hospital, Domiciliary, or Nursing Home Care or Persons Discharged or Released From Active Military, Naval or Air Service.	Deletes the requirements of war service in the determination of veterans eligibility for domiciliary care and deleted references to transportation expenses now contained in VA Regulation 6100.	Do.
38 CFR 17.48	Considerations Applicable in Determining Eligibility for Hospital or Domiciliary Care.	Adds "Nursing Home" to the title, deletes reference to transportation expenses, and deletes the word "exclusive" in referring to health care facilities over which the Administrator has control.	Do.
38 CFR 17.50b	Use of Public or Private Hospitals for Veterans.	Provides that veterans hospitalized at government facilities with which the Administrator contracts may be transferred to a public or private hospital if they develop a need for emergency treatment of a condition which poses a serious threat to the veteran's life or health.	Do.
38 CFR 17.51	Use of Community Nursing Homes.	Increases the maximum percent of the cost of Community Nursing Home Care reimbursable by the VA.	Do.
38 CFR 17.54	Medical Care for Survivors and Dependents of Certain Veterans.	Extends medical care benefits to the spouse or child of a veteran who, at the time of death, had a total disability, permanent in nature, resulting from a service-connected disability.	Do.
38 CFR 17.60	Outpatient Care for Eligible Persons.	Provides for medical services within the limits of VA facilities to obviate the need for hospital care. Provides for furnishing certain home health services. Limits the duration of post-hospital care. Provides for furnishing outpatient care for any condition, except dental, for those veterans rated as 50% or more for a service-connected disability.	Do.
38 CFR 17.98	Authority to Approve Sharing Agreements, Contracts for Scarce Medical Specialists Services and Contracts for Other medical Services.	Permits VA contracts with schools and colleges of podiatry and optometry for scarce medical specialist services.	Do.
38 CFR 17.165 and 17.165c.	Recognition of a State Home	Deletes the requirement of war service in the determination of veterans' eligibility for state home care.	Do.
38 CFR 17.166 and 17.166b.	Aid for Domiciliary Care and Aid for Hospital Care.	Deletes the requirement of war service in the determination of veterans' eligibility for state home care.	Do.
38 CFR 17.166c	Amount of Aid Payable	Revises the amount of aid payable to state homes.	Do.
38 CFR 17.210	Sharing Specialized Medical Resources.	Specifies that charges for services provided to Medicare beneficiaries under a sharing agreement will be at rates prescribed by the Secretary of Health, Education and Welfare, after consultation with the Administrator	Do.

Legal authority	Title	Brief description	Knowledge official
	NON-SIGNIFICANT REGULATIONS SCHEDULED FOR REVIEW—Continued		
38 CFR 18.1–18.3, 18a.1–18a.5, 18b.1–18b.93.	Veterans Assistance—Civil Rights.	Outlines VA's responsibility in enforcing non-discrimination in federally assisted programs/effectuation of Title VI, Civil Rights Act of 1964.	Melvin T. Jackson, (202) 389–2366.
(Published in the Federal Register on 4-26-79, were proposed rules 38 CFR 18c.1 et. seq. (subparts A through F and Appendix A); Federally Assisted Education Programs; Non-discrimination on the Basis of Sex. The continuing review of these regulations will implement Title IX of the Education Amendments of 1972 (Pub. L. 92-318, 6-27-72), enabling the Veterans Administration to enforce the law prohibiting sex discrimination in education programs and activities which receive or benefit from financial assistance.)			
38 CFR 19.1–19.5	General Appellate Regulations	General appellate jurisdiction, delegation of authority, subject matter of appeals, disclosure of information, restrictions on payments.	Jon Oosthoek, (202) 389–2976.
38 CFR 19.101–19.180	Rules 1–68	Rules of Practice for the Board of Veterans Appeals.	Do.

[FR Doc. 79-18940 Filed 6-15-79; 8:45 am]
BILLING CODE 8320-01-M

[38 CFR Part 1]

Regional Office Committees on Waivers and Compromises

AGENCY: Veterans Administration.

ACTION: Proposed Regulations.

SUMMARY: The regulations are revised for purposes of overall clarification. Revision is also made to reflect additions to, and deletions from, the jurisdiction of the regional office Committees on Waivers and Compromises.

DATES: Comments must be received on or before July 18, 1979. It is proposed to make these regulations effective on the date of final approval.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420. Comments will be available for inspection at the address shown above during normal business hours until July 30, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Peter T. Mulhern (047C5), Waivers and Compromises Division, Office of the Controller, Veterans Administration, Washington, DC 20420, (202–389–3405).

SUPPLEMENTARY INFORMATION: This revision of 38 CFR 1.955 through 1.970 provides overall clarification. In addition, the Committee is now granted authority to consider work study and education loan default debts for waiver of collection. Authority to consider school liability questions is removed from Committee jurisdiction. Refund policy is clarified concerning recouped overpayments of erroneous pay and allowances and, also, the date of recovery is established where recoupment is made from a running award. The Chief of the Fiscal activity and the Chief, Centralized Accounts Receivable Division are given authority in certain instances to accept or reject compromise offers on other than loan guaranty program debts, regardless of whether or not there has been a prior denial of waiver. The Chief, Centralized Accounts Receivable Division is now given authority to suspend or terminate collection on all debts within the Centralized Accounts Receivable Division's jurisdiction, not in excess of $20,000, exclusive of interest.

Additional Comment Information

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Administrator of Veterans Affairs (271A), Veterans' Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 am and 4:30 pm Monday through Friday (except holidays) until July 30, 1979. Any person visiting Central Office for the purpose of inspecting comments will be received by the Central Office Veterans Services Unit in room 132. Visitors to any VA field station will be informed that records are available for inspection only in Central Office and furnished the address and the above room number.

Approved: June 11, 1979.

By direction of the Administrator.

Rufus H. Wilson,
Deputy Administrator.

1. The center title is changed and § 1.955 is revised to read as follows:

Regional Office Committees on Waivers and Compromises

§ 1.955 Regional office Committees on Waivers and Compromises.

(a) *Delegation of authority and establishment.* (1) Sections 1.955 et seq. are issued to implement 38 U.S.C. 1820(a)(4) and 2102, 31 U.S.C. 951–953 and 5 U.S.C. 5584. The duties, delegations of authority and all actions required of the Committee on Waivers and Compromises, are to be accomplished under the direction of, and authority vested in, the Director of the regional office.

(2) There is established in each regional office, a Committee on Waivers and Compromises to perform the duties and assume the responsibilities delegated by §§ 1.955 and 1.957. The term "regional office", as used in §§ 1.955 et seq., includes VA Medical and Regional Office Centers and VA Centers where such are established.

(b) *Committee on Waivers and Compromises*—(1) *Composition.* The Committee shall consist of a Chairperson and five members at regional offices having loan guaranty activities or a Chairperson and four members at other regional offices. Members shall be selected so that in each of the debt claims activities of compensation, pension, education, insurance, loan guaranty (at offices having such activities), and finance, there is at least one member with special competence. An alternate Chairperson and an unlimited number of alternate members may be designated and used in place of Committee member(s), or as panel members (see paragraph (c) of this section), whenever needed.

(2) *Selection.* The Director shall designate the employees to serve as Chairperson, members and alternates. Except upon specific authorization of the Chief Benefits Director, when workload warrants a full-time committee, such designation will be part-time additional duty upon call of the Chairperson.

(3) *Control and staff.* The Division Chief of the Fiscal activity is accountable for the administrative control of the Committee functions. The quality control of the Committee and its professional and clerical staff is the responsibility of the Chairperson.

(4) *Overall control.* The Controller is delegated complete management authority, including planning, policy formulation, control, coordination, supervision and evaluation of Committee operations.

(c) *Panels.* When a claim is properly referred to the Committee, the Chairperson shall ordinarily designate from members and/or alternates, a panel of three (of whom the Chairperson may be one), to consider and determine the action to be taken. One person from this panel shall be specially qualified in the program field in which the debt arose. If their panel decision is unanimous, it will be the Committee decision. Otherwise, the case will be decided by the entire membership of the Committee (i.e., either six or five persons as provided in paragraph (b)(1) of this section) and the majority vote of the Committee shall determine the decision. In such cases the Chairperson shall not vote except when necessary on four-member committees to break a tie.

(d) *Single signature authority.* Where a request is for waiver of collection of a debt of $500 or less, exclusive of interest, the Chairperson shall designate from members and/or alternates one person, with special competence in the program area where the debt arose, to consider the request. His/her signature alone to the decision will suffice. In compromise cases, however, three-person panels are always required regardless of the amount of the debt. (38 U.S.C. 210(c)(1))

2. Section 1.956 is amended as follows:

(a) By adding the words "or her" before the word "discretion" and adding the legal citation "(38 U.S.C. 210(c)(1))" at the end of paragraph (b).

(b) By revising the introductory portion of paragraph (a) and paragraph (a)(1)(i) to read as follows:

§ 1.956 Jurisdiction.

(a) The regional office Committees are authorized, except as to determinations under § 2.6(e)(4)(i) of this chapter where applicable, to consider and determine as limited in §§ 1.955 et. seq., settlement, compromise and/or waiver concerning the following debts and overpayments:

(1) Arising out of operations of the Department of Veterans Benefits:

(i) Overpayment or erroneous payments of pension, compensation, dependency and indemnity compensation, burial allowances, plot allowance, subsistence allowance, education (includes debts from work study and education loan defaults as well as from other overpayments of educational assistance benefits) or insurance benefits, clothing allowance and automobile or other conveyance and adaptive equipment allowances.

* * * * *

3. Sections 1.957, 1.958, 1.959, and 1.960 are revised to read as follows:

§ 1.957 Committee authority.

(a) *Regional office committee.* On matters covered in § 1.956, the regional office Committee is authorized to determine the following issues:

(1) *Waivers.* A decision may be rendered to grant or deny waiver of collection of a debt in any amount (except for erroneous payment of pay and allowances as explained in this subparagraph) in the following overpayment categories:

(i) Loan guaranty program (38 U.S.C. 3102(b)). Committees may consider waiver of the indebtedness of a veteran or spouse resulting from (A) the payment of a claim under the guaranty or insurance of loans, (B) the liquidation of direct loans, (C) the liquidation of loans acquired under § 36.4318, and (D) the liquidation of vendee accounts. The phrase "veteran or spouse" includes a veteran-borrower, veteran-transferee, a veteran-purchaser on a vendee account, a former spouse or surviving spouse of a veteran.

(ii) Other than loan guaranty program. (38 U.S.C. 3102(a))

(iii) Services erroneously furnished. (§ 17.62(a))

(iv) Erroneous payment of pay and allowances. (5 U.S.C. 5584) Overpayments in this category may be considered for waiver by the Committee only if $500 or less.

(2) *Compromises*—(i) *Loan program debts.* Accept or reject a compromise offer irrespective of the amount of the debt (loan guaranty matters under 38 U.S.C. ch. 37, are unlimited as to amount).

(ii) *Other than loan program debts (38 U.S.C. 951–953).* (a) Accept or reject a compromise offer on a debt which exceeds $1,000 but which is not over $20,000 (both amounts exclusive of interest).

(b) Accept or reject a compromise offer on a debt of $1,000 or less, exclusive of interest, which is not disposed of by the Chief, Fiscal activity or the Chief, Centralized Accounts Receivable Division pursuant to paragraph (b) of this section.

(3) *Breached career residency contracts.* Final settlement of any breached career residency contract in which terms are different than those provided in the contract, which will result in the payment of less than liquidated value or in an extension of time in which to pay damages.

(b) *Chief of the Fiscal Activity and the Chief, Centralized Accounts Receivable Division.* The Chief of the Fiscal activity at both Department of Veterans Benefits and Department of Medicine and Surgery offices and the Chief, Centralized Accounts Receivable Division have authority, as to debts arising within their jurisdictions, to:

(1) Suspend or terminate collection action on all debts of $20,000 or less, exclusive of interest.

(2) On other than loan guaranty program debts under 38 U.S.C. chapter 37, accept compromise offers of 50 percent or more of a total debt not in excess of $1,000, exclusive of interest, regardless of whether or not there has been a prior denial of waiver.

(3) On other than loan guaranty program debts under 38 U.S.C. chapter 37, reject any offer of compromise of a total debt not in excess of $1,000, exclusive of interest, regardless of whether or not there has been a prior denial of waiver. (38 U.S.C. 210(c)(1))

§ 1.958 Finality of decisions.

A decision by the regional office Committee operating within the scope of its authority, denying waiver of all or a part of an overpayment is subject to appeal. There is no right of appeal from a decision rejecting a compromise offer. (38 U.S.C. 210(c)(1))

§ 1.959 Records and certificates.

The Chairperson of the Committee shall execute or certify any documents pertaining to its proceedings. He/she will be responsible for maintaining needed records of the transactions of the Committee and preparation of any administrative or other reports which may be required. (38 U.S.C. 210(c)(1))

§ 1.960 Legal and technical assistance.

Legal questions involving a determination under § 2.6(e)(4) of this chapter will be referred to the District Counsel for action in accordance with delegations of the General Counsel, unless there is in existence a General Counsel's opinion or an approved District Counsel's opinion dispositive of the controlling legal principle. As to matters not controlled by § 2.6(e)(4) of this chapter, the Chairperson of the regional office Committee or at his/her instance, a member, may seek and obtain advice from the District Counsel on legal matters within his/her jurisdiction and from other division chiefs in their areas of responsibility, on any matter properly before the Committee. Guidance may also be requested from the Central Office staff. (38 U.S.C. 210(c)(1))

4. Section 1.962 is amended as follows:

(a) By deleting the words "Chief Attorney" and inserting the words "District Counsel" in the third sentence and adding the legal citation "(38 U.S.C. 210(c)(1))" at the end of paragraph (b).

(b) By revising the introductory portion preceding paragraph (a) to read as follows:

§ 1.962 Waiver of overpayments.

The term "overpayment" means payments made and determined to be erroneous, indebtedness resulting from work study and education loan defaults, indebtedness resulting from services erroneously furnished and indebtedness of a veteran-borrower or veteran-transferee under the loan guaranty program or the indebtedness of the spouse under laws administered by the Veterans Administration.

* * * * *

5. Section 1.963 is amended as follows:

(a) By adding the legal citation "(38 U.S.C. 210(c)(1))" at the end of paragraph (c).

(b) By revising paragraph (b) to read as follows:

§ 1.963 Waiver; other than loan guaranty.

* * * * *

(b) *Application.* Request for waiver of an overpayment will be considered only if received within 2 years following the date of notice of the indebtedness by the Veterans Administration to the payee.

* * * * *

6. In § 1.963a, paragraph (e) is revised to read as follows:

§ 1.963a Waiver; erroneous payment of pay and allowances.

* * * * *

(e) There shall be no right of appeal to the Board of Veterans Appeals from a determination made under this section denying a waiver of erroneous payment of pay or allowances. Denial of a waiver of erroneous payment of pay and allowances may be appealed to the General Accounting Office (GAO) in accordance with procedures established by that agency and the Veterans Administration. (38 U.S.C. 210(c)(1))

§ 1.964 [Amended]

7. Section 1.964 is amended by deleting the words "widow (widower)" and "widow or widower" and inserting the words "surviving spouse" in paragraph (c) and inserting the legal citation "(38 U.S.C. 210(c)(1))" at the end of paragraph (f).

§ 1.966 [Amended]

8. By deleting the word "his" and inserting "his/her" in paragraph (a); by deleting the words "field station Committee" and inserting "regional office Committee" in the introductory portion of paragraph (b) and by inserting the legal citation "(38 U.S.C. 210(c)(1))" at the end of paragraph (b)(2)(ii).

9. In § 1.967, paragraph (c) is revised to read as follows:

§ 1.967 Refunds.

* * * * *

(c) Amounts which have been recovered by the U.S. Government prior to the date of receipt by the Veterans Administration of a request for waiver, will not be refunded and will be excluded from waiver. Where recovery is made by offset or recoupment from a check(s) of a running award, the date of recovery is the date of issuance of the check from which the offset is made; or in the case of total recoupment the date of recovery is the date on which the check would have been issued. However, any amounts repaid because of erroneous payment of pay or allowances to employees will be considered for waiver action (regardless of date of request as long as such is timely in accordance with § 1.963a(c)) and, if waived, refund will be made to the employee, provided application for refund is made no later than 2 years following the date of waiver. (38 U.S.C. 210(c)(1))

§ 1.968 [Revoked]

10. Section 1.968 is revoked.

11. Sections 1.969 and 1.970 are revised to read as follows:

§ 1.969 Revision of waiver decisions.

(a) *Jurisdiction.* A decision involving waiver may be reversed or modified on the basis of new and material evidence, fraud, a change in law or interpretation of law specifically stated in a Veterans Administration issue, or clear and unmistakable error shown by the evidence in file at the time the prior decision was rendered by the same or any other regional office Committee.

(b) *Finality of decisions.* Except as provided in paragraph (a) of this section, a decision involving waiver rendered by the Committee having jurisdiction is final, subject to the provisions of:

(1) Sections 3.104(a), 19.153 and 19.154 of this chapter as to finality of decisions;

(2) Section 3.105(a) and (b) of this chapter as to revision of decisions, except that the Central Office staff may postaudit or make an administrative review of any decision of a regional office Committee;

(3) Sections 3.103, 19.113 and 19.114 of this chapter as to notice of disagreement and the right of appeal;

(4) Section 19.124 of this chapter as to the filing of administrative appeals and the time limits for filing such appeals.

(c) *Difference of opinion.* Where reversal or amendment of a involving waiver is authorized under § 3.105(b) of this chapter because of a difference of opinion, the effective date of waiver will be governed by the principle contained in § 3.400(h) of this chapter. (38 U.S.C. 210(c)(1))

§ 1.970 Standards for compromise.

Decisions of the Committee respecting acceptance or rejection of a compromise offer shall be in conformity with the standards in §§ 1.900 through 1.937. In loan guaranty cases the offer of a veteran or other obligor to effect a compromise must relate to an indebtedness established after the liquidation of the security, if any, and shall be reviewed by the Committee. An offer to effect a compromise may be accepted if it is deemed advantageous to the Government. A decision on an offer of compromise may be revised or modified on the basis of any information which would warrant a change in the original decision. (38 U.S.C. 210(c)(1))

[FR Doc. 79-18790 Filed 6-15-79; 8:45 am]

BILLING CODE 8320-01-M

[38 CFR Part 21]

Veterans Education; Independent Study

AGENCY: Veterans Administration.

ACTION: Proposed Regulation.

SUMMARY: The proposed regulation is intended to make the criteria used for measuring courses involving independent study clearer and more uniform and thus make payments of educational assistance to veterans and eligible persons more equitable.

The law provides different rates of payment of educational assistance which depend in part upon whether the veteran or eligible person is pursuing a program of education by independent study, residence training or a combination of the two. Educational institutions and state approving agencies, however, do not always define these terms in the same way, so that two students with the same attendance schedule might be paid different educational assistance. The amendment rectifies this situation.

DATES: Comments must be received on or before July 18, 1979. It is proposed to make this amendment effective the date of final approval.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. Comments will be available for inspection at the address shown above during normal business hours until July 30, 1979.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education and Rehabilitation Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202–389–2092).

SUPPLEMENTARY INFORMATION: Section 21.4280(a), Title 38, Code of Federal Regulations is amended to make clear that educational assistance may be paid to veterans and eligible persons who are attending combined independent study-resident training courses or subjects. Section 21.4280(b) is amended to provide a number of definitions which are necessary to apply this section. Section 21.4280(c) is amended to include only material dealing with measuring independent study courses or subjects for Veterans Administration purposes. Section 21.4280(d) is added to provide for paying educational assistance to veterans and eligible persons enrolled in independent study courses or subjects. Section 21.4280(e) is added to provide for measuring and paying for enrollments in both independent study and resident training.

Additional Comment Information

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 am and 4:30 pm Monday through Friday (except holidays) until July 30, 1979.

Any person visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Such visitors to any VA field station will be informed that the records are available for inspection only in Central Office and furnished the address and the above room number.

Approved: June 11, 1979.

By direction of the Administrator.

Rufus H. Wilson,

Deputy Administrator.

Section 21.4280 is revised to read as follows:

§ 21.4280 Independent study leading to a standard college degree.

(a) *General.* An eligible veteran or person may receive an educational assistance allowance for pursuit of an independent study course or subject or for an independent study-resident course or subject under the following conditions:

(1) The course or subject leads to or is fully creditable toward a standard college degree;

(2) The course or subject meets the definition of independent study or independent study-resident training found in paragraph (b) of this section;

(3) The course or subject is approved as independent study or independent study-resident training by the State approving agency

(38 U.S.C. 1682(e))

(b) *Definitions.* For the purposes of measurement and payment of educational assistance whether an eligible veteran or person is pursuing a course or subject entirely by independent study shall depend upon the type of course subject in which the eligible veteran or person is enrolled and in certain instances, defined by the subparagraphs of this paragraph, upon the frequency of class attendance.

(1) A veteran or eligible person is in resident training when he or she:

(i) Is enrolled under chapter 34, title 38, United States Code, in a flight training course (this subdivision refers to veterans only);

(ii) Is enrolled in a course or subject not leading to a standard college degree offered solely through regularly scheduled, weekly conventional classroom or laboratory sessions;

(iii) Is enrolled in an undergraduate course or subject leading to a standard college degree offered through regularly scheduled, weekly conventional classroom or laboratory sessions, and/or flight training;

(iv) Is a student teacher;

(v) Is enrolled in a graduate, advanced professional or law course or subject leading to a standard college degree that either:

(A) Is offered through regularly scheduled, conventional classroom or laboratory sessions, or

(B) Consists of research necessary for the preparation of the student's master's thesis, doctoral dissertation, or a similar treatise which trains the student in the techniques of scholarly investigation; contributes to the body of knowledge; and is a prerequisite to the conferring of the degree the student is pursuing.

(38 U.S.C. 1682, 1732)

(2) A veteran or eligible person is pursuing research in absentia when he or she is a graduate student pursuing off campus research which has all the characteristics of the course or subject described in paragraph (b)(1)(v)(*B*). When a student is registered at a school for research in absentia, the research shall be treated as a resident course or subject. See § 21.4273(b).

(38 U.S.C. 1682, 1732)

(3) No veteran or eligible person is in independent study for the purpose of this section when he or she is enrolled in either a cooperative course as definded in § 21.4233(a), a farm cooperative course, a course approved as a correspondence course, a course meeting the requirements of paragraph (b) (1) or (2) of this section or a course offered by open-circuit television. A veteran or eligible person enrolled in any other course or subject is in independent study only when the course or subject in which he or she is enrolled:

(i) Leads to or is fully creditable toward a standard college degree;

(ii) Consists of a prescribed program of study with provision for interaction either by mail, telephone, or personally between the student and the regularly employed faculty of the university or college;

(iii) Is approved as independent study by the State approving agency;

(iv) Is offered without any regularly scheduled, conventional classroom or laboratory sessions.

(38 U.S.C. 1682, 1732)

(4) A veteran is in independent study-resident training if he or she:

(i) Is enrolled concurrently in one or more courses or subjects offered by resident training as defined by paragraph (b) (1) or (2) of this section and one or more courses or subjects offered by independent study as defined by paragraph (b)(3) of this section; or

(ii) Is enrolled in one or more undergraduate subjects which are offered by resident training as defined by paragraph (b) (1) or (2) of this section for part of a term, quarter or semester; and which are offered by independent study as defined by paragraph (b)(3) of this section for the remainder of the term, quarter or semester; or

(iii) Is enrolled in a subject which includes resident training as defined in paragraph (b)(1) of this section occuring at the same time as independent study

as defined in paragraph (b)(3) of this section.

(38 U.S.C. 1682, 1732)

(c) *Measurement of independent study.* A course or subject offered solely by independent study be measured as less than half-time training as follows:

(1) If the institution of higher learning evaluates the course or subject in semester or quarter hours of credit and prescribes a period for completion, the course shall be measured as less than one-half but more than one-quarter time when the semester hours per semester or equivalent, are 4 or more, and measured as one-quarter time or less for 1 through 3 semester hours per semester, or equivalent.

(2) If the institution of higher learning does not evaluate the independent study program in standard semester or quarter hours or the equivalent, independent study shall be measured as less than one-half but more than one-quarter time training.

(38 U.S.C. 1682(e), 1732(c))

(d) *Payment for independent study.* A veteran or eligible person who is pursuing only independent study under chapter 34 or chapter 35, title 38, United States Code, shall be paid an educational assistance allowance based on the training time determined in paragraph (c) of this section at the institutional rate prescribed in § 21.4136(a).

(38 U.S.C. 1682(e), 1732(c))

(e) *Independent study-resident training.* For the purpose of this paragraph a course or subject described in paragraph (b)(4)(ii) shall be treated as independent study during any week in which no classroom or laboratory sessions are scheduled and as resident training during any week in which classroom or laboratory sessions are scheduled. For the purpose of this paragraph the number of weekly conventional classroom sessions in a course or subject described in paragraph (b)(4)(iii) will be converted to credit hours on a 1 to 1 basis, and the number of laboratory sessions in a course or subject described in paragraph (b)(4)(iii) will be converted to credit hours on a 2 to 1 basis. The remainder of the credit hours assigned by the school will be considered to be independent study. Such a course or subject will be treated as two courses or subjects for payment purposes, one resident training and one independent study. In all cases when the resident training portion of undergraduate independent study-resident training does not have sufficient supporting conventional classroom or laboratory sessions as required by § 21.4272(d) before the independent study-resident training in measured.

the credit hours pursued in residence will be adjusted in accordance with § 21.4272(d)

(38 U.S.C. 1682(e), 1732(c))

(1) If independent study and resident training are pursued concurrently by a veteran or eligible person under chapter 34 or chapter 35, title 38, United States Code, and both are measured on a credit-hour basis, the allowable rate shall be determined on the basis of the combined training load provided a major portion of the credit hours are being pursued in residence.

(38 U.S.C. 1682(e), 1732(c))

(2) When a major portion of the credit hours being pursued by a veteran or eligible person under chapter 34 or chapter 35, title 38, United States Code, is not pursued in residence and the part that is pursued in residence would equal half-time or more, the number of independent study credit hours will be converted to the number of credit hours consistent with less than half-time training as stated in § 21.4270. The converted independent study credit hours shall be added to the credit hours pursued in residence. The allowable rate shall be determined on the basis of the combined training load.

(38 U.S.C. 1682(e), 1732(c))

(3) When a major portion of the credit hours being pursued by a veteran or eligible person under chapter 34 or chapter 35, title 38, United States Code, is not pursued in residence, the portion that is pursued in residence is equal to less than half-time or one-quarter time, and the portion that is by independent study is equal to half-time or more, the number of independent study credit hours shall be coverted to the highest number of credit hours consistent with less than half-time training as stated in § 21.4270. The training load shall be determined by adding the resulting credit hours together. The monthly rate shall be determined by computing the monthly rate separately for independent study and residence training and combining them, except that the monthly rate cannot exceed the institutional rate prescribed in § 21.4136(a) for the combined training load.

(38 U.S.C. 1682(e), 1732(c))

(4) When a major portion of the credit hours being pursued by a veteran or eligible person under chapter 34 or chapter 35, title 38, United States Code, is not pursued in residence and both the portion that is pursued in residence and the independent study portion are each equal to less than half-time or one-quarter time, the training load shall be determined by adding together the hours attributable to each. The monthly rate shall be determined by computing the monthly rates separately for independent study and resident training and combining them, except that the monthly rate cannot exceed the institutional rate prescribed in § 21.4136(a) for the combined training load.

(38 U.S.C. 1682(e), 1732(c))

(5) When measurement of courses being pursued by a veteran or eligible person under chapter 34 or chapter 35, title 38, United States Code, is different (i.e. class attendance on a credit-hour basis and independent study under paragraph (c)(2) of this section), the appropriate rate for each part shall be determined and the combined rates paid, but not to exceed the full-time institutional allowance rate.

(38 U.S.C. 1682(e), 1732(c))

[FR Doc. 79-[illegible] Filed 6-15-79; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[BC Docket No. 79-149; RM-3343]

FM Broadcast Station in St. Simons Island, Ga.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rule Making.

SUMMARY: Action taken herein proposes the assignment of a Class A FM channel to St. Simons Island, Georgia, in response to a petition filed by Canon's Point Broadcasting Compnay. Petitioner states the proposed station would provide a first local aural broadcast service to the community.

DATES: Comments must be filed on or before August 6, 1979, and reply comments must be filed on or before August 27, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: June 7, 1979.

Released: June 13, 1979.

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (St. Simons Island, Georgia), BC Docket No. 79–149, Rm–3343.

1. *Petitioner, Proposal, Comments.* (a) A petition for rule making[1] was filed on February 21, 1979, by Canon's Point Broadcasting Company ("petitioner"), proposing the assignment of FM Channel 249A to St. Simons Island, Georgia, as a first Fm assignment to that community.

(b) The channel can be assigned to St. Simons Island in compliance with the minimum distance separation requirements.

(c) Petitioner states it will apply for the channel, if assigned.

2. *Community Data*—(a) *Location.* St. Simons Island, an unincorporated community in Glynn County, is one of the coastal islands situated off the coast of Georgia, approximately 65 kilometers (53 miles) south of Savannah, Georgia.

(b) *Population.* St. Simons Island—5,346; Glynn county—50,528.[2]

(c) *Local Aural Broadcast Service.* There is no local aural broadcast service on St. Simons Island.

3. *Economic Considerations.* Petitioner asserts that although St. Simons Island is unincorporated, plans are being discussed for its incorporation. It notes that suggestions have been made for funding of a study on incorporation by the legislature and a bill has been introduced in the Georgia State Legislature for studies looking toward incorporation of the community. Petitioner states that the primary industry on the island is resort recreation. It points out that St. Simons Island has its own post office, schools, banks, churches, library, civic organizations, shopping center and chamber of commerce. According to the St. Simons Island Chamber of Commerce, the current population of the community is estimated at 15,000.

4. In light of the above information and the fact that the proposed FM station would provide the community[3] with a first full-time aural broadcast service, the Commision proposes to amend the FM Table of Assignments, § 73.202(b) of the rules, with respect to St. Simons Island, Georgia, as follows:

City	Channel No.	
	Present	Proposed
St. Simons Island, Georgia		249A

5. Authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements, are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before August 6, 1979, and reply comments on or before August 27, 1979.

7. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632–7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Philip L. Verveer

Chief, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later that that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 79-18835 Filed 6-15-79; 8:45 am]

BILLING CODE 6712-01-M

[1] Public Notice of the petition was given on March 19, 1979, Report No. 1188.

[2] Population figures are taken from the 1970 U.S. Census, unless otherwise indicated.

[3] Based on petitioner's showing, St. Simons Island does appear to be a community for purposes of making an assignment.

[47 CFR Part 73]

[BC Docket No. 79–148; RM–3339]

FM Broadcast Station in Moriah, N.Y.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rule Making.

SUMMARY: Action taken herein proposes the asssignment of a Class A FM channel to Moriah, New York, at the request of Peter E. Hunn. The proposed assignment would provide for a first local aural broadcast service to the community.

DATES: Comments must be filed on or before August 6, 1979, and reply comments on or before August 27, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:
Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: June 7, 1979.
Released: June 13, 1979.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Moriah, New York), BC Docket No. 79-148, RM-3339.

1. The Commission has under consideration a petition for rule making [1] seeking amendment of § 73.202(b) of the Commission's Rules, the FM Table of Assignments. The petition was filed by Peter E. Hunn ("petitioner"), requesting the assignment of FM Channel 292A to Moriah, New York. No responses to the petition were received.

2. Moriah (pop. 5,244), [2] in Essex Country (pop. 34,631), is situated in the Lake Champlain-Adirondack Mountain area, approximately 61 kilometers (38 miles) north of Glens Falls, New York. There is no local aural broadcast service in Moriah. Channel 292A can be assigned to this community in conformity with the minimum distance separation requirements.

3. Petitioner states that the proposed FM station could serve the area residents by broadcasting important local information, including local weather forecasts which are important to an area located near the shores of Lake Champlain and the Adirondack Mountains. He adds that the station would serve to inform people about local issues and events and would broadcast many views on various subjects which are of interest to the people of the community.

4. Since Moriah is located within 402 kilometers (250 miles) of the U.S.-Canada border, the proposed assignment of Channel 292A to Moriah, New York, requires coordination with the Canadian Government before if can be assigned.

5. In view of the apparent need for a first local aural broadcast service, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the rules, with regard to Moriah New York, as follows:

City	Channel No.	
	Present	Proposed
Moriah, New York		292A

6. Authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before August 6, 1979, and reply comments on or before August 27, 1979.

8. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An ex parte contract is a message (spoken or written) concerning the merits of pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Philip V. Verveer,
Chief, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D. C.

[FR Doc. 79-18694 Filed 6-15-79; 8:45 am]
BILLING CODE 6712-01-M

[47 CFR Part 73]

[BC Docket No. 79-150; RM-3314]

FR Broadcast Station in Murfreesboro, Ark.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rule Making

SUMMARY: Action taken herein proposes the assignment of a Class A FM channel to Murfreesboro, Arkansas, in response to a petition filed by Ball Broadcasting Company. Petitioner states the proposed station would provide a first aural broadcast service to the community.

DATES: Comments must be filed on or before August 6, 1979, and reply comments must be filed on or before August 27, 1979.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:
Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rule Making

Adopted: June 7, 1979.
Released: June 13, 1979.

[1] Public Notice of the petition was given on March 19, 1979, Report No 1166.
[2] Population figures are taken from the 1970 U.S. Census.

In the Matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Murfreesboro, Arkansas).

By the Chief, Broadcast Bureau: 1. The Commission has under consideration a petition for rule making[1] seeking the amendment of Section 73.202(b) of the Commission's Rules, the Table of FM Assignments. The petition was filed on behalf of Ball Broadcasting Company ("petitioner"), proposing the assignment of FM Channel 237A to Murfreesboro, Arkansas. The channel can be assigned in conformity with the minimum distance separation requirements without affecting the present assignments in the FM Table. Petitioner states that it will apply for the channel, if assigned. No responses were made to the proposal.

2. Murfreesboro (pop. 1,350), seat of Pike County (pop. 8,711),[2] is located approximately 161 kilometers (100 miles) southwest of Little Rock, Arkansas. There is no local aural broadcast service in Murfreesboro.

3. Petitioner states that according to the Murfreesboro Chamber of Commerce, the community's population is currently 1,540, which is an 8.7 percent increase since 1970. It notes that Murfreesboro's economy is based on farming, lumber milling and tourism. Petitioner points out that since there is no local aural broadcast service in Pike County, the proposed station would provide a forum for programs dealing with community problems of the area. It states that a full-time facility would fill the need for coverage of important news items, including storm alerts, disasters affecting the area, and nighttime sports, in addition to serving as an advertising outlet for local business firms.

4. In view of the fact that the proposed FM channel assignment would provide Murfreesboro and Pike County with a first full-time aural broadcast service, the Commission believes it appropriate to propose amending the FM Table of Assignments, Section 73.202(b) of the Rules, with regard to the community listed below:

City	Channel No.	
	Present	Proposed
Murfreesboro, Arkansas	----------	237A

5. Authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required before a channel will be assigned.

6. Interested parties may file comments on or before August 6, 1979, and reply comments on or before August 27, 1979.

7. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Philip L. Verveer,

Chief, Broadcast Bureau.

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Section 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 79-18881 Filed 6-15-79; 8:45 am]
BILLING CODE 6712-01-M

[1] Public Notice of the petition was given on March 19, 1979, Report No. 1168.

[2] Population figures are taken from the 1970 U.S. Census, unless otherwise indicated.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[49 CFR Part 222]

[Docket No. RSGC-2, Notice 2]

Proposed Requirement for Display of Alerting Lights by Locomotives at Public Grade Crossings

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Proposed rulemaking (NPRM).

SUMMARY: This notice proposes new regulations that would require locomotives to display flashing alerting lights at rail-highway grade crossings. The effect of this action would be to alert motorists and pedestrians of an approching train. This action is taken by FRA in an effort to reduce the number of accidents which have occurred at points where highways cross railroad tracks.

DATES: (1) Written Comments: Written comments must be received before September 28, 1979. Comments received after that date will be considered so far as possible without incurring additional expense or delay.

(2) Public Hearings: Public hearings will be held at 10:00 a.m. in Chicago, Illinois on September 17, 1979 and in Washington, D.C. on September 20, 1979. Any person who desires to make an oral statement at either hearing should notify the Docket Clerk before September 12, 1979, by phone or by mail.

ADDRESSES: (1) Written comments: Written comments should identify the docket number and the notice number and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Adminstration (Trans Point Building), 2100 Second Street, SW., Washington, D.C. 20590. Written comments will be available for examination both before and after the closing date for written comments, during regular business hours in Room 4406 of the Trans Point Building at the above address.

(2) Public Hearings: Public hearings will be held in Room 349 of the John C. Kluczynski Building, 230 S. Dearborn Street, Chicago, Illinois, and in Room 2230 of the Nassif Building, 400 Seventh Street, SW., Washington, D.C. Persons desiring to make oral statements at either hearing should notify the Docket Clerk by telephone (202–426–8836) or by writing to: Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, (Trans Point Building), 2100 Second Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

Principal Authors

Principal Program Person: J. A. McNally, Office of Standards and Procedures, Federal Railroad Administration, Washington, D.C. 20590. Telephone (202) 426–9178.

Principal Attorney: Michael E. Chase, Office of the Chief Counsel, Federal Railroad Administration, Washington, D.C. 20590. Telephone 202–426–8836.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 1978, FRA issued an Advance Notice of Proposed Rulemaking (ANPRM) (43 FR 9324). The ANPRM stated that FRA was considering development of proposed safety regulations to require locomotives to be equipped with lighted devices that are more effective than the standard headlight now in use in alerting motorists that a train is approaching a grade crossing. The ANPRM was intended to obtain information about various types of lighted devices, especially the alerting qualities (conspicuity) and potential drawbacks of xenon flash tube lights (strobe lights). Increasing the conspicuity of locomotives is one method of attempting to reduce the large number of grade crossing accidents and their resulting injuries and deaths.

It should be noted that the FRA proposal contained in this notice, which would require that locomotives be equipped with alerting lights, is designed to supplement other efforts being made within DOT to reduce accidents at rail-highway grade crossings. In this connection, DOT has several active programs directed at eliminating hazards at railroad-highway grade crossings. These include the installation of active and passive warning devices, new grade crossing surfaces, construction of grade separations, and endorsing measures to improve driver awareness of the hazards involved through driver education programs and effective enforcement of all traffic laws.

The National Grade Crossing Inventory indicates the following number of crossings: 219,062 public; 142,338 private; and 3,601 pedestrian. During the 10-year period 1967 through 1976, there was an annual average of 1,328 fatalities and 3,680 injuries resulting from rail-highway grade crossing accidents involving collisions between rail equipment and motor vehicles, other vehicles, or machines and pedestrians.

In 1977, the most current year for which data has been finalized, there was a total of 12,299 crossing accidents of all types resulting in 944 fatalities and 4,649 injuries. Of the total number of accidents, 11,849 involved collisions between rail equipment and motor vehicles. These are the accidents which are most pertinent to this proceeding.

The 11,849 accidents between rail equipment and motor vehicles consisted of 8,528 collisions where a train struck a motor vehicle (resulting in 674 fatalities, 3,057 injuries) and 3,321 collisions in which a motor vehicle ran into the side of train (resulting in 172 fatalities and 1,396 injuries). Of the 11,849 collisions, 7,022 occurred in daylight and 4,827 took place at night. A breakdown of the types of protection at the crossings where these accidents occurred indicates that 1,013 occurred at crossings with gates, 4,532 at crossings with flashing lights, wigwags or bells, and 6,104 at crossings with passive warning signs only.

The FRA presently has in effect a regulation (49 CFR 230.231) which requires each locomotive used in road service to be equipped with a headlight "which shall afford sufficient illumination to enable a person in the cab of such locomotive who possesses the usual visual capacity required of locomotive enginemen, to see in a clear atmosphere, a dark object as large as a man of average size standing erect at a distance of at least 800 feet ahead and in front of such headlight; and such headlight must be maintained in good condition." In the case of locomotives used in yard service, the distance requirement is reduced to 300 feet. Additionally, FRA requires that each locomotive be provided with a "suitable whistle or its equivalent" (49 CFR 230.234).

The Association of American Railroads (AAR) Standards Code of Operation Rules is the foundation for the operating rules and practices of most railroads, including rules governing the display of a locomotive headlight and use of the locomotive bell and whistle. Using the AAR Code as a guideline, each railroad constructs, interprets, applies, and expands upon the Code rules as it sees fit according to conditions or operating practices prevailing on the individual railroad. Rule 17 of the AAR Code provides that: "The headlight must be displayed brightly to the front of every train by day and by night. When an engine is running backward, a white light must be displayed by night on the leading end." Rule 16 of the AAR Code provides that: "Yard engines will display the headlight to the front and rear by night. When not provided with a headlight at the rear, a white light must be displayed".

FRA has conducted research to determine means of enhancing the visibility of trains at grade crossings. Several types of devices, including xenon strobe lights, were investigated. This research is documented in the following reports: "The Visibility and Audibility of Trains Approaching Grade Crossings," J. O. Aurelius and N. Korobow System Consultants, Inc. FRA–RP–71–2, May 1971 (NTIS No. PB–202–683); "Field Evaluation of Locomotive

Conspicuity Lights," D. B. Devoe and C. N. Abernathy, Transportation Systems Center, FRA-ORD-75-54, May 1975 (NTIS No. FB-244-532); and "Guidelines for Enhancement of Visual Conspicuity of Trains at Grade Crossings," John B. Hopkins and A. T. Newfell, Transportation Systems Center, FRA-ORD-71, May 1975 (NTIS No. PB-244-551). Copies of these reports may be obtained from the National Technical Information Service, Springfield, Va. 22161.

Also available in the docket are two other reports. One is "Analysis for NPRM Strobe Light on Locomotives (Docket No. RSGC-2)," May 28, 1978, prepared by the Transportation Systems Division of Input Output Computer Services, Inc., Cambridge, Massachusetts. The analysis includes an examination of the effectiveness of strobe lights in preventing accidents, an estimate of the benefits, an evaluation of the costs of a regulation requiring strobe lights, and a measure of the economic impact of the regulation on the railroad industry. The other report, "Grade Crossing Resource Allocation for Strobe Lights and Conventional Warning Systems," is a resource allocation analysis conducted by the Transportation Systems Center, Cambridge, Massachusetts.

Members of Congress have also expressed their interest in the use of strobe lights to improve grade crossing safety. Congressman Paul Simon has introduced a bill on this subject (H.R. 8017, 95th Cong., 1st Sess. (1977)). If it had been enacted, it would have directed the Secretary of Transportation to issue regulations that require the locomotive of all freight, passenger, and commuter trains to be equipped with strobe lights. These regulations would also have had to require that the strobe lights be operated at grade crossings and at other locations where the Secretary finds that their operation is required in the interest of safety.

In addition to laboratory research and field testing, FRA initiated operational tests in fiscal year 1977 with Amtrak, Santa Fe, Chessie, and Boston and Maine Railroads to evaluate the effectiveness of strobe lights and to identify and remedy any operational problems associated with their use. This project should be completed in fiscal year 1979.

Preliminary data collected from two of the railroads has been conflicting. The experience of one railroad indicates the strobe lights have been effective in reducing grade crossing accidents and have been relatively troublefree from an operational and a maintenance standpoint. In this instance, the control group (without strobe lights) had an accident rate higher than the National average. The other railroad experienced operational and maintenance problems, and did not experience any reduction in grade crossing accidents. On this railroad the control group had an accident record lower than the national average. However, neither railroad identified any adverse effects due to the strobe lights.

After careful review and analysis of the comments filed in response to the ANPRM, the research currently available, and the experience from the operational tests, FRA has concluded that it is appropriate to propose Federal requirements for the display of alerting light devices at public grade crossings.

ANPRM Comments

The ANPRM requested comment on the need for and the specific requirements of regulations governing additional lighted devices on locomotives. It also requested specific advice in several question areas. Where possible, the comments have been grouped under the appropriate question area. The more general comments on the need for regulations or suggesting alternatives are discussed before the responses to the ten question areas.

A total of twenty-five comments were received. Out of these, twelve were from railroads, five were from individuals, two were from manufacturers of strobe lights, three were from State transportation regulatory agencies, one was from the National Transportation Safety Board (NTSB), one was from the Association of American Railroads (AAR), and one was from a Congressman, cosigned by five other members.

Eight commenters favored additional lighted devices because they believed increased locomotive conspicuity could reduce the number of grade crossing accidents. Two of the eight were railroads, one was the NTSB, one was a State transportation regulatory agency, one was the Congressman, one was a manufacturer of strobe lights, and two were individuals.

Thirteen commenters were explicitly or implicitly opposed to requiring additional lighted devices because they doubted the potential usefulness of lighted devices in reducing grade crossing accidents, or because they believed additional study of their usefulness should precede any further action. The AAR and seven railroads were among the thirteen, as were three individuals, and two State transportation regulatory agencies. Two other railroads which operate only historic steam trains for educational and recreational purposes were opposed to requiring strobe lights on their locomotives because of the costs and because of a desire for historical accuracy.

The commenters who did not favor additional lighted devices questioned their usefullness. Seven commenters believed additional lighted devices would not deter bad driving. Several noted that drivers often ignore the existing grade crossing warnings. Three commenters suggested that improving signs and other warning devices at grade crossings would be more effective. Two suggested the use of rumble strips, which are strips of asphalt or other substance placed on the road to alert drivers of an upcoming rail-highway grade crossing. Two commenters thought better enforcement of the law where drivers ignore warning signs would be helpful. Two suggested driver education programs and three mentioned "Operation Lifesaver", a program to increase public awareness of the hazard at grade crossings. Three commenters believed that more study is necessary.

Several commenters opposed requiring additional lighted devices because of the costs. In this connection, one commenter suggested that money for additional grade crossing protection, such as strobe lights, should come from highway funds. The FRA does not agree that alerting lights are too costly or that public funding is required. The safety benefits of alerting lights would reduce the number of accidents, injuries, and fatalities, as well as reduce the costs to the railroads associated with grade crossing accidents.

FRA agrees that better law enforcement, driver education, and public awareness are desirable and would help reduce grade crossing accidents. However, the number of grade crossing accidents continues at a high level despite improved technology in crossing protection systems and joint efforts of railroad management, labor, and State and Federal governments of railroad management, labor, and State and Federal governments on public awareness projects such as "Operation Lifesaver". Many motorists approaching a grade crossing either ignore the warning signs and devices or proceed through the crossing after slowing or stopping if they do not see a train in close proximity. Even if the crossing is protected by a lowered gate, some motorists continue to go around the gate and enter the crossing if a train is not sighted.

An additional lighted device on the locomotive that is highly alerting would increase driver awareness that a train is actually approaching the crossing. Lighted alerting devices, including strobe lights, are being used successfully to warn motorists of the approach of an emergency vehicle or of the presence of highway work equipment such as snow removal equipment.

The current information available to the FRA indicates that installation on locomotives of a certain type of lighted device, dual alternating strobe lights, would have the effect of reducing grade crossing accidents. FRA's most recent study, "Analysis for NPRM Strobe Lights on Locomotives", evaluates their effectiveness by fault free analysis.

While the true value of human life cannot be measured in dollars, FRA believes that the cost to society of deaths and injuries at rail-highway grade crossings is an additional indicator of the need for regulatory action. In this connection, FRA calculations indicate that between 124 and 129 fatalities and between 566 and 680 injuries could be avoided on an annual basis if strobe lights were used as proposed in this notice. This reduction in fatalities and injuries would result in an annual savings to society of between 65 and 76 million dollars.

In addition, a resource allocation analysis conducted by the Transportation Systems Center at Cambridge, Massachusetts, indicates that strobe lights are cost effective. However, it should be noted that the benefits considered in the analysis are primarily societal in nature.

ANPRM Query No. 1

What types of lights should FRA consider requiring on locomotives to increase their conspicuity? Strobe lights, more powerful or oscillating headlights, or revolving dome lights? Could any of these lights be confused with other lights in the present railroad environment and result in potentially dangerous situations? Could any of these lights have a negative or distracting effect on railroad employees, motorists, pedestrians or persons who reside near a railroad?

In responding as to the type of lighted device that should be considered, eight commenters recommended strobe lights and two suggested strobe lights as a temporary alternative pending development of better methods of reducing grade crossing accidents. Four of these commenters recommended dual strobe lights which flash alternatively. On the other hand, some commenters expressed support for different types of alerting devices. In this connection, two commenters favored the use of an oscillating headlight believing that it would more easily supplement the present stationary headlight and that the relatively focused sweep of its high candela beam would be highly alerting to motorists at or very near to the grade crossing. One railroad commenter noted it had replaced strobe lights with an oscillating headlight because of employee complaints about the flashing strobe light. One commenter favored a revolving dome light and another commenter noted that its locomotives were already outfitted with a revolving dome light.

Confusion of additional lighted devices with lights in the present railroad environment was not seen as a problem. Two commenters who favored strobe lights, which are white in color, suggested that clear lens be used. The issue is not one of additional lights, rather it is the color of the additional lights. (See ANPRM Query No. 3 for discussion of color.)

A number of possible negative effects of strobe lights were identified and one possible negative effect was identified for dome lights. One commenter suggested that a roof top light might interfere with the radio antenna thereby causing interruptions in radio communications. Six commenters were concerned that reflected light at night would disturb the train crew. One commenter was also concerned that the reflected light of a strobe might be detrimental to visibility, create depth perception problems, have a hypnotic effect, or cause psychological problems. Four commenters suggested that strobes would have an adverse effect on persons along the right of way. The problems suggested included momentary blinding or disorienting railroad employees on the ground, distracting drivers or automobiles or trucks, and disturbing persons who reside close to the right of way.

One commenter who favored dome lights contended that strobe lights tend to draw and hold an observer's gaze directly into the light source, thereby creating a problem in visual acuity adjustment. This commenter further pointed out that any light source as sharp and bright as a strobe has a tendency to diffuse in fog or mist and create uncertainty as to its true location. Three commenters noted that photosensitive persons suffering from epilepsy may be adversely affected by strobe lights with a high flash rate. Three commenters were of the opinion that use of strobe lights would not adversely affect railroad employees.

FRA believes that a bright flashing light, such as a strobe light, is an effective alerting light device. The oscillating headlight is less effective because it has a much narrower focus. Thus, vehicles traveling parallel to the lead locomotive would be less likely to notice it.

The adverse effects noted by several commenters can be virtually eliminated by a reduction in the maximum candela of the light while still retaining the alerting qualities of the device. This has been confirmed in field testing of the device under actual operating conditions on the main line of a railroad. In addition, if the alerting lights are actuated only while approaching and passing over a grade crossing, employee exposure will be reduced to a minimum. Perhaps those commenters opposing strobe lights visualized their being operated continuously whenever the locomotive is in motion, much as the headlight is continuously lighted, instead of being activated only at grade crossings.

ANPRM Query No. 2

Should these lights be required on all locomotives or only on road locomotives? Should these lights be required to be installed only on locomotives that operate independently of other locomotives or that are used as the lead unit of locomotive consists?

The majority of commenters commenting on the questions posed in this query agreed that the lighted warning device should be applied to all road locomotives except those which by design would not be utilized as a leading unit in a consist. Two commenters thought all locomotives that operate across grade crossings should have additional lighted devices. Four commenters thought that only the lead locomotive should be required to have the devices, while one commenter thought that all locomotives should have the device except for those which by design can't be operated as a lead unit. Still another commenter thought it should be displayed on the lead unit and on the rear trailing unit.

Three commenters opposed installing lighted warning devices on switching locomotives that are primarily operated in yards or utilized solely for industry switching. It was pointed out that many switching operations are performed at locations where there may be many competing lighted elements, such as flashing neon signs or emergency vehicles, that would decrease the effectiveness of an additional lighted device on the locomotive. Also, freight

cars often preceded the locomotive in switching operations.

In addressing accident statistics and ratio of severity, it is important to focus attention on locomotives operated in main line road service because of their higher speeds. However, it should also be recognized that switching locomotives usually move over grade crossings more frequently than road locomotives during the course of their assigned work, and these crossings many times involve a higher volume of vehicular traffic than crossings out on the line of road. Furthermore, some classes of locomotives, depending upon the carrier, are used in both switching and road service, sometimes during the course of a single tour of duty.

If the alerting device is relatively unique and is activated only approaching and crossing over grade crossings, it should alert the unwary motorist despite existing lighted elements prevalent in the surrounding area. Since the hazard is a locomotive approaching a crossing when the motorist is unwary, an alerting device can have a bearing on reducing the extent of the hazard. Therefore, FRA believes that the locomotive at the head of a train or other movement which operates across a grade crossing should have increased conspicuity.

ANPRM Query No. 3

How many lights should be required on each locomotive? What color should they be? What values should be specified for light intensity, frequency of flashing, and width and height of beam or angular coverage?

The commenters responding to this portion of the ANPRM expressed a variety of opinions relative to the number of lighted devices that should be required on a locomotive. Their recommendations ranged from one device on the front end of the locomotive only, to one on each end, to a total of four devices per unit. The commenter recommending four devices per unit suggested that two red and two blue lights flashing alternatively be used. One commenter suggested a blue colored lighted device and another rejected amber as a possibility. Several commenters suggested white. A commenter cautioned that only colors which are not prevalent in railroad signal systems or not utilitized in vehicular traffic control should be considered.

Those commenters responding to the question relative to the proposed intensity and angles of the light beam suggested angles which ranged from a very narrow conical beam of 5 to 10 degrees aimed directly forward with an intensity of 20,000 to 50,000 candela, to beams having a horizontal width of 320 degrees and a vertical width of 5 to 10 degrees with an intensity of 400 candela. One commenter pointed out that each strobe light should be required to have an additional continous burning 32 candela miniature incandescent lamp filament inside the optical lens to act as a reference light source.

Because locomotives in general service on railroads today are capable of being operated in either direction, alerting lighted devices should be highly visible in whatever direction the locomotive is being operated. FRA does not favor use of the colors blue or red. FRA believes that the color blue should be reserved for blue signal protection of workmen. The color red is considered unsatisfactory because of its use in the signal systems. Furthermore, both colors are widely used on emergency vehicles and law enforcement vehicles on the nation's highways. On the other hand, a white light, which is produced by a xenon strobe, is highly alerting, does not conflict with the majority of automatic block signal aspects, and enjoys only limited use as an alerting color in a lighted device on highway vehicles.

FRA feels the flash rate for alerting lights must be held to between 60 and 90 flashes per minute to maintain maximum alerting characteristics. Flash rates substantially in excess of 90 per minute have the potential to induce seizures in persons with photosensitivity.

The intensity of alerting lights should not exceed 3,000 candela during the day or 1200 candela during the night in order to avoid possible adverse side affects. Operating two lights alternatively would insure that the device would provide maximum conspicuity to warn motorists of the approach of a locomotive.

FRA further feels the beam width should not be required to exceed a +5 and −5 vertical width over a forward area of at least 270 degrees. Operation of the strobe over the 90 degrees in the rearward direction may adversely affect crewmembers. Limiting the vertical range of the flash will minimize any adverse impacts.

ANPRM Query No. 4

How effective would each type of light be in alerting motorists and preventing grade crossing accidents? Based upon available statistics, what percentage of accidents that occurred in 1977 could have been avoided by each type of light?

Several commenters were of the opinion that the proposed lighting devices would not prove to be effective in alerting a motorist approaching a grade crossing. On the other hand, two commenters, one of whom was a lighting manufacturer, supported the proposed warning lights and were convinced that they would effectively aid in the reduction of grade crossing accidents. One railroad commenter attested to the fact that this railroad's accident record improved after oscillating lights were introduced into use. However, none of the commenters provided statistics to support their position.

FRA believes that flashing light devices mounted on a locomotive could help alert motorists approaching grade crossings. Accident statistics indicate quite clearly that the locomotive headlight, and sounding of the whistle and bell, are often not effective. In some cases, these are being ignored by the motorists; in many others, they fail to draw the attention of motorists in time for them to take action to avoid an accident.

ANPRM Query No. 5

How costly would each type of light be to install and maintain? What would be the labor and material costs per locomotive to install each type? What would be the annual maintenance cost for each type? Is each type readily available in sufficient number? How much time would be required to equip all locomotives with each type?

Two commenters commented as to the length of time that would be needed to install various proposed devices. One of these estimated it would take one month to equip his entire locomotive fleet with either strobe or dome lights. the other estimated that, for each locomotive, it would take four days to install a single strobe light or a single revolving dome light, six days to install an oscillating headlight, and six days to install two strobe lights.

A total of five railroads and one manufacturer commented relative to estimated installation costs. Estimates as to per unit costs for installation ranged from $200 to $1,203 for strobe lights and $1,000 to $1,583 for oscillating headlights. Three commenters who combined the material and labor costs estimated from $530 to $2,000 per strobe unit. One of the three estimated that it would cost $2,200 per unit for an oscillating headlight.

Several comments were received on the subject of annual maintenance costs. The estimates provided ranged rom $55 to $200 for strobe lights, from $105 to $600 for oscillating headlights, and from $60 to $200 for revolving dome lights.

ANPRM Query No. 6

If regulations were promulgated requiring locomotives to be equipped with two strobe lights that flash alternatively, each with an effective intensity of between 800 and 3,000 candela over the forward 270 degrees of the lamp with a vertical beam width of ±degrees and with a flash rate of between 60 and 90 flashes/minute for each lamp, what would be the labor and material costs per locomotive to intall these lights? What would be the annual maintenance costs for these lights per locomotive? Are these lights readily available in sufficient supply? How much time would be required to equip locomotives with these lights?

Several commenters commented relative to installation and maintenance costs if two strobe lights of stipulated specifications were to be required on each locomotive. Estimates as to cost of labor ranged from $200 to $2,406 per locomotive. Two commenters who combined the cost of labor and material estimated the combined cost to be between $530 and $1,500. One comment originating from a member of Congress estimated that the overall cost of equipping a locomotive would be $500. Estimates relative to cost of material ranged from, $400 to $648, while annual maintenance costs ranged from $55 to $224. Estimates of time required per unit for installation ranged from two to six days.

ANPRM Query No. 7

Should these lights be illuminated at all times when the locomotive is in motion? Only at night or during reduced visibility? Only when approaching grade crossings that are not protected by flashing lights or gates? When approaching all grade crossing regardless of the type of grade crossing protection provided? What discretion, if any, should railroads and localities be allowed in this respect? If these lights are to be activated only when approaching grade crossings, should they be installed so that they are automatically activated whenever the locomotive bell or horn is used, or should they be independently activated?

In commenting as to when strobe lights should be illuminated, the NTSB recommended that all locomotives be equipped with strobe lights and that they be activated at all times when a locomotive is in operation. A commenting carrier representative was of the same opinion. Three commenters were of the opinion that the additional lighted devices should be displayed at grade crossings, but that the individual carriers should determine under what other conditions they should be displayed. These commenters point out that there are great dissimilarities, varying physical characteristics, and a variety of operating practices prevalent on railroad systems throughout the country.

Several commenters thought that the lights should be activated only at grade crossings. Two of these commenters suggested that the lights be installed so as to be activated automatically whenever the whistle or bell on the locomotive were sounded with provisions made for sounding it independently when conditions warranted. One commenter stated that the display of these lights should be required only when approaching and passing over public crossings at grade which were protected by passive warning devices, leaving it up to the discretion of the railroad as to whether they should be displayed at grade crossings protected by active warning devices.

A number of commenters, including three representing carriers, argued that the lights should be installed to be activated independently of the locomotive whistle and bell. They point out that there are numerous situations when these audible warning devices are utilized in accordance with operating rules for purposes other than to warn vehicular traffic at grade crossings and, in some of those instances, flashing strobe lights could be inappropriate and distracting.

One carrier thought that these warning lights should be primarily utilized to supplement the lighted locomotive headlight in an effort to provide greater visual warning to the motorist approaching the grade crossing. If this were done, the proposed lights would be displayed whenever the locomotive headlight was displayed in compliance with railroad operating rules.

None of the commenters specifically addressed the issue of displaying these lighted devices only at night or under conditions of reduced visibility. However, one commenter did express the opinion that their use under these conditions should be mandatory regardless of what else might be required.

The grade crossing problem is not one which involves only the larger carrier, nor is it restricted to specific geographical locations or the characteristics of the terrain. To insure that these lights are effective, they must be activated approaching and pasing over all grade crossings, similar to the locomotive's whistle or bell. However, FRA does not believe that the flashing light devices should be displayed at all times when the locomotive is in motion. Continuous display could negate some of the alerting aspects and might distract or disturb railroad employees or persons along the right of way.

In addition, FRA believes that alerting lights should be capable of being operated independently. This would accommodate situations where ordinances do not allow the whistle to be sounded or the whistle is sounded for operating reasons other than approaching grade crossings.

ANPRM Query No. 8

What State and local jurisdictions have laws, ordinances, and regulations in effect that:

(a) Require locomotives to display strobe lights, flashing lights, or any other type of lights to alert motorists at grade crossings?

(b) Prohibit or limit the use of strobe lights, flashing lights, or any other type of lights?

(c) Prohibit or limit the use of horns, bells, whistles, or other types of audible warning devices?

The four commenters responding to this portion of the ANRPM stated that they were not aware of any State or local jurisdictions having laws, ordinances, or regulations in effect that would require locomotives to display such lights or prohibit their use. However, two of these commenters stated that they were aware of State and municipal ordinances which restricted the use of locomotive whistles. One commenter, representing a State regulatory body, stated that restraints were imposed on the sounding of audible warning devices at about one percent of the grade crossings in that State. The precise location and specific hours of prohibition are spelled out by special order. A commenter from an eastern railroad stated that there were no such restrictions in effect at any location on that railroad.

FRA is aware that throughout the country various ordinances require railroads to refrain from using locomotive whistles while moving through specific urban areas, except in emergency situations. However, FRA is not aware of any locations where similar ordinances have been issued relative to the sounding of the locomotive bell. Further, it is not aware of any ordinance that restrains the use of lighted warning devices on locomotives.

ANPRM Query No. 9

How many of the following grade crossing accidents occurred in 1977:

(a) A locomotive equipped with only a standard fixed headlight struck a motor vehicle or pedestrian?

(b) A locomotive equipped with an oscillating headlight, strobe light, or revolving light struck a motor vehicle or pedestrian?

(c) A motor vehicle struck the side of a locomotive or one of the first 20 cars in a train when the locomotive was equipped with an oscillating headlight, strobe light, or revolving light?

A commenter representing a State regulatory body stated that in his State during the year 1977 records indicate that there had been 15 accidents in which a locomotive equipped with a standard fixed headlight had struck a motor vehicle at a grade crossing. Four commenters commenting on this portion of the ANPRM stated that none had occurred on their property during the year 1977.

Six commenters submitted data relative to the number of grade crossing accidents in 1977 that involved a locomotive equipped with an oscillating headlight, strobe light or revolving light. Three of these commenters reported having no grade crossing accidents, two commenters reported having one, and one commenter reported 17 accidents.

Six commenters responded to the question relative to a motor vehicle striking the side of a train at a grade crossing when the locomotive was equipped with only a standard fixed headlight. Two of these commenters reported that no accidents had occurred, one commenter reported having two, another commenter reported having three, and one commenter reported a total of 29.

Four commenters commented on the rate of similar accidents involving trains where the locomotive was equipped either with an oscillating headlight, strobe light, or revolving light. Two of these reported that no accidents had occurred while two commenters reported having had eight each during the year.

FRA believes that the data received are too fragmentary and indefinite to draw any conclusions.

ANPRM Query No. 10

For each accident category in question 9.

(a) What was the grade crossing accident rate based on locomotive miles?

(b) How many fatalities resulted?

(c) How many injuries resulted? To the extent possible, categorize injuries as permanently disabling, major and minor, or superficial.

(d) How much damage resulted to railroad and other private property?

(e) How many accidents occurred at grade crossings protected by gates? By flashing lights without bells? By wigwags with and without bells? By passive warning signs?

(f) How many accidents occurred in daylight, dawn/dusk, and in darkness?

Only one commenter calculated its grade crossing accident rate based upon locomotive miles. The entire locomotive fleet of this railroad is equipped with either a revolving or flashing dome light. The accident rate was 5.97 per million locomotive miles.

In general, the data submitted in response to ANPRM Query No. 10 are too fragmentary and lack the degree of detail necessary to fit them into the categories outlined in the question. The most that can be said is that existing crossing protection, including lowered gates, does not always convince unwary motorists that a train is actually approaching a crossing. This suggests a need for a supplemental warning device which attracts the attention of motorists to the actual presence of a locomotive and provides sufficient warning time to avoid an accident.

Section by Section Analysis

Section 222.1—This section sets forth the scope of the part. Part 222 prescribes the minimum requirements regarding the use of alerting lights on railroad locomotives. It allows a railroad to adopt additional requirements governing their use. This flexibility would permit a railroad to tailor the use of alerting lights to its individual operating environment.

Section 222.1—This section specifies the applicability of the part. It provides that the requirements of the part apply to all locomotives operated on standard gauge track which is part of the general railroad system of transportation. By way of clarification, it also provides that the part does not apply to locomotives operated only on track inside an installation which is not part of the general railroad system of transportation or to locomotives operated by a rapid transit railroad only on track used exclusively for rapid transit passenger service.

FRA believes that alerting lights should be required, regardless of the type of service or operation. Although speeds may be greater on the main track outside of yards, movements over grade crossings within yards, particularly when switching, occur more frequently. Furthermore, the volume of automobile traffic is generally greater. Analysis of the grade crossing accident data demonstrates that there is a significant possibility of collisions at grade crossings irrespective of relatively slower speeds, locale, or type of service being performed.

Section 222.5—Proposed definitions necessary to the understanding and implementation of the part are set forth in this section. Most of the definitions are simple and do not involve any underlying substantive issues. The definition of "locomotive" is similar to that used in other regulations and encompasses the many variations of motive power used by railroads. The term would include units without propelling motors but with "control stands", which are drivers seats. These units are included since they are regularly the lead unit in "push-pull" train operations. These are operations in which the locomotive pulls cars from one point to another and then pushes the cars back to the point from which they originally departed.

The proposed definition of "public grade crossing" has the identical elements of that term defined in the National Grade Crossing Inventory. The proposed requirements of the part regarding the display of alerting lights would apply only at public grade crossings. Private crossings would not be included for several reasons. First, the overwhelming percentage of accidents occur at public grade crossings and those crossings are where the public has a reasonable expectation of special protection. Many private crossings are used very infrequently. Second, the operational practices of a railroad and the holder of a private right of crossing are subject to agreement between the two parties. The parties can best determine the appropriateness of displaying alerting lights and take the necessary actions at private crossings. Third, to the extent that certain private crossings have a quasi-public quality, State and local governments are in the best position to identify them and to require the display of alerting lights.

Section 222.7—This section would prescribe a civil penalty of at least $250, but nor more than $2,500, for each violation of a provision of the proposed part. Each day of each violation would constitute a separate offense. These penalty provisions are consistent with penalty provisions established in other regulations involving mandatory standards governing railroad operations.

Section 222.9—The proposed procedures for petitioning FRA for a

waiver of compliance with any requirement of the proposed part are set forth in this section.

Section 222.11—This section sets forth the proposed requirements for the display of alerting lights. In general, the section would require that each locomotive at the front of a train, or other movement, display two alternately flashing alerting lights at all public grade crossings. (The proposed specifications of each alerting light are set forth in § 222.13 and the proposed procedure for installing alerting lights is covered by § 222.15.) Studies indicate that alternate flashing provides the maximum alerting quality.

The phrase, "at the head of train or other movement", is used for two reasons. First, it makes clear that, if a locomotive is not the first piece of rolling equipment to enter a public crossing, the display of alerting lights would not be required. Second, it indicates that, if a locomotive enters a public crossing without any rolling equipment in front, it would have to display alerting lights irrespective of whether it is pulling any other equipment.

Proposed § 222.11 also provides that the required display begin at least 30 seconds prior to the locomotive entering any public grade crossing and continue until 30 seconds after the locomotive has cleared the crossing or until the entire train has cleared the crossing, whichever occurs sooner. This proposed time frame reflects FRA's view of the period when alerting lights will be effective in warning vehicles approaching the crossing of the presence of the locomotive. It should provide motorists with ample opportunity to take action to avoid an accident, while minimizing any possible adverse impacts from use of the alerting lights.

The section also includes an exception to the proposed requirement that a locomotive at the head of a train, or other movement, display alerting lights at all public grade crossings. A non-equipped locomotive, or a locomotive with defective alerting lights, would be permitted to operate across public grade crossings within an engine servicing area or train yard at a speed not exceeding 5 mph for the purpose of servicing the locomotive or assembling or disassembling multi-unit locomotive consists.

This proposed exception follows logically from the fact that only the locomotive at the head of the train, or other movement, is required to display alerting lights. It is possible that other locomotives in a multi-unit consist will either not be equipped with alerting lights or may have defective lights. In order to assemble or disassemble a consist of that type, and to move a locomotive for repair, an exception appears necessary. The limited geographic boundary, the limited purposes, and the low speed of the exception would minimize the safety risk.

The proposed requirement to display alerting lights would become effective three years from issuance of the final rules based on the NPRM. The three year interval should enable the industry to obtain and install the lights without creating any undue burden on railroad operations.

Section 222.13—The proposed specifications of the alerting lights are contained in this section. They are performance specifications so that there would be maximum opportunity for light manufacturers to develop alerting lights and railroads to choose the best device. The performance characteristic can be met now by xenon strobe lights. FRA is not aware of any other type of light currently available that can meet the specifications.

The section proposes that each alerting light have a flash rate not less than .75 nor more than 1.5 flashes per second. The combined flash rate would be between 1.5 and 3.0 flashes per second. The range of permissible flash rate would provide excellent conspicuity without posing a problem to photosensitive persons.

Under the proposed section, the alerting light would be required to have a flash duration not in excess of .1 seconds, and the light would have to be "aviation white" in color. FRA believes that the short flash duration is an essential element of the alerting quality and that the color white is appropriate due to its relative uniqueness in the railroad environment.

The angular coverage proposed is plus or minus 5 degrees in the vertical direction and at least plus or minus 135 degrees in the forward horizontal direction. The narrow vertical range would focus the flash at the level of vehicles approaching a crossing. It would also minimize undesirable beam scatter. The wide horizontal range would maximize the alerting capability of the light, and would make it visible even to vehicles approaching the crossing at a sharp angle to the tracks and vehicles paralleling the locomotive before crossing the track. The rearward 90 degrees of the flash would not be required to be visible since it could prove distracting in some situations to crewmen behind the locomotive displaying the alerting lights.

Under this proposed section, the effective intensity of the alerting light over the entire angular coverage is specified for day, night, and dawn and dusk. An effective intensity of between 800 and 3,000 candela would be required during the day, between 400 and 1,200 candela during the night, and between 400 and 3,000 during dawn and dusk. The different intensity ranges for different time periods is proposed to permit a railroad to use a multi-intensity light. Thus, for example, if unusual operating conditions warrant an especially high intensity light during the day, a railroad could install a two level alerting light.

It will be noted that a single intensity light with an effective intensity of between 800 and 1,200 candela could be operated at all times. This range is proposed because it provides adequate conspicuity during the day without creating an excessively intense flash at night.

Section 222.15—Under this proposed section, the alerting lights would have to be mounted not less than 5 feet apart, equidistant from the nearer end of the locomotive and at least 8 feet above the rail. This minimum height requirement is proposed to insure that the lights are visible from a considerable distance. Ideally, they should be mounted as high as possible. It is anticipated that in most instances they would be mounted on the roof of the locomotive. The minimum lateral separation of 5 feet is proposed to accentuate the alerting quality of the alternating flash.

Section 222.17—This proposed section provides that whenever one of the alerting lights becomes inoperative enroute, the locomotive could be operated at track speed to the next forward point where repairs can be made or the locomotive replaced. Even if both alerting lights on the locomotive at the front of the train, or other movement, become inoperative enroute, the locomotive still could be operated at track speed to the next forward point where repairs can be made. In addition, the locomotive could be replaced by another locomotive in the consist if the replacement locomotive has an operative alerting light.

Where neither the locomotive at the front of the train, or other movement, nor any other locomotive in the consist has an operative alerting light, the lovomotive would be permitted to operate only at a speed which would enable it to stop short of an obstruction at public grade crossings. This proposed requirement is considered essential, not only in view of the reduced conspicuity of the locomotive, but also due to the

expectation on the part of the public that locomotives will be displaying alerting lights.

Section 222.19—Under this proposed section, a locomotive that is equipped with alerting lights and operated at the front of a train, or other movement, would have to display those lights as specified by proposed section 222.11. This proposed requirement would become effective after 30 days from the date of issuance of the final rules based on this NPRM.

Economic Impact

FRA has evaluated this NPRM in light of Executive Order 12044 and DOT's policies for the evaluation of regulatory impacts (E.O. 12044, 43 FR 12661, March 24, 1978; Policies and Procedures for Simplification, Analysis, and Review of Regulations, 44 FR 11034, February 26, 1979). Based on that evaluation, FRA has determined that this NPRM contains a significant regulatory proposal.

FRA certifies that a regulatory analysis has been prepared and that a copy of that analysis has been placed in Docket No. RSGC–2. Interested persons may examine the regulatory analysis during regular business hours in Room 4406, Trans Point Building, 2100 Second Street, S.W., Washington, D.C. 20590. Persons interested in obtaining a copy of the analysis for review and comment should contact the Docket Clerk by telephone (202) 426–8836 or by writing to: Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Trans Point Building, at the above address.

As previously explained, this NPRM would require that locomotives display alerting lights at public grade crossings. The proposed requirement would apply to each locomotive, whether operated as a single unit or at the front of a train.

FRA has estimated the cost of installing strobe lights using two different approaches. The first approach is based on the TSC recommendation (Hopkins, John B. and Newfell, A. T., Guidelines for Enhancement of Visual Conspicuity of Trains at Grade Crossings, Cambridge, MA, Transportation Systems Center, 1975 (DOT/FRA)). While the specifications set forth in these guidelines are not yet in production, the estimated cost for equipping locomotives with alerting lights pursuant to this approach is $1,750 per locomotive. This cost is based on use of the following specification: 4000 candela—Day 800–4000 candela; Night 100–400 candela; Dim 50–100 candela; Day/Night transition automatic—photocell; automatic hookup to horn and/or whistle; and On/Off Manual override. Thus, if all of the 28,000 locomotives currently in use were equipped pursuant to this approach, the total cost would amount to $49,000,000 (28,000 × $1,750).

If this approach is used, the estimated cost for subsequent maintenance, based on a five-year maintenance interval, is $285.00 per locomotive. This cost is computed as follows: Rebuilt $80.00; Labor remove/replace 2 hours × $25.00 = $50.00; 3 sets of bulbs = $130.00; 1 hour labor.

The second approach is based on currently available equipment. If this equipment is used, the estimated cost of installation is $555.00 per locomotive. This cost is based on use of the following specification: 1100 candela—Standard 1500 candela; 3 level option 100/550/1100 candela; automatic transition—photocell; automatic hookup and/or whistle; and manual override. Thus, if all of the locomotives currently in use were equipped pursuant to this approach, the total cost would amount to $15,540,000 (28,000 × $550.00).

If currently available equipment is used, the estimated cost for subsequent maintenance, based on a 5-year maintenance interval, is $174.00 per locomotive. This cost is computed as follows: Rebuilding $80.00; labor remove/replace 2 hrs. × $25.00 $44.00. = $50.00; 1 bulb/per

It should be noted that the actual cost of installation and maintenance of the strobe lights proposed in this notice would be lower than the cost of installation and maintenance based on the TSC recommendation or currently available equipment. The cost would be lower since some of the options discussed in connectin with those approaches, such as the three level option and automatic transition—photocell, would not be required by this notice.

Alternatives

FRA, in its deliberation of this proposed regulation, has considered various methods of improving grade crossing safety. These methods, grade separation and installation of active warning devices, have been compared with alerting lights for the purpose of determining the relative merits of alerting lights. These alternative methods, however, are crucial elements of an overall grade crossing program.

Grade Separation

Grade separation is one effective means of reducing grade crossing accidents. There are locations throughout the rail-highway network where the nature and volume of automotive and train traffic over a particular grade crossing warrants the major expenditures related to the construction of a grade separation. These types of crossings exist in high speed rail corridors where the closing speed between the automotive and rail vehicle is of such short duration that an extremely hazardous condition is created. Additional areas requiring grade separation exist in connection with the interstate highway system where high volume roadways intersect a railroad right-of-way.

However, the unit cost of a grade separation during 1978 was $1 million based on the average construction cost, (excluding preliminary engineering and right-of-ways) of federal-aid highway projects. Although grade separation projects are currently being funded by the Federal Highway Administration (FHWA), it is recognized that use of this approach at the vast majority of public grade crossings cannot be justified.

Active Warning Devices

Installation of train activated alerting devices (i.e., flashing lights or automatic gates) is another alternative. Installation of these devices constitutes a major portion of the ongoing FHWA program to improve safety at rail-highway grade crossings. The conventional grade-crossing flashing light systems have generally been found to reduce accidents at unprotected crossings from 60% to 75%, with even better results of 90% when augmented by automatic gates.

Per unit costs associated with these types of devices average $26,000 for flashing lights and $90,200 for automatic gates. Recognizing that there are presently 168,000 unprotected crossings, the cost associated with equipping all of these crossings would be enormous.

The vastness of the rail-highway network and the extremely wide variation in the amount of exposure to accident potential that exists at these crossings precludes the desirability and justification for equipping all unprotected crossings with these permanently located automated devices. There are large numbers of grade crossings where rail traffic is very limited (i.e., one train per day or two trains per week) and vehicular traffic is also at a minimum.

Alerting Lights

Alerting lights can be installed on locomotives for a small fraction of the cost that would be required to eliminate all rail-highway crossings or equip all crossings with active warning devices.

Although these methods would provide significantly higher levels of grade crossing safety, FRA studies indicate that alerting lights would provide a valuable added safety factor with a more favorable cost-benefit basis. In fact, as previously noted, the cost of grade separation or equipping all crossings with active warning devices would be prohibitive and, in some case, unjustifiable from a cost-benefit standpoint.

Alerting lights would provide additional warning at all rail-highway grade crossings, most of which are not currently protected by active devices. Moreover, they would serve as a useful supplemental warning system at crossings which are protected by active devices. The added warning provided by alerting lights is, therefore, consistent with the current program for the installation of active warning devices at grade crossings.

In view of these factors, FRA believes that alerting lights are needed to supplement existing departmental efforts to reduce accidents at rail-highway grade crossings.

Written Comments and Hearings

Interested persons are invited to participate in this proceeding by submitting written data, views or comments. Communications would identify the regulatory docket number and the notice number, and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, 2100 Second Street, S.W., Washington, D.C. 20590. Persons desiring receipt of their communications to be acknowledged should attach a stamped pre-addressed postcard to the first page of each communication. Communications received before September 28, 1979, will be considered before final action is taken on the proposed rules. All comments received will be available for examination by interested persons at any time during regular working hours in Room 4406, Trans Point Building, 2100 Second Street, S.W., Washington, D.C. 20590.

In addition, FRA will conduct public hearings at 10:00 a.m. on September 17, 1979, in Room 340 of the John C. Kluczynski Building, Chicago, Illinois and on September 20, 1979, in Room 2230 of the Nassif Building, Washington, D.C. The hearings will be informal, and not judicial or evidentiary hearings. There will be no cross examination of persons making statements. A staff member of FRA will make an opening statement outlining the matter set for hearing. Interested persons will then have the opportunity to present their oral statements.

At the completion of all initial oral statements, those persons who wish to make rebuttal statements will be given the opportunity to do so in the same order in which they make their initial statements. Additional procedures for conducting the hearings will be announced at the hearings.

Interested persons may present oral or written statements at the hearings. All statements will be made a part of the record of the hearings and will be a matter of public record. Any person who wishes to make an oral statement at the hearings should notify the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, 2100 Second Street, S.W., Washington, D.C. 20590 (Telephone (202) 426-8836), before September 12, 1979, stating the amount of time required for the initial statement.

The proposals contained in this notice may be changed in light of the oral statements made at the public hearings, or the written comments submitted in response to this notice.

The Proposed Rule

In consideration of the foregoing, FRA proposes to adopt a new Part 222 (49 CFR Part 222) to read as follows:

PART 222—ALERTING LIGHTS—LOCOMOTIVES

Sec.

222.1 Scope.
222.3 Application.
222.5 Definitions.
222.7 Civil Penalty.
222.9 Waivers.
222.11 Alerting Lights Display.
222.13 Alerting Light Specifications.
222.15 Alerting Lights Installation.
222.17 Movement of Defective Equipment.
222.19 Interim Utilization of Equipped Locomotives.

Authority: Secs. 2, 7, 8, 9, and 13, Locomotive Inspection Act (45 U.S.C. 23, 28, 29, 30 and 34); sec. 6 (e) and (f), Department of Transportation Act (49 U.S.C. 1655 (e) and (f)).

§ 221.1 Scope.

This part prescribes minimum requirements governing alerting lights on locomotives. So long as these minimum requirements are met, railroads may adopt additional or more stringent requirements governing their use.

§ 222.3 Application.

(a) Except as provided in paragraph (b) of this section, this part applies to all locomotives operated on standard gauge track which is part of the general railroad system of transportation.

(b) This part does not apply to locomotives—

(1) Operated only on track inside an installation which is not part of the general railroad system of transportation; or

(2) Operated by a rapid transit railroad only on track used exclusively for rapid transit passenger service in a metropolitan or suburban area.

§ 222.5 Definitions.

As used in this part:

(a) "Alerting light" means a light having the characteristics prescribed in § 222.13.

(b) "Dawn" means the period between one half hour before sunrise and one half hour after sunrise.

(c) "Day" means the period between one half hour after sunrise and one half hour before sunset.

(d) "Dusk" means the period between one half hour before sunset and one half hour after sunset.

(e) "Effective intensity" means that intensity of a light in candela as defined by the Illuminating Engineering Society's Guide for Calculating the Effective Intensity of Flashing Signal Lights, November, 1964.

(f) "Locomotive" means a unit of equipment—

(1) With propelling motors designed for moving other equipment;

(2) With propelling motors designed to carry freight, or passenger traffic, or both, in revenue service; or

(3) Without propelling motors but with control stands.

(g) "Locomotive servicing track area" means one or more tracks within a area in which the testing, servicing, repair, inspection, or rebuilding of locomotives is under the exclusive control of mechanical department personnel.

(h) "Public grade crossing" means a location where one or more railroad tracks cross a road open to public travel which is under the jurisdiction of, and maintained by, a public authority.

§ 222.7 Civil penalty.

Each railroad that operates a locomotive in violation of any requirement prescribed by this part is liable to a civil penalty of not less than $250, nor more than $2,500, for each violation. Each day of each violation constitutes a separate offense.

§ 222.9 Waivers.

(a) A railroad may petition the Federal Railroad Administration for a waiver of compliance with any requirement prescribed in this part.

(b) Each petition for a waiver under this section must be filed in the manner,

and contain the information, required by Part 211 of this Chapter.

(c) If the Administrator finds that a waiver of compliance is in the public interest, and is consistent with railroad safety, he may grant the waiver subject to any condition he deems necessary. Notice of each waiver granted, including a statement of the reason therefor, is published in the Federal Register.

§ 222.11 Alerting lights display.

(a) Except as provided in paragraph (b) of this section, after (three years from issuance of the final rules), each locomotive at the front of a train, or other movement, shall display two alternately flashing alerting lights, installed in accordance with § 222.15, at a minimum of 30 seconds before entering any public grade crossing and continuing until 30 seconds after the locomotive has cleared the crossing or until the entire train has cleared the crossing, whichever occurs sooner.

(b) A non-equipped locomotive, or a locomotive with defective alerting lights, may be operated at the front of a train, or other movement, across a public grade crossing located within an engine servicing area or train yard without displaying alerting lights at a speed not exceeding 5 mph for the purpose of servicing the locomotive or assembling or disassembling multi-unit locomotive consists.

§ 222.13 Alerting light specifications.

Each alerting light shall have—

(a) A flash rate of not less than .75, nor more than 1.5, flashes per second;

(b) A flash duration, as defined by the period during which 90 percent of the total energy within the visible range associated with the flash is emitted, not in excess of .1 seconds;

(c) A color that falls within the limits of "aviation white" as defined in the Code of Federal Regulations, Title 14, § 23.1397(c) (14 CFR 23.1397(c));

(d) An angular coverage of ± degrees in the vertical direction, and not less than ±135 degrees in the forward horizontal direction; and

(e) An effective intensity over the entire angular coverage of between 800 and 3,000 candela during the day, between 400 and 1,200 candela during the night, and between 400 and 3,000 candela during dawn and dusk.

§ 222.15 Alerting lights installation.

The two alerting lights shall be mounted not less than 5 feet apart, equidistant from the nearest end of the locomotive, and not less than eight feet above the rails.

§ 222.17 Movement of defective equipment.

(a) Whenever one of the alerting lights prescribed in this part becomes inoperative en route, the locomotive may be operated at track speed to the next forward point where repairs can be made or the locomotive can be replaced.

(b) Whenever both of the alerting lights prescribed in this part become inoperative en route, the locomotive may be operated to the next forward point where repairs can be made or the locomotive can be replaced—

(1) At track speed if another locomotive in the locomotive consist at the front of the train has an operative alerting light; or

(2) At a speed which will enable it to stop short of any obstruction at public grade crossings.

§ 222.19 Interim utilization of equipped locomotives.

After (30 days from issuance of the final rule), each locomotive that is operated at the front of a train, or other movement, and which is equipped with alerting lights as prescribed in this part, shall display those lights as specified by § 222.11(a)

(Secs. 2, 7, 8, 9, and 13, Locomotive Inspection Act (45 U.S.C. 23, 28, 29, 30 and 34); Sec. 6(e) and (f), Department of Transportation Act (49 U.S.C. 1655(e) and (f))

Issued in Washington, D.C. on June 12, 1979.

John M. Sullivan,
Administrator.

[FR Doc. 79-18998 Filed 6-15-79; 8:45 am]
BILLING CODE 4910-06-M

Federal Highway Administration

[49 CFR Parts 392, 393, and 399]

[BMCS Docket No. MC-80; Notice No. 79-5]

Toxic Gases in Commercial Motor Vehicles

AGENCY: Federal Highway Administration, Department of Transportation.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Comments and information are solicited on a proposed revision to the Federal Motor Carrier Safety Regulations (FMCSR), to establish definite exposure limits to certain toxic gases within commercial motor vehicles operating under the jurisdiction of the Federal Highway Administration. These limits would provide commercial vehicle drivers with the same basic protection afforded industrial workers through current occupational safety standards as set by the Occupational Safety and Health Administration.

DATE: Comments must be received August 17, 1979.

ADDRESS: All comments should refer to the Docket number and notice number that appear at the top of this document and must be submitted (original and two copies) to Room 3402, Bureau of Motor Carrier Safety, 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald J. Davis, Chief, Driver Requirements Branch, Regulations Division, Bureau of Motor Carrier Safety, (202) 426-9767, or Mr. Gerald M. Tierney, Attorney, Motor Carrier and Highway Safety Law Division, Federal Highway Administration, Department of Transportation, Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.s.t., Monday through Friday.

SUPPLEMENTARY INFORMATION: An Advance Notice of Proposed Rulemaking (ANPRM), Docket No. MC-80, Notice No. 77-11, was published in the Federal Register (43 FR 20), January 3, 1978, proposing revisions to these Regulations. The FMCSR in § 392.66 currently requires that:

"No person shall dispatch or drive any motor vehicle or permit any passengers thereon, when the following conditions are known to exist, until such conditions have been remedied or repaired:

(a) Where an occupant has been affected by carbon monoxide;

(b) Where carbon monoxide has been detected in the interior of the vehicle;

(c) When a mechanical condition of the vehicle is discovered, which would be likely to produce a hazard to the occupants by reason of carbon monoxide."

Respondents were invited to comment regarding whether the Federal Highway Administration (FHWA) should expand the regulation dealing with carbon monoxide to include other toxic gases such as nitric oxide and nitrogen dioxide; whether the FHWA should regulate the levels of these harmful gases; and if so, what concentration levels should be set as the maximum.

Twelve responses were filed in response to this ANPRM. The consensus supported the proposal to adopt maximum driver exposure levels for these toxic gases.

The FHWA's initial investigation about the problem of gas intrusion into truck cabs began in April 1973, when a number of drivers and union officials alleged that truck drivers were operating unsafe equipment because of the harmful and hazardous fumes in their

truck cabs, in violation of the FMCSR. Testing which was conducted then, at one motor carrier, failed to disclose significant concentrations of these gases within their cabs.

Complaints continued to be received from drivers from various sections of the country. Accordingly, the FHWA had experimental research conducted to measure the in-cab concentration of these toxic gases over a variety of conditions.

Test Protocol

A worst-case selection of 88 vehicles was made from 8 participating trucking fleets. In most cases both idling and road tests were performed on the same vehicle. Idling tests were conducted in basic conformance with Society of Automotive Engineers' Test Procedure] 988; based upon these results, individual vehicles were selected for road testing. While a technician operated measuring equipment, drivers assisted by changing window, vent, and other conditions; thus, allowing several variables to be studied.

Final testing was conducted to determine gas leakage routes into truck cabs. A tracer gas, sulfur hexafluoride, was released and then measured along the exhaust systems of idling and moving vehicles.

Test Results

The maximum concentrations which were recorded during idling and road testing were: nitric oxide, 2 parts per million (ppm); nitrogen dioxide, 3 ppm; and carbon monoxide, 30 ppm. These measurements consisted of a combination of vehicle and outside air (ambient) concentrations. The proposed National Institute of Occupational Safety and Health (NIOSH) nitrogen dioxide ceiling value of one ppm was commonly exceeded when the levels in the ambient were added to those found in the cab. NIOSH is an advisory government agency. Worst-case nitrogen dioxide levels were found to be statistically correlated with exhaust leaks and closed cabs; testing showed that cab floor openings were the principal pathways for entrance of engine compartment gases.

Interpretation of Test Results

The driver is affected by toxic gas exposure in two ways, the first is by potentially chronic or acute health effects, the second is by performance degradation. These effects were considered for all gases, and it was determined that the consequences of exposure to nitrogen dioxide was greatest followed by carbon monoxide. Nitric oxide under certain atmospheric conditions is changed into nitrogen dioxide.

Nitrogen dioxide, a product of diesel exhaust, is classified as a deep lung irritant, which is known to increase breathing difficulties. In addition, laboratory animal studies have shown this gas to cause pathological changes in the lungs, which may lead to emphysema.

The carbon monoxide levels measured during the test program were considered less hazardous to drivers than the nitrogen dioxide levels, but were high enough to be of concern. This is especially true when vehicle self-contamination levels are combined with any of the following conditions: when the driver smokes, when ambient carbon monoxide levels are elevated, or when a vehicle is operated by a driver suffering from heart or lung disease.

Although the implications for long-term exposure to these gases are not fully known, these conditions create concentrations in the blood sufficiently high to cause short-term health and performance problems. Therefore, the FHWA proposes to adopt requirements for these gases identical to those of the American Conference of Governmental Industrial Hygienists (ACGIH),[1] a voluntary consensus organization. The Department of Labor's Occupational Safety and Health Administration (OSHA) uses these same values with the exception of the Threshold Limit Value—Short-term Exposure Limits (TLV-STELS).[2] Support for the adoption of voluntary consensus standards was provided by the Office of Management and Budget's memorandum of December 22, 1977, to the Heads of Executive Departments and Establishments, published on January 3, 1978, which encourages the use of voluntary consensus standards." * * * whenever possible and appropriate, as a means of reducing and eliminating redundant Federal efforts to develop and maintain in-house Government standards" (43 FR 48).

If justified by future evidence, research, and/or analysis, these levels may need to be revised. It is felt that commercial vehicle drivers should be offered, without further delay, basically the same protection which has safeguarded other industrial workers for years.

The proposed revisions would adopt the Threshold Limit Value—Ceiling, (TLV-C), for nitrogen-dioxide, which is the driver exposure concentration level which must not be exceeded even instantaneously. For carbon monoxide and nitric oxide, 2 measurement levels will be established. The first, the Threshold Limit Value—Short Term Exposure Level, (TLV-STEL), establishes the maximum concentration to which a driver can be exposed for a period up to 15 minutes, continuously. The second, the Threshold Limit Value—Time Weighted Averge, (TLV-TWA), establishes a time-weight average concentration level for driver exposure during a normal 8-hour work day or 40-hour work week.

Although the TLV-TWA values are based on a conventional 8-hour workday or 40-hour work week, they are nevertheless regarded as appropriate for truck and bus drivers. A 1977 FHWA nationwide survey established the mean driving time for these drivers as 30.1 hours and 32.2 hours, respectively.

The adoption by the FHWA of ACGIH standards should not impose undue hardships on the motor carrier industry. Testing which was conducted for the FHWA indicated that well maintained vehicles do not exceed these levels. Thus, this proposed Regulation is expected to have minimal impact, and therefore, does not warrant a full evaluation in accordance with the criteria established by the Department of Transportation, under Executive Order 12044. Consequently, no statement is being placed in the public docket.

The new requirement being proposed will encompass the present rule, and will prohibit anyone from driving, dispatching, or carrying passengers in a vehicle in which concentrations of these gases exceed the established values.

Accordingly, it is proposed that Part 393 Subpart J, published at 43 FR 8638, Feb. 15, 1978, be redesignated as Part 399 Subpart L and it is proposed that § 392.66 of the FMCSR (Subpart G of Chapter III, Title 49, Code of Federal Regulations) be revised and redesignated as § 399.1001 under the new Subpart Z, entitled, Toxic and Hazardous Substances.

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[1] TLVs® Threshold Limit Values for Chemical Substances in Workroom Air Adopted by ACGIH for 1977. Available from Secretary-Treasurer, ACGIH, P.O. Box 1937, Cincinnati, Ohio 45201. Price $1.50.

[2] Occupational Safety and Health Standards, Subpart Z—Toxic and Hazardous Substances. Code of Federal Regulations, Title 29, Chapter XVII. (§ 1910.1000(d)(1)(ii)).

PART 399—EMPLOYEE SAFETY AND HEALTH STANDARDS

Subpart A—General (Proposed in MC-64; 43 FR 8566)

Subpart B—Recording and Reporting Employee Injuries and Illness (Proposed in MC-64; 43 FR 8566)

Subpart C through J [Reserved]

Subpart K—Medical and Emergency Medical Care (Proposed in MC-64; 43 FR 8566)

Subpart L—Step, Handhold, and Deck Requirements on Commercial Motor Vehicles (Proposed in MC-58-1; 43 FR 6638, formerly published as Subpart J to Part 393)

Subpart M through Y [Reserved]

Subpart Z—Toxic and Hazardous Substances

§ 399.1001 Toxic gases.

No motor carrier shall permit or require a driver to drive any motor vehicle or permit any passengers thereon, when the following exist:

(a) Where an occupant has been affected by carbon monoxide, nitric oxide, or nitrogen dioxide;

(b) Where gases have been detected in the interior of the vehicle above the following levels:

Substance	TWA [1]	STEL [2]
Carbon Monoxide	50 ppm	400 ppm
Nitric Oxide	25 ppm	35 ppm
Nitrogen Dioxide	[3]5 (c) ppm	5(c) ppm

[1] Threshold Limit Value—Time Weighted Average (TLV-TWA)—the time-weighted average concentration for a normal 8-hour work day or 40-hour work week, to which nearly all workers may be repeatedly exposed, day-after-day, without adverse effect.

[2] Threshold Limit Value—Short-term Exposure Limit (TLV-STEL)—the maximal concentration to which workers can be exposed for a period up to 15 minutes continuously without suffering from 1) irritation, 2) chronic or irreversible tissue change, or 3) narcosis of sufficient degree to increase accident proneness, impair self-rescue, or materially reduce work efficiency, provided that no more than four excursions per day are permitted, with at least 60 minutes between exposure periods, and provided that the daily TLV-TWA also is not exceeded. The STEL should be considered a maximal allowable concentration, or absolute ceiling, not to be exceeded at any time during the 15-minute excursion period.

[3] Threshold Limit Value-Ceiling (TLV-C)—the concentration that should not be exceeded even instantaneously.

Vehicle testing for gases should be conducted in basic accordance with "Carbon Monoxide Concentration Test Procedure—Society of Automotive Engineers (SAE) J 990," Report of the Automotive Emissions and Air Pollution Committee (Approved January 1968).

(c) When a mechanical condition of the vehicle is discovered which would be likely to produce a hazard to the occupants by reason of exposure to carbon monoxide, nitric oxide, or nitrogen dioxide.

Those desiring to comment on this Notice are asked to submit in writing (original and two copies) of their views, data, and arguments. All communications received will be considered before any proposal for final rulemaking is initiated.

Comments are welcome and will be available, both before and after the closing date, for examination by interested persons in the Docket Room of the Bureau of Motor Carrier Safety, Room 3402, 400 Seventh Street, SW., Washington, D.C. 20590. If it is determined to be in the public interest to proceed further, after summarizing the comments received in response to the NPRM, a Final Rule will be issued.

Note.—The FHWA has determined that this document does not contain a significant proposal according to the criteria established by the Department of Transportation under Executive Order 12044.

Authority: 49 U.S.C. 304, 49 U.S.C. 1655, 49 CFR 1.48 and 49 CFR 301.60.

Issued on: June 6, 1979.

Robert A. Kaye,

Director, Bureau of Motor Carrier Safety.

[FR Doc. 79-18800 Filed 6-15-79; 8:45 am]

BILLING CODE 4910-23-M

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 1056]

[Ex Parte No. MC-19 (Sub- 23)]

Practices of Motor Common Carriers of Household Goods; Investigation Into Estimating Practices

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission proposes to amend its regulations governing the practices of motor common carriers of household goods as they concern estimating, 49 CFR 1056.8. The proposed regulations would allow a carrier at its option to give a binding estimate for the movement of a shipper's household goods. No other written estimates would be allowed. The Commission also proposes to amend 49 CFR 1056.7, .9, .10, and .21 to conform those regulations to the modified estimating requirements.

DATES: Comments are due on or before July 18, 1979.

ADDRESSES: Send comments to Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Bruce Boyarko or David Gaynor, Office of Proceedings, Interstate Commerce Commission, Washington, DC 20423, (202) 275-7901 and 275-7904.

SUPPLEMENTARY INFORMATION: The Interstate Commerce Commission, in an interim report served April 26, 1978, proposed to bind a motor common carrier of household goods to any estimate given for the movement of a shipper's goods. The numerous comments received revealed to the Commission that alternative rules could better accomplish the purpose of the proceeding.

The Commission proposes to allow a carrier the option to give a binding estimate on the basis of constructive weight determined using the volume of the shipper's items as seen by the estimator in the home. The shipper would be charged the lower total charge determined by using the actual or the constructive weight of the shipment. The estimate would be prepared in writing and according to appropriate tariff rules. No other type of written estimate would be allowed. The text of proposed § 1056.8 and those of related regulations are contained forth in the appendix. A brief explanation of each will be set forth here:

Subsection § 1056.7(b) will be amended to eliminate the requirement of reporting in an annual performance report the number of over- and underestimates. Added to that subsection, however, is the requirement that a carrier report the number of shipments on which it misquotes applicable rates. The inclusion of this requirement is designed to provide data our staff can examine to determine if a carrier is systematically misquoting rates to obtain shipments. We would like parties to comment on the likelihood of some carriers abusing the proposed system in this fashion, and, if a likelihood is perceived, to include suggestions to remedy any abuse. In addition, the rules would require that a carrier report the percent of COD and national account shipments carried on which estimates are given, and the percent of shipments which are transported for the estimated price.

Subsection § 1056.8 as it now reads will be entirely eliminated. A new section detailing the mechanics of the binding estimate procedure will be substituted in its place.

The first part of the subsection, § 1056.8(a) will declare that the only estimate that can be given in writing will be a binding estimate, and that if a carrier offers binding estimates, it must offer them to all shippers. Estimates will be made only after a visual inspection of the goods to be transported.

The total charge to be paid will be that determined using the actual or constructive weight of the goods [§ 1056.8(b)]. Constructive weight will be determined by multiplying the volume of the items viewed in the home times a

conversion factor (in pounds per cubic foot) stated in the carrier's tariff. The estimated service price given will include all charges to be rendered to a shipper.

The tariffs of each carrier adopting this method will have to be amended. Subsection 1056.8(c) will require that every carrier adopting this method have two rules: (1) that the price to be paid is the lower price determined using the actual or constructive weight, (2) that a conversion factor of a certain number of pounds per cubic foot will be used to determine constructive weight. There will be no specified conversion factor in the rules, because the figure to be used must be determined by each carrier in its own tariffs. The Commission will be receptive to requests to adopt alternative methods of price computation that carriers may feel are better suited to their operations than is the proposed method.

The estimates given will be valid for 60 days, or less if a carrier's tariff so specifies. Subsection § 1056.8(d) requires this, as well as delivery of a copy of the estimate to the shipper. The estimate will be binding when a shipper requests service or signs an order for service. Furthermore, the subsection states upon what terms an estimate can be changed and that a written statement of any adjustment must be executed.

The proposed rules place upon a carrier certain duties with respect to any change in and misquotation of rates. A carrier would be required to confirm quoted rates and to notify a shipper of changes in applicable rates 3 days prior to the pickup date. In addition, the rules would require a carrier to extend credit to a shipper for any charges which exceed the estimated service price as a result of a misquotation of applicable rates.

Shippers will be allowed to make their own cost appraisals according to § 1056.8(f). A kit may be provided for this purpose by the carrier, but any shipper's own appraisal will not be binding.

There will not be a form prescribed by us on which every estimate may be prepared. Certain information will be required by § 1056.8(g) in every estimate, and a form of the carrier's own design shall be used. The right to prohibit the use of any form which does not comply with the rules is reserved. (The right to approve forms for an alternative method is, of course, reserved too.) The information required is essentially that stated on the form now in use. Certain conditions must be added to make the estimate an offer to contract. The conditions essentially specify the terms for making the estimate binding, a carrier's duties to confirm quoted rates, and the conditions under which the price may change.

Subsection § 1056.8(h) will limit the use of the rules on shipments when an interline is involved. Binding estimates will be allowed only when all interlining carriers give binding estimates and agree to be bound by the estimate of the originating carrier. No such estimate can be given unless all carriers have come to an agreement about this and have appropriate tariff revisions in effect.

Subsection § 1056.9(a) will be amended to require that the estimated price, if any, must be stated in the order for service. Also, since the "110-percent rule" will be eliminated, the requirement of a maximum amount to relinquish possession will be eliminated. The shipper will be required to pledge that he has shown all items to, and requested all services from the estimator.

Subsection § 1056.10 will be amended to reflect the changes in the rules.

Finally, subsection 1056.21(d) will be amended to relieve any difficulty with having more than one set of rates in affect. It is not expected that more than one rate will be in effect; but if any carrier shall try to use a two-tier rate system, the opportunity will be there to seek Commission approval.

Comments are invited on these matters. They should be submitted to Secretary, Interstate Commerce Commission, Washington, DC, 20423. There should be an original and 15 copies. All submissions will become part of the record of this proceeding, and will be open to public inspection at the Commission's office in Washington, DC, during normal business hours.

This notice of proposed rulemaking is issued under the authority of Subchapter II of Chapter 105 of the Interstate Commerce Act (49 U.S.C. §§ 10521–26) and of 5 U.S.C. §§ 552, 553, and 559 (the Administrative Procedure Act).

Issued at Washington, DC, on the 31st day of May, 1979.

By the Commission, Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian. Commissioner Stafford dissenting. Commissioner Christian absent and not participating in the disposition of this proceeding.

H. G. Homme, Jr.,
Secretary.

Commissioner Stafford, dissenting:

After careful review of the numerous comments filed in response to our April 1978 decision, I am compelled to again dissent from the action taken by the majority. Although today's proposal does deal with certain of the legal defects inherent in the previous rule, the practical problems associated with the binding estimate are again overlooked. I share the Commission's deep concern that shippers receive an accurate assessment of their prospective transportation charges. However, I am equally concerned that these same shippers may ultimately be hurt by the long-term effect of this proposal.

Our own Bureau of Investigations and Enforcement has consistently opposed the concept of binding estimates. This rule may well be an incentive for collusion between unscrupulous carriers and shippers to negotiate individual deals to provide transportation service at an excessively low rate. Even assuming no unlawful conduct, it may be expected that in many instances the binding "lawful" rate will be established by what amounts to a process of contractual negotiation between a carrier and shipper. In effect, there will no longer be any uniform rates in the movement of household goods.

This form of rate deregulation, with its resulting diminution in regulatory safeguards over rates, raises the serious possibility that the smaller carriers will be driven out of business. The binding estimate rule may well be an invitation for some carriers to deliberately quote excessively low estimates as a means of competing for all available volumes of business. There will be an incentive to quote higher rates when demand is greater, such as during the peak moving season in the summertime and conversely, to quote lower rates at other times of the year. Likewise, major carriers could, in effect, reduce rates to undercut competition in certain territories and conversely raise rates in areas providing little competition.

Such manipulation of the "estimated rate" will thus enable certain carriers to drive smaller competitors out of business. As pointed out by the Movers' and Warehousemen's Association, the operating ratio of a large number of movers exceeds 100. Many independent movers are barely surviving. The predatory pricing that will arise from the proposed regulation will only compound their financial problems and may force them out of business. The effect of this will be less competition, decreased quality of service, and higher levels of rates to the public as a whole.

In addition to these problems, the binding estimate rule also raises serious enforcement questions. In our prior report, the Commission stated that it would take appropriate action if any carrier were to use the rule deliberately to discriminate between shippers or to prefer one class of shippers over another. However, in its most recent statement, the Bureau of Investigations and Enforcement points out the practical difficulties of enforcing proper estimating practices. If unjust discrimination or preferential treatment becomes widespread, carriers who themselves engage in such conduct will not be apt to come forward with complaints about competitors unfair or deceptive acts, for fear of retaliation. Likewise, shippers cannot be expected to volunteer information concerning specially preferential rates received by themselves as a result of questionable estimating practices on the part of carriers. Compounding these enforcement problems,

the proposed rule would eliminate the present requirement that carriers file quarterly reports on the number of over and underestimates.

Finally, I note that our previous decision devoted extensive discussion as to why national account shippers should not come under the binding estimate rule. The Commission stated that large national account shippers would be in a good position to use the binding estimate rule to exact undue preference from carriers simply by demanding that the carrier furnish low estimates in return for the shipper's agreement to tender a certain volume of business to the carrier. Many of the public comments noted the legal problems associated with this separate treatment of national account shippers. Apparently persuaded by these arguments, the majority now concludes in a one paragraph discussion that "Equality of treatment . . . is more appropriate . . ." and decides to permit carriers to offer binding estimates to employees of national account shippers. What about the potential for unlawful rebates and undue preference which the majority deemed so serious a year ago? Today's report is virtually silent on this point.

This change, however, does not eliminate still another potential discriminatory effect. It is well established that the Interstate Commerce Act precludes carriers from collecting different transportation charges for rendering the same service under substantially the same circumstances. However, under this proposal, two neighbors moving to a common destination with approximately the same household goods shipment may pay very different charges. Even apart from the legal considerations, I am convinced that consumers have a right to expect that, so long as their is rate regulation, every shipper should pay the same charge for the same service.

In sum, I fear the Commission has settled upon a short-term answer to the problem of inaccurate estimates. The binding estimate rule ignores the reality that an estimate is precisely that. It is not within the ability of a carrier to come up with an estimated charge which is identical to a charge based on the actual weight. Nevertheless, this proposal places the full burden upon the carrier. The mover must bear all the risk inherent in the estimating process, a process which this Commission itself once described as "inexact". Ex Parte No. MC-19 (Sub-No. 23), *Practices of Motor Common Carriers of Household Goods*, 125 M.C.C. 307, 315 (1976). Not only do we ignore this reality, but we have failed to address the serious discrimination and enforcement questions which will accompany the implementation of this rule.

The Interstate Commerce Commission proposes to amend certain regulations in 49 CFR § 1056 in the following manner:

1. Section 1056.7(b) would be amended by revising paragraphs (b)(3) (ii) and (iii) and by adding paragraph (b)(3)(xi).

§ 1056.7 Information for shippers.

(ii) Percentage of estimates provided to each type of account.

(iii) Percentage of shipments in each type of account which were transported for the estimated price.

* * * * *

(xi) Number of estimated shipments on which rates were misquoted.

2. Section 1056.8 would be deleted and the following section would be substituted in its place:

§ 1056.8 Furnishing estimates.

(a) *Estimates.* No motor carrier of household goods, as defined in 49 CFR 1056.1(a), shall give to a prospective shipper of household goods an estimate of a service price except in the manner specified in this section. A motor common carrier which provides estimates in the manner specified in this section must offer an estimate to each shipper of household goods who requests an estimate. Each estimate of a service price shall be made only in writing and only after a visual inspection by the carrier or its agent of the goods to be transported. Each estimate of a service price prepared in the manner specified in this section shall consititute an offer for service at a price no higher than that stated in the estimate, subject to the provisions of paragraph (d) of this section.

(b) *Computation of service price.* The service price charged for a shipment on which an estimate is furnished shall be the lower amount determined by using the actual weight of the shipment or the constructive weight of the shipments. The constructive weight of a shipment shall be the estimated volume of a shipment multipled by a conversion factor stated in a carrier's tariff in terms of pounds per cubic foot. The estimated service price of a shipment shall include all service furnished by a carrier, including accessorial and terminal service.

(c) *Tariffs.* Each motor common carrier of household goods which furnishes estimates shall publish in its tariff rules which state the basis upon which an estimate of a service price will be computed. If an estimate is computed on the basis of constructive weight, appropriate tariff rules shall state that (1) the actual price for a shipment shall be the lower amount determined by using the actual weight of a shipment or the constructive weight of the shipment, and (2) that constructive weight will be determined by multiplying the estimated volume of the shipment by a conversion factor of a certain number of pounds per cubic foot. No estimate shall be furnished by a carrier unless appropriate tariff rules are published, filed, posted, and in effect.

(d) *Conditions.* Each estimate of a service price shall be delivered in writing to a prospective shipper and a copy shall be retained by the carrier furnishing the estimate. An estimate shall be valid for not more than 60 days from (but not counting) the date a written estimate is delivered to a prospective shipper. A carrier may by tariff rule limit the period during which an estimate is valid to a specified time of less than 60 days. An estimate shall be binding upon a carrier if a shipper requests the carrier to perform the service or signs a written order for service within the specified period. If a shipper requests the carrier to perform the service or signs a written order for service within the specified period, the estimate will continue in effect until the transportation service is performed. An estimate of service price shall be subject to change only when items are added to or removed from the shipment, additional services are requested or previously requested services are cancelled, a pending rate change becomes effective, or when a charge or charges different from those originally quoted apply to the shipment. If an estimate of service price is changed, a written statement reflecting the adjusted amount shall be delivered to the shipper prior to the commencement of any additional service and a copy retained by the carrier.

(e) *Reconfirmation of rates; misquotations.* Each carrier which furnishes an estimate shall confirm rates quoted in the estimates and notify the shipper of any changes in applicable rates 3 days prior to the date the shipment is to be picked up. If tariff charges subsequently are found to differ from those quoted in the estimate as a result of a misquotation of applicable charges, a carrier shall extend credit to the shipper for any amount in excess of the originally quoted charges which is attributable to misquotation of those charges, for a period of 30 days.

(f) *Shipper cost appraisal.* A carrier may provide a shipper with a kit which contains information which will enable the shipper to make his own nonbinding appraisal of the cost of a move. An appraisal of this type will not constitute an "estimate" as that term is used in these rules. These materials shall plainly indicate that shipper's own cost appraisals are not estimates and are not binding on the carrier.

(g) *Contents of estimate.* An estimate shall be prepared in clear and legible manner. The Commission retains authority to proscribe use of any form which, upon examination, is found not to comply with the provisions of this subsection.

The following information shall be contained in each written estimate based on constructive weight.

(1) The period for which the estimate is valid;

(2) Name, address, telephone number, and I.C.C. number of the carrier, and whether the carrier or the agent is the principal party of liability for the move;

(3) Name, address, and telephone number of shipper;

(4) Origin and destination of shipment;

(5) Destination contact;

(6) Packing, loading, and delivery dates;

(7) Acknowledgement of shipper's receipt of BOp 103, public advisory number 4, and carrier's performance report;

(8) Name and number of applicable tariffs;

(9) Conversion factor (pounds per cubic foot) to be used;

(10) Constructive weight, line-haul rate, number of miles, and total service price;

(11) Valuation charges on transportation and storage;

(12) Additional charges for: (i) pickup and delivery for storage in transit; (ii) storage in transit; (iii) warehouse handling; (iv) extra pickup and delivery; (v) servicing appliances; (vi) heavy articles; (vii) containers; (viii) packing and unpacking; (ix) labor; (x) charges for stairs, elevators, long distances, et cetera; (xi) overtime; (xii) other charges.

(13) Signature of estimator;

(14) Carrier's table of measurement; and

(15) The following conditions: (i) the estimate is binding upon the carrier once the shipper requests the service or signs an order for service; (ii) the shipper shall pay the lower amount determined by using the actual or the constructive weight of a shipment; (iii) the applicable tariff rates and charges; (iv) the shipper's right to 30-days credit for any charges in excess of those estimated, if applicable charges are misquoted; (v) the estimated service price may be adjusted only when items are added to or removed from the shipment, additional services are requested or previously requested services are cancelled, a pending rate change becomes effective, or when a rate different from that originally quoted applies to the shipment; (vi) the following statement, in bold face type, located directly above the estimator's signature:

"This estimate of service price is based upon the articles shown to and the services requested of the estimator. The service price will be subject to adjustment if (1) shipper adds items to or removes items from the shipment; (2) shipper requests additional services or cancels previously requested services; (3) a pending rate change becomes effective; or (4) charges different from those originally quoted apply to the shipment."

(h) *Interline Shipments.* No estimate may be given on a shipment that will be interlined unless all interlining carriers have on file appropriate tariff provisions for the giving of estimates under this section including appropriate provisions concerning shipments to be interlined, and all interlining carriers agree to be bound by the estimate of the originating carrier.

3. Section 1056.9 would be amended by revising paragraphs (a) (9), (10), and (11).

§ 1056.9 Order for service.

(a) * * *

(9) Amount of estimated service price, if any, and method of payment of total tariff charges;

(10) Maximum amount, if any, required to be paid in cash or by certified check, money order, or approved charge card to relinquish possession of a c.o.d. shipment.

(11) If an estimate of service price is furnished, a statement located directly above the space for shipper's signature which reads: "All articles I intend to ship have been shown to the estimator, and all services I will require have been requested. I understand that if the carrier, at my request, transports additional articles or performs additional services, the carrier shall assess additional charges pursuant to its tariff on file with the Commission."

Section 1056.10 would be amended by revising paragraphs (b)(7) and (8).

§ 1056.10 Reciept or bill of lading; information thereon.

(b) * * *

(7) Amount of estimated service price, if any, and method of payment of total tariff charges.

(8) Maximum amount, if any, required to be paid in cash or by certified check, money order, or charge card (under an approved plan) to relinquish possession of a c.o.d. shipment.

Section 1056.21 would be amended by revising paragraph (d).

§ 1056.21 Uniform rates for identical services.

* * * * *

(d) The regulations in (a), (b), and (c), above shall not apply to rates applicable to the transportation of shipments of machinery which, because of its unusual nature or vale, requires the specialized handling and equipment usually employed in the moving industry, nor shall the above subsections apply to rates established in accordance with sections 1056.8 and 1056.25(g) of this chapter.

[FR Doc. 79-18656 Filed 6-15-79; 8:45 am]
BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 44, No. 118
Monday, June 18, 1979

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Licenses and Authorizations; Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Licenses had Authorizations of the Administative Conference of the United States, to be held at 11:00 a.m., Friday, July 20, 1979 at the office of O'Melveny & Myers, 1800 M Street, NW, Suite 500 South, Washington, D.C.

The Committee will meet to discuss Professor Richard Merrill's study of regulation of carcinogens.

Attendance is open to the interested public, but limited to the space available. Person wishing to attend should notify the Office of the Chairman of the Administrative Conference at least two days in advance. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the Committee before, during or after the meeting.

For further information concerning this meeting contact David M. Pritzker (202–254–7065). Minutes of the meeting will be available on request.

Richard K. Berg,
Executive Seretary.

[FR Doc. 79-18810 Filed 6-15-79; 8:45 am]
BILLING CODE 6110-01-M

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Programmatic Agreement Regarding the Operation and Maintenance Programs of the Tulsa District of the Corps of Engineers

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: The Advisory Council on Historic Preservation proposes to execute a Programmatic Memorandum of Agreement pursuant to § 800.8 of the regulations for the "Protection of Historic and Cultural Resources" (36 CFR 800) with the Corps of Engineers, Tulsa District and the State Historic Preservation Officers of Texas, Arkansas, Kansas, and Oklahoma concerning the operation and maintenance programs for water resource projects in the Tulsa District. The agreement provides a system that will insure that the Corps of Engineers gives adequate consideration to historic and cultural properties in the operation and maintenance of water resource projects in order to meet the requirements of Section 106 of the National Historic Preservation Act (16 U.S.C. 470f).

COMMENTS DUE: July 18, 1979.

ADDRESS: Comments should be addressed to the Executive Director, Advisory Council on Historic Preservation, 1522 K Street, N.W., Suite 510, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Louis Wall, Chief, Western Office of Review and Compliance, Advisory Council on Historic Preservation, P.O. Box 25085, Denver, Colorado 80225, (303) 234–4946.

SUPPLEMENTARY INFORMATION: This notice of the proposed agreement invites comments from interested parties. Copies of the proposed agreement are available from either the Western Office of Review and Compliance of the Council, Denver, Colorado, or the Office of Intergovernmental Programs and Planning of the Council, Washington, D.C.

Under Section 106 of the National Historic Preservation Act (16 U.S.C. 470), the Council reviews and comments on Federal undertakings that affect properties listed or eligible for listing on the National Register of Historic Places. Section 106 requires that the head of any Federal agency having indirect or direct jurisdiction over a proposed Federal, federally assisted or licensed undertaking affecting National Register or eligible properties shall afford the Council a reasonable opportunity for comment. The Council's regulations are published at 36 CFR Part 800.

The Tulsa District of the Corps of Engineers operates and maintains 24 multi-purpose lakes (lock, dam, and reservoir systems) and the McClennen-Kerr Navigation System in Texas, Arkansas, Kansas, and Oklahoma. In the course of this work, additions to or improvements of recreation areas are made and measures to mitigate the impacts of public use and natural erosion are taken; in so doing, the Corps encounters National Register and eligible properties. Under the terms of the proposed agreement, the Corps will develop Cultural Resource Management Plans for water resource projects for the states within the Tulsa District. Such plans would contain recommendations for nomination of sites, districts, and multiple resource areas to the National Register, data recovery, preservation, interpretation, and related treatment of such property. Plans developed pursuant to the proposed agreement would be reviewed by both the appropriate State Historic Preservation Officer and the Council. The proposed agreement also provides that Corps projects covered by the agreement will be designed to avoid National Register and eligible properties unless it is not prudent and feasible to do so. In that event, the Corps, in consultation with the appropriate State Historic Preservation Officer may develop mutually acceptable mitigation measures for impacts on National Register and eligible properties. The comments of the Council will be requested in accordance with the published regulations in certain situations.

The parties to the proposed agreement believe that it provides a workable system for expediting review of actions taken by the Corps to operate and maintain water resource projects in the Tulsa District. This agreement may become a model for other Corps districts.

Robert R. Garvey, Jr.,
Executive Director.

[FR Doc. 79-18878 Filed 6-15-79; 8:45 am]
BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Chattahoochee National Forest, Ga.; Change in Boundary of National Forest

Pursuant to authority vested in me by Section 11 of the Act of March 1, 1911 (36 Stat. 961) as amended, and the delegation of authority and assignment of functions by the Secretary of Agriculture to the Assistant Secretary of Agriculture for Conservation, Research, and Education, the boundary of the Chattahoochee National Forest is extended as described below and all lands within the Chattahoochee National Forest as adjusted that have been or hereafter are acquired by the United States under provisions of the aforesaid Act, or which otherwise attain status as National Forest land subject to such Act, are hereby designated for administration as part of the Chattahoochee National Forest.

Chattahoochee National Forest, Georgia

Habersham County:

That part of Forest Service Tract No. R-604 lying outside the existing National Forest boundary.

Union County:

Forest Service Tracts No. C-1633a, C-1698, C-1700, C-1703, C-1704, C-1707, C-1707a, C-1766, C-1784, C-1802, C-1802Aa, C-1802Ab, C-2006, C-2015 and that part of Forest Service Tract No. C-1834 lying in Union County;

Fannin County:

That part of Forest Service Tract No. C-1834 lying in Fannin County;

The areas described aggregate 1,963.39 acres.

Effective Date: This order shall become effective on June 18, 1979.

M. Rupert Cutler,
Assistant Secretary.
June 12, 1979.

[FR Doc. 79-18680 Filed 6-15-79; 8:45 am]
BILLING CODE 3410-11-M

Kisatchie National Forest, La.; Change in Boundary of National Forest

Pursuant to authority vested in me by Section 11 of the Act of March 1, 1911 (36 Stat. 961) as amended, and the delegation of authority and assignment of functions by the Secretary of Agriculture to the Assistant Secretary of Agriculture for Conservation, Research, and Education, the boundary of the Kisatchie National Forest is extended as described below and all lands within the Kisatchie National Forest as adjusted that have been or hereafter are acquired by the United States under provisions of the aforesaid Act, or which otherwise attain status as National Forest land subject to such Act, are hereby designed for administration as part of the Kisatchie National Forest.

Kisatchie National Forest, Louisiana

Louisiana Meridian

Claiborne Parish

T. 22N., R. 5W.,
Sec. 8, S½SW¼NW¼, the West 20.60 acres of the SW¼.

Vernon Parish

T. 1S., R. 5W.,
Sec. 5, N½NW¼, SW¼NW¼.
T. 1N., R. 5W.,
Sec. 18, S½, NW¼, Diagonal SW¼NE¼;
Sec. 19;
Sec. 17;
Sec. 20;
Sec. 21, W½, W½E½, NE¼NE¼, Diagonal NW½SE¼NE¼;
Sec. 28, W½, W½NE¼, Diagonal NW½W½SE¼;
Sec. 29
Sec. 32
Sec. 33, NW¼, N½SW¼.

Rapides Parish

T. 4N., R. 3W.,
Forest Service Tracts No. E-52a, and E-52b, lying in the SE¼ of Section 51 and the W½SW¼ of Section 52 along the shoreline of Kincaid Reservoir.

The areas described aggregate 5,414.55 acres.

Effective Date: This order shall become effective on June 18, 1979.

M. Rupert Cutler,
Assistant Secretary.
June 12, 1979.

[FR Doc. 79-18679 Filed 6-15-79; 8:45 am]
BILLING CODE 3410-11-M

Sabine National Forest, Tex.; Change in Boundary of National Forest

Pursuant to authority vested in me by Section 11 of the Act of March 1, 1911 (36 Stat. 961) as amended, and the delegation of authority and assignment of functions by the Secretary of Agriculture to the Assistant Secretary of Agriculture for Conservation, Research, and Education, the boundary of the Sabine National Forest is extended as described below and all lands within the Sabine National Forest as adjusted that have been or hereafter are acquired by the United States under provisions of the aforesaid Act, or which otherwise attain status as National Forest land subject to such Act, are hereby designated for administration as part of the Sabine National Forest.

SABINE NATIONAL FOREST, TEXAS

Jasper County:

That part of Forest Service Tract No. S-2k-IV lying outside the existing National Forest boundary;

Sabine County:

Forest Service Tract No. S-100-2;

Newton County:

Beginning at a point on the Texas-Louisiana State line common to the Newton-Sabine County line, a point in Toledo Bend Reservoir; Thence, southwesterly across said Reservoir to the south east corner of Forest Service tract S-60; Thence, clockwise around tracts S-60, S-31-c, and S-60b to the Newton-Sabine County line; Thence, easterly with the said county line to the place or point of beginning.

The areas described aggregate 3102.10 acres.

Effective Date: This order shall become effective on June 18, 1979.

M. Rupert Cutler,
Assistant Secretary.
June 12, 1979.

[FR Doc. 79-18682 Filed 6-15-79; 8:45 am]
BILLING CODE 3410-11-M

St. Francis National Forest, Ark.; Change in Boundary of National Forest

Pursuant to authority vested in me by Section 11 of the Act of March 1, 1911 (36 Stat. 961) as amended, and the delegation of authority and assignment of functions by the Secretary of Agriculture to the Assistant Secretary of Agriculture for Conservation, Research, and Education, the boundary of the St. Francis National Forest is extended as described below and all lands within the St. Francis National Forest as adjusted that have been or hereafter are acquired by the United States under provisions of the aforesaid Act, or which otherwise attain status as National Forest land subject to such Act, are hereby designated for administration as part of the St. Francis National Forest.

St. Francis National Forest, Ark. Fifth Principal Meridian

Lee County:

T.2N., R.4E.,
Sec. 33, W½SW¼, SW¼NW¼.

The areas described aggregate 120.00 acres.

Effective Date: This order shall become effective on June 18, 1979.

M. Rupert Cutler,

Assistant Secretary.

June 12, 1979.

[FR Doc. 79-18881 Filed 6-15-79; 8:45 am]

BILLING CODE 3410-11-M

Superior National Forest; Transfer of Certain Lands; Additions

In FR Document 75-26173 appearing at page 45211 in the **Federal Register** of October 1, 1975, the following additions should be made in the land descriptions for St. Louis County:

1. On page 45211, Column 3, following subheading "T. 67N., R. 17 W., Sec. 11, lot 1" add T. 68N., R. 16 W., Sec. 31, lot 2.

2. On page 45212, Column 3, the described aggregate acreage should be 25,333.23 acres.

Effective Date: This order shall become effective on June 18, 1979.

M. Rupert Cutler,

Assistant Secretary for Conservation, Research, and Education.

June 12, 1979.

[FR Doc. 79-18883 Filed 6-15-79; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Office of the Secretary

Request From the Department of Housing and Urban Development for a National Voluntary Laboratory Accreditation Program for Carpet

In accordance with the procedures of the National Voluntary Laboratory Accreditation Program (NVLAP): Federal Government (15 CFR Part 7b.4(c)), the Department of Commerce publishes in this notice a request from the Department of Housing and Urban Development (HUD) to develop a laboratory accreditation program for carpet to be used in designating laboratories acceptable in the HUD/FHA Carpet Certification Program. The Use of Materials Bulletin (UM-44c), and the HUD Carpet Certification Program Procedural Handbook (HUD 4950.4) referenced in the request are available for inspection at the Office of Architecture and Engineering Standards, Room A6176, HUD Building, 451 7th Street, SW., Washington, D.C. 20410. These references are also available at all HUD Field Offices.

Any comments as to the need for this laboratory accreditation program shall be made within 60 days directly to HUD, Mr. Lynford Snell or Mr. Leslie Breden, Department of Housing and Urban Development, Federal Housing Commissioner, Washington, D.C. 20410 (202-755-6600). A copy of such comments should be sent to Mr. John W. Locke, Coordinator, NVLAP, Room 3876, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-2054). Additional inquiries related to NVLAP can also be directed to Mr. Locke.

Dated: June 13, 1979.

Jordan J. Baruch,

Assistant Secretary for Science and Technology.

The Under Secretary of Housing and Urban Development

May 17, 1979.

Honorable Juanita Kreps, Secretary of Commerce, Washington, D.C. 20230.

Dear Madame Secretary: The Department of Housing and Urban Development requests, in accordance with Section 7b.4 of Title 15 of the Code of Federal Regulations, that the Departments of Commerce and Housing and Urban Development, work together to establish a laboratory accreditation program for carpet in accordance with Use of Materials Bulletin 44c, dated February 22, 1978 (copy enclosed):

The HUD Carpet Certification Program presently uses three administrators, each of whom are responsible for the approval of the laboratories they use. The effort to eliminate the duplication of approvals by these administrators and minimize the costs to both industry and government establishes the need.

Enclosed is a copy of HUD Handbook 4950.4 used in the present HUD Carpet Certification Program. The procedures for the certification of carpets were authorized under the Technical Suitability of Products Program, Section 521 of the National Housing Act of 1965.

The Department of Housing and Urban Development will submit recommended general and specific criteria to be used in accrediting carpet testing laboratories. This will include consideration for the existing carpet program procedures now being used by HUD and HUD-accepted administrators and the NVLAP criteria. We will submit these criteria for your review and evaluation by August 15, 1979. HUD reserves the right to review and determine acceptability of the formalized criteria prior to publication in the **Federal Register.**

Although this particular program is directed toward testing carpet in accordance with HUD Standard UM 44c, the testing laboratories may also benefit relative to the testing of other textile related products. This could encourage participation and funding from a variety of both government and private sector sources.

We would be in a position to support this effort with our existing personnel.

If there are additional questions or information required, please feel free to call Mr. Lynford Snell or Mr. Leslie Breden at 755-5929.

Sincerely yours,

Jay Janis.

Enclosures

[FR Doc. 79-18914 Filed 6-15-79; 8:45 am]

BILLING CODE 3510-13-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adusting Level of Restraint for Certain Wool Apparel Products Imported From the Socialist Republic of Romania

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Restoring unused carryforward yardage in the amount of 419 dozen, previously deducted from the level of restraint established for men's and boys' wool suits in Category 443, produced or manufactured in Romania and exported to the United States during the twelve-month period which began on January 1, 1979.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), September 5, 1978 (43 FR 39408), January 2, 1979 (44 FR 94), March 22, 1979 (44 FR 17545), and April 12, 1979 (44 FR 21843.))

SUMMARY: The Bilateral Wool and Man-Made Fiber Textile Agreement of June 17, 1977, as amended, between the Governments of the United States and the Socialist Republic of Romania provides, among other things, for the borrowing of designated percentages of yardage from the succeeding year's levels (carryforward) and deducting those amounts from the levels in the succeeding year. Such yardage amounting to 419 dozen was applied to the level of restraint for Category 443 during the agreement year which began on January 1, 1978 and was deducted from the level established for the year which began on January 1, 1979. It has been determined that the carryforward yardage was not used in 1978. Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase by 419 dozen the level of restraint for wool textile products in Category 443, produced or manufactured in Romania, from 6,990 dozen to 7,409 dozen during the twelve-month period which began on January 1, 1979.

EFFECTIVE DATE: June 12, 1979.

FOR FURTHER INFORMATION CONTACT: Shirley Hargrove, Trade and Industry Assistant, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–5423).

SUPPLEMENTARY INFORMATION: On January 3, 1979, there was published in the Federal Register (44 FR 934) a letter dated December 28, 1978 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, which established import restraint levels for certain wool and man-made fiber textile products, produced or manufactured in Romania and exported to the United States during the twelve-month period which began on January 1, 1979. The letter published below restores carryforward yardage deducted from the level of restraint established for Category 443 during that twelve-month period.

Robert E. Shepherd,

Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Domestic Business Development.

June 8, 1979.

Committee for the Implementation of Textile Agreements

Commissioner of Customs, Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 28, 1978 from the Chairman of the Committee for the Implementation of Textile Agreements which directed you to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of certain categories of wool and man-made fiber textile products produced or manufactured in Romania.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Wool and Man-Made Fiber Textile Agreement of June 17, 1977, as amended, between the Governments of the United States and the Socialist Republic of Romania; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed, effective on June 12, 1979 to increase the twelve-month level of restraint established in the directive of December 28, 1978 for Category 443 to 7,409 dozen.

The action taken with respect to the Government of the Socialist Republic of Romania and with respect to imports of wool textile products from Romania has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Robert E. Shepherd,

Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Domestic Business Development.

[FR Doc. 79-18868 Filed 6-15-79; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed DOD Consolidation of Cryptologic Training; Environmental Impact Analysis Process

The Air Force has begun the environmental impact analysis process to assess the potential environmental impacts associated with the consolidation of cryptologic training at Keesler Air Force Base (AFB), Mississippi.

Based upon a study conducted by the Interservice Training Review Organization (Phase III Report, Cryptologic Consolidation Study, February 2, 1979), the Deputy Secretary of Defense has determined that consolidation of cryptologic training at Keesler AFB, MS, and Navy Technical Training Center, Corry Station, FL is the most feasible and cost-effective solution and worthy of further study.

The environmental impact analysis process will consider the potential impacts on the area surrounding Keesler AFB from gaining approximately 675 military and 60 civilian manpower authorizations and an average annual student load of approximately 1,100.

The environmental impact analysis process will lead to a formal environmental assessment which will be used to determine if a draft environmental impact statement (EIS) will be prepared or if a finding of no significant impact is appropriate.

If the formal environmental assessment indicates there may be significant impact on the quality of the human environment, the Air Force will file a draft EIS with the Environmental Protection Agency and release it to the public.

If such impacts are not found, a finding of no significant impact will be prepared and released.

Any comments or questions should be directed to the Deputy for Environment and Safety, Office of the Secretary of the Air Force, Room 4C885, the Pentagon, Washington, D.C. 20330, telephone 202–697–9297.

Carol M. Rose,

Air Force Federal Register Liaison Officer.

[FR Doc. 79-18911 Filed 6-15-79; 8:45 am]

BILLING CODE 3910-01-M

Office of the Secretary of Defense

Defense Science Board Task Force on V/STOL Aircraft, Phase II; Change in Notice

The referenced used to close the 25–29 June 1979 meeting of the Defense Science Board Task Force on V/STOL Aircraft, Phase II as published in the Federal Register (Vol. 44, No. 100, dated May 21, 1979, FR Doc. 79–16029) is quoted incorrectly. The fifth line, last paragraph of published notice should read ". . . 5 U.S.C. 552b(c)(1)(1976); and that. . . ." In all other respects, the original notice cited above remains the same.

Dated: June 13, 1979.

H.E. Lofdahl,

Correspondence and Directives, Washington Headquarters Services, Department of Defense.

[FR Doc. 79-18909 Filed 6-15-79; 8:45 am]

BILLING CODE 3910-70-M

Defense Intelligence Agency Advisory Committee; Closed Meeting

Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of a Panel of the DIA advisory Committee will be held as follows: Thursday & Friday, 26–27, July 1979, Institute for Defense Analyses, 400 Army-Navy Drive, Arlington, Virginia 22202.

The entire meeting, commencing at 0900 hours, each day, is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a study on the growth and the potential implications of Soviet technology.

Dated: June 13, 1979.

H. E. Lofdahl,

Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

[FR Doc. 79-18910 Filed 6-15-79; 8:45 am]

BILLING CODE 3910-70-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 79-CERT-005]

Anchor Hocking Corp.; Application for Certification of the Use of Natural Gas to Displace Fuel Oil

Take notice that on April 20, 1979, Anchor Hocking Corporation, 109 North Broad Street, Lancaster, Ohio 43130, filed an application pursuant to 10 CFR Part 595 (44 FR 20398, April 5, 1979) for a certification of an eligible use of natural gas to displace fuel oil, all as more fully set forth in the application on file with the Economic Regulatory Administration (ERA) and open to public inspection at the ERA, Docket Room 6317-B, 2000 M Street, N.W., Washington, D.C. 20461, between 8:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

In its application, Anchor Hocking stated that the volume of natural gas subject to certification is 3,000 Mcf per day, and the eligible sellers are Gas Transport, Inc., 109 North Broad Street, Lancaster, Ohio 43130, and Carl E. Smith, Inc., P.O. Box 4, Sandyville, West Virginia 25275. This natural gas will be used to displace approximately 175,500 barrels of No. 6 fuel oil containing up to 2 percent of sulphur per year at Anchor Hocking's glass manufacturing plant in Salem, New Jersey. The gas will be transported by Columbia Gas Transmission Corporation, Charleston, West Virginia 25325, and by Transcontinental Gas Pipe Line Corporation, Houston, Texas 77100.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Room 6318, 2000 M Street, N.W., Washington, D.C. 20461, Attention: Mr. Finn K. Neilsen, on or before June 28, 1979.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest, and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines an oral presentation is required, further notice will be given to Anchor Hocking and any persons filing comments, and filed in the Federal Register.

Issued in Washington, D.C., on June 12, 1979.

Paul T. Burke,

Acting Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-18859 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 79-CERT-023]

Georgia-Pacific Corp.; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

Take notice that on May 25, 1979, Georgia-Pacific Corporation (Georgia-Pacific), P.O. Box 756, Lovell, Wyoming 82431, filed an application pursuant to 10 CFR 595 (44 FR 20398, April 15, 1979) for a certification of an eligible use of natural gas to displace fuel oil, all as more fully set forth in the application on file with the Economic Regulatory Administration (ERA) and open to public inspection at the ERA, Room 6317-B, 2000 M Street, NW., Washington, D.C. 20461, between 8:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

In its application, Georgia-Pacific stated that it was requesting certification to use natural gas at its gypsum manufacturing facility at Lovell, Wyoming, and that it could purchase up to 500,000 Mcf per year of natural gas for use at that facility for five years from the Montana Power Company, 40 East Broadway, Butler, Montana 59701. This natural gas will be used to displace approximately 2,500,000 gallons per year of Number 2 fuel oil with a sulfer content range of 0.3-0.396 percent depending on the supplier, now used at the gypsum facility.

The natural gas will be transported to Georgia-Pacific's gypsum facility at Lovell, Wyoming, by Montana-Dakota Utilities Company, 400 North Fourth Street, Bismarck, North Dakota 59501.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumcstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Room 6318, 2000 M Street, NW., Washington, D.C. 20461, Attention: Mr. Finn K. Neilsen, on or before June 28, 1979.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest, and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines an oral presentation is required, further notice will be given to Georgia-Pacific and any persons filing comments, and filed in the Federal Register.

Issued in Washington, D.C., on June 12, 1979.

Paul T. Burke,

Acting Assistant Administrator, Office of Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-18857 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 79-CERT-020]

Public Service Electric and Gas Co.; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

Take notice that on May 17, 1979, the Public Service Electric and Gas Company (Public Service) 80 Park Place, Newark, New Jersey 07101, filed an application pursuant to 10 CFR Part 595 (44 FR 20398, April 15, 1979) for a certification of an eligible use of natural gas to displace fuel oil, all as more fully set forth in the application on file with the Economic Regulatory Administration (ERA) and open to public inspection at the ERA, Docket Room 6317-B, 2000 M Street, N.W., Washington, D.C. 20461, from 8:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

In its application, Public Service stated that it had entered into three separate arrangements to purchase approximately 24.1 billion cubic feet (Bcf) of natural gas for various public service electric generation facilities in New Jersey for a one-year period. The eligible sellers and transporters are as follows:

a. Seller: National Gas and Oil Corporation, 1500 Granville Road, Newark, Ohio 43065. Transporter: Texas Eastern Transmission Corporation, P.O. Box 2521, Houston, Texas 77001.
b. Seller: Equitable Gas Company, 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219.

Transporters: Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77001; Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77001.

c. Seller: Delhi Gas Pipeline Corporation, P.O. Box 22623, Dallas, Texas 75284 (Transcontinental Gas Pipe Line Corporation Acting as Agent).
Transporter: Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77001.

This 24.1 Bcf per year of natural gas will be used to displace approximately 4 million barrels of middle distillate and residual fuel oil. Because the quantities of gas to be used at each of the New Jersey facilities of Public Service might be subject to considerable variations, Public Service requests certification without assigning specific volumes to specific generating facilities. An estimate of the distribution of the natural gas between electric generating locations is included in the application.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any persons wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Room 6318, 2000 M Street, N.W., Washington, D.C. 20461, Attention: Mr. Finn K. Neilsen, on or before June 28, 1979.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest, and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines an oral presentation is required, further notice will be given to Public Service and any persons filing comments, and filed in the Federal Register.

Issued in Washington, D.C., on June 12, 1979.

Paul T. Burke,

Acting Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-18658 Filed 6-15-79; 8:45 am]
BILLING CODE 6450-01-M

[ERA Docket No. 79-CERT-021]

Long Island Lighting Co., Mineola, N.Y.; Application for Certification of the use of Natural Gas to Displace Fuel Oil

Take notice that on May 17, 1979, the Long Island Lighting Company (LILCO), 250 Old Country Road, Mineola, New York 11501, filed an application pursuant to 10 CFR Part 595 (44 FR 20398, April 15, 1979) for a certification of an eligible use of natural gas to displace fuel oil, all as more fully set forth in the application on file with the Economic Regulatory Administration (ERA) and open to public inspection at the ERA, Docket Room 6317-B, 2000 M Street, N.W., Washington, D.C., 20461, from 8:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

In its application, LILCO stated that it has an agreement with Delhi Gas Pipeline Corporation (Delhi), Fidelity Union Tower, Dallas, Texas 75201, to receive 10,000 Mcf per day for one year (3,650 MMcf) commencing with the date of initial delivery, and 40, 000 Mcf per day for a second year (14,600 MMcf).

The application also states that 3,450,000 barrels of fuel oil can be displaced by that amount of natural gas at LILCO's E. F. Barrett, Glenwood, and Far Rockaway Electric Plants for a 12-month period from May 1, 1979. The natural gas will be transported by Transcontinental Gas Pipe Line Corporation (TRANSCO), 2700 South Post Oak Road, P.O. Box 1396, Houston, Texas 77001.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning the application to submit comments in writing to the Economic Regulatory Administration, Room 6318, 2000 M Street, N.W., Washington, D.C. 20461, Attention: Mr. Finn K. Neilsen, on or before June 28, 1979.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest, and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed presentation and a statement as to why an oral presentation is necessary. If ERA determines an oral presentation is required, further notice will be given to LILCO and any persons filing comments, and filed in the Federal Register.

Issued in Washington, D.C., on June 12, 1979.

Paul T. Burke,

Acting Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-18661 Filed 6-15-79; 8:45 am]
BILLING CODE 6450-01-M

[ERA Docket No. 79-CERT-023]

System Fuels, Inc.; Application for Certification of the Use of Natural Gas to Displace Fuel Oil

Take notice that on May 30, 1979, System Fuels, Inc., (SFI), 225 Baronne Street, New Orleans, Louisiana 70112, for use by its parent companies, Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc., and by Arkansas-Missouri Power Company, all operating electric generating companies of Middle South Utilities, Inc., filed an application pursuant to 10 CFR Part 595 (44 FR 20398, April 15, 1979) for a certification of an eligible use of natural gas to displace fuel oil, all as more fully set forth in the application. SFI's application for certification is on file with the Economic Regulatory Administration (ERA) and open to public inspection at the ERA, Docket Room 6317-B, 2000 M Street, N.W., Washington, D.C. 20461, from 8:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

In its application, SFI stated that the volume of natural gas subject to certification for use at various facilities of the above companies located in Missouri, Arkansas, Louisiana, and Mississippi, may be as much as 120,000 Mcf per day. This natural gas will be used to displace up to 25,000 barrels per day of middle distillate (including No. 2 fuel oil) and up to 20,000 barrels per day of residual fuel oil (No. 5 and No. 6) having a sulfur content of 1 percent, 1½ percent or 3 percent depending on the facilities in which the fuel oil is displaced. SFI anticipates the displacement of at least 1,500,000 barrels of middle distillate, including No. 2 fuel oil, during the next 12 months in addition to a presently undetermined quantity of residual fuel oil. SFI states it will attempt to use the natural gas to maximize the displacement of No. 2 fuel oil first, then other middle distillates, and finally, residual fuels oils (including Nos. 5 and 6).

The eligible sellers of the gas are: Channel Industries Gas Company, Houston, Texas 77001; Louisiana Intrastate Gas Corporation, Alexandria, Louisiana 71301; and Louisiana Resources Company, Tulsa, Oklahoma

74101. The gas will be transported by: United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77001; Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77001; Florida Gas Company, P.O. Box 44, Winter Park, Florida 32790; and Arkansas Louisiana Gas Company, Arkla Building, Shreveport, Louisiana 71151.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Room 6318, 2000 M Street, N.W., Washington, D.C. 20461, Attention: Mr. Finn K. Neilsen, on or before June 28, 1979.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest, and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines an oral presentation is required, further notice will be given to SFI and any persons filing comments, and filed in the Federal Register.

Issued in Washington, D.C., on June 12, 1979.

Paul T. Burke,

Acting Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-18809 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Energy Supply and Environmental Coordination Act; Intention To Rescind a Prohibition Order

The Department of Energy (DOE)[1] hereby gives notice that, acting under the authority granted to it in Section 2(f) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), as amended (15 U.S.C. 792(f)) and implemented by 10 CFR 303.130(b), it intends to rescind the Prohibition Order issued on June 30, 1977, to the unit named below. This action is taken in accordance with the provisions of 10 CFR Part 303, Subpart J ("Modification or Rescission of Prohibition Orders and Construction Orders") of the ESECA regulations.

[1] Effective October 1, 1977, the responsibility for implementing ESECA was transferred by Executive Order No. 12009 from the Federal Energy Administration to the Department of Energy pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*).

Docket No.	Owner	Plant	Units	Location
OCU-0400	The Chesapeake Corp.	West Point Mill	8	West Point, Va.

The Prohibition Order, if made effective by the issuance of a Notice of Effectiveness (NOE), would have prohibited this unit from burning natural gas or petroleum products as their primary energy source.

By letter of February 6, 1979, Garland T. Edmonds, Vice President of the Chesapeake Corporation, reported to DOE that Unit 8 of the West Point Mill will soon be converted from the burning of oil to the burning of coal as its primary energy source pursuant to the terms of the outstanding Prohibition Order.

Based upon this information, DOE finds that the outstanding Prohibition Order issued to Unit 8 of the West Point Mill has attained the originally stated purpose, causing the conversion of this unit from the burning of oil as a primary energy source to the burning of coal in a manner consistent to the fullest extent practicable with existing commitments to protect and improve the environment.

In view of this accomplishment, DOE finds that further action toward making the outstanding Prohibition Order effective would not be in the public interest and accordingly, rescission of the orders is now appropriate.

Comments on DOE's intention to rescind the Prohibition Order are invited. Interested persons may submit written data, views or arguments with respect to the proposed action to the Office of Public Hearing Management, Room 2313, 2000 M Street NW., Washington, D.C. 20461 (Attn: D. Kidwell). All comments and other documents should be identified both on the outside of the envelope and on the document itself with the designation, "Proposed Rescission Order, Chesapeake Corporation's West Point Mill, Unit 8." All written comments must be received no later than June 28, 1979, in order to receive consideration. In making its decision regarding the proposed rescission action, DOE will consider all relevant information submitted to it or otherwise available to it.

Any information considered to be confidential by the person furnishing it must be so identified at the time of submission in accordance with 10 CFR Part 1004. DOE reserves the right to determine the confidential status of the information and to treat it in accordance with that determination.

Questions regarding this proposed action should be directed to DOE as follows: Steven A. Frank, ESECA Programs Division, Department of Energy, Economic Regulatory Administration, Room 7202, 2000 M Street NW., Washington, D.C. 20461 (telephone: (202) 254-8246). Written questions should be identified on the envelope and in the correspondence with the designation set out above.

(Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791 *et seq.*) as amended by Pub. L. 95-70 and Pub. L. 95-620; Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) as amended by Pub. L. 95-70 and Pub. L. 95-91; Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); E.O. 11790 (39 FR 23185); E.O. 12009 (42 FR 46267).)

Issued in Washington, D.C. June 8, 1979.

Doris J. Dewton,

Acting Assistant Administrator, Office of Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-18804 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Energy Supply and Environmental Coordination Act; Intention To Rescind a Prohibition Order

The Department of Energy (DOE)[1] hereby gives notice that, acting under the authority granted to it in Section 2(f) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), as amended (15 U.S.C. 792(f)) and implemented by 10 CFR 303.130(b), it intends to rescind the Prohibition Orders issued on June 30, 1977, to the unit named below. This action is taken in accordance with the provisions of 10 CFR Part 303, Subpart J ("Modification or Rescission of Prohibition Orders and Construction Orders") of the ESECA regulations.

[1] Effective October 1, 1977, the responsibility for implementing ESECA was transferred by Executive Order No. 12009 from the Federal Energy Administration to the Department of Energy pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*).

Docket No.	Owner	Plant	Units	Location
OCU-0004	Brown Co.	Parchment plant	9 & 10	Parchment, Mich.

The Prohibition Orders, if made effective by the issuance of a Notice of Effectiveness (NOE), would have required that this unit be designed and constructed so as to be capable of using coal as its primary energy source.

Based upon a review of the potential environmental impacts of converting the Parchment Units 9 and 10 to coal combustion, DOE is rescinding the Prohibition Orders issued under the Energy Supply and Environmental Coordination Act.

Comments on DOE's intention to rescind the Prohibition Orders are invited. Interested persons may submit written data, views or arguments with respect to the proposed action to the Office of Public Hearing Management, Room 2313, 2000 M Street, NW., Washington, D.C. 20461 (Attn: D. Kidwell).

All comments and other documents should be identified both on the outside of the envelope and on the document itself with the designation, "Proposed Rescission Order, Brown Company's Parchment, Michigan Plant, Units 9 and 10." All written comments must be received no later than June 28, 1979, in order to receive consideration. In making its decision regarding the proposed rescission action, DOE will consider all relevant information submitted to it or otherwise available to it.

Any information considered to be confidential by the person furnishing it must be so identified at the time of submission in accordance with 10 CFR Part 1004. DOE reserves the right to determine the confidential status of the information and to treat it in accordance with that determination.

Questions regarding this proposed action should be directed to DOE as follows: Steven A. Frank, ESECA Division, Department of Energy, Economic Regulatory Administration, Room 7202, 2000 M Street, NW., Washington, D.C. 20461 (telephone: (202) 254–6246). Written questions should be identified on the envelope and in the correspondence with the designation set out above.

(Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791 *et seq.*) as amended by Pub. L. 95–70 and Pub. L. 95–620; Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) as amended by Pub. L. 95–70 and Pub. L. 95–91; Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); E.O. 11790 (39 FR 23185); E.O. 12009 (42 FR 46267))

Issued in Washington, D.C. June 8, 1979.

Doris J. Dewton,

Acting Assistant Administrator, Office of Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-18605 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Energy Supply and Environmental Coordination Act; Intention To Rescind a Prohibition Order

The Department of Energy (DOE) [1] hereby gives notice that, acting under the authority granted to it in Section 2(f) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), as amended (15 U.S.C. 792(f)) and implemented by 10 CFR 308.130(b), it intends to rescind the Prohibition Orders issued on June 30, 1977, to the units named below. This action is taken in accordance with the provisions of 10 CFR Part 303, Subpart J ("Modification or Rescission of Prohibition Orders and Construction Orders") of the ESECA regulations.

[1] Effective October 1, 1977, the responsibility for implementing ESECA was transferred by Executive Order No. 12009 from the Federal Energy Administration to the Department of Energy pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*).

Docket No.	Owner	Plant	Units	Location
OCU-0000	Continental Forest Industries	Hopewell Mill	2 & 3	Hopewell, Va.
OCU-0001	do	Port Wentworth Mill	1, 2, & 3	Port Wentworth, Ga.

The Prohibition Orders, if made effective by the issuance of a Notice of Effectiveness (NOE), would have prohibited these units from burning natural gas or petroleum products as their primary energy source.

By letter of February 23, 1979, R. S. Magruder, Director of Environmental and Energy Management for Continental Forest Industries, reported to DOE that Units 2 and 3, of the Hopewell Mill have been converted from the burning of oil and gas to the burning of bark, black liquor and waste as their primary energy source pursuant to the terms of the outstanding Prohibition Orders.

Based upon this information, DOE finds that the outstanding Prohibition Orders issued to Units 2 and 3 of the Hopewell Mill have attained their originally stated purpose, causing the conversion of their units from the burning of oil and gas to bark, black liquor and waste in a manner consistent to the fullest extent practicable with existing commitments to protect and enhance the environment.

In view of this accomplishment, DOE finds that further action towards making the outstanding Prohibition Orders effective would not be in the public interest and accordingly, rescission of the orders is now appropriate.

In this same letter of February 23, 1979, Mr. Magruder reported that Units 1, 2 and 3 of the Port Wentworth Mill would soon be replaced by a new unit, designated #3 Chemical Recovery Unit, now in the final stages of construction.

In view of Continental Forest Industries ongoing modernization effort at Port Wentworth plus management plans for further future improvements which will eventually lead to an equivalent savings of 190,000 bbls of oil per year, DOE is rescinding the Prohibition Order issued under the Energy Supply and Environmental Coordination Act.

Comments on DOE's intention to rescind the Prohibition Orders are invited. Interested persons may submit written data, views or arguments with respect to the proposed action to the Office of Public Hearing Management, Room 2313, 2000 M Street, NW., Washington, D.C. 20461 (Attn: D. Kidwell).

All comments and other documents should be identified both on the outside of the envelope and on the document itself with the designation, "Proposed Rescission Orders, Hopewell Mill, Units 2 and 3, and Port Wentworth Mill, Units

1, 2 and 3." All written comments must be received no later than June 28, 1979, in order to receive consideration. In making its decision regarding the proposed rescission action, DOE will consider all relevant information submitted to it or otherwise available to it.

Any information considered to be confidential by the person furnishing it must be so identified at the time of submission in accordance with 10 CFR Part 1004. DOE reserves the right to determine the confidential status of the information and to treat it in accordance with that determination.

Questions regarding this proposed action should be directed to DOE as follows: Steven A. Frank, ESECA Division, Department of Energy, Economic Regulatory Administration, Room 7202, 2000 M Street, NW., Washington, D.C. 20461 (telephone: (202) 254–6246). Written questions should be identified on the envelope and in the correspondence with the designation set out above.

(Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791 *et seq.*) as amended by Pub. L. 95–70 and Pub. L. 95–620; Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) as amended by Pub. L. 95–70 and Pub. L. 95–91; Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); E.O. 11790 (39 FR 23185); E.O. 12009 (42 FR 46267))

Issued in Washington, D.C. June 8, 1979.

Doris J. Dewton,

Acting Assistant Administrator, Office of Fules Regulation, Economic Regulatory Administration.

[FR Doc. 79-18898 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Energy Supply and Environmental Coordination Act; Intention To Rescind a Prohibition Order

The Department of Energy (DOE)[1] hereby gives notice that, acting under the authority granted to it in Section 2(f) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), as amended (15 U.S.C. 792(f)) and implemented by 10 CFR 303.130(b), it intends to rescind the Prohibition Orders issued on June 30, 1977 and July 14, 1978, to the units named below. This action is taken in accordance with the provisions of 10 CFR Part 303, Subpart J ("Modification or Rescission of Prohibition Orders and Construction Orders") of the ESECA regulations.

[1] Effective October 1, 1977, the responsibility for implementing ESECA was transferred by Executive Order No. 12009 from the Federal Energy Administration to the Department of Energy pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*)

Docket No.	Owner	Plant	Units	Location
OCU-2640	Avtex Fibers, Inc	Front Royal	1, 2, & 3	Front Royal, Va.
OCU-2640	do	do	4 & 5	Do.

The Prohibition Orders, if made effective by the issuance of a Notice of Effectiveness (NOE), would have prohibited these units from burning natural gas or petroleum products as their primary energy source.

By letter of February 7, 1979, Herbert S. Hall, Vice President of Avtex Fibers, Inc., reported to DOE that Units 1, 2, 3, 4, and 5 of the Front royal Plant have been converted from the burning of oil to the burning of coal as their primary energy source pursuant to the terms of the outstanding Prohibition Orders.

Based upon this information, DOE finds that the outstanding Prohibition Orders issued to Units 1, 2, 3, 4, and 5 of the Front Royal Plant have attained their originally stated purpose, causing the conversion of their unit from the burning of oil as a primary energy source to the burning of coal in a manner consistent to the fullest extent practicable with existing commitments to protect and improve the environment.

In view of this accomplishment, DOE finds that further action towards making the outstanding Prohibition Orders effective would not be in the public interest and accordingly, rescission of the orders is now appropriate.

Comments on DOE's intention to rescind the Prohibition Orders are invited. Interested persons may submit written data, views or arguments with respect to the proposed action to the Office of Public Hearing Management, Room 2313, 2000 M Street NW., Washington, D.C. 20461 (Attn: D. Kidwell). All comments and other documents should be identified both on the outside of the envelope and on the document itself with the designation, "Proposed Rescission Order, Avtex Fibers, Inc., Front Royal Plant, Units 1, 2, 3, 4, and 5." All written comments must be received no later than June 28, 1979, in order to receive consideration. In making its decision regarding the proposed rescission action, DOE will consider all relevant information submitted to it or otherwise available to it.

Any information considered to be confidential by the person furnishing it must be so identified at the time of submission in accordance with 10 CFR Part 1004. DOE reserves the right to determine the confidential status of the information and to treat it in accordance with that determination.

Questions regarding this proposed action should be directed to DOE as follows: Steven A. Frank, ESECA Programs Division, Department of Energy, Economic Regulatory Administration, Room 7202, 2000 M Street NW., Washington, D.C. 20461 (telephone: (202) 254–6246). Written questions should be identified on the envelope and in the correspondence with the designation set out above.

(Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791 *et seq.*) as amended by Pub. L. 95–70 and Pub. L. 95–620; Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) as amended by Pub. L. 95–70 and Pub. L. 95–91; Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); E.O. 11790 (39 FR 23185); E.O. 12009 (42 FR 46267).)

Issued in Washington, D.C. June 8, 1979.

Doris J. Dewton,

Acting Assistant Administrator, Office of Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-18899 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Energy Supply and Environmental Coordination Act; Intention To Rescind a Prohibition Order

The Department of Energy (DOE)[1] hereby gives notice that, acting under the authority granted to it in Section 2(f) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), as amended (15 U.S.C. 792(f)) and implemented by 10 CFR 303.130(b), it intends to rescind the Prohibition Orders issued on June 30, 1977, to the units named below. This action is taken in accordance with the provisions of 10 CFR Part 303, Subpart J ("Modification or Rescission of Prohibition Orders and Construction Orders") of the ESECA regulations.

[1] Effective October 1, 1977, the responsibility for implementing ESECA was transferred by Executive Order No. 12009 from the Federal Energy Administration to the Department of Energy pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*)

Docket No.	Owner	Plant	Units	Location
OCU-1258	A. E. Staley Manufacturing Co.	Decatur plant	19 & 20	Decatur, Ill.

The Prohibition Orders, if made effective by the issuance of a Notice of Effectiveness (NOE), would have prohibited these units from burning natural gas or petroleum products as their primary energy source.

By letter of February 23, 1979, W. P. Hagnebach, Director of Environmental Sciences for A. E. Staley Manufacturing Company, reported to DOE that Units 19 and 20, of the Decatur Plant will soon be converted from the burning of oil to the burning of coal as their primary energy source pursuant to the terms of the outstanding Prohibition Orders.

Based upon this information, DOE finds that the outstanding Prohibition Orders issued to Units 19 and 20 of the Decatur Plant have attained their originally stated purpose of assisting meeting the essential needs of the United States, for fuels by causing the conversion of these units from the burning of oil as a primary energy source to the burning of coal in a manner consistent to the fullest extent practicable with existing commitments to protect and enhance the environment. In view of this accomplishment, DOE finds that further action towards making the outstanding Prohibition Orders effective would not be in the public interest and accordingly, rescission of the orders is now appropriate.

Comments on DOE's intention to rescind the Prohibition Orders are invited. Interested persons may submit written data, views or arguments with respect to the proposed action to the Office of Public Hearing Management, Room 2313, 2000 M Street, NW., Washington, D.C. 20461 (Attn: D. Kidwell).

All comments and other documents should be identified both on the outside of the envelope and on the document itself with the designation, "Proposed Rescission Order, A. E. Staley Manufacturing Company, Units 19 and 20." All written comments must be received no later than June 28, 1979, in order to receive consideration. In making its decision regarding the proposed rescission action, DOE will consider all relevant information submitted to it or otherwise available to it.

Any information considered to be confidential by the person furnishing it must be so identified at the time of submission in accordance with 10 CFR Part 1004. DOE reserves the right to determine the confidential status of the information and to treat it in accordance with that determination.

Questions regarding this proposed action should be directed to DOE as follows: Steven A. Frank, ESECA Programs Division, Department of Energy, Economic Regulatory Administration, Room 7202, 2000 M Street, NW., Washington, D.C. 20461 (telephone: (202) 254-6248). Written questions should be identified on the envelope and in the correspondence with the designation set out above.

(Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791 *et seq.*) as amended by Pub. L. 95-70 and Pub. L. 95-620; Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) as amended by Pub. L. 95-70 and Pub. L. 95-91; Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); E.O. 11790 (39 FR 23185); E.O. 12009 (42 FR 46267))

Issued in Washington, D.C. June 8, 1979.

Doris J. Dewton,

Acting Assistant Administrator, Office of Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-18999 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Energy Supply and Environmental Coordination Act; Intention To Rescind a Prohibition Order

The Department of Energy (DOE)[1] hereby gives notice that, acting under the authority granted to it in Section 2(f) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), as amended (15 U.S.C. 792(f)) and implemented by 10 CFR 303.130(b), it intends to rescind the Prohibition Orders issued on June 30, 1977, to the units named below. This action is taken in accordance with the provisions of 10 CFR Part 303, Subpart J ("Modification or Rescission of Prohibition Orders and Construction Orders") of the ESECA regulations.

[1] Effective October 1, 1977, the responsibility for implementing ESECA was transferred by Executive Order No. 12009 from the Federal Energy Administration to the Department of Energy pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*)

Docket No.	Owner	Plant	Units	Location
OCU-1278	Kennecott Copper Corp.	Utah power plant	1, 2, 3, & 4	Salt Lake City, Utah

The Prohibition Orders, if made effective by the issuance of a Notice of Effectiveness (NOE), would have prohibited these units from burning natural gas or petroleum products as their primary energy source.

By letter of February 7, 1979, J. C. Larson, Special Project of the Utah Copper Division, reported to DOE that the affected units of the Utah Power Plant are burning coal as their primary energy source pursuant to the terms of the outstanding Prohibition Orders.

Based upon this information, DOE finds that the outstanding Prohibition Orders issued to Units 1, 2, 3, and 4 of the Utah Plant have attained their originally stated purpose of assisting the essential needs of the United States for fuels by the burning of coal in a manner consistent to the fullest extent practicable with existing commitments to protect and enhance the environment. In view of this accomplishment, DOE finds that further action toward making the outstanding Prohibition Orders effective would not be in the public interest and accordingly, rescission of the orders is now appropriate.

Comments on DOE's intention to rescind the Prohibition Orders are invited. Interested persons may submit written data, views or arguments with respect to the proposed action to the Office of Public Hearing Management, Room 2313, 2000 M Street, NW., Washington, D.C. 20461 (Attn: D. Kidwell). All comments and other documents should be identified both on the outside of the envelope and on the document itself with the designation, "Proposed Rescission of the Kennecott Copper Corporation, Units 1, 2, 3, and 4." All written comments must be received no later than June 28, 1979, in order to receive consideration. In making its decision regarding the

proposed rescission action, DOE will consider all relevant information submitted to it or otherwise available to it.

Any information considered to be confidential by the person furnishing it must be so identified at the time of submission in accordance with 10 CFR Part 1004. DOE reserves the right to determine the confidential status of the information and to treat it in accordance with that determination.

Questions regarding this proposed action should be directed to DOE as follows: Steven A. Frank, ESECA Programs Division, Department of Energy, Economic Regulatory Administration, Room 7202, 2000 M Street, NW., Washington, D.C. 20461 (telephone: (202) 254–6246). Written questions should be identified on the envelope and in the correspondence with the designation set out above.

(Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791 *et seq.*) as amended by Pub. L. 95–70 and Pub. L. 95–620; Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) as amended by Pub. L. 95–70 and Pub. L. 95–91; Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); E.O. 11790 (39 FR 23185); E.O. 12009 (42 FR 46267))

Issued in Washington, D.C. June 8, 1979.

Doris J. Dewton,

Acting Assistant Administrator, Office of Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-18900 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Energy Supply and Environment Coordination Act; Intention To Rescind a Prohibition Order

The Department of Energy (DOE) [1] hereby gives notice that, acting under the authority granted to it in Section 2(f) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), as amended (15 U.S.C. 792(f)) and implemented by 10 CFR 303.130(b), it intends to rescind the Prohibition Order issued on June 30, 1977, to the unit named below. This action is taken in accordance with the provisions of 10 CFR Part 303, Subpart J ("Modification or Rescission of Prohibition Orders and Construction Orders") of the ESECA regulations.

[1] Effective October 1, 1977, the responsibility for implementing ESECA was transferred by Executive Order No. 12009 from the Federal Energy Administration to the Department of Energy pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*).

Docket No.	Owner	Plant	Unit	Location
OCU-3066	Westvaco	Charleston plant	5	Charleston, S.C.

The Prohibition Order, if made effective by the issuance of a Notice of Effectiveness (NOE), would have prohibited this unit from burning natural gas or petroleum products as their primary energy source.

By letter of February 5, 1979, David L. Luke III, President of Westvaco, reported to DOE that Unit 5 of the Charleston Plant will soon be converted from the burning of oil to the burning of coal as its primary source pursuant to the term of the outstanding Prohibition Order.

Based upon this information, DOE finds that the outstanding Prohibition Order issued to Unit 5 of the Charleston Plant has attained its originally stated purpose of assisting the essential needs of the United States for fuels by causing the conversion of this unit from the buring of oil as a primary energy source to the burning of coal in a manner consistent to the fullest extent practicable with existing commitments to protect and enhance the environment. In view of this accomplishment, DOE finds that further action towards making the outstanding Prohibition Order effective would not be in the public interest and accordingly, rescission of the order is now appropriate.

Comments on DOE's intention to rescind the Prohibition Order are invited. Interested persons may submit written data, views or arguments with respect to the proposed action to the Office of Public Hearing Managment, Room 2313, 2000 M Street, NW., Washington, D.C. 20461 (Attn: D. Kidwell). All comments and other documents should be identified both on the outside of the envelope and on the document itself with the designation, "Proposed Rescission Order, Westvaco's Charleston Plant, Unit 5." All written comments must be received no later than June 28, 1979, in order to receive consideration. In making its decision regarding the proposed rescission action, DOE will consider all relevant information submitted to it or otherwise available to it.

Any information considered to be confidential by the person furnishing it must be so identified at the time of submission in accordance with 10 CFR 1004. DOE reserves the right to determine the confidential status of the information and to treat it in accordance with that determination.

Questions regarding this proposed action should be directed to DOE as follows: Steven A. Frank, ESECA Programs Division, Department of Energy, Economic Regulatory Administration, Room 7202, 2000 M Street, NW., Washington, D.C. 20461 (telephone: (202) 254–6246). Written questions should be identified on the enevelope and in the correspondence with the designation set out above.

(Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791 *et seq.*) as amended by Pub. L. 95–70 and Pub. L. 95–620; Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) as amended by Pub. L. 95–70 and Pub. L. 95–91; Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); E.O. 11790 (39 FR 23185); E.O. 12009 (42 FR 46267))

Issued in Washington, D.C. June 8, 1979.

Doris J. Dewton,

Acting Assistant Administrator, Office of Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-18901 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Energy Supply and Environmental Coordination Act; Intention To Rescind a Prohibition Order

The Department of Energy (DOE) [1] hereby gives notice that, acting under the authority granted to it in Section 2(f) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), as amended (15 U.S.C. 792(f)) and implemented by 10 CFR 303.130(b), it intends to rescind the Prohibition Orders issued on June 30, 1977, to the units named below. This action is taken in accordance with the provisions of 10

[1] Effective October 1, 1977, the responsibility for implementing ESECA was transferred by Executive Order No. 12009 from the Federal Energy Administration to the Department of Energy pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*).

Docket No.	Owner	Plant	Units	Location
OCU-1512	E. I. du Pont de Nemours & Co.	Seaford plant	2 & 3	Seaford, Del.

The Prohibition Orders, if made effective by the issuance of a Notice of Effectiveness (NOE), would have prohibited these units from burning natural gas or petroleum products as their primary energy source.

By letter of February 9, 1979, Mark J. Caplan, of the Legal Department of E. I. du Pont de Nemours & Company, reported to DOE that Units 2 and 3 of the Seaford Plant are burning coal as their primary energy source pursuant to the terms of the outstanding Prohibition Orders.

Based upon this information DOE finds that the outstanding Prohibition Orders issued to Units 2 and 3 of the Seaford Plant have attained their originally stated purpose of assisting in meeting the essential needs of the United States for fuels by causing the burning of coal as a primary energy source in a manner consistent with existing commitments to protect and enhance the environment. In view of this accomplishment, DOE finds that further action towards making the outstanding Prohibition Orders effective would not be in the public interest and accordingly, rescission of the orders is now appropriate.

Comments on DOE's intention to rescind the Prohibition Orders are invited. Interested persons may submit written data, views or arguments with respect to the proposed action to the Office of Public Hearing Management, Room 2313, 2000 M Street, NW., Washington, D.C. 20461 (Attn: D. Kidwell). All comments and other documents should be identified both on the outside of the envelope and on the document itself with the designation, "Proposed Rescission Order, E. I. du Pont de Nemours and Company's Seaford Plant, Units 2 and 3." All written comments must be received no later than June 28, 1979, in order to receive consideration. In making its decision regarding the proposed rescission action, DOE will consider all relevant information submitted to it or otherwise available to it.

Any information considered to be confidential by the person furnishing it must be so identified at the time of submission in accordance with 10 CFR Part 1004. DOE reserves the right to determine the confidential status of the information and to treat it in accordance with that determination.

Questions regarding this proposed action should be directed to DOE as follows: Steven A. Frank, ESECA Division, Department of Energy, Economic Regulatory Administration, Room 7202, 2000 M Street, NW., Washington, D.C. 20461 (telephone: (202) 254-6246). Written questions should be identified on the envelope and in the correspondence with the designation set out above.

(Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791 *et seq.*) as amended by Pub. L. 95-70 and Pub. L. 95-620; Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) as amended by Pub. L. 95-70 and Pub. L. 95-91; Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); E.O. 11790 (39 FR 23185); E.O. 12009 (42 FR 46267))

Issued in Washington, D.C., June 8, 1979.

Doris J. Dewton,

Acting Assistant Administrator, Office of Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-18992 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Energy Supply and Environmental Coordination Act; Intention To Rescind a Prohibition Order

The Department of Energy (DOE)[1] hereby gives notice that, acting under the authority granted to it in Section 2(f) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), as amended (15 U.S.C. 792(f)) and implemented by 10 CFR 303.120(b), it intends to rescind the Prohibition Order issued on June 30, 1977, to the unit named below. This action is taken in accordance with the provisions of 10 CFR Part 303, Subpart J ("Modification or Rescission of Prohibition Orders and Construction Orders") of the ESECA regulations.

[1] Effective October 1, 1977, the responsibility for implementing ESECA was transferred by Executive Order No. 12009 from the Federal Energy Administration to the Department of Energy pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*).

Docket No.	Owner	Plant	Unit	Location
OCU-1710	Union Carbide Corp.	Institute Plant	12	Institute, W. Va.

The Prohibition Order, if made effective by the issuance of a Notice of Effectiveness (NOE), would have prohibited these units from burning natural gas or petroleum products as their primary energy source.

By letter of February 7, 1979, A. Bruce Burns of the Union Carbide Corporation, reported to DOE that Unit 12 at the Institute Plant has been converted from the burning of coal as their primary energy source pursuant to the terms of the outstanding Prohibition Order.

Based upon this information, DOE finds that the outstanding Prohibition Order issued to Unit 12 of the Institute Plant has attained its originally stated purpose of assisting the essential needs of the United States for fuels by causing the conversion of this unit from the burning of oil as a primary energy source to the burning of coal in a manner consistent to the fullest extent practicable with existing commitments to protect and enhance the environment. In view of this accomplishment, DOE finds that further action towards making the outstanding Prohibition Order effective would not be in the public interest and accordingly, rescission of the orders is now appropriate.

Comments on DOE's intention to rescind the Prohibition Order are invited. Interested persons may submit written data, views or arguments with respect to the proposed action to the Office of Public Hearing Management, Room 2313, 2000 M Street NW., Washington, D.C. 20461 (Attn: D. Kidwell). All comments and other documents should be identified both on the outside of the envelope and on the document itself with the designation, "Proposed Rescission Order, Union Carbide Corporation's Institute Plant, Unit 12." All written comments must be received no later than June 28, 1979, in order to receive consideration. In making its decision regarding the proposed rescission action, DOE will consider all relevant information submitted to it or otherwise available to it.

Any information considered to be confidential by the person furnishing it must be so identified at the time of

submission in accordance with 10 CFR Part 1004. DOE reserves the right to determine the confidential status of the information and to treat it in accordance with that determination.

Questions regarding this proposed action should be directed to DOE as follows: Steven A. Frank, ESECA Division, Department of Energy, Economic Regulatory Administration, Room 7202, 2000 M Street NW., Washington, D.C. 20461 (telephone: (202) 254–6246). Written questions should be identified on the envelope and in the correspondence with the designation set out above.

(Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791 *et seq.*) as amended by Pub. L. 95–70 and Pub. L. 95–620; Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) as amended by Pub. L. 95–70 and Pub. L. 95–91; Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); E.O. 11790 (39 FR 23185); E.O. 12009 (42 FR 46267))

Issued in Washington, D.C. June 8, 1979.

Doris J. Dewton,

Acting Assistant Administrator, Office of Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-18603 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Golden Gate Petroleum; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order which was issued to the Golden Gate Petroleum, 465 California Street, San Francisco, California 98104.

This Proposed Remedial Order charges Golden Gate Petroleum with pricing violations in the amount of $965,727.00, connected with the resale of residual fuel oil during the time period November 1, 1973 through August 31, 1975, in the States of California, Nevada and Arizona.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Jack L. Wood, District Manager of Enforcement, 111 Pine Street, San Francisco, CA 94111, phone 415/556–7200. On or before July 3, 1979, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street NW., Washington, D.C. 20461, in accordance with 10 CFR 205.193 of the DOE Regulations.

Issued in Washington, D.C., on the 8th day of June 1979.

Jack L. Wood,

District Manager of Enforcement, Western District, Economic Regulatory Administration.

[FR Doc. 79-18607 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Action Taken on Consent Orders

AGENCY: Economic Regulatory Administration.

ACTION: Notice of Action Taken on Consent Orders.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice that Consent Orders were entered into between the Office of Enforcement, ERA, and the firms listed below during the month of May 1979. These Consent Orders concern prices charged by retail motor gasoline dealers allegedly in excess of the maximum lawful selling price for motor gasoline. The purpose and effect of these Consent Orders is to bring the consenting firms into present compliance with the Mandatory Petroleum Allocation and Price Regulations and they do not address or limit any liability with respect to the consenting firms' prior compliance or possible violation of the aforementioned regulations. Pursuant to the Consent Orders, the consenting firms agree to the following actions:

1. Reduce prices for each grade of gasoline to no more than the maximum lawful selling price;

2. Post the maximum lawful selling price for each grade of gasoline on the face of each pump in numbers and letters not less than one-half inch in height; and

3. Properly maintain records required under the aforementioned regulations.

For further information regarding these Consent Orders, please contact Mr. Herbert M. Heitzer, District Manager of Enforcement, 1421 Cherry Street, Philadelphia, Pennsylvania 19102, telephone number (215) 597–3870.

Firm name	Address	Audit date
Krewstown Service Station	Krewstown and Surrey Road, Philadelphia, Pa. 19115	5/4/79
G & H Shell	Roosevelt Blvd. and Red Lion Road, Philadelphia, Pa. 19115.	5/4/79
Turco's Exxon	Route 129, Billerica, Mass	5/7/79
Carl & Sons Exxon	18–22 Ferry Street, Hudson, N.H	5/8/79
Reading Shell	749 Main Street, Reading, Mass	5/8/79
Regini's Exxon	47 Jerome Avenue, Bloomfield, Conn	5/9/79
Tony's Mobil	73 Essex Street, Gloucester, Mass	5/9/79
Tally's Auto Sales Exxon	2 Washington Street, Gloucester, Mass	5/9/79
Colonial Shell	Route 139, Pembrooke, Mass	5/10/79
Al's Mobil Service Station	6 Willow Street, Manchester, N.H	5/10/79
King's County Service Station	1935 Coney Island Avenue, Brooklyn, N.Y. 11230	5/16/79
Main Street Shell	43–45 Main Street, Flushing, N.Y. 11355	5/18/79
Boston Road Service Station	2475 Boston Road, Bronx, N.Y. 10467	5/21/79
Parker's Texaco Station	102 West Street, Rutland, Vermont	5/23/79
Mason's Corner Mobil	865 Brighton Avenue, Portland, Maine	5/23/79
LaSalle Oil Co	509 Third Street, Dunmore, Pa. 18512	5/23/79
Lee's Texaco Station	391 Kidder Street, Wilkes Barre, Pa. 18702	5/23/79
Mahantan Street Mobil	Lenox and Mahantan Streets, Norwood, Mass	5/24/79
Payne's Gulf Service	707 Naponset Street, Norwood, Mass	5/24/79
Freeway Motors Exxon	1150 Providence Highway, Norwood, Mass	5/24/79
Westwood Service Center Mobil	710 High Street, Westwood, Mass	5/24/79
Springfield Gulf	11 Bishop Avenue, Springfield, Pa	5/30/79
C & N Sunoco	112–12 Astoria Boulevard, Elmhurst, N.Y. 11369	5/25/79
Robert Strohecker's Sunoco	K Street and Erie Avenue, Philadelphia, Pa	5/31/79

Issued in Philadelphia on the 6th day of June 1979.

Herbert M. Heitzer,

District Manager of Enforcement.

[FR Doc. 79-18606 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Action Taken on Consent Orders

AGENCY: Economic Regulatory Administration.

ACTION: Notice of Action Taken on Consent Orders.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice that Consent Orders were entered into between the Office of Enforcement, ERA, and the firms listed below during the month of May 1979. The Consent Orders represent resolutions of outstanding compliance investigations or proceedings by the DOE and the firms which involve a sum of less than $500,000 in the aggregate, excluding penalties and interest. For Consent Orders involving sums of $500,000 or

more. Notice will be separately published in the Federal Register. These Consent Orders are concerned exclusively with payment of the refunded amounts to injured parties for alleged overcharges made by the specified companies during the time periods indicated below through direct refunds or rollbacks of prices.

For further information regarding these Consent Orders, please contact Mr. Herbert M. Heitzer, District Manager of Enforcement, 1421 Cherry Street, Philadelphia, Pennsylvania 19102, telephone number (215) 597–3870.

Firm name and address	Refund amount	Product	Period covered	Recipients of refund
Gladwin & Lane Inc., 224 Elm St., Westfield, Mass. 01085.	$45,000	No. 2 oil	Nov. 1, 1973 to Apr. 30, 1974.	Retail accounts.

Issued in Philadelphia on the 6th day of June 1979.

Herbert M. Heitzer,

District Manager of Enforcement.

[FR Doc. 79-18609 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Interim Remedial Orders for Immediate Compliance

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice that Interim Remedial Orders for Immediate Compliance (IROICs) were issued by the Office of Enforcement, ERA, to the firms listed below during the month of May 1979. These IROICs concern prices charged by retail motor gasoline dealers in excess of the maximum lawful selling prices for motor gasoline. To prevent further irreparable harm to the public interest which might result if these firms continued to charge prices the lawfulness of which could not be justified, these IROICs were issued in accordance with 10 C.F.R. 205.199D and ordered the firms to come into compliance with legal requirements by taking the following actions:

1. Reduce prices for each grade of gasoline to no more than the maximum lawful selling price;

2. Post the maximum lawful selling price for each grade of gasoline on the face of each pump in numbers and letters not less than one-half inch in height; and

3. Properly maintain records required under the Mandatory Petroleum Allocation and Price Regulations, Title 10, Code of Federal Regulations.

In the alternative, these firms were ordered to come forth within five days with support for the lawfulness of the maximum lawful selling prices they otherwise contend are appropriate.

For further information regarding these IROICs, please contact Mr. Herbert M. Heitzer, District Manager of Enforcement, 1421 Cherry Street, Philadelphia, Pennsylvania 19102, telephone number (215) 597–3870.

Firm name	Address	Audit date
Burke's Mobil Service	Route 322 and Route 162, West Chester, Pa. 19380	5/1/79

Issued in Philadelphia on the 6th day of June, 1979.

Herbert M. Heitzer,

District Manager of Enforcement.

[FR Doc. 79-18607 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Interim Remedial Orders for Immediate Compliance

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice that Interim Remedial Orders for Immediate Compliance (IROICs) were issued by the Office of Enforcement, ERA, to the firms listed below during the month of May 1979. These IROICs concern the modifying of normal business practices so as to result in the violation of the provisions of the Mandatory Petroleum Allocation and Price Regulations, Title 10, Code of Federal Regulations. To prevent further irreparable harm to the public interest which might result if these firms continued their course of conduct, these IROIC's were issued in accordance with 10 CFR 205.199D and ordered the firms to come into compliance with legal requirements by taking the following actions:

1. Cease and desist from employing any form of discriminatory practices as set forth in 10 CFR 210.62(b); and

2. Conform its business practices to those practices followed by the firm during its base period.

In the alternative, these firms were ordered to come forth within five days with support for the lawfulness of the practices they otherwise contend are appropriate.

For further information regarding these IROICs, please contact Mr. Herbert M. Heitzer, District Manager of Enforcement, 1421 Cherry Street, Philadelphia, Pennsylvania 19102, telephone number (215) 597–3870.

Firm name	Address	Audit date
S & S Amo	Fourth and Spring Gardens Street, Philadelphia, Pennsylvania	5/29/79

Issued in Philadelphia on the 6th day of June 1979.

Herbert M. Heitzer,

District Manager of Enforcement.

[FR Doc. 79-18608 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP78-256]

Algonquin LNG, Inc.; Informal Conference

June 8, 1979.

Take notice that an informal conference in the above-captioned causes will be held on June 28, 1979, at 10:00 a.m. in Hearing Room F at the Interstate Commerce Commission, 12th and Constitution Avenue N.W., Washington, D.C. 20004. All parties should be prepared to discuss the

technical aspects and possible settlement of the proposals. All persons are invited to attend, but advised that mere attendance and/or participation in this conference's discussions will not serve to make the same persons formally parties to these proceedings.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18770 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-405]

Arkansas Power & Light Co.; Filing

June 11, 1979.

The filing Company submits the following:

Take notice that on June 1, 1979, Middle South Services (Services), acting as agent for Arkansas Power & Light Company (AP&L), tendered for filing a letter Agreement dated January 29, 1979, between AP&L and Oklahoma Gas & Electric Company (OG&E) for transmission services through the System of AP&L of 150mW of capacity and associated energy from OG&E to Gulf States Utility Company (GSU).

AP&L requests an effective date of January 1, 1979, and therefore requests waiver of the Commission's notice requirements. AP&L further states that the rate for this transmission service has previously been approved in docket No. ER77-535 and that no additional facilities will be required.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before July 2, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18771 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-411]

Central Hudson Gas & Electric Corp.; Filing

June 11, 1979.

Take notice that Central Hudson Gas & Electric Company on June 1, 1979, tendered for filing Schedule A applicable to actual charges for 1978 to Consolidated Edison Company of New York pursuant to the Rock Tavern Substation Agreement dated December 29, 1972.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 3, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18772 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-399]

The Cleveland Electric Illuminating Co.; Filing of Changes in Rates and Charges

June 11, 1979.

The filing Company submits the following:

Take notice that The Cleveland Electric Illuminating Company (CEI on May 31, 1979, tendered for filing Revised Service Schedule B—Firm Power Service to its Rates Schedule FERC No. 12, containing revised rates and charges applicable to CEI's firm power service to the City of Cleveland, and Revised Sheet No. 6 to its FERC Electric Tariff, Original Volume No. 1, for transmission service, containing revised rates and charges applicable to customers under CEI's Tariff. CEI proposed to place the Revised Service Schedule B to its Rate Schedule FERC No. 12 and Revised Sheet No. 6 to its FERC Electric Tariff, Original Volume No. 1 into effect as of August 1, 1979. The revised rates and charges would increase revenues from sales under Service Schedule B to Rate Schedule FERC No. 12 by $3,194,000 based on calendar year 1979. CEI is unable to project revenues from its Tariff for transmission service.

CEI states that it expects to realize a rate of return from service under Service Schedule B of only 1.76 percent for calendar year 1979 under the presently effective Supplement No. 2 to Rate Schedule FERC No. 12. The proposed rates contained in Revised Service Schedule B to Rate Schedule FERC No. 12 have been designed to enable CEI to have the opportunity to earn a rate of return of 6.07 percent, whereas the proposed rates contained in Revised Sheet No. 6 to CEI's Electric Tariff Original Volume No. 1 would allow an opportunity of earning 5.99 percent.

CEI states that a copy of the appropriate portions of the filing has been served upon CEI's customers and the Public Utilities Commission of Ohio.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rule of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 2, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18773 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-413]

The Connecticut Light and Power Co.; Purchase Agreement

June 11, 1979.

The filing Company submits the following:

Take notice that on June 1, 1979, The Connecticut Light and Power Company (CL&P) tendered for filing a proposed Purchase Agreement with Respect to Various Gas Turbine Units dated March

20, 1979 between (1) CL&P and The Hartford Electric Light Company (HELCO), and (2) Central Vermont Public Service Corporation (CVPS).

CL&P states that the Purchase Agreement provides for a sale to CVPS of a specified percentage of capacity and energy from five gas turbine generating units during the period from April 1, 1979 to November 30, 1979, together with related transmission service.

CL&P requests that the Commission, pursuant to Section 35.11 of its regulations, permit the rate schedule filed to become effective on April 1, 1979.

CL&P states that the Capacity Charge for the proposed service was a negotiated rate. The monthly Transmission Charge is equal to one-twelfth of the annual average cost of transmission service on the Northeast Utilities (NU) system determined in accordance with Section 13.9 of the New England Power Pool (NEPOOL) Agreement and the uniform rules adopted by the NEPOOL Executive Committee. The monthly Transmission Charge is determined by the product of (i) the transmission charge rate ($KW/month), and (ii) the number of kilowatts of winter capability which CVPS is entitled to receive, reduced to give due recognition of the payments made by CVPS for transmission services on intervening systems. The Variable Maintenance charges were derived from historical costs and the Additional Maintenance Charge is twice the Variable Maintenance Charge.

HELCO has filed a certificate of concurrence in this docket.

CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, Hartford, Connecticut, HELCO, Hartford, Connecticut, and CVPS, Rutland, Vermont.

CL&P further states that the filing is in accordance with Part 35 of the Commission's Regulations.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 3, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-18774 Filed 6-15-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. ER79-400]

Duke Power Co.; Supplement to Electric Power Contract

June 11, 1979.

The filing Company submits the following:

Take notice that Duke Power Company (Duke Power) tendered for filing on June 1, 1979 a supplement to the Company's Electric Power Contract with the Town of Dallas. Duke Power states that this contract is on file with the Commission and has been designated Duke Power Company Rate Schedule FERC No. 254.

Duke Power further states that the Company's contract supplement, made at the request of the customer and with agreement obtained from the customer, provides for the following contract demand: Delivery Point No. 2 of 3,000 Kw.

Duke Power indicates that this supplement also includes an estimate of sales and revenue for twelve months immediately preceding and for the twelve months immediately succeeding the effective date. Duke Power proposes an effective date of August 20, 1979.

According to Duke Power copies of this filing were mailed to the Town of Dallas and the North Carolina Utilities Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 2, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-18775 Filed 6-15-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. RP79-12]

El Paso Natural Gas Co.; Certification of Settlement Agreement

June 8, 1979.

Take notice that June 5, 1979, the Presiding Administrative Law Judge certified a stipulation and agreement which resolves all issues in this proceeding, except that of tax normalization, which has been set for hearing.

Any person desiring to be heard or to protest said settlement agreement should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, and should serve the same on all parties to this proceeding. Comments are due by June 22, 1979. All comments will be considered by the Commission in determining the appropriate action to be taken. Copies of the agreement are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-18795 Filed 6-15-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. ER79-407]

Empire District Electric Co.; Filing

June 11, 1979.

The filing Company submits the following:

Take notice that the Empire District Electric Company on June 1, 1979, tendered for filing proposed changes in its FERC Electric Service Tariff, Volume No. One. The proposed changes would increase revenues from present jurisdictional sales and service to the City of Monett, Missouri by $481,444 based on the 12-month period ending February 28, 1978.

The presently effective rates are based on contractual agreement made up to eleven years ago. Since that time Empire has experienced substantial increase in all elements of its cost, including fuel, labor, interest, taxes and construction to provide additional capacity and meet environmental requirements.

Copies of this filing were served upon the public utility's jurisdictional

customers and the Missouri Public Service Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Washington, D.C. 20426, in accordance with Paragraph 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 2, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18776 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-416]

Florida Power & Light Co.; Amendment to Agreement To Provide Specified Transmission Service

June 8, 1979.

The filing Company submits the following:

Take notice that Florida Power & Light Company (FPL) on June 4, 1979, tendered for filing an amendment to an agreement executed only by it, entitled "Amendment Number Three To Agreement To Provide Specified Transmission Service Between Florida Power & Light Company and City of Homestead." Under the Amendment, FPL is modifying certain terms and conditions not affecting rates concerning the transmission of power and energy by FPL for the City of Homestead (City) as is required by the City in the implementation of its interchange agreements with other utility systems in Florida.

FPL requests an effective date for this Agreement if no later than 60 days after the date of filing. FPL states that a copy of the filing was served on the Utilities Director of the City of Homestead, Florida.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 29, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18787 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Four Star Development Corp.; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

June 7, 1979.

On May 18, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of Louisiana

Department of Natural Resources Office of Conservation

FERC Control Number: JD79-6189
API Well Number: 17-111-21745
Section of NGPA: 103
Operator: Four Star Development Corporation
Well Name: Frost Lumber Ind. Inc. No. 1
Field: Monroe Gas
County: Union, Louisiana
Purchaser: Ashland Exploration Corp., Inc.
Volume: 36.865 MMcf.

FERC Control Number: JD79-6190
API Well Number: 17-017-21885
Section of NGPA: 108
Operator: Erin Exploration Assoc.
Well Name: Noel No. 2 150749
Field: Longwood
County: Caddo Parish, Louisiana
Purchaser: Southwestern Electric Power Co.
Volume: 1600 MMcf.

FERC Control Number: JD79-6191
API Well Number: 17-017-21319
Section of NGPA: 108
Operator: Pelican Gas Production Assoc.
Well Name: H. A. Cushman No. 1 144227
Field: Longwood
County: Caddo Parish, Louisiana
Purchaser: Southwestern Electric Power Co.
Volume: 3,600 MMcf.

FERC Control Number: JD79-6192
API Well Number: 17-017-21579
Section of NGPA: 108
Operator: Pelican Gas Production Assoc.
Well Name: Noel No. 1 147261
Field: Longwood Field
County: Caddo, Louisiana
Purchaser: Southwestern Electric Power Co.
Volume: NA.

FERC Control Number: JD79-6193
API Well Number: 17-1-922090
Section of NGPA: 103
Operator: Goldking Production Company
Well Name: Wallace Eliander No. 1
Field: Northeast Montegut (11700 RA SUB)
County: Terrebonne, Louisiana
Purchaser: Louisiana Intrastate Gas Co.
Volume: NA.

FERC Control Number: JD79-6194
API Well Number: 17-109-22056
Section of NGPA: 103
Operator: Pel-Tex Oil Company, Inc.
Well Name: L. L. & E. "B" 12
Field: Lake Hatch
County: Terrebonne Parish, Louisiana
Purchaser: United Gas Pipe Line Co.
Volume: 360 MMcf.

FERC Control Number: JD79-6195
API Well Number: 17-109-22058
Section of NGPA: 103
Operator: Pel-Tex Oil Company, Inc.
Well Name: L. L. & E. "B" 12-D
Field: Lake Hatch
County: Terrebonne Parish, Louisiana
Purchaser: United Gas Pipe Line Co.
Volume: 12 MMcf.

FERC Control Number: JD79-6196
API Well Number: 17-009-20063
Section of NGPA: 102
Operator: Texoil Company
Well Name: Matassa Ba Sua: Sixty Acres No. 1
Field: Kenner
County: St. Charles, Louisiana
Purchaser: United Gas Pipeline Co.
Volume: 300 MMcf.

FERC Control Number: JD79-6197
API Well Number: 17-067-00436
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Tensas Delta No. 19
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 8.2 MMcf.

FERC Control Number: JD79-6198
API Well Number: 17-067-00419
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Tensas Delta No. 20
Field: Monroe Gas Field
County: Morehouse
Purchaser: Mid Louisiana Gas Company
Volume: 3.3 MMcf.

FERC Control Number: JD79-6199
API Well Number: 17-067-00417
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Tensas Delta No. 26
Field: Monroe Gas Field
County: Morehouse
Purchaser: Mid Louisiana Gas Company
Volume: 4.0 MMcf.

FERC Control Number: JD79-6200
API Well Number: 17-067-00434
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Tensas Delta No. 28
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 10.6 MMcf.

FERC Control Number: JD79-6201
API Well Number: 17-067-00418

Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Tensas Delta No. 21
Field: Monroe Gas Field
County: Morehouse
Purchaser: Mid Louisiana Gas Company
Volume: 2.6 MMcf.

FERC Control Number: JD79-6202
API Well Number: 17-017-21324
Section of NGPA: 108
Operator: Pelican Gas Production Assoc.
Well Name: S. P. Moneyham No. 1 144344
Field: Longwood Field
County: Caddo Parish, Louisiana
Purchaser: Southwestern Electric Power Co.
Volume: 1000 MMcf.

FERC Control Number: JD79-6203
API Well Number: 17-061-20140
Section of NGPA: 108
Operator: Arkla Exploration Company
Well Name: CV RA SU P; Wilson Estate No. 1
Field: Clay
County: Lincoln, Louisiana
Purchaser: Arkansas Louisiana Gas Company
Volume: 38 MMcf.

FERC Control Number: JD79-6204
API Well Number: 17-061-20140
Section of NGPA: 103
Operator: Arkla Exploration Company
Well Name: Hoss RA SU H; Wilson Estate No. 1-D
Field: Clay
County: Lincoln, Louisiana
Purchaser: Arkansas Louisiana Gas Company
Volume: 409 MMcf.

FERC Control Number: JD79-6205
API Well Number: 17-061-20154
Section of NGPA: 103
Operator: Arkla Exploration Company
Well Name: CV RA SU G; Roy No. 1
Field: Clay
County: Lincoln, Louisiana
Purchaser: Arkansas Louisiana Gas Company
Volume: 487 MMcf.

FERC Control Number: JD79-6206
API Well Number: 17-015-23097
Section of NGPA: 103
Operator: Arkla Exploration Company
Well Name: Gray RA SU H; Willamette No. 1
Field: Rocky Mount
County: Bossier, Louisiana
Purchaser: Arkansas Louisiana Gas Company
Volume: 336 MMcf.

FERC Control Number: JD79-6207
API Well Number: 17-015-21104
Section of NGPA: 103
Operator: Arkla Exploration Company
Well Name: Gray RA SU J; Hughes No. 1
Field: Rocky Mount
County: Bossier, Louisiana
Purchaser: Arkansas Louisiana Gas Company
Volume: 18 MMcf.

FERC Control Number: JD79-6208
API Well Number: 17-015-21068
Section of NGPA: 103
Operator: Arkla Exploration Company
Well Name: Mid CV RA SU A; Antrim Estate No. 2
Field: Rocky Mount
County: Bossier, Louisiana
Purchaser: Arkansas Louisiana Gas Company
Volume: 289 MMcf.

FERC Control Number: JD79-6209
API Well Number: 17-015-21639
Section of NGPA: 109
Operator: Arkla Exploration Company
Well Name: Gray RA SU B; Burton No. 1
Field: Rocky Mount
County: Bossier, Louisiana
Purchaser: Arkansas Louisiana Gas Company
Volume: 204 MMcf.

FERC Control Number: JD79-6210
API Well Number: 17-111-01407
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Navarro Fee No. 2
Field: Monroe Gas Field
County: Union, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 8.5 MMcf.

FERC Control Number: JD79-6211
API Well Number: 17-111-00591
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Navarro Fee No. 3
Field: Monroe Gas Field
County: Union, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 8.5 MMcf.

FERC Control Number: JD79-6212
API Well Number: NA
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Nesmith No. 1
Field: Monroe Gas Field
County: Ouachita, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 5.9 MMcf.

FERC Control Number: JD79-6213
API Well Number: NA
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Nolan No. 1
Field: Monroe Gas Field
County: Ouachita, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 5.8 MMcf.

FERC Control Number: JD79-6214
API Well Number: 17-111-01413
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Ouachita National Bank No. 76
Field: Monroe Gas Field
County: Union, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 7.0 MMcf.

FERC Control Number: JD79-6215
API Well Number: NA
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Parks No. 60
Field: Monroe Gas Field
County: Union, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 18.0 MMcf.

FERC Control Number: JD79-6216
API Well Number: 17-111-01818
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Peek No. 60
Field: Monroe Gas Field
County: Union, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 11.5 MMcf.

FERC Control Number: JD79-6217
API Well Number: NA
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Perry No. 1
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 6.6 MMcf.

FERC Control Number: JD79-6218
API Well Number: 17-111-21223
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Grayling N-153 (formerly Luff-Grayling D-1)
Field: Monroe Gas Field
County: Union, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 18.0 MMcf.

FERC Control Number: JD79-6219
API Well Number: 17-111-01344
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Green No. 1
Field: Monroe Gas Field
County: Union, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 1.5 MMcf.

FERC Control Number: JD79-6220
API Well Number: 17-067-00546
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Griffing No. 1
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 2.7 MMcf.

FERC Control Number: JD79-6221
API Well Number: NA
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Griffing No. 2
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 17.0 MMcf.

FERC Control Number: JD79-6222
API Well Number: NA
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Culley No. 1
Field: Monroe Gas Field
County: Union, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 7.3 MMcf.

FERC Control Number: JD79-6223
API Well Number: 17-111-01235
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Hale No. 77
Field: Monroe Gas Field
County: Union, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 4.3 MMcf.

FERC Control Number: JD79-6224
API Well Number: NA
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Harris C No. 1

Field: Monroe Gas Field
County: Union, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 9.1 MMcf.

FERC Control Number: JD79-6225
API Well Number: 17-027-00601
Section of NGPA: 108
Operator: Gulf Oil Corporation
Well Name: Hall Sul; Eva Bennett et al. No. 23-8-1
Field: Lisbon
County: Claiborne, Louisiana
Purchaser: Texas Gas Transmission
Volume: 20 MMcf.

FERC Control Number: JD79-6226
API Well Number: 17-111-00541
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: W. B. McKinnie No. 1
Field: Monroe Gas Field
County: Union, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 4.7 MMcf.

FERC Control Number: JD79-6227
API Well Number: 17-111-00469
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: McKinnie N-1
Field: Monroe Gas Field
County: Union, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 4.7 MMcf.

FERC Control Number: JD79-6228
API Well Number: 17-111-00465
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: McKinnie B-1
Field: Monroe Gas Field
County: Union, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 1.4 MMcf.

FERC Control Number: JD79-6229
API Well Number: 17-111-00549
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: La Gas Lands No. 1
Field: Monroe Gas Field
County: Union, Louisiana
Purchaser: Mid Louisiana Gas Company
Volume: 4.8 MMcf.

The applications for determinations in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before July 3, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-18601 Filed 6-15-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. RP79-75]

Gas Research Institute; Annual Application

June 8, 1979.

Take notice that on June 4, 1979, Gas Research Institute (GRI) filed its third annual application, including its updated five-year R&D plan, requesting advance approval of its 1980-1984 Five-Year R&D Plan and, specifically, of its 1980 R&D Program and the funding thereof, pursuant to the Natural Gas Act and the Commission's Regulations thereunder, particularly 18 CFR 154.38(d)(5).

The first GRI application, dealing with GRI's First Five-Year R&D Plan and initial R&D Program was filed on March 11, 1977, and approved by the Commission in Opinion No. 11, *Opinion and Order Approving the Initial Research, Development and Demonstration Program of Gas Research Institute,* Docket No. RM77-14, issued March 22, 1978. In Opinion No. 11, the Commission found GRI to be a "RD&D organization" within the meaning of Section 154.38(d)(5) of the Commission's Regulations. The Commission approved GRI's initial application with the understanding that GRI will review, annually, and update its five-year plan and funding requirements for presentation to the Commission together with annual applications for advance approval pursuant to the Commission's Regulations.

The second GRI application, dealing with GRI's 1979-1983 Five-Year R&D Plan and 1979 R&D Program, was filed on June 30, 1978 and approved by the Commission in Opinion No. 30, *Opinion and Order Approving The Gas Research Institute's 1979 Research and Development Program,* Docket No. RP78-76, issued September 21, 1978.

The Commission's Regulations state that the principal tests for the adequacy of the proposed application shall be the following guidelines:

1. Evidence that GRI's RD&D objectives have been clearly established.

2. Evidence that the plan evolves from these RD&D objectives and adequately utilizes the viewpoints of scientific, engineering, industry, economic, consumers and environmental interests.

3. Evidence that an effective mechanism exists and is used for coordinating this research and development plan with other relevant efforts of national scope.

4. Evidence that the program and plan are well conceived and have a reasonable chance of benefiting the ratepayer in a reasonable period of time, having due regard to the basic, exploratory or applied nature of each submitted RD&D project.

5. Evidence that whatever achievements may result, including the knowledge gained or technology developed from the RD&D effort, if any, will accrue to the benefit of the sponsoring jurisdictional companies and their customers.

GRI states that its third application follows the principles considered by the Commission in Opinion Nos. 11 and 30 and *Order No. 566, Order Prescribing Changes in Accounting and Rate Treatment for Research, Development and Demonstration Expenditures,* Docket No. RM78-17, issued June 3, 1977. In its third application GRI seeks advance approval for its 1980 R&D Program which proposes that $54,745,000 be collected during the twelve (12) months ending December 31, 1980 to support R&D activities in five technical areas, i.e., Supply, Economics and Systems Analysis, Environment and Safety, Efficient Utilization and Basic Research and to cover the cost of Planning and Administration. Applicant states that its application was filed in accordance with the provisions of Order No. 566 which requires "RD&D organizations" to submit, annually, a five-year program plan at least 180 days prior to the commencement of the five-year program plan, which is scheduled to commence on January 1, 1980.

GRI states that the proposed unit cost of GRI's 1980 R&D Program is 5.0 mills per Mcf or equivalent to become effective January 1, 1980. This General R&D Funding Unit is proposed to be applied to the services included in GRI's Program Funding Services in 1980 which include jurisdictional, direct sale and intrastate volumes of GRI's members and which are estimated to be 10,854 Bcf.

GRI's filing was accompanied by workpapers providing detail about its application. These workpapers are available for inspection in the Commission's Office of Public Information.

The Appendix to GRI's application contains a list of GRI members and state regulatory commissions which were

served with a copy of GRI's application on June 4, 1979. Such members and commissions are hereby permitted to participate in this proceeding as intervenors and need *not* file formal petitions to intervene or notices of intervention.

Any other person desiring to be heard or to make any protest with reference to said application should, on or before June 25, 1979, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a comment, protest, or petition to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure and the Regulations under the Natural Gas Act (18 CFR 1.8, 1.10). All comments or protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein, other than those listed in the Appendix who are automatically entitled to participate, must file a petition to intervene in accordance with the Commission's Rules.

Additionally, take notice that a Commission staff report on GRI's filing will be served on all parties and filed with the Commission as a public document on July 23, 1979. Also, in accordance with a working agreement between the FERC and the Under Secretary of Energy, Department of Energy (DOE), the Energy Research Advisory Board (ERAB) of DOE will provide FERC with an advisory review of the GRI's application. The FERC has requested that ERAB comment on the following: (1) GRI management of its R&D program; (2) Coordination of GRI program with DOE and other gas R&D efforts; (3) The substance and adequacy of GRI's R&D program. The ERAB's report will be filed with the Secretary of Energy, who upon approval, will transmit the report to FERC. The report will be filed with FERC and accompany the staff report. We shall further provide for the filing of additional comments by all parties concurrently with Staff's and ERAB's report on July 23, 1979. Comments on Staff's and ERAB's report by all parties except GRI shall be filed August 13, 1979. Reply comments by GRI shall be filed on August 27, 1979.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18788 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Gulf Oil Corp.; Determination by a Jurisdictional Agency Under the Natural Policy Act of 1978

June 5, 1979.

On May 17, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

STATE OF LOUISIANA

DEPARTMENT OF NATURAL RESOURCES

FERC Control Number: JD79-6285
API Well Number: 17-089-20380
Section of NGPA: 102
Operator: Gulf Oil Corporation
Well Name: Delta Securities Co., Inc. #134
Field: Bayou Coulee
County: St. Charles
Purchaser: Transcontinental Gas Pipeline
Volume: 280 MMcf.

FERC Control Number: JD79-6286
API Well Number: 17-101-21083
Section of NGPA: 103
Operator: Texaco Inc.
Well Name: SL 340 Cote Blanche Island #172
Field: Cote Blanche Island
County: St. Mary
Purchaser: Columbia Gas Transmission Corp.
Volume: 274 MMcf.

FERC Control Number: JD79-6287
API Well Number: 17-113-20750
Section of NGPA: 107
Operator: The Superior Oil Company
Well Name: Burnell D. Hardee No. 3
Field: Southeast Gueydan
County: Vermillion Parish
Purchaser: Michigan Wisconsin Pipe Line Co.
Volume: 2,020 MMcf.

FERC Control Number: JD79-6288
API Well Number: 17-017-22565
Section of NGPA: 108
Operator: McCaldrick Oil Company
Well Name: McDade No. 14
Field: Caddo Pine Island
County: Caddo
Purchaser: United Gas Pipeline Company
Volume: 8 MMcf.

FERC Control Number: JD79-6289
API Well Number: 17-119-201810000
Section of NGPA: 103
Operator: Art Machin & Associates, Inc.,
Well Name: Pet Ra Su DD; Cecil Bailey #1
Field: North Shongaloo-Red Rock
County: Webster Parish
Purchaser: United Gas Pipe Line Co.,
Volume: 8 MMcf.

FERC Control Number: JD79-6290
API Well Number: 17-001-00000000
Section of NGPA: 103
Operator: Murphy Oil Corporation
Well Name: U Hoss L Suf; Sherrard 1-D
Field: Simsboro
County: Lincoln
Purchaser: Arkansas Louisiana Gas Company
Volume: 18 MMcf.

FERC Control Number: JD79-6291
API Well Number: 17-001-00000000
Section of NGPA: 108
Operator: Murphy Oil Corporation
Well Name: Perl Sun; givens ZD, Social No. 44693
Field: Simsboro Field
County: Lincoln
Purchaser: Arkansas Louisiana Gas Company
Volume: 0 MMcf.

FERC Control Number: JD79-6292
API Well Number: 17-001-20010000
Section of NGPA: 108
Operator: Murphy Oil Corporation
Well Name: M Hoss Suf; Clay Colvin B-2
Field: Ruston Field
County: Lincoln
Purchaser: Mississippi River Transmission Corp.
Volume: NA.

FERC Control Number: JD79-6293
API Well Number: 17-061-20178
Section of NGPA: 108
Operator: Franks Petroleum Inc., et al.
Well Name: CRA Suk; Simmons No. 1
Field: Ruston
County: Lincoln
Purchaser: Arkansas Louisiana Gas Company
Volume: 133.955 MMcf.

FERC Control Number: JD79-6294
API Well Number: 17-02-700608
Section of NGPA: 108
Operator: Gulf Oil Corporation
Well Name: Hall Suf; W. B. Williams No. 24-11-1
Field: Lisbon
County: Claiborne
Purchaser: Texas Gas Transmission
Volume: 18 MMcf.

FERC Control Number: JD79-6295
API Well Number: 17-127-20658
Section of NGPA: 108
Operator: Hogan Drilling Company, Inc.
Well Name: Olinkraft #1
Field: East Sikes
County: Winn
Purchaser: United Gas Pipeline Company
Volume: 50.4 MMcf.

FERC Control Number: JD79-6296
API Well Number: 17-127-20708
Section of NGPA: 108
Operator: Hogan Drilling Company, Inc.
Well Name: Olinkraft #3
Field: East Sikes
County: Winn
Purchaser: United Gas Pipeline Company
Volume: 25.4.

FERC Control Number: JD79-6297
API Well Number: 17-119-201730000
Section of NGPA: 103
Operator: Richard B. Nelson, et al.
Well Name: Hoss A RA SU BB; Elias Bailey; ES 001; 154372
Field: Ada
County: Webster
Purchaser: Arkansas-Louisiana Gas Company
Volume: 72 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825

North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before July 3, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18802 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-404]

Idaho Power Co.; Filing

June 11, 1979.

The filing Company submits the following:

Take notice that on June 1, 1979, the Idaho Power Company tendered for filing summary of sales made under the company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during April, 1979, along with cost justification for the rate charged.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 2, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18777 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-402]

Illinois Power Co.; Filing

June 11, 1979.

Take notice that Illinois Power Company on May 31, 1979 tendered for filing Modification No. 1 dated May 3, 1979 to the Interconnection Agreement dated January 14, 1975 with the City of Springfield, Illinois. Illinois Power indicate that Modification No. 1 revises the reservation charges for Short Term Firm Power, Short Term Non-Firm Power and Maintenance Power and revises the energy charge for Emergency Energy.

Illinois Power requests waiver of the Commission's notice requirements to allow for an effective date of June 1, 1979.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before July 2, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18778 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-403]

Illinois Power Co.; Filing Amendment No. 5

June 11, 1979.

The filing Company submits the following:

Take notice that on June 1, 1979, Illinois Power Company ("Illinois Power") tendered for filing proposed Amendment No. 5, dated May 1, 1979, to the Interchange Agreement, dated March 15, 1973, between Iowa-Illinois Gas and Electric Company ("Iowa-Illinois") and Illinois Power Company.

Illinois Power indicates that this filing is made for an increase for Short-Term Firm Capacity and Short-Term Non-Firm Power reservation charges.

Ilinois Power states that a copy of the filing was served upon Iowa-Illinois, the Illinois Commerce Commission, and the Iowa State Commerce Commission.

Any person desiring to be heard or to protest said filing should file comments or protests with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Sections 1.8 or 1.10) of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such comments or protests should be filed on or before July 2, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18770 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

J. Burns Brown; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

June 8, 1979.

On May 22, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

Montana Department of Natural Resources and Conservation

Board of Oil and Gas Conservation

FERC Control Number: JD79-6576
API Well Number: 25-041-21691
Section of NGPA: 108
Operator: J. Burns Brown
Well Name: Phillips 26-1
Field: Badlands Gas Field
County: Hill, Mt.
Purchaser: Northern Natural Gas Company
Volume: 6.0 MMcf.

FERC Control Number: JD79-6577
API Well Number: 25-041-21636
Section of NGPA: 108
Operator: J. Burns Brown
Well Name: Long Estate 31-1
Field: Badlands Gas Field
County: Hill, Mt.
Purchaser: Northern Natural Gas Company
Volume: 18.0 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before July 3, 1979. Please reference the FERC Control Number in any

correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18780 Filed 6-15-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. ER79-406]

Kansas Power & Light Co.; Filing

June 11, 1979.

Take notice that Kansas Power and Light Company on June 1, 1979 tendered for filing a proposal to amend Article II of the Power service Agreement dated May 26, 1976 with the City of Holton, Kansas. The proposal contemplates a change in metering and certain changes in the terms and conditions in the City's rate schedule.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before July 2, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18780 Filed 6-15-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. GP 79-19]

Montana-Dakota Utilities Co.; Protest and Petition for Relief

June 4, 1979.

Take notice that on May 16, 1979, Holly Sugar Corporation (Holly), P.O. Box 1052, Colorado Springs, Colorado 80901, filed in Docket No. GP 79-19 a protest of the actions of Montana Dakota Utilities Co. (MDU) and petition for relief pursuant to §§ 1.6 and 1.7 of the Commission's Rules of Practice and Procedure (18 CFR 1.6 and 1.7) and § 281.110 of the Interim Curtailment Rule issued pursuant to the Natural Gas Policy Act of 1978 (NGPA), all as more fully set forth in the protest and petition which are on file with the Commission and open to public inspection.

Holly is a manufacturer of sugar, operating several plants at which sugar is processed from sugarbeets, among them one situated near the Town of Worland, Washakie County, Wyoming, and one near Sidney, Richland County, Montana. Holly states that MDU has furnished natural gas at the Sidney and Worland plants under negotiated industrial interruptible contracts and that until 1978, it used natural gas at said plants as its sole energy source except for negligible quantities of oil, the required stand-by fuel, during peak load interruptions.

In 1978 MDU instituted an allocation plan (the Plan) and Holly alleges that at MDU's instance, several of MDU's major customers, including Holly, entered into a stipulation and agreement, approving the Plan, by the terms of which an order of priority was established and customers with lowest priority (4) agreed to a program the effect of which would be to reduce their annual consumption each year thereafter by 20 percent cumulatively. Standard contracts thereafter were offered such customers on a fiscal year July 1–June 30 basis. By agreement, dated June 1, 1978, for the term July 1, 1978–June 30, 1979, Holly states that it was restricted to 40 percent of its base year (1976) consumption of priority 4 usage as defined in the Plan. The plan is pending before the Commission.

Holly asserts that in comments filed April 2, 1979, pursuant to a conference in Docket No. RP76-91 to consider the effect of the NGPA upon current curtailment plans, MDU stated:

"Since the volumetric limitations under the present contracts serve as a cap through June 30, 1979, MDU believes it is in harmony with the intent of the Commission's interim rule to maintain the same "cap" for the remaining four months during which the Interim Curtailment Rule is to be in effect—i.e., July 1, 1979 through October 31, 1979.

Consequently, new contracts embracing the period July 1, 1979 through October 31, 1979 will establish volumetric limitations at the present level, which is 40 percent of requirements, that is during that four-month period, the contract volume will be 4/12 of 40 percent of Base Period Requirements.

Holly states that reflecting such intention, MDU wrote Holly on April 30, 1979, as follows:

Section 2.2(a) of our FERC Gas Tariff, First Revised Volume No. 1, requires that Montana-Dakota Utilities Co. shall notify all customers whose base period requirements cannot be completely met, of the percent of service which such customer will receive during the following Supply Year. In compliance with that requirement, we wish to advise you that for the Supply Year 1979–80 (beginning July 1, 1979, and ending June 30, 1980), the curtailment rate will be eighty percent (80%) of your Priority 4 Base Period Requirements as contained in the tariff. You will, therefore, be allotted twenty percent (20%) of the Priority 4 base period requirement volume plus one hundred percent (100%) of the Priority 2 base period requirement for the 1979–80 Supply Year.

A new contract covering the 1979–80 Supply Year, setting forth the new volumes allotted to your plant, will be prepared and submitted to you in the near future. The new contract will incorporate the effect of exemptions or special conditions legally imposed by regulatory bodies, if any, which may affect the volumes applicable to your plant.

Holly alleges that, as an agricultural producer, it is entitled to priority 2 treatment under the U.S. Department of Agriculture's Interim Rule issued pursuant to Section 401 of the NGPA, but that, in reaching a contrary conclusion on April 2, 1979, that its present contract represents a "cap," MDU reasoned as follows:

Section 281.107(c)(1) provides that MDU's supply obligation is:

"• • • the *lesser* of:

"(i) the volume certified by the Secretary of Agriculture as essential agricultural volumetric requirements and calculated under 7 CFR § 2900.4"; or

"(ii) the volume which may be delivered by the interstate pipeline to the direct sale customer without causing the interstate pipeline to exceed any volumetric limitations set out in the contract between the interstate pipeline and such direct sale customer (without regard to any contract provision which would otherwise restrict delivery because of supply or capacity shortage of the interstate pipeline)."

Again, it is clear that the volumetric requirements calculated under Agriculture's rule exceed the volumetric limitations under the present contracts (*i.e.*, 40 percent of Base Period Requirements). Hence, under the Commission's rule, the volumetric limitations set forth in the contracts are a "cap" on MDU's supply obligation to essential agricultural use establishments. Accordingly, there is no authority for or requirement under the Commission's rule that "adjustments" exceed such limitation.

Holly contends that the problem with the above reasoning is that § 281.107(c)(1) refers only to "*the* contract" (emphasis added) and that *the* contract between it and MDU expires June 30, 1979. Holly maintains that after that, there is no reason for denying it the right to seek priority 2 volumetric entitlement unless Holly has subjected itself to some further contractual limitation by MDU in the meantime, which Holly states, it has not and will not do. Holly asserts that without executing such a contract, it may get no gas and that either it must abandon its rights to full entitlement under Section 401 of the NGPA by signing a new restrictive agreement for the coming season with a 20 percent "cap" or it must abandon its rights to service altogether.

Holly protests MDU's action in offering it, as of July 1, 1979, either a contract restricting it to 20 percent of its priority 4 usage or nothing at all, as either (or both) a misconstruction of the Interim Rules or an abandonment of its facilities servicing Holly without requisite approval of the Commission as mandated by Section 7(b) of the Natural Gas Act.

Holly prays that the Commission issue a declaratory order clarifying the following issues:

(1) regarding the aforementioned reference to "the contract," in the Interim Rule, whether such reference refers to unsigned future as well as currently effective contracts between supplier and customer or to currently effective curtailment plans regardless of the existence of individual contracts between supplier and customer;

(2) whether MDU's Plan, aforementioned, is a currently effective curtailment plan;

(3) whether MDU's Plan aforementioned, represents "the contract" referred to in the Interim Rule;

(4) whether MDU's action in offering Holly only a contract as of July 1, 1979 containing volumetric limitations in accordance with the Plan represents an abandonment under Section 7(b) of the Natural Gas Act; and

(5) whether MDU is authorized by Section 401 of the NGPA and the Interim Rule to offer Holly a new contract allowing it only 20 percent of its base period entitlement or whether MDU should offer Holly a contract containing the full volumetric limits to which it would have been entitled had the Plan not been instituted.

Based on the Commission's clarification of the foregoing, Holly prays that the Commission issue its order to MDU, requiring MDU to offer Holly, as of July 1, 1979, contracts at both its Worland and Sidney plants with volumetric limits of natural gas no less than its full base year entitlement.

Any person desiring to be heard or to make any protest with reference to said petition should on or before June 15, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18781 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. GP79-21]

Montana-Dakota Utilities Co.; Petition for Declaratory Order

June 4, 1979.

Take notice that on May 16, 1979, The Great Western Sugar Company (Great Western), 1530 16th Street, Denver, Colorado 80217, filed in Docket No. GP79-21 a petition pursuant to Section 1.7(c) of the Commission's Rules of Practice and Procedure (18 CFR 1.7(c)) for a declaratory order with regard to the interpretation by Montana-Dakota Utilities Co. (MDU) of § 281.107(c)(1)(ii) of the Commission's Interim Curtailment Rule issued pursuant to the Natural Gas Policy Act of 1978 (NGPA) and stating that a pipeline's supply obligation to a direct essential agricultural user under § 281.107(c)(1)(ii) is determined by the full contractual volumes without regard to any limitation thereon resulting from curtailment, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Great Western owns and operates two factories, one located in Billings, Montana, and the other in Lovell, Wyoming, which use natural gas furnished by MDU in connection with the processing of sugar beets into refined sugar and dried beet pulp for use as a livestock feed. As such, Great Western asserts, it qualifies as an essential agricultural user or natural gas under the regulations issued by the Secretary of Agriculture pursuant to the authority delegated under Section 401 of the NGPA.

Great Western states that MDU has filed tariff sheets as part of its FERC Gas Tariff to provide on an interim basis a plan for the delivery of natural gas for essential agricultural and high priority uses in accordance with Section 401 of the NGPA and that § 281.107(c)(1) as incorporated into MDU's tariff provides as follows:

(c) *Essential agricultural supply obligation.*

(1) *Direct essential agricultural supply obligation.*

The direct essential agricultural supply obligation of an interstate pipeline for a particular curtailment period with respect to an essential agricultural user which is a direct sale customer of the interstate pipeline is the lesser of:

(i) the volume certified by the Secretary of Agriculture as essential agricultural volumetric requirements and calculated under 7 CFR § 2900.4; or

(ii) the volume which may be delivered by the interstate pipeline to the direct sale customer without causing the interstate pipeline to exceed any volumetric limitations set out in the contract between the interstate pipeline and such direct sale customer (without regard to any contract provision which would otherwise restrict delivery because of supply or capacity shortage of the interstate pipeline).

Great Western asserts that in comments on the impact of NGPA submitted in Docket No. RP76-91, MDU noted that one of the Commission criteria for determining the volumetric entitlement of large direct essential agricutural users was the volumes certified by the Secretary of Agriculture and that MDU observed that under the Secretary's rule

> * * * the volumetric requirements certified are the *higher* of (1) the highest volume of gas actually used during the most recent three years (corrected to include amounts of process (fn. omitted) and feedstock gas not used because of curtailment or plant shutdown) or (2) the maximum volume the customer would be entitled to purchase under MDU's curtailment plan *in effect on February 28, 1979.* Because the large volume * * * customers had, during the past three years, contracts representing various reduced levels of service (*i.e.*, below full 'Base Period Requirements' as set forth in the Tariff), it is apparent that the actual volumes of gas used (corrected for feedstock and process gas not used because of curtailment) will produce the higher calculation of requirements under Agriculture's rule, *i.e.*, the requirements calculated under (1) will exceed the volumetric limitations specified in the contracts in effect February 28, 1979." (Emphasis in original) (App., p. 5)

Great Western then indicates that further quoting the provision of Section 281.107(c)(1)(ii) set out *supra*, p. 2, MDU then went on to state (App., p.6):

* * * it is clear that the volumetric requirements calculated under Agriculture's rule exceed the volumetric limitations under the present contracts (*i.e.*, 40 percent of Base Period Requirements). Hence, under the Commission's rule, the volumetric limitations set forth in the contracts are a "cap" on MDU's supply obligation to essential agricultural use establishments. Accordingly, there is no authority for or requirement under the Commission's rule that "adjustments" exceed such limitation.

Since the volumetric limitations under the present contracts serve as a cap through June 30, 1979, MDU believes it is in harmony with the intent of the Commission's interim rule to maintain the same "cap" for the remaining four months during which the Interim Curtailment Rule is to be in effect—*i.e.*, July 1, 1979 through October 31, 1979.

Consequently, new contracts embracing the period July 1, 1979 through October 31, 1979 will establish volumetric limitations at the present level, which is 40 percent of requirements, that is during that four-month period the contract volume will be ⅓ of 40 percent of Base Period Regulations.[1]

Great Western submits that MDU's interpretation of Section 281.107(c)(1)(ii) as imposing a "cap" limiting its obligations to essential agricultural users to 40 percent of base period requirements grossly misconstrues the force and thrust of that provision. Great Western further submits that there is no basis for MDU's position that the volumetric limitations of 40 percent of base period requirements contained in its present contracts would continue in effect for the four months remaining after June 1979 that the Commission's Interim Rule is to be effective; to the contrary, Great Western alleges, the present contracts expire June 30, 1979, and new contracts are required for the post-June 30 period. Similarly unjustified, Great Western contends, is MDU's asserted belief that maintenance of the same "cap" for the post-June 30 period would be "in harmony with the intent of the Interim Rule," since there is nothing in the Interim Rule suggesting a Commission purpose that the same volumetric limitation levels be maintained from period to period within the time frame covered by the Rule. In any case, Great Western contends, assuming *arguendo* that, as MDU urges, the Commission intends the post-June 30 period to be treated the same as the prior period, MDU's conclusion that the 40 percent base period requirement operates as a volumetric limitation upon its obligations to direct essential agricultural users such as Great Western is belied by the parenthetical phrase in § 281.107(c)(1)(ii) "without regard to any other provision which would otherwise restrict delivery because of supply or capacity shortage of the interstate pipeline."

Great Western states that in line with certain curtailment provisions in MDU's tariff, the contracts which MDU's customers enter into with MDU annually expressly provide the level of curtailment which MDU determines for the oncoming year beginning July 1, and, thus, MDU's annual contracts with Great Western not only make clear that they were being entered into in a curtailment context, but the total volumes specifically provided were patently a predetermined percentage of Great Western's agreed-upon base period requirements. Great Western submits that since the 40 percent of base period requirements provided in MDU's contracts with its category 4 customers is an integral part of MDU's curtailment plan purported based on the gas supply shortage on the MDU system, it is clear that under the parenthetical phrase in § 281.107(c)(1)(ii) the 40 percent limitation is to be disregarded in determining volumetric limitations for the purpose of that Section.

Accordingly, Great Western petitions the Commission to issue an order declaring that a pipeline supply obligation to a direct essential agricultural user under Section 281.107(c)(1)(ii) is determined by the full contractual volumes without regard to any limitation thereon resulting from curtailment.

Any person desiring to be heard or to make any protest with reference to said petition should on or before June 15, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18782 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[1] The 40 percent calculation applies only to the Base Period Requirements in the category being curtailed, namely, Priority 4.

[Docket No. ER79-415]

Montana Power Co.; Filing

June 8, 1979.

The filing Company submits the following: Take notice that on June 4, 1979, The Montana Power Company (Company) tendered for filing Supplement No. 2, dated May 8, 1979, to the Agreement For Purchase of Power between the Company and Big Horn County Electric Cooperative, Inc. (Rate Schedule FERC No. 40).

The Company states that Supplement No. 2 to the Agreement for Purchase of Power incorporates the Company's Rate Schedules REC-78 and REC-79, which were previously filed with the Commission in *The Montana Power Company*, Docket No. ER78-515. Supplement No. 2 also modifies the contract demand and indemnity provisions of the Agreement for Purchase of Power. The Company has proposed to make Supplement No. 2 to the Agreement for Purchase of Power effective on August 3, 1979.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 29, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18780 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

NRM Petroleum Corp.; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978.

June 8, 1979.

On May 22, 1979, the Federal Energy Regulatory Commission received notices for the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of West Virginia, Department of Natural Resources, Office of Conservation

FERC Control Number: JD79-6578
API Well Number: 47-021-2931

Section of NGPA: 103
Operator: NRM Petroleum Corporation
Well Name: Campbell #1
Field: Glenville
County: Gilmer, W. VA.
Purchaser: Consolidated Gas Supply Corp.
Volume: 8 MMcf.

FERC Control Number: JD79-6579
API Well Number: 47-001-1019
Section of NGPA: 103
Operator: NRM Petroleum Corporation
Well Name: Skayra #1
Field: Union
County: Barbour, W. VA.
Purchaser: Consolidated Gas Supply Corp.
Volume: 4.0 MMcf.

FERC Control Number: JD79-6580
API Well Number: 47-041-2152
Section of NGPA: 103
Operator: NRM Petroleum Corporation
Well Name: Pringle #1
Field: Hackers Creek
County: Lewis, W. VA.
Purchaser: Consolidated Gas Supply Corp.
Volume: 13 MMcf.

FERC Control Number: JD79-6586
API Well Number: 47-033-1210
Section of NGPA: 103
Operator: Consolidated Gas Supply Corporation
Well Name: H. G. Porter 12479
Field: W. VA. Other A-85772
County: Harrison, W. VA.
Purchaser: General System Purchasers
Volume: 22 MMcf.

FERC Control Number: JD79-6587
API Well Number: 47-033-1132
Section of NGPA: 103
Operator: Consolidated Gas Supply Corporation
Well Name: H. C. Morrison 12402
Field: W. VA. Other A-85772
County: Harrison, W. VA.
Purchaser: General System Purchasers
Volume: 36 MMcf.

FERC Control Number: JD79-6588
API Well Number: 47-017-1867
Section of NGPA: 103
Operator: Consolidated Gas Supply Corporation
Well Name: M. J. McMillan 12301
Field: W. VA. Other A-85772
County: Doddridge, W. VA.
Purchaser: General System Purchasers
Volume: 28 MMcf.

FERC Control Number: JD79-6589
API Well Number: 47-041-2147
Section of NGPA: 103
Operator: Consolidated Gas Supply Corporation
Well Name: J. B. Lovett 12310
Field: W. VA. Other A-85772
County: Lewis, W. VA.
Purchaser: General System Purchasers
Volume: 33 MMcf.

FERC Control Number: JD79-6590
API Well Number: 47-047-326
Section of NGPA: 103
Operator: Consolidated Gas Supply Corporation
Well Name: C. H. Hibbs 12276
Field: W. VA. Other A-85772
County: Marion, W. VA.
Purchaser: General System Purchasers
Volume: 40 MMcf.

FERC Control Number: JD79-6591
API Well Number: 47-0212-2994-0000
Section of NGPA: 103
Operator: Rockwell Petroleum Company
Well Name: Barker-Marshall #1
Field: Glenville District
County: Gilmer, W. VA.
Purchaser: Consolidated Gas Supply Corporation
Volume: 10.0 MMcf.

FERC Control Number: JD79-6592
API Well Number: 47-017-1901
Section of NGPA: 103
Operator: United Operating Company
Well Name: M. Haught Dodd-1901
Field: Fred's Run
County: Doddridge, W. VA.
Purchaser: Consolidated Gas Supply Corp.
Volume: 25 MMcf.

FERC Control Number: JD79-6593
API Well Number: 47-1072-0760-0000
Section of NGPA: 103
Operator: Appalachian Exploration & Devel., Inc.
Well Name: W. I. Cale #1
Field: Walker
County: Wood, W. VA.
Purchaser: Cabot Corporation
Volume: 9.1 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record in which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275. 203 and 18 CFR 275. 204, file a protest with the Commission on or before July 3, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-18804 Filed 6-15-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. E-9161]

Nantahala Power and Light Co.; Order Determining Fuel Clause Revenues for Purposes of Compliance, Ordering Refunds, and Terminating Proceeding

Issued June 8, 1979.

In a series of orders previously issued in this docket by the Federal Power Commission (FPC) and this Commission,[1] Nantahala's proposed purchased power adjustment clause was rejected. However Nantahala was permitted to retain out of the purchased power clause revenues the amounts to which it would have been entitled under a fuel cost adjustment clause conforming to the Commission's applicable regulations (18 CFR 35.14) set forth in Order No. 517. Nantahala claimed that of a total of $34,270 collected under the purchased power clause in this docket, it was entitled to retain $32,936 as representing the amount it allegedly would have recovered under a conforming fuel clause. Nantahala was required to document its claimed fuel clause revenue entitlement.

On August 21, 1978, Nantahala submitted calculations purportedly documenting its claim to the $32,936. On August 31, 1978, the town of Highlands, North Carolina, one of Nantahala's wholesale customers and an intervenor, filed a protest to Nantahala's proposed documentation alleging that the amount claimed by Nantahala was excessive and unjustified under the Commission's fuel clause regulations. Highlands' protest was joined by Nantahala's cooperative customers who are also intervenors in the proceeding. On September 29, 1978, Nantahala responded to the intervenors' objections. It acknowledged the merit of certain of Highlands' objections and submitted revised calculations resulting in a substantial reduction in its claim from $32,936 to $12,646. On October 27, 1978, Highlands filed a protest to Nantahala's recalculation, claiming that the company still had not complied with the Commission's fuel clause regulations. Highlands requested the Commission to consider reopening the proceeding to determine whether Nantahala should be required to refund all amounts collected under the purchased power adjustment clause. In the event the Commission were unwilling to do so, Highlands requested that Nantahala be required to refund all amounts collected in excess of the $12,646 claimed by Nantahala in its revised compliance filing.

On October 30, 1978, the Commission staff submitted comments in response to Nantahala's revised documentation. The staff provided detailed calculations showing that under the Commission's regulations Nantahala was entitled to a maximum of only $9,663. The staff requests the Commission to order

[1] Orders issued February 7, 1977; March 20 1978; and July 20, 1978.

refunds of all amounts collected by Nantahala in excess of $9,663 and to terminate the proceeding. On November 13, 1978, Highlands responded to the staff's comments. Highlands alleges that the staff's calculations do not precisely meet the requirements of the fuel clause regulations, but that refund of the amounts determined by the staff would be preferable to continued litigation of this cause.

Upon review, the Commission finds that the staff's calculations provide a reasonable and proper basis for determining Nantahala's refund obligation in this docket. The Commission further finds that the staff's calculations conform to the fuel clause regulations as nearly as may reasonably be required within the limits of available data, including the billing data relating to Nantahala's power purchases from TVA, and that such calculations provide a fair, reasonable, and accurate measure of the fuel costs associated with Nantahala's TVA purchases. Therefore in accordance with the staff's recommendation, Nantahala's refunds shall be established by reference to the calculated fuel clause revenue figure of $9,663.

The Commission orders: (A) On or before July, 3, 1979, Nantahala shall refund to its wholesale customers all amounts collected in this docket under its purchased power adjustment clause in excess of $9,663, together with interest at the rate of 9 percent per annum. Within 10 days thereafter, Nantahala shall submit a statement showing the calculation of refunds and interest paid.

(B) Upon compliance by Nantahala with ordering paragraph (A) above, this proceeding shall be terminated.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18788 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-398]

Northern Indiana Public Service Co., Notice of Tariff Change and Supplements to Service Agreements

June 8, 1979.

The filing company submits the following: Take notice that on May 21, 1979, Northern Indiana Public Service Company (NIPSCo) tendered for filing First Revised Sheet No. 3 to its FERC Electric Service Tariff—Third Revised Volume No. 1 which has been revised to include an additional delivery point for Kosciusko County Rural Electric Membership Corporation—Webster South. Northern Indiana Public Service Company also tendered for filing the following:

Exhibit B-12, a supplement to the Service Agreement between NIPSCo and Kosciusko County Rural Electric Membership Corporation, which covers the supply of electric energy for resale at a delivery point located in Tippecanoe Township, Kosciusko County, Indiana.

Copies of this filing were served upon all customers receiving electric service under NIPSCo's FERC Electric Service Tariff—Third Revised Volume No. 1 and the Public Service Commission of Indiana.

Any person desiring to be heard or to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 25, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18781 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-396]

Ohio Edison Co., Filing

June 11, 1979.

Take notice that Ohio Edison Company on June 1, 1979 tendered for filing a notice of cancellation of FERC Rate Schedule Nos. 5C and 5C-1 through 5C-11. Ohio Edison indicates that these schdules expired by their own terms on December 31, 1975.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before July 2, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18782 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-400 and ER79-403]

Potomac Edison Co.; Certification of Settlement Agreement

June 8, 1979.

On May 30, 1979, the Presiding Administrative Law Judge certified to the Commission a proposed settlement agreement filed by Potomac Edison Company (Edison). The agreement resolves all of the outstanding issues between Edison and its municipal and cooperative customers. The Commission Staff supports the settlement.

Any person desiring to comment or to protest said filing should file comments or protests with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, and 1.10). All such petitions or protests should be filed on or before June 22, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18782 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Primos Production Co., *et al.*; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

June 8, 1979.

On May 18, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of Louisiana

Department of Natural Resources, Office of Conservation

FERC Control Number: JD79-6100
API Well Number: 1708700342
Section of NGPA: 108
Operator: Primos Production Company
Well Name: Tensas Delta No. 31

Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: United Gas Pipeline Company
Volume: 17.30 MMcf.

FERC Control Number: JD79-6167
API Well Number: 1706700346
Section of NGPA: 108
Operator: Primos Production Company
Well Name: Tensas Delta No. 32
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: United Gas Pipeline Company
Volume: 9.03

FERC Control Number: JD79-6168
API Well Number: 1706700391
Section of NGPA: 108
Operator: Primos Production Company
Well Name: Tensas Delta No. 33
Field: Monroe Gas Field
County: Morehouse, Louisiana
Purchaser: United Gas Pipeline Company
Volume: 3.27

FERC Control Number: JD79-6169
API Well Number: 1706700396
Section of NGPA: 108
Operator: Primos Production Company
Well Name: Tensas Delta No. 34
Field: Monroe Gas Field
County: Morehouse
Purchaser: United Gas Pipeline Company
Volume: 4.97 MMcf.

FERC Control Number: JD79-6170
API Well Number: 1706700400
Section of NGPA: 108
Operator: Primos Production Company
Well Name: Tensas Delta No. 37
Field: Monroe Gas Field
County: Morehouse
Purchaser: United Gas Pipeline Company
Volume: 2.01 MMcf.

FERC Control Number: JD79-6171
API Well Number: 1706700393
Section of NGPA: 108
Operator: Primos Production Company
Well Name: Tensas Delta No. 38
Field: Monroe Gas Field
County: Morehouse
Purchaser: United Gas Pipeline Company
Volume: 3.35 MMcf.

FERC Control Number: JD79-6172
API Well Number: 17-113-20716
Section of NGPA: 103
Operator: The Superior Oil Company
Well Name: S.L. 3052 No. 35
Field: LacBlanc
County: Vermilion Parish, Louisiana
Purchaser: Tennessee Gas Pipe Line Co.
Volume: 101.2 MMcf.

FERC Control Number: JD79-6173
API Well Number: 17-101-21009
Section of NGPA: 103
Operator: Sun Oil Company (Delaware)
Well Name: Belle Isle Corp. No. 77
Field: Belle Isle
County: St. Mary, Louisiana
Purchaser: United Gas Pipe Line Company
Volume: 125 MMcf.

FERC Control Number: JD79-6174
API Well Number: 17-087-20153
Section of NGPA: 107
Operator: Chevron U.S.A. Inc.
Well Name: S.L. 6647 No. 3
Field: Rigolets
County: St. Bernard, Louisiana
Purchaser: New Orleans Public Service Inc.
Volume: 1198.8 MMcf.

FERC Control Number: JD79-6175
API Well Number: 17-725-20188
Section of NGPA: 103
Operator: Chevron U.S.A. Inc.
Well Name: S.L. 1354 No. 27
Field: Main Pass Block 69
County: Plaquemines, Louisiana
Purchaser: Southern Natural Gas Co.
Volume: 2.60 MMcf.

FERC Control Number: JD79-6176
API Well Number: 17-725-20167
Section of NGPA: 103
Operator: Chevron U.S.A. Inc.
Well Name: S.L. 1277 No. 24
Field: Main Pass Block 69
County: Plaquemines, Louisiana
Purchaser: Southern Natural Gas Company
Volume: NA

FERC Control Number: JD79-6177
API Well Number: 1772620141
Section of NGPA: 103
Operator: Sabine Production Company
Well Name: S/L 7102 No. 1
Field: Breton Sound Block 53
County: Plaquemines Parish, Louisiana
Purchaser: Texas Eastern Transmission Corp.
Volume: 182.5 MMcf.

FERC Control Number: JD79-6178
API Well Number: 1772620150
Section of NGPA: 103
Operator: Sabine Production Company
Well Name: S/L 7102 No. 2
Field: Breton Sound Block 53
County: Plaquemines Parish, Louisiana
Purchaser: Texas Eastern Transmission Corp.
Volume: 182.5 MMcf.

FERC Control Number: JD79-6179
API Well Number: 1705120461
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Exxon Fee Avondale 12-D
Field: Avondale
County: Jefferson Parish, Louisiana
Purchaser: United Gas Pipe Line Company
Volume: 130 MMcf.

FERC Control Number: JD79-6180
API Well Number: 17-113-20757
Section of NGPA: 103
Operator: The Superior Oil Company
Well Name: S.L. 3057 No. 33
Field: Lacblanc
County: Vermilion Parish, Louisiana
Purchaser: Tennessee Gas Pipe Line Company
Volume: 2,210 MMcf.

FERC Control Number: JD79-6181
API Well Number: 1700120643
Section of NGPA: 103
Operator: Pel-Tex Oil Company, Inc.
Well Name: No. 1 M. M. Kerr
Field: Ellis
County: Acadia Parish, Louisiana
Purchaser: Columbia Gas Transmission Corp.
Volume: 900 MMcf.

FERC Control Number: JD79-6182
API Well Number: 17-109-22027
Section of NGPA: 103
Operator: The Superior Oil Company
Well Name: Laterra Co., Inc. "A" No. 36
Field: Bayou Penchant
County: Terrebonne Parish, Louisiana
Purchaser: United Gas Pipe Line Co.
Volume: 1,566 MMcf.

FERC Control Number: JD79-6183
API Well Number: 17-109-21867
Section of NGPA: 103
Operator: The Superior Oil Company
Well Name: Laterre Co., Inc. "A" No. 34
Field: Bayou Penchant
County: Terrebonne Parish, Louisiana
Purchaser: United Gas Pipe Line Company
Volume: 1,208 MMcf.

FERC Control Number: JD79-6184
API Well Number: 1711121740
Section of NGPA: 103
Operator: Four Star Development Corp.
Well Name: Union Power Co., Inc. No. 1
Field: Monroe Gas
County: Union, Louisiana
Purchaser: Ashland Exploration Corp., Inc.
Volume: 40.750 MMcf.

FERC Control Number: JD79-6185
API Well Number: 1711121739
Section of NGPA: 103
Operator: Four Star Development Corp.
Well Name: Mery Lee et al. No. 1
Field: Monroe Gas
County: Union, Louisiana
Purchaser: Ashland Exploration Corp., Inc.
Volume: 51.700 MMcf.

FERC Control Number: JD79-6186
API Well Number: 1711121752
Section of NGPA: 103
Operator: Four Star Development Corp.
Well Name: G. A. McCormick No. 1
Field: Monroe Gas
County: Union, Louisiana
Purchaser: Ashland Exploration Corp., Inc.
Volume: 31.025 MMcf.

FERC Control Number: JD79-6187
API Well Number: 1711121733
Section of NGPA: 103
Operator: Four Star Development Corporation
Well Name: W. C. Martin et al. No. 1
Field: Monroe Gas
County: Union, Louisiana
Purchaser: Ashland Exploration Corp., Inc.
Volume: 27.375 MMcf.

FERC Control Number: JD79-6188
API Well Number: 1701320283
Section of NGPA: 108
Operator: Bodcaw Company
Well Name: Hoss C Su 65; Payton No. 1
Field: Danville
County: Bienville, Louisiana
Purchaser: La. Gas Intrastate, Inc. of Shreveport
Volume: 14.670 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with

18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before July 3, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18685 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-410]

Puget Sound Power & Light Co.; Filing

June 11, 1979.

Take notice that Puget Sound Power & Light Company on June 1, 1979 tendered for filing First Revised Exhibits A and B Superseding Original Exhibits A and B. Puget Sound indicates that these Revised Exhibits represent cost support data to reflect increases in the actual costs of the Company's coal-fired generating resources.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.W., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure [18 CFR 1.8, 1.10]. All such petitions or protests should be filed on or before July 3, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18704 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

Ravencliffe Development Co.; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

June 5, 1979.

On May 17, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of West Virginia

FERC Control Number: JD79-5875
API Well Number: 47-109-2-852
Section of NGPA: 108
Operator: Ravencliffe Development Company
Well Name: Y & O Coal Co.—89
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5876
API Well Number: 47-109-2-402
Section of NGPA: 108
Operator: Ravencliffe Development Company
Well Name: Y & O Coal Co.—37
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5878
API Well Number: 47-109-2-658
Section of NGPA: 108
Operator: Ravencliffe Development Company
Well Name: Y & O Coal Co.—48
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.580 MMcf.

FERC Control Number: JD79-5880
API Well Number: 47-109-2-755
Section of NGPA: 108
Operator: Ravencliffe Development Company
Well Name: Y & O Coal Co.—70
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 11.054 MMcf.

FERC Control Number: JD79-5881
API Well Number: 47-109-2-658
Section of NGPA: 108
Operator: Ravencliffe Development Company
Well Name: Y & O Coal Co.—50
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp
Volume: 13.457 MMcf.

FERC Control Number: JD79-5882
API Well Number: 47-109-2-661
Section of NGPA: 108
Operator: Ravencliffe Development Company
Well Name: Wyoming Land Co.—34
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5883
API Well Number: 47-109-2-5
Section of NGPA: 108
Operator: Ravencliffe Development Company
Well Name: Y & O Coal Co.—8
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5884
API Well Number: 47-109-2-656
Section of NGPA: 108
Operator: Ravencliffe Development Company
Well Name: Y & O Coal Co.—44
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5885
API Well Number: 47-109-2-662
Section of NGPA: 108
Operator: Ravencliffe Development Company
Well Name: Y & O Coal Co.—56
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5886
API Well Number: 47-109-2-415
Section of NGPA: 108
Operator: Ravencliffe Development Company
Well Name: Y & O Coal Co.—39
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5887
API Well Number: 47-109-2-345
Section of NGPA: 108
Operator: Ravencliffe Development Company
Well Name: Y & O Coal Co.—23
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5888
API Well Number: 47-109-2-206
Section of NGPA: 108
Operator: Ravencliffe Development Company
Well Name: Y & O Coal Co.—25
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5889
API Well Number: 47-109-2-68
Section of NGPA: 108
Operator: Ravencliffe Development Company
Well Name: Wyoming Land Co.—16
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5890
API Well Number: 47-109-2-441
Section of NGPA: 108
Operator: Ravencliffe Development Company
Well Name: Y & O Coal Co.—40
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79-5891
API Well Number: 47-109-2-541
Section of NGPA: 108
Operator: Ravencliffe Development Company
Well Name: Y & O Coal Co.—47
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79–5892
API Well Number: 47–109–2–559
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—49
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79–5893
API Well Number: 47–109–2–0
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—12
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79–5894
API Well Number: 47–109–2–794
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—79
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 3.149 MMcf.

FERC Control Number: JD79–5895
API Well Number: 47–109–2–389
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—35
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79–5896
API Well Number: 47–109–2–682
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—63
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79–5897
API Well Number: 47–109–2–757
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—77
Field: Ravencliff
County: Wyoming, W. VA.
Purchaser: Columbia Gas Transmission Corp.
Volume: 12.120 MMcf.

FERC Control Number: JD79–5898
API Well Number: 47–109–2–742
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Wyoming Land Co—75
Field: Ravencliff
County: Wyoming, W. VA.
Purchaser: Columbia Gas Transmission Corp.
Volume: 18.800 MMcf.

FERC Control Number: JD79–5899
API Well Number: 47–109–2–696
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—69
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79–5900
API Well Number: 47–109–2–708
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—72
Field: Ravencliff
County: Wyoming, W. VA.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79–5901
API Well Number: 47–109–2–735
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—74
Field: Ravencliff
County: Wyoming, W. VA.
Purchaser: Columbia Gas Transmission Corp.
Volume: 11.312 MMcf.

FERC Control Number: JD79–5902
API Well Number: 47–109–2–678
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—61
Field: Ravencliff
County: Wyoming
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79–5903
API Well Number: 47–109–2–683
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—64
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79–5904
API Well Number: 47–109–2–810
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—2
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79–5905
API Well Number: 47–109–2–1
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—6
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79–5906
API Well Number: 47–109–2–2
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—8
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79–5907
API Well Number: 47–109–2–6
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—10
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79–5908
API Well Number: 47–109–2–659
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—57
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79–5909
API Well Number: 47–109–2–636
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—56
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79–5910
API Well Number: 47–109–2–661
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—52
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79–5911
API Well Number: 47–109–2–611
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—53
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79–5912
API Well Number: 47–109–2–351
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—28
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79–5913
API Well Number: 47–109–2–376
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—33
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79–5914
API Well Number: 47–109–2–28
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—17
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79–5915
API Well Number: 47–109–2–15
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—16
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79–5916
API Well Number: 47–109–2–623

Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—54
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79–5917
API Well Number: 47–109–2–506
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—45
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79–5918
API Well Number: 47–109–2–605
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—51
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79–5919
API Well Number: 47–109–2–667
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—60
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79–5920
API Well Number: 47–109–2–632
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—55
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79–5921
API Well Number: 47–109–2–609
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—1
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79–5922
API Well Number: 47–109–2–611
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—4
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79–5923
API Well Number: 47–109–2–718
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—73
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79–5924
API Well Number: 47–109–2–700
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—71
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79–5925
API Well Number: 47–109–2–7
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—11
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79–5926
API Well Number: 47–081–2–126
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—24
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79–5927
API Well Number: 41–109–2–478
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—43
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

FERC Control Number: JD79–5928
API Well Number: 47–109–2–455
Section of NGPA: 108
Operator: Ravencliffs Development Company
Well Name: Y & O Coal Co—42
Field: Ravencliff
County: Wyoming, W. Va.
Purchaser: Columbia Gas Transmission Corp.
Volume: 13.457 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before July 3, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-18928 Filed 6-15-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. ER78-514]

Superior Water, Light & Power Co.; Motion To Withdraw Application

June 11, 1979.

Take notice that Superior Water, Light and Power Company (Superior) on March 15, 1979 tendered for filing a motion to withdraw its application for a rate increase.

On July 28, 1978 Superior tendered for filing a proposed revised Rate Schedule W-7 to the applicable to Dahlberg Light and Power Company. By order dated August 31, 1978 the Commission suspended the effectiveness of Superior's revised Rate Schedule W-7 until December 7, 1978, after which it became effective subject to refund; the Commission ordered that a hearing be held with respect to the proposed rates.

Superior indicates that it no longer wants to pursue its proposed rate increase through the hearing process and would like to withdraw its application. Superior states that upon Commission approval of this motion Superior would refund to Dahlberg the excess revenues collected since December 7, 1978 under the proposed Rate Schedule W-7, together with interest at 9% per annum, and would reinstate Rate Schedule W-6.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before July 2, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-18795 Filed 6-15-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. ER79-412]

Union Electric Co.; Revised Service Schedule

June 11, 1979.

The filing Company submits the following:

Take notice that on May 24, 1979 Union Electric Company (Union) tendered for filing Second Amendment and Third Revised Schedule II to the Interchange Agreement dated April 11, 1967 between Union and Missouri Public Service Company.

Union indicates that said agreements provide for revisions in certain rates under said Interchange Agreement.

Union requests an effective date of August 1, 1979 for the Amendment and revised Schedule.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 3, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-18795 Filed 6-15-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. GP 79-28; API No. 03-071-10126]

U.S. Geological Survey (Mid-Continent Area) Section 108 NGPA Determination Regarding Federal 31 No. 1-12 Well; Preliminary Finding

Issued June 7, 1979.

On April 26, 1979, the Oil and Gas Supervisor for the Mid-Continent Area of the U.S. Geological Survey submitted to the Federal Energy Regulatory Commission (Commission) a notice of determination that the Federal 31 No. 1-12 Well met all the requirements of a stripper well under section 108 of the Natural Gas Policy Act of 1978 (NGPA) and Commission regulations implementing that section. The Commission published notice of the determination on May 7, 1979.

Section 108 of the NGPA provides that the rate of natural gas production from a stripper well shall not exceed an average of 60 Mcf per production day. Section 271.804(a) of the Commission's regulations stipulates that for purposes of determining the rate of production from a well for which a stripper well determination is sought, the total volume of natural gas produced from the well shall constitute its daily production, regardless of whether the well is completed in more than one interval.

The well completion report submitted with this determination indicates that the well is a dual completion. However, the production records submitted are applicable to production from only one of the producing levels. Accordingly, the materials accompanying the determination fail to provide figures reflecting the total volume of gas produced from the well.

On the basis of our review submitted with this determination, the Commission hereby makes a preliminary finding, pursuant to 18 CFR 275.202(a)(1)(i), that the determination submitted by the Oil and Gas Supervisor, Mid-Continent Area, U.S. Geological Survey, that the Federal 31 No. 1-12 Well qualifies as a section 108 stripper well, is not supported by substantial evidence in the record on which the determination was made.

By direction of the Commission.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-18793 Filed 6-15-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. ER79-401]

Virginia Electric Power Co.; Filing

June 11, 1979.

Take notice that the Virginia Electric and Power Company (VEPCO), on June 1, 1979 tendered for filing a request for a new delivery point for the Prince George Electric Cooperative designated Bacons Castle Delivery Point. VEPCO requests an effective date of May 4, 1979 and therefore requests waiver of the Commission's notice requirement.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before July 2, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth P. Plumb,
Secretary.

[FR Doc. 79-18797 Filed 6-15-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. ER79-409]

Washington Water Power Co.; Filing

June 8, 1979.

The filing Company submits the following:

Take notice that on June 1, 1979, The Washington Water Power Company (Washington) tendered for filing copies of Letter Agreements between Washington and San Diego Gas & Electric Company, Pacific Gas and Electric Company and Southern California Edison Company. Washington states that these Letter Agreements apply to the delivery of energy from Washington that is surplus to its immediate needs.

Washington further states that a portion of the energy delivered could be returned to Washington, at its request, prior to December 31, 1979. Washington indicates that the rate at which the energy is purchased will be the rate set forth in Washington's rate schedule FPC No. 88 (Wholesale Nonfirm Energy For Export), the applicable price under said rate schedule to be agreed upon before such energy is scheduled.

Washington proposes an effective date of March 1, 1979, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 29, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to

intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18794 Filed 6-15-79; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

FM and TV Translator Applications Ready and Available for Processing

Adopted: June 11, 1979.

Released: June 12, 1979.

By the Chief, Broadcast Facilities Division.

Notice is hereby given pursuant to §§ 1.572(c) and 1.573(d) of the Commission's Rules, that on July 27, 1979, the TV and FM translator applications listed in the attached Appendix below will be considered ready and available for processing. Pursuant to §§ 1.227(b)(1) and 1.591(b) of the rules, an application, in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on July 26, 1979, which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and submitted for filing at the offices of the Commission in Washington, D.C., by the close of business on July 26, 1979.

Any party in interest desiring to file pleadings concerning any pending TV FM translator application, pursuant to Section 309(d)(1) of the Communications Act of 1934, as amended, is directed to § 1.580(i) of the rules, which specifies the time for filing and other requirements relating to such pleadings.

Federal Communications Commission.

William J. Tricarico,

Secretary.

UHF TV Translator Applications

BPTT-781101IB (new), Hawaiian Ocean View Estates, Hawaii, Hawaii Public Broadcasting Authority. Req: Channel 69, 800-806 MHz, 100 watts. Primary: KMEB-TV, Wailuku, Hawaii.

BPTT-790124IA (new), Planada, Hornitos & Catheys Valley, California, Pappas Telecasting Incorporated. Req: Channel 55, 716-722 MHz, 100 watts. Primary: KMPH-TV, Tulare, California.

BPTT-790125IC (new), Milford, Hamilton's Fort & Newcastle, Utah, Springfield Television of Utah, Inc. Req: Channel 59, 740-746 MHz, 100 watts. Primary: KSTU-TV, Salt Lake City, Utah.

BPTT-790306IB (new), Portales & Dora, New Mexico, Stanley Marsh 3, Tom F. Marsh, Michael Marsh & Estelle Marsh Watlington (Limited Partner), A Partnership d/b as Marsh Media, Ltd. Req: Channel 67, 788-794 MHz, 100 watts. Primary: KVII-TV, Amarillo, Texas.

BPTT-790307IG (new), Donnelly & Herman, Minnesota, Tri-County UHF-TV, Inc., Req: Channel 57, 728-734 MHz, 100 watts. Primary: KTHI-TV, Fargo/Grand Forks, North Dakota.

BPTT-790307IH (new), Donnelly & Herman, Minnesota, Tri-County UHF-TV, Inc. Req: Channel 59, 740-746 MHz, 100 watts. Primary: KMSP-TV, Minneapolis, Minnesota.

BPTT-790307II (new), Donnelly & Herman, Minnesota, Tri-County UHF-TV, Inc. Req: Channel 61, 752-758 MHz, 100 watts. Primary: KDLO-TV, Florence/Watertown, South Dakota.

BPTT-790321IA (new), St. James, Minnesota, Minnesota-Iowa Television Company. Req: Channel 32, 578-584 MHz, 1000 watts. Primary: KAAL-TV, Austin, Minnesota.

BPTT-790327IC (new), St. James Minnesota, Watonwan TV Improvement Association. Req: Channel 44, 650-656 MHz, 100 watts. Primary: KMSP-TV, Minneapolis, Minnesota.

BPTT-790118IL (new), Craddockville, Virginia, County of Accomack, Virginia. Req: Channel 68, 794-800 MHz, 100 watts. Primary: WVEC-TV, Norfolk, Portsmouth, Newport News, Virginia.

BPTT-790118IC (new), Craddockville, Virginia, County of Accomack, Virginia. Req: Channel 38, 602-608 MHz, 100 watts. Primary: WYAH-TV, Norfolk, Portsmouth, Newport News, Virginia.

BPTT-790118ID (new), Tangier, Virginia, County of Accomack, Virginia. Req: Channel 46, 662-668 MHz, 110 watts. Primary: WHRO-TV, Norfolk, Portsmouth, Newport News, Virginia.

BPTT-790118IE (new), Tangier, Virginia, County of Accomack, Virginia. Req: Channel 48, 647-680 MHz, 10 watts. Primary: WYAH-TV, Norfolk, Portsmouth, Newport News, Virginia.

BPTT-790118IF (new), Craddockville, Virginia, County of Accomack, Virginia. Req: Channel 52, 698-704 MHz, 100 watts. Primary: WHRO—TV, Norfolk, Portsmouth, Newport News, Virginia.

BPTT-790118IG (new), Tangier, Virginia, County of Accomack, Virginia. Req: Channel 54, 710-716 MHz, 10 watts. Primary: WAVY-TV, Norfolk, Portsmouth, Newport News, Virginia.

BPTT-790118IH (new), Tangier, Virginia, County of Accomack, Virginia. Req: Channel 50, 722-728 MHz, 10 watts. Primary: WTAR-TV, Norfolk, Portsmouth, Newport News, Virginia.

BPTT-790118II (new), Craddockville, Virginia, County of Accomack, Virginia. Req: Channel 58, 734-740 MHz, 100 watts. Primary: WTAR-TV, Norfolk, Portsmouth, Newport News, Virginia.

BPTT-790118IJ (new), Craddockville, Virginia, County of Accomack, Virginia. Req: Channel 63, 764-770 MHz, 100 watts. Primary: WAVY-TV, Norfolk, Portsmouth, Newport News, Virginia.

BPTT-790118IK (new), Tangier Virginia, County of Accomack, Virginia. Req: Channel 65, 776-782 MHz, 10 watts Primary: WVEC-TV, Norfolk, Portsmouth, Newport News, Virginia.

BPTT-790424IA (NEW), Santa Barbara, Golete & Carpinteria, California, Lethus Ministries, Inc. Req: Channel 66, 776-782 MHz, 100 watts. Primary: KTBN-TV, Fontana, California.

BPTT-790409IB (NEW), Bowman & Surrounding Area, North Dakota, Bowman TV Booster, Inc. Req: Channel 67, 788-794 MHz, 100 watts. Primary: KHSD-TV, South Dakota.

BPTT-790409IC (NEW), Bowman & Surrounding Area, North Dakota, Bowman TV Booster, Inc. Req: Channel 69, 800-806 MHz, 100 watts. Primary: KIVV-TV, South Dakota.

BPTT-790420IA (NEW), Mayaguez, Puerto Rico, Quality Telecasting Corporation. Req: Channel 16, 482-488 MHz, 1000 watts. Primary: WORA-TV, Mayaguez, Puerto Rico.

VHF TV Translator Applications

BPTTV-790126IA (NEW), Denio, Nevada, Red Point Community Club, Inc. Req: Channel 9, 186-192 MHz, 1 watt. Primary: KIVI-TV, Nampa, Idaho.

BPTTV-790126IB (NEW), Denio, Nevada, Red Point Community Club, Inc. Req: Channel 11, 198-204 MHz, 1 watt. Primary: KBCI-TV, Boise, Idaho.

BPTTV-790126IC (NEW), Howard, Montana, Forsyth TV Tax District. Req: Channel 6, 82-88 MHz, 10 watts. Primary: KULR-TV, Billings, Montana.

BPTTV-790126ID (NEW), Rosebud & East Rural Area, Montana, Forsyth TV Tax, District. Req: Channel 9, 186-192 MHz, 10 watts. Primary: KULR-TV, Billings, Montana.

BPTTV-790126IE (NEW), Forsyth & East Rural Area, Montana, Forsyth TV Tax District. Req: Channel 12, 204-210 MHz, 10 watts. Primary: KTVQ-TV, Billings, Montana.

BPTTV-790201IJ (NEW), Valdez, Alaska, City of Valdez. Req: Channel 9, 186-192 MHz, 10 watts. Primary: KTVA-TV, KENI-TV, KIMO-TV, KAKM-TV, Anchorage, Alaska, KTOO-TV, Juneau, Alaska.

BPTTV-790201IK (NEW), Kodiak, Alaska, Kodiak Public Broadcasting, Corporation. Req: Channel 9, 186-192 MHz, 10 watts. Primary: KTVA-TV, KENI-TV, KIMO-TV, KAKM-TV, Anchorage, Alaska, KTOO-TV, Juneau, Alaska.

BPTTV-790201IL (NEW), Petersburg, Alaska, Narrows Broadcasting, Corporation. Req: Channel 9, 186-192 MHz, 10 watts. Primary: KTVA-TV, KENI-TV, KIMO-TV, & KAKM-TV, Anchorage, Alaska, KTOO-TV, Juneau, Alaska.

BPTTV-790201IM (NEW), Kotzebue, Alaska, Kotzebue Broadcasting, Inc. Req: Channel 9, 186-192 MHz, 10 watts. Primary: KTVA-TV, KENI-TV, KIMO-TV, KAKM-TV, Anchorage, Alaska, KTOO-TV, Juneau, Alaska.

BPTTV-790201IN (NEW), Nome, Alaska, City of Nome. Req: Channel 9, 186-192 MHz, 10 watts. Primary: KTVA-TV, KENI-TV, KIMO-TV, & KAKM-TV, Anchorage, Alaska, KTOO-TV, Juneau, Alaska.

BPTTV-790312IC (NEW), Schroon Lake, New York, Town of Schroon. Req: Channel 7, 174–180 MHz, 1 watt. Primary: WETK–TV, Burlington, Vermont.

BPTTV-790312ID (NEW), Schroon Lake, New York, Town of Schroon. Req: Channel 9, 186–192 MHz, 1 watt. Primary: WEZF–TV, Burlington, Vermont.

UHF TV Translator Applications

BPTT-790306IA (NEW), St. James, Minnesota, Hubbard Broadcasting, Inc. Req: Channel 32, 578–584 MHz, 1000 watts. Primary: KSTP–TV, St. Paul, Minnesota.

FM Translator Applications

BPFT-790201IO (NEW), Dothan, Alabama, The Dothan Area Christian Radio Association. Req: Channel 204, 88.3 MHz, 1 watt. Primary: WPCS–FM, Pensacola, Florida.

BPFT-790201IP (NEW), Ashland & Washburn, Wisconsin, Chequeamegon Christian Message, Inc. Req: Channel 285, 100.9 MHz, 1 watt. Primary: WWIB–FM, Ladysmith, Wisconsin.

BPFT-790202IE (NEW), South Lake Tahoe & Kings Beach, California, Western Inspirational Broadcasters, Inc. Req: Channel 221, 92.1 MHz, 10 watts. Primary: KNIS–FM, Carson City, Nevada.

BPFT-790206IB (NEW), Oroville & Tonasket, Washington, KOMW, Incorporated. Req: Channel 269, 101.7 MHz, 10 watts. Primary: KOMW–FM, Omak, Washington.

BPFT-790215IR (NEW), Alturas, California, Sierra Cascade Communications, Inc. Req: Channel 285, 100.9 MHz, 10 watts. Primary: KTMT–FM, Medford, Oregon.

BPFT-790215IS (K265AB), Grants Pass, Oregon, Sierra Cascade Communications, Inc. Req: Change frequency to Channel 276–103.1 MHz.

BPFT-790309IH (NEW), Coon Valley, Wisconsin, Wisconsin Christian Broadcasting Foundation, Inc. Req: Channel 292, 106.3 MHz, 1.0 watt. Primary: WWIB–FM, Ladysmith, Wisconsin.

BMPFT-790518IB (K252AJ), Absarokee, Montana, Absarokee Community TV Club, Inc. Req: Change frequency to Channel 257, 99.3 MHz.

[FR Doc. 79-18915 Filed 6-15-79; 8:45 am]
BILLING CODE 6712-01-M

[FCC 79-332]

Commission Orders Return to Substantial Compliance Standard in Evaluating Ascertainment Showings

June 18, 1979.

The Commission has modified the standard that will be applied in evaluating ascertainment surveys of community problems, needs and interests made in conjunction with the filing of applications for new AM, FM, and TV stations. The modification was made in conjunction with the Report and Order in *Revised Procedures for the Processing of Contested Broadcast Applications*, General Docket No. 79-137, FCC 79-331, adopted on June 1, 1979.

In 1971, the Commission adopted the *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650 (1971), as a "statement intended to clarify and provide guidelines as to Commission policies and requirements." 27 FCC 2d at 651. The Commission said that it was striving for "a degree of flexibility" and that "[g]uidelines that are too specific may result in too rigid an approach." *Id.* In subsequent adjudications, the Commission articulated a policy of "substantial compliance" with the Primer guidelines. *E.g., Greenfield Broadcasting Corp.*, 30 FCC 2d 774 (1971); *The Evening News Association*, 35 FCC 2d 366 (1972); *New Broadcasting Corp.*, 37 FCC 2d 662 (1972); *The Outlet Co.*, 38 FCC 2d 355 (1972); *RadiOhio, Inc.*, 38 FCC 2d 721 (1972); *Mahoning Valley Broadcasting Corp.*, 39 FCC 2d 52 (1972).

However, in 1974, the Commission in examining an ascertainment survey which did not include consultations with leaders of a significant interest group in the community to be served, concluded, as provided in Question and Answer 16 of the *Primer*, that the applicant's ascertainment survey was defective. *Voice of Dixie, inc.*, 45 FCC 2d 1027, *recon. denied*, 47 FCC 2d 526 (1974).

Following the Decision in *Voice of Dixie*, greater emphasis has been placed on strict compliance with all provisions of the Primer, which has fostered unnecessary litigation and time-consuming delays in the processing of broadcast applications by overemphasizing the importance of even trivial variations from the Primer's supposedly flexible guidelines. Ascertainment showings have become the source of much nitpicking in competitive multiparty cases, even though matters of decisional significance were not at issue. The continuation of such an approach is incompatible with the Commission's keen desire, as expressed in the new *Report and Order*, to streamline and expedite application processing.

For these reasons, we have determined that the practice of requiring strict compliance with the Primer on ascertainment should no longer be the criterion for passing upon the adequacy of an applicant's showing in this regard. Rather, we will return to the previous body of precedent which identified substantial compliance as being sufficient.

Although the Commission has previously recognized that "substantial compliance" is an imprecise term and that its meaning must be established based on experience gained in processing applications and in the light of the purposes and policies that the particular regulatory program seeks to effect (see *CATV of Rockford, Inc.*, 30 FCC 2d 10 (1972), the Commission believes that the above-cited cases and other prior processing experience provide sufficient guidance to the processing staff and the public as to how the term will again be construed in ascertainment examinations.

The revised standard will be applicable immediately at all levels of the adjudicatory process and to all pending applications (contested and uncontested) and proceedings where ascertainment questions arise.

Action by the Commission June 1, 1979. Commissioners Ferris (Chairman), Lee, Quello, Washburn and Fogarty, with Commissioner Brown concurring and issuing a statement.

Federal Communications Commission.

William J. Tricarico,
Secretary.

Concurring Statement of Commissioner Tyrone Brown

Re: *Revised Procedures for the Processing of Contested Broadcast Applications; Amendments of Part 73 of the Commission's Rules*

I fully support the thrust of the Commission's action in adopting revised rules and procedures to expedite the processing of contested broadcast applications for new facilities. By adopting the recommendations of the Contractor's Report we will, in substance, simplify and shorten the current cut-off list procedures; eliminate the sending of "deficiency letters" as part of the processing procedures, except where the staff needs further information; restrict the pre-designation voluntary amendment of applications; eliminate the current provision for predesignation issue pleadings; and require pleadings affecting issues to be filed with the Administration Law Judge after designation.

I applaud the efforts and results of the Contractor, Max Paglin, who has performed yeoman's work and has produced a truly important procedural reform embodied in one of the best written documents I have seen in my tenure as a Commissioner. The current procedures encourage delay and waste of Commission and party resources and also have an adverse impact on applicants and petitioners who do not possess deep pockets. The procedural changes the Contractor recommends can be expected to ameliorate these problems and make a substantial dent in our current backlog of applications for new broadcast facilities. I endorse this part of the "Paglin Report" without reservation.

The second portion of the Contractor's Report causes me some concern and is the impetus for this concurring statement. Under

the revised "procedures" adopted today, the Commission changes the groundrules for handling the review of applicants' community ascertainment and financial qualifications showings. Under the new procedures, applicants need only make a threshold showing of substantial compliance with FCC policies and rules to pass initial Commission muster.

Several points are worth emphasizing. First, the procedures and polices we have adopted today apply only to applications for *new* broadcast facilities against which mutually-exclusive applications or petitions to deny are filed. Except to the extent certain filing deadlines are conformed, no changes are intended in the procedures or policies applied to renewal applications.

Second, the requirement of a threshold showing of "substantial compliance" for *financial* showings causes me little concern because the adequacy of such showings is fairly easy to determine and we have been applying a "substantial compliance" test. However, the same is not the case with ascertainment.

At least since the decision in *Voice of Dixie, Inc.* 45 FCC 2d 1027, *recon. denied*, 47 FCC 2d 526 (1974), the Commission has applied a "strict compliance" test to measure the adequacy of ascertainment showings submitted by applicants for new facilities. The procedures adopted today purport to return to the pre-*Voice of Dixie* "substantial compliance" test as a measure of the adequacy of an applicant's ascertainment showing. Based upon the comments made on the Paglin proposals and my understanding of the standards applied before the *Voice of Dixie* case, I would have no problem with reversing that case and returning to a policy of "substantial compliance." In my opinion, the real purpose of ascertainment is to require that broadcasters have contact and dialogue with their communities. The mechanistic approach to ascertainment, and therefore the nit-picking approach to challenging ascertainment, serve no real purpose. Thus substantial compliance with the purpose of ascertainment should be all that we need require.

However, we must make clear what we mean by substantial compliance. There may be some confusion about the standard to be applied by our staff and in the adjudicative process in determining whether there has been substantial compliance. This is so because, while the test is intended to be that applied before the *Voice of Dixie* decision, the Report and Order adopted today suggests otherwise in at least one passage. In adopting the Contractor's recommendation (with minor modifications) we noted that:

"The test to be used regarding the showing required to reopen the question of the adequacy of the ascertainment survey, by way of motion to enlarge issues, will be limited to *misrepresentation* or *gross omission* of some *decisionally significant* area which would make the survey *totally unacceptable*." (Par. 54; emphasis added).

My initial opinion was that this standard for *review* of the staff's action was one which would permit acceptance of ascertainment showings only minimally complying with the *Primer* and other Commission policies. For if the staff determined that the application substantially complied with our policies (a determination in which "only the applicant and the staff are involved") even if it did not, it seemed to me that a review standard requiring a showing of "misrepresentation or gross omission of some decisionally significant area which would make the survey totally unacceptable" in most instances precluded any further examination of the showing.

However, to the extent that that language suggested a standard other than that which existed prior to *Voice of Dixie*, it is not so intended by the Commission. In discussion at the meeting at which we adopted this Report the staff assured us that the review standard permitted an ALJ to enlarge issues if a showing was made that the applicant's ascertainment survey did not substantially comply with our policies. And the tests for substantial compliance are those applied before the *Voice of Dixie* case. (See *Report and Order*, note 9). Also reassuring are subsequent passages in the Report and Order at paragraph 54: "[W]e will return to the previous body of precedent which identified substantial compliance as being sufficient. These criteria shall be applied *at all levels of the adjudicative process* * * *" (emphasis added).

I am also concerned that insufficient notice was given to interested parties about the change in the Commission's policy regarding the acceptability of ascertainment showings. The focus of the Report and the discussions both outside and within the Commission have been on the procedural aspects of the Report and the efforts to ameliorate the backlog in applications for new broadcast facilities. Since the procedural changes as well as the Commission's reversal of the *Voice of Dixie* policy apply to petitions to deny new applications, I considered urging the Commission to submit the Report for further public comment with a special emphasis put on the ascertainment issue.

I am persuaded, however, that the backlog situation in processing our new applications compels us to move as quickly as possible and that we have technically complied with all notice and comment requirements. Moreover, those interested groups which have not commented in this proceeding but might have done so if it were clear that a change in the ascertainment compliance standard was intended, still have an opportunity to comment by filing for reconsideration of the Commission's action.

One final point. The changes made today are procedural in nature and are not intended to eliminate the substantive ascertainment requirements or the procedural requirements of the *Primer*. *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650 (1971). Nor are they intended to denigrate the requirement of substantial compliance with the *Primer*. Finally they are not intended to affect the ascertainment showings required of renewal applicants who are subject to the renewal *Primer*. *Ascertainment of Community Problems by Renewal Applicants*, 57 FCC 2d 246 (1975), *recon. granted in part*, 61 FCC 2d 1 (1976). The Commission is looking into the substance of ascertainment and the *Primer* requirements in another proceeding. I am sure the Commission intends the staff to apply the existing rules in the interim, and interested parties should be guided accordingly.

[FR Doc. 79-18917 Filed 6-15-79; 8:45 am]
BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

[Temporary Regulation D-63]

Federal Property Management Regulations

Subject: Delegation of Authority.

1. *Purpose.* This regulation delegates authority to the Secretary of Labor to appoint uniformed guards employed by the Department of Labor as special police to provide law enforcement services at Job Corps Centers on property under exclusive Federal legislative jurisdiction. These facilities are located at Edinburg, Indiana; Morganfield, Kentucky; Excelsior Springs, Missouri; Edison, New Jersey; Astoria, Oregon; McKinney, Texas; and San Marcos, Texas.

2. *Effective date.* This regulation is effective immediately.

3. *Delegation.* a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and the Act of June 1, 1948 (62 Stat. 281), as amended, authority is hereby delegated to the Secretary of Labor to appoint uniformed guards as special police to enforce Federal law in protecting life and property and preserving the peace at Job Corps Centers under exclusive Federal jurisdiction as cited above.

b. The Secretary of Labor may redelegate this authority to any officer or employee of the Department of Labor.

c. This authority shall be exercised in accordance with the limitations and requirements of the above cited acts and the policies, procedures, and controls prescribed by the General Services Administration.

4. *Effect on other directives.* Temporary Regulation D-61 dated August 28, 1977, is revoked.

Dated: June 5, 1979.

Paul E. Goulding,
Acting Administrator of General Services.

[FR Doc. 79-18922 Filed 6-15-79; 8:45 am]
BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Resources Administration

Advisory Council and Subcommittee Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of July 1979:

Name: National Guidelines, Goals, Priorities, and Standards Subcommittee of the National Council on Health Planning and Development.
Date and Time: July 12, 1979, 10:00 a.m.–12:00 Noon.
Place: Hubert H. Humphrey building, Conference Rooms 703A–705A, 200 Independence Avenue, SW., Washington, D.C. 20201.
Open for entire meeting.

Purpose. The objectives of the National Guidelines, Goals, Priorities, and Standards Subcommittee are to study the experience nationwide in the public and private sectors with the adoption and/or adjustment of the National Guidelines for Health Planning and their impact and recommend changes as appropriate; study the experience of the Health Systems Agencies and State Health Planning and Development Agencies nationwide in implementation of high priority goals and sub-goals and their impact; advise the Council in identifying additional high priority goals and sub-goals; investigate and coordinate information on demonstrations underway by provider, reimbursement, regulatory, labor, industry, and community groups on sub-goals, such as those on alcoholism and prevention; study, investigate and identify research needs appropriate to the formulation, adjustment and refinement of the National Guidelines, and study and develop improved indicators to assess the impact of the Guidelines or the need for revisions; and recommend to the Council on the need for further development and/or revision of the National Guidelines.

Agenda. Status reports on ongoing studies related to Guidelines development. Report on the Emergency Medical Service policies in California, and discussion of site visit plans for the Subcommittee

* * * * *

Name: Technology and Productivity Subcommittee of the National Council on Health Planning and Development.
Date and Time: July 12, 1979, 3:00 p.m.–5:00 p.m.
Place: Hubert H. Humphrey Building, Conference Rooms 723A–727A, 200 Independence Avenue, SW., Washington, D.C. 20201.
Open for entire meeting.

Purpose. The objective of the Technology and Productivity Subcommittee is to advise the full Council on matters related to the productivity of the health care delivery system and to the implications of new medical technology for the organization, delivery and equitable distribution of health care services. "Technology" includes the drugs, devices and medical and surgical procedures used in medical care and the organizational and supportive systems within which such care is delivered. "Productivity" is the efficiency with which health care is delivered.

The Subcommittee is to deliberate and to make recommendations to the full Council on matters chosen from among those brought to it by Council members, HEW staff and advisory committees, other Federal departments, congressional committees and staff, provider groups and the public at large. The Subcommittee in addition will study and investigate the current needs for assistance of HSAs and SHPDAs in the area of evaluating productivity improvement and new medical technology, help transmit concerns of HSAs and SHPDAs to appropriate Federal agencies, and review the current resources both within the Federal Government and among the educational, research and other developmental agencies for providing needed assistance to HSAs and SHPDAs. In addition, it will review technology assessment activities within the Department in order to assure they are relevant to the needs of the HSAs and are useful in the development and implementation of national standards, goals, and guidelines, and for the establishment of priorities with those goals.

Agenda: The Subcommittee will review the productivity monographs for distribution to the Council.

* * * * *

Name: Implementation and Administration Subcommittee of the National Council on Health Planning and Development.
Date and Time: July 12, 1979, 4:30 p.m.—6:30 p.m.
Place: Hubert H. Humphrey Building, Conference Rooms 703A–705A, 200 Independence Avenue, SW., Washington, D.C. 20201.
Open for entire meeting.

Purpose. The objective of the Implementation and Administration Subcommittee is to study and make recommendations on the implementation and administration of Titles XV and XVI of the Public Health Service Act. Specific areas for the Subcommittee's consideration are (1) the impact of HEW's implementation/administration on the effectiveness of Health Systems Agencies and State Health Planning and Development Agencies; (2) the effectiveness of the interrelationships between health planning agencies and HEW, Central and Regional Offices; (3) the timing and strategy of implementation and of the dissemination and distribution of regulatory and technical material; (4) how to better meet the needs of HSAs and SHPDAs; and (5) the review of the Council's responsibilities under section 1122 of the Social Security Act.

Agenda. The Subcommittee will continue consideration of work program priorities, including consumer participation, consider a section 1122 case, and other issues.

* * * * *

Name: National Council on Health Planning and Development.
Date and Time: July 13, 1979, 8:45 a.m.–3:00 p.m.
Place: Main Auditorium, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C. 20201.
Open for entire meeting.

Purpose. The National Council on Health Planning and Development is responsible for advising and making recommendations with respect to (1) the development of national guidelines under section 1501 of Pub. L. 93–641, (2) the implementation and administration of Title XV and XVI of Pub. L. 93–641, and (3) an evaluation of the implications of new medical technology for the organization, delivery and equitable distribution of health care services. In addition, the Council advises and assists the Secretary in the preparation of general regulations to carry out the purposes of section 1122 of the Social Security Act and on policy matters arising out of the implementation of it, including the coordination of activities under that section with those under other parts of the Social Security Act or under other Federal or federally assisted health programs. The Council considers and advises the Secretary on proposals submitted by the Secretary under the provisions of section 1122(d)(2) that health care facilities or health maintenance organizations be reimbursed for expenses related to capital expenditures notwithstanding that under section 1122(d)(1) there would otherwise be exclusion of reimbursement for such expenses.

Agenda. Status reports on the Health Planning Legislation, Council

Subcommittee Work Activities, and the Bureau of Health Planning and Agencies activities. The development of the Massachusetts State Health Plan, a case study. Follow-up of previous Council discussions on HMO policy and employment issues on closure and conversion programs.

Anyone requiring information regarding the subject Council should contact Mrs. S. Judy Silsbee, Executive Secretary, National Council on Health Planning and Development, Room 10-27, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782. Telephone (301) 436-7175.

Agenda items are subject to change as priorities dictate.

Dated: June 12, 1979.

James A. Walsh,

Associate Administrator for Operations and Management.

[FR Doc. 79-18939 Filed 6-15-79; 8:45 am]

BILLING CODE 4110-69-M

Office of the Secretary

Protection of Human Subjects; HEW Support of Human In Vitro Fertilization and Embryo Transfer: Report of the Ethics Advisory Board

AGENCY: Department of Health, Education, and Welfare.

SUMMARY: Departmental regulations governing the protection of human subjects prohibit the support of research involving human *in vitro* fertilization until the Ethics Advisory Board has advised the Secretary as to its ethical acceptability. In 1977, the Department received an application for support of such research which was forwarded to the Board for review early in 1978. Following the birth of a baby conceived by means of *in vitro* fertilization in England, the Secretary directed the Board to broaden its study of the individual research proposal to include the scientific, ethical, legal and social aspects of human *in vitro* fertilization and embryo transfer in general. This report is the product of that study. The Department has decided to publish the report of the Board and to solicit public comment before making any determination on the sensitive issues involved.

ADDRESS: Written comments, data, views, arguments, and inquiries concerning the report and conclusions of the Ethics Advisory Board may be sent to: Mr. F. William Dommel, Jr., Office for Protection from Research Risks, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20014.

Please arrange comments by conclusion number in order to facilitate analysis. Additional copies of this notice may be obtained by writing to the same address. All comments received will be available for inspection in Room 203, Westwood Building, 5333 Westbard Avenue, Bethesda, Maryland, weekdays (Federal holidays excepted) between the hours of 8 a.m. and 4:30 p.m.

DATES: To assure full consideration, all comments should be submitted on or before August 17, 1979. After receipt and review of such comments, the Department will take appropriate action based upon its consideration of this report and the relevant comments submitted.

Dated: June 8, 1979.

Joseph A. Califano, Jr.,

Secretary of Health, Education, and Welfare.

ETHICS ADVISORY BOARD

Department of Health, Education, and Welfare

Report and Conclusions: HEW Support of Research Involving Human in Vitro Fertilization and Embryo Transfer

May 4, 1979.

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Preface

Current regulations of the Department of Health, Education, and Welfare (HEW) prohibit the support of research involving the fertilization of a woman's egg (ovum) outside her body (*in vitro* fertilization) until the Ethics Advisory Board has advised the Secretary as to its ethical acceptability. In 1977, the Department received an application for support of such research and, after it has been approved from a scientific point of view, forward it to the Board. At its meeting in May 1978, the Board agreed to review the research proposal.

Over the summer, the announcement of the birth of a baby following *in vitro* fertilization in England aroused great public interest; it appears that a number of couples are ready and eager to avail themselves of such procedures in order to overcome infertility. Therefore, in September, Secretary Califano asked the Board to broaden its consideration of the pending application to include the scientific, ethical, legal and social issues surrounding human *in vitro* fertilization and embryo transfer in general.

This report is the result of over a half a year of study during which the Board asked scholars and experts in the fields of reproductive science, ethics, theology, law and the social sciences, to prepare reports and discuss the issues with Board members in public meetings. In addition, the Board held a series of eleven public hearings throughout the country in which private individuals, professional societies and public interest groups had an opportunity to present their views. The Board also received over 2,000 pieces of correspondence including letters, postcards and formal testimony, all of which were copied and distributed to each of the members.

Chapter I of the report provides background information about the human reproductive process and research involving *in vitro* fertilization and embryo transfer. Chapter II explores the technical and ethical issues surrounding such research in humans and Chapter III addresses the technical and ethical issues surrounding the use of the procedures in clinical practice. Chapter IV presents a review of the legal issues, and Chapter V summarizes public attitudes as presented to the board and as determined by recent public opinion polls. The Board's conclusions are set forth in Chapter VI.

The Board hopes that its deliberations and conclusions will be useful to the Secretary and staff of the Department in making decisions regarding the support and conduct of research involving human *in vitro* fertilization and embryo transfer.

* * * * *

An appendix containing papers prepared for the Board by scholars in the fields of reproductive science, ethics, theology, law, statistics, and social policy will be available through the U.S. Government Printing Office. Ordering information may be obtained from the Ethics Advisory Board, Westwood Building, Room 125, 5333 Westbard Avenue, Bethesda, Maryland 20016, telephone (301) 496-7776.

Chapter I—Background

A. *The Normal Human Reproductive Process*

Through long years of painstaking study reproductive biologists have been able to acquire significant information concerning the human reproductive process. The gathering of data on this process has presented formidable obstacles, since fertilization and the earliest days of embryonic development occur within the woman's body where, for both technical and ethical reasons, they are not readily accessible for scientific study.

According to the best available evidence, for the average couple the performance of the human reproductive system is only partially "efficient." That is, not every meeting of sperm and ovum results in the production of a viable embryo. One study estimates that in 10% of the cases where human ova are exposed to sperm, fertilizaiton fails to occur. When fertilization does occur, the rate of embryonic loss during the first week is estimated to be 10% and in the second week an additional 32%. According to this study, only 37% of human zygotes survive to be delivered subsequently as live infants.[1] Statistical surveys of the length of time generally required to establish a pregnancy seem to lend support to these estimates.[2]

These relatively high rates of embryonic loss are due in part to external environmental factors which impede continued embryonic development and in part to chromosomal or genetic abnormalities in the embryo itself. The exact proportion of embryonic loss due to each of these factors in unknown. However, one study estimates that perhaps 50% of the embryonic loss subsequent to successful fertilization is due to chromosomal aberrations.[3] Thus, natural selection against most embryos with serious chromosomal abnormalities seems to occur during pregnancy, particularly during the first eights weeks following fertilization.

B. *Previous Research With and Application of in Vitro Fertilization and/or Embryo Transfer*

1. General.—In previous research with humans and other species three major techniques have been employed: (a) *in vitro* fertilization without subsequent transfer of the embryo to the uterus of a female: (b) *in vitro* fertilization followed by embryo transfer; and (c) embryo transfer following fertilization by mating or artifical insemination. Only the first and second techniques have been employed with human beings.

For *in vitro* fertilization (in either the first or second cases listed above) a method must be found for harvesting ova from the female and for brining the ova into contact with sperm from the male in the laboratory setting. In human beings ova are usually secured from the female by means of a surgical procedure called laparoscopy. A needle is passed through the woman's navel and brought into proximity to one or both of her ovaries. Through visual sighting follicles containing mature ova are located, and the ova are removed from the follicles by means of the needle. Human females normally produce only one mature ovum per menstrual cyle; however, if certain hormones ar administered early in a given menstrual cycle, multiple ova are produced which can then be harvested during a single laparoscopic procedure.

Following the successful harvesting of ova, the ova and sperm from a male are placed in a laboratory medium where ova and sperm complete maturation and fertilization occurs. The early embryo is then transferred to a different laboratory medium for subsequent growth. In the first case noted above the embryo is retained in culture in the laboratory setting. In the second case the embryo is transferred to the uterus of a female—either the female donor of the ova or another female whose hormonal cycle is at approximately the same stage as the cycle of the donor female. If the transfer is successful, implantation and subsequent development of the embryo occur in the uterus of the recipient female.

In the third case fertilization occurs *in vivo* in the animal, either through mating or through artificial insemination. The ova may be either those of the inseminated female or those of a donor. Following fertilization but prior to implantation, the resulting embryo or embryos are removed from the reproductive tract of the female and are transferred to the reproductive tract(s) of one or more recipient females. If the transfer is successful, implantation and

subsequent embryonic development occur in the recipient female(s).

In summary, the following combinations of *in vitro* fertilization and/or embryo transfer are possible:

i. *In vitro* fertilization without embryo transfer

ii. *In vitro* fertilization and subsequent embryo transfer

a. Transfer to the uterus of the donor

b. Transfer to the uterus of one or more other females

iii. *In vivo* fertilization and subsequent embryo transfer

a. Fertilization by means of mating

b. Fertilization by means of artificial insemination

c. Ova of the mated or inseminated female

d. Donor ova introduced into the female prior to fertilization.

2. Research and Applications with Animal Species.—a. Nonprimate Laboratory Animals. Successful laboratory experiments with embryo transfer of early rabbit embryos predated by almost 70 years the first successful experiment with *in vitro* fertilization. In 1890 Walter Heape—working in Cambridge, England—succeeded in transferring two embryos from an Angora doe rabbit which had been mated with an Angora buck into the oviduct of a Belgian hare doe which had itself mated several hours before. Six offspring were born to the Belgian hare doe, of which two were clearly Angoras.[4] A similar technique was applied to cultured mouse blastocysts in 1958 by Anne McClaren and John D. Biggers. Some of the offspring grew to adulthood and reproduced naturally to yield a second generation.[5]

Between 1930 and 1959 many investigators sought to imitate the process of embryonic development in the laboratory setting by means of *in vitro* fertilization. However, the researchers failed to devise sufficiently stringent criteria to demonstrate that early embryonic development was indeed the result of fertilization of ova by sperm rather than the effect of laboratory manipulation of the unfertilized ovum. (Severe trauma to the ovum, *e.g.*, puncture or electric shock, can in some cases induce cell division without fertilization. In 1959, however, M. C. Chang of the Worcester Foundation in Massachusetts succeeded in documenting *in vitro* fertilization in the rabbit by taking sperm from male rabbits with specific traits not present in the female ovum donor. The presence of the male traits in the offspring (following embryo transfer and subsequent development) provided unequivocal proof that the sperm had indeed transmitted genetic information to the offspring.[6]

Since 1933 there have been 5 published studies of embryo transfer following *in vivo* fertilization in rabbits, 3 in rats, and 1 in mice.[7] From 1959 to the present, 13 papers (including Chang's initial paper) on *in vitro* fertilization followed by embryo transfer in rabbits have been published, 8 papers on the same procedure in mice, and 1 in rats. In 3 of those studies, 1 on rats and 2 on rabbits, abnormal offspring were reported; however, the causes of the abnormalities are unknown.[8]

Many studies in experimental embryology do not include embryo transfer as a component; rather, they involve various types of laboratory investigation of the early embryo—whether produced by *in vivo* or *in vitro* fertilization. These non-transfer studies examine such topics as mechanisms of normal and abnormal fertilization; the earliest stages of embryonic development; causes of abnormality in early embryos; and the effect of various environmental factors, *e.g.*, radiation, freezing, and various chemicals, on fertilization and early development.[9] Research techniques employed in the study of these topics include fertilization *in vitro*; *in vitro* culture of early embryos to and beyond the blastocyst stage; the fusion of embryonic cells with other cells; the infection of embryonic cells with viruses; the introduction of various changes (chemical or temperature changes, for example) into the embryonic environment; biochemical studies of embryonic cells; and microscopic analysis of embryonic cells.[10]

The technique of superovulation—that is, the administration of a hormone which induces the female to produce a larger than usual number of ova—has sometimes been employed in conjunction with *in vitro* fertilization. Superovulation has been studied rather extensively in rabbits. In one controlled comparison of normally ovulated and superovulated oocytes (total number = 536) 60.1% of embryos obtained following superovulation and 54.6% of those obtained following normal ovulation developed into normal young.[11] In contrast, several other studies in rabbits, as well as in mice, have concluded that an increase in the incidence of chromosomal aberrations occurs following superovulation.[12]

The effects of freezing mammalian embryos have also been studied in considerable detail. The most studied species is the mouse. In one study mouse embryos stored at −195° C for 369 days were cultured and transferred after having been frozen and thawed. The freezing process caused some cellular damage, as evidenced by the fact that a smaller percentage of frozen embryos survived than did unfrozen controls. However, previously frozen offspring were normal and grew and reproduced at the same rate as control animals. The second-generation progeny of the frozen embryos were also normal.[13]

b. Farm Animals. In research with farm animals—particularly, cows, horses, sheep, goats, and pigs—the primary emphasis has been on application rather than on the development of basic knowledge. For this reason, more work has been done on embryo transfer following *in vivo* fertilization than on *in vitro* fertilization itself. Research both with *in vitro* fertilization and with embryo transfer is dwarfed by the use of artificial insemination for commercial breeding purposes: with the aid of artificial insemination no fewer than 100,000,000 cattle have been produced in the United States alone.[14]

Relatively little laboratory research with *in vitro* fertilization or with *in vivo* fertilization using donated ova has been performed in farm animals. Five successful studies in cattle, three in sheep, and one in pigs have been reported.[15]

In contrast, embryo transfer following *in vivo* fertilization of the female's own ova has been widely employed, primarily in cattle, during the past five years. Indeed, thousands of progeny have been produced by this method. Techniques for recovering early embryos from the female following fertilization include both surgical and nonsurgical means. Offspring from embryo transfer appear to be normal, although no carefully controlled study of the outcome of pregnancy has been undertaken.[16]

Two additional techniques which can be employed in conjunction with *in vitro* fertilization and/or embryo transfer have been studied in farm animals. In two studies efforts were made to evaluate the overall quality of early cattle embryos by examining them for compactness, symmetry, and density. These subjective qualitative assessments were successful in predicting differential rates of subsequent pregnancy.[17] A second technique which has been employed experimentally with cattle embryos is the determination of sex through removing cells from the trophoblastic layer of the early embryo. However, many embryos are damaged in the process of sex determination.[18]

c. Non-Human Primates. Relatively little research on *in vitro* fertilization and/or embryo transfer has been performed with non-human primates. Three studies beginning with that of Gould and associates in 1973[19] and continuing with the work of Dukelow and Kuehl[20] have demonstrated fertilization *in vitro* with the squirrel monkey. *In vitro* fertilization studies with the Olive baboon and the rhesus monkey have not yet provided definitive proof that fertilization has in fact occurred. However, in 1976 D. C. Kraemer and associates reported the successful transfer of an embryo from an Olive baboon to a synchronized female following *in vivo* fertilization.[21] Similarly, in 1977 J. H. Marston and associates reported a successful embryo transfer from one oviduct to the other in a female rhesus monkey after *in vivo* fertilization.[22]

The meager data from primate research may reflect technical and funding limitatons on the one hand, or a lack of interest or incentive on the other. Gould has noted that primate research is expensive and that the competition for research funds is a limiting factor. He further observes that investigators may be confronting "as yet unidentified problems regarding the culture requirements for successful maintenance on nonhuman primate gametes *in vitro*."[23] By contrast, Sackett and Smith have expressed confidence that there would be no problem in obtaining a sufficient number of primates to undertake research in this area; further, they report that reliable normative data regarding fertilization, pregnancy, and early development exist against which to measure deviations from the norm resulting from *in vitro* fertilization and embryo transfer.[24]

3. Research and Applications in Humans.—Most successful human research has been concentratred on achieving *in vitro* fertilization and on culturing early human embryos in the laboratory. Efforts at clinical application of *in vitro* fertilization and embryo transfer to overcome infertility were notably unsuccessful until the latter half of 1978 and early 1979 when the delivery of three apparently healthy infants following these procedures was announced.

The first well documented achievement of *in vitro* fertilization with human gametes was reported in 1970 by R. G. Edwards, P. C. Steptoe, and J. M. Purdy.[25] Since 1970 there have been seven additional scientific reports of successful *in vitro* fertilization—four by R. G. Edwards and his colleagues,[26] two by A. Lopata and associates in Australia,[27] and one by Soupart and Strong in the United States.[28] No details concerning the apparently successful *in vitro* fertilization in Calcutta, India, have been published.

Embryo transfer in humans has been attempted only following *in vitro* fertilization. A total of three reports of such efforts have appeared in the scientific literature, one by the Australian group (in 1973),[29] and two by Edwards and Steptoe (in 1976 and 1978).[30] The first attempt led to raised levels of human chorionic gonadotropin in the maternal blood, but implantation was not documented. The second resulted in an ectopic pregnancy in one of the woman's Fallopian tubes. As is well known, the third reported attempt culminated in the birth of a female infant. In oral presentations to scientific meetings, Edwards and Steptoe have reported the birth of a second healthy child, a male, as well as the occurrence of spontaneous abortions in two additional pregnancies initiated by means of *in vitro* fertilization and embryo transfer. The four pregnancies reported by Edwards and Steptoe followed 32 attempts at embryo transfer.[31] In addition, the birth of a female child in India following *in vitro* fertilization and embryo transfer has been reported in the press.[32]

The potential risks of several aspects of human *in vitro* fertilization and embryo transfer have received some discussion in the scientific literature. The technique of superovulation is frequently (though not necessarily) employed in efforts to recover multiple oocytes for *in vitro* fertilization. One report indicates that the technique of superovulation may be associated with higher rates of a chromosomal abnormality (trisomy) in humans.[33] Similarly, evidence from research with mice suggest that too-high a concentration of sperm around the ovum *in vitro* may result in its fertilization by multiple sperm and thus lead to another type of abnormality (triploidy) in the embryo.[34]

In vitro fertilization techniques may also bypass a natural screening process to which sperm are subjected in human reproduction *in vitro*. There is some evidence to indicate that the female reproductive tract selectively eliminates many abnormal sperm. In one study of the human Fallopian tube, for example, it was demonstrated that few morphologically abnormal sperm reach the site of fertilization.[35] Similar observations have been made in studies of mice.[36] the extent of this risk, as well as the two types of risks noted in the preceding paragraph, is unknown.

Two other theoretical sources of risk to human embryos have not been documented in research performed to date: The risk of inducing point mutation or teratogenic effects in the early embryo.[37] The mammalian embryo is highly resistent to environmental insults. Massive insults generally kill rather than merely damage the preimplantation embryo.

These five types of potential risks in humans are, at present, either theoretical or hypothesized on the basis of rather limited data. In addition, even if superovulation or *in vitro* fertilization were to produce a chromosomally or genetically abnormal embryo, there is only a low probability that such an embryo would develop to term. The natural process by which most abnormal early embryos are lost during the early weeks of pregnancy would presumably be operative following *in vitro* fertilization, as well.

C. *The First Phase of the Ethical Debate*

Within the American context, the public debate concerning ethical aspects of *in vitro* fertilization was initiated by biologist James Watson. In an extended statement presented in January 1971 to the Panel on Science and Technology of the House Committee on Science and Astronautics, Watson expressed concern that research advances in human *in vitro* fertilization and the cloning of frogs could in the future lead to attemps to clone human beings.[38] Watson's views were given wide circulation through being excerpted in the May 1971 issue of Atlantic magazine.[39]

An essay defending *in vitro* fertilization appeared in *Nature* in May 1971—the same month that Watson's comments were published in the *Atlantic*. The *Nature* essay, written by British biologist R. G. Edwards and American lawyer David Sharpe, indicated potential benefits of *in vitro* fertilization research and advocated interdisciplinary consultation as the best method for social monitoring of the research.[40]

In late 1971 and the first half of 1972, ethical critiques of *in vitro* fertilization were eloquently presented by biologist-philosopher Leon Kass and theologian Paul Ramsey. The essays of Ramsey and Kass, published in leading medical and public-policy journals, questioned the means being employed in *in vitro* fertilization research and voiced concern about the potential future applications of the research.[41-43] In announcing that it would publish the Ramsey essay, the *Journal of the American Medical Association*

editorially called for a moratorium on human *in vitro* fertilization research.[43]

From mid-1972 to early 1974 relatively little ethical analysis of *in vitro* fertilization was published. A Ciba Foundation symposium on "The Law and Ethics of AID and Embryo Transfer" was held in 1972.[44] In an invitational symposium published in the November 1973 issue of the *Journal of Reproductive Medicine*, several authors—including veterinarian Benjamin Brackett, ethicist Joseph Fletcher, and physicians Luigi Mastroianni and Landrum Shettles—presented sharply divergent viewpoints.[45] In addition, the Committee on the Life Sciences and Social Policy of the National Research Council, whose executive secretary was Leon Kass, completed a detailed technology assessment of *in vitro* fertilization in 1973. Publication of the report was delayed until 1977.[46]

In 1974 the ethical discussion of *in vitro* fertilization seemed to revive. Biologist R. G. Edwards published an extensive survey of medical, ethical, and legal questions surrounding the technique. Edwards devoted particular attention to answering the ethical objections which had previously been raised by Kass and Ramsey.[47] During the same year Joseph Fletcher published *The Ethics of Genetic Control.* In this work Fletcher affirmed the value, indeed the superiority, of numerous genetic and reproductive technologies, including *in vitro* fertilization, as compared with the conventional method of human reproduction.[48]

Between the publication of the National Research Council's technology assessment in 1973 and the middle of 1978 little new ethical literature on *in vitro* fertilization appeared. The first phase in the ethical debate in *in vitro* fertilization thus concluded with a pause. Not until the birth of a child conceived with the aid of the technique did the pause end and the second phase of the ethical debate begin.

D. *The Evolution of HEW Involvement*

HEW involvement in setting guidelines for research involving *in vitro* fertilization and/or embryo transfer has resulted in the publication of three documents: A "draft working document of proposed policy" (November 16, 1973);[49] a set of proposed regulations (August 23, 1974);[50] and final regulations (August 6, 1975).[51] It is perhaps worthy of note that the questions of fetal research, research with pregnant women, and research involving children received substantially greater attention in the three HEW documents than did the issue of *in vitro* fertilization. This differential allocation of attention accurately reflected the public-policy setting of 1973, when fetal research, in particular, was a matter of significant public controversy. The relative de-emphasis of *in vitro* fertilization in the HEW guidelines also reflected the view that successful embryo transfer in humans was not likely to be technically feasible in the near future.

The successive versions of HEW guidelines and rules published between 1973 and 1975 tended toward less detail in their stipulations and toward a greater emphasis on a review procedure for proposed research with human *in vitro* fertilization and/or embryo transfer. The 1973 draft policy stipulated that:

1. "Care must be taken not to bring human ova fertilized *in vitro* to viability * * *"
2. "All proposals for research involving human *in vitro* fertilization must be reviewed by the Ethical Review Board."
3. "No research involving the implantation of human ova fertilized in the laboratory into recipient women should be supported until the appropriate scientific review boards are satisfied that there has been sufficient work in animals (including sub-human primates) to demonstrate the safety of the technique. It is recommended that this determination of safety include studies of natural born offspring of the products of *in vitro* fertilization."
4. "No implantation of human ova fertilized in the laboratory should be attempted until guidelines are developed governing the responsibilities of the donor and recipient 'parents' and of research institutions and personnel."[52]

In August 1974, subsequent to the passage of legislation establishing the National Commission for the Protection of Human Subjects but prior to the Commission's first meeting, HEW published proposed rule-making on research with several specific groups of human subjects. This document responded to comments on the November 16, 1973 preliminary draft regarding *in vitro* fertilization research, clarified the definition of a fetus, and suggested issues to be considered by the Ethical Advisory Board in its review of any proposed HEW supported research involving human *in vitro* fertilization or embryo transfer. In this 1974 document "fetus" was defined to include "both the product of *in vivo* conception and the product of *in vitro* fertilization which is subsequently implanted in the donor of the ovum."[53] With respect to unimplanted human embryos, the 1974 rules proposed no specific guidelines.

However, the 1974 HEW document recommended that the Ethical Advisory Board take into account certain issues in reviewing research proposals involving *in vitro* fertilization and/or embryo transfer:

With respect to the fertilization of human ova *in vitro*, it is expected that the Board will consider the extent to which current technology permits the continued development of such ova, as well as the legal and ethical issues surrounding the initiation and disposition of the products of such research.

With respect to implantation of fertilized human ova, it is expected that the Board will consider such factors as the safety of the technique (with respect to offspring) as demonstrated in animal studies, and clarification of the legal responsibilities of the donor and recipient parent(s) as well as the research personnel.[54]

In August 1975, Hew responded to the National Commission's report and recommendations concerning fetal research. Since the Commission had not specifically addressed the issue of research involving *in vitro* fertilization and/or embryo transfer, HEW chose not to promulgate substantive regulations governing such research. It did, however, clearly reiterate a procedural requirement:

(e) No application or proposal involving human *in vitro* fertilization may be funded by the Department or any component thereof until the application or proposal has been reviewed by the Ethical Advisory Board and the Board has rendered advice as to its acceptability from an ethical standpoint.[55]

The effect of this review requirement between August 1975 and September 1977, when the Ethics Advisory Board was appointed by HEW Secretary Califano, was to place a *de facto* moratorium on all HEW supported human research involving *in vitro* fertilization and/or embryo transfer.

Footnotes

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Biggers, *op. cit.*, p. 11, citing Roberts, C. J. and Lowe, C. R., Where Have all the Conceptions Gone?, *Lancet*, vol. I, pp. 498–499, 1975.

Biggers, *op. cit.*, p. 13, citing Boue, J. G. and Boue, A., Chromosomal Anomalies in Early Spontaneous Abortion, *Current Topics in Pathology*, vol. 62, 1976, pp. 193–208.

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and Birth of Mice Cultivated *In Vitro* as Early Embryos, *Nature*, vol. 182, 1958, pp. 877–878.

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7. Rice, Catherine, Supplement to: *In Vitro* Fertilization, Embryo Culture and Embryo Transfer in the Human by John D. Biggers, 1978, Table 1, pp. 1–6.

8. Biggers, *op. cit.*, Table 7, p. 40.

9. *Ibid.*, Table 3, p. 22; see also Walters, LeRoy, Ethical Issues in Human *In Vitro* Fertilization and Research Involving Early Human Embryos, a paper prepared for the Ethics Advisory Board, 1978, p. 32, citing Fowler, Ruth E. and Edwards R. G., The Genetics of Early Human Development, in: Steinberg, Arthur G. and Bearn, Alexander G., eds., *Progress in Medical Genetics*, Vol. IX, New York, Grune and Stratton, 1973, pp. 82–96; Karp, L. E. and Donahue, R. P., preimplantational Ectogenesis—Science and Speculation Concerning In Vitro Fertilization and Related Procedures (Medical Progress), *Western Journal of Medicine*, vol. 124, p. 296, April 1976; National Research Council, Assembly of Behavioral and Social Sciences, Committee on the Life Sciences and Social Policy, *Assessing Biomedical Technologies: An Inquiry Into the Nature of the Process*, Washington, D.C., National Academy of Sciences, 1975, p. 27.

10. Culture of human embryos beyond the blastocyst stage has not yet been reported in the scientific literature. Walters, *op cit.*, p. 32. The use of several of these techniques in research with non-human embryos is described by Edwards, R. G., Fertilization of Human Eggs *In Vitro*: Morals, Ethics, and the Law, *Quarterly Review of Biology*, vol. 49, March, 1974, pp. 3–6.

11. Foote, Robert H., *In Vitro* Fertilization in Perspective, Relative to the Science and Art of Domestic Animal Reproduction, a paper prepared for the Ethics Advisory Board, 1978, p. 4, citing Maurer, R. R., Hunt, W. L., Van Vleck, L. D., and Foote, R. H., Developmental Potential of Superovulated Rabbit Ova, *Journal of Reproduction and Fertility*, vol. 15, 1968, pp. 171–175.

12. Biggers, *op cit.*, p. 33, citing Fujimoto, S., Pahlaven, N. and Dukelow, W. R., Chromosome Abnormalities in Rabbit Preimplantation Blastocysts Induced by Superovulation, *Journal of Reproduction and Fertility*, vol. 40, 1974, pp. 177–181; Fujimoto, S., Passantino, T. J., and Koenczoel, I., A Preliminary Note on Chromosome Abnormalities, in Intratubal Rabbit Embryos, *Proceedings of the Japanese Academy*, vol. 51, 1975, pp. 51–55; Takagi, N., and Sasaki, M., Digynic Triploidy After Superovulation in Mice, *Nature*, vol. 284, 1976, pp. 278–281; Maudlin, I., and Fraser, L.P., the Effect of PMSG Dose on the incidence of Chromosomal Anomalies in Mouse Embryos Fertilized *In Vitro*, *Journal of Reproduction and Fertility*, vol. 50, 1977, pp. 275–280.

Foote, *op cit.*, p. 16, citing Maurer, R.R., Bank, H., and Staples R.E., Pre- and Postnatal Development of Mouse Embryos After Storage for Different Periods at Cryogenic Temperatures, *Biology of Reproduction*, vol. 16, 1977, pp. 139–146.

14. Foote, *op cit.*, p. 5.

15. *Ibid.*, pp. 10–14.

16. *Ibid.*, p. 17, citing Betteridge, K.J., ed., *Embryo Transfer in Farm Animals*, Ottawa, Ontario, Canada Department of Agriculture, Monograph, vol. 19, 1977.

17. Foote, *op cit.*, p. 12, citing Shea, B.F., Hines, D. J., Lightfoot, D.E., Ollis, G.W., and Olson, S.M., The Transfer of Bovine Embryos, in: Rowson, L. E. A., ed., *Egg Transfer in Cattle*, Luxembourg, Commission of European Communities, EUR 5491, 1976, pp. 145–152; Elsden, R. P., Nelson, L. D., and Seidel, G. E., Jr., Superovulation of Cows with Follicle Stimulating Hormone and Pregnant Mare's Serum Gonadotropin, *Theriogenology*, vol. 9, 1978, pp. 17–26.

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20. Gould, *op cit.*, p. 9, citing Kuehl, T. J. and Dukelow, W. R., Ovulation Induction During the Anovulatory Season in Saimiri Sciureus, *Journal of Medical Primatology*, vol. 4, 1975, pp. 209–218; Dukelow, W. R. and Kuehl, T. J., in: Thibault, C., ed., *La Fecondation*, Paris, Masson, 1975, pp. 67–80.

21. Gould, *op cit.*, pp. 8–9, citing Kraemer, D.C., Moore, G. T., and Kramen, M. A., Babboon Infant Produced by Embryo Transfer, *Science*, vol. 192, 1976, pp. 1246–1247.

22. Gould, *op cit.*, pp. 7–8, citing Marston, J.H., Penn, R., and Sivelle, P.C., Successful Autotransfer of Tubal Eggs in the Rhesus Monkey (Macaca Mulatta), *Journal of Reproduction and Fertility*, vol. 49, 1977, pp. 175–176.

23. Gould, *op cit.*, p. 13.

24. Seckett, G.P., A Nonhuman Primate Research Model of Developmental Risk Following *In Vitro* Fertilization and Embryo Transfer, a paper prepared for the Ethics Advisory Board, 1979.

25. Biggers, *op cit.*, p. 27, citing Edwards, R.G., Steptoe, P.C., and Purdy, J.M., Fertilization and Cleavage *In Vitro* of Preovular Human Oocytes, *Nature*, vol. 227, 1970, pp. 1307–1309.

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50. *Federal Register*, vol. 39, August 23, 1974, p. 30650.

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Chapter II—Laboratory Research Involving Human In Vitro Fertilization and/or the Culture of Early Human Embryos: Technical and Ethical Issues

The technical and ethical issues surrounding *in vitro* fertilization using human gametes depend, to some extent, on whether or not the procedure is performed with the intent of transferring the resulting embryos to women for further development. The discussion in this chapter relates to *in vitro* fertilization of human ova when there is no intention of transferring the product to establish a pregnancy. Chapter III deals with human *in vitro* fertilization performed with the specific intent of initiating a pregnancy.

These two chapters focus primary attention on technical and ethical issues as presented to the Ethics Advisory Board in papers prepared by its consultants. Thus, they do not summarize the primary scientific and ethical publications concerning *in vitro* fertilization and/or embryo transfer.

In one of the papers prepared at the request of the Board, LeRoy Walters surveyed the ethical literature on *in vitro* fertilization published through August 1978.[1] This survey noted that most of the ethical discussion on *in vitro* fertilization has concentrated on clinical applications of the technique (the topic of Chapter III) rather than on laboratory research with early human embryos (the topic of the present chapter). Central issues in the ethical literature on basic research with human embryos included the moral status of the early embryo, the need for such research, and the potential long-term consequences of the research. According to the same survey, commentators on ethical issues in the application of *in vitro* fertilization and/or embryo transfer discussed, among other topics, the need for *in vitro* fertilization as a method for overcoming infertility, the adequacy of prior laboratory and animal research, the risks of *in vitro* fertilization and embryo transfer to the ovum donor as well as to potential offspring, and the appropriateness of allocating scarce health care resources to the clinical application of such techniques. Many of these issues recurred in the papers presented to the Board, which are systematically reviewed in this and the following chapter.

A. The Goals and Potential Benefits of the Research. As noted in the preceding chapter many studies in experimental embryology do not include embryo transfer as a component. Several possible goals of laboratory research with human embryos have been identified:

1. Developing or testing more adequate contraceptives; [2]

2. Determining causes of infertility; [3]

3. Investigating the circumstances leading to the development of hyatidiform moles and their potential transformation into malignant tumors; [4]

4. Evaluating the effect of noxious agents or teratogens on the early embryo by means of an *in vitro* screening system; [5]

5. Studying the mechanisms by which chromosomal abnormalities are produced; [6] and

6. Investigating the totipotential cells of very early embryos to increase understanding of normal and abnormal cell growth and differentiation.[7]

One additional potential goal of human *in vitro* fertilization and embryo culture is more controversial and therefore merits more detailed comment. R.V. Short suggests that a kind of *in vitro* assessment (or "toxicology testing") study might be performed to determine whether *in vitro* fertilization produces a higher incidence of embryonic abnormalities than the conventional *in vivo* method of human reproduction. In Short's view, if *in vitro* fertilization techniques do in fact lead to an excess of embryonic abnormalities, it would be preferable to discover that excess in the laboratory rather than at the time of amniocentesis or birth. Short argues that such a controlled *in vitro* study would also provide information concerning the probable success rate of *in vitro* fertilization.[8]

Several objections can be raised to such a proposal, as Short himself observes. First, there would be little basis for comparison following such a laboratory study since data concerning the incidence of abnormalities, particularly chromosomal abnormalities, in early human embryos following *in vivo* fertilization are quite limited. In fact, the totality of *in vivo* information relating to human preimplantation ova and embryos is "confined to 15 specimens, 9 recovered from the oviduct and 6 from the uterus." [9] At least two replies to this objection can be made. First, James Schlesselman notes that one can extrapolate statistically from three major studies of the incidence of chromosomal abnormalities following *in vivo* fertilization [10] that the natural incidence of such abnormalities in humans is between 395 per 1,000 and 477 per 1,000 at the time of implantation; prior to implantation the incidence of such abnormalities is presumably somewhat higher.[11] Schlesselman concludes that a 40–50% chromosomal abnormality rate in human embryos following *in vivo* fertilization is a reasonable baseline against which to compare the results of *in vitro* fertilization. A second reply is proposed by Short himself, who suggests that one could perform a controlled study of the actual incidence of embryonic defects following *in vivo* fertilization by flushing early embryos from the reproductive tracts of consenting volunteer research subjects. Short concedes that this aspect of the proposed risk-assessment study would present both medical and ethical difficulties of its own.[12]

A second possible objection to Short's proposal for a laboratory risk-assessment study is that it is unnecessary. This objection can take one of two forms. Schlesselman notes that for every 1,000 chromosomal abnormalities which are present in implanted blastocysts, only 5 to 7 survive to the point of live birth. Thus, 99.3% to 99.5% of chromosomally abnormal fetuses are eliminated *in vivo* through spontaneous abortion or fetal death. It follows, therefore, that even a doubling in the incidence of chromosomal abnormalities following *in vitro* fertilization—assuming that the technique or ancillary medical treatment did not facilitate the survival of abnormal embryos—would yield only an additional 6 to 7 chromosomally abnormal fetuses, which could, in Schlesselman's view, be detected by means of prenatal diagnosis and selectively aborted.[13]

An alternative argument against the necessity of Short's proposed risk-assessment study can be based on the essays of Biggers, who asserts that for the investigation of most questions concerning human reproduction a suitable animal model can be found. In his view, women should not be subjected to research risks and valuable human ova and embryos should not be used in research unless there is no reasonable alternative to a study in humans.[14]

Biggers' position suggests a final issue to be considered under the rubric of goals and potential benefits of the research: How

stringent a standard should be set with respect to the *need* for laboratory research on human *in vitro* fertilization and embryo transfer? There are three possible answers to this question. The least stringent standard would be that benefits can be expected from the human research. A somewhat more stringent standard would be that human research should hold out the prospect of more significant or more reliable benefits than research employing animal models.[15] The most stringent standard would require that the promised benefits of human research be achievable *only* through research using human gametes and early human embryos.

B. The Design of the Research. Biggers emphasizes that research on human *in vitro* fertilization and embryo culture, since it involves human volunteers, "should only be undertaken if efficiently designed experiments of adequate size are possible." [16] In his view, this stipulation may require that collaborative trials be conducted. Schlesselman's discussion of appropriate sample size for answering specific questions regarding human *in vitro* fertilization illustrates both the complexity of the design issue and the essential role of the biostatistician in helping to plan laboratory research with human gametes and embryos.[17]

C. *The Consent of Sperm and Ovum Donors.* Most discussion of the consent question for laboratory studies of *in vitro* fertilization has focused on the ovum donor. In most cases ova are harvested from women with intact ovaries by means of laparoscopy. The donation of ova may be associated with receiving hormones to induce superovulation and/or to mature the ova *in vivo* prior to harvest. In some cases ova are harvested at the same time that a tubal ligation is performed. There is unanimous agreement that the informed consent of ovum donors must be secured in advance of their participation as research subjects.[18] In addition, the particular vulnerability of infertility patients, who are dependent on the health professions for assistance in achieving pregnancy and who nonetheless may be asked to serve as ovum donors, has been noted in the literature on the consent question.[19]

Less thoroughly discussed are the issues of consent by semen donors and the use of ova excised from ovarian tissue removed for clinical reasons. Consent by semen donors might be particularly difficult to secure if semen were secured from a sperm bank rather than from a prospectively recruited donor. The view expressed in one published assessment of *in vitro* fertilization is that prior consent should be secured from all males whose sperm are to be used for *in vitro* fertilization.[20]

The harvesting of ova from excised ovarian tissue may prove to be inefficient from a purely practical standpoint unless hormone treatments are administered in advance of surgery. Prior consent to such hormone treatment would presumably be secured. However, even if ova were harvested from such tissue, without the previous administration of hormone to the female patient, gradually evolving general standards with respect to the use of human tissues for research purposes[21] would seem to suggest the necessity for securing the patient's consent to the use of her ova in laboratory research.

D. *The Status of the Early Human Embryo.* Two primary objections to laboratory research with human *in vitro* fertilization and embryo culture have been raised. The first is that such research is incompatible with the respect that is due to early human embryos. The second is that the potential adverse consequences of the research outweigh the potential benefits. These two objections will be discussed in the present and the succeeding section of this chapter.

The shape of the embryonic status question differs somewhat in the laboratory research context and the clinical context. As Leon Kass points out, many human embryos which would be studied in the laboratory would have been created solely for research purposes.[22] The major alternative would be to perform laboratory studies on untransferred embryos remaining after the fertilization of multiple ova and the transfer of only one to the uterus. However, from a research design standpoint total reliance on the use of untransferred embryos would seem to exclude research on the fertilization process and on the earliest stages of embryonic development.

At least three distinguishable answers to the embryonic-status question in the research context have been proposed. Kass himself, impressed by the continuities in embryonic and fetal development and by the potential viability of the early human embryo if it is transferred at the proper time, argues (1) that embryos ought not be deliberately created for research purposes[23] and (2) that no invasive or manipulative research should be performed on already-existing human embryos.[24] Any other policy would, according to Kass, symbolize the belief that early human embryos are "things or mere stuff." [25]

A second position on the embryonic-status is presented by Charles Curran, who argues that:

> From my ethical perspective truly human life is present two to three weeks after conception or shortly after the implantation of the embryo. Hence experimentation after that time and attempts to culture embryos *in vitro* beyond this stage raise insurmountable ethical problems.[26]

However, even for research involving the earliest stages of embryonic life Curran asserts that "[t]he nature of the matter involved in the research calls for respect and economy avoiding unnecessary waste." [27]

A similar position is articulated by Clifford Grobstein who suggests that "human cells, tissues and organs that have no reasonable prospect of possessing or developing sentient awareness" are "human materials rather than human beings or persons." Grobstein notes that "there are established practices for dealing with and disposing of human materials, practices that take into account the special status they have, having originated as human." [28] Grobstein's position is characterized as being similar rather than identical to Curran's for two reasons. First, it is not clear that Curran would extend his principle of respect to include non-embryonic human organs, tissues, or cells. Second, the criterion of possessing a potential for sentience seems not to be a part of Curran's position on embryonic status. Indeed, one could construe this criterion broadly to include all preimplantation embryos since, as Kass notes, they could be transferred, implanted, and develop to maturity; or one could interpret the criterion narrowly to exclude all preimplantation embryos since it is infeasible, given the current state of medical technology, to culture human embryos *in vitro* beyond the blastocyst stage.

A third position on embryonic status, represented by Samuel Gorovitz, adopts sentience (rather than the potential for sentience) as the primary criterion for determining the moral status of the human embryo or fetus in Gorovitz's view:

> The status of the embryo is not equivalent to that of a person, a child, an infant, or a fetus—at least a fetus from the point of development of the capacity for even primitive sentience.[29]

If by "primitive sentience" Gorovitz means the capacity to respond to sensory stimuli, then the transition from embryonic to fetal status (at the eighth week of gestation) or, at the latest, the tenth gestational week of fetal development would seem to mark the transition from nonprotected to protected status.[30] In fact, however, Gorovitz notes that he would draw the

line of acceptability somewhat conservatively, that is, "rather close to the point where cell differentiation begins, rather far from the capacity for independent survival." [31]

A possible reason for the multiplicity of viewpoints on the status of the human embryo is suggested by Gorovitz. In his view, questions like embryonic status or the appropriate criteria of death are not matters of fact which can be clarified through appropriate research programs. Rather, these questions provide the occasion for individuals to make decisions and for societies to establish policies.[32] In contrast, while Kass does not directly address the fact/decision distinction, he clearly regards the discontinuity of fertilization and the continuity fo the embryonic development which follows as factual considerations which lead ineluctably to certain moral conclusions.[33]

E. *Potential Adverse Consequences of the Research.* Concerns about adverse consequences of laboratory research with human *in vitro* fertilization and embryo culture have been focused in three areas: (1) The same types of research *procedures* that have been performed with nonhuman mammalian embryos may be performed with human embryos; (2) certain undesirable technological or clinical *applications* may arise from such research; and (3) the research may have a desensitizing or dehumanizing *effect on investigators.*

Kass outlines some of the scientific procedures which in his view are likely to be applied in the future to human embryos:

1. Culture beyond the blastocyst stage;
2. Formation of hybrids or chimeras (intra-specific and inter-specific);
3. Gene, chromosome, and plasmid insertion, excision, or alteration;
4. Nuclear transplantation or cloning; and
5. The freezing of embryos.[34]

Kass ventures this prediction because, in his view, the same arguments which can be advanced to justify, for example, the simpler and earlier procedures proposed by Pierre Soupart can without *logical* contradiction be extended to the more ambitious and later procedures outlined above. Among these justifiying principles are the following:

1. "It is desirable to learn as much as possible about the process of fertilization, growth, implantation, and differentiation of human embryos and about human gene expression and its control.
2. "It would be desirable to acquire improved techniques for enhancing conception and implantation, for *preventing* conception and implantation, for the treatment of genetic and chromosomal abnormalities, etc.
3. "Finally, only research using human embryos can answer these questions and provide these techniques.
4. "There should be no censorship or limitation of scientific inquiry or research."[35]

Without specifically advocating the types of experiments which Kass regards as undesirable, Gorovitz adopts a general position which could in principle allow him to approve such experiments. If one extrapolates from Gorovitz's views on embryonic status, one concludes that he would approve any type of research procedure on the human embryo, provided only that the research terminated prior to the onset of embryonic or fetal sentience and that other canons of research ethics (consent of gamete donors, appropriate research design, etc.) were carefully followed.[36] Gorovitz explicitly accepts Kass's formal point that the justifying arguments for such research should be carefully formulated, in order to avoid the "slippery slope." [37] However, his material principle of drawing the dividing line at the point of sentience rather than fertilization or implantation seems, at least, to lead Gorovitz to approve as potentially beneficial the experiments which Kass regards as negative consequences of laboratory research with preimplantation embryos.

A specific research technique, interspecies fertilization using human sperm or ova, has provoked considerable discussion and therefore merits brief further comment. Cross-fertilization raises both conceptual and ethical questions. Conceptually, is fertilization research involving the use of only human sperm or human ova and the culture of the resultant hybrid embryo *human research?* Ethically, Kass regards such research as an adverse consequence of intraspecific *in vitro* fertilization. On the other hand, Short, while acknowledging that interspecific fertilization carries with it undertones of a novel type of genetic manipulation,[38] argues that technical and ethical hedges could be constructed to prevent what he regards as the major potential adverse consequence of such research—namely, any effort to transfer the hybrid embryo into the uterus of a human or animal female for further development.

A second type of potential adverse consequence identified by some critics of human *in vitro* fertilization and embryo culture concerns possible applications of the research rather than the research procedures themselves. Kass suggests that the research might lead to the *banking of human ova or embryos for commercial purposes.*[39] In the literature on this topic several other potential adverse consequences are noted: the cloning of human beings, the creation of human/animal hybrids, and the development of devices which would allow for the extracorporeal gestation, or ectogenesis, of human embryos and fetuses.[40] Without commenting specifically on these potential developments, Gorovitz expresses reservations about the wedge argument in its predictive (as distinguished from its logical) form. He also expresses confidence in the collective capacity of human beings to exercise good judgment, citing as examples public policy on abortion, appropriate treatment of newborn infants, the treatment of irretrievably comatose patients, and the setting of limits on the freedom of scientific inquiry.[41]

In an earlier essay on *in vitro* fertilization and cloning Leon Kass identified a third general type of potential adverse consequence which might result from laboratory research involving human embryos. According to Kass, one should "be concerned about the effects on the attitude toward and respect for human life engendered in persons who are engaged in such practices." [42] No other author has commented on the possibly dehumanizing effects on the researcher of human *in vitro* fertilization and embryo culture. It is probable that authors like Curran and Gorovitz would link the dehumanization question to the issue of embryonic or fetal status, arguing that only research on embryos which have developed beyond the two-to-three week stage (Curran) or to the point of sentience (Gorovitz) would show disrespect for the human embryo or fetus and that only research which manifested such disrespect would be likely to desensitize the researcher.

Footnotes

1. Short, R. V., Human *In Vitro* Fertilization and Embryo Transfer, a paper prepared for the Ethics Advisory Board, 1978, pp. 2–3; Mastroianni, Luigi, Jr., *In Vitro* Fertilization and Embryo Transfer, a paper prepared for the Ethics Advisory Board, 1978, p. 5.
2. Short, *op. cit.*, pp. 3–5; Mastroianni, *op. cit.*, p. 5.
3. Short, *op. cit.*, pp. 5–6.
4. Mastroianni, *op. cit.*, p. 5.
5. *Ibid.*
6. *Ibid.*
7. Short, *op. cit.*, pp. 6–7.
8. *Ibid.*, pp. 8–10.
9. Schlesselman, James J., How Does One Assess the risk of Abnormalities From Human *In Vitro* Fertilization?, a paper prepared for the Ethics Advisory Board, 1978, p. 17; cf. Biggers, John D., *In Vitro* Fertilization, Embryo Culture and Embryo Transfer in the Human, a paper prepared for

the Ethics Advisory Board, 1978, p. 6 and Appendix I, Table 3.

10. Schlesselman, *op. cit.*, pp. 7–8, citing, Boue, J. G. and Boue, A., Chromosomal Anomalies in Early Spontaneous Abortion, *Current Topics in Pathology*, vol. 62, 1976, pp. 193–208; Creasy, M. R., Crolla, J. A., and Alberman, E. D., A Cytogenetic Study of Human Spontaneous Abortions Using Banding Techniques, *Humangenetik*, vol. 31, 1976, pp. 177–196; Alberman, E. D. and Creasy, M. R., Frequency of Chromosomal Abnormalities in Miscarriages and Perinatal Deaths, *Journal of Medical Genetics*, vol. 14, 1977, pp. 313–315.

11. Schlesselman, *op. cit.*, p. 19.

12. Short, *op. cit.*, p. 10; cf. Schlesselman, *op. cit.*, pp. 24–25.

13. Schlesselman, *op. cit.*, p. 30.

14. Biggers, *op. cit.*, p. 412; cf. Kass, Leon R., Ethical Issues in Human *In Vitro* Fertilization, Embryo Culture and Research, and Embryo Transfer, a paper prepared for the Ethics Advisory Board, 1978, p. 27.

15. Walters, LeRoy, Ethical Issues in Human *In Vitro* Fertilization and Research Involving Early Human Embryos, a paper prepared for the Ethics Advisory Board, 1978, fn. 178, citing Mastroianni, Luigi, Jr., *In Vitro* Fertilization, in: Reich, Warren, ed., *Encyclopedia of Bioethics*, (vol. 4), New York, Free Press-Macmillan, 1978, pp. 1446–1451.

16. Biggers, *op. cit.*, p. 41a.

17. Schlesselman, *op. cit.*, pp. 20–27.

18. Short, *op. cit.*, p. 9; cf. Walters, *op. cit.*, pp. 37–38.

19. Walters, *op. cit.*, fn. 182, citing National Research Council, Assembly of Behavioral and Social Sciences, Committee on the Life Sciences and Social Policy, *Assessing Biomedical Technologies: An Inquiry into the Nature of the Process*, Washington, D.C., National Academy of Sciences, 1975, p. 27.

20. *Ibid.*

21. Holder, Angela R. and Levine, Robert J., Informed Consent for Research on Specimens Obtained at Autopsy or Surgery: A Case Study in the Overprotection of Human Subjects, *Clinical Research*, vol. 24, 1976, pp. 66–77.

22. Kass, *op. cit.*, fn. 14, p. 28.

23. *Ibid.*, p. 5.

24. *Ibid.*, pp. 10–11.

25. *Ibid.*, p. 11.

26. Curran, Charles E., *In Vitro* Fertilization and Embryo Transfer: From a Perspective of Moral Theology, a paper prepared for the Ethics Advisory Board, 1978, p. 22.

27. *Ibid.*, p. 26.

28. Grobstein, Clifford, Statement to the Ethics Advisory Board, Transcript of Meeting III, September 15, 1978, *National Technical Information Service*, PB–288 764, p. 229.

29. Gorovitz, Samuel, *In Vitro* Fertilization: Sense and Nonsense, a paper prepared for The Ethics Advisory Board, 1979, p. 28.

30. Williams, John W., *Williams Obstetrics*, Pritchard, Jack A. and MacDonald, Paul C., eds., 14th ed., New York, Appleton-Century-Crofts, 1971, p. 223.

31. Gorovitz, *op. cit.*, p. 28.

32. *Ibid.*, pp. 1–4.

33. Kass, *op. cit.*, pp. 5–7.

34. *Ibid.*, pp. 18–19.

35. *Ibid.*, p. 20.

36. Gorovitz, *op. cit.*, pp. 27–28.

37. *Ibid.*, p. 15.

38. Short, *op. cit.*, p. 7.

39. Kass, *op. cit.*, p. 19.

40. Walters, *op. cit.*, pp. 39–40.

41. Gorovitz, *op. cit.*, p. 14.

42. Kass, Leon, Making Babies—the New Biology and the 'Old' Morality, *Public Interest*, vol. 26, 1972, p. 33.

Chapter III—Clinical Applications of in Vitro Fertilization and/or Embryo Transfer: Technical and Ethical Issues

A. The Need for and Potential Benefits of In Vitro Fertilization and Embryo Transfer

The major potential benefit to be derived from clinical applications of *in vitro* fertilization and embryo transfer is that it may enable some otherwise-infertile women to conceive and bear children. Most commentators on the clinical use of *in vitro* fertilization and embryo transfer view the alleviation of infertility, particularly in the context of heterosexual marriage, as a desirable goal.[1] In opposition to this majority position, however, Stanley Hauerwas argues that even within marriage, resort to *in vitro* fertilization as a method to overcome infertility reflects an undue emphasis on the importance of biological parentage.[2]

There are at least two senses in which the *need* for this potential benefit has been discussed. First, how many women who wish to bear children are infertile because of blocked Fallopian tubes? Second, of these infertile women, how many need *in vitro* fertilization and embryo transfer in the sense that they have no alternative means for producing children of their own?

Precise data on the extent of need in these two senses are unavailable. Rough estimates of the upper limits of need in the United States are provided by Biggers:

> There are 60 million women reproductively active in the USA; seven percent of couples are infertile, and a third of these are infertile because of sterility of the wife. Thus, there are 1,400,000 sterile women in the population. Pathology of the oviduct accounts for 40 percent of the cases so that there are about 560,000 women with diseased oviducts.[3]

The major alternative to *in vitro* fertilization and embryo transfer for women is one of several surgical procedures available for repairing blocked oviducts: Salpingolysis, resection and reanastomosis, fimbrioplasty, and tubal implantation. According to a recent survey, the rates of term pregnancy following the first three of these procedures are 40-50%, 25–40%, and 10–25% respectively.[4] Thus, at least 280,000 U.S. women with tubal obstruction are not likely to achieve pregnancy by surgical methods alone. Of these women, an unknown number may also suffer from ovarian and/or uterine dysfunction and thus may be incapable of producing offspring even with the aid of *in vitro* fertilization and embryo transfer.[5] An additional adjustment in the estimate of the "need" for *in vitro* fertilization would be required if one were to consider women who had previously elected sterilization by tubal ligation but who later desire to become pregnant.

While the alleviation of infertility among couples is generally regarded as the major potential benefit of clinical *in vitro* fertilization and embryo transfer, some witnesses and some commentators in the literature have identified what they regard as additional benefits. Sid Leiman regards the surrogate-motherhood role as closely analogous to that of a wet nurse and therefore sees no ethical objection to extramarital involvement in gestation in cases in which intramarital reproduction is physically impossible.[6] In his writings on this topic R. G. Edwards mentions sex preselection as an additional potential benefit of clinical *in vitro* fertilization and embryo transfer.[7] Other potential benefits cited by various authors are pre-transfer screening for abnormalities,[8] re-transfer repair of defects,[9] and extracorporeal gestation.[10] The potential consequences enumerated in this paragraph are not universally judged to be beneficial, however, as Section F below illustrates.

B. The Need for and Adequacy of Prior Laboratory and Animal Research

Three major types of studies have been proposed as precursors to clinical applications of *in vitro* fertilization and embryo transfer: (1) Laboratory research on human sperm, ova, and embryos without embryo transfer, as described in Chapter 2, Section A above; (2) feasibility and safety studies in non-primate species; and (3) feasibility and safety studies in primates. Reservations have been expressed by some witnesses about each of these types of preliminary research.

Laboratory research with human sperm, ova, and embryos has been advocated most vigorously by R. V. Short. Short presents four arguments for a risk-assessment program based on such laboratory studies:

> 1. It would be better to discover an increased incidence, of abnormal embryos and/or low success rate "in the test tube rather than in the long-suffering female patient."

2. Laboratory tests could establish whether fertilization errors leading to potentially malignant trophoblastic tumors occur with *in vitro* fertilization.

3. Although chromosomally abnormal fetuses could be detected by amniocentesis, the discovery of such an affected fetus would confront an infertile couple with an agonizing decision; perhaps the decision would be viewed as a choice between having a handicapped child and no child at all.

4. Laboratory tests could establish whether the lack of the natural screen against defective sperm which is provided by the female reproductive tract leads to an increase in the number of abnormal embryos produced *in vitro*.[11]

Four possible lines of objection to the type of risk-assessment study proposed by Short are suggested by the testimony of other witnesses. Biggers notes that large numbers of human ova would need to be collected and used in such studies in order to attain statistical significance and that the research would therefore involve a substantial number of women acting as donors.[12] Second, even if risk-assessment studies with human sperm, ova, and embryos were considered a necessary preliminary step, it can be argued that such studies would not be sufficient, since they would not detect the subtle types of mental or developmental deficits which might be discovered in a carefully conducted study of primates.[13] (As will be noted below, Short regards primate studies as too time-consuming.[14]) Third, in Biggers' view, there is already sufficient evidence from laboratory studies with rats, mice, and rabbits and from the use of embryo transfer in farm animals to justify the conclusion that *in vitro* fertilization and embryo transfer do not produce a significant increase in the number of abnormal offspring. On this view, the conduct of laboratory studies as proposed by Short is unnecessary.[15] A final type of objection to risk-assessment studies with human gametes and embryos can be derived from Schlesselman's essay—namely, that the efficiency of the human female reproductive system in screening against chromosomally abnormal embryos is so high (99.3% to 99.5%) that proceeding directly to embryo transfer in humans would probably not lead to a significantly higher number of abnormal fetuses (presumably detected by amniocentesis) or handicapped offspring. According to Schlesselman, the primary result of an increase in the number of embryonic chromosomal abnormalities would be an increased rate of spontaneous abortion.[16]

A second proposal is to perform feasibility and safety studies in non-primate species of laboratory animals, *e.g.*, the mouse and the rabbit. Mastroianni, a proponent of prior studies in both primate and non-primate species, asserts that:

> * * * Extensive work in the laboratory animal should be a necessary prerequisite before proceeding with clinical trials. Statistically valid proof in animals that present techniques predictably produce normal offspring has not as yet been presented. Successful uterine transfer of *in vitro* fertilized ova has been accomplished in only two laboratory species.[17]

Short's position is in part similar to that of Mastroianni. In his view, the results of research with laboratory animals "although somewhat inadequate, are on the whole encouraging. The high abnormality rate in the rat experiment [conducted by Toyoda and Chang [18]] was probably not due to the *in vitro* procedure at all (Chang, personal communication) but nevertheless the experiment should be repeated." [19]

Kass indicates his agreement with the "cautious" position of Luigi Mastroianni, Benjamin Brackett, and R. V. Short that:

> * * * The risks for humans have not been sufficiently assessed, in large part because the risks in animals have been so poorly assessed (due to the small number of such births and to the absence of any *prospective* study to identify and evaluate deviations from the norm).[20]

Two objections have been raised regarding studies with non-primate laboratory animals. First, Barton Childs observes that most animal species are so inbred that it would be invalid to extrapolate from the results of *in vitro* fertilization studies, even in large numbers of laboratory animals, to the probable result of clinical applications in humans, who are outbred.[21] Second, in Biggers' view the results of studies with various laboratory animals and of the use of the procedures in farm animals already provide sufficient evidence of safety.[22]

A third possible objection to further studies with non-primate animals is implicit in the Sackett proposal: subtle mental deficits caused by *in vitro* fertilization might not be detected in non-primate animals.[23] Fourth and finally, Schlesselman's calculations concerning the low probability of producing abnormal human offspring following *in vitro* fertilization and embryo transfer [24] can be viewed as an argument against performing further risk-assessment studies with laboratory animals.

A third proposal for preliminary risk-assessment studies is advanced by Sackett. He recommends the conduct of a two-year trial in the pigtail monkey which would include (1) *in vitro* fertilization with some embryos transferred back to the donors of the ova and some transferred to other females, (2) a study of the incidence of abnormalities in products of *in vitro* fertilization, and (3) an assessment of learning abilities and development in the offspring of *in vitro* fertilization.[25] Gould advocates the use of another primate model, the squirrel monkey, for risk-assessment studies.[26]

Several objections have been or can be lodged against the proposal to perform primate risk-assessment studies. Short comments on the time-investment required:

> Whilst it would be helpful to have primate data, the constraints inherent in studying this problem in primates mean that it would be several years before adequate information would be forthcoming, and it would seem wrong to hold up progress until the information was available.[27]

Childs echoes this objection.[28] Second, as noted above, Childs argues that all non-human species are relatively or strictly inbred, so that the range of genetic variability present in humans cannot be duplicated in non-human species.[29] Two other general objections are also applicable to proposed primate research: (1) The studies already performed in several non-primate species provide sufficient evidence concerning risks (Biggers [30]), and (2) abnormal human embryos resulting from *in vitro* techniques are likely to be spontaneously aborted (Schlesselman [31]).

In summary, there is a clear division of opinion within the scientific and ethical communities concerning the need for and adequacy of prior laboratory and animal research. The extent of the disagreement is unclear because not all of the expert witnesses have discussed the three alternative risk-assessment strategies outlined above. In particular, few experts have had the opportunity to comment specifically on the Short and Sackett proposals.

The following positions, however, have been stated with clarity. Biggers regards further risk-assessment studies of any kind as unnecessary. Childs, while acknowledging the reassurance that further animal studies might provide, argues that such studies could never provide conclusive evidence. Short, Mastroianni, Kass, Sackett, and Gould *agree* that further risk-assessment studies should be performed but *disagree* on what kind of studies would be most feasible and appropriate. Short advocates the performance of *in vitro* studies with human sperm and ova and the replication of a single rat study; he

opposes primate studies on grounds of infeasibility and the amount of time required. Mastroianni and Kass support the performance of additional studies in animals, presumably in both primates and non-primates. Sackett and Gould regard non-primate risk-assessment studies as insufficient for drawing conclusions concerning primates and therefore recommend the conduct of primate research. In a word, there is majority support among the expert witnesses for some type of additional risk-assessment study but only minority support for any particular kind of study.

In addition, the data and calculations presented by Schlesselman may be relevant to the entire risk-assessment question. Schlesselman's thesis, which has not been commented on by proponents of risk-assessment studies, is that the probability of producing chromosomally-abnormal infants by means of clinical applications of *in vitro* fertilization and embryo transfer is quite low because of the human female's highly-efficient natural screen against chromosomally-abnormal embryos.

A little-discussed aspect of the risk-assessment debate is the kind of model (regarding proof of safety) which the protagonists have in mind. This model, in turn, can have important implications for the burden of proof issue. If one accepts the drug-testing model, as Short does, then the burden of proof is on investigators to demonstrate that the techniques of *in vitro* fertilization and embryo transfer are safe.[32] (It should be noted that, in a published essay, R. G. Edwards accepts the drug-tested model but argues that the results to date in several species of non-primate laboratory animals constitute sufficient proof of safety.[33]) On the other hand, if one adopts a surgery model, as Gorovitz does, than one can argue that the clinician is free to adopt new techniques unless opponents can demonstrate that prohibition of the techniques is justified.[34]

C. Risks of Procedures

1. Risks to Potential Offspring. The major sources of potential risk to offspring from *in vitro* fertilization and embryo transfer have been briefly outlined in Chapter 1, Section B.[35] In general, the surgical procedure of embryo transfer seems to occasion the least concern, in part perhaps because of the widespread use of embryo transfer following natural fertilization in farm animals.[36] The conditions under which the early embryo is cultured are also not a matter of primary concern, since the early mammalian embryo is known to be highly resistant to damage from environmental insults.[37] The major potential sources of damage to the early embryo are related to either the development of ova, the selection of sperm, the fertilization process, or the freezing of gametes or embryos. Specifically, potential sources of damage are the following:

a. Superovulation, sometimes employed prior to *in vitro* fertilization, may be correlated with an increase in the incidence of a chromosomal abnormality (trisomy) in embryos.[38]

b. The quality of sperm reaching and fertilizing the ovum *in vitro* may differ from the quality of sperm fertilizing the ovum in the Fallopian tube, since the female reproductive tract selects against some types of abnormal sperm.[39]

c. The quantity of sperm reaching the ovum simultaneously *in vitro* may break down the usual block to fertilization by multiple sperm; a polyploid embryo may result.[40]

d. The use of freezing techniques to preserve gametes or embryos may produce mutations.[41]

The precise extent to which each of these theoretical sources of risk is likely to be realized in human clinical applications of *in vitro* fertilization and embryo transfer cannot be estimated with certainty. The data and calculations of Schlesselman suggest that even if an excess of chromosomally abnormal embryos were produced by *in vitro* techniques, only a small proportion (less than 10%) would develop to term because of the natural process by which most such embryos are lost early in gestation. Whether the ancillary medical treatment associated with *in vitro* fertilization and embryo transfer would enhance the survivability of chromosomally abnormal embryos is unknown, as Schlesselman acknowledges.[42] Similarly, if subtler genetic (as distinguished from chromosomal) abnormalities were to result from *in vitro* techniques, the abnormal embryos might not be affected by the natural screening process described by Schlesselman.

Judgments about the *acceptability* of various levels of risk to offspring diverge. Kass would require that such risks be equivalent to or less than those of natural reproduction.[43] Curran adopts a similar (although perhaps slightly less stringent) position, arguing that the risks of the *in vitro* fertilization and transfer procedures to the offspring ought to be "about the same as in the normal process."[44] On the other hand, Bigger notes that there is an estimated three percent additional risk of abnormality in offspring suggested by animal studies, and suggests that such an added risk would be acceptable, particularly in light of the fact that some couples who receive genetic counseling are not deterred from procreation by a twenty-five percent risk of genetically-abnormal offspring.[45]

Schlesselman explicitly raises the question: To what are the risks of human *in vitro* fertilization being compared? His answer is that the women and embryos being used for comparison should have the same medical history relevant to their infertility as those undergoing *in vitro* fertilization and embryo transfer.

2. Risks to donors. Most discussion of risks to donors has focused on risks to the women donating ova. The following sources of risk have been identified:

a. Hormonal treatment of the women, sometimes employed to induce superovulation; this treatment can lead to ovarian hyperstimulation or ovarian cysts.[46]

b. Laparoscopy, a surgical procedure generally performed under general anesthesia; this procedure may have to be repeated.[47]

c. Ectopic pregnancy, a potential danger if the embryo fails to implant in the uterus.[48]

d. Careful monitoring of any resulting uterine pregnancy, often including amniocentesis.[49]

e. The possibility of a higher-than-average rate of embryo loss or spontaneous abortion.[50]

These risks are considered to be comparable to the risks faced by female infertility patients, in general, and by women who undergo surgery for the correction of blocked Fallopian tubes, in particular.[51]

D. The Consent of Sperm and Ovum Donors

The issue of informed consent by sperm and oocyte donors was not addressed by the expert witnesses who testified before the Board. In the literature, however, there is unanimous agreement that the informed consent of the would-be mother and presumably of both parents must be secured. Several specific items of information have been identified by various commentators as being material to the decision of the couple and therefore requiring disclosure:

a. The availability of potentially effective alternative therapies, *e.g.*, surgical reconstruction of the Fallopian tubes.[52]

b. The anticipated need for repeated laparoscopies.

c. The low probability of success.

d. The likelihood that the primary beneficiaries of the research will be other couples rather than the research participants themselves.[53]

e. The sources of the gametes to be used in the attempted *in vitro* fertilization (*i.e.*, a guarantee that only the sperm and ova of the couple will be employed).[54]

f. The disposition to be made of sperm, ova, and embryos not used in the transfer attempt.[56]

In the literature on informed consent, several commentators have remarked that infertility patients may be strongly influenced by their desperate desire to have children.[56] On the other hand, R.G. Edwards notes that many candidates for *in vitro* fertilization and embryo transfer are professional persons or their wives. Edwards expresses confidence that the patients seeking this therapy are fully capable of understanding and consenting to its procedures.[57]

E. The Status of the Early Human Embryo

The question of embryonic status in the clinical context differs to some extent from the same question in the laboratory-research context. Perhaps the most obvious difference is that in the clinical context there is at least a possibility that each embryo "created" will be transferred to the uterus, will implant, and will develop to the point of viability. Because of this difference in probabilities, as well as the directly-therapeutic intention present in the clinical context, most expert witnesses on ethical issues surrounding *in vitro* fertilization and embryo transfer viewed the status of the early embryo as less problematic in the clinical situation.

For persons who regard the embryo as deserving of respect or protection from the time of fertilization there are two major concerns: (1) Loss of embryos following transfer, and (2) the disposition of untransferred embryos. Kass argues that there is no qualitative difference between embryonic loss following natural reproduction and that which follows *in vitro* fertilization.[58] The second issue is somewhat more complex, however, since, as Kass notes, the "surplus" embryos can be transferred to women other than the donor, used for laboratory research purposes, or allowed to die.[59] A fourth possibility, not mentioned by Kass, would be to freeze the untransferred embryos, perhaps for later transfer to the same donor. Among the first three possibilities, Kass expresses a clear preference for allowing untransferred embryos to die. In his view, this choice is most compatible with concerns about lineage (which would argue against transfer to other women) and about the respect which is owed to early human embryos.[60] Curran's position on the discard of embryos is similar to that of Kass, although Curran adds the note that discards and losses should be minimized insofar as possible.[61]

A potential method for reducing the number of untransferred embryos is suggested by both Kass and Leiman:[62] Ova could be fertilized one at a time, and any additional ova could be stored, perhaps by freezing, for future attempts at *in vitro* fertilization and embryo transfer. A possible objection to this one-at-a-time procedure is that if fertilization failed to occur, embryo transfer might be delayed until the next menstrual cycle.

An issue not discussed by the expert witnesses and only hinted at in the literature on *in vitro* fertilization is the disposition of grossly abnormal embryos. Some have argued that to decide that such embryos should not be transferred is the first step toward deciding which fetuses (or persons) are not worthy to live.

Finally, some witnesses such as Gorovitz and Short do not explicitly consider the issue of embryonic status in the clinical context. However, if one extrapolates from their views on embryonic status in general or on laboratory research with early embryos, one can conclude with some confidence that they would regard the embryonic loss following embryo transfer and the discard of untransferred embryos as ethically acceptable.

F. Potential Adverse Consequences of Clinical Applications

Two types of potential adverse consequences of *in vitro* fertilization and embryo transfer have been identified: (1) Adverse consequences for the family; and (2) other adverse consequences. Kass notes that even if the initial aim of clinical applications is to assist married couples to bear children of their own, the techniques employed provide "the *immediate* possibility" of egg donation (egg from donor, sperm from husband), embryo donation (egg and sperm both from outside the marriage), and foster pregnancy (another woman carrying the pregnancy to term).[63] In Kass's view, there will be a strong demand for such extramarital uses of the clinical procedures—a demand which, if fulfilled, will further compromise "the virtues of family, lineage, and heterosexuality" or weaken "the taboos against adultery and even incest."[64]

Responses to the thesis that clinical uses of *in vitro* fertilization and embroyo transfer will weaken the family have taken two forms. The first, represented by Gorovitz, is to argue that the demand for labratory-assisted methods of reproduction in general will be limited and that other technological innovations (*e.g.*, modern contraceptive techniques) will have a much more significant adverse impact on the family.[65] A second kind of response, briefly developed by Leiman, is to deny that surrogate motherhood is necessarily detrimental to the family, if this novel method of becoming a parent is resorted to for good reasons (*e.g.*, if a couple would otherwise be unable to have a child).[66]

Other potential consequences considered adverse by some expert witnesses and commentators include:

a. The development of commercial ovum and embroyo banks.[67]

b. The genetic selection or manipulation of early embroyos.[68]

c. The transfer of nuclei from adult individuals to early embroyos, or cloning.[69]

d. Extracorporeal gestation, or bringing an embroyo all the way to viability in the laboratory.[70]

As noted in Section A of the present chapter, the second and fourth consequences in this list are regarded by some commentators as potential benefits of clinical *in vitro* fertilization and embryo transfer. Few have advocated that commercial ovum and embroyo banks be created or that human beings be cloned. Some commentators (for example, Gorovitz) have advanced the procedural suggestion that each potential consequence of *in vitro* fertilization and embryo transfer be carefully evaluated from the standpoint of both likelihood and probable impact.[71]

G. Questions of Allocation

Three general positions on the allocation issue can be distinguished. The first, represented by Biggers, is that applied laboratory research directed toward improving techniques for testing infertility by means of *in vitro* fertilization and embryo transfer should receive high priority—or, at least, that it should receive a higher priority than basic laboratory research involving human gametes and embroyos. The primary rationale for this position is Biggers' view that the supply of human ova available for research purposes is extremely limited and should devoted either to directly clinical purposes or to answering questions that cannot be satisfactorily resolved by studying laboratory animal.[72]

A second position, represented by Leiman[73] and Curran,[74] is that the federal government should support the clinical application of *in vitro* fertilization and embyro transfer. Leiman regards involuntary infertility as an extremely serious problem.

The rabbis put it this way, some fifteen centuries ago. Four are considered as if they

were dead; the poor, the diseased, the blind, and the childless.[75]

In his view, the public funding of medical means for overcoming infertility (for example, through Medicaid) is entirely appropriate. Indeed, Leiman argues that:

> It would be a sad commentary on the American ethos if federal funds could be used for the taking of human life, that is, therapeutic abortion, but not the creation of human life, that is, therapeutic conception.[76]

Although Kass disagrees with this second position; he presents an additional argument which some have used to support it:

> * * * As he who pays the piper calls the tune, Federal support would make easy the Federal regulation and supervision of this research.[77]

In contrast, a third position on allocation is that Federal funds should not be spent for *in vitro* fertilization and embryo transfer in clinical practice. Hauerwas, Gorovitz, and Kass all take this position, although for somewhat different reasons. In Hauerwas' view, the importance of being pregnant or of bearing a child that is genetically "one's own" has been overstated. Therefore the substantial investment of public funds to develop these anti-infertility techniques, particularly in light of other "immense needs of our society," (for example, the provision of an effective clotting factor for hemophiliacs) is inappropriate.[78] While he may not share Hauerwas' views on parenthood, Gorovitz agrees with his sense of priorities.

> In the competition for support, the burden of making a convincing case should rest with the proponent of a given line of work. With forty million Americans having no adequate access to decent health care, with thousands of children born annually without prospect of a family to nurture them, with veneral disease—a major cause of infertility—on the rise, it is implausible that research into making IVF more readily and reliably available should be a project of high priority concern. It isn't so much the harm or risk it involves as the plainly greater importance of addressing more fundamental and widespread problems of health and the delivery of health care.[79]

Kass presents three arguments for assigning a low priority to clinical applications of *in vitro* fertilization and embryo transfer. First, in agreement with Hauerwas and Gorovitz, he asserts that other health-related needs are more pressing. Kass goes on to argue that even within the sphere of infertility research, other approaches will be more cost-effective:

> * * * With money for research as limited as it is, research funds targeted for the relief of infertility should certainly go first to epidemiological and preventive measure—especially where the costs of success in the high-technology cure are likely to be *great*.[80]

Second, according to Kass, the non-financial costs of developing these technologies—that is, their potential adverse consequences—also militate against assigning their development a high priority.[81] Finally, Kass notes that a substantial number of American citizens are opposed on moral grounds to research on, or application of, *in vitro* fertilization in humans. In his view, these citizens would strenuously—and legitimately—object to any use of their taxes to promote human *in vitro* fertilization and embryo transfer.[82]

Footnotes

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Chapter IV—Legal Issues Surrounding Human In Vitro Fertilization, Embryo Culture, and Embryo Transfer

Two papers written for the Board examined the legal issues surrounding human *in vitro* fertilization; one was prepared by Dennis Flannery and his colleagues at the Washington law firm of Wilmer, Cutler and Pickering, the other was written by Barbara Katz, Office of Legal Affairs, University of Colorado Medical Center. The discussion which follows reflects the legal analysis and conclusions presented by the two papers; in any areas where they differed, the differences are noted. Four main topics are addressed: (A) Existing law that might be applicable to human *in vitro* fertilization and embryo transfer; (B) Constitutional questions raised either by the use, or by restrictions imposed on the use, of the techniques; (C) possible implications for tort liability; and (D) criminal law.

A. Existing Federal and State Law Applicable to Human in Vitro Fertilization and/or Embryo Transfer

1. *Federal law.* The only existing federal control of human *in vitro* fertilization is a regulation of the Department of Health, Education, and Welfare:

> No application or proposal involving human *in vitro* fertilization may be funded by the Department or any component thereof until the application or proposal has been reviewed by the Ethical Advisory Board and the Board has rendered advice as to its acceptability from an ethical standpoint.[1]

In its notice of proposed rulemaking entitled "Protection of Human Subjects: Proposed Policy" issued August 23, 1974, the Department indicated the kind of issues it expected the Ethics Advisory Board to consider:

> With respect to the fertilization of human ova *in vitro*, it is expected that the Board will consider the extent to which current technology permits the continued development of such ova, as well as the legal and ethical issues surrounding the initiation and disposition of such products of research.
>
> With respect to implantation of fertilized human ova, it is expected that the Board will consider such factors as the safety of the technique (with respect to offspring) as demonstrated in animal studies and clarification of the legal responsibilities of the donor and recipient parent(s) as well as the research personnel.[2]

Two other general requirements of HEW regulations are presumably applicable to research involving human *in vitro* fertilization, as well. All such research conducted or supported by the Department must be reviewed by a local Institutional Review Board (IRB);[3] in addition, studies involving human *in vitro* fertilization should not be conducted or supported by HEW unless "appropriate studies on animals and nonpregnant individuals have been completed."[4]

Moreover, the Department interprets the National Research Act as authorizing (if not requiring) IRB review of human research not funded by HEW at any institution which receives a grant or contract involving human subjects under the Public Health Service Act.

> The Secretary shall by regulation require that each entity which applies for a grant or contract under this Act for any project or program which involves the conduct of biomedical or behavioral research involving human subjects submit in or with its application for such grant or contract assurances satisfactory to the Secretary that it has established (in accordance with regulations which the Secretary shall prescribe) a board (to be known as an 'Institutional Review Board') to review biomedical and behavioral research involving human subjects conducted at or sponsored by such entity in order to protect the rights of the human subjects of such research.[5]

However, the standards to be employed by the local Institutional Review Board in reviewing non-federally funded human research are not specified by the statute.

2. *State law.* No state has enacted legislation or promulgated regulations directly governing human *in vitro* fertilization and/or embryo transfer. Such laws or regulations could affect the conduct of research involving *in vitro* fertilization within particular jurisdictions, especially since the federal regulations governing such research specifically do not preempt state or local law in this sphere:

> Nothing in this subpart shall be construed as indicating that compliance with the procedures set forth herein will in any way render inapplicable pertinent State or local laws bearing upon activities covered by this subpart.[6]

The types of existing law which provide the closest analogies to human *in vitro* fertilization and/or embryo transfer are state statutes or court decisions concerning (a) artificial insemination and (b) research involving human fetuses.

Within the context of family law, the issue of artificial insemination, especially artificial insemination with donor sperm (AID), has received

legislative or judicial attention in approximately one-third of the states. Case law concerning AID has focused primary attention on whether AID is equivalent to adultery and thus, whether children conceived as a result of AID are legitimate. (Legitimacy has implications both for inheritance rights and for claims to paternal support.) The general trend of recent case law, particularly in California and New York, has been toward the view that AID does not constitute adultery and that children conceived as a result of AID are legitimate.[7] Nineteen states have enacted legislation regarding one or more aspects of artificial insemination; many of the statutes include a requirement for prior written consent by both husband and wife.[8] However, in the remaining states, the legal status of children conceived following AID is left in doubt.

A second area of state legislative interest—research with live human fetuses—is also at least partially analogous to research involving human *in vitro* fertilization. Approximately sixteen states have enacted statutes governing fetal research. The primary focus of all such statutes is the permissibility of research on the fetus (1) following implantation and (2) before, during, or after induced abortion. however, the language of at least one state statute on fetal research may be sufficiently broad to encompass, as well, research involving unimplanted early human embryos.[9]

B. Constitutional Issues

1. *Preliminary Distinctions.* Federal or state action may be found unconstitutional if it infringes upon a fundamental right of United States citizens and the government cannot demonstrate (1) that the law is necessary to protect a "compelling state interest" and (2) that it does not go beyond what is necessary to protect those interests.[10] If, on the other hand, a governmental action restricts individual activities in ways that do not infringe a fundamental right, then the government need only show that its action is rationally related to a constitutionally permissible purpose.[11] Thus, a critical question regarding human *in vitro* fertilization—whether in the laboratory or the clinical context—will be whether individuals proposing to employ, or seeking access to, the technique can be said to be asserting a fundamental legal right. This, in turn, determines whether the government will be required to justify its regulation of human *in vitro* fertilization by demonstrating a compelling state interest that it seeks to protect or only by demonstrating a rational basis for its action.

A second distinction is also important: the distinction between a governmental restriction of an activity, on the one hand, and a governmental decision not to fund the activity, on the other. In 1977, in a case challenging the constitutionality of restrictions on the use of Medicaid funds for abortions, the United States Supreme Court held that a governmental restriction of the use of public funds to support the exercise of a fundamental right does not, by itself, constitute impermissible interference with the exercise of that right.[12] The Court concluded that the existence of a fundamental right "implies no limitation on the authority of a state to make a value judgment [to discourage the exercise of that right] and to implement that judgment by the allocation of public funds." [13] As applied to the question of *in vitro* fertilization, that language suggests that a governmental decision to restrict either laboratory research or clinical applications of the technique would need stronger justification than would a decision not to provide funds for such activities.

2. *Clinical Applications of In Vitro Fertilization and Embryo Transfer.* Constitutional principles affecting reproductive activity are more fully articulated than those relating to basic laboratory research. Therefore, it is useful to examine the rights pertaining to reproductive choices before attempting to analyze what rights might be implicated in government regulation of basic laboratory research.

The argument for a constitutional right to reproduce by means of *in vitro* fertilization would rest on the right to privacy as related to procreation, the marital relationship, and contraception. In 1942, in a decision striking down Oklahoma's compulsory sterilization law, the Supreme Court held that individuals have a right to be free from unwarranted governmental interference with procreative capabilities. (*Skinner* v. *Oklahoma*) [14] This might be termed "the right to procreation." [15] A second constitutionally protected area is the privacy of the marital relationship. This was recognized in a 1965 decision (*Griswold* v. *Connecticut*) invalidating a Connecticut statute forbidding the use of contraceptives by married couples. There, the Court said:

> The entire fabric of the Constitution and the purposes that clearly underlie its specific guarantees demonstrate that the rights to marital privacy and to marry and raise a family are of similar order and magnitude as the fundamental rights specifically protected . . . . The fact that no particular provision of the Constitution explicitly forbids the State from disrupting the traditional relation of the family—a relation as old and as fundamental as our entire civilization—surely does not show that the Government was meant to have the power to do so.[16]

The privacy interests recognized in Griswold were expanded in later cases to include "the right of the individual, married or single, to be free from governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget children." [17]

The extent to which any individual's access to *in vitro* fertilization will be viewed as involving a fundametal right will depend upon how closely analogous it is to the rights recognized by the Supreme Court. Thus, for example, a married couple with no alternative means for having a child of their own could claim that restriction of access to *in vitro* fertilization is interference with the fundamental right of marital privacy and with their right to choose whether, and in what manner, to achieve procreation. Since these rights are reasonably analogous to those recognized by the Court in *Skinner*, *Griswold*, and *Eisenstadt*, the argument might well be persuasive. If the Court agreed with the view that the rights in this instance are fundamental, the government would have to demonstrate a compelling state interest to justify interfering with the exercise of those rights.

On the other hand, an unmarried woman who wished to utilize *in vitro* fertilization followed by embryo transfer to another (sorrogate) mother, in order to have a genetic child of her own without the expense and inconvenience of pregnancy, would have a much weaker case. There would be neither marital privacy nor a procreative capacity, in the normal sense, to protect. Thus, courts might well find the right asserted to be less than fundamental, and the government would have to show only a rational basis for restricting the exercise of that "right".

Several grounds for prohibiting or limiting access to clinical applications of *in vitro* fertilization could be advanced. First, a state or the federal government might argue that this reproductive technique inevitably involves the loss of human embryos. Accordingly, a government might enact legislation to protect early human embryos. Such a law might pass the rational basis test but might not withstand constitutional challenge by individuals who could assert a fundamental right to access to *in vitro* fertilization.[18]

A second possible basis for state intervention in the clinical applications of *in vitro* fertilization would be the government's interest in fostering marriage and discouraging illegitimacy. This rationale might be proffered, for example, in support of a law restricting publicly funded *in vitro* fertilization and emryo transfer to married couples.[19] This is little room for doubt that such a funding limitation would be found constitutionaly permissable; it is not clear, however, whether courts would uphold an outright prohibition on the access of single persons to *in vitro* fertilization and embryo transfer.[20]

Third, a government might prohibit or limit access to clinical applications of *in vitro* fertilization in order to preclude institutional or individual genetic planning or manipulation. It is been suggested that the potential social impact of a large-scale genetic program might justify governmental regulation, but that interference with the genetic planning of individual families would have to be justified by a compelling state interest.[21]

Fourth, a state or the federal government might conclude that the use of surrogate or host mothers in connection with clinical *in vitro* fertilization would create insuperable legal problems that would justify a prohibition of such activities—perhaps on the ground that service as a surrogate mother is an unacceptable form of employment.[22] In the opinion of Flannery and associates such a prohibition would probably withstand legal challenge on both "rational basis" and "compelling state interest" grounds.[23]

Finally, if clinical applications of *in vitro* fertilization should appear to present health risks to mother or offspring which are substantially greater than those usually associated with conception and childbirth, then a state or the federal government might well decide to prohibit or limit access to this reproductive technique. Whether such a state intervention would withstand constitutional challenge would depend in part on the probability and magnitude of the risks involved.[24]

In addition to making basic decisions regarding the regulation of access to clinical applications of *in vitro* fertilization, the states and the federal government may wish to establish policies on such related matters as the legal status of children who are produced by means of *in vitro* fertilization and embyro transfer, the role of attending physicians in decisions regarding implantation and abortion, and record-keeping requirements.[25]

3. *Laboratory Research Involving In Vitro Fertilization and/or Embryo Culture*—a. *Constitutional bases for asserting a right to perform or participate in laboratory research involving in vitro fertilization and/or embyro culture.* Two major constitutional arguments could be advanced in support of basic laboratory research involving human *in vitro* fertilization. The first is freedom of inquiry, or the right of scientists to perform their research without governmental interference. This argument can be asserted most vigorously in defense of research conducted without the assistance of government funding. The second is the right of individual's to dispose of their genetic material as they see fit.

In a recent report, the National Commission for the Protection of Human Subjects of Biomedical and Behavorial Research expressed the view that although the Supreme Court might recognize a First Amendment right to seek new ideas or knowledge (i.e., a "right to research")[26], that must be distinguished from a right to be free from regulations governing the manner in which research may be conducted.[27]

> • • • [T]he state may not interfere with the researcher's choice of the end or topic of research, but it may regulate only the methods used in the research, in order to protect interests in health, order and safety with which unrestricted research might conflict. Such restrictions are valid if they are reasonably related to protection of non-speech interests and are not so vague and over broad that they chill the exercise of protected speech.[28]

Accepting the National Commission's distinction between the goal and the manner of research as valid, then the applicability of this putative right to basic research involving human *in vitro* fertilization is problematic, since it is the manner of achieving the knowledge—that is, through the creation and study of human embryos—that is most likely to be the target of governmental regulation.[29]

A second constitutional argument in support of laboratory research involving human *in vitro* fertilization focuses attention on the rights of potential gamete donors to dispose of their reproductive cells in whatever manner they see fit. According to this view, donors have a "constitutionally protected fundamental privacy right to control the use and manipulation of their own genetic materials.[30] Such a privacy right is clearer, however, in cases involving contraception or abortion than in the case of genetic materials donated for basic laboratory research. Once the materials are outside the body of the donor, any personal rights of privacy regarding their use become attenuated.[31]

b. *Constitutional bases for governments' prohibiting or refusing to fund laboratory research involving human in vitro fertilization.* If the analysis of the preceding section is accepted, than it would appear that no fundamental constitutional right to perform or participate in basic research involving *in vitro* fertilization is likely to be found. In the absence of such a right, the government could, if it wished, prohibit *in vitro* fertilization research if it had a rational basis for doing so. A prohibition would most probably be based on the view that the creation, study, and destruction of early human embryos is inconsistent with the dignity which should be accorded to forms of potential human life. Even if a fundamental right to conduct or participate in such research did exist, the government could still decline to support it with public funds. Such a refusal could be based on an administrative determination that other areas of research would be more useful to the government.[32]

If research with early human embryos were to involve embryo transfer and subsequent implantation, the current HEW regulations governing fetal research would apply, since the "fetus" is defined as the embryo "from the time of implantation."[33] State statutes regarding fetal research might or might not apply, depending on their formulation.

In addition to deciding whether to prohibit or to support laboratory research involving human *in vitro* fertilization, states or the federal government might wish to formulate standards governing the conduct of such research, if the research is permitted. For example, regulations to protect the health of ovum donors or to set standards for protecting the dignity of potential human life might be adopted. Moreover, a government might require that gamete donors consent in advance to the use of their reproductive cells in research involving *in vitro* fertilization. These procedural regulations, designed to achieve a rational governmental purpose, should be constitutionally permissible.[34]

C. Liability for Injuries

The federal government might be liable for injuries arising from *in vitro* fertilization in research programs conducted or supported by HEW. This section explores three questions: (1) Whether such suits would be barred by the doctrine of sovereign immunity; (2)

what causes of action might be considered valid; and (3) whether a program could be established to provide compensation for such injuries.

1. *Sovereign immunity.* Under the Federal Tort Claims Act, the United States is liable for the "negligent or wrongful" acts or omissions of its employees while they are acting within the scope of their employment.[35] Exceptions to such liability include acts or omissions that are within an agency or officer's "discretionary duty" (as, for example, a decision to initiate a particular research program).[36] Whether the doctrine of sovereign immunity would bar a suit for damages arising within an HEW-conducted or supported research program involving *in vitro* fertilization would depend upon:

1. Whether the investigator is considered a federal "employee." (Does this category include, for example, grantees or contractors in HEW-funded research programs?)

2. Whether the alleged wrong occurred because of the employee's exercise of protected "discretionary functions" at the policy level or through a failure to exercise due care in a particular program at the operational level.

3. Whether the employee's act fell within an exception to liability under the Federal Tort Claims Act.

The Board's legal consultants suggest that the United States, but not individual investigators, would probably be liable for any negligence of subordinate HEW officers or employees who design or conduct a particular research program involving in vitro fertilization. If the conduct violated existing HEW regulations, even the discretionary exception would not prevent liability.[37]

2. *Possible causes of action*—a. *Actions on behalf of the child.* Two kinds of suits might be brought on behalf of a child born alive with handicaps following *in vitro* fertilization and embryo transfer. First, a suit might be brought on the basis of prenatal or even preconception injuries sustained by the child. (Preconception injuries might be claimed if, for example, laboratory procedures involving the gametes were thought to have given rise to the damage.) The plaintiff in such a suit would face the difficult task of demonstrating a causal connection between the procedures of *in vitro* fertilization or embryo transfer and the child's injuries.[38]

Alternatively, a "wrongful life" suit might be brought on behalf of a child born alive but handicapped following *in vitro* fertilization and embryo transfer. Such a suit would claim that it would be better for a child not to be born at all than to be born in a damaged condition. With one exception,[39] the courts have refused to recognize "wrongful life" as a valid ground for recovery of damages. This refusal appears to stem from a reluctance or inability to assign a monetary value to either impaired existence or nonexistence as a basis for recovery.[40] Even if "wrongful life" were accepted as a valid cause of action in principle, the plaintiff would still face the challenge of showing a causal connection between the procedures employed and the child's injuries.[41]

b. *Actions to compensate the parents.* Two distinct types of suit might be brought under this general heading. First, it might be claimed that negligently-caused damage to a child conceived by means of *in vitro* fertilization had caused the parents economic loss and/or emotional distress. Courts have held that the following "wrongful birth" suits stated a valid cause of action:

1. The mother of a severely deformed child brought suit against her physician for his failure to diagnose rubella during pregnancy.[42]

2. Parents brought suit against a physician for failing to diagnose a pregnancy in time to allow the woman to secure an abortion.[43]

3. A pharmacist was sued for mistakenly filling a prescription for the contraceptive Norinyl with a different drug, Nardil, when the woman subsequently became pregnant.[44]

4. A couple brought suit against a physician whose sterilization of the husband failed to prevent the wife's conception of a subsequent child.[45]

If a "wrongful birth" suit were brought because of the birth of a handicapped child following *in vitro* fertilization, the plaintiff would face the difficulties of demonstrating causation which have been alluded to in the preceding paragraphs.[46]

A second possible cause of action which might be brought by would-be parents on their own behalf is an action for the "wrongful death" of a hoped-for child. All states currently allow actions for wrongful death caused by prenatal injuries if the death occurs following live birth. In addition, many states allow recovery for the prenatal death of a viable fetus.[47] The question raised by *in vitro* fertilization and embryo transfer is whether the theory of "wrongful death" would be extended by the courts to cover preimplantation human embryos.

Under a somewhat different legal theory—one which focused on the destruction of the would-be parents' property rather than on the "wrongful death" of an early embryo—a New York jury recently awarded $50,000 for emotional distress following the intentional destruction of a culture containing gametes from the husband and wife.[48] In the opinion of Flannery and associates, it is unlikely that the courts will ultimately extend the concept of "wrongful death" to include the intentional destruction of a preimplantation embryo.[49] According to Katz, suits charging physician negligence in the unintentional death of an embryo or fetus conceived with the aid of *in vitro* fertilization are also unlikely to succeed because of the experimental character of the procedure and because of the absence of a clear standard of due care.[50]

3. *Compensation for injury.* In part because traditional tort concepts seem inapplicable to research involving *in vitro* fertilization and/or embryo transfer, Katz proposes the establishment of a federal compensation fund to provide monetary redress in the event of injury associated with such research.[51] In her view, the rationale for creation of such a fund is that society has a substantial interest in establishing a program of human *in vitro* fertilization research and therefore has an obligation to the human subjects who may be injured as a result of their participation in such a program. Any injury which is not clearly unrelated to participation in the *in vitro* fertilization program would be compensable. The amount of compensation would be determined by calculating the monetary requirements for making the situation of a damaged child or mother equal to that of a normal person, insofar as such calculation is possible. The compensation fund would be financed through premiums paid by researchers or their institutions, by adding a surcharge to hospital bills, or by allocating general revenues to this purpose. The plan would include financial incentives to encourage the exercise of due care by investigators and institutions.

D. Criminal Law

The primary question of criminal law that might arise is whether the act of allowing preimplantation human embryos to die or killing them would constitute the crime of feticide, a species of homicide. After surveying developments in English and American jurisprudence, Katz concludes that the destruction of preimplantation human embryos is not likely to fall within either homicide or feticide statutes.[52]

As noted above, however, state statutes enacted to regulate research involving human fetuses may be broad enough to include research involving preimplantation human embryos. For example, one state statute defines the "human conceptus" as "any human organism, conceived either in the human

body, or produced in an artificial environment other than the human body, from fertilization through the first 265 days thereafter." [53]

The statute continues:

> Whoever uses or permits the use of a living human conceptus for any type of scientific, laboratory research or other experimentation except to protect the life or health of the conceptus, or except as herein provided, shall be guilty of a gross misdemeanor.[54]

In summary, aside from HEW regulations governing research supported by the Department, and a very few broadly written state statutes prohibiting research on the human fetus, no state or federal laws apply to human *in vitro* fertilization. However, Supreme Court decisions recognizing a fundamental right to privacy in marital relations and reproductive activity suggest that married couples might successfully assert a right of access to *in vitro* fertilization and embryo transfer as a means of bearing their own children. The government would have to demonstrate a compelling state interest (*e.g.*, protecting the health and safety of mothers and offspring) to justify restricting such access. The government need not, however, provide federal support for such procedures. In the research context, the government may regulate the manner in which research is conducted, especially if the research is supported by funds and it involves human subjects. Questions about legal responsibility for the care of the offspring cannot be answered with clarity. Analogous statutory and case law in the field of artificial insemination suggests that the law in this area is confused, at best. Similarly, questions about liability and compensation for injuries to the mothers and offspring need to be addressed.

Footnotes

Note.—The two papers prepared for the Board and cited often throughout are: Dennis M. Flannery, *et al.*, "Legal Issues Concerning *In Vitro* Fertilization" (hereinafter cited as, Flannery *et al.*) and Barbara F. Katz, "Legal Implications of *In Vitro* Fertilization and Its Regulation" (hereinafter cited as Katz).

1. 45 CFR § 46.204(d).
2. 39 Federal Register 30650, August 23, 1974.
3. 45 CFR § 46.205.
4. 45 CFR § 46.202(a)(1).
5. Public Law 93-348, 88 Stat. 348, July 12, 1974.
6. 45 CFR § 46.201(b).
7. Katz, pp. 8–10; cf. Flannery *et al.*, pp. 46–49.
8. Katz, pp. 8–10; cf. Flannery *et al.*, pp. 48–49.
9. Flannery *et al.*, pp. 5–6; Katz, pp. 42–44.
10. Flannery *et al.*, p. 35.
11. Maher v. Roe, 432 U.S. 464, 478 (1977).
12. Flannery *et al.*, p. 36.
13. Maher v. Roe, 432 U.S. 464, 474 (1977).
14. Skinner v. Oklahoma, 316 U.S. 535 (1942).
15. Flannery *et al.*, p. 10.
16. Griswold v. Connecticut, 381 U.S. 479 (1965).
17. Eisenstadt v. Baird, 405 U.S. 438, 453 (1972); *see also*, Carey v. Population Services International 431 U.S. 678 (1977).
18. Flannery *et al.*, pp. 38–40; Katz, p. 49.
19. Flannery *et al.*, p. 40.
20. *Id.* at 41–42.
21. *Id.* at 42–44.
22. *Id.* at 45, n. 68.
23. *Id.* at 45–46.
24. *Id.* at 46–47; Katz, p. 49.
25. Flannery *et al.*, pp. 47–54.
26. National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research. *Institutional Review Boards: Report and Recommendations*, DHEW Publication No. (OS) 78-0008, U.S. Government Printing Office, Washington, D.C., 1978, p. 78. (Discussed in Flannery *et al.*, p. 56 *et seq.*)
27. *Id.* at 79.
28. *Id.*
29. Flannery *et al.*, p. 60; Katz, pp. 45–46.
30. Flannery *et al.*, p. 61.
31. *Id.* pp. 61–63; Katz, p. 49.
32. Flannery *et al.*, pp. 63–65.
33. 45 CFR § 46.205(d).
34. Flannery *et al.*, pp. 70–72.
35. 20 U.S.C. § 1346(b); Flannery *et al.*, pp. 73–74.
36. 28 U.S.C. § 2680(a).
37. Flannery *et al.*, pp. 76–82.
38. Katz, p. 15; Flannery *et al.*, pp. 85–86.
39. Park v. Chessin, 60 App. Div.2d 80, 400 N.Y.S.2d 110 (1978).
40. Katz, p. 16; Flannery *et al.*, p. 87.
41. Katz, p. 18.
42. Jacobs v. Theimer, 519 S.W.2d 846 (Texas 1975); cited by Katz, pp. 18–19.
43. Ziemba v. Sternberg, 400 N.Y.2d 110 (1977); cited by Katz, p. 19.
44. Troppi v. Scarf, 187 N.W.2d 511 (Mich. 1971); cited by Katz, p. 19 and Flannery *et al.*, p. 88.
45. Doerr v. Villate, 220 N.E.2d 767 (Ill. 1966); cited by Katz, p. 19.
46. Katz, pp. 19–20; Flannery *et al.*, pp. 88–89.
47. Flannery *et al.*, p. 88; Katz, pp. 29–30.
48. Del Zio v. Presbyterian Hospital, 1974 Civ. 3588 (S.D.N.Y. 1978).
49. Flannery *et al.*, p. 88.
50. Katz, p. 27.
51. Katz, pp. 32–37.
52. Katz, pp. 21–25.
53. Minn. Stat. Ann. § 145.421, section 2 (West 1977); cited by Flannery *et al.*, n. 19.
54. Minn. Stat. Ann. § 145.422, (West 1977); cited by Flannery *et al.*, n. 19.

Chapter V.—Review of Public Attitudes

A. Responses Received by the EAB

Between September 15 and December 15, 1978, the Ethics Advisory Board held eleven public hearings on the question of federal support of research involving human *in vitro* fertilization (IVF) in order to afford an opportunity for members of the public to present their views. In all, several thousand hearing notices were sent to professional organizations, public interest groups, universities, clergy, and individuals. Everyone who requested to appear was heard; 179 individuals presented testimony in hearings in Bethesda (Maryland), Boston, Seattle, San Francisco, Atlanta, Kansas City, Detroit, Philadelphia, Denver, Dallas and New York City. Eighteen people preferred to submit formal written testimony in lieu of oral presentation. In addition, the Board received over 2000 letters and postcards, some of which were forwarded from President Carter and Secretary Califano.

Transcripts of all formal presentations (both oral and written) have been distributed to members of the Board and are available to the general public from the National Technical Information Service (NTIS). All of the correspondence received by the Board has been duplicated and distributed to members; copies are on file at the office of the EAB and are available for public inspection.

In the arguments and presentations made to the Board, it was evident that many people did not distinguish between basic research involving laboratory fertilization of human ova (IVF) on the one hand, and the subsequent transfer of the resulting embryos to establish a pregnancy, on the other. Thus, some of the arguments both for an against "*in vitro* fertilization" referred only to one or another of the procedures under consideration by the Board. At the public hearings, it was often possible to elicit clarification by asking whether a person's statement was intended to apply to both the basic research and the clinical application; this was not the case with respect to written communications. Summaries of the arguments are presented below.

1. *Arguments in favor of Federal Funding.* Although there were, of course, many variations on the theme, most of the arguments in favor of federal support of IVF focused on either the risks and benefits of IVF or the rights of investigators and infertile couples: (a) The scientific benefits to be gained; (b) the need for federal regulation; (c) the necessity to evaluate and to reduce the risks inherent in the procedure and the reliance of such research on federal suppport; (d) freedom of inquiry for scientists; (e) freedom of reproductive choice for infertile couples; and (f) the rights of infertile couples to some return on their taxes paid for general health and welfare.

The majority of individuals who favor federal funding for research involving human IVF stressed the benefits it would produce for the general welfare (*e.g.*, understanding and correcting infertility, preventing birth defects, understanding certain hereditary diseases, furthering the search for a cure for cancer, improving our knowledge of early fetal development, and developing better methods of contraception). A number of witnesses stated that there are many scientific procedures that can be used for either the benefit or the detriment of mankind; but the possibility for abuse does not in and of itself make their development morally wrong. Many responded to the concern regarding "discards" by noting that fertilized eggs are often lost in the natural process of reproduction. Some stated that it is morally irrelevant whether embryo loss occurs naturally or in a laboratory. Other individuals pointed out that zygote wastage may eventually be eliminated. For example, it may be possible to extract only one ovum at a time, as suggested by Dr. Steptoe (on Meet the Press), once the techniques of fertilization and embryo transfer are improved. Moreover, some public witnesses stated that once the technique of freezing the embryos is perfected, fertilized eggs that are not transferred immediately may be preserved for later attempts at implantation.

Numerous witnesses expressed concern about the possible risks of embryo transfer procedures already being performed in the private sector. A few stressed the need to hold investigators accountable for their actions; others urged federal support of the activities in order to apply regulations to assure that they will be conducted in a responsible manner. They thought that if the government were to fund research and adopt regulations governing the experimentation, investigators receiving non-government money would follow the government regulations.

Some stressed the need for government support to assure greater exploration of animal models and to encourage basic research in human IVF so that the safety and efficacy of the procedure can be evaluated before clinical application of embryo transfer is permitted. A related argument was that if research is permitted, scientists may be expected to improve the technique of *in vitro* fertilization and embryo transfer so that risks to mother and offspring will be substantially reduced.

Several individuals stressed the responsibility of the government to assure freedom of inquiry. Others urged the government to educate the public about the significance of new scientific discoveries to the public. They were concerned that the development of federal policy with such profound implications might be influenced by a public unnecessarily alarmed by inaccuracies and misinterpretations.

The last set of arguments in favor of federal funding related to the rights of infertile couples as taxpayers and the corresponding duties of the government. A number of individuals felt that since childless couples have paid taxes that subsidize the costs of contraception and childbearing, as well as education and welfare, for other people's children, the government has an obligation to assist them by supporting research and services relevant to their reproductive needs. Some argued that it is the government's responsibility to ensure freedom of choice for women by making both alternatives—raising a family or remaining childless—available to all couples.

It was stated that at the present time, adoption is not a viable alternative for childless couples. The waiting list for infants is very long and the cost for international adoption is exhorbitant and limited. There was additional testimony, however, that even if adoption procedures could be improved, problems would remain; adoption does not satisfy the very strong desire to bear one's own child. Some even suggested that the unfulfilled desire to bear children threatens the mental health of women and the stability of marriages. They argued that infertility is a disorder requiring medical intervention, and that the government has a responsibility to make such health care available to all citizens. Since the government funds therapeutic abortions when bearing a child would threaten the life or health of the mother, they noted, the government ought to fund "therapeutic conception" as well. Some elaborated on this argument, stating that government funding is necessary to assure that the option of having a child through *in vitro* fertilization is available to poor women as well as to those who are able to purchase the option in the private sector.

2. *Arguments Opposed to Federal Funding.* In general, the arguments against federal support of IVF and embryo transfer stemmed from five major concerns: (a) The moral status of the embryo; (b) questions of safety; (c) funding priorities; (d) decreasing ability to limit more objectionable procedures; and (e) detrimental social and psychological effects on offspring, family and physicians.

The most frequently articulated argument against federal funding of IVF was based on the moral status of the fertilized egg and embryo. Proponents of this argument believed that human life should be respected from the moment of fertilization. They argued that deliberately to create human life merely for experimental purposes with no intent or expectation of sustaining such life is immoral.

Since many fertilized eggs are discarded in the normal process of procreation some proponents of this position said that they might not oppose *in vitro* fertilization research if a technique could be perfected that would allow the investigators to extract and fertilize only one egg, or freeze for later transfer the embryos which could not be implanted immediately. Others stated that even if such a technique were perfected, it would still be unethical to fund *in vitro* fertilization research because of the immorality of interfering with the natural process of human reproduction.

Many individuals expressed concern about proceeding with embryo transfer in humans without further data concerning its safety. They believed that more should be known about the probability of producing defective embryos. They also thought it important to gain more information concerning level of risk to the women undergoing the procedures. Among opponents of federal funding on the grounds of safety were those who thought that people have a right to take risks by volunteering for research conducted in the private sector, but that it is unethical for the government to approve and support IVF and embryo transfer in humans before the risks and benefits have been more fully evaluated.

A large number of persons opposed government funding of IVF and embryo transfer because they believe it is not an important national priority. Various other needs were suggested as having greater claims upon government funds. A favorite alternative was research to develop methods of preventing and treating disorders (such as pelvic infectious diseases) that result in the tubal occlusion giving rise to demands for IVF. Others indicated that funds would be better spent in improving fertility control and in learning to prevent or treat birth defects and genetic abnormalities. Still others stressed society's responsibility toward those children already in existence who have been abused or abandoned. Programs encouraging adoption should have higher priority than IVF. There were also those who believed it

inappropriate to fund IVF when the majority, they were certain, opposed such research on deeply-felt ethical or religious grounds. The government should not spend public money for experiments so clearly in conflict with the basic commitments of many of the citizens.

Some expressed a fear that approving policies that permit researchers consciously to intend human life to die *in vitro* could lead to an inability to draw barriers to policies that allowed more obviously objectionable occasions for humans to end the life of other humans. Some proponents of this argument believed that the selective destruction of undesirable fertilized eggs might contribute to the creation of a eugenic program controlled by some officially condoned elite. There was even the fear that barriers would fall to the creation of half-animal, half-human hybrids or chimeras.

A variety of harmful consequences to the psychological and social well-being of those involved in IVF were cited as reasons for not funding such research. Fears were expressed that children born through *in vitro* fertilization would initially be subject to considerable notoriety and be unable to escape a continuing stigma. There was concern that IVF might endanger the family by reducing the human act of reproduction to an artificial or mechanical laboratory procedure. An even greater threat to the family would be the possible use of surrogate mothers and extra-marital donors of genetic material. This set of reasons for opposing government funding of IVF included the dehumanizing of scientists and doctors involved in the research who must dispose of the human embryos. Another possible consequence cited as a reason for opposing funding was the possible exploitation of uneducated, poor and minority women.

B. *Public Opinion Surveys*

Since the birth of Louise Brown on July 25, 1978, both the Gallup and Harris survey organizations have conducted polls providing the clearest indication available of United States public opinion concerning IVF. The Gallup survey included reactions of both men and women. The Harris survey, conducted August, 1978 for *Parents* magazine, polled 1,501 representatively selected American women. Both polls revealed that majority opinion favors IVF. However, most women in the Harris survey wanted IVF prohibited until further testing had established its safety, and they opposed federal funding of research on IVF.

Gallup reported that 60% of both men and women "favored" the operation. Of persons who could fully explain the procedure, 75% approved, indicating that more knowledge of IVF led to greater acceptance. Approval was even higher among the women in the Harris poll. Eighty-five percent said that the procedure should be an option for couples otherwise unable to have children.

As to whether Americans would be willing to avail themselves of the operation, the two polls reported that a majority would do so. Gallup found 53% of Americans generally would undergo the procedure. Harris reported that 58% of women of childbearing age would consider using IVF. More specifically defined groups among childbearing women produced even more favorable attitudes: 61% of younger women, age 18–39, approved of IVF, as did 66% of the women actually planning to have children.

While most women in the Harris survey approved of IVF as a legitimate option, when they were asked if they couldn't have children would they prefer adoption or IVF, more than twice as many chose adoption (57%) as IVF (21%). Furthermore, a healthy majority (63%) wanted IVF to be banned as standard medical practice until further research had determined whether the operation increased the likelihood of birth defects. (Only 24% wanted IVF available immediately.) Interestingly, although most women wanted further testing of IVF, half (50%) opposed federal funding of such research.

Public Witnesses

Atlanta, Georgia

Catherine S. Amos, O.D., Private Citizen, Birmingham, Alabama.
Mrs. Barbara Holmes, Adoption Consultant, Department of Human Resources, State of Georgia, College Park, Georgia.
Joseph P. Williams, M.D., Private Citizen, Athens, Georgia.

Bethesda, Maryland

Mr. and Mrs. Dennis R. Grills, Private Citizen, Hendersonville, Tennessee.
William F. Colliton, Jr., M.D., National Right to Life, Washington, D.C.
Ted Howard, Co-Director, People's Business Commission, Washington, D.C.
John Gorby, Right to Life and Right to Die, Committee of the American Bar Association.

Boston, Massachusetts

Tabitha Powledge, M.S., Hastings Institute of Society, Ethics, and the Life Sciences, Hastings-on-Hudson, New York.
Martha Robb, Science for the People, Cambridge, Massachusetts.
Joseph Stanton, M.D., Associate Clinical Professor of Medicine, Tufts University School of Medicine, Boston, Massachusetts.
Joyce T. Tenney, Member, Town Meeting, Framingham, Massachusetts.
Rabbi Dr. Samuel J. Fox, President, Massachusetts Council of Rabbis, Lynn, Massachusetts.
Barbara Manning, Private Citizen, Belmont, Massachusetts.
Charles Leavitt Sullivan, M.D., Private Citizen, West Newton, Massachusetts.
Reverend Paul J. Murphy, S.J., Professor of Theology (retired), Boston College, Newton, Massachusetts.
Honorable William K. Wall, Senator, 2nd Essex and Middlesex District, Boston, Massachusetts.
A. Bruce MacDonald, Ph.D., Professor and Head, Department of Microbiology, University of Massachusetts, Amherst, Massachusetts.
Joan Ghio, Private Citizen, Burlington, Massachusetts.
Tina and Peter Golden, Private Citizen, Roslindale, Massachusetts.
Anthony Sbarra, Ph.D., Director of Clinical Laboratories and Research, St. Margaret's Hospital for Women, Boston, Massachusetts.
Debra and Kevin Cantiff, Private Citizen, Belmont, Massachusetts.
William A. Lynch, M.D., Massachusetts Catholic Conference, National Federation of Catholic Physicians Guild, Milton, Massachusetts.
Jonathan King, Ph.D., Coalition for Responsible Genetic Research, Cambridge, Massachusetts.
Joseph A. Zdonczyk, Private Citizen, Wolcott, Connecticut.
Rosemary and Charles Hersey, Private Citizen, Belmont, Massachusetts.
Ruth Hubbard, Ph.D., Professor of Biology, Harvard University, Cambridge, Massachusetts.
Randolph W. Seed, M.D., Richard G. Seed, Ph.D., Reproduction and Fertility Clinic, Inc., Elgin, Illinois.

Dallas, Texas

Frank E. Ladwig, Associate Professor & Director, Social Work Program, College of Santa Fe, Dallas, Texas.
John McDonald, Private Citizen, Houston, Texas.
Ms. Ann Ford, Private Citizen, Dallas, Texas.
L.C. Powell, M.D., Professor of Obstetrics & Gynecology, University of Texas, Medical Branch, Galveston, Texas.
Ms. Brenda Marshall, Private Citizen, Dallas, Texas.
Ms. Isabel Shavers, Private Citizen, Dallas, Texas.
Mrs. Jim Welsh, R.N., Private Citizen, Dallas, Texas.
Mrs. Leon (Ann) Lesniak, Private Citizen, Dallas, Texas.
Desiree Inget, Private Citizen, Austin, Texas.
Reverend Joseph T. Leonard, S.J., Catholic Diocese of Dallas, Irving, Texas.
Dr. Michael M. Donovan, Chief Surgeon, Shriners Hospital for Crippled Children and Clinical Professor at University of

Texas Medical School at Houston, Houston, Texas.
Dr. Joseph Graham, Professor of Philosophy, University of St. Thomas, Houston, Texas.
John McDonald, Private Citizen, Houston, Texas.
Reverend Steve Shiffman, Private Citizen, Atlanta, Georgia.
Mrs. Sharon Johns, Private Citizen, Garland, Texas.
La Neil Wright, Governor's Commission on the Status of Women, Dallas, Texas.
Roy J. Heyne, Jr., M.D., Assistant Professor of Pediatrics, University of Texas—Health Science Center, Southwestern Medical School, Irving, Texas.
Lewis E. Berry, Jr., Attorney, Houston, Texas.
Reverend Ed Robinson, Biology Department, Bishop Lynch High School, Dallas, Texas.
T. I. Ballinger, M.D., Private Citizen, Fort Worth, Texas.
John Crosby, Philosophy Department, University of Dallas, Irving, Texas.
Josef Seifert, Ph.D., Associate Professor of Philosophy and Director of Graduate Philosophy Program, University of Dallas, Irving, Texas.
J. Patrick McCarty, M.D., University of Texas, Southwestern Medical School, Dallas, Texas.
L. Russell Malinak, M.D., Baylor college of Medicine, Houston, Texas.
Mr. Louis A. Shone III, Private Citizen, Dallas, Texas.

Denver, Colorado

Vicar James Cotter, Bethlehem Lutheran Church, Lakewood, Colorado.
Virgil Dechant, Supreme Knight, Knights of Columbus, Aurora, Colorado, (Testimony presented by William Small).
Caroline Reutter, M.D., Women's Medical Association.
Frank Morrise, Contributing Editor, The Wanderer, St. Paul, Minnesota.
Angeline D. Heaton, M.D., President, American Medical Women's Association, Colorado Commission on Women, Denver, Colorado.
George Betz, M.D., School of Medicine, Professor of Obstetrics & Gynecology, Denver, Colorado.
Earl F. Dodge, President, Colorado Right to Life Committee, Denver, Colorado.
Father Gerald Sullivan, Catholic Social Services, Casper, Wyoming.
Dr. Thomas C. Washburn, University of Colorado Medical Center, Denver, Colorado.
Joseph D. McInerney, Center for Education in Human and Medical Genetics, Boulder, Colorado.
Reverend Alex Lukens, Jr., Episcopal Priest and Hospital Chaplain.
Rand L. Kannenberg, Private Citizen, Colorado Springs, Colorado.
Andrew D. Keller, Private Citizen, Longmont, Colorado.
Richard P. Francis, Ph.D., Professor of Ethics, University of Colorado, Colorado Springs, Colorado.
A. D. Lodwick, Private Citizen, Denver, Colorado.
Father Nicholas Persech, Dean of Theology School at St. Thomas Seminary, Denver, Colorado.
Ruth Dolan, President, Denver Metro Chapter of Colorado Right to Life Committee, Denver, Colorado.
Barbara Zibbidee, Private Citizen, Greeley, Colorado.
Carol Lees, Private Citizen, Denver, Colorado.
Jerry Durnford, Private Citizen, Denver, Colorado.
Mary Rita Urbish, Colorado Right to Life, Denver, Colorado.
Janet Foster, Private Citizen, Denver, Colorado.

Detroit, Michigan

Diane Fagelman, Private Citizen, Pontiac, Michigan.
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David Favre, Professor of Law, Detroit College of Law, Detroit, Michigan.
Sister Betty Gaies, Office of Health Affairs, Diocese of Lansing, Lansing, Michigan.
Dr. Hans A. Schieser, Associate Professor of Education, DePaul University, Chicago, Illinois.
David Thompson, Private Citizen, Detroit, Michigan.
Judy Jones, Private Citizen, Farmington Hills, Michigan.
Frank Teskey, Regional Director, Catholics United for Faith, Royal Oak, Michigan.
Patricia Nixon, President, Educational Center for Life Values, Birmingham, Michigan.
Tom Evans, M.D., Chairman, Department of Obstretics and Gynecology, Wayne State University, Detroit, Michigan.

Kansas City, Missouri

Helen Froesman, Archdiocese of Kansas City, Kansas City, Kansas.
Mrs. Jane Clark, Private Citizen, Overland Park, Kansas.
Mr. Kevin Conley, Private Citizen, Kansas City, Kansas.
Mrs. Ginger Drybread, Private Citizen, Olathe, Kansas.
Right Reverend Jerome Hanus, Abbot, Order of St. Benedict, Conception Abbey, Conception, Missouri.
Carolyn Harris, Diocesan Council of Catholic Women, Kansas City, Missouri.
Linda J. Borman, Private Citizen, Council Bluffs, Iowa.
Mr. Norman Bettis, PRO-Family Forum, Kansas City, Missouri.
Ann O'Donnel, R.N., Missouri Citizen for Life, St. Louis, Missouri.
Reverend Alberts S. Morzczewski, O.P., Ph.D., President, Pope John XXIII, Medical-Moral Research and Education Center, St. Louis, Missouri.
Fred Bolton, Pro-Life and Life Advocates of Wyandotte County, Kansas City, Kansas.
Shirley Woods, Saint Peters Pro-Life Group, Kansas City, Kansas.
Sister Aerab Pottinger, Embryologist, St. Mary's Hospital, Kansas City, Missouri.
Mary Miller, Chairperson, Eastern Kansas, Right to Life.
Mr. Terry Richards, Private Citizen, Kansas City, Kansas.

Philadelphia, Pennsylvania

Councilman James J. Tayoun, Philadelphia, Pennsylvania.
Dr. William Mellman, Professor and Chairman, Department of Human Genetics, University of Pennsylvania, Philadelphia, Pennsylvania.
Edward Wortham, Ph.D., Assistant Professor of Biological Sciences, Old Dominion University, Norfolk, Virginia.
Brother Patrick Ellis, President, LaSalle College, Philadelphia, Pennsylvania.
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Mrs. Peter Hoffman, Private Citizen, Wallingford, Pennsylvania.
Mr. Sam A. Banks, President, Dickinson College, Carlisle, Pennsylvania.
Mrs. Patricia Provost, Private Citizen, Bryn Mawr, Pennsylvania.
Mrs. Adelaide Bracalenti, Private Citizen, Woodlyn, Pennsylvania.
Ms. Donna Draus, Private Citizen, Philadelphia, Pennsylvania.
Emanuel Heigelman, D.O., Private Citizen, Philadelphia, Pennsylvania.
Mr. Ronald Zukin, Private Citizen, Westchester, Pennsylvania.
Mrs. Ann Schecter, Private Citizen, Bala Cynwyd, Pennsylvania.
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Carl Startk, M.D., Mayor, Wytheville, Virginia.
Mrs. Eileen Meyers, Co-Chairman, Stop ERA in Pennsylvania, Cornwells Heights, Pennsylvania.
Ms. Malana Petite, Women Ad Hoc Health Commission, Philadelphia, Pennsylvania.
David E. Price, M.D., Special Assistant to Provost and Director of Research Programs, Johns Hopkins School of Medicine, Baltimore, Maryland.
Reverend James J. McCartney (on behalf of), Warren T. Reich, Ph.D., Georgetown University School of Medicine, Washington, D.C.
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Mr. Robert Korsan, Private Citizen, Philadelphia, Pennsylvania.
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Mr. Gizzi, Private Citizen, Mawhaw, New Jersey.

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Ms. Katherine Gillet, Private Citizen, Philadelphia, Pennsylvania.
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Diane Coleman, Private Citizen, San Francisco, California.
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Philip Martin, Private Citizen, San Francisco, California.
Deborah Streeter, Private Citizen, Berkeley, California.
Mr. Paul Herbert, Private Citizen, San Francisco, California.
Judy Johnson, Private Citizen, San Francisco, California.
Leonie Watson, M.D., National Doctors for Life, San Francisco, California.
Mitchell S. Golbus, M.D., University of California, San Francisco, California.
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Robert Glass, Ph. D., University of California, Berkeley, California.
Ms. Nancy Fund, Research Associate, Health Services, Research, Stanford Univrsity.
Mrs. Norge Humeniuk, Private Citizen, Mills Valley, California.
Evelyn Eaton, Ph. D., Sociology (free-lance).
Mrs. Arlene Kessler, Private Citizen, Oakland, California.
David Galvin, Private Citizen, Oakland, California.
Mr. Robert Kessler, Private Citizen, Oakland, California.
Ms. Lois Bogarot, Private Citizen, Redwood City, California.
Bruce Hilton, Ph. D., National Center for Bioethics, Berkeley, California.
Lynn Szwabinsky, Private Citizen, Concord, California.
George Maloff, M.D., Pro-Life Medical Association of California, San Francisco, California.

Seattle, Washington

Dr. Lawrence Karp, Associate Professor of Obstetrics and Gynecology, University of Washington, Seattle, Washington.
Lois Lundquist, Private Citizen, Issaquah, Washington.
Joan Ramos, Private Citizen, Seattle, Washington.
Reverend Stanley Stefancic, East Shore Unitarian Church, Bellevue, Washington.
Janice Rowe, Private Citizen, Seattle, Washington.
Robert E. McIntosh, M.D., Private Citizen, Seattle, Washington.
Margaret K. Ose, Private Citizen, Mercer Island, Washington.
Dale Beasley, Department of Science, St. Philomena School, Des Moines, Washington.
Mrs. Cynthia Bortz, Program Assistant, Department of Obstetrics & Gynecology, University Hospital, Seattle, Washington.
Connie Miller, Private Citizen, Seattle, Washington.
Lex Motti, M.D., Virginia Mason Hospital, Seattle, Washington.
Donald E. Moore, M.D., Assistant Professor and Director, Division of Reproductive Endocrinology and Infertility, University Hospital, Seattle, Washington.
Dr. Richard M. Soderstrom, Past President of the American Association of Laparoscopy, Seattle, Washington.

Individuals Who Submitted Written Testimony in lieu of Oral Presentation

Rev. Joseph C. Frisch, Ph.D., S.T.D., Philosophy Department, College of Saint Teresa, Winona, Minnesota.
Nancy J. Schmitt, Adoption Research Council, Potomac, Maryland.
Michael A. Gobeen, Private Citizen, Kalamazoo, Michigan.
Perry Stearns, M.D., Wayne County Department of Health, Eloise, Michigan.
Susan L. Heine & John D. Heine, Private Citizens, Annandale, Virginia.
Dona B. Morris, Private Citizen, Arlington, Virginia.
Rev. Charles McConnell, Salem Bible Fellowship Church, Allentown, Pennsylvania.
Connie Brewer, Private Citizen, La Mirada, California.
Amitai Etzioni, Director, Center for Policy Research, Professor of Sociology, Columbia University, New York, New York.
James H. Sammons, M.D., Executive Vice-President, American Medical Association, Chicago, Illinois.
John Hoaglund, Private Citizen, Newport News, Virginia.
Maureen E. Webb, Assistant Professor in Biological Science, Holy Name College, Oakland, California.
Walter Funk, Chairman, Department of Health, West Chester State College, West Chester, Pennsylvania.
Laurence B. McCullough, Ph.D., Assistant Professor, College of Medicine, Texas A & M University, College Station, Texas.
Dr. William R. Cunnick, President, American Social Health Association, Palo Alto, California.
Mary Stirling, Private Citizen, Mountaintop, Pennsylvania.
Paul Ramsey, Professor of Religion, Princeton University, Princeton, New Jersey.
Dolores R. Lear, Private Citizen, Kansas City, Missouri.

Chapter VI—Summary and Conclusions

It is now technically possible to fertilize a human egg outside the body of a woman and then transfer the fertilized egg (sometimes called a blastocyst or preimplantation embryo) back into the woman to establish a pregnancy. For some women, *in vitro* fertilization may be the only way to bear children of their own. It does not appear, however, that the procedure for achieving pregnancy by this means is yet very effective; the best available data indicate that a number of attempts have been necessary before a pregnancy in a particular woman can be established, if at all. In addition, many questions remain as to the safety of the procedure for the offspring. Nevertheless, there is reason to believe that clinics may soon be established, both in this country and abroad, where *in vitro* fertilization and embryo transfer will be offered as "therapy" for infertile couples.

The Board is required by HEW regulations to review research proposals involving human *in vitro* fertilization and advise the Secretary as to their "acceptability from an ethical standpoint." [1] This phrase is broad enough to include at least two interpretations: (1) "Clearly ethically right" or (2) "ethically defensible but still legitimately controverted." In finding that research involving human *in vitro* fertilization is "acceptable from an ethical standpoint" the Board is using the phrase in the second sense; the Board wishes to emphasize that it is *not* finding that the ethical considerations against such research are insubstantial. Indeed, concerns regarding the moral status of the embryo and the potential long-range consequences of this research were among the most difficult that confronted the Board.

In its deliberations on human *in vitro* fertilization, the Board confronted many ethical, scientific and legal issues. Among the more difficult were the following: (A) The moral status of the embryo; (B) the safety and efficacy [2] of the procedure; (C) the potential long-range adverse effects of such research; and (D) the appropriateness of Departmental support.

[1] 45 CFR 46.204(d).
[2] By "efficacy" the Board means not only whether the procedure can be done but also how efficient it is, e.g., the number of procedures required to achieve the desired result.

A. After much analysis and discussion regarding both scientific data and the moral status of the embryo, the Board is in agreement that the human embryo is entitled to profound respect; but this respect does not necessarily encompass the full legal and moral rights attributed to persons. In addition, the board noted the high rate of embryo loss that occurs in the natural process of reproduction. It concluded that some embryo loss associated with attempts to assist otherwise infertile couples to bear children of their own through *in vitro* fertilization be regarded as acceptable from an ethical standpoint, under certain conditions, as more fully described below.

B. The Board is concerned about still unanswered questions of safety for both mother and offspring of *in vitro* fertilization and embryo transfer; it is concerned, as well, about the physical and mental health of the children born following such a procedure and about their legal status. Many women have told the Board that in order to bear a child of their own they will submit to whatever risks are involved. The Board believes that while the Department should not interfere with such reproductive decisions, it has a legitmate interest in developing and disseminating information regarding safety and health so that fully informed choices about reproduction can be made.

C. A number of fears have been expressed with regard to adverse effects of technological intervention in the reproductive process: fears that such intervention might lead to genetic manipulation or encourage casual experimentation with human embryos, or bring with it the use of surrogate mothers, cloning, or the creation of genetic hybrids. Some have suggested that such research might also have a dehumanizing effect on investigators, the families involved, and society generally. (See Chapter III of this report.)

Although the Board recognizes that there is an opportunity for abuse in the application of this technology as other technologies, it concluded that a broad prohibition of research involving human *in vitro* fertilization is neither justified nor wise. Among the developments warned against by some who testified before the Board, a few (*e.g.*, the cloning of human beings and the creation of animal/human hybrids) are of uncertain or remote risk. Other possible developments, such as the use of surrogate mothers, may be contained by regulation or legislation. Other abuses may be avoided by the use of good judgment based upon accurate information of the type collected by the Board and now being disseminated in this report. Finally, where reproductive decisions are concerned, it is important to guard against unwarranted governmental intrusion into personal and marital privacy.

D. The question of Federal support of research involving human *in vitro* fertilization and embryo transfer was troublesome for the Board in view of the uncertain risks, the dangers of abuse and because funding the procedure is morally objectionable to many. In weighing these considerations, the Board noted that the procedures may soon be in use in the private sector and that Departmental involvement might help to resolve questions of risk and avoid abuse by encouraging well-designed research by qualified scientists. Such involvement might also help to shape the use of the procedures through regulation and by example. The Board concluded that it should not advise the Department on the level of Federal support, if any, of such research; but it concluded that Federal support, if decided upon after due consideration of all that is at issue, would be acceptable from an ethical standpoint.

Evidence presented to the Board indicates that human *in vitro* fertilization and embryo transfer techniques may, in the near future, be employed throughout the world in both research and clinical practice settings. The Board believes that data from these activities as well as related types of animal research should be collected, analyzed and, when appropriate, given wide public dissemination. Accordingly, the Board recommends in conclusion #4 below, that the Department take the primary initiative in carrying out these functions.

Having carefully weighed diverse ethical points of view and a broad base of scientific considerations regarding human *in vitro* fertilization and embryo transfer, the Board has concluded that: (1) The Department should consider support of more animal research in order to assess the risks to both mother and offspring associated with the procedures; (2) the conduct of research involving human *in vitro* fertilization designed to establish the safety and effectiveness of the procedures is ethically acceptable under certain conditions; (3) Departmental support of such research would be acceptable from an ethical standpoint, although the Board did not address the question of the level of funding, if any, which such research might be given; (4) the Department should take the initiative in collecting, analzing and disseminating data from both research and clinical practice involving *in vitro* fertilization throughout the world; and (5) model or uniform laws should be developed to define the rights and responsibilities of all parties involved in such activities.

Finally, the Board is aware of the possibility of research that involves the collection and culture of early human embryos in the laboratory which have been fetilized naturally rather than *in vitro*. The ethical aspects of such research, which appears to bear a close resemblance to research involving *in vitro* fertilization, have not been examined by the Board. Therefore it has not reached a conclusion concerning the ethical acceptability of these procedures. However, the Board intends to consider in the near future the need for setting standards for such research.

Conclusion (1).—The department should consider support of carefully designed research involving *in vitro* fertilization and embryo transfer in animals, including nonhuman primates, in order to obtain a better understanding of the process of fertilization, implantation and embryo development, to assess the risks to both mother and offspring associated with such procedures, and to improve the efficacy of the procedure.

Discussion: As indicated in Chapter III of the Board's report, available scientific data do not indicate clearly either the relative safety or the efficacy of procedures of *in vitro* fertilization and embryo transfer. Some scientists have suggested that *in vitro* fertilization may result in a higher incidence of abnormal embryos than is associated with the normal reproductive process, although there are no animal data that clearly demonstrate such an effect. Neither are there data that demonstrate an absence of increased abnormality in embryos following *in vitro* fertilization. The Board feels that additional data should be gathered that might indicate whether abnormal embryos are more likely to result and, if so, whether there is a significant increase in the risk of abnormal offspring actually being born following such procedures.

Experts appearing before the Board agreed that there has been insufficient controlled animal research designed to determine the long-range effects of *in vitro* fertilization and embryo transfer. The lack of primate work is particularly noteworthy in view of the opportunity provided by primate models for assessing subtle neurological, cognitive and developmental effects of such procedures. The Board has been advised that controlled studies of embryo

transfer following *in vitro* fertilization in animals, designed to include developmental assessments, may be feasible and may permit more confident estimates of the risk to human offspring associated with such procedures.

Information regarding the effectiveness of the procedures for *in vitro* fertilization and embryo transfer is also lacking. It does not appear possible to predict with reliability the number of laparoscopies and embryo transfers that might be required, or the likelihood of success of the procedure for any couple, given the fact that, to date, only three successes have been reported in humans, and that very limited information is available concerning this work. Such data as are available suggest that any woman hoping to bear a child through *in vitro* fertilization is likely to face numerous unsuccessful procedures and delays with no assurance of achieving her goal.

Careful research with animal models might provide a more accurate estimate of the chances of achieving a successful pregnancy. It might also reduce the inconvenience and risk to women of undergoing multiple procedures to establish a pregnancy by improving techniques for recovering ova, identifying embryonic abnormalities and achieving implantation. It is often the case in medicine that, even after therapies are already being applied to humans, investigations continue in animals in order to test further or to improve their safety and effectiveness. The Board believes that the Department should consider support of well-designed animal studies whether or not human research or clinical trials are also in progress.

Conclusion (2)—The ethics advisory board finds that it is acceptable from an ethical standpoint to undertake research involving human *in vitro* fertilization and embryo transfer provided that:

A. If the research involves human *in vitro* fertilization without embryo transfer, the following conditions are satisfied:

1. The research complies with all appropriate provisions of the regulations governing research with human subjects (45 CFR 46);

2. The Research is designed primarily: (A) To establish the safety and efficacy of embryo transfer and (B) to obtain important scientific information toward that end not reasonably attainable by other means;

3. Human gametes used in such research will be obtained exclusively from persons who have been informed of the nature and purpose of the research in which such materials will be used and have specifically consented to such use;

4. No embryos will be sustained *in vitro* beyond the stage normally associated with the completion of implantation (14 days after fertilization); and

5. All interested parties and the general public will be advised if evidence begins to show that the procedure entails risks of abnormal offspring higher than those associated with natural human reproduction.

B. In addition, if the research involves embryo transfer following human *in vitro* fertilization, embryo transfer will be attempted only with gametes obtained from lawfully married couples.

Discussion: This conclusion relates to the ethics of conducting research involving *in vitro* fertilization in general; it does not address the question of Departmental support of such research. The purpose of this more general conclusion is to provide guidance to Institutional Review Boards and other groups who are asked to review research that will not be supported by HEW.[8] Whether or not the Department decides to provide funds for such research, the Board wishes to express its views regarding the conduct of human *in vitro* fertilization and embryo transfer, so that review groups may benefit from the deliberations of the Board as they conduct their own review of specific research proposals.

As emphasized above, the Board believes that much remains to be learned about the safety and effectiveness of these procedures before they can be considered standard, accepted medical practice. Research designed to provide reliable data regarding safety and efficacy is acceptable from an ethical standpoint if conducted within the constraints indicated above. In the case of research involving embryo transfer, the Board intends not only that the gametes be obtained from lawfully married couples but also that the embryo be transferred back to the wife whose ova were used for fertilization.

The Board also discussed research designed primarily to establish safety and efficacy but which may, in addition, obtain information of scientific importance unrelated to *in vitro* fertilization and embryo transfer. The Board believes that such research, if performed as a corollary to research designed primarily to establish safety and efficacy of *in vitro* fertilization and embryo transfer, would also be acceptable from an ethical standpoint.

Conclusion (3)—The Board finds it acceptable from an ethical standpoint for the department to support or conduct research involving human *in vitro* fertilization and embryo transfer, provided that the applicable conditions set forth in conclusion (2) are met. However, the Board has decided not to address the question of the level of funding, if any, which such research might be given.

Discussion: 1. *Departmental support.* The Board consciously adopted the language "acceptable from an ethical standpoint" to indicate the limits of its inquiry. Even though the members are aware that ethical considerations pervade decisions regarding the level, if any, of Departmental support of human *in vitro* fertilization, the Board has concluded that it lacks the resources needed to render meaningful advice with respect to such decisions. The Board, therefore, defers to established political, scientific and administrative procedures for allocating public research funds.

The Board wishes to note that such decisions have significant ethical dimensions. For example, some believe that research involving human *in vitro* fertilization should have a relatively low priority at a time when other health needs, arguably more basic in character and long-term in nature, are unmet. Others find such research objectionable either on grounds related to the moral status of the embryo or because it may lead to undesirable genetic interventions or have a long-range adverse effect. (See Chapter III of this report.) Still others believe that research on human *in vitro* fertilization and embryo transfer should have a high priority because it might help parents overcome physical obstacles to having their own children and ensure the mothers' safety and the normality of offspring.

The Board has found that these and other ethical arguments for and against public funding of research involving human *in vitro* fertilization, by themselves, are not conclusive. Instead, the Board believes that the questions of whether to fund and at what level should be made in the larger context where all relevant data and arguments—scientific, political, economic, legal and ethical—can be considered. In that context questions such as health and safety, availability of funds, and alternative research

[8] Federal law requires all institutions receiving research funds from HEW to establish an Institutional Review Board (IRB) to review biomedical and behavioral research involving human subjects. (Pub. L. 93-348). The Department, in implementing that law, requires all such research conducted at an institution to be reviewed by the IRB, whether or not the research is supported by HEW.

proposals, must be considered along with the very difficult type of ethical issues described above which arise in allocation of resources.

2. *Research without embryo transfer.* As previously noted the risks of producing abnoraml offspring are still undertermined; therefore, an important goal would be to gain as much information as possible from well-designed research on *in vitro* fertilization not involving embryo transfer in humans. The Department should conduct a careful scientific evaluation of the possibility, supported by some expert testimony before the Board, that animal research and studies involving human *in vitro* fertilization without embryo transfer, over a relatively short period, might substantially increase our knowledge concerning the possible risk of abnormal offspring as well as lead to the development of safe and more effective techniques.

3. *Research involving embryo transfer.* While initial research efforts designed to gain as much information as possible form animal studies and human research not involving embryo transfer may be desirable, the Board does not wish to discourage planning and preparation that may lead to clinical trials or other forms of research involving embryo transfer. The Department's participation in, or support of, clinical trials is often an effective method to evaluate the safety and efficacy of innovative medical procedures, particularly as the use of the procedures increases.

4. *Research for other purposes.* Potentially valuable information about reproductive biology, the etiology of birth defects, and other subjects may be revealed through research involving human *in vitro* fertilization without embryo transfer, and unrelated to the safety and efficacy of procedures for overcoming infertility. The Board makes no judgment at this time regarding the ethical acceptability of such research nor does it speculate about what research might be sufficiently compelling to justify the use of human embryos. Instead, it notes that applications for support of such research should be submitted to the Board for ethical review in accordance with 45 CFR 46.204(d).

5. *Pending Research Application.* Given the criteria specified in Conclusion (2) and incorporated in Conclusion (3) for evaluating research involving human *in vitro* fertilization, and the Board's views about Departmental support of such research, the Board recommends that the Secretary refer the pending application of Vanderbilt University back to the National Institutes of Health for a determination as to whether the proposal meets those criteria and for further review in light of the considerations set forth in this report.

Conclusion (4)—The national institute of child health and human development (NICHD) and other appropriate agencies should work with professional societies, foreign governments and international organizations to collect, analyze and disseminate information derived from research (in both animals and humans) and clinical experience throughout the world involving *in vitro* fertilization and embryo transfer.

Discussion: The Board is aware that the most valuable information regarding *in vitro* fertilization and embryo transfer is likely to come from well-controlled clincial trials. But it is expected that *in vitro* fertilization and embryo transfer will soon be performed in clinics throughout the world, sometimes without benefit of research design or experimental controls. It would be unfortunate not to have access to the information that might be gained from such clinical experience, notwithstanding the fact that well-designed investigations would be preferable. With that in mind, the Board recommends that every effort be made to collect whatever information may be elicited from practitioners in this country and abroad. NICHD should also consider suggesting to practitioners a basic protocol for collecting vital information, to which each would be encouraged to add their own observations.

The data from such clinical experience and from research conducted throughout the world should be analyzed along with that derived from animal studies so that individuals contemplating *in vitro* fertilization and embryo transfer will have access to the best information available regarding risks to both mother and offspring. Timely dissemination of the information would increase the opportunity for investigators, clinicians and prospective patients to be fully informed.

Conclusion (5)—The secretary should encourage the development of a uniform or model law to clarify the legal status of children born as a result of *in vitro* fertilization and embryo transfer. To the extent that funds may be necessary to develop such legislation, the department should consider providing appropriate support.

Discussion: The Board is concerned about the ambiguity regarding the legal status of children born following artificial insemination and a similar ambiguity that may surround the legal status of children born following *in vitro* fertilization and embryo transfer. The Board is also concerned about lack of clarity regarding the legal responsibilities of those who utilize, support, or permit use of such procedures. Because of the complexity of the legal problems involved in new techniques for human reproduction, the Board recommends that a model or uniform law be drafted that would establish with clarity the rights and responsibilities of donor and recipient "parents", of offspring and of those who participate in the process of reproduction through new technologies.

The Board urges that such a uniform or model law be drafted by the National Conference of Commissioners on Uniform State Laws, the American Law Institute, or some other qualified body. Because of the complex nature of the subject matter, however, the Board is aware that the task may be a major undertaking and suggests that the Department consider providing funds for drafting the legislation. Since the purpose is to safeguard the health and welfare of children and their families, it appears to be an appropriate project for Departmental support.

[FR Doc. 79-18825 Filed 6-15-79; 8:45 am]
BILLING CODE 4110-12-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Policy Research on Work and the Aged; Solicitation

Pursuant to Title 45, Part 63 of the Code of Federal Regulations, the Assistant Secretary for Planning and Evaluation (hereafter ASPE) is seeking applications from public and private non-profit agencies, organizations, and institutions for policy-related research projects on the work and income of the elderly and other areas relating to the economics of income transfer programs for the elderly. In particular, we are most interested in projects which relate to the following areas:

1. The labor supply of the elderly.
2. The demand for the labor of the elderly.
3. Unemployment of the elderly.
4. Effects of income transfer programs for the elderly on the savings and work behavior of the non-elderly.
5. Private programs for disability and retirement, and their interaction with public programs.
6. Macro-economic effects on income transfer programs for the elderly.

7. The income distribution of the elderly.

This list is intended to be suggestive, and applications which combine several areas or depart from all of them, are acceptable as long as they relate to the general concerns of work and income of the elderly and the economics of income transfer programs for the elderly.

A. Criteria for Evaluation

Evaluation of applications will employ the following criteria:

1. The potential usefulness of the anticipated results of the proposed project for informing the development of policy relating to the general concerns discussed above.

2. Potential usefulness of the proposed project for the advancement of scientific knowledge.

3. Clarity of statement of the objectives, methods, and anticipated results of the proposed project.

4. Appropriateness and soundness of methodology, including research design statistical techniques, choice of data, and other procedures.

5. Feasibility of the project and adequacy of the proposed resources for achievement of the objectives.

6. Qualifications and experience of personnel.

7. The record of the agency, institution, or organization, or, where appropriate, the personnel proposed for the project, in successful and timeful completion of comparable projects.

B. Applicable Regulations

The applicable regulations are:

1. "Grant Programs Administered by the Office of the Assistant Secretary for Planning and Evaluation" (45 CFR Part 63), which was published in the Code of Federal Regulations on October 1, 1976.

2. "Administration of Grants" (45 CFR Part 74), which was published in the Code of Federal Regulations on August 2, 1978.

C. Effective Date and Duration

1. Grant awards pursuant to this solicitation will be made on or about September 15, 1979.

2. In order to avoid unnecessary delays in the preparation and receipt of applications, this notice is effective immediately. Applications will be accepted no later than 45 days from issuance.

D. Statement of Funds Availability

1. ASPE has available about $165,000 for the Fiscal Year ending September 30, 1979, for the award of grants pursuant to this solicitation.

2. It is expected that between three and eight grants will be made, although the proposal review panel will retain flexibility on the size and number of grants based on the proposals received. Proposals for amounts between $5,000 and $165,000 will be acceptable.

3. Applications may be submitted for projects of several years duration, but funds awarded under this solicitation will be awarded for only one year of any project. However, proposals for multi-year projects which are accepted for first year awards will be eligible for further funding on a non-competitive basis, providing funds are available in succeeding years and projects are performing acceptably. Since there can be no guarantee of continuous funding, projects should be designed to produce significant results during the first year of performance.

E. Applications Processing

1. Grant applications will be reviewed and awards made by an interagency panel of HEW staff, possibly augmented, if appropriate, by outside experts.

2. Applicants will be judged as to eligibility and, if eligible, as to priority of awards, *strictly according to the criteria for evaluation* set forth in paragraph A of this Solicitation. Priority will be given to applicants who, in the judgement of the panel, best meet these criteria. The relative weighting of the criteria are as follows:

Criterion	Weight (points)
1	15
2	15
3	5
4	25
5	10
6	25
7	5
Total	100

3. Applications judged to be below an acceptable level of any criterion will be classified as conditionally unacceptable, regardless of overall point standing.

4. Applications should be as brief and concise as is consistent with communication to the reviewers.

5. The first chapter of each proposal should be a brief (no more than five pages) overall summary description of the project. The summary description should briefly address how the proposed project would be responsive to each of the seven criteria listed in paragraph A of this Solicitation.

Applicants should make certain that the seven criteria are fully addressed in the proposal since failure to satisfy even one criterion could seriously weaken or even invalidate a proposal.

6. Nothing in this Solicitation should be construed as committing ASPE to dividing available funds among all qualified applicants.

F. Applications Sent by Mail

An application sent by mail will be considered to be received on time by the Grants Officer if the application was sent by registered or certified mail and and mailed not later than August 2, 1979 as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service.

G. Hand-Delivered Applications

An application to be hand-delivered must be taken to the Grants Officer at the address listed at the end of this Solicitation. Hand-delivered applications will be accepted daily between the hours of 9:00 a.m. and 5:30 p.m. (Washington, D.C., time), except Saturdays, Sundays, or Federal holidays. Applications will not be accepted after 5:30 on the closing date.

H. Disposition of Applications

1. *Approval, disapproval, or deferral.* On the basis of the review of an application, ASPE will either (a) approve the application in whole or in part, for such amount of funds and subject to such conditions as he deems necessary or desirable for the completion of the approved project, (b) disapprove the application, or (c) defer action on the application for such reasons as lack of funds or a need for further review.

2. *Notification of disposition.* ASPE will notify the applicants in writing of the disposition of their applications. A signed notification of grant ward will be issued to notify the applicant of an approved project application.

I. Application Instructions and Forms

Questions concerning the preceding information, coppies of application forms, and applicable regulations shall be obtained from, or submitted to: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health, Education, and welfare, Room 457F, Hubert H. Humphrey Building, 200 Independence Ave., S.W., Washington, D.C. 20201.

Dated: June 12, 1979.

Benjamin W. Heineman, Jr.,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 79-18962 Filed 6-15-79; 8:45 am]

BILLING CODE 4110-13-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

June 8, 1979.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 54.8(a) notice is hereby given that the

Tchinouk Indians, c/o Mrs. Karleen F. McKenzie, 5621 Altamont Drive, Klamath Falls, Oregon 97601.

has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs on May 16, 1979. The petition was forwarded and signed by Karleen F. McKenzie.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be by mail to the petitioner and other interested parties at the appropriate time.

Under Section 54.8(d) of the Federal regulations, interested parties may submit factual or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the Bureau of Indian Affairs' files.

The petition may be examined by appointment in the Division of Tribal Government Services, Bureau of Indian Affairs, Department of the Interior, 18th and C Streets, N.W., Washington, D.C. 20242.

Rick Lavis,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 79-18913 Filed 6-15-79; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Qualified Joint Bidders; Outer Continental Shelf; Correction

A notice was published on June 1, 1979, in the Federal Register Vol. 44, No. 107 (79-16088), beginning on page 31721. The heading of the notice was *Qualified Joint Bidders; Outer Continental Shelf (OCS).* Attention is called to column 3 on page 31722.

"Union Oil Company" should be changed to read "Union Oil Company of California."

The last word of the second line of the paragraph following the list of names, "nine," should be changed to "eleven".

Dated: June 12, 1979.

Arnold E. Petty,

Acting Associate Director, Bureau of Land Management.

[FR Doc. 79-18908 Filed 6-15-79; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Ozark National Scenic Riverways Advisory Commission; Meeting

Notice is hereby given in accordance with Pub. L. 89-483 that a meeting of the Ozark National Scenic Riverways' Advisory Commission will be held on Friday, July 13, 1979, at 10:00 a.m. (CDT) at the Riverways' Headquarters on U.S. Highway 60 in Van Buren, Missouri.

The Commission was established by Public Law 88-492 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Ozark National Scenic Riverways.

The members of the Commission are:

Dr. Oscar Hawksley, Warrensburg, Missouri (Chairman).
Mr. David Rust, Cabool, Missouri.
Mr. H. C. Daniel, Van Buren, Missouri.
Mr. Carlton E. Bay, Salem, Missouri.
Mr. William Hall, Kansas City, Missouri.
Mr. Henry F. Leupke, Jr., St. Louis, Missouri.
Mr. Edward Hodge, Eminence, Missouri.

The purpose of this meeting is to discuss with the Commission and to receive its input regarding the public involvement phase of the General Management Plan for the Riverways.

The meeting will be open to the public. Any member of the public may file with the Commission prior to the meeting a written statement concerning the matters to be discussed. Persons wishing further information concerning the meeting or who wish to submit written statements, may contact Arthur L. Sullivan, Superintendent, Ozark National Scenic Riverways, P.O. Box 490, Van Buren, Missouri 63965, telephone area code 314-323-4236. Minutes of the meeting will be available for public inspection four weeks after the meeting at Ozark National Scenic Riverways headquarters in Van Buren, Missouri.

Dated: June 7, 1979.

J. L. Dunning,

Regional Director, Midwest Region.

[FR Doc. 79-18909 Filed 6-15-79; 8:45 am]

BILLING CODE 4310-70-M

MINIMUM WAGE STUDY COMMISSION

Commission Meeting

June 13, 1979.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the cancellation of the following Commission meeting:

Name: Minimum Wage Study Commission.
Date: July 10, 1979.

Original notification of this meeting appeared in the May 30 Federal Register.

Next meeting of the Commission will be held Tuesday, August 14, 1979.

All communications regarding this Commission should be addressed to: Mr. Louis E. McConnell, Executive Director, 1430 K St. St. NW, Suite 500, Washington, D.C. 20005, (202) 376-2450.

Louis E. McConnell,

Executive Director.

[FR Doc. 79-18889 Filed 6-15-79; 8:45 am]

BILLING CODE 4510-23-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-131]

Veterans Administration Medical Center; Proposed Renewal of Amended Facility Licenses

The United States Nuclear Regulatory Commission (the Commission) is considering renewal of Amended Facility License No. R-57, issued to the Veterans Administration Medical Center (the licensee), for operation of the TRIGA type nuclear reactor located in Omaha, Nebraska.

The renewal would extend the expiration date of Amended Facility License No. R-57 to June 24, 1989, in accordance with the licensee's timely application for renewal dated May 10, 1979.

Prior to renewal of the license, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By July 18, 1979, the licensee may file a request for a hearing with respect to renewal of the subject facility operating license and any person whose interest may be affected by this proceeding and

who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary of the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the renewal action under consideration. A petitioner who fails to file such a supplement which satisfied these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. by the above date. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for renewal dated May 10, 1979, as may be supplemented by further submittals, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C.

Dated at Bethesda, Maryland this 9th day of June 1979.

For the Nuclear Regulatory Commission.

Robert W. Reid,

Chief, Operating Reactors Branch #4, Division of Operating Reactors.

[FR Doc. 79-18595 Filed 6-15-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-329, 50-330]

Consumers Power Co. (Midland Plant, Units 1 and 2); Evidentiary Hearing (Remand Proceeding)

June 12, 1979.

Please take notice that pursuant to the provisions of the Prehearing Conference Order entered in this proceeding on May 3, 1979, an evidentiary hearing will be held on July 2–27, 1979 at the U.S. Nuclear Regulatory Commission Hearing Room; located at 4350 East/West Highway, Bethesda, Maryland 20014, 5th Floor; commencing at 9 a.m., local time.

As set forth in our Prehearing Conference Order of May 3, 1979, the following issues will be the subject of the evidentiary hearing:

Issue No. 1

Whether there was an attempt by parties or attorneys to prevent full disclosure of, or to withhold relevant factual information from the Licensing Board in the suspension hearings (ALAB–458, 7 NRC 155, 172 fn. 64 177, fn. 87).

Issue No. 2

Whether there was a failure to make affirmative full disclosure on the record of the material facts relating to Dow's intentions concerning performance of its contract with Consumers.

Issue No. 3

Whether there was an attempt to present misleading testimony to the Licensing Board concerning Dow's intentions.

Issue No. 4

Whether any of the parties or attorneys attempted to mislead the Licensing Board concerning the preparation or presentation of the Temple testimony.

Issue No. 5

What sanctions, if any, should be imposed as a result of affirmative finds on any of the above issues.

It is so ordered.

For the Atomic Safety and Licensing Board.

Dated at Bethesda, Maryland this 12th day of June 1979.

Marshall E. Miller,

Chairman.

[FR Doc. 79-18625 Filed 6-15-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-321]

Georgia Power Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 66 to Facility Operating License No. DPR–57 issued to Georgia Power Company, Oglethorpe Electric Membership Corporation, Municipal Electric Association of Georgia, and City of Dalton, Georgia, which revised Technical Specifications for operation of the Edwin I. Hatch Nuclear Plant, Unit No. 1 (the facility) located in Appling County, Georgia. The amendment is effective as of its date of issuance.

This amendment revises the Technical Specifications to allow the count rate on the Source Range Monitor channels to drop below 3 counts per second when the entire core is removed or reloaded.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated May 11, 1979, (2) Amendment No. 66 to License No. DPR-57, and (3) The Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Appling County Public Library, Parker Street, Baxley, Georgia 31513. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 12th day of June 1979.

For the Nuclear Regulatory Commission.

Thomas A. Ippolito,

Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 79-18827 Filed 6-15-79; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-466 CP]

Houston Lighting & Power Co.; Supplementary Notice of Intervention Procedures

On December 28, 1973, there was published at 38 Federal Register 35521 a notice that Houston Lighting & Power Co. had filed an application with the Atomic Energy Commission for a permit to construct Allens Creek Nuclear Generating Station, Units 1 and 2 (station) at a site in southern Austin County, Tex., west of the Brazos River and about 45 miles west of the center of Houston. The notice provided that petitions for leave to intervene in the proceeding could be filed by January 24, 1974. The only petition filed was by the attorney general of the State of Texas.

A hearing was held on the application by an Atomic Safety and Licensing Board (Licensing Board) on March 11 and 12, 1975. Following that hearing the applicant notified the Licensing Board that its plans for the construction of the station were indefinitely deferred. The Licensing Board, notwithstanding, issued a partial initial decision (LBP-75-66, 2 NRC 770, 1975) in which certain findings of fact were made, and in which it was concluded at page 812 that the findings "have demonstrated no reason why the (station) site is not a suitable location for nuclear reactors of the general size and type proposed * * *". The Appeal Board's memorandum and order of December 9, 1975, ALAB-301, 2 NRC 353, in affirming the Licensing Board's partial initial decision, stated that those findings by the Licensing Board in its partial initial decision are subject to later revision should further developments or new information so warrant.

On August 19, 1977, the applicant advised the Board that it wished to resume licensing of only one of the two units previously planned and that it had amended its preliminary safety analysis report to show only one unit at the same site. The amendments also included (among others) changes in plant layout and orientation, changes in the circulating water intake and discharge structures, and a reduction in the size of the cooling lake from 8,250 to 5,120 acres. These new plans for the proposed station may raise concerns that did not exist with respect to the former ones.

This Atomic Safety and Licensing Board (Board) issued on May 31, 1978, a "Notice of Intervention Procedures".[1] As thereafter amended on September 11, 1978,[2] the notice invited the filing of new petitions to intervene but indicated that they had to be limited in scope to contentions which either (1) arose from proposed changes in plant design; or (2) were based upon evidence or information not available prior to the issuance of ALAB-301 in December, 1975.

Some thirty-three petitions for leave to intervene were filed in response to the notices of May 31 and September 11, 1978, of which three were granted by the Board; the balance were denied either because the contentions therein did not fall within the permissible scope of contentions or for other reasons.[3] On consideration of appeals from the Board's determination on these petitions, the Appeal Board reversed and remanded as to petitioners who were denied intervenor status on grounds that their contentions fell outside the permissible scope of issues.[4] The Appeal Board found that the notices of May 31, and September 11, 1978, were "too restrictive."

In denying Applicant's "Motion for Reconsideration of ALAB-535" and the "NRC Staff's Motion for Clarification of ALAB-535" the Appeal Board left unanswered the question whether a new notice of hearing was required.[5]

In a subsequent Memorandum and Order, however, the Appeal Board noted the risk inherent in proceeding under the corrected notices and instead "left [it] to the Board below and to the Applicant and Staff to determine for themselves whether, in the totality of circumstances, it is worthwhile for them to assume any risks which may inhere in continuing to proceed under the [corrected notice]."[6]

For the reasons set forth above, the Board believes that it is in the public interest to issue this supplemental notice of intervention procedures for those members of the public who may have forborne filing of petitions for leave to intervene because of the limitations on the scope of contentions found by the Appeal Board to be "too restrictive".

Accordingly, any person (other than those persons and organizations which filed petitions for leave to intervene pursuant to the above notices of May 31 and September 11, 1978), who did not file a petition pursuant to those notices because of the restrictions on permissible contentions contained therein, and who wishes to intervene as a party to this proceeding must file a written petition for leave to intervene in accordance with the provisions of 10 C.F.R. 2.714. Such person shall state that he failed to file a petition for leave to intervene pursuant to the Board's notices of May 31 and September 11, 1978, because of the restrictions on permissible contentions contained in those notices. A petition for leave to intervene shall set forth the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceedings, and any other contentions of the petitioner including the facts and reasons why he should be permitted to intervene, with particular reference to the following factors: (1)

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[1] 43 FR 23666 (May 31, 1978).
[2] 43 FR 40328 (September 11, 1978).
[3] ASLB Memorandum and Order, February 9, 1979.
[4] ALAB-535, April 4, 1979.
[5] ALAB-539, April 23, 1979.
[6] ALAB-544, May 9, 1979.

The nature of the petitioner's right under the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011–2281 (1970) to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. Any such petition must be supplemented (by the time set forth in 10 CFR § 2.714(b), as amended) by a list of the contentions, which the petitioner seeks to have litigated, with the bases for each contention set forth with reasonable specificity.

The issues in this proceeding are as set forth in the Notice of Hearing as published in the Federal Register of December 28, 1973, provided, however, absent a showing of newly discovered evidence or a material change in circumstances, the Board will not entertain issues fully considered and settled in the above mentioned hearings in this matter on March 11–12, 1975, and as to which findings were made by this Board (See LBP–75–66, 2 NRC 776 (1975), and affirmed by the Appeal Board (ALAB–301, 2 NRC 353).

A petition for leave to intervene must be filed with the Secretary of the Commission and others as specified below by July 18, 1979. A petition for leave to intervene which is filed thereafter must be justified under the factors specified in 10 CFR § 2.714(a)(1)(i)–(v).

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Any petitions shall be filed by mail or telegram addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be filed by delivery to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. Thereafter, anyone admitted as a party is required to file, pursuant to the provisions of 10 CFR § 2.708, an original and twenty (20) copies of each pleading or other document other than correspondence with the Commission, and, pursuant to 10 CFR 2.701 shall serve one copy of each such paper upon all other parties to the proceeding or upon their attorneys of record.

Papers detailing the application for a construction permit may be examined by the public at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. Copies of those same documents are also available at the Sealy Public Library, Sealy, Texas 77474.

It is so ordered.

Dated at Bethesda, Maryland this 12th day of June, 1979.

For the Atomic Safety and Licensing Board.

Sheldon J. Wolfe,

Chairman.

[FR Doc. 79-18672 Filed 6-15-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-416A and 50-417A]

Mississippi Power & Light Co. (Grand Gulf Nuclear Station); Request for Action

Notice is hereby given that by petition dated May 29, 1979, the Municipal Energy Agency of Mississippi requested that proceedings be commenced to enforce the antitrust conditions of the license for the Grand Gulf Nuclear Station. This petition is being treated as a request for action under 10 CFR 2.206 of the Commission's regulations, and accordingly, action will be taken on the petition within a reasonable time.

Copies of the petition are available for inspection in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555 and in the local public document room at the Clairbourne County Courthouse, Port Gibson, Mississippi 39150.

Dated at Bethesda, Maryland, this eleventh day of June, 1979.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 79-18828 Filed 6-15-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-220]

Niagara Mohawk Power Corp.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 32 to Facility Operating License No. DPR–63 to Niagara Mohawk Power Corporation (the licensee) which revised the Technical Specifications for operation of the Nine Mile Point Nuclear Station, Unit No. 1 (the facility) located in Oswego County, New York. The amendment is effective as of its date of issuance.

The amendment (1) extends the applicability of the safety limit on minimum reactor vessel water level by including all modes of operation and specifically including a low-low-low water level limit, (2) adds a Limiting Safety System Setting on low-low-low water level, and (3) adds a Safety Limit and Limiting Condition for Operation to require that at least two recirculation loops remain open during all modes of operation except when the reactor vessel is flooded to the level of the mainsteam line nozzle.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated May 29, 1979, (2) Amendment No. 32 to License No. DPR–63, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Oswego County Office Building, 46 E. Bridge Street, Oswego, New York 13126. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland this 11th day of June 1979.

For the Nuclear Regulatory Commission.

Thomas A. Ippolito,

Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 79-18829 Filed 6-15-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-245]

Northeast Nuclear Energy Co., et al.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 62 to Provisional Operating License No. DPR-21, issued to Northeast Nuclear Energy Company, The Hartford Electric Light Company, Western Massachusetts Electric Company, and Connecticut Light and Power Company (the licensees), which revised Technical Specifications for operation of the Millstone Nuclear Power Station, Unit No. 1 (the facility) located in Waterford, Connecticut. The amendment is effective as of its date of issuance.

This amendment authorizes revisions to Appendix A Technical Specifications to ensure compliance with the fracture toughness requirements of Appendix G to 10 CFR Part 50 during heatup and cooldown operations, system hydrostatic tests and reactor core criticality.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated June 8, 1976, and supplement thereto dated July 1, 1977, (2) Amendment No. 62 to License No. DPR-21, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut 06385. A single copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 1st day of June, 1979.

For the Nuclear Regulatory Commission.

Dennis L. Ziemann,

Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 79-18030 Filed 6-15-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

The Toledo Edison Co. and the Cleveland Electric Illuminating Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 15 to Facility Operating License No. NPF-3, issued to The Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility) located in Ottawa County, Ohio. The amendment is effective as of its date of issuance.

The amendment removes a satisfied condition of the license which required submission of operating reactor coolant system flow data.

The Commission has made appropriate findings as required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the licensee's letter dated January 16, 1979, (2) Amendment No. 15 to License No. NPF-3, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Ida Rupp Public Library, 310 Madison Street, Port Clinton, Ohio.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 5th day of June 1979.

For the Nuclear Regulatory Commission.

Robert W. Reid,

Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc. 79-18031 Filed 6-15-79; 8:45 am]

BILLING CODE 7590-01-M

Three Mile Island Inquiry; Statement of Policy

June 4, 1979.

The Nuclear Regulatory Commission has instituted a Special Inquiry to review and report on the accident which took place at the Three Mile Island Nuclear Station No. 2 beginning on March 28, 1979. The primary objective of the inquiry will be to prepare a report which makes factual determinations concerning the actual events which occurred and their causes, and the actions of utility and Commission personnel before and during the accident. The inquiry will also identify areas of deficiency revealed by the accident and areas in which further investigation is warranted.

The Commission will contract with the law firm of Rogovin, Stern and Huge, Washington, D.C., to conduct the Special Inquiry. The inquiry will be headed by a Director, Mitchell Rogovin. Mr. Rogovin will have the authority to designate a staff of his choosing, including both NRC personnel, and staff and consultants from outside the Commission. It is expected that in assembling a staff, the Director will draw substantially on senior Commission staff, including Commission personnel and consultants currently engaged in conducting an interim inquiry into the matter. The Director will possess full independence in carrying out the inquiry and will be removable only for malfeasance or neglect of duty. To further such independence the Director will maintain records of all discussions bearing on the inquiry between those conducting the inquiry and any member of the Commission or a Commissioner's personal staff. The Commission will designate a senior NRC official to whom it will delegate its statutory power to conduct investigations, issue subpoenas, and administer oaths in order that these powers will be available to further the Special Inquiry. The Commission will grant to the Director access to any and

Commission that he deems necessary to conduct a full and complete inquiry, and will provide appropriate administrative support for carrying out the inquiry. It is expected that reports issued and analyses performed by other persons and organizations will be utilized where useful. It is anticipated that the Special Inquiry will take approximately six months.

The Special Inquiry represents a major phase of the Commission's evaluation of the accident and its implications. It is not intended to duplicate the efforts of the President's Commission on the Accident at Three Mile Island. It is designed instead so that the Nuclear Regulatory Commission, in order to fulfill its own regulatory responsibilities, will have the fullest possible understanding of the events at Three Mile Island, both from the technical standpoint and from the standpoint of how its regulatory processes functioned. The purpose of that evaluation is to permit the Commission to take whatever further steps may be necessary to prevent any similar accident in the future, and to improve the NRC's ability to respond to accidents.

The specific areas which the Special Inquiry will examine include the following:

—the sequence of events during the accident, what was happening to the reactor and the plant, including, where feasible, an assessment of important alternative sequences; the response of the operating personnel; radioactive releases and exposures; events at the plant before the accident that might be related to the accident.

—the history of the NRC review of the utility's application for a license to operate Three Mile Island No. 2; NRC license conditions on TMI–2 operations, including technical specifications; the operating and inspection history at TMI–2; the operating and inspection histories of other Babcock & Wilcox plants, focused on any indications of the types of problems that arose in the TMI–2 accident; a summary of NRC past consideration of such problems; the extent to which financial or tax consideration influenced conditions in the plant in any way that might have contributed to the accident; any other precursor events or analyses relevant to the accident.

—the susceptibility of Babcock & Wilcox plants to accidents; unique features of TMI–2 that may have increased or decreased the severity of the accident; other design effects related to the TMI–2 accident.

—TMI–2 operations, including training and qualifications of personnel, operating procedures and management overview; technical support to operating personnel and management.

—emergency response to the TMI–2 accident by the utility, other utilities and utility groups, and industrial organizations, including coordination with NRC and other Federal, State, and local officials, and assessment and dissemination of information.

—emergency planning by, and emergency response plans approved by, the NRC; actual emergency response to the accident by NRC, including staff, ACRS and Commissioners, on site and at headquarters; NRC coordination with Federal, State, and local officials, the utility, industry sources, and the national laboratories; NRC assessment and dissemination of information; communications and chain of command within NRC.

The Special Inquiry will also assess the possible implications of the accident at TMI–2 (including design of the facility, operations, regulatory actions, emergency preparedness) for other nuclear power plants and identify areas where further study is recommended. Based on these assessments and recommendations, the Commission will undertake such additional investigations, analyses and actions as it considers appropriate in the discharge of its responsibilities.

The Director will keep the Commission informed on a periodic basis of the progress of the inquiry. Any information of immediate public health or safety significance will be reported promptly to the Commission. The Commission emphasizes that it will take whatever regulatory action it deems necessary at any time, based on information available to it at that time. By instituting the Special Inquiry, the Commission intends no suggestion that it will withhold regulatory action with respect to identified deficiencies until the inquiry is completed.

Dated at Washington, D.C. this 13th day of June, 1979.

For the Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 79-18698 Filed 6-15-79; 8:45 am]
BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Agency Forms Under Review

Background

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Federal Reports Act (44 USC, Chapter 35). Departments and agencies use a number of techniques including public hearings to consult with the public on significant reporting reuirements before seeking OMB approval. OMB in carrying out its responsibility under the act also considers comments on the forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

Every Monday and Thursday OMB publishes a list of the agency forms received for review since the last list was published. The list has all the entries for one agency together and grouped into new forms, revisions, or extensions. Each entry contains the following information:

The name and telephone number of the agency clearance officer;
The office of the agency issuing this form;
The title of the form;
The agency form number, if applicable;
How often the form must be filled out;
Who will be required or asked to report;
An estimate of the number of forms that will be filled out;
An estimate of the total number of hours needed to fill out the form; and
The name and telephone number of the person or office responsible for OMB review.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. In addition, most repetitive reporting requirements or forms that require one half hour or less to complete and a total of 20,000 hours or less annually will be approved ten business days after this notice is published unless specific issues are raised; such forms are identified in the list by an asterisk (*).

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. Comments and questions about the items on this list should be directed to the OMB reviewer or office listed at the end of each entry.

If you anticipate commenting on a form but find that time to prepare will

prevent you from submitting comments promptly, you should advise the reviewer of your intent as early as possible.

The timing and format of this notice have been changed to make the publication of the notice predictable and to give a clearer explanation of this process to the public. If you have comments and suggestions for further improvements to this notice, please send them to Stanley F. Morris, Deputy Associate Director for Regulatory Policy and Reports Management, Office of Management and Budget, 726 Jackson Place, Northwest, Washington, D.C. 20503

DEPARTMENT OF AGRICULTURE

(Agency Clearance Officer—Donald W. Barrowman—447-6202)

New Forms

Farmer's Home Administration
National Rural Community Facilities Assessment Study
Single time
Facility administrators 1,330 responses, 887 hours
Off. of Federal Statistical Policy & Standard 673-7974

Revisions

Farm and Rural Development Administration
REA Bulletin 20-21:320-21, Environmental Policy on occasion
REA Electric & Telephone Borrowers 770 responses 107,800 hours
Charles A. Ellett 395-5080

Science and Education Administration
1979-80 Nationwide Food Consumption Survey and Food Intake of Individuals—Low Income Sample
Single time
Low-income households in U.S. 3,200 responses 8,000 hours
Off. of Federal Statistical Policy & Standard 673-7974

Extensions

Farmer's Home Administration
Applicant's Environmental Impact Evaluation—FHA Business and Industrial Loan Program
FMHA 449-10
On occasion
Business & Industry in towns less than 50,000 300 responses 300 hours
Charles A. Ellett 395-5080

Farmer's Home Administration
Request for Contract of Guarantee (Emergency Livestock Loan)
FMHA 1980-25 on occasion
Lenders in rural areas 10,000 responses 15,000 hours
Charles A. Ellett 395-5080

Food and Nutrition Service
Receipt and Distribution of Donated Commodities
FNS-155
Monthly
State Distributing Agencies 864 responses 1,728 hours
Charles A. Ellett 395-5080

DEPARTMENT OF COMMERCE

(Agency Clearance Officer—Edward Michaels—377-4217)

Revisions

Bureau of the Census
Annual Survey of Manufactures
MA-100
Annually
Sample of manufacturing establishments 60,000 responses 211,800 hours
Off. of Federal Statistical Policy & Standard 673-7974

DEPARTMENT OF DEFENSE

(Agency Clearance Officer—John V. Wenderoth—697-1195)

Extensions

Departmental and Other Request for Report From (Employer)—(School)—(Personal Reference)
DD 370
On occasion
Employers and schools, 907,000 responses 181,400 hours
David P. Caywood, 395-6140

DEPARTMENT OF ENERGY

(Agency Clearance Officer—John Gross—252-5214)

New Forms

Certification of Requirements for Use Under Special [1] Rule No. 9
ERA-100A
Annually
Wholesale purchasers reseller, 60,000 responses, 60,000 hours
Jefferson B. Hill, 395-5867

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

(Agency Clearance Officer—Peter Gness—245-7488)

New Forms

Office of the Secretary
* Notice to Patient—Third Party Case
OS-13-79
On occasion
Beneficiaries Injured by Negligent third parties, 1,000 responses, 100 hours
Richard Eisinger, 395-3214

[1] This report for recordkeeping requirement as appropriate has already been approved for use by OMB because: Of urgent need as described by the agency to permit fuel users engaged in agricultural production and certain other activities to obtain current requirements for diesel fuel.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

(Agency Clearance Office—John T. Murphy—755-5190)

Revisions

Administration (Office of Assistant Secretary)
* Mortgagee's Certification and Application for Interest Reduction payments and substantial readiness for occupancy certification
HUD-3111 and HUD-3197
Monthly Mortgagees, 2 responses, 1 hour
Arnold Strasser, 395-5080

Housing Management
Operating Budget—HUD-Aided Mutual Help Projects
HUD-53046
On occasion
IHAS, 150 responses, 1,200 hours
Arnold Strasser, 395-5080

Extensions

Housing Management
Biennial Certification of Family Income and Commission Under the Section 236 Program
FHA 3132
Annually
Low and moderate income households, 400,000 responses, 200,000 hours
Arnold Strasser, 395-5080

DEPARTMENT OF LABOR

(Agency Clearance Officer—Philip M. Oliver—523-6341)

Revisions

Employment Standards Administration
Construction Labor Demand System
ESA-100A, B, C, and D
On occasion
Construction project owners, 370 responses, 574 hours
Arnold Strasser, 395-5080

ENVIRONMENTAL PROTECTION AGENCY

(Agency Clearance Officer—John J. Stanton—245-3084)

Extensions

Cost or Price Sumary Format for Subagreements Under U.S. EPA Grants
5700-41
On occasion
Contractors under EPA Grants, 10,000 responses 20,000 hours
Budget Review Division, 395-4775

NATIONAL SCIENCE FOUNDATION

(Agency Clearance Officer—Herman Fleming—634–4670)

Revisions

Fellowship Application and Grant Forms 289,281,306, 320,296,299, 316,179,349, 453,524,222, 310,961,920, 1060, and 220
Annually
Individual applicants reference, 7,000 responses 84,000 hours
Richard Sheppard, 395–3211

OFFICE OF PERSONNEL MANAGEMENT

(Agency Clearance Officer—John P. Weld—632–7737)

New Forms

Questionnaire for Former Federal Executives
Single Time
Federal Executives who have left Federal Service since October 1978, 300 responses, 150 hours
Marsha D. Traynham, 395–6140

Stanley E. Morris,
Deputy Associate Director for Regulatory Policy and Reports Management.

[FR Doc. 79-18911 Filed 6-15-79; 8:45 am]
BILLING CODE 3110-01-M

Agency Forms Under Review

Background

June 13, 1979.

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Federal Reports Act (44 U.S.C., Chapter 35). Departments and agencies use a number of techniques including public hearings to consult with the public or significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibility under the Act also considers comments on the forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

Every Monday and Thursday OMB publishes a list of the agency forms received for review since the last list was published. The list has all the entries for one agency together and grouped into new forms, revisions, or extensions. Each entry contains the following information:

The name and telephone number of the agency clearance officer;

The office of the agency issuing this form;

The title of the form;

The agency form number, if applicable;

How often the form must be filled out;

Who will be required or asked to report;

An estimate of the number of forms that will be filled out;

An estimate of the total number of hours needed to fill out the form; and

The name and telephone number of the person or office responsible for OMB review.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. In addition, most repetitive reporting requirements on forms that require one half-hour or less to complete and a total of 20,000 hours or less annuallly will be approved ten business days after this notice is published unless specific issues are raised; such forms are identified in the list by an asterisk (*).

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. Comments and questions about the items on this list should be directed to the OMB reviewer or office listed at the end of each entry.

If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer of your intent as early as possible.

The timing and format of this notice have been changed to make the publication of the notice predicable and to give a clearer explanation of this process to the public. If you have comments and suggestions for further improvements to this notice, please send them to Stanley E. Morris, Deputy Associate Director for Regulatory Policy and Reports Management, Office of Management and Budget, 726 Jackson Place, Northwest, Washington, D.C.20503.

DEPARTMENT OF AGRICULTURE

Agency Clearance Officer—Donald W. Barrowman—447–6282

New Forms

Economics, Statistics, and Cooperatives Service
Economic Information Needs of Farmers
Sample of Farmers, 1,800 Responses, 900 hours
Charles A. Ellett, 395–5080

Farmer's Home Administration
*Consolidated Farm and Rural Development Plan
FMHA 424–1
On occasion
Family-size farm, 1,200 responses, 600 hours
Charles A. Ellett, 395–5080

Revisions

Agricultural Stabilization and Conservation Service
*Agricultural Foreign Investment Disclosure Act—Report (AFIDA)
ASCS–153
On occasion
Foreign persons having investments in agri. land in U.S., 5,000 responses, 2,500 hours
Charles A. Ellett, 395–5080

Economics, Statistics, and Cooperatives Service
*Rice Stocks at Mills and Warehouses; Receipts at Mills
Other (see SF–83)
Rice Mills and warehouses, 1,780 responses, 403 hours
Charles A. Ellett, 395–5080

Economics, Statistics, and Cooperatives Service
*Rice Production and Farm Stocks
Other (see SF–83)
Rice farmers, 12,275 responses, 3,070 hours
Charles A. Ellett, 395–5080

DEPARTMENT OF COMMERCE

Agency Clearance Officer—Edward Michaels—377–4217

New Forms

National Oceanic and Atmospheric Administration
Multi-Species Fishery Questionnaire
Single time
Commercial fishing vessel owners on west coast, 635 responses, 254 hours
Richard Sheppard, 395–3211

Revisions

Bureau of the Census
Annual Survey of Government Employment
E–1 through E– 4, 6, 7, and 9—LR–1 through LR–3
Annually
Government agencies, 26,715 responses, 19,134 hours
Off. of Federal Statistical Policy and Standard, 673–7974

Maritime Administration
*Container/Trailer Report—Foreign Trade
MA–578A
On occasion
Shipping companies, 7,980 responses, 3,990 hours
Richard Sheppard, 395–3211

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Agency Clearance Officer—Peter Gness—245-7488

New Forms

Health Care Financing Administration (Departmental)
Survey to Identify Medicare/Medicaid Nursing Home Chains
HCFA-136T
Single time
Chain organ. prov. serv. under tit. 18 and 19 of S.S. Act, 75 responses, 19 hours
Richard Eisinger, 395-3214

Health Care Financing Administration (Medicare) Study of Medicare Beneficiaries Particpating in Kaiser Foundation Health Plan
HCFA-130, HCFA-I-130
Single time
Medicare benes. covered by Kaiser Denver Plan, 300 responses, 150 hours
Richard Eisinger, 395-3214

Health Care Financing Administration (Medicare)
Survey of Municipal Hospital Services
HCFA-127, 127C
On occasion
Clinics participating in municipal health sur. program, 75,000 responses, 37,500 hours
Richard Eisinger, 395-3214

Health Resources Administration
Survey of Baccalaureate Schools of Nursing to Determine the Effect of Clinical Experiences on Graduates Choice of Employment Setting
Single time
Schools, deans, graduates of baccalaureate nursing prog., 4,400 responses, 2,301 hours
Off. of Federal Statistical Policy and Standard, 673-7974

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Agency Clearance Officer—John T. Murphy—755-5190

New Forms

Housing Production and Mortgage Credit
Operating Subsidy Requisition for Partial Payments of PHUIP
HUD-53120
Quarterly
Public housing agencies, 240 responses, 240 hours
Arnold Strasser, 395-5080

DEPARTMENT OF JUSTICE

Agency Clearance Officer—Donald E. Larue—633-3526

New Forms

Offices, Boards, Division
Claim for Damage, Injury, or Death
SF-95
On occasion
People with grievances against the U.S. Government, 400,000 responses, 100,000 hours
Richard Sheppard, 395-3211

Extensions

Immigration and Naturalization Service
Interrogatories in Depositions of Witnesses
N-462A
On occasion
Witnesses in naturalization cases, 100,000 responses, 50,000 hours
Richard Sheppard, 395-3211

Immigration and Naturalization Service
* Request for Asylum in the U.S.
I-589
On occasion
Aliens seeking asylum in the U.S., 2,000 responses, 1,000 hours
Richard Sheppard, 395-3211

DEPARTMENT OF LABOR

Agency Clearance Officer—Philip M. Oliver—523-6341

Revisions

Bureau of Labor Statistics
Manual for Developing Local Area Unemployment Statistics
BIS 3040
Monthly
State ES agencies, 72,000 responses, 144,000 hours
Off. of Federal Statistical Policy and Standard, 673-7974

DEPARTMENT OF TRANSPORTATION

Agency Clearance Officer—Bruce H. Allen—426-1887

Revisions

Federal Aviation Administration
*Dealer's Aircraft Registration Certificate Application
AC 8050-5
On occasion
Aircraft dealers, 866 responses, 433 hours
Susan B. Geiger, 395-5867

Extensions

Federal Aviation Administration
*Application for Export Certificate of Airworthiness
FAA 8130-1
On occasion
Aviation product manufacturers and exporters, 10,000 responses, 5,000 hours
Susan B. Geiger, 395-5867

DEPARTMENT OF THE TREASURY

Agency Clearance Officer—Floyd I. Sandlin—376-0436

Revisions

Bureau of Customs
*U.S. Customs In-Transit Manifest
Customs 7533-0
On occasion
Carriers (railroad), 75,000 responses, 313 hours
Susan B. Geiger, 395-5867

SMALL BUSINESS ADMINISTRATION

Agency Clearance Officer—John Reidy—653-6001

Revisions

8(A) Eligibility and Business Plan
1010A-E
On occasion
8(A) applicants and participants, 3,500 responses, 28,000 hours
Richard Sheppard, 395-3211

Stanley E. Morris,
Deputy Associate Director for Regulatory Policy and Reports Management.

[FR Doc. 79-18845 Filed 6-15-79; 8:45 am]
BILLING CODE 3110-01-M

Office of Federal Procurement Policy

Subcontracting Under Federal Contracts

AGENCY: Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Changes to notice appearing in Federal Register on April 20, 1979.

Changes to April 20, 1979, Federal Register Notice

By its notice in the April 20, 1979, Federal Register, the Office of Federal Procurement Policy set forth changes to be made in the Federal Procurement Regulation and the Defense Acquisition Regulation in partial implementation of Section 211 of Public Law 95-507. This is to inform you of the following changes in that notice:

1. Under the heading "Subcontracting; Utilization of Small Business and Small Disadvantaged Business concerns (over $10,000)" the notice set forth a clause to be used in all contracts over $10,000 with stated exceptions. Paragraph (d) of that clause read:

Subcontractors shall provide a notarized statement to the contractor certifying their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

In order to conform with the precise language of the statute, paragraph (d) should be changed to read:

Contractors acting in good faith may rely on written representations by their subcontractors as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

2. Under the heading "Incentive Subcontracting Progam for Small Business and Small Disadvantaged Business (Negotiated)," the notice indicates that "determinations by the contracting officer under this paragraph may not be appealed under the Disputes Clause." This sentence is hereby deleted.

The prime contractor *may* appeal the contracting officer's determination of the dollars the prime contractor will receive under the terms of the incentive clause. However, he may *not* appeal the precise percentage inserted in the contract as the rate the Government agrees to pay with regard to "excess" subcontracting.

These changes are effective immediately.

James D. Currie,

Acting Administrator.

[FR Doc. 79-18918 Filed 6-15-79; 8:45]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34—15909; File No. SR-NYSE-79-27]

New York Stock Exchange, Inc.; Self Regulatory Organization; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 97-29, 16 (June 4, 1975), notice is hereby given that on June 7, 1979 the New York Stock Exchange, Inc. (the "NYSE") filed with the Securities and Exchange Commission a proposed change to Rule 107, as follows:

NYSE's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule amendment, if approved, would eliminate subparagraph .70 from Rule 107. Subparagraph .70 states:

Unless extended by a duly authorized rule of the Exchange or an amendment to this Rule approved by the Securities and Exchange Commission pursuant to Rule 19b of the Securities Exchange Act of 1934, this Rule shall expire on July 31, 1979.

No other amendment to Rule 107 is being proposed.

NYSE's Statement of the Purpose of Proposed Rule Change

The purpose of the proposed amendment is to delete the "Sunset" provision (subparagraph .70) from Rule 107 in order to make Rule 107 a permanent rule of the NYSE.

On May 1, 1978, the Exchange adopted Rule 107, thereby creating a new category of market maker known as the Registered Competitive Market Maker (RCMM). The Exchange indicated that RCMMs would be required under the Rule to engage in a course of dealings which would contribute in a positive and significant manner to the quality of the market provided on the Exchange; that RCMMs would be obligated to stand ready to compete with the registered specialist in cash and every equity security traded on the Exchange; that Floor brokers could request bids and offers from RCMMs when the market being quoted by the specialist could, in their opinion, be improved either from the standpoint of price or depth; and that Floor Officials could call on RCMMs to assist in the market making function whenever the Floor Offical, in his professional judgement, deemed it necessary.

The Exchange concluded that because the obligations and restrictions governing RCMMs required them to contribute to the market by increasing depth and liquidity and by enhancing competition within the market making function, the claim to the market maker exemption (A) of Section 11(a)(1) was justified.

In approving Rule 107 on a temporary basis, the Commission stated that it had no information which indicate that, in practice, the proposed obligations would assure a bona fide market making function; and that it's approval of the rule was based solely on its containing adequate safeguards.

It added that the Exchange would have to justify any proposal to adopt Rule 107 on a permanent basis with specific data and statistics demonstrating that RCMMs have acted in a manner which qualifies them as market makers.[1]

Section 3(a)(38) of the Securities Exchange Act of 1934 defines a market maker as, among other things,

. . . any dealer who, with respect to a security holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy an sell such security for his own account on regular or continuous basis.

In its approval order, the Commission discussed, at length, the relationship of the four elements of the market maker definition to the Exchange's proposed Rule 107.

The first element relates to the market making relationship between the dealer and a particular security.[2] The Commission noted that under Rule 107, the RCMM's obligation would extend to each NYSE listed stock. In order to learn the number of stocks which were subject to transactions by RCMMs, we conducted a spot check review. Included in this review were all the stocks subject to "calls" from May 1, 1978 to May 15, 1979. In addition, we calculated the number of different stocks in which RCMMs traded from May 1, 1978 to June 2, 1978 plus one week periods from July 1978 through April 1979. Based on this review, RCMMs traded in 664 different stocks.

The second element requires a dealer to "hold himself out (by entering quotations in an inter-dealer communications system or otherwise)". The Commission noted that this "would not seem to require more than an explicit agreement to take certain actions upon request, *e.g.*, to provide quotations, provided that agreement is comunicated to other persons." [3] It deemed this element to be satisfied for the temporary period by the Rule 107 "on call" requirement (i.e., RCMMs are subject to call by Floor brokers holding unexecuted customers' orders or by Floor Officials) and "competitive bid/offer" requirement (unless trading under a Rule 107 exemptive provision, an RCMM's bid or offer must "better" the market, either by narrowing the existing spread in the quotation or by adding depth).[4]

Exchange statistics show that between May 1, 1978, and April 27, 1979 RCMMs effected 87,801 trades totalling 53,541,642 shares. Of these trades, 88.58 were effected pursuant to bids or offers that "bettered" the market (28.6% in price and 59.9% in size). In response to calls by Floor brokers holding unexecuted customers' orders or by Floor Officials, RCMMs effected 811 transactions in 257 different stocks during the period.

The "holding out" standard was clearly demonstrated, for example, during the week of October 30-November 3, 1978, when the Dow Jones Industrial average fluctuated sharply (i.e. +6.15, −10.83, +35.34, −19.40 and

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[1] Securities and Exchange Commission Release No. 14716/May 1, 1978 ("The Release") p. 12.

[2] The Commission explained that the market in a particular security in which the market maker was dealing would theoretically benefit by his participation because of the addition of greater depth, liquidity and continuity (See P. 8 of the Release).

[3] The Release p. 9.

[4] Ibid p. 10.

+5.80). During this period, RCMMs were called in to participate in difficult market situations by Floor brokers holding unexecuted customers' orders or by Floor Officials a total of 200 times.

A third element of the market maker definition requires the market maker to be willing to buy and sell the security in which he has assumed a market making role. The Commission noted that there was no explicit reference to what quantity or price must be provided; and that the RCMM's obligation to bid or offer for one round lot at a price equal to or better than the current bid or offer was sufficient for purposes of an initial experiment.[5]

Exchange statistics for the period May 1, 1978 to April 27, 1979 show that RCMMs' participation has greatly exceeded the minimal size requirement. The average size of an RCMM trade was 610 shares. The average size of a trade effected pursuant to a call was 1,005 shares. Only 2.5% of all RCMM trades effected pursuant to calls were for 100 shares.

The fourth and last element requires a market maker to be willing to buy and sell "on a regular or continuous basis." The Commission noted that this element "provides an indication of the frequency a market maker should be willing to perform in that capacity" and that "a regular market, while something less than 'continuous', should be characterized by a *bona fide* effort to provide bids or offers in a reliable manner, which could include upon request or at periodic intervals of time."[6]

Exchange statistics show that in the aggregate, RCMMs effected an average 1,886 trades per week, with an average weekly volume of 1,138,000 shares. During the week of October 30–November 3, 1978, they effected 3,342 trades with aggregate volume of 2,216,800 shares.

The availability of RCMMs to the market is illustrated by their responding to Floor Official and Floor broker calls over 800 times. In addition, the Exchange has taken steps to make RCMMs more aware of stocks that might benefit by their participation by installing blue flashing lights at all the trading posts and by maintaining a list, posted at the Information Desk, of stocks where the opening or reopening has been delayed.

As an additional means of ensuring that RCMMs' market making activities meet high standards of performance, the Exchange's Market Performance Committee has established an RCMM Subcommittee which reviews RCMM activity and makes appropriate recommendations on ways in which their performance might be improved.

Subparagraph .20 of Rule 107, permits an RCMM to liquidate at a loss anytime without regard to "tick"; and subparagraph .10 (ii) permits an RCMM to "reach across" the market and trade on "zero plus" or "zero minus" ticks, with the trend of the market, when the spread in the quotation is only the minimum variation.

The Commission determined, when it approved Rule 107, that the exemptive provisions permitting such trades were, on balance, designed to facilitate the ability of RCMMs to engage in market making activities which could contribute to the maintenance of fair and orderly markets; and that such trades pose little threat of disrupting the market or being used for manipulative purposes.[7] It noted, however, that it would be quite concerned, if, as the NYSE gained experience, it became apparent that RCMMs were utilizing the exemptive provisions for a substantial percentage of their trading activity rather than trading in a manner calculated to improve the market.[8]

Experience during the period between May 1, 1978 and April 27, 1979 demonstrates that RCMM trades utilizing the exemptive provisions are minimal. Of the 11.5 percent of all RCMM trades which were not effected pursuant to bids or offers that "bettered" the market, 9.7 percent were trades in which the RCMM "reached across" the market (i.e. traded with the existing bid or offer). The remaining 1.8 percent include trades in which the RCMM participated at the opening, in block clean-ups, arbitrage, and to offset errors.

The Commission expressed one additional concern in approving Rule 107. While it noted that the implementation of recordkeeping procedures designed to monitor the performance of RCMMs constituted a necessary first step in determining whether they are complying with their obligations, the Commission expressed concern about the accuracy and reliability of the information the NYSE obtained from RCMMs.[9]

The performance of RCMMs has been monitored by the Exchange, to insure compliance with Section 3(a)(38) of the Act and NYSE Rule 107, from May 1, 1978 to the present, by requiring that each RCMM report all transactions effected in their role as a market maker. These trades have been reviewed against the information reported in our Transaction Journal (which shows the time, price and size of each transaction and quote in every NYSE listed stock) for compliance with the aforementioned provisions and to determine the extent to which RCMMs' bettered the existing markets at the time of their order execution.

The reliability and accuracy of the information reported has been checked by comparing it with other trade data submitted by RCMMs; and by Exchange examiners in their spot check reviews of RCMM trading records. During these reviews, examiners are able to verify the times and prices of RCMM trades by checking with the contra broker to a trade, and by using the clearance and settlement sheets to reconstruct the market in particular stocks.

In conclusion, the NYSE believes that RCMMs have met each of the four elements of the market maker definition cited by the Commission; and that RCMMs have made a positive contribution to the market. They have provided the NYSE with additional liquidity at times and in situations where it was needed by responding to calls by making bids and offers of considerable size (an average of 1,000 shares per call); they have significantly added to the depth and continuity of Exchange markets by making competitive bids and offers (nearly 90 percent of their trades were effected on bids or offers that improved the market); and RCMMs have only made minimal use of the exemptive provisions of the Rule. The NYSE believes that these statistics clearly demonstrate that RCMMs act as market makers on the Exchange in accordance with Section 3(a)(38) of the Act and that Rule 107 should be approved by the Commission as a permanent rule of the Exchange. By not taking such action, the Exchange market would be deprived of the benefits described above.

NYSE's Statement of the Basis Under the Act for Proposed Rule Change

The adoption of Rule 107 on a permanent basis relates to Section 6(b)(5) of the Securities Exchange Act of 1934 in that it will: (i) aid in the protection of investors and the public interest by providing a mechanism that can aid in reducing volatile price fluctuations; and (ii) act to reduce unfair

[5] The Release, pp. 10 and 11.
[6] Ibid. p. 11.
[7] Id. pp. 12 and 13.
[8] Id. p. 14.
[9] The Release, p. 14.

discrimination between brokers and dealers, and as such, act to reduce unfair discrimination between customers by permitting Exchange members to effect proprietary transactions on the Exchange of a type that other broker-dealers are free to effect in the over-the-counter market.

Comments Received from Members, Participants, or others on Proposed Rule Change

The Exchange has not solicited comments regarding the proposed amendment and has received none.

Burden on Competition

The Exchange does not believe that Rule 107 imposes any burden on competition. In fact, the Exchange believes it has furthered competition between brokers and dealers.

On or before July 23, 1979, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of such filings will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before July 9, 1979.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

Shirely E. Hollis,

Assistant Secretary.

June 11, 1979.

[FR Doc. 79-18902 Filed 6-15-79; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Proposed License No. 02/02-0370]

AMEV Capital Corp.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to Section 107.102 of the Regulations governing small business investment companies (13 C.F.R. 107.102 (1978)), under the name of AMEV Capital Corporation (Applicant), for a license to operate as a Small Business Investment Company under the provisions of the Small Business Investment Act of 1958, as amended, and the Rules and Regulations promulgated thereunder.

The Applicant was incorporated under the laws of the State of Delaware and it will commence operations with a capitalization of $2,500,000, which amount is to be raised through the sale of 100 percent of the Applicant's issued and outstanding shares of common stock to AMEV Holdings, Inc., which is wholly owned by N. V. AMEV, Utrecht, the Netherlands. N. V. AMEV (NVA), is an insurance and financial services company with assets of approximately $4 billion (U.S.). Its capital stock consists of 200,005,000 Dutch guilders, divided into five priority shares of 1,000 Dutch guilders. The priority shares are wholly owned and registered in the name of Stichting Belang AMEV, a Netherlands foundation managed by persons who together comprise NVA's Board of Management and Supervisory Board.

It is effectively controlled by its Board of Management consisting of the following five individuals:

Carel Constantijin Nengerman
P. J. van der Does de Willebois
* F. A. J. Smith
* J. B. J. Bollerman
* F. Roos

Mr. Nengerman and Mr. van der Does de Willebois are respectively chairman and director of the Applicant.

* N. V. AMEV, Postbus 2072, Archimedeslaan 10, Utrecht, Netherlands.

The Applicant will have its place of business at 5 World Trade Center, Suite 6281, New York, New York 10048, and it intends to conduct operations primarily in the State of New York and the Eastern and Southwestern Regions of the United States.

The Officers and Directors of the Applicant will be:

Name, Title, and Percent

AMEV Holdings Inc., sole stockholder, 5 World Trade Center, New York, New York 10048, 100 percent.
Allen R. Freedman, president, treasurer, and director, 36 Plymouth Road, Summit, New Jersey 07901.
Mary R. Broderick, secretary, 18 Clifford Avenue, Pelam, New York 10803.
Carel Constantijin Nengerman, chairman, Arnheuse Boveniveg 207, Driebergen—Rijsenburg, The Netherlands.
Pieter Joseph Fraus Maria, director, Theodoor Van Der Does de Willebois, Wilhemina Park 63, Utrecht, The Netherlands.
Joseph M. Wilker, director, 12320 Devan Drive, Silver Spring, Maryland 20904.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the Applicant under their management, including adequate profitability and financial soundness in accordance with the Act and SBA Regulations.

Notice is hereby given that any person may not later than July 3, 1979, submit written comments on the Applicant to the Deputy Associate Administrator for Finance and Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of the Notice shall be published by the Applicant in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 12, 1979

Peter F. McNeish,

Deputy Associate Administrator for Finance and Investment.

[FR Doc. 79-18903 Filed 6-15-79; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09/0226]

West Coast Venture Capital; Filing of Application for Approval of Conflict of Interest Transaction Between Associates; Notice

Notice is hereby given that West Coast Venture Capital (West Coast) 10375 Bandley Drive, Cupertino, California 95014, a Federal Licensee under the Small Business Investment Act of 1958, as amended, has filed an application pursuant to Section 107.1004 of the regulations governing small business investment companies (13 CFR 107.1004 (1979)), for approval of a conflict of interest transaction.

West Coast desires to purchase 250,000 shares of Preferred Stock of Onyx Systems, Inc. (Onyx), 10375

Bandley Drive, Cupertino, California 95014, and International Memories Inc. (IMI), an Associate of West Coast will purchase 67,600 shares. West Coast's investment will be made on the same basis as IMI. Following the proposed investment, West Coast and IMI will own approximately 66 percent of Onyx's equity. This percentage will be reduced to less than 50 percent in accordance with the Small Business Administration's Rules and Regulations, and a plan to that effect will be filed within 90 days following the closing of such financing.

Prior to May 1, 1979, Mr. Gary W. Kalbach, President and General Manager of West Coast Venture Capital, Inc. (General Partner of West Coast), was Chairman of the Board of Onyx. Mr. Douglas Broyles, a 2.9 percent limited partner of West Coast and the owner of 28 percent of the Common Stock of Onyx was a member of the Board of Directors of Onyx. Mr. Dennis C. Sullivan, Counsel for West Coast was Secretary of Onyx. On May 1, 1979, Messrs. Kalbach and Broyles resigned as members of the Board of Directors of Onyx, and Mr. Sullivan resigned as Secretary of Onyx. As a result of the proposed financing, Mr. Broyles ownership of Onyx will be reduced to approximately 9 percent of Onyx's total equity. Pursuant to Section 107.3 subparagraph (g) of the Regulations, for the purpose of definition of an Associate, Messrs. Kalbach, Broyles and Sullivan within six months before or after the date on which West Coast provided assistance to Onyx, shall be deemed to have been in such relationship as of the date of West Coast's assistance, West Coast's financing of Onyx falls within the purview of Section 107.1004(b)(1) of the Regulations, and requires written approval of SBA.

Notice is further given that any person may, not later than July 3, 1979 submit written comments to SBA on the transaction. Any such comments should be addressed to: Deputy Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

(Catalog of Federal Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: June 12, 1979.

Peter F. McNeish,

Deputy Associate Administrator for Finance and Investment.

[FR Doc. 79-18844 Filed 6-15-79; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 141—FM Broadcast Interference Related to Airborne ILS, VOR and VHF Communications Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Special Committee 141 on FM Broadcast Interference Related to Airborne ILS, VOR and VHF Communications Equipment to be held July 10 and 11, 1979, in RTCA Conference Room 261, 1717 H Street, NW., Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Review Committee Terms of Reference; (3) Outline Work Program and Schedule for Accomplishment; (4) Identification and Assignment of Task; and (5) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements or obtain information should contact the RTCA Secretariat, 1717 H Street, NW., Washington, D.C. 20006; (202) 296-0484. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on June 11, 1979.

Karl F. Bierach,

Designated Officer.

[FR Doc. 79-18843 Filed 6-15-79; 8:45 am]

BILLING CODE 4910-13-M

Closure of District Office and Establishment of Field Office

Notice is hereby given that on or about July 1, 1979, the Airports District Office (ADO) at 5885 W. Imperial Highway, Los Angeles, California, will close and the personnel reassigned to the Airports Field Office being established in the Federal Building, 15000 Aviation Boulevard, Hawthorne, California. Normal services to airports within the Airports Field Office's jurisdiction will continue unchanged. This information will be reflected in the FAA Organization Statement the next time it is reissued.

(Sec. 313(a), of the Federal Aviation Act of 1958, as amended, 49 U.S.C. 1354(a).

Issued in Los Angeles, California on May 25, 1979.

Leon C. Daugherty,

Director, Western Region.

[FR Doc. 79-18838 Filed 6-15-79; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

National Highway Safety Advisory Committee; Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of a planning group of the National Highway Safety Advisory Committee to be held July 26 and 27, 1979 at the Holiday Inn—Rivermont, 200 West Georgia Avenue, Memphis, Tennessee.

The planning group will meet on July 26 from 1:00 p.m. to 5:00 p.m. and on July 27 from 8:00 a.m. to 3:00 p.m. to plan future meeting schedules and agendas for the Advisory Committee for the next year.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Any member of the public may present a written statement to the Committee at any time.

This meeting is subject to the approval of appropriate DOT officials.

Additional information may be obtained from the NHTSA Executive Secretary, Room 5221, 400 Seventh Street, S.W., Washington, D.C. 20590, telephone 202-426-2872.

Issued in Washington, D.C. on: June 12, 1979.

Wm. H. Marsh,

Executive Secretary.

[FR Doc. 79-18864 Filed 6-15-79; 8:45 am]

BILLING CODE 4910-59-M

UNITED STATES RAILWAY ASSOCIATION

[Docket No. STP-11]

Procedural Conference

The Regional Rail Reorganization Act of 1973 ("Rail Act"), Section 305, authorizes the Secretary of Transportation to propose transactions supplemental to the Final System Plan which the United States Railway Association ("Association") certified to the Special United States District Court in March, 1976. Section 305 requires the Association to analyze any such proposal, taking into account the

comments of interested persons and statements and exhibits submitted at any public hearings which may have been held, and determine whether the proposal is (1) in the public interest and consistent with the purpose of the Rail Act and the goals of the Final System Plan, and (2) fair and equitable. If the Association makes such a determination, and the transaction is accepted by the proposed transferee, it is reviewed by the ICC. The Association must then petition the Special Court to order the transaction. In any event, the Association must publish a report of its analysis in the Federal Register within 130 days of receipt of the proposal.

On April 11, 1979, the Association received a Supplemental Transaction Proposal ("STP") from the Administrator of the Federal Railroad Administration ("Administrator"). The Administrator proposes that Conrail transfer certain rail properties in eastern Connecticut to the Providence and Worcester Co. ("P&W"), and that Conrail also relinquish to P&W its exclusive freight train trackage rights over a section of track owned by Amtrak which connects with that line. Conrail and the P&W have been negotiating the purchase of the line for two years, without being able to agree on a purchase price. The Secretary of Transportation subsequently directed the Federal Railroad Administration ("FRA") to develop the STP.

On April 20, 1979, the Association published a summary of the STP in the Federal Register (44 FR 23624) and requested comments from all interested parties. Letters requesting comments were also sent to Conrail, the P&W, affected State and local governments, shippers, all rail labor organizations, and other interested parties. To date, responses have been received from Conrail, the P&W, the State of Connecticut, the Worcester (Conn.) Area Chamber of Commerce, the Worcester Business Development Corporation, the Town of Ledyard (Conn.), and the Department of the Army. The State of Connecticut, the Worcester Chamber of Commerce and the Worcester Business Development Corporation favor the proposal, while the Town of Ledyard and the Department of the Army apparently have no preference as to who owns the line in question.

The P&W has requested that the Association hold full evidentiary hearings on the transaction, allowing their attorneys to present evidence and cross-examine Conrail witnesses; Conrail suggests that such hearings are not necessary. Before deciding what further proceedings will be conducted to develop the record the Association may require, the Association will hold a procedural conference at its offices at 955 L'Enfant Plaza North, S.W., Washington, D.C., in Room 2-500, at 10 a.m., on Monday, June 25, 1979. At the conference the Association proposes to discuss with the interested parties whether there are issues requiring that the present record be supplemented, whether hearings would be useful, and, in general, how best to proceed. The conference will be presided over by Douglas L. Siegel, Esq., appointed by the President of the Association, for that purpose. Representatives of the P&W and Conrail are requested to attend, as well as a representative of the Administrator as developer of the STP. All other persons having an interest in this matter are invited to attend the procedural conference. Those planning to attend should notify the following not later than June 22, 1979:

John G. Arlington, Special Assistant to the General Counsel, United States Railway Association, 955 L'Enfant Plaza North, S.W., Washington, D.C. 20595, Telephone (202) 755-4062.

Dated: June 13, 1979.

Peter J. Gallagher,

Secretary.

[FR Doc. 79-18818 Filed 6-15-79; 8:45 am]

BILLING CODE 4310-01-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

Fair Housing Lending Enforcement; Public Meeting

AGENCY: Comptroller of the Currency.

ACTION: Notice of Public Meeting.

Settlement of *National Urban League, et al.*, v. *Office of the Comptroller of the Currency, et al.*, (Civil Action No. 76-0718) provides that a semi-annual meeting will be held to review the fair housing lending enforcement program of the Office of the Comptroller of the Currency. Members of the public are invited to attend this meeting.

DATE: June 26, 1979, 2:00 p.m.

ADDRESS: 490 L'Enfant Plaza, S.W., Washington, DC 20219. Individuals who plan to attend this meeting should report to the 6th floor reception desk prior to 2:00 p.m.

FOR FURTHER INFORMATION CONTACT: Zina G. Greene, Special Assistant for Civil Rights, Office of the Comptroller of the Currency, Washington, DC 20219, phone 202/447-0934.

SUPPLEMENTARY INFORMATION: Settlement of *National Urban League, et al.* v. *Office of the Comptroller of the Currency, et al.*, (Civil Action No. 76-0718) provides that a semi-annual meeting will be held to review the fair housing lending enforcement program of the Office of the Comptroller of the Currency. Representatives of the Comptroller of the Currency will discuss their fair housing program and any changes made or proposed therein and will receive and consider suggestions from the National Urban League.

Members of the public are invited to attend this meeting and will be given an opportunity to make comments and suggestions with respect to the enforcement program of the Comptroller of the Currency.

Dated: June 12, 1979.

Zina G. Greene,

Special Assistant for Civil Rights.

[FR Doc. 79-18807 Filed 6-15-79; 8:45 am]

BILLING CODE 4810-33-M

Southern National Bank, Birmingham, Ala.; Suspension of Trading

On my opinion that the public interest and the protection of investors so require, trading in the common stock of Southern National Bank, Birmingham, Alabama, is hereby suspended pursuant to sections 12(i) and 12(k) of the Securities Exchange Act of 1934 for a ten-day period, commencing at 9:00 a.m., EDT on June 13, 1979.

Dated: June 13, 1979.

John G. Heimann,

Comptroller of the Currency.

[FR Doc. 79-18808 Filed 6-15-79; 8:45 am]

BILLING CODE 4810-33-M

Customs Service

Viscose Rayon Staple Fiber From Austria; Receipt of Countervailing Duty Petition and Initiation of Investigation

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Initiation of Investigation.

SUMMARY: This notice is to advise the public that a satisfactory petition has been received and as a result an investigation is being initiated for the purpose of determining whether or not benefits which constitute a bounty or grant within the meaning of the countervailing duty law are granted by the Government of Austria to manufacturers or exporters of viscoserayon staple fiber. A preliminary determination will be made no later

than November 7, 1979, and a final determination no later than May 7, 1980.

EFFECTIVE DATE: June 18, 1979.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5492).

SUPPLEMENTARY INFORMATION: A petition was received in proper form on May 7, 1979, alleging that payments or bestowals, conferred by the Government of Austria upon the manufacture, production, or exportation of viscose rayon staple fiber from Austria constitute the payment or bestowal of a bounty or grant within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303) ("the Act"). Imports covered by this investigation are classifiable under item numbers 309.4320 and 309.4325, Tariff Schedules of the United States, Annotated (TSUSA).

The petition alleges that the manufacturer of this product received preferential tax treatment based on the establishment of an export sales reserve, loans at rates lower than those otherwise commercially available, and preferential freight rates. As to a determination of whether low freight rates constitute a bounty or grant, it has been Treasury policy to consider whether this lower rate charged for export exceeds any cost differentials involved and/or whether such rates are below the cost of providing the service.

Pursuant to section 303(a)(4) of the Act (19 U.S.C. 1303(a)(4)), the Secretary of the Treasury is required to issue a preliminary determination as to whether or not any bounty or grant is being paid or bestowed within the meaning of the statute within 6 months of the receipt, in satisfactory form, of a petition alleging the payment of a bounty or grant, and a final decision within 12 months of the receipt of such a petition.

Therefore, a preliminary determination on this petition will be made no later than November 7, 1979, as to whether or not alleged payments or bestowals conferred by the Government of Austria upon the manufacture, production, or exportation of the above described merchandise constitute a bounty or grant within the meaning of section 303 of the Act. A final determination will be issued no later than May 7, 1980.

An investigation under the Antidumping Act, 1921, as amended (19 U.S.C. 160 *et seq.*) involving the same product has recently resulted in a notice of "Final Discontinuance of Antidumping Investigation", which was published in the Federal Register of December 11, 1978 (43 FR 57999).

This notice is published pursuant to section 303(a)(3) of the Act, as amended (19 U.S.C. 1303(a)(3)).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order No. 101-5, May 16, 1979, the provisions of Treasury Department Order 165, Revised, November 2, 1954, and § 159.47(c) of the Customs regulations (19 CFR 159.47(c)), insofar as they pertain to the initiation of a countervailing duty investigation by the Commissioner of Customs, are hereby waived.

Robert H. Mundheim,

General Counsel of the Treasury.

June 8, 1979.

[FR Doc. 79-18910 Filed 6-15-79; 8:45 am]

BILLING CODE 4810-22-M

Fiscal Service

[Dept. Circ. 570, 1978 Rev., Supp. No. 16]

Surety Companies Acceptable on Federal Bonds: Termination of Authority

Notice is hereby given that the certificate of authority issued by the Treasury to American Reserve Insurance Company, Providence, Rhode Island, under Sections 6 to 13 of Title 6 of the United States Code, to qualify as an acceptable surety on Federal bonds, is hereby terminated effective May 21, 1979. The company was last listed as an acceptable surety on Federal bonds at 43 FR 28693, June 30, 1978.

With respect to any bonds currently in force with American Reserve Insurance Company, bond-approving officers of the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. Information concerning asserting claims against the company will be published by the Treasury Department when it becomes available.

Questions concerning this notice may be directed to the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226. Telephone 202-634-5978.

D. A. Paglial,

Commissioner, Bureau of Government Financial Operations.

Dated: June 8, 1979.

[FR Doc. 79-18877 Filed 6-15-79; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Cir. 570, 1978 Rev., Supp. No. 15]

Surety Companies Acceptable on Federal Bonds: Termination of Authority

On March 31, 1979, Gulf American Fire and Casualty Company, an Alabama corporation, merged into American States Insurance Company. The companies were last listed as acceptable sureties on Federal bonds at 43 FR 28697, 28694, respectively, June 30, 1978.

Confirmation of this action has been received and filed with the Treasury. Accordingly, the certificate of authority issued to Gulf American Fire and Casualty Company, is hereby terminated as of March 31, 1979, the effective date of the merger. The surviving corporation, American States Insurance Company, an Indiana corporation, has acquired the assets and assumed the liabilities of the merged corporation. American States Insurance Company retains its certificate of authority.

Federal bond-approving officers need take no action with respect to bonds accepted prior or subsequent to the merger. They may, however, annotate their reference copies of Treasury Circular 570, 1978 Revision at page 28697 to reflect the change.

Dated: June 8, 1979.

D. A. Paglial,

Commissioner, Bureau of Government Financial Operations.

[FR Doc. 79-18878 Filed 6-15-79; 8:45 am]

BILLING CODE 4810-35-M

Internal Revenue Service

[Delegation Order No. 156, Amdt. 9]

Delegation of Authority To Disclose Mailing Addresses

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: This Amendment authorizes certain officials of the Internal Revenue Service to disclose mailing addresses to the Commissioner of Education. The text of the delegation order appears below. This document does not meet the criteria for significant regulations set forth in paragraph 8 of the proposed

Treasury directive appearing in the Federal Register for Wednesday, May 24, 1978 (43 FR 22319).

EFFECTIVE DATE: June 13, 1979.

FOR FURTHER INFORMATION CONTACT: Howard T. Martin, TX:D, 1111 Constitution Ave., N.W., Room 1603, Washington, D.C. 20224, Telephone number 202–566–3908. (Not a Toll-Free telephone number.)

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the Federal Register for Wednesday, November 8, 1978.

Howard T. Martin,

Director, Disclosure Operations Division.

Subject: Disclosure of Mailing Address to Commissioner of Education Under IRC 6103(m)(4).

Date of Issue: June 13, 1979.

Effective Date: June 13, 1979.

Pursuant to the authority vested in the Commissioner of Internal Revenue by Treasury Department Order No. 150–37, dated March 17, 1955, authority is hereby delegated as follows:

The Deputy Commissioner; Assistant Commissioner (Taxpayer Service and Returns Processing); Deputy Assistant Commissioner (Taxpayer Service and Returns Processing); Director, Disclosure Operations Division; and, upon approval of a contractual agreement by the Director, Disclosure Operations Division or his/her delegate, the Assistant Commissioner (Data Services); Executive Assistant to the Assistant Commissioner (Data Services); Director; Service and Design Division; Director, National Computer Center; and Service Center Directors are authorized to disclose, or in specific instances, authorize the disclosure of the mailing address of any taxpayer who has defaulted on a loan made from the student loan fund established under part E of title IV of the Higher Education Act of 1965 to the Commissioner of Education, upon written request and subject to the conditions prescribed in IRC 6103(m)(4).

The authority delegated to the Deputy Commissioner, Assistant Commissioner (Taxpayer Service and Returns Processing), Deputy Assistant Commissioner (Taxpayer Service and Returns Processing); and Director, Disclosure Operations Division, may be redelegated only to the Assistant Director, Disclosure Operations Division; and Branch Chiefs and Section Chiefs, Disclosure Operations Division. The authority delegated to the Assistant Commissioner (Data Services); Executive Assistant to the Assistant Commissioner (Data Services); Director, Service and Design Division; Director, National Computer Center; and Service Center Directors may not be redelegated. The authority delegated in this order does not include authority to enter into a contractual agreement, which is contained in Delegation Order No. 100, as revised.

This Amendment Supplements paragraph 9(c) of Delegation Order No. 150. Delegation Order No. 150, issued May 19, 1976, is printed in the Federal Register dated May 21, 1976, Vol. 41, Number 100, Page 20698.

Jerome Kurtz,

Commissioner.

[FR Doc. 79-18832 Filed 6-15-79; 8:45 am]

BILLING CODE 4830-01-M

Office of the Secretary

Portland Cement From Belgium; Antidumping: Tentative Determination to Modify or Revoke Dumping Finding

AGENCY: U.S. Treasury Department.

ACTION: Tentative Revocation of Finding of Dumping.

SUMMARY: This notice is to advise the public that it appears that portland cement, other than white, nonstaining portland cement, from Belgium, is no longer being sold to the United States at less than fair value under the Antidumping Act, 1921, as amended. Sales at less than fair value generally occur when the price of the merchandise sold for exportation to the United States is less than the price of such or similar merchandise sold in the home market or to third countries. Notice is hereby given that the Department of the Treasury intends to revoke this finding. If this action is made final, the finding of dumping covering the subject merchandise from Belgium will be revoked. Interested persons invited to comment on this action.

EFFECTIVE DATE: June 18, 1979.

FOR FURTHER INFORMATION CONTACT: Al Jemmott, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202–566–5492).

SUPPLEMENTARY INFORMATION: A finding of dumping with respect to portland cement, other than white, nonstaining portland cement, from Belgium, except as to importations from the firm of Cimenteries Et Briqueteries Reunies, was published as Treasury Decision *55428* in the Federal Register on July 20, 1961 (26 FR 6511).

After due investigation, it has been determined tentatively that portland cement, other than white, nonstaining portland cement, from Belgium, is no longer being, nor likely to be, sold to the United States at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 *et seq.*).

Statement of Reasons on Which This Tentative Determination Is Based

The investigation indicated that there have been no shipments of portland cement, other than white, nonstaining portland cement, from Belgium, to the United States by the firms subject to the finding for more than four years and there is no likelihood of resumption of sales at less than fair value.

Accordingly, notice is hereby given that the Department of the Treasury intends to revoke the finding of dumping with respect to portland cement, other than white, nonstaining portland cement, from Belgium.

In accordance with § 153.40, Customs Regulations (19 CFR 153.40), interested persons may present written views or arguments, or request in writing that the Secretary of the Treasury afford an opportunity to present oral views.

Any requests that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to the Commissioner of Customs, 1301 Constitution Avenue NW., Washington, D.C. 20229, in time to be received by his office not later than July 3, 1979. Requests must be accompanied by a statement outlining the issues wished to be discussed.

Any written views or arguments should likewise be addressed to the Commissioner of Customs in time to be received by his office not later than July 18, 1979. All persons submitting views or arguments should avoid repetitious and merely cumulative material, and they are reminded of the requirement to include nonconfidential summaries or approximated presentations of all confidential material.

This notice is published pursuant to § 153.44(c) of the Customs Regulations (19 CFR 153.44(c)).

Dated: June 8, 1979.

Robert H. Mundheim,

General Counsel of the Treasury.

[FR Doc. 79-18814 Filed 6-15-79; 8:45 am]

BILLING CODE 4820-02-M

[Department Circular, Public Debt Series—No. 12–79]

Treasury Notes of June 30, 1981; Series U–1981

June 14, 1979.

1. Invitation for Tenders

1. 1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $2,750,000,000 of United States securities, designated Treasury Notes of June 30, 1981, Series U–1981 (CUSIP No. 912827 JS 2). The securities will be sold at auction with bidding on the basis of yield. Payment will be required at the price equivalent

of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities, to the extent that the aggregate amount of tenders for such accounts exceeds the aggregate amount of maturing securities held by them.

2. Description of Securities

2. 1. The securities will be dated July 2, 1979, and will bear interest from that date, payable on a semiannual basis on December 31, 1979, and each subsequent 6 months on June 30 and December 31, until the principal becomes payable. They will mature June 30, 1981, and will not be subject to call for redemption prior to maturity.

2. 2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2. 3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2. 4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered and book-entry securities, and the transfer of registered securities will be permitted.

2. 5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3. 1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Daylight Saving time, Tuesday, June 19, 1979. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, June 18, 1979.

3. 2. Each tender must state the face amount of securities bid for. The minimum bid is $5,000 and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.11 percent. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. no bidder may submit more than one noncompetitive tender and the amount may not exceed $1,000,000.

3. 3. All bidders must certify that they have not made and will not make any agreements for the sale or purchase of any securities of this issue prior to the deadline established in Section 3.1. for receipt of tenders. Those authorized to submit tenders for the account of customers will be required to certify that such tenders are submitted under the same conditions, agreements, and certifications as tenders submitted directly by bidders for their own account.

3. 4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3. 5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government Accounts. Tenders from others must be accompanied by a deposit of 5 percent of the face amount of securities applied for (in the form of cash, maturing Treasury securities or readily collectible checks), or by a guarantee of such deposit by a commercial bank or a primary dealer.

3. 6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3. 7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. Reservations

4. 1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5. 1. Settlement for allotted securities must be made or completed on or before Monday, July 2, 1979, at the Federal

Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received at such institution no later than:

(a) Thursday, June 28, 1979, if the check is drawn on a bank in the Federal Reserve District of the institution to which the check is submitted (the Fifth Federal Reserve District in case of the Bureau of the Public Debt), or

(b) Tuesday, June 26, 1979, if the check is drawn on a bank in another Federal Reserve District.

Checks received after the dates set forth in the proceeding sentence will not be accepted unless they are payable at the applicable Federal Reserve Bank. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented in the amount payable on the securities allotted.

5. 2. In every case where full payment is not completed on time, the deposit submitted with the tender, up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5. 3. Registered securities tendered as deposits and in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5. 4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer from and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5. 5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6. 1 As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6. 2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Paul H. Taylor,

Fiscal Assistant Secretary.

[FR Doc. 79-19022 Filed 6-14-79; 3:02 pm]

BILLING CODE 4810-40-M

[Department Circular, Public Debt Series—No. 13-79]

Treasury Notes of June 30, 1983; Series E-1983

June 14, 1979.

1. Invitation for Tenders

1. 1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $2,750,000,000 of United States securities, designated Treasury Notes of June 30, 1983 Series E-1983 (CUSIP No. 912827 JT 0). The securities will be sold at auction with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities, to the extent that the aggregate amount of tenders for such accounts exceeds the aggregate amount of maturing securities held by them.

2. Description of Securities

2. 1. The securities will be dated July 2, 1979, and will bear interest from that date, payable on a semiannual basis on December 31, 1979, and each subsequent 6 months on June 30 and December 31, until the principal becomes payable. They will mature June 30, 1983, and will not be subject to call for redemption prior to maturity.

2. 2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2. 3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2. 4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered and book-entry securities, and the transfer of registered securities will be permitted.

2. 5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3. 1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Daylight Saving time, Thursday, June 21, 1979. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, June 20, 1979.

3. 2. Each tender must state the face amount of securities bid for. The minimum bid is $1,000 and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.11%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender and the amount may not exceed $1,000,000.

3. 3. All bidders must certify that they have not made and will not make any agreements for the sale or purchase of any securities of this issue prior to the deadline established in Section 3.1. for receipt of tenders. Those authorized to submit tenders for the account of customers will be required to certify that such tenders are submitted under the same conditions, agreements, and certifications as tenders submitted directly by bidders for their own account.

3. 4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3. 5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by a deposit of 5% of the face amount of securities applied for (in the form of cash, maturing Treasury securities or readily collectible checks), or by a guarantee of such deposit by a commercial bank or a primary dealer.

3. 6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.250. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3. 7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. Reservations

4. 1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5. 1. Settlement for allotted securities must be made or completed on or before Monday, July 2, 1979, at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received at such institution no later than:

(a) Thursday, June 28, 1979, if the check is drawn on a bank in the Federal Reserve District of the institution to which the check is submitted (the Fifth Federal Reserve District in case of the Bureau of the Public Debt), or

(b) Tuesday, June 26, 1979, if the check is drawn on a bank in another Federal Reserve District.

Checks received after the dates set forth in the preceding sentence will not be accepted unless they are payable at the applicable Federal Reserve Bank. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5. 2. In every case where full payment is not completed on time, the deposit submitted with the tender, up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5. 3. Registered securities tendered as deposits and in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities

surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5. 4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5. 5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6. 1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6. 2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Paul H. Taylor,

Fiscal Assistant Secretary.

[FR Doc. 79-18933 Filed 6-15-79; 8:45 am]

BILLING CODE 4810-40-M

INTERSTATE COMMERCE COMMISSION

Fourth Section Applications for Relief

June 13, 1979.

These applications for long-and-short-haul relief have been filed with the I.C.C.

Protests are due at the I.C.C. within 15 days from the date of publication of this notice.

FSA No. 43703, Zim Israel Navigation Co., Ltd., No. 18, intermodal rates on general commodities in containers, from ports in the Far East to rail carriers terminals at Tampa, Fla., by way of Los Angeles, Calif., in its Tariffs ICC ZIMU 701 and 702, FMC Nos. 55 and 57, respectively, to become effective July 10, 1979. Grounds for relief—water competition.

FSA No. 43704, Southwestern Freight Bureau, Agent's No. B–4, carload rates on soapstone, in bulk, in covered hoppers, from stations in Southwestern Territory, to stations in Central-Eastern Territory, as published in Supplement 242 to its Tariff ICC SWFB 2005–J, to become effective July 10, 1979. Ground for relief—market competition; modified short-line distance formula and grouping.

FSA No. 43705, Southwestern Freight Bureau, Agent's No. B–1, carload rates on coke, from Toledo, Ohio, to stations in SWL Territory, as published in Supplement 56 to its Tariff ICC SWFB 4197, to become effective July 8, 1979. Grounds for relief—market competition.

By the Commission.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-18931 Filed 6-15-79; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. 20]

Petitions for Modification, Interpretation or Reinstatement of Operating Rights Authority

June 7, 1979.

The following petitions seek modification or interpretation or existing operating rights authority, or reinstatement of terminated operating rights authority.

All pleadings and documents must clearly specify the suffix (e.g. M1 F, M2 F) numbers where the docket is so identified in this notice.

An original and one copy of protests to the granting of the requested authority must be filed with the Commission within 30 days after the date of this notice. Such protests shall comply with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247) [1] and shall include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities. Verified statements in opposition should not be tendered at this time. A copy of the protest shall be served concurrently upon petitioner's representative, or petitioner if no representative is named.

MC 5296 (M1F) (notice of filing of petition to modify certificate), filed April 9, 1979. Petitioner: LACY'S EXPRESS, INC., P.O. Box 130, Pedricktown, NJ 08067. Representative: Michael R. Werner, 167 Fairfield Road, P.O. Box 1409, Fairfield, NJ 07006. Petitioner holds a motor *common carrier* certificate in MC–5296, issued October 28, 1975, authorizing transportation, over regular routes, of *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Philadelphia, PA, and Salem, NJ, serving all intermediate points: from Philadelphia across the Delaware River to Camden, NJ, then over NJ Hwy 45 to junction U.S. Hwy 130, then over U.S. Hwy 130 to Pennsville, NJ, and then over NJ Hwy 49 to Salem, and return over the same route, (2) between Westville, NJ, and Bridgeport, NJ, serving all intermediate points: from Westville over NJ Hwy 44 to Bridgeport, and return over the same route, serving in connection with routes set forth in (1) and (2) above the off-route points in Woodbury, National Park, Pedricktown, NJ, and those in Alloway, Quinton, and Lower Alloways Creed Townships, NJ. By the instant petition, petitioner seeks to modify the above authority to serve points in NJ, in lieu of the present specified off-route points.

MC 44737 (Notice of filing of petition to modify certificate), filed March 28, 1979. Petitioner: THE ANDREWS MOVING AND STORAGE COMPANY, a corporation, 4811 Van Epps Road, Cleveland, OH 44131. Representative: David A. Turano, Columbus Center, Suite 1800, 100 East Broad Street, Columbus, OH 43215. Petitioner holds motor *common carrier* certificate in MC–44737 issued October 27, 1959. MC–44737 authorizes transportation over irregular routes of *household goods* as defined by the Commission, between points in OH, on the one hand, and, on the other, points in CT, DE, IL, IN, KY, ME, MD, MA, MI, MO, NJ, NY, OH, PA., RI, VA, and DC. By the instant petition,

[1] Copies of Special Rule 247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

petitioner seeks to modify the authority as follows: change the territorial description to be between points in CT, DE, IL, IN, KY, ME, MD, MA, MI, MO, NJ, NY, OH, PA, RI, VA, and DC.

MC 45544 (M1F), (Notice of filing of petition to modify the territorial description), filed January 5, 1979. Petitioner: SILVER LINE, INC., 171 Commerce Rd., Carlstadt, NJ 07072. Representative: Edward L. Nehez, P.O. Box 1409, 167 Fairfield Rd., Fairfield, NJ 07006. Petitioner holds motor *common carrier certificates* in MC–45544 dated April 20, 1943 and MC–45544 Sub 1, dated March 4, 1947. MC–45544 authorizes, as pertinent, transportation, over irregular routes, of *cleaning fluid, corrugated boxes, piece goods, cut materials and trimmings, thread, sewing machines and pads, and wearing apparel,* between New York, NY, on the one hand, and, on the other, points in Hudson, Essex, Union, Middlesex, Somerset, Hunterdon, Bergen, Passaic, Morris and Warren Counties, NJ, and points in Northumberland, Northampton, Lehigh, Bucks, Carbon, Luzerne, and Schuylkill Counties, PA. MC–45544 Sub 1 authorizes transportation, over irregular routes, *wearing apparel* (not including such articles which are transported crated or on hangers), from points in Lebanon and Monroe Counties, PA, to New York, NY; and *Materials and equipment* used in the manufacture of wearing apparel and paper and paper containers used in the packing thereof, over irregular routes, from New York, NY, to points in Lebanon and Monroe Counties, PA. By this instant petition, petitioner seeks to modify the the territorial description in MC–45544 to read: "(1) between New York, NY, and points in Bergen, Passaic, Hudson, Essex, Union, Morris, Hunterdon, Warren, Middlesex, and Somerset Counties, NJ, on the one hand, and, on the other, points in PA on the east of U.S. Hwy 15; and (2) between New York, NY, on the one hand, and, on the other, points in Hudson, Essex, Union, Middlesex, Somerset, Hunterdon, Bergen, Passaic, Morris, and Warren Counties, NJ."

MC 65106 (M1F) (notice of filing of petition to modify permit), filed February 2, 1979. Petitioner: FOGLIA BROS., INC., 75 Manchester Place, Newark, NJ 07104. Representative: Robert B. Petter, The Forest Park Building, 168 Woodbridge Avenue, Highland Park, NJ 08904. Petitioner holds a *contract carrier* permit in MC–65106, issued September 5, 1972, authorizing, over irregular routes, the transportation of (1) *corn products,* between New York, NY, on the one hand, and, on the other, points in Bergen, Essex, Hudson, Passaic, and Union Counties, NJ, (2) *textile chemicals,* from New York, NY, to Hawthorne, NJ, and points in NJ within 30 miles of city hall, New York, NY, (3) *empty textile chemical* containers, from the destination points specified immediately above, to New York, NY, (4) *caustic soda,* from Passaic, NJ, to New York, NY, (5) *empty caustic soda containers,* from New York, NY, to Passaic, NJ, and (6) *paint, varnish, painters' supplies, materials, supplies* and *equipment* used by paint manufacturers, and advertising displays and materials used in connection therewith, between New York, NY, and points in Nassau and Westchester Counties, NY, on the one hand, and, on the other, Carteret and Newark, NJ. By the instant petition, petitioner seeks to add Orange County in part (6) as a radial point to be included along with the other counties in NY.

MC 102616 (Sub-904) (M1F) (notice of filing of petition to modify certificate) filed December 28, 1978. Petitioner: COASTAL TANK LINES, INC., 250 N. Cleveland-Massillon Road, Akron, OH 44313. Representative: Fred H. Daly, 1725 K Street NW., Suite 1009, Washington, DC 20006. Petitioner holds a motor *common carrier* certificate in MC–102616 Sub 904, issued October 9, 1975, authorizing transportation over irregular routes, of *chemicals* (except anhydrous ammonia, aqua ammonia, and liquid fertilizer), in bulk, from the facilities of Monsanto Company at or near Muscatine, IA, to points in the United States (except AK, HI, IA, and points in the St. Louis, MO, East St. Louis, IL commercial zone, as defined by the Commission). By the instant petition, petitioner seeks to delete the words the facilities of Monsanto Company at or near.

MC 109324 (Sub-18) (MI) (notice of filing of petition to delete restriction), filed January 9, 1979. Petitioner: GARRISON MOTOR FREIGHT, INC., P.O. Box 1278, Harrison, AR 72601. Representative: Jay C. Miner (same address as petitioner). Petitioner holds a motor *common carrier* certificate in MC 109324 (Sub–18) issued June 16, 1970, authorizing transportation, over regular routes, as pertinent, of: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), Between Springfield. Mo., and Kansas City, Kans., serving no intermediate points: From Springfield over Missouri Highway 13 to junction Missouri Highway 7 (near Clinton, Mo.), thence over Missouri Highway 7 to Harrisonville, Mo., thence over U.S. Highway 71 to junction U.S. Highway 40 (Interstate Highway 70), thence over U.S. Highway 40 (Interstate Highway 70) to Kansas City, Kans., and return over the same route. Between Springfield, Mo., and East St. Louis, Ill., serving no intermediate points: From Springfield over U.S. Highway 66 (Interstate Highway 44) to East St. Louis, and return over the same route. Between Mountain Home, Ark., and junction U.S. Highway 63 and U.S. Highway 66 (Interstate Highway 44) at Rolla, Mo., serving no intermediate points, and serving said junction as a point of joinder only: From Mountain Home over Arkansas Highway 5 to the Arkansas–Missouri State line, thence over Missouri Highway 5 to Gainesville, Mo., thence over U.S. Highway 160 to junction U.S. Highway 63, thence over U.S. Highway 63 to junction U.S. Highway 66 (Interstate Highway 44) at Rolla, and return over the same route. Restriction: The operations authorized herein are restricted against the transportation of shipments moving (1) between points in the St. Louis, Mo.-East St. Louis, Ill., Commercial Zone, as defined by the Commission, on the one hand, and, on the other, Little Rock, Ark., Memphis, Tenn., and Springfield, Mo., and the commercial zones thereof, as defined by the Commission, (2) between points in the Kansas City, Mo.-Kansas City, Kans., Commercial Zone, as defined by the Commission, on the one hand, and, on the other, Little Rock, Ark., Memphis, Tenn., and Springfield, Mo., and the commercial zones thereof, as defined by the Commission, and (3) between points in the St. Louis, Mo.-East St. Louis, Ill., Commercial Zone, as defined by the Commission, on the one hand, and, on the other, points in the Kansas City, Mo.-Kansas City, Kans., Commercial Zone, as defined by the Commission. By the instant petition, petitioner seeks to modify the above authority by deleting the restriction contained in (1) above which reads "(1) between points in the St. Louis, Mo.-East St. Louis, Ill., Commercial Zone, as defined by the Commission, on the one hand, and, on the other, Little Rock, Ark., Memphis, Tenn., and Springfield, Mo., and the commercial zones thereof, as defined by the Commission".

MC 119547 (Sub-33) (M1F) (notice of filing of petition to modify certificate), filed March 13, 1979. Petitioner: EDGAR W. LONG, INC., 3815 Old Wheeling

Road, Zanesville, OH 43701. Representative: Richard H. Brandon, 220 West Bridge Street, P.O. Box 97, Dublin, OH 43017. Petitioner holds a motor *common carrier* certificate in MC-119547 Sub 33 issued March 4, 1974, authorizing the transportation over irregular routes of *ceramic tile* and *brick facing*, (except in bulk), from Cambridge, OH, to points in the United States (except AK, HI, MD, MI, NY, PA, and WV). By the instant petition, petitioner seeks to modify the authority as follows: Substitute the words clay products for the words ceramic tile and brick facing.

MC 123233 (Sub-13) (M2F), filed March 15, 1979 (notice of filing of petition to modify certificate). Petitioner: PROVOST CARTAGE, INC., 7887 Rue Grenache, Ville D'Anjou, Quebec, Canada H1J 1C4. Representative: J. P. Vermette (same address as petitioner). Petitioner holds motor *common carrier* Certificate in MC-123233 Sub 13 issued December 13, 1977, which authorizes transportation, over irregular routes, of *chemicals, lactose, soybean oil, whiskey, explosives, tung oil, and castor oil*, in bulk, in tank or hopper-type vehicles, between ports of entry on the United States-Canada Boundary line at or near Trout River, Alexandria Bay, Rooseveltown, Ogdensburg, and Champlain, NY, Highgate Springs, Derby Line, and Norton, VT, Jackman, Van Buren, Houlton, Vanceboro, and Calais, ME, on the one hand, and, on the other, Livermore Falls, Rumford, Lincoln, Great Works, and Cumberland Mills, ME, and points in VT, NH, MA, CT, RI, NY, NJ, DE, MD, PA (except petrochemical products from points in PA), and OH (except liquid chemical wax from Cleveland, OH), restricted to the transportation of traffic originating at or destined to points in the Province of Quebec, Canada, and to the extent it authorizes the transportation of Classes A and B explosives, the certificate shall be limited in point of time to a period expiring August 9, 1982. By the instant petition, petitioner seeks to modify the authority as follows: deleting the words: "at or near Trout River, Alexandria Bay, Rooseveltown, Ogdensburg, and Champlain, NY, Highgate Springs, Derby Line, and Norton, VT, and Jackman; Van Buren, Houlton, Vanceboro, and Calais, ME".

Note.—MC-123233 (Sub-No. 13) (M1F), published November 25, 1977, is pending before the Commission.

MC 133867 (Sub-6) (M1F) (notice of filing of petition to modify permit), filed April 2, 1979. Petitioner: STARLING TRANSPORT LINES, INC., P.O. Box 1733, Fort Pierce, FL 33450. Representative: Dwight L. Koerber, Jr., 805 McLachlen Bank Building, 666 Eleventh Street, N.W., Washington, DC 20001. Petitioner holds *contract carrier* permit in MC 133867 (Sub-6), issued October 21, 1977, authorizing over irregular routes, the transportation of *frozen foods*, from Wethersfield, CT, to points in the United States (except AK, HI, and CT). Restriction: The operations authorized herein are limited to a transportation service to be performed, under a continuing contract, or contracts, with Foodways New York, Inc. By the instant petition, petitioner seeks to broaden the commodity to foodstuffs, add an additional origin point of New Paltz, NY, and restrict the origin points from the facilities of Foodways National, Inc.

MC 134467 (Sub-24) (M1F) (notice of filing of petition to modify certificate), filed February 21, 1979. Petitioner: POLAR EXPRESS, INC., P.O. Box 845, Springdale, AR 72764. Representative: Charles J. Kimball, Suite 350, Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. Petitioner holds motor common carrier certificate in MC 134467 (Sub-24), issued December 28, 1978. MC 134467 (Sub-24) authorizes transportation over irregular routes of foodstuffs, from the facilities used by La Choy Food Products, a division of Beatrice Foods Co., at or near Archbold, OH, to points in AR, LA, OK, and TX, restricted to the transportation of traffic originating at the named facilities and destined to the indicated states. By the instant petition, petitioner seeks to modify the authority as follows: from the plantsites and/or storage facilities utilized by LaChoy Food Products and Beatrice Specialties Co., Divisions of Beatrice Foods Co., at or near Archbold, OH.

MC 138065 (Sub-2F) (M1F) (notice of filing of a petition to modify the territorial description), filed January 16, 1979. Applicant: LOU BOLE CARPET CARRIERS, INC., L. Davis Division, 325 Main Street, Belleville, NJ 07109. Representative: Michael R. Werner, P.O. Box 1409, 167 Fairfield Road, Fairfield, NJ 07006. Petitioner holds motor *common carrier* authority in MC 138065 (Sub-2) authorizing transportation over irregular routes of: *Floor covering*, and *materials, supplies, and equipment* used in the installation of floor covering (except commodities in bulk), between New York, NY, on the one hand, and, on the other, points in Rockland and Westchester Counties, NY, points in Fairfield County, CT, and those points in that part of New Jersey on and north of a line beginning at junction New Jersey-Pennsylvania State line and Interstate Highway 195 and extending along Interstate Highway 195 to junction New Jersey Highway 526, thence along New Jersey Highway 526 to junction New Jersey Highway 549, thence along New Jersey Highway 549 to the Atlantic Ocean. By the instant Petition, petitioner seeks to modify the territorial description to read: "between New York, NY, on the one hand, and, on the other, points in Rockland, Westchester, Orange and Putnam Counties, NY, New Milford, Ansonia, Derby, Orange and Milford, CT, points in Fairfield County, CT, and those points in that part of NJ on and north of a line beginning at junction NJ-PA line and Interstate Hwy 195 and extending along Interstate Hwy 195 to junction NJ Hwy 526, then along NJ Hwy 526 to junction NJ Hwy 549, then along NJ Hwy 549 to the Atlantic Ocean."

MC 138157 (Sub-44) (M1F) (Notice of filing of petition to modify certificate), filed January 26, 1979. Petitioner: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, P.O. Box 9608, Chattanooga, TN 37412. Representative: Patrick E. Quinn (same address as applicant). Petitioner holds a *motor common carrier* certificate in MC 138157 (Sub-44), issued July 14, 1978, authorizing over irregular routes, the transportation of (1) *carpeting* and *yarn*, from the facilities of Berven Carpets Corp., at or near Fresno, CA, to Ridgefield Park, NJ, Franklin Park, IL, Roseville, MI, Houston, TX, Phoenix, AZ, and Cincinnati, OH, and (2) *equipment, materials*, and *supplies* used in the manufacture, production, and distribution of the commodities named in (1) above, (except in bulk, in tank vehicles) and *carpeting* and *yarn*, from points in AL, GA, PA, NC, SC, TN, and VA, to Los Angeles, CA, and the facilities of Berven Carpets Corp., at or near Fresno, CA. By the instant petition, petitioner seeks to modify in part (1) by substituting Detroit, MI, in lieu of Roseville, MI, and in part (2) by deleting the facilities of Berven Carpets Corp., at or near Fresno, CA, and substitute points in Fresno, Tulare, Merced, and Madera Counties, CA.

MC 140484 (Sub-291) (M1F) (Notice of filing of petition to modify the territorial description in a pending certificate), filed January 5, 1979. Petitioner: LESTER COGGINS TRUCKING, INC., 2871 E. Edison Ave., P.O. Box 69, Ft. Myer, FL 33901. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 Fifteenth St., NW., Washington, DC 20005. Petitioner has applied for motor

common carrier authority in MC 140484 (Sub-29), and a decision was served on April 3, 1979 granting *electric motors, electric gear motors, power transmission equipment,* and *machinery, and controllers or controller parts* and *parts and accessories therefor, elevator and elevator parts and accessories, escalator and escalator parts and accessories, weighing machinery and parts and accessories* and *tele-communication equipment and parts and accessories,* between Cleveland, OH, Mishawaka, IN, Rogersville, TN, and Lawrenceburg, KY. The above-authority is conditioned to publication in the **Federal Register.** By the instant petition, petitioner seeks to modify the above territorial description by adding Athens, Gainesville and Atlanta, GA, Madison, IN, Weaverville, NC, Spartansburg, SC, and Chicago, IL as additional points.

MC 141717 (Notice of filing of petition to modify certificate), filed December 1, 1978. Petitioner: HOWARD MOUNTAIN TRANSPORTATION CORP., 89–50 56th Avenue, Elmhurst, NY 11373. Representative: Michael K. Benimowitz, 299 Broadway, New York, NY 10007. Petitioner holds motor *common carrier* certificate in MC 141717, issued June 4, 1976. MC 141717 authorizes transportation, over irregular routes of *passengers and their baggage,* in special operations, in non-scheduled, door-to-door service, limited to the transportation of not more than in part (1) 8 passengers and, in part, (2) 6 passengers, in any one vehicle, but not including the driver thereof, and not including children under ten years of age who do not occupy a seat or seats, during in part (1) the season extending from the 15th day of May to the 30th day of September, inclusive, between New York, NY, on the one hand, and, on the other, points in Liberty, Thompson, and Fallsburg Townships, Sullivan County, and Wawarsing Township, Ulster County, NY, and in part (2) the season extending from November 1 to April 30, both inclusive of each year, between New York, NY, and Lakewood, NJ. By the instant petition, petitioner seeks to modify the authority as follows: Delete the seasonal restrictions in both parts (1) and (2).

Republications of Grants of Operating Rights; Authority Prior to Certification

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the **Federal Register.**

An original and one copy of a petition for leave to intervene in the proceeding must be filed with the Commission within 30 days after the date of this **Federal Register** notice. Such pleading shall comply with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247) addressing specifically the issue(s) indicated as the purpose for republication, and including copies of intervenor's conflicting authorities and a concise statement of intervenor's interest in the proceeding setting forth in detail the precise manner in which it has been prejudiced by lack of notice of the authority granted. A copy of the pleading shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

MC 19311 (Sub-43F) (republication), filed April 3, 1978, previously noticed in the **Federal Register** issue of June 29, 1978. Applicant: CENTRAL TRANSPORT, INC., 34200 Mound Road, Sterling Heights, MI 48077. Representative: Elmer J. Maue, 34200 Mound Road, Sterling Heights MI 48077. A Decision of the Commission, Review Board number 1, decided March 30, 1979, and served April 6, 1979, finds that the present and future public convenience and necessity require operation by applicant, or foreign commerce, as a *common carrier* by motor vehicle, in foreign commerce only, over irregular routes, transporting *expanded plastic products* (except in bulk) from Detroit and Port Huron, MI, and Buffalo, NY, to points in Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Ohio, West Virginia, and Wisconsin, those points in Pennsylvania on and west of U.S. Hwy 219, and those points in New York on and west of a line beginning at the New York–Pennsylvania State line and extending along U.S. Hwy 219 to its junction with NY Hwy 78, then along NY Hwy 78 to Lake Ontario. Applicant is fit, willing, and able properly to perform the granted service and to conform to the requirements of Title 49, Subtitle IV, U.S. Code, and the Commission's regulations. The purpose of this republication is to indicate applicant's actual grant of authority.

MC 51146 (Sub-593F) (republication), filed April 10, 1978, published in the **Federal Register** issue of July 27, 1978, and republished this issue. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John R. Patterson, 2480 East Commercial Boulevard, Fort Lauderdale, FL 33308. A Decision of the Commission, Review Board No. 2, decided March 21, 1979, and served April 9, 1979, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier,* by motor vehicle, over irregular routes, transporting *such commodities* as are dealt in by distributors of games and toys (except commodities in bulk), between points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of M.W. Kasch Co., that applicant is fit, willing, and able properly to perform such service to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to modify the territorial description.

MC 89684 (Sub-100) (republication), filed October 17, 1977, published in the **Federal Register** issue of December 22, 1977 and April 27, 1978, and republished this issue. Applicant: WYCOFF COMPANY, INC., 560 South 300 West, Salt Lake City, UT 84110. Representative: Kent W. Capener, 560 South 300 West, Salt Lake City, UT 84110. A Decision of the Commission, Review Board Number 1, decided March 5, 1979, and served March 19, 1979, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce, as a *common carrier* by motor vehicle, over irregular routes, transporting *general commodities* (except classes A and B explosives, commodities in bulk, commodities which require special equipment, and household goods as defined by the Commission), between Elko and Wendover, NV, on the one hand, and, on the other, points in Washoe, Storey, Carson City, Humboldt, Pershing, Churchill, Lander, Eureka, and White Pine Counties, NV, restricted (1) to the transportation of packages or articles each not exceeding 100 pounds in weight, and (2) against the transportation of shipments of packages or articles weighing in the aggregate more than 200 pounds from one consignor to one consignee on any one day. The purpose of this publication is to show Wendover, NV as a service point.

Note.—Applicant may tack the above authority with its present authority.

MC 116073 (Sub-365) (republication), filed September 26, 1977, published in the **Federal Register** issue of November 25, 1977, and republished this issue. Applicant: BARRETT MOBILE HOME TRANSPORT, INC., 1825 Main Ave.,

P.O. Box 919, Moorhead, MN 56560. Representative: Donald E. Cross, 918 16th Street, N.W., Ste. 700, Washington, D.C. 20006. A Decision of the Commission, Division 1, decided May 11, 1979, and served May 24, 1979, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of (1) *travel and camper trailers, fifth wheel trailers, camper and camp coaches, and motor homes*, in truckaway service, and (2) *automobiles*, in secondary movements, in truckaway service, from points in Indiana (except Fort Wayne), Ohio (except Springfield), and Michigan to points in the United States (except Alaska and Hawaii); that applicant is fit, willing, and able properly to perform the service authorized and to conform to the requirements of Title 49, sub title IV, U.S. Code (formerly the Interstate Commerce Act), and the Commission's regulations. The purpose of this republication is to modify the commodity description and the territorial description.

MC 121664 (Sub-12) (republication), filed September 25, 1975, published in the **Federal Register** issue of October 31, 1975, and republished this issue. Applicant: G. A. HORNADY, CECIL M. HORNADY and B. C. HORNADY, d.b.a., HORNADY BROTHERS TRUCK LINE, Box 846, Monroeville, AL 36480. Representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. A Decision of the Commission, Division 2, decided March 1, 1979, and served March 14, 1979, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of lumber, lumber products, and particleboard, between points in AL, GA, FL, KY, MS, and TN, restricted to the transportation of traffic which either originates at or is destined to a facility of Moore-Handley, Inc., or from a supplier of Moore-Handley, Inc., to and from construction or building sites, located in the named states. The purpose of this republication is to add "* * * from a supplier of Moore-Handley, Inc., to and from construction or building sites * * *"

MC 124211 (Sub-322F) (republication), filed April 10, 1978, previously noticed in the **Federal Register** issue of July 27, 1978. Applicant: HILT TRUCK LINE, INC., P.O. Box 988, D.T.S., Omaha, NE 68101. Representative: Thomas L. Hilt, P.O. Box 988, D.T.S., Omaha, NE 68101. A Decision of the Commission, Review Board Number 2, decided April 5, 1979, and served May 3, 1979, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, transporting *herbicides, insecticides, fertilizer, vermiculite*, and *ice-melting compounds* (except commodities in bulk, from Kenosha and Union Grove, WI, to points in the United States (except Wisconsin, Alaska, and Hawaii). Applicant is fit, willing, and able properly to perform such service and to conform to the requirements of Title 49, Subtitle IV, U.S. Code, and the Commission's regulations. The purpose of this republication is to add ice-melting compounds to the commodity description.

MC 134286 (Sub-52F) (republication), filed June 22, 1978, published in the **Federal Register** issue of August 10, 1978, and republished this issue. Applicant: ILLINI EXPRESS, INC., P.O. Box 1564, Sioux City, IA 51102. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. A Decision of the Commission, Review Board No. 4, decided March 30, 1979, and served April 6, 1979, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, transporting *meat, meat products, meat by-products*, and *articles* distributed by meat packinghouses as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Sioux Preme Packing Co., located at or near Sioux Center and Sioux City, IA, to points in CT, DE, ME, MD, MA, MI, NH, NJ, NY, PA, RI, TX, VT, VA, WV and DC, restricted to traffic originating at the named origins, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to modify the territorial description.

MC 134286 (Sub-54F) (republication), filed April 5, 1978, published in the **Federal Register** issue of July 13, 1978, and republished this issue. Applicant: ILLINI EXPRESS, INC., P.O. Box 1564, Sioux City, IA 51102. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. A Decision of the Commission, Review Board No. 3, decided March 16, 1979, and served April 18, 1979, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, transporting *chemicals, acids, solvents, and edible oils* (except in bulk), (A) from (1) Chicago, IL, (2) the facilities of Hawkins Chemical Co., and Exxon Chemical Corp., at or near Minneapolis, MN, (3) the facilities of F.M.C. Corp., at or near Lawrence, KS, and Green River, WY, (4) the facilities of Olin Chemical Co., at or near Joliet, IL, (5) the facilities of Sanford Chemical Co., at or near Elk Grove Village, IL, (6) the facilities of Velsicol Chemical Co., at or near St. Louis, MO, (7) the facilities of James Varley & Son Co., at or near St. Louis, MO, (8) the facilities of BASF Wyandotte Chemical Corp., and Penwalt Corp., at or near Wyandotte, MI, (9) the facilities of Ozark-Mahoning Co., at or near Tulsa, OK, (10) the facilities of Floridin Company at or near Berkeley Springs, WV, and Quincy, FL, (11) the facilities of Ash Grove Chemical Co., at or near Springfield, MO, (12) the facilities of Lien Chemical Co., at or near Rapid City, SD, (13) the facilities of Burris Chemical Co., at or near Charleston, SC, and East Point, GA, (14) the facilities of Barnebey Cheney, at or near Columbus, OH, (15) the facilities of Cities Service Co., at or near Copperhill, TN, (16) the facilities of Ft. Recovery Industries, at or near Ft. Recovery, on, (17) the facilities of Great Lakes Chemical Corp., at or near West Lafayette, IN, (18) the facilities of Marathon Morco Co., at or near Dickinson, TX, (20) the facilities of Mazer Chemical, at or near Gurnee, IL, (21) the facilities of Quality Chemical Co., at or near Baltimore, MD, (22) the facilities of Stauffer Chemical Co., at or near Green River, WY, (23) the facilities of Westvaco Chemical Division, at or near Covington, VA, (24) the facilities of Lowe's Inc., at or near Oran, MO, (25) the facilities of P.P.G. Industries, at or near Barberton, OH, and Natrium, WV, (26) the facilities of Diamond Shamrock Chemical Co., at or near Pineesville, OH, (27) the facilities of Allied Chemical Co., at or near Wilmington and North Claymont, DE, Richmond, VA, and Syracuse, NY, (28) the facilities of E.I. DuPont, at or near Memphis, TN, (29) the facilities of Dow Chemical Co., at or near Midland and Ludington, MI, (30) the facilities of North Star Chemical, at or near Pine Bend, MN, (31) the facilities of Penwalt Corp., at or near Delaware,

OH, and (32) the facilities of Standard Milling, at or near Meta, MO, to points in IA and NE, and (B) from the facilities of Warren-Douglas Chemical Co., at or near Omaha, NE, and Sioux City, IA, to Phoenix, AZ, and points in NM, OK, and TX, restricted, in (A) and (B), to the transportation of traffic originating at the named origins and destined to the indicated destinations, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to modify the territorial description.

MC 138126 (Sub-24F) (republication), filed March 20, 1978, published in the **Federal Register** issue of June 8, 1978, and republished this issue. Applicant: WILLIAMS REFRIGERATED EXPRESS, INC., P.O. Box 47, Old Denton Road Federalsburg, MD 21632. Representative: Chester A. Zyblut, 366 Executive Building, 1030 15th Street N.W., Washington, DC 20005. A Decision of the Commission, Review Board No. 2, decided April 17, 1979, and served May 10, 1979, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, transporting *frozen foodstuffs*, from the facilities used by Campbell Soup Company, Inc., located in DE and MD and points in that part of PA on and east of U.S. Hwy 15, to points in CT, DE, KY, MD, MA, MI, NJ, NY, OH, PA, RI, VA, WV and DC, those in TN on and east on U.S. Hwy 127, and Atlanta, GA, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. the purpose of this republication is amend the territorial description.

MC 139208 (Sub-35F) (republication), filed March 30, 1978, published in the **Federal Register** issue of July 7, 1978, and republished this issue. Applicant: F.M.S. TRANSPORTATION, INC., Box 1597, 2584 Harley Drive, Maryland Heights, MO 64043. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 11th St. N.W., Washington, DC 20001. A Decision of the Commission, Review Board No. 1, decided March 21, 1979, and served April 3, 1979, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *contract carrier*, by motor vehicle, over irregular routes, transporting *general commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), between Hatboro, PA, on the one hand, and, on the other, points in the United States (except AK, HI, and PA), under continuing contract(s) with Chromalloy American Corporation of Clayton, MO, will be consistent with the public interest and the national transportation policy. The purpose of this republication is to modify the comodity description.

MC 140484 (Sub-29F) (republication), filed February 28, 1978, published in the **Federal Register** issue of April 6, 1978, and republished this issue. Applicant: LESTER COGGINS TRUCKING, INC., 2671 East Edison Avenue, P.O. Box 69, Fort Myers, FL 33902. Representative: Chester A. Zyblut, 366 Executive Building, 1030 Fifteenth Street, N.W., Washington, DC 20005. A Decision of the Commission, Review Board Number 1, decided March 2, 1979, and served April 3, 1979, finds that the present and future public convenience and necessity require operations by applicant in the interstate or foreign commerce as a *common carrier, by motor vehicle, over irregular routes, transporting electric motors, electric gear motors, power transmission equipment, and machinery and controllers or controller parts and parts and accessories therefor, elevator and elevator parts and accessories, escalator and escalator parts and accessories, weighing machinery and parts and accessories and tele-communication equipment and parts and accessories, between Cleveland, OH, Mishawaka, IN, Rogersville, TN, and Lawrenceburg, KY*, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of Title 49, Subtitle IV, U.S. Code and the Commission's regulations. The purpose of this republication is to show Lawrenceburg, KY, as a service point in lieu of Lexington, KY.

MC 143006 (republication), filed February 7, 1977, published in the **Federal Register** issue of April 14, 1977, and republished this issue. Applicant: DORWIN TRUCKING COMPANY, INC., 3420 52nd Street East, Tacoma, WA 98443. Representative: George Kargianis, 2120 Pacific Building, Seattle, WA 98104. A Decision of the Commission, Division 2, decided May 15, 1979, and served May 18, 1979, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, transporting *cranes, steel, rubber-covered rollers, commodities*, the transportation of which because of size or weight require the use of special equipment, and *contractors' equipment and supplies*, between points in WA, on the one hand, and, on the other, points in ID, MT, OR, and WA, that applicant is fit, willing and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to modify the commodity description.

Motor Carrier, Broker, Water Carrier and Freight Forwarder Operating Rights Applications

The following applications are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date of notice of filing of the application is published in the **Federal Register**. Failure to seasonably file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with Section 247(e)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protests not in reasonable compliance with the requirements of the rules may be rejected.

MC 29555 (Sub-96F), filed February 1, 1979. Applicant: BRIGGS TRANSPORTATION CO., a corporation, North 400 Griggs-Midway Bldg., St. Paul, MN 55104. Representative: Carl L. Steiner, 39 S. LaSalle St., Chicago, IL 60603. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities*, (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between St.

Louis, MO, and LaCrosse, WI, over U.S. Hwy 61, serving the intermediate points of Keokuk, Fort Madison, Burlington, Muscatine, and DeWitt, IA, and serving the junctions of U.S. Hwys 61 and 6, U.S. Hwys 61 and 30, and U.S. Hwys 61 and 218 for the purpose of joinder only, (2) between St. Louis, MO, and Keokuk, IA, (a) over U.S. Hwy 67 to junction U.S. Hwy 136, then over U.S. Hwy 136 to Keokuk, and return over the same route, serving the intermediate point of Macomb, IL, and (b) over MO Hwy 79 to junction Hwy 79, then over IL Hwy 79 to junction IL Hwy 57, then over IL Hwy 57 to junction IL Hwy 96, then over IL Hwy 96 to junction U.S. Hwy 136, and return over the same route, serving no intermediate points, (3) between St. Louis, MO, and Rockford, IL, from St. Louis over Interstate Hwy 55 to junction U.S. Hwy 51, then over U.S. Hwy 51 to Rockford, and return over the same route, serving no intermediate points, (4) between junction U.S. Hwys 67 and 136 and Rockford, IL, from junction U.S. Hwys 67 and 136, over U.S. Hwy 67 to junction IL Hwy 2, then over IL Hwy 2 to Rockford, and return over the same route, serving the intermediate points of Dixon, Sterling, and Rock Falls, IL, (5) between St. Louis, MO, and Omaha, NE, from St. Louis, over Interstate Hwy 70 to junction Interstate Hwy 29, then over Interstate Hwy 29 to Omaha, and return over the same route, serving no intermediate points, (6) between junction U.S. Hwys 61 and 218, and Cedar Rapids, IA, over U.S. Hwy 218, serving the intermediate point of Iowa City, IA, and serving the junction of U.S. Hwys 61 and 218 for the purpose of joinder only, (7) between junction IA Hwy 38 and U.S. Hwy 61, and Cedar Rapids, IA, from junction IA Hwy 38 and U.S. Hwy 61 over IA Hwy 38 to junction Interstate Hwy 80, then over Interstae Hwy 80 to junction Interstate Hwy 380, then over Interstate Hwy 380 to Cedar Rapids, and return over the same route, serving the intermediate point of Iowa City, IA, and serving the junction of IA Hwy 38 and U.S. Hwy 61 for the purpose of joinder only, (8) between junction U.S. Hwys 218 and 34, and Des Moines, IA, from junction U.S. Hwys 218 and 34 over U.S. Hwy 34 to junction U.S. Hwy 63, then over U.S. Hwy 63 to junction U.S. Hwy 163, then over U.S. Hwy 163 to Des Moines and return over the same route, serving the intermediate points of Oscaloosa, Ottumwa, Fairfield, and Mt. Pleasant, IA, and serving the junction of U.S. Hwys 218 and 34 for purpose of joinder only, (9) between junction Interstate Hwys 70 and 35 and Des Moines, IA, over Interstate Hwy 35, serving no intermediate points, for the purpose of joinder only, (10) between junction Interstate Hwy 70 and U.S. Hwy 65 and Des Moines, IA, over U.S. Hwy 65, serving no intermediate points, for the purpose of joinder only, and (11) between junction Interstate Hwy 70 and U.S. Hwy 63, and Ottumwa, IA, over U.S. Hwy 63, serving no intermediate points, for the purpose of joinder only. (Hearing site: St. Louis, MO, Minneapolis, MN, and Des Moines, IA.)

MC 134922 (Sub-288F), filed March 23, 1979. Applicant: B. J. McADAMS, INC., Route 6, Box 15, North Little Rock, AR 72118. Representative: Bob McAdams (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *pipe fittings and pipe hangers*, from Columbia, PA, to points in AZ, CA, ID, NV, NM, OR, TX, UT, and WA. (Hearing site: Philadelphia, PA, or Washington, DC.)

Note.—Applicant states that its purpose is to replace interline service with single-line service.

Motor Carrier Transfer Proceedings

Application filed for temporary authority under Section 11349 in connection with transfer application under Section 10926 and Transfer Rules, 49 CFR Part 1132.

MC FC 78154. By application filed May 25, 1979, DARRELL MADDEN, an individual, d.b.a. DARRELL D. MADDEN TRUCKING, 2232 East Maime Eisenhower Avenue, Boone, IA 50036, seeks temporary authority to transfer a portion of the operating rights of Dakota Express, Inc., 550 East Fifth Street South, South St. Paul, MN 55075, under Section 210a(b). The transfer to Darrell Madden, an individual, d.b.a. Darrell D. Madden Trucking, of a portion of the operating rights of Dakota Express, Inc., is presently pending.

MC FC 78163. By application filed May 30, 1979, AUTOBUS VENISE (1978) LTEE, 50 McArthur Road, Valleyfield, Quebec J6S 4M5 CD, seeks temporary authority to transfer the operating rights of Venise Coach Line, Inc., 50 McArthur Road, Valleyfield, Quebec J6S 4M5, CD, under section 210a(b). The transfer to Autobus Venise (1978) LTEE, of the operating rights of Venise Coach Line, Inc., is presently pending.

Motor Carrier Board Transfer Proceedings

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under Section 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application.

Protests against approval of the application, which may include request for oral hearing, must be filed with the Commission on or before July 18, 1979. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicants' representative(s), or applicants (if no such representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopses form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

Finance Docket 29027F, filed April 12, 1979. Transferee: AURORA INTERNATIONAL FORWARDING, INC., 5060 Shawline Dr., San Diego, CA 92111. Transferor: COLUMBIA EXPORT PACKERS, INC., Joel Mithers, Trustee in Bankruptcy, Broadway Plaza, Suite 1702, 700 S. Flower St., Los Angeles, CA 90017. Representative: Alan F. Wohlstetter, 1700 K St. NW., Washington, DC 20006. Authority sought for purchase by transferee of the freight forwarder rights of transferor as set forth in permit No. FF–325 (Sub-No. 1), issued October 5, 1977, as follows: operations as a freight forwarder of (a) *used household goods* and *unaccompanied baggage* and (b) *used automobiles*, between points in the United states (including AK and HI), restricted in (b) above, to the transportation of export-import traffic. Transferee holds no authority from this Commission. Application has not been filed for temporary authority under 49 U.S.C. § 11349.

Finance Docket 29041F filed May 1, 1979. Transferee: MS EXPRESS, Inc., 600 Grant St. Pittsburg, PA 15219.

Transferor: MASTER FORWARDING CORPORATION, (The Union National Bank of Pittsburgh, Successor-In-Interest), Fourth Ave. and Wood St., Pittsburgh, PA 15222. Applicants' representatives: William A. Chesnutt, 1776 F St., N.W., Washington, D.C. 20006. M. Bruce McCullough, 5700–600 Grant St., Pittsburgh, PA 15219. Authority sought for purchase by transferee of the permit held by transferor in No. FF–139, issued March 27, 1970, authorizing operations as a freight forwarder of general commodities, (1) from points in CT, MA, NJ, NY, KY, IL, and MO, to points in IN, TN, IL, WI, MN, IA, MO, AR, LA, TX, OK, KS, NE, SD, ND, and CO; (2) between points in MA, CT, PA (except Philadelphia), NJ (except Bergen, Essex, Hudson, Middlesex, Passaic, and Union Counties), and Rockland, Suffolk, Orange, Putnam, Ulster, Dutchess, and Sillivan Counties, NY, on the one hand, and, one the other, points in KY, MI, and OH; (3) between points in MI and OH, on the one hand, and, on the other, points in MD (except Baltimore), and Delware (except Wilmington), (4) from Indianapolis, IN, to points in MA, CT, DE (except Wilmington), (4) from Indianapolis, IN, to points in MA, CT, DE (except Wilmington), PA (except Philadelphia), NJ (except Bergen, Essex, Hudson, Middlesex, Passaic, Union Countries), and Suffolk County, NY; (5) from Cambridge, IN, to points in MA, CT, and Suffolk County, NY, and (6) from points in ME, MD, NH, PA, RI, and VT, to points in LA, TN, and TX. Transferee holds no authority from the Commission.

MC–FC 77575, filed March 23, 1979. Transferee: REMY MOVING & STORAGE CORP., Old Post Road, Walpole, MA 02081. Transferor: REMY MOVING & STORAGE OF MASSACHUSETTS, INC. (same as transferee). Representative: Robert J. Gallagher, 1000 Connecticut Ave., NW., Suite 1200, Washington, D.C. 20036. Authority sought for purchase by transferee of the operating rights of transferor in Certificate MC 2677, issued January 31, 1968, acquired by transferor in MC–FC 76614 under its prior name of Remy Transportation Corp., as set froth below: Household goods as defined by the Commission, between points in Massachusetts, east of the Connecticut River, including those on the west bank of the Connecticut River, on the one hand, and, on the other, points in CT, IL, ME, MD, OH, NH, NJ, NY, PA, RI, VA, VT, and DC. Transferee holds no authority from the Commission. An application for temporary authority has not been filed.

MC–FC 77930, filed November 14, 1978. Transferee: T & E TRUCKING, INC., Box 342, Clarksville, VA 23927. Transferor: CLARENCE OVERTON THOMAS, d.b.a. C. O. THOMAS TRUCKING, Route 1 Box 153, New Canton, VA 23213. Applicants' representative: Morton E. Kiel, Suite 6193, 5 World Trade Center, New York, NY 10048. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Permit No. MC–114949, issued March 15, 1973, as follows: *Lumber and pallets,* from Drakes Branch, VA, to points in WV, OH, MD, DE, PA, NJ, NY, and DC. *Lumber,* from Drakes Branch, VA, to Bargersville, IN, and Louisville, KY. *Lumber,* (except plywood), from Drakes Branch, VA, to points in CT, KY (except Louisville), IL, IN (except Bargersville), MI, and TN. The two commodity descriptions next above, are limited to a transportation service to be performed under continuing contract(s) with Stanley Land and Lumber Corporation, of Drakes Branch, VA. Transferee presently holds no authority from this Commission. Application has been granted for temporary authority under 49 U.S.C. § 11349.

MC–FC 78046, filed February 26, 1979. Transferor: ROBCO TRANSPORTATION, INC., P.O. Box 510, West Des Moines, Iowa 50265. Transferee: CONTINENTAL EXPRESS, INC., 486 West Eagle Lake Drive, Osseo, Minnesota 55369. Applicant's Representative: Grant J. Merritt, 4444 IDS Center, Minneapolis, Minnesota 55402. Authority sought to transfer pursuant to Section 212(b) of the Interstate Commerce Act a portion of Transferor's Certificate MC 136786, (Sub-92), issued August 18, 1977, as follows: to transport over irregular routes frozen prepared foods from Duluth, Minnesota, to points in ND, SD, NB, IA, MO, WI, IL, IN, MI, OH, PA, WV, VA, MD, DE, NJ, NY, MA, CN, RI, VT, NH, MA, and DC. Restricted to the transportation of shipments originating at the plantsites or warehouse facilities of Jeno's, Inc. at Duluth, MN, and destined to points in the above-name destination States and DC. Transferee holds no authority from the Commission and no temporary authority application has been filed.

MC–FC 78050, filed February 15, 1979. Transferee: LEONARD EXPRESS, INC., P.O. Box 23, 13 Third Street, Charleroi, PA 15022. Transferor: C. E. LIZZA, INC., P.O. Box 308, Lignoier, PA 15658. Transferee's representative: William A. Gray, 2310 Grant Building, Pittsburgh, PA 15219. Transferor's representative: David R. Gold, 200 Union Trust Building, Greensburg, PA 15601. Authority sought for the purchase of the operating rights set forth in Permit MC 48213 (Sub-18), MC 48213 (Sub-24), MC 48213 (Sub-27), MC 48213 (Sub-32), MC 48213 (Sub-33), MC 48213 (Sub-35), MC 48213 (Sub-37), MC 48213 (Sub-39), MC 48213 (Sub-41), and MC 48213 (Sub-42). Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under Section 210a(b). The commodities authorized include explosives, wall covering, synthetic fiber yarn, and dry animal and poultry feeds, and the involved territory includes numerous named States.

MC FC–78058, filed March 5, 1979. Transferee: INTERNATIONAL STAGE LINES, INC., No. 6, 3150 E. 58th Ave., Vancouver, British Columbia, Canada, V5S 3S9. Transferor: VANCOUVER ISLAND COACH LINES LTD., 710 Douglas St., Victoria, British Columbia, Canada. Representative: Leslie R. Peterson, 600–890 W. Pender St., Vancouver, British Columbia, Canada, V6C 1K4. Authority sought for purchase by transferee of the operating rights of transferor as set forth in Certificates MC 124233 (Sub-6 and 7), issued October 3, 1969 and August 12, 1971, respectively, as follows: *Passengers and their baggage,* in round-trip charter, and special operations in sightseeing and pleasure tours, beginning and ending at ports of entry on the United States-Canada boundary line in WA, and extending to points in AZ, CA, CO, ID, MT, NV, OR, UT, WA, and WY. *Passengers and their baggage* in the same vehicle with passengers, in one-way charter operations, from ports of entry on the United States-Canada Boundary line in WA, to points in WA. Transferee holds no authority from this Commission. Application has been filed for temporary authority under 49 U.S.C. § 11349.

MC–FC 78059, filed March 8, 1979. Transferee: MOUNTAIN WEST TRANSPORTATION CO., a corporation, 346 W. South Temple, Salt Lake City, UT 84101. Transferor: SALT LAKE TRANSPORTATION CO., a corporation, 346 W. South Temple, Salt Lake City, UT 84101. Representative: Bruce W. Shand, 430 Judge Bldg., Salt Lake City, UT 84111. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificates MC–2239 and Subs 1, 2, and 3, issued July 1, 1942, October 9, 1962, May 26, 1967, and March 28, 1972 respectively, as follows: (A) *Passengers and their*

baggage, (1) in charter operations, from Salt Lake City, UT, to points in AZ, CO, ID, MT, NV, WY, and UT within 400 miles of Salt Lake City, UT, and return, restricted to the transportation of traffic originating at the point indicated, (2) in special operations, in round-trip sightseeing or pleasure tours, originating at Salt Lake City, UT, and extending to those points in AZ, CO, ID, MT, NV, NM, OR, and WY within 400 miles of Salt Lake City, and return, and (3) in special operations, in sightseeing or pleasure tours, from Salt Lake City, UT, to West Yellowstone, MT, and from West Yellowstone, MT, to Salt Lake City, UT. (B) *Passengers and their baggage* in the same vehicle with passengers, over a regular route between Salt Lake City and Brighton, UT, serving all intermediate points. Transferee holds no authority from this Commission. Application has not been filed for temporary authority under 49 U.S.C. § 11349.

MC–FC 78060, filed March 6, 1979. Transferee: VIKING INTERNATIONAL, INC., 1434 S.W. 137th, Seattle, WA 98166. Transferor: J & R TRUCKING, INC., 4104 83rd S.E., Mercer Island, WA 98040. Representative: James T. Johnson, 1610 IBM Bldg., Seattle, WA 98101. Authority sought for purchase by transferee of the operating rights of transferor set forth in Certificates No. MC 140313 Subs 4, 7, and 8, issued July 30, 1976, October 6, 1977, and January 10, 1978, as follows: Metal doors and metal fireplaces, from Fredericksburg, VA, to Sacramento, CA, and points in OR and WA; Metal doors, metal fireplaces and attachments and related parts of metal doors and metal fireplaces, from Fredericksburg, VA, to points in AZ and NV, and ports of entry on the U.S.-Canada Boundary in MN, MO, NY, and ND; Galvanized pipe, furnaces, furnace fittings and parts, air conditioners, and air conditioner parts, from Cincinnati, OH, to points in ID, OR, and WA. Transferee holds no ICC authority and a temporary authority application has been filed.

MC–FC 78061, filed February 8, 1979. Transferee: BLUE RIDGE LINES, LTD. 134–F LaMancha Drive, Asheville, NC 28805. Transferor: TRAILWAYS SOUTHEASTERN LINES INC., 200 Spring St., N.W., P.O. Box 56669, Atlanta, GA 30343. Representative: Edward S. Finley, Jr., P.O. Box 109, Raleigh, NC 27602. Authority sought for purchase by transferee of portions of the operating rights held by transferor in Certificate MC 61599 issued November 2, 1948, as follows: Passengers and their baggage, express, mail and newspapers in the same vehicle with passengers, between Bristol, VA–TN and Asheville, NC; between Mars Hill, NC and Marshall, NC; and between Greenville, TN and Asheville, NC, over specified regular routes, serving all intermediate points. Transferee holds no authority from the Commission. An application for temporary authority has not been filed.

MC–FC 78062, filed March 8, 1979. Transferee: CHARLES G. LAWSON TRUCKING INC., 608 Ann Drive, Brundidge, AL 36010. Transferor: LORENZ TRANSPORT AND SHIP LINES, INC., Mobile Highway, Montgomery, AL 36102. Representative: William P. Jackson, Jr., P.O. Box 1240, Arlington, VA 22210. Authority sought for purchase by transferee of the operating rights of transferor set forth in Permit MC 143185, issued June 13, 1978, as follows: Meats, meat products, meat by-products, and materials and supplies used in the manufacture of meats, meat products, meat by-products (except hides and skins and commodities in bulk, in tank vehicles), between the facilities of Frosty Land Foods International, Inc., d.b.a. Lorenz International, in Montgomery, AL, on the one hand, and, on the other, points in the United States, including Alaska, but excluding Hawaii, under contract with Frosty Lands Foods International, Inc., d.b.a. Lorenz International. Transferee holds no ICC authority. Application for temporary authority has been filed.

MC–FC 78063, filed March 2, 1979. Transferee: RUSSELL A. KARCHNER, d.b.a. RUSSELL KARCHNER TRUCKING, Box 20, Sybertsville, PA 18251. Transferor: Gervase Murphy, 105 W. Independent St., Orwigsburg, PA 17961. Representative: Keith W. Karchner, Box 130, Sybertsville, Pa. 18251. Authority sought for purchase by transferee of the operating rights of transferor set forth in Permit MC 140618, issued October 4, 1976, as follows: *Petroleum motor oil, lubricating oil, greases, and undercoating and oil additives* (except in bulk), from Congo, WV, to points in Bucks, Montgomery, Delaware, Philadelphia, Cumberland, Dauphin, Lancaster, Perry and Schuylkill Counties, PA, under contract with Penn Harris Oil Co, of Camp Hill, PA; Shollenberger Oil Co., of Pottsville, PA, and Loos & Dilworth, Inc., of Philadelphia. Transferee holds authority under MC 79700. Application for temporary authority has not been filed.

MC–FC 78064, filed March 6, 1979. Transferee: EDWARD J. STINSON, Route 1, Box 256, Glen Rose, TX 76043. Transferor: H. J. NOLL, 1014 Daisy St., Houston, TX 77012. Representative: Joe G. Fender, 711 Louisiana, Suite 1150, Houston, TX 77002. Authority sought for purchase by transferee of the operating rights of transferor set forth in Certificates MC 117836 and Subs 1, 3, 8, and 12, issued May 8, 1962, October 19, 1966, April 11, 1963, December 4, 1963, and May 30, 1978, authorizing transportation of bananas, from New Orleans, LA, to points in TX; from Galveston, TX, to Clovis and Roswell, NM, Monroe, LA, Little Rock, AR, Albuquerque, NM, and points in TX, OK, and AR; and from Houston, TX, to Albuquerque, NM. Transferee holds no ICC authority and no application for temporary authority has been filed.

MC–FC 78066, filed March 5, 1979. Transferee: DONALDSON FREIGHT DELIVERY, INC., 12891 Nelson St., Garden Grove, CA 92642. Transferor: G & H TRANSPORTATION, INC., 1501 Chapin Road, Montebello, CA 90640. Representative: Fred H. Mackensen, 9454 Wilshire Blvd., Suite 400, Beverly Hills, CA 90212. Authority sought for purchase by transferee of the operating rights of transferor in Certificate of Registration No. MC 96621 Sub 6 issued January 6, 1978, authorizing the transportation of general comodities, with exceptions, (1) between points in the Los Angeles Basin Territory; (2) between points in the San Diego Territory; (3) between the Territories above serving points on and within ten miles laterally of Interstate Highways 5 and 15; and (4) between points within the Territories in (1) and (2) above and intermediate points as defined in (3) above, on the one hand, and, on the other, Goleta, CA serving points on and within ten miles laterally of U.S. Highway 101. Transferee holds no ICC authority. Application for temporary authority has not been filed.

MC–FC 78068, filed March 12, 1979. Transferee: YUMA COUNTY TRANSPORTATION CO., 310 East Second Ave., Yuma, CO 80759. Transferor: EDWARD P. RUFF and THOMAS E. BROOKS, d.b.a. BROOKS TRANSPORTATION COMPANY, 101 Oak St., Sterling, CO 80751. Representative: Charles J. Kimball, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. Authority sought for purchase by transferee of a portion of the operating rights of transferor in Certificate MC 73639 issued June 27, 1974, as follows: *General commodities*, with the usual exceptions, between Sterling, CO, and Holyoke, CO serving Holyoke, CO, for purposes of joinder only, from Sterling, CO, over U.S. Highway 6 to Holyoke, CO, and return over the same route; and between

Holyoke, CO, and McCook, NE, serving Holyoke, CO, for the purpose of joinder only, and serving Imperial, NE, and all points intermediate between Imperial, NE and McCook, NE, from Holyoke, CO, over U.S. Highway 6 to McCook, NE, and return over the same route. Transferee holds authority under MC 96877 (Sub-1). Application for temporary authority has been filed.

MC–FC 78071, filed March 14, 1979. Transferee: STEEL EXPRESS, INC. 1507 Ripley St., P.O. Box 5217, Lake Station, IN 46405. Transferor: D. F. BAST, INC., P.O. Box 2288, Allentown, PA 18001. Representative: Alan Kahn, Suite 1920, 2 Penn Center Plaza, Philadelphia, PA 19102. Authority sought for purchase by transferee of the operating rights of transferor set forth in Certificate MC 6078 Sub 46, issued February 4, 1966, as follows: Iron and steel articles and equipment and supplies, used or useful in the production and distribution of such articles, between the facilities of Bethlehem Steel Corporation at Burns Harbor, Porter County, IN, on the one hand, and, on the other, points in IL, IA MI, MO, and WI. Transferee holds no authority from the Commission. Application for temporary authority has been filed.

MC–FC 78072, filed March 14, 1979. Transferee: GOVERNMENT CONTRACT SERVICES, INC., 4112 Dewmar Court, Kensington, MD 20795. Transferor: SOUTHERN MARYLAND TRANSPORTATION CO., INC. (same as transferee). Representative: Thomas M. Auchincloss, Jr., 918 16th St., N.W., Washington, D.C. 20006. Authority sought for purchase by transferee of the operating rights of transferor set forth in Certificate MC 96818 Sub 4, issued September 22, 1976, authorizing general commodities, with exceptions, between the site of the U.S. Navy Quicktrans Air Cargo System Station, Naval Air Station, Norfolk, VA, on the one hand, and, on the other, the sites of the Naval Weapons Laboratory, Dahlgren, VA, the Naval Air Station, Patuxent River, MD, the Naval Ordnance Station, Indian Head, MD, and the Naval Station, Washington, D.C., with exceptions. Transferee holds no ICC authority, and no temporary authority application has been filed.

MC–FC 78073, filed March 5, 1979. Transferee: BOLDUC-GOULET EXPRESS, INC., Old Worcester Road, P.O. Box 217, Webster, MA 01570. Transferor: HANNIGAN'S EXPRESS, INC., Barbara T. Goff, (Assignee For Benefit Of Creditors) c/o Barbara T. Goff, 1 State Street, Boston, MA 02109. Transferee's representative: George Robinson, 293 Main Street, Webster, MA 01570. Transferor's representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Authority sought for purchase by transferee of the operating rights of transferor as set forth in Certificate MC 9928 issued April 22, 1960 authorizing the transportation of (1) general commodities, with usual exceptions, over regular routes, between Ware and Worcester, MA, including intermediate and specific off-route points in MA, and (2) paper, paper products, woolen cloth and dyeing supplies, pipe couplings and supplies, asbestos products, and machinery, over irregular routes, between Brookfield, MA and points in MA within 10 miles of Brookfield, on the one hand, and, on the other, points in Providence County, RI. Transferee holds authority from this Commission in Certificate MC 17764. Application has not been filed for temporary authority under Section 210a(b) (49 U.S.C. 11349).

MC–FC 78075, filed March 9, 1979. Transferee: R. M. ORMES TRANSPORTATION, Inc., 20 Atlantic Avenue, Woburn, MA 01801. Transferor: TIPTON MOVING, INC., 20 Atlantic Avenue, Woburn, MA 01801. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Authority sought for purchase by transferee of the operating rights of transferor as set forth in Certificate MC 25280 and MC 25280 (Sub-1), issued April 17, 1972 and September 6, 1972 respectively, authorizing the transportation of household goods, (1) between points in Middlesex, Norfolk, Suffolk and Worcester Counties, MA, on the one hand, and, on the other, points in CT, ME, MA, NH, NJ, NY, PA, RI, and VT, and (2) between Brockton, MA and points within 25 miles thereof, on the one hand, and, on the other, points in MA, RI, NH, VT, NY, and CT. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under 49 U.S.C. 11349.

MC–FC 78083, filed April 2, 1979. By decision of May 2, 1979, the Motor Carrier Board approved the transfer from WATKINS MOTOR LINES, INC., 1120 West Griffin Road, Lakeland, FL, 33801, to MOTOR CARGO TRANSPORT CORP., 21 D'Shibe Terrace, Vineland, NJ, 08360, of a portion of the operating rights in Certificate MC 95540 (Sub-663), issued August 6, 1970, authorizing generally the transportation of glassware and glass containers, from and to Tuckahoe, NY, Relay, MD, Bridgeton and Salem, NJ, Auburn, Lewiston, South Paris, Buckfield, and Portland, ME, and Manchester, NH, points in Cumberland County, NJ, and points in CT, DE, MD, MA, NY, PA, RI, VA, and DC. Transferee holds no authority from the Commission. No application for temporary authority has been filed. Applicants' representatives: Charles Ephraim, Suite 600, 1250 Connecticut Ave., NW, Washington, DC 20036; Paul Daniell, 1200 Peachtree Center Gas Light Tower, 235 Peachtree St., N.E., Atlanta, GA 30303.

MC–FC 78086, filed March 15, 1979. Transferee: JOSEPH TALLERICO, 200 N. Keyser Ave., Old Forge, PA 18518. Transferor: JOSEPH GILCHRIST, 855 W. Oak St., Old Forge, PA 18518. Applicants' representative: Joseph F. Hoary, 121 S. Main St., Taylor, PA 18517. Authority sought for purchase by transferee of the operating rights of transferor as set forth in Certificate MC 139806, issued October 2, 1975, as follows: (1)(a) *lamps* and *lamp shades* and *wall plaques*, from the plant site of Grossinger Industries, Old Forge, PA, to points in IL, IN, OH, MI, WV, VA, MD, and NJ (except Camden and points north of and including Middlesex and Mercer Counties), (b) *parts, materials and supplies* used in the manufacture of the commodities in (1)(a) above, in the reverse direction of (1)(a) above. (2)(a) *lamp shades*, from the plant site of Hillcrest Shades, Inc., Old Forge, PA, to the destination points named in (1)(a), and (b) *materials and supplies* used in the manufacture of lamp shades, in the reverse direction of (2)(a). (3)(a) *incandescent light bulbs*, from the plant site of Pennsylvania Illuminating Corporation, Scranton, PA, to the destinations points named in (1)(a) above, and (b) *parts, materials and supplies* used in the manufacture of incandescent light bulbs, in the reverse direction of (3)(a). (4)(a) *fluorescent and incandescent lamp fixtures*, from the plant sites of Alleghany Lamp Manufacturing, Inc., and Scott Manufacturing Co., Wilkes-Barre, PA, to the destination points named in (1)(a) above, and (b) *parts, materials, and supplies* used in the manufacture of the commodities in (4)(a), in the reverse direction of (4)(a). (5)(a) *fluorescent and incandescent lamp fixtures*, from the plantsites of Globe Lighting Products, Inc., West Hazleton, PA and Fulton Lamp Manufacturing Co., Inc., Berwick, PA, to points in IL, IN, MI, OH, WV, MD (except points in the Baltimore Commercial Zone as defined by the Commission and points on the Delmarva Peninsula), and NJ (except Camden and points north of and including Middlesex and Mercer Counties), and (b) *parts,*

materials and supplies used in the manufacture of the commodities in (5)(a), in the reverse direction of (5)(a). The operations in (1) through (5) above are restricted against the transportation of commodities in bulk, and restricted to the transportation of traffic originating at the respectively named plant sites. Transferor holds authority from this Commission under MC 139331. Application has not been filed for temporary authority under 49 U.S.C. § 11349.

MC FC–78090, filed April 17, 1979. Transferee: TRAFIK SERVICES, INC., 11 Newark St., Providence, RI 02908. Transferor: PROVIDENCE–SPRINGFIELD DESPATCH, INC., 540 Huntington Ave., Providence, RI 02907. Applicants' representative: Francis P. Barrett, P.O. Box 238, Milton, MA 02187. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in certificate MC 59666, issued March 21, 1968, authorizing transportation of *General commodities*, with the usual exceptions, between Providence, RI and Holyoke, MA, serving all intermediate points and the off-route points of Ware and S. Hadley, MA, those in Providence County, RI, Hampden County, MA, and that part of Worcester County, MA south of MA Hwy 9, over specified regular routes. Transferee holds no authority from this Commission. Application has been filed for temporary authority under 49 U.S.C. § 11349.

MC–FC 78092, filed March 26, 1979. Transferee: BOBBY W. RAGLAN, doing business as TEKAMAH TRANSFER, 1414 J St., Tekamah, NE 68061. Transferor: D. K. CONKLIN, doing business as TEKAMAH TRANSFER, 1521 "O" St., Tekamah, NE 68061. Representative: Bobby W. Raglan, 1414 J St., Tekamah, NE 68061. Authority sought by transferee to purchase the operating rights of transferor as set forth in certificates MC 25198 and MC 25198 (Sub- 1), issued August 28, 1949 and December 21, 1973, respectively, as follows: *General commodities*, with the usual exceptions, between Tekamah and Omaha, NE, over U.S. Hwy 73, serving all intermediate points, and serving the off-route points of Council Bluffs, IA and Decatur, NE. *Feed, farm machinery, farm machinery parts, draintile, and building materials*, from Sioux City, IA to Tekamah, NE and points in NE within 25 miles of Tekamah. *Livestock and agricultural commodities*, between Tekamah, NE and points in NE within 25 miles thereof, on the one hand, and, on the other, points in IA. Transferee presently holds no authority from this Commission. Application has been filed for Temporary authority under 49 U.S.C. § 11342.

MC–FC 78093, filed April 2, 1979. Transferee: HERMAN L. ROSS, doing business as WYKAGYL EXPRESS, 348 S. Eighth Ave., Mount Vernon, NY 10550. Transferor: OTIS CAREY, doing business as WYKAGYL EXPRESS, 172 Morris St., New Rochelle, NY 10801. Authority sought by transferee to purchase the operating rights of transferor, as set forth in Certificate MC 105328, issued January 10, 1978, as follows: *Household goods* as defined by the Commission, between points in Westchester County, NY, on the one hand, and, on the other, points in CT, MA, NJ, NY, and PA. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under 49 U.S.C. § 11349.

MC–FC 78145 filed May 17, 1979. Transferee: CAJUN CARTAGE & WAREHOUSING CORP., 1205 St. Louis Street, New Orleans, LA 70150. Transferor: C. NEAL CARSON doing business as CARSON CARRIERS, same address as transferee. Representative: Thomas N. Willess, 1000 16th Street NW., Washington, D.C. 20036. Authority sought to be purchased: operating rights of transferor set forth in certificate number MC 57946, Sub. No. 2, issued July 21, 1978, authorizing the transportation of general commodities (with usual exceptions) between New Orleans, LA and points within 10 miles of New Orleans, on the one hand, and, on the other, points in that part of Louisiana in the area bounded by a line beginning at the TX–LA State line and drawn easterly along Louisiana Highway 12 to junction U.S. Highway 190 at or near Ragley, LA, thence along U.S. Highway 190 to junction U.S. Highway 71 at or near Krotz Springs, LA, thence northerly along U.S. Highway 71 to junction U.S. Highway 167 at or near Alexandria, LA, thence northerly along U.S. Highway 167 to the Arkansas-Louisiana State line at or near Junction City, AR. Cajun Cartage & Warehousing Corp. holds no authority from this Commission. However, transferee is owned by the transferor. Temporary authority is not sought.

Finance Applications

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control through ownership of stock, of rail carriers or motor carriers pursuant to Sections 11343 (formerly Section 5(2)) or 11349 (formerly Section 210a(b)) of the Interstate Commerce Act.

An original and one copy of protests against the granting of the requested authority must be filed with the Commission on or before July 18, 1979. Such protest shall comply with Special Rules 240(c) or 240(d) of the Commission's *General Rules of Practice* (49 CFR 1100.240) and shall include a concise statement of protestant's interest in the proceeding. A copy of the protest shall be served concurrently upon applicant's representative, or applicant, if no representative is named.

Each applicant states that approval of its application will not significantly affect the quality of the human environment nor involve a major regulatory action under the Energy Policy and Conservation Act of 1975.

MC–F 13927F. Authority sought to transfer to NATIONAL REFRIGERATED TRANSPORT, INC., P.O. Box 51366, Tulsa, OK 74151, a portion of the operating rights of TRANS–NATIONAL TRUCK, INC., P.O. Box 4160, Amarillo, TX, and to transfer to Trans-National Truck, Inc., a portion of the operating rights of National Refrigerated Transport, Inc. Applicants' attorney: Charles W. Singer, 2480 E. Commercial Blvd., Ft. Lauderdale, FL 33308. Operating rights sought to be transferred to National Refrigerated Transport, Inc., from Trans-National Truck, Inc., are contained in sub numbers under docket MC 133655 or portions thereof and authorize the transportation of cellulose materials and products, foodstuffs, furniture, department store merchandise, meat and meat products, printed matter materials, pulpboard and pulpboard articles, containers, advertising materials, beverages, carbon products, and various other specified commodities from, to, or between the following States: Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, and District of Columbia, with various specified restrictions. Trans-National Truck, Inc., is authorized to operate from, to and between all points in the United States (except Alaska and Hawaii). Operating rights sought to be transferred to Trans-National Truck, Inc., from National Refrigerated Transport, Inc., are contained in docket MC 118159 and sub numbers thereunder or portions thereof and authorize the

transportation of foodstuffs, containers, glassware, flat glass, paper and paper products, pulpboard and pulpboard articles, meat and meat products, beverages, compounds and deodorants, tile flooring, picture frames, cleaning, bleaching, washing and scouring items, and various other specified commodities, from, to or between the following States: Alabama, Arizona, Arkansas, California, Colorado, Connnecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming and District of Columbia, with various specified restrictions. National Refrigerated Transport, Inc., is authorized to operate from, to and between all points in the United States (except Alaska and Hawaii). Trans-National Truck, Inc., and National Refrigerated Transport, Inc., are commonly controlled. No application has been filed for temporary authority under Section 210a(b).

MC–F 13990F. Authority sought for purchase by NEYRINCK BROTHERS, INC., 7140 Riga Highway, Riga, Mich. 49276, a portion of the operating rights of GRA-BELL TRUCK LINE, INC., 679 Lincoln Avenue, Holland, Mich. 49423. Applicants attorney: Aloysius B. O'Mara, 105 W. Jefferson St., P.O. Box 165, Blissfield, Mich. 49228. Operating rights sought to be purchased: common carrier authority to transport fertilizer and fertilizer materials from Toledo, Ohio to points in Michigan with no transportation for compensation on return. Approval of the proposed transaction will result in a split of vendor's authority. Vendor is authorized to transport fertilizer and fertilizer material from Toledo, Ohio to points in Michigan. Vendor proposes to retain the authority set forth in MC 113434 (Sub-26) authorizing the transportation of sauerkraut from Jonesville, Michigan to points in Ohio, Pennsylvania and Kentucky and from Fremont, Ohio to points in Pennsylvania and Kentucky as well as all other authority now held in other certificates. None of the authority being retained by transferor duplicates the authority sought to be transferred. Vendee is authorized to operate as a contract carrier in the State of OH. Application has not been filed for temporary authority under section 11349.

MC–F 13993F. Transferee: NORTH PENN TRANSFER OF CONNECTICUT, INC., Route 63 and 202, Lansdale, PA 19446. Transferor: WOOSTER EXPRESS, INC., Route 63 and 202, Lansdale, PA 19446. Applicant's Representative: JOHN W. FRAME, ICC PRACTITIONER, Box 626, 2207 Old Gettysburg Road, Camp Hill, PA 17011. authority sought for merger by transferee of the operating rights of transferor as set forth in Certificate No. MC–3598, issued March 14, 1944, MC–3598, Sub No. 4, issued June 23, 1966, MC–3598, Sub No. 5, issued November 4, 1966, MC–3598, Sub No. 6, issued July 7, 1971, MC–3598, Sub No. 7, issued November 21, 1972, and MC–3598, Sub No. 8 (originally MC–52810, acquired 8/31/77 under Docket No. MC–F 12765), as follows: (a)(1) *General commodities* (except those of unusual value, and except dangerous explosives, household goods as defined in Practices of Motor Common Carriers of Household Goods, 17 M.C.C. 467, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), between Northampton, MA, and Newark, NJ, as follows: From Northampton over US Hwy 5 to New Haven, CT, then over US Hwy 1 to Newark; from Northampton over US Hwy 5 to Springfield, MA, then over Alternate US Hwy 5 to Hartford, CT, then over CT Hwy 9 to Middletown, CT, then over CT Hwy 15 to New Haven, and then over US Hwy 1 to Newark; From Northampton to Hartford as specified above, then over US Hwy 6 to Thomaston, CT, then over CT Hwy 8 to Stratford, CT, then over US Hwy 1 to Newark; and return over these routes to Northampton. Service is authorized to and from the Off-route points of Adams and Pittsfield, MA, and points and places in MA within 12 miles of Springfield, MA: Bloomfield, Watertown, Glastonbury, Portland, New Britain, Somers, East Hampton, Sharon, Kent, New Milford, Washington, Colchester, Haddam, East Haddam, New Canaan, and Danbury, CT, Scarsdale, Freeport, Garden City, Hempstead, Lynbrook, Mineola, Rockville Center, White Plains, and Tuckahoe, NY, and points and places in the New York, NY Commercial Zone, as defined in 1 M.C.C. 665, and those in New Jersey within 20 miles of Newark, NJ, other than those in New York, NY Commercial Zone. Between Southbridge, MA and Hartford, CT: From Southbridge over MA Hwy 131 to Sturbridge, MA, then over MA Hwy 15 to the MA-CT State line, and then over CT Hwy 15 to Hartford, and return over the same route. Service is authorized to and from the off-route points of Willington, Eastford, and Thompson, CT. Between New Haven, CT and Boston, MA: From New Haven over US Hwy 1 to Boston, and return over the same route. Service is authorized to and from the off-route points of Norwich and Saybrook, CT, Brockton, Beverly, Salem, Newton, Malden, Lynn, Everett, Winchester, Arlington, Weburn, Taunton, Somerville, Cambridge, and Chelsea, MA, and points and places in Rhode Island. Between Canton, CT and Hartford, CT: From Canton over US Hwy 44 to Hartford, and return over the same route. Service is authorized to and from the off-route points of Torrington, New Hartford, and Winchester, CT. Between Hartford, CT and New Bedford, MA; From Hartford over US Hwy 6 via Manchester and Willimantic, CT to New Bedford (also from Manchester over Alternate US Hwy 6 to Willimantic), and return over the same route. Service is authorized to and from the off-route points of Plainfield, Griswold, Sterling, and Putnam, CT and Dighton, MA. Between Boston, MA and Springfield, MA; From Boston over US Hwy 20 to Springfield and return over the same route. Service is authorized to and from the off-route points of Clinton, Warren, Russel, and Great Barrington. Between Northampton, MA and New Haven, CT: From Northampton over MA Hwy 10 to the MA-CT State line, then over CT Hwy 10 to New Haven, and return over the same route. Between Boston, MA and Northampton, MA: From Boston over US Hwy 20 to junction MA Hwy 9, then over MA Hwy 9 to Northampton, and return over the same route. Service is authorized to and from all intermediate points on the above-specified routes. Between Boston, MA and Northampton, MA: From Boston over MA Hwy 2 to Greenfield, MA, then over US Hwy 5 to Northampton, and return over the same route. Service is authorized to and from all intermediate points between Ayer, MA and Greenfield, MA, including Ayer and Greenfield, and the off-route points of Haverhill, Lowell, Winchendon, Royalston, and Monroe, MA. Between Boston, MA and Southbridge, MA: From Boston over US Hwy 20 to Marlboro, MA, then over MA Hwy 85 to junction MA Hwy 16 at a point approximately 2 miles east of Milford, MA, then over MA Hwy 16 to Douglas, MA, then over unnumbered highway to junction MA Hwy 197 at a point approximately 2 miles northeast of Webster, MA, then over MA Hwy 197 to junction MA Hwy

131, and then over MA Hwy 131 to Southbridge, and return over the same route. Service is authorized to and from all intermediate points between Marlboro, MA and Southbridge, MA, and the off-route points of Ashland, Dudley, and Blackstone, MA. (2) *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), serving points in CT as off-route points in connection with carrier's presently authorized regular route operations in MC–3598. (3) *General Commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading). Between NY, NY and Philadelphia, PA, serving the intermediate point of Trenton, NJ, restricted to traffic moving to or from points other than New York, NY, all other intermediate points without restriction; and off-route points within ten miles of the specified portions of US Hwy 1 and US Hwy 130 (formerly NJ Hwy 25): From New York over US Hwy 1 to Philadelphia, and return over the same route. From New York over US Hwy 1 to junction of US Hwy 130 (formerly NJ Hwy 25), then over US Hwy 130 to Camden, NJ, and then across the Delaware River to Philadelphia, and return over the same route. Irregular Routes: (a) *Shirts, piece goods, pajamas, thread, trimmings, buttons, underwear, leather, paper, glass and metal frames,* between Jersey City, Newark, Elizabeth, Linden, Rahway, Perth Amboy, and Fords, NJ, on the one hand, and, on the other, New York, NY. (b) *Handkerchiefs,* from South River, NJ, to New York, NY, with no transportation for compensation on return except as otherwise authorized. (c) *Machinery, equipment,* and *supplies,* used or useful in the manufacture of shirts and handkerchiefs, from New York, NY, to Perth Amboy and South River, NJ, with no transportation for compensation on return except as otherwise authorized. (4) Regular Routes: (a) *Gummed tape,* serving the plant site of the Crowell Corporation at Yorklyn, DE, as an off-route point in connection with carrier's regular-route operations authorized herein between Philadelphia, PA and Wilmington, DE. (b) *General Commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodites in bulk, and those requiring special equipment). Between Philadelphia, PA and Wilmington, DE, serving all intermediate points: From Philadelphia over US Hwy 13 via Chester, PA to Wilmington, and return over the same route. Restriction: The service authorized is subject to the limitation that service at Wilmington, Camden, intermediate or off-route points south of Philadelphia, and points south of Camden is restricted to shipments moving over carrier's lines to or from points north of Philadelphia or points north of Camden. (5) *Irregular Routes. Food* and *foodstuffs* (except commodities in bulk, in tank vehicles), in vehicles equipped with mechanical refrigeration, from the facilities of Kraft Foods Division of Kraftco Corporation at or near Fogelsville, PA, to points in CT, MA, ME, NH, RI, and VT, with no transportation for compensation on return except as otherwise authorized. Restriction: The authority granted herein is restricted to the transportation of traffic originating at the named origin points and destined to the named destination points. (6) *Regular Routes. General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (a) serving all intermediate points on US Hwy 1 between Baltimore, MD, and junction US Hwys 1 and 222, in connection with carrier's regular-route operations authorized herein between Baltimore, MD and New York, NY. (b) Serving all intermediate points on US Hwy 40 between Baltimore, MD and junction US Hwys 40 and 222, in connection with carrier's regular-route operations authorized herein between Baltimore, MD and New York, NY. (c) Serving all intermediate points on US Hwy 1 between New Brunswick and Rahway, NJ (except Rahway), and points on US Hwy 222 between junction US Hwys 222 and 40 and junction US Hwys 1 and 222, in connection with carrier's regular-route operations authorized herein between Baltimore, MD and New York, NY. (d) Serving points in Bergen, Passaic (except Paterson and Passaic, NJ), Hudson, Essex (except Irvington, NJ), Union, Morris, and Middlesex Counties, NJ (except those located south of the Raritan River), and Nassau County, NY, Edgewood Arsenal, Aberdeen Proving Ground, MD, and Bound Brook, NJ, as off-route points in connection with carrier's regular-route operations authorized herein between Baltimore, MD and New York, NY. Restriction: The authority granted above is restricted to the transportation of traffic moving from, to, or through Aberdeen, MD, except that traffic moving from, to, or through Edgewood Arsenal or Aberdeen Proving Grounds, MD, or points in MD on US Hwys 1 and 40 may move from, to, or through Baltimore, MD, without such prior movement through Aberdeen, MD. (e) Between Baltimore, MD and Washington, DC, serving all intermediate points, and serving as off-route points Frizzelburg, MD, and points in that part of MD bounded by a line extending from Baltimore, MD, westward along US Hwy 40 to junction MD Hwy 32, then along MD Hwy 32 to junction US Hwy 140, then along US Hwy 140 to Westminster, MD, then along MD Hwy 482 to junction MD Hwy 30, then along MD Hwy 30 to MD Hwy 88, then along MD Hwy 88 to junction MD Hwy 137, then along MD Hwy 137 to Hereford, MD, then along MD Hwy 45 to Baltimore, then southeasterly along MD Hwy to Annapolis, MD, then along US Hwy 50 to Washington, DC, then along US Hwy 1 to Baltimore, MD, including all points on the indicated portions of the specified highways, and Rockville and Indianhead, MD; (f) From Baltimore over US Hwy 1 to Washington, DC, and return over the same route. (g) From Baltimore, over US Hwy 40 to junction US Hwy 29, then over US Hwy 29 to Washington, DC, and return over the same route. Restriction: The operations authorized under the 2 route descriptions immediately above are restricted to the transportation of traffic moving from, to, or through Baltimore, MD. Restriction: The authority granted under 6 (a), (b), (c), (d), (e), (f), and (g) above, shall not be severable by sale or otherwise from the irregular route authority under (7) herein. (7) *Regular Route, general commodities,* Between Baltimore, MD and New York, NY, serving the intermediate points of Rahway, NJ, and those between Rahway and New York; and the off-route points of Paterson, Passaic and Irvington, NJ. (a) From Baltimore over US Hwy 40 to junction MD Hwy 7, near Havre de Grace, MD, then over MD Hwy 7 to Elkton, MD, then over US Hwy 40 via State Road, DE to junction I–295 (formerly shown as junction US Hwy 130), then over I–295 to junction US Hwy 130, then over US Hwy 130 to junction US Hwy 1, then over US Hwy 1 to New York, and return over the same route. (b) From Baltimore over the above-specified route to State Road, DE, then over US Hwy 13 via Chester, PA to junction US Hwy 1, and then over US Hwy 1 to New York, and return over the same route. (c) From Baltimore to Chester as specified above, then across the Delaware River

to Bridgeport, NJ, then over US Hwy 130 to junction US Hwy 1, and then over US Hwy 1 to New York, and return over the same route. (d) From Baltimore over US Hwy 1 to New York, and return over the same route. From Baltimore, MD to Washington, DC, with service authorized to Washington, DC restricted to traffic moving from New York, NY. From Baltimore over US Hwy 1 to Washington, DC and return over the same route with no transportation for compensation except as otherwise authorized. *Irregular Routes. General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Aberdeen, MD, on the one hand, and, on the other, New York, NY, points on Long Island, NY, and points in NJ. Restriction: The authority granted under the commodity description next-above is subject to the following conditions: Said authority is restricted against the pickup or delivery of any traffic at Aberdeen, MD, other than that which carrier is authorized to transport under (8) herein. Said authority and that held by carrier under (7) herein from or to points in NJ and NY through Oxford and West Grove, PA, shall be construed as comprising a single operating right and shall not be severable by sale or otherwise. *General commodities* (except those of unusual value, classes A and B explosives, sand, gravel, earth, stone, household goods as defined by the Commission, and commodities requiring special equipment) between points in Harford County, MD, on the one hand, and, on the other, points in that part of MD within 60 miles of Bel Air, MD, other than Baltimore, MD, and that part of PA south and east of US Hwy 1, within 60 miles of Bel Air, MD, including points on the indicated portion of the highway specified. *General commodities* (except those of unusual value, classes A and B explosives, alcoholic liquors, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), between Baltimore, MD on the one hand, and, on the other, Quantico, VA, points in the District of Columbia, and points in MD except those in Harford County and those east of the Chesapeake Bay and south of the Chesapeake and Delaware Canal. *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), between Oxford and West Grove, PA, and points in PA within 5 miles of West Grove, on the one hand, and, on the other, points in NJ, those in NY, NY, and on Long Island, NY, those in that part of MD west of the Chesapeake Bay and on and east of US Hwy 1, and those in that part of DE north of the Chesapeake and Delaware Canal. Between Wilmington, DE, on the one hand, and, on the other, points in that part of DE and PA on and east of that portion of US Hwy 13, between Wilmington, DE and Philadelphia, PA, including Wilmington and Philadelphia. Restriction: Carrier shall not, pursuant to the irregular-route authority in (7) herein transport traffic between any points authorized in (8) herein to be served by it in regular-route operations. NORTH PENN TRANSFER OF CONNECTICUT, INC., holds no authority from this Commission. However, NORTH PENN TRANSFER, INC. owns all of the stock of NORTH PENN TRANSFER OF CONNECTICUT and is authorized to operate as a common carrier in the States of PA, DC, MD, DE, NJ, NY, MA, RI, CT, VA, NC, OH, AL, GA, FL, SC, KY, TN, WV, ME, VT, and NH. Application has not been filed for temporary authority under section 11349.

Note.—Under MC–F 12806, North Penn Transfer of Connecticut, Inc. was granted control of Wooster Express, Inc. and Baltimore-New York Express, Inc. by an order served July 27, 1977.

MC–F 13994F Authority sought for control by AMNACO, INC., 2861 South Broadway, Green Bay, Wisconsin, of CONTRACT DISTRIBUTION SYSTEM, INC., 1820 First National Bank Tower, Atlanta, Georgia 30303, and for acquisition by AL J. SCHNEIDER and DONALD J. SCHNEIDER, 2861 South Broadway, Green Bay, Wisconsin 54304, of control of such rights through the transaction. Applicant's attorney: Charles W. Singer, 2480 East Commercial Boulevard, Fort Lauderdale, Florida 33308. CONTRACT DISTRIBUTION SYSTEM, INC., holds no authority but has been authorized by an administratively final Order in No. MC–144232 (Sub-No. 1F), to transport such commodities as are dealt in, or used by, manufacturers and distributors of paint, chemicals and related articles (except commodities in bulk), between points in the United States (except (1) Alaska and Hawaii, (2) from Richmond, KY to Louisville, KY and Cincinnati, OH in connection with traffic having a subsequent movement by rail, (3) from Garland, TX to Memphis, TN and (4) between Louisville, KY and St. Louis, MO and points in their respective commercial zones and points in Illinois, Indiana, and Ohio and those in Allegheny, Beaver, Indiana and Westmoreland Counties, PA on the one hand, and, on the other, points in Michigan] under a continuing contract with Sherwin Williams Company of Cleveland, Ohio. AMNACO, INC., is not a motor carrier but is a person in control of several regulated motor carriers.

MC–F 13995F. Authority sought for control by U.S. TRUCK LINES, INC. OF DELAWARE, 785 Union Commerce Building, Cleveland, OH 44115 of MERCURY FREIGHT LINES, INC., P.O. Box 1247, Mobile, AL 36601 through ownership of capital stock. Applicant's attorney: John C. Bradley, Suite 1301, 1600 Wilson Boulevard, Arlington, VA 22209. Common carrier operating rights sought to be controlled: MC 113528 (Sub-1), Regular Routes General Commodities (With The Usual Exceptions) Between Birmingham, AL., and Mobile AL., serving all intermediate points between Birmingham and the junction of Alabama Highway 5 and Alabama Highway 14 and the off-route point of Semmes, AL; Between junction Alabama Highway 5 and Alabama Highway 14, and Selma, AL., serving all intermediate points; Between Selma, AL., and Pensacola, FL., serving the intermediate and off-route points of Craig Field, Camden, Monroeville, Frisco City, Huxford, and Atmore, AL., Molina, Cantonment, and Gonzalez, FL., and points within 15 miles of Pensacola; Between Selma, AL, and Clanton, AL., serving all intermediate points; Between Selma, AL., and Stafford, AL., serving the intermediate point of Orrville, AL., and with service at Safford for purpose of joinder only; Between Mobile, AL., and Stockton, AL., serving no intermediate points; Between Camden, AL., and Catherine, AL., as an alternate route for operating convenience only, serving no intermediate points, and with service at Catherine for purpose of joinder only; Between Monroeville, AL., and Camden, AL., as an alternate route for operating convenience only, serving no intermediate points; *Empty vehicles.* Between Mobile, AL., and Pensacola, FL., serving no intermediate points. MC 113528 (Sub-4), Regular Routes General Commodities (With The Usual Exceptions) Between Birmingham, AL., and Fort Worth, TX., serving the intermediate point of Dallas, TX., Between Birmingham, AL., and Houston, TX., serving the intermediate point of Beaumont, TX.; Between Selma, AL., and junction U.S. Highway 80 and U.S. Highway 11, serving no intermediate points, and serving the junction of U.S. Highways 80 and 11 for the purpose of joinder only. MC 113528 (Sub-5), Regular Routes General Commodities (With The

Usual Exceptions) Between Mobile, AL., and Pensacola, FL., serving the intermediate and off-route points located within a 15 mile airline radius of the corporate limits of Pensacola; Between Monroeville, AL., and junction Alabama Highways 69 and 41, as an alternate route for operating convenience only, serving no intermediate points, and serving junction of said highways for purpose of joinder only; Between Birmingham, AL., and junction Alabama Highways 191 and 22, as an alternate route for operating convenience only, serving no intermediate points; Between Stockton, AL., and junction Alabama Highways 59 and 21 (at or near Uriah, AL.), serving no intermediate points and serving the junction of said highways for purpose of joinder only. MC 113528, (Sub-6), Regular Routes General Commodities (With The Usual Exceptions) Serving the site of the National Aeronautics and Space Administration, Manned Spacecraft Center, located near Houston, TX., and in the vicinity of Clear Lake, TX., as an off-route point in connection with carrier's authorized regular-route operations to and from Houston, TX. MC 113528 (Sub-10), Regular Routes General Commodities (With The Usual Exceptions) Between Mobile, AL., and junction U.S. Highway 11 and Mississippi Highway 26, located at or near Poplarville, MS., serving no intermediate points and serving junction U.S. Highway 11 and Mississippi Highway 26 for purpose of joinder only. MC 113528 (Sub-11), Regular Routes General Commodities (With The Usual Exceptions) Between Mobile, AL., and junction U.S. Highway 49 and U.S. Highway 80 (at or near Jackson, Miss.), serving no intermediate points, but serving junction U.S. Highway 49 and U.S. Highway 80 as a point of joinder with carrier's presently authorized regular routes. MC 113528 (Sub-12), Regular Routes General Commodities (With The Usual Exceptions) Serving Bay Minette, AL., as an intermediate point in connection with carrier's authorized regular-route operations between Mobile, AL., and Stockton, AL.; Serving Picayune, MS., and the Mississippi Test Facility of the National Aeronautics and Space Administration, located in Hancock County, MS., near Picayune, as off-route points in connection with carrier's authorized regular-route operations between Hattiesburg, MS., and Hammond, LA.; Serving Baton Rouge, LA., and points within 15 miles of Baton Rouge, as intermediate and off-route points in connection with carrier's authorized regular-route operations between Birmingham, AL., and Houston, TX.; Serving Lake Charles, LA., and points within 15 miles of Lake Charles, as intermediate and off-route points in connection with carrier's authorized regular-route operations between Birmingham, AL., and Houston, TX. MC 113528 (Sub-13), Regular Routes General Commodities Regular Route General Commodities (With The Usual Exceptions) Serving the plant site of the Hammermill Paper Company, located at or near Burnsville, AL., as an off-route point in connection with carrier's authorized regular-route operations to, from, and through Selma, AL. MC 113528 (Sub-16), (With The Usual Exceptions) Between Birmingham, AL., and Atlanta, GA., serving all intermediate and off-route points within 15 miles of Birmingham, and serving all intermediate and off-route points in Fulton, Douglas, Haralson, Cobb, DeKalb, Clayton, and Carroll Counties, GA., on and west of a line beginning at the Georgia-Florida State line and extending along U.S. Highway 41 to Atlanta, and thence along U.S. Highway 29 to the Georgia-South Carolina State line restricted to the transportation of shipments moving between Birmingham, and points within 15 miles of Birmingham, on the one hand, and, on the other, Atlanta, and points in the seven counties described above in Georgia. MC 113528 (Sub-16TA), Regular Routes General Commodities (With The Usual Exceptions) Serving Norcross, GA., and points in its commercial zone and the Tucker-Stone Mountain Industrial District as off-route points in connection with applicant's regular-route operations restricted against transportation traffic between the named points and, Atlanta, GA. MC 113528 (Sub-19), Irregular Routes General Commodities (With The Usual Exceptions) Serving points in Fulton, Cobb, Douglas, Clayton, and DeKalb Counties, GA., points in that part of Fayette County, GA., on and north of a line from the Fulton-Fayette County line along Georgia Highway 74 to junction Georgia Highway 54, thence along Georgia Highway 54 to the Fayette-Clayton County line, points in that part of Henry County, GA., on, north, and west of a line from the Clayton-Henry County line along Georgia Highway 3 to junction Georgia Highway 81, thence along Georgia Highway 81 to junction Georgia Highway 20, thence along Georgia Highway 20 to the Henry-Newton County line, points in that part of Rockdale County, GA., on, south, and west of Georgia Highway 212, and points in that part of Gwinnett County, GA., on, south, and west of a line from the DeKalb-Gwinnett County line along Georgia Highway 124 to junction Georgia Highway 20, thence along Georgia Highway 20 to junction Georgia Highway 120, thence along Georgia Highway 120 to the Gwinnett-Fulton County line as off-route points in connection with carrier's otherwise authorized routes, restricted against the transportation of traffic, direct or interline, between Atlanta, GA., on the one hand, and, on the other, the points named herein. MC 113528 (Sub-21), Irregular Routes Tobacco and Tobacco Products. From points in North Carolina to points in that part of Alabama south of U.S. Highway 278, with no transportation for compensation on return except as otherwise authorized. MC 113528 (Sub-22), Irregular Routes General Commodities (With The Usual Exceptions). Between points in Sumter County, S.C., on the one hand, and, on the other points in North Carolina and South Carolina; *Household goods, new furniture*, and *general commodities*, (with the usual exceptions), between Sumter, S.C., on the one hand, and, on the other, points in that part of Alabama south of U.S. Highway 278. *Kitchen cabinets*, set up and *kitchen sinks*, from Bennettsville, S.C., to points in that part of Alabama south of U.S. Highway 278, with no transportation for compensation on return except as otherwise authorized. *Mineral wool, rock wool, siding, roofing*, and *roofing materials*, from Leeds, AL., and points in Jefferson County, AL., to points in North Carolina and South Carolina, with no transportation for compensation on return except as otherwise authorized. MC 113528 (Sub-23G), Irregular Routes General Commodities (With The Usual Exceptions) Between points in that part of Alabama south of U.S. Highway 278 and, points in North Carolina and South Carolina. MC 113528 (Sub-25), Irregular Routes. *Iron and steel articles, aluminum articles, iron and steel tanks, aluminum tanks* and *parts, attachments and accessories* for iron and steel tanks and aluminum tanks, From Liberty County, TX., to points in AL, AK, KS, LA, MS, MO, NM, and OK, with no transportation for compensation on return except as otherwise authorized, restricted to traffic originating at the facilities of Pittsburgh-Des Moines Steel Company. MC 113528 (Sub-34), Irregular Routes, *Particleboard and paneling*, From the facilities of Vanply, Inc., at or near Many, LA., to points in AL, GA, NC, and SC. MC 113528 (Sub-35), Regular Routes General Commodities (With The Usual Exceptions) Servinng the facilities of K-Mart Corporation's Distributing Center in Coweta County,

GA., as an off-route point in connection with carrier's otherwise authorized regular-route operations. MC 113528 (Sub-36F), Irregular Routes, *Plastic pipe, pipe fittings, couplings,* and *valves,* (except commodities in bulk), From points in Geneva, County, AL., to points in GA, LA, MS, TN, and TX; *Materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) above (except commodities in bulk), From points in GA, LA, MS, TN and TX, to points in Geneva County, AL. (Hearing site: Cleveland, OH.) U.S. TRUCK LINES, INC. OF DELAWARE holds no authority from this Commission. However, it is in control of the Transferree in the application through ownership of its capital stock. Application has not been filed for temporary authority under section 210a(b).

MC–F 13999F. Applicant (Transferee): WINTZ MOTOR FREIGHT, INC., 656 Pelham Boulevard, St. Paul, MN 55114. (Transferor): WINTZ WAREHOUSING CO., 656 Pelham Boulevard, St. Paul, MN 55114. Representative: James E. Ballenthin, 630 Osborn Building, St. Paul, MN 55102. Authority sought for purchase by Wintz Motor Freight, Inc., 656 Pelham Boulevard, St. Paul, MN 55114, of the interstate operating authority of Wintz Warehousing Company, 656 Pelham Boulevard, St. Paul, MN 55114, and for control of such rights through the transaction. Applicants' attorney: James E. Ballenthin, 630 Osborn Building, St. Paul, MN 55102. Operating rights sought to be transferred: Certificate MC 129757 (dated September 24, 1974): *Irregular Routes: Meats, meat products, dairy products, and articles distributed by meat packinghouses,* from Minneapolis, Minn., to points in Anoka (except the city of Anoka and Coon Rapids), Carver, Dakota, Hennepin (except Osseo and Brooklyn Park), Ramsey, Scott, and Washington Counties, Minn., with no transportation for compensation on return except as otherwise authorized. *Meats, and meat products, dairy products and articles distributed by meat packinghouses,* as described in Sections A, B, and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766, from Minneapolis, Minn., to Anoka, Coon Rapids, Osseo, and Brooklyn Park, Minn., with no transportation for compensation on return except as otherwise authorized. *Restriction:* The authority granted herein shall be subject to the right of the Commission, which is hereby expressly reserved, to impose such terms, conditions or limitations in the future as it may find necessary to order to insure that carrier's operations shall conform to the provisions of section 210 of the Act. Permit MC 117681: *Irregular Routes: Ink,* in bulk, in tank vehicles, from Minneapolis, Minn., to points in North Dakota, South Dakota, Nebraska, Iowa, Wisconsin, and Minnesota, with no transportation for compensation on return except as otherwise authorized. *Restriction:* The service authorized herein is subject to the following conditions: The operations authorized herein are limited to a transportation service to be performed, under a continuing contract, or contracts, with George H. Morrill Company, Chicago, Ill. The authority granted herein shall be subject to the right of the Commission, which is hereby expressly reserved, to impose such terms, conditions or limitations in the future as it may find necessary in order to insure carrier's operations shall conform to the provisions of section 210 of the Act. The purpose of this application is to resolve all issues of common control between the applicants by vesting all interstate authority of the commonly controlled applicants in Wintz Motor Freight, Inc. Vendee is authorized to operate as a common carrier in the States of MN, WI and as a contract carrier in the States of MN, IA, ND, SD, WI. Application has not been filed for temporary authority under section 11349.

MC–F–14002F. Authority sought for control by BRAY LINES INCORPORATED, 1401 North Little Street, Cushing, OK 74023, of SUBLER TRANSFER, INC., One Vista Drive, Versailles, OH 45380, and for acquisition by BRAY CORPORATION, 1401 North Little Street, Cushing, OK 74023, of control of Subler Transfer, Inc., through the acquisition by Bray Lines Incorporated. Applicant's attorney: Edward T. Lyons, Jr., 1600 Lincoln Center Building, 1660 Lincoln Street, Denver, CO 80264. Operating rights sought to be controlled: (1) *Foodstuffs* and other specified commodities falling within the generic description of foodststuffs; (2) *Such Commodities* as are used by meat packers and other specified persons in the conduct of their business; (3) and numerous other specified commodities including, *packaged petroleum products, steel strapping* and *paper* and *paper products, carpeting* and *floor coverings, heating stoves, building materials, rubber articles, refractory products, glass, cleaning compounds* and *supplies, farm machinery* and *agricultural implements, alkalies, animal food, washing machines* and *laundry equipment,* and *metal products, automobile parts and appliances, household appliances* and *refrigeration equipment,* from, to, and between specified points or areas in CT, DE, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MO, NE, NH, NJ, NY, OH, PA, RI, VT, VA, WV, WI and DC, with certain restrictions and limitations of points, as more specifically described in Docket MC 117883 and sub-numbers thereunder. Bray Lines Incorporated is authorized to operate as a motor common carrier in all states in the United States except AK, CT, DE, HI, ME, MD, MA, NH, NJ, NY, PA, RI, VT and DC. This notice does not purport to be a complete description of the operating rights of the carrier involved. For more information with respect to the specific authorities of applicant or the carrier to be controlled, inquiries should be made to the Commission in Washington, DC, or at its Regional Offices in Dallas, TX or Philadelphia, PA, at which complete descriptions of all pertinent authorities are on file as part of the application. Application has not been filed for temporary authority. (Hearing site: Washington, DC.)

MC–F 14003F. Applicant: ANR FREIGHT SYSTEM, INC., One Woodward Avenue, Detroit, MI 48226. Representative: Roland Rice, Esq., 501 Perpetual Bldg., 1111 E Street, N.W., Washington, DC 20004. Gwenn L. Carr, Esq., One Woodward Avenue, Detroit, MI 48226. An application of ANR Freight System, Inc., One Woodward Avenue, Detroit, MI 48226, for authority to acquire control of Associated Truck Lines, Inc., 200 Monroe North, Grand Rapids, MI 49503, accompanied by a Motion to Dismiss for want of jurisdiction. ANR Freight System, Inc., is a wholly owned subsidiary of American Natural Resources Company and, with Commission approval, owns the stock of Graves Truck Line. In addition, it has pending before the Commission an application, unopposed, in MC–F 13618 to acquire the stock of another carrier, Garrett Freight Lines. Operating rights sought to be transferred: None. The parent holding company, American Natural Resources Company, owns the stock of Associated Truck Lines (its first carrier acquisition) through an intermediate holding company, Associated Freightways, Inc. The sole purpose of the instant application is to place the stock of Associated Truck Lines, Inc. in ANR Freight System, Inc., which already owns the Graves stock and is seeking to acquire the stock of Garrett. No other change is sought. In similar cases the Commission has declined to assume jurisdiction. As

shown, a Motion to Dismiss accompanies the application.

MC–F 14004F. Authority sought for purchase by DAVID W. HASSLER, INC., R.D. #8, York, Pennsylvania 17403 of the operating rights of C. W. Bierkamp & Sons, Inc., 1821 Monroe Street, York, Pennsylvania 17404. Applicants' attorneys, S. Harrison Kahn, Jeremy Kahn, Kahn and Kahn, Suite 733 Investment Building, 1511 K Street, N.W., Washington, D.C. 20005. Operating rights sought to be purchased are those in Docket MC 111795 and MC 111795 (Sub-5), authorizing the transportation of limestone and limestone products, in bulk, from West Manchester Township, York County, Pennsylvania to points in DE, MD, and NJ, and portions of NY and VA, and from Thomasville, PA to points in DE, MD, NJ, and New York, NY. Vendee holds authority in MC 100439 and MC 100439 (Sub-4) to transport petroleum and petroleum products from Baltimore, MD, to certain points in PA and industrial asphalt from York, PA to points in Sussex County, VA. Approval of this transaction will not result in (a) dual operations; (b) splitting of operating authority; or (c) duplicating authority. Application has not been filed for temporary authority under 49 U.S.C. 11349.

MC–F14009F. Authority sought to purchase by ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223, of a portion of the operating rights of SUPERIOR TRUCKING COMPANY, INC., 2770 Peyton Road, N.W., Atlanta, GA 30321, and for acquisition by Richard E. Doran, Robert J. Doran and C. M. Doran of 1601 Blue Rock Street, Cincinnati, OH 45223, of control of such rights through the purchase. Applicants' attorneys are JOHN P. McMAHON, 100 East Broad Street, Columbus, OH 43215, and GUY H. POSTELL, 3384 Peachtree Road, N.E., Atlanta, GA 30326. Operating rights sought to be purchased: (1) commodities, the transportation of which because of their size and weight require the use of special equipment, and (2) self-propelled articles each weighing 15,000 pounds or more and related machinery, tools, parts and supplies, limited to the transportation of such commodities as are transported on trailers and restricted against the transportation of pipe, pipeline machinery, equipment and supplies incidental to and used in connection with the construction, operation, repair, servicing, and dismantling of pipelines and the stringing or picking up thereof, between points in Gallatin and Grant Counties, KY, on the one hand, and, on the other, points in TN. Vendee is authorized to operate as a common carrier of general commodities, size and weight commodities, and specified commodities between various points in the contiguous forty-eight states. Application has not been filed for temporary authority under section 11349. (Hearing site: Columbus, OH).

MC–F14011F. NORTH PENN TRANSFER, INC., Routes 63 and 202, Lansdale, PA 19446; NORTH PENN TRANSFER OF CONNECTICUT, INC., Routes 63 and 202, Lansdale, PA 19446; JOHN W. FRAME, ICC Practitioner, Box 626, 2207 Old Gettysburg Road, Camp Hill, PA 17011. Authority sought for merger by transferee of the operating rights of transferor as set forth in Certificate No. MC–3598, issued March 14, 1944, MC–3598, Sub No. 4, issued June 23, 1966, MC–3598, Sub No. 5, issued November 4, 1966, MC–3598, Sub No. 6, issued July 7, 1971, MC–3598, Sub No. 7, issued November 21, 1972, and MC–3598, Sub No. 8 (originally MC–52810, acquired 6/31/77 under Docket No. MC–F–12785), as follows: (A)(1) *General commodities* (except those of unusual value, and except dangerous explosives, households goods as defined in Practices of Motor Common Carriers of Household Goods, 17. M.C.C. 467, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), between Northampton, MA, and Newark, NJ, as follows: From Northampton over U.S. Hwy 5 to New Haven, CT, then over U.S. Hwy 1 to Newark; from Northampton over U.S. Hwy 5 to Springfield, MA, then over Alternate U.S. Hwy 5 to Hartford, CT, then over CT Hwy 9 to Middletown, CT, then over CT Hwy 15 to New Haven, and then over U.S. Hwy 1 to Newark; from Northampton to Hartford as specified above, then over U.S. Hwy 6 to Thomaston, CT, then over CT Hwy 8 to Stratford, CT, and then over U.S. Hwy 1 to Newark; and return over these routes to Northampton. Service is authorized to and from the off-route points of Adams and Pittsfield, MA, and points and places in MA within 12 miles of Springfield, MA; Bloomfield, Watertown, Glastonbury, Portland, New Britain, Somers, East Hampton, Sharon, Kent, New Milford, Washington, Colchester, Haddam, East Haddam, New Canaan, and Danbury, CT, Scarsdale, Freeport, Garden City, Hempstead, Lynbrook, Mineola, Rockville Center, White Plains, and Tuckahoe, NY, and points and places in the New York, NY Commercial Zone, as defined in 1 M.C.C. 665, and those in New Jersey within 20 miles of Newark, NJ, other than those in New York, NY Commerical Zone. Between Southbridge, MA and Hartford, CT: From Southbridge over MA Hwy 131 to Sturbridge, MA, then over MA Hwy 15 to the MA–CT State line, and then over CT Hwy 15 to Hartford, and return over the same route. Service is authorized to and from the off-route points of Willington, Eastford, and Thompson, CT. Between New Haven, CT and Boston, MA: From New Haven over U.S. Hwy 1 to Boston, and return over the same route. Service is authorized to and from the off-route points of Norwich and Saybrook, CT, Brockton, Beverly, Salem, Newton, Malden, Lynn, Everett, Winchester, Arlington, Weburn, Taunton, Somerville, Cambridge, and Chelsea, MA, and points and places in Rhode Island. Between Canton, CT and Hartford, CT: From Canton over U.S. Hwy 44 to Hartford, and return over the same route. Service is authorized to and from the off-route points of Torrington, New Hartford, and Winchester, CT. Between Hartford, CT and New Bedford, MA: From Hartford over U.S. Hwy 6 via Manchester and Willimantic, CT to New Bedford (also from Manchester over Alternate U.S. Hwy 6 to Willimantic), and return over the same route. Service is authorized to and from the off-route points of Plainfield, Griswold, Sterling, and Putnam, CT and Dighton, MA. Between Boston, MA and Springfield, MA: From Boston over U.S. Hwy 20 to Springfield and return over the same route. Service is authorized to and from the off-route points of Clinton, Warren, Russel, and Great Barrington, MA. Between Northampton, MA and New Haven, CT: From Northampton over MA Hwy 10 to the MA–CT State line, then over CT Hwy 10 to New Haven, and return over the same route. Between Boston, MA and Northampton, MA: – From Boston over U.S. Hwy 20 to junction MA Hwy 9, then over MA Hwy 9 to Northampton, and return over the same route. Service is authorized to and from all intermediate points on the above-specified routes. Between Boston, MA and Northampton, MA: From Boston over MA Hwy 2 to Greenfield, MA, then over U.S. Hwy 5 to Northampton, and return over the same route. Service is authorized to and from all intermediate points between Ayer, MA and Greenfield, MA, including Ayer and Greenfield, and the off-route points of Haverhill, Lowell, Winchendon, Royalston, and Monroe, MA. Between Boston, MA and Southbridge, MA: From Boston over U.S. Hwy 20 to Marlboro, MA, then over MA Hwy 85 to junction

MA Hwy 16 at a point approximately 2 miles east of Milford, MA, then over MA Hwy 16 to Douglas, MA, then over unnumbered highway to junction MA Hwy 197 at a point approximately 2 miles northeast of Webster, MA, then over MA Hwy 197 to junction MA Hwy 131, and then over MA Hwy 131 to Southbridge, and return over the same route. Service is authorized to and from all intermediate points between Marlboro, MA and Southbridge, MA, and the off-route points of Ashland, Dudley, and Blackstone, MA. (2) *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), serving points in CT as off-route points in connection with carrier's presently authorized regular route operations in MC–3598. (3) *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), Between NY, NY and Philadelphia, PA, serving the intermediate point of Trenton, NJ, restricted to traffic moving to or from points other than New York, NY, all other intermediate points without restriction; and off-route points within ten miles of the specified portions of U.S. Hwy 1 and U.S. Hwy 130 (formerly NJ Hwy 25): From New York over U.S. Hwy 1 to Philadelphia, and return over the same route. From New York over U.S. Hwy 1 to junction of U.S. Hwy 130 (formerly NJ Hwy 25), then over U.S. Hwy 130 to Camden, NJ, and then across the Delaware River to Philadelphia, and return over the same route. Irregular routes: (a) *Shirts, piece goods, pajamas, thread, trimmings, buttons, underwear, leather, paper, glass and metal frames,* between Jersey City, Newark, Elizabeth, Linden, Rahway, Perth Amboy, and Fords, NJ, on the one hand, and, on the other, New York, NY. (b) *Handkerchiefs,* from South River, NJ, to New York, NY, with no transportation for compensation on return except as otherwise authorized. (c) *Machinery, equipment,* and *supplies,* used or useful in the manufacture of shirts and handkerchiefs, from New York, NY, to Perth Amboy and South River, NJ, with no transportation for compensation on return except as otherwise authorized. (4) Regular routes: (a) *Gummed tape,* serving the plant site of the Crowell Corporation at Yorklyn, DE, as an off-route point in connection with carrier's regular-route operations authorized herein between Philadelphia, PA and Wilmington, DE. (b) *General Commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) Between Philadelphia, PA and Wilmington, DE, serving all intermediate points: From Philadelphia over U.S. Hwy 13 via Chester, PA to Wilmington, and return over the same route. Restriction: The service authorized is subject to the limitation that service at Wilmington, Camden, intermediate or off-route points south of Philadelphia, and points south of Camden is restricted to shipments moving over carrier's lines to or from points north of Philadelphia or points north of Camden. (5) *Irregular Routes. Food* and *foodstuffs* (except commodities in bulk, in tank vehicles), in vehicles equipped with mechanical refrigeration, from the facilities of Kraft Foods Division of Kraftco Corporation at or near Fogelsville, PA, to points in CT, MA, ME, NH, RI, and VT, with no transportation for compensation on return except as otherwise authorized. Restriction: The authority granted herein is restricted to the transportation of traffic originating at the named origin points and destined to the named destination points. (6) *Regular Routes. General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (a) serving all intermediate points on U.S. Hwy 1 between Baltimore, MD, and junction U.S. Hwys 1 and 222, in connection with carrier's regular-route operations authorized herein between Baltimore, MD and New York, NY. (b) Serving all intermediate points on U.S. Hwy 40 between Baltimore, MD and junction U.S. Hwys 40 and 222, in connection with carrier's regular-route operations authorized herein between Baltimore, MD and New York, NY. (c) Serving all intermediate points on U.S. Hwy 1 between New Brunswick and Rahway, NJ (except Rahway), and points on U.S. Hwy 222 between junction U.S. Hwys 222 and 40 and junction U.S. Hwys 1 and 222, in connection with carrier's regular-route operations authorized herein between Baltimore, MD and New York, NY. (d) Serving points in Bergen, Passaic (except Paterson and Passaic, NJ), Hudson, Essex (except Irvington, NJ), Union, Morris, and Middlesex Counties, NJ (except those located south of the Raritan River), and Nassau County, NY, Edgewood Arsenal, Aberdeen Proving Ground, MD, and Bound Brook, NJ, as off-route points in connection with carrier's regular-route operations authorized herein between Baltimore, MD and New York, NY. Restriction: The authority granted above is restricted to the transportation of traffic moving from, to, or through Aberdeen, MD, except that traffic moving from, to, or through Edgewood Arsenal or Aberdeen Proving Grounds, MD, or points in MD on U.S. Hwys 1 and 40 may move from, to, or through Baltimore MD, without such prior movement through Aberdeen, MD. (e) Between Baltimore, MD and Washington, DC, serving all intermediate points, and serving as off-route points Frizzelburg, MD, and points in that part of MD bounded by a line extending from Baltimore, MD, westward along U.S. Hwy 40 to junction MD Hwy 32, then along MD Hwy 32 to junction U.S. Hwy 140, then along U.S. Hwy 140 to Westminster, MD, then along MD Hwy 482 to junction MD Hwy 30, then along MD Hwy 30 to MD Hwy 88, then along MD Hwy 88 to junction MD Hwy 137, then along MD Hwy 137 to Hereford, MD, then along MD Hwy 45 to Baltimore, then southeasterly along MD Hwy 2 to Annapolis, MD, then along U.S. Hwy 50 to Washington, DC, then along U.S. Hwy 1 to Baltimore, MD, including all points on the indicated portions of the specified highways, and Rockville and Indianhead, MD. (f) From Baltimore over U.S. Hwy 1 to Washington, DC, and return over the same route. (g) From Baltimore, over U.S. Hwy 40 to junction U.S. Hwy 29, then over U.S. Hwy 29 to Washington, DC, and return over the same route. Restriction: The operations authorized under the 2 route descriptions immediately above are restricted to the transportation of traffic moving from, to or through Baltimore, MD. Restriction: The authority granted under 6 (a), (b), (c), (d), (e), (f), and (g) above, shall not be severable by sale or otherwise from the irregular route authority under (7) herein. (7) *Regular Routes, general commodities,* Between Baltimore, MD and New York, NY, serving the intermediate points of Rahway, NJ, and those between Rahway and New York; and the off-route points of Paterson, Passaic and Irvington, NJ: (a) From Baltimore over U.S. Hwy 40 to junction MD Hwy 7, near Havre de Grace, MD, then over MD Hwy 7 to Elkton, MD, then over U.S. Hwy 40 via State Road, DE to junction I–295 (formerly shown as junction U.S. Hwy 130), then over I–295 to junction U.S. Hwy 130, then over U.S. Hwy 130 to junction U.S. Hwy 1, then over U.S. Hwy 1 to New York, and

return over the same route. (b) From Baltimore over the above-specified route to State Road, DE, then over U.S. Hwy 13 via Chester, PA to junction U.S. Hwy 1, and then over U.S. Hwy 1 to New York, and return over the same route. (c) From Baltimore to Chester as specified above, then across the Delaware River to Bridgeport, NJ, then over U.S. Hwy 130 to junction U.S. Hwy 1, and then over U.S. Hwy 1 to New York, and return over the same route. (d) From Baltimore over U.S. Hwy 1 to New York, and return over the same route. From Baltimore, MD to Washington, DC, with service authorized to Washington, DC restricted to traffic moving from New York, NY. From Baltimore over U.S. Hwy 1 to Washington, DC and return over the same route with no transportation for compensation except as otherwise authorized. *Irregular Routes. General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Aberdeen MD, on the one hand, and, on the other, New York, NY, points on Long Island, NY, and points in NJ. Restriction: The authority granted under the commodity description next-above is subject to the following conditions: Said authority is restricted against the pickup or delivery of any traffic at Aberdeen, MD, other than that which carrier is authorized to transport under (6) herein. Said authority and that held by carrier under (7) herein from or to points in NJ and NY through Oxford and West Grove, PA, shall be construed as comprising a single operating right and shall not be severable by sale or otherwise. *General commodities* (except those of unusual value, classes A and B explosives, sand, gravel, earth, stone, household goods as defined by the Commission, and commodities requiring special equipment) between points in Harford County, MD, on the one hand, and, on the other, points in that part of MD within 60 miles of Bel Air, MD, other than Baltimore, MD, and that part of PA south and east of U.S. Hwy 1, within 60 miles of Bel Air, MD, including points on the indicated portion of the highway specified. *General commodities* (except those of unusual value, classes A and B explosives, alcoholic liquors, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), between Baltimore, MD on the one hand, and, on the other, Quantico, VA, points in the District of Columbia, and points in MD except those in Harford County and those east of the Chesapeake Bay and south of the Chesapeake and Delaware Canal. *General commodities*, (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), between Oxford and West Grove, PA, and points in PA within 5 miles of West Grove, on the one hand, and, on the other, points in NJ, those in NY, NY, and on Long Island, NY, those in that part of MD west of the Chesapeake Bay and on and east of U.S. Hwy 1, and those in that part of DE north of the Chesapeake and Delaware Canal. Between Wilmington, DE, on the one hand, and, on the other, points in that part of DE and PA on and east of that portion of U.S. Hwy 13, between Wilmington, DE and Philadelphia, PA, including Wilmington and Philadelphia. Restriction: Carrier shall not, pursuant to the irregular-route authority in (7) herein transport traffic between any points authorized in (6) herein to be served by it in regular-route operations. North Penn Transfer, Inc., is authorized to operate as a common carrier in the states of PA, DC, MD, DE, NJ, NY, MA, RI, CT, VA, NC, OH, AL, GA, FL, SC, KY, TN, WV, ME, VT, and NH. Application has not been filed for temporary authority under section 11349.

MC–F 14014F. Applicants: MURPHY MOTOR FREIGHT LINES, INC., 2323 Terminal Road, St. Paul, MN 55113, and BEATRICE MOTOR FREIGHT, INC., 123 Court Street, Beatrice, NE 68310. Representative: Jerry E. Hess, 2323 Terminal Road, St. Paul, MN 55113. Approval sought for a Pooling Agreement between the applicants herein for the transportation of general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Omaha, NE and Lincoln, NE, whereby Beatrice will deliver all of the parties inbound traffic to Lincoln, NE and pick up all of their outbound traffic therefrom. Tender and receipt of all such traffic will take place at the facility of Murphy Motor Freight Lines in Omaha, NE. If a hearing is deemed necessary, the applicants request that it be held in Omaha, NE.

Note.—Both parties hereto presently hold authority from the Interstate Commerce Commission to transport general commodities between Omaha and Lincoln, NE over U.S Hwy. 6. The authority of Beatrice Motor Freight may be found in MC 65019 and the authority of Murphy Motor Freight Lines may be found in MC–F 13993.

MC–F 14015. Authority sought for control by TRIMAC TRANSPORTATION GROUP LIMITED, 736 8th Avenue, S.W., Calgary, Alberta T2P 2P9, and STOTHERT HOLDINGS LTD., 736 8th Avenue, S.W., Calgary, Alberta T2P 2P9, of Municipal Tank Lines Limited, 736 8th Avenue, S.W., Calgary, Alberta T2P 2P9, and for acquisition by Trimac Limited, 736 8th Avenue, S.W., Calgary, Alberta T2P 2P9, J. R. McCaig, 736 8th Avenue, S.W., Calgary, Alberta T2P 2P9, M. W. McCaig, 736 8th Avenue, S.W., Calgary, Alberta T2P 2P9, and the estate of R. W. McCaig, 736 8th Avenue, S.W., Calgary, Alberta T2P 2P9, for control of Municipal Tank Lines Limited through the acquisition of Trimac Transportation Group Limited and Stothert Holdings Ltd. Applicants' attorneys: Richard H. Streeter and Edward K. Wheeler, 1729 H Street, N.W. Washington, D.C. 20006. Operating rights sought to be controlled: Soybean oil and soybean meal, in bulk, as a common carrier by motor vehicle, over irregular routes, from the facilities of Cargill, Inc., at or near Sidney, OH to ports of entry on the International Boundary Line between the U.S. and Canada located at points in MI and NY. Neither Trimac Transportation Group Limited nor Stothert Holdings Ltd. hold authority from this Commission. However, Trimac Transportation Group Limited controls H. M. Trimble & Sons Ltd., 736 8th Avenue, S.W., Calgary, Alberta T2P 2P9, which is authorized to operate as a common carrier in ND, AK, WA, MT, AZ, AR, WI, WY, CA, CO, IL, IA, TN, TX, KS, ID, KY, LA, UT, MN, MS, MO, NE, NV, NM, OK, OR, and SD. Trimac Transportation Group Limited and Stothert Holdings Ltd. jointly control Oil & Industry Suppliers Ltd., 736 8th Avenue, S.W., Calgary, Alberta T2P 2P9, which is authorized to operate as a common carrier in WA, OR, ID, MT, WY, ND, SD, MN, WI, UT, CO, NE, KS, IA, MO, IL, IN, NM, TX, OK and AR; and Mercury Tanklines Limited, 736 8th Avenue, S.W., Calgary, Alberta T2P 2P9, which is authorized to operate as a contract carrier between points in KY, IL, OH, MD, MI, CA, PA, NY, and VA and points on the U.S./Canada International Boundary Line in MI, NY, MN, WA, ND, and MT. Approval of control of these cariers was given by the I.C.C. in Docket MC F 9653 and MC–F 10380. An application has not been filed for temporary authority under Section 11349 (fomerly 210a(b)). Approval of this application will not significantly affect the quality of the human environment nor involve a major regulatory action under the Energy Policy and Conservation act of 1975.

MC–F 14018. Authority sought for purchase by CASAZZA TRUCKING COMPANY, d.b.a. CASAZZA TRUCKING CO., 1250 Glendale Ave., Sparks, NV., 89431, of a portion of the operating rights of WELLS CARGO, INC., 1775 East 4th Street, Reno, NV., 89512, and for acquisition by EARL CASAZZA, 1250 Glendale Ave., Sparks, NV., 89431, of control of such rights through the transaction. Applicants representative: Earl Casazza, 1250 Glendale Ave., Sparks, NV., 89431. Operating rights sought to be purchased: Petroleum and petroleum products, as described in Appendix XII to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209, in bulk, in tank vehicles, as a common carrier over irregular routes from Sparks and Fallon, NV to points in Modoc, Lassen, Plumas, Sierra, NV, Placer, Eldorado, Alpine, and Mono Counties, CA with no transportation for compensation on return except as otherwise authorized. Contaminated Shipments of the above-specified commodities, from Sparks and Fallon, NV, to points in Alameda, Contra Costa, Sacramento, and Yolo Counties, CA, with no transportation for compensation on return except as otherwise authorized. Vendee is authorized to operate as a common carrier in the States of CA and NV. Application has not been filed for temporary authority under section 11349.

MC–F 14021F. Authority sought for purchase by MISSOURI PACIFIC TRUCK LINES, INC., a Texas corporation, d.b.a. MISSOURI PACIFIC TRUCK LINES, INC., 210 North 13th Street, St. Louis, MO 63103, of certain operating rights of Missouri Pacific Railroad Company, 210 North 13th St., St. Louis, MO 63103. Applicants' representative: Robt S. Davis, Commerce Counsel, Missouri Pacific Railroad Company, 210 North 13th Street, St. Louis, MO 63103. Operating rights sought to be transferred: MC–54828 (Subs- 1 and 2) issued to the New Orleans & Lower Coast Railroad Company (NOLC) in July, 1944, and August, 1954, respectively, authorizing transportation of general commodities between New Orleans, Louisiana, and Venice, Louisiana, serving intermediate points. Service under the Certificates from their inception was provided by The Texas & Pacific Motor Transport Company under contract with NOLC and subsequently by Missouri Pacific Truck Lines. Missouri Pacific Railroad Company acquired the Certificates when the NOLC was merged into it, effective November 1, 1979. All motor carrier operations for Missouri Pacific Railroad Company are provided by its wholly owned subsidiary, Missouri Pacific Truck Lines. The railroad holds no motor carrier authority except the subject Certificates, which it acquired as incident to the NOLC merger. Since the motor carrier operations authorized by the subject Certificates have always been provided by Missouri Pacific Truck Lines or its predecessor, it has applied to the Commission for approval of the transfer of the subject Certificates from Missouri Pacific Railroad Company to Missouri Pacific Truck Lines, Inc. Service to the public will not be affected by the transfer. Application has not been filed for temporary authority under section 11349.

MC–F 14028F. Authority sought for purchase by BRIGGS TRANSPORTATION CO., North 400 Griggs-Midway Bldg., St. Paul, MN 55104, of a portion of the operating rights of SCOTT'S TRANSPORTATION SERVICE, INC. (WITTE TRANSPORTATON COMPANY, Assignor). Applicants' Attorneys: Leonard R. Kofkin, 39 South LaSalle St., Chicago, IL and William S. Rosen, 630 Osborn Bldg., St. Paul, MN 55102. Operating rights sought to be transferred are contained in MC 115554, authorizing the transportation, over irregular routes, of *General Commodities,* except those of unusual value, Class A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between points in IA and IL within 25 miles of Rock Island, IL, including Rock Island, IL. Vendee is authorized to operate as a common carrier in the States of IL, IN, IA, OH, WI, MN, KS, KY, MO, NB, SD, CO and WY. Application has been filed for temporary authority under section 11349 of the Act.

MC–F 14029F. Transferee: J. & L. REFRIGERATED SERVICE, INC., 312 Willow Way, Lee's Summit, MO 64064. Transferor: COX REFRIGERATED EXPRESS, INC., 10606 Goodnight Lane, Dallas, Texas 75220. Representative: Brad T. Murphree, 814 Century Plaza Building, Wichita, Kansas 67202. Authority sought for purchase by transferee of the operating rights of transferor as set forth in Certificate MC 140033 (Sub-31) as follows: *Foodstuffs* (except commodities iin bulk) in vehicles equipped with mechanical refrigeration, from the facilities of Inland Storage Distribution Center, located at Kansas City, Kansas, to points in Oklahoma and Texas; Restricted to traffic originating at the facilities of Inland Storage Distribution Center and destined to the named states. J. & L. Refrigerated Service, Inc., holds no permanent authority from this Commission. However has received Emergency Temporary and Regular Temporary authority, MC 144435 R–1, R–4 and Sub-2 TA, none of which duplicates authority sought in this application. Application has been filed for temporary authority under section 11349.

MC–F 14030F. Authority sought for purchase by NORTHWEST TRANSPORT SERVICE, INC., 5231 Monroe Street, Denver CO 80216 of a portion of the operating rights of BRIGGS TRANSPORTATION CO., North 400, Griggs-Midway Building, St. Paul MN 55104, and for acquisition by NW Transport Service, Inc. and in turn Donn D. McMorris and Jerry D. McMorris, 5231 Monroe Street, Denver CO of control of such rights through purchase. Applicant's attorneys: David E. Driggers, 1600 Lincoln Center Building, 1660 Lincoln Street, Denver CO 80264 for transferee, and Carl L. Steiner, 39 So. LaSalle Street, Chicago IL 60603 for transferor. Operating rights sought to be transferred: Regular routes, general commodities, with usual exceptions: (1) Between Denver, Colorado, and junction of U.S. Highways No. 26 and No. 87 in Wyoming, serving all intermediate points, and the off-route points in Yoder, Lagrange, and Huntley, Wyoming: From Denver over U.S. Highway No. 85 to Torrington, Wyoming; thence over U.S. Highway No. 26 to junction U.S. Highway No. 87, and return over the same route. (2) Between Guernsey, Wyoming, and Sunrise, Wyoming, serving all intermediate points: From Guernsey over unnumbered highway to Sunrise, and return over same route. (3) Between Lingle, Wyoming, and Lusk, Wyoming, serving the intermediate point of Jay Em, Wyoming: From Lingle over U.S. Highway No. 85 to Lusk, and return over the same route. (4) Between Torrington, Wyoming, and Gering, Nebraska, serving all intermediate points and off-route points with one mile of Nebraska Highway No. 29 between Gering and Scottsbluff, Nebraska: From Torrington over U.S. Highway No. 26 to Scottsbluff, thence over Nebraska Highway No. 29 to Gering, and return over the same route. (5) Between Scottsbluff, Nebraska, and Alliance, Nebraska, serving all intermediate points: From Scottsbluff over U.S. Highway No. 26 to junction U.S. Highway No. 385, thence over U.S. Highway No. 385 to Alliance, and return

over the same route. Transferee is authorized to operate as a common carrier in AZ, CO, ID, NE, NM, UT and WY. Application has been filed for temporary authority under Section 210a(b). (Hearing site: Denver CO and Scottsbluff NE.)

MC–F 14032F. Authority sought for purchase by CHIPPEWA MOTOR FREIGHT, INC., 1000 East 41st Street, Sioux Falls, SD 57105, to purchase a portion of the operating rights of R–W SERVICE SYSTEM, INC., 20225 Goddard Road, Taylor, ML, 48180, and for acquisition of control of such rights by LEWIS INDUSTRIES, INC., 510 Northwestern Bank Bldg., Sioux Falls, SD, 57102, through the purchase. Applicants attorneys: Carl L. Steiner, 39 South LaSalle St., Chicago, IL, 60603, and Martin J. Leavitt, 22375, Haggerty Road, P.O. Box 400, Northville, MI, 48167. Operating rights sought to be transferred are as a common carrier, over irregular routes as follows: General Commodities, with the usual exceptions, between Hartford City, IN and Fort Wayne, IN. Vendee is authorized to operate as a common carrier in the States of MN, WI, IL, IN, IA, and OH. Application has not been filed for temporary authority under Section 210a(b).

MC–F 14033F. Transferee: THE DANIEL COMPANY OF SPRINGFIELD, 3725 West Division, Springfield, MO 65803. Transferor: COX REFRIGERATED EXPRESS, INC., 10606 Goodnight Lane, Dallas, TX 75220. Representative: Turner White, 910 Plaza Towers, Springfield, MO 65804. Authority sought for purchase by The Daniel Company of Springfield of a portion of the operating rights of Cox Refrigerated Express, Inc., at 10606 Goodnight Lane, Dallas, TX 75220, in Docket MC 140033, (Sub-33), issued September 12, 1978, as follows: Irregular routes: *Such merchandise as is dealt in by grocery and food business houses, in vehicles equipped with mechanical refrigeration* (except commodities in bulk, in tank vehicles). From the facilities of Kraft, Inc., at Springfield, MO, to points in AL, AR, AZ, CA, CO, FL, GA, KS, KY, LA, MS, NM, NC, OK, SC, TN, TX and VA. The certificate contains a restriction against tacking and a further restriction to traffic originating at the named origin and destined to the named destinations. Transferee presently holds Authority under its Lead Docket MC 143085 and Subs thereunder as a Common Carrier, and holds a Permit under its Lead Docket MC 139274 and Subs. Dual operations have been approved. There is presently pending an application under Section 210a(b) by Transferee seeking Temporary Authority to operate the described Authority.

MC–F 14034F. Authority sought for purchase by STAM–WIN, INC., 3700 Park East Drive, Cleveland, Ohio 44122, of operating rights and certain properties of T. T. TRANSPORT CO., 3985 Hutchinson Road, Cincinnati, Ohio 45211, and for the acquisition by LEASEWAY TRANSPORTATION CORP., 3700 Park East Drive, Cleveland, Ohio 44122, of control of said operating rights through the transaction. Applicant's Attorney, J. A. Kundtz, 1100 National City Bank Building, Cleveland, Ohio 44114. Operating rights sought to be transferred and controlled: Injection molding machines, infrared gas heaters, containers, container closures, plastic pipe and fittings, and plastic articles, from the facilities of Van Dorn Company at Cleveland and Conneaut, Ohio, Leetsdale, Pennsylvania, and Elizabeth, New Jersey, to points in CT, IL, IN, KY, MD, MI, MA, MO, NY, OH, PA, RI, VA, and WV, and materials used in the manufacture thereof in the reverse direction. Stam-Win, Inc. holds no authority from this Commission. It is controlled by Leaseway Transportation Corp. which controls certain common and contract carriers some of which are authorized to operate throughout the United States. Application has been filed for Temporary Authority under Section 210a(b).

MC–F 14037F. Transferee: GORDON FAST FREIGHT, INC., 2205 Pacific Highway East, Tacoma, WA 98422. Transferor: V & J REFRIGERATED SERVICE, INC., 3623 6th South, Seattle, WA. Representative: Michael D. Duppenthaler, 211 South Washington Street, Seattle, WA 98104. Authority sought to be controlled: *Alcoholic Beverages* (except wine, in bulk, in tank vehicles), from points in CA to points in King, Pierce, and Snohomish Counties, WA, as a *common* carrier, by motor vehicle, over irregular routes. Vendee is authorized to operate as a common carrier in WA, OR, CA, ZA, and NV. Application has been filed for temporary authority under section 11349.

MC–F 14039F. Authority sought by ALLTRANS EXPRESS U.S.A., INC., of 1335 Sixth Street, San Francisco, CA. 94107, to acquire control of MMAR TRANSPORTATION, INC., of 128 Pennsylvania Street, Kearney, NJ. 07032, through the purchase of 80% MMAR's capital stock. Applicants' attorneys: S. S. Eisen, 370 Lexington Avenue, New York, NY. 10017 and Steven L. Weiman, Suite 145, 4 Professional Drive, Gaithersburg, MD. 20760. Operating rights sought to be controlled: General commodities (except commodities in bulk, classes A and B explosives, commodities of unusual value and commodities requiring special equipment), as a common carrier over irregular routes between New York, NY, Baltimore, MD, Newark, NJ, Philadelphia, and Pittsburgh, PA, New Haven, CT, Holyoke and Boston, MA, Cincinnati, Cleveland, Dayton and Columbus, OH, St. Louis, MO, Chicago, Rockford and Peoria, IL, Milwaukee, WI, Los Angeles, San Francisco, San Diego, Fresno, Emeryville, Oakland, San Jose, Stockton and Sacramento, CA, Phoenix and Tuscon, AZ, Las Vegas and Reno, NV, Seattle and Spokane, WA, Portland, OR, and Salt Lake City, UT. Limitation: Limited to the transportation of shipments moving on bills of lading of freight forwarders as defined in section 402(a)(5) of the Interstate Commerce Act. Restriction: Restricted against the transportation of shipments (a) between Pittsburgh, PA, and Cleveland, OH; (b) from Pittsburgh, PA, and Cleveland, OH, to New York, NY, and Newark, NJ; (c) between Peoria and Chicago, IL; (d) between Cleveland, OH, Chicago, IL, and Milwaukee, WI; (e) between Salt Lake City, UT, Spokane, WA, and Portland, OR; and (f) between Los Angeles, San Francisco, San Diego, Fresno, Emeryville, Oakland, San Jose, Stockton and Sacramento, CA, Phoenix and Tuscon, AZ, Las Vegas and Reno, NV, Seattle, WA, and Portland, OR. Vendee is authorized to operate in the State of CA. Application has not been filed for temporary authority under Section 11349.

MC–F 14041F. Applicant: McLEAN TRUCKING COMPANY, 1920 West First Street, Winston-Salem, NC 27104. Representative: David F. Eshelman, P.O. Box 213, Winston-Salem, NC 27102. Authority sought by McLean Trucking Company, 1920 West First Street, P.O. Box 213, Winston-Salem, NC 27102 to merge with Wolverine Express, Inc., 1920 West First Street, P.O. Box 213, Winston-Salem, NC 27102 and Interlake Equipment Corporation of same address, both of which are now wholly owned subsidiaries of McLean Trucking Company. Operating rights sought to be merged: General commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) over regular routes between named points in Michigan, including Grand Rapids, Lansing, Flint, Alma, Ludington, Traverse City, Muskegon,

Holland, Kalamazoo and other points in the southern peninsula, on the one hand, and, on the other, Toledo, OH, South Bend, IN and Chicago, IL; specified commodities over irregular routes within the above described territory. Vendee is authorized to operate as a common carrier in the States of AR, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, OH, PA, RI, SC, TN, TX, VT, VA, WV, WI, and DC. Application has not been filed for temporary authority under Section 11345.

Note.—Wolverine Express, Inc. and Interlake Equipment Corporation have been operated as wholly owned subsidiaries of McLean Trucking Company pursuant to the decision of the Commission in Docket MC-F 13133 served on August 19, 1977. Common control may be involved.

MC-F 14042F, Transferee LADLIE TRANSPORTATION, INC., 103 East Main Street, Albert Lea, MN 56007. Transferor LTL PERISHABLES, INC., 550 East 5th Street South, South St. Paul, MN 55075. Representatives: Robert S. Lee, 1000 First National Bank Bldg., Minneapolis, MN 55402, and Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106. Authority sought for purchase by Transferee of a portion of the operating rights of Transferor as set forth in Certificate MC 135874 (Sub-42), served January 29, 1976, as follows: *Irregular* route, *common* carrier, *Meats, meat products, meat byproducts and articles distributed by meat packinghouses* as defined in Sections A and C of Appendix I to the report in Descriptions in *Motor Carrier* Certificates, 61 MCC 209 and 766 (except hides and commodities in bulk), from the facilities of Wilson and Co. at Albert Lea, MN, to points in IL, IA, KS and MO. Transferee has ETA, TA and permanent applications pending under MC 136758. No tacking is sought. Application is being filed for temporary authority under Section 210a(b).

Motor Carrier Alternate Route Deviations

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Property (49 CFR 1042.4(c)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed on or before July 18, 1979.

Each applicant states that there will be no significant effect on either the quality of the human environment or energy policy and conservation.

Motor Carriers of Property

MC 2245 (Deviation No. 10), THE O.K. TRUCKING COMPANY, 3000 E. Crescentville Rd., Cincinnati, OH 45241, filed May 2, 1979. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Indianapolis, IN over Interstate Hwy 70 to Terre Haute, IN, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Indianapolis, IN over US Hwy 136 to Danville, IL, then over US Hwy 150 to Terre Haute, IN and return over the same route.

MC 11220 (Deviation No. 42), GORDONS TRANSPORTS, INC., 184 W. McLemore Ave., Memphis, TN 38101, filed March 26, 1979. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Little Rock, AR over U.S. Hwy 65 to junction Interstate Hwy 20, then over Interstate Hwy 20 to Jackson, MS, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Little Rock, AR over U.S. Hwy 70 to Memphis, TN, then over U.S. Hwy 51 to Jackson, MS, and return over the same route.

MC 11220 (Deviation 41), GORDONS TRANSPORTS, INC., 184 W. McLemore Ave., Memphis, TN 38101, filed March 29, 1979. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Idabel, OK over US Hwy 259 to junction US Hwy 59, then over US Hwy 59 to Livingston, TX, then over TX Hwy 146 to junction US Hwy 90, then over US Hwy 90 to Houston, TX, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Idabel, OK over US Hwy 70 to Durant, OK, then over US Hwy 75 to Houston, TX, and return over the same route.

Note.—A portion of this deviation is premised on a grant of temporary authority under section 210(a)(b). If applicant's right to operate all or part of the leased authority expires, this deviation, if authorized, will likewise expire.

MC 29910 (Deviation 40), ARKANSAS-BEST FREIGHT SYSTEM, INC., P.O. Box 48, Fort Smith, AR 72902, filed April 2, 1979. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Cleveland, OH over US Hwy 480 to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction Pennsylvania Hwy 153, then over Pennsylvania Hwy 153 to junction Pennsylvania Hwy 322, then over Pennsylvania Hwy 322 to Harrisburg, PA, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Cleveland, OH over US Hwy 422 to junction Ohio Hwy 8, then over Ohio Hwy 8, via Akron to Canton, OH, then over US Hwy 30 to junction Pennsylvania Turnpike, then over Pennsylvania Turnpike to junction US Hwy 11, then over US Hwy 11, to Harrisburg, PA, and return over the same route. Restrictions: Service is subject to restrictions as follows: (1) That carrier in operating over the Pennsylvania Turnpike shall handle only traffic which is moving between points in Massachusetts, Rhode Island, Connecticut, and the metropolitan area of New York, NY, including Jersey City, Newark and Elizabeth, NJ, on the one hand, and, on the other, points west of the Ohio-Indiana State Line and points in Ohio north of US Hwy 30 and Lima, OH, on US Hwy 30; or that which is moving between points south of Elizabeth, NJ, on the one hand, and, on the other, points west of the Illinois-Indiana State Line, including Gary, IN, and (2) that authority applicable shall continue only so long as carrier shall, by reason of other authority granted, be entitled or authorized to operate over other routes between the termini of the said above specified two routes.

MC 48958 (Deviation 87), ILLINOIS-CALIFORNIA EXPRESS, INC., 601 Ross St., P.O. Box 9050, Amarillo, TX 79189, filed March 29, 1979. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over deviation routes as follows: (1) From Wichita Falls, TX, over US Hwy 277 to junction Interstate Hwy 35, then over Interstate Hwy 35 to Kansas City, MO, and (2) From Wichita Falls, TX, over Interstate Hwy 35 to junction US Hwy 81, then over US Hwy 81 to junction US Hwy 50, then over US Hwy 50 to Kansas City, MO, and return

over the same routes for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Wichita Falls, TX over US Hwy 287 to junction US Hwy 66, then over US Hwy 66 to junction NM Hwy 39, then over NM Hwy 39 to junction NM Hwy 58 (US 56), then over NM Hwy 58 to junction US Hwy 85, then over US Hwy 85 to junction US Hwy 6, then over US Hwy 6, to junction US Hwy 138, then over US Hwy 138 to junction US Hwy 30, then over US Hwy 30 to junction US Hwy 34, then over US Hwy 34 to junction US Hwy 73, then over US Hwy 73 to junction US Hwy 40, then over US Hwy 40 to Kansas City, MO, and return over the same route.

MC 55312 (Deviation 10) (Cancels Deviation NO. 8), CONTINENTAL TENNESSEE LINES, INC., 1785 Hwy 80 West, P.O. Box 8435, Jackson, MS 39204, filed March 28, 1979. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage*, and *express*, and *newspapers* in the same vehicle with passengers, over deviation routes as follows: From Shepherdsville, KY over Interstate Hwy 65 to junction TN Hwy 25, then over TN Hwy 25 to Gallatin, TN, with the following access route: From junction US Hwy 31W and TN Hwy 109, over TN Hwy 109 to Gallatin, TN, and return over the same routes for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over a pertinent service route as follows: From Shepherdsville, KY over KY Hwy 61 to Boston, KY, then over US Hwy 62 to Leitchfield, KY, then over KY Hwy 259 to junction US Hwy 31W, then over US Hwy 31W to junction KY Hwy 101, then over KY Hwy 101 to Scottsville, KY, then over US Hwy 31E to Gallatin, TN, and return over the same route.

MC 59583 (Deviation 60), THE MASON AND DIXON LINES, INC., P.O. Box 969, Kingsport, TN 37662, filed May 7, 1979. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over deviation routes as follows: (1) From Richmond, VA over Interstate Hwy 95 to Petersburg, VA, then over Interstate Hwy 85 to Henderson, NC, and (2) From Richmond, VA over Interstate Hwy 95 to Roanoke Rapids, NC and return over the same routes for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Richmond, VA over US Hwy 60, to junction VA Hwy 24, then over VA Hwy 24 to Appamatox, VA, then over US Hwy 460 to Lynchburg, VA, then over US Hwy 29 to Greensboro, NC, then over Interstate Hwy 85 to (a) Henderson, NC, then over US Hwy 1 to Norlina, NC, then over US Hwy 158 to (b) Roanoke Rapids, NC, and return over the same routes.

MC 10343 (Deviation 26), CHURCHILL TRUCK LINES, INC., P.O. Box 250, Highway 36 West, Chillicothe, MO 64601, filed May 2, 1979. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over the deviation routes as follows: (1) From Wichita, KS, over the Kansas Turnpike to Topeka, KS and return over the same route for operating convenience only, (2) From Wichita, KS over the Kansas Turnpike to junction Interstate Hwy 35, then over Interstate Hwy 35 to Kansas City, MO, and return over the same route for operating convenience only, and (3) From Wichita, KS over Interstate Hwy 135 (formerly Interstate Hwy 35W) to junction US Hwy 50, then over US Hwy 50 to junction Interstate Hwy 35, then over Interstate Hwy 35 to Kansas City, MO, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: (1) From Wichita, KS over Kansas Hwy 15 to junction US Hwy 40, then over US Hwy 40 to junction Kansas Hwy 18, then over Kansas Hwy 18 to junction US Hwy 24, then over US Hwy 24 to Topeka, KS, and return over the same route, and (2) From Wichita, KS over Kansas Hwy 15, to junction US Hwy 56, then over US Hwy 56 to junction US Highway 50, then over US Hwy 50 to Kansas City, MO and return over the same route.

MC 111231 (Deviation No. 67), JONES TRUCK LINES, INC, 610 E. Emma Ave., Springdale, AR 72764, filed May 4, 1979. Carrier's representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Ave., Washington, DC 20014. Carrier proposes to operate as a *comon carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Kansas City, MO over Interstate Hwy 35 to junction Interstate Hwy 80, then over Interstate Hwy 80 to Chicago, IL and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Kansas City, MO over US Hwy 73 to Hiawatha, KS, then over US Hwy 36 to junction KS Hwy 15E, then east over US Hwy 36 to Marysville, KS, then over US Hwy 77 to Lincoln, NE, then over US Hwy 6 to junction IL Hwy 92, then over IL Hwy 92 to junction US Hwy 34, then over US Hwy 34 to Chicago, IL, and return over the same route.

By the Commission,
H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-18942 Filed 6-15-79; 8:45 am]
BILLING CODE 7035-01-M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 118
Monday, June 18, 1979

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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CONSUMER PRODUCT SAFETY COMMISSION.

Revised Agenda [1]

TIME AND DATE: 4 p.m., Tuesday, June 12, 1979.

LOCATION: 8th Floor Conference Room, 1111 18th St., NW., Washington, DC.

STATUS: Part open, part closed to the public.

MATTERS TO BE CONSIDERED:

A. Open to public:

1. *Briefing on Abestos in Products Other than Hair Dryers.*—The staff will brief the Commission on CPSC chronic hazards programs concerning asbestos in consumer products other than hair dryers.

B. Closed to the Public:

2. *Lead in Paint: Tee Shirts.*—The staff will brief the Commission on issues to litigation concerning enforcement of lead in paint regulations. (Closed under exemption 10: litigation)

C. Open to the Public:

3. *Hair Dryers/Abestos.*—The staff will present a review of procedures it is using in matters involving asbestos in hair dryers.

[1] Agenda revised June 12, by oral vote of the Commission to add items 2 and 3, and to close discussion of item 2 to the public. In making these changes, the Commission determined that agency business requires consideration of these matters without seven days notice.

Agenda originally approved June 8; at that time, the Commission determined that agency business requires consideration of item 1 without seven days notice.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Assistant Secretary, Suite 300, 1111 18th Street, NW., Washington, DC 20207, Telephone: (202) 634-7700.

[S-1192-79 Filed 6-14-79; 11:45 am]

BILLING CODE 6355-01-M

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U.S. CONSUMER PRODUCT SAFETY COMMISSION.

Revised Agenda [1]

TIME AND DATE: 10:30 a.m., Wednesday, June 20, 1979.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Briefing on Minorities Program.*—The staff will make recommendations on the use of Fiscal Year 1980 funds for information and education programs directed toward minority populations.

2. *Briefing on Cellulose Insulation: 27 (e) Labeling Rule.*—The staff will brief the Commission on a proposed labeling rule under section 27(e) of the Consumer Product Safety Act. This rule will address proper installation, warning of fire hazards if the insulation is installed too close to certain heat sources. The staff will brief the Commission on other cellulose insulation issues at a briefing on June 25. The Commission will consider cellulose insulation at the June 28 Meeting.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Assistant Secretary, Suite 300, 1111 18th Street NW, Washington, DC 20207, Telephone: (202) 634-7700.

[S-1193-79 Filed 6-14-79; 11:45 am]

BILLING CODE 6355-01-M

3

CONSUMER PRODUCT SAFETY COMMISSION.

Agenda

TIME AND DATE: 9:30 a.m., Thursday, June 21, 1979.

LOCATION: Third Floor Hearing Room, 1111 18th Street, NW., Washington, D.C.

STATUS: Open to the public.

[1] Agenda revised June 13, 1979, with deletion of former item 2: Briefing on Rust Removers Petition, HP 79-2, which will be rescheduled.

In addition, the meeting will begin at 10:30, instead of at 10:00, as previously scheduled.

MATTERS TO BE CONSIDERED:

1. *CB Antennas: Notice and Plan.*—The Commission will consider a draft Federal Register document giving notice of CPSC's intent to develop a safety standard to address electrocution hazards associated with the erection and dismantling of Citizens Band base station antennas. The staff will also discuss the management plan for conducting the standard development process.

2. *Skateboards Petition, CP 79-2.*—The Commission will consider a petition in which the Consumer Affairs Committee, Americans for Democratic Action asks CPSC to ban skateboards.

3. *Burn Prevention Project.*—The Commission will consider a proposed one-site replication of Project Burn Prevention, and other national efforts on burn prevention. The Commission previously considered these matters at the May 17 Briefing and at the June 6 Meeting.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Assistant Secretary, Suite 300, 1111 18th Street, NW., Washington, DC 20207, Telephone: (202) 634-7700.

Agenda approved June 8, 1979.

[S-1194-79 Filed 6-14-79; 11:45 am]

BILLING CODE 6355-01-M

4

CONSUMER PRODUCT SAFETY COMMISSION.

Agenda

TIME AND DATE: 9:30 a.m., Monday, June 25, 1979.

LOCATION: Third Floor Hearing Room, 1111-18th St. NW., Washington, D.C.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

Briefing on Cellulose Insulation.—The staff will brief the Commission on the final amendment to the Interim Safety Standard, and the Certification Rule for Cellulose Insulation. The Commission proposed both rules on March 8, 1979. The Commission will consider the Safety Standard, the Certification Rule, and a Labeling Rule (briefing scheduled for June 25) at the June 28 Commission Meeting.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Assistant Secretary, Suite 300, 1111-18th Street, NW., Washington, D.C. 20207, Telephone: (202) 634-7700.

Agenda approved June 8, 1979.

[S-1195-79 Filed 6-14-79; 11:45]

BILLING CODE 6355-01-M

5

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m. (eastern time), Tuesday, June 19, 1979.

PLACE: Commission Conference Room, No. 5240, on the fifth floor of the Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

Open to the public:

1. Proposed designation of South Carolina Human Affairs Commission as a 706 Agency.
2. Proposed revision of interpretations of the age Discrimination in Employment Act of 1967, as amended (29 CFR 860).
3. Proposed contracts for computer analyses and expert witness services in connection with a pending court case.
4. Report on operations of the Office of Review and Appeals.
5. Report on Commission operations by the Executive Director.

Closed to the public:

1. Litigation Authorization; General Counsel Recommendations.
2. Proposed Decision in Charge TN03-1711.
3. Proposed Reconsideration of Decision in Charge 052-77-0748.

Note.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION: Marie D. Wilson, Executive Officer, Executive Secretariat, at (202) 634-6748.

This notice issued June 12, 1979.

[S-1201-79 Filed 6-14-79; 2:57 pm]

BILLING CODE 6570-06-M

6

June 13, 1979.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 10 a.m., June 20, 1979.

PLACE: 825 North Capitol Street NE., Washington, D.C. 20426, Hearing Room A.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 275-4166.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda, however, all public documents may be examined in the office of public information.

Power Agenda—226th Meeting, June 20, 1979, Regular Meeting (10 a.m.)

CAP-1. Project No. 2708, Monongahela Power Co., The Potomac Edison Power Co., and West Penn Power Co.
CAP-2. Project No. 2372, Pennsylvania Electric Co.
CAP-3. Project No. 1992, California Fire Mountain Lodge.
CAP-4. Docket Nos. ER79-338, ER79-337, Central Illinois Public Service Co., Kentucky Utilities, and Southern Illinois Power Cooperative.
CAP-5. Docket No. ER79-343, Florida Power Corp.
CAP-6. Docket No. ER79-334, Upper Peninsula Power Co.
CAP-7. Docket No. ER79-342, Union Electric Co. and Kentucky Utilities Co.
CAP-8. Docket No. ER79-344, West Texas Utilities Co.
CAP-9. Docket No. ER79-336, Central Louisiana Electric Co.
CAP-10. Docket Nos. EL78-15 and ER78-338, Public Service Co. of New Hampshire.
CAP-11. Docket No. ER78-515, Montana Power Co.
CAP-12. Docket No. ER79-107, Upper Peninsula Power Co.
CAP-13. Docket Nos. ER79-216 and ER79-217, Boston Edison Co.

Miscellaneous Agenda—226th Meeting, June 20, 1979, Regular Meeting

CAM-1. Wesco Pipeline Co.
CAM-2. Elimination of order No. 539 conditions in producer temproary and permanent certificates.
CAG-1. Docket Nos. RP78-67 and RP78-68 (PGA79-1), Kentucky West Virginia Gas Co.
CAG-2 Docket No. CP72-156 (PGA No. 78-1a), Texas Gas Transmission Corp.
CAG-3. Docket Nos. RP71-107 and RP72-127 (PGA No. 79-2), Northern Natural Gas Co.
CAG-4. Docket No. RP72-94 (PGA No. 79-2) (DCA No. 79-2), Southern Natural Gas Co.
CAG-5. Docket No. RP76-5, City of Des Arc, Ark., complainant vs. Mississippi River Transmission Corp., respondent.
CAG-6. Docket No. RP75-93 (advance payments), Texas Eastern Transmission Corp.
CAG-7. Docket No. RP77-80, South Texas Natural Gas Gathering Co.
CAG-8. Docket No. RI78-18, West Lake Natural Gasoline Co.
CAG-9. Docket No. RI77-88, CRA, Inc.
CAG-10. Docket No. CI78-870, American Natural Gas Production Co.; Docket No. CI78-845 and CI78-846, Helmerich & Payne, Inc.; Docket No. CI78-182, Monsanto Co.; Docket No. CI78-1131, Amoco Production Co.; Docket No. CI78-620, Continental Oil Co.; Docket No. CI78-941, Atlantic Richfield Co.; Docket No. CI7-645, Getty Oil Co.; Docket No. CI79-402, Getty Oil Co.; Docket Nos. CS71-181, et al., Herman Lang, et al.; Docket Nos. CS71-208, et al., Santa Fe Energy Co.; Docket No. CS78-331, Cisco Gathering System; Docket No. G-8209, Phillips Petroleum Co.; Docket No. CI78-685, Phillips Petroleum Co.; Docket No. CI78-480, Continental Oil Co.; Docket No. CI78-527, Continental Oil Co.; Docket No. CI78-527, Continental Oil Co.; Docket No. CI77-508, Sonat Exploration Co.; Docket No. CI78-1215, The Superior Oil Co.
CAG-11. Docket No. CI78-694, Shell Oil Co.
CAG-12. Docket Nos. CI78-338, et al., Bethlehem Steel Corp., et al.
CAG-13. Docket Nos. CI78-425, et al., Chevron U.S.A. Inc., et al.
CAG-14. Docket No. G-7004, Pennzoil Co.
CAG-15. Docket No. CP78-255, Michigan Wisconsin Pipe Line Co.
CAG-16. Docket No. CP79-7 (Phase II), Southern Natural Gas Co.
CAG-17. Docket No. CP79-267, Texas Gas Transmission Corp.
CAG-18. Docket No. CP73-70, Columbia Gulf Transmission Co.

Power Agenda—226th Meeting, June 20, 1979, Regular Meeting

I. Electric Rate Matters

ER-1. Docket Nos. ER79-332 and ER79-333, Ohio Power Co.
ER-2. Docket No. ER79-352, Florida Power & Light Co.
ER-3. Docket No. ER79-67, Tucson Gas & Electric Co.

Miscellaneous Agenda: 226th Meeting, June 20, 1979, Regular Meeting

M-1. Docket No. RM79-10, Determination of power plant design capacity.
M-2. Reserved.
M-3. Reserved.
M-4. Docket No. RM79-1, Rate making treatment of certain research, development, and demonstration expenses.
M-5. Docket No. RM79-13, Certification of pipe line transportation for certain high priority uses.
M-6. Docket No. RM79-22, amendment and clarification of the commission's interim regulation implementing the Natural Gas Policy Act of 1978 and Regulations under the Natural Gas Act.
M-7. Docket No. RM79-15, final regulations for the implementation of section 401 of the Natural Gas Policy Act of 1978.

Gas Agenda—226th Meeting, June 20, 1979, Regular Meeting

I. Pipeline Rate Matters

RP-1. Docket No. RP76-4, National Fuel Gas Supply Corp.
RP-2. Docket No. RP77-107, United Gas Pipe Line Co.

II. Producer Matters

CI-1. Docket No. RI78-23, Southern Union Gathering Co.
CI-2. Docket No. RI77-129, Coastal States Gas Producing Co.
CI-3. Docket No. CI75-201, Atlantic Richfield Co., et al.
CI-4. Docket No. CI76-277, J. G. Stone, Sun Oil Co., and United Gas Pipe Line Co.

Kenneth F. Plumb,
Secretary.

[S-1197-79 Filed 6-14-79; 2:59 pm]

BILLING CODE 6450-01-M

7

FEDERAL ELECTION COMMISSION.

FEDERAL REGISTER NO.: FR–S–1189.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 21, 1979 at 10 a.m.

CHANGE IN MEETING: The following items have been added to the open portions of the meeting:

Advisory opinion 1979–17—James T. Lynn, counsel, Republican National Committee.

Advisory opinion 1979–21—Glenn E. Watts, chairman, CWA–COPE PCC.

Index pricing policy.

Financial control and compliance manual for presidential candidates.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred S. Eiland, Public Information Officer, telephone: 202–523–4065.

Marjorie W. Emmons,

Secretary to the Commission.

[S–1198–79 Filed 6–14–79; 3:30 pm]

BILLING CODE 6715–01–M

8

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 10 a.m., June 21, 1979.

PLACE: Room 12126, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Part of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portion open to the public:

1. Agreement No. 10109–3: Application for approval of extension of a cooperative working agreement among noncontainerized cargo carriers at United States ports on the Atlantic and Gulf Coasts.

Portions closed to the public:

1. Docket No. 79–10: Rates of Far Eastern Shipping Company—Consideration of the record.

2. Commission Action Regarding TMT v. F.M.C.—D.C. Cir. 78–1307.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary, (202) 523–5725.

[S–1199–79 Filed 6–13–79; 11:30 am]

BILLING CODE 6730–01–M

9

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 3 p.m., June 12, 1979.

PLACE: Room 12126, 1100 L Street NW., Washington, D.C. 20753.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Commission Action Regarding TMT v. F.M.C.—D.C. Cir. 78–1307.

2. Criminal Indictments of Certain Carriers and Individuals.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary, (202) 523–5725.

[S–1196–79 Filed 6–14–79; 12:27 pm]

BILLING CODE 6730–01–M

10

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

June 14, 1979.

TIME AND DATE: 10 a.m., June 21, 1979.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

Secretary of Labor v. Valley Camp Coal Company, MORG 78–46–P.

Secretary of Labor v. Stash Brothers, Inc., PITT 79–44–P

Secretary of Labor v. Cut Slate, Inc., WILK 79–13–PM

CONTACT PERSON FOR MORE INFORMATION: Joanne Kelley, 202–653–5632.

[S–1200–79 Filed 6–14–79; 3:37 pm]

BILLING CODE 6820–12–M

11

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [44 FR 33236 June 8, 1979 and 44 FR 33549 June 11, 1979.]

STATUS: Closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Monday, June 4, 1979 and Wednesday, June 6, 1979.

CHANGES IN MEETING: Rescheduling.

The following items scheduled for consideration at a closed meeting on Tuesday, June 12, 1979, at 10:00 a.m. has been rescheduled for Wednesday, June 13, 1979 at 8:00 a.m.:

Settlement of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

Chairman Williams and Commissioners Loomis, Evans, Pollack and Karmel determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling or meeting items. For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact: Mike Rogan at (202) 755–1638.

June 13, 1979.

[S–1196–79 Filed 6–14–79; 12:27 pm]

BILLING CODE 8010–01–M

Federal Register

Monday
June 18, 1979

Part II

Department of Housing and Urban Development

Office of Assistant Secretary for Housing—Federal Housing Commissioner

Fair Market Rents for New Construction and Substantial Rehabilitation; All Market Areas Section 8 Projects

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[24 CFR Part 888]

[Docket No. R-79-677]

Fair Market Rents for New Construction and Substantial Rehabilitation; All Market Areas Section 8 Projects

AGENCY: Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Proposed rule.

SUMMARY: This Proposed Rule will amend the Section 8 Fair Market Rents applicable to New Construction and Substantial Rehabilitation for all Market Areas. The Proposed Fair Market Rents are intended to reflect the changes which have occurred in the general levels of market rents for recently completed or newly constructed dwelling units within each market area since their last annual or special (interim) revision.

DATE: July 3, 1979. Comments should be filed by this deadline with the Rules Docket Clerk at the above address.

ADDRESS: Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, SW, Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Supervisory Appraiser, Valuation Branch, Technical Support Division, Office of Multifamily Housing Development, 451–7th Street, S.W., Washington, D.C. 20410. (202) 755–5743. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: This proposed rule would establish revised section 8 Fair Market Rents applicable to new construction and substantial rehabilitation for all market areas in compliance with the requirements of section 8(c)(1) of the U.S. Housing Act of 1937 and implementing regulations that Fair Market Rents be established and published in the **Federal Register** at least annually.

These Fair Market Rents are based primarily on the levels of rental paid for recently completed or newly constructed dwelling units of modest design within each market area as determined by HUD Field Office staff. They are estimates of the rentals that prospective tenants who have income above 80 percent of the median income would be willing and able to pay for recently completed or newly constructed dwelling units of modest design. Families with incomes 80% or less of the median income for the area, with certain adjustments, may be eligible for housing assistance under the section 8 programs. The last annual revision was published June 13, 1978, effective April 1, 1978. After consideration of comments received as a result of this publication, revised rents will be published effective April 1, 1979.

The Proposed Rule includes Fair Market Rents for 0, 1, 2, 3, and 4 or more bedroom units in five structural categories (detached, semi-detached/row, walkup, elevator 2–4 story, and elevator 5+ story.) However, Departmental policy discourages construction of high-rise family projects. For the McAlester, Oklahoma market area only, Fair Market Rents are included for mobile homes.

Proposals involving combinations of structure type and unit size by bedroom count for which Fair Market Rents have not been published for effect may not be approved until publication of the applicable Fair Market Rents, first for comment and then for effect.

Interested parties are encouraged at all times to submit information and data on Fair Market Rents which will be considered in initiating revisions as needed. It has been determined that because of the immediate need to provide revised Fair Market Rents in order to meet this year's departmental Production goals for assisted housing reservations and starts, a 15-day comment period is reasonable and in the public interest. A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours at the Office of the Rules Docket Clerk at the address set forth above.

It is therefore proposed that Schedule A of Part 888 be amended as set for below.

(Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d))

Issued at Washington, D.C., on May 4, 1979.

Lawrence B. Simons,
Assistant Secretary for Housing-Federal Housing Commissioner.

Schedule A—Fair Market Rents for New Construction and Substantial Rehabilitation (Including Housing Finance and Development Agencies Program)

These Fair Market Rents have been trended ahead 2 years to allow time for processing and construction of proposed new construction and substantial rehabilitation rental projects.

Note.—The Fair Market Rents for (1) dwelling units designed for the elderly or handicapped are those for the appropriate size units, not to exceed 2-bedroom for the elderly, multiplied by 1.05 rounded to the next higher whole dollar, (2) congregate housing dwelling units are the same as for non-congregate units, and (3) single room occupancy dwelling units are those for 0-bedroom units of the same type.

[FR Doc. 79-18891 Filed 6-15-79; 8:45 am]

BILLING CODE 4210-01-M

REGION I - BOSTON
AREA OFFICE BOSTON, MASS.
NUMBER OF BEDROOMS | MARKET AREA | STRUCTURE TYPE

REGION I - BOSTON
AREA OFFICE HARTFORD, CONN.
NUMBER OF BEDROOMS | MARKET AREA | STRUCTURE TYPE

AREA OFFICE HARTFORD, CONN. REGION I - BOSTON

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
HARTFORD/NEW HAVEN	DETACHED			518	578	622
	SEMI-DETACHED/ROW		423	491	550	593
	WALKUP	358	417	486	546	587
	ELEVATOR-2-4 Sty	373	435	505		
	5 + Sty	386	448	518		
BRIDGEPORT/DANBURY	DETACHED			541	605	650
	SEMI-DETACHED/ROW		445	515	581	625
	WALKUP	378	438	511	570	616
	ELEVATOR-2-4 Sty	393	457	529		
	5 + Sty	406	470	541		
NEW MILFORD	DETACHED			510	565	610
	SEMI-DETACHED/ROW		406	483	537	581
	WALKUP	348	401	478	531	574
	ELEVATOR-2-4 Sty	364	417	498		
	5 + Sty	376	429	510		
RIDGEFIELD/STAMFORD	DETACHED			557	618	661
	SEMI-DETACHED/ROW		454	525	588	629
	WALKUP	387	449	520	582	629
	ELEVATOR-2-4 Sty	405	468	542		
	5 + Sty	417	478	553		
WINDHAM	DETACHED			480	543	588
	SEMI-DETACHED/ROW		388	457	515	557
	WALKUP	324	383	450	510	552
	ELEVATOR-2-4 Sty	337	395	463		
	5 + Sty	350	412	480		
NORWICH/NEW LONDON	DETACHED			509	569	614
	SEMI-DETACHED/ROW		418	484	540	584
	WALKUP	350	408	477	535	579
	ELEVATOR-2-4 Sty	366	423	496		
	5 + Sty	378	438	509		

AREA OFFICE BOSTON, MASS. REGION I - BOSTON

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
BOSTON	DETACHED			—	—	—
	SEMI-DETACHED/ROW		401	454	569	646
	WALKUP	323	400	441	516	621
	ELEVATOR-2-4 Sty	—	—	—		
	5 + Sty	336	433	488	649	712
CAPE COD	DETACHED			507	543	638
	SEMI-DETACHED/ROW			372	448	513
	WALKUP	280	347	365	442	508
	ELEVATOR-2-4 Sty	—	—	—		
	5 + Sty	306	398	429		
PITTSFIELD	DETACHED			—	—	—
	SEMI-DETACHED/ROW		348	421	531	582
	WALKUP	290	331	374	460	554
	ELEVATOR-2-4 Sty	—	—	—		
	5 + Sty	309	353	437		
SPRINGFIELD	DETACHED			—	—	—
	SEMI-DETACHED/ROW		328	388	521	594
	WALKUP	218	322	364	460	566
	ELEVATOR-2-4 Sty	—	—	—		
	5 + Sty	274	353	416		
WORCHESTER	DETACHED			—	—	—
	SEMI-DETACHED/ROW		357	421	522	614
	WALKUP	316	347	408	480	585
	ELEVATOR-2-4 Sty	—	—	—		
	5 + Sty	318	389	456		
FALL RIVER	DETACHED			—	—	—
	SEMI-DETACHED/ROW		354	431	555	564
	WALKUP	318	331	408	483	537
	ELEVATOR-2-4 Sty	—	—	—		
	5 + Sty	—	370	438		

AREA OFFICE BOSTON, MASS. REGION I - BOSTON

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
LOWELL	DETACHED			654	747	790
	SEMI-DETACHED/ROW		392	446	530	633
	WALKUP	325	373	432	505	603
	ELEVATOR-2-4 Sty	---	---	---		
	5 + Sty	329	423	479		
SALEM	DETACHED			---	---	---
	SEMI-DETACHED/ROW		374	436	489	604
	WALKUP	297	364	408	478	575
	ELEVATOR-2-4 Sty	---	---	---		
	5 + Sty	336	433	483		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE MANCHESTER, N.H. REGION I - BOSTON

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
MAINE STATEWIDE	DETACHED		372	425	481	547
	SEMI-DETACHED/ROW	313	359	410	463	524
	WALKUP	287	328	377	423	481
	ELEVATOR-2-4 Sty	342	376	459		
	5 + Sty	379	418	509		
VERMONT STATEWIDE	DETACHED			416	483	565
	SEMI-DETACHED/ROW		353	405	461	529
	WALKUP	297	344	394	444	498
	ELEVATOR-2-4 Sty	324	363	435		
	5 + Sty	360	404	483		
NEW HAMPSHIRE STATEWIDE	DETACHED		396	465	537	627
	SEMI-DETACHED/ROW	301	345	410	469	545
	WALKUP	283	326	390	443	505
	ELEVATOR-2-4 Sty	286	342	436		
	5 + Sty	318	380	484		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE PROVIDENCE, R.I. REGION I - BOSTON

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE NEWARK, N.J. REGION II - NEW YORK

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE PROVIDENCE, R.I. REGION I - BOSTON

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
PROVIDENCE	DETACHED			460	520	555
	SEMI-DETACHED/ROW		375	450	515	555
	WALKUP	275	365	435	490	530
	ELEVATOR-2-4 Sty	280	385	495		
	5 + Sty	285	390	499		
NEWPORT	DETACHED			465	500	530
	SEMI-DETACHED/ROW		350	410	480	520
	WALKUP	240	315	375	425	470
	ELEVATOR-2-4 Sty	275	355	410		
	5 + Sty	280	360	420		
WESTERLY	DETACHED			460	520	555
	SEMI-DETACHED/ROW		370	455	520	555
	WALKUP	276	355	440	495	535
	ELEVATOR-2-4 Sty	285	370	465		
	5 + Sty	290	375	480		
PAWTUCKET	DETACHED			460	520	540
	SEMI-DETACHED/ROW		350	415	490	530
	WALKUP	270	355	410	475	525
	ELEVATOR-2-4 Sty	275	375	470		
	5 + Sty	285	380	500		
WOONSOCKET	DETACHED			455	515	530
	SEMI-DETACHED/ROW		325	385	460	500
	WALKUP	265	320	385	425	470
	ELEVATOR-2-4 Sty	270	370	490		
	5 + Sty	280	370	495		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE NEWARK, N.J. REGION II - NEW YORK

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
NEWARK	DETACHED			695	770	807
	SEMI-DETACHED/ROW	449	489	621	711	773
	WALKUP	394	429	551	631	689
	ELEVATOR-2-4 Sty	454	482	602	671	734
	5 + Sty	498	533	654	735	769
ATLANTIC CITY	DETACHED			623	691	715
	SEMI-DETACHED/ROW	377	411	480	558	616
	WALKUP	348	380	441	512	567
	ELEVATOR-2-4 Sty	414	448	515	597	650
	5 + Sty	479	525	596	717	781
ASBURY PARK	DETACHED			615	694	735
	SEMI-DETACHED/ROW	418	462	542	637	702
	WALKUP	364	403	475	559	620
	ELEVATOR-2-4 Sty	409	460	557	633	708
	5 + Sty	454	512	610	698	766
CAMDEN/ BURLINGTON/ GLOUCESTER	DETACHED			612	683	721
	SEMI-DETACHED/ROW	378	413	503	583	642
	WALKUP	344	376	458	529	584
	ELEVATOR-2-4 Sty	410	445	538	620	679
	5 + Sty	452	495	602	698	762
FREEHOLD	DETACHED			674	752	792
	SEMI-DETACHED/ROW	425	469	600	693	738
	WALKUP	371	410	531	614	674
	ELEVATOR-2-4 Sty	409	460	585	671	745
	5 + Sty	454	512	648	735	803
NORTH BERGEN	DETACHED			698	776	816
	SEMI-DETACHED/ROW	461	505	624	717	767
	WALKUP	406	445	554	637	697
	ELEVATOR-2-4 Sty	462	515	665	731	784
	5 + Sty	506	567	718	795	843

AREA OFFICE NEWARK, N.J. REGION II - NEW YORK

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
TRENTON	DETACHED			630	701	738
	SEMI-DETACHED/ROW	419	456	521	600	659
	WALKUP	384	416	475	546	601
	ELEVATOR-2-4 Sty	453	488	557	639	697
	5 + Sty	495	539	621	717	780
VINELAND	DETACHED			526	596	634
	SEMI-DETACHED/ROW	325	363	419	498	557
	WALKUP	293	326	376	447	502
	ELEVATOR-2-4 Sty	356	392	451	533	591
	5 + Sty	398	442	514	611	674
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE BUFFALO, N.Y. REGION II - NEW YORK

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
ALBANY/ GLEN FALLS/ MASSENA/ SYRACUSE	DETACHED			429	517	571
	SEMI-DETACHED/ROW		317	376	458	508
	WALKUP	249	309	361	424	479
	ELEVATOR-2-4 Sty	273	339	426		
	5 + Sty	294	360	447		
ITHACA/ WATERTOWN/ SCHNECTADY/ BINGHAMTON	DETACHED			429	517	571
	SEMI-DETACHED/ROW		317	376	458	508
	WALKUP	249	309	361	424	479
	ELEVATOR-2-4 Sty	273	339	426		
	5 + Sty	294	360	447		
PLATTSBURGH	DETACHED			438	517	571
	SEMI-DETACHED/ROW		370	404	466	526
	WALKUP	292	319	370	432	492
	ELEVATOR-2-4 Sty	369	396	455		
	5 + Sty	382	417	498		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE BUFFALO, N.Y. REGION II - NEW YORK

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE NEW YORK, N. Y. REGION II - NEW YORK

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE BUFFALO, N.Y. REGION II - NEW YORK

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
BUFFALO	DETACHED			448	505	568
	SEMI-DETACHED/ROW		355	392	459	532
	WALKUP	282	314	363	428	453
	ELEVATOR-2-4 Sty	353	374	444		
	5 + Sty	409	433	506		
ELMIRA	DETACHED			440	510	565
	SEMI-DETACHED/ROW		383	422	475	530
	WALKUP	299	329	389	449	510
	ELEVATOR-2-4 Sty	358	401	479		
	5 + Sty	383	425	505		
JAMESTOWN	DETACHED			448	504	566
	SEMI-DETACHED/ROW		375	409	468	535
	WALKUP	308	334	379	435	501
	ELEVATOR-2-4 Sty	370	396	460		
	5 + Sty	390	430	515		
ROCHESTER	DETACHED			436	487	539
	SEMI-DETACHED/ROW		353	401	465	524
	WALKUP	275	301	356	419	471
	ELEVATOR-2-4 Sty	368	393	467		
	5 + Sty	389	426	510		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE NEW YORK, N. Y. REGION II - NEW YORK

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
NEW YORK CITY	DETACHED	—	—	—	—	—
	SEMI-DETACHED/ROW	—	502	599	697	813
	WALKUP	390	461	555	652	753
	ELEVATOR-2-4 Sty	448	523	623	710	801
	5 + Sty	560	646	779	899	998
SUFFOLK	DETACHED	—	—	548	674	763
	SEMI-DETACHED/ROW	406	429	507	549	657
	WALKUP	328	397	471	508	568
	ELEVATOR-2-4 Sty	408	501	592	—	—
	5 + Sty	430	512	629	—	—
WESTCHESTER	DETACHED	—	—	636	723	769
	SEMI-DETACHED/ROW	—	450	531	635	709
	WALKUP	350	410	492	600	678
	ELEVATOR-2-4 Sty	374	429	534	625	—
	5 + Sty	427	489	587	—	—
ORANGE	DETACHED	—	—	506	582	628
	SEMI-DETACHED/ROW	—	345	414	488	563
	WALKUP	247	325	388	476	515
	ELEVATOR-2-4 Sty	366	469	555	—	—
	5 + Sty	376	478	564	—	—
ROCKLAND	DETACHED	—	—	648	735	779
	SEMI-DETACHED/ROW	—	420	523	617	662
	WALKUP	328	397	500	595	640
	ELEVATOR-2-4 Sty	350	428	544	—	—
	5 + Sty	385	464	586	—	—
NASSAU	DETACHED	—	—	713	758	874
	SEMI-DETACHED/ROW	—	515	619	714	812
	WALKUP	380	475	580	676	790
	ELEVATOR-2-4 Sty	386	509	602	—	—
	5 + Sty	393	515	644	---	—

AREA OFFICE NEW YORK, N.Y. REGION II - NEW YORK

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
PUTNAM	DETACHED	—	—	636	723	769
	SEMI-DETACHED/ROW	—	450	531	635	709
	WALKUP	350	410	492	600	678
	ELEVATOR-2-4 Sty	374	429	534	625	—
	5 + Sty	427	489	597	---	—
POUGHKEEPSIE	DETACHED	---	--	465	520	570
	SEMI-DETACHED/ROW	---	323	402	473	523
	WALKUP	255	303	368	447	497
	ELEVATOR-2-4 Sty	---	---	---	---	---
	5 + Sty	335	387	467	---	---
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE SAN JUAN, P.R. REGION II - NEW YORK

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SAN JUAN	DETACHED			367	432	470
	SEMI-DETACHED/ROW		346	367	432	470
	WALKUP	274	346	367	432	470
	ELEVATOR-2-4 Sty	-	-	-	-	-
	5 + Sty	322	395	418	486	524
PONCE	DETACHED			387	456	495
	SEMI-DETACHED/ROW		364	387	456	495
	WALKUP	292	364	387	456	495
	ELEVATOR-2-4 Sty	-	-	-	-	-
	5 + Sty	338	414	440	510	615
MAYAGUEZ	DETACHED			379	446	487
	SEMI-DETACHED/ROW		357	379	446	487
	WALKUP	284	357	379	446	487
	ELEVATOR-2-4 Sty	-	-	-	-	-
	5 + Sty	332	407	431	501	540
ARECIBO	DETACHED			379	446	487
	SEMI-DETACHED/ROW		357	379	446	487
	WALKUP	284	357	379	446	487
	ELEVATOR-2-4 Sty	-	-	-	-	-
	5 + Sty	332	407	431	501	540
ST. CROIX	DETACHED			423	487	506
	SEMI-DETACHED/ROW		279	408	469	488
	WALKUP	244	276	369	384	434
	ELEVATOR-2-4 Sty	-	-	-	-	-
	5 + Sty	-	-	-	-	-
ST. THOMAS	DETACHED			468	557	592
	SEMI-DETACHED/ROW		343	429	516	550
	WALKUP	256	340	414	454	520
	ELEVATOR-2-4 Sty	305	391	467		
	5 + Sty	-	-	-	-	-

AREA OFFICE Philadelphia, Pa. REGION III- PHILADELPHIA.

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE WASHINGTON, DC / REGION III - PHILADELPHIA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more

AREA OFFICE Philadelphia, Pa. REGION III- PHILADELPHIA.

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
WILMINGTON, DEL.	DETACHED		—	—	—	—
	SEMI-DETACHED/ROW		288	384	541	0
	WALKUP	255	285	357	434	0
	ELEVATOR-2-4 Sty	270	335	410	460	0
	5 + Sty	300	375	438	500	0
DOVER, DEL.	DETACHED			—	—	—
	SEMI-DETACHED/ROW		266	355	500	0
	WALKUP	236	264	330	401	0
	ELEVATOR-2-4 Sty	250	310	379	426	0
	5 + Sty	278	356	403	463	0
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE WASHINGTON, DC / REGION III - PHILADELPHIA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
WASHINGTON, DC	DETACHED		0	0	0	0
	SEMI-DETACHED/ROW		427	507	552	624
	WALKUP	296	389	448	542	600
	ELEVATOR-2-4 Sty	327	421	503		
	5 + Sty	337	430	577		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE BALTIMORE, MD. REGION III - PHILADELPHIA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
BALTIMORE/ WALDORF	DETACHED			547	642	696
	SEMI-DETACHED/ROW		342	383	471	602
	WALKUP	284	327	368	459	540
	ELEVATOR-2-4 Sty	298	360	423		
	5 + Sty	308	366	464		
HAGERSTOWN	DETACHED			475	559	633
	SEMI-DETACHED/ROW		333	360	440	566
	WALKUP	283	317	353	423	528
	ELEVATOR-2-4 Sty	293	338	402		
	5 + Sty	298	348	409		
SALISBURY	DETACHED			460	530	630
	SEMI-DETACHED/ROW		306	349	425	565
	WALKUP	254	286	343	408	534
	ELEVATOR-2-4 Sty	264	305	393		
	5 + Sty	269	314	400		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE PHILADELPHIA, PA REGION III - PHILADELPHIA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
PHILADELPHIA	DETACHED		---	---	---	---
	SEMI-DETACHED/ROW		368	458	504	554
	WALKUP	283	336	422	488	529
	ELEVATOR-2-4 Sty	307	373	444		
	5 + Sty	356	400	464		
ALLENTOWN/ BETHLEHEM	DETACHED		---	---	---	---
	SEMI-DETACHED/ROW		320	396	475	524
	WALKUP	277	311	391	468	511
	ELEVATOR-2-4 Sty	329	347	407		
	5 + Sty	337	371	456		
BELLEFONTE	DETACHED		---	---	---	---
	SEMI-DETACHED/ROW		307	413	465	509
	WALKUP	259	298	379	457	497
	ELEVATOR-2-4 Sty	297	330	421		
	5 + Sty	324	361	459		
HARRISBURG	DETACHED		---	---	---	---
	SEMI-DETACHED/ROW		323	405	518	572
	WALKUP	277	318	391	505	559
	ELEVATOR-2-4 Sty	304	354	402		
	5 + Sty	341	382	435		
LANCASTER/YORK	DETACHED		---	---	---	---
	SEMI-DETACHED/ROW		314	386	459	493
	WALKUP	260	309	374	448	481
	ELEVATOR-2-4 Sty	292	343	433		
	5 + Sty	322	371	470		
READING/ POTTSTOWN	DETACHED		---	---	---	---
	SEMI-DETACHED/ROW		319	377	472	517
	WALKUP	283	304	352	438	479
	ELEVATOR-2-4 Sty	306	351	398		
	5 + Sty	321	384	450		

AREA OFFICE PHILADELPHIA, PA REGION III - PHILADELPHIA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE PITTSBURGH, PA REGION III - PHILADELPHIA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE PHILADELPHIA, PA REGION III - PHILADELPHIA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SCRANTON	DETACHED		---	---	---	---
	SEMI-DETACHED/ROW		356	418	478	540
	WALKUP	275	332	402	473	522
	ELEVATOR-2-4 Sty	302	363	423		
	5 + Sty	352	417	467		
WELLSBORO	DETACHED		---	---	---	---
	SEMI-DETACHED/ROW		307	413	465	509
	WALKUP	259	298	379	457	497
	ELEVATOR-2-4 Sty	297	330	421		
	5 + Sty	324	361	459		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE PITTSBURGH, PA REGION III - PHILADELPHIA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
PITTSBURGH	DETACHED		427	460	538	619
	SEMI-DETACHED/ROW		399	438	500	576
	WALKUP	289	359	414	469	543
	ELEVATOR-2-4 Sty	---	---	---	---	---
	5 + Sty	321	388	466		
NEW CASTLE/ SHARON	DETACHED		356	417	492	591
	SEMI-DETACHED/ROW		347	387	456	548
	WALKUP	255	315	361	426	494
	ELEVATOR-2-4 Sty	---	---	---	---	---
	5 + Sty	305	365	438		
ERIE	DETACHED		399	440	491	575
	SEMI-DETACHED/ROW		371	407	442	533
	WALKUP	268	331	383	438	507
	ELEVATOR-2-4 Sty	---	---	---	---	---
	5 + Sty	318	380	459		
ALTOONA/ JOHNSTOWN	DETACHED		377	434	506	591
	SEMI-DETACHED/ROW		377	414	473	553
	WALKUP	268	331	400	451	519
	ELEVATOR-2-4 Sty	---	---	---	---	---
	5 + Sty	301	360	434		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE RICHMOND, VA. REGION III - PHILADELPHIA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
RICHMOND	DETACHED			383	444	525
	SEMI-DETACHED/ROW		298	341	411	459
	WALKUP	239	274	338	408	455
	ELEVATOR-2-4 Sty	239	304	389		
	5 + Sty	241	324	406		
NEWPORT NEWS/ HAMPTON	DETACHED			368	447	490
	SEMI-DETACHED/ROW		298	337	419	467
	WALKUP	229	254	298	382	427
	ELEVATOR-2-4 Sty	242	273	334		
	5 + Sty	255	279	347		
FREDERICKSBURG/ CHARLOTTESVILLE/	DETACHED			396	458	523
	SEMI-DETACHED/ROW		288	340	410	462
	WALKUP	234	279	335	406	454
	ELEVATOR-2-4 Sty	234	297	381		
	5 + Sty	235	318	399		
ROANOKE/ LYNCHBURG/ DANVILLE/	DETACHED			360	423	476
	SEMI-DETACHED/ROW		265	324	408	451
	WALKUP	214	251	307	385	427
	ELEVATOR-2-4 Sty	228	290	378		
	5 + Sty	231	312	390		
HARRISONBURG/ WARRENTON/	DETACHED			342	382	465
	SEMI-DETACHED/ROW		265	320	382	433
	WALKUP	213	251	298	375	431
	ELEVATOR-2-4 Sty	220	276	359		
	5 + Sty	239	297	374		
CHESAPEAKE/ NORFOLK/ PORTSMOUTH/ VIRGINIA BEACH/ SUFFOLK	DETACHED			381	451	508
	SEMI-DETACHED/ROW		290	338	422	462
	WALKUP	239	288	335	417	461
	ELEVATOR-2-4 Sty	255	308	347		
	5 + Sty	268	292	366		

AREA OFFICE RICHMOND, VA REGION III - PHILADELPHIA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
BRISTOL	DETACHED			328	414	450
	SEMI-DETACHED/ROW		268	326	380	422
	WALKUP	229	263	326	380	422
	ELEVATOR-2-4 Sty	246	292	372		
	5 + Sty	248	326	402		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

OFFICE CHARLESTON, WEST VA. REGION III - PHILADELPHIA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

OFFICE CHARLESTON, WEST VA. REGION III - PHILADELPHIA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

OFFICE CHARLESTON, WEST VA. REGION III - PHILADELPHIA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
CHARLESTON	DETACHED			425	467	520
	SEMI-DETACHED/ROW		335	401	447	501
	WALKUP	230	293	340	401	452
	ELEVATOR-2-4 Sty	340	393	443		
	5 + Sty	345	399	448		
BECKLEY/ BLUEFIELD	DETACHED			383	420	469
	SEMI-DETACHED/ROW		283	360	393	443
	WALKUP	248	283	320	357	392
	ELEVATOR-2-4 Sty	301	357	400		
	5 + Sty	306	362	405		
HUNTINGTON	DETACHED			386	464	504
	SEMI-DETACHED/ROW		283	367	439	483
	WALKUP	199	263	346	418	458
	ELEVATOR-2-4 Sty	301	357	427		
	5 + Sty	306	362	432		
PARKERSBURG	DETACHED			341	393	432
	SEMI-DETACHED/ROW		283	321	371	409
	WALKUP	231	264	313	352	388
	ELEVATOR-2-4 Sty	293	352	427		
	5 + Sty	299	357	432		
WHEELING	DETACHED			343	425	481
	SEMI-DETACHED/ROW		276	325	407	464
	WALKUP	232	269	316	396	431
	ELEVATOR-2-4 Sty	297	355	430		
	5 + Sty	302	360	435		
MARTINSBURG/ FAIRMONT	DETACHED			396	439	491
	SEMI-DETACHED/ROW		330	373	420	470
	WALKUP	253	307	359	396	446
	ELEVATOR-2-4 Sty	336	369	411		
	5 + Sty	342	374	416		

OFFICE CHARLESTON, WEST VA. REGION III - PHILADELPHIA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
POINT PLEASANT	DETACHED			340	391	428
	SEMI-DETACHED/ROW		272	320	369	406
	WALKUP	230	263	312	348	386
	ELEVATOR-2-4 Sty	291	348	389		
	5 + Sty	296	354	395		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE BIRMINGHAM, ALA. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
BIRMINGHAM/ TUSCALOOSA	DETACHED			475	535	565
	SEMI-DETACHED/ROW		300	345	405	435
	WALKUP	260	290	340	395	430
	ELEVATOR-2-4 Sty	310	345	400		
	5 + Sty	325	355	415		
DOTHAN	DETACHED			420	470	495
	SEMI-DETACHED/ROW		285	335	395	435
	WALKUP	250	280	320	395	430
	ELEVATOR-2-4 Sty	310	345	400		
	5 + Sty	325	355	415		
FLORENCE	DETACHED			440	500	525
	SEMI-DETACHED/ROW		285	340	400	435
	WALKUP	260	285	335	395	430
	ELEVATOR-2-4 Sty	310	345	400		
	5 + Sty	325	355	415		
HUNTSVILLE	DETACHED			450	515	540
	SEMI-DETACHED/ROW		285	340	400	435
	WALKUP	235	280	335	390	430
	ELEVATOR-2-4 Sty	310	345	400		
	5 + Sty	325	355	415		
MOBILE	DETACHED			450	515	545
	SEMI-DETACHED/ROW		280	340	405	435
	WALKUP	235	280	325	395	430
	ELEVATOR-2-4 Sty	310	345	400		
	5 + Sty	325	355	415		
MONTGOMERY	DETACHED			445	505	530
	SEMI-DETACHED/ROW		290	335	395	435
	WALKUP	255	290	335	390	430
	ELEVATOR-2-4 Sty	310	345	400		
	5 + Sty	325	355	415		

AREA OFFICE JACKSONVILLE, FLA. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
JACKSONVILLE	DETACHED			333	400	450
	SEMI-DETACHED/ROW		302	324	386	422
	WALKUP	227	255	314	376	411
	ELEVATOR-2-4 Sty	299	337	452		
	5 + Sty	310	351	471		
FT. WALTON BEACH PENSACOLA	DETACHED			380	414	462
	SEMI-DETACHED/ROW		239	311	396	413
	WALKUP	220	236	286	370	400
	ELEVATOR-2-4 Sty	261	326	438		
	5 + Sty	292	331	444		
GAINESVILLE	DETACHED			346	460	487
	SEMI-DETACHED/ROW		306	339	425	450
	WALKUP	247	268	339	400	439
	ELEVATOR-2-4 Sty	288	326	438		
	5 + Sty	300	340	456		
PANAMA CITY	DETACHED			371	414	450
	SEMI-DETACHED/ROW		240	302	390	413
	WALKUP	220	236	286	380	400
	ELEVATOR-2-4 Sty	284	322	432		
	5 + Sty	296	335	450		
TALLAHASSEE	DETACHED			375	427	460
	SEMI-DETACHED/ROW		298	330	417	432
	WALKUP	227	258	307	387	402
	ELEVATOR-2-4 Sty	294	333	446		
	5 + Sty	306	347	465		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE JACKSONVILLE, FLA. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more

AREA OFFICE JACKSONVILLE, FLA. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more

AREA OFFICE JACKSONVILLE, FLA. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
MIAMI	DETACHED			454	477	541
	SEMI-DETACHED/ROW		338	406	469	520
	WALKUP	269	306	386	462	505
	ELEVATOR-2-4 Sty	276	311	414		
	5 + Sty	332	357	498		
FT. LAUDERDALE	DETACHED			505	525	570
	SEMI-DETACHED/ROW		324	415	490	535
	WALKUP	275	297	404	457	499
	ELEVATOR-2-4 Sty	281	328	409		
	5 + Sty	325	388	491		
FT. MYERS	DETACHED			365	440	480
	SEMI-DETACHED/ROW		303	355	430	472
	WALKUP	246	295	345	424	462
	ELEVATOR-2-4 Sty	252	302	351		
	5 + Sty	290	330	386		
KEY WEST	DETACHED			491	616	676
	SEMI-DETACHED/ROW		375	474	590	639
	WALKUP	307	346	443	531	571
	ELEVATOR-2-4 Sty	319	355	443		
	5 + Sty	344	378	481		
W. PALM BEACH	DETACHED			463	535	568
	SEMI-DETACHED/ROW		320	428	506	549
	WALKUP	285	319	397	500	543
	ELEVATOR-2-4 Sty	298	347	414		
	5 + Sty	332	355	467		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE JACKSONVILLE, FLA. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
TAMPA	DETACHED			350	411	446
	SEMI-DETACHED/ROW		263	300	367	417
	WALKUP	227	247	288	346	390
	ELEVATOR-2-4 Sty	275	308	403		
	5 + Sty	290	325	425		
COCOA	DETACHED			347	404	442
	SEMI-DETACHED/ROW		274	337	394	432
	WALKUP	222	239	289	326	346
	ELEVATOR-2-4 Sty	275	308	403		
	5 + Sty	290	325	425		
DAYTONA BEACH FT. PIERCE	DETACHED			343	401	425
	SEMI-DETACHED/ROW		281	343	385	421
	WALKUP	227	245	298	335	355
	ELEVATOR-2-4 Sty	275	308	403		
	5 + Sty	290	325	425		
LAKELAND	DETACHED			341	380	402
	SEMI-DETACHED/ROW		292	341	366	400
	WALKUP	240	257	298	346	365
	ELEVATOR-2-4 Sty	275	308	403		
	5 + Sty	290	325	425		
ORLANDO	DETACHED			354	402	437
	SEMI-DETACHED/ROW		279	344	392	427
	WALKUP	205	241	298	354	374
	ELEVATOR-2-4 Sty	275	308	403		
	5 + Sty	290	325	425		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE JACKSONVILLE, FLA. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SARASOTA	DETACHED			389	441	467
	SEMI-DETACHED/ROW		324	377	412	451
	WALKUP	261	279	323	391	413
	ELEVATOR-2-4 Sty	275	308	403		
	5 + Sty	290	325	425		
ST. PETERSBURG	DETACHED			378	413	435
	SEMI-DETACHED/ROW		267	333	399	430
	WALKUP	244	266	318	405	426
	ELEVATOR-2-4 Sty	275	308	403		
	5 + Sty	290	325	425		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE ATLANTA, GA REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
ATLANTA	DETACHED			382	441	483
	SEMI-DETACHED/ROW		300	351	420	460
	WALKUP	270	292	346	407	446
	ELEVATOR-2-4 Sty	295	316	370		
	5 + Sty	305	340	408		
ALBANY	DETACHED			328	422	452
	SEMI-DETACHED/ROW		253	311	403	429
	WALKUP	228	246	305	397	424
	ELEVATOR-2-4 Sty	253	271	330		
	5 + Sty	301	321	400		
AUGUSTA	DETACHED			331	395	443
	SEMI-DETACHED/ROW		261	308	378	422
	WALKUP	230	255	299	366	410
	ELEVATOR-2-4 Sty	255	279	323		
	5 + Sty	301	328	391		
BRUNSWICK	DETACHED			346	403	434
	SEMI-DETACHED/ROW		273	323	385	413
	WALKUP	236	261	311	372	401
	ELEVATOR-2-4 Sty	261	286	336		
	5 + Sty	317	348	419		
COLUMBUS	DETACHED			333	389	428
	SEMI-DETACHED/ROW		278	320	374	423
	WALKUP	239	260	309	368	406
	ELEVATOR-2-4 Sty	263	284	333		
	5 + Sty	309	334	400		
MACON	DETACHED			348	376	425
	SEMI-DETACHED/ROW		251	320	372	423
	WALKUP	220	238	316	347	391
	ELEVATOR-2-4 Sty	244	262	340		
	5 + Sty	293	315	413		

AREA OFFICE ATLANTA, GA REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE LOUISVILLE, KY. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE ATLANTA, GA REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
ROME	DETACHED			327	388	429
	SEMI-DETACHED/ROW		257	301	364	408
	WALKUP	224	245	296	357	396
	ELEVATOR-2-4 Sty	248	270	321		
	5 + Sty	300	327	397		
SAVANNAH	DETACHED			382	441	487
	SEMI-DETACHED/ROW		296	368	430	468
	WALKUP	254	285	348	410	453
	ELEVATOR-2-4 Sty	278	309	372		
	5 + Sty	332	369	453		
VALDOSTA	DETACHED			322	367	420
	SEMI-DETACHED/ROW		254	303	362	412
	WALKUP	222	261	296	344	393
	ELEVATOR-2-4 Sty	245	263	320		
	5 + Sty	290	314	387		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE LOUISVILLE, KY. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
ASHLAND	DETACHED			407	462	523
	SEMI-DETACHED/ROW		329	383	436	490
	WALKUP	269	303	354	399	441
	ELEVATOR-2-4 Sty	287	320	369		
	5 + Sty	356	397	468		
BOWLING GREEN	DETACHED			382	439	521
	SEMI-DETACHED/ROW		304	366	415	491
	WALKUP	239	272	334	404	443
	ELEVATOR-2-4 Sty	251	288	350		
	5 + Sty	310	359	440		
CORBIN	DETACHED			425	510	572
	SEMI-DETACHED/ROW		325	405	482	537
	WALKUP	259	294	374	442	486
	ELEVATOR-2-4 Sty	277	310	390		
	5 + Sty	345	386	486		
COVINGTON	DETACHED			414	494	568
	SEMI-DETACHED/ROW		337	388	453	519
	WALKUP	263	303	354	412	463
	ELEVATOR-2-4 Sty	276	320	369		
	5 + Sty	345	393	463		
FRANKFORT	DETACHED			420	500	565
	SEMI-DETACHED/ROW		318	399	473	531
	WALKUP	260	294	375	442	488
	ELEVATOR-2-4 Sty	278	310	390		
	5 + Sty	335	371	421		
HOPKINSVILLE	DETACHED			375	422	476
	SEMI-DETACHED/ROW		311	361	402	452
	WALKUP	250	279	326	370	425
	ELEVATOR-2-4 Sty	266	294	339		
	5 + Sty	310	342	427		

AREA OFFICE LOUISVILLE, KY. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
LEXINGTON	DETACHED			420	478	539
	SEMI-DETACHED/ROW		352	402	454	509
	WALKUP	260	294	375	442	479
	ELEVATOR-2-4 Sty	274	306	390		
	5 + Sty	337	382	479		
LOUISVILLE	DETACHED			384	492	552
	SEMI-DETACHED/ROW		312	363	460	515
	WALKUP	267	302	356	427	469
	ELEVATOR-2-4 Sty	280	315	369		
	5 + Sty	347	393	461		
MIDDLESBORO	DETACHED			435	507	553
	SEMI-DETACHED/ROW		335	414	480	520
	WALKUP	261	294	375	442	486
	ELEVATOR-2-4 Sty	273	310	390		
	5 + Sty	341	384	485		
MURRAY	DETACHED			384	438	484
	SEMI-DETACHED/ROW		321	366	413	463
	WALKUP	255	290	332	374	444
	ELEVATOR-2-4 Sty	270	306	350		
	5 + Sty	330	377	440		
NEWPORT	DETACHED			424	498	564
	SEMI-DETACHED/ROW		342	396	455	515
	WALKUP	263	303	354	409	452
	ELEVATOR-2-4 Sty	281	320	370		
	5 + Sty	351	396	469		
OWENSBORO	DETACHED			410	453	502
	SEMI-DETACHED/ROW		344	392	430	478
	WALKUP	229	255	369	396	433
	ELEVATOR-2-4 Sty	241	270	381		
	5 + Sty	305	335	472		

AREA OFFICE LOUISVILLE, KY. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
PADUCAH	DETACHED			352	437	494
	SEMI-DETACHED/ROW		296	336	414	460
	WALKUP	243	274	315	388	423
	ELEVATOR-2-4 Sty	259	289	328		
	5 + Sty	317	349	406		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE JACKSON, MISS REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more

AREA OFFICE JACKSON, MISS REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more

AREA _____ OFFICE JACKSON, MISS REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
JACKSON	DETACHED			376	462	513
	SEMI-DETACHED/ROW	291	315	361	446	493
	WALKUP	281	307	360	442	482
	ELEVATOR-2-4 Sty	341	373	441		
	5 + Sty	350	381	451		
BILOXI	DETACHED			315	375	425
	SEMI-DETACHED/ROW	232	261	305	366	410
	WALKUP	232	260	305	366	407
	ELEVATOR-2-4 Sty	305	329	392		
	5 + Sty	317	339	404		
CORINTH	DETACHED			307	391	440
	SEMI-DETACHED/ROW		253	293	371	415
	WALKUP	218	251	293	371	412
	ELEVATOR-2-4 Sty	285	319	384		
	5 + Sty	293	329	395		
GREENVILLE	DETACHED			338	379	421
	SEMI-DETACHED/ROW		277	335	355	400
	WALKUP	236	267	334	352	389
	ELEVATOR-2-4 Sty	304	339	423		
	5 + Sty	311	348	433		
GREENWOOD	DETACHED			319	351	402
	SEMI-DETACHED/ROW		271	319	342	383
	WALKUP	237	269	319	342	380
	ELEVATOR-2-4 Sty	304	340	409		
	5 + Sty	312	349	420		
GULFPORT	DETACHED			315	375	425
	SEMI-DETACHED/ROW	232	261	305	366	410
	WALKUP	232	260	305	366	407
	ELEVATOR-2-4 Sty	305	329	392		
	5 + Sty	317	339	404		

AREA _____ OFFICE JACKSON, MISS REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
HATTIESBURG	DETACHED			314	371	415
	SEMI-DETACHED/ROW	206	239	291	347	392
	WALKUP	195	232	290	344	382
	ELEVATOR-2-4 Sty	275	308	390		
	5 + Sty	283	317	402		
SOUTHAVEN	DETACHED		273	356	373	420
	SEMI-DETACHED/ROW	229	264	356	362	401
	WALKUP	225	262	323	362	401
	ELEVATOR-2-4 Sty	284	334	406		
	5 + Sty	291	343	417		
TUPELO	DETACHED			307	391	440
	SEMI-DETACHED/ROW		253	293	371	415
	WALKUP	218	251	293	371	412
	ELEVATOR-2-4 Sty	285	319	384		
	5 + Sty	291	328	390		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE GREENSBORO, N.C. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
GREENSBORO	DETACHED			372	446	505
	SEMI-DETACHED/ROW		297	339	414	478
	WALKUP	263	297	339	414	478
	ELEVATOR-2-4 Sty	287	321	362		
	5 + Sty	309	351	401		
ASHEVILLE	DETACHED			338	424	486
	SEMI-DETACHED/ROW		286	326	401	463
	WALKUP	246	286	326	401	463
	ELEVATOR-2-4 Sty	270	310	349		
	5 + Sty	303	344	393		
CHARLOTTE	DETACHED			366	432	492
	SEMI-DETACHED/ROW		290	332	403	463
	WALKUP	255	290	332	403	463
	ELEVATOR-2-4 Sty	280	314	356		
	5 + Sty	315	357	408		
DURHAM	DETACHED			342	411	473
	SEMI-DETACHED/ROW		279	326	391	448
	WALKUP	244	279	326	391	448
	ELEVATOR-2-4 Sty	269	303	350		
	5 + Sty	309	351	401		
GREENVILLE	DETACHED			339	396	455
	SEMI-DETACHED/ROW		279	321	379	437
	WALKUP	244	279	321	379	437
	ELEVATOR-2-4 Sty	269	303	344		
	5 + Sty	309	351	401		
RALEIGH	DETACHED			384	475	534
	SEMI-DETACHED/ROW		311	353	431	497
	WALKUP	276	311	353	431	497
	ELEVATOR-2-4 Sty	301	335	377		
	5 + Sty	317	360	412		

AREA OFFICE GREENSBORO, N.C. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
WINSTON-SALEM	DETACHED			347	422	482
	SEMI-DETACHED/ROW		295	336	405	462
	WALKUP	254	295	336	405	462
	ELEVATOR-2-4 Sty	278	318	359		
	5 + Sty	306	348	397		
FAYETTEVILLE	DETACHED			333	393	448
	SEMI-DETACHED/ROW		272	317	368	423
	WALKUP	240	272	317	368	423
	ELEVATOR-2-4 Sty	263	295	339		
	5 + Sty	301	335	383		
WILMINGTON	DETACHED			354	423	481
	SEMI-DETACHED/ROW		271	318	380	443
	WALKUP	244	271	318	380	443
	ELEVATOR-2-4 Sty	269	295	340		
	5 + Sty	306	341	390		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE COLUMBIA, S.C. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE COLUMBIA, S.C. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE COLUMBIA, S.C. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
GREENVILLE	DETACHED	286	314	347	414	476
	SEMI-DETACHED/ROW	280	308	342	409	470
	WALKUP	269	297	330	398	459
	ELEVATOR-2-4 Sty	280	325	386		
	5 + Sty	291	336	398		
GREENWOOD	DETACHED	297	308	342	398	442
	SEMI-DETACHED/ROW	280	302	336	392	437
	WALKUP	269	291	325	381	426
	ELEVATOR-2-4 Sty	280	325	386		
	5 + Sty	291	336	398		
MYRTLE BEACH	DETACHED	286	314	353	414	493
	SEMI-DETACHED/ROW	280	308	347	409	487
	WALKUP	269	297	336	398	476
	ELEVATOR-2-4 Sty	280	325	386		
	5 + Sty	291	336	398		
NORTH AUGUSTA	DETACHED	286	308	347	398	454
	SEMI-DETACHED/ROW	280	302	342	392	448
	WALKUP	269	291	330	381	437
	ELEVATOR-2-4 Sty	280	325	386		
	5 + Sty	291	336	398		
ORANGEBURG	DETACHED	286	308	347	398	448
	SEMI-DETACHED/ROW	280	302	342	392	442
	WALKUP	269	291	330	381	431
	ELEVATOR-2-4 Sty	280	325	386		
	5 + Sty	291	336	398		
ROCKHILL	DETACHED	286	308	347	398	454
	SEMI-DETACHED/ROW	280	302	342	392	448
	WALKUP	269	291	330	381	437
	ELEVATOR-2-4 Sty	280	325	386		
	5 + Sty	291	336	398		

AREA OFFICE COLUMBIA, S.C. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
COLUMBIA	DETACHED	286	308	347	403	454
	SEMI-DETACHED/ROW	280	302	342	398	448
	WALKUP	269	291	330	386	437
	ELEVATOR-2-4 Sty	280	325	386		
	5 + Sty	291	336	398		
AIKEN	DETACHED	286	308	347	398	454
	SEMI-DETACHED/ROW	280	302	342	392	448
	WALKUP	269	291	330	381	437
	ELEVATOR-2-4 Sty	280	325	386		
	5 + Sty	291	336	398		
ANDERSON	DETACHED	297	308	342	398	442
	SEMI-DETACHED/ROW	280	302	336	392	437
	WALKUP	269	291	324	381	426
	ELEVATOR-2-4 Sty	280	325	386		
	5 + Sty	291	336	398		
BEAUFORT	DETACHED	286	314	353	414	493
	SEMI-DETACHED/ROW	280	308	347	409	487
	WALKUP	269	297	336	398	476
	ELEVATOR-2-4 Sty	280	325	386		
	5 + Sty	291	336	398		
CHARLESTON	DETACHED	286	314	353	414	493
	SEMI-DETACHED/ROW	280	308	347	409	487
	WALKUP	269	297	336	398	476
	ELEVATOR-2-4 Sty	280	325	386		
	5 + Sty	291	336	398		
FLORENCE	DETACHED	286	308	347	398	448
	SEMI-DETACHED/ROW	280	302	342	392	442
	WALKUP	269	291	330	381	431
	ELEVATOR-2-4 Sty	280	325	386		
	5 + Sty	291	336	398		

AREA OFFICE COLUMBIA, S.C. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SPARTANBURG	DETACHED	286	314	347	414	476
	SEMI-DETACHED/ROW	280	308	342	409	470
	WALKUP	269	297	330	398	459
	ELEVATOR-2-4 Sty	280	325	386		
	5 + Sty	291	336	398		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE KNOXVILLE, TENN REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
KNOXVILLE	DETACHED			356	421	454
	SEMI-DETACHED/ROW		275	340	410	443
	WALKUP	243	265	329	394	427
	ELEVATOR-2-4 Sty	270	292	351		
	5 + Sty	292	324	378		
CHATTANOOGA	DETACHED			335	400	432
	SEMI-DETACHED/ROW		292	329	394	427
	WALKUP	259	281	313	378	410
	ELEVATOR-2-4 Sty	286	308	356		
	5 + Sty	313	335	378		
JOHNSON CITY	DETACHED			313	373	400
	SEMI-DETACHED/ROW		259	302	362	389
	WALKUP	227	248	286	346	373
	ELEVATOR-2-4 Sty	248	275	313		
	5 + Sty	275	302	340		
KINGSPORT	DETACHED			313	373	400
	SEMI-DETACHED/ROW		259	302	362	389
	WALKUP	227	248	286	346	373
	ELEVATOR-2-4 Sty	248	275	313		
	5 + Sty	275	302	340		
OAKRIDGE	DETACHED			356	421	454
	SEMI-DETACHED/ROW		275	340	410	443
	WALKUP	243	265	329	394	427
	ELEVATOR-2-4 Sty	270	292	351		
	5 + Sty	292	324	378		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

OFFICE NASHVILLE, TENN. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE CHICAGO, ILLINOIS REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

OFFICE NASHVILLE, TENN. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
MEMPHIS	DETACHED			350	399	457
	SEMI-DETACHED/ROW	286	312	350	383	426
	WALKUP	209	234	284	333	364
	ELEVATOR-2-4 Sty	261	297	355		
	5 + Sty	293	330	396		
JACKSON	DETACHED			285	322	368
	SEMI-DETACHED/ROW	202	230	270	316	359
	WALKUP	193	220	266	304	343
	ELEVATOR-2-4 Sty	239	276	328		
	5 + Sty	264	302	359		
UNION CITY	DETACHED			284	315	351
	SEMI-DETACHED/ROW	208	236	283	315	351
	WALKUP	198	232	278	313	348
	ELEVATOR-2-4 Sty	259	291	343		
	5 + Sty	299	340	397		
NASHVILLE	DETACHED			376	429	469
	SEMI-DETACHED/ROW		270	311	408	434
	WALKUP	227	259	305	408	447
	ELEVATOR-2-4 Sty	243	292	340		
	5 + Sty	259	324	373		
CLARKSVILLE	DETACHED			356	407	445
	SEMI-DETACHED/ROW		233	311	397	422
	WALKUP	189	233	285	356	386
	ELEVATOR-2-4 Sty	211	259	308		
	5 + Sty	233	292	335		
COLUMBIA	DETACHED			356	407	445
	SEMI-DETACHED/ROW		234	311	400	427
	WALKUP	189	234	281	376	410
	ELEVATOR-2-4 Sty	211	259	308		
	5 + Sty	233	292	335		

AREA

OFFICE CHICAGO, ILLINOIS REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
CHICAGO	DETACHED			713	769	832
	SEMI-DETACHED/ROW		510	556	612	671
	WALKUP	356	418	492	587	616
	ELEVATOR-2-4 Sty	380	446	525	626	
	5 + Sty	411	514	618		
MOLINE	DETACHED			547	599	650
	SEMI-DETACHED/ROW		443	469	529	558
	WALKUP	331	367	423	493	527
	ELEVATOR-2-4 Sty	363	397	458		
	5 + Sty	376	412	525		
ROCK ISLAND	DETACHED			547	599	650
	SEMI-DETACHED/ROW		443	469	529	558
	WALKUP	331	367	427	511	540
	ELEVATOR-2-4 Sty	363	397	458		
	5 + Sty	376	412	525		
ROCKFORD	DETACHED			613	666	728
	SEMI-DETACHED/ROW		403	432	492	529
	WALKUP	316	363	412	472	504
	ELEVATOR-2-4 Sty	354	388	460		
	5 + Sty	367	416	506		
STERLING	DETACHED			479	542	605
	SEMI-DETACHED/ROW		389	412	512	575
	WALKUP	301	339	381	434	455
	ELEVATOR-2-4 Sty	333	367	419		
	5 + Sty	346	382	432		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE CHICAGO, ILL. REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SPRINGFIELD	DETACHED			433	490	552
	SEMI-DETACHED/ROW		361	411	468	524
	WALKUP	309	338	406	462	515
	ELEVATOR-2-4 Sty	320	357	425		
	5 + Sty	369	408	480		
BELLEVILLE	DETACHED			391	450	517
	SEMI-DETACHED/ROW		304	367	425	488
	WALKUP	255	294	362	419	474
	ELEVATOR-2-4 Sty	274	312	380		
	5 + Sty	311	350	431		
CARBONDALE	DETACHED			415	475	539
	SEMI-DETACHED/ROW		322	393	449	511
	WALKUP	271	312	387	441	491
	ELEVATOR-2-4 Sty	293	332	407		
	5 + Sty	337	373	462		
CHAMPAIGN	DETACHED			412	470	532
	SEMI-DETACHED/ROW		325	388	446	505
	WALKUP	276	314	384	440	491
	ELEVATOR-2-4 Sty	296	332	402		
	5 + Sty	335	371	456		
DANVILLE	DETACHED			445	505	569
	SEMI-DETACHED/ROW		361	423	479	538
	WALKUP	308	347	417	474	528
	ELEVATOR-2-4 Sty	333	370	441		
	5 + Sty	368	407	492		
E. ST. LOUIS	DETACHED			381	442	508
	SEMI-DETACHED/ROW		300	357	416	479
	WALKUP	248	290	353	411	465
	ELEVATOR-2-4 Sty	272	311	375		
	5 + Sty	319	360	440		

AREA OFFICE CHICAGO, ILL. REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
LA SALLE	DETACHED			422	485	552
	SEMI-DETACHED/ROW		333	398	458	523
	WALKUP	274	314	381	439	491
	ELEVATOR-2-4 Sty	295	333	400		
	5 + Sty	341	381	465		
QUINCY	DETACHED			375	433	494
	SEMI-DETACHED/ROW		300	352	409	467
	WALKUP	251	289	347	402	454
	ELEVATOR-2-4 Sty	272	311	366		
	5 + Sty	309	347	418		
PEORIA	DETACHED			467	528	591
	SEMI-DETACHED/ROW		381	444	501	564
	WALKUP	333	372	439	496	549
	ELEVATOR-2-4 Sty	355	393	459		
	5 + Sty	395	434	515		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE INDIANAPOLIS, IND. REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
ANDERSON	DETACHED			422	485	552
	SEMI-DETACHED/ROW		333	398	458	523
	WALKUP	274	314	381	439	491
	ELEVATOR-2-4 Sty	295	333	400		
	5 + Sty	341	381	465		
BLOOMINGTON	DETACHED			375	433	494
	SEMI-DETACHED/ROW		300	352	409	467
	WALKUP	251	289	347	402	454
	ELEVATOR-2-4 Sty	272	311	366		
	5 + Sty	309	347	418		
COLUMBUS	DETACHED			467	528	591
	SEMI-DETACHED/ROW		381	444	501	564
	WALKUP	333	372	439	496	549
	ELEVATOR-2-4 Sty	355	393	459		
	5 + Sty	395	434	515		
EVANSVILLE	DETACHED			412	470	532
	SEMI-DETACHED/ROW		325	388	446	505
	WALKUP	276	314	384	440	491
	ELEVATOR-2-4 Sty	296	332	402		
	5 + Sty	335	371	456		
FORT WAYNE	DETACHED			445	505	569
	SEMI-DETACHED/ROW		361	423	479	538
	WALKUP	308	347	417	474	528
	ELEVATOR-2-4 Sty	333	370	441		
	5 + Sty	368	407	492		
GARY	DETACHED			381	442	508
	SEMI-DETACHED/ROW		300	357	416	479
	WALKUP	248	290	353	411	465
	ELEVATOR-2-4 Sty	272	311	375		
	5 + Sty	319	360	440		

AREA OFFICE INDIANAPOLIS, IND. REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
HAMMOND	DETACHED			422	485	552
	SEMI-DETACHED/ROW		333	398	458	523
	WALKUP	274	314	381	439	491
	ELEVATOR-2-4 Sty	295	333	400		
	5 + Sty	341	381	465		
INDIANAPOLIS	DETACHED			375	433	494
	SEMI-DETACHED/ROW		300	352	409	467
	WALKUP	251	289	347	402	454
	ELEVATOR-2-4 Sty	272	311	366		
	5 + Sty	309	347	418		
KOKOMO	DETACHED			467	528	591
	SEMI-DETACHED/ROW		381	444	501	564
	WALKUP	333	372	439	496	549
	ELEVATOR-2-4 Sty	355	393	459		
	5 + Sty	395	434	515		
LAFAYETTE	DETACHED			412	470	532
	SEMI-DETACHED/ROW		325	388	446	505
	WALKUP	276	314	384	440	491
	ELEVATOR-2-4 Sty	296	332	402		
	5 + Sty	335	371	456		
MUNCIE	DETACHED			445	505	569
	SEMI-DETACHED/ROW		361	423	479	538
	WALKUP	308	347	417	474	528
	ELEVATOR-2-4 Sty	333	370	441		
	5 + Sty	368	407	492		
SOUTH BEND	DETACHED			381	442	508
	SEMI-DETACHED/ROW		300	357	416	479
	WALKUP	248	290	353	411	465
	ELEVATOR-2-4 Sty	272	311	375		
	5 + Sty	319	360	440		

AREA OFFICE INDIANAPOLIS, IND. REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
BLOOMINGTON	DETACHED			440	476	523
	SEMI-DETACHED/ROW		273	356	389	423
	WALKUP	237	268	346	381	423
	ELEVATOR-2-4 Sty	258	289	389		
	5 + Sty	308	345	446		
INDIANAPOLIS	DETACHED			456	542	584
	SEMI-DETACHED/ROW		296	362	442	482
	WALKUP	257	290	352	437	472
	ELEVATOR-2-4 Sty	278	312	395		
	5 + Sty	329	365	455		
EVANSVILLE	DETACHED			449	488	534
	SEMI-DETACHED/ROW		294	377	410	444
	WALKUP	257	283	356	394	440
	ELEVATOR-2-4 Sty	279	305	401		
	5 + Sty	324	359	455		
FORT WAYNE	DETACHED			458	497	544
	SEMI-DETACHED/ROW		302	368	406	445
	WALKUP	259	293	346	386	444
	ELEVATOR-2-4 Sty	281	314	390		
	5 + Sty	333	367	453		
GARY	DETACHED			485	531	572
	SEMI-DETACHED/ROW		337	406	453	483
	WALKUP	299	328	391	434	476
	ELEVATOR-2-4 Sty	320	351	434		
	5 + Sty	373	412	499		
RAYMOND	DETACHED			485	541	586
	SEMI-DETACHED/ROW		340	403	450	489
	WALKUP	296	328	391	434	469
	ELEVATOR-2-4 Sty	318	351	434		
	5 + Sty	365	401	489		

AREA OFFICE INDIANAPOLIS, IND. REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
LAFAYETTE	DETACHED			450	497	539
	SEMI-DETACHED/ROW		307	359	403	434
	WALKUP	270	303	355	394	433
	ELEVATOR-2-4 Sty	292	326	400		
	5 + Sty	343	379	449		
SOUTH BEND	DETACHED			494	541	584
	SEMI-DETACHED/ROW		335	406	443	481
	WALKUP	296	329	401	440	480
	ELEVATOR-2-4 Sty	318	352	445		
	5 + Sty	367	405	495		
TERRE HAUTE	DETACHED			448	496	540
	SEMI-DETACHED/ROW		308	355	399	433
	WALKUP	266	299	351	394	432
	ELEVATOR-2-4 Sty	288	322	393		
	5 + Sty	341	376	447		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE DETROIT, MICH. REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
DETROIT/ANN ARBOR YPSILANTI	DETACHED			497	533	561
	SEMI-DETACHED/ROW		428	459	488	533
	WALKUP	295	339	409	451	481
	ELEVATOR-2-4 Sty	319	379	424		
	5 + Sty	342	413	509		
FLINT/ SAGINAW	DETACHED			456	491	519
	SEMI-DETACHED/ROW		346	415	462	496
	WALKUP	268	320	375	422	450
	ELEVATOR-2-4 Sty	303	361	403		
	5 + Sty	325	392	484		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

OFFICE GRAND RAPIDS, MICH. REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
GRAND RAPIDS	DETACHED					
	SEMI-DETACHED/ROW	---	347	388	437	495
	WALKUP	235	280	340	390	439
	ELEVATOR-2-4 Sty	290	343	383		
	5 + Sty	304	374	402		
BATTLE CREEK/ B. HARBOR/ KALAMAZOO/ MUSKEGON/	DETACHED					
	SEMI-DETACHED/ROW		356	397	447	506
	WALKUP	240	286	348	399	450
	ELEVATOR-2-4 Sty	296	350	391		
	5 + Sty	310	382	411		
LANSING/ JACKSON	DETACHED					
	SEMI-DETACHED/ROW		363	405	457	517
	WALKUP	245	293	355	407	459
	ELEVATOR-2-4 Sty	303	353	400		
	5 + Sty	317	390	420		
MARQUETTE/ TRAVERSE CITY	DETACHED					
	SEMI-DETACHED/ROW		371	415	467	530
	WALKUP	252	299	364	417	470
	ELEVATOR-2-4 Sty	310	367	410		
	5 + Sty	325	400	430		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE MINNEAPOLIS, MINN. REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE COLUMBUS, OHIO REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE MINNEAPOLIS, MINN. REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
MINN-ST. PAUL	DETACHED			542	588	604
	SEMI-DETACHED/ROW		396	445	488	533
	WALKUP	253	311	362	455	477
	ELEVATOR-2-4 Sty	306	356	444	468	
	5 + Sty	338	392	488		
DULUTH	DETACHED			510	555	575
	SEMI-DETACHED/ROW		416	468	513	563
	WALKUP	253	329	431	477	501
	ELEVATOR-2-4 Sty	313	360	453	488	
	5 + Sty	345	396	501		
MANKATO	DETACHED			494	538	583
	SEMI-DETACHED/ROW		378	427	470	516
	WALKUP	258	286	369	423	446
	ELEVATOR-2-4 Sty	306	346	436		
	5 + Sty	337	381	481		
ROCHESTER	DETACHED			478	530	548
	SEMI-DETACHED/ROW		381	428	480	505
	WALKUP	251	295	369	426	450
	ELEVATOR-2-4 Sty	308	354	423		
	5 + Sty	339	390	467		
ST. CLOUD	DETACHED			498	540	557
	SEMI-DETACHED/ROW		378	427	470	514
	WALKUP	251	275	339	433	456
	ELEVATOR-2-4 Sty	300	345	434		
	5 + Sty	330	379	478		
WORTHINGTON	DETACHED			476	520	536
	SEMI-DETACHED/ROW		370	418	461	469
	WALKUP	254	264	310	418	440
	ELEVATOR-2-4 Sty	307	341	430		
	5 + Sty	338	376	474		

AREA OFFICE COLUMBUS, OHIO REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
CINCINNATI	DETACHED			563	587	616
	SEMI-DETACHED/ROW		389	461	481	515
	WALKUP	301	341	393	472	495
	ELEVATOR-2-4 Sty	362	392	454		
	5 + Sty	411	461	522		
COLUMBUS	DETACHED			462	517	545
	SEMI-DETACHED/ROW		319	374	446	479
	WALKUP	281	314	347	418	440
	ELEVATOR-2-4 Sty	330	374	440		
	5 + Sty	380	418	473		
DAYTON	DETACHED			540	589	618
	SEMI-DETACHED/ROW		362	427	483	518
	WALKUP	317	357	398	440	474
	ELEVATOR-2-4 Sty	378	407	459		
	5 + Sty	427	479	581		
ATHENS LIMA MARIETTA NEWARK SPRINGFIELD TROY ZANESVILLE	DETACHED			440	501	528
	SEMI-DETACHED/ROW		330	363	429	462
	WALKUP	281	319	358	391	435
	ELEVATOR-2-4 Sty	325	363	429		
	5 + Sty	374	407	468		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

OFFICE CLEVELAND, OHIO REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
CLEVELAND	DETACHED			542	584	614
	SEMI-DETACHED/ROW		376	440	487	511
	WALKUP	330	342	398	449	476
	ELEVATOR-2-4 Sty	358	381	443	495	527
	5 + Sty	371	396	461		
AKRON	DETACHED			478	517	545
	SEMI-DETACHED/ROW		351	397	441	477
	WALKUP	290	313	360	406	443
	ELEVATOR-2-4 Sty	323	346	399	448	478
	5 + Sty	341	374	437		
FINDLAY	DETACHED			426	458	489
	SEMI-DETACHED/ROW		323	365	406	429
	WALKUP	267	286	329	374	398
	ELEVATOR-2-4 Sty	298	319	366	412	441
	5 + Sty	309	331	395		
LORAIN	DETACHED			465	505	534
	SEMI-DETACHED/ROW		325	389	433	457
	WALKUP	264	286	350	399	424
	ELEVATOR-2-4 Sty	293	315	389	438	468
	5 + Sty	319	351	422		
MANSFIELD	DETACHED			400	439	473
	SEMI-DETACHED/ROW		311	339	382	421
	WALKUP	253	273	312	356	392
	ELEVATOR-2-4 Sty	281	303	335	383	412
	5 + Sty	293	325	391		
TOLEDO	DETACHED			485	523	553
	SEMI-DETACHED/ROW		346	406	450	481
	WALKUP	283	308	365	414	447
	ELEVATOR-2-4 Sty	315	337	407	456	486
	5 + Sty	340	374	446		

OFFICE CLEVELAND, OHIO REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
YOUNGSTOWN	DETACHED			460	500	528
	SEMI-DETACHED/ROW		327	384	428	451
	WALKUP	266	289	345	393	419
	ELEVATOR-2-4 Sty	295	318	384	433	463
	5 + Sty	321	353	414		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE MILWAUKEE, WIS. REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE MILWAUKEE, WIS. REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE MILWAUKEE, WIS. REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
MADISON	DETACHED			462	540	584
	SEMI-DETACHED/ROW		323	398	470	512
	WALKUP	272	305	364	429	-
	ELEVATOR-2-4 Sty	285	318	377	442	-
	5 + Sty	323	356	439	-	-
REEDSVILLE	DETACHED			444	510	564
	SEMI-DETACHED/ROW		359	382	451	528
	WALKUP	250	275	350	415	-
	ELEVATOR-2-4 Sty	263	288	363	428	
	5 + Sty	305	338	429	-	-
SUPERIOR	DETACHED			469	551	587
	SEMI-DETACHED/ROW		325	399	471	523
	WALKUP	281	316	377	449	
	ELEVATOR-2-4 Sty	294	329	391	462	
	5 + Sty	329	359	444	-	
MILWAUKEE	DETACHED			509	597	638
	SEMI-DETACHED/ROW		360	439	510	563
	WALKUP	301	334	393	461	474
	ELEVATOR-2-4 Sty	315	348	406	474	
	5 + Sty	372	393	475	-	
EAU CLAIRE	DETACHED			438	520	562
	SEMI-DETACHED/ROW		306	387	450	486
	WALKUP	262	295	344	409	-
	ELEVATOR-2-4 Sty	278	308	358	422	-
	5 + Sty	309	321	403	-	-
GREEN BAY	DETACHED			439	513	548
	SEMI-DETACHED/ROW		303	371	440	483
	WALKUP	239	271	343	406	
	ELEVATOR-2-4 Sty	252	284	356	453	
	5 + Sty	281	311	417		

AREA OFFICE MILWAUKEE, WIS. REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
WAUSAU	DETACHED			454	523	552
	SEMI-DETACHED/ROW		331	377	450	486
	WALKUP	253	285	354	418	-
	ELEVATOR-2-4 Sty	266	298	367	431	-
	5 + Sty	296	345	421	-	-
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE LITTLE ROCK, ARK. REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
LITTLE ROCK	DETACHED			319	380	457
	SEMI-DETACHED/ROW	210	255	313	373	449
	WALKUP	205	254	307	366	423
	ELEVATOR-2-4 Sty	242	300	362		
	5 + Sty	311	378	438		
FAYETTEVILLE	DETACHED			320	380	460
	SEMI-DETACHED/ROW	206	254	307	366	441
	WALKUP	205	254	302	357	415
	ELEVATOR-2-4 Sty	242	300	356		
	5 + Sty	308	376	431		
FORT SMITH	DETACHED			298	353	426
	SEMI-DETACHED/ROW	192	234	289	342	411
	WALKUP	181	234	283	335	388
	ELEVATOR-2-4 Sty	214	276	334		
	5 + Sty	296	365	425		
JONESBORO	DETACHED			320	378	456
	SEMI-DETACHED/ROW	206	252	311	366	441
	WALKUP	195	252	306	364	417
	ELEVATOR-2-4 Sty	230	297	361		
	5 + Sty	303	371	427		
TEXARKANA	DETACHED			309	368	443
	SEMI-DETACHED/ROW	202	246	303	360	434
	WALKUP	195	242	292	346	402
	ELEVATOR-2-4 Sty	232	286	345		
	5 + Sty	308	376	434		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE NEW ORLEANS, LA REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
NEW ORLEANS	DETACHED			473	561	680
	SEMI-DETACHED/ROW		309	386	499	598
	WALKUP	255	300	371	473	548
	ELEVATOR-2-4 Sty	266	329	411		
	5 + Sty	373	461	529		
BATON ROUGE	DETACHED			421	498	601
	SEMI-DETACHED/ROW		279	354	469	557
	WALKUP	258	279	354	469	542
	ELEVATOR-2-4 Sty	270	334	418		
	5 + Sty	437	506	644		
LAFAYETTE	DETACHED			446	530	641
	SEMI-DETACHED/ROW		305	384	465	541
	WALKUP	244	305	384	465	541
	ELEVATOR-2-4 Sty	255	316	391		
	5 + Sty	399	462	389		
LAKE CHARLES	DETACHED			471	560	676
	SEMI-DETACHED/ROW		319	396	543	629
	WALKUP	255	319	396	543	629
	ELEVATOR-2-4 Sty	266	331	416		
	5 + Sty	415	480	610		
HOUMA	DETACHED			433	516	624
	SEMI-DETACHED/ROW		288	361	468	543
	WALKUP	230	288	361	468	543
	ELEVATOR-2-4 Sty	240	298	370		
	5 + Sty	380	440	560		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE NEW ORLEANS, LA REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

OFFICE ALBUQUERQUE, N.M. REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE NEW ORLEANS, LA REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SHREVEPORT	DETACHED			383	437	529
	SEMI-DETACHED/ROW		245	318	366	441
	WALKUP	197	229	305	350	403
	ELEVATOR-2-4 Sty	289	311	332		
	5 + Sty	306	330	447		
ALEXANDRIA	DETACHED			326	387	464
	SEMI-DETACHED/ROW		220	278	329	389
	WALKUP	175	218	273	325	380
	ELEVATOR-2-4 Sty	268	293	315		
	5 + Sty	271	316	400		
MONROE	DETACHED			349	417	503
	SEMI-DETACHED/ROW		238	309	367	424
	WALKUP	187	231	294	353	407
	ELEVATOR-2-4 Sty	286	311	333		
	5 + Sty	287	343	444		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

OFFICE ALBUQUERQUE, N.M. REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
ALBUQUERQUE	DETACHED			329	403	439
	SEMI-DETACHED/ROW		261	297	350	413
	WALKUP	191	235	275	329	376
	ELEVATOR-2-4 Sty	239	281	345		
	5 + Sty	254	302	366		
ALAMOGORDO	DETACHED			308	379	441
	SEMI-DETACHED/ROW		263	293	351	420
	WALKUP	189	235	266	315	364
	ELEVATOR-2-4 Sty	215	251	317		
	5 + Sty	231	272	338		
ARTESIA/ CARLSBAD	DETACHED			320	382	452
	SEMI-DETACHED/ROW		276	314	367	431
	WALKUP	201	245	276	329	376
	ELEVATOR-2-4 Sty	219	254	319		
	5 + Sty	235	274	340		
CLOVIS	DETACHED			314	377	457
	SEMI-DETACHED/ROW		270	307	360	429
	WALKUP	201	244	276	329	376
	ELEVATOR-2-4 Sty	217	252	317		
	5 + Sty	239	273	338		
FT. BLISS/ TRUCALERO	DETACHED			337	403	476
	SEMI-DETACHED/ROW		290	324	387	459
	WALKUP	212	264	307	363	417
	ELEVATOR-2-4 Sty	235	271	342		
	5 + Sty	251	293	364		
PENASCO/ POJOAQUE	DETACHED			339	404	476
	SEMI-DETACHED/ROW		286	318	382	451
	WALKUP	201	260	293	351	396
	ELEVATOR-2-4 Sty	225	270	342		
	5 + Sty	241	292	364		

OFFICE ALBUQUERQUE, N.M. REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
GALLUP	DETACHED			345	410	490
	SEMI-DETACHED/ROW	-	299	333	392	465
	WALKUP	214	271	306	355	382
	ELEVATOR-2-4 Sty	235	282	342		-
	5 + Sty	251	303	364		-
HOBBS	DETACHED			320	382	452
	SEMI-DETACHED/ROW		276	314	367	431
	WALKUP	201	245	276	329	376
	ELEVATOR-2-4 Sty	219	254	319		
	5 + Sty	235	276	340		
LAS CRUCES	DETACHED			317	375	456
	SEMI-DETACHED/ROW		270	304	363	427
	WALKUP	199	246	284	329	371
	ELEVATOR-2-4 Sty	223	258	322		
	5 + Sty	239	279	343		
LAS VEGAS/ LOS ALAMOS/ RATON	DETACHED			339	404	476
	SEMI-DETACHED/ROW		286	318	382	451
	WALKUP	201	260	293	351	396
	ELEVATOR-2-4 Sty	225	270	342		
	5 + Sty	241	292	364		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

OFFICE ALBUQUERQUE, N.M. REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SOCORRO	DETACHED			308	379	441
	SEMI-DETACHED/ROW		263	293	351	420
	WALKUP	189	235	266	315	364
	ELEVATOR-2-4 Sty	215	251	317		
	5 + Sty	231	272	338		
DULCE/ RUIDOSO	DETACHED			337	403	476
	SEMI-DETACHED/ROW		290	324	387	459
	WALKUP	212	264	307	363	417
	ELEVATOR-2-4 Sty	235	271	342		
	5 + Sty	251	293	364		
ISLETA	DETACHED			329	403	439
	SEMI-DETACHED/ROW		261	297	350	413
	WALKUP	191	235	275	329	376
	ELEVATOR-2-4 Sty	239	281	345		
	5 + Sty	254	302	366		
JEMEZ	DETACHED			339	404	476
	SEMI-DETACHED/ROW		286	318	382	451
	WALKUP	201	260	293	351	396
	ELEVATOR-2-4 Sty	225	270	342		
	5 + Sty	241	292	364		
LAGUNA	DETACHED			345	410	490
	SEMI-DETACHED/ROW		299	333	392	465
	WALKUP	214	271	306	355	382
	ELEVATOR-2-4 Sty	235	282	342		
	5 + Sty	251	303	364		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

OFFICE ALBUQUERQUE, N.M. REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

OFFICE ALBUQUERQUE, N.M. REGION VI - DALLAS

AREA OFFICE OKLAHOMA CITY, OKLA. REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

OFFICE ALBUQUERQUE, N.M. REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SANTA FE	DETACHED			339	404	476
	SEMI-DETACHED/ROW		286	318	382	451
	WALKUP	201	260	293	351	396
	ELEVATOR-2-4 Sty	225	270	342		
	5 + Sty	241	292	364		
SILVER CITY/ TAOS/TIERRA AMARILLA	DETACHED			337	403	476
	SEMI-DETACHED/ROW		290	324	387	459
	WALKUP	212	264	307	363	417
	ELEVATOR-2-4 Sty	235	271	342		
	5 + Sty	251	293	364		
TRUTH OR CONSEQUENCES	DETACHED			308	379	441
	SEMI-DETACHED/ROW		263	293	351	420
	WALKUP	189	235	266	315	364
	ELEVATOR-2-4 Sty	215	251	317		
	5 + Sty	231	272	338		
FARMINGTON	DETACHED			337	403	476
	SEMI-DETACHED/ROW		290	324	387	459
	WALKUP	212	264	307	363	417
	ELEVATOR-2-4 Sty	235	271	342		
	5 + Sty	251	293	364		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE OKLAHOMA CITY, OKLA. REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
OKLAHOMA CITY	DETACHED			366	442	484
	SEMI-DETACHED/ROW	247	286	351	427	469
	WALKUP	203	239	298	368	394
	ELEVATOR-2-4 Sty	229	269	334		
	5 + Sty	263	309	366		
ADA	DETACHED			386	451	514
	SEMI-DETACHED/ROW	283	308	375	440	503
	WALKUP	242	264	323	380	428
	ELEVATOR-2-4 Sty	270	296	362		
	5 + Sty	---	---	---		
ARDMORE	DETACHED			376	433	487
	SEMI-DETACHED/ROW	269	292	364	422	476
	WALKUP	228	248	314	364	403
	ELEVATOR-2-4 Sty	256	281	334		
	5 + Sty	---	---	---		
BARTLESVILLE	DETACHED			344	406	468
	SEMI-DETACHED/ROW		285	329	392	433
	WALKUP	235	256	298	357	389
	ELEVATOR-2-4 Sty	243	262	305		
	5 + Sty	---	---	---		
ENID	DETACHED			424	487	519
	SEMI-DETACHED/ROW	257	329	412	446	508
	WALKUP	211	280	355	379	425
	ELEVATOR-2-4 Sty	237	310	392		
	5 + Sty	---	---	---		
GUYMON	DETACHED			363	439	493
	SEMI-DETACHED/ROW	228	251	352	427	480
	WALKUP	184	205	298	366	403
	ELEVATOR-2-4 Sty	212	237	336		
	5 + Sty	---	---	---		

AREA OFFICE Oklahoma City, Okla. REGION VI - Dallas

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
Lawton	DETACHED			442	464	531
	SEMI-DETACHED/ROW	319	357	431	453	520
	WALKUP	278	312	381	394	446
	ELEVATOR-2-4 Sty	305	343	418		
	5 + Sty					
Mc Alester	DETACHED			320	381	418
	SEMI-DETACHED/ROW		203	313	374	411
	WALKUP	159	178	286	342	368
	ELEVATOR-2-4 Sty	171	188	298		
	5 + Sty					
Muskogee	DETACHED			299	368	405
	SEMI-DETACHED/ROW		250	288	350	393
	WALKUP	196	223	258	320	349
	ELEVATOR-2-4 Sty	209	233	269		
	5 + Sty					
Shawnee	DETACHED			346	389	429
	SEMI-DETACHED/ROW	227	260	335	378	415
	WALKUP	184	216	283	318	343
	ELEVATOR-2-4 Sty	212	248	322		
	5 + Sty					
Stillwater	DETACHED			354	421	474
	SEMI-DETACHED/ROW	250	271	344	411	459
	WALKUP	208	228	293	352	386
	ELEVATOR-2-4 Sty	236	259	332		
	5 + Sty					
Tulsa	DETACHED			380	427	484
	SEMI-DETACHED/ROW		315	366	413	469
	WALKUP	250	290	341	386	433
	ELEVATOR-2-4 Sty	256	296	347		
	5 + Sty	265	319	450		

AREA OFFICE [illegible], Okla REGION VI - Dallas

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
Woodward	DETACHED			386	471	513
	SEMI-DETACHED/ROW	261	283	375	453	502
	WALKUP	218	238	323	392	426
	ELEVATOR-2-4 Sty	246	270	362		
	5 + Sty					
Mc Alester	DETACHED					
	SEMI-DETACHED/ROW		179	243	305	330
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE DALLAS, TEXAS REGION VI - DALLAS

OFFICE FORT WORTH, TEX. REGION VI - DALLAS

AREA OFFICE DALLAS, TEXAS REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
DALLAS	DETACHED			428	557	611
	SEMI-DETACHED/ROW		296	373	440	513
	WALKUP	220	276	347	409	477
	ELEVATOR-2-4 Sty	243	305	384		
	5 + Sty	341	409	544		
SHERMAN	DETACHED			344	448	492
	SEMI-DETACHED/ROW		239	300	353	412
	WALKUP	178	222	279	330	384
	ELEVATOR-2-4 Sty	195	243	309		
	5 + Sty	321	386	515		
TYLER/ MARSHALL	DETACHED			330	430	472
	SEMI-DETACHED/ROW		229	288	339	396
	WALKUP	172	213	268	315	365
	ELEVATOR-2-4 Sty	187	234	296		
	5 + Sty	305	360	489		
WACO	DETACHED			334	435	477
	SEMI-DETACHED/ROW		230	290	343	400
	WALKUP	172	215	271	318	373
	ELEVATOR-2-4 Sty	188	237	299		
	5 + Sty	306	362	484		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

OFFICE FORT WORTH, TEX. REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
FORT WORTH	DETACHED			411	534	585
	SEMI-DETACHED/ROW		283	358	421	482
	WALKUP	211	259	332	392	457
	ELEVATOR-2-4 Sty	233	292	368		
	5 + Sty	327	392	521		
ABILENE	DETACHED			407	529	580
	SEMI-DETACHED/ROW		281	354	417	487
	WALKUP	210	245	329	389	453
	ELEVATOR-2-4 Sty	231	289	363		
	5 + Sty	324	389	516		
WICHITA FALLS	DETACHED			376	489	537
	SEMI-DETACHED/ROW		260	327	386	450
	WALKUP	193	239	305	360	419
	ELEVATOR-2-4 Sty	213	268	337		
	5 + Sty	299	360	477		
SAN ANGELO	DETACHED			376	489	537
	SEMI-DETACHED/ROW		260	327	386	450
	WALKUP	193	237	305	360	419
	ELEVATOR-2-4 Sty	213	268	337		
	5 + Sty	299	360	477		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

OFFICE HOUSTON, TEXAS REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
HOUSTON	DETACHED			495	612	708
	SEMI-DETACHED/ROW	274	334	435	517	621
	WALKUP	268	320	404	499	553
	ELEVATOR-2-4 Sty	322	461	485		
	5 + Sty	407	475	550		
BEAUMONT	DETACHED			450	556	645
	SEMI-DETACHED/ROW	270	313	379	471	543
	WALKUP	245	295	363	449	498
	ELEVATOR-2-4 Sty	294	354	436		
	5 + Sty	366	428	520		
BRYAN	DETACHED			465	575	665
	SEMI-DETACHED/ROW	257	314	409	486	584
	WALKUP	252	299	386	449	530
	ELEVATOR-2-4 Sty	303	358	464		
	5 + Sty	404	442	587		
EL CAMPO	DETACHED			463	554	664
	SEMI-DETACHED/ROW	214	283	358	426	509
	WALKUP	203	277	358	426	490
	ELEVATOR-2-4 Sty	244	332	430		
	5 + Sty	345	405	479		
LUFKIN	DETACHED			453	532	650
	SEMI-DETACHED/ROW	273	310	385	451	548
	WALKUP	232	272	344	403	472
	ELEVATOR-2-4 Sty	278	326	413		
	5 + Sty	338	394	472		
TEXAS CITY	DETACHED			477	579	683
	SEMI-DETACHED/ROW	268	327	408	491	578
	WALKUP	257	321	408	491	558
	ELEVATOR-2-4 Sty	308	385	490		
	5 + Sty	407	475	550		

OFFICE LUBBOCK, TEXAS REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
LUBBOCK	DETACHED			339	426	492
	SEMI-DETACHED/ROW	219	259	326	409	488
	WALKUP	206	249	315	396	449
	ELEVATOR-2-4 Sty	254	278	321		
	5 + Sty	278	309	406		
AMARILLO	DETACHED			354	442	448
	SEMI-DETACHED/ROW	227	261	333	416	456
	WALKUP	212	249	321	403	436
	ELEVATOR-2-4 Sty	254	278	321		
	5 + Sty	278	309	406		
EL PASO	DETACHED			327	406	449
	SEMI-DETACHED/ROW	227	254	321	399	439
	WALKUP	212	242	309	385	419
	ELEVATOR-2-4 Sty	254	278	321		
	5 + Sty	278	309	406		
MIDLAND	DETACHED			362	434	488
	SEMI-DETACHED/ROW	252	287	348	424	463
	WALKUP	241	278	339	404	448
	ELEVATOR-2-4 Sty	281	306	349		
	5 + Sty	306	337	424		
ODESSA	DETACHED			364	431	473
	SEMI-DETACHED/ROW	250	290	345	409	447
	WALKUP	237	278	333	396	427
	ELEVATOR-2-4 Sty	276	300	343		
	5 + Sty	300	331	417		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE SAN ANTONIO, TEXAS REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

OFFICE DES MOINES, IOWA REGION VII - KANSAS CITY

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE SAN ANTONIO, TEXAS REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
AUSTIN	DETACHED			448	569	600
	SEMI-DETACHED/ROW	305	334	428	512	575
	WALKUP	288	312	403	488	527
	ELEVATOR-2-4 Sty	422	427	556		
	5 + Sty	487	490	642		
CORPUS CHRISTI	DETACHED			406	528	630
	SEMI-DETACHED/ROW	246	314	389	475	573
	WALKUP	230	294	366	453	525
	ELEVATOR-2-4 Sty	343	403	511		
	5 + Sty	395	461	586		
DEL RIO/ EAGLE PASS/ LAREDO	DETACHED			424	604	819
	SEMI-DETACHED/ROW	263	344	406	517	583
	WALKUP	245	305	365	465	512
	ELEVATOR-2-4 Sty	386	437	529		
	5 + Sty	443	503	610		
SAN ANTONIO	DETACHED			386	495	579
	SEMI-DETACHED/ROW	268	310	365	473	554
	WALKUP	253	293	351	450	513
	ELEVATOR-2-4 Sty	378	414	505		
	5 + Sty	436	476	583		
HARLINGEN	DETACHED			440	339	660
	SEMI-DETACHED/ROW	232	295	403	315	600
	WALKUP	218	266	344	440	500
	ELEVATOR-2-4 Sty	244	356	493		
	5 + Sty	394	410	568		
VICTORIA	DETACHED			406	528	630
	SEMI-DETACHED/ROW	246	314	389	475	573
	WALKUP	230	294	366	453	525
	ELEVATOR-2-4 Sty	343	403	511		
	5 + Sty	395	461	586		

OFFICE DES MOINES, IOWA REGION VII - KANSAS CITY

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
DES MOINES	DETACHED			477	546	630
	SEMI-DETACHED/ROW		324	400	474	562
	WALKUP	248	294	352	404	456
	ELEVATOR-2-4 Sty	318	360	430		
	5 + Sty	366	394	484		
BETTENDORF	DETACHED			464	532	619
	SEMI-DETACHED/ROW		313	400	442	509
	WALKUP	263	283	360	415	478
	ELEVATOR-2-4 Sty	326	372	447		
	5 + Sty	356	407	504		
CEDAR RAPIDS	DETACHED			465	533	625
	SEMI-DETACHED/ROW		327	398	452	523
	WALKUP	262	300	373	428	488
	ELEVATOR-2-4 Sty	322	367	439		
	5 + Sty	351	401	484		
COUNCIL BLUFFS	DETACHED			449	505	574
	SEMI-DETACHED/ROW		290	360	415	475
	WALKUP	250	270	330	380	430
	ELEVATOR-2-4 Sty	301	348	405		
	5 + Sty	326	373	455		
DAVENPORT	DETACHED			463	529	614
	SEMI-DETACHED/ROW		319	410	450	510
	WALKUP	262	283	358	414	477
	ELEVATOR-2-4 Sty	332	387	456		
	5 + Sty	362	423	513		
DUBUQUE	DETACHED			475	543	629
	SEMI-DETACHED/ROW		314	382	437	510
	WALKUP	260	285	360	429	483
	ELEVATOR-2-4 Sty	322	368	440		
	5 + Sty	352	403	495		

OFFICE DES MOINES, IOWA REGION VII - KANSAS CITY

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
MASON CITY	DETACHED			469	535	621
	SEMI-DETACHED/ROW		311	371	435	511
	WALKUP	246	280	343	407	470
	ELEVATOR-2-4 Sty	319	365	432		
	5 + Sty	348	399	486		
SIOUX CITY	DETACHED			452	542	629
	SEMI-DETACHED/ROW		312	381	434	509
	WALKUP	251	287	360	406	479
	ELEVATOR-2-4 Sty	319	365	438		
	5 + Sty	348	399	493		
WATERLOO	DETACHED			469	534	621
	SEMI-DETACHED/ROW		311	378	430	504
	WALKUP	258	285	348	400	474
	ELEVATOR-2-4 Sty	319	365	438		
	5 + Sty	349	403	496		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

OFFICE TOPEKA, KANSAS REGION VII - KANSAS CITY

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
TOPEKA	DETACHED					
	SEMI-DETACHED/ROW		316	372	433	472
	WALKUP	211	266	325	387	444
	ELEVATOR-2-4 Sty	233	322	411		
	5 + Sty	239	327	416		
GARDEN CITY	DETACHED					
	SEMI-DETACHED/ROW		294	355	416	444
	WALKUP	222	261	316	377	416
	ELEVATOR-2-4 Sty	233	322	411		
	5 + Sty	239	327	416		
PITTSBURG	DETACHED					
	SEMI-DETACHED/ROW		293	343	404	443
	WALKUP	216	255	308	377	422
	ELEVATOR-2-4 Sty	233	322	411		
	5 + Sty	239	327	416		
SALINA	DETACHED					
	SEMI-DETACHED/ROW		294	355	411	450
	WALKUP	222	255	311	377	416
	ELEVATOR-2-4 Sty	233	322	411		
	5 + Sty	239	327	416		
WICHITA	DETACHED					
	SEMI-DETACHED/ROW		300	364	427	461
	WALKUP	205	261	321	389	438
	ELEVATOR-2-4 Sty	233	322	411		
	5 + Sty	239	327	416		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE KANSAS CITY, KAN REGION VII - KANSAS CITY

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE ST. LOUIS, MO REGION VII - KANSAS CITY

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE KANSAS CITY, KAN REGION VII - KANSAS CITY

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
KANSAS CITY MO.	DETACHED			367	419	468
	SEMI-DETACHED/ROW		272	353	419	448
	WALKUP	244	279	325	385	421
	ELEVATOR-2-4 Sty	268	307	379		
	5 + Sty	302	341	493		
JOPLIN MO.	DETACHED			356	431	467
	SEMI-DETACHED/ROW		251	305	396	432
	WALKUP	175	205	288	376	414
	ELEVATOR-2-4 Sty	251	287	355		
	5 + Sty	283	322	462		
ST. JOSEPH MO.	DETACHED			349	417	455
	SEMI-DETACHED/ROW		250	336	386	423
	WALKUP	249	288	316	359	392
	ELEVATOR-2-4 Sty	268	306	379		
	5 + Sty	302	344	493		
SEDALIA MO.	DETACHED			340	349	413
	SEMI-DETACHED/ROW		259	305	349	413
	WALKUP	187	214	296	368	404
	ELEVATOR-2-4 Sty	235	268	332		
	5 + Sty	264	306	431		
SPRINGFIELD MO.	DETACHED			331	395	431
	SEMI-DETACHED/ROW		258	326	395	431
	WALKUP	173	202	261	343	380
	ELEVATOR-2-4 Sty	232	266	328		
	5 + Sty	262	307	427		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE ST. LOUIS, MO REGION VII - KANSAS CITY

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
ST. LOUIS	DETACHED					
	SEMI-DETACHED/ROW		337	397	479	564
	WALKUP	244	306	373	452	501
	ELEVATOR-2-4 Sty	282	352	423		
	5 + Sty	304	370	518		
COLUMBIA	DETACHED					
	SEMI-DETACHED/ROW		285	365	447	501
	WALKUP	230	273	352	430	477
	ELEVATOR-2-4 Sty	268	318	404		
	5 + Sty					
KIRKSVILLE	DETACHED					
	SEMI-DETACHED/ROW		278	349	441	484
	WALKUP	212	264	331	410	453
	ELEVATOR-2-4 Sty	250	304	382		
	5 + Sty					
ROLLA	DETACHED					
	SEMI-DETACHED/ROW		255	326	415	475
	WALKUP	191	242	313	385	419
	ELEVATOR-2-4 Sty	228	285	363		
	5 + Sty					
CAPE GIRARDEAU	DETACHED					
	SEMI-DETACHED/ROW		259	332	425	475
	WALKUP	197	250	320	391	437
	ELEVATOR-2-4 Sty	234	294	371		
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE OMAHA, NEBRASKA REGION VII - KANSAS CITY

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
OMAHA	DETACHED			461	514	546
	SEMI-DETACHED/ROW		324	402	477	507
	WALKUP	246	275	335	393	417
	ELEVATOR-2-4 Sty	293	336	426		
	5 + Sty	328	379	488		
GRAND ISLAND	DETACHED			409	457	493
	SEMI-DETACHED/ROW		311	384	454	482
	WALKUP	239	265	321	374	396
	ELEVATOR-2-4 Sty	281	321	406		
	5 + Sty	325	377	487		
LINCOLN	DETACHED			454	507	534
	SEMI-DETACHED/ROW		307	383	456	485
	WALKUP	243	271	330	386	408
	ELEVATOR-2-4 Sty	293	335	423		
	5 + Sty	325	377	487		
NORFOLK	DETACHED			436	487	516
	SEMI-DETACHED/ROW		312	385	456	483
	WALKUP	240	267	323	378	401
	ELEVATOR-2-4 Sty	286	328	414		
	5 + Sty	325	377	487		
NORTH PLATTE	DETACHED			408	457	489
	SEMI-DETACHED/ROW		302	371	434	465
	WALKUP	228	264	319	373	395
	ELEVATOR-2-4 Sty	286	326	412		
	5 + Sty	325	377	487		
SCOTTS BLUFF	DETACHED			406	455	484
	SEMI-DETACHED/ROW		305	374	441	469
	WALKUP	235	262	317	376	404
	ELEVATOR-2-4 Sty	283	323	408		
	5 + Sty	325	377	487		

AREA OFFICE DENVER, COLORADO REGION VIII - DENVER

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
DENVER COLO.	DETACHED			422	482	534
	SEMI-DETACHED/ROW		330	378	450	482
	WALKUP	255	307	336	437	474
	ELEVATOR-2-4 Sty	256	311	348		
	5 + Sty	269	327	358		
COLO. SPRINGS COLO.	DETACHED			322	405	478
	SEMI-DETACHED/ROW		267	289	350	420
	WALKUP	228	238	269	330	396
	ELEVATOR-2-4 Sty	235	278	298		
	5 + Sty	243	299	322		
DURANGO COLO.	DETACHED			385	454	496
	SEMI-DETACHED/ROW		290	328	409	473
	WALKUP	232	277	307	373	426
	ELEVATOR-2-4 Sty	241	285	316		
	5 + Sty	254	291	324		
GRAND JUNCTION COLO.	DETACHED			412	456	495
	SEMI-DETACHED/ROW		353	379	420	477
	WALKUP	248	289	348	378	424
	ELEVATOR-2-4 Sty	263	299	352		
	5 + Sty	274	311	360		
GREELEY COLO.	DETACHED			385	452	493
	SEMI-DETACHED/ROW		277	331	397	450
	WALKUP	228	254	319	348	406
	ELEVATOR-2-4 Sty	236	263	331		
	5 + Sty	249	274	342		
PUEBLO COLO.	DETACHED			365	412	467
	SEMI-DETACHED/ROW		275	309	348	408
	WALKUP	223	242	277	330	372
	ELEVATOR-2-4 Sty	230	259	292		
	5 + Sty	245	274	313		

AREA OFFICE DENVER, COLO. REGION VIII -DENVER

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more

AREA OFFICE DENVER, COLO. REGION VIII - DENVER

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more

AREA OFFICE DENVER, COLO. REGION VIII - DENVER

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
HELENA	DETACHED			388	453	495
	SEMI-DETACHED/ROW		312	383	445	487
	WALKUP	244	303	374	436	478
	ELEVATOR-2-4 Sty	260	320	389		
	5 + Sty	271	331	400		
BILLINGS	DETACHED			383	436	468
	SEMI-DETACHED/ROW		288	375	429	460
	WALKUP	234	279	365	420	453
	ELEVATOR-2-4 Sty	249	294	379		
	5 + Sty	260	305	390		
BOZEMAN	DETACHED			374	442	474
	SEMI-DETACHED/ROW		301	366	433	465
	WALKUP	248	292	358	424	457
	ELEVATOR-2-4 Sty	264	310	376		
	5 + Sty	275	321	387		
BUTTE	DETACHED			375	442	475
	SEMI-DETACHED/ROW		313	366	434	467
	WALKUP	250	305	358	425	459
	ELEVATOR-2-4 Sty	266	323	377		
	5 + Sty	277	334	388		
GREAT FALLS	DETACHED			372	429	460
	SEMI-DETACHED/ROW		294	365	420	453
	WALKUP	238	286	357	412	445
	ELEVATOR-2-4 Sty	256	298	374		
	5 + Sty	267	309	388		
HAVRE	DETACHED			368	419	457
	SEMI-DETACHED/ROW		279	360	411	448
	WALKUP	233	271	352	402	440
	ELEVATOR-2-4 Sty	254	289	371		
	5 + Sty	265	300	382		

AREA OFFICE DENVER, COLO. REGION VIII - DENVER

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
MILES CITY	DETACHED			368	419	457
	SEMI-DETACHED/ROW		279	360	411	448
	WALKUP	233	271	353	402	440
	ELEVATOR-2-4 Sty	254	289	371		
	5 + Sty	265	300	382		
KALISPELL	DETACHED			375	438	473
	SEMI-DETACHED/ROW		289	366	431	467
	WALKUP	240	281	357	422	458
	ELEVATOR-2-4 Sty	259	297	374		
	5 + Sty	270	308	385		
MISSOULA	DETACHED			374	440	475
	SEMI-DETACHED/ROW		293	366	432	466
	WALKUP	243	286	357	423	456
	ELEVATOR-2-4 Sty	261	302	375		
	5 + Sty	272	313	386		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE DENVER, COLORADO REGION VIII - DENVER

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
FARGO	DETACHED			400	475	502
	SEMI-DETACHED/ROW		327	374	440	484
	WALKUP	269	308	347	429	473
	ELEVATOR-2-4 Sty	282	325	397		
	5 + Sty	308	352	429		
BISMARK	DETACHED			397	471	500
	SEMI-DETACHED/ROW		313	373	439	481
	WALKUP	264	302	346	427	470
	ELEVATOR-2-4 Sty	280	322	395		
	5 + Sty	308	350	425		
DICKINSON	DETACHED			375	450	475
	SEMI-DETACHED/ROW		301	352	418	451
	WALKUP	236	286	335	407	434
	ELEVATOR-2-4 Sty	252	300	353		
	5 + Sty	275	324	390		
GRAND FORKS	DETACHED			400	473	500
	SEMI-DETACHED/ROW		321	380	435	475
	WALKUP	247	305	346	420	456
	ELEVATOR-2-4 Sty	280	324	390		
	5 + Sty	297	341	412		
MINOT	DETACHED			390	460	495
	SEMI-DETACHED/ROW		297	355	422	456
	WALKUP	242	286	335	412	435
	ELEVATOR-2-4 Sty	261	299	355		
	5 + Sty	280	325	385		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE DENVER, COLORADO REGION VIII - DENVER

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SIOUX FALLS	DETACHED			401	424	462
	SEMI-DETACHED/ROW		336	374	407	440
	WALKUP	268	319	355	391	420
	ELEVATOR-2-4 Sty	284	327	365		
	5 + Sty	289	333	369		
ABERDEEN	DETACHED			391	424	462
	SEMI-DETACHED/ROW		330	374	407	440
	WALKUP	257	308	352	391	424
	ELEVATOR-2-4 Sty	268	319	363		
	5 + Sty	278	330	369		
FORT THOMPSON	DETACHED			402	438	480
	SEMI-DETACHED/ROW		342	384	418	463
	WALKUP	277	325	363	399	440
	ELEVATOR-2-4 Sty	286	333	372		
	5 + Sty	290	338	376		
MCLAUGHLIN	DETACHED			402	438	480
	SEMI-DETACHED/ROW		342	383	418	463
	WALKUP	277	325	363	403	440
	ELEVATOR-2-4 Sty	286	333	372		
	5 + Sty	290	338	376		
MISSION	DETACHED			402	437	480
	SEMI-DETACHED/ROW		342	384	418	463
	WALKUP	277	325	363	403	440
	ELEVATOR-2-4 Sty	286	333	372		
	5 + Sty	290	338	376		
PIERRE	DETACHED			402	435	473
	SEMI-DETACHED/ROW		341	385	418	462
	WALKUP	257	313	352	396	440
	ELEVATOR-2-4 Sty	273	325	363		
	5 + Sty	278	330	369		

AREA OFFICE DENVER, COLORADO REGION VIII - DENVER

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE DENVER, COLO. REGION VIII - DENVER

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE DENVER, COLORADO REGION VIII - DENVER

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
RAPID CITY	DETACHED			402	433	479
	SEMI-DETACHED/ROW		347	385	418	462
	WALKUP	268	319	363	407	440
	ELEVATOR-2-4 Sty	284	336	374		
	5 + Sty	288	341	379		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE DENVER, COLO. REGION VIII - DENVER

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SALT LAKE CITY UTAH	DETACHED			371	401	455
	SEMI-DETACHED/ROW		272	308	343	379
	WALKUP	189	264	286	321	355
	ELEVATOR-2-4 Sty	235	310	330		
	5 + Sty	259	330	367		
CEDAR CITY UTAH	DETACHED			322	353	384
	SEMI-DETACHED/ROW		245	289	323	346
	WALKUP	178	241	283	320	334
	ELEVATOR-2-4 Sty	225	270	320		
	5 + Sty	237	300	345		
PROVO UTAH	DETACHED			339	387	447
	SEMI-DETACHED/ROW		269	299	336	384
	WALKUP	210	262	289	329	378
	ELEVATOR-2-4 Sty	237	305	330		
	5 + Sty	260	320	351		
LOGAN UTAH	DETACHED			367	393	450
	SEMI-DETACHED/ROW		270	294	327	358
	WALKUP	193	264	288	321	349
	ELEVATOR-2-4 Sty	230	275	323		
	5 + Sty	255	320	357		
VERNAL UTAH	DETACHED			388	432	498
	SEMI-DETACHED/ROW		317	328	448	495
	WALKUP	194	265	308	365	411
	ELEVATOR-2-4 Sty	237	310	335		
	5 + Sty	265	330	370		
MOAB UTAH	DETACHED			322	356	384
	SEMI-DETACHED/ROW		249	289	323	343
	WALKUP	180	241	283	317	334
	ELEVATOR-2-4 Sty	225	271	320		
	5 + Sty	235	303	345		

AREA OFFICE DENVER, COLORADO REGION VIII - DENVER

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
CASPER WYO.	DETACHED			461	550	590
	SEMI-DETACHED/ROW		330	428	536	586
	WALKUP	273	317	418	526	576
	ELEVATOR-2-4 Sty	307	347	448		
	5 + Sty	358	418	490		
CHEYENNE WYO.	DETACHED			447	526	573
	SEMI-DETACHED/ROW		330	400	515	565
	WALKUP	266	317	390	512	562
	ELEVATOR-2-4 Sty	300	347	432		
	5 + Sty	332	403	461		
CODY WYO.	DETACHED			450	510	570
	SEMI-DETACHED/ROW		331	415	480	538
	WALKUP	267	324	396	468	526
	ELEVATOR-2-4 Sty	302	351	435		
	5 + Sty	338	396	461		
GILLETTE WYO.	DETACHED			447	541	605
	SEMI-DETACHED/ROW		330	428	533	591
	WALKUP	273	317	418	526	570
	ELEVATOR-2-4 Sty	305	350	440		
	5 + Sty	346	411	480		
JACKSON WYO.	DETACHED			483	576	634
	SEMI-DETACHED/ROW		361	447	541	597
	WALKUP	302	346	432	533	562
	ELEVATOR-2-4 Sty	334	375	461		
	5 + Sty	374	426	497		
LARAMIE WYO.	DETACHED			421	520	569
	SEMI-DETACHED/ROW		332	403	503	548
	WALKUP	266	334	396	497	538
	ELEVATOR-2-4 Sty	295	355	427		
	5 + Sty	324	396	453		

AREA OFFICE DENVER COLORADO REGION VIII - DENVER

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
RIVERTON WYO.	DETACHED			450	491	548
	SEMI-DETACHED/ROW		331	415	476	537
	WALKUP	264	324	396	468	526
	ELEVATOR-2-4 Sty	300	351	435		
	5 + Sty	331	396	461		
ROCK SPRINGS WYO.	DETACHED			468	565	605
	SEMI-DETACHED/ROW		331	432	545	590
	WALKUP	281	324	418	533	576
	ELEVATOR-2-4 Sty	312	355	449		
	5 + Sty	367	425	483		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE LOS ANGELES, CA. REGION IX - SAN FRANCISCO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more

AREA OFFICE LOS ANGELES, CA. REGION IX - SAN FRANCISCO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more

AREA OFFICE LOS ANGELES, CA. REGION IX - SAN FRANCISCO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
PHOENIX	DETACHED			392	460	515
	SEMI-DETACHED/ROW		328	370	415	460
	WALKUP	335	284	353	415	460
	ELEVATOR-2-4 Sty	275	314	397		
	5 + Sty	360	421	532		
CASA GRANDE	DETACHED			348	426	483
	SEMI-DETACHED/ROW		296	340	426	483
	WALKUP	263	296	339	405	430
	ELEVATOR-2-4 Sty	271	315	338		
	5 + Sty	---	---	---		
FLAGSTAFF	DETACHED			409	513	527
	SEMI-DETACHED/ROW		282	336	381	427
	WALKUP	348	282	336	381	427
	ELEVATOR-2-4 Sty	287	302	353		
	5 + Sty	---	---	---		
KEARNS CANYON	DETACHED			344	383	442
	SEMI-DETACHED/ROW		248	344	372	431
	WALKUP	211	237	278	332	386
	ELEVATOR-2-4 Sty	230	256	297		
	5 + Sty	---	---	---		
TUCSON	DETACHED			410	455	510
	SEMI-DETACHED/ROW		299	366	444	500
	WALKUP	257	275	346	427	474
	ELEVATOR-2-4 Sty	276	294	365		
	5 + Sty	385	416	344		
YUMA	DETACHED			404	453	508
	SEMI-DETACHED/ROW		344	382	429	481
	WALKUP	258	295	363	405	446
	ELEVATOR-2-4 Sty	278	314	382		
	5 + Sty	---	---	---		

AREA OFFICE LOS ANGELES, CA. REGION IX - SAN FRANCISCO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
LOS ANGELES	DETACHED			610	679	776
	SEMI-DETACHED/ROW		531	562	625	708
	WALKUP	540	603	512	564	590
	ELEVATOR-2-4 Sty	557	620	529	561	608
	5 + Sty	650	581	811		
BAKERSFIELD	DETACHED			450	545	649
	SEMI-DETACHED/ROW		309	401	492	551
	WALKUP	257	293	383	473	516
	ELEVATOR-2-4 Sty	273	311	398	488	558
	5 + Sty	382	436	559		
LANCASTER	DETACHED			495	551	576
	SEMI-DETACHED/ROW		320	429	472	509
	WALKUP	387	305	393	451	498
	ELEVATOR-2-4 Sty	283	322	410	454	501
	5 + Sty	408	454	582		
OXNARD/VENTURA	DETACHED			544	579	642
	SEMI-DETACHED/ROW		403	465	553	681
	WALKUP	308	346	394	471	516
	ELEVATOR-2-4 Sty	525	363	411	488	532
	5 + Sty	442	492	576		
SANTA MARIA	DETACHED			437	473	515
	SEMI-DETACHED/ROW		337	399	446	487
	WALKUP	273	311	364	409	455
	ELEVATOR-2-4 Sty	289	328	380	425	471
	5 + Sty	413	463	552		
SANTA BARBARA	DETACHED			642	677	723
	SEMI-DETACHED/ROW		424	523	657	710
	WALKUP	324	364	447	571	619
	ELEVATOR-2-4 Sty	340	381	464	588	636
	5 + Sty	466	515	634		

AREA OFFICE LOS ANGELES, CA REGION IX - SAN FRANCISCO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
PASA ROBLES	DETACHED			378	615	659
	SEMI-DETACHED/ROW		372	440	541	590
	WALKUP	278	315	368	460	505
	ELEVATOR-2-4 Sty	294	331	384	476	521
	5 + Sty	417	463	551		
SAN DIEGO/ EL CAJON	DETACHED			470	525	572
	SEMI-DETACHED/ROW		393	454	501	545
	WALKUP	297	352	411	475	515
	ELEVATOR-2-4 Sty	366	422	530		
	5 + Sty	415	511	625		
SANTA ANA	DETACHED			472	530	570
	SEMI-DETACHED/ROW		369	450	502	543
	WALKUP	295	351	417	461	495
	ELEVATOR-2-4 Sty	310	367	435		
	5 + Sty	424	491	592		
SAN BERNARDINO	DETACHED			460	512	568
	SEMI-DETACHED/ROW		348	425	471	535
	WALKUP	262	316	377	409	454
	ELEVATOR-2-4 Sty	280	336	399		
	5 + Sty	387	448	544		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

OFFICE SACRAMENTO, CA. REGION IX - SAN FRANCISCO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SACRAMENTO	DETACHED			425	460	500
	SEMI-DETACHED/ROW		375	415	450	485
	WALKUP	270	310	360	445	480
	ELEVATOR-2-4 Sty	360	405	460		
	5 + Sty	440	495	575		
PLACERVILLE	DETACHED			435	470	510
	SEMI-DETACHED/ROW		380	425	460	495
	WALKUP	275	315	365	455	490
	ELEVATOR-2-4 Sty	365	415	470		
	5 + Sty	---	---	---		
REDDING	DETACHED			435	470	510
	SEMI-DETACHED/ROW		385	425	460	495
	WALKUP	235	270	320	368	415
	ELEVATOR-2-4 Sty	370	415	470		
	5 + Sty	---	---	---		
SO. L. TAHOE	DETACHED			495	540	590
	SEMI-DETACHED/ROW		440	480	530	575
	WALKUP	315	360	420	525	570
	ELEVATOR-2-4 Sty	420	475	540		
	5 + Sty	---	---	---		
YREKA	DETACHED			425	460	500
	SEMI-DETACHED/ROW			415	450	495
	WALKUP	270	310	360	445	485
	ELEVATOR-2-4 Sty	360	405	460		
	5 + Sty	---	---	---		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE San Francisco, Ca. REGION IX -SAN.FRANCISCO.

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE Honolulu, Hawaii REGION IX - SAN FRANCISCO.

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE San Francisco, Ca. REGION IX - SAN FRANCISCO.

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
San Francisco	DETACHED			863	1011	1084
	SEMI-DETACHED/ROW		542	737	863	925
	WALKUP	636	677	848	760	815
	ELEVATOR-2-4 Sty	460	511	715		
	5 + Sty	579	649	873		
Fresno	DETACHED			423	483	506
	SEMI-DETACHED/ROW		300	393	453	474
	WALKUP	246	266	354	441	474
	ELEVATOR-2-4 Sty	298	335	431		
	5 + Sty	436	485	627		
Modesto	DETACHED			415	509	534
	SEMI-DETACHED/ROW		320	368	441	473
	WALKUP	286	318	361	439	473
	ELEVATOR-2-4 Sty	323	368	438		
	5 + Sty	477	537	634		
San Jose	DETACHED			469	561	634
	SEMI-DETACHED/ROW		368	462	515	536
	WALKUP	348	368	448	518	536
	ELEVATOR-2-4 Sty	360	401	495		
	5 + Sty	497	550	665		
Oakland/Marin	DETACHED			664	702	719
	SEMI-DETACHED/ROW		566	664	684	710
	WALKUP	331	338	537	636	682
	ELEVATOR-2-4 Sty	342	440	887		
	5 + Sty	480	590	730		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE Honolulu, Hawaii REGION IX - SAN FRANCISCO.

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
Honolulu	DETACHED			477	573	658
	SEMI-DETACHED/ROW		384	425	506	542
	WALKUP	298	378	417	487	534
	ELEVATOR-2-4 Sty	299	387	426		
	5 + Sty	338	396	446		
Hilo	DETACHED			392	472	509
	SEMI-DETACHED/ROW		327	374	454	491
	WALKUP	259	296	352	437	476
	ELEVATOR-2-4 Sty	268	305	361		
	5 + Sty					
Kauai	DETACHED			500	548	588
	SEMI-DETACHED/ROW		395	473	522	561
	WALKUP	277	318	345	430	469
	ELEVATOR-2-4 Sty	289	325	354		
	5 + Sty					
Kona	DETACHED			421	509	558
	SEMI-DETACHED/ROW		362	409	489	535
	WALKUP	281	319	388	473	512
	ELEVATOR-2-4 Sty	298	328	397		
	5 + Sty					
Maui	DETACHED			445	530	578
	SEMI-DETACHED/ROW		397	427	512	560
	WALKUP	277	318	420	505	544
	ELEVATOR-2-4 Sty	286	324	428		
	5 + Sty					
Guam	DETACHED			476	579	627
	SEMI-DETACHED/ROW		376	430	535	583
	WALKUP	238	303	384	458	
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE San Francisco, Ca. REGION IX - SAN FRANCISCO.

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
Reno	DETACHED			520	589	624
	SEMI-DETACHED/ROW		423	520	589	611
	WALKUP	329	374	470	546	588
	ELEVATOR-2-4 Sty	351	406	534		
	5 + Sty	470	535	674		
Las Vegas	DETACHED			454	558	643
	SEMI-DETACHED/ROW		354	448	527	569
	WALKUP	320	354	435	527	569
	ELEVATOR-2-4 Sty	342	386	499		
	5 + Sty	461	515	639		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE ANCHORAGE, ALASKA REGION X - SEATTLE

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
ANCHORAGE	DETACHED			628	635	705
	SEMI-DETACHED/ROW		540	598	610	678
	WALKUP	360	443	503	535	594
	ELEVATOR-2-4 Sty	491	578	647		
	5 + Sty	500	588	658		
FAIRBANKS	DETACHED			618	676	734
	SEMI-DETACHED/ROW		530	594	667	720
	WALKUP	465	505	571	642	706
	ELEVATOR-2-4 Sty	570	655	729		
	5 + Sty	581	668	743		
JUNEAU	DETACHED			600	655	715
	SEMI-DETACHED/ROW		512	567	624	681
	WALKUP	421	470	527	590	649
	ELEVATOR-2-4 Sty	467	513	570		
	5 + Sty	476	523	581		
KETCHIKAN	DETACHED			503	612	627
	SEMI-DETACHED/ROW		407	480	542	608
	WALKUP	329	381	453	517	579
	ELEVATOR-2-4 Sty	404	493	578		
	5 + Sty	411	503	595		
COASTAL AREA, NORTH OF ALEUTIANS	DETACHED		765	841	925	1018
	SEMI-DETACHED/ROW		743	817	899	989
	WALKUP	656	721	794	873	960
	ELEVATOR-2-4 Sty	---	---	---	---	---
	5 + Sty	---	---	---	---	---
NORTH COASTAL AREA, BARTER ISLAND	DETACHED		765	841	925	1018
	SEMI-DETACHED/ROW		743	817	899	989
	WALKUP	656	721	794	873	960
	ELEVATOR-2-4 Sty	---	---	---	---	---
	5 + Sty	---	---	---	---	---

AREA OFFICE PORTLAND, ORE. REGION X - SEATTLE

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE PORTLAND, ORE REGION X - SEATTLE

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE PORTLAND, ORE. REGION X - SEATTLE

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
BOISE	DETACHED			419	478	507
	SEMI-DETACHED/ROW		311	372	425	462
	WALKUP	243	283	338	397	432
	ELEVATOR-2-4 Sty	297	364	425		
	5 + Sty	318	382	463		
IDAHO FALLS	DETACHED			415	467	511
	SEMI-DETACHED/ROW		320	364	437	461
	WALKUP	259	283	349	422	457
	ELEVATOR-2-4 Sty	303	371	433		
	5 + Sty	318	388	492		
McCALL	DETACHED			306	365	384
	SEMI-DETACHED/ROW		234	273	319	358
	WALKUP	176	215	254	306	345
	ELEVATOR-2-4 Sty	---	---	---	---	---
	5 + Sty	222	273	326		
POCATELLO	DETACHED			428	474	505
	SEMI-DETACHED/ROW		316	371	431	461
	WALKUP	246	289	356	428	451
	ELEVATOR-2-4 Sty	300	367	429		
	5 + Sty	315	386	467		
TWINFALLS	DETACHED			393	448	479
	SEMI-DETACHED/ROW		300	370	410	430
	WALKUP	239	259	329	374	401
	ELEVATOR-2-4 Sty	283	347	405		
	5 + Sty	297	364	441		
LEWISTON	DETACHED			429	472	514
	SEMI-DETACHED/ROW		286	365	423	460
	WALKUP	247	273	339	395	432
	ELEVATOR-2-4 Sty	298	361	422		
	5 + Sty	309	378	459		

AREA OFFICE PORTLAND, ORE REGION X - SEATTLE

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
COEUR D'ALENE	DETACHED			395	440	489
	SEMI-DETACHED/ROW		280	365	418	446
	WALKUP	220	261	321	380	420
	ELEVATOR-2-4 Sty	281	344	402		
	5 + Sty	295	361	438		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE PORTLAND, ORE. REGION X - SEATTLE

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
PORTLAND	DETACHED			342	414	450
	SEMI-DETACHED/ROW	237	270	335	396	437
	WALKUP	228	257	315	374	414
	ELEVATOR-2-4 Sty	270	339	392		
	5 + Sty	300	376	436		
SEND	DETACHED			328	410	455
	SEMI-DETACHED/ROW		275	321	397	433
	WALKUP	219	261	305	377	411
	ELEVATOR-2-4 Sty	267	323	375		
	5 + Sty	296	359	417		
COOS BAY	DETACHED			329	366	404
	SEMI-DETACHED/ROW		281	318	356	392
	WALKUP	225	262	300	337	375
	ELEVATOR-2-4 Sty	271	324	370		
	5 + Sty	301	360	411		
EUGENE	DETACHED			342	416	456
	SEMI-DETACHED/ROW		278	315	375	412
	WALKUP	237	264	302	362	398
	ELEVATOR-2-4 Sty	278	321	368		
	5 + Sty	309	357	409		
MEDFORD	DETACHED			331	380	423
	SEMI-DETACHED/ROW		267	315	365	408
	WALKUP	215	251	307	346	381
	ELEVATOR-2-4 Sty	258	310	374		
	5 + Sty	287	345	415		
ONTARIO	DETACHED			336	381	426
	SEMI-DETACHED/ROW		267	312	365	413
	WALKUP	206	251	297	358	404
	ELEVATOR-2-4 Sty	235	288	344		
	5 + Sty	262	320	383		

AREA OFFICE PORTLAND, ORE. REGION X - SEATTLE

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
PENDLETON	DETACHED			321	370	413
	SEMI-DETACHED/ROW		247	315	357	392
	WALKUP	198	235	296	345	380
	ELEVATOR-2-4 Sty	244	295	362		
	5 + Sty	271	329	402		
WEST SALEM	DETACHED			343	414	449
	SEMI-DETACHED/ROW		286	326	397	431
	WALKUP	238	276	317	382	426
	ELEVATOR-2-4 Sty	288	343	391		
	5 + Sty	320	381	435		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE SEATTLE, WASH. REGION X - SEATTLE

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE SEATTLE, WASH. REGION X - SEATTLE

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE SEATTLE, WASH. REGION X - SEATTLE

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SEATTLE	DETACHED			366	463	488
	SEMI-DETACHED/ROW		302	363	434	480
	WALKUP	243	293	361	420	475
	ELEVATOR-2-4 Sty	276	351	411		
	5 + Sty	312	384	445		
ABERDEEN	DETACHED			339	398	455
	SEMI-DETACHED/ROW		282	333	388	444
	WALKUP	246	278	329	374	429
	ELEVATOR-2-4 Sty	273	304	373		
	5 + Sty	300	341	417		
BELLINGHAM	DETACHED			356	445	495
	SEMI-DETACHED/ROW		282	343	420	472
	WALKUP	239	268	326	386	434
	ELEVATOR-2-4 Sty	297	317	378		
	5 + Sty	327	354	423		
LONGVIEW	DETACHED			337	399	485
	SEMI-DETACHED/ROW		282	331	393	464
	WALKUP	229	265	316	379	435
	ELEVATOR-2-4 Sty	274	330	383		
	5 + Sty	301	370	429		
OLYMPIA	DETACHED			353	408	461
	SEMI-DETACHED/ROW		278	325	389	448
	WALKUP	247	264	321	384	443
	ELEVATOR-2-4 Sty	283	345	393		
	5 + Sty	311	387	443		
PORT ANGELES	DETACHED			342	408	452
	SEMI-DETACHED/ROW		278	325	392	440
	WALKUP	213	256	317	378	415
	ELEVATOR-2-4 Sty	253	300	361		
	5 + Sty	279	336	404		

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AREA OFFICE SEATTLE, WASH. REGION X - SEATTLE

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SPOKANE	DETACHED			320	392	457
	SEMI-DETACHED/ROW		253	300	378	422
	WALKUP	213	249	288	360	404
	ELEVATOR-2-4 Sty	265	330	388		
	5 + Sty	291	362	426		
CHENEY	DETACHED			323	418	469
	SEMI-DETACHED/ROW		255	289	378	423
	WALKUP	213	250	286	366	411
	ELEVATOR-2-4 Sty	264	329	387		
	5 + Sty	291	362	425		
KENNEWICK	DETACHED			392	465	508
	SEMI-DETACHED/ROW		345	387	456	499
	WALKUP	246	300	378	430	475
	ELEVATOR-2-4 Sty	297	364	412		
	5 + Sty	322	401	453		
PULLMAN	DETACHED			348	421	462
	SEMI-DETACHED/ROW		281	329	386	433
	WALKUP	229	266	320	378	414
	ELEVATOR-2-4 Sty	276	338	408		
	5 + Sty	304	355	417		
YAKIMA	DETACHED			343	389	441
	SEMI-DETACHED/ROW		292	325	385	432
	WALKUP	220	264	311	378	424
	ELEVATOR-2-4 Sty	273	316	377		
	5 + Sty	300	354	422		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

UMI

Monday
June 18, 1979

Federal Register

Part III

Environmental Protection Agency

Implementation of Procedures on the National Environmental Policy Act

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 6]

[FRL 1227-6]

Implementation of Procedures on the National Environmental Policy Act

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On November 29, 1978, the Council on Environmental Quality (CEQ) promulgated regulations establishing uniform procedures for implementing the procedural provisions of the National Environmental Policy Act. CEQ required Federal agencies to adopt appropriate procedures to supplement their regulations. As a result, EPA is proposing to amend its procedures contained in 40 CFR Part 6 to take into account this initiative.

DATE: Written comments will be received with respect to this proposed regulation. Comments must be received on or before July 18, 1979.

ADDRESS: Comments should be addressed to William N. Hedeman, Jr., Director, Office of Environmental Review (A–104), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Thomas Sheckells, Office of Environmental Review, EPA, 401 M Street SW., Washington, D.C. 20460; telephone 202/755–0790.

SUPPLEMENTARY INFORMATION:

Introduction

The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, as implemented by Executive Orders 11514 and 11991, and the Council on Environmental Quality (CEQ) Regulations (40 CFR Parts 1500–1508) requires that all agencies of the Federal Government to the fullest extent possible carry out the provisions of NEPA by building into agency decisionmaking appropriate and careful consideration of the environmental effects of proposed actions, and avoiding or minimizing the adverse effects of these actions. The environmental impact statement (EIS) requirement under section 102(2)(C) serves as the most significant mechanism for implementing NEPA.

These regulations set forth the requirements for EPA to carry out its obligations under NEPA. CEQ in its January 19, 1979 Memorandum for NEPA Liaisons set forth strict rules for Federal agencies in developing their implementing regulations.

Specifically, in view of the President's directive to CEQ to establish a single set of regulations for government-wide NEPA implementation, CEQ has directed the Federal agencies to avoid restating or paraphrasing the CEQ Regulations, even though agencies may quote or cross-reference the CEQ regulations in their implementing procedures. Therefore, it must be made clear that EPA is proposing the following regulations with the understanding that the reader has available the policy statements and definitions contained in the CEQ Regulations. In this respect, it is noted that previous nomenclature used by EPA has been adjusted to conform with the CEQ regulations. The term "environmental assessment" as previously used by EPA is now referred to as an "environmental information document"; the term "negative declaration" is now a "finding of no significant impact"; and the term "environmental impact appraisal" is now "environmental assessment."

These regulations amend EPA regulations under 40 CFR Part 6 previously promulgated in Subparts A–H on April 14, 1975 (see 40 FR 16823) and Subpart I on January 11, 1977 (see 42 FR 2450).

Exemptions

Over the past several years there has been much controversy surrounding this Agency's preparation of EISs. Considering that the nature of EPA's activities generally concern actions protective of the environment, the Congress and the Courts have seen fit to exempt numerous EPA activities from EIS applicability.

The Congress has provided major exemptions under the Clean Water Act and the Clean Air Act. Specifically, under section 511(c)(1) of the Clean Water Act (CWA) (Pub. L. 92–500), EPA is exempt from preparing EISs under the CWA except for the issuance of new source National Pollutant Discharge Elimination System (NPDES) permits as authorized under section 402 and the provision of Federal financial assistance for the purpose of assisting the construction of publicly owned treatment works under section 201. Under section 7(c)(1) of the Energy Supply and Environmental Coordination Act of 1974 (Pub. L. 93–319), all activities under the Clean Air Act are exempt from the EIS requirements of NEPA. Further, the courts have found EPA to be exempt from the EIS requirements for regulatory actions under the Clean Air Act, the Federal Insecticide, Fungicide, and Rodenticide Act, and the Marine Protection, Research and Sanctuaries Act. In addition, the Agency has determined that EPA regulatory activities under the Resource Conservation and Recovery Act of 1976, the Toxic Substances Control Act of 1976, the Safe Drinking Water Act, and the Noise Control Act are exempt from the EIS requirements of NEPA. Nevertheless, on May 7, 1974, Administrator Russell Train decided that the Agency would voluntarily prepare EISs on certain regulatory activities in spite of the statutory and court exemptions that existed at that time. This revised regulation does not affect those voluntary EIS procedures.

Summary of Regulation

The regulations set forth below are intended to meet the requirements for Federal agency procedures under § 1507.3 of the CEQ regulations.

Subparts A thru I describe procedures for preparing required EISs. Specifically, Subpart E relates to environmental review procedures for the Wastewater Treatment Construction Grants Program of the CWA; Subpart F relates to environmental review procedures for the new source NPDES permit program; Subpart G relates to environmental review procedures for research, and development programs; Subpart H relates to environmental review procedures for solid waste demonstration projects; and Subpart I relates to environmental review procedures for EPA undertakings for construction of special purpose facilities or facility renovations.

Conformity to State Implementation Plans

In 1977, the Congress amended the Clean Air Act (CAA) (Pub. L. 95–95) to provide that no Federal agency shall (1) engage in, (2) support in any way or provide financial assistance for, (3) license or permit, or (4) approve, any activity which does not conform to an approved or promulgated state air quality implementation plan (SIP). Section 176(c) of the CAA provides that the assurance of conformity for a Federal action to a SIP is the affirmative responsibility of the head of such agency. Subpart C of these regulations sets forth new requirements for EPA to carry out its obligations under section 176(c). The Agency has expanded its notification procedures under Subpart C to provide for increased consultation opportunities between EPA and the designated lead State or local air quality

agency in the determination of an action's conformity to the SIP. These procedures will also establish a process by which the designated lead State or local agency will have an opportunity to concur or nonconcur with the EPA conformity determination. It is believed that the environmental review procedures will provide the most expeditious and complete review of an EPA action's air quality impact and conformity to a SIP.

Monitoring Responsibility

The CEQ Regulations at § 1505.3 require monitoring of grant conditions. One question that is raised by this provision is whether third parties (e.g. citizen groups) may file a lawsuit to enforce compliance with a grant condition after final payment is made for an EPA funded project. Sections 6.506 and 6.509 of this proposed rule presently provide for the imposition and monitoring of grant conditions. In these regulations and the amendments to the EPA Construction Grant Regulations (40 CFR Part 35, Subpart E), which will be proposed in the near future, EPA is considering providing for third party enforcement of such conditions. Public comment on this concept is invited.

Mandatory Hearings

Although the CEQ Regulations under 40 CFR § 1506.6(c) do not require mandatory public hearings attendant to a draft EIS, EPA is contemplating requiring such hearings for all draft EISs. These proposed regulations under § 6.409(c) presently require the responsible official to consider conducting a public hearing on a draft EIS especially when a hearing may facilitate the resolution of conflicts or significant public controversy. Your comments are solicited concerning the possibility of making draft EIS hearings mandatory.

Review Timeframe for Proposed Regulation

In view of the July 30, 1979 effective date imposed by the CEQ Regulations, EPA is allowing only 30 days for public comment on this proposed rule. Commenters are urged to meet this time deadline.

Note.—EPA has determined that because this document does not constitute a significant regulation within the meaning of Executive Order 12044, preparation of a regulatory analysis is not required.

Dated: June 8, 1979

Douglas M. Costle,

Administrator.

It is proposed to revise Part 6 to read as follows:

PART 6—PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS

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6.101 Definitions.
6.102 Applicability.
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Subpart F—Environmental Review Procedures for New Source NPDES Program

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6.602 Applicability.
6.603 Limitations on actions during environmental review process.
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Subpart G—Environmental Review Procedures for Research and Development Programs.

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6.701 Definitions.
6.702 Applicability.
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Subpart H—Environmental Review Procedures for Solid Waste Demonstration Projects.

6.800 Purpose.
6.801 Applicability.
6.802 Criteria for preparing EISs.
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Subpart I—Environmental Review Procedures for EPA Facility Support Activities

6.900 Purpose.
6.901 Definitions.
6.902 Applicability.
6.903 Criteria for preparing EISs.
6.904 Environmental review process.
6.905 Record of decision.

Subpart A—General

§ 6.100 Purpose and policy.

(a) The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, as implemented by Executive Orders 11514 and 11991 and the Council on Environmental Quality (CEQ) Regulations of November 29, 1978 (43 FR 55978), requires that Federal agencies include in their decision-making processes appropriate and careful consideration of all environmental effects of proposed actions, analyze potential environmental effects of proposed actions and their alternatives for public understanding and scrutiny, avoid or minimize adverse effects of proposed actions, and restore and enhance environmental quality as much as possible. The Environmental Protection Agency (EPA) shall integrate these NEPA factors as early in the Agency planning processes as possible. The environmental review process shall be the focal point to assure NEPA considerations are taken into account. To the extent applicable, EPA shall prepare environmental impact statements (EISs) on those major actions determined to have significant impact on the quality of the human environment. This part takes into account the EIS exemptions set forth under section 511(c)(1) of the Clean Water Act (Pub. L. 92-500) and section 7(c)(1) of the Energy Supply and Environmental Coordination Act of 1974 (Pub. L. 93-319).

(b) This Part establishes EPA policy and procedures for the identification and analysis of the environmental impacts of EPA related activities and the preparation and processing of EISs.

§ 6.101 Definitions.

(a) *Terminology.* All terminology used in this part will be consistent with the terms as defined in 40 CFR 1508 (the

CEQ Regulations). Any qualifications will be provided in the definitions set forth in each subpart of this regulation.

(b) The term "CEQ Regulations" means the regulations issued by the Council on Environmental Quality on November 29, 1978 (see 43 FR 55978), which implement Executive Order 11991. The CEQ Regulations will often be referred to throughout this regulation by reference to 40 CFR Part 1500 *et al.*

(c) The term "environmental review" means the process whereby an evaluation is undertaken by EPA to determine whether a proposed Agency action may have a significant impact on the environment and therefore require the preparation of the EIS.

(d) The term "environmental information document" means any preliminary written analysis prepared by an applicant, grantee or contractor describing the environmental impacts of a proposed Agency action.

§ 6.102 Applicability.

(a) *Administrative actions covered.* This part applies to the activities of EPA in accordance with the outline of the subparts set forth below. Each subpart describes the detailed environmental review procedures required for each action.

(1) Subpart A sets forth an overview of the regulation. Section 6.102(b) describes the requirements for EPA legislative proposals.

(2) Subpart B describes the requirements for the content of an EIS prepared pursuant to subparts E, F, G, H, and I.

(3) Subpart C describes the requirements for coordination of all environmental laws during the environmental review undertaken pursuant to subparts E, F, G, H, and I.

(4) Subpart D describes the public information requirements which must be undertaken in conjunction with the environmental review requirements under subparts E, F, G, H, and I.

(5) Subpart E describes the environmental review requirements for the wastewater treatment construction grants program under Title II of the Clean Water Act.

(6) Subpart F describes the environmental review requirements for new source National Pollutant Discharge Elimination System (NPDES) permits under section 402 of the Clean Water Act.

(7) Subpart G describes the environmental review requirements for research and development programs undertaken by the Agency.

(8) Subpart H describes the environmental review requirements for solid waste demonstration projects undertaken by the Agency.

(9) Subpart I describes the environmental review requirements for construction of special purpose facilities and facility renovations by the Agency.

(b) *Legislative proposals.* As required by the CEQ Regulations, legislative EISs are required for any legislative proposal developed by EPA which significantly affects the quality of the human environment. A preliminary draft EIS shall be prepared by the responsible EPA office concurrently with the development of the legislative proposal and contain information required under subpart B. The EIS shall be processed in accordance with the requirements set forth under 40 CFR 1506.8.

§ 6.103 Responsibilities.

(a) *General responsibilities.* (1) The responsible official's duties include:

(i) Requiring applicants, contractors, and grantees to submit environmental information documents and related documents and assuring that environmental reviews are conducted on proposed EPA projects at the earliest possible point in EPA's decision-making process. In this regard, the responsible official shall assure the early involvement and availability of information for private applicants and other non-Federal entities requiring EPA approvals.

(ii) When required, assuring that draft EIS's are prepared and distributed at the earliest possible point in EPA's decision-making process, their internal and external review is coordinated, and final EISs are prepared and distributed.

(iii) When an EIS is not prepared, assuring that findings of no significant impact (FNSIs) and environmental assessments are prepared and distributed for those actions requiring them.

(iv) Consulting with appropriate officials responsible for other environmental laws set forth in subpart C.

(v) Consulting with the Office of Environmental Review (OER) on action involving unresolved conflicts concerning this part or other Federal agencies.

(vi) When required, assuring that public participation requirements are met.

(2) Office of Environmental Review duties include:

(i) Supporting the Administrator in providing EPA policy guidance and assuring that EPA offices establish and maintain adequate administrative procedures to comply with this part.

(ii) Monitoring the overall timeliness and quality of the EPA effort to comply with this part.

(iii) Providing assistance to responsible officials as required, i.e., guidelines describing the scope of environmental information required by private applicants relating to their proposed actions.

(iv) Coordinating the training of personnel involved in the review and preparation of EISs and other associated documents.

(v) Acting as EPA liaison with the Council on Environmental Quality and other Federal and State entities on matters of EPA policy and administrative mechanisms to facilitate external review of EISs, to determine lead agency and to improve the uniformity of the NEPA procedures of Federal agencies.

(vi) Advising the Administrator and Deputy Administrator on projects which involve more than one EPA office, are highly controversial, are nationally significant, or "pioneer" EPA policy, when these projects have had or should have an EIS prepared on them.

(vii) Carrying out administrative duties relating to maintaining status of EISs within EPA, i.e., publication of notices of intent in the Federal Register and making available to the public status reports on EISs and other elements of the environmental review process.

(3) Office of an Assistant Administrator duties include:

(i) Providing specific policy guidance to their respective offices and assuring that those offices establish and maintain adequate administrative procedures to comply with this part.

(ii) Monitoring the overall timeliness and quality of their respective office's efforts to comply with this part.

(iii) Acting as liaison between their offices and the OER and between their offices and other Assistant Administrators or Regional Administrators on matters of agencywide policy and procedures.

(iv) Advising the Administrator and Deputy Administrator through the OER on projects or activities within their respective areas of responsibilities which involve more than one EPA office, are highly controversial, are nationally significant, or "pioneer" EPA policy, when these projects will have or should have an EIS prepared on them.

(4) The Office of Planning and Evaluation shall be responsible for coordinating the preparation of EISs required on EPA legislative proposals (see § 6.102(b)).

(b) *Responsibilities for Subpart E.* (1) *Responsible official.* The responsible official for EPA actions covered by this subpart is the Regional Administrator.

(2) *Assistant Administrator.* The responsibilities of the Office of the Assistant Administrator, as described in § 6.103(a)(3) shall be assumed by the Assistant Administrator for Water and Waste Management for EPA actions covered by this subpart.

(c) *Responsibilities for Subpart F.* (1) *Responsible official.* The responsible official for activities covered by this subpart is the Regional Administrator.

(2) *Assistant Administrator.* The responsibilities of the Assistant Administrator, as described in § 6.103(a)(3) shall be assumed by the Assistant Administrator for Enforcement for EPA actions covered by this subpart.

(d) *Responsibilities for Subpart G.* The Assistant Administrator for Research and Development will be the responsible official for activities covered by this subpart.

(e) *Responsibilities for Subpart H.* The Deputy Assistant Administrator for Solid Waste will be the responsible official for activities covered by this subpart.

(f) *Responsibilities for Subpart I.* (1) *Responsible official.* The responsible official for new construction and modification of special purpose facilities is as follows:

(i) The Chief, Facilities Management Branch, Facilities and Support Services Division, Office of Management and Agency Services, shall be the responsible official on all new construction of special purpose facilities and on all improvement and modification projects for which the Facilities Management Branch has received a funding allowance.

(ii) The Regional Administrator shall be the responsible official on all improvement and modification projects for which the regional office has received the funding allowance.

(iii) The Center Directors shall be the responsible officials on all improvement and modification projects for which the National Environmental Research Centers have received the funding allowance.

§ 6.104 Early involvement of private parties.

As required by 40 CFR 1501.2(d) and § 6.103(a)(3)(E) of this regulation, responsible officials must ensure early involvement of private applicants or other non-Federal entities in the environmental review process related to EPA grant and permit actions set forth under subparts E, F, G, and H. The responsible official in conjuction with OER shall:

(a) Prepare where practicable generic guidelines describing the scope and level of environmental information required from applicants as a basis for evaluating their proposed actions, and make these guidelines available upon request.

(b) Provide such guidance on a project-by-project basis to any applicant seeking assistance.

(c) Upon receipt of an application for agency approval, or notification that an application will be filed, consult as required with other appropriate parties to initiate and coordinate the necessary environmental analyses.

§ 6.105 Synopsis of EIS Procedures.

(a) *Responsibile Official.* the responsible official shall utilize a systematic, interdisciplinary approach to integrate natural and social sciences as well as environmental design arts in planning programs and making decisions which are subject to environmental review. The respective staffs may be supplemented by professionals from other agencies (see 40 CFR § 1501.6) or consultants whenever in-house capabilities are insufficiently interdisciplinary.

(b) *Environmental information documents.* Environmental information documents must be prepared by applicants, grantees, or permittees and submitted to EPA as required in subparts E, F, G, H, and I.

(c) *Environmental reviews.* Environmental reviews shall be conducted on the EPA activities outlined in § 6.102 above and set forth under subparts E, F, G, H and I. This process shall consist of a study of the action to identify and evaluate the related environmental impacts. The process shall include a review of any related environmental information document to determine whether any significant impacts are anticipated and whether any changes can be made in the proposed action to eliminate significant adverse impacts; when an EIS is required, EPA has overall responsibility for this review, although grantees, applicants, permittees or contactors will contribute to the review through submission of environmental information documents.

(d) *Environmental assessments.* Environmental assessments (i.e., concise public documents for which EPA is responsible) are prepared to provide sufficient data and analysis to determine whether an EIS or finding of no significant impact is required. Where EPA determines at an early stage that an EIS will be prepared, there is no need to prepare a formal environmental assessment.

(e) *Notice of intent and EISs.* When the environmental review and resulting environmental assessment indicate that a significant environmental impact may occur and significant adverse impacts can not be eliminated by making changes in the project, a notice of intent to prepare an EIS shall be published in the Federal Register, scoping shall be undertaken in accordance with 40 CFR 1501.7, and a draft EIS shall be prepared and distributed. After external coordination and evaluation of the comments received, a final EIS shall be prepared and disseminated.

(f) *Finding of no significant impact* (FNSI). When the environmental review indicates no significant impacts are anticipated or when the project is altered to eliminate any significant adverse impacts, a FNSI shall be issued and made available to the public. The environmental assessment shall be included as a part of the FNSI.

(g) *Record of decision.* At the time of its decision on any action for which a final EIS has been prepared, the responsible official shall prepare a concise public record of the decision.

(h) *Monitoring.* The responsible official shall provide for monitoring to assure that decisions on any action where a final EIS has been prepared are properly implemented. Appropriate mitigation measure shall be included in actions undertaken by EPA.

§ 6.106 Deviations.

(a) *General.* The Director, OER, is authorized to approve deviations from these regulations.

(b) *Requirements.* (1) Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the substantive provisions of these regulations or the CEQ Regulations, the responsible officials shall notify the Director, OER, before taking such action. The responsible official shall consider to the extent possible alternative arrangements; such arrangements will be limited to actions necessary to control the immediate impacts of the emergency; other actions remain subject to the environmental review process. The Director, OER, after consulting CEQ, will inform the responsible official as expeditiously as possible of the disposition of his request.

(2) Where circumstances make it necessary to take action without observing procedural provisions of these

regulations, the responsible officals shall notify the Director, OER, before taking such action. If the Director, OER, determines such a deviation would be in the best interest of the Government, he shall inform the responsible official, as soon as possible, of his approval.

(3) The Director, OER, shall coordinate his action on a deviation under § 6.106(b)(1) or (2) above with the Director, Grants Administration Division, Office of Planning and Management, for any required grant related deviation under 40 CFR 30.1000.

Subpart B—Content of EISs

§ 6.200 The environmental impact statement.

Preparers of EISs must conform with the requirements of 40 CFR Part 1502 in writing EISs.

§ 6.201 Format.

The format used for EISs shall encourage good analysis and clear presentation of alternatives, including the proposed action, and their environmental, economic and social impacts. The following standard format for EISs should be used unless the responsible official determines that there is a compelling reason to do otherwise:

(a) Cover sheet
(b) Executive Summary
(c) Table of contents
(d) Introduction
(e) Purpose of and need for action
(f) Alternatives including proposed action
(g) Environmental consequences of the alternatives on the affected environment
(h) Coordination (includes list of agencies, organizations, and persons to whom copies of the EIS are sent)
(i) List of preparers
(j) Literature cited
(k) Index (commensurate with complexity of EIS)
(l) Appendices

§ 6.202 Cover sheet.

In addition to the requirements of 40 CFR 1502.11, the cover sheet shall include the name(s) and titles of the persons who were primarily responsible for preparing the EIS.

§ 6.203 Executive summary.

The executive summary shall describe in sufficient detail (10–15 pages) the critical facets of the EIS so that the reader can become familiar with the proposed project or action and its net effects. The executive summary shall focus on:

(a) The existing problem;

(b) A brief description of each alternative evaluated (including the preferred and no action alternatives) along with a listing of the environmental impacts, possible mitigation measures relating to each alternative, and any areas of controversy (including issues raised by governmental agencies and the public); and

(c) Any major conclusions.

A comprehensive summary may be prepared in instances where the EIS is unusually long in nature. In accordance with 40 CFR 1502.19, the comprehensive summary may be circulated in lieu of the EIS; however, both documents shall be distributed to any Federal, State and local agencies who have EIS review responsibilites and also shall be made available to other interested parties with request.

§ 6.204 Body of EIS.

(a) *Purpose and need.* The EIS shall clearly specify the underlying purpose and need to which EPA is responding. If the action is a request for a permit or a grant, the EIS shall clearly specify the goals and objectives of the applicant.

(b) *Alternatives including the proposed action.* In addition to 40 CFR 1502.14, the EIS shall include:

(1) *Alternatives considered by the applicant.* This section shall include a *balanced* description of each alternative considered by the applicant. These discussions shall include size and location of facilities, land requirements, operation and maintenance requirements, auxiliary structures such as pipelines or transmission lines, and construction schedules. The alternative of no action shall be discussed and the applicant's preferred alternative(s) shall be identified. For alternatives which were eliminated from detailed study, a brief discussion of the reasons for their having been eliminated shall be included.

(2) *Alternatives available to EPA.* EPA alternatives to be discussed shall include: (i) Taking an action; (ii) taking an action on a modified or alternative project; and (iii) denying the action.

(3) *Alternatives available to other permitting agencies.* When preparing a joint EIS, and if applicable, the alternatives available to other Federal and/or State agencies shall be discussed.

(4) *Other alternatives.* Description of additional reasonable alternatives not within the jurisdiction of the lead agency or any cooperating agency shall be discussed.

(c) *Environmental consequences of the alternatives on the affected environment.* The affected environment on which the evaluation of each alternative shall be based includes for example hydrology, geology, air quality, noise, biology, socioeconomics, energy, land use, and archeology/history. These subject matters shall be adapted to analyze each alternative within a project area. The discussion shall be structured so as to present the impacts of each alternative under each subject heading for easy comparison by the reader. The "no action" alternative should be described first so that the reader may relate the other alternatives to beneficial and adverse impacts related to the applicant doing nothing. Description of environmental setting for the purpose of necessary background shall be included in this discussion of the impacts of the "no action" alternative. The amount of detail in describing the affected environment shall be commensurate with the complexity of the situation and the importance of the anticipated impacts.

(d) *Coordination.* The EIS shall include:

(1) The objections and suggestions made by local, State, and Federal agencies before and during the EIS review process must be given full consideration, along with the issues of public concern expressed by individual citizens and interested environmental groups. The EIS must include discussions of any such comments concerning our actions, and the author of each comment should be identified. If a comment has resulted in a change in the project or the EIS, the EIS should explain the reason.

(2) Public participation through public hearings or scoping meetings shall also be included. If a hearing has been held prior to the publication of the EIS, a summary of the transcript should be included in this section. If one is to be held after the publication of the draft EIS, the date, time, place, and purpose shall be included here. Finally, if no public hearing will be held at any time, it shall be noted.

(3) In the final EIS, a summary of the coordination process, and EPA responses to comments on the draft EIS shall be included.

6.205 Incorporation by reference.

In addition to 40 CFR 1502.21, material incorporated into an EIS by reference shall be organized to the extent possible into a Supplemental Information Document and be made available for review upon request.

Subpart C—Coordination With Other Environmental Review and Consultation Requirements

§ 6.300 General.

Various Federal laws and executive orders protect specific environmental concerns. This subpart presents the central requirements of these laws and executive orders. It refers to the pertinent authority and regulatons or guidance that contain the procedures. These laws and executive orders establish review procedures independent of NEPA requirements. However, the responsible official shall coordinate to the greatest practicable extent the applicable procedures in this subpart during the implementation of the environmental review process.

§ 6.301 Historical and archeological sites.

EPA is subject to the requirements of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 *et seq.*, the Archeological and Historic Preservation Act of 1974, 16 U.S.C. 469 *et seq.*, and Executive Order 11593, entitled "Protection and Enhancement of the Cultural Environment." These provisions and regulations establish review procedures independent of NEPA requirements.

(a) Under section 106 of the National Historic Preservation Act and Executive Order 11593, if an EPA undertaking affects any property with historic, architectural, archeological or cultural value that is listed on or eligible for listing on the National Register of Historic Places, the responsible official shall comply with the procedures for consultation and comment promulgated by the Advisory Council on Historic Preservation in 36 CFR Part 800. The responsible official must identify properties affected by the undertaking that are potentially eligible for listing on the National Register and shall request a determination of eligibility from the Keeper of the National Register, Department of the Interior, under the procedures in 36 CFR Part 63.

(b) Under the Archeological and Historic Preservation Act, if an EPA activity may cause irreparable loss or destruction of significant scientific, prehistoric, historic or archeological data, the responsible official or the Secretary of the Interior is authorized to undertake data recovery and preservation activities. Applicable procedures are found in 36 CFR Parts 64 and 66.

§ 6.302 Wetlands, floodplains, agricultural lands, coastal zones, wild and scenic rivers, fish and wildlife and endangered species.

The following procedures shall apply to EPA administrative actions in programs to which the pertinent statute or executive order applies.

(a) *Wetlands protection.* Executive Order 11990, Protection of Wetlands, requires Federal agencies conducting certain activities to avoid, to the extent possible, the adverse impacts associated with the destruction or loss of wetlands and to avoid support of new construction in wetlands if a practicable alternative exists. EPA's Statement of Procedures on Floodplain Management and Wetlands Protection (January 5, 1979) requires EPA programs to determine if proposed actions will be in or will affect wetlands. If so, the responsible official shall prepare a floodplains/wetlands assessment, which will be part of the environmental assessment or environmental impact statement. The responsible official shall either avoid adverse impacts or minimize them if no practicable alternative to the action exists.

(b) *Floodplain management.* Executive Order 11988, Floodplain Management, requires Federal agencies to evaluate the potential effects of actions they may take in a floodplain to avoid, to the extent possible, adverse effects associated with direct and indirect development of a floodplain. EPA's Statement of Procedures on Floodplain Management and Wetlands Protection (January 5, 1979), requires EPA programs to determine whether an action will be located in or will affect a floodplain. If so, the responsible official shall prepare a floodplain/wetlands assessment. The assessment will become part of the environmental assessment or environmental impact statement. The responsible official shall either avoid adverse impacts or minimize them if no practicable alternative exists.

(c) *Agricultural lands.* It is EPA's policy to consider the protection of the Nation's environmentally significant agricultural lands from irreversible conversion to uses which result in its loss as an environmental or essential food production resource. Before undertaking an action, the responsible official shall determine whether there are significant agricultural lands in the planning area. If significant agricultural lands are identified, direct and indirect effects of the undertaking on the land shall be evaluated and adverse effects avoided or mitigated, to the extent possible, in accordance with EPA's Policy to Protect Environmentally Significant Agricultural Lands (September 8, 1978).

(d) *Coastal Zone Management.* The Coastal Zone Management Act, 16 U.S.C. 1451 *et seq.*, requires that all Federal activities in coastal areas be consistent with approved State Coastal Zone Management Programs, to the maximum extent possible. If an EPA action may affect a coastal zone area, the responsible official shall assess the impact of the action on the coastal zone. If the action significantly affects the coastal zone area and the State has an approved coastal zone management program, a consistency determination shall be sought in accordance with procedures promulgated by the Office of Coastal Zone Management in 15 CFR 930.

(e) *Wild and Scenic Rivers.* Under the Wild and Scenic Rivers Act, 16 U.S.C. 1274 *et seq.*, a Federal agency may not assist, through grant, loan, license or otherwise, the construction of a water resources project that would have a direct and adverse effect on rivers designated as wild and scenic under Section 3 of the Act or those designated as having potential for inclusion under Section 5 of the Act. The responsible official shall determine whether there are any designated rivers in the planning area. If so, the responsible official shall consult with the Department of Interior or Department of Agriculture to determine whether the action has a direct and adverse impact on a river or river segment. If the action has a direct and adverse impact, the impact shall be avoided. No action may be taken if the adverse effect cannot be avoided. Applicable consultation procedures are found in Section 7 of the Act.

(f) *Fish and Wildlife Protection.* The Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et seq.*, requires federal agencies involved in actions that will result in the control or structural modification of any natural stream or body of water for any purpose, to take action to protect the fish and wildlife resources which may be affected by the action. The responsible official shall consult with the Fish and Wildlife Service and the appropriate State agency to ascertain the means and measures necessary to mitigate, prevent and compensate for project-related losses of wildlife resources and to enhance the resources. Reports and recommendations of wildlife agencies should be incorporated into the environmental assessment or environmental impact statement. Consultation procedures are detailed in 16 U.S.C. 662.

(g) *Endangered Species Protection.* Under the Endangered Species Act, 16 U.S.C. 1531 *et seq.*, Federal agencies are prohibited from jeopardizing threatened or endangered species or adversely modifying habitats essential to their survival. The responsible official shall identify all designated endangered or threatened species or their habitat that may be affected by an EPA action. If listed species or their habitat may be affected, formal consultation must be undertaken with the Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate. If the consultation reveals that the EPA activity will adversely affect a listed species or habitat, mitigation measures must be undertaken. Applicable consultation procedures are found in 50 CFR 402.

§ 6.303 Air Quality.

(a) The Clean Air Act, as amended in 1977, 42 U.S.C. 7476(c), requires all Federal projects, licenses, permits, plans, and financial assistance activities to conform to any State Air Quality Implementation Plan (SIP) approved or promulgated under section 110 of the Act. For proposed EPA actions that may significantly affect air quality, the responsible official shall assess the extent of the direct or indirect increases in emissions and the resultant change in air quality.

(b) If the action has a significant direct or indirect adverse impact on air quality, the responsible official shall consult with the State or local agency or agencies, designated by the Governor as having the lead responsibility for SIP development and implementation, to ascertain the conformity of the action to the SIP, including compliance with all applicable emission limitations or standards. The determination of conformity by the responsible official shall certify that the growth of direct and indirect emissions is allowable as a component of the SIP's emission growth increment for areas where national ambient air quality standards have not been attained; or if a case-by-case offset approach is included in the SIP for such areas, that any necessary offsets have been obtained; and that the EPA action complies with all other provisions and requirements of the SIP, whether for attainment or nonattainment areas.

(c) The responsible official shall submit the conformity determination to the designated lead State or local agency for its concurrence. The action shall not be approved by the responsible official if the designated lead State or local agency does not concur with the conformity determination until all objections have been resolved. Lack of response from the designated lead State or local agency within 45 days of the request for a conformity concurrence will be interpreted by the Responsible official to mean that the lead agency concurs with the conformity determination. No action may be taken if it is determined by the responsible official that such action would not be in conformity with an approved SIP.

Subpart D—Public and Other Federal Agency Involvement

§ 6.400 Initial public involvement.

(a) *General.* EPA shall make diligent efforts to involve the public in the environmental review process consistent with program regulations and EPA policies on public participation. The responsible official shall ensure that public notice is provided for, in accordance with, 40 CFR 1506.6(b) and shall ensure that public involvement is carried out in accordance with EPA Public Participation Regulations, 40 CFR Part 25, and other applicable EPA public participation procedures.

(b) *Publication of notices of intent.* As soon as practicable after its decision to prepare an EIS and before the scoping process, the responsible official shall send the notice of intent to interested and affected members of the public and shall request the OER to publish the notice of intent in the **Federal Register.** The scoping process should be initiated as soon as practicable in accordance with the requirements of 40 CFR 1501.7. Participants in the scoping process shall be kept informed of substantial changes which evolve during the EIS drafting process.

(c) *Public meetings or hearings.* Public meetings or hearings shall be conducted consistent with Agency program requirements. There shall be a presumption that a scoping meeting will be conducted whenever a notice of intent has been published. The responsible official shall consider holding a public hearing on a draft EIS especially when a hearing may facilitate the resolution of conflicts or significant public controversy.

(d) *Findings of no significant impact.* The responsible official shall allow for sufficient public review of a FNSI before it becomes final. The FNSI and attendant publication must state that interested persons disagreeing with the decision may submit comments for consideration by EPA. EPA shall not take administrative action on the project for at least thirty (30) calendar days after release of the FNSI and may allow more time for response. The FNSI shall be made available to the public in accordance with the requirements of 40 CFR 1506.6.

§ 6.401 Official filing requirements.

(a) *General.* OER is responsible for the conduct of the official filing system for EISs. This system was established as a central repository for all EISs which serves not only as means of advising the public of the availability of each EIS but provides a uniform method for the computation of minimum time periods for the review of EISs. OER publishes a weekly notice in the **Federal Register** listing all EISs received during a given week. The 45 day and 30 day review periods for draft and final EISs, respectively, are computed from the Friday following a given reporting week. Pursuant to 40 CFR section 1506.9, responsible officials shall comply with the guidelines established by OER on the conduct of the filing system.

(b) *Minimum time periods.* No decision on EPA actions shall be made until the later of the following dates:

(1) Ninety (90) days after the date established in § 6.401(a) above from which the draft EIS review time period is computed.

(2) Thirty (30) days after the date established in § 6.401(a) above from which the final EIS review time period is computed.

(c) *Filing of EISs.* All EISs, including supplements, must be officially filed with OER. Responsible officials shall transmit each EIS in five (5) copies to the Director, Office of Environmental Review, EIS Filing Section (A–104). OER will provide CEQ with one copy of each EIS filed. No EIS will be officially filed by OER unless assurances have been made that the EIS has been made available to the public. OER will not accept unbound copies of EISs for filing.

(d) *Extensions or waivers.* The responsible official may independently extend review periods. In such cases, the responsible official shall notify OER as soon as possible so that adequate notice may be publised in the weekly **Federal Register** report. OER upon a showing of compelling reasons of national policy may reduce the prescribed review periods. Also, OER upon a showing by any other Federal agency of compelling reasons of national policy may extend prescribed review periods, but only after consultation with the responsible official. If the responsible official does not concur with the extension of time, OER may not extend a prescribed review period more than 30 days.

(e) *Recission of filed EISs.* The responsible official shall file EISs with

OER no later than they are transmitted to commenting agencies and made available to the public. The responsible official is required to reproduce an adequate supply of EISs to satisfy these distribution requirements prior to filing an EIS. If the EIS is not made available, OER will consider retraction of the EIS or revision of the prescribed review periods based on the circumstances.

§ 6.402 Availability of documents.

(a) *General.* The responsible official will ensure sufficient copies of the EIS are distributed to interested and affected members of the public and are made available for further public distribution. EISs, comments received, and any underlying documents should be available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552(b)), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed actions. To the extent practicable, materials made available to the public shall be provided without charge; otherwise, a fee may be imposed which is not more than the actual cost of reproducing copies required to be sent to another Federal agency.

(b) *Public information.* Lists of all notices of intent, EISs, and FNSIs prepared by EPA shall be maintained by OER for the public. Each responsible official will maintain a similar monthly status report for all environmental documents prepared. In addition, OER will make available for public inspection copies of EPA EISs; the responsible official shall do the same for any prepared EIS.

§ 6.403 The commenting process.

(a) *Inviting comments.* After preparing a draft EIS and before preparing a final EIS, the responsible official shall obtain the comments of Federal agencies, other governmental entities and the public in accordance with 40 CFR 1503.1. If the OER determines that a draft EIS is so inadequate as to preclude meaningful analysis, the responsible official shall prepare and circulate a revised draft of the appropriate portion.

(b) *Response to comments.* The responsible official shall respond to comments in the final EIS in accordance with 40 CFR 1503.4.

§ 6.404 Supplements.

(a) *General.* The responsible official shall consider preparing supplements to draft and final EISs in accordance with 40 CFR 1502.9(c). A supplement shall be prepared, circulated and filed in the same fashion (exclusive of scoping) as draft and final EISs.

(b) *Alternative procedures.* In the case where the responsible official wants to deviate from existing procedures, OER shall be consulted. OER shall consult with CEQ on any alternative arrangements.

Subpart E—Environmental Review Procedures for Wastewater Treatment Construction Grants Program

§ 6.500 Purpose.

This subpart amplifies the procedures described in Subparts A through D with detailed environmental review procedures for the wastewater treatment works construction grants program under Title II of the Clean Water Act.

§ 6.501 Definitions.

(a) "Step 1 grant" means a project for preparation of a facilities plan as described in 40 CFR 35.930–1.

(b) "Step 2 grant" means a project for preparation of construction drawings and specifications as described in 40 CFR 35.930–1.

(c) "Step 3 grant" means a project for erection and building of a publicly owned treatment works as described in 40 CFR 35.930–1.

(d) "Step 2 plus Step 3 grant" means a project which combines the grants set forth in § 6.501 (b) and (c) above.

§ 6.502 Applicability

(a) *Administrative actions covered.* This subpart applies to the administrative actions listed below (except as provided in § 6.502(c) below):

(1) Approval of a facilities plan; and

(2) Award of grant assistance for a project involving step 2 or step 3 when the responsible official determines that significant change has occurred in the project or its impact from that described in the facilities plan.

(b) *Administrative actions excluded.* The actions listed below are not subject to the requirements of this subpart:

(1) Approval of State priority lists;

(2) Award of a step 1 grant;

(3) Approval or award of a section 206 planning grant;

(4) Award of grant assistance for a step 2 or step 3 project unless the responsible official determines that significant change has occurred in the project or its impact from that described in the facilities plan;

(5) Approval of issuing an invitation for bids or awarding a construction contract;

(6) Actual physical commencement of building or erection;

(7) Award of a section 206 grant for reimbursement;

(8) Award of a grant increases unless the responsible official determines that significant change has occurred in a project or its impact as described in the approved facilities plan; and

(9) Awards of training assistance under section 109(b) the Clean Water Act;

(10) Approval of an ICR system or user charge system.

(c) *Consultation during the environmental review process.* When there are overriding considerations of cost or impaired program effectiveness, the responsible official may award a step 2 or step 3 grant for a discrete segment of the project plans or construction before the environmental review is completed. The project segment must be noncontroversial, necessary to correct water quality or other immediate environmental problems and cannot, by its completion, foreclose any options being considered in the environmental review. The remaining portion of the project shall be evaluated to determine if an EIS is required. In applying the criteria for this determination, the entire project shall be considered, including those parts permitted to proceed. In no case may these types of grant assistance for step 2 or step 3 projects be awarded unless both the OER and CEQ have been consulted, a FNSI has been issued on the segments permitted to proceed at least 30 days prior to grant award, and the grant award contains a specific agreement prohibiting action on the segment of planning or construction for which the environmental review is not complete. The responsible official will consult with OER, who will consult with CEQ.

§ 6.503 Public participation.

(a) *General.* It is EPA policy that optimum public participation be achieved during the environmental review process as deemed appropriate by the responsible official under 40 CFR Part 25 and implementing provisions of Part 35, Subpart E of this Chapter. Compliance with Part 25 and implementing provisions constitutes compliance with public participation requirements under this part.

(b) *Full-scale public participation.* In accordance with 40 CFR 35.917–5, the responsible official shall assure that a full-scale public participation program shall be undertaken where EPA prepares or requires the preparation of

an EIS during the facility planning process.

(c) Public participation activities undertaken in connection with the environmental review process should be coordinated with the facility planning public participation program wherever possible.

(d) The responsible official may institute such additional NEPA-related public participation procedures as he deems necessary during the environmental review process.

§ 6.504 Limitations on actions during environmental review process.

No administrative action under § 6.502(a) shall be taken until the environmental review process has been completed except as provided under § 6.502(c) above. The responsible official shall ensure compliance in accordance with 40 CFR 1506.1 and subparts A, C, and D of this regulation, and all policies, guidance and regulations adopted to implement the regulations of the Clean Air Act under 42 U.S.C. 7616.

§ 6.505 Criteria for preparing EISs.

The responsible official shall assure that an EIS will be issued when he determines that any of the following conditions exists:

(a) The treatment works will induce significant changes (either absolute changes or increases in the rate of change) in industrial, commercial, agricultural, or residential land use concentrations or distributions. Factors that should be considered in determining if these changes are significant include but are not limited to: the vacant land subject to increased development pressure as a result of the treatment works; the increases in population which may be induced; the faster rate of change of population; changes in population density; the potential for overloading sewage treatment works; the extent to which landowners may benefit from the areas subject to increased development; the nature of land use regulations in the affected area and their potential effects on development; and deleterious changes in the availability or demand for energy.

(b) Where the treatment works or collector system will have significant adverse effects on wetlands, including indirect effects, or any major part of the treatment works will be located on wetlands.

(c) Where the treatment works or collector system will significantly affect the habitat of wildlife on the Department of Interior's or a State's threatened and endangered species lists, or the treatment works will be located on the habitat.

(d) Implementation of the treatment works or plan may directly cause or induce changes that significantly:

(1) Displace population;

(2) Deface an existing residential area;

(3) Adversely affect a floodplain; or

(4) Adversely affect significant amounts of prime or unique agricultural land, or agricultural operations on this land as defined in EPA's Policy to Protect Environmentally Significant Agricultural Land.

(e) The treatment works will have significant adverse effects on parklands, other public lands or areas of recognized scenic, recreational, archaeological, or historic value.

(f) The treatment works may directly or through induced development have a significant adverse effect upon local ambient air quality, local ambient noise levels, surface or groundwater quality or quantity, fish, wildlife, and their natural habitats.

(g) The treated effluent is being discharged into a body of water where the present classification is too lenient or is being challenged as too low to protect present or recent uses, and the effluent will not be of sufficient quality to meet the requirements of these uses.

(h) The environmental impact of the treatment works is likely to be highly controversial.

When full-scale public participation is required under 40 CFR 35.917–5(c), the responsible official shall consider preparing an EIS.

§ 6.506 Environmental review process.

Consistent with 40 CFR 1501.2, EPA shall integrate the environmental review process throughout the construction grants program facilities planning process (Step 1). Critical decisionmaking points and the scope of review recommended include:

(a) *Award of a facilities planning grant (Step 1).* Prior to award of Step 1 assistance, or within no more than 30 days thereafter, EPA may review, or request that the State review, if the program is delegated under section 205(g) of the Clean Water Act, the existence of environmentally sensitive areas in the facilities planning area. This review is intended to be brief and concise, drawing on existing information and knowledge of EPA, State agencies, regional planning agencies, areawide water quality management agencies, and grantees. This review may be used to determine the scope of the environmental information document prepared by the grantee. It may also be used to make an early determination of the need for an EIS. Whenever possible, this initial review should be discussed at the first conference held with the potential grantee.

(b) *Mid-course reviews.* A review of environmental information developed by the grantee should be conducted whenever meetings are held to assess the progress of facilities plan development. These meetings should ideally be held after completion of the majority of the environmental information document, but before a final alternative is selected. When the program is delegated, the State shall forward to EPA the required environmental information documents as early as possible to enable EPA to make decisions with respect to the need for an EIS. Although the decision whether to prepare an EIS must be made before a facilities plan can be approved, a decision to prepare an EIS is encouraged earlier during the facilities planning process. Following any mid-course review meeting, EPA should inform interested parties as to the following:

(1) The preliminary nature of the agency's position on preparing an EIS;

(2) The relationship between the facilities planning and environment review processes;

(3) The desirability of further public input; and

(4) A contact person for further information.

(c) *Review of completed facilities plan.* EPA, or the State, when the program is delegated, shall review any completed facilities plan with particular attention to the environmental information document and its utilization in the development of alternatives and the selection of a final alternative. An adequate environmental information document must be an integral part of any facilities plan submitted to EPA or to a State. For those States where the review of facilities plans has been delegated, State personnel will be required to prepare a preliminary environmental assessment which serves as an adequate basis for EPA's decision to issue a FNSI or an EIS. The environmental assessment shall cover all potentially significant environmental impacts and related factors. Each of the following subjects shall be critically reviewed to identify potentially significant environmental concerns to be addressed in the environmental assessment:

(1) *Description of the existing environment.* For the delineated facilities planning area, the existing environmental conditions relevant to the analysis of alternatives or

determinations of the environmental impacts (especially indirect) of the proposed action shall be considered. The description may include those environmental factors potentially affected by the alternatives under consideration, such as: surface and groundwater quality; water supply and use; general hydrology; air quality; noise levels, energy production and consumption; land use trends; population projections; wetlands, floodplains, coastal zones and other environmentally sensitive areas; historic and archaeological sites; other related Federal or State projects in the area; plant and animal communities which may be affected, especially those containing threatened or endangered species.

(2) *Description of the future environment without the project.* The relevant future environmental conditions shall be described. The no action alternative must be adequately evaluated.

(3) *Purpose and need.* This should include a summary discussion and demonstration of the need for wastewater treatment in the facilities planning area, with particular emphasis on existing public health or water quality problems and their severity and extent.

(4) *Documentation.* Sources of information used to describe the existing environment and to assess future environmental impacts should be clearly referenced. These sources should include regional, State and Federal agencies with responsibility or interest in the types of impacts listed in section 6.505(a)(1) above and in subpart C.

(5) *Evaluation of alternatives.* This discussion shall include a comparative analysis of feasible alternatives (including the no action alternative) throughout the study area. The alternatives shall be screened with respect to capital and operating costs; significant direct and indirect environmental effects; physical, legal or institutional constraints; and compliance with regulatory requirements. Special attention should be given to long term impacts, irreversible impacts and induced impacts such as development. The reasons for rejecting any alternatives shall be presented in addition to any significant environmental benefits precluded by rejection of an alternative. The analysis should consider, when relevant to the project:

(i) Flow and waste reduction measures, including infiltration/inflow reduction;

(ii) Appropriate water conservation measures;

(iii) Alternative locations, capacities, and construction phasing of facilities;

(iv) Alternative waste management techniques, including treatment and discharge, wastewater reuse, land application, and individual systems;

(v) Alternative methods for management of sludge, other residual materials, including utilitization options such as land application, composting, and conversion of sludge for marketing as a soil conditioner or fertilizer.

(vi) Improving effluent quality through more efficient operation and maintenance;

(vii) Appropriate energy reduction measures;

(viii) Multiple use, including recreation and education.

(6) *Environmental consequences.* Relevant direct and indirect impacts of the proposed action shall be considered, giving special attention to unavoidable impacts, steps to mitigate adverse impacts, any irreversible or irretrievable commitments of resources to the project and the relationship between local short term uses of the environment and the maintenance and enhancement of long term productivity. The significance of land use impacts shall be considered, based on the analysis required under Appendix A to 40 CFR Part 35, Subpart E. Any specific land use controls (including grant conditions and areawide waste treatment management plan requirements) should be identified and referenced. In addition to these items, the responsible official may require that other analyses and data, which are needed to satisfy environmental review requirements, be included with the facilities plan. Such requirements should be discussed during initial conference with potential grantees or mid-course review meetings. The responsible official also may require submission of supplementary information either before or after award of grant assistance for a step 2 project or before a step 3 project if needed for compliance with environmental review requirements. Requests for supplementary information shall be made in writing.

(7) *Steps to minimize adverse effects.* (i) This section shall describe structural and nonstructural measures, if any, in the facilities plan, or additional measures identified during the review, to mitigate or eliminate significant adverse effects on the human and natural environments. Structural provisions include changes in facility design, size, and location; non-structural provisions include staging facilities as well as developing and enforcing land use regulations and environmental protection regulations.

(ii) The responsible official may not award step 2 or step 3 grant assistance if the grantee has not made, or agreed to make, pertinent changes in the project, in accordance with determinations made in a FNSI or EIS. He may condition a grant to ensure that the grantee will comply, or seek to obtain compliance, with such environmental review determinations. The conditions shall address secondary impacts to the extent deemed appropriate by the responsible official.

(d) *Environmental review.* The environmental review shall apply the criteria under § 6.505 above. If deficiencies exist in the environmental information document, the environmental assessment or other supporting documentation, they shall be identified in writing by EPA and must be corrected before the determination whether an EIS is required can be made and the plan approved. This review shall be conducted by the responsible official and based on any of the following:

(1) A complete facilities plan and environmental information document, whenever review of facilities plan has not been delegated;

(2) The grant applicant's environmental information document and the preliminary environmental assessment prepared by the State for a State which has been delegated authority for facilities plan review; or

(3) Other documentation, deemed necessary by the responsible official or submitted by a State with delegated review authority, adequate to make an EIS determination by EPA.

(e) *Finding of no significant impact.* If, after completion of the environmental review, a determination is made that an EIS will not be required, the responsible official shall prepare and distribute a FNSI in accordance with § 6.104 and Subpart D. The FNSI will be based on EPA's independent review and environmental assessment which will either be incorporated into or attached to the FNSI. Once a FNSI and environmental assessment have been prepared for the facilities plan for a certain area, grant awards may proceed without preparation of additional FNSIs, unless the responsible official has determined that the project has changed significantly from that described in the facilities plan.

(f) *Environmental assessment.* A decision not to prepare an EIS must be substantiated by an environmental assessment. It shall as a minimum be a

concise document which provides sufficient data and analysis for determining that the alternative proposed in the facilities plan will not have significant impacts upon the human environment.

(1) In the case where the responsible official reviews the complete facilities plan, the environmental assessment shall be prepared based on that review and the review of the environmental information document and any other data deemed appropriate.

(2) Where EPA has delegated review authority to a State, the EPA environmental assessment may be based on and reference either the State's environmental assessment or the other supporting documentation used by the responsible official.

(g) *Notice of intent.* If, after completion of the environmental review, or subsequent to any of the steps described in § 6.506 (a), (b), or (c) above, a determination is made that an EIS will be required, the responsible official shall prepare and distribute a Notice of Intent in accordance with § 6.104 and Subpart D.

(h) *Scoping.* As soon as possible, but not later than 30 days after the publication of the Notice of Intent, the responsible official will convene a meeting of affected Federal, State and local agencies, the grantee and other interested parties (e.g. Advisory Group members under 40 CFR 25.7) to determine the scope of the EIS. A notice of this scoping meeting will meet the requirements of subpart D. As part of the scoping meeting EPA will as a minimum:

(1) Determine the scope and the significant issues to be analyzed in depth in the EIS;

(2) Identify those issues which are not significant;

(3) Determine what information is needed from cooperating agencies or other parties;

(4) Discuss the method for EIS preparation and the public participation strategy;

(5) Identify consultation requirements of other environmental laws, in accordance with subpart C; and

(6) Determine the relationship between the EIS and the completion of the facilities plan and any necessary coordination arrangements between the preparers of both documents.

(i) *EIS Method.* EPA shall prepare the EIS by any one of the following means:

(1) Directly by its own staff;

(2) By contracting directly with a qualified consulting firm; or

(3) By utilizing a joint EIS process, whereby the grantee contracts directly with a qualified consulting firm. In this instance, the following selection requirements shall be fulfilled:

(i) A Memorandum of Understanding shall be developed between EPA, the grantee, and where possible the State, outlining the responsibilities of each party and their relationship to the EIS consultant.

(ii) EPA shall approve evaluation criteria to be used in the consultant selection process.

(iii) EPA shall review and approve the selection process.

(iv) EPA shall approve the consultant selected for EIS preparation.

(v) The detailed Scope of Work prepared by the EIS consultant must be approved by EPA.

(vi) The EIS consultant shall execute a disclosure statement prepared by EPA indicating that the consultant has no financial or other interest in the outcome of the project.

(4) By adopting after independent evaluation by the responsible official a grantee's facilities plan and NEPA-related information to the extent that the facilities plan and NEPA-related information adequately address relevant environmental issues, when the responsible official determines under § 6.505 that an EIS should be issued. This procedure shall be utilized only when a decision to issue an EIS is made on the basis of the information obtained or circumstances arising after a grantee has substantially completed its facilities plan.

§ 6.507 Limits on delegation to States.

(a) *General.* In cases where the authority for facilities plan review has been delegated to the State under Section 205(g) of the Clean Water Act, EPA shall, as a minimum, retain the following responsibilities:

(1) The determination of whether or not to prepare an EIS shall be solely that of EPA. EPA may consider a State's recommendation, but the ultimate decision under NEPA shall not be delegated.

(2) Findings of No Significant Impact and the environmental assessment shall be approved, finalized and issued by EPA.

(3) Notices of Intent shall be prepared and issued by EPA.

(b) *Elimination of duplication.* The responsible official shall assure that maximum efforts are undertaken to minimize duplication within the limits described under §§ 6.506 and 6.507(a) above. In carrying out requirements under this subpart, maximum consideration should be given to eliminating duplication in accordance with 40 CFR section 1506.2, where there are State or local procedures comparable to NEPA, and entering into Memoranda of Understanding with a State concerning workload distribution and responsibilities for implementing the facilities planning process.

§ 6.508 Record of decision.

(a) *General.* When a final EIS has been issued, the responsible official shall prepare a record of decision in accordance with 40 CFR 1505.2 prior to the approval of the facilities plan.

(b) *Mitigation measures.* The record of decision shall include identification of mitigation measures derived from the EIS process. Prior to the award of step 1 or step 2 grant assistance, the responsible official must ensure that effective mitigation measures are implemented by the grantee. This may be done by revising the facilities plan, initiating other steps to mitigate adverse effects, or agreeing to conditions in grants requiring actions to minimize effects. Care should be exercised if a condition is to be imposed in a grant document to assure that the applicant possesses the authority to fulfill the conditions.

§ 6.509 Monitoring.

(a) *General.* The responsible official shall ensure there is adequate monitoring of mitigation measures and other grant conditions which are identified in the final EIS and record of decision.

(b) *Enforcement.* The responsible official may consider taking the following actions consistent with 40 CFR 35.965 if the applicant fails to comply with grant conditions:

(1) Terminating or annulling the grant;

(2) Disallowing project costs related to noncompliance;

(3) Withholding of project payments;

(4) Suspending work;

(5) Finding the grantee to be nonresponsible or ineligible for future Federal assistance or for approval for future contract awards under EPA grants;

(6) Seeking an injunction against the grantee; or

(7) Instituting such other administrative or judicial action as may be legally available and appropriate.

Subpart F—Environmental Review Procedures for the New Source NPDES Program

§ 6.600 Purpose.

(a) *General.* This subpart provides procedures for carrying out the environmental review process for the

issuance of new source National Pollutant Discharge Elimination System (NPDES) discharge permits authorized under section 306, section 402, and section 511(c)(1) of the Clean Water Act.

(b) *Permit regulations.* All references in this subpart to the "permit regulations" shall mean Parts 122, 124, and 125 of Title 40 of the Code of Federal Regulations relating to the NPDES program.

§ 6.601 Definitions.

(a) The term "administrative action" for the sake of this subpart means the issuance by EPA of an NPDES permit to discharge as a new source.

(b) the term "third party" defines a method for preparing both EPA s environmental impact statement and the permit applicant's environmental information document by using one contractor Through a memorandum of understanding, the responsible official and the new source applicant agree 1) that the responsible official will choose a contractor and manage the contract, 2) that the permit applicant will pay for the contract service and 3) that the document produced will serve as both the environmental information document and the environmental impact statement.

§ 6.602 Applicability.

(a) *General.* The procedures set forth under subparts A, B, C and D, and this subpart shall apply to the issuance of new source NPDES permits, except for the issuance of a new source NPDES permit from any State which has an approved NPDES program in accordance with section 402(b) of the Clean Water Act.

(b) *New source determination.* An NPDES permittee must be determined a "new source" before these procedures apply New source determinations will be undertaken pursuant to the provisions of the permit regulations under 40 CFR 122.479(a) and (b) and § 124.12.

§ 6.603 Limitations on actions during environmental review process.

(a) *General.* The processing and review of an applicant's NPDES permit application shall proceed concurrently with the procedures within this subpart. Further, no administrative action shall be taken by EPA until the environmental review process is completed and the responsible official has complied with subparts A, C, and D of this regulation.

(b) *Activities of permit applicant.* Consistent with the provisions of 40 CFR 1506.1 and 40 CFR 122.47(c), the responsible official shall ensure that the applicant does not undertake activity which has environmental impact or limits the choice of alternatives before the environmental review process is completed. If activities are begun, the responsible official shall promptly notify the applicant that EPA will take appropriate action to ensure the objectives and procedures of NEPA are achieved.

§ 6.604 Environmental review process.

(a) *New source.* If EPA s initial determination under § 6.604(b) is that the facility is a new source. the responsible official shall evaluate the environmental information to determine if any significant impacts are anticipated and whether an EIS is necessary If the permit applicant requests. the responsible official shall establish time limits for the completion of the environmental review process consistent with 40 CFR 1501.8.

(b) *Information needs.* If additional information is necessary for a proper environmental review this information shall be provided by the permit applicant in an environmental information document. The responsible official shall consult with the applicant to determine the scope of an environmental information document. In doing this the responsible official shall consider the size of the new source and the extent to which the applicant is capable of providing the required information. The responsible official shall not require the applicant to gather data or perform analyses which duplicate either existing data or the results of existing analyses available to EPA. The responsible official shall keep requests for data to the minimum consistent with his responsibilities under NEPA.

(c) *Environmental assessment.* The responsible official shall prepare a written environmental assessment based, on an environmental review of either the environmental information document or any other available environmental information.

(d) *EIS determination.* (1) When the environmental assessment indicates that a significant environmental impact may occur and that the significant adverse impacts cannot be eliminated by making changes in the proposed new source project, a notice of intent shall be issued, and a draft EIS prepared and distributed. When the environmental assessment indicates no significant impacts are anticipated or when the proposed project is changed to eliminate the significant adverse impacts, a FNSI shall be issued.

(2) The FNSI together with the environmental assessment that supports the finding shall be distributed in accordance with § 6.400(d) of this regulation.

(e) *Lead agency* (1) If the environmental review reveals that the preparation of an EIS is required, the responsible official shall determine if other Federal agencies are involved with the project The responsible official shall contact all other involved agencies and together the agencies shall decide the lead agency based on the criteria set for in the 40 CFR 1501.5.

(2) If. after the meeting of involved agencies. EPA has been determined to be the lead agency the responsible official may request that other involved agencies be cooperating agencies. Cooperating agencies shall be chosen and shall be involved in the EIS preparation process in the manner prescribed in the 40 CFR 1501.6(a). If EPA has been determined to be a cooperating agency the responsible official shall be involved in assisting in the preparation of the EIS in the manner prescribed in 40 CFR 1501.6(b).

(f) *Preparation of the EIS.* (1) If EPA is the lead agency for the preparation of an EIS, the responsible official shall arrange through OER for the publication of the Notice of Intent in the **Federal Register**, distribute both the Notice of Intent and the environmental assessment and arrange and conduct a scoping meeting as outlined in 40.CFR 1501.7.

(2) If the responsible official and the permit applicant agree to a third party method of EIS preparation, the responsible official shall insure that a Notice of Intent is published and that a scoping meeting is held before the third party contractor begins work which may influence the scope of the EIS.

(3) Draft and Final EISs may be developed by several methods including preparation of the EIS entirely by EPA personnel or utilization of consultant services either retained by the responsible official or retained through a third party agreement between the responsible official and the applicant.

(i) A third party agreement for the preparation of an EIS may be requested by either the applicant or responsible official. Such an agreement however shall not be initiated unless both the applicant and the responsible official have agreed to its creation. Generally a third party agreement will be established prior to the development of the applicant's environmental information document and serve the purposes of this document as well as the EIS. The responsible official shall select

the consultant and shall base such selection on the consultant's objectivity, financial dependance on the third party contract, ability, and absence of conflicting interest. Third party contractors will be required to execute a disclosure statement prepared by the responsible official signifying that they have no financial or other interest in the outcome of the project.

(ii) In all cases when a third party agreement is used to prepare an EIS, the responsible official shall specify the information to be developed and shall supervise the gathering, analysis, and presentation of the information. The responsible official shall restrict requests for information from the applicant to the miminum consistent with his responsibilities under NEPA and shall insure that the applicant has sufficient opportunity to review all material prior to publication.

(4) The responsible official ensure that the final EIS and supplements thereto are introduced into the formal administrative record for any evidentiary hearing conducted relative to a permit application.

§ 6.605 Criteria for preparing EISs.

(a) *General guidelines.* (1) When determining the significance of a proposed new source's impact, the responsible official shall consider both its short term and long term effects as well as its direct and indirect effects and beneficial and adverse environmental impacts as defined in 40 CFR 1508.8.

(2) If EPA is proposing to issue a number of new source NPDES permits during a limited time span and in the same general geographic area, the responsible official shall examine the possibility of tiering EISs. If the permits are minor and environmentally insignificant when considered separately, the responsible official may determine that the cumulative impact of the issuance of all these permits may have a significant environmental effect and require an EIS for the area. Each separate decision to issue an NPDES permit shall then be based on the information in this areawide EIS.

(b) *Specific criteria.* An EIS will be prepared when:

(1) The new source will induce or accelerate significant changes in industrial, commercial, agricultural, or residential land use concentrations or distributions which have the potential for significant environmental effects. Factors that should be considered in determining if these changes are environmentally significant include but are not limited to: The nature and extent of the vacant land subject to increased development pressure as a result of the new source; the increases in population or population density which may be induced and the ramifications of such changes; the nature of land use regulations in the affected area and their potential effects on develoment and the environment; and the changes in the availability or demand for energy and the resulting environmental consequences.

(2) The new source will directly, or through induced development, have significant adverse effect upon local ambient air quality, local ambient noise levels, floodplains, surface or groundwater quality or quantity, fish, wildlife, and their natural habitats.

(3) Any major part of the new source will have significant adverse effect on the habitat of threatened or endangered species on the Department of Interior's lists of threatened and endangered species.

(4) The environmental impact of the issuance of a new source NPDES permit is likely to be highly controversial.

(5) The environmental impact of the issuance of a new source NPDES permit will have significant direct and adverse effect on a property listed in or eligible for listing in the National Register of Historic Places.

(6) Any major part of the source will have significant adverse effects on parklands, wetlands, wild and scenic rivers, reservoirs or other important bodies of water, navigation projects, or agricultural lands.

§ 6.606 Record of decision.

At the time of permit award, the responsible official shall prepare a record of decision in those cases where a final EIS was issued in accordance with 40 CFR section 1505.2 and pursuant to the provisions of the permit regulations under 40 CFR 124.61 and 124.122.

§ 6.607 Monitoring.

In accordance with 40 CFR 1505.3 and pursuant to 40 CFR 122.47(c) and 122.17 a permit applicant will sign a legally binding written agreement which requires compliance with all EIS-related requirements before construction begins and shall periodically report on the progress of any compliance actions, required by the EIS, which must extend beyond the effective date of the permit.

Subpart G—Environmental Review Procedures for Research and Development Programs

§ 6.700 Purpose.

This subpart amplifies the requirements decribed in subparts A through D by providing more specific environmental review procedures on research and development programs undertaken by the Office of Research and Development (ORD).

§ 6.701 Definitions.

The term "appropriate program official" means the official at each decision level within ORD to whom the Assistant Administrator has delegated responsibility for carrying out the environmental review process.

§ 6.702 Applicability.

The requirements of this subpart apply to administrative actions undertaken to approve intramural and extramural programs under the purview of ORD.

§ 6.703 Criteria for preparing EISs.

(a) An EIS shall be prepared by the appropriate program official when:

(1) The action will have significant adverse impacts on public parks, wetlands, floodplains, coastal zones, agricultural lands, wildlife habitats, or areas of recognized scenic or recreational value.

(2) The action will significantly deface an existing residential area.

(3) The action may directly or through induced development have a significant adverse effect upon local ambient air quality, local ambient noise levels, surface or groundwater quality and fish, wildlife or their natural habitats.

(4) The project consists of field tests involving the introduction of significant quantities of toxic or polluting agricultural chemicals, animal wastes, pesticides, radioactive materials, or other hazardous substances into the environment by ORD, its grantees or its contractors.

(5) The action involve the introduction of species or subspecies not indigenous to an area.

(6) There is a high probability of an action ultimately being implemented on a large scale, and this implementation may result in significant environmental impacts.

(7) The project involves commitment to a new technology which is significant and may restrict future viable alternatives.

(b) An EIS will not usually be needed when:

(1) The project is conducted completely within any laboratory or other facility, and external environmental effects have been minimized by methods for disposal of laboratory wastes and safeguards to prevent hazardous materials entering the environment accidentally; or

(2) The project is a relatively small experiment or investigation that is part of a non-Federally funded activity of the private sector, and it makes no significant new or additional contribution to existing pollution.

§ 6.704 Environmental review process.

Environmental review activities will be integrated into the decision levels of ORD's research planning system to assure managerial control.

(a) *Environmental information.* (1) Environmental information documents shall be submitted with all grant applications and all unsolicited contract proposals. The documents shall contain the same information required for EISs under Subpart B. Guidance on environmental information documents shall be included in all grant application kits and attached to instructions for the submission of unsolicited proposals.

(2) In the case of competitive contracts, environmental information documents need not be submitted by potential contractors since the environmental review procedures must be completed before a request for proposal (RFP) is issued. If there is a question concerning the need for an environmental information document the potential contractor should contact the official responsible for the contract.

(b) *Environmental review.*

(1) At the start of planning year, an environmental review will be performed for each program plan with its supporting substructures (work plans and projects) before incorporating them into the ORD program planning system, unless they are excluded from review by existing legislation. This review is an evaluation of the potentially adverse environmental effects of the efforts required by the program plan. The criteria in § 6.703 above shall be used in conducting this review. Each program plan with its supporting substructures which does not have significant adverse impacts may be dismissed from further current year environmental considerations with a single FNSI. Any supporting substructures of a program plan which cannot be dismissed with the parent plan shall be reviewed at the appropriate subordinate levels of the planning system.

(i) All continuing program plans and supporting substructures, including those previously dismissed from consideration, will be reevaluated annually. An environmental review will coincide with the annual planning cycle and whenever a major redirection of a parent plan is undertaken. All environmental documents will be updated as appropriate.

(ii) Later plans and/or projects, added to fulfill the mission objectives but not identified at the time program plans were approved, will be subjected to the same environmental review.

(2) The responsible official shall complete the EPA Form 5300–23 for each extramural project subject to an environmental review. For projects where the impact is virtually nonexistent, e.g. literature studies, computer studies, studies in which essentially all work is performed within the confines of the laboratory, completion of the Form 5300–23 constitutes a finding of no significant impact.

(c) *Notice of intent and EIS.* (1) If the reviews conducted according to § 6.704(b) above reveal a potential significant adverse effect on the environment and the adverse impact cannot be eliminated by replanning, the appropriate program official, shall issue a notice of intent and through proper organizational channels, shall request the Regional Administrator to assist him in the preparation and distribution of the EIS.

(2) As soon as possible after release of the notice of intent, the appropriate program official shall prepare a draft EIS in accordance with Subpart B and distribute the draft EIS in accordance with Subpart D.

(3) All draft and final EISs shall be sent through the proper organizational channels to the Assistant Administrator for ORD for approval.

(d) *Finding of no significant impact.* If an environmental review conducted according to § 6.704(b) above reveals that proposed actions will not have significant adverse environmental impacts, the appropriate program official shall prepare a FNSI.

(e) *Timing of action.* Pursuant to § 6.401(b), in no case shall a contract be awarded or intramural activity undertaken until the prescribed 30 day review period for a final EIS has elapsed. Similarly, no action shall be taken until the 30 day comment period for a FNSI is completed.

§ 6.705 Record of decision.

The responsible official shall prepare a record of decision in any case where final EIS has been issued in accordance with 40 CFR 1505.2. It shall be prepared at the time of contract or grant award or before the undertaking of the intramural activity.

Subpart H—Environmental Review Procedures for Solid Waste Demonstration Projects

§ 6.800 Purpose.

This subpart amplifies the procedures described in subparts A through D by providing more specific environmental review procedures for demonstration projects undertaken by the Office of Solid Waste (OSW).

§ 6.801 Applicability.

The requirements of this subpart apply to solid waste demonstration projects for resource recovery systems and improved solid waste disposal facilities undertaken pursuant to section 8006 of the Resource Conservation and Recovery Act of 1976.

§ 6.802 Criteria for preparing EISs.

The following criteria shall be used when reviewing a proposed EPA action to determine whether an EIS is required:

(a) *Significant environmental effects.* (1) An action with both beneficial and detrimental effects should be classified as having significant effects on the environment, even if EPA believes that the net effect will be beneficial. However, preference should be given to preparing EISs on proposed actions which, on balance, have adverse effects.

(2) When determining the significance of a proposed action's impacts, the responsible official shall consider both its short term and long term effects as well as its direct and indirect effects. Particular attention should be given to changes in land use patterns; changes in energy supply and demand; increased development in floodplains; significant changes in ambient air and water quality or noise levels; potential violations of air quality, water quality and noise level standards; significant changes in surface or groundwater quality or quantity; impacts on agricultural lands and encroachments on wetlands, coastal zones, or fish and wildlife habitat, especially when threatened or endangered species may be affected.

(3) Minor actions which may set a precedent for future major actions with significant adverse impacts or a number of actions with individually insignificant but cumulatively significant adverse impacts shall be classified as having significant environmental impacts. If EPA is taking a number of minor, environmentally insignificant actions that are similar in execution and

purpose, during a limited time span and in the same general geographic area, the cumulative environmental impact of all of these actions shall be evaluated.

(4) In determining the significance of a proposed action's impact, the unique characteristics of the project area should be carefully considered. For example, proximity to historic sites, parklands or wild and scenic rivers may make the impact significant. A project discharging into a drinking water aquifer may make the impact significant.

(5) A proposed EPA action which will have direct and significant adverse effects on a property listed in or eligible for listing in the National Register of Historic Places or will cause irreparable loss or destruction of significant scientific, prehistoric, historic or archaeological data shall be classified as having significant environmental impacts.

(b) *Controversial actions.* An EIS shall be prepared when the environmental impact of the proposed EPA action is likely to be highly controversial.

§ 6.803 Environmental review process.

(a) *Environmental information.* (1) Environmental information documents shall be submitted to EPA by grant applicants or contractors. If there is a question concerning the need for a document, the protential contractor or grantee should consult with the appropriate project officer for the grant or contract.

(2) The environmental information document shall contain the same sections specified for EIS's in subpart B. Guidance alerting protential grantees and contractors of the environmental information documents shall be included in all grant application kits, attached to letters concerning the submission of unsolicited proposals, and included with all requests for proposal.

(b) *Environmental review.* An environmental review will be conducted before a grant or contract award is made. This review will include the preparation of an environmental assissment by the responsible official; the appropriate Regional Administrator's input will include his recommendations on the need for an EIS.

(c) *Notice of intent and EIS.* Based on the environmental review if the criteria in section 6.802 above apply, the responsible official will assure that a notice of intent and a draft EIS are prepared. The responsible official may request the appropriate Regional Administrator to assist him in the preparation and distribution of the environmental documents.

(d) *Finding of no significant impact.* If the environmental review indicated no significant environmental impacts, the responsible official will assure that a FNSI is prepared.

(e) *Timing of action.* Pursuant to §6.401(b), in no case shall a contract or grant be awarded until the prescribed 30 day review period for a final EIS has elapsed. Similarly, no action shall be taken until the 30 day comment period for a FNSI is completed.

§ 6.804 Record of decision.

The responsible official shall prepare a record of decision in any case where final EIS has been issued in accordance with 40 CFR 1505.2. It shall be prepared at the time of contract or grant award.

Subpart I—Environmental Review Procedures for EPA Facility Support Activities

§ 6.900 Purpose.

This subpart amplifies the general requirements described in Subparts A through D by providing environmental procedures for the preparation of EISs on construction and renovation of special purpose facilities.

§ 6.901 Definitions.

(a) The term "special purpose facility" means a building or space, including land incidental to its use, which is wholly or predominantly utilized for the special purpose of an agency and not generally suitable for other uses, as determined by the General Services Administration.

(b) The term "program of requirements" means a comprehensive document (booklet) describing program activities to be accomplished in the new special purpose facility or improvement. It includes architectural, mechanical, structural, and space requirements.

(c) The term "scope of work" means a document similar in content to the program of requirements but substantially abbreviated. It is usually prepared for small-scale projects.

§ 6.902 Applicability.

(a) *Actions covered.* These procedures apply to all new special purpose facility construction, activities related to this construction (e.g., site acquisition and clearing), and any improvements or modifications to facilities having potential environmental effects external to the facility, including new construction and improvements undertaken and funded by the Facilities Management Branch, Facilities and Support Services Division, Office of Management and Agency Services; by a regional office; or by a National Environmental Research Center.

(b) *Actions excluded.* This subpart does not apply to those activities of the Facilities Management Branch, Facilities and Support Services Division, for which the branch does not have full fiscal responsibility for the entire project. This includes pilot plant construction, land acquisition, site clearing and access road construction where the Facilities Management Branch's activity is only supporting a project financed by a program office. Responsibility for considering the environmental impacts of such projects rests with the office managing and funding the entire project. Other subparts of this regulation apply depending on the nature of the project.

§ 6.903 Criteria for preparing EISs.

(a) *Preliminary information.* The responsible official shall request an environmental information document from a construction contractor or consulting architect/engineer employed by EPA if he is involved in the planning, construction or modification of special purpose facilities when his activities have potential environmental effects external to the facility. Such modifications include but are not limited to facility additions, changes in central heating systems or wastewater treatment systems, and land clearing for access roads and parking lots.

(b) *EIS preparation criteria.* The responsible official shall conduct an environmental review of all actions involving construction of special purpose facilities and improvements to these facilities. The following general criteria shall be used when reviewing a proposed action to determine if an EIS is required:

(1) *Significant environmental effects.*

(i) An action with both beneficial and detrimental effects should be classified as having significant effects on the environment, even if EPA believes that the net effect will be beneficial. However, preference should be given to preparing EISs on proposed actions which, on balance, have adverse effects.

(ii) When determining the significance of a proposed action's impacts, the responsible official shall consider both its short term and long term effects as well as its direct and indirect effects.

(iii) In determining the significance of a proposed action's impact, the unique characteristics of the project area should be carefully considered. For example, proximity to historic sites, parklands or wild and scenic rivers may make the impact significant. A project

dischargeing into a drinking water aquifer may make the impact significant.

(iv) A proposed EPA action which will have direct and significant adverse effects on a property listed in or eligible for listing in the National Register of Historic Places or will cause irreparable loss or destruction of significant environmental impacts.

(v) Controversial actions. An EIS shall be prepared when the environmental impact of a proposed EPA action is likely to be highly controversial.

§6.904 Environmental review process.

(a) *Environmental review.* (1) An environmental review shall be conducted when the program of requirements or scope of work has been completed for the construction, improvement, or modification of special purpose facilities. For special purpose facility construction, the Chief, Facilities Management Branch, shall request the assistance of the appropriate program office and Regional Administrator in the review. For modifications and improvements, the appropriate responsible official shall request assistance in making the review from other cognizant EPA offices.

(2) Any environmental information documents requested shall contain the same sections listed for EISs in Subpart B. Contractors and consultants shall be notified in contractual documents when an environmental information document must be prepared.

(b) *Notice of intent, EIS, and FNSI.* The responsible official shall decide at the completion of the environmental review whether there may be any significant environmental impacts. If there could be significant environmental impacts, a notice of intent and an EIS shall be prepared according to the procedures under Subparts A, B, C and D. If there are not any significant environmental impacts, a FNSI shall be prepared according to the procedures in subparts A and D.

(c) *Timing of action.* Pursuant to §6.401(b), in no case shall a contract be awarded or construction activities begun until the prescribed 30 day wait period for a final EIS has elapsed. Similarly, under §6.400(d), no action shall be taken until the 30 day comment period for FNSIs is completed.

§6.905 Record of decision.

At the time of contract award, the responsible official shall prepare a record of decision in those cases where a final EIS has been issued in accordance with 40 CFR 1505.2.

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Monday
June 18, 1979

Federal Register

Part IV

Environmental Protection Agency

Requirements for Preparation, Adoption and Submittal of Implementation Plans; Intergovernmental Consultation

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL 1062-2]

Requirements for Preparation, Adoption and Submittal of Implementation Plans; Intergovernmental Consultation

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Clean Air Act, as amended, August 1977 (42 U.S.C. 7401 *et seq.*), includes new requirements for intergovernmental consultation. Section 121 of the Act requires the States to provide a process of consultation with local governments, organizations of local elected officials, and Federal land managers during certain actions under the Act. Section 174 of the Act requires Governors to designate, in consultation with local officials, lead organizations for coordinating State implementation plan (SIP) revisions for areas where carbon monoxide or ozone standards have not been attained. Section 174 also requires that State and local officials jointly determine their respective responsibilities for developing, implementing, and enforcing a SIP for such areas. The Environmental Protection Agency (EPA) is today publishing a final rule to assist States in preparing SIP revisions meeting these new requirements. The rule was proposed in the **Federal Register** on May 18, 1978 (43 FR 21466–21470). The final rule incorporates public comments received during the period May 18 to June 23, 1978, including comments received at a public hearing on June 21, 1978.

EFFECTIVE DATE: June 18, 1979.

FOR FURTHER INFORMATION CONTACT: Jerry Kurtzweg, Office of Transportation and Land Use Policy (ANR–445), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, Telephone: (202) 755–0570.

SUPPLEMENTARY INFORMATION:

Background

The Clean Air Act, as amended, August 1977 (42 U.S.C. 7401 *et seq.*), requires increased coordination and consultation among State and local officials in the achievement of national ambient air quality standards and the prevention of significant deterioration of air quality. On May 18, 1978, EPA published in the **Federal Register** (43 FR 21466–21470) a proposed rule containing requirements for intergovernmental consultation. A public hearing on these requirements was held on June 23, 1978. Public comments were received during the period May 18, 1978 through June 23, 1978.

Section 121 of the amended Act requires States to establish procedures for consulting with officials of local government and Federal land managers. Each SIP must include a satisfactory process of consultation for carrying out provisions of the Act related to requirements, including transportation controls, for nonattainment areas; air quality maintenance; preconstruction review of major stationary sources of air pollution; prevention of significant deterioration; and certain delayed compliance orders. Thus, the consultation requirement applies to both attainment and nonattainment areas and to all pollutants for which national ambient air quality standards have been established. EPA is required by the amended Act to promulgate regulations to assure adequate consultation.

Guidance describing certain consultation procedures related to Clean Air Act requirements for an air quality-transportation planning process and for prevention of significant deterioration has already been issued. In June 1978 EPA and the Department of Transportation (DOT) jointly issued "Transportation—Air Quality Planning Guidelines" that include recommendations for consultation during the development of the transportation related portion of a SIP. Final rules for the prevention of significant deterioration, including consultation requirements, were published in the **Federal Register** on June 19, 1978 (43 FR 26380–26387). These guidelines and regulations should be consulted by agencies affected by the rule being published today in the development of consultation processes.

In nonattainment areas for carbon monoxide or ozone, States are subject to additional consultation requirements under section 174 of the amended Act. States must determine jointly with local governments the division of responsibility for development, implementation, and enforcement of the air quality plans for these areas. Local governments were provided an opportunity to designate by agreement an organization to prepare the SIP revision for these nonattainment areas, if they did so by February 7, 1978. The Governor is required to either certify a locally designated organization or, if no acceptable local designation is made, to certify another state or local organization. On December 14, 1977, EPA and DOT jointly issued "Clean Air Act section 174 Guidelines" describing the process and criteria to be used for such certification. The final rule published today reflects the information contained in those guidelines.

The regulations promulgated below combine existing regulations pertaining to intergovernmental consultation in 40 CFR 51.21 and 51.58 with the new requirements in the Clean Air Act, as amended, under a new Subpart M, entitled "Intergovernmental Consultation," within Part 51. In addition, this regulation amends 40 CFR 51.61 to make the new Subpart M, where appropriate, applicable to air quality maintenance planning.

These regulations are not designed to require the replacement of existing consultation procedures. However, such procedures should be augmented or improved, where necessary, to involve affected organizations or individuals and to provide them with adequate opportunity to express their opinions and concerns during development of a SIP.

Discussion of Major Comments

Agency certification

Major substantive comments were received on the portions of the proposed regulations for agency certification under Section 174. Some commenters identified a need for provisions in the regulations to allow for changing the certified agency, particularly if requested by elected officials of local governments. EPA agrees that, in order to accommodate changes in responsibilities for plan developments, there is a need for procedures to allow a change in the agency certified. In addition, a Governor may initially have certified a State agency as the lead planning agency. Because State agencies will not be eligible for funding under section 175 of the Act, unless local officials maintain control over use of the funds, certification of an organization more directly representing local officials may prove desirable. A new § 51.241(f) has been added to allow changing the certified agency.

One commenter suggested a need for regulations to provide for certification of a lead planning agency where the status of an area changes from attainment to nonattainment for carbon monoxide or ozone. A new § 51.241(e) has been added outlining procedures that shall be used in those situations.

Another commenter suggested that, in order to assure that concerns of all participants in the agency certification

process have been addressed, EPA should circulate a description of concerns raised by participants under § 51.241(d). EPA believes that this issue deserves attention in the regulation. However, we believe that the issue is adequately addressed by making the information submitted by the Governor under § 51.241(d) available for public review in the appropriate EPA Regional Office. Language has been added to § 51.241(d) to enable such review.

Consultation Process—Objectives

Under the approach in the proposed rule, State and local governments would have the responsibility for determining the mechanisms and procedures that should be used to provide for adequate consultation. Objectives for the process were included in the proposal. Most commenters stated that they believed the objectives of the consultation process were appropriate. However, some commenters disagreed with the approach and maintained further, procedural guidance will be needed to insure that the objectives are given adequate and serious consideration. EPA has retained the proposed approach in the final rule. A process of consultation is now more specifically defined in these regulations because a satisfactory process may vary depending upon the program or action affected and upon established channels of communication within each State and local area. However, in response to comments, additional clarifying language has been added to the objectives to indicate that (1) the information and education requirement in § 51.243(a) applies to the revision of all SIP elements listed in § 51.244, and (2) the opportunity for involvement of affected governmental organizations and elected officials must be provided on a regular and frequent basis in the development of all elements of the revised SIP which affect their area.

One commenter requested clarification as to who has final authority under § 51.243(c) to resolve key issues. EPA believes that this decision should be left to the affected State and local governments developing the consultation process. Another commenter requested that requirements be included for providing information and education on such topics as planning alternatives under consideration, groups of measures that form alternative strategies, and the effects of alternatives in local areas. EPA has partially incorporated this suggestion by specifying that information must be provided on all elements listed in § 51.244. EPA believes that the more detailed guidance suggested is unnecessary given the requirements of section 172(b)(9) of the Act and the recommendations in the EPA-DOT "Transportation-Air Quality Planning Guidelines."

A number of comments addressed the scope and extent of the consultation process. One commenter noted that it would be inappropriate to involve local officials in the stationary source control portions of a SIP. Other commenters suggested that the consultation process should apply only to the substantive portions of plan revisions and that the EPA rule should not affect basic procedures and functions of local agencies (e.g., intra-agency preconstruction reviews, local governing or hearing board decisionmaking, or local rule changes). In response to these comments, EPA emphasizes that the consultation requirements do apply to stationary source review procedures, but only to affected governmental agencies and individuals. This intent has been clarified in both §§ 51.243(b) and 51.245.

One commenter suggested that the determination of the proportion of emission reductions to come from stationary and from mobile sources should be included among the key issues to be jointly resolved by State and local officials under § 51.243(c). This suggestion has been incorporated into the final rule. Other examples have also been added to help clarify the type of issues that should be jointly resolved.

Plan Elements Affected

Several commenters requested clarification of the definition of "direct" sources in § 51.244(a). In response to these comments, EPA has substituted the words "major stationary" for "direct." The exact definition of "major stationary source" will depend on the status of the area and type of planning (see, e.g., sections 169(1), 169A(g)(7), and 302(j) of the Act).

Other commenters questioned whether the affected plan elements included all the requirements in section 172, and whether the consultation process applied to all revisions in attainment and nonattainment areas. This has been clarified in a new § 51.244(g) which indicates that consultation is required during development of any measure required under Part C or Part D of the Act. A related comment suggested listing a new plan element, public participation, in § 51.244. This addition would require use of a consultation process in development of programs to adequately inform the public about the air quality planning process and involve them in the process. EPA believes that consultation in the development of public participation aspects of any of the measures or procedures listed under § 51.244 is a legitimate requirement, but that it is unnecessary to list public participation separately.

Organizations and Officials To Be Consulted

A substantial number of comments were received that pointed out that the "intergovernmental consultation" required in sections 121 and 174 of the Act does not include consultation with public interest organizations. These commenters indicated that consultation with special interest groups would be an enormous administrative burden to State and local agencies. Other commenters suggested expanding the involvement of interest groups to include private business entities and major community organizations. EPA has determined that sections 121 and 174 apply only to consultation among governmental organizations and elected officials. However, sections 109(e)(4) and 172(b)(9) of the Act, and the EPA-DOT "Transportation—Air Quality Planning Guidelines" do require public involvement in the SIP revision process. The final rule has been amended by deleting the requirement for public interest group involvement in § 51.245(e), but specifically including these groups, as well as other affected interest groups, in § 51.251(a).

One commentator emphasized the fact that the consultation process is particularly important because different State, local and areawide agencies may be responsible for development, implementation and enforcement of a SIP. Several types of governmental agencies commented that their interests and responsibilities would be affected by the SIP and that they should, therefore, be included in any consultation process established. These comments are reflected in the final regulation which has been expanded to require an opportunity for participation in the consultation process of State, local and areawide agencies with implementation or enforcement responsibilities. Agencies specifically mentioned include health planning agencies, community and economic development agencies, and manpower planning agencies. A related comment indicated that the provision for inclusion of State, local and areawide transportation planning agencies in the consultation process should be expanded to specifically include State

highway and transportation departments, as well as local transit authorities and agencies. EPA believes such specificity is unnecessary. The general reference to "transportation planning" agencies encompasses all these organizations.

Resolution of Disputes

One commenter addressed the need to include procedures to enable local officials to appeal to Federal officials to set aside a plan, or portion thereof, for lack of adequate consultation. Section 121 of the Act specifically provides that local or regional governmental agencies adversely affected by action of the Administrator approving a plan may petition for judicial review of such action on the basis of violation of the consultation requirements. However, EPA believes that procedures should be provided to encourage resolution of disputes out of court. Therefore, a new § 51.247 including such procedures has been added to the continuing consultation process regulations. Subsequent subsections have been renumbered.

Relationship With Other Programs

A major concern raised by some commenters was that the requirement for coordination with other programs is unnecessary and duplicative of existing review procedures required by Circular A–95 of the Office of Management and Budget. EPA intends that, where possible, existing procedures should be used to ensure the necessary coordination. Clarifying language has been added to §§ 51.248 (a) and (b) (§ 51.247(a) and (b) in the proposed rule) to emphasize this intent.

One commenter questioned how conflicts will be resolved under § 51.248(a) (originally § 51.247(a)) if an agency disagrees with another agency as to whether its programs substantially affect or are affected by the SIP. EPA believes State and local governments should establish appropriate mechanisms for resolving such disagreements within the framework of the consultation process (e.g., through memoranda of understanding, as indicated in § 51.248(b)).

Another agency commenting on these regulations pointed out procedural problems associated with coordination with other planning and management programs. Specifically, some transportation, solid waste, and other plans are only updated at multi-year intervals. Thus, existing plans may be outdated and consideration of planning objectives in those plans or determining conformity of those plans with the SIP may be meaningless and futile. EPA recognizes that coordination may present problems in these situations and will certainly consider these problems when reviewing the coordination procedures developed under this regulation. However, EPA believes that, in light of the conformity requirement in section 176(c) of the Act, the requirement is, nevertheless, valid and necessary. State and local government agencies, which are familiar with planning and programming schedules of affected agencies, are in a better position than EPA to develop coordination and conformity determination procedures which account for different planning cycles, yet insure the necessary coordination.

A–95 Clearinghouse Review

The major comments related to the A–95 Clearinghouse Review section of the regulation concerned who has responsibility for insuring this revew and when the review sould occur (e.g., before or after public hearings, as sections of SIP are drafted, or when the entire SIP is complete). In response to the first issue, clarifying language has been added to §51.251 (§ 51.250 in the proposed rule) indicating that the governmental organization responsible for developing the SIP is also responsible for submitting the draft plan the A–95 clearinghouse and considering comments raised during A–95 review. With respect to the timing issue, language has been added indicating that the draft plan (or portions thereof) shall be submitted to the A–95 clearinghouse either prior to or concurrent with announcement of the public hearing on the plan. EPA believes this approach is consistent with existing A–95 review procedures and will best insure timely submittal of SIP Revisions to EPA.

Discussion of Miscellaneous Comments

EPA does not agree that the proposed rule would be improved by the suggestions of some commenters and has rejected the following comments for the reasons noted.

Two commenters questioned the need for the requirements for agency certification because section 174 of the Act does not require EPA to promulgate regulations, and agency certifications have already occurred in most nonattainment areas to which the requirements in section 174 apply. No changes have been made in response to these comments because (1) certifications have not been made for all affected areas, (2) section 301(a)(1) of the Act authorizes the Administrator to prescribe such regulations as may be necessary to carry out his functions in administering the Act and (3) section 172(b)(9) of the Act requires that the SIP Revisions evidence "public, local government and State legislative involvement and consultation in accordance with section 174." The Administrator has determined that the actions and information required by these regulations are necessary in order to insure compliance with sections 172(b)(9) and 174. Furthermore, as indicated above, because of comments received, EPA has determined that the agency certification process may be a continuing one, i.e., there should be provisions for changing certifications and for making new certifications if situations change (e.g., an attainment area becomes a nonattainment area). Therefore, EPA believes these regulations are valid and necessary.

Other comments concerning the agency certification process raised issues which are beyond EPA's legal authority under the Act. For example, one commenter suggested that the regulations for implementing section 174 should apply to all lead planning organizations, and not be limited to lead agencies in carbon monoxide photochemical or oxidant nonattainment areas. Another commenter suggested that EPA set a deadline by when Governors must act on certification of locally designated lead agencies. If the Governor has taken no action by that date, EPA could consider the locally designated agency eligible for funding under section 175.

One commenter suggested that EPA place an affirmative duty on the States to encourage local designation of lead agencies, including a duty to educate local officials so that they can participate meaningfully in the designation process. EPA believes that this suggestion is adequately addressed in both section 174 of the Act and in § 51.241 (a) and (b) of this regulation which give local governments the initial opportunity to act and require the Governor to consult with local governments before certifying a lead agency.

One commenter indicated the consultation is not required under section 113 of the Act and should not be required in this regulation. However, section 121 specifically states that the consultation requirements apply to activities under section 113(d).

One commenter asked for clarification concerning the definition of "Federal land manager," particularly whether the phrase included managers of Federal facilities. This term is defined in section 302(i) of the Act and clearly does not

include Federal facility managers. Another commenter indicated that the Secretary of Agriculture has designated the Chief of the Forest Service as the Federal land manager for Forest Service lands (see 7 CFR, subtitle A, Part 2) and requested that EPA state that the Federal land manager for Forest Service lands is the Regional Forester having authority over the affected lands. EPA believes it is inappropriate to include the suggested specificity in this regulation, but believes affected agencies should be aware of this delegation of authority.

One commenter suggested that the words "and where possible" be deleted from § 51.248(a)(2)–(4) (§ 51.247(a)(2)–(4) in the proposed rule). This provision requires integration of work programs, use of common policy advisory boards, and common public participation and information programs. EPA believes that an absolute requirement would be unreasonable and might in some cases, preclude use of existing procedures for coordinating with other programs. Therefore, EPA has determined that the coordination requirement is sufficient.

One commenter indicated that A–95 review for some matters (e.g., compliance orders and new source review) would be inappropriate. Because other commenters indicated that A–95 review would be quite appropriate for such elements as preconstruction review, no change was made in the final rule.

Some comments disputed EPA's contention that the regulation will not require an appreciable increase in resources and therefore does not meet the minimum criteria for significant regulations requiring a regulatory analysis under Executive Order 12044. EPA disagrees because (1) these regulations are procedural in nature and affect mainly governmental personnel; (2) existing consultation procedures should be used, wherever possible; and (3) funds available under section 175 may be used to develop or modify the required procedures.

Final Action

The following regulations are nationally applicable. Therefore, under section 307(b)(1) of the Act, judicial review may be sought only in the U.S. Court of Appeals for the District of Columbia. Petitions for review must be filed on or before August 17, 1979.

As noted above, these regulations are procedural in nature and affect mainly governmental personnel. Because the required level of effort will not necessitate an appreciable increase in resources, these regulations do not meet the minimum criteria for significant regulations requiring a regulatory analysis as described in Executive Order 12044.

SIP revisions for nonattainment areas must be submitted to EPA by January 1, 1979. The procedures required by these regulations must be included in those plans. Therefore, the Administrator finds good cause for making these regulations effective on the date of publication.

As part of EPA's "sunset" policy, EPA will evaluate this regulation five years after the date of publication. This evaluation will assess the implementation of the regulation in terms of effectiveness, costs and benefits, and alternatives for achieving the same objectives.

Dated: May 25, 1979.

Douglas M. Costle,

Administrator.

Title 40 of the Code of Federal Regulations, Chapter I, Part 51, is amended as follows:

1. Sections 51.21 and 51.58 (b)–(h) are revoked and reserved.

2. Section 51.61, paragraph (d) is revised to read as follows:

§ 51.61 AQMA plan: Submittal format.

* * * * *

(d) AQMA plan. Applicable information required under §§ 51.52(b), 51.53, 51.54, 51.55, 51.56, 51.58, 51.59, 51.60 and Subpart M.

* * * * *

3. In § 51.63 paragraph (a) the reference to "51.58(h)" is deleted from the first sentence.

Subparts E–L [Added and Reserved]

4. New subparts E to L are added and reserved.

5. A new Subpart M is added as follows:

Subpart M—Intergovernmental Consultation

Agency Certification

Sec.

51.240 General plan requirements.
51.241 Nonattainment areas for carbon monoxide and ozone.
51.242 (Reserved).

Continuing Consultation Process

51.243 Consultation process objectives.
51.244 Plan elements affected.
51.245 Organizations and officials to be consulted.
51.246 Timing.
51.247 Hearings on consultation process violations.

Relationship of Plan to Other Planning and Management Programs

51.248 Coordination with other programs.
Sec.
51.249 (Reserved).
51.250 Transmittal of information.
51.251 A–95 clearinghouse review.
51.252 Summary of plan development participation.

Authority: Secs. 110, 121, 174(a), 301(a) Clean Air Act as amended (42 U.S.C. 7410, 7421, 7504, and 7601(a)).

Agency Designation

§ 51.240 General plan requirements.

Each State implementation plan must identify organizations, by official title, that will participate in developing, implementing, and enforcing the plan and the responsibilities of such organizations. The plan shall include any related agreements or memoranda of understanding among the organizations.

§ 51.241 Nonattainment areas for carbon monoxide and ozone.

(a) For each AQCR or portion of an AQCR in which the national primary standard for carbon monoxide or ozone will not be attained by July 1, 1979, the Governor (or Governors for interstate areas) shall certify, after consultation with local officials, the organization responsible for developing the revised implementation plan or portions thereof for such AQCR. The procedures described in the "Section 174 Guidelines" issued jointly in December 1977 by EPA and the Department of Transportation should be consulted in this process. These guidelines are published as Appendix U to Part 51.

(b) The Governor shall certify an organization of elected officials of local governments designated by agreement of affected general purpose local governments unless no agreement was reached by affected local governments by February 7, 1978, or the locally designated organization does not meet the criteria for a lead planning organization contained in the "Section 174 Guidelines." In making the certification, the Governor shall take into consideration any ongoing process of local designation in existence on February 7, 1978. The certification shall be in accordance with the joint determination of responsibilities for plan development, implementation, and enforcement required by section 174(a) of the Clean Air Act, as amended.

(c) The Governor shall certify, where feasible, the metropolitan planning organization responsible for the continuing, cooperative, and comprehensive transportation planning process required under 23 USC 134 and the Urban Mass Transportation Act; the organization responsible for air quality maintenance planning; or the

organization responsible for both. In determining the feasibility of certifying such an organization, the Governor shall also consider whether the organization gives adequate representation to local elected officials of general purpose governments and has areawide planning responsibilities in other Federal environmental or planning programs which could contribute to integration and consolidation of planning functions. Where possible, preference should be given to organizations with several program responsibilities, such as comprehensive planning or water quality management. Attention is directed to Part IV of the Office of Management and Budget Circular A–95 (41 FR 2050) which encourages the designation of established, substate comprehensive planning agencies as the agencies to carry out Federally assisted or required areawide planning.

(d) The Governor shall submit the following information to the Administrator of the EPA through the appropriate EPA regional office. The information shall be made available for public review at the regional office.

(1) A list of all air quality planning organizations certified pursuant to section 174 within the State.

(2) A description of the geographic jurisdictions of these organizations by AQCR, or portion thereof.

(3) A general description of the responsibilities of the certified organizations.

(4) A brief discussion of the alternatives investigated for consolidation of environmental and other planning functions, and the basis for the selection of the certified organization.

(5) A brief description of the consultative process leading to the selection of a certified organization, including the disposition of significant concerns raised by participants.

(e) Within 60 days following a redesignation, pursuant to section 107(d) of the Clean Air Act, as amended, to nonattainment of any AQCR or portion of an AQCR designated as attainment or unclassifiable for the national primary standard for carbon monoxide or ozone the State and elected officials of affected general purpose local governments shall jointly determine their respective responsibilities in developing, implementing, or enforcing portions of a revised implementation plan. The Governor shall certify, within the 60-day period and after consultation with local officials, the organization responsible for developing the revised plan or portions thereof for such area. The procedures in the "Section 174 Guidelines" should be consulted in the joint determination of responsibilities and in the certification of the organization. The organization certified by the Governor shall be a locally designated organization unless agreement among local officials cannot be achieved in time to make the certification within the 60-day period. If no agreement is reached, the Governor may then, after consultation with local officials, certify an organization of local officials or a State agency. The implementation plan submitted within nine months after an area is designated nonattainment shall include the information listed in § 51.241(d)(1)–(5).

(f) An organization certified under the provisions of this section shall remain certified until the Governor, after consultation with elected officials of local government in a nonattainment area, certifies another organization. Elected officials of local government may make written request to the Governor to change the certified organization for an area. The request shall contain the reasons for the proposed change and the replacement organization proposed for certification. The Governor shall consider such requests and, if he or she finds that the reasons are compelling, shall send a notice of the proposed change to the Regional Administrator, the chief official of the organization to be replaced, and elected officials of major general purpose local governments in the nonattainment area. The notice of proposed change shall include the reasons for the change, the effective date of the change, the effects of the change on development of necessary implementation plan revisions, and a revision of the joint determination of responsibilities developed pursuant to section 174(a) of the Clean Air Act, as amended. The notice of proposed change shall be made available for public review in the affected area for at least 30 days before becoming effective.

§ 51.242 [Reserved]

Continuing Consultation Process

§ 51.243 Consultation process objectives.

Any governmental organization that has the lead responsibility for development of one of the State implementation plan elements listed in § 51.244 shall provide for a continuing intergovernmental consultation process in carrying out those responsibilities. All affected governmental organizations should, to the extent feasible, be involved in the development of the process. Already established consultation processes, such as those established under § 51.241, may be used, and supplemented if necessary, to meet the requirements of this subpart. A satisfactory consultation process must include provisions to meet the following objectives:

(a) Provide for information dissemination to and education of relevant organizations and individuals on, at least, all elements of the State implementation plan identified in § 51.244.

(b) Provide an opportunity for regular and frequent involvement of affected governmental organizations and elected officials in development of all elements of the revised State implementation plan which affect their area.

(c) Provide an opportunity for joint resolution by affected governmental organizations and individuals of key issues in the development of the revised implementation plan. Key issues include determination of the proportion of emission reductions to come from stationary and mobile sources; selection of mobile and stationary source control strategies; and determination of responsibilities among State and local governments for implementation and enforcement, particularly where commitment of local resources will be necessary.

§ 51.244 Plan elements affected.

The consultation process must ensure consultation during preparation of the following measures:

(a) Procedures for preconstruction review of major stationary sources of air pollution. Preparation of such procedures includes the development of allocation programs for allowable emission increments for attainment areas and growth increments or banked emission reductions for nonattainment areas.

(b) Transportation-related planning procedures and control measures.

(c) Procedures and control measures, other than those related to transportation, applicable to nonattainment areas.

(d) Measures for prevention of significant deterioration of air quality, and protection of visibility in Federal Class I areas.

(e) Air quality maintenance measures.

(f) Delayed compliance orders described in section 113(d) of the Clean Air Act, as amended, August 1977.

(g) Any other measures required under Part C or Part D of the Act.

§ 51.245 Organizations and officials to be consulted.

A continuing intergovernmental consultation process established in

accordance with § 51.243 shall ensure the involvement of the following organizations or individuals whenever the interests for which they are responsible are directly or indirectly affected:

(a) State, areawide, and local agencies responsible for air pollution control, health planning, transportation planning, energy planning, manpower planning, economic and community development, housing planning, coastal zone management, solid waste management, and water quality management.

(b) Elected officials of local government.

(c) Federal land managers having authority over lands affected by State implementation plans.

(d) Any other affected governmental organizations that may be responsible for implementing or enforcing the plan element being developed.

§ 51.246 Timing.

The continuing intergovernmental consultation process shall apply to any measure related to the plan elements in § 51.244 adopted after December 18, 1979. The State implementation plan shall be revised to provide an opportunity for Federal, State and local involvement in such a consultation process no later than December 18, 1979.

§ 51.247 Hearings on consultation process violations.

(a) Where a majority of elected officials of any local government affected by a plan element listed in § 51.244 contend that they have been improperly excluded from consultation on that element, they may petition the EPA Regional Administrator to hold a hearing on the matter. Upon receipt of the petition, the Regional Administrator shall request from the responsible State agency a formal response to that petition. After evaluation of the State's response to the petition, the Regional Administrator shall make a determination whether to hold a hearing. If a hearing is held, the transcript and the State's response shall be forwarded to the Administrator for consideration when approving or disapproving the plan elements. If no hearing is held, the Regional Administrator's determination, together with the State's response, shall similarly be forwarded to the Administrator.

(b) The other organizations or individuals involved in preparing the plan element or otherwise affected by it shall be given notice of the hearing and afforded an opportunity to participate in it.

Relationship of Plan to Other Planning and Management Programs

§ 51.248 Coordination with other programs.

(a) A governmental organization that has a major responsibility for developing any of the State implementation plan elements listed in § 51.244 shall coordinate with other planning and management programs substantially affecting or affected by such elements through the development of procedures, or the use of existing procedures, to ensure the following:

(1) Use of common data.

(2) Coordination, and where possible, integration of work programs.

(3) Use, where possible, of common public participation and information programs.

(5) Incorporation of appropriate air quality criteria as a factor in other planning and management programs.

(6) Consideration of other community objectives in development of air pollution control strategies.

(b) The coordination procedures shall include a process for determining conformity between the State implementation plan and other plans and programs, such as those pertaining to transportation, land use, solid waste, water quality, or community development, substantially affecting or affected by the implementation plan. Existing procedures should be used, where feasible. The State implementation plan shall include a list of any memoranda of understanding developed, as part of that process, among the agencies responsible for development, implementation, or enforcement of air quality plans. The provisions of items 3a through d, Part IV of the Office of Management and Budget Circular A–95 shall be considered in the preparation of memoranda of understanding.

§ 51.249 [Reserved]

§ 51.250 Transmittal of information.

Each plan shall provide assurances that the governmental organization having primary responsibility for implementing national ambient air quality standards in any AQCR, or portion thereof, will promptly transmit to other organizations having similar or related responsibility in the same or other States, information on factors (e.g., construction of new industrial plants) which may significantly affect air quality in any portion of such AQCR or in any adjoining AQCR.

§ 51.251 A–95 Clearinghouse review.

The organization responsible for developing the State implementation plan revision shall submit a draft of any major implementation plan revision including any of the six elements listed in § 51.244 to the cognizant State and areawide clearinghouses as established under the Office of Management and Budget Circular A–95, for review and comment for a period of 45 days. The draft plan, or portions thereof, shall be submitted to the A–95 clearinghouse either prior to or concurrent with announcement of public hearings on the plan. Comments received from the clearinghouse within that 45-day period shall be considered. The organization initiating the plan revision shall retain copies of these comments for inspection by the Administrator and the public.

§ 51.252 Summary of plan development participation.

An organization with responsibility for the development of all or a portion of the implementation plan elements listed in § 51.244 shall include in the plan:

(a) A summary of the procedures used to involve the general public, public and special interest groups having a major interest in the program, local and areawide governmental organizations, elected officials of local governments, State agencies and the State legislature, and Federal land managers in the development of the plan revision.

(b) A discussion of any significant comments raised during the consultation process, including those received in the A–95 clearinghouse or in any public hearing held on the plan. The discussion shall include a description of the final disposition of such points.

Clean Air Act Section 174 Guidelines

Guidance on Designation of Lead Planning Organizations for Nonattainment Areas and on Determination of Interagency Responsibilities, December 1977, Issued Jointly by The U.S. Environmental Protection Agency and The U.S. Department of Transportation Washington, D.C.

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Appendix B. Section 174.

General questions on any of the material covered by this guideline should be sent to the Office of Transportation and Land Use Policy (AW-445), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Attention: Ms. Martha Burke. Ms. Burke's telephone number is (202) 755-0570. Questions concerning specific state or local areas should be directed to the appropriate EPA regional office.

1. Introduction

1.1 Applicability.

These guidelines are applicable to all metropolitan area regions or portions of regions where the national ambient air quality standards for photochemical oxidants or carbon monoxide will not be attained by July 1, 1979.

1.2 Purposes.

The purposes of these guidelines include:

1. To recommend procedures and criteria for determining a lead agency to be responsible for coordinating the preparation of the implementation plan revisions called for by the 1977 amendments to the Clean Air Act (Pub. L. 95-95) in metropolitan area regions where carbon monoxide or photochemical oxidant standards will not be attained by July 1979.

2. To assist state and local governments in identifying the initial planning, implementation, and enforcement responsibilities for the plan revisions and in establishing a process for further definition of responsibilities as development of the revisions progresses.

3. To encourage further coordination and consolidation of federally sponsored planning programs. This includes the integration of the new transportation related air quality requirements under Pub. L. 95-95 into the transportation planning process required by federal transportation grant statutes.

1.3 Background.

On August 7, 1977, President Carter signed into law the first comprehensive amendments to the Clean Air Act since 1970. Among the more important changes in the Clean Air Act are provisions encouraging local governments and organizations of local elected officials to assume additional responsibilities in the development, implementation, and enforcement of plans to attain national ambient air quality standards. Such plans were first required under the 1970 amendments to the Clean Air Act. The 1977 amendments require plan revisions for areas where standards have not been attained.

The assumption of additional responsibilities by local governments and local officials is specifically encouraged in those areas where photochemical oxidant and carbon monoxide standards will not be attained by July 1, 1979 (section 174(a)). The first identification of nonattainment areas for these and other pollutants under the requirements of the 1977 amendments must have been made by states by December 5, 1977. The Administrator of the Environmental Protection Agency (EPA) must publish a list of these areas, with any modifications he deems necessary, by February 3, 1978.

For areas where standards for photochemical oxidants and carbon monoxide will not be attained by July 1, 1979, state and local elected officials must jointly determine by February 7, 1978, their respective responsibilities for the plan revisions necessary to attain standards by the new deadlines in the 1977 amendments. The plan elements for which responsibilities are to be jointly determined encompass control measures for all pollutants for which standards have not been attained, not just photochemical oxidants and carbon monoxide.

The amendments require that, where possible, the implementation plan revisions be prepared by an organization of local elected officials designated by agreement of local governments. The amendments strongly encourage preparation by the organization now responsible for transportation planning under section 134 of title 23, U.S.C., or for air quality maintenance planning (or for both). The designated organization and its responsibilities must be certified by the state (or states if an interstate area is involved). Where local governments have not reached agreement by February 7, 1978, the governor must, in consultation with the elected officials of local governments in the affected area, designate an organization of local elected officials or a state agency to prepare the plan revisions. The designation by the governor must be in accordance with the joint determination of responsibilites made by state and local elected officials.

The governor must, under regulations which the EPA will propose during December 1977, submit a notice to the EPA certifying the designated agency for each nonattainment area or identifying the organization that he or she has designated. The notice must include a brief summary of the process involved in selecting the designated agency. A more detailed documentation of the selection process shall be included as part of the plan revisions to be submitted to the EPA by January 1, 1979. Evidence of the involvement of state legislatures and local governments is required as part of the plan revision submittal (section 172(b)(9)).

Only organizations of local elected officials of general purpose governments certified by the governor will be eligible for the grants authorized under section 175 of the amendments. In each urban area which is wholly or partially classified as a nonattainment area, only one organization will be eligible to receive a grant. The organization receiving the grant may use the grant funds to support plan revision activities carried out by other governmental organizations, public interest groups, or private consultants.

In addition to further defining the process for implementation of the Clean Air Act amendments, the EPA and the Department of Transportation also encourage in these guidelines further coordination and consolidation of federally sponsored planning programs. Such encouragement is consistent with President Carter's Environmental Message of May 1977 and with subsequent actions taken by the President to eliminate, consolidate, or simplify federal planning requirements. The Environmental Message in part stressed the need for improved implementation of environmental laws through more efficient delivery of federally funded programs. The encouragement for coordination and consolidation does not imply the advocacy of any particular institutional mechanism. A wide variety of mechanisms ranging from concentration of authority or responsibility in a single organization to development of memoranda of understanding among several organizations are available to achieve the same objectives.

2. Selection of a Lead Planning Organization

2.1 Criteria for Selecting an Organization.

These guidelines are intended to assist state and local officials in reaching agreement on the lead planning organization to be responsible for plan revisions called for by the 1977 Clean Air Act amendments. The role of the lead planning organization may vary from developing almost all elements of the plan revision to acting as a forum for decisionmaking by elected officials on elements developed almost entirely by other organizations. In most instances the lead organization will probably develop some elements, coordinate the development of other elements, and serve as a forum for deciding the ultimate nature of the plan revisions.

The amendments require that, where feasible, the organization designated and certified to prepare the plan revisions shall be (1) the metropolitan planning organization (MPO) responsible for the continuing, cooperative, and comprehensive transportation planning process for the affected area; (2) the organization responsible for the air quality maintenance planning process; or (3) an organization responsible for both planning processes. Coordination of the development of a plan revision with the MPO transportation planning process is particularly important in those nonattainment areas where transportation control measures appear necessary to attain standards. Only through the MPO process can the federal funds available under Federal Highway Administration and Urban Mass Transportation Administration programs be used to implement necessary transportation management measures and capital projects.

The Administrator of the EPA also strongly encourages that, in addition to meeting the requirements described above, the designations made pursuant to section 174 contribute to a consolidation within a single organization of responsibilities for air quality planning and for other environmental planning carried out under federal laws administered by the EPA. These laws include the Federal Water Pollution Control Act, the Safe Drinking Water Act, and the Resource Conservation and Recovery Act. The EPA believes that, where properly applied, consolidation of environmental planning efforts is an essential step in the development of comprehensive environmental strategies that are able to take into account the interrelated nature of environmental

problems. Comprehensive strategies can also result in a more efficient and effective use of resources in achieving environmental benefits.

The following criteria should be considered by local elected officials and by the governor when determining the lead planning organization for urban nonattainment regions:

1. The organization should be the forum for cooperative decisionmaking by principal elected officials of general purpose local governments. The principal elected officials of general purpose local governments should have adequate (preferably majority or larger) representation in the organization but membership need not be limited to them or their designees. There should be participation by agencies that may be responsible for implementation of portions of the plan.

2. The organization should have a planning jurisdiction that includes the current urbanized area and the area likely to be urbanized at least over the period to be covered by the revised plan.

3. The organization should have the ability to produce the necessary plan revision for the planning jurisdiction described above by the January 1, 1979 submittal deadline. The organization should have the capability to perform the necessary analysis and planning tasks itself or be able to enter into binding agreements with other organizations to perform such tasks.

4. The organization should have the capability to coordinate the development of the plan revision with other relevant planning processes, if it does not have responsibility for those processes, and with agencies that may have responsibility for implementation or enforcement. Relevant planning processes include the continuing, cooperative, and comprehensive planning process; other environmental planning processes assisted through EPA-administered programs; and comprehensive planning processes established in accordance with Part IV of the Office of Management and Budget Circular A-95 (41 FR 2052).

2.2 The Selection Process.

Local governments within a nonattainment area for photochemical oxidants or carbon monoxide may, by agreement, designate an organization of elected officials of local government to prepare the plan revision for the pollutants for which standards in that area have not been attained. A resolution by the governing body of an organization meeting the criteria in section 2.1 of these guidelines is sufficient to demonstrate agreement of local governments. Such a designation must be submitted to the governor by February 7, 1978. Local governments intending to designate an organization should consult with the state during the designation process.

If local governments agree on an organization by February 7, 1978, the governor shall certify that organization by April 1, 1978, unless he or she finds that the designated organization does not meet the criteria in section 2.1. If local governments have initiated, but have not completed, designation of an organization by February 7, 1978, they should inform the governor that an on-going process exists.

If local governments are unable to agree by February 7 on a single lead organization of local elected officials to be responsible for the coordination of the plan revision, the governor shall, in consultation with local elected officials of general purpose local governments, designate an organization or a state agency by April 1, 1978. If more than one organization meeting the criteria in section 2.1 is self-designated in an area and proposed to the governor for certification, the governor shall certify the organization which, in his or her opinion, is most capable of completing the required plan revisions.

The governor may designate a state, local, or regional agency, but that designation shall be in accordance with the joint determination of responsibilities required by section 174 of the Clean Air Act amendments and discussed in the following section of these guidelines. In making a designation, the governor shall take into consideration any on-going process of local designation in existence on February 7, 1978, even though no formal agreement among local governments has been reached.

The governor shall submit to the Administrator of the EPA by April 1, 1978, through the appropriate EPA regional office, a list of all organizations or agencies certified or designated within the state, a description of the geographic jurisdictions of these organizations and agencies, and a general description of their responsibilities. Regardless of the agency finally designated or certified, the decisions should reflect an examination of all reasonable alternatives for consolidation of environmental and other planning functions. The submission should include a brief discussion of the alternatives investigated and the basis for the ultimate choice. If the organization designated or certified by the governor is not one of the organizations encouraged by the amendments and by the Administrator in these guidelines, the reasons that such an organization should not have the lead responsibility for planning should be specifically addressed. More detailed descriptions, including documentation of the consultation that occurred, shall be submitted by January 1, 1979 with the implementation plan revision.

3. Joint Determination of Responsibilities

3.1 Joint Determination Process.

The determination of responsibilities made jointly by state and local elected officials will necessarily have to be relatively general for many areas. The nature and extent of the air quality problem may not be adequately defined by the February 7, 1978 deadline specified in the amendments. In addition, the planning process guidelines for photochemical oxidant and carbon monoxide nonattainment areas, required to be prepared by the EPA also by February 7, will not be available for consideration in the joint determinations. The nature of the process recommended in the EPA guidelines should influence the ultimate determination of responsibilities.

Because agency responsibilities, especially for plan implementation and enforcement, will undoubtedly change or become more specific by the time a plan revision is actually submitted to the EPA for approval, the determination of responsibilities should be viewed as a process, the first phase of which is to be completed by February 7, 1978. The final product of the joint determination process should be included as part of the plan revision submitted by January 1, 1979. Possible steps in this phased process are set forth below. Because institutional arrangements differ from region to region and from state to state, specification of a generally applicable process for joint state-local determination of agency responsibilities is not possible.

Many state and local governments already have initiated such a process. As long as the approach taken provides for substantial involvement of all parties—local governments, regional agencies, and states—and results in the identification of agencies and responsibilities as described in these guidelines, such an existing process is sufficient to meet the requirements of section 174(a). The activities described in the following section should be completed by February 7, 1978 to comply with the requirements of section 174.

3.2 Notification of Affected Governmental Organizations.

The state should, by correspondence or other established notification procedures, ensure that all affected governmental organizations within the nonattainment region are informed of the purpose and schedule of the joint determination process. In many instances, an entire state may be designated as a nonattainment area for photochemical oxidants. However, many control strategies will still generally focus on urban regions. As a minimum, the following organizations should be notified in each region:

a. General purpose local governments.

b. Organizations of local elected officials (including all metropolitan planning organizations).

c. Air pollution control agencies (including the agency or agencies responsible for air quality maintenance planning).

d. Areawide A-95 clearinghouses.

e. Areawide and statewide water quality planning agencies designated under section 208 of the Federal Water Pollution Control Act.

f. Areawide solid waste management agencies.

g. Areawide comprehensive planning agencies.

h. Coastal management agencies.

i. Interested citizen groups.

3.3 Establishment of a Determination Process.

The state should ensure the establishment of a process for determination of agency responsibilities that will provide state and local elected officials of all major political subdivisions within a region with an opportunity for substantial involvement and that will enable the concerns of these officials to be adequately addressed. This may be done through a variety of mechanisms including the establishment of task forces with state and local government

representatives and the use of public meetings or hearings with elected officials of all major general purpose local governments within the affected regions invited. Where appropriate, existing forums such as meetings of organizations of local elected officials or meetings of air quality maintenance policy advisory groups should be used in the determination process.

All state and local officials participating in the determination of agency responsibilities should have the opportunity to propose agencies and their respective functions. All proposals should be made available to affected agencies and the general public for comment.

3.4 Formal Indentification of Responsibilities.

The initial joint determination of responsibilities shall at a minimum establish which level of government (although not necessarily the specific agency)—the state, local governments, regional agencies or any combination of these—shall be responsible for: (1) the development of an accurate, comprehensive, and current emission inventory; (2) the completion of an air quality analysis, using modeling techniques, to determine the level of control needed to attain standards; and (3) the evaluation and selection of control strategies for mobile sources, point sources, and area sources. An initial assignment of responsibilities for implementation and enforcement must be considered. However, it is expected that the final determination of such responsibilities will occur after the measures to be included in the plan revision have been relatively well defined.

When agreement is reached among the state and the participating local elected officials, memoranda of understanding or other comparable joint acknowledgements of responsibilities should be signed. Because duties and responsibilities for implementation and enforcement of plan revisions may change as development of the plan revisions proceeds, the determination of agency responsibilities need not be incorporated in the state implementation plan until the revisions are submitted for federal approval. The initial determination of responsibilities made by February 7, 1978, to meet the requirements of section 174, should be submitted by April 1, 1978, to the EPA with the certifications of lead planning organizations discussed in section 2 of these guidelines.

Appendix A—List of Key Dates

Date	Action
August 7, 1977	Clean Air Act amendments are signed into law.
December 5, 1977	States identify nonattainment areas.
February 3, 1978	EPA publishes list of nonattainment areas.
February 7, 1978	Local governments designate organizations of local officials.
	State and local elected officials complete joint determinations of responsibilities.
April 1, 1978	Governors transmit to EPA certification of lead planning organizations and joint determinations of responsibilities.
January 1, 1979	Governors transmit to EPA plan revision for nonattainment areas.

Appendix B—Section 174

Planning procedures

42 USC 7504

Consultation

"Sec. 174. (a) Within six months after the enactment of the Clean Air Act Amendments of 1977, for each region in which the national primary ambient air quality standard for carbon monoxide or photochemical oxidants will not be attained by July 1, 1979, the State and elected officials of affected local governments shall jointly determine which elements of a revised implementation plan will be planned for and implemented or enforced by the State and which such elements will be planned for and implemented or enforced by local governments or regional agencies, or any combination of local governments, regional agencies, or the State. Where possible within the time required under this subsection, the implementation plan required by this part shall be prepared by an organization of elected officials of local governments designated by agreement of the local governments in an affected area, and certified by the State for this purpose. Where such an organization has not been designated by agreement within six months after the enactment of the Clean Air Act Amendments of 1977, the Governor (or, in the case of an interstate area, Governors), after consultation with elected officials of local governments, and in accordance with the determination under the first sentence of this subparagraph, shall designate an organization of elected officials of local governments in the affected area or a State agency to prepare such plan. Where feasible, such organization shall be the metropolitan planning organization designated to conduct the continuing, cooperative and comprehensive transportation planning process for the area under section 134 of title 23, United States Code, or the organization responsible for the air quality maintenance planning process under regulations implementing this section, or the organization with both responsibilities.

"(b) The preparation of implementation plan provisions under this part shall be coordinated with the continuing, cooperative, and comprehensive transportation planning process required under section 134 of title 23, United States Code, and the air quality maintenance planning process required under section 110, and such planning processes shall take into account the requirements of this part.

Ante, pp. 691–698

[FR Doc. 79-18787 Filed 6-15-79; 8:45 am]

BILLING CODE 6560-01-M

Federal Register

Monday
June 18, 1979

Part V

Department of Health, Education, and Welfare

Office of Education

Arts Education Program; Proposed Rulemaking

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Parts 160g, 161c]

Arts Education Program

AGENCY: Office of Education, HEW.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commissioner of Education proposes to revise the regulations that govern the Arts Education Program as required by the Education Amendments of 1978.

The proposed regulations—

(a) Respond to the broadened eligibility provision in the legislation, which allows public and private agencies, organizations, and institutions, as well as State educational agencies (SEAs) and local educational agencies (LEAs), to compete for funds;

(b) Define new priorities and funding strategies; and

(c) Establish eligibility requirements and funding criteria for applications.

DATES: Comments must be received on or before August 17, 1979. A public meeting will be held on these proposed regulations in Washington, D.C. on May 30, 1979, from 3:00 to 4:30 p.m.

ADDRESSES: Comments should be addressed to Harold Arberg, Director, Arts and Humanities Staff, U.S. Office of Education, 400 Maryland Avenue, SW. (Room 3728, Donohoe Bldg.), Washington, D.C. 20202. The public meeting will be held in the auditorium, Room 1928, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Lonna Jones, Arts Education Coordinator, Office of the Commissioner. (202) 472-5658.

SUPPLEMENTARY INFORMATION:

Background

The Arts Education Program provides the only Federal categorical support for arts education.

This support, at the elementary and secondary education levels, consists of:

(a) Competitive awards to SEAs, LEAs, and other public and private agencies, organizations, and institutions;

(b) Arrangements with the John F. Kennedy Center for the Performing Arts for model projects and programs in the performing arts for children and youth; and

(c) Arrangements with the National Committee/Arts for the Handicapped for model projects and programs for handicapped persons in all the arts.

These regulations address only the competitive grant awards under (a). Program arrangements with the Kennedy Center and the National Committee/Arts for the Handicapped, as well as technical assistance awards, will be funded by procurement contracts and are not part of these regulations.

Basis for Changes in the Regulations

Changes proposed in these regulations are based on the Commissioner's new priorities and funding strategies for the program, as well as the statutory changes.

The program focus, elementary and secondary arts education, is not altered by the amendments. However, the regulations establish new requirements that bring other levels of education, colleges, universities, and other community arts and educational resources, into partnerships with elementary and secondary schools.

Objectives

These regulations: (a) *Reaffirm the concept of the arts as an integral part of elementary and secondary curriculum.* The arts are often isolated from other areas of learning and from regular academic school programs. The law assumes that the arts should be essential and vital components of every student's education; that the arts provide students with useful insights into other areas of learning; and that a Federal program is appropriate to foster the interrelationship of the arts and education.

(b) *Clarify roles of the various applicants.* These proposed regulations establish requirements and criteria for a wide range of applicants.

The regulations establish minimum requirements ("elements") for cooperation to—

(1) Allow community resources, for example, museums, arts centers, artists, performers, parent groups, universities and colleges, to serve as arts resources for the schools;

(2) Strengthen SEA and LEA ties with State and community arts resources;

(3) Bring practicing professional artists into the retraining and development of teachers and administrators; and

(4) Encourage new approaches and initiatives from nonschool resources working cooperatively with SEAs and LEAs.

(c) *Set new funding strategies.* The approach until now has been to provide token or "seed" grants of $10,000 or less to as many States as possible. The new strategy concentrates funds on comparatively few projects, and these proposed regulations contemplate larger awards in fewer States. In order to encourage project commitment, the OE share of funding will be no more than 50 percent of project costs.

Funding priority will be given to those applicants who indicate capability to link together effectively existing school and community resources in support of school arts programs. This coordination will encourage increased interaction between schools and groups, cultural leaders, and others whose major focus is the arts.

(d) *Establish common criteria for all applicants.* The objective is to select projects with the greatest impact on elementary and secondary arts education, whether submitted by school or nonschool agencies.

(e) *Establish links with other Federal agencies.* The Commissioner chairs the Working Group on the Arts in Education, a subcommittee of the Federal Council on the Arts and the Humanities. Member agencies are: The National Endowments for the Arts and the Humanities, the National Institute of Education, the Institute of Museum Services, the John F. Kennedy Center for the Performing Arts, the National Gallery of Art, the Smithsonian Institution, and the Office of Education.

The eight agencies in the group share a central obligation to promote national goals, and a common interest in reaffirming the centrality of the arts in education and in working together to clarify agency relationships in the field.

As a basis for interagency cooperation, and as a commitment to strengthening combined Federal resources for the arts in education, the Commissioner may convene the Working Group or another committee consisting of Federal Council member agencies to review or comment on applications. Applications may be considered for joint support by the Office of Education and other Federal agencies that are members of the Council.

How the Regulations Are Intended to Work

An application may be submitted in one of three funding categories. However, an applicant may be funded for only one project—whether proposed singly by the applicant or jointly with other applicants.

The funding categories are: (1) State—for statewide projects; (2) urban or large community—for projects in standard metropolitan statistical areas with access to cultural resources; and (3)

rural or small community—for projects in areas isolated from metropolitan environments with limited or no cultural resources.

Each of the three categories has specific application requirements that are addressed in the regulations. All projects must be designed to—

(1) Provide opportunities for all students in the schools served by the project to acquire skills in and through several arts media, including at least dance, music, theater, and the visual arts; and

(2) Integrate these disciplines into the regular eductional program of the schools, rather than to include the peripherally or as extra-curricular activities.

Each applicant shall provide for a project advisory committee broadly representative of State and local arts and educational resources. A State project shall use its official State arts education advisory committee, if one exists. A local applicant shall submit an information copy of its application to the SEA for a 30-day comment period.

The proposed regulations give examples of types of project activities for which an applicant may request support. The Commissioner may approve projects for a maximum of three years; however, renewals are subject to availability of funds and review.

Applications are judged in the following categories; needs assessment; coordination; project administration; and results, end products, or outcome. The Commissioner may add 10 points to the total score of an application to achieve geographic distribution and project diversity.

Requirements in EDGAR

The proposed regulations do not cover certain application requirements and grantee responsibilities that are part of the Education Division's General Administrative Regulations (EDGAR). EDGAR replaces the General Provisions or Office of Education Program Regulations. The following are among the items applicable to this program that will be explained in EDGAR:

How to apply for a grant.

Certain conditions that must be met by a grantee.

The administrative responsibilities of a grantee. Where appropriate, proposed regulations reference other key provisions of EDGAR.

Public Participation

The Office of Education will hold a public meeting on these proposed regulations May 30, 1979, at the U.S. Office of Education, 400 Maryland Avenue, S.W., Washington, D.C. as part of the Commissioner's convocation on the Arts in Education, a one-day meeting of the three groups that comprise the Office of Education's Arts in Education Initiative. Participants in the Convocation will be:

(1) The Arts in Education Forum, a group of about 50 arts and educational association executives who serve national constituencies of arts administrators, teachers, principals, parents, community arts organizations, arts specialists, and artists;

(2) The Working Group for the Arts in Education of the Federal Council on the Arts and the Humanities, composed of eight Federal agencies with activities or programs in arts education;

(3) The Interbureau Task Force on the Arts in Education, Office of Education, composed of about 20 program officials from all OE bureaus.

A summary of the meeting transcript will be available after this meeting.

Invitation to Comment

Interested persons are invited to submit comments, suggestions, and recommendations to be considered prior to the issuance of final regulations.

Comments, suggestions, or recommendations may be sent to the address given at the beginning of this notice. All comments received on or before August 17, 1979, will be considered. They will be available for public inspection in Room 3728, Donohoe Building, 400 Sixth Street, SW., Washington, D.C. 20202, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday of each week except on Federal holidays.

Citation of Legal Authority

The reader will find a citation of statutory or other legal authority in parentheses on the line following each substantive provision.

(Catalog of Federal Domestic Assistance No. 13.560, Arts Education Program)

Dated: May 4, 1979.

Ernest L. Boyer,

Commissioner of Education.

Approved: May 25, 1979.

Joseph A. Califano, Jr.,

Secretary of Health, Education, and Welfare.

PART 160g—[REDESIGNATED]

Part 160g, 45 CFR is redesignated as Part 161c and revised to read as follows:

PART 161c—ARTS EDUCATION PROGRAM

Subpart A—General

Sec.

161c.1 Arts Education Program.
161c.2 Eligible parties.
161c.3 Regulations that apply.
161c.4 Definitions.

Subpart B—What Kinds of Projects Does the Office of Education Assist Under This Program?

161c.9 Program elements.
161c.10 Elements of cooperation.
161c.11 Eligible activities.
161c.12 Project duration.

Subpart C—How is an Application Submitted?

161c.21 Limitation on number of applications.
161c.22 Joint application.
161c.23 Application requirements.
161c.24 State review of local applications.

Subpart D—How Is a Grant Made?

161c.31 How the Commissioner judges applications.
161c.32 Criteria for evaluation of applications.

Subpart E—What Conditions Must Be Met by a Grantee?

161c.41 Ongoing evaluation activities.
161c.42 Funding.
161c.43 Ineligible costs.

Authority: Title III, Part C, of the Elementary and Secondary Education Act, as amended by the Education Amendments of 1978, Pub. L. 95-561 (20 U.S.C. 2961).

Subpart A—General

§ 161c.1 Arts Education Program.

The Arts Education Program provides Federal financial assistance for the arts in elementary and secondary education.

(20 U.S.C. 2961)

§ 161c.2 Eligible parties.

(a) State educational agencies (SEAs), local educational agencies (LEAs), and nonprofit agencies, organizations, and institutions may apply for grants.

(b) Nonprofit agencies, organizations, and institutions may include, but are not limited to, libraries, museums, theaters, arts councils and centers, colleges and universities, performing arts groups, and parent, youth, and civic organizations.

(20 U.S.C. 2962)

§ 161c.3 Regulations that apply to the Arts Education Program.

(a) *Regulations for grants.* The following regulations apply to grants under the Arts Education Program:

(1) The Education Division General Administrative Regulations (EDGAR) in Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 161c.

(b) *Regulations for procurement contracts.* The Commissioner may award contracts to carry out the purposes of the Act. The regulations in this part, however, do not apply to procurement contracts under the Arts Education Program. These contracts are subject to:

(1) Federal and HEW procurement regulations in 41 CFR Chapters 1 and 3; and

(2) Requirements and criteria in particular requests for proposals (RFPs) published in the *Commerce Business Daily.*

(20 U.S.C. 1221e–3, 2982)

§ 161c.4 Definitions.

(a) The definitions in Part 100c of the Education Division General Administrative Regulations (EDGAR) apply to these regulations, including the following terms:

Commissioner
Equipment
Facilities
Local educational agency
Nonprofit
State
State educational agency

(b) In addition, the following definitions apply in these regulations:

"Act" means the Arts in Education Act of 1978, enacted by Pub. L. 95–561 as Part C of Title III of the Elementary and Secondary Education Act of 1965.

"Arts" includes, but is not limited to, music, dance, drama, folk art, creative writing, architecture and allied fields, painting, sculpture, photography, graphic and craft arts, industrial design, costume and fashion design, motion pictures, televison, radio, and tape and sound recording, the presentation, performance, execution, and exhibition of these art forms, and the study and application of the arts to the human environment. (20 U.S.C. 2961, 952(b), Pub. L. 89–209)

"Arts education program" means a program in which the arts are an integral part of elementary and secondary school education and that complies with § 161c.9 (Program elements).

"Urban or large community," for purposes of these regulations, means a standard metropolitan statistical area, as defined in section 617(9) of the Elementary and Secondary Education Act.

"Rural or small community," for purposes of this regulation, means a geographic area—other than a State—isolated from a metropolitan area. Cultural resources outside the schools are nonexistent or limited.

Subpart B—What Kinds of Projects Does the Office of Education Assist Under This Program?

§ 161c.9 Program elements.

The Commissioner awards grants to assist in establishing, conducting, or improving arts education programs. Each arts education program to be assisted under a project must be designed to—

(a) Provide opportunities for all students in the schools served by the project to acquire skills and understanding in and through several arts media, including, at least, dance, music, theater, and the visual arts; and

(b) Integrate these arts disciplines into the regular educational program of the schools served, rather than to include them on an extra-curricular or peripheral basis.

(20 U.S.C. 2961, 2962)

§ 161c.10 Elements of cooperation.

(a) An applicant shall develop—and describe in its application—a strategy to work collaboratively with State and/or local agencies, including SEAs and LEAs, schools, colleges and universities, arts organizations, and other community resource groups in the geographic area to be served by the proposed project.

(b) The applicant or grantee shall involve these groups in planning, conducting, and improving the assisted arts education program.

(c) To be considered for a grant, an arts education project must meet the following minimum elements of cooperation in the funding category under which the applicant applies:

(1) *All projects.* (i) The project must have a project advisory committee consisting of members broadly representative of education, the arts, business, the professions, and parent and youth groups in the project area. A State applicant shall use the State arts education advisory committee (such as the State Alliance for Arts Education Committee) if one exists and if it meets the requirements of a project advisory committee. A local applicant shall have on its project advisory committee some representation from the State arts education advisory committee, if one exists.

(ii) The advisory committee shall provide service to assist with the project, in areas such as—

(A) Planning the project proposal;

(B) Meeting with project staff to review and comment on the progress of the project;

(C) Acquainting the community with the project; and

(D) Disseminating information regarding the project.

(2) *State projects.* The proposed projects shall provide for interagency program planning and implementation with at least the SEA, the State arts education advisory committee, the State arts agency, a minimum of three LEAs in the State, and a variety of other State and local arts resource organizations, agencies, and institutions.

(3) *Urban or large community projects.* Projects cooperation shall include, but not be limited to—

(i) Serving the elementary and secondary students of a minimum of five cooperating schools located in one or more LEAs; and

(ii) Participation of a minimum of three arts and educational organizations, institutions, and agencies.

(4) *Rural or small community projects.* The projects shall utilize available arts and community resources within the project area and may also use resources from outside the area.

(20 U.S.C. 2962)

§ 161c.11 Eligible Activities.

Projects to make the arts an integral part of elementary and secondary curriculums may include, but need not be limited to—

(a) Activities related to program content, including—

(1) Leadership training and staff development;

(2) Community awareness programs;

(3) Technical assistance; and

(4) Material and curriculum development; and

(b) Activities related to program management, including—

(1) Planning and coordination;

(2) Evaluation; and

(3) Documentation and dissemination.

(20 U.S.C. 2962)

§ 161c.12 Project duration.

(a) The Commissioner may approve a project for a maximum of three years in accordance with EDGAR §§ 100a.250 and 100a.251.

(b) Any continuation awards for budget periods after the first budget period of an approved multi-year project are made for decreasing amounts of funds. See EDGAR §§ 100a.253–100a.254 for provisions on continuation awards and extension of a project.

(c) In deciding whether or not to make a continuation award, the Commissioner considers the factors in § 100a.253(a) of EDGAR and the degree to which a project shows school-community

cooperation and direct benefit to elementary and secondary arts education, as evidenced by site visits, reports, project evaluation, and documentation.

(20 U.S.C. 1221e–3, 2962)

Subpart C—How to Apply for a Grant

§ 161c.21 Limitation on number of applications.

The Commissioner approves no more than one project application from an applicant in a fiscal year, whether or not that application is filed jointly with other applicants.

(20 U.S.C. 1221e–3, 2962)

§ 161c.22 Joint application.

A single application may be submitted by a group of eligible parties. Joint applications are subject to §§ 100a.127 through 100a.129 of EDGAR.

(20 U.S.C. 1221e–3, 2962)

§ 161c.23 Application requirements.

(a) *Project requirements.* The Commissioner considers only applications that meet the requirements in the following sections of these regulations:

(1) Limitation on number of applications (§ 161c.21).

(2) Joint application (§ 161c.22).

(3) Program elements (§ 161c.9).

(4) Elements of cooperation (§ 161c.10).

(5) Cost-sharing requirements (§ 161c.42).

(b) *Criteria.* In preparing an application for a grant, an applicant should address each criterion in § 161c.32.

(20 U.S.C. 1221e–3, 2962)

(c) *Special requirements for SEA or LEA applicants.* (1) An application from an LEA shall comply with the requirements in §§ 100a.136 through 100a.141 of EDGAR concerning an open meeting on the application.

(2) A grant to an SEA or LEA is subject to EDGAR requirements in §§ 100a.680 and 100b.650 through 100b.663 concerning participation by private school children.

(20 U.S.C. 887e, 2942(b))

§ 161c.24 State review of local applications.

(a) The SEA, working with the State arts education advisory committee, may review and comment on local applications.

(b) If a State advisory committee does not exist, the SEA may assemble a committee for this purpose, using the elements for a project advisory committee in § 161c.10 as a guide.

(c) The local applicant shall send a copy of its application to the SEA, at the same time it sends the application to the Commissioner. The application must show that a copy was sent to the SEA.

(d) The SEA has 30 days after date of receipt of the application in which to review it.

(20 U.S.C. 1221e–3, 2962)

Subpart D—How is a Grant Made?

§ 161c.31 How the Commissioner judges applications.

(a) General selection procedures for applications are discussed in §§ 100a.216 through 100a.221 of EDGAR.

(b) In selecting new or continuing applications the Commissioner may use the Federal Council on the Arts and the Humanities to review or comment on applications.

(1) The Commissioner may, in conjunction with the Council, identify applications within the priorities of other funding agencies on the Council.

(2) The Commissioner may decline to fund applications within other agencies' priorities.

(3) Applications may be considered for joint support by the Office of Education and other Federal agencies which are members of the Council.

(c) The Commissioner may reserve funds for grants in each of the areas of State projects, urban or large community projects, and rural or small community projects.

(20 U.S.C. 2962)

§ 161c.32 Criteria for evaluation of applications.

The Commissioner evaluates applications within each of the funding areas on the basis of criteria in this section totaling 100 possible points.

(a) *Criteria related to program management.*—(1) *Needs assessment.* The extent to which the application—

(i) Identifies and analyzes, objectively and comprehensively, the elementary and secondary arts education needs in the area to be served. In judging this criterion, the Commissoner considers the application's description of the geographic location to be served by the proposed project, including school populations. (5 points)

(ii) Sets forth clear and measurable objectives that relate to the identified needs. (5 points)

(2) *Coordination.* (i) The quality of the applicant's plan to mobilize and coordinate activities of all agencies, organizations, and institutions involved. In judging this criterion, the Commissioner considers the application's description of how and why each entity is cooperating in the project. (10 points)

(ii) *Quality* of planning and its *consistency* with plans and/or activities previously carried out in the arts. In judging this criterion, the Commissioner considers how the project relates to the objectives of the State plan for the arts in education, if one exists. (5 points).

(iii) Extent of commitment and involvement of the SEA and LEAs in the proposed project. (10 points)

(iv) The extent to which the applicant makes effective use of the facilities and services of State and local agencies, institutions, and organizations, beyond the minimum requirements in § 161c.10. (5 points)

(3) *Project administration.* (i) The Commissioner uses EDGAR criteria worth a total of 30 points to evaluate applications. These criteria in §§ 100a.202 through 100a.205 concern the quality of the applicant's proposed plan of operation (10 points), key personnel (5 points), budget and cost-effectiveness (10 points), and evaluation plan (5 points).

(ii) The adequacy of provisions for disseminating information about the project. (10 points)

(b) *Criteria related to program content.* (1) The extent to which the proposed project is designed to serve the needs of all students in the project area, including the handicapped, gifted, and underprivileged. (5 points)

(2) *Results, end products, or outcome.* The extent to which the proposed project employs or will result in new and innovative approaches, methods, or materials of value in increasing the effectiveness of the arts in education. (15 points)

(c) *Distribution of projects.* (1) The Commissioner considers the extent to which approval of a project will contribute to—

(i) An equitable geographic distribution or arts education programs throughout the United States in both urban and rural areas; and

(ii) A variety in types of projects funded that collectively demonstrate diverse approaches to the arts in elementary and secondary education.

(2) The Commissioner may add up to 10 points to the score of an aplication to help achieve these aims.

(20 U.S.C. 2962)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 161c.41 Ongoing evaluation activities.

(a) Throughout a project period, a grantee is responsible for evaluation activities that provide information for effective management of the project, including—

(1) Documentation of all activities for self-monitoring purposes; and

(2) Collection of statistics and data on students served, student and teacher achievements and attitudes, and relationships between other academic subjects and the arts.

(b) The Commissioner may require that some of the information in paragraph (a) of this section be included in project reports.

(c) Not more than 10 percent of total project costs may be used for outside evaluation of the project.

(20 U.S.C. 2962)

§ 161c.42 Funding.

(a) *OE share.* The Office of Education share is limited to a maximum of 50 percent of the costs of a project.

(b) *Project share.* The project share may include cash or in-kind contributions from the cooperating organizations, agencies, and institutions involved in the project. Salaries of regular full-time instructional personnel may not be included as in-kind contribution.

(20 U.S.C. 2962)

§ 161c.43 Ineligible costs.

Federal funds may not be used for—

(a) Equipment worth more than five percent of the total grant amount;

(b) Direct student financial aid; or

(c) Salaries for regular, full-time instructional personnel.

(20 U.S.C. 2962)

[FR Doc. 79-18738 Filed 6-15-79; 8:45 am]
BILLING CODE 4110-02-M

federal register

Monday
June 18, 1979

Part VI

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Permanent Regulatory Program; Clearance of Recordkeeping Requirements by General Accounting Office

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[30 CFR Ch. VII]

Surface Mining Reclamation and Enforcement Permanent Regulatory Program

AGENCY: Office of Surface Mining, Reclamation and Enforcement (OSM), U.S. Department of the Interior, Washington, D.C. 20240.

ACTION: Notice to confirm clearance of recordkeeping and reporting requirements.

SUMMARY: This notice confirms clearance by the General Accounting Office (GAO) of permanent regulatory program regulations requiring collection, submission or retention of information issued by the Office of Surface Mining Reclamation and Enforcement (OSM). Of the nearly 300 reporting and/or recordkeeping requirements submitted to GAO for clearance, 228 sections were approved and 65 sections were excluded from the clearance process either because they were exempted under 4 CFR 10.6(c) or were not subject to the Federal Reports Act. Three sections were not cleared due to the wording inconsistency and language of the regulations. These sections will be revised by way of an errata sheet to be published in the Federal Register at a later date.

EFFECTIVE DATE: May 7, 1979.

ADDRESSES:

Assistant Director, Management and Budget, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, Washington, D.C. 20240, 202–343–4293.

Assistant Director, Regulatory Reports Review, U.S. General Accounting Office, Room 5106, 441 G Street NW., Washington, D.C. 20548.

FOR FURTHER INFORMATION CONTACT: Joan Shaw, 202–343–5447.

SUPPLEMENTAL INFORMATION: On March 13, 1979, the Secretary of Interior promulgated regulations at Title 30, Code of Federal Regulations, Chapter VII (44 FR 15312–15463), under the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95–87, 30 U.S.C. 1201 *et seq.* Those regulations which required collection, submission or retention of information were promulgated subject only to review and clearance by the GAO pursuant to 44 U.S.C. 3512. The GAO solicited public comments on these regulations by public notice in the Federal Register on March 28, 1979 (44 FR 18467).

GAO clearance for each of the regulations listed at 44 FR 18532–18562 was given on May 7, 1979, except for sections 786.21, 805.14(b) and 807.11(a). Accordingly, all of these regulations, except for these three items, are effective as of May 7, 1979. However, once OSM forwards GAO a copy of the Federal Register notice revising these three items not cleared, clearance will be given.

GAO excluded from the clearance process the following:

Sections 741.11(a)(1); 743.11(b); 745.15(a); 745.16, 764.11, 764.15(a)(1), (2), (4), (5), and (6); 764.15(b)(1) and (2); 764.15(c); 764.17(a), (b), (c), and (e); 776.14; 786.12; 786.13; 786.14(a), 786.17(a) and (b); 788.15; 788.17; 805.14(a); 807.11(c); 807.11(f); 807.11(g); 808.12; 840.11(a); 840.11(b); 840.11(c); 842.12(a); 842.14; 842.15(a); 842.15(b); 843.11(a)(2); 843.11(b)(2), 843.11(c), 843.11(f); 843.12(a)(2); 843.12(b) and (e); 843.13(c), (d), and (e); 843.14(a), (b), and (d); 843.15(d) and (f); 845.17(a) and (b); 845.18(d); and 845.19(a).

Sections 745.15(a) and 745.16 were not subject to the Federal Reports Act because they were unlikely to apply to 10 or more respondents over the life of the regulations. Other sections listed above were either (1) not subject to the Federal Reports Act because they do not require reporting to the Federal Government or to a regulatory authority or do not impose recordkeeping requirements, or (2) they were exempt from clearance under 4 CFR 10.6(c)(5) or (c)(6) of GAO regulations.

The reporting requirements contained in 30 CFR 700.12(b) and 700.13 have been approved by the U.S. General Accounting Office under number B–190462 (RO589).

The recordkeeping requirements contained in 30 CFR 707.12 has been approved by the U.S. General Accounting Office under number B–190462 (RO590).

The reporting requirement contained in 30 CFR 730.12(b) has been approved by the U.S. General Accounting Office under number B–190462 (RO591).

The reporting requirements contained in 30 CFR 731.12(a), 731.13 and 731.14 have been approved by the U.S. General Accounting Office under number B–190462 (RO592).

The reporting requirements contained in 30 CFR 732.11(d), 732.13(f), 732.14, 732.16(a), 732.17(b), 732.17(f), 732.17(g), and recordkeeping requirement contained in 30 CFR 732.16(b) have been approved by the U.S. General Accounting Office under number B–190462 (RO593).

The reporting requirements contained in 30 CFR 733.12(a)(2) has been approved by the U.S. General Accounting Office under number B–190462 (RO594).

The reporting requirements contained in 30 CFR 741.11(c)(1), 741.12(c), 741.13(c), 741.15(a)(1), 741.15(b)(1), 741.21(b), 741.24(c), and 741.25(b) have been approved by the U.S. General Accounting Office under number B–190462 (RO595).

The reporting requirements contained in 30 CFR 742.11(a), 742.13(a), 742.18(c), and 742.18(d) have been approved by the U.S. General Accounting Office under number B–190462 (RO596).

The reporting requirements contained in 30 CFR 745.11 (a) and (b) have been approved by the U.S. General Accounting Office under number B–190462 (RO598).

The reporting requirements contained in 30 CFR 761.12(b)(2), 761.12(e), 761.12(f), and the recordkeeping requirement contained in 30 CFR 761.12(d) have been approved by the U.S. General Accounting Office under number B–190462 (RO599).

The reporting requirements contained in 30 CFR 764.13(b), 764.13(c), 764.19(b), and the recordkeeping requirements contained in 30 CFR 764.15(d), 764.21, and 764.25(b) have been approved by the U.S. General Accounting Office under number B–190462 (RO600).

The reporting requirements contained in 30 CFR 769.11 and 769.13 have been approved by the U.S. General Accounting Office under number B–190462 (RO601).

The reporting requirements contained in 30 CFR 771.15(c), 771.21(a)(1), 771.21(b)(2), 771.21(b)(3), and 771.23 have been approved by the U.S. General Accounting Office under number B–190462 (RO602).

The reporting requirements contained in 30 CFR 776.11 and 776.12 have been approved by the U.S. General Accounting Office under number B–190462 (RO603).

The reporting requirements contained in 30 CFR 778.13, 778.14, 778.15, 778.16, 778.17, 778.18, 778.19, 778.20, and 778.21 have been approved by the U.S. General Accounting Office under number B–190462 (RO604).

The reporting requirements contained in 30 CFR 779.11, 779.12, 779.13, 779.14, 779.15, 779.16, 779.17, 779.18, 779.19, 779.20, 779.24, 779.25, and 779.27 have been approved by the U.S. General Accounting Office under number B–190462 (RO605).

The reporting requirements contained in 30 CFR 780.11, 780.12, 780.13, 780.14, 780.15, 780.16, 780.18, 780.21, 780.23, 780.25, 780.27, 780.29, 780.31, 780.33, 780.35, and 780.37 have been approved by the U.S. General Accounting Office under number B–190462 (RO606).

The reporting requirements contained in 30 CFR 782.13, 782.14, 782.15, 782.16, 782.17, 782.18, 782.19, 782.20, and 782.21 have been approved by the U.S. General Accounting Office under number B–190462 (RO607).

The reporting requirements contained in 30 CFR 783.11, 783.12, 783.13, 783.14, 783.15, 783.16, 783.17, 783.18, 783.19, 783.20, 783.21, 783.22, 783.24, 783.25, and 783.27 have been approved by the U.S. General Accounting Office under number B–190462 (RO608).

The reporting requirements contained in 30 CFR 784.11, 784.12, 784.13, 784.14, 784.15, 784.16, 784.17, 784.18, 784.19, 784.20, 784.21, 780.22, 784.23, 784.24, and 784.25 have been approved by the U.S. General Accounting Office under number B–190462 (RO609).

The reporting and recordkeeping requirements contained in 30 CFR 785.13 (e), (f), (g), and (h); 785.14; 785.15; 785.16; 785.17(b) (1), (2), (4), (6), and (8); 785.18(c); 785.19; 785.20; 785.21; and 785.22 have been approved by the U.S. General Accounting Office under number B–190462 (RO610).

The reporting and recordkeeping requirements contained in 30 CFR 786.11 (a), (b), (c), and (d); 786.14(b); 786.15; 786.17(c); 786.19; and 786.23 (c) and (d) have been approved by the U.S. General Accounting Office under number B–190462 (RO611).

The reporting requirements contained in 30 CFR 788.12, 788.14, 788.18, and 788.19, and the recordkeeping requirements contained in 30 CFR 788.11 and 788.16 have been approved by the U.S. General Accounting Office under number B–190462 (RO612).

The reporting requirements contained in 30 CFR 800.11 and 800.12 have been approved by the U.S. General Accounting Office under number B–190462 (RO613).

The reporting requirement contained in 30 CFR 806.11(b) has been approved by the U.S. General Accounting Office under number B–190462 (RO615).

The reporting requirement contained in 30 CFR 807.11(e)(4) has been approved by the U.S. General Accounting Office under number B–190462 (RO616).

The reporting and recordkeeping requirements contained in 30 CFR Part 816, subsections 46(c)(4), 46(r), 46(t), 49(h), 52(a)(3), 52(b)(1)(iii), 53(a), 62, 64, 65(a)(2)(iii), 67, 68, 71(j), 82(a)(4), 82(b), 87, 91(b), 117(b)(4), 117(c) (1) and (3), 131(b), 133(c) (1) through (4), 133(c) (8) and (9), 150(d)(1), 152(d)(13), 160(d)(1), and 163(d) have been approved by the U.S. General Accounting Office under number B–190462 (RO618).

The reporting and recordkeeping requirements contained in 30 CFR Part 817, subsections 46(c)(4), 46(r), 46(t), 49(h), 52(a)(3), 52(b)(1)(iii), 53(a), 62, 65(b)(2)(iii), 67, 68, 71(j), 82(a)(4), 82(b), 87, 91(b), 117(b)(4), 117(c) (1) and (3), 131(b), 133(c) (1) through (4), 133(c) (8) and (9), 150(d)(1), 152(d)(13), 160(d)(1), and 163(d) have been approved by the U.S. General Accounting Office under number B–190462 (RO619).

The recordkeeping requirements contained in 30 CFR 822.14 (a) and (d) have been approved by the U.S. General Accounting Office under number B–190462 (RO620).

The reporting requirement contained in 30 CFR 826.12(b) has been approved by the U.S. General Accounting Office under number B–190462 (RO621).

The reporting requirements contained in 30 CFR 840.11(d)(3), 840.14(a), and 840.14(b) have been approved by the U.S. General Accounting Office under number B–190462 (RO622).

The reporting requirement contained in 30 CFR 843.16 has been approved by the U.S. General Accounting Office under number B–190462 (RO624).

The recordkeeping requirement contained in 30 CFR 845.18(c) has been approved by the U.S. General Accounting Office under number B–190462 (RO625).

Because OSM did not have the experience in fullfilling these recordkeeping and reporting requirements, estimating accurately the compliance burden estimates was very difficult. Therefore we are requesting that respondents inform OSM, no later than November 30, 1980, as to how long it took to comply with reporting requirements listed in this clearance notice. This will give OSM an opportunity to reevaluate its burden estimates and revise estimates where necessary.

The following sections may impose reporting requirements which duplicate information already submitted by respondents to other Federal or State agencies:

779.27, 780.14, 780.15, 780.25, 782, 783.25, 784.16, 784.23, 784.28, 816.46, 816.49, 816.81, 816.85, 816.86, 816.91–93, 817.46, 817.49, 817.81, 817.85, 817.91–93, 822.14(a), 822.14(d).

Where these sections, or any other sections, impose reporting requirements which duplicate any information that is required to be submitted to another Federal or a State agency, any person may comply with these regulations by submitting to the appropriate regulatory authority, in lieu of preparing new reports, one copy of such duplicate report. Information which is submitted as duplicative must be identical to the information required by these regulations in all substantive respects including, but not limited to, timeliness and detail of data, time span of data, geographic area, qualification of the preparer and other professional certification, specific maps, time tables, and plans, measurements or monitoring devices, design and construction specifications, required demonstrations and methods of notice.

During GAO's review, commenters and GAO staff identified, and OSM confirmed that the sections below require either reporting or recordkeeping but had not been previously submitted for GAO clearance:

30 CFR 776.13(b)
30 CFR 776.17(b)
30 CFR 779.21
30 CFR 779.22
30 CFR 784.26
30 CFR 785.17(b)(3)
30 CFR 785.17(b)(5)
30 CFR 785.17(b)(7)
30 CFR 786.15(a)(3)
30 CFR 786.25(b)(2)
30 CFR 786.25(b)(4)
30 CFR 807.11(d)
30 CFR 807.11(h)(ii)
30 CFR 816.49(i)
30 CFR 816.52(a)
30 CFR 816.52(b)(1)(ii)
30 CFR 816.95
30 CFR 816.116
30 CFR 817.49(i)
30 CFR 817.52(a)
30 CFR 817.52(b)(1)(ii)
30 CFR 817.95
30 CFR 817.116
30 CFR 843.14(c)

OSM will be submitting these sections to GAO during the week of June 4, 1979. These sections will not be effective until they have been cleared by GAO under the Federal Reports Act.

To determine what water quality and quantity information the Federal Government or organizations have collected and can make available to the public, you can contact:

National Water Data Exchange, Program Office (NAWDEX), U.S. Geological Survey, 421 National Center, Reston, Va. 22092, 703–860–6031.

Dated: June 8, 1979.

Walter N. Heine,

Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 79–18812 Filed 6–15–79; 8:45 am]
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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
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DOT/FRA*	LABOR		DOT/FRA*	LABOR
CSA	HEW/FDA		CSA	HEW/FDA

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

*NOTE: As of June 14, 1979, the Urban Mass Transportation Administration and Federal Railroad Administration, Department of Transportation, will publish on the Monday/Thursday schedule.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.

Rules Going Into Effect Today

FEDERAL COMMUNICATIONS COMMISSION

27994 5-14-79 / Private land mobile radio service; simplification of certain procedures for filing applications

List of Public Laws

Last Listing June 15, 1979

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202-275-3030).

S. 7 / Pub. L. 96-22 "Veterans' Health Care Amendments of 1979". (June 13, 1979; 93 Stat. 47) Price $1.10.

S. 709 / Pub. L. 96-23 To authorize appropriations for the Coast Guard for fiscal years 1980 and 1981, and for other purposes. (June 13, 1979; 93 Stat. 68) Price $.60.

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Federal Register

Book 1 of 2 Books
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Highlights

35280 **National School Lunch Program** USDA/FNS determines the value of donated agricultural commodities and other foods; effective 6–15–79

35980 **Energy Impacted Area Development Assistance** USDA/FmHA issues regulations concerning areas impacted by increased coal or uranium production, processing or transportation; effective 6–19–79 (Part VII of this issue)

35231 **Supplemental Food Program** USDA/FNS proposes funding formulas for women, infants and children; effective 6–19–79; comments by 8–3–79

35904 **Indian Reservations** USDA/FNS sets forth requirements for conducting the Food Stamp and Food Distribution Programs; effective 6–19–79 (Part III of this issue)

35282 **Hydrocarbon, Coal, and Coke Consumption** Commerce/Census provides information on consumption of fuels for nonenergy purposes

35217 **Certain Alcohol Fuels** Treasury/IRS provides temporary regulations concerning exemption from motor fuels excise taxes

35604 **Gun Control** Treasury/BATF publishes firearms laws of political subdivisions and states (Part II of this issue)

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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Area Code 202–523–5240

Highlights

35297 **Alcohol, Drug Abuse, and Mental Health Administration** HEW/PHS establishes an Office of Extramural Project Review and Extramural Policy and Project Review

35946 **Advisory Councils and Boards** HEW/NIH requests nominations for members of councils and boards; nominations by 8–1–79 (Part IV of this issue)

35295 **Spironolactone** HEW/FDA announces efficacy review results and marketing conditions; comments by 8–20–79

35956 **Inmate Correspondence** Justice/Prisons Bureau provides rules concerning control, custody, care, treatment and instruction; effective 7–1–79; comments by 10–1–79 (Part VI of this issue)

35286 **Motor Vehicle Information and Cost Savings** EPA summarizes retrofit device evaluation of the "Malpassi Filter King"

35201 **Sugar Beet Crop Insurance** USDA/FCIC prescribes shorter, clearer, and more simplified procedures; effective 6–19–79

35195 **Barley Crop Insurance** USDA/FCIC prescribes shorter, clearer and more simplified procedures; effective 6–19–79

35208 **Food Additives** EPA includes paint-on application of chlorpyritos regulations in food-handling establishments; effective 6–19–79

35209 **Aluminium Phosphide** EPA removes restrictions prohibiting contact in manufacturing beer; effective 6–19–79

35230 **Cigar-Binder Tobacco** USDA/ASCS investigates operations of marketing quota; comments by 7–19–79

35256 **Seaway Regulations** DOT/SLS proposes amendments to safety procedures; comments by 8–3–79

35356 **Sunshine Act Meetings**

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 295

Availability of Information and Records to the Public; Changes in Addresses; Correction

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule; correction.

SUMMARY: The purpose of this document is to correct errors in FR Doc. 79-13287 appearing at pgs. 25396-25397 in the Federal Register of May 1, 1979.

EFFECTIVE DATE: Upon publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Joseph M. Scordato, Freedom of Information Officer, Administrative Services Division, Food and Nutrition Service, USDA, Washington, D.C. 20250 (202-447-8278).

SUPPLEMENTARY INFORMATION: It is impractical and unnecessary to follow the proposed rule making and public participation procedure of 5 U.S.C. and Executive Order 12044 since this is a technical amendment that is nonsubstantive in nature. The errors and corrections are as follows:

1. On Page 25396, the fifth amendment erroneously omitted a reference to paragraph (d), as well as omitting a reference to and the amendatory language of paragraphs (e) and (f). It should be corrected to read as follows:

"5. In § 295.7 the second sentence and paragraphs (a), (b), (c), (d), and (e) are revised and paragraph (f) is added to read as follows:

§ 295.7 Public inspection and copying.

* * * * *

(e) Supplemental Food Program materials—Room 4405, Auditors Building, 14th and Independence Ave. S.W., Washington, D.C.

(f) All other FNS materials—Inquire at Administrative Services, Division, Room 792, 500 12th Street S.W., Washington, D.C., for specific locations."

2. On page 25396, the sixth amendment erroneously used the term "subparagraphs" rather than "paragraphs" in referring to paragraphs (g) and (h).

3. On page 25397, the seventh amendment erroneously omitted a reference to paragraph (e). It should be corrected to read:

"7. In § 295.9 paragraphs (a), (b), (c) and (d) are revised and paragraph (e) is added to read as follows:" (5 U.S.C. 301, 552; 7 CFR 1.1-1.16).

Done this 12th day of June, 1979, at Washington, D.C.

Robert Greenstein,
Acting Administrator,
Food and Nutrition Service.

[FR Doc. 79-18389 Filed 6-18-79; 8:45 am]
BILLING CODE 3410-30-M

Federal Crop Insurance Corporation

7 CFR Parts 401 and 419

Barley Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: This rule prescribes procedures for insuring barley crops effective with the 1980 crop year. The rule combines provisions from previous regulations for insuring barley in a shorter, clearer, and more simplified document which will make the program more effective administratively. This rule is promulgated under the authority contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: June 19, 1979.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone 202-447-3325.

SUPPLEMENTARY INFORMATION: The Federal Crop Insurance Corporation (FCIC) published a notice of proposed rulemaking in the Federal Register (44 FR 23229, Thursday, April 19, 1979) outlining the prescribed procedures for insuring barley crops effective with the 1980 crop year. In the notice, FCIC, under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), proposed that a new Part 419 of Chapter IV in Title 7 of the Code of Federal Regulations be established to prescribe procedures for insuring barley crops effective with the 1980 crop year to be known as 7 CFR Part 419 Barley Crop Insurance.

All previous regulations applicable to insuring barley crops as found in 7 CFR 401.101-401.111 and 401.125 are not applicable to 1980 and succeeding barley crops but remain in effect for FCIC barley insurance policies issued for the crop years prior to 1980.

It has been determined that combining all previous regulations for insuring barley crops into one shortened, simplified and clear regulation would be more effective administratively. In addition, Part 419 contains a premium adjustment table to provide maximum individual premium discounts for good insuring experience of up to 50 percent and premium increases for unfavorable insuring experience. The good experience discounts provided under the previous barley crop insurance policies have been discontinued; however, the premium adjustment table will result in more premium discounts for good experience than were formerly provided under the good experience discounts in the previous policy. Further, Part 419 (1) provides that any premium balance not paid by the termination date will be increased by a 9 percent service fee with a 9 percent simple interest charge applying to any unpaid premium balance at the end of each subsequent 12-month period, (2) extends the 15-day period for submitting a notice of damage or loss to 30 days and eliminates the 60-day period for filing a claim for loss, (3) establishes the production guarantee on a harvested basis with a reduction of the lesser of 4 bushels or 20 percent of the guarantee for any unharvested acreage, (4) provides 3 levels of insurance coverage on each barley crop in each county, (5) provides new termination dates for indebtedness and sales closing dates which more nearly reflect current farming practices, and (6) increases the limitation from $5,000 to $20,000 in cases involving good faith reliance on misrepresentation (as found in 7 CFR

Part 419.5 of the regulations) wherein the Manager of the Corporation is authorized to take action to grant relief. The Barley Crop Insurance Regulations provide a December 31 cancellation date for all counties in which only spring barley is insurable and a June 30 date for all other counties. These regulations and any amendments thereto, must be placed on file in the Corporation's office for each particular county in which the insurance is available by not later than 15 days prior to June 30 or December 31 (for spring barley) in order to be effective for the crop year.

Under the provisions of Executive Order No. 12044, and the Administrative Procedure Act (5 U.S.C. 553 (b) and (c)), the public was given an opportunity to submit written comments, data, and views on the proposed regulations, but none were received. Therefore, with the exception of minor and nonsubstantive corrections to language, the regulations, as contained in the proposed rule, are hereby issued as a final rule to be in effect starting with the 1980 crop year.

Final Rule

§ 401.125 [Reserved]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby deletes and reserves 7 CFR 401.125 with such regulations as are contained therein remaining in effect for FCIC insurance policies issued for crop years prior to 1980, and issues a new Part 419 in Chapter IV of Title 7 of the Code of Federal Regulations (7 CFR Part 419) to be known as the Barley Crop Insurance Regulations, which shall remain in effect, until amended or superseded, for the 1980 and succeeding crop years, to read as follows:

PART 419—BARLEY CROP INSURANCE

Subpart—Regulations for the 1980 and Succeeding Crop Years

Sec.

419.1 Availability of barley insurance.
419.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
419.3 Public notice of indemnities paid.
419.4 Creditors.
419.5 Good faith reliance on misrepresentation.
419.6 The contract.
419.7 The application and policy.

Authority: Secs. 506, 516, 52 Stat. 73, as amended 77, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1980 and Succeeding Crop Years

§ 419.1 Availability of Barley Insurance.

Insurance shall be offered under the provisions of this subpart on barley in counties within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. Before insurance is offered in any county, there shall be published by appendix to this chapter the names of the counties in which barley insurance will be offered.

§ 419.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for barley which shall be shown on the county actuarial table on file in the office for the county and may be changed from year to year.

(b) At the time the application for insurance is made, the applicant shall elect a coverage level and price at which indemnities shall be computed from among those levels and prices shown on the actuarial table for the crop year.

§ 419.3 Public notice of indemnities paid.

The Corporation shall provide for posting annually in each county at each county courthouse a listing of the indemnities paid in the county.

§ 419.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, or an involuntary transfer shall not entitle the holder of the interest to any benefit under the contract except as provided in the policy.

§ 419.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the barley insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation, (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured, or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $20,000, finds (1) that an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured person relied thereon in good faith, and (3) that to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

§ 419.6 The contract.

(a) The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. Such acceptance shall be effective upon the date the notice of acceptance is mailed to the applicant. The contract shall cover the barley crop as provided in the policy. The contract shall consist of the application, the policy, the attached appendix, and the provisions of the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. Copies of forms referred to in the contract are available at the office for the county.

§ 419.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's insurable share in the barley crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the office for the county on or before the applicable closing date on file in the office for the county.

(b) The Corporation reserves the right to discontinue the acceptance of applications in any county upon its determination that the insurance risk involved is excessive, and also, for the same reason, to reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting of applications or contract changes in any county, by placing the extended date on file in the office for the county and publishing a notice in the **Federal Register** upon the Manager's determination that no adverese selectivity will result during the period of such extension: *Provided, however,* That if adverse conditions should develop during such period, the

Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1980 and succeeding crop years, a contract, in the form provided for under this subpart, will come into effect as a continuation of a barley contract issued under such prior regulations, without the filing of a new application.

(d) The provisions of the application and Barley Insurance Policy for the 1980 and Succeeding Crop Years, and the Appendix to the Barley Insurance Policy are as follows:

United States Department of Agriculture

Federal Crop Insurance Corporation

Application for 19—— and Succeeding Crop Years

Barley Crop Insurance Contract

_____

(Contract number)

_____

(Identification number)

_____

(Name and address) (Zip Code)

_____

(County) (State)

Type of entity _____

Applicant is over 18 Yes—— No——

A. The applicant, subject to the provisions of the regulations of the Federal Crop Insurance Corporation (herein called "Corporation"), hereby applies to the Corporation for insurance on the applicant's share in the barley seeded on insurable acreage as shown on the county actuarial table for the above-stated county. The applicant elects from the actuarial table the coverage level and price at which indemnities shall be computed. THE PREMIUM RATES AND PRODUCTION GUARANTEES SHALL BE THOSE SHOWN ON THE APPLICABLE COUNTY ACTUARIAL TABLE FILED IN THE OFFICE FOR THE COUNTY FOR EACH CROP YEAR.

Level election _____

Price election _____

Example: For the 19— crop year only (100% share)

Location/ farm No.	Guarantee per acre[1]	Premium per acre	Practice

[1] Your guarantee will be on a unit basis (bushels X per acre guarantee X share).

B. WHEN NOTICE OF ACCEPTANCE OF THIS APPLICATION IS MAILED TO THE APPLICANT BY THE CORPORATION, the contract shall be in effect for the first crop year specified above, unless the time for submitting applications has passed at the time this application is filed, AND SHALL CONTINUE FOR EACH SUCCEEDING CROP YEAR UNTIL CANCELED OR TERMINATED as provided in the contract. This accepted application, the following barley insurance policy, the attached appendix, and the provisions of the county actuarial table showing the production guarantees, coverage levels, premium rates, prices for computing indemnities, insurable and uninsurable acreage, shall constitute the contract. Additional information regarding contract provisions can be found in the county regulations folder on file in the office for the county. No term or condition of the contract shall be waived or changed except in writing by the Corporation.

_____

(Code No./Witness to signature)

_____

(Signature of applicant) (Date)

Address of office for county:

_____

Phone _____

Location of farm headquarters:

_____

Phone _____

Barley Crop Insurance Policy

Terms and conditions

Subject to the provisions in the attached appendix:

1. *Causes of loss.* (a) Causes of loss insured against. The insurance provided is against unavoidable loss of production resulting from adverse weather conditions, insects, plant disease, wildlife, earthquake or fire occurring within the insurance period, subject to any exceptions, exclusions or limitations with respect to causes of loss shown on the actuarial table.

(b) Causes of loss not insured against. The contract shall not cover any loss of production, as determined by the Corporation, due to (1) the neglect or malfeasance of the insured, any member of the insured's household, the insured's tenants or employees, (2) failure to follow recognized good farming practices, (3) damage resulting from the backing up of water by any governmental or public utilities dam or reservoir project, or (4) any cause not specified as an insured cause in this policy as limited by the actuarial table.

2. *Crop and acreage insured.* (a) The crop insured shall be barley which is seeded for harvest as grain and which is grown on insured acreage for which the actuarial table shows a guarantee and premium rate per acre and, where so provided on the actuarial table, a mixture of barley with oats or wheat or both seeded for harvest as grain. The production from such mixture shall be counted as barley on a weight basis.

(b) The acreage insured for each crop year shall be that acreage seeded to barley on insurable acreage, as shown on the actuarial table and the insured's share therein as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect: *Provided,* That insurance shall not attach or be considered to have attached as determined by the Corporation to any acreage (1) where premium rates are established by farming practices on the actuarial table, and the farming practices carried out on any acreage are not among those for which a premium rate has been established, (2) not reported for insurance as provided in section 3 if such acreage is irrigated and an irrigated practice is not provided for such acreage on the actuarial table, (3) which is destroyed and after such destruction it was practical to reseed to barley and such acreage was not reseeded, (4) initially seeded after the date on file in the office for the county which has been established by the Corporation as being too late to initially seed and expect a normal crop to be produced, (5) of volunteer barley, (6) seeded to a type or variety of barley not established as adapted to the area or shown as noninsurable on the actuarial table, or (7) seeded with another crop, except as otherwise provided herein.

(c) Insurance may attach only by written agreement with the Corporation on acreage which is seeded for the development or production of hybrid seed or for experimental purposes.

3. *Responsibility of insured to report acreage and share.* The insured shall submit to the Corporation on a form prescribed by the Corporation, a report showing (a) all acreage of barley seeded in the county (including a designation of any acreage to which insurance does not attach) in which the insured has a share and (b) the insured's share therein at the time of seeding. Such report shall be submitted each year not later than the acreage reporting date on file in the office for the county.

4. *Production guarantees, coverage levels and prices for computing indemnities.* (a) For each crop year of the contract, the production guarantees, coverage levels, and prices at which indemnities shall be computed shall be those shown on the actuarial table.

(b) The production guarantee per acre shall be reduced by the lesser of 4 bushels or 20 percent for any unharvested acreage.

5. *Annual premium.* (a) The annual premium is earned and payable at the

time of seeding and the amount thereof shall be determined by multiplying the insured acreage times the applicable premium per acre, times the insured's share at the time of seeding, times the applicable premium adjustment percentage in subsection (c) of this section.

(b) For premium adjustment purposes, only the years during which premiums were earned shall be considered.

(c) The premium shall be adjusted as shown in the following table:

Percent Adjustments for Favorable Continuous Insurance Experience

Loss ratio[1] through previous crop year	Number of years continuous experience through previous year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
	Percentage adjustment factor for current crop year															
.00 to .20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 to .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 to .60	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70
.61 to .80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 to 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

Percent Adjustments for Unfavorable Insurance Experience

Loss ratio[1] through previous crop year	Number of loss years through previous year[2]															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	Percentage adjustment factor for current crop year															
1.10 to 1.19	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 to 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 to 1.69	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 to 1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 to 2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 to 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 to 3.99	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00 to 4.99	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 to 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 and up	100	100	120	136	158	180	202	224	246	268	290	300	300	300	300	300

[1] Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.

[2] Only the most recent 15 crop years will be used to determine the number of "Loss Years" (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year).

(d) Any amount of premium for an insured crop which is unpaid on the day following the termination date for indebtedness for such crop shall be increased by a 9 percent service fee, which increased amount shall be the premium balance, and thereafter, at the end of each 12-month period, 9 percent simple interest shall attach to any amount of the premium balance which is unpaid: *Provided,* When notice of loss has been timely filed by the insured as provided in section 7 of this policy, the service fee will not be charged and the contract will remain in force if the premium is paid in full within 30 days after the date of approval or denial of the claim for indemnity; *however,* if any premium remains unpaid after such date, the contract will terminate and the amount of premium outstanding shall be increased by a 9 percent service fee, which increased amount shall be the premium balance. If such premium balance is not paid within 12 months immediately following the termination date, 9 percent simple interest shall apply from the termination date and each year thereafter to any unpaid premium balance.

(e) Any unpaid amount due the Corporation may be deducted from any indemnity payable to the insured by the Corporation or from any loan or payment to the insured under any Act of Congress or program administered by the U.S. Department of Agriculture, when not prohibited by law.

6. *Insurance period.* Insurance on insured acreage shall attach at the time the barley is seeded and shall cease upon the earliest of (a) final adjustment of a loss, (b) combining, threshing, or removal of the barley from the field, (c) October 31 of the calendar year in which barley is normally harvested, or (d) total destruction of the insured barley crop.

7. *Notice of damage or loss.* (a) Any notice of damage or loss shall be given promptly in writing by the insured to the Corporation at the office for the county.

(b) Notice shall be given promptly if, during the period before harvest, the barley on any unit is damaged to the extent that the insured does not expect to further care for the crop or harvest any part of it, or if the insured wants the consent of the Corporation to put the acreage to another use. No insured acreage shall be put to another use until the Corporation has made an appraisal of the potential production of such acreage and consents in writing to such other use. Such consent shall not be given until it is too late or impractical to reseed to barley. Notice shall also be given when such acreage has been put to another use.

(c) In addition to the notices required in paragraph (b) of this section, if an indemnity is to be claimed on any unit, the insured shall give written notice thereof to the Corporation at the office for the county not later than *30 DAYS* after the earliest of (1) the date harvest is completed on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire barley crop on the unit is destroyed, as determined by the Corporation. The Corporation

reserves the right to provide additional time if it determines there are extenuating circumstances.

(d) Any insured acreage which is not to be harvested and upon which an indemnity is to be claimed shall be left intact until inspected by the Corporation.

(e) The Corporation may reject any claim for indemnity if any of the requirements of this section are not met.

8. *Claim for indemnity.* (a) It shall be a condition precedent to the payment of any indemnity that the insured (1) establish the total production of barley on the unit and that any less of production was directly caused by one or more of the insured causes during the insurance period for the crop year for which the indemnity is claimed and (2) furnish any other information regarding the manner and extent of loss as may be required by the Corporation.

(b) Indemnities shall be determined separately for each unit. The amount of indemnity for any unit shall be determined by (1) multiplying the insured acreage of barley on the unit by the applicable production guarantee per acre, which product shall be the production guarantee for the unit, (2) subtracting therefrom the total production of barley to be counted for the unit, (3) multiplying the remainder by the applicable price for computing indemnities, and (4) multiplying the result obtained in step (3) by the insured share: *Provided,* That if the premium computed on the insured acreage and share is more than the premium computed on the reported acreage and share, the amount of indemnity shall be computed on the insured acreage and share and then reduced proportionately.

(c) The total production to be counted for a unit shall be determined by the Corporation and shall include all harvested and appraised production.

(1) Mature production which grades No. 4 or better shall be reduced .12 percent for each .1 percentage point of moisture in excess of 14.5 percent, and if, due to insurable causes, any barley does not grade No. 4 or better, or is graded smutty, garlicky, or ergoty, in accordance with the Official U.S. Grain Standards, the production shall be adjusted by (i) dividing the value per bushel of the damaged barley (as determined by the Corporation) by the price per bushel of U.S. No. 2 barley and (ii) multiplying the result by the number of bushels of such barley. The applicable price for No. 2 barley shall be the local market price on the earlier of: the day the loss is adjusted or the day the damaged barley was sold.

(2) Any harvested production from volunteer crops growing with the seeded barley crop or small grains seeded in the growing barley crop on acreage which the Corporation has not given consent to be put to another use shall be counted as barley on a weight basis.

(3) Appraised production to be counted for a unit shall include: (i) the greater of the appraised production or 50 percent of the applicable guarantee for any acreage which, with the consent of the Corporation, is seeded before barley harvest becomes general in the current crop year to any other crop insurable on such acreage (excluding any crop(s) maturing for harvest in the following calendar year), (ii) any appraisals by the Corporation for potential production on harvested acreage and for uninsured causes and poor farming practices, (iii) not less than the applicable guarantee for any acreage which is abandoned or put to another use without prior written consent of the Corporation or damaged solely by an uninsured cause, and (iv) only the appraisal in excess of the lesser of 4 bushels or 20 percent of the production guarantee for all other unharvested acreage.

(d) The appraised potential production for acreage for which consent has been given to be put to another use shall be counted as production in determining the amount of loss under the contract. *However,* if consent is given to put acreage to another use and the Corporation determines that any such acreage (1) is not put to another use before harvest of barley becomes general in the county, (2) is harvested, or (3) is further damaged by an insured cause before the acreage is put to another use, the indemnity for the unit shall be determined without regard to such appraisal and consent.

9. *Misrepresentation and fraud.* The Corporation may void the contract without affecting the insured's liability for premiums or waiving any right including the right to collect any unpaid premiums if, at any time, the insured has concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

10. *Transfer of insured share.* If the insured transfers any part of the insured share during the crop year, protection will continue to be provided according to the provisions of the contract to the transferee for such crop year on the transferred share, and the transferee shall have the same rights and responsibilities under the contract as the original insured for the current crop year. Any transfer shall be made on an approved form.

11. *Records and access to farm.* The insured shall keep or cause to be kept for two years after the time of loss, records of the harvesting, storage, shipments, sale or other disposition of all barley produced on each unit including separate records showing the same information for production from any uninsured acreage. Any persons designated by the Corporation shall have access to such records and the farm for purposes related to the contract.

12. *Life of contract: Cancellation and termination.* (a) The contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, either party may cancel the insurance for any crop year by giving a signed notice to the other on or before the cancellation date preceding such crop year.

(b) Except as provided in section 5(d) of this policy, the contract will terminate as to any crop year if any amount due the Corporation under this contract is not paid on or before the termination date for indebtedness preceding such crop year: *Provided,* That the date of payment for premium (1) if deducted from an indemnity claim shall be the date the insured signs such claim or (2) if deducted from payment under another program administered by the U.S. Department of Agriculture, shall be the date such payment was approved.

(c) Following are the cancellation and termination dates:

State/county	Cancellation date	Termination date for indebtedness
Arizona, Delaware, Maryland, North Carolina, and Pennsylvania	June 30	October 10.
California:		
Modoc and Siskiyou Counties	December 31	March 31.
All other California counties	June 30	October 10.
Idaho:		
Idaho County and all counties lying north thereof	June 30	November 30.
All other Idaho counties	December 31	March 15.
Oregon:		
Klamath and Malheur Counties	December 31	March 31.
All other Oregon counties	June 30	November 30.
Washington	June 30	November 30.
All other states	December 31	March 31.

(d) In the absence of a notice from the insured to cancel, and subject to the provisions of subsections (a), (b), and (c) of this section and section 7 of the Appendix, the contract shall continue in force for each succeeding crop year.

Appendix

(Additional Terms & Conditions)

1. *Meaning of Terms*

For the purposes of barley crop insurance: (a) "Actuarial table" means the forms and related material for the crop year approved by the Corporation which are on file for public inspection in the office for the county, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, insurable and uninsurable acreage, and related information regarding barley insurance in the county.

(b) "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown on the actuarial table.

(c) "Crop year" means the period within which the barley crop is normally grown and shall be designated by the calendar year in which the barley crop is normally harvested.

(d) "Harvest" means the severance of mature barley from the land for combining or threshing.

(e) "Insurable acreage" means the land classified as insurable by the Corporation and shown as such on the county actuarial table.

(f) "Insured" means the person who submitted the application accepted by the Corporation.

(g) "Office for the county" means the Corporation's office serving the county shown on the application for insurance or such office as may be designated by the Corporation.

(h) "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

(i) "Share" means the interest of the insured as landlord, owner-operator, or tenant in the insured barley crop at the time of seeding as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect, and no other share shall be deemed to be insured: *Provided,* That for the purpose of determining the amount of indemnity, the insured share shall not exceed the insured's share at the earliest of (1) the date of beginning of harvest on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire crop on the unit is destroyed, as determined by the Corporation.

(j) "Tenant" means a person who rents land from another person for a share of the barley crop or proceeds therefrom.

(k) "Unit" means all insurable acreage of barley in the county on the date of seeding for the crop year (1) in which the insured has a 100 percent share, or (2) which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the barley crop on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in the office for the county, or by written agreement between the Corporation and the insured. The Corporation shall determine units as herein defined when adjusting a loss, notwithstanding what is shown on the acreage report, and has the right to consider any acreage and share reported by or for the insured's spouse or child or any member of the insured's household to be the bona fide share of the insured or any other person having the bona fide share.

2. *Acreage Insured*

(a) The Corporation reserves the right to limit the insured acreage of barley to any acreage limitations established under any Act of Congress, provided the insured is so notified in writing prior to the seeding of barley.

(b) If the insured does not submit an acreage report on or before the acreage reporting date on file in the office for the county, the Corporation may elect to determine by units the insured acreage and share or declare the insured acreage on any unit(s) to be "zero". If the insured does not have a share in any insured acreage in the county for any year, the insured shall submit a report so indicating. Any acreage report submitted by the insured may be revised only upon approval of the Corporation.

3. *Irrigated Acreage*

(a) Where the actuarial table provides for insurance on an irrigated practice, the insured shall report as irrigated only the acreage for which the insured has adequate facilities and water to carry out a good irrigation practice at the time of seeding.

(b) Where irrigated acreage is insurable, any loss of production caused by failure to carry out a good irrigation practice, except failure of the water supply from an unavoidable cause, occurring after the beginning of seeding, as determined by the Corporation, shall be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities shall not be considered as a failure of the water supply from an unavoidable cause.

4. *Annual Premium*

(a) If there is no break in the continuity of participation, any premium adjustment applicable under section 5 of the policy shall be transferred to (1) the contract of the insured's estate or surviving spouse in case of death of the insured, (2) the contract of the person who succeeds the insured if such person had previously participated in the farming operation, or (3) the contract of the same insured who stops farming in one county and starts farming in another county.

(b) If there is a break in the continuity of participation, any reduction in premium earned under section 5 of the policy shall not thereafter apply; *however,* any previous unfavorable insurance experience shall be considered in premium computation following a break in continuity.

5. *Claim for and Payment of Indemnity*

(a) Any claim for indemnity on a unit shall be submitted to the Corporation on a form prescribed by the Corporation.

(b) In determining the total production to be counted for each unit, production from units on which the production has been commingled will be allocated to such units in proportion to the liability on each unit.

(c) There shall be no abandonment to the Corporation of any insured barley acreage.

(d) In the event that any claim for indemnity under the provisions of the contract is denied by the Corporation, an action on such claim may be brought against the Corporation under the provisions of 7 U.S.C. 1508(c): *Provided,* That the same is brought within one year after the date notice of denial of the claim is mailed to and received by the insured.

(e) Any indemnity will be payable within 30 days after a claim for indemnity is approved by the Corporation. However, in no event shall the Corporation be liable for interest or damages in connection with any claim for indemnity whether such claim be approved or disapproved by the Corporation.

(f) If the insured is an individual who dies, disappears, or is judicially declared incompetent, or the insured is an entity other than an individual and such entity is dissolved after the barley is seeded for any crop year, any indemnity will be paid to the person(s) the Corporation determines to be beneficially entitled thereto.

(g) The Corporation reserves the right to reject any claim for indemnity if any of the requirements of this section or section 8 of the policy are not met and the Corporation determines that the amount of loss cannot be satisfactorily determined.

6. *Subrogation*

The insured (including any assignee or transferee) assigns to the Corporation all rights of recovery against any person for loss or damage to the extent that payment hereunder is made by the Corporation. The Corporation thereafter shall execute all papers required and take appropriate action as may be necessary to secure such rights.

7. *Termination of the Contract*

(a) The contract shall terminate if no premium is earned for five consecutive years.

(b) If the insured is an individual who dies, or is judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution; *however,* if such event occurs after insurance attaches for any crop year, the contract shall continue in force through such crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

8. *Coverage Level and Price Election*

(a) If the insured has not elected on the application a coverage level and price at which indemnities shall be computed from among those shown on the actuarial table, the coverage level and price election which shall be applicable under the contract, and which the insured shall be deemed to have elected, shall be as provided on the actuarial table for such purposes.

(b) The insured may, with the consent of the Corporation, change the coverage level and/or price election for any crop year on or before the closing date for submitting applications for that crop year.

9. *Assignment of Indemnity*

Upon approval of a form prescribed by the Corporation, the insured may assign to another party the right to an indemnity for the crop year and such assignee shall have the right to submit the loss notices and forms as required by the contract.

10. *Contract Changes*

The Corporation reserves the right to change any terms and provisions of the contract from year to year. Any changes shall be mailed to the insured or placed on file and made available for public inspection in the office for the county at least 15 days prior to the cancellation date preceding the crop year for which the changes are to become effective, and such mailing or filing shall constitute notice to the insured. Acceptance of any changes will be conclusively presumed in the absence of any notice from the insured to cancel the contract as provided in section 12 of the policy.

Note.—The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942, and OMB Circular No. A–40.

These regulations have been determined not significant under the USDA criteria implementing Executive Order No. 12044. A draft impact analysis is available from Peter F. Cole, Secretary, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

Approved by the Board of Directors on June 8, 1979.

Dated: June 8, 1979.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by: W. Otto Johnson, *Acting Manager, Federal Crop Insurance Corporation.*

Dated: June 13, 1979.

[FR Doc. 79-19011 Filed 6-18-79; 8:45 am]

BILLING CODE 3410-09-M

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7 CFR Parts 401 and 430

Sugar Beet Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: This rule prescribes procedures for insuring sugar beet crops effective with the 1980 crop year. The rule combines provisions from previous regulations for insuring sugar beets in a shorter, clearer, and more simplified document which will make the program more effective administratively. This is promulgated under the authority contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: June 19, 1979.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone 202–447–3325.

SUPPLEMENTARY INFORMATION: The Federal Crop Insurance Corporation (FCIC) published a notice of proposed rulemaking in the Federal Register [44 FR 27119, Wednesday, May 9, 1979] outlining the prescribed procedures for insuring sugar beet crops effective with the 1980 crop year. In the notice, FCIC, under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), proposed that a new Part 430 of Chapter IV in Title 7 of the Code of Federal Regulations be established to prescribe procedures for insuring sugar beet crops effective with the 1980 crop year to be known as 7 CFR Part 430 Sugar Beet Crop Insurance.

All previous regulations applicable to insuring sugar beet crops as found in 7 CFR 401.101–401.111, 401.140, and 401.149 will not be applicable to 1980 and succeeding sugar beet crops but will remain in effect for FCIC sugar beet insurance policies issued for the crop years prior to 1980.

It has been determined that combining all previous regulations for insuring sugar beet crops into one shortened, simplified, and clearer regulation would be more effective administratively. In addition, Part 430 contains a premium adjustment table to provide maximum individual premium discounts for good insuring experience of up to 50 percent and premium increases for unfavorable insuring experience. The good experience discounts provided under the previous sugar beet crop insurance policies have been discontinued; however, the premium adjustment table will result in more premium discounts for good experience than were formerly provided under the good experience discounts in the previous policy. Further, Part 430 (1) provides that any premium balance not paid by the termination date will be increased by a 9 percent service fee with a 9 percent per annum simple interest charge applying to any unpaid premium balance at the end of each subsequent 12-month period, (2) extends the 15-day period for submitting a notice of damage or loss to 30 days and eliminates the 60-day period for filing a claim for loss, (3) provides 3 levels of insurance coverage on each sugar beet crop in each county, and (4) increases the limitation from $5,000 to $20,000 in

those cases involving good faith reliance on misrepresentation (as found in 7 CFR Part 430.5 of the regualtions) wherein the Manager of the Corporation is authorized to take action to grant relief.

The Sugar Beet Crop Insurance Regulations provide a July 15 cancellation date for Arizona and California, and December 31 for all other States. These regulations and any amendments there to, must be placed on file in the Corporation's office for each particular county in which the insurance is available not later than 15 days prior to the applicable cancellation date.

Under the provisions of Executive Order No. 12044, and the Administrative Procedure Act (5 U.S.C. 553 (b) and (c)). the public was given an opportunity to submit written comments, data, and views on the proposed regulations, but none were received. Therefore, with the exception of minor and nonsubstantive corrections to language, the regulations as contained in the proposed rule are hereby issued as a final rule to be in effect starting with the 1980 crop year.

Final Rule

§§ 401.140 and 401.149 [Reserved]

Accordingly, under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby deletes and reserves 7 CFR 401.140 and 401.149, with such regulations as are contained therein remaining in effect for FCIC policies issued for crop years prior to 1980, and issues a new Part 430 in Chapter IV of Title 7 of the Code of Federal Regulations (7 CFR Part 430) to be known as the Sugar Beet Crop Insurance Regulations, which shall remain in effect, until amended or superseded, for the 1980 and succeeding crop years, to read as follows:

PART 430—SUGAR BEET CROP INSURANCE

Subpart—Regulations for the 1980 and Succeeding Crop Years

Sec.

430.1 Availability of sugar beet insurance.
430.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
430.3 Public notice of indemnities paid.
430.4 Creditors.
430.5 Good faith reliance on misrepresentation.
430.6 The contract.
430.7 The application and policy.

Authority: Secs. 506, 516, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1980 and Succeeding Crop Years

§ 430.1 Availability of sugar beet insurance.

Insurance shall be offered under the provisions of this subpart on sugar beets in counties within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. Before insurance is offered in any county, there shall be published by appendix to this chapter the names of the counties in which sugar beet insurance will be offered.

§ 430.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for sugar beets which shall be shown on the county actuarial table on file in the office for the county and may be changed from year to year.

(b) At the time the application for insurance is made, the applicant shall elect a coverage level and price at which indemnities shall be computed from among those levels and prices shown on the actuarial table for the crop year.

§ 430.3 Public notice of indemnities paid.

The Corporation shall provide for posting annually in each county at each county courthouse a listing of the indemnities paid in the county.

§ 430.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, or an involuntary transfer shall not entitle the holder of the interest to any benefit under the contract except as provided in the policy.

§ 430.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the sugar beet insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation, (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $20,000, finds (1) that an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured person relied thereon in good faith, and (3) that to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

§ 430.6 The contract.

(a) The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. Such acceptance shall be effective upon the date the notice of acceptance is mailed to the applicant. The contract shall cover the sugar beet crop as provided in the policy. The contract shall consist of the application, the policy, the attached appendix, and the provisions of the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. Copies of forms referred to in the contract are available at the office for the county.

§ 430.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's insurable share in the sugar beet crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the office for the county and, where applicable, on or before the closing date on file in the office for the county.

(b) The Corporation reserves the right to discontinue the acceptance of applications in any county upon its determination that the insurance risk involved is excessive, and also, for the same reason, to reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting of applications or contract changes in any county, by placing the extended date on file in the office for the county and publishing a notice in the Federal Register upon the Manager's determination that no adverse selectivity will result during the period of such extension: *Provided, however,* That if adverse conditions should

develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1980 and succeeding crop years, a contract in the form provided for under this subpart will come into effect as a continuation of a sugar beet contract issued under such prior regulations, without the filing of a new application.

(d) The provisions of the application and Sugar Beet Insurance Policy for the 1980 and Succeeding Crop years, and the Appendix to the Sugar Beet Insurance Policy are as follows:

United States Department of Agriculture

Federal Crop Insurance Corporation

Application for 19—— and Succeeding Crop Years

Sugar Beet Crop Insurance Contract

Contract No. _____
Identification No. _____
Name and address _____
Zip Code _____
County _____
State _____
Type of entity _____
Applicant is over 18—Yes ☐ No ☐

A. The applicant, subject to the provisions of the regulations of the Federal Crop Insurance Corporation (herein called "Corporation"), hereby applies to the Corporation for insurance on the applicant's share in the sugar beets planted on insurable acreage as shown on the county actuarial table for the above-stated county. The applicant elects from the actuarial table the coverage level and price at which indemnities shall be computed. THE PREMIUM RATES AND PRODUCTION GUARANTEES SHALL BE THOSE SHOWN ON THE APPLICABLE COUNTY ACTUARIAL TABLE FILED IN THE OFFICE FOR THE COUNTY FOR EACH CROP YEAR.

Level election _____
Price election _____
Example: For the 19—— crop year only (100% share) _____
Location/farm No. _____
Guarantee per acre * _____
Premium per acre _____
Practice _____

Your guarantee will be on a unit basis (acres X per acre guarantee X share).

B. WHEN NOTICE OF ACCEPTANCE OF THIS APPLICATION IS MAILED TO THE APPLICANT BY THE CORPORATION, the contract shall be in effect for the crop year specified above, unless the time for submitting applications has passed at the time this application if filed, AND SHALL CONTINUE FOR EACH SUCCEEDING CROP YEAR UNTIL CANCELED OR TERMINATED as provided in the contract. This accepted application, the following sugar beet insurance policy, the attached appendix, and the provisions of the county actuarial table showing the production guarantees, coverage levels, premium rates, prices for computing indemnities and insurable and uninsurable acreage shall constitute the contract. Additional information regarding contract provisions can be found in the county regulations folder on file in the office for the county. No term or condition of the contract shall be waived or changed except in writing by the Corporation.

Code No./witness to signature _____
Signature of applicant _____
Date _____
Address of office for county: _____

_____
Phone _____
Location of farm headquarters: _____

_____
Phone _____

Sugar Beet Crop Insurance Policy

Terms and conditions

Subject to the provisions in the attached appendix:

1. *Causes of loss.* (a) Causes of loss insured against. The insurance provided is against unavoidable loss of production resulting from adverse weather conditions, insects, plant disease, wildlife, earthquake or fire occurring within the insurance period subject to any exceptions, exclusions or limitations with respect to causes of loss shown on the actuarial table.

(b) Causes of loss not insured against. The contract shall not cover any loss of production, as determined by the Corporation, due to (1) the neglect or malfeasance of the insured, any member of the insured's household, the insured's tenants or employees, (2) failure to follow recognized good farming practices, (3) damage resulting from the backing up of water by any governmental or public utilities dam or reservoir project, or (4) any cause not specified as an insured cause in this policy as limited by the actuarial table.

2. *Crop and acreage insured.* (a) The crop insured shall be sugar beets grown under a contract with a processor for processing as sugar, for which the actuarial table shows a guarantee and premium rate per acre, and which are grown on insured acreage.

(b) The acreage insured for each crop year shall be that acreage planted to sugar beets on insurable acreage as shown on the actuarial table and the insured's share therein as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect. *Provided*, That insurance shall not attach or be considered to have attached as determined by the Corporation to any acreage (1) where premium rates are established by farming practices on the actuarial table, and the farming practices carried out on any acreage are not among those for which a premium rate has been established, (2) excluded from the processor contract for, or during, the crop year, (3) which is destroyed and after such destruction it was practical to replant to sugar beets and such acreage was not replanted, (4) initially planted after the date where applicable on file in the office for the county which has been established by the Corporation as being too late to initially plant and expect a normal crop to be produced, (5) planted to sugar beets the preceding crop year in Michigan, Minnesota, North Dakota and Ohio or the two preceding crop years in all other States unless otherwise provided on the county actuarial table, (6) planted to a type or variety of sugar beets not established as adapted to the area or shown as non-insurable on the actuarial table, or (7) in California other than Imperial County, planted before the filing of the application or reinstatement request if such acreage is not inspected for the crop year and approved in writing by the Corporation after a normal stand is obtained.

(c) Insurance may attach only by written agreement with Corporation on acreage which is planted for the development or production of hybrid seed or for experimental purposes.

3. *Responsibility of insured to report acreage and share.* The insured shall submit to the Corporation on a form prescribed by the Corporation, a report showing (a) all acreage of sugar beets planted in the county (including a designation of any acreage to which insurance does not attach) in which the insured has a share and (b) the insured's share therein at the time of planting. Such report shall be submitted promptly after completion of planting each year not later than the acreage reporting date on file in the office for the county.

4. *Production guarantees, coverage levels and prices for computing indemnities.* (a) For each crop year of the contract, the production guarantees, coverage levels and prices at which indemnities shall be computed shall be those shown on the actuarial table.

(b) The production guarantee per acre shall be progressive as follows:

(1) *First Stage*—from planting until July 1 (except in California and Arizona) it shall be until the earlier of thinning or 90 days after planting; and to any acreage that the Corporation determines was damaged in this stage to the extent that growers in the area usually would not further care for the crop.

(2) *Second Stage*—from the end of the first stage until at least 15 percent of the production guarantee per acre for the third stage has been harvested.

(3) *Third Stage*—after harvest of at least 15 percent of the production guarantee per acre for any acreage.

The production guarantee applicable to any acreage within a unit shall be that established for the stage reached by the crop on such acreage, as determined by the Corporation.

(5) *Annual premium.* (a) The annual premium is earned and payable at the time of planting and the amount thereof shall be determined by multipling the insured acreage times the applicable premium per acre, times the insured's share at the time of planting, times the applicable premium adjustment percentage in subsection (c) of this section.

(b) For premium adjustment purposes, only the years during which premiums were earned shall be considered.

(c) The premium shall be adjusted as shown in the following table:

Percent Adjustments for Favorable Continuous Insurance Experience

Loss ratio [1] through previous crop year	Number of years continuous experience through previous year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
	Percentage adjustment factor for current crop year															
.00 to .20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 to .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 to .60	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70
.61 to .80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 to 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

Percent Adjustments for Unfavorable Insurance Experience

Loss ratio [1] through previous crop year	Number of loss years through previous year [2]															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	Percentage adjustment factor for current crop year															
1.10 to 1.19	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 to 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 to 1.69	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 to 1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 to 2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 to 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 to 3.99	100	100	106	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00 to 4.99	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 to 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 and up	100	100	120	136	156	180	202	224	246	268	290	300	300	300	300	300

[1] Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.

[2] Only the most recent 15 crop years will be used to determine the number of "Loss Years" (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year).

(d) Any amount of premium for an insured crop which is unpaid on the day following the termination date for indebtedness for such crop shall be increased by a 9 percent service fee, which increased amount shall be the premium balance, and thereafter, at the end of each 12 month period, 9 percent simple interest shall attach to any amount of the premium balance which is unpaid: *Provided,* When notice of loss has been timely filed by the insured as provided in section 7 of this policy, the service fee will not be charged and the contract will remain in force if the premium is paid in full within 30 days after the date of approval or denial of the claim for indemnity; however, if any premium remains unpaid after such date, the contract will terminate and the amount of premium outstanding shall be increased by a 9 percent service fee, which increased amount shall be the premium balance, if such premium balance is not paid within 12 months immediately following the termination date, 9 percent simple interest shall apply from the termination date and each year thereafter to any unpaid premium balance.

(e) Any unpaid amount due the Corporation may be deducted from any indemnity payable to the insured by the Corporation or from any loan or payment to the insured under any Act of Congress or program administered by the U.S. Department of Agriculture, when not prohibited by law.

6. *Insurance period.* Insurance on insured acreage shall attach at the time the sugar beets are planted and shall cease upon the earliest of (a) final adjustment of a loss, (b) harvesting, (c) total destruction of the insured sugar beet crop, and (d) the applicable date of the calendar year in which the sugar beets are normally harvested as follows: (1) July 15 for Arizona and Imperial County, California, (2) the last day of the 12th calendar month after planting of the acreage for all other California counties, unless a written request from the insured for an extension of the insurance period is received prior to such date and is approved by the Corporation, (3) November 25 in Ohio, or (4) November 15 in all other States.

7. *Notice of damage or loss.* (a) Any notice of damage or loss shall be given promptly in writing by the insured to the Corporation at the office for the county.

(b) Notice shall be given promptly if, during the period before harvest, the sugar beets on any unit are damaged to the extent that the insured does not expect to further care for the crop or harvest any part of it, or if the insured wants the consent of the Corporation to put the acreage to another use. No insured acreage shall be put to another use until the Corporation has made an appraisal of the potential production of such acreage and consents in writing to such other use. Such consent shall not be given until it is too late or impractical to replant to sugar beets. Notice shall also be given when such acreage has been put to another use.

(c) In addition to the notices required in subsection (b) of this section, if an indemnity is to be claimed on any unit, the insured shall give written notice thereof to the Corporation at the office for the country not later than *30 DAYS* after the earliest of (1) the date harvest is completed on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire sugar beet crop on the unit is destroyed, as determined by the Corporation. The Corporation reserves the right to provide additional time if it determines there are extentuating circumstances.

(d) Any insured acreage which is not to be harvested and upon which an indemnity is to be claimed shall be left intact until inspected by the Corporation.

(e) The Corporation may reject any claim for indemnity if any of the requirements of this section are not met.

8. *Claim for indemnity.* (a) It shall be a condition precedent to the payment of any indemnity that the insured (1) establish the total production of sugar beets on the unit and that any loss of production was directly caused by one or more of the insured causes during the insurance period for the crop year for which the indemnity is claimed and (2) furnish any other information regarding the manner and extent of loss as may be required by the Corporation.

(b) Indemnities shall be determined separately for each unit. The amount of indemnity for any unit shall be determined by (1) multiplying the insured acreage of sugar beets on the unit by the applicable production guarantee per acre, which product

shall be the production guarantee for the unit, (2) subtracting therefrom the total production of sugar beets to be counted for the unit, (3) multiplying the remainder by the applicable price for computing indemnities, and (4) multiplying the result obtained in step (3) by the insured share: *Provided*, That if the premium computed on the insured acreage and share is more than the premium computed on the reported acreage and share, the amount of indemnity shall be computed on the insured acreage and share and then reduced proportionately.

(c) The total production to be counted for a unit shall be determined by the Corporation and shall include all harvested and appraised production: *Provided*, That for acreage not qualifying for the third stage production guarantee, only the appraised and harvested production in excess of the difference between the third stage production guarantee and the production guarantee applicable to such acreage shall be counted. For acreage abandoned, put to another use without prior written consent of the Corporation, or damage solely by an uninsured cause, not less than the applicable production guarantee shall be counted.

(1) Any harvested production of sugar beets shall be adjusted by the factor (rounded to three decimal places) obtained by dividing the average percentage of sugar in sugar beets, as determined from individual tests made at the time of delivery to the processor, by the percentage of sugar shown on the actuarial table: *Provided, however*, That if individual tests of sugar content are not made by the processor at the time of delivery of the sugar beets, the factor to be used shall be 1.000: *Provided, further*, That for harvested sugar beets which are not acceptable under the contract with a processor due to an insurable cause of loss occurring within the insurance period, the Corporation will determine the production to be counted by (i) dividing the value of the beets, as determined by the Corporation by the value of undamaged beets containing the percentage of sugar shown on the actuarial table and (ii) multiplying the result obtained by the tons of beets harvested: *Provided, further*, That any Corporation appraisals shall be the tons appraised with no adjustment for quality.

(2) Appraised production to be counted shall include: (i) Any appraisals by the Corporation for potential production on harvested acreage and for uninsured causes and poor farming practices, and (ii) not less than the applicable guarantee for any acreage which is abaondoned or put to another use without prior written consent of the Corporation or damaged solely by an uninsured cause.

(d) The appraised potential production for acreage for which consent has been given to be put to another use shall be counted as production in determining the amount of loss under the contract. *However*, if consent is given to put acreage to another use and the Corporation determines that any such acreage (1) is not put to another use before harvest of sugar beets becomes general in the county, (2) is harvested, or (3) is further damaged by an insured cause before the acreage is put to another use, the indemnity for the unit shall be determined without regard to such appraisal and consent.

9. *Misrepresentation and fraud.* The Corporation may void the contract without affecting the insured's liability for premiums or waiving any right, including the right to collect any unpaid premiums if, at any time the insured has concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

10. *Transfer of insured share.* If the insured transfers any part of the insured share during the crop year, protection will continue to be provided according to the provisions of the contract to the transferee for such crop year on the transferred share, and the transferee shall have the same rights and responsibilities under the contract as the original insured for the current crop year. Any transfer shall be made on an approved form.

11. *Records and access to farm.* The insured shall keep or cause to be kept for two years after the time of loss, records of the harvesting, storage, shipments, sale or other disposition of all sugar beets produced on each unit including separate records showing the same information for production from any uninsured acreage. Any persons designated by the Corporation shall have access to such records and the farm for purposes related to the contract.

12. *Life of contract: Cancellation and termination.* (a) The contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, either party may cancel insurance for any crop year by giving a signed notice to the other on or before the cancellation date preceding such crop year.

(b) Except as provided in section 5(d) of this policy, the contract will terminate as to any crop year if any amount due the Corporation under this contract is not paid on or before the termination date for indebtedness preceding such crop year. *Provided*, That the date of payment for premium (1) if deducted from an indemnity claim, shall be the date the insured signs such claim, or (2) if deducted from payment under another program administered by the U.S. Department of Agriculture shall be the date such payment was approved.

(c) Following are the cancellation and termination dates:

State and county	Cancellation date	Termination date for indebtedness
Arizona and Imperial County, Calif.	July 15	August 31.
All other California counties.	July 15	(1)
All other States	December 31	March 31.

[1] The termination date for indebtedness for all California counties other than Imperial County shall be the date the insured begins planting for the next crop year unless prior to such date the insured has made arrangements satisfactory to the Corporation for payment of the premium owed the Corporation.

(d) In the absence of a notice from the insured to cancel, and subject to the provisions of subsections (a), (b), and (c) of this section and section 7 of the Appendix, the contract shall continue in force for each succeeding crop year.

Appendix

(Additional Terms and Conditions)

1. *Meaning of Terms*

For the purposes of sugar beet crop insurance:

(a) "Actuarial table" means the forms and related material for the crop year approved by the Corporation which are on file for public inspection in the office for the county, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, insurable and uninsurable acreage, and related information regarding sugar beet insurance in the county.

(b) "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown on the actuarial table.

(c) "Crop year" means the period within which the sugar beet crop is normally grown and shall be designated by the calendar year in which the sugar beet crop is normally harvested: *however*, in California and Arizona it shall be the period from planting until the applicable date for the end of the insurance period and shall be designated by (1) the calendar year in which planted if planted on or before July 15, or (2) the next calendar year if planted after July 15.

(d) "Harvest" means the lifting and topping of the sugar beets for the purpose of delivery to a processor.

(e) "Insurable acreage" means the land classified as insurable by the Corporation and shown as such on the county actuarial table.

(f) "Insured" means the person who submitted the application accepted by the Corporation.

(g) "Office for the county" means the Corporation's office serving the county shown on the application for insurance or such office as may be designated by the Corporation.

(h) "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

(i) "Share" means the interest of the insured as landlord, owner-operator, or tenant in the insured sugar beet crop at the time of planting as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect, and no other share shall be deemed to be insured: *Provided*, That for the purpose of determining the amount of indemnity, the insured share shall not exceed the insured's share at the earliest of (1) the date of beginning of harvest on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire crop on the unit is destroyed, as determined by the Corporation.

(j) "Tenant" means a person who rents land from another person for a share of the sugar beet crop or proceeds therefrom.

(k) "Unit" means all insurable acreage of sugar beets in the county on the date of

planting for the crop year (1) in which the insured has a 100 percent share, or (2) which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the sugar beet crop on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in the office for the county or by written agreement between the Corporation and the insured. The Corporation shall determine units as herein defined when adjusting a loss, notwithstanding what is shown on the acreage report, and has the right to consider any acreage and share reported by or for the insured's spouse or child or any member of the insured's household to be the bona fide share of the insured or any other person having the bona fide share.

2. *Acreage Insured*

(a) The Corporation reserves the right to limit the insured acreage of sugar beets to any acreage limitations established under any Act of Congress, provided the insured is so notified in writing prior to the planting of sugar beets.

(b) If the insured does not submit an acreage report on or before the acreage reporting date on file in the office for the county, the Corporation may elect to determine by units the insured acreage and share or declare the insured acreage on any unit(s) to be "zero". If the insured does not have a share in any insured acreage in the county for any year, the insured shall submit a report so indicating. Any acreage report submitted by the insured may be revised only upon approval of the Corporation.

3. *Irrigated Acreage*

(a) Where the actuarial table provides for insurance on an irrigated practice, the insured shall report as irrigated only the acreage for which the insured has adequate facilities and water to carry out a good irrigation practice at the time of planting.

(b) Where irrigated acreage is insurable, any loss of production caused by failure to carry out a good irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting as determined by the Corporation shall be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities shall not be considered as a failure of the water supply from an unavoidable cause.

4. *Annual Premium*

(a) If there is no break in the continuity of participation, any premium adjustment applicable under section 5 of the policy shall be transferred to (1) the contract of the insured's estate or surviving spouse in case of death of the insured, (2) the contract of the person who succeeds the insured if such person had previously participated in the farming operation, or (3) the contract of the same insured who stops farming in one county and starts farming in another county.

(b) If there is a break in the continuity of participation, any reduction in premium earned under section 5 of the policy shall not thereafter apply; *however*, any previous unfavorable insurance experience shall be considered in premium computation following a break in continuity.

5. *Claim for and Payment of Indemnity*

(a) Any claim for indemnity on a unit shall be submitted to the Corporation on a form prescribed by the Corporation.

(b) In determining the total production to be counted for each unit, production from units on which the production has been commingled will be allocated to such units in proportion to the liability on each unit.

(c) There shall be no abandonment to the Corporation of any insured sugar beet acreage.

(d) In the event that any claim for indemnity under the provisions of the contract is denied by the Corporation, an action on such claim may be brought against the Corporation under the provisions of 7 U.S.C. 1506(c): *Provided,* That the same is brought within one year after the date notice of denial of the claim is mailed to and received by the insured.

(e) Any indemnity will be payable within 30 days after a claim for indemnity is approved by the Corporation. *However,* in no event shall the Corporation be liable for interest or damages in connection with any claim for indemnity whether such claim be approved or disapproved by the Corporation.

(f) If the insured is an individual who dies, disappears, or is judicially declared incompetent, or the insured is an entity other than an individual and such entity is dissolved after the sugar beets are planted for any crop year, any indemnity will be paid to the person(s) the Corporation determines to be beneficially entitled thereto.

(g) The Corporation reserves the right to reject any claim for indemnity if any of the requirements of this section or section 8 of the policy are not met and the Corporation determines that the amount of loss cannot be satisfactorily determined.

6. *Subrogation*

The insured (including any assignee or transferee) assigns to the Corporation all rights of recovery against any person for loss or damage to the extent that payment hereunder is made by the Corporation. The Corporation thereafter shall execute all papers required and take appropriate action as may be necessary to secure such rights.

7. *Termination of the Contract*

(a) The contract shall terminate if no premium is earned for five consecutive years.

(b) If the insured is an individual who dies or is judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution; *however,* if such event occurs after insurance attaches for any crop year, the contract shall continue in force through such crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

8. *Coverage Level and Price Election*

(a) If the insured has not elected on the application a coverage level and price election at which indemnities shall be computed from among those shown on the actuarial table, the coverage level and price election which shall be applicable under the contract, and which the insured shall be deemed to have elected, shall be as provided on the actuarial table for such purposes.

(b) The insured may, with the consent of the Corporation, change the coverage level and/or price election for any crop year on or before the closing date for submitting applications for that crop year.

9. *Assignment of Indemnity*

Upon approval of a form prescribed by the Corporation, the insured may assign to another party the right to an indemnity for the crop year and such assignee shall have the right to submit the loss notices and forms as required by the contract.

10. *Contract Changes*

The Corporation reserves the right to change any terms and provisions of the contract from year to year. Any changes shall be mailed to the insured or placed on file and made available for public inspection in the office for the county at least 15 days prior to the cancellation date preceding the crop year for which the changes are to become effective, and such mailing or filing shall constitute notice to the insured. Acceptance of any changes will be conclusively presumed in the absence of any notice from the insured to cancel the contract as provided in section 12 of the policy.

Note.—The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942, and OMB Circular No. A–40.

Note.—These regulations have been determined non significant under the USDA criteria implementing Executive Order No. 12044. A draft impact analysis is available from Peter F. Cole, Secretary, Federal Crop Insurance Corporation, Room 4096, U.S. Department of Agriculture, Washington, D.C. 20250.

Approved by the Board of Directors on June 8, 1979.

Dated: June 8, 1979.

Federal Crop Insurance Corporation.

Peter F. Cole,

Secretary.

Dated: June 13, 1979.

Federal Crop Insurance Corporation.

Approved by:

W. Otto Johnson,

Acting Manager.

[FR Doc. 79-19042 Filed 6-18-79; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 929

Findings and Determinations with Respect To Continuation of the Amended Marketing Agreement and Order Regulating Cranberries Grown in Specified States

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document contains the determination with respect to continuation of the amended marketing agreement and order regulating cranberries grown in specified States. A referendum was conducted among cranberry growers May 14 through May 23, 1979, to ascertain if they favor termination of this regulatory program. The vote in that referendum shows that the required majority of such growers do not favor termination.

EFFECTIVE DATE: June 19, 1979.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, Fruit Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, Phone: (202) 447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* A notice was published in the **Federal Register** on May 3, 1979 (44 FR 25846), directing that a referendum be conducted among cranberry growers to ascertain if such growers favor continuance of the marketing agreement, as amended, and Order No. 929, as amended (7 CFR Part 929). This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). Consistent with such notice, the referendum was conducted among growers who were engaged in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, in the production of cranberries during the representative period determined to be September 1, 1978, through April 30, 1979. The referendum period was May 14 through May 23, 1979.

Upon the basis of the results of the referendum, it is hereby found and determined that the termination of the marketing agreement and order is not favored by a majority of producers who produced more than 50 percent of the cranberries produced for market during the representative period. This action has not been determined significant under the USDA criteria for implementing Executive Order 12044.

Dated: June 13, 1979.

Jerry C. Hill,

Deputy Assistant Secretary.

[FR Doc. 79-19019 Filed 6-18-79; 8:45 am]

BILLING CODE 3410-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 375

[Regulation SPR-161; Amendment No. 12]

Navigation of Foreign Civil Aircraft Within the United States, Approval by the General Accounting Office

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. June 14, 1979.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This final rule gives notice that the General Accounting Office has approved the recordkeeping and reporting requirements contained in the subject regulation. This approval is required under the Federal Reports Act, and was transmitted to the Civil Aeronautics Board by letter dated June 6, 1979.

DATES: Adopted: June 14, 1979; Effective: June 14, 1979.

FOR FURTHER INFORMATION CONTACT: Clifford M. Rand, Chief, Data Requirements Division, Office of Economic Analysis, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, 202–673–6044.

PART 375—NAVIGATION OF FOREIGN CIVIL AIRCRAFT WITHIN THE UNITED STATES

Accordingly, the Civil Aeronautics Board amends Part 375 of its Special Regulations (14 CFR 375) by adding the following note at the end of Part 375:

Note.—The recordkeeping requirements contained in §§ 375.43(b) and 375.43(c) and the reporting requirements contained in §§ 375.44(b), 375.45 and 375.70 have been approved by the U.S. General Accounting Office under B–180226 (R0642).

This amendment is issued by the undersigned pursuant to the delegation of authority from the Board to the Secretary in 14 CFR 385.24(b). (Sec. 204 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324).

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-19079 Filed 6-18-79; 8:45 am]

BILLING CODE 6320-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 201 and 202

[Release Nos. 33-6077; 34-15911; 35-21095; 39-528; IC-10726; IA-679]

Consideration of Written Comments Received After the Closing Date in Informal Commission Proceedings

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its regulations to provide notice of a current practice of the Commission to accept, and include in the public record, in its discretion, written comments received by the Commission after the closing date in rulemaking proceedings and adjudications not required to be determined on the record. The Commission is also making certain editorial amendments to its regulations concerning these informal Commission proceedings.

EFFECTIVE DATE: June 12, 1979.

FOR FURTHER INFORMATION CONTACT: Howard A. Bartnick, Office of the General Counsel, Securities and Exchange Commission, Room 735, 500 North Capitol Street, Washington, D.C. 20549, (202) 376–8003.

SUPPLEMENTARY INFORMATION: The Commission finds, in accordance with the Administrative Procedure Act ("APA"), 5 U.S.C. § 553(b)(A) and 5 U.S.C. § 553(d), that these amendments relate solely to agency organization, procedure or practice and do not relate to a substantive rule. Accordingly, notice and opportunity for public comment pursuant to the APA is not necessary and the foregoing action becomes effective immediately.

Accordingly, Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

PART 201—RULES OF PRACTICE

1. By amending the heading of § 201.27 to read as follows:

§ 201.27 Adjudications under the Securities Exchange Act of 1934 not required to be determined on the record after notice and opportunity for hearing.

2. By adding § 201.28 to read as follows:

§ 201.28 Adjudications not required to be determined on the record after notice and opportunity for hearing.

(a) This section applies to every case of adjudication (as defined in section 551 of title 5, United States Code)

pursuant to any statute which the Commission administers, which adjudication is not required to be determined on the record after notice and opportunity for hearing and which the Commission has not chosen to determine on the record after notice and opportunity for hearing.

(b) In any case of adjudication described in paragraph (a) above, if the Commission provides notice and opportunity for the submission of written comments by parties to the adjudication or, as the case may be, by other interested persons, written comments received on or before the closing date for comments, unless accorded confidential treatment pursuant to statute or rule of the Commission, become a part of the public record of the adjudication. The Commission, in its discretion, may accept and include in the public record written comments filed with the Commission after the closing date.

PART 202—INFORMAL AND OTHER PROCEDURES

3. By amending § 202.6 by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 202.6 Adoption, revision, and rescission of rules and regulations of general application.

* * * * *

(b) After preliminary consideration by the Commission a draft of the proposed rule is published in the Federal Register and mailed to interested persons (e.g., other interested regulatory bodies, principal registrants or persons to be affected, stock exchanges, professional societies and leading authorities on the subject concerned and other persons requesting such draft) for comments. Unless accorded confidential treatment pursuant to statute or rule of the Commission, written comments filed with the Commission on or before the closing date for comments become a part of the public record upon the proposed rule. The Commission, in its discretion, may accept and include in the public record written comments received by the Commission after the closing date.

(c) Following analysis of comments received, the rule may be adopted in the form published or in a revised form in the light of such comments. In some cases, a revised draft is prepared and published and, where appropriate, an oral hearing may be held before final action upon the proposal. Any interested person may appear at the hearing and/or may submit written comment for consideration in accordance with the Commission's notice of the rulemaking procedure to be followed. The rule in the form in which it is adopted by the Commission is publicly released and is published in the Federal Register.

(Sec. 19(a), 48 Stat. 906; Sec. 23(a), 48 Stat. 901; Sec. 20(a), 49 Stat. 833; Sec. 319(a), 53 Stat. 1173; Sec. 38(a), 54 Stat. 841; Sec. 211(a), 54 Stat. 855; (15 U.S.C. 77s(a), 78w(a), 78t(a), 77sss(a), 80a–37(a), 80b–11(a)))

By the Commission.

George A. Fitzsimmons,
Secretary.

Shirley E. Hollis,
Assistant Secretary.

June 12, 1979.

[FR Doc. 79–19075 Filed 6–18–79; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 6, 10, 123, 161, 171, and 172

[T–D–79–160]

Fines, Penalties, Forfeitures, and Liquidated Damages for Violations of the Customs and Navigation Laws, Amended

Correction

In FR Doc. 79–17245, appearing at page 31950 in the issue of Monday, June 4, 1979, make the following changes:

1. On page 31956, second column, the first word in the twentieth line should read "of".

2. On page 31957, second column, the third word in the ninth line should read "or".

3. On page 31958, third column, the second and third lines of § 162.70(a)(2) should read, "(b) of this section, violations of section 592, Tariff Act of 1930, as amended [19 (U.S.C. 1592)]."

4. On page 31959, third column the fourth and fifth lines of § 162.74(c)(1) should read, "disclosing party and the disclosed information for investigation of a possible violation of 19 U.S.C. 1592 on the".

BILLING CODE 1505–01–M

19 CFR Parts 10, 11, 18, 19, 54, 111, 112, 133, 134, 148, 151, and 162

[T.D. 79–159]

Recordkeeping, Reporting by Customhouse Brokers, Trademarks, and the Disposition of Forfeited Distilled Spirits, Wines, and Malt Liquor, Amended

Correction

In FR Doc. 79–17246, appearing at page 31962 in the issue of Monday, June 4, 1979, make the following changes:

1. On page 31967, second column, the title below the name "George C. Corcoran, Jr." should read, "Acting Commissioner of Customs".

2. On page 31969, second column, the second word in the ninth line of § 148.55(b)(1) should read, "he".

BILLING CODE 1505–01–M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[FRL 1250–3; FAP 7H5172/R48]

Paint-on Application of Chlorpyrifos in Food-Handling Establishments

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule amends 21 CFR 193.85 by establishing a food additive regulation to include paint-on application of chlorpyrifos in food-handling establishments. The regulation was requested by Positive Formulators, Inc. This rule provides for another method of applying chlorpyrifos in food-handling establishments at 2 percent of the active ingredient by weight.

EFFECTIVE DATE: Effective on June 19, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Sanders, Product Manager (PM) 12, Registration Division (TS–767), Office of Pesticide Programs, EPA, 401 M Street, SW, Washington, DC 20460 (202/426–9425).

SUPPLEMENTARY INFORMATION: On October 27, 1977, notice was given (42 FR 56643) that Positive Formulators, Inc., 1044 N. Jerrie Ave., Tucson, AZ 85711, had filed a petition (FAP 7H5172) with the EPA. This petition proposed that 21 CFR 193.85 be expanded to include the use of the insecticide chlorpyrifos (*O,O-*

diethyl *O*-(3,5,6-trichloro 2-pyridyl)phosphorothioate) in the slow-release paint-on formulation for insect control in food handling establishments (places other than private residences including, but not limited to, restaurants, grocery stores, bakeries, bottling plants, and canneries) where food and food products are held, processed, prepared or served. The slow-release product shall be limited to a maximum of 2 percent by weight of the active ingredient. No comments were received by the Agency in response to this notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance included a two-year rat feeding/oncogenic study and a dog feeding study with no-observed-effect levels (NOEL) of 0.1 milligram (mg)/kilogram, (kg) of body weight (bw)/day, a three-generation rat reproduction study with no effects up to 1 mg/kg bw/day, and an acute delayed neurotoxicity study on hens (negative at up to 100 mg/kg bw).

Based on the two-year rat feeding/oncogenicity study with a 0.1 mg/kg bw/day NOEL and using a safety factor of 10, the acceptable daily intake (ADI) for man is 0.01 mg/kg bw/day. The theoretical maximum residue contribution (TMRC) in the human diet from the proposed use does not exceed the ADI.

Desirable data that are lacking from the petition are a lifetime oncogenicity study and a teratology study. The lifetime oncogenicity study is expected to be completed in November 1979 and the teratology study is expected to be completed in late 1979. The petitioner also agreed to voluntarily delete the use of chlorpyrifos in food areas of food-handling establishments from the label should the teratology and life-time oncogenic study exceed the risk criteria for chronic toxicity as delineated in 40 CFR 162.11. Although the oncogenicity evaluation of chlorpyrifos is not complete, it is concluded that based on the available data, the risks are acceptable since the absence of an oncogenic potential is adequately shown in the two-year rat feeding/oncogenicity study.

The metabolism of chlorpyrifos is adequately understood, and an adequate analytical method (gas chromatography with a flame photometric detector) is available for enforcement purposes. Tolerances have previously been established (40 CFR 180.342) on a variety of raw agricultural commodities at levels ranging from 1 ppm to 0.01 ppm. Food additive regulations have also been established permitting the use of chlorpyrifos at a maximum concentration of 0.5 percent for spot and/or crevice treatment and in a controlled-release insect tape as a general treatment in food areas of food-handling establishments. No actions are currently pending against continued registration of chlorpyrifos, nor are any other relevant considerations involved in establishing the proposed regulation.

The pesticide is considered useful for the purpose for which the regulation is sought, and it is concluded that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136). Therefore the regulation amending 21 CFR 193.85 is being promulgated as proposed. Accordingly, a food additive regulation is established as set forth below.

Any person adversely affected by this regulation may, on or before July 19, 1979, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M-3708 (A-110), 401 M St., SW., Washington, DC 20460. Such objections should be submitted in triplicate and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". This regulation has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Effective on June 18, 1979, 21 CFR 193.85 is amended as set forth below.

Dated: June 12, 1979.

(Sec. 409(c)(1), Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(c)(1)))

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

Part 193, Subpart A, § 193.85, is amended by revising paragraph (a) to read as follows:

§ 193.85 Chlorpyrifos.

* * * * *

(a) Application shall be limited solely to spot and/or crack and crevice treatment in food handling establishments where food and food products are held, processed, prepared or served. Contamination of food or food contact surfaces shall be avoided. Food must be removed or covered during treatment.

(1) Spray concentration for spot treatment shall be limited to a maximum of 0.5 percent of the active ingredient by weight. A coarse, low-pressure spray shall be used to avoid atomization or splashing of the spray.

(2) Paint-on application for spot treatment shall be limited to a maximum of 2 percent of the active ingredient by weight.

(3) Crack and crevice treatment shall be limited to a maximum of 2 percent of the active ingredient by weight. Equipment capable of delivering a pin-stream of insecticide shall be used.

* * * * *

[FR Doc. 79-18873 Filed 6-18-79; 8:45 am]
BILLING CODE 6560-01-M

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21 CFR Part 193

[FAP 8H5184/R47; FRL 1251-6]

Tolerances for Pesticides in Food Administered by the Environmental Protection Agency; Aluminum Phosphide

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule amends 21 CFR 193.20 by establishing a food additive regulation permitting aluminum phosphide residues to come in contact with processed brewer's rice, malt, and corn grits in the manufacture of beer. The amendment to the regulations was requested by Phostoxin Sales, Inc. This rule removes the restriction prohibiting the direct contact of aluminum phosphide with processed brewer's rice, malt, and corn grits.

EFFECTIVE DATE: Effective on June 19, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. William Miller, Product Manager (PM) 16, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, SW, Washington, DC 20460 (202/755-9315).

SUPPLEMENTARY INFORMATION: On May 10, 1978, notice was given (43 FR 20051) that Phostoxin Sales, Inc., P.O. Box 469, Alhambra, CA 96102, had filed a petition

(FAP 8H5184) with the EPA. This petition proposed that 21 CFR 193.20 be amended by establishing a regulation permitting the direct contact by fumigation of the formulation containing aluminum phosphide in or on processed rice and malt stored in breweries for the manufacture of beer with a tolerance limitation of 0.01 part per million (ppm).

Subsequently, the petitioner amended the petition by adding corn grits to the proposed regulation with a tolerance limitation of 0.01 ppm (43 FR 35385, August 9, 1978). Three comments were received objecting to the proposal on the grounds that: (a) the proposed use is illegal since it violates label directions, (b) alternative low cost methods of fumigation are available, and (c) residues from the proposed use are undesirable toxic contaminants. The Agency having considered the comments and having evaluated the available data concludes that the proposed regulation should be established because (a) it will permit the label to be amended so that the proposed use is in compliance with the label, (b) establishment of the regulation does not preclude an applicator from using any of the other low-cost alternative methods of fumigation in accordance with label directions, and (c) the proposed use is a no-residue situation so that the beer when consumed will not contain any toxicologically significant residues, such as phosphine gas or aluminum phosphide.

The data submitted in the petition and other relevant material have been evaluated, and it is concluded that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

The toxicological data considered in support of the proposed tolerances included acute and subacute inhalation studies of phosphine on various animal species. No chronic toxicity data for phosphine residues have been reviewed because such studies are deemed unnecessary for the following reasons:

(1) An acceptable daily intake (ADI) cannot be determined for phosphine since a chronic-feeding study for a gas is difficult if not impossible to achieve.

(2) Only extremely small quantities of residues remain on treated food after aeration.

(3) The small quantities of residues that remain would be further reduced through follow-up procedures, such as processing.

No data have been reported in previous petitions, nor in this one, regarding the transfer of residues resulting from the proposed use to meat, milk, poultry, and eggs. Because phosphine is a highly reactive and fugitive gas, residues of phosphine are not expected in meat, milk, poultry, and eggs as delineated in 40 CFR 180.6(a)(3). An adequate analytical method (colorimetry) is available for enforcement purposes, and the nature of aluminum phosphide is adequately understood.

Tolerances have previously been established for residues of phosphine resulting from application of aluminum phosphide (40 CFR 180.225) on a variety of raw agricultural commodities at levels ranging from 0.1 ppm to 0.01 ppm. A food additive tolerance (21 CFR 193.20) has previously been established for residues of phosphine resulting from application of aluminum phosphide to processed foods at 0.01 ppm. Also a feed additive tolerance (21 CFR 561.40) has previously been established for residues of phosphine resulting from application of aluminum phosphide to processed feeds at 0.1 ppm. No other considerations are involved in establishing the proposed regulation.

The pesticide is considered useful for the purpose for which a regulation is sought. Therefore the regulation permitting residues of aluminum phosphide to come in contact with processed brewer's rice, malt, and corn grits by amending 21 CFR 193.20 is being promulgated as proposed. Accordingly a food additive regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication in the Federal Register, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M–3706 (A–110), 401 M St., SW, Washington, DC 20460. Such objections should be submitted in triplicate and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". This regulation has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Effective on the date of publication in the Federal Register, 21 CFR 193.20 is amended as set forth below.

Dated: June 12, 1979.

Statutory Authority: Section 409(c)(1) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 348(c)(1)].

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

Part 193, Subpart A, section 193.20 is amended by revising paragraph (b) to read as follows:

§ 193.20 Aluminum phosphide.

* * * * *

(b) To assure safe use of the additive, it is used in compliance with label and labeling conforming to that registered with the U.S. Environmental Protection Agency. Labeling shall bear a warning to aerate the finished food for 48 hours before it is offered to the consumer. A further warning shall state that under no condition should the formulation containing aluminum phosphide be used so that it or its unreacted residues will come in contact with any processed food, except processed brewer's rice, malt, and corn grits stored in breweries for use in the manufacture of beer.

* * * * *

[FR Doc. 79-19071 Filed 6-18-79; 8:45 am]

BILLING CODE 4110-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

21 CFR Part 520

Oxfendazole Powder and Pellets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document amends regulations to reflect approval of two new animal drug applications (NADAs) filed by Syntex Agribusiness, Inc., providing for the safe and effective use of the powder and pellet forms of an anthelmintic for horses.

EFFECTIVE DATE: June 19, 1979.

FOR FURTHER INFORMATION CONTACT: Henry C. Hewitt, Bureau of Veterinary Medicine (HFV–114), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: Syntex Agribusiness, Inc., 3401 Hillview Ave., Palo Alto, CA 94304, filed NADA's 110–776 and 110–777 providing for use of oxfendazole powder and pellets, respectively, in horses for removal of certain large roundworms, pinworms,

large strongyles, and small strongyles. The powder is reconstituted to form a suspension and then administered by either stomach tube or dose syringe. The pellets are sprinkled on the grain portion of the ration.

In accordance with the freedom of information regulations and § 514.11(e)(2)(ii) of the animal drug regulations (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk (HFA–305), Rm. 4–65, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), Part 520 is amended by adding new § 520.1628 to read as follows:

§ 520.1628 Oxfendazole powder and pellets.

(a) *Specifications.* (1) As powder for suspension: Each 30-gram packet contains 2.27 grams oxfendazole. (2) As pellets: each 35-gram packet contains 2.27 grams oxfendazole.

(b) *Sponsor.* See No. 017180 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* 10 milligrams per kilogram of body weight. One packet treats a 500 pound (227 kilogram) horse and two packets treat the average mature horse (1000 pounds).

(2) *Indications for use.* The drug is used in horses for removal of the following gastrointestinal worms: Large roundworms (*Parascaris equorum*), mature and immature pinworms (*Oxyuris equi*), large strongyles (*Strongylus edentatus* and *Strongylus vulgaris*), and small strongyles.

(3) *Limitations*—(i) *Powder for suspension.* For gravity administration via stomach tube: Add ½ to 1 pint warm water per packet. For positive administration via stomach tube and dose syringe: Add enough water to bring volume to 5 ounces per packet; administer at rate of 1 fluid ounce per 100 pounds of body weight. Discard unused portions of suspension after 24 hours. Administer drug with caution to sick or debilitated horses. Not for use in horses intended for food. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(ii) *Pellets. The drug is given by sprinkling on the grain portion of the ration. Withholding feed or water prior to administration is not necessary. Administer drug with caution to sick or debilitated horses. Not for use in horses intended for food. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism.*

Effective date. This regulation is effective June 19, 1979.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: June 12, 1979.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 79-18699 Filed 6-18-79; 8:45 am]

BILLING CODE 4110-03-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 561

[FAP 9H5203/R49; FRL 1251-8]

Tolerances for Pesticides in Animal Feeds Administered by the Environmental Protection Agency; Chlorpyrifos

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This rule amends 21 CFR 561.98 by establishing a feed additive tolerance for residues of the insecticide chlorpyrifos in or on sorghum grain milling fractions for animal feed at 1.5 parts per million (ppm). The regulation was requested by Dow Chemical Co. This rule establishes a maximum permissible level for residues of chlorpyrifos in or on sorghum grain million fractions.

EFFECTIVE DATE: Effective June 19, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Sanders, Product Manager (PM) 12, Registration Division (TS–767), Office of Pesticide Programs, EPA, 401 M Stret, SW, Washington, DC 20460 (202/426–9425).

SUPPLEMENTARY INFORMATION: On January 18, 1979, notice was given (44 FR 3771) that Dow Chemical U.S.A., Midland, MI 48640, had filed a petition (FAP 9H5203) with the EPA. This petition proposed that 21 CFR 561.98 be amended by establishing a regulation permitting combined residues of the insecticide chlorpyrifos (*O,O*-diethyl *O*-(3,5,6,-trichloro-2-pyridyl) phosphorothioate) and its metabolite 3,5,6,-trichloro-2-pyridinol in or on sorghum grain milling fractions (bran, germ, screenings) intended for animal feed resulting from application of the subject insecticide to growing sorghum with a tolerance limitation of 1.5 ppm. No comments were received by the Agency in response to this notice of filing. (A related document establishing tolerances for residues of chlorpyrifos on sorghum grain, fodder, and forage appears elsewhere in today's Federal Register.)

The data submitted in the petition and other relevant material have been evaluated, and it is concluded that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

The toxicological data considered in support of the proposed tolerance included a two-year rat feeding/oncogenicity study and a dog feeding study with a no-observed-effect level (NOEL) of 0.1 milligram (mg)/kilogram (kg) of body weight (bw). Studies on delayed neurotoxicity and reproduction showed negative potentials. Based on the two-year chronic rat feeding study with the 0.1 mg/kg bw NOEL on cholinesterase activity and using a safety factor of 10, the acceptable daily intake (ADI) for man is 0.01 mg/kg bw/day. The theoretical maximum residue contribution (TMRC) in the human diet from the proposed tolerances and tolerances which have previously been established for residues of chlorpyrifos on a variety of raw agricultural commodities at levels ranging from 0.01 ppm to 1.50 ppm does not exceed the ADI. A food additive regulation (21 CFR 193.85) has previously been established for chlorpyrifos in food-handling establishments. Feed additive tolerances have also been established (21 CFR 561.98) for residues of chlorpyrifos in dried sugar beet pulp at 1 ppm and sugar beet molasses at 3 ppm.

Desirable data that are lacking from the petition are a lifetime oncogenicity study and a teratology study. In a letter of February 17, 1978, and January 31, 1979, the petitioner indicated that the lifetime oncogenicity study is expected to be completed in May, 1979 and the teratology study is expected to be completed in late 1979. The petitioner also agreed to voluntarily delete the use of chlorpyrifos on sorghum from the label should the lifetime oncogenicity and teratology studies be found to exceed the risk criteria for chronic toxicity in 40 CFR 162.11. Although the oncogenicity evaluation of chlorpyrifos is not complete, it is concluded that

based on the available data, the risks are acceptable since the absence of an oncogenic potential is shown in the two-year rat feeding/oncogenicity study.

The metabolism of chlorpyrifos is adequately understood, and an adequate analytical method (gas chromatography) is available for enforcement purposes. No actions are currently pending against continued registration of chlorpyrifos nor are there any other relevant considerations involved in establishing the proposed tolerance. The established tolerances for residues of chlorpyrifos in milk, meat, poultry, and eggs are adequate to cover the proposed use.

The pesticide is considered useful for the purpose for which a tolerance is sought. Therefore, the regulation establishing a tolerance of 1.5 ppm in or on sorghum fractions (bran, germ, screenings) by amending 21 CFR 561.98 is being promulgated as proposed. Accordingly, a feed additive regulation is established as set forth below.

Any person adversely affected by this regulation may, on or before July 19, 1979, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M-3708 (A-110), 401 M St., SW, Washington, DC 20460. Such objections should be submitted in triplicate and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". This regulation has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Effective June 19, 1979. 21 CFR 561.98 is amended as set forth below.

Dated: June 12, 1979.

(Section 409(c)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(c)(1))

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

Part 561 is amended by revising section 561.98 to read as follows:

§ 561.98 Chlorpyrifos.

Tolerances are established for combined residues of the insecticide chlorpyrifos (*O, O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate) and its metabolite 3,5,6-trichloro-2-pyridinol in the following processed feeds when present therein as a result of application of this insecticide to growing crops:

	Parts per million
Feed:	
Sorghum milling fractions	1.5
Sugar beet pulp, dried	1
Sugar beet molasses	3

[FR Doc. 79-19069 Filed 6-18-79; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

24 CFR Part 1914

[Docket No. FI 5564]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, Federal Emergency Management Agency.[1]

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fourth column of the table.

[1] The functions of the Federal Insurance Administration, U.S. Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-8620.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Federal Insurance Administrator has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

Section 1914.6 is amended by adding in alphabetical sequence new entries to the table.

§ 1914.6 List of eligible communities.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified
Oklahoma	Johnston	Wapanucka, town of	400337	June 7, 1979, emergency.	May 28, 1976.
Pennsylvania	Mercer	Mill Creek, township of	421871-B	do	Dec. 20, 1974 and June 18, 1976.
Pa	Lackawanna	Vandling, borough of	421748	do	Feb. 14, 1975.
Wyoming	Platte	Wheatland, town of	560043-B	July 2, 1975, emergency, Apr. 16, 1979, regular, Apr. 18, 1979, suspended, June 6, 1979, reinstated.	Apr. 12, 1974 and May 7, 1976.
Pennsylvania	Huntingdon	Barree, township of	421863	June 11, 1979, emergency.	Dec. 6, 1974.
Florida	Gadsden	Havana, town of	120411	June 12, 1979, emergency.	July 23, 1976.
Idaho	Bonneville	Swan Valley, city of	160154-A	June 11, 1979, emergency.	Aug. 29, 1975 and June 14, 1977.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.)

Issued: June 12, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18865 Filed 6-18-79; 8:45 am]

BILLING CODE 4210-23-M

24 CFR Part 1915

[Docket No. FI 5565]

List of Communities With Special Hazard Areas Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule identifies communities with areas of special flood, mudslide, or erosion hazards as authorized by the National Flood Insurance Program. The identification of such areas is to provide guidance to communities on the reduction of property losses by the adoption of appropriate flood plain management or other measures to minimize damage. It will enable communities to guide future construction, where practicable, away from locations which are threatened by flood or other hazards.

EFFECTIVE DATES: The date listed in the eighth column of the table or July 19, 1979, whichever is later.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410

SUPPLEMENTARY INFORMATION: The Flood Disaster Protection Act of 1973 (Pub. L. 93–234) requires the purchase of flood insurance on and after March 2, 1974, as a condition of receiving any form of Federal or federally related financial assistance for acquisition or construction purposes in a identified flood plain area having special flood hazards that is located within any community participating in the National Flood Insurance Program.

One year after the identification of the community as flood prone, the requirement applies to all identified special flood hazard areas within the United States, so that, after that date, no such financial assistance can legally be provided for acquisition and construction in these areas unless the community has entered the program. The prohibition, however, does not apply to loans by federally regulated, insured, supervised, or approved lending institutions (1) to finance the acquisition of a residential dwelling occupied as a residence prior to March 1, 1976, or one year following identification of the area within which such dwelling is located as an area containing special flood hazards, whichever is later, or made to extend, renew, or increase the financing or refinancing in connection with such a dwelling, (2) to finance the acquisition of a building or structure completed and occupied by a small business concern, as defined by the Secretary, prior to January 1, 1976, (3) any loan or loans, which in the aggregate do not exceed $5,000, to finance improvements to or rehabilitation of a building or structure occupied as a residence prior to January 1, 1976, or (4) any loan or loans, which in the aggregate do not exceed an amount prescribed by the Secretary, to finance nonresidential additions or improvements to be used solely for agricultural purposes on a farm.

This 30 day period does not supersede the statutory requirement that a community, whether or not participating in the program, be given the opportunity for a period of six months to establish that it is not seriously flood prone or that such flood hazards as may have existed have been corrected by floodworks or other flood control methods. The six months period shall be considered to begin 30 days after the date of publication in the Federal Register or the effective date of the Flood Hazard Boundary Map, whichever is later. Similarly, the one year period a community has to enter the program under section 201(d) of the Flood Disaster Protection Act of 1973 shall be considered to begin 30 days after publication in the Federal Register or the effective date of the Flood Hazard Boundary Map, whichever is later.

This identification is made in accordance with Part 1915 or Title 24 of the Code of Federal Regulations as authorized by the National Flood Insurance Program (42 U.S.C. 4001–4128).

Section 1915.3 is amended by adding in alphabetical sequence a new entry to the table:

§ 1915.3 List of communities with special hazard areas (FHBM's in effect).

State, county, community name, and number of panels	Community number suffix	Program and change code	Inland or coastal	Hazard F/M/E	Identification date(s)	Effective date of this map action	Local map repository
Illinois, Fulton, Fulton County,[1] 0001B, 0007B, 0009B, only.	170241	N-11	I	F	July 21, 1978	June 1, 1979	Paul Woods, Ch. Co. Bd., Courthouse, Lewistown, IL 61542, Phone: (309) 647-0361.
Illinois, Iroquois, Iroquois County,[1] 0003B only	170731	E-12, 14	I	F	May 26, 1978	June 1, 1979	Homer Seall, Jr., Ch. Co. Bd., R. R. #3, Milford, IL 60953, Phone: (815) 432-4911.
Illinois, Saline, Saline County,[1] 0001A-0006A.	170966	E-5	I	F	June 1, 1979	June 1, 1979	Maynard Cannon, Clk., Courthouse, Harrisburg, IL 62946, Phone: (618) 253-8197.
Ohio, Defiance, city of Defiance, 0001B	390144	E-8, 11, 12, 14	I	F	May 17, 1974, July 23, 1976.	June 1, 1979	Kenneth E. Amebaugh, Mayor, 324 Perry Street, Defiance, OH 43512, Phone: (419) 784-2101.
Ohio, Muskingum, Muskingum County,[1] 0001B only.	390425	E-11, 12, 14	I	F	Mar. 28, 1975, Dec. 23, 1977.	June 1, 1979	William Embrace, Ch. Co. Comm., Zanesville, OH 43701, Phone: (614) 452-4587.
Ohio, Champaign, village of North Lewisburg, 01.	390056B	E-8, 12, 14	I	F	Apr. 5, 1974, Aug. 20, 1976.	June 1, 1979	Max Kostas, Mayor, 187 East Maple, North Lewisburg, OH 43060, Phone: (513) 747-3234.
Ohio, Paulding, Paulding County,[1] 0005B only	390777	E-10, 11	I	F	Jan. 27, 1978	June 1, 1979	John Dietrich, Ch. Co. Comm., Courthouse, Paulding, OH 45879, Phone: (419) 399-3051.
Ohio, Tuscarawas, city of Uhrichsville, 0001B.	390547	E-8, 11, 12, 14	I	F	Nov. 9, 1973, July 9, 1976.	June 1, 1979	Burton Peck, Mayor, P.O. Box 268, 305 East Second St., Uhrichsville, OH 44683, Phone: (614) 922-1243.
Pennsylvania, Venango, township of Victory, 0001A-0002A.	422548	E-11, 12, 14	I	F	Jan. 31, 1975	June 1, 1979	Dewayne King, Chairman, R. D. #1, Polk, PA 16342, Phone: (814) 432-4935.
Louisiana, Bossier Parish, city of Bossier City, 0001B-0004B.	220036B	E-8, 11, 12	I	F	June 28, 1974, Dec. 12, 1975.	June 5, 1979	Honorable Marvin E. Anding, Mayor, City of Bossier City, P.O. Box 5337, Bossier City, LA 71111, (318) 742-3535.
Louisiana, Lincoln Parish, city of Ruston, 0001A-0004A.	220047A	E-8, 11, 12	I	F	Dec. 24, 1976	June 5, 1979	Honorable John W. Perritt, Mayor, City of Ruston, P.O. Box 280, Ruston, LA 71270, (318) 255-7000.
North Dakota, McKenzie, city of Watford City, 0001A.	380344A	N-5	I	F	June 5, 1979	June 5, 1979	Honorable William E. Feeney, Mayor, Office of Mayor, City of Watford City, P.O. Box 494, Watford City, ND 58854, (701) 842-3294.
Oregon, Union, city of Summerville, 0001A	410222A	E-5	I	F	June 5, 1979	June 5, 1979	Honorable Cecil McDonald, Mayor, City of Summerville, Office of Mayor, P.O. Box 1B, Summerville, OR 97876, (503) 534-3035.
Texas, Denton, town of Copper Canyon, 0001A.	481508A	N-5	I	F	June 5, 1979	June 5, 1979	Honorable Thomas Murray, Mayor, Town of Copper Canyon, Office of Mayor, P.O. Box 1154, Lewisville, TX 75067, (817) 455-2316.
Texas, Chambers, town of Cove, 0001A	481510A	N-5	I	F	June 5, 1979	June 5, 1979	Honorable H. Leroy Stevens, Mayor, Town of Cove, Office of Mayor, Route 2, P.O. Box 190C, Baytown, TX 77520 (713) 383-2751.
Texas, Denton, town of Cross Roads, 0001A.	481513A	N-5	I	F	June 5, 1979	June 5, 1979	Honorable Bob Turner, Mayor, Town of Cross Roads, Office of Mayor, Route 1, Box 87B, Aubrey, TX 76227 (817) 365-2032.
Illinois, Sangamon, village of Chatham, 0001B.	170601	E-8, 11, 12, 14	I	F	Nov. 16, 1973, June 11, 1976.	June 8, 1979	Ginger Ealy, V. Employee, Village Hall, Chatham, IL 62629, Phone: (217) 483-2451.
Illinois, Jackson, city of Grand Tower, 0001A.	170300	E-8, 11, 12, 14	I	F	Jan. 9, 1974	June 8, 1979	Lois Hanson, Clerk, P.O. Box 253, Grant Tower, IL 62942, Phone: (618) 565-2132.
Illinois, Henderson, village of Gulfport, 0001B.	170260	E-11	I	F	Mar. 1, 1974, Jan. 23, 1976.	June 8, 1979	William Lucas, Mayor, Rt. 2, Burlington, IO 52601, Phone: (309) 673-2261.
Illinois, Jackson, Jackson County,[1] 0003B and 0007B only.	170827	N-10	I	F	July 14, 1978	June 8, 1979	William Kelley, Ch. Co. Bd., Rt. 5, Carbondale, IL 62901, Phone: (618) 457-5681.
Illinois, Monroe, Monroe County,[1] 0004B and 0007B only.	170509	E-10, 12	I	F	Dec. 20, 1974, July 7, 1978.	June 8, 1979	Harold Pieper, Ch. Co. Bd., R.R. 2, Waterloo, IL 62298, Phone: (618) 939-6767.
Illinois, Randolph, village of Prairie Du Rocher, 01.	170578B	E-8, 11	I	F	Nov. 23, 1973, Mar. 26, 1976.	June 8, 1979	Lavern Delron, Mayor, P.O. Box 325, Prairie Du Rocher, IL 62277, Phone: (618) 284-3321.
Illinois, Richland, Richland County,[1] 0001A-0006A.	170995	N-5	I	F	June 8, 1979	June 8, 1979	William Phelps, Ch. Co. Bd., 321 West Main, Olney, IL 62450, Phone: (618) 393-6472 home, (618) 393-4951 work.
Minnesota, Houston, city of Brownsville, 0001B.	270191	E-8, 11, 12, 14	I	F	Oct. 18, 1974, July 2, 1976.	June 8, 1979	Harold Harer, Clerk, City Hall, Brownsville, MN 55919, Phone: (507) 482-5656.
Ohio, Tuscarawas, village of Midvale, 0001A.	390715	E-8, 12, 14	I	F	Feb. 21, 1975	June 8, 1979	Vicki DeMatio, Clerk, Village Hall, Midvale, OH 44653, Phone: (216) 339-3271.
Ohio, Trumbull, village of Orangeville, 0001A.	390751	E-11, 12, 14	I	F	Apr. 18, 1975	June 8, 1979	Gary Langer, Mayor, P.O. Box 116, Orangeville, OH 44453, Phone: (216) 772-5703.

State, county, community name, and number of panels	Community number suffix	Program and change code	Inland or coastal	Hazard F/M/E	Identification date(s)	Effective date of this map action	Local map repository
Ohio, Montgomery, village of Union, 0001A	390704	E-8, 12, 14	I	F	Feb. 14, 1975	June 8, 1979	William R. Cooper, Mayor, 105 W. Martindale Rd., Union, OH 45322, Phone: (513) 836-9824.
Pennsylvania, Huntingdon, township of Cass, 0001A.	421688	E-11, 12, 14	I	F	Dec. 27, 1974	June 8, 1979	Terry Forshey, Chairman, Township Building, Calvin, PA 16822, Phone: (814) 448-3750.
Pennsylvania, Huntingdon, township of Miller, 0001A-0002A.	421695	E-11, 12, 14	I	F	Nov. 29, 1974	June 8, 1979	Harold Couch, Chairman, R.D. 2, Huntingdon, PA 16652, Phone: (814) 667-3635.
Pennsylvania, Huntingdon, township of Morris, 0001A.	421696	N-11, 12, 14	I	F	Nov. 22, 1974	June 8, 1979	Richard Anders, Chairman, Star Rt., Alexandria, PA 16611, Phone: (814) 669-4843.
Pennsylvania, Huntingdon, township of Shirley, 0001A.	421700	E-8, 11, 12, 14	I	F	Dec. 13, 1974	June 8, 1979	Paul E. Gardner, Chairman, R.D. 1, Box 73A, Shirleysburg, PA 17260, Phone: (814) 447-3568.
Pennsylvania, Potter, township of Summit, 0001A-0004A.	422502	E-5	I	F	June 8, 1979	June 8, 1979	Earnest Meistek, Chairman, R.D. 4, Coudersport, PA 16915, Phone: (814) 274-8523.
Louisiana, unincorporated area, Catahoula Parish, 0001B-0013B.	2200478	E-12	I	F	Nov. 29, 1977	June 12, 1979	Mr. H. C. Peck, Jr., Police Jury President, Catahoula Parish, P.O. Box 256, Harrisonburg, LA 71340, (318) 744-5285.
Nevada, unincorporated area, Churchill County, 0026B; 0027B.	320030B	N-11, 12	I	F	Dec. 27, 1977	June 12, 1979	Mr. Bjorn P. Selinder, County Manager, Churchill County Administrative Office, 869 South Maine Street, Fallon, NV 89406, (702) 423-5136.
Oregon, Lincoln, city of Depoe Bay, 0001A	410283A	N-5	C	F	June 12, 1979	June 12, 1979	Honorable Robert L. Jackson, Mayor, Office of Mayor, 630 Highway 101 SE, Depoe Bay, OR 97341, (503) 765-2361.
Texas, Denton, town of Bartonville, 0001A	481501A	N-5	I	F	June 12, 1979	June 12, 1979	Honorable Jim Morris, Mayor, Town of Bartonville, Office of Mayor, Route 3, 400 Stonewood Blvd., Roanoke, TX 76262, (817) 625-2311.
Texas, Waller, city of Pattison, 0001A	481527A	N-5	I	F	June 12, 1979	June 12, 1979	Honorable Allen M. Taylor, Mayor, City of Pattison, Office of Mayor, P.O. Box 758, Pattison, TX 77466, (713) 934-2711.
Texas, unincorporated area, Wharton County, 0009B.	480652B	N-6, 12	I	F	Aug. 2, 1974, June 20, 1978.	June 12, 1979	Honorable Daniel R. Sklar, County Judge, Wharton County, 100 Courthouse Building, Wharton, TX 77488, (713) 532-4812.
Utah, Box Elder, city of Brigham City, 0001B	490006B	E-11, 12	I	F	June 7, 1974, Jan. 16, 1976.	June 12, 1979	Honorable Peter C. Knudson, Mayor, P.O. Box A, Brigham City, UT 84302, (801) 723-8521.
Washington, Clallam, lower Elwha Reservation, 0001A.	530316A	E-5	C	I	June 12, 1979	June 12, 1979	Western Washington Agency, Bureau of Indian Affairs, c/o Mr. Bill White, Tribal Chairman, 3006 Colby Avenue, Everett, WA 98201, (206) 452-8471.
Alabama, Etowah, city of Gadsden, 0001B-0004B.	010080	E-8, 11, 12, 14	I	F	Mar. 8, 1974, May 28, 1976.	June 15, 1979	Steve Means, Mayor, P.O. Box 267, Gadsden, AL 35901, Phone: (205) 543-9670.
Illinois, Grundy, Grundy County,[1] 0004B only	170256	E-11	I	F	Dec. 20, 1974, Feb. 3, 1978.	June 15, 1979	Wm. Walters, Ch. Co. Bd., Courthouse, Morris, IL 60450, Phone: (815) 942-0835.
Illinois, Sangamon, Sangamon County,[1] 0010B, 0012B, and 0013B only.	170912	E-8, 11, 12, 14	I	F	May 5, 1978	June 15, 1979	Donald Gibbs, Ch. Co. Bd., Courthouse, Springfield, IL 62701, Phone: (217) 753-6650.
Illinois, Fayette, city of Vandalia, 0001C	170233	E-8, 11, 12, 14	I	F	Mar. 22, 1974, Mar. 19, 1976, Feb. 24, 1978.	June 15, 1979	Alvin Washburn, Mayor, 219 S. 5th Street, Vandalia, IL 62471, Phone: (618) 283-1196.
Indiana, Madison, town of Frankton, 0001B	180154	E-8, 11	I	F	Dec. 14, 1973, Sept. 12, 1975.	June 15, 1979	Joe Lagg, Town Bd. Pres., Town Hall, Frankton, IN 46044, Phone: (317) 754-7904.
Indiana, Pike, Pike County,[1] 0001A-0008A	180473	N-5	I	F	June 15, 1979	June 15, 1979	Dordon Hartke, Ch. Co. Comm., Courthouse, Petersburg, IN 47567, Phone: (812) 568-4430.
Kentucky, Bullitt, city of Shepherdsville, 0001B.	210028	E-8, 11	I	F	May 24, 1974, Mar. 5, 1976.	June 15, 1979	James T. Sparrow, Mayor, City Hall, Shepherdsville, KY 40165, Phone: (502) 543-2022.
New York, Ulster, town of Hardenburgh, 0001A-0005A.	361579	E-5	I	F	June 15, 1979	June 15, 1979	Lester Bowie, Town Supr., Town Hall, Lew Beach, NY 12753, Phone: (914) 439-4627 home, (914) 586-4137 office.
Ohio, Huron, village of New London, 0001B	390284	E-8, 11, 12, 14	I	F	May 17, 1974, Apr. 9, 1976.	June 15, 1979	Robert Blackman, Mayor, 42 East Main Street, New London, OH 44851, Phone: (419) 929-4091.
Ohio, Miami, city of Piqua, 0001B	390400	E-8, 11, 12, 14	I	F	June 28, 1974, July 25, 1975.	June 15, 1979	Jim Henderson, Mayor, City Hall, Piqua, OH 45356, Phone: (513) 773-1264.
Ohio, Auglaize, city of St. Marys, 0001B	390022	E-8, 11, 12, 14	I	F	May 7, 1974, July 30, 1976.	June 15, 1979	Kay E. Albert, Mayor, 101 East Spring Street, St. Marys, OH 45885, Phone: (419) 394-3303.
Pennsylvania, Crawford, township of Beaver, 0001A-0002A.	422386	E-11, 12, 14	I	F	Feb. 28, 1975	June 15, 1979	Sidney H. Martin, Chmn., R. D. #1, Conneautville, PA 16406, Phone: (814) 587-6238.
Pennsylvania, Venango, township of Clinton, 0001A-0002A.	422531	E-11, 12, 14	I	F	Jan. 17, 1975	June 15, 1979	Fred Eakin, Chmn., R.D. #2, Kennerdell, PA 16374, Phone: (814) 385-6278.

State, county, community name, and number of panels	Community number suffix	Program and change code	Inland or coastal	Hazard F/M/E	Identification date(s)	Effective date of this map action	Local map repository
Pennsylvania, Huntingdon, township of Logan, 0001A–0002A.	421694	E–11, 12, 14	I	F	Dec. 6, 1974	June 15, 1979	Raymond Goss, Jr., Chmn., Box 31–1A, R.D. #1, Petersburg, PA 16669, Phone: (814) 666–9031.
Maine, York, town of Limerick, 0001, 002	230194A	E–11, 12	I	F	Jan. 10, 1975	June 15, 1979	Board of Selectmen, Town of Limerick, Box 300, Limerick, Maine 04048.
Maine, York, town of Newfield, 0001, 0002, 0003, 0004.	230196A	E–12	I	F	Feb. 21, 1975	June 15, 1979	Town of Newfield, Town Office, Newfield, Maine 04095.
Maine, York, town of Shapleigh, 0001, 0003	230196A	E–11, 12	I	F	Jan. 17, 1975	June 15, 1979	Town of Shapleigh, P.O. Box 26, Shapleigh, Maine 04076.
New York, Rockland, town of Stony Point, 0001, 0002, 0003, 0004.	3606038	E–12	I	F	May 10, 1974, Sept. 26, 1975.	June 15, 1979	Town Clerk, Town of Stony Point, 74 East Maine Street, Stony Point, NY 10980.
Alabama, Shelby, town of Montevallo, 0001, 0002.	0103498	E–12	I	F	Jan. 28, 1977	June 15, 1979	Town Clerk, Town of Montevallo, 15 South Main Street, Montevallo, AL 35115.
Louisiana, Natchitoches Parish, village of Natchez, 0001A.	220370A	E–5	I	F	June 19, 1979	June 19, 1979	Honorable Lloyd Benjamin, Mayor, Office of Mayor, Village of Natchez, Natchez, LA 71456, (318) 352–6912.
Massachusetts, Franklin, town of Northfield, 0001A; 0003A–0004A.	250124A	E–10, 11, 12, 13	I	F	Aug. 9, 1974	June 19, 1979	Mr. Richard G. Parsons, Chairman, Northfield Planning Board, Town Hall, Northfield, MA 01360, (413) 498–5557.
Texas, Jasper, city of Browndell, 0001A	481542A	N–5	I	F	June 19, 1979	June 19, 1979	Honorable Sybie Walker, Mayor, City of Browndell, Office of Mayor, P.O. Box 516, Jasper, TX, 75951, (713) 696–2466.
Texas, Denton, town of Double Oak, 0001A	481518	N–5	I	F	June 19, 1979	June 19, 1979	Honorable Weldon Word, Mayor, town of Double Oak, Office of Mayor, 200 Timberview, Lewisville, TX 75067, (817) 488–1977.
Texas, Bell, town of Morgan's Point Resort, 0001A.	481525A	N–5	I	F	June 19, 1979	June 19, 1979	Honorable William Gibson, Mayor, Office of Mayor, Town of Morgan's Point Resort, Route 1, Box MP4–19, Belton, TX 76513, (817) 780–1894.
Texas, Liberty, city of Plum Grove, 0001A	481599A	E–5	I	F	June 19, 1979	June 19, 1979	Honorable Kenneth Shilling, Mayor, City of Plum Grove, Office of Mayor, Route 5, Box 322, Cleveland, TX 77327, (713) 592–5948.
Texas, Llano, city of Sunrise Beach Village, 0001A.	481591	N–5	I	F	June 19, 1979	June 19, 1979	Honorable Edward Houy, Mayor, City of Sunrise Beach Village, Office of Mayor, Click Route, Llano, TX 78643, (915) 388–6488.
Illinois, Effingham, city of Altamont, 0001B	170228	E–6, 11, 12, 14	I	F	Mar. 22, 1974, June 11, 1976.	June 22, 1979	Ray Gilbert, Mayor, 202 North Second St., Altamont, IL 62411, Phone: (618) 483–5212.
Illinois, Tazewell, city of Washington, 0001B	170855	E–6, 11, 12, 14	I	F	June 7, 1974, Oct. 24, 1975.	June 22, 1979	Arden Muller, Sr., Mayor, 115 West Jefferson, Washington, IL 61571, Phone: (309) 353–3196.
Illinois, Knox, village of Wataga, 0001B	170354	E–6, 12, 14	I	F	July 7, 1974, May 28, 1976.	June 22, 1979	C. A. Rose, Village President, P.O. Box 371, Wataga, IL 61488, Phone: (309) 375–6642.
Indiana, Fayette, Fayette County,[1] 0003B only	180417	E–12, 14	I	F	Dec. 30, 1977	June 22, 1979	Mike Bunyard, Chairman, Fayette Co. Bd. of Comm., 401 Central, Connersville, IN 47331, Phone: (317) 825–1213.
Indiana, Huntington, Huntington County,[1] 0004B only.	180436	N–11, 12, 14	I	F	Mar. 3, 1978	June 22, 1979	Jack Brewster, President, County Comm., 4th Floor Courthouse, Huntington, IN 46750, Phone: (219) 356–0850.
Indiana, Knox, Knox County,[1] 0003B, 0005B–0006B, 0008B–0009B only.	180422	E–10, 11, 12, 14	I	F	Mar. 10, 1978	June 22, 1979	Glenn A. Kelly, Exec. Dir. of Planning Comm., 7th and Busseron Sts., Courthouse, Vincennes, IN 47591, Phone: (812) 886–4042.
Indiana, Wells, Wells County,[1] 0001B and 0003B only.	180288	E–11, 12, 14	I	F	Dec. 13, 1974, May 27, 1977.	June 22, 1979	Albert Myers, President, Bd. of Comm., Courthouse, Bluffton, IN 46714, Phone: (219) 824–3224.
Ohio, Summit, city of Barberton, 0001B	390524	E–6, 11, 12, 14	I	F	May 24, 1974, July 30, 1976.	June 22, 1979	Lawrence A. Maurer, Mayor, City Hall, Barberton, OH 44203, Phone: (216) 753–8811.
Ohio, Hancock, Seneca, and Wood, city of Fostoria, 0001B.	390245	E–6, 11, 12, 14	I	F	Apr. 12, 1974, Apr. 16, 1976.	June 22, 1979	George Peeler, Mayor, 213 South Main St., Fostoria, OH 44830, Phone: (419) 435–8348.
Ohio, Pickaway, Pickaway County,[1] 0004B only.	390445	E–11, 12, 14	I	F	June 2, 1978	June 22, 1979	L. R. Liston, Chairman Co. Comm., Rm 5, Courthouse, Circleville, OH 43113, Phone: (614) 474–6983.
Pennsylvania, Huntingdon, township of Lincoln, 0001A–0002A.	421693	N–11, 12, 14	I	F	Jan. 3, 1975	June 22, 1979	Richard K. Isett, Chairman, R. D. #1, James Creek, PA 16657, Phone: (814) 658–3627.
Pennsylvania, Venango, township of Oil Creek, 0001A–0002A.	422537	E–11, 12, 14	I	F	Jan. 24, 1975	June 22, 1979	Wayne H. Spence, Chairman, R. D. #1, Pleasantville, PA 16341, Phone: (814) 589–7764.
Pennsylvania, Venango, township of President, 0001A–0003A.	422112	E–11, 12, 14	I	F	Jan. 10, 1975	June 22, 1979	Homer L. Hill, Chmn., Star Rt. 3, Titusville, PA 16363, Phone: (814) 676–6806.

State, county, community name, and number of panels	Community number suffix	Program and change code	Inland or coastal	Hazard F/M/E	Identification date(s)	Effective date of this map action	Local map repository
Wisconsin, Dodge, village of Brownsville, 01...	550096B	E-11	I	F	Sept. 6, 1974, June 4, 1976.	June 22, 1979	Dale R. Michaels, Vil. Pres., P.O. Box 128, Brownsville, WI 53006. Phone: (414) 583-3132.
Arizona, unincorporated area, Pinal County, 0027B-0028B; 0035B-0036B.	040077	E-12	I	F	Jan. 10, 1975, Feb. 7, 1978.	June 26, 1979	Mr. Terry Smith, Department of Planning and Zoning, Board of Supervisors, Pinal County, County Courthouse, Florence, AZ 85232. (602) 868-5801.
Montana, unincorporated area, Custer County, 0008A-0009A; 0014A.	300147A	N-5	I	F	June 26, 1979	June 26, 1979	Mr. Walter J. Ulmer, Chairman, Custer County, Board of County Commissioners, Miles, MT 59301. (406) 232-1347.
Texas, Kaufman, city of Berryville, 0001A	481541A	N-5	I	F	June 26, 1979	June 26, 1979	Honorable James E. Berry, Mayor, Office of Mayor, City of Berryville, Route #1, P.O. Box #140-B, Frankston, TX 75763, (214) 876-2975.
Texas, Denton, town of Eastvale, 0001A	481517A	N-5	I	F	June 26, 1979	June 26, 1979	Honorable Mrs. Mozelle Crawford, Mayor, Office of Mayor, Town of Eastvale, Route 3, Box 321, Lewisville, TX 75067, (214) 370-3000.
Texas, Kaufman, town of Oak Ridge, 0001A...	481534A	N-5	I	F	June 26, 1979	June 26, 1979	Honorable Walt Dickerson, Mayor, Office of Mayor, Town of Oak Ridge, Route 2, Box 45A, Terrell, TX 75160, (214) 563-3352.

[1] Unincorporated area.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (42 U.S.C. 4001-4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.)

Issued: June 12, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18866 Filed 6-18-79; 8:45 am]

BILLING CODE 4210-23-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 138

[T.D. 7629]

Exemption From Motor Fuels Excise Taxes for Certain Alcohol Fuels

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations relating to exemption from motor fuels excise taxes for certain alcohol fuels. Changes in the applicable tax law were made by the Energy Tax Act of 1978. These regulations affect producers and sellers of motor fuels and provide them with the guidance needed to comply with the law.

DATE: These regulations apply generally to sales after December 31, 1978, and prior to October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Robert H. Waltuch of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 Attention: CC:LR:T 202-566-3328, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to the exemption from motor fuels excise taxes for certain alcohol fuels (gasohol) under section 221 of the Energy Tax Act of 1978 (Pub. L. 95-618, 92 Stat. 3185) ("Act"). The temporary regulations provided by this document will remain in effect until superseded by final regulations on this subject. A notice of proposed rulemaking with respect to final regulations appears elsewhere in this issue of the Federal Register.

Section 221 of the Act amended section 4061 and 4041 of the Internal Revenue Code of 1954 (Code) relating to excise taxes on motor fuels. Under section 4061 a 4 cent a gallon tax is imposed upon gasoline sold by a producer or importer. Under section 4041 a 4 cent a gallon tax is imposed on the retail sale or use of diesel and special motor fuels. Noncommercial aviation fuel is taxed at the rate of 7 cents a gallon on any liquid other than gasoline and 3 cents a gallon on gasoline (in addition to the 4 cents imposed under section 4061).

Section 221 of the Act added a new subsection (c) to section 4061 and a new subsection (k) to section 4041 of the Code. Under these amendments the excise taxes on motor fuels do not apply generally to certain sales of qualifying mixtures of motor fuels and alcohol (gasohol) or to the sale of motor fuels for the purpose of producing gasohol.

On February 22, 1979, the Internal Revenue Service issued IR-2099 which provided interim guidance to those wishing to take advantage of the exemption. Producers of qualifying mixtures of gasoline and alcohol, as defined in the Act, may register to purchase gasoline free of the federal excise tax. Producers were directed to register by filing Form 637, *Registration for Tax-Free Transactions Under Chapter 32 of the Internal Revenue Code*, with their Internal Revenue Service District Director. Any person who in the ordinary course of a trade or business regularly purchases gasoline and alcohol in bulk quantities for mixing could be considered a producer for this purpose.

These regulations supersede the interim guidance given in IR-2099 and provide additional rules to clarify the

scope and application of the exemption relating to gasohol.

Refunds or Credits

There is no provision in the Code that provides for a refund or credit with respect to tax-paid gasoline used in producing gasohol. Congress is presently considering amending the Code to allow such a refund in section 108(c)(2) of the Technical Corrections Bill of 1979 (H.R. 2797). For refund or credit provisions relating to diesel, special motor and noncommercial aviation fuels, see § 138.4081(c)–1 (f).

Waiver of Procedural Requirements of Treasury Directive

There is need for expeditious adoption of the provisions contained in this document because of the need for immediate guidance to persons wishing to produce or sell gasohol. For this reason, Jerome Kurtz, Commissioner of Internal Revenue, has determined that the provisions of paragraphs 8 through 14 of the Treasury Department directive implementing Executive Order 12044 must be waived.

Drafting Information

The principal author of this regulation is Robert H. Waltuch of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Adoption of Amendments to the Regulations

Title 26 of the Code of Federal Regulations, Part 138 is amended by inserting in the appropriate place the following new sections 138.4041(k)–1 and 138.4081(c)–1:

§ 138.4041(k)–1 Fuels containing alcohol.

Under section 4041(k) the tax imposed under section 4041 does not apply to the sale or use of any liquid fuel at least 10 percent of which consists of alcohol. Except where a different rule has been expressly provided, purchasers and sellers of liquids under section 4041(k) are subject to the same requirements and limitations as are imposed on purchasers and sellers of gasoline under section 4081(c). See, § 138.4081(c)–1.

§ 138.4081(c)–1 Gasoline mixed with alcohol.

(a) *In general.* Under section 4081(c) the tax imposed by section 4081 on the sale of gasoline does not apply to the sale of qualifying gasohol or to the sale of gasoline for the purpose of producing qualifying gasohol if the requirements of this section are met. Qualifying gasohol is referred to in this section as gasohol. Gasohol is a blend of gasoline and alcohol (whether domestic or imported alcohol) in a mixture at least 10 percent of which contains alcohol made from any product other than petroleum, natural gas, or coal. In determining whether the 10 percent alcohol requirement has been met, alcohol that is 95 or more percent pure (190 degrees or more of proof) will be considered pure if no part of the impurity is gasoline. To the extent that the alcohol is less than 95 percent pure or to the extent that any part of the impurity is gasoline, a corresponding increase in the amount of alcohol is required to meet the 10 percent requirement. For certain requirements imposed on producers of alcohol (ethanol) under chapter 51 of the Code relating to distilled spirits, see 27 CFR Part 201. For certain requirements imposed on purchasers of specially denatured alcohol (ethanol), see 27 CFR Part 211.

(b) *Sale of gasoline to produce gasohol.* Under section 4081(c) the sale of gasoline for the purpose of producing gasohol is not exempt unless the sale is in bulk quantities for delivery into a bulk storage tank of a producer who meets the requirements of this section. For purposes of section 4081(c), the term "producer" means any person who in the ordinary course of its trade or business regularly buys gasoline and alcohol in bulk quantities for blending for use in its trade or business or for resale. Thus, the mere purchase of gasoline for blending into gasohol does not qualify a person as a producer. A person is not a producer for purposes of section 4082 merely because such a person is a producer of gasohol as defined in this section. Thus, the provisions of section 4083 (relating to certain exempt sales to producers) do not necessarily apply.

(c) *Requirement for gasohol producers purchasing tax free—(1) Certificate of Registry.* A person qualifying as a producer who wishes to purchase gasoline tax free for the purpose of producing gasohol must be registered with the district director for the district in which its principal place of business is located, unless exempt from registration requirements under section 4222(b). A person registers, if not previously registered, by completing and filing Form 637, *Registration for Tax-Free Transactions Under Chapter 32 of the Internal Revenue Code*, in duplicate, in accordance with its instructions. Copies of Form 637 may be obtained from any district director. Upon approval a registry number is assigned and a Certificate of Registry is issued. At the time of purchase, a registered producer must furnish to the seller in writing its registry number together with its signed statement of the exempt purpose of the purchase. Persons not required to be registered under section 4222(b) may purchase tax free by following the procedure that applies to them in the case of other tax-free sales. See § 48.4222(b)–1.

(2) *Revocation or suspension of registration.* The district director is authorized to revoke or temporarily suspend, upon written notice, the registration of any person and the right of such a person to purchase gasoline tax free under section 4081(c) in any case in which the district director finds that—

(i) The registrant is not a bona fide producer of gasohol;

(ii) The registrant failed to comply with the requirements of paragraph (c)(1) of this section, relating to the evidence required to support a tax-free sale;

(iii) The registrant has used its registration to avoid the payment of any tax imposed by chapter 31 or 32 of the Code, or to postpone or interfere in any manner with the collection of such a tax;

(iv) The revocation or suspension is necessary to protect the revenue; or

(v) The registrant is for some other reason not eligible under this section to retain a Certificate of Registry.

The revocation or suspension of registration is in addition to any other penalty that may apply under the law for any act or failure to act.

(d) *Seller not relieved of liability in certain cases.* The seller of the gasoline remains liable for the tax imposed under section 4081 if at the time of the sale the seller of the gasoline has reason to believe that all the gasoline sold by it to the purchaser is not intended for blending into gasohol or that the purchaser has failed to register or that its registration has been revoked or suspended.

(e) *Special rules—(1) Limitation on tax-free sales.* The exemption from the excise tax under section 4081(c) applies to the sale of gasoline only for use in producing gasohol. Therefore, unless the sale is exempt under another provision of the Code, the seller of the gasoline may sell tax free only that portion of the gaoline that is intended for use in producing gasohol.

(2) *Credit sales to exempt users.* Under section 6416 of the Code, the producer of gasoline is entitled to a refund or credit if tax-paid gasoline is

ultimately sold to tax-exempt users in a case to which section 6416 (b) (2) (A), (B), (C), (D), or (H) applies. To determine the amount of overpayment, the producer of gasoline, among other things, must be able to establish the amount of tax-paid gasoline that was sold by the ultimate vendor to tax-exempt users. Therefore, if the ultimate vendor sells both tax-paid gasoline and gasohol on credit and the sales of the two kinds of fuels are not clearly distinguished, the producer of the gasoline will not be entitled to a credit or refund with respect to the tax-paid gasoline if it can not establish the amount of the tax-paid gasoline sold by the ultimate vendor to tax-exempt users.

(f) *Refunds and credits*—(1) *Gasoline.* Except as provided in paragraph (f)(2) of this section, there is no provision in the Code that allows a refund or credit with respect to tax-paid gasoline used in producing gasohol.

(2) *Mixture of gasoline and alcohol containing more than 40 percent alcohol.* If a purchaser buys gasoline tax paid for blending a mixture of gasoline and alcohol containing more than 40 percent alcohol, that mixture will be treated as a special fuel under section 4041 and the refund provisions in section 6416 and the regulations under that section apply.

(3) *Diesel, special motor, and noncommercial aviation fuels.* If a producer (as defined in paragraph (b) of this section) buys diesel, special motor, or noncommercial aviation fuels tax paid and uses the fuel in producing exempt gasohol, then the refund provisions in section 6427 of the Code and the regulations under that section apply.

(g) *Later separation and failure to blend*—(1) *Gasoline.* If any person fails to blend gasoline purchased tax free under section 4081(c) with alcohol to make gasohol, or later separates the tax-free gasoline from the alcohol, that person is treated as a producer of gasoline as defined in section 4082 and the provisions of section 4061 relating to the sale of gasoline by a producer apply. If gasoline has been purchased tax free for the purpose of producing gasohol in excess of the amount of gasoline that the purchaser is able to establish has actually been used to produce gasohol by the records required under paragraph (h)(3) of this section, the purchaser is treated as having failed to blend the excess gasoline, and the provisions of this paragraph apply. In such a case, any of the excess gasoline that is not in the purchaser's possession is treated as having been disposed of by sale or by a use that is treated as a sale under section 4082(c). See section 7201 for criminal penalties relating to a willful attempt to evade or defeat tax, and sections 6651 and 6653 for additions to tax for failure to file a return or pay tax and for negligence and fraud.

(2) *Diesel, special, and noncommercial aviation fuels.* If any person separates the diesel, special, or noncommercial aviation fuel purchased tax free under section 4041(k) from the alcohol, the separation is treated as a sale of the fuel for purposes of section 4041.

(h) *Information; records*—(1) *Information to be furnished to purchaser.* A producer of gasoline who sells gasoline tax free under section 4081(c) shall indicate to the purchaser that the purchaser is obtaining gasoline tax free for making gasohol. The producer may transmit this information by any convenient means, such as coding of sales invoices, provided that the information is presented with sufficient particularity so that the purchaser is informed that he has obtained the gasoline tax free and the purchaser can compute and remit the tax due if the gasoline is diverted to a taxable use.

(2) *Records of seller.* Every person who, but for this section would be liable for the excise tax on the sale of the gasoline, shall maintain in its records—

(i) The identity of the purchaser,

(ii) The written statement required to be given to the seller under paragraph (c) of this section, and

(iii) The quantity of gasoline sold tax free to each purchaser.

(3) *Records of producer of gasohol.* Any person purchasing gasoline tax free for the purpose of producing gasohol must maintain sufficient records to establish that the gasoline purchased tax free for the purpose of producing gasohol has actually been used for that purpose. Such a person must maintain records sufficient to establish to the satisfaction of the district director that alcohol, of the requisite kind, has actually been obtained by it in a quantity sufficient to have enabled it to have produced the full amount of gasohol that could have been produced from the quantity of gasoline it has acquired tax free for the purpose of producing gasohol.

(i) *Effective dates.* Section 4061(c) (relating to gasoline mixed with alcohol) applies to sales after December 31, 1978, and before October 1, 1984. Gasoline sold prior to January 1, 1979, and which is blended into gasohol after that date is not exempt from the tax under section 4081(c) of the Code. Section 4041(k) (relating to fuels other than gasoline) applies to sales or use after December 31, 1978, and before October 1, 1984. Where the special fuels have been blended into gasohol and have been put into the tank of a vehicle prior to January 1, 1979, the fuels are considered used prior to that date. The record-keeping requirements under this section apply to sales or uses that occur after July 19, 1979.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

(Sec. 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805); secs. 4041(k), 4081(c) of the Code)

Jerome Kurtz,
Commissioner of Internal Revenue.

Approved: June 7, 1979.

Donald C. Lubick,
Assistant Secretary of the Treasury.

[FR Doc. 79-19026 Filed 6-14-79; 2:45 pm]
BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 644

[EP 405-1-2]

Real Estate Handbook; Relocation Assistance Program; Correction

AGENCY: U.S. Army Corps of Engineers, DOD

ACTION: Final rule.

SUMMARY: On January 15, 1979 (44 FR 3168) the U.S. Army Corps of Engineers published certain portions of the Real Estate Handbook describing existing procedures pertinent to the real estate activities of the Corps. The section number 644.121 assigned therein to Subpart D—Relocation Assistance Program is hereby redesignated as § 644.175, Cross Reference, to allow additional expansion for Subpart C.

EFFECTIVE DATE: January 2, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie L. Pitchford, Jr., Chief, Programs Division, Real Estate Directorate, Office of the Chief of Engineers, Washington, D.C. 20314 (202-693-6285).

Dated: June 12, 1979.

Thorwald R. Peterson,

Colonel, Corps of Engineers, Executive Director, Engineer Staff.

[FR Doc. 79-19043 Filed 6-18-79; 8:45 am]

BILLING CODE 3710-92-M

Department of the Air Force

32 CFR Part 842

Administrative Claims; Miscellaneous Amendments

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: The following amendments to the administrative claims regulations reflect recent statutory changes, and promulgates changes in policy. The amendments will also simplify the settlement and disposition of administrative claims.

EFFECTIVE DATE: April 11, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Francis B. Van Nuys, Deputy Chief, Claims and Tort Litigation Staff, Office of the Judge Advocate General, Washington, DC 20324 (202-693-0350).

SUPPLEMENTARY INFORMATION. The provisions of Part 842 are issued under authority of Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012, except as otherwise noted.

The amendments will read as follows:

1. Section 842.8 is amended by revising the caption for paragraph (a)(1) to read as follows:

§ 842.8 Action on disapproving claims.

(a) * * *

(1) *Claims under Subpart C and M.*

* * *

* * * * *

§ 842.12 [Amended]

2. Section 842.12 is amended as follows:

A. Paragraph (a) is amended by deleting the word "and" at the end of the last sentence, and by substituting a "period" in place of the "comma", after the word "implied".

B. Paragraph (c) is revised to read as follows:

* * * * *

(c) Claims for damage to or loss or destruction of property that result from an act or omission that occurred outside the scope of a member's employment which are cognizable under other claims statutes may be processed under this regulation, in whole or in part, if specific authority has been obtained from HQ USAF/JACC (Subparts C, E, G, or M of this part).

3. Section 842.24 is amended to revise Rule 7, Column (B) Remarks, to read as follows:

§ 842.24 Cognizable claims not payable.

* * * * *

Except if loss was not recovered and is no longer recoverable and the reason it is not recoverable is not the knowing or intentional act or omission of the claimant, his agent, or his employee. Claim should then be processed in same manner as if claimant did not have insurance.

4. Section 842.31 is amended to revise paragraph (c) to read as follows:

§ 842.31 Property recovered by claimant.

* * * * *

(c) Disclaim any interest in the property and request that it be turned over to the Defense Property Disposal Office. (10 U.S.C. 2575(a)).

5. Section 842.32 is amended to revise paragraph (a)(1) and to add paragraphs (b), (b)(1), (b)(2), (b)(3), and (c) to read as follows:

§ 842.32 Items turned in for salvage.

* * * * *

(a) * * *

(1) Notifies the claimant in writing that the item must be delivered to the Defense Property Disposal Office as a condition to payment awaiting turn-in. EXCEPTION: If claims officer had determined that the cost to turn the property in to Government salvage would exceed its monetary value, he may ask the claimant to discard it.

(2) * * *

(b) The claims officer, upon receipt of approving authority's notice.

(1) Completes DD Form 1345-1 or other form as prescribed by the local property disposal office and makes sure that copies accompany the property to the local property disposal office.

(2) Determines whether Government transportation is necessary to carry the item(s) to the local Defense Property Disposal Office activity; if so, DD Form 1348-1 is authority for transportation.

(3) Determines necessary action if the description of property on DD Form 1845 does not agree with the item to be turned in.

(c) The Defense Property Disposal Office uses DD Form 1348-1 to receipt for property turned in for salvage, returns two copies to the delivering agent, and turns one copy over to the claims office for inclusion in the claim file.

6. Section 842.43 is amended to add Rule 8 to read as follows:

§ 842.43 Proper claimants.

Rule	Proper claimant (A)	Scope of limitations (B)
.	.	.
8	Air Force military or civilian health care providers.	For judgment or settlement resulting from litigation concerning acts committed within the scope of their employment as authorized by 10 U.S.C. 1089(f) and DOD Directive 6000.6. After investigation, forward all such claims to HQ USAF/JACC for settlement. (See Para. 7-6d)

7. Section 842.46 is amended to add paragraph (d) to read as follows:

§ 842.46 Claims payable under this subpart.

* * * * *

(d) Claims by Air Force military or civilian health care providers (see § 842.43, Rule 8). Payable costs resulting from claims or suits against individuals by 10 U.S.C. 1089(f) shall include any costs of judgment which are taxed by a court, costs of a settlement or compromise approved by the Attorney General, normal litigation expenses and such interest as any medical personnel may be obligated to pay by any court order or by statute. Costs for attorney's fees shall not be payable unless the retention of the attorney was approved by the Attorney General.

8. Section 842.49 is amended to revise paragraph (e) to read as follows:

§ 842.49 Settlement authority.

* * * * *

(e) *Claims recommended for payment in excess of $25,000.*

(1) The Secretary of the Air Force may disapprove a claim or, if he considers it meritorious and otherwise covered under this subpart make an award in an amount greater than $25,000.

(2) Upon receipt of a settlement agreement in full satisfaction of the claim, he may authorize a partial payment of $25,000 (including any emergency payment under § 842.4). Generally emergency payments are made only for personal, not corporate, claims (§ 842.4). The Secretary will return the claim to the Judge Advocate General for payment action. The claim will be forwarded to the General

Accounting Office for certification to the Treasury of the balance due claimant.

9. Section 842.54 is amended to revise paragraphs (c)(4) to read as follows:

§ 842.54 Settlement authority.

* * * * *

(4) When the Secretary approves a claim in excess of $25,000, the Judge Advocate General will prepare a letter of transmittal with appropriate documentation to the Claims Division, General Accounting Office, Washington, D.C. 20548, for GAO certification and payment by the Department of the Treasury.

10. Section 842.141 is amended to revise paragraph (a) to read as follows:

§ 842.141 Assertable claims.

A claim is assertable if:

(a) It is based on injury or disease that occurred after January 1, 1963 either under circumstances creating tort liability for the payment of damage upon a third person, or under circumstances wherein the United States is an eligible third-party beneficiary of a medical payment, uninsured motorist, no-fault, or workmen's compensation insurance policy.

11. Section 842.143 is amended to revise paragraph (b) to read as follows:

§ 842.143 Notification of injured party.

* * * * *

(b) The injured party, when desiring to do so, may seek the advice of legal counsel concerning any possible claim for personal injury or disease and furnish the base staff judge advocate the name and address of any civilian attorney retained.

12. Section 842.145 is amended to revise paragraph (a) to read as follows:

§ 842.145 Compromise settlements.

(a) Compromise of the Government's claim is authorized if the injured party or his or her attorney requests, in writing, that the United States accept less than the full amount of its claim. Normally such a request is based upon the proposed acceptance by the injured party of less than the total assets available due to either questionable liability or litigation risks. The Government's claim should ordinarily be compromised for an amount which bears the same percentage relationship to the amount claimed as the settlement does to the jury verdict expectancy. For example, if the Government's claim is $3,000 and the jury verdict expectancy is $15,000 but the injured party elects to settle for a total of $10,000, the United States should compromise for ⅔ of its claim, or $2,000.

13. Section 842.147 is amended to revise paragraph (a) to read as follows:

§ 842.147 Settlement authority.

(a) The Secretary of the Air Force may accept the full amount of any hospital recovery claim, or he may compromise or waive any such claim not in excess of $40,000. The Secretary has delegated and limited this authority as shown in 842.148.

14. Section 842.148 is amended to revise Rule 2, Column A, as amended § 842.148 reads as follows:

§ 842.148 Settlement authorities for hospital recovery claims.

RULE	A If a claim is for	B then payment may be accepted in full and a release signed by	C it may be compromised, settled, or waived by
1	any amount	The Judge Advocate General. The Asst Judge Advocate General. Director of Civil Law, Chief, Deputy Chiefs, and Branch Chiefs, Claims and Tort Litigation Staff SJAs and their designees of PACAF, and USAFE, and GCMs with PACAF and USAFE. SJAs and their designees of bases, stations, and fixed installations	
2	$40,000 or less		The Judge Advocate General. The Asst Judge Advocate General. Director of Civil Law, OTJAG. Chief, Deputy Chief, and Branch Chiefs Claims and Tort Litigation Staff. See note 2.
3	$15,000 or less		SJAs and their designees of PACAF and USAFE
4	$7,500 or less		SJAs and their designees of one-base GCMs and GCMs of PACAF and USAFE
5	$5,000 or less		SJAs and their designees of each base, station, or fixed installation.

Note.—Claims over $40,000 that cannot be collected in full may be acted on only with the approval of the Department of Justice.

Carol M. Rose,

Air Force Federal Register Liaison Officer.

BILLING CODE 3910-01-M

[FR Doc. 79-19041 Filed 6-18-79; 8:45 am]

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Yellowstone National Park, Wyoming, Montana, Idaho; Fishing Regulations

AGENCY: National Park Service, Interior.

ACTION: Final Rule.

SUMMARY: The proposed regulations set forth below are a partial revision of existing regulations promulgated to control sport fishing within Yellowstone National Park. Controls are necessary to protect native fish species and to provide for sport fishing with adequate replenishment of fish populations through natural reproduction. Research findings and field experience indicate the need for further protection of native species, for correction of difficult law enforcement situations and for relaxed limits on certain exotic species.

EFFECTIVE DATE: June 19, 1979.

FOR FURTHER INFORMATION CONTACT: Superintendent, Yellowstone National Park, P.O. Box 168, Yellowstone National Park, Wyoming 82190.

SUPPLEMENTARY INFORMATION:

Previous Publications

A Notice of Proposed Rulemaking was published in the Federal Register of March 30, 1979 (44 FR 18995), proposing a regulation substantially the same as the regulations set forth below.

The purpose of this amendment is to:

1. Protect spawning fish in the Gardner River and in Trout Lake from illegal fishing methods.

2. Protect delicate thermal features along portions of the Firehole River and to avoid accidental burns to fishermen.

3. Protect an ecologically unique fish population in Three Ponds north of Snake River Hot Springs.

4. Provide for catch-and-release fishing only on Beula and Hering Lakes and adjacent streams, on Sportsman Lake, on upper Cougar Creek, on the Cascade Creek drainage near Canyon, on the Sylvan Lake drainage, on Sedge Creek above Turbid Lake, on those portions of the Bechler River containing genetically pure cutthroat trout and for cutthroat trout in Blacktail Deer Creek and Blacktail Ponds.

5. Correct Paragraph (2) Open Fishing Season, to properly indicate the daily period in which fishing is permitted.

6. Correct the catch-and-release regulation on Pelican Creek drainage to include only that portion of the drainage above the lower two miles, the latter which is closed to fishing.

7. Extend the additional catch limit on brook trout to the Gallatin River and Grayling Creek drainages and to include brown trout in the added limit on these drainages only.

8. Provide for the ecologically correct disposal of fish entrails in the backcountry.

Season changes on Trout Lake and on a portion of the Gardner River will protect spawning trout from illegal fishing methods such as snagging and clubbing. Closing a portion of the Firehole River will help to prevent damage to thermal features on the river bank and will lessen the possibility of fishermen accidentally stepping into hot pools. The small ponds north of Snake River Hot Springs are the only known waters containing all the fish species native to the upper Snake River and in an unaltered condition. Closure to fishing will preserve this unique ecosystem for research purposes.

Catch-and-release fishing on several waters in the park will preserve native strains of cutthroat trout. Paragraph (2) Open Fishing Season incorrectly indicates the daily fishing period. The catch-and-release regulation on Pelican Creek was written incorrectly and is confusing. The additional limits of brook and brown trout in the Gallatin River and Grayling Creek drainages will help to shift fishing pressure from the rarer native species to the more competitive non-native fish.

General park regulations prohibit disposing of fish entrails in any fresh water. A special regulation permitting this will provide a more ecologically correct method of disposal in a natural area and will avoid creating an attraction to bears that results from burying the entrails or from the often ineffective attempts at burning them in a campfire.

Comments

No specific objections to the proposed rule changes were received during the 30-day comment period which was provided. Three letters were received which were in favor and encouraged the adoption of the proposed changes. One letter and five phone calls were received requesting copies of the proposed regulations However, no comments were subsequently received from these inquiries. One letter was received disagreeing with our overall fisheries program, but did not make specific comments on the proposed regulations.

In view of the fact that the summer fishing season has already begun, the National Park Service has determined that immediate implementation of these regulations is necessary to adequately provide for resource protection. Therefore, it is deemed neither necessary nor constructive to delay the effective date for 30 days after this publication.

Authority

(Sec. 3, Act of August 25, 1916 (39 Stat. 535, as amended, 16 U.S.C. 3), and the Act of May 7, 1894 (28 Stat. 73, as amended; 16 U.S.C. 26), 245 DM 1 (42 FR 12931), as amended)

Drafting Information

The primary author of this regulation is Jerry R. Phillips, Assistant Chief Ranger, Yellowstone National Park.

Impact Analysis

The National Park Service has determined that this document is not a significant rule requiring preparation of a regulatory analysis under Executive Order 12044 and Part 14 of Title 43 of the Code of Federal Regulations; nor is it a major Federal action significantly affecting the quality of the human environment which would require preparation of an Environmental Impact Statement. An Environmental Statement for the Master Plan for Yellowstone National Park which discusses, among other things, the impacts of controlling fishing within the park, has been prepared by the National Park Service. This statement is available for review at the address given above, or interested

parties may request copies of it from the Superintendent.

Boyd Evison,

Acting Associate Director, Management and Operations.

In consideration of the foregoing, paragraphs (e)(2), (3)(ix), (xi), (xii); (5)(vii) through (xvi), (6)(v) and (10)(i) of § 7.13 of Title 36, Code of Federal Regulations, are revised as follows:

§ 7.13 Yellowstone National Park.

* * * * *

(e) *Fishing.* * * *

(2) *Open Fishing Season.* * * *

(i) All rivers and creeks in the Yellowstone River drainage above the Upper Falls at Canyon except as otherwise provided in paragraph (e)(3) of this section, are open to fishing between the hours of 5 a.m. and 10 p.m., local time, from July 15 through October 31. Rivers and creeks include those portions of Yellowstone Lake marked by buoys within 100 yards of the river or creek inlet.

(ii) All lakes in the Yellowstone River drainage above the Upper Falls at Canyon, except as otherwise provided in paragraph (e)(3) of this section, are open to fishing between the hours of 5 a.m. and 10 p.m., local time, from June 15 through October 31. The marking buoys in the vicinity of the outlet of Yellowstone Lake shall define the northern limit of Yellowstone Lake.

(iii) The Trout Lake drainage above Soda Butte Creek, including Trout, Buck and Shrimp Lakes, shall be open between the hours of 5 a.m. and 10 p.m., local time, from June 15 through October 31.

(iv) All other waters, except as provided in paragraph (e)(3) of this section, are open to fishing between the hours of 5 a.m. and 10 p.m., local time, from May 28 through October 31.

* * * * *

(3) *Class Waters.* * * *

(ix) The Firehole River, from the road bridge one-half mile east of Old Faithful downstream to the road bridge at Biscuit Basin, including any other portions of the Firehole River, identified by the posting of appropriate signs, which lie in the immediate vicinity of hazardous or fragile thermal features.

* * * * * *

(xi) The Gardner River between Mammoth Hot Springs and the North Boundary, where and when posted, on or after September 1 until the end of the park fishing season.

(xii) The three ponds one-half mile north of Snake Hot Springs.

* * * * *

(5) *Catch-and-Release Waters.* * * *

(vii) Pelican Creek and all its tributaries from two miles above the mouth to the headwaters.

* * * * *

(ix) Sylvan Lake, including its inlets, and the outlet downstream to Clear Creek.

(x) The Cascade Creek drainage near Canyon Village, including Cascade Lake.

(xi) The Falls River drainage above the falls at the 7200 foot contour, as posted, including Beula and Hering Lakes.

(xii) Sportsman Lake, including the inlets and the outlet downstream to Mol Heron Creek.

(xiii) Cougar Creek above the Gneiss Creek trail crossing.

(xiv) The Bechler River and its tributaries above Colonnade Falls.

(xv) Sedge Creek and its tributaries above Turbid Lake.

(xvi) Blacktail Deer Creek drainage, including Blacktail Ponds, for cutthroat trout only.

* * * * *

(6) *Daily Limits by Waters.* * * *

(v) The Gallatin River and Grayling Creek and their tributaries, and Cougar Creek below the Gneiss Creek trail crossing: Five fish, any size, of which at least three must be brook or brown trout.

* * * * *

(10) *Disposal of Fish Entrails.* * * *

(i) In those backcountry waters, designated by the Superintendent, fish entrails may be disposed of by puncturing the air bladder and depositing the entrails in deep water in the lake or stream from which the fish was taken.

* * * * *

[FR Doc. 79-19030 Filed 6-18-79; 8:45 am]
BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 1245-7]

Texas, Approval and Promulgation of Implementation Plan: Deletion of Reporting Requirement

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is amending § 52.2297—Employer Mass Transit and Carpool Incentive Program to delete the annual reporting requirements. The content and format of the reports as presently specified do not provide information which is sufficiently useful to justify the time and expense of their preparation. This action eliminated the requirement for annual reports but retains the requirement for initial reports.

EFFECTIVE DATE: June 19, 1979.

FOR FURTHER INFORMATION CONTACT: Joan Brown, Air Compliance Branch, Region 6, Environmental Protection Agency, 1201 Elm Street, Dallas, Texas 75270, (214) 767-2755.

SUPPLEMENTARY INFORMATION: On July 21, 1977 (42 FR 37376), the Administrator promulgated regulations under the Clean Air Act as an addition to the state implementation plan for Texas. The regulations required reductions in emission of hydrocarbons as an aid in attaining the health-related ambient air quality standard for photochemical oxidants (ozone). One of the regulations, 40 CFR 52.2297, was called the Employer Mass Transit and Carpool Incentive Program. This regulation required certain employers and educational institutions in 23 Texas counties to establish programs to encourage and increase the use of mass transit and carpools by employees and students. The employers and educational institutions were required to submit an initial report, followed by annual reports each June 30, describing the program and its effectiveness.

It has now been determined that the annual reports place a burden on employers and educational institutions which outweighs the value of the information presently required in the annual reports. The requirement for annual reports is now being removed, although the requirement for initial reports is retained. The agency is studying alternative formats which would provide more meaningful and consistent data. The annual reports which would be due on June 30, 1979, need not be submitted.

For good cause, the Administrator finds that notice of proposed rulemaking and public comment are unnecessary before this amendment is made effective. It removes a requirement presently existing. Because of the limited value of the reports as presently required, no useful data will be lost by not obtaining such reports.

For good cause, the Administrator finds that this amendment should be made effective immediately. Because of the nearness of this publication to the date for submission of the annual reports, any delay could result in the failure to remove the legal requirement before the date on which the reports must be submitted.

This action is taken under the authority of the Clean Air Act, sections 110 and 301, 42 U.S.C. 7410 and 7601.

Dated: June 12, 1979.

Douglas M. Costle,

Administrator.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart SS—Texas

§ 52.2297 [Amended]

1. In § 52.2297, paragraph (e) is revoked and reserved.

[FR Doc. 79-18024 Filed 6-18-79; 8:45 am]
BILLING CODE 6560-01-M

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40 CFR Part 52

[FRL 1243-4]

Air Programs; Louisiana Variance; Kaiser Aluminum & Chemical Corp. (Norco)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action approves a variance to Louisiana Regulation 19.5 for Kaiser Aluminum & Chemical Corporation in Norco, Louisiana. Compliance under the variance is scheduled for December 31, 1980. The variance will allow Kaiser to complete emission controls for its petroleum coke calcining facilities. The continuation of particulate matter emissions at current rates are not expected to cause or contribute to a violation of ambient air quality standards.

DATES: This rulemaking is effective on July 19, 1979.

FOR FURTHER INFORMATION CONTACT: Jerry Stubberfield, Environmental Protection Agency, Region 6, Air Program Branch, Dallas, Texas 75270, (214) 767-2742.

SUPPLEMENTARY INFORMATION: A proposed variance to Louisiana Regulation 19.5 for Kaiser Aluminum & Chemical Corp. (Norco) was submitted to EPA by the Governor of Louisiana on August 31, 1978. Under the variance, Kaiser is required to achieve compliance by December 31, 1980. A schedule of compliance, which includes increments of progress, is contained in the Commission Order of the Louisiana Air Control Commission.

EPA review of the proposed variance indicated that a continuation of particulate emissions at current rates would not cause or contribute to a violation of air quality standards. As a result EPA proposed approval of the variance on march 12, 1979 (44 FR 13545), and invited public comment on the proposed action. No comments were received.

Current Action

The variance to Louisiana Regulation 19.5 for Kaiser Aluminum & Chemical Corp. (Norco) is being approved as proposed.

This notice of final rulemaking is issued under the authority of Section 110(a) of the Clean Air Act, as amended, 42 U.S.C. 7410-(a).

Dated: June 12, 1979

Douglas M. Costle,

Administrator.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart T—Louisiana

1. In § 52.970, paragraph (c) is amended by adding a new paragraph (13) as follows:

§ 52.970 Identification of plan.

* * * * *

(c)* * *

(13) A variance to Regulation 19.5 for Kaiser Aluminum & Chemical Corporation at Norco, Louisiana was submitted by the Governor on August 31, 1978.

2. In Subpart T, § 52.980 is amended by adding a new paragraph (b) as follows:

§ 52.980 Compliances schedules.

* * * * *

(b) The compliance schedule below for Kaiser Aluminum & Chemical Corporation is approved as a revision to the plan pursuant to §§ 51.6 and 51.15 of this chapter. The regulation cited is an approved regulation of the State.

Source	Location	Regulation involved	Final compliance date
Kaiser Aluminum & Chemical Corp. (coke calciner)	Norco	19.5	Dec. 31, 1980.

[FR Doc. 79-18077 Filed 6-18-79; 8:45 am]
BILLING CODE 6560-01-M

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40 CFR Part 65

[FRL 1241-1]

Delayed Compliance Order for Collins & Aikman Corp., Located in Albemarle, N.C.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby issues a Delayed Compliance Order to Collins and Aikman Corporation. This innovative technology order issued pursuant to Section 113(d)(4) of the Clean Air Act requires the company to bring air emissions from its two coal fired boilers at Albemarle, North Carolina, into compliance with North Carolina air pollution control regulations contained in the federally approved North Carolina State Implementation Plan (SIP). Collins and Aikman Corporation's compliance with the Order will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the Order during the period the Order is in effect.

DATES: This rule takes effect on June 18, 1979.

FOR FURTHER INFORMATION CONTACT: Floyd Ledbetter, Air Enforcement Branch, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30308, Telephone Number: (404) 881-4298.

ADDRESSES: The Federal Delayed Compliance Order, supporting material, and any comments received in response to a prior Federal Register notice proposing issuance of the Order are available for public inspection and copying during normal business hours at: U.S. Environmental Protection Agency, Region IV, Air Enforcement Branch, 345 Courtland Street, NE., Atlanta, Georgia 30308.

SUPPLEMENTARY INFORMATION: On February 8, 1979, the Regional Administrator of EPA's Region IV Office published in the Federal Register, Vol. 44, No. 29, p. 8315, a notice setting out the provisions of a proposed "innovative technology" federal delayed compliance order for Collins and Aikman Corporation. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed Order. No public comments or requests

for a public hearing were received in response to the proposal notice.

Therefore, a federal delayed compliance order effective this date is issued to the Collins and Aikman Corporation by the Administrator of EPA pursuant to the authority of Section 113 (d)(1) and (d)(4) of the Clean Air Act, 42 U.S.C. 7413(d) (1) and (4). The Order places Collins and Aikman Corporation on a schedule to bring its two coal fired boilers in Albemarle, North Carolina, into compliance as expeditiously as practicable with the North Carolina Administrative Code Title 15, Chapter 2D, a part of the federally approved North Carolina State Implementation Plan. The Order also imposes interim requirements which meets Sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit the Collins and Aikman Corporation to delay compliance with the SIP regulations covered by the Order until June 1, 1980. A source receiving an innovative technology delayed compliance order pursuant to Section 113(d)(4) of the Act has five years from the state implementation plan deadline to comply with the regulation in question. The Collins and Aikman Corporation is unable to comply immediately with these regulations.

EPA has determined that the Order shall be effective upon publication of this notice because of the immediate need to place Collins and Aikman Corporation on a schedule for compliance with the applicable requirement(s) in the North Carolina State Implementation Plan.

(42 U.S.C. 7413(d), 7601)

Dated: June 12, 1979.

Douglas M. Costle,

Administrator.

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

§ 65.380 [Amended]

1. By adding the following entry to the table in § 65.380 Federal delayed compliance orders issued under Section 113(D) (1), (3), and (4) of the Act.

* * * * *

Source	Location	Order No.	Date of FR proposal	SIP regulation(s) involved	Final compliance date
*	*	*	*	*	*
Collins and Aikman Corp	Albemarle, North Carolina.	DCO-78-33	Feb. 9, 1979	15 NCAC, 2D.0503, .0504, .0521.	June 1, 1980
*	*	*	*	*	*

[FR Doc. 79-18976 Filed 6-18-79; 8:45 am]
BILLING CODE 6560-01-M

40 CFR Part 65

[FRL 1247-4]

Delayed Compliance Order for General Housewares Corp., Wagner Manufacturing Division

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: By this rule, the Administrator of U.S. EPA approves a Delayed Compliance Order to General Housewares Corp., Wagner Manufacturing Division (Wagner). The Order requires the Company to bring air emissions from its grey iron at Sidney, Ohio into compliance with certain regulations contained in the federally approved State Implication Plan (SIP). Wagner's compliance with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act (Act) for violations of the SIP regulations covered in the Order.

DATES: This rule takes effect June 18, 1979.

FOR FURTHER INFORMATION CONTACT: Cynthia Colantoni, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, Telephone (312) 353-2082.

SUPPLEMENTARY INFORMATION: On May 1, 1979 the Regional Administrator of U.S. EPA's Region V Office published in the **Federal Register** (44 FR 25473) a notice setting out the provisions of a proposed State Delayed Compliance Order for Wagner. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed Order.

No public comments and no request for a public hearing were received in response to the notice.

Therefore, a Delayed Compliance Order effective this date is approved to Wagner by the Administrator of U.S. EPA pursuant to the authority of Section 113(d)(2) of the Act, 42 U.S.C. 7413(d)(2). The Order places Wagner on a schedule to bring its grey iron cupolas at Sidney, Ohio into compliance as expeditiously as practicable with Regulations OAC 3745-17-07 and OAC 3745-17-11, a part of the federally approved Ohio State Implementation Plan. Wagner is unable to immediately comply with these regulations. The Order also imposes interim requirements which meet Sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit Wagner to delay compliance with the SIP regulations covered by the Order until July 1, 1979.

Compliance with the Order by Wagner will preclude Federal enforcement action under Section 113 of the Act for violations of the SIP regulations covered by the Order. Citizen suits under Section 304 of the Act to enforce against the source are similarly precluded. Enforcement may be initiated, however, for violations of the terms of the Order, and for violations of the regulations covered by the Order which occurred before the Order was issued by U.S. EPA or after the Order is terminated. If the Administrator determines that Wagner is in violation of a requirement contained in the Order, one or more of the actions required by Section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under Section 307(b) of the Act.

U.S. EPA has determined that the Order shall be effective June 18, 1979 because of the need to immediately place Wagner on a schedule for compliance with the Ohio State Implementation Plan.

42 U.S.C. 7413(d), 7601)

Dated: June 13, 1979.

Douglas M. Costle,

Administrator.

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

By adding the following entry to the table in § 65.401:

§ 65.401 U.S. EPA approval of State delayed compliance orders issued to major stationary sources.

Source	Location	Order No.	Date of FR Proposal	SIP regulation involved	Final compliance date
•	•	•	•	•	•
General Housewares Corp., Wagner Manufacturing Division.	Sidney, Ohio	None	5-1-79	OAC 3745-17-07, OAC 3745-17-11.	7-1-79
•	•	•	•	•	•

[FR Doc. 79-18978 Filed 6-18-79; 8:45 am]
BILLING CODE 6560-01-M

40 CFR Part 180

[PP 6F1830/R207; FRL 1252-1]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Chlorpyrifos

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This rule establishes tolerances for residues of the insecticide chlorpyrifos on sorghum grain at 0.75 part per million (ppm) sorghum fodder at 6 ppm, and sorghum forage at 1.5 ppm. The regulation was requested by Dow Chemical Co. This rule establishes maximum permissible levels for residues of chlorpyrifos on sorghum grain, fodder, and forage.

EFFECTIVE DATE: Effective June 19, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Sanders, Product Manager (PM) 12, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, SW, Washington, DC 20460 (202/426-9425).

SUPPLEMENTARY INFORMATION: On September 1, 1976, notice was given (41 FR 36834) that Dow Chemical Co., PO Box 1706, Midland, MI 48640, had filed a pesticide petition (PP 6F1830) with the EPA. This petition proposed that 40 CFR 180.342 be amended to establish tolerances for combined residues of the insecticide chlorpyrifos (*O,O-diethyl O-*(3,5,6-trichloro-2-pyridyl) phosphorothioate) and its metabolite 3,5,6,-trichloro-2-pyridinol in or on the raw agricultural commodities sorghum grain at 0.75 ppm, and sorghum fodder and forage at 1.5 ppm.

The State Order identified below has been approved by the Administrator in accordance with Section 113(d)(2) of the Act and with this Part. With regard to this Order, the Administrator has made all the determinations and findings which are necessary for approval of the Order under Section 113(d) of the Act.

Subsequently, the petitioner amended the petition by increasing the proposed tolerance on sorghum fodder from 1.5 ppm to 6 ppm. Since sorghum fodder is not a human food item, the higher tolerance will not result in a potential increase in exposure of humans to chlorpyrifos residues. Thus, the tolerances are not being proposed at this time to provide an opportunity for public comment. No comments were received in response to this notice of filing. (A related document concerning the establishment of a feed additive tolerance for residues of chlorpyrifos on sorghum grain milling fractions appears elsewhere in today's **Federal Register**).

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the proposed tolerances included a two-year rat feeding/oncogenicity study and a dog feeding study with a no-observed-effect level (NOEL) of 0.1 milligram (mg)/kilogram (kg) of body weight. Studies on delayed neurotoxicity and reproduction showed negative potentials. Based on the two-year chronic rat feeding study with the 0.1 mg/kg bw NOEL on cholinesterase activity and using a safety factor of 10, the acceptable daily intake (ADI) for man is 0.01 mg/kg bw/day. The theoretical maximum residue contribution (TMRC) in the human diet from the proposed tolerances and tolerances which have previously been established for residues of chlorpyrifos on a variety of raw agricultural commodities at levels ranging from 0.01 ppm to 1.5 ppm does not exceed the ADI. A food additive regulation (21 CFR 193.85) has previously been established for chlorpyrifos in food-handling establishments. Feed additive tolerances have also been established (21 CFR 561.98) for residues of chlorpyrifos in dried sugar beet pulp at 1 ppm and sugar beet molasses at 3 ppm.

Desirable data that are lacking from the petition are a lifetime oncogenicity study and a teratology study. In a letter of February 17, 1978, and January 31, 1979, the petitioner indicated that the lifetime oncogenicity study is expected to be completed in May, 1979 and the teratology study is expected to be completed in late 1979. The petitioner also agreed to voluntarily delete the use of chlorpyrifos on sorghum from the label should the lifetime oncogenicity and teratology studies be found to exceed the risk criteria for chronic toxicity in 40 CFR 162.11. Although the oncogenicity evaluation of chlorpyrifos is not complete, it is concluded that based on the available data, the risks are acceptable since the absence of an oncogenic potential is shown in the two-year rat feeding/oncogenicity study.

The metabolism of chlorpyrifos is adequately understood, and an adequate analytical method (gas chromatography) is available for enforcement purposes. No actions are currently pending against continued registration of chlorpyrifos nor are there any other relevant considerations involved in establishing the proposed tolerances. The established tolerances for residues of chlorpyrifos in milk, meat, poultry, and eggs are adequate to cover the proposed uses.

The pesticide is considered useful for the purpose for which tolerances are sought, and it is concluded that the tolerances of 0.75 ppm on sorghum grain, 6 ppm on sorghum fodder, and 1.5 ppm on sorghum forage established by amending 40 CFR 180.342 will protect the public health. It is concluded, therefore, that the tolerances be established as set forth below.

Any person adversely affected by this regulation may, on or before July 19, 1979, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M-3708 (A-110), 401 M St., SW, Washington, DC 20460. Such objections should be submitted in triplicate and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Under Executive Order 12044, EPA is required to judge whether a regulation is

"significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". This regulation has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Effective June 18, 1979, Part 180 is amended as set forth below.

Dated: June 12, 1979.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

(Section 408(d)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(d)(2))

Part 180, Subpart C, section 180.342, is amended by alphabetically inserting sorghum grain at 0.75 ppm, sorghum fodder at 6 ppm, and sorghum forage at 1.5 ppm in the table to read as follows:

§ 180.342 Chlorpyrifos; tolerances for residues.

* * * * *

Commodity:	Parts per million
* * * * *	
Sorghum, fodder	6
Sorghum, forage	1.5
Sorghum, grain	0.75
* * * * *	

[FR Doc. 79-18088 Filed 6-18-79; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 600

[FRL 1076-6]

Fuel Economy of Motor Vehicles; Technical Amendment

AGENCY: Environmental Protection Agency.

ACTION: Final Rule.

SUMMARY: This amendment provides EPA additional latitude in judging the levels of correlation between fuel economy data generated at the EPA laboratory in Ann Arbor, Michigan, and at industry laboratories. Currently this judgment must be based on data developed under a specific section of Part 600. The regulations have been amended to allow for use of data from Part 86, Part 600, or from correlation testing.

DATES: These amendments are effective June 19, 1979.

FOR FURTHER INFORMATION CONTACT: Gregory J. Dana, Regulatory Management Staff (ANR-455), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, phone: 202-755-0596.

SUPPLEMENTARY INFORMATION: Under the present regulations, only data from Part 600 is allowed to be used to determine the level of offset between manufacturers' and the EPA laboratory. If insufficient data are available under Part 600, additional testing must be performed, even though applicable data exist from testing done under Part 86 or correlation programs. This action places no additional burden on the industry as it simply allows the use of all existing data to determine the level of offset. Therefore, issuance of a proposal and opportunity for public comment is unnecessary. For these reasons, EPA finds good cause to publish this technical amendment as final and to have it take effect immediately in accordance with 5 U.S.C. 553(b).

Note.—The Environmental Protection Agency has determined that this document is not a "significant" regulation and does not require preparation of a regulatory analysis under Executive Order 12044.

Dated: June 12, 1979.

Douglas M. Costle,

Administrator.

Part 600 of Chapter I, Title 40 of the Code of Federal Regulations is hereby amended as follows:

1. By amending paragraph (g) of § 600.006 to read as follows:

§ 600.006 [Amended]

* * * * *

(g) If, based on a review of the fuel economy data generated under Part 86, Part 600, or by correlation testing, the Administrator determines that an unacceptable level of offset exists between fuel economy data generated by a manufacturer and fuel economy data generated by the Administrator, he may reject all fuel economy data submitted by the manufacturer until the cause of the discrepancy is determined and validity of the data is established by the manufacturer.

* * * * *

(Secs. 501, 503, 505, 506, Motor Vehicle Information and Cost Savings Act as amended by Title III of the Energy Policy and Conservation Act (15 U.S.C. 2001, 2003, 2005, and 2006))

[FR Doc. 79-18018 Filed 6-18-79; 8:45 am]

BILLING CODE 6560-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Service Order No. 1381]

Indiana Interstate Railway Co., Inc. Authorized to Operate Over Tracks Leased From the Penn Central Corp.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order, Service Order No. 1381.

SUMMARY: Indiana Interstate Railway Company, Inc., is authorized to operate over former tracks of Penn Central between Goshen, Indiana, and Shipshewana, Indiana.

DATES: Effective 11:59 p.m., June 15, 1979, until further order of this Commission. Expires when modified or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Carter (202) 275-7840.

Decided: June 12, 1979.

Railroad service on the former Shipshewana Branch of the former Penn Central Transportation Company, identified in the Final System Plan of the Reorganization of the Northeastern Railroads as USRA Line No. 399, between Goshen, Indiana, and Shipshewana, Indiana, has been discontined for several years. The State of Indiana has leased this line from The Penn Central Corporation and has designated Indiana Interstate Railway Company, Inc. (II) to operate this line.

An application seeking authority to operate as the designated operator of this line will be filed by II. There is an interchange connection between this line and Consolidated Rail Corporation at Goshen, Indiana. If service over this line is not restored, numerous shippers on this line will not have needed rail service.

It is the opinion of the Commission that an emergency exists requiring the immediate resumption of operations over this line in the interest of the public; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, § 1033.1381 *Indiana Interstate Railway Company, Inc. authorized to operate over tracks leased from the Penn Central Corporation.*

(a) The Indiana Interstate Railway Company, Inc. (II) is authorized to operate over tracks of USRA Line No. 399, formerly known as the Shipshewana Branch of the Penn

Central Transportation Company (PC) between former PC milepost 0.7 at Goshen, Indiana, and former PC milepost 16.7 at Shipshewana, Indiana, a distance of approximately 16.0 miles.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(c) Nothing herein shall be considered as a prejudgement of the application of the Indiana Interstate Railway Company, Inc. seeking authority to operate over these tracks.

(d) *Effective date.* This order shall become effective at 11:59 p.m., June 15, 1979.

(e) *Expiration.* The provisions of this order shall remain in effect until modified or vacated by order of this Commission.

(49 U.S.C. (10304–10305 and 11121–11126).)

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. Homme, Jr.,

Secretary.

FR Doc. 79–19081 Filed 6–18–79; 8:45 am]

BILLING CODE 7035–01–M

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49 CFR Part 1125

(Ex Parte No. 293, Sub. No. 2)

Standards for Determining Rail Services Continuation Subsidies; Decision

AGENCY: Rail Services Planning Office, Interstate Commerce Commission.

ACTION: Amendments to the Standards.

SUMMARY: On March 16, 1979, the Rail Services Planning Office (RSPO) published proposed amendments regarding calculation of the off-branch costs for Class II railroads under section 1125.7(n)(4). The method proposed in that notice will be adopted and the necessary amendments made to the regulations to effect the revisions. It is RSPO's position that the method adopted will develop costs that more accurately reflect those incurred by Class II and III railroads handling traffic to and from branch lines that are operated under a subsidy agreement. A further benefit of the procedure adopted is that it is applicable for Class III railroads as well as Class II railroads. In the March 16 notice, there was a companion issue related to the effect of inflation on costs, which will be handled in a separate notice.

EFFECTIVE DATE: January 1, 1979.

FOR FURTHER INFORMATION CONTACT: James Wells, Chief, Cost and Subsidies Branch, Section of Rail Services Planning, 202–275–7283.

SUPPLEMENTARY INFORMATION: On March 16, 1979 the RSPO published a notice of proposed rulemaking that covered the issues of (1) revised off-branch costs for Class II railroads and (2) the effects of inflation on costs between the conclusion of the calendar and subsidy year. The second issue requires further comment on the proposed method and, therefore, will be handled in a separate notice.

No comments of substance were received on the method proposed for calculating the off-branch costs of Class II railroads. As a result, RSPO is adopting the procedure in the March 16 notice and is amending the regulations to implement this change. As RSPO stated in the supplementary information of the March 16 notice, the new procedure recognizes the operational elements of terminal handlings, line-haul service, and the interchange function. This is a great improvement over the single-element basis of the prior procedure. A further benefit is that the adopted procedure can be applied to the newly-designated Class III category of railroads in addition to those designated Class II.

Part 1125, Subchapter B of Chapter X of Title 49 of the Code of Federal Regulations is amended by making the change set forth below to the regulations issued on January 11, 1978. The amendments are retroactive to January 1, 1979.

This decision does not significantly affect the quality of the human environment.

Issued June 20, 1979 by Alexander L. Morton, Director, Rail Services Planning Office,

By the Commission.

H. G. Homme, Jr.,

Secretary.

1. Section 1125.7(n)(4) is revised to read as follows:

§ 1125.7 Calculation of avoidable costs and management fee.

* * * * * *

(n) * * *

(4) Class II and Class III line-haul railroads shall calculate off-branch costs as follows (based on: the carrier's latest Form R–2 or R–3 filed with the ICC; the ICC's latest *Rail Carload Cost Scales;* and the carrier's own records):

(i) A carrier that has only freight operations shall calculate the estimated system variable expenses by multiplying the total operating expenses by .78, the three-year composite variability ratio for all Class I railroads. If a carrier has passenger and freight service, the freight portion of the total estimated system variable expenses shall be calculated by multiplying the total estimated system variable expenses, calculated as above, by the ratio of freight related operating expenses to total railway operating expenses [freight related operating expenses divided by total railway operating expenses].

(ii) The total number of revenue carload terminal handlings shall be determined from company records [originating and terminating (local) revenue carloads multiplied by 2, plus originating or terminating and interchange (interline) revenue carloads].

(iii) The total number of revenue carload interchange handlings shall be determined from company records [bridge (interchange to interchange) revenue carloads multiplied by 2, plus revenue carloads that are originated or terminated and interchanged (interline)].

(iv) The average load per car shall be determined from company records [ton-miles-revenue freight, divided by loaded freight car-miles].

(v) The ratios employed to separate the estimated system variable expenses between interchange, terminal and line-haul operations are calculated as follows:

(A) Theoretical interchange expenses are calculated by multiplying the number of revenue carload interchange handlings, paragraph (n)(4)(iii) of this section, by the interchange variable cost per carload for other than box, unequipped, refrigerator, tank and TOFC cars (ICC *Rail Carload Cost Scales,* Table 12, Line 6 or 14, appropriate region, multiplied by 100).

(B) Theoretical terminal carload expenses are calculated by multiplying the number of revenue carload terminal handlings, paragraph (n)(4)(ii) of this section, by the average train variable terminal cost per carload for box-general service, equipped (one half of the terminal cost per carload ICC *Rail Carload Scales,* Table 3, appropriate region, line 2, col. (6)).

(C) Theoretical terminal lading expenses are calculated by multiplying the total terminal tons [terminal carload handlings, paragraph (n)(4)(ii) of this section, multiplied by average load per car, paragraph (n)(4)(iv) of this section] by the average train variable terminal cost per ton for box-general service, equipped [one half of the terminal cwt. cost, ICC *Rail Carload Cost Scales*, Table 3, appropriate region, line 2 col. (7), multiplied by 20].

(D) Theoretical line-haul car expenses are calculated by multiplying the carrier's loaded car-miles by the average train variable cost per car-mile excluding interchange, for box-general service, equipped [ICC *Rail Carload Cost Scales*, Table 3, appropriate region, Line 2, col. (4) minus Appendix B, appropriate region, Line 2, col. (4)].

(E) Theoretical line-haul lading expenses are calculated by multiplying the carrier's total ton-miles of revenue freight by the average train variable ton-mile cost for a box-general service, equipped [wt-mile cost ICC *Rail Carload Cost Scales*, Table 3, appropriate region, Line 2, col. (5), multiplied by 20].

(F) Theoretical station clerical expenses are calculated by multiplying total revenue carload terminal handlings, paragraph (n)(4)(ii) of this section, by the variable station clerical cost per carload [one half of the station clerical cost per carload, ICC *Rail Carload Cost Scales*, Table 10, appropriate region, Line (2) multiplied by 100].

(G) Total theoretical system variable expenses are calculated by adding paragraph (n)(4)(v)(A) plus (n)(4)(v)(B) plus (n)(4)(v)(C) plus (n)(4)(v)(D) plus (n)(4)(v)(E) of this section.

(H) The ratio for interchange variable expenses is calculated by dividing total theoretical interchange variable expenses, paragraph (n)(4)(v)(A) of this section, by the total theoretical system variable expenses, paragraph (n)(4)(v)(G) of this section.

(I) The ratio for terminal variable expenses is calculated by dividing the total theoretical terminal variable expenses, paragraph (n)(4)(v)(B) plus (n)(4)(v)(C) of this section, by the total theoretical system variable expenses, paragraph (n)(4)(v)(G) of this section.

(J) The ratio for line-haul variable expenses is calculated by dividing total theoretical line-haul variable expenses, paragraph (n)(4)(v)(D) plus (n)(4)(v)(E) of this section, divided by the total theoretical system variable expenses, paragraph (n)(4)(v)(G) of this section.

(K) The ratio for station clerical variable expenses is calculated by dividing total theoretical station clerical variable expenses, paragraph (n)(4)(v)(F) above, by the total theoretical system variable expenses, paragraph (n)(4)(v)(G) above.

(vi) The carrier's total system variable expenses are separated as follows:

(A) Total interchange variable expenses are calculated by multiplying the total system variable expenses, paragraph (n)(4)(i) of this section, by the interchange variable expense ratio, paragraph (n)(4)(v)(H) of this section.

(B) Total terminal variable expenses are calculated by multiplying the total system variable expenses, paragraph (n)(4)(i) of this section, by the terminal variable expense ratio, paragraph (n)(4)(v)(I) of this section.

(C) Total line-haul variable expenses are calculated by multiplying the total system variable expenses, paragraph (n)(4)(i) of this section, by the line-haul variable expense ratio, paragraph (n)(4)(v)(J) of this section.

(d) Total station clerical variable expenses are calculated by multiplying the total system variable expenses, paragraph (n)(4)(i) of this section by the station clerical expense ratio, paragraph (n)(4)(v)(K) of this section.

(vii) The carrier's unit costs shall be determined as follows:

(A) The interchange cost per carload shall be calculated by dividing the total interchange variable expense, paragraph (n)(4)(vi)(A) above by the total number of interchange handlings, paragraph (n)(4)(iii) of this section.

(B) The terminal cost per carload shall be calculated the total terminal variable expenses, paragraph (n)(4)(vi)(B) above, by the total number of terminal handlings, paragraph (n)(4)(ii) of this section.

(C) The line-haul cost per car-mile shall be calculated by dividing the total line-haul variable expenses, paragraph (n)(4)(vi)(C) of this section, by the total number of loaded car-miles.

(D) The modified terminal cost per carload shall be calculated by adding the interchange cost per carload, paragraph (n)(4)(vii)(A) of this section, to the station clerical cost per carload total station clerical variable expense, paragraph (n)(4)(vi)(D) of this section, divided by the total number of terminal handlings, paragraph (n)(4)(ii) of this section].

(viii) The interchange costs shall be calculated by multiplying the interchange cost per carload, paragraph (n)(4)(vii)(A) above, by the number of carloads of traffic interchanged with other railroads.

(ix) The terminal costs shall be calculated by multiplying the modified terminal cost per carload, paragraph (n)(4)(vii)(D) of this section, times the number of carloads which originated or terminated on the branch during the subsidy year. To this amount add the normal terminal cost per carload, paragraph (n)(4)(vii)(B) of this section, times the number of carloads which originated or terminated on the branch that are local to the railroad serving the branch.

(x) The line-haul costs shall be calculated by mulitplying the line-haul cost per car-mile, paragraph (n)(4)(vii)(C) of this section, by the loaded car-miles generated off the branch by cars originated or terminated on the branch during the subsidy year.

[FR Doc. 79-19089 Filed 6-18-79; 8:45 am]
BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 44, No. 119
Tuesday, June 19, 1979

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

[5 CFR Part 353]

Restoration To Duty

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: OPM proposes to amend § 353.306 of its regulations governing the restoration to duty of compensably injured employees who have partially recovered, to delete the 1-year limitation during which agencies are required to make every effort to restore these individuals. This will mean that agencies will be required to consider partially recovered employees or former employees without time limit, just as they are now required to similarly consider those who fully recover from a job related injury. This proposal is in furtherance of the President's budget message to Congress on the restoration to duty of injured employees and the intent of Congress in its enactment of the Rehabilitation Act of 1973, and the Injury Compensation Amendments of 1974.

DATES: Written comments are invited and will be considered if received no later than August 20, 1979.

ADDRESS: Send written comments to Raleigh M. Neville, Office of Staffing Policies, Staffing Services, Rm 6526, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Raleigh M. Neville (202) 632–6817

Accordingly, § 353.306 of Part 353, title 5, Code of Federal Regulations, is amended to read as follows:

§ 353.306 Partially recovered injured employees.

Agencies must make every effort to restore according to the circumstances in each case, an employee or former employee who has partially recovered from a compensable injury and who is able to return to limited duty.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 79–18967 Filed 6–18–79; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

[7 CFR Part 724]

Termination of Marketing Quotas on Cigar-Binder (Types 51 and 52) Tobacco for the 1979–80 Marketing Year

AGENCY: Agricultural Stabilization and Conservation Service.

ACTION: Proposed rule.

SUMMARY: The Secretary of Agriculture is investigating whether the operation of marketing quotas for cigar-binder tobacco will cause this kind of tobacco to be in short supply for the 1979–80 marketing year. Interested persons are invited to submit written comments, views and recommendations concerning the possible suspension of marketing quotas for cigar-binder (types 51 & 52) tobacco for the 1979–80 marketing year. Also, requests for a hearing will be granted if timely submitted.

DATES: Written comments and requests for a hearing must be received by July 19, 1979 in order to be sure of consideration.

ADDRESSES: Send comments and hearing requests to the Acting Director, Price Support and Loan Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, (202) 447–7601.

SUPPLEMENTARY INFORMATION: Pursuant to and in accordance with the Agricultural Adjustment Act of 1938, as amended, (referred to hereinafter as the "Act"), a national marketing quota of 8.1 million pounds was announced for the 1979–80 marketing year for cigar-binder (types 51 & 52) tobacco (44 FR 7108). However, as noted in the quota determination, production of only 2.1 million pounds during the 1979–80 marketing year is needed to make the supply of this kind of tobacco equal to its reserve supply level. Because only 31 percent of the announced marketing quota over the past four years has been produced, a national marketing quota of 6.75 million pounds is needed to make available production of 2.1 million pounds and such quota was announced. This quota was later increased by 20 percent to 8.1 million pounds by the Secretary's authority under Section 312(b) of the Act.

Because quotas were terminated during recent years, a portion of this tobacco was produced by people who did not have a cigar binder tobacco allotment (the poundage quota is converted to an acreage allotment) and by producers who have allotments but produced in excess of their allotment. Consequently, desired levels of production may not be attainable with marketing quotas in force.

Accordingly, pursuant to and in accordance with section 371(a) of the Act, as amended, an investigation is being made to determine whether the operation of farm marketing quotas in effect on cigar-binder (types 51 & 52) tobacco for the 1979–80 marketing year will cause the amount of such kind of tobacco which will be free of marketing restrictions to be less than the normal supply for such kind of tobacco for such marketing year.

If upon the basis of such investigation the Secretary finds the existance of such fact, he will proclaim the same and specify such increase in, or termination of, existing quotas as he finds, on the basis of such investigation, is necessary to make the amount of such kind of tobacco which will be free of marketing restrictions for the 1979–80 marketing year equal to the normal supply.

Marketing quotas were proclaimed for cigar-binder (types 51 & 52) tobacco for the 1978–79, 1979–80 and 1980–81 marketing years (43 FR 4966). Farmers approved marketing quotas for such 3 marketing years (43 FR 16310).

Under present legislation the termination of maketing quotas for any marketing year would be limited in application and effect to that year only.

Under Sections 101 and 106 of the Agricultural Act of 1949, as amended, price support will be made available on the 1979 crop of cigar-binder (types 51 & 52) tobacco even if marketing quotas are terminated because producers did not

disapprove marketing quotas for such tobacco.

Data shows that total disappearance (domestic use plus exports) of cigar-binder (types 51 & 52) tobacco has decreased from 26 million pounds during the 1955–56 marketing year, prior to the advent of reconstituted binder sheet, to 1.9 million pounds during the 1977–78 marketing year. Disappearance is expected to increase to 2.4 million pounds during the 1978–79 marketing year. This has necessitated drastic adjustments in production. Producers used the Soil Bank and the Cropland Adjustment Programs extensively in making these adjustments. In addition, the allotted acreage has been reduced from 16,643 acres in the 1955–56 marketing year to about 4,824 acres in 1979.

Total disappearance (domestic use plus exports) has exceeded production in 18 of the 23 years from 1955 to 1977. This has caused stocks of this kind of tobacco to decline from 62.2 million pounds on October 1, 1955, to 4.9 million pounds at the beginning of the current marketing year (October 1, 1978).

With production during the 1978–79 year estimated at 2.6 million pounds, the total supply of cigar-binder tobacco is 7.5 million pounds. Subtracting estimated disappearance during the 1978–79 year of 2.4 million pounds, carryover for the beginning of 1979–80 marketing year could equal 5.1 million pounds, 1.7 million below the normal supply determined and announced February 1, 1979.

Quotas for cigar-binder tobacco have been annually terminated since the 1970 marketing year began.

Section 371(a) of the Act provides that in the course of the investigation conducted by the Secretary, due notice and opportunity for hearing shall be given to interested persons.

Proposed Rule

It is proposed that an investigation be conducted to determine whether the operation of marketing quotas for cigar-binder tobacco will cause this kind of tobacco to be in short supply for the 1979–80 marketing year. It is proposed further that interested persons be invited to submit written comments, views and recommendations or request a hearing concerning the possible suspension of marketing quotas for cigar-binder (types 51 & 52) tobacco for the 1979–80 marketing year.

Prior to making any determination, the Department will consider comments, views and recommendations submitted in writing to the Acting Director, Price Support and Loan Division.

Executive Order 12044 (43 FR 12661, Mar. 24, 1978) requires at least a 60 day public comment period on any proposed significant regulations except where the Agency determines this is not possible. Because cigar binder producers need to know as soon as possible the status of quotas for the 1979–80 marketing year, it is hereby found and determined that compliance with the 60-day comment period required by Executive Order 12044 is impossible. Accordingly, comments must be received by July 19, 1979 in order to be assured of consideration.

Note.—A draft impact analysis is available from Jerome F. Sitter, Director, Price Support and Loan Division, Room 3741-South Building, P.O. Box 2415, Washington, D.C. 20013.

Note.—This regulation has been determined not significant under the USDA criteria implementing Executive Order 12044.

Signed at Washington, D.C. on June 12, 1979.

Ray Fitzgerald,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 79-18608 Filed 6-18-79; 8:45 am]

BILLING CODE 3410-05-M

Food and Nutrition Service

[7 CFR Part 246]

Special Supplemental Food Program for Women, Infants, and Children (WIC)

AGENCY: Food and Nutrition Service.

ACTION: Proposed Program (Food) Funding Formula for the Special Supplemental Food Program for Women, Infants and Children (7 CFR 246).

SUMMARY: The Food and Nutrition Service is reissuing for public comment the formula for distribution program (food) funds to State agencies participating in the Special Supplemental Food Program for Women, Infants and Children.

DATE: June 19, 1979; comments by August 3, 1979.

ADDRESS: Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Jennifer R. Nelson, Director, (202) 447–8206.

SUPPLEMENTARY INFORMATION: The Secretary of Agriculture issued notices in proposed (October 11, 1978) and final (January 2, 1979) form which described the components and the operation of the formula used to allocate program (food) funds to participating State agencies. Subsequent to issuance of the final notice, it was brought to the Department's attention that the description of the mathematical process used to run the formula was not totally accurate. The Department then issued a clarification notice at 44 FR 18253 (March 27, 1979) which more clearly explained the process followed in the allocation of funds.

As the Department received only 24 comments on the October 11 proposed notice, a number of questions were not addressed in these comments which significantly impact on participating agencies. For this reason, and to assure that all interested persons understand and have an additional opportunity to comment on the complete formula process, the Department is reissuing the formula description with a full discussion of all the components and of the operation of the formula. Although the Department wishes to receive comments on all aspects of the formula, comments are specifically requested on the method used to determine the number of children under five below 200 percent of poverty, the 50 percent cap component, and the alternative formula procedures.

I. Description of the Funding Formula Components

In choosing components for the formula which were need indicators, the Department had to find data elements which were readily available or could be determined for all State agencies and which, when compared to each other, would indicate the need for the Program in each State agency. A survey of available and determinable data was made prior to the September 6–8, 1978, Funding Panel meeting (additional information about the Funding Panel is available in the October 11, 1978 Federal Register notice) to determine which data met the criteria of need indicator and availability. These data were then made available to the Panel for discussion.

Based on review of the data available and the Panel's recommendations, the Department chose to use the number of children under five below 200 percent poverty in each State and the infant mortality rate in each State. The figure for the number of children under five below 200 percent poverty in each State serves as a poverty and population factor and is compared among State agencies to indicate the relationships among States based on the number of potential participants. Since this data element is based on population, using it alone would result in a distribution of funds based on the size of the State

agency. It was necessary to introduce another data element to indicate the respective nutritional need of potential participants among State agencies. Infant mortality rate was chosen to fulfill this requirement. Infant mortality rate is based on the number of infant deaths per 1,000 live births and it has no inherent population bias. As a result, it is a good indicator of the severity of nutritional need among the target population of a State agency.

A (1) *Children Under Five Below 200 Percent Poverty*—The U.S. Bureau of Census Survey of Income Education (SIE), 1975, was used as the source for determining the number of children under five below 200 percent of poverty in the 50 States. Since similar data was not available for Puerto Rico, the Virgin Island and the Indian State agencies, alternative methods, described below, were used to determine the figures for these State agencies.

The SIE data is separated into several categories. For each specified poverty level of below 75 percent, below 125 percent, below 150 percent, below 175 percent and below 200 percent, data is provided on the number of children in each of the following categories: under 18, 5 to 17 years, less than 3 years, 3 to 5 years, 6 to 13 years, 14 and 15 years, and 16 and 17 years. In order to determine the number of children 0 through 4, the Department decreased the 3 to 5 years figure by one-third (multiply by .66667) to delete the 5 year olds and added the resulting figure to the less than 3 years number. For example, the number for Connecticut is figured as follows:

Less than 3 years = 39,930

3 to 5 years = 44,960

44,960 × .66667 = 29,973.46

39,930 + 29,973 = [1]69,903

[1]Children 0 through 4

This method may tend to slightly overstate the total number of children nationwide in the 0–4 category, since it assumes that the birth rate remained the same over the five year period considered. The results of this procedure are shown in column 1 below.

An alternate method for determining the number of children 0–4 in each State is possible. The number of children 5 to 17 years can be subtracted from the number of children under 18. If this method is used, the number for Connecticut would be obtained as follows:

Under 18	270,050
5 to 17 years	−200,490
Children 0 through 4	69,560

For Connecticut, the alternate method arrives at a lower number of children under five below 200 percent of poverty than the procedure used by the Department. The comparison chart below shows that the results of the two methods vary among States; some States are considered to have less children according to the Department's method while others have more children. There is, however, very little difference in the total number nationwide.

Children Under 5 Below 200 Percent Poverty

	USDA procedure No. 1	Alternate procedure No. 2
New England:		
Connecticut	69,903	69,560
Maine	41,223	38,940
Massachusetts	166,590	159,670
New Hampshire	24,077	23,670
Rhode Island	24,423	23,500
Vermont	19,273	18,690
Mid-Atlantic:		
Delaware	15,840	15,470
Maryland	102,257	102,170
New Jersey	201,240	197,500
New York	464,057	451,862
Pennsylvania	360,837	355,770
Virginia	128,580	127,230
West Virginia	72,780	67,810
Southeast:		
Alabama	147,137	155,360
Florida	287,093	281,948
Georgia	215,207	208,460
Kentucky	130,077	132,080
Mississippi	121,057	120,277
North Carolina	198,993	196,979
South Carolina	120,027	121,120
Tennessee	172,980	162,520
Southwest:		
Arkansas	104,420	101,660
Louisiana	163,260	165,590
New Mexico	60,183	59,115
Oklahoma	108,430	79,376
Texas	578,220	585,150
Midwest:		
Illinois	331,067	321,960
Indiana	173,510	170,880
Michigan	269,927	271,550
Minnesota	116,520	115,960
Ohio	373,637	362,910
Wisconsin	119,760	114,990
Mountain Plains:		
Colorado	77,273	78,877
Iowa	76,917	75,850
Kansas	84,960	83,830
Missouri	143,627	134,220
Montana	25,760	26,190
Nebraska	47,490	46,570
North Dakota	20,709	20,161
South Dakota	27,017	25,070
Utah	67,307	69,020
Western:		
Alaska	10,043	10,220
Arizona	102,850	100,950
California	640,697	637,560
Hawaii	27,143	28,290
Idaho	37,093	37,100
Nevada	21,870	20,430
Oregon	69,487	68,360
Washington	108,237	106,170
National total	7,048,816	6,928,414

Data for Indian agencies, Puerto Rico and the Virgin Islands were not as easily determined. A variety of sources was used for the Indian State agencies including the Indian Health Service, the Bureau of Indian Affairs, Tribal statistics and the 1970 census. Two basic assumptions had to be made by the Department before the 1970 census data could be used. First, the 1970 census data include five year olds; the Department used the total number, with the five year olds included, because it assumed that the Indian population might have increased from 1970 to 1975.

This assumption was based on a review of birth and mortality data from the National Center for Health Statistics. These data for the years 1970 through 1975 showed that the number of national births (births minus infant deaths) decreased over this period while births for Indians increased. The 1970 census data represents the only published report of American Indian statistics. The data reflect the number of persons within the reservation boundaries and do not include those residing in adjacent areas. Therefore, including the five year olds will help compensate for the persons in adjacent areas not counted in the census. Second, since data for Indians were not distinguished by poverty level, the Department assumed that all Indian children are below 200 percent poverty. These two assumptions may result in inflated numbers of children for the State agencies, but the Department feels that these assumptions are basically correct and that any overstatement would have minor effects.

The above described data were used for all Indian agencies in the first quarter of FY '79. Despite the Department's assumptions that all Indian children are below 200 percent poverty and that 5 year olds could be included, some of these agencies were still found to be above their maximum grant level. The FNS Regional Offices were asked to determine if more current data were available from reliable governmental sources at the regional or tribal level. New data were found which more accurately reflect the number of children in these State agencies' service areas. The presence of new data resulted in some changes in allocation levels for some Indian State agencies for the second quarter. The Department is reviewing all sources to determine the best data available for use in FY '80.

The U.S. Bureau of Census Survey of Income and Education, 1975, was used to obtain a total number of children under five in Puerto Rico. In order to determine the number of these children which fell below 200 percent of poverty, the Department applied the procentage of children in Puerto Rico eligible to receive free and reduced price lunches, which represents those children under 200 percent of poverty. Data on the total number of children under five were not available from the Bureau of Census for the Virgin Islands. Therefore, the Department contacted the National

Center for Health Statistics to obtain the number of live births and infant deaths in the Virgin Islands for the years 1971 through 1976 (no data were available for 1972). The deaths were subtracted from the births and the numbers for these years were summed to arrive at the total number of children under five. The percentage of children eligible to receive free and reduced price lunches in the Virgin Islands was then applied to this number to obtain the number of these children under 200 percent of poverty.

For States with participating Indian State agencies within their boundaries, the numbers used for the Indian agencies were subtracted from the State total to prevent double counting. (This subtraction is not reflected in the above charts, but is reflected in subsequent charts).

The Department specifically requests comments on the procedures used to determine the number of children under five below 200 percent of poverty and recommendations on which of these procedures should be used for the funding formula.

(2) *Infant Mortality Rate*—Infant mortality data used in the formula were obtained from the Monthly Vital Statistics Report for 1976 for most State agencies including Puerto Rico. (Data for the Virgin Islands represents 1975 figures.) This is a National Center for health Statistics publication which reflects the final infant mortality data for 1976. The infant mortality rate is the number of deaths of infants under one year of age per 1,000 live births. The National Center for Health Statistics' final data for 1977 will be available soon and will be used in the formula for the allocation of FY '80 funds.

Infant mortality rates for the Indian State agencies were generated by the Department based on infant deaths and live births data obtained from the Indian Health Service. The equation used to generate these numbers for each Indian State agency is as follows:

$$\frac{\text{Infant Deaths}}{\text{Infant Births}} \times 1{,}000 = \text{Infant Mortality Rate}$$

The national infant mortality rate for 1976 used for the comparison was 15.2. The individual State agency rates used in the formula are listed below.

	Infant Mortality Rate
New England:	
Connecticut	14.2
Maine	11.0
Massachusetts	12.1
New Hampshire	11.5
Rhode Island	14.4
Vermont	12.6
Mid-Atlantic:	
Delaware	12.9
Maryland	17.3
New Jersey	15.0
New York	16.0
Pennsylvania	15.4
Puerto Rico	19.2
Seneca Nat., NY	13.9
Virginia	16.3
Virgin Islands	26.1
West Virginia	16.9
Southeast:	
Alabama	19.7
Florida	15.1
Georgia	15.9
Kentucky	14.7
Mississippi	21.5
North Carolina	17.8
South Carolina	19.8
Tennessee	16.2
Seminoles, FL	71.4
Choctaws, MS	28.0
E. Cherokee, NC	24.2
Southwest:	
Arkansas	15.5
Louisiana	17.8
New Mexico	15.5
Oklahoma	16.7
Texas	16.0
Acoma, NM	5.4
N. Pueblo, NM	19.1
Isleta Pueblo, NM	11.6
Santa Domingo, NM	1.0
Six Sandoval, NM	19.0
WCD Ent., OK	6.7
Choctaws, OK	5.5
Cherokee, OK	9.5
Chickasaw, OK	15.0
Tonkawa, OK	15.7
Potawatami, OK	9.1
Zuni	17.1
Midwest:	
Illinois	16.7
Indiana	14.6
Michigan	15.2
Minnesota	13.9
Ohio	14.9
Wisconsin	12.5
Mountain Plains:	
Colorado	13.0
Iowa	14.3
Kansas	14.1
Missouri	15.3
Montana	16.5
Nebraska	14.2
North Dakota	13.6
South Dakota	17.1
Utah	11.7
Shos & Ara., WY	26.5
Ute Mtn. Tribe, CO	11.5
Winnebago, Neb	1.0
Cheyenne Rv., SD	52.8
Rosebud, SD	23.8
Standing Rock, ND	39.4
Western:	
Alaska	16.2
Arizona	15.4
California	12.4
Hawaii	10.8
Idaho	13.1
Nevada	14.2
Oregon	12.7
Washington	14.5
ITCN	32.7

The comparison of the two need indicators (components), children under five below 200 percent poverty and infant mortality rate, form the basis of the funding formula. The formula is as follows:

$$\frac{\text{(State Children Under 5 Below 200\% Poverty)}}{\text{(Total Children Under 5 Below 200\% Poverty}} \times \frac{\text{(State Infant Mortality Rate)}}{\text{(National Infant Mortality Rate)}}$$

The "Total Children Under 5 Below 200% Poverty" is the sum of all the State numbers of children under 5 below 200% poverty.

Additional provisions of the formula are the hold harmless level, maximum grant level and 50 percent cap.

B(1.) *Hold Harmless*—The "hold harmless" level for each State agency is determined by first totaling all the program (food) funds available to the State agency in the fourth quarter of the previous fiscal year. An additional 10 percent is added to this level to provide for inflation and some growth. The final figure (previous fourth quarter food funds plus 10 percent) is the hold harmless level.

The hold harmless provision of the formula was included to assure that all State agencies receive sufficient funds to maintain their fourth quarter operational level, in turn assuring that no participants would be removed from the Program. Failure to include this provision would in effect destroy the efforts of the State agencies to expand their operation over the past years. The fiscal year 1978 fourth quarter level and that level with a 10 percent increase are shown in the chart below. The fiscal year 1978 fourth quarter level was computed by adding the fiscal year 1978 fourth quarter total grant (less any overexpenditures from previous months), earned unused administrative funds and for those State agencies participating in the Migrant Demonstration Project, one-third of the funds provided to those agencies for the Project. This figure reflects the funds available to be spent in the fourth quarter. The overexpenditures were subtracted from the funding level, since this amount of money was needed to fund expenditures in an earlier quarter and, therefore, was not available to be

spent in the fourth quarter. The earned unused administrative funds equal the difference between 25 percent of food expenditures (earned administrative funds as determined by the fiscal year 1978 funding procedure) and the State agency's administrative expenditures. These unused funds were available to be spent by the State agency in the fourth quarter. Only one-third of the migrant funding was considered, because the migrant grant was designed to cover three quarters of operation so that only one-third of this funding would apply to the fourth quarter. This total was multiplied by 80 percent to determine the amount which could be used for food.

	4th quarter fiscal year 1978 level	4th quarter fiscal year 1979 level plus 10 percent
New England:		
Connecticut	2,092,836	2,301,900
Maine	615,294	676,824
Massachusetts	1,846,525	1,811,178
New Hampshire	277,950	305,745
Rhode Island	418,008	459,809
Vermont	1,102,430	1,212,673
Mid-Atlantic:		
Delaware	212,926	234,219
Maryland	1,931,358	2,124,495
New Jersey	1,977,036	2,174,740
New York	6,455,674	7,101,246
Pennsylvania	3,380,349	3,718,386
Puerto Rico	2,172,633	2,389,897
Seneca Nat., NY	29,514	32,465
Virginia	2,396,852	2,635,438
Virgin Islands	93,600	102,960
West Virginia	1,090,912	1,200,003
Southeast:		
Alabama	2,024,451	2,226,896
Florida	2,465,875	2,712,464
Georgia	3,247,535	3,572,290
Kentucky	2,579,635	2,837,600
Mississippi	2,104,023	2,314,427
North Carolina	4,106,070	4,518,881
South Carolina	2,805,538	3,086,06_
Tennessee	2,489,578	2,738,537
Seminoles, FL	19,534	21,486
Choctaws, MS	65,162	71,679
E. Cherokee, NC	59,521	65,473
Southwest:		
Arkansas	999,183	1,390,745
Louisiana	2,666,146	2,932,761
New Mexico	447,625	492,388
Oklahoma	844,885	929,374
Texas	6,131,022	6,744,126
Acoma, NM	37,468	41,215
N. Pueblo, NM	27,988	30,787
Isleta Pueblo, NM	21,210	23,332
Santa Domingo, NM	20,021	22,023
Six Sandoval, NM	57,546	63,300
WCD Ent., OK	142,997	157,297
Choctaws, OK	85,778	94,354
Cherokee, OK	233,238	256,562
Chickasaw, OK	21,756	23,932
Tonkawa, OK	12,000	39,600
Potawatami, OK	0	0
Zuni, NM	0	0
Midwest:		
Illinois	3,736,974	4,110,673
Indiana	765,455	842,002
Michigan	2,804,096	3,084,507
Minnesota	1,183,198	1,301,517
Ohio	4,818,626	5,300,493
Wisconsin	1,312,877	1,444,165
Mountain Plains:		
Colorado	862,756	949,032
Iowa	994,460	1,093,928
Kansas	587,251	645,976
Missouri	2,300,491	2,530,542
Montana	704,785	775,264
Nebraska	183,174	201,493
North Dakota	378,759	416,635
South Dakota	285,166	313,684
Utah	962,904	1,059,194
Shos & Ara., WY	46,846	51,532
Ute Mtn. Tribe, CO	7,088	7,842
Winnebago, Neb	26,400	29,040
Cheyenne Rv., SD	52,553	57,808
Rosebud, SD	29,478	72,080
Standing Rock, ND	88,000	96,800
Western:		
Alaska	96,038	105,642
Arizona	2,531,957	2,785,165
California	5,704,458	6,274,905
Hawaii	288,645	317,510
Idaho	558,254	614,080
Nevada	433,957	477,353
Oregon	1,260,275	1,386,302
Washington	1,638,419	1,802,261
ITCN	41,340	45,480

(2.) *Maximum Grant*—Maximum grant levels were determined to assure that no State agency received more money than its potential need would indicate. Potential need is determined by adding the number of children under five below 200 percent of poverty and the number of live births for one year (to indicate pregnant women) and multiplying the total by a monthly food package cost level and then by three. This results in a food funding level sufficient to serve all of a State agency's potentially eligible participants for one quarter.

The live birth data used included all births and are not adjusted to reflect those births in families below 200 percent of poverty. This results in overstated figures. An alternate procedure has been suggested which would use one-fifth of the number of children under five below 200 percent of poverty rather than live births.

Live birth data were obtained from the National Center for Health Statistics; Vital Statistics Report, 1975, and from Indian Health Service, Bureau of Indian Affairs and Tribal Statistics. The food package cost used for Indian State agencies was the higher of either the Indian State agency's actual average food cost or the average food cost for all Indian State agencies. The cost used for other State agencies was the average cost for all those agencies. The data elements used in determining the maximum grant level are shown in the chart below. Only the food costs for Indian State agencies are listed; all other State agencies were figured with an average food cost of $22.26. This cost is the average for the first ten months of FY '78. Applicable State figures for the children under five below 200 percent poverty have been adjusted to subtract out Indian data.

	Children under 5 below 200% poverty	Live births for 1975	Food cost
New England			
Connecticut	69,903	35,915	
Maine	41,229	15,270	
Massachusetts	165,390	68,268	
New Hampshire	24,677	11,048	
Rhode Island	24,423	10,727	
Vermont	19,270	8,746	
Mid-Atlantic			
Delaware	15,648	6,242	
Maryland	182,257	52,817	
New Jersey	201,240	91,892	
New York	463,758	283,634	
Pennsylvania	260,827	148,074	
Puerto Rico	321,809	89,702	
Seneca Nat., NY	298	144	25.31
Virginia	189,580	78,126	
Virgin Islands	10,873	2,372	
West Virginia	72,790	28,096	
Southeast			
Alabama	147,137	58,085	
Florida	256,927	166,709	
Georgia	215,267	79,899	
Kentucky	130,077	54,880	
Mississippi	120,494	43,637	
North Carolina	186,252	80,788	
South Carolina	126,027	46,897	
Tennessee	172,860	62,347	
Seminoles, FL	166	32	36.92
Choctaws, MS	573	170	25.58
E. Cherokee, NC	741	140	22.27
Southwest			
Arkansas	104,420	34,457	
Louisiana	163,280	67,933	
New Mexico	57,584	19,882	
Oklahoma	89,884	36,791	
Texas	578,220	215,895	
Acoma, NM	305	46	21.99
N. Pueblo, NM	908	157	21.99
Isleta Pueblo, NM	212	432	21.99
Santa Domingo, NM	271	64	21.99
Six Sandoval, NM	554	262	21.99
WCD Ent., OK	2,208	150	21.99
Choctaws, OK	1,472	364	21.99
Cherokee, OK	7,203	1,250	21.99
Chickasaw, OK	909	109	21.99
Tonkawa, OK	1,056	191	21.99
Potawatami, OK	3,766	771	21.99
Zuni, NM	894	191	21.99
Midwest			
Illinois	331,067	169,420	
Indiana	173,510	82,433	
Michigan	299,927	133,968	
Minnesota	116,520	58,444	
Ohio	373,587	158,701	
Wisconsin	119,760	65,173	
Mountain Plains			
Colorado	77,140	40,118	
Iowa	76,817	41,376	
Kansas	64,980	33,894	
Missouri	143,627	68,519	
Montana	25,760	12,056	
Nebraska	46,979	23,546	
North Dakota	18,941	10,441	
South Dakota	25,257	10,803	
Utah	67,307	31,660	
Shos & Ara., WY	544	118	22.47
Ute Mtn. Tribe, CO	133	87	22.27
Winnebago, Neb	421	121	25.73
Cheyenne Rv., SD	668	153	24.41
Rosebud, SD	1,091	294	21.99
Standing Rock, ND	759	155	28.85
Western			
Alaska	10,043	7,457	
Arizona	102,850	39,578	
California	640,897	317,433	
Hawaii	27,143	15,713	
Idaho	37,068	16,243	
Nevada	20,870	8,811	
Oregon	89,487	33,382	
Washington	108,237	50,702	
ITCN	1,000	245	23.13

(3) *50 Percent Cap*—During the development of the program (food) formula, the Department completed one run of the formula with the hold harmless and maximum grant provisions of the formula in place. The results of this run were reviewed, and it was determined that some State agencies were receiving quite substantial increases in their funding level as compared with their previous fourth quarter level. The Department felt that such increases would result in too rapid expansion which could have detrimental effects on the efficient operation of the Program and could result in a greater amount of unspent funds at the end of the year. Since the amount of funds involved was especially large for agencies which received $5 million in food monies in the previous fiscal year, the Department decided to limit these agencies to a 50 percent increase over their fourth quarter level. To date, Puerto Rico and Florida are the only State agencies experiencing this limitation.

In addition to these agencies, there are four State agencies (Indiana, New Mexico, Nebraska, and Virgin Islands) which receive more than a 50 percent increase over their fourth quarter level. There is a total of 15 State agencies that either receive more than their hold harmless level or receive the 50 percent cap. This means that these agencies receive more than a 10 percent increase over their fourth quarter level. These increases range from 11.8 percent to 178.3 percent.

The Department is concerned that all available funds be spent as expeditiously as possible. In regard to the 50 percent cap issue, there are several questions: (1) Is 50 percent the proper percentage level for the cap, or should a different percentage limitation be established? and (2) Should the cap continue to apply only to States which received at least $5 million in the prior fiscal year, or should it apply to more States? If it should apply to more States, should there be a lower threshhold than $5 million and, if so, what should the threshhlold be, or should there be no threshhold at all? The Department is very interested in the public's comments on these specific questions.

II. Application of the Formula

The first step of the formula process is to enter all data elements into the computer. Data for each State agency are entered along with applicable totals used in comparisons. As stated above, the total number of children under five below 200 percent poverty is the sum of all State agency numbers entered.

Second, the mathematical equation is carried out. For each State agency, the number of children under five below 200 percent poverty is divided by the national total of children under five below 200 percent poverty. The result is multiplied by each State agency's infant mortality rate divided by the national average infant mortality rate. This equation results in a multidigit decimaled number called the index number.

Third, the index numbers are summed and then each State agency's index number is divided by the total to arrive at a percent which indicates the State agencies' relationships to each other and to the total. The percentages are applied to the funds available to determine each State agency's funding level.

Fourth, State agencies are run through the formula initially. If according to the formula any State agency would receive less funds than it received for the immediately preceding fiscal year's fourth quarter plus 10 percent, it is "held harmless" and given the fourth quarter level plus 10 percent. Additionally, if according to the formula any State agency would receive an amount greater than its maximum grant level it is funded at the maximum grant level. Those State agencies with a fourth quarter annualized level of $5 million or more that have been previously identified by a preliminary run of the formula as receiving more than a 50 percent increase by the formula are limited to a 50 percent increase. The amount of funds needed to provide allocations for the three categories listed above, namely, hold harmless, maximum grant and 50 percent cap State agencies, is totaled and subtracted from the total funds available.

The formula is then run on the remaining funds for the State agencies which did not fall into one of the three categories listed above. Any State agency receiving less than its fourth quarter level plus 10 percent in this second run is held harmless. The funds needed for allocations to hold harmless State agencies are subtracted from total funds for this second run, and the formula is run again with the remaining funds and State agencies. This procedure is repeated until no State agencies are held harmless.

Each time a subsequent run of the formula is made, the index numbers of the State agencies remaining in consideration are summed and the new total is used to derive new percentage relationships (new indexes are not computed as this would not change the percentages). The percentages are then applied to the remaining funds to determine funding levels. The resultant levels are compared to the hold harmless levels to determine if any State agency is receiving less than their hold harmless level. Any such agencies are given their hold harmless level, and they and the funds provided for them are removed from consideration. The purpose of the subsequent runs is to continue the comparison until no more State agencies are held harmless.

III. Alternative Formula Procedures

Some alternate procedures for applying the formula have been suggested and are discussed below.

A. *Alternative I*

One procedure would implement the first run of the formula as described above except that there would be no 50 percent cap State agencies. All State agencies that were identified as hold harmless or maximum grant would be given those funds and dropped out of consideration. Next, rather than completing the subsequent runs described above, the State agencies remaining in consideration after the first run would be given their fourth quarter plus 10 percent level. The funds necessary to accomplish this would be subtracted. Then the formula would be run for those State agencies against the small amount of remaining funds. The result of this application of the formula would be added to each State agency's fourth quarter plus 10 percent level to arrive at each State agency's total funding level for the quarter.

The effect of this procedure would be that State agencies with a greater degree of need as demonstrated by the formula receive less funds than they receive if the formula is applied according to the Department's method. Conversely, those State agencies with a lesser need receive more funds. As a result, the purpose of the Department's formula to allocate the greatest funds to the neediest agencies is thwarted.

The chart below indicates the percentage of need that was being met in each State agency in the fourth quarter of FY 1978. The chart represents a comparison of the average fourth quarter FY 1978 participation of infants and children to the State agency's number of children under 5 below 200 percent poverty. This comparison results in a figure which indicates the percentage of potential participants being served by the State agency.

State	Percent of need being met 4th quarter fiscal year 1978
New England:	
Connecticut	36.33
Maine	20.43
Massachusetts	10.91
New Hampshire	12.58
Rhode Island	15.61
Vermont	61.24
Mid-Atlantic:	
Delaware	15.47
Maryland	16.74
New Jersey*	12.16
New York	15.93
Pennsylvania*	9.36
Puerto Rico*	6.25
Seneca Nat., NY	110.74
Virginia	15.12
Virgin Islands*	8.27
West Virginia	13.74
Southeast:	
Alabama	16.10
Florida*	9.97
Georgia	15.87
Kentucky	21.84
Mississippi	25.77
North Caroline	21.42
South Caroline	25.63
Tennessee	17.11
Seminoles, FL	93.37
Choctaws, MS	101.92
E. Cherokee, NC	75.84
Southwest:	
Arkansas	10.54
Louisiana	19.58
New Mexico*	8.58
Oklahoma*	9.66
Texas*	11.59
Acoma, NM	81.37
N. Pueblo, NM	66.67
Isleta Pueblo, NM	91.04
Santa Domingo, NM	90.41
Six S., NM	91.34
WCD Ent., OK	79.15
Choctaws, OK	64.67
Cherokee, OK	17.34
Chickasaw, OK	28.14
Tonkawa, OK	19.22
Midwest:	
Illinois*	12.71
Indiana*	4.44
Michigan*	12.02
Minnesota	11.93
Ohio	13.25
Wisconsin	15.86
Mountain Plains:	
Colorado	11.41
Iowa	15.21
Kansas*	10.68
Missouri	19.50
Montana	30.79
Nebraska*	4.54
North Dakota	19.38
South Dakota*	10.21
Utah	13.52
Shos. & Ara., WY	87.87
Ute Mtn. Tribe, CO	45.86
Winnebago, Neb.	72.45
Cheyenne Rv., SD	93.57
Rosebud, SD	66.08
Standing Rock, ND	47.04
Western:	
Alaska*	6.28
Arizona	22.46
California	9.60
Hawaii	9.18
Idaho	17.16
Nevada	20.11
Oregon	16.98
Washington	16.17
ITCN	41.50

*State agencies not held harmless by the current USDA formula and which would be affected by the alternative formula.

USDA's formula application provides funds based on the number of potential eligibles in conjunction with infant mortality rates so that those State agencies meeting the lowest percentage of their need receive the highest percentage of increase in their funding level. In so doing, the Department is funding those most in need. Conversely, Alternative I would not give the highest relative increase to those State agencies with the greatest need. In fact, this alternative would substantially reduce the funding level of these State agencies. The end result of this alternative is that previous funding levels are perpetuated, since through this procedure everyone receives around a 10 percent increase. The current USDA formula is designed to help correct the past funding inequities which are reflected in the percentage of need being met shown in the chart above.

B. Alternative II

Another alternative would be to apply the formula as applied by the Department without the hold harmless provision. This would give State agencies funding according to their releative need with no relationship to previous operations. The most overwhelming effect of using this procedure would be the drastic cut backs in operation which some State agencies would have to initiate. The end result of such action is the removal of at least some participants from the Program.

C. Alternative III

Another alternative would be to provide all State agencies with a straight percentage increae over their fourth quarter level. This would perpetuate the current inequality of the funding relationships among State agencies. That is, those State agencies that were more successful in expanding their operation at the beginning of the Program would receive a larger portion of the funds. Therefore, they would be able to meet a larger percentage of their need. The use of this procedure would continue this funding inequity.

D. Alternative IV

A procedure which would more quickly correct the funding inequity among the States would be to hold all State agencies which are meeting a larger proportion of their need to their current operational level and give those State agencies which are meeting less of their need sufficient funds and time to expand their operation and catch up. One major problem with this procedure is that there is no provision for inflation. As costs rise the State agencies being held at status-quo would either reduce benefits or remove participants from the Program. Alternatives IV and V do not meet the strict definition of a formula and thus might not be in full compliance with the law.

These are only a few alternative suggestions. The Department is interested in receiving comments on these alternatives as well as suggestions of any other viable options.

As stated above, the Department is issuing this document for public comment. In order to allow sufficient time to analyze all comments received and then to issue in final a description of the formula used to allocate program (food) funds prior to fiscal year 1980, it is necessary to limit the comment period to 45 days. The Department believes the public interest is served in this instance in that a longer comment period would result in the allocation of funds prior to the formal publication of the Department's final decision on this issue. To be assured of consideration, comments should be received by August 3, 1979. All comments received by that date will be carefully considered before a final decision is made.

Comments may be sent to: Jennifer R. Nelson, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, Washington, D.C. 20250.

Copies of all written submissions received will be made available for public inspection in Room 4405, 201 14th Street, S.W., Washington, D.C., during regular business hours (8:30 a.m. to 5 p.m.)

Signed in Washington, D.C., on June 13, 1979.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 79-18833 Filed 6-18-79; 8:45 am]
BILLING CODE 3410-30-M

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 121]

Small Business Size Standards; Establishing a New Size Standard for Retail Heating Oil Dealers for Purposes of SBA Loan Programs

AGENCY: Small Business Administration.

ACTION: Proposed Rulemaking.

SUMMARY: This rule proposes to raise the size standard for retail heating oil dealers from $2 million to $6 million in average annual sales. It is necessary because the structure of the industry has shifted due to changes in the

accessibility and prices of raw materials and because of legislative costs imposed on the industry.

EFFECTIVE DATE: Written comments must be submitted by July 19, 1979.

ADDRESS ALL COMMENTS TO: Kaleel C. Skerik, Chief, Size Standards Division, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Robert N. Ray, Jr., (202) 653-6373.

SUPPLEMENTARY INFORMATION: The loan size standard of $2 million for SIC 5983, *Fuel Oil Dealers*, was set in 1975 and was based on the industrial structure of firms within that industry during the 1973–1974 period. The 1973–1974 years, however, marked the beginning of fuel shortages as a result of cutbacks among the oil exporting nations. Thus, the fuel oil industry did not have sufficient time to adjust to the changing supply situation when the size standard of $2 million was initially set in 1975.

Cost increases due to foreign imposed supply limitations since 1973 have had a greater impact than any other factor in changing the industrial structure of the fuel oil industry. It is estimated, for example, that the magnitude of wholesale price rises from mid-1973 to mid-1979 in the fuel oil industry will be in the 150–200 percent range. This is similar to price increases announced by the Organization of Petroleum Exporting Countries, which suggests that changes in the price of imported crude have been the primary cause of price rises in the oil industry.

While foreign imposed price increases have affected the structure of the entire fuel oil industry, other factors have tended to impact most heavily on the small business sector of that industry. For examples, the seasonal tendency in the industry to accumulate large amounts of customers' accounts receivable tends to work a hardship on small firms which typically do not have the same availability to financial capital as do large firms. Reporting and recordkeeping requirements initiated by the Department of Energy have also contributed more heavily to the costs of operating a small fuel oil marketing business than costs for large firms in the industry. Thus, other factors in conjuction with foreign imposed price increase have adversely affected the small business sector of the industry.

A rise in the size standard to $5.0 million from the present $2.0 million would account for an estimated 80 percent of dealers in the fuel oil industry.

It would bring the proportion of firms considered small by the Small Business Administration in this industry into closer comparability with other industries, and also help to alleviate those problems present in the industry which disproportionately impact on small firms.

Accordingly, pursuant to authority contained in Section 5(b)(6) of the Small Business Act, as amended, 15 U.S.C. 634, et seq, section 121.3, Schedule D of Part 121, Chapter I of Title 13, Code of Federal Regulations is proposed to be amended by changing Major Group 59 to read as follows:

Schedule D

* * * * *

Major Group 59—Miscellaneous Retail

5961	Mail order houses	7.5
5983	Fuel oil dealers	6.0

Dated: June 8, 1979.

William H. Mack, Jr.,

Acting Administrator.

[FR Doc. 79-19077 Filed 6-19-79; 8:45 am]

BILLING CODE 8025-01-M

FEDERAL TRADE COMMISSION

[16 CFR Ch. I]

Opportunity to Submit Comments on Petition to Issue Rule Declaring Oil Company Ownership of Petroleum Pipelines To Be an Unfair Method of Competition

[File No. 7910065]

AGENCY: Federal Trade Commission.

ACTION: Request for Comment.

SUMMARY: The Federal Trade Commission has been petitioned by Senator Edward M. Kennedy of Massachusetts to issue a rule declaring oil company ownership of petroleum pipelines to be an unfair method of competition. The Commission has unanimously decided that the petition should be neither granted nor denied until interested persons are afforded an opportunity to make their views known to the Commission staff who will recommend to the Commission appropriate action with respect to the competitive problems alledged by the petition. Accordingly, the Commission is soliciting written views on the Petition and the specific questions set forth below in this Notice. The Commission believes that public comment on the petition could greatly enhance development of the issues which should be considered by the Commission.

DATES: Comments should be received on or before October 18, 1979.

ADDRESS: Send comments to Ronald B. Rowe, Assistant Director, Bureau of Competition, Federal Trade Commission, 6th & Pennsylvania Avenue, NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Ronald B. Rowe, Assistant Director, or Rhett R. Krulla, Attorney, Bureau of Competition, Federal Trade Commission, Washington, D.C. 20580 (telephone (202) 724-1441 and (202) 724-1428, respectively).

SUPPLEMENTARY INFORMATION: Comments should be submitted in triplicate to the above address. All comments so received will be placed in a public file, except for information that discloses the identity of a confidential source or contains confidential commercial or financial information. If you believe your comment contains such information or fits this category, please specify the reasons for your belief. Such information will be retained in the Bureau staff's nonpublic, investigative file.

Interested persons are invited to address any issues of fact, law, policy or procedure which they feel are relevant to the petition and should be considered by the Commission. Further, the Commission particularly desires comment upon the questions listed below. These questions are provided in order to facilitate public comment and should not be construed to limit the nature and scope of comments prepared in response to this Notice. Following these questions, Senator Kennedy's petition is reprinted in full below.

1. What is the competitive structure of petroleum transportation?

(a) To what extent do petroleum pipelines compete among themselves in the transportation of petroleum?

(b) To what extent do petroleum pipelines compete with other modes of petroleum transportation?

(c) What barriers, if any, exist with respect to entry into large diameter petroleum pipeline transportation?

(d) What effects do pipeline economies of scale have on competition in petroleum transportation?

2. What are the economic effects of oil company ownership of petroleum pipelines?

(a) To what extent may transactional and project risks, ability to attract capital, operating efficiencies, or other economic factors support oil company ownership of petroleum pipelines?

(b) What information is required, and how might such information be used, to confirm or deny the petitioner's allegation that integrated oil companies are able to extract monopoly profits

through restriction of pipeline throughput or capacity?

(c) To what extent have individual oil company owned pipelines operated at or near full capacity or under prorationing during the past ten years?

(d) What has been the expansion history of individual pipelines? What has been the relationship between such expansions and increases in demand?

3. What are the competitive effects of oil company ownership of petroleum pipelines

(a) Are oil companies able to secure any competitive advantages through ownership of petroleum pipelines?

(b) Are there any significant competitive differences among the various oil company owned pipelines? What market indicia should be used to measure these differences?

(c) What degree of competitive harm should be shown before Commission action is warranted?

(d) What obstacles, practical difficulties, or disadvantanges may non-owners face in securing the desired level of use of oil company owned pipelines?

(e) What is the effectiveness of common carrier regulation of petroleum pipelines? To what extent are the following aspects of petroleum pipeline transportation unregulated: pipeline routing, pipeline connections, provision of terminal and storage facilities, pipeline financing, pipeline capacity and expansion, pipeline ownership, and tariff and prorationing policies?

(f) How do the services generally provided by existing independent petroleum pipelines differ from those ordinarily provided by oil company owned pipelines?

(g) To what extent have non-owners and non-major oil companies used individual oil company owned pipelines during the past ten years? What share of the total throughput of such pipelines has been accounted for by non-owners and by non-major oil companies?

(h) To what extent do potential pipeline shippers enter into exchange agreements as an alternative to using oil company owned pipelines as common carriers? What are the advantages or disadvantages of such arrangements?

(i) How are decisions made during the planning stage of a petroleum pipeline project regarding: Ownership, routing, capacity, expansion, connections policy, provision of terminal and storage facilities, prorationing policy, financing, tariff policy, and share readjustment? How are such decisions made once the pipeline becomes operational?

4. Would prohibition of oil company ownership of petroleum pipelines serve the public interest?

(a) Would the Commission's issuance of a rule prohibiting oil company ownership of petroleum pipeline serve the public interest?

(b) Should divestiture by the Commission be limited to pipelines possessing substantial market power?

(c) What limitations or exceptions, if any, should there be to the scope or application of the proposed rule?

(d) What alternative rules or remedies to the proposed rule should the Commission consider? How could the Commission best implement such rules or remedy?

(e) What are the public benefits or costs of oil company ownership of petroleum pipelines?

(f) What would be the public benefits or costs of prohibiting oil company ownership of petroleum pipelines and requiring divestiture of existing oil company owned pipelines?

(g) How could pipeline divestiture best be implemented?

5. What would be the financial effects of prohibiting oil company ownership of petroleum pipelines?

(a) What effect would diverstiture have upon existing financial arrangements of oil company owned pipelines including throughput commitments and debt obligations?

(b) What effect would diverstiture have upon the ability of divested pipelines to expand or to attract capital? What capital requirements would such existing pipelines have?

(c) How would new pipelines not owned by oil companies be financed?

(d) What, if any, guarantees or throughput commitments would be necessary for financing of independent pipelines? Under what circumstances would oil companies provide such guarantees or commitments? What compensation should oil companies expect in return?

* * * * *

Petition for the Initiation of a Rulemaking Proceeding Prohibiting Ownership of Petroleum Pipelines by Petroleum Companies

The purpose of this petition is to request the Federal Trade Commission ("Commission") pursuant to 5 U.S.C. 553 and 16 CFR 1.25 to initiate a rulemaking proceeding to proscribe as unfair methods of competition certain forms of petroleum pipeline ownership. Specifically, I request the Commission issue a trade regulation rule declaring it to be an unfair trade practice for an oil company to have any ownership interest in petroleum pipelines of certain classes.

Jurisdiction

The Commission has authority under Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, to prohibit "unfair methods of competition in or affecting commerce." While pipelines themselves are exempted from the Commission's jurisdiction to the extent they are common carriers as defined in Section 5(a)(6) of the FTC Act, parent companies of such carriers are not exempt. The Commission may proceed against parents and affiliates of, or parties acting in concert with, persons exempted from the Commission's jurisdiction.[1]

The Commission has authority under Section 6(g) of the FTC Act to proceed by way of rulemaking in lieu of case-by-case adjudication. That section empowers the Commission to issue rules defining unfair methods of competition, violations of which would constitute violations of Section 5 of the FTC Act.[2] This method is especially appropriate where an elaborate factual record need not be developed. Because the debate over the competitive consequences of petroleum pipeline ownership by integrated oil companies will involve predominantly issues of competitive theory, with disputes of fact playing a less significant role, rulemaking rather than adjudication is the most efficient way to address this question.

The question whether divestiture for competitive purposes can be ordered in an administrative rulemaking proceeding was dealt with by the Supreme court this year in *FCC v. National Citizens Committee for Broadcasting et al.*, U.S.——, 50 L.Ed. 2d 697, 98 S. Ct.—— (June 12, 1978). In that case, the Court upheld an FCC rule dealing with the "cross ownership" of television and radio stations by newspapers; the FCC rule required divestiture in sixteen cases. The court upheld the divestiture requirements, thus establishing a clear precedent for dealing with industry-wide structural problems through rulemaking.

The Commission has long held that divestiture is within its power when this

[1] *Perpetual Federal Savings & Loan Ass'n.*, Docket No. 9063, Final Order to Cease and Desist, 3 Trade Reg. Rep., 21,371 (December 6, 1977) (appeal pending). *Exxon Corp. et al.*, Docket No. 8934, Order Denying Respondents' Motion to Strike Allegations Re Pipelines or to Stay this Proceeding Re Pipelines, July 3, 1978; Order Denying Respondents' Motions to Strike Pipeline Allegations Etc., October 16, 1974; Order Denying Respondents' Motions Regarding Governmental Action and Primary Jurisdiction, December 3, 1974.

[2] *National Petroleum Refiners' Ass'n et al. v. FTC et al.*, 482 F. 2d 672 (D.C. Cir. 1973), *cert denied*, 415 U.S. 951 (1974).

remedy would advance the public interest.[3]

Harm to the Public Interest

The specific unfairness on which this petition is grounded involves the relationship between pipelines and their oil company owners, and the inherent competitive advantages that accrue to the oil companies as a result of such ownership. As will be discussed below, the public interest is injured in two ways. First, consumers must pay higher prices for petroleum products because integrated oil companies are able to exploit the monopoly power inherent in their pipeline ownership. Second, competition between oil companies is injured because the system of integrated oil company ownership virtually by definition places disadvantages on the non-owner shipper in terms of both costs and access to the lines. This unfairness does not depend upon a specific pattern of behavior; it is the inevitable result of shipper ownership of common carrier pipelines.

Factual Background

Vertically integrated oil companies are owners of the vast majority of petroleum pipelines. This control extends to all three types of pipeline: Gathering lines carrying crude oil from wells to intermediate storage tanks; crude oil pipelines carrying crude from producing areas to refineries; and product pipelines carrying refined products from refineries or terminals to markets. A study prepared by the ICC staff showed that in 1975, the top 20 vertically integrated oil companies controlled 74.2 percent of total pipeline operating revenue. That same study found that the top twenty integrated oil firms accounted for 94.5 percent of all crude barrel-mile movements and 78.1 percent of product barrel-mile traffic.[4]

Of the 90 petroleum pipeline companies which reported $500,000 or more annual revenues in 1975, a full 81 were owned either by vertically integrated oil companies (50.8 percent) or by joint stock companies affiliated with one or more vertically integrated oil companies (30.2 percent).

Petroleum pipelines are natural monopolies. The economies of scale are usually such that maximum efficiency may be realized when only one pipeline serves a particular geographic market. Competition between pipelines would, therefore, result in waste and inefficiency. The natural monopoly inherent in pipeline transportation has been recognized by the law since the passage of the Hepburn Act in 1906. That Act brought petroleum pipelines under the regulation of the Interstate Commerce Commission. It required them to provide transportation upon reasonable request and to establish just and reasonable rates.

Historically, however, pipeline regulation has been a failure. ICC regulation has ensured neither equitable rates nor nondiscriminatory access. Over the seventy-two years that it had jurisdiction over pipelines, the ICC dealt with the access problem only twice, each time to require a reduction of minimum tender offers. While the ICC has regularly explained its inactivity in this area by asserting that there have been no complaints from the industry, there is considerable evidence that access to pipelines has been a chronic competitive problem. In 1967, the Attorney General's Report on the Interstate Oil Compact found that the nonowner shippers confronted serious obstacles in gaining access to common carrier crude pipelines:

> * * * outsiders simply are unable to use these lines as they could other types of common carriers. This is probably due less to direct refusal to accept outside shipment as to the multiple inconvenience which an outsider would encounter in attempting shipment over a line designated and geared almost entirely to handle the refiner-owner's own shipments.

The report went on to describe the consequences of this control:

> * * * virtually all crude oil passing through a pipeline carrier system is oil owned by the carrier's refining affiliate. Some exception is made where the "outsider" is also an integrated company whose lines elsewhere the carrier's refining affiliate may wish to use. Even in this situation, however, the appearance of discrimination is avoided by the exchange and reexchange of the oil involved, or its "sale and repurchase."

More recently, the Department of Justice report on Deepwater Ports cited an economic analysis performed by a large oil company which noted the numerous ways nonowners can be denied access:

> * * * there are many subtle ways that nonowners can, in effect, be locked out limiting grade, tankage use, batch size, scheduling, etc. "Colonial" and "Explorer," for example, clearly inhibit nonowners. And, at present, the terminal to St. James pipeline is planned as an undivided interest line. While in theory the undivided share is common carrier transportation, in practice it is not * * *

("Explorer" and "Colonial" are two of the largest and most important petroleum product pipelines in the country.)

As for rate regulation, the record of the ICC is no better. In a recent case, *Farmers Union Central Exchange et al v. FERC*, No. 76-2138 (D.C. Cir. June 27, 1978) the United States Court of Appeals for the district of Columbia Circuit reviewed the whole history of rate regulation by the ICC. In the years since the passage of the Hepburn Act, the Court could find no "viable precedents" and no "semblance of established ratemaking theory" that would enable it to make sense of the record before it.

The Case for Prohibiting Shipper Ownership

The central proposition on which this petition is grounded is that the failure of regulation to guarantee nondiscrimination in access, adequate capacity for nonowners, and equitable rates is a direct consequence of the struture of pipeline ownership. This theory was developed by the Department of Justice and presented to the Subcommittee by Assistant Attorney General Shenefield. It holds that under the present statutory scheme, effective regulation is logically impossible. Rate regulation can be evaded by restricting the capacity of the line and forcing some part of the downstream demand to be met by less efficient and more costly means, thus raising the price of all product shipped into that market.

In testimony prepared for the Antitrust Subcommittee, the commission's Director of the Bureau of Competition illustrated the theory with a simplified example:

> * * * assume that boston is served by one pipeline, that it is the least-cost method of transportation into Boston, and that it is owned by one firm. How large will the owner make the pipe? If the owner is a firm that depends upon the profit derived solely from pipeline transportation fees, it will size the line to maximize its transportation profits. On the other hand, if the line is owned by a firm that owns both the pipeline and sells gasoline in the Boston market, that firm will size the line so that the combined profits from the operation of the line and the gasoline sales in the Boston area are maximized. Under federal regulation, the profit rate permitted on pipeline operations is fixed. However, the owner-shipper can size his line so that the volume of gasoline that flows into the market is restricted, thereby ensuring that profits from its gasoline marketing operations are maximized.

In short, because pipeline capacity is not regulated, owners can evade rate regulation. The effect of such evasion is to raise prices to consumers and to

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[3] *In The Matter of Ekco Products Co.*, 65 FTC 1163, 1213 (1964), aff'd 347 F.2d 745 (7th Cir. 1965).

[4] These data, as well as other relevant factual material, are set out in the *Staff Report of the Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary, 85th Cong., 2nd Sess., Report on Oil Company Ownership of Pipelines*, 56 (Comm. Print 1978), which is attached to and made a part of this petition.

discriminate against nonowner shippers by depriving them of adequate capacity and equitable rates.

It is important to recognie that capacity is singularly difficult to regulate. Such regulation places the government into the business of second-guessing investment decisions. It would involve a drastically expanded scheme for pipeline regulation. The Department of Justice proposed such a regulatory scheme for deepwater ports, regulated by the Department of Transportation, but argued that the scheme would be inappropriate for dealing with competitive problems in the pipeline industry as a whole.[5]

As Assistant Attorney General Shenefield said concerning the rules for deepwater ports in testimony prepared for the Antitrust Subcommittee:

> On the balance, I believe the basic flaw in the Competitive Rules, even in the (deepwater port) context, may be characterized as their tendency to treat the symptoms rather than the disease. The treatment goes on forever, at considerable expense to all, and only the approximation of a cure is effected.

> The other possible solution is divestiture—the separation of pipeline ownership from the other oil industry operations. Again, as Mr. Shenefield observed:

> Divestiture * * * attacks the problem directly because the problem is clearly rooted in the structure. What might appear to be a drastic approach, therefore, is in reality a clean and decisive break with the burdensome requirement of continuous, pervasive regulatory scrutiny.

> The argument may be summed up as follows. Petroleum pipelines are natural monopolies. The only way nonowner shippers, and ultimately the public, can be protected from the abuse of the monopoly power invested in their owners is through effective regulation. Effective regulation, however, is impossible given both the present statutory scheme and the industry structure. The choices, therefore, are between a massive expansion of regulation, and in particular regulation of capacity and other investment decision, on the one hand, and divestiture, on the other.

Appropriateness of FTC Action

The Commission has both the necessary jurisdiction and the flexibility in its rulemaking procedures to deal effectively with the problem of pipeline ownership. Not only can the Commission deal with competitive problems through its broad rulemaking powers, it has the ability to tailor its procedures to fit the precise nature of the particular problem before it. To a large extent, the issues raised by this petition do not require an evidentiary hearing. They involve the "fairness" of shipper-ownership within the meaning of Section 5 of the FTC Act. They are more matters of law and public policy than questions of fact. Therefore, a formal adjudicative proceeding would be both inappropriate and unnecessary. Although some evidentiary hearings may be called for, fairness and equity will not require rigid adherence to trial-type procedures, nor the compilation of a voluminous factual record.

As is clear from the attached statement of Assistant Attorney General Shenefield, the Department of Justice has developed considerable expertise in the pipeline area. It would be extremely valuable to the Commission, as well as an effective and efficient use of governmental resources, if the FTC were to undertake this proceeding with the active participation of the Department. This can be achieved by a simple request from the Commission that the Department participate in the proceedings.

Conclusion

Since 1906 there have been numerous studies, investigations, and reports on the question of pipeline ownership.[6] Virtually all have found a massive inconsistency between shipper-ownership on one hand, and common carrier status on the other. Virtually all have called for divorcing ownership of pipelines from the shipper function. Reinforcing this mass of accumulated expertise is the overwhelmingly persuasive analysis done by the Department of Justice.

It is clear that the failure of traditional common carrier regulation has not been solely the result of indifference or ineptitude. In the context of the present system of shipper-ownership, traditional regulation is logically impossible. Such ownership, with its potential for harm both to outside shippers and to consumers, is unfair and violates Section 5 of the FTC Act. The Commission has the jurisdiction and the authority to promulgate an effective remedy—the divestiture of petroleum pipelines from integrated oil companies.

Respectfully submitted,

Edward M. Kennedy.

* * * * *

By Direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 79-19021 Filed 6-18-79; 8:45 am]

BILLING CODE 6750-01-M

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[5] The proposal for regulating deepwater ports involved four "Competitive Rules:"

1. Deepwater ports must provide open and nondiscriminatory access to all shippers, owner and nonowner alike.

2. Any deepwater port owner or shipper providing adequate throughput guarantees at the standard tariff can unilaterally request and obtain expansion of capacity.

3. Deepwater ports must provide open ownership to all shippers at a price equivalent to replacement cost less economic depreciation.

4. The ownership shares of the deepwater ports' owners must be revised frequently (annually) so that each owner's share quals his share of average throughput.

It is relevant to note there that application of these four Rules to pipelines on the Outer Continental Shelf was considered and rejected by the Senate during the debate on the OCS Lands act Amendments. The objection was to the complexity and the burden of the regulation.

[6] This material is discussed at some length in the attached Subcommittee Staff Report on Oil Company Ownership of Pipelines [not attached].

[16 CFR Part 457]

Standards and Certification; Proposed Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Amendment to Notice of Proposed Rulemaking.

SUMMARY: This amendment to the notice of proposed rulemaking clarifies the authority of the Presiding Officer to issue compulsory process in connection with the Commission's rulemaking proceeding concerning standards and certification. Although the Commission gave the Presiding Officer the power to issue compulsory process in its notice of proposed rulemaking, it inadvertently omitted the standards by which that power should be exercised. This notice adds those standards.

EFFECTIVE DATE: June 19, 1979.

FOR FURTHER INFORMATION CONTACT: Barry R. Rubin, Attorney, Office of the General Counsel, Federal Trade Commission, Washington, D.C. 20580 (202) 523-3520.

SUPPLEMENTARY INFORMATION: On December 7, 1978, the Commission published a Notice of Proposed Rulemaking concerning this proceeding. [43 FR 57289 December 7, 1978.] Pursuant to Rule 1.20 of the Commission's Rules of Practice, 16 CFR 1.20, that notice prescribed the procedures to be followed in this proceeding. As announced in the notice, the powers of the Presiding Officer in this proceeding, in which no issues were designated, are those of Rule 1.13(c) of the Commission's Rules of Practice, 16 CFR 1.13(c), which include the power to "compel the attendance of persons or the production of documents or to obtain

responses to written questions," 16 CFR 1.13(c)(1)(vi). In the original notice, the Commission inadvertently omitted the standards that should govern the Presiding Officer's discretion to exercise compulsory process in this proceeding. Cf. 16 CFR 1.13(d)(6) (standards for the Presiding Officer's exercise of his compulsory process power in proceedings in which issues are designated). Accordingly, this amendment prescribes the standards that govern the Presiding Officer's discretion to issue compulsory process in the Standards and Certificate Rulemaking. The Notice of Proposed Rulemaking [43 FR 57269] is amended as follows:

By revising Section G to read as follows:

Section G. Notification of Interest

Interested persons who wish to avail themselves of the opportunity to question witnesses must, by March 2, 1979, notiy the Presiding Officer of their position with respect to the proposed rule and each individual provision thereof. This notification must be in sufficient detail to enable the Presiding Officer to identify groups with the same or similar interests respecting the proposed rule. The Presiding Officer may require the submission of additional information from any applicant whose notification is inadequate. Failure to file an adequate notification in sufficient detail may result in the applicant not being considered for purposes of questioning.

Before the hearings commence, the Presiding Officer will identify groups with the same or similar interests in the proceeding. Such groups will be required to select a single representative for the purpose of conducting questioning and, if unable to make this selection, the Presiding Officer may select a representative of each such group. The Presiding Officer will notify all interested persons of the identity of the group representatives at the earliest practicable time.

Group representatives will be given an opportunity to question each witness on any issue relevant to the proceeding and within the scope of the testimony. The Presiding Officer may disallow any questioning which is not appropriate for full and true disclosure as to relevant issues. The Presiding Officer may impose fair and reasonable time limitations on the questioning. Given that questioning by group representatives and the staff will satisfy the statutory requirements with respect to disputed issues, no such issues will be designated by the Presiding Officer.

The Presiding Officer may grant requests to compel the production of documents or the attendance of persons or to obtain responses to written questions, only to the extent necessary to provide a participant in the rulemaking proceeding with an opportunity to obtain information necessary for a full and true disclosure as to relevant issues. Such requests should contain a statement showing the general relevancy of the material, information or presentation, and the reasonableness of the scope of the request, together with a showing that such material, information or presentation is not available by voluntary methods and cannot be obtained through examination, including cross-examination of oral presentations or the presentation of rebuttal submissions.

Any motion to limit or quash a ruling to compel the attendance of persons or the production of documents or to obtain responses to written questions shall be filed with the Presiding Officer within ten (10) days after service thereof, or within such other time as the Presiding Officer may allow. Such motion shall set forth all assertions of privilege or other factual and legal objection to the ruling, including all appropriate argument, affidavits and other supporting documentation. The Presiding Officer may, in his sole discretion, certify a ruling on such motion to quash to the Commission.

The Commission may, on its own motion, review a determination of the Presiding Officer which requires the production of confidential Commission records or the appearance of an offical or employee of the Commission or another government agency.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 79-19052 Filed 6-18-79; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Parts 404 and 416]

Old-Age, Survivors, and Disability Insurance Program and Supplemental Security Income for the Aged, Blind, and Disabled; Decision To Develop Regulations

AGENCY: Social Security Administration, HEW.

ACTION: Notice of Decision to Develop Regulations.

SUMMARY: HEW plans to rewrite and reorganize several subparts of the regulations under titles II and XVI of the Social Security Act. The objectives are: (1) to comply with Executive Order 12044 and to meet the Department's "Operation Common Sense" standards by makihg the regulations clearer and easier to understand; (2) to remove obsolete and rarely used provisions; and (3) as appropriate, to examine the policies and consider additions, revisions, and clarifications. The revised subparts will be published with Notice of Proposed Rulemaking.

FOR FURTHER INFORMATION CONTACT: Charles Rollins, Room 4334, West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-6666.

SUPPLEMENTARY INFORMATION: The regulations presently being rewritten are:

(1) *20 CFR Part 404, Subpart Q.* This subpart contains the rules for representative payees under the Old-Age, Survivors, and Disability Insurance program. These rules explain when a person needs a representative payee, how a payee is selected and how we assure that the payee uses payments in the best interest of the beneficiary.

(2) *20 CFR Part 416, Subpart F.* This subpart contains the rules for representative payees under the Supplementary Security Income Program. These rules explain when a person needs a representative payee, how a payee is selected and how we assure that the payee uses payments in the best interest of the beneficiary.

(3) *20 CFR Part 416, Subpart M.* This subpart contains the rules for suspension or termination of supplementary security income (SSI) benefits. The rules explain when suspension or termination of SSI is required and the due process requirements for effecting suspension or termination.

(4) *20 CFR Part 416, Subpart Q.* This subpart contains the rules that require people who receive SSI benefits based on disability or blindness to accept training and other services to enable them to work. It also contains the rules that require drug addicts and alcoholics to accept treatment in order to receive supplemental security income benefits based on disability.

(5) *20 CFR Part 416, Subpart U.* This subpart contains the rules under which the Department of Health, Education, and Welfare (HEW) can make arrangements with States for HEW to decide whether people who receive SSI benefits are eligible for Medicaid.

HEW has classified the recodification of these regulations as policy significant in nature.

Dated: June 12, 1979.

Stanford G. Ross,

Commissioner of Social Security.

[FR Doc. 79-19028 Filed 6-18-79; 8:45 am]

BILLING CODE 4110-07-M

Food and Drug Administration

[21 CFR Parts 20 and 110]

[Docket No. 78N-0296]

Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding Human Food

Correction

In FR Doc. 17432 appearing at page 33237 in the issue for Friday, June 8, 1979, make the following corrections:

(1) On page 33238, in the first column, under the heading, "SUMMARY", in the 16th line, "CGTMP" should be corrected to read "CGMP".

(2) On page 33238, in the first column, under the heading, "SUMMARY", in the 21st line, "save" should be corrected to read, "safe".

(3) On page 33238, in the first column, under the heading, "DATES", in the 4th line, delete the phrase, "on or before December 5, 1979" and substitute the following words in lieu thereof: "180 days after the date of its publication in the Federal Register".

BILLING CODE 1505-01-M

[21 CFR Parts 20 and 110]

[Docket No. 78P-0296]

Current Good Manufacturing Practices in Manufacturing, Processing, Packing, or Holding Human Food; Hearings

AGENCY: Food and Drug Administration.

ACTION: Notice of public hearings.

SUMMARY: The Food and Drug Administration (FDA) annouces that public hearings will be held in Chicago, Illinois on September 11, 1979, in San Francisco, California on October 3, 1979, and in Atlanta, Georgia on October 24, 1979, to receive information and views interested from persons on the proposed revision of the regulation concerning current good manufacturing practice (CGMP) for human food published in the Federal Register of June 8, 1979.

DATES: A written notice of participation should be filed by August 15, 1979 for the Chicago hearing, by September 7, 1979 for the San Francisco hearing, and by September 28, 1979 for the Atlanta hearing.

ADDRESS: Written notices of participation should be sent to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Bureau of Foods (HFF-414), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street, SW., Washington, DC 20204, 202-245-1164.

SUPPLEMENTARY INFORMATION: FDA will hold informal public hearings on the proposed revised current good manufacturing practice in manufacturing, processing, packing, or holding human food ("Umbrella CGMP") regulation, published in the Federal Register of June 8, 1979 (44 FR 33238). The hearings will be limited to the issues raised by that proposal. These hearings are essential in order to gather sufficient information and opinions on the impact of the proposed revision of the regulations. In particular, FDA is especially interested in the impact that these revised regulations will have on small businesses. The agency solicits comments from small business persons or trade associations representing small businesses on this issue.

These informal hearings are open to the public and will be held in accordance with Part 15 of the FDA procedural regulations (21 CFR Part 15).

The hearing scheduled for September 11, 1979 will start at 9:30 a.m. in the Radisson Hotel, 505 N. Michigan Avenue, Chicago, IL 60611. Those persons desiring to make a presentation at this hearing should file a written notice of participation by August 15, 1979.

The hearing scheduled for October 3, 1979 will start at 9:30 a.m. in the Ramada Inn, 590 Bay Street (Fisherman's Wharf), San Francisco, CA 94133. Those persons desiring to make a presentation at this hearing should file a written notice of participation by September 7, 1979.

The hearing scheduled for October 24, 1979 will start at 9:30 a.m. in the Atlanta Hilton, 255 Courtland Street, Atlanta, GA 30303. Those persons desiring to make a presentation at this hearing should file a written notice of participation by September 28, 1979.

Individuals or organizations will be allotted time for a presentation at only one hearing.

A written notice of participation should be filed with the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, by the appropriate date indicated above. The envelope containing the notice of participation should be prominently marked "FOOD CGMP HEARING."

The notice of participation itself should be identified with Docket Number 78P-0296 and contain the following information:

1. Name, address, and telephone number of person desiring to make a presentation.
2. Business affiliation, if any.
3. Topic(s) of presentation.
4. Number of minutes for oral presentation (maximum of 15 minutes, unless more time can be justified).

A schedule of presentations for a hearing will be mailed to each person who files a notice of participation for that hearing and will also be available from the Hearing Clerk. If the number of persons formally requesting time for presentation exceeds the number that can be accomodated during the day session, the hearing will be carried over to the evening and, if necessary, to the following day. Participants will be notified in advance if an additional session(s) is required. Time permitting, persons not formally scheduled to make a presentation may be permitted to make a presentation at the discretion of the presiding officer. Individuals and organizations with common interests are urged to consolidate their presentations. Formal written statements or extensions of remarks (preferably four copies) may be presented to the presiding officer on the day of the hearing for inclusion in the hearing record of this proceeding.

Dated: June 14, 1979.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-19099 Filed 6-18-79; 8:45 am]

BILLING CODE 4110-03-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[24 CFR Part 1917]

[Docket No. FI-5557]

Proposed Flood Elevation Determinations for the Town of St. Marks, Wakulla County, Fla., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of St. Marks, Wakulla County, Florida.

These base (100-year) flood elevations are the basis for the flood plain

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Town Hall, Port Leon Drive, St. Marks, Florida. Send comments to: Mayor Luther Franklin, P.O. Box 296, St. Marks, Florida 32355.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or toll free line (800) 424–8872, Room 5270, 451 Seventh Street, SW, Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Town of St. Marks, Wakulla County, Florida, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in the flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance of existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Hurricane Tidal Surge from Gulf of Mexico.	Intersection of West Pine Street and Seventh Street.	12
	Intersection of Tallahassee Avenue and Riverside Drive.	12

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963)

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18887 Filed 6-18-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5558]

Proposed Flood Elevation Determinations for the City of West Melbourne, Brevard County, Fla.; Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of West Melbourne, Brevard County, Florida.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 90 East Court, Melbourne, Florida.

Send comments to: Mayor Larry Archibald, City Hall, P.O. Drawer 338, Melbourne, Florida 32901.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or toll-free line (800) 424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of West Melbourne, Brevard County, Florida, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Crane Creek	Shannon Avenue extended	28
	Just downstream of Wickham Road.	23

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963.)

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18888 Filed 6-18-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-4662]

Proposed Flood Elevation Determinations for the City of Martinsville, Morgan County, Ind., Under the National Flood Insurance Program; Correction

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects a proposed rule on base (100-year) flood elevations that appeared on page 44 FR 1136 of the **Federal Register** of January 4, 1979.

EFFECTIVE DATE: January 4, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program (202) 755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

The following:

Source of Flooding	Location	Elevation in feet, national geodetic vertical datum
White River	Approximately 3.7 miles downstream of Conrail Railroad Bridge.	590
	Approximately 2.69 miles upstream of State Route 39 at northern extraterritorial limits.	604
Indian Creek	At mouth of White River 2.8 miles upstream of 500 West Road.	590 606

Should be corrected to read:

Source of Flooding	Location	Elevation in feet, national geodetic vertical datum
White River	Approximately 1.7 miles downstream of Conrail Railroad Bridge.	592
	Approximately 2.69 miles upstream of State Route 39.	604
Indian Creek	Approximately 1,850 feet downstream of State Route 37.	591
	Approximately 2.8 miles upstream of 500 West Road.	605

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18990 Filed 6-18-79; 8:45 am]

BILLING CODE 4210-01-M

[24 CFR Part 1917]

[Docket No. FI-5559]

Proposed Flood Elevation Determinations for the Borough of Jefferson, Allegheny County, Pa., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Borough of Jefferson, Allegheny County, Pennsylvania.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Borough Building, 3006 Old Clairton Road, Clairton, Pennsylvania.

Send comments to: Mr. Anthony Capane, Council President of Jefferson, R.D. 4, 27 Marion, Finleyville, Pennsylvania 15332.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW, Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Borough of Jefferson, Allegheny County, Pennsylvania in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of Flooding	Location	Elevation in feet, National geodetic vertical datum
Monongahela River	Downstream Corporate Limits.	748
	Lock and Dam 3 (Upstream)	750
	Upstream Corporate Limits	751
Lobbs Run	Confluence with Monongahela River.	751
	3rd crossing of Walton Road (Upstream).	784
	Upstream Limit of Detailed Study.	812
Peters Creek	Downstream Corporate Limits.	760
	Private Drive 5,000 feet upstream of S.R. 51 (Upstream).	783
	Upstream Corporate Limits	822
Lewis Run	Confluence with Peters Creek.	773
	3rd crossing of State Route 57 (Upstream).	842
	Upstream Corporate Limits	918
Lick Run	Confluence with Peters Creek.	820
	Snowden Road (Upstream)	862
	McElhaney Road (Upstream).	925
	Upstream Limit of Detailed Study.	962

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[Fr Doc. 79-18990 Filed 6-18-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5560]

Proposed Flood Elevation Determinations for the Borough of Pitcairn, Allegheny County, Pa., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Borough of Pitcairn, Allegheny County, Pennsylvania.

These base (10-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Borough Office, Pitcairn, Pennsylvania.

Send comments to: Mr. Joseph L. Rizzo, Council President of Pitcairn, 320 Center Avenue, Pitcairn, Pennsylvania 15140.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755-5581 or Toll Free Line (800) 424-8872, Room 5270, 451 Seventh Street, SW, Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Borough of Pitcairn, Allegheny County, Pennsylvania in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Dirty Camp Run	Broadway Avenue (Upstream)	748
	Third Street (Upstream)	750
	Eleanor Street (Upstream)	751
	Agatha Street Culvert (Outlet)	751
	Agatha Street Culvert (Inlet)	784
	Taylor Avenue (Upstream)	812
	Hill Street (Extended)	760
	Wall Street (Upstream)	783
	Coal Street (Extended)	822
	Upstream Corporate Limits	773
		842
		918
		820
		882
		925
		962

(National Flood Insurance Act of 1968 (title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

FR Doc 79-18891 Filed 6-18-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5561]

Proposed Flood Elevation Determinations for the Town of Pine Ridge, Lexington County, S.C.; Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Pine Ridge, Lexington County, South Carolina.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Town Hall, 1015 Fish Hatchery Road, West Columbia, South Carolina 29169.

Send comments to: Mayor W.F. Turner or Mr. Doug Caley, Town Councilman, Town Hall, 1015 Fish Hatchery Road, West Columbia, South Carolina 29169.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755-5581 or Toll Free Line (800) 424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Town of Pine Ridge, Lexington County, South Carolina, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Congress Creek	Northeastern Corporate Limits.	146
	Northwestern Corporate Limits (Approximately 2500 feet downstream of Southern Railway).	150
Big Branch	Just upstream of Fish Hatchery Road.	183
First Creek	Dogwood Road	174

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18682 Filed 6-18-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5562]

Proposed Flood Elevation Determinations for Kitsap County, Wash., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in Kitsap County, Washington.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at County Courthouse, 614 Division Street, Port Orchard, Washington.

Send comments to: Mr. Gene Lobe, Chairman, Board of County Commissioners, Kitsap County, County Courthouse, 614 Division Street, Port Orchard, Washington 98366.

FOR FUTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for Kitsap County, Washington, in accordance with section 110 of the Flood Distaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)], 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Blackjack Creek (Upper Reach).	Dogwood Road (100 feet)*	179
	Lider Road (100 feet)*	187
	Sidney Road**	201
South Fork Blackjack Creek.	Confluence with Blackjack Creek (Upper Reach).	186
	Sidney Road (30 feet)*	201
Gorst Creek	State Route 3 (50 feet)*	10
	Old Navy Yard Way (Old Belfair Valley Road)**.	35
No Name Creek No. 4	State Route 3 (60 feet)*	46
Parish Creek	Old Navy Yard Way (Old Belfair Valley Road) (30 feet)*.	67
	State Route 3 (100 feet)***	112
Ross Creek	State Route 160 (10 feet)*	14
	State Route 16 (50 feet)***	111
Chico Creek	State Route 3 (125 feet)***	16
	State Route 3 (150 feet)*	25
	Erlands Point Road (50 feet)***.	33
	Erlands Point Road (75 feet)*.	39
	North Lake Way (75 feet)***	83
	North Lake Way (100 feet)*	89
	Taylor Road (25 feet)***	84
	Taylor Road (25 feet)*	103
Kitsap Creek	Confluence with Chico Creek.	77
	West Kitsap Lake Road (10 feet)***.	103
Dickerson Creek	Taylor Road (25 feet)***	91
	Taylor Road (25 feet)*	98
	Dwight Road (25 feet)*	114
	Burlington Northern Railroad (50 feet)***.	147
Curley Creek	Hinkley Road Extended 600 feet southeast of intersection of Locker and Hinkley Roads.	48
	Sedgewick Road (50 feet)*	109
	Ostile Road (Long Lake Road)**.	120
Beaver Creek	Beach Drive (25 feet)***	31
	Beach Drive (20 feet)*	37
	Beaver Creek Road (30 feet)*.	43
No Name Creek No. 6	State Route No. 3 (Kitsap Way) (50 feet)***.	22
	State Route No. 3 (Kitsap Way) (60 feet)*.	30
	Silverdale Loop Road**	56
	Ballard Lane**	121
Tributary to No Name Creek No. 6.	New State Route 3 (60 feet)***.	83
Barker Creek	Barker Creek Road Culvert (140 feet)***.	13
	Barker Creek Road Culvert (50 feet)*.	23
	Nels Nelson Road (100 feet)***.	46
	Nels Nelson Road (100 feet)*.	54
Clear Creek	County Bridge (Myhre Road) (10 feet)*.	84
	New State Route 3 (100 feet)*.	41
No Name Creek No. 7	School Road**	41
	Clear Creek Road (50 feet)***.	68
Dogfish Creek	State Highway 305 (50 feet)***.	16
	State Highway 305 (70 feet)*	29
	Little Valley Road (25 feet)***.	34
	Little Valley Road (25 feet)*	40
East Fork Dogfish Creek.	Little Valley Road (15 feet)*	36
Union River	Private Bridge (4.55 miles above mouth) (10 feet)*.	135
	Old Navy Yard Way (50 feet)*.	173
East Fork Union River	Confluence with Union River	146
	Old Navy Yard Way Extended (50 feet)*.	222
No Name Creek No. 3	Confluence with Union River	175
	Wilkinson Road (40 feet)***	186
	Wilkinson Road (10 feet)*	202
Hazel Creek	Mirland Road (15 feet)*	216
Tahuya Lake	600 feet south of intersection of Gold Creek Road and Kings Way.	583
Wye Lake	300 feet west of intersection of Wye Lake Boulevard and Sylvan Street.	306
Wildcat Lake	1500 feet north of intersection of Wildcat Lake Road and Thayer Road.	360
Long Lake	1200 feet northeast of intersection of Dorman Drive and Mullenix Road.	
Island Lake	300 feet east of intersection of Carey Street and Island Lake Road.	219
Panther Lake	County Limits between Kitsap and Mason Counties.	500
Hood Canal	Western Coastal areas of Kitsap County.	10
Puget Sound	Northern and eastern coastal areas of Kitsap County.	10

*Upstream From Centerline
**Centerline
***Downstream From Centerline

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18693 Filed 6-18-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5563]

Proposed Flood Elevation Determinations for the City of Middleton, Dane County, Wis., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Middleton, Dane County, Wisconsin. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 7426 Hubbard Avenue, Middleton, Wisconsin. Send comments to: Honorable Dan Ramsey, Mayor, City of Middleton, City Hall, 7426 Hubbard Avenue, Middleton, Wisconsin 53562.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Middleton, Wisconsin, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Pheasant Branch	County Truck Highway M (25 feet)*	856
	Century Avenue (County Truck Highway M) (25 feet)*	876
	Park Street (80 feet)**	892
	Park Street (180 feet)*	900
	U.S. Highway 12 (105 feet)*	916

*Upstream from centerline.
**Downstream from centerline.

Source of flooding	Location	Depth in feet above ground
Pheasant Branch	1600 feet northwest of intersection of Airport Road and Atom Road.	2

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18694 Filed 6-18-79; 8:45 am]

BILLING CODE 4210-23-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 48]

[LR-120-79]

Exemption from Motor Fuels Excise Taxes for certain Alcohol Fuels

AGENCY: Internal Revenue Service, Treasury.

ACTION: Proposed rulemaking cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this Federal Register, the Internal Revenue Service is issuing a temporary regulation regarding the exemption from motor fuels excise taxes for certain alcohol fuels. The temporary regulation also serves as a notice of proposed rulemaking for final excise tax regulations.

DATES: The temporary regulation applies generally to sales after December 31, 1978, and prior to October 1, 1984. The proposed regulations are to be effective for the same period. Written comments and requests for public hearing must be delivered or mailed by August 20, 1979.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T LR–120–79, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Robert H. Waltuch of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, 202–566–3328 not a toll-free call.

SUPPLEMENTARY INFORMATION: The temporary regulation in the Rules and Regulations portion of this issue of the Federal Register amends 26 CFR Part 138. The final regulations which are proposed to be based on the temporary regulation would amend 26 CFR Part 48. For the text of the temporary regulation, See FR Doc. 79–19025 (T.D. 7629) published in the Rules and Regulations portion of this issue of the Federal Register.

Jerome Kurtz,

Commissioner of Internal Revenue.

[FR Doc. 79-19026 Filed 6-14-79; 2:00 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

[32 CFR Part 41]

[DoD Directive 1332.14]

Enlisted Administrative Separations

AGENCY: Office of the Secretary of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of Defense proposes to revise its directive governing enlisted administrative separations. This proposal delegates authority to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics). It provides for the discharge of individuals who are not determined to be mobilization assets. It adds a new category that provides for uncharacterized service when a member's term of service has been of insufficient length to warrant characterization or in unusual circumstances, on a casy-by-case basis, as determined by the Secretary of a Military Department. It requires qualified military counsel, when reasonably available, in all instances where counsel is to be consulted or provided, and it adds other administrative due process entitlements. The revision provides for the honorable characterization of service for those discharged or released from active duty for expiration of service, convenience of the Government and unsuitability reasons.

DATES: Written comments must be received by July 19, 1979.

ADDRESS: Office of the Deputy Assistant Secretary of Defense (Military Personnel Policy), the Pentagon, Room 3C980, Washington, D.C. 20301.

FOR FURTHER INFORMATION CONTACT: LTC Gary A. Johnson, USAF, telephone 202-697-9525.

SUPPLEMENTARY INFORMATION: In FR Doc. 76-6104 appearing in the Federal Register on March 3, 1976 (41 FR 9088), the Office of the Secretary of Defense published a revision to this part (DoD Directive 1332.14). The directive was again revised effective December 29, 1976. This proposed rule further modifies Part 41. Although this part pertains solely to agency management and personnel, thus obviating the requirement under 32 CFR Part 296 (1978) for notice and public comment, the proposed rule nontheless is set forth herein to obtain the views of the public.

Specific Modifications

Certain modifications have been made to the marginal performer program. Discharge processing is required for cases involving homosexuality and other aberrant sexual acts when probable cause exists for determining the allegations to be valid. The proposal permits only a General discharge or a Discharge Under Other than Honorable Conditions when there is a discharge by reason of misconduct or discharge in lieu of court-martial. If the appropriate authority determines that the overall record of the member clearly warrants an honorable separation, the member may be separated for unsuitability in mitigated or extenuated cases of misconduct.

New Notification Procedures

New notification procedures are prescribed for those individuals who are unable or unwilling to meet an administrative discharge board proceeding. This proposal was drafted following receipt of comments from the Military Departments, the U.S. Coast Guard, and the Veterans Administration. Nothing in this proposal has express retroactive application to individuals previously separated or discharged from military service.

Accordingly, it is proposed to revise 32 CFR Part 41 reading as follows:

PART 41—ENLISTED ADMINISTRATIVE SEPARATIONS

Sec.

41.1 Reissuance and purpose.
41.2 Applicability and scope.
41.3 Definitions.
41.4 Policy.
41.5 Responsibilities.
41.6 Characterization of service.
41.7 Reasons for and characterization of service.
41.8 Authority and procedures for separation.
41.9 Suspension of Executive of approved separation.
41.10 Effective date and implementation.

Authority: Title 10, U.S.C. 1162, 1163, 1169, 1170, 1172, and 1173.

§ 41.1 Reissuance and purpose.

This part updates the policies, standards, and procedures which govern the administrative separation of enlisted persons from the Military Services; and implements various provisions of Title 10, U.S.C.

§ 41.2 Applicability and scope.

The provisions of this part apply to the Regular and Reserve components of the Army, Navy, Air Force, Marine Corps, and, by agreement with the Secretary of Transportation, to the Coast Guard. When the terms "military Services or Military Departments" are used in this part, the Coast Guard is included.

§ 41.3 Definitions.

(a) *Member.* An enlisted man or woman of the Military Services.

(b) *Discharge.* Complete severance from all military status.

(c) *Release from Active Duty.* Termination of active duty status and transfer or reversion to a Reserve Component not on active duty, including transfer to the Individual Ready Reserve (IRR).

(d) *Separation.* A general term which includes discharge or release from active duty.

(e) *Administrative Separation.* Discharge or release from active duty upon expiration of enlistment or required period of service or in any other lawful manner, but specifically excluding separation by sentence of court-martial.

(f) *Military Record.* An individual's behavior while a member of a Military Service, including general comportment and performance of duty.

(g) *Administrative Discharge Board.* A board appointed to render findings on a case and to recommend retention in the Service or separation with or without probation, specifying the reason for separation and character of service to be assigned (see § 41.8, paragraph (f) and § 41.9).

(h) *Separation Authority.* An official authorized by a Military Service to take final action with respect to specified types of separation.

(i) *Respondent.* A member of a Military Service who has been notified that action has been initiated to separate the member under a specified Service regulation.

(j) *Counsel.* A lawyer, within the meaning of the Uniform Code of Military Justice (UCMJ), 10 U.S.C. Section 827(b), Article 27(b) (1976) or a civilian attorney employed at the member's expense.

(k) *Minority Group.* A segment of the population that possesses common traits, which are transmissible by descent or common characteristics and a cultural heritage signicantly different from that of the general population. Such groups include, but are not limited to, blacks, American Indians, Asian or Pacific Islanders, Alaskan Natives, and Hispanic Americans.

§ 41.4 Policy.

(a) Military Departments have the authority to separate from the Service enlisted members with an appropriate characterization of service. Such

members will be separated in accordance with the procedures set forth in this part.

(b) In determining whether a member should retain current military status or be administratively separated, the member's military record should be evaluated, including records of nonjudicial punishment imposed during a prior period of service, all records of conviction by court-martial, and any other factors which are material and relevant (refer to § 41.6).

(c) The Military Services may establish additional reasons for separation to meet their specific needs, subject to approval by the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) (ASD (MRA&L)).

(d) Standards and procedures for separation and retention are prescribed in §§ 41.6 through 41.9.

(e) Except for those members whose quality of service has been determined to warrant that they be discharged under other than honorable conditions, personnel released from active duty under the provisions of this part and determined to be mobilization assets may be retained in the Ready Reserve of their respective Military Service to fulfill their total military obligation. Such action is in accordance with Title 10, United States Code, Section 651, and may be accomplished under standards and conditions established by the respective Military Service.

§ 41.5 Responsibilities.

(a) Each of the Military Services shall:

(1) Prescribe appropriate internal procedures for periodic explanation to enlisted members of the types of discharges, the basis for their issuance, and the possible effects of various discharges upon reenlistment, civilian employment, veterans' benefits, and related matters. As a minimum, such explanation shall take place each time the Articles of the Uniform Code of Military Justice (UCMJ) are explained, pursuant to 10 United States Code, Section 937. The requirement that the effects of the various types of discharges be explained to military personnel does not create a procedural right, but establishes a command responsibility to publicize the effects. Failure on the part of the member to receive or to understand such explanation shall not create a defense to effecting a discharge nor a legal basis for review of the effectiveness of the discharge.

(2) Ensure that information concerning the purpose and scope of the Discharge Review Board and the Board for Correction of Military/Naval Records, established pursuant to Title 10, United States Code, Sections 1552 and 1553, and DoD Directive 1332.28, "Discharge Review Board (DRB) Procedures and Standards," March 28, 1978, is explained during the separation processing of all members. Specific counseling is required concerning Pub. L. 95–126 which states that a discharge under other than honorable conditions, resulting from a period of continuous, unauthorized absence of 180 days or more, is a conditional bar to benefits of the Veterans Administration. Such counseling may be given orally, but a written fact sheet or similar document is preferred.

(b) The ASD (MRA&L) is delegated the authority to modify or supplement this part in a manner consistent with the general policies set forth herein.

§ 41.6 Characterization of Service.

(a) *Guidelines.* Standards of acceptable personnel conduct and peformance of duty for military personnel are found in the UCMJ and the Service regulations, and embody time-honored customs and traditions of the Military Services. Due consideration must be given to the member's age, length of service, grade, and general aptitude when determining the reason for separation and the characterization of service, consistent with the following:

(1) *Honorable.* Honorable service is the standard against which a servicemember's performance is compared. It encompasses a wide and variable range of related attributes, such as courage, fidelity, honesty, trustworthiness, and effectiveness as measured while a member of the Military Service. These attributes are reflected in the member's military record, including the reason for separation. A member will not necessarily be denied an honorable characterization solely by reason of a specific number of convictions by courts-martial or actions involving nonjudicial punishment under Article 15 of the UCMJ during the member's current enlistment period of obligated services.

(2) *General (Under Honorable Conditions).* Such a characterization is appropriate when a member's military record, including the reason for separation, is not sufficiently meritorious to warrant an honorable characterization, but not so unsatisfactory as to warrant an other than honorable characterization of service.

(3) *Under Other Than Honorable Conditions.* Such a characterization is appropriate when a member's military record, including the reason for separation, indicates the person has performed or conducted himself or herself in an unsatisfactory manner, and a higher characterization of service is not warranted. Such a member will be discharged for: Misconduct or security reasons, when based on the approval of a recommendation of an administrative discharge board or waiver of the right to board action; or resignation or request for discharge for the good of the Service in lieu of court-martial.

(i) No member shall be discharged under other than honorable conditions if the grounds for such action are based wholly or in part upon acts or omissions for which the member has been previously tried by court-martial resulting in acquittal or action having the effect thereof, except when such acquittal or equivalent disposition is based on a ruling not going to the merits of the case.

(ii) No member shall be discharged under other than honorable conditions unless the member is afforded the right to present his or her case before an administrative discharge board, with the advice and assistance of counsel, and unless such discharge is supported by approved board findings and an approved board recommendation for such a discharge. As exceptions, a discharge under other than honorable conditions may be issued without board action if the member (A) is beyond military control by reason of unauthorized absence for a period of one year or more, subject to the limitations of Title 10, United States Code, Section 1163 (1976) (members of a Reserve Component) (See § 41.8); (B) resigns or requests discharge for the good of the Service and in lieu of court-martial; or (C) waives his or her right to board action.

(b) *Special Consideration.* (1) Uncharacterized service is appropriate when a member's term of military service has been of insufficient length to warrant characterization. Notwithstanding any other provision within this part, an administrative separation of any member, who is separated during initial entry training (e.g.; recruit, basic, one-station unit) and has less than 180 days of continuous active service in the current enlistment, will be uncharacterized unless the member is separated by reason of misconduct or disability. Such a determination may also be directed, on a case-by-case basis, by the Secretary concerned, when unusual circumstances indicate an inconsistency with the concept of characterization.

(2) Except as indicated below, the characterization of service of the current enlistment or period of service will be determined solely by the member's military record and reason for separation during that enlistment or period of service, plus any extensions thereof prescribed by law or by the Military Service concerned, or effected with the consent of the member. The following shall not be considered:

(i) Prior service activities, including but not limited to records of conviction by courts-martial, records of non-judicial punishments, records of absence without leave, or commission of other offenses for which punishment was not imposed.

(ii) Preservice activities, except that in cases involving separations for fraudulent or erroneous enlistments, consideration may be given to omission of facts which, if known, would have precluded, postponed, or otherwise affected the member's eligibility for enlistment or induction from active duty under the provisions of this part, a member shall be provided a separation document reflecting the period of service concerned, in accordance with DoD Instruction 1336.1, "Certificate of Release or Discharge from Active Duty (DD Form 214/5 Series)," December 14, 1978. Upon request, the member will also be provided written evidence of the characterization of service, if applicable. In the case of an honorable discharge, an Honorable Discharge Certificate (DD Form 256) will be awarded. Characterization of service upon completion of total military obligation will normally be the same as the characterization assigned upon release from active duty, unless other circumstances justify a different characterization. The General Discharge Certificate (DD Form 257) and the Under Other Than Honorable Conditions Discharge Certificate (DD Form 794) will only be issued in cases involving members discharged from a Reserve Component.

§ 41.7 Reasons for and characterization of separations.

(a) *Expiration of enlistment or fulfillment of service obligation.* A member separated by reason of expiration of the term of obligated service will be assigned an Honorable characterization. For purposes of this paragraph, when individuals serving outside the continental United States (CONUS) or non-CONUS residents serving outside their state/territory, and the separation takes place not more than 30 days before the end of a given enlistment, expiration of enlistment will be considered to have occurred. Where the reason for separation is other than for expiration of enlistment, this provision does not apply.

(b) *Convenience of the Government.* A member separated by reason of the convenience of the Government will be assigned an Honorable characterization. Separation by reason of the convenience of the Government may be effected for such reason as may be prescribed by the Secretary of the Military Department concerned and will include the following:

(1) General demobilization, reduction in authorized strength, or an order applicable to all members of a class of personnel specified in the order.

(2) Acceptance of a commission, appointment or acceptance into a program leading to a commission, or appointment in any branch of the Military Services for active duty only.

(3) Immediate enlistment or reenlistment.

(4) Erroneous induction, enlistment, extension of enlistment, these reasons include enlistments that would not have occurred had the truth been known to the Government or had appropriate directives been followed.

(5) Early separation of personnel under various, authorized programs or circumstances as established by the Military Departments and approved by the ASD(MRA&L) (see § 41.4, paragraph (c)).

(6) Pregnancy or childbirth involving women members, upon the request of the member, unless the Secretary of the Military Department determines that retention is in the best interest of the Service.

(7) Inability to perform prescribed duties, repetitive absenteeism or nonavailability for worldwide assignment resulting from parenthood.

(8) Conscientious objection in accordance with DoD Directive 1300.6, "Conscientious Objectors," August 20, 1971.

(9) Sole surviving son/daughter and certain family members in accordance with DoD Directive 1315.14, "Special Assignment and Discharge Policies for Family Members," July 5, 1974.

(10) Physical or mental condition, not a disability, which interferes with assignment to and/or performance of duty, including but not limited to chronic seasickness, airsickness, enuresis, and sexual change.

(11)Marginal performance program.

(i) Application of this provision is limited to members meeting the following criteria:

(A) Members separated under this program must be assigned to: (1) Basic, recruit or one-station unit training and have less than 180 days of continuous active service in the current enlistment; (2) initial skill training immediately following basic/recruit training; or (3) an organizational unit for an appropriate period of evaluation, as determined by the Secretary of the Military department concerned, but for not less than 60 days.

(B) The members considered must be in their initial enlistment in that particular Military Service; serving in pay grade E–3 or below; and have less than two years of active service in their current enlistment.

(C) The member must be medically qualified for separation.

(D) The member must have completed any unsuspended disciplinary punishment and not have received more than a combination of three Article 15, UCMJ, punishments or convictions by courts-martial following completion of basic, recruit, or one-station unit training.

(E) The member must not be awaiting disciplinary action under the USMJ or have pending an unexecuted or a suspended discharge.

(ii) A marginal performer is identified by reason of the member's:

(A) Failure to attain or maintain required job skill proficiency, either by associated inaptitude or lack of reasonable effort; or

(B) Presence creating an administration burden to the command due to repeated minor military or disciplinary infractions; or

(C) Performance which has not contributed to unit readiness and mission accomplishment as evidenced by below average ratings or demonstrated incapacity to meet performance standards.

(iii) As a minimum, the Military Services will establish procedures requiring formal counseling and documentation concerning deficiencies, and affording an individual a reasonable opportunity to overcome them prior to initiating separation action. In addition, a member separated under this provision will be given an opportunity to consult with counsel, if reasonably available.

(c) *Dependency or Hardship.* A member separated by reason of dependency or hardship will be assigned an Honorable characterization.

(1) Separation may be directed when genuine dependency or undue hardship exists, and

(i) The hardship or dependency is not of a temporary nature;

(ii) Conditions have arisen or have been aggravated to an excessive degree since entry into the Service and the

member has made every reasonable effort to remedy the situation;

(iii) The separation will eliminate or materially alleviate the condition; and

(iv) There are no means of alleviation readily available other than the separation.

(2) Undue hardship does not necessarily exist solely because of altered present or expected income or because of separation from the member's family that causes the inconveniences incident to Military Service.

(d) *Minority.* A member who is under age 17 at the time the member's minority is discovered shall be processed in accordance with paragraph (e) of this section. Where the member has attained age 17 prior to the discovery of this defect, the member shall be discharged with an Honorable characterization upon application by the member's parent or guardian made to the separation authority within 90 days after the member's enlistment where:

(1) There is evidence satisfactory to the separation authority that the member is under 18 years of age; and

(2) The member enlisted without the written consent of the member's parent or guardian, if the member was not emancipated and is under the control of his or her parent or guardian.

(e) *Void/Voidable Enlistments.* (1) In those cases in which an enlistment is administratively determined to be void, the individual will be released from military control. Such individuals will be issued a DD Form 214, Certificate of Release or Discharge from Active Duty, to allow them to account for periods under military control, but that document will not constitute a discharge and will not contain a characterization of service. If otherwise eligible, an individual so released may be permitted to enter a new enlistment.

(2) In those cases in which the enlistment is voidable only at the option of the Military Service, the individual may be:

(i) Retained, with or without the individual's consent.

(ii) Released from military control, as provided in paragraph (e)(1) of this section or

(iii) Discharged in accordance with erroneous or fradulent enlistment provisions specified elsewhere herein.

(3) In those cases in which the enlistment is voidable at the option of either the individual or the Military Service, the individual may be released from Military control or discharged as provided above, regardless of which party elects to terminate the enlistment. In addition, under such regulations as the Military Service may prescribe, the individual may be retained if the disqualification is no longer present and both the individual and Military Service consent in writing.

(f) *Disability.* A member separated by reason of disability will be discharged with an Honorable characterization. Disability exists when it has been determined that a member is physically unfit to perform the duties of the member's office, rank, grade, or rating, and is not entitled to retirement under the provisions of Title 10, United States Code, chapter 61.

(g) *Personal Abuse of Drugs Other than Alcoholic Beverages.* (1) A member separated for this reason will be discharged with an Honorable discharge, when based on evidence developed as a direct or indirect result of a test administered for identification of drug abusers, or by a member's volunteering for treatment for a drug problem under the Drug Identification and Treatment Program administered by his or her particular Armed Force.

(2) A member may not be separated under this provision unless:

(i) The member's military record indicates a lack of potential for continued military service; or

(ii) Long-term rehabilitation is determined necessary and the member is transferred to a Veterans' Administration or civilian medical facility for rehabilitation; or(iii) The member has failed, through inability or refusal, to participate in, cooperate in, or complete a drug abuse treatment and rehabilitation program.

(3) A member separated under this provision will be given an opportunity to consult with counsel, if reasonably available.

Note.—It is essential to assure compliance with both the letter and spirit of the decision of the Court of Military Appeals in *United States* v. *Ruiz*, 23 C.M.A. 181, 48 C.M.R. 797 (1974). Care should be exercised to assure that a member identified for separation under this provision is not discharged with less than an Honorable discharge, based on some separate and distinct reason for discharge, unless it can be demonstrated that evidence of drug use obtained through the identification process described herein was not directly or indirectly utilized in establishing such separate and distinct reason.

(h) *Unsuitability.* A member separated from active duty or from Reserve status by reason of unsuitability will be assigned an Honorable characterization when it has been determined that the individual is not currently suitable for further Military Service. Factors considered under this category are normally of a nonvoluntary nature, apparently beyond the control of the member, which make retention incompatible with the best interest of the Military Services. Where military/disciplinary infractions are involved, the member should be considered for processing for misconduct.

Administrative separation action under paragraphs(h)(2), (5), (6), and (7), of this section, will not normally be initiated until a member has been formally counseled concerning deficiencies and afforded a reasonable opportunity to overcome them as reflected in appropriate counseling records. Unsuitability is evidenced by one or more of the following:

(1) Personality Disorder: As determined by a medical officer or contract physician (preferably a psychiatrist) or clinical psychologist and described in the *diagnostic and Statistical Manual (DSM–11) of mental Disorders*, American Psychiatric Association [1] which interferes with the member's ability to perform adequately. Combat exhaustion and other acute situational maladjustments are exceptions.

(2) Alcohol Abuse. A member who has been involved in alcohol-related incidents and who is offered but fails through inability or refusal to participate or cooperate in or complete an alcohol abuse treatment and rehabilitation program.

(3) Homosexual act (s) not falling within the purview of paragraph (j)(6) (including act(s) prior to the current period of service) and homosexual tendencies. Because anyform of homosexuality is incompatible with military service, discharge processing will be initiated when competent authority believes there is probable cause for determining that a valid basis exists for the allegations.

(4) Other aberrant sexual acts including, but not limited to, marriage between personnel of the same sex, voyeurism, and transvestism. Because aberrant sexual tendencies such as these are incompatible with Military Service, discharge processing will be initiated when competent authority believes there is probable cause for determining that valid basis exists for the allegations.

(5) Apathy, defective attitude, and inability to expend effort constructively that is a significant observable defect.

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[1] Section on mental disorders, International Classification of Diseases and Injuries—8, *Diagnostic and Statistical Manual (DSM–11) of Mental Disorders*, 2nd Edition, Committee on Nomenclature and Statistics, American Psychiatric Association, Washington, D.C., 1968

(6) Inaptitude, which is a lack of general adaptability, want of readiness of skill, unhandiness, or inability to learn.

(7) Financial irresponsibility, which involves a failure to resolve satisfactorily indebtedness matters in a proper and timely manner.

(8) Mitigated or extenuated cases of misconduct. If in a separation proceeding for misconduct (paragraph (j) of this section), an Administrative Discharge Board or Separation Authority determines the overall record clearly warrants an Honorable or General Characterization, the servicemember may be processed on a case-by-case basis under this paragraph for unsuitability, subject to approval of the general court-martial authority concerned, or of such other authority designated Military Department concerned.

(i) *Security.* Members separated by reason of security will be discharged with an appropriate characterization and under conditions and procedures established by the Secretary of Defense, as set forth in DoD Directive 5210.9, "Military Personnel Security Program," June 19, 1956, and similar Directives applicable to the Coast Guard, when retention is clearly inconsistent with the interest of national security.

(j) *Misconduct.* Members discharged by reason of misconduct, except as provided in paragraph (j) (11) of this section will be given a General discharge or a discharge under other than honorable conditions as the particular circumstances in a given case warrant. Administrative discharge action under paragraphs (j)(1) through (5) and (11) of this section will not normally be initiated until a member has been formally counseled concerning deficiencies and afforded a reasonable opportunity to overcome them. Such counseling will be recorded and included in the record of the discharge action. Discharge for misconduct is appropriate when it has been determined that an individual is unqualified for further military service because the member's military record in the current enlistment or period of obligated service evidences one or more of the following patterns of conduct, acts, conditions:

(1) Serious or frequent involvement of a discreditable nature with civil or military authorities. Serious involvement is participation in an offense which, under the UCMJ, is punishable by a punitive discharge.

(2) An established pattern of shirking, which is the deliberate evasion of duty.

(3) An established pattern showing dishonorable failure to pay just debts.

(4) An established pattern showing dishonorable failure to contribute adequate support to dependents or failure to comply with orders, decrees, or judgements of a civil court concerning support of dependents.

(5) Drug abuse, which is the illegal or wrongful introduction into a military reservation, or the improper, illegal, or wrongful use, possession, sale, transfer, of any narcotic substance, intoxicating inhaled substance, marijuana, or controlled substance, as established by Title 21, United States Code, Section 812, "Schedule of Controlled Substances Establishment," when supported by evidence not attributed to a urinalysis test administered for identification of drug abusers or to a member's volunteering for treatment under the drug identification and treatment program administered by his/her particular Military Service, or where otherwise exempted in paragraph (g) of this section.

(6) Sexual deviation, including but not limited to:

(i) Sodomy

(ii) Lewd and lascivious act(s).

(iii) Indecent exposure.

(iv) Indecent act(s) with or assault upon a child under the age of 16 years.

(v) Aggravated in-service homosexual act(s), to include:

(A) The attempt, solicitation, or accomplishment of a homosexual act with a child under the age of 16 years, regardless of the cooperation of the child.

(B) The attempt, solicitation, or accomplishment of a homosexual act accompanied by assault or coercion so that one party involved did not willingly cooperate or consent, or where the consent or cooperation was obtained through force, fraud, or intimidation. Because such acts are incompatible with military service, discharge processing will be initiated when competent authority believes there is probable cause for determining that a valid basis exists for the allegations.

(7) Prostitution, which is the act of a male or female engaging in sexual activity for which payment is received.

(8) Conviction by civil authorities (foreign or domestic), or action taken which is tantamount to a finding of guilty of an offense for which the maximum penalty under the UCMJ (Title 10, United States Code) is death or confinement for one year or more; or which involves moral turpitude; or where the offender is adjudged a juvenile delinquent, wayward minor, or youthful offender, or is placed on probation, or punished in any way, as the result of an offense involving moral turpitude. If the offense is not listed in the *Manual for Courts-Martial,* 1969 (Rev.), Table of Maximum Punishments, or is not closely related to an offense listed therein, the maximum punishment authorized by the United States Codes, whichever is lesser, applies. A member is subject to discharge although he or she has filed an appeal or stated his or her intention to do so. However, it will be the general policy to withhold the execution of the approved discharge pending outcome of the appeal. If the execution of the discharge is considered appropriate without waiting for final action on the appeal, the member may be discharged upon the direction of the Secretary concerned or if the member requests such discharge.

(9) Procurement of a fraudulent enlistment, induction, or period or active service through any deliberate material misrepresentation, omission, or concealment which, if known at the time, might have resulted in rejection. The enlistment of a minor with false representation as to age without proper consent will not, in itself, be considered as fradulent enlistment (see paragraph (d) of this section). Where there is no court-martial jurisdiction over the member because of the manner in which the individual's enlistment was effected, the individual may be processed for separation in accordance with paragraph (e) of this section.

(10) Prolonged, unauthorized absence, continuous for one year or more.

(11) Unsatisfactory participation in a unit of the Ready Reserve as defined in DoD Directive 1215.13, "Unsatisfactory Performance of Ready Reserve Obligation," May ——1979, (see § 41.8, (d)(2)(iii)).

(k) *Resignation or Request for Discharge for the Good of the Service and in Lieu of Court-Martial.* Discharge under other than honorable conditions or a General discharge is authorized subject to procedures and safeguards specified in § 41.8, paragraph (g), upon resignation or request for discharge, where conduct has rendered a member triable by court-martial for an offense punishable by a punitive discharge. (The provisions of the Table of Maximum Punishments, Section B, paragraph 127c, *Manual for Courts-Martial,* 1969 (Rev.), are not applicable to requests for discharge pursuant to this paragraph.)

(l) *Secretarial Plenary Authority.* Notwithstanding the specific provisions of this or any other Directive, the Secretary concerned may direct the separation of any member with an Honorable or General characterization

or with no characterization prior to the expiration of term of service, after determining it to be in the best interests of that Department

§ 41.8 Authority and procedures for separation.

(a) *Convenience of the Government.* A separation with an Honorable characterization may be approved by the member's commanding officer or higher authority when it has been determined that the member merits separation. A member recommended for separation under § 41.7, paragraph (11) shall be afforded the opportunity to consult with counsel if reasonably available and to make a statement in the member's own behalf or to decline the opportunity in writing. If such a statement is made by the member, a staff judge advocate or legal assistant must review it prior to submitting the case to the separation authority.

(b) *Unsuitability.* A separation with an Honorable characterization may be approved by the commander with special court-martial jurisdiction or higher authority. A determination to approve the separation of an individual for unsuitability must be supported by a preponderance of the evidence, meaning that the evidence is of greater weight or more convincing than that which is offered in opposition to it.

(1) A member in pay grade E–3 or below with less than five years of total active and/or Reserve military service shall be notified in writing of the proposed action and shall be afforded an opportunity to consult with counsel, if reasonably available, and to make a statement in the member's own behalf or to decline the opportunity in writing. If such a statement is made by the member, a staff judge advocate or legal assistant must review it prior to submitting the case to the separation authority.

(2) A member in pay grade E–4 or higher or a member with five or more years of total active and Reserve military service shall be separated by reason of unsuitability only in accordance with the safeguards and procedures specified in paragraph (d)(2)(i) through (iii) of this section.

(c) *Other Reasons for Honorable Separations.* A separation with an Honorable characterization may be approved by the member's commanding officer or higher authority when it has been determined that the member merits separation because of expiration of enlistment or fulfillment of service obligation, dependency or hardship, minority, disability, void and voidable enlistment, and personal abuse of drugs other than alcoholic beverages. A member recommended for separation under § 41.7, paragraph (g) shall be afforded the opportunity to consult with counsel if reasonably available and to make a statement in the member's own behalf or to decline the opportunity in writing. If such a statement is made by the member, a staff judge advocate or legal assistant must review it prior to submitting the case to the separation authority.

(d) *Misconduct.* A General discharge or a discharge under other than honorable conditions is authorized. A determination of processing for misconduct must be supported by a preponderance of the evidence.

(1) Separation Authority.

(i) A General discharge may be approved by a commander with special court-martial jurisdiction or higher authority, only after consultation with the staff judge advocate or legal assistant with respect to the legal sufficiency of the proceedings.

(ii) A discharge under other than honorable conditions may be approved by a commander with general court-martial jurisdiction or higher authority, only after consultation with the staff judge advocate or legal assistant with respect to the legal sufficiency of the procedures. This authority may be delegated to a general or flag officer in command who has a judge advocate or law specialist on his or her staff for cases arising in that command. Every action taken pursuant to such delegation shall state the specific authority therefor.

(2) Safeguards and Procedures.

(i) A member who is under military control shall be notified in writing of the basis for the proposed discharge action, the provision mentioned in paragraph (e) of this section, and advised that the member has the right to:

(A) Present his or her case before an administrative discharge board.

(B) Be represented by counsel, as described in paragraph (f)(3)(i) of this section.

(C) Submit statements in the member's own behalf.

(D) Waive the above rights in writing. The member shall be given an opportunity to consult with counsel, prior to waiving such rights.

(ii) A member unable to appear in person before an administrative discharge board by reason of confinement by civil authorities will be so advised by certified mail (return receipt requested) and a receipt for certified mail (PS Form 3800) obtained. Such notification will include notice of the proposed discharge action, the most unfavorable type of characterization of service that may be assigned, and the fact that action has been suspended to give the member the opportunity to exercise the rights specified in paragraph (d)(2)(i)(A) through (D) of this section.

(iii) Any member of a Reserve Component not on active duty shall be entitled to basically the same rights as an active duty member.

(A) The notification letter to the individual will contain the following information:

( ) The proposed discharge action;
( ) The type of characterization of service that may be assigned or intent to transfer to the IRR, as appropriate;
( ) The probable characterization of service if certain conditions are not fulfilled following transfer to the IRR;
( ) The suspension of administrative discharge proceedings to give him or her the opportunity to exercise the rights specified in paragraph (d)(2)(i) of this section, and the opportunity to request appointment of a military counsel to represent the member or, in the member's absence, present the member's case before an administrative separation board; and
( ) The possible finalization of the proposed discharge action, if the member fails to respond within 45 days.

(B) When members of the Selected Reserve are notified of probable discharge action as a result of their unsatisfactory participation, reasonable effort should be made to furnish copies of such notification to the individual through personal contact by a member of the command and a written acknowledgement of receipt obtained. Where such efforts are unsuccessful, the notification will be mailed to the individual.

( ) In addition to the notification procedures specified in paragraph (d)(2)(iii)(A) of this section, the individual who mailed the notification will prepare a Sworn Affidavit of Service by Mail (see DoD Directive 1215.13, "Unsatisfactory Performance of Ready Reserve Obligation," ——— 1979), which will be inserted immediately, together with PS Form 3800, in the member's personnel file.
( ) Such notification shall be fully and sufficiently accomplished through the mailing of said notification to the member at the mailing address considered to be the most recent one furnished by the member as an address at or from which official mail will be received by or forwarded to the member.
( ) Provided the notification was properly and correctly mailed to the most recent address furnished by the member, absence of proof of delivery does not change the fact that the member was properly notified.

(iv) If a member waives his or her rights in any of the situations covered in paragraphs (d)(2)(i), (A) through (D), of

this section the separation authority may disapprove the waiver and refer the case to an administrative discharge board, or direct retention on active duty, or direct discharge. If discharge is directed, the character of service will be specified except as provided in § 41.6.

(v) A member beyond military control by reason of unauthorized absence:

(A) May be discharged under other than honorable conditions *in absentia* under any of the following circumstances (see DoD Directive 1325.2, "Desertion and Unauthorized Absenteeism," February 10, 1977).

( ) When the prosecution of the member is apparently barred by statute of limitations, Title 10, United States Code, Section 843(1976). In those cases, a discharge under other than honorable conditions may be directed at any time it is determined that prosecution is so barred: *Provided*, That upon consideration of available extenuating, mitigating, and aggravating factors in each case, the separation authority determines that the best interests of the Military Services will be served by issuance of such discharge.

( ) When the member who is an alien has gone to a foreign country where the United States has no authority to apprehend such a member under a treaty or agreement.

( ) When the member has been absent for a period of 18 months or more (absent any other aggravated circumstances, such as commission of a serious crime), on a case-by-case basis, as determined by the Secretary concerned. *This provision will only be implemented upon further authorization by the Secretary or Deputy Secretary of Defense.*

(B) Shall be notified of the imminent discharge action and advised of his or her rights in accordance with paragraph (d)(2)(i) of this section. Such notification will be forwarded to the last known record address of the member, or next of kin, as appropriate.

(C) Shall be subject to the separation limitations of Title 10, United States Code, Section 1163, if a member of a Reserve component.

(e) *Unauthorized Absence When Involuntary Discharge is Pending.* Members who absent themselves without authority while being processed for involuntary discharge need not be returned to military control solely for execution of the discharge. Notwithstanding the provisions of paragraph (d)(2)(v) of this section, an approved administrative discharge may be executed if:

(1) Processing, at least insofar as the member's presence is required, was complete at the time the unauthorized absence began; and

(2) A commander with special court-martial jurisdiction determines that the member's return to military control for disposition of the unauthorized absence is not required.

(f) *Administrative Discharge Board.*—(1) *Composition.* Except as provided in paragraph (f)(1) (i) through (v) of this section, an administrative discharge board shall be comprised of at least 3 experienced commissioned officers, at least one of whom shall be serving in the grade of major/lieutenant commander or higher. The board may include a nonvoting recorder. A nonvoting legal advisor may be appointed to assist the board if authorized by the Secretary concerned. The following additional requirements apply:

(i) If the respondent is a member of a Regular Component, the respondent may request in writing that an enlisted member be appointed to sit as a member of the board. All enlisted personnel appointed as members shall be serving in pay grade E–7 or above and shall be senior to the respondent. This provision does not apply to reservists. See Title 10, United States Code, Section 1163 (1976).

(ii) If the respondent is an enlisted member of a Reserve Component or holds an appointment as a Reserve commissioned or warrant officer, the membership shall include a majority of Reserve officers, if reasonably available. Where a Reserve majority is not available, the board shall include at least one Reserve component officer. Voting members shall be senior to the respondent's Reserve grade.

(iii) The board shall include at least one voting member, of the same sex as the respondent, if requested in writing by the respondent and reasonably available.

(iv) If the respondent is a member of a minority group, the board shall, upon the written request of the respondent, include as a voting member a minority group member, if such person is available. When requested, the appointed board member should normally be of the same minority as the respondent; however, nonavailability of a member of the same minority group shall not preclude convening the board. In the event of nonavailability, the reason shall be stated in the record of proceedings.

(v) A respondent who asks for special representation on the board in accordance with paragraphs (g)(1)(iii) and (iv), of this section shall not as a matter of right be entitled to a representative from each such category. The respondent shall elect, in writing, the category from which the special representative is preferred. In all cases, the majority of the board must be comprised of commissioned or warrant officers.

(2) *Procedures.* The board functions as an administrative rather than a judicial body. Strict rules of evidence need not be observed. However, reasonable restrictions as to relevancy and competency of matters considered may be imposed. When the board meets in closed session, only voting members shall be present. The proceedings of the board shall be kept as prescribed by the Secretary of the Military Department concerned but, as a minimum shall contain a verbatim record of the findings and recommendations. The findings of the board must be supported by a preponderance of the evidence. Based upon the findings, the board shall recommend one of the following:

(i) Retention.

(ii) Discharge for a specified reason with the appropriate characterization of service, according to the applicable Service regulations implementing this part.

(iii) Discharge in accordance with the above paragraph, but with the discharge suspended and the member placed on probation for a period of not less than six months or more than one year, except that the expiration of the respondent's enlistment or any extension thereto shall automatically terminate any probationary period.

(3) *Rights of the Respondent.* A respondent has the following rights:

(i) Counsel.

(A) As defined in § 41.3, counsel shall be appointed to represent the respondent during the course of the proceedings.

(B) The respondent may be represented by military counsel of the member's own choice provided that the requested counsel is available as determined under regulations of the Military Service concerned. If requested counsel is made available to represent the respondent, detailed military counsel shall be relieved.

(C) The respondent may employ a civilian attorney at the member's own expense. A respondent who retains a civilian attorney is not entitled to request military counsel of the member's own choice. However, appointed military counsel will be made available to assist the civilian attorney.

(ii) The respondent may request the appearance before the board of any witness on active duty or civilian employee of the Department of Defense whose testimony is believed to be material to the respondent's case. Other civilians who agree to appear may be issued invitational travel orders in appropriate cases (see paragraph

C6000.11, Joint Travel Regulations). Members of the Reserve Components may testify, either in an active duty or drill status. The respondent or his or her counsel will address the request in writing to the recorder or legal advisor where applicable, or in the absence of a recorder or legal advisor to the convening authority. Such request will state the reason for the personal appearance. If the recorder or legal advisor where applicable, denies the request, the matter will be forwarded to the convening authority. The convening authority, in his or her sole discretion, will determine whether the witness' testimony is material and whether the personal appearance is necessary. If the convening authority determines that the personal testimony of the witness is necessary and material, the hearing will be postponed or continued to permit attendance of the witness. If the separation authority determines that the personal testimony of the witness is not necessary or if the witness commanding officer determines that military necessity precludes the witness attendance at the hearing, the hearing shall be continued or postponed to provide the respondent with the opportunity to obtain a written statement from the requested witness within a reasonable time period determined by the convening authority. The respondent and the respondent's counsel may question any witness who appears before the board. Nothing in this paragraph is intended to preclude the respondent from arranging for the attendance of nonactive duty witnesses at the member's own expense.

(iii) The respondent may, at any time before the board convenes or during the proceedings, submit any answer, deposition, sworn or unsworn statement, affidavit, certificate, or stipulation. This includes, but is not limited to, depositions of witnesses not deemed to be reasonably available or witnesses unwilling to appear voluntarily.

(iv) The respondent may or may not submit to examination by the board. The provisions of Title 10, United States Code, Section 831, Article 31 apply.

(v) The respondent may challenge any voting member of the board for cause only.

(vi) Failure of the respondent to assert any of these rights after being apprised of them, cannot be considered as a bar to the board proceedings, findings, and recommendations.

(4) *Actions by Separation Authority.* Upon receipt of the record of board proceedings and a review of his or her staff judge advocate's or legal assistant's opinion regarding legal sufficiency:

(i) The separation authority may:

(A) Approve the board's recommendations and direct their execution.

(B) Approve the board's recommendations with the following modifications including any combination thereof:

( ) Suspended execution for a specified period of probation.

( ) Change the characterization of service to a more favorable one.

( ) Change the basis for discharge when the record indicates such action would be appropriate.

(C) Disapprove the findings or the recommendation for discharge and retain the member in the service.

(D) Disapprove the findings and recommendation and refer the case to a new board if the separation authority (*1*) finds legal prejudice to the substantial rights of the respondent or (*2*) if the findings of the previous board are determined to have been obtained by fraud or collusion. No member of the new board shall have served on a prior board which considered the same matter. The record of the proceedings of the earlier board, minus the findings, recommendations, and prejudicial matter, may be furnished the successor board. The separation authority shall not approve findings and recommendations less favorable to the respondent than those rendered by the previous board unless fraud or collusion can be attributed to the respondent or individuals acting on his or her behalf.

(E) Recommend separation to the Secretary concerned, pursuant to § 41.6(b), in the event of a board recommendation for retention if he or she believes that separation is warranted by the circumstances of the particular case.

(ii) The separation authority may not:

(A) Downgrade the characterization of service.

(B) Designate misconduct as the basis when the board has recommended separation for unsuitability.

(C) Suspend execution in cases of fraudulent enlistment.

(D) Approve discharge without probation when the board recommends discharge with probation. In this case, only the general court-martial or higher authority may approve the discharge without probation.

(g) *Resignation or Request for Discharge for the Good of the Service and in Lieu of Court-Martial.* A member may be issued a discharge under other than honorable conditions without board action, provided he or she has been afforded the opportunity to consult with counsel and certifies in writing that he or she (1) understands the elements of the offense for which being charged; (2) acknowledges guilt of the offense or any lesser offense, for which a punitive discharge is authorized; (3) understands that he or she will receive a discharge under other than honorable conditions unless the discharge authority finds mitigating circumstances warranting the issuance of a discharge under honorable conditions; and (4) understands the adverse nature of such a characterization and possible consequences thereof. Such a discharge will be approved by a commander exercising general court-martial jurisdiction or higher authority.

(h) *Conditional Waiver.* Use of a conditional waiver, as described below, is authorized at the discretion of the Military Departments. A conditional waiver is a statement initiated by a member waiving those rights associated with administrative separation board proceedings contingent upon receiving a characterization of military service higher than the least characterization authorized for issuance for the specific reason of separation in the member's situation. If such a statement of waiver is accepted, the particular circumstances of the member's military service warranting the higher characterization will be specifically identified by the member's commanding officer, or higher authority, in the separation correspondence to be filed in the member's military personnel record. A member may not waive rights contingent on receiving a separation with service uncharacterized.

§ 41.9 Suspension of execution of approved separation.

Except in the case of fraudulent enlistment, the separation or higher authority may, prior to the expiration of the member's enlistment or period of obligated service, suspend execution of an approved separation for a specified period not to exceed 12 months, if the circumstances of the case indicate a reasonable prospect of rehabilitation. During the period of suspension, the member shall be afforded an opportunity to demonstrate that he or she is capable of behaving properly for an extended period under varying conditions and that the member can perform assigned duties efficiently.

(a) Upon satisfactory completion of the probationary period, execution of the approved separation will be canceled automatically.

(b) Additional misconduct on the part of the member during the probationary

period or actions which constitute substandard performance of duty or demonstrate characteristics of unsuitability may establish the basis for one of the following actions:

(1) Punitive or new administrative action may be initiated, notwithstanding the suspension of execution of the approved separation.

(2) Vacation of the suspension and execution of the discharge. Prior to such action, the member will be afforded the opportunity to make a written statement in rebuttal or explanation of the conduct which forms the basis to vacate the suspension. Where the member has absented himself or herself and is beyond military control for 15 or more days, the suspension may be vacated and the discharge executed without affording the member the opportunity to make a statement. However, the member will be advised of this provision in the document suspending the discharge, a copy of which will be provided to the member.

June 14, 1979.

H. E. Lofdahl,

Director, Correspondence and Directives.

[FR Doc. 79-19074 Filed 6-18-79; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

[33 CFR Part 401]

Seaway Regulations; Miscellaneous Amendments

AGENCY: Saint Lawrence Seaway Development Corporation.

ACTION: PROPOSED RULE.

SUMMARY: The Saint Lawrence Seaway Development Corporation and its counterpart agency, the St. Lawrence Seaway Authority of Canada, have completed their annual review of joint Seaway Regulations and have agreed that several sections are in need of revision. The Seaway Corporation therefore proposes to amend 33 CFR Part 401–Sub part A in order 1) to require certain new safety features and procedures, 2) to revise provisions concerning the transportation of hazardous cargo in accordance with the International Maritime Dangerous Goods Code as promulgated by the Intergovernmental Maritime Consultative Organization (IMCO), 3) to insure its consistency with actual operating procedures, and 4) to clarify several existing regulations.

DATES: Comments received by August 3, 1979 will be considered.

ADDRESSES: Interested parties may submit written comments to the Saint Lawrence Seaway Development Corporation, P. O. Box 520, Massena, New York 13662 (Attn: General Counsel). Persons who want the receipt of their comments acknowledged in writing may submit a stamped, self-addressed postcard for this purpose.

FOR FURTHER INFORMATION CONTACT: Frederick A. Bush, General Counsel, (315) 764–0271, Ext. 245.

SUPPLEMENTARY INFORMATION: As indicated above, the Seaway Corporation and its counterpart agency, the Seaway Authority of Canada, have completed their annual review of the joint Seaway Regulations and propose to amend same for the reasons set forth in the summary. A slight reorganization of several sections is also being effected for clarity. Following is a summary and explanation of the changes proposed.

The Table of Contents will be amended to reflect changes in several section headings.

In § 401.2, a definition for "tanker" will be added. This is necessary as several of the sections included under the heading "Dangerous Cargo" are applicable to these vessels.

In § 401.3, paragraphs (b) and (d) will be amended to restrict vessel dimensions so as to protect bascule bridges which are located at several of the Seaway locks. These bridges, when fully raised, overhang the lock wall at a given point thereby limiting the height of the vessel above the water line measured at the vessel's side as well as the height of other structures which are located near the sides of the vessel, such as derricks, crosstrees, antennas, etc. A new Appendix I to the Seaway Regulations will illustrate the acceptable dimensions with respect to bascule bridges.

The present § 401.3(d) will be reworded to prohibit the discharge of any substance onto lock or tie-up walls and further will be redesignated as § 401.19(c).

The main text of § 401.5(b) will be relocated in substantially the same form to § 401.21 while its subparagraphs will be set forth in Schedule I. This change is designed to clearly indicate that the requirements contained therein apply only to the U.S. waters of the Seaway.

The heading to § 401.6 will be changed from "Draft markings" to "Markings" and a new paragraph (c) will be added to this section which requires that vessels with bulbous bows so indicate by placing special markings above their draft markings. This has appeared as a strong recommendation in the general Seaway Notice published by both Seaway entities for a number of years and is necessary so that the vessel may be safely spotted in the lock. Because the regulation will not be effective until the beginning of the 1981 navigation period, vessels will have an adequate time in which to comply with a relatively simple requirement.

In § 401.16, a reference to the vessel's weight is being substituted for a reference to the vessel's length. This will make the equipment required by the section dependent on the gross tonnage of the vessel rather than on its length and will keep the Seaway Regulations consistent in their requirements for equipment. Subsection 401.16(b) will be reworded for clarity with no change in substance.

As indicated above, § 401.19 will have added to it a new paragraph (c) which prohibits the discharge of any substance onto lock or tie-up walls. In addition, the section's heading will be changed to read "Disposal and discharge systems."

As further stated above, § 401.21 will be modified to indicate that in addition to the requirements contained elsewhere in the Seaway Regulations, certain requirements as set forth in Schedule I are applicable only to the U.S. waters of the Seaway. The present § 401.21 provision that vessels be equipped with rudder angle indicators will be included in Schedule I.

Section 401.26 along with § 401.29(c), § 401.31(c)(4), § 401.35, § 401.43, § 401.62 and § 401.63 will be amended so as to delete any reference to the Canadian Sault Ste. Marie Lock. This is necessary to reflect that the Canadian Seaway Authority no longer has any responsibility for the area.

New security required of vessels as a result of the recently revised Tolls Schedule (43 FR 11872) will be set forth in § 401.26.

Subsection 401.31(c)(2) will be amended to prohibit smaller plasure craft from overtaking and passing commercial vessels near lock entrances, the practice of which endangers both vessels.

As indicated previously, bascule bridges overhang several lock walls within the Seaway system. Section 401.3 is being amended to provided for this. Section 401.33 will also be amended to require that vessels whose dimensions exceed the maximum allowable under § 401.3(d) must apply for special transit instructions from either the Seaway Corporation or the Seaway Authority.

Subsection 401.40(a) will be revised to indicate that stop symbols rather than "Stop" signs are now in use at the locks.

Section 401.51 will be amended to require that a vessel master signal the vessel's presence to a bridgemaster by VHF radio rather than by using the vessel's whistle. This will make the regulation consistent with the usual practice.

Subsection 401.59(b) will be revoked and a new provision substituted therefor which requires that vessels only discharge substances in accordance with the applicable U.S. and Canadian Federal Regulations. Additionally, in the Welland Canal, two zones have been designated as prohibited discharge areas due to their proximity to municipal intake areas.

Sections 401.66 through 401.73 have been revised in accordance with IMCO standards and applicable U.S. and Canadian statutes concerning the transportation of dangerous cargo.

Section 401.77 will be amended to reflect the actual charge for pleasure craft tickets as revised by the recently adopted Tolls Schedule.

Section 401.80 will be amended to require a hazardous cargo vessel to report certain particulars of its cargo to the nearest Seaway station prior to entering or getting underway in the Seaway.

Sections 401.84 and 401.85 will be substantially revised so as to group in one place applicable reporting requirements.

A new Schedule I which indicates additional maneuvering data and equipment required to be on board vessels transiting the U.S. waters of the Seaway will be added. This will include the requirements previously set forth in § 401.5(b). The remaining Schedules will be renumbered accordingly. In addition, several minor changes will be made to the redesignated Schedules II and III in order to make them consistent with operating procedures now in effect.

The Seaway Corporation has determined that the expected impact of this regulation is so minimal that it does not warrant either a Regulatory Analysis or a formal Evaluation as required by the Secretary of Transportation's Order concerning Regulatory Policies and Procedures (44 FR 11034). It is expected to result in negligible costs to a few vessel owners. There should be no added cost to or impact on consumers and/or Federal, state and local governments.

For the stated reasons, it is proposed to amend the Seaway Regulations as follows.

1. The Table of Contents to the Seaway Regulations is amended as follows:

PART 401—SEAWAY REGULATIONS AND RULES

Subpart A—Regulations

Sec.

* * * * *

401.6 Markings.

* * * * *

401.19 Disposal and discharge systems.

* * * * *

401.21 Requirements for U.S. waters of the Seaway.

* * * * *

401.84 Reporting of impairment or other hazard by vessels transiting within the Seaway.

401.85 Reporting of impairment or other hazard by vessels intending to transit the Seaway.

* * * * *

Schedule I Requirements for U.S. waters of the Seaway.

* * * * *

Appendix I Vessel dimensions.

2. Section 401.2 is amended by adding a new paragraph (k) and redesignating the present paragraphs (k) through (n) as (l) through (o), respectively. Section 401.2(k) will read as follows:

§ 401.2 Interpretation.

* * * * *

(k) "Tanker" means any vessel specifically constructed for carrying bulk cargoes of liquid petroleum products, liquid chemicals, liquid edible oils and liquefied gases in tanks which form both an integral part and the total cargo carrying portion of that vessel.

* * * * *

3. Section 401.3 is amended as follows:

§ 401.3 Maximum vessel dimensions.

* * * * *

(b) No vessel shall transit if any part of the vessel or anything on the vessel extends more than 35.5 metres (116.5 feet) above water level.

* * * * *

(d) No vessel's hull or superstructure when alongside a lock wall shall extend beyond a limit over which an open bascule bridge could be hit. (See illustration in Appendix I).

4. Section 401.5 is revised to read as follows:

§ 401.5 Required equipment.

No vessel shall transit unless it is

(a) Propelled by motor power that is adequate in the opinion of an officer; and

(b) Marked and equipped in accordance with the requirements of sections 401.6 to 401.21.

5. The heading to § 401.6 is changed and a new paragraph (c) is added as follows:

§ 401.6 Markings.

* * * * *

(c) Effective April 1, 1981, where a vessel's bulbous bow extends forward beyond her stem head, a symbol of a bulbous bow shall be marked above the 79.25 decimetres (26 feet) mark in addition to a "+" symbol followed by a number indicating the total length in metres by which the bulbous bow projects beyond the stem.

6. Section 401.16 is amended as follows:

§ 401.16 Propeller direction alarms.

Every vessel of 1600 gross registered tons or more shall be equipped with—

* * * * *

(b) Visible and audible wrong-way propeller direction alarms located in the wheelhouse and engine rooms, unless the vessel is fitted with a device which renders it impossible to operate engines against orders from the bridge telegraph.

7. The heading to § 401.19 will be changed and a new paragraph (c) added as follows:

§ 401.19 Disposal and discharge systems.

* * * * *

(c) No substance shall be discharged or disposed onto a lock wall or tie-up wall by any means, including overboard discharge pipes.

8. Section 401.21 is revoked and the following substituted therefor:

§ 401.21 Requirements for U.S. waters of the Seaway.

In addition to the requirements set forth herein, vessels transiting the U.S. waters of the Seaway are subject to the requirements set forth in Schedule I.

9. Section 401.26 is amended to read as follows:

§ 401.26 Security for tolls.

(a) Before transit by a vessel to which the requirement of preclearance applies, security for the payment of tolls and other charges in accordance with the St. Lawrence Seaway Tariff of Tolls, shall be provided by the representative by means of—

* * * * *

(b) The security for the tolls and other charges of a vessel shall be sufficient to

cover the gross registered tonnage of the vessel—

(1) On the Seaway between Montreal and Lake Ontario, at $1.50 per ton for transit each way or at $3.00 per ton for a round trip;

(2) On the Welland Canal, at $1.25 per ton for transit each way or at $2.00 per ton for a round trip; and shall be maintained in an amount sufficient to cover each transit for which tolls and other charges have been incurred and are unpaid.

(c) Where a number of vessels—

(1) Are owned or controlled by the same individual or company, and

(2) Have the same representative, the security for the tolls and other charges may be provided in an amount estimated by the representative to be equal to $2.20 per ton for the aggregate maximum tonnage of the vessels within the Seaway at any one time and shall be maintained in an amount sufficient to cover each transit for which tolls and other charges have been incurred and are unpaid.

* * * * *

§ 401.29 [Amended].

10. Paragraph (c) of § 401.29 is revoked.

11. Subparagraph (c)(4) of § 401.31 is revoked. Subparagraph (c)(2) of § 401.31 is amended as follows:

§ 401.31 Meeting and passing.

* * * * *

(c) * * *

(2) Within 609.60 metres (2000 feet) of a canal or lock entrance.

* * * * *

12. Section 401.33 is revised to read as follows:

§ 401.33 Special instructions.

Special instructions shall be applied for from the Corporation or the Authority in connection with the intended transit of vessels of unusual design, hulks, sections of vessels, large dredges, all vessels in tow and vessels whose limits extend the requirements of § 401.3(d), and such vessels shall not transit except in compliance with such instructions.

13. Section 401.35 is revised to read as follows:

§ 401.35 Employment of tugs.

No tug shall be fastened alongside a vessel in a canal so that the aggregate of the beams exceeds 23 metres (75 feet 6 inches).

14. In § 401.40, paragraph (a) is amended as follows:

§ 401.40 Entering a lock.

(a) No vessel shall proceed into a lock in such a manner that the stem passes the stop symbol on the lock wall nearest the closed gates.

* * * * *

§ 401.43 [Amended].

15. Section 401.43 is amended by inserting the word "and" after "Iroquois" and deleting the phrase "and Sault Ste. Marie (Canada)".

The table to § 401.43 is also amended by deleting therefrom the portion entitled "Canadian Sault Ste. Marie".

§ 401.51 [Amended].

16. Section 401.51 is amended by deleting the phrase "three distinct blasts shall be sounded on the vessel's whistle" and substituting therefor "the Master shall signal the vessel's presence to the bridgemaster by VHF radio".

17. Paragraph (b) of § 401.59 is amended to read as follows:

§ 401.59 Pollution.

* * * * *

(b) No vessel shall discharge into Seaway waters any substance not in conformity with applicable U.S. Federal Regulations and Canadian Federal Government Regulations with the exception of the waters of the Welland Canal where two specific no-discharge zones are established as follows:

(1) From Lock 7 (Thorold) to Mile 17 (Welland); and

(2) From Lock 8 (Port Colborne) to the outer Port Colborne piers (Lake Erie).

* * * * *

§ 401.62 [Amended]

18. § 401.62 is amended by deleting therefrom the following Seaway Station:

VDX23 (Seaway Sault)—Sault Ste. Marie, Ontario—Traffic Control Sector No. 8.

§ 401.63 [Amended]

19. The Table to § 401.63 is amended by deleting therefrom the following:

9 Seaway Sault C.I.P. No. 17 to C.I.P. No. 18 Channel 14, Channel 14, Channel 14.

20. Sections 401.66 through 401.73 under the heading of "DANGEROUS CARGO" are revised as follows:

Dangerous Cargo

§ 401.66 Applicable laws.

Vessels carrying a cargo or part cargo of fuel oil, gasoline, crude oil or other inflammable goods in bulk, including empty tankers which are not gas free, and vessels carrying dangerous substances whether break-bulk or containerized, to which regulations made under the Canada Shipping Act, the Transportation of Dangerous Goods Act (Canada) or the Dangerous Cargo Act of the United States of America, or regulations issued pursuant thereto apply, shall be deemed to carry dangerous substances, and shall not transit unless all requirements of the said statutes and regulations and of these Regulations have been fulfilled.

§ 401.67 Explosive vessels.

A vessel carrying explosives, either Government or commercial, as defined by the Canada Shipping Act, the Transportation of Dangerous Goods Act (Canada), the Dangerous Cargo Act of the United States of America and the International Maritime Dangerous Goods Code Class 1, Divisions 1.1 to 1.5 inclusive shall be deemed for the purpose of these regulations to be an explosive vessel.

§ 401.68 Explosives permit.

(a) An explosives permit is required for an explosive vessel in the following cases:

(1) For all vessels carrying any quantity of explosives with a mass explosive risk, up to a maximum of two (2) metric tons (2.2 short tons; IMCO Class 1, Division 1.1);

(2) For all vessels carrying more than ten (10) metric tons (11.02 short tons) and up to a maximum of fifty (50) metric tons (55.12 short tons) of explosives that do not explode en masse (IMCO Class 1, Division 1.2);

(3) For all vessels carrying more then one hundred (100) metric tons (110.23 short tons) and up to a maximum of five hundred (500) metric tons (551.16 short tons) of explosives having a fire hazard without explosive effect (IMCO Class 1, Division 1.3);

(4) For all vessels carrying more than one hundred (100) metric tons (110.23 short tons) and up to a maximum of five hundred (500) metric tons (551.16) short tons) of safety explosives and shop goods (IMCO Class 1, Divisions 1.4 and 1.5).

(b) When an explosive vessel is carrying quantities of explosives above the maximum mentioned in paragraph (a) of this section, no explosives permit shall be granted.

(c) Written application for a Seaway Explosives Permit may be made to the Chief, Office of Lock Operations, Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York 13662, or to the Manager of Operational Services, the St. Lawrence Seaway Authority, 202 Pitt Street, Cornwall, Ontario K6J 3P7. The application shall show that the cargo is packed, marked, labelled, described,

certified, stowed and otherwise conforms with all relevant regulations of the country in which it was loaded and of Canada and the United States.

(d) A signed copy of a Seaway Explosives Permit and a true copy of any certificate as to the loading of dangerous cargo shall be kept on board every explosive vessel in transit and shall be made available to any officer requiring production of such copies.

§ 401.69 Hazardous cargo vessels.

For the purpose of these Regulations, a vessel shall be deemed to be a hazardous cargo vessel in the following cases:

(a) A tanker carrying fuel oil, gasoline, crude oil or other flammable liquids in bulk, having a flashpoint below 61°C, including a tanker that is not gas free where its previous cargo had a flashpoint below 61°C.

(b) A tanker carrying compressed liquefied gases, bulk acids or liquefied chemicals.

(c) A dry cargo vessel carrying other dangerous substances whether in bulk, break-bulk or containerized that is in excess of:

(1) 50 metric tons (55.12 short tons) of gases, compressed, liquefied or dissolved under pressure (IMCO Class 2);

(2) 50 metric tons (55.12 short tons) of inflammable liquids having a flashpoint below 61°C (IMCO Class 3);

(3) 50 metric tons (55.12 short tons) of inflammable solids, spontaneously combustible material or substances emitting combustible gases when wet (IMCO Class 4);

(4) 50 metric tons (55.12 short tons) of oxidizing substances or organic peroxides (IMCO Class 5);

(5) Any quantity of poisonous (toxic) substances and infectious substances (IMCO Class 6);

(6) Any quantity of radioactive substances (IMCO Class 7);

(7) 50 metric tons (55.12 short tons) of corrosive substances (IMCO Class 8);

(8) Any quantity of metal turnings, borings, cuttings, or shavings in bulk having a temperature on loading or in transit in excess of 65.5°C; or

(9) Any quantity of grain which is under fumigation, where the chemical being used is hazardous to human life.

§ 401.70 Fendering—Explosive and hazardous cargo vessels.

All explosive vessels requiring a permit in accordance with § 401.68 of this title and all tankers carrying cargo with a flashpoint of up to 61°C, except those carrying such cargo in center tanks with gas free wing tanks, shall be equipped with a sufficient number of non-metallic fenders on each side to prevent any metallic part of the vessel from touching the side of a dock or lock wall.

§ 401.71 Signals—Explosive and hazardous cargo vessels.

(a) An explosive vessel shall display at the masthead or at an equivalent conspicuous position a "B" flag.

(b) A hazardous cargo vessel shall display at the masthead or at an equivalent conspicuous position a "B" flag superior to numeral pennant number 1.

§ 401.72 Reporting—Explosive and hazardous cargo vessels.

(a) Every explosive vessel or hazardous cargo vessel shall, when reporting in information related to cargo as required by § 401.84(a) of this title, report the nature and tonnage of its explosive or hazardous cargo, and the flashpoint of that cargo where applicable. Every vessel carrying grain which is under fumigation shall declare the nature of the fumigant and its properties.

(b) Every explosive vessel requiring a Seaway Explosives Permit shall, when reporting in, give the number of its Seaway Explosives Permit.

(c) Every hazardous cargo vessel carrying metal turnings, shavings, cuttings or borings in bulk shall, when reporting in information related to cargo as required by § 401.84(a) of this title, give the high temperature reading of each compartment at that time, together with the high temperature reading in each compartment taken on completion of loading.

(d) Every vessel carrying radioactive substances shall, when reporting in, give the number and date of issue of any required certificate issued by the Atomic Energy Control Board authorizing such shipment.

§ 401.73 Cleaning tanks—Hazardous cargo vessels.

Gas freeing and cleaning of cargo tanks shall not take place.

(a) In a canal or a lock;

(b) In an area that is not clear of other vessels or structures;

(c) Before gas freeing and tank cleaning has been reported to the nearest Seaway station.

§ 401.77 [Amended]

22. Section 401.77 is amended by deleting the comma after "Seaway lock" and by deleting the phrase "other than the lock on the Sault Ste. Marie (Canada) Canal,". The section is further amended by deleting the phrase "$2 or $3" and substituting therefor "$4".

23. § 401.80 is revised to read as follows:

§ 401.80 Reporting hazardous cargo.

(a) The master of any explosive vessel or hazardous cargo vessel shall report or shall cause to be reported to the nearest Seaway station, at least three hours prior to expected entry into the Seaway system, the nature and quantity of the dangerous cargo and where it is stowed on the vessel.

(b) The master of any vessel which takes on explosive or hazardous cargo while in the Seaway system shall report to the nearest Seaway station, at least three hours prior to commencing transit, the nature and quantity of the dangerous cargo and where it is stowed on the vessel.

24. Section 401.84 is revised to read as follows:

§ 401.84 Reporting of impairment or other hazard by vessels transiting within the Seaway.

While transiting the Seaway, the master of a vessel shall report to the nearest Seaway station as soon as possible—

(a) Any condition of the vessel that might impair its ability to transit safely and expeditiously;

(b) Any hazardous condition on the vessel;

(c) Any malfunction on the vessel of equipment required by § 401.5 to § 401.21 of the Seaway Regulations;

(d) Any difficulty on the part of the vessel in controlling its tow or tows;

(e) Any hazard, dangerous situation or malfunctioning aid to navigation which has not been published in a Notice to Mariners;

(f) Any loss of anchor with particulars of the precise location of the loss (immediate reporting required in this situation); and

(g) Any location where the visibility is less than one nautical mile (1.15 statute miles).

25. Section 401.85 is revised to read as follows:

§ 401.85 Reporting of impairment or other hazard by vessels intending to transit the Seaway.

The master of any vessel which intends to transit the Seaway shall report to the nearest Seaway station, prior to entering the Seaway, any of the conditions set forth in paragraphs (a) to (d) of § 401.84.

26. Schedule I, "Table of Speeds," and Schedule II, "Calling-in Table", are renumbered as Schedules II and III.

respectively. A new Schedule I is added as follows:

Schedule I.—Requirements for U.S. Waters of the Seaway.

No vessel of 1600 gross tons or more shall transit the U.S. waters of the Seaway unless it is equipped with the following maneuvering data and equipment:

(a) Charts of the Seaway which are currently corrected and of large enough scale and sufficient detail to enable safe navigation. These may be published by a foreign government if the charts contain similar information to those published by the U.S. Government.

(b) U.S. Coast Guard Light List, currently corrected.

(c) Current Seaway Notices Affecting Navigation.

(d) The following maneuvering data prominently displayed on a fact sheet in the wheelhouse:

(1) For full and half speed, a turning circle diagram to port and starboard that shows the time and distance of advance and transfer required to alter the course 90 degrees with maximum rudder angle and constant power settings;

(2) The time and distance to stop the vessel from full and half speed while maintaining approximately the initial heading with minimum application of rudder;

(3) For each vessel with a fixed propeller, a table of shaft revolutions per minute, for a representative range of speeds;

(4) For each vessel that is fitted with an auxiliary propeller, a table of control settings for a representative range of speeds;

(5) For each vessel that is fitted with an auxiliary device to assist in maneuvering, such as a bow thruster, a table of vessel speeds at which the auxiliary device is effective in maneuvering the vessel;

(6) The maneuvering information for the normal load and normal ballast condition for:

(i) Calm weather—wind 10 knots or less, calm sea;

(ii) No current;

(iii) Deep water conditions—water depth twice the vessel's draft or greater; and

(iv) Clean hull;

(7) At the bottom of the fact sheet, the following statement:

Warning

The response of the (name of the vessel) may be different from that above if any of the following conditions, upon which the maneuvering is based, are varied:

(a) Calm weather—wind 10 knots or less, calm sea;

(b) No current;

(c) Deep water conditions—water depth twice the vessel's draft or greater;

(d) Clean hull;

(e) Intermediate drafts or unusual trim.

(e) Illuminated magnetic compass at main steering station with compass deviation table, graph or record.

(f) Gyro-compass with illuminated gyro—repeater at main steering station.

(g) Marine radar system for surface navigation.

(h) Efficient echo sounding device.

(i) Illuminated rudder angle indicators or repeaters that are:

(1) Located in the wheelhouse;

(2) Arranged so that they can easily be read from any position on the bridge.

(j) Illuminated indicator showing the operating mode of that device when vessel is equipped with auxiliary maneuvering devices.

Schedule II [Amended]

27. Schedule II, "Table of Speeds", is amended by substituting "Buoy 162" for "Light 162" both in Column II of Item 9 and in Column I of Item 10, Schedule II is further amended by deleting Item 14 and renumbering Items 15 and 16 as Items 14 and 15, respectively.

Schedule III [Amended]

28. Schedule III, "Calling-in Table", is amended by deleting Items 25, 26, 27, 28, and 52 and by renumbering the remaining Items accordingly. In addition, the new Item 49 will be amended under the column entitled "Message content" to read as follows:

C.I.P. and checkpoint	Station to call	Message content
	DOWNBOUND VESSELS	
49. St. Lambert Lock to C.I.P. 2—leaving Sector 1.	Seaway Beauharnois Ch.14	1. Name of vessel. 2. Location. 3. Confirm harbor or river pilot requirement—St. Lambert. 4. Montreal Harbor berth number (if applicable)

29. A new Appendix I will be added as follows:

Appendix I.—Vessel Dimensions

Bascule bridges are located at a number of Seaway locks. These bridges, when fully raised, overhang the lock wall at a given point, thereby limiting:

(a) the height of a vessel above the water line measured at the vessel's side; and

(b) the height of other structures which are located near the sides of the vessel, such as derricks, crosstrees, antennas, etc.

The following block diagram shows the limits beyond which a vessel's hull or superstructure cannot extend *when the vessel is alongside the lock wall.* The limits in the block diagram are based on vessels with a maximum allowable beam of 23.16m (76 feet). For vessels with a beam width less than this, and whose dimensions exceed the limits of the block diagram (measured with the vessel alongside the lock wall), a special permission to transit must be obtained. (Accurate measurements may be required before such permission is granted).

Caution: Masters must take into account the ballast draft of the vessel when verifying the maximum permissible dimensions.

(68 Stat. 92–97, 33 U.S.C. § 981–990, as amended, and sections 4, 5, 6 and 7 of SEC. 2 of Pub. L. 95–474, 92 Stat. 1471.)

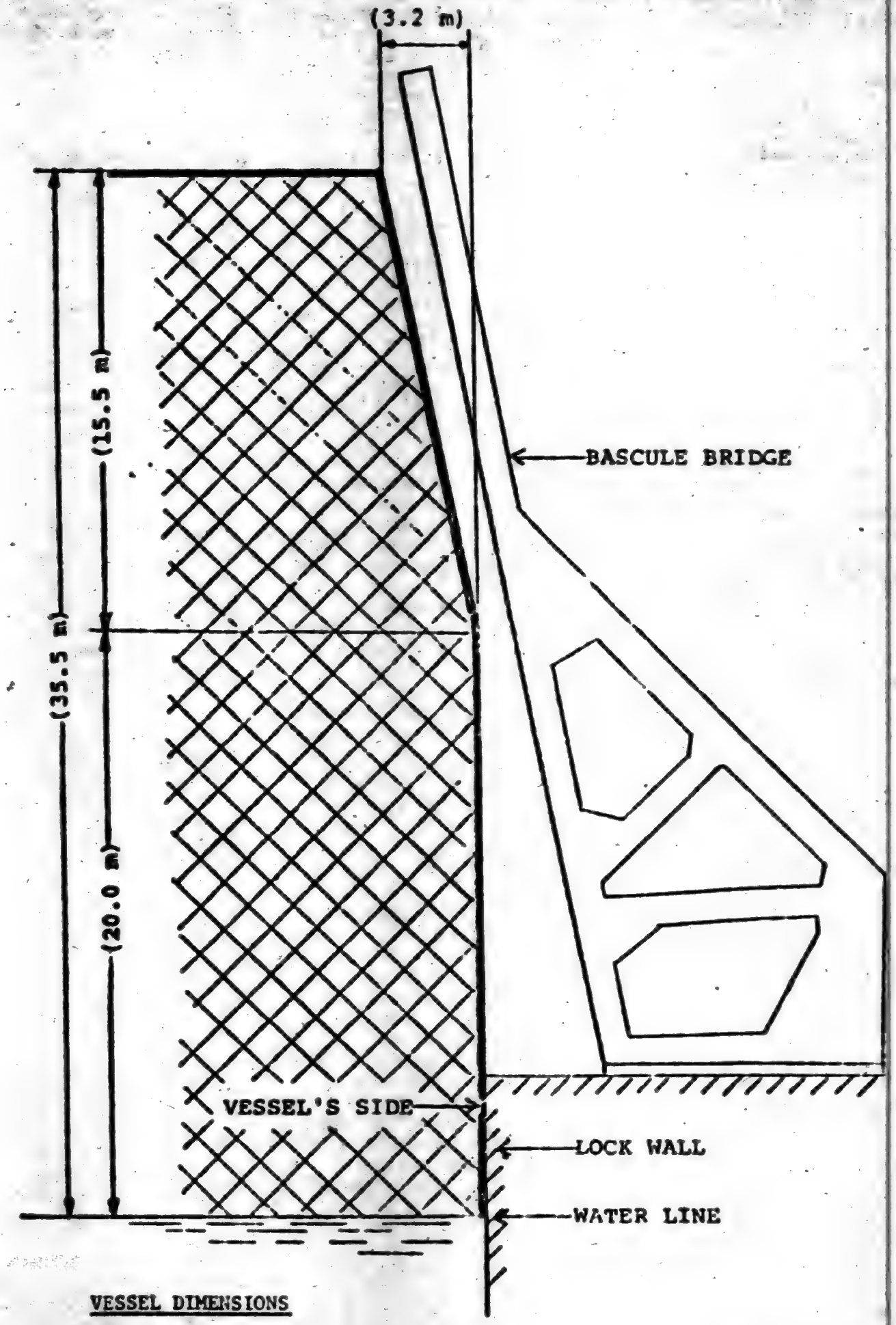
Issued at Massena, New York on June 11, 1979.

Saint Lawrence Seaway Development Corporation.

William H. Kennedy,

Acting Administrator.

BILLING CODE 4910-61-M



VESSEL DIMENSIONS

Block Diagram

N.B. Not to scale

[FR Doc. 79-18959 Filed 6-18-79; 8:45 am]
BILLING CODE 4910-61-C

ENVIRONMENTAL PROTECTON AGENCY

[40 CFR Ch. I]

[FRL 1252-6]

Motor Vehicle Pollution Control; Waiver of Carbon Monoxide Emission Standards, Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public hearing to consider application for waiver of 1981 and 1982 model year light-duty vehicle emission standard for carbon monoxide (CO).

SUMMARY: General Motors Corporation (GM) has announced its intention to submit on June 22, 1979, an application requesting the Administrator to waive the effective date of the 1981 and 1982 CO standard under section 202(b)(5) of the Clean Air Act, as amended.

DATES: This notice announces that EPA will hold a public hearing in Washington, D.C. beginning on July 9, 1979, and continuing through July 13, 1979, if necessary, to consider GM's waiver application and any other manufacturers' applications received by June 29, 1979. Interested parties also may submit written comments to the public docket on the waiver applications until July 23, 1979.

ADDRESS: All public portions of CO waiver applications and other relevant information are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday, at: U.S. Environmental Protection Agency, Central Docket Section (A–130), Room 2903 B Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460 (Docket Number EN–79–4).

FOR FURTHER INFORMATION CONTACT: Ms. Carolyn Blackstone, Mobile Source Enforcement Division (EN–340), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 755–0944.

SUPPLEMENTARY INFORMATION: Under section 202(b)(5)(A) of the Clean Air Act, as amended, 42 U.S.C. 7521(b)(5)(A) (1977) ("Act"), at any time after August 31, 1978, any manufacturer may file with the Administrator an application requesting the waiver of the effective date of the carbon monoxide (CO) emission standard applicable to any model of light-duty motor vehicles and engines manufactured by the applicant during model years 1981 and 1982. Section 202(b)(5)(C) requires the Administrator to issue a decision granting or denying such waiver within 60 days after receipt of the application and after public hearing. Guidelines for the submission of such waiver requests have been previously published in the Federal Register, 43 FR 47272, October 13, 1978.

Section 202(b)(1)(A) requires that emissions of CO from 1981 and later model year light-duty motor vehicles be reduced by 90% from 1970 CO emission standards. A CO emission standard of 3.4 grams per vehicle mile, determined to achieve such reduction and made applicable by regulation to 1981 and later model year light-duty vehicles, has been published in the Federal Register, 43 FR 37972, August 24, 1978. If the Administrator determines that a waiver from the CO standard of 3.4 grams per vehicle mile (gpm) should be granted, he must simultaneously with such determination prescribe by regulation CO emission standards to apply to those model vehicles or engines to which the waiver applies. Under section 202(b)(5)(B), the maximum CO level for which a waiver may be granted is 7.0 gpm.

Under section 202(b)(5)(C), the Administrator may grant such a waiver only if he finds that protection of the public health does not require attainment of the statutory CO standard of 3.4 gpm for those model years and vehicles for which the waiver is sought. In addition, a waiver may be ganted only if the Administrator determines that (1) such waiver is essential to the public interest or the public health and welfare of the United States, (2) all good faith efforts have been made to meet the established standards, (3) the applicant has established that effective control technology, processes, operating methods, or other alternatives are not available or have not been available with respect to the model in question for a sufficient period of time to achieve compliance prior to the effective date of such standards, taking into consideration costs, driveability, and fuel economy, and (4) studies and investigations of the National Academy of Sciences and other information available to him have not indicated that technology, processes, or other alternatives are available to meet such standards.

In order for a waiver to be granted, the Administrator must detemine that the applicant has provided information sufficient to satisfy each of the waiver criteria set out above. However, the Administrator is not required to make his determination solely on the record of the hearing, and may consider any additional information as well. All information considered by the Administrator will be included in the public docket.

GM has announced its intention to submit a CO waiver application on June 22, 1979. A decision on GM's application then would have to be made on or before August 21, 1979. A public hearing on this application and on applications received from any other motor vehicle manufacturers on or before June 29, 1979, will be held in the General Services Administration Auditorium, 7th and D Streets, S.W., Washington, D.C., commencing at 9 a.m. on July 9, 1979. EPA encourages all manufactures planning to request a CO waiver to file their applications by the June 29 deadline so that all of the applications can be reviewed in one consolidated proceeding. *Procedures.* The public hearing is intended to provide an opportunity for interested persons to state their views or arguments, or to provide pertinent information concerning the action requested of the Administrator by the applicant. Any person desiring to make an oral statement at the hearing should file a notice of such intention and 10 copies of the proposed testimony and other relevant material in the Central Docket Section at the address listed above, not later than July 5, 1979. If feasible, at least 75 copies of such statement or material for the hearing record and for general circulation should be submitted to the Presiding Officer at the time of the hearing. In addition, any person may submit written questions at any time during the hearing to be propounded to the witnesses by the hearing panel to the extent practicable. Written statements and information may be filed in the public docket until July 23, 1979.

Under the subpoena authority of section 307(a)(1), appropriate representatives of the applicants will be required to attend the hearings and respond to questions propounded by the hearing panel. Moreover, representatives from other groups, in particular other automobile manufacturers, may also be subpoenaed to produce relevant information and provide testimony before the hearing panel. Section 307(a)(1) also authorizes the administration of oaths to testifying parties.

The Presiding Officer will have the responsibility for maintaining order, excluding irrelevant or repetitious material, scheduling presentations, directing that corroborative material be submitted in writing and, to the extent possible, notifying participants of the time at which they may appear.

Presentations by the participants should be addressed exclusively to the following considerations:

1. Whether protection of the public health requires attainment of the established CO standard of 3.4 gpm for the model years to which the waiver would apply.

2. Whether the requested waiver is essential to the public interest or public health and welfare of the United States.

3. Whether the applicants have made all good faith efforts to meet the CO standard for those model years and vehicles for which the waiver is sought.

4. Whether effective control technology, processes, operating methods, or other alternatives are not available or have not been available with respect to the model in question for a sufficient period of time to achieve compliance prior to the effective date of such standards, taking into consideration costs, driveability, and fuel economy.

5. Whether studies and investigations of the National Academy of Sciences and other information indicate that technology, processes or other alternatives are available to meet such standards.

6. The level of CO emissions, not to exceed 7.0 gpm, which could be met in each of the model years for which a waiver is requested and which would reflect the greatest degree of emission control achievable by use of available technology, giving appropriate consideration to the cost of applying such technology within the available time period.

A verbatim record of the proceedings will be made and will be available for public inspection. A copy of the transcript may be requested from the reporter during the hearing and will be made at the expense of the person so requesting. Copies of other documents in the public record also may be obtained as provided in 40 C.F.R. Part 2.

Dated: June 14, 1979.

B. R. Jackson,

Acting Assistant Administrator for Enforcement.

[FR Doc. 79-18252 Filed 6-18-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Part 52]

[FRL 1252-2]

State and Federal Administrative Orders Revising the Michigan State Implementation Plan

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed Rule; Proposed Disapproval of Revision.

SUMMARY: Proposed revisions to the Michigan State Implementation plan (SIP) were submitted by the Michigan Department of Natural Resources (MDNR), pursuant to section 110 of the Clean Air Act. These revisions pertain to emission limitations for sulfur dioxide and particulate matter for the chemical producing complex of the Dow Chemical Company in Midland, Michigan. These revisions seek approval of the continued use by Dow of a Supplementary Control System (SCS) for control of emissions from the complex in order to maintain satisfactory air quality. The U.S. Environmental Protection Agency is proposing to disapprove these revisions.

DATE: Comments must be received on or before July 19, 1979.

ADDRESS COMMENTS TO: John McGuire, Regional Administrator, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, Attention: Air Programs Branch.

Copies of the proposal are available for public inspection during normal business hours at the above address and at: Michigan Air Pollution Control Commission, General Office Building-State Secondary Complex, 7150 Harris Drive, 3rd Floor, Lansing, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Joel Morbito, Michigan State Specialist, Air Programs Branch, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604 (312) 353-2205.

SUPPLEMENTARY INFORMATION: Dow Chemical, U.S.A.—Michigan Division, operates a large chemical manufacturing plant located in Midland, Michigan. The Company burns coal, oil and gas in its power plants at these facilities, with a huge potential for exceeding air quality standards in the Midland area. Currently, the Michigan Implementation Plan provides that Dow-Michigan Division achieve compliance with sulfur dioxide emission standards by July 1, 1975. See 40 CFR Part 52.1175(d). This plan provides that Dow-Michigan Division achieve compliance with particulate emission standards by April 1, 1975. See 40 CFR Part 52.1175(e). As a means of complying with Michigan's emission regulations which are designed to meet the national ambient air quality standards (NAAQS), Dow entered into a Consent Order with the Michigan Air Pollution Control Commission (MAPCC) on May 17, 1974. The 1974 Consent Order provided that Dow could temporarily operate a Supplementary Control System (SCS) in order to meet NAAQS for sulfur dioxide. SCS are systems which limit the rate of pollutant emissions during periods when meteorological conditions are conducive to ground level concentrations in excess of the NAAQS. SCS differ from the traditional technique for pollution control, namely constant control devices. Constant control devices eliminate the amount of pollutant emitted into the atmosphere. The 1974 Consent Order further provided that so long as NAAQS for sulfur dioxide were met, Dow was granted a variance until July 1, 1980 from the emission regulations for air pollutants. This Order was never approved by USEPA as a revision to the Michigan Implementation Plan. The 1974 Consent Order contemplated retirement of Dow's fuel burning power plants July 1, 1980. When it became clear that a nuclear power plant would not be completed in time to supply Dow by July 1, 1980, Dow and the MAPCC devised a new plan designed to meet emission regulations by the time of the expiration of the variance on July 1, 1980.

On July 21, 1977, a new Consent Order between Dow and the MAPCC became effective. U.S. EPA never approved this Order as a revision to the Michigan Implementation Plan. This Consent Order provided that Dow would continue to operate an SCS until July 1, 1980, after which time coal would be eliminated as a fuel in the Dow power plants. It was determined that fuel conversion from coal to low-sulfur oil was a feasible means of reducing emissions at the complex to the required levels.

On August 7, 1977, shortly after the July, 1977 Consent Order between Dow and MAPCC, the Clean Air Act was amended. Section 123 of the Act now provides:

(a) The degree of emission limitation required for control of any air pollutant under an applicable implementation plan under this title shall not be affected in any manner by—

(1) so much of the stack height of any source as exceeds good engineering practice (as determined under regulations promulgated by the Administrator), or

(2) any other dispersion technique. . . .

(b) For the purpose of this section, the term "dispersion technique" includes any intermittent or supplemental control of air pollutants varying with atmospheric conditions. 42 U.S.C. § 7423.

In its request to revise its State Implementation Plan, Michigan permits Dow to continue to burn mostly coal and operate the SCS until December 31, 1982.

The information submitted and all other relevant material have been

evaluated. Operation of the Supplementary Control System by Dow violates the Clean Air Act prohibition of dispersion techniques. It is proposed, therefore, that the request of the Michigan Department of Natural Resources to extend the use of SCS at Dow Chemical, U.S.A., Midland, Michigan, and thereby revise the Michigan Implementation Plan, be disapproved.

Interested persons are invited to submit written comments on this proposed action. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in inspecting them.

Dated: June 6, 1979.

John McGuire,

Regional Administrator.

[FR Doc. 79-19070 Filed 6-18-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Part 52]

[FRL 1251-3]

Mississippi: Proposed 1979 Implementation Plan Revisions

AGENCY: U.S. Environmental Protection Agency, Region IV.

ACTION: Proposed rule.

SUMMARY: EPA today proposes approval action on the State Implementation Plan (SIP) revision which the Mississippi Air and Water Pollution Control Commission submitted pursuant to requirements of Part D of the Clean Air Act Amendments (CAAA) of 1977 with regard to nonattainment areas. EPA has found all portions of the revisions to be approvable. Mississippi has one designated nonattainment area for total suspended particulate (TSP), in Jones County, (Laurel) Mississippi. On March 7, 1979, Mississippi formally submitted a SIP revision for the nonattainment area.

The public is invited to submit written comments on these proposed actions.

DATES: To be considered, comments must be submitted on or before July 19, 1979. A thirty-day comment period is being used to enable publication of final action on the SIP revisions before the July 1, 1979, statutory deadline in Section 172 of the CAAA, because a thirty day comment period was provided when this SIP revision was announced by the State, and because this SIP revision is not complex.

ADDRESSES: Written comments should be addressed to Melvin Russell of EPA Region IV's Air Programs Branch (See EPA Region IV address below). Copies of the materials submitted by Mississippi may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street S.W., Washington, DC. 20460.

Library, Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30308.

Mississippi Air and Water Pollution Control Commission, Robert E. Lee Building, Jackson, Mississipi 39205.

FOR FURTHER INFORMATION CONTACT: Mr. Melvin Russell, Air Programs Branch, EPA Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30308, 404/881-2864.

SUPPLEMENTAL INFORMATION:

Background: In accordance with the Clean Air Act, as amended August, 1977, EPA, on March 3, 1978, published in the **Federal Register** a listing of States' attainment status relative to the National Ambient Air Quality Standards. Jones County (Laurel), Mississippi was designated nonattainment for TSP.

Following notice and public hearing in conformity with the requirements of 40 CFR 51.4, the Mississippi Air & Water Pollution Control Commission on January 23, 1979, adopted a revision to the SIP.

The revision represents the State's plan for attaining and maintaining the TSP National Ambient Air Quality Standard (NAAQS) in Jones County. This revision has been reviewed in light of the CAAA of 1977, EPA regulations, and additional guidance materials. The criteria utilized in this review were detailed in the **Federal Register** on April 4, 1979 (44 FR 20372) and need not be repeated in detail here.

General Discussion: Section 172(b)(1) through (11) of the CAAA of 1977 contains the requirements for nonattainment State Implementation Plans. The following is a listing of these requirements accompanied by a discussion of the contents and adequacies of the Mississippi submittal.

172(b)(1) [SIP provisions shall] be adopted by the State (or promulgated by the Administrator under Section 110(c)) after reasonable notice and public hearing;

The plan revision was adopted by the Mississippi Air and Water Pollution Control Commission on January 23, 1979. Public hearings were held in Jackson and Laurel, Mississippi on December 18, 1978, following 30 days public notice.

172(b)(2) [SIP provisions shall] provide for the implementation of all reasonably available control measures as expeditiously as practicable;

The revision provides that reasonably available control measures have been adopted and will be implemented as expeditiously as practicable . Enforceable compliance schedules and a demonstration of attainment before December 31, 1982, was in the submittal.

172(b)(3) [SIP provisions shall] require, in the interim reasonable further progress (as defined in Section 171(1)) including such reduction in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT);

The revision includes a reasonable further progress (RFP) table and graph, enforceable RACT measures which are the basis for numbers used in the table, and a description of reductions already achieved. The RFP schedule provides for attainment of primary and secondary TSP standards before December 31, 1982, including a margin for growth.

172(b)(4) [SIP provisions shall] include a comprehensive, accurate, current inventory of actual emissions from all sources (as provided by rule of the Administrator) of each such pollutant for each such area which is revised and resubmitted as frequently as may be necessary to assure that the requirements of paragraph (3) are met and to assess the need for additional reductions to assure attainment of each standard by the date required under subsection (a);

The revision includes a comprehensive and accurate inventory of actual emissions for the base year 1975. This base year was used because no major changes in emissions affecting air quality have taken place since then. EPA finds the 1975 inventory acceptable for the purpose of developing the plan. A projected emissions inventory for 1982, based on allowable emissions, was also submitted. The Plan provides that Mississippi shall report to EPA annually regarding progress toward attaining standards in the area. These reports will include update inventories of actual emissions from all TSP sources in the area, as necessary.

172(b)(5) [SIP provisions shall] expressly identify and quantify the emissions, if any, of any such pollutant which will be allowed to result from the construction and operation of major new or modified stationary sources for each such area;

Emissions from the construction and operation of major new or modified stationary sources will be permitted only if emissions from the new or modified source, combined with existing emissions, do not exceed the total emissions allowed by the Plan's RFP schedule. (See item (6) below.) Identification and quantification of emissions will be accomplished by means of the permitting process.

172(b)(6) [SIP provisions shall] require permits for the construction and operation of new or modified major stationary sources in accordance with Section 173 (relating to permit requirements);

The State requires permits for the construction and operation of new or modified major stationary sources in accordance with Section 173 (Air Emission Equipment Regulation APC–S–2). Briefly this regulation requires that any construction and operation of new or modified major stationary sources meet the following criteria before permits to construct and operate are issued:

(A) Achieve the lowest achievable emission rate (LAER) of particulate matter.

(B) Emissions from the proposed new facility combined with existing emissions may not exceed the total allowable emissions projected in the Plan's RFP schedule.

(C) All major sources located in the State owned by or under common ownership with the owner of the proposed new sources must be in compliance with all applicable State and Federal air pollution control regulations or on a schedule of compliance.

172(b)(7) [SIP provisions shall] identify and commit the financial and manpower resources necessary to carry out the plan provisions required by this subsection;

The State has identified and committed adequate financial and manpower resources necessary to carry out the provisions of this SIP provision.

172(b)(8)[SIP provisions shall] contain emission limitations, schedules of compliance and such other measures as may be necessary to meet the requirements of this section;

The Plan revision contains emission limitations which are in the form of adopted permit conditions, schedules of compliance and other necessary measures to demonstrate attainment by December 31, 1982. Because of the limited number of sources impacting the nonattainment area, the adopted permit conditions for the sources, which will be made part of the SIP, will be the regulatory basis for achieving the emission reductions. A significant amount of the required reductions has already been achieved.

The most significant emission reduction required by the plan is to require Masonite Corporation to cease all air emissions from woodchip pneumatic nozzles and cyclone WR–4 and that the wood chip pnuematic conveyance be replaced by a mechanical conveyance system by September 1, 1979.

1(b)(9)[SIP provisions shall] contain evidence of public, local government, and State legislative involvement and consultation in accordance with Section 174 (relating to planning procedures) and include (A) an identification and analysis of the air quality, health, welfare, economic, energy, and social effects of the plan provisions required by this subsection and of the alternatives considered by the State, and (B) a summary of the public comment on such analysis;

Consultation with the public, local government and State legislative involvement, and consultation in accordance with section 174 of the CAAA is evidenced by a submittal of public hearing transcripts, and copies of records from the January 23, 1979, Commission meeting when the plan was formerly adopted. Section 14 of the plan addresses the air quality, health, welfare, economic, energy, and social effects of the plan revision. The plan indicates positive effects for health, welfare, economics, energy, and air quality, and no appreciable social effects.

172(b)(10)[SIP provisions shall] include written evidence that the State, the general purpose local government or governments, or a regional agency designated by general purpose local governments for such purpose, have adopted by statute, regulation, ordinance, or other legally enforceable document, the necessary requirements and schedules and timetables for compliance, and are committed to implement and enforce the appropriate elements of the plan;

In the State of Mississippi, the Air and Water Pollution Control Commission has the full statutory authority for enforcing the SIP revisions. The Mississippi Air and Water Pollution Control Commission adopted the necessary requirements, schedules, and timetables for compliance, and is committed to implement and enforce the appropriate elements of the Plan (See items (6), (7) and (8) above).

172(b)(11)[SIP provisions shall] in the case of plans which make a demonstration pursuant to paragraph (2) of subsection (a)—

(A) establish a program which requires, prior to issuance of any permit for construction or modification of a major emitting facility, an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification;

(B) establish a specific schedule for implementation of a vehicle emission control inspection and maintenance program; and

(C) identify other measures necessary to provide for attainment of the applicable national ambient air quality standard not later than December 31, 1987.

This requirement is not applicable to Mississippi's 1979 plan revision submittal.

Proposed Action

Based on the foregoing, EPA is proposing to approve fully the SIP under Part D of the CAAA, as it relates to the attainment of TSP standard in Jones County (Laurel) Mississippi.

(Sections 110 and 172 of the Clean Air Act [42 U.S.C. 7410 and 7502])

Dated: May 18, 1979.

Sanford W. Young,

Acting Regional Administrator.

[FR Doc. 79–19072 Filed 6–18–79; 8:45 am]

BILLING CODE 6560–01–M

[40 CFR Part 60]

[FRL 1095–1]

Review of Standards of Performance for New Stationary Sources: Nitric Acid Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Review of standards.

SUMMARY: EPA has reviewed the standard of performance for nitric acid plants. The review is required under the Clean Air Act, as amended August 1977. The purpose of this notice is to announce EPA's intent not to undertake revision of the standards at this time.

DATES: Comments must be received on or before August 20, 1979.

ADDRESSES: Send comments to the Central Docket Section (A–130), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Attention: Docket No. A–79–06. The document "A Review of Standards of Performance for New Stationary Sources—Nitric Acid Plants" (EPA report number EPA–450/3–79–013) is available upon request from Mr. Robert Ajax (MD–13), Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Ajax, (919) 541–5271.

SUPPLEMENTARY INFORMATION:

Background

Prior to the promulgation of the NSPS in 1971, only 10 of the existing 194 weak nitric acid (50 to 60 percent acid) production facilities were specifically designed to accomplish NO_x abatement.

Without control equipment, total NO_x emissions are approximately 3,000 ppm in the stack gas, equivalent to a release of 21.5 kg/Mg (43 lb/ton) of 100 percent acid produced.

At the time of the NO_x New Source Performance Standard (NSPS) promulgation there were no State or locat NO_x emission abatement regulations in effect in the U.S. which applied specifically to nitric acid production plants. Ventura County, California, had enacted a limitation of 250 ppm NO_x to govern nitric acid plants as well as steam generators and other sources.

In August of 1971, the EPA proposed a regulation under Section 111 of the Clean Air Act to control nitrogen oxides emissions from nitric acid plants. The regulation, promulgated in December 1971, requires that no owner or operator of any nitric acid production unit (or "train") producing "weak nitric acid" shall discharge to the atmosphere from any affected facility any gases which contain nitrogen oxides, expressed as NO_2, in excess of 1.5 kg per metric ton of acid produced (3.0 lb per ton), the production being expressed as 100 percent nitric acid; and any gases which exhibit 10 percent opacity or greater.

The Clean Air Act Amendments of 1977 require that the Administrator of the EPA review and, if appropriate, revise established standards of performance for new stationary sources at least every 4 years [Section 111(b)(1)(B)]. This notice announces that EPA has completed a review of the standard of performance for nitric acid plants and invites comment on the results of this review.

Findings

Industry Growth Rate

The average rate of production increase for nitric acid fell from 9 percent/year in the 1960–1970 period to 0.7 percent from 1971 to 1977. The decline in demand for nitric acid parallels that for nitrogen-based fertilizers during the same period.

Nitric acid production shows an increasing trend toward plant/unit location and growth in the southern tier of States. In 1971, 48 percent of the national production was in the south. This figure increased to 54 percent in 1976.

About 50 percent of plant capacity in 1972 consisted of small to moderately sized units (50 to 300-ton/day capacity). Because of the economies of scale some producers are electing to replace their existing units with new, larger units. New nitric acid production units have been built as large as 910 Mg/day (1000 tons/day). The average size of new units is approximately 430 Mg/day (500 tons/day).

Control Technology

A mixture of nitrogen oxides (NO_x) is present in the tail gas from the ammonia oxidation process for the production of nitric acid. In modern U.S. single pressure process plants producing 50 to 60 percent acid, uncontrolled NO_x emissions are generated at the rate of about 21 kg/Mg of 100 percent acid (42 lb/ton) corresponding to approximately 3000 ppm NO_x (by volume) in the exit gas stream. The catalytic reduction process which was considered the best demonstrated control technology at the time the present standard was established has been largely supplanted by the extended absorption process as the preferred control technology for NO_x emissions from new nitric acid plants. The latter control system appears to have become the technology of choice for the nitric acid industry due to the increasing cost and danger of shortages of natural gas used in the catalytic reduction process. Since the energy crisis of the mid-1970's, over 50 percent of the nitric acid plants that had come on stream through mid-1978 and almost 90 percent of the plants scheduled to come on stream through 1979 use the extended absorption process for NO_x control.

Levels Achievable with Demonstrated Control Technology

All 14 of the new or modified operational nitric acid production units subject to NSPS and tested showed compliance with the current standard of 1.50 kg/Mg (3 lb/ton). The average of seven sets of test data from catalytic reduction-controlled plants is 0.22 kg/Mg (0.44 lb/ton), and the average of six sets of test data from extended absorption-controlled plants is 0.91 kg/Mg (1.82 lb/ton). All of the plants tested were in compliance with the opacity standard. It appears that the extended absorption process, while it has become the preferred control technology for NO_x control, cannot control these emissions as efficiently as the catalytic reduction process. In fact, over half of the test results for extended absorption were within 20 percent of the NO_x standard. The extended absorption process thus appears to have limitations with respect to NO_x control, and compares unfavorably with catalytic reduction in its ability to reduce NO_x emissions much below the present NSPS level.

Economic Considerations Affecting the NO_x NSPS

The annualized costs of the extended absorption process and the catalytic reduction NO_x control methods appear to be quite comparable. Capital cost for the extended absorption process is appreciably higher than that for catalytic reduction. However, this is offset by the higher operating cost of the latter system which requires increasingly costly natural gas.

Conclusions

Based on the above findings, EPA concludes that the existing standard of performance is appropriate at this time. While lower emission levels are attainable, the energy penalty and shortages of natural gas are concluded to be a basis for retaining the current standard of performance under Section 111 of the Clean Air Act. However, the recent deregulation will alter the price and availablity of natural gas, and provides a basis for optimism about its future availability for process and pollution control purposes. The Agency, therefore, plans to continue to assess the standard as the effect of deregulation materializes. Moreover, it should be noted that for the purpose of attaining and maintaining national ambient air quality standards and prevention of significant deterioration requirements, State Implementation Plan new source reviews may in come cases require greater emission reductions than those required by the standards of performance for new sources.

Public participation

All interested persons are invited to comment on this review, the conclusions, and EPA's planned action. Comments should be submitted to: Mr. Don Goodwin (MD–13), Emission Standards and Engineering Division, U.S. Environmenal Protection Agency, Research Triangle Park, North Carolina 27711.

Dated: June 11, 1979.

Douglas M. Costle,

Administrator.

[FR Doc. 79-19002 Filed 6-18-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Part 65]

[FRL 1250-7]

State and Federal Administrative Orders Permitting a Delay in Compliance With State Implementation Plan Requirements; Proposed Delayed Compliance Order for Ashland Oil, Inc.

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: U.S. EPA proposes to issue an Administrative order to Ashland Oil, Inc. The Order requires the Company to bring its volatile organic material loading rack into compliance with the Indiana Regulation APC-15, part of the federally approved Indiana State Implementation Plan (SIP). Because the Company is unable to comply with this regulation at this time, the proposed Order would establish an expeditious schedule requiring final compliance by July 1, 1979. Source compliance with the Order would preclude suits under the Federal enforcement and citizen suit provision of the Clean Air Act (Act) for violation of the SIP regulation covered by the Order.

The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on U.S. EPA's proposed issuance of the Order.

DATES: Written comments must be received on or before the thirtieth day from the date of this notice and requests for a public hearing must be received on or before the fifteenth day from the date of this notice. All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held after twenty-one days' prior notice of the date, time, and place of the hearing has been given in this publication.

ADDRESSES: Comments and requests for a public hearing should be submitted to Director, Enforcement Division, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Material supporting the Order and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Mr. Pierre Talbert, Attorney, Enforcement Division, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, at (312) 353-2082.

SUPPLEMENTARY INFORMATION: Ashland Oil, Inc. owns a volatile organic material loading rack at Clarksville, Indiana. The proposed order addresses emissions from this facility, which is subject to APC-15 of the Indiana Implementation Plan. The regulation limits the emissions of volatile organic materials and is part of the federally approved Indiana State Implementation Plan. The Order requires final compliance with the regulation by July 1, 1979, and the source has consented to its terms.

The proposed Order satisfies the applicable requirements of Section 113(d) of the Act. If the Order is issued, source compliance with its terms would preclude further U.S. EPA enforcement action under Section 113 of the Act against the source for violations of the regulation covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provisions of the Act (Section 304) would be similarly precluded.

Comments received by the date specified above will be considered in determining whether U.S. EPA should issue the Order. Testimony given at any public hearing concerning the Order will also be considered. After the public comment period and any public hearing, the Administrator of U.S. EPA will publish in the **Federal Register** the Agency's final action on the Order in 40 CFR Part 65.

Dated: May 31, 1979.

John McGuire,

Regional Administrator, Region B

1. The text of the Order reads as follows:

U.S. Environmental Protection Agency, Region V

In the matter of: Ashland Oil, Inc., Clarksville Terminal, Clarksville, Indiana. Proceeding Pursuant to Section 113(d) of the Clean Air Act, as Amended [42 U.S.C. Section 7413(d)]. Order No. EPA-5-79.

Introduction

This Order is issued this date pursuant to Sections 113(a), 113(d), and 114 of the Clean Air Act, as amended, 42 U.S.C. Section 7401 *et seq.* (hereafter "Act") and contains a schedule for compliance, interim control requirements, and reporting requirements. Public notice, opportunity for a public hearing, and thirty (30) days notice to the State of Indiana have been provided pursuant to Section 113(d)(1) of the Act.

Findings

1. On January 23, 1979, the United States Environmental Protection Agency (hereafter "U.S. EPA" or "Agency") issued a Notice of Violation (hereafter "NOV") to Ashland Oil, Inc. (hereafter Ashland) pursuant to Section 113(a)(1) of the Act, 42 U.S.C. 7413(a)(1), for alleged violation of Indiana Air Pollution Control Regulation APC-15. The NOV cited Ashland's Clarksville, Indiana Terminal located at 214 Center Street, Clarksville, Indiana.

2. Indiana Air Pollution Control Regulation APC-15 creates certain requirements applicable to facilities which load volatile organic materials in specified quantities into certain tank trucks, trailers, or railroad tank cars.

3. Indiana Air Pollution Control Regulation APC-15 is part of the State of Indiana Implementation Plan, which was created under Section 110 of the Act, 42 U.S.C. 7410.

4. In satisfaction of Section 113(a)(4) of the Act, 42 U.S.C. 7413(a)(4), an opportunity to confer with the Administrator's delegate was extended to Ashland in the NOV, and a conference was held on March 5, 1979.

5. Following the March 5, 1979, conference, Ashland, by informal discussion, stated its intent to control vapor emissions with a vapor recovery and disposal system at its Clarksville, Indiana Terminal by July 1, 1979.

6. It has been determined by the U.S. EPA that Ashland Oil, Inc. is unable to immediately comply with Indiana Air Pollution Control Regulation APC-15 of the State of Indiana Implementation Plan.

7. It has been determined by U.S. EPA that violations of Indiana Air Pollution Control Regulation have continued beyond the 30th day after the date of notification by the Director, Enforcement Division.

8. Ashland Oil, Inc. does not admit to a violation of Indiana Air Pollution Control Regulation APC-15 and its consent as hereinafter set forth is a demonstration of its good faith to avoid protracted and costly administrative and judicial proceedings.

Order

After a thorough investigation of all relevant facts, including public comment, it is determined that the schedule for compliance set forth in this Order is as expeditious as practicable, and that the terms of this Order comply with Section 113(d) of the Act. Therefore, it is hereby agreed and Ordered that:

1. Ashland Oil, Inc. will achieve compliance by July 1, 1979, with the State of Indiana Implementation Plan Air Pollution Control Regulation APC-15 as approved by the U.S. EPA in the **Federal Register** on May 14, 1973, which requires the installation of a vapor collection and recovery system or its equivalent at the volatile organic material loading rack associated with its Clarksville, Indiana Terminal in accordance with the following schedule:

a. March 26, 1979—Order Necessary Equipment.
b. May 28, 1979—Start Construction.
c. June 15, 1979—Equipment Delivery.
d. June 29, 1979—Complete Construction.
e. June 30, 1979—Unit Start-Up.
f. July 1, 1979—Achieve and Demonstrate Compliance.

2. Ashland Oil, Inc. shall adopt and implement operation and maintenance procedures to maximize the control efficiency of the vapor recovery and disposal unit and

submit a copy of such procedures to the U.S. EPA by June 1, 1979.

3. Ashland Oil, Inc. shall continue to use overhead loading submerged fill as the best practicable interim system of emission reduction at its Clarksville, Indiana Terminal loading facility above mentioned so as to minimize hydrocarbon emissions, avoid any imminent and substantial endangerment to the health of persons, and minimize product spillage.

4. Ashland Oil, Inc. shall comply with the following emission monitoring and reporting on or before the dates specified below:

a. *Emission Monitoring*

(1). Ashland Oil, Inc. shall, beginning as soon as reasonably practicable, maintain a record of the quantity of volatile organic material which passes through the Clarksville, Indiana Terminal.

(2). Ashland Oil, Inc. shall, immediately following demonstrated compliance, maintain a record of any malfunctions of the vapor recovery and disposal unit (including the reasons for such malfunctions) and the down time of the flare oxidation unit, whether caused by malfunction or other causes.

b. *Reporting Requirements*

(1). No later than ten (10) days after any date for achievement of an incremental step specified in this Order, Ashland Oil, Inc. shall notify U.S. EPA in writing of its compliance or noncompliance with the requirement.

If delay is anticipated in meeting any requirement contained in this Order, Ashland Oil, Inc. shall immediately notify U.S. EPA in writing of the anticipated delay and reasons for the delay. Notification to U.S. EPA of an anticipated delay does not excuse the delay.

(2). Beginning three months after the date for achievement of the first increment of progress specified in this Order, Ashland Oil, Inc. shall submit a status report to U.S. EPA detailing the progress made during that quarter and the information required in Section 4(a) above. These reports shall be submitted on a quarterly basis until July 1, 1980.

(3). All notifications to U.S. EPA under this Order shall be made to Chief, Air Compliance Section, Enforcement Division, U.S. EPA, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 353–2000. A copy of all submissions shall be made to the State of Indiana.

5. Ashland Oil, Inc. is hereby notified that its failure to achieve final compliance by July 1, 1979, at its Clarksville, Indiana Terminal loading facilities above mentioned may result in a requirement to pay a noncompliance penalty in accordance with Section 120 of the Act, 42 U.S.C. 7420. In the event of such failure, Ashland will be formally notified, Pursuant to Section 120(b)(3), 42 U.S.C. 7420(b)(3), and any regulations promulgated thereunder, of its noncompliance.

6. This order shall be terminated in accordance with Section 113(d)(8) of the Act, if the Administrator or his delegate determines on the record, after notice and hearing, that an inability to comply with Indiana Air Pollution Control Regulation APC–15 of the Indiana Implementation Plan no longer exists.

7. Violation of any requirement of this Order may result in one or more of the following actions:

a. Enforcement of such requirement pursuant to Section 113(a), (b), or (c) of the Act, 42 U.S.C. 7413(a), (b) or (c).

b. Revocation of this Order, after notice and opportunity for a public hearing, and subsequent enforcement of Indiana Implementation Plan Air Pollution Control Regulation APC–15 in accordance with the preceding paragarph.

c. If such violation occurs on or after July 1, 1979, notice of noncompliance and subsequent action pursuant to section 120 of the Act.

8. During the period of this Order, no Federal enforcement action pursuant to Section 113 of the Act, and no action under Section 304 of the Act shall be pursued where Ashland is in compliance with the terms of this Order.

9. Nothing herein shall be construed to be a waiver by the Administrator of any rights or remedies under the Act, including but not limited to Section 303 of the Act, 42 U.S.C. 7603.

10. The provisions of this Delayed Compliance Order shall apply and be binding upon Ashland Oil, Inc., its officers, directors, agents, servants, employees, and any successors in interest; in addition, the provisions of this Delayed Compliance Order shall apply to all persons, firms, and corporations having notice of the Delayed Compliance Order and who are or who will be acting in concert and privity with the Company or its officers, directors, agents, servants, employees, and any successors in interest. Ashland Oil, Inc. shall give notice of this Delayed Compliance Order to any successors in interest prior to transfer of ownership, and shall simultaneously verify to the United States Environmental Protection Agency, Region V, Enforcement Division, that such notice has been given.

11. This Order is effective upon final promulgation in the Federal Register.

Date: _____

_____

Administrator, U.S. Environmental Protection Agency.,

Ashland Oil, Inc. has reviewed this Order and agrees to its terms.

Date: _____

_____

Ashland Oil, Inc.

[FR Doc. 79-19008 Filed 6-18-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Part 65]

[FRL 1250–8]

Proposed Delayed Compliance Order for Continental Oil Co.

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: U.S. EPA proposes to issue an Administrative Order to Continental Oil Company. The Order requires the Company to bring its violatile organic materials loading rack into compliance with Indiana Air Pollution Control Regulation APC–15, part of the federally approved Indiana State Implementation Plan (SIP). Because the Company is unable to comply with this regulation at this time, the proposed Order would establish an expeditious schedule requiring final compliance by July 1, 1979. Source compliance with the Order would preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act (Act) for violation of the SIP regulation covered by the Order.

The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on U.S. EPA's proposed issuance of the Order.

DATES: Written comments must be received on or before the thirtieth day from the date of this notice and requests for a public hearing must be received on or before the fifteenth day from the date of this notice. All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held after twenty-one days prior notice of the date, time, and place of the hearing has been given in this publication.

ADDRESSES: Comments and requests for a pubic hearing should be submitted to Director, Enforcement Division, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Material supporting the Order and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Mr. Pierre Talbert, Attorney, Enforcement Division, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, at (312) 353–2082.

SUPPLEMENTARY INFORMATION: Continental Oil Company owns a volatile organic materials loading rack at Griffith, Indiana. The proposed Order addresses emissions from this facility, which is subject to Indiana Air Pollution Control Regulation APC–15 of the Indiana Implementation Plan. The regulation limits the emissons of volatile organic materials and is part of the federally approved Indiana State

Implementation Plan. The Order requires final compliance with the regulation by July 1, 1979, and the source has consented to its terms.

The proposed Order satisfies the applicable requirements of Section 113(d) of the Act. If the Order is issued, source compliance with its terms would preclude further U.S. EPA enforcement action under Section 113 of the Act against the source for violations of the regulation covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provisions of the Act (Section 304) would be similarly precluded. Comments received by the date specified above will be considered in determining whether U.S. EPA should issue the Order. Testimony given at any public hearing concerning the Order will also be considered. After the public comment period and any public hearing, the Administrator of U.S. EPA will publish in the Federal Register the Agency's final action on the Order in 40 CFR Part 65.

Dated: May 31, 1979.

John McGuire

Regional Administrator, Region V.

1. The text of the Order reads as follows:

U.S. Environmental Protection Agency—Region V

In the matter of: Continent Oil Company, Griffith Terminal, Griffith, Indiana. Proceeding pursuant to section 113(d) of the Clean Air Act, as amended [42 U.S.C. Section 7413(d)]. Order No. EPA-5-79-

Introduction

This Order is issued this date pursuant to Sections 113(a), 113(d), and 114 of the Clean Air Act, as amended, 42 U.S.C. Section 7401 *et seq.* (hereafter "Act") and contains a schedule for compliance, interim control requirements, and reporting requirements. Public notice, opportunity for a public hearing, and thirty (30) days notice to the State of Indiana have been provided pursuant to Section 113(d)(1) of the Act.

Findings

1. On December 19, 1978, the United States Environmental Protection Agency (hereafter "U.S. EPA" or "Agency") issued a Notice of Violation (hereafter "NOV") to Continental Oil Company (hereafter Conoco) pursuant to Section 113(a)(1) of the Act, 42 U.S.C. 7413(a)(1), for alleged violation of Indiana Air Pollution Control Regulation APC-15. The NOV cited Conoco's Griffith, Indiana Terminal located at 1600 West Avenue H, Griffith, Indiana.

2. Indiana Air Pollution Control Regulation APC-15 creates certain requirements applicable to facilities which load volatile organic materials in specifies quantities into certain tank trucks, trailers, or railroad tank cars.

3. Indiana Air Pollution Control Regulation APC-15 is part of the State of Indiana Implementation Plan, which was created under Section 110 of the Act, 42 U.S.C. 7410.

4. In satisfaction of Section 113(a)(4) of the Act, 42 U.S.C. 7413 (a)(4), an opportunity to confer with the Administrator's delegate was extended to Conoco in the NOV, and a conference was held on January 8, 1979.

5. Following the January 8, 1979, conference; Conoco, by informal discussions, stated its intent to control vapor emissions with a flare unit at its Griffith, Indiana Terminal by July 1, 1979.

6. It has been determined by the U.S. EPA that Continental Oil Company is unable to immediately comply with Indiana Air Pollution Control Regulation APC-15 of the State of Indiana Implementation Plan.

7. It has been determined by U.S. EPA that violations of Indiana Air Pollution Control Regulation have continued beyond the 30th day after the date of notification by the Director, Enforcement Division.

Order

After a thorough investigation of all relevant facts, including public comment, it is determined that the schedule for compliance set forth in this Order is as expeditious as practicable, and that the terms of this Order comply with Section 113(d) of the Act. Therefore, it is hereby agreed and Ordered that:

1. Continental Oil Company will achieve compliance by July 1, 1979, with the State of Indiana Implementation Plan Air Pollution Control Regulation APC-15 as approved by the U.S. EPA in the Federal Register on May 14, 1973, which requires the installation of a vapor collection and recovery systems or its equivalent at the volatile organic material loading rack associated with its Griffith, Indiana Terminal in accordance with the following schedule:

a. May 1, 1979—Order Necessary Equipment
b. May 29, 1979—Start Construction
c. June 15, 1979—Equipment Delivery
d. June 22, 1979—Complete Construction
e. June 28, 1979—Unit Start-Up
f. July 1, 1979—Achieve and Demonstrate Compliance

2. Continental Oil Company shall adopt and implement operation and maintenance procedures for the flare unit and submit a copy of such procedures to the U.S. EPA by August 1, 1979.

3. Continental Oil Company shall continue to use bottom loading as the best practicable interim system of emission reduction at its Griffith, Indiana Terminal loading facility above mentioned so as to minimize hydrocarbon emissions, avoid any imminent and substantial endangerment to the health of persons, and minimize product spillage.

4. Continental Oil Company shall comply with the following emission monitoring and reporting requirements on or before the dates specified below:

a. *Emission Monitoring* (1). Continental Oil Company shall, beginning as soon as reasonably practicable, maintain a record of the quantity of volatile organic material which passes through the Griffith, Indiana Terminal.

(2). Continental Oil Company shall, immediately following demonstrated compliance, maintain a record of any malfunctions of the flare unit (including the reasons for such malfunctions) and the down time of the flare unit, whether caused by malfunction or other causes.

b. *Reporting Requirements* (1). No later than ten (10) days after any date for achievement of an incremental step specified in this Order, Continental Oil Company shall notify U.S. EPA in writing of its compliance or noncompliance with the requirement.

If delay is anticipated in meeting any requirement contained in this Order, Continental Oil Company shall immediately notify U.S. EPA in writing of the anticipated delay and reasons for the delay. Notification to U.S. EPA of an anticipated delay does not excuse the delay.

(2). Continental Oil Company shall, by August 1, 1979, submit performance test results associated with start up of the flare unit.

(3). Continental Oil Company shall submit a quarterly status report to U.S. EPA setting forth the throughput data required by paragraph 4.a. Such reports shall terminate following Continental Oil Company's submission covering the calendar quarter April-June, 1982.

(4). All notifications to U.S. EPA under this Order shall be made to Chief, Air Compliance Section, Enforcement Division, U.S. EPA, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 353-2090. A copy of all submissions shall be made to the State of Indiana.

5. Continental Oil Company is hereby notified that its failure to achieve final compliance by July 1, 1979, at its Griffith, Indiana Terminal loading facilities above mentioned may result in a requirement to pay a noncompliance penalty in accordance with Section 120 of the Act, 42 U.S.C. 7420. In the event of such failure, Conoco will be formally notified, pursuant to Section 120(b)(3), 42 U.S.C. 7420(b)(3), and any regulations promulgated thereunder, of its noncompliance.

6. This Order shall be terminated in accordance with Section 113(d)(6) of the Act if the Administrator of his delegate determines on the record, after notice and hearing, that an inability to comply with Indiana Air Pollution Control Regulation APC-15 of the Indiana Implementation Plan no longer exists.

7. Violation of any requirement of this Order may result in one or more of the following actions:

a. Enforcement of such requirement pursuant to Section 113 (a), (b), or (c) of the Act, 42 U.S.C. 7413 (a), (b) or (c).

b. Revocation of this Order, after notice and opportunity for a public hearing, and subsequent enforcement of Indiana Implementation Plan Air Pollution Control Regulation APC-15 in accordance with the preceding paragraph.

c. If such violation occurs on or after July 1, 1979, notice of noncompliance and subsequent action pursuant to Section 120 of the Act.

8. During the period of this Order, no Federal enforcement action pursuant to Section 113 of the Act, and no action under Section 304 of the Act shall be pursued where Conoco is in compliance with the terms of this Order.

9. Nothing herein shall be construed to be a waiver by the Administrator of any rights or remedies under the Act, including but not limited to Section 303 of the Act, 42 U.S.C. 7603.

10. The provisions of this Delayed Compliance Order shall apply and be binding upon Continental Oil Company, its officers, directors, agents, servants, employees, and any successors in interest; in addition, the provisions of this Delayed Compliance Order shall apply to all persons, firms, and corporations having notice of the Delayed Compliance Order and who are or who will be acting in concert and privity with the Company or its officers, directors, agents, servants, employees, and any successors in interest. Continental Oil Company shall give notice of this Delayed Compliance Order to any successors in interest prior to transfer of ownership, and shall simultaneously verify to the United States Environmental Protection Agency, Region V, Enforcement Division, that such notice has been given.

11. This Order is effective upon final promulgation in the Federal Register.

Date: ———

Administrator, U.S. Environmental Protection agency

Continental Oil Company, by the duly authorized undersigned, hereby consents to the requirements of this Order.

Date: ———

Continental Oil Company

[FR Doc. 79-19000 Filed 6-18-79; 8:45 am]
BILLING CODE 6560-01-M

[40 CFR Part 65]

[FRL 1250-5]

Proposed Delayed Compliance Order for Ohio Ferro-Alloys Corp.

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: U.S. EPA proposes to issue an Administrative Order to Ohio Ferro-Alloys Corporation. The Order requires the Company to bring its four electric submerged arc furnaces into compliance with Ohio Regulation AP–3–07 and AP–3–12, part of the federally approved Ohio State Implementation Plan (SIP). Because the Company is unable to comply with these regulations at this time, the proposed Order would establish an expeditious schedule requiring final compliance by January 15, 1980. Source compliance with the Order would preclude suits under the Federal enforcement and citizen suit provision of the Clean Air Act (Act) for violation of the SIP regulations covered by the Order.

The purpose of this notice is to invite the public comment and to offer an opportunity to request a public hearing on U.S. EPA's proposed issuance of the Order.

DATES: Written comments must be received on or before the thirtieth day from the date of this notice and requests for a public hearing must be received on or before the fifteenth day from the date of this notice. All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary or any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held after twenty-one days prior notice of the date, time, and place of the hearing has been given in this publication.

ADDRESSES: Comments and requests for a public hearing should be submitted to Director, Enforcement Division, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Material supporting the Order and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Garber, Attorney, Enforcement Division, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, at (312) 353–2082.

SUPPLEMENTARY INFORMATION: Ohio Ferro-Alloys Corporation owns four electric submerged arc furnaces at Powhatan Point, Ohio. The proposed Order addresses emissions from this facility, which is subject to AP–3–07 and AP–3–12 of the Ohio Implementation Plan. The regulations limit the emissions of particulate matter and are part of the federally approved Ohio State Implementation Plan. The Order requires final compliance with the regulations by January 15, 1980, and the source has consented to its terms.

The proposed Order satisfies the applicable requirements of Section 113(d) of the Act. If the Order is issued, source compliance with its terms would preclude further U.S. EPA enforcement action under Section 113 of the Act against the source for violations of the regulations covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provisions of the Act (Section 304) would be similarly precluded.

Comments received by the date specified above will be considered in determining whether U.S. EPA should issue the Order. Testimony given at any public hearing concerning the Order will also be considered. After the public comment period and any public hearing, the Administrator of U.S. EPA will publish in the Federal Register the Agency's final action on the Order in 40 CFR Part 65.

Dated: May 31, 1979.

John McGuire,

Regional Administrator, Region V.

1. The text of the order reads as follows:

U.S. Enivornmental Protection Agency
Region V

In the matter of: Ohio Ferro-Alloys Corporation, Powhatan Point Plant, Powhatan Point, Ohio, proceeding pursuant to Section 113(d) of the Clean Air Act, as Amended [42 U.S.C. Section 7413(d)]. Order No. ———.

This Order is issued this date pursuant to Section 113(d) of the Clean Air Act, as amended, 42 U.S.C. Section 7401 *et seq.* (hereafter the "Act") and contains a schedule for compliance, interim control requirements, and reporting requirements. Public notice, opportunity for a public hearing, and thirty (30) days notice to the State of Ohio have been provided pursuant to Section 113(d)(1) of the Act.

Findings

1. On November 13, 1978, the United States Environmental Protection Agency (hereafter "U.S. EPA" or "Agency") issued a Notice of Violation (hereafter "NOV") pursuant to Section 113(a)(1) of the Act [42 U.S.C. 7413(a)(1)] to Ohio Ferro-Alloys Corporation [the "Company"], upon a finding that the four electric submerged arc furnaces at its Powhatan Point, Ohio plant were in violation of Ohio Air Pollution Regulations AP–3–07 and AP–3–12. These regulations are part of the Ohio Implementation Plan as defined in Section 110(d) of the Act. The finding was based on emission factor calculations derived from data submitted by the Company to U.S. EPA, and on smoke readings performed on the subject facility by Ohio EPA personnel. A copy of this Notice was sent to the State of Ohio.

2. In satisfaction of Section 113(a)(4) of the Act an opportunity to confer with the Administrator's delegate was extended to Ohio Ferro-Alloys in the NOV, and a conference was held on the record on December 19, 1978.

3. U.S. EPA has determined that said violations have continued beyond the 30th day after the date said NOV was received.

4. It has been determined that Ohio Ferro-Alloys is unable to immediately comply with Regulations AP–3–07 and AP–3–12 of the Ohio Implementation Plan.

5. After a thorough investigation of all relevant facts, including public comment, it is determined that the schedule for compliance set forth in this Order is as expeditious as

practicable and that the terms of the Order comply with Section 113(d) of the Act.

Therefore, it is hereby Ordered that:

Order

1. Ohio Ferro-Alloys Corporation shall achieve compliance with the Ohio Implementation Plan Regulations AP-3-07 and AP-3-12, as approved by the Administrator on April 15, 1974, in accordance with the following schedule. The compliance program shall include installation of canopy hoods on Furnaces. #1—4, connecting ductwork into the existing pollution control system, and additional pollution control equipment on or before the dates specified:

1. November 17, 1978—Begin installation of canopy hood and ductwork on Furnace #1.*

2. December 26, 1978—Begin installation of bags on #2 collector.*

3. January 9, 1979—Submit to U.S. EPA design calculations and drawings for hoods and ductwork and operating and maintenance procedures for collectors.*

4. January 23, 1979—Receive hood for Furnace #3.*

5. January 25, 1979—Complete installation of bags and start up #2 collector.*

6. January 29, 1979—Complete installation of hood and ductwork and start up of Furnace#1.*

7. Janauary 30, 1979—Order third hood.*

8. February 1, 1979—Shut down #3 Furnace and begin installation of hood and ductwork.*

9. March 15, 1979—Complete installation of hood and ductwork on Furnace #3.*

Start engineering for move of two collector units (18 compartments) from Brilliant, Ohio plant to Powhatan plant.

10 April 1, 1979—Shut down Furnace #2 and begin installation of hood and ductwork on Furnace #2.

11. April 10, 1979—Order hood for #4 Furnace.

12. May 15, 1979—Complete installation of hood and duckwork on Furnace #2. Complete engineering to move collector units from Brilliant to Powhatan.

13. June 1, 1979—Shut down Furnace #4 and begin installation of hood and ductwork on Furnace #4. Complete necessary maintenance work to assure accuracy of all temperature and pressure drop instrumentation on collector units.

14. July 15, 1979—Complete installation of hood and duckwork on Furnace #4.

15. August 1, 1979—Begin installation of additional collector units at Powhatan *unless prior to this date* Ohio Ferro-Alloys Corporation demonstrates to U.S. EPA that its Powhatan Point facilities are in compliance with Regulation AP-3-07 of the Ohio Implementation Plan, in accordance with the following procedure:

A. Such demonstration shall consist of at least four sets of visible emissions readings conducted on four separate days by U.S. EPA certified smoke readers in accordance with Method 9, Appendix A of 40 CFR, Part 60, of emissions from collector exhaust vents, during a two week period of simultaneous operation of *all four furnaces*, under representative operating conditions, with the melt shop roof monitor completely sealed.

B. Notwithstanding subparagraph (A) above, if, on or before June 1, 1979, Ohio Ferro-Alloys certifies in writing to U.S. EPA that it shall thereafter operate no more than three furnaces simultaneously at its Powhatan Point plant, such demonstration of compliance may be made during a two week period of simultaneous operation of three furnaces (Furnace #4 plus any two additional furnaces).

C. The Company shall make any request for EPA smoke readings at least ten (10) days in advance of the intended demonstration date. Ten (10) days advance notice shall also be given to Ohio EPA to afford the State opportunity to have observers present.

16. Demonstration of compliance at the Powhatan facilities with AP-3-07 using the existing collectors prior to August 1, 1979, in accordance with paragraph 15.A., does not relieve Ohio Ferro-Alloys of a continuing obligation to maintain compliance with all applicable Ohio air pollution regulations. Failure to maintain such compliance subsequent to August 1, 1979, due to insufficient collection capacity of the existing control equipment, is a violation of this Order. Such violations shall be excused only if installation of additional collector units at Powhatan is completed and compliance with AP-3-07 and AP-3-12 is achieved and demonstrated in accordance with paragraphs 16 and 17, respectively, of this Order.

17. December 15, 1979—Complete installation of collector units.

18. January 15, 1980—Achieve and demonstrate compliance with AP-3-07 in accordance with the method and procedures set forth in paragraph I.15.A of this Order. Achieve compliance with AP-3-12.

II. Pursuant to Section 113(d)(7) of the Act, Ohio Ferro-Alloys shall comply with the following requirements which are determined to be reasonable and to constitute the best practicable means of reducing emissions during the period this Order is in effect:

A. After January 19, 1979, the five existing collectors at Powhatan shall be operated continuously except for necessary shutdowns due to malfunctions or replacement of bags.

B. After August 1, 1979, if shutdown of a collector is required for replacement of dacron bags with high temperature (Nomex) bags or installation of additional dampers, the corresponding furnace shall be shut down during that period so as to maintain compliance with Regulation AP-3-07. Notification of the decision to replace bags shall be made immediately to Ohio EPA and U.S. EPA.

C. The Company shall operate and maintain all process and pollution control equipment in such manner so as to maximize the removal of pollutants.

D. Furnace tapping cycles will be staggered so as to maximize capture of tapping and blowing emissions.

III. Pursuant to the authority granted in Sections 113(d)(1)(c) and 114(a)(1) of the Act, Ohio Ferro-Alloys Corporation shall comply with the following emissions monitoring and reporting requirements on or before the dates specified:

A. Employees shall inspect each collector unit daily; a daily record of collector operating parameters shall be made in the form shown in Exhibit 1 attached hereto and hereby made a part of this Order. A central chronological file shall be established for all operating and maintenance records, including, but not limited to the daily inspection reports required by this paragraph.

B. The Company shall immediately report all malfunctions of pollution control equipment to Ohio EPA.

C. Beginning three months after this Order is entered into and every calendar quarter thereafter, Ohio Ferro-Alloys shall submit a written report to U.S. EPA summarizing the data contained in the daily operating reports and all maintenance performed on pollution control equipment during the quarter. Such report will list all malfunctions which have occurred during the quarter giving the nature and cause of such malfunction, the time period during which control efficiency was decreased and the corrective action taken.

D. No later than ten days after any date for achievement of an incremental step specified in this Order, the Company shall notify U.S. EPA in writing of its compliance or noncompliance with the requirements and the reasons for any failure to comply. Such notification shall further contain, where applicable, an ongoing evaluation of the collection system as completed up to that point in time, including but not limited to:

—capture efficiency of hoods
—projected need for additional collection capacity
—estimated "worst condition" temperature of gases at collector intake and need for bag replacement
—estimated need for improved damper controls.

If delay is anticipated in meeting a requirement, the Company shall immediately notify U.S. EPA in writing of the anticipated delay and the reasons therefor. Such prior notification does not necessarily excuse the delay but shall be a factor in determining whether deviations from this compliance schedule are reasonable.

E. All data required to be recorded by this Order shall be retained for a period of two years and made available for inspection by U.S. EPA or its agents upon request.

IV. All submittals, notifications and reports to U.S. EPA pursuant to this Order shall be made to Mr. Eric Cohen, Chief, Compliance Section, Enforcement Division, U.S. EPA, 230 South Dearborn Street, Chicago, Illinois 60604.

V. Nothing contained in these Findings or Order shall affect Ohio Ferro-Alloys' responsibility to comply with State or local laws or regulations or other Federal laws or regulations.

VI. Ohio Ferro-Alloys Corporation is hereby notified that its failure to achieve final compliance by the dates specified in this Order, at the Powhatan Point, Ohio facility may result in a requirement to pay a noncompliance penalty in accordance with Section 120 of the Act, 42 U.S.C. 7420. In the event of such failure, Ohio Ferro-Alloys will

* Has been completed prior to issuance of this Order.

be formally notified, pursuant to Section 120(b)(3), 42 U.S.C. 7420(b)(3), and any regulations promulgated thereunder, of its noncompliance.

VII. This Order shall be terminated in accordance with Section 113(d)(8) of the Act if the Administrator or his delegate determines on the record, after notice and hearing, that an inability to comply with the applicable Ohio Implementation Plan no longer exists.

VIII. This schedule is protected by Section 113(d)(10) against Federal enforcement action and citizen suits under Section 304 until April 15, 1980, where the owner or operator of said source is in compliance with the terms of such Order.

IX. Nothing herein shall be construed to be a waiver by the Administrator of any rights or remedies under the Clean Air Act, including, but not limited to, Section 303 of the Act, 42 U.S.C. Section 7503.

X. This Order is effective upon promulgation in the Federal Register.

Date: ————

————,

Regional Administrator, U.S. Environmental Protection Agency.

Ohio Ferro-Alloys Corporation, by the duly authorized undersigned, hereby consents to the provisions of this Order and believes it to be a reasonable means by which its Powhatan Point facilities can achieve compliance with the Ohio Implementation Plan. Ohio Ferro-Alloys Corporation further waives any and all rights under any provisions of Law to challenge this Order.

Ohio Ferro-Alloys Corporation

Date: ————.

By: ————.

[FR Doc. 79-19005 Filed 6-18-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Part 65]

[FRL 1250-6]

Proposed Delayed Compliance Order for Shell Oil Co.

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: U.S. EPA proposes to issue an Administrative Order to Shell Oil Company. The Order requires the Company to bring its volatile organic material loading rack into compliance with Indiana Air Pollution Control Regulation APC–15 part of the federally approved Indiana State Implementation Plan (SIP). Because the Company is unable to comply with this regulation at this time, the proposed Order would establish an expeditious schedule requiring final compliance by July 1, 1979. Source compliance with the Order would preclude suits under the Federal enforcement and citizen suit provision of the Clean Air Act (Act) for violation of the SIP regulation covered by the Order.

The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on U.S. EPA's proposed issuance of the Order.

DATES: Written comments must be received on or before the thirtieth day from the date of this notice and requests for a public hearing must be received on or before the fifteenth day from the date of this notice. All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held after twenty-one days prior notice of the date, time, and place of the hearing has been given in this publication.

ADDRESSEES: Comments and requests for a public hearing should be submitted to Director, Enforcement Division, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Material supporting the Order and public comments received in response to this notice may be inspected and copies (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Mr. Pierre Talbert, Attorney, Enforcement Division, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, at (312) 353–2082.

SUPPLEMENTARY INFORMATION: Shell Oil Company owns a volatile organic material loading rack at Hammond, Indiana. The proposed Order addresses emissions from this facility, which is subject to APC–15 of the Indiana Implementation Plan. The regulation limits the emissions of volatile organic materials and is part of the federally approved Indiana Implementaion Plan. The Order requires final compliance with the regulation by July 1, 1979 and the source has consented to its terms.

The proposed Order satisfies the applicable requirements of Section 113(d) of the Act. If the Order is issued, source compliance with its terms would preclude further U.S. EPA enforcement action under Section 113 of the Act against the source for violations of the regulation covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provisions of the Act (Section 304) would be similarly precluded.

Comments received by the date specified above will be considered in determining whether U.S. EPA should issue the Order. Testimony given at any public hearing concerning the Order will also be considered. After the public comment period and any public hearing, the Administrator of U.S. EPA will publish in the Federal Register the Agency's final action on the Order in 40 CFR Part 65.

Dated: May 31, 1979.

John McGuire,

Regional Administrator Region V.

1. The text of the Order reads as follows:

U.S. Environmental Protection Agency
Region V

In the matter of: Shell Oil Company, Hammond Terminal, Hammond, Indiana. Proceeding Pursuant to Section 113(d) of the Clean Air Act, as Amended 42 U.S.C. Section 7413(d); Order No.

Introduction

This Order is issued this date pursuant to Section 113(a), 113(d), and 114 of the Clean Air Act, as amended, 42 U.S.C. Section 7401 *et seq.* (hereafter the "Act") and contains a schedule for compliance, interim control requirements, and reporting requirements. Public notice, opportunity for a public hearing, and thirty (30) days notice to the State of Indiana have been provided pursuant to Section 113(d)(1) of the Act.

Findings

1. On January 12, 1979, the United States Environmental Protection Agency (hereafter "U.S. EPA" or "Agency") issued a Notice of Violation (hereafter "NOV") to the Shell Oil Company (hereafter "Shell" or the "Company") pursuant to Section 113 (a)(1) of the Act, 42 U.S.C. 7413(a)(1), for alleged violation of Indiana Air Pollution Control Regulation APC–15.

2. Indiana Air Pollution Control Regulation APC–15 deals with the control of volatile organic materials and creates certain requirements applicable to facilities which load volatile organic materials in specified quantities into any tank truck, trailer or railroad tank car.

3. Indiana Air Pollution Control Regulation APC–15 is part of the State of Indiana Implementation Plan, which was created under Section 110 of the Act, 42 U.S.C. 7410.

4. In satisfaction of Section 113(a)(4) of the Act, 42 U.S.C. 7413(a)(4), an opportunity to confer with the Administrator's delegate was extended to Shell in the NOV, and conferences was held on February 22, 1979.

5. At the February 22, 1979, conference, after noting that Shell's Hammond Terminal is in compliance with the interpretation of the Indiana State Implementation Plan as represented and followed by the staff of the Indiana Air Pollution Control Board, Shell and others, Shell agreed to make necessary modification to the Hammond Terminal's volatile organic materials loading rack and install necessary additional equipment to tie-in the loading rack to a vapor recovery and disposal system already in existence at the

Hammond Terminal by July 1, 1979. This action will comply with U.S. EPA's interpretation of its regulation and avoid the expense and delay of litigation.

6. It has been determined by the U.S. EPA that the Shell Oil Company is unable to immediately comply with Indiana Air Pollution Control Regulation PAC–15 of the State of Indiana Implementation Plan.

7. U.S. EPA has determined that said violations have continued beyond the thirtieth day after the date of the Enforcement Director's notification.

Order

After a thorough investigation of all relevant facts, including public comment, it is determined that the schedule for compliance set forth in this Order is as expeditious as practicable, and that the terms of this Order comply with Section 113(d) of the Act. Therefore, it is hereby Agreed and Ordered that:

1. Shell Oil Company will achieve compliance by July 1, 1979, with the State of Indiana Implementation Plan Air Pollution Control Regulation APC–15 as approved by the U.S. EPA in the **Federal Register** on May 14, 1973, which requires a vapor collection and recovery system at the loading rack associated with Shell Oil Company's Hammond, Indiana, facility in accordance with the following schedule:

a. *December 1, 1978*—Place equipment orders.

b. *December 18, 1978*—Equipment received; start construction and installation.

c. *June 30, 1979*—Complete construction; start operation.

d. *July 1, 1979*—Complete manufacturer's performance tests, submit results, achieve and demonstrate compliance.

2. Shell Oil Company shall adopt and implement operation and maintenance procedures to maximize the control efficiency of the vapor collection and recovery system and submit a copy of such procedures to the U.S. EPA.

3. Shell Oil Company shall continue to use top loading submerged fill as the best practicable interim system of emission reduction at its Hammond, Indiana, loading facility so as to minimize hydrocarbon emissions, avoid any imminent and substantial endangerment to the health of persons, and minimize product spillage.

4. Shell Oil Company shall comply with the following emission monitoring and reporting requirements on or before the dates specified below:

a. *Emission Monitoring.*

(1). Shell Oil Company shall, beginning on the effective date of this Order, maintain a record of the quantity of gasoline which passes through the loading facility quarterly.

(2). Shell shall, beginning on the effective date of this Order, maintain a record of any malfunctions of the vapor recovery and disposal system (including the reasons for such malfunctions) and the down time of the vapor recovery and disposal system, whether caused by malfunctions or other causes.

b. *Reporting Requirements.*

(1). Beginning on the effective date of this Order, Shell shall notify U.S. EPA in writing of its achievement or nonachievement of an incremental step of the compliance schedule in this Order no later than fifteen (15) days after the date specified for achievement of that step.

If Shell fails to complete any of the actions required by the dates specified in the Order, it shall include a detailed explanation of such failure in the notification required in this paragraph 4.b.(1).

(2). Shell shall, beginning with the effective date of this Order, report on a quarterly basis the information required to be maintained under paragraph 4.a. of this Order. Such reporting requirement shall terminate following Shell's submission covering the calendar quarter April-June, 1980.

(3). All submittals, notifications and reports to U.S. EPA pursuant to this Order shall be made to Mr. Eric Cohen, Chief, Compliance Section, Enforcement Division, U.S. EPA, 230 South Dearborn Street, Chicago, Illinois 60604. In addition, all submittals, notifications and reports pursuant to this Order shall be made to the Indiana Air Pollution Control Board.

5. Nothing contained in these Findings or Order shall affect Shell Oil Company's responsibility to comply with State or local laws or regulations or other Federal laws or regulations.

6. Shell Oil Company is hereby notified that its failure to achieve final compliance by July 1, 1979, at the Hammond, Indiana, loading facility may result in a requirement to pay a noncompliance penalty in accordance with Section 120 of the Act, 42 U.S.C. 7420. In the event of such failure, Shell will be formally notified, pursuant to Section 120(b)(3), 42 U.S.C. 7420(b)(3), and any regulations promulgated thereunder, of its noncompliance.

7. This Order shall be terminated in accordance with Section 113(d)(6) of the Act if the Administrator or his delegate determines on the record, after notice and hearing, that an inability to comply with Indiana Air Pollution Control Regulation APC–15 of the Indiana Implementation Plan no longer exists.

8. Violation of any requirement of this Order shall result in one or more of the following actions:

a. Enforcement of such requirement pursuant to Section 113(a), (b), or (c) of the Act, 42 U.S.C. 7413(a), (b), or (c), including possible judicial action for an injunction and/or penalties and in appropriate cases, criminal prosecution.

b. Revocation of this Order, after notice and opportunity or a public hearing, and subsequent enforcement of Indiana Implementation Plan Air Pollution Control Regulation APC–15, in accordance with the preceding paragraph.

c. If such violation occurs on or after July 1, 1979, notice of non-compliance and subsequent action pursuant to Section 120 of the Act.

9. This schedule is protected by Section 113(d)(10) against Federal enforcement action and citizen suits under Section 304 until July 1, 1979, where Shell Oil Company is in compliance with the terms of such Order.

10. Nothing herein shall be construed to be a waiver by the Administrator of any rights or remedies under the Clean Air Act, including, but not limited to, Section 303 of the Act, 42 U.S.C. Section 7503.

11. The provisions of this Delayed Compliance Order shall apply and be binding upon the Company, its officers, directors, agents, servants, employees and any successors in interest; in addition, the provisions of this Delayed Compliance Order shall apply to all persons, firms, and corporations having notice of the Delayed Compliance Order and who are or who will be acting in concert and privity with the Company or its officers, directors, agents, servants, employees, and any successors in interest. The Company shall give notice of this Delayed Compliance Order to any successors in interest prior to transfer of ownership, and shall simultaneously verify to the United States Environmental Protection Agency, Region V, Enforcement Division, that such notice has been given.

12. This Order is entered into and Shell's consent to it is made for the sole purpose of settlement of this matter by compromise to avoid the expense and delay of contesting the asserted violations. Such consent shall not be deemed a waiver by Shell of any right it may have to contest U.S. EPA's findings or assertions that Shell is in violation of the regulation or contest the applicability of the regulation to Shell. However, Shell has specifically agreed to the terms of this Order and shall not be entitled to challenge any of the terms in an action to enforce the Order.

13. This Order is effective upon final promulgation in the **Federal Register**.

Date: ———

Administrator, U.S. Environmental Protection Agency.

Consent to Issuance of Order

Shell Oil Company, by the duly authorized undersigned, hereby consents to the provisions of this Order, and believes it to be a reasonable means by which the Hammond, Indiana facility can achieve compliance with Indiana Air Pollution Control Regulation APC–15 as interpreted by the U.S. EPA.

Date: ———

Shell Oil Company.

[FR Doc. 79–19007 Filed 6–18–79; 8:45 am]

BILLING CODE 6560–01–M

[40 CFR Part 65]

[FRL 1249–6]

Proposed Approval of an Administrative Order Issued By Ohio Environmental Protection Agency To Cooper Tire & Rubber Co.

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: U.S. EPA proposes to approve an Administrative Order issued by the Ohio Environmental Protection Agency to Cooper Tire and Rubber Company. The Order requires the company to bring air emissions from its coal-fired boilers in Findlay, Ohio, into compliance with certain regulations contained in the federally approved Ohio State Implementation Plan (SIP) by July 1, 1979. Because the Order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by U.S. EPA before it becomes effective as a Delayed Compliance Order under the Clean Air Act (the Act). If approved by U.S. EPA, the Order shall constitute an addition to the SIP. In addition, a source in compliance with an approved Order May not be sued under the Federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on U.S. EPA's proposed approval of the Order as a Delayed compliance Order.

DATES: Written comments must be received on or before July 19, 1979.

ADDRESSES: Comments should be submitted to Director, Enforcement Division, U.S. EPA Region V, 230 South Dearborn Street, Chicago, Illinois 60604. The State Order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Cynthia Colantoni, Enforcement Division, U.S. EPA, 230 South Dearborn Street, Chicago, Illinois 60604. (312) 353–2082.

SUPPLEMENTARY INFORMATION: Cooper Tire and Rubber Company operates a coal-fired boiler at Findlay, Ohio. The Order under consideration addresses emissions from this boiler, which is subject to OAC–3745–17–07. The regulation limits the amount of visible emissions, and is part of the federally approved Ohio State Implementation Plan. The Order requires final compliance with the regulation by July 30, 1979 through use of coal with a quality better than or equal to that specified in Part 3 of the Order and the installation of a new type ash handling system. This company is allowed to achieve final compliance by July 30, 1979 since it was previously granted a variance which required compliance by April 15, 1977. This company could have been allowed to April 15, 1980 to achieve compliance under a 113(d) Order, but is completing its program expeditiously and will be finished by July 30, 1979.

Because this Order has been issued to a major source of visible emissions and permits a delay in compliance with the applicable regulation, it must be approved by U.S. EPA before it becomes effective as a Delayed compliance Order under Section 113(d) of the Act. U.S. EPA may approve the Order only if it satisfies the appropriate requirements of this subsection.

If the Order is approved by U.S. EPA, source compliance with its terms would preclude Federal enforcement action under Section 113 of the Act against the source for violations of the regulation covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the Order would also constitute an addition to the Ohio SIP. However, in the event final compliance is not achieved by July 1, 1979, source compliance with the Order will not preclude assessment of any noncompliance penalties under Section 120 of the Act, unless the source is otherwise entitled to an exemption under Section 120(a)(2)(B) or (C).

All interested persons are invited to submit written comments on the proposed Order. Written comments received by the date specified above will be considered in determining whether U.S. EPA may approve the Order. After the public comment period, the Administrator of U.S. will publish in the Federal Register the Agency's final action on the Order in 40 CFR Part 65.

Dated: May 31,1979.

John McGuire,

Regional Administrator.

The text of the Order reads as follows:

Before the Ohio Environmental Protection Agency

Order

In the Matter of: Cooper Tire & Rubber Company, Lima & Western Avenues, Findlay, OH 45849.

The Director of Environmental Protection (hereinafter "Director"), hereby makes the following Findings of Fact and, pursuant to Sections 3704.03 (S) and (I) of the Ohio Revised Code and in accordance with Section 113(d) of the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*, issues the following Orders which will not take effect until the Administrator of the United States Environmental Protection Agency has approved their issuance under the Clean Air Act:

Findings of Fact

1. Cooper Tire & Rubber Company (hereinafter Cooper Tire), operates a coal fired boiler (B004) which serves its facility located at Lima and Western Avenues, Findlay, Ohio 45840.

2. In the course of operation of said coal fired boiler (B004), air contaminants are emitted in violation of OAC–3745–17–07.

3. Cooper Tire is unable to immediately comply with OAC–3745–17–07.

4. Potential emissions of particulates from Cooper Tire are approximately 1241 tons per year; therefore, Cooper Tire constitutes a major stationary source or facility under Section 302(j) of the Clean Air Act, as amended.

5. The compliance schedule set forth in the Orders below requires compliance with OAC–3745–17–07 as expeditiously as practicable.

6. Implementation by Cooper Tire of the interim requirements contained in the Orders below will fulfill the requirements of Section 113(d)(7) of the Clean Air Act, as amended.

7. The Director's determination to issue the Orders set forth below is based upon his consideration of reliable, probative and substantial evidence relating to the technical feasibility and economic reasonableness of compliance with such Orders, and their relation to benefits to the people of the State to be derived from such compliance.

Orders

Whereupon, after due consideration of the above Findings of Fact, the Director hereby issues the following Orders pursuant to Sections 3704.03 (S) and (I) of the Ohio Revised Code in accordance with Section 113(d) of the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*, which will not take effect until the Administrator of the United States Environmental Protection Agency has approved their issuance under the Clean Air Act.

1. Cooper Tire shall bring its coal boiler (B004) located at Lima & Western Avenues, Findlay, Ohio, into final compliance with OAC–3745–17–07 by (A) burning a coal with a quality better than or equal to that specified in Order (3) below, (B) installing new boiler instrumentation equipment, and (C) installing a new type ash handling system, no later than July 30, 1979.

2. Compliance with Order (1) above shall be achieved by Cooper Tire in accordance with the following schedule on or before the dates specified:

Submit final control plans: complete
Award contract(s): complete
Begin construction: February 1, 1979
Complete construction: July 16, 1979
Achieve final compliance with OAC–3745–17–07: July 30, 1979.

3. Pending achievement of compliance with Order (1) above, Cooper Tire shall comply with the following interim requirements which are determined to be reasonable and to be the best practicable system(s) of emission reduction and which are necessary to ensure compliance with OAC–3745–17–07 insofar as Cooper Tire is able to comply with them during the period this Order is in effect in accordance with Section 113(d)(7) of the Clean Air Act, as amended. Such interim requirements shall include:

a. Cooper Tire shall immediately use coal with an analysis of: less than or equal to 9.2 percent ash, and greater than or equal to 12,000 BTU.

b. Cooper Tire shall immediately institute a regular maintenance program to minimize emissions from coal boiler (B004).

c. Cooper Tire shall continue to use the multiple cyclones to minimize emissions from the coal boiler (B004).

4. Within five (5) days after the scheduled achievement date of each of the increments of progress specified in the compliance schedule in Order (2) above, Cooper Tire shall submit a written progress report to the Northwest District Office. The person submitting these reports shall certify whether each increment of progress has been achieved and the date it was achieved.

On a monthly basis, Cooper Tire shall submit a written report to the Northwest District Office concening any excursions above the 20 percent opacity limitation in OAC Rule 3745-17-07, the maintenance and operation of the coal boiler, and the analysis of the coal burned. Cooper Tire shall keep on file all monitoring data for a minimum of three years.

5. Cooper Tire shall continue to properly operate and maintain a continuous recording opacity monitor and comply with any other emission monitoring and reporting required by Chapter 3704 of the Ohio Revised Code and the regulations promulgated thereunder.

6. Cooper Tire is hereby notifed that unless it is exempted under Section 120(a)(2)(B) or (C) of the Clean Air Act, as amended, failure to achieve final compliance with Order (1) above by July 1, 1979, will result in a requirement to pay a noncompliance penalty under Section 120 of the Clean Air Act, as amended.

These orders will not take effect until the Administrator of the United States Environmental Protection Agency has approved their issuance under the Clean Air Act.

Dated: February 12, 1979.

James F. McAvoy,

Director of Environmental Protection.

Waiver

The Cooper Tire & Rubber Company agrees that the attached Findings and Orders are lawful and reasonable and agrees to comply with the attached Orders. The Cooper Tire & Rubber Company hereby waives the right to appeal the issuance or terms of the attached Findings and Orders to the Environmental Board of Review, and it hereby waives any and all rights it might have to seek judicial review of said Findings and Orders either in law or equity. The Cooper Tire & Rubber Company also waives any and all rights it might have to seek judicial review of any approval by U.S. EPA of the attached Findings and Orders or to seek a stay of enforcement of said Findings and Orders in connection with any judicial review of Ohio's air implementation plan or portion thereof.

Dated: November 13, 1978.

W. P. Zimmerman,

Corporate Director Facilities Engineering.

[FR Doc. 79-18975 Filed 6-18-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Part 65]

[FRL 1247-4]

Proposed Approval of an Administrative Order Issued By Ohio Environmental Protection Agency To Fox Paper, Inc.

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: U.S. EPA proposes to approve an Administrative Order issued by the Ohio Environmental Protection Agency to Fox Paper, Inc. The Order requires the company to bring air emissions from its two coal-fired boilers in Lockland, Ohio, into compliance with certain regulations contained in the federally approved Ohio State Implementation Plan (SIP) by July 1, 1979. Because the Order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by U.S. EPA before it becomes effective as a Delayed Compliance Order under the Clean Air Act (the Act). If approved by U.S. EPA, the Order will constitute an addition to the SIP. In addition, a source in compliance with an approved Order may not be sued under the Federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on U.S. EPA's proposed approval of the Order as a Delayed Compliance Order.

DATE: Written comments must be received on or before July 19, 1979.

ADDRESSES: Comments should be submitted to Director, Enforcement Division, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. The State Order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Cynthia Colantoni, Enforcement Division, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. (312) 353-2062.

SUPPLEMENTARY INFORMATION: Fox Paper, Inc. operates a paper mill at Lockland, Ohio. The Order under consideration addresses emissions from two coal-fired boilers at the facility, which are subject to OAC 3745-17-07 and OAC 3745-17-10. The regulations limit the emissions of particulate matter emissions, and are part of the federally approved Ohio State Implementation Plan. The Order requires final compliance with the regulations by July 1, 1979 by the installation of an electrostatic precipitator and mechanical collector.

Because this Order has been issued to a major source of particulate matter emission and permits a delay in compliance with the applicable regulations, it must be approved by U.S. EPA before it becomes effective as a Delayed Compliance Order under Section 113(d) of the Act. U.S. EPA may approve the Order only if it satisfies the appropriate requirements of this subsection.

If the Orer is approved by U.S. EPA, source compliance with its terms would preclude Federal enforcement action under Section 113 of the Act against the source for violations of the regulations covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the Order would also constitute an addition to the Ohio SIP.

All interested persons are invited to submit written comments on the proposed Order. Written comments received by the date specified above will be considered in determining whether U.S. EPA may approve the Order. After the public comment period, the Administrator of U.S. EPA will publish in the Federal Register the Agency's final action on the Order in 40 CFR Part 65.

(42 U.S.C. 7413, 7601)

Dated: May 31, 1979.

John McGuire,

Regional Administrator.

The text of the Orders reads as follows:

Before the Ohio Environmental Protection Agency

In the Matter of: Fox Paper, Inc., Case No. 77-AV-116.

Stipulation

The parties hereto, Fox Paper, Inc. and the Ohio Environmental Protection Agency hereby stipulate as follows:

1. The Order attached hereto represents the culmination of discussions had for the purpose of resolving the issues of fact and law in this proceeding.

2. The Order is supported by reliable, probative, and substantial evidence, and is in accordance with law.

3. The Director may issue the Order by signing it and entering it upon his Journal.

4. Pursuant to Section 113(d)(2) of the Clean Air Act, as amended, the order shall not take effect until the Administrator of the United States Environmental Protection Agency determines that it has been issued in accordance with the requirements of the Clean Air Act, as amended.

5. Upon the effective date of the Order, Fox Paper, Inc. will be deemed to have withdrawn its request for an adjudication hearing, and the above-captioned proceedings shall be dismissed.

Colleen K. Nissl

Assistant Attorney General Counsel for the Ohio Environmental Protection Agency.

Clement A. Durna,

Fox Paper, Inc., Sr. Vice President Operations, Erving Paper Mills.

Before the Ohio Environmental Protection Agency

In the Matter of: Fox Paper, Inc. [Erving Paper Mills], P.O. Box 15099 Lockland, Cincinnati, Ohio 45215, Case No. 77-AV-116.

Order

The Director of Environmental Protection (hereinafter "Director"), hereby makes the following Findings of Fact and, pursuant to Sections 3704.03(I) and 3704.03(S) of the Ohio Revised Code and in accordance with Section 113(d) of the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*, issues the following Orders which will not take effect until the Administrator of the United States Environmental Protection Agency has approved their issuance under the Clean Air Act.

Findings of Fact

1. Fox Paper, Inc., owned by Erving Paper Mills (hereinafter "Fox"), operates two coal-fired boilers, which serve its facility located at Cooper and Lock Streets, Lockland, Ohio 45215.

2. These boilers are identified as follows:

Boiler No. 2, Application No. 1431260171 B002, Babcock & Wilcox coal-fired underfeed stoker boiler with maximum rated heat input of 69 million BTU per hour.

Boiler No. 3, Application No. 1431260171 B003, Babcock & Wilcox Model No. FH18 pulverized coal-fired boiler with a maximum rated heat input of 97 million BTU per hour.

3. In the course of operation of said boilers, air contaminants are emitted in violation of OAC 3745-17-07 and OAC 3745-17-10.

4. The Director proposed to deny the applications for variances on April 22, 1977.

5. Fox is unable to immediately comply with the above-cited regulations.

6. Potential emissions of particulates from the two boilers are over 100 tons per year; therefore, Fox constitutes a major source under Section 302(j) of the Clean Air Act, as amended.

7. The Compliance Schedule set forth in the Orders below requires compliance with OAC 3745-17-07 and OAC 3745-17-10 as expeditiously as practicable.

8. Implementation by Fox of the interim requirements contained in the Orders below will fulfill the requirements of Section 113(d)(7) of the Clean Air Act, as amended.

9. Fox is using and will continue to use coal of sufficiently low sulfur content to maintain their existing status of compliance with federal promulgated sulfur oxide standards (U.S. Environmental Protection Agency Sulfur Oxide Plan for Ohio, 41 FR 36324 (August 27, 1976)).

10. The Director's determination to issue the Orders set forth below is based upon his consideration of reliable, probative and substantial evidence relating to the technical feasibility and economic reasonableness of compliance with such Orders, and their relation to benefits to the people of the State to be derived from such compliance.

Whereupon, after due consideration of the above Findings of Fact, the Director hereby issues the following Orders pursuant to Sections 3704.03(I) and 3704.03(S) of the Ohio Revised Code in accordance with Section 113(d) of the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*, which will not take effect until the Administrator of the United States Environmental Protection Agency has approved their issuance under the Clean Air Act.

1. Fox shall bring its coal-fired boilers into compliance with OAC 3745-17-10 and OAC 3745-17-07 by the installation of an electrostatic precipitator and mechanical collector no later than July 1, 1979.

2. Compliance with Order (1) above, shall be achieved by Fox in accordance with the following schedule on or before the dates specified:

Implementation Schedule

1. Preliminary engineering survey to be completed by February 15, 1978—Completed.

2. Electrostatic precipitator for Boiler B003 on order in April, 1978—Completed.

3. Drawing approval by June 1, 1978—Completed.

4. Construction of dust collector for Boiler B002 to begin by June 15, 1978—Completed.

5. Final engineering complete by July 15, 1978—Completed.

6. Construction contracts for structural, mechanical and electrical work awarded before August 15, 1978—Completed.

7. Contracts for mechanical and electrical work sent out and completion of work by June 1, 1979.

8. Construction of mechanical collector for Boiler B002 started on October 16, 1978 and completed by June 1, 1979.

9. Preparatory construction for electrostatic precipitator to begin October 1, 1978.

10. Preparatory construction for electrostatic precipitator completed by December 1, 1978.

11. Electrostatic precipitator to be delivered by January 1, 1979.

12. Installation of electrostatic precipitator to begin March 1, 1979.

13. Complete installation of electrostatic precipitator by June 1, 1979.

14. Testing June 1, 1979, results submitted by July 1, 1979.

15. Achieve final compliance with OAC Sections 3745-17-07 and 3745-17-10.

3. Pending achievement of compliance with Order (1) above, Fox shall use the best practicable systems of emission reduction for the period during which this Order is in effect in accordance with Section 113(d)(7) of the Clean Air Act, as amended. Such interim measures shall include:

a. The use of coal with analysis of: less than or equal to seven (7) to twelve (12) percent ash; less than or equal to one (1) percent sulfur; greater than or equal to 12,800 BTU per pound of coal;

b. Equipping each boiler with opacity instrumentation and recorders and oxygen anayses and recorders which have been ordered by Fox, and subsequent operation of said instrumentation; and

c. Regular maintenance of the boilers.

4. Within five (5) days after the scheduled achievement date of each of the increments of progress specified in the Compliance Schedule in Order (2) above, Fox shall submit a written progress report to the Cincinnati Division of Air Pollution Control. The person submitting these reports shall certify whether each increment of progress has been achieved and the date it was achieved. If the progress dates have not been met, Fox shall indicate why the milestones have not been met.

5. Fox shall comply with any other emission monitoring and reporting required by Chapter 3704 of the Ohio Revised Code and the regulations promulgated thereunder.

6. On a quarterly basis, Fox shall report to the Cincinnati Air Pollution Control Agency any excursions above the 20 percent opacity limitation set out in OAC 3745-17-07. Fox shall keep on file all stack monitoring data for a minimum of two years.

7. Emission tests at the normal rate of operation and at the maximum rate of operation shall be conducted upon both boilers to verify compliance with Order (1) above. Such tests shall be conducted no later than the date specified in the compliance schedule in Order (2) above, in accordance with procedures approved by the Director. Written notification of intent to test shall be provided to the Cincinnati Air Pollution Control Agency thirty (30) days prior to the testing date.

8. Fox shall apply for and obtain permits to operate the boilers in accordance with OAC 3745-35-02, at the expiration of this Order.

9. Fox is hereby notified that unless it is exempted under Section 120(a)(2) (B) or (C) of the Clean Air Act, as amended, failure to achieve final compliance with Order (1) above, by July 1, 1979, will result in a requirement to pay a noncompliance penalty under Section 120 of the Clean Air Act, as amended.

These Orders will not take effect until the Administrator of the United States Environmental Protection Agency has

approved their issuance under the Clean Air Act.

James F. McAvoy,

Director of Environmental Protection.

Waiver

Fox Paper, Inc. agrees that the attached Findings and Orders are lawful and reasonable and agrees to comply with the attached Orders. Fox Paper, Inc. hereby waives the right to appeal the issuance or terms of the attached Findings and Orders to the Environmental Board of Review, and it hereby waives any and all rights it might have to seek judicial review of said Findings and Orders either in law or equity.

Clement A. Durna,

Representative for Fox Paper, Inc. (Erving Paper), Sr. Vice President Operations, Erving Paper Mills.

[FR Doc. 79-18079 Filed 6-18-79; 8:45 am]
BILLING CODE 6560-01-M

[40 CFR Part 65]

[FRL 1249-7]

Proposed Approval of an Administrative Order Issued By Ohio Environmental Protection Agency To B. F. Goodrich Co.

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: U.S. EPA proposes to approve an Administrative Order issued by the Ohio Environmental Protection Agency to B. F. Goodrich Company. The Order requires the company to bring air emissions from its coal-fired steam generating boiler in Akron, Ohio, into compliance with certain regulations contained in the federally approved Ohio State Implementation Plan (SIP) by July 1, 1979. Because the Order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by U.S. EPA before it becomes effective as a Delayed Compliance Order under the Clean Air Act (the Act). If approved by U.S. EPA, the Order will constitute an addition to the SIP. In addition, a source in compliance with an approved Order may not be sued under the Federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on U.S. EPA's proposed approval of the Order as a Delayed Compliance Order.

DATE: Written comments must be received on or before July 19, 1979.

ADDRESSES: Comments should be submitted to Director, Enforcement Division, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. The State Order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Cynthia Colantoni, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 353-2082.

SUPPLEMENTARY INFORMATION: B.F. Goodrich Company operates a coal-fired steam generating boiler at Akron, Ohio. The Order under consideration addresses emissions from this facility, which is subject to OAC-3745-17-07 and OAC-3745-17-10. The regulations limit the emissions of particulate matter and visible emissions, and are part of the federally approved Ohio State Implementation Plan. The Order requires final compliance with the regulations by July 1, 1979, by converting the boilers from coal firing to oil firing.

Because this Order has been issued to a major source of particulate matter emissions and visible emissions and permits a delay in compliance with the applicable regulations, it must be approved by U.S. EPA before it becomes effective as a Delayed Compliance Order under Section 113(d) of the Act. U.S. EPA may approve the Order only if it satisfies the appropriate requirements of this subsection.

If the Order is approved by U.S. EPA, source compliance with its terms would preclude Federal enforcement action under Section 113 of the Act against the source for violations of the regulations covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the Order would also constitute an addition to the Ohio SIP.

All interested persons are invited to submit written comments on the proposed Order. Written comments received by the date specified above will be considered in determining whether U.S. EPA may approve the Order. After the public comment period, the Administrator of U.S. EPA will publish in the **Federal Register** the Agency's final action on the Order in 40 CFR Part 65.

(42 U.S.C. 7413, 7601)

Dated: May 31, 1979.

John McGuire,

Regional Administrator.

The text of the Order reads as follows:

Before the Ohio Environmental Protection Agency

Order

In the matter of: The B.F. Goodrich Company, 500 South Main Street, Akron, Ohio 44318.

The Director of Environmental Protection (hereinafter "Director"), hereby makes the following Findings of Fact and, pursuant to Section 3704.03(S) and Section 3704.03(I) of the Ohio Revised Code and in accordance with Section 113(d) of the Clear Air Act, as amended, 42 U.S.C. 7401 *et seq.*, issues the following Order which will not take effect until the Administrator of the United States Environmental Protection Agency has approved its issuance under the Clean Air Act, as amended.

Findings of Fact

1. The B.F. Goodrich Company (hearinafter "Goodrich") operates a coal-fired steam generating boiler designated as boiler number 31 which serves its facilities located at 500 South Main Street, Akron, Ohio 44318.

2. This boiler is identified as follows:

Boiler No. 31, application No. 1677010051 B002, coal-fired spreader stoker.

3. In the course of operation of said boiler, particulate matter is emitted in violation of OAC 3745-17-10 and OAC 3745-17-07.

4. Said boiler is unable to comply immediately with OAC 3745-17-10 and OAC 3745-17-07.

5. The Director proposed to deny the application for a variance on November 29, 1978.

6. Potential emissions of particulate matter from said boiler are greater than 100 tons per year. Therefore, said boiler constitutes a major source under Section 302(j) of the Clean Air Act, as amended.

7. The compliance schedule set forth in the Orders below require ultimate compliance by said boiler with OAC 3745-17-10 and 3745-17-07 as expeditiously as practicable.

8. Implementation by Goodrich of the requirements contained in the Orders below will fulfill the requirements of Section 113(d)(7) of the Clean Air Act, as amended.

9. On November 11, 1976, Goodrich and the City of Akron, Ohio, executed an agreement whereby Goodrich agreed to purchase for a period of twenty-five years (with the right to five renewal periods of five years each) excess steam generated by ARES, a project for producing steam using combustible solid waste as a principal fuel source, not needed by other customers of ARES up to Goodrich's total steam requirements for all of its plants and offices located at or contiguous with 500 South Main Street, Akron, Ohio.

This agreement for excess steam constituted a commitment by Goodrich which was essential to the undertaking of the ARES project by the City of Akron. The effect of this agreement for excess steam was to enable and to allow the City of Akron to finance the construction of ARES in that the agreement provided assurance of a substantial customer for steam on a year round basis. ARES is to be completed about July 1, 1979, and after its completion, Goodrich expects to purchase significant

portions of the steam necessary for its operations from ARES thereby reducing the level of its own boiler operations. Reliance by Goodrich on steam from ARES will reduce the use of boiler number 31 after it is switched to compliance fuel and boiler number 31 will then be used primarily for peaking and in the event of a breakdown of the other boiler or the ARES system.

10. It is technically and economically unreasonable to require Goodrich to install and operate a continuous opacity monitoring system on boiler number 31 prior to achieving compliance with the Orders specified below, since Goodrich is currently unable to comply with the requirements of OAC 3745–17–07 pertaining to visible emissions, no data would be produced which is not already known, and therefore, no purpose would be served by requiring monitoring during the interim compliance period.

11. The Director's determination to issue the Order set forth below is based upon his consideration of reliable, probative, and substantial evidence relating to the technical feasibility and economic reasonableness of compliance with such Order, and their relation to benefits to the people of the State of Ohio to be derived from such compliance.

Order

Whereupon, after due consideration of the above Findings of Fact, the Director hereby issues the following Order pursuant to Sections 3704.03(S) and 3704.03(I) of the Ohio Revised Code in accordance with Section 113(d) of the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*, which will not take effect until the Administrator of the United States Environmental Protection Agency has approved their issuance under the Clean Air Act, as amended.

1. Goodrich shall bring its boiler number 31 into final compliance with OAC 3745–17–10 and 3745–17–07 by July 1, 1979 by converting it from coal firing to oil firing as expeditiously as practicable but not later than July 1, 1979.

2. Compliance with Order (1) above shall be achieved by Goodrich in accordance with the following schedule on or before the dates specified:

a. January 1, 1979; complete drawings for boiler modifications necessary to convert boiler number 31 from a coal firing to an oil firing boiler.

b. February 1, 1979; complete equipment specifications and bills of materials for items and equipment required for boiler modifications necessary to convert boiler number 31 from a coal firing to an oil firing boiler.

c. March 1, 1979; complete procurement of items and equipment required for boiler modifications necessary to convert boiler number 31 from a coal firing to an oil firing boiler.

d. April 30, 1979; shutdown boiler number 31 and begin construction of modifications required to convert boiler number 31 from a coal firing to an oil firing boiler.

e. July 1, 1979; complete modifications necessary to convert boiler number 31 from a coal firing to an oil firing boiler and achieve final compliance with OAC 3745–17–10 and 3745–17–07.

3. Pending achievement of compliance with this Order, Goodrich shall comply with the following interim requirements which are determined to be reasonable and to be the best practicable system of emission reduction, and which are necessary to ensure compliance with OAC 3745–17–10 and OAC 3745–17–07 insofar as Goodrich is able to comply with them during the period this Order is in effect in accordance with Section 113(d)(7) of the Clean Air Act, as amended. Such interim requirements shall include:

a. Goodrich shall conduct a regular maintenance program to minimize emissions from boiler number 31.

b. Goodrich shall continue to use the multiclone control systems to minimize particulate emissions from boiler number 31.

4. Within five (5) days after the scheduled achievement date of each of the increments of progress specified in the compliance schedule in Order (2) above, Goodrich shall submit a written progress report to the Akron Air Pollution Agency. The person submitting these reports shall certify whether each increment of progress has been achieved and the date it was achieved. The reports shall also indicate the status of compliance with the interim control requirements in Order (3) above.

5. Goodrich shall apply for and obtain permit to operate the boiler in accordance with OAC 3745–35–02.

6. Goodrich is hereby notified that unless it is exempted under Sections 120(a)(2)(B) and (C) of the Clean Air Act, as amended, failure to achieve final compliance with Order (1) above, by July 1, 1979, will result in a requirement to pay a noncompliance penalty under Section 120 of the Clean Air Act, as amended. Goodrich does not waive any right to contest the validity or appropriateness of any such penalty.

This Order will not take effect until the Administrator of the United States Environmental Protection Agency has approved their issuance under the Clean Air Act.

Dated: May 2, 1979.

James F. McAvoy,

Director of the Ohio Environmental Protection Agency.

Waiver

The B.F. Goodrich Company agrees that the attached Findings and Orders are lawful and reasonable and agrees to comply with the attached Orders. The B.F. Goodrich Company hereby waives the right to appeal the issuance or terms of the attached Findings and Orders to the Environmental Board of Review, and it hereby waives any and all rights it might have to seek judicial review of said Findings and Orders either in law or equity. B.F. Goodrich also waives its rights to seek judicial review of any U.S. EPA approval without change of said Findings and Orders or to seek a stay of enforcement pending judicial review of Ohio's Air Implementation Plan.

Dated: February 20, 1979.

Robert J. Jawett,

Vice President, Research & Development.

[FR Doc. 79–18980 Filed 6–18–79; 8:45 am]

BILLING CODE 6560–01–M

[40 CFR Part 65]

[FRL 1247–7]

Proposed Delayed Compliance Order for Amoco Oil Co.

Correction

In FR Doc. 79–18745 appearing at page 34522 in the issue for Friday, June 15, 1979; on page 18746, first column, the first sentence under DATES should read: "Written comments must be received on or before July 16, 1979 and requests for a public hearing must be received on or before July 2, 1979."

BILLING CODE 1505–01–M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[45 CFR, Part 233]

Financial Assistance Programs—Need and Amount of Assistance; Using Equity Value for Resources

AGENCY: Social Security Administration, HEW.

ACTION: Notice of Decision to Develop Regulations.

SUMMARY: The Social Security Administration plans to recommend to the Secretary that a proposed regulation be published to clarify its policy on evaluating real and personal property of an applicant applying for, or a recipient receiving, public assistance.

The proposed regulation will preclude a State, in determining the amount of an applicant's or recipient's allowable resources (real or personal property), from counting as available the market value of property without regard to existing encumbrances. Thus, in evaluating real and personal property, only an applicant's or recipient's equity in property—defined as fair market value less encumbrances—can be taken into consideration in determining the amount of allowable resources. This policy reflects the court decision in *NWRO* v. *Mathews* (553 F. 2d 637).

The proposed regulation would affect applicants and recipients of AFDC, and of the adult assistance titles of the Social Security Act (titles I, X, XIV, and

XVI (AABD)) administered in Guam, Puerto Rico, and the Virgin Islands.

This proposed regulation will amend 45 CFR 233.20.

The Department of Health, Education, and Welfare has classified the regulation as policy significant.

FOR FURTHER INFORMATION CONTACT:
Mrs. Juanita Henderson, 330 C Street, S.W., Washington, D.C. 20201, (202) 245-0203.

Dated: June 1, 1979.

Robert P. Bynum,

Acting Commissioner of Social Security.

[FR Doc. 79-19079 Filed 6-18-79; 8:45 am]
BILLING CODE 4110-07-M

Notices

Federal Register
Vol. 44, No. 119
Tuesday, June 19, 1979

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Cash in Lieu of Commodities; Value of Donated Commodities for School Year 1979

Section 6(b) of the National School Lunch Act, as amended (7 U.S.C. 1755) and the regulations governing cash in lieu of commodities (7 CFR Part 240) require the Secretary of Agriculture to make an estimate not later than May 15, 1979, of the value of agricultural commodities and other foods that will be delivered to States under the food donation regulations (7 CFR Part 250) during the school year ending June 30, 1979, for use in lunch programs by schools participating in the National School Lunch Program. If the estimated value is less than the total level of assistance authorized under Section 6(e) of the Act, as amended, for the school year ending June 30, 1979, the Secretary is required to pay to each State administering agency, not later than June 15, 1979, an amount of funds that is equal to the difference between the value of such deliveries as then programmed for each State and the total level of assistance authorized for such State under Section 6(e)

For school year 1979, the adjusted minimum national average value per lunch of donated foods or payment of cash in lieu thereof has been established under Section 6(e) at 13.75 cents per lunch (43 FR 31419) and, in accordance with these requirements, the Secretary has determined that $599,840,079 in commodities will be delivered nationally by June 30, 1979. Notice is hereby given, therefore, that no shortfall cash payments will be made for the school year ending June 30, 1979 (7 CFR Part 240)

On January 29, 1979, the amount of commodities needed to meet the requirements of Section 6(e) was revised to reflect increased participation trends, and commodities were shipped to State against their share of the revised national entitlement level of $599,426,784. By May 15 commodities valued at $599,804,079 had been purchased for shipment by June 30 to meet these requirements. However, during the May 15 review, later participation reports indicated the growth would be somewhat less than expected in January, and that the national commodity assistance level would be only $596,798,845. It was decided that since States had been given an entitlement figure based on the higher national figure of $599,426,784, it would be unfair to lower entitlements at this time. Therefore, no further adjustments will be made for the 1979 school year.

Effective Date: This notice shall become effective June 15, 1979. Dated: June 14, 1979.

Bob Greenstein,
Acting Administrator.

Carol Tucker Foreman,
Assistant Secretary.

[FR Doc. 79-19046 Filed 6-18-79; 8:45 am]
BILLING CODE 3410-30-M

Office of the Secretary

Change in Boundary of Ozark National Forest, Ark.

Pursuant to authority vested in me by Section 11 of the Act of March 1, 1911 (36 Stat. 961) as amended, and the delegation of authority and assignment of functions by the Secretary of Agriculture to the Assistant Secretary of Agriculture for Conservation, Research, and Education, the boundary of the Ozark National Forest is extended as described below and all lands within the Ozark National Forest as adjusted that have been or hereafter are acquired by the United States under provisions of the aforesaid Act, or which otherwise attain status as National Forest land subject to such Act, are hereby designated for administration as part of the Ozark National Forest.

Ozark National Forest, Arkansas

Fifth Principal Meridian

Stone County:
T.15N., R.11W.,
Sec. 14, NW¼NE¼ north of North Sylamore Creek, part NE¼NW¼ described as beginning at the northeast corner of NE¼NW¼, thence South 9.00 chains to the centerline or North Sylamore Creek; thence upstream along the centerline of North Sylamore Creek North 62 deg. West 6.43 chains, North 30½ deg. East 5.06 chains, North 36 deg. East 1.91 chains to the north line of NE¼NW¼; thence East along said north line 2.00 chains to the point of beginning.
Searcy County:
T.14N., R.18W.,
Sec. 23, SW¼NW¼, NW¼SW¼
Johnson County:
T.10N., R.25W.,
Sec. 2, NW¼NW¼;
Sec. 3, N½
Madison County:
T.13N., R.25W.,
Sec. 8, SE¼SW¼, SW¼SE¼.
Franklin County:
T.11N., R.27W.,
Sec. 18, SW¼SE¼, NE¼SW¼, NW¼SW¼ lying north of the Mulberry River, S½S½SW¼ less one acre square in the northeast corner, NW¼SE¼ lying north of the Mulberry River;
Sec. 19, W½W½, NE¼SW¼, NW¼SE¼.
T.11N., R.28W.,
Sec. 13, S½;
Sec. 14, NE¼SE¼, S½SE¼;
Sec. 23, NE¼NE¼, N½NW¼ lying south of the Mulberry River;
Sec. 24, N½, SE¼, E½SW¼, NW¼SW¼;
Sec. 29, NW¼SW¼ lying south of the Mulberry River, SW¼NW¼ lying south of the Mulberry River.
Crawford County:
T.12N., R.32W.,
Sec. 36, W½W½SE¼.
Washington County:
T.13N., R.31W.,
Sec. 33, W½SW¼.

The areas described aggregate 1,803.03 acres.

EFFECTIVE DATE: This order shall become effective June 19, 1979.

M. Rupert Cutler,
Assistant Secretary.
June 14, 1979.

[FR Doc. 79-19009 Filed 6-18-79; 8:45 am]
BILLING CODE 3410-11-M

Rural Electrification Administration

United Power Association, Elk River, Minn.; Proposed Loan Guarantee

Under the authority of Pub. L. 93-32 (87 Stat. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20-22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider (a) providing a guarantee supported by the full faith and

credit of the United States of America for a loan in the approximate amount of $31,387,000 to United Power Association of Elk River, Minnesota, and (b) supplementing such a loan with an insured REA loan at 5 percent interest in the approximate amount of $10,000,000 to this cooperative.

These loans will be used to finance a construction program consisting of approximately 32 miles of 230 kV and approximately 60 miles of 69 kV transmission lines and related facilities; load management equipment; and miscellaneous generation and other system improvements providing no additional generating capacity.

Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed program, including the engineering and economic feasibility studies and the proposed schedule for the advances to the borrower of the guaranteed loan funds from Mr. Philip O. Martin, Manager, United Power Association, Elk River, Minnesota 55330.

In order to be considered, proposals must be submitted before July 19, 1979, to Mr. Martin. The right is reserved to give such consideration and make such evaluation or other disposition of all proposals received, as United Power Association and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20–22 are available from the Director, Informtion Services Division, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

Dated at Washington, D.C., this 11th day of June 1979.

Joseph Vellone,

Acting Administrator, Rural Electrification Administration.

[FR Doc. 79-18084 Filed 6-18-79; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Vineland Area Tributary to Arkansas River Watershed, Colorado; Intent Not to File an Environmental Impact Statement for Deauthorization of Federal Funding of the Vineland Area Tributary to Arkansas River Watershed

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the deauthorization of Federal funding of the Vineland Area Tributary to Arkansas River Watershed, Pueblo County, Colorado.

The environmental assessment of this action indicates that deauthorization of Federal funding of the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Robert G. Halstead, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this action.

The watershed project, which included a combination of land treatment and structural measures, will not be completed and will not contribute to soil and water conservation, watershed protection or flood prevention of the area.

This notice of intent not to file an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment is on file and may be reviewed by contacting Mr. Robert G. Halstead, State Conservationist, P.O. Box 17107, Denver, Colorado 80217, 303–837–4275.

An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy request at the above address.

No administrative action on implementation of the proposal will be taken on or before August 20, 1979.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program, Public Law 83–566, 16 U.S.C. 1001–1008.)

Dated: June 11, 1979.

Joseph W. Haas,

Assistant Administrator for Water Resources, Soil Conservation Service.

[FR Doc. 79-18029 Filed 6-18-79; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

[Docket 34573]

Anchorage-London Service Case; Hearing

Notice is hereby given to the provisions of the Federal Aviation Act of 1958, as amended, that hearing in the above-entitled matter is assigned to be held on July 17, 1979, at 10:00 a.m. (local time), in Room 1003, Hearing Room A, Universal North Building, 1875 Connecticut Avenue, N.W., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., June 13, 1979.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 79-18068 Filed 6-18-79; 8:45 am]

BILLING CODE 6320-01-M

Application for an All-Cargo Air Service Certificate

June 13, 1979.

In accordance with Part 291 (14 CFR 291) of the Board's Economic Regulations (effective November 9, 1978), notice is hereby given that the Civil Aeronautics Board has received an application, Docket 35423, from Emerald Air, Inc. d/b/a Emerald Airlines, of Austin, Texas for an all-cargo air service certificate to provide domestic cargo transportation.

Under the provisions of section 291.12(c) of Part 291, interested persons may file an answer in opposition to this application within twenty-one (21) days after publication of this notice in the **Federal Register**. An executed original and six copies of such answer shall be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. It shall set forth in detail the reasons for the position taken and must relate to the fitness, willingness, or ability of the application to provide all-cargo air service or to comply with the Act or the Board's orders and regulations. The answer shall be served upon the applicant and state the date of such service.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-18060 Filed 6-18-79; 8:45 am]

BILLING CODE 6320-01-M

Application for an All-Cargo Air Service Certificate

June 13, 1979.

In accordance with Part 291 (14 CFR 291) of the Board's Economic Regulations (effective November 9, 1978), notice is hereby given that the Civil Aeronautics Board has received an application, Docket 35512, from Michigan Peninsula Airways, Inc. of Romulus, Michigan for an all-cargo air service certificate to provide domestic cargo transportation.

Under the provisions of section 291.12(c) of Part 291, interested persons may file an answer in opposition to this application within twenty-one (21) days after publication of this notice in the **Federal Register**. An executed original

and six copies of such answer shall be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. It shall set forth in detail the reasons for the position taken and must relate to the fitness, willingness, or ability of the applicant to provide all-cargo air service or to comply with the Act or the Board's orders and regulations. The answer shall be served upon the applicant and state the date of such service.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-19051 Filed 6-18-79; 8:45 am]

BILLING CODE 6320-01-M

COMMISSION ON CIVIL RIGHTS

Colorado Advisory Committee; Agenda; Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Colorado Advisory Committee (SAC) of the Commission will convene at 9:00 am and will end at 12 noon, on July 14, 1979, at the Executive Tower, 1405 Curtis Street, Suite 1706, Denver, Colorado 80202.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Rocky Mountain Regional Office of the Commission, Executive Tower Inn, Suite 1700, 1405 Curtis Street, Denver, Colorado 80202.

The purpose of this meeting is to orientate newly rechartered committee members and report on the status of the Energy Policy Handbook project.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., June 13, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-19011 Filed 6-18-79; 8:45 am]

BILLING CODE 6335-01-M

Wyoming Advisory Committee; Agenda and Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Wyoming Advisory Committee (SAC) of the Commission will convene at 10:30 a.m. and will end at 3 p.m., on July 12, 1979, at the Natrona County Library, Sullivan Room, Second and Durbin, Casper, Wyoming 82601.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Rocky Mountain Regional Office of the Commission, Executive Tower Inn, Suite 1700, 1405 Curtis Street, Denver, Colorado 80202.

The purpose of this meeting is to review status of current project on educational opportunities in energy impacted counties in Wyoming.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., June 14, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-19010 Filed 6-18-79; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of the Census

1978 Survey of the Consumption of Selected Hydrocarbon, Coal, and Coke Materials by Manufacturers; Determination

In conformity with title 13, United States Code, sections 182, 224, and 225, and due notice having been published on March 29, 1979 (44 FR 18720), I have determined that the data collected on this survey will provide needed information on the consumption of fuels for nonenergy purposes. This information will be used as an aid in various policy development activities by the Department of Energy. This information will supplement the data on fuels used for heat and power that are collected in the annual survey of manufactures, Form MA-100. Therefore, these data will be useful to both the public and private sectors for a variety of analytical purposes related to energy supply and usage. They are not available in the form requested from nongovernmental or other governmental sources.

This survey will request data concerning selected hydrocarbon material consumption, produced and consumed fuels, fuel oil stocks, and coal and coke stocks.

Data will be collected on an establishment basis from a subsample of the annual survey of manufactures. The sample will consist of approximately 3,300 establishments.

Copies of the report forms are available upon request to the Director, Bureau of the Census, Washington, D.C. 20233.

I have, therefore, directed that this survey be conducted for the purpose of collecting the data hereinabove described.

Dated June 14, 1979.

Daniel B. Levine,

Acting Director, Bureau of the Census.

[FR Doc. 79-19038 Filed 6-18-79; 8:45 am]

BILLING CODE 3510-07-M

National Bureau of Standards

Clinical Thermometers; Voluntary Product Standard Action of Withdrawal

In accordance with § 10.12 of the Department's "Procedures for the Development of Voluntary Product Standards" (15 CFR Part 10), notice is hereby given of the withdrawal of Voluntary Product Standard PS 39-70, "Clinical Thermometers (Maximum-Self-Registering, Mercury-in-Glass)."

This withdrawal action is being taken for the reason that PS 39-70 is adequately covered by the American Society for Testing and Materials' standard ANSI/ASTM E 667-79, "Standard Specification for Clinical Thermometers (Maximum Self-Registering, Mercury-in-Glass)," and duplication is inappropriate and not in the public interest. This action is taken in furtherance of the Department's announced intentions as set forth in the public notice appearing in the **Federal Register** of April 4, 1979 (44 FR 20237) to withdraw this standard.

The effective date for the withdrawal of this standard will be August 20, 1979. This withdrawal action terminates the authority to refer to this standard as a voluntary standard developed under the Department of Commerce procedures.

Dated: June 14, 1979.

Ernest Ambler,

Director.

[FR Doc. 79-19001 Filed 6-18-79; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration, Western Pacific Fishery Management Council; Amended Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Western Pacific Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Public Law 94-265), has changed its meeting dates on June 26-27, 1979; the time to 9 a.m. to 5 p.m. on both days; and the place to State Capitol, Honolulu, Hawaii, (FR Vol. 44, No. 101, May 23, 1979).

FOR FURTHER INFORMATION CONTACT: Western Pacific Fishery Management

Council, Room 1606, 1164 Bishop Street, Honolulu, Hawaii 96813, telephone: (808) 523–1368.

Dated: June 13, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-18887 Filed 6-18-79; 8:45 am]

BILLING CODE 3510-22-M

Office of the Secretary

National Laboratory Accreditation Criteria Committees for Thermal Insulation Materials and Freshly Mixed Field Concrete; Open Meetings

The National Laboratory Accreditation Criteria Committee for Thermal Insulation Materials (NLACC–1) and the National Laboratory Accreditation Criteria Committee for Freshly Mixed Field Concrete (NLACC–2) will hold a joint meeting on July 9–10, 1979, in the Main Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C. (public entrance to the building is on 14th Street, between Constitution Avenue and E Street, N.W.). The Committees will meet jointly from 10:00 a.m. to 5:00 p.m. on July 9 in Room B841 and separately from 9:00 a.m. to 5:00 p.m. on July 10 (NLACC–1) in Room 3708 and NLASS–2 in Room B841).

Tentative agenda items include:

1. Briefing on the implementation of the criteria for the thermal insulation materials program including experiences of using the questionnaires, the on-site examinations, and the proficiency testing programs.

2. Review of the fundamental differences in the criteria recommended by the two Committees.

3. Consideration of possible changes in each Committee's recommendations.

The meeting will be open to public observation. The public may submit written statements or inquiries to the Chairman before or after the meeting. A limited number of seats will be available to the public and to the press on a first-come, first-served basis.

Copies of the minutes and material distributed will be made available for reproduction, following certification by the Chairman, in accordance with the Federal Advisory Committee Act, at Room 3876, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Additional information may be obtained from Mr. Peter S. Unger, Assistant Coordinator, National Voluntary Laboratory Accreditation Program, Room 3876, U.S. Department of Commerce, Washington, D.C. 20230, telephone: 202–377–5872.

Dated: June 13, 1979.

Jordan J. Baruch,

Assistant Secretary for Science and Technology.

[FR Doc. 79-18927 Filed 6-18-79; 8:45 am]

BILLING CODE 3510-13-M

DEPARTMENT OF DEFENSE

Defense Science Board Summer Study Panel on Comprehensive Test Ban; Advisory Committee Meeting

The Defense Science Board Summer Study Panel on the Comprehensive Test Ban (CTB) will meet in closed session on July 19–20, 1979 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

A meeting has been scheduled for July 19–20, 1979 to further organize the Defense Science Board Panel on the Comprehensive Test Ban and to examine stockpile reliability and endurance, and the weapon science and technology base. This Panel will also discuss plans for future consideration of the scientific and technical aspects of the CTB in preparation for the Summer Study.

In accordance with 5 U.S.C. App. I 10(d) (1976), it has been determined that this Defense Science Board Summer Study Panel meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly this meeting will be closed to the public.

H. E. Lofdahl,

Director, Correspondence and Directives, Washington Headquarters Service, Department of Defense.

June 14, 1979.

[FR Doc. 79-19013 Filed 6-18-79; 8:45 am]

BILLING CODE 3810-70-M

Federal Voting Assistance Program

AGENCY: Office of the Secretary of Defense.

ACTION: Notice of Intent.

SUMMARY: This notice of intent is to revise the Federal Post Card Application form to be used for absentee voting in accordance with the Federal Voting Assistance Act of 1955 and the Overseas Citizens Voting Rights Act of 1975 as amended. Individuals covered by these Acts are as follows:

(a) a member of the armed forces or merchant marine in active service;

(b) a spouse or dependent of (a) above;

(c) a U.S. citizen temporarily residing outside U.S.;

(d) a spouse or dependent residing with (c) above;

(e) U.S. citizen overseas by virtue of employment;

(f) a spouse or dependent residing with (e) above;

(g) other U.S. citizen residing outside United States.

Pub. L. 95–593 requires the Presidential designee, currently the Secretary of Defense, to design a single form of postcard application for registration to vote and for an absentee ballot request. The same law recommends that each State accept any official postcard which is duly executed by citizens covered by the Acts as a simultaneous application for registration and for absentee ballot. This proposed change incorporates the information submitted by the States to meet the requirement set forth by PL 95–593.

DATES: Comments must be received on or before July 20, 1979.

ADDRESSES: Federal Voting Assistance Program, Office of the Secretary of Defense, Pentagon, Room 1B457, Washington, D.C. 20301.

FOR FURTHER INFORMATION CONTACT: Henry Valentino, Director, Federal Voting Assistance Program, Ext. 695–9330 or 697–6125.

H. E. Lofdahl,

Director, Correspondence and Directives, Washington Headquarters Service, Department of Defense.

June 14, 1979.

BILLING CODE 3810-70-M

POST CARD REGISTRATION AND ABSENTEE BALLOT REQUEST

INSTRUCTIONS

A. TYPE or PRINT LEGIBLY all entries before signing. The term *appropriate U.S. Official* as used herein refers to Unit Voting Officers or Counsellors, Commanding Officers, U.S. Embassy or U.S. Consul Officers or any other official who has access to the Voting Assistance Guide.

B. A detailed Voting Assistance Guide is published each even numbered year. It contains voting information for all States, U.S. territories and the District of Columbia. The Voting Assistance Guide is distributed to all Unit Voting Officers, Commanding Officers, U.S. Embassies and Consulates and State Election Officials. Copies of the Voting Assistance Guide are available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

C. The information to be listed on this form will allow each State to accept it as an application for registration or request for absentee ballot or both. If you omit any items, be sure to consult with appropriate U.S. Officials BEFORE mailing an incomplete application. An incomplete application may invalidate your request.

D. Privacy Act Statement: Authority: 50USC1451, 42USC1973, EO10646, 10USC133. The principal purposes and uses of this form are to serve as an application or request for registration or request for absentee ballot and for voter identification and authentication in registration records. Disclosure of all information on this form is voluntary. However, your failure to provide the necessary information may preclude the pertinent State or other jurisdiction from processing this form and may possibly prevent you from exercising your right to vote absentee.

E. Passport or I.D. Card number is preferred, however, an alternative form of identification may be acceptable if you do not possess a valid passport or card of identity and registration. Indicate the type of identification used such as driver's license, birth or baptism certificates, or marriage certificate.

F. Some States require a separate application for registration and for each election. If you circle (All as permitted), you will receive those ballots permitted by State law. Consult the *appropriate U.S. Official* for specific information concerning your State. If you circle either (Primary), (Special), or (General) and you are eligible to vote, you will receive a ballot for the election circled only.

G. Party choice is secret in Primary Elections in the following States: Alaska, Idaho, Louisiana, Michigan, Minnesota, Montana, North Dakota, Utah, Vermont, Washington, Wisconsin. You do not have to disclose your political party preference for a Primary Election ballot in these States.

H. Most States allow military personnel and U.S. citizens outside the United States to vote absentee in State and local, as well as Federal elections. However, in a few States, you may be liable for State or local taxes if you vote in State or local elections. The exercise of any right to register or vote in Federal elections by any U.S. citizen outside the United States shall not affect the determination of his place of residence or domicile for purposes of any tax imposed under Federal, State or local law. Consult the *appropriate U.S. Official* for specific information concerning your State. If you request a Federal Ballot only and receive a full ballot (Federal and State or local) because some States do not print a Federal Ballot, you may vote the full ballot without incurring a tax liability.

I. In most States, checking any box 12(a) through (f) will entitle you to a full ballot. A U.S. citizen temporarily residing outside the U.S. means that at some future time the voter intends to reside again in the State where application is being made. Civilian employees of the Federal government assigned to an overseas area are covered by category 12(c).

J. All citizens, not employed by the Federal government, who are overseas by virtue of their employment including missionaries and students should check box 12(e).

K. Other U.S. citizen means all civilians not covered by any other listed category who are outside the U.S. in a private capacity such as retirees or persons on extended travel or vacation.

L. If you have not voted before, enter "Not Applicable." If you were registered in a precinct other than the one you are now claiming, you should complete this item. This will help transfer your registration records. If you don't remember the information, then indicate the approximate year and enter "unknown" in the other spaces.

M. Many States require this affirmation. If you have been convicted of a felony or been adjudicated mentally incompetent, some States have provisions for a pardon in order to reinstate voting rights. Consult the appropriate State Governor for reinstatement of your voting rights. If you need to know which States require this affirmation, consult the *appropriate U.S. Official* for further information.

N. Not all States require completion of the Oath or Notary provision in item 19. If completion of this item presents an undue hardship, consult the *appropriate U.S. Official* to determine if this is a requirement for your State.

O. Address the card to the proper county, township or State official. Consult with the *appropriate U.S. Official* to determine the correct address for your application.

P. Foreign airmail postage must be affixed if mailed in a foreign postal facility. No postage is required for this card if mailed in a U.S. postal facility, APO, FPO or Embassy or Consulate.

(Keep this portion of the card for your records.) Date Mailed: _____

(Mail this portion of the card to proper addressee.)

NOTICE: ILLEGIBLE OR INCOMPLETE INFORMATION MAY DELAY OR INVALIDATE YOUR REQUEST

POST CARD APPLICATION FOR ABSENTEE BALLOT

APPLICATION FOR STATE OF _____ COUNTY OF _____ SS _____

(1) _____
(TYPE OR PRINT FULL NAME—(First, Middle, Last))

(2) My home residence is (or for citizens checking 12(g), my last residence immediately prior to my departure from the United States):

_____
(Number and Street or Rural Route)

_____ _____
(City, Town, or Village) (County or Parish)

_____ _____
(State) (Zip Code)

(3) I am a United States Citizen, born on _____
(Day, Month, Year)

(4) Place of Birth _____

(5) If Naturalized:

(a) Place _____ Date _____

(b) Naturalization No. _____

(6) Sex _____, Height _____, Weight _____

Hair Color _____, Eye Color _____

(7) Social Security No. _____
See instruction D

(8) Other Identification No.: _____
(Passport, I.D. Card, etc. See instruction E)

(9) I request registration (if required) and absentee ballot(s) to vote in the coming election(s):
Circle applicable election(s) (See instruction F)
(Primary) (Special) (General) (All as permitted)

(10) For primary election ballot, my political party preference is _____
(If party choice is secret for primary in this State do not answer, see instruction G).

(11) Check one box (see instruction H)
☐ (a) I request Federal, State and Local ballot, if I am entitled.
☐ (b) I request only Federal election ballot if provided separately by State.

(12) I am: (check applicable box—see instruction I)
☐ (a) a member of the armed forces or merchant marine in active service
☐ (b) a spouse or dependent of (a) above
☐ (c) a U.S. citizen temporarily residing outside U.S.
☐ (d) a spouse or dependent residing with (c) above
☐ (e) U.S. citizen overseas by virtue of employment (See instruction J)
☐ (f) a spouse or dependent residing with (e) above
☐ (g) other U.S. citizen residing outside U.S. (See instruction K)

(13) Please mail my ballot to this address: (include zip code if applicable and ensure military or foreign address is complete)

_____

_____

_____

(14) I am not requesting a ballot from or voting in any other U.S. State, territory or possession in this election.

(15) The last time I voted was in _____
County or Township

_____
(State) (Year)

Voter Registration No., if known: _____
(See instruction L)

(16) I have not been convicted of a felony or been adjudicated mentally incompetent. (If so, see instruction M)

(17) I swear or affirm, under penalty of perjury, that the above information is true and complete.

(18) _____
(Signature of person requesting ballot)

OATH IF REQUIRED BY STATE (See instruction N)

(19) Subscribed and sworn to before me on _____
(Day, Month, Year)

_____ SEAL
(Signature of official administering oath)

_____
(Typed or printed name of official administering oath)

_____
(Title or rank, and organization of administering official)

[FR Doc. 79-19007 Filed 6-18-79; 8:45 am]

BILLING CODE 3510-79-C

Office of the Secretary of Defense

Per Diem, Travel and Transportation Allowance Committee; Publication of Per Diem Rate Changes

Correction

In FR Doc. 79-18733 appearing at page 34627 in the issue for Friday, June 15, 1979, make the following correction: On page 34628, in the second column, in the table of maximum per diem rates, under the entry for the Virgin Islands of U.S., the maximum rate for "5-1—11-30" should be corrected to read "54.00".

BILLING CODE 1505-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Okanogan Area Service Draft Facility Planning Supplement to Final Environmental Statement; Public Meetings

The Bonneville Power Administration (BPA) hereby gives notice of public meetings to be held to discuss and solicit comments on the Okanogan Area Service Draft Facility Location Supplement. This environmental statement supplements BPA's Final Fiscal Year 1976 Proposed Program EIS (DOI/FES 75-79) and was prepared pursuant to DOE's implementation of the National Environmental Policy Act of 1969. This supplemental statement assesses the anticipated impacts associated with the construction of approximately 63 miles of 230-kV transmission line from the Chief Joseph/Foster Creek Substations to the Tonasket Substation, and a new substation near Chillowist, Washington. Alternatives to the proposal, including nonconstruction, are also discussed.

Public information meetings will be held at the following locations:

July 24, 1979, Oak County PUD Auditorium, Okanogan, Washington, 7:00 p.m.
July 25, 1979, Brewster Grange Hall, Brewster, Washington, 7:00 p.m.

All interested parties are urged to attend. All comments are welcome in order to fully assist the agency in evaluating the environmental factors pertinent to this proposal. Comments will be considered in the preparation of the Okanogan Area Service Final Facility Location Supplement.

For those who cannot attend the meetings, written comments will be accepted until the close of comment date August 6, 1979. Copies of the environmental statement, as well as additional or clarifying information, may be obtained by writing or calling the Environmental Manager's Office, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208, 503-234-3361, extension 5137,

Dated at Portland, Oregon, this 11th day of June 1979.

Sterling Munro,
Administrator.

[FR Doc. 79-18017 Filed 6-18-79; 8:45 am]
BILLING CODE 6450-01-M

Public Utility Regulatory Policies Act; Hearings

AGENCY: Department of Energy. Bonneville Power Administration (BPA).

ACTION: Notice of Hearings Respecting Ratemaking Standards.

SUMMARY: Bonneville Power Administration (BPA) will hold hearings on July 19, 1979, to consider and determine whether or not it is appropriate to implement standards for ratemaking concerning cost of service, declining block rates, time-of-day rates, seasonal rates, interruptible rates, and load management techniques, as provided by Section 111 of the Public Utility Regulatory Policies Act (PURPA, Pub. L. 95-617).

DATES: Public hearings concerning the adoption of ratemaking standards will be held Thursday, July 19, 1979, in the Auditorium, Bonneville Power Administration Headquarters Building, 1002 NE. Holladay street, Portland, Oregon, commencing at 9 a.m. and at 7 p.m.

SUPPLEMENTAL INFORMATION: PURPA Section 111 requires certain nonregulated electric utilities to consider certain specified standards for ratemaking and to make a determination concerning whether or not it is appropriate to implement such standards for its ratemaking. The consideration is required to be after a public hearing; the announced hearing is the public hearing for such purpose. Written and oral evidence will be accepted at the hearing. And the determination concerning whether to implement standards must be based upon such evidence.

SUBJECT OF HEARINGS: The Federal standards which must be considered and which define the scope of this hearing are specified by Section 111(d) of PURPA. The electric consumers with which these standards are concerned include any person, state agency, or Federal agency to which electric energy is sold by BPA. The standards proposed by PURPA raise issues which are to be considered and determined as a result of these hearings. The proposed standards generally provide that:

(1) *Cost of Service*—Rates to each class of consumers shall be designed to the maximum extent practicable to reflect the costs of providing service to that class. Section 115(a) establishes certain special factors upon which to base rates for consideration of this proposed standard. These special factors generally require that cost-of-service determinations take into account the changes in costs associated with daily and seasonal time of use. The cost of adding more generating capacity and of delivering additional energy also are to be taken into consideration.

(2) *Declining Block Rates*—Declining block energy charges that are not cost based shall be eliminated.

(3) *Time-of-Day rates*—Time-of-day rates shall be established if cost effective where costs vary by time of day.

(4) *Seasonal Rates*—Seasonal rates shall be established where costs vary by season.

(5) *Interruptible Rates*—Interruptible rates based on the costs of providing interruptible service shall be offered to commercial and industrial customers.

(6) *Load Management Techniques*—Load management techniques shall be offered to consumers where practicable, cost-effective, reliable, and useful to the utility for energy or capacity management.

PROCEDURE OF HEARING: Persons desiring to appear and make statements shall present themselves, in person or by counsel, at the beginning of the hearing at 9 a.m. or 7 p.m., July 19, 1979.

The hearing will be presided over by a hearing officer designated by the Administrator of BPA.

The hearing officer will disclose at the beginning of the hearing any additional rules necessary for insuring an orderly procedure. The hearing will be transcribed and copies of the transcript may be ordered at cost from the Office of General Counsel, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208.

Written data, views and comments on the standards are also requested from the public. All written material received by BPA before 4:30 p.m. on August 20, 1979, will be made part of the official record and will be considered by BPA.

The BPA Branch of Rates has prepared written statements concerning

the standards; these statements will be made part of the official record and are available to the public upon request. The statements will include information concerning the standards and a summary of comments received from the public on BPA's proposed 1979 Wholesale Power Rates which may be useful to the public in developing its views and recommendations for the BPA Administrator's consideration. Copies of the staff statement are available from Donna Lou Geiger, Public Involvement Coordinator, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212, or from BPA's Area and District Offices, located as follows: Spokane Area Office, Room 561, U.S. Court House, Spokane, Washington 99201; Kalispell District Office, Box 758, Kalispell, Montana 59901; Wenatchee District Office, Room 314, U.S. Federal Building, 301 Yakima Street, P.O. Box 741, Wenatchee, Washington 98801; Portland Area Office, Lloyd Plaza Building, 919 NE. 19th Avenue, Room 201, P.O. Box 3621, Portland, Oregon 97208; Eugene District Office, U.S. Federal Building, Room 206, 211 East 7th Street, Eugene, Oregon 97401; Seattle Area Office, 415 First Avenue North, Room 250, Seattle, Washington 98109; Walla Walla Area Office, West 101 Poplar, P.O. Box 1516, Walla Walla, Washington 99362; Idaho Falls District Office, 531 Lomax Street, P.O. Box 2568, Idaho Falls, Idaho 83401.

The official record of the proceedings will consist of the verbatim transcript of the hearings and copies of all written material submitted within the time set forth above. The summary of the record will be prepared by the hearings officer and will be transmitted to the BPA Administrator along with the complete record. The record will be used by the Administrator in making the determinations required by Section 111 of the Public Utility Regulatory Policies Act of 1978.

Individual copies of the record will be available to the public at cost of reproduction. Copies will also be kept on file for public inspection at BPA's Area and District Offices and at the Office of the Public Involvement Coordinator, Room 494, Bonneville Power Administration Building, 1002 NE. Holladay Street, Portland, Oregon.

WRITTEN COMMENTS: Written comments will be accepted before the hearing and until 4:30 p.m., August 20, 1979, and may be delivered or mailed to Ms. Donna Lou Geiger, Public Involvement Coordinator, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

CONSUMER REPRESENTATION: Any person may appear at this hearing either in person or by an attorney or both.

As provided by Section 122 of PURPA, Pub. L. 95-617, November 9, 1978, if no alternative means for assuring representation of electric consumers is provided, and if an electric consumer of BPA substantially contributes to the approval, in whole or in part, of a position advocated by such consumer at these hearings and relating to any of the subjects of this hearing, BPA will compensate such consumer for reasonable attorney fees, expert witness fees, and other reasonable costs incurred in preparation and advocacy of such position in this hearing.

A notice of intention to claim such fees and costs shall be presented in writing before the close of the hearing. Those electric consumers of BPA who are found to be entitled to such fees and costs under Section 122(a) of PURPA will be so notified and required thereafter to file a written claim. The written claim shall be on oath and shall state (1) the names and addresses of the consumer and of his attorney, (2) a recitation of the entire fee contract made between the consumer and his attorney and witness, (3) a detailed statement of the time and charges of the attorney or witness or both for which reimbursement is sought, (4) an itemization of any other costs for which reimbursement is sought, and (5) information as to the financial situation of the consumer.

The determination as to what, if any, attorney fees, witness fees, and costs will be reimbursed by BPA will be included in the final order or determination in these proceedings. Payment to be made will be processed in due course thereafter and mailed to the consumer, or his attorney, or both.

FURNISHING INFORMATION: BPA will furnish information on the PURPA standards in accordance with the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Ms. Donna Lou Geiger, Public Involvement Coordinator, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212; 503-234-3361, extension 4261.

BPA also has toll-free information lines for use by the public in the region. The toll-free numbers are: Oregon 1-800-452-5978 or 452-8429; Washington, Idaho, Montana, Utah, Wyoming, California, and Nevada, 1-800-547-5977 or 547-6048.

George E. Bell,
Assistant Administrator.
June 13, 1979.

[FR Doc. 79-19014 Filed 6-18-79; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-50332A; FRL 1250-2]

Chevron Chemical Co.; Amendment to Experimental Use Permit Issued

On Thursday, September 29, 1977 (42 FR 28716), information appeared pertaining to the issuance of an experimental use permit, No. 239-EUP-68, to Chevron Chemical Company. At the request of the company, that permit has been amended. The experimental use permit now allows the use of *cis-N*-[(1,1,2,2-tetrachloroethyl)thio]-4-cyclohexene-1,2-dicarboximide (captafol) on potatoes to evaluate control of late and early blight. A total of 306 acres is involved; the program is authorized only in the States of California, Colorado, Idaho, Michigan, Nebraska, Oregon, Washington, Wisconsin, and Wyoming. The experimental use permit is effective from October 31, 1978 to October 31, 1979. A permanent tolerance for residues of the active ingredient in or on potatoes has been established (40 CFR 180.267). (PM-21, Henry Jacoby, Room E-305, Telephone: 202/755-2562)

(Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).)

Dated: June 12, 1979.

Douglas D. Campt,
Director, Registration Division.

[FR Doc. 79-19066 Filed 6-18-79; 8:45 am]
BILLING CODE 6560-01-M

[FRL 1251-2]

Fuel Economy Retrofit Devices Evaluation of Retrofit Device

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Retrofit Device Evaluation.

SUMMARY: This announcement summarizes the conclusions of the EPA following evaluation of the "Malpassi Filter King" under the provisions of Section 511 of the Motor Vehicle Information and Cost Savings Act.

FOR FURTHER INFORMATION CONTACT:
Peter Hutchins, Emission Control Technology Division, Office of Mobile Source Air Pollution Control, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, 313–668–4310.

SUPPLEMENTAL INFORMATION:
Background: Section 511(b) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2011(b)) requires that:

(b)(1) Upon application of any manufacturer of a retrofit device (or prototype thereof), upon the request of the Federal Trade Commission pursuant to subsection (a), or upon his own motion, the EPA Administrator shall evaluate, in accordance with rules prescribed under subsection (d), any retrofit device to determine whether the retrofit device increases fuel economy and to determine whether the representations (if any) made with respect to such retrofit device are accurate.

* * * * *

(c) The EPA Administrator shall publish in the Federal Register a summary of the results of all tests conducted under this section, together with the EPA Administrator's conclusions as to—

(1) the effect of any retrofit device on fuel economy;

(2) the effect of any such device on emissions of air pollutants; and

(3) any other information which the Administrator determines to be relevant in evaluating such device.

On November 8, 1977, the EPA received a request from Peter Francis Coulter and Richard Harding Serivenen of Toronto, Canada, for evaluation of a fuel saving device termed the "Malpassi Filter King." An evaluation has been made and the results are described completely in an EPA report entitled "EPA Evaluation of 'Malpassi Filter King' under Section 511 of the Motor Vehicle Information and Cost Savings Act." Copies of this report are available upon request.

Summary of Evaluation: The basic conclusion following review of testing by other organizations is that the device does not have large scale applicability for improvement of fuel economy for different types of vehicles. The only reported testing performed in accordance with the Federal Emissions Test Procedure and Highway Fuel Economy Test, performed by American Motors Corporation, identified driveability problems and associated safety concerns which detracted from the universal applicability of the device as a fuel economy improver. However, because the device may potentially benefit fuel economy for certain types of vehicles, the applicant is encouraged to carry out testing designed to identify particular vehicles whose fuel economy is improved by the device. If vehicles are identified which respond favorably with respect to fuel economy while retaining their emissions control capabilities, the applicant is advised to focus on these vehicles only in advertising the product and to refrain from making sweeping claims as to applicability to all vehicles.

The emissions impact of the device has been evaluated independently by the California Air Resources Board, who determined that installation of the device did not reduce the effectiveness of motor vehicle pollution control devices.

Dated: June 13, 1979.

David G. Hawkins,

Assistant Administrator for Air, Noise and Radiation.

[FR Doc. 79-19073 Filed 6-18-79; 8:45 am]

BILLING CODE 6560-01-M

[OPP-C30167; FRL 1251-7]

Pesticide Programs; Receipt of Applications to Conditionally Register Pesticide Products Containing New Active Ingredient

Applications have been submitted to the Environmental Protection Agency (EPA) to conditionally register pesticide products containing an active ingredient which has not been included in any previously registered pesticide products. Notice of these applications is given pursuant to the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended in 1972, 1975 and 1978 (92 Stat. 819; 7 U.S.C. 136) and regulations thereunder (40 CFR 162). Notice of receipt of these applications does not indicate a decision by the Agency on the applications.

Interested persons are invited to submit written comments on these applications. Comments may be submitted, and inquiries directed, to Product Manager (PM) 23, Ms Willa Garner, Room E–351, Registration Division (TS–767), Office of Pesticide Programs, EPA, 401 M St., SW, Washington, DC 20460, telephone number 202/755–1397. The comments must be received on or before July 19, 1979 and should bear a notation indicating the EPA file symbol number of the application to which the comments pertain. Comments received within the specified time period will be considered before a final decision is made; comments received after the specified time period will be considered only to the extent possible without delaying the processing of the application. The labels furnished by each applicant, as well as all written comments filed pursuant to this notice, will be available for public inspection in the Product Manager's office from 8:30 a.m. to 4:00 p.m. Monday through Friday.

Notice of approval or denial of the applications to register pesticide products will be announced in the **Federal Register**. Except for such material protected by Section 10 of FIFRA, the test data and other information submitted in support of registration as well as other scientific information deemed relevant to the registration decision may be made available after approval under the provisions of the Freedom of Information Act. The procedures for requesting such data will be given in the **Federal Register** if an application is approved.

Dated: June 14, 1979.

Douglas D. Campt,

Director, Registration Division.

Applications Received

EPA File Symbol 43142–R. Boots Hercules Agrochemicals Co., 910 Market St., Wilmington, DE 19899. ANTOR HERBICIDE FOR MANUFACTURING USE ONLY. Active Ingredient: *Diethatyl ethyl [N–chloroacetyl–N–(2,6–diethyl phenyl) glycine, ethyl ester* 90%. PM23–Ms Willa Garner, Room E–351.

EPA File Symbol 43142–E. Boots Hercules Agrochemical Co. ANTOR HERBICIDE 4 LB/GALLON EMULSIFIABLE SOLUTION. Active Ingredient: Diethatyl ethyl 36%. Application proposes that this product be classified for general use as a preemergence control of certain weeds. PM23.

[FR Doc. 79-19069 Filed 6-18-79; 8:45 am]

BILLING CODE 6560-01-M

[PP 9G2173/T208; FRL 1251–5]

Pesticide Programs; Establishment of a Temporary Exemption From the Requirement of a Tolerance; n-Tetradecyl Formate

Hercon Products Group, Herculite Products, Inc., 1107 Broadway, New York, NY 10010, submitted a pesticide petition (PP 9G 2173) to the Environmental Protection Agency (EPA). This petition requested that a temporary exemption from the requirement of a tolerance be established for residues of the insecticide *n*-tetradecyl formate in or on the raw agricultural commodity cottonseed when used as a pheromone to disrupt mating in bollworm, and tobacco budworm.

Establishment of this temporary exemption will permit the marketing of the above raw agricultural commodity when treated in accordance with an experimental use permit (8720–EUP–7)

that has been issued under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

An evaluation of the scientific data reported and other material showed that the requested temporary exemption was adequate to protect the public health. The temporary exemption has been established for the pesticide, therefore, with the following provisions:

1. The total amount of the pesticide to be used must not exceed the quantity authorized by the experimental use permit.

2. Hercon Products Group must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The firm must also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary exemption expires April 3, 1980. Residues remaining in or on the cottonseed after this expiration date will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the experimental use permit and temporary exemption. This temporary exemption may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicates such revocation is necessary to protect the public health. Inquiries concerning this notice may be directed to Mr. Franklin Gee, Product Manager 17, Registration Division (TS–767), Office of Pesticide Programs, 401 M St., SW, Washington, DC 20460 (202/426–0425).

Statutory Authority: Section 408(j) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 346a(j)].

Dated: June 14, 1979.

Douglas D. Campt,

Director, Registration Division.

[FR Doc. 79-19067 Filed 6-18-79; 8:45]

BILLING CODE 6560-01-M

[PP 6G1667/T209; FRL 1250–4]

Pesticide Programs; Renewal of Temporary Tolerances for Tebuthiuron

On July 8, 1977, the Environmental Protection Agency gave notice (42 FR 35186) that in response to a pesticide petition (PP 6G1667) submitted to the Agency by Elanco Products Co., Div. of Eli Lilly and Co., P.O. Box 1750, Indianapolis, IN 46206, temporary tolerances were established for combined residues of the herbicide tebuthiuron (*N*-[5-(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl]-*N,N'*-dimethylurea) and its metabolites in or on the raw agricultural commodities grasses (pasture and rangeland) and grass hay at 20 parts per million (ppm); in kidney and liver of cattle, goats, horses, and sheep at 2 ppm; in milk at 0.3 ppm; and in the meat, fat, and meat byproducts (except kidney and liver) of cattle, goats, horses, and sheep at 0.25 ppm. These temporary tolerances expired June 15, 1978.

Elanco Products Co. requested a one-year renewal of these temporary tolerances both to permit continued testing to obtain additional data and to permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of an experimental use permit (1471–EUP–43) that has been renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that renewal of the temporary tolerances would protect the public health. Therefore, the temporary tolerances have been renewed on condition that the pesticide is used in accordance with the experimental use permit with the following provisions:

1. The total amount of the pesticide to be used must not exceed the quantity authorized by the experimental use permit.

2. Elanco Products Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The firm must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These temporary tolerances expire May 14, 1980. Residues not in excess of these temporary tolerances remaining in or on the above raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the experimental use permit and temporary tolerances. These temporary tolerances may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicate such revocation is necessary to protect the public health. Inquiries concerning this notice may be directed to Mr. Robert Taylor, Product Manager 25, Registration Division (TS–767), Office of Pesticide Programs, 401 M St., SW, Washington, DC 20460 (202/755–7013).

Statutory Authority: Section 408(j) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 346a(j)].

Dated: June 12, 1979.

Douglas D. Campt,

Director, Registration Division.

[FR Doc. 79-1984 Filed 6-18-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1251–1]

Underground Injection Control; List of States Requiring Programs

AGENCY: Environmental Protection Agency.

ACTION: Notice of Amended List of States Requiring Underground Injection Control (UIC) Programs.

SUMMARY: § 1422(a) of the Safe Drinking Water Act requires the Administrator of the Environmental Protection Agency to list in the **Federal Register** "* * * each State for which in his judgment, a State Underground Injection Control (UIC) program may be necessary to assure that underground injection will not endanger drinking water sources." For those States listed, the Act requires the development of programs to protect underground drinking water sources. EPA listed 22 States on September 25, 1978 (43 FR 43420); today, EPA adds 17 States to that list.

DATES: Comments are due August 20, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas E. Belk, Office of Drinking Water (WH–550), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Telephone No. (202) 426–3934.

SUPPLEMENTARY INFORMATION: Section 1421 of the Safe Drinking Water Act (P.L. 93–523 as amended by P.L. 95–190) requires the Administrator of the Environmental Protection Agency (EPA) to publish regulations which contain minimum requirements for State programs to prevent underground injection which endangers drinking water sources. Such regulations were reproposed on April 20, 1979 (44 FR 23738).

§ 1422(a) of the Act further requires the Administrator to "* * * list in the **Federal Register** each State for which in his judgment a State underground injection control program may be necessary to assure that underground injection will not endanger drinking water sources * * *." Section 1422(b)

requires each listed State, within 270 days from the date of final promulgation of the "minimum requirements" regulations under Section 1421, to submit an application to the Administrator with a plan to implement a UIC program in response to these requirements. The Administrator may, for good cause, extend the date for submission of an application of any State for an additional 270 days.

If the Administrator approves the State's application, the State shall have primary enforcement responsibility for its program (Section 1422(b) (3)). If the Administrator disapproves an application in whole or in part, if a State fails to make application within the allowed time, or if the Administrator subsequently determines that a State's program no longer meets the conditions for primacy, the Administrator must prescribe a program applicable to such State within 90 days after the date of such disapproval under Section 1422(a).

On September 25, 1978 (43 FR 43420), EPA Listed 22 States under § 1422(a) for participation in the UIC program. Today, EPA amends that initial list.

Amended List of States Requiring A State Underground Injection Control Program

In addition to the 22 States listed on September 25, 1978 and to the listing of one other State, Maryland, on April 11, 1979, the following seventeen States are hereby listed as requiring a State underground injection control program to assure that underground injection will not endanger drinking water sources.

Alabama	North Carolina
Georgia	North Dakota
Hawaii	Oregon
Massachusetts	South Carolina
Minnesota	Tennessee
Missouri	Virginia
Montana	Washington
Nebraska	Wisconsin
New Jersey	

States that are listed may apply for Federal financial assistance for developing and implementing the Underground Injection Control Program in accordance with regulations entitled "State Underground Water Source Protection Program Grants" issued on October 12, 1978, 43 FR 47130.

Methodology for Designation of States

In the September 25, 1978, Federal notice, EPA explained many options and numerous models in its desire to fashion an objective and quantifiable methodology for ranking States' needs for the underground injection control (UIC) programs. The agency ultimately selected seven criteria relating to both the relative importance of ground water resource and potential endangerment caused by various injection practices. These seven criteria determined the ranking of all 57 States and territories. The first 22 States listed headed the list, i.e. they had the greatest need for UIC programs. The 17 States added today are the next group of States as determined by that initial ranking. For a full discussion of the methodology which EPA used to determine this ranking of need, please see the September 25, 1978 notice (43 FR 43420).

Public Comments:

Although the Act does not require public comment on listings under Section 1422(a), it is EPA's policy to provide for public participation in its decisions. Accordingly, EPA is soliciting written public comments on today's action. Comments should be sent to Thomas E. Belk at the address noted above. EPA will consider all comments carefully, and issue a response in the **Federal Register** which either reconfirms today's list or makes appropriate revisions in the light of the comments. EPA will accept comments until August 20, 1979.

During the comment period, any State which is not now listed may ask to be included. EPA will carefully consider any such request which indicates a State's commitment to develop an approvable program under Section 1421 in a timely fashion.

Dated: June 14, 1979.

Douglas M. Costle,

Administrator.

[FR Doc. 79-18982 Filed 6-18-79; 8:45 am]
BILLING CODE 6560-01-M

[FRL 1250-1]

Water Quality Criteria; Corrections

In FR Doc. 79-7647, Thursday, March 15, 1979 at 44 FR 15936, EPA published and invited comment on Water Quality Criteria. In that document a number of errors appeared which needed correction. The corrections were published in FR Doc. 79-15191, May 16, 1979 at 44 FR 28716. One error still needs correction and it is listed below.

1. Appendix C, page 15980, left column, fourth equation,

$B_H = B^3\sqrt{\frac{70}{w}}$ is incorrect; the correct mathematical expression is:

$$B_H = B_A\sqrt[3]{\frac{70}{w}}.$$

Dated: June 13, 1979.

Thomas C. Jorling,

Assistant Administrator.

[FR Doc. 79-18985 Filed 6-18-79; 8:45]
BILLING CODE 6560-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Board of Visitors for the National Academy for Fire Prevention and Control; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name: Board of Visitors for the National Academy for Fire Prevention and Control (Board).

Dates of meeting: July 10-12, 1979.

Place: Conference Room, Administration Building (Building E), National Fire Academy, Emmitsburg, Maryland.

Times: 9:00 a.m. to 5:00 p.m., Tuesday thru Thursday.

Proposed agenda: July 10, 1979: Introductory remarks; Academy budget 1980 and 1981; Overview of Academy progress; Report of Planning Task Force; Report on curriculum delivery and delivery systems; Academy administrative services; Review of Open University; Review of Outreach programs. July 11, 1979: Round table question and answer discussion; Tour of Academy facilities. July 12, 1979: Briefing on Opening Symposium; Administrative items.

The meeting will be open to the public, with approximately 20 seats available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact Ms. Jane Sornberger, National Fire Academy, Route 1, Box 10A, Emmitsburg, Maryland 21727 (301-447-6117) on or before July 3, 1979.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Superintendent's Office, Administration Building, National Fire Academy, Emmitsburg, Maryland. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: June 14, 1979.

Gordon Vickery,

Administrator, United States Fire Administration.

[FR Doc. 79-19008 Filed 6-18-79; 8:45 am]
BILLING CODE 4210-23-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Fedefal Maritime Commission, 1100 L Street, N.W., Room 10423 or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before July 9, 1979. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No.: T-3812.

Filing Party: Jerry A. Ganey, Administrative Assistant, North Carolina Ports Authority, P.O. Box 3248, Wilmington, North Carolina 28406.

Summary: Agreement No. T-3812 is a lease agreement between the North Carolina Ports Authority (Authority) and Harrington and Company, Inc. (Harrington) covering the lease of approximately four (4) acres of hardstand area at the Port of Wilmington. The leased premises are to be used for the general activities of Harrington, as a containership service.

When and if approved by the Commission, this agreement will supersede and cancel the presently approved Agreement No. T-3363, approved November 15, 1976.

Agreement No.: T-3814.

Filing Party: H. H. Wittren, Manager, Waterfront Real Estate, Port of Seattle, P.O. Box 1209, Seattle, Washington 98111.

Summary: Agreement No. T-3814 between the Port of Seattle (Port) and Seacon Terminals, Inc. (Seacon) provides for the one-year lease by the Port to Seacon of approximately 15 acres of container terminal facilities at Pier 42 together with the preferential use of Port-owned cranes.

Agreement No. 5600-38.

Filing Party: Charles F. Warren, Esq., Warren & Associates, P. C., 1100 Connecticut Avenue, N.W., Washington, D.C. 20036.

Summary: Agreement 5600-38 would modify the basic agreement of the Philippines North America Conference by adding the following sentence to Article 9(E): "When a circular ballot is utilized and a vote is not received by the Conference within ten (10) working days, excluding day of distribution, absent votes shall be considered affirmative votes."

Agreement No. 9522-40.

Filing Party: Marc J. Fink, Esquire, Billig, Sher & Jones, P. C., Suite 300, 2033 K Street, N.W., Washington, D.C. 20006.

Summary: Agreement No. 9522-40 among the members of Med-Gulf Conference, would amend Article 3-B to the basic agreement by adding new language to provide that substituted service by land at the expense of the member line between or from loading ports, in addition to those ports specified within the scope of the agreement, may only be authorized, altered or cancelled upon the unanimous vote of all members of the Conference section affected.

By Order of the Federal Maritime Commission.

Dated: June 13, 1979.

Francis C. Hurney,

Secretary.

[FR Doc. 79-19015 Filed 6-18-79; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

Open Committee Meetings

Pursuant to the provisions of section 10 of the Federal Advisory Committee Act (P.L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, July 12, 1979
Thursday, July 19, 1979
Thursday, July 26, 1979

The meetings will convene at 10 a.m., and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, D.C.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives of five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives of five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the prevailing rate system and other matters pertinent to the establishment of prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management thereon.

These scheduled meetings will convene in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would impair to an unacceptable degree the ability of the Committee to reach a consensus on the matters being considered and disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public on the basis of a determination made by the Director of the Office of Personnel Management under the provisions of Section 10(d) of the Federal Advisory Committee Act (P. L. 92-463) and 5 U.S.C., section 552(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations thereon, and related activities. These reports are also available to the public, upon written request to the Committee Secretary.

Members of the public are invited to submit material in writing to the Chairman concerning Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information concerning these meetings may be obtained by contacting the Secretary, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW., Washington, D.C. 20415 (202-632-9710).

Dated: June 11, 1979.

Jerome H. Ross,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 79-18946 Filed 6-18-79; 8:45 am]

BILLING CODE 6325-01-M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report Proposals

The following requests for clearance of reports intended for use in collecting information from the public were accepted by the Regulatory Reports Review Staff, GAO, on June 13, 1979.

See 44 U.S.C. 3512(c) and (d). The purpose of publishing this notice in the Federal Register is to inform the public of such receipts.

The notice includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed OSM requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before July 9, 1979, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202–275–3532.

OFFICE OF SURFACE MINING

The Office of Surface Mining (OSM), Department of the Interior, requests clearance of new application, recordkeeping and reporting requirements contained in 30 CFR Parts 872, 877, 879, 882, 884 and 886. The Office of Surface Mining has determined that such information is necessary to perform its responsibilities under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq. and must be collected, submitted or retained. On October 25, 1978, the OSM adopted these requirements, subject only to review by GAO to assure that a minimum burden is imposed in the manner in which such information is proposed to be obtained. The requirements contained in each part are as follows:

30 CFR Part 872

Sections 872.11(b)(2) and 872.11(b)(3) require that no money shall be allocated to States and Indian Tribes, if OSM is advised in writing by the State and Indian Tribe, that a State or Indian Reclamation Plan will not be submitted. Funds allocated and granted to the States and Indian Tribes for reclamation work, that have not been expended within 3 years from the date of allocation, may be withdrawn if the Director finds in writing that the amounts involved are not necessary to carry out the approved reclamation activities, or that failure to expend is the result of avoidable delays in conducting approved reclamation activities. OSM anticipates that each of the 28 respondents will submit a Reclamation Plan and will expend their allocation within the 3-year period. Therefore OSM estimates no burden will be incurred as a result of this section.

Section 872.12(a) provides for the establishment of the State Abandoned Mine Reclamation Fund in each State with an approved Reclamation Plan and in accordance with OMB Circular No. A–102. This section will require 25 respondents to comply by filing with OSM an average of 1 report each on a one-time basis. OSM estimates that compliance with this section requires 6 hours per report and a total of 150 hours.

Section 872.13(a) sets the procedures to establish the Indian Abandoned Mine Reclamation Fund. This section will require 3 respondents to comply by filing with OSM an average of 1 report each on a one-time basis. OSM estimates that compliance with this section requires 6 hours per report and a total of 18 hours.

30 CFR Part 877

Section 877.12(b) requires OSM, the State or Indian Tribe to give notice to the landowner in writing, including a statement of the reasons why entry is necessary, of any intentions to enter upon land to conduct studies or exploration, if the owner of the land will not provide consent to enter. This section will require 28 respondents to comply by preparing and/or posting an average of 1 notice each per year. OSM estimates that compliance with this section requires 1 hour per notice and a total of 28 hours per year.

Section 877.13(c) requires the Regional Director, State or Indian Tribe to give notice to the owner or post notice on the property of its intent to enter for purposes of conducting reclamation, 30 days before entry, if the owner will not grant permission. A copy of findings which outline the reasons for entry shall be included with the notice. This section will require 28 respondents to comply by preparing an average of 1 notice and statement of findings each per year. OSM estimates that compliance with this section requires 4 hours per notice and statement of findings and a total of 112 hours per year.

30 CFR Part 879

Section 879.13 sets out the procedures and authorizations which the Director, OSM, or a State or Indian Tribe under an approved Reclamation Plan, must follow in accepting gifts of land for reclamation purposes. It regulates the offers to make a gift and prescribes the actions that must follow immediately after acceptance of the gift. This section will require 28 respondents to comply by filing with OSM an average of 1 report each per year. OSM estimates that compliance with this section requires 80 hours per report and a total of 2,240 hours per year.

Section 879.15 requires that the Regional Director, State and Indian Tribe take the following actions prior to the disposition of any acquired reclaimed lands: (1) Publish a public notice which describes the proposed disposition of the land and which provides for public comment, and hold a hearing if requested as a result of the public notice; (2) make a written finding that the proposed disposition is appropriate, considering all comments received; (3) state in writing the public purposes for which the land is to be used if it is intended to purchase the land, and (4) publish a notice in a newspaper describing the land to be sold, the appraised value, conditions of sale, and provide for the submission of sealed bids and an oral auction open to the public. This section will require 28 respondents to comply by preparing an average of 1 report each per year. OSM estimates that compliance with this section requires 16 hours per report and a total of 448 hours per year.

30 CFR Part 882

Section 882.12 provides that OSM, the State or Indian Tribe shall obtain a notarized appraisal of the fair market value of private land to be reclaimed immediately before reclamation work is performed or as early as possible if reclamation must be done without appraisal (in case of emergency). It also states the procedures to inform the landowner of the values established in each appraisal before and after reclamation and information as to whether a lien will or will not be filed because of increased market value of the land resulting from reclamation. This section will require 28 respondents to comply by filing with OSM an average of 1 report each per year. OSM estimates that compliance with this section requires 72 hours per report and a total of 2,016 hours per year.

Section 882.13(a) sets forth the procedures for OSM, the State or Indian Tribe to file a lien and describes the ranking of such lien with respect to other liens or mortgages that may be imposed on the property. This section will require 28 respondents to comply by filing with OSM an average of 1 report each per year. OSM estimates that compliance with this section requires 80 hours per report and a total of 2,240 hours per year.

30 CFR Part 884

Section 884.13 requires the State or Indian Tribe to submit a Reclamation Plan, and sets forth the elements that must be included in the plan and manner in which the plan is to be submitted to the Director, OSM. Section 884.15 sets out the requirements for submitting amendments or revisions to the approved plan. These sections will require 28 respondents to comply by filing with OSM an average of 1 report each per year. OSM estimates that compliance with these sections will require 4,080 hours per report and a total of 114,240 hours per year.

30 CFR Part 886

Section 886.14 mandates the agencies selected by the States and Indian Tribes to administer the reclamation programs, to cooperate with the OSM Regional Directors in the development of advance budget estimates to be used by the Director of OSM in the preparation of requests for appropriation of monies from the Abandoned Mine Reclamation Fund. This section will require 28 respondents to comply by filing with OSM an average of 1 report each per year. OSM estimates that compliance with this section requires 40 hours per report and a total of 1,120 hours per year.

Section 886.15 describes and sets out the procedures required to submit a grant application to the appropriate OSM Regional Director. It describes the time of submission as well as the forms to be used and the time limits within which the application is to be processed. Section 886.17 requires the State or Indian Tribe Agency to notify the Regional Director in writing of any proposed changes which may require a grant amendment. These two sections will require each of the 28 respondents to comply by filing with OSM an average of 7 reports per year. OSM estimates that compliance with this section requires 24 hours per report and a total of 4,704 hours per year.

Section 886.18(c)(2) sets forth the procedures to appeal a decision taken by the Director of OSM which modifies the original conditions of a grant. This section will require 14 respondents to comply by filing with OSM an average of 1 report each per year. OSM estimates that compliance with this section requires 8 hours per report and a total of 112 hours per year.

Section 886.23 requires the agency of each State or Indian Tribe to submit for each grant received, an Annual Financial Status Report. This section will require 28 respondents to comply by filing with OSM an average of 7 reports each per year. OSM estimates that compliance with this section requires 24 hours per report and a total of 4,704 hours per year.

Section 886.24 requires the agency of the State or Indian Tribe to maintain complete records in accordance with OMB Circular No. 102. OSM estimates that each of the 28 respondents will require an average of 8 hours for record maintenance for the requirements in this section. OSM estimates that compliance with this section will require 8 hours for each respondent and a total of 224 hours per year.

OSM Abandoned Mine Land Reclamation Program Final Rules which were adopted on October 25, 1978, promulgated 30 CFR Parts 872, 877, 879, 882, 884 and 886. Although the Final Rules specified that the revisions pertaining to application, recordkeeping and report requirements would be effective on December 11, 1978, this effective date is contingent upon OSM's compliance with 44 U.S.C 3512 which precludes the collection of information from ten or more persons until the Comptroller General has had the opportunity to advise that the information is not presently available from other Federal sources and that the proposed application, recordkeeping and reporting requirements are consistent with the provisions of section 3512. This notice represents the beginning of our review.

John M. Lovelady,

Assistant Director, Regulatory Reports Review.

[FR Doc. 79-19047 Filed 6-18-79; 8:45 am]

BILLING CODE 1610-01-M

GENERAL SERVICES ADMINISTRATION

Regional Public Advisory Panel on Architectural and Engineering Services; Meeting

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Regional Public Advisory Panel on Architectural and Engineering Services, Region 8, on June 28, 1979, from 8 a.m. to 4. p.m., in the South Dakota Conference Room, Second Floor of Building 41 at the Denver Federal Center in Denver, Colorado. The meeting will be open to the public. In order to meet the schedule requirements of the full committee, it will be necessary to hold the meeting on the specified date.

Dated: June 8, 1979.

Dennis A. Jensen,

Regional Administrator.

[FR Doc. 79-19003 Filed 6-18-79; 8:45]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[FDA-225-74-2011]

Dry Milk Products; Memorandum of Understanding With the Ministry of Agriculture and Fisheries of the Netherlands

AGENCY: Food and Drug Administration

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has Executed a memorandum of understanding with the Ministry of Agriculture and Fisheries of the Netherlands. The purpose of the understanding is to set forth cooperative working arrangements to diminish the detention rate of Netherland's dry milk products entering the United States and to expedite the entry of Netherland's dry milk products at U.S. ports.

DATES: The agreement became effective March 9, 1979.

FOR FURTHER INFORMATION CONTACT: Gary Dykstra, Regulatory Operations Section (HFC-22), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3470.

SUPPLEMENTARY INFORMATION: Pursuant to the notice published in the Federal Register of October 3, 1974 (39 FR 35697) stating that future memorandums of understanding and agreements between FDA and others would be published in the Federal Register (see § 20.108(c) (21 CFR 20.108(c))), the agency is issuing the following memorandum of understanding:

Memorandum of Understanding Between the Food and Drug Administration, Department of Health, Education, and Welfare, and the Directorate General for Agriculture and Food of the Ministry of Agriculture and Fisheries of The Netherlands Covering Dry Milk Products Exported to the United States of America

Revised January 8, 1979.

Objectives

The mutual goals of the Food and Drug Administration (FDA) and The Ministry of Agriculture and Fisheries of the Netherlands in entering into this Memorandum of Understanding (MOU) are to:

1. Diminish the detention rate of Netherland's dry milk products entering the United States, through improved compliance with the regulations enforced by the FDA, and by assuring that contaminated or underprocessed dry milk products will not be imported to the U.S.

2. Expedite the entry of Netherland's dry milk products at U.S. ports by minimizing the need for extensive FDA audit sampling of dry milk products certified by the Ministry of Agriculture and Fisheries of the Netherlands as being in compliance with the microbiological standards enumerated in this agreement.

Definitions

For purposes of this Memorandum, both parties agree to the following definitions:

Dry Milk Products—Dry milk products include dry whole milk, nonfat dry milk, lowfat dry milk, dry cream, dry whey, dry buttermilk, casein, and caseinates.

Lot—A lot is a quantity of dry milk product produced by one manufacturer during a discrete period of time, not exceeding one day in one continuous process using a single processing line, packaged in identical containers which are identified by a code or mark traceable to the manufacturer.

Salmonella negative—The absence of *Salmonella* in 30/25 gram portions each taken from a lot of dry milk product and reconstituted individually or composited and tested by procedures outlined in the *Bacteriological Analytical Manual* (*BAM*) 5th Edition; or in *Methods of Analysis—AOAC.*

Phosphatase negative—Each of the 30 reconstituted 25 gram portions or composited units of dry milk product contains less than 1 microgram of phenol per milliliter of milk when tested by the Scharer Rapid Method indicating no under pasteurization or contamination with raw milk. Products found negative by the Storch Test (paraphenylenediamine test) will not be tested by the Scharer Method.

Penicillin negative—Each of the 30 reconstituted 25 gram portions or composited units contains no detectable residue of penicillin when tested by the *S. lutea* cylinder method; or, by the *B. stearothermophilus*, variety calidolactis, disk assay method normally used in the Netherlands for this purpose.

Obligations of Participants

The Ministry of Agriculture and Fisheries of The Netherlands

1. The Directorate General for Agriculture and Food of the Ministry of Agriculture and Fisheries of the Netherlands agrees to have the Netherlands Inspection Institute for Milk and Milk Products (CVM) inspect each lot of dry milk product voluntarily offered to it by the manufacturer, for export to the United States of America. This inspection will certify that the lot is *Salmonella* negative, phosphatase negative and penicillin negative.

2. The Directorate General for Agriculture and Food of the Ministry of Agriculture and Fisheries of the Netherlands agrees to have the CVM issue an export certificate for only those lots which meet the criteria of 1., above.

3. The Directorate General for Agriculture and Food of the Ministry of Agriculture and Fisheries of the Netherlands agrees to require all containers of lots exported to the United States of America under certificate to be identified by a lot number and marked together with all other information required by the Federal Food, Drug and Cosmetic Act.

4. The Directorate General for Agriculture and Food of the Ministry of Agriculture and Fisheries of the Netherlands agrees to include in the certificate for each lot exported to the United States of America the following information:

a. Lot identification, including name and address of manufacturer;

b. Number and size of containers in the lot;

c. Analytical results for *Salmonella*, phosphatase, and penicillin;

d. Date of the certificate; and

e. Name and stamp, or seal of authorizing official. The validated certificate will accompany the shipping manifest.

5. The Directorate General for Agriculture and Food of the Ministry of Agriculture and Fisheries of the Netherlands agrees to furnish to the Food and Drug Administration a copy of the current regulations, and procedures used to assure that dry milk products are sanitary.

6. The Directorate General for Agriculture and Food of the Ministry of Agriculture and Fisheries of the Netherlands agrees to furnish to the Food and Drug Administration a full description of the manufacturing processes and quality controls used to assure the production of sanitary dry milk products.

The Food and Drug Administration

The Food and Drug Administration (FDA) of the Department of Health, Education, and Welfare is charged with the enforcement of the Federal Food, Drug and Cosmetic Act and the Fair Packaging and Labeling Act. In fulfilling its responsibilities under the Acts, FDA directs its activities toward the protection of the public health of the United States of America by ensuring that foods are safe and wholesome and that products are honestly and informatively labeled. This is accomplished by inspecting the processing and distribution of foods and by collecting and examining samples to assure compliance with these Acts. To carry out these responsibilities as they relate to imported dry milk products and in fulfillment of its Memorandum of Understanding commitment:

1. The Food and Drug Administration will sample dry milk products certificated under this Memorandum of Understanding to assure that the exporting country and the exported products comply with specifications set forth in this Memorandum. The intensity of sampling may be reduced on gaining confidence in the compliance of the products to these specifications. The FDA may also check for other attributes to make sure the products also comply with the other requirements of the Food, Drug and Cosmetic Act and the Fair Packaging and Labeling Act.

2. Information obtained by the Food and Drug Administration through its audit sampling will be shared with the Agricultural Attache of the Royal Netherlands Embassy.

3. Also, the Food and Drug Administration will promptly notify the Agricultural Attache of any detention of dry milk products covered by the Memorandum and of any modifications in the regulations.

4. The Food and Drug Administration will share expertise and will provide consultative assistance to the exporting country when necessary to assure the safety of the dry milk products exported to the United States of America.

5. If audit sampling discloses that certified dry milk products are not conforming to the requirements of the MOU and if adequate steps are not taken to correct the situation after proper notification, the Food and Drug Administration may consider termination of the Memorandum of Understanding.

Sample Collection

The same subsamples will be used for determining the presence of *Salmonella*, phosphatase and penicillin. They will be collected as follows:

Following aseptic techniques, 30 subsamples each containing approximately 100 grams will be randomly collected from each lot. If a lot contains packaged units weighing approximately 225 grams (about 8 ounces) or less, but more than 100 grams, 30 of these units will be randomly collected, unopened, from the lot.

Analytical Methodology

The subsamples of dry milk products will be aseptically reconstituted. To reduce the analytical workload, the subsamples collected from a lot may be combined to give 2 to 10 composites at the option of the testing laboratory and reconstituted. Examples of compositing combinations are given in Attachment A.[1]

1. *Salmonella.* Reconstituted dry milk products will first be analyzed for presence of *Salmonella* according to the methods contained in:

(a) *Bacteriological Analytical Manual*, Fifth Edition, 1978, Chapter VI—Detection and Identification of *Salmonella*, including *S. arizonae*, or in:

(b) *Methods of Analysis—AOAC*, Twelfth Edition, 1975, Chapter 46, Microanalytical Methods, Section 46.013, et seq. (Note: Both (a) and (b) give methods based upon 100 gram samples. For this MOU, 30/25 gram samples will be used instead.) Lots of dry milk products that are positive for *Salmonella* will not be certified for export to the United States.

2. *Phosphatase.* Only reconstituted dry milk products that are positive by the Storch Test will be tested for phosphatase activity by the Scharer Rapid Method for Phosphatase Analysis, described in *Standard Methods for the Examination of Dairy Products*, Thirteenth Edition, 1972, Section 18.4. Lots of dry milk products demonstrating positive phosphatase activity will not be certified for export to the United States.

3. *Penicillin.* Reconstituted dry milk products will be tested for penicillin residues by the following methods. The *S. lutea*, cylinder method as described in *Methods of Analysis—AOAC*, Twelfth Edition, Section 42.252 et seq., p. 812–813; Changes in Official Methods of Analysis made by the Nineteenth Annual Meeting, Oct. 18–21, 1978/Third Supplement to 12th Edition, Journal of AOAC, Volume 60, March 77, pp. 484–485, Section 42(4). The *B. stearothermophilus*, variety calidolactis, disk assay method described in the *International Standard FIL–IDF 57:1970* of the International Dairy Federation normally used in Denmark for this purpose.

While the Ministry of Agriculture and Fisheries of the Netherlands may choose to use either of these methods for certification of lots, FDA will continue to use the *S. lutea* cylinder method, which is an official *AOAC* method, in its regulatory enforcement to assure that imported dry milk products are free of detectable penicillin residues. Lots of dry milk products found to be penicillin positive, will not be certified for export to the United States.

References of Analytical Methods Cited in This MOU

1. *Bacteriological Analytical Manual*, Fifth Edition, 1978. The Association of Official Analytical Chemists, Box 540, Benjamin Franklin Station, Washington, DC 20044.

2. *Methods of Analysis—AOAC*, Twelfth Edition, 1975. Changes in Official Methods of Analysis made at the Nineteenth Annual Meeting, Oct. 18–21, 1978/Third Supplement to 12th Edition, Journal of AOAC, Volume 60, March 77, pp. 484–485, Section 42(4). The Association of Official Analytical Chemists, Box 540, Benjamin Franklin Station, Washington, DC 20044.

3. *Standard Methods for the Examination of Dairy Products*, Thirteenth Edition, 1972, Section 18.4. American Public Health Association, 1015 Eighteenth St. NW., Washington, DC 20036.

4. *The International Standard FIL–IDF 57:1970*, International Dairy Federation, General Secretariat, Square Vergot 41, Brussels, Belgium.

Modifications and Termination of the MOU

Changes in this Memorandum of Understanding may be proposed by either of the participants. When the proposed changes are acceptable to both participants, they will be incorporated into the Memorandum. This revision to the Memorandum of Understanding will become effective 60 days after signature by the participants, and will remain in effect pending revocation by either participant. Upon its effective date, this revised Memorandum of Understanding will be published in the **Federal Register**. A copy will be available for public review at the Office of the Hearing Clerk, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

In witness whereof, the Agencies have executed this revision to the Memorandum of Understanding covering dry milk products presently in effect between our governments.

For the Directorate General for Agriculture and Food of the Ministry of Agriculture and Fisheries of the Netherlands:

Ir. A. de Zeeuw,

Director-General for Agriculture and Food, The Netherlands.

Dated: January 8, 1979.

For the Food and Drug Administration:

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs, Food and Drug Administration, United States of America.

Dated: December 20, 1978.

Effective date. This Memorandum of Understanding became effective March 9, 1979.

Dated: June 11, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

Attachment A

The 25 gram portions taken from each of the 30 samples collected from a lot of dry milk product may be composited according to the following options before reconstituting.

Number of—			
Composites to be prepared for analysis from the 30 samples collected	Samples in each composite	Grams of test product in each composite	Milliliters of sterile distilled water in which the weighed test product is to be reconstituted
2	15	375	3,750
3	10	250	2,500
5	6	150	1,500
6	5	125	1,250
10	3	75	750

Example of Compositing:

If the 2 composite option is selected, 25 gram portions are taken from each of 15 samples, weighed and reconstituted in 3,750 milliliters of sterile distilled water; 25 gram portions from each of the

[1] Filed as part of the original document.

remaining 15 samples are likewise weighed and added to an additional 3,750 milliliters of sterile distilled water. Each of these composites contains 375 grams of the test product.

[FR Doc. 79-18005 Filed 6-18-79; 8:45 am]
BILLING CODE 4110-03-M

[Docket No. 79D-0059]

Efficacy Evaluation of Equine Anthelmintics; Availability of Guideline

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The agency announces the availability of a guideline for use in developing data to establish the effectiveness of equine anthelmintic drugs. The agency invites interested persons to submit written comments on the guideline.

ADDRESS: The guideline is available for public examination at, and comments may be submitted to, the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Henry C. Hewitt, Bureau of Veterinary Medicine (HFV-110), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: The Federal Food, Drug, and Cosmetic Act requires that a new animal drug must be the subject of an approved new animal drug application (NADA) before it may be marketed. Section 512(b)(1) of the act (21 U.S.C. 360b(b)(1)) requires that each NADA include full reports of investigations which show that the drug is safe and effective for use. Section 512(d) of the act (21 U.S.C. 360b(d)) enumerates the criteria that must be met before a new animal drug may be approved, including a requirement that a drug's effectiveness be shown by "substantial evidence" as defined in section 512(d)(3).

The Bureau of Veterinary Medicine has prepared a guideline that addresses the type of data to be included in an NADA for equine anthelmintic drugs to establish "substantial evidence" of effectiveness for the drug.

The guideline is available for public examination at the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857. Written requests for single copies may be sent to the Food and Drug Administration, Bureau of Veterinary Medicine, Industry Information Branch (HFV-226), 5600 Fishers Lane, Rockville, MD 20857.

Interested persons may submit written comments on the guideline to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857. Such comments will be considered in determining whether amendments to or revisions of the guideline are warranted. Comments should be in four copies (except that individuals may submit single copies of comments), identified with the Hearing Clerk docket number found in brackets in the heading of this document. The guideline and received comments may be seen in the Hearing Clerk's office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 12, 1979.

William F. Randolph,

Acting Associate Commission for Regulatory Affairs.

[FR Doc. 79-18080 Filed 6-18-79; 8:45 am]
BILLING CODE 4110-03-M

[Docket No. 79N-0206; DESI 12151]

Spironolactone; Drugs for Human Use; Drug Efficacy Study Implementation; Announcement

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the results of the efficacy review of spironolactone and the conditions for marketing it for the indications for which it is regarded as effective. The drug is used in the treatment of hypertension.

DATE: Supplements to approved NDA's due on or before August 20, 1979.

ADDRESSES: Communications in response to this notice should be identified with the reference number DESI 12151, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Supplements to full new drug applications (identify with NDA number): Division of Cardio-Renal Drug Products (HFD-110), Rm 16B-30, Bureau of Drugs.

Original abbreviated new drug applications and supplements thereto (identify as such): Division of Generic Drug Monographs (HFD-530), Bureau of Drugs.

Requests for guidelines or information on conducting bioavailability tests: Division of Biopharmaceutics (HFD-520), Bureau of Drugs.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD-501), Bureau of Drugs.

FOR FURTHER INFORMATION CONTACT: Herbert Gerstenzang, Bureau of Drugs (HFD-32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of July 9, 1966 (31 FR 9426), FDA asked each holder of a new drug application that became effective before October 10, 1962, to submit reports containing the best data available in suppport of the effectiveness of each such product for the claimed indications. The agency needed that information to determine, with the assistance of the National Academy of Sciences-National Research Council (NAS-NRC), whether each claim in the labeling is supported by substantial evidence of effectiveness, as required by the Drug Amendments of 1962.

Because Searle Laboratories, the sponsor of the following drug, did not submit such information, the drug was not reviewed by NAS-NRC.

NDA 12-151; Aldactone Tablets containing spironolactone; Searle Laboratories, P.O. Box 5110, Chicago, IL 60680.

In a notice (DESI 9296) published in the Federal Register of February 6, 1973 (38 FR 3418), FDA announced its conclusion that a combination of spironolactone and hydrochlorothiazide (NDA 12-616; Aldactazide Tablets manufactured by Searle Laboratories) is effective for the treatment of hypertension, edema of congestive heart failure, cirrhosis of the liver, the nephrotic syndrome, and idiopathic edema.

Upon evaluating all available data on spironolactone in support of effectiveness, FDA has now concluded that the drug is effective for its labeled indications. This notice announces that conclusion and the conditions under which such drug products may be marketed.

As stated in the Federal Register of August 23, 1977 (42 FR 42311), the provision of 21 CFR 320.22(c) waiving

bioavailability data for certain drugs does not necessarily apply to drug products first announced as effective in DESI notices published after January 7, 1977. As this is the first notice announcing that spironolactone is effective, FDA has reviewed it for actual or potential bioavailability problems and has determined that spironolactone should be added to the list of drugs for which bioavailability data are not waived.

Such drugs are regarded as new drugs (21 U.S.C. 321(p)). Supplemental new drug applications are required to revise the labeling in and to update previously approved applications providing for such drugs. An approved new drug application is a requirement for marketing such drug products.

In addition to the product specifically named above, this notice applies to any drug product that is not the subject of an approved new drug application and is identical to the product named above. It may also be applicable, under 21 CFR 310.6, to a similar or related drug product that is not the subject of an approved new drug application. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Such person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address given above).

A. *Effectiveness classification.* The Food and Drug Administration has reviewed all available evidence and concludes that the drug is effective for the indications in the labeling conditions below.

B. *Conditions for approval and marketing.* The Food and Drug Administration is prepared to approve abbreviated new drug applications and abbreviated supplements to previously approved new drug applications under conditions described herein.

1. *Form of drug.* The drug is in tablet form suitable for oral administration.

2. *Labeling conditions. a.* The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The Indications are as follows:

Spironolactone is indicated in the management of:

Primary hyperaldosteronism for:

Establishing the diagnosis of primary hyperaldosteronism by therapeutic trial.

Short-term preoperative treatment of patients with primary hyperaldosteronism.

Long-term maintenance therapy for patients with discrete aldosterone-producing adrenal adenomas who are judged to be poor operative risks, or who decline surgery.

Long-term maintenance therapy for patients with bilateral micro- or macronodular adrenal hyperplasia (idiopathic hyperaldosteronism).

Edematous conditions for patients with:

Congestive heart failure: For the management of edema and sodium retention when the patient is only partially responsive to, or is intolerant of, other therapeutic measures. Spironolactone is also indicated for patients with congestive heart failure taking digitalis when other therapies are considered inappropriate.

Cirrhosis of the liver accompanied by edema and/or ascites: Aldosterone levels may be exceptionally high in this condition. Spironolactone is indicated for maintenance therapy together with bed rest and the restriction of fluid and sodium.

The nephrotic syndrome: For nephrotic patients when treatment of the underlying disease, restriction of fluid and sodium intake, and the use of other diuretics do not provide an adequate response.

Essential hypertension:

Usually in combination with other drugs. Spironolactone is indicated for patients who cannot be treated adequately with other agents or for whom other agents are considered inappropriate.

Hypokalemia:

For the treatment of patients with hypokalemia when other measures are considered inappropriate or inadequate. Spironolactone is also indicated for the prophylaxis of hypokalemia in patients taking digitalis when other measures are considered inadequate or inappropriate.

3. *Marketing Status.* a. Marketing of such drug products that are the subject of a new drug application approved before October 10, 1962, may be continued provided that, on or before August 20, 1979, the holder of the application has submitted (i) a supplement for revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted, and (ii) a supplement to provide updating information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD–356H (21 CFR 314.1(c)) to the extent required in abbreviated applications (21 CFR 314.1(f)).

b. Approval of an abbreviated new drug application (21 CFR 314.1(f)) must be obtained before marketing such products. The bioavailability regulations (21 CFR 320.21) require any person submitting an abbreviated new drug application after July 7, 1977, to include evidence demonstrating the in vivo bioavailability of the drug or information to permit waiver of the requirement. No waiver will be granted for spironolactone. In light of the tumorigenic potential of spironolactone, demonstration of bioavailability must be undertaken in patients employing a multiple dose steady-state design performed under an IND. Guidelines are available from the Division of Biopharmaceutics (address given above).

Marketing before approval of a new drug application will subject such products, and the persons who caused the products to be marketed, to regulatory action.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053, as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.70).

Dated: June 14, 1979.

J. Richard Crout,

Director, Bureau of Drugs.

[FR Doc. 79–19091 Filed 6–18–79; 8:45 am]

BILLING CODE 4110-03-M

National Institutes of Health

Committee Advisory to National Cancer Institute; Open Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of committees advisory to the National Cancer Institute.

These meetings will be entirely open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available. Meetings will be held at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205, unless otherwise stated.

Mrs. Marjorie F. Early, Committee Management Officer, NCI, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will furnish summaries of the meetings and rosters of committee members upon request.

Other information pertaining to the meeting can be obtained from the Executive Secretary indicated.

Name of committee: President's Cancer Panel.

Dates: July 25, 1979; 9:30 a.m.—adjournment

Place: Building 31C Conference Room 7, National Institutes of Health

Times: Open for the entire meeting

Agenda: To hear reports on activities of the President's Cancer Panel and the National Cancer Program.

Executive Secretary: Dr. Richard A. Tjalma

Address: Building 31, Room 11A46, National Institutes of Health
Phone: 301–496–5854.

Name of committee: Cancer Control and Rehabilitation Advisory Committee
Dates: July 30, 1979; 9:00 a.m.—adjournment
Place: Building 31C Conference Room 7, National Institutes of Health
Times: Open for the entire meeting
Agenda: To review planning for several projects planned for funding in fiscal year 1980.
Executive Secretary: Mr. H. C. Noyes
Address: Blair Building, Room 720, National Cancer Institute, Silver Spring, Maryland 20910
Phone: 301–427–8636.

Name of committee: Chemical Selection Subgroup of the Clearinghouse on Environmental Carcinogens
Dates: July 30, 1979; 9:00 a.m.—adjournment
Place: Building 31C Conference Room 8 National Institutes of Health
Times: Open for the entire meeting
Agenda: To consider chemicals for bioassay and other matters relevant to chemical selection
Executive secretary: Dr. James M. Sontag
Address: Building 31 Room 3A16National Institutes of Health
Phone: 301–496–5106.

Dated: June 8, 1979.

Suzanne L. Fremeau,

Committee Management Officer, National Institutes of Health.

[FR Doc. 79-18656 Filed 6-18-79; 8:45 am]
BILLING CODE 4110-08-M

National Cancer Advisory Board, Subcommittee Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of an ad hoc subcommittee of the National Cancer Advisory Board, National Cancer Institute, July 31, 1979, Building 31, Conference Room 7, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205.

The entire meeting will be open to the public from 9:00 a.m. to adjournment to review the role of the National Cancer Advisory Board. Attendance by the public will be limited to space available.

Mrs. Marjorie F. Early, Committee Management Officer, National Cancer Institute, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of Board members, upon request.

Dr. Thomas J. King, Executive Secretary, National Cancer Institute, Building 31, Room 10A03, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5147) will provide substantive program information.

Dated: June 8, 1979.

Suzanne L. Fremeau,

Committee Management Officer, National Institutes of Health.

[FR Doc. 79-18657 Filed 6-18-79; 8:45 am]
BILLING CODE 4110-08-M

Public Health Service

Alcohol, Drug Abuse, and Mental Health Administration; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HM (Alcohol, Drug Abuse, and Mental Health Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health, Education, and Welfare (39 FR 1654, January 11, 1974, as amended most recently by 43 FR 20562, May 12, 1978 and 44 FR 32292, June 5, 1979) is revised to reflect: (1) the establishment of an Office of Extramural Project Review in the National Institute on Drug Abuse and the National Institute of Mental Health and (2) the establishment of an Office of Extramural Policy and Project Review in the National Institute on Alcohol Abuse and Alcoholism.

Section HM–B, *Organization and Functions* is amended as follows:

1. Under *National Institute on Drug Abuse (HMH)* insert the following statement after the statement for the *Office of the Director (HMH1):*

Office of Extramural Project Review (HMH14)

(1) Plans, administers and coordinates peer and objective review of grant applications and contract proposals; (2) develops Institute review policies and procedures, provides orientation and guidance on such policies and procedures, and monitors the review process to ensure quality of review and conformance to policy; (3) recommends nominees for review groups; (4) administers the committee management function; (5) collects and analzses data relating to grant appications and contract proposals reviewed, and makes recommendations, as necessary, for changes in Institute committee structure and/or referral guidelines; (6) collaborates with other Institute and Office of the Administrator offices to ensure adequate exchange of information and assume optimum effectiveness of the review process; and (8) participates in the review of proposed DHEW, PHS, and ADAMHA policies and documents e.g., program announcements and guidelines affecting peer and object review.

2. Under *National Institute on Alcohol Abuse and Alcoholism (HMC),* insert the following statement after statement for the *Office of the Director (HMC1):*

Office of Extramural Policy and Project Review (HMC14)

(1) Plans, administers and coordinates peer and objective review of grant applications and contract proposals, except nonresearch and development contracts; (2) develops Institute review policies and procedures, provides orientation and guidance on such policies and procedures, and monitors the review process to ensure quality of review and conformance to policy; (3) recommends nominees for review groups; (4) administers the committee management function; (5) coordinates and assures the development of and adherence to program policies related to Institute extramural activities; (6) collects and analyzes data relating to grant applications and contract proposals reviewed, and makes recommendations, as necessary, for changes in Institute committee structure and/or referral guidelines; (7) collaborates with other Institute and OA offices to ensure adequate exchange of information and assure optimum effectiveness of the review process; and (8) participates in the review of proposed DHEW, PHS, and ADAMHA policies and documents (e.g., program announcements and guidelines) affecting peer and objective review.

3. *Under National Institute of Mental Health (HMM)* insert the following statement after statement for the *Office of the Director (HMM1):*

Office of Extramural Project Review (HMM14)

(1) Plans, administers and coordinates peer and objective review of grant applications and contract proposals; (2) develops Institute review policies and procedures, provides orientation and guidance on such policies and procedures, and monitors the review process to ensure quality of review and conformance to policy; (3) recommends nominees for review groups; (4) collects and analyzes data relating to grant applications and contract proposals reviewed, and makes recommendations, as necessary, for changes in Institute committee structure and/or referral guidelines; (5) collaborates with other Institute and Office of Administrator

offices to ensure adequate exchange of information and assure optimum effectiveness of the review process; and (6) participates in the review of proposed HEW, PHS, and ADAMHA policies and documents affecting peer and objective review.

Dated: June 9, 1979.

Frederick M. Bohen,

Assistant Secretary for Management and Budget.

[FR Doc. 79-19068 Filed 6-18-79; 8:45 am]

BILLING CODE 4110-88-M

Office of the Secretary

Statement of Organization, Functions, and Delegations of Authority

Correction

In FR Doc. 16727 appearing on page 31045 in the issue for Wednesday, May 30, 1979, make the following correction: In the middle column, in the third paragraph of the document with the introductory sentence, "Section AA.10 Organization", among the listing of elements constituting the Office of the Secretary, "Office of Civil Rights" should be corrected to read:

"Office for Civil Rights".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Colorado 27941]

Pipeline Application T.C.P. Gathering Co.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449), as amended (30 U.S.C. 185), TCP Gathering Co., 2334 East 3rd Avenue, Denver, Colorado 80206, has applied for a right-of-way for an 8⅝" o.d. natural gas pipeline across lands located in Colorado and Utah. The pipeline will cross approximately 4.808 miles in Colorado to the Slick Rock Processing Facility. The lands affected are described as:

T. 44 N., R. 19 W., N.M.P.M., Colorado
Section 7: Lots 1, 2, S½NE¼, SE¼NW¼
Section 8: S½N½, N½S½
Section 9: SW¼NE¼, S½NW¼
T. 44 N., R. 20 W., N.M.P.M., Colorado
Section 1: Lots 3, 4
Section 2: Lots 1, 2, 3
Section 12: N½NE¼
T. 45 N., R. 20 W. N.M.P.M., Colorado
Section 36: SW¼SE¼, SE¼SW¼

The proposed pipeline will enable the applicant to collect natural gas in San Juan County, State of Utah, and convey it to the Slick Rock Processing Facility to be refined then conveyed to customers.

The purposes for this notice are: (1) To inform the public that the Bureau of Land Management is proceeding with the preparation of the environmental and other analytic reports, necessary for determining whether or not the application should be approved and if approved, under what terms and conditions. (2) To give all interested parties the opportunity to comment on the applications. (3) To allow any party asserting a claim to the lands involved or having bona fide objections to the proposed natural gas pipeline to file its claims or objections in the Colorado State Office. Any party so filing must include evidence that a copy thereof has been served on TCP Gathering Co.

Any comments, claims, or objections must be filed with the Chief, Branch of Adjudication, Bureau of Land Management, Colorado State Office, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80202, as promptly as possible after publication of this notice.

Merrill G. Anderson,

Leader, Montrose Team, Branch of Adjudication.

[FR Doc. 79-19030 Filed 6-18-79; 8:45 am]

BILLING CODE 4310-84-M

[M 43822]

Montana; Application

June 11, 1979.

Notice is hereby given that, pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), Continental Pipe Line Company has applied for one 3-inch crude oil pipeline across the following land:

Principal Meridian, Montana.

T. 8 N., R. 24 E.,
Sec. 2, Lots 1 and 8.

This pipeline will convey crude oil across 0.09 miles of public lands in Musselshell County, Montana.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views on this matter should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, P.O. Drawer 1160, Lewistown, Montana 59457.

Kenneth J. Sire,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-19031 Filed 6-18-79; 8:45 am]

BILLING CODE 4310-84-M

[2880; U-42146, U-42155, U-42170, U-42239, U-42240 (Ut-942)]

Utah; Application

June 11, 1979.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corporation has applied for five natural gas pipeline rights-of-way across the following described lands. The pipelines range in size from 4½ to 12¾ inches in diameter.

Salt Lake Meridian, Utah

T. 15 S., R. 22 E.,
Secs. 28, 28, 33, 34 and 35.
T. 16 S., R. 22 E.,
Secs. 23 and 26.
T. 17 S., R. 23 E.,
Secs. 4, 8 and 9.
T. 15 S., R. 24 E.,
Sec. 29.
T. 15 ½ S., R. 24 E.,
Sec. 34.
T. 13 S., R. 25 E.,
Secs. 21, 22, 26, 27, 28, 29 and 35.
T. 14 S., R. 25 E.,
Secs. 1, 7, 8, 12, 15, 17, 18, 20, 21, 22 and 31.
T. 14 S., R. 26 E.,
Sec. 7.

The needed rights-of-way are a portion of applicant's gas gathering system located in Grand County, Utah.

The purpose of this notice is to inform the public that the Bureau will be proceeding with the preparation of environmental and other analyses necessary for determining whether the applications should be approved, and if so, under what terms and conditions.

Interested persons should express their interest and views to the Vernal District Manager, Bureau of Land Management, P.O. Box F, Vernal, Utah, 84078.

Dell T. Weddoups,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-19032 Filed 6-18-79; 8:45 am]

BILLING CODE 4310-84-M

Heritage Conservation and Recreation Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in

the National Register were received by the Heritage Conservation and Recreation Service before June 8, 1979. Pursuant to section 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, Office of Archeology and Historic Preservation, U.S. Department of the Interior, Washington, DC 20240. Written comments or a request for additional time to prepare comments should be submitted on or before July 30, 1979.

Charles A. Harrington,
Acting Keeper of the National Register.

ALABAMA

Russell County

Pittsview vicinity, *Glennville Historic District*, S of Pittsview.

ALASKA

Fairbanks Division

Delta Junction vicinity, *Sullivan Roadhouse*, W of Delta Junction.

COLORADO

Denver County

Denver, *Old Highland Business District*, 15th and Boulder Sts.

GEORGIA

Richmond County

Augusta, *Gould-Weed House*, 828 Milledge Rd.

ILLINOIS

St. Clair County

East St. Louis, *Pennsylvania Avenue Historic District*, Pennsylvania Ave.

IOWA

Chickasaw County

Chickasaw, *Chichasaw Octagon House*, Court St.

Lucas County

Chariton, *Payne, O. E., House*, 702 Auburn Ave.

Winneshiek County

Decorah, *Luther College Farm*, Luther College campus.

KENTUCKY

Daviess County

Owensboro, *Union Station*, 1039 Frederica St.

Fayette County

Lexington, *Brown, Joshua, House*, 2765 Tates Creek Rd.
Lexington, *Stony Point*, 4036 Parkers Mill Rd.
Lexington vicinity, *Bowman Houses*, W of Lexington on Bowman's Mill Rd.

Nelson County

Bardstown, *Johnson, Ben, House*, 1003 N. 3rd St.

MAINE

Lincoln County

Damariscotta, *Main Street Historic District*, Main St.

MARYLAND

Montgomery County

Washington Grove, *Washington Grove Historic District*, MD 124.

MISSOURI

Pulaski County

Waynesville, *Pulaski County Courthouse*, Courthouse Sq.

NEW JERSEY

Morris County

Mountain Lakes, *Grimes Homestead*, 45 Bloomfield Ave. (proposed move).

NEW YORK

Albany County

Cohoes, *Silliman Memorial Presbyterian Church*, Mohawk and Seneca Sts.

Chenango County

Greene, *Rosekrans Building*, 62 Genesee St.

Cortland County

Preble vicinity, *Little York Pavilion*, S of Preble off NY 281.

Onondaga County

Skaneateles, *Smith, Reuel E., House*, 28 W. Lake St.

NORTH CAROLINA

Edgecombe County

Mercer, *Nobles, Dr. A. B., House (McKendree Church)* NW of Mercer on SR 1224.

Forsyth County

Winston-Salem, *Slater Industrial Academy Houses Thematic Resources*, 346 Atkins St., 914 and 984 Stadium Dr.

Lenoir County

Kinston Vicinity, *Jackson, Jesse, House*, SE of Kinston on U.S. 11 (boundary increase).

Mecklenburg County

Charlotte, *Hotel Charlotte*, 327 W. Trade St.

Moore County

Aberdeen, *Bethesda Presbyterian Church*, NC 5.

Pender County

Scott's Hill, *Poplar Grove*, U.S. 17.

Rockingham County

Madison vicinity, *Fewell-Reynolds House*, W of Madison.

Stokes County

Pine Hall, *Pine Hall (Anderson-Hanes House)* SR 1001 and NC 772.

Yadkin County

Enon vicinity, *Glenwood*, E of Enon on SR 1549.

OHIO

Highland County

Rainsboro vicinity, *Barretts Mills*, CR 1A and Rocky Fork Creek (boundary increase).

PENNSYLVANIA

Monroe County

Bushkill vicinity, *Schoonover Mountain House*, S of Bushkill.
Stroudsburg vicinity, *Michael, John, Farm*, E of Stroudsburg.

TENNESSEE

Davidson County

Goodlettsville, *Cartwright House*, Old Dickerson Pike.

Hamilton County

Chattanooga, *Wiley United Methodist Church*, 904 Lookout St.

Robertson County

Springfield, *Springfield Town Square Historic District*, U.S. 41 and TN 49.

Washington County

Jonesboro vicinity, *Jackson Farm Historic Site*, S of Jonesboro at TN 107 and Jackson Bridge Rd.

TEXAS

Bexar County

Leon Springs, *Aue Stagecoach Inn*, Boerne Stage Rd. and I-10.

Somervell County

Glen Rose, *Somervell County Courthouse*, off TX 144.

Travis County

Austin, *Wooldridge Park*, Guadalupe St.

VIRGINIA

Isle of Wight County

Smithfield vicinity, *Four Square*, W of Smithfield on VA 620.
Winchester (independent city).
Winchester Historic District, U.S. 522, U.S. 11 and U.S. 50/17.

WASHINGTON

San Juan County

Orcas, *Orcas Hotel*, Orcas Island.

[FR Doc. 79-18629 Filed 6-18-79; 8:45 am]
BILLING CODE 4310-03-M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Stewart Mechanical Enterprises, Inc.; Proposed Consent Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, the following written comments on the

proposed judgment filed with the United States District Court for the Western District of Kentucky in Civil Action No. C75-0377L(A), United States of America v. Stewart Mechanical Enterprises, Inc., were received by the Department of Justice and are published herewith, together with Justice's response to the comments.

Dated: June 6, 1979

Charles F. B. McAleer,

Special Assistant for Judgment negotiations, Office of Operations, Antitrust Division.

May 30, 1979.

Donald R. Balleisen, Esquire,
Greenbaum, Doll & McDonald, 33rd Floor, 101 South Fifth Street, First National Tower, Louisville, Ky.

Re: United States v. Stewart Mechanical Enterprises, Inc.—C75-0377L(A).

Dear Mr. Balleisen: Your letter of May 22, 1979 describes two concerns of Stewart Mechanical Enterprises ("Stewart") about the proposed Consent Judgment in this matter. First, you have indicated that, since all of the officers of Stewart often are out of town when it is time for a bid to be submitted, it sometimes would be very difficult for an officer to sign the noncollusion affidavit that the proposed Consent Judgment requires be attached to bids or quotations for mechanical contracting services. Because of the burden this provision would place upon Stewart and because of the possibility that the decree would have an anticompetitive effect in that this provision would prevent Stewart from submitting a bid in certain situations, the United States is willing to change the words "an officer * * * bids or quotations" to "the employee * * * bid or quotation" in lines five and six of Section VII. In changed form Section VII will read as follows:

VII

The Defendant is ordered and directed for a period of five (5) years from the date of entry of this Final Judgment to affix to every bid or quotation for the rendering of mechanical contracting services a written certification, signed by the employee of the defendant responsible for the preparation of the bid or the quotation, that such bid or quotation was not in any way the result, directly or indirectly, of any discussion, communication, agreement, understanding, plan or program, whether formal or informal, between the Defendant and any other mechanical contractor, except as specifically permitted by Paragraph VI of this final Judgment.

Based on my conversation with you on May 22, 1979, it is my understanding that these changes in Section VII would resolve the first problem Stewart has raised.

Your letter of May 22, 1979 also expressed concern as to whether the United States interpreted Section VII of the proposed Consent Judgment as including Stewart's repair service. Since this work generally involves repairs which are done on an emergency basis and the customers requesting such work generally do not seek competitive bids, the United States does not consider the repair service of Stewart to fall under Section VII of the proposed Consent Judgment.

Sincerely yours,

William J. Oberdick,

Attorney, Antitrust Division.

Law Offices Greenebaum Doll & McDonald
3300 First National Tower, Louisville, Kentucky 40202 (502) 589-4200, May 22, 1979.

Mr. William Oberdick,
Department of Justice, Antitrust Division, 995 Celebrezze Federal Bldg., Cleveland, Ohio

RE: United States of America v. Steward Mechanical Enterprises, Inc., C75-0377L(A).

Dear Mr. Oberdick: This letter is being sent as a result of certain problems that Stewart Mechanical Enterprises, Inc. has discovered in connection with the proposed Final Judgment in the above action. Stewart has two particular problems, both of which relate to the application of numerical section 7 of the Judgment.

These problems were developed at a meeting held on April 19, 1979, with the executive officers of Stewart and its employees involved in the preparation of mechanical contracting bids at which time the terms and application of the Judgment were reviewed.

The first problem relates to the person or persons required to sign the noncollusion statement provided for in numerical section 7 of the Judgment. Stewart at this time has appriximately 15 people involved in the preparation of mechanical contracting bids, all of whom at times may supervise or have knowledge of a particular bid. Only three of those persons are officers and those three have substantial duties in other areas of the business including supervision and inspection of work at job sites. Frequently such jobs are not in the Louisville area. At times all three are out of town at the same time when a bid is to be signed and filed. In these circumstances the bids are signed on behalf of Stewart by the employee in charge of the bid or who has knowledge of the bid. To require as presently provided in numerical section 7 of the Judgment, that the noncollusion certificate be signed by an officer with knowledge would in some instances require Stewart to withhold its bid because of the unavailability of such an officer. We believe that such a result was not the intent of either party to the Judgment. This problem could be solved by substituting for the word officer on the fifth line of numerical section 7, the employee of the Defendant responsible for the bid.

The second problem caused Stewart under the terms of numerical section 7 of the Judgment relates to its repair operation. Stewart has a repair group which operates separate and apart from its mechanical contracting business and deals almost exclusively with emergency work. The repair operation involves approximately 20 men who work from radio-equipped trucks. A customer with a repair problem calls the Stewart office and the office in turn contacts the truck nearest to the party who has called. The personnel on the truck then go to the customer and take care of his problem which usually is of an emergency nature and needs to be taken care of as soon as possible. These calls involve in the main such matters as malfunctioning air conditioners and furnaces or plumbing leaks which by their very nature compel immediate service. Approximately 98% of such work is for commerical and industrial customers. Only on rare occasions is a residential call involved.

The repair work also does not generally involve alteration work. On occasion an air conditioning window-type unit may be replaced but the repair department does not engage in modifying or enlarging heating, air conditioning or plumbing systems. It would appear that the nature of the business is such that repair work of this type is not within the terms of numerical section 7 of the Judgment and, if we are correct in this interpretation, we would appreciate your so advising us.

Sincerely yours,

Donald H. Balleisen,

United States Department of Justice,
Antitrust Division, Great Lakes Office, 995 Celebrezze Federal Building, Cleveland, Ohio 44199, 216-522-4070, April 24, 1979.

Donald H. Balleisen, Esquire,
Greenbaum, Doll & McDonalds, 3300 First National Tower, Louisville, Ky.

Re: United States v. Stewart Mechanical Enterprises, Inc.—C75-0377L(A).

Dear Mr. Balleisen: In response to your letter of April 20, 1979, this is to advise you that we do not agree to incorporate your two requested clarifications into the proposed Final Judgment in this action. To agree at this time to such modifications, on the basis of circumstances which should have been considered by the defendant prior to the filing of this proposal, would require republication of the amended Judgment pursuant to the provisions of the Antitrust Procedures and Penalties Act.

If, after entry of the proposed Judgment, the defendant continues to believe some changes are necessary it may file an appropriate Motion to the Court under Paragraph X of the Judgment.

Sincerely yours,

William A. LeFaiver,

Attorney, Antitrust Division.

April 20, 1979.

Mr. William A. LeFaiver,
Department of Justice, Antitrust Division, 995 Celebrezze Federal Bldg., Cleveland, Ohio.

Re: United States of America v. Stewart Mechanical Enterprises, Inc., C75-0377L(A).

Dear Mr. LeFaiver: This letter is being written relative to clarifications of the Final Judgment entered in the above matter as discussed in our telephone conversation of April 19, 1979.

The two clarifications we desire both involve numerical paragraph VII of the Final Judgment. The first relates to exempting from the requirements of affixing the non-collusion statement to quotations of bids in amounts less than $1,000. The reason for this request is that Stewart Mechanical Enterprises, Inc. has a repair service which operates as a separate division. This service utilizes approximately

20 repairmen who work from trucks and make an average of 100 calls a day in total. The servicemen make their visits as a result of telephone calls and do the work and bill usually in the same day. Rarely, if ever, is a competitive bid involved and most of the calls involve relatively small amounts of money and only in a most unusual situation does the work involve more than $1,000.

The second clarification deals with the person required to sign certification. At the present time Stewart has approximately fifteen people involved in the preparation of bids and the filing of bids. Frequently bids are submitted under the signature of a non-officer and at the time of submission no corporate officer with knowledge is available to sign. The expansion of the business and the large amount of work being done outside of the Louisville area has caused this problem. We request that to meet it, Stewart be allowed to have the person who submits the bid sign the certification with the understanding that his signature be considered the action of the company and binding on it.

Unless we receive a written response that the above clarifications are not acceptable, we will advise Stewart Mechanical Enterprises, Inc. that they may act in accord with those clarifications.

I appreciate your courtesies in the matter.

Very truly yours,

Donald H. Balleisen.

bcc: Mr. George Duthie, Mr. Frank E. Haddad, Jr.

[FR Doc. 79-18903 Filed 6-18-79; 8:45 am]
BILLING CODE 4410-01-M

United States v. Krause Milling Company and ADM Milling Co.; Proposed Consent Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), that a proposed consent judgment and a competitive impact statement as set out below have been filed with the United States District Court for the District of Kansas in *United States of America* v. *Krause Milling Company and ADM Milling Co.*, Civil Action No. 78-1122. The complaint in this case alleges that the two grain milling industry defendants conspired with each other by entering into an agreement to rig bids and allocate contracts for the sale of a blended food known as soy fortified sorghum grits (SFSG) to the Commodity Credit Corporation, an agency of the U.S. Department of Agriculture, in violation of Section 1 of the Sherman Act.

The proposed judgment enjoins defendant ADM for ten years from engaging in the illegal conduct alleged in the complaint. Krause remains a defendant. Also enjoined are communications by ADM with any seller of blended foods concerning prices or other terms of sale prior to communication of such information to the public generally, except in the course of bona fide purchase and sale transactions. The proposed judgment requires defendant ADM to take affirmative action for a period of five years to apprise management personnel of the requirements of the proposed judgment and the possible consequence of its violation. Further details of the injunctive relief are contained in the proposed judgment and the competitive impact statement.

Public comment is invited within the statutory 60-day comment period and should be directed to John E. Sarbaugh, Chief, Midwest Office, Antitrust Division, Department of Justice, Room 2634 219 South Dearborn Street, Chicago, Illinois 60604. Such comments and responses thereto will be published in the Federal Register and filed with the Court.

Dated June 6, 1979.

Charles F. B. McAleer,

Antitrust Division, Department of Justice.

U. S. District Court, District of Kansas

United States of America, Plaintiff, v. *Krause Milling Company, and ADM Milling Co.*, Defendants.

Civil Action No. 78-1122.

Filed: June 6, 1979.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings: *Provided*, That plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant ADM and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to the plaintiff and defendant ADM in this and any other proceeding.

Dated: June 6, 1979.

For the Plaintiff. John H. Shenefield, Assistant Attorney General. William E. Swope, Director of Operations. Charles F. B. McAleer, /s/ Allyn A. Brooks, James J. Kubik, Diane C. Lotko-Baker, John E. Sarbaugh, Attorneys, Department of Justice.

For the Defendants. Dick H. Woods, Esq., Attorney, for ADM Milling Co., Stinson, Mag, Thomson, McEvers & Fizzell, Ten Main Center, Suite 2100, Kansas City, Missouri 64141.

Mark S. Prosperi, Attorneys, Department of Justice, Room 2634 Everett M. Dirksen Bldg., Chicago, Illinois 60604 (312) 353-7283.

U.S. District Court, District of Kansas

United States of America, Plaintiff, v. *Krause Milling Company and ADM Milling Co.*, Defendants.

Civil Action No. 78-1122.

Filed: June 6, 1979.

Final Judgment

Plaintiff, United States of America, having filed its complaint herein on March 27, 1978, and its amended complaint on July 20, 1978 and defendant ADM Milling Co. ("ADM"), having appeared and filed its answer to the amended complaint denying the material allegations thereof and raising an affirmative defense, and plaintiff having dismissed Counts Two and Three of its amended complaint as to defendant ADM by agreement with defendant ADM; and plaintiff and defendant ADM, by their respective attorneys, each having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence against or an admission by any party hereto with respect to any such issue;

Now, therefore, before the taking of any testimony, without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence or admission by any party with respect to any such issue, and upon the consent of the parties aforesaid, it is hereby

Ordered, adjudged and decreed, with respect to Count One of plaintiff's amended complaint as to defendant ADM only as follows:

I

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. Count One of the amended complaint states a claim upon which relief may be granted against defendant ADM under Section 1 of the Sherman Act (15 U.S.C. 1).

(D) Communicate to or exchange with any other person manufacturing or selling blended foods any term or condition of sale including but not limited to any actual or proposed price, price component, price change, discount, total quantity, incremental price or quantity, or freight rate, at or upon which blended foods are to be, or have been, sold to any person, prior to the communication of such information to the public generally.

Subparagraphs (A) and (D) of this Section IV shall not apply to prices, discounts, or other terms or conditions of sale, or necessary communications relating thereto, offered by defendant ADM to any person or offered by any person to defendant ADM in negotiating for, entering into or carrying out a

bona fide sale or proposed sale or purchase of blended foods either between the defendant and such other person or where such other person is acting as a purchasing agent or group buying representative on behalf of any third person.

V

Defendant ADM shall furnish to the plaintiff a copy of each audit of its bidding procedures that may be required by the Final Order entered against it in the Commodity Credit Corporation Debarrment proceedings involving defendant ADM and commenced by the Commodity Credit Corporation's issuance on April 28, 1978, of its notices of proposed debarrment, and any written modifications or interpretations of those Orders.

VI

For a period of five (5) years from the date of entry of this Final Judgment, defendant ADM shall preserve all written price computations and other written calculations performed by it, subsequent to March 27, 1978, in the preparation of any bid on blended foods.

VII

Defendant ADM is ordered and directed:

(A) To furnish, within sixty (60) days after the entry of this Final Judgment, a copy of this Final Judgment to each of its officers and directors, and to each of its employees and agents who have any responsibility for preparing, reviewing or submitting bids on blended foods;

(B) To furnish a copy of this Final Judgment to each successor to such officers, directors, employees or agents described in Paragraph (A) of this Section VII within sixty (60) days after such successor becomes employed or associated with defendant ADM;

(C) To obtain a receipt from each person to whom a copy of this Final Judgment has been furnished pursuant to Sections VII A and B hereof, and to maintain said receipts so long as this Final Judgment is effective;

(D) To establish a program for dissemination of, education as to, and compliance with this Final Judgment, involving each corporate officer, director, employee and agent having responsibilities in connection with or authority over the establishment of prices, discounts, or other terms or conditions of sale of blended foods, advising them of its and their obligations under this Final Judgment. This program shall include an explanation of the Final Judgment and a statement of corporate compliance policy thereunder;

(e) To furnish to plaintiff within one hundred and twenty (120) days of the entry of this Final Judgment, and thereafter upon request by plaintiff for a period of five (5) consecutive years from the date of its entry, an annual account of all steps defendant has taken since the prior account to discharge its obligations under this Section VII and to include with said account copies of all written directives issued during the prior year with respect to compliance with the terms of this Final Judgment.

VIII

Defendant ADM shall require, as a condition of the sale or disposition of all, or substantially all, of the assets used by it in the production and sale of blended foods, that the acquiring party agree to be bound by the provisions of this Final Judgment, and that such agreement be filed with the Court.

IX

Defendant ADM agrees to cooperate with plaintiff during both the pre-trial discovery and the trial of this case, including but not limited to the following cooperation:

(A) Producing expeditiously in advance of trial any and all corporate documents not privileged and relevant to the issues in this case requested by the Government without the necessity of a subpoena;

(B) Consenting to interviews of corporate personnel, who may have counsel present, regarding any of the allegations in the complaint in this case and the explanation of corporate documents.

X

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant ADM made to its principal office, be permitted:

(1) Access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview under oath officers, employees and agents of such defendant, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to defendant ADM's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section X shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law or court order.

(C) If at the time information or documents are furnished by defendant ADM to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendant ADM is not a party.

XI

Jurisdicition is retained by this Court for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance therewith, and for the punishment of violation thereof.

This Final Judgment shall be in effect for a period of ten years from the date of its entry by this Court.

XIII

Entry of this Final Judgment is in the public interest.

Dated: ———.

United States District Judge.

U.S. DISTRICT COURT, DISTRICT OF KANSAS

United States of America, Plaintiff, v. *Krause Milling Company, and ADM Milling Co.*, Defendants.

Civil No. 78–1122.

Filed: June 6, 1979.

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)), the United States hereby submits this Competitive Impact Statement relating to the proposed consent judgment submitted for entry in this civil antitrust proceeding.

I

Nature of the Proceeding

On March 27, 1978, the United States filed a civil complaint under Section 4 of the Sherman Act (15 U.S.C. 4), alleging that the defendants, Krause Milling Company and ADM Milling Co., had violated Section 1 of the Sherman Act (15 U.S.C. 1). The Complaint alleged that, beginning in late 1974 and continuing until late 1976, defendants and various co-conspirators engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce, the substantial terms of which were: (a) To allocate between the defendants contracts awarded by the Commodity Credit Corporation (hereinafter CCC), an agency of the United States Department of Agriculture, for the total volume of Soy Fortified Sorghum Grits, a type of blended food purchased by the CCC under the Food For Peace Program; and (b) to submit rigged, collusive and non-competitive bids to the CCC for the above-described contracts.

On July 26, 1978 the United States filed a First Amended Complaint in which the

above-described violation of Section 1 of the Sherman Act was realleged as Count One. In addition, Count Two alleged a violation of the False Claims Act (31 U.S.C. 231–233) and Count Three alleged actual damages under Section 4A of the Clayton Act (15 U.S.C. 15(a)). Counts Two and Three of the First Amended Complaint, seeking money damages for alleged overcharges suffered by the United States as a result of the alleged conspiracy, have been previously settled and compromised by the United States and the defendant ADM in the amount of $225,000 without adjudication of any issue of fact or law. The attached final judgment provides injunctive relief against defendant ADM under Count One. Krause remains a defendant.

A federal grand jury indictment against the same corporate defendants and one individual defendant, Charles A. Krause, president of Krause Milling Company, was also filed in the District of Kansas on March 27, 1978. The indictment alleged a criminal felony violation of Section 1 of the Sherman Act arising out of the same conspiracy alleged in this case. All defendants in the criminal case entered pleas of *nolo contendere* and were sentenced by District Judge Earl E. O'Connor on November 13, 1978. The sentences were as follows:

Krause Milling Company; $300,000 fine.
ADM Milling Co.; $200,000 fine.
Charles A. Krause; 2 years custody of the Attorney General, 6 months to be served with the remainder suspended.

Entry by the Court of the proposed consent judgment will terminate the remaining portions of this civil action against ADM, except insofar as the Court will retain jurisdiction over the matter for possible further proceedings which may be required to interpret, modify or enforce the judgment, or to punish alleged violations of any of the provisions of the judgment.

II

Description of Practices Involved in the Alleged Violation

The defendants are grain millers which manufacture Soy Fortified Sorghum Grits (SFSG), a high protein blended food product, which is sold to the CCC under the "Food For Peace Program" (Title II of the Agricultural Trade Development and Assistance Act of 1954, as amended). The CCC ships the product to foreign countries for distribution by relief organizations to undernourished people and to victims of war, famine and a variety of natural disasters. Defendants' total sales of SFSG during the period of the alleged conspiracy amounted to about $28 million.

The Government would have been prepared to prove at trial that representatives of defendants entered into an agreement in mid-1974 to allocate the total purchases of SFSG by the CCC between their two companies roughly on the basis of their respective plant capacities (approximately 30% for ADM and 70% for Krause). This allocation was to be accomplished through a series of phone calls on the occasion of each bid during which the prices and quantities to be bid by each company would be discussed and agreed upon. Although representatives of defendants were unable to contact each other before each and every bid, they did so about one-half to three-fourths of the time. Bids were then submitted to the CCC containing the prearranged prices and quantities which each company had agreed to submit. This alleged bid rigging and contract allocation agreement continued until November, 1976 when grand jury subpoenas *duces tecum* were served upon the defendants.

According to the Complaint, the alleged conspiracy had the following effects:

(a) Prices of SFSG sold to the CCC under the Food For Peace Program were fixed, maintained, and established at artificial and non-competitive levels;

(b) Competition in such sales was restrained, suppressed and eliminated; and

(c) The United States Government was denied the benefits of free and open competition in the purchase of SFSG.

Defendants, in their formal pleadings filed in the case, denied all of the allegations in the Government's Complaint and were prepared, and Krause remains prepared, to dispute the evidence to be offered by the Government at a trial.

III

Explanation of the Proposed Final Judgment

The United States and the defendant ADM have stipulated that the proposed final judgment, which is in a form negotiated by the parties, may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The stipulation between the parties provides that there has been no admission by any party with respect to any issue of fact or law. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, entry of the proposed judgment by the Court is conditioned upon a determination by the Court that the judgment is in the public interest.

A. *Prohibited Conduct.* The proposed judgment will prohibit ADM for a period of ten years from entering into or adhering to any agreement with any person to fix or maintain the prices or other terms or conditions for the sale of blended foods to any third party. The judgment also prohibits the submission of non-competitive, collusive, or rigged bids on contracts for the sale of blended foods to any person. Also forbidden is any agreement by ADM to allocate contracts, rotate or divide markets, customers, or territories with respect to sales of blended foods. The judgment also prohibits ADM, by agreement or individually, from communicating or exchanging with any other person any information on prospective prices, quantities, freight rates, discounts or other terms and conditions for the sale of blended foods, before such prices or other terms are made available to the public generally, except in the course of bona fide purchase and sales transactions.

B. *Require Conduct.* To ensure that all bids to the Government are made without collusion or agreement, the proposed judgment requires defendant ADM to furnish the Government a copy of any audit of its bidding procedures for CCC sales prepared in accordance with any Order of the CCC entered as a result of debarment proceedings conducted by CCC against ADM. To permit monitoring of compliance with the provisions relating to competitive bidding, defendant ADM is also required, over a five-year period, to preserve all written price computations and other calculations actually performed in connection with the submission of bids to public agencies.

To permit enforcement of the judgment against purchasers of ADM's milling assets, ADM Must require any purchaser of all or substantially all of ADM's assets used in the production and sale of blended foods to agree to be bound by the provisions of the judgment, and such agreement must be filed with the Court.

For the purpose of notifying all necessary employees regarding the prohibitions of the judgment, defendant ADM is required, within 60 days, to serve a copy of the judgment on each of their directors and officers, and upon each of their employees or agents who have any responsibility for preparing, reviewing, or submitting bids on blended foods. If new employees are hired in these positions in the future, ADM must also serve a copy of the judgment on these new employees. ADM must obtain and keep receipts reflecting the service of the judgment on corporate personnel. The judgment applies not only to the defendant corporation but also to its officers, directors, employees, and agents who have actual notice of the judgment. Requiring the defendant ADM to give such notice to its responsible personnel serves two purposes: it enables the affected employees to know what activities are prohibited, and it permits prosecution for criminal contempt of those employees who disregard the provisions of the judgment. ADM is also required to establish a reasonable program of advising those persons having duties in regard to establishment of prices, discounts, or other terms or conditions of sale of blended foods of the company's obligations under the judgment.

Under the proposed judgment, the Department of Justice is given access for ten years to the files and records of the defendant ADM in order to examine such records for compliance or noncompliance with the judgment. The Department is also granted access to interview employees of the defendant ADM to determine whether defendants are complying with the judgment.

C. *Effect of the Proposed Judgment on Competition.* The relief encompassed in the proposed consent judgment is designed to prevent a recurrence of any of the activities alleged in the Complaint. The prohibitory language of the judgment will ensure that all pricing decisions on blended foods are made independently by the individual competitors. The judgment contains sufficient record-keeping requirements and access to defendant ADM's records to allow the Department to adequately monitor defendant AMD's activities in the future.

Accordingly, it is the opinion of the Department of Justice that the proposed judgment is fully adequate to prevent any future antitrust violations by the defendant

ADM. It is also the view of the Department that disposition of the case without additional litigation is appropriate in view of the fact that the proposed judgment includes the form and scope of relief equal to that which might be obtained after a full hearing on the issues at a trial.

IV

Remedies available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages such person has suffered, as well as costs and reasonable attorney fees. Since the CCC, an agency of the United States Department of Agriculture, was the only purchaser of blended foods, there are no potential private plaintiffs who have suffered any equitable or monetary damage as a result of the alleged violation in this case. Hence, no potential private litigants exist who have standing to sue under Section 4 9f the Clayton Act in this matter.

V

Procedures Available for Modification of the Proposed Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed judgment should be modified may submit written comments to John E. Sarbaugh, Department of Justice, Antitrust Division, Room 2634, 219 South Dearborn Street, Chicago, Illinois 60604, within the 60-day period provided by the Act. The comments and the government's responses to them will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed judgment at any time prior to its entry if it should determine that some modification of the judgment is necessary in the public interest. The proposed judgment itself provides that the Court will retain jurisdiction over this action, and that the parties may apply to the Court for such orders as may be necessary or appropriate for the modification or enforcement of the judgment.

VI

Alternatives to the Proposed Consent Judgment

This case does not involve any unusual or novel issues of fact or law which might make litigation a more desirable alternative than the entry of the negotiated consent judgment. The proposed judgment contains virtually all the relief which was requested in the Complaint.

VII

Other Materials

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)) were considered in formulating this proposed judgment.

John E. Sarbaugh,

Attorney, Department of Justice.

Allyn A. Brooks,

James J. Kubik,

Diane C. Lotko-Baker,

Mark S. Prosperi,

Attorneys, Department of Justice, Room 2634, Everett M. Dirksen Bldg., Chicago, Illinois 60604, 312-353-7283.

[FR Doc. 79-18094 Filed 6-18-79; 8:45 am]

BILLING CODE 4410-01-M

United States v. Florida Power Corp.; Consent Decree in Action To Enforce Compliance With Terms of NPDES Permit

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed consent decree in *United States* v. *Florida Power Corporation* has been lodged with the United States District Court for the Middle District of Florida. The decree imposes on defendant certain requirements and compliance dates with respect to the operation of its Anclote electric power generating facility and also imposes a $200,000 civil penalty for violations of the NPDES permit issued for that facility.

The Department of Justice will receive on or before July 19, 1979, written comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 10230 and should refer to *United States* v. *Florida Power Corporation*, D.J. Ref. 90-5-1-1-965.

The consent decree may be examined at the office of the United States Attorney, Middle District of Florida, 409 Post Office Building, 311 West Monroe Street, Jacksonville, Florida 32201, at the Region IV office of the Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30308, and the Pollution Control Section, Land and Natural Resources Division of the Department of Justice, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Pollution Control Section, Land and Natural Resources Division of the Department of Justice.

James W. Moorman,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 79-18095 Filed 6-18-79; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

[TA-W-5036]

Akron & Barberton Belt Railroad Co., Barberton, Ohio; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on March 26, 1979, in response to a worker petition received on March 20, 1979, which was filed by the United Transportation Union on behalf of workers and former workers of the Akron and Barberton Belt Railroad Company, Barberton, Ohio, engaged in transporting materials in and out of tire plants and transporting the finished product to the consumer.

The Akron and Barberton Belt Railroad is engaged in providing the services of a terminal switching railroad. The company is owned by the Conrail System, the Chessie System, and the Norfolk and Western Railroad Company, and is a common carrier. Formerly, the major portion of the work of the railroad was carrying the tires of a major tire manufacturer in the local area.

Thus, workers of the Akron and Barberton Belt Railroad Company do not produce an article within the meaning of Section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from the parent firms, a firm otherwise related to the Akron and Barberton Belt Railroad Company by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

The Akron and Barberton Belt Railroad Company and its customers have no controlling interest in one

another. The parent firms do not produce an article.

All workers engaged in railroad operations at the Akron and Barberton Belt Railroad Company are employed by that firm. All personnel actions and payroll transactions are controlled by the Akron and Barberton Belt Railroad Company. All employee benefits are provided and maintained by the Akron and Barberton Belt Railroad Company. Workers are not, at any time, under employment or supervision by customers of the Akron and Barberton Belt Railroad Company. Thus, the Akron and Barberton Belt Railroad Company, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of the Akron and Barberton Belt Railroad Company, Barberton, Ohio are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 11th day of June 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-18817 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, as instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 29, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 29, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 12th day of June 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Alabama Fuel Company #1 Mine (Southern Labor Union).	Summerville, W. Va	6/6/79	5/30/79	TA-W-5,550	Mining of coal.
Bata Shoe Co., Inc. (company)	Belcamp, Md	6/7/79	6/4/79	TA-W-5,551	Rubber, canvas and vinyl footwear.
Bata Shoe Co., Inc. (company)	Elkins, W. Va	6/7/79	6/4/79	TA-W-5,552	Rubber, canvas and vinyl footwear.
Bee & Jay Sportswear (workers)	Philadelphia, Pa	6/5/79	5/31/79	TA-W-5,553	Men's sportswear.
East West Leathers, Inc. (workers)	San Francisco, Calif	6/7/79	5/29/79	TA-W-5,554	Leather garments.
Ecko Housewares—Massillon Division (workers).	Massillon, Ohio	6/4/79	5/25/79	TA-W-5,555	7"-12" skillets 1 QT to 12 QT saucepans.
Golo Footwear Co.p. (workers)	Dunmore, Pa	6/4/79	5/30/79	TA-W-5,556	Boots and shoes for ladies.
J. Schoeneman, Inc., Suntile Division (ACTWU).	Owings Mills, Md	6/7/79	5/31/79	TA-W-5,557	Men's suits and sportcoats.
Tygart Coal Company (workers)	Clarksburg, W. Va	6/7/79	5/31/79	TA-W-5,558	Mining of coal.

[FR Doc. 79-18818 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5248]

Converse Rubber Co., Lumberton Division, Lumberton, N.C.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 18, 1979 in response to a worker petition received on April 16, 1979 which was filed on behalf of workers and former workers producing athletic canvas footwear at the Lumberton Division of Converse Rubber Company, Lumberton, North Carolina. It is concluded that all of the requirements have been met.

Imports of rubber/canvas footwear increased in 1978 from 1977, both in absolute terms, and relative to domestic production.

Customers of Converse Rubber Company surveyed by the Department of Labor indicated that they had

decreased purchases of canvas and athletic footwear from Converse and increased purchases of imports during the period under investigation.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with canvas and athletic footwear produced at the Lumberton, North Carolina plant of Converse Rubber Company contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of the Lumberton, North Carolina plant of Converse Rubber Company who became totally or partially separated from employment on or after November 1, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 11th day of June 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-18819 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5236]

Dyna Coal No. 1, Anawalt, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 16, 1979 in response to a worker petition received on April 2, 1979 which was filed by the United Mine Workers of America on behalf of workers and former workers mining coal at Dyna Coal No. 1, Anawalt, West Virginia. In the following determination, at least one of the criteria has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

A Department survey revealed that none of Dyna's customers purchased any imported coal or imported coke.

In addition, a substantial portion of the coal Dyna sold was used for the export market by its customers.

Conclusion

After careful review, I determine that all workers of Dyna Coal No. 1, Anawalt, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 11th day of June 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-18820 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4479]

Ernst Strauss, Inc., Los Angeles, Calif.; Negative Determination on Reconsideration

On May 16, 1979, the Department made an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of Ernst Strauss, Inc., Los Angeles, California. This determination was published in the **Federal Register** on May 25, 1979, (44 FR 30479).

The petitioning union claimed that the Department should redefine the appropriate worker group to those workers in a subdivision of Ernst Strauss, Inc., namely, the Ernst Strauss Department which produces women's jackets and coats.

The Department's further investigation revealed that although production and sales records for the Ernst Strauss Department are not kept separately, records of wages paid to workers are kept separately. These data show that wages paid to Ernst Strauss Department workers increased in 1978 compared to 1977. Based on these wage records and other information, the Labor Department is unable to conclude that a significant number or proportion of the workers of the Ernst Strauss Department have become separated wholly or partially from employment or are threatened with such separation.

The Department's initial investigation had found that the employment requirement of Section 222 had not been met for the firm, Ernst Strauss, Inc.

Conclusion

After reconsideration, I reaffirm the original denial of eligibility to apply for adjustment assistance to workers and former workers of Ernst Strauss, Inc., Los Angeles, California.

Signed at Washington, D.C., this 8th day of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-18821 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5315]

F. J. Boutell Driveaway Co, Inc., Jersey City, N.J.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 30, 1979, in response to a worker petition received on April 12, 1979, which was filed by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America on behalf of workers and former workers of F. J. Boutell, Hoboken, New Jersey, engaged in shipping cars. The investigation revealed that the legal title of the firm is F. J. Boutell Driveaway Company, Incorporated, and that although the mailing address of the firm is Hoboken, New Jersey, the transport facility where the petitioners are employed is located in Jersey City, New Jersey.

The Jersey City, New Jersey facility of F. J. Boutell Driveaway Company, Incorporated is engaged in providing the service of transporting new automobiles from an auto terminal to automobile dealers in the metropolitan areas.

Thus, workers of the Jersey City, New Jersey facility of F. J. Boutell Driveaway Company, Incorporated do not produce an article within the meaning of Section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to F. J. Boutell Driveaway Company, Incorporated by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the

statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

F. J. Boutell Driveaway Company, Incorporated and its customers have no controlling interest in one another. B & C, Incorporated, a subsidiary of the subject firm, does not produce an article.

All workers engaged in transporting new automobiles at the Jersey City, New Jersey facility of F. J. Boutell Driveaway Company, Incorporated, are employed by that firm. All personnel actions and payroll transactions are controlled by F. J. Boutell Driveaway Company, Incorporated. All employee benefits are provided and maintained by F. J. Boutell Driveaway Company, Incorporated. Workers are not, at any time, under employment or supervision by customers of F. J. Boutell Driveaway Company, Incorporated. Thus, F. J. Boutell Driveaway Company, Incorporated, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of the Jersey City, New Jersey, facility of F. J. Boutell Driveaway Company, Incorporated are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of theTrade Act of 1974.

Signed at Washington, D.C. this 7th day of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-18822 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5122]

F.S.C. Enterprises, Inc., Fayette County, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 5, 1979, in response to a worker petition received on April 2, 1979, which was filed by the United Mine Workers of America on behalf of workers and former workers producing coal at F.S.C. Enterprises, Incorporated, Surface Mine #1, Fayette County, West Virginia. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The average number of workers employed by F.S.C. Enterprises increased in the last four months of 1978 compared to the same period of 1977. Workers of F.S.C. Enterprises were on strike between December 6, 1977 and March 27, 1978. Labor turnover data shows that all separations of workers in 1978 and the first three months of 1979 were due to quits and retirements. There were no layoffs and average weekly hours worked per employee did not change significantly in 1978 or the first three months of 1979.

Conclusion

After careful review, I determine that all workers of F.S.C. Enterprises, Incorporated, Fayette County, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-18823 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5240]

Fisher Coal Co., Hillsboro, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 16, 1979 in response to a worker petition received on April 9, 1979 which was filed by the United Mine Workers of America on behalf of workers and former workers mining coal at the Fisher Coal Company, Hillsboro, West Virginia. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

A survey conducted by the Department revealed that the subject firm's customers exported all but an insignificant amount of the coal they purchased from the subject firm, therefore any imports of coal or coke will have a negligible impact on employment.

Conclusion

After careful review, I determine that all workers of the Fisher Coal Company, Hillsboro, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 7th day of June 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-18824 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5250]

Florsheim Shoe Co., Poplar Bluff, Mo.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 16, 1979 in response to a worker petition received on April 5, 1979 which was filed by the United Shoe Workers of America on behalf of workers and former workers producing men's dress shoes at the Poplar Bluff, Missouri plant of the Florsheim Shoe Company. It is concluded that all of the requirements have been met.

U.S. imports of men's dress and casual footwear increased absolutely and relative to domestic production in 1977

compared to 1976 and increased relative to domestic production in 1978 compared to 1977. Imports as a percentage of domestic production exceeded 75 percent during 1976, 1977 and 1978.

Total Florsheim Shoe Company imports of men's footwear increased in 1977 and 1978 compared to the previous year and during the first quarter of 1979 compared to the first quarter of 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's dress footwear produced at the Poplar Bluff, Missouri plant of the Florsheim Shoe Company contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of the Poplar Bluff, Missouri plant of the Florsheim Shoe Company who became totally or partially separated from employment on or after december 24, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the trade Act of 1974.

Signed at Washington, D.C. this 8th day June 1979.

Harry J. Gilman

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-18825 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5175]

Foam Pillow Corp., Long Island, N.Y.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 6, 1979 in response to a worker petition received on April 2, 1979 which was filed on behalf of workers and former workers producing decorative pillows, sleeping pillows, chair and bed rests at the Foam Pillow Corporation, Long Island, New York. The investigation revealed that the plant produced primarily decorative pillows. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Evidence developed during the course of the investigation indicated that U.S. imports of pillows and cushions are negligible. The ratio of imports to domestic production of pillows and cushions in 1978 was 0.7 percent.

Conclusion

After careful review, I determine that all workers of the Foam Pillow Corporation, Long Island, New York are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 5th day of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-18826 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5237]

Green Leaf Fashions, Inc., New York, N.Y.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 16, 1979, in response to a worker petition received on April 10, 1979, which was filed on behalf of workers and former workers producing ladies' coats and suits at Green Leaf Fashions, Incorporated, New York, New York. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses' and children's coats and jackets increased in 1977 compared to 1976 and increased in 1978 compared to 1977. U.S. imports of women's, misses' and children's suits increased in 1978 compared to 1977.

Customers of the subject firm were surveyed by the Department. Customers representing a significant proportion of sales of the subject firm, decreased purchases from the subject firm and increased import purchases of ladies' coats and suits in 1978 compared to 1977. Some customers decreased purchases of ladies' coats from the subject firm and increased imports of ladies' coats in the first quarter of 1979 compared to the same period of 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ladies' coats and suits produced at Green Leaf Fashions, Incorporated, New York, New York contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Green Leaf Fashions, Incorporated, New York, New York who became totally or partially separated from employment on or after April 3, 1978 and before May 31, 1979 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 11th day of June 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-18827 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5152]

Hinkle & Son, Inc., Canvas, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 5, 1979, in response to a worker petition received on April 2, 1979, which was filed by the United Mine Workers of America on behalf of workers and former workers of Hinkle and Son, Incorporated, Canvas, West Virginia, a coal hauler.

Hinkle and Son, Incorporated is engaged in providing the service of transporting coal by truck from a customer's mine to a tipple.

Thus, workers of Hinkle and Son, Incorporated do not produce an article within the meaning of Section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Hinkle and Son, Incorporated by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Hinkle and Son, Incorporated and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any other company.

All workers engaged in transporting coal by truck at Hinkle and Son, Incorporated, Canvas, West Virginia, are employed by that firm. All personnel actions and payroll transactions are controlled by Hinkle and Son, Incorporated. All employee benefits are provided and maintained by Hinkle and Son, Incorporated. Workers are not, at any time, under employment or supervision by customers of Hinkle and Son, Incorporated. Thus, Hinkle and Son, Incorporated, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of Hinkle and Son, Incorporated, Canvas, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-18628 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5045]

International Shoe Co., Inc., Perryville, Mo.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on March 28, 1979 in response to a worker petition received on March 22, 1979 which was filed by the Retail Clerks International Union on behalf of workers and former workers producing men's and women's shoes at the Perryville, Missouri plant of International Shoe Company, Incorporated. The investigation revealed that the plant produces primarily men's dress and work shoes and women's work shoes. It is concluded that all of the requirements have been met.

U.S. imports of men's dress and casual shoes, except athletic, increased absolutely and relative to domestic production from 1976 to 1977. Imports decreased absolutely and increased relatively from 1977 to 1978.

U.S. imports of work footwear increased absolutely and relative to domestic production from 1976 to 1977 and from 1977 to 1978.

A survey was conducted of customers of International Shoe Company, Incorporated. The survey revealed that some customers decreased purchases of mens shoes from International Shoe Company, Inc. and increased purchases of imported shoes in 1978 and in the first quarter of 1979.

International Shoe Company, Incorporated also began to import men's dress and work shoes in 1978. These imports are directly competitive with the shoes produced at the Perryville, Missouri plant and represent a significant portion of the decline in production at the Perryville plant.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's dress and work shoes and women's work shoes produced at the Perryville, Missouri plant of International Shoe Company, Incorporated contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of International Shoes Company, Incorporated, Perryville, Missouri who became totally or partially separated from employment on or after January 13, 1979 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 5th day of June 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-18629 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5224]

Island Creek Coal Co., Northern Division, the Beaver Deep Mine, the Tioga Surface Mine, The Tioga Preparation Plant, Craigsville, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 12, 1979 in response to a worker petition received on April 9, 1979 which was filed by the United Mine Workers of America on behalf of workers and former workers producing coal for the Island Creek Coal Company, Northern Division, Craigsville, West Virginia. The investigation revealed that the mine primarily produces steam coal. The investigation further revealed that the petition includes the Beaver Deep Mine, the Tioga Surface Mine, and the Tioga Preparation Plant, only. In the following determination, at least one of the criteria has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Island Creek Coal Company, a wholly-owned subsidiary of Occidental Petroleum Corporation, operated coal mining operations throughout the United States. The United Mine Workers of America (U.M.W.A.) filed this petition on behalf of all miners (represented by U.M.W.A.) employed in the Northern Division of Island Creek Coal Company. Sources stated that three facilities (the Beaver Deep mine, the Tioga Strip mine and Tioga Preparation Plant) have experienced total separations and decline in sales and production

following the closing of the three facilities on March 23, 1979. Sources further stated that all coal mined from the mines and cleaned by this preparation plant is sold to domestic customers for use in producing steam.

U.S. imports of bituminous coal are negligible, being well less than one percent.

Conclusion

After careful review, I determine that all workers of the Island Creek Coal Company, Northern Division, the Beaver Deep mine, the Tioga Surface mine, and the Tioga Preparation Plant, Craigsville, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 5th day of June 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-18830 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5210-5211]

Jerome Industries Corp., Kenilworth, N.J., Orange, N.J.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 10, 1979 in response to worker petitions received on April 9, 1979 which were filed on behalf of workers and former workers producing wall plug converter adapters at the Kenilworth and Orange, New Jersey plants of Jerome Industries Corporation. It is concluded that all of the requirements have been met.

Imports of power conversion adapters increased in 1978 compared to 1977.

Major surveyed customers decreased purchases from Jerome Industries and increased purchases of imported wall plug converter adapters in 1978 compared to 1977.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with wall plug converter adapters produced at the Kenilworth and Orange, New Jersey plants of Jerome Industries Corporation contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Jerome Industries Corporation, Kenilworth and Orange, New Jersey who became totally or partially separated from employment on or after April 5, 1979 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 8th day of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-18831 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5093]

Kay Fashions, Inc., Lodi, N.J.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on March 30, 1979, in response to a worker petition received on March 30, 1979, which was filed on behalf of workers and former workers producing ladies' dresses, skirts, and suits at Kay Fashions, Incorporated, Lodi, New Jersey. The investigation revealed that Kay Fashions also produces pants. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Production at Kay Fashions increased substantially in both quantity and value from 1977 to 1978. Production, in value, increased in the first five months of 1979 compared to the first five months of 1978.

Employment at Kay Fashions remained constant from 1977 to 1978. Reduced employment and production levels in the first quarter 1979 at Kay Fashions can be attributed to normal business fluctuations. Production at Kay Fashions increased in April and May 1979, subsequent to the short downturn.

Conclusion

After careful review, I determine that all workers of Kay Fashions, Incorporated, Lodi, New Jersey are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 11th day of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-18832 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5396]

Kristie Minerals, Inc., Richwood, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on May 15, 1979, in response to a worker petition received on April 9, 1979, which was filed by the United Mine Workers of America on behalf of workers and former workers mining coal at Kristie Minerals, Incorporated, Richwood, West Virginia. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

A survey conducted by the Department revealed that the subject firm's customers exported all but an insignificant amount of the coal they purchased from the subject firm, therefore, any imports of coal or coke

will have a negligible impact on employment.

Conclusion

After careful review, I determine that all workers of Kristie Minerals, Incorporated, Richwood, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 11th day of June 1979.

James F. Taylor,
Director, Office of Management, Administration, and Planning.

[FR Doc. 79-18828 Filed 6-18-79; 8:45 am]
BILLING CODE 4510-28-M

[TA-W-5199]

L. W. Foster Sportswear Co., Inc., Philadelphia, Pa.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 10, 1979 in response to a worker petition received on April 5, 1979 which was filed on behalf of workers and former workers producing men's suits and jackets at L. W. Foster Sportswear Company, Incorporated, Philadelphia, Pennsylvania. The investigation revealed that the plant produces primarily men's suits and sportcoats. It is concluded that all of the requirements have been met.

U.S. imports of men's and boys' tailored dress coats and sportcoats increased absolutely and relative to domestic production in 1978 compared to 1977.

U.S. imports of men's and boy's tailored suits increased absolutely in 1978 compared to the 1974 to 1977 annual average and increased absolutely in the period January to February 1979 compared to the same period in 1978.

A survey conducted by the Department revealed that major customers of L. W. Foster Sportswear Company decreased purchases from that firm and increased purchases of imported men's suits and sportcoats in 1978 compared to 1977.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's suits and sportcoats produced at L. W. Foster Sportswear Company, Incorporated, Philadelphia, Pennsylvania contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of L. W. Foster Sportswear Company, Incorporated, Philadelphia, Pennsylvania who became totally or partially separated from employment on or after April 2, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 8th day of June 1979.

James F. Taylor,
Director, Office of Management, Administration, and Planning.

[FR Doc. 79-18824 Filed 6-18-79; 8:45 am]
BILLING CODE 4510-28-M

[TA-W-5107]

Larrimore, Limited, et al., Philadelphia, Pa.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 4, 1979 in response to a worker petition received on March 23, 1979 which was filed on behalf of workers and former workers producing men's coats and trousers at the Philadelphia, Pennsylvania plant of Larrimore, Limited. The investigation revealed that the plant primarily produced men's tailored suits and sport coats. It also revealed that the petition should be expanded to include workers producing men's tailored suits and sport coats at the Philadelphia, Pennsylvania plants of Makranskys, Incorporated and Mario Di Santo, Incorporated. It is concluded that all of the requirements have been met.

Imports of men's and boys' tailored dress coats and sport coats increased in 1978 to 6,349 thousand units compared to 6,239 thousand units in 1977.

Makranskys, Incorporated is a men's clothing manufacturer. In May, 1977 all sewers employed at Makranskys were formed into another company, Mario Di Santo, Incorporated. All sewers at Makranskys went to work for Mario Di Santo, Incorporated. In April, 1978, all cutters employed at Makranskys were formed into a third company, Larrimore, Limited. Makransky's Incorporated and Larrimore, Limited share common ownership. Mario Di Santo, Incorporated and Larrimore, Limited also share common ownership. Workers at Mario Di Santo and Larrimore, Limited sewed and cut, respectively, for Makranskys, Incorporated until July, 1978. In July, 1978 Makranskys, Incorporated and Larrimore, Limited closed. Since July, 1978 Mario Di Santo, Incorporated has attempted to solicit other orders, but has been unable to reach previous levels.

The Department conducted a survey of customers of Makranskys, Incorporated. The results of this summary indicated that some of these customers had decreased purchases from Makranskys, Incorporated in the period January through September, 1978 compared to the same period in 1977, and had increased purchases of imports during that period.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's tailored suits and sport coats produced at the Philadelphia, Pennsylvania plant of Makranskys, Incorporated, including Larrimore Limited, and Mario Di Santo, Incorporated contributed importantly to the decline in sales or production and to the total or partial separation of workers of those firms. In accordance with the provisions of the Act, I make the following certification:

All workers of Makranskys, Incorporated, including Larrimore, Limited, and Mario Di Santo, Incorporated, Philadelphia, Pennsylvania who became totally, or partially separated from employment on or after March 20, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of June 1979.

James F. Taylor,
Director, Office of Management, Adminstration, and Planning.

[FR Doc. 79-18825 Filed 6-18-79; 8:45 am]
BILLING CODE 4510-28-M

[TA-W-5132]

Layland Coal Co., Kim-Lyn Tipple, Fayette County, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 5, 1979, in response to a worker petition received on April 2, 1979, which was filed by the United Mine Workers of America on behalf of workers and former workers of Layland Coal Company, Kim-Lyn Tipple, Fayette County, West Virginia, engaged in operating a tipple machine.

Layland Coal Company is engaged in providing the service of weighing coal trucks, operating a coal loading tipple, and maintaining a stockpile of coal. Some of the coal is bought, loaded, and sold by Layland Coal Company, and some is handled on a contract basis.

Thus, workers of Layland Coal Company, Kim-Lyn Tipple, Fayette County, West Virginia, do not produce an article within the meaning of Section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from the parent firm, a firm otherwise related to Layland Coal Company by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Layland Coal Company and its customers have no controlling interest in one another. The parent company, the Berwind Corporation, does not produce coal.

All workers engaged in weighing coal trucks, operating a coal loading tipple, and maintaining a stockpile of coal at Layland Coal Company, Kim-Lyn Tipple, Fayette County, West Virginia, are employed by that firm. All personnel actions and payroll transactions are controlled by Layland Coal Company. All employee benefits are provided and maintained by Layland Coal Company. Workers are not, at any time, under employment or supervision by customers of Layland Coal Company. Thus, Layland Coal Company, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of Layland Coal Company, Kim-Lyn Tipple, Fayette County, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of June 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-18626 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5074 and TA-W-5074-A]

Lloyd's Electronics, Inc., Edison, N.J., and Lloyd's Electronics of California, Inc., Compton, Calif.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on March 29, 1979 in response to a worker petition received on March 26, 1979 which was filed on behalf of workers and former workers producing home stereo equipment at the Edison, New Jersey plant of Lloyd's Electronics, Incorporated (TA-W-5074). The investigation was expanded to include workers and former workers producing home stereo equipment at the Compton, California plant of Lloyd's Electronics of California, Incorporated (TA-W-5074-A), a subsidiary of Lloyd's Electronics, Incorporated. It is concluded that all of the requirements have been met.

U.S. imports of radio-phonograph-tape audio sound systems increased in unit volume from 1977 to 1978. The ratio of imports to domestic production of audio sound systems increased from 358.3 percent in 1977 to 466.4 percent in 1978.

During the fourth quarter of 1978, Lloyd's Electronics reduced domestic assembly operations at its Edison, New Jersey and Compton, California plants and increased its reliance on imports of finished home stereo equipment. Corporate imports of home stereo equipment increased from 1977 to 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with home stereo equipment produced at Lloyd's Electronics, Incorporated, Edison, New Jersey and at Lloyd's Electronics of California, Incorporated, Compton, California contributed importantly to the decline in sales or production and to the total or partial separation of workers of those plants. In accordance with the provisions of the Act, I make the following certification:

All workers of Lloyd's electronics, Incorporated, Edison, New Jersey and all workers of Lloyd's Electronics of California, Incorporated, Compton, California who became totally or partially separated from employment on or after October 1, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 8th day of June 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-18627 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5227]

Lucy Ann Footwear Corp., Paterson, N.J.; Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of investigations regarding certifications of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 12, 1979 in response to a worker petition received on April 9, 1979 which was filed by the United Shoe Workers of America on behalf of workers and

former workers producing women's footwear at Lucy Ann Footwear Corporation, Paterson, New Jersey. The investigation revealed that the plant produces womens's slippers and casual shoes. In the following determinations, without regard to whether any of the other criteria have been met for workers producing women's slippers, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The investigation revealed that U.S. imports of women's slippers declined absolutely and relatively from 1976 to 1977 and from 1977 to 1978.

For workers producing women's casual shoes, all of the criteria have been met.

U.S. imports of women's non-rubber footwear increased from 1977 to 1978.

The Department surveyed the customers of Lucy Ann Footwear. The respondents who indicated increased imports of women's slippers and casual shoes accounted for most of the decline in sales at Lucy Ann Footwear from 1977 to 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the women's casual shoes produced at Lucy Ann Footwear Corporation, Paterson, New Jersey contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers engaged in the production of women's casual shoes at Lucy Ann Footwear Corporation, Paterson, New Jersey who became totally or partially separated from employment on or after October 6, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 7th day of June 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning

[FR Doc. 79-18838 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5133 etc.]

Lyburn Coal Co., et al.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of Lyburn Coal Co., Logan City, W. Va., TA-N-5133, Metco Mining Corp., Logan City, W. Va., and Logan Mohawk Coal Co., Logan, W. Va., TA-W-5383.

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 5, 1979 in response to a worker petition received on April 3, 1979 which was filed on behalf of workers and former workers engaged in employment related to the mining of coal at Lyburn Coal Company, Logan City, West Virginia and Metco Mining Corporation, Logan City, West Virginia.

Another investigation was initiated on May 14, 1979 in response to a worker petition received on May 9, 1979 which was filed on behalf of workers and former workers engaged in employment related to the mining of coal at Logan Mohawk Coal Company, Logan, West Virginia. It is concluded that all of the requirements have been met.

While U.S. imports of metallurgical coal have been negligible, U.S. imports of coke increased in 1977 compared to 1976 and in 1978 compared to 1977.

Coke is metallurgical coal at a later stage of processing. Since a domestic article may be "directly competitive" with an imported article at a later stage of processing, imports of coke can be considered in determining import injury to workers producing metallurgical coal at Lyburn Coal Company, Metco Mining Corporation and Logan Mohawk Coal Company.

Lyburn Coal Company, Metco Mining Corporation and Logan Mohawk Coal Company sold all their coal through a single broker.

The Department of Labor conducted a survey of firms purchasing metallurgical coal through this broker. All of these customers stopped purchasing coal mined by Logan Mohawk, Metco and Lyburn about the time that those firms closed. None of these customers surveyed purchased any imported coal in 1977 or 1978. Customers that accounted for a significant proportion of the sales of Logan Mohawk, Metco and Lyburn increased purchases of imported coke in 1978 compared to 1977 and reduced purchases of domestically mined metallurgical coal at the same time.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with metallurgical coal produced at Lyburn Coal Company, Logan City, West Virginia, Metco Mining Corporation, Logan City, West Virginia and Logan Mohawk Coal Company, Logan, West Virginia contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Lyburn Coal Company, Logan City, West Virginia, Metco Mining Corporation, Logan City, West Virginia and Logan Mohawk Coal Company, Logan, West Virginia who became totally or partially separated from employment on or after December 1, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of June 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-18839 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5182 and 5183]

M and B Coal Co., Wyoming County, W. Va.; Indian Creek Mine Nos. 15 and 7; Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 6, 1979, in response to a worker petition received on April 2, 1979, which

was filed by the United Mine Workers of America on behalf of workers and former workers producing metallurgical coal at M & B Coal Company, Wyoming County, West Virginia, Indian Creek Mine #5. The investigation revealed that M & B does not operate Indian Creek Mine #5. M & B operates Indian Creek Mine #7 and Indian Creek Mine #15. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

M & B sells all of its coal to another domestic coal company. This company does not buy any imported coal and reported increasing sales of coal over the past two years. This company also exports almost all of its coal. Furthermore, this company was itself the subject of an recent adjustment assistance investigation which resulted in a Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance. The company reported that it did not reduce purchases from M & B except during the Norfolk and Western Railroad Strike in 1978 and for a short period in February 1979 when adverse weather conditions led to a shortage of railroad cars in which to ship coal.

Conclusion

After careful review, I determine that all workers of the M & B Coal Company, Wyoming County, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 5th day of June 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-18840 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5308-5309]

Maben Energy Corp., Maben Energy Mine Nos. 1, 3, 4, and 5, Wyoming County, W. Va; Notice of Negative Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigations were initiated on April 26, 1979, in response to worker petitions received on April 23, 1979, which were filed by the United Mine Workers of America on behalf of workers and former workers producing low-volatile metallurgical coal at the Maben Energy Corporation, Maben Energy Mines #1, #3, #4, and #5, Wyoming County, West Virginia. In the following determination, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Employment decreases at the Maben Energy Corporation are attributable to the UMWA strike in January–March 1978, a fire at the Westmoreland Coal Company tipple in May 1978, and the Norfolk and Western Railroad strike in July–August 1978. Employment levels at all four of the Maben Energy Corporation mining facilities in Wyoming County, West Virginia, have remained stable during the non-strike periods in 1978, and in January–April 1979, with no layoffs except for the aformentioned events.

Conclusion

After careful review, I determine that all workers of Maben Energy Corporation, Maben Energy Mines #1, #3, #4 and #5, Wyoming County, West Virginia, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., June 8, 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-18841 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5213]

Metaframe Corp., Elmwood Park, N.J.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 10, 1979, in response to a worker petition received on April 9, 1979, which was filed by the Retail, Wholesale and Department Store Union on behalf of workers and former workers producing aquatic equipment and small animal cages at the Elmwood Park, New Jersey plant of Metaframe Corporation. The investigation revealed that the plant produces primarily aquariums and aquarium accessories. It is concluded that all of the requirements have been met.

U.S. imports of aquariums and aquarium accessories increased both absolutely and relative to domestic production in 1978 compared to 1977.

Metaframe Corporation's imports of aquarium accessories increased in value in FYE 1/28/78 compared to FYE 1/29/77 and increased in value in FYE 2/3/79 compared to FYE 1/28/78.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with aquariums and aquarium accessories produced at the Elmwood Park, New Jersey plant of Metaframe Corporation contributed importantly to the decline in sales or production and to the total or partial separation of workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All workers of the Elmwood Park, New Jersey plant of Metaframe Corporation who became totally or partially separated from employment on or after April 3, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 8th day of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-18842 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5134]

Metropolitan Greetings, Inc., Cambridge, Mass.; Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 5, 1979, in response to a worker petition received on April 3, 1979, which was filed on behalf of workers and former workers producing greeting cards, novelty kits, play books, wrapping paper and related products at Metropolitan Greetings, Incorporated, Cambridge, Massachusetts. The investigation revealed that the plant produces primarily greeting cards. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

U.S. imports of greeting cards have been less than one percent of U.S. production in each year during the 1974 through 1978 period. U.S. imports increased absolutely and relative to domestic production from 1976 through 1978, but then decreased absolutely in the first quarter of 1979 versus the first quarter of 1978.

A Departmental survey of the major customers of Metropolitan Greetings, Incorporated revealed that the only customer which imported greeting cards did not decrease purchases from Metropolitan prior to the latter company's closure.

Conclusion

After careful review, I determine that all workers of Metropolitan Greetings, Incorporated, Cambridge, Massachusetts are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 4th day of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-18903 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5155]

Nappe-Smith Manufacturing, Farmingdale, N.J.; Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 5, 1979, in response to a worker petition received on April 3, 1979, which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing insulated plastic bags at Nappe-Smith Manufacturing, Farmingdale, New Jersey. In the following determination, at least one of the criteria has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Nappe-Smith Manufacturing closed its Farmingdale, New Jersey, plant in August, 1978, and transferred all production of insulated plastic bags to another domestic plant.

Production of insulated plastic bags by the Nappe-Smith plant in Farmingdale, New Jersey, had increased each year, for the years 1975, 1976 and 1977, and, in the first half of 1978 compared to the like period in 1977.

Conclusion

After careful review, I determine that all workers of Nappe-Smith Manufacturing, Farmingdale, New Jersey, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 4th day of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-18904 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5214]

New Jersey Machine Corp., Hoboken, N.J.; Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 10, 1979, in response to a worker petition received on April 9, 1979, which was filed by the International Association of Machinists and Aerospace Workers Union on behalf of workers and former workers producing automatic packaging machinery at New Jersey Machine Corporation in Hoboken, New Jersey. The investigation revealed that the plant produces labeling machinery. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Company sales and production of New Jersey Machine Corporation increased in 1977 as compared to 1976 and increased in 1978 as compared to 1977. Sales and production declined in the first quarter of 1979 as compared to the same quarter of 1978. A strike occurred at the company during the month of February 1979. The subsequent production levels were lower as the company resumed its production. In April 1979, sales exceeded the level of sales recorded for April of 1978.

No layoffs occurred in 1978 at New Jersey Machine Corporation, and employement remained stable in 1978 as compared to 1977. On February 16, 1979, a public announcement was made to transfer production to the New Jersey

Machine of New Hampshire, Incorporated, another division of New Jersey Machine, Incorporated. Layoffs began in March 1979 due to the company's transfer of production.

Conclusion

After careful review, I determine that all workers of New Jersey Machine Corporation, Hoboken, New Jersey are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 8th day of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-18845 Filed 6-18-79; 8:45]

BILLING CODE 4510-28-M

[TA-W-5156

Norman S. Bailey Trucking Co., Iaeger, W. Va.; Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 5, 1979, in response to a worker petition received on April 2, 1979, which was filed by the United Mine Workers of America on behalf of workers and former workers of Norman S. Bailey Trucking Company, Iaeger, West Virginia, a transporter of coal.

Norman S. Bailey Trucking Company is engaged in providing the service of transporting coal by truck from a customer's mine to a coal cleaning plant.

Thus, workers of Norman S. Bailey Trucking Company do not produce an article within the meaning of Section 222(3) of the Act. Therefore, they must be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Norman S. Bailey Trucking Company by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Norman S. Bailey Trucking Company and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any other company.

All Workers engaged in transporting coal by truck at Norman S. Bailey Trucking Company are employed by that firm. All personnel actions and payrolls transactions are controlled by Norman S. Bailey Trucking Company. All employee benefits are provided and maintained by Norman S. Bailey Trucking Company. Workers are not, at any time, under employment or supervision by customers of Norman S. Bailey Trucking Company. Thus, Norman S. Bailey Trucking Company, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of Norman S. Bailey Trucking Company, Iaeger, West Virginia, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 4th day of June 1979.

Harry Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-18846 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5157, 5158]

Oak Ridge Coal Co., Oak Ridge No. 1 Mine, Levisay, W. Va., and K & M Mine No. 5, Quinwood, W. Va.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 5, 1979, in response to a worker petition received on April 2, 1979, which was filed by the United Mine Workers of America, District 29 on behalf of workers and former workers mining metallurgical coal at Oak Ridge Coal Company, Incorporated's Oak Ridge No. 1 mine located in Levisay, West Virginia and K & M No. 5 mine located in Quinwood, West Virginia. It is concluded that all of the requirements have been met.

While U.S. imports of metallurgical coal have been negligible, U.S. imports of coke increased absolutely and relative to domestic production from 1977 to 1978.

Coke is metallurgical coal at a later stage of processing. Since a domestic article may be "directly competitive with" an imported article at a later stage of processing, imports of coke can be considered in determining import injury to workers producing metallurgical coal at Oak Ridge Coal Company, Incorporated, Rupert, West Virginia.

Oak Ridge Coal Company, Incorporated, under contract, supplies metallurgical coal to domestic coal companies. A Departmental survey of these coal companies revealed that they had reduced purchases of coal from Oak Ridge as a result of declines in their own sales of metallurgical coal.

The Department of Labor also conducted a survey of the major customers purchasing metallurgical coal from the coal companies. Several of these customers reduced purchases from the coal companies and increased purchases of imported coke from 1977 to 1978.

Conclusion.

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with metallurgical coal mined at Oak Ridge Coal Company, Incorporated's Oak Ridge No. 1 mine located in Levisay, West Virginia and K & M mine No. 5 located in Quinwood, West Virginia, contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Oak Ridge Coal Company, Incorporated's Oak Ridge No. 1 mine located in Levisay, West Virginia and K & M mine No. 5 located in Quinwood, West Virginia who became totally or partially separated from employment on or after March 27, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of June 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-18847 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5261]

Ohio Brass Co., Inc., Oak Hill, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 18, 1979 in response to a worker petition received on April 16, 1979 which was filed by Local 175 of the International Brotherhood of Teamsters on behalf of workers and former workers producing electrical machinery for underground mining at the Ohio Brass Company, Incorporated, Oak Hill, West Virginia. The investigation revealed that the plant primarily produces underground mine rectifier systems. In the following determination, at least one of the criteria has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Electrical rectifying systems for underground mining equipment can not be considered to be like or directly competitive with coke as alleged on the petition. Imports of electrical rectifying systems must be considered in determining import injury to workers producing electrical rectifying systems at the Ohio Brass Company, Rectifier Division, Oak Hill, West Virginia.

Evidence developed during the course of the investigation indicated that United States imports of electrical mining systems for underground mines are insignificant. Imports measured in value in 1978 are estimated to be about one quarter of one percent of domestic production.

Conclusion

After careful review, I determine that all workers of the Ohio Brass Company, Incorporated, Oak Hill, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 8th day of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-18868 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5201]

Paley Associates, Inc., Dorchester, Mass.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 10, 1979 in response to a worker petition received on April 6, 1979 which was filed by the Amalgamated Clothing and Textile Workers' Union on behalf of workers and former workers producing men's outerwear, overcoats, topcoats, jackets (woolen) at Paley Associates, Dorchester, Massachusetts. The investigation revealed that the plant primarily produces men's woolen and leather outerwear. It is concluded that all of the requirements have been met.

U.S. imports of men's and boys' outercoats and jackets increased relative to domestic production in 1978 compared with 1977.

U.S. imports of leather coats and jackets—men's, boys', women's, misses', juniors', and children's increased in 1978 compared with 1977.

Customers who were surveyed indicated that they decreased purchases of men's woolen outerwear from Paley Associates, Incorporated and increased their reliance upon foreign sources.

Customers who were surveyed indicated that they decreased purchases of men's leather outerwear from Paley Associates and increased their reliance upon foreign sources for similar products.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's woolen and leather outerwear produced at Paley Associates, Incorporated, Dorchester, Massachusetts contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Paley Associates, Incorporated, Dorchester, Massachusetts who became totally or partially separated from employment on or after October 1, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 8th day of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-18869 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5185]

Pott of Coal, Inc., Willis Branch Strip Mine, Fayette County, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 6, 1979 in response to a worker petition received on March 30, 1979 which was filed by the United Mine Workers of America on behalf of workers formerly mining coal at Pott of Coal, Incorporated, the Willis Branch Strip Mine, Fayette County, West Virginia. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met.

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and the absolute decline in sales or production.

Pott of Coal produced metallurgical coal for one domestic coal company on a commission basis. A Departmental survey conducted with Pott of Coal's customer revealed that the majority of the coal was exported to the customer's parent company in France.

Conclusion

After careful review, I determine that all workers of Pott of Coal, Incorporated, the Willis Branch Strip Mine, Fayette County, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 5th day of June 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-18850 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5297]

Rich Creek Mining Co., Inc., Rich Creek Hollow, W. Va., Logan, W. Va.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 25, 1979 in response to a worker petition received on April 23, 1979 which was filed on behalf of workers and former workers mining coal at Rock Creek Mining Company, Davin, West Virginia. The investigation revealed that the name of the firm is Rich Creek Mining Company, Inc. and that Davin is only a mailing address. The mines are located in Rich Creek Hollow, West Virginia and the administrative office is located in Logan, West Virginia. The investigation was expanded to include the Rich Creek Hollow and Logan locations. It is concluded that all of the requirements have been met.

The petition was filed on behalf of workers mining metallurgical coal. In accordance with Section 222 of the Trade Act of 1974 and 29 CFR 90.2 a domestic article may be "directly competitive" with an imported article at a later stage of processing. Coke is metallurgical coal at a later stage of processing. Imports of coke and imports of metallurgical coal should be considered in determining import injury to workers mining metallurgical coal.

Although U.S. imports of metallurgical coal have been negligible, U.S. imports of coke increased absolutely and relative to domestic production from 1976 to 1977 and from 1977 to 1978.

Rich Creek Mining Company operated as a contractor for a small number of coal companies in the 1977–78 period. Those coal companies do not import metallurgical coal or coke. However, a Department survey revealed that several major customers had reduced their purchases from these coal companies in 1978 compared to 1977 as a result of a decline in their own sales of metallurgical coal to U.S. steel producers. These customers accounted for the preponderance of the decline in the coal companies' sales from 1977 to 1978. Further investigation revealed that those steel producers who reduced purchases of metallurgical coal from the coal companies' customers had increased imports of coke in 1978 compared to 1977.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the metallurgical coal mined at the Rich Creek Mining Company, Inc., Rich Creek Hollow, West Virginia and Logan, West Virginia contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of the Rich Creek Hollow, West Virginia and Logan, West Virginia facilities of Rich Creek Mining Company, Inc., who became totally or partially separated from employment on or after July 15, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 6th day of June 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-18851 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5324, 5325]

Roberts and Schaefer Co., Raleigh County, W. VA. and Wyoming County, W. VA.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 30, 1979, in response to worker petitions received on April 23, 1979, which were filed by the United Mine Workers on America on behalf of workers and former workers of Roberts and Schaefer Company, Raleigh County and Wyoming County, West Virginia, engaged in engineering and construction of preparation plants.

Roberts and Schaefer Company, Raleigh and Wyoming Counties, West Virginia is engaged in providing construction and engineering services to coal mining companies. Roberts and Schaefer Company is a subsidiary of Elgin National Industries, Incorporated, a watch and clock maker.

Thus, workers of Roberts and Schaefer Company, Raleigh and Wyoming Counties, West Virginia do not produce an article within the meaning of Section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from the parent firm, a firm otherwise related to Roberts and Schaefer Company by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Robert and Schaefer Company and its customers have no controlling interest in one another. The parent firm does not produce coal.

All workers engaged in construction and engineering work for Roberts and Schaefer Company, Raleigh and Wyoming Counties, West Virginia are employed by that firm. All personnel

actions and payroll transactions are controlled by Roberts and Schaefer Company. All employee benefits are provided and maintained by Roberts and Schaefer Company. Workers are not, at any time, under employment or supervision by customers of Roberts and Schaefer Company. Thus, Roberts and Schaefer Company, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of Roberts and Schaefer Company, Raleigh and Wyoming Counties, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 11th day of June 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-18852 Filed 6-18-79 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5459]

Roberts and Schaefer Co., Raleigh County, W. Va.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 24, 1979, in response to a worker petition received on May 16, 1979, which was filed on behalf of workers and former workers of Roberts and Schaefer, Beckley, West Virginia, engaged in contract construction work of preparation plants. The investigation revealed that the legal title of the firm is Roberts and Schaefer Company, and that the petitioners are employed at a construction site in Raleigh County, West Virginia.

On April 22, 1979, a petition was filed on behalf of the same group of workers (TA-W-5324).

Since the identical group of workers is the subject of the ongoing investigation TA-W-5324, a new investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C., this 6th day of June 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-18853 Filed 6-18-79 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5135]

Round Mountain Coal Corp., Surface Mine No. 1, Algoma, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance.

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibiliity to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 5, 1979 in response to a worker petition received on April 2, 1979 which was filed by the United Mine Workers of America on behalf of workers and former workers mining metallurgical coal at Round Mountain Coal Corporation, Surface Mine No. 1, Algoma, West Virginia. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Declines in coal shipments by Round Mountain Coal Corporation in 1978 occurred as a result of the United Mine Workers of America strike and the Norfolk and Western Railroad strike. Since June 1977 when Round Mountain began operations, company shipments of coal during non-strike periods (September through November 1978 and April 1979) increased compared to shipments during the same periods of the previous year.

Conclusion

After careful review, I determine that all workers of the Round Mountain Coal Corporation, Surface Mine No. 1, Algoma, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of June 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-18854 Filed 6-18-79 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5327]

Seagoing Uniform Corp., Brooklyn, N.Y.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 30, 1979 in response to a worker petition received on April 25, 1979 which was filed on behalf of workers and former workers sewing pants at the Seagoing Uniform Corporation, Brooklyn, New York. The investigation revealed that the plant produces primarily dungarees and work shirts for the military. The firm also produces jeans, skirts, shirts and jackets for non-military use, and an insignificant quantity of military dress uniforms. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met with respect to production of military dungarees and work shirts:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Evidence developed during the course of the investigation revealed that the main customers of the Seagoing Uniform Corporation are Naval, Coast Guard and Marine base exchanges. The base exchanges use the Price Agreement Bulletin (PAB) system to purchase dungarees and work shirts. Section 824 of the Defense Appropriations Act of 1979 (Pub. L. 95-457) and the regulations promulgated thereunder (32 CFR 6-304.1) state in part that clothing will be procured only if produced in the United States or its possessions. In accordance with Federal regulations, all companies listed on the PAB are domestic firms. No

foreign firms are eligible. Imports, therefore, would have no effect on declines in sales or production of dungarees and work shirts at Seagoing Uniform Corporation.

Without regard to whether any of the other criteria have been met, the following criterion has not been met with respect to production of non-military jeans, skirts, shirts and jackets:

that sales or production, or both, of the firm or subdivision have decreased absolutely.

Company sales of non-military jeans, skirts, shirts and jackets increased from 1977 to 1978 and continued to increase in the first four months of 1979 compared to the same 1978 period.

Conclusion

After careful review, I determine that all workers of the Seagoing Uniform Corporation, Brooklyn, New York are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 8th day of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research

[FR Doc. 79-18865 Filed 6-18-79; 8:45]

BILLING CODE 4510-28-M

[TA-W-5184 and TA-W-5230]

The Sewell Coal Co., Nicholas County, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

An investigation (TA-W-5184) was initiated on April 6, 1979 in response to a worker petition received on April 3, 1979 which was filed on behalf of workers and former workers at the Sewell Division, Nettie, West Virginia. The investigation revealed that the petition applied specifically to workers at Mine No. 4 of the Sewell Coal Company, Nicholas County, West Virginia. Another investigation (TA-W-5230) was initiated on April 12, 1979 in response to a worker petition received on April 9, 1979 which was filed by the United Mine Workers of America on behalf of workers and former workers at Sewell Coal Company No. 4. The investigation revealed that this petition applied to all workers at the Sewell Coal Company, Nicholas County, West Virginia not working at Mine No. 4. This includes workers at Mines No. 1, 1A, 2, and Meadow River No. 1; workers at Tipples No. 1, 2, 4 and Meadow River; workers at the Central Shop; and, all other workers.

In the following determination, at least one of the criteria has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Sources indicated that the Pittson Coal Division, the parent firm of the Sewell Coal Company, distributes the metallurgical coal mined and processed at the Sewell Coal Company primarily to foreign users. Therefore, any imports of coal or coke would have a negligible effect on the sales and/or production and employment at the Sewell Coal Company.

Conclusion

After careful review, I determine that all workers of The Sewell Coal Company, Nicholas County, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 5th day of June 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-18863 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5245]

Sigler Mining, Inc., Jodie, W. Va.; Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 16, 1979 in response to a worker petition received on April 2, 1979 which was filed by the United Mine Workers of America on behalf of workers and former workers producing coal at Sigler Mining, Incorporated, Jodie, West Virginia. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Coke is metallurgical coal at a later stage of processing. Since a domestic article may be "directly competitive" with an imported article at a later stage of processing, imports of both coke and metallurgical coal can be considered in determining import injury to workers producing metallurgical coal at the Jodie, West Virginia mine of Sigler Mining, Incorporated.

Evidence developed during the course of the investigation revealed that Sigler Mining sells all of its coal to a larger coal company. The larger coal company does not purchase imported coal or coke. A Department survey revealed that none of the customers of the larger coal company purchased imported metallurgical coal and only one customer purchased imported coke. That customer represented an insignificant proportion of the larger coal company's sales in 1977 and 1978 and has not purchased coal from the larger coal company since April 1978, one year before layoffs at the Jodie, West Virginia mine of Sigler Mining took place.

Conclusion

After careful review, I determine that all workers of Sigler Mining, Incorporated, Jodie, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 11th day of June 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-18864 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4909]

Skyland Textile Co., Morganton, N.C.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the

Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on March 8, 1979 in response to a worker petition received on March 5, 1979 which was filed on behalf of workers and former workers producing children's clothing at the Morganton, North Carolina plant of Skyland Textile Company, a division of Skyland International Corporation, Chattanooga, Tennessee. The investigation revealed that children's knit and woven tops and bottoms were produced, consisting of boy's sport shirts, tank tops, shorts and sport trousers; girls' blouses, skirts, dresses and shorts. It is concluded that all of the requirements have been met.

Aggregate import statistics are not separately available for children's knit tops and bottoms.

U.S. imports of men's and boy's knit sport and dress shirts increased absolutely from 1976 to 1977 and from 1977 to 1978.

U.S. imports of men's and boy's dress and sport trousers and shorts increased absolutely from 1976 to 1977 and from 1977 to 1978.

U.S. imports of women's, misses' and children's blouses and shirts increased absolutely from 1976 to 1977 and from 1977 to 1978.

U.S. imports of women's, misses' and children's skirts increased absolutely from 1977 to 1978.

U.S. imports of women's, misses' and children's dresses increased absolutely in 1978 compared to 1977.

U.S. imports of women's, misses' and children's slacks and shorts increased absolutely and relative to domestic production from 1976 to 1977 and increased absolutely from 1977 to 1978.

Skyland International Corporation produces children's knit tops and bottoms for one manufacturer. This manufacturer experienced decreasing sales in 1978 versus 1977. The Department conducted a survey of that manufacturer's customers. Major customers reduced their purchases of children's knit tops and bottoms from the manufacturer and increased their purchases of imported children's tops and bottoms in 1978 compared to 1977.

The Morganton, North Carolina plant of Skyland Textile Company closed in February 1979.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with children's knit tops and bottoms produced at the Morganton, North Carolina plant of Skyland Textile Company, a division of Skyland International Corporation, Chattanooga, Tennessee contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of the Morganton, North Caroline plant of Skyland Textile Company who became totally or partially separated from employment on or after February 28, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-18805 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5215]

Southwell Combing Co., North Chelmsford, Mass.; Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 10, 1979 in response to a worker petition received on April 9, 1979 which was filed by the United Textile Workers of America on behalf of workers and former workers producing scouring and combing fibers (worsted) at the North Chelmsford, Massachusetts plant of Southwell Combing Company. The investigation revealed that the plant produces primarily wool tops. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

U.S. imports of wool tops have been less than 2.0 percent of U.S. production in each of the years 1974 through 1977. Imports of wool tops decreased absolutely from 842 thousand pounds in 1977 to 470 thousand pounds in 1978.

Southwell Combing Company is a commission comber of wool fibers. In addition, it treats wool previously combed to inhibit shrinking, and also processes synthetic fiber. Synthetic fiber constitutes a small portion of sales and production. The department conducted a survey of customers of Southwell Combing Company. The survey revealed that most of these customers do not purchase imported wool tops, or wool treated for shrinking. None had decreased purchases from Southwell Combing Company and increased purchases of imports during the same time period.

Conclusion

After careful review, I determine that all workers of the Southwell Combing Company, North Chelmsford, Massachusetts are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 7th day of June 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-18806 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5278]

Stanhope Sewing Center, Inc., Netcong, N.J.; Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 23, 1979, in response to a worker petition received on April 11, 1979, which was filed on behalf of workers and former workers producing women's

blouses at Stanhope Sewing Center, Incorporated, Netcong, New Jersey. The investigation revealed that the firm also produced women's pants, skirts, vests, blazers, and suits in 1977 and 1978. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Department surveyed the manufacturers for whom Stanhope performs contract work. None of these manufacturers indicated that they purchased any imported women's blouses or other sportswear in 1977, 1978 or the first quarter of 1979.

Conclusion

After careful review, I determine that all workers of Stanhope Sewing Center, Incorporated, Netcong, New Jersey are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 11th day of June 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-18997 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5242]

TRI-J Coal Co., Lynco, W. Va., Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 16, 1979 in response to a worker petition received on April 2, 1979 which was filed by the United Mine Workers Union on behalf of workers and former workers mining coal at the Jeffery Coal Company, Lynco, West Virginia. During the course of the investigation it was revealed that correct name of the company is the Tri-J Coal Company.

The Notice of Investigation was published in the **Federal Register** on April 18, 1979 (44 FR 24960). No Public hearing was requested and none was held.

The Tri-J Coal Company has mined coal since August, 1978. Due to the short term of operation of the Tri-J Coal Company there is not sufficient information in this case upon which to base a determination. In addition, worker qualifying requirements in Section 231 of the Act may not be met. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 11th day of June 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-18998 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5159]

Triple W. Trucking Co., Inc., Beaver, W. Va.; Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 5, 1979, in response to a worker petition received on April 2, 1979, which was filed by the United Mine Workers of America on behalf of workers and former workers of Triple W. Trucking Company, Incorporated, Beaver, West Virginia, engaged in hauling coal and stone.

Triple W. Trucking Company, Incorporated is engaged in providing the service of transporting coal by truck from a customer's mine to a tipple and of transporting rock.

Thus, workers of Triple W. Trucking Company, Incorporated do not produce an article within the meaning of Section 222(3) of the Act. Therefore, they may be certifed only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Triple W. Trucking Company, Incorporated by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Triple W. Trucking Company, Incorporated and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any other company.

All workers engaged in transporting coal by truck at Triple W. Trucking Company, Incorporated are employed by that firm. All personnel actions and payroll transactions are controlled by Triple W. Trucking Company, Incorporated. All employee benefits are provided and maintained by Triple W. Trucking Company, Incorporated. Workers are not, at any time, under employment or supervision by customers of Triple W. Trucking Company, Incorporated. Thus, Triple W. Trucking, Incorporated, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of Triple W. Trucking Company, Incorporated, Beaver, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 8th day of June 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-18999 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5136]

Valley Services, Inc., Valley Surface Mine No. 2, Bolt, W. Va.; Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 5, 1979 in response to a worker petition received on April 2, 1979 which was filed by the United Mine Workers of America on behalf of workers and former workers mining metallurgical coal at Valley Services, Incorporated, Valley Surface Mine No. 2, Bolt, West Virginia. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or

threat thereof, and to the absolute decline in sales or production.

Evidence developed during the course of the investigation revealed that Valley Services' customer has reduced purchases of coal from Valley Services because of the customer's own loss of export sales. Valley Services, an independent coal contractor, sells all its coal to a single customer. Sales declines by the customer are accounted for by decreases in export sales.

Conclusion

After careful review, I determine that all workers of Valley Services, Incorporated, Valley Surface Mine No. 2, Bolt, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of June 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-18870 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5160]

Van Trucking, Inc., Shady Spring, W. Va.; Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 5, 1979, in response to a worker petition received on April 2, 1979, which was filed by the United Mine Workers of America on behalf of workers and former workers of Van Trucking, Incorporated, Shady Spring, West Virginia, engaged in transporting coal.

Van Trucking, Incorporated is engaged in providing the service of transporting coal by truck from a customer's mine to a tipple.

Thus, workers of Van Trucking, Incorporated do not produce an article within the meaning of Section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Van Trucking, Incorporated by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Van Trucking, Incorporated and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any other company.

All workers engaged in transporting coal by truck at Van Trucking, Incorporated are employed by that firm. All personnel actions and payroll transactions are controlled by Van Trucking, Incorporated. All employee benefits are provided and maintained by Van Trucking, Incorporated. Workers are not, at any time, under employment or supervision by customers of Van Trucking, Incorporated. Thus, Van Trucking, Incorporated, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of Van Trucking, Incorporated, Shady Spring, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 8th day of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-18871 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5111]

Weyenberg Shoe Manufacturing Co., North Spring Street Plant Beaver Dam, Wisc.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 4, 1979 in response to a worker petition received on April 3, 1979 which was filed by the Boot and Shoe Workers Union on behalf of workers and former workers producing men's shoes at the North Spring Street plant, Beaver Dam, Wisconsin of the Weyenberg Shoe Manufacturing Company. It is concluded that all of the requirements have been met.

U.S. imports of men's dress and casual footwear increased absolutely and relative to domestic production in 1977 compared to 1976 and increased relative to domestic production in 1978 compared to 1977. Imports as a percentage of domestic production exceeded 75 percent in 1976, 1977, and 1978.

Weyenberg owns and operates two men's footwear plants abroad in Ireland. Weyenberg increased imports of men's footwear in 1978 compared to 1977 and in the first quarter of 1979 compared to the first quarter of 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's footwear produced at the North Spring Street plant, Beaver Dam, Wisconsin of the Weyenberg Shoe Manufacturing Company contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of the North Spring Street plant, Beaver Dam, Wisconsin of the Weyenberg Shoe Manufacturing Company who became totally or partially separated from employment on or after March 29, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 1st day of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-18872 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5360]

White & Cole Coal Co., Inc., No. 10 Mine, Herndon, W. Va.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification

of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on May 10, 1979 in response to a worker petition received on May 9, 1979 which was filed on behalf of workers and former workers mining coal at the White and Cole Coal Company, Incorporated, #10 Mine, Herndon, West Virginia. It is concluded that all of the requirements have been met.

U.S. imports of metallurgical coal are negligible. However, in accordance with Section 222 of the Trade Act of 1974 and 29 CFR 90.2, a domestic article may be "directly competitive" with an imported article at a later stage of processing. Coke is metallurgical coal at a later stage of processing. Therefore, imports of coke as well as imports of metallurgical coal should be considered in determining import injury to workers producing metallurgical coal.

U.S. imports of coke increased absolutely and relatively in 1977 compared to 1976 and 1978 compared to 1977.

The White and Cole Coal Company is a contact mining operation and must deliver all of its coal to the larger coal company with whom it contracts. This larger coal company reduced the amount of its orders from White and Cole as a result of declines in its own sales of metallurgical coal in 1978 compared to 1977. A Departmental survey established that one major customer sharply reduced its purchases of metallurgical coal from the larger coal company in 1978 compared to 1977 due to a decline in its own sales of metallurgical coal to two large U.S. steel producers. This customer accounted for the preponderance of the decline in sales in 1978 compared to 1977 by the larger coal company for whom White and Cole contracts. Further investigation revealed that these steel producers increased imports of coke in 1978 compared to 1977.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increase of imports of articles like or directly competitive with metallurgical coal mined at the #10, Mine, Herndon, West Virginia of the White and Cole Coal Company, Incorporated contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of the #10 Mine, Herndon, West Virginia, of the White and Cole Coal Company, Incorporated who became totally or partially separated from employment on or after January 4, 1979, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 6th day of June 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-18873 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5192]

Wright Trucking & Mining Co., No. 9 Auger Mine, Mercer County, W. Va.; Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 6, 1979 in response to a worker petition received on April 2, 1979 which was filed by the United Mine Workers of America on behalf of workers and former workers mining metallurgical coal at the Wright Trucking and Mining Company's No. 9 Auger Mine, Mercer County, West Virginia. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Department's investigation revealed that customers for whom the subject firm does contract work do not purchase imported metallurgical coal or imported coke.

Conclusion

After careful review, I determine that all workers of the Wright Trucking and Mining Company's No. 9 Auger Mine, Mercer County, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of June 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-18874 Filed 6-18-79; 8:45 am]

BILLING CODE 4510-28-M

NATIONAL COMMISSION ON SOCIAL SECURITY

Hearings and Meetings

June 12, 1979.

The National Commission on Social Security will hold its first public hearings in Atlanta, Georgia on Friday, September 7 at the World Congress Center, 285 International Boulevard, N.W., beginning at 9:00 A.M.

Subsequent hearings are scheduled for 9:00 A.M.:

Friday, October 12 in Milwaukee, Wisconsin at the Performing Arts Center, 929 North Water Street

Friday, November 2 in Boston, Massachusetts at Faneuil Hall

Tuesday, November 27 in Austin, Texas at the East Campus Lecture Hall, LBJ School of Public Affairs at the corner of Manor & Red River on the University of Texas at Austin Campus and

Thursday, November 29 in Phoenix, Arizona at the Civic Plaza, 225 East Adams.

Additional hearings will be scheduled for early 1980.

Requests to testify must be submitted 30 days in advance of the hearing giving the

(a) name,

(b) business address,

(c) telephone number,

(d) capacity in which presentation will be made, i.e., public official, organization presentation, or private citizen,

(e) principal issues to be discussed and position on them, and

(f) copy of text.

Invitations to testify and time allotted will be determined by the number of requests received for each hearing. National organization representatives will not be allowed to make multiple presentations and are encouraged to use local representatives as witnesses. Where appropriate, witnesses may be grouped in panels. All witnesses are urged to give oral summaries of their written presentations in order to maximize the number of people heard and allow time for questioning of witnesses by Commissioners.

Organization representatives should bring fifty copies (50) of their written presentations to the hearings for distribution to the press.

An official transcript of each hearing will be made and persons unable to testify in person can submit written testimony which will be included in the official hearing record.

The press and public are invited to attend and there will be time scheduled at each hearing for local citizens to testify regarding their personal opinions of and experiences with the Social Security program.

Commision meetings will follow the first three hearings with meetings scheduled for Saturday, September 8 at the World Congress Center in Atlanta, Saturday, October 13 at the Marc Plaza Hotel, 509 West Wisconsin Avenue in Milwaukee and on Saturday, November 2 at the Copley Plaza Hotel, 138 St. James Street in Boston. The meetings will begin at 9:00 A.M. and while they will be open to the public the space available will accommodate approximately 40 members of the public at any time.

The Commission which was created by the 1977 Social Security Amendments is mandated to study and review the old-age, survivors, disability and health insurance programs authorized by Titles II and XVIII of the Social Security Act. The nine member commission, chaired by Milton Gwirtzman, will conclude its work in January 1981 with the submission of a report to the President and the Congress describing its findings and recommendations.

Requests to testify and inquiries about the hearings should be sent to: Melanie W. McClintock, Public Information Officer, National Commission on Social Security, 440 G Street, N.W., Room 126, Washington, D.C. 20218 (202) 376-2822.

Francis J. Crowley,

Executive Director.

[FR Doc. 79-19063 Filed 6-18-79; 8:45 am]

BILLING CODE 6820-AC-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Architecture, Planning and Design Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Architecture, Planning and Design Advisory Panel (Fellowships, Services to the Field, General Programs) will be held on Monday, July 9, 1979 from 9 a.m. to 5:30 p.m. and Tuesday, July 10, 1979 from 9 a.m. to 5:30 p.m. in room 1426, Columbia Plaza Office Building, 2401 E Street, NW., Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of March 17, 1977, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(B) of section 552 of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

June 14, 1979.

[FR Doc. 79-19044 Filed 6-18-79; 8:45 am]

BILLING CODE 7537-01-M

Dance Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel to the National Council on the Arts will be held July 16, 1979 from 9:00 am-6:30 pm; July 17, 1979 from 9:00 am-6:00 pm; July 18, 1979 from 9:00 am-6:30 pm in 14th Floor Conference Room, Columbia Plaza Office Building, 2401 E Street, NW., Washington, D.C.

A portion of this meeting will be open to the public on July 16, 1979 from 9:00 am-11:00 am. The topic of discussion will be the FY 81 Dance Program Guidelines.

The remaining sessions of this meeting on July 16, 1979 from 9:00 am-6:00 pm, July 17, 1979 from 9:00 am-6:30 pm, and July 18, 1979 from 11:00 am-6:00 pm, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register March 17, 1977, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

June 14, 1979.

[FR Doc. 79-19063 Filed 6-18-79; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-514, 50-515]

Portland General Electric Co., et al. (Pebble Springs Nuclear Plant, Units 1 and 2); Order Canceling Conference

It has become necessary to temporarily postpone the conference of the Parties in this proceeding scheduled for Wednesday, June 20, 1979, at 9:00 a.m., local time at the following location:

Courtroom No. 2 (Third Floor), The Pioneer Courthouse, 555 S.W. Yamhill, Portland, Oregon 97204.

The conference will be rescheduled at a later date.

It is so ordered.

For the Atomic Safety and Licensing Board.

James R. Yore,

Chairman.

Dated at Bethesda, Maryland this 14th day of June 1979.

[FR Doc. 79-19083 Filed 6-18-79; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 21068 70-6313]

Alabama Power Co.; Proposal by Electric Utility Subsidiary to Sell a Substation

June 7, 1979.

Notice is hereby given that Alabama Power Company ("Alabama"), P.O. Box 2641, Birmingham, Alabama 35291, an electric utility subsidiary of The Southern Company, a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 12(d) of the Act and Rule 44 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Alabama proposes to sell one of its substations to Alabama River Pulp Company, Inc. ("ARP"), such substation being located on ARP's property in

Monroe County, Alabama, pursuant to ARP's request. It is proposed that such substation would be conveyed by Alabama to ARP for a sale price of $390,000. Alabama's book value of such substation is $384,912.24. Alabama will obtain from its first mortgage bond Trustee a release of such substation from the lien of Alabama's first mortgage indenture.

Alabama and ARP have heretofore entered into an electric service contract pursuant to which power is delivered by Alabama to ARP and ARP proposes to utilize the substation in connection with the receipt of power from Alabama. It is anticipated that there will be no substantial change in the proposed use of the transmission substation and, since it was constructed at ARP's request and is to be used for ARP's benefit and ARP has now determined that it would prefer to own the substation, Alabama considers it appropriate and in the interest of the public and Alabama's investors for ARP to purchase and own the substation.

The fees, commissions and expenses to be incurred by Alabama in connection with the proposed transaction are estimated at $3,500, including legal fees of $1,000. It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than July 2, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-19087 Filed 6-18-79; 8:45 am]

BILLING CODE 8010-11-M

[Rel. No. 21091; 70-5213]

American Electric Power Co., Inc., et al.; Proposed Exemption From Competitive Bidding in Connection With Sale or Disposition of Gas Properties

June 5, 1979.

American Electric Power Company, Inc. ("AEP"), 2 Broadway, New York, New York 10004, a registered holding company, and two of its subsidiaries, Michigan Power Company ("MPC"), a gas and electric utility company, and Michigan Natural Gas Company ("MNG"), 100 South Main, Three Rivers, Michigan 49093, a presently inactive company, have filed with this Commission a post-effective amendment to their Plan previously filed and amended pursuant to section 11(e) and other applicable provisions of the Public Utility Holding Company Act of 1935 ("Act") and rules promulgated thereunder concerning the following proposed transaction. All interested persons are referred to the amended Plan, which is summarized below, for a complete statement of the proposed transaction.

By order dated July 24, 1967 (HCAR No. 15800), AEP was authorized to acquire MPC (then known as Michigan Gas and Electric Company), a previously nonaffiliated company owning and operating a combination gas and electric utility business. Such acquisition was conditioned on AEP's divestitute of the gas utility properties of MPC, and the order of July 24, 1967, authorized their sale to Michigan Gas Utilities Company ("MGU"), a nonaffiliated gas utility company, the Commission reserving jurisdiction over such final disposition. To facilitate the divestitutre, AEP was authorized by order dated October 25, 1968 (HCAR No. 16196), to create MNG (then called MacLane Gas Company). MNG was to acquire MPC's gas properties and to issue and sell its securities to AEP, which was to sell such securities to MGU. By letter dated August 21, 1969, however, AEP advised the Commission that its agreement with MGU had been terminated due to MGU's inability to obtain the necessary financing.

About three years after termination of the agreement with MGU, AEP, MPC and MNG filed a Plan under Section 11(e) of the Act outling a program for ultimate divestitute of the gas properties. Part I of the Plan involved the redemption of MPC's preferred stock, which redemption was authorized by Memorandum Opinion and Order dated June 1, 1978 (HCAR No. 20569). Part II of the Plan involved term financing for MPC, which financing was authorized by order dated December 30, 1976 (HCAR No. 19828). The remainder of the Plan, none of which has been authorized, and further details of which will be supplied by future amendment, involves AEP's sale or dispostion of all of MNG's common stock for a consideration of cash or cash and debt securities or installment obligations of the purchaser, and the severance of all corporate and other ties of MNG with AEP and MPC in steps including (i) completion of the organization of MNG, (ii) sale and transfer of the gas utility properties of MPC to MNG free from the lien of MPC's mortgage, and (iii) establishment by MNG of the rates and tariffs by which it, as the successor operator of the gas distribution and other facilities, will render retail gas service.

In the instant post-effective amendment, AEP requests an exemption from the competitive bidding requirements of Rule 50 with respect to its proposed sale of the common stock of MNG pursuant to Rule 50(a)(5). AEP had previously been granted such an exemption for 90-day periods by orders dated June 13, 1973, and October 10, 1973 (HCAR Nos. 18007 and 18119), but no purchaser was found and no request to revew the exemption was filed until now. It is stated that AEP has contacted eleven utility systems which it believes might have an interest in acquiring some or all of the gas utility properties, and that it has received requests for additional information from several of the utilities it contacted. AEP believes it would be desirable to initiate further discussions with, and if warranted to negotiate with, such prospective purchasers concerning the terms on which AEP would be willing to sell and such prospective purchasers would be willing to buy the common stock of MNG.

The fees and expenses to be incurred in connection with the request for exemption from competitive bidding will be supplied by amendment. It is stated that no state commission and no federal commission, other than this

Commission, has jurisdiction over the requested exemption.

Notice is further given that any interested person may, not later than June 29, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said Plan, as amended, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the Plan, insofar as it requests exception from competitive bidding, may be approved as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-19088 Filed 6-18-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21090; 70-6321]

Louisiana Power & Light Co.; Proposed Issuance and Sale of Preferred Stock at Competitive Bidding

June 7, 1979.

Notice is hereby given that Louisiana Power & Light Company ("Louisiana"), 142 Delaronde Street, New Orleans, Louisiana 70174, an electric utility subsidiary of Middle South Utilities, Inc. ("Middle South"), a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Louisiana proposes to issue and sell, subject to the competitive bidding requirements of the Act, not in excess of 2,400,000 shares of a newly-created class of preferred stock, cumulative, $25 par value. Louisiana's proposal to amend its charter to provide for such $25 preferred stock is pending before the Commission (File No. 70-6316). The $25 preferred stock is to be established by appropriate corporate action and, except as to the number of shares and designation, dividend rate, the date from which dividends commence to accumulate, the amounts payable upon redemption, the terms and amount of a possible sinking fund and matters relating to par value and certain voting rights (including matters relating to quorums and adjournments), will have the same rank and the same relative rights as the presently outstanding preferred stock of the company.

The dividend rate of the $25 preferred stock (which will be a multiple of ⅛ths of 1%) and the price to be paid to the company for the stock (which will be not less than $25 nor more than $25.70 per share, plus accumulated dividends, if any) will be determined by competitive bidding. The terms of such stock will include a prohibition until July 1, 1984, against refunding the stock, directly or indirectly, with funds derived from the issuance of securities at a lower effective interest or dividend cost. Louisiana presently expects that the terms of the stock will not include a sinking fund. In the event, however, that market conditions require, in the opinion of the company, that the terms of the stock include a sinking fund, the company may amend the declaration to provide therefor.

The declaration states that in the event that market conditions change so that, in the opinion of the company, the market for $100 par value preferred stock is more favorable that that for $25 preferred stock, Louisiana may amend the declaration to propose the issuance and sale of not in excess of 600,000 shares of its $100 par value preferred stock in lieu thereof.

Louisiana will apply the net proceeds derived from the issue and sale of the $25 preferred stock to the payment in part of short-term borrowings estimated to total $120,000,000 at the time the sale proceeds are received, to the financing in part of the company's construction program, and to other corporate purposes.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $160,000, including legal fees of $47,000 and auditors' fees of $15,000. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than July 3, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-19089 Filed 6-18-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21094; 70-6244]

Lowell Gas Co. and Cape Cod Gas Co.; Supplemental Notice of Proposed Issuance and Sale of First Mortgage Bonds to Institutional Investors Pursuant to a Private Offering

June 11, 1979.

Notice is hereby given that Lowell Gas Company ("Lowell"), 95 East Merrimack Street, Lowell, Massachusetts 01853, and Cape Cod Gas Company ("Cape Cod"), P.O. Box 1360, Hyannis, Massachusetts 02601, public utility subsidiaries of Colonial Gas Energy System ("Colonial"), a registered holding company, have filed with this

Commission an amendment to the joint-declaration in this proceeding pursuant to Sections 6 and 7 of the Public Utility Holding Company Act of 1935 ("Act"), and Rule 50(a)(5) promulgated thereunder regarding the private placement of first mortgage bonds. All interested persons are referred to the amended declaration, which is summarized below, for a complete statement of the proposed transactions.

On October 7, 1977, Colonial filed an application for exemption under Section 3(a)(1) of the Act (File No. 31–763). Its application for exemption is pending. Pursuant to a Stipulation in that proceeding dated January 26, 1978, entered into by Colonial and the Division of Corporate Regulation pending the development of a plan of financial simplification or recapitalization by Colonial appropriate to the requirements for exemption under Section 3(a)(1), Colonial has registered as a public utility holding company under Section 5(a) for the limited purpose of complying with the provisions of Sections 6, 7 and 12(b) of the Act.

Lowell and Cape Cod filed in this proceeding a joint-declaration and an amendment thereto seeking authorization to issue and sell common stock to Colonial for a maximum aggregate purchase price of $1,000,400 and $899,755, respectively, and to privately place up to $1,250,000 of Lowell's first mortgage bonds and up to $1,250,000 of Cape Cod's first mortgage bonds. The proposed transactions were duly noticed on March 9, 1979 (HCAR No. 20951). By order dated April 4, 1979 (HCAR No. 20992), the Commission authorized the proposed issuance and sale of the subsidiary common stock and granted the companies an exception under Rule 50(a)(5) from competitive bidding in connection with the sale of the bonds. Jurisdiction was reserved over the terms of the bonds and with respect to any fees, expenses or commissions to be paid or incurred in connection with the issuance and sale of the bonds. Pursuant to the April 4, 1979 order, Lowell issued and sold 44,300 shares of its common stock to Colonial for an aggregate purchase price of $908,150, and Cape Cod issued and sold 54,000 shares of its common stock to Colonial for an aggregate purchase price of $719,820.

The companies have now filed an amendment to the joint-declaration seeking authorization to sell up to $2,000,000 of Lowell's 11⅝% First Mortgage Bonds ("Lowell Bonds") and up to $1,000,000 of Cape Cod's 11⅝% First Mortgage Bonds ("Cape Cod Bonds"). The Lowell Bonds and Cape Cod Bonds (collectively, the "Bonds") are to be sold to John Hancock Mutual Life Insurance Company.

The companies' capital structure as of March 31, 1979, and pro forma is shown in the following table.

[In millions of dollars]

	Lowell				Cape Cod			
	Unaudited		Pro forma		Unaudited		Pro forma	
	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent
Long-term debt	$23,127	46.86	$25,127	50.88	$12,814	44.88	$13,814	48.32
Notes payable banks	5,900	11.96	3,040	6.16	4,866	17.03	3,186	11.14
Total debt	29,027	58.82	28,167	57.04	17,679	61.89	16,999	59.46
Preferred stock	4,409	8.93	4,409	8.93	1,540	5.39	1,540	5.39
Common equity	15,914	32.25	16,813	34.03	9,348	32.72	10,048	35.15
Total capitalization	49,350	100.00	49,389	100.00	28,567	100.00	28,587	100.00

A statement of bond and total fixed charges coverages, as of March 31, 1979, is reflected below, based on the reported income for the twelve months ended that day.

[In millions of dollars]

	Lowell Gas Company		Cape Cod Gas Company	
	(Unaudited)	Pro forma	(Unaudited)	Pro forma
Income before taxes	$5,965	$5,965	$2,221	$2,221
Bond interest	1,744	2,371	936	1,252
Bond interest coverage	3.42x	2.52x	2.36x	1.77x
Income after taxes	5,297	5,017	2,397	2,257
Total interest	3,481	2,981	1,986	1,706
Preferred dividends	296		86	
Total fixed charges	3,778	2,981	2,072	1,706
Coverages for total fixed charges and preferred stock dividend requirements	1.40x	1.68x	1.16x	1.32x

Under their respective indentures, Lowell and Cape Cod may issue first mortgage bonds only if pro forma net income before bond interest and income taxes is at least two times mortgage bond interest charges for a period of twelve consecutive calendar months preceding the issuance. The holders of the outstanding bonds are institutional investors and it is expected that the required percentage of holders of Cape Cod's outstanding first mortgage bonds will waive the latter requirement in order to permit the issuance and sale of the Cape Cod Bonds.

The bonds will be issued under each company's indenture of mortgage and deed of trust, as amended and supplemented, and will be of equal rank with the outstanding bonds. The bonds will have an average life of 10.54 years and will not be redeemable for five years nor refundable for an additional five years in anticipation of borrowings having a lower effective interest cost or a shorter weighted average life than that remaining on the bonds.

The Lowell Bonds and Cape Cod Bonds will mature June 15, 1995 and June 1997, respectively, and will be subject to sinking funds, under which Lowell and Cape Cod will retire $1,760,000 and $880,000 of bonds, respectively. Sinking fund requirements begin in the third year and retirements thereunder increase at designated intervals. Dividends may be paid out of net earnings arising after December 31, 1978, available for capital stock dividends plus $800,000 in the case of Lowell. As of November 30, 1978, substantially all of the retained earnings of Lowell and Cape Cod are restricted from payment of dividends under their bank credit agreements and certain supplemental indentures.

The fees and expenses incurred or to be incurred in connection with the proposed transactions will be filed by amendment. The Massachusetts

Department of Public Utilities has jurisdiction over the proposed issue and sale of bonds. No other state or federal commission, except this Commission, has jurisdiction over such transaction.

Notice is further given that any interested person may, not later than June 28, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the amendment which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated addresses, and proof of service (by affidavit or in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as amended or as it may be further amended, may be permitted to become effective as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, for the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-18000 Filed 6-18-79; 8:45]

BILLING CODE 8010-01-M

[Release No. 10723; 812-4456]

Narragansett Capital Corp. and Bevis Industries, Inc.; Filing of Application for Order Pursuant to Section 17(b) of the Act Exempting Proposed Transaction From Section 17(a) of the Act, and Pursuant to Section 17(d) of the Act and Rule 17d-1 Thereunder Permitting Proposed Transaction

June 8, 1979

Notice is hereby given that Narragansett Capital Corporation ("Narragansett"), registered under the Investment Company Act of 1940 (the "Act") as a non-diversified, closed, end, management investment company and licensed as a small business investment company under the Small Business Investment Act of 1958, and Bevis Industries, Inc. ("Bevis"), a corporation presumed to be controlled by Narragansett (hereinafter Narragansett and Bevis are collectively referred to as "Applicants"), 40 Westminster Street, Providence, Rhode Island 02903, filed an application on March 27, 1979, and an amendment thereto on June 1, 1979, for an order pursuant to Section 17(b) of the Act, exempting from the provisions of Section 17(a) of the Act, and pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, permitting, certain proposed transactions to be made in connection with the acquisition by MDP Holding Corporation ("MDP"), a wholly-owned subsidiary of Bevis, of all of the issued and outstanding stock of MD Pneumatics, Inc. ("Pneumatics"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that Narragansett owns approximately 35.5%of the outstanding shares of Bevis, and that, as a group, the officers and directors of Narragansett own less than 1% of the outstanding shares of Bevis. According to the application, Bevis, which had engaged, *inter alia*, in the business of manufactureing and selling Christmas cards, (i) filed a voluntary petition in United States District Court for the Southern District of New York ("Court") for an arrangement under Chapter XI of the Federal Bankruptcy Act on April 15, 1974, and (ii) in connection therewith, filed a debtors arrangement which , as amended, was confirmed by order of the Court on April 23, 1975. Applicants state that in 1976, Bevis embarked on a program (i) to reduce its expenses by disposing of most of its properties and curtailing its then existing business and (ii) to acquire existing profitable businesses. According to the application, the first acquisition in this program was the acquisition of Greenville Tube Corporation ("Greenville") by a wholly-owned subsidiary of Bevis. Applicants assert that Greenville is the only operating compnay presently owned by Bevis, and that the proposed acquisition of Pneumatics, a compnay which has been consistently profitable over the past five years, should complement the Greenville acquisition.

Applicants state that Pneumatics is engaged in the business of manufacturing and selling blowers and air pumps for industrial uses. They further, state that Pneumatics was organized under the laws of the State of Missouri in 1972 to acquire the assets and business of MGD Pneumatics, Inc., a subsidiary of North American Rockwell Corporation, and that at the time of such acquistion (i) Narragansett acquired fifty percent of the common stock of Pneumatics for an aggregate purchase price of $200,000 and made a subordinated loan to Pneumatics in the amount of $1,500,000 and (ii) ten employees of MGD Pneumatics, Inc. (the "Management Stockholders"), including Earl L. Fester ("Fester"), currently president of Pneumatics, purchased the remaining fifty percent of the common stock of Pneumatics. According to the application, the subordinated loan to Pneumatics has been fully repaid. Applicants represent that during 1978 Narragansett exchanged its voting common stock in Pneumatics for the same number of shares of newly authorized Class B non-voting common stock.

MDP proposes to purchase all of the outstanding shares of Pneumatics, pursuant to a stock purchase agreement ("Stock Purchase Agreement") among MDP, Bevis, Narragansett and the Management Stockholders, for $5,500,000 (subject to adjustment as described below): $600,000 payable in cash within 10 days of closing, and the balance to be represented by subordinated installment notes ("Notes") bearing interest at the rate of 6 percent per annum and payable in principal installments (subject to adjustment) of $550,000 on April 1 of 1980, 1981, 1982, and 1983, and $2,700,000 on September 30, 1984. According to the application, the cash payment of $600,000 will, in part, be financed by a term loan ("Term Loan") from Industrial National Bank of Rhode Island ("INbank"). The loan agreement ("INbank Loan Agreement") provides that Bevis shall loan to MDP not less than $200,000 of the proceeds from the sale, described below, of its common stock to Pneumatics' stockholders and employees, and that MDP shall apply such funds to the partial payment of the Term Loan.

Applicants state that the Notes will be subordinate to any indebtedness of MDP which is incurred in compliance with the provisions of the Stock Purchase Agreement (other than indebtedness to Narragansett, none of which is outstanding or contemplated), and that no payments of principal or of interest would be payable on the Notes if MDP is in default with respect to any such indetedness. Applicants further state that individual installments of principal (excluding the September 30, 1984, installment) will be deferred to the extent that the Adjusted Net Income (as defined in the Stock Purchase Agreement) of Pneumatics for the fiscal year ending immediately prior to the

April installment in question is less than $550,000, and that any such deferred installments shall be payable on the following April 1, to the extent that the Adjusted Net Income of Pneumatics for the last fiscal year ending prior to such following April 1 exceeds the installment of principal due on such following April 1. According to the application, payments of principal will be allocated to the earliest unpaid deferred installments, and all unpaid deferred installments shall become payable on September 30, 1984.

Applicants state that the principal amounts due under the Notes are subject to reduction with respect to the September 30, 1984, installment of principal in the event Pneumatics' "warranted pre-tax income" less any "warranted pre-tax loss" (as those terms are defined in the Stock Purchase Agreement) for the period commencing on the closing date and ending on the fifth anniversary of such date does not exceed $7,000,000. Applicants further state that the reduction, if any, will equal the total of (i) the excess of $7,000,000 over the actual amount of warranted pre-tax income, after deducting any warranted pre-tax loss, and (ii) any excess interest paid or accrued on the Notes in light of the reduced purchase price, except that in no event will the reduction exceed $2,700,000. According to the application, under a Guarantee and Pledge Agreement, payment of the Notes will be guaranteed by Bevis and will be secured by a pledge by Bevis of all of the outstanding stock of MDP, which stock shall be the sole recourse against Bevis.

Applicants state that the Stock Purchase Agreement contains certain other convenants and restrictions respecting the conduct of the business of Pneumatics until the payment in full or other satisfaction of the Notes, including: (i) that MDP and Bevis not sell, transfer or encumber the shares of common stock of Pneumatics, or shares of capital stock of MDP, except as specifically provided by the Stock Purchase Agreement; (ii) that MDP furnish to Fester, on a regular basis, certain financial information regarding MDP and Bevis; (iii) restrictions on MDP and Pneumatics incurring indebtedness or creating liens; (iv) that MDP and Pneumatics not consolidate or merge, or dispose of any substantial portion of their properties or assets; and (v) that Pneumatics continue to maintain its incentive compensation and profit sharing plans, and maintain a $1,000,000 life insurance policy on the life of Fester. According to the application, these convenants and restrictions can be waived by the content of the holders of 80% of the total original principal amount of the Notes. The Applicants further state that, under the provisions of the Stock Purchase Agreement, Management Stockholders are given a right of first refusal exercisable in case of the sale by Bevis or MDP of the capital stock of MDP or Pneumatics, respectively, or in case of the sale of all or substantially all of Pneumatics' assets. The Stock Purchase Agreement also provides that Fester and Charles V. Malone (also a Management Stockholder) shall be two of the four directors of MDP and Pneumatics until the satisfaction of MDP's obligations under the Notes, provided there is no default on the Notes or on any indebtedness not subordinate to the Notes.

The application also describes certain other agreements respecting and relating to the proposed acquisition of Pneumatics shares by MDP: (i) an employment agreement with Fester, expiring December 31, 1983, under which Fester will be given full independent authority to manage Pneumatics, subject only to the direction of the board of directors of Pneumatics; (ii) an agreement by the Management Stockholders and certain other Pneumatics employees to purchase a total of 140,000 shares of Bevis common stock at a price of $2.00 per share, which price, Applicants asserts, reflects fairly the value of the Bevis stock to be issued in light of the restrictions on transfer and the amount of such stock being sold; (iii) an amendment to an existing agreement among the principal shareholders of Bevis which provides for the representation on the Bevis board of directors of the various principal shareholders of Bevis, and extends until January 2, 1984, certain restrictions on the transfer of Bevis stock imposed by the existing Bevis stockholders' agreement; (iv) the INbank Loan Agreement, referred to above, which also provides for certain modifications to an existing loan agreement between INbank and Pneumatics to permit the acquisition of Pneumatics by MDP, and which makes Narragansett, the Management Stockholders and Bevis parties to the INbank Loan Agreement for various purposes; and (6) the Guarantee and Pledge Agreement referred to above.

Section 2(a)(3) of the Act includes within the definition of "affiliated person" of another person: (1) any person controlled by such other person; (2) any person five percent or more of whose outstanding voting securities are owned by such other person and (3) any employee, officer or director of such other person. Section 2(a)(9) of the Act provides, in part, that any person owning, directly or indirectly, more than 25 per centum of the voting securities of a company shall be presumed to control such company. Accordingly, it appears, *inter alia* that Bevis and MDP are affiliated persons of, and presumed to be controlled by, Narragansett.

Section 17(a) of the Act provides, in part, that it is unlawful for any affiliated person of a registered investment company or any affiliated person of such person, acting as principal: (1) knowingly to sell any security or other property to such registered company or to any company controlled by such registered company, unless such sale involves solely securities of which the buyer is the issuer, or (2) knowingly to purchase from such registered company or from any company controlled by such registered company, any security or other property, except securities of which the seller is the issuer. Section 17(b) of the Act generally provides that, upon application, the Commission shall exempt a proposed transaction from the provisions of Section 17(a) of the Act if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned and the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act. Thus, Narragansett requests an order pursuant to Section 17(b) of the Act, exempting from the provisions of Section 17(a) of the Act, (i) the sale by MDP of the Notes to Narragansett and (ii) the purchase by MDP from Narragansett of shares of Class B non-voting common stock of Pneumatics.

Section 17(d) of the Act and Rule 17d–1 thereunder, taken together, provide, in part, that it is unlawful for an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, to effect any transaction in which such investment company is a joint participant, without the permission of the Commission. Rule 17d–1 provides, in part, that in passing upon applications for orders granting such permission, the Commission will consider (i) whether the participation of the investment company in such transaction on the basis proposed is consistent with the provisions, policies and purposes of the Act, and (ii) the extent to which such participation is on a basis different from or less

advantageous than that of other participants. Applicants state that the proposed transactions described in the application are interrelated, involve affiliated persons of Narragansett or affiliated persons of such persons, and may be deemed to be part of a joint enterprise or other joint arrangement. Thus, Applicants request an order of the Commission, pursuant to Section 17(d) of the Act and Rule 17d–1 thereunder, permitting all such proposed transactions.

Applicants assert that the terms of the proposed transactions are the result of throughly arm's-length negotiations among the parties, each of whom was represented by independent counsel, and that, based upon ordinary standards of valuation, the price and terms of the purchase of Pneumatics stock are fair and reasonable to all parties. Applicants state that discounting the $4,900,000 in face amount of the Notes at 10% to a present-day cash value of approximately $3,420,000 and adding to this amount the $600,000 cash down payment, represents a price of approximately 11.93 times the average after-tax earnings of Pneumatics over its fiscal years ended March 31, 1977 and 1978, and a lower multiple of its anticipated after-tax earnings for the current fiscal year. Applicants submit that, although the 11.93 multiple represents a higher multiple of earnings than Pneumatics' stockholders (including Narragansett) could expect to receive from most other potential purchasers, MDP can pay this amount because Bevis expects a carryover of net operating losses which should be available to MDP through 1981. Thus, Applicants note that part of the income generated by Pneumatics, which will be utilized to pay off the Notes, will not be subject to federal income tax. Applicants further submit that, if the net operating losses should prove not to be available, the selling stockholders are adequately secured by the pledge of MDP stock. Applicants state that the exposure of Bevis is essentially limited to its down payment plus any other principal payments previously made, and note that the inability of Pneumatics to generate the projected earnings should result in a reduction of the purchase price. Applicants further state that the sales and earnings of Pneumatics have been increasing over the past five years, and that they believe the Management Stockholders are confident that the warranted earnings can be realized. They also state that, because the selling stockholders view the transaction as capital gains oriented, the parties are justified in setting the interest rate on the Notes at the minimum rate which would avoid imputed interest for federal income tax purposes.

Applicants submit that the proposed transaction does not involve overreaching by any person, and that all Bevis shareholders are treated equally and given an equal chance to receive a fair return on their investment in Bevis. Applicants further submit that all shareholders of Narragansett are treated equally, with an equal chance to recoup on one of the major investments of Narragansett. They assert that the proposed transaction is consistent with Narragansett's investment policy, and state that the proposed transaction is substantially beneficial to the public shareholders of Narragansett and Bevis, as well as to the Management Stockholders and, therefore, is consistent with the intent and purposes of the Act.

Applicants state that all participants will participate in the proposed transaction on the same basis, except that (i) Fester will enter into an employment agreement and (ii) Management Stockholders and certain other Pneumatics employees will be purchasing Bevis common stock. Applicants assert that the success of Pneumatics is largely attributable to the management talents of Fester, and that the employment agreement is a necessary inducement to him, as a major stockholder of Pneumatics, to agree to the proposed transaction and to continue his relationship with Pneumatics until the Notes are fully paid. Applicants further state that the proposed equity investment in Bevis by Pneumatics' employees is designed to assure that such employees continue to have an equity interest in the success of Pneumatics and to provide funds to Bevis. Narragansett states that it will not buy additional Bevis common stock because the regulations of the Small Business Administration ("SBA") prohibit any additional investment by Narragansett in Bevis without the approval of the SBA. Applicants state that Narragansett's past dealings with the SBA indicate that the SBA would not consent to any additional investment in Bevis.

Notice is further given that any interested person may, not later than June 29, 1979, at 10:00 a.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 79–19082 Filed 6–18–79; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 15909; SR–NASD–78–17]

National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

June 11, 1979.

On November 15, 1978, the National Association of Securities Dealers, Inc. ("NASD"), 1735 "K" Street, NW., Washington, D.C. 2006, filed with the Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act"), and Rule 19b-4 thereunder, copies of a proposed rule change to amend the portion of Appendix C to Article III, Section 32 of its Rules of Fair Practice that requires NASD members to review annually their fidelity bonding coverage. The proposed rule change revises the formula used by members entering their second year of business in determining the adequacy of their fidelity bonding coverage. Under the proposed rule change, members entering into their second year of business generally would be required to carry a lower amount of coverage than they are currently required to carry. The

proposed rule change also allots more time to all members to make any required adjustment in their bonding coverage. The NASD states that the purposes of the proposed rule change are to: (a) establish comparable bonding requirements for members in their second year of business and for members simiarly situated in subsequent years of business and (b) afford all members a better opportunity to obtain bonding coverage at competitive and reasonable rates.

Notice of the proposed rule change, together with the terms of substance of proposed rule change, was given by publication of a Commission Release (Securities Exchange Act Release No. 34–15396, December 13, 1978) and by publication in the **Federal Register** (43 FR 60682, December 28, 1978). No comments were received by the Commission with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association, and in particular, the requirements of Section 15A, and the rules and regulations thereunder. Among other things, that Section permits a registered securities association to deny membership to or condition the membership of a registered broker or dealer if it does not meet such standards of financial responsibility as are prescribed by the rules of the associaiton. The Commission believes that the proposed rule change may facilitate the attainment of that objective in a manner which is not designed to permit unfair discrimination among brokers and dealers. In addition, the Commission believes that the effect of the proposed rule change may be to reduce unnecessary burdens on competition by facilitating the ability of smaller broker-dealers to obtain adequate bonding insurance at a reasonable price.

It is therefore ordered, pursuant to Section 19)b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79–19063 Filed 6–18–79; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 21092 70–6317]

New England Power Co. and New England Electric System; Proposed Capital Contribution by Holding Company to Subsidiary

June 7, 1979.

Notice is hereby given that New England Electric System ("NEES"), a registered holding company, and its electric utility subsidiary company, New England Power Company ("NEPCO"), 20 Turnpike Road, Westborough, Massachusetts 05181, have filed with this Commission an application-declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 9(a), 10 and 12 of the Act and Rules 42(a) and 45 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

NEES proposes to make a capital contribution to NEPCO of $20,000,000. NEPCO will use such contribution to repay a like amount of its short-term promisory notes issued to pay for capital expenditures or to reimburse its Treasury therefor. As of March 31, 1979, NEPCO has no short-term indebtedness outstanding; however, it is anticipated that such indebtedness will aggregate $37,000,000 at the time of the proposed capital contribution.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $2,500, including $500 of incidental services to be performed at cost, by New England Power Service Compnay, an affiliate of NEES. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than June 28, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such requst should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above stated address and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any portponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A Fitzsimmons,

Secretary.

[FR Doc. 79–19064 Filed 6–18–79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 15897 SR–OCC–78–6]

Options Clearing Corporation ("OCC"); Order Approving Proposed Rule Change

June 5, 1979.

On August 21, 1978, OCC filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b–4 thereunder, copies of a proposed rule change modifying its procedures for liquidating open short positions and unsegregated long positions in the accounts of suspended clearing members. The purpose of the proposed rule is to simplify and clarify OCC's procedures for liquidating open positions.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34–15085, August 24, 1978) and by publication in the **Federal Register** (43 FR 38753, August 30, 1978). No written comments were received by the Commission, and there were no written communications with OCC regarding this proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to clearing agencies, and in particular, the requirements of Section 17A and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the

proposed rule change referenced above be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

June 5, 1979.

[FR Doc. 79-18083 Filed 6-18-79; 8:45 am]

BILLING CODE 8010-01

[Release No. 10725; 811-1118]

South Coast Capital Co. (Formerly Space Ventures, Inc.)

Filing of Application for an Order Declaring That Applicant Has Ceased To Be an Investment Company

June 11, 1979.

Notice is hereby given that South Coast Capital Company (formerly Space Ventures, Inc.) ("Applicant"), c/o Keith Lister, 661 Sixth Avenue, San Diego, California 92101, registered under the Investment Company Act of 1940 ("Act") as a closed-end, non-diversified, management investment company, and a licensee under the Small Business Investment Act of 1958, filed an application on May 14, 1979, pursuant to Section 8(f) of the Act, for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant, a Nevada corporation, registered under the Act on November 2, 1961. According to the application Applicant has not made a public offering of its securities. Subsequent to registering under the Act, Applicant changed its name to South Coast Company. In 1967, after having distributed its assets pro-rata to five shareholders Applicant was formerly dissolved pursuant to applicable state laws. Applicant currently has no assets, debts or liabilities and is not a party to any pending litigation or administrative proceeding.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the effectiveness of such order the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than July 5, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-19085 Filed 6-18-79; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 06/06-0188]

Mercantile Texas Capital Corp.; Filing of Application for Approval of a Conflict of Interest Transaction Between Associates

Notice is hereby given, pursuant to § 107.1004 of the regulations governing small business investment companies (13 CFR 107.1004(1979)), by the Small Business Administration (SBA) of a conflict of interest transaction between Mercantile Texas Capital Corporation (MTCC), 1704 Main Street, Dallas, Texas 75201, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. et seq.), and an Associate.

MTCC was licensed by SBA on December 8, 1970. It is wholly-owned by Mercantile National Bank at Dallas. This bank is owned by Mercantile Texas Corporation, a federal bank holding company (Dallas, Texas), whose stock is traded on the New York Stock Exchange.

It is proposed that MTCC provide financial assistance to K O Steel Castings, Inc., 2915 Zarzamora, San Antonio, Texas 78211, for the purpose of expansion and construction of new production facilities. Mr. Reagan Houston, III, is a director of this company. He is also a director of Mercantile Texas Corporation. As such, Mr. Houston is deemed to be an Associate of MTCC as defined by § 107.3(c) of the SBA rules and regulations. In view of this, K O Steel Castings, Inc., is also deemed to be as Associate concern as defined by § 107.3(f) of the Regulations.

The proposed financing falls within the purview of § 107.1004(b)(1) of the regulations and requires a written exemption from SBA. SBA is considering a request for such exemption.

Notice is further given that any person may, not later than July 19, 1979, submit to SBA in writing, comments on the proposed transaction. Any such communication should be addressed to: Associate Administrator for Finance and Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of the notice shall be published in a newspaper of general circulation in San Antonio and Dallas, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Peter F. McNeish,

Deputy Associate Administrator for Finance and Investment.

Dated: June 12, 1979.

[FR Doc. 79-19079 Filed 6-18-79; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Customs Service

Certain Textiles and Textile Products From Thailand; Final Countervailing Duty Determination

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Final Countervailing Duty Determination.

SUMMARY: This notice is to inform the public that a countervailing duty investigation has resulted in a final determination that the Government of Thailand has not given benefits which are considered to be bounties or grants

under the countervailing duty law on the manufacture, production, or exportation of men's and boys' apparel and textile mill products of cotton, wool and manmade fibers.

EFFECTIVE DATE: June 19, 1979.

FOR FURTHER INFORMATION CONTACT: Leon McNeill, Technical Branch, Duty Assessment Division, Office of Operations, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, telephone 202-566-5492.

SUPPLEMENTARY INFORMATION: On January 12, 1979, a notice of "Preliminary Countervailing Duty Determination" was published in the **Federal Register** (44 FR 2747). The notice stated that the Government of Thailand had not provided benefits constituting bounties or grants within the meaning of section 303 or the Tariff Act of 1930, as amended (19 U.S.C. 1303), to manufacturers of textiles and textile products which export to the United States. One practice—an exemption for three to eight years from corporate income taxes for certain companies approved by the Board on Investment—was found to have provided benefits to one manufacturer during 1977. However, that company does not export to the United States, and accordingly that benefit does not constitute a "bounty or grant" within the meaning of the U.S. countervailing duty law.

The preliminary determination also stated that certain other practices of the Government of Thailand did not on their face constitute bounties or grants, including advisory technical and training services provided for a charge to manufacturers by the Ministry of Industry, and rebate of a business tax imposed on raw material used in export production.

Furthermore, it was preliminarily determined that certain programs did not constitute bounties or grants because they were either not applicable to or not used by the textile industry of Thailand, including fiscal benefits granted by the Board of Investment for locating in certain specified areas of the country, benefits granted to companies in areas controlled by the Industrial Estate Authority, relief from "business taxes" (levied on gross monthly receipts), and exemption from exchange controls or remittance of profits and dividends.

Interested parties were invited to submit relevant data, views or arguments either orally or in writing with respect to the preliminary determination. However, no additional information has been received. In view of the foregoing, for the reasons explained in the notice of "Preliminary Countervailing Duty Determination", the conclusions reached in that determination remain unchanged and it is hereby finally determined that no bounty or grant is being paid or bestowed, directly or indirectly, within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303), upon the manufacture, production or exportation of textile mill products or men's and boys' apparel from Thailand.

For purposes of this notice "textile mill products" include yarns, fabrics, household textiles, miscellaneous products of textile mills, and certified handloomed and folklore products, made of cotton, wool and manmade fibers, as specified in the U.S. bilateral textile agreements and described by the Tariff Schedules of the United States Annotated (TSUSA) item numbers set forth in the Appendix to the **Federal Register** notice published on October 13, 1978 (43 FR 47340). "Men's and boys' apparel" includes those items described by TSUSA item numbers in the Appendix to the above-cited **Federal Register** notice.

This notice is published pursuant to section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order No. 101-5, May 16, 1979, the provisions of Treasury Department Order No. 165, Revised, November 2, 1954, and § 159.47 of the Customs Regulations (19 CFR 150.47), insofar as they pertain to the issuance of a final countervailing duty determination by the Commissioner of Customs, are hereby waived.

Robert H. Mundheim,

General Counsel of the Treasury.

June 12, 1979.

[FR Doc. 79-19034 Filed 6-18-79; 8:45 am]

BILLING CODE 4810-22-M

Certain Textiles and Textile Products From Singapore; Final Countervailing Duty Determination

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Final Countervailing Duty Determination.

SUMMARY: This notice is to inform the public that a countervailing duty investigation has resulted in a final determination that the Government of Singapore has not given benefits which are considered to be bounties or grants under the countervailing duty law on the manufacture, production, or exportation of men's and boys' apparel and textile mill products of cotton, wool, and manmade fibers.

EFFECTIVE DATE: June 19, 1979.

FOR FURTHER INFORMATION CONTACT: Leon McNeill, Duty Assessment Division, Technical Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, telephone (202) 566-5492.

SUPPLEMENTARY INFORMATION: On January 12, 1979, a notice of "Preliminary Countervailing Duty Determination" was published in the **Federal Register** (44 FR 2748). The notice stated that certain practices of the Government of Singapore provided benefits to manufacturers and/or exporters of the subject merchandise, but that such benefits did not constitute bounties or grants within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303), because the amount of the total benefits, 0.05 percent of the value of the merchandise exported, was considered to be *de minimis*. The programs involved are:

(1) Tax benefits derived from the double deduction from gross corporate income of expenses incurred in promoting export sales by participation in certain overseas trade fairs. The value of this benefit has been calculated by multiplying the amount of the deduction allowed eligible companies which exported to the United States in 1977 by the standard corporate income tax rate, and spreading this amount over the companies' total export sales.

(2) Short-term financing at preferential interest rates provided by the Monetary Authority of Singapore (MAS). The MAS operates a program which allows exporters to discount the value of pre-export and export insurance bills of exchange (which are, essentially, sales and purchase contracts) with commercial banks at a rate lower than the one commercially available. In turn, these banks rediscount the bills of exchange with the MAS. The benefit conferred by this program is equal to the interest savings of those participating exporters which had business dealings with the United States in 1977, spread over the value of their total exports in that year.

The preliminary determination also stated that certain other practices of the Government of Singapore did not on their face constitute bounties or grants, including exemption from corporate income tax for companies increasing their investment in equipment and generally-available accelerated depreciation allowances for tax purposes.

Certain other programs were preliminarily considered not to constitute bounties or grants because they are not used by Singapore's textile and apparel industry, including an exemption from corporate income tax for companies designated as being part of a "pioneer" industry, and reduced corporate income taxes for companies granted "export enterprise status".

Finally, it was preliminarily determined that certain alleged practices do not exist in Singapore, including government loans available at preferential rates, preferential rental, tax, and utility rates for companies locating in designated industrial zones and free trade zones, and loans at preferential rates to exporters made by the Development Board of Singapore (DBS) and other sources.

Interested parties were invited to submit relevant data, views or arguments either orally or in writing with respect to the preliminary determination. However, no additional information has been received. In view of the foregoing, for the reasons explained in the notice of "Preliminary Countervailing Duty Determination", the conclusions reached in that determination remain unchanged and it is hereby finally determined that no bounty or grant is being paid or bestowed, directly or indirectly, within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303), upon the manufacture, production or exportation of textile mill products or men's and boys' apparel from Singapore.

For purposes of this notice, "textile mill products" include yarns, fabrics, household textiles, miscellaneous products of textile mills, and certified handloomed and folklore products, made of cotton, wool and manmade fibers, as specified in United States bilateral textile agreements and described by the Tariff Schedules of the United States Annotated (TSUSA) item numbers set forth in the Appendix to the **Federal Register** notice published on October 13, 1978 (43 FR 47340). "Men's and boys' apparel" includes those items described by TSUSA item numbers in the Appendix to the above-cited **Federal Register** notice.

This notice is published pursuant to section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order No. 101–5, May 16, 1979, the provisions of Treasury Department Order 165, Revised, November 2, 1954, and § 159.47 of the Customs Regulations (19 CFR 159.47), insofar as they pertain to the issuance of a final countervailing duty determination by the Commissioner of Customs, are hereby waived.

Robert H. Mundheim,
General Counsel of the Treasury.
June 12, 1979.
[FR Doc. 79-19035 Filed 6-18-79; 8:45 am]
BILLING CODE 4810-22-M

Fiscal Service

[Dept. Circ. 570, 1978 Rev., Supp. No. 17]

Millers Casualty Insurance Co. of Texas; Surety Companies Acceptable on Federal Bonds: Termination of Authority

Notice is hereby given that the Certificate of Authority issued by the Treasury to The Millers Casualty Insurance Company of Texas, Fort Worth, Texas under Sections 6 to 13 of Title 6 of the United States Code as an acceptable surety on Federal bonds is hereby terminated effective June 30, 1979.

The company was last listed as an acceptable surety of Federal bonds at 43 FR 28699, July 1, 1978.

With respect to any bonds currently in force with The Millers Casualty Insurance Company of Texas, bond-approving officers of the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding.

Dated: June 11, 1979.

D. A. Paglini,
Commissioner, Bureau of Government Financial Operations.
[FR Doc. 79-19012 Filed 6-18-79; 8:45 am]
BILLING CODE 4810-35-M

Office of the Secretary

Antidumping: Steel Wire Coat and Garment Hangers From Canada; Termination of Investigation Based on no Likelihood of Injury

AGENCY: United States Treasury Department.

ACTION: Termination of Anitdumping Investigation.

SUMMARY: This notice is to advise the public that an antidumping investigation involving steel wire coat and garment hangers from Canada is being terminated. The investigation is being terminated as the result of a finding by the United States International Trade Commission that there is "no reasonable indication of injury or likelihood of injury" to the domestic industry caused by imports of the subject merchandise from Canada.

EFFECTIVE DATE: June 19, 1979.

FOR FURTHER INFORMATION CONTACT: Vincent P. Kane, U.S. Customs Service, Office of Operations, Duty Assessment Division, 1301 Constitution Avenue, N.W., Washington, D.C. 20229 (202–566–5492).

SUPPLEMENTARY INFORMATION: On April 20, 1979, an "Antidumping Proceeding Notice" was published in the **Federal Register** with respect to steel wire coat and garment hangers from Canada (44 FR 23623).

The notice stated that Treasury had concluded that there was substantial doubt of injury to, or likelihood of injury to, an industry in the United States by reason of imports of steel wire coat and garment hangers from Canada. Accordingly, the United States International Trade Commission was advised of such doubt pursuant to section 201(c)(2) of the Antidumping Act of 1921, as amended (19 U.S.C. 160(c)(2)) (hereinafter referred to as the "Act").

The United States International Trade Commission has determined, and on May 17, 1979, it advised the Secretary of the Treasury pursuant to section 201(c)(2) of the Act (19 U.S.C. 160(c)(2)), that there is no reasonable indication that an industry in the United States is being, or is likely to be, injured, by reason of the importation of steel wire coat and garment hangers, alleged to be sold at less than fair value, from Canada into the United States. This determination was published in the **Federal Register** on May 23, 1979 (44 FR 29990–2).

Accordingly, the antidumping investigation with respect to steel wire coat and garment hangers from Canada is hereby terminated, as provided for in section 201(c)(2) of the Act (19 U.S.C. 160(c)(2)).

Robert H. Mundheim,
General Counsel of the Treasury.
June 12, 1979.
[FR Doc. 79-19036 Filed 6-18-79; 8:45 am]
BILLING CODE 4810-22-M

INTERSTATE COMMERCE COMMISSION

Fourth Section Application for Relief

June 14, 1979.

This application for long-and-short-haul relief has been filed with the I.C.C.

Protests are due at the I.C.C. within 15 days from the date of publication of this notice.

FSA No. 43708, Southwestern Freight Bureau, Agent No. B–6, annual volume rates on ethylene glycol, in tank carloads, from Geismar, La. to Eastman, S.C., in Supp. 18 to Tariff ICC SWFB 4615, effective July 8, 1979. Grounds for relief-market competition.

By the Commission.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-19083 Filed 6-18-79; 8:45 am]

BILLING CODE 7035-01-M

[Notice No. 93]

Motor Carrier Temporary Authority Applications

June 7, 1979.

The following are notices of filing of applications for temporary authority under Section 210(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register**. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

MC 200 (Sub-345TA), filed April 5, 1979. Applicant: RISS INTERNATIONAL, 903 Grand Avenue, Kansas City, MO 64106. Representative: Ivan E. Moody (same as applicant), *Books*, serving Crawfordsville, IN as an off-route point in connection with carriers regular route authority on U.S. 36, U.S. 52, and U.S. 40 for 180 days. An underlying ETA requests 90 day authority. Supporting shipper(s): R. R. Donnely & Sons, 10009 Sloan Street, Crawfordsville, IN 47933. Send protests to: Vernon V. Coble, DS, ICC, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 200 (Sub-346TA), filed April 27, 1979. Applicant: RISS INTERNATIONAL CORPORATION, 903 Grand Ave., Kansas City, MO 64106. Representative: Ivan E. Moody (same address as applicant), *Common carrier:* regular route: *Foodstuffs*, serving Yorktown, IN as on off-route point in connection with applicant's regular route authority on US Hwy 40 and IN Hwy 67, for 180 days. Supporting shipper: Marsh Super Markets, Inc., P.O. Box 155, Yorktown, IN 47396. Send protests to: John V. Barry, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106. Supporting shipper(s): Marsh Super Markets, Inc., P.O. Box 155, Yorktown, IN 47396. Send protests to: John V. Barry, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 200 (Sub-347TA), filed April 27, 1979. Applicant: RISS INTERNATIONAL CORPORATION, 903 Grand Ave., Kansas City, MO 64106. Representative: Ivan E. Moody (same address as applicant). *Iron and Steel, Iron and Steel Articles*, from Midland, PA to all points in MO, IL, IN, WI, MI, KS and IA, for 180 days. SUPPORTING SHIPPER: Colt Industries, P. O. Box 226, Midland, PA 15059. SEND PROTESTS TO: John V. Barry, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106. An underlying ETA seeks 90 days authority. Supporting shipper(s): Colt Industries, P.O. Box 226, Midland, PA 15059. Send protests to: John V. Barry, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 200 (Sub-348TA), filed May 7, 1979. Applicant: RISS INTERNATIONAL CORPORATION, 903 Grand Avenue, Kansas City, MO 64106. Representative: Ivan E. Moody (same address as applicant). *Containers and Container Closures*, from Denver and Golden, CO to points in NE, IA, MN, MO, IL, IN, MI, OH, TN and KY, for 180 days. SUPPORTING SHIPPER: The Continental Group, Inc., 5401 W. 65th St., Chicago, IL 60638. SEND PROTESTS TO: John V. Barry, DS, ICC, 600 Federal bldg., 911 Walnut St., Kansas City, MO 64106. Supporting Shipper(s): The Continental Group, Inc., 5401 W. 65th St., chicago, IL 60638. Send protests to: John V. Barry, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 531 (Sub-403TA), filed May 8, 1979. Applicant: YOUNGER BROTHERS, INC., 4904 Griggs Rd., Houston, TX 77021. Representative: Wray E. Hughes, 4904 Griggs Rd., Houston, TX 77021. Common carrier over irregular routes. *Liquid synthetic plastic, in bulk, in tank vehicles* from Columbus, OH to Hayward, CA for 180 days. Supporting Shipper(s): Adhesive Consultants Corp., 25917 Clawiter Rd., Hayward, CA 94545. Send protests to: John F. Mensing, Interstate Commerce Commission, 515 Rusk Ave. #8610, Houston, TX 77002.

MC 730 (Sub-438TA), filed Apr–27–79. Applicant: PACIFIC INTERMOUNTAIN EXPRESS CO., 25 North Via Monte, Walnut Creek, CA 94598. Representative: R. N. Cooledge, 25 North via Monte, Walnut Creek, CA 94598. *Liquid weed killing compounds, in bulk, in tank vehicles*. From Portland, Oregon to points in Kansas, Missouri, Iowa & Illinois. An underlying ETA seeks *90 days* authority. Supporting Shippers(s): Rhodia Inc., P.O. Box 10224, Portland, OR 97210. Send protests to: A. J. Rodriguez, D/S, I.C.C., 211 Main St., Suite 500, San Francisco, CA 94105.

MC 2421 (Sub-22TA), filed May 16, 1979. Applicant: NEWTON TRANSPORTATION COMPANY, INC., P.O. Box 678, Lenoir, NC 28645. Representative: Charles H. Keller (same as applicant). *New furniture* from Lenoir, NC to points in IL, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Broyhill Furniture Industries, Lenoir, NC. Fairfield Chair Company, P.O. Box 1710, Lenoir, NC. Send protests to: District Supervisor Terrell Price, 800 Briar Creek Rd-Rm CC516, Mart Office Building, Charlotte, NC 28205.

MC 2421 (Sub-23TA), filed May 16, 1979. Applicant: NEWTON TRANSPORTATION COMPANY, INC., P.O. Box 678, Lenoir, NC 28645. Representative: Charles H. Keller (same as applicant). *Cold rolled steel formed products* from the facilities of Superior Roll Forming Company located in Independence, OH to points in NC, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Superior Roll Forming Co., Inc., 7728 Commerce Park Oval, Independence,

OH 44131. Send protests to: District Supervisor Terrell Price, 800 Briar Creek Rd-Rm CC516, Mart Office Building, Charlotte, NC 28205.

MC 2860 (Sub-176TA), filed May 2, 1979. Applicant: NATIONAL FREIGHT, INC., 71 West Park Avenue, Vineland, N.J. 08360. Representative: Gerald S. Duzinski (same address as above). *Containers, container closures* and *accessories* and *materials, equipment and supplies* used in the manufacture, sale and distribution of the foregoing commodities (except commodities in bulk and those which, because of size or weight, require the use of special equipment) between points in AL, AR, GA, IL, IN, LA, MD, MI, MS, NY, NJ, OH, OK, TX and WI, for 180 days. Supporting Shipper(s): Continental Can Company, U.S.A., 217 Brook Ave., P.O. Box 659, Passaic, N.J. 07055. Send protests to: District Supervisor, ICC, 428 East State Street, Room 204, Trenton, N.J. 08608.

MC 2900 (Sub-369TA), filed April 27, 1979. Applicant: RYDER TRUCK LINES, INC., P.O. Box 2408, Jacksonville, FL 32203. Representative: S. E. Somers, Jr. (same as applicant). General Commodities except Classes A and B explosives, commodities in bulk, those of unusual value, those requiring special equipment, and household goods as defined by the Commission.

From Gary, IN over Interstate Hwy 65 to Louisville, KY and return over the same route. From St. Joseph, MI over U.S. Hwy 31 to Indianapolis, IN then over Indiana Hwy 37 to junction U.S. Hwy. 50, then over U.S. Hwy 50 to Junction U.S. Hwy 231, then over U.S. Hwy 231 to junction U.S. Hwy 431, then over U.S. Hwy 431 to Nashville, TN and return over the same route. From the Indiana-Michigan State line, over U.S. Hwy 27 to Cincinnati, OH and return over the same route. From Ft. Wayne, IN over Interstate Hwy 69 to Indianapolis, IN and return over the same route. From Terre Haute, IN over U.S. Hwy 41 to Nashville, TN and return over the same route. From Chicago, IL over U.S. Hwy 90 to Indiana-Ohio State line and return over the same route. From Danville, IL over Interstate Hwy 74 to Cincinnati, OH and return over the same route. From St. Louis, MO over Interstate Hwy 70 to Richmond, IN and return over the same route. From St. Louis, MO over Interstate Hwy 64 to Louisville, KY and return over the same route. Service on Route 1 through 9 inclusive, is authorized to and from all intermediate points and all points in the state of Indiana as off route points in connection with the carriers authorized regular routes.

For 180 days. Applicant seeks to tack this authority with that issued in MC 2900 and to interline, and serve the commercial zones of each city. Supporting Shipper(s): There are 38 shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: G. H. Fauss, Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 4941 (Sub-45TA), filed April 25, 1979. Applicant: QUINN FREIGHT LINES, INC., 1093 North Montello Street, Brockton, MA 02403. Representative: Russell S. Callahan, 1093 North Montello Street, Brockton, MA 02403. *Retail Department Store Merchandise,* from Clinton, MA to points in MD and VA. An underlying *ETA seeks 90 days* authority. Supporting shipper(s): Zayre Corporation, RT. 6 Framingham, MA 01701. Send protest to: Glenn A. Eady, TS, ICC, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 4941 (Sub-46TA), filed April 9, 1979. Applicant: QUINN FREIGHT LINES, INC., 1093 North Montello Street, Brockton, MA 02403. Representative: Russell S. Callahan (same address as applicant). Authority sought to operate as a common carrier, over irregular routes, in the transportation of *Retail Department Store Merchandise,* from Mansfield, MA to Akron, Barberton, Brook Park, Cleveland (including Commercial Zone) Cambridge, Canton, Elyria, Mansfield and Mentor, OH for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Zayre Corp., Framingham, MA 01701. Send protests to: John B. Thomas, DS, ICC, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 5470 (Sub-190TA), filed May 3, 1979. Applicant: TAJON, INC., R.D. 5, Mercer, PA 16137. Representative: Mary Chutz-Eshenbaugh (same as Applicant). *Coke,* in bulk, in dump vehicles, from Conshohocken, PA and five (5) miles thereof, to Clarksburg, WV. Supporting shipper(s): Union Carbide Corp., 270 Park Avenue, New York, NY 10017. Send protests to: J. J. England, DS, ICC, 2111 Federal Bldg., Pittsburgh, PA 15222.

MC 8771 (Sub-50TA), filed May 4, 1979. Applicant: SAW MILL SUPPLY, INC., 1018 Saw Mill River Road, Yonkers, NY 10710. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425–13th St., N.W., Washington, D.C. 20004. *Ferro-nickel ingot,* from Baltimore, MD, to Warren, OH, and Warren, MI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Le Nickel, Inc., 450 Park Avenue, New York, NY 10022. Send protests to: Maria B. Kejss, Transportation assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, NY 10007.

MC 13651 (Sub-19TA), filed April 20, 1979. Applicant: PEOPLES TRANSFER, INC., 1430 West 11th Street, Long Beach, CA 90813. Representative: James H. Gulseth, 100 Bush Street, 21st Floor, San Francisco, CA 94104. *1(a) Such commodities as are dealt in by wholesale and retail grocery, food business, fast food, discount, and variety houses, 1(b) equipment, materials, and supplies used in the conduct of such businesses, and 1(c) general commodities when moving in mixed loads with 1(a) or 1(b) above,* between points in CA, on the one hand, and, on the other, points in OR, WA, AZ, and NV, for 180 days. Restricted to the transportation of traffic originating at or destined to the facilities of Amstar Corporation, Kingsford/Duraflame, Patterson Frozen Foods, Procter & Gamble Distributing Company, and United Grocers, Ltd. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): There are 5 shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: Irene Carlos, TA, ICC, P.O. Box 1551, Los Angeles, CA 90053.

MC 17000 (Sub-14TA), filed May 4, 1979. Applicant: HOHENWALD TRUCK LINES, INC., P.O. Box 198, Hohenwald, TN 38462. Representative: Robert L. Baker, 618 United American Bank Bldg., Nashville, TN 37219. *(1) Fans and heaters and (2) commodities used in the manufacture and distribution of fans and heaters (except commodities in bulk, in tank vehicles)* between Franklin, TN on the one hand, and, on the other points in IL, IN, KS, MI, OH, OK, TX and WI, for 180 days. Restricted to the transportation of shipments originating at or destined to the facilities of Lasko Metal Products, Inc. an underlying ETA seeks 90 days authority. Supporting shipper(s): Lasko Metal Products, Inc., 300 Confederate Drive, Franklin, TN 37064. Send protests to: Glenda Kuss, TA, ICC, Suite A–422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 22311 (Sub-13TA), filed April 25, 1979. Applicant: A LINE INC., 8135 Monroe St., Munster, IN 46321. Representative: Anthony E. Young, 29 S. LaSalle St., Suite 350, Chicago, IL 60603. *(1) Iron, steel, zinc, lead, and articles or products thereof (except in bulk), construction materials, supplies and equipment (except in bulk),* from the facilities of or used by Penn-Dixie Steel

Corporation, Inc. at or near Joliet, IL and Kokomo, IN to points in the United States in and east of MN, IA, MO and LA; *(2) materials, equipment and supplies (except in bulk) used in the manufacture and distribution of the commodities described in (1) above* from points in the United States in and east of MN, IA, MO, AR and LA to the facilities of or used by Penn-Dixie Steel Corporation, Inc. at or near Joliet, IL and Kokomo, IN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Penn-Dixie Steel Corporation, P.O. Box 5049, 1111 S. Main St., Kokomo, IN 46901. Send protests to: Annie Booker, TA, ICC, 1386 Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 29990 (Sub-17TA), filed May 2, 1979. Applicant: BADGER LINES, INC., 3109 West Lisbon Avenue, Milwaukee, Wisconsin 53208. Representative: Richard C. Alexander, 710 North Plankinton Avenue, Milwaukee, Wisconsin 53203. *Contract Carrier.* Irregular route: *Malt beverages,* from points in the Commercial Zones of Kansas City, KS and Kansas City, MO, to West Allis, WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Paul Rose, Incorporated, 2100 South 116th Street, West Allis, Wisconsin 53227. Send protests to: Mr. John E. Ryden, DS, ICC, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 38481 (Sub-14 TA), filed April 26, 1979. Applicant: FARRUGGIO'S BRISTOL AND PHILADELPHIA AUTO EXPRESS, INC., 1419 Radcliffe Street, Bristol, PA 19007. Representative: Alan Kuhn, 1920 Two Penn Center Plaza, Philadelphia, PA 19102. *Slag, slag products, sand and gravel,* from the facilities of the Warner Company in Falls Township, Bucks County, PA to points in NY and NJ for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Warner Company, 111 Presidential Blvd., Suite 132, Bala Cynwyd, PA 19004. Send protests to: ICC, Federal Reserve Bank Bldg., 101 N. Seventh Street, Phila., PA 19106.

MC 41951 (Sub-42 TA), filed April 13, 1979. Applicant: WHEATLEY TRUCKING, INC., P.O. Box 458, Cambridge, MD 21613. Representative: Gary E. Thompson, 4304 East-West Highway, Washington, D.C. 20014. *Canned goods,* from Cheriton and Hopeton, VA, DE, and Worcester, Wicomico, Somerset, Dorchester, Caroline, Talbot, and Queen Anne Counties, MD to DE, MD and DC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Vlasic Foods, Inc., 33200 West 14 Mile Road, West Boomfield, MI 48033; Jenkins Foods Corp., P.O. Box 263, Milton, DE 19963, and A.W. Sisk & Sons, Inc., Preston, MD 21655. Send protests to: T. M. Esposito, TA, ICC, 600 Arch St., Room 3238, Philadelphia, PA 19106.

MC 4430 (Sub-19 TA), filed April 25, 1979. Applicant: HESS CARTAGE COMPANY, 17065 Hess Avenue, Melvindale, MI 48122. Representative: Walter N. Bieneman, Attorney, 100 West Long Lake Road, Bloomfield Hills, MI 48013. *Iron and Steel, iron and steel articles and materials, equipment and supplies* used or useful in the manufacture and distribution of the aforementioned commodities, between the international boundary line between the United States and Canada, at or near Sault Ste. Marie, MI on the one hand, and, on the other, points in MI, OH, PA, IN, IL and WI. For 180 days. Supporting shipper(s): The Algoma Steel Corporation, Limited, Sault Ste. Marie, Ontario, P6A 5P2. Send protests to: C. R. Flemming, D/S, I.C.C., 225 Federal Building, Lansing, MI 48933.

MC 48441 (Sub-44 TA), filed March 23, 1979. Applicant: R.M.E. INC., P.O. Box 418, Streator, IL 61364. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street, NW., Washington, D.C. 20001. (1) *Such merchandise as is dealt in by wholesale, retail, chain grocery and food business houses,* between the facilities of Ralston Purina company at or near Clinton and Davenport, Iowa and Battle Creek, Michigan on the one hand, and on the other points in Missouri and New York. (2) *Materials, ingredients and supplies used in the manuacture, distribution and sale of the products in (1) above,* (except in bulk), between the facilities of Ralston Purina company at or near Battle Creek, Michigan; Lancaster, Ohio and Sharonville, Ohio for 180 days. An underlying ETA was granted for 90 days authority. Supporting shipper(s): Ralston Purina Company, Checkerboard Square, St. Louis, MO 63188. Send protests to: Annie Booker, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 48441 (Sub-45TA), filed April 17, 1979. Applicant: R.M.E., INC., P.O. Box 418, Streator, IL 61364. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street, NW., Washington, D.C. 20001. *Fibre drums:* from the facilities of The Continental Group, Inc. at/near Van Wert, OH to points in IL, IN and MI for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The Continental Group, Inc., Continental Forest Industries, Office Park II, Greenwich, CT 06830. Send protests to: Annie Booker, TA, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 48441 (Sub-46TA), filed March 16, 1979. Applicant: R.M.E., INC., P.O. Box 418, Streator, IL 61364. Representative: Elizabeth Purcell, 666 Eleventh Street, NW., Suite 805, Washington, D.C. 20001. *Such Commodities* as are used, dealt in or distributed by paper and plastic manufacturers and/or converters of paper (except in bulk, and commodities which because of size or weight require special equipment), from points in IL to the facilities of Georgia-Pacific Corporation at Kalamazoo, MI. Supporting shipper(s): Georgia-Pacific Corporation, 2425 King Highway, Kalamazoo, MI. Send protests to: T/A Annie Booker, Room 1386, 219 South Dearborn, Chicago, IL 60604.

MC 52861 (Sub-64TA), filed April 26, 1979. Applicant: WILLS TRUCKING, INC., 3185 Columbia Rd., Richfield, OH 44286. Representative: John Wilson, same address as applicant. *Lime, limestone, limestone products and refractory products,* in dump vehicles, from Maple Grove (Seneca County), OH, to Burns Harbor, Gary, E. Chicago, IN, and Chicago, IL, and its commercial zone, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Basic Incorporated, 845 Hanna Bldg., Cleveland, OH 44115. Send protests to: Mary Wehner, D/S, I.C.C., 731 Federal Bldg., Cleveland, OH 44199.

MC 59531 (Sub-115TA), filed May 4, 1979. Applicant: AUTO CONVOY CO., 3020 South Haskell Avenue, Dallas, TX 75223. Representative: Eugene C. Ewald, 100 West Long Lake Road—Suite 102, Bloomfield Hills, MI 48043. *Motor vehicles, except trailers, in secondary movements, in truckaway service,* from Port Allen and Baton Rouge, LA to points in KS, MO, NE, and OK for 180 days. An underlying ETA for 90 days filed. Supporting shipper(s): Mazda Motors of America (Central), Inc., 3040 East Ana St., Compton, CA 90221. Send protests to: Opal M. Jones, TA, ICC, 1100 Commerce St., Room 13C12, Dallas, TX 75242.

MC 61470 (Sub-7TA), filed April 20, 1979. Applicant: BRYAN TRUCK LINE, INC., 610 East Wilson St., Bryan, OH 43506. Representative: James Duvall, 220 West Bridge St., Dublin, OH 43017. *Road-making implement parts,* between Bryan, OH, on the one hand, and on the other, Calhoun, GA for 180 days. An underlying ETA seeks 90 days authority.

Supporting shipper(s): Challenge-Cook Bros., Inc., 720 E. Perry St., Bryan, OH 43506. Send protests to: ICC, Fed. Res. Bank Bldg, 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 75840 (Sub-120TA), filed April 18, 1979. Applicant: MALONE FREIGHT LINES, INC., P.O. Box 11103, 3400 Third Avenue, South, Birmingham, AL 35202. Representative: Frank D. Hall, Suite 713, 3384 Peachtree Road, NE, Atlanta, GA 30326. *Chemicals, paint and paint products, textile fibers, film, pigments, rubber products, photo products, and fluorocarbons,* between the facilities of E. I. duPont De Nemours & Company, Inc., located in VA, WV, OH, PA, TN, GA, NJ, NY, DE, KY, SC, and NC, on the one hand, and on the other Houston, TX. For 180 days. Supporting shipper(s): E. I. DuPont De Nemours & Co., Inc., 1007 Market Street, Wilmington, DE 19898. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616—2121 Building, Birmingham, AL 35203.

MC 75840 (Sub-121TA), filed April 18, 1979. Applicant: MALONE FREIGHT LINES, INC., P.O. Box 11103, 3400 Third Avenue, South, Birmingham, AL 35202. Representative: Frank D. Hall, Suite 713, 3384 Peachtree Road, NE, Atlanta, GA 30326. *Chemicals, plastic and plastic materials,* from the facilities of Diamond Shamrock Corporation located at or near Houston, TX, to points in AR, AL, FL, GA, KY, LA, MS, MA, NY, NJ, NC, OH, PA, SC, TN, and VA. For 180 days. Supporting shipper(s): Diamond Shamrock Corporation, 1100 Superior Ave., Cleveland, OH 44114. Send protest to: Mabel E. Holston, T/A, ICC Room 1616—2121 Building, Birmingham, AL 35203.

MC 78400 (Sub-72TA), filed May 11, 1979. Applicant: BEAUFORT TRANSFER COMPANY, P.O. Box 151, Gerald, MO 63037 Representative: Ernest A. Brooks, II, 1301 Ambassador Bldg., St. Louis, MO 63101. *Charcoal briquettes,* from the facilities of the Kingsford Company at or near Cotter, AR to points in CO, IA, IL, KS, MO, NE, NM, OK, TX, and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The Kingsford Company, P.O. Box 1033, Louisville, KY 40201. Send protests to: P. E. Binder, DS, ICC, Rm. 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 82101 (Sub-16TA), filed May 1, 1979. Applicant: WESTWOOD CARTAGE, INC., 62 Everett Street, Westwood, MA 02090. Representative: John P. Tynan, Esq., 65-12 69th Place, Middle Village, NY 11379. *Contract Carrier:* Irregular Routes: *Kitchen or bathroom cabinets, cabinet doors, mouldings, boards, panels and brass, bronze or copper hardware* from Nashua, NH to points in Canton, Farmington, Fairfield, Kent, New Haven, CT; Claymont, Newark and New Castle, DE; Bangor, Bath, Fairfield, Oxford, Scarboro and Waterville, ME; Annapolis, Beltsville, Bradshaw, Baltimore, Gaithersburg, Hagerstown, Harmons, Hyattsville, Seabrook, Savage, Timonium and Westminster, MD; Charlestown, Danvers, E. Longmeadow, Lowell, Readville, Somerville, Springfield, Westminster, MA; Grand Rapids, MI; Bayville, Burlington, Blackwood, Berlin, Bayonne, Farmindale, Oakland, Pennington, Pleasantville, Rockaway, Trenton, Vineland, NJ; Albany, Auburn, Bohemia, Brocton, Binghamton, Babylon, Buffalo, Cicero, E. Syracuse, Farmingdale, Guilderland, Islip, Jamestown, Kennedy, Liverpool, Lacona, Middletown, Oswego, Ontario, Rochester, Schenectady, Tonawanda, Troy, NY; Elizabeth City, NC; Akron, Brookfield, Conneaut, Cambridge, Circleville, Columbia Station, Cleveland, Farmington, Lima, Maumee, Norton, Northfield, Springfield, Toledo, W. Carrolton, Westerville, OH; Altoona, Allentown, Braddock, Bridgeville, Canonsburg, Chalfont, Cresson, Duncanville, Dillsburg, Erie, Fairless Hills, Frazer, Greensburg, Harrisburg, Homer City, Lancaster, Murrayville, Milesburg, Middletown, Philadelphia, Reading, Stockertown, Tobyhanna, Uniontown, Van Port, W. Mifflin, Wilkes Barre, 84 Junction, PA; Cumberland, Cranston, Lincoln, Warwick, RI; Burlington, Williamstown, VT for the account of Triangle Pacific Corp. for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Triangle Pacific Corp., 25 Crown St., Nashua, NH 03060. Send protests to: D/S John B. Thomas, I.C.C., 150 Causeway St., Boston, MA 02114.

MC 82841 (Sub-255TA), filed April 27, 1979. Applicant: HUNT TRANSPORTATION, INC., 10770 "T" St., Omaha, NE 68127. Representative: William E. Christensen, same address as applicant. *Such commodities as are dealt in by agricultural equipment, industrial equipment, and lawn and leisure product dealers (except commodities in bulk),* from the facilities of Deere & Company located in Polk and Wapello Counties, IA to points in KS and MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Deere & Company, John Deere Road, Moline, IL 61265. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 82841 (Sub-256TA), filed April 30, 1979. Applicant: HUNT TRANSPORTATION, INC., 10770 "T" Street, Omaha, NE 68127. Representative: William E. Christensen, same address as applicant. *Agricultural machinery and parts and accessories thereto,* from Rock Island County, IL to points in CO, IN, IA, KS, MI, MO, MT, NE, OH, SD, WI, and WY, for 180 days. Restricted for the account of Massey Ferguson, Inc. An underlying ETA seeks 90 days authority. Supporting shipper(s): Massey Ferguson, Inc., 1901 Bell Avenue, Des Moines, IA 50315. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 93840 (Sub-45TA), filed April 26, 1979. Applicant: GLESS BROS., INC., P.O. Box 219, Glue Grass, IA 52726. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. *Materials and supplies used in the manufacture of iron and steel articles,* from Chicago, IL to Wilton, IA for 180 days. Supporting shipper(s): North Star Steel, P.O. Box 749, Wilton, IA 52778. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 95490 (Sub-48TA), filed May 14, 1979. Applicant: UNION CARTAGE COMPANY, 9A Southwest Cutoff, Worcester, Massachusetts 01604. Representative: Edward J. Kiley, 1730 M Street, N.W., Suite 501, Washington, DC 20036. Malt beverages in containers, from Oswego and Onondaga counties (Syracuse, Liverpool, Clay and Fulton area), NY to CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT, VA, WV, and Washington, DC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Miller Brewing Company, 3939 W. Highland Boulevard, Milwaukee, WI 53208. Sent protests to: David M. Miller, DS, ICC, 436 Dwight Street, Springfield, MA 01103.

MC 95540 (Sub-1107 TA), filed April 27, 1979. Applicant: WATKINS MOTOR LINES, INC., 1144 West Griffin Road, P.O. Box 1030, Lakeland, FL 33802. Representative: Benjy W. Fincher, same address as applicant. *Foodstuffs, meats, meat products,* and *meat byproducts, dairy products,. articles distributed by meat packing houses,* and *such commodities as are used by meat packers in the conduct of their business* between points at or near Britt, IA and Mason City, IA, on the one hand, and, on the other, points in the U.S. for 180 days. Supporting shipper(s): Armour & Co., Greyhound Tower, Phoenix, AZ 85077. Send protest to: Donna M. Jones, T/A, ICC, Monterey Bldg., Suite 101, 8410 N.W. 53rd Terr., Miami, FL 33157.

MC 95540 (Sub-1106 TA), filed May 1, 1979. Applicant: WATKINS MOTOR LINES, INC., 1144 West Griffin Road, P.O. Box 1636, Lakeland, FL 33802. Representative: Benjy W. Fincher, same address as applicant. *Such merchandise as is used, sold, or dealt in by retail, wholesale, or department stores, textile mills, plants, warehouses or retail or wholesale textile dealers* between Fort Worth and Dallas, TX, on the one hand, and, on the other, points in FL, PA, and NY for 180 days. Supporting shipper(s): Montgomery Ward, Montgomery Ward Plaza, Chicago, IL 60671, Haber Textiles, 1720 E. Hwy 356, Irving, TX 75060. Send protests to: Donna M. Jones, T/A, ICC, Monterey Bldg., Suite 101, 8410 N.W. 53rd Ter., Miami, FL 33166.

MC 106401 (Sub-67 TA), filed April 18, 1979. Applicant: JOHNSON MOTOR LINES, INC., PO Box 31577, Charlotte, NC 28231. Representative: Roger W. Rash, same as applicant Charlotte, NC 28231. *Drugs and medicines, except commodities in bulk,* from the facilities of Glenbrook Laboratories, DIV. of Sterling Drug, Inc., at or near Gulfport, MS to Dallas, TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Sterling Drug, Inc., 90 Park Ave. NY, NY 10016. Send protest to: District Supervisor Terrell Price, 800 Briar Creek Rd-Rm CC516, Mart Office Building, Charlotte, NC 28205.

MC 107541 (Sub-61TA), filed May 1, 1979. Applicant: WASHINGTON-OREGON LUMBER FREIGHTERS, INC., 12925 N. E. Rockwell Drive, Vancouver, WA 98665. Representative: Edward A. Francom, 12925 N. E. Rockwell Drive, Vancouver, WA 98665. Limestone, calcium carbonate and calcium carbonate products from the facilities of Pluess-Staufer Inc. at Lucerne Valley, CA to points in the States of AZ, CA, CO, ID, MT, NM, NV, OR, TX, UT, WA and WY for 180 days. A corresponding ETA was granted 5/1/79 for 30 + 2 and a permanent will be filed within 60 days. Supporting shipper(s): Pluess-Staufer (California), Inc., P. O. Box 825, Lucerne Valley, CA 92356. Send protests to: R. V. Dubay, D/S, ICC. 114 Pioneer Courthouse, Portland, OR 97204.

MC 107541 (Sub-62TA), filed April 30, 1979. Applicant: WASHINGTON-OREGON LUMBER FREIGHTERS, INC., 12925 N. E. Rockwell Drive, Vancouver, WA 98665. Representative: Edward A. Francom, 12925 N. E. Rockwell Drive, Vancouver, WA 98665. For 180 days, *Wallboard, other than gypsum board* from the facilities of Owens Corning Fiberglas at St. Helens, OR to points in the State of AZ. A corresponding ETA has been filed. A permanent application will be filed in 60 days. Supporting shipper(s): Owens Corning Fiberglas, St. Helens, OR. Send protests to: D/S, ICC, R. V. Dubay, 114 Pioneer Courthouse, Portland, Oregon 97204.

MC 110191 (Sub-34TA), filed April 25, 1979. Applicant: TURNER'S EXPRESS, INCORPORATED, 1300 Shelton Avenue, Norfolk, VA 23502. Representative: D. L. Turner, same address as above. *Paper and Paper Products,* from West Point, VA to points in DE; NJ; NY; MD; PA; CT; MA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The Chesapeake Corp. of VA., Box 311, West Point, VA 23181. Send protests to: Paul D. Collins, DS, ICC, Room 10-502 Federal Bldg., 400 North 8th Street, Richmond, VA 23240.

MC 110420 (Sub-816TA), filed April 19, 1979. Applicant: QUALITY CARRIERS, INC., P.O. Box 186, Pleasant Prairie, WI 53158. Representative: John Sims, Jr., 915 Pennsylvania Bldg., 425 13th St., NW, Washington, DC 20004. *Liquid chemicals, in bulk, in tank vehicles,* from Lake Charles, LA to points in the U.S. (except AK and HI), for 180 days. Supporting shipper(s): PPG Industries, Inc., One Gateway Center, Pittsburgh, PA 15222. Send protests to: G. Daugherty, TA, ICC, Federal Bldg., 517 E. Wisconsin Ave. Rm. 619, Milwaukee, WI 53202.

MC 111170 (Sub-257TA), filed April 5, 1979. Applicant: WHEELING PIPE LINE, INC., P.O. Box 1718, El Dorado, AR 71730. Representative: H. A. Kennedy, P.O. Box 1718, El Dorado, AR 71730. Sodium Tribromophenate, a liquid chemical, in bulk, in tank vehicles From the facilities of Velsicol Chemical Corporation at El Dorado, AR to the facilities of Velsicol Chemical Corporation at Viterbo (Beaumont), TX for 180 days as a common carrier over irregular routes. An underlying ETA seeks *90 days* authority. Supporting shipper(s): Velsicol Chemical Corporation, 341 E. Ohio Street, Chicago, IL 60611. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 111170 (Sub-258TA), filed April 25, 1979. Applicant: WHEELING PIPE LINE, INC., P.O. Box 1718, El Dorado, AR 71730. Representative: H. A. Kennedy, same as applicant. *Lubricating oil,* in bulk, in tank, from Norphlet, AR to Midway, CO, for 180 days as a common carrier over irregular routes. Supporting shipper(s): MacMillan Ring Free Oil Co., Inc., 200 Petroleum Building, El Dorado, AR 71730. Send protests to: William H. Land, Jr. D/S, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 111231 (Sub-265TA), filed April 13, 1979. Applicant: JONES TRUCK LINES, INC., 610 E. Emma Ave., Springdale, AR 72764. Representative: Don A. Smith, P.O. Box 43, 510 North Greenwood, Fort Smith, AR 72902. Foodstuffs, frozen and other than frozen, from the facilities of Welch Foods, Inc. at or near Westfield, NY and North East, PA to points in AR, KS, LA, MO, MS, NM, OK, TN and TX, for 180 days as a common carrier over irregular routes. Supporting shipper(s): Welch Foods, Inc., Westfield, NY 14787. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 111231 (Sub-266TA), filed May 17, 1979. Applicant: JONES TRUCK LINES, INC., 610 East Emma Avenue, Springdale, AR 72764. Representative: Don A. Smith, P.O. Box 43, 510 North Greenwood, Fort Smith, AR 72902. *electrolytic chlorination cells* (except in bulk), from Russellville, AR to Jackson and Brazoria Counties, TX, for 180 days as a common carrier over irregular routes. An underlying ETA seeks *90 days* authority. Supporting shipper(s): Dow Chemical Co. U.S.A., P.O. Box 1048, Russellville, AR 72801. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, LIttle Rock, AR 72201.

MC 111401 (Sub-561TA), filed May 5, 1979. Applicant: GROENDYKE TRANSPORT, INC., 2510 Rock Island Blvd., P.O. Box 632, Enid, OK 73701. Representative: Victor R. Comstock (same address as applicant). *Lubricating oil,* in bulk, in tank vehicles, from Coffeyville, KS, to Memphis, TN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Petroleum Sources, Inc., P.O. Box 32246, Oklahoma City, OK 73123. Send protests to: D/S, ICC, Room 240 Old Post Office, 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 111401 (Sub-562TA), filed May 7, 1979. Applicant: GROENDYKE TRANSPORT, INC., 2510 Rock Island Blvd., P.O. Box 632, Enid OK 73701. Representative: Victor R. Comstock (same address as applicant). *Chlorinated camphene (toxaphene),* in bulk, in tank vehicles, from Waco, TX, to Altus, OK, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Hercules Incorporated, 3169 Holcomb Bridge Road, Suite 700, Norcross, GA 30071. Send protests to: D/S, ICC, Room 240 Old Post Office, 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 112801 (Sub-230TA), filed April 17, 1979. Applicant: TRANSPORT SERVICE CO., 15 Salt Creek Lane, Hinsdale, IL 60521. Representative: Gene Smith (same address as applicant). *Hydrochloric (Muriatic) acid, in bulk, in tank vehicles,* from Cincinnati, OH to points in IL, IN, IA, MI and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Dow Chemical USA, East-Central Zone, 1400 East Touhy Ave., Des Plaines, IL 60018. Send protests to: Annie Booker, TA, ICC, 1386 Everett Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 112801 (Sub-231 TA), filed April 17, 1979. Applicant: TRANSPORT SERVICE CO., 15 Salt Creek Lane, Hinsdale, IL 60521. Representative: Gene Smith (same address as applicant). *Liquid chemicals, in bulk, in tank vehicles,* from Plaquemine, LA to points in AL, AR, FL, GA, IL, IA, IN, KS, KY, MI, MS, MO, NJ, NY, NC, OH, OK, PA, SC, TN, VA, WV, WI and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Dow Chemical USA, Building 3302, P.O. Box 150, Plaquemine, LA 70764. Send protests to: Annie Booker, TA, ICC, 1386 Everett Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 112801 (Sub-232TA), filed April 20, 1979. Applicant: TRANSPORT SERVICE CO., 2 Salt Creek Lane, Hinsdale, IL 60521. Representative: Gene Smith (same address as applicant). *Chemicals, in bulk, in tank vehicles,* from the facilities of Dow Chemical USA at Freeport, TX to points in AR, IL, IA, IN, KS, KY, MI, MN, MO, NE, OH, OK, TN and WI for 180 days. An ETA has been granted for 90 days. Supporting Shipper(s): Dow Chemical USA, P.O. Drawer K, Freeport, TX 77541. Send protests to: David Hunt, TA, 219 S. Dearborn St., Room 1386, Chicago, IL 60604.

MC 112801 (Sub-233TA), filed April 17, 1979. Applicant: TRANSPORT SERVICE CO., 15 Salt Creek Lane, Hinsdale, IL 60521. Representative: Gene Smith (same address as applicant). *Chemicals, in bulk, in tank vehicles,* from Lake Charles, IA to points in the United States (except Alaska and Hawaii), for 180 days. Supporting Shipper(s): PPG Industries, One Gateway Center, Pittsburgh, PA 15222. Send protests to: Annie Booker, TA, ICC, 1386 Everett Dirksen Bldg., 219 S. Dearborn St., Chicago, IL 60604.

MC 113861 (Sub-72TA), filed April 23, 1979. Applicant: WOOTEN TRANSPORTS, INC., 153 Gaston Avenue, P.O. Box 725, Memphis, TN 38101. Representative: James N. Clay, III, 2700 Sterick Building, Memphis, TN 38103. Liquid sugar, corn syrup, and blends of corn syrup and liquid sugar, in bulk, in tank vehicles, from Memphis, TN to points in AL, MO, LA, TX, GA, FL and OK, for 180 days. Supporting Shipper(s): Macaroy Distributing Co., 2151 York Avenue, Memphis, TN 38104. Send protests to: Floyd A. Johnson, DS, ICC, Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 113861(Sub-73TA), filed April 23, 1979. Applicant: WOOTEN TRANSPORTS, INC., 153 Gaston Avenue, P.O. Box 725, Memphis, TN 38101. Representative: James N. Clay, III, 2700 Sterick Building, Memphis, TN 38103. *Liquid fertilizer,* in bulk, in tank vehicles, from Memphis, TN to points in AR, MS, MO and TN, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Allied Chemical Corporation, P.O. Box 2120, Houston, TX 77001. Send protests to: Floyd A. Johnson, DS, ICC, Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 115331 (Sub-352TA), filed April 23, 1979. Applicant: TRUCK TRANSPORT INCORPORATED, 29 Clayton Hills Lane, St. Louis, Missouri 63131. Representative: Steve Vogt, 11040 Manchester Rd., St. Louis, MO 63122. (1) Paper, paper products and cellulose products; and (2) paper, paper products, cellulose products and textile softeners, (1) from the facilities of Procter & Gamble Paper Products at or near Neely's Landing, MO; and (2) from the facilities of Procter & Gamble Paper Products at or near Green Bay, WI to points in and east of ND, SD, NE, KS, OK and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Procter & Gamble Paper Products Company, P.O. Box 599, Cincinnati, OH 45201. Send protests to: P. E. Binder, DS, ICC, Rm. 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 115841 (Sub-706TA), filed May 3, 1979. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., 3041 Executive Park Drive, Suite 110, Bldg. 100, Knoxville, TN 37919. Representative: D. R. Beeler, (same address as applicant). *Foodstuffs (except commodities in bulk)* from Independence, VA and Uniontown, AL to Allentown, PA and Champaign, IL, for 180 days. Underlying ETA for 90 days filed. Supporting Shipper(s): Kraft, Inc., 500 Peshtigo Court, Chicago, IL 60690. Send protests to: Glenda Kuss, TA, ICC, Suite A–422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 115841 (Sub-707TA), filed April 24, 1979. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., 3041 Executive Park Drive, Suite 110, Building 100, Knoxville, TN 37919. Representative: D. R. Beeler (same address as applicant). *Adhesives, glues, pastes, cleaning, preserving & sealing compounds and products, solvents, stains and related equipment and supplies,* from Kalamazoo, MI and Dayton, OH, to points in MO, KS, OK, TX, AR, LA, TN, MS, AL, FL, GA, NC, SC, VA, KY and WV, for 180 days. RESTRICTED to traffic originating at or destined to the facilities of Roberts Consolidated Industries. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Roberts Consolidated Industries, 600 N. Baldwin Park Blvd., City of Industry, CA 91749. Send protests to: Glenda Kuss, T/A, ICC, Suite A–422 U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 116300 (Sub-44TA), filed April 27, 1979. Applicant: NANCE AND COLLUMS, INC., P.O. Drawer J, Fernwood, MS 39635. Representative: Harold D. Miller, Jr., P.O. Box 22567, Jackson, MS 39205. *Malt beverages, and materials and supplies dealt in by malt beverage distributors* from the facilities of Jos. Schlitz Brewing Company at or near Memphis, TN to points in Jefferson and Lafayette Parishes, LA, for 180 days. Supporting Shipper(s): Neal W. Kaye, Inc., 201 Laitram Lane, Harahan, LA 70123. Lafayette Distributors, Inc., P.O. Box 3867, Lafayette, LA 70502. Send protests to: Alan Tarrant, D/S, ICC, Rm. 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 117241 (Sub-2 TA), filed April 23, 1979. Applicant: RONALD J. EMANUELSON, 418 Higby Road, Middletown, Connecticut 06457. Representative: Robert C. Engstrom, One Financial Plaza, Hartford, CT 06103. Fertilizer and fertilizer materials including lime and limestone in bulk in spreader dump or hopper unloading vehicles; also fertilizer and fertilizer materials, weed killing compounds and insecticides in mixed truckloads, (1) from Portland, CT to points in MA (other than Barnstable, Bristol and Plymouth Counties), VT, NH, ME and NY (other than Rensselaer, Columbia, Dutchess, Putnam, Westchester, Suffolk and Nassau Counties), (2) from points in MA, RI, VT, NH, ME and NY to Portland, CT, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Swift Agricultural Chemical Corp., 340 Interstate North Pkwy. Suite 150, Atlanta, GA 30339. Send protests to: J. D. PERRY, JR., DS, ICC, 135 High Street, Hartford, CT 06103.

MC 117730 (Sub-52TA), filed April 9, 1979. Applicant: KOUBENEC MOTOR

SERVICE, INC., Route 47, Huntley, IL 60142. Representative: Stephen H. Loeb, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. *Foodstuffs and materials and supplies used in the manufacture and distribution of foodstuffs (except commodities in bulk),* from the facilities of Oscar Mayer & Co., at Madison, WI to the facilities of Oscar Mayer & Co., Inc., at or near Goodlettsville, TN. An underlying ETA seeks 90 days authority. Supporting shipper(s): Oscar Mayer & Co., Inc., P.O. Box 7188, Madison, WI 53707. Send protests to: Annie Booker, TA, ICC, 1386 Everett Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 117730 (Sub-53TA), filed April 30, 1979. Applicant: KOUBENEC MOTOR SERVICE, INC., Route 47, Huntley, IL 60142. Representative: Stephen H. Loeb, Suite 200, 205 West Touhy Ave., Park Ridge, IL 60068. *Rough steel forgings* from the facilities of Wyman-Gordon Company at Danville and Harvey, IL to Cleveland and Fostoria, OH, Jackson, MI and Hagerstown, MD for 180 days. An ETA has been filed for 90 days. Supporting Shipper(s): Wyman-Gordon Company, 14600 S. Wood, Harvey, IL 60426. Send protests to: David Hunt, TA 219 S. Dearborn St., Room 1386 Chicago, IL 60604.

MC 117730 (Sub-54TA), filed 4-9-79. Applicant: Koubenec Motor Service, Inc., Route 47, Huntley, IL 60142. Representative: Stephen H. Loeb, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. *Flux Compounds* (except in bulk). From the facilities of Cleveland Metallurgical Supply Co. at Cleveland OH to Chicago, IL and points in its commercial zone. 180 days. An underlying ETA seeks *90 days* authority. Supporting Shipper(s): Cleveland Metallurgical Supply Co., 13621 McCracken Road, Cleveland, OH 44125. Send protests to: T/A Annie Booker, Room 1386, 219 S. Dearborn, Chicago, IL 60604.

MC 117730 (Sub-55 TA), filed April 11, 1979. Applicant: KOUBENEC MOTOR SERVICE, INC., Route 47, Huntley, IL 60142. Representative: Stephen H. Loeb, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. *Chemicals (except commodities in bulk, in tank vehicles),* (1) from the facilities of Rohm & Haas Company at Bristol, Croydon and Philadelphia, PA to points in IL, IN, IA, KS, MI, MO and WI, and (2) from the facilities of Rohm & Haas Company at Louisville, KY to points in IL, IN, IA, MN, MO and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Rohm & Haas Company, Inc., Independence Mall West, Philadelphia, PA 19105. Send protests to: Annie Booker, TA, ICC, 1386 Everett Dirksen Bldg., 219 So. Dearborn St., Chicago, Il 60604.

MC 117820 (Sub-32 TA), filed April 11, 1979. Applicant: Aurelia Trucking Co., 2121 Petit Avenue, Port Huron, MI 48060. Representative: Robert D. Schuler, 100 W. Long Lake Road, Ste. 102, Bloomfield Hills, MI 48013. *Plastic pellets in containers,* from facilities of Federal Plastics, Inc., Cranford, NJ to Tecumseh and Walled Lake, MI for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Comfort Brick and Tile Company, 6393 Rogers Highway, Tecumseh, MI 49286. Send protests to: C. R. Flemming, D/S, ICC 225 Federal Building, Lansing, MI 48933.

MC 117940 (Sub-334 TA), filed April 25, 1979. Applicant: NATIONWIDE CARRIERS, INC., P.O. Box 104, Maple Plain, MN 55359. Representative: Allan L. Timmerman, 5300 Highway 12, Maple Plain, MN 55359. *Such commodities as are dealt in by retail department stores (except foodstuffs, those of unusual value, explosives, commodities in bulk, household goods and those requiring special equipment)* from KY, MI, OH and TN to the facilities of Gamble Skogmo, Inc. in IL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Gamble Skogmo, Inc., 5100 Gamble Drive, Minneapolis, MN 55481. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 118270 (Sub-10 TA), filed April 27, 1979. Applicant: PRODUCE TRANSPORT SERVICE, INC., 181 West Ramapo Street, Mahwah, NJ 07403. Representative: Joseph F. Hoary, 121 South Main Street, Taylor, PA 18517. *Dairy products.* From Arcade, NY to ME, MA, NH, VT, RI, CT, NJ, NY, PA, GA, MD, VA, DE, FL, NC, SC, & WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Emkay Trading Corporation, 250 Clearbrook Road, Elmsford, NY 10523. Send protests to: Joel Morrows, D/S, ICC, 9 Clinton St., Room 618, Newark, NJ 07102.

MC 119670 (Sub-44 TA), filed April 24, 1979. Applicant: THE VICTOR TRANSIT CORPORATION, 5250 Este Ave., Cincinnati, OH 45232. Representative: Robert H. Kinker, 314 W. Main St., P.O. Box 464, Frankfort, KY 40601. *Glass containers,* from Lawrenceburg, IN, to points in the states of KY, OH, IL, MI, and St. Louis County, MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Thatcher Glass Manufacturing Co., Division of Dart Industries, Inc., James F. Rehr, Asst. General Traffic Manager, P.O. Box 265, Elmira, NY 14902. Send protests to: Bureau of Operations, ICC, 600 Arch St., Room 3238, Philadelphia, PA 19106.

MC 119700 (Sub-57 TA), filed April 26, 1979. Applicant: STEEL HAULERS, INC., 306 Ewing Avenue, Kansas City, MO 64125. Representative: Frank W. Taylor, Jr., Suite 600, 1221 Baltimore Ave., Kansas City, MO 64105. *Wood Fencing, Wood Timbers, Wood Shavings and Wood Posts,* from Gladstone, MI to points in MO, TX, OH, KY, IL, IN, IA, OK and AR, for 180 days. Supporting shipper: The Mac Gillis & Gibbs Company, P.O. Box 12788, New Brighton, MN 55112. Send protests to: John V. Barry, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO. 64106. An underlying ETA seeks 90 days authority. Supporting shipper(s): The Mac Gillis & Gibbs Company, P.O. Box 12788, New Brighton, MN 55112. Send protests to: John V. Barry, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO. 64106.

MC 119700 (Sub-58 TA), filed April 9, 1979. Applicant: STEEL HAULERS, INC., 306 Ewing Avenue, Kansas City, MO 64125. Representative: Frank W. Taylor, Jr., Suite 600, 1221 Baltimore Avenue, Kansas City, MO 64105. *Iron and steel articles,* from the facilities of Armco, Inc. at Ashland, KY, and Middletown, Oh to points in AR, KS, IA, MN, MO, NE, OK, TX, CO, MS and LA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Armco, Inc., 703 Curtis Street, Middletown, Oh 45043. Send protests to: Vernon V. Coble, DS, ICC, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 119700 (Sub-59 TA), filed April 13, 1979. Applicant: STEEL HAULERS, INC., 306 Ewing Avenue, Kansas City, MO 64125. Representative: Frank W. Taylor, Jr., Suite 600, 1221 Baltimore Avenue, Kansas City, MO 64105. *Iron and steel articles and equipment, materials and supplies* used in the manufacture and distribution of Iron and steel articles, from the facilities of North Star Steel Corporation at or near Newport, MN, to AR, CO, IL, IN, IA, KY, LA, MI, MO, OH, OK, TX and WI, for 180 days. Supporting shipper(s): North Star Steel Corporation, P.O. Box 43189, St. Paul, MN 55164. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 119741 (Sub-183TA), filed April 25, 1979. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., P.O. Box 1235, Fort Dodge, IA 50501.

Representative: D. L. Robson (same as applicant). *Meats, meat products, meat by-products, and articles distributed by meat packinghouses, as described in Sections A and C of Appendix I to the Report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766* (except hides and commodities in bulk, in tank vehicles), from the facilities of Wilson Foods Corporation at Albert Lea, MN to IL, IA, KS, MO, and NE. Restricted to traffic originating at the named origin and destined to the named destinations for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wilson Foods Corporation, 4545 Lincoln Blvd. Oklahoma City, OK 73105. Send protests to: Herbert W. Allen, DS, ICC 518 Federal Building, Des Moines, IA 50309.

MC 120181 (Sub-16TA), filed April 20, 1979. Applicant: MAIN LINE HAULING CO., INC., P.O. Box C, St. Clair, MO 63077. Representative: Ralph Howard (same as applicant). *Hats, caps, containers, container closures, glassware, packaging products, container components and scrap materials,* and *materials, equipment and supplies used in the manufacture, sale and distribution* of the foregoing commodities (except commodities in bulk, in tank vehicles, and those which because of size and weight require the use of special equipment), for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Paramount Cap Mfg. Co., Bourbon, MO, Libbey Glass, 940 Ash St., Toledo, OH 43693. Send protests to: P. E. Binder, DS, ICC, Room 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 121060 (Sub-105TA), filed April 17, 1979. Applicant: ARROW TRUCK LINES, INC., P.O. Box 1416 Birmingham, AL 35201. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. *Iron and steel articles,* from the facilities of United States Steel Corporation at or near Gary, IN, South Chicago, Joliet and Waukegan, IL, to points in AL, AR, GA, KY, LA, MO, MS, and TN, for 180 days. Supporting shipper(s): United States Steel Corporation, 1000 East 80th Place, Merrillville, IN 46410. Send protests to: Mabel E. Holston, T/A ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 121641 (Sub-1TA), filed April 30, 1979. Applicant: Jerry O Connell d.b.a., SHAMROCK TRUCK LINE, 2233 S. 7th St., P.O. Box 6928, San Jose, CA 95150. Representative: Edwin L. Scott (same address as above). *General commodities,* except Vehicles, Household Goods, Livestock, Bulk Commodities in Tank Type or Vacuum type equipment and hazardous material, between AZ, CA, NV and OR for 180 days. SUPPORTING SHIPPER(S): VSL Corporation, 1077 Dell Ave., Campbell, CA 95008. SEND PROTESTS TO: District Supervisor, 211 Main, Suite 500, San Francisco, CA 94105. Supporting shipper(s): VSL Corporation, 1077 Dell Ave., Campbell, CA 95008. Send protests to: District Supervisor, 211 Main, Suite 500, San Francisco, CA 94105.

MC 124141 (Sub-17TA), filed April 26, 1979. Applicant: JULIAN MARTIN, INC., P.O. Box 3348, Highway 25 W., Batesville, AR 72501. Representative: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101. *Bagged animal feeds* from Chilton, WI to Chamblee, GA; Circleville, OH; Kansas City, MO; Kansas City, KS; Sanford, NC; Lancaster and York, PA, for 180 days as a common carrier over irregular routes. An underlying ETA seeks *90 days* authority. Supporting shipper(s): Carnation Company, 5054 Wilshire Blvd., Los Angeles, CA 90036. Send protests to: William H. Land, Jr., DS, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 124141 (Sub-18TA), filed April 30, 1979. Applicant: JULIAN MARTIN, INC., P.O. Box 3348, Batesville, AR 72501. Representative: Don Garrison, P.O. Box 159, Rogers, AR 72756. *Charcoal briquettes* from Dierks, AR to AZ, CO, LA, OK, TN and TX, and MS, for 180 days as a common carrier over irregular routes. Supporting shipper(s): Weyerhaeuser Company, P.O. Box 1060, Hot Springs, AR 71901. Send protests to: William H. Land, Jr., DS, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 124511 (Sub-56TA), filed April 23, 1979. Applicant: OLIVER MOTOR SERVICE, INC., P.O. Box 223, East Hwy 54, Mexico, MO 65265. Representative: Leonard R. Kofkin, 39 South LaSalle St., Chicago, IL 60603. *Common carrier:* regular route: *Iron and Steel Articles,* from the facilities of Wisconsin Steel Corporation at Chicago, IL to Maryville, MO, for 180 days. Supporting shipper(s): Wisconsin Steel Corporation, 2800 E. 106th St., Chicago, IL 60617. Send protests to: V. V. Coble, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wisconsin Steel Corporation, 2800 E. 106th St., Chicago, IL 606017. Send protests to: V. V. Coble, DS, ICC, 600 Federal Bldg., 600 Walnut St., Kansas City, MO 64106.

MC 124711 (Sub-87TA), filed April 19, 1979. Applicant: BECKER CORPORATION, P.O. Box 1050, El Dorado, KS 67042. Representative: Norman A. Cooper (same as above). *Petroleum products,* in bulk, in tank vehicles, from Shell Oil Co. refinery at or near Roxanna, IL to Kansas City, MO and to KS, NE and IA, for 180 days, common, irregular. Supporting Shipper(s): Allied Oil & Supply, Inc., 2209 South 24th St., Omaha, NE 68108. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 101 Litwin Bldg., Wichita, KS 67202.

MC 124711 (Sub-90TA), filed April 30, 1979. Applicant: BECKER CORPORATION, P.O. Box 1050, El Dorado, KS 67042. Representative: Norman A. Cooper (same as above). *Petroleum products,* in bulk, in tank vehicles from facilities of Mobil Oil Corporation at or near Augusta, KS to points in AR; common, irregular, 180 days. Supporting shipper: Mobil Oil Corporation, Dallas, TX. Send protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg., Wichita, KS. 67202. Supporting Shipper(s): Mobil Oil Corporation, 8350 N. Central Expressway, Dallas, TX 75206. Send protests to: M. E. Taylor, D/S, ICC, 101 Litwin Bldg., Wichita, KS 67202.

MC 124821 (Sub-44TA), filed April 23, 1979. Applicant: GILCHRIST TRUCKING, INC., 105 North Keyser Avenue, Old Forge, PA 18518. Representative: John W. Frame, Box 626, 2207 Old Gettysburg Road, Camp Hill, PA 17011. *Television picture tubes or parts thereof,* and *materials and supplies used in the manufacture, sales, and distribution of televisions and televisions parts,* between Dunmore, PA and Bloomington, IN for 180 days. An underlying ETA seeks authority for 90 days. Supporting Shipper(s): RCA Corporation, Keystone Industrial Park, Dunmore, PA 18512. Send protests to: ICC, Federal Reserve Bank Building, 101 N. Seventh Street, Room 620, Phila., PA 19106.

MC 124821 (Sub-45TA), filed April 9, 1979. Applicant: GILCHRIST TRUCKING, INC., 105 North Keyser Avenue, Old Forge, PA 18518. Representative: John W. Frame, Box 626, 2207 Old Gettysburg Road, Camp Hill, PA 17011. *Building and construction materials,* from the facilities of Celotex Corporation, Sunbury, PA, to points in NY, NJ, CT, MA, RI, MD, DC, DE, VA, AL, GA, NC, SC, TN, FL, LA, AR, MS, KY, OH, IL, IN and MI for the account of The Flintkote Company, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: The Flintkote Company, 580 Decker Drive,

Irving, TX 75062. Send protests to: ICC, Wm. J. Green, Jr., Federal Bldg., 600 Arch St., Philadelphia, PA 19106. An underlying ETA seeks 90 days authority. Supporting Shipper(s): The Flintkote Company, 580 Decker Drive, Irving, TX 75062. Send protests to: ICC, Wm. J. Green, Jr., Federal Bldg., 600 Arch St., Philadelphia, PA 19106.

MC 124821 (Sub-50TA), filed April 17, 1979. Applicant: GILCHRIST TRUCKING, INC., 105 North Keyser Avenue, Old Forge, PA 18518. Representative: John W. Frame, Box 626, 2207 Old Gettysburg Road, Camp Hill, PA 17011. *Starch and chemicals* (except in bulk), from the facilities of National Starch and Chemical Corporation at or near Indianapolis, IN, to points in the states of CT, MA, ME, MD, NJ, NY, PA, RI and VA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): National Starch & Chemical Corp., P.O. Box 6500, Bridgewater, NJ 08807. Send protests to: ICC, Wm. J. Green, Jr., Federal Bldg., 600 Arch St., Philadelphia, PA 19106.

MC 125141 (Sub-1 TA), filed April 19, 1979. Applicant: Sea-Cold Service Inc., 320 Main St., Gloucester, MA 01930. Representative: Edward F. Buckley (same address as above). Authority sought to operate as a common carrier, over irregular routes, in the transportation of *edible flour products* from Brook Park, OH and Evansville, IN to Gloucester and New Bedford, MA and Mobile, AL for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The Gorton Group, Division of General Mills Inc., Gloucester, MA 01930. Send protests to: John B. Thomas, DS, ICC, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 125470 (Sub-51 TA), filed April 27, 1979. Applicant: MOORE'S TRANSFER, INC., P.O. Box 1151, Norfolk, NE 68701. Representative: Lavern R. Holdeman, P.O. Box 81849, Lincoln, NE 68501. *Iron and steel articles*, from the facilities of Nucor Steel Corporation at or near Norfolk, NE to points in CA, ID, MT, NV, UT, WA, and WY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Nucor Steel Corporation, P.O. Box 309, Norfolk, NE 68701. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 125551 (Sub-16 TA), filed May 3, 1979. Applicant: K & W TRUCKING CO., INC., 101 Cooper Avenue North, P.O. Box 1415, St. Cloud, MN 56301. Representative: Robert D. Gisvold, 1000 First National Bank Building, Minneapolis, MN 55402. *General commodities (except classes A and B explosives and commodities in bulk)* between points in the Seattle, WA Commercial Zone, restricted to traffic having prior or subsequent movement by water, for 180 days. Supporting shipper(s): Western Compound Co., 1024 6th Avenue So., Seattle, WA 98134. Totem Ocean Trailer Express, Inc., 1100 Olive Way, P.O. Box 24908, Seattle, WA 98134. Pacific Alaska Lines, 2401 Fourth Ave., Seattle, WA 98121. Puget Sound Packaging and Crating Inc., 9407 E. Marginal Way So., Seattle, WA 98134. Alaska Hydro-Train, 2401 Fourth Ave., Seattle, WA 98121. Pacific Alaska Lines-West, 2401 Fourth Ave., Seattle, WA 98121. Hawaiian Marine Lines, 2401 Fourth Ave., Seattle, WA 98121. Hydro-Tech, Inc., 1117 Phillips Field Rd., Seattle, WA. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building, 110 South 4th Street, Minneapolis, MN 55401.

MC 127030 (Sub-7 TA), filed April 13, 1979. Applicant: MATTHEW J. DE PALMA, INC., 1700 Orthodox Street, Philadelphia, PA 19124. Representative: Leonard W. Becker (same as above). *Raw sugar*, in bulk, from Camden, NJ to Yonkers, NY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Philipp Brothers, 1221 Avenue of The Americas, New York, NY 10020. Send protests to: ICC, Federal Reserve Bank Bldg., 101 N. Seventh Street, Room 620, Philadelphia, PA 19106.

MC 127610 (Sub-3TA), filed May 2, 1979. Applicant: J. P. NOONAN TRANSPORTATION, INC., 436 West Street, West Bridgewater, Mass. 02379. Representative: Frank J. Weiner, 15 Court Square, Boston, Mass. 02108. *Slag*, from Bow, NH to points in ME, VT, MA, CT, RI, and NY for 180 days. Supporting Shipper(s): H. B. Reed & Co., Inc., 8149 Kennedy Ave., Highland, IN 46322. Send protests to: D/S John B. Thomas, ICC, 150 Causeway St., Room 501, Boston, Mass. 02114.

MC 127651 (Sub-45TA), filed April 23, 1979. Applicant: EVERETT G. ROEHL, INC., East 29th St., P.O. Box 7, Marshfield, WI 54449. Representative: Richard Westley, 4506 Regent St., Suite 100, Madison, WI 53705. *Iron and steel articles* from facilities of L. B. Foster Co., at or near Bedford Park, IL to points in WI and MN, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): L. B. Foster Co., 6660 S. Nashville Ave., Bedford Park, IL. Send protests to: Gail Daugherty, TA, ICC—Bureau of Operations, US Federal Bldg & Courthouse, 517 East Wisconsin Ave. Rm. 619, Milwaukee, WI 53202.

MC 127840 (Sub-100TA), filed April 17, 1979. Applicant: MONTGOMERY TANK LINES, INC., 17550 Fritz Drive, Lansing, IL 60438. Representative: William H. Towle, 180 North LaSalle St., Chicago, IL 60601. *Petrochemicals, in bulk*, from Houston, TX to points in OH, CT, NJ, CO, AZ, IL, UT, MO, PA, AR, CA, MI, WI and IN, for 180 days. Supporting Shipper(s): Chemical Exchange, Inc., 101 Concrete St., Houston, TX 77012. Send protests to: Annie Booker, TA, ICC, 1386 Everett Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 127840 (Sub-101TA), filed April 17, 1979. Applicant: MONTGOMERY TANK LINES, INC., 17550 Fritz Drive, Lansing, IL 60438. Representative: William H. Towle, 180 North LaSalle St., Chicago, IL 60601. *Plastic pellets*, from Denver, CO to Salt Lake City, UT, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Phillips Petroleum Company, 154 Phillips Building Annex, Bartlesville, OK 74004. Send protests to: Annie Booker, TA, ICC, 1386 Everett Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 127840 (Sub-104TA), filed March 28, 1979. Applicant: MONTGOMERY TANK LINES, INC., 17550 Fritz Drive, Lansing, IL 60438. Representative: William H. Towle, 180 North LaSalle Street, Chicago, IL 60601. *Animal fats, animal oils, vegetable oils, and blends and products of animal fats, animal oils and vegetable oils*, in bulk, in tank vehicles, from Denison, TX to Points in CA, WA and OR for 180 days. Supporting shipper(s): Safeway Stores, Inc., 5725 East 14th Street, Oakland, CA 94660. Send protests to: Annie Booker, Transportation Assistant, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 127840 (Sub-105TA), filed March 30, 1979. Applicant: MONTGOMERY TANK LINES, INC., 17550 Fritz Drive, Lansing, IL 60438. Representative: William H. Towle, 180 North LaSalle Street, Chicago, IL 60601. *Glycol Ether*, from Crosby, TX to Pandora, OH, 180 days. Supporting shipper(s): KMCO, Inc., 16503 Ramsey Road, Crosby, TX 77532. Send protests to: T/A Annie Booker, Room 1386, 219 South Dearborn Street, Chicago, IL 60604.

MC 127991 (Sub-5TA), filed March 27, 1979. Applicant: P. F. HUNTLEY CO., 6222 E. Desmet, Spokane, WA 99206. Representative: Jack H. Blanshan, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. *Bananas and agricultural commodities exempt from regulation under Section 10526 (a)(6) of the Interstate Commerce Act when*

transported in mixed loads with bananas, from the facilities of DelMonte Banana Co. at Port Hueneme, CA to points in ID and WA, restricted to the transportation of traffic having a prior movement by water, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): DelMonte Banana Company, 1201 Brickell Ave., Miami, FL 33101. Send protests to: Shirley M. Holmes, T/A, ICC 858 Federal Bldg., Seattle, WA 98174.

MC 128021 (Sub-42TA), filed April 18, 1979. Applicant: DIVERSIFIED TRUCKING CORP., 309 Williamson Avenue, Opelika, AL 36801. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. Contract irregular: *Cleaning compounds, floor scrubbing machines, display racks, vacuum cleaner bags, vacuum cleaner belts, pressure washers and commodities dealt in by cleaning compound manufacturers,* from French Lick, IN, and Marion County, IN, to all points in the United States (except AK and HI); and *equipment, materials and supplies used in the manufacture and distribution of cleaning compounds, floor scrubbing machines, display racks, vacuum cleaner bags, vacuum cleaner belts, pressure washers and commodities dealt in by cleaning compound manufacturers* (except commodities in bulk, in tank vehicles), from all points in the United States (except AK and HI) to French Lick, IN, and Marion County, IN, under a contract or contracts with the Earl Grissmer Company, Inc., for 180 days. Supporting shipper(s): Earl Grissmer Company, Inc., 7950 Castleway Drive, Indianapolis, IN 46250. Send protests to: Mabel E. Holston, T/A ICC, Room 1616—2121 Building, Birmingham, AL 35203.

MC 128940 (Sub-39 TA), filed April 27, 1979. Applicant: RICHARD A. CRAWFORD, d.b.a. R. A. CRAWFORD TRUCKING SERVICE, P.O. Box 303, Gambrills, MD 21504. Representative: Edward N. Button, 1329 Pennsylvania Ave., Hagerstown, MD 21740. *Contract carrier:* irregular route: *General commodities in vehicles equipped with mechanical refrigeration (except Classes A and B explosives, commodities in bulk, household goods and commodities requiring special equipment),* between the facilities of Baltimore Shippers and Receivers Association, Inc., at or near Baltimore, Maryland on the one hand, and, on the other, points in FL and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Baltimore Shippers and Receivers Assn., Inc., 3601 Benson Ave., Baltimore, MD 21227. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 129191 (Sub-11 TA), filed April 24, 1979. Applicant: RICHARD T. PLATNER, d.b.a. JANS MOTOR SERVICE, 12800 South Laramie Avenue, Alsip, IL 60659. Representative: Albert A. Andrin, 180 North LaSalle St., Chicago, IL 60601. *Iron and steel articles,* from the facilities of Jones and Laughlin Steel Corp. located in the Chicago, IL commercial zone to points in IL, the St. Louis, MO commercial zone, and points in the Davenport, IA, E. Moline, Moline and Rock Island, IL commercial zone, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Jones & Laughlin Steel Corporation, 3001 Dickey Road, East Chicago, IN 46312. Send protests to: Annie Booker, TA, ICC, 1386 Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 129401 (Sub-12 TA), filed April 13, 1979. Applicant: DOUGLAS & BESS, INC., Rt. 5, Box 238, Statesville, NC 28677. Representative: Charles Ephraim, Suite 600, 1250 Connecticut Ave, NW, Washington, DC 20036. *Contract* Carrier-Irregular routes: *Feed and feed ingredients, except in bulk* from Decatur, IL to points in NC and under a continuing contract with the A.E. Staley Manufacturing Company, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): A. E. Staley Manufacturing Company, 220 E. Eldorado St., Decatur, IL 62521. Send protests to: District Supervisor Terrell Price, 800 Briar Creek Rd., Room CC516, Mart Office Building, Charlotte, NC 28205.

MC 129401 (Sub-13 TA), filed May 11, 1979. Applicant: DOUGLAS & BESS, INC., Rt. 5, Box 238, Statesville, NC 28677. Representative: Charles Ephraim, Suite 600, 1250 Connecticut Ave., NW, Washington, DC 20036. *Contract* carrier—Irregular routes: (1) *Wood sawing machines, pumps, generators, compaction equipment, concrete vibrators, lawn care equipment, accessories and parts thereof;* from Gastonia, NC and Greer, SC to points in the U.S. in the west of LA, AR, MO, IL and WI, under a continuing contract with Homelite Division of Textron, Inc. (2) *materials, equipment and supplies used in in the manufacturing, assembly, and distribution of wood sawing machines, pumps, generators, compaction equipment, concrete vibrators, and lawn care equipment, accessories and parts thereof,* from points in the U.S. in and west of LA, AR, MO, IL and WI, to Gastonia, NC and Greer, SC under a continuing contract with Homelite Division of Textron, Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Homelite Division of Textron, Inc., P.O. Box 1500, Gastonia, NC 28052. Send protests to: D/S Terrell Price, 800 Briar Creek Rd., Rm. CC516, Mart Office Building, Charlotte, NC 28205.

MC 129480 (Sub-36TA), filed April 23, 1979. Applicant: TRI-LINE EXPRESSWAYS, LTD., 550-71st Avenue S.E., Calgary, AB, Canada T2H 0S6. Representative: Richard S. Mandelson, Jones, Meiklejohn, Kehl & Lyons, 1600 Lincoln Center Bldg., 1660 Lincoln St., Denver, CO 80264. (1) *Agricultural machinery and implements,* (2) *tractors,* (3) *industrial construction, excavating and material-handling equipment,* (4) *trailers* designed for the transportation of the above commodities, and (5) *parts, components and accessories* for commodities described in paragraphs (1) through (4) above, from the plantsites and storage facilities of J. I. Case Company at or near Bettendorf and Burlington, IA, Terre Haute, IN, and Racine, WI, to the International Boundary line between the U.S. and Canada in ND, MN, MT, ID and WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): J. I. Case Company, 700 State St., Racine, WI 53404. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 129790 (Sub-12TA), filed April 20, 1979. Applicant: JOSEPH A. BECKER, d.b.a. BECKER HI-WAY FRATE, Route 5, Box 10B, Albert Lea, MN 56007. Representative: Robert S. Lee, 1000 First National Bank Building, Minneapolis, MN 55402. *Contract carrier:* irregular routes: *Foodstuffs* from Clifton, NJ to IL, IN, IA, MI, MN, NE, OH, and WI, under a continuing contract or contracts with Globe Products Co., Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Globe Products Co., Inc., 55 Webro Road, Clifton, NJ 07015. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building, 110 South 4th Street, Minneapolis, MN 55401.

MC 129830 (Sub-12TA), filed April 23, 1979. Applicant: JACOBSMA TRANSPORTATION COMPANY, 2800 Highway 75 North, Sioux City, IA 51105. Representative: Edward A. O'Donnell, 1004 29th St., Sioux City, IA 51104. *Hides,* from Hospers, IA and the commercial zone of Sioux City, IA to points in the commercial zones of Chicago, IL; Fond du Lac, Kenosha, Milwaukee, and Sheboygan, WI and St. Paul, MN, for 180 days. An underlying

ETA seeks 90 days authority. Supporting shipper(s): (1) Great Plains Processing, 1100 Cunningham Dr., Sioux City, IA 51107. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 133541 (Sub-7TA), filed April 20, 1979. Applicant: MCKIBBEN MOTOR SERVICE, INC., 494 W. Sharon Rd., Cincinnati, OH 45264. Representative: James Duvall, 220 W. Bridge Street, Dublin, OH 43017. *Contract carrier:* irregular routes: *Glass containers,* between Marion, IN, on the one hand, and, on the other, points in KY, MI and OH, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): National Can Corporation, John R. Moosbrugger, Manager Traffic-Central Region, 8101 W. Higgins Rd., Chicago, IL 60631. Send protests to: Bureau of Operations, ICC, Wm J. Green, Jr., Federal Bldg., 600 Arch St., Room 3238, Philadelphia, PA 19106.

MC 134071 (Sub-6TA), filed April 25, 1979. Applicant: MODULAR TRANSPORTATION CO., P.O. Box 1822, Grand Rapids, MI 49501. Representative: William D. Parsley, 1200 Bank of Lansing Building, Lansing, MI 48933. *Iron and steel articles, and materials, equipment and supplies* used in the manufacture thereof; from the facilities of or utilized by Penn-Dixie Steel Corporation, Penn-Dixie Steel Industries, Inc. and Stevens Spring, Inc., at or near Lansing and Grand Rapids, MI; Joliet and Blue Island, IL; Kokomo and Fort Wayne, IN; Centerville, IA; Jackson, MS; Columbus and Toledo, OH; to points in the United States (excluding Alaska and Hawaii); and from points in the United States (excluding Alaska and Hawaii) to the facilities of or utilized by Penn-Dixie Steel Corporation, Penn-Dixie Steel Industries, Inc. and Stevens Spring, Inc., located at or near points in Lansing and Grand Rapids, MI; Joliet and Blue Island, IL; Kokomo and Ft. Wayne, IN; Centerville, IA; Jackson, MS; and Columbus and Toledo, OH; for 180 days. Supporting Shipper(s): Penn-Dixie Steel Corporation, 1111 S. Main St., Kokomo, IN 46901. Send protests to: C. R. Flemming, D/S, I.C.C., 225 Federal Building, Lansing, MI 48933.

MC 134131 (Sub-11TA), filed May 14, 1979. Applicant: R & S TRANSIT, INC., 1323 West Locust, Springfield, MO 65803. Representative: Tom B. Kretsinger, Kretsinger & Kretsinger, 20 East Franklin, Liberty, MO 64068. *Bubble bath, shampoo, toilet preparations, liquid cleaning compounds and buffing or polishing compounds* (except in bulk), from Manitowoc, WI to Los Angeles and San Francisco, CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Northern Laboratories, Inc., 4701 Custer, Manitowoc, WI. Send protests to: John V. Barry, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 134441 (Sub-6TA), filed April 25, 1979. Applicant: DESERT COASTAL TRANSPORT, INC., 3015 East "G" Street, Ontario, CA 91764. Representative: Robert O. Young, 3015 East "G" Street, Ontario, CA 91764. *Bananas and bananas in mixed loads with fresh fruit and vegetables and fresh fruits and vegetables when moving at the same time and in the same vehicle with bananas,* from points within 15 miles of Port Hueneme, California, to Phoenix and Tucson, Arizona, for 180 days. An underlying ETA seeks 90 days operating authority. Supporting Shipper(s): Del Monte Banana Company, 1201 Brickell Avenue, Miami, FL 33101. Send protests to: Irene Carlos, TA, ICC, P.O. Box 1551, Los Angeles, CA 90053.

MC 134551 (Sub-13TA), filed May 8, 1979. Applicant: LANTER REFRIGERATED DISTRIBUTING CO., No. 3 Caine Drive, Madison, IL 62060. Representative: Ernest Brooks III, 1301 Ambassador Bldg., St. Louis, MO 63101. Such merchandise as is dealt in by wholesale, retail and chain food and grocery stores, plastic articles, cleaning scouring and solvent materials (except in bulk), compressed gas in cylinders, and advertising matter, premiums and display materials when moving at the same time and in the same vehicle with such merchandise (restricted to movement in vehicles equipped with mechanical refrigeration) between Des Plaines and Chicago, IL and points in MO and KS. Supporting Shipper(s): Dry Storage Corporation, 2005 West 43rd Street, Chicago, IL 60609. Send protests to: Interstate Commerce Commission, Room 414 Leland Building, 527 East Capitol Avenue, Springfield, IL 62701.

MC 134940 (Sub-3TA), filed April 17, 1979. Applicant: VERNON KUFAHL, d.b.a. KUFAHL TRUCKING, 4704 N. 32nd Ave., Wausau, WI 54401. Representative: Michael Wyngaard, 150 E. Gilman St., Madison, WI 53703. Contract carrier; irregular routes; *Such commodities as are manufactured, processed, sold, used, distributed or dealt in by manufacturers, converters, and printers of paper and paper products* (except commodities in bulk) from the facilities of Georgia Pacific Corp. at or near Tomahawk, WI to points in DE, IL, IN, MI, MN, NY & VA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Georgia Pacific Corp., 800 Summer St., Stamford, CT 06901. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 134940 (Sub-4TA), filed April 24, 1979. Applicant: VERNON KUFAHL, d.b.a. KUFAHL TRUCKING, 4704 N. 32nd Ave., Wausau, WI 54401. Representative: Michael Wyngaard, 150 E. Gilman St., Madison, WI 53703. Contract carrier; irregular routes; *Such commodities as are manufactured, processed, sold, used, distributed or dealt in by manufacturers, converters, and printers of paper products* (except commodities in bulk); (1) from the facilities of Georgia Pacific Corp. at or near Gary, IN to points in MN & WI; (2) from the facilities of Georgia Pacific Corp. at or near Taylorville, IL to points in MN, WI, MI & IN; and (3) from points in IL and from points in the Minneapolis-St. Paul, MN Commercial Zone to facilities of Georgia Pacific Corp. at or near Tomahawk, WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Georgia Pacific Corp., 800 Summer St., Stamford, CT 06901. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 134970 (Sub-24TA), filed April 27, 1979. Applicant: UNZICKER TRUCKING, INC., P.O. Box 35, El Paso, IL 61738. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501. *(1) Meats, meat products, meat by-products, and articles distributed by meat packinghouses, as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk); and (2) foodstuffs when moving in mixed loads with articles listed in (1) above,* from Davenport, IA to Demopolis and Montgomery, AL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Oscar Mayer & Co., Inc., P.O. Box 7188, Madison, WI 53707. Send protests to: Annie Booker, TA, ICC, 1386 Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 135070 (Sub-52TA), filed April 23, 1979. Applicant: JAY LINES, INC., 720 N. Grand, Amarillo, TX 79120. Representative: Gailyn Larsen, P.O. Box 82816, Lincoln, NE 68501. *Kitchen and storage cabinets, and new furniture,* knocked down and parts and accessories thereto, from White City and Portland, OR to points in MS, PA, IL, OH, TN, IA, NC, SC, and IN, for 180

days. An underlying ETA seeks 90 days authority. Supporting shipper(s): D & M Wood Products, Div. of Medford Corp., P.O. Box 20037, Portland, OR 97220. Send protests to: District Supervisor Haskell E. Ballard, Box F–13206 Federal Building, Amarillo, TX 79101. Supporting shipper(s): D & M Wood Products, Div. of Medford Corp., P.O. Box 20037, Portland, OR 97220. Send protests to: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission—Bureau of Operations, Box F–13206 Federal Building, Amarillo, TX 79101.

MC 135070 (Sub-54TA), filed May 2, 1979. Applicant: JAY LINES, INC., 720 N. Grand, Amarillo, TX 79120. Representative: Gailyn Larsen, P.O. Box 82816, Lincoln, NE 68501. *Motorcycles, and recreational vehicles, parts, components, and accessories thereof,* and *such commodities* as are used in the manufacture, sale and distribution of motorcycles and recreational vehicles, from the facilities of AMF, York Division, at or near York and Middletown, PA to points in AR, LA, OK, and TX, for 180 days. An underlying ETA seeks up to 90 days authority. Supporting shipper(s): AMF, York Division, 1425 Eden Road, York, PA 17402. Send protests to: Martha Powell, Transportation Assistant, 9A27 Federal Building, 819 Taylor Street, Forth Worth, TX 76102. Supporting shipper(s): AMF, York Division, 1425 Eden Road, York, PA 17402. Send protests to: Martha Powell, Room 9A27 Federal Building, 819 Taylor Street, Forth Worth, TX 76102.

MC 135070 (Sub-55TA), filed May 4, 1979. Applicant: JAY LINES, INC., 720 N. Grand, Amarillo, TX 79120. Representative: Gailyn Larsen, P.O. Box 82816, Lincoln, NE 68501. Meats, meat products, and articles distributed by meat packinghouses as described in Sections A and C of Appendix 1 to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except commodities in bulk), from the facilities of Reelfoot Packing Company, at or near Union City and Humboldt, TN, to points in CA, MA, NJ, and PA, for 180 days. Supporting shipper(s): Reelfoot Packing Company, P.O. Box 699, Union City, TN 38261. Send protests to: Martha Powell, Transportation Assistant, Room 9A27 Federal Building, 819 Taylor Street, Forth Worth, TX 76102. Supporting shipper(s): Reelfoot Packing Company, P.O. Box 699, Union City, TN 38261. Send protests to: Martha Powell, Transportation Assistant, ICC, Room 9A27 Federal Building, 819 Taylor Street, Forth Worth, TX 76102.

MC 135070 (Sub-56TA), filed May 4, 1979. Applicant: JAY LINES, INC., 720 N. Grand, Amarillo, TX 79120. Representative: Gailyn Larsen, P.O. Box 82816, Lincoln, NE 68501. *Candy and confectionery,* from the facilities of M & M/Mars, at or near Elizabeth and Hackettstown, NJ and Elizabethtown, PA to points in AZ and CA, for 180 days. An underlying ETA seeks up to 90 days authority. Supporting shipper(s): M & M/Mars, Div. of Mars, Inc., High Street, Hackettstown, NJ. Send protests to: Martha Powell, Transportation Assistant, 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102. Supporting shipper(s): M & M/Mars, Div. of Mars, Inc., High Street, Hackettstown, NJ. Send protests to: Martha Powell, TA, ICC, Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 135170 (Sub-38TA), filed April 20, 1979. Applicant: TRI-STATE ASSOCIATES, INC., P.O. BOX 186, Federalsburg, MD 21632. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602. *Contract carrier:* Irregular routes: *Metal containers,* from Columbus and Worthington, OH to Hurlock, MD., under contract with The Continental Group, Inc., Passaic, NJ, for 180 days. Supporting shipper(s): Thomas Riall, The Continental Group, Inc., 217 Brook Ave., Passaic, NJ 07055. Send protests to: W. L. Hughes, DS, ICC 1025 Federal Bldg., Baltimore, MD 21201.

MC 135221 (Sub-14TA), filed April 12, 1979. Applicant: DICK SIMON TRUCKING, INC., P.O. Box 26724, Salt Lake City, UT 84125. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030—15th Street NW., Washington, D.C. 20005. *Doors,* in van trailers, from Vancouver and McCleary, WA to Salt Lake City, UT and points in its commercial zone, for 180 days. An underlying ETA requests 90 days authority. Supporting Shipper(s): Cook Lumber Company, 6533 South State Street, Murray, UT 84107. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 135410 (Sub-69TA), filed April 19, 1979. Applicant: COURTNEY J. MUNSON, d/b/a Munson Trucking, P.O. Box 266, Monmouth, IL 61462. Representative: Stephen H. Loeb, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. *Common, Irregular* Envelopes from Addison, IL to Mt. Pleasant, IA. Supporting Shipper(s): Boise Cascade Corporation, P.O. Box 7747, Boise, ID 83707. Send protests to: Charles D. Little, District Supervisor, ICC, Room 414 Leland Office Bldg., 527 East Capitol Avenue, Springfield, IL 62701.

MC 135891 (Sub-32TA), filed April 19, 1979. Applicant: DALLAS CARRIERS CORP., 3610 Garden Brook Drive, P.O. Box 402020, Dallas, TX 75240. Representative: J. Max Harding, P.O. Box 82028, Lincoln, NE 68501. Contract carrier, irregular routes, *(a) Air conditioning equipment, furnaces, and component parts, and accessories therefore; and material, equipment and supplies utilized in the manufacture, sale and distribution of said commodities* from Tyler, TX; Dallas, TX; and Indianapolis, IN to Memphis, TN; *(b) Air conditioning equipment, furnaces, and component parts, and accessories therefore; and material, equipment, and supplies utilized in the manufacture, sale, and distribution of said commodities* from Memphis and Nashville, TN; and Syracuse, NY to points in the U.S. in and East of MN, IA, MO, OK, and TX; *(c) All* restricted against commodities in bulk or those which by reason of size or weight require the use of special equipment; and further restricted to a transportation service to be performed under a continuing contract with Carrier Corporation. An underlying ETA seeks 90 days authority. Supporting shipper(s): Carrier Air Conditioning, P.O. Box 4808, Syracuse, NY 13221. Send protests to: Opal M. Jones, TA, ICC, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 136220 (Sub-7TA), filed May 1, 1979. Applicant: SULLIVAN'S TRUCKING COMPANY, INC., P.O. Box 2164, Ponca City, Oklahoma 74601. Representative: G. Timothy Armstrong, 200 N. Choctaw, P.O. Box 24, El Reno, Oklahoma 73036. *Petroleum Coke,* (in bulk, in dump vehicles) from Port Arthur, TX to the facilities of Great Lakes Carbon Corp. at Kremlin, Oklahoma. For 180 days. Supporting Shipper(s): Great Lakes Carbon Company, 299 Park Ave., New York, N.Y. 10017. Send protests to: Connie Stanley, TA, ICC, Room 240 Old Post Office Bldg., 215 N.W. Third Street, Oklahoma City, Oklahoma 73102.

MC 136511 (Sub-50TA), filed April 27, 1979. Applicant: VIRGINIA APPALACHIAN LUMBER CORPORATION, 6640 Timberlake Road, Lynchburg, VA 24502. Representative: David C. Venable, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. *Coatings, adhesives, sealants and thinners,* between Brea, CA; Buffalo, NY; Chicago, IL; Conroe, TX; Denver, CO; Houston, TX; Jacksonville, FL; Jefferson, LA; Wichita, KS, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ameron Protective Coatings Division, 201 N. Berry Street, P.O. Box 1020, Brea, CA 92621. Send protests to:

Charles F. Myers, DS, ICC, Room 10–502 Federal Bldg., 400 North 8th Street, Richmond, VA 23240.

MC 138000 (Sub-48TA), filed April 30, 1979. Applicant: ARTHUR H. FULTON, INC., P.O. Box 86, Stephens City, VA 22655. Representative: Edward N. Button, 1329 Pennsylvania Ave., Hagerstown, MD 21740. *Aluminum ingots and sows,* from the facilities of Batchelder Blasius, Inc. at or near Spartanburg, SC, to points in IN, IL, MI, OH, KY, PA, VA, NC, GA, TN, FL, NY, and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Batchelder Blasius, Inc., P.O. Box 5503, Spartanburg, SC 29304. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th Street, Rm 620, Philadelphia, PA 19106.

MC 138000 (Sub-49TA), filed March 26, 1979. Applicant: ARTHUR H. FULTON, INC., P.O. Box 86, Stephens City, VA 22655. Representative: Edward N. Button, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740. *Malt beverages,* from Newport, KY and Evansville, IN and their respective commercial zones to points in NC, SC, VA, WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): G. Heileman Brewing Co., Inc., 925 S. Third St., La Crosse, WI 54601. Send protests to: T. M. Esposito, Trans. Asst., 101 S. 7th St., Room 620, Philadelphia, PA 19106.

MC 138420 (Sub-38TA), filed April 26, 1979. Applicant: CHIZEK ELEVATOR & TRANSPORT, INC., P.O. Box 147, Cleveland, WI 53063. Representative: Wayne Wilson, 150 E. Gilman St., Madison, WI 53703. *Such commodities as are manufactured, processed, sold, used, distributed or dealt in by manufacturers, converters and printers of paper and paper products (except commodities in bulk)* from facilities of Consolidated Papers, Inc. at or near Wisconsin Rapids, Biron and Stevens Point, WI to points in MI, MO and OH, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Consolidated Papers, Inc., Wisconsin Rapids, WI 55494. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Room 619, Milwaukee, WI 53202.

MC 138841 (Sub-15TA), filed April 19, 1979. Applicant: BLACK HILLS TRUCKING CO., P.O. Box 2130, Rapid City, SD 57709. Representative: James W. Olson, P.O. Box 1552, Rapid City, SD 57709. *Meat and meat products* from Worthington, MN to points in CA for 180 days. Supporting shipper(s): Armour Fresh Meat Company, 111 W. Clarendon, Greyhound Tower, Phoenix, AZ 85077. Send protests to: J. L. Hammond, DS, ICC, Room 455, Federal Bldg., Pierre, SD 57501.

MC 139571 (Sub-2TA), filed April 27, 1979. Applicant: A. S. MASON, INC., 3110 Gibson Street, Bakersfield, CA. 93308. Representative: Michael J. Stecher, Silver, Rosen, Fischer & Stecher, 256 Montgomery Street, San Francisco, CA 94104. *(1) Oil well drilling rigs, and oil well drilling machinery, and (2) Equipment, materials and supplies incidental to or used in the drilling and development of oil wells,* between points in CA, on the one hand, and points in NV, on the other hand, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): R. B. Montgomery, 3504 Standard Street, Bakersfield, CA; Coastal Drilling, 2157 Mohawk, Bakersfield, CA 93308. Send protests to: Irene Carlos, TA, ICC, P.O. Box 1551, Los Angeles, CA 90053.

MC 141721 (Sub-2TA), filed March 22, 1979. Applicant: DFC TRANSPORTATION COMPANY, 3600 North River Road, Franklin Park, IL 60131. Representative: Edward G. Bazelon, 39 South LaSalle St., Chicago, IL 60603. *Coffee,* tea, beverage mix, and beverage kits and parts thereof, from the facilities of CFS Continental, Inc., located at Houston, TX, to Chicago, IL, Detroit, MI, and Indianapolis, IN, and points in their respective commercial zones. An underlying ETA seeks 90 days authority. Supporting shipper(s): CFS Continental, Inc., 2550 North Clybourn Avenue, Chicago, IL 60614. Send protests to: T/A Annie Booker, Room 1386, 219 S. Dearborn, Chicago, IL 60604.

MC 142081 (Sub-2TA), filed April 20, 1979. Applicant: ETHLAR T. SMALL, JULIA T. SMALL, ERIC T. SMALL and CRAIG T. SMALL, d.b.a. SMALL'S L. P. GAS COMPANY (Partnership), P.O. Box 397, Wyatt, MO 63882. Representative: Eric T. Small (same address as above). *Anhydrous Ammonia* from Barefield, AR to points in AR, KY, MO and TN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Chevron Chemical Company, P.O. Box 282, Ft. Madison, IA 52627. Send protests to: P. E. Binder, DS, ICC, Rm. 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 142061 (Sub-3TA), filed April 20, 1979. Applicant: ETHLAR T. SMALL, JULIA T. SMALL, ERIC T. SMALL and CRAIG T. SMALL, d.b.a. SMALL'S L. P. GAS COMPANY (Partnership), P.O. Box 397, Wyatt, MO 63882. Representative: Eric T. Small (same address as above). *Anhydrous Ammonia* from Selma, MO to points in AR, IL, KY, TN and KS, for 180 days. An underlying ETA seeks authority for 90 days. Supporting shipper(s): United States Steel Corp., 600 Grant St., Pittsburgh, PA 15230. Send protests to: P. E. Binder, DS, ICC, Rm. 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 142181 (Sub-6TA), filed April 30, 1979. Applicant: LIBERTY CONTRACT CARRIER, INC, P.O. Box 1104, 214 Hermitage Ave., Nashville, TN 37202. Representative: Robert L. Baker, 618 United American Bank Bldg., Nashville, TN 37219. *Contract carrier:* irregular routes: *Merchandise, equipment and supplies, sold, used or distributed by a manufacturer of cosmetics* between Atlanta, GA, on the one hand, and, on the other, points in AL, FL, GA, LA, (except Shreveport, New Orleans and Baton Rouge), MS, NC, SC and TN, for 180 days. Supporting shipper(s): Avon Products, Inc., 2200 Cotillion Drive, Atlanta, GA 30302. Send protests to: Glenda Kuss, TA, ICC, Suite A–422, U.S. Courthouse, 801 Broadway, Nashville, TN 37203.

MC 142310 (Sub-16TA), filed April 30, 1979. Applicant: H. O. WOLDING, INC., Box 56, Nelsonville, WI 54458. Representative: Wayne W. Wilson, 150 East Gilman Street, Madison, WI 53703. *Such commodities as are manufactured, processed, sold, used, distributed, or dealt in by manufacturers, converters, or printers of paper and paper products,* from the facilities of Mosinee Paper Corporation at Mosinee, Green Bay, and Columbus, WI to points in IL, IN, IA, KY, MI, NC, OH, PA, MA, NY, TN, VA, MO, OK, AR, AL, NJ, TX, MS, GA, NH, SC and MD, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Mosinee Paper Corporation, Mosinee, Wisconsin 54455. Send protests to: Mr. John E. Ryden, DS, ICC, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 142971 (Sub-2TA), filed May 15, 1979. Applicant: F & W TRANSPORT CO., INC., P.O. Box 389, Camden, NJ 08101. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. Contract irregular. *Wooden and plastic cabinets, and materials and supplies used in the manufacturing, sale and installation thereof,* (except in bulk). Between Lakewood, NJ on the one hand, and, on the other, points in VA and WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Excel Wood Products Co., Inc., P.O. Box 619, Lakewood, NJ 08901. Send protests to: Robert J. Latarewicz, TR&TS, ICC 744 Broad Street, Room 522, Newark, NJ 07102.

MC 143331 (Sub-8TA), filed April 19, 1979. Applicant: FREIGHT TRAIN TRUCKING, INC., 4906 E. Compton

Blvd., P. O. Box 817, Paramount, CA 90723. Representative: William J. Monheim, P. O. Box 1756, Whittier, CA 90609. *Contract:* irregular: *Plastic articles and materials, equipment and supplies dealt in by manufacturers of plastic articles,* from Dallas, TX to points in AZ, CA, CO, ID, KS, NE, NV, NM, OR, UT, WA and WY, for 180 days, under a continuing contract or contracts with Owens-Illinois, Inc. An underlying ETA seeks up to 90 days operating authority. Supporting Shipper(s): Owens-Illinois, Inc., P. O. Box 1035, WEP-4, Toledo, OH 43666. Send protests to: Irene Carlos, TA, ICC, P. O. Box 1551, Los Angeles, CA 90053.

MC 143471 (Sub-14TA), filed May 4, 1979. Applicant: DAKOTA PACIFIC TRANSPORT, INC., 301 Mt. Rushmore Road, Rapid City, SD 57701. Representative: J. Maurice Andren, 1734 Sheridan Lake Road, Rapid City, SD 57701. *Contract carrier:* irregular routes: *Lumber and lumber products* from Townsend, MT and points in its commercial zone to points in IL, IA, MN, NE, ND, SD, WI and WY for the account of Wickes Forest Industries for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wickes Forest Industries, Division of the Wickes Corp., Box 153, Grangeville, ID 83530. Send protests to: J. L. Hammond, DS, ICC, Room 455, Federal Bldg., Pierre, SD 57501.

MC 143621 (Sub-17TA), filed April 24, 1979. Applicant: TENNESSEE STEEL HAULERS, INC., 901 5th Avenue, North, Nashville, TN 37219. Representative: Sidney T. Stanley (same address as applicant). *Iron and Steel Articles* from the plantsite and warehouse facilities of Republic Steel Corp. at Gadsden, AL to points in TN, KY, IN & OH, for 180 days. Supporting shipper(s): Republic Steel Corp., Alabama City Station, Gadsden, AL 35901. Send protests to: Glenda Kuss, T/A, ICC, Suite A-422 U.S. Courthouse, 801 Broadway, Nashville, TN 37203.

MC 143630 (Sub-4TA), filed May 4, 1979. Applicant: JAMES S. HELWIG and ALLEN L. GRIMLAND, d.b.a. H & G LEASING, 2901 Inwood, Dallas, TX 75235. Representative: Paul D. Angenend, P.O. Box 2207, Austin, TX 78768. *Motor Truck or trailer coupler parts,* from Holland, MI and Denmark, SC, to the facilities of Holland Hitch of Texas, Inc., located at or near Wylie, TX for 180 days. Underlying ETA for 90 days filed. Supporting shipper(s): Holland Hitch of Texas, Inc., P.O. Box 977, Wylie, TX 75098. Send protests to: Opal M. Jones, TA, ICC, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 144041 (Sub-33TA), filed May 9, 1979. Applicant: DOWNS TRANSPORTATION CO., INC., 2705 Canna Ridge Circle NE., Atlanta, GA 30345. Representative: Mark C. Ellison, P.O. Box 56367, Atlanta, GA 30343. *Ornamental iron, plastic articles, vents, ventilators, ceiling grids, shutters, louvers, and parts, accessories, materials and supplies used in the manufacturing, sale and installation of the commodities named above (except commodities in bulk and commodities which by reason of size or weight require the use of special equipment)* between the facilities of Leslie-Locke, Division of Questor Corp., located at or near Franklin Park, IL; Lodi, OH and Tifton, GA, on the one hand, and, on the other, points in the U.S. in and east of TX, OK, CO, NE, SD and ND for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Leslie-Locke Division, Questor Corp., One John Goerlich Square, Toledo, OH 43694. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St. NW., Rm. 300, Atlanta, GA 30309.

MC 144291 (Sub-6TA), filed April 25, 1979. Applicant: V.M.P. ENTERPRISES, INC., 3006 S. 40th St., Milwaukee, WI 53215. Representative: Wm. C. Dineen, 710 N. Plankinton Ave., Milwaukee, WI 53203. *Buses, in initial movements, in driveaway service,* from Delaware and Loudonville, OH to points in the U.S., except AK, HI and OH, restricted to traffic originating at the facilities of Gruman-Flxible Corp., at named origins, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Gruman Flxible Corp., 970 Pittsburg Dr., Delaware, OH 43015. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Milwauke, WI 53202.

MC 144630 (Sub-19TA), filed March 23, 1979. Applicant: STOOPS EXPRESS, INC., 2239 Malibu Court, Anderson, IN 46011. Representative: Donald W. Smith, Suite 945, 9000 Keystone Crossing, Indianapolis, IN 46240. *Corrugated paper products,* from the facilities of Akers Packaging Service, Inc., at Chicago, IL, to Muncie, IN; Cincinnati, Dayton, and Middletown, OH, for 180 days. Supporting shipper: Akers Packaging Service, Inc., 1037 E. 87th Street, Chicago, IL 60619. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 46 E. Ohio Street, Rm. 429, Indianapolis, IN 46204. An underlying ETA seeks 90 days authority.

MC 144810 (Sub-3TA), filed April 25, 1979. Applicant: FLOYD M. CROSS, 62911 Lopez Street, Espanola, NM 87532. Representative: Roger V. Eaton, Campbell, Cherpelis & Pica, P.O. Drawer 965, Albuquerque, NM 87103. *Contract carrier:* irregular routes: *Gypsum and gypsum products,* from Rosario, NM to Tucson and Phoenix, AZ, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Western Gypsum Company, P.O. Box 2636, Santa Fe, NM 87501. Send protests to: District Supervisor, ICC, 1106 Federal Office Building, 517 Gold Avenue SW., Albuquerque, NM 87101.

MC 144910 (Sub-3TA), filed April 25, 1979. Applicant: TYREE D. PRUITT, d.b.a., TY PRUITT TRUCKING, 611 Landay Ave., Baltimore, MD 21237. Representative: Chester A. Zyblut, 1030—15th St. NW., Washington, D.C. 20005. *Flour, flour products and sugar topping* (except in bulk), from the facilities of the Pillsbury Company, Martel, OH to Baltimore, MD, E. Orange and W. Carteret, NJ, Philadelphia and Harrisburg, PA, Roanoke and Richmond, VA and DC and points in their respective commercial zones, for 90 days. An underlying ETA seeks 90 days. Supporting shipper(s): Richard A. Fischer, The Pillsbury Company, 608 Second Ave. South, Minneapolis, MN 55402. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore, MD 21201.

MC 145230 (Sub-2TA), filed May 8, 1979. Applicant: H & S TRUCKING, INC., P.O. Box 127, Wesson, MS 39191. Representative: Fred W. Johnson, Jr., P.O. Box 22828, Jackson, MS 39205. Contract carrier; irregular routes: *Such commodities as are dealt in or used by manufacturers of lawn and snow removal products* (except commodities in bulk) between the facilities of Jacobsen Manufacturing Co. at Brookhaven, MS, on the one hand, and, on the other, points in the states of PA, MA, OH, MI, IN, IL, WI, MN, MO and TX, for account of Jacobsen Manufacturing Co., Brookhaven, MS, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Jacobsen-Textron, P.O. Box 688, Brookhaven, MS 39601. Send protests to: Alan Tarrant, D/S, ICC, Rm. 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 145441 (Sub-39TA), filed April 24, 1979. Applicant: A.C.B. TRUCKING, INC., P.O. Box 5130, North Little Rock, AR 72119. Representative: E. Lewis Coffey (same as applicant). *Glass and glassware* from Dunkirk, IN to points in AZ, CA, NV, OR, WA and UT, for 180 days as a common carrier over irregular routes. Supporting shipper(s): Lancaster Colony Corporation, 37 West Broad Street, Columbus, OH 43215. Send protests to: William H. Land, Jr., D/S,

3106 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 145480 (Sub-1TA), filed May 1, 1979. Applicant: ED WOLFE TRUCKING, INC., 20425 Ahha Lane, Bend, OR 97701. Representative: Philip G. Skofstad, 1300 N. E. Linden Ave., Gresham, OR 97030. Dolomite lime in bulk to be transported in hydraulic operated and dump equipment only from Salinas and Natividad, CA to Gresham, Portland, Woodburn, Hillsboro, Salem, Bend, Redmond, Prineville, Madras, Culver, St. Helens, Forest Grove, McMinnville, Newberg, Albany, Corvallis and Dallas, OR for 180 days. A corresponding ETA has been filed this date and a Permanent will be filed in the immediate future. Supporting shipper(s): North Pacific Trading Co., P.O. Box 3915, 1505 S. E. Gideon, Portland, OR 97208. Send protests to: R. V. Dubay, D/S, ICC, 114 Pioneer Courthouse, Portland, OR 97204.

MC 145541 (Sub-2TA), filed April 26, 1979. Applicant: SUNWAY CORPORATION, 118 W. Main Street, Thomasville, North Carolina 27360. Representative: Stephen L. Ervin, P.O. Box 22, Trinity, NC 27370. *New Furniture, Furniture parts, and materials used in the manufacturing of new furniture* between points in Burke, Cleveland, and Davie Counties, NC on the one hand, and on the other, points in AZ, CA, and TX for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Drexel Heritage Furnishings, Inc., Drexel, NC 28619. Send protests to: Terrell Price, DS, ICC, 800 Briar Creek Rd., Rm. CC516, Charlotte, NC 28205.

MC 145581 (Sub-2TA), filed May 9, 1979. Applicant: Harold L. Hood, d/b/a Hood Trucking, RR1, Rushing, IL 62681. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. *Contract, Irregular,* Treated lumber, unfinished lumber, lumber and wood products from Beardstown, IL to points in, IN, IA, MI, MN, and WI. Supporting shipper(s): Edward Hines Lumber Co., 200 South Michigan Avenue, Chicago, IL 60604. Send protests to: Interstate Commerce Commission, Room 414 Leland Building, 527 East Capitol Avenue, Springfield, IL 62701.

MC 145680 (Sub-2TA), filed May 4, 1979. Applicant: C & R TRUCKING, LTD., 2955 Packers Ave., Madison, WI 53704. Representative: Michael Wyngaard, 150 E. Gilman St., Madison, WI 53703. *Dunnage trays* from facilities of Portage Industries Corp. at on near Portage, WI to Chicago Hts., IL; Bedford, OH and Woodhayen, MI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Portage Industries Corp., 1325 Adams St., Portage, WI 53901. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 145861 (Sub-2TA), filed April 24, 1979. Applicant: VANTRANS, INC., 11375 Greenwich Rd., Homerville, OH 44235. Representative: James M. Burtch, 100 East Broad St., Columbus, OH 43215. *Rough iron or steel forgings and bands and wheels,* between the facilities of Welded Ring Products Company, in Cuyahoga County, OH, on the one hand, and, on the other, Muscle Shoals, AL; Gardenia, CA; Lodi, CA; East Hartford, CN; Hartford, CN; Chicago, IL; Erie PA; Philadelphia, PA ; Warren, PA; Houston, TX; Salem, VA; and Weirton, WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Welded Ring Products Company, 2180 W. 114th St., Cleveland, OH 44102. Send protests to: Mary Wehner, D/S, ICC, 731 Federal Bldg., Cleveland, OH 44199.

MC 146071 (Sub-6TA), filed April 19, 1979. Applicant: Deetz Trucking, Inc., P.O. Box 2, Strum, WI 54770. Representative: Charles J. Kimball, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. (1) *gates, corn cribs, grain bins, feed boxes, water troughs, portable augers, front-end loading attachments, and parts and attachments used in farming and agricultural industries, except machinery and commodities, which because of size or weight require special equipment,* from facilities of Sioux Steel Co., at or near Hull, IA and Lennox and Sioux Falls, SD, to points in ND, SD, MN, WI, and (2) *materials, supplies, and equipment used in the production and manufacturing of commodities described in Part (1) above,* from the destination States in Part (1) above, to the facilities of Sioux Steel Co., at or near Hull, IA, Lennox and Sioux Falls, SD, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Sioux Steel Co.; 196½ East Sixth St., Sioux Falls, SD 57101. Send protests to: G. Daugherty, TA, ICC, Federal Bldg., 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 146101 (Sub-1TA), filed April 14, 1979. Applicant: MIDSTATES REFRIGERATED EXPRESS, INC., P.O. Box 420, East Chicago, IL 46312. Representative: Stephen L. Loeb, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. *Frozen foods,* between the facilities of Continental Freezers of Illinois at Chicago, IL, on the one hand, and, on the other, points in IN, MI, OH, KY, MO, KS, WI, IA, NE and those points in PA on and west of Interstate Highway 79, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Continental Freezers of Illinois, 4220 S. Kildare Blvd., Chicago, IL 60632. Send protests to: Annie Booker, TA, ICC, 1386 Everett Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

By the Commission.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-19034 6-18-79; 8:45 am]

BILLING CODE 7035-01-M

[Notice No. 94]

Motor Carrier Temporary Authority Applications

June 7,1979

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register**. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

Note: All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

MC 146251 (Sub-2TA), filed March 21, 1979. Applicant: CLAXTON TRANSPORT, INC., Route No. 3, Box 135, Wrightsville, GA 31096. Representative: Ronald K. Kolins, c/o Suite 428, 910—17th St., N.W., Washington, D.C. 20006. *(1) Malt beverages; (2) supplies and materials used in the sale, manufacture, and distribution of malt beverages; (3) malt beverages and supplies and materials used in the sale, manufacture and distribution of malt beverages.* (1) From the plant site of Pabst Brewing Co., Pabst, GA (Houston County, GA) to points in AL, AR, GA, IA, IL, IN, KY, LA, MI, MS, OH, PA, TN, TX and WI; (2) from points in AL, AR, GA, IA, IL, IN, KY, LA, MI, MS, OH, PA, TN, TX, and WI to the plant site of Pabst Brewing Co., Pabst, GA (Houston County, GA); (3) from, to, and between the facilities of the Pabst Brewing Co. located at Pabst, GA (Houston County, GA), Newark, NJ, Peoria, IL, and Milwaukee, WI, for 180 days. Supporting shipper(s): Pabst Brewing Company, 917 W. Juneau Ave., Milwaukee, WI 53201. Send protests to: Sara K. Davis TA, ICC, 1252 W. Peachtree St., N.W., Room 300, Atlanta, GA 30309.

MC 146270 (Sub-1TA), filed February 26, 1979. Applicant: WINFORD NOAH WILLIAMS, Box 578, Aberdeen, NC 28315. Representative: James E. Holshouser, Jr., Box 116, Southern Pines, NC 28387. *General commodities, except Class A and B explosives and motor vehicles, having prior or subsequent movement by rail in trailer on flatcar service; no passengers;* between Hamlet, NC and Fayetteville, NC on the one hand, and, on the other, points in Montgomery, Lee and Moore Counties, NC, for 180 days. An underlying ETA seeking 90 days authority has been filed. Glendon Pyrophyllite, Inc., Box 306, Carthage, NC 28327. J. P. Stevens & Co., Inc., P.O. Box 310, Aberdeen, NC 28315. Supporting shipper(s): Milliken & Company, P.O. Box 1007, Aberdeen, NC 28135. Trimble Corp. Send protests to: Mr. Archie W. Andrews, District Supervisor, Interstate Commerce Commission, P.O. Box 26896, Raleigh, NC 27611.

MC 146361 (Sub-3TA), filed April 23, 1979. Applicant: WOLTER TRUCK LINES, INC., R. D. 1, Greenwood, DE 19950. Representative: Chester A. Zyblut, Esq., 1030 15th St., NW., Washington, DC 20005 *Dry fertilizer and fertilizer ingredients,* in bulk, in dump vehicles, from Hopewell, VA to points in DE, MD, NJ, PA, VA, WV and NC. Supporting shipper(s): R. R. Whipple, Allied Chemical Corporation, P.O. Box 2120, Houston, TX 77001. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore, MD 21201.

MC 146441 (Sub-1TA), filed January 8, 1979. Applicant: VALLEY GYPSUM CO., INC., R. D. No. 1, Bath, PA 18014. Representative: Wainwright E. H. Diehl, Center & Liberty Sts., P.O. Box 301, Nazareth, PA 18064. Contract—irregular routes. *Lime pebbles.* From Strasburg, VA to Lafayette, NJ, 180 days. Supporting shipper(s): Limestone Products Corp., R.D. 1, Lime Crest Rd., Lafayette, NJ 07848. Send protests to: T. M. Esposito, Transportation Asst., 600 Arch St., Room 3238, Philadelphia, PA 19106.

MC 146540 (Sub-1TA), filed April 2, 1979. Applicant: SUN CITY SALVAGE POOL, INC., 9605 A Carnegie Street, El Paso, TX 79925. Representative: A. M. Aguilar (same as above). *Theft recovered, wrecked or disabled authomobiles, trucks, trailers,* and *motor homes,* from all points in NM south of Interstate 40 to El Paso, TX, for 180 days. An underlying emergency temporary authority was granted seeking up to 90 days authority. Supporting shipper(s): Farm Bureau Insurance, 421 N. Water, Las Cruces, NM 88001. Send protests to: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission—Bureau of Operations, Box F-13206 Federal Building, Amarillo, TX 79101.

MC 146601 (Sub-2TA), filed May 7, 1979. Applicant: POTEAT MOTOR LINES, INC., 522 12th Ave. SW, Hickory, NC 28601. Representative: Robert D. Hoagland, Esq., 1204 Cameron Brown Building, 301 S. McDowell St., Charlotte, NC 28024. *Iron and steel articles* from Baltimore, MD and Philadelphia, PA to points and places in the counties of Catawba and Yancey, NC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Hickory Springs Mfg., Co., 2200 Main Ave. ES, Hickory, NC 28601. Send protests to: District Supervisor Terrell Price, 800 Briar Creek Rd, Room CC516, Mart Office Building, Charlotte, NC 28205.

MC 146621 (Sub-3TA), filed April 27, 1979. Applicant: EUGENE GEORGE TRUCKING SERVICE, Route 1, Box 14A, Oswego, Kansas 67356. Representative: Tom B. Kretsinger, 20 East Franklin, Liberty, MO 64068. *Steel buildings and machinery, equipment, materials and supplies used in the manufacture, construction, erection and installation of steel buildings,* from (1) Chetopa, KS on the one hand and on the other hand points in IA, IL, IN, MO & WI; (2) Between Waukesha, WI and points in IA, IL, IN, KS & MO; 180 days, common, irregular; SUPPORTING SHIPPER: Sonoco Buildings, Chetopa, KS.; SEND PROTESTS TO: M. E. Taylor, DS, ICC, 101 Litwin Bldg., Wichita, KS 67202. Supporting shipper(s): Sonoco Buildings, P.O. Box 307, Chetopa, KS 67336. Send protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg., Wichita, KS 67202.

MC 146680 (Sub-1TA), filed April 17, 1979. Applicant: P & R TRANSPORTATION, INC., 1424 Palmer, Laramie, WY 82070. Representative: Robert B. Karns (same address as applicant). *Log Buildings, Building Materials, Equipment and Supplies* used in the erection of log buildings, between points in Albany County, WY and points in CA, ID, WY, CO, ND, SD, NE, KS, OK, TX, WA, AR, LA, MO, MN, WI, OH, IN, IL, IA, PA, VA, FL, GA OR & MI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Authentic Homes Corp., 310 Grand Avenue, Laramie, WY 82070. Send protests to: Paul A. Naughton, D/S, ICC, Rm. 105 Federal Bldg., 111 South Wolcott, Casper, Wy 82601.

MC 146690 (Sub-2TA), filed March 29, 1979. Applicant: NORTHEAST TOWING, INC., 7618 Glencoe St., Phila., PA 19111. Representative: Robert M. Rubin, 600 Penn Square Bldg., Phila., PA 19107. *Trucks, trailers, new, used, unfinished, wrecked or disabled in initial and secondary movements in towaway service,* between points in Phila., PA and its commercial zone, on the one hand, and, on the other, points in AL, CT, DE, DC, FL, GA, IL, IN, KY, LA, ME, MD, MA, MI, MN, MS, NH, NY NC, OH, PA, RI, SC, TN, VT, VA, WV, WI, for 180 days. An underlying ETA seeks 90 days authority. International Harvester Co., 4298 Macalester St., Phila., PA 19124. Supporting shipper(s): P & H Diesel Service, 2701 E. Luzerne St., Phila., PA, Mack Trucks, Inc., P.O. Box 6311, Bridgewater, NJ 08807, Brind Leasing Corp., 3000 Hedley St., Phila., PA. Send protests to: T. M. Esposito, Trans. Asst., 101 S. 7th St., Room 620, Phila., PA 19106.

MC 146700 (Sub-1TA), filed April 2, 1979. Applicant: TRAVELERS TRANS. CO., INC., Room 8, Commonwealth Pier 5, Boston, MA 02210. Representative: J. Albert Johnson, 8 Whittier Place, Boston, MA 02114. Authority sought to operate as a contract carrier, over irregular routes, in the transportation of *frozen onion rings and fish exempt from economic regulation under Section 203(b)(6) of the Act, when transported in mixed loads with frozen onion rings.*

Between all points in Massachusetts to all points in: Connecticut; Illinois; Indiana; Iowa; Kansas; Kentucky; Michigan; Minnesota; Missouri; Nebraska; New York; Ohio; Pennsylvania; Wisconsin, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Caribou Fisheries Ltd., 159 E Main St., Gloucester, MA 01930. Send protests to: John B. Thomas, District Supervisor, Interstate Commerce Commission, 150 Causeway Street, Boston, MA 02114.

MC 146701 (Sub-4TA), filed April 2, 1979. Applicant: WEAVER TRUCKING CO., INC., P.O. Box 45, Eton, GA 30724. Representative: Archie B. Culbreth, Suite 202–2200 Century Parkway, Atlanta, GA 30345 *Contract Carrier: irregular routes: Alumina hydrate (in bulk)* from Chatsworth, GA, to points in FL, IL, IN, MN, MO and TN, under a continuing contract(s) with North Georgia Minerals and Chemicals, Inc., Chatsworth, GA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): North Georgia Minerals and Chemicals, Inc., Holly St. Chatsworth, GA 30705. Send protests to: Sara K. Davis TA, ICC, 1252 W. Peachtree St., NW., RM 300, Atlanta, GA 30309.

MC 146701 (Sub-5TA), filed April 2, 1979. Applicant: WEAVER TRUCKING CO., INC., P.O. Box 45, Eton, GA 30724. Representative: Archie B. Culbreth, Suite 202–2200 Century Parkway, Atlanta, GA 30345. *Contract Carrier: irregular routes: Meats, meat products, meat by-products, and articles distributed by meat packinghouses as described in Sections A and C of Appendix 1 to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except hides and commodities in bulk), fresh or frozen, in vehicles equipped with mechanical refrigeration* from points in CO, IL, IA, KS, MN, NE, NM, ND, OK and TX, to points in AL, FL, GA, KY, NC, SC, TN, and VA, under a continuing contract(s) with Missouri Valley Foods, Inc., Omaha, NE, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Missouri Valley Foods, Inc., 11414 West Center RD., Omaha, NE 68144. Send protests to: Sara K. Davis TA, ICC, 1252 W. Peachtree St., NW., RM 300, Atlanta, GA 30309.

MC 146730 (Sub-1TA), filed April 2, 1979. Applicant: L & W TRANSPORTATION, INC., Route 3, Box 195, Sedalia, Missouri 65301. Representative: Charles J. Fain, FAIN & FAIN, 333 Madison Street, Jefferson City, MO 65101. *Heavy electrical switchgear, electrical transformers, portable electrical sub-stations, related protective coverings, housing, fencing material, iron and steel articles, aluminum articles, electrical substations, shelter aisle switchgear, breaker sleds, bases, switching sleds, and related installation equipment,* from facilities of Central Electric Manufacturing, at or near Fulton, MO to points in the U.S (except AK and HI) and; from points in the U.S. (except AK and HI) to the facilities of Central Electric Manufacturing at or ner Fulton, MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Central Electric Manufactuing, Bus. Rt. 54 South at JCT BB, Fulton, MO 65251. Send protests to: John V. Barry DS, ICC, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 146760 (Sub-1TA), filed March 30, 1979. Applicant: GARY V. MONDUS & GARY E. HAZER, G & G EXPRESS, 318 Brunswick Ct., Streamwood, IL 60103. Representative: Philip A. Lee, 120 W. Madison St., Chicago, IL 60602. *Supplies for medical diagnostic machines and medical laboratory supplies,* From Elk Grove, Illinois to points and places in Wisconsin within an area bounded by Wisconsin State Route 29 on the North (including Greenbay); U.S. 51 or the west, thru Portage, WI, thence along state Route 78 South, to the Illinois-Wisconsin State line, along that state line on the South and Lake Michigan on the East. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Curtin Matheson Scientific, 1850 Greenleaf, Elk Grove Village, IL 60007. Send protests to: T/A Annie Booker, Room 1386, 219 S. Dearborn, Chicago, IL 60604.

MC 146761 (Sub-1TA), filed Mar. 30, 1979. Applicant: P. J. TRUCKING, INC., P.O. Box 376, Summit, IL 60501. Representative: William H. Towle, 180 N. LaSalle St., Chicago, IL 60601. *Toilet Preparations,* Costume Jewelry, Sales Premiums and articles manufactured or distributed by manufacturers or distributors of toilet preparations and Costume Jewelry. *Between* the facilities of Avon Products, Inc. at Morton Grove, Glenview and Deerfield, IL, on the one hand, and, on the other, the facilities of Avon Products, Inc. at Monrovia and Pasadena, CA. An underlying ETA seeks up to 90 days authority. Supporting shipper(s): Avon Products, Inc., 6901 Golf Road, Morton Grove, IL 60053. Send protests to: T/A Annie Booker, Room 1386, 219 S. Dearborn, Chicago, IL 60604.

MC 146780 (Sub-1TA), filed May 3, 1979. Applicant: MABE BROTHERS ENTERPRISES, INC., 205 Sattlewood Dr., Kernersville, NC 27284. Representative: Thomas M. Mabe, 205 Sattlewood Dr., Kernersville, NC 27284. *Contract* Carrier-Irregular Routes: (1) *Yearbooks and other printed matter* from Forsyth County, NC to points in the U.S., except AK and HI; (2) *materials and supplies used in the manufacturing, printing and assembly of yearbooks* from points in the U.S. to Forsyth Co., NC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Hunter Publishing Company, 2475 South Stratford Rd., Winston-Salem, NC. Send protests to: D/S Terrell Price, 800 Briar Creek Rd-Rm CC516, Mart Office Building, Charlotte, NC 28205.

MC 146790 (Sub-1TA), filed April 11, 1979. Applicant: X-TRA MILE TRUCKING COMPANY, INC., 118 S. Second St., Milwaukee, WI 53204. Representative: Joseph Bambrick, Jr., P.O. Box 216, Douglassville, PA 19518. *Used household goods restricted to the transportation of shipments having prior or subsequent movement in containers* beyond the points authorized and further restricted to performance pickup and deliveries, between Milwaukee County, WI on the one hand, and, on the other, points within the State of WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Naval Administrative Command, Supply Dept., Bldg. 3200, Code 200, Great Lakes, IL 60088. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 146791 (Sub-19TA), filed April 30, 1979. Applicant: G–C–F TRANSPORT COOPERATIVE ASSOCIATION, Fennimore, Wisconsin 53809. Representative: Niles Berman, 25 West Main Street, Suite 801, Madison, Wisconsin 53703. Contract carrier: irregular routes: *Liquefied petroleum gas,* in bulk, in tank trucks, from the facilities of the Mid-America Pipeline Company in Dubuque, IA to facilities of the Fennimore Cooperative Oil Company in Fennimore and Blue River, WI and of the Grant-Crawford Cooperative Oil Company in Patch Grove, WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Fennimore Cooperative Oil Co., Fenninsore, Wisconsin 53809, and Grant-Crawford Co-op Oil Co., Fennimore, Wisconsin 53809. Send protests to: Mr. John E. Ryden, DS, ICC,

517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 146810 (Sub-1TA), filed April 16, 1979. Applicant: JOHN WILLEGALLA, d.b.a. Willegalla Trucking, 1295 Elsnore Circle, Long Lake, MN 55356. Representative: Val M. Higgins, 1000 First National Bank Building, Minneapolis, MN 55402. *Contract carrier:* irregular routes: *Malt beverages and related advertising materials, premiums, and malt beverage dispensing equipment, when moving in mixed loads with malt beverages* from St. Louis, MO and La Crosse, WI to Long Lake, MN, under a continuing contract or contracts with Thorpe Distributing Co., Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Thorpe Distributing Co., Inc., 2225 Daniels Street, Long Lake, MN 55356. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building, 110 South 4th Street, Minneapolis, MN 55401.

MC 146811 (Sub-1TA), filed April 17, 1979. Applicant: PAULUIK BROS. LTD., Route 5, Thunder Bay, Ontario, Canada P7C 5M9. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, Minnesota 55403. *Brick, brick slices and tile* from ports of entry on the U.S.-Canadian boundary in MN to points in IL, IA, MN, ND and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Thunderbird Limited, R.R. 5, Rosslyn Road, Thunder Bay, Ontario, Canada P7C 5M9. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building, 110 South 4th Street, Minneapolis, MN 55401.

MC 146821 (Sub-1TA), filed April 23, 1979. Applicant: RON BESTEMAN PRODUCE CORP., 2240 Byron Center Road, Wyoming, MI 49509. Representative: Ron Besteman, 2240 Byron Center Road, Wyoming, MI 49509. *Frozen potato products* from the plant sites of Mid-American Potato Co., at or near Grand Rapids, Lake Odessa and Martin, MI to points in the States of IL, IN, OH, PA, KY, MO, WI, NY, NJ, VA and WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Mid-America Potato Co., P.O. Box 2064, Grand Rapids, MI 49501. Send protests to: C. R. flemming, D/S, I.C.C., 225 Federal Building, Lansing, MI 48933.

MC 146830 (Sub-1TA), filed April 26, 1979. Applicant: JACK POOLE, INC., R.R. 2, Manhattan, KS 66502. Representative: Tom B. Kretsinger, 20 East Franklin, Liberty, MO 64068. *Insulation and Insulation Materials,* from the facilities of Owens-Corning Fibreglas at Kansas City and Pauline, KS to points and places in TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Owens-Corning Fibreglas, Inc., P.O. Box 15139, Fairfax St., Kansas City, KS 66115. Send protests to: Thomas P. O'Hara, DS, ICC, 256 Federal Bldg., 444 SE Quincy, Topeka, KS 66683.

MC 146831 (Sub-1TA), filed April 30, 1979. Applicant: MID-CONTINENT L. P. SERVICE, INC., 3711 North Main, Great Bend, KS 67530. Representative: Lester C. Arvin, 814 Century Plaza Bldg., Wichita, KS 67202. *Anhydrous Ammonia, Nitrogen Fertilizer Solutions, and Urea Liquor* in bulk, from points in OK to points in AR, CO, IA, KS, LA, MO, NE, NM, SD, TX & WY; 180 days, common, irregular; Supporting shipper: Terra Chemicals, International Inc., Sioux City, IA; Send protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg., Wichita, KS 67202. Supporting shipper(s): Terra Chemicals, International Inc., P.O Box 1828, Sioux City, IA 51102. Send protests to: M. E. Taylor, D/S, ICC, 101 Litwin Bldg., Wichita, KS 67202.

MC 146840 (Sub-2TA), filed May 7, 1979. Applicant: BOYCHUKS' TRANSPORT LTD., P.O. Box 6298, Station C, Edmonton, AB, Canada T5B 4K6. Representative: Richard S. Mandelson, 1600 Lincoln Center Bldg., 1660 Lincoln St., Denver, CO 80264. *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment) between the U.S.-Canada International Boundary line and the port of entry at Sweetgrass, MT with authority to interline traffic with other carriers at Sweetgrass, MT, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): BN Transport, Inc., 6775 East Evans Ave., Denver, CO 80224. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 146841 (Sub-1TA), filed April 20, 1979. Applicant: DESERT FREIGHT LINES, INC., 1971 East 4th Street, Suite 30, Santa Ana, CA 92704. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. *Brass, bronze, or copper articles and products and commodities used in the manufacture of brass, bronze or copper articles and products,* (1) from Reading, PA and points in its commercial zone as defined by the Commission to Pulaski, TN, and (2) from Reading, PA and points in its commercial zone as defined by the Commission and Pulaski, TN, to points in AZ, CA, CO, OR, TX, and WA, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Reading Industries, Inc., P.O. Box 126, Reading, PA 19603. Send protests to: Irene Carlos, TA, ICC, P.O. Box 1551, Los Angeles, CA 90053.

MC 146860 (Sub-), filed May 14, 1979. Applicant: FRANK BREIDENBACH, Route #1, Iliff, Colorado 80736. Representative: Same. *Dry fertilizer,* from Brownson, NE (near Sidney, NE) to points in CO, KS, WY and NE, for 180 days. Underlying ETA filed seeking 90 days authority. Supporting Shipper(s): Farmland Industries, Box 671, Sterling, CO 80751. Send protests to: D/S Roger L. Buchanan, ICC, 721 19th St., 492 U.S. Customs House, Denver, CO 80202. Supporting shipper(s): Farmland Industries, Box 671, Sterling, CO 80751. Send protests to: D/S Roger L. Buchanan, Interstate Commerce Commission, 721 19th St., 492 U.S. Customs House, Denver, CO 80202.

MC 146861 (Sub-1TA), filed April 23, 1979. Applicant: EDGAR A. SPIEGEL, Route 1, Neillsville, WI 54456. Representative: Bernard Spiegel, 1116 Hyland Drive, Stoughton, WI 53589. Contract carrier; irregular routes: *Exhaust mufflers, spark arrestors, intake silencers, air cleaners and related parts and equipment for those products* from points in Neillsville, Black River Falls, Mineral Point, Viroqua, Arcadia, Wautoma and Stoughton, WI to points in IA, IL, TN, SC and MN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Nelson Muffler Div., P.O. Box 428, Stoughton, WI 53589. Send protests to: Gail Daugherty, TA, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 146970 (Sub-TA), filed April 12, 1979. Applicant: J & J GUTIERREZ, INC., P.O. Box 336, Elsa, TX 78543. Representative: Thomas F. Sedberry, Lanham, Hatchell, Sedberry & Hoffman, 801 Vaughn Building, Austin, TX 78701. *Foodstuffs,* except in bulk, from the facilities utilized by Texsun Corporation in Hidalgo and Cameron Counties, TX to points in the United States in and west of NM, CO, WY and MT. Supporting shipper(s): Texsun Corporation, P.O. Box 327, Weslaco, TX 78597. Send protests to: Richard H. Dawkins, District Supervisor, Interstate Commerce Commission, Room B-400 Federal Building, 727 E. Durango St., San Antonio, TX 78206.

MC 146871 (Sub-1TA), filed April 24, 1979. Applicant: DATELINE TRANSPORTATION, INC., 2931 Powell Avenue, Nashville, TN 37204. Representative: Roland M. Lowell, 618 United American Bank Bldg., Nashville, TN 37219. *Contract carrier:* irregular routes: *Magazines, publications and printed matter* from the facilities of Baird-Ward at or near Nashville, TN to points in and east of MN, IA, KS, OK & TX (except TN), for 180 days. Restricted against the transportation of telephone directories to AL. Supporting shipper(s): Baird-Ward, P.O. Box 530, Nashville, TN 37202. Send protests to: Glenda Kuss, T/A, ICC, Suite A-422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 146891 (Sub-1TA), filed April 27, 1979. Applicant: A & G EXPRESS, INC., 4807 Millbrooke Road, Albany, GA 31701. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *Contract carrier,* irregular routes, *Paper, paper products and cellulose products (except in bulk),* from Albany, GA to points in FL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The Proctor & Gamble Paper Products Co., P.O. Box 599, Cincinnati, OH 45201. Send protests to: G. H. Fauss, Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 146980 (Sub-1TA), filed April 25, 1979. Applicant: HOOSIER EXPRESS, INC., P.O. Box 705, Westville, IN 46391. Representative: Donald W. Smith, Suite 945-900 Keystone Crossing, Indianapolis, IN 46240. *Contract carrier:* irregular routes: *(1) Steel and aluminum articles, (2) materials, equipment and supplies used in the manufacture and distribution of steel and aluminim articles,* between the facilities of Roll Coater, Inc. at or near Greenfield and Kingsbury, IN, on the one hand, and, on the other, points in IL, KY, MI, OH, MD, NY, PA, WI and WV for the account of Roll Coater, Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Roll Coater, Inc., Greenfield, IN. Send protests to: Annie Booker, TA, ICC, 1386 Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 146981 (Sub-1TA), filed April 26, 1979. Applicant: M. KYLE BOWMAN, d.b.a. BOWMAN FERTILIZER SERVICE, Route 4, Rocky Mount, VA 24151. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168. *Common—irregular* (1) *Fertilizer and fertilizer ingredients,* from Dunn, Fayetteville, Wilmington, Wilson, and Winstom Salem, NC to points in VA and WV; (2) *Feed and Flour,* from Roanoke, VA to points in NC and WV; (3) *Feed and Feed Ingredients,* from points in NC to Roanoke, VA; (4) *Lumber,* from points in Franklin County, VA to points in DE, DC, KY, MD, NC, NJ, NY, OH, PA, SC, TN, and WV; (5) *Lumber,* from points in NC and SC to points in Franklin County, VA; and (6) *Molasses, in bulk,* in tank vehicles, from Wilmington, NC to points in VA. Supporting shipper(s): International Minerals & Chemical Corp., Rocky Mount, VA 24151; Rocky Top Treating Co, Inc., N. Main St., Rocky Mount, VA 24151; Roanoke City Mills, Inc., 1702 S. Jefferson St., Roanoke, VA 24006; Big Spring Mill Inc., Elliston, VA 24087; and Ferguson Land & Lumber Company, Rocky Mount, VA 24151. Send protests to: Charles F. Myers, DS, ICC, Room 10—502 Federal Bldg., 400 North 8th St., Richmond, VA 23240.

MC 147001 (Sub-1TA), filed April 26, 1979. Applicant: NOEL MURRAY, 229 6th Avenue N.W., Valley City, ND 58072. Representative: Charles E. Johnson, 418 East Rosser Avenue, Bismarck, ND 58501. *Contract carrier:* over irregular routes: (1) *Such commodities as are dealt in by wholesale, retail, and chain grocery and food business houses (except frozen commodities and commodities in bulk),* from Minneapolis, MN, and its commercial zone, and Glencoe, MN to Valley City, ND, restricted to a transportation service to be performed under a continuing contract or contracts with Valley City Grocery Company, Incorporated, Valley City, ND; and (2) *Flour* (except in bulk), from Hastings, MN to points in ND, restricted to a transportation service to be performed under a continuing contract or contracts with The Peavey Company, Minneapolis, MN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Valley City Grocery Company, Incorporated, 617 N.W. 2nd, Valley City, ND 58072; The Peavey Company, 730 2nd Avenue South, Minneapolis, MN 55402. Send protests to: DS, ICC, Bureau of Operations, Room 268 Fed. Bldg. & U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

MC 147021 (Sub-1TA), filed April 25, 1979. Applicant: C. SUMMERS, INC., 112 Spruce St., Elizabethville, PA 17023. Representative: John W. Frame, Box 626, 2207 Old Gettysburg Road, Camp Hill, PA 17011. MEATS, packinghouse products, and commodities used by packing houses as described in Section A, B and C of Appendix I in Descriptions in 16 M.C.C. 209 and 766 (except commodities in bulk), from Elizabethville, PA, to points in DE, MD, NY, NJ, OH, PA, VA, WV and DC for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Swift & Company, 115 W. Jackson Blvd., Chicago, IL 60604. Send protests to: ICC, Federal Reserve Bank Bldg., 101 N. 7th St., Room 620, Phila., PA 19106.

MC 147030 (Sub-1TA), filed February 20, 1979. Applicant: GEORGE C. GUY d.b.a. GUY TRUCKING, Avenue, MD 20609. Representative: Charles E. Creager, 1329 Pennsylvania Avenue, P.O. Box 1417, Hagerstown, MD 21740. *Contract carrier:* irregular routes: *Malt beverages,* from Newark, NJ and Williamsburg, VA, including their commercial zones, to points in St. Mary's County, MD, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Guy Distributing Co., Inc., Leonardtown, MD 20650. Send protests to: Carol Rosen, TA, ICC, 600 Arch St., Rm. 3238, Philadelphia, PA-19106.

MC 147031 (Sub-1TA), filed April 25, 1979. Applicant: CLARENCE D. BISHOP, 6123 Dunn Rd., Hazelwood, MO 64042. Representative: Warren H. Sapp, P.O. Box 16047, Kansas City, MO 64112. (1) Mineral wool, glass wool, mineral wool and glass wool products and materials, insulated air ducts, insulating products and materials and (2) materials, supplies and equipment used in the distribution and installation of the products named in (1) above, from the facilities of Clecon, Inc., at or near St. Louis, MO to points in AR, IL, IN, IA, KS, KY, NE, OK, TN and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Clecon, Inc., 7528 N. Broadway, St. Louis, MO 63147. Send protests to: P. E. Binder, OC, ICC, Rm. 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 147080 (Sub-1TA), filed May 7, 1979. Applicant: WADE FARMS, INC., Route 3—Box 172, Franklin, Ky. 42134. Representative: Louis J. Amato, Attorney, P.O. Box E, Bowling Green, Ky. 42101. Plastic Bottles, from the facilities of Fortune Plastics, Inc. Franklin, KY, to Cincinnati, OH, Chicago, IL, Raeford, NC, St. Louis, MO, Howell, MI, Cedar Grove, NJ, and Atlanta, GA. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ms. Marilyn McMillan, Secretary, Fortune Plastics, Inc., 715 Orange St., Franklin, Ky. 42134. Send protests to: Linda H. Sypher, D/S, ICC, 426 Post Office Bldg., Louisville, Ky.

MC 147101 (Sub-1TA), filed May 17, 1979. Applicant: L D F, INC., 30 Enterprise Avenue, Secaucus, NJ 07094. Representative: J. A. Kundtz, 1100 National City Bank Building, Cleveland, OH 44114. Foodstuffs, in mechanically

refrigerated equipment, from the facilities of The Nestle Company, Inc. in Charlotte, NC to points in VA and SC, and points in TN on and east of Highway 127, under a continuing contract or contracts with The Nestle Company, Inc. An underlying ETA seeks 90 days authority. Supporting shipper(s): Nestle Company, Inc., 100 Bloomingdale Road, White Plains, NY 10605. Send protests to: Robert E. Johnston, DS, ICC, 744 Broad Street, Room 522, Newark, NJ 07102.

MC 147121 (Sub-1TA), filed April 30, 1979. Applicant: HUGH H. YOUNGBLOOD and JAMES R. YOUNGBLOOD, d.b.a. YOUNGBLOOD TRUCKING CO., P.O. Box 993, Branson, MO 65616. Representative: Hugh H. Youngblood, P.O. Box 993, Branson, MO 65616. *Charcoal Briquettes, Fireplace Logs, Wood Chips and Lighter Fluid* (except in bulk), from facilities of Husky Industries, Inc. at or near Branson, MO to points in OK, TX, KY, AR and NM, for 180 days. Supporting shipper: Huskey Ind. Inc., 62 Asimeter Center East, Branson, MO. Send protests to: John V. Barry, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 147130 (Sub-1TA), filed April 26, 1979. Applicant: AYOTTE TRANSPORT, INC., P.O. Box 705, Goshen, NH 03752. Representative: R. Peter Decato, 23 Bank St., Lebanon, NH 03766. Lumber and wood products, from the facilities of Marlow Lumber Company at Marlow, NH, to points in CT, ME, MA, RI, and VT and to ports of entry on the U.S.-Canada International Boundary Line in NY, for the account of Marlow Lumber Company, for 180 days. Supporting shipper(s): Henry T. Ayotte d.b.a. Marlow Lumber Company, Marlow, NH 03456. Send protests to: Ross J. Seymour, DS, ICC, Rm. 3, 6 Loudon Rd., Concord, NH 03301.

MC 147190 (Sub-1TA), filed April 20, 1979. Applicant: MIKE & MONICA M. MALONEY d.b.a. M & M TRUCKING, P.O. Box 233, Sheridan, MT 59749. Representative: Charles Linewebber, Ironrod Sawmill, Inc., Sheridan, MT 59749. *Pallets* from the facilities of Ironrod Sawmill located near Sheridan, MT to points in ID and WY, for 180 days. Supporting shipper(s): Ironrod Sawmill, P.O. Box 416, Sheridan, MT 59749. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 147311 (Sub-1TA), filed May 9, 1979. Applicant: T & S TRANSPORTATION, INC., 7420 Ranco Road, Post Office Box 9729, Richmond, VA 23228. Representative: William P. Jackson, 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. Contract carrier *Such commodities* as are dealt in or used by grocery and food business houses (except in bulk), between the facilities of Taylor & Sledd, Inc., at or near Greendale, VA and Memphis, TN, on the one hand, and, on the other, points in the United States (except AK and HI), for 180 days, restricted to the transportation of shipments under a continuing contract or contracts with Taylor & Sledd, Inc. Supporting shipper(s): Peter A. Stevens, Traffic Manager, Taylor & Sledd, Inc., 7420 Ranco Road, Post Office Box 9729, Richmond, VA 23228. Send protests to: Paul D. Collins, DS, ICC, Room 10-502 Federal Bldg., 400 North 8th Street, Richmond, VA 23240.

By the Commission.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-18885 Filed 6-18-79; 8:45 am]

BILLING CODE 7035-01-M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 119
Tuesday, June 19, 1979

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

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1

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 10 a.m., June 20, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of items adopted by notation.

2. Dockets 32635, 32686, 32694, 33353, 35269, 35252, 35270, 35275, 35331, 35386, 35449; Applications of World, TIA, DHL Airways, American, Braniff, Continental, Pan American, TWA, and United for transpacific exemption authority to provide scheduled combination and all-cargo air transportation to Korea and other Far East points (BIA).

3. Dockets 34127 and 34167—Application of the Flying Tiger Line, Inc. (FTL) for certificate authority to operate all-cargo service between Los Angeles/San Francisco-Toronto/Montreal via Chicago and petition for an order to show cause; and Application of Seaboard World Airlines, Inc. (Seaboard) for identical authority and motion for consolidation and convention of oral hearing (BIA, OGC, BLJ).

4. Docket 33656; Application of Kinki Nippon Tourist Co., Ltd. (Japan) d/b/a Kintetsu International Express (U.S.A.), Inc. for a foreign air carrier permit to act as a foreign tour operator (BIA).

5. Docket 34840, Travac, A.G. (Switzerland) application for an indirect foreign air carrier permit to act as a foreign tour operator (BIA, OGC, BLJ).

6. Docket 35032, Application of Colombia Airlines Ltd. for an initial foreign air carrier permit to operate charters between Canada and the U.S. using small aircraft (BIA, OGC, BLJ).

7. Docket 34563, Application of Southern Frontier Air Transport Limited (Canada) for a foreign air carrier permit (BIA, OGC, BLJ).

8. Dockets 32775 and 32776; Applications of Jet Executive International, Inc. for charter certificates; Docket 33362, *Former Large Irregular Air Service Investigation*—Discretionary review of recommended decision (OGC).

9. Dockets 34769, 35486, 35039, 35069, 34879, and 34857; Continental's, Allegheny's and Braniff's application for Denver-Washington nonstop authority; Ozark's and Western's applications for Denver-Washington and Denver-Baltimore nonstop authority; and National's application for Denver-Colorado Springs-Washington authority (Memo 8905, BDA, OGC, BLJ).

10. Docket 35242, United's petition for a show-cause order for nonstop Pittsburgh-Las Vegas authority (Memo 8903, BDA).

11. Dockets 35406 and 35537; Nashville-Knoxville Show-Cause Proceeding and application of Ozark (BDA).

12. Docket 33448—Dismissal of show-cause procedures in Order 78–10–106 (Memo 8248–G, BDA, BIA).

13. Dockets 35141 and 35292, Applications of Texas International and Continental for orders to show-cause for nonstop Tulsa-Dallas/Fort Worth authority (Memo 8906, BDA, OGC).

14. Docket 35304—National's notice of intent to terminate air service at Melbourne and in the Melbourne-Tampa nonstop markets (BDA, OCCR).

15. Docket 35366, Airwest's notice to terminate service at Santa Rosa, California (BDA).

16. Docket 35436, Hughes Airwest's notice under section 401 (j)(1) to terminate its certificate obligation at Palmdale-Lancaster, California (BDA, OCCR).

17. Docket 35642, Revised transborder excess baggage charges proposed by Canadian Pacific, DHL, Air courier, complains that the proposed charges are not cost-justified (BDA, BIA).

18. Dockets 35664, 35687 and 35743; Complaints of American, TWA and World against United's discount coupon program. Complainants contend the proposal constitutes a rebate and is unjustly discriminatory (BDA).

19. Docket 30452, Interbank Card Association, Carte Blanche Corporation and VISA U.S.A. Inc.'s Motions to Withdraw from the Universal Air Travel Plan—1976 Proceeding (BDA).

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673–5068.

[S–1202–79 Filed 6–15–79; 9:17 am]

BILLING CODE 6320–01–M

2

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 2 p.m., June 14, 1979.

PLACE: 825 North Capitol Street, NE., Washington, D.C. 20426, Hearing Room A.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

(1) Continuation of June 1, 1979, meeting on a matter related to civil litigation.

(2) A matter involving apparent misrepresentations to the FPC by a jurisdictional corporation.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 275–4166.

[S–1209–79 Filed 6–15–79; 10:46 am]

BILLING CODE 6450–01–M

3

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 9:30 a.m., June 21, 1979.

PLACE: 1700 G Street, N.W., Sixth Floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Franklin O. Bolling, 202–377–6677.

MATTERS TO BE CONSIDERED:

Satellite Office Application—Flagler Federal Savings & Loan Association, Miami, Florida.

Limited Facility Application—Cleveland Federal Savings & Loan Association, Cleveland, Ohio.

Limited Facility Application—Fairfield Federal Savings & Loan Association of Lancaster, Lancaster, Ohio.

Branch Office Application—First Federal Savings & Loan Association of Hammonton, Hammonton, New Jersey.

Branch Office Application—Buckeye Federal Savings & Loan Association, Columbus, Ohio.

Consideration of Increased Authority of Supervisory Agents Charles P. O'Toole and Linda C. Mercurio, Federal Home Loan Band of New York.

Modification of Branch Office Resolution (Advertising of Branch Name)—First Federal Savings & Loan Association of Lincoln, Lincoln, Nebraska.

Modification of Branch Office Resolution (Advertising of Branch Name)—First Federal Savings & Loan Association of Lincoln, Lincoln, Nebraska.

Modification of Branch Office Resolution (Advertising of Branch Name)—First Federal Savings of Loan Association of York, York, Nebraska.

Application for Increase in Accounts of an Insurable Type (Merger); Cancellation of Membership and Insurance; and Transfer of Stock—Consolidated Savings & Loan Association, Milwaukee, Wisconsin into Hopkins Savings & Loan Association, Wauwatosa, Wisconsin.

No. 248, June 14, 1979.

[S-1208-79 Filed 6-15-79; 9:46 am]

BILLING CODE 6720-01-M

4

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 1 p.m., June 19, 1979.

PLACE: Room 12126, 1100 L Street, N.W., Washington, D.C. 20573.

STATUS: Closed.

MATTER TO BE CONSIDERED: Legislative proposals.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523-5725.

[S-1211-79 Filed 6-15-79; 11:41 am]

BILLING CODE 6730-01-M

5

FEDERAL RESERVE SYSTEM (Board of Governors).

TIME AND DATE: 11 a.m., Friday, June 22, 1979.

PLACE: 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

[S-1207-79 Filed 6-15-79; 10:08 am]

BILLING CODE 6210-01-M

6

FEDERAL TRADE COMMISSION.

TIME AND DATE: 2 p.m., Wednesday, June 20, 1979.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

STATUS: Open.

MATTERS TO BE CONSIDERED: Consideration of approval of Staff Report to the Federal Trade Commission on Life Insurance Cost Disclosure and adoption of Model Life Insurance Cost Disclosure Regulation.

CONTACT PERSON FOR MORE INFORMATION: Ira J. Furman, Office of Public Information: (202) 523-3830; Recorded Message: (202) 523-3806.

[S-1206-79 Filed 6-15-79; 10:30 am]

BILLING CODE 6750-01-M

7

[USITC SE-79-25]

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Wednesday, June 27, 1979.

PLACE: Room 117, 701 E Street, N.W., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary: a. Calcium pantothenate from Japan (Docket No. 579).
5. Oleoresin from India (Inv. 303-TA-10)—Briefing and vote.
6. Certain novelty glasses (Inv. 337-TA-55)—Briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-1214-79 Filed 6-15-79; 1:59 pm]

BILLING CODE 7020-02-M

8

NATIONAL LABOR RELATIONS BOARD.

TIME AND DATE: 10:30 a.m., Friday, June 22, 1979.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, N.W., Washington, D.C. 20570.

STATUS: Closed to public observation.

MATTERS TO BE CONSIDERED: Consideration of applicants qualified for appointment to Administrative Law Judge.

CONTACT PERSON FOR MORE INFORMATION: William A. Lubbers, Executive Secretary, Washington, D.C. 20570, telephone 202-254-9430.

Dated: Washington, D.C., June 15, 1979.

By direction of the Board.

George A. Leet,

Associate Executive Secretary, National Labor Relations Board.

[S-1213-79 Filed 6-15-79; 12:11 pm]

BILLING CODE 7545-01-M

9

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: June 20, 21 and 22, 1979.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

Wednesday, June 20; 9:30 a.m.

1. Discussion of Task Force on NRC Safeguards Policy and Safeguards Upgrade Rule (continued from 5/3) (approximately 1 hour, closed—exemption 1).

Wednesday, June 20; 1:30 p.m.

1. Discussion of Commission Response to Emergency Requirements (approximately 2 hours, public meeting).
2. Discussion of Personnel Matter (approximately 1½ hours, closed—exemption 6).

Thursday, June 21; 10 a.m.

1. Briefing on Facts of TMI Radiological Sequence (approximately 1 hour, public meeting).
2. Briefing on Reactor Licensing Schedules (approximately 1 hour, public meeting).

Thursday, June 21; 1:30 p.m.

1. Affirmation Session (approximately 10 minutes, public meeting) (items are tentative):
   a. Physical Protection of Category II and III Material.
   b. Rancho Seco, and
   c. Seabrook Seismic Shutdown.
2. Discussion of Proposed Executive Branch Format for Analysis of Export Applications (approximately 1 hour, public meeting).
3. Discussion of International Safeguards Matters (approximately 2 hours, closed—exemption 1).

Friday, June 22; 9:30 a.m.

1. Recommendations on Operational Data Analysis and Evaluation for Nuclear Power Plants (Task Force Report) (approximately 1 hour, public meeting).

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634-1410.

Walter Magee

Office of the Secretary.

[S-1203-79 Filed 6-15-79; 9:21 am]

BILLING CODE 7590-01-M

10

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 1 p.m. on June 25, 1979.

PLACE: Room 1101, 1825 K Street, N.W., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process

CONTACT PERSON FOR MORE INFORMATION: Mrs. Patricia Bausell, (202) 634-4015.

Dated: June 14, 1979.

[S-1205-79 Filed 6-15-79; 9:46 am]

BILLING CODE 7600-01-M

11

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 34022, June 13, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 1 p.m. on June 19, 1979.

CHANGES IN THE MEETING: This meeting has been rescheduled for June 19, 1979, at 1:30 p.m.

Date: June 15, 1979.

[S–1204–79 Filed 6–15–79; 9:46 am]

BILLING CODE 7600–01–M

12

PAROLE COMMISSION: National Commissioners (the Commissioners presently maintaining offices at Washington, D.C. Headquarters).

TIME AND DATE: Thursday, June 28, 1979, at 9:30 a.m.

PLACE: Room 828, 320 First Street, N.W., Washington, D.C. 20537.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTER TO BE CONSIDERED: Referrals from Regional Commissioners of approximately 20 cases in which inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: A. Ronald Peterson, Analyst, 202–724–3094.

[S–1212–Filed 6–15–79; 11:41 a.m.]

BILLING CODE 4410–01–M

13

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [44 FR 33549 June 11, 1979/to be published].

STATUS: Closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Wednesday, June 6, 1979 and Wednesday, June 13, 1979.

CHANGES IN MEETING: Rescheduling.

The following items scheduled for consideration at a closed meeting on Wednesday, June 13, 1979, at 8 a.m. has been rescheduled for Thursday, June 14, 1979 at 11:30 a.m.:

Institution of administrative proceedings of an enforcement nature.

Institution of injunctive action.

Settlement of administrative proceedings of an enforcement nature.

Regulatory matter bearing enforcement implications.

Chairman Williams and Commissioners Loomis, Evans, Pollack and Karmel determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alternations in the scheduling or meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Mike Rogan at (202) 755–1638.

June 14, 1979.

[S–1210–79 6–15–79; 11:06 am]

BILLING CODE 8010–01–M

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Federal Register

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Tuesday, June 19, 1979

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/OHMO	USDA/FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
DOT/UMTA*	MSPB/OPM		DOT/UMTA*	MSPB/OPM
DOT/FRA*	LABOR		DOT/FRA*	LABOR
CSA	HEW/FDA		CSA	HEW/FDA

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

***NOTE: As of June 14, 1979, the Urban Mass Transportation Administration and Federal Railroad Administration, Department of Transportation, will publish on the Monday/Thursday schedule.**

REMINDERS

Rules Going Into Effect Today

Note: There were no items eligible for inclusion in the list of Rules Going Into Effect Today.

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

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Published Firearms Laws of Political Subdivisions and States

Part III—USDA/FNS:
Food Stamp and Food Distribution Programs on Indian Reservations

Part IV—HEW/NIH:
Request for Nominations for Members of NIH National Advisory Councils and Boards

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Review of Standards for Secondary Brass and Bronze Ingot Production

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UMI

Tuesday
June 19, 1979

Federal Register

Part II

Department of the Treasury

Bureau of Alcohol, Tobacco and Firearms

Gun Control

Published Firearms Laws of Political Subdivisions and States

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

(Notice No. 79-4)

GUN CONTROL

Published Firearms Laws of Political Subdivisions and States

Pursuant to the provisions of Section 921(a)(19), Title 18, United States Code, and Section 178.24, Title 27, Code of Federal Regulations (27 CFR, Part 178), the following is the annual revised compiled list of published ordinances of political subdivisions within the United States that are relevant to the enforcement of 18 U.S.C., Chapter 44, relating to firearms. State firearms laws are also included.

The list was developed from (a) copies of local firearms ordinances obtained through a national mail survey of political subdivisions, and (b) State firearms laws.

The Bureau applied the following criteria in deciding which firearms laws were relevant or nonrelevant to the enforcement of 18 U.S.C., Chapter 44.

RELEVANT

Firearms laws considered relevant to the enforcement of 18 U.S.C., Chapter 44, and therefore included in the accompanying list are those which:

1. Prohibit the sale, possession, or receipt of any type of firearms or ammunition, or allow any exemption to such prohibitions;
2. Prohibit the sale, possession, or receipt of any type of firearm or ammunition to or by a particular class of persons; e.g. aliens, felons, drug addicts, or mental incompetents;
3. Restrict the sale, possession, or receipt of firearms such as fully automatic firearms, short-barreled shotguns and rifles, and destructive devices; i.e. bombs, grenades, molotov cocktails, etc.;
4. Require waiting periods or notification to law enforcement officials before a weapon may be delivered to a purchaser;
5. Require a permit, license, or I.D. card before a weapon may be sold and/or delivered to a purchaser; and
6. Restrict the age at which a person may purchase a firearm or ammunition.

NOT RELEVANT

Firearms laws considered not relevant to 18 U.S.C., Chapter 44, and therefore not included in the accompanying list are those which:

1. Prohibit the carrying of weapons such as legal handguns, long-barreled rifles or shotguns, slingshots, dirks, daggers, etc. on persons or in vehicles;
2. Prohibit the discharge of weapons within city limits or on private property;
3. Require recordkeeping after sale of the firearms;
4. Require notification to local police departments of sale of firearms after the sale has been made; and
5. Require licenses for selling BB guns, slingshots, dirks, daggers, and other dangerous weapons.

This list comprises the 1979 list of published laws and implements Title 1 of the Gun Control Act of 1968 (82 Stat. 1213; 18 U.S.C., Chapter 44) and supersedes that list published on May 30, 1978 (43 FR 23201).

Signed: June 5, 1979.

G. R. DICKERSON,
Director.

BILLING CODE 4810-31-M

Alabama

State Law

Editor's Note: Title 13A becomes effective June 1, 1979, replacing the present code.

Title 13A. Criminal Code

Sec. 13A-11-57. Selling, etc., pistol or bowie knife to minor. Any person who sells, gives or lends to any minor any pistol * * * shall, on conviction, be fined not less than $50.00 nor more than $500.00.

Sec. 13A-11-58. Sale of firearms or ammunition to residents of adjoining states; purchase in adjoining states. (a) Any resident of Alabama authorized to sell and deliver rifles, shotguns and ammunition may sell and deliver them to a resident of any state adjoining Alabama. Any purchaser of such firearm or ammunition may take or send it out of the state or have it deliver (sic) to his place of residence.

(b) Any resident of Alabama who legally purchases rifles, shotguns and ammunition in any state adjoining Alabama may take delivery of said weapons either in the state where they were purchased or in Alabama.

Sec. 13A-11-70. Definitions. For the purposes of this division, the following terms shall have the respective meanings ascribed by this section:

(1) *Pistol.* Any firearm with a barrel less than 12 inches in length.

(2) *Crime of violence.* Any of the following crimes or an attempt to commit any of them, namely, murder, manslaughter, (except manslaughter arising out of the operation of a vehicle), rape, mayhem, assault with intent to rob, assault with intent to ravish, assault with intent to murder, robbery, burglary, kidnapping and larceny.

(3) *Person.* Such term includes any firm, partnership, association or corporation.

Sec. 13A-11-72. Certain persons forbidden to possess pistol. (a) No person who has been convicted in this state or elsewhere of committing or attempting to commit a crime of violence shall own a pistol or have one in his possession or under his control.

(b) No person who is a drug addict or an habitual drunkard shall own a pistol or have one in his possession or under his control.

Sec. 13A-11-76. Delivery to minors, habitual drunkards, etc. No person shall deliver a pistol to any person under the age of 18 or to one who he has reasonable cause to believe has been convicted of a crime of violence or is a drug addict, an habitual drunkard or of unsound mind.

Sec. 13A-11-77. Sales regulated; application for purchase. No seller shall deliver a pistol to the purchaser thereof until 48 hours shall have elapsed from the time of the application for the purchase thereof, and, when delivered, the pistol shall be securely wrapped and shall be unloaded. At the time of applying for the purchase of a pistol, the purchaser shall sign in triplicate and deliver to the seller a statement containing his full name, address, occupation, color, place of birth, the date and hour of application, the caliber, make, model and manufacturer's number of the pistol to be purchased and a statement that he has never been convicted in this state or elsewhere of a crime of violence. The seller shall within six hours after such application, sign and attach his address and forward by registered or certified mail one copy of such statement to the chief of police of the municipality or the sheriff of the county of which the seller is a resident; the duplicate duly signed by the seller shall within seven days be sent by him with his address to the director of public safety; and he shall retain the triplicate for six years. This section shall not apply to purchases by licensed retailers from manufacturers, wholesalers or jobbers, or to purchases by wholesalers or jobbers from manufacturers.

Sec. 13A-11-78. Dealers' licenses—Required. No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell, or otherwise transfer, any pistol without being licensed as hereinafter provided.

Sec. 13A-11-79. Same—Issuance; conditions; display; fees. The duly constituted licensing authorities of any city, town or political subdivision of this state may grant licenses in forms prescribed by the secretary of state, effective for not more than one year from date of issue, permitting the licensee to sell pistols at retail within this state subject to the following conditions, in addition to those specified in section 13A-11-77, for breach of any of which the license shall be forfeited and the licensee subject to punishment as provided in this division. The business shall be carried on only in the building designated in the license. The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be read. No pistol shall be sold in violation of any provisions of this division, nor shall a pistol be sold under any circumstances unless the purchaser is personally known to the seller or shall present clear evidence of his identity. A true record in triplicate shall be made of every pistol sold, in a book kept for the purpose, the form of which may be prescribed by the secretary of state and shall be personally signed by the purchaser and by the person effecting the sale, the caliber, make, model and manufacturer's number of the weapon, the name, address, occupation, color and place of birth of purchaser and a statement signed by the purchaser that he has never been convicted in this state or elsewhere of a crime of violence. * * *

Sec. 13A-11-80. Loans secured by deposit, etc., of pistol prohibited; certain transfers prohibited. No person shall make any loan secured by a mortgage, deposit or pledge of a pistol contrary to this division, nor shall any person lend or give a pistol to another or otherwise deliver a pistol contrary to the provisions of this division.

Sec. 13A-11-82. Alteration of identifying marks prohibited. No person shall change, alter, remove or obliterate the name of the maker, model, manufacturer's number or other mark of identification of any pistol. Possession of any pistol upon which any such mark shall have been changed, altered, removed or obliterated shall be prima facie evidence that the possessor has changed, altered, removed or obliterated the same.

Sec. 13A-11-83. Antique pistols. This division shall not apply to the purchase, possession or sale of pistols as curiosities or ornaments or to the transportation of such pistols unloaded and in a bag, box or securely wrapped package, but not concealed on the person.

**Sec. 40-12-143. Pistols, revolvers, * * * etc. Persons dealing in pistols, revolvers, maxim silencers, * * * whether principal stock in trade or not shall pay the following license tax: in cities and towns of 25,000 inhabitants and over, $150.00; and in all other places, $100.00. All persons dealing in pistols, revolvers and maxim silencers shall be required to keep a permanent record of the sale of every pistol, revolver or maxim silencer, showing the date of sale, serial number or other identification marks, manufacturer's name, caliber and type, and also the name and address of the purchaser, which record shall always be open for inspection by any peace officer of the state of Alabama or any municipality thereof. * * *

Sec. 40-12-158. Shotguns, rifles, ammunition, etc. (a) Each person dealing in shotguns, rifles of .22 calibre or over, metallic ammunition or shotgun shells shall pay a license tax * * *

Anniston

3. No seller of a pistol shall deliver the pistol to a purchaser thereof until 48 hours shall have elapsed from the time of the application for the purchase thereof.

4. The provisions of sections 1-3 shall apply to a gift of a pistol just as though the person making such gift were a seller and the person to whom such gift is made were a purchaser thereof and no such gift shall be made except in accordance with such sections.

5. No person shall deliver a pistol to any person under the age of eighteen or to one he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, an habitual drunkard, or of unsound mind.

6. This division shall be applicable within the corporate limits and police jurisdiction of this city and shall be construed as supplementing, in such territory, and as not in conflict with, Code of Alabama, Title 14, Sections 172 to 186.

Ardmore

Local ordinance incorporates, by reference, Alabama State Criminal Code sections.

Auburn

Sec. 15-78. Same—Delivery to minors and others prohibited. No person shall deliver a pistol to any person under the age of eighteen or to one who he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, an habitual drunkard, or of unsound mind.

Bessemer

Sec. 15-169. Possession of pistol prohibited. (a) No person who has been convicted in this City or elsewhere of committing or attempting to commit a crime of violence shall own a pistol or have one in his possession or under his control.

(b) No person who is a drug addict or a habitual drunkard shall own a pistol or have a pistol in his possession or under his control.

Sec. 15-172. Delivery of pistol restricted. No person shall deliver a pistol to any person under the age of eighteen (18) years or to any person who he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, habitual drunkard or of unsound mind.

Sec. 15-173. Regulation of sales. (a) No seller shall deliver a pistol to the purchaser until forty-eight (48) hours shall have elapsed from the time of the application for the purchase of the pistol. When delivered, the pistol shall be securely wrapped and shall be unloaded.

(b) At the time of applying for the purchase of a pistol, the purchaser shall sign in duplicate and deliver to the seller a statement [contact local authorities for required contents] * * *.

(c) The seller shall, within six (6) hours after the application, sign and attach his address and forward by registered mail or personally deliver one (1) copy of the statement to the Chief of Police.

(d) This Section shall not apply to purchases by licensed retailers from manufacturers, wholesalers or jobbers, or to purchases by wholesalers or jobbers from manufacturers.

Sec. 15-174. License to carry; dealer. No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell, or otherwise transfer, any pistol without being licensed as provided in Section 15-171.

Birmingham

Sec. 56-3. Delivery of pistol * * * to minor. No person shall sell give or lend to any minor any pistol * * *.

Sec. 56-11. Exceptions to provisions of chapter. This chapter shall not apply to antique pistols unsuitable for use as firearms and possessed as curiosities or ornaments.

Sec. 56-12. Definitions. For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Crime of violence. (Same as State Law Definition, see Sec. 13A-11-70)

Exempt person. Any marshal, sheriff, prison or jail warden and his regularly employed deputies, policeman or other law enforcement officer of any state or political subdivision thereof, member of the army, navy or marine corps of the United States or of the national guard, member of the national guard organized reserves or state guard organizations, when on duty or going to or from duty, regularly enrolled member of any organization duly authorized to purchase or receive such weapons from the United States or from this state, provided such member is at or is going to or from his place of assembly or target practice, officer or employee of the United States duly authorized to carry a pistol, any person engaged in manufacturing, repairing or dealing in pistols or the agent or representative of such person possessing, using, or carrying a pistol in the usual or ordinary course of such business, any common carrier, except taxicabs, licensed as a common carrier, any person permitted by law to possess a pistol while carrying it unloaded in a secure wrapper, from the place of purchase to his home or place of business or to or from a place of repair or in moving from one place of abode or business to another.

Nonexempt person. Any person other than an exempt person.

Pistol. Any firearm with a barrel less than twelve inches in length.

Sec. 56-16. Altering, obliterating or removing names or numbers from pistols. No person shall change, alter, remove or obliterate the name of the maker, model, manufacturer's number or other mark of identification of any pistol. Possession of any pistol upon which any such mark shall have been changed, altered, removed or obliterated shall be prima facie evidence that the possessor has changed, altered, removed or obliterated the same.

Sec. 56-20. Statement required of persons desiring to purchase—Filing. At the time of applying for the purchase of a pistol, the person desiring to make such purchase shall sign in duplicate and deliver to the seller a statement [contact local authorities for required contents] * * *; provided, that this requirement shall not apply to purchases by licensed retailers from manufacturers, wholesalers or jobbers, or to purchases by wholesalers or jobbers from manufacturers or to antique pistols unsuitable for use as firearms and possessed as curiosities or ornaments.

Sec. 56-22. Delivery to purchaser. No seller of a pistol shall deliver the pistol to a purchaser thereof until forty-eight hours shall have elapsed from the time of the application for the purchase thereof. When delivered, the pistol shall be securely wrapped and shall be unloaded.

Sec. 56-23. Gifts. The provisions of sections 56-20 to 56-22 shall apply to a gift of a pistol just as though the person making such gift were a seller and the person to whom such gift is made were a purchaser thereof and no such gift shall be made except in accordance with such sections.

Sec. 56-24. Delivery to certain persons forbidden. No person shall deliver a pistol to any person under the age of eighteen or to one he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, an habitual drunkard, or of unsound mind.

Brighton

1. All statutory and common law misdemeanors against the State of Alabama are hereby adopted as laws and Ordinances of the City of Brighton.

2. All criminal laws of the State of Alabama by which statutory or common law misdemeanors against the State of Alabama are determined and declared shall be adopted as laws and Ordinances of the City of Brighton, and any and all acts which under said laws of the State of Alabama are held to be misdemeanors, or punishable as such, shall be violations of the laws and Ordinances of the City of Brighton.

5. No seller, within the corporate limits of the City of Brighton, or within the police jurisdiction thereof, shall deliver a pistol to the purchaser thereof until forty-eight hours shall have elapsed from the time of the application for the purchase thereof and, when delivered, such pistol shall be securely wrapped and shall be unloaded. * * * This section shall not apply to purchases by licensed retailers from manufacturers, wholesalers or jobbers,

or to purchases by wholesalers or jobbers from manufacturers.

Carrville

Ordinance number 1977-10 adopts the Alabama State Law.

Citronelle

Chapter 28

Sec. 675. Definitions. As used in this chapter the term "pistol" shall mean any firearm with a barrel less than twelve inches in length, and the term "crime of violence" shall mean the crime of murder, manslaughter, rape, mayhem, assault with intent to rob, assault with intent to ravish, assault with intent to murder, robbery, burglary, kidnaping or larceny or the crime of attempting to commit any of the aforesaid crimes, and the term "exempt person" shall mean a marshal, a deputy marshal, sheriff, deputy sheriff, prison or jail warden, deputy prison or jail warden, policeman or other authorized law enforcement officer, or a person regularly engaged in the business of manufacturing, repairing or dealing in firearms, and the term "nonexempt person" shall mean other than an exempt person.

Sec. 676. Permit to receive pistol—required. It shall be unlawful for any exempt or nonexempt person, or for any employee, servant, or agent of any exempt or nonexempt person, to sell, give, lend or deliver a pistol to any nonexempt person unless the latter have in his possession, and deliver to the former, an unrevoked original of a permit issued by the chief of police authorizing him to receive a pistol. * * *

Sec. 682. Ex-convict not to possess pistol. No person who has been convicted in the State of Alabama or elsewhere of a crime of violence shall own a pistol or have one in his possession or under his control.

Sec. 683. Altering, obliterating or removing names or numbers from pistols. No person shall change, alter, remove or obliterate the name of the maker, model, manufacturer's number or other mark of identification of any pistol. Possession of any pistol upon which any such mark shall have been changed, altered, removed or obliterated shall be prima facie evidence that the possessor has changed, altered, removed or obliterated the same.

Sec. 687. Delivery of pistol * * * to minor. Any person who sells, gives or lends to any minor any pistol * * * shall, on conviction, be punished as provided in section 4.

Sec. 696. Exceptions to provisions of chapter. This chapter shall not apply to antique pistols unsuitable for use as firearms and possessed as curiosities or ornaments.

Daleville

Daleville has adopted the State code.

Dora

The city of Dora has adopted the language of state firearms laws, including sections 14.170 through 14.185 (Compiler's note: recodified to 13A-11-57 through 13A-11-83) shown at the beginning of the Alabama State listing in this publication.

Dothan

Sec. 10-25. State misdemeanors. All laws of the State of Alabama, in effect as of October 26, 1965, and as may be adopted or amended thereafter by the State Legislature, the violation of which constitutes a misdemeanor, are hereby adopted as laws of the city.

Eufaula

Article VI. Weapons

Sec. 16-134. Definitions. For purposes of this article the following terms shall have the meanings ascribed to them:

Crime of violence. "Crime of violence" shall mean the crime of murder, manslaughter, rape, mayhem, assault with intent to rob, assault with intent to ravish, assault with intent to murder, robbery, burglary, kidnapping or larceny or the crime of attempting to commit any of the aforesaid crimes.

Exempt person. The term "exempt person" shall mean a marshal, deputy marshal, sheriff, deputy sheriff, prison or jail warden, deputy prison or jail warden, policeman or other authorized law enforcement officer, or a person regularly engaged in the business of manufacturing, repairing or dealing in firearms.

Nonexempt person. The term "nonexempt person" shall mean any person other than an exempt person.

Pistol. The term "pistol" shall mean any firearm with a barrel less than twelve (12) inches in length.

Sec. 16-135. Exceptions to provisions of article. This article shall not apply to antique pistols unsuitable for use as firearms and possessed as curiosities or ornaments.

Sec. 16-136. Permit to Receive Pistol Required. It shall be unlawful for any exempt or nonexempt person, or for any employee, servant or agent of any exempt or nonexempt person, to sell, give, lend or deliver a pistol to any nonexempt person unless the latter have in his possession, and deliver to the former, an unrevoked original of a permit issued by the chief of police authorizing him to receive a pistol.

It shall be unlawful for any nonexempt person to buy, borrow, or accept delivery of a pistol from another unless such nonexempt person have in his possession, and deliver to such other, an unrevoked original of a permit issued by the chief of police authorizing such nonexempt person to receive a pistol.

Sec. 16-139. Sales; requirements generally. (a) No seller shall deliver a pistol to the purchaser thereof until forty-eight (48) hours shall have elapsed from the time of the application for the purchase thereof and when delivered. * * *

(c) At the time of applying for the purchase of a pistol the purchaser shall sign in triplicate and deliver to the seller a statement [contact local authorities for required contents] * * * that he has never been convicted in this state or elsewhere of a crime of violence.

Sec. 16-144. Persons convicted of crimes of violence not to possess pistol. No person who has been convicted in the state or elsewhere of a crime of violence shall own a pistol or have one in his possession or under his control.

Sec. 16-145. Altering, obliterating or removing names or numbers from pistols prohibited. No person shall change, alter, remove or obliterate the name of the maker, model, manufacturer's number or other mark of identification of any pistol. Possession of any pistol upon which any such mark shall have been changed, altered, removed or obliterated shall be prima facie evidence that the possessor has changed, altered, removed or obliterated the same.

Sec. 16-148. Delivery of pistol * * * to minor. Any person who sells, gives or lends to any minor any pistol * * * shall, on conviction, be punished as hereinafter provided in Section 1-14.

Falkville

Ordinance 80 states that the license on metallic ammunition, such as rifle and pistol cartridges, shall be $10.

Florence

Sec. 15-39. Same—Selling to or use by minors. It shall be unlawful for any person to sell, give, lend or otherwise place in the possession of any minor, any pistol, firearm or other weapon which may be concealed upon the person, and it shall be unlawful for any minor to have in his possession or use any such firearm or weapon in the city.

Gadsden

Sec. 23-79. It shall be unlawful for any person to expose for sale, sell or give away

any pistol or firearms of like nature in which blank cartridges or a metallic cartridge, or in which powder and balls, can be used or can be exploded unless licensed by the city.

Gardendale

Ordinance 80

Section 2. Definitions. As used in this Ordinance, the term "pistol" shall mean any firearm with a barrel less than twelve inches in length, and the term "crime of violence" shall mean the crime of murder, manslaughter, rape, mayhem, assault with intent to rob, assault with intent to ravish, assault with intent to murder, robbery, burglary, kidnapping or larceny or the crime of attempting to commit any of the aforesaid crimes, * * *.

Section 6. Ex-Convict not to Possess Pistol. No person who has been convicted in the State of Alabama or elsewhere of a crime of violence shall own a pistol or have one in his possession or under his control.

Section 7. Altering, Obliterating or Removing Names or Numbers from Pistols. No person shall change, alter, remove or obliterate the name of the maker, model, manufacturer's number or other mark of identification of any pistol. Possession of any pistol upon which any such mark shall have been changed, altered, removed or obliterated shall be prima facie evidence that the possessor has changed, altered, removed or obliterated the same.

Section 11. Delivery of Pistol * * * to Minor. Any person who sells, gives or lends to any minor any pistol * * * shall, on conviction, be punished as provided in Section 2 of Ordinance #13.

Headland

Article 24

Section 6. Selling Pistol or Bowie Knife to Minor. Any person who sells, gives, or lends to any minor any pistol * * * shall, on conviction, be fined not less than one nor more than one hundred dollars.

* * * * *

Hueytown

3. Delivery of pistol * * * to Minor. No person shall sell, give, lend or deliver any pistol * * * to any minor or to any one he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict and an habitual drunkard, or of unsound mind.

10. Possession by Certain Persons Prohibited. (a) No person who has been convicted in the state or elsewhere of a crime of violence shall own a pistol or have one in his possession or under his control.

(b) No person who is a drug addict or an habitual drunkard shall own a pistol or have one in his possession or under his control.

12. Gifts. The provisions of section 3 and 4 shall apply to a gift just as though the person making such gift were a seller and the person to whom such gift were made were purchaser thereof.

13. Exceptions to Provisions. The sections of this Ordinance shall not apply to antique pistols unsuitable for use as firearms and possessed as curiosities or ornaments.

Kimberly

Ordinance number 14-76 adopts the Alabama State Law.

Maplesville

Ordinance 15

Section 1. Definitions. As used in this ordinance the term "pistol" shall mean any firearm with a barrel less than twelve inches in length, and the term "crime" or "crime of violence" shall mean the crime of murder, robbery, manslaughter, rape, mayhem, assault with intent to murder, burglary, kidnapping, larceny, or the crime of attempting to commit any of the aforesaid crimes; the term "exempt person" shall mean a marshal, deputy marshal, sheriff, deputy sheriff, prison or jail warden, policeman or other authorized law enforcement officer or a person regularly engaged in the business of manufacturing, repairing or dealing in firearms; the term "non-exempt person" shall mean any person other than an exempt person.

Section 2. Permit to Receive Pistol. It shall be unlawful for any exempt or non-exempt person, or any employee, servant, or agent of any exempt or non-exempt person to sell, give, lend or deliver a pistol to any non-exempt person unless the latter has in his possession, shall deliver to the former, an unrevoked original of a permit issued by the Chief of Police of the Town of Maplesville, Alabama, authorizing him or her to receive a pistol.

Midfield

Section 5. No seller, within the corporate limits of the City of Midfield, or within the police jurisdiction thereof, shall deliver a pistol to the purchaser thereof until forty-eight hours shall have elapsed from the time of the application for the purchase thereof and, when delivered, such pistol shall be securely wrapped and shall be unloaded. At the time of applying for the purchase of a pistol, the purchaser shall sign in duplicate and deliver to the seller a statement [contact local authorities for required contents] * * *. The seller shall, within six hours after such application, sign and attach his address and forward by registered mail or personally deliver one copy of such statement to the chief of police. This section shall not apply to purchases by licensed retailers from manufacturers, wholesalers or jobbers, or to purchases by wholesalers or jobbers from manufacturers.

Montgomery

45-4. Selling or giving small pistols to minors. It shall be unlawful for any person in the city to sell, give or deliver to any minor any small pistol, or any pistol known as a toy pistol, in which powder and ball can be used, or a metallic cartridge containing a leaden ball which can be exploded.

Mountain Brook

Sec. 13-1. State misdemeanors. All acts or omissions which are misdemeanors under the laws of the state are hereby declared to be offenses against the city. It shall be unlawful for any person to commit any such offense within the corporate limits of the city or its police jurisdiction.

Newville

Section 6. Selling Pistol * * * to Minor. Any person who sells, gives, or lends to any minor any pistol * * * shall, on conviction, be fined not less than one nor more than one hundred dollars.

Northport

Ordinance 523

1. At the time of applying for the purchase of a pistol, the purchaser shall sign a statement (contact local authorities for required contents) * * * The seller or dealer shall, within six (6) hours after such application, sign and attach his address and forward by registered or certified mail one copy of such statement to the Chief of Police of the City of Northport, Alabama.

2. No person or dealer shall deliver a pistol to the purchaser thereof until 96 hours shall have elapsed from the time of the application for the purchase thereof, * * *

Ontario

Sec. 5-10.03. Possession of firearms by minors. (a) **Rifles and shotguns.** It shall be unlawful for any person under the age of

eighteen (18) years to have in his possession, custody, or control any rifle or shotgun within the City unless he has the written permission of his parent or guardian to have such firearm or is accompanied by his parent or guardian while he has such firearm in his possession, custody, or control.

(b) Other weapons. It shall be unlawful for any person under the age of eighteen (18) years to have in his possession, custody, or control within the City any cannon * * * or any weapon or device designed to discharge any dangerous missile except as provided in subsection (a) of this section.

Oxford

10-140. Any person applying for the purchase of a pistol shall sign in duplicate and deliver to the seller a statement [contact local authorities for required contents] * * * provided, that this requirement shall not apply to purchases by licensed retailers from manufacturers, wholesalers or jobbers, or to purchases by wholesalers or jobbers from manufacturers or to antique pistols unsuitable for use as firearms and possessed as curiosities or ornaments.

10-142. No seller of a pistol shall deliver the pistol to a purchaser thereof until seventy-two hours shall have elapsed from the time of the application for the purchase thereof. When delivered, the pistol shall be securely wrapped and shall be unloaded.

10-143. The provisions of Sections [10-140—10-142] shall apply to a gift of a pistol just as though the person making such gift were a seller and the person to whom such gift is made were a purchaser thereof and no such gift shall be made except in accordance with such sections.

10-144. No person shall deliver a pistol to any person under the age of eighteen or to one he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, an habitual drunkard, or of unsound mind.

10-145. * * *

(b) It shall be unlawful for any person to sell, give away or otherwise dispose of within the city, to minors, any * * * toy pistol, air gun, parlor rifle, or any similar weapon or thing which discharges a ball or projectile.

Ozark

Sec. 14-29. Definitions. "Pistol" as used in this article, means any firearm with barrel less than twelve (12) inches in length.

"Person", as used in this section, includes firm, partnership, association or corporation.

Sec. 14-30. Application of provisions. This article shall not apply to antique pistols unsuitable for use as firearms and possessed as curiosities or ornaments.

Sec. 14-32. Possession of arms by persons convicted of violent crimes. No person who has been convicted in this city or elsewhere of a crime of violence shall own a pistol or have one in his possession or under his control.

Sec. 14-34. Delivery of pistols to certain persons prohibited. No person shall deliver a pistol to any person under the age of eighteen (18) or to one who he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, an habitual drunkard or of unsound mind.

Sec. 14-35. Sales; requirements generally. (a) No seller shall deliver a pistol to the purchaser thereof until forty-eight (48) hours shall have elapsed from the time of the application for the purchase thereof and when delivered.

Sec. 14-36. Dealers to have license. No retail dealer shall sell or otherwise transfer or expose for sale or transfer or have in his possession with intent to sell, or otherwise transfer, any pistol without being licensed as provided by the ordinances of the city and the laws of the state.

Sec. 14-37. Use of pistol to secure loan; unlawful transfer of pistol. No person shall make any loan secured by a mortgage, deposit or pledge of a pistol contrary to the provisions of this article, nor shall any person lend or give a pistol to another or otherwise deliver a pistol contrary to the provisions of this article.

Phenix City

Sec. 13-97. Weapons—Restrictions generally. No pawnbroker or pawnbroker's sales store shall take in pawn, receive, sell or exchange any of the following named articles, to-wit: Shotgun or rifle with barrel length of less than eighteen inches, * * *.

Sec. 13-98. Same—Pistols. No pawnbroker or pawnbroker's sales store shall sell any pistol unless and until all of the following regulations have been complied with strictly:

(a) No seller shall deliver a pistol to the purchaser thereof until forty-eight (48) hours have elapsed from the time of the application for the purchase thereof, and when delivered the pistol shall be securely wrapped and shall be unloaded. At the time of applying for the purchase of a pistol the purchaser shall sign in triplicate and deliver to the seller a statement [contact local authorities for required contents] * * *. The seller shall within six (6) hours after such applications, sign and attach his address and forward by registered mail one copy of such statement to the chief of police. This section shall not apply to purchases by licensed retailers from manufacturers, wholesalers or jobbers, or to purchases by wholesalers or jobbers from manufacturers. [If the chief of police disapproves the sale], it shall be unlawful for the pawnbroker or pawnbroker's sales store to sell said pistol to the prospective purchaser. * * *

(b) No pistol shall be sold by any pawnbroker or pawnbroker's sales store until the period of forty-eight (48) hours shall have elapsed after the service of the chief of police of the notice of the proposed sale.

(c) These regulations regarding pistols shall also be complied with before a pawnbroker or pawnbroker's sales store shall deliver a pistol to the transferee of a pawn ticket.

Prichard

1. For the purposes of this Ordinance a shotgun shall be defined as a weapon firing either single or multiple shots through a smooth bore barrel or barrels, and shall be powered by an individual cartridge or shell (whether re-fillable or not), and the firing of such shall be activated by a trigger or other mechanism, the exercise of which shall propel or fire one cartridge or shell, and not be ready for firing until another shell or cartridge shall have been placed in the breech or other firing partition, whether by hand or mechanically.

2. It shall be unlawful and an offense against the City of Prichard for any person to have in his or her possession, either actively or constructively or to allow to be or remain in any dwelling or place of business under the control of such person a shotgun as defined in Section One hereof which shall have an overall length, including barrel or barrels, breech or similar firing apparatus and stock, of less than 26 inches.

Red Level

Ordinance Two of the Town of Red Level adopts the Alabama State Law.

Satsuma

Ordinance 141

Section 1. It shall be unlawful and an offense against the City of Satsuma for any person to sell, give or deliver a pistol within the City of Satsuma, or the police jurisdiction thereof, to any person under the age of eighteen or to one he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, an habitual drunkard, of unsound mind, a non-resident of the State of Alabama, or a person who has not resided in the State of Alabama for a period of not less than six (6) months next immediately preceding the date of such application.

Section 2. It shall be unlawful and an offense against the City of Satsuma for any person under the age of eighteen or a drug addict, an habitual drunkard, a person of un-

sound mind, or a person who has been convicted of a crime of violence to own or possess a pistol or have one under his control.

Section 3. Definitions. As used in this Ordinance the term "Pistol" shall mean any firearm with a barrel less than twelve inches in length, and the term "Crime of Violence" shall mean the crime of murder, first degree manslaughter, rape, mayhem, assault with intent to murder, robbery, burglary, kidnapping or the crime of attempting to commit any of the aforesaid crimes.

Section 4. It shall be unlawful and an offense against the City for any person within the City or its police jurisdiction to change, alter, remove or obliterate the name of the maker, model, manufacturer's number or other mark of identification of any pistol. Possession of any pistol upon which any such mark shall have been changed, altered, removed or obliterated shall be prima facie evidence that the possessor has changed, altered, removed or obliterated the same.

* * * * *

Section 7. At the time of applying for the purchase of a pistol, the person desiring to make such purchase shall sign in duplicate and deliver to the seller a statement [contact local authorities for required contents] * * * provided, that this requirement shall not apply to purchases by licensed retailers from manufacturers, wholesalers or jobbers, or to purchases by wholesalers or jobbers from manufacturers, or to antique pistols unsuitable for use as firearms and possessed as curiosities or ornaments. The Seller shall within six (6) hours after receiving such application, sign and attach his address thereto and file one copy of such application in the office of the chief of police of the City of Satsuma. * * *

Section 8. When a purchaser of a pistol shall be a resident of Mobile County, Alabama, no seller of a pistol shall deliver the pistol to the purchaser thereof until seven (7) days [not including Saturdays, Sundays or legal holidays as fixed by the State of Alabama] shall have elapsed from the time a copy of the application for the purchase thereof shall have been filed with the chief of police * * *.

Section 9. When a purchaser of a pistol shall be a resident of the State of Alabama and reside outside of Mobile County, no Seller of a pistol shall deliver the pistol to the purchaser thereof until ten (10) days [not including Saturdays, Sundays or legal holidays as fixed by the State of Alabama] shall have elapsed from the time a copy of the application for the purchase thereof shall have been filed with the chief of police * * *.

Section 13. It shall be unlawful for any person to purchase, attempt to purchase or to receive a pistol within the City of Satsuma, or its police jurisdiction, except in strict compliance with the provisions of Sections 1 through 12, inclusive, of this ordinance, or when the application of such person to purchase a pistol has been disapproved by the Chief of Police within the time required to elapse prior to delivery as provided in applicable provisions of Sections 8 and 9 * * *.

Section 14. It shall be unlawful for any person to sell, give or deliver a pistol to any person whose application to purchase the same has been disapproved by the Chief of police within the time required to elapse before delivery as set forth in applicable provisions of Sections 8 and 9 * * *.

Selma

Sec. 17-229. Selling, giving or lending to minor. It shall be unlawful for any person to sell, give or lend to any minor any * * * firearm * * *.

Slocomb

(State criminal laws adopted October 20, 1964.)

1. That any act which would be a criminal offense under the Laws of the State of Alabama, as set forth in the criminal code of the State of Alabama as recompiled in 1958, and as has been amended and as may be amended, is hereby adopted as the criminal code of the Town of Slocomb. * * *

Sylacauga

Section 16-31: Required to receive: It shall be unlawful for any exempt or non-exempt person, or any employee, servant, or agent of any exempt or non-exempt person to sell, give, lend or deliver a pistol to any non-exempt person unless the latter has in his possession, and shall deliver to the former, an unrevoked original of a permit issued by the Chief of Police authorizing him or her to receive a pistol.

Thomasville

Chapter 37

Sec. 347 1/2. It shall be unlawful for any person to sell, give or lend to any minor, any pistol, * * * and any person violating the provisions of this section, must, on conviction, be punished as provided in Section 242 of this Code.

Ordinance 69-12

Section 1—Definitions. A. Exempt person. Any marshal, sheriff, prison or jail warden and his regularly employed deputies, policeman or other law enforcement officer of any state or political subdivision thereof, member of the army, navy or marine corps of the United States or of the national guard, member of the national guard organized reserves or state guard organizations, when on duty or going to or from duty, regularly enrolled member of any organization duly authorized to purchase or receive such weapons from the United States or from this state, provided such member is at or is going to or from his place of assembly or target practice, officer or employee of the United States duly authorized to carry a pistol, any person engaged in manufacturing, repairing or dealing in pistols or the agent or representative of such person possessing, using, or carrying a pistol in the usual or ordinary course of such business, and any common carrier, except taxicabs, licensed as a common carrier.

B. Nonexempt person. Any person other than an exempt person.

C. Pistol. Any firearm with a barrel less than twelve inches in length.

Section 2. Permit to receive pistol—Required. A. It shall be unlawful for any exempt or nonexempt person, or for any employee, servant or agent of any exempt or nonexempt person, to sell, give, lend or deliver a pistol to any nonexempt person unless the latter have in his possession, and deliver to the former, an unrevoked original of a permit issued by the Chief of Police authorizing him to receive a pistol.

B. It shall be unlawful for any nonexempt person to buy, borrow, or accept delivery of a pistol from another unless such nonexempt person have in his possession, and deliver to such other, an unrevoked original of a permit issued by the Chief of Police authorizing such nonexempt person to receive a pistol.

Section 3. Same—Application; * * * Any person desiring to buy, borrow or accept delivery of a pistol from another may apply to the Chief of Police in writing for a permit to receive a pistol.

Tuscaloosa

34-13. Definitions. For the purpose of this article, the following words and phrases shall have the meanings herein ascribed to them:

Crime of violence. (Same as State Law Definition, see Sec. 13A-11-70)

Pistol. The word "pistol" shall mean any firearm with a barrel less than twelve (12) inches in length.

Purchaser. The term "purchaser" shall, in addition to its ordinary and customary meaning, include any person who receives a pistol by gift, pledge or loan.

Seller. The term "seller" shall, in addition to its ordinary and usual meaning, include any person who delivers a pistol to another by way of loan, gift or pledge.

34-15. Sale or delivery to minors, drug addicts, etc., prohibited. No person shall sell, give or deliver a pistol to any person under

the age of eighteen (18) or to one who he has reason to believe has been convicted of a crime of violence, or is a drug addict, a habitual drunkard or of unsound mind.

34-16. Sale to unknown purchaser. No person shall sell a pistol to any purchaser, under any circumstances, unless the purchaser is personally known to the seller or shall present clear evidence of his identity and age.

34-17. * * *; Delivery to purchaser. * * * No person shall deliver a pistol to the purchaser thereof until forty-eight (48) hours shall have elapsed from the time of the application for the purchase thereof, and, when delivered, the pistol shall be securely wrapped and shall be unloaded.

34-20. Certain purchases and sales excepted from article. This article shall not apply to the purchase or sale of pistols as curiosities or ornaments, nor shall the same apply to purchases by licensed retailers, manufacturers, wholesalers or jobbers.

Uniontown

Sec. 98. Firearms. It shall be unlawful for any person to * * * sell, give or lend to any minor any pistol * * *.

Alaska

State Law

Alaska Stats.

Sec. 11.55.030. Possession by convicts. (a) A person who has been convicted of a felony, or assault with a dangerous weapon, burglary, robbery and like crimes, by a court in this state, or by the courts of the United States or of another state or territory, may not own or have in his possession or under his custody or control a pistol, revolver, or other firearm capable of being concealed about his person, * * * or an instrument commonly considered to be a weapon.

(b) The provisions of (a) of this section do not apply to a person who has received a pardon for the prior conviction upon which this action is based or, in the case of a felony, when the final termination of the sentence, including any probationary period, was more than 10 years before the time of ownership, possession or control of a weapon as specified in (a) of this section.

Sec. 11.55.070. Possession of firearm while under influence of intoxicating liquor or drug. A person who, while under the influence of intoxicating liquor or an exhilarating or stupefying drug, carries, has in his possession or under his control, or uses or discharges a firearm is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $1,000, or by imprisonment in a jail for not more than one year, or by both.

Sec. 11.55.080. Purchase of firearms in contiguous states. No resident of this state is prohibited from purchasing a rifle or shotgun in a contiguous state if he complies with the provisions of PL 90-618.

Akolmiut

Ordinance 15

Section 1. All the retail stores located in the limits of the City of Akolmiut shall not sell any firearms, ammunition or firing device of any kind to any minor who is under 18 years of age.

Section 2. All the retail stores should have permits and license as required by the Federal Government to distribute firearms, ammunition and firing devices.

* * * * *

Section 4. No retail store manager or the clerk shall sell any firearms, ammunition or firing devices to any intoxicated person(s) or anyone who is under the influence of habit-forming drugs, or to a person of unstable mind.

Anchorage

8.05.430 Minors, sale of firearms to. It is unlawful for any person to give, barter, sell, lease or otherwise make available to any person under the age of eighteen years, any firearm, including but not limited to pistols, rifles and shotguns, or any ammunition therefor, without consent of the parent or guardian of the minor.

Fairbanks

(2) No person shall exhibit, or have in his possession with intent to give away, or sell, or offer for sale, within the City of Fairbanks, any squib, rocket, cracker, torpedo, grenade, gun, revolver, pistol, dynamite cap, or cartridge, or other combustible firecrackers or fireworks of any kind.

* * * * *

(5) No person shall purchase from, or sell, loan, or furnish any weapon in which any explosive substance can be used, to any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to a minor under the age of eighteen (18) years without written permission of his parent or guardian.

Greater Anchorage Area Borough

18.65.060 Minors, Selling Firearms To; Age. It shall be unlawful without consent of parent or guardian for any person to give, barter, sell, lease or otherwise make available to any person under the age of eighteen years, any firearm, including but not limited to pistols, rifles, and shotguns.

Ketchikan

9.32.060 Sale of firearms to certain minors. It is unlawful for any person to sell firearms to minors under the age of nineteen without the written consent of a parent or guardian of the minor, or for any vendor to fail to keep a record of any sale of a firearm to a minor under said age and to make the record available to inspection by any policeman on request.

Kivalina

Section 5: It shall be unlawful for teenagers under 18 to buy shells of any kind, * * *.

Kodiak

8.28.020 Minors—firearms. It shall be unlawful for any person to give, barter, sell, lease, or otherwise make available to any person under the age of eighteen (18) years, any firearm, including but not limited to pistols, rifles, and shotguns, within the City.

8.96.040 Prohibited to intoxicated persons. It is unlawful for any person under the influence of alcohol to have in his possession firearms of any type.

Metlakatla Indian Reservation

1. Definitions. As used in this Ordinance, the following terms shall have the following respective meanings: (a) Prohibited Firearm. The term "Prohibited Firearm" means (1) a shotgun having a barrel or barrels of less than 18 inches in length; (2) a weapon made from a shotgun if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length; (3) a rifle having a barrel or barrels of less than 16 inches in length; (4) a weapon

made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length; (5) any other weapon, as defined in subsection (e); (6) a machinegun; (7) a muffler or a silencer for any firearm whether or not such firearm is included within this definition; and (8) a destructive device.

(b) Machinegun. The term "machinegun" means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapons, any combination of parts designed and intended for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.

(c) Rifle. The term "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifle bore for each single pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed cartridge.

(d) Shotgun. The term "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed shotgun shell.

(e) Any Other Weapon. The term "any other weapon" means any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive, a pistol or revolver having a barrel with a smooth bore designed or redesigned to fire a fixed shotgun shell, weapons with combination shotgun and rifle barrels 12 inches or more, less than 18 inches in length, from which only a single discharge can be made from either barrel without manual reloading, and shall include any such weapon which may be readily restored to fire. Such term shall not include a pistol or a revolver having a rifled bore, or rifled bores, or weapons designed, made, or intended to be fired from the shoulder and not capable of firing fixed ammunition.

(f) Destructive Device. The term "destructive device" means (1) any explosive, incendiary, or poison gas (A) bomb, (B) grenade, (C) rocket having a propellent charge of more than four ounces, (D) missile having an explosive or incendiary charge of more than one-quarter ounce, (E) mine, or (F) similar device; (2) any type of weapon by whatever name known which will, or which may be readily converted to expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter, except a shotgun or shotgun shell which is generally recognized as particularly suitable for sporting purposes; and (3) any combination of parts either designed or intended for use in converting any device into a destructive device as defined in subparagraphs (1) and (2) and from which a destructive device may be readily assembled.

2. Possession of Certain Firearms Prohibited. No person shall, within the Annette Islands Reserve, own, possess or transport any Prohibited Firearm or destructive device, other than the United States of America or members of the Armed Forces thereof duly authorized to carry such a Prohibited Firearm when on duty on the Annette Islands Reserve, or the State of Alaska, or any duly appointed law enforcement officer of the United States, the Metlakatla Indian Community or the State of Alaska, when such officers are on duty; and enforcing Law and Order on Annette Islands Reserve.

4. Exclusion. Any person who is not subject to the jurisdiction of the Metlakatla Indian Community who violates Section 2 hereof, shall be subject to removal from the Annette Islands Reserve upon issuance of a written order of exclusion by the court, after a hearing upon reasonable notice, subject to the approval of such exclusion order by the Council. Upon the approval of such an order by the Council, the Mayor shall transmit a copy of such order to the Chief Constable or the State Enforcement Officers who shall carry out the order by removing such person as a trespasser from the Annette Islands Reserve.

5. Interpretation. The terms used in this ordinance are intended to prohibit the possession, ownership or transportation within the Annette Islands Reserve of any firearm which is subject to registration with the National Firearms Registration and Transfer Board pursuant to the provisions of the Act of October 22, 1968, 82 Stat. 1229, 26 U.S.C. Sec. 5841, or any successor provision of Federal law. In applying the definitions set forth herein, reference shall be made to the regulations and interpretations of the Secretary of the Treasury pursuant to that Act.

Scammon Bay

Ordinance 3, 1974

Section 3. Any person own (sic) such handgun shall ask the city chief of police to take the serial number and the make of such handgun for the record or file for future security of handgun.

Seward

15-13. Same—Sale of firearms to. It shall be unlawful for any person to give, barter, sell, lease or otherwise make available to any person under the age of eighteen years any firearm, including but not limited to pistols, rifles, and shotguns, within the city.

American Samoa

Title Twenty-Three

Sec. 1. Definitions. As used in this chapter "arms" includes guns, rifles, pistols, * * * ammunition, shells, cartridges, gunpowder, dynamite, nitroglycerine, blasting powder, fireworks, and all other firearms and explosives and materials for the manufacture of the same.

Sec. 4. Sale of arms. (a) It shall be unlawful for any person to sell or in any other way transfer the right of possession of any arms without having obtained from the Treasurer a license to sell arms. The application for such license shall contain such information as may be required by the Treasurer.

(b) A license to sell arms shall not be issued by the Treasurer unless the application for the license has been approved by the Governor or his designated representative. No license shall be issued for the sale of arms other than shotguns and .22 caliber rifles and ammunition therefor.

Sec. 5. Information required. (a) Every person who obtains a license to possess, import, or sell arms shall, upon the written request of the Governor or his designated representative, furnish such information concerning such arms as may be reasonably required.

(b) Each license issued shall specify the number, quantity, and description of the arms which may be possessed, imported, or sold, or otherwise transferred under it.

Sec. 9. Marking arms for identification. Each person to whom a license to possess arms is issued shall, upon receipt of such arms, produce at the office of the Treasurer his license to possess arms, together with the

arms specified in said license. Such arms shall be examined and compared with the license and, if found to correspond therewith, shall be marked with such letters as may be designated by the Treasurer and also marked with a number indicating the order of the license, and registration as specified in the license, unless the arm has a plainly visible and distinctive serial number stamped on it. Such arms when duly marked shall be redelivered to the licensee, together with the license. If the provisions of this section are not complied with, the license shall be revoked, and the arms may be confiscated as though no license had been issued.

Sec. 10. Sales to persons without licenses. No person shall sell or otherwise transfer any arms to any person who does not hold a valid and existing license to possess the particular firearms to be sold.

Arizona

State Law

Revised Criminal Code

Sec. 13-3101. Definitions. In this chapter, unless the context otherwise requires:

1. "Deadly weapon" means anything designed for lethal use. The term includes a firearm.

2. "Deface" means to remove, alter or destroy the manufacturer's serial number.

3. "Explosive" means any dynamite, nitroglycerine, black powder or other similar explosive material including plastic explosives but does not mean or include ammunition or ammunition components such as primers, percussion caps, smokeless powder, black powder and black powder substitutes used for hand loading purposes.

4. "Firearm" means any loaded or unloaded pistol, revolver, rifle, shotgun or other weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, except that it does not include a firearm in permanently inoperable condition.

5. "Prohibited possessor" means any person:

(a) Who has been found to constitute a danger to himself or to others pursuant to court order under the provisions of Sec. 36-540, and whose court ordered treatment has not been terminated by court order.

(b) Who has been convicted within or without this state of a felony involving violence or possession and use of a deadly weapon or dangerous instrument and whose civil rights have not been restored.

(c) Who is at the time of possession serving a term of imprisonment in any correctional or detention facility.

6. "Prohibited weapon" means * * * any:

(a) Explosive, incendiary or poison gas:

(i) Bomb.

(ii) Grenade.

(iii) Rocket having a propellant charge of more than four ounces.

(iv) Mine.

(b) Device designed, made or adapted to muffle the report of a firearm; or

(c) Firearm that is capable of shooting more than one shot automatically, without manual reloading, by a single function of the trigger; or

(d) Rifle with a barrel length of less than sixteen inches, or shotgun with a barrel length of less than eighteen inches, or any firearm made from a rifle or shotgun which, as modified, has an overall length of less than twenty-six inches; or * * *

(f) The items as set forth in subdivisions (a), (b), (c) and (d) of this paragraph shall not include any such firearms or devices registered in the national firearms registry and transfer records of the United States treasury department or any firearm which has been classified as a curio or relic by the United States treasury department.

Sec. 13-3102. Misconduct involving weapons; defenses; classification. A. A person commits misconduct involving weapons by knowingly:

* * * * *

3. Manufacturing, possessing, transporting, selling or transferring a prohibited weapon; or

* * * * *

5. Selling or transferring a deadly weapon to a prohibited possessor; or

6. Defacing a deadly weapon; or

7. Possessing a defaced deadly weapon knowing the deadly weapon was defaced; or

* * * * *

C. Subsection A, paragraphs 1, 2, 3, 7, 8 and 9 shall not apply to:

1. A peace officer or any person summoned by any peace officer to assist and while actually assisting in the performance of official duties; or

2. A member of the military forces of the United States or of any state of the United States in the performance of official duties; or

3. A person specifically licensed, authorized or permitted pursuant to a statute of this state or of the United States.

D. Subsection A, paragraphs 3 and 7 shall not apply to:

1. The possession, transporting, selling or transferring by a museum as a part of its collection or an educational institution for educational purposes or by an authorized employee of such museum or institution, if:

(a) Such museum or institution is operated by the United States or this state or a political subdivision of this state, or by an organization described in Sec. 170(C) of Title 26 of the United States Code as a recipient of a charitable contribution; and

(b) Reasonable precautions are taken with respect to theft or misuse of such material.

2. The regular and lawful transporting as merchandise; or

3. Acquisition by a person by operation of law such as by gift, devise or descent or in a fiduciary capacity as a recipient of the property or former property of an insolvent, incapacitated or deceased person.

E. Subsection A, paragraph 3, shall not apply to the merchandise of an authorized manufacturer thereof or dealer therein, when such material is intended to be manufactured, possessed, transported, sold or transferred solely for or to a dealer or a regularly constituted or appointed state or municipal police department or police officer, or a detention facility, or the military service of this or another state or the United States, or a museum or educational institution or a person specifically licensed or permitted pursuant to federal or state law.

I. Misconduct involving weapons under paragraphs 3 through 7 of subsection A is a class 6 felony.

* * * * *

Sec. 13-3106. Firearm purchase in other states. A person residing in this state, or a corporation or other business entity maintaining a place of business in this state, may purchase or otherwise obtain firearms anywhere in the United States if such purchase or acquisition fully complies with the laws of this state and the state in which the purchase or acquisition is made and the purchaser and seller, prior to the sale or delivery for sale, have complied with all the requirements of the Federal Gun Control Act of 1968, Public Law 90-618, Sec. 922, subsection (c) and the Code of Federal Regulations, volume 26, section 178.96, subsection (c).

* * * * *

Sec. 13-3108. Regulation of firearms by state. Ordinances of any political subdivision of this state relating to the possession, carrying, sale and use of firearms in this state shall not be in conflict with this chapter.

Sec. 13-3109. Sale or gift of firearm to minor; classification.

A. A person who sells or gives to a minor, without written consent of the minor's parent or legal guardian, a firearm, ammunition or

toy pistol by which dangerous and explosive substances may be discharged, is guilty of a class 2 misdemeanor.

B. Nothing in this section shall be construed to require reporting sales of firearms, nor shall registration of firearms or firearms sales be required.

COMPILER'S NOTE:

Several cities share the following language prohibiting sales to minors (*Buckeye, Casa Grande, Clarkdale, Cocanino, Eloy/ruge, Globe, Goodyear, Kearney, Payson, Somerton, South Tucson, Springerville, and Youngtown*):

Sale of Weapons to Minors. A person who sells or gives to a minor under the age of eighteen years, without written consent of the minor's parent or legal guardian, a weapon, ammunition or toy pistol by which dangerous and explosive substances may be discharged, is guilty of a misdemeanor.

Several other cities share slightly different language prohibiting sales to minors (*Gila Bend, Guadalupe, Hayden, Page, Pima, Safford, Show Low, and Snowflake*:

Sale of Weapons to Minors. It is unlawful for any person to sell or give to a minor under the age of eighteen years, without written consent of the minor's parent or legal guardian, a weapon, ammunition or toy pistol by which dangerous and explosive substances may be discharged.

Municipalities on both lists define "weapon" as follows:

"Weapon", as used in this section means anything readily capable of lethal use and possessed under circumstances not manifestly appropriate for lawful uses which it may have. The term "weapon" includes a firearm which is not loaded or lacks a clip or other component to render it immediately operable, and components which can readily be assembled into a weapon.

Bisbee

6-4-5. Registration of dealers required: Every person who deals in arms, ammunition and explosives, or either of them, shall register as such dealer in a book for that purpose kept by the Chief of Police. In said book he shall write his name, his business or occupation and the address of his place of business.

Phoenix

Sec. 23-41. "Firearm" defined. For the purpose of the following Sections, the term "firearm" is defined as any device that expels a projectile or projectiles by means of expanding gases.

Sec. 23-42. Dealers in firearms—Registration required. Every person dealing in firearms, ammunition or explosives shall register as a dealer in a book to be kept by the Chief of Police for that purpose. * * *

Sec. 23-46.1. Unlawful to make, possess or dispose of a fire bomb; penalties; exceptions. (a) Definitions.

Dispose of—To give, give away, loan, offer, offer for sale, sell, transfer, hurl, throw, or cause to be hurled or thrown

Fire bomb—A breakable container containing a flammable liquid with a flash point of one hundred fifty degrees fahrenheit or less, having a wick or similar device capable of being ignited, but no device commercially manufactured primarily for the purpose of illumination shall be deemed to be a fire bomb for the purposes of this Section.

(b) Offenses. A person is guilty of a misdemeanor who:

(1) Possesses any of the component parts of a fire bomb with intent to wilfully and maliciously use such material, substance or device to set fire to or burn any buildings or property.

(2) Possesses, manufactures or disposes of a fire bomb.

(c) Exceptions. The provisions of Subsections (a) and (b) of this Section shall not prohibit:

(1) The authorized use or possession of any material, substance or device described in such Subsections by a member of the Armed Forces of the United States or National Guard of the State of Arizona, or by firemen, police officers or peace officers authorized by the properly constituted authorities and acting in the course of their official duties;

(2) The use or possession of any material, substance or device described therein when used solely for scientific research or educational purposes, or for any lawful burning;

(3) The manufacture or disposal of a fire bomb for the parties or purposes described in this Subsection.

Wickenburg

Chapter 4 Firearms

6-4-5: Registration of dealers required: Every person who deals in arms, ammunition and explosives, or either of them, shall register as such dealer in a book for that purpose kept by the Chief of Police. In said book he shall write his name, his business or occupation and the address of his place of business.

Arkansas

State Law

Arkansas Criminal Code

41-3101. Definitions. As used in this Chapter [Secs. 41-3101—41-3110], unless the context plainly requires otherwise:

* * * * *

(2) "Minor" means any person under eighteen (18) years of age.

41-3103. Firearms—Possession by certain persons prohibited. (1) No person who has been

(a) convicted of a felony; or

(b) adjudicated a mental defective; or

(c) committed involuntarily to any mental institution; shall possess or own any firearm.

(2) A determination by a jury or court that a person committed a felony shall constitute a "conviction" for purposes of subsection (1) even though the court suspended imposition of sentence or placed the defendant on probation.

(3) A determination by a jury or a court that a person committed a felony shall not constitute a "conviction" for purposes of subsection (1) if the person is subsequently granted a pardon explicitly restoring the ability to possess a firearm.

COMPILER'S NOTE

It is the opinion of the Arkansas Attorney General that convicted felons who receive a full gubernatorial pardon *before* July 6, 1977, are no longer subject to a State ban on the possession of firearms. To have the same effect, pardons issued *after* the date must include language specifically authorizing possession of firearms

41-3104. Criminal use of prohibited weapons. (1) A person commits the offense of criminal use of prohibited weapons if, except as authorized by law, he uses, possesses, makes, repairs, sells, or otherwise deals in any bomb, machine gun, sawed-off shotgun, firearm specially made or specially adapted for silent discharge, * * * or other implement for the infliction of serious physical injury or death which serves no common lawful purpose.

(2) It is a defense to a prosecution under this section that:

(a) the person was a law enforcement officer, prison guard, or member of the armed forces acting in the course and scope of his duty at the time he used or possessed the prohibited weapon; or

(b) the defendant used, possessed, made, repaired, sold, or otherwise dealt in any of the above enumerated articles under circumstances negating any likelihood that the weapon could be used unlawfully.

(3) Criminal use of prohibited weapons is a class B felony if the weapon is a bomb, machine gun, or firearm specially made or specially adapted for silent discharge. Otherwise, it is a class D felony.

41-3105. Legitimate manufacture, repair, and transportation of prohibited weapons

Section 3104 [Sec. 41-3104] shall not be construed to prohibit the manufacture, repair, transportation, or sale of the weapons enumerated therein to or for authorized representatives of the armed forces or to or for the authorized representatives of any law enforcement agency.

41-3107. Possession of a defaced firearm. (1) A person commits the offense of possession of a defaced firearm if he knowingly possesses a firearm with a manufacturer's serial number, or other identification mark required by law, which has been removed, defaced, marred, covered, altered or destroyed.

(2) It is a defense to a prosecution under this section that the person reported such possession to the police or other governmental agency prior to arrest or the issuance of an arrest warrant or summons.

(3) Possession of a defaced firearm is a class A misdemeanor.

41-3108. Criminal possession of explosives. (1) A person commits the offense of criminal possession of explosives when he sells, possesses, manufactures or transports an explosive substance or incendiary device:

(a) if he has the purpose of using that substance or device to commit an offense; or

(b) if he knows or should know that some other person intends to use that substance or device to commit an offense.

(2) Criminal possession of explosives is a class B felony.

41-3109. Furnishing a deadly weapon to a minor. (1) A person commits the offense of furnishing a deadly weapon to a minor when he sells, barters, leases, gives, rents or otherwise furnishes a firearm or other deadly weapon to a minor without the consent of a parent, guardian, or other person responsible for general supervision of his welfare.

(2) Furnishing a deadly weapon to a minor is a class A misdemeanor.

41-3157. Uniform Machine Gun Act—Definitions. "Machine Gun" applies to and includes a weapon of any description by whatever name known, loaded or unloaded, from which more than five shots or bullets may be rapidly, or automatically, or semi-automatically discharged from a magazine, by a single function of the firing device.

"Crime of Violence" applies to and includes any of the following crimes or an attempt to commit any of the same, namely, murder, manslaughter, kidnapping, rape, mayhem, assault to do great bodily harm, robbery, burglary, housebreaking, breaking and entering, and larceny.

"Person" applies to and includes firm, partnership, association or corporation.

41-3160. Offensive or aggressive purpose defined. Possession or use of a machine gun shall be presumed to be for offensive or aggressive purpose:

(a) when the machine gun is on premises not owned or rented, for bona fide permanent residence or business occupancy, by the person in whose possession the machine gun may be found; or

(b) when in the possession of, or used by, an unnaturalized foreign-born person, or a person who has been convicted of a crime of violence in any court of record, state or federal, of the United States of America, its territories or insular possessions; or

(c) when the machine gun is of the kind described in section 8 [Sec. 41-3164] and has not been registered as in said section required; or

(d) when empty or loaded pistol shells of 30 (.30 in. or 7.63 mm.) or larger caliber which have been or are susceptible of use in the machine gun are found in the immediate vicinity thereof.

41-3161. Evidence of possession or use of machine gun. The presence of a machine gun in any room, boat, or vehicle shall be evidence of the possession or use of the machine gun by each person occupying the room, boat, or vehicle where the weapon is found.

41-3162. Guns for military use may be manufactured. Nothing contained in this act [Secs. 41-3157—41-3167] shall prohibit or interfere with

1. the manufacture for, and sale of, machine guns to the military forces or the peace officers of the United States or of any political subdivision thereof, or the transportation required for that purpose;

2. the possession of a machine gun for scientific purpose, or the possession of a machine gun not usable as a weapon and possessed as a curiosity, ornament, or keepsake;

3. the possession of a machine gun other than one adapted to use pistol cartridges of 30 (.30 in. or 7.63 mm.) or larger caliber, for a purpose manifestly not aggressive or offensive.

41-3163. Manufacturer to keep register of guns manufactured. Every manufacturer shall keep a register of all machine guns manufactured or handled by him. This register shall show the model and serial number, date of manufacture, sale, loan, gift, delivery or receipt, of every machine gun, the name, address, and occupation of the person to whom the machine gun was sold, loaned, given, or delivered, or from whom it was received; and the purpose for which it was acquired by the person to whom the machine gun was sold, loaned, given or delivered, or from whom received. Upon demand every manufacturer shall permit any marshal, sheriff or police officer to inspect his entire stock of machine guns, parts, and supplies therefor, and shall produce the register, herein required, for inspection. * * *

41-3164. Guns now owned and in use to be registered. Every machine gun now in this State adapted to use pistol cartridges of 30 (.30 in. or 7.63 mm.) or larger caliber shall be registered in the office of the (secretary of state), on the effective date (Feb. 26, 1935) of this act, and annually thereafter. If acquired hereafter it shall be registered within 24 hours after its acquisition. Blanks for registration shall be prepared by the (secretary of state), and furnished upon application. To comply with this section the application as filed must show the model and serial number of the gun, the name, address and occupation of the person in possession, and from whom and the purpose for which the gun was acquired. The registration data shall not be subject to inspection by the public. Any person failing to register any gun as required by this section, shall be presumed to possess the same for offensive or aggressive purpose.

41-3168. Tear gas—Carrying or possession a misdemeanor. Any person who shall carry or have in his possession any tear gas in any form whatever, and any person who shall carry or have in his possession any gun, bomb, grenade, cartridge or other weapon designed for the discharge of tear gas, shall be guilty of a misdemeanor. Provided, it is lawful for a person to possess or carry, and use, a small container of tear gas to be used for self-defense purposes only, but the capacity of such cartridge or container shall not exceed fifty (50) cubic centimeters.

41-3169. Peace officers and banking institutions excepted from provisions of act. Provided the provisions of this act [Secs. 41-3168—41-3170] shall not apply to any peace officer while engaged in the discharge of his official duties, nor to any banking institution desiring to have possession of tear gas in any form for the purpose of securing funds in its custody from theft or robbery.

41-3174. Sale of rifles, shotguns and ammunition in this state to residents or adjacent states authorized. Hereafter, the sale of shotguns and rifles and ammunition in this State to residents of adjacent states is authorized pursuant to regulations issued by the Secretary of the Treasury under the Federal Gun Control Act of 1968 [U.S.C., tit. 18, Secs. 921-928], as the same is in effect on the effective date [March 4, 1969] of this Act.

41-3175. Residents of this state authorized to purchase rifles, shotguns or ammunition in an adjacent state. Hereafter, a resident of this State shall be permitted to purchase a rifle, shotgun, or ammunition in an adjacent state; such sales are hereby expressly authorized pursuant to the regulations issued under the Federal Gun Control Act of 1968 [U. S. C., tit. 18, Secs. 921-928], as

the same is in effect on the effective date (March 4, 1969) of this Act.

Bearden

Ordinance 172

Section 1: Adoption of the Arkansas Criminal Code which became effective on January 1, 1976: There is hereby adopted by this City Council for the purpose of regulating the enforcement of the Criminal Laws of this State and City within Bearden City Limits that code known as the "Arkansas Criminal Code" effective January 1, 1976. * * *

Section 2: The said Arkansas Criminal Code effective January 1, 1976, is adopted in toto.

Section 3: The invalidity of any section or provision of this code shall not invalidate any other section thereof.

Section 4: All ordinances or parts thereof in force at the time of this ordinance that are inconsistent herewith are hereby repealed.

* * * * *

Danville

Section 7.16.01 Sale of certain weapons prohibited or restricted. (a) It shall be unlawful for any manufacturer, gun collector or dealer to sell any pistol at wholesale or retail, or to pledge or accept any pistol as security for a loan, except those manufacturers, collectors, or dealers who have a valid federal firearms license.

(b) When delivered, all pistols must be securely wrapped and must be unloaded.

(c) It shall be unlawful for any person to sell, lease, lend or otherwise transfer a pistol to any person who he knows or has reasonable cause to believe has been convicted of a crime of violence, or is a fugitive from justice, or who is of unsound mind, or who is a drug addict, or who is under the influence of drugs or liquor at the time of the transfer, or who is under the age of twenty-one.

(d) It shall be unlawful for any person to purchase, receive, sell, give, lease, or otherwise transfer any firearm from which the manufacturers identification mark or serial number has been removed.

(e) It shall be unlawful for any person to give, sell, loan or in any way furnish, or to cause or permit to be sold, given, loaned or in any way furnished, to any person under the age of 18 years, any firearm, or any device designated, altered or capable of discharging any dangerous missile, or any cartridge, shell, ammunition, or device containing an explosive substance designed, or intended to be used in, or fired from, any gun, revolver, pistol or firearm without the written consent of the parent or guardian of such person.

(f) It shall be unlawful for any person to sell, barter or in any manner to furnish another person, * * * any shotgun with barrel or barrels less than 18 inches in length or any rifle with barrel or barrels less than 16 inches in length or any weapon made of a rifle or shotgun by any manner to be less than 26 inches in overall length, * * *

(g) Any person who manufacturers or causes to be manufactured, imports into this city, keeps for sale, or offers or exposes for sale any of the devices listed in the above paragraph (f) of this section shall be guilty of furnishing the device even though a transfer is not carried out.

* * * * *

Sec. 7.16.02 Possession of weapons by certain persons prohibited. (a) It shall be unlawful for any person who is a fugitive from justice, or who has been convicted of a felony, or who is a drug addict, or who is under the influence of alcohol, or any drug, to carry or have in his possession or under his control, or to have about his person or in any vehicle in which he is an occupant any firearm or other dangerous or deadly weapon.

(b) It shall be unlawful for any person under the age of 21 to have in his possession or under his control any handgun without adult supervision and the consent in writing of a parent or guardian.

El Dorado

Sec. 23-27. Weapons; * * * bartering, etc. * * * * * Any person who shall sell, barter or exchange, or otherwise dispose of, or in any manner furnish to any person any * * * pistol of any kind whatever, any kind of cartridges for any firearm, shall be guilty of a misdemeanor. Any person convicted of a violation of any of the provisions of this section shall be punished by a fine * * * or by imprisonment in the city jail * * * or by both fine and imprisonment * * *.

Garland

Local ordinance 149 incorporates, by reference, the Arkansas State Criminal Code.

Hickory Ridge

Hickory Ridge local ordinance, Chapter 7.04, 7.04.01, incorporates, by reference, Arkansas State Criminal Code.

Little Rock

25.96. Pistols, sale and transfer regulated—Definitions. (a) The term "person" includes any individual, partnership, association, or corporation.

(b) The term "pistol" means any firearm with a barrel less than twelve inches in length, except cap and ball, flintlock, wheellock or matchlock hand guns.

(c) The term "manufacturer or dealer" means any person engaged in the business of manufacturing or selling pistols at wholesale or retail, or of accepting or pledging pistols as security for loans.

(d) The term "gun collector" means any person who as a hobby but not for profit shall collect and traffic in pistols.

(e) The term "crime of violence" means murder, manslaughter (except negligent manslaughter arising out of traffic accidents), rape, mayhem, kidnapping, burglary, robbery, assault with intent to kill, commit rape, or rob; or assault with intent to commit any offense punishable by imprisonment for more than one year.

(f) The term "fugitive from justice" means any person who has fled or is fleeing from any law enforcement officer to avoid prosecution or imprisonment for a crime of violence.

25-97. Same—License required; sales restricted. (a) It shall be unlawful for any manufacturer, dealer, or gun collector, except a manufacturer, dealer, or collector having a valid federal firearms license, to sell any pistol at wholesale or retail, or to lease or to pledge or accept any pistol as security for a loan.

(c) It shall be unlawful for any person to sell, lease, lend or otherwise transfer a pistol to any person who he knows or has reasonable cause to believe has been convicted of a crime of violence, or who is a fugitive from justice, or who is of unsound mind, or who is a drug addict, or who is under the influence of liquor at the time of the sale, or who is under the age of twenty-one years.

25-98. Same—Possession by certain persons prohibited; permit to display; serial number; record of sales, etc. (a) It shall be unlawful for any person who has been convicted of a crime of violence in any court of the United States, the several states, territories, possessions or the District of Columbia, or who is a fugitive from justice, to possess a pistol within this city.

(b) It shall be unlawful for any person under age of eighteen to possess a pistol. The provisions of this section shall not apply to the issue of pistols to members of the State Militia, R.O.T.C., or armed forces of the United States for training or active duty.

(c) It shall be unlawful for any person to sell, lease, lend, or otherwise transfer a pistol to any person under twenty-one years of age except as provided in paragraph (b) above.

* * * * *

(f) It shall be unlawful for any person to purchase, receive, possess, sell, lease or otherwise transfer any pistol from which the manufacturer's identification mark or serial number has been removed.

Mammoth Springs

7.12.01 Unlawful to carry, exchange. It shall be unlawful * * * for any firm or corpo-

ration to sell, barter, exchange or otherwise dispose of * * * instruments to be used for a weapon within the corporate limits of the city.

Morrilton

11-64. Same—Sale of weapons and ammunition. Any person who shall sell, barter or exchange or otherwise dispose of or in any manner furnish to any person * * * any kind of pistol of any kind whatever except such as are used in the army or navy of the United States, and known as the navy pistol, or any kind of cartridge for any pistol, or any person who shall keep any such arms or cartridges for sale in the city shall be deemed guilty of a misdemeanor.

Norphlet

The city of Norphlet has adopted the language of the State firearms laws, including sections 41-3101 through 41-3175, shown at the beginning of the Arkansas State listing in this publication.

Plumerville

Ordinance No. 17

Any person who shall sell, barter or exchange, or otherwise dispose of in any manner or furnish to any person * * * any pistol of any kind whatever except such as are used in the army or navy of the United States and known as the navy pistol, or any person who shall keep any such arms for sale in the said incorporated town shall be guilty of a misdemeanor.

Springdale

22-21. Sale, loan, etc., weapons to intoxicated persons, etc. It shall be unlawful for any person to sell, loan or furnish any gun, pistol or other firearm in which any explosive substance can be used, to any person whom he knows or has reasonable cause to believe is under the influence of alcohol or any narcotic, drug, stimulant, or depressant, or who is of unsound mind, or who is a member of any subversive organization.

Sulphur Springs

Ordinance 17

Section 3. That it shall be unlawful for any person to sell, barter or exchange, or otherwise dispose of, or in any manner furnish to any person, any * * * pistol of any kind whatever, except such as are known as the navy pistol, or any kind of cartridge for any pistol, or to keep any such arms or cartridges for sale.

California

State Law

Ann. Cal. Codes

Penal Code

Chapter 1.
Concealed Weapons

Sec. 12001. Definitions. "Pistol," "revolver," and "firearm capable of being concealed upon the person" as used in this chapter shall apply to and include any device, designed to be used as a weapon, from which is expelled a projectile by the force of any explosion, or other form of combustion, and which has a barrel less than 12 inches in length. "Pistol," "revolver," and "firearm capable of being concealed upon the person" as used in Sections 12021, 12072, and 12073 include the frame or receiver of any such weapon.

Sec. 12001.5 Manufacture, sale or possession of sawed-off shotguns not authorized. Except as provided in Section 12020, nothing in this chapter shall be construed as authorising the manufacture, importation into the state, keeping for sale, offering for sale, or giving, lending, or possession of any sawed-off shotgun, as defined in Section 12020.

Sec. 12002. Exemptions.

(a) Nothing in this chapter prohibits police officers, special police officers, peace officers, or law enforcement officers from carrying any wooden club, baton, or any equipment authorized for the enforcement of law or ordinance in any city or county.

Sec. 12020. Blackjacks, etc.; manufacture, sale or possession; concealed explosive or dagger; offense; punishment; exemptions. (a) Any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any cane gun or wallet gun, any firearm which is not immediately recognizeable as a firearm, any ammunition which contains or consists of any flechette dart, any bullet containing or carrying an explosive agent, or any instrument or weapon of the kind commonly known as a * * * sawed-off shotgun, * * * or who carries concealed upon his person any explosive substance, other than fixed ammunition * * * is guilty of a felony, and upon conviction shall be punishable by imprisonment in the county jail not exceeding one year or in a state prison. A bullet containing or carrying an explosive agent is not a destructive device as that term is used in Section 12301.

(b) Subdivision (a) shall not apply to any of the following: (1) The manufacture, possession, transportation or use, with blank cartridges, of sawed-off shotguns solely as props for motion picture film or television program production when such is authorized by the Department of Justice pursuant to Article 6 (commencing with Section 12095) of this chapter and is not in violation of federal law. * * * * *

(4) Any antique firearm. For purposes of this section the term "antique firearm" means any firearm not designed or redesigned for using rimfire or conventional centerfire ignition with fixed ammunition, and manufactured in or before 1898, (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(5) Tracer ammunition manufactured for use in shotguns. * * *

(d) (1) As used in this section a "sawed-off shotgun" means any firearm (including any revolver) manufactured, designed, or converted to fire shotgun ammunition having a barrel or barrels of less than 18 inches in length, or a rifle having a barrel or barrels of less than 16 inches in length, or any weapon made from a rifle or shotgun (whether by manufacture, alteration, modification, or otherwise) if such weapon as modified has an overall length of less than 26 inches. * * *

(3) As used in this section a "wallet gun" means any firearm mounted or enclosed in a case, resembling a wallet, designed to be or capable of being carried in a pocket or purse, if such firearm may be fired while mounted or enclosed in such case.

(4) As used in this section a "cane gun" means any firearm mounted or enclosed in a stick, staff, rod, crutch or similar device, designed to be or capable of being used as an aid in walking, if such firearm may be fired while mounted or enclosed therein.

(5) As used in this section, a "flechette dart" means a dart, capable of being fired from a firearm, which measures approximately one inch in length, with tail fins which take up five-sixteenths inch of the body.

12020.5. Advertising unlawful weapons prohibited. It shall be unlawful for any person, firm, corporation, or association, in any newspaper, magazine, circular, form letter, or open publication, published, distributed, or

circulated in this state, or on any billboard, card, label, or other advertising medium, or by means of any other advertising device, to advertise the sale of any weapon or device whose possession is prohibited by Section 12020.

Sec. 12021. Concealable firearms; prohibited ownership or possession; offense; punishment; exceptions. (a) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or who is addicted to the use of any narcotic drug, who owns or has in his possession or under his custody or control any pistol, revolver, or other firearm capable of being concealed upon the person is guilty of a public offense * * *.

(b) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment; or

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both such punishments.

COMPILER'S NOTE

In the opinion of the California Attorney General: "California is not constitutionally required to recognize sister state gubernatorial or presidential pardons for purposes of section 12021. Nor is California compelled to recognize relief granted by federal authorities pursuant to 18 U.S.C. 925(c). However, under 18 U.S.C.A. 5034, states are required to recognize the expungement of a youth offender's conviction pursuant to 18 U.S.C.A. 5021. California would recognize such an expungement for purposes of section 12021."

Sec. 12070. Unlicensed business; offense. No person shall engage in the business of selling, transferring, advertising, offering, or exposing for sale or transfer, any pistol, revolver or other firearm capable of being concealed upon the person unless he has been issued a license pursuant to Section 12071. Any person violating this section is guilty of a misdemeanor. As used in this article, engaging in the business of selling or transferring concealable firearms does not include the infrequent sale or transfer, offering, exposing for sale, or advertising for sale any handgun at a gun show, swap meet or similar event.

As used in this section, "infrequent" means occasional and without regularity.

Sec. 12071. Retail licenses; business regulations. The duly constituted licensing authorities of any city or county may grant licenses in form prescribed by the Attorney General, effective for not more than one year from date of issue, permitting the licensee to sell at retail within the county, city and county, city, town or other municipality pistols, revolvers, and other firearms capable of being concealed upon the person, subject to the following conditions, for breach of any of which the license shall be subject to forfeiture. * * * * *

3. No pistol or revolver shall be delivered

(a) Within fifteen days of the application for the purchase, and when delivered shall be unloaded and securely wrapped; nor

(b) Unless the purchaser either is personally known to the seller or shall present clear evidence of his identity. * * * * *

Sec. 12072. Prohibited transfers; delivery of weapon; transfer to stranger; offense. No person, corporation or dealer shall sell, deliver, or otherwise transfer any pistol, revolver, or other firearm capable of being concealed upon the person to any person whom he has cause to believe to be within any of the classes prohibited by Section 12021 from owning or possessing such firearms, nor to any minor, under the age of 18 years. In no event shall any such firearm be delivered to the purchaser within fifteen days of the application for the purchase thereof, and when delivered such firearm shall be securely wrapped and shall be unloaded. Where neither party to the transaction holds a dealer's license, no person shall sell or otherwise transfer any such firearm to any other person within this state who is not personally known to the vendor. Any violation of the provisions of this section is a misdemeanor.

Sec. 12073. Register of sales; contents; exemptions. Every person in the business of selling, leasing or otherwise transferring a pistol, revolver or other firearm, of a size capable of being concealed upon the person, whether such seller, leasor or transferor is a retail dealer, pawnbroker, or otherwise, except as provided by this chapter, shall keep a register in which shall be entered the time of sale, the date of sale, the name of the salesman making the sale, the place where sold, the make, model, manufacturer's number, caliber, or other marks of identification on such pistol, revolver or other firearm.

This section shall not apply to wholesale dealers in their business intercourse with retail dealers, nor to wholesale or retail dealers in the regular or ordinary transport of unloaded firearms as merchandise to other wholesale or retail dealers by mail, express or other mode of shipment, to points outside of the city or county wherein they are situated.

* * * * *

Sec. 12078. Exemption of sales to government officers; identification; report of sale. The preceding provisions of this article do not apply to sales of concealable firearms made to persons properly identified as full-time paid officers of a city police department, sheriff's department, district attorney's office, the California Highway Patrol, or the State Department of Justice, nor to sales of concealable firearms made to authorized representatives of cities, cities and counties, counties, state or federal governments for use by such governmental agencies. Proper identification is defined as verifiable written certification from the head of the agency by which the purchaser is employed, identifying the purchaser and authorizing the purchase. The certification shall be delivered to the seller at the time of purchase and the purchaser shall identify himself as the person authorized in such certification. On the day the sale is made, the dealer shall forward by prepaid mail to the Department of Justice a report of such sale and the type of information concerning the buyer and the firearm sold as is indicated in Section 12077.

Sec. 12079. Mail orders; record of order; fee. Any person, other than a dealer licensed under the provisions of Section 12071, or a manufacturer or wholesaler of weapons, who orders by mail any pistol, revolver, or firearm capable of being concealed upon the person shall, at least five days before ordering such weapon, file with the chief of police, or other head of the police department of the city, county, or city and county wherein such person maintains his residence or principal place of business, a record in duplicate of such order. When such person resides or has his principal place of business where there is no municipal police department, then such record, in duplicate, shall be filed with the sheriff of the county where such person resides or maintains his principal place of business. Such record shall be substantially in the following form: [See local requirements]

* * * * *

Sec. 12092. Assignment of number or mark. The Department of Justice upon request may assign a distinguishing number or mark of identification to any pistol or revolver whenever it is without a manufacturer's number, or other mark of identification or whenever the manufacturer's number or other mark of identification or the distinguishing number or mark assigned by the department has been destroyed or obliterated.

* * * * *

Sec. 12094. Unmarked firearms; purchase, sale or possession; offense. Any person with knowledge of any change, alteration, removal, or obliteration described herein, who buys, receives, disposes of, sells, offers for sale, or has in his possession any pistol, revolver, or other firearm which has had the name of the maker, model, or the manufacturer's number or other mark of identification including any distinguishing number or mark assigned by the Department of Justice changed, altered, removed, or obliterated is guilty of a misdemeanor.

Sec. 12095. Sawed-off shotguns as props; manufacture, possession, transportation or use; issuance of permit, duration of permit. If it finds that it does not endanger the public safety, the Department of Justice may issue permits initially valid for a period of one year,

and renewable annually thereafter, for the manufacture, possession, transportation or use, with blank cartridges, of sawed-off shotguns solely as props for motion picture film or television program production upon a showing that good cause exists for the issuance thereof to the applicant for such a permit. No permit shall be issued to a person who is under 18 years of age.

Chapter 2
Machine Guns

Sec. 12200. Definition. The term "machinegun" as used in this chapter means any weapon which shoots, or is designed to shoot, automatically, more than one shot, without manual reloading, by a single function of the trigger, and includes any frame or receiver which can only be used with such weapon. The term shall also include any combination of parts designed and intended for use in converting a weapon into a machinegun.

Sec. 12201. Exemptions. Nothing in this chapter shall prohibit the sale to, purchase by, or possession of machine guns by police departments, sheriffs' offices, city marshal's offices, or the military or naval forces of this State or of the United States for use in the discharge of their official duties; nor shall anything in this chapter prohibit the possession of machine guns by regular, salaried, full-time members of a police department, sheriff's office, or city marshal's office when on duty and such use is within the scope of their duties.

Sec. 12220. Unauthorized sale, possession or transportation; punishment. Any person, firm or corporation, who within this State sells, offers for sale, possesses or knowingly transports any firearms of the kind commonly known as a machine gun, except as provided by this chapter, is guilty of a public offense * * *.

Sec. 12230. Authority to issue; showing necessary. The Department of Justice may issue permits for the possession and transportation or possession or transportation of such machineguns, upon a satisfactory showing that good cause exists for the issuance thereof to the applicant for such permit but no permit shall be issued to a person who is under 18 years of age.

* * * * *

Sec. 12250. Authority to grant license; revocation; business regulations. The Department of Justice may grant licenses in a form to be prescribed by it effective for not more than one year from the date of issuance, to permit the sale at the place specified in the license of machineguns subject to all of the following conditions, upon breach of any of which the license shall be revoked: * * * * *

3. No machinegun shall be delivered to any person not authorized to receive the same under the provisions of this chapter.

* * * * *

Chapter 2.5
Destructive Devices

Sec. 12301. Definition. (a) The term "destructive device," as used in this chapter, shall include any of the following weapons: (1) Any projectile containing any explosive or incendiary material or any other chemical substance, including, but not limited to, that which is commonly known as tracer or incendiary ammunition, except tracer ammunition manufactured for use in shotguns.

(2) Any bomb, grenade, explosive missile, or similar device or any launching device therefor.

(3) Any weapon of a caliber greater than .60 caliber which fires fixed ammunition, or any ammunition therefor, other than a shotgun or shotgun ammunition.

(4) Any rocket, rocket-propelled projectile, or similar device of a diameter greater than 0.60 inch, or any launching device therefor, and any rocket, rocket-propelled projectile, or similar device containing any explosive or incendiary material or any other chemical substance, other than the propellant for such devices, except such devices as are designed primarily for emergency or distress signaling purposes.

(5) Any breakable container which contains a flammable liquid with a flashpoint of 150 degrees Fahrenheit or less and has a wick or similar device capable of being ignited, other than a device which is commercially manufactured primarily for the purpose of illumination.

(b) The term "explosive," as used in this chapter, shall mean any explosive defined in Section 12000 of the Health and Safety Code.

Sec. 12302. Exemptions. Nothing in this chapter shall prohibit the sale to, purchase by, or possession of, or use of destructive devices by:

(a) Any peace officer listed in Section 830.1 or 830.2, or any peace officer in the Department of Justice authorized by the Attorney General, while on duty and acting within the scope and course of his employment.

(b) Any member of the Army, Navy, Air Force, or Marine Corps of the United States, or the National Guards, while on duty and acting within the scope and course of his employment.

Nothing in this chapter shall prohibit the sale to, purchase by, possession by, or use by any person who is a regularly employed and paid officer, employee or member of a fire department or fire protection or firefighting agency of the federal government, the State of California, a city, county, city and county, district, or other public or municipal corporation or political subdivision of this state, while on duty and acting within the scope and course of his employment, of any equipment used by such department or agency in the course of fire suppression.

Sec. 12303. Possession; other than fixed ammunition; punishment. Any person, firm, or corporation who, within this state, possesses any destructive device, other than fixed ammunition of a caliber greater than .60 caliber, except as provided by this chapter, is guilty of a public offense * * *.

Sec. 12303.6 Sale or transportation; other than fixed ammunition; punishment. Any person, firm, or corporation who, within this state, sells, offers for sale, or knowingly transports any destructive device, other than fixed ammunition of a caliber greater than .60 caliber, except as provided by this chapter, is guilty of a felony * * *.

12304. Sale, possession or transportation of fixed ammunition; punishment; subsequent conviction. Any person, firm or corporation who, within this state, sells, offers for sale, possesses or knowingly transports any fixed ammunition of a caliber greater than .60 caliber, except as provided in this chapter, is guilty of a public offense * * *.

Sec. 12305. Permits to conduct business; fee. Every dealer, manufacturer, importer, and exporter of any destructive device, or any motion picture or television studio using destructive devices in the conduct of its business, shall obtain a permit for the conduct of such business from the Department of Justice. * * *

Sec. 12306. Permits; non-business purposes; fee. Any person, firm or corporation, other than those included in Section 12305, shall obtain a permit from the Department of Justice before possessing or transporting any destructive device. * * * The department shall issue a permit without payment of a fee upon a satisfactory showing that the possessor of such destructive devices is a bona fide collector of destructive devices. * * * *

Chapter 4
Tear Gas Weapons

Sec. 12402. Tear gas weapon. The term "tear gas weapon" as used in this chapter shall apply to and include: (a) Any shell, cartridge, or bomb capable of being discharged or exploded, when the discharge or explosion will cause or permit the release or emission of tear gases.

(b) Any revolvers, pistols, fountain pen guns, billies, or other form of device, portable or fixed, intended for the projection or release of tear gas except those regularly manufactured and sold for use with firearm ammunition.

Sec. 12403. Exemptions; peace officers. Nothing in this chapter shall prohibit any person who is a peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 from purchasing, possessing, or transporting any tear gas weapon for official use in the discharge of his duties, if such weapon has been certified as acceptable un-

der Article 5 (commencing with Section 12450) of this chapter and if such such person has satisfactorily completed a course of instruction approved by the Commission on Peace Officers Standards and Training in the use of tear gas.

12403.1 Exemptions; military and naval forces and federal law enforcement officers. Nothing in this chapter shall prohibit any member of the military and naval forces of this state or of the United States or any federal law enforcement officer from purchasing, possessing, or transporting any tear gas or tear gas weapon for official use in the discharge of his duties.

* * * * *

Sec. 12403.5 Exemptions; private investigators; private patrol operators or uniformed patrolmen employees. Notwithstanding any other provision of law, a person holding a license as a private investigator or private patrol operator issued pursuant to Chapter 11 (commencing with Section 7500), Division 3 of the Business and Professions Code, or uniformed patrolmen employees of a private patrol operator, may purchase, possess, or transport any tear gas weapon, if it is used solely for defensive purposes in the course of the activity for which the license was issued and if such person has satisfactorily completed a course of instruction approved by the Commission on Peace Officer Standards and Training in the use of tear gas.

Sec. 12403.7. Exemptions; weapons approved for self-defense; regulations; training. (a) Notwithstanding any other provision of law, any person may purchase, possess or use tear gas and tear gas weapons for the projection or release of tear gas if such tear gas and tear gas weapons are approved by the Department of Justice and are used solely for self-defense purposes, subject to the following requirements:

(1) No person convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country shall purchase, possess, or use tear gas or tear gas weapons.

(2) No person who is addicted to any narcotic drug shall purchase, possess, or use tear gas or tear gas weapons.

(3) No person shall sell or furnish any tear gas or tear gas weapon to a minor.

(4)(i) No person shall purchase, possess or use any tear gas weapon which expels a projectile, or which expels the tear gas by any method other than an aerosol spray, or which is of a type, or size of container, other than authorized by regulation of the Department of Justice. * * *

(5)(i) No person shall purchase, possess or use any tear gas or any tear gas weapon who has not completed a course certified by the Department of Justice in the use of tear gas and tear gas weapons pursuant to which a card is issued identifying the person who has completed such a course. Such a course may be taken in any training institution certified by the Commission on Peace Officers Standards and Training to offer tear gas training. Such a training institution is authorized to charge a fee covering the actual cost of such training. * * *

(6) No person shall purchase, possess or use any tear gas or tear gas weapon if such person has not been issued a permit by the police chief or sheriff having jurisdiction over the person's place of legal residence. The police chief or sheriff shall issue a permit to any person who has completed the course of training specified in paragraph (5), and who meets the following criteria:

(i) Is not a minor.

(ii) Has not been convicted of a felony.

(iii) Is not addicted to any narcotic drug.

(iv) Has not been convicted of any crime involving assault.

(v) Has not been convicted of misuse of tear gas under paragraph (8). * * *

Sec. 12420. Sale, possession or transportation; punishment. Any person, firm, or corporation who within this state knowingly sells or offers for sale, possesses, or transports any tear gas or tear gas weapon, except as permitted under the provisions of this chapter, is guilty of a public offense * * *.

Sec. 12422. Alteration of manufacturer's name, serial number or mark. Any person who changes, alters, removes or obliterates the name of the manufacturer, the serial number or any other mark of identification on any tear gas weapon is guilty of a public offense * * *.

Possession of any such weapon upon which the same shall have been changed, altered, removed, or obliterated, shall be presumptive evidence that such possessor, has changed, altered, removed, or obliterated the same.

* * * * *

Sec. 12435. Authority to issue; business regulations. The Department of Justice may grant licenses in a form to be prescribed by it effective for not more than one year from the date of issuance, to permit the sale at retail at the place specified in the license of tear gas or tear gas weapons, and to permit the installation and maintenance of protective systems involving the use of tear gas or tear gas weapons subject to all of the following conditions upon breach of any of which the license shall be subject to forfeiture: [See State statute for details]

Chapter 5
Firearm Devices

Sec. 12500. Silencer. The term "silencer" as used in this chapter shall apply to and include all devices or attachments of any kind designed, used or intended for use in silencing the report of a firearm.

Sec. 12501. Exemptions. Nothing in this chapter shall prohibit any peace officer listed in Section 830.1, or the military or naval forces of this state or of the United States from possessing silencers for official use in the discharge of their duties.

Sec. 12520. Possession; offense; punishment. Any person, firm or corporation who within this State possesses any device of the kind commonly known as a silencer for firearms is guilty of a felony * * *.

Chapter 6
Miscellaneous

Sec. 12550. Necessity of parental consent; violation; misdemeanor. No person shall sell any firearm to any minor who is at least 16 years of age but not over the age of 18 years without the written consent of a parent or legal guardian of the minor.

Violation of this section is a misdemeanor.

Sec. 12551. Sale to minors; misdemeanor. Every person who sells to a minor any firearm, air gun, or gas-operated gun, designed to fire a bullet, pellet or metal projectile, is guilty of a misdemeanor.

Sec. 12560. Violation; penalty. Every person who has been convicted of a felony under the laws of the United States, of the State of California, or of any other state, government, or country and who used a firearm in the commission of such felony, who owns or has in his possession or under his custody or control any firearm is punishable by imprisonment in the state prison, or in a county jail not exceeding one year or by a fine not exceeding five hundred dollars ($500), or by both such term of imprisonment and such fine.

Sec. 12570. Purchase in contiguous state; laws applicable. Any person residing in this state may purchase any rifle or shotgun, as defined in the federal Gun Control Act of 1968 (18 U.S.C., Sec. 921 et seq.), in a state contiguous to this state pursuant to paragraph (3), subdivision (b), Section 922 of Title 18 of the United States Code, and in conformance with the rules and regulations prescribed by the Secretary of the Treasury pursuant to the Gun Control Act of 1968. The purchase of any such rifle or shotgun pursuant to this section is also subject to any other applicable laws of this state and all such laws of the contiguous state in which the rifle or shotgun is purchased.

Government Code

Sec. 53071. Registration and licensing of firearms; exclusive regulation by legislature. It is the intention of the Legislature to occupy the whole field of regulation of the registration or licensing of commercially manufactured firearms as encompassed by the provisions of the Penal Code, and such provisions shall be exclusive of all local regulations, relating to registration or licensing of commercially manufactured firearms, by any

political subdivisions as defined in Section 1721 of the Labor Code.

Adelanto

Ordinance No. 18

Section 6. Purchase of Firearm and Other Weapons. No person except a parent or guardian shall purchase from, sell, exchange, give, lend or furnish to any person under the age of eighteen years a firearm * * *.

Alameda

16-512. Maxim silencer. It is hereby declared to be unlawful for any person, firm or corporation to have in its or his possession any Maxim silencer to be used, or that may be used, on any firearm or arms, or any similar apparatus or device to be used, or that may be used, on any firearm or arms.

16-517. Firearms * * *—Use or possession of by minors. It shall be unlawful for any persons to sell or give to any minor in the City of Alameda under the age of eighteen (18) years, or to allow any such minor to possess, use or discharge, or for any such minor to possess, use, or discharge, any rifle, gun, pistol, revolver, * * * or other similar instrument from or by means of which any bullet, shot or other missile of any kind may be projected; provided that the provisions of this section shall not apply to the possession of such firearms or other instruments by such minors in bona fide shooting galleries, gun clubs, or organizations or educational institutions authorized to give military instruction, while such firearms or other instruments are being used as a part of such instruction, nor to the possession of unloaded firearms, air rifles or other such instruments by any such minor as an employee of a merchant, when such possession is in the usual course of his employment.

16-521. Sale, etc., except to permit holder unlawful. It shall be unlawful for any person, firm, association or corporation to sell, lease or otherwise transfer a pistol, revolver or other firearm of a size capable of being concealed upon the person, unless the person to whom the same is sold, leased or otherwise transferred, shall first exhibit a permit duly issued by the Chief of Police authorizing such person to acquire such weapon.

* * * * *

16-525. Article not applicable to officers or dealers receiving or transporting firearms. Nothing in this chapter shall apply to duly elected or appointed peace officers of any political subdivision of the State, or to bona fide dealers receiving or transporting unloaded pistols, revolvers and other firearms in the regular course of business.

Alameda County

4-11.0 Definition of dangerous weapon. Dangerous weapon shall mean and include: * * * * * (f) Any rifle, gun, pistol, revolver, * * * or other similar instrument or device designed or intended to discharge or capable of discharging a bullet, shot, or other missile of any kind.

4-11.1 Use, possession, discharge, sale of dangerous weapons. Except as otherwise provided in Section 4-11.2, it shall be unlawful for any person in the unincorporated territory of Alameda County to sell, give, loan, or in any way furnish, or to cause or permit to be sold, given, loaned, or in any way furnished to a minor, or to allow any minor to use or possess or discharge, or for any minor to use or possess or discharge a dangerous weapon.

4-11.2 Same: exceptions. Nothing in this article shall be deemed or construed to prohibit the selling, giving, loaning, or furnishing to any minor, upon written consent of the parent or guardian of such minor, any dangerous weapon as defined in subdivision (f) of Section 4-11.0; nor to prohibit such minor from using or having in his possession, care, custody or control any such dangerous weapon as so defined in the event that such possession, care, custody, control or use is had with the consent of the parent or guardian of such minor and is under the direct supervision and control of some adult person; nor to prohibit any minor from using or having in his possession or control any dangerous weapon which is in good faith in his possession or control or use for his lawful occupation or employment or for the purpose of lawful recreation.

Alhambra

2842. Section One: It shall be unlawful for any person, firm or corporation to sell, exchange, give, loan or furnish to any person under eighteen years of age * * * any gun, revolver, pistol * * * or firearm of any description which discharges or propels any missile; * * * or any ammunition, cartridge or shell; or any other device containing any explosive substance designed and intended for use in any of the weapons enumerated herein.

* * * * *

Angels

Section 1. It shall be unlawful for any person to sell, give away or dispose, to fire, shoot, discharge or explode, within the limits of the City of Angels any pistol, gun, fire-arm, cannon, anvil or any other cracker, bomb, torpedo, sky-rocket, chaser, roman candle or any other kind of fire-works, except on Public occasions, fete days or occasions of public parade, and only on such time when written permission shall first have been obtained from the Board of Trustees of the City of Angels and which permission shall fix the time and place and restrict the manner in which such public demonstration may be had.

Artesia

I. Except as otherwise provided in Section 4 hereof, it shall be unlawful in the City of Artesia for any person, firm, or corporation, to sell, give, loan, or in any way furnish, or to cause or permit to be sold, given, loaned, or in any way furnished, to any person under the age of eighteen (18) years, any gun, revolver, pistol, firearm, * * *.

II. Except as otherwise provided in Section 4 hereof, it shall be unlawful in the City of Artesia for any person, firm, or corporation, to sell, give, loan, or in any way furnish, or to cause or permit to be sold, given, loaned, or in any way furnished, to any person under the age of eighteen (18) years, any cartridge, shell, ammunition, or device containing any explosive substance, designed, or intended to be used in, or fired from, any gun, revolver, pistol, or firearm.

Azusa

8.09.030. Providing dangerous weapons to minors unlawful. Except as otherwise provided for in this Chapter it shall be unlawful for any person to sell, give, loan or in any way furnish, or to cause or permit to be sold, given, or loaned, or in any way furnished, to any minor person under the age of eighteen years, any gun, revolver, pistol, firearm, * * * or device designed or intended to discharge or capable of discharging any dangerous missile or explosive substance. This Section shall not apply to or include any person who shall loan, give, or furnish to any minor person under the age of eighteen years any firearm or weapon or device when and only when it is so loaned, given or furnished to comply with and when such minor person under eighteen years of age actually participates in shooting at any of the designated target ranges in Section 8.09.060 or while going to and returning from such target ranges.

Baldwin Park

3528. No person shall sell at retail within the city, pistols, revolvers, or other firearms capable of being concealed upon the person without first having obtained a permit from the Chief of Police authorizing such person to make such sale * * *.

3529. The Chief of Police may issue a permit for the sale of firearms upon receiving an application in conformity with the form prescribed by the Attorney General and further in conformity with Article 4, Chapter 1, Title 2, Part 4 of the Penal Code of the State of California.

3530. Except as otherwise provided in Section 3520.3 hereof, it shall be unlawful in the City of Baldwin Park for any person, firm

or corporation to sell, give, loan, or in any way furnish, or cause or permit to be sold, given, loaned, or in any way furnished, to any person under the age of eighteen (18) years, any gun, revolver, pistol, firearm, * * *.

3520.1 Except as otherwise provided in Section 3520.2 hereof, it shall be unlawful in the City of Baldwin Park for any person, firm or corporation to sell, give, loan, or in any way furnish, or to cause or permit to be sold, given, loaned, or in any way furnished to any person under the age of eighteen (18) years, any cartridge, shell, ammunition, or device containing any explosive substance, designed or intended to be used in, or fired from any gun, revolver, pistol, or firearm.

3520.2 Nothing in this chapter shall be deemed or construed to prohibit in the City of Baldwin Park the giving, loaning, or furnishing to any person under the age of eighteen (18) years any articles mentioned in Sections 3520, and 3521 hereof, nor to prohibit any persons under the age of eighteen (18) years from having in his or her care, custody, or control, any article mentioned in Section 3502.2 hereof in the event that such possession, care, custody, or control of such article is had with the consent of the parent or guardian of such person, or in the event that such person is under the direct supervision and control of some adult person.

Bell

Ordinance 524

Section 2: No persons shall sell, exchange, give or loan to any person under eighteen (18) years of age any gun, revolver, pistol or firearm of any description * * * or any ammunition, cartridge, shell or other device containing any explosive substance designed or intended for use in any weapon enumerated herein * * *.

Bellflower

Section 3400. Except as otherwise provided in Section 3403 hereof, it shall be unlawful in the City of Bellflower for any person, firm, or corporation, to sell, give, loan, or in any way furnish, or to cause or permit to be sold, given, loaned, or in any way furnish, to any person under the age of eighteen (18) years, any gun, revolver, pistol, firearm, * * *.

Section 3401. Except as otherwise provided in Section 3403 hereof, it shall be unlawful in the City of Bellflower, for any person, firm, or corporation, to sell, give, loan, or in any way furnish, or to cause or permit to be sold, given, loaned, or in any way furnished to any person under the age of eighteen (18) years, any cartridge, shell, ammunition, or device containing any explosive substance, designed, or intended to be used in, or fired from, any gun, revolver, pistol, or firearm.

Section 3403. Nothing in Sections 3400, 3401, and 3402 shall be deemed or construed to prohibit in said City of Bellflower the selling, giving, loaning, or furnishing to any person under the age of eighteen (18) years, upon the written consent of the parent or guardian of such person, any article mentioned in Sections 3400 and 3401 hereof.

Belmont

Sec. 15-38. Sale to minors. Sale of firearms to minors. No person shall sell, deliver or transfer to any person under the age of eighteen years ownership of any pistol, revolver or other similar weapon capable of being concealed upon the person designed to discharge a solid projectile propelled by the expansion of a gas.

Beverly Hills

Sec. 3-7.02. Furnishing weapons to minors. It shall be unlawful for any person to sell, exchange, give or loan, or to cause or permit to be sold, exchanged, given or loaned, any gun, revolver, pistol, * * * or firearm of any description to any person under the age of eighteen (18) years.

Sec. 3-7.03. Furnishing ammunition to minors. It shall be unlawful for any person to sell, exchange, give or loan, or to cause or permit to be sold, exchanged, given or loaned, any cartridge, shell or other device containing any explosive or any cartridge, shell or other device designed and intended for use in connection with any gun, revolver, pistol or firearm of any description containing any explosive or any ammunition of any description to any person under the age of eighteen (18) years.

Brisbane

Ordinance 28

Section 3. No person under eighteen (18) years of age shall purchase any of the parts, projectiles, supplies or devices set forth in Sections 1 and 2 of this Ordinance (which includes pistol, revolver, gun, rifle [of any caliber], cannon, anvil, or any other firearm) unless accompanied by his or her parent or guardian, who shall request said purchase.

Buena Park

18-14. Giving, selling, etc., of firearms to minors. No person shall give, sell or loan to any person under the age of eighteen years any firearm, * * * or ammunition.

Burbank

Sec. 20-57. License to Sell Firearms at Retail. Any person engaging in the business of selling or otherwise transferring, or renting, or advertising for sale, or offering or exposing for sale or transfer or rental at retail, pistols, revolvers, or other firearms capable of being concealed upon the person, shall obtain the license required by Title 2, Chapter 1, Article 4, of the Penal Code of the State of California from the License Division, the purpose of this section being to provide for the granting of the local license prescribed by Section 12071 and amendments thereto of said Penal Code. * * *

Sec. 20-58. Unlawful to Sell without Prior Notice to Chief of Police. No person shall sell, deliver or otherwise transfer any pistol, revolver, or other firearm capable of being concealed upon the person, to any person without notifying the Chief of Police of the intended sale or transfer at least twenty-four (24) hours before the transfer is made, giving the name and address of the transferor, a description of the firearm, and the name and address of the transferee.

Sec. 20-63. Sale of Ammunition to Minors. No person shall sell, exchange, give or loan to any person under sixteen (16) years of age any ammunition, cartridge, shell, pellets, B-B shot, shot or other missile designed for use in any firearm * * *.

California City

Sec. 4-7.02. Use by minors. Unless accompanied by, and under the direct care and control of, an adult person, it shall be unlawful for any person, firm, or corporation to sell, give, loan, or in any way furnish, or cause or permit to be sold, given, lent, or in any way furnished, to any person under the age of eighteen (18) years any gun, revolver, pistol, firearm, or device designed or intended to discharge, or capable of discharging, any dangerous missile propelled by any explosive substance or to sell, give, loan, or in any way furnish, or cause or permit to be sold, given, lent, or in any way furnished, any cartridge, shell, ammunition, or device containing any explosive substance designed or intended to be used in or fired from any gun, revolver, pistol, or firearm.

Carpinteria

Chapter 6.1
Handgun Sellers' License
(Added by Ordinance 193)

Section 6610. Definition. For the purposes of this Chapter, the word "Handgun"

shall have the following meaning: "Handgun" means pistols, revolvers, and other firearms capable of being concealed upon the person, as defined in Section 12001 of the Penal Code.

Section 6611. Purpose and Intent. The purpose and intent of this Chapter is to designate the City Clerk of the City of Carpinteria as the duly constituted licensing authority to grant licenses permitting an applicant to sell handguns in this City pursuant to Title 2, Chapter 1, Article 4 of the California Penal Code.

Section 6612. Application Procedure. Application for the license to sell handguns shall be made and conducted in the following manner: Application for license effective for one year from the date of issue shall be on forms made available by the City Clerk and prescribed by the Attorney General of the State of California.

Section 6613. Application for License to Sell Handguns. Upon payment of the fees fixed therefor in Section 6616, and the obtaining of all other applicable fees and licenses, the City Clerk shall issue and renew a license to sell handguns in the form prescribed by the Attorney General of the State of California pursuant to Penal Code Section 12071 if, and only if, all the following conditions are satisfied: (a) The applicant is eighteen years of age, or over; (b) The applicant has not been convicted of any crime involving the illegal use or possession of any weapon described in Penal Code Section 3024(f) or Penal Code Section 12020; (c) The applicant has not been adjudicated a mentally incompetent person or has not been adjudicated to be a member of a class of persons subject to proceedings pursuant to the Lanterman-Petris-Short Act contained in Section 5001, et seq. of the Welfare and Institutions Code. (d) The applicant has not willfully failed to disclose any material information required in the application; (e) The applicant has not made any false statement as to any material fact in connection with the application; (f) The applicant is not in violation, at the time of issuance or renewal of the license, of any of the provisions of this Chapter, or of any conditions contained in any license to sell handguns previously issued to the applicant pursuant to this Chapter, or contained in Penal Code Section 12071; and (g) The sale of handguns at the locations specified in the application is not prohibited by any provision of the zoning laws or ordinances of the City.

Carson

Section 4302. Minors, Selling or Giving Weapons To. Except as otherwise provided in Section 4305, no person shall sell, give, loan, or in any way furnish, or cause or permit to be sold, given, loaned, or in any way furnished to any person under the age of 18 years, any gun, revolver, pistol, firearm, * * * or device designed to discharge, or capable of discharging, or any dangerous missile.

Section 4303. Minors, Providing Ammunition To. Except as otherwise provided in Section 4305, no person shall sell, give, loan, or in any way furnish, or cause or permit to be sold, given, loaned, or in any way furnished, to any person under the age of 18 years, any cartridge, shell, ammunition, or device containing any explosive substance, designed, or intended to be used in, or fired from, any gun, revolver, pistol or firearm.

Section 4305. Exception To. Nothing in this Chapter shall be deemed or construed to prohibit the selling, giving, loaning, or furnishing to any person under the age of 18 years, upon written consent of the parent or guardian of such person, any article mentioned in Sections 4302 and 4303 hereof; * * *.

Cerritos

Ordinance 17

Section 1. * * * it shall be unlawful for any person, firm, or corporation, to sell, give, loan, or in any way furnish, or to cause or permit to be sold, given, loaned, or in any way furnished, to any person under the age of eighteen (18) years, any gun, revolver, pistol, firearm, * * *.

Section 2. * * * it shall be unlawful for any person, firm, or corporation, to sell, give, loan, or in any way furnish, or to cause or permit to be sold, given, loaned, or in any way furnished, to any person under the age of eighteen (18) years, any cartridge, shell, ammunition, or device containing any explosive substance, designed, or intended to be used in, or fired from, any gun, revolver, pistol, or firearm.

Section 4. Nothing in this ordinance shall be deemed or construed to prohibit the selling, giving, loaning, or furnishing to any person under the age of eighteen (18) years, upon the written consent of the parent or guardian of such person, any article mentioned in Sections 1 and 2 hereof; * * *.

Chowchilla

Section 11-84. Fee Schedule for License to Sell Concealable Firearms. 1. Five dollars ($5.00) per quarter during the first year; * * *

Chula Vista

5.28.010 License required—Statutory authority applicable. No person shall engage in the business of selling or otherwise transferring, or advertise for sale or transfer any pistol, revolver or other firearm capable of being concealed upon the person, without first obtaining a license from the chief of police, which license shall be issued in accordance with the conditions and provisions contained in Article 4, Chapter 1, Title 2, Part 4 of the Penal Code, commencing at Section 12070. There shall be no charge for the issuance of this license.

9.32.010 Conveyance of firearms to minors prohibited. No person shall sell, exchange, give or loan to any person under the age of sixteen years any * * * gun, revolver, pistol or firearm of any description * * * designed or intended to discharge any pellets, or other deadly or dangerous missile, or any ammunition, cartridge, shell or other device, whether containing any explosive substance or not, designed and intended for use in any weapons enumerated herein.

Clovis

4-6.07. Sale of firearms. (a) No person who is engaged in the business of selling, leasing, or otherwise transferring, and no person who sells, leases, or otherwise transfers, either title to or possession of a pistol, revolver, or other firearm of a size capable of being concealed upon the person, shall sell, lease, or in any other way transfer title to or possession of such pistol, revolver or other firearm, or deliver the same pursuant to such sale, lease, or transfer, unless the person to whom the same is sold, leased, transferred, or delivered shall at the time exhibit a permit duly issued by the Chief of Police authorizing such person to acquire such pistol, revolver, or firearm; nor shall any person not having such permit receive or accept delivery or transfer of possession of such pistol, revolver, or other firearm of a size capable of being concealed on the person. * * * * *

(c) No person shall sell, exchange, give, loan, or otherwise dispose of to any person under the age of eighteen (18) years any * * * rifle, pistol, revolver, gun, or any firearm of any description using B-B pellets, bullets, or shots, or which expels a deadly or dangerous missile by spring, air, gas, or gunpowder, or any ammunition, cartridge, shell, or other device capable of being projected or projecting a missile, whether or not containing any explosive substance.

Commerce

9.16.010 Giving firearms to minors. Except as otherwise provided in Section 9.16.040, it is unlawful for any person, firm, or corporation, to sell, give, lend or in any way furnish, or to cause or permit to be sold, given, lent, or in any way furnished, to any person under the age of eighteen years, any gun, revolver, pistol, firearm * * *.

9.16.020 Giving ammunition to minors. Except as otherwise provided in Section

9.16.040, it is unlawful for any person, firm, or corporation, to sell, give, lend, or in any way furnish, or to cause or permit to be sold, given, lent, or in any way furnished, to any person under the age of eighteen years, any cartridge, shell, ammunition, or device containing any explosive substance, designed, or intended to be used in, or fired from any gun, revolver, pistol, or firearm.

9.16.040 Exceptions. Nothing in this chapter shall be deemed or construed to prohibit the selling, giving, lending, or furnishing to any person under the age of eighteen years, upon the written consent of the parent or guardian of such person, any article mentioned in Sections 9.16.010 and 9.16.020 hereof; * * *.

Compton

3603. Firearms—Sale to minors. No person shall sell, exchange, give or loan to any person under 18 years of age any gun, revolver, pistol or firearm of any description * * * or any ammunition, cartridge, shell, or device containing any explosive substance designed and intended for use in any weapons enumerated herein.

Contra Costa County

44-4.002 Firearms—Possession by minors. No minor under the age of sixteen years shall possess or use firearms of .22 calibre or greater or air guns except under the direct supervision and control of an adult.

44-4.008 Firearms—Ammunition sale to minors. No person shall sell or give to any minor under the age of sixteen years any ammunition capable of being used in any firearm, unless the minor is accompanied by a parent, legal guardian or adult authorized by the parent.

Corona

4-4-1. Minors, firearms, etc., sale, etc., to. No person except a parent or guardian shall purchase from, sell, exchange, give, lend or furnish to any person under the age of eighteen years a revolver or pistol of any description, shotgun, or rifle which may be used for the explosion of cartridges, * * * or any ammunition therefor, * * *

Chapter 17
Retail Sale of Concealable Firearms

6-17-1: Purpose: The purpose of this Chapter 17 is to provide for the licensing of persons to engage in the business of selling by retail any pistol, revolver, or other firearm capable of being concealed upon the person, as provided for the Part 4, Title II, Chapter 1, Article 4 (commencing with Section 12070) of the California Penal Code, and hereinafter in this Chapter referred to as "Article 4".

6-17-2: Administration: The Chief of Police is hereby constituted the licensing authority for the City within the meaning of Section 12070 of Article 4, and is granted the authority to administer the provisions of this Chapter. The Chief of Police may delegate such authority to an employee or member of the City's Police Department, as he shall determine.

6-17-3: Issuance of license; fees: The Chief of Police, or his delegee, shall accept applications for, and may grant licenses permitting a person to sell at retail within the City of Corona pistols, revolvers, and other firearms capable of being concealed upon the person. If such a license is granted it shall be effective for not more than one year from the date of issuance or such shorter period of time as the Chief, or his delegee, may provide.

* * * * *

6-17-7: Exceptions: This Chapter shall not be applicable to any person who makes only those sales, as described in Section 12078 of the California Penal Code.

Cudahy

Article 4—Firearms

Sec. 3500. Providing firearms to minors. Except as otherwise provided in Section 3503 of this article, it shall be unlawful in the City for any person to sell, give, lend, or in any way furnish, or to cause or permit to be sold, given, lent, or in any way furnished, to any person under the age of eighteen (18) years any gun, revolver, pistol, firearm, * * *.

Sec. 3501. Providing ammunition to minors. Except as otherwise provided in Section 3503 of this article, it shall be unlawful in the City for any person to sell, give, lend, or in any way furnish, or cause or permit to be sold, given, lent, or in any way furnished, to any person under the age of eighteen (18) years any cartridge, shell, ammunition, or device containing any explosive substance designed, or intended to be used in or fired from any gun, revolver, pistol, or firearm.

Sec. 3503. Possession or use of firearms or ammunition by minors: Exceptions. Except as provided in Sections 3503.1, 3503.4, and 3503.5 of this article, nothing in this article shall be deemed or construed to prohibit in the City the selling, giving, lending, or furnishing to any person under the age of eighteen (18) years, upon the written consent of the parent or guardian of such person, any article mentioned in Sections 3500 and 3501 of this article * * *.

Culver City

Section 36-3. Minors—Sale of Firearms to. It shall be unlawful for any person to sell, exchange, give or loan to any person under 18 years of age, any gun, revolver, pistol or firearm of any description.

Cupertino

10.52.020 Licenses required. B. Within the incorporated area of the City of Cupertino, no person shall engage in the business of selling, transferring, advertising, or exposing for sale any pistols, revolvers, or other firearms capable of being concealed upon the person, unless that person has been issued a license as provided herein.

Daly City

Sec. 16-5. Firearms, explosives, cartridge or metallic caps—Sale, exchange, etc., to minors under eighteen years of age. No person shall expose for sale, sell or offer for sale, barter or exchange or offer to barter or exchange to or with any minor under the age of eighteen years, any pistol or other firearm or any instrument capable of receiving or discharging any charge of powder, cartridge or other explosive, or any cartridge or metallic cap, whether loaded or not with ball.

* * * * *

Sec. 19-6. Firearms * * * Permit required for use. No person shall exhibit, manufacture, sell, expose for sale, set off, discharge or cause to be set off or discharged any ordnance, gun, rifle, pistol or other firearm or * * * gunpowder * * * within the city, except after a permit has been obtained from the city council.

Del Rey Oaks

Ordinance 112

2. No person shall sell, display for sale, or store preparatory for sale any firearm within the city limits of Del Rey Oaks unless said person has fully complied with all of the following conditions:

a) The Seller shall hold a Federal Firearms Permit and shall meet all of the provisions of the Gun Control Act of 1968.

b) The Seller shall have obtained a permit from the Chief of Police authorizing the storage of the firearms within the City of Del Rey Oaks. * * *

5. Private persons selling their own firearms and not engaged in the commercial sale

of the same shall be exempted from the purview of this ordinance. For the purpose of this ordinance, a person selling three (3) or more firearms in any calendar year shall be conclusively deemed to be engaged in the commercial sale of firearms and shall be required to comply with the terms of this ordinance.

6. The term "firearms" as used in this ordinance shall include, but not by way of limitation, handguns, rifles, shotguns, * * * and other weapons coming under the definition of firearms as defined in the Penal Code of the State of California.

Downey

4112. Weapons: Furnishing to minors. Except as otherwise provided in Section 4114 hereof, no person shall sell, give, loan, or in any way furnish to any person under the age of eighteen (18) years, any * * * gun, revolver, pistol, firearm, * * * or device designed, or intended to discharge, or capable of discharging, any dangerous missile, or any cartridge, shell, ammunition, or device containing any explosive substance, designed, or intended to be used in, or fired from, any gun, revolver, pistol, or firearm.

4114. Exceptions. Nothing in Sections 4112 or 4113 shall be deemed or construed to prohibit the selling, giving, loaning, or furnishing to any person under the age of eighteen (18) years, upon the written consent of the parent or guardian of such person, any article mentioned in said Sections, nor to prohibit any such person under the age of eighteen (18) years from having in his or her possession, care, custody or control, any article mentioned in said Sections hereof in the event that such possession, care, custody, or control of such article is had with the consent of the parent or guardian of such person and is under the direct supervision and control of some adult person; * * *.

Duarte

9.52.060 Furnishing weapons to minors prohibited. Except as otherwise provided in Section 9.52.090, it shall be unlawful in the city of Duarte for any person, firm, or corporation, to sell, give, loan, or in any way furnish, or to cause or permit to be sold, given, loaned, or in any way furnish, to any person under the age of eighteen years, any gun, revolver, pistol, firearm, * * *

El Cajon

9.32.020 Firearms—Sale to minors. No person shall sell within the city to any minor child any * * * pistol, revolver, gun, rifle or any other firearm or device fired or discharged by explosives.

El Cerrito

Section 10.48.060. Firearms—Sale to minors. It is unlawful for any person to sell to any minor in the city * * * any firearm, or gun, or rifle or other gun or device discharging by the use of powder * * * except when accompanied by parent or legal guardian; provided that the provisions of this section shall not apply to the possession of such firearms, or other such instruments, by such minors in bona fide shooting galleries, or on pistol and rifle ranges, the locations of which have been approved by the Council.

El Monte

12.3. Permits required. a. Permits shall be obtained: (1) To manufacture, possess, store, sell or otherwise dispose of explosives, blasting agents, or small arms ammunition.

4250. Firearm. Defined. For the purposes of this Part, a firearm is defined as any object capable of discharging or projecting any missile, including but not limited to: shotgun, rifle, pistol, revolver, * * * target pistol, target gun * * * tommy gun, wham-o gun, or any other similar device for the discharging or propelling of missiles capable of inflicting injury to person or property.

4252. Same. Sale to minors prohibited. No person shall give, lend, sell, deliver, or transfer possession of any firearm to a person under the age of 16 years.

El Segundo

5.44.010 Director of Finance Licensing Authority. The director of finance is designated the duly authorized licensing authority of the city for the sale of pistols, revolvers and other firearms capable of being concealed upon the person.

The director of finance is directed to comply with the provisions of Section 12071 of the Penal Code of the state of California.

5.44.020 Application. An application shall be filed in writing with the director of finance on forms provided by the city.

5.44.030 Investigation. The director of finance shall refer each application for a permit, or renewal of such permit, to the chief of police, who, upon receipt thereof, shall conduct an appropriate investigation. Such investigation shall include, at a minimum, the following factors:

(1) The security of the premises on which the business is conducted;

(2) The criminal record or lack thereof of the applicant;

(3) Compliance with all applicable sections of United States and California law governing the sale of firearms.

The chief of police may cause the fingerprints to be taken of any person who files an application pursuant to this chapter.

5.44.040 Permit Issued—Renewed. After investigation, the director of finance may issue or renew the permit if he finds:

(1) The applicant, his employee, agent or any person associated with the applicant as partner, director, officer, stockholder, associate or manager has not been convicted of a felony;

(2) The premises in which the business will be carried on provides secure protection against theft, loss or misplacement of concealable firearms, and complies with and meets all health, zoning, fire, building and safety requirements;

(3) That the applicant will comply with all applicable provisions of law concerning the sale of firearms.

Fontana

Sec. 22-11. Sale, etc., of weapons, ammunition, etc., to minors. No person shall sell, exchange, give or lend to any person under eighteen years of age any * * * gun, revolver, pistol or firearm of any description * * * or any ammunition, cartridge, shell or other device, whether containing any explosive substance or not, designed and intended for use in any weapons enumerated herein.

No portion of this section shall prohibit the giving, lending or possession of any * * *, rifle, shotgun or pistol, or any ammunition for such firearm, * * * nor prohibit the selling thereof for such purpose provided the minor has the written consent of a parent or legal guardian.

Foster City

9.28.060 Sale to minors prohibited. No person shall sell, deliver or transfer ownership to any person under the age of eighteen years any pistol, revolver or other similar weapon capable of being concealed upon the person and designed to discharge a projectile propelled by the expansion of a gas, powder or air.

Fremont

Sec. 3-3100. Sale of Weapons to minors. Except as otherwise provided in section 3-3103 of this Code, no persons shall sell, give, loan, or in any way furnish to any person under the age of sixteen years, any gun, revolver, pistol, firearm, * * * or other device designed or intended to discharge, or capable of discharging, any dangerous missile.

Sec. 3-3101. Sale of ammunition to minors. Except as otherwise provided in section 3-3103 of this Code, no person shall sell,

give, loan, or in any way furnish, to any person under the age of sixteen years, any cartridge, shell, ammunition, or device containing any explosive substance, designed or intended to be used in, or fired from any gun, revolver, pistol, or other firearm.

Sec. 3-3103. Prohibition does not apply to licensed hunters. Nothing in sections 3-3100, 3-3101 or 3-3102 of this Code shall be deemed or construed to prohibit the selling, giving, loaning, or furnishing of any article mentioned in sections 3-3100 and 3-3102 of this Code, to any person under the age of sixteen years who is the holder of a valid hunting license issued to such person in accordance with the provisions of the Fish and Game Code of the state; nor prohibit any such licensee under the age of sixteen years from using or possessing any article mentioned in section 3-3102 of this Code. * * *

Fullerton

3.55.010 Definition. "Seller of concealable firearms" means any person who sells or offers for sale at retail any pistols, revolvers or other firearms capable of being concealed upon the person.

3.55.015 Permit required. No person shall engage in, conduct, manage or carry on the business of seller of concealable firearms without a written permit from the chief of police. * * *

3.55.020 Fixed location. Each permittee must have a fixed place of business. Sales of concealable firearms may only be made from that fixed place of business.

Gardena

Sec. 3-3.101. Definitions. For the purposes of this article, certain words and terms used herein are defined as follows: (a) "Firearm" shall include, but not be limited to, any gun, revolver, pistol, firearm, * * * or device designed or intended to discharge, or capable of discharging, any dangerous missile or any cartridge, shell, ammunition, or device containing any explosive substance, spring, or other impelling force devised or intended to be used or fired from any gun, revolver, pistol, or firearm. * * * * *

Sec. 3-3.104. Furnishing firearms to minors. It shall be unlawful for any person to sell, exchange, give, or loan to any person under eighteen (18) years of age any firearm.

Glendale

Ordinance 1260

Section 1: It shall be unlawful for any person, firm or corporation to sell, exchange, give or loan, or to cause or permit to be sold, exchanged, given or loaned, in the City of Glendale, any gun, revolver, pistol or firearms of any description to any person under the age of eighteen (18) years.

Section 2: It shall be unlawful for any person, firm or corporation to sell, exchange, give or loan, or to cause or permit to be sold, exchanged, given or loaned, in the City of Glendale, any cartridge, shell or other device containing any explosive, or any cartridge, shell or other device designed and intended for use in connection with any gun, revolver, pistol or firearms of any description, or any ammunition of any description containing any explosive, to any person under the age of eighteen (18) years.

Ordinance 4254

Article VII. Concealable Firearms; Retail Sales. Sec. 19-80. Permit required. No person shall within the city engage in the business of selling or otherwise transferring any handgun, pistol, revolver or other firearm capable of being concealed upon the person without first having received a revocable permit from the chief of police authorizing such person to make such sales.

Sec. 19-81. Permit application and issuance. The chief of police shall issue a revocable permit for the sale of firearms described in this section * * * whenever: (a) The applicant has an established place of business within the city; and (b) The applicant is a person of good moral character and has not been convicted of any felony or misdemeanor involving the violation of any law of the State of California or ordinance of the city relating to the owning, carrying, sale, use or registration of any firearm or dangerous or deadly weapon.

Sec. 19-83. Conditions of permit, revocation. Any permit issued shall be subject to all of the following conditions, the breach of any of which shall be sufficient cause for revocation of the permit by the chief of police:

1. The business shall be carried on only in the building designated in the license.

2. The license or a copy thereof, certified by the issuing authority shall be displayed on the premises where it can easily be seen.

3. No pistol or revolver shall be delivered within fifteen (15) days of the application for the purchase, and in addition, the purchaser must be personally known to the seller or the purchaser must present clear evidence of his identity to the seller.

4. No pistol or revolver shall be delivered unless it is unloaded and securely wrapped.

Guadalupe

Ordinance 66

Section 2. Sale of firearms to minors. It shall be unlawful for any person to sell to any minor in the City of Guadalupe, * * * any firearm, or gun, or rifle or other gun or device discharging by the use of powder, * * * any bullet or shot of any kind, * * *.

Half Moon Bay

IX. Weapons

9.48.060 Sale to minors prohibited. No person shall sell, deliver or transfer to any person under the age of eighteen years, ownership of any pistol, revolver or other similar weapon capable of being concealed upon the person, designed to discharge a solid projectile propelled by the expansion of a gas.

Hawaiian Gardens

9.60.010 Sale of weapons to minors. Except as otherwise provided in Section 9.60.040, it is unlawful in the city for any person, firm or corporation to sell, give, lend or in any way furnish to any person under the age of eighteen years, any gun, revolver, pistol, firearm, * * *.

9.60.020 Sale of ammunition to minors. Except as otherwise provided in Section 9.60.040, it is unlawful in the city, for any person, firm or corporation, to sell, give, lend, or in any way furnish or to cause or permit to be held, given, lent, or in any way furnish, to any person under the age of eighteen years any cartridge, shell, ammunition, or device containing any explosive substance, designed, or intended to be used in, or fired from any gun, revolver, pistol or firearm.

9.60.040 Supervision and control of minors. Nothing in this chapter shall be deemed or construed to prohibit in said city the selling, giving, lending or furnishing to any person under the age of eighteen years, upon the written consent of the parent or guardian of such person, any article mentioned in Sections 9.60.010 and 9.60.020, * * *.

Hawthorne

Sale of Firearms and Ammunition to Minors

9.78.010 Regulations. A. Selling. No person shall sell, exchange, give or loan any cartridge, shell, ammunition or other device containing any explosive, or designed and intended for use in connection with any gun designed and intended to discharge any pellet, shot or other dangerous missile, to any person under the age of eighteen years.

Hayward

3-4.00 Dangerous weapon. Definition. Dangerous weapon shall mean and include: 6. Any rifle, gun, pistol, revolver, * * * or oth-

or similar instrument or device designed or intended to discharge or capable of discharging a bullet shot, or other missile of any kind.

3-4.10 Use, possession, discharge, sale of dangerous weapons. Except as otherwise provided herein, it shall be unlawful for any person in the City to sell, give, loan, or in any way furnish, or to cause or permit to be sold, given, loaned, or in any way furnished to a minor, or to allow any minor to use or possess or discharge, or for any minor to use or possess or discharge a dangerous weapon.

3-4.11 Same. Exceptions. Nothing in this Article shall be deemed or construed to prohibit the selling, giving, loaning or furnishing to any minor, upon written consent of the parent or guardian of such minor, any dangerous weapon as defined in subdivision 6 of Section 3-4.00 * * *.

Hermosa Beach

Sec. 18-1. Firearms—Sale to minors. No person shall sell, exchange, give or loan to any person under eighteen years of age any gun, revolver, pistol or firearm of any description or any spring or air gun designed or intended to discharge any shot or other deadly or dangerous missile, or any ammunition, cartridge, shell, or other device containing any explosive substance designed and intended for use in any weapon enumerated herein.

Huron

Ordinance 18

Section 2. It shall be unlawful for any person, firm or corporation to sell, exchange, give or loan, or to cause or permit to be sold, exchanged, given or loaned, any gun, revolver, pistol or firearms of any description, or any cartridge, shell, or other device containing any explosive, or designed and intended for use in connection with any gun, revolver, pistol or firearms of any description, or any ammunition of any description, containing any explosive, * * * to any person under the age of eighteen (18) years.

Industry City

9.56.010 Furnishing weapons—Unlawful. Except as otherwise provided in Section 9.56.040, it is unlawful in the city, for any person, firm, or corporation, to sell, give, loan, or in any way furnish, or to cause or permit to be sold, given, loaned, or in any way furnished, to any person under the age of eighteen years, any gun, revolver, pistol, firearm, * * * or device, designed or intended to discharge, or capable of discharging, any dangerous missile.

9.56.020 Furnishing ammunition—Unlawful. Except as otherwise provided in Section 9.56.040, it is unlawful in the city, for any person, firm, or corporation, to sell, give, loan, or in any way furnish, or to cause or permit to be sold, given, loaned, or in any way furnished, to any person under the age of eighteen years, any cartridge, shell, ammunition, or device containing any explosive substance, designed or intended to be used in or fired from any gun, revolver, pistol or firearm.

9.62.030 Sale of firearms—Permit required. No person shall sell at retail within the city a pistol, revolver or other firearm capable of being concealed upon the person without first having received a permit from the county sheriff authorizing such person to make such sale.

Inglewood

Section 5-19.1. Firearm Sale to Minor Prohibited. It shall be unlawful for any person to sell, exchange, give or loan to any person under eighteen years of age, any * * * gun, revolver, pistol or firearm of any description * * * or any ammunition, cartridge, shell or other device, whether containing any explosive substance or not, whether designed or intended for use in any weapons enumerated herein or not.

Irwindale

4135. Permit to Sell. No person shall sell at retail within the City a pistol, revolver or other firearm capable of being concealed upon the person without first having received a permit from the Sheriff of Los Angeles County authorizing such person to make such sale.

4140. Weapons. Sale to Minors. Except as otherwise provided in Section 4143 hereof, no person shall sell, give, loan, or in any way furnish to any person under the age of eighteen years, any gun, revolver, pistol, firearm, * * *.

4141. Ammunition. Sale to Minors. Except as otherwise provided in Section 4143 hereof, no person shall sell, give, loan, or in any way furnish to any person under the age of eighteen years, any cartridge, shell, ammunition, or device containing any explosive substance, designed, or intended to be used in, or fired from, any gun, revolver, pistol, or firearm, except ordinary paper caps for toy cap guns.

4142. (Weapons. Minors.) Consent of Parent. Nothing contained in Sections 4140, 4141 or 4142 shall be deemed or construed to prohibit the selling, giving, loaning, or furnishing to any person under the age of eighteen years, upon the written consent of the parent or guardian of such person, any article mentioned in said sections; * * *.

Isleton

42.1. It shall be unlawful for any person, firm, co-partnership, association or corporation to sell at retail within the Town of Isleton any pistol, revolver or other firearm capable of being concealed upon the person, as such firearms are defined by the terms of Chapter 339 of the Statutes of the State of California of the year 1923, without first procuring from said Town of Isleton, a license so to do.

2-2. No pistol or revolver shall be delivered (a) On the day of the application for the purchase, and when delivered shall be unloaded and securely wrapped; nor (b) Unless the purchaser either is personally known to the seller or shall present clear evidence of his identity.

Lakewood

3520. Unlawful Sale, Gift or Furnishing. Except as otherwise provided in Section 3520.3 hereof, it shall be unlawful in the City of Lakewood for any person, firm or corporation to sell, give, loan or in any way furnish or to cause or permit to be sold, given, or loaned to any person under the age of eighteen (18) years, any gun, revolver, pistol, firearm, * * * or devices designed or intended to discharge or capable of discharging any dangerous missile.

3520.1. Except as otherwise provided in Section 3520.3 hereof, it shall be unlawful in the City of Lakewood for any person, firm, or corporation, to sell, give, loan, or in any way furnish, or to cause or permit to be sold, given, loaned, or in any way furnished, to any person under the age of eighteen (18) years, any cartridge, shell, ammunition, or device containing any explosive substance, designed or intended to be used in, or fired from, any gun, revolver, pistol, or firearm.

3520.3 Nothing in this chapter shall be deemed or construed to prohibit in said City of Lakewood the selling, giving, loaning, or furnishing to any person under the age of eighteen (18) years, upon the written consent of the parent or guardian of such person, any article mentioned in sections 3520 and 3520.1 hereof, * * *.

La Mirada

9.40.010. Except as otherwise provided in Section 9.40.040 hereof, it shall be unlawful in the City of Mirada Hills for any person, firm, or corporation, to sell, give, loan, or in any way furnish, or to cause or permit to be sold, given, loaned, or in any way furnish, to any person under the age of eighteen (18) years, any gun, revolver, pistol, firearm, * * *.

9.40.020. Except as otherwise provided in Section 9.40.040 hereof, it shall be unlawful in the City of Mirada Hills, for any person, firm, or corporation, to sell, give, loan, or in any way furnish, or to cause or permit to be sold, given, loaned, or in any way furnished to any person under the age of eighteen years (18), any cartridge, shell, ammunition, or device containing any explosive substance, designed, or intended to be used in, or fired from, any gun, revolver, pistol, or firearm.

9.40.040. Nothing in Sections 9.40.010, 9.40.020, * * * shall be deemed or construed to prohibit in the City of Mirada Hills the selling, giving, loaning, or furnishing to any person under the age of eighteen (18) years, upon the written consent of the parent or guardian of such person, any article mentioned in Sections 9.40.010 and 9.40.020 hereof; * * *.

La Puente

3.12.090 Retail sale permit—Required. No person shall sell at retail within the city, a pistol, revolver or other firearm capable of being concealed upon the person without first having received a permit from the County Sheriff authorizing such persons to make such sale.

* * * * *

3.12.140 Furnishing firearms to minors prohibited. Except as otherwise provided in Section 3.12.170, it shall be unlawful in the City of La Puente for any person, firm or corporation to sell, give, loan, or in any way furnish, or to cause or permit to be sold, given, loaned, or in any way furnished; to any person under the age of eighteen years, any gun, revolver, pistol, firearm, * * *.

3.12.150 Furnishing ammunition to minors prohibited. Except as otherwise provided in Section 3.12.170, it is unlawful in the city for any person, firm or corporation, to sell, give, loan, or in any way furnish, or to cause or permit to be sold, given, loaned, or in any way furnished, to any person under the age of eighteen years, any cartridge, shell, ammunition, or device containing any explosive substance designed or intended to be used in, or fired from, any gun, revolver, pistol or firearm.

3.12.170 Exceptions from prohibition. Nothing in this chapter shall be deemed or construed to prohibit in the city the selling, giving, loaning, or furnishing to any person under the age of eighteen years, upon the written consent of the parent or guardian of such person, any article mentioned in Sections 3.12.140 and 3.12.150, * * *.

Lomita

Chapter 3
Weapons

Sec. 3-3.01. Minors—Furnishing weapons to prohibited. Except as otherwise provided in section 3-3.04 hereof, it shall be unlawful in the City of Lomita for any person, firm or corporation, to sell, give, lend or in any way furnish, or to cause or permit to be sold, given, lent, or in any way furnished, to any person under the age of eighteen (18) years, any gun, revolver, pistol, firearm, * * *.

Sec. 3-3.02. Same—Furnishing ammunition to prohibited. Except as otherwise provided in section 3-3.04 hereof, it shall be unlawful in the City of Lomita for any person, firm or corporation, to sell, give, lend, or in any way furnish, or to cause or permit to be sold, given, lent, or in any way furnished, to any person under the age of eighteen (18) years, any cartridge, shell, ammunition or device containing any explosive substance, designed or intended to be used in or fired from any gun, revolver, pistol, or firearm.

Sec. 3-3.04. Same—Selling, giving, lending, possessing with consent or under supervision of parent or guardian. Nothing in this chapter shall be deemed or construed to prohibit in said City of Lomita the selling, giving, lending or furnishing to any person under the age of eighteen (18) years, upon the written consent of a parent or guardian of said person, any article mentioned in sections 3-3.01 and 3-3.02 hereof; * * *.

Lompoc

Sec. 10A-25. Concealable Firearms Retail Sales Licenses. (a) This section is adopted to comply with the requirements of section 12071 and related sections of the California Penal Code.

(b) Applications to sell at retail within the city, pistols, revolvers and other firearms capable of being concealed upon the person, shall be made to the City Clerk. Each application shall include a $10.00 fee. The fee is not refundable in the event the license is not issued. The City Clerk shall issue the license, after receiving the approval of the Chief of Police. * * * * *

Long Beach

4180.4—Same—Sale, gift or loan of firearms to. No person, as principal, agent or otherwise, shall sell, exchange, give or loan, or cause or permit to be sold, exchanged, given or loaned, any gun, revolver, pistol or firearm of any description to any person under the age of eighteen years.

4180.5—Same—Sale, etc., of * * * ammunition to persons under eighteen years of age. No person as principal, agent or otherwise, shall sell, exchange, give or loan any * * * missile designed or intended for use in any, * * * pistol or gun, or any cartridge, shell or other device containing any explosive and designed or intended for use in any gun, revolver, pistol, or firearm of any description, to any person under the age of eighteen years.

Los Angeles

Los Angeles Municipal Code

Sec. 45.01 Firearms * * * Sale to minors: No person shall sell, exchange, give or loan to any person under 18 years of age any * * * gun, revolver, pistol or firearm of any description, * * * or any ammunition, cartridge, shell or other device, whether containing any explosive substance or not, designed and intended for use in any weapons enumerated herein.

* * * * *

103.314. Sellers of concealable firearms: (a) Definition. "Seller of Concealable Firearms" shall be any person who sells or offers for sale at retail any pistols, revolvers, or other firearms capable of being concealed upon the person, including any pistol, revolver or gun which detonates or fires an explosive compound in any manner and discharges or is capable of being altered so as to discharge a projectile.

(b) Permit required. No person shall engage in, conduct, manage, or carry on the business of seller of concealable firearms without a written permit from the Board.

Los Angeles County

1567-1. Except as otherwise provided in section 4 hereof, it shall be unlawful in the unincorporated territory of Los Angeles County, for any person, firm, or corporation, to sell, give loan, or in any way furnish, or to cause or permit to be sold, given, loaned, or in any way furnished, to any person under the age of eighteen (18) years, any gun, revolver, pistol, firearm, * * * or device designed, or intended, to discharge, or capable of discharging, any dangerous missile.

1567-2. Except as otherwise provided in section 4 hereof, it shall be unlawful in the unincorporated territory of said Los Angeles County, for any person, firm, or corporation, to sell, give, loan, or in any way furnish, or to cause or permit to be sold, given, loaned, or in any way furnished, to any person under the age of eighteen (18) years, any cartridge, shell, ammunition, or device containing any explosive substance, designed or intended to be used in, or fired from, any gun, revolver, pistol, or firearm.

1567-4. Nothing in this ordinance shall be deemed or construed to prohibit in said Los Angeles County the selling, giving, loaning, or furnishing to any person under the age of eighteen (18) years, upon the written consent

of the parent or guardian of such person, any article mentioned in Section 1 and 2 hereof; * * *.

Los Banos

Policy
Concealable Weapons Dealer License

I. Policy. A. The Chief of Police or his designated representative shall review each application for a License to Sell Concealable Firearms on an individual basis.

* * * * *

License Conditions

3. No pistol or revolver shall be delivered: (a) within five days of the application for the purchase, and when delivered shall be unloaded and securely wrapped; nor (b) unless the purchaser either is personally known to the seller or shall present clear evidence of his identity.

Los Gatos

Sec. 17-13. Same—Sale to minors; possession and use by minors. No person shall sell to any minor in the town under the age of sixteen years, and no person shall sell or give to any minor in the town under the age of eighteen years, without written consent of his parent or guardian, any rifle, gun, pistol, revolver, * * * or other similar instrument from or by means of which any bullet, shot or other missile of any kind may be projected. No such minor shall use or possess any rifle, gun, pistol, revolver, * * * or other similar instrument from or by means of which any bullet, shot or other missile of any kind may be projected. * * *

Lynwood

22-33. Furnishing ammunition to persons under eighteen. Except as otherwise provided in this article, it shall be unlawful in the city for any person to sell, give, loan or in any way furnish or to cause or permit to be sold, given, loaned or in any way furnished to any person under the age of eighteen (18) years any cartridge, shell, ammunition or device containing any explosive substance, designed or intended to be used in or fired from any gun, revolver, pistol or firearm.

Manteca

Sec. 11-27. Retail licenses; business regulations. The duly constituted licensing authority of the City of Manteca shall accept applications for, and may grant licenses permitting the licensee to sell at retail within the City, pistols, revolvers and other firearms capable of being concealed upon the person. If a license is granted, it shall be in the form prescribed by the Attorney General, effective for not more than one (1) year from the date of issue, and be subject to the following conditions, for breach of any of which the license shall be subject to forfeiture.

* * * * *

2. No pistol or revolver shall be delivered: (a) Within 15 days of the application for the purchase, * * * nor (b) Unless the purchaser either is personally known to the seller or shall present clear evidence of his identity.

Montclair

Chapter 5. Weapons

Sec. 4-5.01. Definitions. For the purposes of this chapter, certain words and phrases used herein are defined as follows: (a) "Firearm" shall mean and include, but shall not be limited to, any gun, revolver, pistol, firearm, * * * or device designed or intended to discharge, or capable of discharging, any dangerous missile or any cartridge, shell, ammunition, or device containing any explosive substance or spring or other impelling force devised or intended to be used or fired from any gun, revolver, pistol, or firearm.

Sec. 4-5.04. Sales to minors. It shall be unlawful for any person to sell, exchange, give or loan to any person under eighteen (18) years of age, any firearm.

Monterey Park

9.84.010 Possession—By minor. No person shall give, sell or loan to any person under the age of eighteen years, any firearm, * * * or ammunition.

Norwalk

4302. Minors, Selling or Giving Weapons to. Except as otherwise provided in Section 4305, no person shall sell, give, loan, or in any way furnish, or cause or permit to be sold, given, loaned, or in any way furnished, to any person under the age of 18 years, any gun, revolver, pistol, firearm * * *.

4303. Same, Providing Ammunition to. Except as otherwise provided in Section 4305, no person shall sell, give, loan, or in any way furnish, or cause or permit to be sold, given, loaned, or in any way furnished, to any person under the age of 18 years, any cartridge, shell, ammunition, or device containing any explosive substance, designed, or intended to be used in, or fired from, any gun, revolver, pistol, or firearm.

4305. Same, Exception to. Nothing in this Chapter shall be deemed or construed to prohibit the selling, giving, loaning, or furnishing to any person under the age of 18 years, upon written consent of the parent or guardian of such person, any article mentioned in Sections 4302 and 4303 hereof; * * *.

Oakland

2-2.30. Firearms and air rifles. Use or possession of by minors. It shall be unlawful for any person to sell or give to any minor in the City of Oakland under the age of eighteen (18) years, or to allow any such minor to possess, use or discharge, or for any such minor to use or possess, any rifle, gun, pistol, revolver * * *, or other similar instrument from or by means of which any bullet, shot or other missile of any kind may be projected; * * *.

2-2.31. Maxim silencers. It shall be unlawful for any person to have in his possession any Maxim silencer to be used or that may be used on any firearm or any similar apparatus or device to be used or that may be used on any firearm.

Oceanside

Ordinance No. 75-5

ARTICLE III. Sec. 15.38 Purpose. The purpose of this article is to set forth the procedures for the issuance and revocation of the state license to sell concealable firearms.

Sec. 15.39 Application. Any person desiring a state license to sell concealable firearms shall make written application to the license inspector, who shall refer the application to the appropriate city departments for investigation as to: (1) Security of the business premises; (2) Criminal record or lack thereof of applicant; (3) Applicant's reputation for honesty and integrity in the community.

Orange County

Sec. 5-1-29. Licenses required. It shall be unlawful for any person, firm or corporation to engage in, conduct, manage or carry on any of the following businesses, practices, professions or occupations within the unincorporated area of the County of Orange without first having obtained a license therefor in accordance with division 2 of this title: * * * * *
(n) Retail sale of concealable firearms.

Sec. 5-3-240. Licensing of retail sellers of concealable weapons. The Sheriff of Orange County is hereby designated as the licensing authority for said County and is authorized to issue licenses therefor pursuant to Article 4 of Title 2 of Part 4 of the California Penal Code (commencing with Section 12070) as said Article exists or may be amended from time to time for the sale at retail of pis-

tols, revolvers and other firearms capable of being concealed upon the person.

Palmdale

Ordinance No. 258

Section 1. No person shall engage in the business of selling or otherwise transferring, or shall advertise for sale, or offer or expose for sale or transfer, any pistol, revolver or other firearm capable of being concealed upon the person, unless he has been issued a license pursuant to Section 2 hereof. Any person violating this section is guilty of a misdemeanor.

Section 2. The City Clerk shall accept applications for, and may, in his discretion, grant licenses permitting the licensee to sell at retail within the City of Palmdale pistols, revolvers, and other firearms capable of being concealed upon the person. [The license] * * * shall be effective for not more than one year from the date of issue, and shall be subject to the following conditions, for breach of any of which the license shall be subject to forfeiture:

(1) The business shall be carried on only in the building designated in the license.

(2) The license or a copy thereof, certified by the City Clerk, shall be displayed on the premises where it can easily be seen.

(3) No pistol or revolver shall be delivered

(a) within five days of the application for the purchase, and when delivered shall be unloaded and securely wrapped; nor

(b) unless the purchaser is either personally known to the seller or shall present clear evidence of his identity.

Paramount

Sec. 30-33. Sale to minors. Except as otherwise provided in section 30-36, it shall be unlawful in the city for any person to sell, give, loan or in any way furnish, or to cause or permit to be sold, given, loaned or in any way furnished, to any person under the age of eighteen years, any gun, revolver, pistol, firearm, * * *

Sec. 30-34. Sale of ammunition to minors. Except as otherwise provided in section 30-36, it shall be unlawful for any person to sell, give, loan or in any way furnish, or to cause or permit to be sold, given, loaned or in any way furnished, to any person under the age of eighteen years, any cartridge, shell, ammunition or device containing any explosive substance, designed or intended to be used in, or fired from, any gun, revolver, pistol or firearm.

Sec. 30-36. Exceptions to sections 30-33 to 30-35. Nothing in this chapter shall be deemed or construed to prohibit in the city the selling, giving, loaning or furnishing to any person under the age of eighteen years, upon the written consent of the parent or guardian of such person, any article mentioned in sections 30-33 and 30-34; * * *.

Pico Rivera

3520. Unlawful Sale, Gift or Furnishing. Except as otherwise provided in Section 3520.3 hereof, it shall be unlawful in the City of Pico Rivera for any person, firm or corporation to sell, give, loan or in any way furnish or to cause or permit to be sold, given, or loaned to any person under the age of eighteen (18) years, any gun, revolver, pistol, firearm. * * * or devices designed or intended to discharge or capable of discharging any dangerous missile.

3520.3 Nothing in this chapter shall be deemed or construed to prohibit in said City of Pico Rivera the selling, giving, loaning, or furnishing to any person under the age of eighteen (18) years, upon the written consent of the parent or guardian of such person, any article mentioned in sections 3520 and 3520.1 hereof, * * *.

Piedmont

12.5. Firearms, etc.—Sales or gifts to minors; use or possession by minors; exceptions. It shall be unlawful for any person to sell or give to any minor in the city, under the age of eighteen years, * * * any rifle, gun, pistol, revolver, * * * or other similar instrument from or by means of which any bullet, shot or other missile of any kind may be projected; * * *.

Pittsburg

9.92.030 No person, firm or corporation shall sell, offer for sale, deliver, transfer, or give to any minor under the age of eighteen (18) years, nor shall such minor under the age of eighteen (18) years keep, carry or possess, any pistol, revolver, gun, rifle or other firearm or device, regardless of the length of the barrel thereof, discharging by the use of powder, air or springs, any bullet, shot or other object: provided that the provisions of this section shall not apply to the possession of firearms, or other such devices, by such minors under eighteen (18) years in duly licensed shooting galleries and/or on pistol and rifle ranges approved by the Chief of Police.

Placentia City

(c) It shall be unlawful to sell, give away, barter, or trade, any gun, pistol, or firearms * * * to any minor under the age of eighteen years without the written consent of the Police Department.

(d) It shall be unlawful to sell, give away, barter, or trade any ammunition, * * * used for shooting from pistols, guns or fire arms, * * * to any person under the age of eighteen years without the written consent of the Police Department.

(e) It shall be unlawful for any parent, juvenile, or any person, to transport or have shipped into the City of Placentia, any of the above-mentioned items for the use of any person under the age of eighteen years.

Pleasant Hill

Ordinance 53

Section 1. Selling or furnishing guns to persons under 18 Prohibited. It is unlawful for a person to sell, give, loan, or furnish to anyone under the age of 18 years, a gun, firearm, * * *

Section 2. Selling or furnishing ammunition to person under 18 prohibited. It is unlawful for a person to sell, give, loan, or furnish to a person under the age of 18 years, a cartridge, shell, ammunition, or device containing an explosive substance, designed or intended to be used in or fired from a gun or firearm.

* * * * *

Section 4. Exceptions. This ordinance does not apply to: (1) A person who sells or furnishes an article mentioned in Section 1 or Section 2 to a person under 18 upon the written consent of the parent or guardian; * * *.

Redding

19.19. Same—Sale of firearms thereto. It shall be unlawful to expose for sale, sell, or offer for sale, barter or exchange, to or with any minor under the age of eighteen years, any pistol or other firearm, or any instrument capable of discharging any charge of powder, or other explosives, or any cartridge loaded with ball.

Rolling Hills

Ordinance 8

Section 1: Except as otherwise provided in Section 4 hereof, it shall be unlawful in the City of Rolling Hills for any person, firm or corporation to sell, give, loan or in any way furnish or to cause or to permit to be sold, given, loaned or in any way furnished to any person under the age of sixteen (16) years any gun, revolver, pistol, firearm, * * *

Section 2: Except as otherwise provided in Section 4 hereof, it shall be unlawful in the City of Rolling Hills for any person, firm, or corporation to sell, give, loan or in any way furnish or to cause or to permit to be sold, given, loaned or in any way furnished to any person under the age of sixteen (16) years, any cartridge, shell, ammunition or device

containing any explosive substance designed or intended to be used in or fired from any gun, revolver, pistol or firearm.

* * * * *

Section 4: Nothing in this Ordinance shall be deemed or construed to prohibit in the City of Rolling Hills the selling, giving, loaning or furnishing to any person under the age of sixteen (16) years upon the written consent of the parent or guardian of such person, any article mentioned in Sections 1 and 2 hereof * * *

Rosemead

Chapter V—Firearms

3500. Firearms Prohibited to Minors. Except as otherwise provided in Section 3503 hereof, it shall be unlawful in the City of Rosemead for any person, firm, or corporation, to sell, give, lend or in any way furnish, or to cause or permit to be sold, given, lent, or in any way furnished, to any person under the age of eighteen (18) years, any gun, revolver, pistol, firearm, * * *.

3501. Ammunition Prohibited to Minors. Except as otherwise provided in Section 3503 hereof, it shall be unlawful in the City of Rosemead, for any person, firm, or corporation, to sell, give, lend, or in any way furnish, or to cause or permit to be sold, given, lent, or in any way furnished, to any person under the age of eighteen (18) years, any cartridge, shell, ammunition, or device containing any explosive substance, designed, or intended to be used in, or fired from any gun, revolver, pistol, or firearm.

3503. Nothing in this Chapter shall be deemed or construed to prohibit in said City of Rosemead the selling, giving, lending, or furnishing to any person under the age of eighteen (18) years, upon the written consent of the parent or guardian of such person, any article mentioned in Sections 3500 and 3501 hereof; * * *.

San Bernardino

Ordinance No 2106

Section one: No person except a parent or guardian shall purchase from, sell, exchange, give, lend or furnish to any person under the age of 18 years a revolver or pistol of any description, shotgun, or rifle which may be used for the explosion of cartridges, * * *

San Bernardino County

22.016 Purchase of Firearms. No person except a parent or guardian shall purchase from, sell, exchange, give, lend or furnish to any person under the age of eighteen years, a revolver or pistol of any description, shotgun, or rifle, which may be used for the explosion of cartridges * * *.

San Bruno

16-6. Firearms—Sale to and possession by minors. (b) No person shall sell, deliver or transfer to any person under the age of eighteen years any pistol, revolver or other similar weapon capable of being concealed upon the person, designed to discharge a solid projectile propelled by the expansion of a gas.

San Carlos

Section 5113. Sale of Certain Firearms Prohibited to Minors. No person shall sell, deliver or transfer to any person under the age of eighteen (18) years any pistol, revolver or other similar weapons capable of being concealed upon the person designed to discharge a solid projectile propelled by the expansion of gas.

San Diego County

21.1201. License required. It shall be unlawful for any person to sell at retail pistols, revolvers and other firearms capable of being concealed upon the person, and hereinafter referred to as concealable weapons, unless such seller has been issued a license by the Tax Collector of the County of San Diego as provided in this chapter.

21.1207. Delivery of firearms. No concealable weapon shall be delivered: (a) Within fifteen days of the application for the purchase thereof; nor (b) Unless the purchaser either is personally known to the seller or shall present clear evidence of his identity. When delivered, such concealable weapon shall be unloaded and securely wrapped.

San Dimas

9.52.010. Sale of firearms to minors prohibited; exception. Except as otherwise provided in this chapter (no person shall sell, give, lend or in any way furnish, or cause or permit to be sold, given, lent or in any way furnish, to any person under the age of eighteen years any gun, revolver, pistol, firearm * * *.

9.52.020. Sale of ammunition to minors prohibited; exception. Except as otherwise provided in this chapter, no person shall sell, give, lend or in any way furnish, or cause or permit to be sold, given, lent or in any way furnish, to any person under the age of eighteen years, any cartridge, shell, ammunition or device containing any explosive substance, designed or intended to be used in or fired from any gun, revolver, pistol or firearm.

9.52.040. Minors exempted from prohibitions under certain conditions. Nothing in this chapter shall be deemed or construed to prohibit the selling, giving, lending or furnishing to any person under the age of eighteen years, upon the written consent of the parent or guardian of such person, any article mentioned in sections 9.52.010 and 9.52.020; * * *.

San Francisco

San Francisco Police Code

Article 8

Sec. 521. Sale of Firearms and Explosive Cartridges to Minors Prohibited. It shall be unlawful for any person or persons within the limits of the City and County of San Francisco to expose for sale, sell or offer for sale, barter or exchange, or offer to barter or exchange to or with any minor under the age of 17 years any pistol or other firearm or any toy pistol or imitations of any pistol or firearm, or instrument capable of receiving or discharging any charge of powder, cartridge or other explosive, or any cartridge or cap, whether loaded or not with ball.

Article 9

Sec. 613. Regulating Sale of Concealable Firearms. Pursuant to the Provisions of Chapter I (Sec. 12070 et seq.) Title 2, Article 4 of the Penal Code, any person, firm, corporation or dealer engaging in the business of selling, leasing or otherwise transferring any pistol, revolver, or other firearm capable of being concealed upon the person shall file an application with the Police Department on forms provided by the Police Department for a license to engage in such business and shall pay an application fee of thirty ($30.00) dollars, which fee shall not be refundable.

* * * * *

Sec. 613.4. Issuance of License. (a) The Police Department may grant a license to the applicant if it is found:

(1) That the operation as proposed, if permitted, would comply with all applicable laws including but not limited to the Penal Code of the State of California, and the Building, City Planning and Fire Codes of the City and County of San Francisco.

(2) That the applicant or an officer thereof, has not been convicted of a felony so as to disqualify the applicant or officer from owning or possessing a firearm under Section 12021 of the Penal Code.

(b) If the license is granted it shall be in a form prescribed by the Attorney General, effective for not more than one year from the date of issue, as required by Section 12071 of the Penal Code of the State of California.

Sec. 613.5. Revocation of License. For breach of any one of the following conditions, the license shall be subject to revocation:

(a) The business shall be carried on only in the building denoted in the license.

(b) The license or a copy thereof, certified by the Police Department, shall be displayed on the premises where it can easily be seen.

(c) No pistol or revolver shall be delivered:

(1) Within five days of the application for the purchase and when delivered shall be unloaded and securely wrapped; nor

(2) Unless the purchaser either is personally known to the seller or shall present clear evidence of his identity.

* * * * *

Sec. 613.6. Delivery to Tax Collector. Upon granting said license, the Police Department shall forward said license to the Tax Collector who shall issue said license to the applicant upon the payment of one hundred ($100.00) Dollars.

* * * * *

Sec. 617. Exceptions. This section and Sections 613 to 616 inclusive, of this Article, shall not apply to wholesale dealers, in their business intercourse with transportation of unloaded firearms, merchandise by mail, express or other mode of shipment to points outside the City and County of San Francisco.

San Jacinto

14-51. Definitions. For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them herein, unless the text clearly indicates otherwise: * * *

(f) Any rifle, * * *, gun, pistol, revolver, * * * or other similar instrument or device designed or intended to discharge or which is capable of discharging a bullet, shot, * * * or missile of any kind.

14-54. Same—Minors—Use, possession, discharge and sale. Except as otherwise provided in section 14-55, it shall be unlawful for any person to sell, give, loan or in any way furnish, or to cause or permit to be sold, given, loaned or in any way furnished to a minor, or to allow any minor to use, possess or discharge, or for any minor to use, possess or discharge a dangerous weapon. For purposes of this article only, a minor is a person who is under the age of eighteen years.

14-55. Same—Same—Consent of parent or guardian; supervision of use, etc. Nothing in this article shall be deemed or construed to prohibit the selling, giving, loaning or furnishing to any minor upon written consent of the parent or guardian of such minor, any dangerous weapon as defined in subsection (f) of section 14-51, nor to prohibit such minor from using or having in his possession, care, custody or control any such dangerous weapon as so defined, in the event that such possession, care, custody, control or use is had with the consent of the parent or guardian of such minor and is under the direct supervision and control of some person over the age of twenty-one years.

14-57. Applicability of state law. The provisions of this article shall not apply to the commission of any act which is made a public offense by any law of this state. This article is adopted to supplement the state law regulating and controlling deadly weapons as stated beginning with section 12,000 of the state Penal Code.

San Jose

4258. Selling Pistol to Minor. No person shall sell, dispose of or give to any minor under the age of eighteen years, any pistol, * * * without the written request of his parent or guardian; and no minor under the age of eighteen years shall have in his possession any such pistol or weapon unless by the written consent of his parent or guardian.

San Marcos

17-50. License required. It shall be unlawful for any person to sell at retail pistols, revolvers and other firearms capable of being concealed upon the person, and hereinafter referred to as concealable weapons, unless such seller has been issued a license by the City Clerk of the City of San Marcos as provided in this chapter. * * *

17-51. Records—Second Hand Weapons. If a dealer, licensed by this chapter to sell firearms, shall have offered to him for purchase or for acceptance in trade a used or second hand concealable weapon, he shall first obtain from the person offering such weapon the following information:

a) Name, address, and physical description of such person.

b) The description and license number of the vehicle, if any, being driven by such person.

c) The caliber, manufacturer's name, description, serial number or numbers, initials or other identifying marks of the weapon.

d) Such other information which may be required by the Sheriff.

17-52. Delivery Of Firearms. No concealable weapon shall be delivered:

a) Within five days of the application for the purchase thereof; nor

b) Unless the purchaser either is personally known to the seller or shall present clear evidence of his identity.

San Marino

Sec. 14.3 Firearms, ammunition, etc.—selling, etc., to minors.

1. Sale, etc., of firearms to minors. It shall be unlawful for any person to sell, exchange, give or loan, or to cause or permit to be sold, exchanged, given or loaned, any gun, revolver, pistol or firearms of any description to any person under the age of eighteen years.

2. Sale, etc., of ammunition to minors. It shall be unlawful for any person to sell, exchange, give or loan, or to cause or permit to be sold, exchanged, given or loaned, any cartridge, shell or other device containing any explosive, or any cartridge, shell or other device designed and intended for use in connection with any gun, revolver, pistol or firearms of any description, or any ammunition of any description, containing any explosive to any person under the age of eighteen years.

San Mateo County

3250.5. Sale of certain firearms prohibited to minors. No person shall sell, deliver or transfer ownership to any person under the age of eighteen (18) years any pistol, revolver or other similar weapon capable of being concealed upon the person and designed to discharge a solid projectile propelled by the expansion of a gas.

3255.0. Portions of penal code adopted. The provisions of Sections 12070-12077, inclusive, of the Penal Code of the State of California, pertaining to the licensing of retailers selling pistols, revolvers, and other firearms capable of being concealed upon the person, are hereby adopted in the County of San Mateo and shall be in full force and effect in this County.

Section 3255.1. Sheriff's licensing authority. The Sheriff is hereby designated and appointed the duly constituted licensing authority of this County for the purpose of this article. * * *

Section 3255.2 Conditions of license. Licensees shall be subject to the following conditions, for breach of any of which the license shall be subject to forfeiture; * * * c. No pistol or revolver shall be delivered

(1) Within three days of the application for the purchase, and when delivered shall be unloaded and securely wrapped; nor

(2) Unless the purchaser is either personally known to the seller or shall present clear evidence of his identity.

Section 3255.3. Copies of register sheet, disposition of. Licensees shall, immediately upon receiving an application for purchase, mail a copy of the register sheet required to be maintained to the Bureau of Criminal Identification and Investigation and to the Sheriff, as required by Penal Code Section 12076. The Sheriff shall, upon receiving said copy, investigate and report to said retailer whether or not the purchaser is known to be a minor under the age of eighteen (18) years

or within one of the classes of persons prohibited by Section 12021 of said Penal Code from owning or possessing such weapons. Such person are narcotics addicts, persons convicted of felonies and persons not citizens of the United States.

Sand City

Ordinance 74-76

Section 1: No person shall sell, exchange, give or loan to any person under the age of 16 years any * * * gun, revolver, pistol or firearm of any description, * * * or other deadly or dangerous missile, or any ammunition, cartridge, shell or other device, whether containing any explosive substance or not, designed and intended for use in any weapons enumerated herein.

Section 2: No person shall sell, display for sale, or store preparatory for sale any firearm within the city limits of Sand City unless said person has fully complied with all of the following conditions:

A. The Seller shall hold a Federal Firearms Permit, and shall meet all of the provisions of the Gun Control Act of 1968.

B. The Seller shall have obtained a permit from the Chief of Police authorizing the storage of the firearms within the City of Sand City. * * *

C. The City Permit and the Federal Firearms Permit shall be displayed at the location for which it is issued in a prominent place.

Section 5: Private persons selling their own firearms and not engaged in the commercial sale of the same shall be exempted from the purview of this ordinance. For the purpose of this ordinance, a person selling three (3) or more firearms in any calendar year shall be conclusively deemed to be engaged in the commercial sale of firearms and shall be required to comply with the terms of this ordinance.

Section 6: The term "firearms" as used in this ordinance shall include, not by way of limitation, handguns, rifles, shotguns, * * * and other weapons coming under the definition of firearms as defined in the Penal Code of the State of California.

Santa Barbara

9.36.090 Delivery of firearms to minors prohibited. No person engaged in the business of selling or otherwise transferring firearms shall sell, deliver, lease, rent or in any manner transfer, furnish, give or cause to be sold, delivered, leased, rented, transferred, furnished or given any firearm to any person under the age of eighteen years. Members of businessman's immediate family are excepted.

9.36.130 Sale of ammunition to certain persons prohibited—Exception. No person, whether or not such person is engaged in the business of selling ammunition for firearms, shall sell ammunition for any firearm to any person to whom the sale or transfer of any firearm using such ammunition is prohibited under this chapter. Minors with written consent of their parent or legal guardian are excepted.

9.36.160 Dealings without permit prohibited. No person without holding a current permit as provided in this chapter shall engage in the business of selling or otherwise transferring or advertising for the sale of any firearms.

9.36.210 Duration—Grounds for revocation. * * * * *

(3) No pistol or revolver shall be delivered unless all of the following conditions are complied with: (a) within five days of the application for the purchase, (b) unless the same shall be unloaded and securely wrapped, and (c) unless the purchaser either is personally known to the seller or shall present bona fide documentary evidence of his identity;

* * * * * *

9.36.220 Persons to whom permits may not be issued. In no event shall a permit required by this chapter be issued to any of the following persons:

(1) Persons who are prohibited from possessing firearms capable of being concealed upon the person under the provisions of Section 12021 of the State Penal Code;

(2) Anyone convicted of any violation of any provision of the law of the state dealing with the unlawful use of narcotic, hypnotic or dangerous drugs or under similar laws of the United States;

(3) Anyone not of good moral character;

(4) Anyone under the age of twenty-one years.

Santa Barbara County

Sec. 14B-1. Definition. For the purposes of this chapter and Chapter 22 of this Code, the word "Handgun" shall have the following meaning: "Handgun" means pistols, revolvers, and other firearms capable of being concealed upon the person, as defined in Section 12001 of the Penal Code.

Sec. 14B-2. Purpose and Intent. The purpose and intent of this chapter is to designate the Tax Collector of the County of Santa Barbara as the duly constituted licensing authority to grant licenses permitting an applicant to sell handguns in the unincorporated area of this County, pursuant to Title 2, Chapter 1, Article 4 of this California Penal Code.

Santa Clara

Sec. 18-26. Sale of weapons to minors without request of parents, etc., prohibited. It shall be unlawful within the city for any person to sell, dispose of or give to any minor under the age of eighteen (18) years any pistol * * * other weapon capable of receiving and discharging any charge, cartridge or explosive without the written request of his parent or guardian.

Santa Fe Springs

Section 2: Firearms to minors. No person shall give, sell or loan to any person under the age of eighteen years, any gun, firearms, * * * or ammunition.

Santa Maria

Sec. 17-8. It shall be unlawful for any person to sell to any minor in the city or to allow any such minor, or for any minor to carry, unless in a suitable case or securely wrapped, any firearm or gun, or rifle or other gun or device discharging by the use of powder, air or springs, any bullet or shot of any kind, * * * except when accompanied by parent or legal guardian; provided, that the provisions of this section shall not apply to the possession of such firearms, or other such instruments, by such minors in bona fide shooting galleries, or on pistol and rifle ranges, the locations of which have been approved by the council.

Santa Monica

Section 3505. Retailer's Permit for the Sale of Certain Firearms. No person shall sell at retail within the City any pistol, revolver or other firearm capable of being concealed upon the person without first having received a permit from the Chief of Police authorizing such person to make such sale.

Section 3509. Firearms, * * *, and other devices. Sale to Minors. No person shall sell, exchange, give, or loan to any person under 18 years of age any * * * gun, revolver, pistol, or firearm of any description * * * or any ammunition, cartridge, shell, or other device, whether containing any explosive substance or not, designed and intended for use in any weapons or devices enumerated or described herein.

Section 3510. Same. Possession by Minors. No person under 18 years of age shall have in his possession, care, custody, or control any article or thing mentioned in the preceding section.

Section 3511. Same. Exceptions. It is the intent of the preceding sections to absolutely prohibit the sale or exchange to, and the possession by a person under the age of 18 years of, any of the articles or things mentioned therein. Provided, nothing in these sections shall be construed to prohibit any person un-

der the age of 18 years from having in his possession or using any article or device described in Section 3509 when it is with the consent of a parent or guardian. * * *

Seaside

5-101 Conditions for Sale of Firearms. No firearms, including hand guns, rifles, shotguns, * * * shall be offered for sale in the City of Seaside by any person or establishment holding a City business certificate and/or located in any commercially zoned property unless and until each and every of the following conditions shall have been fulfilled:

A. The seller shall keep all firearms in a secure facility satisfactory to the Chief of Police.

B. The building housing said firearms held for sale shall be adequately secured against burglary to the satisfaction of the Chief of Police.

C. The seller shall hold a written permit, renewable annually, from the Chief of Police evidencing compliance with each of the within conditions.

Selma

6-4-3: Firearms; Sale to Minors: It shall be unlawful for any person to sell or give to any minor under the age of eighteen (18) years, any revolver or pistol of any kind from or by means of which any bullet, shot or other missile of any kind may be fired or projected by means of percussion caps, cartridges or any explosive substances whatever.

South Lake Tahoe

Sec. 18-16. Use, possession, discharge, sale of dangerous weapons by minors. Except as otherwise provided in section 18-17, it shall be unlawful for any person to sell, give, loan, or in any way furnish, or to cause or permit to be sold, given, loaned, or in any way furnished to a minor, or to allow any minor to use or possess or discharge, or for any minor to use or possess or discharge a dangerous weapon. For the purposes of this article only, a minor is a person who is under the age of eighteen years.

Sec. 18-17. Same—Exceptions. Nothing in this article shall be deemed or construed to prohibit the selling, giving, loaning, or furnishing to any minor, upon written consent of the parent or guardian of such minor, any dangerous weapon as defined in subdivision (f) of section 18-13; nor to prohibit such minor from using or having in his possession, care, custody or control any such dangerous weapon as so defined in the event that such possession, care, custody, control or use is had with the consent of the parent or guardian of such minor and is under the direct supervision and control of some person over the age of twenty-one years.

South Pasadena

Sec. 18.50. Business, Professions and Trades. * * * (k) Firearms sale. "Firearms sale" means the business of selling at retail, pistols, revolvers, or other firearms capable of being concealed upon the person. The license issued hereunder shall be issued in a form prescribed by the attorney general of the state, and shall be issued in the manner and upon the conditions required by the statutes of California.

* * * * *

Sec. 18.80. Permit required for certain businesses. No person shall operate, and no license shall be issued for any of the following businesses until a permit has first been obtained therefor upon application in writing for such permit pursuant to this chapter: * * * (k) Firearms; * * *

(Editor's note: Sec. 18.60 contains license fees for specialty businesses including firearms).

Stanislaus County

(The Stanislaus County Sheriff is designated as the department responsible for issuing licenses to dealers selling concealable firearms in the unincorporated area of Stanislaus County.)

Per Sec. 12071 of the California Penal Code:

1. The business shall be carried on only in the building designated in the license.

2. The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.

3. No pistol or revolver shall be delivered (a) Within five days of the application for the purchase, and when delivered shall be unloaded and securely wrapped; nor (b) Unless the purchaser either is personally known to the seller or shall present clear evidence of his identity.

Stockton

Sec. 4-040. "Dangerous or deadly weapon", defined. "Dangerous or deadly weapon" includes, but is not limited to: * * * any firearm other than

(1) carried pursuant to a valid permit, issued by a duly authorized governmental authority, or

(2) any ordinary rifle or shotgun lawfully carried for purposes of hunting or other lawful sport.

Sec. 4-041. Possession of "dangerous or deadly weapons": it shall be unlawful (to possess weapons as defined in Sec. 4-040. above).

Sec. 4-044. Sale of firearms and/or ammunition to minors: It shall be unlawful, in the City of Stockton, to sell firearms and/or ammunition of any kind to minors under the age of fourteen (14) years, unless accompanied by parent or guardian.

Sec. 4-045. Sale of concealed firearms: It shall be unlawful to sell pistols, revolvers, or other firearms capable of being concealed upon the person, at retail, within the City of Stockton, without a license issued in the manner herein provided for.

Sec. 4-046. License to sell: The City Manager is hereby authorized to issue licenses to sell, at retail, within the City of Stockton, pistols, revolvers, and other firearms capable of being concealed upon the person. * * * * *

Temple City

3500. Except as otherwise provided in Section 3503 hereof, it shall be unlawful in the City of Temple City for any person, firm or corporation, to sell, give, lend or in any way furnish, or cause or permit to be sold, given, lent, or in any way furnished, to any person under the age of eighteen (18) years, any gun, revolver, pistol, firearm, * * *.

3501. Except as otherwise provided in Section 3503 herein it shall be unlawful in the City of Temple City, for any person, firm or corporation, to sell, give, lend, or in any way furnish or cause or permit to be sold, given, lent, or in any way furnished, to any person under the age of eighteen (18) years, any cartridge, shell, ammunition, or device containing any explosive substance, designed, or intended to be used in, or fired from any gun, revolver, pistol, or firearm.

* * * * *

3503. Nothing in this Chapter shall be deemed or construed to prohibit in said City of Temple City the selling, giving, lending or furnishing to any person under the age of eighteen (18) years, upon the written consent of the parent or guardian of such person, any article mentioned in Sections 3500 and 3501 hereof; * * *.

Thousand Oaks

Sec. 3-17.06. Prohibited sales, trades, exchanges, or bartering. No person, firm, or corporation at any swap meet, whether the operator, or an exhibitor, or any other person or entity, shall sell, exchange, or display, or offer for sale or exchange or barter, at any swap meet any of the following items of personal property: * * *

(b) Any handgun, rifle, shotgun, or other type of firearm by whatever name, or any deadly weapon; * * *

Turlock

Resolution 75-156

Be it resolved that the Police Department of the City of Turlock be, and hereby is designated as the department responsible for issuing licenses to dealers selling concealable firearms in the City of Turlock.

License Conditions * * * 3. No pistol or revolver shall be delivered (a) within fifteen (15) days of the application for the purchase, and when delivered, shall be unloaded and securely wrapped; nor (b) unless the purchaser either is personally known to the seller or shall present clear evidence of his identity. (*Contact local authorities for application requirements*)

Union City

Ordinance 23-59

Section 1. Dangerous weapon. definition. Dangerous weapon shall mean and include: * * *f. Any rifle, gun, pistol, revolver, * * * or other similar instrument or device designed or intended to discharge or capable of discharging a bullet, shot, or other missile of any kind.

Section 2. Use, possession, discharge, sale of dangerous weapons. Except as otherwise provided herein it shall be unlawful for any person in the City of Union City to sell, give, loan, or in any way furnish, or to cause or permit to be sold, given, loaned, or in any way furnished to a minor, or to allow any minor to use or possess or discharge, or for any minor to use or possess or discharge a dangerous weapon.

Section 3. Same: exceptions. Nothing in this Ordinance shall be deemed or construed to prohibit the selling, giving, loaning, or furnishing to any minor, upon written consent of the parent or guardian or such minor, any dangerous weapon as defined in subdivision of Section 1; * * *.

Upland

576-1: Definitions: Firearms: The words "Firearm" or "Firearms" as used in this Ordinance, includes, but is not limited to: any gun, revolver, pistol, firearm, * * * or device, designed or intended to discharge or capable of discharging any dangerous missile or any cartridge, shell, ammunition or device containing any explosive substance, spring or other impelling force devised or intended to be used or fired from any gun, revolver, pistol or firearm.

* * * * *

576-4: It shall be unlawful for any person to sell, exchange, give or loan to any person under eighteen (18) years of age, any firearm or firearms as defined in Section 1 of this ordinance.

Vista

66-19 * * * * * Section 2. Selling weapons to children. No person shall sell to any minor child (age 18 and under), any * * * pistol, revolver, gun, rifle, or any other firearm or device fired or discharged by explosives within the corporate limits of this City.

Walnut

Sec. 17-20. Firearms, etc.—Persons under eighteen years of age—Furnishing to. Except as otherwise provided in section 17-22, it shall be unlawful in the city for any person to sell, give, loan or in any way furnish, or to cause or permit to be sold, given, lent or in any way furnished, to any person under the age of eighteen years, any gun, revolver, pistol, firearm, * * *

Except as otherwise provided in section 17-22, it shall be unlawful in the city for any person to sell, give, loan or in any way furnish, or to cause or permit to be sold, given, lent or in any way furnished, to any person under the age of eighteen years, any cartridge, shell, ammunition or device containing any explosive substance, designed or intended to be used in, or fired from any gun, revolver, pistol or firearm.

Sec. 17-22. Same—Same—Exceptions. Nothing in this Code shall be deemed or construed to prohibit in the city the selling, giving, lending or furnishing to any person under the age of eighteen years, upon the written consent of the parent or guardian of such person, any article mentioned in section 17-20; * * *.

Sec. 17-23. Same—License to sell. No person shall engage in the business of selling or otherwise transferring, or advertising for sale, or offering or exposing for sale or transfer, any pistol, revolver or other firearm capable of being concealed upon the person without first having received a license from the county sheriff.

Walnut Creek

3-6.04. Sale of weapons to minors. It shall be unlawful for any person to sell to any minor under eighteen (18) years of age any * * * ammunition for any firearm, gun, rifle or other gun or device discharging by the use of powder, air or springs, except when accompanied by an authorized person over eighteen (18) years of age.

West Covina

4402. Providing minors with firearms unlawful. No person shall sell, exchange, give or loan to any person under eighteen years of age any gun, revolver, pistol or firearm of any description or any spring or air gun designed or intended to discharge any shot or other deadly or dangerous missile, or any ammunition, cartridge, shell, or other device containing any explosive device designed and intended for use in any of the weapons enumerated herein.

Westminster

3700.3. Sale, etc. of * * * ammunition to person under eighteen years of age. No person as principal, agent or otherwise shall sell, exchange, give or lend any * * * cartridge, shell or other device containing any explosive and designed or intended for use in any gun, revolver, pistol or firearm or any description, to any person under the age of eighteen (18) years of age without the consent of the parent or guardian of said minor under the age of eighteen (18) years.

Whittier

4260.12—Minors—Firearms, etc., Selling, etc., to Prohibited No person shall sell, give, loan or in any manner furnish or cause or permit to be sold, given, loaned, or furnished to any person under the age of eighteen years any gun, revolver, pistol, firearm * * *. The provisions of this Section shall not apply to the loan or use of firearms to such persons for use on a permitted range or shooting gallery in connection with any firearms training program sponsored by the City or any of its departments.

4260.12(a)—Same—Ammunition, Explosives, etc., Selling to Prohibited No person shall sell, give, loan or in any manner furnish or cause to be furnished to any person under the age of eighteen years any cartridge, shell, ammunition or device containing any explosive substance designed or intended to be used in or fired from any gun, revolver, pistol or firearm.

Yreka

1. Applications for licenses permitting the licensee to sell at retail within the City of Yreka, pistols, revolvers, and other firearms capable of being concealed upon the person, shall be filed with the City Clerk of the City of Yreka. * * * * *

c. No pistol or revolver shall be delivered (I) within five (5) days of the application for the purchase, and when delivered shall be unloaded and securely wrapped; nor (II) unless the purchaser either is personally known to the seller or shall present clear evidence of his identity.

Colorado

State Law

Colo. Rev. Stat.

12-26-101. Firearms defined. As used in this article, unless the context otherwise requires:

(1)(a) "Firearms" means a pistol, revolver, or other weapon of any description, loaded or unloaded, from which any shot, bullet, or other missile can be discharged, the length of the barrel of which, not including any revolving, detachable, or magazine breech, does not exceed twelve inches.

(b) "Firearms" does not include firearms, as defined in paragraph (a) of this subsection (1), for which ammunition is not sold or which there is reasonable ground for believing are not capable of being effectually used.

12-26-102. Retail dealers—record—inspection. Every individual, firm, or corporation engaged, within this state, in the retail sale, rental, or exchange of firearms, pistols, or revolvers shall keep a record of each pistol or revolver sold, rented, or exchanged at retail. The record shall be made at the time of the transaction in the book kept for that purpose and shall include the name of the person to whom the pistol or revolver is sold or rented or with whom exchanged; his age, occupation, residence, and, if residing in a city, the street and number therein where he resides; the make, caliber, and finish of said pistol or revolver, together with its number and serial letter, if any; the date of the sale, rental, or exchange of said pistol or revolver; and the name of the employee or other person making such sale, rental, or exchange. The record book shall be open at all times to the inspection of any duly authorized police officer.

12-27-101. Legislative declaration—nonresident. (1) It is declared by the general assembly that it is lawful for a licensed importer, licensed manufacturer, licensed dealer, or a licensed collector (licensed under the federal "Gun Control Act of 1968") whose place of business is in this state to sell or deliver a rifle or shotgun to a resident of a state contiguous to this state, subject to the following restrictions and requirements:

(a) The purchaser's state of residence must permit such sale or delivery by law.

(b) The state must fully comply with the legal conditions of sale in both such contiguous states.

(c) The purchaser and the licensee must have complied, prior to the sale or delivery for sale of the rifle or shotgun, with all of the requirements of section 922(c) of the federal "Gun Control Act of 1968" applicable to interstate transactions other than those at the licensee's business premises.

12-27-102. Legislative declaration—residents. (1) It is declared by the general assembly that it is lawful for a resident of this state, otherwise qualified, to purchase or receive delivery of a rifle or shotgun in a state contiguous to this state, subject to the following restrictions and requirements:

(a) The sale must fully comply with the legal conditions of sale in both such contiguous states:

(b) The purchaser and the licensee must have complied, prior to the sale or delivery for sale of the rifle or shotgun, with all of the requirements of section 922(c) of the federal "Gun Control Act of 1968", applicable to interstate transactions other than at the licensee's business premises.

12-27-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "A state contiguous to this state" means any state having a common border with this state.

(2) All other terms shall be construed as such terms are defined in the federal "Gun Control Act of 1968".

12-27-104. Article does not apply—when. (1) The provisions of this article do not apply to:

(a) Transactions between licensed importers, licensed manufacturers, licensed dealers, and licensed collectors;

(b) The loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(c) A person who is participating in any organized rifle or shotgun match or contest, or is engaged in hunting, in a state other than his state of residence and whose rifle or shotgun has been lost or stolen or has become inoperative in such other state, and who purchases a rifle or shotgun in such other state from a licensed dealer if such person presents to such dealer a sworn statement:

(I) That his rifle or shotgun was lost or stolen or became inoperative while participating in such a match or contest, or while engaged in hunting, in such other state; and

(II) Identifying the chief law enforcement officer of the locality in which such person resides, to whom such licensed dealer shall forward such statement by registered mail.

18-12-101. Definitions. (1) As used in this article, unless the context otherwise requires:

* * * * *

(b) "Bomb" means any explosive or incendiary device or molotov cocktail as defined in section 9-7-103, C.R.S. 1973, which is not specifically designed for lawful and legitimate use in the hands of its possessor.

(c) "Firearm silencer" means any instrument, attachment, weapon, or appliance for causing the firing of any gun, revolver, pistol, or other firearm to be silent or intended to lessen or muffle the noise of the firing of any such weapon.

(d) "Gas Gun" means a device designed for projecting gas-filled projectiles which release their contents after having been projected from the device and includes projectiles designed for use in such a device.

* * * * *

(g) "Machine gun" means any firearm, whatever its size and usual designation, that shoots automatically more than one shot, without manual reloading, by a single function of the trigger.

(h) "Short rifle" means a rifle having a barrel less than sixteen inches long or an overall length of less than twenty-six inches.

(i) "Short shotgun" means a shotgun having a barrel or barrels less than eighteen inches long or an overall length of less than twenty-six inches.

* * * * *

(2) It shall be an affirmative defense to any provision of this article that the act was committed by a peace officer in the lawful discharge of his duties.

18-12-102. Possessing an illegal weapon. (1) As used in this section, the term "illegal weapon" means a * * * bomb, firearm silencer, gas gun, machine gun, short shotgun, short rifle * * * (2) A person, other than a peace officer or member of the armed forces of the United States or Colorado national guard acting in the lawful discharge of his duties or a person who has a valid permit and license pursuant to the federal code for such weapon, commits a class 1 misdemeanor if he knowingly possesses an illegal weapon. The exceptions in this subsection (2) shall be an affirmative defense.

18-12-103. Possession of a defaced firearm. A person commits a class 3 misdemeanor if he knowingly and unlawfully possesses a firearm, the manufacturer's serial number of which, or other distinguishing number or identification mark, has been removed, defaced, altered, or destroyed.

18-12-106. Possession of weapons by previous offenders. Any person previously convicted of burglary, arson, or a felony involving the use of force or violence or the use of a deadly weapon, or attempt or conspiracy to commit such offenses, under the laws of the United States of America, the state of Colorado, or another state, within the ten years next preceding or within ten years of his release from incarceration, whichever is greater, who shall possess, use, or carry upon his person a firearm or other weapon mentioned in section 18-1-901(3)(h) or sections 18-12-101 to 18-12-106 commits a class 5 felony. A second or subsequent offense under this section is a class 4 felony.

Akron

10-5-18 Selling Weapons to Intoxicated Persons (a) It shall be unlawful for any person, firm, or corporation to purchase, sell, loan, or furnish any gun, pistol, or other firearm in which any explosive substance can be used, to any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to any minor under the age of eighteen (18) years.

Aurora

10-3-2. Sale of weapons: It shall be unlawful for any person to sell, loan, or furnish any gun, pistol, or other firearm in which any explosive substance can be used, to any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to any minor. * * *

Bennett

Section 5 Weapons

7-5-1 Definitions. The following definitions apply to this section:

* * *

Bomb means any explosive or incendiary device or Molotov cocktail as defined in section 53-7-3, C.R.S. 1963, which is not specifically designed for lawful and legitimate use in the hands of its possessor.

Firearm silencer means an instrument, attachment, weapon, or appliance for causing the firing of any gun, revolver, pistol, or other firearm to be silenced, or intended to lessen or muffle the noise of the firing of any such weapon.

Gas gun means a device designed for projecting gas filled projectiles which release their contents after having been projected from the device, and includes projectiles designed for use in such a device.

* * *

Machine gun means any firearm, whatever its size and usual designation that shoots automatically more than one shot, without manual reloading, by a single function of the trigger.

Short rifle means a rifle having a barrel less than sixteen (16) inches long, or an overall length of less than twenty-six (26) inches.

Short shotgun means a shotgun having a barrel or barrels less than eighteen (18) inches long or an overall length of less than twenty-six (26) inches.

* * *

7-5-2 Article not to affect duties of a peace officer The provisions of this article shall not be held to prohibit any act by a peace officer in the lawful discharge of his duties.

7-5-3 Possessing an illegal weapon As used in this section the term "illegal weapon" means a * * * bomb, firearm silencer, gas gun, machine gun, short shotgun, short rifle * * *. It shall be unlawful for any person other than a peace officer or member of the Armed Forces of the United States or state national guard to knowingly possess an illegal weapon.

7-5-4 Possession of a defaced firearm It shall be unlawful for any person to knowingly and unlawfully possess a firearm the manufacturer's serial number of which, or other distinguishing number or identification mark, has been removed.

Boulder

36-11 Sales, etc., to drunkards, drug addicts and minors. It is unlawful for any person to purchase, sell, loan or furnish any gun, pistol or other firearm in which any explosive substance can be used, to any person under the influence of alcohol or any narcotic drug, stimulant or depressant, or to any person in a condition of agitation and excitability, or to any minor under the age of eighteen years.

Brighton

Ordinance 741

Section 7-445. Unlawful to sell weapons to intoxicated persons. It shall be unlawful for any person, firm or corporation to sell, loan, or furnish any instrument or weapon designated in Sections 7-441 or 7-444 to any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to any minor.

Section 7-446. Incendiary or explosive device.

A. It shall be unlawful to throw, place or cause to be placed any incendiary or explosive device for the purpose of causing injury to any person or damage to property.

B. It shall be unlawful for any person to prepare or to assist in the preparation of an incendiary or an explosive device, to possess, handle, store, transport or sell any such device, knowing the same is to be thrown, placed or caused to be placed for the purpose of causing injury to any person or damage to property.

C. An incendiary or explosive device includes, but not by way of limitation, any device consisting in whole or in part of flammable material or other material having the capability of exploding, igniting, or burning.

D. Except as otherwise permitted by law, it shall be unlawful for any person to possess on his person, in any motor vehicle or in any structure, an incendiary or an explosive device as defined in this Section.

Broomfield

Ordinance 15

Section 64. Unlawful to Sell Weapons to Intoxicated Persons. (a) It shall be unlawful for any person, firm, or corporation to purchase, sell, loan, or furnish any gun, pistol, or other firearm in which any explosive substance can be used, to any person under the influence of alcohol or any narcotic drug, stimulant, depressant, or to any person in a condition of agitation and excitability, or to any minor under the age of 18 years.

(b) Further, such unlawful purchase, sale, loan, or furnishing shall be grounds for revocation of any license issued by the City of Broomfield to such person, firm or corporation.

Central City

191-9-4 Sale to Certain Persons Unlawful. It is unlawful for any person, firm, or corporation to purchase, sell, loan, or furnish any gun, pistol, or other firearm in which any explosive substance can be used, to any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to any minor under the age of eighteen years.

Colorado Springs

8-14. Dangerous or Deadly Weapons—A. Definition: For purposes of this section, dangerous or deadly weapons shall mean: 1. Any firearm whether loaded or unloaded including any pistol, revolver, rifle, shotgun. * * * * *.

G. Selling Weapons to Intoxicated Persons or Minors It shall be unlawful for any person to purchase, sell, loan, or furnish any dangerous or deadly weapon to any person intoxicated or under the influence of alcohol or any narcotic or dangerous drug or glue, or to any person in a condition of agitation and excitement, or to any minor under the age of eighteen (18) years.

Commerce City

14-112. Furnishing to certain persons prohibited. It shall be unlawful for any person to purchase, sell, loan, or furnish any gun, pistol, or other firearm in which any explosive substance can be used, to any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to any minor under the age of eighteen (18) years.

Cortez

11-6-6. Unlawful to Sell Weapons to Intoxicated Persons. A. It shall be unlawful for any person to purchase, sell, loan, or furnish any gun, pistol, or other firearm in which any explosive substance can be used, to any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to any minor under the age of 18 years.

* * *

Creede

10-5-18. Selling weapons to intoxicated persons. (a) It shall be unlawful for any person, firm, or corporation to purchase, sell, loan, or furnish any gun, pistol, or other firearm to which any explosive substance can be used, to any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to any minor under the age of eighteen (18) years.

(b) Further, such unlawful purchase, sale, loan, or furnishing shall be grounds for revocation of any license issued by the Town of Creede, Colorado to such person, firm or corporation.

Dacono

Dacono Ordinance 169 adopts by reference the Colorado Criminal Code, Title 18, Articles 3 through 13, Colorado Revised Statutes, 1973, as amended; repeals all ordinances in conflict therewith; and provides penalties for violation thereof.

Denver, City and County of

845.6-2(1). Handgun. A firearm designed to be held and fired by the use of a single hand. The term 'handgun' also includes a combination of parts in the possession or under the control of a person from which a handgun can be assembled. The term does not include antique firearms, or any firearm which comes within the definition set forth in Section 5485(a) of the United States Internal Revenue Code of 1954.

845.6-2(2). Basic Structural Component. Any or all of the following single parts (including a permanent assembly forming such single part) of a handgun: frame, barrel, cylinder, slide, and breechblock.

845.6-2(3). Antique Firearm. Any firearm, including any handgun, with a matchlock, flintlock, percussion cap, or similar type of ignition system manufactured in or before 1898; and any replica of any such firearm if such replica (a) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or (b) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

845.6-3. It shall be unlawful for any secondhand dealer or pawnbroker or any other person engaged in the business of the wholesale or retail sale, rental, or exchange of handguns, to sell, rent, exchange or deliver any handgun (except an antique firearm) knowing or having reasonable cause to believe the basic structural components thereof are made (1) of any material having a melting point (liquidus) of less than 1,000 degrees Fahrenheit, or (2) of any material having an ultimate tensile strength of less than 55,000 pounds per square inch, or (3) of any powdered metal having a density of less than 7.5 grams per cubic centimeter.

845.7. Identification and records concerning sales, etc. 845.7-1. Every person who sells, rents, or exchanges at retail any weapon designated in Sections 845.1 (pistol, revolver, rifle, shotgun) or 845.6 of this Code shall require the vendee, lessee, or person with whom such exchange is made to furnish more than one type of identification before such sale, rental, or exchange is consummated.

845.8. Unlawful to sell weapons to intoxicated persons or minors. 845.8-1. It shall be unlawful for any person to sell, loan, or furnish any instrument or weapon designated in Sections 845.1 or 845.6 of this Code to any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to any minor.

845.10. Incendiary or explosive device. 845.10-1. For the purposes of this Section 845.10, an incendiary or explosive device shall include, but not by way of limitation, any device consisting in whole or in part of flammable material or other material having the capability of exploding, igniting, or burning.

845.10-2. It shall be unlawful for any person to prepare or to assist in the preparation of an incendiary or explosive device; to possess, handle, store, transport, or sell any such device, knowing the same is to be thrown, placed, or caused to be placed for the purpose of causing injury to any person, or damage to property.

Dolores

Ordinance 271

Chapter 11, Article 3: Furnishing to intoxicated persons. Section 60. No person shall, directly or indirectly, sell, barter, loan or deliver any deadly weapon to any drunk or intoxicated person.

Edgewater

9.92.020 Identification required Every person who sells, rents, or exchanges at retail any weapon described in Sections 9.88.010, 9.88.020 or 9.92.010 shall require the vendee, lessee, or person from whom such exchange is made, to furnish more than one type of identification before such sale, rental or exchange is consummated.

9.92.050 Sale to certain persons prohibited. It is unlawful for any person, firm or corporation to sell, loan, or furnish any instrument or weapon * * * to any person under the influence of alcohol, or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to any minor.

Empire

P. Selling Weapons to Intoxicated Persons. (a) It shall be unlawful for any person, firm, or corporation to purchase, sell, loan, or furnish any gun, pistol, or other firearm in which any explosive substance can be used, to any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to any minor under the age of eighteen (18) years.

Englewood

11-3-4: Certain sales prohibited It shall be unlawful for any person to purchase, sell, loan, or furnish any gun, pistol or other firearm in which any explosive substance can be used, to any person under the influence of

alcohol, or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation or excitability, or to any minor under the age of 18 years.

Evans

Sec. 9.60.43 Definitions. * * *

(b) "Bomb" means any explosive or incendiary device or Molotov cocktail which is not specifically designed for lawful and legitimate use in the hands of its possessor.

(c) "Firearm silencer" means any instrument, attachment, weapon, or appliance for causing the firing of any gun, revolver, pistol, or other firearm to be silent or intended to lessen or muffle the noise of the firing of any such weapon.

(d) "Gas gun" means a device designed for projecting gas-filled projectiles which release their contents after having been projected from the device and includes projectiles designed for use in such a device.

* * * * *

(g) "Machine Gun" means any firearm, whatever its size and usual designation, that shoots automatically more than one shot, without manual reloading, by a single function of the trigger.

(h) "Short rifle" means a rifle having a barrel less than sixteen inches long or an overall length of less than twenty-six inches.

(i) "Short shotgun" means a shotgun having a barrel or barrels less than eighteen inches long or an overall length of less than twenty-six inches.

* * * * *

(2) It shall be an affirmative defense to any provision of this article that the act was committed by a peace officer in the lawful discharge of his duties.

Sec. 9.60.44 Possessing an illegal weapon. (1) As used in this section, the term, "illegal weapon" means a * * * bomb, firearm silencer, gas gun, machine gun, short shotgun, short rifle * * *.

(2) A person other than a peace officer or member of the armed forces of the United States or Colorado National Guard acting in the lawful discharge of his duties or a person who has a valid permit and license pursuant to the federal code for such weapon, commits a violation if he normally possesses an illegal weapon. The exceptions in this subsection (2) shall be an affirmative defense.

Sec. 9.60.45 Possession of a defaced firearm. A person commits a violation of this section if he knowingly possesses a firearm, the manufacturer's serial number of which, or other distinguishing number or identification mark, has been removed, defaced, altered or destroyed.

Glendale

Sec. 10-137. Possessing an illegal weapon. (a) As used in this section, the term "illegal weapon" means a * * * firearm silencer, gas gun, machine gun, short shotgun, short rifle * * *.

(b) It shall be unlawful for any person other than a peace officer or member of the Armed Forces of the United States or state national guard to knowingly possess an illegal weapon.

Sec. 10-141. Prohibited use of weapons. It shall be unlawful for any person to: * * * (4) Have in his possession a firearm while he is under the influence of intoxicating liquor or of a narcotic drug, or dangerous drug. Possession of a permit issued under Section 40-12-105(2)(c) of C.R.S. 1963, is no defense to a violation of this subsection.

Grand Junction

19-60. Furnishing to intoxicated persons. No person shall, directly or indirectly, sell, barter, loan or deliver any deadly or dangerous weapon to any drunk or intoxicated person.

Greely

Sec. 15-47. Possessing an illegal weapon. (a) As used in this section, the term "illegal weapon" means a * * * firearm silencer, gas gun, machine gun, short shotgun, short rifle * * *.

(b) A person other than a peace officer or member of the armed forces of the United States or Colorado National Guard commits the violation of this section if he knowingly possesses an illegal weapon.

(c) Any person convicted of violating this section shall forfeit to the city the illegal weapon involved.

Sec. 15-48. Possession of a defaced firearm. A person commits a violation of this section if he knowingly possesses a firearm, the manufacturer's serial number of which, or other distinguishing number or identification mark, has been removed, defaced, altered or destroyed.

Greenwood Village

Section 2. Chapter 8

2.17 Unlawful Acts. In addition to the other acts prohibited by this ordinance, it shall be unlawful:

(1) For any person other than a peace officer or member of the armed forces of the United States or Colorado National Guard acting in the lawful discharge of his duties or a person who has a valid permit and license pursuant to the federal code for such weapon to knowingly possess an illegal weapon. As used herein, the term "illegal weapon" means a * * *, bomb, firearm silencer, gas gun, machine gun, short shotgun, short rifle, * * *, unless the context otherwise requires:

(2) "Bomb" means any explosive or incendiary device or Molotov cocktail which is not specifically designed for lawful and legitimate use in the hands of its possessor.

(3) "Firearm silencer" means any instrument, attachment, weapon, or appliance for causing the firing of any gun, revolver, pistol, or other firearm to be silent or intended to lessen or muffle the noise of the firing of any such weapon.

(4) "Gas gun" means a device designed for projecting gas filled projectiles which release the contents after having been projected from the device and includes projectiles for use in such a device.

* * * * *

(7) "Machine gun" means any firearm, whatever size and usual designation, that shoots automatically more than one shot, without manual reloading, by a single function of the trigger.

(8) "Short rifle" means a rifle having a barrel less than sixteen inches long or overall length of less than twenty-six inches.

(9) "Short shotgun" means a shotgun having a barrel or barrels less than eighteen inches long or an overall length of less than twenty-six inches.

Johnstown

Sec. 16-131. Possessing an illegal weapon. (a) As used in this section, the term "illegal weapon" means a * * * bomb, firearm silencer, gas gun, machine gun, short shotgun, short rifle, (for definitions of these terms see State Law, 18-12-101.) * * *.

(b) It shall be unlawful for any person other than a peace officer or member of the Armed Forces of the United States or state national guard to knowingly possess an illegal weapon.

Sec. 16-132. Possession of a defaced firearm. It shall be unlawful for any person to knowingly and unlawfully possess a firearm, the manufacturer's serial number of which, or other distinguishing number or identification mark, has been removed.

Sec. 16-135. Prohibited use of weapons. It shall be unlawful for any person to: * * * (4) Have in his possession a firearm while he is under the influence of intoxicating liquor or of a narcotic drug, or dangerous drug. Possession of a permit issued under Section 40-12-105(2)(c) of C.R.S. 1963, is no defense to a violation of this subsection.

Kersey

Ordinance 128

VI. Possessing an illegal weapon. 1. As used in this section the term "illegal weapon" means a * * * firearm silencer, gas gun, short shotgun, short rifle, * * *. 2. No person shall knowingly possess an illegal weapon within the town of Kersey.

Las Animas

Sec. 23-6. Sale, rental, etc., of firearms to certain persons prohibited. It shall be unlawful for any person to purchase, sell, loan or furnish any gun, pistol or other firearm in which any explosive substance can be used, to any person under the influence of alcohol or any narcotic drug, stimulant or depressant, or to any person in a condition of agitation and excitability. * * *

La Veta

Ordinance No 81

16. a. It shall be unlawful for any person, firm or corporation to purchase, sell, loan or furnish any gun, pistol or any other firearm, in which any explosive substance can be used, to any person under the influence of alcohol or any narcotic drug or stimulant or depressant, or to any person the seller knows to be under the influence of alcohol or any narcotic drug, stimulant or depressant, or to any minor under the age of eighteen (18) years.

Limon

2. Unlawful to Sell Weapons to Intoxicated Persons. 2.-1. It shall be unlawful for any person, firm or corporation to sell, loan, or furnish any gun, pistol, or other firearm in which an explosive substance can be used, to any person under the influence of alcohol or any narcotic drug, stimulant, or depressant or to any person in a condition of agitation and excitability, or to any minor.

Littleton

6-7-3(C) Sales of firearms to certain persons prohibited. It shall be unlawful for any person to purchase for or to sell, loan, or furnish any gun, pistol, or other firearm in which any explosive substance can be used, to any person under the influence of alcohol or any narcotic drug, stimulant or depressant, or to any person in a condition of agitation and excitability, or to any minor under the age of eighteen years.

Milliken

Ordinance 118

Art. 1. Sec. 9.60.33. Using weapon in a prohibited manner. (1) A person commits a violation of this section if: * * * * * (d) He has in his possession a firearm while he is under the influence of intoxicating liquor or of a narcotic drug, or dangerous drug.

Monument

6-4-18 Selling Weapons to Intoxicated Persons. (a) It shall be unlawful for any person, firm, or corporation to purchase, sell, loan, or furnish any gun, pistol, or other firearm in which any explosive substance can be used, to any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to any minor under the age of eighteen (18) years.

Nederland

Ordinance 74

Section 2. That no person, firm, company, corporation or association shall exhibit, or have in its possession with intent to give away, or sell, or offer for sale within the Town of Nederland, any * * * gun, revolver, pistol, cap, or cartridge, or other combustible fireworks of any kind in the Town of Nederland.

Oak Creek

Ordinance 299

A-5-18 Selling Weapons to Intoxicated Persons. (a) It shall be unlawful for any person, firm, or corporation to purchase, sell, loan, or furnish any gun, pistol, or other firearm in which any explosive substance can be used, to any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to any minor under the age of eighteen (18) years.

Pueblo

9-7-11: Firearms—Dealing in, License Required; Fee, Terms (a) Firearms shall mean a pistol or revolver or other weapon of any description, loaded or unloaded, from which any shot, bullet or other missile can be discharged, and the length of the barrel of which, not including any revolving detachable or magazine breech, does not exceed twelve inches.

(b) It shall be unlawful for any person to engage in the business of the retail sale, rental, or exchange of firearms, within the City, without obtaining a license therefor from the License Officer.

* * * * *

9-7-12: Same—Record Required; Contents; Hearing on Revocation; Notice (a) Every person engaged within the City in the retail sale, rental or exchange of firearms shall keep a record of such firearm sold, rented or exchanged. Such record shall be made at the time of the transaction in a book kept for that purpose [contact local authorities for required contents] * * *. Such record shall be exhibited at all times by such persons for the inspection of any law enforcement officer upon demand. Failure to keep such record or to exhibit the same as aforesaid shall constitute a breach of this Code and shall be cause for the revocation of the license herein required, by the License Officer upon hearing after notice to the holder of such license.

* * * * *

11-1-35: Firearms; Sale; etc. to Minors; Consent It shall be unlawful for any person to sell, give or loan to any minor under the age of eighteen years of age any type of firearms or ammunition whatsoever without first contacting the parent or parents or the legal guardian of such minor and obtaining from such parent or parents or the legal guardian written consent to such gift, sale, or loan; provided, however, where a minor has been emancipated by law or marriage it shall be sufficient, upon proper showing made, for the Chief of Police to authorize such sale, gift or loan.

Ridgway

Chapter X, Section 5

10-5-18 Selling Weapons to Intoxicated Persons (a) It shall be unlawful for any person, firm, or corporation to purchase, sell, loan, or furnish any gun, pistol, or other firearm in which any explosive substance can be used, to any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to any minor under the age of eighteen (18) years.

San Luis

Selling Weapons to Intoxicated Persons: (a) It shall be unlawful for any person, firm or corporation to purchase, sell, loan, or furnish any gun, pistol or other firearm in which any explosive substance can be used, to any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excit-

ability, or to any minor under the age of eighteen (18) years.

Sheridan

16-65. Furnishing to Certain Persons Prohibited. It shall be unlawful for any person to purchase, sell, loan, or furnish any gun, pistol, rifle, shotgun or other firearm in which any explosive substance can be used, to any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to any minor person under the age of eighteen (18) years.

Silverthorne

16-5-18 Selling Weapons to Intoxicated Persons. (a) It shall be unlawful for any person, firm, or corporation to purchase, sell, loan, or furnish any gun, pistol, or other firearm in which any explosive substance can be used, to any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to any minor under the age of eighteen (18) years.

(b) Further, such unlawful purchase, sale, loan, or furnishing shall be grounds for revocation of any license issued by the Town of Silverthorne to such person, firm or corporation.

Thornton

Sec. 23-30. Unlawful sale of weapons to intoxicated persons. It shall be unlawful for any person, firm or corporation to purchase, sell, loan or furnish any gun, pistol or other firearm in which any explosive substance can be used to any person under the influence of alcohol or any narcotic drug, stimulant or depressant, or to any person in a condition of agitation and excitability, or to any minor under the age of eighteen (18) years. Further, such unlawful purchase, sale, loan or furnishing shall be grounds for revocation of any license issued by Thornton to such person, firm or corporation.

Walsenburg

Ordinance 658

Section III: 15. Selling Weapons to Intoxicated Persons: (a) It shall be unlawful for any person, firm or corporation to purchase, sell, loan or furnish any gun, pistol or other firearm in which any explosive substance can be used to any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person the seller knows to be under the influence of alcohol or any narcotic drug, stimulant or depressant, or to any minor under the age of eighteen years. (b) Further, such unlawful purchase, sale, loan or furnishing shall be grounds for revocation of any licenses issued by the City of Walsenburg to such person, firm or corporation.

Wiley

General Offenses

16-5-18 Selling weapons to intoxicated persons

(a) It shall be unlawful for any person, firm, or corporation to purchase, sell, loan, or furnish any gun, pistol, or other firearm in which any explosive substance can be used, to any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to any minor under the age of eighteen (18) years.

(b) Further, such unlawful purchase, sale, loan or furnishing shall be grounds for revocation of any license issued by the City of Wahsenburg to such person, firm or corporation.

Wiley

VIII. Weapons

9.70.010 Definitions. For purposes of this chapter, "dangerous or deadly weapons" means:

A. Any firearm, whether loaded or unloaded, including any pistol, revolver, rifle, shotgun, * * *

9.70.070 Selling weapons to intoxicated persons or minors. It is unlawful for any person to purchase, sell, loan or furnish any dangerous or deadly weapon to any person intoxicated or under the influence of alcohol or any narcotic or dangerous drug or gun, or to any person in a condition of agitation and excitement, or to any minor under the age of eighteen years.

Woodland Park

VIII. Weapons

9.70.010 Definitions. For purposes of this chapter, "dangerous or deadly weapons" means:

A. Any firearm, whether loaded or unloaded, including any pistol, revolver, rifle, shotgun, * * *

9.70.070 Selling weapons to intoxicated persons or minors. It is unlawful for any person to purchase, sell, loan or furnish any dangerous or deadly weapon to any person intoxicated or under the influence of alcohol or any narcotic or dangerous drug or gun, or to any person in a condition of agitation and excitement, or to any minor under the age of eighteen years.

Connecticut

State Law

Conn. General Stats. Ann.

Sec. 29-27. "Pistol" and "revolver" defined. The term "pistol" and the term "revolver," as used in sections 29-28 to 29-38, inclusive, mean any firearm having a barrel less than twelve inches in length.

Sec. 29-28. Permit for selling or carrying pistols or revolvers. No person shall advertise, sell, deliver, or offer or expose for sale or delivery, or have in his possession with intent to sell or deliver, any pistol or revolver at retail without having a permit therefor issued as hereinafter provided. The chief of police or, where there is no chief of police, the warden of the borough or the first selectman of the town, as the case may be, may, upon the application of any person, issue a permit in such form as may be prescribed by the commissioner of state police for the sale at retail of pistols and revolvers within the jurisdiction of the authority issuing such permit.

* * * * *

Sec. 29-31. Display of permit to sell. * * * No sale of any pistol or revolver shall be made except in the room, store or place described in the permit for the sale of pistols and revolvers, and such permit or a copy thereof certified by the authority issuing the same shall be exposed to view within the room, store or place where pistols or revolvers are sold or offered or exposed for sale, and no sale or delivery of any pistol or revolver shall be made unless the purchaser or person to whom the same is to be delivered is personally known to the vendor of such pistol or revolver or the person making delivery thereof or unless the person making such purchase or to whom delivery thereof is to be made provides evidence of his identity.

* * * * *

Sec. 29-33. No sale to aliens. Application to purchase. Waiting period. No person, firm or corporation shall sell at retail, deliver or otherwise transfer any pistol or revolver to any alien. No person, firm or corporation shall deliver any pistol or revolver at retail except upon written application on a form prescribed and furnished by the commissioner of state police, in triplicate, one copy of which shall be mailed by first class mail on the day of receipt of such application to the chief of the police department of the municipality within which the applicant resides or, where there is no chief of police, the first selectman or warden of such municipality, as the case may be, and to the commissioner of state police, and no sale or delivery of any pistol or revolver shall be made until the expiration of two weeks from the date of the mailing of such copies. Any such municipal authority or said commissioner, having knowledge of the conviction of such applicant of a felony, shall forthwith notify the person, firm or corporation to whom

such application was made and no pistol or revolver shall be by him or it sold or delivered to such applicant. When any pistol or revolver is delivered in connection with the sale or purchase, such pistol or revolver shall be enclosed in a package, the paper or wrapping of which shall be securely fastened, and no pistol or revolver when delivered on any sale or purchase shall be loaded or contain therein any gunpowder or other explosive or any bullet, ball or shell. Upon the delivery of any pistol or revolver, the purchaser shall sign in quadruplicate a receipt for such pistol or revolver which shall contain the name, address and occupation of such purchaser, the date of sale, caliber, make, model and manufacturer's number and a general description thereof. Two of such quadruplicate receipts shall, within twenty-four hours thereafter, be mailed by first class mail by the vendor of such pistol or revolver to the commissioner of state police and one to the authority issuing the permit for the sale of such pistol or revolver and the other, together with the original application, shall be retained by such vendor for at least six years. The waiting period herein specified during which delivery may not be made shall not apply to the holder of a valid state permit to carry pistols and revolvers, nor to any federal marshal, sheriff, parole officer or peace officer. The provisions of this section shall not apply to antique pistols or revolvers. An antique pistol or revolver, for the purposes of this section, means any pistol or revolver utilizing an early type of ignition, including, but not limited to, flintlocks, wheel locks, matchlocks, percussions and pin-fire, but no pistol or revolver which utilizes center fire or rim fire cartridges shall be deemed to be an antique pistol or revolver.

Sec. 29-34. False information. Sale to minors prohibited. No person shall make any false statement or give any false information connected with any purchase, sale or delivery of any pistol or revolver, and no person shall sell, barter, hire, lend, give or deliver to any minor under the age of eighteen years any pistol or revolver.

Sec. 29-36. Altering or removing identification mark. No person shall alter, remove or obliterate the name of any maker or model or any maker's number or other mark of identification on any pistol or revolver. The possession of any pistol or revolver upon which any identifying mark, number or name has been altered, removed or obliterated shall be prima facie evidence that the person owning or in possession of such pistol or revolver has altered, removed or obliterated the same.

Sec. 29-38a. Out-of-state purchase or acquisition of rifles or shotguns. (a) For the purposes of the federal gun control act of 1968, Public Law 90-618, 18 U.S.C. 921 et seq., and any law amendatory thereof, any person resident in this state, including a corporation or other business entity maintaining a place of business in this state, may purchase or otherwise receive delivery of a rifle or shotgun in the states of New York or Rhode Island or in the Commonwealth of Massachusetts, unless such purchase or receipt of delivery violates any applicable law of this state, any applicable law of the state in which such purchase or receipt of delivery takes place, or any applicable provision of said control act of 1968, as amended.

(b) Nothing in subsection (a) of this section shall be deemed to deprive any such resident of this state of any rights granted to such resident under title 18 U.S.C. section 922(a)(5), section 922(b)(3)(B) or section 922(b)(3)(C).

Sec. 53-202. Machine guns. (1) "Machine gun," as used in this section, shall apply to and include a weapon of any description, loaded or unloaded, from which more than five shots or bullets may be rapidly, or automatically, or semi-automatically, discharged from a magazine, by a single function of the firing device. "Crime of violence," as used in this section, shall apply to and include any of the following-named crimes or an attempt to commit any of the same: Murder, manslaughter, kidnapping, sexual assault and sexual assault with a firearm, assault in the first or second degree, robbery, burglary, and larceny. (2) Any person who possesses or uses a machine gun in the perpetration or attempted perpetration of a crime of violence shall be imprisoned not more than twenty years. (3) Any person who possesses or uses a machine gun for an offensive or aggressive purpose shall be imprisoned not more than ten years. (4) The possession or use of a machine gun shall be presumed to be for an offensive or aggressive purpose: (a) When the machine gun is on premises not owned or rented, for bona fide permanent residence or business occupancy, by the person in whose possession the machine gun was found; or (b) when in the possession of, or use by, an unnaturalized foreign-born person, or a person who has been convicted of a crime of violence in any state or federal court of record of the United States of America, its territories or insular possessions; or (c) when the machine gun is of the kind described in subsection (7) hereof and has not been registered as therein required; or (d) when empty or loaded pistol shells of thirty (.30 in. or 7.63 mm.) or larger caliber which have been or are susceptible of use in the machine gun are found in the immediate vicinity thereof. (5) The presence of a machine gun in any room, boat or vehicle shall be presumptive evidence of the possession or use of the machine gun by each person occupying such room, boat or vehicle. (6) Each manufacturer shall keep a register of all machine guns manufactured or handled by him. Such register shall show the model and serial number, date of manufacture, sale, loan, gift, delivery or receipt, of each machine gun, the name, address and occupation of the person to whom the machine gun was sold, loaned, given or delivered, or from whom it was received and the purpose for which it was acquired by the person to whom the machine gun was sold, loaned, given or delivered. Upon demand, any manufacturer shall permit any marshal, sheriff or police officer to inspect his entire stock of machine guns, and parts and supplies therefor, and shall produce the register, herein required, for inspection. Any person who violates any provision of this subsection shall be fined not more than two thousand dollars. (7) Each machine gun in this state adapted to use pistol cartridges of thirty (.30 in. or 7.63mm.) or larger caliber shall be registered in the office of the commissioner of state police within twenty-four hours after its acquisition and, thereafter, annually, on July first. Blanks for registration shall be prepared by said commissioner and furnished upon application. To comply with this subsection, the application as filed shall show the model and serial number of the gun, the name, address and occupation of the person in possession, and from whom and the purpose for which the gun was acquired. The registration data shall not be subject to inspection by the public. Any person who fails to register any gun as required hereby shall be presumed to possess the same for an offensive or aggressive purpose. The provisions of this subsection shall not apply to any machine gun which has been registered under the provisions of subsection (6) and which is still in the actual possession of the manufacturer. (8) No provision of this section shall apply to the manufacture of machine guns for sale or transfer to the United States government, to any state, territory or possession of the United States or to any political subdivision thereof or to the District of Columbia.

Sec. 53a-211. Possession of sawed-off shotgun or silencer: Class D felony. (a) A person is guilty of possession of a sawed-off shotgun or a silencer when he owns, controls or possesses any sawed-off shotgun of any caliber that has a barrel of less than eighteen inches or an overall length of less than twenty-six inches or when he owns, controls or possesses any silencer designed to muffle the noise of a firearm during discharge.

(b) The provisions of this section shall not apply to persons, firms, corporations or museums licensed or otherwise permitted by federal or state law to possess, control or own sawed-off shotguns or silencers.

(c) Possession of a sawed-off shotgun or a silencer is a class D felony.

East Haven

D. No person, persons, firm, or corporation shall sell or expose for sale any blank pistol or any other pistol in the Town of East Haven.

New Haven

18-12. Firearms and ammunition; sales to children. No person shall sell to any child under the age of sixteen (16) years, without the written consent of the parent or guardian of such child, any cartridge or fixed ammunition of which any fulminate is a component part, or any gun, pistol, or other mechanical contrivance arranged for the explosion of such cartridge, or of any fulminate.

Seymour

13-7. (Guns and Firearms)—Sale to children prohibited. It shall be unlawful and is hereby prohibited for any person or persons, firm, corporation or association to sell or offer for sale to any person under the age of sixteen (16) years * * * any gun or rifle or pistol which fires or which is designed or intended to fire a bullet, shell or pellet by means of gunpowder, or other chemical propellant which such devices are generally known as firearms, within the limits of the Town of Seymour.

Windsor

Section 2. Regulation of Dangerous Weapons Where Minors Under Age 18 Are Involved. No person shall within the Town of Windsor sell, give, lend or otherwise transfer or make available to any person under the age of eighteen (18) years any firearm, airgun or other dangerous weapon * * * except where the relationship of parent and child, guardian and ward, or adult firearm instructor and pupil exists between such person and the person under eighteen (18) years of age.

Delaware

State Law

Del. Code Ann.

11 Sec. 222. General definitions. * * * * *

(4) "Dangerous instrument" means any instrument, article, or substance which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or serious physical injury.

(5) "Deadly weapon" includes any weapon from which a shot may be discharged * * * * *

11 Sec. 1444. Possessing a destructive weapon; class D felony. A person is guilty of possessing a destructive weapon when he sells, transfers, buys, receives or has possession of a bomb, bombshell, firearm silencer, sawed-off shotgun, machine gun or any other firearm or weapon which is adaptable for use as a machine gun.

Possessing a destructive weapon is a class D felony. This section does not apply to members of the military forces or to members of a police force in this State duly authorized to carry a weapon of the type described; nor shall the provisions contained herein apply to persons possessing machine guns for scientific or experimental research and development purposes, which machine guns have been duly registered under the provisions of the National Firearms Act of 1968.

The term "shotgun" as used in this section means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shot gun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger. The term "sawed-off shotgun" as used in this section means a shotgun having 1 or more barrels less than 18 inches in length or any weapon made from a shotgun (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than 26 inches.

11 Sec. 1445. Unlawfully dealing with a dangerous weapon; class B misdemeanor. A person is guilty of unlawfully dealing with a dangerous weapon when:

* * * * * *

(2) He sells, gives or otherwise transfers to a child under 16 years of age a firearm * * * or

(3) Being a parent, he permits his child under 16 years of age to have possession of a firearm * * * unless under the direct supervision of an adult. Unlawfully dealing with a dangerous weapon is a class B misdemeanor.

Sec. 1448. Purchase and possession of deadly weapons by certain persons prohibited; class E felony. Any person, having been convicted in this State or elsewhere of a felony or a crime of violence involving bodily injury to another, whether or not armed with, or having in his possession any weapon during the commission of such felony or crime of violence, or any person who has ever been committed for a mental disorder to any hospital, mental institution or sanatorium (unless he possesses a certificate of a medical doctor or psychiatrist licensed in this State that he is no longer suffering from a mental disorder which interferes with or handicaps him in the handling of a firearm), or any person who has been convicted for the unlawful use, possession or sale of a narcotic, dangerous drug or central nervous system depressant or stimulant drug as those terms were defined prior to the effective date of the Uniform Controlled Substance Act in January 1973, or of a narcotic drug or controlled substance as defined in Chapter 47 of Title 16, who purchases, owns, possesses or controls any deadly weapon is guilty of a class E felony.

24 Sec. 901. Necessity for license; exceptions. No person shall sell or expose to sale any pistol or revolver, or revolver of pistol cartridges, * * * without first having obtained a license therefor, which license shall be known as "special license to sell deadly weapons."

This section shall not apply to toy pistols, * * *

24 Sec. 902. Application and fee for license; duration. Whoever desires to engage in the business of selling any of the articles referred to in the first paragraph of Sec. 901 of this title shall apply to the Department of Administrative Services to obtain a license to conduct such business. The license shall entitle the holder thereof to conduct such business until the 1st day of June next succeeding its date.

24 Sec. 903. Sale to minors or intoxicated persons. No person shall sell to a minor or any intoxicated person any of the articles referred to in the first paragraph of Sec. 901 of this title.

24 Sec. 904. Record; data to be recorded. Any person desiring to engage in the business described in this chapter shall keep and maintain in his place of business at all times a record. In such record, he shall enter the date of the sale, the name and address of the person purchasing any deadly weapon, the number and kind of deadly weapon so purchased, the color of the person so purchasing the same, the apparent age of the purchaser, and the names and addresses of at least 2 residents of the State who shall positively identify the purchaser before the sale can be made. No clerk, employee or other person associated with the seller shall act as one of the identifying residents. The record shall at all times be

open for inspection by any judge, justice of the peace, police officer, constable or other peace officer of this State.

28 Sec. 801. Definitions. (a) As used in this chapter, the term "a state contiguous to this State" shall mean any state having a common border with this State.

(b) As used in this chapter, all other terms shall be given the meaning prescribed in 18 U.S.C.A. Sec. 921 (the Gun Control Act of 1968), and the regulations duly promulgated thereunder as presently enacted or promulgated and as hereafter modified.

28 Sec. 802. Lawful acts. It shall be lawful for a person residing in this State, including a corporation or other business entity maintaining a place of business in this State, to purchase or otherwise obtain a rifle or shotgun in a state contiguous to this State and to receive or transport such rifle or shotgun into this State, subject, however, to such other laws of the State or its political subdivision as may be applicable and subject to Sec. 102 of the Gun Control Act of 1968, 18 U.S.C.A. Sec. 921 et seq.

28 Sec. 803. Not applicable to federal licensees. This chapter shall not apply or be construed to affect in any way the purchase, receipt or transportation of rifles and shotguns by federally licensed firearms manufacturers, importers, dealers or collectors.

Delmar

13-2. No person shall offer for sale any gun, pistol, rifle * * * or any gunpowder, gunshot, rifle bullets or ammunition of any description to any one under the age of sixteen years old within the Town limits of the Town of Delmar, Delaware.

Dover

20-34. Sales to intoxicated persons and minors prohibited. It shall be unlawful for any person to purchase from, or sell, loan or furnish any weapon mentioned in Section 20-29(a) (revolver or pistol of any description, a shotgun or rifle) * * * to any person under the influence of any alcoholic beverage or any narcotic drug, stimulant or depressant, to any person in a condition of agitation and excitability or to a minor under the age of eighteen (18) years.

Elsmere

Ordinance 108

Section 1. That fire arms means any rifle, revolver, pistol or shotgun capable of propelling a projectile by means of an explosive material or charge.

Section 2. That ammunition is defined as any material used in discharging any fire arm projectile discharged by any fire arm.

Section 3. It shall be unlawful for anyone within the limits of the Town of Elsmere or within the limits of the public lands vested in said Town to sell, distribute, dispense or give away any fire arms or ammunition of any character whatsoever.

Wilmington

39-19.1 Manufacture, delivery, sale or possession of certain weapons prohibited. (a) It shall be unlawful for any person to manufacture, make, deliver, transport, trade, give, sell, or possess a smooth-bore shot revolver, short-barreled rifle, zip gun, converted tear gas gun, taser gun or converted starter pistol.

(b) 1. The term "smooth-bore shot revolver" as used in this section means a revolver with a smooth-bore having been reamed out so that it can be used to fire shotshell.

2. The term "short-barreled rifle" means a rifle having one or more barrels less than 16 inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon, as modified, has an overall length of less than 26 inches.

3. The term "zip-gun" means any weapon or instrument not originally designed to be a firearm which has been made or altered to discharge a projectile with sufficient force to cause death or physical injury.

4. The term "converted tear gas gun" as used in this section means a tear gas gun which has been altered to fire a projectile with sufficient force to cause death or physical injury.

5. The term "converted starter pistol" as used in this section means a starter pistol which has been altered to fire a projectile with sufficient force to cause death or physical injury.

(6) The term "taser gun," as used in this section, means any battery or electrically operated stun gun or high voltage weapon that projects a dart or barb or combination of darts or barbs attached to the weapon by lengths of wire, which is designed to transmit an electrical current upon discharge and impact.

(c) Any law enforcement officer while performing his lawful duties within the City shall be exempted from the effect of this section.

39-21. Same—Sale, etc., of firearms to minors. It shall be unlawful for any person to sell, give away, dispose of or otherwise directly or indirectly furnish, within the city, to any minor under the age of eighteen years, any gun, pistol, revolver or other firearm whatsoever.

Sec. 39-35.1. Firearms dealers—Definitions. For the purposes of section 39-35.2, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Dealer. Any individual, firm, association, partnership or corporation engaged in the business of selling firearms, purchasing firearms for resale or conducting a gunsmith or firearms repair business. Whenever used in any cause prescribing and imposing a penalty, the term dealer, as applied to any partnership or association, shall mean the partners or members thereof, and as applied to any corporation, shall include the officers thereof.

Firearms. Any rifle, revolver, pistol or shotgun capable of propelling a projectile by means of an explosive material or charge.

Sec. 39-35.2. Same—Storage and display of firearms; permits. (a) During the hours they are not regularly open for business, dealers shall store all firearms in accordance with the following requirements: * * * * * (2) All firearms must be placed in an approved safe, vault or properly secured storeroom. Any dealer may comply with the requirements of this section by providing an approved steel safe wherein any firearms may be stored and locked during nonbusiness hours.

* * * * * *

(c) No dealer shall receive a permit to store firearms unless he: (1) Complies with the provisions of this section and regulations issued pursuant thereto.

District Of Columbia

D.C. Code Encyclopedia

D.C. Code Title 22

22-3201. Possession, sale, transfer, and use of dangerous weapons—Definition. "Pistol," as used in this chapter, means any firearm with a barrel less than twelve inches in length.

"Sawed-off shotgun," as used in this chapter, means any shotgun with a barrel less than twenty inches in length.

"Machine gun," as used in this chapter, means any firearm which shoots automatically or semi-automatically more than twelve shots without reloading.

"Person," as used in this chapter, includes individual, firm, association, or corporation.

"Sell" and "purchase" and the various derivatives of such words, as used in this chapter, shall be construed to include letting on hire, giving, lending, borrowing, and otherwise transferring.

"Crime of violence," as used in this chapter, means any of the following crimes, or an attempt to commit any of the same, namely: Murder, manslaughter, rape, mayhem, maliciously disfiguring another, abduction, kidnaping, burglary, robbery, housebreaking, larceny, any assault with intent to kill, commit rape, or robbery, assault with a dangerous weapon, or assault with intent to commit any offense punishable by imprisonment in the penitentiary.

22-3203. Unlawful possession of a pistol. No person shall own or keep a pistol, or have a pistol in his possession or under his control within the District of Columbia, if—

(1) he is a drug addict;

(2) he has been convicted in the District of Columbia or elsewhere of a felony;

(3) he has been convicted of violating section 22-2701, section 22-2722, or sections 22-3302 to 22-3306; or

(4) he is not licensed under section 22-3210 to sell weapons, and he has been convicted of violating sections 22-3201 to 22-3216.

No person shall keep a pistol for, or intentionally make a pistol available to, such a person, knowing that he has been so convicted or that he is a drug addict. * * *

22-3207. Selling pistol to minors and others. No person shall within the District of Columbia sell any pistol to a person who he has reasonable cause to believe is not of sound mind, or is forbidden by section 22-3203 to possess a pistol, or, except when the relation of parent and child or guardian and ward exists, is under the age of twenty-one years.

22-3208. Transfers of firearms, regulated. No seller shall within the District of Columbia deliver a pistol to the purchaser thereof until forty-eight hours shall have elapsed from the time of the application for the purchase thereof, except in the case of sales to marshals, sheriffs, prison or jail wardens or their deputies, policemen, or other duly appointed law-enforcement officers, and, when delivered, said pistol shall be securely wrapped and shall be unloaded. At the time of applying for the purchase of a pistol the purchaser shall sign in duplicate and deliver to the seller a statement [contact local authorities for required contents] * * * No machine gun, sawed-off shotgun, or blackjack shall be sold to any person other than the persons designated in section 22-3214 as entitled to possess the same, and then only after permission to make such sale has been obtained from the chief of police of the District of Columbia. This section shall not apply to sales at wholesale to licensed dealers.

22-3209. Dealers of weapons to be licensed. No retail dealer shall within the District of Columbia sell or expose for sale or have in his possession with intent to sell, any pistol, machine gun, sawed-off shotgun, * * * without being licensed as provided in section 22-3210. No wholesale dealer shall, within the District of Columbia, sell, or have in his possession with intent to sell to any person other than a licensed dealer, any pistol, machine gun, sawed-off shot gun, * * *

22-3210. Licenses of dealers of weapons— * * * —Conditions thereof.

* * * * *

3. No pistol shall be sold (a) if the seller has reasonable cause to believe that the purchaser is not of sound mind or is forbidden by section 22-3203 to possess a pistol or is under the age of twenty-one years, and (b) unless the purchaser is personally known to the seller or shall present clear evidence of his identity. No machine gun, sawed-off shotgun, * * * shall be sold to any person other than the persons designated in section 22-3214 as entitled to possess the same, and then only after permission to make such sale has been obtained from the superintendent of police of the District of Columbia.

Sec. 22-3212. Alteration of identifying marks of weapons prohibited

No person shall within the District of Columbia change, alter, remove or obliterate the name of the maker, model, manufacturer's number, or other mark or identification on any pistol, machine gun, or sawed-off shotgun. Possession of any pistol, machine gun, or sawed-off shotgun upon which any such mark shall have been changed, altered, removed, or obliterated shall be prima facie evidence that the possessor has changed, altered, removed, or obliterated the same within the District of Columbia: Provided, however, That nothing contained in this section shall apply to any officer or agent of any of the departments of the United States or the District of Columbia engaged in experimental work.

22-3213. Exceptions. This chapter shall not apply to toy or antique pistols unsuitable for use as firearms.

22-3214. Possession of certain dangerous weapons prohibited—Exceptions. (a) No person shall within the District of Columbia possess any machine gun, sawed-off shotgun, * * * nor any instrument, attachment, or appliance for causing the firing of any firearm to be silent or intended to lessen or muffle the noise of the firing of any firearms: Provided, however, that machine guns, or sawed-off shotguns, * * * may be possessed by the members of the Army, Navy, Air Force or Marine Corps of the United States, the National Guard, or Organized Reserves when on duty, the United States Postal Service or its employees when on duty, marshals, sheriffs, prison or jail wardens, or their deputies, policemen, or other duly-appointed law-enforcement officers, officers or employees of the United States duly authorized to carry such weapons, banking institutions, public carriers who are engaged in the business of transporting mail, money securities, or other valuables, wholesale dealers and retail dealers licensed under section 22-3210.

22-3215a. Manufacture, transfer, use, possession or transportation of molotov cocktails, or other explosives for unlawful purposes, prohibited—definitions—penalties. (a) No person shall within the District of Columbia manufacture, transfer, use, possess, or transport a molotov cocktail. As used in this subsection, the term "molotov cocktail" means (1) a breakable container containing flammable liquid and having a wick or a similar device capable of being ignited, or (2) any other device designed to explode or produce uncontained combustion upon impact; but such term does not include a device lawfully and commercially manufactured primarily for the purpose of illumination, construction work, or other lawful purpose.

(b) No person shall manufacture, transfer, use, possess, or transport any device, instrument, or object designed to explode or produce uncontained combustion, with the intent that the same may be used unlawfully against any person or property. * * *

Title 6

Chapter 18
Subchapter I—General Provisions

Sec. 6-1802. Definitions. (1) "Acts of Congress" means (A) chapter 32 of title 22; (B) Omnibus Crime Control and Safe Streets Act of 1968, as amended (Title VII, Unlawful Possession or Receipt of Firearms (82 Stat. 236; 18 U.S.C. Appendix)); and (C) an Act to Amend Title 18, United States Code, to Provide for Better Control of the Interstate Traffic in firearms Act of 1968 (82 Stat. 1213; 18 U.S.C. 921, et seq.).

(2) "Ammunition" means cartridge cases, shells, projectiles (including shot), primers, bullets, propellant powder, or other devices or materials designed, redesigned, or intended for use in a firearm or destructive device.

(3) "Antique firearm" means—(A) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; and (B) any replica of any firearm described in subparagraph (A) if such replica—(i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or (ii) uses rimfire or conventional ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

(4) "Chief" means the Chief of Police of the Metropolitan Police Department of the District of Columbia or his designated agent.

(5) "Crime of Violence" means a crime of violence as defined in section 22-3201, committed in any jurisdiction, but does not include larceny or attempted larceny.

(6) "Dealers license" means a license to buy or sell, repair, trade, or otherwise deal in firearms, destructive devices, or ammunition as provided for in subchapter IV of this chapter.

(7) "Destructive device" means—(A) an explosive, incendiary, or poison gas bomb, grenade, rocket, missile, mine, or similar device; (B) any device by whatever name known which will, or is designed or redesigned, or may be readily converted or restored to expel a projectile by the action of an explosive or other propellant through a smooth bore barrel, except a shotgun. (C) any device containing tear gas or a chemically similar lacrimator or sternutator by whatever name known; (D) any device designed or redesigned, made or remade, or readily converted or restored, and intended to stun or disable a person by means of electric shock; (E) any combination of parts designed or intended for use in converting any device into any destructive device; or from which a destructive device may be readily assembled:

Provided, That the term shall not include—(i) any pneumatic, spring, or B-B gun which expels a single projectile not exceeding .18 inch in diameter; (ii) any device which is neither designed nor redesigned for use as a weapon; (iii) any device originally a weapon which has been redesigned for use as a signaling, line throwing, or safety device; or, (iv) any device which the Chief finds is not likely to be used as a weapon.

(8) "District" means District of Columbia.

(9) "Firearm" means any weapon which will, or is designed or redesigned, made or remade, readily converted or restored, and intended to, expel a projectile or projectiles by the action of an explosive; the frame or receiver of any such device; or any firearm muffler or silencer: Provided, That such term shall not include—(A) antique firearms; and/or (B) destructive devices; (C) any device used exclusively for line throwing, signaling, or safety, and required or recommended by the Coast Guard or Interstate Commerce Commission; or (D) any device used exclusively for firing explosive rivets, stud cartridges, or similar industrial ammunition and incapable for use as a weapon.

(10) "Machine gun" means any firearm which shoots, is designed to shoot, or can be readily converted or restored to shoot: (A) automatically, more than one shot by a single function of the trigger; (B) semiautomatically, more than twelve shots without manual reloading.

(11) "Organization" means any partnership, company corporation, or other business entity, or any group or association of two or more persons united for a common purpose.

(12) "Pistol" means any firearm originally designed to be fired by use of a single hand.

(13) "Registration certificate" means a certificate validly issued pursuant to this act evincing the registration of a firearm pursuant to this chapter.

(14) "Rifle" means a grooved bore firearm using a fixed metallic cartridge with a single projectile and designed or redesigned, made or remade, and intended to be fired from the shoulder.

(15) "Sawed-off shotgun" means a shotgun having a barrel of less than 20 inches in length; or a firearm made from a shotgun if such firearm as modified has an overall length of less than 26 inches or any barrel of less than 20 inches in length.

(16) "Shotgun" means a smooth bore firearm using a fixed shotgun shell with either a number of ball shot or a single projectile, and designed or redesigned, made or remade, and intended to be fired from the shoulder.

(17) "Short barreled rifle" means a rifle having any barrel less than 16 inches in length, or a firearm made from a rifle if such firearm as modified has an overall length of less than 26 inches or any barrel of less than 16 inches.

(18) "Weapons offense" means any violation in any jurisdiction of any law which involves the sale, purchase, transfer in any manner, receipt, acquisition, possession, having under control, use, repair, manufacture, carrying, or transportation of any firearm, ammunition, or destructive device.

Subchapter II—Firearms and Destructive Devices

Sec. 6-1811. Registration Requirements. (a) Except as otherwise provided in this chapter, no person or organization shall within the District receive, possess, have under his control, transfer, offer for sale, sell, give, or deliver any destructive device, and no person or organization shall, within the District possess or have under his or its control any firearm, unless such person or organization is the holder of a valid registration certificate for such firearm. In the case of an organization, a registration certificate shall be issued (1) only to an organization which has in its employ one or more commissioned special police officers or other employees licensed to carry firearms, and which arms such employees with firearms during such employees duty hours and (2) only to such organization in its own name and in the name of its president or the chief executive. (b) Subsection (a) shall not apply to—

(1) Any law enforcement officer or agent of the District or the United States, or any law enforcement officer or agent of the government of any State or subdivision thereof, or any member of the Armed Forces of the United States, the National Guard or Organized Reserves, when such officer, agent, or member is authorized to possess such a firearm or device while on duty in the performance of official authorized functions.

(2) Any person holding a dealer's license; Provided, That the firearm or destructive device is—(A) acquired by such person in the normal conduct of business; (B) is kept at the place described in the dealer's license; and (C) is not kept for such person's private use or protection, or for the protection of his business.

(3) With respect to firearms, any non-resident of the District participating in any lawful recreational firearm-related activity in the District, or on his way to or from such activity in another jurisdiction; Provided, That such person, whenever in possession of a firearm, shall upon demand of any member of the Metropolitan Police Department, or other bona fide law enforcement officer, exhibit proof that he is on his way to or from such activity, and that his possession or control of such firearm is lawful in the jurisdiction in which he resides: Provided further, that such weapon shall be unloaded, securely wrapped, and carried in open view.

Sec. 6-1812. Registration of certain firearms prohibited. No registration certificate shall be issued for any of the following types of firearms: (a) Sawed-off shotgun; (b) Machine gun; (c) Short-barreled rifle; (d) Pistol not validly registered to the current registrant in the District prior to September 24, 1976, provided, that the provisions of this subsection shall not apply to any organization which has in its employ one (1) or more commissioned special police officers or other employees licensed to carry firearms, and which arms such employees with firearms during such employees' duty hours.

Sec. 6-1813. Qualifications for registration—Information required for registration. [Contact local authorities for requirements] * * *

* * * * *

Sec. 6-1814. Time for filing registration applications. (a) An application for a registration certificate shall be filed (and a registration certificate issued) prior to taking possession of a firearm from a licensed dealer or from any person or organization holding a registration certificate therefor. In all other cases, an application for registration shall be filed immediately after a firearm is brought into the District. It shall be deemed compliance with the preceding sentence if such person personally communicates with the Metropolitan Police Department (as determined by the Chief to be sufficient) and provides such information as may be demanded: Provided, That such person files an application for a registration certificate within 48 hours after such communication. (b) Any firearm validly registered under prior regulations must be registered pursuant to this chapter in accord-

ance with procedures to be promulgated by the Chief. An application to register such firearm shall be filed pursuant to this chapter within 60 days of September 24, 1976.

* * * * *

Sec. 6-1818. Duties of Registrants. Each person and organization holding a registration certificate, in addition to any other requirements imposed by this chapter, or the Acts of Congress, shall: (a) notify the Chief in writing of: (1) the loss, theft, or destruction of the registration certificate or of a registered firearm (including the circumstances, if known) immediately upon discovery of such loss, theft, or destruction; (2) a change in any of the information appearing on the registration certificate or required by section 6-1813; (3) the sale, transfer or other disposition of the firearm not less than forty-eight hours prior to delivery, pursuant to such sale, transfer or other disposition, including: (A) identification of the registrant, the firearm and the serial number of the registration certificate; (B) the name, residence, and business address and date of birth of the person to whom the firearm has been sold or transferred; and (C) whether the firearm was sold or how it was otherwise transferred or disposed of. (b) Return to the Chief, the registration certificate for any firearm which is lost, stolen, destroyed, or otherwise transferred or disposed of, at the time he notified the Chief of such loss, theft, destruction, sale, transfer, or other disposition. (c) Have in his possession, whenever in possession of a firearm, the registration certificate for such firearm, and exhibit the same upon the demand of a member of the Metropolitan Police Department, or other law enforcement officer.

Subchapter IV—Licensing of Firearms Businesses

Sec. 6-1841. Prohibition of manufacturing—Exception—Dealer's license requirements.

(a) No person or organization shall manufacture any firearm, destructive device or parts thereof, or ammunition, within the District; Provided, That persons holding registration certificates may engage in hand loading, reloading, or custom loading ammunition for his registered firearms: Provided further, that such persons may not hand load, reload, or custom load ammunition for others.

(b) No person or organization shall engage in the business of selling, purchasing, or repairing any firearm, destructive device, parts therefor, or ammunition, without first obtaining a dealer's license, and no licensee shall engage in the business of selling, purchasing, or repairing firearms which are unregisterable under section 6-1812, destructive devices, or parts therefor, except pursuant to a valid work or purchase order, for those persons specified in section 6-1811(b)(1).

Sec. 6-1842. Qualifications for dealer's licenses—Application—fee.

(a) Any person eligible to register a firearm under this act, and who, if a registrant, has not previously failed to perform any of the duties imposed by this chapter; and, any person eligible under the Acts of Congress to engage in such business, may obtain a dealer's license, or a renewal thereof, which shall be valid for a period of not more than one year from the date of issuance. The license required by this chapter, shall be in addition to any other license or licensing procedure required by law.

(b) Each application for a dealer's license and each application for renewal thereof shall be made on a form prescribed by the Chief, shall be sworn to or affirmed by the applicant, and shall contain: [Contact local authorities for requirements] * * *

Sec. 6-1847. Display of firearms or ammunition by dealers—Security—Employees of dealers.

(a) No licensed dealer shall display any firearm or ammunition in windows visible from a street or sidewalk. All firearms, destructive devices, and ammunition shall be kept at all times in a securely locked place affixed to the premises except when being shown to a customer, being repaired, or otherwise being worked on.

(b) No licensee shall knowingly employ any person in his establishment if such person would not be eligible to register a firearm under this chapter.

Sec. 6-1848. Firearm markings. No licensee shall sell or offer for sale any firearm which does not have imbedded into the metal portion of such firearm a unique manufacturer's identification number or serial number, unless the licensee shall have imbedded into the metal portion of such firearm a unique dealer's identification number.

* * * * *

Subchapter V—Sale and Transfer of Firearms, Destructive Devices, and Ammunition

Sec. 6-1851. Sales and transfers prohibited. No person or organization shall sell, transfer or otherwise dispose of any firearm, destructive device or ammunition in the District except as provided in sections 6-1852 or 6-1875.

Sec. 6-1852. Permissible sales and transfers.

(a) Any person or organization eligible to register a firearm may sell or otherwise transfer ammunition or any firearm, except those which are unregisterable under section 6-1812, to a licensed dealer.

(b) Any licensed dealer may sell or otherwise transfer ammunition and any firearm or destructive device which is lawfully a part of such licensee's inventory to: (1) any nonresident person or business licensed under the Acts of Congress and the jurisdiction where such person resides or conducts such business; (2) any other licensed dealer; (3) any law enforcement officer or agent of the District or the United States when such officer or agent is on duty, and acting within the scope of his duties when acquiring such firearm, ammunition, or destructive device, if the officer or agent has in his possession a statement from the head of his agency stating that the item is to be used in such officer's or agent's official duties.

(c) Any licensed dealer may sell or otherwise transfer a firearm except those which are unregisterable under section 1812, to any person or organization possessing a registration certificate for such firearm: Provided, That if the Chief denies a registration certificate, he shall so advise the licensee who shall thereupon (1) withhold delivery until such time as a registration certificate is issued, or, at the option of the purchaser, (2) declare the contract null and void, in which case consideration paid to the licensee shall be returned to the purchaser; Provided further that this subsection shall not apply to persons covered by subsection (b).

(d) Except as provided in subsections (b) and (c), no licensed dealer shall sell or otherwise transfer ammunition unless (1) the sale or transfer is made in person; and (2) the purchaser exhibits, at the time of sale or other transfer, a valid registration certificate, or, in the case of a nonresident, proof that the weapon is lawfully possessed in the jurisdiction where such person resides; (3) the ammunition to be sold or transferred is of the same caliber or gauge as the firearm described in the registration certificate, or other proof in the case of nonresident; and (4) the purchaser signs a receipt for the ammunition which (in addition to the other records required under this chapter) shall be maintained by the licensed dealer for a period of one year from the date of sale.

(e) Any licensed dealer may sell ammunition to any person holding an ammunition collector's certificate on September 24, 1976; Provided, That the collector's certificate shall be exhibited to the licensed dealer whenever the collector purchases ammunition for his collection; Provided further that the collector shall sign a receipt for the ammunition, which shall be treated in the same manner as that required under subsection (d)(4) of this section.

Subchapter VI—Possession of Ammunition

Sec. 6-1861. Persons permitted to possess ammunition. No person shall possess ammunition in the District of Columbia unless: (a) He is a licensed dealer pursuant to

Subchapter IV; (b) He is an officer, agent, or employee of the District of Columbia or the United States of America, on duty and acting within the scope of his duties when possessing such ammunition; (c) He is the holder of a valid registration certificate for a firearm of the same gauge or caliber as the ammunition he possesses; or (d) He holds an ammunition collector's certificate on September 24, 1976.

Subchapter VII—Miscellaneous.

Sec. 6-1871. Securing mortgages, deposits, or pawns with firearms, destructive devices, or ammunition prohibited—Loan or rental of firearms, destructive devices, or ammunition prohibited. (a) No firearm, destructive device, or ammunition shall be security for, or be taken or received by way of any mortgage, deposit, pledge, or pawn. (b) No person may loan, borrow, give, or rent to or from another person, any firearm, destructive device, or ammunition.

Sec. 6-1872. Firearms required to be unloaded and disassembled or locked. Except for law enforcement personnel described in section 6-1811(b)(1), each registrant shall keep any firearm in his possession unloaded and disassembled or bound by a trigger lock or similar device unless such firearm is kept at his place of business, or while being used for lawful recreational purposes within the District of Columbia.

Sec. 6-1873. Firing ranges. [Contact local authorities for requirements] * * *

Sec. 6-1874. False information—forgery or alteration. (a) It shall be unlawful for any person purchasing any firearm or ammunition, or applying for any registration certificate or dealer's license under this chapter, or in giving any information pursuant to the requirements of this chapter, to knowingly give false information or offer false evidence of identity. (b) It shall be unlawful for anyone to forge or alter any application, registration certificate, or dealer's license submitted, retained or issued under this chapter.

Sec. 6-1875. Voluntary surrender of firearms, destructive devices, or ammunition—Immunity from prosecution—Determination of evidentiary value of firearms. (a) If a person or organization within the District voluntarily and peaceably delivers and abandons to the Chief any firearm, destructive device, or ammunition at any time, such delivery shall preclude the arrest and prosecution of such person on a charge of violating any provision of this chapter with respect to the firearm, destructive device, or ammunition voluntarily delivered. Delivery under this section may be made at any police district, station, or central headquarters, or by summoning a police officer to the person's residence or place of business. Every firearm and destructive device to be delivered and abandoned to the Chief under this section shall be unloaded and securely wrapped in a package, and, in the case of delivery to a police facility, the package shall be carried in open view. No person who delivers and abandons a firearm, destructive device, or ammunition under this section, shall be required to furnish identification, photographs, or fingerprints. No amount of money shall be paid for any firearm, destructive devices, or ammunition delivered and abandoned under this section. (b) Whenever any firearm, destructive device, or any ammunition is surrendered under this section or pursuant to section 6-1820(c)(1), the Chief shall inquire of the United States Attorney and the Corporation Counsel for the District whether such firearm is needed as evidence; Provided, That if the same is not needed as evidence, it shall be destroyed.

Sec. 6-1878. Construction Nothing in this chapter shall be construed, or applied to necessarily require, or excuse noncompliance with any provision of any Federal Law. This chapter and the penalties prescribed in section 6-1876, for violations of this chapter, shall not supersede but shall supplement all statutes of the District and the United States in which similar conduct is prohibited or regulated.

* * * * *

Florida

State Law

Fla. Stat. Ann

790.001 Definitions. The following words and phrases, when used in this chapter, shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this chapter, except where the context otherwise requires.

(1) "Antique firearm" means any firearm manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar early type of ignition system) or replica thereof, whether actually manufactured before or after the year 1898; and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(2) "Concealed firearm" means any firearm, as defined in subsection (6), when the same is carried on or about a person in such a manner as to conceal said firearm from the ordinary sight of another person.

(3) (a) "Concealed weapon" means any dirk, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or any other deadly weapon carried on or about a person in such a manner as to conceal said weapon from the ordinary sight of another person.

(b) "Tear gas gun," "chemical weapon" or "device" shall apply to all weapons of such nature except those designed to be carried in a woman's handbag or a man's pants or coat pocket or designed as a pocket pencil or pen and containing not more than one half (1/2) ounce of chemical.

(4) "Destructive device" means any explosive, incendiary, or poison gas bomb, grenade, mine, rocket, missile, or similar device; and includes any type of weapon which will, or is designed to or may readily be converted to, expel a projectile by the action of any explosive and has a barrel with a bore of one half inch or more in diameter and ammunition for such destructive devices, but not including shotgun shells or any other ammunition designed for use in a firearm other than a destructive device. "Destructive device" shall not include:

(a) A device which is not designed, redesigned, used, or intended for use as a weapon;

(b) Any device, although originally designed as a weapon, which is redesigned so that it may be used solely as a signaling, line-throwing, safety, or similar device;

(c) Any shotgun other than a short-barreled shotgun; or

(d) Any nonautomatic rifle (other than a short-barreled rifle) generally recognized or particularly suitable for use for the hunting of big game.

(5) "Explosive" means any chemical compound or mixture that has the property of yielding readily to combustion or oxidation upon application of heat, flame, or shock, including but not limited to dynamite, nitroglycerin, trinitrotoluene, or ammonium nitrate when combined with other ingredients to form an explosive mixture, blasting caps and detonators; but not including:

(a) Shotgun shells, cartridges or ammunition for firearms;

(b) Fireworks as defined in Sec. 791.01;

(c) Smokeless propellent powder or small arms ammunition primers, if possessed, purchased, sold, transported, or used in compliance with Sec. 552.241;

(d) Black powder in quantities not to exceed that authorized by chapter 552, or by any rules or regulations promulgated thereunder by the Department of Insurance, when used for or intended to be used for, the manufacture of target and sporting ammunition or for use in muzzleloading flint or percussion weapons.

The exclusions contained in paragraphs (a)–(d) shall not apply to the term "explosive" as used in the definition of "firearm" in subsection (6).

(6) "Firearm" means any weapon (including a starter gun) which will, or is designed to or may readily be converted to, expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" shall not include an antique firearm.

(7) "Indictment" means an indictment or an information in any court under which a crime punishable by imprisonment for a term exceeding one year may be prosecuted.

(8) "Law enforcement officer" means:

(a) All officers or employees of the United States or the State of Florida, or any agency, commission, department, board, division, municipality, or subdivision thereof, who have authority to make arrests;

(b) Officers or employees of the United States or the State of Florida, or any agency, commission, department, board, division, municipality, or subdivision thereof, duly authorized to carry a concealed weapon;

(c) Members of the armed forces of the United States, the organized reserves, state militia, or Florida National Guard, when on duty, when preparing themselves for or going to or from military duty, or under orders;

(d) An employee of the state prisons or correctional systems who has been so designated by the Department of Offender Rehabilitation or by a superintendent of an institution;

(e) All peace officers;

(f) All state attorneys and United States attorneys, and their respective assistants and investigators.

(9) "Machine gun" means any firearm, as defined herein, which shoots, or is designed to shoot, automatically or semi-automatically, more than one (1) shot, without manually reloading, by a single function of the trigger.

(10) "Short barreled shotgun" means a shotgun having one (1) or more barrels less than eighteen (18) inches in length and any weapon made from a shotgun (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than twenty-six (26) inches.

(11) "Short barreled rifle" means a rifle having one (1) or more barrels less than sixteen (16) inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than twenty-six (26) inches.

* * * * *

(13) "Weapon" means * * * tear gas gun, chemical weapon or device, or any other deadly weapon except a firearm or a common pocket knife.

(14) "Electric weapon or device" means any device which, through the application or use of electrical current, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury.

790.161 Making, possessing, * * * any destructive device * * *. A person who makes, possesses, * * * any destructive device, with intent to do bodily harm to any person or with intent to do damage to property; (1) shall be guilty of a felony * * *.

790.17 Furnishing weapons to minors under eighteen years of age, etc. Whoever sells, hires, barters, lends or gives any minor under eighteen years of age any pistol, * * * electric weapon or device or other arm or weapon, * * * without permission of the parent of such minor or the person having charge of such minor, or sells, hires, barters, lends or gives to any person of unsound mind an electric weapon or device or any dangerous weapon * * * is guilty of a misdemeanor of the first degree, punishable as provided in Sec. 775.082, Sec. 775.083, or Sec. 775.084.

790.18 Selling arms to minors by dealers. It is unlawful for any dealer in arms to sell to minors any pistol, springfield rifle or other repeating rifle, or electric weapon or device * * * and every person violating this section shall be guilty of a misdemeanor of the first degree, punishable as provided in Sec. 775.082 or Sec. 775.083.

790.221 Possession of short-barreled rifle, short-barreled shotgun or machine gun; penalty.

(1) It is unlawful for any person to own or to have in his care, custody, possession or control any short-barreled rifle, short-barreled shotgun, or machine gun which is, or may readily be made, operable, but this section shall not apply to antique firearms.

(2) Any person convicted of violating this section is guilty of a felony and upon conviction thereof shall be punished by imprisonment in the state penitentiary not to exceed five (5) years.

(3) Firearms in violation hereof which are lawfully owned and possessed under provisions of federal law are excepted.

COMPILER'S NOTE: Florida residents legally possessing short-barreled shotguns, short-barreled rifles or machine guns under federal law may transfer such weapons pursuant to 26 U.S.C. Section 5812 to another Florida resident; they would not come within the proscription of Section 790.221, Florida Statutes.

790.23 Felons; possession of firearms or electric weapons or devices unlawful; exception; penalty. (1) It is unlawful for any person who has been convicted of a felony in the courts of this state or of a crime against the United States which is designated as a felony or convicted of an offense in any other state, territory, or country punishable by imprisonment for a term exceeding 1 year to own or to have in his care, custody, possession, or control any firearm or electric weapon or device or to carry a concealed weapon, including all tear gas guns and chemical weapons or devices.

(2) This section shall not apply to a person convicted of a felony whose civil rights have been restored.

(3) Any person convicted of violating this section is guilty of a felony of the second degree, punishable as provided in Secs. 775.082, 775.083 and 775.084.

Alachua County

Section 1: Handgun means any weapon commonly referred to as a pistol, other than a BB gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive.

Section 2: No retail establishment or pawn shop shall sell or deliver a handgun to any purchaser until three (3) complete days have elapsed after application to purchase has been made.

Section 3: No wholesale establishment shall sell or deliver a handgun to any purchaser except to another wholesale establishment or retail establishment until three (3) complete days have elapsed after application to purchase has been made.

Section 4: It shall be unlawful for anyone to purchase a handgun from any establishment mentioned in Sections 2 and 3 hereof without a valid application hereinafter provided for.

Section 5: All sales and deliveries of handguns except as provided in Section 3 hereof shall require an approved application form to be filed with the seller by applicant. Applications for the purchase of handguns shall be available only in the office of the Sheriff of Alachua County, Florida. * * *

* * * * *

Before the sale or delivery of a handgun within Alachua County, the Seller shall be required to receive from buyer the copy of the approved application. Should the seller determine or have reason to believe that the application has been forged or contains false information, he shall make no sales based thereon but shall immediately report such information to the Sheriff's Office for further investigation.

* * * * *

Section 9: Antique firearms as defined in Section 790.001(1), Florida Statutes, are exempt from the provisions hereof.

Bal Harbour

Sec. 12-17. Weapons—Pistols, etc.; notice of intention to obtain. (a) It shall be unlawful to purchase, acquire or receive delivery of

any pistol or revolver of any description without first filing a notice of such intention with the chief of police and giving information concerning his name, residence, a full description of such firearm and the name and address of the person from whom such firearm will be obtained.

Sec. 12-18. Same—Sale in violation of section 12-17. It shall be unlawful to sell, barter, exchange or deliver, or cause to be delivered, any revolver or pistol to any other person, without having previously obtained the registration certificate described in section 12-17 from the person seeking actual delivery of such firearm and, upon receipt of such certificate, shall report to the chief of police within twenty-four (24) hours thereafter the serial number of such revolver or pistol and the name and address of the person to whom it is delivered.

Bay Harbor Islands

Article II. Firearms and Other Weapons

Sec. 14.20. Attempting to use or possessing certain weapons prohibited. A person * * * who, with intent to use the same unlawfully against another, carries or possesses a * * * machine gun, sawed-off shotgun, bomb or bombshell, or any explosive substance, or any other dangerous or deadly instrument, or weapon, except a rifle or shotgun not sawed off, is guilty of a misdemeanor. Possession shall include but not be limited to in a person's house or in his automobile.

Belle Glade

17-40. Weapons—Procedure for acquiring. (a) It is unlawful for any person to purchase, acquire or receive delivery of any pistol or revolver of any description unless he has first filed a notice of intent to acquire same with the chief of police.

(c) It is unlawful for any person to sell, barter, exchange or deliver, or cause to be delivered, any revolver or pistol to any other person without having previously obtained the registration certificate * * * from the person seeking actual delivery of such firearm * * *

Boynton Beach

Sec. 17-50. [Weapons]—Sale, purchase from, furnishing to persons under influence of drugs, alcohol, etc.; minors. It shall be unlawful for any person to purchase from, sell, loan or furnish any weapon in which any explosive substance can be used, to any person under the influence of alcohol or any narcotic drug, stimulant or depressant, or to any person in a condition of agitation and excitability, or to a minor.

Brooksville

Sec. 15-32. [Minors]—Sale of weapons to. It shall hereafter be unlawful for any person to sell, barter, lend, give, or deliver any pistol, dirk, or other deadly weapon to any minor under seventeen (17) years of age.

It shall further be unlawful for any person to sell, barter, lend, give or deliver any pistol, dirk, or other deadly weapon to any minor between the ages of seventeen (17) and twenty-one (21) years of age without the express written approval of one of the parents or legal guardian of such a minor.

Bushnell

State laws adopted by Ordinance no. 0-76-2.

Clearwater

13-32. Buying or receiving goods from minors. It shall be unlawful for any person conducting an auction house, or for any pawnbroker, junk dealer or secondhand dealer to loan money to or buy or receive from any minor any goods, chattels or other article of personal property; provided, however, this section shall not apply to any minor who has in his possession the written consent to the proposed transaction signed by a parent or guardian, nor shall it apply to any minor whose disabilities of nonage have been removed as provided by law.

13-34. Chapter applies to guns, pistols, etc. All the provisions herein provided for receiving, registering, reporting, holding and disposing of personal property generally shall specifically apply to pistols, guns and firearms of all kinds.

Cocoa Beach

Sec. 15-35. (Weapons)—Sale, loans, etc., to intoxicated persons, etc. It shall be unlawful for any person to sell, loan or furnish any gun, pistol or other firearm in which any explosive substance can be used, to any person whom he knows or has reasonable cause to believe is under the influence of alcohol or any narcotic, drug, stimulant, or depressant, or who is of unsound mind, or who is a member of any subversive organization.

Coral Gables

Section 20-15. Firearms—Sale. (a) Definition. The word "firearm" as used in this ordinance shall be construed to mean any revolver, pistol, auto-loading pistol, any modified shotgun or rifle having an overall length of less than 26 inches, rifles having barrels less than 16 inches, and shotguns having a barrel length of less than 18 inches, machine guns, sub-machine guns and machine pistols or any fully automatic weapon capable of firing more than one shot at each pull of the trigger. This ordinance shall not apply to any antique weapon with flint or percussion ignition using only black powder, or to modern replicas of such weapons, or to antique rifles using ammunition which is no longer manufactured or commercially sold.

(b) Applications. Any person desiring to purchase, receive, lease, loan, rent, give or make any other transfer of custody of a firearm shall be required to give the seller or the person from whom the firearm is to be obtained, in writing, on a form to be supplied by the Chief of Police, a statement in duplicate containing true and correct information which shall include the following:

* * * * * *

(c) Restrictions. It shall be unlawful for any person knowingly and willfully to sell, lend, lease, rent, give or deliver any firearm to any person under the age of twenty-one (21) years unless accompanied by a parent or guardian, in which event, both the minor and the parent or guardian shall be required to fill out the application form, as provided in Section 20-15 (b) hereof.

It shall be unlawful for any person to sell, loan, give, furnish or transfer any firearm or any ammunition therefor to any person whom the seller knows or has reasonable cause to believe is under the influence of intoxicating liquor, narcotic, drugs, stimulants, depressants, barbiturates or hallucinogens; or is addicted to any narcotic, drug or barbiturate or hallucinogens; or is a habitual alcoholic; or is of unsound mind; or has been convicted of a felony; or is a fugitive from justice; or is a member of a subversive organization. In addition to all other penalties, violations of Section 20-15 shall be grounds for revocation of any license to sell firearms issued by the City to such violator.

(d) Applicability. The provisions of Section 20-15 shall apply to persons in the firearms business or in the business of gunsmithing, and do not apply to (1) sales or trades by an unlicensed person to a person licensed hereunder, nor to (2) isolated sales, transfers, or trades between unlicensed persons who are not engaged in the firearms business or in the business of gunsmithing.

Section 20-16. Firearms—License required for sale: Qualifications; Application; Credit Report; F.B.I. Reports. Occupational licenses permitting the sale or distribution of firearms shall be issued only to persons of good moral character, who have not been convicted of any offense involving moral turpitude, and who are over twenty-one (21) years of age. Licenses to corporations

shall be issued only when all directors, officers and managers of unit qualify as above.

* * * * *

Section 20-16. 1 Firearms—Waiting Period Required; Investigation. (a) Dealers or persons licensed to sell firearms shall, before selling, lending, renting, leasing, giving, delivering or transferring custody of any firearm, maintain a permanent record of one copy of the registration or application and shall forward the other copy, after first inserting the serial number of such firearm (make, model, barrel length, caliber, type, finish) to the Chief of Police by first class mail, not later than twenty-four (24) hours after the close of the business day in which the transaction took place. No firearm shall be delivered to any person until seventy-two (72) hours after sale or deposit, or notification of intent to purchase is received.

(b) Delivery of firearm may be made after a twenty-four (24) hour waiting period, only under the circumstances and to those persons listed below:

1. Applicant must furnish any United States of America, State of Florida, County, or municipal I.D. card as a condition precedent to issuance, and must be fingerprinted and photographed by the issuing authority and the applicant's photo affixed as a part of said I.D. card. The above shall be on an approved list promulgated by the Chief of Police.

2. Applicant must furnish a positive identification card to which a fingerprint and photograph are attached.

(c) The following shall be exempt from either the seventy-two (72) hour or twenty-four (24) hour waiting period required:

1. Wholesale dealers who have valid state, county and/or municipal licenses in their business intercourse with retail dealers for the sale of firearms; retail dealers who have valid state, county and/or municipal licenses in their business intercourse with other retail dealers for the sale of firearms; wholesale or retail dealers in the regular or ordinary transportation of unloaded firearms, merchandise by mail, express or other mode of shipment, to points outside the city, nor to sales or transfer of firearms that do not use a self-containing cartridge.

2. Purchasers who have been issued pistol or revolver permits by any governmental agency (United States of America, State of Florida, county or municipal) as special police officers. The applicant must present an I.D. card from the issuing authority.

Whenever an identification card is utilized for the waiver of the seventy-two (72) hour or twenty-four (24) hour waiting period, as set forth in the foregoing provisions of this ordinance, the following information shall be imprinted on the application: The issuing agency or authority; The card number; The name and address identical to that on the card.

3. Persons who are on record with a Police Department in Dade County as having previously purchased a pistol, revolver or firearm as defined in Section 20-15 (a) hereof.

4. Persons trading an operable pistol, revolver or firearm, as defined in Section 20-15 (a), for another similar operable pistol, revolver or firearm.

(d) The provisions of Section 20-16 shall not apply to gun shows, conferences or conventions which are staged by a duly recognized non-profit state or national organization.

Dade City

Sec. 15-28. Prohibitions and restrictions as to possession, discharge, use by minors and carrying concealed weapons.

(a) It shall be unlawful for any person to have within the corporate limits of the city any machine gun, shotgun having a barrel of less than twenty inches in length, any firearm equipped with a silencer, * * * except a pistol or revolver when a permit to carry the same has been received from the chief of police of said city.

(b) It shall be unlawful for any minor under the age of sixteen years to possess any of the weapons described in subparagraph (a) above * * *

Sec. 15-29. Selling to minors. It shall be unlawful to sell to any minor, within the limits of the city any pistol, revolver or other pocket firearm. The word "pistol", as used in this chapter, shall be held to include pocket sized mechanical devices designed for or capable of exploding or firing blank shells or cartridges, whether classed or sold as toys or otherwise, * * *.

Dade County

Sec. 21-7. Sale of firearms to. [Minors]. It shall be unlawful for any person to sell or offer for sale, barter or exchange, or offer to barter of exchange to or with any minor under the age of twenty-one years any pistol or other firearm capable of inflicting bodily harm except upon written parental consent.

* * * * *

Sec. 21-16. Sale, loan, etc., weapons to intoxicated persons, etc. It shall be unlawful for any person to sell, loan or furnish any firearm as defined in section 21-20.1(a) to any person whom he knows or has reasonable cause to believe is under the influence of alcohol or any narcotic, drug, stimulant, or depressant, or who is of unsound mind, or who is a member of any subversive organization.

* * * * *

Sec. 21-19.1. Sale of Saturday night specials in Dade County prohibited. It shall be unlawful for any person to sell or otherwise transfer any Saturday night special as defined in section 21-20.1(h) or offer or expose for sale or transfer any such Saturday night special.

(a) Notwithstanding the foregoing provisions of this section, the sale of Saturday night specials to law enforcement agencies or for authorized military use shall not be subject to the limitations herein set forth.

(b) This section shall not apply to wholesale dealers in their business intercourse with retail dealers nor to retail dealers in their business intercourse with other retail dealers nor to wholesale or retail dealers in the regular or ordinary transportation of unloaded firearms, merchandise by mail, express or other mode of shipment, to points outside the country, nor to sales or transfer of firearms that do not use a self-containing cartridge.

Sec. 21-20. Registration of sales and transfers required; penalty. (a) Register. Every person engaged in the business of selling, leasing, or otherise transferring firearms as defined in section 21-20.1(a), of the size capable of being concealed on the person, whether such seller, lessor or transferor is a retail dealer, pawnbroker, or otherwise, shall keep a register * * *

(b) Purchaser and seller to sign. The person to whom such firearm is sold, leased or otherwise transferred shall sign and the dealer shall require him to sign his name and affix his address to the register in duplicate and the salesman shall affix his signature in duplicate as a witness to the signature of the person to whom such firearm is sold, leased or transferred.

(c) Waiting period required for handgun. The person to whom such handgun is sold, leased or otherwise transferred shall wait, and the dealer shall require him to wait, a period of seventy-two (72) hours prior to such person acquiring possession of such handgun.

* * * * *

(e) Exceptions. This section shall not apply to wholesale dealers in their business intercourse with retail dealers nor to retail dealers in their business intercourse with other retail dealers, nor to wholesale or retail dealers in the regular or ordinary transportation of unloaded firearms, merchandise by mail, express or other mode of shipment, to points outside the county, nor to sales or transfer of firearms that do not use a self-containing cartridge.

Sec. 21-20.1. Definitions. (a) The word "firearm" as used in this division shall be construed to mean any firearm, weapon, revolver, pistol, autoloading pistol, modified rifle or shotgun, or any similar mechanism by whatever name known, which is designed to expel a projectile through a gun barrel by the action of any explosive, having the size, length or dimensions which make it capable of being concealed upon the person, and originally designed or altered to be used by one hand and having a barrel length of less than

sixteen (16) inches, and an overall length of less than twenty-six and one-half (26 1/2) inches, but the word firearm shall not be construed to mean guns that do not use self-contained cartridges.

(b) The term "Saturday Night Special" shall mean any firearm which is 32 caliber or smaller, whose barrel is less than three (3) inches, except those whose frame is an investment cast or forged steel, or investment cast or forged high tensile alloy.

(c) The word "sale" includes transfer, assignment, pledge, lease, loan, barter, or gift.

Sec. 21-20.2. License—Required to sell. (a) It shall be unlawful for any person who, without being licensed as provided in this act [chapter], to engage in the business of selling or otherwise transferring any handgun or to advertise for sale, or offer or expose for sale or transfer any handgun defined in section 21-120.1(a) or to engage in the business of repairing handguns. This section applies to persons in the firearms business or in the business of gunsmithing, and does not apply to: (1) Sales or trades by an unlicensed person to a person licensed hereunder, nor to (2) Isolated sales, transfers or trades between unlicensed persons who are not engaged in the firearms business or in the business of gunsmithing.

(b) The provisions of this section shall not apply to gun shows, conferences or conventions which are staged under the auspices of a duly recognized nonprofit state or national organization.

Sec. 21-20.4.1. Demonstration of knowledge of county, state and federal laws applicable to sale of firearms required. As part of the application procedure for a license to sell firearms, the Dade County Commission shall set up two (2) different type licenses. The first license shall be described as the dealer license, which shall be issued to the owner, corporation, or partner, or general manager; and the employee license, which shall be issued to any employee who is engaged primarily in retail sale of firearms. * * * (T)he applicant, whether he be a dealer or employee, shall have to show his knowledge of federal, state and Dade county laws by a (test) * * *.

Sec. 21-20.6. Issuance of license. (a) Upon completion of the following: (1) An investigation showing the statements on the application to be true; and (2) The taking and passing of the required written examination on gun control laws and applicable to the sale of firearms in Dade County; the county commission shall inquire into the good character, competency and integrity of the applicant. If the commission is satisfied as to the applicant's good character, compentency and integrity, a license to sell shall be issued to the applicant within thirty (30) days of application, and the committee should also assign a permanent license number to each applicant.

(b) No license may be issued to any person who has been convicted of a felony in this state or elsewhere or who is under eighteen(18) years of age.

(c) No license may be issued solely in the name of a corporation, firm, partnership, company or other fictitious entity, but the corporate name may be listed on the license.

* * * * *

Sec. 21-20.8. Conditions; revocation. (A) A license issued in accordance with the provisions of this division is subject to the following conditions, for breach of any of which the license is subject to revocation: * * *

(4) No handgun shall be delivered:

(a) Until seventy-two (72) hours after the sale has been completed, unless the purchaser is the possessor of a valid license to carry firearms issued within the state, which license to carry shall be displayed at time of sale, except where an operable firearm is traded for another operable firearm as defined in section 21-20.8 of this chapter.

(b) Unless the purchaser is either personally known to the licensee, or presents conclusive evidence of his identity, proper identification as required by Omnibus Crime Bill of 1968, said evidence to be noted on the sales record.

(c) Unless the delivery is made to the identical individual who has purchased the firearm, by proof of dealer receipt.

(d) The provisions of this section shall not apply to duly employed federal, state, county or municipal law enforcement officers.

* * * * *

Sec. 21-20.13. Sale of firearm with serial number defaced prohibited. It shall be unlawful to sell any firearm whose serial number has been altered, changed, disfigured or defaced.

Sec. 21-20.14. Sale or delivery of firearms or ammunition to certain classes of persons. It shall be unlawful to sell or deliver any firearm or any ammunition therefor to any person who the seller has reasonable grounds to believe is under the influence of intoxicating liquor, narcotic drugs or barbiturates, or hallucinogens, or is addicted to the use of any narcotic drug or barbiturate, or hallucinogens, or is a habitual alcoholic, or is of unsound mind; or has been convicted of a felony; or is a fugitive from justice; or is a member of a subversive organization.

Sec. 21-20.16. Handgun purchaser's instruction and qualification procedure. (a) Instruction and qualification procedure required. It shall be unlawful for any person to acquire a handgun in Dade County from a licensed dealer, unless such person has received safety instruction and otherwise qualified * * *.

* * * * *

(e) Exceptions. This section shall not apply to:

(1) Law enforcement officers or agents of any state of the United States, or any political subdivision, municipal corporation, department or agency of either, members of the organized militia of any state or the armed forces of the United States, or law enforcement officers of any political subdivision, municipal corporation, department or agency of either, while engaged in the discharge of their official duties.

(2) Wholesale dealers in their business intercourse with retail dealers or retail dealers in their business intercourse with other retail dealers or to wholesale or retail dealers in the regular or ordinary transportation of any unloaded firearms, merchandise by mail, express or other mode of shipment to points outside the country.

(3) Nonresidents of the United States having proper authorization from his or her consulate, acting consulate, commercial attache, or such other authorized representative.

(4) This section applies to persons in the firearms business or in the business of gunsmithing, and does not apply to:

(a) Sales or trades by an unlicensed person to a person licensed hereunder, nor to

(b) Isolated sales, transfers or trades between unlicensed persons who are not engaged in the firearms business or in the business of gunsmithing.

(5) The provisions of this section shall not apply to gun shows, conferences or conventions which are staged under the auspices of a duly recognized nonprofit, state or national organization.

Sec. 21-20.17. Unlawful to sell handguns to persons who have not qualified. (a) It shall be unlawful for a licensed dealer to sell, deliver, transfer, or furnish any handgun to any person in Dade County unless the purchaser has qualified under section 21-20.16, or

(b) Unless the purchaser exhibits evidence that he is exempt from the requirements of section 21-20.16(b). Every person who is convicted for violation of this section, shall be punished as provided in section 21-20.15 of this Code.

Dania

Sec. 20-15. Misdemeanors recognized by law of Florida, forbidden. It shall be unlawful to commit within the city any act which shall be recognized by the laws of the state as a misdemeanor and the commission of such act is forbidden. Violation of any such act shall upon conviction be punished as provided by section 1-8 of this Code. (*Note: The State laws that are recognized include Chapter 790, Weapons and Firearms, Sections 790.001—790.26.*)

Davie

237-2. It shall be unlawful to sell, hire, barter, lend or give any minor under sixteen

(16) years of age any gun, rifle, pistol or other arm or weapon * * * without permission of the parent of such minor or the person having charge of such minor.

De Land

21-21. Weapons—Allowing minors or habitual drunkards to obtain firearms. No person shall sell, give, lend or otherwise place in the possession of any minor or habitual drunkard, any pistol, revolver or other weapon which may be concealed on the person.

21-25. Same—Machine guns. It shall be unlawful for any person to possess, use, keep or store any machine gun, sub-machine gun or similar firearm within the city. The provisions of this section shall not apply to the United States Army, Navy, National Guard or any duly constituted and authorized law enforcement officer of the United States government, the State of Florida, or the city and any private corporation that receives clearance from the proper division of the United States Treasury Department to transport Class II weapons, which includes machine guns.

Dunedin

15-35. Same—Registration of small arms required. It shall be unlawful for any person to own, possess, carry or otherwise have control of any .22 rifle, air rifle, air pistol or other similar device, in the city, unless first the ownership thereof be registered within the city.

15-37. Change of ownership. All changes of ownership or possession shall be registered in the same manner as provided in section 15-36.

El Portal

Sec. 12-17. Weapons—Sale, etc., to minors prohibited. It shall hereafter be unlawful for any person to sell, barter, lend, give, or deliver any pistol, dirk, or other deadly weapon to any minor under seventeen (17) years of age.

Sec. 12-18. Same—Approval of parent or guardian, when required. It shall hereafter be unlawful for any person to sell, barter, lend, give or deliver any pistol, dirk, or other deadly weapon to any minor between the ages of seventeen (17) and twenty-one (21) years of age without the express written approval of one of the parents of such a minor or legal guardian.

Eustis

Ordinance 144

Section 13.30 Weapons. * * * (e) Sales to Intoxicated Persons and Minors. It shall be unlawful for any person to purchase from or sell, loan or furnish any weapon in which any explosive substance can be used, to any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to a minor under the age of 18 years.

(f) Records Required. It should be unlawful for any secondhand dealer, pawnbroker, or other person engaged in the sale, rental, or exchange of any weapons described in sub-sections (a) and (d) above [pistol, revolver, or other firearm, with a barrel less than 12 inches in length] to sell, rent or exchange any such weapons unless he shall keep a record of each such weapon purchased, sold, rented or exchanged at retail.

(f-1) Time of Recordation. The record required herein shall be made at the time of the transaction, in a book kept for that purpose [contact local authorities for required contents] * * *

(f-2) Report to Chief of Police. Every secondhand dealer, pawnbroker, or other person engaged in the sale, rental, or exchange of any weapons described in sub-sections (a) and (d) above shall deliver daily reports to the Chief of Police of every such purchase, sale, loan or gift. The report shall be on forms provided by the Chief of Police * * *.

Everglades

Ordinance No. 1974-3 adopts Florida statutes.

Fernandina Beach

Sec. 15-19. (Weapons)—Concealable on person; permit required. It shall be unlawful for any person to purchase or acquire any pistols, revolvers or firearms which may be concealed upon the person without first having obtained from the chief of police of the city a written permit therefor.

Sec. 15-20. (Weapons)—Display of permit prerequisite to purchase. Each person to whom any pistol, revolver or firearm which may be concealed upon the person is sold or otherwise disposed of, shall first display his permit duly and properly signed by the chief of police of the city showing his authority and right to purchase or acquire such firearm * * *

Sec. 15-21. (Weapons)—Registration with police. Each person who owns or has in his or her possession any pistols, revolvers or firearms which may be concealed upon the person shall immediately register the same with the chief of police of the city and obtain a written permit therefor as is required and set forth in section 15-19.

Florida City

Sec. 11-3. Sale, etc., of deadly weapons to minors prohibited.

(a) It shall be unlawful for any person to sell, barter, lend, give or deliver any pistol * * * to any minor under seventeen (17) years of age.

(b) It shall be unlawful for any person to sell, barter, lend, give or deliver any pistol * * * to any minor between the ages of seventeen (17) and twenty-one (21) years of age without the express written approval of one of the parents or legal guardian of such a minor.

Fort Pierce

Sec. 19-50. Same—Permit of purchasers required. (a) It shall be unlawful for any person to purchase, give away or sell any pistol, revolver, one-hand firearms, * * * within the corporate limits of the city, unless and until a permit shall have first been obtained from the chief of police of the city by the person to whom such articles are to be sold or delivered.

Fruitland Park

Florida state law adopted by ordinance.

Gainesville

18-37.1 Sale or transfer of certain firearms.

A. Sale or Transfer of Handguns Prohibited. It shall be unlawful for any person to sell or transfer, or offer or expose for sale or transfer, any "handgun" which does not meet the minimum standards provided by this Ordinance.

B. Definitions.

1. "Handgun" means any pistol, revolver, or other firearms, having a barrel not exceeding twelve (12) inches in length, measured by the insertion thereof of a rod with the receiver or slide closed, but does not include handguns designed and safe only for use with black powder.

2. "Firearm" means any weapon, including a handgun, by whatever name known, or the barrel, receiver, or any part of the firing mechanism of such weapon which is designed to eject or propel a projectile by the action of an explosive or combustible propellant, but does not include inoperable firearms which cannot be rendered operable.

3. "Saturday Night Specials" means any handgun which shall not meet the minimum criteria so set forth in Section B-7 herein.

4. "Sale or Transfer" means any sale, transfer assignment, pledge, lease, loan, barter, or gift.

5. "Firearms Dealer" means any person, firm or corporation regularly engaged in the business of selling or trading firearms or ammunition at wholesale or retail within the limits of the City of Gainesville whether as the principal business of such person, firm or corporation, or in addition thereto.

6. "Antique Firearms" means any firearm manufactured in or before the year 1898; and any replica of any such firearm if such replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; or uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

7. "Minimum Standards" means any handgun with a barrel, cylinder, slide or breech block that is manufactured of a material that has a minimum melting temperature of 800 degrees Fahrenheit and a minimum ultimate tensile strength of 55,000 pounds per square inch.

8. "Licensed Firearms Collectors" means any person who acquires, holds, or disposes of firearms or ammunition as curios or relics and who is licensed as a collector under the provisions of United States Code, Title 18, Section 923.

C. Proof of Meeting Minimum Standards. It shall be required of firearms dealers to furnish the City Manager with proof that the minimum criteria are met by the handgun to be sold prior to sale by said dealer. * * *

D. Exceptions.

1. This ordinance shall not apply to sales or transfers to law enforcement agencies, or sales or transfers for authorized military use.

2. This ordinance shall not apply to wholesale dealers in their business intercourse with retail dealers nor to retail dealers in their business intercourse with other retail dealers nor to wholesale or retail dealers in the regular or ordinary transportation of unloaded firearms, merchandise by mail, express or other mode of shipment, to points outside the country, nor to sales or transfer of firearms that do not use a self-containing cartridge.

3. This ordinance shall not apply to sales or transfer of "antique firearms".

4. This ordinance shall not apply to sales or transfer between "licensed firearms collectors".

Sec. 18-40. Same—Sale to minors. It shall be unlawful for any person to sell to any minor within the corporate limits of the city, a pistol, gun or other weapon shooting a cartridge.

Glen Ridge

Local ordinance incorporates, by reference, Florida State Criminal Code.

Greenacres

Florida state law adopted by ordinance.

Sec. 18-38. State Misdemeanors. No person shall commit, within the town, any act which is or shall be recognized by the laws of the state as a misdemeanor.

Green Cove Springs

11-8. [Firearms]—Permit for sale. It shall be unlawful for any person to sell to any person any such pistols, revolvers, firearms which may be concealed upon the person or rifles of a caliber larger than .22 caliber without first having obtained a permit in writing from the chief of police or mayor of the city approving such sale to such person, which permit shall be kept by such person, on file for inspection by city officials for a period of one year from the date of such sale or other disposition.

11-9. * * *—Sale to minor, incompetent. No person shall sell, give, lend or otherwise place in the possession of any minor, known habitual drunkard or known incompetent any pistol, revolver, firearm which may be concealed upon the person or rifle of a caliber larger than .22 caliber.

Gretna

13-3. Sale or transfer of certain firearms. (a) It shall be unlawful for any person to sell or transfer, or offer or expose for sale or transfer, any "handgun" which does not meet the minimum standards provided by this chapter.

13-4. Definitions.

Handgun means any pistol, revolver, or other firearms, having a barrel not exceeding twelve (12) inches in length, measured by the insertion thereof of a rod with the receiver or slide closed, but does not include handguns designed and safe only for use with black powder.

Firearm means any weapon, including a handgun, by whatever name known, or the barrel, receiver, or any part of the firing mechanism of such weapon which is designed to eject or propel a projectile by the action of an explosive or combustible propellant, but does not include inoperable firearms which cannot be rendered operable.

Saturday night specials means any handgun which shall not meet the minimum criteria as set forth in this section.

Sale or transfer means any sale, transfer, assignment, pledge, lease, loan, barter or gift.

Firearms dealer means any person, firm or corporation regularly engaged in the business of selling or trading firearms or ammunition at wholesale or retail within the limits of the town whether as the principal business of such person, firm or corporation, or in addition thereto.

Antique firearms means any firearms manufactured in or before the year 1898; and any replica of any such firearm if such replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; or uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

Minimum standards means any handgun with a barrel, cylinder, slide or breech block that is manufactured of a material that has a minimum melting temperature of eight hundred (800) degrees Fahrenheit and a minimum ultimate tensile strength of fifty-five thousand (55,000) pounds per square inch.

Licensed firearms collectors means any person who acquires, holds, or disposes of firearms or ammunition as curios or relics and who is licensed as a collector under the provisions of United States Code, Title 18, Section 923. * * *

13-5(d) Exceptions.

(1) This section shall not apply to sales or transfers to law enforcement agencies, or sales or transfers for authorized military use.

(2) This section shall not apply to wholesale dealers in their business intercourse with retail dealers nor to retail dealers in their business intercourse with other retail dealers nor to wholesale or retail dealers in the regular or ordinary transportation of unloaded firearms, merchandise by mail, express or other mode of shipment, to points outside the country, nor to sales or transfer of firearms that do not use a self-containing cartridge.

(3) This section shall not apply to sales or transfer of "antique firearms."

(4) This section shall not apply to sales or transfer between "licensed firearms collectors." * * *

13-7. Sale to minors.

(a) It shall be unlawful for any person to sell to any minor within the corporate limits of the town, a pistol, gun or other weapon shooting a cartridge.

(b) For the purposes of this section, a "pistol, gun or other weapon shooting a cartridge" shall include toy pistols designed to shoot a blank cartridge and any weapon so designed that by explosive force a bullet may be propelled from it.

Hallandale

Sec. 11A-1. Definitions. For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Firearm. Any firearm, weapon, revolver, pistol, autoloading pistol, modified rifle or

shotgun, or any similar mechanism by whatever name known, which is designed to expel a projectile through a gun barrel by the action of any explosive, having the size, length or dimensions which make it capable of being concealed upon the person, but the word "firearm" shall not be construed to mean guns that do not use self-contained cartridges.

Sale. Includes transfer, assignment, pledge, lease, loan, barter or gift.

Sec. 11A-2. License to sell—Required. (a) It shall be unlawful for any person who, without being licensed as provided in this chapter, to engage in the business of selling or otherwise transferring any firearm, or to advertise for sale, or offer or expose for sale or transfer any firearm defined in section 11A-1, or to engage in the business of repairing firearms or in the business of gunsmithing. This section applies to persons in the firearms business or in the business of gunsmithing, and does not apply to (1) sales or trades by an unlicensed person to a person licensed hereunder, nor to (2) isolated sales, transfers or trades between unlicensed persons who are not engaged in the firearms business or in the business of gunsmithing.

(b) The provisions of this section shall not apply to gun shows, conferences or conventions which are staged under the auspices of a duly recognized nonprofit, state or national organization.

Sec. 11A-3. Same—By whom granted. The city commission may grant licenses in the form prescribed by the city commission permitting the licensee to sell such firearms within the city on the premises named therein.

Sec. 11A-7. Same—Conditions. (4) No firearm shall be delivered:

(a) Until twenty-four hours after the sale has been completed, unless the purchaser is the possessor of a valid license to carry firearms issued within this state, which license to carry shall be displayed at time of sale, except where an operable firearm is traded for another operable firearm as defined in section 11A-1.

(b) Unless the purchaser is either personally known to the licensee, or presents conclusive evidence of his identity such evidence to be noted on the sales record.

(c) Unless the delivery is made to the identical individual who has purchased the firearm.

(d) The provisions of this section shall not apply to duly employed federal, state, county or municipal law enforcement officers.

Sec. 11A-11. Sales to certain persons prohibited. It shall be unlawful to sell or deliver any firearm or any ammunition therefor to any person who the seller has reasonable grounds to believe is under the influence of intoxicating liquor, narcotic drugs or barbiturates, or hallucinogens, or is addicted to the use of any narcotic drug or barbiturate, or hallucinogens, or is an habitual alcoholic, or is of unsound mind, or has been convicted of a felony, or is a fugitive from justice, or is a member of a subversive organization.

Haverhill

Sec. 6-1. Permit for purchase or sale or gift of certain weapons—Required. It shall be unlawful for any person to purchase, give away or sell any pistol, revolver, one-hand fire-arms * * * or other similar equipment used primarily by police officers, within the corporate limits of the Town of Haverhill, Florida, unless and until a permit shall have first been obtained from the Town Marshal of the town by the person to whom such article is to be sold or delivered.

Sec. 6-10. Permit for sale, possession, etc. of tear gas—Required. Before any person shall possess, purchase, sell, distribute or dispose of any tear gas or tear gas weapons within the Town, such person shall apply to the Town Marshal of the Town for a permit so to do.

Hialeah

21-31. * * *—Weapons, unlawful to distribute to. It shall hereafter be unlawful for any person to sell, barter, lend, give or deliver any pistol * * * or other deadly weapon to any minor under seventeen years of age; or to sell, barter, lend, give or deliver any pistol * * * or other deadly weapon to any minor between the ages of seventeen and twenty-one years of age without the express written approval of one of the parents of such a minor, or the legal guardian of such minor.

* * * * *

21-42. Same—Sales to minors under eighteen. No gun, revolver, pistol, cannon or firearm of any description shall be sold or given to anyone under the age of eighteen years.

21-44. Same—Blank cartridges and pistols. No blank cartridges or blank cartridge pistols shall be kept in stock or sold in the city.

Hollywood

Sec. 19-43. Firearms and ammunition—Defined.

Ammunition. All pistol or revolver ammunition, shotgun shells, metallic ammunition suitable for uses in rifles or any .22 caliber rimfire ammunition. No distinction shall be recognized between new and reloaded ammunition.

Firearms. Any weapon, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosive.

Firearms and ammunition dealers licenses. Any person engaged in the business of selling new or used firearms or ammunition or cartridge cases, primers, bullets or propellant powder, at wholesale or retail, and shall include pawnbrokers, or any person engaged in the business of repairing such firearms or manufacturing or fitting special barrels, stocks, trigger mechanisms or breech mechanisms to firearms.

(a) All firearms and ammunition dealers shall obtain a firearms and ammunition dealer's license; * * *.

(b) All applications for a dealer's license shall be approved by the chief of police * * *.

(c) All persons associated with such dealer shall be required to have a police I.D. card.

Homestead

Sec. 24-8. Sale of firearms to. No gun, revolver, pistol, cannon or firearm of any description shall be sold or given to anyone in the city under the age of eighteen years.

Sec. 29-7. Blank cartridges. No blank cartridges or blank cartridge pistols shall be kept in stock or sold in the city.

Sec. 29-32. * * * (Firearms)—Information required of purchaser. Any person desiring to purchase or receive delivery of a revolver or other firearm of any description shall hereby be required to first give to the seller or to the person from whom delivery shall be obtained, in writing, a duplicate statement containing the true and correct information concerning his name, occupation, residence and last prior residence before coming to the city.

Sec. 29-33. Same—Sale, etc.—Statement of purchaser prerequisite. No person shall sell, barter, exchange or deliver, or cause to be delivered, any revolver or other firearm of any description to any person, without having previously obtained in writing from the person seeking actual delivery of such firearm a statement of his true name, occupation, residence and last previous residence before coming to the city.

Sec. 29-34. Same—Same—Record to be kept. No gun, revolver, pistol, cannon or firearm of any description shall be sold, unless a record of the name and address of the person to whom such weapon is sold shall be kept in a separate book by the selling agent, together with a record of the manufacturer's number or other marks by which such weapon may be identified.

Sec. 29-105. Weapons—Carrying concealed. It shall be unlawful for any person in the city, except an officer of the law authorized to make arrests, to carry concealed about his person any pistol * * * or any other deadly weapon * * * or to carry any fountain pen or other device or instrument designed to discharge, or for the purpose of discharging, tear gas or other injurious gas.

Sec. 28-107. Same—Sale to intoxicated persons, etc. No person in the city shall sell, loan or furnish a weapon described in section 28-105, or other weapon in which an explosive substance can be used, to any person under the influence of alcohol or any narcotic drug, stimulant or depressant, or to any person in a condition of agitation or excitability.

Jacksonville

328.101 Certificate from Sheriff Required for License to Deal in Certain Firearms. No office of the City shall issue to any person a license to sell, vend or deal in pistols, revolvers or other firearms which may be concealed upon the person, until such person shall have obtained from the Sheriff a certificate that such person is trustworthy, reliable and fit to deal in, sell and vend such revolvers, pistols or other firearms. * * *

328.102 Registry of Certain Firearms Sold. * * * Each person to whom any pistol, revolver or firearm which may be concealed upon the person is sold or otherwise disposed of by a dealer, shall first file a written and signed statement showing his correct name and address, and such information shall be promptly entered in such registry or book, together with a description of a kind, make, number and the name of the manufacturer of such weapon. * * *

328.202 Allowing Minors or Habitual Drunkards to Obtain Firearms. It shall be unlawful and a class D offense against the City for any person to sell, give, lend or otherwise place in the possession of any minor or habitual drunkard, any pistol, revolver or other weapon which may be concealed on the person.

328.205 Possession of Short-barreled Shotgun, Short-barreled Rifle or Machine Gun Prohibited. It shall be unlawful and a Class C offense against the City for any person to own or possess any short-barreled shotgun, short-barreled rifle or machine gun which is, or may readily be made operable. A "Short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than twenty-six inches. A "Shortbarreled rifle" means a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than twenty-six inches. A "Machine gun" means any firearm, as defined herein, which shoots, or is designed to shoot, automatically or semiautomatically, more than one shot, without manually reloading, by a single function of the trigger, but this section shall not apply to antique firearms; "Antique firearms" being defined as any firearm manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar early type of ignition system) or replica thereof, whether actually manufactured before or after the year 1898; and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

Section 2. Exceptions. Firearms in violation hereof which are lawfully owned or possessed under provisions of federal law are excepted.

Jacksonville Beach

Sec. 16-11. Same—Registry of firearms sold; information to be registered; weekly report to police of sales; permit for each sale. Every person selling pistols, revolvers or firearms which may be concealed upon the person, shall keep a registry or record of such sales in a book, * * *

It shall be unlawful for any person to sell or otherwise dispose of any of the weapons, hereinabove mentioned, without first obtaining and entering into such registry all the information required by this section; provided, however, that no person shall sell to any person any such firearms, pistols or deadly weapon without first having obtained a permit in writing from the chief of police or city manager approving such sale to the person. The permit shall be kept by such person on file for inspection for a period of one year from the date of the sale.

Sec. 16-13. Same—Allowing minors or habitual drunkards to obtain firearms. No person shall sell, give, lend or otherwise place in the possession of any minor or habitual drunkard any pistol, revolver or other weapon which may be concealed on the person.

Key Colony Beach

Ordinance 44

* * * it shall be unlawful to commit, within the limits of the city, any act relative to the ownership, use, possession and display of weapons or firearms, which is, or shall be made unlawful, or an offense against the state, by Sections 790.01 to 790.24, both inclusive, of the Florida Statutes.

Lantana

16-25. [Weapons]—Sale prohibited without permit. No dealer or vendor in firearms, shall sell, hire, barter, lend or give to any other person any pistol, gun or other firearm, except upon written permit of the chief of police, provided that nothing in this section shall prevent the sale, hire, barter, loan or gift of any such weapon to any duly authorized law enforcement officer of the United States, State of Florida, or any political subdivision thereof, for such officer's use in the discharge of his duties.

Longwood

Section 57. Weapons; Placing in Possession of Minor, Habitual Drunkard, et cetera. No person shall sell, give, lend or otherwise place in the possession of any minor or habitual drunkard, any pistol, revolver, or any other dangerous weapon.

Mangonia Park

Sec. 17-45. Delivering possession of dangerous weapon to minor. Whoever sells, hires, barters, lends, or gives any minor under sixteen (16) years of age any pistol, * * * or other arm or weapon, other than * * * a gun or rifle used for hunting, without the permission of the parent of such minor or sells, hires, barters, lends, or gives, to any person of unsound mind any dangerous weapon, * * * shall be punished by imprisonment not exceeding ninety (90) days, and/or by fine not exceeding five hundred dollars ($500.00).

Medley

(The city has adopted the State of Florida and Dade County laws and ordinances pertaining to firearms.)

Miami

61-1. Sale of firearms generally.

(a) "Firearm" defined. The word "Firearm" means any device, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas or escape of gas; * * *

(b) Firearm registration. No person, firm, corporation or other legal entity, may acquire, own or possess any firearm within the city unless such firearm has been registered by the owner in accordance with this section or by the dealer selling, renting or leasing firearms with the city police department upon forms furnished by such department. * * *

(c) Exemptions. The provisions of this section shall not apply to the following:

1. United States marshals, while engaged in the operation of their official duties;

2. Members of the armed forces of the United States or the National Guard, while

engaged in the operation of their official duties;

3. Federal officials required to carry firearms, while engaged in the operation of their official duties;

4. Law enforcement officials of this or any other jurisdiction, while engaged in the operation of their official duties;

5. Nonresident hunters during hunting season, with valid nonresident hunting licenses and while in an area where hunting is permitted; however, at all other places such persons must have their firearms unloaded and enclosed in a case;* * * * *

9. Nonresidents, who are currently licensed or registered to possess firearms in their resident state;* * * * *

11. Any person who has registered the firearm in his possession with a municipality within the county which requires registration of such firearms;

12. Any person holding a current license to deal in firearms with the county or any other municipality located within the county.

(d) Sale to minors restricted. It shall be unlawful for any person knowingly and willfully to sell, lend, lease, rent, give or deliver any firearm to any person under the age of twenty-one unless accompanied by a parent or guardian, in which event both the minor and the parent or guardian shall be required to fill out the application form as provided in paragraph (b).

(e) Sale to felons prohibited. It shall be unlawful for any person knowingly or willfully to sell, lend, give or deliver any firearm to any person convicted of a felony.

(f) Sale to users of narcotics prohibited. It shall be unlawful for any person knowingly or willfully to sell, lend, give or deliver any firearm to any person addicted to the use of narcotics or users of drugs, stimulants or depressants.

(g) Sale to persons under the influence of intoxicating beverages. It shall be unlawful for any person knowingly or willfully to sell, lend, give or deliver any firearm to any person under the influence of intoxicating beverages.

61-2. Delivery of firearms.

(a) Dealers or persons licensed to sell firearms shall, before selling, lending, renting, leasing, giving or delivering the firearm, maintain a permanent record of one copy of the registration or application and shall forward the other copy, after first inserting the serial number of such firearm, and also descriptions of the firearm (make, model, barrel length, caliber, type, finish) to the chief of police by first class mail, not later than twenty-four hours after the close of the business day in which the transaction took place. No firearm shall be delivered to any person until seventy-two hours after sale or deposit, or notification of intent to purchase is received.

(b) Delivery of a firearm may be made after a twenty-four hour waiting period only under the circumstances and to those persons listed below:

1. Applicant must furnish any United States of America, state, county or municipal I.D. card as a condition precedent to issuance, and must be fingerprinted and photographed by the issuing authority and the applicant's photo affixed as a part of such I.D. card. The above shall be issued in the name of the purchaser and signed by him, and shall be on an approved list promulgated by the chief of police.

2. The applicant must furnish a positive identification card to which a fingerprint and photograph are attached.

(c) The following shall be exempt from either the seventy-two hour or twenty-four hour waiting period required:

1. Wholesale dealers who have valid state, county or municipal licenses in their business intercourse with retail dealers for the sale of firearms; retail dealers who have valid state, county or municipal licenses in their business intercourse with other retail dealers for the sale of firearms; wholesale or retail dealers in the regular or ordinary transportation of unloaded firearms, merchandise by mail, express or other mode of shipment, to points outside the city, nor to sales or transfer of firearms that do not use a self-containing cartridge.

2. Purchasers who have been issued pistol or revolver permits by any governmental agency (United States of America, state, county or municipal) as special police officers. The applicant must present an I.D. card from the issuing authority.

Whenever an identification card is utilized for the waiver of the seventy-two hour or twenty-four hour waiting period, as set forth in the foregoing provisions, the following information shall be imprinted on the application:

a. The issuing agency or authority.

b. The card number.

c. The name and address identical to that on the card.

3. Persons who are on record with the police department as having previously purchased a pistol, revolver or firearm as defined in section 61-1(a).

4. Persons trading an operable pistol, revolver or firearm, as defined in section 61-1(a), for another similar operable pistol, revolver or firearm.

(d) The provisions of this section shall not apply to gun shows, conferences or conventions which are staged by a duly recognized nonprofit state or national organization.

61-3. Sale of weapons, firearms, tear gas pens, etc., to minors. (a) It shall be unlawful for any person to sell, offer for sale, barter, lend, give or deliver any fountain pen, starter gun, device or other instrument designed to discharge or for the purpose of discharging tear gas or other injurious gas, or any pistol, dirk or other deadly weapon, to any minor under seventeen years of age.

(b) It shall be unlawful for any person to sell, offer to sell, barter, lend, give or deliver any fountain pen, starter gun, device or other instrument designed to discharge or for the purpose of discharging tear gas or other injurious gas, or any pistol, * * * or other deadly weapon, to any minor between the ages of seventeen and twenty-one years of age without the express written approval of one of the parents or the legal guardian of such minor.

61-5. Sale, etc., of firearms to intoxicated, etc., persons. It shall be unlawful for any person to sell, loan or furnish any gun, pistol or other firearm in which any explosive substance can be used to any person whom he knows or has reasonable cause to believe is under the influence of alcohol or any narcotic, drug, stimulate or depressant, or who is of unsound mind, or who is a member of any subversive organization. In addition to all other penalties, such unlawful sale, loan or furnishing shall be grounds for revocation of any license issued by the city to such person.

61-18. * * * (Fountain pens or devices for discharge of injurious gas)—Permit to sell, etc.—Required. No person shall sell, offer for sale or cause to be sold or distributed any fountain pen, device or other instrument designed to discharge, or for the purpose of discharging, tear gas or other injurious gas within the city without a permit to do so issued by the city manager.

Miami Beach

Sec. 25-104. * * * Firearms—Sale generally.

(a) Firearms defined. The word "firearm" as used in this section and the following sections shall be construed to mean any revolver, pistol, automatic pistol, shotgun, rifle, machine gun, submachine gun, machine pistol, or any fully automatic weapon capable of firing more than one shot at each pull of the trigger, or any weapon, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosive, or any firearm muffler or any firearm silencer, or any part or parts of such firearms. This section and the following sections shall not apply to any automatic weapon with flint or percussion ignition using only black powder, or to modern replicas of such weapons, or to antique or replicas of cartridge pistols, or rifles using ammunition which is no longer manufactured or commonly sold, or to stud guns used as tools by tradesmen.

(b) Application. Any person desiring to purchase or receive delivery of a revolver or other firearm shall be required to give the seller or the person from whom delivery shall be obtained, whether by purchase or gift, in writing, on a form to be supplied by the chief

of police, a duplicate statement containing true and correct information which shall be signed by the applicant and shall include the following: * * *

Sec. 25-105. * * * (Firearms)—Unlawful to sell to person without police approval. It shall be unlawful for any dealer or person licensed to sell firearms, to sell, lend, lease, give or deliver any firearm to any person unless such person first presents to the dealer or vendor an application approved by the chief of police in the manner set forth in the preceding section.

Sec. 25-110. * * * (Firearms)—Waiting period between time of sale and delivery. No firearm shall be delivered to any person until seventy-two hours after the sale of any firearm.

Sec. 25-112. * * * (Firearms)—Persons to whom sale is unlawful. It shall be unlawful for any person knowingly and willfully to sell, lease, lend, give or deliver any firearm to any person under the age of twenty-one; or to any person convicted of a felony, or to any person addicted to the use of narcotics, or to users of drugs, stimulants or depressants, or to any person of unsound mind, or to any person under the influence of intoxicating beverages, or to any person who has been released from a mental institution within the past five years.

Sec. 25-112.2. * * * (Firearms)—Exemptions from section 25-110. The following shall be exempt from the seventy-two hour waiting period required:

(a) Wholesale dealers who have valid state, county or municipal licenses in their business intercourse with retail dealers for the sale of firearms; retail dealers who have valid state, county or municipal licenses in their business intercourse with other retail dealers in the regular or ordinary transportation of unloaded firearms.

(b) Purchasers who have been issued pistol or revolver permits by any governmental agency (United States of America, state, county or municipal) as special police officers. The applicant must present an I.D. card from the issuing authority.

Whenever an identification card is utilized for the waiver of the seventy-two hour waiting period as set forth in the foregoing provisions, the following information shall be imprinted on the application:

(1) The issuing agency or authority.

(2) The card number.

(3) The name and address identical to that on the card.

(c) Persons who are on record with the police department as having previously purchased a pistol, revolver or firearm as defined in section 25.104.

Sec. 25-115. * * * (Firearms)—Dealer's license. No person shall engage in the business of selling firearms unless a license shall have been procured from the city council as herein provided, and it shall be unlawful for any person to engage in the business of selling firearms without first procuring such license from the city council. * * *

Mount Dora

14-36. Merchant prohibited from selling firearms, ammunition, explosives to minors. It shall be unlawful for any merchant, business house or vendor, or any person, firm or corporation to sell to any person under eighteen (18) years of age any firearms, "BB" pellets, or ammunition of any and all types, including 22 caliber ammunition, or any other explosives, within the city.

Neptune Beach

Sec. 16-69. Weapons—Certificate from city council prerequisite to license to deal in. No officer of the city shall issue to any person a license to sell, vend or deal in pistols, revolvers or other firearms which may be concealed upon the person, until such person shall have obtained from the city council a certificate that such person is trustworthy, reliable and fit to deal in, sell and vend such revolvers, pistols or other firearms. * * *

Sec. 16-70. Same—Registry of firearms sold; information to be registered; weekly report to city marshal of sales; permit for each sale. Every person selling pistols, revolvers or firearms which may be concealed upon the person, shall keep a registry * * *

It shall be unlawful for any person to sell or otherwise dispose of any of the weapons, hereinabove mentioned, without first obtaining and entering into such registry all the information required by this section; provided, however, that no person shall sell to any person any such firearms, pistols or deadly weapons without first having obtained a permit in writing from the city marshal or city council approving such sale to the person.

North Miami

Sec. 10-75. Manufacture, storage, sale, etc., small arms ammunition. No person shall manufacture within the limits of the city any small arms ammunition. This shall not be construed as prohibiting the hand-loading of small arms ammunition for private use and not for resale.

No person shall store for sale, sell or offer for sale any small arms ammunition without a permit.

North Palm Beach

24-74(3) Sales to intoxicated persons and minors. No pawnbroker, second-hand dealer or other person engaged in business in the Village shall purchase from, or sell, loan, or furnish any weapon in which any explosive substance can be used to any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to a minor under the age of 18 years.

Ocala

Sec. 15-96. (Weapons)—Sale to intoxicated persons or minors. It shall be unlawful for any person to purchase from, or sell, loan, or furnish any weapon in which any explosive substance can be used, to any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to a minor under the age of eighteen years.

Opa-Locka

Sec. 18-12. Registration certificate required for sale, exchange, delivery, etc. No person shall sell, barter, exchange or deliver, or cause to be delivered, any revolver, gun, rifle or other firearm to any other person without having previously obtained the registration certificate, described in section 18-12, from the person seeking actual delivery of such firearm * * *

Palm Beach Gardens

17-10. Concealed weapons; selling weapons; possession of weapons.

* * * * *

(g) Purchase from, or sell, loan, or furnish any weapon in which any explosive substance can be used to, any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to a minor under the age of 18 years, or to any known convicted felon who has not had his civil rights restored according to law.

Pasco County

Sec. 8 1/2-1. Definitions. As used in this chapter; "Pistol" means any small firearm, loaded or unloaded, made after 1920, with a barrel of three (3) inches or less, fired by hand. The term shall include all firearms having one or more barrels, such as revolvers, automatics, derringers and the like, capable of discharging loaded ammunition, and having a frame or receiver with a melting point of 850 degrees F. or less.

Sec. 8 1/2-2. Seventy-two hour waiting period required.—No sale or delivery or exchange of any pistol or revolver shall be made to a purchaser until the expiration of seventy-two (72) hours from the time that an initial

offer to purchase said pistol or revolver is made by the purchaser to the seller.

Pinellas County

Ordinance 74-1

Section 1. Definitions. (a) Firearm as used in this division shall be construed to mean any firearm, weapon, revolver, pistol, auto-loading pistol, modified rifle or shotgun, or any similar mechanism by whatever name known, which is designed to expel a projectile or gas through a gun barrel by the action of any explosive, having the size, length or dimensions which make it capable of being concealed upon the person, and originally designed or altered to be used by one hand and having a barrel length of less than 16 inches, and an overall length of less than 26 1/2 inches, but the word firearm shall not be construed to mean guns that do not use self contained cartridges.

(b) Saturday Night Special shall mean any firearm which is 32 caliber or smaller, whose barrel is less than 3 inches, except those whose frame is an investment cast or forged steel, or investment cast or forged high tensile alloy.

(c) Sale includes transfer, assignment, pledge, lease, loan, barter, or gift.

Section 2. Prohibition. It shall be unlawful for any person to sell or otherwise transfer any Saturday Night Special as defined hereinabove or offer or expose for sale or transfer any such Saturday Night Special.

Section 3. Exception. The sale of Saturday Night Specials to law enforcement agencies or for authorized military use shall not be subject to the limitations herein set forth.

Ordinance 74-7

Section 1. Definitions. (a) The word Firearm as used in this Ordinance shall be construed to mean any firearm, weapon, revolver, pistol, auto-loading pistol, rifle, modified rifle, shotgun, or any similar mechanism by whatever name known which is designed to expel a projectile through a gun barrel by the action of any explosive. The word firearm shall not be construed to mean guns that do not use self-contained cartridges

(b) The word Sale includes transfer, assignment, pledge, lease, loan, barter, or gift.

Section 2. Prohibition. It shall be unlawful for any person to transfer any firearm within a 72-hour period following the sale of the firearm.

Section 3. Exceptions. (a) This Ordinance shall not apply to wholesale dealers in their business dealings with retail dealers nor to retail dealers in their business dealings with other retail dealers, nor to wholesale or retail dealers in the regular or ordinary transportation of unloaded firearms, merchandise by mail, express, or other mode of shipment to points outside the County, nor to sales or transfer of firearms that do not use a self-contained cartridge.

(b) This Ordinance shall not apply to duly employed federal, state, county, or municipal law enforcement officers.

Pinellas Park

13-16 (67). Guns, dealers in revolvers, pistols, ammunition, etc. Approval of city manager with the recommendation of police department as well as separate license in addition to other retail merchant's license required.

Pompano Beach

Sec. 21.16. Firearms, discharging; sale of ammunition. * * * * * (b) It shall be unlawful for any person to sell, barter or give to any other person under the age of sixteen (16) years in the city, ammunition for a firearm, * * * provided, however, that this ordinance shall not apply to parents or guardians giving such ammunition to their own children, in case of a parent, or to the children over whom they may have lawful custody and control, in the case of a guardian.

Quincy

35-1. License to sell—Required. No person shall, within the corporate limits of the city: (a) Engage in the sale of pistols, machine guns or submachine guns, or (b) Operate or manage any business where pistols, machine guns or submachine guns are sold, without first procuring a license for the sale of same as provided herein.

* * * * *

35-12. Registration of pistols, machine guns and submachine guns required. No person shall, within the corporate limits of the city:

(a) Owners or possessors. Own or possess, or have in his possession, custody or control, a pistol, machine gun or submachine gun, without first having registered the same with the chief of police.

* * *

Riviera Beach

13-26. Sale of weapons to minors prohibited. It shall be unlawful for any dealer in arms, guns, rifles or other weapons to sell to minors any pistol, rifle, repeating rifle, tear gas gun, flair gun, * * * or any other type of dangerous weapon.

Ordinance 140 adopts Florida misdemeanors and penalties.

St. Petersburg

20.76. Sale to minors. It shall be unlawful for any person within the city to sell to any person under twenty-one (21) years of age a pistol, gun or other weapon shooting a cartridge.

For the purposes of this section a "pistol, gun or other weapon shooting a cartridge" shall include toy pistols designed to shoot a blank cartridge and any weapon so designed that by explosive force a bullet may be propelled from it.

20.77. Registration of hand gun sales. (a) Each retail dealer who deals in and sells pistols, revolvers, or any other weapon which is generally described and referred to as a "hand gun" shall require a purchaser thereof to register his name, age and place of residence in a book the dealer shall keep for that purpose. * * *

(b) It shall be unlawful for any dealer of weapons subject to subsection (a) or any agent or employee thereof to fail or refuse to comply with the provisions of subsection (a).

(c) It shall be unlawful for any person purchasing a weapon subject to subsection (a) to give a false name, age or place of residence as required by subsection (a).

(d) This section shall not be applicable to the sale of any bona fide antique weapon that is incapable of being fired.

Sebastian

Sec. 17-1. Adoption of state laws constituting a misdemeanor. It shall be unlawful to commit, within the limits of the City of Sebastian, any act which is or shall be recognized by the laws of the State of Florida as a misdemeanor; and the commission of such acts is hereby forbidden.

South Miami

15-25. Firearms-Notice of intent to purchase. It shall be unlawful for any person to purchase or receive delivery of a revolver, rifle, or firearm of any description in the city without first filing a notice of such intention with the desk officer at the police station, in the city. * * *

15-26. Same—Selling or receiving without certificate. It shall be unlawful to sell, barter, exchange or deliver, or cause to be bought, sold, bartered or exchanged or delivered, any revolver, gun, rifle or other firearm to any person in the city without having previously obtained a registration certificate * * *, from the person seeking actual delivery of such firearm, * * *.

Sec. 15-27. Same—Blank cartridge and pistols; sale of guns, etc., to minors. No blank cartridges or blank cartridge pistols shall be kept in stock or sold in the city. No gun, revolver, pistol, cannon or firearm of any

description shall be sold or given to anyone in the city under the age of eighteen years.

Starke

8-19. (Weapons)—Registry of firearms sold; * * * permit for each sale. * * * It shall be unlawful for any person to sell or otherwise dispose of (weapons) * * * without first obtaining and entering into such registry all the information required by this section; provided, however, that no person shall sell to any person any such firearms, pistols or deadly weapon without first having obtained a permit in writing from the Chief of Police or Mayor approving such sale to the person. The permit shall be kept by such person on file for inspection for a period of one year from the date of the sale.

* * * * *

8-21. Same—Allowing minors or habitual drunkards to obtain firearms. No person shall sell, give, lend or otherwise place in the possession of any minor or habitual drunkard, any pistol, revolver or other weapon which may be concealed on the person.

* * * * *

8-25. Same—Machine guns. It shall be unlawful for any person to possess, use, keep or store any machine gun, sub-machine gun or similar firearm within the city. The provisions of this section shall not apply to the United States Army, Navy, National Guard or any duly constituted and authorized law-enforcement officer of the United States government, the State of Florida, or the city.

Surfside

Sec. 13-43. (Weapons) Receiver of firearms to furnish certain information in writing. Any person in the town desiring to purchase or receive delivery of a revolver or other firearm of any description shall be and hereby is required first to give to the seller or to the person from whom delivery shall be obtained, in writing, a duplicate statement containing true and correct information concerning his name, occupation, residence and last prior residence before coming to the town.

Sec. 13-44. Same—Seller of firearms to obtain designated information in writing. It shall be unlawful for any person to sell, barter, exchange or deliver, or cause to be delivered any revolver, gun, or other firearm to any other person, without having previously obtained, in writing, from the person seeking actual delivery of such firearm, a statement of his true name, occupation, residence, and the last previous residence before coming to the town.

* * * * *

Sec. 13-46. Same—Report to police of possession. Any person having in his possession, actually or constructively, any revolver, gun or other firearm of any description, within the town, shall file with the police department a certificate or statement in writing giving his true name, occupation, residence, and a full and complete description of such revolver, gun or other firearm in his possession.

Tallahassee

3. It shall be unlawful for any person, firm or corporation within the City of Tallahassee to sell, give, lend or otherwise place in the possession of any minor any pistol, revolver or other firearm which may be concealed on the person.

Tampa

Sec. 24-112. Blank cartridge pistols, tear gas pistols and ammunition—Sale, possession, etc. No person shall sell, offer for sale, give or have in his possession within the corporate limits of the city any blank cartridge pistol or other like device made exclusively for the purpose of firing or discharging any blank cartridge; providing, however, that this section shall not apply to the sale, possession or discharge of any pistol or other like device designed to use .22 caliber crimped blanks and/or .22 caliber tear gas cartridges.

Sec. 24-113. Same—Selling or giving to minors. No person shall sell or give away to any minor within the corporate limits of the city any blank cartridges or other like ammunition.

Sec. 24-114. Firearms—Machine guns, "sawed-off" shotguns and rifles prohibited. It shall be unlawful for any person to have in his possession within the corporate limits of the city any machine gun, or shotgun or rifle having a barrel of less than twenty (20) inches in length, or any firearm equipped with a silencer, or any other firearm, which is capable of being concealed on the person. This section shall not apply to a pistol, revolver, or blank or tear gas gun authorized by this chapter.

This section shall not be applicable to regular law enforcement officers who are permanently employed and devote their full time as federal, state, county or municipal law enforcement officers.

* * * * *

Sec. 24-116. Molotov cocktails, firebombs, etc. It shall be unlawful for any person to make, carry, possess or use any type of "Molotov cocktail", gasoline or petroleum base firebomb, or any other incendiary missile or any explosive bomb, device or missile unless the same is otherwise permitted as a lawful act pursuant to the laws and ordinances of this city.

Titusville

Sec. 15-9.1. Firearms—Sales to children under sixteen. The sale for any purpose whatsoever of any * * * 22-caliber rifle or any firearms or of any BB's, pellets or ammunition for use therein to any child under the age of sixteen (16) shall be unlawful.

Sec. 15-9.2. Same—Relinquishment of possession to child under sixteen. The relinquishment of possession of any * * * 22-caliber rifle or any other firearm or any * * * ammunition for use therein to any child under the age of sixteen (16) by one who is in possession of said weapon and/or ammunition or by anyone who is the lawful owner of said weapon and/or ammunition shall be unlawful.

Virginia Gardens

Sec. 12-9. Weapons—Sale, etc., to minors. No person shall sell, barter, lend, give or deliver any pistol, dirk or other deadly weapon to any minor under seventeen years of age.

No person shall sell, barter, lend, give or deliver any pistol, dirk or other deadly weapon to any minor between the ages of seventeen and twenty-one years of age without the express written approval of one of the parents of such a minor or his legal guardian.

West Miami

14-16. Minors—sale of weapons to. It shall hereafter be unlawful for any person to sell, barter, lend, give or deliver any pistol, * * * or other deadly weapon to any minor under seventeen (17) years of age. It shall further be unlawful for any person to sell, barter, lend, give or deliver any pistol, * * * or other deadly weapon to any minor between the ages of seventeen (17) and twenty-one (21) years of age without the express written approval of one of the parents, or legal guardian of such a minor.

West Palm Beach

51.1. Permit for purchase, sale, etc.—Required. It shall be unlawful for any person to purchase, give away or sell any pistol, revolver, one-hand firearms, * * * or other similar equipment used primarily by police officers, within the city, unless and until a permit shall have first been obtained from the chief of police by the person to whom such article is to be sold or delivered.

Winter Springs

Sec. 9-77. Placing in Possession of Minors, Habitual Drunkards. No person shall sell, give, lend or otherwise place in the possession of any minor or habitual drunkard, any pistol, revolver or any other dangerous weapon.

Georgia

State Law

Code of Ga. Ann.

26-1405 Criminal possession of an incendiary (a) A person commits criminal possession of an incendiary when he possesses, manufactures, sells, offers for sale, gives away, or transports a fire bomb or molotov cocktail.

(b) The terms "fire bomb" and "molotov cocktail" mean any device, by whatever name called, made of a breakable container containing a flammable liquid or compound with a flash point of 150 degrees Fahrenheit or less which has a wick or any similar material, which, when ignited, is capable of igniting such flammable liquid or compound when such device is thrown or dropped. These terms do not include a device which is manufactured or produced for the primary purpose of illumination or for marking detours, obstructions, defective paving or other hazards on streets, roads, highways and or other hazards on streets, roads, highways and bridges.

(c) Subsection (a) does not apply to a device coming within the definition of subsection (b) when it is in the use, possession or control of a member of the armed forces of the United States or a fireman or a law enforcement officer when acting in his official capacity or otherwise under proper authority.

(d) A person convicted of criminal possession of an incendiary shall be punished by imprisonment for not less than one nor more than three years, or by a fine not exceeding $1,000 or by both.

26-2905 Furnishing weapons to minors. A person commits a misdemeanor when he knowingly sells to or furnishes to a person under the age of 21 years a pistol, * * *

26-2906 Machine guns; sale, etc., illegal. A person commits a felony when he sells, manufactures, purchases, possesses, or carries a machine gun and upon conviction shall be punished by imprisonment for not less than one nor more than five years. A machine gun is any weapon from which more than eight shots or bullets may be discharged by a single function of the firing device. This section shall not apply to or affect the manufacture, for, or the transportation, or sale of machine guns to persons exempted under section 26-2907, provided said machine guns are broken down in a non-functioning state or are not immediately accessible.

26-2907 Exemptions. Sections 26-2901, 26-2902, 26-2903, and 26-2906 shall not apply to or affect any of the following persons while engaged in pursuit of official duty or when authorized by Federal or State law, regulation or order: (1) peace officers; (2) wardens, superintendents, and keepers of prisons, penitentiaries, jails, or other institutions for the detention of persons accused or convicted of an offense; (3) persons in the military service of the State or of the United States; (4) persons employed in fulfilling defense contracts with the Government of the United States or agencies thereof when possession of the weapon is necessary for manufacture, transport, installation, and testing under the requirements of such contract; and (5) district attorneys, investigators employed by and assigned to a district attorney's office, and assistant district attorneys.

A prosecution based upon a violation of sections 26-2901, 26-2902, 26-2903, or 26-2906 need not negative any exemptions.

26-9910a Georgia Firearms and Weapons Act; short title. This law [Secs. 26-9910a through 26-9916a] shall be known and may be cited as the "Georgia Firearms and Weapons Act."

26-9911a Same; possession of certain types of firearms, dangerous weapons and silencers prohibited. No person shall have in his possession any sawed-off shotgun, sawed-off rifle, machine gun, dangerous weapon, or silencer, except as provided in section 26-9914a.

26-9912a Same; definitions. (a) (1) The term "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(2) The term "sawed-off shotgun" means a shotgun or any weapon made from a shotgun (whether by alteration, modification, or otherwise) having one or more barrels less than 18 inches in length or if such weapon as modified has an overall length of less than 26 inches.

(b) The term "sawed-off rifle," as used in this law, shall mean a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned, made or remade, to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifle bore for each single pull of the trigger, and which has a barrel (or barrels) of less than 16 inches in length (or has an over-all length of less than 26 inches).

(c) The term "machine gun," as used in this law, means any weapon which shoots, or is designed to shoot, automatically, more than six shots, without manual reloading, by a single function of the trigger.

(d) The term "dangerous weapon," as used in this law, shall mean any weapon commonly known as a "rocket launcher," "bazooka" or "recoilless rifle," which fires explosive or non-explosive rockets designed to injure or kill personnel or destroy heavy armor or similar weapon used for such purpose. The term shall also mean a weapon commonly known as a "mortar" which fires explosives from a metallic cylinder, and which is commonly used by the armed forces as an anti-personnel weapon or similar weapon used for such purpose. The term shall also mean a weapon commonly known as a "hand grenade" or other similar weapon which is designed to explode and injure personnel or similar weapon used for such purpose.

(e) The term "person," when used in this law, shall include any individual, partnership, company, association or corporation.

(f) The term "silencer," when used in this law, shall mean any device for silencing or diminishing the report of any portable weapon, such as a rifle, carbine, pistol, revolver, machine gun, shotgun, fowling piece, or other device from which a shot, bullet or projectile may be discharged by an explosive.

26-9914a Same; exceptions to provisions of law. The provisions of this law [Secs. 26-9910a through 26-9916a] shall not apply to:

(a) A peace officer of any duly authorized police agency of this State or of any political subdivision thereof, or a law enforcement officer of any department or agency of the United States, who is regularly employed and paid by the United States, this State or any such political subdivision, or an employee of the Board of Corrections of this State who is authorized in writing by the director thereof to transfer or possess such firearms while in the official performance of his duties.

(b) A member of the National Guard or of the armed forces of the United States, to-wit: the Army, Navy, Marine Corps, Air Force or Coast Guard, who, while serving therein, possesses such firearm in the line of duty.

(c) Any sawed-off shotgun, sawed-off rifle, machine gun, dangerous weapon or silencer which has been modified or changed to the extent that it is inoperative. Examples of the requisite modification include: weapons with their barrel or barrels filled with lead or hand grenades filled with sand or other nonexplosive materials.

(d) Each sawed-off shotgun, sawed-off rifle, machine gun, dangerous weapon or silencer which is possessed by a person who is authorized to possess the same because he has registered the sawed-off shotgun, sawed-off rifle, machine gun, dangerous weapon or silencer in accordance with the dictates of the National Firearms Act, approved August 16, 1964, 68A Stat. 725 (26 U. S. C. 5841-5862).

92A-901. License for dealers. —Any person, firm, retail dealer, wholesale dealer, pawnbroker, or corporation who shall sell, dis-

pose of, or offer for sale, or cause or permit to be sold, disposed of or offered for sale any caliber pistol, revolver or short barreled firearm of less than 15 inches in length, whether the same shall be their own property or whether they shall sell the same as agents or employees of others, shall obtain from the Department of Public Safety a license permitting the sale of said caliber pistols and guns. Nothing in this Chapter shall apply to or prohibit the casual sales of the articles referred to between individuals or bona fide gun collectors.

92A-1601. Purchase by Georgia residents in contiguous States. —Residents of the State of Georgia may purchase rifles and shotguns in any State contiguous to the State of Georgia, provided such residents conform to applicable provisions of statutes and regulations of the United States, of the State of Georgia, and of the contiguous State in which the purchase is made.

92A-1602. Purchase in State by residents of contiguous States. Residents of any State contiguous to the State of Georgia may purchase rifles and shotguns in the State of Georgia, provided such residents conform to applicable provisions of statutes and regulations of the United States, of the State of Georgia, and of the contiguous State in which such persons reside.

Adel

Sec. 14-8. Firearms; * * * (c) Regulation of the sale and purchase of firearms and registration of firearms and other purposes:

(1) It shall be unlawful for any person or corporation to sell any firearms defined as rifle, pistol, shot gun or tear gas to any person who has not yet attained the age of twenty-one (21) years.

(2) It shall be unlawful for any person or corporation to sell any firearms defined as rifle, pistol, shot gun or tear gas within the City of Adel, Georgia, to any person, unless such seller shall verify from the police department of the City of Adel, or from the office of the sheriff of Cook County, Georgia, that such proposed purchaser is a person of good character, and has never been convicted of a felony insofar as is revealed by the records of such office.

(3) Any such firearm as hereinbefore defined purchased from any licensed dealer or individual must be registered with the county sheriff's office, as to make, serial number and from whom it was purchased. Copy of same is to be furnished immediately upon purchase by seller. It shall be the responsibility of the dealer or person selling such firearm to inform and furnish such information to the purchaser, and to notify the sheriff's office of the transaction.

Americus

Section 15-29. Every person desiring to purchase or otherwise acquire in the City of Americus a pistol, revolver, or other type hand gun, shall sign in duplicate and deliver to the seller or person disposing thereof an application for the purchase of a pistol, revolver, or other type hand gun, [contact local authorities for required contents] * * *.

The seller or persons disposing of such weapons shall within six hours after such application, sign and attach his address and deliver the two copies of the application to the office of the Chief of Police of the City of Americus.

It shall be unlawful to give false information or offer false evidence of the identity of such person in making such application or in acquiring a weapon as set forth herein.

No person shall, within the City of Americus, deliver or otherwise dispose of a pistol, revolver or other type hand gun, until 72 hours shall have elapsed from the time of receipt of the application in the office of the Chief of Police of the City of Americus. Provided however, this 72 hour waiting period may be waived by the Chief of Police of the City of Americus in his sole discretion upon good cause therefor being shown.

No person within the City of Americus shall sell or otherwise dispose of a pistol, revolver, or other type hand gun to any person whom he has reasonable cause to believe is not a fit and proper person to possess the same, is not of sound mind, is under 18 years of age, is a drug addict, or is a person who has been convicted of a crime of violence.

If, within the 72 hour waiting period required by this section, the Chief of Police of Americus or any person designated by him from his office, shall inform the proposed seller or person proposing to dispose of a pistol, revolver, or other type hand gun, that the applicant is not a fit and proper person to possess the weapon, * * * such information shall be prima facie evidence that the seller or person disposing thereof had reasonable cause to believe the applicant is unqualified to acquire such a weapon.

* * * * *

This section shall not be construed to apply to toy pistols, toy revolvers, or toy weapons of any kind and to antique weapons manufactured in or before the year 1898 which are to be used only for display or decoration purposes.

This ordinance shall not be construed to apply to bona fide gun collectors who have registered and obtained a permit from the Chief of Police of the City of Americus as a bona fide gun collector. The application for a permit as a bona fide gun collector shall be submitted in writing to the Chief of Police of the City of Americus [contact local authorities for required contents] * * *.

Atlanta

Sec. 17-4001 Definition of "pistol." A "pistol", for the purpose of this chapter, is any small firearm fired by hand, capable of being concealed upon the person or being strapped around some portion of the body. The term shall include all small firearms having one or more barrels, such as revolvers, automatics, derringers and the like, discharging ball or similar ammunition and usually called pistols.

Sec. 17-4002 License to deal in pistols required; prerequisite to issuance. No license shall be issued to dealers in pistols, wholesale or retail, until the party applying for such license shall have received a special permit from the council to deal in pistols.

Sec. 17-4003. Application for dealer's license; information to be shown. Any person desiring a license to deal in pistols, under the provisions of the preceding section, shall first apply to the council, * * *.

Sec. 17-4011 Registration required by aliens possessing firearms. Every foreign-born alien living within or coming into the city, having or gaining possession of any firearms, such as pistols, rifles, shotguns, machine guns or any other such instruments of any kind and character, shall register same with the director of the bureau of police services, referred to in this chapter as the "director," giving such information as may be required by the mayor or those working under his orders. Aliens coming into the city and bearing or possessing any of the firearms described herein shall register same within 24 hours after arrival within the city.

Sec. 17-4012 Disposition; permit required. After any firearm, as is described in section 17-4011, has been registered with the director, no person shall dispose of same without a permit from the director.

Sec. 17-4013 Application for permit to dispose of firearm. The application for the permit required by the preceding section shall give such information as may be required by the mayor or his designee.

Sec. 17-4014 Notice of purchase, possession to be given to mayor or his designee. No person shall purchase or come into possession of firearms from any alien without notifying the chief of police of his intention a reasonable time in advance and securing permission from such officer to obtain possession of same.

Sec. 17-4021 Definitions. As used in this chapter unless the context otherwise requires, terms shall have the meanings ascribed as follows:

Dealer means any person regularly engaged in the business of selling firearms as defined herein.

Firearms means any pistol, revolver or derringer, by whatever name known, which is

designed to expel a projectile or projectiles by the action of an explosive, and a firearm muffler or a firearm silencer, or any part or parts of such weapon.

Identification means any driver's license, birth certificate, U. S. military identification card, baptismal or christening certificate, employee's identification card provided same shows age and home address of employee and U. S. passport.

Person includes an individual, partnership, association or corporation.

Sec. 17-4022 Identification of purchaser. No dealer in firearms as defined herein shall sell, trade or dispose of, in any way, any firearm unless the person obtaining the firearm shall furnish identification to the dealer setting forth his name, present address and age.* * *

Sec. 17-4024 Fingerprint record to be maintained. (a) In addition to the other records and information as called for above, each dealer shall obtain from each person purchasing any firearm the fingerprint of the right hand index finger, unless that finger is missing in which event the print of the next finger in existence on the right hand of the person purchasing the firearm shall be obtained, with a notation as to the exact finger printed. In the event the purchaser has no right hand, the dealer shall require the fingerprint of the left hand index finger, unless that finger is missing, in which event the print of the next finger in existence on the left hand of the person purchasing the firearm shall be obtained, with a notation as to the exact finger printed. Fingerprints and the information as required herein shall be obtained from all persons each time that person purchases any firearm regardless of whether or not that person may have previously purchased a firearm from the dealer and been fingerprinted.
* * *

Augusta

14-8. Ammunition—Sale, etc., to minors. It shall be unlawful for any person to sell or furnish a minor with pistol ammunition or to sell or furnish a minor seventeen years of age and under with any other kind of ammunition, including rifle and shotgun ammunition * * *.

Chatham County

Every person desiring to purchase or otherwise acquire a pistol, revolver, or other type handgun in Chatham County, Georgia, outside the boundaries of any incorporated municipality therein, shall sign in duplicate and deliver to the seller or person disposing thereof an application for the purchase of a pistol, revolver, or other type handgun [contact local authorities for required contents] * * *.

The seller or persons disposing of such weapons shall within six hours after such application, sign and attach his address and deliver the two copies of the application to the office of the Chief of Police of Chatham County. It shall be unlawful to give false information or offer false evidence of the identity of such person in making such application or in acquiring a weapon as set forth herein. No person shall, within Chatham County, outside the boundaries of any municipality therein, deliver or otherwise dispose of a pistol, revolver, or other type handgun, until seventy-two hours shall have elapsed from the time of receipt of the application in the office of the Chief of Police of Chatham County.

No person within Chatham County, outside the corporate boundaries of any municipality therein, shall sell or otherwise dispose of a pistol, revolver, or other type handgun to a person whom he has reasonable cause to believe is not a fit and proper person to possess the same, is not of sound mind, is under 21 years of age, is a drug addict, or is a person who has been convicted of a crime of violence.

If, within the seventy-two hours waiting period required by this ordinance, the Chief of Police of Chatham County or a person designated by him from his office shall inform the proposed seller or person proposing to dispose of a pistol, revolver, or other type handgun, that the applicant is not a fit and proper person to possess the weapon, * * * such information shall be prima facie evidence that the seller or person disposing thereof had reasonable cause to believe the applicant is unqualified to acquire such a weapon * * *.

This Ordinance shall not be construed to apply to toy pistols, toy revolvers, or toy weapons of any kind, or antique souvenir weapons used only for display or decoration purposes.

Columbus

14-64. Same—Notice; investigation; approval; waiting period. No person doing business in the city or its police district shall sell or deliver any pistol or pistol cartridges until all of the following regulations have been complied with strictly:

Before selling or delivering any pistol or pistol cartridges, such dealer shall notify, in writing, the chief of police, in such notice giving the name, address and description of the prospective purchaser. The prospective purchaser shall, at the same time, furnish to the chief of police three written and signed testimonials vouching for the general good character of the prospective purchaser and such prospective purchaser shall also submit to having his fingerprints taken by the police department of the city. The chief of police shall make full investigation; * * * [if] the chief of police * * * [disapproves] the proposed sale, * * * it shall be unlawful for any such dealer to sell or deliver such pistol or cartridges to the prospective purchaser. * * *

No pistol or pistol cartridges shall be sold or delivered by any such dealer until the period of five days shall have elapsed after the service on the chief of police of the notice of the proposed sale.

14-65. Dangerous weapons; prohibited. No person shall within the city or its police district, sell, exchange or keep on hand for the purpose of sale any of the following named articles: Shotgun or rifle with barrel length of less than eighteen inches. * * *

14-65(c) It shall be unlawful for any person to: (1) Sell any hand gun that does not have a full case hardened barrel, and in the case of automatics, full case hardened working parts able to withstand 2,700 degrees fahrenheit as certified by the manufacturer.

(2) To sell or transfer a hand gun to any person without a certificate from the Chief of Police or his designee that such purchaser or transferee has not been convicted of a felony within five years, and the Chief of Police or his designee shall furnish such certificate within three days from the date of the application for such certificate.

14-66. Exclusion from chapter. 14-65(c) shall be applicable to all persons including pawn brokers and pawn brokers sales stores; the other provisions of the preceding sections of this chapter shall not be applicable to pawn brokers and pawn broker sales stores, they being regulated by provisions of this Code specifically relating to them; but this Chapter is applicable to all other persons, and the words "persons" or "person" as used herein shall in addition to them, include their managers, agents, clerks and employees.

15-8. Prohibited items—Receiving. No pawnbroker or pawnbroker's sales store shall take in pawn, or receive, sell or exchange any of the following named articles: shotgun or rifle with barrel length of less than eighteen inches * * *.

15-9. Same—Possessing. No pawnbroker or pawnbroker's sales store shall own or keep on hand any of the weapons named or referred to in the preceding section hereof.

15-10. Pistols and cartridges; sale, notice, police findings. All pawnbrokers and pawnbrokers' sales stores shall at all times keep in their places of business a complete list and description of all pistols and pistol cartridges owned by them or held in pawn, and this provision applies also to pistols and cartridges purchased by such stores from regular dealers in pistols and pistol cartridges. All provisions of this chapter with reference to other articles shall be applicable to the keeping and sale of pistols and pistol cartridges, and in addition thereto the following regulations and prohibitions shall be applicable to pistols and pistol cartridges:

(a) No pawnbroker or pawnbroker's sales store shall sell any pistol or pistol cartridges

unless and until all of the following regulations have been complied with strictly:

Before selling any pistol or pistol cartridges, the pawnbroker or pawnbroker's sales store shall notify, in writing, the chief of police, and in such notice giving the name, address and description of the prospective purchaser. The prospective purchaser shall, at the same time, furnish to the chief of police three written and signed testimonials vouching for the general good character of the prospective purchaser, and such prospective purchaser shall also submit to having his fingerprints taken by the police department. The chief of police shall make full investigation; * * * [if] the chief of police * * * [disapproves] the proposed sale, * * * it shall be unlawful for the pawnbroker or pawnbroker's sales store to sell such pistol or cartridges to the prospective purchaser. * * *

(b) No pistol or pistol cartridges shall be sold by any pawnbroker or pawnbroker's sales store until the period of five days shall have elapsed after the service on the chief of police of the notice of the proposed sale.

These regulations regarding pistols shall also be complied with before a pawnbroker or pawnbroker's sales store shall deliver a pistol to the transferee of a pawn ticket.

Ordinance 75-14

Section 1. That it shall be unlawful to sell or otherwise convey any handgun to any individual without a certificate from the Chief of Police, or his designee, stating that to the best of his knowledge the applicant is free of felony convictions. If said applicant is found to be free of felony convictions, the Chief of Police, or his designee must by law furnish applicant with such certificate at the end of three days from the date application is made. Under no circumstances is the Chief of Police, or his designee, to deny such certificate to any person at any time other than for reason of prior felony conviction.

For those applicants who make multiple handgun purchases during the course of the year, a handgun purchasers identification card shall be made available. This card shall exempt holder from the necessity of obtaining a certificate for each handgun purchased. Said card shall be available from the city license section upon receipt of a certificate from the Chief of Police, or his designee, stating that to the best of his knowledge the applicant is free of felony convictions. Card shall contain a physical description and picture of the holder and expense of issuance shall be borne by an issuance fee of $3.00. Card shall be valid for a period of three (3) years from date of issuance.

In the event any holder of a valid handgun purchasers identification is convicted of a felony, such identification shall immediately be revoked by the Chief of Police.

Section 2. Dealers selling handguns may submit application to the Chief of Police or his designee on behalf of the prospective purchaser, and the Chief of Police or his designee may return the certificate directly to the seller submitting the application.

Section 3. Provided, however, that the terms of this Ordinance shall not apply to dealers holding federal firearms license when purchasing handguns. Provided further, that the terms of this ordinance shall not apply to collectors and gun shows which have been exempted from the application of the provisions of Ordinance Number 75-14 by a resolution approved in advance by the Council.

(Note: See Georgia State Criminal Code, Sections 26-2901 to 26-2904.)

Decatur

16-7.1. [Firearms]—Sale, etc., by dealers—Definitions. For the purposes of sections 16-7.2 to 16-7.5, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Dealer. Any person regularly engaged in the business of selling firearms as defined herein.

Firearms. Any pistol, revolver or derringer, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosive, and a firearm muffler or a firearm silencer, or any part or parts of such weapon.

Identification. Any driver's license, birth certificate, U. S. military identification card, baptismal or christening certificate, employee's identification card; provided, same shows age and home address of employee and U. S. passport.

Person. An individual, partnership, association or corporation.

16-7.2. Same—Same—Identification of purchaser required. No dealer in firearms as defined herein shall sell, trade or dispose of, in any way, any firearms unless the person obtaining such firearm shall furnish identification to the dealer setting forth his or her name, present address and age.

* * * * *

16-7.4. Same—Same—Fingerprint of purchaser required. * * * (a) Failure to fingerprint the person purchasing such firearm shall constitute an offense under these sections.

* * * * *

16-25.1. Pistols, revolvers, etc.; sale, etc., of certain types prohibited. It shall be unlawful for any person or persons to sell, possess for sale, exhibit for sale, display or advertise for the purpose of sale, any .22 caliber pistol, revolver or derringer with a barrel three inches or less in length, which sells at a retail price of less than thirty-nine dollars ($39.00).

It shall be unlawful for any person or persons to sell, to possess for sale, exhibit for sale, display or advertise for the purpose of sale, any pistol, revolver or derringer described in the preceding paragraph, designed and manufactured to fire blank cartridges and ammunition containing explosive charges only, if such pistol, revolver or derringer may be adapted to fire cartridges and ammunition containing projectiles; provided however, that this paragraph shall not apply to any pistol, revolver or derringer to be used in any organized high school, college, professional or other recognized athletic events.

Hapeville

14-21.1. Pocket pistols, revolvers, derringers—Sale, possession, et cetera; * * * (a) It shall be unlawful for any person to sell, possess for sale, exhibit for sale, display or advertise for the purpose of sale, any .22 caliber pistol, revolver or derringer with a barrel three inches or less in length, which sells at a retail price of less than thirty-nine dollars ($39.00).

(b) It shall be unlawful for any person to sell, to possess for sale, exhibit for sale, display or advertise for the purpose of sale, any pistol, revolver, or derringer described in subsection (a), designed and manufactured to fire blank cartridges and ammunition containing explosive charges only, if such pistol, revolver or derringer may be adapted to fire cartridges and ammunition containing projectiles, provided, however, that this section shall not apply to any pistol, revolver, or derringer to be used in any organized high school, college, professional or other recognized athletic events.

Hinesville

Section 1. Firearms—sale—reports—records. Every person desiring to purchase or otherwise acquire in the City of Hinesville a pistol, revolver, or other type handgun, shall sign in duplicate and deliver to the seller or person disposing thereof an application for the purchase of a pistol, revolver, or other type handgun, [Contact local authorities for required contents] * * *. The application in duplicate may take the form of the United States Department of Treasury—Internal Revenue Service, Alcohol and Tobacco Tax Division Form 4473, "Fire Arms Transaction Record".

The seller or persons disposing of such weapons shall within six hours after such application, sign and attach his address and deliver the two copies of the application to the Office of the Chief of Police of the City of Hinesville.

It shall be unlawful to give false information or offer false evidence of the identity of such person in making such application or in acquiring a weapon as set forth therein.

No person shall, within the City limits of Hinesville, deliver or otherwise dispose of a pistol, revolver, or other type handgun, until forty-eight hours shall have lapsed from the time of receipt of the application in the Office of the Chief of Police of Hinesville.

No person within the City of Hinesville shall sell or otherwise dispose of a pistol, revolver, or other type of handgun to a person whom he has reasonable cause to believe is not fit and proper person to possess the same, is not of sound mind, is under 21 years of age, is a drug addict, or is a person who has been convicted of a crime of violence.

If within the forty-eight hour waiting period required by this Section, the Chief of Police of Hinesville or person designated by him from his office shall inform the proposed seller or person proposing to dispose of a pistol, revolver, or other type of handgun, that the applicant is not a fit and proper person to possess the weapon, is not of sound mind, is under 21 years of age, is a drug addict or is a person who has been convicted of a crime of violence, such information shall be prima facie evidence that the seller or person disposing thereof had reasonable cause to believe the applicant is unqualified to acquire such weapon.

A crime of violence, as used in this Ordinance, shall be taken to mean murder, manslaughter, rape, mayhem, kidnapping, burglary, robbery by force, aggravated assault, and aggravated battery.

This section shall not be construed to apply to toy pistols, toy revolvers, toy weapons of any kind, or to antique weapons manufactured in or before the year 1898 which are to be used only for display or decoration purposes.

Jackson

Be it ordained by the Mayor and Council of the City of Jackson, and it is hereby ordained by the authority of the same that from and after the passage and adoption of this ordinance it shall be unlawful for any person to provide, furnish, or sell any pistol, rifle or gun to any person under the age of 21 to have, control, or possess any pistol or concealed weapons within such municipality and any person so violating this ordinance shall be guilty of disorderly conduct and subject to fine or imprisonment in the discretion of the Mayor or recorder.

Maysville

1. No person shall have in his or her possession within the Town Limits of the Town of Maysville, any sawed-off shotgun, rifle or machine gun, dangerous weapons, or silencers, except as provided below.

* * * * *

2. No person shall sell or place in the hands of an Alien, a Felon, Drug Addict, or Mentally Incompetent, any weapon or explosive device.

4. No person shall sell or possess within the Town Limits any Title II firearms such as fully automatic firearms, or destructive devices such as bombs, grenades, Molotov cocktails, etc., except as noted below.

* * * * *

6. All requirements as to age, permits, license, or other identification required by State of Federal Statute, must be complied with prior to delivery of any weapon to a purchaser within the Town Limits of the Town of Maysville, Georgia. * * * Further, any exceptions as to persons or things enumerated in the various provisions of this Ordinance shall be in accordance with Section 26-9914a, Georgia Code Annotated.

Nashville

Section I. It shall be unlawful for any person, Firm or Corporation to sell to any purchaser any pistol, * * * without complying with the following provisions of this section:

(a) The merchant or dealer from whom a prospective buyer shall seek to purchase such weapon shall, before making a sale to such prospective purchaser, obtain from such prospective purchaser his or her name; place of residence; age; occupation, and a statement [contact local authorities for required contents] * * *.

(b) It shall then be the duty of the merchant or dealer promptly to deliver to the police department a duplicate of the questions propounded to the purchaser, together with a duplicate of the answers made by him. All as recorded in the printed form provided therefor. Where such a sale is made, a description of the item sold, including serial number, of any, shall be entered on said form by said seller in the place provided.

Section II. Be it further enacted that any person engaged in the sale of revolvers or pistols after having obtained a license for such sales is by this ordinance prohibited from accepting in pawn any pistol or revolver from any minor and is prohibited from selling any pistol to any minor.

Rossville

Sec. 15-2. Registration of firearms sales. (a) All wholesale and retail sellers, vendors and merchants selling, exchanging, or anywise changing ownership or title to any and all kinds or types of firearms within the city, or conveying and transferring title thereto, shall, before actual delivery of such firearms, make and keep on file in his place of business a record and registration of such firearms. Such record and registration shall disclose the name of purchaser, buyer or vendee, the make, model, serial number, and caliber of said firearms.

Savannah

Article B. Sale of Firearms

Section 6-1021 Report and Record. (a) Every person desiring to purchase or otherwise acquire in the City a pistol, revolver, or other type handgun, shall sign in duplicate and deliver to the seller or person disposing thereof an application for the purchase of a pistol, revolver, or other type handgun, [contact local authorities for required contents] * * *

(b) The seller or persons disposing of such weapons shall within six hours after such application, sign and attach his address and deliver the two copies of the application to the Office of the Police Chief of the City.

(c) It shall be unlawful to give false information or offer false evidence of the identity of such person in making such application or in acquiring a weapon as set forth herein.

(d) No person shall, within the City, deliver or otherwise dispose of a pistol, revolver, or other type handgun, until seventy-two hours shall have elapsed from the time of receipt of the application in the Office of the Police Chief of Savannah.

(e) No person within the City shall sell or otherwise dispose of a pistol, revolver, or other type handgun to a person whom he has reasonable cause to believe is not a fit and proper person to possess the same, is not of sound mind, is a drug addict, or is a person who has been convicted of a crime of violence.

(f) If, within the seventy-two hour waiting period required by this Section, the Police Chief of Savannah or a person designated by him from his office shall inform the proposed seller or person proposing to dispose of a pistol, revolver, or other type handgun, that the applicant is not a fit and proper person to possess the weapon, is not of sound mind, is under twenty-one (21) years of age, is a drug addict or is a person who has been convicted of a crime of violence; such information shall be prima facie evidence that the seller or person disposing thereof had reasonable cause to believe the applicant is unqualified to acquire such a weapon.

(g) A crime of violence, as used in this article, shall be taken to mean, murder, manslaughter, rape, mayhem, kidnapping, burglary, robbery by force, aggravated assault, and aggravated battery.

(h) This section shall not be construed to apply to toy pistols, toy revolvers or toy weapons of any kind. This section shall also

not be construed to apply to antique weapons manufactured in or before the year 1898 which are to be used only for display or decoration purposes. * * *

Section 6-1022 Purchaser must have permit or license. No person shall sell or deliver to any purchaser a pistol or firearm of similar character until and unless the purchaser has presented to the seller a permit or license issued under existing State law authorizing the purchaser to carry such weapon.

Snellville

Snellville enforces the State law.

Tifton

Section 1. It shall be unlawful and a violation of this Ordinance for any person, partnership, corporation, pawn shop or firm to sell or barter to anyone, to exchange or keep for the purpose of sale, any of the following weapons: a shotgun or rifle with barrel length of less than 18 inches, * * *.

Section 2. It shall be unlawful and a violation of this Ordinance for any person, partnership, corporation, pawn shop or firm to sell or barter to any purchaser a rifle, shotgun or pistol without complying with the following regulations:

(A) At the time of the sale or barter, there shall be obtained from the purchaser in writing the following information: buyer's name, height, weight, race, residence address, date of birth, place of birth and answers by the buyer to [those questions required by law; contact local authorities for those questions required by Tifton] * * *. This information will be obtained from the purchaser on a written form which the purchaser must sign and date.

(B) Any person, partnership, corporation, pawn shop or firm selling or bartering a firearm as provided in this Section shall provide to the Police Department of the City of Tifton the following information in writing: the manner in which the buyer of the firearm has identified himself to the seller, the type, model, caliber or gauge, serial number and manufacturer of the firearm.

(C) The information set out above in (A) and (B) shall be placed upon a printed form provided by the Police Department of the City of Tifton and shall be made by the seller in duplicate. The original of such form showing such information shall be delivered by the seller to the Police Department of the City of Tifton on same day that the firearm is sold or bartered, such delivery shall be made by hand or by placing the original in the U.S. Mail addressed to the Police Department of City of Tifton.

Section 3. It shall be unlawful and a violation of this Ordinance for any person, partnership, corporation, pawn shop or firm required by Section 2 hereof to obtain the information set out in (A) of Section 2 hereof to either fail to obtain such information or fail to provide such information to the Police Department of the City of Tifton as required by (C) of Section 2 hereof.

Section 4. It shall be unlawful and a violation of this Ordinance for any person buying or bartering for a firearm as set out in Section 2 hereof to give false information to seller or to answer falsely any questions set out in (A) of Section 2 hereof.

Valdosta

Sec. 18-39. Weapons—Sales of, regulated. (a) It shall be unlawful for any person, firm or corporation to sell to any purchaser any pistol, * * * without complying with the following provisions of this section:

(1) The merchant or dealer from whom a prospective buyer shall seek to purchase such weapon shall, before making a sale to such prospective purchaser, obtain from such prospective purchaser * * * (a statement) [contact local authorities for required contents]

(2) The information obtained by such inquiry shall be entered in writing or in print upon a printed form provided therefor by the police department and shall be made in duplicate. The duplicate copy shall be delivered at once by hand or by mail to the police department.

(3) Having obtained such information, the merchant or dealer, shall forthwith, before any sale is made, contact the chief of police, or, in his absence, one authorized to act in his stead, and inform the chief or his alter ego of the information obtained from the prospective purchaser. It shall then be the duty of the chief or of the officer authorized to speak for him to advise the merchant or dealer that he may, or may not, as the case may be, sell the object involved to the customer.

(4) It shall then be the duty of the merchant or dealer promptly to deliver to the police department a duplicate of the questions propounded to the purchaser, together with a duplicate of the answers made by him, all as recorded in the printed form provided therefor. Where such a sale is made, a description of the item sold, including serial number, if any, shall be entered on said form by said seller in the place provided.

(5) For obtaining the consent and approval of the police department to make such sale, the merchant or dealer may communicate with the chief of police or with one authorized by him to act in his stead in person or by telephone. * * *

(b) The foregoing provisions of this section having been complied with, the police department shall then advise the merchant or dealer that he may, or may not, as the case may be, sell to the prospective purchaser the item sought to be purchased. * * *

Waycross

Chapter 7.

Sec. 1. Definitions. The following words as used in this chapter shall have the meanings ascribed to them:

(1) Firearm. The word "firearm", as used in this chapter, shall be construed as including any pistol, revolver, rifle or shotgun of whatever form of action, caliber or gauge.

(2) Ammunition. The word "ammunition" shall be construed as meaning any pistol or rifle cartridge or shotgun shell and like cartridges and shells, of any caliber or gauge with bullet or projectile or shots made up within the same shell or cartridge with the propelling charge.

Sec. 2. Permit to purchase, receive or accept—Required. It shall be unlawful for any person to purchase, receive or accept in any manner any firearm or ammunition within the city without first having obtained a written permit from the chief of police of the city authorizing such person to receive or accept such firearm or ammunition.

No person shall sell, deliver, barter or give, or otherwise transfer a firearm or ammunition within the city to any person who is not the holder of a written permit from the chief of police authorizing such person to purchase, receive or accept such firearm or ammunition. In no case shall any person deliver a firearm or ammunition to the person to whom it is to be sold or transferred until approved by the chief of police.

Sec. 6. Same—Transfer at time of sale and at time of reports. It shall be the duty of any person who sells, transfers or gives away any firearm or ammunition as provided in this chapter, at the time such sale, gift or delivery is made, to require the holder of such permit to deliver the permit to such person who sells, transfers or gives away any firearm or ammunition. * * * * *

Sec. 10. Hours when exchange of firearms prohibited. It shall be unlawful for any person to purchase, receive or accept in any manner, or to barter or give away any firearm or ammunition between the hours of 5:00 P. M. and 5:00 A. M.

Winder

Sec. 17-45. Responsibility for violation of section 17-44 [Discharge of firearms, similar firearms, prohibited] by minor. It shall be deemed a violation of section 17-44 for any parent or person in control of children to permit a minor child to do the acts forbidden in section 17-44, or to furnish such minor child with firearms, including rifles, pistols, shot-

guns, air rifles or other similar devices; and such person by furnishing such instruments and allowing such minor child to violate the terms of section 17–44 shall also be deemed a violator of section 17-44 in the aiding and abetting of the minor child by his failure to forbid the said minor to do the acts prohibited.

Guam

Territorial Law

Govt. Code, Territory of Guam

8900. As used in this Chapter: (a) 'Firearm' means any weapon, the operating force of which is an explosive. This definition includes pistols, revolvers, rifles, shotguns, machine guns, automatic rifles, noxious gas projectors, mortars, bombs, cannon and submachine guns. The specific mention of certain weapons does not exclude from the definition other weapons operated by explosives.

(b) 'Pistol' or 'revolver' means any firearm of any shape whatever, and designed to be fired with one hand with a barrel less than twelve inches (12") in length and capable of discharging loaded ammunition or any noxious gas.

(c) 'Rifle' means a firearm designed, made, redesigned or remade, and intended to be fired from the shoulder and to fire only a single projectile through a rifled bore for each single pull of the trigger, and shall include any such firearm which may be readily restored to fire loaded ammunition, and any antique rifle or long gun, regardless of the type of charge or projectile used, which is capable of being used as a weapon.

(d) 'Shotgun' means any firearm designed, made, redesigned or remade and intended to be fired from the shoulder and to fire through a smooth barrel either a number of projectiles (ball shot) or a single projectile, and shall include any such firearm which may be readily restored to fire any of the above, and shall also include any firearm of any age designed and capable of firing the above-mentioned projectiles.

(e) The terms 'Director' and 'Department' means the Director of Revenue and Taxation and the Department of Revenue and Taxation respectively.

8900.1. This Chapter shall not apply to: (a) Law enforcement officers when using firearms authorized by the Director in their official duty.

(b) Persons in the Armed Forces of the United States engaged in official duty.

(c) Devices which are not designed or redesigned for use as a weapon. Any device, although originally designed as a firearm, which has been redesigned, or was designed initially for use as, a signalling, pyrotechnic, line-throwing, safety, industrial or similar device, surplus ordnance sold, loaned or given by the Secretary of the Army pursuant to the provisions of Sections 4684(2), 4685 or 4686 of Title 10 of the United States Code is not covered by this Chapter.

8901. Ownership, etc. of certain firearms prohibited. The manufacture, possession, sale, barter, trade, gift, transfer, or acquisition of any machine guns, sub-machine guns, automatic rifles or any other firearm not a rifle having a barrel length of sixteen (16) inches or greater, or not a shotgun having a barrel length of eighteen (18) inches or greater, or a revolver or pistol having a barrel length of more than twelve (12) inches is prohibited. Mufflers, silencers, or devices for deadening the sound of discharged firearms are also prohibited. Any person violating this section shall be guilty of a felony.

8901.1. Ownership, etc. permitted. Any person who qualifies under this Chapter may lawfully own, possess, use or carry any rifle, shotgun, pistol or revolver not prohibited by Section 8901 subject to the conditions and penalties provided in this Chapter.

8901.2. Dealer, etc. must register. Any person who is in the business of selling, buying, renting, or trading any firearm shall register with the Department of Revenue and Taxation under the terms and conditions set forth in this Chapter and the rules and regulations adopted hereunder before engaging in any of the above activities. The term 'in the business of' shall mean any person, natural or legal, who engages in the above activities for profit or who so engages on behalf of others, but shall not include private sales, loans, gifts or transfers of lawfully possessed firearms which have been registered and possessed under the provisions of Sections 8901.1 and 8902 of this Chapter.

8902. Identification card required. No person shall own, possess, use, carry or acquire any firearm which is lawful under Section 8901.1 unless he shall have first obtained from the Department an identification card evidencing his right to such ownership, possession, use or carrying, concealed or otherwise, as stated upon the face of the Card. Said Card shall be in the possession of the holder and on his person whenever he is using or has in his possession a firearm. * * *

8902.2. Same: restrictions. (a) No identification card shall be issued unless the Department is satisfied that the applicant may lawfully possess, use, carry, conceal or otherwise, own, or acquire the type of firearm stated in the application and upon the face of the identification card.

(b) No person shall be issued an identification card:

(1) Who has been convicted by any court of the United States, a state, territory, possession, Trust Territory or political subdivision thereof of any felony, or

(2) Who is an alien, except temporary permits may be issued to aliens for use only at target ranges operated by persons possessing permits therefor and who are citizens, or only for use at authorized sporting events, and except for official representatives of foreign governments in their official capacities, or

(3) Who is presently charged by information or indictment with any crime stated in (b)(1) above, or

(4) Who has been adjudicated incompetent, has been committed to any mental institution, or

(5) Who is under the age of eighteen (18) years, or

(6) Who has been convicted of any violation of the Uniform Controlled Dangerous Substances Act or any misdemeanor where personal injury or use of firearms was an element or factor of the offense unless the Director has determined that the offense was committed more than ten (10) years previously and that the applicant would not endanger the public safety by receiving an identification card, or

(7) Who, in the determination of the Director appears to suffer from a physical or mental disease or defect which would adversely affect the safe use of the firearm applied for, unless the person obtains a certificate from a licensed physician stating that the physical or mental disease or defect would not adversely affect his safe operation of the firearm or the public safety.

8902.2. Upon transfer to a pawnbroker, and upon retransfer from the pawnbroker to either the owner, or to another person, a new registration must be obtained. * * *

8904.1. (a) No person may use or possess a firearm, regardless of ownership of the firearm, without possession of an identification card evidencing his eligibility to possess, use or carry such firearms.

(b) No person shall transfer, loan, give, sell either as a part of a business or individually, or permit the use of any firearm unless the person receiving the firearm has an identification card evidencing his eligibility to receive, possess, use and carry the type of firearm which he is to receive, borrow, use, buy or possess or carry. * * *

(d) No person shall wilfully alter, remove, or obliterate the name of the make, model,

manufacturer's number, or other mark of identity of any firearm or ammunition. Possession of a firearm or ammunition upon which any mark of identity has been altered, removed, or obliterated shall be presumptive evidence that the possessor has altered, removed, or obliterated the same.

* * * * *

8905. Dealers, etc. must register. Any person who is a dealer, manufacturer, wholesaler, or retailer of firearms or ammunition within the territory of Guam who must register pursuant to Section 8901.2 shall do so by supplying the Department with information required by it relative to the name of the business, name or names of the owners, whether the business is a corporation, sole proprietorship, partnership or any other form, relative to the types of firearms sold, manufactured, bought or repaired by such business, to the security of the storage areas of the business wherein the firearms are stored and any other information deemed necessary by the Department. Upon receipt of the necessary information, the Department shall issue a registration card, which shall be prominently displayed at the place of business of the person or firm so registered, and copies to be displayed at each location where firearms are sold.

8905.1. Any person or firm licensed pursuant to Section 8901.2 shall, in the conduct of his business: * * * * *

(3) Permit only persons who are holders of identification cards making them eligible to purchase, possess and use the firearms sold by the registrant or repaired by the repair facility to have access to the firearms or ammunition, except that nothing in this section shall be construed to require a customer to show an identification card prior to his engaging in a transaction for which an identification card is required by this Chapter.

(4) Sell only to persons who have a valid identification card making them eligible to purchase, own, possess, use and carry the firearm or ammunition which is the subject of the transaction. * * * * *

8905.2. No person, other than the owner or possessor of a firearm, may accept any firearm for repair without having first been shown a valid identification card showing the person delivering the firearm to such person accepting it for repair to be eligible to possess the firearm in question. No firearm shall be returned to any person after repair or other work done on it without the repairer having seen the identification card of the one to whom the firearm is to be given.

* * * * *

Hawaii

State Law

Hawaii Rev. Stats.

Sec. 134-1 Definitions. As used in this chapter: "Firearm" means any weapon, the operating force of which is an explosive. This definition includes pistols, revolvers, rifles, shotguns, machine guns, automatic rifles, noxious gas projectors, mortars, bombs, cannon, and submachine guns. The specific mention of certain weapons does not exclude from the definition other weapons operated by explosives.

"Pistol" or "revolver" means any firearms of any shape whatsoever with barrel less than twelve inches in length and capable of discharging loaded ammunition or any noxious gas.

"Electric gun" means any portable device which is electrically operated to project a missile or electromotive force. It does not mean to include any electric livestock prod used in animal husbandry.

Sec. 134-2 Registration, mandatory. Every person arriving in the State who brings with him firearms of any description, whether useable or unuseable, serviceable or unserviceable, modern or antique, or ammunition of any type and description, shall within forty-eight hours after arrival, register the same with the chief of police of the county of his place of business, or if there be no place of business, his residence, or if there be neither place of business nor residence, his place of sojourn.

Registration shall not be required for: (a) any device designed to fire loose black powder; (b) a device not designed to fire or made incapable of discharging a shot by means of an explosive and incapable of being readily restored to a firing condition; and/or (c) all unserviceable firearms and destructive devices registered with the Director, Alcohol, Tobacco, and Firearms Division of the U.S. Internal Revenue Service as provided in Part 179 of Title 26, Code of Federal Regulations.

The registration shall be on such forms as may be designated by the department of the attorney general and shall include a description of the class of firearms and ammunition owned by him, or in his possession, together with the name of the maker and the factory number, if known or ascertainable, and the source from which possession was obtained. * * * * *

Sec. 134-3 Permits to acquire; registration; penalty. No person shall acquire the ownership of a firearm of any description (other than a rifle or shotgun having a barrel length of eighteen inches or over), whether usable or unusable, serviceable or unserviceable, modern or antique registered under prior law or by a prior owner or unregistered, either by purchase, gift, inheritance, bequest, or in any other manner, whether procured in the State or imported by mail, express, freight or otherwise, until he has first procured from the chief of police of the county of his place of business, or if there be no place of business, his residence, or if there be neither place of business nor residence, his place of sojourn, a permit to acquire as prescribed herein; * * * [*See local police for details*]

Sec. 134-4 Transfer of rifles and shotguns. No transfer of any rifle or shotgun having a barrel length of eighteen inches or over, whether usable or unusable, serviceable or unserviceable, modern or antique, registered under prior law or by a prior owner or unregistered, shall be made in any event to any person under the age of eighteen years, and no person under the age of eighteen years shall possess any such rifle or shotgun, except as provided by section 134-5.

It shall be unlawful for any person to own or possess such rifle, unless he is a citizen of the United States, or an alien who has procured a hunting license under sections 191-1 to 191-6 and a firearms permit under section 134-3.

Sec. 134-7 Ownership or possession by fugitive from justice or by person convicted of certain crimes prohibited; penalty. (a) No person who is a fugitive from justice shall own or have in his possession or under his control any firearm or ammunition therefor. As used in this section the term "fugitive from justice" means any person who has fled from any state, territory, the District of Columbia, or possession of the United States to avoid prosecution for a felony or to avoid giving testimony in any criminal proceeding.

(b) No person who has been convicted in this State or elsewhere, of having committed a felony, or of the illegal use, possession, or sale of any drug, shall own, or have in his possession, or under his control any firearm or ammunition therefor. * * * * *

Sec. 134-8 Ownership, etc., of machine guns, automatic rifles, silencers, etc., prohibited; penalty. The manufacture, possession, sale, barter, trade, gift, transfer, or acquisition of any machine guns, submachine guns, automatic rifles, or rifles with barrel lengths less than 16 inches, or shotguns with barrel length less than 18 inches, cannon, mufflers, silencers, or devices for deadening or muffling the sound of discharged firearms, or any hand grenade, dynamite or other explosives, blasting caps, bombs or bombshell is prohibited. * * *

Sec. 134-10 Alteration of identification marks prohibited; penalty. No person shall wilfully alter, remove, or obliterate the name of the make, model, manufacturer's number, or other mark of identity of any firearm or ammunition. Possession of a firearm or ammunition upon which any mark of identity has been altered, removed, or obliterated shall be presumptive evidence that the possessor has altered, removed, or obliterated the same.
* * *

Sec. 134-11 Exemptions. Sections 134-6 to 134-9 shall not apply:

(1) To members of police departments, sheriffs, members of military and naval forces of the State and of the United States, mail carriers, and law enforcement officers;

(2) To regularly enrolled members of any organization duly authorized to purchase or receive the weapons from the United States or from the State, provided the members are at, or going to or from their places of assembly, or target practice;

(3) To persons employed by the State or subdivisions thereof or the United States whose duties require them to be armed, while the persons are in the performance of their respective duties, or while going to and from their respective places of duty;

(4) To police officers on official assignment in Hawaii from any state which by compact permits police officers from Hawaii while on official assignment in that state to carry firearms without registration. The governor of the State or his duly authorized representative may enter into compacts with other states to carry out this section.

Nor shall sections 134-2 and 134-3 apply to such firearms or ammunition as are a part of the official equipment of any federal agency.

Sec. 134-16 Restriction of materials for manufacture of pistols or revolvers. It shall be unlawful for any person, including a licensed manufacturer, licensed importer or licensed dealer, to possess, sell or deliver any pistol or revolver which is not duly registered pursuant to section 134-2 prior to July 1, 1975, if the frame or receiver thereof is a die casting of zinc alloy or any other material which has a melting temperature of less than 800 degrees Fahrenheit.

Any person who violates this section shall be guilty of a misdemeanor.

This section shall not apply to any pistol or revolver duly registered prior to July 1, 1975, pursuant to section 134-2, or to any antique pistol or revolver.

The term antique pistol or revolver means any pistol manufactured in or before 1898 and any replica of such pistols or revolvers if such replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

Sec. 134-31 License to sell and manufacture firearms; fee. Any person desiring to engage in the business to sell and manufacture firearms for sale in the State either at wholesale or retail, shall annually file an application for a license therefor with the director of finance of each county of the State.
* * *

Honolulu, City and County of

Honolulu uses the Hawaii Revised Statutes as published in this volume with a few exceptions: delete the third (and last) paragraph from Sec. 134-2, delete "penalty" from Sections 134-8 and 134-10, delete the entire Sec. 134-31.

Idaho

State Law

Idaho Code

18-3302. Concealed and dangerous weapons—Possession and exhibition—Sale to minors. If any person, excepting officials of a county, officials of the state of Idaho, officials of the United States, peace officers, guards of any jail, or any officer of any express company on duty, shall carry concealed upon or about his person any * * * pistol, revolver, gun or any other deadly or dangerous weapon within the limits or confines of any city, town or village, or in any public assembly, or in any mining, lumbering, logging, railroad or other construction camp, public conveyances or on public highways within the state of Idaho, or shall, in the presence of one or more persons, exhibit any deadly or dangerous weapon in a rude, angry or threatening manner, or shall have or carry such weapons upon or about his person when intoxicated or under the influence of intoxicating drinks, or shall, directly or indirectly, sell or deliver, loan or barter to any minor under the age of sixteen years any such weapon without the consent of the parent or guardian of such minor, he shall, upon conviction, be punished by a fine of not less than $25.00 nor more than $200.00, and by imprisonment in the county jail for a period of not less than twenty days nor more than ninety days: provided, however, that any person shall be allowed to carry any of the above weapons in the places mentioned above on securing a permit from the sheriff of the county after satisfying the sheriff of the necessity therefor.

18-3308. Selling explosives, ammunition or firearms to minors. No person, firm, association or corporation shall sell or give to any minor under the age of sixteen years any powder, commonly called gunpowder, of any description, or any dynamite or other explosive, or any shells or fixed ammunition of any kind, except shells loaded for use in shotguns and for use in rifles of twenty-two caliber or smaller, or any firearms of any description, without the written consent of the parents or guardian of such minor first had and obtained. Any person, firm, association or corporation violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than twenty-five dollars nor more than $100, or be imprisoned in the county jail not less than ten days nor more than thirty days, or be punished by both such fine and imprisonment in the discretion of the court.

18-3314. Resident's purchase of firearm in contiguous state. Residents of the state of Idaho may purchase rifles and shotguns in a state contiguous to Idaho, provided that such residents conform to the applicable provisions of the federal Gun Control Act of 1968, and regulations thereunder, as administered by the United States secretary of the treasury, and provided further, that such residents conform to the provisions of law applicable to such a purchase in Idaho and in the contiguous state in which the purchase is made.

Illinois

State Law

Ill. Ann. Stat.

38 Sec. 24-1. Unlawful use of weapons. (a) A person commits the offense of unlawful use of weapons when he knowingly: * * * * *

(6) Possesses any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or

(7) Sells, manufactures, purchases, possesses or carries any weapon from which 8 or more shots or bullets may be discharged by a single function of the firing device, any shotgun having one or more barrels less than 18 inches in length, sometimes called a sawed-off shotgun, or any weapon made from a shotgun, whether by alteration, modification or otherwise, if such weapon, as modified or altered, has an overall length of less than 26 inches, or a barrel length of less than 18 inches or any bomb, bomb-shell, grenade, bottle or other container containing an explosive substance of over one-quarter ounce for like purposes, such as, but not limited to, black powder bombs and Molotov cocktails or artillery projectiles; * * *

* * * * *

A "stun gun or taser", as used in this paragraph (a) means any device which is powered by electrical charging units, such as, batteries, and which, fires one or several barbs attached to a length of wire and which, upon hitting a human can send out current capable of disrupting the person's nervous system in such a manner as to render him incapable of normal functioning.

38 Sec. 24-2. Exemptions. * * * * *

(c) Subsection 24-1(a)(7) does not apply to or affect any of the following:

(1) Peace officers.

(2) Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of an offense.

(3) Members of the Armed Services or Reserve Forces of the United States or the Illinois National Guard, while in the performance of their official duty.

(4) Manufacture, transportation, or sale of machine guns to persons authorized under (1) through (3) of this Subsection to possess machine guns, if the machine guns are broken down in a non-functioning state or not immediately accessible. * * * * *

(g) An information or indictment based upon a violation of any Subsection of this Article need not negative any exemptions contained in this Article. The defendant shall have the burden of proving such an exemption.

38 Sec. 24-3. Unlawful sale of firearms. A person commits the offense of unlawful sale of firearms when he knowingly:

(a) Sells or gives any firearm of a size which may be concealed upon the person to any person under 18 years of age; or

(b) Sells or gives any firearm to a person under 21 years of age who has been convicted of a misdemeanor other than a traffic offense or adjudged delinquent; or

(c) Sells or gives any firearm to any narcotic addict; or

(d) Sells or gives any firearm to any person who has been convicted of a felony under the laws of this or any other jurisdiction within 5 years from release from the penitentiary or within 5 years of conviction if penitentiary sentence has not been imposed; or

(e) Sells or gives any firearm to any person who has been a patient in a mental hospital within the past 5 years; or

(f) Sells or gives any firearms to any person who is mentally retarded; or

(g) Delivers any firearm of a size which may be concealed upon the person, incidental to a sale, without withholding delivery of such firearm for at least 72 hours after application for its purchase has been made, or delivers any rifle, shotgun or other long gun, incidental to a sale, without withholding delivery of such rifle, shotgun or other long gun for at least 24 hours after application for its purchase has been made. However, this paragraph shall not apply to: (1) the sale of a firearm to a law enforcement officer or a person who desires to purchase a firearm for use in promoting the public interest incident to his employment as a bank guard, armed truck guard, or other similar employment; or (2) a mail order sale of a firearm to a nonresident of Illinois under which the firearm is mailed to a point outside the boundaries of Illinois; or (3) the sale of a firearm to a nonresident of Illinois while at a firearm showing or display recognized by the Illinois Department of Law Enforcement; or (4) the sale of a firearm to a dealer licensed under the Federal Firearms Act of the United States; or

(h) While holding any license under the Federal "Gun Control Act of 1968", as amended, as a dealer, importer, manufacturer or pawnbroker; manufactures, sells or delivers to any unlicensed person a handgun having a barrel, slide, frame or receiver which is a die casting of zinc alloy or any other nonhomogeneous metal which will melt or deform at a temperature of less than 800 degrees Fahrenheit. For purposes of this paragraph, (1) "firearm" is defined as in "An Act relating to the acquisition, possession and transfer of firearms and firearm ammunition, to provide a penalty for the violation thereof and to make an appropriation in connection therewith", approved August 3, 1967, as amended; (2) "handgun" is defined as a firearm designed to be held and fired by the use of a single hand, and includes a combination of parts from which a firearm can be assembled.

(i) Paragraph (h) of this Section shall not include firearms sold within 6 months after enactment of this amendatory Act of 1973, nor shall any firearm legally owned or possessed by any citizen or purchased by any citizen within 6 months after the enactment of this amendatory Act of 1973 be subject to confiscation or seizure under the provisions of this amendatory Act of 1973. Nothing in this amendatory Act of 1973 shall be construed to prohibit the gift or trade of any firearm if that firearm was legally held or acquired within 6 months after the enactment of this amendatory Act of 1973.

(j) Sentence. Unlawful sale of firearms is a Class A misdemeanor.

38 Sec. 24-3.1 Unlawful Possession of Firearms and Firearm Ammunition. (a) A person commits the offense of unlawful possession of firearms or firearm ammunition when:

(1) He is under 18 years of age and has in his possession any firearm of a size which may be concealed upon the person.

(2) He is under 21 years of age, has been convicted of a misdemeanor other than a traffic offense or adjudged delinquent and has any firearms or firearm ammunition in his possession; or

(3) He has been convicted of a felony under the laws of this or any other jurisdiction within 5 years from release from the penitentiary or within 5 years of conviction if penitentiary sentence has not been imposed, and has any firearm ammunition in his possession; or

(4) He is a narcotic addict and has any firearms or firearm ammunition in his possession; or

(5) He has been a patient in a mental hospital within the past 5 years and has any firearms or firearm ammunition in his possession; or

(6) He is mentally retarded and has any firearms or firearm ammunition in his possession.

(b) Sentence. Unlawful possession of firearms and firearm ammunition is a Class A misdemeanor.

38 Sec. 24-5. Defacing Identification Marks of Firearms.

(a) Any person who shall change, alter, remove or obliterate the name of the maker, model, manufacturer's number or other mark of identification of any firearm commits a Class A misdemeanor.

(b) Possession of any firearm upon which any such mark shall have been changed, altered, removed or obliterated shall be prima facie evidence that the possessor has changed, altered, removed or obliterated the same.

38 Sec. 83-1. Legislative Declaration. It is hereby declared as a matter of legislative determination that in order to promote and protect the health, safety and welfare of the public, it is necessary and in the public interest to provide a system of identifying persons who are not qualified to acquire or possess firearms and firearm ammunition within the State of Illinois by the establishment of a system of Firearm Owner's Identification Cards, thereby establishing a practical and workable system by which law enforcement authorities will be afforded an opportunity to identify those persons who are prohibited by Section 24-3.1 of the "Criminal Code of 1961", as amended, from acquiring or possessing firearms and firearm ammunition.

38 Sec. 83-1.1 Definitions. For purposes of this Act: "Firearm" means any device, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas or escape of gas; excluding, however:

(1) any pneumatic gun, spring gun, or B-B gun which expels a single globular projectile not exceeding .18 inch in diameter.

(2) any device used exclusively for signalling or safety and required or recommended by the United States Coast Guard or the Interstate Commerce Commission; or

(3) any device used exclusively for the firing of stud cartridges, explosive rivets or similar industrial ammunition;

(4) an antique firearm (other than a machine-gun) which, although designed as a weapon, the Department of Law Enforcement finds by reason of the date of its manufacture, value, design, and other characteristics is primarily a collector's item and is not likely to be used as a weapon.

"Firearm Ammunition" means any self-contained cartridge or shotgun shell, by whatever name known, which is designed to be used or adaptable to use in a firearm; excluding, however:

(1) any ammunition exclusively designed for use with a device used exclusively for signalling or safety and required or recommended by the United States Coast Guard or the Interstate Commerce Commission; or

(2) any ammunition designed exclusively for use with a stud or rivet driver or other similar industrial ammunition.

38 Sec. 83-2. Requisites for Acquisition or Possession—Exempted Persons or Entities. (a) No person may acquire or possess any firearm or any firearm ammunition within this State without having in his possession a Firearm Owner's Identification Card previously issued in his name by the Department of Law Enforcement under the provisions of this Act.

(b) The provisions of this Section regarding the possession of firearms and firearm ammunition do not apply to:

(1) United States Marshals, while engaged in the operation of their official duties;

(2) Members of the Armed Forces of the United States or the National Guard, while engaged in the operation of their official duties;

(3) Federal officials required to carry firearms, while engaged in the operation of their official duties;

(4) Law enforcement officials of this or any other jurisdiction, while engaged in the operation of their official duties;

(5) Members of bona fide veterans organizations which receive firearms directly from the armed force of the United States, while using such firearms for ceremonial purposes with blank ammunition.

(6) Nonresident hunters during hunting season, with valid nonresident hunting licenses and while in an area where hunting is permitted; however, at all other times and in all other places such persons must have their firearms unloaded and enclosed in a case;

(7) Nonresidents while on a firing or shooting range recognized by the Department of Law Enforcement; however, such persons must at all other times and in all other places have their firearms unloaded and enclosed in a case;

(8) Nonresidents, while at a firearm showing or display recognized by the Department of Law Enforcement; however, at all other times and in all other places such persons must have their firearms unloaded and enclosed in a case;

(9) Nonresidents, whose firearms are unloaded and enclosed in a case; and

(10) Nonresidents, who are currently licensed or registered to possess a firearm in their resident state; and

(11) Unemancipated minors while in the custody and immediate control of their parent or legal guardian or other person in loco parentis to such minor if such parent or legal guardian or other person in loco parentis to such minor has a currently valid Firearm Owner's Identification Card.

38 Sec. 83-3. Requisites for transfer. (a) No person within this State may knowingly transfer, or cause to be transferred, any firearm or any firearm ammunition to any person within this State unless the transferee with whom he deals displays a currently valid Firearm Owner's Identification Card which has previously been issued in his name by the Department of Public Safety under the provision of this Act. (c) The provisions of this Section regarding the transfer of firearm ammunition shall not apply to those persons specified in paragraph (b) of Section 2 of this Act. (Chapter 38, Sec. 83-2.)

38 Sec. 83-6. Contents of Identification Card. A Firearm Owner's Identification Card, issued by the Department of Law Enforcement at such places as the Director of the Department shall specify, shall contain the applicant's name, residence, date of birth, sex, physical description, recent photograph and such other personal identifying information as may be required by the Director. Each Firearm Owner's Identification Card must have printed on it the following: "CAUTION-This card does not permit bearer to UNLAWFULLY carry or use firearms."

Abingdon

6-2-3-15: Unlawful use of weapons: (A) It shall be unlawful for any person to: 6. Possess any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or

7. Possess or carry any weapon from which more than eight (8) shots or bullets may be discharged by a single function of the firing device, any shotgun with a barrel less than eighteen inches (18") in length, or any bomb-shell, grenade, bottle or other container containing an explosive substance, such as, but not limited to, black powder bombs and Molotov cocktails;

6-2-4-14: Sale of firearms or weapons to minors prohibited: (A) It shall be unlawful for any person to sell to any minor person any firearm

Atlanta City

6-2-3-15: and 6-2-4-14: same as Abingdon Code.

Aurora

Division 1. Generally

Sec. 48-11. Dealer's license required. It shall be unlawful for any person to engage in the business of selling, or to sell or give away, any pistol, revolver, derringer, or other deadly weapon which can be concealed on the person, without securing a license so to do.

Sec. 48-17. Disposing of weapon to unauthorized persons. It shall be unlawful for any person to sell, barter, or give away to any person within the city, any deadly weapon mentioned in section 48-11, except to licensed dealers and to persons who have secured a permit for the purchase of such articles from the chief of police as hereinafter required.

Division 2. Gunsmiths

Sec. 48-33. License required. It shall be unlawful for any person to engage in the business of repairing any pistol, revolver, derringer, or other firearm, which can be concealed on the person without securing a license so to do.

Addison

2. Permit. It shall be unlawful for any person to sell or give away to any person within the Village of Addison any firearm unless such person so purchasing or receiving such firearm shall have a valid State of Illinois Gun Owner's Identification Card and shall have secured a written permit for the purchase of said firearm from the Chief of Police, and it shall be the duty of the person selling or giving away firearms to receive and keep such written permits from the Chief of Police in a permanent file for inspection purposes. Every such person with a license to deal in firearms shall, on demand, allow the

Chief of Police or his deputy to enter for inspection during normal business hours, all stock on hand and shall on request of such officer, produce for inspection all written permits issued by the Chief of Police for the sale of such firearms, and the register so required to be kept.

4. Minors. It shall be unlawful for any person to sell or give away to any minor any firearm which can be concealed on the person within the corporate limits of the Village of Addison.

Alton

4-17-1: License required: It shall be unlawful for any person to engage in the business of selling, or to sell or give away to any person within the City, any pistol, revolver, derringer, shotgun and rifle (capable of being concealed on the person), antique firearms, * * * without securing a license so to do * * *.

Arlington Heights

Article XXXIII—Gun Dealers.

Section 14-3301 Gun Dealers—License Required. No person shall engage in the business of selling firearms, ammunition, black powder, smokeless powder, or any other propellant, without first having obtained a business license therefor from the Village of Arlington Heights pursuant to the provisions of Chapter 9 of this Code. * * * * *

Section 14-3304 For the purpose of this ordinance, "firearm" shall not mean an antique firearm (other than a machine-gun) which, although designed as a weapon, is by reason of the date of its manufacture, value, design and other characteristics primarily a collector's item and is not likely to be used as a weapon, or which is designated as a collector's item or antique firearm by state or federal law."

Bartlett

23.014 Firearms—Minors. It shall be unlawful to sell, loan, or furnish to any minor any gun, rifle, pistol, shotgun or other firearm.

Beecher

* * * * *

6-1-7 * * * * * (B) It shall be unlawful for any person to sell, loan, or furnish to any minor any gun, pistol, fowling piece or other firearm within the limits of the Village.

Belvidere

Sec. 133.006 Unlawful use of weapons; prohibited. (A) A person commits the offense of unlawful use of weapons when he knowingly: * * * * * (6) Possesses any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; * * * * *

Sec. 133.014 Unlawful sale of firearms. (A) A person commits the offense of unlawful sale of firearms when he knowingly:

(1) Sells or gives any firearm of a size which may be concealed upon the person to any person under 18 years of age; or

(2) Sells or gives any firearm to a person under 21 years of age who has been convicted of a misdemeanor other than a traffic offense or adjudged delinquent; or

(3) Sells or gives any firearm to any narcotic addict; or

(4) Sells or gives any firearm to any person who has been convicted of a felony under the laws of this or any other jurisdiction within 5 years from release from the penitentiary or within 5 years of conviction if penitentiary sentence has not been imposed; or

(5) Sells or gives any firearm to any person who has been a patient in a mental hospital within the past 5 years; or

(6) Sells or gives any firearms to any person who is mentally retarded; or

(7) Delivers any firearm, of a size which may be concealed upon the person, incidental to a sale, without withholding delivery of such firearm for at least 72 hours after application for its purchase has been made; or delivers any rifle, shotgun or other long gun incidental to a sale, without withholding delivery of such rifle, shotgun or other long gun for at least 24 hours after application for its purchase has been made. However this paragraph shall not apply to:

(a) The sale of a firearm to a law enforcement officer or a person who desires to purchase a firearm for use in promoting the public interest incident to his employment as a bank guard, armed truck guard, or other similar employment; or

(b) A mail order sale of a firearm to a nonresident of Illinois under which the firearm is mailed to a point outside the boundaries of Illinois; or

(c) The sale of a firearm to a nonresident of Illinois while at a firearm showing or display recognized by the Illinois Department of Law Enforcement; or

(d) The sale of a firearm to a dealer licensed under the Federal Firearms Act of the United States.

* * * * *

Sec. 133.015 Unlawful possession or acquisition of firearms or ammunition.

(A) A person commits the offense of unlawful possession of firearms or firearm ammunition when:

(1) He is under 18 years of age and has in his possession any firearm of a size which may be concealed upon the person;

(2) He is under 21 years of age, has been convicted of a misdemeanor other than a traffic offense or adjudged delinquent and has any firearm or firearm ammunition in his possession; or

(3) He has been convicted of a felony under the laws of this or any other jurisdiction within 5 years from release from the penitentiary or within 5 years of conviction if penitentiary sentence has not been imposed, and has any firearms or firearm ammunition in his possession; or

(4) He is a narcotic addict and has any firearms or firearm ammunition in his possession; or

(5) He has been a patient in a mental hospital within the past 5 years and has any firearms or firearm ammunition in his possession; or

(6) He is mentally retarded and has any firearms or firearm ammunition in his possession.

* * * * *

Bensenville

42.08 Firearms to minors. No persons shall sell, loan or furnish to any minor any gun, pistol or other firearm * * * within the village.

Berkeley

Ordinance 69-12

Section one: That it shall be unlawful for any firm, business or corporation within the Village of Berkeley, to manufacture for sale, or cause to be manufactured, sell, keep for sale, offer, or dispose of, any instrument or weapon of the kind usually known as a pistol, revolver, shot gun, rifle, * * * or any other offensive and dangerous weapon or instrument, or to give or sell a pistol or firearm to any person.

Berwyn

36-6. Definition. "Firearms," for the purposes of this article, are pistols, revolvers, guns and small arms of a size and character that may be concealed upon or about the person.

36-7. License to sell concealable firearms required. It shall be unlawful for any person to engage in the business of selling, or to sell or give away to any person within the city, any firearms which are of such size of nature as may be concealed upon the person, without securing a license therefor.

36-9. Licensee not to sell concealable firearms; exception. No person having se-

cured a license required by section 26-7 of this Code, shall sell, loan or give away any firearm described in section 26-6 of this Code to any person who has not secured a permit from the chief of police to purchase such firearm.

26-11. Persons ineligible for permits. No person shall be permitted to purchase a firearm without having secured a permit from the chief of police. Such permit shall not be issued to a criminal, vagabond, minor under eighteen years of age or an alien.

Bloomington

69. Minors—selling, etc., weapons to prohibited. No person shall sell, give, loan, hire, barter, furnish, or offer to sell, give, loan, hire, barter or furnish to any minor within the City any gun, pistol, revolver, fowling piece, or toy firearm in which any explosive substance can be used * * * or other deadly weapon of a like character.

Blue Island

2272. 1.01—Definitions. For the purposes of this ordinance—

A. "Deadly Weapons" means pistols, derringers, revolvers or other handguns of such size or nature that they may be concealed on or about the person, short-barreled shotguns and short-barreled rifles. Deadly weapons do not include any antique firearm. Deadly weapons do not include any firearm which is not designed to or may not readily be converted to expel a projectile by the action of an explosive.

B. "Short-Barreled Shotguns" means shotguns having one or more barrels less than eighteen inches in length.

C. "Short-Barreled Rifles" means a rifle having one or more barrels less than sixteen inches in length.

D. "Antique Firearm" means:

(1) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; and

(2) any replica of any firearm described in subsection D.(1) if such replica—

(a) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or

(b) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

E. "Dealer" means any person, firm or corporation—

(1) engaged in the business of selling firearms at wholesale or retail,

(2) engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms, or

(3) any person who is a pawnbroker.

F. "Licensed Dealer" means any dealer who is validly licensed as a dealer under the provisions of Chapter 44 of Title 18 of the United States Code.

G. "Licensed Collector" means any person who acquires, holds, or disposes of firearms or ammunition as curios or relics and who is validly licensed as a collector by the Secretary of the Treasury of the United States under the provisions of Chapter 44 of Title 18 of the United States Code.

H. "Sale or Other Transfer" means any sale, gift, exchange, loan, rental or other transfer of a deadly weapon, but does not include any of the following:

(1) acquisition of a deadly weapon as the executor, administrator or other legal representative of a decedent's estate, or

(2) transfer of a deadly weapon by bequest or intestate succession, or

(3) acquisition or transfer of a deadly weapon by a trustee in bankruptcy in the administration of a bankrupt's estate, or

(4) return of a deadly weapon to a person, firm or corporation from whom it was received, or

(5) transfer of a deadly weapon where it is required by or in accordance with a judgment or decree of any court of lawful jurisdiction, or

(6) transfer of a deadly weapon to any Federal, State or Local government, or any department, agency, bureau, institution or commission thereof, or

(7) transfer of a deadly weapon to a private museum, society institution or other private organization which customarily acquires and holds firearms as curios or relics or for scientific or research purposes, or

(8) loan or rental of a deadly weapon solely for the purpose of target shooting upon a lawful pistol range or other lawful target range.

2.01 Unlawful Sale or Other Transfer of Deadly Weapons. It shall be unlawful for any person, firm or corporation to make any sale or other transfer of a deadly weapon in the City of Blue Island, Illinois, to any person, firm or corporation other than the following:

A. Persons who are required or authorized to possess and use a deadly weapon incident to their membership, employment or association with any of the regular armed forces, military services or reserve organizations of the United States.

B. Persons who are required or authorized to possess and use a deadly weapon incident to their membership, employment or association with the organized militia of any State.

C. Persons who are required or authorized to possess and use a deadly weapon incident to their employment by any Federal, State or Local government thereof, specifically including by way of example but not limited to:

(1) Peace Officers;

(2) Wardens, Superintendents and Keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of an offense; and

(3) Agents and Investigators of the Illinois Legislative Investigatory Commission authorized by the Commission to carry weapons.

D. Licensed detectives and employees of licensed detective agencies as defined in Illinois Revised Statutes, Chapter 38, Section 201-1 as now or hereafter amended.

E. Special agents employed by a railroad or public utility to perform police functions.

F. Watchmen, bank guards, armed truck guards or other similar private security personnel, in accordance with the provisions of Section 4.02 of this ordinance.

G. A licensed collector of deadly weapons.

H. A licensed dealer in deadly weapons.

3.01—Dealer License Required. No person, firm or corporation shall engage in the business of a dealer in deadly weapons in the City of Blue Island, Illinois, without securing a license therefor.

4.02—Sale or Other Transfer to Private Security Personnel. Any dealer in deadly weapons who sells or otherwise transfers a deadly weapon to any watchman, bank guard, armed truck guard or other similar private security personnel shall before making such sale or transfer request and receive from such person's employer a letter stating that such person is employed as a private security guard and requires the deadly weapon which he is seeking to obtain from the dealer.

Bolingbrook

* * * * *

19-406. License Required. It shall be unlawful for any person to engage in the business of selling any concealable firearms, * * * derringer * * * or deadly weapons which can be concealed on the person, without securing a license from the Village of Bolingbrook to do so.

19-413. Unlawful use of weapon: (a) A person commits the offense of unlawful use of weapons when he knowingly: * * * * * (6) possesses any device or attachment of any kind designed, used, or intended for use in silencing the report of any firearm; or

* * * * *

19-414. Defacing identification marks of firearms: It shall be unlawful for any person to change, alter, remove or obliterate the name of the maker, model, manufacturer's number or other mark of identification of any firearm. Possession of any firearm upon which any such mark shall have been

changed, altered, removed or obliterated shall be prima facie evidence that the possessor has changed, altered, removed or obliterated the same.

19-420. Permit required for purchase of concealable weapons—Application; Ineligible applicants. (A) No sale of any revolver, pistol, or other deadly weapon which can be concealed on a person shall be made by any licensee under this article to any person unless such person shall first exhibit to the licensee a permit for the purchase thereof, as issued by the Chief of Police of the Village.

(B) Before any permit required by this section can be granted, an application in writing must be made to the Chief of Police. * * *

Brookfield

Sec. 29-1. "Firearms" defined. "Firearms," for the purposes of this chapter, are pistols, revolvers, guns and small arms of a size and character that may be concealed upon or about the person.

Sec. 29-2. Permit to purchase firearms. No person shall purchase a firearm without having secured a permit so to do from the chief of police. Such permit shall not be issued to a criminal, vagabond, minor under eighteen (18) years of age, or an alien. Application for such a permit shall state the type of firearm desired and the name, age, sex, residence, nationality, height, weight and complexion of the applicant. Recommendation by two (2) or more citizens of the village of the good moral character of the applicant shall accompany each application for permit under this section.

No person, whether licensed by the village or not, shall sell, loan, or give away any firearm to any person who has not secured a permit from the chief of police as required by this section.

Cahokia

4. No person, firm or corporation shall sell or give or loan to any person under the age of 18 years any firearm or other deadly weapon in the Village of Cahokia, Illinois.

Calumet Park

Ordinance 76-256

Section 1: That it shall be unlawful for any person, firm, business, corporation, association or otherwise, within the corporate limits of the Village of Calumet Park, to manufacture for sale or cause to be manufactured, sell, give, keep for sale, offer, or otherwise dispose of, in usable form, any instrument or weapon of any kind usually known as a pistol, revolver, shotgun, rifle or any other offensive and dangerous weapon or instrument.

* * * * *

Carpentersville

8-39. Unlawful Use of Weapons. A person commits the offense of unlawful use of weapons when he knowingly: * * *

(f) Possesses any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or

(g) Sells, manufacturers, purchases, possesses or carries any weapon from which more than 8 shots or bullets may be discharged by a single function of the firing device. * * *

Subsection * * * (g) shall not apply to or affect any of the following:

(a) Peace officers.

(b) Manufacture, transportation, or sale of machine guns to persons authorized under (a) of this subsection to possess such, provided said machine guns are broken down in a non-functioning state or not immediately accessible. * * *

8-40. Unlawful Sale of Firearms. A person commits the offense of unlawful sale of firearms when he knowingly:

(a) Sells or gives any firearm of a size which may be concealed upon the person to any person under 18 years of age; or

(b) Sells or gives any firearm to any narcotic addict; or

(c) Sells or gives any firearm to any person who has been convicted of a felony under the laws of this or any other jurisdiction within 5 years from release from the penitentiary or within 5 years of conviction if penitentiary sentence has not been imposed.

Centralia

16-1-4. Unlawful use of weapons. A person commits the offense of unlawful use of weapons when he knowingly:

(1) Sells, manufactures, purchases, possesses or carries any * * * shotgun with a barrel less than 18 inches in length, * * * or * * * * *

(6) Possesses any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or

(7) Sells, manufactures, purchases, possesses or carries any weapon from which more than eight shots or bullets may be discharged by a single function of the firing device.

C. Subsection 16-1-4 (7) shall not apply to or affect any of the following:

(1) Peace Officers.

(2) Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of an offense.

(3) Members of the Armed Services or Reserve Forces of the United States or the Illinois National National Guard, while in the performance of their official duty.

(4) Manufacture, transportation, or sale of machine guns to persons authorized under (1) through (3) of the subsection to possess such, provided said machine guns are broken down in a non-functioning state or not immediately accessible.

16-1-6. Unlawful sale of firearms. A person commits the offense of unlawful sale of firearms when he knowingly:

(1) Sells or gives any firearms of a size which may be concealed upon the person to any person under 18 years of age; or

(2) Sells or gives any firearm to any narcotic addict; or

(3) Sells or gives any firearm to any person who has been convicted of a felony under the laws of this or any other jurisdiction within 5 years from release from the penitentiary or within 5 years of conviction if penitentiary sentence has not been imposed.

Champaign

13.505. Weapons. No pawnbroker shall receive as a pledge or purchase any revolver, pistol, * * * or sawed-off shotgun. And no pawnbroker shall display in his window or shop any such weapons for sale.

22.209. Weapons. It shall be unlawful to carry or possess any firearm or weapon in the City in violation of the laws of this State.

Chicago

Registration

11.1-4 At the time of sale the seller shall complete a registration form, designed or approved by the Director of Revenue, [contact local authorities for required contents] * * *.

11.1-5. At such time of sale the seller shall witness to the best of his knowledge that the information submitted on the registration form by the purchaser is true and correct and that the transaction is not in violation of law.

* * * * *

11.1-14. For the purposes of this Chapter the term "firearm" means any weapon, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosive and a firearm muffler or firearm silencer, or any part or parts of such weapon.

11.1-15. Any person under 18 years of age, any narcotic addict, any person who has been convicted of a felony under the laws of this State or any other jurisdiction within 5 years from release from penitentiary or within 5 years of conviction if penitentiary sentence has not been imposed, and any person who has been released from a mental institution or from the custody of the Illinois Youth Commission within the last 5 years, or is mentally retarded, and any person who pos-

assess any firearm, the possession of which is prohibited by any State or Federal law relating to weapons or firearms, shall be ineligible to register pursuant to this Chapter. Any purported registration by any of the above-described persons shall be null and void.

11.1-16. A person may not possess or harbor any firearm, whether concealed or not concealed, if such person is ineligible to register such firearm with the licensing authority pursuant to the provisions of this Chapter.

Unlawful Acts

183-1. It shall be unlawful for any person to engage in the business of selling, or to sell or give away, any pistol, revolver, * * * derringer, * * * or other deadly weapon which can be concealed on the person, without securing a license so to do.

183-6. It shall be unlawful for any person to sell, barter, or give away to any person within the city, any deadly weapon mentioned in section 183-1, except to licensed dealers and to persons who have secured a permit for the purchase of such articles from the superintendent of police as hereinafter required. This section shall not apply to sales made of such articles which are to be delivered or furnished outside the city.

183-7. It shall be unlawful for to purchase any deadly weapon mentioned in section 183-1, which can be concealed on the person without first securing from the superintendent of police a permit so to do. Before any such permit is granted, an application in writing shall be made therefor, [contact local authorities for required contents] * * *

183-9.1 Gunsmiths. It shall be unlawful for any person to engage in the business of repairing any pistol, revolver, derringer, or other firearm which can be concealed on the person without securing a license so to do.

Chicago Heights

38-101. Unlawful use of weapons. A person commits the offense of unlawful use of weapons when he knowingly:

* * * * * *

(f) Possesses any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or

(g) Sells, manufactures, purchases, possesses or carries any weapon from which more than eight (8) shots or bullets may be discharged by a single function of the firing device, any shotgun with a barrel less than eighteen (18) inches in length, or any bomb, bombshell, grenade, bottle or other container containing an explosive substance, such as but not limited to black powder bombs and Molotov cocktails; * * * * *

38-104. Unlawful sale of firearms. A person commits the offense of unlawful sale of firearms when he knowingly:

(a) Sells or gives any firearm of a size which may be concealed upon the person to any person under eighteen (18) years of age; or

(b) Sells or gives any firearm to a person under twenty-one (21) years of age who has been convicted of a misdemeanor other than a traffic offense or adjudged delinquent; or

(c) Sells or gives any firearm to any narcotic addict; or

(d) Sells or gives any firearm to any person who has been convicted of a felony under the laws of this or any other jurisdiction within five (5) years from release from the penitentiary or within five (5) years of conviction if penitentiary sentence has not been imposed; or

(e) Sells or gives any firearm to any person who has been a patient in a mental hospital within the past five (5) years; or

(f) Sells or gives any firearm to any person who is mentally retarded; or

(g) Delivers any firearm of a size which may be concealed upon the person, incidental to a sale, without withholding delivery of such firearm for at least seventy-two (72) hours after application for its purchase has been made, or delivers any rifle, shotgun or other long gun, incidental to a sale, without withholding delivery of such rifle, shotgun or other long gun for at least twenty-four (24) hours after application for its purchase has been made. However, this paragraph shall not apply to:

(1) The sale of a firearm to a law enforcement officer or a person who desires to purchase a firearm for use in promoting the public interest incident to his employment as a bank guard, armed truck guard, or other similar employment; or

(2) A mail order sale of a firearm to a nonresident of this state under which the firearm is mailed to a point outside the boundaries of this state; or

(3) The sale of a firearm to a nonresident of this state while at a firearm showing or display recognized by the state department of public safety; or

(4) The sale of a firearm to a dealer licensed under the federal firearms act.

38-105. Unlawful possession of firearms and firearm ammunition. A person commits the offense of unlawful possession of firearms or firearm ammunition when:

(a) He is under eighteen (18) years of age and has in his possession any firearm of a size which may be concealed upon the person.

(b) He is under twenty-one (21) years of age, has been convicted of a misdemeanor other than a traffic offense or adjudged delinquent and has any firearms or firearm ammunition in his possession; or

(c) He has been convicted of a felony under the laws of this or any other jurisdiction within five (5) years from release from the penitentiary or within five (5) years of conviction if penitentiary sentence has not been imposed, and has any firearms or firearm ammunition in his possession; or

(d) He is a narcotic addict and has any firearms or firearm ammunition in his possession; or

(e) He has been a patient in a mental hospital within the past five (5) years and has any firearms or firearm ammunition in his possession; or

(f) He is mentally retarded and has any firearms or firearm ammunition in his possession.

Chicago Ridge

Section 1—License required. It shall be unlawful for any person, firm or corporation to engage in the business of selling or to sell, loan or give away to any person within the Village any pistol, revolver, derringer, * * * or any toy firearms or other toy in the nature of a firearm in which any explosive substance can be used or other weapon of like character without securing a license so to do as hereinafter provided; and no person, firm or corporation having secured such a license shall sell or give away such weapon to any person within this Village who has not secured a permit from either the Chief of Police or the Village Clerk to purchase such weapon in the manner hereinafter provided.

Section 5—Permit. It shall be unlawful for any person to purchase any pistol, revolver, derringer, * * * or weapon of like character without first securing from the Village Clerk a permit so to do. Before any such permit is granted an application in writing shall be made * * * [contact local authorities for required contents]. Before issuing such permit the Village Clerk shall refer the same to the Chief of Police * * *. In addition the Chief of Police shall make such inquiry or investigation as shall be necessary to ascertain whether or not the applicant is entitled to receive such a permit * * * * *.

Section 6—Refusing permit. It shall be the duty of the Chief of Police to refuse his approval of such permit to a) All persons having been convicted of any crime; b) All minors.

Cicero

38-7. Minors using firearms. No person shall sell, loan or furnish to any minor any gun, pistol or other firearms, or any toy gun, toy pistol or other toy firearms, in which any explosive substance can be used, within the town, under a penalty of not more than one hundred dollars for each offense; provided, that minors may be permitted, with the consent of their parents or guardians, to use firearms on the premises of a duly licensed shooting gallery, gun club or rifle club.

38-9. Sale or gift of deadly weapons concealable on person—License—Required.

It shall be unlawful for any person to engage in the business of selling, or to sell or give away, any pistol, revolver, * * * derringer, * * * or other deadly weapon which can be concealed on the person, without securing a license so to do.

38-12. Same—Application to, permission from, superintendent of police required. No pistol, revolver, * * * derringer, * * * or other deadly weapon can be sold unless application is made to the superintendent of police of the town stating that a request has been made for the purchase of a pistol, revolver, * * * derringer, * * * or other deadly weapon * * *

38-14. Same—Prohibited to other than licensed dealers, or persons granted permits. It shall be unlawful for any person to sell, barter, or give away to any person within the town, any deadly weapon mentioned in section 38-9, except to licensed dealers and to persons who have secured a permit for the purchase of such articles from the superintendent of police of the town as hereinafter required. This section shall not apply to sales made of such articles which are to be delivered or furnished outside the town.

38-15. Same—Purchasers required to obtain permit; permits prohibited to minors and persons convicted of crime. It shall be unlawful for any person to purchase any deadly weapon mentioned in section 38-9 which can be concealed on the person without first securing from the superintendent of police of the town a permit so to do. * * *

Clarendon Hills

Selling firearms to minors unlawful. No person shall sell, loan or furnish to any minor, any gun, pistol, fowling piece or other firearm, * * * within the Village of Clarendon Hills, under a penalty of not less than five dollars not more than fifty dollars for each offense.

Colchester

Sec. 4-30. Weapons—Selling or furnishing firearms to minors. It shall be unlawful for any person within the city to sell, loan or furnish to any minor under the age of eighteen (18) years any gun, pistol, fowling piece or other firearms.

Countryside

8-11.01 License required. It shall be unlawful for any person, firm or corporation to engage in the business of selling, or to sell or give away, any loaded paper shells, metallic shot, loaded cartridges, bank cartridges, percussion caps, primers, detonators, or any other explosives without having first obtained a license therefor.

8-11.11 Minors. It is hereby declared to be unlawful for any person to sell, deliver, or give to any person under eighteen years of age any of the items set forth in 8-11.01.

Crest Hill

1. Violation. It shall be unlawful for any person to engage in the business of selling or to sell, or offer for sale or give away to any person within the city any pistol, revolver, * * * or other weapons of like character without securing a license to do so.

3. Sale to minors. None of the articles enumerated in Section 1, or of like character, shall be sold to any minor.

5. Permit. No sale of any revolver, pistol, * * * or other deadly weapons which can be concealed on the person shall be made by any licensee to any purchaser unless such purchaser shall first exhibit to such licensee a permit for the purchase thereof, issued by the chief of police of this city. * * * It shall be the duty of the chief of police to refuse such permit to all minors or persons having been convicted of any crime.

Creve Coeur

6-2-17: Unlawful use of weapons: (A) It shall be unlawful for any person to: 6. Possess any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or

7. Possess or carry any weapon from which more than eight (8) shots or bullets may be discharged by a single function of the firing device, any shotgun with a barrel less than eighteen inches (18") in length, or any bomb, bomb-shell, grenade, bottle or other container containing an explosive substance, such as, but not limited to, black powder bombs and Molotov cocktails; * * *.

DeKalb

52.10 Firearms * * * (b) Selling to minors. No person shall sell, give, loan or furnish to any minor within the City any pistol, revolver, * * * derringer, * * * (shotguns and rifles excepted).

Decatur

41-1. No person, firm or corporation shall sell, give, loan, hire, barter, furnish or offer for sale, or give, loan, hire, barter or furnish to any minor under the age of sixteen (16) years within the City, without the written consent of the parent or legal guardian of said minor, any gun, pistol, revolver, fowling piece or other firearm or any toy gun, toy pistol, toy fowling piece or other toy firearm in which any explosive substance can be used; * * * * *

Downers Grove

Sec. 15-13. Same—Sale to minors. No person shall sell, loan or furnish to any minor any gun, pistol, fowling piece or other firearm, * * *

Dupo

24.23. Age limitation. * * * No person, firm or corporation shall sell or give or loan to any person under the age of eighteen (18) years, any firearm or other deadly weapon in the Village.

Duquoin

20-65. Purchasing from or selling, loaning or furnishing weapons using explosive substances to persons under the influence of alcohol, etc., agitated persons, or minors. It shall be unlawful to purchase from or to sell, loan, or furnish any weapon in which any explosive substance can be used, to any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to a minor under the age of eighteen (18) years.

Durand

Sec. 12-7. Unlawful use of weapons. * * * * *

(6) Possesses any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or

(7) Sells, manufactures, purchases, possesses or carries any weapon from which more than eight (8) shots or bullets may be discharged by a single function of the firing device, any shotgun with a barrel less than eighteen (18) inches in length, or any bomb, bombshell, grenade, bottle or other container containing an explosive substance, such as, but not limited to, black powder bombs and Molotov cocktails;

* * * * *

East Alton

6-3-3-15: Unlawful use of Weapons: (A) It shall be unlawful for any person to: * * * * *

6. Possess any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or

7. Possess or carry any weapon from which more than eight (8) shots or bullets may be discharged by a single function of the firing device, any shotgun with a barrel less than eighteen inches (18") in length, or any bomb, bomb-shell, grenade, bottle or other container containing an explosive substance, such as, but not limited to, black powder bombs and Molotov cocktails;

* * * * *

East Dundee

Sec. 1. Unlawful Use of Weapons 1. A person commits the offense of unlawful use of weapons when he knowingly:

a. Sells, manufactures, purchases, possesses or carries any * * * shotgun with a barrel less than 18 inches in length, * * *

* * * * *

f. Possesses any device or attachment of any kind designed, used, or intended for use in silencing the report of any firearm.

* * * * *

Sec. 3. Unlawful Sale of Firearms 1. A person commits the offense of unlawful sale of firearms when he knowingly:

a. Sells or gives any firearm of a size which may be concealed upon the person to any person under 18 years of age.

b. Sells or gives any firearm to any narcotic addict.

c. Sells or gives any firearm to any person who has been convicted of a felony under the laws of this or any other jurisdiction within five years from release from the penitentiary or within five years of conviction if penitentiary sentence has not been imposed.

* * * * *

Sec. 5. Defacing Identification Marks of Firearms * * * * * 2. Possession of any firearm upon which any such mark shall have been changed, altered, removed or obliterated shall be prima facie evidence that the possessor has changed, altered, removed or obliterated the same.

East Peoria

10-1-3-15: Unlawful use of weapons. (a) It shall be unlawful for any person to:

(6) Possess any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm;

(7) Possess or carry any weapon from which more than 8 shots or bullets may be discharged by a single function of the firing device, any shotgun with a barrel less than 18 inches in length, or any bomb, bomb-shell, grenade, bottle or other container containing an explosive substance, such as, but not limited to, black powder bombs and Molotov cocktails.

East St. Louis

1. It shall be unlawful for any person, firm or corporation to engage in the business of selling or to sell or give away to any person within the City, or to bargain or negotiate with any person within the City for any pistol, revolver, derringer, * * * or other weapon of like character, which can be concealed on the person, without securing a license so to do * * *.

5. It shall be unlawful for any person, firm or corporation to sell, barter or give away to any person within the City of East St. Louis, Illinois, any pistol, revolver, derringer, * * * or any other weapon of like character which can be concealed on the person, except to licensed dealers and to persons who have secured a permit for the purchase of such articles from the Chief of Police * * *.

6. It shall be unlawful for any person to purchase any pistol, revolver, derringer, * * * or other weapon of like character which can be concealed on the person without first securing from the Chief of Police a permit so to do * * *.

7. It shall be the duty of the Chief of Police to refuse such permit to:

(a) All persons having been convicted of any crime;

(b) All minors.

Elmhurst

51.19 Firearms to minors. No person shall sell, loan or furnish to any minor, any gun, pistol or other firearm or any airgun or toy pistol on which percussion caps are used.

Elmwood Park

52-2. Definition of "firearm". Firearms for the purposes of this chapter are pistols, revolvers, guns and small arms of a size and character that may be concealed upon or about the person.

52-6. License to sell firearms—Required. It shall be unlawful for any person to engage in the business of selling or to sell, or give away, to any person within the village, any firearms which are of such size or nature as may be concealed upon the person, without securing a license therefor.

52-7. Permit to purchase firearms. No person shall be permitted to purchase a firearm without having secured a permit from the chief of police. * * *

52-8. Sales, etc., of firearms to persons without permit. No person, having secured a license to sell firearms shall sell, loan, or give away, any such weapon to any person who has not secured a permit from the chief of police to purchase such weapon.

52-11. Sale, etc., of firearms to minors. No person shall sell or give to any alien or to any minor under the age of eighteen years any firearm of a size which may be concealed upon the person.

Evanston

48-6. Permit for purchase of pistol; inspection of stock, etc. It shall be unlawful for any person dealing in firearms to sell, barter, loan or give away to any person within the city, any pistol, revolver or other weapon of like character which can be concealed upon the person, unless such person so purchasing or receiving such weapon shall have secured a written permit for the purchase of such article, from the chief of police * * *

48-7. Selling firearms to minors. It shall be unlawful for any person to sell, loan or furnish to any minor, any gun, pistol, fowling-piece or other firearm, within the corporate limits of the city.

Evergreen Park

Sec. 22-2. Certain acts involving weapons deemed unlawful—In general. It shall be unlawful for any person to knowingly:

(a) Sell, manufacture, purchase, possess or carry any * * * shotgun with a barrel less than eighteen inches (18) in length * * * * *

(f) Possess any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or

(g) Sell, manufacture, purchase, possess or carry any weapon from which more than eight (8) shots or bullets may be discharged by a single function of the firing device.

Sec. 22-3. Same—Exceptions. The preceding section 22-2 shall not apply to peace officers or any persons summoned by any such officer to assist in making arrests or preserving the peace while he actually is engaged in assisting such officer.

Sec. 22-11. License required to engage in business or to sell or give away deadly weapons. It shall be unlawful for any person to engage in the business of selling or to sell or give away any pistol, revolver, * * * or other deadly weapon, which can be concealed on the person without securing a license so to do.

Sec. 22-17. Limitations on sale or gift of deadly weapons; exception. It shall be unlawful for any person to sell, barter, or give away to any person within the village, any deadly weapon mentioned in section 22-11, except to licensed dealers and to persons who have secured a permit for the purchase of such articles from the chief of police as here-

inafter required. This section shall not be construed to apply between licensed dealers.

Sec. 32-18. Purchaser required to secure permit to purchase deadly weapon; application; fingerprinting; grounds for disapproval; fee. It shall be unlawful for any person to purchase any deadly weapon mentioned in section 32-11, which can be concealed on the person without first securing from the chief of police a permit so to do. * * * * *

Sec. 32-36. License required to engage in business. It shall be unlawful for any person to engage in the business of repairing any pistol, revolver, derringer or other firearm, which can be concealed on the person without securing a license so to do.

Forest Park

20-6A. Firearms—Concealed Classification. It shall be unlawful for any person in the Village of Forest Park to sell, give away, transfer or deliver any revolver, pistol, handgun or firearm that may be concealed upon a person, to anyone who is not a: 1. U. S. Marshall, or 2. Federal official required to carry firearms while engaged in the official operation of their duties, or 3. Law enforcement official of Forest Park or any other governmental jurisdiction, or 4. Licensed Private Detective.

* * * * *

Fox Lake

26.03. Weapons. (a) A person who is not a village officer, shall not carry about his person any concealed pistol, * * * or any other weapon or thing of deadly character.

(b) No person shall sell, give or transfer any such weapon to any minor person.

Fox River Valley Gardens Village

Section 7. Unlawful use of Weapons. (a) A person commits the offense of unlawful use of weapons when he knowingly: * * * * * (5) Possesses any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or (6) Sells, manufactures, purchases, possesses or carries any weapon from which more than 8 shots or bullets may be discharged by a single function of the firing device, any shotgun with a barrel less than 18 inches in length, or any bomb, bomb-shell, grenade, bottle or other container containing an explosive subetance, such as but not limted to black powder bombs and Molotov cocktails; * * *

Franklin Park

17-202. Affidavit required for sales. (a) No person licensed under the provisions of this article having secured such a license, shall sell or give away any deadly weapons as defined in this division to any person within this village who has not filled out, signed and had witnessed by a notary public a federal firearms affidavit.

(b) It shall be unlawful, for any person to purchase any deadly weapon as defined in this article without filling out a federal firearms affidavit in writing * * * Upon witnessing the identification of the applicant, the officer of the company, clerk or secretary, holding a notary public seal from the state shall notarize the affidavit. It shall be the duty of the notary, upon witnessing the identification of the applicant to affix his notary seal and sign the affidavit, refusing any applicant whom he concludes is a minor, lacks proper identification, shows physical signs of being a narcotic, or is unemployed.

17-211. Required. It shall be unlawful for any person to engage in the business of selling, or to sell or give away to any person within the village, any deadly weapon as defined in this article, without securing a license so to do as provided in this division and the general licensing provisions of this chapter.

Geneva

19-10. Unlawful use of weapons.

(b) A person commits the offense of unlawful use of weapons when he knowingly: * * *

(6) Possesses any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or

(7) Sells, manufacturers, purchases, possesses or carries any weapon from which more than eight (8) shots or bullets may be discharged by a single function of the firing device, any shotgun with a barrel less than eighteen (18) inches in length, or any bomb, bombshell, grenade, bottle or other container containing an explosive substance, such as, but not limited to, black powder bombs and Molotov cocktails; * * *

Gibson City

8.21 Illegal to Sell Firearms and Other Devices to Persons Under Twenty-One. No person shall within the corporate limits of the City, sell to any person under the age of twenty-one (21) any gun, pistol, fowling piece, * * * or other firearm or device which is calculated or intended to propel or project a bullet, pellet * * * or similar projectile, without written permission of parent or guardian.

Glencoe

Sec. 24-49. Same—Sale of weapons which can be concealed. It shall be unlawful to sell any firearms which can be concealed on or about the person in the village.

Sec. 24-50. Same—Sale, etc., to minors. No person shall sell, loan or furnish to any minor any gun, pistol or other firearm, or any air gun or ammunition for any firearm or air gun within the village.

Glendale Heights

10-6-5-1: Unlawful use of weapons. * * * * *

(3) Carries on or about his person or in any vehicle, a tear gas gun projector or bomb or any object containing noxious liquid gas or substance; * * * * *

(6) Possesses any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm;

(7) Sells, manufactures, purchases, possesses or carries any weapon from which more than eight (8) shots or bullets may be discharged by a single function of the firing device, any shotgun with a barrel less than eighteen (18) inches in length, or any bomb, bombshell, grenade, bottle or other container containing an explosive substance, such as, but not limited to, black powder bombs and Molotov cocktails;

10-6-5-2: Unlawful sale of firearms. A person commits the offense of unlawful sale of firearms, which shall be a violation of this Code, when he knowingly:

(a) Sells or gives any firearm of a size which may be concealed upon the person to any person under eighteen (18) years of age;

(b) Sells or gives any firearm to a person under twenty-one (21) years of age who has been convicted of a misdemeanor other than a traffic offense or adjudged delinquent;

(c) Sells or gives any firearm to any narcotic addict;

(d) Sells or gives any firearm to any person who has been convicted of a felony under the laws of Illinois or any other jurisdiction;

(e) Sells or gives any firearm to any person who has been a patient in a mental hospital within the past five (5) years;

(f) Sells or gives any firearm to any person who is mentally retarded; or

(g) Delivers any firearm of a size which may be concealed upon the person, incidental to a sale, without withholding delivery of such firearm for at least seventy-two (72) hours after application for its purchase has been

made, or delivers any rifle, shotgun or other long gun, incidental to a sale, without withholding delivery of such rifle, shotgun or other long gun for at least twenty-four (24) hours after application for its purchase has been made; however, this subsection shall not apply to:

(1) The sale of a firearm to a law enforcement officer or a person who desires to purchase a firearm for use in promoting the public interest incident to his employment as a bank guard, armed truck guard or other similar employment;

(2) A mail-order sale of a firearm to a nonresident of Illinois under which the firearm is mailed to a point outside the boundaries of Illinois;

(3) The sale of a firearm to a nonresident of Illinois while at a firearm showing or display recognized by the Illinois Department of Public Safety; or

(4) The sale of a firearm when another firearm is traded in for the firearm purchased, in whole or in part.

10-6-5-3: Unlawful possession of firearms and firearm ammunition. A person commits the offense of unlawful possession of firearms or firearm ammunition, which shall be a violation of this Code, when:

(a) He is under eighteen (18) years of age and has in his possession any firearm of a size which may be concealed upon the person;

(b) He is under twenty-one (21) years of age, has been convicted of a misdemeanor other than a traffic offense or adjudged delinquent and has any firearm or firearm ammunition in his possession;

(c) He has been convicted of a felony under the laws of Illinois or any other jurisdiction within five (5) years from release from the penitentiary or within five (5) years of conviction if penitentiary sentence has not been imposed, and has any firearm or firearm ammunition in his possession;

(d) He is a narcotic addict and has any firearm or firearm ammunition in his possession;

(e) He has been a patient in a mental hospital within the past five (5) years and has any firearm or firearm ammunition in his possession; or

(f) He is mentally retarded and has any firearm or firearm ammunition in his possession.

Glen Ellyn

6-2-3.13: Weapons: (E) Sales to Intoxicated Persons and Minors: No person shall purchase from or sell, loan or furnish any weapon in which any explosive substance can be used to any person under the influence of alcohol or any narcotic drug, or to any person in a condition of agitation or excitability, or to a minor under the age of eighteen (18) years.

Granite City

Ordinance 1863

Section 1: It shall henceforth be unlawful for any person, firm, or corporation to sell, display for sale, or offer to sell to any minor, any revolver, pistol, shotgun or rifle * * *

Section 2: It shall be unlawful to sell or offer to sell to any minor any shell, cartridge, charge, pellet, ammunition or other device to be used, discharged or propelled from any of the items mentioned in Section 1 hereof.

Hampton

Ordinance 276

* * * * * *

Section 2. No person shall change, alter, remove, or obliterate the name of the maker, model, manufacturer's number or other mark of identification on any firearm. Possession of any firearm upon which any such mark shall have been changed, altered, removed or obliterated, shall be prima facie evidence that the possessor has changed, altered, removed or obliterated the same.

Section 3. No person, firm, or corporation shall sell, give or loan to any alien or to any minor under the age of 18 years any firearm of a size which may be concealed upon the person.

Harvey

29-274. No person shall sell, loan, or furnish to any minor, any gun, pistol, or other firearm, or any toy gun, toy pistol, or other toy firearm, in which any explosive substance can be used, * * * or any similar weapon or device within the city, * * *

Harwood Heights

29-1. License: It shall be unlawful for any person, firm or corporation to engage in the business of selling, or to sell, loan or give away to any person, within the Village, any pistol, revolver, derringer, * * * or any toy firearms or other toy in the nature of a firearm in which any explosive substance can be used, or other weapon of like character, without securing a license so to do as hereinafter provided, and no person, firm or corporation having secured such a license, shall sell or give away such weapon to any person within this village who has not secured a permit from either the Chief of Police or the Village Clerk to purchase such weapon * * *

29-5. Permit: It shall be unlawful for any person to purchase any pistol, revolver, derringer, * * * or weapon of like character, without first securing from the Village Clerk a permit so to do. * * *

29-6. Refusing Permit: It shall be the duty of the Chief of Police to refuse his approval of such permit to:

(a) All persons having been convicted of any crime;

(b) All minors.

Hialeah

Ordinance 897

Section 1. It shall hereafter be unlawful for any person to sell, barter, lend, give or deliver any pistol * * * to any minor under seventeen (17) years of age.

Section 2. It shall hereafter be unlawful for any person to sell, barter, lend, give or deliver any pistol * * * to any minor between the ages of seventeen (17) and twenty-one (21) years of age without the express written approval of one of the parents of such a minor, or the legal guardian of such minor.

Highland Park

134.001. Definitions: For the purpose of this chapter. (A) The term "person" includes any individual, corporation, company, association, partnership, society or joint stock company.

(B) The term "hand gun" means any device, or part of a device, by whatever name known, which is designed or may be readily converted to expel a projectile or projectiles by the action of an explosive, expansion of gas or air, or escape of gas or air, having an overall length of 18 inches or less and designed to be held and operated with and by one hand.

(C) The term "Chief of Police" means the head law enforcement officer of the City of Highland Park or his duly authorized agent.

134.002. Manufacture, assembly, sale prohibited—special permit. No person shall engage in the business of manufacturing, assembling or selling, within the corporate limits of the City of Highland Park, any hand gun as defined in Section 134.001 of this Code, except in compliance with the provisions of this Chapter. No person shall engage in the business of manufacturing, assembling or selling such hand guns without first having been granted a special permit therefor by the City Council. No such permit shall be granted to

any person ineligible to register a hand gun in accordance with the requirements of Sections 134.007 and 134.010, nor to any person who fails to meet the standards for Federal and Illinois Dealer's licenses.

Hillsdale

(A) It shall be unlawful for any person to: * * * * * 6. Possess any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or

7. Possess or carry any weapon from which more than eight (8) shots, or bullets may be discharged by a single function of the firing device, any shotgun with a barrel less than eighteen inches (18) in length, or any bomb, bomb-shell, grenade, bottle or other container containing explosive substance, such as, but not limited to, black powder bombs and Molotov cocktails; * * * * *

Hodgkins

1. License to sell, loan or give away: It shall be unlawful for any person, firm or corporation to engage in the business of selling, or to sell, loan or give away to any person, within the Village, any pistol, revolver, derringer, * * * or any toy firearms or other toy in the nature of a firearm in which any explosive substance can be used, or other weapon of like character, without securing a license so to do as hereinafter provided, and no person, firm or corporation having secured such a license, shall sell or give away such weapon to any person within the Village who has not secured a permit from either the Chief of Police or the Village Clerk to purchase such weapon in the manner hereinafter provided.

Hoffman Estates

29-1. License: It shall be unlawful for any person, firm or corporation to engage in the business of selling, or to sell, loan or give away to any person, within the Village, any pistol, revolver, derringer, * * * or any toy firearms or other toy in the nature of a firearm in which any explosive substance can be used, or other weapon of like character, without securing a license so to do as hereinafter provided, and no person, firm or corporation having secured such a license, shall sell or give away such weapon to any person within this Village who has not secured a permit from either the Chief of Police or the Village Clerk to purchase such weapon * * *

29-5. Permit: It shall be unlawful for any person to purchase any pistol, revolver, derringer, * * * or weapon of like character, without first securing from the Village Clerk a permit so to do. * * *

Homewood

53.18 Dealers in weapons. (a) Definition. The term "deadly weapon" as used in this section shall include any pistol, * * * derringer, * * * or any other object of similar nature which can be concealed on the person.

(b) License Required. No person shall engage in the business of selling or sell or give away any deadly weapon without a license. * * *

(c) Sale Procedure. 1. No deadly weapon shall within the Village be sold, traded or given to any person who fails to present a permit to purchase issued by the Chief of Police. * * * * *

(d) Purchase Permit. It shall be unlawful for any person to purchase or receive any deadly weapon which can be concealed on the person without first obtaining a permit so to do from the Chief of Police. * * *

(e) Gunsmiths. No person shall engage in the business of repairing any pistol, revolver, derringer or other firearm which can be concealed on the person without a license. * * * * *

53.19 Sale of weapons to minors. No person shall sell, loan, or furnish to any minor, any gun, pistol or other fire-arm, * * * or ammunition for any fire-arm * * *, within the limits of the Village.

Island Lake

7. Unlawful use of weapons. (5) Possesses any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or

(6) Sells, manufactures, purchases, possesses or carries any weapon from which more than 8 shots or bullets may be discharged by a single function of the firing device, any shotgun with a barrel less than 18 inches in length, or any bomb, bomb-shell, grenade, bottle or other container containing an explosive substance, such as but not limited to black powder bombs and Molotov cocktails * * *.

Jerseyville

Sec. 20-66. Unlawful use of Weapons. A person commits the offense of unlawful use of weapons when he knowingly: * * * * * (6) Possesses any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; (7) Sells, manufactures, purchases, possesses or carries any weapon from which more than eight (8) shots or bullets may be discharged by a single function of the firing device, any shotgun with a barrel less than eighteen (18) inches in length, or any bomb, bombshell, grenade, bottle or other container containing an explosive substance, such as, but not limited to, black powder bombs and Molotov cocktails; * * *

* * * * *

Sec. 20-67. Unlawful sale of firearms. A person commits the offense of unlawful sale of firearms when he knowingly:

(a) Sells or gives any firearm of a size which may be concealed upon the person to any person under eighteen (18) years of age;

(b) Sells or gives any firearm to a person under twenty-one (21) years of age who has been convicted of a misdemeanor other than a traffic offense or adjudged delinquent;

(c) Sells or gives any firearm to any narcotic addict;

(d) Sells or gives any firearm to any person who has been convicted of a felony under the laws of the state or any other jurisdiction;

(e) Sells or gives any firearm to any person who has been a patient in a mental hospital within the past five (5) years;

(f) Sells or gives any firearm to any person who is mentally retarded; or

(g) Delivers any firearm, incidental to a sale, without withholding delivery of such firearm for at least seventy-two (72) hours after application for its purchase has been made; however, this subsection shall not apply to:

(1) The sale of a firearm to a law enforcement officer or a person who desires to purchase a firearm for use in promoting the public interest incident to his employment as a bank guard, armed truck guard or other similar employment;

(2) A mail-order sale of a firearm to a nonresident of the state under which the firearm is mailed to a point outside the boundaries of the state;

(3) The sale of a firearm to a nonresident of the state while at a showing or display recognized by the state department of public safety;

(4) The sale of a firearm when another firearm is traded-in for the firearm purchased, in whole or in part; or

(5) The sale of a firearm to a dealer licensed under the Federal Firearms Act of the United States.

Joliet

Sec. 32.19. Licensed required. It shall be unlawful for any person to engage in the business of selling or to sell or offer to sell or give away to any person within the city any pistol, rifle, shotgun, revolver, * * * or other weapons of like character without first securing a license to do so. * * *

Sec. 22.21. Sales to minors. None of the articles governed by this article or of like character, shall be sold to any minor.

Sec. 22.22. Permit required for concealable weapons; application; contents; ineligible applicants. (a) No sale of any revolver, pistol, * * * or other deadly weapon which can be concealed on the person shall be made by any licensee under this article to any purchaser unless the purchaser shall first exhibit to the licensee a permit for the purchase thereof, issued by the chief of police of the city.

(b) Before any permit required by this section is granted, an application in writing shall be made to the chief of police [contact local authorities for required contents]. * * *

La Grange

Sec. 115-320. Weapons. No pawnbroker shall receive or have in his possession as a pledge or purchase, any revolver, pistol, machine gun, * * * or sawed-off shotgun, or display in his window or shop any such weapons for sale.

Sec. 136-1. Unlawful use of weapons.

(A) A person commits the offense of unlawful use of weapons when he knowingly:

(1) Sells, manufactures, purchases, possesses or carries any * * * shotgun with a barrel less than 18 inches in length, * * *.

* * * * *

(6) Possesses any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm.

Lake Bluff

52.02. No person shall sell, loan or furnish to any minor, any gun, pistol, fowling piece, or other firearm within the limits of the Village of Lake Bluff.

Lake Villa

9-1. Unlawful Use of Weapons: (a) A person commits the offense of unlawful use of weapons when he knowingly: * * * * * (5) Possesses any device or any attachment of any kind designed, used or intended for use in silencing the report of any firearm; or (7) Sells, manufactures, purchases, possesses or carries any weapon from which more than 8 shots or bullets may be discharged by a single function of the firing device, any shotgun with a barrel less than 18 inches in length, or any bomb, bomb-shell, grenade, bottle or other container containing an explosive subtance such as but not limited to black powder bombs and Molotov cocktails; or * * * * *

Leroy

42.03 (b) No person shall sell, give or transfer any [concealed pistol] to any minor person.

Lindenhurst

41.01 Gun dealers—license required. No person shall engage in the business of selling or sell or give away any pistol, revolver, * * * derringer, * * * or other deadly weapon which can be concealed on the person, without securing a license to do so as provided in Chapter 31.

41.06 Restrictions on sale or gift. It shall be unlawful for any person to sell, barter or give away to any person within the Village any deadly weapon mentioned in this section except to licensed dealers and to persons who have secured a permit for the purchase of such articles from the Village Marshal as herein required. This does not apply to sales made of such articles which are to be delivered or furnished outside the Village.

41.07 Permit to purchase weapon. It shall be unlawful for any person to purchase any deadly weapon mentioned in this section without first securing from the Village Marshal a permit to do so. * * *.

41.08 Revocation of license. In case the Village Marshal revokes a license for the selling of such weapons, no other such license shall be issued to such licensee for a period of three (3) years thereafter.

41.09 Gunsmiths—license required. No person shall engage in the business of repairing any pistol, revolver, derringer, or other firearm which can be concealed on the person without securing a license to do so as provided in chapter 31.

Lockport

4-1 same as 38 Sec. 24-1. (State Law)
4-4 same as 38 Sec. 24-3.
4-5 same as 38 Sec. 24-3.1.

Lombard

9.16.040 Selling firearms to minors unlawful. No person shall sell, loan or furnish to any minor any gun, pistol or other firearm, in which any explosive subetance can be used, within the limits of the village.

Loves Park

Sec. 13-15. Furnishing ammunition to, acquisition by, minors. It shall be unlawful for any person to sell, give or deliver any ammunition, ball, bullet, pellet, * * * or other missile or projectile to any person under the age of eighteen (18) years and it shall be unlawful for any person under the age of eighteen (18) years to obtain any ammunition, ball, bullet, pellet, * * * or any other missile or projectile by purchase, sale or gift, or in any other manner.

Sec. 13-50. Unlawful use of weapons—Prohibited. (a) A person commits the offense of unlawful use of weapons when he knowingly: * * * * *

(6) Possesses any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or

(7) Sells, manufactures, purchases, possesses or carries any weapon from which more than eight (8) shots or bullets may be discharged by a single function of the firing device, any shotgun with a barrel less than eighteen (18) inches in length, or any bomb, bombshell, grenade, bottle or other container containing an explosive substance, such as but not limited to black powder bombs and Molotov cocktails; * * * * *

Lyndon

Sec. 147—Selling Fire Arms to Minors. No person shall sell, loan, or furnish to any minor any gun, pistol, fowling piece, or other fire arm.

Manteno

3-15-1: License required: It shall be unlawful for any person to engage in the business of selling, or to sell or give away, any pistol, revolver * * * derringer * * * or other deadly weapon which can be concealed on the person without securing a license to do so.

* * * * *

3-15-5: Restrictions on sales and gifts: It shall be unlawful for any person to sell, barter or give away to any person within the Village any deadly weapon mentioned in this Chapter which can be concealed on the person without first securing from the Police Chief a permit to do so. The Police Chief may require such information from such applicant as he deems reasonable and necessary.

3-15-6: Permit: It shall be unlawful for any person to purchase any deadly weapon mentioned in this Chapter which can be concealed on the person without first securing from the Police Chief a permit so to do. The Police Chief may require such information from such applicant as he deems reasonable and necessary. No such permit shall be issued to one convicted of any crime or to a minor.

Marquette Heights

Unlawful use of Weapons:(A) It shall be unlawful for any person to: * * * * * 6. Pos-

sess any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or 7. Possess or carry any weapon from which more than eight (8) shots or bullets may be discharged by a single function of the firing device, any shotgun with a barrel less than eighteen inches (18") in length, or any bomb, bombshell, grenade, bottle or other container containing an explosive substance, such as, but not limited to, black powder bombs and Molotov cocktails; * * *

* * * * *

Matteson

133.005 same as 38 Sec. 24–3.1. (State Law)

Maywood

8.259 It shall be unlawful for any person to engage in the business of selling, or to sell or give away, any pistol, revolver, * * * derringer * * * or other deadly weapon which can be concealed on the person, without securing a license so to do.

8.264 It shall be unlawful for any person to sell, barter, or give away to any person within the Village, any deadly weapon mentioned in Section 8.259, except to licensed dealers and to persons who have secured a permit for the purchase of such articles from the Chief of Police as hereinafter required. This section shall not apply to sales made of such articles which are to be delivered or furnished outside the Village. —

8.265 It shall be unlawful for any person to purchase any deadly weapon mentioned in Section 8.259, which can be concealed on the person without first securing from the Chief of Police a permit so to do. * * *

8.268 It shall be unlawful for any person to engage in the business of repairing any pistol, revolver, derringer, or other firearm which can be concealed on the person without securing a license so to do.

McCook

9-10-3. License to sell: Firearms for the purposes of this Chapter are pistols, revolvers, guns, and small arms of a size and character that may be concealed upon or about the person. It shall be unlawful for any person to engage in the business of selling or to sell, or give away, to any person, any firearms which are of such size or nature as may be concealed upon the person, without securing a license therefor. And no person, having secured such license, shall sell, loan, or give away, any such weapon to any person who has not secured a permit from the Chief of Police to purchase such weapon.

9-10-4. Purchasers of firearms: No person shall be permitted to purchase a firearm without having secured a permit from the Chief of Police. Such permit shall not be issued to a criminal, vagabond, minor under eighteen (18) years of age or an alien. * * *

9-10-8. Sale or gift: No person shall sell or give to any alien or to any minor under the age of eighteen (18) years any firearm of a size which may be concealed upon the person.

Melrose Park

93.1 Generally: * * * No person shall sell, loan or furnish to any minor any gun, pistol, fowling piece or other firearm, within the corporate limits of the Village of Melrose Park. * * * No person, firm or corporation shall engage in the business of selling or sell or give away to any person within the Village of Melrose Park, any pistol, revolver, derringer, * * * or other weapon, of like character which can be concealed on the person, and no person, firm or corporation having secured such a license, shall sell or give away any such weapon to any person within the Village who has not secured a permit from the Chief of Police or President of the Village to purchase such weapon * * *

93.2 License to sell firearms: Any person, firm or corporation desiring a license authorizing the sale of any of the deadly weapons mentioned in the foregoing Section shall make application in writing to the President of the Village * * *

93.3 Other requirements:

* * * * *

(b) It shall be unlawful for any person to purchase any pistol, revolver, derringer, * * * or other weapon of like character, which can be concealed on the person, without first securing from the Chief of Police or the President of the Village a permit so to do. * * *

Midlothian

6-4-4: Sale to minors prohibited: It shall be unlawful to sell, loan or give, to any person under the age of eighteen (18) years any * * * weapon capable of projecting or discharging projectiles of any type by any force, * * *.

It shall be unlawful to sell, loan or give to any person under the age of eighteen (18) years any amunition, * * * with any of the weapons referred to in the foregoing provisions of this Section.

6-4-5: Sale of shotguns and shells; license: It shall be unlawful for any person to engage in the business of selling shotguns or shotgun shells in the Village without securing a license so to do.

* * * * *

6-4-8: Shotguns; sale to minors: It shall be unlawful to sell a shotgun or shotgun shells to any person under the age of twenty-one (21) years.

* * * * *

Moline

Sec. 27-47. Unlawful use of weapons. A person commits the offense of unlawful use of weapons when he knowingly: * * * * *

(f) Possesses any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or

(g) Sells, manufactures, purchases, possesses or carries any weapon from which more than eight (8) shots or bullets may be discharged by a single function of the firing device, any shotgun with a barrel less than eighteen (18) inches in length, or any bomb, bombshell, grenade, bottle or other container containing an explosive substance, such as but not limited to black powder bombs and Molotov cocktails; or * * * * *

Sec. 27-48. Unlawful sale of firearms. A person commits the offense of unlawful sale of firearms when he knowingly:

(a) Sells or gives any firearm of a size which may be concealed upon the person to any person under eighteen (18) years of age; or

(b) Sells or gives any firearm to a person under twenty-one (21) years of age who has been convicted of a misdemeanor other than a traffic offense or adjudged delinquent; or

(c) Sells or gives any firearm to any narcotic addict; or

(d) Sells or gives any firearm to any person who has been convicted of a felony under the laws of this state or any other jurisdiction; or

(e) Sells or gives any firearm to any person who has been a patient in a mental hospital within the past five (5) years; or

(f) Sells or gives any firearm to any person who is mentally retarded; or

(g) Delivers any firearm, incidental to a sale, without withholding delivery of such firearm for at least seventy-two (72) hours after application for its purchase has been made. However, this subsection shall not apply to:

(1) The sale of a firearm to a law enforcement officer or a person who desires to purchase a firearm for use in promoting the public interest incident to his employment as a bank guard, armed truck guard, or other similar employment; or

(2) A mail order sale of a firearm to a nonresident of the state under which the firearm is mailed to a point outside the boundaries of the state; or

(3) The sale of a firearm to a nonresident of the state while at a showing or display recognized by the state department of public safety; or

(4) The sale of a firearm when another fire-

arm is traded-in for the firearm purchased, in whole or in part; or

(5) The sale of a firearm to a dealer licensed under the Federal Firearms Act of the United States.

Monmouth

Sec. 18-30. Same—Selling or furnishing firearms to minors. It shall be unlawful for any person within the city to sell, loan or furnish to any minor under the age of eighteen (18) years any gun, pistol, fowling piece or other firearms.

Montgomery

Sec. 12-17. Unlawful use of weapons. (a) A person commits the offense of unlawful use of weapons, which shall be a violation of this Code, when he knowingly: * * * * *

(6) Possesses any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or

(7) Sells, manufactures, purchases, possesses or carries any weapon from which more than eight (8) shots or bullets may be discharged by a single function of the firing device, any shotgun with a barrel less than eighteen (18) inches in length, or any bomb, bombshell, grenade, bottle or other container containing an explosive substance, such as but not limited to black powder bombs and Molotov cocktails; * * * * *

Sec. 12-18. Unlawful sale of firearms. A person commits the offense of unlawful sale of firearms, which shall be a violation of this Code, when he knowingly:

(a) Sells or gives any firearm of a size which may be concealed upon the person to any person under eighteen (18) years of age; or

(b) Sells or gives any firearm to a person under twenty-one (21) years of age who has been convicted of a misdemeanor other than a traffic offense or adjudged delinquent; or

(c) Sells or gives any firearm to any narcotic addict; or

(d) Sells or gives any firearm to any person who has been convicted of a felony under the laws of Illinois or any other jurisdiction; or

(e) Sells or gives any firearm to any person who has been a patient in a mental hospital within the past five (5) years; or

(f) Sells or gives any firearms to any person who is mentally retarded; or

(g) Delivers any firearm of a size which may be concealed upon the person, incidental to a sale, without withholding delivery of such firearm for at least seventy-two (72) hours after application for its purchase has been made, or delivers any rifle, shotgun or other long gun, incidental to a sale, without withholding delivery of such rifle, shotgun or other long gun for at least twenty-four (24) hours after application for its purchase has been made. However, this subsection shall not apply to:

(1) The sale of a firearm to a law enforcement officer or a person who desires to purchase a firearm for use in promoting the public interest incident to his employment as a bank guard, armed truck guard, or other similar employment; or

(2) A mail order sale of a firearm to a nonresident of Illinois under which the firearm is mailed to a point outside the boundaries of Illinois; or

(3) The sale of a firearm to a nonresident of Illinois while at a firearm showing or display recognized by the Illinois Department of Public Safety; or

(4) The sale of a firearm when another firearm is traded-in for the firearm purchased, in whole or in part.

Sec. 12-19. Unlawful possession of firearms and firearm ammunition. A person commits the offense of unlawful possession of firearms or firearm ammunition, which shall be a violation of this Code, when:

(a) He is under eighteen (18) years of age and has in his possession any firearm of a size which may be concealed upon the person; or

(b) He is under twenty-one (21) years of age, has been convicted of a misdemeanor other than a traffic offense or adjudged delinquent and has any firearms or firearm ammunition in his possession; or

(c) He has been convicted of a felony under the laws of Illinois or any other jurisdiction within five (5) years from release from the penitentiary or within five (5) years of conviction if penitentiary sentence has not been imposed, and has any firearms or firearm ammunition in his possession; or

(d) He is a narcotic addict and has any firearms or firearm ammunition in his possession; or

(e) He has been a patient in a mental hospital within the past five (5) years and has any firearms or firearm ammunition in his possession; or

(f) He is mentally retarded and has any firearms or firearm ammunition in his possession.

Morrison

9.76.070. It shall be unlawful for any person to permit, suffer, or allow any child under the age of 18 years to handle or have in his possession within the City of Morrison, any cannon, gun, pistol, or any toy gun or cannon, or toy pistol or air gun, or any other similar weapon, or any firearms of any description, which is a deadly weapon, * * *.

Morton Grove

132.100 Selling deadly weapons; sales to minors. (B) No person shall sell, give, loan, hire, barter, furnish, or offer to sell, give, loan, hire, barter or furnish to any minor within the village any gun, pistol, revolver, fowling-piece, or other firearm, or any toy gun, toy pistol, toy fowling-piece, or other toy firearm in which any explosive substance can be used * * * * *.

Mount Carmel

Article V. Weapons

Sec. 16-95. Unlawful possession of firearms and firearm ammunition. A person commits the offense of unlawful possession of firearms or firearm ammunition when he:

(1) Is under eighteen (18) years of age and has in his possession any firearm of a size which may be concealed upon the person; or

(2) Is under twenty-one (21) years of age, has been convicted of a misdemeanor other than a traffic offense or adjudged delinquent and has any firearms or firearm ammunition in his possession; or

(3) Has been convicted of a felony under the laws of this or any other jurisdiction within five (5) years from release from a penitentiary or within five (5) years of conviction if penitentiary sentence has not been imposed, and has any firearms or firearm ammunition in his possession; or

(4) Is a narcotic addict and has any firearms or firearm ammunition in his possession; or

(5) Has been a patient in a mental hospital within the past five (5) years and has any firearms or firearm ammunition in his possession; or

(6) Is mentally retarded and has any firearms or firearm ammunition in his possession.

Sec. 16-98. Defacing identification marks of firearms.

(a) It shall be unlawful for any person to change, alter, remove or obliterate the name of the maker, model, manufacturer's number or other mark of identification of any firearm.

(b) Possession of any firearm upon which any such mark shall have been changed, altered, removed or obliterated shall be prima facie evidence that the possessor has changed, altered, removed or obliterated the same.

New Boston

5-2-2-12: Sale of firearms or weapons to minors prohibited: (A) It shall be unlawful for any person to sell to any minor person any firearm, * * *

Niles

22-44. Affidavit to purchase firearms.

(a) It shall be unlawful for any person dealing in firearms to sell, barter, loan, or give away to any person within the village any pistol, revolver, or other firearm of like character which can be concealed upon the person, unless such person so purchasing or receiving such firearm shall have filed with the dealer an affidavit * * *.

(b) The following persons are covered by the section and not eligible to purchase a firearm:

(1) Any person convicted of a felony;

(2) Any minor under the age of eighteen (18) years;

(3) A narcotic addict.

22-45. Selling, furnishing firearms to minors. It shall be unlawful for any person to sell, give, loan or furnish to any minor under the age of eighteen (18) years any gun, pistol, rifle, revolver or other firearm within the corporate limits of the village.

Norridge

Section 1. License. It shall be unlawful for any person, firm or corporation to engage in the business of selling, or to sell, loan or give away to any person, within the Village, any pistol, revolver, Derringer, * * * or any toy firearms or other toy in the nature of a firearm in which any explosive substance can be used, or other weapon of like character, without securing a license so to do as hereinafter provided, and no person, firm or corporation having secured such a license, shall sell or give away such weapon to any person within this Village who has not secured a permit from either the Chief of Police or the Village Clerk to purchase such weapon in the manner hereinafter provided.

Section 5. Permit. It shall be unlawful for any person to purchase any pistol, revolver, Derringer, * * * or weapon of like character, without first securing from the Village Clerk a permit so to do. * * *

Section 6. Refusing Permit. It shall be the duty of the Chief of Police to refuse his approval of such permit to: (a) All persons having been convicted on any crime, (b) All minors, (c) All persons who, in his opinion, are not of good moral character.

* * * * *

North Pekin

6-2-3-15: Unlawful use of weapons: (A) It shall be unlawful for any person to: * * * * *

6. Possess any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or

7. Possess or carry any weapon from which more than eight (8) shots or bullets may be discharged by a single function of the firing device, any shotgun with a barrel less than eighteen inches (18") in length, or any bomb, bomb-shell, grenade, bottle or other container containing an explosive substance, such as, but not limited to, black powder bombs and Molotov cocktails; * * *

* * * * *

Northbrook

17.25 Unlawful Use of Weapons. A person commits the offense of unlawful use of weapons when he knowingly:

(a) Sells, manufactures, purchases, possesses or carries any * * * shotgun with a barrel less than 18 inches in length

* * * * *

(f) Possesses any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or

(g) Sells, manufactures, purchases, possesses or carries any weapon from which more than 8 shots or bullets may be discharged by a single function of the firing device.

17.26 Exemptions * * * * * (c) Paragraph 17.25 (g) shall not apply to or affect any of the following:

(1) Peace officers.

(2) Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of an offense.

(3) Members of the Armed Services or Reserve Forces of the United States or the Illinois National Guard, while in the performance of their official duty.

(4) Manufacture, transportation, or sale of machine guns to persons authorized under (1) through (3) of this paragraph 17.26 (c) to possess such, provided said machine guns are broken down in a non-functioning state or not immediately accessible. * * * * *

O'Fallon

27.60 Unlawful Use of Weapons. (a) A person commits the offense of unlawful use of weapons when he knowingly: * * * * * (6) Possesses any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or

* * * * *

27.61 Unlawful Sale of Firearms. A person commits the offense of unlawful sale of firearms when he knowingly:

(a) Sells or gives any firearm of a size which may be concealed upon the person, to any person under eighteen (18) years of age; or

(b) Sells or gives any firearm to a person under twenty-one (21) years of age who has been convicted of a misdemeanor other than a traffic offense or adjudged delinquent; or

(c) Sells or gives any firearm to any narcotic addict; or

(d) Sells or gives any firearm to any person who has been convicted of a felony under the laws of this or any other jurisdiction within five (5) years from release from the penitentiary or within five (5) years of conviction if penitentiary sentence has not been imposed; or

(e) Sells or gives any firearm to any person who has been a patient in a mental hospital within the past five (5) years; or

(f) Sells or gives any firearms to any person who is mentally retarded; or

(g) Delivers any firearm of a size which may be concealed upon the person, incidental to a sale, without withholding delivery of such firearm for at least seventy-two (72) hours after application for its purchase has been made, or delivers any rifle, shotgun or other long gun, incidental to a sale, without withholding delivery of such rifle, shotgun, or other long gun for at least twenty-four (24) hours after application for its purchase has been made.

However, this paragraph shall not apply to:

(1) The sale of a firearm to a law enforcement officer or a person who desires to purchase a firearm for use in promoting the public interest incident to his employment as a bank guard, armed truck guard, or other similar employment; or

(2) A mail order sale of a firearm to a nonresident of Illinois under which the firearm is mailed to a point outside the boundaries of Illinois; or

(3) The sale of a firearm to a nonresident of Illinois while at a firearm showing or display recognized by the Illinois Department of Law Enforcement; or

(4) The sale of a firearm to a dealer licensed under the Federal Firearms Act of the United States.

27.62 Register of Sales by Dealer. (a) Any seller of firearms of a size which may be concealed upon the person, other than a manufacturer selling to a bona fide wholesaler or retailer or a wholesaler selling to a bona fide retailer, shall keep a register of all firearms sold or given away.

* * * * *

27.64 Defacing Identification Marks of Firearms.

(a) Any person who shall change, alter, remove or obliterate the name of the maker, model, manufacturer's number or other mark of identification of any firearm commits a misdemeanor.

(b) Possession of any firearm upon which any such mark shall have been changed, al-

tered, removed or obliterated shall be prima facie evidence that the possessor has changed, altered, removed or obliterated the same.

Oak Park

45.1—Definition of "Firearms". "Firearms" for the purposes of this chapter are pistols, revolvers, guns and small arms of a size and character that may be concealed on or about the person.

45.2—Sale or Rental of Firearms. It shall be unlawful to sell, loan, rent or give away any firearms or firearm ammunition to any of the following:

(a) A person under twenty-one (21) years of age, except that this provision shall not prohibit the use of a firearm by a person under twenty-one (21) years of age in a supervised target shooting program;

(b) A narcotics addict;

(c) A person convicted of a felony within five (5) years of release from a penitentiary or within five (5) years of conviction if penitentiary sentence has not been imposed;

(d) Any person who has been a patient in a mental hospital within the past five (5) years;

(e) A person who is mentally retarded.

45.3—Application and Permit to Purchase or Rent. No person shall be allowed to purchase or rent a firearm without a permit for said transaction having been issued by the Village of Oak Park. A separate permit shall be required for each firearms transaction. * * * * *

(h) No firearm shall be delivered to the purchaser or renter until a valid permit therefor has been issued to the seller by the Village of Oak Park, said permit bearing the endorsement thereon of both the Chief of Police and the Village Manager of Oak Park.

* * * * *

45.4—License to Deal in Firearms—Required. It shall be unlawful for any person to engage in the business of selling or renting, or to sell, rent, loan or give away, to any person, any firearm as defined in Section 45.1 of this Code, without securing a license for said dealings.

Oakbrook Terrace

Sec. 21-2. Sale, etc., of Firearms or Airguns to Minors. It shall be unlawful for any person to sell or give away to any minor any firearm which can be concealed on the person within the corporate limits of the city.

Sec. 21-5. Sales of Firearms—Registration. All persons dealing at retail within the city in one or more of the following firearms:

(a) Firearms of a size which may be concealed upon the person; (b) Shotguns; (c) Rifles: (d) Firearms of any description not above enumerated; shall keep a register of all such firearms sold or given away by them. Such register shall contain [such information as is required by Oakbrook Terrace; contact local authorities for requirements] * * *. A Firearm Transaction Record Form 4473 is sufficient and shall satisfy the requirements of this section.

Sec. 21-6. Same—Purchase Approval; Inspection of Premises Where Sold, etc. It shall be unlawful for any person to sell or give away to any person within the city any firearm, unless such person so purchasing or receiving such firearm shall have a valid state gun owner's identification card and shall have secured approval for the purchase of such firearm from the chief of police [contact local authorities concerning those categories of persons not eligible for such approval]. It shall be the duty of every person selling or giving away firearms to receive and keep such written approvals from the chief of police in a permanent file for inspection purposes. Every such person with a license to deal in firearms shall, on demand, allow the chief of police or his deputy to enter his premises during normal business hours for inspection of all stock on hand and shall, on request of such officer, produce for inspection all written approvals issued by the chief of police for the sale of such firearms and the register required to be kept by section 21-5.

* * * * *

In case the chief of police shall find the applicant [qualified] * * * it shall be his duty to grant such approval.

The chief of police shall complete such investigation within the waiting period prescribed under state law prior to delivery, unless extenuating circumstances are shown.

Sec. 21-7. Same—Bartering. The approval required by section 21-6 shall not be required when bartering one fireable firearm for another fireable firearm. However, the individual must possess the valid state gun owner's identification card, and the information provided for in section 21-5 must be furnished to the chief of police on the day of the barter.

Oregon

8-6-3: Firearms: No person shall sell, loan, exchange, deliver or give away to any minor any gun, pistol, fowling piece or other firearm within the corporate limits of the City.

Park Forest South Village

670.01. Possessing dangerous or deadly weapons. No person shall carry or possess any dangerous or deadly weapon in violation of Article 24 of the Illinois Criminal Code.

* * * * *

Peoria

41-4. License to sell, etc.—Required. It shall be unlawful for any person to engage in the business of selling, or to sell or give away, any pistol, revolver, * * * derringer, * * * or other deadly weapon, which can be concealed on the person, without securing a license so to do.

41-6. Required Certificate and Thumb Print. It shall be unlawful for any person to sell, barter, or give away to any person within the City, any deadly weapon mentioned in Section 41-4 of this Code, except to licensed dealers, without first obtaining from the person receiving such deadly weapon a signed statement [contact local authorities for required contents] * * * and which shall contain a thumb print from the person receiving such weapon. Such thumb print shall be the right-hand thumb print unless circumstances prevent, in which case it shall be the left-hand thumb print. All such information required by this section shall be entered upon forms provided by the Superintendent of Police for that purpose.

Sec. 41-11. Restriction on sale. It shall be unlawful for any person to sell, barter or give away, to any person within the city, any deadly weapon mentioned in section 41-4 of this Code, to any person known to him to be under twenty-one (21) years of age or of unsound mind or under indictment or a drug addict or a fugitive from justice or who has been convicted of a crime of violence.

Sec. 41-13. Registration. All persons who have in their possession any pistol, revolver or gun, which may be concealed on the person, shall register such gun or pistol with the superintendent of police, setting forth the caliber, make, model and manufacturer's number of the weapon. No fee shall be required for such registration.

Peoria Heights

Section 1. License required. It shall be unlawful for any person to engage in the business of selling any pistol, revolver, * * * derringer, * * * or other deadly weapon which can be concealed on the person, without securing a license to do so from the Village Clerk.

Section 5. Restrictions on sale or gift. It shall be unlawful for any person to sell, barter, or give away to any person within the Village any deadly weapon mentioned in Section 1 hereof, to any person known to him to be under twenty-one (21) years of age, of unsound mind, or under indictment, or a drug

addict, or a fugitive from justice, or who has been convicted of a crime of violence.

Pinckneyville

Sec. 39. Minors not to have certain weapons. No person, not being the father, guardian or employer of a minor, shall, by himself, agent, servant, or employee, directly or indirectly, sell, give, loan, hire or barter to any such minor, within the city, any pistol, revolver, derringer, * * *.

Port Byron

* * * * *

6-3-19: Weapons: No person shall sell, give, loan, hire or barter or offer to sell, give, loan, hire or barter to any minor within the Village, any pistol, derringer, * * * or other deadly weapon, capable of being secreted upon the person, such person not being the father, guardian or employer of said minor; * * *.

Posen

Chapter 8, Title VIII Posen Village Code

8-8-1: Definitions. For purposes of this Ordinance—A. "Deadly Weapons" means pistols, derringers, revolvers or other handguns of such size or nature that they may be concealed on or about the person, short-barreled shotguns and short-barreled rifles. Deadly weapons do not include any antique firearm. Deadly weapons do not include any firearm which is not designed to or may not readily be converted to expel a projectile by the action of an explosive.

B. "Short-Barreled Shotguns" means shotguns having one or more barrels less than eighteen inches in length.

C. "Short-Barreled Rifles" means a rifle having one or more barrels less than sixteen inches in length.

D. "Antique Firearm" means: (1) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; and

(2) any replica of any firearm described in subsection 8-8-1 - D - (1), if such replica (a) is not designed or redesigned for using rimfire or conventional center-fire fixed ammunition, or (b) uses rimfire or conventional center-fire fixed ammunition which is not longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

E. "Dealer" means any person, firm or corporation—

(1) engaged in the business of selling firearms at wholesale or retail,

(2) engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms, or

(3) any person who is a pawnbroker.

F. "Licensed Dealer" means any dealer who is validly licensed as a dealer under the provisions of Chapter 44 of Title 18 of the United States Code.

G. "Licensed Collector" means any person who acquires, holds, or disposes of firearms or ammunition as curios or relics and who is validly licensed as a collector by the Secretary of the Treasury of the United States under the provisions of Chapter 44 of Title 18 of the United States Code.

H. "Sale or Other Transfer" means any sale, gift, exchange, loan, rental or other transfer of a deadly weapon, but does not include any of the following:

(1) acquisition of a deadly weapon as the executor, administrator or other legal representative of a decedent's estate, or

(2) transfer of a deadly weapon by bequest or intestate succession, or

(3) acquisition or transfer of a deadly weapon by a trustee in bankruptcy in the administration of a bankrupt's estate, or

(4) return of a deadly weapon to a person, firm or corporation from whom it was received, or

(5) transfer of a deadly weapon where it is required by or in accordance with a judgment or decree of any court of lawful jurisdiction, or

(6) transfer of a deadly weapon to any Federal, State or Local government, or any department, agency, bureau, institution or commission thereof, of

(7) transfer of a deadly weapon to a private museum, society institution or other private organization which customarily acquires and holds firearms as curios or relics or for scientific or research purposes, or

(8) loan or rental of a deadly weapon solely for the purpose of target shooting upon a lawful pistol range or other lawful target range.

8-8-2: Unlawful sale or other transfer of deadly weapons. It shall be unlawful for any person, firm or corporation to make any sale or other transfer of a deadly weapon in the Village of Posen, Illinois, to any person, firm or corporation other than the following:

A. Persons who are required or authorized to possess and use a deadly weapon incident to their membership, employment or association with any of the regular armed forces, military services or reserve organizations of the United States.

B. Persons who are required or authorized to possess and use a deadly weapon incident to their membership, employment or association with the organized militia of any State.

C. Persons who are required or authorized to possess and use a deadly weapon incident to their employment by any Federal, State or Local government thereof, specifically including by way of example but not limited to:

(1) Peace Officers;

(2) Wardens, Superintendents and Keepers of prisons, penitentiaries, jails or other institutions for the detention of persons accused or convicted of an offense; and

(3) Agents and Investigators of the Illinois Legislative Investigatory Commission authorized by the Commission to carry weapons.

D. Licensed detectives and employees of licensed detective agencies as defined in Illinois Revised Statutes, Chapter 38, Section 201-1, as now or hereafter amended.

E. Special agents employed by a railroad or public utility to perform police functions.

F. Watchmen, bank guards, armed truck guards or other similar private security personnel, in accordance with the provisions of Section "8-8-11" of this Ordinance.

G. A licensed collector of deadly weapons.

H. A licensed dealer in deadly weapons.

8-8-3: Dealer license required. No person, firm or corporation shall engage in the business of a dealer in deadly weapons in the Village of Posen, Illinois, without securing a license therefor.

8-8-4: Application for dealer's license. An application for the license required by Section 8-8-3 shall be made in writing to the Village of Posen Clerk on such suitable forms provided or approved by him [contact local authorities for required contents] * * *. * * *

8-8-5: Dealer's license fee. The license fee shall be $25.00 per year or such other sum as may be established by ordinance. The license shall expire on April 30th following the date of issuance. The fee for a license issued for less than one year shall be prorated.

8-8-6: Denial or issuance of license. It shall be the duty of the Village Clerk to refuse the license required by Section 8-8-3 to any person, firm or corporation which fails, refuses or is unable to comply with all of the requirements; * * *; otherwise, * * * it shall be the duty of the Village Clerk to issue such license.

* * * * *

Rantoul

18.53 Illegal to Sell Firearms and Other Devices to Persons Under Twenty-One. No person shall within the corporate limits of the Village, sell, loan or furnish to any person under the age of twenty-one any gun, pistol, fowling piece, * * * or other firearm * * *.

Red Bud

261. Selling Weapons to Minors or Intoxicated Person. Section 58. Whoever shall, within the limits of this City, by himself or

agent, sell, give, loan, hire or barter, or offer so to do, to any minor, or intoxicated person any pistol, revolver, derringer, * * * shall be deemed guilty of a misdemeanor.

Riverdale

911. In addition to all other applicable requirements in this Code, the intrastate transportation of small arms ammunition, small arms ammunition primers, smokeless propellants and black powder propellants shall be in accordance with current U.S. Department of Transportation regulations.* * *

15.3301—Definitions. The term "gunshop" is hereby defined to mean any building, room, enclosure, premises, place, establishment or part of establishment in the Village of Riverdale operated and maintained or conducted for the sale or offer for sale at retail any of the following articles: rifles, shotguns, pistols and loaded shot shells or cartridges.

15.3302—License. No person shall engage in the business of a gunshop or a shooting range without first having obtained a license therefor.

29.216 * * *No person shall sell, loan or furnish to any minor, any gun, pistol or any other firearm, or any toy gun, pistol or other toy firearm, in which any explosive substance can be used.

* * *

Rochester

6-1-14: Weapons: * * *It shall be unlawful for any minor to have in his possession any firearms.

* * *

Rockford

Sec. 19-48. Unlawful use of weapons. (a) A person commits the offense of unlawful use of weapons when he knowingly:

* * * * * *

(6) Possesses any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or

(7) Sells, manufactures, purchases, possesses or carries any weapon from which more than eight (8) shots or bullets may be discharged by a single function of the firing device, any shotgun with a barrel less than eighteen (18) inches in length, or any bomb, bombshell, grenade, bottle or other container containing an explosive substance, such as but not limited to black powder bombs and Molotov cocktails;

* * * * * *

Sec. 19-52. Furnishing bullets, pellets, arrows, etc., to minors. It shall be unlawful for any person to sell, give or deliver any ammunition, ball, bullet, * * * to any person under the age of eighteen (18) years and it shall be unlawful for any person under the age of eighteen (18) years to obtain any ammunition, ball, bullet, * * * by purchase, sale or gift, or in any other manner.

Rockton

Section 13. Unlawful use of weapons—Prohibited. (a) A person commits the offense of unlawful use of weapons when he knowingly: * * * * * (6) Possesses any devise or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or (7) Sells, manufactures, purchases or carries any weapon from which more than eight (8) shots or bullets may be discharged by a single function of the firing device, any shotgun with a barrel less than eighteen (18) inches in length, or any bomb, bombshell, grenade, bottle or other container containing an explosive substance, such as but not limited to black powder bomb and Molotov cocktails * * *

* * * * * *

(c) Section 13, subsection (a) (7) shall not apply to or affect any of the following:

(1) Peace officers.

(2) Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of an offense.

(3) Members of the Armed Services or Reserve Forces of the United States or the Illinois National Guard, while in the performance of their official duty.

(4) Manufacture, transportation, or sale of machine guns to persons authorized under (1) through (3) of this subsection to possess such, provided the machine guns are broken down in a non-functioning state or not immediately accessible.

Rockwood

18-1. Unlawful use of weapons. a. A person commits the offense of unlawful use of weapons when he knowingly: * * * (6) Possesses any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm: or (7) Sells, manufactures, purchases, possesses or carries any weapon from which more than 8 shots or bullets may be discharged by a single function of the firing device, any shotgun with a barrel less than 18 inches in length, or any bomb, bomb-shell, grenade, bottle or other container containing an explosive substance, such as but not limited to black powder bombs and Molotov cocktails.

18-2. No person, firm or corporation in the Village of Rockwood, shall sell, give or loan to any person under the age of 18 years of age any firearm or other deadly weapon, without the consent of the parent or guardian of such minor.

Rolling Meadows

13-36. Same—Handling, possession by minors. (a) Prohibited. It shall be unlawful for any parent or guardian of any child under the age of eighteen (18), to permit, suffer or allow any such child to handle or have in his possession within the city any cannon, gun, pistol * * *

Roscoe

Sec. 13-9. Unlawful use of weapons—Prohibited. (a) A person commits the offense of unlawful use of weapons when he knowingly: * * * (6) Possesses any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or (7) Sells, manufactures, purchases, possesses or carries any weapon from which more than eight (8) shots or bullets may be discharged by a single function of the firing device, any shotgun with a barrel less than eighteen (18) inches in length, or any bomb, bombshell, grenade, bottle or other container containing an explosive substance, such as but not limited to black power bomb and Molotov cocktails; or

* * * * * *

Sec. 13-10. Unlawful use of weapons—Exemptions. * * * * * (c) Subsection (a) (7) of section 13-9 shall not apply to or affect any of the following:

(1) Peace officers.

(2) Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of an offense.

(3) Members of the Armed Services or Reserve Forces of the United States or the Illinois National Guard, while in the performance of their official duty.

(4) Manufacture, transportation, or sale of machine guns to persons authorized under (1) through (3) of this subsection to possess such, provided that the machine guns are broken down in a non-functioning state or not immediately accessible.

* * * * * *

Round Lake

43.03 same as 26.03 Fox Lake

San Jose

Section 4. Unlawful to Sell, Etc., to Minors—Penalty. Whoever not being the father or guardian of any minor, by himself or

agent, shall give, loan or hire or offer to sell, give, hire or barter to any minor, within the limits of said village, any pistol, revolver, derringer, * * * or other dangerous or deadly weapon of like character capable of being secreted upon the person, shall be fined * * * * *.

St. Charles

28.039 Unlawful Use of Weapons. It shall be unlawful to, and a person commits the offense of unlawful use of weapons when he knowingly: * * *

F. Possesses any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or

G. Sells, manufactures, purchases, possesses or carries any weapon from which more than 8 shots or bullets may be discharged by a single function of the firing device, any shotgun with a barrel less than 18 inches in length, or any bomb, bomb-shell, grenade, bottle or other container containing an explosive substance, such as but not limited to black powder bombs and Molotov cocktails; * * *

Schaumburg

Sec. 20-56. [Weapons]—Sales or gifts to minors. It shall be unlawful for any person to sell or give to any minor any pistol, revolver or other firearm that may be concealed upon the person within the corporate limits of the village.

* * * * *

Shorewood

Ordinance 78-263

Section 2: Permit to Purchase Firearms. It shall be unlawful for any person to purchase a firearm without having first secured a permit for each such purchase from the Chief of Police. Such permit shall be issued by the Chief of Police upon application therefor * * * only after the Chief of Police has sufficient time to reasonably investigate the applicant to determine whether the applicant is not a person to whom the issuance of the permit is prohibited by this Ordinance. Permits shall not be issued to any person who does not possess a currently valid Illinois Firearm Owner's Identification, nor shall a permit be issued to any person who is under the age of 18 years, has ever been convicted of a felony under the laws of Illinois or any other state or the United States, has ever been confined to a penitentiary of Illinois or any other state or the United States, has been convicted of a misdemeanor under the laws of Illinois or any other state within a period of two years of the date of the application, is addicted to narcotics, is mentally retarded, is being treated medically or psychologically for a current mental or emotional disease or disturbance, has been a patient in a mental institution within a period of five years of the date of the application, or who is an alien.

Section 3: License or Permit to Deal in Firearms. It shall be unlawful for any person to sell, rent, offer to sell or rent any firearms without securing a license therefor. A retail business or rental business license required by other Ordinances of the Village shall be sufficient license to engage in such business.

Section 4: Unlawful to Sell, Rent or Loan Firearms. It shall be unlawful for any person to sell, rent or loan a firearm to any person who does not possess and display a currently valid permit provided for in Section 2 of this Ordinance.

* * * * *

Sec. 20-60. Same—Same—Permits generally; police inspection of retailers. It shall be unlawful for any person dealing in firearms to sell, barter, loan or give away to any person within the village any pistol, revolver or any other firearm of like character which can be concealed upon the person, unless such person so purchasing or receiving such firearm shall have secured a valid firearm owner's identification card from the department of public safety of the state. Every such person dealing in firearms shall, on demand, allow any police officer, sheriff or deputy sheriff to enter and inspect all stock on hand and shall, on request of such officer, produce for inspection the register so required to be kept.

Sec. 20-61. Same—Same—Permits for nonresidents. The provisions of this article requiring a state firearm owner's identification card and number do not apply to nonresidents who are currently licensed or registered to possess a firearm in their resident state.

* * * * *

Sibley

43.03 Weapons. * * * (b.) No person shall sell, give or transfer any such weapon (concealed pistol or any other weapon) to any minor person.

Skokie

27-17. Permit. It shall be unlawful for any person dealing in firearms to sell, barter, loan or give away to any person within the Village of Skokie, any pistol, revolver, or other firearm of like character which can be concealed upon the person, unless such person so purchasing or receiving such firearm shall have secured a written permit for the purchase of such firearm, from the Chief of Police, * * *.

27-18. Minors. It shall be unlawful for any person to sell, loan or furnish to any minor any gun, pistol, rifle, revolver or other firearm within the corporate limits of the Village.

Smithton

27.70 same as 38 Sec. 24-1. (Illinois State Law)

27.71 same as 38 Sec. 24-3.

27.72 same as 38 Sec. 24-3.1.

27.74 same as 38 Sec. 24-5.

South Beloit

Sec. 18-10. Unlawful use of weapons—Prohibited. (a) A person commits the offense of unlawful use of weapons when he knowingly:

(6) Possesses any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or

(7) Sells, manufactures, purchases, possesses or carries any weapon from which more than eight (8) shots or bullets may be discharged by a single function of the firing device, any shotgun with a barrel less than eighteen (18) inches in length, or any bomb, bombshell, grenade, bottle or other container containing an explosive substance, such as but not limited to black powder bomb and Molotov cocktails;

* * * * *

(c) Subsection (a) (7) of section 18-10 shall not apply to or affect any of the following:

(1) Peace officers.

(2) Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of an offense.

(3) Members of the Armed Services or Reserve Forces of the United States or the Illinois National Guard, while in the performance of their official duty.

(4) Manufacture, transportation, or sale of machine guns to persons authorized under (1) through (3) of this subsection to possess such, provided that the machine guns are broken down in a non-functioning state or not immediately accessible.

* * * * *

South Elgin

18. Unlawful use of weapons. No person shall commit the offense of unlawful use of weapons. A person commits the offense of unlawful use of weapons when he knowingly:

(f) sells, manufactures, purchases, possesses or carries any * * * shotgun with a barrel less than 18 inches in length, * * *

(6) possesses any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm.

Springfield

31.45. Minors not to handle or possess firearms, * * * etc. It shall be unlawful for any parent or guardian of any child under the age of eighteen, to permit, suffer or allow any such child to handle or have in his possession within the city, any cannon, gun, pistol * * *

Steger

Sec. 130.701 Unlawful use of weapons. (A) A person commits the offense of unlawful use of weapons when he knowingly:

* * * * * *

(6) Possesses any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or

(7) Sells, manufactures, purchases, possesses or carries any weapon from which more than eight shots or bullets may be discharged by a single function of the firing device, any shotgun with a barrel less than eighteen inches in length, or any bomb, bombshell, grenade, bottle or other container containing an explosive substance, such as but not limited to black powder bombs and Molotov cocktails;

* * * * * *

Sec. 130.702 Unlawful sale of firearms. (A) A person commits the offense of unlawful sale of firearms when he knowingly:

(1) Sells or gives any firearm of a size which may be concealed upon the person to any person under eighteen years of age; or

(2) Sells or gives any firearm to a person under twenty-one years of age who has been convicted of a misdemeanor other than a traffic offense or adjudged delinquent; or

(3) Sells or gives any firearm to any narcotic addict; or

(4) Sells or gives any firearm to any person who has been convicted of a felony under the laws of this or any other jurisdiction within five years from release from the penitentiary or within five years of conviction if penitentiary sentence has not been imposed; or

(5) Sells or gives any firearm to any person who has been a patient in a mental hospital within the past five years; or

(6) Sells or gives any firearms to any person who is mentally retarded; or

(7) Delivers any firearm of a size which may be concealed upon the person, incidental to a sale, without withholding delivery of such firearm for at least seventy-two hours after application for its purchase has been made, or delivers any rifle, shotgun or other long gun, incidental to a sale, without withholding delivery of such rifle, shotgun or other long gun for at least twenty-four hours after application for its purchase has been made. However, this paragraph shall not apply to:

(a) the sale of a firearm to a law enforcement officer or a person who desires to purchase a firearm for use in promoting the public interest incident to his employment; or

(b) a mail order sale of a firearm to a nonresident of Illinois under which the firearm is mailed to a point outside the boundaries of Illinois; or

(c) the sale of a firearm to a nonresident of Illinois while at a firearm showing or display recognized by the Illinois Department of Law Enforcement; or

(d) the sale of a firearm to a dealer licensed under the Federal Firearms Act of the United States.

(B) While holding any license under the Federal "Gun Control Act of 1968," as amended, as a dealer, importer, manufacturer, or pawnbroker; manufactures, sells or delivers to any unlicensed person a handgun having a barrel, slide, frame or receiver which is a die casting of zinc alloy or any other nonhomogeneous metal which will melt or deform at a temperature of less than 800 degrees Fahrenheit. For purposes of this paragraph "firearm" is defined as in "An Act relating to the acquisition, possession and transfer of firearms and firearm ammunition, to provide a penalty for the violation thereof and to make an appropriation in connection therewith," approved August 3, 1967, as amended;

2) "handgun" is defined as a firearm designed to be held and fired by the use of a single hand, and includes a combination of parts from which a firearm can be assembled.

(C) Paragraph (B) of this section shall not include firearms sold within six months after enactment of this amendatory ordinance nor shall any firearm legally owned or possessed by any citizen or purchased by any citizen within six months after the enactment of this amendatory ordinance be subject to confiscation or seizure under the provisions of this amendatory ordinance. Nothing in this amendatory ordinance shall be construed to prohibit the gift or trade of any firearm if that firearm was legally held or acquired within six months after the enactment of this amendatory ordinance.

* * * * * *

Sec. 130.703 Unlawful possession of firearms and firearm ammunition. (A) A person commits the offense of unlawful possession of firearm ammunition when:

(1) He is under eighteen years of age and has in his possession any firearm of a size which may be concealed upon the person.

(2) He is under twenty-one years of age, has been convicted of a misdemeanor other than a traffic offense or adjudged delinquent and has any firearms or firearm ammunition in his possession; or

(3) He has been convicted of a felony under the laws of this or in any other jurisdiction within five years from release from the penitentiary or within five years of conviction if penitentiary sentence has not been imposed, and has any firearms or firearm ammunition in his possession; or

(4) He is a narcotic addict and has any firearms or firearm ammunition in his possession; or

(5) He has been a patient in a mental hospital within the past five years and has any firearms or firearm ammunition in his possession; or

(6) He is mentally retarded and has any firearms or firearm ammunition in his possession.

* * * * * *

Stickney

Ordinance 75-14

Section 1. Definition. "Firearms" for the purposes of this Ordinance, are Pistols, Revolvers, Derringers, Handguns or small arms of such size and nature that may be readily concealed on or about the person.

Section 2. License Required. It shall be unlawful for any person, firm or corporation to engage in the business of selling, or to sell, lease, loan or give away to any resident of the Village of Stickney, any firearms which are of such size or nature as may be readily concealed on or about the person, without securing a license therefor.

Section 3. Unlawful Sale. It shall be unlawful for any seller of firearms to sell, lease, loan or give away any firearm to any person residing in the State of Illinois unless such person shall have been issued a Firearms Owners Identification Card as provided in the "Criminal Code of 1961" as amended, or to sell firearms in violation of the provisions of the "Criminal Code of 1961" as amended, or in violation of the provisions of any Federal Act regulating the sale of Firearms.

Section 4. Permit Required. It shall be unlawful for a seller of firearms to sell, lease, loan or give away any firearms to any resident of the Village of Stickney who has not secured a permit from the Chief of Police to purchase such firearm as hereinafter provided.

Streamwood

19.1001. Definition of firearms. Firearm for the purpose of this article is a pistol, revolver, gun and small arms of a size and character that may be concealed upon or about the person.

19.1005. Permit to purchase firearms. No person shall be permitted to purchase a firearm without having secured a permit from the chief of police. Such permit shall not be issued to a criminal, vagabond, minor under eighteen years of age or an alien.

19.1006. License and permit to deal in firearms. It shall be unlawful for any person to engage in the business of selling or to sell, or give away, to any person within the village, any firearms which are of such size or nature as may be concealed upon the person, without securing a license therefor. No person, having secured such license, shall sell, loan or give away, any such weapon to any person who has not secured a permit from the chief of police to purchase such weapon.

Sugar Grove

15. Unlawful use of weapons: A person commits the offense of unlawful use of weapons when he knowingly:

1. Sells, manufactures, purchases, possesses or carries any * * * shotgun with a barrel less than 18 inches in length, * * * or

* * * * *

6. Possesses any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm.

Summit

6-7-1: License required: It shall be unlawful for any person to engage in the business of selling, or to sell or give away, any pistol, revolver, * * * derringer, * * * or other deadly weapon, * * * or any toy firearms or other toy in the nature of a firearm in which any bullet, pellet, or other object can be expelled by means of air pressure or any explosive substance without securing a license so to do, and no person having secured such license shall sell or give away any such weapon to any person within the Village who has not secured a permit from the Chief of Police to purchase such weapon in the manner hereinafter provided.

Swansea

27.28 Unlawful possession of firearms and firearm ammunition. (a) A person commits the offense of unlawful possession of firearms or firearm ammunition when: (1) He is under eighteen (18) years of age and has in his possession any firearm of a size which may be concealed upon the person.

(2) He is under twenty-one (21) years of age, has been convicted of a misdemeanor other than a traffic offense or adjudged delinquent and has any firearms or firearm ammunition in his possession; or

(3) He has been convicted of a felony under the laws of this or any other jurisdiction within five (5) years from release from the penitentiary or within five (5) years of conviction if penitentiary sentence has not been imposed, and has any firearms of firearm ammunition in his possession; or

(4) He is a narcotic addict and has any firearms or firearm ammunition in his possession; or

(5) He has been a patient in a mental hospital within the past five (5) years and has any firearms or firearm ammunition in his possession; or

(6) He is mentally retarded and has any firearms or firearm ammunition in his possession.

27.30 Defacing identification marks of firearms.

(a) Any person who shall change, alter, remove or obliterate the name of the maker, model, manufacturer's number or other mark of identification of any firearm commits a Class A misdemeanor.

(b) Possession of any firearm upon which any such mark shall have been changed, altered, removed or obliterated shall be prima facie evidence that the possessor has changed, altered, removed or obliterated the same.

Tremont

Sec. 6-2-3-15 Unlawful use of weapons a) It shall be unlawful for any person to:

* * * * *

(6) Possess any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or

(7) Possess or carry any weapon from which more than eight (8) shots or bullets may be discharged by a single function of the firing device, any shotgun with a barrel less than eighteen (18) inches in length, or any bomb, bomb-shell, grenade, bottle or other container containing an explosive substance, such as, but not limited to, black powder bombs and Molotov cocktails; * * *

* * * * *

Towanda

42.03 Weapons. * * * (b) No person shall sell, give or transfer any such weapon ("pistol, * * * or any other weapon or thing of deadly character") to any minor person.

Tuscola

Sec. 18-51. (Weapons)—Selling or furnishing to minors. Whoever, not being the father, guardian or employer of a minor by himself or agent, shall sell, give, loan, hire or barter to any minor within the corporate limits of the city, any pistol, revolver, derringer, * * * or other deadly weapon of like character, capable of being secreted upon the person shall be subject to penalty as provided by section 1-8 of this Code.

Urbana

Sec. 21.55. Weapons—Unlawful use and possession, and exemptions. (1) A person commits the offense of unlawful use of weapons when he knowingly: * * * * * (f) Possesses any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or (g) Sells, manufactures, purchases, possesses or carries any weapon from which more than 8 shots or bullets may be discharged by a single function of the firing device, any shotgun with a barrel less than 18 inches in length, or any bomb, bomb-shell, grenade, bottle or other container containing an explosive substance, such as but not limited to black powder bombs and Molotov cocktails; * * *

* * * * *

(4) Exemptions. * * * * *

(c) Section 21.55 (1)(g) does not apply to or affect any of the following:

(1) Peace officers.

(2) Wardens, superintendents and keepers of prisons, penitentiaries, jails or other institutions for the detention of persons accused or convicted of an offense.

(3) Members of the armed services or reserve forces of the United States or the Illinois National Guard while in the performance of their official duty.

(4) Manufacture, transportation, or sale of machine guns to persons authorized under (1) through (3) of this subsection to possess machine guns, if the machine guns are broken down in a non-functioning state or not immediately accessible.

(d) Section 21.55 (1)(g) does not apply to the purchase, possession or carrying of a blackjack or slung-shot by a peace officer.

* * * * *

21.56. Weapons—Infants. Any person who, not being the father, guardian or employer of a minor, by himself or agent, shall sell, give, loan, hire or barter to any minor within the corporate limits of the city, any pistol, revolver, derringer, * * * capable of being secreted upon the person, shall be subject to the penalties set out in section 1.6 of this Code.

Venice

9-5-4: Weapons: No pawnbroker shall receive as a pledge or purchase any revolver,

pistol, * * * or sawed-off shotgun; and no pawnbroker shall display in his window or shop any such weapons for sale.

Washington

16-26. Same—Selling, etc., weapons to prohibited. No person shall sell, give, loan, hire, barter or furnish, to any minor within the city, any gun, pistol, revolver, fowling-piece or toy firearm, in which any explosive substance can be used, * * *.

Washington Park

Unlawful possession of firearms and firearm ammunition: A person commits the offense of unlawful possession of firearms or firearm ammunition when: (a) he is under 18 years of age and has in his possession any firearm of a size which may be concealed upon the person; (b) he is under 21 years of age, has been convicted of a misdemeanor other than a traffic offense or adjudged delinquent and has any firearms or firearm ammunition in his possession; or (c) he has been convicted of a felony under the laws of this or any other jurisdiction within five years of conviction if penitentiary sentence has not been imposed, and has any firearms or firearm ammunition in his possession; or (d) he is a narcotic addict and has any firearm or firearm ammunition in his possession; or (e) he has been a patient in a mental hospital within the past five years and has any firearms or firearm ammunition in his possession; or (f) he is mentally retarded and has any firearms or firearm ammunition in his possession.

Unlawful use of Weapons A person commits the offense of unlawful use of weapons when he knowingly * * * * * (f) possesses any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm.

* * * * *

Wauconda

8-2-3-2: Unlawful use of weapons. A person commits the offense of unlawful use of weapons when he knowingly: (A) Sells, manufactures, purchases, possesses or carries any * * * shotgun with barrel less than 18 inches in length * * *.

(F) Possesses any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or

(G) Sells, manufactures, purchases, possesses or carries any weapon from which more than 8 shots or bullets may be discharged by a single function of the firing device.

8-3-3-5: Unlawful sale of firearms. A person commits the offense of unlawful sale of firearms when he knowingly: (A) Sells or gives any firearms of a size which may be concealed upon the person to any person under 18 years of age; or

(B) Sells or gives any firearm to any narcotic addict; or

(C) Sells or gives any firearm to any person who has been convicted of a felony under the laws of this or any other jurisdiction within 5 years from release from the penitentiary or within 5 years of conviction if penitentiary sentence has not been imposed.

Waukegan

24-121. Dealer's license—Required. No person shall engage in the business of selling or sell or give away any pistol, revolver, * * * derringer, * * * or other deadly weapon which can be concealed on the person, without securing a license to do so * * *

24-127. Restrictions on sale or gift. It shall be unlawful for any person to sell, barter or give away to any person within the city any deadly weapon mentioned in this division except to licensed dealers and to persons who have secured a permit for the purchase of such articles from the chief of police as required in this division. This does not apply to sales made of such articles which are to be delivered or furnished outside the city.

24-128. Purchase permit required; * * * It shall be unlawful for any person to purchase any deadly weapon mentioned in this division without first securing from the chief of police a permit to do so. * * *

24-135. License—Required. No person shall engage in the business of repairing any pistol, revolver, derringer or other firearm which can be concealed on the person without securing a license to do so * * *

26-27. Sale of weapons to minors, aliens prohibited. No person shall sell or give to any alien or to any minor under the age of eighteen (18) years any firearms or dangerous or deadly instruments of any character.

West Chicago

Ordinance 879

* * * * *

Section 4. (1) A Person commits the offense of unlawful use of weapons when he knowingly:

(a) Sells, manufactures, purchases, possesses, or carries any * * * shot-gun with a barrel less than 18 inches in length, * * *.

* * * * *

(f) Possesses any device or attachment of any kind designed, used, or intended for use in silencing the report of any firearm; or

(g) Sells, manufactures, purchases, possesses, or carries any weapon from which more than 8 shots or bullets may be discharged by a single function of the firing device.

* * * * *

Western Springs

62.2 Fixed ammunition—license. Any person or corporation desiring a license for the sole purpose of keeping, selling, or giving away loaded ball cartridges or shot shells for use in rifles, pistols, or shotguns shall be entitled to a license upon application made as provided in chapter 27 of this code, provided that such licensee shall not have on hand at any one time more than 25,000 rounds of such ammunition.

Westmont

Sec. 17-21. Persons under twenty-one years of age prohibited from purchasing firearms or ammunition. No persons under the age of twenty-one (21) years shall purchase any firearms or ammunition of any type.

Wheaton

17-83. Enumeration of dangerous, deadly weapons. The term "dangerous or deadly weapon" as used herein shall include pistols, revolvers, rifles or other firearms, * * * and any other deadly weapons which, except for this article, may be lawfully possessed by any person.

17-84. Selling, furnishing to minors; exceptions. It shall be unlawful for any person to sell, give, or loan to any minor under the age of eighteen (18) years any deadly or dangerous weapon. * * *

17-93. License—Required. It shall be unlawful for any person to engage in the business of selling or otherwise dealing in dangerous or deadly weapons (hereafter called a dealer) in the city without securing a license therefor.

Wilmette

5-10.1 License required; * * * It is unlawful for any person to engage in the business of making, selling, or repairing firearms of any type, size or description without first having obtained a license therefor. * * *

5-10.2 Permit to purchase. It shall be unlawful for any person dealing in firearms to sell, barter, loan or give away to any person within the Village of Wilmette firearms of

any type, size or description, unless such person so purchasing or receiving such firearm shall have secured a written permit for the purchase of such firearm, from the Chief of Police. * * *

Wilmington

132.075 Selling deadly weapons; sales to minors. (A) It shall be unlawful for any person to sell, give, loan, hire, barter, furnish, or offer to sell, give, loan, hire, barter or furnish to any minor within the City any gun, pistol, revolver, fowling piece, or other toy firearm in which any explosive substance can be used, * * * or other deadly weapon of a like character.

Winnetka

5-44. Weapons. No pawnbroker shall receive as a pledge or purchase any revolver, pistol, machine gun, or sawed-off shotgun, and no pawnbroker shall display in his window or shop any such weapons for sale.

13-51. Weapons—Sale to minors prohibited. No person shall sell, loan or furnish to any minor any gun, pistol or other firearm, * * * or ammunition for any firearm * * *, within the limits of the village.

Worth

Sec. 3-11-1: License required, sale restricted: It shall be unlawful for any person to engage in the business of selling or to sell, or give away, to any person within the Village, any firearms which are of such size or nature as may be concealed upon the person, without securing a license therefor. No person, having secured such license, shall sell, loan or give away, any such weapon to any person who has not secured a permit from the Chief of Police to purchase such weapon.

Sec. 10-5-1: Definition of "firearms." "Firearms" for the purposes of this chapter are pistols, revolvers, guns and small arms of a size and character that may be concealed upon or about the person.

Sec. 10-5-2: Permit to purchase firearms. No person shall be permitted to purchase a firearm without having secured a permit from the Chief of Police. [Contact local authorities for required contents] * * *. * * *

Sec. 10-5-5: Sale to minors, aliens prohibited: No person shall sell or give to any alien or to any minor under the age of eighteen years any firearm of a size which may be concealed upon the person.

Zion

28-1. Unlawful use or carrying of weapons—Defined. (a) A person commits the offense of unlawful use of weapons when he knowingly: * * * * *

(6) Possesses any device or attachment of any kind designed, used, or intended for use in silencing the report of any firearm; or

(7) Sells, manufactures, purchases, possesses or carries any weapon from which more than eight (8) shots or bullets may be discharged by a single function of the firing device, any shotgun with a barrel less than eighteen (18) inches in length, or any bomb, bombshell, grenade, bottle or other container containing an explosive substance, such as but not limited to black powder bombs and Molotov cocktails; * * *

28-2. Same—Exemptions. * * * * * (c) Subsection 28-1(a)(7) shall not apply to or affect any of the following:

(1) Peace officers.

(2) Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of an offense.

(3) Members of the Armed Services or Reserve Forces of the United States or the Illinois National Guard, while in the performance of their official duty.

(4) Manufacture, transportation, or sale of machine guns to persons authorized under (1) through (3) of this subsection to possess such, provided the machine guns are broken down in a nonfunctioning state or not immediately accessible. * * *

28-14. To be licensed. It shall be unlawful for any person to engage in the business of selling, or to sell or give away, any pistol, revolver, * * * derringer, * * * or other deadly weapon which can be concealed on the person, without securing a license to do so.

28-20. Restrictions on sale or gift. It shall be unlawful for any person to sell, barter or give away to any person within the city any deadly weapon mentioned in this article except to licensed dealers and to persons who have secured a permit for the purchase of such articles from the chief of police * * *

28-21. Permit required to purchase; * * * It shall be unlawful for any person to purchase any deadly weapon mentioned in this article which can be concealed on the person without first securing from the chief of police a permit so to do. * * *

28-34. License required. It shall be unlawful for any person to engage in the business of repairing any pistol, revolver, derringer, or other firearm which can be concealed on the person without securing a license so to do.

28-48. License, compliance required; exception. It shall be unlawful for any person to engage in the business of selling, or to sell or give away any * * * toy firearms or other toy in the nature of a firearm in which any explosive substance can be used without securing a license so to do, and no person having secured such license shall sell, or give away any such weapon to any person within the city who has not secured a permit from the chief of police to purchase such weapon * * *; provided that it shall not be necessary for any person licensed to sell deadly weapons to take out an additional license for the sale of the articles mentioned herein.

28-51. Purchasers' permits required; * * * It shall be unlawful for any person to purchase * * * any toy firearm or other toy in the nature of a firearm in which any explosive substance is used to expel a projectile without first securing from the chief of police a permit so to do. * * *

Indiana

State Law

Ind. Stat. Ann. (Burns)

Chapter 3
Possession and use of machine guns, explosives and poison gases

35-23-3-1 (10-4712). Ownership or possession. A person who owns or possesses: (1) A machine gun; or (2) A bomb loaded with either explosives or dangerous gases; commits a class C felony.

35-23-3-3 (10-4714). Exceptions from application of chapter. The provisions of this chapter [Secs. 35-23-3-1—35-23-3-3] shall not be construed to apply to any of the following named persons and acts, nor to apply under any of the following described circumstances, to wit: (a) To members of the military or naval forces of the United States, National Guard of Indiana, or Indiana State Guard, when on duty or practicing; (b) to machine guns or bombs kept for display as relics and which are rendered harmless and not useable; (c) To any of the police, sheriffs or other officers of this state or the United States of America charged with the duty of law enforcement while acting within the scope of their employment and in connection with and in the furtherance of their duties; (d) To persons lawfully engaged in the display, testing or use of fireworks; or (e) To persons, firms, agencies of the state government; or corporations and the employees, servants, or agents of such persons, firms, agencies, or corpora-

tions authorized or permitted by law to engage in and engaged in the business of manufacturing, assembling, conducting research on or testing machine guns, bombs, airplanes, tanks, armored vehicles or ordnance equipment or supplies while or when acting within the scope of and in furtherance of such business; and (f) To persons, firms or corporations possessing, or having applied to possess machine guns under applicable United States Statutes, providing, that such machine guns shall also be transferred as are handguns, as provided in IC 1971, 35-23-4.1-7 [Sec. 10-4751g].

35-23-4.1-1 (10-4751a). Firearms—Definitions. As used in this chapter [Secs. 10-4751a—10-4751r]:

(a) The term "firearm" means any weapon which is capable of or designed to or which may readily be converted to expel a projectile with deadly force by means of an explosion;

(b) The term "handgun" means any firearm designed or adapted so as to be aimed and fired from one hand regardless of barrel length, or any other firearm with a barrel less than sixteen [16] inches in length, or an overall length of less than twenty-six [26] inches;

(c) The term "crime of violence" includes each of the following offenses or an attempt to commit any of them: murder, voluntary manslaughter, kidnapping for the purpose of ransom, rape, malicious mayhem, assault or assault and battery with intent to commit a felony, aggravated assault and battery, robbery, bank robbery, automobile banditry, and burglary in the first or second degree. The term also includes any felony or attempted felony in which bodily harm or the threat of bodily harm is directed against a human being or in which harm is done or threatened against a place of human habitation or employment;

(d) The term "person" includes firms, corporations, partnerships or associations, as well as human beings;

(e) The term "place of abode" means a place of residence which is more than temporary in nature and to which the dweller, when absent, intends to return;

(f) The term "superintendent" means the superintendent of the Indiana state police department;

(g) The term "retail" means the sale of handguns singly or in small quantities to one who intends to be the ultimate user thereof;

(h) The term "wholesale" means the sale of handguns singly or in bulk lots to one lawfully licensed to deal in the same, or the sale of a handgun or handguns to a governmental law enforcement agency for issue to its law enforcement officers, agents or employees;

(i) The term "dealer" means any person who holds himself out as a buyer and seller of handguns on a regular and continuing basis;

(j) The term "police officer" means any state, city, or town law enforcement officer who is employed with unlimited police authority on a full-time basis to enforce the laws of the state of Indiana.

* * * * *

35-23-4.1-6 (10-4751f). Prohibited sales or transfers. No person, except an individual acting within a parent-child or guardian-ward relationship shall sell, give or in any other manner transfer the ownership of a handgun to any person under the age of eighteen [18], and in no event shall any person sell, give, or in any manner transfer the ownership or possession of a handgun to one who he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, or is a habitual drunkard, or is of unsound mind.

35-23-4.1-7 (10-4751g). Persons to whom regulations apply—Waiting period—Application for sale or transfer of handgun—Fingerprints—Fee. The regulation of the sale of handguns imposed by this chapter [35-23-4.1-1—35-23-4.1-18] shall apply equally to an occasional sale, trade or transfer between individual persons and to retail transactions between dealers and individual persons.

(a) Except as otherwise provided in this section, this section does not apply to sales at wholesale. No transferor shall deliver a handgun to a transferee until at least seven [7] calendar days shall have elapsed from the time of the application for the transfer and, when delivered, the handgun shall be securely wrapped and unloaded.

(1) The seven [7] day waiting period shall not apply to law-enforcement officers. Any law-enforcement officer who takes advantage of this exception to purchase a handgun for someone other than himself commits a class B misdemeanor.

(2) The seven [7] day waiting period shall also be waived for any person to whom a qualified or unlimited handgun-carrying license has been issued, upon exhibition of the license to the transferor. The transferor shall note on the application-to-purchase form the serial number of the license, the expiration date, the issuing authority, and the notation "waiting period waived," together with the date on which the handgun or handguns are released to the applicant. Any person using or seeking to use a false, counterfeit, spurious or altered handgun-carrying license to obtain a handgun contrary to the provisions of this chapter commits a class B misdemeanor.

(b) At the time of applying for the transfer of a handgun, the transferee shall complete and sign an application in triplicate in the presence of the transferor [contact State authorities for required contents] * * *. This application, in triplicate, shall be deposited with the transferor who shall, within eight [8] hours of the time of execution of the application, sign and attach his address and forward by first class mail or deliver in person one [1] copy of the application to the chief of police of the municipality or the sheriff of the county of which the purchaser is a resident; one [1] copy duly signed by the transferor shall at the same time be forwarded by him with his address to the superintendent; and he, the transferor, shall retain one [1] copy for six [6] years. If the superintendent shall by administrative rule require, the application forms forwarded to the superintendent may be accompanied by a full or partial set of legible and classifiable fingerprints of the transferee, taken by the transferor or by an agent of the transferor. Repeated instances of the transferor intentionally forwarding illegible fingerprints shall, in the case of a dealer, constitute grounds for the suspension or revocation of the dealer's license. Upon receipt of the handgun transfer application forms, the chief of police or sheriff, and the superintendent shall search the records of their respective departments concerning the transferee, and they shall forward immediately in both verbal and written form to the transferor any information constituting grounds for nondelivery of the handgun or handguns. In the case of the occasional transfer of a handgun between individuals, both the transferor and the transferee shall complete the application and fingerprint forms at any sheriff's office, police station, state police post, or licensed dealer, with the required fingerprints to be taken by a qualified person and the forms being forwarded to the appropriate chief of police or sheriff and to the superintendent, by the person taking the fingerprints. No charge shall be made for this service by any police agency; however, a dealer may charge a fee not to exceed two dollars [$2.00] for his services in assisting in the processing of the transfer, which fee is to be assessed of the transferor. It is the intent of this chapter that all sale forms shall be completed by the transferee in the presence of the transferor and that delivery of the handgun or handguns not take place until the seven [7] day waiting period has elapsed or has been waived as indicated above. Any notice from the chief of police or sheriff or from the superintendent indicating that the information on the transferee's application is untrue or incomplete or that the transferee has been convicted of a violation of this chapter or any crime of violence shall be grounds for nondelivery of the handgun or handguns, and in such case, delivery shall not occur without written approval of the superintendent.

(c) Delivery of a handgun by the transferor or his agent to the transferee prior to the expiration of the seven [7] day waiting period, except when the waiting period has been waived under this section, or delivery to any transferee without the superintendent's writ-

ten approval after receiving notice of grounds for nondelivery is unlawful and in addition, constitutes grounds for the immediate suspension of the retail dealer's license.

(d) No additional record of any lawful transfer of any firearm shall be made or maintained by any local or state official or agency; and, all forms utilized in executing lawful firearm transfers, with the sole exception of those remaining with the transferor, shall be forwarded within six [6] months to the transferee indicated on the forms. Said forms shall then be retained by the transferee as proof of ownership of the firearm or firearms listed thereon.

35-23-4.1-8 (10-4751h). Retail dealer—License required. A retail dealer shall not sell, trade, or otherwise transfer or expose for sale, trade, or transfer, or have in his possession with intent to sell, trade or transfer, any handgun without being licensed under section 9 [35-23-4.1-9] of this chapter.

35-23-4.1-9 (10-4751i) License issuance as retail handgun dealer—Application * * * Conditions. A person desiring a license as a retail handgun dealer shall apply to the sheriff of the county in which he resides, or if he is a resident of another state and has a regular place of business in this state, then to the sheriff of the county in which he has a regular place of business. * * * No retail dealer's license shall be issued to any person who has been convicted of a crime of violence in this state or any state or country, or who has been convicted of a felony violation of this chapter [35-23-4.1-1—35-23-4.1-18]. A retail dealer's license shall permit the licensee to sell handguns at retail within this state subject to the following conditions in addition to those specified elsewhere in this chapter for breach of any of which the license may be suspended or revoked in accordance with applicable law and in addition the licensee may be subject to punishment as provided in this chapter:

(a) The business shall be carried on only in the site designated in the license and a separate license shall be required for each separate retail outlet. In the event a licensed dealer moves his place of business, he shall promptly notify the superintendent, who shall at once issue an amended license certificate valid for the balance of the license period. This section shall not apply to sales at wholesale.

(b) The license, certified by the issuing authority, shall be displayed on the business premises in a prominent place where it can be seen easily by prospective customers.

(c) No handgun shall be sold in violation of any provisions of this chapter, nor shall any handgun be sold under any circumstances unless the purchaser is personally known to the seller or presents clear evidence of his identity.

35-23-4.1-10 (10-4751j). Loan secured by handgun prohibited. No person shall make any loan secured by a mortgage, deposit, or pledge of a handgun.

35-23-4.1-13. Firearms exempted. This chapter [35-23-4.1-1—35-23-4.1-18] does not apply to any firearm not designed to use fixed cartridges or fixed ammunition, or any firearm made on or before 1898.

35-23-4.1-14 (10-4751n). Waiver of disability or pardon of conviction—Effect. A waiver of disability from United States authorities or a full pardon from the governor or other chief executive of the state, county or jurisdiction in which a conviction for any crime of violence or violation of this chapter [35-23-4.1-1—35-23-4.1-18] took place, shall, as to the conviction so pardoned, remove any disability under this chapter imposed by that conviction.

35-23-5-1 (10-4701). Intoxicated persons—Sale or gift of weapons to. A person who sells, barters, gives, or delivers any deadly weapon to any person at the time in a state of intoxication, knowing him or her to be in a state of intoxication, or to any person who is in the habit of becoming intoxicated, and knowing him or her to be a person who is in the habit of becoming intoxicated, commits a class B misdemeanor.

35-23-7-1 (10-1911). Sale, manufacture, use, purchase or possession of container with explosive or inflammables with intent to use. A person who sells, manufactures, purchases, possesses or carries with intent to use the same or cause the same to be used for an unlawful purpose, any bomb, bombshell, grenade, bottle or other container containing an explosive or inflammable substance commits a class C felony.

35-23-10-1 (10-4740a). Interstate firearms sales. Any resident of this state who is eighteen [18] years of age or over and not otherwise prohibited by IC 1971, 35-23-4-6 [Sec. 10-4739], IC 1971, 35-1-79-3 [Sec. 10-4702], or IC 1971, 35-23-5-1 [Sec. 10-4701], or any applicable law of another state or the United States from obtaining, possessing, or using a firearm, may purchase or obtain a rifle, shotgun or ammunition for either a rifle or shotgun in Ohio, Kentucky, Michigan or Illinois. Any resident of those states who is eighteen [18] years of age or over and not otherwise prohibited by IC 1971, 35-23-4-6 [Sec. 10-4739], IC 1971, 35-1-79-3 [Sec. 10-4702], or IC 1971, 35-23-5-1 [Sec. 10-4701] or the laws of his domicile or of the United States from obtaining, possessing, or using a firearm in this state or his home state, may purchase or obtain a rifle, shotgun, or ammunition for either a rifle or shotgun in this state. Any such transaction shall be for the purposes and under the conditions prescribed by the "Gun Control Act of 1968," 82 Stat. 1213, 18 U.S.C. 922(B)(3).

Gary

Ordinance 4641

Section 10-2201. All handguns located in the City of Gary shall be registered in accordance with the provisions of this Chapter.

Section 10-2204. At the time of sale the seller shall complete a registration form, designed or approved by the City Controller, [Contact local authorities for required contents] * * *

Section 10-2205. At such time of sale the seller shall witness to the best of his knowledge that the information submitted on the registration form by the purchaser is true and correct and that the transaction is not in violation of law.

Section 10-2214. For the purposes of this Chapter the term "handgun" means any weapon, by whatever name known, which is less than twelve (12) inches long capable of being used with one hand and which is designed to expel a projectile or projectiles by the action of an explosive and a handgun muffler or handgun silencer, or any part or parts of such weapon.

Section 10-2216. A person may not possess * * * any handgun * * * if such person is ineligible to register such handgun with the licensing authority pursuant to the provisions of this Chapter.

Hammond

27-201. Explosives—Permit. 1. No person or corporation shall keep, sell or offer for sale, or give away, anywhere within the City any gunpowder, guncotton, giant powder, dynamite, nitroglycerine, fulminate of mercury, or other high explosives of similar nature, in any quantity, whether in bulk or made up or kept in packages or cartridges, or kept, sell or offer for sale, or give away, anywhere within the City, any loaded paper or metallic shot shells or cartridges designed or intended to be used for shot guns, pistols, rifles or other firearms, or percussion caps or primers * * *

Indianapolis

Code of Ordinances

Sec. 20-98. Firearms for minors. No person shall sell, loan or furnish to any minor under the age of eighteen (18) years any gun, pistol or other firearm, or any toy gun, toy pistol or other toy firearm, in which any explosive substance is or can be used, within the city; however, minors over fifteen (15) years of age may be permitted, with the consent of their parents or guardians, to use firearms on the premises of a duly licensed shooting gal-

lery, gun club or rifle club, or to shoot game birds in accordance with other provisions of this Code or state law.

Sec. 29-190. Unlawful disposition of dangerous weapons. No person shall sell, give, barter, exchange, lend or otherwise dispose of, or place in the possession of any known or suspected habitual user of narcotics or any known or suspected criminal or a person with criminal purpose, any type of machine gun, sawed-off shotgun, pistol or revolver, or ammunition therefor, * * *. [The] provisions of this section shall not apply to any military forces, peace officers or other persons so excepted by law for the possession, use or disposal of any such things.

Marion

Sec. 1. Be it ordained by the Common Council of the City of Marion, that it shall be and is hereby declared to be unlawful for any person to sell or give away within this city, to any minor, any rifle or gun for shooting powder and ball, * * * or other gun, rifle or device for shooting and propelling missiles * * *.

Meridian Hills

Sec. 197. Sale to minors prohibited. No person shall sell, loan or furnish to any minor, any gun, pistol or other firearm or ammunition for any firearm * * *, within the limits of the town.

* * * * *

New Whiteland

Section 5. Firearms for minors. No person shall sell, loan or furnish to any minor, under the age of eighteen years, any gun, pistol, or other firearm, or any toy gun, toy pistol, or other toy firearm in which any explosive substance is or can be used, within the town; * * *

Section 8. Selling weapons to narcotic users, etc. No person shall sell, give, barter, exchange, lend or otherwise dispose of, or place in the possession of any known, or suspected, habitual user of narcotics, or any known, or suspected, criminal or person with criminal purpose, any type of machine-gun or sawed-off shotgun, or pistol, or revolver, or ammunition therefor, * * * which may be carried or concealed on or about the person and which are commonly used and fit to be used unlawfully to inflict harm on or to any person; * * * the provisions of this section shall not apply to any military forces, peace officers, or other persons so excepted by law for the possession, use, or disposal of any such things.

Iowa

State Law

Iowa Code Ann.

Chapter 724. Weapons

724.1 Offensive weapons. An offensive weapon is any device or instrumentality of the following types;

1. A machine gun. A machine gun is a firearm which shoots or is designed to shoot more than one shot, without manual reloading, by a single function of the trigger.

2. A shotgun having a barrel or barrels shorter than eighteen inches in length, or a rifle having a barrel or barrels shorter than sixteen inches in length.

3. Any weapon other than a shotgun or muzzle loading rifle, cannon, pistol, revolver or musket, which fires or can be made to fire a projectile by the explosion of a propellant charge, which has a barrel or tube with the bore of more than six-tenths of an inch in diameter, or the ammunition or projectile therefor, but not including antique weapons kept for display or lawful shooting.

4. A bomb, grenade, or mine, whether explosive, incendiary, or poison gas; any rocket having a propellant charge of more than four ounces; any missile having an explosive charge of more than one-quarter ounce; or any device similar to any of these.

5. Any part or combination of parts either designed or intended to be used to convert any device into an offensive weapon as described in subsections one (1) through four (4), inclusive, of this section, or to assemble into such an offensive weapon, except magazines or other parts, ammunition, or ammunition components used in common with lawful sporting firearms or parts including but not limited to barrels suitable for refitting to sporting firearms.

724.2 Authority to possess offensive weapons. Any of the following is authorized to possess an offensive weapon when his or her duties or lawful activities require or permit such possession:

1. Any peace officer.

2. Any member of the armed forces of the United States or of the national guard.

3. Any person in the service of the United States.

4. Any correctional officer, serving in an institution under the authority of the division of adult corrections.

5. Any person who under the laws of this state and the United States, is lawfully engaged in the business of supplying those authorized to possess such devices.

6. Any person, firm or corporation who under the laws of this state and the United States is lawfully engaged in the improvement, invention or manufacture of firearms.

7. Any museum or similar place which possesses, solely as relics, offensive weapons which are rendered permanently unfit for use.

724.3 Unauthorized possession of offensive weapons. Any person, other than a person authorized herein, who knowingly possesses an offensive weapon commits a class D felony.

724.4-724.14 Concerns the carrying of weapons; professional and nonprofessional permits to carry; eligibility for such permits, and the firearms training program.

* * * * *

724.15 Report and record of sales. Any person who sells or transfers ownership of a revolver or pistol, whether such person is a dealer or otherwise, shall report within five days to the county sheriff the sale or transfer or such weapon, on forms prescribed and published by the commissioner of public safety, and on the forms shall set forth the time of selling or transfer, the age, occupation, place of employment or business, name and residence of such recipient of such weapon, together with the model, caliber, serial number, and make of such weapon, and the sheriff on receipt of such information shall make a permanent record of the same in a book specially kept for that purpose. A copy of this report shall be forwarded by the sheriff to the commissioner of public safety. * * *

Sec. 724.16 Permit to purchase required. Any person who purchases a pistol or revolver without a valid permit to purchase pistols or revolvers or any person who sells a pistol or revolver to a person who does not have in his or her possession a valid permit to purchase pistols or revolvers is guilty of a simple misdemeanor.

Sec. 724.17 Application for permit to purchase. The application for a permit to purchase pistols or revolvers may be made to the sheriff of any county and shall be on a form prescribed and published by the commissioner of public safety. * * *

(Contact your county sheriff for information concerning applications for permits to purchase pistols and revolvers)

* * * * *

724.20 Validity of permit to purchase. The permit shall be valid throughout the state and shall be valid three days after the date of

application and shall be invalid one year after the date of application.

724.21 Giving false information when purchasing weapon. A person who gives a false name or presents false identification, or otherwise gives false information to one from whom the person seeks to purchase a pistol or revolver, commits an aggravated misdemeanor.

Sec. 724.22 Sale to minors. A person who sells, loans, gives or makes available a firearm or ammunition for a firearm, to any person below the age of eighteen years commits a simple misdemeanor; provided, that a rifle or shotgun or the ammunition therefor, which lawfully may be used for hunting, may be given to such person by his or her parent or guardian, or by another with the express consent of his or her parent or guardian; and further provided, that any such person may allow a minor to possess a rifle, shotgun, or pistol, and the ammunition therefor, while on military duty, when such duty requires the possession of such a weapon, or while receiving instruction in the proper use thereof from an adult instructor.

Sec. 724.24 Purchase or sale of firearms in contiguous states. A resident of Iowa not otherwise precluded by applicable law, may purchase firearms, rifles, shotguns, ammunition, reloading components, or firearms accessories in states contiguous to Iowa. This authorization is enacted in conformance with the Gun Control Act of 1968, 18 U.S.C., section 922(b)(3)(A). In the event that presently enacted federal restrictions on the purchase of firearms, rifles, shotguns, ammunition, reloading components, or firearms accessories are repealed or set aside by courts of competent jurisdiction, this section shall in no way be interpreted to prohibit or restrict the purchase of firearms, shotguns, rifles, ammunition, reloading components, or firearms accessories by residents of Iowa otherwise competent to purchase the same in contiguous or other states.

A dealer licensed in Iowa may sell or deliver a rifle or shotgun, and a collector licensed in Iowa may sell or deliver a rifle or shotgun if it is a curio or relic, to a resident of an adjacent state, if the purchaser's state of residence permits such sale or delivery by law, the sale fully complies with the legal conditions of Iowa and the adjacent state, and the purchaser and licensee have, prior to the sale or delivery for sale of the rifle or shotgun, complied with all the requirements of the federal Gun Control Act of 1968.

* * * * * *

Sec. 724.26 Receipt, transportation and possession of firearms and destructive devices by felons. Any person who is convicted of a felony in any state or federal court and who subsequently possesses, receives, or transports or causes to be transported a firearm or offensive weapon is guilty of an aggravated misdemeanor.

Sec. 724.27 Exception to section 724.26. The provisions of section 724.26 shall not apply to a person who is pardoned or has had his or her civil rights restored by the President of the United States or the chief executive of a state and who is expressly authorized by the President of the United States or such chief executive to receive, transport, or possess firearms or destructive devices.

Cedar Rapids

63.16 Prohibition against bombs. No person shall sell, manufacture, produce, distribute, purchase, carry, possess or use any bomb, bombshell, grenade, bottle or other container containing an explosive, flammable, noxious gas, or chemical substance, such as but not limited to black powder bombs and Molotov cocktails. The provisions of this section shall not apply to any duly constituted police or military authorities or peace officers in the discharge of their duties.

Des Moines

26-11. Report to chief of police. Every secondhand dealer, or other merchant, shopkeeper or dealer who shall purchase or receive from any person any guns, pistols, or parts thereof, shall within twenty-four hours after purchasing or receiving such articles report the same in writing to the chief of police, * * *.

No person purchasing or receiving any such article shall melt up, destroy or dispose of the same without making such report or within fifteen days after such report is made, except upon written permit from the chief of police.

Fort Madison

7-2-22: Sale to minors: A person who sells, loans, gives or makes available a firearm or ammunition for a firearm, to any person below the age of eighteen (18) years violates this Section; provided, that a rifle or shotgun or the ammunition therefor, which lawfully may be used for hunting, may be given to such person by his or her parent or guardian, or by another with the express consent of his or her parent or guardian; and further provided that any such person may allow a minor to possess a rifle, shotgun, or pistol, and the ammunition therefor, while on military duty, when such duty requires the possession of such a weapon or while receiving instruction in the proper use thereof from an adult instructor.

7-2-23: Permit to purchase required: Any person who purchases a pistol or revolver without a valid permit to purchase pistols or revolvers or any person who sells a pistol or revolver to a person who does not have in his or her possession a valid permit to purchase pistols or revolvers is in violation of this Section.

Marshalltown

75 * * * * * Sec. 2. It shall be unlawful to do or commit any of the following acts within the limits of the City of Marshalltown, Iowa: * * * * *

12. Sale—Weapons. To sell, keep for sale or offer for sale or loan, or give away, any silencer * * *.

13. Weapons—Minors. To sell, loan or give any pistol or revolver to any person under the age of 21 years.

14. Sale of Arms—License. To sell or keep for sale or exchange or to give away to any person, any revolver, pistol, * * * or other weapon of a like character, which can be concealed on the person, without first securing a permit from the proper officer, having authority to issue such permit.

Sac City

(e) Sales to intoxicated persons and minors. Purchase from, or sell, loan, or furnish any weapon in which any explosive substance can be used to, any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to a minor under the age of 18 years.

Spirit Lake

Article V Weapons

Sec. 21-71. Furnishing weapons to minors. No person other than the parent or legal guardian of a minor shall sell, barter, exchange, furnish, or give to any minor under the age of eighteen (18) years, any * * * rifle, shotgun, revolver, pistol, or any other firearms, or ammunition therefor, * * * except when accompanied by or upon written consent of his parent or legal guardian of such minor.

Sec. 21-72. Furnishing weapons to intoxicated persons, etc. It shall be unlawful for any person to sell, loan, or furnish any gun, rifle, shotgun, revolver, pistol, or the ammunition therefor, or any other dangerous weapon to any person whom he knows or has reasonable cause to believe is under the influence of alcohol, or any narcotic, drug, stimulant, or depressant, or to any person who is of unsound mind.

West Des Moines

12. Selling firearms to minors: Any person who shall knowingly sell, present, or give any pistol or revolver to any minor shall be guilty of a misdemeanor, * * * Nothing herein contained shall prohibit the sale of ammunition to minors who have been licensed to hunt by the State of Iowa and to those minors who by reason of hunting on their own premises are not required by law to have a hunting license.

Kansas

State Law

Kan. Stat. Ann.

21-4201. Unlawful use of weapons. (1) Unlawful use of weapons is knowingly:

(a) Selling, manufacturing, purchasing, possessing or carrying any * * * shotgun with a barrel less than eighteen (18) inches in length * * * or

* * * * *

(f) Possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or

(g) Selling, manufacturing, purchasing, possessing or carrying any firearm designed to discharge or capable of discharging automatically more than once by a single function of the trigger.

(2) Exemptions. (a) Subsections (1), (b), (c), (d) and (g) of this section shall not apply to or affect any of the following:

(i) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer; (ii) Wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority; (iii) Members of the armed services or reserve forces of the United States or the Kansas national guard while in the performance of their official duty; (iv) Manufacture of, transportation to, or sale of weapons to person authorized under (i) through (iii) of this subsection to possess such weapons.

* * * * *

(3) It shall be a defense that the defendant is within an exemption.

(4) Violation of subsections (1) (a) through (1) (f) of this section is a class B misdemeanor; violation of subsection (1) (g) of this section is a class E felony.

21-4202. Unlawful disposal of firearms. (1) Unlawful disposal of firearms is knowingly:

(a) Selling, giving or otherwise transferring any firearm with a barrel less than twelve (12) inches long to any person under eighteen (18) years of age; or

(b) Selling, giving or otherwise transferring any firearms to any habitual drunkard or narcotic addict; or

(c) Selling, giving or otherwise transferring any firearm with a barrel less than twelve (12) inches long to any person who has been convicted of a felony under the laws of this or any other jurisdiction if such sale, gift or transfer is made to such convicted person within five (5) years after his release from the penitentiary or within five (5) years after his conviction if the defendant has not been imprisoned in the penitentiary.

(2) Unlawful disposal of firearms is a class A misdemeanor.

21-4204. Unlawful possession of a firearm. (1) Unlawful possession of a firearm is: (a) Possession of any firearm by an habitual drunkard or narcotic addict; or

(b) Possession of a firearm with a barrel less than twelve (12) inches long by a person who, within five (5) years preceding such violation has been convicted of a felony under the laws of Kansas or any other jurisdiction or has been released from imprisonment for a felony.

(2) Violation of subsection (1) (a) of this section is a class B misdemeanor; violation of subsection (1) (b) is a class D felony.

48-1903. Purchase or receipt of rifle or shotgun in contiguous state by resident of Kansas; restrictions. It is hereby declared to be lawful for a resident of this state to purchase or receive delivery of a rifle or shotgun in a state contiguous to this state, subject to the following restrictions and requirements:

(a) The sale must fully comply with the legal conditions of sale in both such states; and

(b) Prior to the sale or delivery for sale of the rifle or shotgun, the purchaser and the licensee must have complied with all of the requirements of section 922 (c) of the federal gun control act of 1968, applicable to interstate transactions other than at the licensee's business premises.

48-1904. Nonapplication of act, when. The provisions of this act do not apply to:

(a) Transactions between importers, manufacturers, dealers and collectors licensed under the federal gun control act of 1968;

(b) The loan or rental of a firearm to any person for temporary use for lawful sporting purposes; and

(c) A person who is engaged in hunting or in participating in any organized rifle or shotgun match or contest in a state other than his or her state of residence, and whose rifle or shotgun has been lost or stolen or has become inoperative in such other state, and who purchases a rifle or shotgun in such other state from a licensed dealer, if such person presents to such dealer a sworn statement:

(1) That his or her rifle or shotgun was lost or stolen or became inoperative while hunting or participating in any such match or contest in such other state; and

(2) Identifying the chief law enforcement officer of the political subdivision in which such person resides, to whom such licensed dealer shall forward such statement by registered mail.

Altoona

Ordinance 84

Sec. 15—It shall be unlawful for any person or persons to sell, trade, give, loan to or otherwise furnish any pistol, revolver or toy pistol by which cartridges or caps may be exploded, * * * or other dangerous weapons, except shot guns and rifles, to any minor, or to any person known to be of unsound mind.

Sec. 16—It shall be unlawful for any minor to have in his possession any pistol, revolver or toy pistol, by which cartridges may be exploded, * * * or other dangerous weapons, except shot guns and rifles.

Atchison

Sec. 21-124. Unlawful use of weapons. (1) Prohibited uses. Unlawful use of weapons is knowingly:

(a) Selling, manufacturing, purchasing, possessing or carrying any * * * shotgun with a barrel less than eighteen (18) inches in length, * * *

(f) Possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm. * * * * *

Sec. 21-129. Unlawful disposal of firearms. (1) Unlawful disposal of firearms is knowingly:

(a) Selling, giving or otherwise transferring any firearm with a barrel less than twelve (12) inches long to any person under eighteen (18) years of age; or

(b) Selling, giving or otherwise transferring any firearms to any habitual drunkard or narcotic addict; or

(c) Selling, giving or otherwise transferring any firearm with a barrel less than

twelve (12) inches long to any person who has been convicted of a felony under the laws of this or any other jurisdiction if such sale, gift or transfer is made to such convicted person within five (5) years after his release from the penitentiary or within five (5) years after his conviction if the defendant has not been imprisoned in the penitentiary.

* * * * *

Augusta

12-1101. Unlawful use of weapons. * * * * * a. Unlawful use of weapons is knowingly:

1. Selling, manufacturing, purchasing, possession or carrying any shotgun with a barrel less than eighteen inches (18") in length, * * *

* * * * *

6. Possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm.

7. Selling, manufacturing, purchasing, possessing or carrying any firearm designed to discharge or capable of discharging automatically more than once by a single function of the trigger.

* * * * *

13-1103. Unlawful disposal of firearms. Unlawful disposal of firearms in the city is knowingly:

a. Selling, giving or otherwise transferring any firearm with a barrel less than twelve inches (12") long to any person under eighteen (18) years of age;

b. Selling, giving or otherwise transferring any firearms to any habitual drunkard or narcotic addict;

c. Selling, giving or otherwise transferring any firearm with a barrel less than twelve inches (12") long to any person who has been convicted of a felony under the laws of this or any other jurisdiction if such sale, gift or transfer is made to such convicted person within five (5) years after his release from the penitentiary or within five (5) years after his conviction if the offender has not been imprisoned in the penitentiary.

Bonner Springs

Sec. 17-108. Unlawful use of weapons. (1) Prohibited uses. Unlawful use of weapons is knowingly:

(a) Selling, manufacturing, purchasing, possessing or carrying any * * * shotgun with a barrel less than eighteen (18) inches in length, * * *

* * * * *

(f) Possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm.

(2) Exemptions: (a) Subsections (1) (a), (b), (c) and (d) of this section shall not apply to or affect any of the following: (i) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officers; (ii) Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime; (iii) Members of the armed services or reserve forces of the United States or the Kansas national guard while in the performance of their official duty; (iv) Manufacture of, transportation to, or sale of weapons to persons authorized under (i) through (iii) of this subsection to possess such weapons.

17-113. Unlawful disposal of firearms. (1) Unlawful disposal of firearms is knowingly:

(a) Selling, giving or otherwise transferring any firearm with a barrel of less than twelve (12) inches long to any person under eighteen (18) years of age; or

(b) Selling, giving or otherwise transferring any firearms to any habitual drunkard or narcotic addict; or

(c) Selling, giving or otherwise transferring any firearm with a barrel less than twelve (12) inches long to any person who has been convicted of a felony under the laws of this or any other jurisdiction if such sale, gift or transfer is made to such convicted person within five (5) years after his release from the penitentiary or within five (5) years after his conviction if the defendant has not been imprisoned in the penitentiary.

Sec. 17-114. Defacing identification marks of a firearm. * * * (2) Possession of any firearm upon which any such mark shall have been intentionally changed, altered, removed or obliterated shall be prima facie evidence that the possessor has changed, altered, or obliterated the same.

Cheney

9.70.020 Unlawful use of weapons defined. "Unlawful use of weapons" is knowingly:

A. Selling, manufacturing, purchasing, possessing or carrying any * * *, shotgun with a barrel less than eighteen inches in length, * * *

* * * * *

F. Possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or

G. Selling, manufacturing, purchasing, possessing or carrying any firearms designed to discharge or capable of discharging automatically more than once by a single function of the trigger * * *

9.70.030 Exemptions. A. Subsections A, B, C, D and G of Section 9.70.020 shall not apply to or affect any of the following:

1. Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

2. Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime;

3. Members of the armed services or reserve forces of the United States or the Kansas National Guard while in the performance of their official duty;

4. Manufacture of, transportation to, or sale of weapons to persons authorised under subdivisions 1 through 3 of this subsection to possess such weapons;

Cherryvale

12-310 Firearms in possession of minors. Every minor who shall have in his possession any pistol, revolver, or toy pistol by which cartridges may be exploded * * * or other dangerous weapons, shall be guilty of a misdemeanor.

12-311 Firearms, furnishing to minors. Every person who shall trade, give, loan or otherwise furnish any pistol, revolver, * * * or other dangerous weapons to any minor, or any person of unsound mind, shall be guilty of a misdemeanor.

Claflin

Section 19. Unlawful use of weapons. (1) Unlawful use of weapons is knowingly:

(1) Selling, manufacturing, purchasing, possession or carrying any * * * shotgun with a barrel less than eighteen (18) inches in length * * *

* * * * *

(f) Possession [of] any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm.

(2) Exemptions. (a) Subsections (1) (a), (b), (c), (d), of this section shall not apply to or affect any of the following; (i) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer; (ii) Wardens, superintendents and keepers of prisons, penitentiaries, jails, and other institutions for the detention of persons accused or convicted of a crime; (iii) Members of the armed services or reserve forces of the United States or the Kansas National Guard while in the performance of their official duty; (iv) Manufacture

of, transportation to, or sale of weapons to persons authorized under (i) through (iv) of this subsection to possess such weapons.

Section 20. Unlawful possession of a firearm. Unlawful possession of a firearm is: (a) Possession of any firearm by an habitual drunkard or narcotics addict.

Concordia

Sec. 15-37. Unlawful use of weapons generally.

Sec. 15-37(a). The following acts shall constitute unlawful use of weapons and a misdemeanor:

(1) Selling, manufacturing, purchasing, possessing or carrying any * * * shotgun with a barrel less than eighteen (18) inches in length * * *.

* * * * *

(6) Possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm.

Sec. 15-37(b). Paragraphs (1), (2), (3) and (4) of section 15-37 (a) shall not apply to or affect any of the following:

(1) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(2) Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime;

(3) Members of the armed services or reserve forces of the United States or the Kansas National Guard while in the performance of their official duties;

(4) Manufacture of, transportation to, or sale of weapons to persons authorized under paragraphs (1) through (3) above to possess such weapons.

Sec. 15-46. Unlawful disposal of firearms. Unlawful disposal of firearms is knowingly:

(1) Selling, giving or otherwise transferring any firearm with a barrel less than twelve (12) inches long to any person under eighteen (18) years of age; or

(2) Selling, giving or otherwise transferring any firearms to any habitual drunkard or narcotic addict; or

(3) Selling, giving or otherwise transferring any firearm with a barrel less than twelve (12) inches long to a person who has been convicted of a felony under the laws of this or any other jurisdiction if such sale, gift or transfer is made to such convicted person within five (5) years after his release from the penitentiary or within five (5) years after his conviction if the defendant has not been imprisoned in the penitentiary.

Unlawful disposal of firearms is a misdemeanor.

Countryside

Ordinance 68

Section 1. It shall be unlawful at any time for any person, partnership, company, corporation or association to have in their possession or under their control or supervision; or to make, manufacture, offer for sale, and sell, or distribute, whether the same be with or without consideration, any type of gasoline or other inflamable explosive or incendiary bombs, including all such devices commonly known as a Molotov Cocktail, within the corporate limits of the City of Countryside, Kansas.

Derby

Ordinance 864

Section 9.80.010. It is unlawful for anyone within the city to unlawfully use any weapons.

Section 9.80.020. Unlawful use of weapons is knowingly:

(a) Selling, manufacturing, purchasing, possessing or carrying any * * * shotgun with a barrel less than eighteen (18) inches in length, * * *.

* * * * *

(f) Possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or

(g) Selling, manufacturing, purchasing, possession or carrying any firearms designed to discharge or capable of discharging automatically more than once by a single function of the trigger.

Section 9.80.030. Exemptions. (a) Subsections (a), * * * (d) and (g) of this section shall not apply to or affect any of the following: (1) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer; (2) Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons, accused or convicted of crime; (3) Members of the armed services or reserve forces of the United States or the Kansas National Guard while in the performance of their official duty; (4) Manufacture of, transportation to, or sale of weapons to persons authorized under (1) through (3) of this subsection to possess such weapons.

* * * * *

It shall be a defense if the defendant is within an exemption.

De Soto

63. Unlawful Use of Weapons. Unlawful use of weapons is:

(a) selling, manufacturing, purchasing, possessing, or carrying any * * * shotgun with a barrel less than eighteen inches in length.

* * * * *

(f) possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any pistol, revolver, rifle, or shot gun.

* * * * *

Dodge City

20-118. Unlawful use of weapons. (1) Prohibited uses. Unlawful use of weapons is knowingly: (a) Selling, manufacturing, purchasing, possessing or carrying any * * * shotgun with a barrel less than eighteen (18) inches in length,

* * * * *

(f) Possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm.

20-121. Unlawful disposal of firearms. (1) Unlawful disposal of firearms is knowingly: (a) Selling, giving or otherwise transferring any firearm with a barrel less than twelve (12) inches long to any person under eighteen (18) years of age; or (b) Selling, giving or otherwise transferring any firearms to any habitual drunkard or narcotic addict; or (c) Selling, giving or otherwise transferring any firearm with a barrel less than twelve (12) inches long to any person who has been convicted of a felony under the laws of this or any other jurisdiction if such sale, gift or transfer is made to such convicted person within five (5) years after his release from the penitentiary or within five (5) years after his conviction if the defendant has not been imprisoned in the penitentiary.

20-122. Defacing identification marks of a firearm. * * * * * (2) Possession of any firearm upon which any such mark shall have been intentionally changed, altered, removed or obliterated shall be prima facie evidence that the possessor has changed, altered or obliterated the same. * * * * *

Eastborough

Section 62. Unlawful Use of Weapons. Unlawful use of weapons is: (a) selling, manufacturing, purchasing, possessing, or carrying any * * * shotgun with a barrel less

than eighteen (18) inches in length, * * * (f) possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any pistol, revolver, rifle, or shot gun.

* * * * *

El Dorado

Article 10. Crimes against public safety

7-1001. Unlawful use of weapons.

a. Unlawful Use of Weapons is knowingly:

1. Selling, manufacturing, purchasing, possession or carrying any * * * shotgun with a barrel less than eighteen inches (18'') in length, * * *

* * * * *

6. Possession of any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm;

7. Selling, manufacturing, purchasing, possessing or carrying any firearm designed to discharge or capable of discharging automatically more than once by a single function of the trigger.

b. Exemptions:

1. Subsections "a" 1, * * * and 7 of this section shall not apply to or affect any of the following:

(a) Law enforcement officers, or any person summoned by any such officer to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(b) Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime;

(c) Members of the armed services or reserve forces of the United States or the Kansas National Guard while in the performance of their official duty;

(d) Manufacture of, transportation to, or sale of weapons to persons authorized under (a) through (c) of this subsection to possess such weapons.

* * * * *

7-1003. Unlawful Disposal of Firearms. Unlawful disposal of firearms is knowingly:

a. Selling, giving or otherwise transferring any firearm with a barrel less than twelve inches (12'') long to any person under eighteen (18) years of age;

b. Selling, giving or otherwise transferring any firearms to any habitual drunkard or narcotic addict;

c. Selling, giving or otherwise transferring any firearm with a barrel less than twelve inches (12'') long to any person who has been convicted of a felony under the laws of this or any other jurisdiction if such sale, gift or transfer is made to such convicted person within five (5) years after his release from the penitentiary or within five (5) years after his conviction if the offender has not been imprisoned in the penitentiary.

Elkhart

9.40.010 Unlawful use. A. Unlawful use of weapons is knowingly:

1. Selling, manufacturing, purchasing, possessing or carrying any * * *, shotgun with a barrel less than eighteen inches in length, * * *. [or] * * * * * 6. Possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm.

9.40.020 Unlawful use—Exemptions. A. Subsections A 1, 2, 3 and 4 of Section 9.40.010 shall not apply to or affect any of the following:

1. Law enforcement officers or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

2. Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime;

3. Members of the armed services or reserve forces of the United States or the Kansas National Guard while in the performance of their official duty;

4. Manufacture of, transportation to or sale of weapons to person authorized under 1 and 3 of this subsection to possess such weapons.

9.40.030 Firearm—Unlawful disposal. A. Unlawful disposal of firearms is knowingly:

1. Selling, giving or otherwise transferring any firearm with a barrel less than twelve inches long to any person under eighteen years of age; or

2. Selling, giving or otherwise transferring any firearms to any habitual drunkard or narcotic addict; or

3. Selling, giving or otherwise transferring any firearm with a barrel less than twelve inches long to any person who has been convicted of a felony under the laws of this or any other jurisdiction if such sale, gift or transfer is made to such convicted person within five years after his release from the penitentiary or within five years after his conviction if the defendent has not been imprisoned in the penitentiary.

9.40.040 Firearm—Unlawful possession. A. Unlawful possession of a firearm is possession of any firearm by an habitual drunkard or narcotics addict.

Ellinwood

8-701 Unlawful Use of Weapons: (1) Unlawful use of weapons is knowingly: (a) Selling, manufacturing, purchasing, possessing or carrying any * * * shotgun with a barrel less than 18 inches in length * * *.

* * * * *

(f) Possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm;

(g) Selling, manufacturing, purchasing, possessing or carrying any firearm designed to discharge or capable of discharging automatically more than once by a single function of the trigger.

(2) Exemptions: (a) Subsections (1) (a) (b) (c) (d) and (g) of this section shall not apply to or effect any of the following:

(i) Law enforcement officers or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officers; (ii) Keepers of jails and other institutions for the detention of persons accused or convicted of crime; (iii) Members of the Armed Services or Reserve Forces of the United States or the Kansas National Guard while in the performance of their official duty; (iv) Manufacture of, transportation to or sale of weapons to person authorized under (i) through (iii) of this subsection to possess such weapons.

Emporia

15-306 same as 21-4201 Kansas State Law

Fairway

10-1001 same as 21-4201 Kansas State Law

10-1003 same as 21-4203 Kansas State Law

Florence

Article 10. Crimes Against Public Safety

10-1001 Unlawful use of weapons. Rules and regulations relating to use of weapons and subsequent exemptions shall be as follows:

a. Unlawful Use of Weapons is knowingly: 1. Selling, manufacturing, purchasing, possessing or carrying any bludgeon, sandclub, shotgun with a barrel less than eighteen inches (18'') in length, * * *.

* * * * *

6. Possession of any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm.

7. Selling, manufacturing, purchasing, possessing or carrying any firearm designed to discharge or capable of discharging automatically more than once by a single function of the trigger.

b. Exemptions: 1. Subsections "a" 1, 2, 3, 4 and 7 of this section shall not apply to or affect any of the following:

(a) Law enforcement officers, or any person summoned by any such officer to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(b) Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime;

(c) Members of the armed services or reserve forces of the United States or the Kansas National Guard while in performance of their official duty;

(d) Manufacture of, transportation to, or sale of weapons to persons authorized under (a) through (c) of this subsection to possess such weapons.

* * * * *

10-1063 Unlawful Disposal of Firearms. Unlawful disposal of firearms is knowingly:

a. Selling, giving or otherwise transferring any firearm with a barrel less than twelve inches (12") long to any person under eighteen (18) years of age;

b. Selling, giving or otherwise transferring any firearms to any habitual drunkard or narcotic addict;

c. Selling, giving or otherwise transferring any firearm with a barrel less than twelve inches (12") long to any person who has been convicted of a felony under the laws of this or any other juriadiction if such sale, gift or transfer is made to such convicted person within five (5) years after his release from the penitentiary or within five (5) years after his conviction if the offender has not been imprisoned in the penitentiary. Unlawful disposal of firearms is a Class A misdemeanor.

Garden Plain

Ordinance 271

Section 1. Unlawful use of weapons is knowingly:

(a) Selling, manufacturing, purchasing, possessing or carrying any * * *, shotgun with a barrel less than eighteen (18) inches of length, * * *

* * * * *

(f) Possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or

(g) Selling, manufacturing, purchasing, possessing or carrying any firearm designed to discharge or capable of discharging automatically more than once by a single function of the trigger.

Section 2. It shall be a defense that the defendant is within any of the following exceptions:

(a) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officers; (i) Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime; (ii) Members of the armed services or reserve forces of the United States or the Kansas national guard while in the performance of their official duty; (iii) Manufacture of, transportation to, or sale of weapons to person authorized under (i) through (ii) of this subsection to possess such weapons.

(b)Watchmen while actually engaged in the performance of the duties of their employment, or (i) Licensed hunters or fishermen while engaged in hunting or fishing; or (ii) Persons licensed as private detectives by the state of Kansas, detectives or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service.

Gardner

11-326. Unlawful use of Weapons. Unlawful use of weapons is:

(a) selling, manufacturing, purchasing, possessing or carrying any * * * shotgun with a barrel less than eighteen inches in length * * *. * * * * * or (f) possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any pistol, revolver, rifle or shotgun. Sub-sections (a), (b), (c) and (d) of this section shall not apply to or affect any of the following: (a) Law enforcement officers, or any person summoned by any such officers or summoned by any other lawfully authorized public officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer; (b) Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime; (c) Members of the armed services or reserve forces of the United States or the Kansas National Guard while in the performance of their official duty; (d) Manufacture of, transportation to, or sale of weapons to persons authorized under this exemption to possess such weapons.

Grandview Plaza

Ordinance 25-68

Section 2. From and after the effective date of this ordinance no pistol, revolver or other firearm with a barrel less than 10 inches in length shall be sold in the City of Grandview Plaza, Kansas, unless the purchaser thereof shall have first obtained a registration certificate to be issued by the City Clerk of Grandview Plaza, Kansas.

* * * * *

Section 4. No certificate of registration shall be issued to any of the following classes of persons:

(a) Any person under the age of 21 years.

(b) Any person convicted of a felony as defined by KSA 21-261-1.

(c) Any person who is addicted to the use of narcotics or who is mentally retarded or is a habitual drunkard.

Section 5. No firearm as herein described shall be delivered into the possession of the purchaser thereof unless a period of forty-eight (48) hours shall have expired from the time of issuance of such certificate of registration and such certificate shall have been presented to the seller.

Haysville

8-1001 same as 21-4201 Kansas State Law

8-1063 Defacing identification marks of a firearm. * * *(2) Possession of any firearm upon which any such mark shall have been intentionally changed, altered, removed or obliterated shall be prima facie evidence that the possessor has changed, altered or obliterated the same. (3) Defacing identification marks of a firearm is a class B misdemeanor.

8-1102 same as 21-4203

Herington

12-1001. Unlawful use of weapons. Rules and regulations relating to use of weapons and subsequent exemptions shall be as follows:

a. Unlawful Use of Weapons is knowingly: 1. Selling, manufacturing, purchasing, possessing or carrying any * * * shotgun with a barrel less than eighteen inches (18") in length. * * *

* * * * *

6. Possession of any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm.

7. Selling, manufacturing, purchasing, possessing or carrying any firearm designed to discharge or capable of discharging automatically more than once by a single function of the trigger.

b. Exemptions:

1. Subsections "a" 1, 2, 3, 4 and 7 of this section shall not apply to or affect any of the following:

(a) Law enforcement officers, or any person summoned by any such officer to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(b) Wardens, superintendents and keepers of prisons, penitentiaries, jails and other insti-

tutions for the detention of persons accused or convicted of crime;

(c) Members of the armed services or reserve forces of the United States or the Kansas National Guard while in the performance of their official duty;

(d) Manufacture of, transportation to, or sale of weapons to persons authorized under (a) through (c) of this subsection to possess such weapons.

12-1003. Unlawful disposal of firearms. Unlawful disposal of firearms is knowingly:

a. Selling, giving or otherwise transferring any firearm with a barrel less than twelve inches (12") long to any person under eighteen (18) years of age;

b. Selling, giving or otherwise transferring any firearms to any habitual drunkard or narcotic addict;

c. Selling, giving or otherwise transferring any firearm with a barrel less than twelve inches (12") long to any person who has been convicted of a felony under the laws of this or any other jurisdiction if such sale, gift or transfer is made to such convicted person within five (5) years after his release from the penitentiary or within five (5) years after his conviction if the offender has not been imprisoned in the penitentiary.

Holton

14-501. Furnishing firearms to minors and mentally incompetent persons. It shall be unlawful for any person to sell, trade, give, loan or otherwise furnish any pistol, revolver or toy pistol by which cartridges or caps may be exploded * * * or any other dangerous weapon to any minor or to any person who is mentally incompetent.

* * * * *

14-502. Possession of firearms by minors. It shall be unlawful for any minor to have in his possession any pistol, revolver or toy pistol by which cartridges may be exploded * * * or any other deadly weapon.

* * * * *

Hutchinson

Sec. 24-1002. Unlawful disposal of firearms.

(a) Unlawful disposal of firearms is knowingly:

(1) Selling, giving or otherwise transferring any firearm with a barrel less than twelve inches long to any person under eighteen years of age; or

(2) Selling, giving or otherwise transferring any firearms to any habitual drunkard or narcotic addict; or

(3) Selling, giving or otherwise transferring any firearm with a barrel less than twelve inches long to any person who has been convicted of a felony under the laws of this or any other jurisdiction if such sale, gift or transfer is made to such convicted person within five years after his release from the penitentiary or within five years after his conviction if the offender has not been imprisoned in the penitentiary.

(b) Unlawful disposal of firearms is a Class A misdemeanor.

Independence

17-212. Furnishing weapons to minors. Any person who shall sell, trade, give, loan or otherwise furnish any pistol, revolver or toy pistol by which cartridges or caps may be exploded, * * * to any minor, or to any person of notoriously unsound mind shall, upon conviction thereof, be fined in any sum not exceeding One Hundred Dollars ($100), or be imprisoned not to exceed thirty (30) days, or be both so fined and imprisoned.

17-213. Possession of weapons. Any person who shall have in his possession any pistol, revolver, or toy pistol by which cartridge may be exploded * * * shall, upon conviction thereof, be fined in any sum not exceeding One Hundred Dollars ($100), or be imprisoned not to exceed thirty (30) days, or be both so fined and imprisoned.

Junction City

18-3a101—Registration. Section 1. * * * no pistol, revolver or other firearm with a barrel less than 10 inches in length shall be sold in the City of Junction City, Kansas, unless the purchaser thereof shall have first obtained a registration certificate to be issued by the Chief of Police of the City.

18-3a104—Waiting period. Section 4. No firearm as herein described shall be delivered into the possession of the purchaser thereof until a period of 48 hours shall have transpired from the time of issuance of such certificate of registration and said certificate shall have been presented to the seller.

18-3a105—Exclusions. Section 5. The provisions of this Ordinance shall not apply to any duly authorized police officer, marshal, sheriff, constable, or other law enforcement officer designated by the federal, state, county or municipal governments, who purchase weapons to be used in the performance of their duties.

Kansas City

39-4. Permit to purchase or receive pistol or revolver—Required; exceptions. It shall be unlawful for any person to sell, loan for a consideration or give, or purchase, borrow for a consideration or accept as a gift, any pistol, revolver, or gun capable of propelling a metallic projectile, with a barrel less than nine (9) inches long, unless the purchaser, borrower or person accepting the same has then and there a permit, dated less than ten (10) days prior to such sale, loan or gift, issued by the chief of police, authorizing such person to purchase or accept a pistol or revolver. Such permit must be retained by the vendor and returned to the chief of police with a complete description of the gun sold within three (3) days of the sale.

This section shall not apply to sales of collector's items made and consummated at hobbyists' conventions.

* * * * *

39-7. Small firearms to be stamped with trade mark, name of maker, model and serial number. No dealer in firearms, either at wholesale or retail, shall have in his possession for the purpose of sale or sell any pistol, revolver or other firearm of a size which may be concealed upon the person, unless such firearm has plainly and permanently stamped, upon the metallic portion thereof, the trade mark, the name of the maker, the model and factory serial number thereof, which number shall not be the same as that of any other such weapon of the same model made by the same maker. No person within the city shall lease, buy or in any wise procure the possession of any pistol, revolver or other firearm of a size which may be concealed upon the person, unless such firearm is stamped as required by this section.

Nothing in this section shall be considered or construed as forbidding or making it unlawful for a dealer in or manufacturer of pistols, revolvers or other firearms of a size which may be concealed upon the person, located in this city, to ship into other states or foreign countries any such articles, whether stamped as required by this section or not so stamped.

39-10. Transferring of firearms; permit required; penalty for violation of chapter. 39-10(1). It shall be unlawful for any person to make arrangements in the City of Kansas City, Kansas, to transport or meet a person outside the city limits for the purpose of selling, loaning for a consideration or giving, or purchasing, borrowing for a consideration or accepting as a gift, any pistol, revolver, or gun of any kind with a barrel less than nine (9) inches long, unless the purchaser, borrower or person accepting the same has then and there a permit, dated less than ten (10) days prior to such sale, loan or gift, issued by the chief of police, authorizing such person to purchase or accept a pistol or revolver. Such permit must be retained by the vendor and returned to the chief of police with a complete description of

the gun sold within three (3) days of the transfer.

Leavenworth

14-1001. Unlawful use of weapons. Rules and regulations relating to use of weapons and subsequent exemptions shall be as follows: a. Unlawful Use of Weapons is knowingly:

1. Selling, manufacturing, purchasing, possession or carrying any * * * shotgun with a barrel less than eighteen inches (18") in length, * * *

6. Possession of any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm.

7. Selling, manufacturing, purchasing, possessing or carrying any firearm designed to discharge or capable of discharging automatically more than once by a single function of the trigger.

14-1002. Unlawful disposal of firearms. Unlawful disposal of firearms is knowingly: a. Selling, giving or otherwise transferring any firearm with a barrel less than twelve inches (12") long to any person under eighteen (18) years of age; b. Selling, giving or otherwise transferring any firearms to any habitual drunkard or narcotic addict; c. Selling, giving or otherwise transferring any firearm with a barrel less than twelve inches (12") long to any person who has been convicted of a felony under the laws of this or any other jurisdiction if such sale, gift or transfer is made to such convicted person within five (5) years after his release from the penitentiary or within five (5) years after his conviction if the offender has not been imprisoned in the penitentiary.

14-1016. Molotov cocktails. Unlawful possession, use and transportation of "Molotov Cocktail" is the transporting, use or possession or control of a container of incendiary or explosive material, liquid, solvent or mixture, equipped with a fuse, wick or other detonating device of a kind commonly known as "Molotov Cocktail."

Lenexa

10.1. Unlawful Use of Weapons. Unlawful use of weapons is: (a) selling, manufacturing, purchasing, possessing, or carrying any * * * shotgun with a barrel less than eighteen inches in length, * * *, * * * * * [or] (f) possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any pistol, revolver, rifle, or shot gun.

Sub-sections (a), (b), (c) and (d) of this section shall not apply to or affect any of the following: (a) Law enforcement officers, or any person summoned by any such officers or summoned by any other lawfully authorized public officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer; (b) Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted or crime; (c) Members of the armed services or reserve forces of the United States or the Kansas National Guard while in the performance of their official duty; (d) Manufacture of, transportation to, or sale of weapons to persons authorized under this exemption to possess such weapons.

10.2 Unlawful possession of a firearm. Unlawful possession of a firearm is possession of any firearm by an habitual drunkard or narcotics addict.

10.3 Defacing identification marks of a firearm. Defacing identification marks of a firearm is the intentional changing, altering, removing or obliterating the name of the maker, model, manufacturer's number or other mark of identification of any firearm.

Possession of any firearm upon which any such mark shall have been intentionally changed, altered, removed or obliterated shall be prima facie evidence that the possessor has changed, altered, or obliterated the same.

* * * * *

10.36 Molotov cocktail—possession, manufacture, etc. It shall be unlawful for any person to have in his possession or under his control or supervision, or to make, manufacture, offer for sale or sell or distribute, whether the same be with or without consideration, any type of gasoline or other inflammable or explosive incendiary bomb, commonly known as a Molotov cocktail, within the city.

Lenora

Sec. 2. It shall be unlawful for any person to make, sell, or furnish any pistol, * * * or weapons of any description * * * to any minor within the corporate limits of the City of Lenora, Kansas, and any minor found in possession of any of the above described weapons, shall be punished according to the penalty prescribed for any violation of this ordinance.

Lyons

13-601. Unlawful use of weapons. Rules and regulations relating to use of weapons and subsequent exemptions shall be as follows:

a. Unlawful use of weapons is knowingly:

1. Selling, manufacturing, purchasing, possession or carrying any * * * shotgun with a barrel less than eighteen inches (18") in length * * *;

* * * * *

6. Possession of any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm;

7. Selling, manufacturing, purchasing, possessing or carrying any firearm designed to discharge or capable of discharging automatically more than once by a single function of the trigger.

b. Exemptions: 1. Subsections "a" 1 * * * and 7 of this section shall not apply to or affect any of the following:

(a) Law enforcement officers, or any person summoned by any such officer to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(b) Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime;

(c) Members of the armed services or reserve forces of the United States or the Kansas National Guard while in the performance of their official duty;

(d) Manufacture of, transportation to, or sale of weapons to persons authorized under (a) through (c) of this subsection to possess such weapons.

* * * * *

13-1003. Unlawful disposal of firearms. Unlawful disposal of firearms is knowingly:

a. Selling, giving or otherwise transferring any firearm with a barrel less than twelve inches (12") long to any person under eighteen (18) years of age;

b. Selling, giving or otherwise transferring any firearms to any habitual drunkard or narcotic addict;

c. Selling, giving or otherwise transferring any firearm with a barrel less than twelve inches (12") long to any person who has been convicted of a felony under the laws of this or any other jurisdiction if such sale, gift or transfer is made to such convicted person within five (5) years after his release from the penitentiary or within five (5) years after his conviction if the offender has not been imprisoned in the penitentiary.

Madison

9-310. Minors or Incompetents, Furnishing Weapons to. It shall be unlawful for any person to sell, trade, give, loan of otherwise furnish any pistol or revolver by which cartridges may be exploded, * * * or other dangerous weapon to any minor person or person of unsound mind.

Manhattan

16-1201. Dealer receives written commitment from buyer. No person, partnership

or corporation, regularly engaged in the sale of pistols, revolvers or other firearms with a barrel less than ten inches, may deliver possession of such firearms, until the expiration of forty-eight hours from the date the sale of said firearm is consummated. For the purpose of this article, a sale of firearms shall be deemed consummated when the dealer shall have received a written commitment from the buyer legally binding the latter to purchase said firearm.

10-1202. Any dealer subject to the provisions of Section 1 hereof shall forthwith upon the consummation of the sale of such firearms as defined herein, report such sale to the Chief of Police of Manhattan, Kansas, within twenty-four (24) hours after the consummation of the sale of said firearm, describing therein the firearms sold. [Contact local authorities for required contents] * * *

10-1203. Any dealer who shall violate or fail to comply with the provisions of this ordinance, or any person who as a buyer of such firearms shall give false information to said dealer or otherwise violate any of the provisions of this ordinance, shall upon conviction be fined One Hundred Dollars ($100.00) or imprisoned in the City Jail for not more than thirty (30) days, or both such fine and imprisonment.

Merriam

Ordinance 457

Section 3: Permit to purchase or receive pistol or revolver—required: Exceptions It shall be unlawful for any person to sell, loan for a consideration or give, or purchase, borrow for a consideration, or accept as a gift, any pistol, revolver, or gun of any kind, with a barrel less than 9 inches long, unless the purchaser, borrower, or person accepting the same has then and there a permit, dated less than 10 days prior to such sale, loan, or gift, issued by the Chief of Police, authorizing such person to purchase or accept a pistol or revolver. * * *

Section 6: Small firearms. To be stamped with trademark, name of maker, model and serial number. No dealer in firearms, either at wholesale or retail, shall have in his possession for the purpose of sale or sell any pistol, revolver, or other firearm of a size which may be concealed upon the person, unless such firearm has plainly and permanently stamped, upon the metallic portion thereof, the trademark, the name of the maker, the model and factory serial number thereof, which number shall not be the same as that of any other such weapon of the same model made by the same maker. No person within the city shall lease, buy, or in anywise procure the possession of any pistol, revolver, or the firearm, of the size which can be concealed upon the person, unless such firearm is stamped as required by this Section.

Section 7: Record of sales and purchases of small firearms. No wholesaler or retail dealer in firearms shall have in his possession for the purpose of sale or shall sell any firearm of a size which may be concealed upon the person, unless he keeps a full and complete record of the information as stamped thereon in accord with Section 6, the name and address of the person from whom purchased and to whom sold, and the date of such purchase or sale. * * *

Mission

8-801. Unlawful use of Weapons. (1) Unlawful use of weapons is knowingly: (a) Selling, manufacturing, purchasing, possessing or carrying any * * * shotgun with a barrel less than eighteen (18) inches in length * * *. * * * * * [or] (f) Possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm.

(2) Exemptions: (a) Subsections (1) (a), (b), (c) and (d) of this section shall not apply to or affect any of the following: (i) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer; (ii) Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime; (iii) Members of the armed services or reserve forces of the United States or the Kansas National Guard while in the performance of their official duty; (iv) Manufacture of, transportation to, or sale of weapons to person authorized under (i) through (iii) of this subsection to possess such weapons.

8-802. Unlawful Disposal of Firearms. Unlawful disposal of firearms is knowingly:

(a) Selling, giving or otherwise transferring any firearm with a barrel less then twelve (12) inches long to any person under eighteen (18) years of age; or

(b) Selling, giving or otherwise transferring any firearms to any habitual drunkard or narcotic addict; or

(c) Selling, giving or otherwise transferring any firearm with a barrel less than twelve (12) inches long to any person who has been convicted of a felony under the laws of this or any other jurisdiction if such sale, gift or transfer is made to such convicted person within five (5) years after his release from the penitentiary or within five (5) years after his conviction if the defendant has not been imprisoned in the penitentiary.

8-803. Unlawful Possession of a Firearm. Unlawful possession of a firearm is possession of any firearm by an habitual drunkard or narcotics addict.

283-3. Permit to purchase or receive pistol or revolver—Required. Exceptions: It shall be unlawful for any person to sell, loan for a consideration or give, or purchase, borrow for a consideration or accept as a gift, any pistol, revolver, or gun of any kind, with a barrel less than nine (9) inches longunless the purchaser, borrower or person accepting the same has then and there a permit, dated less than ten (10) days prior to such sale, loan or gift, issued by the Chief of Police, authorizing such person to purchase or accept a pistol or revolver. Such permit must be retained by the vendor and returned to the Chief of Police with a complete description of the gun sold within three (3) days of the sale.

This section shall not apply to sales of collector's items made and consummated at hobbyists' conventions, nor to firearms that do not use a fixed metallic cartridge.

* * * * * *

Mulvane

10-1001 same as 21-4201 Kansas State Law

10-1002 same as 21-4203 Kansas State Law

10-1003 Defacing identification marks of a firearm. * * *(2) Possession of any firearm upon which any such mark shall have been intentionally changed, altered, removed or obliterated shall be prima facie evidence that the possessor has changed, altered, or obliterated the same. (3) Defacing identification marks of a firearm is a class B misdemeanor.

* * * * *

Ness County

10-310. Minors or incompetents, furnishing weapons to. It shall be unlawful for any person to sell, trade, give, loan or otherwise furnish any pistol or revolver by which cartridges may be exploded, * * * or other dangerous weapon to any minor person or person of unsound mind.

Newton

17-1001. Unlawful use of weapons. (a) Unlawful use of weapons is knowingly:

(1) Selling, manufacturing, purchasing, possession or carrying any shotgun with a barrel less than eighteen (18) inches in length * * *.

* * * * * *

(6) Possession of any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm.

(7) Selling, manufacturing, purchasing, possessing or carrying any firearm designed to discharge or capable of discharging automatically more than once by a single function of the trigger.

b. Exemptions: 1. Subsections "a" 1, * * * and 7 of this section shall not apply to or affect any of the following:

(a) Law enforcement officers, or any person summoned by any such officer to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(b) Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime;

(c) Members of the armed services or reserve forces of the United States or the Kansas National Guard while in the performance of their official duty;

(d) Manufacture of, transportation to, or sale of weapons to persons authorized under (a) through (c) of this subsection to possess such weapons.

17-1663. Unlawful disposal of firearms. Unlawful disposal of firearms is knowingly:

(a) Selling, giving or otherwise transferring any firearm with a barrel less than twelve (12) inches long to any person under eighteen (18) years of age; or

(b) Selling, giving or otherwise transferring any firearm to any habitual drunkard or narcotic addict; or

(c) Selling, giving or otherwise transferring any firearm with a barrel less than twelve (12) inches long to any person who has been convicted of a felony under the laws of this or any other jurisdiction if such sale, gift or transfer is made to such convicted person within five (5) years after his release from the penitentiary or within five (5) years after his conviction if the offender has not been imprisoned in the penitentiary.

Nickerson

9-164. Weapons—Sale to minors or persons of unsound mind. Any person who shall sell, trade, give, loan or otherwise furnish any pistol or revolver, by which cartridges may be exploded, * * * to any minor or to any person of notoriously unsound mind shall, upon conviction, be guilty of a misdemeanor.

13-601. Unlawful use of weapons. (1) Unlawful use of weapons is knowingly:

(a) Selling, manufacturing, purchasing, possessing, or carrying any * * * shotgun, with a barrel less than eighteen (18) inches in length, * * * or

* * * * *

(f) Possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; * * *

(2) Exemptions. A. Subsections (1) (a), (b), (c) and (d) of this section shall not apply to or affect any of the following:

(i) Law enforcement officers, or any persons summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(ii) Wardens, superintendents and keepers of prisons, penitentiaries, jails, and other institutions for the detention of persons accused or convicted of a crime; (iii) Members of the armed services or reserve forces of the United States or the Kansas National Guard while in the performance of their official duty; (iv) Manufacture of, transportation to, or sale of weapons to persons authorized under (i) through (iii) of this subsection to possess such weapons.

North Newton

Section 1. same as 21-4201 Kansas State Law

Section 2. same as 21-4203 Kansas State Law

Olathe

9.16.050 Minors or incompetents—Furnishing weapons to. It is unlawful for any person to sell, trade, give, loan or otherwise furnish any pistol, revolver or toy pistol by which cartridges or caps may be exploded, * * * or other dangerous weapon to any minor person or person of unsound mind.

239-45 Unlawful Use of Weapons. Unlawful use of weapons is: (a) selling, manufacturing, purchasing, possessing or carrying any * * * shotgun with a barrel less than eighteen inches in length * * * or (f) possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any pistol, revolver, rifle or shotgun.

Sub-sections (a) * * * of this section shall not apply to or affect any of the following: (a) Law enforcement officers, or any person summoned by any such officers or summoned by any other lawfully authorized public officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer; (b) Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime; (c) Members of the armed services or reserve forces of the United States or the Kansas National Guard while in the performance of their official duty; (d) Manufacture of, transportation to, or sale of weapons to persons authorized under this exemption to possess such weapons.

Osawatomie

11-1001. Unlawful use of weapons. Rules and regulations relating to use of weapons and subsequent exemptions shall be as follows: a. Unlawful Use of Weapons is knowingly:

1. Selling, manufacturing, purchasing, possession or carrying any * * * shotgun with a barrel less than eighteen inches (18) in length * * *

* * * * *

6. Possession of any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm;

7. Selling, manufacturing, purchasing, possessing or carrying any firearm designed to discharge or capable of discharging automatically more than once by a single function of the trigger.

b. Exemptions: 1. Subsections "a" 1 * * * and 7 of this section shall not apply to or affect any of the following:

(a) Law enforcement officers, or any person summoned by any such officer to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(b) Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime;

(c) Members of the armed services or reserve forces of the United States or the Kansas National Guard while in the performance of their official duty;

(d) Manufacture of, transportation to, or sale of weapons to persons authorized under (a) through (c) of this subsection to possess such weapons.

* * * * *

11-1663. Unlawful disposal of firearms. Unlawful disposal of firearms is knowingly:

a. Selling, giving or otherwise transferring any firearm with a barrel less than twelve inches (12'') long to any person under eighteen (18) years of age;

b. Selling, giving or otherwise transferring any firearms to any habitual drunkard or narcotic addict;

c. Selling, giving or otherwise transferring any firearm with a barrel less than twelve inches (12'') long to any person who has been convicted of a felony under the laws of this or any other jurisdiction if such sale, gift or transfer is made to such convicted person within five (5) years after his release from the penitentiary or within five (5) years after his

conviction if the offender has not been imprisoned in the penitentiary.

Oskaloosa

11-217. Furnishing weapons to minors or persons of unsound mind. It shall be unlawful for any person to sell, give, loan or otherwise furnish any pistol or revolver by which cartridge may be exploded, * * * or other dangerous weapons to any minor, or to any person of notorious unsound mind.

* * * * *

Overland Park

11.60.010 Unlawful use of weapons. "Unlawful use of weapons" is knowingly:

A. Selling, manufacturing, purchasing, possessing or carrying any * * * shotgun with a barrel less than eighteen inches in length * * * [or] F. Possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any pistol, revolver, rifle, or shotgun.

11.60.020 Exceptions to Section 11.60.010. Subsections (A) through (D) of Section 11.60.010 do not apply to or affect any of the following:

A. Law enforcement officers, or any person summoned by any such officers or summoned by any other lawfully authorized public officers to assist in making arrests or preserving the peace while actually engaged in assisting such officers;

B. Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime;

C. Members of the armed services or reserve forces of the United States or the Kansas National Guard while in the performance of their official duty;

D. Manufacture of, transportation to, or sale of weapons to persons authorized under this exemption to possess such weapons.

Pittsburg

15-605. Furnishing weapons to minors or persons of unsound mind. Any person who shall sell, trade, give, loan or otherwise furnish any pistol, revolver or toy pistol by which cartridges or caps may be exploded, * * * to any minor or to any person of notoriously unsound mind shall, upon conviction thereof, be fined in any sum not less than $5.00 nor more than $100.00.

15-606. Possession of weapons by minors. Any minor who shall have in his possession any pistol, revolver or toy pistol by which cartridges may be exploded * * * shall, upon conviction thereof, be fined in any sum not less than $1.00 nor more than $10.00.

Prairie Village

10.04.620 Unlawful use of weapons. A. Unlawful use of weapons is:

1. Selling, manufacturing, purchasing, possessing, or carrying any * * * shotgun with a barrel less than eighteen inches in length, * * *

6. Possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any pistol, revolver, rifle, or shotgun.

Pratt

11-1001 same as 21-4201 Kansas State Law

11-1003 same as 21-4203 Kansas State Law

Roeland Park

Ordinance 279

* * * * *

Section 3. Permit to purchase or receive pistol or revolver—Required: exceptions. It shall be unlawful for any person to sell, loan for a consideration or give, or purchase, borrow for a consideration or accept as a gift, any pistol, revolver, or gun of any kind, with a barrel less than nine (9) inches long, unless the purchaser, borrower or person accepting the same has then and there a permit, dated less than ten (10) days prior to such sale, loan or gift, issued by the chief of police, authorizing such person to purchase or accept a pistol or revolver. Such permit must be retained by the vendor and returned to the chief of police with a complete description of the gun sold within three (3) days of the sale.

This section shall not apply to sales of collector's items made and consummated at hobbyists' conventions, nor to firearms that do not use a fixed metallic cartridge.

* * * * *

Section 6. Small firearms to be stamped with trade mark, name of maker, model and serial number. No dealer in firearms, either at wholesale or retail, shall have in his possession for the purpose of sale or sell any pistol, revolver or other firearm of a size which may be concealed upon the person, unless such firearm has plainly and permanently stamped, upon the metallic portion thereof, the trade mark, the name of the maker, the model and factory serial number thereof, which number shall not be the same as that of any other such weapon of the same model made by the same maker. No person within the city shall lease, buy or in any wise procure the possession of any pistol, revolver or other firearm of a size which may be concealed upon the person, unless such firearm is stamped as required by this section.

Nothing in this section shall be considered or construed as forbidding or making it unlawful for a dealer in or manufacturer of pistols, revolvers or other firearms of a size which may be concealed upon the person, located in this city, to ship into other states or foreign countries any such articles, whether stamped as required by this section or not so stamped.

Section 7. Record of sales and purchases of small firearms. No wholesale or retail dealer in firearms shall have in his possession for the purpose of sale or shall sell any firearm of a size which may be concealed upon the person, unless he keeps a full and complete record of the information stamped thereon in accord with section six (6), the name and address of the person from whom purchased and to whom sold, and the date of such purchase or sale. Such record shall be open to inspection at all times during normal business hours to any police officer or other peace officer of this state.

Selden

Ordinance 15

Section 20: Any person who shall sell, trade, give, loan or otherwise furnish any pistol, revolver, or toy pistol by which cartridges or cape may be exploded * * * or any other dangerous weapon to any minor or any person of notoriously unsound mind, shall upon conviction be fined * * *.

Shawnee

13-1101. Unlawful use of weapons. (1) Unlawful use of weapons is knowingly:

(a) Selling, manufacturing, purchasing, possessing or carrying any * * * shotgun with a barrel less than eighteen inches (18") in length, * * *

* * * * *

(f) Possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; * * *

(2) Exemptions.

(a) Subsections (1)(a), (b), (c) and (d) of this section shall not apply to or affect any of the following:

(i) Law enforcement officers, or any person summoned by any such officer to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(ii) Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime;

(iii) Members of the armed services or reserve forces of the United States or the Kansas National Guard while in the performance of their official duty;

(iv) Manufacture of, transportation to, or sale of weapons to person authorized under (i) through (iii) of this subsection to possess such weapons.

13-1102. Unlawful disposal of firearms. (1) Unlawful disposal of firearms is knowingly:

(a) Selling, giving or otherwise transferring any firearm with a barrel less than twelve inches (12") long to any person under eighteen (18) years of age; or

(b) Selling, giving or otherwise transferring any firearms to any habitual drunkard or narcotic addict; or

(c) Selling, giving or otherwise transferring any firearm with a barrel less than twelve inches (12") long to any person who has been convicted of a felony under the laws of this or any other jurisdiction if such sale, gift or transfer is made to such convicted person within five (5) years after his release from the penitentiary or within five (5) years after his conviction if the defendant has not been imprisoned in the penitentiary.

13-1103. Unlawful possession of a firearm. (1) Unlawful possession of a firearm is:

(a) Possession of any firearm by an habitual drunkard or narcotics addict; or

(b) Possession of a firearm with a barrel less than twelve inches (12") long by a person who within five (5) years preceding such violation has been convicted of a felony under the laws of Kansas or any other jurisdiction or has been released from imprisonment for a felony.

South Hutchinson

Ordinance 823-A

Section 23. Unlawful use of weapons. (1) Unlawful use of weapons is knowingly:

(a) Selling, manufacturing, purchasing, possessing or carrying any * * *, shotgun with a barrel less than eighteen (18) inches in length, * * *. * * * * * [or] (f) Possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; * * *.

(2) Exemptions. (a) Subsections (1) (a), (b), (c), (d), of this section shall not apply to or affect any of the following: (i) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer; (ii) Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime; (iii) Members of the armed services or reserve forces of the United States or the Kansas National Guard while in the performance of their official duty; (iv) Manufacture of, transportation to, or sale of weapons to person authorized under (i) through (iii) of this subsection to possess such weapons.

Section 24. Unlawful possession of a firearm. Unlawful possession of a firearm is: (a) Possession of any firearm by an habitual drunkard or narcotics addict.

Sterling

Sec. 17-32. Same—Unlawful possession or carrying. (1) Unlawful use of weapons, hereby declared to be an offense, is knowingly: (a) Selling, manufacturing, purchasing, possessing or carrying any * * *, shotgun with a barrel less than eighteen (18) inches in length, * * *. * * * * * [or] (f) Possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm.

(2) Exemptions. (a) Subsections (1) (a), (b), (c), and (d), of this section shall not apply to or affect any of the following: (i) law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer; (ii) wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime; (iii) members of the armed services or reserve forces of the United States or the Kansas national guard while in the performance of their official duty; (iv) manufacture of, transportation to, or sale of weapons to person authorized under (i) through (iii) of this subsection to possess such weapons.

* * * * *

Topeka

12-216. Furnishing weapons to minors or persons of unsound mind. It shall be unlawful for any person to sell, give, loan or otherwise furnish any pistol or revolver by which cartridge may be exploded, * * * or other dangerous weapons to any minor, or to any person of notorious unsound mind.

Valley Center

9.78.010 Unlawful use defined. Unlawful use of weapons is knowingly: A. Selling, manufacturing, purchasing, possessing or carrying any * * * shotgun with a barrel less than eighteen inches in length, * * *.

F. Possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; * * *.

9.78.020. Exemptions. A. Section 9.78.010A, B, C, D and G shall not apply to or affect any of the following:

1. Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

2. Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime;

3. Members of the armed services or reserve forces of the United States or the Kansas National Guard while in the performance of their official duties;

4. Manufacture of, transportation to, or sale of weapons to person authorized under (1) through (3) of this subsection to possess such weapons.

Wakeeney

Article 10. Crimes against public safety

11-1001. Unlawful use of weapons. Rules and regulations relating to use of weapons and subsequent exemptions shall be as follows:

a. Unlawful Use of Weapons is knowingly:

1. Selling, manufacturing, purchasing, possessing or carrying any * * * shotgun with a barrel less than eighteen inches (18") in length,

* * * * *

6. Possession of any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm.

7. Selling, manufacturing, purchasing, possessing or carrying any firearm designed to discharge or capable of discharging automatically more than once by a single function of the trigger.

b. Exemptions: 1. Subsections "a" 1, 2, 3, 4 and 7 of this section shall not apply to or affect any of the following:

(a) Law enforcement officers, or any person summoned by any such officer to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(b) Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime;

(c) Members of the armed services or reserve forces of the United States or the Kansas National Guard while in the performance of their official duty;

(d) Manufacture of, transportation to, or sale of weapons to persons authorized under

(a) through (c) of this subsection to possess such weapons.

* * * * *

11-1003. Unlawful disposal of firearms. Unlawful disposal of firearms is knowingly:

a. Selling, giving or otherwise transferring any firearm with a barrel less than twelve inches (12") long to any person under eighteen (18) years of age;

b. Selling, giving or otherwise transferring any firearms to any habitual drunkard or narcotic addict;

c. Selling, giving or otherwise transferring any firearm with a barrel less than twelve inches (12") long to any person who has been convicted of a felony under the laws of this or any other jurisdiction if such sale, gift or transfer is made to such convicted person within five (5) years after his release from the penitentiary or within five (5) years after his conviction if the offender has not been imprisoned in the penitentiary.

Wellington

18-611. Molotov Cocktail. It shall be unlawful for any person to transport, use or have in his possession or control a container of incendiary or explosive material, liquid, solid or mixture, equipped with a fuse, wick or any other detonating device of a kind commonly known as a "Molotov Cocktail". * * *

Wellsville

Article 12

12-1215. Deadly weapons to minors and unsound persons. Any person who shall sell, trade, loan, or otherwise furnish any pistol, revolver, * * * to any minor or to any person of notoriously unsound mind, upon conviction, shall be fined * * *.

Westwood

10.1 Unlawful use of weapons. Unlawful use of weapons is: (a) selling, manufacturing, purchasing, possessing, or carrying any * * * shotgun with a barrel less than eighteen inches in length, * * * * * (f) possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any pistol, revolver, rifle, or shot gun.

Sub-sections (a), (b), (c) and (d) of this section shall not apply to or affect any of the following: (a) law enforcement officers, or any person summoned by any such officers or summoned by any other lawfully authorized public officers to assist in making arrests or preserving the peace while actually engaged in assisting such officers; (b) wardens, superintendents and keepers of prisons, penitentiaries; jails and other institutions for the detention of persons accused or convicted of crime; (c) members of the armed services or reserve forces of the United States or the Kansas National Guard while in the performance of their official duty; (d) manufacture of, transportation to, or sale of weapons to persons authorized under this exemption to possess such weapons.

* * * * *

10.2 Unlawful possession of a firearm. Unlawful possession of a firearm is possession of any firearm by an habitual drunkard or narcotics addict.

10.3 Defacing identification marks of a firearm. * * * * *Possession of any firearm upon which any such mark shall have been intentionally changed, altered, removed or obliterated shall be prima facie evidence that the possessor has changed, altered, or obliterated the same.

Wichita

5.88.040 Sawed off rifles and shotguns; * * * (a) It is unlawful for any person, other than a sheriff or other peace officer or any military unit of the state or of the United States, or any common carrier for hire, to transport or have in his possession or under his control, any firearm known as a shotgun or rifle with a barrel less than eighteen inches in length, or any silencer; provided, that banks, trust companies or other institutions or corporations subject to unusual hazard from robbery or holdup who have secured permits from the sheriff of the county in which they are located for one or more of their employees to have such firearms, may possess such firearms; provided, further, that museums, American Legion posts and other similar patriotic organizations may possess such firearms when not used as a weapon and when possessed as a curiosity, ornament or keepsake.

* * * * *

Kentucky

State Law

Ky Revised Stat. Ann.

237.020 Right of Kentucky residents to buy firearms in contiguous states; reciprocity as to residents of contiguous states. (1) Residents of the Commonwealth of Kentucky shall have the right to purchase rifles, shotguns, and any other firearms which they are permitted to purchase under federal law from properly licensed dealers, manufacturers, importers, or collectors located in states contiguous to the Commonwealth of Kentucky.

(2) Residents of states contiguous to the Commonwealth of Kentucky may purchase rifles, shotguns, and any other firearms which they are permitted to purchase under federal law from properly licensed dealers, manufacturers, importers, or collectors located in the Commonwealth of Kentucky.

(3) All such sales shall conform to the requirements of federal law, the Kentucky Revised Statutes, applicable local ordinances, and the law of the purchaser's state.

237.030 Definitions for KRS 237.040 and 237.050. (1) "Destructive device" means any explosive, incendiary, or poison gas bomb, grenade, mine, rocket, missile, or similar device and includes the unassembled components from which such a device can be made.

(2) "Booby trap device" includes any device, or substance designed to surreptitiously or covertly take life, endanger life or destroy or damage property and shall not include firearms.

237.040 Criminal possession of destructive device or booby trap device. A person is guilty of criminal possession of a destructive device or a booby trap device when he possesses, manufactures, or transports such substance or device with:

(1) Intent to use that device to commit an offense against the laws of this state, a political subdivision thereof, or of the United States; or

(2) Knowledge that some other person intends to use that device to commit an offense against the laws of this state, a political subdivision thereof, or of the United States.

(3) Mere possession without substantial evidence of the requisite intent is insufficient to bring action under KRS 237.030 to 237.050.

237.050 Exemptions. KRS 237.030 to 237.050 shall not apply to:

(1) Destructive devices or booby trap devices which are possessed by the government of the United States, this state, or a political subdivision thereof;

(2) Any device which is lawfully possessed under the Gun Control Act of 1968, the Organized Crime Control Act of 1971, or any other law of the United States or this state, unless a crime is committed therewith;

(3) Non-lethal devices placed on the premises of the owner or the lawful occupant thereof for his own self-protection or the protection of the said property;

(4) The setting of traps suitable and legal for the taking of game by persons licensed or permitted to do so by the game laws of the Commonwealth;

(5) Inert devices which cannot readily be restored to operating condition; or

(6) The acquisition, possession, use, or control of firearms.

527.010 Definitions. The following definitions apply in this chapter unless the context otherwise requires:

(1) "Deface" means to remove, deface, cover, alter or destroy the manufacturer's serial number or any other distinguishing number or identification mark.

(2) "Firearm" means any weapon which will expel a projectile by the action of an explosive.

(3) "Handgun" means any pistol or revolver originally designed to be fired by the use of a single hand, or any other firearm originally designed to be fired by the use of a single hand.

527.040 Possession of handgun by convicted felon; exceptions. (1) A person is guilty of possession of a handgun by a convicted felon when he possesses, manufactures, or transports a handgun when he has been convicted of a felony, as defined by the laws of the jurisdiction in which he was convicted, in any state or federal court and has not:

(a) Been granted a full pardon by the governor or by the President of the United States; or

(b) Been granted relief by the United States secretary of the treasury pursuant to the Federal Gun Control Act of 1968, as amended.

(2) Possession of a handgun by a convicted felon is a Class D felony.

(3) The provisions of this section shall apply only to persons convicted after January 1, 1975.

527.050 Possession of defaced firearm. (1) A person is guilty of possession of a defaced firearm when he knowingly possesses a defaced firearm unless he makes a report to the police or other appropriate government agency of such possession prior to arrest or authorization of a warrant by a court.

(2) Possession of a defaced firearm is a Class A misdemeanor.

Bellevue

131.11 Sale and purchase of weapons. (A) Sale. No person shall sell, give away or otherwise supply to any person, any pistol, revolver, deringer, * * * or other weapon of like character, which can be concealed on or about the person, without first requiring such person to produce a permit to purchase a weapon, signed by the chief of police.

131.13. (B) Permit required. No person shall purchase, or acquire by any means, any pistol, revolver, deringer, * * * or other weapon of like character, which can be concealed on the person, without first securing from the chief of police a permit. * * *

Bromley City

7-301. Possession by Minors of Projectile-Shooting Instruments Prohibited. It shall be unlawful for any person eighteen (18) years of age or younger within the limits of this city to have in their possession any of the instruments (gun, pistol, rifle, shotgun or any firearm) mentioned in Section 7-300.

Cold Spring

Ordinance 99

Section 1 That it shall be unlawful in the City of Cold Spring, Campbell County, Kentucky, for any person, firm or corporation to sell, give away or otherwise supply to any person, any pistol, revolver, derringer or other weapon of like character, which is capable of being concealed on or about the person, without first requiring such person as a condition precedent to receiving said weapon, to produce to such supplier a written permit to purchase or otherwise receive such weapon issued by the City of Cold Spring, Campbell County, Kentucky and signed by the City Marshal of the City of Cold Spring, Campbell County, Kentucky * * *.

[Section 2 contains weapons permit application requirements]

* * * * *

The sale, donation, supply or transfer of any pistol, revolver, derringer, or other weapon of like character, pursuant to the authority of a weapon permit issued by the City of Cold Spring, Campbell County, Kentucky, as hereinbefore set forth, shall be accomplished within ten (10) days from the date of the issuance of such weapon permit and such weapon permit shall be void after the expiration of ten (10) days from the date of its issuance.

Covington

Sec. 14-115. Sale of dangerous weapons to minors and intoxicated persons. (a) No person shall knowingly sell, offer for sale, loan or furnish any rifle, firearm or other dangerous or deadly weapon to:

(1) Any minor under the age of eighteen (18) years;

(2) Any person under the influence of any alcoholic beverage, narcotic drug, stimulant or depressant;

(3) Any person in a condition of agitation and excitability; or

(4) To any person that the seller, lender or donor has reasonable cause to believe is not of sound mind.

Danville

1. No person, firm or corporation whether a licensed or unlicensed dealer or one who sells in a casual sale, shall sell any pistol, revolver, Derringer * * * or other weapon of like character which can be concealed on or about the person except to one to whom a permit for the purchase of a weapon has been issued * * *. Only one such weapon shall be sold for each permit so issued.

Erlanger

Ordinance 1010

Section 130.01 Sale of pistol or like weapon; permit required. (a) No person shall sell, give away or otherwise supply to any person, any pistol, revolver, derringer or other weapon of like character, which is capable of being concealed on or about the person, without first requiring such person as a condition to receiving said weapon, to produce to such supplier a written permit to purchase or otherwise receive such weapon issued by the City of Erlanger and signed by the chief of police as hereinafter provided.

(b) No person shall purchase or otherwise receive any pistol, revolver, derringer or other weapon of like character, which can be concealed on the person, without first securing from the City of Erlanger, a weapon permit signed by its chief of police * * *.

The sale, donation, supplying or transfer of any pistol, revolver, derringer, or other weapon of like character, pursuant to the authority of a weapon permit issued by the City of Erlanger, as hereinbefore set forth, shall be accomplished within ten (10) days from the date of the issuance of such weapon permit and such weapon permit shall be void after the expiration of ten (10) days from the date of its issuance.

Frankfort

9.26.090 Minor possessing * * * firearm. It is unlawful for any person, firm or corporation to sell or give away to any person under eighteen years of age any * * * gun within the city limits.

* * * * * *

Lebanon

Section II That it shall be unlawful for any person to sell or furnish any minor or

infant * * * with any firearm of any kind or character for the purpose of use within the City limits of the City of Lebanon, or which shall be used by said minor or infant within the City limits of the City of Lebanon, or to furnish any minor or infant with ammunition for said firearms, * * *.

Lexington-Fayette Urban County Government

Sec. 13-57. Same—License and permits for concealed deadly weapons—Required. It shall be unlawful for any person to engage in the business of selling, or to sell, give away or otherwise dispose of to any person within the city any pistol, revolver, derringer, * * * or other weapon of like character, which can be concealed on or about the person, without securing a license so to do, * * * and no person having secured such license shall sell, give away or otherwise dispose of any such weapon to any person within the city who has not secured a permit from the chief of police to purchase a weapon * * *

Sec. 13-59. Same—Same—Permit for purchase, refusal of permit when. (a) It shall be unlawful for any person in the city to purchase any pistol, revolver, derringer * * * or other weapon of like character, which can be concealed on the person, without first securing from the chief of police a permit so to do. * * *

Sec. 14-40. Same—Supplying small arms ammunition to. No person shall sell, give, or otherwise supply to any child under the age of eighteen years in the city any small arms ammunition, and no person shall purchase for the use of or place such small arms ammunition in the possession of any such child in the city. * * *

Louisville

747.01 Definitions.

Fire Bomb: A breakable container containing a flammable substance or liquid and having a wick or similar device and capable of being ignited. No device commercially manufactured primarily for the purpose of illumination shall be deemed to be a fire bomb.

Dispose of: To give, lend, offer for sale, sell, transfer, hurl, throw, drop, or caused to be hurled, thrown or dropped, or to abandon at any location.

Explosive: Any chemical compound or mixture that has the property of yielding readily to combustion or oxidation upon the application of heat, flame, shock or electricity including but not limited to dynamite, nitroglycerin, trinitrotoluene, ammonium nitrate when combined with other ingredients to form an explosive mixture, blasting caps, detonators and detonating cords, but not including any fireworks or ammunition for firearms or any black or smokeless propellant powder or primers or any other component of ammunition for firearms.

Licensee: A dealer or manufacturer of explosives licensed under this ordinance.

Permittee: Any user of explosives for lawful purposes who has obtained a user permit under the provisions of this ordinance.

747.02 Possession or ownership of firebombs.

(a) It shall be unlawful to own, make, possess or dispose of a fire bomb, tear gas bomb, stink or acid bomb.

(b) It shall be unlawful to possess any recognizable component part of a firebomb with intent to use such component, material or substance to set fire to or burn any building, structure or property.

(c) This section shall not prohibit the authorized use or possession of any device, substance or material described herein by a member of the Armed Forces of the United States or any Reserve component thereof or of the National Guard of the Commonwealth of Kentucky or by a duly authorized Fireman, Policeman, or Peace Officer acting pursuant to official duty, nor shall the use or possession of such device, substance or material for the sole purpose of scientific research or education or for lawful burning be prohibited.

711.01 Definitions When used in this Ordinance, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meanings ascribed in this section. Words in the plural form shall include the singular, and vice versa, and words importing the masculine gender shall include the feminine.

Antique firearm. (a) Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; and

(b) Any replica of any firearm described in paragraph (a) of this definition if such replica (1) is not designed or redesigned for using rim fire or conventional center fire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

Collector. Any person who acquires, holds, or disposes of firearms as curios or relics.

Concealable firearm. Any pistol, or revolver, or other weapon by whatsoever name known, other than an antique firearm as herein defined, designed to be fired by the use of a single hand, and which is designed to fire or is capable of firing a fixed metallic cartridge, or the frame or receiver of such a weapon; the term "concealable firearm" shall include any other such weapons irrespective of their original design which have received such extensive modification to stock, barrel or otherwise as to make them sufficiently small to be readily concealable on the person: in addition, the term "concealable firearm" shall include tear gas guns, tear guns, tear gas pencils, pen guns, mace guns, or other similar devices capable of firing, projecting, expelling or spraying tear gas, mace, or any similar gas, chemical or substance which may be dangerous or injurious to human health or safety.

Curios or relics. Firearms which are of special interest to collectors by reason of some quality other than is ordinarily associated with firearms intended for sporting use or as offensive or defensive weapons. To be recognized as curios or relics, firearms must fall within one of the following categories:

(a) Firearms which were manufactured at least 50 years prior to the current date, but not including replicas thereof;

(b) Firearms which are certified by the curator of a municipal, state or federal museum which exhibits firearms to be curios or relics of museum interest; and

(c) Any other firearms which derive a substantial part of their monetary value from the fact that they are novel, rare, bizarre, or because of their association with some historical figure, period or event.

Dealer. Any person engaged in the business of selling concealable firearms at wholesale or retail; any person engaged in the business of repairing concealable firearms or of making or fitting special barrels, stocks or trigger mechanisms to concealable firearms; or any person who is a pawn broker.

Felony. Any offense punishable by imprisonment for a term exceeding one (1) year. The term shall not include any offense (other than one involving a firearm or explosive) classified as a misdemeanor under the laws of any state and punishable by a term of imprisonment of two (2) years or less.

Frame or receiver. That part of a concealable firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel.

Fugitive from justice. Any person who has fled from any state to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding.

Indictment. Includes an indictment or information in any Court under which a crime punishable by imprisonment for a term exceeding one (1) year may be prosecuted.

Pawnbroker. Any person whose business or occupation includes the taking or receiving, by way of pledge or pawn, of any concealable firearm as security for the payment or repayment of money.

Person. Any individual, corporation, company, association, firm, partnership, society, or joint stock company.

711.02 Sale or transfer of concealable firearms. No sale, transfer or delivery of a

concealable firearm shall be made within the City of Louisville to any of the following:

(a) A person under twenty-one (21) years of age;

(b) A person under indictment for, or who has been convicted in any Court of a felony;

(c) A person who has been convicted of a misdemeanor involving the handling, carrying, furnishing or misuse of a firearm within five (5) years;

(d) A person who is a fugitive from justice;

(e) A person who has been adjudicated as a mental defective or incompetent, or any person who is a known drug addict;

(f) A person who is not a resident of the Commonwealth of Kentucky;

(g) A person who has been convicted of public drunkenness three (3) or more times within the year last past before the proposed sale, transfer or delivery;

(h) A person who has a conviction record of three or more misdemeanors involving the employment of physical violence against another person within three (3) years last past before the proposed sale, transfer or delivery.

711.03 Ownership or possession of concealable firearms. It shall be unlawful for anyone within the following categories to own, possess or exercise any degree of control over a concealable weapon:

(a) A person under twenty-one (21) years of age;

(b) A person under indictment for, or who has been convicted in any Court of a felony;

(c) A person who has been convicted of a misdemeanor involving the handling, carrying, furnishing or misuse of a firearm within five (5) years;

(d) A person who is a fugitive from justice;

(e) A person who has been adjudicated as a mental defective or incompetent or who has been committed to any mental institution.

(f) A person who has a conviction record of three or more misdemeanors involving the employment of physical violence against another person within three (3) years last past before the proposed sale, transfer or delivery.

711.04 Licensing of dealer. Any person who engages in the business of a dealer as defined in this Ordinance in the City of Louisville shall secure a license from the City to conduct such business * * *.

711.05 Sale by dealer. Every dealer who makes a sale, transfer or delivery of a concealable firearm to any person other than another licensed dealer or licensed collector shall first require the purchaser to execute in full an affidavit on a form provided by the Louisville Division of Police * * *.

* * * * * *

The aforesaid affidavit shall be signed and sworn to by the prospective purchaser before a person authorized to administer oaths.

711.06 Completion of sale and report to the Louisville Division of Police. After the prospective purchaser or transferee of a concealable firearm has executed the affidavit hereinabove provided for, the dealer shall allow a period of not less than 24 hours to expire before the completion of any sale or transfer of the concealable firearm to the purchaser or transferee.

Upon the completion of the sale or transfer, the dealer shall execute a certificate on a form provided by the Louisville Division of Police * * *.

* * * * * *

The purchaser or transferee shall sign the aforesaid certificate acknowledging receipt of the concealable firearm described therein. The dealer shall also sign the aforesaid certificate.

The dealer and purchaser or transferee shall swear to the accuracy of the information contained therein before a person authorized to administer oaths. * * * * *

711.07 Report of sale by seller other than dealer. Every person who is not a licensed dealer or collector who makes a sale, loan, gift or any other transfer or delivery of a concealable firearm to anyone who is not a licensed dealer or collector shall within twenty-four (24) hours after such sale, loan, gift, transfer or delivery mail or deliver to the Louisville Division of Police a certificate on a form provided by the Louisville Division of Police * * *.

* * * * * *

Said certificate shall be signed by the person making such sale, loan, gift, transfer or delivery and by the purchaser or recipient acknowledging receipt of the concealable firearm.

It shall be the duty of both the person making such sale, loan, gift, transfer or delivery as well as the person purchasing or receiving the concealable firearm to see that the provisions of this section are complied with, and failure to report such sale, loan, gift, transfer or delivery shall constitute a violation of this Ordinance by each.

711.09 Collectors license. Any person qualifying as a collector as defined in this Ordinance may make application to the Louisville Division of Police for issuance of a "Collectors License" and shall pay for said license the sum of Ten dollars ($10.00); said license shall be renewable annually for an additional fee of Five dollars * * *

711.11 Licensed collector may make immediate transactions. Any duly licensed collector hereunder may buy, sell or otherwise receive or transfer any firearms qualifying as curios and relics as defined herein without the necessity of reporting such transactions and without the elapsement of any waiting period.

711.13 Exclusions. 1. Despite any language to the contrary contained herein, it shall be lawful for the following persons to acquire, transfer, or purchase concealable firearms from a dealer or broker without the necessity of the affidavit and waiting period required by this Ordinance:

(a) Any governmental agency which is authorized to own or acquire firearms;

(b) Licensed dealers, manufacturers, wholesalers in all transactions between similarly licensed persons, in their usual course of business;

(c) Licensed pawnbrokers accepting a firearm as security or pledge for loan, unless or until the pawnbroker makes a sale or transfer or the firearm pledged to a person other than the owner, at which time the affidavit required by this Ordinance and the waiting period shall be complied with, and the report of such sale or transfer shall be made as provided herein.

2. Despite any language to the contrary contained herein, it shall be lawful for the following persons to transport, possess and lawfully use concealable firearms for lawful purposes:

(a) Non residents of Louisville who are regularly enrolled members of any state or federal organization, service or agency who's members are legally authorized to purchase, or receive and transport concealable firearms;

(b) Non residents of Louisville regularly enrolled as members of clubs organized for firearms collecting or organized target shooting while such members are going to or from collectors gun shows, competitions and other organized convocations of such clubs;

(c) Non residents while lawfully engaged in hunting, fishing, or camping or going to or returning from hunting, fishing or camping;

(d) Non residents engaged in the business of manufacturing, repairing or dealing in firearms, or the agent or representatives of such person while engaged in the lawful course of such business.

Newport

Sec. 117.01 Licensing of dealer. Every person hereinafter called "dealer," engaged in the business of buying or selling pistols, revolvers and like or similar instruments, whether such business is carried on as the only business or in conjunction with other lines of business, shall secure a license from the city, and shall pay an annual license fee of $25 to conduct the business of buying or selling pistols, revolvers and like or similar instruments, and the $25 license fee shall be in addition to any other business license held by said dealer.

Sec. 117.02 Dealer's bond. (A) Before a license shall be issued, such dealer shall execute a bond to the city in the minimum of $1,000, either in cash or with corporate surety, to be approved by the city manager.

* * * * *

Sec. 117.04 Purchaser's qualifications. No "dealer" shall make any sale of, or deliver,

any pistol, revolver, or like or similar instrument to any person without first requiring such person to execute an affidavit in triplicate copy, either typewritten or in plain legible English handwriting and which shall contain the following information: The purchaser's name, age, address, description, place of employment, citizenship and statement of criminal record. If the prospective purchaser is an alien or if his record indicated he has been involved in any felony or any misdemeanor involving the use of firearms, then the "dealer" shall not make any sale of or deliver any pistol, revolver, or like or similar instrument to such person. The "dealer" shall be further charged with the responsibility of refusing to make a sale to any person who appears visibly agitated or under stress, and who cannot give a reasonable or proper explanation of such behavior. The "dealer" shall complete any sale to a prospective purchaser only if it appears that such person has good cause to fear an injury to his person or property, or that such pistol, revolver or like or similar instrument is to be used for a lawful purpose.

Sec. 117.06 Report of sale. When the "dealer" ascertains that the prospective purchaser is properly qualified and has executed the affidavit, as above provided, he may complete the sale and deliver the pistol, revolver or like or similar instrument to the said purchaser. * * *

Sec. 117.07 Sale to unlicensed "dealers." No person shall sell a revolver, pistol or like or similar instrument to any unlicensed "dealer" at any time.

Sec. 117.08 Sale to minors. No person shall sell a revolver, pistol or like or similar instrument to any minor at any time. (Ord. 1094, Sec. 8)

Sec. 117.09 Wholesalers excepted. Nothing contained in this chapter shall apply to sales at wholesale to a licensed "dealer."

Paris

Sec. 11-12. Various deadly weapons—Permits to buy and sell; required reports. (a) It shall be unlawful for any person to engage in the business of selling, or to sell, give away or otherwise dispose of to any person within the city any pistol, revolver, derringer, * * * or other weapon of like character which can be concealed on or about the person, without securing a license so to do as hereinafter provided, and no person having secured such license shall sell, give away or otherwise dispose of any such weapon to any person within the city who has not secured a permit from the chief of police to purchase the weapon. * * * * *

(d) It shall be unlawful for any person in the city to purchase any pistol, revolver, derringer, * * * or other weapon of like character, which can be concealed on the person, without first securing from the chief of police a permit so to do.

Park Hills

Ordinance 3

Section 1. Licensing of Dealer: Every person, firm or corporation hereinafter called "Dealer", engaged in the business of buying or selling pistols, revolvers and like or similar instruments, * * * shall secure a license from the City of Park Hills. * * *

Section 4. Purchaser's Qualifications: No "Dealer" shall make any sale of, or deliver any pistol, revolver, or like or similar instrument to any person without first requiring such person to execute an affidavit in triplicate copy, either typewritten or in plain legible English handwriting and which shall contain the following information: The Purchaser's name, age, address, description, place of employment, citizenship and statement of criminal record. If the Prospect purchaser is an alien or if his record indicates he has been involved in any felony or any misdemeanor involving the use of firearms, then the "Dealer" shall not make any sale of or deliver any pistol, revolver or like or similar instrument to such person. The "Dealer" shall be further charged with the responsibility of refusing to make a sale to any person who appears visibly agitated or under stress, and who cannot give a reasonable or proper explanation of such behavior. The "Dealer" shall complete any sale to a prospective purchaser only if it appears that such person has good cause to fear an injury to his person or property or that such pistol, revolver, or like or similar instrument is to be used for a lawful purpose.

* * * * *

Section 7. Sale to Unlicensed "Dealers": It shall be unlawful for any person, firm or corporation to sell a revolver, pistol or like or similar instrument to any unlicensed "Dealer", at any time.

Section 8. Sale to Minors. It shall be unlawful for any person, firm or corporation to sell a revolver, pistol or like or similar instrument to any minor at any time.

West Buechel

Section 135.30. Definitions pertaining to weapons offenses. For the purpose of this subchapter the following words shall have the following meaning ascribed to them respectively:

(A) "Deface." To remove, deface, cover, alter or destroy the manufacturer's serial number or any other distinguishing number or identification mark.

(B) "Firearm." Any weapon which will expel a projectile by the action of an explosive.

* * * * *

Section 135.34. Possession of a defaced firearm. (A) A person is guilty of possession of a defaced firearm when he knowingly possesses a defaced firearm unless he makes a report to the police or other appropriate government agency of such possession prior to arrest or authorization of a warrant by a court.

Louisiana

State Law Rev. Stat.

La. Stat. Ann.

Title 40

Sec. 1751. Definitions. For purposes of this Part, "machine gun" includes all firearms of any calibre, commonly known as machine rifles, machine guns, and sub-machine guns, capable of automatically discharging more than eight cartridges successively without reloading, in which the ammunition is fed to the gun from or by means of clips, disks, belts, or some other separable mechanical device. "Manufacturer" includes all persons manufacturing machine guns; "Merchant" includes all persons dealing with machine guns as merchandise.

Sec. 1752. Handling of machine guns unlawful; exceptions. No person shall sell, keep or offer for sale, loan or give away, purchase, possess, carry, or transport any machine gun within this state, except that:

(1) All duly appointed peace officers may purchase, possess, carry, and transport machine guns.

(2) This Part does not apply to the Army, Navy, or Marine Corps of the United States, the National Guard, and organizations authorized by law to purchase or receive machine guns from the United States or from this state. The members of such Corps, National Guard, and organizations may possess, carry, and transport machine guns while on duty.

(3) Persons possessing war relics may purchase and possess machine guns which are relics of any war in which the United States

was involved, may exhibit and carry the machine guns in the parades of any military organization, and may sell, offer to sell, loan, or give the machine guns to other persons possessing war relics.

(4) Guards or messengers employed by common carriers, banks, and trust companies, and pay-roll guards or messengers may possess and carry machine guns while actually employed in and about the shipment, transportation, or delivery, or in the guarding of any money, treasure, bullion, bonds, or other thing of value. Their employers may purchase or receive machine guns and keep them in their possession when the guns are not being used by their guards or messengers.

(5) Manufacturers and merchants may sell, keep or offer for sale, loan or give away, purchase, possess, and transport machine guns in the same manner as other merchandise except as otherwise provided in this Part. Common carriers may possess and transport unloaded machine guns as other merchandise.

Sec. 1753. Transfers of possessions permitted in certain cases; method. No manufacturer or merchant shall permit any machine gun to pass from his possession to the possession of any person other than:

(1) A manufacturer or a merchant.

(2) A common carrier for shipment to a manufacturer or merchant.

(3) A duly authorized agent of the government of the United States or of this state, acting in his official capacity.

(4) A person authorized to purchase a machine gun under the provisions of paragraphs (1) and (4) of R.S. 40:1752.

Manufacturers or merchants shall not deliver a machine gun to any of the persons authorized to purchase it under the provisions of paragraphs (1) and (4) of R.S. 40:1752 unless the person presents a written permit to purchase and possess a machine gun, signed by the sheriff of the parish in which the manufacturer or merchant has his place of business or delivers the machine gun. The manufacturer or merchant shall retain the written permit and keep it on file in his place of business. Each sheriff shall keep a record of all permits issued by him.

(Sec. 1754. requires that every manufacturer or merchant shall keep a register of all machine guns manufactured or handled by him)

Part II: Registration

Sec. 1781. Definitions. For the purpose of this Part, the following terms have the meanings ascribed to them in this Section:

(1) "Dealer" means any person not a manufacturer or importer engaged in this state in the business of selling any firearm. The term includes wholesalers, pawnbrokers, and other persons dealing in used firearms.

(2) "Department" means the Department of Public Safety.

(3) "Firearm" means a shotgun having a barrel of less than eighteen inches in length; a rifle having a barrel of less than sixteen inches in length; any weapon made from either a rifle or a shotgun if said weapon has been modified to have an overall length of less than twenty-six inches; any other firearm, pistol, revolver or shotgun from which the serial number or mark of identification has been obliterated, from which a shot is discharged by an explosive, if that weapon is capable of being concealed on the person; or a machine gun or gas grenade; and includes a muffler or silencer for any firearm, whether or not the firearm is included within this definition. Pistols and revolvers and those rifles and shotguns which have not previously been defined in this Paragraph as firearms from which serial numbers or marks of identification have not been obliterated are specifically exempt from this definition.

(4) "Importer" means any person who imports or brings into the state any firearm.

(5) "Machine gun" means any weapon, including a submachine gun, which shoots or is designed to shoot automatically more than one shot without manual reloading, by a single function of the trigger.

(6) "Manufacturer" means any person who is engaged in this state in the manufacture, assembling, alteration, or repair of any firearm.

(7) "Muffler" or "silencer" includes any device for silencing or diminishing the report of any portable weapon such as a rifle, carbine, pistol, revolver, machine gun, submachine gun, shotgun, fowling piece, or other device from which a shot, bullet, or projectile may be discharged by an explosive and is not limited to mufflers and silencers for firearms as defined in this Section.

(8) "Transfer" includes the sale, assignment, pledge, lease, loan, gift, or other disposition of any firearm.

Sec. 1782. Exemptions from Part. This Part does not apply to the following persons and things:

(1) Sheriffs or equivalent municipal officers in municipalities of over ten thousand, when they are acting in their official capacity.

(2) The arms, accoutrements, and equipment of the military and naval forces of the United States or of other officers of the United States authorized by law to possess weapons of any kind.

(3) The arms, accoutrements, and equipment of the militia.

(4) Any firearm which is unserviceable and which is transferred as a curiosity or ornament.

Sec. 1783. Registration with department of public safety. Every person possessing any firearm shall register with the department the number or other mark identifying the firearm, together with his name, address, and place of business or employment, the place where the firearm is usually kept, and, if the person is other than a natural person, the name and home address of the executive officer thereof having control of the firearm and the name and home address of the person having actual possession thereof.

Sec. 1784. Application to possess or transfer. No person shall continue to possess or shall transfer any firearm without the prior approval of the department. Interested persons shall file written application in duplicate on application forms issued in blank for those purposes by the department. In the case of transfers of any firearm, applications shall be filed by both the proposed vendor and the proposed vendee.

The applications shall set forth, in the original and duplicate, the manufacturer's number or other mark identifying the firearm. Both the original and duplicate shall be forwarded to the department. If approved, the original shall be returned to the applicant.

Sec. 1785. Possession or dealing in unregistered or illegally transferred weapons. No person shall receive, possess, carry, conceal, buy, sell, or transport any firearm which has not been registered or transferred in accordance with this Part.

Sec. 1787. Importation, manufacture, or dealing in without registration. Upon first engaging in business, every importer, manufacturer, and dealer in firearms shall register with the department his name or style, principal place of business and other places of business in this state. No person required to register under the provisions of this Section shall import, manufacture, or deal in any firearm without having registered as required by this Section.

Sec. 1788. Identification with number or other mark; obliteration or alteration of number or mark. A. Each manufacturer, importer, and dealer in any firearm shall identify it with a number or other identification mark approved by the department and shall mark or stamp or otherwise place the number or mark thereon in a manner approved by the department.

B. No one shall obliterate, remove, change, or alter this number or mark. Whenever, in a trial for a violation of this Sub-section, the defendant is shown to have or to have had possession of any firearm upon which the number or mark was obliterated, removed, changed, or altered, that possession is sufficient evidence to authorize conviction unless the defendant explains it to the satisfaction of the court.

Part III. Purchase of rifles and shotguns

Sec. 1802. Definitions As used in this Part:

(1) "A state contiguous to this state" shall mean any state having a common border with this state.

(2) All other terms shall be given the meaning prescribed in 18 U.S.C. Sec. 921 (The Gun Control Act of 1968, Public Law 90-618), and the regulations duly promulgated thereunder as presently enacted or promulgated and as hereafter modified.

Sec. 1803. Purchase of rifle or shotgun or ammunition. It shall be lawful for any person residing in this state, including any corporation or other business entity maintaining a place of business in this state, to purchase or otherwise obtain a rifle or shotgun or ammunition in any state which is contiguous to this state and to receive or transport such rifle or shotgun or ammunition into this state and to permit any person residing in a contiguous state to purchase shotguns, rifles or ammunition in this state and to receive or transport such rifles, shotguns or ammunition in this state.

Title 14

91. Unlawful sales to minors. Unlawful sales to minors is the selling, or otherwise delivering for value by anyone over the age of seventeen of any * * * firearm or other instrumentality customarily used as a dangerous weapon, to any person under the age of eighteen. Lack of knowledge of the minor's age shall not be a defense.

95.1 Possession of firearm or carrying concealed weapon by a person convicted of certain felonies.

A. It is unlawful for any person who has been convicted of first or second degree murder, manslaughter, aggravated battery, aggravated or simple rape, aggravated kidnapping, aggravated arson, aggravated or simple burglary, armed or simple robbery, or any violation of the Uniform Controlled Dangerous Substances Law which is a felony or any crime defined as an attempt to commit one of the above enumerated offenses under the laws of this state, or who has been convicted under the laws of any other state or of the United States or of any foreign government or country of a crime which, if committed in this state, would be one of the above enumerated crimes, to possess a firearm or carry a concealed weapon.

* * * * *

C. Except as otherwise specifically provided, this Section shall not apply to the following cases: (1) The provisions of the Section prohibiting the possession of firearms and carrying concealed weapons by persons who have been convicted of certain felonies shall not apply to any person who has not been convicted of any felony for a period of ten years from the date of completion of sentence, probation, parole, or suspension of sentence.

(2) Upon completion of sentence, probation, parole, or suspension of sentence the convicted felon shall have the right to apply to the sheriff of the parish in which he resides, or in the case of Orleans Parish the superintendent of police, for a permit to possess firearms. The felon shall be entitled to possess the firearm upon the issuing of the permit.

* * * * *

Abbeville

Section 95. Illegal carrying of weapons. A. Illegal carrying of weapon is: * * * (2) The ownership, possession, custody or use of any firearm, or other instrumentality customarily used as a dangerous weapon, at any time by an enemy alien; or

* * * * *

Section 95.1 Possession of firearm or carrying concealed weapon by a person convicted of certain felonies. A. It is unlawful for any person who has been convicted of first or second degree murder, manslaughter, aggravated battery, aggravated or simple rape, aggravated kidnapping, aggravated arson, aggravated or simple burglary, armed or simple robbery, or any violation of the Uniform Controlled Dangerous Substances Law which is a felony or any crime defined as an attempt to commit one of the above enumerated offenses under the laws of this state, or who has been convicted under the laws of any other state or of the United States or of any foreign government or country of a crime which if committed in this state, would be one of the above enumerated crimes, to possess a firearm or carry a concealed weapon.

* * * * *

Arnaudville

Section 7:130 same as Section 95 Abbeville.

Bastrop

Section 10-83 same as Section 95 Abbeville.

Berwick

Section 14-38 same as Section 95 Abbeville.

Bogalusa

59. Unlawful sales to minors and purchases by minors. Unlawful sales to minors is the selling, or otherwise delivering for value by anyone over the age of seventeen of any * * * firearm or other instrumentality customarily used as a dangerous weapon, to any person under the age of twenty-one. Lack of the knowledge of the minor's age shall not be a defense.

Coushatta

Criminal Code

Article 58. Unlawful sales to minors and purchases by minors. Unlawful sales to minors is the selling, or otherwise delivering for value by anyone over the age of seventeen of any * * * firearm or other instrumentality customarily used as a dangerous weapon, to any person under the age of twenty-one. * * *

Article 59. Illegal carrying of weapons: Illegal carrying of weapons is: * * * * * (2) The ownership, possession, custody or use of any firearm or other instrumentality customarily used as a dangerous weapon, at any time by an enemy alien * * * * *.

Covington

Section 14-109 same as Section 95 Abbeville.

Crowley

8-44. Weapons—Illegal carrying. (2) The ownership, possession, custody or use of any firearm, or other instrumentality customarily used as a dangerous weapon, at any time by an enemy alien.

* * * * *

Denham Springs

Article 59. Unlawful sales to minors and purchases by minors. Unlawful sales to minors is the selling, or otherwise delivering for value by anyone over the age of seventeen * * * any firearm or other instrumentality customarily used as a dangerous weapon, to any person under the age of twenty-one. Lack of the knowledge of the minor's age shall not be a defense.

Article 60. Illegal carrying of weapons. Illegal carrying of weapons is: * * * * * (2) The ownership, possession, custody or use of any firearm or other instrumentality customarily used as a dangerous weapon, at any time by an enemy alien; * * * * *

DeRidder

7-68. Unlawful sales to minors and purchases by minors. Unlawful sales to minors is the selling, or otherwise delivering for value by anyone over the age of seventeen (17) of any firearm or other instrumentality customarily used as a dangerous weapon, to any person under the age of twenty-one (21). Lack of the knowledge of the minor's age shall not be a defense.

Sec. 21-223. Retail dealers in pistols, rifles or cartridges. * * * * * (b) No person shall sell, at wholesale or retail, pistols, or pistol cartridges, blank pistols or blank pistol cartridges, or any rifles, except rifles of .22 and .25 calibers or any cartridges, except rifle cartridges of .22 and .25 calibers, without first obtaining the license required by the State of Louisiana in R.S. 47:282 and 47:283, and without first obtaining the license imposed by this article authorizing the sale of pistols, or pistol cartridges, blank pistols or blank pistol cartridges, rifles or rifle cartridges. * * *

East Baton Rouge Parish

94. same as Section 95 Abbeville.

Ferriday

Article 61. same as Section 95 Abbeville.

Franklinton

Sec. 8-69. Unlawful sales to and purchases by minors. Unlawful sales to minors is the selling, or otherwise delivering for value by anyone over the age of seventeen (17) of * * * any firearm or other instrumentality customarily used as a dangerous weapon, to any person under the age of twenty-one (21). Lack of the knowledge of the minor's age shall not be a defense.

Gonzales

Section 11-56 same as Section 95 Abbeville.

Harahan

Ordinance 122

Section 1. * * * it shall be unlawful for any person, firm or corporation to sell, offer for sale, assign, pledge, lease, loan, give away, transfer or purchase any pistol, revolver or rifle of whatever nature or kind, without first having obtained from the Sheriff of the Parish of Jefferson, Permit Department, a permit therefor.

Section 2. * * * any person, firm or corporation interested in the sale, assignment, pledge, lease, loan, gift, transfer or purchase of any pistol, revolver or rifle, as aforesaid, shall file written application in duplicate on application forms issued in blank for those purposes by the permit department of the Sheriff of the Parish of Jefferson. Applications shall be filed by both the proposed vendor and the proposed vendee. The applications shall set forth in the original and duplicate, the manufacturers number or other mark identifying the firearm. Both the original and duplicate shall be forwarded to the Permit Department of the Sheriff of the Parish of Jefferson, and if approved, the original shall be returned to the applicant.

Houma

9-31. same as Section 95 Abbeville.

Jean Lafitte

Ordinance 25

Article 40. same as Section 95 Abbeville.

Jefferson Parish

Section 12-17.1. All dealers in firearms, prior to delivering any firearm, will ascertain from the Jefferson Parish Sheriff's Office that the purchaser is not a convicted felon and is not charged as a felon.

(a) Dealers in firearms will contact the Sheriff's Office to determine if a buyer is a convicted felon or if felony charges are pending. Dealers will indicate on their record the name of the deputy who conducted the electronic investigation.

(b) It shall be unlawful for any person in the Parish of Jefferson to sell, offer for sale, assign, pledge, lease, loan, give, transfer, purchase or receive any firearm, pistol or revolver to or from a known felon.

Jennings

20-42. same as Section 95 Abbeville.

Kenner

19-93. Wholesale dealers in pistols, rifles or cartridges. Every wholesale dealer in pistols, pistol cartridges, blank pistols, blank cartridges, and all rifles except .22 and .25 calibers, and rifle cartridges, except .22 and .25 calibers, shall pay an annual license on the said business. * * *

No dealer shall be deemed a wholesale dealer unless he sells to dealers for resale.

19-94. Retail dealers in pistols, rifles or cartridges. (b) No person shall sell, at wholesale or retail, pistols, or pistol cartridges, blank pistols or blank pistol cartridges, or any rifles, except rifles of .22 and .25 calibers or any cartridges, except rifle cartridges of .22 and .25 calibers, without first obtaining the license required by the State of Louisiana in R.S. 47:282 and 47:283, and without first obtaining the license imposed by this article authorizing the sale of pistols, or pistol cartridges, blank pistols or blank pistol cartridges, rifles or rifle cartridges.

Kentwood

Sec. 11-4007 same as Section 95 Abbeville.

Lafayette City

B. No person shall sell at wholesale or retail, pistols or pistol cartridges, blank pistols or blank pistol cartridges, or any rifles, except rifles of .22 and .25 calibers or any cartridges, except rifle cartridges of .22 and .25 calibers, without first obtaining the license required by the State of Louisiana in Title 47, Section 282 and Section 283, and without first obtaining the license imposed by this Ordinance authorizing the sale of pistols, or pistol cartridges, blank pistols or blank pistol cartridges, rifles or rifle cartridges.

Lafayette Parish

B. No person shall sell, at wholesale or retail, pistols or pistol cartridges, blank pistols or blank pistol cartridges, or any rifles, except rifles of .22 and .25 calibers or any rifle cartridges, except rifle cartridges of .22 and .25 calibers, without first obtaining the license required in this Section or in Section 22 of this Ordinance, or without first obtaining the license which may be imposed by any municipal or parochial authority for the sale of pistols or pistol cartridges, blank pistols or blank pistol cartridges, rifles or rifle cartridges.

Lake Providence

Ordinance 1161

Section II. Illegal Carrying or Possession of Weapons: Illegal carrying or possession of weapons is: * * * * * 3. The receipt, possession, carrying, concealment, buying, selling or transferring, of any machine-gun, shotgun having a barrel of less than twenty (20) inches in length, rifle having a barrel of less than sixteen (16) inches in length, hand-grenade, gas-grenade, muffler or silencer, which has not been properly registered with the Louisiana Department of Safety.

Livingston

Section 11-4007 same as Section 95 Abbeville.

Mamou

Section 9.82.010 Unlawful sales to minors—Defined—Penalty. "Unlawful sale

to minors" is the selling or otherwise delivering for value by anyone over the age of seventeen years of * * * any firearm or other instrumentality customarily used as a dangerous weapon, to any person under the age of twenty-one years. Lack of the knowledge of the minor's age shall not be a defense.

* * * * *

Section 9.86.010 Defined—Nonapplicability—Penalty. A. "Illegal carrying of weapons" is: * * * 2. The ownership, possession, custody or use of any firearm or other instrumentality customarily used as a dangerous weapon at any time by an enemy alien; * * *

Mandeville

Section 11-65 same as 9.82.010 Mamou.
Section 11-66 same as 9.86.010 Mamou.

Many

59. Unlawful sales to minors and purchases by minors. Unlawful sales to minors is the selling, or otherwise delivery for value by anyone over the age of seventeen of * * * any firearm or other instrumentality customarily used as a dangerous weapon, to any person under the age of twenty-one. Lack of knowledge of the minors' age shall not be a defense.

Monroe

10-20. Dangerous weapons—Illegally carrying. It shall be unlawful for any person to commit the act of the illegal carrying of weapons. Illegal carrying of weapons is:

(2) The ownership, possession, custody or use of any firearm, or other instrumentality customarily used as a dangerous weapon, at any time by an enemy alien.

Montgomery

Section 1. same as Section 95 Abbeville.

Morgan City

Sec. 10-11. * * * sale of firearms to minors. It shall be unlawful for any person to sell, offer, or expose for sale within the corporate limits of the city, * * * to sell firearms to minors.

New Orleans

Section 67-2.1. Illegal possession or ownership of firearms or other dangerous instruments by convicted felons. It shall be unlawful for any convicted felon to possess or own any firearm or other instrument, customarily used or intended for use as a dangerous weapon. * * *

Section 67-7. Unlawful to sell, etc., certain weapons to persons under eighteen. It shall be unlawful for any person to sell, lease or give through himself or any other person any pistol, * * * toy pistol for which cartridges are used or other dangerous weapon which may be carried concealed to any person under the age of eighteen years.

* * * * *

Article II. Regulation of Sale of Firearms.

Section 67-10. Sale of pistols, etc., forbidden except upon compliance with article. It shall be unlawful for any person in the city to sell, give away, lend, exchange or otherwise dispose of or transfer in the city or for any person to purchase, borrow, accept as a gift, exchange or otherwise receive any pistol, revolver, automatic pistol or firearm whatsoever capable of being concealed on the person, except as authorized by this article.

Section 67-11. Application to purchase articles referred to in preceding section. Prior to the actual delivery or transfer of any of the articles mentioned in the preceding section, the person desiring to obtain any such article shall file a written application, in duplicate, with the Superintendent of Police of the city. Such application shall be signed in duplicate and state the residence and business address of the applicant and his occupation, age, color, sex, height, weight, color of hair, eyes, scars and other visible markings and give a full description of the article, whether new or used, with the names, letters, numbers and other identification marks and style thereof and the name of the person from whom such article is to be obtained. The Superintendent of Police may also require the fingerprints of the applicant as part of such application.

Section 67-12. Oath that applicant has not been charged with felony. Each applicant for a permit under the provisions of this article shall be required to swear under oath, before the Superintendent of Police or any other officer of the Department of Police, designated by the Superintendent, that he has not been previously charged with or convicted of any felony.

* * * * *

Section 67-17. Unlawful to obtain for or transfer to another, etc. It shall be unlawful for any person to obtain the transfer of any article, for the account of, or to sell, give away, lend, exchange or otherwise dispose of any such article to another person and it shall be unlawful for any person to employ or procure anyone to apply for or obtain the transfer of any such article or to aid and abet in such violation of this article.

New Roads

2. same as Section 95 Abbeville.

* * * * *

Oakdale

Sec. 8-67. Unlawful sales to minors. (a) Unlawful sales to minors is the selling, or otherwise delivering for value, by anyone over the age of seventeen (17) of * * * any firearm or other instrumentality customarily used as a dangerous weapon, to any person under the age of twenty-one (21). Lack of the knowledge of the minor's age shall not be a defense.

Sec. 8-68. Illegal carrying of weapons. (a) Illegal carrying of weapons is: * * * (2) The ownership, possession, custody or use of any firearm or other instrumentality customarily used as a dangerous weapon, at any time by an enemy alien;

* * * * *

Sec. 23-261. Retail dealers in pistols, rifles, and cartridges. (a) Every retail dealer in pistols or pistol cartridges, blank pistols or blank pistol cartridges, or any rifles, except rifles of .22 and .25 calibers, or any rifle cartridges, except rifle cartridges of .22 and .25 calibers, shall pay an annual license tax on the said business.

* * * * *

(c) No person shall sell, at wholesale or retail, pistols or pistol cartridges, blank pistols or blank pistol cartridges, or any rifles except rifles of .22 and .25 calibers or any rifle cartridges, except rifle cartridges of .22 and .25 calibers, without first obtaining the license required in this section or section 23-260.

Opelousas

Sec. 18-8. (Minors)—Sale of weapons to. It shall hereafter be unlawful for any person to sell, barter, lend, give, or deliver any pistol, dirk, or other deadly weapon to any minor under seventeen (17) years of age.

It shall further be unlawful for any person to sell, barter, lend, give or deliver any pistol, dirk, or other deadly weapon to any minor between seventeen (17) and twenty-one (21) years of age without the express written approval of one of the parents, or legal guardian of such a minor.

Patterson

Section 15-40. same as Section 95 Abbeville.

Plaquemine

Sec. 11-69. Unlawful sales to minors and purchases by minors. Unlawful sales to minors is the selling, or otherwise delivering for value by anyone over the age of seventeen (17) of * * * any firearm or other instrumentality customarily used as a dangerous weapon, to any person under the age of twenty-one (21) and shall be unlawful. Lack of the knowledge of the minor's age shall not be a defense.

Sec. 11-70. Illegal carrying of weapons. Illegal carrying of weapons is: * * * * * (b) The ownership, possession, custody or use of any firearm or other instrumentality customarily used as a dangerous weapon, at any time by an enemy alien: * * * * *.

Rodessa

Article 61. same as Section 95 Abbeville.

Springhill

Article 61. same as Section 95 Abbeville.

Vernon Parish

Ordinance 4 of 1974

Section I. It shall be unlawful for any business, firm or corporation, to sell, lease or give, individually or by agent, any pistol, * * * toy pistol for which cartridges are used, or other dangerous weapon which may be carried concealed, to any person under the age of eighteen.

Section II. It shall be unlawful for any business, firm or corporation, in Vernon Parish to sell, give away, lend, exchange or otherwise dispose of or transfer in Vernon Parish or for any business, firm or corporation to purchase, borrow, accept as a gift, exchange or otherwise receive any pistol, revolver, automatic pistol or firearm whatsoever capable of being concealed on the person, except as authorized by this article.

Section III. Prior to the actual delivery or transfer of any of the articles mentioned in the preceding section, the business, firm or corporation desiring to obtain any such article shall file a written application, in duplicate, with the Sheriff of Vernon Parish. The Sheriff of Vernon Parish may also require the fingerprints of the applicant as part of such application.

Section VI. The transfer under applications to purchase articles under this article shall be made only between the hours of 9:00 A.M. and 5:00 P.M. on the following day stated therefor in the approved application and such transfer shall be openly and publicly made and only to the person signing the application.

Section VIII. The word "business" in the foregoing article, will apply to any person or individual who is conducting a business of selling or distributing guns or other weapons, provided, however, that this will not apply to a private transaction as between two individuals, neither of whom is engaged in the business or enterprise of selling guns or other weapons.

Vinton

Article 59. Unlawful sales to minors and purchases by minors. Unlawful sales to minors is the selling, or otherwise delivering for value by anyone over the age of seventeen * * * any firearm or other instrumentality customarily used as a dangerous weapon, to any person under the age of eighteen. Lack of the knowledge of the minor's age shall not be a defense. * * * * *

Article 60. Illegal carrying of weapons. Illegal carrying of weapons is: * * * * *

(2) The ownership, possession, custody or use of any firearm or other instrumentality customarily used as a dangerous weapon, at any time by an enemy alien; * * * * *.

Walker

Article 60 same as Section 95 Abbeville.

Waterproof

* * * * *

(2) same as Section 95 Abbeville.

Welsh

Sec. 16-69. Unlawful sales to and purchases by minors. Unlawful sales to minors is the selling, or otherwise delivering for value by anyone over the age of seventeen (17) * * * any firearm or other instrumentality customarily used as a dangerous weapon, to any person under the age of twenty-one (21). Lack of the knowledge of the minor's age shall not be a defense.

Westwego

Section 15:46. Illegal carrying of weapons * * * B. Illegal carrying of weapons is: * * * 2. The ownership, possession, custody or use of any firearm or other instrumentality customarily used as a dangerous weapon, at any time by an enemy alien; or * * *

* * * * *

Section 15:168. Sale or distribution of guns, permits required. A. It shall be unlawful for any person, firm or corporation to sell, offer for sale, assign, pledge, lease, loan, give away, transfer or purchase any pistol revolver or rifle of whatever nature or kind, without first having obtained from the Sheriff of the Parish of Jefferson, Permit Department, a permit therefor.

B. Any person, firm or corporation interested in the sale, assignment, pledge, lease, loan, gift, transfer or purchase of any pistol, revolver or rifle, as aforesaid, shall file written application in duplicate on application forms issued in blank for these purposes by the permit department of the Sheriff of the Parish of Jefferson. * * * * *

Winnfield

* * * * *

Article 5. Unlawful sales to minors and purchases by minors. Unlawful sales to minors is the selling, or otherwise delivering for value by anyone over the age of seventeen of * * * any firearm or other instrumentality customarily used as a dangerous weapon, to any person under the age of twenty-one. Lack of knowledge of the minor's age shall not be a defense.

* * * * *

Winnsboro

Sec. 16-76. Unlawful sales to minors and purchases by minors. Unlawful sales to minors is the selling, or otherwise delivering for value by anyone over the age of seventeen (17) of any firearm or other instrumentality customarily used as a dangerous weapon, to any person under the age of eighteen (18). Lack of the knowledge of the minor's age shall not be a defense. * * *

* * * * *

Sec. 16-110. Illegal carrying of weapons. Illegal carrying of weapons is: * * * (2) The ownership, possession, custody or use of any firearm or other instrumentality customarily used as a dangerous weapon, at any time by an enemy alien; or * * *

* * * * *

Maine

State Law

Me. Rev. Stat. Ann.

Title 12

Sec. 2455. Silencers; * * * * *No person shall sell, offer for sale, use or have in his possession any gun, pistol or other firearms, fitted or contrived with any device for deadening the sound of explosion. * * * * *

Title 15

Sec. 391. Definitions. The following words and phrases when used in this chapter are defined as follows: "Pistol," "revolver" and "firearm" mean a weapon capable of being concealed upon the person and shall include all firearms having a barrel of less than 12 inches in length.

Sec. 392. Application. The penal provisions of section 393 shall not apply to any person employed as a law enforcement officer or employed by a watch, guard or patrol agency licensed under Title 32, chapter 55-A.

Sec. 393. Possession of firearms prohibited for certain persons.

1. Possession prohibited. No person who has been convicted of any crime, under the laws of the United States, the State of Maine or any other state, which is punishable by one year or more imprisonment or any other crime which was committed with the use of a dangerous weapon or of a firearm against a person, except for a violation of Title 12, chapter 319, subchapter III, shall own, have in his possession or under his control any firearm, unless such a person has obtained a permit under this section.

* * * * *

7. Definitions. For the purposes of this section, the term "dangerous weapon" shall have the same meaning as in Title 17-A, section 2, subsection 9 and the term "firearm" shall have the same meaning as in Title 17-A, section 2, subsection 12-A.

Sec. 455. Record of sales of firearms. No dealer shall sell, let or loan any firearm to any person without first recording in a book kept for the purpose the name or make, calibre and number, if any, of said firearm, and the name and address of the purchaser or recipient of said firearm. Said record shall be made before said firearm is delivered, * * *

Title 17-A

Criminal Code

Sec. 2. Definitions. As used in this code, unless a different meaning is plainly required, the following words and variants thereof have the following meanings. * * * * *

12-A. "Firearm" means any weapon, whether loaded or unloaded, which will expel a projectile by the action of an explosive and includes any such weapon commonly referred to as a pistol, revolver, rifle, gun, machine gun or shotgun. Any weapon which can be readily made into a firearm by the insertion of a firing pin, or other similar thing in the actual possession of the actor or an accomplice, is a firearm.

Sec. 554. Endangering the welfare of a child.

1. A person is guilty of endangering the welfare of a child if * * * he knowingly sells, furnishes, gives away or offers to sell, furnish or give away to such a child (under the age of 16 years), * * * firearms or ammunition; * * *

2. It is an affirmative defense to prosecution under this section that:

* * *

B. The defendant was a person acting pursuant to authority expressly or impliedly granted in Title 12.

Sec. 1051. Possession of machine gun

1. A person is guilty of possession of a machine gun if, without authority to do so, he knowingly possesses a machine gun.

2. As used in this chapter, "machine gun" means a weapon of any description, by whatever name known, loaded or unloaded, which is capable of discharging a number of projectiles in rapid succession by one manual or mechanical action on the trigger or firing mechanism.

3. Possession of a machine gun is a Class D crime.

Sec. 1052. Right to possess, carry or transport machine gun. Any law enforcement officer of the State of Maine, any law enforcement officer of another state or a territory of the United States, members of the Armed Forces, Maine National Guard and Maine State Guard may possess a machine gun if the possession or carrying of such weapon is in the discharge of his official duties and has been authorized by his appointing authority.

Machine guns manufactured, acquired, transferred or possessed in accordance with the National Firearms Act, as amended, shall be exempt from this chapter.

Title 25

Sec. 2041. Purchase by Maine residents in another state. Residents of the State may purchase rifles and shotguns in a state contiguous to the State of Maine, provided that such residents conform to the applicable provisions of the Gun Control Act of 1968, and regulations thereunder, as administered by the United States Secretary of the Treasury, and provided further that such residents conform to the law applicable to such purchase in the State of Maine and in the contiguous state in which the purchase is made.

Bangor

Ch. VII; Art. 5

1.4 Sale of Cartridge to Children under Sixteen. No person shall sell to any child under the age of sixteen years, without the written consent of a parent or guardian of such child, any cartridge of fixed ammunition or blank cartridge, or any gun, pistol or other mechanical contrivance arranged for the explosion of such cartridge.

Biddeford

Sec. 24-17. Defined. For the purpose of this article a "hand gun" shall mean a firearm having a barrel length of less than fifteen (15) inches and designed and intended to be fired with one (1) hand, using fixed ammunition.

Sec. 24-18. Conveyances to conform to article. No person in the city shall sell, give or deliver to any person any hand gun except in accordance with the provisions of this article.

Sec. 24-19. Purchaser to sign certificate; * * * Any person desiring to sell, give or deliver a hand gun shall require the person seeking to purchase or obtain such hand gun to sign a certificate [contact local authorities for required contents]* * *

* * * * *

Sec. 24-20. Penalty for signing certificate containing false information. Any person who signs a certificate required in section 24-19 containing false information for the purpose of complying with the provisions of this article shall be guilty of a violation of this article and subject to a fine of not more than one hundred dollars ($100.00).

Sec. 24-21. Police chief to examine purchaser's record, report results. Any person desiring to sell, give or deliver a hand gun shall deliver the certificate required in section 24-19 to the chief of police at police headquarters; and the chief shall have seventy-two (72) hours after receipt of the certificate to make an examination of the records contained in the police department and in state police headquarters at Augusta, Maine * * *.

Sec. 24-22. When selling, giving, delivering hand gun a violation. Any person selling, giving or delivering a hand gun to any person before the expiration of the seventy-two (72) hour examination period required by section 24-21 or when notified within such period by the chief of police that a person signing the certificate required by section 24-19 has been convicted of, or is under complaint

or indictment for, assault, assault and battery or a felony; is a user of or addicted to marijuana or any depressant, stimulant or narcotic drug; or has been judged by a court as a mental defective or has been committed to, or voluntarily has been a patient at, a mental institution, shall be guilty of a violation of this article and subject to a fine of not more than one hundred dollars ($100.00).

Cape Elizabeth

1. No person, firm, or corporation in the Town of Cape Elizabeth shall sell and deliver to any person, or shall give or lend to any person except members of the household or upon the grounds of and for use at an established target range, any hand gun as hereinafter defined, except in accordance with the provisions of the following sections.

2. A hand gun shall mean a firearm having a barrel length of less than fifteen inches and designed and intended to be fired with one hand, using fixed ammunition.

3. Such person, firm, or corporation shall require the person seeking to purchase or obtain such hand gun to sign a certificate [contact local authorities for required contents]* * *

4. Such person, firm, or corporation shall deliver such certificate to the Chief of Police of the Town of Cape Elizabeth, or his duly authorized representative, at Police Headquarters, and said Chief of Police or his duly authorized representative shall have seven calendar days after delivery of said certificate to make an examination of the records contained in the police department of the Town of Cape Elizabeth, in the police department of any other municipality listed as an address on such certificate, and in State Police Headquarters at Augusta, Maine * * *

5. Any person, firm, or corporation selling and delivering, giving or lending a hand gun to any person without complying with the provisions of this Ordinance, or before the expiration of said seven calendar days or when notified within said period by the Chief of Police or his duly authorized representative [that the person is not eligible to receive a handgun] * * * shall be guilty of a violation of this ordinance and subject to a fine of not more than $100.00 * * *.

6. Any person who signs a certificate containing false information for the purpose of complying with the provisions of this Ordinance, or who accepts a hand gun without complying with the provisions of this Ordinance, shall be guilty of a violation of this Ordinance and subject to a fine of not more than $100.00 * * *.

Falmouth

1. Definition. No person, firm, or corporation in the Town of Falmouth shall sell, give, or in any manner transfer title to any person any hand gun as hereinafter defined, except in accordance with the provisions of the following sections.

2. Hand Gun. A hand gun shall mean a firearm having a barrel length of less than fifteen inches and designed and intended to be fired with one hand, using fixed ammunition.

3. Certificate. Such person, firm, or corporation shall require the person seeking to purchase or obtain such hand gun to sign a certificate [contact local authorities for required contents] * * *

4. Waiting period. Such person, firm, or corporation shall deliver such certificate to the Chief of Police of the Town of Falmouth, or his duly authorized representative, at Police Headquarters, and said Chief of Police or his duly authorized representative shall have 72 hours after receipt of said certificate to make an examination of the records contained in the Police Department of the Town of Falmouth and in the State Police Headquarters at Augusta, Maine * * *

5. Penalty for selling. Any person, firm, or corporation selling, giving, or delivering a hand gun to any person before the expiration of said 72 hours or when notified within said period by the Chief of Police, or his authorized representative, that [the person is not eligible to receive a handgun] * * * shall be guilty of a violation of this ordinance and subject to a fine of not more than $100.00.

Lewiston

Sec. 28-1. Sale of weapons to minors prohibited; placard required. (a) It shall be unlawful for any person in the city to sell or offer for sale any pistol, rifle, * * * gun, * * * or any other weapon of like kind to any child under the age of sixteen (16) years.

(b) In any establishment in the city wherein any pistol, rifle, * * * gun, * * * or any other weapon of like kind is offered for sale, there shall be conspicuously posted in such establishment by the person in charge of the operation of such establishment a placard or notice setting forth the provisions of this section. * * *

* * * * *

Article II. Hand Guns

* * * * *

Sec. 28-29. Defined. For the purpose of this article, a hand gun shall mean a firearm having a barrel length of less than fifteen (15) inches and designed and intended to be fired with one (1) hand, using fixed ammunition, except antique hand guns as defined by federal gun law.

* * * * *

Sec. 28-32. Conveyance to conform to regulations. No person in the city shall sell, rent or exchange to any person any hand gun, except in accordance with the provisions of this article.

* * * * *

Sec. 28-34. Police to examine purchaser's record. The person proposing to sell, rent or exchange a hand gun shall deliver to the police department the application required by this article, upon which shall be endorsed the time of receipt by the officer receiving the application. Upon receipt of the application, the police department shall, as soon as possible, but within seventy-two (72) hours thereafter, make an examination of its records, the records of the state police and the records of such other law enforcement agencies * * * [to determine if the applicant is eligible to receive a hand gun]

Sec. 28-35. Disposition prohibited pending investigation, after notification of bad record; notification procedure. No person shall sell, rent or exchange any hand gun to an applicant during the period of investigation required by this article or thereafter if notified during such period by the police department that the applicant [is not eligible to receive a hand gun] * * * Said notification shall be delivered to the person proposing to sell, rent or exchange the hand gun by an officer of the police department, obtaining at the time of delivery a receipt or acknowledgment of the notification and the time and date received, whenever possible.

* * * * *

Portland

Section 318.1 No person, firm, or corporation in the City of Portland shall sell, give, or deliver to any person any hand gun as hereinafter defined, except in accordance with the provisions of the following sections.

Section 318.2 A hand gun shall mean a firearm having a barrel length of less than fifteen inches and designed and intended to be fired with one hand, using fixed ammunition.

Section 318.3 Such person, firm, or corporation shall require the person seeking to purchase or obtain such hand gun to sign a certificate * * *.

Section 318.4 Such person, firm, or corporation shall deliver such certificate to the Chief of Police of the City of Portland, or his duly authorized representative, at Police Headquarters, and said Chief of Police or his duly authorized representative shall have 72 hours after receipt of said certificate to make an examination of the records contained in the Police Department of the City of Portland

and in State Police Headquarters at Augusta, Maine * * *.

Presque Isle

20. Sale and use of firearms. A. No person shall sell to any child under the age of sixteen years, without the written consent of a parent or guardian of such child, any cartridge, or any gun, pistol or other mechanical contrivance arranged for the explosion of such cartridge.

South Portland

Sec. 26-4. Certain weapons not to be purchased from, furnished to minors, etc. No person shall purchase from, or sell, loan or furnish any weapon in which any explosive substance can be used to any person under the influence of alcohol or any narcotic drug, stimulant or depressant, or to any person in a condition of agitation and excitability, or to a minor under the age of eighteen (18) years.

Sec. 26-22. Person receiving hand gun to sign certificate; contents of certificate. A person selling, giving or delivering a hand gun to any person shall require the person seeking to purchase or obtain such firearm to sign a certificate [contact local authorities for required contents] * * *

Sec. 26-24. Duty to deliver certificate to police; police to conduct investigation, report results. (a) A person proposing to sell, give or deliver a hand gun to another person shall deliver the certificate referred to in section 26-22 to the chief of police, or his duly authorized representative, at police headquarters. The chief or his duly authorized representative shall have seven (7) days after receipt of the certificate to make an examination of the records contained in the police department of the city and in the state police headquarters in Augusta, Maine, and such other appropriate records [to determine if the applicant is eligible to receive a hand gun] * * *

(b) The chief of police or his duly authorized representative may waive the seven (7) day waiting period described in subsection (a) by written endorsement to that effect on the certificate.

Sec. 26-25. When disposition a violation; penalty. Any person selling, giving or delivering a hand gun to any person before the expiration of the seven (7) days referred to in section 26-24, or failing to complete the certificate referred to in section 26-22 and deliver it to the chief of police, or when notified within said period by the chief, or his authorized representative, that a person signing the certificate [is not eligible to receive a hand gun] * * * shall be guilty of a violation of this article and subject to a fine of not more than one hundred dollars ($100.00), in addition to any other penalties which this chapter may impose.

Westbrook

24-2. Toy guns, cannons, etc., not to be sold, * * * railroad excepted. No person shall at any time sell or keep for sale * * * any toy pistol, toy gun, toy cannon or cane that can be used to fire a blank cartridge or potash and sulphur pellet, any fire balloon or blank cartridge. This section shall not apply to the use of signal torpedoes by railroads in the operation of their trains, to paper cap pistols or paper caps.

24-14. Defined. A handgun shall mean a firearm having a barrel length of less than fifteen (15) inches and designed and intended to be fired with one hand, using fixed ammunition.

24-15. Disposition regulated. No person in the city shall sell, give or deliver to any person any handgun as hereinbefore defined, except in accordance with the provisions of the following sections.

24-16. Purchaser, etc., to sign certificate; contents; * * *. (a) A person selling, giving or delivering a handgun to any person shall require such person to sign a certificate [contact local authorities for required contents] * * *

24-17. Police chief to run investigation on purchasers. One disposing of a handgun shall deliver the certificate required by the preceding section to the chief of police at police headquarters, and the chief shall have seven (7) days after receipt of such certificate to make an examination of the records contained in the police department and in the state police headquarters, in Augusta, Maine, or other departments, [to determine if the applicant is eligible to receive a hand gun] * * * and to report such findings to the person filing such certificate.

24-18. Conveyance prior to investigation, when knowing purchaser's defects. Any person selling, giving or delivering a handgun to any person before the expiration of the seven (7) day period referred to in section 24-17 or when notified within such period by the chief of police that a person signing such certificate [is not eligible to receive a hand gun] * * * shall be guilty of a violation * * *

Maryland

State Law

The Ann. Code of Md.

27 Sec. 372. Definitions. "Machine gun" as used in this subtitle, means a weapon, of any description, by whatever name known, loaded or unloaded, from which more than one shot or bullet may be automatically discharged from a magazine, by a single function of the firing device.

"Crime of violence" applies to and includes any of the following crimes or an attempt to commit any of the same, namely, murder of any degree, manslaughter, kidnapping, rape in any degree, mayhem, assault with intent to do great bodily harm, assault with intent to murder, assault with intent to rape, robbery, burglary, housebreaking, breaking and entering and larceny.

"Person" applies to and includes firm, partnership, association or corporation.

27 Sec. 373. Use of machine gun for crime. Possession or use of a machine gun in the perpetration or attempted perpetration of a crime of violence is hereby declared to be a felony punishable by imprisonment in the State penitentiary for a term of not more than twenty years.

27 Sec. 374. Use of machine gun for aggressive purpose. Possession or use of a machine gun for offensive or aggressive purpose is hereby declared to be a crime punishable by imprisonment in the State penitentiary for a term of not more than ten years.

27 Sec. 375. What constitutes aggressive purpose. Possession or use of a machine gun shall be presumed to be for offensive or aggressive purpose:

(a) When the machine gun is on premises not owned or rented, for bona fide permanent residence or business occupancy, by the person in whose possession the machine gun may be found; or

(b) When in the possession of, or used by, an unnaturalized foreign-born person, or a person who has been convicted of a crime of violence in any court of record, state or federal, of the United States of America, its territories or insular possessions; or

(c) When the machine gun is of the kind described in Sec. 379 and has not been registered as in said section required; or

(d) When empty or loaded shells which have been used or are susceptible of being used in the machine gun are found in the immediate vicinity thereof.

27 Sec. 376. Presence prima facie evidence of use. The presence of a machine gun in any room, boat, or vehicle shall be evi-

dence of the possession or use of the machine gun by each person occupying the room, boat, or vehicle where the weapon is found.

27 Sec. 377. Exceptions. Nothing contained in this subtitle shall prohibit or interfere with:

(1) The manufacture for, and sale of, machine guns to the military forces or the peace officers of the United States, the several states or of any political subdivision thereof, or the transportation required for that purpose;

(2) The possession of a machine gun for scientific purpose; or the possession of a machine gun not usable as a weapon and possessed as a curiosity, ornament, or keepsake;

(3) The possession of a machine gun for a purpose manifestly not aggressive or offensive.

27 Sec. 378. Manufacturer's register; inspection of stock. Every manufacturer shall keep a register of all machine guns manufactured or handled by him. This register shall show the method and serial number, date of manufacture, sale, loan, gift, delivery or receipt, of every machine gun, the name, address, and occupation of the person to whom the machine gun was sold, loaned, given or delivered, or from whom it was received; and the purpose for which it was acquired by the person to whom the machine gun was sold, loaned, given or delivered, or from whom received. Upon demand every manufacturer shall permit any marshal, sheriff or police officer to inspect his entire stock of machine guns, parts, and supplies therefor, and shall produce the register, herein required, for inspection. A violation of any provision of this section shall be punishable by a fine of not more than one hundred dollars.

27 Sec. 379. Registration of machine guns. Every machine gun now in this State shall be registered with the Superintendent of the Maryland State Police, on June 1, 1933, and annually thereafter. If acquired hereafter it shall be registered within 24 hours after its acquisition. Blanks for registration shall be prepared by the Superintendent of the State Police and furnished upon application. To comply with this section the application as filed must show the model and serial number of the gun, the name, address and occupation of the person in possession, and from whom and the purpose for which the gun was acquired. The registration data shall not be subject to inspection by the public. Any person failing to register any gun as required by this section shall be presumed to possess the same for offensive or aggressive purpose.

* * * * *

27 Sec. 406. Sale, etc., of deadly weapon or ammunition therefor to minor; exceptions. It shall be unlawful for any person, be he licensed dealer or not, to sell, barter or give away any firearms whatsoever, or other deadly weapons or any ammunition therefor, to any minor under the age of eighteen years, except with the express permission of a parent or guardian of such minor. Any person violating this section shall on conviction thereof pay a fine of not less than fifty nor more than two hundred dollars, together with the costs of prosecution; and upon failure to pay said fine and costs shall be committed to jail and confined therein until such fine and costs are paid, or for the period of sixty days, whichever shall first occur, provided, however, that the provisions of this section shall not apply to a member of any organized militia in Maryland, when said member is engaged in supervised training, marksmanship activities or any other performance of his official duty, and provided further that none of the restrictions or limitations contained herein shall apply to any adult or qualified supervisor or instructor of a recognized organization engaged in the instruction of marksmanship.

27 Sec. 441. Definitions. (a) As used in this subtitle—

(b) The term "person" includes an individual, partnership, association or corporation.

(c) The term "pistol or revolver" means any firearm with barrel less than twelve inches in length, including signal, starter, and blank pistols.

(d) The term "dealer" means any person engaged in the business of selling firearms at wholesale or retail, or any person engaged in the business of repairing such firearms.

(e) The term "crime of violence" means abduction; arson; burglary, including common-law and all statutory and storehouse forms of burglary offenses; escape; housebreaking; kidnapping; manslaughter, excepting involuntary manslaughter; mayhem; murder; rape; robbery; and sodomy; or an attempt to commit any of the aforesaid offenses; or assault with intent to commit any other offense punishable by imprisonment for more than one year.

(f) The term "fugitive from justice" means any person who has fled from a sheriff or other peace officer within this State, or who has fled from any state, territory or the District of Columbia, or possession of the United States, to avoid prosecution for a crime of violence or to avoid giving testimony in any criminal proceeding.

27 Sec. 442. Sale or transfer of pistols and revolvers. (a) Right to regulate sales preempted by State. All restrictions imposed by the laws, ordinances or regulations of all subordinate jurisdictions within the State of Maryland on sales of pistols or revolvers are superseded by this section, and the State of Maryland hereby preempts the rights of such jurisdictions to regulate the sale of pistols and revolvers.

(b) Application to purchase or transfer. No dealer shall sell or transfer any pistol or revolver until after seven days shall have elapsed from the time an application to purchase or transfer shall have been executed by the prospective purchaser or transferee, in triplicate, and forwarded by the prospective seller or transferor to the Superintendent of the Maryland State Police.

(c) Same—Disposition of copies. The dealer shall promptly after receiving an application to purchase or transfer, completed in accordance with subsection (a) below, forward one copy of the same, by certified mail, to the Superintendent of the Maryland State Police. The copy forwarded to the said Superintendent shall contain the name, address, and signature of the prospective seller or transferor. The prospective seller or transferor shall retain one copy of the application for a period of not less than three years. The prospective purchaser or transferee shall be entitled to the remaining copy of the application.

(d) Same—Statement of penalties for supplying false information required. The application to purchase or transfer shall bear the following legend: "Any false information supplied or statement made in this application is a crime which may be punished by imprisonment for a period of not more than two years, or a fine of not more than $1,000, or both."

(e) Same—Information required. The application to purchase or transfer shall contain the following information:

(1) Applicant's name, address, occupation, place and date of birth, height, weight, race, eye and hair color and signature. In the event the applicant is a corporation, the application shall be completed and executed by a corporate officer who is a resident of the jurisdiction in which the application is made.

(2) A statement by the applicant that he or she:

(i) Has never been convicted of a crime of violence, in this State or elsewhere, or of any of the provisions of this subtitle.

(ii) Is not a fugitive from justice.

(iii) Is not an habitual drunkard.

(iv) Is not an addict or an habitual user of narcotics, barbiturates or amphetamines.

(v) Has never spent more than thirty consecutive days in any medical institution for treatment of a mental disorder or disorders, unless there is attached to the application a physician's certificate, issued within thirty days prior to the date of application, certifying that the applicant is capable of possessing a pistol or revolver without undue danger to himself or herself, or to others.

(vi) Is at least 21 years of age as required by federal law.

(vii) Has or has not submitted a prior application and, if so, when and where.

(3) The date and hour the application was delivered in completed form to the prospective seller or transferor by the prospective purchaser or transferee. * * * * *

(g) Sale prohibited to disapproved applicant; exceptions. No dealer shall sell or

transfer a pistol or revolver to an applicant whose application has been timely disapproved, unless such disapproval has been subsequently withdrawn by the Superintendent of the Maryland State Police and/or his duly authorized agent or agents or overruled by the action of the courts * * *.

(i) Notification of completed transaction; permanent record of sales and transfers. Any dealer who sells or transfers a pistol or revolver in compliance with this subtitle shall forward a copy of the written notification of such completed transaction, within seven days from the date of delivery of the said pistol or revolver, to the Superintendent of the Maryland State Police, whose duty it shall be to maintain a permanent record of all such completed sales and transfers of pistols and revolvers in the State. The notifications shall contain an identifying description of the pistol or revolver sold or transferred including its caliber, make, model, manufacturer's serial number, if any, and any other special or peculiar characteristics or marking by which the said pistol or revolver may be identified.

(j) Construction of section. Nothing in this section shall be construed to affect sales and/or transfers for bona fide resale in the ordinary course of business of a person duly licensed under Sec. 443 of this subtitle, or sales, transfer, and/or the use of pistols or revolvers by any person authorized or required to sell, transfer, and/or use such pistols or revolvers as part of his or her duties as a member of any official police force or other law enforcement agency, the armed forces of the United States, including all official reserve organizations, or the Maryland National Guard. * * * * *

27 Sec. 443. Pistol and revolver dealer's license. (a) Required. No person shall engage in the business of selling pistols or revolvers unless he lawfully possesses and conspicuously displays at his place of business, in addition to any other license required by law, a pistol and revolver dealer's license issued by the Superintendent of the Maryland State Police or his duly authorized agent or agents. Such license shall identify the licensee and the location of his place of business. One such license shall be required for each place of business where pistols or revolvers are sold.

* * * * *

(Contact Maryland State Police for additional information contained in Sec. 443 concerning fees for licenses to deal in pistols and revolvers, information required on applications for such license, prohibitions, denial procedure, appeals, etc.)

(f) Sales by disapproved applicants prohibited; exceptions.—No person shall engage in the business of selling pistols or revolvers whose application for a pistol and revolver dealer's license has been disapproved, unless such disapproval has been subsequently withdrawn by the Superintendent of the Maryland State Police and/or his duly authorized agent or agents or overruled by the action of the courts * * *.

27 Sec. 444. Obliterating, etc., identification mark or number. It shall be unlawful for anyone to obliterate, remove, change or alter the manufacturer's identification mark or number on any firearms. Whenever on trial for a violation of this section the defendant is shown to have or have had possession of any such firearms, such fact shall be presumptive evidence that the defendant obliterated, removed, changed or altered the manufacturer's identification mark or number.

27 Sec. 445. Restrictions on sale, transfer and possession of pistols and revolvers. (a) Right to regulate transfer and possession of pistols and revolvers preempted by State. All restrictions imposed by the laws, ordinances or regulations of all subordinate jurisdictions within the State of Maryland on possession or transfers by private parties of pistols and revolvers are superseded by this section and the State of Maryland hereby preempts the right of such jurisdictions to regulate the possession and transfer of pistols and revolvers.

(b) Sale or transfer to criminal, fugitive, etc. A dealer or person may not sell or transfer a pistol or revolver to a person whom he knows or has reasonable cause to believe has been convicted of a crime of violence, or of any of the provisions of this subtitle, or is a fugitive from justice, or is an habitual drunkard, or is addicted to or an habitual user of narcotics, barbiturates or amphetamines, or is of unsound mind, or to any person visibly under the influence of alcohol or drugs, or to any person under 21 years of age as required by federal law.

(c) Possession by criminal, fugitive, etc. It shall be unlawful for any person who has been convicted of a crime of violence, or of any of the provisions of this subtitle or who is a fugitive from justice or a habitual drunkard, or addicted to or an habitual user of narcotics, barbiturates or amphetamines, to possess a pistol or revolver.

27 Sec. 446. Sale, transfer, etc., of stolen pistol. It shall be unlawful for any person to possess, sell, transfer or otherwise dispose of any stolen pistol or revolver, knowing or having reasonable cause to believe same to have been stolen.

27 Sec. 447. Antique or unserviceable firearms excepted. The provisions of this subtitle shall not be construed to include any antique or unserviceable firearms sold or transferred and/or held as curios or museum pieces.

27 Sec. 481A. Purchase from licensed dealer in adjoining state. It shall be lawful for any Maryland resident to purchase a rifle or shotgun from a federally licensed gun dealer in an adjoining state provided the purchaser is eligible to purchase a rifle or shotgun under the laws of such state.

27 Sec. 481C. Short-barreled rifles and short-barreled shotguns.

(a) Definitions.—(1) In this section, the following words have the meanings indicated.

(2) "Rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(3) "Short-barreled shotgun" means a shotgun having one or more barrels less than 18 inches in length and any weapon made from a shotgun (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than 26 inches.

(4) "Short-barreled rifle" means a rifle having one or more barrels less than 16 inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon, as modified, has an overall length of less than 26 inches.

(5) "Shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(6) The terms short-barreled shotgun and short-barreled rifle do not include:

(i) Antique firearms as defined in Sec. 36F(a)(1) of this article [Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; and any replica of any such firearm if such replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.];

(ii) Any device which is neither designed nor redesigned for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; or

(iii) Any firearm which is incapable of discharging a shot by means of an explosive and incapable of being readily restored to a firing condition.

(b) Registration.—A person may not possess a short-barreled rifle or short-barreled shotgun unless the person has registered it with the United States government in accordance with United States statutes.

(c) Penalty.—Any person violating the provisions of this section is guilty of a misde-

manner and upon conviction is subject to a fine not exceeding $5,000 or imprisonment not exceeding five years, or both.

Annapolis

Sec. 17-8. Same—Register of persons purchasing firearms or ammunition. Each person engaged in the selling or exchanging of any firearms, except shotguns and air and cat rifles, or ammunition, shall keep a register of the name and address of the person purchasing any firearms, cartridges or other ammunition, noting the make, caliber and date of purchase. Such register shall at all times be open to the inspection of the police.

Sec. 17-9. Same—Sellers of firearms or ammunition to register with city clerk. Each person engaged in the selling or exchanging of any kind of firearms or ammunition within the city shall register his name and place of business with the city clerk.

Sec. 17-10. Same—Selling, giving, etc., firearms or ammunition to minor under eighteen. It shall be unlawful for any person, be he a licensed dealer or not, to sell, barter or give away any firearms whatsoever or other deadly weapons or any ammunition therefor to any minor under the age of eighteen years, except with the express and written permission of a parent or guardian of such minor.

The provisions of this section shall not apply to a member of any organized militia in the state, when such member is engaged in supervised training, marksmanship activities or any other performance of his official duty, and none of the restrictions or limitations contained herein shall apply to any adult or qualified supervisor or instructor of a recognized organization engaged in the instruction of marksmanship.

Baltimore City

Article 19

97. Definitions. (1) The term "person" includes an individual, partnership, association or corporation.

(2) The term "pistol or revolver" as used in this subtitle means any firearm with barrel less than twelve inches in length.

(3) The term "dealer" means any person engaged in the business of selling firearms at wholesale or retail, or any person engaged in the business of repairing such firearms.

(4) The term "crime of violence" means murder, manslaughter, rape, mayhem, kidnapping, burglary, housebreaking; assault with intent to kill, commit rape, or rob; assault with a dangerous weapon, or assault with intent to commit any offense punishable by imprisonment for more than one year.

(5) The term "fugitive from justice" means any person who has fled from a sheriff or other peace officer within this State, or who has fled from any State, Territory, or the District of Columbia, or possession of the United States, to avoid prosecution for a crime of violence or to avoid giving testimony in any criminal proceeding.

101. Convicts not to possess. No person who has been convicted in this State or elsewhere for a crime of violence, shall own a pistol or have one in his possession or under his control.

104. Delivery to minors and others. No person shall deliver a pistol to any person under the age of twenty-one (21), except members of the Maryland State Guard and members of the Maryland Minute Men, or to one who he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, an habitual drunkard, or of unsound mind, or to any person visibly under the influence of liquor or of drugs. It shall be unlawful for any person to make any loan, secured by a mortgage, deposit or pledge, of a pistol or revolver.

105. Order required for transfer. No seller, transferrer or donor shall deliver a pistol to the purchaser, transferee or donee thereof except upon a written order, dated not more than sixty days prior thereto, and signed by the Police Commissioner of Baltimore City, or his agent, * * *. Such application shall be executed in triplicate. Said Police Commissioner, or his agent, shall immediately make an investigation of the applicant and if such investigation does not disclose that such applicant is [ineligible to receive a pistol] * * * said Police Commissioner or his agent, at the expiration of five days after such application is filed, shall sign an order in triplicate (which order shall be attached to said application), authorizing the applicant to purchase, transfer or give away a pistol. * * *

106. False information. No person shall, in purchasing or otherwise securing delivery of a pistol, or in registering the same, give false information or offer false evidence of his identity.

Baltimore County

16-7. Purchase, sale, etc., in connection with minors. (a) It shall be unlawful for any person under the age of twenty-one years to purchase, trade or acquire in any other manner, or to use or possess, or to attempt to use or possess, any gun, pistol, rifle, shotgun or any other type of firearm, without having first complied with the provisions of this section. Before so acquiring, using or possessing, or attempting to acquire, use or possess, any such firearm, the possessor or user, or prospective possessor or user thereof, shall first file with the police bureau a statement of possession or use, which statement shall be retained by the police bureau. (Contact county authorities for required contents) * * *

(b) It shall be unlawful for any person to sell, give or in any manner transfer to any other person under the age of twenty-one years, any firearm unless the statements of acquisition, use or possession, or prospective acquisition, use or possession have been filed with the police bureau, as required herein.

(c) The provisions of this section shall not be construed to include any antique or unserviceable firearms sold or transferred or held as curios or museum pieces.

Capitol Heights

22. It shall be unlawful for any person, firm, or corporation, be he licensed dealer or not, to sell, barter, or give away any firearms, or ammunition whatsoever, or other deadly weapons, to any minor under the age of sixteen years.

Cheverly

Sec. 20-5. Supplying firearm materials or dangerous weapons to underage persons. It shall be unlawful for any person, licensed dealer or otherwise, to sell, barter or give away shotguns, rifles or any long guns whatsoever, or any ammunition, powder, shot or shells for any dangerous weapon, * * *, to any person under the age of eighteen (18) years. It shall be unlawful for any person, licensed dealer or otherwise, to sell, barter, or give away handguns of all types except those classified as antiques to any person under the age of twenty-one (21) years.

Cumberland

29-11

Firearms-Pistols, Revolvers, etc.—Permit Required:

"(a) No person shall sell, give or lend to any person within the City a revolver, pistol, or other small firearm, unless such person has a permit from the Chief of Police authorizing the possession of such revolver, pistol or other small firearm.

"(b) This section shall apply to all persons within the City, whether such persons are engaged in the business of buying and selling revolvers, pistols or other small firearms or not."

19-12

* * * * *

"No person shall have possession of a revolver, pistol or other small firearm without such permit."

District Heights

6. It shall be unlawful for any child or children under the age of eighteen (18) years, to have in his possession whether for use or not, any shot-gun, rifle, pistol, firearm, * * * or any other fire-arm or missile propelling device, except and unless said child or children shall be engaging in "target practice." * * *

Eagle Harbor

Chap. 4. Sec. 6. It shall be unlawful for any person or persons to sell to any child or children under age of seventeen (17) years any firearms, gun powder or loaded cartridges * * *

Montgomery County

Sec. 57-1. Definitions. The following words and phrases shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section:

Crime of violence. Murder, voluntary manslaughter, rape, mayhem, kidnapping, robbery, burglary, housebreaking, arson, assault with intent to murder, ravish or rob, assault with a deadly weapon or assault with intent to commit any offense punishable by imprisonment for more than one year.

Fixed ammunition. Any ammunition composed of a projectile or projectiles, a casing and a primer, all of which shall be contained as one unit.

Fugitive from justice. Any person for whom criminal proceedings have been instituted, warrant issued or indictment presented to the grand jury, who has fled from a sheriff or other peace officer within this state, or who has fled from any state, territory, District of Columbia or possession of the United States, to avoid prosecution for crime of violence or to avoid giving testimony in any criminal proceeding involving a felony or treason.

Gun. Any firearm, rifle, shotgun, revolver, pistol, * * * or any similar mechanism by whatever name known which is designed to expel a projectile through a gun barrel by the action of any explosive * * *

Pistol or revolver. Any gun with a barrel less than sixteen inches in length that uses fixed ammunition.

Sell or purchase. Such terms and the various derivatives of such words shall be construed to include letting on hire, giving, lending, borrowing or otherwise transferring.

Subversive organization. Any "subversive organization" or "foreign subversive organization" as defined by article 85A, section 1, Annotated Code of Maryland, 1957.

Superintendent of police. The superintendent of police for the county or his duly authorized agents. * * *

Sec. 57-6. Transfer of rifles or shotguns to minors. It shall be unlawful for any person to give, sell, rent, lend or otherwise transfer any rifle or shotgun designed to use explosive ammunition or any projectile therefor within the county to a minor under the age of eighteen years; provided, that nothing contained within this section shall be construed to apply where the relationship of parent and child, guardian and ward or adult instructor and pupil exists between such person and the minor, or in connection with a regularly conducted or supervised program of marksmanship training or participation.

Sec. 57-7. Unlawful ownership or possession of firearms. It shall be unlawful for any person * * * to have a rifle or shotgun in his possession, custody, or control within the county, if:

(a) He is an unlawful user of or addicted to marijuana or any depressant or stimulant drug (as defined in section 201 (v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731 (a) of the Internal Revenue Code of 1954), or is under treatment for such addiction; or

(b) He has been convicted in any court of a crime of violence, or of trafficking in narcotics or of a criminal violation of any of the provisions of article 27, sections 441 to 448, subtitle "Pistols", Annotated Code of Maryland, 1957 or any Federal firearms control laws; or

(c) He is a fugitive from justice; or

(d) He has been confined to any hospital or institution for treatment of a mental disorder or for mental illness unless a licensed physician has by affidavit stated that he is familiar with the person's history of mental illness and that in his opinion the person is not disabled by such illness in a manner which should prevent his possessing a rifle or a shotgun; or

(e) He is a member of a subversive organization or of any Communist organization (as that term is defined in the Internal Security Act of 1950, as amended); or

(f) He has been confined to any hospital or institution for treatment of alcoholism unless a licensed physician has by affidavit stated that he is familiar with the person's history of alcoholism and that, in his opinion, the person is no longer suffering from a disability in such a manner which should prevent his possessing a rifle or shotgun.

Sec. 57-9. Exemptions from provisions of chapter. Nothing in this chapter shall apply to the purchase, ownership or possession of bona fide antique guns which are incapable of use as a gun. Further, nothing in this chapter shall be deemed to prohibit the owner or tenant of any land from carrying or discharging a firearm on his land for the purpose of killing predatory animals which prey upon, damage or destroy his property, livestock or crops.

Oakland

Section 1: Be it enacted and ordained by the Mayor and Town Council of Oakland, Maryland, that it shall be unlawful for any person, firms, or corporation, whether licensed dealers or not, to sell, barter or give away any firearms whatsoever, or other deadly weapons, or any blank cartridge pistols or firearms, or any ammunition for the same, to any minor under the age of sixteen years, within the corporate limits of the Town of Oakland, Maryland.

Prince Georges County

12-3. * * * (Firearms) —Sale, transfer, etc., to minors. It shall be unlawful for any person to give, sell, rent, lend or otherwise transfer any gun or weapon described in section 12-2. (any firearm, rifle, shotgun, revolver, pistol or any similar mechanism by whatever name known, which is designed to expel a projectile through a gun barrel by the action of any explosive) designed to use explosive ammunition or any projectile therefor, within the county to a minor under the age of seventeen years, except where the relationship of parent and child, guardian and ward or adult instructor and pupil exists between such person and the minor.

This section shall not apply to any pistols or revolvers regulated by sections 441 to 448, article 27, Annotated Code of Maryland, 1957.

Takoma Park

Sec. 8-51. Definitions; weapons. * * * (a) As used in this Division:

(1) Dangerous weapons shall mean any pistol, excluding those defined in Subsection (a)(2), sawed off shotgun, machine gun, * * *.

(2) Pistol or revolver means any firearm with a barrel less than twelve (12) inches in length, including signal, starter and blank pistols.

* * * * *

Sec. 8-52. Exceptions to Article. (a) This Division shall not apply to:

(1) An officer of this City or any surrounding county, municipality, or the State who is required or entitled to carry a weapon.

(2) Any conservator of the peace of any other state temporarily sojourning in this City, or

(3) Any special agent of a railway or representative of the United States Government whose duties include the carrying of a dangerous weapon.

(b) This Division shall not apply to any pistol or revolver as defined in Section 8-51, Subsection (a)(2), or to any other weapon regulated under State law.

Sec. 8-53. Sales permit required. (a) No person shall engage in or conduct the business of selling, bartering, hiring, lending, or giving any dangerous weapon without having previously obtained from the Clerk a special license authorizing the conduct of this business by this person. The Clerk is authorized to grant a license, without fee therefor, upon the filing with him by the applicant a bond, with sureties to be approved by the Mayor and Council, conditioned in a penal sum as they shall fix, to the City, for the compliance by the applicant with all the provisions of this Section.

(b) Upon any breech of the condition, the bond shall be put in suit by the City, for its benefit, and the Mayor and Council may revoke the license.

Sec. 8-57. Sales to minor prohibited. No person shall sell, barter, hire, lend, or give to any minor under the age of twenty-one (21) years any dangerous weapon.

Sec. 8-58. Sales of weapons to minors prohibited. (a) No person shall sell to any child or children under the age of eighteen (18) years, firearms, ammunition, gunpowder, gun caps, or other explosives in any quantity or quantities.

(b) Toy pistol caps as legalized under Maryland State Law shall not be construed to be prohibited under this Section.

Sec. 8-59. Minors not to possess weapons; exceptions. (a) No person under the age of eighteen (18) years shall carry or have in his or her possession upon any street, avenue, road alley, park or public space in the City any gun, pistol, rifle, * * * or other dangerous weapon of any character. Such weapons may be confiscated if found to be carried, or possessed, in violation of this Section;

(b) Nothing in this Section shall be so construed as to prohibit members of duly authorized military or law enforcement organizations from the proper use of their guns and other equipment as members of such organizations.

Upper Marlboro

Sec. 12-3. Same—sale, transfer, etc., to minors. It shall be unlawful for any person to give, sell, rent, lend or otherwise transfer any gun or weapon described in section 12-2, designed to use explosive ammunition or any projectile therefor, within the county to a minor under the age of seventeen years, except where the relationship of parent and child, guardian and ward or adult instructor and pupil exists between such person and the minor.

This section shall not apply to any pistols or revolvers regulated by sections 441 to 448, article 27, Annotated Code of Maryland, 1957.

Massachusetts

State Law

Ann. Laws of Mass.

Chapter 140

Sec. 121. Definitions; Application for License or Identification Card; Exceptions. In sections one hundred and twenty-two to one hundred and thirty-one F, inclusive, "firearm" shall mean a pistol, revolver or other weapon of any description loaded or unloaded, from which a shot or bullet can be discharged and of which the length of barrel is less than sixteen inches or eighteen inches in the case of a shotgun, and the term "length of barrel" shall mean that portion of a firearm, rifle, shotgun or machine gun through which a shot or bullet is driven, guided or stabilized, and shall include the chamber. A "machine gun" is a weapon of any description, by whatever name known, loaded or unloaded, from which a number of shots or bullets may be rapidly or automatically discharged by one continuous activation of the trigger, and includes a submachine gun. The term "ammunition" shall mean cartridges or cartridge cases, primers (igniter), bullets or propellent powder designed for use in any firearm, rifle or shotgun, The term "ammunition" shall also mean tear gas cartridges, chemical mace, or any device or instrument which contains or emits a liquid, gas, powder, or any other substance designed to incapacitate. The words "purchase" and "sale" include exchange; the word "purchaser" shall include exchanger; and the verbs "sell" and "purchase", in their different forms and tenses, shall include the verb exchange in its appropriate form and tense, and the term "gunsmith" as used in this chapter shall mean and include any person who engages in the business of repairing, altering, cleaning, polishing, engraving, blueing or performing any mechanical operation on any firearm, rifle, shotgun or machine gun. The word "conviction" shall mean a finding or verdict of guilt, or a plea of guilty whether or not final sentence is imposed. "Licensing Authority" shall mean the chief of police or the board or officer having control of the police in a city or town, or persons authorized by them.

Where the local licensing authority has the power to issue licenses or cards under this chapter, but no such authority exists, any resident or applicant may apply for such license or firearm identification card directly to the commissioner of the department of public safety and the commissioner shall for this purpose be the licensing authority.

Sections one hundred and twenty-two to one hundred and twenty-nine D, inclusive, and sections one hundred and thirty-one A, one hundred and thirty-one B and one hundred and thirty-one E shall not apply to

(A) any firearm, rifle or shotgun including any firearm, rifle or shotgun with matchlock, flintlock, percussion cap, or similar type of ignition system manufactured in or before eighteen hundred and ninety-eight;

(B) any replica, or any firearm, rifle or shotgun described in clause (A) if such replica (i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or (ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; and

(C) manufacturers or wholesalers of firearms, rifles, shotguns or machine guns.

Sec. 122. Licenses; * * * The chief of police or the board or officer having control of the police in a city or town, or persons authorized by them, may, after an investigation, grant a license to any person except an alien, a minor or a person who has been convicted of a felony or of the unlawful use, possession or sale of narcotic or harmful drugs, to sell, rent or lease firearms, rifles, shotguns or machine guns, or to be in business as a gunsmith. * * * * *

Sec. 122B. Licensee to Sell Ammunition. No person shall sell ammunition in the commonwealth unless duly licensed. The chief of police or the board or officer having control of the police in a city or town, or persons authorized by them, may grant a license to any person, except an alien, a minor or a person who has been convicted of a felony in any state or federal jurisdiction, or of the unlawful use, possession or sale of narcotic or harmful drugs, to sell ammunition. * * * * *

Sec. 123. Conditions of Licenses Granted under Sec. 122. A license granted under section one hundred and twenty-two shall be expressed to be and shall be subject to the following conditions: * * * * *

Second, That every licensee shall, before delivery of a firearm, rifle or shotgun, make or cause to be made a true, legible entry in a sales record book to be furnished by the commissioner of public safety and to be kept for that purpose, specifying the complete de-

scription of the firearm, rifle or shotgun, including the make, serial number, if any, type of firearm, rifle or shotgun, whether sold, rented or leased, the date of each sale, rental or lease, the license to carry firearms number or permit to purchase number and the identification card number in the case of a firearm or the identification card number or the license to carry firearms number in the case of a rifle or shotgun, the sex, residence and occupation of the purchaser, renter or lessee, and shall before delivery, as aforesaid, require the purchaser, renter or lessee personally to write in said sales record book his full name. * * * * *

Seventh, That no delivery of a firearm or of ammunition therefor shall be made to any minor nor to any person not having a license to carry firearms issued under the provisions of section one hundred and thirty-one nor shall any delivery of a rifle or shotgun or ammunition therefor be made to any person not having a license to carry firearms issued under the provisions of section one hundred and thirty-one or a firearm identification card issued under the provisions of section one hundred and twenty-nine B; provided, however, that delivery of a firearm by a licensee to a person possessing a valid permit to purchase said firearm issued under the provisions of section one hundred and thirty-one A and a valid firearm identification card issued under section one hundred and twenty-nine B may be made by the licensee to the purchaser's residence or place of business. Eighth, That no firearm shall be sold, rented or leased to a minor or a person who has not a permit then in force to purchase, rent or lease the same issued under section one hundred and thirty-one A, and a firearm identification card issued under the provisions of section one hundred and twenty-nine B, or unless such person has a license to carry firearms issued under the provisions of section one hundred and thirty-one; nor shall any rifle or shotgun be sold, rented or leased to a person who has not a valid firearm identification card as provided for in section one hundred and twenty-nine B, or has a license to carry firearms as provided in section one hundred and thirty-one; and that no machine gun shall be sold, rented or leased to any person who has not a license to possess the same issued under section one hundred and thirty-one. * * * Eleventh, That the second, fifth, eighth and ninth conditions shall not apply to a gunsmith with regard to repair or remodeling or servicing of firearms, rifles or shotguns unless said gunsmith has manufactured a firearm, rifle or shotgun for the purchaser, but said gunsmith shall keep records of the work done by him together with the names and addresses of his customers. * * * * *

Sec. 128. Penalty for Violation of License or Selling, etc., without License. Any licensee under a license described in section one hundred and twenty-three, and any employee or agent of such licensee, who violates any provision of said section required to be expressed in the second, fourth, sixth, seventh, eighth or ninth condition of said license, and except as provided in section one hundred and twenty-eight A, any person who, without being licensed as hereinbefore provided, sells, rents or leases, or exposes for sale, rental or lease, or has in his possession with intent to sell, rent or lease, a firearm, rifle, shotgun or machine gun, or is engaged in business as a gunsmith, shall for the first offense be punished by a fine of not less than five hundred nor more than one thousand dollars, and for any subsequent offense by imprisonment in the state prison for not more than ten years. Evidence that a person sold or attempted to sell a machine gun without being licensed under section one hundred and twenty-three shall, in a prosecution under this section, constitute prima facie evidence that such person is engaged in the business of selling machine guns.

Sec. 128A. Sales, etc., by Certain Unlicensed Residents Who Sell, etc., not More than Four Firearms, etc., within Calendar Year, etc. The provisions of section one hundred and twenty-eight shall not apply to any resident of the commonwealth who, without being licensed, as provided in section one hundred and twenty-two, sells, exposes for sale, or has in his possession with intent to sell not more than four firearms including rifles and shotguns, in any one calendar year; provided, however, the seller has a firearm identification card or a license to carry firearms, is an exempt person under the conditions of clauses (n), (o), (r) and (s) of the fourth paragraph of section one hundred and twenty-nine C, or is permitted to transfer ownership under the conditions of section one hundred and twenty-nine D and the purchaser has, in the case of sale or transfer of a firearm, a permit to purchase issued under the provisions of section one hundred and thirty-one A and a firearm identification card issued under section one hundred and twenty-nine B, or has such permit to purchase and is an exempt person under the provisions of section one hundred and twenty-nine C, or has been issued a license to carry firearms under the provisions of section one hundred and thirty of this chapter, or in the case of sale or transfer of a rifle or shotgun, the purchaser has a firearm identification card or a license to carry firearms or is an exempt person as hereinbefore stated; and provided, further, that such resident reports within seven days, in writing to the commissioner of public safety on forms furnished by said commissioner, the names and addresses of the seller and the purchaser of any such firearm, rifle or shotgun, together with a complete description of the firearm, rifle or shotgun, including the calibre, make and serial number and the purchaser's license to carry firearms number, permit to purchase number and firearm identification card number, permit to purchase number and identifying number of such documentation as is used to establish exempt person status in the case of a firearm or the purchaser's license to carry number or firearm identification card number or said document identity number, in the case of a rifle or shotgun.

Sec. 129B. Firearm identification cards; form; conditions; * * * Any person residing or having a place of business within the jurisdiction of the licensing authority or any person residing in an area of exclusive federal jurisdiction located within a city or town may submit to the licensing authority application for a firearm identification card, which such person shall be entitled to, unless the applicant (a) has within the last five years been convicted of a felony in any state or federal jurisdiction, or within that period has been released from confinement where such person was serving a sentence for a felony conviction, or (b) has been confined to any hospital or institution for mental illness, except where the applicant shall submit with the application an affidavit of a registered physician that he is familiar with the applicant's history of mental illness and that in his opinion the applicant is not disabled by such illness in a manner which should prevent his possessing a firearm, rifle or shotgun, or (c) has within the last five years been convicted of a violation of any state or federal narcotic or harmful drug law, or within that period has been released from confinement for such a conviction; or is or has been under treatment for or confinement for drug addiction or habitual drunkenness, except when he is deemed to be cured of such condition by a registered physician, he may make application for said card after the expiration of five years from the date of such confinement or treatment and upon presentation of an affidavit issued by said physician to the effect that the physician knows the applicant's history of treatment and that in his opinion the applicant is deemed cured, or (d) is at the time of the application under the age of fifteen, or (e) is at the time of the application fifteen years of age or over but under the age of eighteen, except where the applicant submits with his application a certificate of his parent or guardian granting the applicant permission to apply for a card, or (f) is an alien. * * * * *

Sec. 129C. Application of section 129B; ownership or possession of firearms or ammunition; * * *, exemptions, * * * No person, other than a licensed dealer or one who has been issued a license to carry a pistol or revolver or an exempt person as hereinafter described, shall own or possess any firearm, rifle, shotgun or ammunition unless he has been issued a firearm identification card by

the licensing authority pursuant to the provisions of section one hundred and twenty-nine B.

No person shall sell, give away, loan or otherwise transfer a rifle or shotgun or ammunition other than (a) by operation of law, or (b) to an exempt person as hereinafter described, or (c) to a licensed dealer, or (d) to a person who displays his firearm identification card, or license to carry a pistol or revolver. * * * * *

The provisions of this section shall not apply to the following exempted persons and uses: * * * * *

(b) Federally licensed firearms manufacturers or wholesale dealers, or persons employed by them or by licensed dealers, or on their behalf, when possession of firearms, rifles or shotguns is necessary for manufacture, display, storage, transport, installation, inspection or testing; * * * * *

(d) The regular and ordinary transport of firearms, rifles or shotguns as merchandise by any common carrier; * * * * *

(f) Possession of rifles and shotguns and ammunition therefor by nonresident hunters with valid nonresident hunting licenses during hunting season;

(g) Possession of rifles and shotguns and ammunition therefor by nonresidents while on a firing or shooting range; * * * * *

(l) The possession or utilization of any rifle or shotgun during the course of any television, movie, stage or other similar theatrical production, or by a professional photographer or writer for examination purposes in the pursuit of his profession, providing such possession or utilization is under the immediate supervision of a holder of a firearm identification card or a license to carry firearms; * * * * *

(o) Persons in the military or other service of any state or of the United States, and police officers and other peace officers of any jurisdiction, in the performance of their official duty or when duly authorized to possess them;

(p) Carrying or possession by nonresidents of so-called black powder rifles, shotguns, and ammunition therefor as described in such paragraphs (A) and (B) of the third paragraph of section 121, and the carrying or possession of conventional rifles, shotguns, and ammunition therefor by nonresidents who meet the requirements for such carrying or possession in the state in which they reside.

(q) Any nonresident from a contiguous state, provided he is eighteen years of age or over when acquiring a rifle or shotgun, or ammunition, provided it is removed from the commonwealth within fourteen days of such acquisition, and provided that he is in compliance with his own state law and has the proper firearms license if required, and provided, further, that in the case of a rifle or shotgun the seller notifies the chief of police where the purchaser resides of the transfer, description and serial number of the rifle or shotgun and the name, address and license number of the purchaser and seller;

(r) Possession by a veteran's organization chartered by the Congress of the United States or included in clause (12) of section five of chapter forty and possession by the members of any such organizations when on official parade duty or ceremonial occasions; * * * * *

Any person, exempted by clauses (o), (p) and (q), purchasing a rifle or shotgun or ammunition therefor shall submit to the seller such full and clear proof of identification, including shield number, serial number, military or governmental order or authorization, military or other official identification, other state firearms license, or proof of nonresidence, as may be applicable.

Nothing in this section shall permit the sale of rifles or shotguns or ammunition therefor to a minor under the age of eighteen in violation of section one hundred and thirty nor may any firearm be sold to a minor nor to any person who is not licensed to carry firearms under section one hundred and thirty-one unless he presents a valid firearm identification card and a permit to purchase issued under section one hundred and thirty-one A, or presents such permit to purchase and is a properly documented exempt person as hereinbefore described.

Neither the provisions of section one hundred and twenty-nine C nor the possession of a firearm identification card issued under section one hundred and twenty-nine B shall entitle any person to carry a firearm in violation of section ten of chapter two hundred and sixty-nine.

Sec. 130. Penalty for Selling, etc., Firearms, etc., to Minor or Alien. Whoever sells or furnishes a firearm or machine gun or ammunition therefor to any alien or to a minor or whoever sells or furnishes a rifle or shotgun or ammunition therefor to an alien who does not hold a permit card issued to him under section one hundred and thirty-one H, or to a minor eighteen years of age or older, except to such minor who being eighteen years of age or older displays either a license to carry firearms or a firearms identification card, and a sporting or hunting license issued to him in the case of ammunition, or displays such license to carry, or firearm identification card together with said sporting or hunting license, and the written consent of his parent or guardian that a rifle or shotgun be sold to him or furnished to him in the case of a rifle or shotgun, or to a minor under eighteen years of age, shall have his license to sell firearms, machine guns or ammunition revoked and shall not be entitled to apply for such a license for ten years from the date of revocation and shall be punished by a fine of not less than five hundred or more than one thousand dollars. * * * * *

Sec. 131. License to carry or possess firearms. The chief of police or the board or officer having control of the police in a city or town, or the commissioner of public safety, or persons authorized by them, respectively, after an investigation, may, upon the application of any person, including a minor eighteen years of age or older who has the written consent of his parent or guardian, residing or having a place of business within their respective jurisdiction, except an alien, a person who has been convicted of a felony or of the unlawful use, possession or sale of narcotic or harmful drugs or a minor under the age of eighteen, issue a license to such applicant to * * * possess and carry therein (within the commonwealth) a machine gun, * * * provided, however, that no minor shall be issued a license to possess and carry a machine gun. A license issued * * * to possess and carry a machine gun shall be for a period of five years, expiring on the anniversary of the applicant's date of birth occurring not less than four years but not more than five years from the date of issue. * * *

* * * * *

Sec. 131B. Penalty for Loan of Money on Pistol, etc. Whoever loans money secured by mortgage, deposit or pledge of a firearm, rifle, shotgun or machine gun shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than one year, or by both.

Sec. 131E. Purchase by Licensed Resident; * * * Any resident of the commonwealth except a minor may purchase firearms, rifles and shotguns from any dealer licensed under section one hundred and twenty-two, or from such person as shall be qualified under section one hundred and twenty-eight A, or ammunition therefor from a licensee under section one hundred and twenty-two B, upon presentation of a valid license to carry firearms issued to him under the provisions of section one hundred and thirty-one, or a permit to purchase issued to him under section one hundred and thirty-one A together with a firearm identification card issued to him under the provisions of section one hundred and twenty-nine B, or said permit to purchase together with proof of exempt status under the provisions of section one hundred and twenty-nine C, in the case of a firearm, or in the case of a rifle or shotgun, said license to carry or said firearm identification card or said proof of exempt status, except that no rifle, shotgun or ammunition therefor shall be sold to any minor under eighteen years of age nor to any minor eighteen years of age or older unless such minor displays a license to carry firearms or a fire-

arm identification card issued to him, a hunting or sporting license issued to him, and the written consent of his parent or guardian to purchase a particular rifle or shotgun, except, however, that said written consent shall not be required for purchase of ammunition only. * * * * *

Sec. 131H. Ownership or possession of firearms by aliens; * * * No alien shall own or have in his possession or under his control a firearm, rifle or shotgun, except as provided in this section. The commissioner of public safety may, after an investigation, issue a permit to an alien to own or have in his possession or under his control a rifle or shotgun; subject to such terms and conditions as said commissioner may deem proper. * * * * *

Chapter 269

Sec. 10. Penalty for Unlawfully Carrying Dangerous Weapons, Possessing Machine Gun, etc. * * * * * (c) Whoever, except as provided by law, possesses a shotgun with a barrel less than eighteen inches in length, or possesses a machine gun, as defined in section one hundred and twenty-one of chapter one hundred and forty, without permission under section one hundred and thirty-one of said chapter one hundred and forty, shall be punished by imprisonment in the state prison for life or for any term of years provided that any sentence imposed under the provisions of this clause shall be subject to the minimum requirements of clause (a) of this section. * * * * *

(k) For the purpose of this section "sawed-off shotgun" means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun, whether by alteration, modification, or otherwise, if such weapon as modified has an overall length of less than twenty-six inches.

Sec. 10A. Sale, etc., of Silencers for Firearms. Whoever sells or keeps for sale, or offers, or gives or disposes of by any means other than submitting to an authorized police official, or uses or possesses, any instrument, attachment, weapon or appliance for causing the firing of any gun, revolver, pistol or other firearm to be silent or intended to lessen or muffle the noise of the firing of any gun, revolver, pistol or other firearm shall be punished by imprisonment for not more than five years in the state prison or for not more than two and one half years in a jail or house of correction. * * * * *

Sec. 11C. Removing, Defacing, etc., Serial or Identification Number of Firearms. * * *Possession or control of a firearm the serial number or identification number of which has been removed, defaced, altered, obliterated or mutilated in any manner shall be prima facie evidence that the person having such possession or control is guilty of a violation of this section; but such prima facie evidence may be rebutted by evidence that such person had no knowledge whatever that such number had been removed, defaced, altered, obliterated or mutilated, or by evidence that he had no guilty knowledge thereof. * * *

Sec. 11E. Firearms Sold, etc., by Manufacturers and Dealers to Have Serial Identification Numbers; Penalty. All firearms, rifles and shotguns of new manufacture, manufactured or delivered to any licensed dealer within the commonwealth shall bear serial numbers permanently inscribed on a visible metal area of said firearm, rifle, or shotgun, and the manufacturer of said firearm, rifle or shotgun shall keep records of said serial numbers and the dealer, distributor or person to whom the firearm, rifle or shotgun was sold or delivered. No licensed dealer shall order for delivery, cause to be delivered, offer for sale or sell within the commonwealth any newly manufactured firearm, rifle or shotgun received directly from a manufacturer, wholesaler or distributor not so inscribed with a serial number nor shall any licensed manufacturer or distributor of firearms, rifles or shotguns deliver or cause to be delivered within the commonwealth any firearm, rifle or shotgun not complying with this section.

No licensed manufacturer within the commonwealth shall produce for sale within the United States, its territories or possessions any firearm, rifle or shotgun not complying with paragraph one of this section. Whoever violates this section shall be punished by a fine of five hundred dollars. Each such violation shall constitute a separate offense.

Chapter 266

Sec. 102A. Possession of Infernal Machine; Notice of Seizure. Whoever, other than a police or other law enforcement officer acting in the discharge of his official duties, has in his possession or under control an infernal machine or a similar instrument, contrivance or device shall be punished by imprisonment in the state prison for not more than ten years or in jail for not more than two and one half years, or by a fine of not more than one thousand dollars, or by both such fine and imprisonment, and the said machine, instrument, contrivance or device shall be forfeited to the commonwealth. The term "infernal machine," as used in this section, shall include any device for endangering life or doing unusual damage to property, or both, by fire or explosion, whether or not contrived to ignite or explode automatically and whether or not disguised so as to appear harmless. Notice of the seizure of any such machine, instrument, contrivance or device shall be sent forthwith to the commissioner of public safety and the article seized shall be subject to his order.

Sec. 102B. Possession, etc., of Molotov Cocktail or Similar Device; Exceptions; Penalties. Whoever makes, sells, uses or has in his possession or under his control a bottle or other breakable container containing a flammable liquid into which has been fixed or placed a wick or similar device, and which bottle or container when ignited and thrown will cause a fire or explosion, shall be punished by a fine of not more than one thousand dollars or imprisonment for not more than two and one half years, or both.

The provisions of this section shall not apply to flares, lanterns, fireworks or other such devices used for signal or illumination purposes, or for any other lawful purpose.

Whoever violates any provision of this section may be arrested without a warrant and held in custody in jail or otherwise until a complaint be made against him for such offense unless previously admitted to bail, which complaint shall be made as soon as practicable and in any case within twenty-four hours, Sundays and legal holidays excepted.

Chapter 148

Sec. 35. Possession of Bombs and Explosives; Penalty. No person shall have in his possession or under his control any bomb or other high explosive, as defined by the rules and regulations made under section nine, contrary to the provisions of this chapter or of any rule or regulation made thereunder. Whoever violates this section shall be punished by a fine of not more than one thousand dollars, or by imprisonment for not more than two and one half years, or both, and any bomb or explosive found in his possession or under his control on such violation shall be forfeited to the commonwealth. Any officer qualified to serve criminal process may arrest without a warrant any person violating this section.

Boston

(120) Firearms, license to carry or possess. The fee for a license to carry firearms in the commonwealth or to possess therein a machine gun granted by the police commissioner under section 131 of chapter 140 of the General Laws shall be $25.00.

(121) Firearms, permit to purchase, rent or lease. The fee for a permit to purchase, rent or lease a firearm granted by the police commissioner under section 131A of chapter 140 of the General Laws shall be $50.00. * * *

(122) Firearms, License to Sell, Rent or Lease. The fee for a license to sell, rent or lease firearms, rifles, shotguns or machine

guns granted by the police commissioner under section 122 of chapter 140 of the General Laws shall be $150.00.

(154) Gunsmith's License. The fee for a license to be in business as a gunsmith granted by the police commissioner under section 122 of chapter 140 of the General Laws shall be, in the case of a person licensed to sell, rent or lease firearms, rifles, shotguns or machine guns, $15.00, and in the case of any other person, $50.00.

Fall River

Sec. 20-3. Ammunition and guns—Sale to minors. No person shall sell to any minor under the age of sixteen years, without the written consent of his parent or guardian any cartridge or fixed ammunition containing any fulminate, or any gun, pistol or other contrivance intended for the explosion of such cartridge, ammunition or fulminate.

Lynn

Relative to the Sale of Revolvers or Pistols by Dealers. Section 1. No dealer in the City of Lynn shall sell, loan, exchange or give to any person any revolver or pistol unless and until a certified copy of a written permit allowing such person to carry a revolver or pistol shall be furnished such dealer by the Chief of Police before such sale or other transfer.

Michigan

State Law

Mich. Stat. Ann.

Sec. 4.127(1) Residents purchasing firearms in contiguous states. SECTION 1. Residents of this state may purchase rifles and shotguns in any state contiguous thereto if they conform to the federal gun control act of 1968 and the regulations issued thereunder, as administered by the secretary of the treasury and the laws of the state where the purchase is made.

Sec. 28.91 Terms defined. SECTION 1. As used in this act:

(a) "Pistol" means any firearm, loaded or unloaded, 30 inches or less in length, or any firearm, loaded or unloaded, which by its construction and appearance conceals it as a firearm.

(b) "Purchaser" means any person who receives a pistol from another by purchase, gift or loan.

(c) "Seller" means any person who sells, furnishes, loans or gives a pistol to another.

Sec. 28.92 Purchasing, carrying or transporting pistol; license; issuance; qualifications; signatures; execution; contents; disposition of copies; inapplicability of section; transfer of inherited pistols. SEC. 2. (1) No person shall purchase, carry or transport a pistol without first having obtained a license therefor as prescribed herein, except that any person who brings a pistol into this state and who is either on leave from active duty with the armed forces of the United States or who has been discharged from such active duty shall obtain a license for the pistol within 5 days after his arrival into this state. The commissioner or chief of police, or his duly authorized deputy, in incorporated cities or in incorporated villages having an organized department of police, and the sheriff, or his authorized deputy, in parts of the respective counties not included within incorporated cities or villages, may issue licenses to purchase, carry or transport pistols to applicants residing within the respective territories herein mentioned. No such license shall be granted to any person unless he is 18 years of age or over, a citizen of the United States and has resided in this state 6 months or more, and in no event shall such a license be issued to a person who has been convicted of a felony or confined therefor in this state or elsewhere during the 8-year period immediately preceding the date of such application or has been adjudged insane in this state or elsewhere unless he has been restored to sanity and so declared by court order.

(2) Applications for such licenses shall be signed by the applicant under oath upon forms provided by the director of the department of state police, hereinafter referred to as the director. The forging of any matter on an application is a felony. Licenses to purchase, carry or transport pistols shall be executed in triplicate upon forms provided by the director and shall be signed by the licensing authority. Three copies of such license shall be delivered to the applicant by the licensing authority. Upon sale of the pistol the seller shall fill out the license forms describing the pistol sold, together with the date of sale, and sign his name in ink indicating that such pistol was sold to the licensee. The licensee shall also sign his name in ink indicating the purchase of such pistol from the seller. The seller may retain a copy of the license as a record of the sale of the pistol. The licensee shall return 2 copies of the license to the licensing authority within 10 days following the purchase of the pistol. One copy of such license shall be retained by the licensing authority as a permanent official record for a period of 6 years and the other copy shall be forwarded by the licensing authority within 48 hours to the director. Such license shall be void unless used within 10 days after the date of its issue. This section does not apply to the purchase of pistols from wholesalers by dealers regularly engaged in the business of selling pistols at retail, nor to the sale, barter or exchange of pistols kept solely as relics, curios, or antiques not made for modern ammunition or permanently deactivated. This section does not prevent the transfer of ownership of pistols which are inherited if the license to purchase is approved by the chief of police, sheriff, or their authorized deputies, and signed by the administrator or administratrix of the estate or by the next of kin having authority to dispose of such property.

(The pistol safety inspection requirement set forth in 28.97, which is not included herein, does not apply to wholesale or retail dealers in firearms . . .)

Sec. 28.96. Inapplicability of certain sections. SEC. 12. Sections 2 and 9 do not apply to a duly authorized police or correctional agency of the United States or of the state or any subdivision thereof, nor to the army, air force, navy or marine corps of the United States, nor to organizations authorized by law to purchase or receive weapons from the United States or from this state, nor to the national guard, armed forces reserves or other duly authorized military organizations, or to members of the above agencies or organizations for weapons used for the purposes of or incidental to such agencies or organizations, nor to a person holding a license to carry a pistol concealed upon his person issued by another state, nor to the regular and ordinary transportation of pistols as merchandise by authorized agents of any person licensed to manufacture firearms.

* * * * *

Sec. 28.408(1). Explosive or incendiary devices; unlawful construction or possession; evidence. Sec. 211a. Any person who shall make, construct or have in his possession any device which is designed to explode or which will explode upon impact or with the application of heat or a flame, or which device is highly incendiary, with intent to use the device unlawfully against the person or property of another is guilty of a felony. For the purposes of prosecution under this section, possession of such a device is prima facie evidence of the possessor's intent to use the device unlawfully against the person or property of another.

* * * * *

Sec. 28.419. Definitions. SEC. 222. As used in this chapter:

(a) "Pistol" means a firearm, loaded or unloaded, 30 inches or less in length, or any firearm, loaded or unloaded, which by its construction and appearance conceals it as a firearm.

(b) "Purchaser" means a person who receives a pistol from another by purchase, gift, or loan.

(c) "Seller" means a person who sells, furnishes, loans, or gives a pistol to another.

(d) "Shotgun" means a firearm designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single function of the trigger.

(e) "Short-barreled shotgun" means a shotgun having 1 or more barrels less than 18 inches in length or a weapon made from a shotgun, whether by alteration, modification, or otherwise, if the weapon as modified has an overall length of less than 26 inches.

(f) "Rifle" means a firearm designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(g) "Short-barreled rifle" means a rifle having 1 or more barrels less than 16 inches in length or a weapon made from a rifle, whether by alteration, modification, or otherwise, if the weapon as modified has an overall length of less than 26 inches.

(h) "Barrel length" of a firearm shall be measured internally, from the face of the closed breach of an unloaded firearm, to the forward face of the end of the barrel.

Sec. 28.420 Selling pistols and firearms. SEC. 223. (1) Any person who sells a pistol without complying with section 2 of Act No. 372 of the Public Acts of 1927, as amended, being section 28.422 of the Compiled Laws of 1948, shall be guilty of a misdemeanor.

(2) Any person who sells a firearm more than 30 inches in length to a person under 18 years of age shall be guilty of a misdemeanor.

Sec. 28.421 Selling, etc., machine guns, silencers, * * * etc.; exceptions. Sec. 224. (1) A person who shall manufacture, sell, offer for sale, or possess a machine gun or firearm which shoots or is designed to shoot automatically more than 1 shot without manual reloading, by a single function of the trigger, a muffler, silencer, or device for deadening or muffling the sound of a discharged firearm, a bomb or bomb shell, * * * or a gas ejecting device, weapon, cartridge, container, or contrivance designed or equipped for or capable of ejecting gas which will either temporarily or permanently disable, incapacitate, injure or harm a person with whom it comes in contact, shall be guilty of a felony, and shall be imprisoned for not more than 5 years, or be fined not more than $2,500.00, or both.

(2) This section shall not apply to a person manufacturing firearms, explosives, or munitions of war by virtue of a contract with a department of the government of the United States, or to a person duly licensed by the secretary of the treasury of the United States or his delegate to manufacture, sell, or possess a machine gun or gas ejecting device, weapon, cartridge, container, or contrivance mentioned in subsection (1).

Sec. 224b. (1) A person shall not manufacture, sell, offer for sale, or possess a short-barreled shotgun or a short-barreled rifle.

(2) A person who violates this section is guilty of a felony punishable by imprisonment for not more than 5 years, or a fine of not more than $2,500.00, or both.

(3) The provisions of this section shall not apply to the sale, offering for sale or possession of a short-barreled rifle or a short-barreled shotgun which the secretary of the treasury of the United States of America, or his delegate, pursuant to U.S.C. title 26, section 5801 through 5872 or U.S.C. title 18, sections 921 through 928, has found to be a curio, relic, antique, museum piece or collector's item not likely to be used as a weapon, but only if the person selling, offering for sale or possessing the firearm has also fully complied with the provisions of sections 2 and 9 of Act No. 372 of the Public Acts of 1927, as amended, being sections 28.422 and 28.429 of the Michigan Compiled Laws.

Sec. 28.422. Possession, etc., of printed matter offering to sell or deliver pistols, etc., from without the state. Sec. 225. Any person who shall sell or deliver within this state, or offer or expose for sale, or have in possession for the purpose of sale, any book, pamphlet, circular, magazine, newspaper or other form of written or printed matter offering to sell or deliver, or containing an offer to sell or deliver to any person within this state from any place without this state any pistol or any weapon or device mentioned in the next preceding section of this chapter, shall be guilty of a misdemeanor. The provisions of this section shall not apply to sales of or offers to sell pistols at wholesale to persons regularly engaged in the business of selling such pistols wholesale or retail, nor to sales or offers to sell such pistols made or authorized by the United States government or any department or agency thereof.

Sec. 28.426. Pawnbrokers, second-hand dealers, junk dealers, accepting pistol, offering or displaying it for resale. SEC. 229. Any pawnbroker who shall accept a pistol in pawn, or any second-hand or junk dealer, as defined in Act No 350 of the Public Acts of 1917, who shall accept a pistol and offer or display the same for resale, shall be guilty of a misdemeanor.

Sec. 28.427. Alteration of pistols, penalty; possession presumptive evidence of alteration, exception. Sec. 230. * * * Possession of a firearm upon which the (manufacturer's) number shall have been altered, removed, or obliterated, other than an antique firearm as defined by section 231a(2)(a) or (b) shall be presumptive evidence that the possessor has altered, removed, or obliterated the same.

Sec. 28.429(1). Purchaser of pistol without license, false statement in application. SEC. 232a. Any person who shall purchase a pistol without having obtained a license to purchase as provided in section 2 of Act No 372 of the Public Acts of 1927, as amended, shall be guilty of a misdemeanor.

Any person who shall intentionally make a false statement in any application for a license to purchase a pistol, under section 2 of Act No 372 of the Public Acts of 1927, as amended, shall be guilty of a misdemeanor.

Sec. 28.434 Possession or use of fire-arm by person under influence of liquor or drug. SEC. 237. Any person under the influence of intoxicating liquor or any exhilarating or stupefying drug who shall carry, have in possession or under control, or use in any manner or discharge any fire-arm within this state, shall be guilty of a misdemeanor.

Albion

52.2-31. * * * No person in the City shall sell a revolver, pistol or other handgun without reporting that sale to the Albion Police Department and furnishing such information as the Police Department may require.

Allen Park

Sec. 8-137 Firearms; possession, transportation; restrictions. * * * * * (d) It shall be unlawful for any person under 18 years of age to purchase, carry or transport a firearm on any public street or in any public place. It shall be unlawful for any person to sell a firearm to any person under 18 years of age.

* * * * *

Belding

12.11 **Dangerous weapons.** No person shall possess any machine gun, sawed-off shotgun, * * * or any instrument, attachment or appliance for causing the firing of any firearm to be silent or intended to lessen or muffle the noise of the firing of any firearm except as is otherwise permitted by law.

Bloomfield Hills

6.01 It shall be unlawful for any person under 18 years of age to purchase, carry or

transport a firearm on any public street or in any public place.

7.01. It shall be unlawful for any person to sell a firearm to any person under 18 years of age.

Buchanan

11.4. Dangerous weapons. No person shall possess any machine gun, sawed off shot gun, or any instrument, * * * attachment or appliance for causing the firing of any firearm to be silent or intended to lessen or muffle the noise of the firing of any firearm except as is otherwise permitted by law.

Center Line

8-106. Dangerous weapons; possession prohibited, exceptions. (a) No person shall within the city possess any machine gun, sawed off shotgun, revolver, pistol, gun or any instrument, attachment, or appliance for causing the firing of any firearm to be silent or intended to lessen or muffle the noise of the firing of any firearms except as is otherwise permitted by law.

Dearborn Heights

9.215. Sale or Purchase. It shall be unlawful for any person under eighteen (18) years of age to purchase, carry or transport a firearm on any public street or in any public place. It shall be unlawful for any person to sell a firearm to any person under eighteen (18) years of age.

Detroit

66-1-1. "Firearm" defined. The word "firearm," as used in this article, shall be construed to include any shot gun, rifle or other device of a similar character, except pistols.

66-1-2. Permit required to purchase pistols. No person shall purchase a pistol without first having obtained a permit to do so from the commissioner of police. No person or agent thereof shall sell or deliver a pistol to any person unless such person has obtained a permit therefor from the commissioner of police, which permit shall be given to the person making such sale or delivery and must be kept by him.

66-4-1. "Firearm" defined. For the purposes of this article, the word "firearm," except as otherwise specifically defined in this Code, shall be construed to include any weapon from which a dangerous projectile may be propelled by using explosives, gas or air as a means of propulsion.

66-4-4. Minors carrying firearms; sales to minors. It shall be unlawful for any person under eighteen years of age to purchase, carry or transport a firearm on any public street or in any public place. It shall be unlawful for any person to sell a firearm to any person under eighteen years of age.

Ecorse

Unregistered Fire-Arms—Sale or Purchase of Fire Arms. 3-4.2 Any person who shall own or possess any pistol, weapon or device without the same being registered as required by Section 9 of Act 372 of the Public Acts of the State of Michigan for the year 1927, as amended; and also any person who shall purchase or sell a pistol, weapon or device without license as required by Act 372 of the Public Acts of the State of Michigan for 1927, as amended, shall be guilty of a misdemeanor and shall be punished as provided in Article I, Chapter I of this Code.

Escanaba

138.11 Firearms * * * * * (D) Dangerous weapons. No person shall possess any machine gun, sawed off shot gun, * * * or any instrument, attachment or appliance for causing the firing of any firearm to be silent or intended to lessen or muffle the noise of the firing of any firearm except as is otherwise permitted by law.

Fenton

7-116. Possessing dangerous weapons. (a) No person shall, within the city, possess any machine gun, sawed-off shotgun, * * * nor any instrument, attachment or appliance for causing the firing of any firearm to be silent or lessened or muffled, except as is otherwise permitted by law.

Flushing

7.209 Firearms and Weapons. .1 Definitions * * * * *

.1b "Firearm Silencer" means any instrument, attachment, weapon or appliance for causing the firing of any gun, revolver, pistol or other firearm to be silent, or intended to lessen or muffle the noise of the firing of any such weapon.

.1c "Gas Gun" means any gas ejecting device, weapon, cartridge, container or contrivance designed or equipped for ejecting any gas that will cause death, serious physical injury or physical injury, or will temporarily incapacitate.

* * * * *

.1e "Machine Gun" means any firearm, whatever its size and usual designation, that shoots automatically more than one (1) shot, without manual reloading, by a single function of the trigger.

* * * * *

.3 Possession of Illegal Weapon. A person commits the crime of possession of illegal weapon if he knowingly possesses a * * * bomb, firearm silencer, gas gun, * * * machine gun, * * * unless licensed to do so.

.4 Prohibited Use of Weapons. A person commits the crime of prohibited use of weapons if: * * *

.4c He possesses or discharges a firearm while under the influence of intoxicating liquor or of a narcotic drug, dangerous drug or LSD; * * *

Gibraltar

Sec. 15-186. Minors and firearms. It shall be unlawful for any person under eighteen (18) years of age to purchase, carry or transport a firearm on any public street or in any public place. It shall be unlawful for any person to sell a firearm to any person under eighteen (18) years of age.

Gladstone

131.06 Possession of weapons. No child under the age of 18 years shall be allowed to have in his possession or control, or use, any * * * shotguns, rifles or other dangerous weapons within the City.

131.07 Sale to minors of weapons. No person shall sell, furnish, or give to or permit any child under the age of 18 years to have in his possession or use any * * * shotguns, rifles or other dangerous weapons within the City.

Gladwin

Ordinance 163

Section 9. Sales to Minors. It shall be unlawful for any person, firm or corporation to sell, offer for sale, give away or distribute any firearm * * * to any person in the City of Gladwin who is under the age of eighteen years.

Grand Haven

8-209. Dangerous weapons, possession prohibited. No person shall possess any machine gun, sawed off shotgun, * * * nor any instrument, attachment or appliance for causing the firing of any firearm to be silent or

intended to lessen or muffle the noise of the firing of any firearms, except as is otherwise permitted by law.

Grand Rapids

9.180. Firearms Dealer's License. It shall be unlawful to establish, maintain, operate or conduct a business or attempt to conduct a business of selling, trading or offering to sell or trade, any firearms or ammunition for firearms unless there shall have been issued a license to do so in compliance with Chapter 91 of this Code. * * *

Grosse Pointe Farms

24. Firearms, sale to minors. It shall be unlawful for any person under eighteen (18) years of age to purchase any firearm. * * *

Grosse Pointe Shores

Ordinance 138

Paragraph 10—Sale to minors: It shall be unlawful for any person under the legal age of majority to purchase any firearm. * * *

Grosse Pointe Woods

8-3-29: Firearms, sale to minors: It shall be unlawful for any person under eighteen (18) years of age to purchase any firearm. * * *

Hamtramck

Section 47; Possession or control of firearms while intoxicated: It shall be unlawful for any person within the City of Hamtramck while under the influence of an intoxicating liquor, or any exhilarating or stupefying drug, to carry, have in possession or control, or use in any manner, or discharge any firearm.

Hartford

42.03. Weapons. * * * No person shall sell or transfer any such weapon (any concealed pistol) to any minor person.

Hazel Park

15. Dangerous weapons; possession prohibited. (a) No person shall possess any machine gun, sawed off shotgun * * * nor any instrument, attachment or appliance for causing the firing of any firearm to be silent or intended to lessen or muffle the noise of the firing of any firearms, except as is otherwise permitted by law.

Highland Park

378-3. It shall be unlawful for any person to purchase a revolver or pistol without having first obtained a permit to do so in accordance with the laws of the State of Michigan.

378-4. It shall be unlawful for any person to sell, give, furnish or deliver to any person or persons, any pistol, revolver or other small firearm, without first receiving from said person or persons a written permit in accordance with the laws of the State of Michigan. Such permits shall be preserved and filed in accordance with the laws of the State of Michigan.

Inkster

1. Any person found guilty of the following offenses in the Village of Inkster shall be deemed disorderly persons (*sic*) * * * (19) Any person who sells, gives, loans or furnishes another with a pistol or firearms less than 30 inches in length. * * *

Keego Harbor

4-4. Offenses Against Public Safety. No person in the city shall:

(1) Weapons—(e) "Sales to Intoxicated Persons and Minors." Purchase from, or sell, loan, or furnish any weapon in which any explosive substance can be used to, any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to a minor under the age of 21 years.

Lake Orion

9. Sales to minors. It shall be unlawful for any person, firm or corporation to sell, offer to sale, give away or distribute any firearm, * * * to any person in the Village of Lake Orion who is under the age of twenty-one years.

Lapeer

19.09. Firearms. (d) No person shall sell, loan or furnish to any minors any firearm, or any toy firearm in which any explosive substance can be used, or any dynamite, dynamite fuse, or caps, gunpowder, or any other explosive substance.

Lincoln Park

* * * * * *

D. It shall be unlawful for any person under 18 years of age to purchase, carry or transport a firearm on any public street or in any public place. It shall be unlawful for any person to sell a firearm to any person under 18 years of age.

Linden

Ordinance 86

Section I. Possessing Dangerous Weapons: (A) No person shall, within the Village, possess any machine gun, sawed-off shotgun, * * * nor any firearm to be silent or lessened or muffled, except as is otherwise permitted by law.

Livonia

Section 8-404. Prohibition to Carry Firearms or Dangerous Weapons. * * * It shall also be unlawful for any person to carry a machine gun or to have a silencer, bombs, * * * in his possession in the manner indicated in this ordinance.

* * * * * *

Section 8-409. Possession or Control of Firearm While Intoxicated. It shall be unlawful for any person within the City of Livonia, while under the influence of an intoxicating liquor, or any exhilarating or stupefying drug, to carry, have in possession or control, use in any manner or discharge any firearm or longarm.

Lowell

Sec. 18-3. * * * (b) Sales to minors. No dealer shall sell or give away firearms to any minor.

Madison Heights

396(7). the word "firearm", except as otherwise specifically defined in this ordinance, shall be construed to include any weapon from which a dangerous projectile may be propelled by using explosives, gas or air as a means of propulsion.

8-111 Dangerous weapons; possession prohibited, exceptions. (a) No person shall possess any machine gun, sawed off shotgun * * * nor any instrument, attachment or appli-

ance for causing the firing of any firearm to be silent or intended to lessen or muffle the noise of the firing of any firearms, except as is otherwise permitted by law.

Marshall

20.02 Firearms. * * * * * (b) No person shall sell, loan or furnish to any minors any firearm, or any toy firearm in which any explosive substance can be used, or any dynamite, dynamite fuse or caps, gunpowder, or any other explosive substance.

(c) Any person selling, loaning or keeping firearms within the City of Marshall shall comply with all the laws of the State of Michigan governing the use, sale, registration, storage, carrying, keeping and any other provisions concerning firearms.

(d) The word firearm includes any instrument whereby any projectile is shot or discharged by means of powder, compressed air, springs, or other means.

Mason

Ordinance 52

* * * * *

Section 4. It shall be unlawful for any person, firm or corporation to sell, offer for sale, give away or distribute any slingshot, airgun or other weapon to any minor within the City of Mason who is under the age of sixteen years.

Milford Township

Section 22. Unlawful possession of firearms. It shall be unlawful for any person under the influence of intoxicating liquor or any exhilarating or stupefying drug to carry, have in possession or under control, or use in any manner or discharge any firearm within this state.

Montrose

Section 10.2. Furnishing Firearms to Minors. It shall be unlawful for any minor under the age of eighteen (18) years to possess any firearm, on the streets of the Village of Montrose unless such minor shall be accompanied by an adult over the age of twenty-one (21) years.

Mount Clemens

8-210. Dangerous weapons; possession prohibited, exceptions. (1) No person shall possess any machine gun, sawed off shotgun, * * * nor any instrument, attachment or appliance for causing the firing of any firearm to be silent or intended to lessen or muffle the noise of the firing of any firearms, except as is otherwise permitted by law.

Mount Pleasant

Sec. 8-108 Dangerous weapons; possession prohibited, exceptions. —(a) No person shall within the city possess any machine gun, sawed off shotgun, * * * nor any instrument, attachment, or appliance for causing the firing of any firearm to be silent or intended to lessen or muffle the noise of the firing of any firearms except as is otherwise permitted by law.

Novi

A. Definition. (1) The word "firearm" as used in this section, shall be construed to include any weapon from which a projectile, dangerous to person or property, may be propelled by using explosives, gas or air as a means of propulsion.

B. Weapons. [It shall be unlawful to] * * * (4) Purchase, carry or transport a firearm, if a person doing so is under eighteen (18) years of age or sell a firearm to any person under eighteen (18) years of age.

* * * * *

Oak Park

30.108. It shall be unlawful for any person under 18 years of age to purchase, carry or transport a firearm on any public street or in any public place. It shall be unlawful for any person to sell a firearm to any person under 18 years.

Orchard Lake

Section 3. Offenses Against Public Safety. No person in the City shall: * * *

(e) Sales to Intoxicated Persons and Minors. Purchase from, or sell, loan, or furnish any weapon in which any explosive substance can be used to any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to a person under the age of eighteen (18) years.

(f) Records Required. Engage in the sale, rental, or exchange of any weapons referred to in sub-sections (a) and (d) above without keeping a record of each such weapon purchased, sold, rented, or exchanged.

(1) Time of Recordation. The record required herein shall be made at the time of the transaction, in a book kept for that purpose, [contact local authorities for required contents] * * *

* * * * *

Pontiac

Sec. 16-110. Sale of dangerous weapons to minors and intoxicated persons. (a) No person shall knowingly sell, offer for sale, loan or furnish any rifle, firearm or other dangerous or deadly weapon to:

(1) Any minor under the age of eighteen (18) years;

(2) Any person under the influence of any alcoholic beverage, narcotic drug, stimulant or depressant;

(3) Any person in a condition of agitation and excitability; or to

(4) Any person the seller, lendor, or donor has reasonable cause to believe is not of sound mind.

Sec. 16-111. Order required to sell or deliver revolver. No person shall sell, deliver or furnish to any other person any revolver or pistol or handgun, unless such person shall first procure and exhibit an order therefor from the Chief of Police.

Port Huron

2.117. Weapons prohibited. It shall be unlawful for the parent or guardian of any minor child under the age of 18 years to willfully permit such minor child under the age of 18 years to use or have in his or her possession any pistol, rifle, shotgun, * * * except and unless such minor child under the age of 18 years shall be, at the time of his or her use or possession of any gun or weapon herein described, under the direct supervision or control of his or her parent or guardian or some other adult person.

Redford

Sec. 2-156. Dangerous Weapons; Possession Prohibited, Exceptions. (a) No person shall possess any machine gun, sawed off shotgun, * * * or any instrument, attachment or applicant for causing the firing of any firearm to be silent or intended to lessen or muffle the noise of the firing of any firearms, except as is otherwise permitted by law.

Riverview

Sec. 15-94. Dangerous weapon. (a) No person shall within the city possess any ma-

chine gun, sawed off shotgun, revolver, pistol, gun, * * * nor any instrument, attachment, or appliance for causing the firing of any firearm to be silent or intended to lessen or muffle the noise of the firing of any firearms except as is otherwise permitted by law; * * *

Rockwood

9.322. Sale or Purchase. It shall be unlawful for any person under eighteen (18) years of age to purchase, carry or transport a firearm on any public street or in any public place. It shall be unlawful for any person to sell a firearm to any person under eighteen (18) years of age.

Royal Oak Township

Ordinance 168

Sec. 4 Minors carrying firearms; sales to minors. It shall be unlawful for any person under eighteen (18) years of age to purchase, carry or transport a firearm on any public street or in any public place. It shall be unlawful for any person to sell a firearm to any person under eighteen (18) years of age.

Saginaw

807. Failure to complete and return license to purchase pistol. 807.1 It shall be unlawful for the purchaser of any pistol to be or remain in possession thereof if the completed license to purchase the same shall not have been returned to the licensing authority within ten (10) days of the purchase of the pistol, as required by law.

St. Clair Shores

20-17. Dangerous weapons; possession prohibited, exceptions. No person shall possess any machine gun, sawed off shotgun, * * * nor any instrument, attachment or appliance for causing the firing of any firearm to be silent or intended to lessen or muffle the noise of the firing of any firearms, except as is otherwise permitted by law.

Southfield

9.129 Dangerous weapons: possession prohibited, exceptions (1) No person shall within the City possess any machine gun, sawed off shotgun, * * * nor any instrument, attachment, or appliance for causing the firing of any firearm to be silent or intended to lessen or muffle the noise of the firing of any firearms except as is otherwise permitted by law.

Sterling Heights

7. (1) No person shall possess any machine gun, sawed off shotgun, * * * nor any instrument, attachment or appliance for causing the firing of any firearm to be silent or intended to lessen or muffle the noise of the firing of any firearms, except as is otherwise permitted by law.

Three Rivers

79-1. The City of Three Rivers ordains, That it shall not be lawful for any person directly or indirectly, himself or by his clerk, agent or employe, to sell, keep for sale, give away, furnish or use, within the limits of the City of Three Rivers, any * * * blank cartridge, toy pistol * * * or any cap or other device containing any explosive; Provided, however. That this provision shall not apply to the sale of gun powder or gun or revolver ammunition in the regular course of trade nor to the sale of dynamite that is to be used for a necessary purpose.

Trenton

9.171. Dangerous weapon. (1) No person shall possess any machine gun, sawed off shotgun, * * * nor any instrument, attachment or appliance for causing the firing of any firearm to be silent or intended to lessen or muffle the noise of the firing of any firearms, except as is otherwise permitted by law.

Troy

9.79. Regulation, control of the possession and transportation of firearms within the city. (3) It shall be unlawful for any person under 18 years of age to purchase, carry or transport a firearm on any public street or in any public place. It shall be unlawful for any person to sell a firearm to any person under 18 years of age.

Warren

Sec. 8-210 Dangerous weapons. (1) No person shall possess any machine gun, sawed-off shotgun, * * * nor any instrument, attachment or appliance for causing the firing of any firearm to be silent or intended to lessen or muffle the noise of the firing of any firearm, except as is otherwise permitted by law.

* * * * *

Waterford

* * * * *

Section V. Possessing or use of weapons while under influence. No person while under the influence of intoxicating liquor or exhilerating or stupefying drugs shall carry, have in his possession or under his control, or in any manner use or discharge any weapon.

* * * * *

Section IX. Sales to minors It shall be unlawful for any person, firm or corporation to sell, offer for sale, give away or distribute any firearm, * * * or other like weapon to any person in the Township of Waterford who is under the age of twenty-one years.

Woodhaven

Article III

Sec. 11 1/2-14. Sale or Purchase. It shall be unlawful for any person under eighteen (18) years of age to purchase, carry or transport a firearm on any public street or in any public place. It shall be unlawful for any person to sell a firearm to any person under eighteen (18) years of age.

Minnesota

State Law

Minn. Stat. Ann.

609.66 Dangerous weapons: Subdivision 1. Acts prohibited. Whoever does any of the following is guilty of a misdemeanor: * * * * * (6) Sells or has in his possession any device designed to silence or muffle the discharge of a firearm; or (7) Without the parent's or guardian's consent, furnishes a child under 14 years of age, or as a parent or guardian permits such child to handle or use, outside of the parent's or guardian's presence, a firearm or airgun of any kind, or any ammunition or explosive; or (8) In any municipality of this state, furnishes a minor under 18 years of age with a firearm airgun, ammunition, or ex-

plosive without the written consent of his parent or guardian or of the police department or magistrate of such municipality.

Subdivision 2. Nothing in this section prohibits the possession of the articles mentioned by museums or collectors of art or for other lawful purposes of public exhibition.

609.67 Machine guns and short-barreled shotguns: Subdivision 1. Definition. (a) "Machine gun" means any firearm designed to discharge, or capable of discharging automatically more than once by a single function of the trigger.

(b) "Shotgun" means a weapon designed, redesigned, made or remade which is intended to be fired from the shoulder and uses the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(c) "Short-barreled shotgun" means a shotgun having one or more barrels less than 18 inches in length and any weapon made from a shotgun if such weapon as modified has an overall length less than 26 inches.

Subd. 2. Acts prohibited. Except as otherwise provided herein, whoever owns, possesses, or operates a machine gun or a short-barreled shotgun may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $5,000, or both.

Subd. 3. Uses permitted. The following persons may own or possess a machine gun or a short-barreled shotgun provided the provisions of subdivision 4 are complied with:

(1) Law enforcement officers for use in the course of their duties;

(2) Wardens of penal institutions and other personnel thereof authorized by them and persons in charge of other institutions for the retention of persons convicted or accused of crime, for use in the course of their duties; and

(3) Persons possessing machine guns or short-barreled shotguns which, although designed as weapons, have been determined by the superintendent of the bureau of criminal apprehension or his delegate by reason of the date of manufacture, value, design or other characteristics to be primarily collector's items, relics, museum pieces or objects of curiosity, ornaments or keepsakes, and are not likely to be used as weapons.

Subd. 4. Report required. A person owning or possessing a machine gun or short-barreled shotgun as authorized by subdivision 3 shall, within ten days after acquiring such ownership or possession, file a written report with the bureau of criminal apprehension, showing his name and address; his official title and position, if any; a description of the machine gun or short-barreled shotgun sufficient to enable identification thereof; the purpose for which it is owned or possessed; and such further information as the bureau may reasonably require.

Subd. 5. Exceptions. This section does not apply to members of the armed services of either the United States or the state of Minnesota for use in the course of their duties.

624.71 Gun control, application of federal law. * * * Subd. 2. Notwithstanding any other law to the contrary, it shall be lawful for a resident of Minnesota to purchase firearms and ammunition in a contiguous state in any instance where such sale and delivery is lawful under the federal Gun Control Act of 1968 (Public Law 90-618).

624.712 Definitions. Subdivision 1. As used in sections 624.711 to 624.717, the terms defined in this section shall have the meanings given them.

Subd. 2. "Pistol" includes a weapon designed to be fired by the use of a single hand and with an overall length less than 26 inches, or having a barrel or barrels of a length less than 18 inches in the case of a shotgun or having a barrel of a length less than 16 inches in the case of a rifle (a) from which may be fired or ejected one or more solid projectiles by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances; or (b) for which the propelling force is a spring, elastic band, carbon dioxide, air or other gas, or vapor.

"Pistol" does not include a device firing or ejecting a shot measuring .18 of an inch, or less, in diameter and commonly known as a "BB gun," a scuba gun, a stud gun or nail gun used in the construction industry or children's pop guns or toys.

Subd. 3. "Antique firearm" means any firearm, including any pistol, with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured before 1899 and any replica of any firearm described herein if such replica is not designed or redesigned, made or remade, or intended to fire conventional rimfire or conventional centerfire ammunition, or uses conventional rimfire or conventional centerfire ammunition which is not readily available in the ordinary channels of commercial trade.

Subd. 4. "Saturday night special pistol" means a pistol other than an antique firearm or a pistol for which the propelling force is carbon dioxide, air or other vapor, or children's pop guns or toys, having a frame, barrel, cylinder, slide or breechblock:

(a) of any material having a melting point (liquidus) of less than 1,000 degrees Fahrenheit, or

(b) of any material having an ultimate tensile strength of less than 55,000 pounds per square inch, or

(c) of any powdered metal having a density of less than 7.5 grams per cubic centimeter.

Subd. 5. "Crime of violence" includes murder in the first degree, murder in the second degree, murder in the third degree, manslaughter in the first degree, manslaughter in the second degree, aiding suicide, aiding attempted suicide, aggravated assault, use of drugs to injure or to facilitate crime, simple robbery, aggravated robbery, kidnapping, false imprisonment, aggravated rape, rape, aggravated sodomy, felonious theft, aggravated arson, riot, burglary, reckless use of a gun or dangerous weapon, intentionally pointing a gun at or towards a human being, setting a spring gun, and unlawfully owning, possessing, or operating a machine gun, and an attempt to commit any of those offenses, as each of those offenses is defined in Minnesota Statutes, Chapter 609.

Subd. 6. "Transfer" means a sale, gift, loan, assignment or other delivery to another, whether or not for consideration, of a pistol or the frame or receiver of a pistol.

624.713 Certain persons not to have pistols. Subdivision 1. The following persons shall not be entitled to possess a pistol:

(a) A person under the age of 18 years except that a person under 18 may carry or possess a pistol (i) in the actual presence or under the direct supervision of his parent or guardian, (ii) for the purpose of military drill under the auspices of a legally recognized military organization and under competent supervision, (iii) for the purpose of instruction, competition or target practice on a firing range approved by the chief of police or county sheriff in whose jurisdiction the range is located and under direct supervision; or (iv) if the person has successfully completed a course designed to teach marksmanship and safety with a pistol and approved by the commissioner of natural resources;

(b) A person who has been convicted in this state or elsewhere of a crime of violence unless ten years have elapsed since the person has been restored his civil rights or the sentence has expired, whichever occurs first, and during that time he has not been convicted of any other crime of violence. For purposes of this section, crime of violence includes crimes in other states or jurisdictions which would have been crimes of violence as herein defined if they had been committed in this state;

(c) A person who is or has ever been confined or committed in Minnesota or elsewhere as a "mentally ill," "mentally deficient" or "dangerous to the public" person as those terms are defined in Minnesota Statutes, Section 253A.02, to a hospital, mental institution or sanitarium, unless he possesses a certificate of a medical doctor or psychiatrist licensed in Minnesota, or other satisfactory proof that he is no longer suffering from this disability;

(d) A person who has been convicted in Minnesota or elsewhere for the unlawful use,

possession or sale of a controlled substance other than conviction for possession of a small amount of marijuana, as defined in section 152.01, subdivision 16, or a person who is or has ever been hospitalized or committed for treatment for the habitual use of a controlled substance or marijuana, as defined in Minnesota Statutes, Sections 152.01 and 152.02, unless he possesses a certificate of a medical doctor or psychiatrist licensed in Minnesota, or other satisfactory proof, that he has not abused a controlled substance or marijuana during the previous two years; or

(e) A person who has been confined or committed to a hospital, mental institution or sanitarium in Minnesota or elsewhere as an "inebriate person" as that term is defined in Minnesota Statutes, Section 253A.02, or for alcoholic problems, unless he possesses a certificate of a medical doctor or psychiatrist licensed in Minnesota, or other satisfactory proof, that he has not abused alcohol during the previous two years. A person who issues a certificate pursuant to this subdivision in good faith shall not be liable for damages in an action arising out of the issuance.

Subd. 2. A person named in subdivision 1, clause (b) of this section who possesses a pistol is guilty of a felony. A person named in any other clause of subdivision 1 of this section who possesses a pistol is guilty of a gross misdemeanor.

624.7131 Transferee permit

Subdivision 1. Information. Any person may apply for a pistol transferee permit by providing the following information in writing to the chief of police of an organized full time police department of the municipality in which he resides or to the county sheriff if there is no such local chief of police:

(a) The name, residence, telephone number and driver's license number or nonqualification certificate number, if any, of the proposed transferee;

(b) The sex, date of birth, height, weight and color of eyes of the proposed transferee;

(c) A statement by the proposed transferee that he is not prohibited by section 624.713 from possessing a pistol.

The statement shall be signed by the person applying for a permit. At the time of application, the local police authority shall provide the applicant with a dated receipt for the application.

Subd. 2. Investigation. The chief of police or sheriff shall check criminal histories, records and warrant information relating to the applicant through the Minnesota crime information system.

Subd. 3. Forms. Chiefs of police and sheriffs shall make transferee permit application forms available throughout the community. There shall be no charge for forms, reports, investigations, notifications, waivers or any other act performed or materials provided by a government employee or agency in connection with application for or issuance of a transferee permit.

Subd. 4. Grounds for disqualification. A determination by the chief of police or sheriff that the applicant is prohibited by section 624.713 from possessing a pistol shall be the only basis for refusal to grant a transferee permit.

Subd. 5. Granting of permits. The chief of police or sheriff shall issue a transferee permit or deny the application within seven days of application for the permit. The chief of police or sheriff shall provide an applicant with written notification of a denial and the specific reason for the denial. The permits and their renewal shall be granted free of charge.

Subd. 6. Permits valid statewide; renewal. Transferee permits issued pursuant to this section are valid statewide and shall expire after one year. A transferee permit may be renewed in the same manner and subject to the same provisions by which the original permit was obtained. Permits issued pursuant to this section are not transferable. A person who transfers a permit in violation of this subdivision is guilty of a misdemeanor.

Subd. 7. Permit voided. The transferee permit shall be void at the time that the holder becomes prohibited from possessing a pistol under section 624.713, in which event the holder shall return the permit within five days to the issuing authority. Failure of the holder to return the permit within the five days is a misdemeanor unless the court finds that the circumstances or the physical or mental condition of the permit holder prevented the holder from complying with the return requirement.

Subd. 8. Hearing upon denial. Any person aggrieved by denial of a transferee permit may appeal the denial to the county court or county municipal court having jurisdiction over the county or municipality in which the denial occurred.

Subd. 9. Permit to carry. A valid permit to carry issued pursuant to section 624.714 constitutes a transferee permit for the purposes of this section and section 624.7132.

Subd. 10. Transfer report not required. A person who transfers a pistol to a person exhibiting a valid transferee permit issued pursuant to this section or a valid permit to carry issued pursuant to section 624.714 is not required to file a transfer report pursuant to section 624.7132, subdivision 1.

Subd. 11. Penalty. A person who makes a false statement in order to obtain a transferee permit knowing or having reason to know the statement is false is guilty of a gross misdemeanor.

Subd. 12. Local regulation. This section shall be construed to supersede municipal or county regulation of the issuance of transferee permits.

624.7132 Report of transfer

Subdivision 1. Except as provided in this section and section 624.7131, every person who agrees to transfer a pistol shall report the following information in writing to the chief of police of the organized full-time police department of the municipality where the agreement is made or to the appropriate county sheriff if there is no such local chief of police:

(a) The name, residence, telephone number and driver's license number or nonqualification certificate number, if any, of the proposed transferee;

(b) The sex, date of birth, height, weight and color of eyes of the proposed transferee;

(c) A statement by the proposed transferee that he is not prohibited by section 624.713 from possessing a pistol; and

(d) The address of the place of business of the transferor.

The report shall be signed by the transferor and the proposed transferee. The report shall be delivered by the transferor to the chief of police or sheriff no later than three days after the date of the agreement to transfer, excluding weekends and legal holidays.

Subd. 2. Investigation. Upon receipt of a transfer report, the chief of police or sheriff shall check criminal histories, records and warrant information relating to the proposed transferee through the Minnesota crime information system.

Subd. 3. Notification. The chief of police or sheriff shall notify the transferor and proposed transferee in writing as soon as possible if the chief or sheriff determines that the proposed transferee is prohibited by section 624.713 from possessing a pistol. The notification to the transferee shall specify the grounds for the disqualification of the proposed transferee and shall set forth in detail his right of appeal under subdivision 13.

Subd. 4. Delivery. No person shall deliver a pistol to a proposed transferee until seven days after the date of the agreement to transfer as stated on the report delivered to a chief of police or sheriff in accordance with subdivision 1 unless the chief of police or sheriff waives all or a portion of the seven day waiting period.

No person shall deliver a pistol to a proposed transferee after receiving a written notification that the chief of police or sheriff has determined that the proposed transferee is prohibited by section 624.713 from possessing a pistol.

If the transferor makes a report of transfer and receives no written notification of disqualification of the proposed transferee within seven days of the date of the agreement to transfer, the pistol may be delivered to the transferee.

Subd. 5. Grounds for disqualification. A determination by the chief of police or sheriff

that the proposed transferee is prohibited by section 624.713 from possessing a pistol shall be the sole basis for a notification of disqualification under this section.

Subd. 6. Transferee permit. If a chief of police or sheriff determines that a transferee is not a person prohibited by section 624.713 from possessing a pistol, the transferee may, within 30 days after the determination, apply to that chief of police or sheriff for a transferee permit, and the permit shall be issued.

Subd. 7. Immediate transfers. The chief of police or sheriff may waive all or a portion of the seven day waiting period for a transfer.

Subd. 8. Report not required. (1) If the proposed transferee presents a valid transferee permit issued under Laws 1977, c. 349, section 3, or a valid permit to carry issued under section 624.714, the transferor need not file a transfer report.

(2) If the transferor makes a report of transfer and receives no written notification of disqualification of the proposed transferee within seven days of the date of the agreement to transfer, no report or investigation shall be required under this section for any additional transfers between that transferor and that transferee which are made within 30 days of the date on which delivery of the first pistol may be made under subdivision 4.

Subd. 9. Number of pistols. Any number of pistols may be the subject of a single transfer agreement and report to the chief of police or sheriff. Nothing in this section or section 624.7131 shall be construed to limit or restrict the number of pistols a person may acquire.

Subd. 10. Restriction on records. If, after a determination that he is not a person prohibited by section 624.713 from possessing a pistol, a transferee requests that no record be maintained of the fact that he is the transferee of a pistol, the chief of police or sheriff shall sign the transfer report and return it to the transferee as soon as possible. Thereafter, no government employee or agency shall maintain a record of the transfer that identifies the transferee, and the transferee shall retain the report of transfer.

Subd. 11. Forms; cost. Chiefs of police and sheriffs shall make transfer report forms available throughout the community. There shall be no charge for forms, reports, investigations, notifications, waivers or any other act performed or materials provided by a government employee or agency in connection with a pistol transfer.

Subd. 12. Exclusions. This section shall not apply to transfers of antique firearms as curiosities or for their historical significance or value, transfers to or between federally licensed firearms dealers, transfers by order of court, involuntary transfers, transfers at death or the following transfers:

(a) A transfer by a person other than a federally licensed firearms dealer;

(b) A loan to a prospective transferee if the loan is intended for a period of no more than one day;

(c) The delivery of a pistol to a person for the purpose of repair, reconditioning or remodeling;

(d) A loan by a teacher to a student in a course designed to teach marksmanship or safety with a pistol and approved by the commissioner of natural resources;

(e) A loan between persons at a firearms collectors exhibition;

(f) A loan between persons lawfully engaged in hunting or target shooting if the loan is intended for a period of no more than 12 hours;

(g) A loan between law enforcement officers who have the power to make arrests other than citizen arrests; and

(h) A loan between employees or between the employer and an employee in a business if the employee is required to carry a pistol by reason of his employment and is the holder of a valid permit to carry a pistol.

Subd. 13. Appeal. A person aggrieved by the determination of a chief of police or sheriff that the person is prohibited by section 624.713 from possessing a pistol may appeal the determination as provided in this subdivision. In Hennepin and Ramsey counties the municipal court shall have jurisdiction of proceedings under this subdivision. In the remaining counties of the state, the county court shall have jurisdiction of proceedings under this subdivision.

On review pursuant to this subdivision, the court shall be limited to a determination of whether the proposed transferee is a person prohibited from possessing a pistol by section 624.713.

Subd. 14. Transfer to unknown party. (a) No person shall transfer a pistol to another who is not personally known to the transferor unless the proposed transferee presents evidence of his identity to the transferor. A person who transfers a pistol in violation of this clause is guilty of a misdemeanor.

(b) No person who is not personally known to the transferor shall become a transferee of a pistol unless he presents evidence of his identity to the transferor. A person who becomes a transferee of a pistol in violation of this clause is guilty of a misdemeanor.

Subd. 15. Penalties. A person who does any of the following is guilty of a gross misdemeanor:

(a) Transfers a pistol in violation of subdivisions 1 to 13 of this section;

(b) Transfers a pistol to a person who has made a false statement in order to become a transferee, if the transferor knows or has reason to know the transferee has made the false statement;

(c) Knowingly becomes a transferee in violation of subdivisions 1 to 13 of this section; or

(d) Makes a false statement in order to become a transferee of a pistol knowing or having reason to know the statement is false.

Subd. 16. Local regulation. This section shall be construed to supersede municipal or county regulation of the transfer of pistols except more restrictive regulation in cities of the first class.

624.714. Carrying of weapons without permit; * * * * * (Concerns permits to carry: for information concerning applying for permits to carry, required contents of such applications, place of application, conditions under which applications will be granted, etc., contact your local law enforcement agency.)

624.715 Exemptions; antiques and ornaments. Sections 624.713 and 624.714 shall not apply to antique firearms which are carried or possessed as curiosities or for their historical significance or value.

624.716 Saturday night specials prohibited. Any federally licensed firearms dealer who sells a Saturday Night Special Pistol, or any person who manufactures or assembles a Saturday Night Special Pistol in whole or in part, shall be guilty of a gross misdemeanor.

624.717 Local regulation. Sections 624.711 to 624.716 shall be construed to supersede municipal or county regulation of the carrying or possessing of pistols and the regulation of Saturday Night Special Pistols except more restrictive regulation in cities of the first class.

624.718. Notwithstanding any other law to the contrary, cities of the first class may enforce local laws, ordinances or regulations governing the transfer of pistols that are more restrictive than state laws governing the transfer of pistols.

Alexandria

9.20. Dangerous weapons and articles. Subd. 1. Acts Prohibited. It is unlawful for any person to:

* * * * *

F. Sell or have in his possession any device designed to silence or muffle the discharge of a firearm; or

G. Furnish a minor under eighteen years of age with a firearm, * * * ammunition, or explosive without the written consent of his parent or guardian or of the Police Department.

Subd. 2. Exception. Nothing in Subdivision 1 of this Section shall prohibit the possession of the articles therein mentioned if the purpose of such possession is for public exhibition by museums or collectors of art.

* * * * *

Appleton

6.06. Weapons, sale to minors. No person shall sell, give, loan, or in any wise furnish

any firearm or ammunition to a minor under the age of eighteen years without the written consent of his parents or guardian, or of a police officer of this village.

6.07. Minors not to use firearms. No minor under the age of fourteen years shall handle or have in his possession or under his control except while accompanied by his parent or guardian any firearm, * * * of any kind for hunting or target practice, or any other purpose. No parent or guardian shall knowingly permit any minor to violate this section.

Apple Valley

128-IV. Hand gun purchases: The purchaser of a hand gun from a Federally licensed dealer in the Village of Apple Valley must wait for three (3) days before delivery of said hand gun. The Federally licensed dealer will inform the Village of Apple Valley Police Office of the purchaser's name and address so as to enable the determination of any of the below listed prohibiting conditions. The Police Department of the Village of Apple Valley will notify the above dealer of the results within the three (3) day limit for delivery of said gun or refund of any moneys deposited should the sale be prohibited. Prohibiting conditions:

A. Under the age of eighteen (18) years.

B. Has been convicted of a felony or any crime of violence under the laws of this state or any other jurisdiction.

C. Has been convicted of any offense involving the applicant's use of intoxicating beverages, hallucinatory chemicals, narcotics or any other drugs.

D. Has been hospitalized for attempted suicide or mental or emotional conditions involving the use of alcohol, hallucinatory chemicals or drugs.

Arden Hills

Section 1. Definitions. Deadly Weapons. The term "deadly weapons" as used herein shall include the following: (1) all firearms; * * * * *

Section 4. The selling, giving, loaning, or furnishing in any way of any deadly weapon to a minor under the age of 18 years without the written consent of his parents or guardian is hereby prohibited.

Section 5. No minor under the age of 14 years shall handle or have in his possession or under his control, except while accompanied by or under the immediate charge of his parent or guardian, any deadly weapon. * * * * *

Blaine

89.01—Every person who shall sell, give, loan or in any wise furnish any firearm or ammunition to a minor under the age of 18 years without the written consent of his parents or guardian or of a police officer or magistrate shall be guilty of a misdemeanor.

101.01—The term "deadly weapons" as used herein shall include the following: (1) All Firearms; * * * * *

101.02—(1) Whoever does any of the following is guilty of a misdemeanor: * * * * * (6) Sells or has in his possession any device designed to silence or muffle the discharge of a firearm; * * * * *

101.03—The selling, giving, loaning, or furnishing in any way of any deadly weapon to a minor under the age of 18 years without written consent of his parents or guardian, or of a police officer or magistrate is hereby prohibited.

Bloomfield

Ordinance 188

Section 6.01. It shall be unlawful for any person under 18 years of age to purchase, carry or transport a firearm on any public street or in any public place.

Section 7.01. It shall be unlawful for any person to sell a firearm to any person under 18 years of age.

Bloomington

203.01. Restriction. Every person who shall sell, give, loan or in any wise furnish any firearm or ammunition to a minor under the age of eighteen years without the written consent of his parents or guardian, or of a police office or magistrate shall be guilty of a misdemeanor.

Brooklyn Center

19-402. Dangerous weapons. 1. "Dangerous weapon" means any firearm * * * whether loaded or unloaded * * *.

2. Section 609.66 of the Minnesota Criminal Code (West 1963) Laws of 1963, Chapter 753 is hereby adopted by reference and shall have the same force and effect as though set out at length herein.

Brooklyn Park

Section 950:00. Definition. Definition—Deadly Weapons. The term "deadly weapons" as used herein shall include the following: 1) All firearms; * * * * *

Section 950:15. Minors. The selling, giving, loaning, or furnishing in any way of any deadly weapon to a minor under the age of 18 years without the written consent of his parents or guardian, or of a police officer or magistrate is hereby prohibited.

Section 950:20. Under 14 Years. No minor under the age of 14 years shall handle or have in his possession or under his control, except while accompanied by or under the immediate charge of his parent or guardian, any deadly weapon.

Buhl

510:02. Deadly Weapons. It shall be unlawful in the Village of Buhl for any person, persons, firm or corporation to manufacture, or cause to be manufactured, sell, keep for sale, offer or dispose of any * * * pistol, revolver, * * * or to give or sell any pistol or fire-arm to a person under the age of eighteen years, without the written consent of a magistrate or the mayor of the said village or the chief of police or marshal of said village.

Chisholm

Section 10.20. Dangerous weapons and articles. Subd. 1. Acts prohibited. It is unlawful for any person to: * * * F. Sell or have in his possession any device designed to silence or muffle the discharge of a firearm; or, * * * H. Furnish a minor under eighteen (18) years of age with a firearm, * * *, ammunition, or explosive without the written consent of his parent or guardian or the Police Department; or, * * *

* * * * *

Cold Spring

Section 925:00. Definition of Deadly Weapons. The term "deadly weapons" as used herein shall include the following: 1) All firearms; * * *

Section 925:15. Minors. The selling, giving, loaning, or furnishing in any way of any deadly weapon to a minor under the age of 18 years without the written consent of his parents or guardian, or of a police officer or magistrate is hereby prohibited.

Coon Rapids

7-201 Definition. "Dangerous Weapon" means any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or great bodily harm, or any other device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm. The term "dangerous weapon" shall include but not be limited to the following: (1) All firearms; * * * * *

7-202 Prohibited Actions. (1) Whoever does any of the following is guilty of a misde-

meanor: * * * * * (f) Sells or has in his possession any device designed to silence or muffle the discharge of a firearm; * * * * *

(2) Nothing in this Section prohibits the possession of the articles mentioned by museums or collectors of art or for other lawful purposes of public exhibition.

7-203 Selling Gun to Minor Without Parental Consent. The selling, giving, loaning, or furnishing in any way of any deadly weapon to a minor without written consent of his parents or guardian, or of a Police Officer or Magistrate is hereby prohibited.

7-204 Minors Under 14. No minor under the age of 14 years shall handle or have in his possession or under his control, except while accompanied by or under the immediate charge of his parent or guardian, any dangerous weapon.

Cottage Grove

Sec. 27-13. Furnishing to minors. No person, within the limits of the village, shall: (a) Without the parent's or guardian's consent, furnish a child under fourteen years of age, or as a parent or guardian, permit such child to handle or use, outside of the parent's or guardian's presence, a firearm or airgun of any kind, or any ammunition or explosive.

(b) Furnish a minor under eighteen years of age with a firearm, airgun, ammunition or explosive without the written consent of his parent, guardian, the police department or magistrate of this village.

Sec. 27-14. Silencers. No person, within the limits of the village, shall sell or have in his possession any device designed to silence or muffle the discharge of a firearm.

Crystal

935.01. Definitions. Subdivision 1. For purposes of this Section, the terms defined herein have the meanings given them.

Subd. 2. "Military type weapon" means any firearms such as bazookas, machine guns, mortars, grenades, molotov cocktails and similar weapons. * * *

935.03. Military Type Weapons. It is unlawful for any person to own, keep, carry or have possession of military type weapons in the City. This Section does not apply to law enforcement personnel or military personnel while on active duty, or to military or fraternal organizations in their participation in public functions or celebrations.

Deephaven

8. Minors not to use fire arms. No minor under the age of 18 years shall handle or have in his possession or under his control, except while accompanied by or under the immediate charge of his parent, guardian or competent supervision, any fire arms, * * * ammunition or other weapons of any kind for hunting or target practice or any other purpose.

27. Sale of firearms to minor. No person, firm or corporation shall sell, offer for sale, or give away, or in anywise furnish any firearms or ammunition to a minor under the age of 18 years, without the written consent of such minor's parents or guardian or of a peace officer or magistrate.

Dilworth

Sec. 60.07. Subd. 1. Acts Prohibited. Whoever does any of the following is guilty of a misdemeanor * * *:

(4) Sells or has in his possession any device designed to silence or muffle the discharge of a firearm; or

(5) W thout the parents' or guardians' consent, and the written consent of the Dilworth Police Department, furnishes a child under 15 years of age with a firearm or other dangerous weapon or explosive, or any ammunition or explosive.

Duluth

* * * * *

Sec. 49-6. Possession, use, etc., of firearm silencers prohibited. No person shall use, own or possess any type of silencer for a firearm or possess any firearm equipped so that a silencer may be attached to such firearm.

* * * * *

Sec. 49-8. Possession of firearms by minors. No minor under the age of eighteen years shall handle or have in his possession or under his control, except while accompanied by or under the immediate charge of a parent or guardian, any firearm of any kind for hunting or target practice or any other purpose.

* * * * *

Sec. 49-15. License—Required. No person shall engage in the business of selling or renting guns, pistols or other firearms without first having obtained a license to do so.

* * * * *

Sec. 49-20. Sales and rentals to minors. No person shall sell, rent, give, loan or in anywise furnish any firearm, * * * or ammunition to a minor under the age of eighteen years without the written consent of his parents or guardian or of a police officer or magistrate of the city.

* * * * *

Eagan

9.02 Subdivision 3.—Persons prohibited. It shall be unlawful for any person within the Town of Eagan to own, possess, carry or have in his custody or control any firearms or ammunition unless such person:

A. Shall be at least 18 years of age or shall hold a firearms safety certificate recognized by the Minnesota Department of Conservation or be enrolled in a program to qualify for said certificate or if under 18 years of age is accompanied by his parent or guardian or by an adult who has written permission from the minor's parent or guardian.

B. Shall not within the previous five years have been: 1. Convicted of a felony or drug addiction under the laws of this state or any other jurisdiction, or a violation of this Ordinance or any other law relating to weapons. 2. Committed under the statutory procedures of this state or any other jurisdiction to any institution for treatment of a mental, drug, or alcoholic condition.

C. It shall be unlawful for any person to be in possession of, carry or transport any firearm or ammunition while under the influence of alcohol or hallucinatory chemical, or narcotics, or other drugs.

East Grand Forks

Sec. 9.20. Dangerous Weapons and Articles. Subd. 1. Acts Prohibited. It is unlawful for any person to: * * * * *

F. Sell or have in his possession any device designed to silence or muffle the discharge of a firearm; or

G. Furnish a minor with a firearm, * * * ammunition, or explosive without the written consent of his parent or guardian or of the Police Department.

Elko

Ordinance 24

Section I. Definitions. * * * * *

Handgun shall mean a gun designed to be fired primarily with one hand and capable of inflicting serious personal injury, without limitation as to type of propellant or type of projectiles, and regardless of whether the handgun or pistol was factory made, made individually by a skilled craftsman or craftsmen, or homemade.

* * * * *

Section II. Prohibitions: The following acts are prohibited * * * (c) Possessing a handgun if the person possessing it is a person who has been formally adjudicated as mentally ill, mentally incompetent, or insane, or who has been convicted of a felony within a period of ten years prior to the time he is found in possession of a handgun; * * *

Ely

410:02. Deadly weapons. [No person] without the written consent of a magistrate,

shall sell or give any pistol or firearm to a person under the age of eighteen years.

Fairmont

6.20. Dangerous weapons and articles. 1. Acts prohibited. It is unlawful for any person to: * * * F. Sell or have in his possession any device designed to silence or muffle the discharge of a firearm; * * *

(G) Furnish a minor under eighteen years of age with a firearm, * * * ammunition, or explosive without the written consent of his parent or guardian or of the Police Department.

Farmington

6-1-15. Dangerous weapons: It shall be unlawful for any person to do any of the following: * * * (G) Sell or have in his possession any device designed to silence or muffle the discharge of a firearm;

(H) Without the parent's or guardian's consent, furnish a child under fourteen (14) years of age, or as a parent or guardian permit such child to handle or use, outside of the parent's or guardian's presence, a firearm or airgun of any kind, or any ammunition or explosive; (I) Furnish a minor under eighteen (18) years of age with a firearm, * * * ammunition or explosive without the written consent of his parent or guardian or of the Police Department of the Village.

Farmington Hills

80.265. Unlawful Possession of Firearms. It shall be unlawful for any person under the influence of intoxicating liquor or any exhilarating or stupefying substance to carry, have in possession or under control, or use in any manner or discharge any firearm within this City.

Glencoe

Ordinance 93, Article B.

Weapons—sale to minors. No person shall sell, give, loan or in any wise furnish any firearm or ammunition to a minor under the age of sixteen (16) years without the written consent of his parents or guardian, or of a police officer or magistrate of the municipality.

Glenville

Sec. 606. Dangerous Weapons and Articles. Subd. 1. Acts Prohibited. It is unlawful for any person to: * * * * *

F. Sell or have in his possession any device designed to silence or muffle the discharge of a firearm; or,

G. Without the parent's or guardian's consent, furnish a child under 14 years of age, or as a parent or guardian permit such child to handle or use, outside of the parent's or guardian's presence, a firearm or airgun of any kind, or any ammunition or explosive; or,

H. Furnish a minor under eighteen years of age with a firearm, * * * ammunition, or explosive without the written consent of his parent or guardian or of the Police Department or magistrate of the Village.

Golden Valley

Section 525:00. Definitions. 1. General Terms. Terms used in this ordinance, unless expressly defined, shall have the meanings prescribed by the Statutes of the State of Minnesota for the same terms.

(2) "Firearm" shall mean any weapon from which is propelled any missile, projectile or bullet through a barrel by means of explosives, carbon dioxide, air or other vapor, excluding (1) any device used exclusively for the firing of stud cartridges, explosive rivets, or similar industrial ammunition, (2) any antique firearm or (3) Saturday Night Special Pistol.

Section 525:03. Display of Firearms. It shall be unlawful for any person within the City to display or exhibit any firearm for sale in any show window abutting a public street or sidewalk or public entryway which can be seen from the public street.

Granite Falls

6.06. Weapons, sale to minors. No person shall sell, give, loan, or in any wise furnish any firearm or ammunition to any minor under the age of eighteen years without the written consent of his parents or guardian, or of a police officer or magistrate of this city.

Green Isle

Ordinance 67

Section 4. The selling, giving, loaning, or furnishing in any way of any deadly weapon to a minor under the age of 18 years without the written consent of his parents or guardian is hereby prohibited.

Greenwood

Ordinance 16

Section 12. Every person who shall sell, give, loan or in any wise furnish any firearm or ammunition to a minor under the age of 18 years without the written consent of his parents or guardian or of a police officer or magistrate shall be guilty of a misdemeanor.

Hampton

1004.02. Prohibitions. The following are prohibited within the city:

* * * * *

C. Minors. The selling, giving, loaning, or furnishing in any way of any deadly weapon (includes all firearms) to a minor under the age of 18 years without the written consent of his parents or guardian, or of a police officer or magistrate is hereby prohibited.

Hastings

Sec. 9.20. Dangerous weapons and articles. Subd. 1. Acts prohibited. It is unlawful for any person to: * * * * *

F. Sell or have in his possession any device designed to silence or muffle the discharge of a firearm; or

G. Furnish a minor under eighteen years of age with a firearm, * * * ammunition, or explosive without the written consent of his parent or guardian or of the Police Department. * * * * *

Hayfield

Ordinance 7-1-Section 1: Use by Minors. No person under the age of 18 shall handle, or have in his possession or under his control, except while accompanied by or under the immediate charge of his parents or guardian, any firearm or air gun of any kind for hunting or target practice or any other purpose.

Hendricks

11.202. Sale of Firearms to Minor. No person shall offer for sale, sell, give away, or in anyway furnish any firearms or ammunition to any person under the age of 18 years, without the written consent of such persons parents or guardian or of a peace officer or magistrate.

Hermantown

Ordinance 76-02

* * * * *

Section 3. No person shall use, own or possess any firearm equipped so that a silencer may be attached to such firearm.

* * * * *

Section 5. No minor age fourteen (14) years or under shall handle, or have in his or her possession or under his or her control except while accompanied by or under the immediate charge of a parent or guardian, any firearm of any kind for hunting or target practice or any other purpose. Any minor having attained the age of 15 shall be the holder of a valid firearm safety permit.

* * * * *

Hibbing

Section 10.20 same as Chisholm

Hopkins

Section 910:25. Minors Not to Use Firearms. No minor under the age of fourteen years shall * * * have in his possession * * * any firearm of any kind for hunting or target practice or any other purpose. * * * * *

Section 920:12. Sale of Firearms to Minors. Every person who shall sell, give away, or in any wise furnish any firearms or ammunition to a minor under the age of eighteen years without the written consent of his parents or guardian or of a peace officer or magistrate, shall be guilty of a penal offense.

Hoyt Lakes

2. Use of fire arms by minors. No minor under the age of 14 years shall handle or have in his possession or under his control, except while accompanied by or under immediate charge of his parent or guardian, any fire arm * * * of any kind for hunting or target practice or for any other purpose. Every person violating the foregoing provision or aiding or knowingly permitting any such minor to violate the same shall be guilty of a misdemeanor.

International Falls

12.08-1. No person within the limits of the City of International Falls shall manufacture or cause to be manufactured, sell, keep for sale, offer, or dispose of, any instrument, or weapon of the kind usually known as a * * * pistol * * * or other offensive and dangerous weapons or instruments, or without the written consent of the Mayor, shall sell or give any revolver or fire arm of any description to a person under the age of eighteen years.

Inver Grove

927.13 Handgun Identification Marks. No person shall * * * keep in his possession or under his control, any such handgun upon which the name of the make, model, manufacturer's number, or other mark of identification has been to his knowledge, changed, altered, renewed or obliterated.

Jackson

Sec. 8.20. Dangerous Weapons and Articles. Subd. 1. Acts Prohibited. It is unlawful for any person to:

* * * * *

F. Sell or have in his possession any device designed to silence or muffle the discharge of a firearm; or,

G. Furnish a minor under eighteen years of age with a firearm, * * * ammunition, or explosive without the written consent of his parent or guardian or of the Police Department.

Subd. 2. Exception. Nothing in Subdivision 1 of this Section shall prohibit the possession of the articles therein mentioned if the purpose of such possession is for public exhibition by museums or collectors of art.

* * * * *

Kettle River

Section 4. Every person, who shall sell, give, loan or in any way furnish any firearm or ammunition to a minor under the age of eighteen years without the written consent of his parents or guardian, or of a police officer or magistrate, shall be guilty of a misdemeanor.

La Crescent

B. Specific Terms. The following terms shall have the following meanings:

1. "Person" shall mean any natural individual, firm, partnership, trust, estate, club, association or corporation. As applied to partnerships or associations, the word includes the partners or members thereof, as applied to corporations it includes the officers, agents, or employees thereof who are responsible for the act referred to. The singular includes the plural, and plural includes the singular. The masculine gender includes the feminine gender.

2. "Firearm" shall mean any weapon from which is propelled any missile, projectile or bullet by means of explosives or gas and shall include air and "BB" guns.

3. "Long gun" shall mean a rifle, shotgun or similar gun not designed to be fired from the hand.

4. "Hand gun" shall mean any firearm designed to be fired from the hand.

5. "Military type weapon" shall mean any destructive device and the ammunition designed only for such device having firepower, mass explosive or incendiary characteristic of weapons such as cannons having a bore diameter of larger than one-half inch, bazookas, machine guns, fully automatic weapons, mortars, grenades, Molotov cocktails, but not including shotguns, rifles, pistols or revolvers included in definitions (3) and (4) above. Destructive devices which are not firearms and ammunitions for any military type weapon which is inert and not readily restorable, both mechanically, and by intent, shall be exempted from the provisions of this ordinance.

* * * * *

7. "Ammunition" shall mean any complete round prepared for insertion in and propulsion from any firearm.

* * * * *

9. "Dealer" shall mean a person licensed to sell, manufacture or repair firearms.

Section 2. Persons Prohibited: A. It shall be unlawful for any person within the corporate limits of the Village of La Crescent, to own, possess, carry, or have in his custody or control any firearm, or ammunition unless such person:

1. Shall be at least 18 years of age or shall hold a firearms safety certificate recognized by the Minnesota Department of Conservation or be enrolled in a program to qualify for said certificate.

2. Shall not within the previous five years have been:

a. Convicted of a felony or drug addiction under the laws of this state or any other jurisdiction; or a violation of this ordinance or any other law relating to weapons.

b. Committed under the statutory procedures of this state or any other jurisdiction to any institution for treatment of a mental, drug or alcoholic condition.

B. It shall be unlawful for any person to be in possession of, carry or transport any firearm or ammunition while under the influence of any alcoholic beverage, or hallucinatory chemical, or narcotics, or other drugs.

Section 3. Places Prohibited. A. It shall be unlawful for any person, except law enforcement or military personnel while in the course of their duties, or owner or agent while he is present at a business place operated by him, or private persons with permits who are required by their occupation to be present, to have in his possession or control any firearm or ammunition while such person is present at any public place or public gathering within the Village of La Crescent.

Section 4. Weapons Prohibited: A. It shall be unlawful for any person within the Village of La Crescent to own, keep, carry or have in his custody or control any of the following:

1. Military type * * * weapons unless the person in possession of such weapon has in his possession the permit provided in Section 6.

2. Any firearm or ammunition which the transferee knows or has reasonable cause to

believe has been stolen or transferred in violation of this ordinance.

Section 5. Sales, Gift or Delivery of Weapons and Ammunition. A. It shall be unlawful for any person within the Village of La Crescent to sell, give or deliver to any person:

1. Any weapon prohibited under Section 4 unless the weapon to be received is a military type weapon * * * and the person to receive the weapon has secured the permit provided in Section 6.

2. Any firearm or ammunition for such firearm if such person is:

a. Under the age of 18 years if the firearm is a long gun or under 21 years of age if the firearm is a hand gun, except for legitimate firearm activities set forth in Section 3 (D) or unless the recipient shall qualify under Section 2 (A-1).

b. Under the influence of alcohol, hallucinatory chemicals, narcotics or other drugs.

c. Prohibited from ownership, possession, custody or control of firearms under section 2, and seller or giver knew or had reasonable cause to believe such person was prohibited.

Section 6. Permit for Military Type and Assault Weapons: A. The owner or purchaser of a military type or assault weapon may be issued a permit by the Chief of Police for possession either as a collector's item or as a military type weapon used in officially recognized competition, or assault weapon, provided such person is not prohibited from owning or possessing firearms under this ordinance * * *.

* * * * *

B. A "Military type weapon used in officially recognized competition" shall include its ammunition and shall be weapons used in competition regulated and supervised by a target shooting club, pistol club or sportsman's club, which is duly authorized to purchase or receive firearms from the United States. Any such weapon shall be kept in a secure location.

Lake Elmo

1301.050. License Required. No persons shall deal in or sell at retail or wholesale without a license, any gun, pistol, revolver, * * *.

Lakeville

Section 1. Weapons Prohibited. No person shall * * * sell, offer for sale or have in his possession, except in his own domicile, or carry or use any dangerous or deadly weapon, including, but not by way of limitation, revolvers, pistols * * * * *.

Section 2. Exception. The prohibition of this chapter shall not be construed to forbid any law enforcement officer from carrying any of said weapons as may be necessary in the proper discharge of his duties, nor shall this chapter prohibit the sale, possession or carrying of a revolver or pistol for legitimate sporting purposes providing such revolver or pistol is not concealed.

Lauderdale

2. Specific terms. The following terms shall have the following meanings. (a) "Firearm" shall mean any weapon from which is propelled any missile, projectile, bullet, or other mass through a barrel by means of explosives or gas or air, excluding devices used exclusively for the firing of stud cartridges, explosive rivets, or similar industrial apparatus and instruments or equipment when used by licensed physicians or veterinarians in the course and scope of their professions.

(b) "Handgun" shall mean any firearm having a barrel of less than twelve inches in length and capable of being concealed on the person.

(c) "Military type weapon" shall mean any destructive device and the ammunition designed only for such device having firepower, mass, explosive or incendiary characteristics of weapons such as cannons having a bore diameter larger than one-half inch, bazookas, machine guns, fully automatic weapons, mortars, grenades, Molotov cocktails, but not including shotguns, rifles, pistols or revolvers.

* * * * *

(e) "Ammunition" shall mean any projectile, bullet, or other mass prepared for insertion in and propulsion from any firearm.

(f) "Secured container" shall mean a locked case legibly marked "firearms" having no mechanical features designed for immediate weapons removal or use and containing no other nonrelated objects, except that a "secured container" for a rifle or shotgun may mean a weapon case, such as leather, fibre, canvas or plastic secured with a zipper, clasp, buckle, or ties.

2. Persons prohibited from possessing firearms. (1) No person who has not attained the age of 18 years shall have any firearm in his custody or control, or carry the same on his person, within the limits of the Village of Lauderdale except when he is accompanied by his parent or legal guardian, while participating under adult supervision as a member of a registered target shooting or sportsmen's club, gun-training program, gun show, parade or similar event for which a permit has been issued by the Chief of Police, or unless he holds a firearms safety certificate recognized by the Minnesota Department of Conservation, or is actually enrolled in a program to obtain the same.

(2) No person shall have any firearm in his possession or control, or carry the same on his person, within the limits of the Village of Lauderdale who has been convicted of any felony, or who is addicted to the use of drugs or who is under the influence of drugs or alcohol.

4. Weapons prohibited. No person shall own, keep, carry, or have in his possession anywhere in the Village of Lauderdale any military type weapons, * * *, or any stolen weapon, except military personnel engaged in the course of their duties and peace officers, unless he holds a permit to possess the same as collectors' items or for use in officially recognized competition. "Officially recognized competition" includes all competitions held under the sponsorship of a registered target shooting or sportsman's club which is duly authorized to obtain firearms or ammunition from the United States.

6. License required to sell firearms. No person shall engage in the business of selling or dealing in firearms or ammunition in the Village of Lauderdale without first obtaining a license to do so from the Village Council. The fee for such license shall be $10.00, payable annually * * *.

7. Permits and registrations.

* * * * *

(2) Any person not prohibited from owning or possessing firearms may obtain a permit to possess a military type of assault weapon as a collectors' item, or to possess a military type weapon for participation in officially recognized competition upon application therefor to the Chief of Police. [Contact local authorities for required contents] * * *. The Chief shall issue such permit, without fee, if he concludes the applicant is of good moral character and intends to use the weapon for a lawful purpose.

Lester Prairie

Section 3. Weapons—Sale to Minors. No person shall sell, give, loan or in any wise furnish any firearm or ammunition to a minor under the age of eighteen years without the written consent of his parents or guardian, or of a police officer or magistrate of the municipality.

Little Falls

Section 10.20. Dangerous Weapons and Articles. Subd. 1. Acts Prohibited. It is unlawful for any person to: * * * * *

F. Sell or have in his possession any device designed to silence or muffle the discharge of a firearm; or

G. Permit, as a parent or guardian, any child under fourteen years of age to handle or use, outside of the parent's or guardian's presence, a firearm or air gun of any kind, or any ammunition or explosive; or

H. Furnish a minor under eighteen years of age with a firearm, air gun, ammunition, or

explosive without the written consent of his parent or guardian or of the Police Department.

Luverne

6.20. Dangerous weapons and articles. Subd. 1. Acts prohibited. It is unlawful for any person to:

* * * * *

F. Sell or have in his possession any device designed to silence or muffle the discharge of a firearm; or,

G. Furnish a minor under eighteen years of age with a firearm, * * * ammunition, or explosive without the written consent of his parent or guardian or of the Police Department.

Subd. 2. Exception. Nothing in Subdivision 1 of this Section shall prohibit the possession of the articles therein mentioned if the purpose of such possession is for public exhibition by museums or collectors of art.

* * * * *

Mahtomedi

4. No minor under the age of 18 years shall within the Village of Mahtomedi, handle or have in his possession or under his control, except when accompanied by or under the immediate charge of his parent or guardian, any fire-arm of any kind whatever, or ammunition of any kind for use therein, * * *

Mankato

Sec. 9.30. Dangerous Weapons and Articles. Subd. 1. Acts Prohibited. It is unlawful for any person to: * * *

F. Sell or have in his possession any device designed to silence or muffle the discharge of a firearm; or

G. Furnish a minor under eighteen (18) years of age with a firearm, air gun, ammunition, or explosive without the written consent of his parents or guardian or of the Police Department. * * *

Maple Grove

Section 960:15. Selling to Minor. The selling, giving, loaning, or furnishing in any way of any deadly weapon to a minor under the age of 18 years without the written consent of his parents or guardian, or of a police officer or magistrate, is hereby prohibited.

Maplewood

1210.010 Permit. No person shall purchase, receive or accept a revolver or pistol within the Village of Maplewood without first having obtained a written permit from the Chief of Police of said Village, authorizing him to purchase, receive or accept such revolver or pistol.

1210.020. Sale without permit prohibited. No person, firm or corporation shall sell, deliver, display for sale, offer for sale, or otherwise transfer a pistol or revolver within the Village of Maplewood to any person who is not the holder of a written permit from the Police Chief of Maplewood, authorizing him to purchase, receive or accept such revolver or pistol, and in no case shall any person, firm or corporation deliver a pistol or revolver to the person to whom it is sold, or to be transferred unless such sale or transfer is made pursuant to approval of the Chief of Police in the manner hereinafter provided.

1210.040 Transfer of permit. Before the delivery of a pistol or revolver purchased, or to be transferred, the purchaser or the person to whom such revolver is to be delivered shall surrender his permit to the seller or transferor and shall sign in duplicate and deliver to said seller a statement [contact local authorities for required contents] * * *. The seller or transferor shall immediately deliver to the Chief of Police one copy of such statement * * *. The weapon shall not be released by the seller for delivery to the purchaser or transferee until the Police Chief has approved such sale.

1210.050. Terms. The words "pistol or revolver" as used in this ordinance shall be construed as meaning any fire arm with a barrel less than twelve (12) inches in length.

Mendota Heights

Ordinance 909

Section 5. Possession of Weapons by Minors. No minor under the age of eighteen years shall, within the corporate limits of the Village of Mendota Heights, handle or have in his possession or under his control, except when accompanied by or under the immediate charge of his parent or guardian, any firearm of any kind whatsoever, or ammunition of any kind for use therein, * * *

Section 6. Sale to Minors. No person, firm, or corporation shall, within the corporate limits of the Village of Mendota Heights, give, sell, or otherwise furnish any firearms * * * or any ammunition of any kind for use therein, to any minor under age of eighteen years, without the written consent of the parent or guardian of the said minor. * * *

Section 9. Definitions

9.1 General Terms. Terms used in this ordinance, unless expressly defined, shall have the meanings prescribed by the Statutes of the State of Minnesota for the same terms.

9.2 Specific Terms. The following terms shall have the following meanings:

9.2(1) Firearm—Shall mean any weapon from which is propelled any missle, projectile, bullet, or other means of explosives or gas or air, excluding devices used exclusively for the firing of stud cartridges, explosive rivets, or similar industrial apparatus and instruments or equipment when used by licensed physicians or veterinarians in the course and scope of their profession.

9.2(2) Handgun—Shall mean any firearm having a barrel of less than twelve inches in length and capable of being concealed on the person.

9.2(3) Military Type Weapon—Shall mean any destructive device and the ammunition designed only for such device having firepower, mass, explosive or incendiary characteristics of weapons such as cannons having a bore diameter larger than one-half inch, bazookas, machine guns, fully automatic weapons, mortars, grenades, Molotov cocktails, but not including shotguns, rifles, pistols or revolvers.

* * * * *

9.2(5) Ammunition—Shall mean any projectile, bullet, or other mass prepared for insertion in and propulsion from any firearm.

9.2(6) Secured Container—Shall mean a locked case legibly marked "firearm" having no mechanical features designed for immediate weapons removal or use and containing no other non-related objects, except that a "secured container" for a rifle or shotgun may mean a weapon case, such as leather, fibre, canvas or plastic secured with a zipper, clasp, buckle or ties.

Section 12. Sale, Gift, or Delivery of Firearms

12.1. No person shall purchase, receive or accept a handgun within the Village of Mendota Heights without first having obtained a written permit from the Chief of Police authorizing him to purchase, receive or accept such handgun. * * *

12.2. Before the delivery of a handgun purchased or to be transferred, the purchaser or person to whom such handgun is to be delivered shall surrender his permit and shall sign in duplicate and deliver to the seller or transferer a statement [contact local authorities for required contents] * * *. The seller or person intending to transfer such handgun shall immediately deliver to the Chief of Police one copy of such statement, and if it appears that the person to whom such weapon is sold or to be transferred has been permitted to purchase, accept or receive such handgun, the Chief of Police shall endorse upon such statement his approval of the purchase or transfer.

12.4. No person shall sell, lend, give, or deliver to any person any military type weapon or assault weapon except upon presentation of a valid permit to possess the same issued to the transferee by the Chief of

Police as provided in Paragraph 12.2 hereinabove.

12.5. No person shall knowingly sell, lend, give, or deliver any firearm to any person forbidden to own or possess the same by law or ordinance.

12.6. Nothing contained in this section shall apply to sales at wholesale to dealers.

Section 13. License Required to Sell Firearms. 13.1 No person shall engage in the business of selling or dealing in firearms or ammunition in the Village of Mendota Heights without first obtaining a license to do so from the Village Council. * * *

Section 14. Permits and Registrations. Permits and registrations required hereunder shall be accomplished in the following manner:

14.1. Any person not prohibited from owning or possessing firearms may obtain a permit to possess a military type * * * weapon as a collector's item, or to possess a military type weapon for participation in officially recognized competition upon application therefor to the Chief of Police. * * *

Minneapolis

877.010. Definitions.

2. Specific terms. The following terms shall have the following meanings:

(a) "Person" shall mean any natural individual, firm, partnership, trust, estate, club, association or corporation. As applied to partnerships or associations, the word includes the partners or members thereof, as applied to corporations it includes the officers, agents, or employees thereof who are responsible for the act referred to. The singular includes the plural, and the plural includes the singular. The masculine gender includes the feminine gender.

(b) "Firearm" shall mean any weapon from which is propelled any missile, projectile or bullet by means of explosives or gas and shall include air and "BB" guns.

(c) "Long gun" shall mean a rifle, shotgun or similar gun not designed to be fired from the hand.

(d) "Hand gun" shall mean any firearm designed to be fired from the hand.

(e) "Military type weapon" shall mean any destructive device and the ammunition designed only for such device having firepower, mass, explosive or incendiary characteristic of weapons such as cannons having a bore diameter of larger than one-half inch, bazookas, machine guns, fully automatic weapons, mortars, grenades, Molotov cocktails, but not including shotguns, rifles, pistols or revolvers included in definitions (c) and (d) above. Destructive devices which are not firearms and ammunition for any military type weapon which is inert and not readily restorable, both mechanically and by intent, shall be exempted from the provisions of this ordinance.

* * * * *

(g) "Ammunition" shall mean any complete round prepared for insertion in and propulsion from any firearm.

(j) "Dealer" shall mean a person licensed to sell, manufacture or repair firearms.

877.020. Persons prohibited. It shall be unlawful for any person within the corporate limits of the City of Minneapolis to own, possess, carry, or have in his custody or control any firearms or ammunition unless such person:

1. Shall be at least 18 years of age or shall hold a firearms safety certificate recognized by the Minnesota Department of Conservation or be enrolled in a program to qualify for said certificate.

2. Shall not within the previous five years have been:

(a) Convicted of a felony or drug addiction under the laws of this state or any other jurisdiction; or a violation of this ordinance or any other law relating to weapons.

(b) Committed under the statutory procedures of this state or any other jurisdiction to any institution for treatment of a mental, drug or alcholic condition.

It shall be unlawful for any person to be in possession of, carry or transport any firearm or ammunition while under the influence of alcohol, or hallucinatory chemical, or narcotica, or other drugs.

877.040. Weapons prohibited. It shall be unlawful for any person within the City of Minneapolis to own, keep, carry or have in his custody or control any of the following:

1. Military type * * * weapons, unless the person in possession of such weapon has in his possession the permit provided in Section 877.080.

2. Any firearm or ammunition which the transferee knows or has reasonable cause to believe has been stolen or transferred in violation of this ordinance.

The provisions of this section shall not apply to law enforcement or military personnel while engaged in the course of their duties.

877.050. Sales, gift or delivery of weapons and ammunition. It shall be unlawful for any person within the City of Minneapolis to sell, give, or deliver to any person:

1. Any weapon prohibited under Section 877.040, unless the weapon to be received is a military type weapon * * * and the person to receive the weapon has secured the permit provided in Section 877.080.

2. Any firearm or ammunition for such firearm if such person is:

(a) Under the age of 18 years if the firearm is a long gun or under the age of 21 years if the firearm is a hand gun, except for legitimate firearm activities set forth in Section 877.030(4) or unless the recipient shall qualify under Section 877.020(1).

(b) Under the influence of alcohol, hallucinatory chemicals, narcotics or other drugs.

(c) Prohibited from ownership, possession, custody, or control of firearms under Section 877.020, and seller or giver knew or had reasonable cause to believe such person was prohibited.

877.070. Report of sale, gift, or delivery of handguns. Every person within the corporate limits of the City of Minneapolis who agrees to sell, deliver or give to any person a handgun as defined in this ordinance shall within five (5) days after such agreement to sell, deliver or give, make and file with the City Clerk a legible written report, * * *.

The City Clerk shall provide the reporting forms on which such reports shall be made, and shall make such forms freely available to licensed gun dealers. Persons not licensed dealers may secure such reporting forms from the City Clerk or any licensed gun dealer.

No person who intends to sell, deliver or give to any person a handgun as defined in this ordinance shall deliver actual possession to the person to receive the handgun until three (3) days excluding Saturday, Sunday, and holidays, after making and filing with the City Clerk the required Report of Sale.

877.080. Permit for military type and assault weapons. The owner or purchaser of a military type * * * weapon may be issued a permit by the City Clerk for possession either as a collector's item or as a military type weapon used in officially recognized competition, or assault weapon, provided such person is not prohibited from owning or possessing firearms under this ordinance.

Minnetonka

Section 515:00. Prohibited Use of Dangerous Weapons. No person shall in any public or private place engage in any of the following acts or conduct without first securing a permit to do so from the Chief of Police:

* * * * *

(d) Sell or otherwise furnish any firearms * * * any ammunition of any kind for use therein, to any juvenile under the age of 18 years unless they are the parent or guardian of such juvenile.

Minnetrista

1. Definitions. (a) "Firearms" shall mean any device from which is propelled any projectile or bullet by means of explosions or gas.

(b) "Military type weapon" shall mean any firearm or other weapon such as bazookas, machine guns, mortars or grenades.

2. Possession. No person shall own, keep, carry or have possession of any military type

weapon within the Village of Minnetrista except persons on active duty as a member of a United States military unit.

Montevideo

5-1-32: Firearms; minors; No minor under the age of fourteen (14) years shall handle, or have in his possession or under his control, except while accompanied by or under the immediate charge of his parent or guardian any firearm of any kind for hunting or target practice or any other purpose. No parent or guardian shall knowingly permit any minor to violate this Section.

5-1-71: Weapons; sale to minors: No person shall sell, give, loan, or in any wise furnish any firearms or ammunition to a minor under the age of eighteen (18) years without the written consent of his parents or guardian, or of a police officer or magistrate of the City.

Morris

11.285. Sale of Firearms to Minors Prohibited. No person shall furnish a minor, under 18 years of age, with a firearm of any description or ammunition or explosive without the written consent of the minor's parent or guardian.

11.286. Possession of certain weapons prohibited. No person shall have in his possession any of the following except for displays in museums or collections: (1) Any device designed to silence or muffle the discharge of a firearm;

* * * * *

Mound

51.20 Minors—Firearms. No person, or persons, shall hereafter within the Village of Mound, sell, give, loan or in anywise furnish any firearm * * * (or) ammunition * * * to a minor under the age of 18 years without the written consent of his parents or guardian or of a police or magistrate of the Village * * *.

Mountain Iron

Ordinance 149

51.09 Furnishing to Minors. No person within the City Limits of the City of Mountain Iron shall: a. Furnish a minor under 18 years of age with any firearms, air gun, ammunition or explosives without the written consent of said minor's parent or legal guardian, or the Chief of Police.

* * * * *

51.10 Silencers. No person within the City Limits of the City of Mountain Iron, Minnesota, shall sell or have in his possession any device designed to silence or muffle the discharge of a firearm.

New Brighton

Article 2 Weapons

Sec. 18-18. Possession of firearms. No person shall have any firearm in his possession or control, or carry the same on his person, within the limits of the city, who has been convicted of any felony, or who is addicted to the use of drugs, or who is under the influence of drugs or alcohol.

North Mankato

Sec. 10.20. Dangerous Weapons and Articles. Subd. 1. Acts Prohibited. It is unlawful for any person to:

* * * * *

F. Sell or have in his possession any device designed to silence or muffle the discharge of a firearm; or,

* * * * *

H. Furnish a minor under eighteen (18) years of age with a firearm, * * * ammunition, or explosive without the written consent of his parent or guardian or of the Police Department.

North St. Paul

101.010. Permit. No person shall purchase, receive or accept a revolver or pistol within the Village of North St. Paul without first having obtained a written permit from the Chief of Police of said Village, authorizing him to purchase, receive or accept such revolver or pistol.

101.020. Sale without permit prohibited. No person, firm or corporation shall sell, deliver, display for sale, offer for sale, or otherwise transfer a pistol or revolver within the Village of North St. Paul to any person who is not the holder of a written permit from the Police Chief of North St. Paul, authorizing him to purchase, receive or accept such revolver or pistol * * *.

101.040. Transfer of permit. Before the delivery of a pistol or revolver purchased, or to be transferred, the purchaser or the person to whom such revolver is to be delivered shall surrender his permit to the seller or transferor and shall sign in duplicate and deliver to said seller a statement (contact local authorities for required contents) * * *. The seller or transferor shall immediately deliver to the Chief of Police one copy of such statement * * *. The weapon shall not be released by the seller for delivery to the purchaser or transferee until the Police Chief has approved such sale.

101.050. Terms. The words "pistol or revolver" as used in this ordinance shall be construed as meaning any fire arm with a barrel less than twelve (12) inches in length.

101.060. Wholesale to dealers does not apply. Nothing contained herein shall apply to the sales at wholesale to dealers.

Oakdale

Sec. 13-17. Possession of certain items prohibited. No person shall possess any of the following:

(a) Fully automatic firearms.

(b) Shot guns with a barrel less than eighteen (18) inches.

(c) Rifles with a barrel less than sixteen (16) inches.

(d) Weapons made from a rifle or shot gun with an overall length of less than twenty-six (26) inches.

(e) Semi-automatic pistols with shoulder stocks.

(f) Any silencer.

(g) Any unconventional weapon which is capable of being fired and can be concealed on the person.

Sec. 13-22. Silencers. It shall be unlawful for any person to sell or have in his possession any device designed to silence or muffle the discharge of a firearm.

Orono

Ordinance 106

Section 1. Chapter 80 of the Municipal Code of Orono is hereby amended as follows: 80.010 Definitions. * * * * * (b) "Military type weapon" shall mean any firearm or other weapon such as bazookas, machine guns, mortars or grenades.

80.020 Possession. No person shall own, keep, carry or have possession of any military type weapon within the Village of Orono except persons on active duty as a member of a United States military unit.

Pine Springs

Ordinance 9

Section 2. Possession by Minor. It shall be unlawful for a minor under the age of 18 to have in his possession any uncased firearm beyond the presence of a parent or guardian within the Village of Pine Springs. The police officers of the Village may confiscate any

such weapon found on any minor but shall return the weapon to the parent or guardian of said minor upon request.

Section 4. Acts Prohibited. a. It shall be unlawful for any person to do any of the following acts: * * * * *

6. Sell or have in his possession any device designed to silence or muffle the discharge of a firearm.

7. To furnish a child under 16 years of age, without the consent of the parent or guardian of said child or if parent or guardian of said child permit such child to handle or use outside of the parent's or guardian's presence a rifle, gun, or dangerous weapon of any kind or any ammunition or explosive.

Section 6. Possession. a. No person shall possess the following:

1. Fully automatic firearms.

2. Shot guns with a barrel less than 18 inches.

3. Rifles with a barrel less than 16 inches.

4. Weapons made from a rifle or shot gun with an overall length of less than 26 inches.

5. Semi-automatic pistols with shoulder stocks.

6. Any silencer.

7. Any unconventional weapon which is capable of being fired and can be concealed on the person.

Plymouth

1.14. Dangerous Articles. * * * * * (b) It shall be unlawful to sell, give, loan, or in anywise furnish any firearm or ammunition to a minor under the age of 18 years without the written consent of his parents or guardian or of a police officer or magistrate.

Redwood Falls

Sec. 10.20. Dangerous Weapons and Articles. Subd. 1. Acts Prohibited. It is unlawful for any person to:

* * * * *

F. Sell or have in his possession any device designed to silence or muffle the discharge of a firearm; or

* * * * *

H. Furnish a minor under eighteen (18) years of age with a firearm, * * * ammunition; or explosive without the written consent of his parent or guardian or of the Police Department.

Richfield

5.29. Firearms. Subdivision 1. Definitions. The following terms have the meanings ascribed to them in this section:

(1) "Crime of violence" means murder, manslaughter, rape, mayhem, kidnaping, burglary, housebreaking; assault with intent to kill, commit rape or rob; assault with a dangerous weapon or assault with intent to commit any offense punishable by imprisonment for more than one year.

(2) "Firearm" means any weapon, by whatever name known, which is designed to expel a projectile or projectiles by the action of expanding gases.

(3) "Fugitive from justice" means any person who has fled or is fleeing from any law enforcement officer to avoid prosecution or incarceration for a crime of violence or to avoid giving testimony in any criminal proceeding.

(4) "Manufacturer or dealer" means any person engaged in the business of manufacturing, repairing or selling firearms at wholesale or retail, or of accepting or pledging firearms as security for loans within the city.

(5) "Pistol" means any firearm with a barrel less than 12 inches in length.

(6) "Subversive organization" means any group, committee, club, league, society, association or combination of individuals the purpose of which, or one of the purposes of which, is the establishment, control, conduct, seizure or overthrow of the government of the United States or any state or political subdivision thereof by the use of force, violence, military measures or threats of one or more of the foregoing.

Subd. 2. License Required. It is unlawful for any manufacturer or dealer to sell at wholesale or retail, to lease or to pledge or accept as security for a loan, any firearm without first having procured a license.

* * * * *

Subd. 9. Unlawful Disposition of Firearms. It is unlawful for any dealer to sell, lease, lend or otherwise transfer a firearm to any person who he knows or has reasonable cause to believe has been convicted of a crime of violence, is a fugitive from justice, is of unsound mind, is a drug addict or a habitual drunkard, or who is a member of a subversive organization.

Rochester

1. Dangerous weapons. No person shall: * * * (5) possess any other dangerous article or substance for the purpose of being used unlawfully as a weapon against some other person; or (6) sell or have in his possession any device designed to silence or muffle the discharge of any firearm; or (7) without the parent's or guardian's consent, furnishes a child under 14 years of age, or as a parent or guardian permits such child to handle or use, outside of the parent's or guardian's presence, a firearm * * * or any ammunition or explosive; or (8) furnish to any minor under 18 years of age any firearm, * * * ammunition or explosive without the written consent of the parent or guardian, or of the police department.

Rockford

Ordinance 11.0

Dangerous Weapons. Subdivision 1. Acts prohibited. Whoever does any of the following may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100.00. * * * * * (6). Sells or has in his possession any device designed to silence or muffle the discharge of a firearm; or * * * * * (8). In the municipality of Rockford, furnishes a minor under 18 years of age with a firearm, * * * ammunition, or explosive without the written consent of his parent or guardian or of the police department or magistrate of said municipality.

Roseville

160.090. Sale to Minors under 18. No person shall give, sell or otherwise furnish any firearms, * * * or any ammunition of any kind for use therein, to any minor under the age of 18 years without the written consent of the parent or guardian of said minor. * * *

161.010. Registration Required. No person shall purchase, sell, trade, own or have in his possession any revolver or hand gun without registering the same with the Chief of Police.

Sauk Rapids

Dangerous Weapons

Section 900:00. Whoever does any of the following within the limits of this municipality is guilty of a misdemeanor:

* * * * *

F. Sells or has in his possession any device designed to silence or muffle the discharge of a firearm;

G. Without the parents or guardians consent, furnishes a child under fourteen (14) years of age, * * * a firearm or air gun of any kind, or any ammunition or explosive;

* * * * *

Stillwater

Adopted Minnesota State Law

St. Louis Park

4:700. Minors not to have firearms * * *. No minor under the age of eighteen years

shall handle, or have in his possession, or under his control, except while accompanied by, or under the immediate charge of, his parent or guardian, any firearm of any kind whether for hunting or target practice or any other purpose * * *. No person shall knowingly permit any such minor to violate this section.

4:701. Firearms for minors. No person shall sell, give away, or in any wise furnish any firearms or ammunition * * * to a minor under the age of eighteen years without the written consent of his parents or guardian or of a peace officer or magistrate.

St. Paul

425.01—Definitions. A. General Terms. Terms used in this ordinance, unless expressly defined, shall have the meanings prescribed by the Statutes of the State of Minnesota for the same terms.

B. Specific Terms. The following terms shall have the following meanings.

(1) Firearm. Shall mean any weapon from which is propelled any missile, projectile, bullet, or other mass through a barrel by means of explosives or gas or air, excluding devices used exclusively for the firing of stud cartridges, explosive rivets, or similar industrial apparatus and instruments or equipment when used by licensed physicians or veterinarians in the course and scope of their professions.

(2) Handgun. Shall mean any firearm having a barrel of less than twelve inches in length and capable of being concealed on the person.

(3) Military Type Weapon. Shall mean any destructive device and the ammunition designed only for such device having firepower, mass, explosive or incendiary characteristics of weapons such as cannons having a bore diameter larger than one-half inch, bazookas, machine guns, fully automatic weapons, mortars, grenades, Molotov cocktails, but not including shotguns, rifles, pistols or revolvers.

* * * * *

(5) Ammunition. Shall mean any projectile, bullet, or other mass prepared for insertion in and propulsion from any firearm.

* * * * *

425.02—Persons Prohibited from Possessing Firearms. A. No person who has not attained the age of 18 years shall have any firearm in his custody or control, or carry the same on his person, within the limits of the City of Saint Paul except when he is accompanied by his parent or legal guardian, while participating under adult supervision as a member of a registered target shooting or sportsmen's club, gun-training program, gun show, parade or similar event for which a permit has been issued by the Chief of Police, or unless he holds a firearms safety certificate recognized by the Minnesota Department of Conservation, or is actually enrolled in a program to obtain the same.

B. No person shall have any firearm in his possession or control, or carry the same on his person, within the limits of the City of Saint Paul who has been convicted of any felony, or who is addicted to the use of drugs or who is under the influence of drugs or alcohol.

425.04—Weapons Prohibited. No person shall own, keep, carry, or have in his possession anywhere in the City of Saint Paul any military type weapons, * * * or any stolen weapon, except military personnel engaged in the course of their duties and peace officers, unless he holds a permit to possess the same as collector's items or for use in officially recognized competition. "Officially recognized competition" includes all competitions held under the sponsorship of a registered target shooting or sportsman's club which is duly authorized to obtain firearms or ammunition from the United States.

425.06—Sale, Gift, or Delivery of Firearms. A. No person shall purchase, receive or accept a handgun within the City of Saint Paul without first having obtained a written permit from the Chief of Police authorizing him to purchase, receive or accept such handgun. * * *

B. Before the delivery of a handgun purchased or to be transferred, the purchaser or person to whom such handgun is to be delivered shall surrender his permit and shall sign in duplicate and deliver to the seller or transferer a statement [contact local authorities for required contents] * * *. The seller or person intending to transfer such handgun shall immediately deliver to the Chief of Police one copy of such statement * * *.

C. No licensed dealer shall sell, lend, give, or deliver any rifle or shotgun to any person without making and retaining a permanent record of the information required in (B) with respect to handguns. * * *

D. No person shall sell, lend, give, or deliver to any person any military type weapon or assault weapon except upon presentation of a valid permit to possess the same issued to the transferee by the Chief of Police as provided in (B). * * *

E. No person shall knowingly sell, lend, give, or deliver any firearm to any person forbidden to own or possess the same by law or ordinance.

F. Nothing contained in this section shall apply to sales at wholesale to dealers.

425.07—License Required to Sell Firearms. No person shall engage in the business of selling or dealing in firearms or ammunition in Saint Paul without first obtaining a license to do so from the City Council. * * *

425.08—Permits and Registrations. Permits and registrations required hereunder shall be accomplished in the following manner: * * * * *

B. Any person not prohibited from owning or possessing firearms may obtain a permit to possess a military type * * * weapon as a collectors' item, or to possess a military type weapon for participation in officially recognized competition upon application therefor to the Chief of Police. * * * * *

St. Paul Park

22.07 Regulation and Licensing of Firearms. d. No minor under the age of fourteen years shall handle or have in his possession or under his control except while accompanied by or under the immediate charge of his parent or guardian, any firearm or air gun of any kind and use for hunting, target practice or any other purpose.

St. Peter

Sec 10.20. Dangerous Weapons and Articles. Subd. 1. Acts Prohibited. It is unlawful for any person to: * * * * *

F. Sell or have in his possession any device designed to silence or muffle the discharge of a firearm; or

H. Furnish a minor under eighteen years of age with a firearm, air gun, ammunition, or explosive without the written consent of his parent or guardian or of the Police Department.

Shakopee

Section 10.20 same as Chisholm

Shoreview

909.010. Definitions. Weapon means any gun, pistol, revolver, * * * firearm or any similar device for the propulsion of shot or other metal pellet by whatever means, and any other dangerous or deadly weapon or instrument. Person means any person, firm, partnership or corporation.

909.020. Unlawful Acts. Except as otherwise provided herein, it shall be unlawful for any person: (A) To handle or to have in his possession or under his control for sale or otherwise any such weapon within the Village of Shoreview. * * *

909.040. Exceptions. The prohibitions of this Ordinance shall not apply to: (A) Police Officers. Duly authorized police officers of the Village when in the course and scope of their duties, nor to any officer of any Court whose duty shall be to serve warrants or to make arrests, nor to persons whose business or occupations may require the carrying of weapons for protection and who shall have obtained from the Village Council or some

other appropriate governmental agency, a license or permit to handle or have in his or her possession or control any weapon.

(B) Encased Weapons. Persons in possession of any weapon that is properly encased and/or is being stored or transported for hunting purposes and not for sale purposes. * * *

(D) Sale Not in Regular Course of Business. Persons in possession or control of any weapon for the purpose of the sale of the weapon as long as the sale is not in the regular course of said persons' business.

(E) Licensed Persons. Persons licensed hereunder.

909.050. License Required. No persons shall deal in or sell at retail or wholesale without a license, any gun, pistol, revolver. * * *

909.056. Conditions of License. Every license shall be granted subject to the following conditions and all other provisions of this and any other Chapter of the Shoreview Municipal Code or other ordinance or State law. * * * (B) No weapon of any sort shall be sold or furnished to any person under twenty-one (21) years of age.

Shorewood

Ordinance 5

Section 12. Every person who shall sell, give, loan or in any wise furnish any firearm or ammunition to a minor under the age of 18 years without the written consent of his parents or guardian or of a police officer or magistrate shall be guilty of a misdemeanor.

South St. Paul

808.01. Firearms purchase restricted. No person shall purchase, receive or accept a revolver, pistol, and other firearm having a barrel of 10 inches or less in length, without first having obtained a written permit from the Chief of Police authorizing him to purchase, receive or accept such a firearm.

808.02 Firearms sale restricted. No person shall sell, deliver, or otherwise transfer a pistol, revolver, or other firearm having a barrel of 10 inches or less in length, within the City to any person who is not the holder of a written permit from the Chief of Police authorizing him to purchase, receive or accept such firearm.

808.03. Firearm permit required. Applications for permits to purchase, receive and accept any revolver, pistol, or other firearm having a barrel of 10 inches or less in length, shall be made to the Chief of Police upon blanks to be provided therefor [contact local authorities for required contents]. * * *

808.06. Firearm identification marks. No person shall change, alter or obliterate the name of the make, model, manufacturer's number or other mark of identification, and no person shall keep in his possession or under his control any such firearm upon which the name of the make, model, manufacturer's number, or other mark of identification has been to his knowledge changed, altered, renewed or obliterated.

Thief River Falls

Section 10.20 same as Chisholm

Two Harbors

(e) Sales to intoxicated persons and minors. No person within the City shall purchase from, or sell, loan, or furnish any weapon in which any explosive substance can be used to, any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to a minor under the age of 18 years.

Vadnais Heights

145.050. Use of Dangerous Weapons: Any person who commits any of the following acts shall be guilty of a misdemeanor under this ordinance:

* * * * *

(6) Sell or has in his possession any device designed to silence or muffle the discharge of a firearm within the limits of this Village; or

* * * * *

(8) Furnish a minor under 18 years of age with a firearm, airgun, ammunition, or explosive without the written consent of such minor's parent or guardian or of the police department within the limits of this Village;

* * * * *

Virginia

3. Dangerous weapons. It shall be unlawful for any person, persons, firm or corporation * * * to sell or give any pistol or firearm to a person under the age of eighteen years, without written permit of the Mayor of the City of Virginia; * * *.

8. Use of arms by minors. No minor under the age of fourteen (14) years shall handle, or have in his possession or under his control, except while accompanied by or under the immediate charge of his parent or guardian, any fire arm of any kind for hunting or target practice, or any other purpose and it shall be unlawful for any person or persons to aid or knowingly permit any such minor to have such fire arms in his possession while unaccompanied by or under the immediate charge of his parent or guardian.

Wabasha

2. It shall be unlawful for any person under the age of fourteen years to handle or have in his possession or under his control, within the City of Wabasha, any firearm of any kind, except while accompanied by, or under the immediate charge of his parent or guardian.

Warren

Section 2. Sale to Minors. It shall be a misdemeanor for any person to sell, give, loan or in any manner furnish any fire-arm, air gun, ammunition or explosive to a minor without the written consent of his parent or guardian or of the Chief of Police of the city.

Waseca

6.20. Dangerous Weapons and Articles. Subd. 1. Acts Prohibited. It is unlawful for any person to:

* * * * *

F. Sell or have in his possession any device designed to silence or muffle the discharge of a firearm; or,

G. Furnish a minor under eighteen years of age with a firearm, * * * ammunition, or explosive without the written consent of his parent or guardian or of the Police Department.

Subd. 2. Exception. Nothing in Subdivision 1 of this Section shall prohibit the possession of the articles therein mentioned if the purpose of such possession is for public exhibition by museums or collecters of art.

* * * * *

West St. Paul

52.02 Deadly Weapons. * * * * * (f) Purchase of Revolvers. No person shall purchase, receive, or accept a revolver or pistol within the city without first providing the seller or transferor with his full and true name, address and date of birth in writing on a form approved by the Chief of Police.

(g) Sale of Revolvers. No person shall sell, deliver, offer for sale, or otherwise transfer a pistol or revolver within the city to any person until the purchaser or recipient of such firearm shall in the presence of the seller or transferor, write his name, address the

date of birth, on the form as provided in paragraph (f). * * *

White Bear Lake

1302.050. Dangerous weapons. No minor under the age of 18 years shall handle or have in his possession or under his control, except when accompanied by or under the immediate charge of his parent or guardian, any firearm of any kind whatsoever, or ammunition of any kind for use therein * * *.

No person shall give, sell, or otherwise furnish any firearms * * * or any ammunition of any kind for use therein, to any minor under age of 18 years, without the written consent of the parent or guardian of the minor. Said permission shall be preserved by the person furnishing such arms or ammunition, and shall be open to inspection at all reasonable times by all members of the police department, the Sheriff or his deputies, or the judge of any court of record in the State.

Wolf Lake

Ordinance 2

Section 11. Every person who shall sell, give, loan or in any wise furnish any firearm or ammunition to a minor under the age of 18 years without the written consent of his parents or guardian or of a police officer or magistrate shall be guilty of a misdemeanor.

Woodbury

1263.02 Definitions. The following terms shall have the following meanings:

A. "Person" shall mean any natural individual, firm, partnership, trust, estate, club, association, or corporation as applied to partnerships or associations. The word includes the partners or members thereof as applied to groups. It includes the officers, agent or employees thereof who are responsible for the act referred to.

B. "Firearm" shall mean any weapon from which is propelled any missile, projectile, or bullet by means of explosives, gas, compressed air, or mechanical spring and shall include air and BB guns.

C. "Long Gun" shall mean any rifle, shot gun, or similar gun not designed to be fired from the hand.

* * * * *

1263.03 Persons Prohibited. It shall be unlawful for any person within the corporate limits of the Village of Woodbury to own, possess, carry, or have in his custody or control any firearms or ammunition except as provided below:

* * * * *

B. Shall be at least 16 years of age or shall hold a firearm safety certificate recognized by the Minnesota Department of Conservation or be enrolled in a program to qualify for said certificate, except while accompanied by or under any charge of his parent or guardian.

C. Shall not within the previous 5 years have been convicted of a felony or drug addiction under the laws of this state or of any other jurisdiction or a violation of this ordinance or any other law relating to weapons.

D. Committed under the statutory procedures of this state or any other jurisdiction to any institution for treatment of a mental, drug, or alcoholic condition.

It shall be unlawful for any person to be in possession of, carry, or transport any firearm or ammunition while under the influence of alcohol or hallucinatory chemical or narcotics or other drugs.

Worthington

Section 6.20. Dangerous Weapons and Articles. Subd. 1. Acts prohibited. It is unlawful for any person to: * * * F. Sell or have in his possession any device designed to silence or muffle the discharge of a firearm; or, G. Furnish a minor under eighteen years of age with a firearm, * * * ammunition, or explosive without the written consent of his parent or guardian or of the Police Department.

* * * * *

Wyoming

462.04 No minor under the age of 14 years shall handle nor have in his possession under his control except while accompanied or under the immediate charge of his parent or guardian, any fire arm or air gun of any kind for any purpose.

Mississippi

State Law

Miss. Code

Sec. 45-9-1. Weapons to be registered; exceptions.

(1) Every person in this state who now owns or has in his possession, or who shall hereafter acquire any * * * machine guns, sub-machine guns, and/or similar firearms * * * shall be required to register such weapon in the manner and within the time hereinafter specified; provided, however, that the provisions of sections 45-9-1 to 45-9-17 shall not apply to any person, firm or corporation regularly engaged in the sale of such weapons in the usual course of business from an established and permanent place of business, except as herein provided; and provided, further, that the provisions of sections 45-9-1 to 45-9-17 shall not apply to any firearms manufactured prior to January 1, 1900, nor to any firearm manufactured since that date which is not capable of being discharged and which has been procured and has been kept by the owner thereof as a relic or historical specimen, nor to any firearms furnished to the organized militia of this state, or the armed forces of the United States for their use.

(2) Sections 45-9-1 to 45-9-17 shall not apply to collectors of firearms whose collection is registered with the National Rifle Association or other licensed national collectors firearms associations.

(For information concerning registration of weapons, contact the sheriff's office of the county in which you reside; if you have no fixed address, contact the sheriff's office in the county in which the weapon will be principally located)

* * * * *

Sec. 45-9-15. Transient nonresidents exempt. The provisions of sections 45-9-1 to 45-9-17 shall not apply to a transient nonresident of this state bringing a weapon with him in the course of travel into or through this state, where such weapon does not remain herein for more than thirty (30) days.

Sec. 45-9-17. Transfer of firearms. It will be necessary to register firearms under sections 45-9-1 to 45-9-17 only one time so long as said firearm remains in the possession of the person registering same, provided that when the registered firearm shall be sold or given away by the person registering same, then the person acquiring possession of such firearm shall register same as herein provided.

Sec. 45-9-19. Purchase of rifles and shotguns in contiguous states. It is declared that it is in the public interest to authorize residents of this state to purchase or otherwise obtain rifles and shotguns in states contiguous to this state in compliance with such other laws of this state or its political subdivisions as may be applicable and in compliance with Section 102 of the Gun Control Act of 1968, Public Law 90-618, 18 USC 921 et seq.

As used in this section, the term "a state contiguous to this state" shall mean any state with a border touching a border of this state. As used in this section, all other terms shall be given the meaning prescribed in 18 USC 921 (the Gun Control Act of 1968, Public Law 90-618) and the regulations duly promulgated thereunder as presently enacted or promulgated and as hereinafter modified.

It shall be lawful for a person residing in this state (including a corporation or other business entity maintaining a place of business in this state) to purchase or otherwise obtain a rifle or shotgun in a state contiguous to this state and to receive or transport such rifle or shotgun into this state.

This section shall not apply or be construed to affect in any way the purchase, receipt or transportation of rifles and shotguns by federally licensed firearms manufacturers, importers, dealers or collectors.

Sec. 97-37-1. Deadly weapons—carrying deadly weapon and use of imitation firearm prohibited—penalties. Any person who carries, concealed in whole or in part, any * * * pistol, revolver, or any rifle with a barrel of less than sixteen (16) inches in length, or any shotgun with a barrel of less than eighteen (18) inches in length, machine gun or any fully automatic firearm or deadly weapon, or any muffler or silencer for any firearm, whether or not it is accompanied by a firearm, or uses or attempts to use against another person any imitation firearm, shall upon conviction be punished as [prescribed by law] * * *.

* * * * *

Sec. 97-37-5. Deadly weapons—possession by convicted felon as evidence of crime. The possession of any deadly weapon as described in section 97-37-1 by any person who has been convicted of a felony under the laws of this state, any other state, or of the United States, shall be prima facie evidence of a violation of that section.

* * * * *

Sec. 97-37-13. Deadly weapons—weapons and cartridges not to be given to minor or intoxicated person. It shall not be lawful for any person to sell, give or lend to any minor or person intoxicated, knowing him to be a minor or in a state of intoxication, any deadly weapon, or other weapon the carrying of which concealed is prohibited, or pistol cartridge; and on conviction thereof, * * *.

Sec. 97-37-15. Deadly weapons—father not to suffer minor son to have or carry. Any father who shall knowingly suffer or permit any son under the age of sixteen years to have or to own, or to carry concealed, in whole or in part, any weapon the carrying of which concealed is prohibited, shall be guilty of a misdemeanor. * * *

Sec. 97-37-17. Deadly weapons—possession by students. A student of any college, university, or school, who shall carry, bring, receive, own, or have on the campus, college or school grounds, or within two miles thereof, any weapon the carrying of which concealed is prohibited, or a teacher, instructor, or professor who shall knowingly suffer or permit any such weapon to be carried or so brought, received, owned, or had by a student or pupil, shall be guilty of a misdemeanor, * * *.

* * * * *

97-37-31. Silencers on firearms—manufacture, sale, possession or use unlawful. It shall be unlawful for any person, persons, corporation, or manufacturing establishment, within this state, to make or manufacture for sale in the State of Mississippi, any instrument or device which, if used on firearms of any kind, will arrest or muffle or tend to lessen the report of said firearm when shot or fired. It shall be unlawful to sell, offer for sale or to give away, in this state any such instrument or device, and it shall be unlawful for any person to own, use or have in his possession, any such instrument or device. * * *

Sardis

* * * * *

Section 2. Any person who shall sell any such deadly weapon (includes pistol) to a minor shall be guilty of a misdemeanor.

Vicksburg

14-93. Dispensing to minor or intoxicated person. It shall be unlawful for any person to sell, give, or lend to any minor, or person intoxicated, knowing him to be a minor or in a state of intoxication, any deadly weapon, or other weapon the carrying of which concealed is prohibited, or pistol cartridge.

Winona

Ordinance 38

Sec. I. That it shall be unlawful for any person to sell, or give to any intoxicated person, or minor, any * * * pistol, or pistol cartridge. * * *

Yazoo City

Sec. 15-145. Certain sales prohibited. It shall be unlawful for any person to sell, give or lend to any minor or person intoxicated, knowing him to be a minor or in a state of intoxication, any deadly weapon or other weapon the carrying of which concealed is prohibited, or pistol cartridge;
* * *

Missouri

State Law

Ann. Mo. Stat. (Vernon's)

Purchase of Shotguns and Rifles

407.500. Missouri residents may purchase rifles and shotguns in contiguous states, when: Residents of the state of Missouri may purchase rifles and shotguns in a state contiguous to the state of Missouri, provided that such residents conform to the applicable provisions of the Federal Gun Control Act of 1968, and regulations thereunder, as administered by the United States Secretary of the Treasury, and provided further that such residents conform to the provisions of law applicable to such purchase in the state of Missouri and in the contiguous state in which the purchase is made.

Criminal Code
Preliminary Provisions

556.061. Code Definitions. * * * (9) "Deadly weapon" means any firearm, loaded or unloaded, or any weapon from which a shot, readily capable of producing death or serious physical injury may be discharged, * * *

Chapter 571
Weapons Offenses

571.100. Possession or control of bomb prohibited—penalty. Every person who has in his possession or under his control a bomb or bombshell, or who carries or possesses any explosive substance with intent to use the same unlawfully against the person or property of another, is guilty of a felony, and upon conviction therefor, shall be punished by imprisonment in the penitentiary for a term of not less than two nor more than ten years. The terms "bomb" and "bombshell" as used in this section shall be held to mean any device or object containing dynamite or any other explosive or highly combustible substance or chemical connected with a fuse, dynamite cap or other device or substance whereby

such explosive or highly combustible substance or chemical may be ignited or exploded, and capable of causing bodily injury or death to persons, or damage or destruction to property; provided, that this section shall not apply to the lawful possession of bombs or bombshells by peace officers or by members of military forces in the regular discharge of their duties as such.

* * * * *

571.105. Machine gun, possession a felony—exceptions. It shall be unlawful for any person to sell, deliver, transport, or have in actual possession or control any machine gun, or assist in, or cause the same to be done. Any person who violates this section shall be guilty of a felony and punished by imprisonment in the state penitentiary not less than two nor more than thirty years, or by a fine not to exceed five thousand dollars, or by both such fine and imprisonment; provided, that nothing in this section shall prohibit the sale, delivery, or transportation to police departments or members thereof, sheriffs, city marshals or the military or naval forces of this state or of the United States, or the possession and transportation of such machine guns, for official use by the above named officers and military and naval forces in the discharge of their duties.

571.110. Machine gun defined. The term "machine gun" as used in section 571.105 shall be construed to apply to and include all firearms known as machine rifles, machine guns or sub-machine guns capable of discharging automatically and continuously loaded ammunition of any caliber in which the ammunition is fed to such gun from or by means of clips, disks, drums, belts or other separable mechanical device.

* * * * *

571.120. Pistol, revolver or firearms to be plainly marked. No wholesaler or dealer therein shall have in his possession for the purpose of sale, or shall sell, any pistol, revolver, or other firearm of a size which may be concealed upon the person, which does not have plainly and permanently stamped upon the metallic portion thereof, the trademark or name of the maker, the model and the serial factory number thereof, which number shall not be the same as that of any other weapon of the same model made by the same maker, and the maker, and no wholesale or retail dealer therein shall have in his possession for the purpose of sale, or shall sell, any such weapon unless he keep a full and complete record of the description of the weapon, the name and address of the person from whom purchased and to whom sold, the date of the purchase or sale, and in the case of retailers the date of the permit and the name of the sheriff granting the same, which record shall be open to inspection at all times by any police officer or other peace officer of this state.

571.125. Concealed weapon permits, how obtained—antique firearms exempted.

1. No person, other than a manufacturer or wholesaler thereof to or from a wholesale or retail dealer therein, for the purposes of commerce, shall directly or indirectly buy, sell, borrow, loan, give away, trade, barter, deliver or receive, in this state, any pistol, revolver or other firearm of a size which may be concealed upon the person, unless the buyer, borrower or person receiving the weapon shall first obtain and deliver to, and the same be demanded and received by, the seller, loaner, or person delivering the weapon, within thirty days after the issuance thereof, a permit authorizing the person to acquire the weapon.

2. The permit shall be issued by the sheriff of the county in which the applicant for a permit resides in this state, if the sheriff be satisfied that the person applying for the same is of good moral character and of lawful age, and that the granting of the same will not endanger the public safety. The permit shall recite the date of the issuance thereof and that the same is invalid after thirty days after the date, the name and address of the person to whom granted and of the person from whom the weapon is to be acquired, the nature of the transaction, and a full description of the weapon, and shall be countersigned by the person to whom granted in the presence of the sheriff. The sheriff shall receive therefor a fee of fifty cents which shall be remitted to the county treasurer for deposit in the general revenue fund of the county.

3. If the permit be used, the person receiving the same shall return it to the sheriff within thirty days after its expiration, with a notation thereon showing the date and manner of the disposition of the weapon. The sheriff shall keep a record of all applications for the permits and his action thereon, and shall preserve all returned permits.

4. No person shall in any manner transfer, alter or change the permit or make a false notation thereon or obtain the same upon any false representation to the sheriff granting the same, or use or attempt to use a permit granted to another.

5. No permit shall be required for an antique firearm or replica thereof. The term "antique firearm" means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

571.130. Weapons must be stamped. No person within this state shall lease, buy or in any wise procure the possession from any person, firm or corporation within or without the state, of any pistol, revolver or other firearm of a size which may be concealed upon the person, that is not stamped as required by section 571.120; and no person shall buy or otherwise acquire the possession of any such article unless he shall have first procured a written permit so to do from the sheriff of the county in which such person resides, in the manner as provided in section 571.125.

571.135. Manufacture not prohibited. Nothing contained in sections 571.120 to 571.140 shall be considered or construed as forbidding or making it unlawful for a dealer in or manufacturer of pistols, revolvers or other firearms of a size which may be concealed upon the person, located in this state, to ship into other states or foreign countries, any such articles whether stamped or not so stamped.

571.140. Violation of sections 571.120 to 571.135, penalty. Any person or persons, firm, partnership, association or corporation, his or its directors, officers, agents or servants, convicted of violating any of the provisions of sections 571.120 to 571.135, shall be punished by imprisonment in the penitentiary for not more than five years, or by imprisonment in the county jail not less than six months, or by a fine not less than fifty dollars nor more than five thousand dollars, or by both such fine and imprisonment in the county jail.

Albany

Chapter 13
Article 4

Section 14—Sale of firearms, etc., to children prohibited. Any person within the City who shall sell to any child under the age of sixteen years, without the written consent of the parents or guardian of such child, any cartridge or fixed ammunition, or blank cartridge, or any gun, rifle, pistol, revolver, * * * shall be deemed guilty of a misdemeanor.

Ava

75.160. Prohibited weapons. A person commits an offense if he knowingly possesses, manufactures, transports, repairs or sells: 1. an explosive weapon; 2. a machine gun; 3. a gas gun (i.e., a gas ejective device); 4. a short barreled rifle or shotgun; 5. a firearm silencer.

Belton

Sec. 15-118. Sale to certain persons prohibited. No person engaged in business

shall purchase from, or sell, loan or furnish any weapon in which any explosive substance can be used, to any person under the influence of alcohol, or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to a minor under the age of eighteen (18) years.

Boonville

49.08. Sale of weapons to minors. No person shall sell to any child under the age of sixteen years, without the written consent of the parent or guardian of such child, any cartridge of fixed ammunition of which any fulminate is a component part, or any gun, rifle, pistol, revolver, * * *.

Breckenridge Hills

Section 2. * * * [no person shall] sell any pistol, revolver or other fire-arm with barrel less than 12 inches in length, within the Village of Breckenridge Hills, unless the person purchasing same shall have authorization to purchase such weapon issued by the Chief of Police of the Village * * *.

Bridgeton

Sec. 16-60. [Weapons] Sale of firearms or cartridges to minor. No person shall sell to any minor any firearm without the consent of the parent or guardian of such minor; or, without such consent, sell to any minor under the age of sixteen (16) years any cartridge or shell of fixed ammunition which part is detonated by any type of primer.

Cainsville

Ordinance 120A

Article 4

Section 16—Sale of Firearms, etc., to children prohibited. Any person with[in] the City who shall sell to any child under the age of sixteen years, without the written consent of the parents or guardian of such child, any cartridge of fixed ammunition, or blank cartridge, or any gun, rifle, pistol, revolver, * * * shall be deemed guilty of a misdemeanor.

Canton

75.180 Prohibited weapons. A person commits an offense if he knowingly possesses, manufactures, transports, repairs or sells: 1. any explosive weapon; 2. a machine gun; * * * 4. a short barreled rifle or shotgun; 5. a firearm silencer

* * * * *

Cape Girardeau

18-100. Sale of weapons to minors; restrictions. No person shall sell to any child under the age of sixteen years without the written consent of the parents or guardian of such child any cartridge or fixed ammunition of which fulminate is a component part, or any gun, rifle, pistol, revolver, * * *.

Carl Junction

74.800. Weapons. * * * 5. "Sale, etc., to minor of firearm, * * * etc." It shall be unlawful within the city for any person to sell, loan or furnish, to any minor any gun, pistol or other firearm or any toy gun, toy pistol or other toy firearm in which any explosive substance can be used, * * *.

Caruthersville

51.10 Sale of Ammunition to Minors. No person shall give, lend, barter, or sell to any minor under the age of 18 years, without the written consent of the guardian or parent of such minor, any cartridge of fixed ammunition, either blank or loaded with shot or ball, of which fulminate is a component part, or any gun, rifle, pistol or revolver * * *.

Charleston

12-59. Selling ammunition to minors. Any person within the limits of this city, who shall give, lend, barter, or sell to any minor under the age of eighteen (18) years, without the written consent of the guardian or parents of such minor any cartridge of fixed ammunition, either blank or loaded with shot or ball, of which fulminate is a component part, or any gun, rifle or revolver, * * * shall be deemed guilty of a misdemeanor.

Clayton

Sec. 17-31. [Weapons]—Sale of firearms or ammunition to minor. No person shall sell to any minor any firearm of any kind without the consent of the parent or guardian of such minor, * * *.

Columbia

7.1500. Weapons—Carrying concealed; delivering to minors. If any person shall, within the city, carry concealed upon or about his person any deadly or dangerous weapon, or * * * shall directly or indirectly sell or deliver, loan or barter to any minor any such weapon, without the consent of the parent or guardian of such minor, he shall be punished by a fine of not less than fifty dollars nor more than two hundred dollars, or by imprisonment in the city prison not less than five days nor more than six months, or by both such fine and imprisonment.

Crestwood

53.09. Sale of firearms or ammunition to minors. No person shall sell to any minor any firearm without the consent of the parent or guardian of such minor, or, without such consent sell to any minor under the age of sixteen years any cartridge or shell or fixed ammunition of which fulminate is a component part.

Dellwood

Section 203.08 Weapons. a. It is unlawful to: * * * (5) Directly or indirectly, sell or deliver, loan or barter to any minor any [dangerous or deadly] weapon without the consent of the parent or guardian of such minor; or * * *

El Dorado Springs

Section 250.630: Sale of Firearms to Minors. If any person shall directly sell or deliver, loan or barter to any minor any kind of firearms, * * * or other deadly weapon, without the consent of the parent or guardian of such minor, within the City, he shall be deemed guilty of a misdemeanor.

Elsberry

No person in the city shall: (2) Weapons. * * * (d) Display and Sale of Specified Weapons. No pawnbroker, second-hand dealer or other person engaged in business in the City shall display or place on exhibition in any show window or other window facing upon any street, any pistol, revolver or other firearm, with barrel less than twelve (12) inches in length. * * *

(e) Sales to Intoxicated Persons and Minors. Purchase from, or sell, loan, or furnish any weapon in which any explosive substance can be used to, any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to a minor under the age of 21 years.

(f) Records Required. Every second-hand dealer, pawnbroker, or other person engaged in the sale, rental or exchange of any weapons described in sub-sections (a) and (d) above shall keep a record of each such weapon purchased, sold, rented, or exchanged at retail.

(f-1) Time of Recordation. The record required herein shall be made at the time of the transaction, in a book kept for that purpose, and shall include all required the name of this person to whom such weapon is sold or from whom such weapon is purchased, his or her age; physical description, occupation, residence, and if residing in a municipality, the street and number where he or she resides; the make, caliber, and finish of the firearm, together with the number or serial letter thereof, if any; the date of the purchase, sale, rental, or exchange of such weapon; and the name of the employee or other person making such purchases, sale, rental or exchange.

Excelsior Springs

Sec. 24-86. Sale of firearms, etc., to minors. If any person shall directly or indirectly, sell or deliver, loan or barter to any minor any kind of firearms, * * * without the consent of the parent or guardian of such minor, within the city, he shall be deemed guilty of a misdemeanor.

Flat River

70. Sale to minors. Any person within the corporate limits of this city who shall sell to any child under the age of sixteen years, without the written consent of the parent or guardian of such child, any cartridge or any gun, rifle, pistol, revolver, * * * shall be deemed guilty of a misdemeanor.

Fulton

Section Twenty-Six; Sale of Pistols, Knives and Cartridges to Children Prohibited: Any person, within this City, who shall sell to any child under the age of sixteen years, without the written consent of the parents or guardian of such child, any cartridge or fixed ammunition of which any fulminate is a component part, or any gun, rifle, pistol, revolver * * * shall be deemed guilty of a misdemeanor.

Glasgow

75.160. Prohibited weapons. A person commits an offense if he knowingly possesses, manufactures, transports, repairs or sells: 1. An explosive weapon; 2. A machine gun; 3. A gas gun (i.e., a gas ejective device); 4. A short barreled rifle or shotgun; 5. A firearm silencer.

Gower

Ordinance 122

Section 1. * * * It shall be unlawful for any person * * * to sell or deliver, loan or barter any such weapon [a deadly or dangerous weapon] to any minor * * *

Grant City

Section 16—Sale of Firearms, etc., to Children Prohibited: Any person within the city who shall sell to any child under the age of sixteen years, without the written consent of the parents or guardian of such child, any cartridge of fixed ammunition, or blank cartridge, or any gun, rifle, pistol, revolver, * * * shall be deemed guilty of a misdemeanor.

* * * * *

Grantwood Village

Section 204.01: Sale, Discharge and Use of Prohibited. It shall be unlawful for any person, firm or corporation to, within the Village, sell, offer for sale, expose for sale, use, discharge or explode any shells or cartridges, blank or otherwise, pistols, toy or otherwise, cannon, toy or otherwise, * * *.

Grain Valley

Definitions: For the purpose of this chapter—A. Firearm— The term 'Firearm' means (1) A shotgun having a barrel or barrels of less than 18 inches in length; (2) A weapon made from a shotgun if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length; (3) A rifle having a barrel or barrels of less than 16 inches in length; (4) A weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length; (5) Any other weapon, as defined in subsection (E); (6) A machine gun; (7) A muffler or a silencer for any firearm whether or not such firearm is included within this definition; and (8) A destructive device. The term 'Firearm' shall not include an Antique Firearm or any device (other than a machine gun or destructive device) which, although designed as a weapon, by reason of the date of it's manufacture, value, design, and other characteristics is primarily a collector's item and is not likely to be used as a weapon.

B. Machinegun— The term 'Machinegun' means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any combination of parts designed and intended for the use in converting a weapon into a machinegun, and any combinations of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.

C. Rifle— The term 'Rifle' means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger and shall include any such weapon which may be readily restored to fire a fixed cartridge.

D. Shotgun— The term 'Shotgun' means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed shotgun shell.

E. Any other weapon— The term 'any other weapon' means any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of any explosive, a pistol or revolver having a barrel with a smooth bore designed or redesigned to fire a fixed shotgun shell weapons with the combination shotgun and rifle barrels 12 inches or more, less than 18 inches in length, from which only a single discharge can be made from either barrel without manual reloading, and shall include any such weapon which may be readily restored to fire such term shall not include a pistol or a revolver having a rifled bore, or rifled bores, or weapons designed, made, or intended to be fired from the shoulder and not capable of firing fixed ammunition.

F. Destructive Device— the term 'Destructive Device' means (1) Any explosive, incendiary, or poison gas, (a) Bomb, (b) Grenade, (c) Rocket having a propellent charge of more than four ounces, (d) Missile having an explosive or incendiary charge of more than one quarter ounce, (e) Mine, or (f) Similar device; (2) Any type of weapon by whatsoever name known which will, or which may be readily converted to, expel a projectile by the action of any explosive or other propellant, the barrel or barrels of which have a bore of

more than one-half inch in diameter, except a shotgun or shotgun shell which is generally recognized as particularly suitable for sporting purposes; and (3) Any combination of parts either designed or intended for use in converting any device into a destructive device as defined in subparagraphs (1) and (2) and from which a destructive device may be readily assembled. The term 'destructive device' shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon; which is redesigned for use as a signaling, pyratechnic, line throwing, safety, or similar device; surplus ordinance sold, loaned, or given by the secretary of the army, pursuant to the provisions of the section 4684, (2) 4685, or 4686 of Title 10 of the United States code; or any other device which the Secretary of the Treasury or his delegate finds is not likely to be used as a weapon, or is an antique or is a rifle which the owner intends to use solely for sporting purposes.

G. Antique Firearms— The term 'Antique Firearms' is defined the same as sec. 571.125.5 in the State Law.

H. Unserviceable Firearm— the term 'Unserviceable Firearm' means a firearm which is incapable of discharging a shot by means of an explosive and incapable of being readily restored to a firing condition.

I. Make— The term 'Make' and the various derivatives of such word, shall include manufacturing (other than by one qualified to engage in such business under this chapter), putting together, altering, any combination of these, or otherwise producing a firearm.

J. Transfer— The term 'Transfer' and the various derivatives of such word shall include selling, assigning, pledging, leasing, loaning, giving away, or otherwise disposing of.

K. Dealer— The term 'Dealer' means any person, not a manufacturer or importer, engaged in the business of selling, renting, leasing, or loaning firearms and shall include pawnbrokers who accept firearms as collateral for loans.

Scope. The provisions of this code shall apply to that area of the Incorporated area of the City of Grain Valley.

Section I. Permits required— A permit shall be obtained: to manufacture, possess, store, sell or otherwise dispose of explosives, blasting agents, or small arms ammunition.

Section II. Sales to intoxicated persons— No pawnbroker, secondhand dealer, or other person engaged in business shall purchase from or sell, loan, or furnish any weapon in which any explosive substance can be used to any person under the influence of alcohol or any Narcotic drug, Stimulant or Depressant, or to any person in a condition of agitation and excitability.

* * * * *

Section V. Sale of firearms to minors— No person shall directly or indirectly, sell or deliver, loan or barter to any person under eighteen (18) years of age, without the consent of the parent or guardian of such minor, any kind of firearm, gun, revolver, pistol, starter pistol or starter pistol with automatic ejector or firearm of any description, casing or any ammunition, cartridge, shell or other device, whether containing any explosive substance or not, designed and intended for use in any weapons or devices enumerated or described herein.

Section VI. Machine Guns.

6.01 Possession Prohibited— Every person who, within the City, possesses any firearm of the kind commonly known as a machine gun, as herein after defined, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment not to exceed ninety days or by a fine not to exceed five hundred dollars ($500.00) or by both such fine and imprisonment.

6.02 Applicability to Police— Nothing in this section shall prohibit the Police Department, and the members thereof, Sheriffs or the members of the military or Naval forces of this state or of the United States from possessing such firearms for official use in the discharge of their duties.

* * * * *

Section VIII. Explosive or flammable devices— It shall be unlawful for any person to make, use, or possess on his person, or under his control, any explosive device, including a Molotov cocktail, containing flammable, combustable or explosive material or substance which can be used as a fire bomb either by igniting the fuse or breaking the device; provided however, any person who can show that he is engaged in any lawful activity, business, calling, employment, or occupation requiring him to have such a device or such material or substance in his possession or under his control is hereby exempt from the operation of this section.

Section IX. Definitions— For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section; CRIME AND VIOLENCE—Murder, manslaughter, (except manslaughter arising out of the operation of a vehicle), rape, mayhem, assault with intent to rob, assault with intent to ravish, assault with intent to murder, robbery, burglary, kidnapping and larceny or the crime of attempting to commit any of the aforesaid crimes.

* * * * *

Section XI. Possession of pistol prohibited.

11.01 No person who has been convicted in the City or elsewhere, of committing or attempting to commit a crime of violence shall own a pistol or have one in his possession or under his control. * * * * *

Section XII. Possession of pistol by criminal; punishment— It is unlawful for a person who has been convicted of a crime of violence in any court of the United States, it's territories, districts or possessions, to possess a pistol unless such person has been pardoned for such crime or has by law regained full status as a citizen. A person violating the provisions of this section shall be punished by a fine of not more than fifty dollars ($50.00), by imprisonment for not more than ninety (90) days or both and shall forfeit the pistol.

Section XIII. Possession of a defaced firearm.

13.01 A person commits the offense of possession of a defaced firearm, if he knowingly possesses a firearm with a manufacturers serial number, or other identification mark required by law, which has been removed, defaced, marred, covered, altered or destroyed.

13.02 It is a defense to a prosecution under this section that the person reported such possession to the police or other Governmental agency prior to arrest or the issuance of an arrest warrant or summons.

13.03 Possession of a defaced firearm is a misdemeanor.

Hanley Hills

Ordinance 54

Article 5. Sale of Firearms or Ammunition to Minors Prohibited. No person shall sell to any minor any firearms of any kind without the consent of the parent or guardian of such minor, or, without such consent, sell to any minor under the age of sixteen years any cartridge or shell of fixed ammunition of which fulminate is a component part.

Hilldale

Section 230.12 Sale of Firearms or Ammunition to Minors. No person shall sell to any minor any firearms of any kind without the consent of the parent or guardian of such minor, or, without such consent, sell to any minor under the age of sixteen (16) years any cartridge or shell of fixed ammunition of which fulminate is a component part.

Holden

562-6—Sale of Firearms to Minors. If any person shall directly or indirectly sell, deliver, loan or barter to any minor, any kind of firearms, * * * or other deadly weapon, without the consent of the parent or guardian of

such minor, he shall upon conviction be punished by a fine of not less than ten nor more than two hundred dollars, or by imprisonment in the city jail not less than five days nor more than six months or by both such fine and imprisonment.

Iberia

17-56. Sale of firearms, etc., to minors. If any person shall directly or indirectly, sell or deliver, loan or barter to any minor any kind of firearms * * * or other deadly weapon, without the consent of the parent or guardian of such minor, within the city, he shall be deemd guilty of a misdemeanor.

Independence

12.158. Weapons. E. Sales to intoxicated persons and minors. No pawnbroker, secondhand dealer, or other person engaged in business shall purchase from, or sell, loan, or furnish any weapon in which any explosive substance can be used, to any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to a minor under the age of 18 years.

Ironton

Ordinance 272

If any person shall * * *, directly or indirectly, sell or deliver, loan or barter, to any minor, he shall, upon conviction, be punished by imprisonment * * *.

No wholesaler or dealer therein shall have in his possession for the purpose of sale, or shall sell, any pistol, revolver, or other firearm of a size which may be concealed upon the person, which does not have plainly and permanently stamped upon the metallic portion thereof, the trademark or name of the maker, the model and the serial factory number thereof, which number shall not be the same as that of any other weapon of the same model made by the same maker, and no wholesale or retail dealer therein shall have in his possession for the purpose of sale, or shall sell, any such weapon unless he keeps a full and complete record [contact local authorities for required contents] * * *, which record shall be open to inspection at all times by the Mayor of this City, any police officer, or other peace officer of this state.

No person, other than a manufacturer or wholesaler thereof to or from a wholesale or retail dealer therein, shall directly or indirectly buy, sell, borrow, loan, give away, trade, barter, deliver or receive, in this City, any pistol, revolver or other firearm of a size which may be concealed upon the person, unless the buyer, borrower or person receiving the weapon shall first obtain and deliver to, and the same be demanded and received by, the seller, loaner, or person delivering the weapon, within thirty days after the issuance thereof, a permit authorizing the person to acquire the weapon.

The permit shall be issued by the Sheriff of Iron County. If the Sheriff is satisfied that the person applying for the same is of good moral character and of lawful age, and that the granting of the same will not endanger the public safety. The permit shall recite the date of the issuance thereof and that the same is invalid after thirty days after the date, the name and address of the person to whom granted and of the person from whom the weapon is to be acquired, the nature of the transaction, and a full description of the weapon, and shall be countersigned by the person to whom granted in the presence of the Sheriff.

* * * * *

Jefferson City

2. Explosives, firearms and weapons. 2.1 No person shall, in this City, * * * having upon or about his person any kind of firearms, * * * directly or indirectly sell, deliver, loan or barter to any minor any such weapon, without the consent of the parent or guardian of such minor; * * *.

1268. Sale of pistols, * * * and cartridges to children, prohibited. Any person, within this city, who shall sell to any child under the age of sixteen years, without the written consent of the parents or guardian of such child, any cartridge or fixed ammunition of which any fulminate is a component part, or any gun, rifle, pistol, revolver, * * * shall be deemed guilty of a misdemeanor.

Jennings

Sec. 24-95. Carrying, exhibiting dangerous weapons generally; selling to minors. (If a person shall) * * * directly or indirectly sell or deliver, loan or barter to any minor any such weapon (any kind of firearms) without the consent of the parent or guardian of such minor, he shall upon conviction be punished as provided in section 1-9 of this Code. * * *

Joplin

Sec. 26-105. Sale of firearms, etc., to minors. If any person shall directly or indirectly sell or deliver, loan or barter to any minor any kind of firearms, * * * or other dangerous weapon, without the consent of the parent or guardian of such minor, within the city, he shall be deemed guilty of a misdemeanor.

Kansas City

26.151. Sale of firearms to minors. No person shall, directly or indirectly, sell or deliver, loan or barter to any person under eighteen (18) years of age, without the consent of the parent or guardian of such minor, any kind of firearm, gun, revolver, pistol, starter pistol or starter pistol with automatic ejector or firearm of any description, * * * casing or any ammunition, cartridge, shell or other device, whether containing any explosive substance or not, designed and intended for use in any weapons or devices enumerated or described herein.

26.186. Machine guns.

(a) Possession prohibited. Every person who, within the city, possesses any firearm of the kind commonly known as a machine gun, as hereinafter defined, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment at the municipal farm not to exceed one year, or by a fine not to exceed five hundred dollars ($500.00) or by both such fine and imprisonment.

(b) Applicability to police. Nothing in this section shall prohibit the police department, and the members thereof, sheriffs or the members of the military or naval forces or this state or of the United States from possessing such firearms for official use in the discharge of their duties. * * * * *

(d) Definition. The term "machine gun", as used in this section, shall be construed to apply to and include all firearms known as machine rifles, machine guns or submachine guns capable of discharging, automatically and continuously, loaded ammunition of any caliber, in which ammunition is fed to such gun from or by means of clips, disks, drums, belts or other separable mechanical device.

26.188. Explosive or flammable devices. It shall be unlawful for any person to make, use, or possess on his person, or under his control, any explosive device, including a molotov cocktail, containing flammable, combustible or explosive material or substance which can be used as a fire bomb either by igniting the fuse or breaking the device; provided however, any person who can show that he is engaged in any lawful activity, business, calling, employment, or occupation requiring him to have such a device or such material or substance in his possession or under his control, is hereby exempt from the operation of this section.

Kearney

Ordinance 30

Section 1. Any person who shall, within the corporate limits of the City of Kearney * * * directly or indirectly sell or deliver, loan or barter to any minor, any such weapon, [any kind of firearms] without the consent of the parent or guardian of such minor, shall, upon conviction, be fined * * *.

Lathrop

Ordinance 32

Section 1. Any person who shall within the corporate limits of the city of Lathrop, * * * directly or indirectly, sell or deliver, loan or barter to any minor any such weapon (firearms), without the consent of the parent or guardian of such minor, he shall, upon conviction, be punished by a fine of not less than ten nor more than one hundred dollars, or by imprisonment in the city prison not less than five nor more than thirty days, or by both such fine and imprisonment.

Leasburg

Section 1. No fireworks, firearms and ammunition of any kind shall be sold, * * * within the boundaries of the Village of Leasburg, Missouri.

* * * * *

Section III. Ammunition may be sold for hunting purpose only.

Maplewood

305.19 Weapons, Etc. * * * B. No person shall sell to a minor under the age of sixteen (16) years, without the consent of that child's guardian or parents, any ammunition, firearms, or any deadly weapon. * * *

Marceline

9. No person * * * having upon or about his person, any kind of firearms * * * directly or indirectly loan or barter to any minor any such weapon without the consent of the parent or guardian of such minor.

Marlborough

Ordinance 106

Section 1. It shall be unlawful for any person to sell, discharge, fire or shoot any fireworks, shotgun, rifle, revolver, pistol, spring-gun, air-gun or other firearms, weapons, instruments or contrivances of any kind whatsoever using lead, slug, bullets, powder, shots or either of them, whether discharged or shot by means of powder, bullet, caps or spring, or other motive power, or any ammunition for the aforesaid firearms, within the Village of Marlborough, St. Louis County, Missouri.

Marshall

20-29. Weapons—Carriage, display. It shall be unlawful for any person * * * having upon or about his person, * * * any kind of firearms, * * * directly or indirectly, sell or deliver, loan or barter to any minor any such weapon, without the consent of the parent or guardian of such minor; * * *.

Maryville

Ordinance 2399

Section 16. Sale of Firearms, etc., to Children Prohibited. Any person within the City who shall sell to any child under the age of sixteen years, without the written consent of the parents or guardian of such child, any cartridge of fixed ammunition, or blank cartridge, or any gun, rifle, pistol, revolver, * * * shall be deemed guilty of a misdemeanor.

Matthews

Ordinance 4

Sec. 20. Carrying Concealed Weapons. If any person within the town limits of this town shall * * * directly or indirectly, sell or deliver, loan barter, to any minor any such weapon, without the consent of the parent or guardian of such minor, he shall, upon conviction, be punished by a fine * * *.

Mexico

44.4. Weapons transactions with incompetent persons, etc., prohibited. No person in this city shall purchase or borrow from or sell, loan or furnish to any person who is (a) under the influence of alcohol or any narcotic drug, stimulant or depressant; or (b) in a condition of agitation or excitability; or (c) legally incompetent or a minor under the age of eighteen years any weapon in which any explosive substance can be used.

Monett

Ordinance 773

Section 86. Firearms; Minors. It shall be unlawful for any person to sell, loan or furnish to any minor any gun, pistol, or other fire arm, or any toy gun, toy pistol or other toy firearm, in which any explosive substance can be used, within the city. Any person violating this section shall be deemed guilty of a misdemeanor.

Monroe City

4.3. Sale of Pistols, * * *, and Cartridges to children prohibited. Any person within this city who shall sell to any child under the age of sixteen years, without the written consent of the parent or guardian of such child, any cartridge of fixed ammunition of which any fulminate is a component part, or any gun, rifle, pistol, revolver, * * * shall be deemed guilty of a misdemeanor.

Montgomery

Section 22.776. [Any persons within the City of Montgomery who] * * * directly or indirectly, sell or deliver, loan or barter to any minor any such weapon, without the consent of the parent or guardian of such minor, upon conviction, shall be deemed guilty of a misdemeanor.

Nevada

Sec. 23-28. No person in the city shall sell, give, furnish or procure or deliver any revolver, pistol, shotgun, rifle or other firearm capable of propelling a metal object or projectile by means of an explosive substance to any minor under the age of eighteen years without the written consent of the parent, guardian or other person having control of the minor.

Sec. 23-80. No person in the city shall sell, loan or furnish a weapon described in section 23-78 [pistol, revolver] or other weapon in which an explosive substance can be used to any person under the influence of alcohol or any narcotic drug, stimulant or depressant, or to any person in a condition of agitation or excitability.

Old Monroe

Section 220:015 Weapons.

D. Sales to Intoxicated Persons and Minors: No person in the City shall purchase from or sell, loan or furnish any weapon in which any explosive substance can be used to any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability or to a minor under the age of 21 years.

E. Records Required: Every second-hand dealer, pawnbroker, or other person en-

gaged in the sale, rental or exchange of any weapons described in sub-sections A and C above shall keep a record of each such weapon purchased, sold, rented, or exchanged at retail. 1. Time of Recordation: The record required herein shall be made at the time of the transaction, in a book kept for that purpose and shall include [all required information; contact local authorities for details] * * *

B. Any person, firm or corporation violating any of the provisions of this Section shall be deemed guilty of a misdemeanor * * *

Pacific

Sec. 22-75. Sale of firearms, etc., to minors. If any person shall directly or indirectly sell or deliver, loan or barter to any minor any kind of firearm, * * * without the consent of the parent or guardian of such minor, within the city, he shall be deemed guilty of an offense.

Poplar Bluff

22-70. Sale of firearms, etc., to minors. If any person shall directly or indirectly, sell or deliver, loan or barter to any minor any kind of firearm * * * without the consent of the parent or guardian of such minor, within the city, he shall be deemed guilty of a misdemeanor.

Richmond

13-66. Dangerous and concealed weapons; prohibitions concerning. If any person shall carry, concealed upon or about his person, any deadly or dangerous weapon, * * * any kind of firearm, * * *, or shall directly or indirectly loan or barter to any minor any such weapon without the consent of the parent or guardian of such minor, shall be guilty of a misdemeanor.

Rolla

33-3. Same—Sale to minors prohibited; exception. No person shall directly or indirectly sell, deliver, loan or barter to any minor any weapon of the type described in section 33-2 [any pistol, revolver] without the written consent, or in the presence of, the parent or guardian of such minor.

33-4. Same—Exception for certain officers, etc. Section * * * 33-3 shall not apply to officers of the United States, state, county, or police officers, nor to soldiers of the United States.

St. George

Section 215.090: Carrying Concealed Weapons. No person within the confines of the City of St. George, Missouri, shall * * * have in his possession when intoxicated, or directly or indirectly sell, deliver, barter, loan or otherwise give to any minor person without the consent of the parent or guardian of such minor, any dangerous or deadly weapon of any kind or description, which shall include, but not be limited to any kind of fire-arm of the type or size that can be concealed upon the body of a person, * * *

St. Joseph

Sec. 16-161. Machine guns.

(a) Possession. It shall be unlawful for any person within the city, to possess any firearm of the kind commonly known as a machine gun, as hereinafter defined.

(b) Scope of section. Nothing in this section shall prohibit the police department, and the members thereof, sheriffs or the members of the military or naval forces of this state or of the United States from possessing such firearms for official use in the discharge of their duties.

* * * * *

(d) Definition. The term "machine gun" as used in this section shall be construed to apply to and include all firearms known as machine rifles, machine guns or submachine guns capable of discharging, automatically and continuously loaded ammunition of any caliber, in which the ammunition is fed to such gun from or by means of clips, disks, drums, belts or other separable mechanical device.

St. Louis

754.030. Sale of certain weapons to minors prohibited. No person shall sell or deliver, loan or barter, either directly or indirectly, to any minor under the age of 21 years, any kind of firearms, * * * or tear gas gun, vapor gas gun, or any other similar weapon, without the consent of the parent or guardian of such minor.

754.010. Definition. As used in this Chapter, the term "minor" shall mean anyone under the age of 21 years.

St. Louis County

712.020 Definitions. The term "Firearm" as is used in this Chapter means any rifle, shotgun, weapon or similar mechanism by whatever name known, which is designed to expel a projectile or projectiles through a gunbarrel, tube, pipe, cylinder or similar device by the action of any explosive. The term "Firearm" shall not apply to devices used exclusively for commercial, industrial or vocational purposes.

712.030 Scope. The provisions of this code shall apply to that area of St. Louis County outside the incorporated cities, towns, and villages.

712.040 Specific Actions, Prohibited. 1. It shall be unlawful for any person to sell, give, lend or otherwise transfer any firearm to any person sixteen (16) years of age or younger, except where the relationship of parent and child, guardian and ward, or adult instructor and pupil exists between such person, and the person sixteen (16) years of age or younger, or in the case of a gift or loan, where such gift or loan is made with the consent of the parent or guardian of such person sixteen (16) years of age or younger

St. Louis Park

Ordinance 1284

Section 4:260. Dangerous Weapons. Whoever does any of the following is guilty of a misdemeanor: * * * * *

(7) Sells or has in his possession any device designed to silence or muffle the discharge of a firearm; or * * * * *

(9) Furnishes a minor under 18 years of age with a firearm, airgun, ammunition, or explosive without the written consent of his parent or guardian or of the police department or of a magistrate.

St. Mary's

Ordinance 285

[T]he sale * * * [of] fire arms and related items within Corporate Limits of City of St. Marys Mo. [is prohibited.]

Salem

75.180. Prohibited weapons. A person commits an offense if he knowingly possesses, manufacturers, transports, repairs or sells: 1. an explosive weapon; 2. a machine gun * * *; 4. a short barreled rifle or shotgun; 5. a firearm silencer * * *.

Shrewsbury

5. No person shall sell to any minor any firearms of any kind without the consent of

the parent or guardian of such minor, or, without such consent, sell to any minor under the age of sixteen years any cartridge or shell of fixed ammunition of which fulminate is a component part.

Sikeston

9-206. Dangerous or deadly weapons. (a) No person shall, directly or indirectly, sell, loan, barter, deliver or give to any minor any dangerous or deadly weapon without the written consent of such minor's parent or guardian.

Slater

Sec. 14-97. Possession of deadly weapon when intoxicated prohibited. It shall be unlawful for any person to possess, when intoxicated, any kind of firearm, * * * or other similar deadly weapon.

Sec. 14-98. Giving of firearms, etc. to minors prohibited; exception. It shall be unlawful for any person directly or indirectly, to sell or deliver, loan or barter to any minor any kind of firearm, * * * or other similar deadly weapon, without the consent of the parent or guardian of such minor.

Springfield

26-10. * * * Sale of weapons to minors. No person shall * * * sell or deliver, loan or barter to any minor any * * * weapon without the consent of the parent or guardian of such minor.

Stanberry

Chapter 14, Article 4, Section 16—Sale of Firearms, etc., to Children Prohibited: Any person within the City who shall sell to any child under the age of sixteen (16) years, without the written consent of the parents or guardian of such child, any cartridge of fixed ammunition, or blank cartridge, or any gun, rifle, pistol, revolver, * * * shall be deemed guilty of a misdemeanor.

Sweet Springs

31.116. Sale of weapons to minors. Any person who shall within the City, directly or indirectly sell or deliver, loan or barter to any minor any kind of firearms * * * or other dangerous weapon, without the consent of the parent or guardian of such minor, shall upon conviction thereof be deemed guilty of a misdemeanor.

University City

23-37.1. Weapons—Handguns Prohibited. It shall be unlawful for any person to manufacture, assemble, distribute, or sell any handgun within the City. 'Handgun" means any pistol, revolver or other firearm having a barrel of less than 10'' in length, measured by the insertion therein of a rod with the receiver or slide closed. Nothing herein shall apply to officers of the law who are authorized to carry arms.

Valley Park

302.090: Weapons. a. It is unlawful to: (5) Directly or indirectly, sell or deliver, loan or barter to any minor any such weapon without the consent of the parent or guardian of such minor; * * *.

Warrensburg

16-85. Sale of firearms, etc., to minors. If any person shall directly or indirectly, sell or deliver, loan or barter to any minor any kind of firearms ,* * * without the consent of the parent or guardian of such minor, within the city, he shall be deemed guilty of a misdemeanor.

Warsaw

Chapter 75—Offenses

75.170 Firearms, * * * etc.

2. No person shall directly or indirectly, sell or deliver, lend or barter to any minor any kind of firearm, * * * or other deadly weapon, without the consent of the parent or guardian of such minor.

3. Any person found guilty of violating this section shall be guilty of a misdemeanor.

Waynesville

217-1. No person shall * * * have any such weapon (any kind of firearms, including firearms designed for firing blank cartridges) in his possession when intoxicated, nor shall directly or indirectly sell or deliver, loan or barter, to any minor such weapon, without the consent of the parent or guardian of such minor.

Webb City

Sec. 17-61. * * * Firearms and ammunition not to be provided to minors. It shall be unlawful for any person within the city to sell, give away or otherwise dispose of, to any minor, firearms or ammunition of any type, including but not limited to blank cartridges, * * * excepting toy pistols which shoot paper caps only, or to allow such to be done by any person in his employ or under his control.

Wellston

Ordinance 191

Section 1. If any person shall * * * [directly or indirectly, sell or deliver, loan or barter to any minor] any kind of firearms, * * * without the consent of the parent or guardian of such minor, he shall, upon conviction, be punished by a fine of not less than One Hundred ($100.00) nor more than Five Hundred Dollars ($500.00), or by imprisonment in the county jail not less than fifty days nor more than one year, or by both such fine and imprisonment; provided, that nothing contained in this section shall apply to legally qualified sheriffs, police officers and other persons whose bona fide duty is to execute process, civil or criminal, make arrest, or aid in conserving the public peace, nor to persons traveling in a continuous journey peaceably through this state.

Wentzville

Section 220.030: Weapons. D. Sales to Intoxicated Persons and Minors: see text of Old Monroe

E. Records Required: see text of Old Monroe

Wright City

230.420 Weapons * * * * * F. Sales to Intoxicated Persons and Minors. No one shall purchase from, or sell, loan or furnish any weapon in which any explosive substance can be used to any person under the influence of alcohol or any narcotic drug, stimulant or depressant, or to any person in a condition of agitation and excitability, or to a minor under the age of twenty-one (21) years.

* * * * *

Montana

State Law

Rev. Codes of Mont.

94-8-201. (11317.1) Definitions. In 94-8-202 through 94-8-208 the following definitions apply:

(1) "Machine gun" means a weapon of any description by whatever name known, loaded or unloaded, from which more than six shots or bullets may be rapidly, automatically, or semiautomatically discharged from a magazine by a single function of the firing device.

(2) "Crime of violence" means any of the following crimes or an attempt to commit any of the same: any forcible felony, robbery, burglary, and criminal trespass.

(3) "Person" includes a firm, partnership, association, or corporation.

94-8-202. (11317.2) Possession or use of machine gun—when unlawful. Possession or use of a machine gun in the perpetration or attempted perpetration of a crime of violence is hereby declared to be a crime punishable by imprisonment in the state penitentiary for a term of not less than twenty years.

94-8-204. (11317.4) Presumption of offensive or aggressive purpose. Possession or use of a machine gun shall be presumed to be for offensive or aggressive purpose:

(1) when the machine gun is on premises not owned or rented for bona fide permanent residence or business occupancy by the person in whose possession the machine gun may be found;

(2) when the machine gun is in the possession of or used by a person who has been convicted of a crime of violence in any court of record, state or federal, in the United States of America or its territories or insular possessions;

(3) when the machine gun is of the kind described in 94-8-206 and has not been registered as required in that section; or

(4) when empty or loaded pistol shells of 30 (.30 in. or 7.63 mm.) or larger caliber which have been or are susceptible of being used in the machine gun are found in the immediate vicinity thereof.

94-8-206. (11317.6) Exceptions. Nothing contained in this act shall prohibit or interfere with:

1. The manufacture for, and sale of, machine guns to the military forces or the peace officers of the United States or of any political subdivision thereof, or the transportation required for that purpose;

2. The possession of a machine gun for scientific purpose, or the possession of a machine gun not usable as a weapon and possessed as a curiosity, ornament, or keepsake;

3. The possession of a machine gun other than one adapted to use pistol cartridges of 30 (.30 in. or 7.63 mm.) or larger caliber, for a purpose manifestly not aggressive or offensive.

94-8-207. (11317.7) Manufacturer to keep register of machine guns—contents—inspection—penalty for failure to keep. Every manufacturer shall keep a register of all machine guns manufactured or handled by him. This register shall show the model and serial number, date of manufacture, sale, loan, gift, delivery or receipt, of every machine gun, the name, address, and occupation of the person to whom the machine gun was sold, loaned, given or delivered, or from whom it was received; and the purpose for which it was acquired by the person to whom the machine gun was sold, loaned, given or delivered, or from whom received. Upon demand every manufacturer shall permit any marshal, sheriff or police officer to inspect his entire stock of machine guns, parts, and supplies therefor, and shall produce the register, herein required, for inspection. A violation of any provision of this section shall be punishable by a fine of not less than one hundred dollars ($100.00).

94-8-208. (11317.8) Registration of machine guns now in state and hereafter acquired. Every machine gun now in this state adapted to use pistol cartridges of 30 (.30 in. or 7.63 mm.) or larger caliber shall be registered in the office of the secretary of state on the—effective date of this act, and annually thereafter. If acquired hereafter it shall be registered within twenty-four hours after its acquisition. Blanks for registration shall be prepared by the secretary of state and furnished upon application.

To comply with this section the application as filed must show the model and serial number of the gun, the name, address and occupation of the person in possession, and from whom and the purpose for which, the gun was acquired. The registration data shall not be subject to inspection by the public. Any person failing to register any gun as required by this section, shall be presumed to possess the same for offensive or aggressive purpose.

94-8-209.1. Destructive device and explosive defined. (1) "Destructive device", as used in this chapter, includes but is not limited to the following weapons:

(a) a projectile containing an explosive or incendiary material or any other similar chemical substance, including, but not limited to, that which is commonly known as tracer or incendiary ammunition, except tracer ammunition manufactured for use in shotguns;

(b) a bomb, grenade, explosive missile, or similar device or a launching device therefor;

(c) a weapon of a caliber greater than .60 caliber which fires fixed ammunition or any ammunition therefor, other than a shotgun or shotgun ammunition;

(d) a rocket, rocket-propelled projectile, or similar device of a diameter greater than 0.60 inch, or a launching device therefor and a rocket, rocket-propelled projectile, or similar device containing an explosive or incendiary material or any other similar chemical substance other than the propellant for the device, except devices designed primarily for emergency or distress signaling purposes;

(e) a breakable container which contains a flammable liquid with a flashpoint of 150 degrees Fahrenheit or less and which has a wick or similar device capable of being ignited, other than a device which is commercially manufactured primarily for the purpose of illumination.

(2) "Explosive", as used in this chapter, means any explosive defined in 66-1901.

94-8-209.2. Possession of a destructive device. (1) A person who, with the purpose to commit a felony, has in his possession any destructive device on a public street or highway, in or near any theater, hall, school, college, church, hotel, other public building, or private habitation, in, on, or near any aircraft, railway passenger train, car, vessel engaged in carrying passengers for hire, or other public place ordinarily passed by human beings is guilty of the offense of possession of a destructive device.

(2) A person convicted of the offense of possession of a destructive device shall be imprisoned in the state prison for a period of not more than 10 years.

94-8-209.4. Possession of a silencer. (1) A person commits the offense of possession of a silencer if he possesses, manufactures, transports, buys, or sells a silencer and has the purpose to use it to commit an offense or knows that another person has such a purpose.

(2) A person convicted of the offense of possession of a silencer is punishable by imprisonment in the state prison for a term of not less than 5 years or more than 20 years or a fine of not less than $1,000 or more than $20,000 or by both such fine and imprisonment.

94-8-209.5. Possession prima facie evidence of unlawful purpose. Possession of a silencer or of a bomb or similar device charged or filled with one or more explosives is prima facie evidence of a purpose to use the same to commit an offense.

94-8-210. When Montana residents may purchase rifles or shotguns in contiguous states. Residents of Montana may purchase

any rifle or rifles and shotgun or shotguns in a state contiguous to Montana, provided that such residents conform to the applicable provisions of the federal Gun Control Act of 1968, and regulations thereunder, as administered by the United States secretary of the treasury, and provided further, that such residents conform to the provisions of law applicable to such purchase in Montana and in the state in which the purchase is made.

Deer Lodge

This municipality has adopted Montana State laws.

Nebraska

State Law

Rev. Stat. of Nebr.

28-1201. Fugitive from justice * * * machine gun, other terms; defined. As used in sections 28-1201 to 28-1212, unless the context otherwise requires:

(1) Fugitive from justice shall mean any person who has fled or is fleeing from any peace officer to avoid prosecution or incarceration for a felony;

* * * * *

(4) Machine gun shall mean any firearm, whatever its size and usual designation, that shoots automatically more than one shot, without manual reloading, by a single function of the trigger;

(5) Short rifle shall mean a rifle having a barrel less than sixteen inches long or an overall length of less than twenty-six inches; and

(6) Short shotgun shall mean a shotgun having a barrel or barrels less than eighteen inches long or an overall length of less than twenty-six inches.

* * * * *

28-1203. Transportation or possession of machine guns, short rifles, or short shotguns; penalty; exception. (1) Any person or persons who shall transport or possess any machine gun, short rifle, or short shotgun commits a Class IV felony.

(2) The provisions of this section shall not be held to prohibit any act by peace officers, members of the United States armed services, or enlisted men in the National Guard of this state, in the lawful discharge of their duties, or persons qualified under the provisions of federal law relating to the short rifle, short shotgun, or machine gun.

28-1204. Unlawful possession of a revolver; exceptions; penalty. (1) Any person under the age of eighteen years who possesses a pistol, revolver, or any other form of short-barreled hand firearm commits the offense of unlawful possession of a revolver.

(2) The provisions of this section shall not apply to the issuance of such firearms to members of the armed forces of the United States, active or reserve, state militia, or Reserve Officers Training Corps, when on duty or training, or to the temporary loan of pistols, revolvers, or any other form of short-barreled firearms for instruction under the immediate supervision of a parent or guardian or adult instructor.

(3) Unlawful possession of a revolver is a Class III misdemeanor.

* * * * *

28-1206. Possession of firearms by a fugitive from justice or a felon; penalty. (1) Any person who possesses any firearm with a barrel less than eighteen inches in length * * * and who has previously been convicted of a felony or who is a fugitive from justice commits the offense of possession of firearms by a fugitive from justice.

(2) Such felony conviction may have been had in any court in the United States, the several states, territories, or possessions, or the District of Columbia.

(3) Possession of firearms by a fugitive from justice or a felon is a Class IV felony.

28-1207. Possession of a defaced firearm; penalty. (1) Any person who knowingly possesses, receives, sells, or leases, other than by delivery to law enforcement officials, any firearm from which the manufacturer's identification mark or serial number has been removed, defaced, altered, or destroyed, commits the offense of possession of a defaced firearm.

(2) Possession of a defaced firearm is a Class IV felony.

28-1209. Failure to register tranquilizer guns; penalty. (1) Any person who fails or neglects to register any gun or other device designed, adapted or used for projecting darts or other missiles containing tranquilizers or other chemicals or compounds which will produce unconsciousness or temporary disability in live animals, with the county sheriff of the county in which the owner of the gun or device resides, commits the offense of failure to register tranquilizer guns.

(2) Failure to register tranquilizer guns is a Class III misdemeanor.

28-1210. Failure to notify the sheriff of the sale of tranquilizer guns; penalty; record. (1) Any person, partnership or corporation selling any gun or other device as described in section 28-1209 who fails to immediately notify the sheriff of the county of the sale and giving the name and address of the purchaser thereof and the make and number of the gun or device, commits the offense of failure to notify the sheriff of the sale of tranquilizer guns.

(2) The sheriff shall keep a record of such sale with the information furnished him.

(3) Failure to notify the sheriff of the sale of tranquilizer guns is a Class III misdemeanor.

28-1211. Firearms; purchase, sell, trade, convey; conditions. The State of Nebraska herewith permits its residents, not otherwise precluded by any applicable laws, to purchase, sell, trade, convey, deliver, or transport rifles, shotguns, ammunition, reloading components or firearm accessories in Nebraska and in states contiguous to Nebraska. This authorization is enacted to implement for this state the permissive firearms sales and delivery provisions in section 922(b), (3) (A) of Public Law 90-618 of the 90th Congress, Second Session. In the event that presently enacted federal restrictions on the purchase of rifles, shotguns, ammunition, reloading components, or firearm accessories are repealed by the United States Congress or set aside by courts of competent jurisdiction, this section shall in no way be interpreted to prohibit or restrict the purchase of shotguns, rifles, ammunition, reloading components, or firearm accessories by residents of Nebraska otherwise competent to purchase same in contiguous or other states.

* * * * *

28-1213. Explosives, destructive devices, other terms; defined. As used in sections 28-1213 to 28-1239, unless the context otherwise requires:

(1) Person shall mean any individual, corporation, company, association, firm, partnership, society, or joint stock company;

(2) Business enterprise shall mean any corporation, partnership, company, or joint stock company; * * *

(7) Destructive devices shall mean: (a) Any explosive, incendiary, or poison gas (i) bomb, (ii) grenade, (iii) rocket having a propellant charge of more than four ounces, (iv) missile having an explosive or incendiary charge of more than one-quarter ounce, (v) mine, (vi) booby trap, (vii) Molotov cocktail, or (viii) any similar device, the primary or common purpose of which is to explode and to be used as a weapon against any person or property; or

(b) Any combination of parts either designed or intended for use in converting any device into a destructive device as defined in subdivision (7) (a) of this section from which a destructive device may be readily assembled. The term destructive device shall not include any device which is neither designed nor redesigned for use as a weapon to be used against person or property; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of Section 4684(2), 4685, or 4686 of Title 10 of the United States Code; or any other device which the State Fire Marshal finds is not likely to be used as a weapon, or is an antique; or any other device possessed under circumstances negating an intent that the device be used as a weapon against any person or property;

* * * * *

28-1220. Possession of a destructive device; penalty; permit or license for explosive materials; no defense. (1) Any person who has in his possession a destructive device, as defined in subdivision (7) of section 28-1213, commits the offense of possession of a destructive device.

(2) A permit or license issued under any state or federal law to possess, own, use, distribute, sell, manufacture, store, or handle in any manner explosive materials shall not be a defense to the crime of possession of a destructive device as defined in this section.

(3) Possession of a destructive device is a Class IV felony.

* * * * *

28-1242. Unlawful sale of toy revolvers and blank cartridges; penalty; exceptions. (1) Any person, except as provided for in subsection (2) of this section, who shall use, sell, offer for sale, or keep for sale in this state any toy revolvers for shooting blank cartridges or blank cartridges for toy revolvers, commits the offense of unlawful sale of toy revolvers and blank cartridges.

(2) Caps containing dynamite may be used, kept for sale, or sold when needed for mining purposes, or for danger signals or for other necessary uses, and blank cartridges may be sold or used for ceremonial purposes, athletic or sporting events.

(3) Unlawful sale of toy revolvers and blank cartridges is a Class III misdemeanor.

Aurora

6-311 Misdemeanors; Selling Weapons to Minors, Possession. It shall be unlawful for any person to sell or give away to any person under the age of sixteen (16) years any rifle, gun, pistol, * * * blank cartridge revolver or any other firearm, * * * It shall be unlawful for any person under the age of sixteen (16) years to have in his possession any firearm or weapon as described above or any ammuniton designed for use in said above described firearms or weapons unless said individual is accompanied by a person of legal age.

Ceresco Village

Ceresco Code

10-413 Firearms Vendor; Sale to Minors. It shall be unlawful for any person, or persons, to sell, convey, or deliver any firearm, except toy cap pistols which explode caps that contain less than twenty-five hundredths of a gram of explosive materials, to a minor under the age of eighteen (18) years without oral, or written permission from the parents, or legal guardian. It shall be further unlawful for any person, or persons, to sell, convey, or deliver to any minor under the age of eighteen (18) years a pistol, except as herein provided.

Creston

10-409 Firearms Vendor; Sale to Minors. It shall be unlawful for any person, or persons, to sell, convey, or deliver any firearm, except toy cap pistols which explode caps that contain less than twenty-five hundredths of a gram of explosive materials, to a minor under the age of eighteen (18) years without oral, or written permission from the parents, or legal guardian. It shall be further unlawful for any person, or persons, to sell, convey, or deliver to any minor under the age of eighteen (18) years a pistol, except as herein provided.

Dorchester

Sec. 2. Minors and certain other persons not to be furnished with fire-arms. No person within the corporate limits of this Village shall sell, loan or furnish any gun, fowling-piece or other fire-arm to any minor, insane person or intoxicated person, unless such persons to whom said fire-arms are sold have a parent or guardian living, who, knowing of said sales, and acknowledging responsibility for the use made of said fire-arms by the ward or wards, shall give his or her consent to said sale. Any person who shall be convicted of violating any of the provisions of this Section, shall be fined * * *

Gering

6-4-2: Sale to minors: It shall be unlawful for any person within the Corporate Limits of the City to sell or give away to any minor under the age of twenty-one (21) years, or for any such minor to have in his possession, any revolver, pistol, gun or firearm of any description or calibre or any cartridges or ammunition loaded with powder or powder and ball of any size or dimension without first procuring the consent of such minor's parent or guardian.

Grand Island

Sec. 22-10. It shall be unlawful for any person to sell, loan, give or furnish to any minor, any gun, fowling piece, or other firearm * * * within the city.

Hastings

Sec. 39-5. Sale to intoxicated persons, minors, etc. No person in the city shall purchase from, or sell, loan or furnish any weapon in which any explosive substance can be used to any person under the influence of alcohol or any narcotic drug, stimulant or depressant, or to any person in a condition of agitation and excitability, or to a minor under the age of eighteen years.

Sec. 39-6. Records of sales, etc. (a) Required generally. Every person in the city engaged in the sale, rental or exchange of any weapons described in sections 39-1 and 39-4 shall keep a record of each such weapon purchased, sold, rented or exchanged at retail.

(b) Time of recordation; contents. The record required herein shall be made at the time of the transaction, in a book kept for that purpose, and shall include [all required information; contact local authorities for requirements] * * *

(c) Report to chief of police. Every person in the city engaged in the sale, rental or exchange of any weapons described in sections 39-1 and 39-4 shall deliver daily to the chief of police a copy of such record of every such purchase, sale, loan or gift.

Humphrey

10-409 Firearms Vendor; Sale to Minors. It shall be unlawful for any person, or persons, to sell, convey, or deliver any firearm, except toy cap pistols which explode caps that contain less than twenty-five hundredths of a gram of explosive materials, to a minor under the age of eighteen (18) years without oral, or written permission from the parents, or legal guardian. It shall be further unlawful for any person, or persons, to sell, convey, or deliver

to any minor under the age of eighteen (18) years a pistol, except as herein provided.

Kearney

Sec. 21.13. Same—Sale to and Possession by Minors. It shall be unlawful for any person within the city to sell or give way to any minor under the age of eighteen years, or for any such minor to have in his possession, any revolver, pistol, gun or firearm of any description or calibre or any cartridges or ammunition loaded with powder, or powder and ball of any size or dimension without first procuring the consent of such minor's parent or guardian.

Kimball

6-4-4. Sale to Persons Under Eighteen Years of Age Forbidden: It shall be unlawful for any person to sell or give away to any other person under the age of eighteen years, or for any person under the age of eighteen years to have in his possession, any revolver, pistol, gun or firearm of any description or calibre or any cartridges or ammunition loaded with powder or powder and ball of any size or dimension without first procuring the consent of such person's, parent or guardians.

Lincoln

9.28.020 Minors not to be furnished with firearms and weapons. It is unlawful for any person to sell, loan or furnish to any minor any gun, fowling piece, or other firearm * * *; provided, it shall be lawful to sell, loan or furnish shotguns, rifles, and .22-caliber pistols, of a type commonly used for hunting, to persons eighteen years of age or older.

Malcolm

10-404 Firearms Vendor; Sale to Minors. It shall be unlawful for any person, or persons, to sell, convey, or deliver any firearm, except toy cap pistols which explode caps that contain less than twenty-five hundredths of a gram of explosive materials, to a minor under the age of eighteen (18) years without oral, or written permission from the parents, or legal guardian. It shall be further unlawful for any person or persons, to sell, convey, or deliver to any minor under the age of eighteen (18) years a pistol, except as herein provided.

Omaha

16.86.020 Permits Required * * * Any person who is engaged in the business of a Firearms Dealer shall first obtain a written permit to do so from the Permits & Inspection Division of the City of Omaha. * * * * *

16.86.050 Firearms to Be Retained for Ten Days. No firearm received on deposit, purchased or taken in trade by any Firearm Dealer shall be sold or permitted to be taken from the place of business of such person for the period of ten (10) days after the mailing to the Chief of Police of the copy and statement * * * requiring a list of all Firearms or other valuable things, received or deposited, purchased, mortgaged, or taken in trade during the previous day.

25.01.015 Concealable Firearm. The term 'Concealable Firearm' shall mean a firearm having a barrel less than 18'' in length.

25.01.020 Firearm. The term 'Firearm' shall mean any instrument which releases a projectile by means of an explosive charge.

25.53.010 Possession of an Unregistered Concealable Firearm. It shall be unlawful for any person to own, have possession of or maintain control over any concealable firearm which has not been registered to said person with the Chief of Police in accordance with this Chapter, except when such possession or control is with the knowledge and express consent of the person in whose name such concealable firearm is registered.

25.93.010. Sale of a firearm to a minor. It shall be unlawful for any person to sell to a minor any firearm or ammunition therefor.

25.93.030. Purchasing or renting a firearm. It shall be unlawful for any person to sell or rent a firearm to any person who has not obtained a written permit from the Chief of Police as provided for in this Title.

25.93.040. Pawning a firearm. It shall be unlawful for any person to pawn, pledge or store a firearm or to accept a firearm in pawn or as a pledge of or for storage from a person who has not registered it as provided for in this Title.

Pleasant Dale Village

10-409 Firearms Vendor; Sale to Minors. It shall be unlawful for any person, or persons, to sell, convey, or deliver any firearm, except toy cap pistols which explode caps that contain less than twenty-five hundredths of a gram of explosive materials, to a minor under the age of eighteen (18) years without oral, or written permission from the parents, or legal guardian. It shall be further unlawful for any person, or persons, to sell, convey, or deliver to any minor under the age of eighteen (18) years a pistol, except as herein provided.

Stromsburg

10-425 Firearms Vendor; Sale to Minors. It shall be unlawful for any person, or persons, to sell, convey, or deliver any firearm, except toy cap pistols which explode caps that contain less than twenty-five hundredths of a gram of explosive materials, to a minor under the age of eighteen (18) years without oral, or written permission from the parents, or legal guardian. It shall be further unlawful for any person, or persons, to sell, convey, or deliver to any minor under the age of eighteen (18) years a pistol, except as herein provided.

Tekamah

6-4-4. Sale to minors forbidden: It shall be unlawful for any person to sell or give away to any minor under the age of twenty-one (21) years, or for any minor to have in his possession, any revolver, pistol, gun or firearm of any description or calibre or any cartridges or ammunition loaded with powder or powder and ball of any size or dimension without first procuring the consent of such minor's parent or guardian.

Trenton

10-411 Firearms Vendor; Sale to Minors. It shall be unlawful for any person, or persons, to sell, convey, or deliver any firearm, except toy cap pistols which explode caps that contain less than twenty-five hundredths of a gram of explosive materials, to a minor under the age of eighteen (18) years without oral, or written permission from the parents, or legal guardian. It shall be further unlawful for any person, or persons, to sell, convey, or deliver to any minor under the age of eighteen (18) years a pistol, except as herein provided.

Utica

Firearms Vendor; Sale to Minors. It shall be unlawful for any person, or persons, to sell, convey, or deliver any firearm, except toy cap pistols which explode caps that contain less than twenty-five hundredths of a gram of explosive materials, to a minor under the age of eighteen (18) years without oral, or written permission from the parents, or legal guardian. It shall be further unlawful for any person, or persons, to sell, convey, or deliver to any minor under the age of eighteen (18) years a pistol, except as herein provided.

Waterloo Village

This municipality has adopted Nebraska State laws.

Nevada

State Law

Nev. Rev. Stat.

* * *

202.253 "Firearm" defined. As used in NRS 202.255 to 202.360, inclusive, "firearm" means any weapon with a caliber of .177 inches or greater from which a projectile may be propelled by means of explosive, spring, gas, air or other force.

202.260 Infernal machines. 1. Any person who unlawfully possesses, manufactures, or disposes of any explosive or incendiary device with intent to destroy life or property shall be punished by imprisonment in the state prison for not less than 1 year nor more than 6 years.

2. For the purposes of this section: (a) "Dispose of" means give, give away, loan, offer, offer for sale, sell or transfer.

(b) "Explosive or incendiary device" means any explosive or incendiary material or substance that has been constructed, altered, packaged or arranged in such a manner that its intended use would cause destruction or injury to life or property.

3. Subsection 1 does not prohibit the manufacture, use, possession or disposal of any material, substance or device by those persons engaged in mining or any other lawful activity or who are authorized by governmental agencies, which have lawful control over such matters, to use such items in the performance of their duties.

202.275 Unlawful possession, manufacture, disposition of short-barreled rifle, short-barreled shotgun: Penalty; exceptions.

1. Any person who unlawfully possesses, manufactures or disposes of any short-barreled rifle or short-barreled shotgun shall be punished by imprisonment in the state prison for not less than 1 year nor more than 6 years.

2. For purposes of this section:

(a) "Short-barreled rifle" means:

(1) A rifle having one or more barrels less than 16 inches in length; or

(2) Any weapon made from a rifle, whether by alteration, modification or other means, with an overall length of less than 26 inches.

(b) "Short-barreled shotgun" means:

(1) A shotgun having one or more barrels less than 18 inches in length; or

(2) Any weapon made from a shotgun, whether by alteration, modification or other means, with an overall length of less than 26 inches.

3. This section does not prohibit:

(a) The possession or use of any short-barreled rifle or short-barreled shotgun by any peace officer when authorized to do so in the performance of official duties; or

(b) The possession of any short-barreled rifle or short-barreled shotgun by any person who is licensed as a firearms importer, manufacturer or dealer by the United States Department of the Treasury.

202.277 Changing, altering, removing, obliterating serial number of firearm unlawful.

1. It is unlawful for any person to change, alter, remove or obliterate the serial number upon any firearm. Possession of any firearm upon which the serial number has been changed, altered, removed or obliterated is prima facie evidence that the possessor has changed, altered, removed or obliterated the serial number.

2. Any person who violates the provisions of subsection 1 is guilty of a gross misdemeanor.

202.310 Sales of certain firearms to minors under 18 years unlawful. 1. Any person in this state who sells or barters to another under the age of 18 years either a pistol, revolver or a firearm capable of being concealed upon the person shall be guilty of a misdemeanor.

2. The term "firearm capable of being concealed upon the person" as used in this section applies to and includes all firearms having a barrel less than 12 inches in length.

202.360 Alien, ex-felon not to possess firearm capable of being concealed on person; penalty. 1. The terms "pistol," "revolver," and "firearm capable of being concealed upon the person," as used in this section, apply to and include all firearms having a barrel less than 12 inches in length.

2. After July 1, 1925, no unnaturalized foreign-born person, and no person who has been convicted of a felony in the State of Nevada, or in any one of the states of the United States of America, or in any political subdivision thereof, or of a felony in violation of the laws of the United States of America, shall own or have in his possession or under his custody or control any pistol, revolver or other firearm capable of being concealed upon the person.

Tear Gas Bombs and Weapons

202.370 Definitions. As used in NRS 202.370 to 202.440, inclusive:

1. "Shell," "cartridge" or "bomb" shall be construed to apply to and include all shells, cartridges or bombs capable of being discharged or exploded, when such discharge or explosions will cause or permit the release or emission of tear gas.

2. "Tear gas" shall be construed to apply to and include all liquid, gaseous or solid substances intended to produce temporary physical discomfort or permanent injury through being vaporized or otherwise dispersed in the air. "Tear gas" does not include a liquid, gaseous or solid substance whose active ingredient is composed of natural substances or products derived from natural substances which cause no permanent injury through being vaporized or otherwise dispersed in the air.

3. "Weapon designed for the use of such shell, cartridge or bomb" shall be construed to apply to and include all revolvers, pistols, fountain pen guns, billies, riot guns or other form of device, portable or fixed, intended for the projection or release of tear gas except those regularly manufactured and sold for use with firearm ammunition.

202.380 Sale, possession of tear gas bombs, weapons without permit unlawful; exceptions. 1. Every person, firm or corporation who within the State of Nevada knowingly sells or offers for sale, possesses or transports any form of shell, cartridge or bomb containing or capable of emitting tear gas, or any weapon designed for the use of such shell, cartridge or bomb, except as permitted under the provisions of NRS 202.370 to 202.440, inclusive, shall be guilty of a gross misdemeanor.

2. Nothing in NRS 202.370 to 202.440, inclusive, shall prohibit police departments or regular salaried members thereof, sheriffs and their regular salaried deputies, or the military or naval forces of this state or of the United States from purchasing, possessing or transporting such shells, cartridges or bombs for official use in the discharge of their duties.

202.390 Weapon to bear name of manufacturer and serial number; penalty for removal. 1. Each tear gas weapon sold, transported or possessed under the authority of NRS 202.370 to 202.440, inclusive, shall bear the name of the manufacturer and a serial number applied by him.

* * * * *

202.400 Permit for possession, transportation, protective system, to be issued by chief of Nevada highway patrol. 1. It shall be lawful for the chief of the Nevada highway patrol to issue a permit for the possession and transportation of such shells, cartridges, bombs or weapons upon proof to the chief that good cause exists for the issuance thereof to the applicant for such permit.

2. The permit may also allow the applicant to install, maintain and operate a protective system involving the use of such shells, cartridges, bombs or weapons in any place which is accurately and completely described in the application for the permit.

202.410 Licenses for retail sale of bombs, weapons: conditions. The sheriff of any

county may also grant licenses in a form to be prescribed by him, effective for not more than 1 year from the date of issuance, to permit the sale at retail, at the place specified in the license, of such shells, cartridges, bombs or weapons, and to permit the installation and maintenance of protective systems involving the use of such shells, cartridges, bombs or weapons, * * *.

* * * * *

3. No such shell, cartridge, bomb or weapon shall be delivered to any person not authorized to possess or transport the same under the provisions of NRS 202.370 to 202.440, inclusive. No protective system involving the use of such shells, cartridges, bombs or weapons shall be installed, nor shall supplies be sold for the maintenance of such system, unless the licensee has personal knowledge of the existence of a valid permit for the operation and maintenance of such system.

4. A complete record must be kept of sales made under the authority of the license, showing the name and address of the purchaser, the quantity and description of the articles purchased, together with the serial number, if any, the number and date of issue of the purchaser's permit, and the signature of the purchaser or purchasing agent * * *.

* * * * *

598.060 Sales of rifles, shotguns to residents of Nevada and contiguous states in accordance with provisions of federal law. 1. Residents of the State of Nevada may purchase rifles and shotguns in states contiguous to Nevada if:

(a) Such residents conform to the applicable provisions of the federal firearms control law (18 U.S.C. Sec. 921 et seq.) and any regulation promulgated thereunder.

(b) Such residents conform to the provisions of law applicable to such a purchase in Nevada and in the state where the purchase is made.

Carson City

8.20.020. Sale of dangerous weapons to minors prohibited. It shall be unlawful for any person, firm or association to sell or dispose of any * * * revolver, pistol, gun or other dangerous or deadly weapon to any person under the age of twenty-one years. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not exceeding twenty dollars, or imprisonment in the city jail not exceeding ten days, or both such fine and imprisonment.

Clark County

12.04.010 Definitions. In this chapter, unless the context clearly requires otherwise, the following definitions shall apply and be effective:

(1) "Dealer" means any person engaged in the business of buying or selling pistols at wholesale or retail, or of accepting pledges of pistols as security for loans.

(2) "Firearm capable of being concealed" means any gun, pistol, revolver or other firearm, the barrel of which does not exceed twelve inches in length from which a dangerous projectile may be propelled by explosives, springs, gas or air, as a means of propulsion.

12.04.020 Dealing in pistols without permit unlawful. It is unlawful within the unincorporated area of Clark County, for any person, except a dealer having a pistol permit issued under the provisions of this chapter, to engage in the business of buying or selling pistols at retail or wholesale, or of accepting pledges of pistols as security for loans, and no such permit shall authorize the leasing of any pistol.

12.04.050 Persons prohibited from purchasing or owning pistols. It is unlawful in the unincorporated area of Clark County, for any person to receive from another by loan, gift, purchase, or in any manner, or attempt to obtain in any manner or have in his possession or control, a pistol as defined by this chapter who:

(a) Has been convicted of a felony in the state of Nevada, or in any state or territory of the United States or any political subdivision thereof;

(b) Is a fugitive from justice;

(c) Is an unlawful user or seller of narcotics;

(d) Is a habitual drunkard;

(e) Is a member of an organization advocating criminal syndicalism as defined in NRS 203.160 through 203.190;

(f) Is foreign born and not a naturalized citizen of the United States;

(g) Has been adjudged insane in the state or any other state and has not subsequently been adjudged sane.

12.04.060 Prohibited sales and transfer of a pistol. It shall be unlawful for any person or a dealer in pistols to sell, lease, lend, or otherwise transfer a pistol to any person whom he knows or has reasonable cause to believe:

(a) Is under the influence of intoxicating beverages;

(b) Is mentally ill or disturbed;

(c) Is seventeen years of age or under;

(d) Is a person prohibited from purchasing a pistol as provided in Section 12.04.050.

12.04.070 Certain persons prohibited from purchasing or owning pistols. It shall be unlawful for any person who is included in any one or more of the categories set forth in Section 12.04.050 of this chapter, to receive from another by loan, gift, purchase or in any other manner, or in any manner whatsoever, to attempt to obtain, or have in his or her possession or control, any pistol; provided, however, that a person under the age of eighteen years may have a pistol in his or her possession, or under his or her control, while accompanied by or under the immediate charge of his or her parent, guardian, or other responsible adult, and while engaged in hunting or target practice or other lawful purpose.

12.04.080 Time between sale and delivery of pistol. When any sale of a pistol is made by a dealer under this chapter, seventy-two hours must elapse between the time of sale and the time of delivery to the purchaser. * * *

12.04.090 Exceptions to Section 12.04.080. The aforesaid seventy-two hour waiting period shall not apply to the sale of a pistol to any person who, at the time of such sale, produces bona fide documentary evidence that he is a member of a federal law enforcement agency; or a peace officer of the state of Nevada or any political subdivision thereof, regularly employed for pay by the state or such subdivision; or that he currently owns a pistol which is duly registered in his name with any law enforcement agency in Clark County. And said waiting period shall not apply to any person who requires the use of a pistol in connection with his employment, and who receives written permission from the sheriff with express waiver of the waiting period; however, all of the other provisions herein shall apply to any such sales.

12.04.120 Sale or possession of certain pistols prohibited. It shall be unlawful to purchase, sell, or in any manner to transfer, or have in possession or control, any pistol on which the name of the manufacturer, or the model, or the manufacturer's serial number has been removed, obliterated, concealed, or altered.

12.04.140 Sale of foreign made pistols with ammunition restricted. No pistol of foreign make shall be sold with ammunition for the same unless the ammunition is expressly designed for use with such pistol.

12.04.150 Sale of homemade pistols prohibited. No homemade pistols shall be bought or sold except as provided by law under the federal firearms act.

12.04.160 Condition of pistols sold. All secondhand and used pistols, except antique pieces, sold or purchased, shall be in a safe and operable condition.

12.04.200 Registration of firearms capable of being concealed. It is unlawful for any person to own or have in his possession, within the unincorporated area of Clark County, a gun, pistol, revolver, or other firearm capable of being concealed, unless the same has first been registered with the sheriff or with a police department of any of the incorporated cities of Clark County.

12.04.210 Unlawful transfer of firearms capable of being concealed. It is unlawful for any person to sell, give away or permanently pass possession to another person of any pistol, revolver or other firearm capable of being concealed, unless the transferor thereof first registers, or causes the weapon to be registered to the transferee and new owner thereof, either with the sheriff, or with a police department of one of the incorporated cities of Clark County.

Henderson

8.98.030 Concealable weapons to be registered. It shall be unlawful for any person to own or have in his possession a gun, pistol, revolver or other firearm capable of being concealed without first having registered it with the chief of police.

8.98.040 Exchange of weapons to be registered. It shall be unlawful for any person to sell, give away or permanently pass possession of a gun, pistol, revolver or other firearm without first having the weapon registered to the new owner thereof with the chief of police by the seller, giver or person permanently passing possession thereof.

8.98.050 Concealable weapon defined. For the purposes of this chapter, a weapon capable of being concealed is defined as any gun or firearm with a barrel whose length is fourteen inches or less or whose overall length is eighteen inches or less.

Las Vegas

6-4-1: Pistol Defined: The term "Pistol" shall mean any small firearm fired by hand, loaded or unloaded capable of being concealed upon the person. The term shall include all small firearms with a barrel or barrels not exceeding twelve inches (12") in length including revolvers, automatics, derringers and like weapons from which a dangerous projectile may be propelled • • •

6-4-2: Person Defined: The term "Person" shall mean any individual, partnership, association or corporation.

6-4-3: Dealer Defined: The term "Dealer" shall mean any person engaged in the business of buying or selling pistols at wholesale or retail, or of accepting pledges of pistols as security for loans.

6-4-4: Dealing in Pistols without Permit Unlawful: It shall be unlawful for any person, except a dealer having a pistol permit issued under the provisions of this Chapter, to engage in the business of buying or selling pistols at retail or wholesale, or of accepting pledges of pistols as security for loans, and no such permit shall authorize the leasing of any pistol.

6-4-7: Sales to Certain Persons Prohibited: It shall be unlawful for a dealer or any other person to sell, lease, rent or otherwise transfer a pistol to any person whom he knows or has reasonable cause to believe is included within any one or more of the following categories:

A. Who is under the age of 18 years.

B. Who is under the influence of intoxicating beverages.

C. Who is a fugitive from justice.

D. Who has been convicted of a felony in the State of Nevada or any State or territory of the United States or any political subdivision thereof.

E. Who is an unlawful user or seller of narcotics.

F. Who is a member of an association advocating criminal syndicalism as defined in Section 203.160 through 203.190 of the Nevada Revised Statutes.

G. Who is foreign born and not a naturalized citizen of the United States of America.

H. Who has been adjudged insane in this State or elsewhere and has not subsequently been adjudged sane by a court of competent jurisdiction.

6-4-8: Certain Persons Prohibited from Purchasing or Owning Pistols: It shall be unlawful for any person who is included within any one or more of the categories set forth in Section 7 of this Chapter, to receive from another by loan, gift, purchase or in any manner, or to attempt to obtain in any manner or have in his or her possession or control any pistol; provided, however, that a person under the age of 18 years may have a pistol in his or her possession or under his or her control while accompanied by or under the immediate charge of his or her parent, guardian, or responsible adult and while engaged in hunting or target practice or other lawful purpose.

6-4-9: Seventy-two Hours must Elapse between Sale and Delivery of Pistol: When any sale of a pistol is made by a dealer under this Chapter, seventy-two (72) hours must elapse between the time of sale and the time of delivery to the purchaser, and when delivered, all pistols must be securely wrapped, must be unloaded and must be accompanied by a receipt, signed by dealer, setting forth the name, address and description of the purchaser or transferee, a complete description of the pistol, including the manufacturer, model and manufacturer's serial number thereof, the date and time of sale and the date and time of delivery of such pistol, and a statement notifying the purchaser or transferee that said pistol must be registered with the Chief of Police within twenty-four (24) hours.

The aforesaid seventy-two (72) hour waiting period shall not apply to the sale of a pistol to any person who, at the time of such sale, produces bona fide documentary evidence that he is a member of a federal law enforcement agency, that he is a peace officer of the State of Nevada or any political subdivision thereof who is regularly employed for pay by the State or such subdivision, or that he currently owns a pistol which is duly registered in his name with any law enforcement agency in Clark County, Nevada, nor shall said waiting period apply to any person who requires the use of a pistol in his employment and receives written permission from the Chief of Police to waive said waiting period; provided, however, that all of the other provisions shall apply to any of such sales.

6-4-12: Sale or Possession of Certain Pistols Prohibited: It shall be unlawful to purchase, sell, or to transfer in any manner or to have in possession or control any pistol on which the name of the manufacturer, model or manufacturer's serial number has been removed or altered.

6-4-14: Sale of Foreign made Pistols with Ammunition Restricted: No pistol of foreign make shall be sold with ammunition for the same unless said ammunition is expressly made for the pistol.

6-4-15: Sale of Home-made Pistols Prohibited: No home-made pistols shall be bought or sold except as provided by law under the Federal Firearms Act.

6-4-16: Condition of Pistols Sold: All secondhand and used pistols, except antique pieces, sold or purchased shall be in a safe and first class condition.

North Las Vegas

66-2. It shall be unlawful for any person to sell, offer to sell or to give or lend any minor under the age of 18 years any ammunition for any firearms enumerated in Section 1 hereof (pistol, revolver and firearms capable of being concealed upon the person).

304-1. Definitions. Unless the context clearly requires otherwise, the following definitions shall apply and be effective in this ordinance:

1.1 Dealer. The term "dealer" means any person engaged in the business of buying or selling pistols at wholesale or retail, or of accepting pledges of pistols as security for loans as set forth herein.

1.2. Pistol. The term "pistol" shall mean any small firearm fired by hand, loaded or unloaded, capable of being concealed upon the person. The term shall include all small firearms with a barrel or barrels not exceeding twelve (12) inches in length including revolvers, automatics and derringers from which a dangerous projectile may be propelled by explosives.

304-2. Dealing in Pistols without Permit Unlawful. It shall be unlawful for any per-

son, except a dealer having a pistol permit issued under the provisions of this Ordinance, to engage in the business of buying or selling pistols at retail or wholesale or to lease or to pledge or accept any pistol as security for a loan.

304-8. 72 Hour Waiting Period. When any sale of a pistol is made by a dealer under this Ordinance, seventy-two (72) hours must elapse between the time of sale and the time of delivery to the purchaser and, when delivered, all pistols must be unloaded.

This section shall not apply to Federal law enforcement agencies or to a police officer of the State of Nevada or any subdivision thereof who is regularly employed and paid by the State or subdivision, or to any person who currently owns a pistol which is duly registered in his name with any law enforcement agency of Clark County or who has a currently valid permit to carry a concealed pistol, nor shall it apply to any person who requires the use of a pistol in his employment and receives written permission from the Chief of Police to waive the 72 hour waiting period.

304-11. Means of Identifying Pistol. It shall be unlawful to purchase, sell or to transfer in any manner, or to have in possession or control, any pistol on which the name of the manufacturer, model and manufacturer's serial number has been removed or altered unless, if upon presentation for registration, the pistol can otherwise be identified to the satisfaction of the Chief of Police, in which case the means of identification shall be noted upon the registration card.

304-12. Persons Prohibited from Purchasing or Owning Pistols. It shall be unlawful for any person to receive from another by loan, gift, purchase or in any manner, or attempt to obtain in any manner or have in his possession or control, a pistol as defined by this Ordinance who:

(a) Has been convicted of a felony in the State of Nevada, or in any state or territory of the United States or any political subdivision thereof.

(b) Is a fugitive from justice,

(c) Is an unlawful user or seller of narcotics,

(d) Is an habitual drunkard,

(e) Is a member of an organization advocating criminal syndicalism as defined in N.R.S. 203.160 through 203.190.

(f) Is foreign born and not a naturalized citizen of the United States of America,

(g) Has been adjudged insane in this State or any other state and has not subsequently been adjudged sane.

304-13. Prohibited Sales and Transfers of a Pistol. It shall be unlawful for any person or a dealer in pistols to sell, lease, lend, or otherwise transfer a pistol to any person whom he knows or has reasonable cause to believe:

(a) Is under the influence of intoxicating beverages,

(b) Is mentally ill or disturbed,

(c) Is under 18 years of age, or

(d) Is a person prohibited from purchasing a pistol as provided in Section 12 preceding.

304-15. Sales of Foreign Made Pistols with Ammunition Restricted. No pistol of foreign make shall be sold with ammunition for the same unless said ammunition is expressly designed for use with such pistol.

304-16. Homemade Pistols Prohibited. No homemade pistols shall be bought or sold except as provided by law under the Federal Firearms Act.

304-17. Condition of Pistols Sold. All secondhand and used pistols, except antique pieces, sold or purchased shall be in a safe, operable condition.

304-20. Blank Cartridge Pistols Prohibited. Possession, transportation, sale or use of a blank cartridge pistol, except for theatrical purposes or for the training or exhibiting of dogs or for signal purposes in athletic sports or by railroads for signal purposes or for use by the United States Armed Forces or any organization of war veterans or by peace officers is prohibited.

Reno

14.14.030 Small arms ammunition defined. "Small arms ammunition" whenever used in this title means any shotgun, rifle, pistol or revolver cartridges.

14.14.040 Manufacture of small arms ammunition unlawful—Exception. It shall be unlawful for any person to manufacture within the limits of the city any small arms ammunition. This shall not be construed as prohibiting the handloading of small arms ammunition for private use and not for resale.

14.14.050 Storage and sale of small arms ammunition unlawful without permit. It shall be unlawful for any person to store for sale, sell, or offer for sale any small arms ammunition without a permit.

Winnemucca

20.160 Minors, furnishing explosives to. 2. It is unlawful to sell or give to any minor under 12 years of age any small firearms ammunition without a written order or permit from the parent or guardian of such minor.

New Hampshire

State Law

N.H. Rev. Stat. Ann.

Chapter 159
Pistols and Revolvers

159:1 Definition. Pistol or revolver, as used herein, means any firearm with barrel less than sixteen inches in length. It does not include antique pistols or revolvers. An antique pistol or revolver, for the purposes of this chapter, means any pistol or revolver utilizing an early type of ignition, including, but not limited to, flintlocks, wheel locks, matchlocks, percussions and pin-fire, but no pistol or revolver which utilizes center fire or rim fire cartridges shall be deemed to be an antique pistol or revolver.

159:3 Possession; Felons. No person who has been convicted of a felony against the person or property of another, shall own or have in his possession or under his control a pistol or revolver, unless said weapon is obtained in accordance with the provisions of RSA 159:7. Whoever violates the provisions of this section shall be guilty of a class B felony, and upon conviction the weapon shall be confiscated to the use of the state.

159:7 Permit to Purchase. No person shall sell, deliver or otherwise transfer a pistol or revolver to a person who has been convicted of a felony against the person or property of another, except upon delivery of a written permit to purchase, signed by the selectmen of the town or the mayor or chief of police of the city. Before a delivery is made the purchaser shall sign in duplicate and deliver to the seller a statement containing his full name, address and nationality, the date of sale, the caliber, make, model and manufacturer's number of the weapon. The seller shall, within seven days, sign and forward to the chief of police of the city or selectmen of the town one copy thereof and shall retain the other copy for one year. This section shall not apply to sales at wholesale. Where neither party to the transaction holds a dealer's license no person shall sell or otherwise transfer a pistol or revolver to any person not personally known to him. Whoever violates the provisions of this section shall be guilty of a misdemeanor.

159:8 License to Sell. The selectmen of a town and the chief of police of a city may grant licenses, the form of which shall be prescribed by the secretary of state, effective for not more than one year from date of issue,

permitting the licensee to sell at retail pistols and revolvers subject to the following conditions, for breach of any of which the license shall be subject to forfeiture:

I. The business shall be carried on only in the building designated in the license or at any organized sporting show or arms collectors' meeting sponsored by a chartered club or organization.

159:8-a [New] Sales to Nonresidents; Attorney General. No person holding a license issued under the provisions of section 8 shall sell a pistol or revolver to a nonresident unless such nonresident has authority under the laws of the state of his residence, to purchase a pistol or revolver in the state of his residence, or unless the director of the division of state police, for good cause shown, has issued to such nonresident a permit for the purchase of a pistol or revolver. The attorney general shall, at least once annually, file with the secretary of state a summary of the laws of each state of the United States relative to the purchase of pistols and revolvers in such states; and a licensee may rely upon such summary in determining if a nonresident offering to purchase a pistol or revolver has authority to make such purchase under the laws of the the state of his residence.

159:10 Sale Without License. Any person who, without being licensed as herein provided, sells, advertises or exposes for sale, or has in his possession with intent to sell, pistols or revolvers shall be guilty of a class B felony if a natural person, or guilty of a felony if any other person.

159:11 False Information. If any person in purchasing or otherwise securing delivery of a pistol or revolver shall give false information or offer false evidence of his identity he shall for a first offense be fined not less than one hundred dollars and not more than five hundred dollars, and for a second or subsequent offense he shall be imprisoned not less than one year and not more than three years.

159:12 Sale to Minors. Any person who shall sell, barter, hire, lend or give to any minor any pistol or revolver shall be guilty of a misdemeanor. This section shall not apply to fathers, mothers, guardians, administrators or executors who give a revolver to their children or wards or to heirs to an estate.

* * * * *

159:16 [New] Carrying or Selling Weapons. Whoever, except as provided by the laws of this state, sells, has in his possession with intent to sell, or carries on his person any * * * pistol cane * * * shall be guilty of a misdemeanor; and such weapon or article so carried by him shall be confiscated to the use of the state.

159:17 [New]—Exception. The provisions of the preceding section shall not apply to officers of the law, to persons holding hunters' licenses when lawfully engaged in hunting, to employees of express companies while on duty, or to watchmen while on duty.

Chapter 159-A [New]
Purchase Of Shotguns And Rifles

159-A:1 Purchase in Contiguous States. Residents of the state of New Hampshire may purchase rifles and shotguns in a state contiguous to the state of New Hampshire, provided that such residents conform to the applicable provisions of the Gun Control Act of 1968, and regulations thereunder, as administered by the United States Secretary of the Treasury, and provided further that such residents conform to the provisions of law applicable to such purchase in the state of New Hampshire and in the contiguous state in which the purchase is made.

* * * * *

New Jersey

State Law

N.J. Stat. Ann.

2A:151-1. Definitions. The following definitions apply to this chapter:

a. Firearm or firearms includes any pistol, revolver, rifle, shotgun, machine gun, automatic and semiautomatic rifle, or other firearm as the term is commonly used, or any gun, device or instrument in the nature of a weapon from which may be fired or ejected any solid projectile, ball, slug, pellet, missile or bullet, or any gas, vapor or other noxious thing, by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances.* * *

b. Pistol or revolver includes any firearm with an overall length less than 26 inches, or a shotgun having a barrel or barrels of a length less than 18 inches, or a rifle having a barrel length less than 16 inches.

c. Rifle and shotgun includes all other firearms with overall length of 26 inches or greater, provided the length of the barrel or barrels, if a shotgun, is 18 or more inches, and if a rifle is 16 or more inches but does not include machine guns or automatic rifles as defined in section 2A:151-39.

d. Person includes any individual, corporation, partnership, firm or association of any kind or nature whatsoever; any public entity of any kind or nature; the plural as well as the singular and any gender.

e. Superintendent means the Superintendent of State Police.

f. Manufacturer includes all persons who receive or obtain raw materials or parts and process them into firearms or finished parts of firearms, except those persons who exclusively process grips, stocks and other nonmetal parts of firearms. It shall not include those persons who repair existing firearms or who receive and use raw materials or parts solely for the repair of existing firearms.

g. Wholesale dealer includes all persons except the manufacturer, who sell, transfer or assign firearms, or parts of firearms, to persons who are reasonably understood not to be the ultimate consumer, and shall include persons, except the manufacturer, who receive finished parts of firearms and assemble them into completed or partially completed firearms, in furtherance of such purpose, except that it shall not include those persons dealing exclusively in grips, stocks and other nonmetal parts of firearms.

h. Retail dealer includes all persons except the manufacturer and wholesale dealer who sell, transfer or assign for a fee or profit any firearm or parts of firearms which they have purchased or obtained with the intention, or for the purpose, of reselling or reassigning to persons who are reasonably understood to be the ultimate consumer. It shall also include any person who sells any firearm to satisfy a debt secured by the pledge of a firearm.

i. Explosive includes any chemical compound or mixture that is commonly used or intended for the purpose of producing an explosion, that contains any oxidizing and combustible materials or other ingredients, in such proportions, quantities or packing that an ignition by fire, by friction, by concussion or by detonation of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects. The term shall not include small arms ammunition, or explosives in the form prescribed by the official United States Pharmacopoeia.

2A:151-2. Pawnbrokers not to deal in weapons. Any pawnbroker who sells or possesses for sale or to lend or give away, any firearm or * * * * * grenade, bomb or other explosive is guilty of a high misdemeanor.

2A:151-5. Additional sentence for armed criminals. Any person who commits or attempts to commit an assault, robbery, larceny, burglary, breaking and entering, rape, murder, mayhem, arson, abduction, extortion, kidnapping, sodomy or treason, or who is a fugitive from justice, when armed with or having in his possession any firearm, whether

or not capable of being discharged or dangerous instrument of any kind, * * * grenade, bomb or other explosive or any object or device, whether toy or imitation, having an appearance similar to or capable of being mistaken for any of the foregoing, shall, in addition to the punishment provided for the crime, be punished on a first conviction by imprisonment for not less than one nor more than 10 years; upon a second conviction by imprisonment for not less than 3 nor more than 15 years; upon a third conviction by imprisonment for not less than 5 nor more than 20 years; and upon a fourth or subsequent conviction, by imprisonment for not less than 10 years nor more than for life, in the discretion of the court. No such additional punishment shall be imposed unless the indictment shall have averred that the person was armed with or had in his possession any such instrument and conviction was had thereon.

2A:151-8. Certain persons not to have weapons; penalty. Any person, having been convicted in this State or elsewhere of any crime enumerated in section 2A:151-5, whether or not armed with or having in his possession any firearm or dangerous instrument enumerated in section 2A:151-5, or any person who has ever been committed for a mental disorder to any hospital, mental institution or sanitarium unless he possesses a certificate of a medical doctor or psychiatrist licensed in New Jersey or other satisfactory proof that he is no longer suffering from a mental disorder which interferes with or handicaps him in the handling of a firearm, or any person who has been convicted for the unlawful use, possession or sale of a controlled dangerous substance as defined in article 2 of P.L. 1970, c. 226 (C. 24:21-3 et seq.), who purchases, owns, possesses or controls any firearm or any of the said dangerous instruments, is guilty of a misdemeanor.

Whenever any person shall have been convicted in another State, territory, commonwealth or other jurisdiction of the United States, or of any country in the world, in a court of competent jurisdiction, of a crime which in said State, jurisdiction or country shall be equal to or comparable or the same as one of the crimes designated in 2A:151-5, then that person shall be subject to the provisions of this section.

2A:151-9. Right to refuse to sell weapons; sales to persons without permit or to persons of unsound mind or with physical defect; penalty. Any person shall have the right to refuse to sell any firearm or dangerous instrument to any other person, provided however that any person who knowingly sells any firearm to a person who does not possess and exhibit to the seller a permit to purchase in the case of a pistol or revolver or a firearms purchaser identification card in the case of a rifle or shotgun; or where the seller has reason to believe that the person is of unsound mind or suffers from a physical defect or sickness which would make it unsafe for him to handle firearms, is guilty of a misdemeanor. The presentation of a permit for the purchase of a pistol or revolver, or the signing of a certification and presentation of a firearms purchaser identification card for the purchase of a rifle or shotgun as set forth in section 2A:151-32, shall be prima facie evidence of compliance with the requirements of this chapter.

2A:151-10. Sale of weapons or loaded or blank cartridges to minors. Any person who knowingly offers, sells, lends, leases or gives to any person under the age of 18 years, any firearm, grenade, bomb or other explosive or any chemical compounds or ingredients for explosives or instructions for the use of such chemical compounds or ingredients as explosives, or a toy pistol or other instrument from which a loaded or blank cartridge may be fired, or any loaded or blank cartridge therefor, is guilty of a misdemeanor; provided however that a person may lend a firearm to a minor who may borrow same for the purpose of carrying, firing or using said firearm under section 2A:151-11, and provided further said minor furnishes the owner with written consent to his use thereof by his parent or legal guardian.

2A:151-11. Acquisition of weapons or explosives by minors; exceptions. Any person under the age of 18 years who purchases, barters, borrows, acquires or exchanges any firearm, grenade, bomb or other explosive or any chemical compounds or ingredients for explosives or instructions for the use of such chemical compounds or ingredients as explosives, is guilty of a misdemeanor or an act of juvenile delinquency as may be provided otherwise in the statutes; except that any such person may carry, fire or use any firearm in the actual presence or under the direct supervision of his father, mother, guardian or some other person who is himself a holder of a permit to carry a pistol or revolver or a firearms purchaser identification card, or for the purpose of military drill under the auspices of a legally recognized military organization and under competent supervision, or for the purpose of competition or target practice in and upon a firing range approved by the governing body or the chief of police of the municipality in which such range is located or the National Rifle Association and which is under competent supervision at the time of such competition or target practice, and except further that a minor under the age of 18 years who has successfully completed a hunter's safety course taught by a qualified instructor or conservation officer and carries in his possession a certificate indicating the successful completion of such a course and has a valid hunting license in his own name, may carry and use a rifle or shotgun as otherwise provided in this chapter, for the purpose of hunting during the regularly designated hunting season.

2A:151-12. Manufacture or sale of dangerous instruments prohibited. a. Any person who manufactures or causes to be manufactured, or sells or keeps for sale, or offers, gives or disposes of any * * * grenade, bomb, or other explosive, * * * to any person, except in accordance with Federal or State law is guilty of a misdemeanor.

2A:151-14. Silencers forbidden. Any person who manufactures, sells, purchases or possesses, except for military or police purposes, any muffler, silencer or device for deadening or muffling the sound of a firearm when discharged, is guilty of a misdemeanor.

2A:151-15. Altering serial number, etc., of firearm; sale. Any person who alters, changes, removes, disfigures, obliterates or defaces the name of the maker, model, manufacturer's or serial number, or other mark of identification of any firearm; and any person who sells, leases or transfers any firearm whose serial number has been altered, changed, disfigured or defaced is guilty of a misdemeanor.

2A:151-18. Antiques and ornaments excepted This chapter does not apply to antique firearms which are incapable of being fired or discharged or which do not fire fixed ammunition, or those manufactured before 1898 for which cartridge ammunition is not commercially available, and are possessed as curiosities or ornaments or for their historical significance or value.

2A:151-19. Manufacturers and wholesalers of firearms to be registered. No person shall manufacture or sell at wholesale any firearm until he has registered with the superintendent and has furnished him with such particulars as may be prescribed by law and by rules and regulations promulgated by the superintendent for registration. * * * * * The * * * registration shall be valid for a period of 3 years from the date of issuance. * * * The superintendent shall issue a license for each employee * * * which shall be valid for so long as the employee remains in the employ of said wholesale dealer.

2A:151-24. Licenses for retail dealers; standards and qualifications; fees, conditions. No retail dealer shall sell or expose for sale, or possess with intent to sell, any firearm, except that a retail dealer may be licensed to sell firearms as hereinafter provided.

* * * * *

A judge of the county court * * * shall grant licenses in form prescribed by the superintendent (which) shall be valid for a period of 3 years from the date of issuance. * * * The superintendent shall issue a license for each employee * * * which license shall be valid for so long as the employee remains in the employ of said retail dealer.

* * * * *

d. No pistol or revolver shall be delivered to any person:

1. Unless the person has obtained a permit to purchase under the provisions of sections 2A:151-32 through 2A:151-39;

2. Until 7 days have elapsed after date of the application for the permit;

3. Unless the person either is personally known to the seller or presents evidence of his identity;

4. Unless the pistol or revolver is unloaded and securely wrapped;

f. No rifle or shotgun shall be delivered to any person:

1. Unless the person has obtained a firearms purchaser identification card under the provisions of this chapter;

2. Unless the person has exhibited his firearms purchaser identification card and furnished the seller, on a form prescribed by the superintendent, a certification signed by him which shall contain among other things the name, permanent home address and firearms purchaser identification card number of said person. * * * * *

2A:151-27. Signatures on register. The purchaser, lessee or transferee of any pistol or revolver shall sign, and the dealer shall require him to sign his name to the register, in triplicate, and the person making the sale, lease or transfer shall affix his name, in triplicate, as a witness to the signature. The signatures shall constitute a representation of the accuracy of the information contained in the register.

2A:151-32. Purchaser must have permit; firearms purchaser identification card. A. No person shall sell, give, transfer, assign or otherwise dispose of, nor receive, purchase or otherwise acquire a pistol or revolver unless the purchaser, assignee, donee, receiver or holder is licensed as a dealer under this chapter or has first secured a permit to purchase a pistol or revolver as provided by this article.

B. No person shall sell, give, transfer, assign or otherwise dispose of nor receive, purchase or otherwise acquire a rifle or shotgun unless the purchaser, assignee, donee, receiver or holder is licensed as a dealer under this chapter or possesses a valid firearms purchaser identification card, and first, exhibits said card to the seller, donor, transferor or assignor, and unless the purchaser, assignee, donee, receiver or holder signs a written certification, on a form prescribed by the superintendent, which shall indicate that he presently complies with the requirements of section 2A:151-33, and shall contain his name, address and firearms purchaser identification card number or dealer's registration number, and which shall be retained by the seller as provided in section 2A:151-24, provided that a person who is not a dealer may file the certification with the chief of police of the municipality in which he resides or with the superintendent.

2A:151-33. Permit to purchase; who may obtain. No person of good character and who is of good repute in the community in which he lives, and who is not subject to any of the disabilities set forth in this section or other sections of this chapter, shall be denied a permit to purchase a pistol or revolver or a firearms purchaser identification card, except as hereinafter set forth:

a. No pistol or revolver purchase permit or firearms purchaser identification card shall be issued to any person who has ever been convicted of any crime, to any drug dependent person as defined in P.L.1970, c. 226 (C. 24:21-2) to any person who is confined for a mental disorder to a hospital, mental institution or sanitarium, or to any person who is presently a habitual drunkard; or

b. To any person who suffers from a physical defect or sickness which would make it unsafe for him to handle firearms, to any person who has ever been confined for a mental disorder, or to any alcoholic, unless any of the foregoing persons produce a certificate of a medical doctor or psychiatrist licensed in New Jersey, or other satisfactory proof, that he is no longer suffering from that particular disability in such a manner that would interfere with or handicap him in handling of firearms; or

c. To any person under the age of 18 years; or

d. To any person where the issuance would not be in the interest of the public health, safety or welfare.

2A:151-39. Restriction on number of firearms person may purchase. A person shall not be restricted as to the number of pistols or revolvers he may purchase, if he applies for and obtains permits to purchase the same, but only one pistol or revolver shall be purchased or delivered on each permit, except that a person shall not be restricted as to the number of rifles or shotguns he may purchase provided he possesses a valid firearms purchaser identification card and provided further that he signs the certification required. * * * * *

2A:151-49. "Machine gun or automatic rifle" defined. The term "machine gun or automatic rifle," as used in this chapter, means any weapon, mechanism or instrument not requiring that the trigger be pressed for each shot and having a reservoir, belt or other means of storing and carrying ammunition, which can be loaded into the weapon, mechanism or instrument and fired therefrom.

2A:151-50. Sale, purchase or possession of machine guns; penalty. Any person who sells, gives, loans, furnishes or delivers a machine gun or automatic rifle to another person, or a person who purchases, has or possesses any machine gun or automatic rifle, is guilty of a high misdemeanor.

2A:151-51. Exceptions to section 2A:151-50. Section 2A:151-50 of this title does not apply to any person having a license to purchase, have and possess a machine gun or automatic rifle, when the license has been obtained in the manner hereinafter provided; nor to the authorized agents or servants of the licensee; nor to the officers and members of a duly authorized military organization; nor to the officers and members of the police force of any municipality, or of the state; nor to any sheriff or undersheriff; nor to any county prosecutor, his assistants, detectives and employees.

2A:151-52. License to procure machine gun; application; reference and approval; issue of license. Any person who desires to purchase; have and possess a machine gun or automatic rifle may apply to a judge of the county court of the county in which the applicant resides for a license to do so. The application shall be in writing and shall state in detail the reasons why the applicant desires a license. * * * * *

2A:151-58. Possession or carrying of bombs. Any person, except a duly appointed law enforcement officer, or a member of the armed forces of the United States, or of the national guard or organized reserves when on duty, who possesses or carries on or about his person or in a vehicle, any bomb or bombshell, except for blasting or other commercial use, is guilty of a high misdemeanor.

2A:151-59. Possession of bombs with intent to use unlawfully; molotov cocktail; evidence of intent; exceptions. Any person who has in his possession or control any shell, bomb or similar device charged or filled with one or more explosives or any bomb or device commonly known as a fire bomb, "molotov cocktail," or any container charged or filled with an explosive, combustible or incendiary substance, with intent to use the same or cause the same to be used for an unlawful purpose, is guilty of a high misdemeanor, and shall be punished by imprisonment in the State Prison for not more than 20 years.

"Molotov cocktail" as used in this amendment means a breakable container containing flammable liquid and having a wick or similar device capable of being ignited, but is not intended to mean a device commercially manufactured primarily for the purpose of illumination, or other such uses.

The possession, sale or control by a person or persons of any such device or container so charged or filled, is prima facie evidence of an intent to use the same or to cause the same to be used for an unlawful purpose.

This section does not apply to the regular Armed Forces of the United States or its Allies, or to the duly authorized militia of any State or territory thereof, or to the police or fire departments of this State or any municipality or county thereof, provided they are acting in their official capacity and in the performance of their duties; nor does this section apply to explosives or combustibles or incen-

diary substances while the same are being transported in conformity with the regulations adopted by the interstate commerce commission.

2A:151-60. Possession or carrying of explosives with intent to use unlawfully. Any person who, with intent to use the same unlawfully against the person or property of another, possesses or carries any explosive substance, or any explosive liquid, gas or like substance, is guilty of a high misdemeanor.

(The following named sections of the New Jersey gun control law do not relate to specific requirements of the Federal Gun Control Act. They are, however, important to out-of-state firearms dealers who are not familiar with the gun control laws of the State of New Jersey.)

Section 2A:151-3, Penalty for loaning on firearms; 2A:151-6, Arms as evidence of intent; 2A:151-7, Firearms or explosives in vehicle; 2A:151-12b, Manufacture or sale of dangerous instruments prohibited; 2A:151-22, Manufacturer and wholesale dealer to keep record of sales; 2A:151-25, Record of sales to be kept, inspection of register; 2A:151-26, Preparation and furnishing of register; 2A:151-41, Carrying weapons, permit or identification card required, penalty; 2A:151-41.1, Possession of firearms on school or college premises; 2A:151-41.2, Defense; written consent of governing officer required; 2A:151-42, Carrying weapons about one's premises or for purposes of hunting or target practice; etc.; 2A:151-43, Carrying weapons; persons excepted from provisions of Section 2A:151-41; 2A:151-56, Unlawful use of dangerous weapons; 2A:151-57, Possession as presumption of unlawful use.

COMPILER'S NOTE:

A revised Code of Criminal Justice for the State of New Jersey was approved on August 16, 1978 and will, when it becomes effective September 1, 1979, replace the present code. The new material has been codified into Sections 2C:39 and 2C:58. For the convenience of licensees in the State of New Jersey, the text of the new law, as it was passed by the 198th New Jersey Legislature, follows. Please note that certain provisions of the new law may be amended prior to the effective date. Licensees having inquiries concerning the impact of the law should contact the Firearms Investigation Unit, New Jersey State Police, Division Headquarters, PO Box 7068, West Trenton, N.J. 08625

Chapter 39
Firearms, other dangerous weapons and instruments of crime

2C:39-1. Definitions. The following definitions apply to this chapter and to chapter 58:

a. "Antique firearm" means any firearm which is incapable of being fired or discharged, or which does not fire fixed ammunition, or which was manufactured before 1898 for which cartridge ammunition is not commercially available, and is possessed as a curiosity or ornament or for its historical significance or value.

b. "Deface" means to remove, deface, cover, alter or destroy the name of the maker, model designation, manufacturer's serial number or any other distinguishing identification mark or number on any firearm.

c. "Destructive device" means any device, instrument or object designed to explode or produce uncontrolled combustion, including (1) any explosive or incendiary bomb, mine or grenade; (2) any rocket having a propellant charge of more than four ounces or any missile having an explosive or incendiary charge of more than one quarter of an ounce; (3) any weapon capable of firing a projectile of a caliber greater than .60 caliber, except a shotgun or shotgun ammunition generally recognized as suitable for sporting purposes; (4) any Molotov cocktail or other device consisting of a breakable container containing flammable liquid and having a wick or similar device capable of being ignited. The term does not include any device manufactured for the purpose of illumination, distress signaling, line-throwing, safety or similar purposes.

d. "Dispose of" means to give, give away, lease, loan, keep for sale, offer, offer for sale, sell, transfer, or otherwise transfer possession.

e. "Explosive" means any chemical compound or mixture that is commonly used or is possessed for the purpose of producing an explosion and which contains any oxidizing and combustible materials or other ingredients in such proportions, quantities or packing that an ignition by fire, by friction, by concussion or by detonation or (sic) any part of the compound or mixture may cause such a sudden generalization of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects. The term shall not include small arms ammunition, or explosives in the form prescribed by the official United States Pharmacopoeia.

f. "Firearm" means any hand gun, rifle, shotgun, machine gun, automatic or semi-automatic rifle, or any gun, device or instrument in the nature of a weapon from which may be fired or ejected any solid projectible ball, slug, pellet, missile or bullet, or any gas, vapor or other noxious thing, by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances. It shall also include, without limitation, any firearm which is in the nature of an air gun, spring gun or pistol or other weapon of a similar nature in which the propelling force is a spring, elastic band, carbon dioxide, compressed or other gas or vapor, air or compressed air, or is ignited by compressed air, and ejecting a bullet or missile smaller than three-eighths of an inch in diameter, with sufficient force to injure a person.

g. "Firearm silencer" means any instrument, attachment, weapon or appliance for causing the firing of any gun, revolver, pistol or other firearm to be silent, or intended to lessen or muffle the noise of the firing of any gun, revolver, pistol or other firearm. * * *

i. "Machine gun" means any firearm, mechanism or instrument not requiring that the trigger be pressed for each shot and having a reservior, belt or other means of storing and carrying ammunition which can be loaded into the firearm, mechanism or instrument and fired therefrom.

j. "Manufacturer" means any person who receives or obtains raw materials or parts and processes them into firearms or finished parts of firearms, except a person who exclusively processes grips, stocks and other nonmetal parts of firearms. The term does not include a person who repairs existing firearms or receives new and used raw materials or parts solely for the repair of existing firearms.

k. "Hand gun" means any pistol, revolver or other firearm originally designed or manufactured to be fired by the use of a single hand.

l. "Retail dealer" means any person including a gunsmith, except a manufacturer or a wholesale dealer, who sells, transfers or assigns for a fee or profit any firearm or parts of firearms or ammunition which he has purchased or obtained with the intention, or for the purpose, of reselling or reassigning to persons who are reasonably understood to be the ultimate consumer, and includes any person who is engaged in the business of repairing firearms or who sells any firearm to satisfy a debt secured by the pledge of a firearm.

m. "Rifle" means any firearm designed to be fired from the shoulder and using the energy of the explosive in a fixed metallic cartridge to fire a single projectile through a rifled bore for each single pull of the trigger.

n. "Shotgun" means any firearm designed to be fired from the shoulder and using the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each pull of the trigger, or any firearm designed to be fired from the shoulder which does not fire fixed ammunition.

o. "Sawed-off shotgun" means any shotgun having a barrel or barrels of less than 18 inches in length measured from the breach to the muzzle, or a rifle having a barrel or barrels of less than 16 inches in length measured from the breach to the muzzle, or any firearm made from a rifle or a shotgun, whether by alteration, or otherwise, if such firearm as modified has an overall length of less than 26 inches. * * *

q. "Superintendent" means the Superintendent of the State Police.

r. "Weapon" means anything readily capable of lethal use or of inflicting serious bodily injury. The term includes, but is not limited to, all (1) firearms, even though not loaded or lacking a clip or other component to render them immediately operable; (2) components which can be readily assembled into a weapon; and (3) gravity knives, switchblade knives, daggers, dirks, stilettos, or other dangerous knives, billies, blackjacks, bludgeons, metal knuckles, sandclubs, slingshots, cestus or similar leather bands studded with metal filings or razor blades imbedded in wood; and any weapon or other device which projects, releases, or emits tear gas or any other substance intended to produce temporary physical discomfort or permanent injury through being vaporized or otherwise dispensed in the air.

s. "Wholesale dealer" means any person, except a manufacturer, who sells, transfers, or assigns firearms, or parts of firearms, to persons who are reasonably understood not to be the ultimate consumer, and includes persons who receive finished parts of firearms and assemble them into completed or partially completed firearms, in furtherance of such purpose, except that it shall not include those persons dealing exclusively in grips, stocks and other nonmetal parts of firearms.

* * * * *

2C:39-3. Prohibited Weapons and Devices. a. Destructive devices. Any person who knowingly has in his possession any destructive device is guilty of a crime of the third degree.

b. Sawed-off shotguns. Any person who knowingly has in his possession any sawed-off shotgun is guilty of a crime of the third degree.

c. Silencers. Any person who knowingly has in his possession any firearm silencer is guilty of a crime of the fourth degree.

d. Defaced firearms. Any person who knowingly has in his possession any firearm except an antique firearm which has been defaced is guilty of a crime of the fourth degree.

f. Dum-dum bullets. Any person, other than a law enforcement officer or persons engaged in activities pursuant to 2C:39-6f., who knowingly has in his possession any hollow nose or dum-dum bullet, is guilty of a crime of the fourth degree.

g. Exceptions. (1) Nothing in this section shall apply to any member of the Armed Forces of the United States or the National Guard, or except as otherwise provided by any law enforcement officer while actually on duty or traveling to or from an authorized place of duty, provided that his possession of the prohibited weapon or device has been duly authorized under the applicable laws, regulations or military or law enforcement orders, or to the possession of any weapon or device by a law enforcement officer who has confiscated, seized or otherwise taken possession of said weapon or device as evidence of the commission of a crime or because he believed it to be possessed illegally by the person from whom it was taken, provided that said law enforcement officer promptly notifies his superiors of his possession of such prohibited weapon or device.

(2) Nothing in subsection f. shall be construed to prevent a person from keeping such ammunition at his dwelling, premises or other land owned or possessed by him, or from carrying such ammunition from the place of purchase to said dwelling or land; nor shall subsection f. be construed to prevent any licensed retail or wholesale firearm dealer from possessing such ammunition at its licensed premises, provided that the possessor or purchaser has a valid firearms purchase identification card. Such card must be presented to the firearm dealer at the time the ammunition is purchased.

* * * * *

2C:39-5. Unlawful Possession of Weapons.

a. Machine guns. Any person who knowingly has in his possession a machine gun or any instrument or device adaptable for use as a machine gun, without being licensed to do so as provided in section 2C:58-5, is guilty of a crime of the third degree.

b. Handguns. Any person who knowingly has in his possession any handgun, without first having obtained a permit to purchase a handgun as provided for in section 2C:58-3 and a permit to carry the same as provided in section 2C:58-4, is guilty of a crime of the third degree.

c. Rifles and shotguns. (1) Any person who knowingly has in his possession any rifle or shotgun (other than a sawed-off shotgun) without having first obtained a firearms purchaser identification card in accordance with the provisions of section 2C:58-3, is guilty of a crime of the third degree.

(2) Unless otherwise permitted by law, any person who knowingly has in his possession any loaded rifle or shotgun (other than a sawed-off shotgun) is guilty of a crime of the third degree.

d. Other weapons. Any person who knowingly has in his possession any weapon other than a machine gun, handgun, rifle or shotgun under circumstances not manifestly appropriate for such lawful uses as it may have is guilty of a crime of the fourth degree.

* * * * *

2C:39-6. Exemptions. a. Section 2C:39-5 does not apply to:

(1) Members of the Armed Forces of the United States of (sic) the National Guard while actually on duty, or while traveling between places of duty and carrying authorized weapons in the manner prescribed by the appropriate military authorities;

(2) Federal law enforcement officers, and any other Federal officers and employees required to carry firearms in the performance of their official duties;

(3) Members of the State Police, a motor vehicle inspector;

(4) A sheriff, undersheriff, sheriff's officer, county prosecutor, assistant prosecutor, prosecutor's detective or investigator, State investigator employed by the Division of Criminal Justice of the Department of Law and Public Safety, or State park ranger;

(5) A prison or jail warden or his deputies, a correction officer or keeper of any penal institution in this State, while in the performance of his duties, and when required to possess such a weapon by his superior officer;

(6) A civilian employee of the United States Government under the supervision of the commanding officer of any post, camp, station, base or other military or naval installation located in this State who is required, in the performance of his official duties, to carry firearms, and who is authorized to carry such firearms by said commanding officer, while in the actual performance of his official duties; or

(7) A regularly employed member, including a detective, of the police department of any county or municipality, or of any State, interstate, municipal or boulevard police force, at all times while in the State of New Jersey, or a special policeman appointed by the governing body of any county or municipality or by the commission, board or other body having control of a county park or boulevard police force, while engaged in the actual performance of his official duties and when specifically authorized by the governing body to carry weapons. (so in enrolled bill)

(8) County park police while engaged in the actual performance of their official duties.

b. Subsections a., b. and c. of section 2C:39-5 do not apply to:

(1) A law enforcement officer employed by a governmental agency outside of the State of New Jersey while actually engaged in his official duties, provided, however, that he has first notified the superintendent or the chief law enforcement officer of the municipality or the prosecutor of the county in which he is engaged; or

(2) A licensed retail dealer in firearms and his registered employees during the course of their normal business while traveling to and from their place of business and other places for the purpose of demonstration, exhibition or delivery in connection with a sale, provided, however, that any such weapon is carried in the manner specified in subsection g. of this section.

c. Subsections b. and c. of section 2C:39-5 do not apply to:

(1) A railway policeman, campus police officer appointed pursuant to P.L.1970, c. 211

(C. 18A:6-4.2 et seq.), or any other police officer, while in the actual performance of his official duties;

(2) A conservation officer or a full-time employee of the Division of Shell Fisheries having the power to arrest and authorized to carry weapons, while in the actual performance of his official duties;

(3) A full-time member of the marine patrol force or a special marine patrolman authorized to carry such a weapon by the Commissioner of Environmental Protection, while in the actual performance of his official duties;

(4) The inspectors and investigators of the Division of Alcoholic Beverage Control in the Department of Law and Public Safety, while in the actual performance of his official duties;

(5) A court attendant serving as such under appointment by the sheriff of the county or by the judge or magistrate of any court of this State, while in the actual performance of his official duties;

(6) A guard in the employ of any railway express company, banking or building and loan or savings and loan institution of this State, while in the actual performance of his official duties;

(7) A member of a legally recognized military organization while actually under orders or while going to or from the prescribed place of meeting and carrying the weapons prescribed for drill, exercise or parade;

(8) An officer of the Society for the Prevention of Cruelty to Animals, while in the actual performance of his duties; or

(9) An employee of a public utilities corporation actually engaged in the transportation of explosives.

d. Subsections b., c. and d. of section 2C:39-5 do not apply to antique firearms, provided that such antique firearms are unloaded or are being fired for the purposes of exhibition or demonstration at an authorized target range or in such other manner as has been approved in writing by the chief law enforcement officer of the municipality in which the exhibition or demonstration is held.

e. Nothing in subsections b., c. and d. of section 2C:39-5 shall be construed to prevent a person keeping or carrying about his place of business, residence, premises or other land owned or possessed by him, any firearm, or from carrying the same, in the manner specified in subsection g. of this section, between his dwellings and his place of business or between his dwelling or place of business and place where such firearms are repaired, for the purpose of repair. For the purposes of this section, a place of business shall be deemed to be a fixed location.

f. Nothing in subsections b., c. and d. of Section 2C:39-5 shall be construed to prevent:

(1) A member of any rifle or pistol club organized in accordance with the rules prescribed by the National Board for the Promotion of Rifle Practice, in going to or from a place of target practice, carrying such firearms as are necessary for said target practice, provided that the club has filed a copy of its charter with the superintendent and annually submits a list of its members to the superintendent, and provided further that the firearms are carried in the manner specified in subsection g. of this section;

(2) A person carrying a firearm or knife in the woods or fields or upon the waters of this State for the purpose of hunting, target practice or fishing, provided that the firearm or knife is legal and appropriate for hunting or fishing purposes in this State and he has in his possession a valid hunting or fishing license;

(3) A person transporting any firearm or knife while traveling:

(a) Directly to or from any place for the purpose of hunting or fishing, provided such person has in his possession a valid hunting or fishing license; or

(b) Directly to or from any target range or other authorized place for the purpose of practice, match, target, trap or skeet shooting exhibitions, provided in all cases that during the course of such travel all firearms are carried in the manner specified in subsection g. of this section and the person has complied with all the provisions and requirements of Title 23 of the Revised Statutes and any amendments thereto and all rules and regulations promulgated thereunder: (So in enrolled bill)

(c) In the case of a firearm, directly to or from any exhibition or display of firearms which is sponsored by any law enforcement agency, any rifle or pistol club, or any firearms collectors club, for the purpose of displaying of the firearms to the public or to the members of such organization or club, provided, however, that not less than 30 days prior to such exhibition or display, notice of such exhibition or display shall be given to the Superintendent of the State Police by the sponsoring organization or club, and the sponsor has complied with such reasonable safety regulations or (sic) the superintendent may promulgate. Any firearms transported pursuant to this section must be transported in accordance with 2C:39-6.

g. All weapons being transported under subsections (b) (2), e. or f. (1) or (3) of this section shall be carried unloaded and contained in a closed and fastened case, gunbox, securely tied package, or locked in the trunk of the automobile in which it is being transported, and the course of travel shall include only such deviations as are reasonably necessary under the circumstances.

2C:39-9. Manufacture, Transport, Disposition and Defacement of Weapons and Dangerous Instruments and Appliances.

a. Machine guns. Any person who manufactures, causes to be manufactured, transports, ships, sells or disposes of any machine gun without being registered or licensed to do so as provided in chapter 58 is guilty of a crime of the third degree.

b. Sawed-off shotguns. Any person who manufactures, causes to be manufactured, transports, ships, sells or disposes of any sawed-off shotgun is guilty of a crime of the third degree.

c. Firearm silencers. Any person who manufactures, causes (so in enrolled bill) be manufactured, transports, ships, sells or disposes of any firearm silencer is guilty of a crime of the fourth degree.

d. Weapons. Any person who manufactures, causes to be manufactured, transports, ships, or disposes of any weapon including gravity knives, switchblade knives, daggers, dirks, stilettos, blackjacks, metal knuckles, sandclubs, slingshots, cestus or similar leather bands studded with metal filings, or in the case of firearms is (so in enrolled bill) he is not licensed or registered to do so as provided in chapter 58, is guilty of a crime of the fourth degree. Any person who manufactures, causes to be manufactured, transports, ships, sells or disposes of any billy or any weapon or other device which projects, releases or emits tear gas or any other substance intended to produce temporary physical discomfort or permanent injury through being vaporized or otherwise dispensed in the air, which is intended to be used for any purpose other than for authorized military or law enforcement purposes by duly authorized military or law enforcement personnel, is guilty of a crime of the fourth degree.

e. Defaced firearms. Any person who defaces any firearm is guilty of a crime of the third degree. Any person who knowingly buys, receives, disposes of or conceals a defaced firearm is guilty of a crime of the fourth degree.

2C:39-10. Violation of the Regulatory Provision Relating to Firearms; False Representation in Applications.

a. Any person who knowingly violates the regulatory provisions relating to manufacturing or wholesaling of firearms (section 2C:58-1), permits to purchase certain firearms (section 2C:58-3), permits to carry certain firearms (section 2C:58-4), licenses to procure machine guns (section 2C:58-5), or incendiary or tracer ammunition (section 2C:58-10), except acts which are punishable under section 2C:39-5 or section 2C:39-9, is guilty of a crime of the fourth degree.

b. Any person who knowingly violates the regulatory provisions relating to notifying the authorities of possessing certain items of explosives (section 2C:58-7), or of certain wounds (section 2C:58-8) is a disorderly person.

c. Any person who gives or causes to be given any false information, or signs a fictitious name or address, in applying for a firearms purchaser identification card of (sic) a permit to purchase or a permit to carry a handgun, or a permit to possess a machine gun, or in completing the certificate or any other instrument required by law in purchasing or otherwise acquiring delivery of any rifle, shotgun, handgun, machine gun, or any other firearm, is guilty of a crime of the third degree.

2C:39-11. Pawnbrokers; Loaning on Firearms.

a. Any pawnbroker who sells, offers to sell or to lend or to give away any weapon, destructive device or explosive is guilty of a crime of the fourth degree.

b. Any person who loans money secured by mortgage, deposit or pledge on any handgun, rifle or shotgun is guilty of a disorderly persons offense.

2C:39-12. Voluntary Surrender. No person shall be convicted of an offense under this chapter for possessing any firearms, weapons, destructive devices, silencers or explosives, if after giving written notice of his intention to do so, including the proposed date and time of surrender, he voluntarily surrendered the weapon, device, instrument or substance in question to the superintendent or to the chief of police in the municipality in which he resides, provided that the required notice is received by the superintendent or chief of police before any charges have been made or complaints filed against such person for the unlawful possession of the weapon, device, instrument or substance in question and before any investigation has been commenced by any law enforcement agency concerning the unlawful possession. Nothing in this section shall be construed as granting immunity from prosecution for any crime or offense except that of the unlawful possession of such weapons, devices, instruments or substances surrendered as herein provided.

Chapter 58
Licensing and other provisions relating to firearms

2C:58-1. Registration of Manufacturers and Wholesale Dealers of Firearms.

a. Registration. Every manufacturer and wholesale dealer of firearms shall register with the superintendent as provided in this section. No person shall engage in the business of, or act as a manufacturer or wholesale dealer of firearms, or manufacture or sell at wholesale any firearm, until he has so registered.

Applications for registration shall be made on such forms as shall be prescribed by the superintendent, and the applicant shall furnish such information and other particulars as may be prescribed by law or by any rules or regulations promulgated by the superintendent. Each application for registration or renewal shall be accompanied by a fee of $150.00.

The superintendent shall prescribe standards and qualifications for the registration of manufacturers and wholesalers of firearms, for the protection of the public safety, health and welfare. He shall refuse to register any applicant for registration unless he is satisfied that the applicant can be permitted to engage in business as a manufacturer or wholesale dealer of firearms without any danger to the public safety, health or welfare.

The superintendent shall issue a certificate of registration to every person registered under this section, and such certificate shall be valid for a period of 3 years from the date of issuance.

b. Wholesale dealer's agent. Every registered wholesale dealer of firearms shall cause each of his agents or employees actively engaged in the purchase or sale of firearms to be licensed with the superintendent as a wholesale dealer's agent. Applications for agents' licenses shall be submitted on such forms as shall be prescribed by the superintendent, and shall be signed by the registered wholesale dealer and by the agent. Each application shall be accompanied by a fee of $5.00, and each license shall be valid for so long as the agent or employee remains in the employ of the wholesale dealer and the wholesale dealer remains validly registered under this section. The superintendent shall prescribe standards and qualifications for licensed wholesale dealers' agents, for the protection of the public safety, health and welfare.

c. Revocation of certificate of registration or license. The superintendent may, after reasonable notice to all affected parties and a hearing if requested, revoke any certificate of registration or agent's license if he finds that the registered or licensed person is no longer engaged in the business of manufacturing or wholesaling firearms in this State or that he can no longer be permitted to carry on such business without endangering the public safety, health or welfare. A certificate or license may be canceled at any time at the request of the registered or licensed person.

* * *

e. Records of Sales. Every manufacturer and wholesale dealer shall keep a detailed record of each firearm sold by him. The record shall include the date of sale, the name and address of the purchaser, a description of each firearm and the serial number thereof. The records shall be available for inspection at all reasonable times by any law enforcement officer.

2C:58-2. Retailing of Firearms. a. Licensing of retail dealers and their employees. No retail dealer of firearms nor any employee of a retail dealer shall sell or expose for sale, or possess with the intent of selling, any firearm unless licensed to do so as hereinafter provided. The superintendent shall prescribe standards and qualifications for retail dealers of firearms and their employees for the protection of the public safety, health and welfare.

Applications shall be made in the form prescribed by the superintendent, accompanied by a fee of $50.00 payable to the superintendent, and shall be made to a judge of the county court in the county where the applicant maintains his place of business. The judge shall grant a license to an applicant if he finds that the applicant meets the standards and qualifications established by the superintendent and that the applicant can be permitted to engage in business as a retail dealer of firearms or employee thereof without any danger to the public safety, health and welfare. Each license shall be valid for a period of 3 years from the date of issuance, and shall authorize the holder to sell firearms at retail in a specified municipality.

In addition, every retail dealer shall pay a fee of $5.00 for each employee actively engaged in the sale or purchase of firearms. The superintendent shall issue a license for each employee for whom said fee has been paid, which license shall be valid for 3 years or so long as the employee remains in the employ of said retail dealer if such period is less than 3 years.

No license shall be granted to any person under the age of 18 years or to any person who could not qualify to obtain a permit to purchase a handgun or a firearms purchaser identification card, or to any corporation, partnership or other business organization in which an actual or equitable controlling interest is held or possessed by such an ineligible person.

All licenses shall be granted subject to the following conditions, for breach of any of which the license shall be subject to revocation on the application of any law enforcement officer and after notice and hearing by the issuing court:

(1) The business shall be carried on only in the building or buildings designated in the license, provided that repairs may be made by the dealer or his employees outside of such premises.

(2) The license or a copy certified by the issuing authority shall be displayed at all times in a conspicuous place on the business premises where it can be easily read.

(3) No firearm or imitation thereof shall be placed in any window or in any other part of the premises where it can be readily seen from the outside.

(4) No rifle or shotgun shall be delivered to any person unless such person possesses and exhibits a valid firearms purchaser identification card and furnishes the seller, on the form prescribed by the superintendent, a certifica-

tion signed by him setting forth his name, permanent address, firearms purchaser identification card number and such other information as the superintendent may by rule or regulation require. The certification shall be retained by the dealer and shall be made available for inspection by any law enforcement officer at any reasonable time.

(5) No handgun shall be delivered to any person unless:

(a) Such person possesses and exhibits a valid permit to purchase a firearm and at least 7 days have elapsed since the date of application for the permit. (as in enrolled bill)

(b) The person is personally known to the seller or presents evidence of his identity; and

(c) The handgun is unloaded and securely wrapped.

(6) The dealer shall keep a true record of every handgun sold, given or otherwise delivered or disposed of, in accordance with the provisions of subsections b. through e. of this section.

b. Records. Every person engaged in the retail business of selling, leasing or otherwise transferring a handgun, as a retail dealer or otherwise, shall keep a register in which shall be entered the time of the sale, lease or other transfer, the date thereof, the name, age, date of birth, complexion, occupation, residence and a physical description including distinguishing physical characteristics, if any, of the purchaser, lessee or transferee, the name and permanent home address of the person making the sale, lease or transfer, the place of the transaction, and the make, model, manufacturer's number, caliber and other marks of identification on such handgun and such other information as the superintendent shall deem necessary for the proper enforcement of this chapter. The register shall be retained by the dealer and shall be made available at all reasonable hours for inspection by any law enforcement officer.

c. Form of register. The superintendent shall prepare the form of the register as described in subsection b. of this section and furnish the same in triplicate to each person licensed to be engaged in the business of selling, leasing or otherwise transferring firearms.

d. Signatures on register. The purchaser, lessee or transferee of any handgun shall sign, and the dealer shall require him to sign his name to the register, in triplicate, and the person making the sale, lease or transfer shall affix his name, in triplicate, as a witness to the signature. The signatures shall constitute a representation of the accuracy of the information contained in the register.

e. Copies of register entries; delivery to chief of police or county clerk. Within 5 days of the date of the sale, assignment or transfer, the dealer shall deliver or mail by certified mail, return receipt requested, to the office of the chief of police of the municipality in which the purchaser resides, or to the office of the captain of the precinct of the municipality in which the purchaser resides, and to the superintendent, legible copies of the register forms. If hand delivered a receipt shall be given to the dealer therefor.

Where a sale, assignment or transfer is made to a purchaser who resides in a municipality having no chief of police, the dealer shall, within 5 days of the transaction, mail a duplicate copy of the register sheet to the clerk of the county within which the purchaser resides.

2C:58-3. Purchase of Firearms.

a. Permit to Purchase a Handgun. No person shall sell, give, transfer, assign or otherwise dispose of, nor receive, purchase, or otherwise acquire a handgun unless the purchaser, assignee, donee, receiver or holder is licensed as a dealer under this chapter or has first secured a permit to purchase a handgun as provided by this section.

b. Firearms purchaser identification card. No person shall sell, give, transfer, assign or otherwise dispose of nor receive, purchase or otherwise acquire a rifle or shotgun unless the purchaser, assignee, donee, receiver or holder is licensed as a dealer under this chapter or possesses a valid firearms purchaser identification card, and first exhibits said card to the seller, donor, transferor or assignor, and unless the purchaser, assignee, donee, receiver or holder signs a written certification, on a form prescribed by the superintendent, which shall indicate that he presently complies with the requirements of subsection c. of this section and shall contain his name, address and firearms purchaser identification card number or dealer's registration number. The said certification shall be retained by the seller, as provided in section 2C:58-2a., or, in the case of a person who is not a dealer, it may be filed with the chief of police of the municipality in which he resides or with the superintendent.

c. Who may obtain. No person of good character and good repute in the community in which he lives, and who is not subject to any of the disabilities set forth in this section or other sections of this chapter, shall be denied a permit to purchase a handgun or a firearms purchaser identification card, except as hereinafter set forth. No handgun purchase permit or firearms purchaser identification card shall be issued:

(1) To any person who has been convicted in this State of a crime, whether or not armed with or possessing a weapon at the time of such offense;

(2) To any drug dependent person as defined in P.L.1970, c. 226 (C.24:21-2), to any person who is confined for a mental disorder to a hospital, mental institution or sanitarium, or to any person who is presently an alcoholic or an habitual drunkard;

(3) To any person who suffers from a physical defect or disease which would make it unsafe for him to handle firearms unless he produces a certificate of a medical doctor or psychiatrist licensed in New Jersey, or other satisfactory proof, that he is no longer suffering from that particular disability in such a manner that would interfere with or handicap him in the handling of firearms; to any person who knowingly falsifies any information on the application forms for a handgun purchase permit or firearms purchaser identification card;

(4) To any person under the age of 18 years; or

(5) To any person where the issuance would not be in the interest of the public health, safety or welfare. * * *

e. Applications. Applications for permits to purchase a handgun and for firearms purchaser identification cards shall be in the form prescribed by the superintendent and shall set forth the name, residence, place of business, age, date of birth, occupation, sex and physical description, including distinguishing physical characteristics, if any, of the applicant, and shall state whether the applicant is a citizen, whether he is an alcoholic, habitual drunkard, drug dependent person as defined in P.L.1970, c. 226 (C.24:21-2), whether he has ever been confined or committed to a mental institution or hospital for treatment or observation of a mental or psychiatric condition on a temporary, interim or permanent basis, giving the name and location of the institution or hospital and the dates of such confinement or commitment, whether he has been attended, treated or observed by any doctor or psychiatrist or at any hospital or mental institution on an inpatient or outpatient basis for any mental or psychiatric condition giving the name and location of the doctor, psychiatrist, hospital or institution and the dates of such occurrence, whether he presently or ever has been a member of any organization which advocates or approves the commission of acts of force and violence to overthrow the Government of the United States or of this State, or which seeks to deny others their rights under the Constitution of either the United States or the State of New Jersey, whether he has ever been convicted of a crime or disorderly persons offense, and such other information as the superintendent shall deem necessary for the proper enforcement of this chapter. The application shall be signed by the applicant and shall contain as reference the names and addresses of two reputable citizens personally acquainted with him.

Application blanks shall be obtainable from the superintendent, from any other officer authorized to grant such permit or identification card, and from licensed retail dealers.

The chief police officer or the superintendent shall obtain the fingerprints of the applicant and shall have them compared with any and all records of fingerprints in the munici-

pality and county in which the applicant resides and also the records of the State Bureau of Identification and the Federal Bureau of Investigation, provided that an applicant for a handgun purchase permit who possesses a valid firearms purchaser identification card, or who has previously obtained a handgun purchase permit from the same licensing authority for which he was previously fingerprinted, and who provides other reasonably satisfactory proof of his identity, need not be fingerprinted again; however, the chief police officer or the superintendent shall proceed to investigate the application to determine whether or not the applicant has become subject to any of the disabilities set forth in this chapter.

f. Granting of permit or identification card; fee; term; renewal; revocation. The application for the permit to purchase a handgun together with a fee of $2.00, or the application for the firearms purchase identification card together with a fee of $5.00, shall be delivered or forwarded to the licensing authority who shall investigate the same and, unless good cause for the denial thereof appears, shall grant the permit or the identification card, or both, if application has been made therefor, within 30 days from the date of receipt of the application for residents of this State and within 45 days for nonresident applicants. A permit to purchase a handgun shall be valid for a period of 90 days from the date of issuance and may be renewed by the issuing authority for good cause for an additional 90 days. A firearms purchaser identification card shall be valid until such time as the holder becomes subject to any of the disabilities set forth in subsection c. of this section, whereupon the card shall be void and shall be returned within 5 days by the holder to the superintendent, who shall then advise the licensing authority. Failure of the holder to return the firearms purchaser identification card to the superintendent within the said 5 days shall be an offense under section 2C:39-10a. Any firearms purchaser identification card may be revoked by the County Court of the county wherein the card was issued, after hearing upon notice, upon a finding that the holder thereof no longer qualifies for the issuance of such permit. The county prosecutor of any county, the chief police officer of any municipality or any citizen may apply to such court at any time for the revocation of such card.

There shall be no conditions or requirements added to the form or content of the application, or required by the licensing authority for the issuance of a permit or identification card, other than those that are specifically set forth in this chapter. * * *

h. Form of permit; quadruplicate; disposition of copies. The permit shall be in the form prescribed by the superintendent and shall be issued to the applicant in quadruplicate. Prior to the time he receives the handgun from the seller, the applicant shall deliver to the seller the permit in quadruplicate and the seller shall complete all of the information required on the form. Within 5 days of the date of the sale, the seller shall forward the original copy to the superintendent and the second copy to the chief of police of the municipality in which the purchaser resides, except that in a municipality having no chief of police, such copy shall be forwarded to the superintendent. The third copy shall then be returned to the purchaser with the pistol or revolver and the fourth copy shall be kept by the seller as a permanent record.

i. Restriction on number of firearms person may purchase. Only one handgun shall be purchased or delivered on each permit, but a person shall not be restricted as to the number of rifles or shotguns he may purchase, provided he possesses a valid firearms purchaser identification card and provided further that he signs the certification required in subsection b. of this section for each transaction.

j. Firearms passing to heirs or legatees. Nothwithstanding any other provision of this section concerning the transfer, receipt or acquisition of a firearm, a permit to purchase or a firearms purchaser identification card shall not be required for the passing of a firearm upon the death of an owner thereof to his heir or legatee, whether the same be by testamentary bequest or by the laws of intestacy. The person who shall so receive or acquire said firearm shall, however, be subject to all other provisions of this chapter, and if the heir or legatee of such firearm does not qualify to possess or carry it, the firearm may be possessed by him for the purpose of sale for a period not exceeding 180 days, or for such further limited period as may be approved by the chief law enforcement officer of the municipality in which the heir or legatee resides or the superintendent.

k. Sawed-off shotguns. Nothing in this section shall be construed to authorize the purchase or possession of any sawed-off shotgun.

* * * * *

2C:58-5. Licenses to Possess and Carry Machine Guns. a. Any person who desires to purchase, possess and carry a machine gun in this State may apply for a license to do so by filing in the County Court of the county in which he resides, or conducts his business if a nonresident, a written application setting forth in detail his reasons for desiring such a license. The County Court shall refer the application to the county prosecutor for investigation and recommendation. A copy of the prosecutor's report, together with a copy of the notice of the hearing on the application, shall be served upon the superintendent, the county sheriff, and the chief police officer of every municipality in which the applicant intends to carry the machine gun, unless, for good cause shown, the court orders notice to be given wholly or in part by publication.

* * * * *

2C:58-7. Persons Possessing Explosives or Destructive Devices to Notify Police. a. Any person who becomes the possessor of any explosive, destructive device, or ammunition therefor, which is or may be loaded or otherwise dangerous, except such as is possessed for any lawful commercial or other purpose in connection with which the use of explosives is authorized, shall within 15 days notify the police authorities of the municipality in which he resides or the State Police that the same is in his possession and shall present the same to them for inspection.

Beach Haven

Sec. 65-2. Discharge, exhibition of or possession of certain fireworks or weapons prohibited; exceptions. A. Hereafter it shall be unlawful for any person to: * * * * * (2) Exhibit, or have in his possession with intent to give away, or sell or offer for sale within the borough any * * * grenade, revolver, pistol * * *.

Belleville

1. The manufacture, storage or display for sale at retail or wholesale, or the sale at retail or wholesale of fireworks and cartridges, is hereby prohibited within the limits of the Town of Belleville, in the County of Essex.

2. The storage or display for the sale at retail or wholesale, or the sale at retail or wholesale of cartridges whether loaded or blank, is prohibited within the limits of the Town of Belleville, in the County of Essex.

7. The within ordinance shall not prohibit the sale or storage of bullets or cartridges for hunting purposes, when sold in stores that deal in sportsmen and hunting equipment.

Cresskill Borough

246-5. Purchasing or selling a firearm. Any resident of the Borough of Cresskill purchasing or selling a firearm of any description within the Borough of Cresskill shall report the same forthwith to the Chief of Police, giving a full and complete description of said firearm.

Deal Borough

5-7.3 Compliance with State Statute. No person shall possess, carry, sell, exchange, store or retain any firearm or other device

* * * except in accordance with the provisions of 2A:151-1 through 2A:151-55 of the Revised Statutes of New Jersey.

Fairlawn

12.3 Permits required. a. Permits shall be obtained: (1) To manufacture, possess, store, sell or otherwise dispose of explosives, blasting agents, or small arms ammunition.

12.5 General Requirements. a. The manufacture of any explosives, blasting agents, including small arms ammunition, and pyrotechnics, * * *, shall be prohibited unless such manufacture is authorized by the Chief of the Bureau of Fire Prevention. This shall not apply to hand loading of small arms ammunition prepared for personal use when not for resale.

Glassboro

69-3. Permits required to sell or store ammunition and gunpowder. No person, firm or corporation shall sell or store gunpowder, gun shells or cartridges without having first obtained a permit from the Chief of the Fire Department, who shall inspect the place where same is to be kept.

Haddonfield

Ordinance 585

Section 1. It shall be unlawful for any merchant or person to sell or use any blank cartridge pistols or contrivances shooting or exploding or to shoot or explode blank cartridges, other than revolvers of standard make, within the limits of the Borough of Haddonfield, at any time.

Irvington

22-14. * * * Parents, etc., not to purchase [guns] for minors under sixteen or permit such minors to purchase, possess. * * * No parent, guardian, or person standing in loco parentis of any minor under the age of sixteen years shall purchase for such minor or shall knowingly permit such minor, who is in his care or custody, to purchase, have, hold, possess, own, * * * any of the articles or guns or devices described in section 22-13.

Kenilworth Borough

1. Except as hereinafter excepted, no person shall discharge or use any * * * shotgun or firearm of any kind, or any other missile projecting device or contrivance of any kind within the Borough of Kenilworth.

2. No parent, guardian, or person, standing in loco parentis of any minor under the age of sixteen (16) years shall purchase for such minor or shall knowingly permit such minor, who is in his or her care or custody to purchase, have, hold, possess, own, any of the articles or guns or devices described in Section 1.

Lincoln Park Borough

1. The storage and sale of fire works, gun powder and ammunition in the Borough of Lincoln Park shall be subject to the following rules and regulations:

A permit for the storage and sale of fire works, gun powder and ammunition must be obtained from the Clerk of the Borough. All such permits shall expire on the first day of January after the issuance thereof. All permits issued as aforesaid shall be exposed in a conspicuous place in the place of business of the applicant.

No blank cartridge pistol or blank cartridge shall be sold or kept in stock; no pistol or fire arm of any description shall be sold to anyone under the age of fifteen years.

Manasquan

Chapter 64

64-2. No person shall possess, carry, sell, exchange, store or retain any firearm or other device * * * except in accordance with the provisions of 2A:151-1 through 2A:151-55 of the Revised Statutes of New Jersey.

Millburn Township

Sec. 25-1-7. No person shall knowingly offer, sell, lend, lease or give to any person under the age of eighteen years any machine gun, automatic rifle, revolver, pistol or other firearm, * * *. No persons under the age of eighteen years shall purchase, barter or exchange any gun, pistol, * * * firearm, * * *.

Mountainside

* * * * *

Sec. 54-2. Sale of firearms. The sale or offering for sale, within the limits of the Borough of Mountainside, of any new or used shotguns, rifles, revolvers or pistols, is prohibited unless special permission for that purpose be first obtained in writing from the Chief of Police of the Borough of Mountainside and the seller shall theretofore have lawfully acquired such firearms and shall have complied with all requirements of pertinent state statutes.

Northfield

1. That from and after the passage of this ordinance, it shall be unlawful for any person, persons or corporation, to offer for sale, make sale of or use, any gun or guns, pistol or pistols, firearms or fireworks, of any description whatsoever, within the limits of the City of Northfield, without a special permit or license therefor.

Nutley

Section 1. No person or persons shall possess, make, throw, discharge or explode a Molotov Cocktail or other incendiary object within the limits of the Town of Nutley in Essex County, New Jersey;

Section 2. No person or persons shall at any time have in their possession or cause to be made, thrown, discharged or exploded a Molotov Cocktail or any such incendiary object;

Paulsboro Borough

35-1. Permission for use required. It shall be unlawful to sell or use within the limits of the Borough of Paulsboro, at any time, any blank cartridge, pistol or gun, cap pistol or gun, cartridge cannon, toy gun, pistol or cannon firing an explosive of any kind or character, * * *.

Piscataway

7-7-1. It shall be unlawful for any person to carry or possess a loaded gun or any firearm until licensed or authorized by State or Federal Authorities, or both.

Prospect Park Borough

136.1. That it shall be unlawful to exhibit for sale or sell any pistols, cap pistols, firearms or fireworks of any and all descriptions within the limits of the Borough of Prospect Park.

Rockaway Borough

Article III. Firearms

Sec. 32-37. Sale to be in accordance with laws. No pistol or firearm of any description shall be sold to anyone except as provided by law.

Sec. 32-38. Selling, keeping blank cartridge pistols prohibited. No blank cartridge pistol shall be sold or kept in stock in the borough.* * * * * *

Scotch Plains

2. No person shall, within the limits of the Township of Scotch Plains, sell, offer for sale, set off or discharge, any cannon, gun, revolver, toy pistol or firearms of any description whether the same be loaded with blank or full charge; * * *

Sea Girt Borough

Section 3 No person shall possess, carry, sell, exchange, store or retain any firearm or other device * * * except in accordance with the provisions of 2A:151-1 through 2A:151-55 of the Revised Statutes of New Jersey.

Section 4 The provisions of this ordinance shall not apply to the authorized use, possession and storage of firearms within the confines of the National Guard Training Center and Supply Depot located within the borders of the Borough of Sea Girt.

Secaucus

Sec. 72-1. Sale to minors prohibited. The sale of guns, rifles, * * * to minors is hereby prohibited.

Sec. 72-2. Possession by minors unlawful. It shall be unlawful for any minor to have in his possession any gun, rifle, * * *.

* * * * * *

Tenafly Borough

4. Any purchase or sale of a firearm of any description within the Borough of Tenafly shall be made in compliance with the Laws of the State of New Jersey applicable thereto.

West New York

1. That no person, firm or corporation shall sell or deliver to any person, within the Town of West New York, in the County of Hudson, any pistol, gun, revolver, firearm of any description unless such person, shall file with the seller a permit from the Mayor or the Chief of Police of the Police Department of this Town, permitting him to make such purchase.

2. No person, shall purchase a revolver, pistol, gun or firearm from any person, firm or corporation in this Town, without obtaining from the Mayor or Chief of Police of the Police Department of this Town a permit to make such sale. * * *

Winfield Township

5. An ordinance to regulate the manufacture, storage, sale, keeping or conveying of gun powder, nitroglycerine, dynamite and other explosives. 1. No person, firm or corporation shall manufacture, store, sell, keep or convey gun powder, nitroglycerine, dynamite or other explosives within the limits of this Township.

6. An ordinance to regulate and prohibit the sale and use of guns, pistols, etc. 1. No person, firm or corporation shall sell or use guns, pistols, fire arms or fire works within this Township without having previously obtained a permit for same from the Township authorities.

New Mexico

State Law

N.M. Stat. Ann.

40A-7-8. Firearms—Sale and purchase. Residents of states contiguous to New Mexico may purchase firearms in New Mexico. Residents of New Mexico may purchase firearms in states contiguous to New Mexico.

Alamagordo

5-6-4. Transactions with minors. It shall be the responsibility of each person or firm who buys, sells or loans money on secondhand or used firearms to ascertain whether or not the person with whom the transaction is consummated is a minor under the age of twenty-one (21) years and to report to the Chief of Police of the City any transaction with such minor.

Albuquerque

2-9. Negligent Use of Weapons. A. Negligent use of a weapon consists of either: * * * 4. Selling, loaning or furnishing any deadly weapon to a person with knowledge that the person is under the influence of any intoxicant or narcotic or that the person is incompetent.

2-10. Unlawful Possession, Transfer or Sale of Weapons.

* * * * * *

B. Unlawful sale of a deadly weapon consists of giving, selling, trading, bartering, or exchanging for anything of value any deadly weapon or ammunition for any firearm to any person under the age of 18 years; provided, however, that nothing herein contained shall be construed to prevent any parent or legal guardian from purchasing such a weapon or ammunition for his child or ward.

Artesia

21.36. Sale of firearms to minors. No person shall sell, deliver or transfer to any person under the age of eighteen years ownership of any pistol, revolver or other similar weapon capable of being concealed upon the person designed to discharge a solid projectile propelled by the expansion of a gas.

Belen

2-9. Negligent Use of Weapons. A. Negligent use of weapon consists of either: * * * * * 4. Selling loaning or furnishing any deadly weapon to a person with knowledge that the person is under the influence of any intoxicant or narcotic or that the person is incompetent. * * * * *

2-10. Unlawful Possession, Transfer or Sale of Weapons. * * * * * B. Unlawful sale of a deadly weapon consists of giving, selling, trading bartering, or exchanging for anything of value any deadly weapon or ammunition for any firearm to any person under the age of 18 years; provided, however, that nothing herein contained shall be construed to prevent any parent or legal guardian from purchasing such a weapon or ammunition for his child or ward.

Central Village

6.206 Furnishing firearms to minors. No person shall sell, loan or furnish to any minor below the age of sixteen (16) years any gun, pistol or other firearm within the limits of the village, nor shall any person in the village sell or give to any minor below the age of sixteen (16) years any cartridges of fixed ammunition of which any fulminate is a component part.

Cimarron

Ordinance 198

220-1-11 C. Sales to Minors. It is unlawful to give, sell, trade, barter or exchange for

anything of value any deadly weapon, * * * or ammunition for any firearm to any person under the age of 18 years provided that this section shall not be construed to prevent any parent or legal guardian from purchasing firearms * * * or ammunition for his child or ward.

Cloudcroft

6-1-10 Unlawful Possession, Transfer or Sale of Weapons. * * * * * B. Unlawful sale of a deadly weapon consists of giving, selling, trading, bartering, or exchanging for anything of value any deadly weapon or ammunition for any firearm to any person under the age of 18 years; provided, however, that nothing herein contained shall be construed to prevent any parent or legal guardian from purchasing such a weapon or ammunition for his child or ward.

Espanola

18. Weapons—furnishing firearms, etc., to persons under sixteen. It shall be unlawful for any person to furnish, sell or offer for sale to any person under sixteen years of age any firearm, * * * in the city.

19. Same—possession of firearm by person under sixteen. It shall be unlawful for any person under sixteen years of age to have in his possession any firearm * * * within the city, except that when such person is under the immediate supervision of an adult instructor or teacher such possession shall not be considered a violation of this section.

Farmington

Sec. 21-80. Same—Furnishing to minors. No person shall sell, lend or furnish to any minor, below the age of sixteen, any gun, pistol or other firearm, within the city. Nor shall any person in the city sell or give to any minor below the age of sixteen any cartridges of fixed ammunition of which any fulminate is a component part.

Gallup

6-4-5: Sales of Firearms to Minors Prohibited: The giving, selling, trading, bartering or exchanging for anything of value of any firearm as defined in Section 6-4-1 [shotguns, rifles, pistols] or of any ammunition for any firearm, to any person under the age of eighteen (18) years, within the corporate limits of the Municipality, is hereby prohibited and declared to be a misdemeanor; provided, however, that nothing herein contained shall be construed to prohibit any parent or legal guardian from purchasing such a weapon for his child or ward, or from giving such a weapon to his child or ward, subject to the provisions of Section 6-4-3 hereof.

Grants

6-1-58 Firearms—furnishing to minors. No person shall sell, loan or furnish to any minor below the age of sixteen any gun, pistol or other firearm within the limits of the Town, nor shall any person in the Town sell or give to any minor below the age of sixteen any explosive ammunition.

Hurley

Ordinance 2

Section 12. Selling to Minors Under 16 Years. No person shall sell, load, or furnish to any minor below the age of 16, any gun, pistol, or other firearm, within the limits of the town. Nor shall any person in the town sell or give to any minor below the age of 16, any cartridges of fixed ammunition of which any fuliminate is a component part.

La Mesilla Town

7-1-14 * * * G. Sales to Minors. It is unlawful to give, sell, trade, barter or exchange for anything of value any deadly weapon, * * * or ammunition for any firearm to any person under the age of 18 years provided that this section shall not be construed to prevent any parent or legal guardian from purchasing firearms or ammunition for his child or ward.

Las Cruces

G. Sales to minors: It shall be unlawful to give, sell, trade, barter or exchange for anything of value any deadly weapon, * * * or ammunition for any firearm to any person under the age of 18 years provided that this section shall not be construed to prevent any parent or legal guardian from purchasing firearms or ammunition for his child or ward.

Las Vegas

7-1-14. G. Sales to minors. It is unlawful to give, sell, trade, barter or exchange for anything of value any deadly weapon, * * * or ammunition for any firearm to any person under the age of 18 years provided that this section shall not be construed to prevent any parent or legal guardian from purchasing firearms or ammunition for his child or ward.

Los Lunas

Ordinance 86

2-9. Negligent Use of Weapons. * * * * * 4. Selling loaning or furnishing any deadly weapon to a person with knowledge that the person is under the influence of any intoxicant or narcotic or that the person is incompetent.

* * * * *

2-10. Unlawful Possession, Transfer or Sale of Weapons. * * * * * B. Unlawful sale of a deadly weapon consists of giving, selling, trading bartering, or exchanging for anything of value any deadly weapon or ammunition for any firearm to any person under the age of 18 years; provided, however, that nothing herein contained shall be construed to prevent any parent or legal guardian from purchasing such a weapon or ammunition for his child or ward.

Lovington

7-1-14. Deadly weapons. * * * * *

(e) Exposing Others to Danger. It is unlawful to * * * sell, loan or furnish any deadly weapon to persons under the influence of any intoxicant or narcotic or to any incompetent person. * * * * *

(g) Sales to Minors. It is unlawful to give, sell, trade, barter or exchange for anything of value any deadly weapon * * * or ammunition for any firearm to any person under the age of eighteen years provided that this section shall not be construed to prevent any parent or legal guardian from purchasing firearms or ammunition for his child or ward.

Mountainair

7-1-10 * * * B. Unlawful sale of a deadly weapon consists of giving, selling, trading, bartering, or exchanging for anything of value any deadly weapon or ammunition for any firearm to any person under the age of 18 years; provided, however, that nothing herein contained shall be construed to prevent any parent or legal guardian from purchasing such a weapon or ammunition for his child or ward so long as the weapon and ammunition used by the child are used while under the supervision of the parent or legal guardian.

* * * * *

Questa

7-1-14 * * * G. Sales to Minors. It is unlawful to give, sell, trade, barter or exchange

for anything of value any deadly weapon, * * * or ammunition for any firearm to any person under the age of 18 years provided that this section shall not be construed to prevent any parent or legal guardian from purchasing firearms or ammunition for his child or ward.

* * * * *

Raton

9.F. Unlawful sale of a deadly weapon consists of giving, selling, trading, bartering, or exchanging for anything of value any deadly weapon or ammunition for any firearm to any person under the age of 18 years; provided, however, that nothing herein contained shall be construed to prevent any parent or legal guardian from purchasing such a weapon for his child or ward.

Red River

* * * * *

G. Sales to Minors. It is unlawful to give, sell, trade, barter or exchange for anything of value any deadly weapon, * * * or ammunition for any firearm to any person under the age of 18 years, provided that this section shall not be construed to prevent any parent or legal guardian from purchasing firearms or ammunition for his child or ward.

* * * * *

Ruidoso Downs

7-1-14 * * * G. Sales to Minors: It is unlawful to give, sell, trade, barter or exchange for anything of value any deadly weapon, * * * or ammunition for any firearm to any person under the age of 18 years provided that this section shall not be construed to prevent any parent or legal guardian from purchasing firearms or ammunition for his child or ward.

* * * * *

Santa Fe

15-31. Weapons—Furnishing firearms, etc., to persons under sixteen. It shall be unlawful for any person to furnish, sell or offer for sale to any person under sixteen years of age any firearm, * * * within the city.

Silver City

7.206—Selling to Minors Under 16 Years. No person shall sell, loan, or furnish to any minor below the age of 16, any gun, pistol, or other firearm, within the limits of the town. Nor shall any person in the town sell or give to any minor below the age of 16, any cartridges of fixed ammunition of which any fulminate is a component part.

Taos

G. Sale to Minors. It is unlawful to give, sell, trade, barter or exchange for anything of value any deadly weapon, * * * or ammunition for any firearm to any person under the age of 18 years provided that this section shall not be construed to prevent any parent or legal guardian from purchasing firearms or ammunition for his child or ward.

Tatum

5.12 (e) Exposing Others to Danger. It shall be unlawful * * * to sell, loan or furnish any deadly weapon to persons under the influence of any intoxicant or narcotic or to any incompetent person.

5.12. (g) Sales to minors. It is unlawful to give, sell, trade, barter or exchange for anything of value any deadly weapon, * * * or ammunition for any firearm to any person under the age of eighteen (18) years provided that this section shall not be construed to prevent any parent or legal guardian from purchasing firearms or ammunition for his child or ward.

Tucumcari

12-1-14 G. Sales to Minors. It is unlawful to give, sell, trade, barter or exchange for anything of value any deadly weapon * * *, or ammunition for any firearm to any person under the age of 18 years provided that this section shall not be construed to prevent any parent or legal guardian from purchasing firearms or ammunition for his child or ward.

* * * * *

New York

State Law

N.Y. Consol. Laws (McKinney's)

Penal Law

265.00. Definitions. As used in this article and in article four hundred, the following terms shall mean and include:

1. "Machine-gun" means a weapon of any description, irrespective of size, by whatever name known, loaded or unloaded, from which a number of shots or bullets may be rapidly or automatically discharged from a magazine with one continuous pull of the trigger and includes a sub-machine gun.

2. "Firearm silencer" means any instrument, attachment, weapon or appliance for causing the firing of any gun, revolver, pistol or other firearms to be silent, or intended to lessen or muffle the noise of the firing of any gun, revolver, pistol or other firearms.

3. "Firearm" means any pistol, revolver, sawed-off shotgun or other firearm of a size which may be concealed upon the person, except an antique firearm.

* * * * *

6. "Dispose of" means to dispose of, give, give away, lease, loan, keep for sale, offer, offer for sale, sell, transfer and otherwise dispose of.

7. "Deface" means to remove, deface, cover, alter or destroy the manufacturer's serial number or any other distinguishing number or identification mark.

8. "Gunsmith" means any person, firm, partnership, corporation or company who engages in the business of repairing, altering, assembling, manufacturing, cleaning, polishing, engraving or trueing, or who performs any mechanical operation on, any firearm or machine-gun.

9. "Dealer in firearms" means any person, firm, partnership, corporation or company who engages in the business of purchasing, selling, keeping for sale, loaning, leasing, or in any manner disposing of, any pistol or revolver.

10. "Licensing officer" means in the city of New York the police commissioner of that city; in the county of Nassau the commissioner of police of that county; in the county of Suffolk the sheriff of that county except in the towns of Babylon, Brookhaven, Huntington, Islip and Smithtown, the commissioner of police of that county; and elsewhere in the state a judge or justice of a court of record having his office in the county of issuance.

* * * * *

11. "Rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

12. "Shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

14. "Antique Firearm" means: Any unloaded muzzle loading pistol or revolver with a matchlock, flintlock, percussion cap, or similar type of ignition system, or a pistol or revolver which uses fixed cartridges which are no longer available in the ordinary channels of commercial trade.

15. "Loaded firearm" means any firearm loaded with ammunition or any firearm which is possessed by one who, at the same time, possesses a quantity of ammunition which may be used to discharge such firearm.

15-a. "Electronic dart gun" means any device designed primarily as a weapon, the purpose of which is to momentarily stun, knock out or paralyze a person by passing an electrical shock to such person by means of a dart or projectile.

16. "Certified not suitable to possess a rifle or shotgun" means that the director or physician in charge of any hospital or institution for mental illness, public or private, has certified to the superintendent of state police or to any organized police department of a county, city, town or village of this state, that a person who has been judicially adjudicated incompetent, or who has been confined to such institution for mental illness pursuant to judicial authority, is not suitable to possess a rifle or shotgun.

* * * * *

Sec. 265.01 Criminal possession of a weapon in the fourth degree. A person is guilty of criminal possession of a weapon in the fourth degree when:

(1) He possesses any firearm, electronic dart gun * * * or

* * * * *

(4) He possesses a rifle or shotgun and has been convicted of a felony or serious offense; or

(5) He possesses any dangerous or deadly weapon and is not a citizen of the United States; or

(6) He is a person who has been certified not suitable to possess a rifle or shotgun, as defined in subdivision sixteen of section 265.00, and refuses to yield possession of such rifle or shotgun upon the demand of a police officer. * * *

Criminal possession of a weapon in the fourth degree is a class A misdemeanor.

Sec. 265.02 Criminal possession of a weapon in the third degree. A person is guilty of criminal possession of a weapon in the third degree when:

(1) He commits the crime of criminal possession of a weapon in the fourth degree as defined in subdivision one, two, three or five of section 265.01, and has been previously convicted of any crime; or

(2) He possesses any explosive or incendiary bomb, bombshell, firearm silencer, machine-gun or any other firearm or weapon simulating a machine-gun and which is adaptable for such use; or

(3) He knowingly has in his possession a machine-gun or firearm which has been defaced for the purpose of concealment or prevention of the detection of a crime or misrepresenting the identity of such machine-gun or firearm; or

(4) He possesses any loaded firearm. Such possession shall not, except as provided in subdivision one, constitute a violation of this section if such possession takes place in such person's home or place of business.

Criminal possession of a weapon in the third degree is a class D felony.

* * * * *

Criminal possession of a weapon in the first degree is a class B felony.

Sec. 265.05 Unlawful possession of weapons by persons under sixteen. It shall be unlawful for any person under the age of sixteen to possess * * * any gun or any instrument or weapon in or upon which any loaded or blank cartridges may be used, or any loaded or blank cartridges or ammunition therefor, * * *.

A person who violates the provisions of this section shall be adjudged a juvenile delinquent.

Sec. 265.10 Manufacture, transport, disposition and defacement of weapons and dangerous instruments and appliances. 1. Any person who manufactures or causes to be manufactured any machine-gun is guilty of a class D felony. * * *

2. Any person who transports or ships any machine-gun or firearm silencer is guilty of a class D felony. Any person who transports or ships as merchandise any firearm * * * is guilty of a class A misdemeanor.

3. Any person who disposes of any machine-gun or firearm silencer is guilty of a class D felony. Any person who knowingly buys, receives, disposes of, or conceals a machine-gun or firearm which has been defaced for the purpose of concealment or prevention of the detection of a crime or misrepresenting the identity of such machine-gun or firearm is guilty of a class D felony.

4. Any person who disposes of any of the weapons, instruments or appliances specified in subdivision one of section 265.01 is guilty of a class A misdemeanor, and he is guilty of a class D felony if he has previously been convicted of any crime.

5. Any person who disposes of any of the weapons, instruments, appliances or substances specified in section 265.05 to any other person under the age of sixteen years is guilty of a class A misdemeanor.

6. Any person who wilfully defaces any machine-gun or firearm is guilty of a class D felony.

7. Any person, other than a wholesale dealer, or gunsmith or dealer in firearms duly licensed pursuant to section 400.00, lawfully in possession of a firearm, who disposes of the same without first notifying in writing the licensing officer in the city of New York and counties of Nassau and Suffolk and elsewhere in the state the executive department, division of state police, Albany, is guilty of a class A misdemeanor.

Sec. 265.15 Presumptions of possession, unlawful intent and defacement.

1. The presence in any room, dwelling, structure or vehicle of any machine-gun is presumptive evidence of its unlawful possession by all persons occupying the place where such machine-gun is found.

2. The presence in any stolen vehicle of any weapon, instrument, appliance or substance specified in sections 265.01, 265.02, 265.03, 265.04 and 265.05 is presumptive evidence of its possession by all persons occupying such vehicle at the time such weapon, instrument, appliance or substance is found.

3. The presence in an automobile, other than a stolen one or a public omnibus, of any firearm, defaced firearm, firearm silencer, explosive or incendiary bomb, bombshell, * * * is presumptive evidence of its possession by all persons occupying such automobile at the time such weapon, instrument or appliance is found, except under the following circumstances: (a) if such weapon, instrument or appliance is found upon the person of one of the occupants therein; (b) if such weapon, instrument or appliance is found in an automobile which is being operated for hire by a duly licensed driver in the due, lawful and proper pursuit of his trade, then such presumption shall not apply to the driver; or (c) if the weapon so found is a pistol or revolver and one of the occupants, not present under duress, has in his possession a valid license to have and carry concealed the same.

4. The possession by any person of the substance as specified in section 265.04 is presumptive evidence of possessing such substance with intent to use the same unlawfully against the person or property of another if such person is not licensed or otherwise authorized to possess such substance. The possession by any person of any * * * weapon, instrument, appliance, or substance designed, made or adapted for use primarily as a weapon, is presumptive evidence of intent to use the same unlawfully against another.

5. The possession by any person of a defaced machine-gun or firearm is presumptive evidence that such person defaced the same.

Sec. 265.20 Exemptions. a. Sections 265.01, 265.02, 265.03, 265.04, 265.05, 265.10, 265.15 and 270.05 shall not apply to:

1. Possession of any of the weapons, instruments, appliances or substances specified in sections 265.01, 265.02, 265.03, 265.04, 265.05 and 270.05 by the following:

(a) Persons in the military service of the state of New York when duly authorized by regulations issued by the chief of staff to the governor to possess the same, members of the division of state police, and peace officers as defined in subdivision thirty-three of section 1.20 of the criminal procedure law and persons appointed as railroad policemen pursuant to section eighty-eight of the railroad law.

(b) Persons in the military or other service of the United States, in pursuit of official duty or when duly authorized by federal law, regulation or order to possess the same.

(c) Persons employed in fulfilling defense contracts with the government of the United States or agencies thereof when possession of the same is necessary for manufacture, transport, installation and testing under the requirements of such contract.

(d) A person voluntarily surrendering such weapon, instrument, appliance or substance, provided that such surrender shall be made to the sheriff of the county in which such person resides and in the county of Nassau to the commissioner of police or a member of the police department thereof designated by him, or if such person resides in a city having a population of seventy-five thousand or more to the police commissioner or head of the police force or department, or to a member of the force or department designated by such commissioner or head; and provided, further, that the same shall be surrendered by such person only after he gives notice in writing to the appropriate authority, stating his name, address, the nature of the weapon to be surrendered, and the approximate time of day and the place where such surrender shall take place. Such notice shall be acknowledged immediately upon receipt thereof by such authority. Nothing in this paragraph shall be construed as granting immunity from prosecution for any crime or offense except that of unlawful possession of such weapons, instruments, appliances or substances surrendered as herein provided. A person who possesses any such weapon, instrument, appliance or substance as an executor or administrator or any other lawful possessor of such property of a decedent may continue to possess such property for a period not over fifteen days. If such property is not lawfully disposed of within such period the possessor shall deliver it to an appropriate official described in this paragraph or such property may be delivered to the superintendent of state police. Such officer shall hold it and shall thereafter deliver it on the written request of such executor, administrator or other lawful possessor of such property to a named person, provided such named person is licensed to or is otherwise lawfully permitted to possess the same. If no request to deliver the property is received within two years of the delivery of such property to such official he shall dispose of it in accordance with the provisions of section 400.05 of the penal law.

2. Possession of a machine-gun, firearm, * * * by a warden, superintendent, headkeeper or deputy of a state prison, penitentiary, workhouse, county jail or other institution for the detention of persons convicted or accused of a crime or detained as witnesses in criminal cases, in pursuit of official duty or when duly authorized by regulation or order to possess the same.

3. Possession of a pistol or revolver by a person to whom a license therefor has been issued as provided under section 400.00; provided, that such a license shall not preclude a conviction for the offense defined in subdivision three of section 265.01.

4. Possession of a rifle, shotgun or longbow for use while hunting, trapping or fishing, by a person, not a citizen of the United States, carrying a valid license issued pursuant to section 11-0713 of the environmental conservation law.

5. Possession of a rifle or shotgun by a person who has been convicted as specified in subdivision four of section 265.01 to whom a certificate of good conduct has been issued pursuant to section two hundred forty-two, subdivision three of the executive law.

* * * * *

7. Possession, at an indoor or outdoor rifle range for the purpose of loading and firing the same, of a rifle of not more than twenty-two calibre rim fire, the propelling force of which may be either gunpowder, air or springs, by a person under sixteen years of age but not under twelve, who is a duly enrolled member of any club, team or society organized for educational purposes and maintaining as a part of its facilities, or having written permission to use, such rifle range under the supervision, guidance and instruction of (a) a duly commissioned officer of the United States army, navy, marine corps or coast guard, or of the national guard of the state of New York; or (b) a duly qualified adult citizen of the United States who has been granted a certificate as an instructor in small arms practice issued by the United States army, navy or marine corps, or by the adjutant general of this state, or by the national rifle association of America, a not-for-profit corporation duly organized under the laws of this state.

7-a. Possession and use, at an indoor or outdoor pistol range located in or on premises owned or occupied by a duly incorporated organization organized for conservation purposes or to foster proficiency in small arms or at a target pistol shooting competition under the auspices of or approved by the national rifle association for the purpose of loading and firing the same, by a person duly licensed to possess a pistol or revolver pursuant to section 400.00 of this chapter of a pistol or revolver duly so licensed to another person who is present at the time.

8. The manufacturer of machine-guns * * * as merchandise and the disposal and shipment thereof direct to a regularly constituted or appointed state or municipal police department, sheriff, policeman or other peace officer, or to a state prison, penitentiary, workhouse, county jail or other institution for the detention of persons convicted or accused of crime or held as witnesses in criminal cases, or to the military service of this state or of the United States.

9. The regular and ordinary transport of firearms as merchandise, provided that the person transporting such firearms, where he knows or has reasonable means of ascertaining what he is transporting, notifies in writing the police commissioner, police chief or other law enforcement officer performing such functions at the place of delivery, of the name and address of the consignee and the place of delivery, and withholds delivery to the consignee for such reasonable period of time designated in writing by such police commissioner, police chief or other law enforcement officer as such official may deem necessary for investigation as to whether the consignee may lawfully receive and possess such firearms.

10. Engaging in the business of gunsmith or dealer in firearms by a person to whom a valid license therefor has been issued pursuant to section 400.00.

11. Possession of a pistol or revolver by a police officer or sworn peace officer of another state while conducting official business within the state of New York.

b. At any time, any person who voluntarily delivers to a peace officer any weapon, instrument, appliance or substance specified in section 265.01, 265.02, 265.03, 265.04 or 265.05, under circumstances not suspicious, peculiar or involving the commission of any crime, shall not be arrested. Instead, the officer who might make the arrest shall issue or cause to be issued in a proper case a summons or other legal process to the person for investigation of the source of the weapon, instrument, appliance or substance.

* * * * *

265.40. * * * It shall be lawful for a person or persons residing in this state to purchase or otherwise obtain a rifle and/or shotgun in a contiguous state, and to receive or transport such rifle and/or shotgun into this state; provided, however, such person is otherwise eligible to possess a rifle and/or shotgun under the laws of this state.

Article 400—Licensing And Other Provisions Relating To Firearms

Sec. 400.00 Licenses to carry, possess, repair and dispose of firearms.

1. Eligibility. No license shall be issued or renewed pursuant to this section except by

the licensing officer, and then only after investigation and finding that all statements in a proper application for a license are true. No license shall be issued or renewed except for an applicant (a) of good moral character; (b) who has not been convicted anywhere of a felony or a serious offense; (c) who has stated whether he has ever suffered any mental illness or been confined to any hospital or institution, public or private, for mental illness; and (d) concerning whom no good cause exists for the denial of the license. No person shall engage in the business of gunsmith or dealer in firearms unless licensed pursuant to this section. An applicant to engage in such business shall also be a citizen of the United States, more than twenty-one years of age and maintain a place of business in the city or county where the license is issued. For such business, if the applicant is a firm or partnership, each member thereof shall comply with all of the requirements set forth in this subdivision and if the applicant is a corporation, each officer thereof shall so comply.

* * * * *

2. Types of licenses. A license for gunsmith or dealer in firearms shall be issued to engage in such business. A license for a pistol or revolver shall be issued to * * * (f) have, possess, collect and carry antique pistols which are defined as follows: (i) any single shot, muzzle loading pistol with a matchlock, flintlock, percussion cap, or similar type of ignition system manufactured in or before 1898, which is not designed for using rimfire or conventional centerfire fixed ammunition; and (ii) any replica of any pistol described in clause (i) hereof if such replica—

(1) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or (2) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

* * * * *

12. Records required of gunsmiths and dealers in firearms. Any person licensed as gunsmith or dealer in firearms shall keep a record book approved as to form, except in the city of New York, by the superintendent of state police. In the record book shall be entered at the time of every transaction involving a firearm the date, name, age, occupation and residence of any person from whom a firearm is received or to whom a firearm is delivered, and the calibre, make, model, manufacturer's name and serial number, or if none, any other distinguishing number or identification mark on such firearm. Before delivering a firearm to any person, the licensee shall require him to produce either a license valid under this section to carry or possess the same, or proof of lawful authority as a peace officer or other exempt person pursuant to section 265.20. The licensee shall remove and retain the attached coupon and enter in the record book the date of such license, number, if any, and name of the licensing officer, in the case of the holder of a license to carry or possess, or the shield or other number, if any, assignment and department or unit, in the case of an exempt person. The record book shall be maintained on the premises mentioned and described in the license and shall be open at all reasonable hours for inspection by any peace officer.

N. Y. Consol. Laws (McKinney's)

Village Law

89. General powers of the board of trustees. 58. Firearms and explosives. May prohibit, restrain, regulate and license the storage, sale or discharge of firearms, fireworks and other explosives and the explosion of gun powder and gun cotton.

Babylon

Sec. 1. No person shall offer, sell, loan, lease or give to any child under the age of sixteen years any gun, revolver, pistol or other firearm, * * * or any instrument or weapon commonly known as a toy pistol, or a blank gun or any type of gun, pistol, cannon or instrument simulating a weapon in or upon which any loaded or blank cartridge, powder and ball are used or may be used, or any loaded or blank cartridge, powder or ammunition therefor.

It shall be unlawful for any child under the age of sixteen years to have in his possession or to use any of the articles, instruments or weapons enumerated in this section.

Sec. 2. No person over the age of sixteen years shall have in his possession any gun, revolver, pistol or other firearm, * * * without having procured a permit to possess the same from such official, agency or department as the Board of Trustees may from time to time by resolution designate.

Brockport

Sec. 18-1. Selling or discharging prohibited. It shall be unlawful for any person or persons to sell or discharge firearms, fireworks or other explosives, including the explosion of gunpowder and gun cotton, within the corporate limits of the Village of Brockport.

Buffalo

Fire Prevention Code

12.01. Definition. "Small arms ammunition" shall mean any shotgun, rifle, pistol or revolver cartridge and cartridges for propellant-actuated power devices and industrial guns. "Small arms ammunition primer" shall mean a small percussion-sensitive explosive charge, encased in a cap, used to ignite propellant powder.

12.02. License Required for the Possession and Sale of Fixed Ammunition for Small Arms. No person, firm or corporation shall store, keep for sale or offer for sale any fixed ammunition for small arms without a license from the director of licenses and permits of the city of Buffalo upon the approval of the bureau of fire prevention at wholesale or retail. The said license shall expire on December thirty-first of each year following the date of issuance. * * *

12.03. Manufacture of Small Arms Ammunition Within the City Is Prohibited. No person shall manufacture within the limits of the city, any fixed ammunition for small arms. Exception: Hand loading of small arms ammunition prepared for personal use when not for resale.

12.04. Hand Loading of Small Arms Ammunition. No person shall engage in the hand loading of small arms ammunition except for private personal use only and not for resale. A reloading of small arms ammunition shall be limited to the use of sporting or smokeless powder. An amount not in excess of five pounds and in the original container may be kept in a building without storing such powder in a magazine. An amount not in excess of ten pounds stored in a magazine and one thousand small arms primers packed in approved ICC containers may be kept in a building. Smoking while handling powder is prohibited. Storage of powder shall be inaccessible to children.

The hand loading of small arms ammunition is hereby prohibited in all buildings classified as multiple dwellings or multiple housing by the division or rehabilitation and conservation.

Licensing of Trades and Businesses

Sec. 237. Pawn of Firearms and Other Goods Prohibited. No pawnbroker shall receive in pawn any pistol, revolver or other firearm of a size which may be concealed upon the person, * * *

Cedarhurst

Sec. 11-4. Firearms, firecrackers, explosives. * * * (b) Sale, delivery prohibited; exception. No person or corporation shall at any time sell, expose for sale or give away any loaded cartridges, blank cartridges, percussion-caps * * * except to licensed holders of

firearms and except shells for firearms not requiring a license.

Churchville

Chapter 2-A Within the Village of Churchville no person or corporation shall, without a license: Sec. 1. Store, sell or discharge firearms, fireworks or other explosives.

* * * * *

Fayetteville

Sec. 12-4. Firearms.

(a) No person shall manufacture, cause to be manufactured, store, handle, transport, sell, keep for sale, offer, give or dispose of or discharge any firearms except as provided in the Penal Law, nor any small arms ammunitions within the limits of the village without permission from the village board of trustees or the mayor.

(b) In the event that permission be given, such permit shall indicate the exact time when, the place where, and the detailed method by which the act permitted is to be executed; and suitable indemnity shall be given the village against all claims against the village arising from the act so permitted.

(c) Small arms ammunition, whenever used in this section, shall be held to mean any shotgun, rifle, pistol or revolver cartridge.

Great Neck

Ordinance 2—The Use of Fire-Arms. * * * * * 2. Sale of Toy Pistols: No person shall sell or dispose of to a minor any toy pistol or pistol that can be loaded with powder and ball or blank-cartridge to be exploded by means of metal caps, but nothing herein contained shall apply to the sale or disposal of what are known as fire-cracker pistols, torpedo pistols or such pistols as are used for the explosion of paper caps.

* * * * *

Ordinance 22—Regulating the Sale, Transportation, Storage and Discharge of Firearms and Other Explosives. * * * * * Second: No person, firm or corporation shall sell, expose for sale or give away any loaded cartridges, blank cartridges, caps, percussion caps, fuse or electric blasting caps, dynamite, fire-crackers or other fireworks or any other explosive materials of any description without first obtaining a permit from the Village Board of the Village of Thomaston.

* * * * *

Hastings on Hudson

Chapter 25
Article I

Sec. 25-2. Sale of fireworks, firearms, ammunition. It shall be unlawful for any person to sell or offer for sale within the village any blank cartridges, pistol, cannon, firecracker, torpedo canes for firing ammunition, or any ammunition commonly known as "car-track ammunition," and any and all kinds, within the said village.

* * * * *

Hempstead

6-57. Permits for sale of ammunition. (a) Required: issuance. Permits for the sale and storage of ammunition may be granted in the discretion of the village board. Application shall be made in writing to the village clerk; * * * Such permit shall apply only to the premises and persons stated and to the class and kind of ammunition mentioned therein and shall be subject to such conditions and restrictions as the board may prescribe.

Kings Point

Ordinance 8

* * * * *

Sec. 2. No person, firm or corporation shall in the Village of Kings Point sell, expose for sale, or give away, any loaded cartridges, blank cartridges * * * or any other explosive materials of any description, without first obtaining a permit from the Village Clerk.

* * * * *

Kingston

Sec. 11.11 Manufacture Prohibited. It shall be unlawful to manufacture small arms ammunition in The City of Kingston.

Sec. 11.13 Storage and Sale of Small Arms Ammunition. (a) Permit required. It shall be unlawful to store, sell or offer for sale any small ammunition without first having obtained a permit therefor from the Fire Chief.

Mount Vernon

Sec. 78-15. Prohibition Against Fire Bombs or "Molotov Cocktails". (a) Prohibition: No person or organization shall assemble, manufacture, produce, distribute, store or possess fire bombs or "Molotov Cocktails" or any similar devices which employ the use of gasoline or any other flammable or combustible substance.

(b) Fire Bomb or "Molotov Cocktail" defined: A glass or other breakable or collapsible portable container in which is contained gasoline or other flammable or combustible liquid with a wick attached thereto, which upon impact will burn, explode or ignite.

New York City

436-5.0. Firearms. a. Pistols or revolvers, keeping or carrying. 1. The commissioner shall grant and issue licenses and permits hereunder pursuant to the provisions of Article four hundred of the penal law. Unless they indicate otherwise, such licenses and permits shall expire on the first day of the second January after the date of issuance.

2. Every applicant for a license to carry or possess a pistol or revolver in the city shall pay therefor, a fee of thirty dollars for each original application for the license period or part thereof, a fee of twenty dollars for each renewal application, and a fee of ten dollars for each replacement application of a lost license. A fee of ten dollars shall be paid for each renewal license that is issued for a period of one year or part thereof.

436-6.0. Control and regulation of the disposition, purchase and possession of firearms, rifles and shotguns. Definitions. Whenever used in this chapter the following terms shall mean and include:

1. "Firearm." Any pistol, revolver, sawed-off shotgun, rifle or other firearm of a size which may be concealed upon the person.

2. "Rifle." A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder, and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each pull of the trigger.

3. "Shotgun." A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder, and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell, to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

4. "Gunsmith." Any person, firm, partnership, corporation, or company who engages in the business of repairing, altering, assembling, manufacturing, cleaning, polishing, engraving, or trueing, or who in the course of such business performs any mechanical operation on any rifle, shotgun, firearm or machine gun.

5. "Dealer in firearms." Any person, firm, partnership, corporation or company who engages in the business of purchasing, selling, keeping for sale, loaning, leasing, or in any manner disposing of any pistol or revolver or other firearms which may be concealed upon the person. Dealer in firearms shall not include a wholesale dealer.

6. "Dealer in rifles and shotguns." Any person, firm, partnership, corporation or company who engages in the business of purchasing, selling, keeping for sale, loaning, leasing, or in any manner disposing of any rifle, or shotgun. Dealer in rifles and shotguns shall not include a wholesale dealer.

7. "Ammunition." Explosives suitable to be fired from a firearm, machine gun, pistol, revolver, rifle, shot gun or other dangerous weapon.

8. "Dispose of." To dispose of, give away, give, lease, loan, keep for sale, offer, offer for sale, sell, transfer and otherwise dispose of.

9. "Deface." To remove, deface, cover, alter, or destroy the manufacturer's serial number or any other distinguishing number or identification mark.

10. "Commissioner." The police commissioner of the city of New York.

11. "Control Board." The firearms control board as established in section 436-6.2.

12. "Appeals Board." The rifle and shotgun purchase and possession permit appeals board as established in section 436-6.7.

13. "Permit." The permit for purchase and possession of rifles and shotguns issued by the control board.

14. "Certificate." The certificate of registration for possession of rifles and shotguns.

15. "Mental defective." Any person affected with mental defectiveness from birth or from an early age to such an extent that he is incapable of managing himself and his affairs, who for his own welfare or the welfare of others or of the community requires supervision, control or care, and who is not mentally ill or of unsound mind to such an extent as to require his certification to an institution for the mentally ill.

436-6.1 Licensing of gunsmiths, of wholesale manufacturer of firearms, of assemblers of firearms, or of dealers in firearms. a. It shall be unlawful for any person to engage in the business of gunsmith, wholesale manufacturer of firearms, assembler of firearms, or of dealer in firearms, unless such person, firm, partnership, corporation or company has obtained a license in the manner prescribed in this section.

b. No license shall be issued or renewed pursuant to this section except by the commissioner, and then only after investigation and finding that all statements in a proper application for a license or renewal are true. No license shall be issued or renewed except for any applicant:

(1) of good moral character;

(2) who has not been convicted anywhere of a felony or of any of the following misdemeanors or offenses: * * *

(3) who has stated whether he has ever suffered any mental illness or been confined to any hospital or institution, public or private, for mental illness; and

(4) concerning whom no good cause exists for the denial of the license.

c. An applicant to engage in such business shall also be a citizen of the United States, more than twenty-one years of age and maintain a place of business in the city. * * *

k. The conviction of a licensee anywhere of a felony or any of the misdemeanors or offenses enumerated in paragraph two, of subdivision b, of this section, shall operate as a revocation of the license. * * *

436-6.3. Licensing of dealers in rifles and shotguns. No person shall engage in the business of purchasing, selling, licensing, or in any manner disposing of shotguns or rifles unless he has been issued a permit for the purchase and possession of shotguns and rifles, and prominently displays in his place of business a license as a registered dealer in shotguns and rifles. * * *

436-6.6 Permits for possession and purchase of rifles and shotguns. It shall be unlawful to dispose of any rifle or shotgun to any person unless said person is the holder of a permit for possession and purchase of rifles and shotguns; it shall be unlawful for any person to have in his possession any rifle or shotgun unless said person is the holder of a permit for the possession and purchase of rifles and shotguns.

The disposition of a rifle or shotgun, by any licensed dealer, to any person presenting a valid rifle and shotgun permit issued to such person, shall be conclusive proof of the legality of such disposition by the dealer.

a. Requirements—No person of good character and who is of good repute in the community and who is not subject to any of the disabilities set forth in this section or other sections of this chapter, shall be denied a permit to purchase and possess a rifle or shotgun unless the applicant:

1. is under the age of eighteen, or

2. has been convicted in this state or elsewhere of a felony or any misdemeanor or offense set forth in section 552 of the code of criminal procedure, unless such person has received a certificate of good conduct pursuant to subdivision 3 of section 242 of the executive law, or

3. has ever been confined to any hospital or institution, public or private, for mental illness, alcoholism, drug addiction, except where such person has a written statement by a physician duly licensed to practice medicine in the state of New York and specializing in psychiatric medicine, that the applicant is a sound person to possess a rifle or shotgun without danger of harm to himself or any other person, or

4. suffers from a physical defect or sickness which would make it unsafe for him to handle firearms, rifles or shotguns except where such person has a written statement from a physician duly licensed to practice medicine in the state of New York, or other satisfactory proof, that he is no longer suffering from a disability in such a manner that it would interfere with or incapacitate him in the handling of a rifle or shotgun, or

5. is a mental defective, or

6. is a habitual drunkard, or

7. has been adjudicated mentally incompetent and with respect to whom such adjudication remains outstanding, or

8. is addicted to narcotic drugs, or

9. has received a dishonorable discharge from the military service of the United States by reason of an action found constituting a felony or a misdemeanor or offense set forth in section 552 of the code of criminal procedure; or

10. Where the issuance of a permit to such a person would not be in the interests of public health, safety or welfare.

f. Validity—Any person to whom a rifle and shotgun permit has been validly issued pursuant to this chapter may possess a rifle or shotgun. No permit shall be transferred to any other person. Every person carrying a rifle or shotgun shall have on his person a permit which shall be exhibited for inspection to any police officer upon demand. Failure of any such person to so exhibit his permit shall be presumptive evidence that he is not duly authorized to possess a rifle or shotgun and the same may be considered by the control board as cause for forfeit of such permit. A permit shall be valid for three (3) years and shall be subject to automatic renewal, upon sworn application, and without investigation, unless the control board has reason to believe that the status of the applicant has changed since the previous application.

h. Non-residents.—Non-residents of the city of New York may apply for a rifle or shotgun permit subject to the same conditions, regulations and requirements as residents of the city of New York.

A non-resident of the city of New York who has not been issued a permit may nevertheless, purchase a rifle or shotgun from a licensed dealer provided that:

1. He subscribes and affirms or swears to a written statement that he does not suffer from any of the disabilities set forth in subdivision a. of this section which would prohibit him from receiving a permit if he were a resident of the city of New York, and that he would be legally permitted to purchase a rifle or shotgun in the city or state in which he resides.

2. The rifle or shotgun so purchased is transmitted by the dealer directly to the purchaser's residence.

3. In the event the purchaser is traveling to another country by rail, ship or plane, the dealer is hereby authorized to deliver such rifle or shotgun at the appropriate terminal to a representative of the railroad, airline or shipping company, for placement aboard such train, plane or ship.

436-6.9. Certificates of registration. a. It shall be unlawful for any person to have in his possession any rifle or shotgun unless said person is the holder of a certificate of registration for such rifle or shotgun. It shall be unlawful for any person, not a licensed dealer, to dispose of any rifle or shotgun for which he does not have a certificate of registration.

e. Disposition of rifles and shotguns—No person lawfully in possession of a rifle or

shotgun shall dispose of same except to a licensed dealer in firearms, licensed dealer in rifles and shotguns, the holder of a valid rifle and shotgun permit, or to an exempt person as enumerated in this chapter.

Any person so disposing of a rifle or shotgun shall report the disposition on forms provided by the control board setting forth the rifle and shotgun permit number of both seller and purchaser, the make, caliber, type, model and serial number, if any, and if the seller is a licensed dealer the certificate of registration number, of all such rifles and shotguns. Such form shall be signed by both seller and purchaser and the original shall be forwarded to the control board within seventy-two hours of the disposition, one copy shall be retained by the seller, another by the purchaser.

1—If the seller is a licensed dealer, he shall at the time of the sale issue a certificate of registration to the purchaser provided to the dealer for that purpose by the control board and shall forward to the control board the duplicate thereof, together with the report of disposition.

2—If the seller is not a licensed dealer the control board shall, if the purchaser's rifle permit is valid, issue the certificate of registration within ten days of the receipt by the control board of the report of disposition. Pending receipt of the certificate, but in no event for any longer than fourteen days from the date of purchase, the copy of the report of disposition shall serve in lieu of the purchaser's certificate of registration.

436-6.10. Exemptions. The sections requiring rifle and shotgun permits and certificates shall not apply as follows:

a. Minors. Any person under the age of eighteen years may carry, fire, or use any rifle or shotgun in the actual presence or under the direct supervision of any person who is himself a holder of a rifle or shotgun permit, or for the purpose of military drill under the auspices of a legally recognized military organization and under competent supervision or for the purpose of competition or target practice in and upon a firing range approved by the commissioner or any other governmental agency authorized to provide such approval, or the national rifle association, which is under competent supervision at the time of such competition or target practice, and providing that the rifle or shotgun is otherwise properly registered or exempt from registration by virtue of some other provision of this chapter.

b. Antiques and ornaments. The provisions of this chapter shall not apply to antique rifles and shotguns which are incapable of being fired or discharged or which do not fire fixed ammunition, or those weapons manufactured prior to 1894 and those weapons whose design was patented and whose commercial manufacture commenced prior to 1894 and whose manufacture continued after 1894 without any substantial alteration in design or function, and for which cartridge ammunition is not commercially available and are possessed as curiosities or ornaments or for their historical significance and value.

c. Persons in the military service in the state of New York, when duly authorized by regulations issued by the chief of staff to the governor to possess the same, and police officers, and other peace officers.

d. Persons in the military or other service of the United States, in pursuit of official duty or when duly authorized by federal law, regulation or order to possess the same.

e. Persons employed—in fulfilling defense contracts with the government of the United States or agencies thereof when possession of the same is necessary for manufacture, transport, installation and testing under the requirements of such contract.

Any such person exempted by sections c, d and e above, may purchase a rifle or shotgun only from a licensed dealer, and must submit to the dealer full and clear proof of identification, including shield number, serial number, military or governmental order or authorization, and military or other official identification. Any dealer who disposes of a rifle or shotgun to any exempt person without securing such identification shall be in violation of these sections.

g. The regular and ordinary transport of rifles and shotguns as merchandise provided that the person transporting such rifles and shotguns where he knows or has reasonable means of ascertaining what he is transporting notifies, in writing, the control board of the name and address of the consignee and the place of delivery, and withholds delivery to the consignee for such reasonable period of time designated in writing by the control board as it may deem necessary for investigation as to whether the consignee may lawfully receive and possess such rifles and shotguns.

j. Nothing herein contained shall be construed to be a prohibition of the conduct of business by manufacturers, wholesale dealers, interstate shippers, or any other individuals or firms properly licensed by the federal government.

k. Special theatrical permit. Nothing herein contained is intended to prevent the possession or utilization of any rifle or shotgun during the course of any television, movie, stage or other similar theatrical production, or by a professional photographer in the pursuance of his profession, provided however, that the rifle or shotgun so used shall be properly registered and a special theatrical permit shall have been issued by the control board without the requirements for fingerprinting and investigation set forth for rifle and shotgun permits.

436-6.11. Sale and purchase of ammunition. At any time after one year from the effective date of this section no ammunition suitable for use in a rifle of any caliber or for any shotgun shall be sold or given away, or otherwise disposed of to any person who has not been issued a rifle and shotgun permit and a certificate of registration and who does not exhibit same to the dealer at the time of purchase. In no event shall rifle or shotgun ammunition be sold to any such person except for a shotgun, or for the specific caliber of rifle, for which the certificate of registration has been issued.

A record shall be kept by the dealer of each sale or any other disposition of ammunition under this section which shall show the type and quantity of ammunition sold, the name and address of the person receiving same, the date and time of the transaction, and the numbers of the permit and certificate exhibited as required by this section.

436-6.12. Identifying marks. a. Defacing. Any person who alters, changes, removes, disfigures, obliterates or defaces the name of the maker, model, manufacturer's or serial number of a rifle or shotgun shall be in violation of this section.

b. Any rifle or shotgun sold or otherwise disposed of by a licensed dealer, at any time after six months of the effective date of this act, which does not contain a manufacturer's or serial number, must have imbedded into the metal portion of such rifle or shotgun a dealer's number. Failure to so mark and identify any rifle or shotgun shall be a violation of this section.

C19-28.9. Storage and sale. a. Permit. It shall be unlawful to store, sell or offer for sale any ammunition in excess of two hundred small arm cartridges without a permit.

Pelham Manor

29—Firearms (a) It shall be unlawful for any person without proper license issued under the laws of the State of New York to possess or carry any pistol, revolver, sawed-off shotgun or other firearms as defined in Section 1 of this Code of General Ordinances of a size which may be concealed upon the person except in the case of any person who is specifically exempt from the State licensing provisions under the laws of the State of New York.

Rochester

47-5. Rifles, guns, revolvers and dangerous instruments. A. No person shall sell, loan, lease, give or offer to any child under eighteen years of age, or to any other person to whom a permit has not been issued by the Commissioner of Public Safety, any revolver, pistol or instrument which may be used as a weapon in which the propelling force is com-

pressed air, compressed gas, a spring or any elastic substance and which releases darts, pellets, bullets, metallic particles or other materials capable of endangering life or property, or causing bodily injury, or any instrument commonly known as a blank gun in which any loaded or blank cartridge or ammunition is or may be used. No person shall make such sale, loan, lease, gift, transfer or offer, unless the person acquiring the item or items above named exhibits to him a permit issued by the Commissioner of Public Safety and produces identification that that person acquiring said item or items is the same person to whom the permit has been issued.

No person shall sell, loan, lease, give or offer to any child under eighteen years of age any loaded or blank cartridges or ammunition commonly used in the said type of revolver, pistol, gun or instrument which may be used as a weapon, described in this section.

Saddle Rock Village

Ordinance 10

* * * * *

Section 2. No person, firm or corporation shall keep, store, sell, expose for sale or give away any loaded cartridges, blank cartridges, caps, percussion caps, * * * without first obtaining a permit from the Board of Trustees of the Village of Saddle Rock.

* * * * *

Suffolk County

Local law No. 7

* * * * *

Section 2. Definitions. (a) The term "firearm" means any handgun (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, including: a pistol; a revolver; an automatic; or the frame or receiver of any such weapon; or any firearm muffler or firearm silencer; or the trigger, barrel or cylinder of any such weapon.

(b) The term "manufacturer" means any person engaged in the manufacture of any firearm, or the assembly of any firearm for the purposes of sale or distribution; and the term "licensed manufacturer" means any such person licensed under the provisions of this local law.

(c) The terms "person", "applicant" and "whoever" include any individual, corporation, company, association, firm, partnership, society or joint stock company.

(d) The term "Commissioner" shall mean the Commissioner of the Suffolk County Police Department, or such member of the Department as the Commissioner may designate to handle the licenses authorized by this local law.

Section 3. Prohibited Conduct. It shall be unlawful for any person to manufacture or assemble any firearm within the confines of Suffolk County without having first obtained a written license from the Commissioner of the Suffolk County Police Department, as hereinafter prescribed.

Section 4. License Requirements * * * (a) No person shall engage in business as a firearms manufacturer in Suffolk County until he has filed an application with, and received a license to do so from, the Commissioner of the Suffolk County Police Department. The application shall be in such form and contain such information as the Commissioner shall by regulation prescribe * * * (Contact the Office of the Commissioner for additional information; the license fee is $500.00 a year)* * * * * *

(c) Any application submitted hereunder shall be disapproved and the license denied and the fee returned to the applicant, if the Commissioner, after notice and opportunity for hearing, finds that (the applicant is not qualified to receive a license to manufacture firearms; contact the office of the commissioner for information on the categories in Section 4(c) under which an application would be denied)

Section 5. Business Location. (a) Every person licensed pursuant to this local law shall maintain a place of business in Suffolk County, and shall have on hand for inspection by any Police Officer, a complete record of every firearm manufactured, * * * [Contact the office of the commissioner for required contents under Section 5 (a)]

1. (In general) The [following] Rules and Regulations are promulgated to implement Local Law No. 7—1972 of Suffolk County.

* * * * *

Part B—Definitions

1. The term "manufacturer." [See Section 2(b), above]

2. The term "firearm." [See Section 2(a), above]

8. The terms "person", "applicant" and "whoever." [See Section 2(c), above]

4. The term "Commissioner." [See Section 2(d), above]

5. The term "license" means the permit or permission of the Commissioner of the Suffolk County Police Department to engage in the manufacture of "firearms".

6. The term "business premise" means the property on which the firearms manufacturing is or will be conducted.

7. The term "firearm frame or receiver" means that part of a firearm which provides housing for the hammer, bolt or breechlock and firing mechanism, and which is usually threaded at its forward position to receive the barrel.

Part C—Administrative Provisions

1. The Commissioner is authorized to prescribe all forms required by this law. All of the information called for in each form required shall be furnished, as indicated by the headings on the form and the instructions thereon or issued in respect thereto, and as required by this part.

2. Each license issued will specify what type or types of firearms may be manufactured by the licensee and only those types approved by the commissioner may be manufactured in the licensee's business premise. A separate license is required for each manufacturing site or premise.

3. Any person desiring a license pursuant to Local Law No. 7-1972 shall, in addition to filling out those forms required in paragraph #1 of this section, also fill out a "Factoring Criteria for Weapons" form for each type of firearm to be manufactured as per paragraphs 4 and 5.

4. If the applicant desires to manufacture a Pistol model firearm (including automatics), he shall prepare and submit form PDCS-382-52 in quadruplicate. No license to manufacture a pistol model firearm will be issued by the Commissioner unless a qualifying score of 75 points is obtained.

5. If the applicant desires to manufacture a Revolver model firearm, he shall prepare and submit form PDCS-382-51 in quadruplicate. No license to manufacture a revolver model firearm will be issued by the Commissioner unless a qualifying score of 45 points is obtained.

6. Each applicant shall submit along with his application (or have available at a specific location, if possible) a model of each firearm he desires to manufacture for the purpose of comparison with the information placed on the "Factoring Criteria for Weapons" form, by a member of this Police Department. Such member, after inspection and comparison, shall forward his findings on internal correspondence directly to the Commissioner.

7. Once a license has been issued by the Commissioner to manufacture an approved firearm, no deviation from those standards of production will be permitted without the prior approval of the Commissioner.

Part D—Right of Entry and Examination

1. Any duly authorized police officer may enter during business hours the premises, including places of storage, of any licensed manufacturer for the purpose of inspecting or examining any records or documents required to be kept by these rules and regulations, and

any firearms kept or stored at the said premises.

2. Each person licensed pursuant to Local Law No. 7-1972 shall maintain a place of business in Suffolk County and shall have on hand for inspection by any duly authorized police officer, a complete record of every firearm manufactured therein, including but not limited to [all information required by law; contact local authorities for requirements] * * *

3. Each person licensed pursuant hereto shall maintain adequate security measures to prevent the theft of any of its stock and shall adopt and follow such reasonable security measures as may be recommended by any duly authorized police officer.

Part E—Licenses

1. Every person engaged in, or intending to engage in the manufacturing of firearms in Suffolk County, shall obtain a license to do so. [Contact local authorities for criteria upon which denials are based]

* * * * *

4. All employees of the applicant must submit to fingerprinting for the purposes of determining whether or not he has a criminal record. If any employee would be prohibited from obtaining a firearm license itself pursuant to Section 400.00 (1) of the Penal Law, the applicant may not employ him in the licensed premises.

Part F—License Fees

1. Each applicant shall pay a fee for obtaining a manufacturer's license, a separate fee being required for each business location or premise.

Part G—License Proceedings

1. Whenever the Commissioner has reason to believe that an applicant is not eligible to receive a license hereunder, he may issue a letter of denial to the applicant. [Contact local authorities for details on the review process]

Part H—Posting of License

1. Any license issued under this part shall be kept posted and kept available for inspection on the premises covered by the license.

Part I—Identification of Firearms

1. Each licensed manufacturer of any firearm shall legibly identify each such firearm by engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or placed on the frame or receiver thereof in a manner not susceptible of being readily obliterated, altered, or removed, an individual serial number not duplicating any serial number placed by the manufacturer or importer on any other firearm, and by engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or placed on the frame, receiver or barrel thereof in a manner not susceptible of being readily obliterated, altered or removed, the model, if such designation has been made; the caliber or gauge; the name (or recognized abbreviation of same) of the manufacturer; in the case of a domestically made firearm, the city and state (or recognized abbreviation thereof) wherein the licensed manufacturer maintains his place of business;

2. Such individual serial number shall be affixed either to the frame or receiver at the time said part is completed.

Part J—Other Laws

1. The provisions of these rules and regulations are in addition to, and are not in lieu of, any other provision of law, or regulations respecting firearms.

2. Where appropriate, any records, documents or procedures utilized or maintained pursuant to other laws or regulations, may be used to satisfy the various requirements of these rules and regulations.

Town of Orangetown

Section 15-78. Permits Required. A. Permits shall be obtained: (1) To manufacture, possess, store, sell or otherwise dispose of * * * small-arms ammunition.

Thomaston

Ordinance 22

Second: No person, firm or corporation shall sell, expose for sale or give away any loaded cartridges, blank cartridges, caps, percussion caps, fuse or electric blasting caps, dynamite, fire-crackers or other fireworks or any other explosive materials of any description without first obtaining a permit from the Village Board of the Village of Thomaston.

* * * * *

Utica

16-4. Fireworks, firearms, pyrotechnics. (a) Definitions. (2) "Small arms ammunition" whenever used in this section, shall be held to mean any shotgun, rifle, pistol, or revolver cartridges.

(b) Sale, manufacture, delivery, use. No person shall manufacture, cause to be manufactured, store, handle, transport, sell, keep for sale, offer, give, dispose of, or discharge any firearms except as provided in the Penal Code, nor any pyrotechnics or small arms ammunition within the city without permission from the common council or written permission from the commissioner of public safety, or the mayor.

White Plains

11.10—Definitions. "Small Arms Ammunition" shall mean any shotgun, rifle, pistol or revolver cartridge, and cartridges for propellant-actuated power devices and industrial guns. * * *

11.11 Manufacture Prohibited. It shall be unlawful to manufacture small arms ammunition in The City of White Plains.

11.12 Storage and Sale of Small Arms Ammunition. (a) Permit required. It shall be unlawful to store, sell or offer for sale any small arms ammunition without first having obtained a permit therefor from the Commissioner. * * *

North Carolina

State Law

The Gen. Stat. of N.C.

14-288.8. Manufacture, assembly, possession, storage, transportation, sale, purchase, delivery, or acquisition of weapon of mass death and destruction; exceptions. (a) Except as otherwise provided in this section, it is unlawful for any person to manufacture, assemble, possess, store, transport, sell, offer to sell, purchase, offer to purchase, deliver or give to another, or acquire any weapon of mass death and destruction.

(b) This section does not apply to:

(1) Persons exempted from the provisions of Sec. 14-269 with respect to any activities lawfully engaged in while carrying out their duties.

(2) Importers, manufacturers, dealers, and collectors of firearms, ammunition, or destructive devices validly licensed under the laws of the United States or the State of North Carolina, while lawfully engaged in activities authorized under their licenses.

(3) Persons under contract with the United

States, the State of North Carolina, or any agency of either government, with respect to any activities lawfully engaged in under their contracts.

(4) Inventors, designers, ordnance consultants and researchers, chemists, physicists, and other persons lawfully engaged in pursuits designed to enlarge knowledge or to facilitate the creation, development, or manufacture of weapons of mass death and destruction intended for use in a manner consistent with the laws of the United States and the State of North Carolina.

(c) The term "weapon of mass death and destruction" includes:

(1) Any explosive, incendiary, poison gas or radioactive material:

a. Bomb; or

b. Grenade; or

c. Rocket having a propellant charge of more than four ounces; or

d. Missile having an explosive or incendiary charge of more than one-quarter ounce; or

e. Mine; or

f. Device similar to any of the devices described above; or

(2) Any type of weapon (other than a shotgun or a shotgun shell of a type particularly suitable for sporting purposes) which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; or

(3) Any semiautomatic firearm capable of firing 31 rounds or more without reloading, any firearm capable of fully automatic fire, any shotgun with a barrel of less than 18 inches in length or an overall length of less than 26 inches; or

(4) Any combination of parts either designed or intended for use in converting any device into any weapon described above and from which a weapon of mass death and destruction may readily be assembled. * * * The term "weapon of mass death and destruction" does not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line-throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of Title 10 of the United States Code; or any other device which the Secretary of the Treasury finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting purposes, in accordance with chapter 44 of Title 18 of the United States Code. * * * * *

Sec. 14-315. Selling or giving weapons to minors. If any person shall knowingly sell, offer for sale, give or in any way dispose of to a minor any pistol or pistol cartridge, * * * he shall be guilty of a misdemeanor.

Sec. 14-401.6. Unlawful to possess, etc., tear gas except for certain purposes. It shall be unlawful for any person, firm, corporation or association to possess, use, store, sell or transport within the State of North Carolina, any form of that type of gas generally known as "tear gas," or any container or device for holding or releasing the same; provided, the provisions of this section shall not apply to the possession, use, storage, sale or transportation of such gas by or for any of the armed services of the United States or of this State, or by or for any governmental agency, or municipal and State peace officers of this State or for bona fide scientific, educational or industrial purposes, or for use in safes, vaults and depositories as a means of protection against robbery.

Any person, firm, corporation or association violating any provision of this section shall be guilty of a misdemeanor * * *.

Article 52A.

Sale of Weapons in Certain Counties.

Sec. 14.402. Sale of certain weapons without permit forbidden. It shall be unlawful for any person, firm, or corporation in this State to sell, give away, or dispose of, or to purchase or receive, at any place within the State from any other place within or without the State, unless a license or permit therefor shall have first been obtained by such purchaser or receiver from the sheriff of the county in which such purchase, sale, or transfer is intended to be made, any pistol, * * *.

"Antique firearm" as defined by G.S. 14-409.11, and "historic edged weapon" as defined by G.S. 14-409.12, are hereby excepted from the provisions of this section.

[Per 14-404, "nothing in this article shall apply to officers authorized by law to carry firearms if such officers identify themselves to the vendor or donor as being officers authorized by law to carry firearms."]

Sec. 14-407.1. Sale of blank cartridge pistols. The provisions of G.S. 14-402 and G.S. 14-405 to 14-407 shall apply to the sale of pistols suitable for firing blank cartridges. The clerks of the superior courts of all the counties of this State are authorized and may in their discretion issue to any person, firm or corporation, in any such county, a license or permit to purchase or receive any pistol suitable for firing blank cartridges from any person, firm or corporation offering to sell or dispose of the same, which said permit shall be in substantially the following form: [form deleted]

Sec. 14-409. Machine guns and other like weapons. It shall be unlawful for any person, firm or corporation to manufacture, sell, give away, dispose of, use or possess machine guns, submachine guns, or other like weapons: Provided, however, that this section shall not apply to the following:

Banks, merchants, and recognized business establishments for use in their respective places of business, who shall first apply to and receive from the sheriff of the county in which said business is located, a permit to possess the said weapons for the purpose of defending the said business; officers and soldiers of the United States army, when in discharge of their official duties, officers and soldiers of the militia and the State guard when called into actual service, officers of the State, or of any county, city or town, charged with the execution of the laws of the State, when acting in the discharge of their official duties; the manufacture, use or possession of such weapons for scientific or experimental purposes when such manufacture, use or possession is lawful under federal laws and the weapon is registered with a federal agency, and when a permit to manufacture, use or possess the weapon is issued by the sheriff of the county in which the weapon is located. Provided, further, that automatic shotguns and pistols or other automatic weapons that shoot less than thirty-one shots shall not be construed to be or mean a machine gun or submachine gun under this section; and that any bona fide resident of this State who now owns a machine gun used in former wars, as a relic or souvenir, may retain and keep same as his or her property without violating the provisions of this section upon his reporting said ownership to the sheriff of the county in which said person lives.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor.

Article 53.

Sale of Weapons in Certain Other Counties.

Sec. 14-409.1. Sale of certain weapons without permit forbidden. It shall be unlawful for any person, firm, or corporation in this State to sell, give away, or dispose of, or to purchase or receive, at any place within the State from any other place within or without the State, unless a license or permit therefor shall have first been obtained by such purchaser or receiver from the clerk of the superior court of the county in which such purchase, sale or transfer in intended to be made, any pistol, * * *.

[Per 14-409.3, "nothing in this article shall apply to officers authorized by law to carry firearms if such officers identify themselves to the vendor or donor as being officers authorized by law to carry firearms."]

Sec. 14-409.7. Sale of blank cartridge pistols. The provisions of G. S. 14-409.1 and G. S. 14-409.4 to 14-409.6 shall apply to the sale of pistols suitable for firing blank cartridges. The clerks of the superior courts of all the counties of this State are authorized and may in their discretion issue to any person, firm or corporation, in any such county, a license or permit to purchase or receive any pistol suitable for firing blank cartridges from any person, firm or corporation offering to sell or dispose of the same, which said permit shall be in substantially the [format required by State law, as set forth in 14-409.7.]

Sec. 14-409.9. Machine guns and other like weapons. It shall be unlawful for any person, firm or corporation to manufacture, sell, give away, dispose of, use or possess machine guns, submachine guns, or other like weapons: Provided, however, that this section shall not apply to the following:

Banks, merchants, and recognized business establishments for use in their respective places of business, who shall first apply to and receive from the clerk of the superior court of the county in which said business is located, a permit to possess the said weapons for the purpose of defending the said business; officers and soldiers of the United States army, when in discharge of their official duties, officers and soldiers of the militia and the State guard when called into actual service, officers of the State, or of any county, city or town, charged with the execution of the laws of the State, when acting in the discharge of their official duties; the manufacture, use or possession of such weapons for scientific or experimental purposes when such manufacture, use or possession is lawful under federal laws and the weapon is registered with a federal agency, and when a permit to manufacture, use or possess the weapon is issued by the sheriff of the county in which the weapon is located. Provided, further, that automatic shotguns and pistols or other automatic weapons that shoot less than thirty-one shots shall not be construed to be or mean a machine gun or submachine gun under this section; and that any bona fide resident of this State who now owns a machine gun used in former wars, as a relic or souvenir, may retain and keep same as his or her property without violating the provisions of this section upon his reporting said ownership to the clerk of the superior court of the county in which said person lives.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor * * *.

Sec. 14-409.10. Purchase of rifles and shotguns out of State. It shall be lawful for citizens of this State to purchase rifles and shotguns and ammunition therefor in states contiguous to this State.

Sec. 14-409.11. "Antique firearm" defined. The term "antique firearm" means any firearm manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar early type of ignition system) or replica thereof, whether actually manufactured before or after the year 1898; and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

Sec. 14-415.1. Possession of firearms, etc., by felon prohibited. (a) It shall be unlawful for any person who has been convicted of any crime set out in subsection (b) of this section to purchase, own, possess, or have in his custody, care, or control any handgun or other firearm with a barrel length of less than 18 inches or an overall length of less than 26 inches, or any weapon of mass death and destruction as defined in G.S. 14-288.8(c), within five years from the date of such conviction, or the unconditional discharge from a correctional institution, or termination of a suspended sentence, probation, or parole upon such conviction, whichever is later.

Every person violating the provisions of this section shall be guilty of a felony * * *.

Sec. 14-415.2. Exemption where citizenship restored. Any person whose citizenship is restored under the provisions of Chapter 13 of the General Statutes, any comparable State or federal statute, shall thereafter be exempted from the provisions of G.S. 14-415.1

Sec. 105-80. Dealers in pistols, etc. (a) Every person, firm, or corporation who is engaged in the business of keeping in stock, selling, and/or offering for sale any of the articles or commodities enumerated in this section, shall apply for and obtain a State license from the Commissioner of Revenue for the privilege of conducting such business * * *.

* * * * *

Ahoskie

Section 8-22. Firebombs (a) Definitions. For the purposes of this Section, the following terms shall have the meanings herein ascribed:

(1) "Molotov Cocktail" is defined as any breakable container or any container which is designed in such a manner that upon being propelled it will at impact empty its contents, which is filled with an inflammable fluid or substance, and which is fitted with a fuse or wick.

(2) "Firebombs" is defined as any type of object designed or constructed so that upon being propelled it will explode or ignite its area of impact.

(b) Prohibited Acts. No person or persons shall manufacture, possess, transport or use any Molotov Cocktail or other firebomb.

(c) Possession of Materials Restricted. No person or group of persons shall possess all the items or materials needed to manufacture Molotov Cocktails or other firebombs, other than on his or their premises.

Chapel Hill

Sec. 11-7. Firebombs, "Molotov cocktails"—Defined. For the purposes of sections 11-7 through 11-9, the following terms shall have the meanings herein ascribed:

Firebomb is defined as any type of object designed or constructed so that upon being propelled it will explode or ignite its area of impact.

Molotov cocktail is defined as any breakable container or any container which is designed in such a manner that upon being propelled it will at impact empty its contents, which is filled with an inflammable fluid or substance, and which is fitted with a fuse or wick.

Sec. 11-8. Same—Use, manufacture, possession, transport prohibited. It shall be unlawful for any person to manufacture, possess, transport or use any Molotov cocktail or other firebomb.

Sec. 11-9. Same—Possession of materials restricted. It shall be unlawful for any person or group of persons to possess all the items or materials needed to manufacture Molotov cocktails or other firebombs, other than on his or their premises.

Charlotte

11-13(246a). Pistols, dealers in pistols, etc. License required of dealers in pistols and/or metallic pistol cartridges or cartridges used in pistols.

Elizabeth City

6-3.1. Public safety. I: It shall be unlawful for any merchant within the City of Elizabeth City to engage in the business of selling or exchanging pistols without being licensed by the City Council of the City of Elizabeth City to engage in such business.

II: A new section shall be added to such ordinance, designated as Section III.1, reading as follows: All employees of a licensed merchant who are authorized to make a sale of pistols shall apply to the Chief of Police on a form to be prepared by him for a license to sell pistols as an employee of a licensed merchant and such application shall be passed upon by the City Council and if approved, a license shall be granted. It shall be unlawful for any employee of a licensed merchant to

engage in the sale of pistols without being first licensed in accordance with the above provisions.

Franklinton

Section 1. Definitions: For the purpose of this ordinance, the following terms shall have the meanings herein ascribed:

(a) "Molotov Cocktail" is defined as any breakable container or any container which is designed in such a manner that upon being propelled it will at impact empty it contents, which is filled with an inflammable fluid substance, and which is fitted with a fuse or wick.

(b) "Firebomb" is defined as any type of object designed or constructed so that upon being propelled it will explode or ignite its area of impact.

Section 2. Prohibited Acts. It shall be unlawful for any person or persons to manufacture, possess, transport, or use any Molotov Cocktail or other firebomb.

Section 3. Possession of Materials Restricted. It shall be unlawful for any person or group of persons to possess all the items or materials needed to manufacture Molotov Cocktails or other firebombs, other than on his or their premises.

High Point

Licenses

(131) Weapons, Dealer in. (Every person who is engaged in the business of keeping in stock, selling, and/or offering for sale any pistols, blank cartridge pistols, or metallic cartridges, must apply for and obtain from the city collector a license and pay the required tax)

Lenoir

Sec. 10-15.1. Fire bombs, Molotov Cocktails, etc. (a) Definitions. For the purposes of this section the following terms shall have the meanings herein ascribed:

(1) Firebomb. Any type of object designed or constructed so that upon being propelled it will explode or ignite its area of impact.

(2) Molotov Cocktail. Any breakable container or any container which is designed in such a manner that upon being propelled it will at impact empty its contents, filled with inflammable fluid or substance, and which is fitted with a fuse or wick.

(b) Prohibited acts. It shall be unlawful for any person or persons to manufacture, possess, transport or use any Molotov Cocktail or other firebomb.

(c) Possession of materials restricted. It shall be unlawful for any person or group of persons to possess all the items or materials needed to manufacture Molotov Cocktails or other firebombs other than on his or their premises.

Micro

Ordinance 22

* * * * *

Section 1 Any person having in his possession any Molotov cocktail or other fire bombs of any kind or material for manufacturing any fire bomb shall be subject to a fine * * * or confinement.

* * * * *

New Bern

Sec. 15-5. Possession of incendiary devices and materials. (a) For the purposes of this section, the following terms shall have the meanings ascribed to them:

(1) Firebomb shall mean any type of object designed or constructed so that upon being propelled it will explode or ignite its area of impact.

(2) Molotov cocktail shall mean any breakable container or any container which is designed in such a manner that upon being propelled it will at impact empty its contents, which is filled with an inflammable fluid or substance, and which is fitted with a fuse or wick.

(b) It shall be unlawful for any person to manufacture, possess, transport or use any molotov cocktail or other firebomb.

(c) It shall be unlawful for any person to possess all the items or materials needed to manufacture molotov cocktails or other firebombs, other than on his premises.

Newton Grove

Section 11.15. Fire bombs prohibited. (a) For the purpose of this section, the following terms shall have the meanings herein ascribed:

(1) "Molotov Cocktail" is defined as any breakable container or any container which is designed in such a manner that upon being propelled it will at impact empty its contents which is filled with an inflammable fluid or substance, and which is fitted with a fuse or wick.

(2) "Firebomb" is defined as any type of object designed or constructed so that upon being propelled it will explode or ignite its area of impact.

(b) It shall be unlawful for any person or persons to manufacture, possess, transport or use any Molotov Cocktail or other firebomb.

(c) It shall be unlawful for any person or group of persons to possess all the items or materials needed to manufacture Molotov Cocktails or other firebombs, other than on his or their premises. The provisions of this section shall be cumulative and in addition to any other ordinance or General Statute of North Carolina on this subject.

Ocean Isle Beach

Now, therefore, be it further resolved that the following gun control law be adopted by the Town Council of the Town of Ocean Isle Beach.

(a) No person with the exception of a law enforcement officer shall have in his possession either concealed or otherwise, a firearm, by way of illustration and not by way of limitation specifically including shotgun, rifle, handgun, sawed-off shotgun, or any other like firearm in any public place within the Town limits of the Town of Ocean Isle Beach.

* * * * *

Pineville

Sec. 16-41. Definitions. For the purpose of this division, the following terms shall have the meanings herein ascribed:

Firebomb. Any type of object designed or constructed so that upon being propelled, it will explode or ignite at its area of impact.

Molotov Cocktail. Any breakable container or any container which is designed in such a manner that upon being propelled, it will upon impact empty its contents, which is filled with an inflammable fluid or substance, and which is fitted with a fuse or wick.

Sec. 16-42. Prohibited acts. It shall be unlawful for any person or persons to manufacture, possess, transport or use any Molotov Cocktail or other firebomb.

Sec. 16-43. Possession of materials restricted. It shall be unlawful for any person to possess all the items of materials needed to manufacture Molotov Cocktails or other firebombs, other than on his own premises.

Shelby

(1) "Molotov cocktail" is defined as any breakable container or any container which is designed in such a manner that upon being propelled it will at impact empty its contents, which is filled with an inflammable fluid or substance, and which is fitted with a fuse or wick.

(2) "Fire bomb" is defined as any type of object designed or constructed so that upon

being propelled it will explode or ignite its area of impact.

(b) **Manufacture, possession, transportation, or use.** It shall be unlawful for any person or persons to manufacture, possess, transport or use any Molotov cocktail or other fire bomb.

(c) **Possession of materials restricted.** It shall be unlawful for any person or group of persons to possess all the items or materials needed to manufacture Molotov cocktails or other fire bombs, other than on his or their premises.

Snow Hill

Offenses and Miscellaneous Provisions

* * * * *

Sec. 14-22. Molotov cocktails and other firebombs—Prohibited. It shall be unlawful for any person to manufacture, possess, or transport or use any Molotov cocktail or other firebomb.

Sec. 14-23. Same—Definitions. For the purpose of this chapter, the following terms shall have the meanings herein ascribed:

Molotov Cocktail is defined as any breakable container which is designed in such a manner that upon being propelled it will on impact empty its contents, which is filled with an inflammable fluid or substance, and which is fitted with a fuse or wick.

Firebomb is defined as any type of object designed or constructed so that upon being propelled it will explode or ignite its area of impact.

* * * * *

Southern Pines

Sec. 9-21. Definitions. For the purposes of this article, the following terms shall have the meanings herein ascribed:

(a) **Molotov Cocktail.** "Molotov Cocktail" is defined as any breakable container or any container which is designed in such a manner that upon being propelled it will at impact empty its contents, which is filled with an inflammable fluid or substance, and which is fitted with a fuse or wick.

(b) **Firebomb.** "Firebomb" is defined as any type of object designed or constructed so that upon being propelled it will explode or ignite its area of impact.

Sec. 9-22. Prohibited acts. It shall be unlawful for any person or persons to manufacture, possess, transport or use any Molotov Cocktail or other firebomb.

Star

Section 11.17. Fire bombs prohibited. (a) For the purpose of this Section, the following terms shall have the meanings herein ascribed:

(1) "Molotov Cocktail" is defined as any breakable container or any container which is designed in such a manner that upon being propelled it will at impact empty its contents which is filled with an inflammable fluid or substance, and which is fitted with a fuse or wick.

(2) "Firebomb" is defined as any type of object designed or constructed so that upon being propelled it will explode or ignite its area of impact.

(b) It shall be unlawful for any person or persons to manufacture, possess, transport or use any Molotov Cocktail or other firebomb.

Warsaw

Section 8—6005. Firebombs prohibited (1) "Molotov Cocktail" is defined as any breakable container or any container which is designed in such a manner that upon being propelled it will at impact empty its contents, which is filled with an inflammable fluid or substance, and which is fitted with a fuse or wick.

(2) "Firebomb" is defined as any type of object designed or constructed so that upon being propelled it will explode or ignite its area of impact.

(b) **Prohibited acts.** It shall be unlawful for any person or persons to manufacture, possess, transport or use any Molotov Cocktail or other firebomb.

(c) **Possession of materials restricted.** It shall be unlawful for any person or group of persons to possess all the items or materials needed to manufacture Molotov Cocktails or other firebombs, other than on his or their premises.

Williamston

Sec. 18-6. Molotov cocktails—Definitions. For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Firebomb. Any type of object designed or constructed so that upon being propelled it will explode or ignite its area of impact.

Molotov cocktail. Any breakable container or any container, filled with a flammable fluid or substance and fitted with a fuse or wick which is designed in such a manner that upon being propelled it will at impact empty its contents.

Sec. 18-7. Same—Manufacture, possession, etc., unlawful. It shall be unlawful for any person or persons to manufacture, possess or transport any Molotov cocktail or other firebomb.

Sec. 18-8. Same—Possession of materials used to manufacture. It shall be unlawful for any person or group of persons to possess all the items or materials needed to manufacture Molotov cocktails or other firebombs, other than on his or their premises.

North Dakota

State Law

N. D. Century Code

62-01-01. "Pistol" defined. "Pistol" as used in this chapter means any firearm having a barrel less than twelve inches long.

62-01-04. Who not to possess pistols. The following persons shall not own a pistol or have one in their possession or under their control:

1. A person who has been convicted anywhere within the last ten years of any of the crimes of murder, manslaughter, robbery, burglary, kidnaping, arson, extortion, mayhem, forcible rape, unlawful entry, and any assault except simple assault and battery or any other crime involving the use of or possession of a pistol.

2. A person who is under the age of seventeen years or who is a drug addict, an alcoholic, or who is emotionally unstable.

62-01-06. License to carry weapon—Who may issue. A license to carry a pistol within this state may be issued by a sheriff upon application submitted to the sheriff of the county wherein the applicant has residence. If the applicant is a resident of a city within such county, the sheriff shall immediately notify in writing the chief of police of that city regarding the application. The chief of police of that city shall inform the sheriff in writing of his rejection or approval of the application.

62-01-09. Regulation of sales of pistols. No person shall sell, deliver, or otherwise transfer a pistol to any other person unless such other person shall:

1. Exhibit a license to carry a pistol; or

2. Be one of the persons exempted under the provisions of section 62-01-05.

The person to whom a pistol is sold, delivered, or otherwise transferred must be known or identified to the person making the sale, delivery, or transfer. Before delivery of the pistol, the person to whom the same is sold, delivered, or otherwise transferred must

sign and deliver to the person selling, delivering, or transferring the same, a statement in triplicate containing the full name, age, address, and occupation of the person receiving the pistol, the caliber, make, model, and manufacturer's number of the pistol, and the number of the license possessed by the person obtaining the pistol.

This section shall not apply to purchase by licensed retailers from manufacturers, wholesalers, or jobbers, or to purchase by wholesalers or jobbers from manufacturers.

* * * * *

62-01-11. Selling pistol to minors prohibited—Penalty. Any person who shall sell, barter, hire, lend, or give any pistol to any minor under the age of seventeen years shall be guilty of a class A misdemeanor.

62-01-12. Prohibited transfers. No person shall deliver a pistol to any person if he has reasonable cause to believe that person is prohibited by law from possessing a pistol. No person shall make any loan secured by a mortgage, deposit, or pledge of a pistol. Any person may lend a pistol for not more than thirty days to any person who holds a license to carry a pistol. A person not a licensed retailer shall not sell or give away a pistol without complying with the provisions of section 62-01-09.

62-01-13. Dealer's license required. Before any retail dealer may sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell or transfer, any pistol, he must be licensed by the federal government and, in cities requiring such license, by the duly constituted licensing authorities of such city.

62-01-14. Dealer's licenses—By whom granted and conditions thereof Any city may provide by ordinance for the licensing of retail dealers in pistols. If such license is required, it shall be effective for not more than one year from the date of issue, and shall permit the licensee to sell pistols at retail within the said city. If such licenses are issued, they shall be subject to the following conditions, for the breach of any of which the license shall be subject to forfeiture: * * * 4. A true record, in triplicate, shall be made of every pistol sold, said record to be made in a book kept for such purpose. Such book shall be signed personally by the purchaser and by the person effecting the sale, each in the presence of the other, and shall include the date of sale, the caliber, make, model, and manufacturer's number of the weapon, and the name, address, and occupation of the purchaser. * * *

62-01-19. Antique pistols. This chapter shall not apply to the purchase, possession, or sale as curiosities or ornaments, of pistols more than fifty years old.

* * * * *

62-02-01. Definitions. The term "machine gun, submachine gun, or automatic rifle" as used in this chapter shall mean and include a weapon, mechanism, or instrument not requiring that the trigger be pressed for each shot, and having a reservoir, belt, or other means of storing and carrying ammunition which can be loaded into the weapon, mechanism, or instrument and fired therefrom at a rate of five or more shots to the second.

62-02-02. License required. No person shall purchase, sell, have, or possess a machine gun, submachine gun, automatic rifle of a caliber larger than twenty-two, or a bomb loaded with explosives or poisonous or dangerous gases unless he has a license permitting him to purchase, sell, have, or possess such weapon.

62-02-04. License—Application—Who issues. An application for a license to purchase, sell, have, or possess a machine gun, submachine gun, automatic rifle of a caliber larger than twenty-two, or a bomb loaded with explosives or poisonous or dangerous gases shall be made to the judge of the district court of the county in which the applicant is a resident.

* * * * *

62-02-07. Persons exempt from provisions of this chapter. The provisions of this chapter shall not apply to the following persons:

1. The authorized agent and a servant of a person who has a license to purchase, sell, have, or possess a machine gun, submachine gun, automatic rifle of a caliber larger than twenty-two, or a bomb loaded with explosives or poisonous or dangerous gases;

2. Officers and members of a duly authorized military organization;

3. Officers and members of the police force of any municipality or sheriffs, deputy sheriffs, or other officers having police powers under the laws of this state.

62-04-01. Use and sale of "silencer" prohibited—Penalty. Any person who sells, offers for sale, or uses any device for or attachment to any firearm which will silence or deaden the sound or natural report of the weapon when it is discharged shall be guilty of a class A misdemeanor. The use of any such device by a member of the national guard or of the regular army, on any rifle range in this state under the supervision of a commissioned officer shall not be a violation of this section.

62-05-02. Resident may purchase rifle or shotgun in contiguous state. It shall be lawful for a person residing in this state, including a corporation or other business entity maintaining a place of business in this state, to purchase or otherwise obtain a rifle or shotgun in a state contiguous to this state, and to receive or transport such rifle or shotgun into this state.

62-05-03. Federal firearms licensees—Not applicable to. This chapter shall not apply or be construed to affect in any way the purchase, receipt, or transportation of rifles and shotguns by federally licensed firearms manufacturers, importers, dealers, or collectors.

Barney

* * * * *

2-106 Manufacture, Use or Sale of Certain Firearms * * * Prohibited No person shall manufacture, use, sell, offer for sale, or keep any blank cartridge pistols, blank cartridges, revolvers, or other blank cartridge firearms, * * *. The sale or use of such of these items as are not prohibited by state law will be permitted under such rules and regulations as the Village Board may establish.

* * * * *

Bowman

4.0401 Firearms not to be Furnished to Minors. It shall be unlawful for any person, firm, or corporation to sell or rent firearms to minors within the limits of this City.

* * * * *

Burlington

3. Weapons * * * e. Sales to intoxicated persons and minors. (It is unlawful to) Purchase from, or sell, or furnish any weapon in which any explosive substance can be used to, any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to a minor under the age of 18 years.

f. Records required. Every second-hand dealer, pawnbroker, or other person engaged in the sale, rental or exchange of any weapons described in sub-sections (a) and (d) above shall keep a record of each such weapon purchased, sold, rented, or exchanged at retail.

f.1. Time of recordation. The record required herein shall be made at the time of the transaction, in a book kept for that purpose, (contact local authorities for required contents) * * *

f.2. Report to chief of police. Every second-hand dealer, pawnbroker, or other person engaged in the sale, rental, or exchange of any weapons described in subsections (a) and (d) above shall deliver daily reports to the Chief of Police of every such purchase, sale, loan, or gift. The report shall be on forms provided by the Chief of Police and shall set forth the name in full, the residence, age and physical description.

* * * * *

Fargo

25-2701. "Pistol" defined. The term "pistol" as used in this article means any firearm having a barrel less than twelve inches long.

25-2702. License to sell pistols required—Expiration of license. No person, firm, or corporation shall sell, trade, or otherwise transfer or expose for sale or transfer, or have in his possession with intent to sell, trade, or transfer any pistol without first obtaining a license to sell pistols as herein provided. All licenses granted under the provisions of this article shall expire at the expiration of the calendar year in which issued.

25-2705. Regulation of sales of pistols by dealer or individuals. No person shall sell, deliver, or otherwise transfer a pistol to any other person unless such other person shall:

1. Exhibit a license to carry a pistol; or

2. Be one of the persons exempted under the provisions of section 62-01-05 of the North Dakota Century Code.

The person to whom a pistol is sold, delivered, or otherwise transferred must be known or identified to the person making the sale, delivery, or transfer. Before delivery of the pistol, the person to whom the same is sold, delivered, or otherwise transferred must sign and deliver to the person selling, delivering, or transferring the same, a statement in triplicate [contact local authorities for required contents.] * * * * *

Grafton

Ordinance 135.

Section 1. Definitions: 1. Retail Dealer shall be any person, firm or corporation purchasing pistols for resale.

2. Pistols shall be any firearm having a barrel less than twelve (12) inches long.

3. Purchaser shall be any person, firm or corporation obtaining a pistol either by purchase or gift, or by any other means, from a retail dealer.

Section 2. No retail dealer in pistols shall sell a pistol within the City limits of the City of Grafton before he has obtained a license from the City.

Section 3. Any license issued in accordance with this Ordinance shall be subject to the following conditions, for the breach of any of which the license shall be subject to forfeiture; * * * * *

3. No pistol shall be delivered:

a. On the day of the application for the purchase;

b. Unless the purchaser either is personally known to the seller, or shall present clear evidence of his identity; nor

c. Unless the purchaser shall exhibit a license to carry a pistol issued in his name; nor

d. Unless the Chief of Police shall have been notified at least twenty-four (24) hours before delivery of a pistol of the name of the prospective purchaser and the caliber of the pistol intended to be sold.

4. A true record, in triplicate, shall be made of every pistol sold, said record to be made in a book kept for such purpose. Such book shall be signed personally by the purchaser and by the person effecting the sale, each in the presence of the other, [contact local authorities for required contents] * * *

Hatton

This municipality has adopted North Dakota State firearms laws.

Jamestown

* * * * *

Sec. 22-47. Weapons—Possession by minors under fifteen. No parent, guardian or other person having charge or custody of any minor child under fifteen years of age shall permit such child to carry or use in public any gun or firearm of any description, except when such child is in the company and under the direct control of such parent, guardian, or other person authorized by the parent or guardian.

* * * * *

Lansford

Section 14-13. Weapons. * * * 4. Sales to Intoxicated Persons and Minors. [No person shall] purchase from, or sell, or furnish any weapon in which any explosive substance can be used to, any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to a minor under the age of 18 years.

Section 14-14. Display and Sale of Specified Weapons. No pawnbroker, second-hand dealer or other person engaged in business in the City shall display or place on exhibition in any show window or other window facing upon any street, any pistol, revolver, or other firearm, with barrel less than twelve (12) inches in length * * *.

Section 14-15. Records Required. Every second-hand dealer, pawnbroker or other person engaged in the sale, rental or exchange of any weapons described in sub-sections (1) and (2) above shall keep a record of each such weapon purchased, sold, rented, or exchanged at retail.

1. Time of Recordation. The record herein shall be made at the time of the transaction, in a book kept for that purpose, and shall include [all required information. Contact local authorities for details] * * *

Mandan

7-0225. Sale of Weapons to Intoxicated Persons and Minors. No person in the city shall purchase from, or sell, loan, or furnish any weapon in which explosive substances can be used [to any person in an intoxicated state or to any minor] * * *

7-0226. Records of Weapon Sales Required. Every second-hand dealer, pawnbroker or other person engaged in the sale, rental or exchange of any weapons described in sections 7-0219 and 7-0224 above shall keep a record of each such weapon purchased, sold, rented or exchanged at retail. The record required herein shall be made at the time of the transaction, in a book kept for that purpose, and shall include (those entries required by local authorities; contact them for information on record requirements listed in 7-0226) * * * Every second-hand dealer, pawnbroker or other person engaged in the sale, rental or exchange of any weapons described in Sections 7-0219 and 7-0224 above shall deliver daily reports to the chief of police of every such purchase, sale, loan or gift.

* * * * *

Mclean County

This municipality has adopted North Dakota State firearms laws.

Minot

Sec. 23-124. Sales to intoxicated persons and minors. No person in the city shall purchase from, or sell, loan, or furnish any weapon in which any explosive substance can be used to any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to a minor under the age of twenty-one (21) years.

Stanton

Section 16-0703 The following persons shall not own a pistol or have one in their possession or under their control within the jurisdictional limits of the City of Stanton; 1. Any person who has been convicted anywhere within the last ten years of any crime classified as a felony; 2. A person who is under the age of 17 years, or who is a drug addict, an alcoholic, or who is emotionally unstable.

Surrey

This municipality has adopted North Dakota State firearms laws.

Valley City

8-9. Pistol defined. The term "pistol" means any firearm having a barrel less than twelve inches long.

8-11. License—Required; term. No retail dealer shall sell or otherwise transfer or expose for sale or transfer, or have in his possession with intent to sell or transfer, any pistol without first obtaining a license as provided in this article. All licenses granted under the provisions of this article shall expire at the expiration of one year from the date of issue.

8-12. Same—Qualifications. No person may obtain a retail dealer's pistol license within the city without first being licensed by the federal government to sell pistols and exhibiting such federal license to the city auditor, and unless the applicant is a resident of the city.

8-13. Same—Conditions of issuance. * * *
(c) No pistol shall be delivered:

(1) On the day of the application for the purchase.

(2) Unless the purchaser either is personally known to the seller or shall present clear evidence of his identity.

(3) Unless the purchaser shall exhibit a license to carry a pistol

Velva

14-13 4. Sales to Intoxicated Persons and Minors. Purchase from, or sell, or furnish any weapon in which any explosive substance can be used to, any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to a minor under the age of 18 years.

* * * * *

Washburn

This municipality has adopted North Dakota State firearms laws.

Northern Marianas

63 Trust Territory Code

Weapons Control Act

Sec. 551. Short title. This Subchapter is known and may be cited as the Trust Territory Weapons Control Act.

Sec. 552. Firearms and dangerous devices prohibited. No person shall manufacture, purchase, sell, possess or carry any firearm, dangerous device or ammunition other than as hereinafter provided.

Sec. 553. Subchapter not applicable. This Subchapter shall not apply to:

(1) Law enforcement officers while engaged on official duty except to the extent that particular provisions of this Subchapter are expressly made applicable to them.

(2) Firearms which are in unservicable condition and which are incapable of being fired or discharged and which are kept as curios, ornaments or for their historical significance or value.

(3) Weapons or other dangerous devices which are not firearms and which are kept as ornaments, curios, or objects of historical or archeological interest: provided that the article or articles referred to herein are kept or displayed only in private homes, museums, or in connection with public exhibitions.

(4) Persons in the armed forces of the United States, whenever such persons are engaged on official duty except to the extent that particular provisions of this Subchapter are expressly made applicable to them.

(5) Persons designated by the Attorney General as crocodile hunters; PROVIDED, HOWEVER, that not more than one person shall be so designated at any one time; AND PROVIDED FURTHER that the Attorney General shall by regulation limit the size and type of weapons which may be used by such crocodile hunter.

Sec. 554. Definitions.

(1) "Firearm" means any device, by whatever name known, which is designed or may be converted to expel or hurl a projectile or projectiles by the action of an explosion, a release, or an expansion of gas, including but not limited to guns, except a device designed or redesigned for use solely as a signaling, linethrowing, spearfishing, or industrial device, or a device which hurls a projectile by means of the release or expansion of carbon dioxide or air.

(2) "Dangerous device" means any explosive, incendiary or poison gas bomb, grenade, mine or similar device, or any instrument designed or redesigned for use as a weapon.

(3) "Handgun" means a pistol or revolver with an overall length of less than twenty-six inches.

(4) "Long gun" means a rifle with one or more barrels more than eighteen inches in length.

(5) "Gun" means a handgun or long gun.

(6) "Transfer" means sale, gift, purchase or any other means by which ownership or temporary rights of use and control are conveyed or shifted from one person to another.

(7) "Carry" means having on one's person or in a motor vehicle or other conveyance.

(8) "Automatic Weapon" means a weapon of any description irrespective of size, by whatever name designated or known, loaded or unloaded, from which may be repeatedly or automatically discharged a number of bullets contained in a magazine, ribbon or other receptacle, by one continued movement of the trigger or firing mechanism.

(9) "Semi-automatic Weapon" means a weapon of any description irrespective of size, by whatever name designated or known, loaded or unloaded, from which may be repeatedly or automatically discharged a number of bullets contained in a magazine, ribbon or other receptacle by a like number of movements of the trigger or firing mechanism without recocking or resetting the trigger or firing mechanism.

(10) "Person" means any natural person, corporation, partnership, or other business entity.

Sec. 555. Identification cards.

(1) No person shall acquire or possess any firearm, dangerous device or ammunition unless he holds an identification card issued pursuant to this Subchapter. The identification card is evidence of the holder's eligibility to possess and use or carry firearms, dangerous devices, or ammunition.

Sec. 556. Purchase, possession and use of firearms, dangerous devices, and ammunition. No person shall purchase, possess or use a firearm, dangerous device, or ammunition unless he is the holder of an identification card issued pursuant to this Subchapter evidencing the eligibility of such person to purchase, possess and use a firearm, dangerous device or ammunition. Such person shall be at least twenty-one years of age.

* * * * *

Sec. 558. New residents and visitors—Temporary residents of the Trust Territory. Visitors, new residents, and temporary residents in the Trust Territory shall not import, transport, purchase, use or possess any firearm, dangerous device or ammunition in the Trust Territory without an identification card issued pursuant to this Subchapter. Any person who possesses any firearms, dangerous device, or ammunition shall, before or immediately upon his entrance into the Trust Territory, turn it in to the Attorney General's Office or the Chief of Police of any district of the Trust Territory. Such firearm, dangerous device or ammunition shall be returned to such person upon his being issued an identification card pursuant to the provisions of this Subchapter or upon his departure from the Trust Territory.

Sec. 559. Law enforcement officers.

(1) Possession, use and carriage of firearms, ammunition and dangerous devices by law enforcement officers derives from the laws governing the powers, functions and organization of the police and other organized

forces of peace officers. Eligibility of law enforcement officers to possess, use and carry firearms, ammunition or dangerous devices while on duty is not subject to the holding of identification cards or any other qualifications prescribed in this Subchapter or in regulations pursuant thereto.

(2) Transfer of any firearm from or to a law enforcement officer or agency shall, except as provided in Subsection (1) of this section, be subject to the provisions of this Subchapter and regulations made pursuant thereto.

(3) The head of a law enforcement agency of the Trust Territory or any subdivision thereof shall furnish to the Office of the Attorney General the names, addresses, ranks and badge numbers or similar identification of each person on his force who is authorized to possess, use and carry firearms in the course of his official duty. Upon the occurrence of any changes in personnel to whom this subsection applies, the head of the law enforcement agency shall inform the Office of the Attorney General promptly of the change.

(4) Whenever a law enforcement officer is not engaged on official duties, this Subchapter shall be applicable to him in the same manner and to the same extent as to any other person.

Sec. 560. Transfer of firearms and dangerous weapons.

(1) No dealer, manufacturer or wholesaler shall transfer firearms, dangerous devices or ammunition except pursuant to a license therefor as provided in this section.

(2) Any person, firm, corporation, association or other entity proposing to engage in the business of selling firearms, ammunition, and dangerous devices at retail shall apply for a dealer's license. The application shall be on a form approved by the Office of the Attorney General and shall contain the following information:

* * * * *

Sec. 563. Records.

(1) Every licensed dealer shall maintain records containing an inventory of firearms, dangerous devices, and ammunition or any of them received together with the name and address of the person from whom received, and the manufacturer, type and serial number of each firearm and dangerous device, the name and address of the person to whom transferred, the identification card number of such person, the manufacturer, type and serial number of the gun or dangerous device transferred and the date of transfer. Such records shall be available for inspection at all reasonable times by the Office of the Attorney General and his duly designated representatives. Such records shall be retained at least 5 years.

(2) Every dealer, at the time of any transfer of any firearm or dangerous device to any person other than a licensed dealer shall, within twenty-four hours of the transfer, supply the following information to the Office of the Attorney General on a form approved by it.

(a) The name, address and license number of the dealer.

(b) The manufacturer, type and serial number of firearm or dangerous device transferred. No firearm shall be transferred which does not have a serial number or from which the serial number has been removed, defaced, or altered.

(c) The name, address and identification card number of the transferee.

Sec. 564. Repair.

(1) No person, other than a dealer or manufacturer licensed pursuant to this act, shall repair firearms or accept the same for repair.

(2) No person shall accept any firearms for repair, unless he is shown an identification card evidencing eligibility of the holder to possess and use a firearm of the type offered for repair. Prior to returning any such firearm, the manufacturer or dealer shall make and keep a record identical with that required for the purchase of a firearm pursuant to 63 TTC Sec. 562, and shall maintain such record for at least 1 year.

(3) Nothing in this section shall be construed to prohibit the repair or maintenance of a firearm by the owner thereof.

Sec. 565. Ammunition.

(1) No person may transfer ammunition, unless he is a manufacturer, wholesaler or dealer, licensed pursuant to this Subchapter. If the transfer is other than to another manufacturer, wholesaler or dealer, the transfer shall not be made until the transferor has ascertained that the transferee is the holder of an identification card evidencing eligibility to possess and use a firearm of the type for which the ammunition is suited. Upon transfer the transferor shall record the quantity, type and caliber or gauge transferred, the name and address of the transferee and the number of the transferee's identification card.

(2) No transferee of ammunition shall transfer it to any person other than a dealer licensed pursuant to this Subchapter. Upon receipt of ammunition, the dealer shall make and keep all records with respect to the ammunition in the manner required by this Section for ammunition sold by him.

Sec. 566. Private sale or transfer. No person other than a manufacturer, wholesaler or dealer licensed pursuant to this Subchapter shall transfer a firearm or dangerous device to any person other than a manufacturer, wholesaler or dealer without first ascertaining that the transferee is the holder of an identification card issued pursuant to this Subchapter. Prior to any such transfer, the transferor shall furnish to the Office of the Attorney General in person or by registered or certified mail, return receipt requested, a properly completed form approved by the Office of the Attorney General providing information equivalent to that required to be furnished by a dealer upon the transfer by him of a firearm or dangerous device.

Sec. 567. Security transactions.

(1) No person, other than a licensed dealer, shall receive a firearm as a pledge or pawn, or in any other manner as security.

(2) A dealer receiving a firearm as a pledge, pawn, or otherwise as security, shall record promptly the date of receipt; the full description of the item or items received, including the manufacturer, type and serial number or numbers, if any; the name and address of the person making the pledge, pawn, or other deposit as security; and the number of said person's identification card. No dealer shall accept the pledge, pawn, or other deposit as security unless the person making the same exhibits an identification card evidencing his entitlement to possess and use a gun of the type involved.

(3) Upon the return or other disposition of the firearm in his possession pursuant to this section, the dealer shall make a record of the return or other disposition, including the date thereof and the name and address of the person to whom the firearm was returned or disposed. No firearm shall be returned or disposed of to any person who, at the time of such return or disposition, does not exhibit a valid identification card issued in his own name and entitling him to possess and use the firearm involved.

Sec. 568. Manufacturers and wholesalers.

(1) No person shall manufacture or deal in firearms, dangerous devices or ammunition at wholesale unless:

(a) He is the holder of a dealer's license issued pursuant to 63 TTC Sec. 561; or

(b) He is the holder of a license issued pursuant to this section.

(2) Any person proposing to manufacture or deal at wholesale in firearms, dangerous devices or ammunition, and not the holder of a dealer's license, shall make application for a manufacturer's or wholesaler's license. Such application shall contain the same information required for a dealer's license, and any additional information required by the Attorney General as may be appropriate to administer this Subchapter. No manufacturer's license or wholesaler's license shall authorize transfer or delivery within the Trust Territory except to a licensed dealer, manufacturer or wholesaler or to a political subdivision of the Trust Territory or, subject to applicable laws of the Trust Territory, for export.

(3) The Office of the Attorney General shall issue, renew, cancel, deny, suspend and revoke manufacturers' and wholesalers' licenses on the same terms and subject to the same conditions as provided for dealers' licenses.

(4) Every manufacturer shall assign a unique serial number to each firearm manu-

factured by him and shall inscribe such number in or on the firearm in such manner as will resist removal, alteration, defacement or obliteration. The Office of the Attorney General may make regulations for the style of such serial numbers and for the manner of their inscription.

Sec. 569. Registry of firearms and ammunition.

(1) The Office of the Attorney General shall maintain a registry of firearms. The records in the registry shall be kept permanently unless there is a record of the destruction of the gun.

(2) Records kept in the registry shall include all records required to be filed with the Office of the Attorney General pursuant to this Subchapter, copies of all records filed with an agency or officer of local government pursuant to this Subchapter, and any records deposited with the Office of the Attorney General pursuant to Subsection (3) of this Section.

(3) Any dealer, manufacturer or wholesaler licensed pursuant to this Subchapter, upon his discontinuance of the licensed business or activity, shall transmit all records kept by him pursuant to this Subchapter to the Office of the Attorney General. * * *

Sec. 570. Cancellation, denial, suspension and revocation of licenses.

(1) Any license issued pursuant to this Subchapter shall be surrendered for cancellation immediately on the discontinuance or termination of business or upon the holder's discontinuing the manufacturing, selling, acquisition for sale or repair of firearms and the sale of ammunition.

(2) The issuing officer or agency may deny, suspend or revoke an identification card or a license issued pursuant to this Subchapter for failure of the applicant or holder to meet or continue to meet any of the requirements for eligibility therefore, or for any violation of this Subchapter or regulations in force pursuant thereto.

Sec. 571. Shipment and delivery of firearms, dangerous devices and ammunition.

(1) No person shall ship, transport or deliver any firearm, dangerous device or ammunition to anyone other than a licensed manufacturer, wholesaler, dealer or person who possesses a valid identification card.

(2) Any person who ships, transports or delivers firearms, dangerous devices to a manufacturer, wholesaler, dealer or person possessing an identification card in the Trust Territory shall, before delivery, furnish to the Office of the Attorney General an invoice listing his name and address, the name and address of the manufacturer, wholesaler, dealer or person possessing the identification card to whom such firearms or dangerous devices are to be delivered, the place of origin of the shipment, the number of firearms and dangerous devices of each type and the manufacturer and serial number of each firearm and dangerous device in the shipment.

(3) Any person who ships, transports or delivers ammunition to a manufacturer, wholesaler, dealer or person possessing an identification card in the Trust Territory shall, before delivery, furnish to the Office of the Attorney General an invoice listing his name and address, the name and address of the manufacturer, wholesaler, dealer or person possessing an identification card to whom the ammunition is to be delivered, the place of origin of the shipment and the quantity of ammunition of each type in the shipment.

(4) If shipment is by common carrier, a copy of the invoice required by Subsections (2) and (3) of this section shall also be delivered to the common carrier. The common carrier shall deliver the invoice and any said shipment to the district Chief of Police who will verify the accuracy of the shipment, and compliance with this Subchapter, before delivery to the manufacturer, wholesaler, dealer or person possessing an identification card. A copy of the invoice shall be left with the manufacturer, wholesaler, dealer or person possessing an identification card at the time of delivery.

(5) If shipment is by other than common carrier, a copy of the invoice shall be furnished to the manufacturer, wholesaler, dealer or person possessing an identification card at the time of delivery.

(6) No person shall ship, transport, or deliver firearms, dangerous devices or ammunition via air without first complying with international regulations pertaining to air shipment of firearms, dangerous devices or ammunition.

Sec. 572. Loss, destruction or theft of firearms or dangerous devices. Whoever owns or possesses a firearm or dangerous device shall within twenty-four hours of discovery, notify the Office of the Attorney General of the loss, theft or destruction of any such firearm or dangerous device and, after such notice, of recovery thereof.

Sec. 573. Prohibitions. No person shall:

(1) Knowingly remove, obliterate or alter the importer's or manufacturer's serial number of any firearm.

(2) Knowingly deface, alter or destroy an identification card.

(3) Acquire, possess or use any firearm silencer or muffler.

(4) Carry any gun or dangerous device while under the influence of alcohol or narcotic or other disabling drug.

(5) Import, sell, transfer, give away, purchase, possess or use any handgun, automatic weapon, rifle larger than .22 caliber, shotgun larger than .410 gauge, or any other firearm.

(6) Board or attempt to board any commercial aircraft while carrying any firearm, dangerous device or ammunition, either on his person or in his luggage. Such firearm, dangerous device or ammunition shall be turned in prior to departure to an appropriate official or to the pilot of the airline or aircraft concerned, who shall keep a record of the name of the person turning in such firearm, dangerous device, or ammunition, and the type and quantity turned in. Upon completion of such person's travel, the official of the airline or pilot of the aircraft shall personally deliver the article or articles turned in to the Police Chief of the district in which such completion took place, or to his delegate. Such person may reobtain the article or articles turned in upon either

(a) Presentation of a valid identification card or license for such article or articles to the police officer having custody thereof, or

(b) departure from the district.

* * * * *

Sec. 576. Guns on effective date of act.

(1) Any person having in his possession a firearm or dangerous device on the effective date of this Subchapter shall, within 90 days of such effective date, furnish on a form approved by the Office of the Attorney General to the agency or officer authorized to receive information concerning the transfer of firearms or dangerous devices pursuant to this Subchapter, equivalent information concerning any firearm or dangerous device in his possession.

* * * * *

Sec. 578. Local laws. Nothing in this Subchapter shall be deemed to prevent any district or municipality from further restricting, by local law or ordinance, the transfer, possession, use or carriage of firearms, ammunition or dangerous devices. This Subchapter shall supersede all district laws and municipal ordinances in conflict with this Subchapter.

* * * * *

Sec. 580. Fees. The fees for issuance and renewal of licenses and identification cards as required by this Subchapter shall be as follows:

(1) for an identification card, $20;

(2) for a dealer's license, $150;

(3) for a manufacturer's license, $500;

(4) for a wholesaler's license, $500;

(5) for replacement of lost, destroyed, or defaced identification card, $5. * * *

Sec. 581. Penalties. * * * The holder of any dealer's license or the manager or supervisor of employees of any establishment so licensed, or both, shall be liable for any violation of this Subchapter by his employee or agent committed in the course of the dealer's business, to the same extent as such employee or agent.

Ohio

State Law

Ohio Revised Code

2923.11 Definitions. As used in sections 2923.11 to 2923.24 of the Revised Code:

(A) "Deadly weapon" means any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon.

(B) "Firearm" means any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant. "Firearm" includes an unloaded firearm, and any firearm which is inoperable but which can readily be rendered operable.

(C) "Handgun" means any firearm designed to be fired while being held in one hand.

(D) "Semi-automatic firearm" means any firearm designed or specially adapted to fire a single cartridge and automatically chamber a succeeding cartridge ready to fire, with a single function of the trigger.

(E) "Automatic firearm" means any firearm designed or specially adapted to fire a succession of cartridges with a single function of the trigger. "Automatic firearm" also means any semi-automatic firearm designed or specially adapted to fire more than eighteen cartridges without reloading, other than a firearm chambering only .22 caliber short, long, or long-rifle cartridges.

(F) "Sawed-off firearm" means a shotgun with a barrel less than eighteen inches long, or a rifle with a barrel less than sixteen inches long, or a shotgun or rifle less than twenty-six inches long overall.

(G) "Zip-gun" means any of the following:

(1) Any firearm of crude and extemporized manufacture;

(2) Any device, including without limitation a starter's pistol, not designed as a firearm, but which is specially adapted for use as such;

(3) Any industrial tool, signalling device, or safety device, not designed as a firearm, but which as designed is capable of use as such, when possessed, carried, or used as a firearm.

(H) "Explosive device" means any device designed or specially adapted to cause physical harm to persons or property by means of an explosion, and consisting of an explosive substance or agency and a means to detonate it. "Explosive device" includes without limitation any bomb, any explosive demolition device, any blasting cap or detonator containing an explosive charge, and any pressure vessel which has been knowingly tampered with or arranged so as to explode.

(I) "Incendiary device" means any firebomb, and any device designed or specially adapted to cause physical harm to persons or property by means of fire, and consisting of an incendiary substance or agency and a means to ignite it.

(J) "Dangerous ordnance" means any of the following, except as provided in division (K) of this section:

(1) Any automatic or sawed-off firearm, or zip-gun;

(2) Any explosive device or incendiary device;

(4) Any firearm, rocket launcher, mortar, artillery piece, grenade, mine, bomb, torpedo, or similar weapon, designed and manufactured for military purposes, and the ammunition therefor;

(5) Any firearm muffler or silencer;

(6) Any combination of parts that is intended by the owner for use in converting any firearm or other device into a dangerous ordnance.

(K) "Dangerous ordnance" does not include any of the following:

(1) Any firearm, including a military weapon and the ammunition therefor, and regardless of its actual age, which employs a percussion cap or other obsolete ignition system, or which is designed and safe for use only with black powder;

(2) Any pistol, rifle, or shotgun, designed or suitable for sporting purposes, including a military weapon as issued or as modified, and the ammunition therefor, unless such firearm is an automatic or sawed-off firearm;

(3) Any cannon or other artillery piece which, regardless of its actual age, is of a type in accepted use prior to 1887, has no mechanical, hydraulic, pneumatic, or other system for absorbing recoil and returning the tube into battery without displacing the carriage, and is designed and safe for use only with black powder;

(4) Black powder, priming quills, and percussion caps possessed and lawfully used to fire a cannon of a type defined in division (K) (3) of this section during displays, celebrations, organized matches or shoots, and target practice, and smokeless and black powder, primers, and percussion caps possessed and lawfully used as a propellant or ignition device in small-arms or small-arms ammunition;

(5) Dangerous ordnance which is inoperable or inert and cannot readily be rendered operable or activated, and which is kept as a trophy, souvenir, curio, or museum piece.

(6) Any device which is expressly excepted from the definition of a destructive device pursuant to the "Gun Control Act of 1968," 82 Stat. 1213, 18 U.S.C. 921 (A) (4), and any amendments or additions thereto or reenactments thereof, and regulations issued thereunder.

2923.13 Having weapons while under disability. (A) Unless relieved from disability as provided in section 2923.14 of the Revised Code, no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance, if any of the following apply:

(1) Such person is a fugitive from justice;

(2) Such person is under indictment for or has been convicted of any felony of violence, or has been adjudged a juvenile delinquent for commission of any such felony;

(3) Such person is under indictment for or has been convicted of any offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse, or has been adjudged a juvenile delinquent for commission of any such offense;

(4) Such person is drug dependent or in danger of drug dependence, or is a chronic alcoholic;

(5) Such person is under adjudication of mental incompetence.

(B) Whoever violates this section is guilty of having weapons while under disability, a felony of the fourth degree.

2923.14 Relief from disability. (A) Any person who, solely by reason of his disability under division (A) (2) or (3) of section 2923.13 of the Revised Code, is prohibited from acquiring, having, carrying, or using firearms, may apply to the court of common pleas in the county where he resides for relief from such prohibition.

(B) The application shall recite the following:

(1) All indictments, convictions, or adjudications upon which the applicant's disability is based, the sentence imposed and served, and probation, parole, or partial or conditional pardon granted, or other disposition of each case;

(2) Facts showing the applicant to be a fit subject for relief under this section.

(C) A copy of the application shall be served on the county prosecutor, who shall cause the matter to be investigated, and shall raise before the court such objections to granting relief as the investigation reveals.

(D) Upon hearing, the court may grant the applicant relief pursuant to this section, if all of the following apply:

(1) The applicant has been fully discharged from imprisonment, probation, and parole, or, if he is under indictment, has been released on bail or recognizance;

(2) The applicant has led a law-abiding life since his discharge or release, and appears likely to continue to do so;

(3) The applicant is not otherwise prohibited by law from acquiring, having, or using firearms.

(E) Costs of the proceeding shall be charged as in other civil cases, and taxed to the applicant.

(F) Relief from disability granted pursuant to this section:

(1) Applies only with respect to indictments, convictions, or adjudications recited in the application;

(2) Applies only with respect to firearms lawfully acquired, possessed, carried, or used by the applicant;

(3) Does not apply with respect to dangerous ordnance;

(4) May be revoked by the court at any time for good cause shown and upon notice to the applicant;

(5) Is automatically void upon commission by the applicant of any offense embraced by division (A) (2) or (3) of section 2923.13 of the Revised Code, or upon the applicant's becoming one of the class of persons named in division (A) (1), (4), or (5) of such section.

2923.17 Unlawful possession of dangerous ordnance. (A) No person shall knowingly acquire, have, carry, or use any dangerous ordnance.

(B) This section does not apply to:

(1) Officers, agents, or employees of this or any other state or the United States, members of the armed forces of the United States or the organized militia of this or any other state, and law enforcement officers, to the extent that any such person is authorized to acquire, have, carry, or use dangerous ordnance and is acting within the scope of his duties;

(2) Importers, manufacturers, dealers, and users of explosives, having a license or user permit issued and in effect pursuant to the "Organized Crime Control Act of 1970," 84 Stat. 952, 18 U.S.C. 843, and any amendments or additions thereto or reenactments thereof, with respect to explosives and explosive devices lawfully acquired, possessed, carried, or used under the laws of this state and applicable federal law;

(3) Importers, manufacturers, and dealers having a license to deal in destructive devices or their ammunition, issued and in effect pursuant to the "Gun Control Act of 1968," 82 Stat. 1213, 18 U.S.C. 923, and any amendments or additions thereto or reenactments thereof, with respect to dangerous ordnance lawfully acquired, possessed, carried, or used under the laws of this state and applicable federal law;

(4) Persons to whom surplus ordnance has been sold, loaned, or given by the secretary of the army pursuant to 70A Stat. 262 and 263, 10 U.S.C. 4684, 4685, and 4686, and any amendments or additions thereto or reenactments thereof, with respect to dangerous ordnance when lawfully possessed and used for the purposes specified in such sections;

(5) Owners of dangerous ordnance registered in the national firearms registration and transfer record pursuant to the act of October 22, 1968, 82 Stat. 1229, 26 U.S.C. 5841, and any amendments or additions thereto or reenactments thereof, and regulations issued thereunder.

(6) Carriers, warehousemen, and others engaged in the business of transporting or storing goods for hire, with respect to dangerous ordnance lawfully transported or stored in the usual course of their business and in compliance with the laws of this state and applicable federal law;

(7) The holders of a license or temporary permit issued and in effect pursuant to section 2923.18 of the Revised Code, with respect to dangerous ordnance lawfully acquired, possessed, carried, or used for the purposes and in the manner specified in such license or permit.

(C) Whoever violates this section is guilty of unlawful possession of dangerous ordnance, a felony of the fourth degree.

2923.18 License or permit to possess dangerous ordnance. (A) Upon application to the sheriff of the county or safety director or police chief of the municipality where the applicant resides or has his principal place of business, and upon payment of the fee specified in division (B) of this section, a license or temporary permit shall be issued to qualified applicants to acquire, possess, carry, or use dangerous ordnance, for the following purposes:

* * * * *

(3) Scientists, engineers, and instructors, with respect to dangerous ordnance acquired, possessed, carried, or used in the course of bona fide research or instruction;

(4) Financial institution and armored car company guards, with respect to automatic firearms lawfully acquired, possessed, carried, or used by any such person while acting within the scope of his duties;

(5) In the discretion of the issuing authority, any responsible person, with respect to dangerous ordnance lawfully acquired, possessed, carried, or used for a legitimate research, scientific, educational, industrial, or other proper purpose.

(B) Application for a license or temporary permit under this section shall be in writing under oath to the sheriff of the county or safety director or police chief of the municipality where the applicant resides or has his principal place of business. The application shall be accompanied by an application fee of fifty dollars when the application is for a license, and an application fee of five dollars when the application is for a temporary permit. The fees shall be paid into the general revenue fund of the county or municipality. The application shall contain the following information:

(1) The name, age, address, occupation, and business address of the applicant, if he is a natural person, or the name, address, and principal place of business of the applicant, if the applicant is a corporation;

(2) A description of the dangerous ordnance for which a permit is requested;

(3) A description of the place or places where and the manner in which the dangerous ordnance is to be kept, carried, and used;

(4) A statement of the purposes for which the dangerous ordnance is to be acquired, possessed, carried, or used;

(5) Such other information as the issuing authority may require in giving effect to this section.

(C) Upon investigation, the issuing authority shall issue a license or temporary permit only if all of the following apply:

(1) The applicant is not otherwise prohibited by law from acquiring, having, carrying or using dangerous ordnance;

(2) The applicant is age twenty-one or over, if he is a natural person;

(3) It appears that the applicant has sufficient competence to safely acquire, possess, carry, or use the dangerous ordnance, and that proper precautions will be taken to protect the security of the dangerous ordnance and insure the safety of persons and property;

(4) It appears that the dangerous ordnance will be lawfully acquired, possessed, carried, and used by the applicant for a legitimate purpose.

(D) The license or temporary permit shall identify the person to whom it is issued, identify the dangerous ordnance involved and state the purposes for which the license or temporary permit is issued, state the expiration date, if any, and list such restrictions on the acquisition, possession, carriage, or use of the dangerous ordnance as the issuing authority considers advisable to protect the security of the dangerous ordnance and insure the safety of persons and property.

(E) A temporary permit shall be issued for the casual use of explosives and explosive devices, and other consumable dangerous ordnance, and shall expire within thirty days of its issuance. A license shall be issued for the regular use of consumable dangerous ordnance, or for any non-consumable dangerous ordnance, which license need not specify an expiration date, but the issuing authority may specify such expiration date, not earlier than one year from the date of issuance, as it considers advisable in view of the nature of the dangerous ordnance and the purposes for which the license is issued.

(F) The dangerous ordnance specified in a license or temporary permit may be obtained by the holder anywhere in the state. The holder of a license may use such dangerous ordnance anywhere in the state. The holder of a temporary permit may use such dangerous ordnance only within the territorial jurisdiction of the issuing authority.

(G) The issuing authority shall forward to the state fire marshall a copy of each license or temporary permit issued pursuant to this section, and a copy of each record of a transaction in dangerous ordnance and of each report of lost or stolen dangerous ordnance, given to the local law enforcement authority as required by divisions (A) (4) and (5) of section

2923.20 of the Revised Code. The state fire marshall shall keep a permanent file of all licenses and temporary permits issued pursuant to this section, and of all records of transactions in, and losses or thefts of dangerous ordnance forwarded by local law enforcement authorities pursuant to this section.

* * * * *

2923.20 Unlawful transactions in weapons. (A) No person shall: (1) Recklessly sell, lend, give, or furnish any firearm to any person prohibited by section 2923.13 or 2923.15 of the Revised Code from acquiring or using any firearm, or recklessly sell, lend, give, or furnish any dangerous ordnance to any person prohibited by section 2923.13, 2923.15, or 2923.17 of the Revised Code from acquiring or using any dangerous ordnance;

(2) Possess any firearm or dangerous ordnance with purpose to dispose of it in violation of division (A) of this section; * * * * *

(4) When transferring any dangerous ordnance to another, negligently fail to require the transferee to exhibit such identification, license, or permit showing him to be authorized to acquire dangerous ordnance pursuant to section 2923.17 of the Revised Code, or negligently fail to take a complete record of the transaction and forthwith forward a copy of such record to the sheriff of the county or safety director or police chief of the municipality where the transaction takes place;

(5) Knowingly fail to report to law enforcement authorities forthwith the loss or theft of any firearm or dangerous ordnance in such person's possession or under his control.

(B) Whoever violates this section is guilty of unlawful transactions in weapons. Violation of division (A) (1) or (2) of this section is a felony of the third degree. Violation of division * * * (4) of this section is a misdemeanor of the second degree. Violation of division (A) (5) of this section is a misdemeanor of the fourth degree.

2923.21 Improperly furnishing firearms to a minor.

(A) No person shall:

(1) Sell any firearm to a person under age eighteen;

(2) Sell any handgun to a person under age twenty-one;

(3) Furnish any firearm to a person under age eighteen, except for purposes of lawful hunting, or for purposes of instruction in firearms safety, care, handling, or marksmanship under the supervision or control of a responsible adult.

(B) Whoever violates this section is guilty of improperly furnishing firearms to a minor, a misdemeanor of the second degree.

2923.22 Permitted interstate transactions in firearms. (A) Any resident of Ohio age eighteen or over, and not prohibited by section 2923.13 or 2923.15 of the Revised Code or any applicable law of another state or the United States from acquiring or using firearms, may purchase or obtain a rifle, shotgun, or ammunition therefor in Indiana, Kentucky, Michigan, Pennsylvania, or West Virginia.

(B) Any resident of Indiana, Kentucky, Michigan, Pennsylvania, or West Virginia, age eighteen or over, and not prohibited by section 2923.13 or 2923.15 of the Revised Code or the laws of his domicile or the United States from acquiring or using firearms, may purchase or obtain a rifle, shotgun, or ammunition therefor in Ohio.

(C) Any purchase and sale pursuant to this section shall be for such purposes and under such circumstances and upon such conditions as are prescribed by the "Gun Control Act of 1968," 82 Stat. 1213, 18 U.S.C. 922 (b) (3), and any amendments or additions thereto or reenactments thereof.

Editor's Note

A number of the Ohio municipalities included herein have incorporated portions of the Ohio State law directly into their municipal ordinances. In these instances, the ordinance language is identical to the corresponding portion of the State law.

To avoid undue repetition of State law language, listings for municipalities falling within this category contain only municipal codification references, followed by either the words "same as" or "adopts," and the corresponding State law citations. The reader can then refer to the appropriate portion of the State law.

In the case of Akron, for example, Section 672.01 of the municipal ordinances would contain the same language as Section 2923.11 of the Ohio State law.

Ada

260.01 same as 2923.11
260.05 same as 2923.17
260.07 same as 2923.18
260.09(a)(2) same as 2923.20(A)(4)
260.10 same as 2923.21

Akron

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.

672.13 Certain Handguns Prohibited. No person shall possess, sell, transfer, give, deliver or furnish a handgun having a retail value of $50.00 or less and having a barrel, slide, frame, or receiver which is a die casting of zinc alloy or any other non-homogeneous metal which will melt or deform at a temperature of less than 800 degrees Fahrenheit, either assembled or disassembled.

* * * * *

C. For purposes of this section, "handgun" shall mean a firearm having a barrel and firing mechanism designed to eject or propel a projectile by the action of any explosive or combustible propellant, and having a barrel not exceeding twelve inches in length, measured by the insertion therein of a rod with the receiver or slide closed, but does not include inoperable firearms which cannot be rendered operable, or handguns designed and safe only for use with black powder.

864.01 Definitions. As used in this chapter:

(a) "Firearm" means any weapon, by whatever name known, which is designed to expel a projectile or projectiles by the action of expanding gases, but does not include any weapon not designed to fire or capable of firing fixed cartridge or fixed shotshell ammunition.

(b) "Pistol" means any firearm with a barrel less than twelve inches in length.

(c) "Manufacturer" or "dealer" means any person engaged in the business of manufacturing, repairing or selling firearms at wholesale or retail.

(d) "Fugitive from justice" means any person who has fled or is fleeing from any law enforcement officer to avoid prosecution or incarceration for a felony or to avoid giving testimony in any criminal proceeding.

864.02 Possession restricted. (a) No person who has been convicted of a felony in any court of the United States, the several states, territories, possessions, commonwealth countries or the District of Columbia, or who is a fugitive from justice or of unsound mind or a drug addict or an habitual drunkard, shall possess a firearm within the City.

(b) No person under the age of eighteen years shall possess a pistol. The provisions of this paragraph shall not apply to the issue of pistols to members of the Armed Forces of the United States, active or reserve, State Militia or ROTC, when on duty or training, or to the temporary loan of pistols for instruction under the immediate supervision of a parent, guardian or adult instructor.

(c) No person shall sell, lease, lend or otherwise transfer a pistol to any person under eighteen years of age except as provided in subsection (b) hereof.

864.03 Removal of Serial Numbers. No person shall receive, possess, sell, lease or otherwise transfer any pistol from which the manufacturer's serial numbers or letters have been removed.

864.05 Sales, transfers * * * (a) No manufacturer or dealer, except a manufacturer or dealer having a license issued, under the provisions of this chapter, shall sell any firearm at wholesale or retail.

(b) No person shall sell, lease, lend or otherwise transfer a firearm to any person who he knows or has reasonable cause to believe has been convicted of a felony, or is a fugitive from justice or of unsound mind or a drug addict or an habitual drunkard.

(c) When delivered, all pistols must be securely wrapped and must be unloaded.

* * * * *

864.09 Obtaining weapons by theft or fraud. No person shall procure or attempt to procure any firearm, regardless of dollar value, by theft, fraud, violence or threat of violence.

864.10(b) same as 2923.20(A) (4).
864.10(c) same as 2923.20(A) (5).
864.11 same as 2923.21(A).

Alliance

549.01same as 2923.11
549.05 same as 2923.17
549.07 same as 2923.18

Section 789. It shall be unlawful for any person to buy, purchase or obtain in exchange any revolver, pistol, * * * without first having obtained a permit from the chief of police to make such purchase or exchange.

Amberley Village

Sec. 134.07. Improperly Furnishing Firearms to a Minor. (A) No person shall:

(1) Sell any firearm to a person under age eighteen;

(2) Sell any handgun to a person under age twenty-one;

(3) Furnish any firearm to a person under age eighteen, except for purposes of lawful hunting or for purposes of instruction in firearms safety, care, handling or marksmanship under the supervision or control of a responsible adult.

Amelia

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Amherst

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Andover

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 same as 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.10 same as 2923.21.

Arlington

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a)(2) same as 2923.20(A)(4).
549.07(a) (3) same as 2923.20(A)(5).
549.08 same as 2923.21.

Ashland

587.01 same as 2923.11.
587.06(A) (2) same as 2923.20(A) (4).
587.06(A) (3) same as 2923.20(A) (5).
587.07 same as 2923.21.

Ashtabula

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

551.01 Definitions. As used in this chapter, certain words are defined as follows:

(a) "Firearm" has the same meaning as defined in Section 549.01(b).

(b) "Pistol" means any firearm with a barrel less than twelve inches in length.

(c) "Manufacturer" or "dealer" means any person engaged in the business of manufacturing, repairing or selling firearms at wholesale or retail.

551.02 Nonserialized Pistols. No person shall receive, possess, sell, lease or otherwise transfer any pistol from which the manufacturer's serial numbers or letters have been removed.

551.03 Manufacturer's and Dealers' Licenses; Fee and Term. Application for a manufacturer's or dealer's license shall be made to the Police Chief on forms prescribed and furnished by the City. [Contact local authorities for requirements.] * * *

Ashville

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a)(2) same as 2923.20(A)(4).
549.07(a)(3) same as 2923.20(A)(5).
549.08 same as 2923.21.

Athens

131.06. Sale of firearms to minors. No person shall sell, barter, furnish, or give to a minor under the age of seventeen years, an air gun, musket, rifle, shotgun, revolver, pistol, or other firearm, or ammunition therefor, or being the owner or having charge or control thereof, knowingly permit it to be used by a minor under such age.

Aurora

672.01 same as 2923.11
672.05 same as 2923.17
672.07 same as 2923.18
672.09(a) (2) same as 2923.20(A) (4)
672.10 same as 2923.21

672.15 (b)License Required. Every firearms dealer in the City shall procure a license to engage in such business. Any firearm dealer engaged in such business at more than one permanent location in the City shall procure a separate license for each such permanent location. Application for such license shall be made under oath to the Chief of Police.

Avon

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

Avon Lake

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

Barberton

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 same as 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

Bay Village

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Beachwood

626.01 Definitions. (a) "Chief of Police" means the Chief of Police of the City, or his duly authorized agents.

* * * * *

(c) "Firearm" means any weapon, including a handgun, by whatever name known, or the barrel, receiver or any part of the firing mechanism of such weapon, which is designed to eject or propel a projectile by the action of an explosive or combustible propellant, but does not include inoperable firearms which cannot be rendered operable.

(d) "Handgun" means any pistol, revolver or other firearm, having a barrel not exceeding twelve inches in length, measured by the insertion therein of a rod with the receiver or slide closed, but does not include handguns designed and safe only for use with black powder.

(e) "Firearms dealer" means any person, firm or corporation, regularly engaged in the business of selling or trading firearms or ammunition at wholesale or retail within the limits of the City, whether as the principal business of such person, firm or corporation, or in addition thereto.

(f) "Fugitive from justice" means a person who flees, escapes from custody, conceals or attempts to use any other unlawful means to avoid prosecution or punishment for a felony under the laws of this or any other state, the United States or any of its territories or possessions, the District of Columbia or any foreign country with which the United States has a treaty of extradition in effect.

(g) "Resident" means any person who has a place of residence within the limits of the City.

(h) "Nonresident" means any person who does not have a place of residence within the limits of the City.

(i) "Minor" means any person under the age of twenty-one years.

626.03 Prohibitions. (a) No person shall purchase, own, possess, receive, have on or about his person or use any firearm or ammunition, if such person is a fugitive from justice or is, at that time, under court adjudication for mental incompetence, or has been committed to a mental institution, hospitalized or has received hospital treatment for any mental disorder, alcoholism or narcotic addiction within the previous ten years, unless a doctor indicates, in writing, that such person is completely recovered and sufficiently stable to own or possess a firearm or ammunition.

(b) No person shall purchase, receive, have on or about his person or use any firearm or ammunition while under the influence of alcohol, any narcotic drug, hallucinogen or other dangerous drug or stimulants as defined by Title 21 of the United States Code, Section 321 (v), known as the Drug Abuse Control Amendments of 1965 effective February 1, 1966.

(c) No person shall purchase, own, possess, receive, have on or about his person or use any firearm or ammunition if such person has been convicted of a felony involving the use or threat of use of force or violence against the person of another under the laws of this City, the State of Ohio or any other state, the United States or any of its territories or possessions, the District of Columbia or any foreign country with which the United States has a treaty of extradition in effect, provided, however, such person shall be eligible to possess, purchase, own, receive or have on or about his person or use a handgun or handgun ammunition after ten years have elapsed from the date of completion of any sentence, probationary period or parole imposed upon such person so convicted.

(d) No person shall knowingly sell, transfer, give, deliver or furnish any firearms or ammunition to any person prohibited by this section from purchasing, owning, possessing, receiving, having on or about his person or using such firearms or ammunition.

626.05 Identification card required. (a) No person shall purchase, own, possess, receive, have on or about his person or use any handgun unless such person has a handgun owner's identification card issued to him and in effect pursuant to this section, or unless such person has been issued a dealer's license pursuant to Section 626.07, or unless such person is exempt from the requirements of an identification card pursuant to Section 626.06.

* * * * *

626.06 Exemptions. (a) The requirements of a handgun owner's identification card contained in Section 626.05 do not apply to the purchase, ownership, possession, receipt, having on or about the person or use of any handgun or handgun ammunition by:

(1) Any state or the United States, or any political subdivision, department or agency of either.

(2) Officers or agents of any state or the United States, or any political subdivision, department or agency of either; members of the organized militia of any state, or the Armed Forces of the United States; or law enforcement officers of any political subdivision to the extent that the official duties of any such persons require them to purchase, own, possess, receive, carry or use handguns.

(3) Licensed dealers of handguns, and their agents and servants, to the extent that the purchase, ownership, possession, receipt or use of handguns is in the ordinary course of business.

(4) Nonresidents of the City who are residents of the State, provided that such persons are not prohibited by the provisions of Sections 626.03 and 626.05, and possess and exhibit upon request, such valid permit, authorization or identification issued by the chief of police or the sheriff of their place of residence to purchase, own, possess, receive, carry or use any handgun; * * *

The requirements of a valid permit, authorization or identification as required by this subparagraph shall not apply to a nonresident who enters the City with firearms for the sole and only purpose of exhibiting or trading such firearms at a public firearms display, show or exhibition, or for the sole and only purpose of participating in an organized and sanctioned pistol match. The permit, authorization or identification provided for in this subparagraph shall be valid for thirty days only from the date thereof.

(5) Nonresidents of the City, moving to the City for the purpose of establishing residence herein, during a period not exceeding thirty days from the date of their entry into the City for such purpose, provided that such persons shall possess and exhibit upon request such valid permit, authorization or identification as may be required by the laws of their former domicile to own, possess, receive or have on or about the person any handgun.

(6) Executors, administrators, guardians, receivers, trustees in bankruptcy and other fiduciaries duly qualified and appointed by a court of competent jurisdiction, when acting in their fiduciary capacity, and their attorneys.

(7) Heirs and legatees acquiring any handgun or handgun ammunition through distribution of any estate, and other persons other than fiduciaries acquiring any handgun through operation of law, during a period not exceeding sixty days from the date of their coming into possession of any handgun.

(8) Carriers, warehousemen and others engaged in the business of transporting or storing firearms, handguns and their agents, to the extent that the ownership, possession, receipt or having on or about the person of business and in conformity with the laws of this State or the United States.

(9) Residents of the City who acquire, by purchase or otherwise, a handgun or handguns during a period not exceeding thirty days from such purchase or acquisition.

(b) No person shall purchase, or otherwise obtain, or attempt to purchase or otherwise obtain, any handgun by claiming an exemption pursuant to this section from the requirement of a handgun owner's identification card contained in Section 626.05, knowing such claim of exemption to be false.

626.07 Dealer's license. (a) Every firearms dealer in the City shall procure a license to engage in such business. Any firearms dealer engaged in such business at more than one permanent location in the City shall procure a separate license for each separate permanent location. Application for such license shall be made to the Chief of Police.

* * * * *

(c) No person, firm or corporation shall engage in business as a firearms dealer in this City without a license as provided by this section. * * *

626.11 Further prohibitions; sales; purchases; transfers. (a) No person shall, in the City, purchase or otherwise obtain ownership or possession of, or as security for a loan,

any handgun from any person, unless the transferor exhibits a handgun owner's identification card valid on its face, issued to the transferor pursuant to Section 626.05, or unless the transferor exhibits evidence that he is exempt from the requirement of an identification card pursuant to Section 626.06.

(b) No person in this City shall sell, deliver, transfer or furnish any handgun to any person in this City unless the transferee exhibits a handgun owner's identification card valid on its face and issued to the transferee pursuant to Section 626.05, or unless the transferee exhibits evidence that he is exempt from the requirement of an identification card pursuant to Section 626.06.

* * * * *

Bedford

* * * * *

672.17 Weapons dealers; license required. (a) No person in the City shall sell, transfer, give away or otherwise dispose of any pistol, revolver or other firearm, having a barrel not more than twelve inches in length, measured by the insertion therein of a rod with the receiver or slide closed, * * * without first securing a license from the Chief of Police.

* * * * *

672.19 Report of gift or sale. (a) Every person who is permitted to deal in the deadly weapons described in Section 672.17 shall make out and deliver to the Chief of Police, once a month on the last day of the month, a legible and correct report of every sale or gift made under authority of such license during the preceding calendar month, which report shall contain the date of such sale or gift, the name of the purchaser or donor, with his or her address and age, the number, kind, description and price of such weapon, the number of the purchaser's permit and the purposes given by such person for the purchase of such weapon, which report shall be substantially in the following form: Number of permit; Number of weapon; Name of purchaser; Address of purchaser; Age of purchaser; Kind or description of weapon; For what purpose purchased; Price.

672.21 Limitation on purchase, sale and transfer. (a) No person shall purchase or acquire by gift or transfer any of the weapons mentioned in Section 672.17 who:

(1) Is under twenty-one years of age;

(2) Is a fugitive from justice or is at the time under court adjudication of mental incompetence;

(3) Refuses or neglects to give the necessary information required in any application he is required to prepare;

(4) Has been convicted of the illegal use or possession of narcotics;

(5) Is, at the time of his application, under the influence of alcohol or any other dangerous drug or narcotic;

(6) Has been convicted of a felony under the laws of this or any other state, the United States or any of its territories or possessions, the District of Columbia, or any foreign country with which the United States has a treaty of extradition in effect; provided, however, that such person shall have eligibility restored after ten years have elapsed from the date of completion of any sentence, probationary period or parole; or

(7) Has been convicted of more than one misdemeanor involving the use of force and violence or threats of the use of force and violence against another person within one year prior to his application.

(b) It shall be the duty of the seller of the aforesaid weapons, as a condition of his license, to obtain the information required by Section 672.19 in affidavit form and to have such form signed and sworn to before a notary public by the purchaser on three copies, one to be delivered to the purchaser at the time of sale, the second to be delivered to the Chief of Police as required by Section 672.19 and the third to be kept by the seller for a period of not less than six months.

(c) It shall be the duty of the seller of the aforesaid weapons, as a condition of his license, to display a copy of Sections 672.17 through 672.21 in a conspicuous place.

(d) No holder of a license as required by Section 672.17 shall sell one of the weapons named in Section 672.17 without first obtaining the information in proper affidavit form as required herein. Failure to comply with this section shall be grounds for revocation of the license.

(e) Whoever violates or fails to comply with any of the provisions of this section is guilty of a misdemeanor of the third degree. Punishment shall be as provided in Section 698.02.

Section 547.14 Certain Handguns Prohibited. No person shall possess, sell, transfer, give, deliver or furnish a handgun having a retail value of $90.00 or less and having a barrel, slide, frame, or receiver which is a die casting of zinc alloy or any other nonhomogeneous metal which will melt or deform at a temperature of less than 800 degrees Fahrenheit, either assembled or disassembled and having a gross weight of less than 19 ounces as originally manufactured.

A. Such handguns are hereby declared to be illegal contraband, which may be confiscated and destroyed by the Police Division.

B. Whoever violates the provisions of this section is guilty of a misdemeanor of the first degree.

C. For purposes of this section, "handgun" shall mean a firearm having a barrel and firing mechanism designed to eject or propel a projectile by the action of an explosive or combustible propellant, and having a barrel not exceeding twelve inches in length, measured by the insertion therein of a rod with the receiver or slide closed, but does not include inoperable firearms which cannot be rendered operable, or handguns designed and safe only for use with black powder.

Bellaire

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Bellbrook

This municipality has adopted Ohio State firearms laws.

Bellefontaine

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Bellevue

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Belpre

Sec. 131.08 Improperly furnishing firearms to a minor. (A) No person shall: (1) Sell any firearm to a person under age 18; (2) Sell any handgun to a person under age

(3) Furnish any firearm to a person under age 18, except for purposes of lawful hunting, or for purposes of instruction in firearms safety, care, handling, or marksmanship under the supervision or control of a responsible adult.

Berea

945.01 same as 2923.11.
945.05 same as 2923.17.

945.07(A) (2) same as 2923.20(A) (4).
945.07(A) (3) same as 2923.20(A) (5).
945.08 same as 2923.21.

Berkey

Sec. 38.10 Sale of explosives to minors. It shall be unlawful to sell, offer for sale or give away to a minor any explosive cap, cartridge, shell, guncotton or other similar article containing explosives.

Bexley

Section 1. License to sell firearms. It shall be unlawful for any person, firm or corporation to engage in the business of selling, or to sell, or give away to any person, within the city, any pistol, revolver, derringer, * * * or other weapon of like character, which can be concealed on the person, nor shall any person, firm or corporation doing business as a pawn broker, sell or give away or permit to be redeemed or removed from deposit or pledge, any of the deadly weapons hereinabove mentioned, without securing a license so to do as hereinafter provided, and no person, firm or corporation, having secured such a license, shall sell or give away, or permit to be redeemed or removed from deposit or pledge, any such weapon unless the person so purchasing, acquiring, redeeming or removing such property shall have secured a permit from the Mayor to purchase, acquire, redeem or remove such weapon in the manner hereinafter provided.

Section 5. Permit to purchase. It shall be unlawful for any person to purchase, or redeem, or remove from deposit or pledge, any pistol, revolver, derringer, * * * or other weapon of like character which can be concealed on the person, without first securing from the Mayor a permit so to do. Before any such permit is granted an application in writing shall be made therefor [contact local authorities for required contents] * * *. * * *no recommendation shall be required where the application is by a United States marshal, a sheriff or the chief of police of the city of Bexley, and that in case the application is by deputy United States marshal, or a deputy sheriff, the approval of his chief officer shall be sufficient recommendation, and in case the application is by a regular or special police officer of the city of Bexley, the approval of the chief of police shall be sufficient recommendation, and in case of any of the officers aforesaid the fee provided by section 6 shall not be required.

* * * * *

13-101 same as 2923.11
13-106(A) (2) same as 2923.20(A) (4)
13-107 same as 2923.21

Bloomdale Village

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Blue Ash

Sec. 91.05 Sale of firearms to minors. No person shall sell, barter, furnish, or give to a minor under the age of seventeen years, an air gun, musket, rifle, shotgun, revolver, pistol, or other firearm, or ammunition therefor, or, being the owner or having charge or control thereof knowingly permit it to be used by a minor under such age. This section is not applicable to a minor under the age of seventeen years who is hunting in accordance with Section 1533.13 of the Revised Code.

Sec. 91.06 Possession of firearms for instruction purposes. Section 91.05 or any other section of the Revised Code does not prohibit or render it unlawful to possess, use, or furnish for use, a rifle or other suitable firearm, together with such ammunition as is necessary, for the purpose of receiving and being given instructions and training in marksmanship and the proper handling, use, and care of firearms on any suitable range, which, at the time of such instruction and use, is under the supervision and control of a competent adult instructor, provided that the giving of such instruction and training is sponsored and supervised by an organization or association, which has been and continues to be, approved for this purpose by the adjutant general or provided that said instructor is the parent of the person receiving such instruction.

* * * * *

Bolivar

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a)(2) same as 2923.20(A)(4).
549.07(a)(3) same as 2923.20(A)(5).
549.08 same as 2923.21.

Boston Heights Village

549.01 same as 2923.11
549.05 same as 2923.17
549.07(a)(2) same as 2923.20(A)(4).
549.07(a)(3) same as 2923.20(A)(5).
549.08 same as 2923.21.

Bowling Green

511.01 same as 2923.11.
511.06(2) same as 2923.20(A) (4).
511.07 same as 2923.21.

Bradner

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Brady Lake

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a)(2) same as 2923.20(A)(4).
672.09(a)(3) same as 2923.20(A)(5).
672.10 same as 2923.21.

Bremen

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

Brewster

73.1 same as 2923.11

73.5 Failure to secure dangerous ordinance. (A) No person, in acquiring, possessing, carrying, or using any dangerous ordnance shall negligently fail to take proper precautions:

(1) To secure the dangerous ordnance against theft, or against its acquisition or use by any unauthorized or incompetent person; * * * * *

73.6 same as 2923.21(A)

Brooklyn

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.

672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

Brookville

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 same as 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (4).
672.10 same as 2923.21.

Brunswick

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a)(2) same as 2923.20(A)(4).
672.09(a)(3) same as 2923.20(A)(5).
672.10 same as 2923.21.

Bryan

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Burton

512.06(a) (2) same as 2923.20(A) (4).
512.06(a) (3) same as 2923.20(A) (5).
512.07 same as 2923.21.

Cadiz

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Cambridge

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Campbell

131.06. Sale of firearms to minors. No person shall sell, barter, furnish, or give to a minor under the age of seventeen years, an air gun, musket, rifle, shotgun, revolver, pistol, or other firearm, or ammunition therefor, or being the owner or having charge or control thereof, knowingly permit it to be used by a minor under such age.

134.03. Unlawful sale of weapons. (A) No person shall sell to any other person any pistol, revolver or other weapon which may be concealed upon the person without first obtaining a permit from the mayor to sell same.

Canfield

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Carlisle

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

Carrolton

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

Cecil

Sec. 38:10 Sale of explosives to minors. It shall be unlawful to sell, offer for sale, or give away to a minor any explosive cap, cartridge, shell, guncotton or other similar article containing explosives.

Centerburg

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Centerville

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Chagrin Falls

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Chardon

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Chesapeake

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 same as 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

Cheviot

134.13 same as 2923.21.

Chillicothe

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Cincinnati

Sec. 708-1. Aliens. No alien shall own or have in his possession or under his control a dangerous weapon.

Sec. 708-3. Minors. No person shall sell, barter, lend or give to a minor under the age of sixteen (16) years, an air-gun, musket, rifle, shotgun, revolver, pistol or ammunition therefor, * * * or any other dangerous weapon, and no minor under the age of sixteen (16) years shall buy, barter, hire, borrow, receive or possess an air-gun, musket, rifle, shotgun, revolver, pistol or ammunition therefor, * * * or any other dangerous weapon.

Sec. 708-7. Obliterating Identification Marks Prohibited. * * * No person shall keep in his possession or under his control any dangerous weapon upon which the name of the maker, model, manufacturer's number or other mark of identification has been to his knowledge changed, altered, removed or obliterated.

Sec. 708-9. Dealers in Weapons; License Fees. Every retail dealer in firearms, ammunition for firearms, or dangerous weapons, shall pay a license fee of two hundred thirty-four dollars and fifty cents ($234.50) per annum, and such license may be granted by the city manager upon written application of any such dealer. Where a dealer deals only in shotguns and rifles of regulation size manufactured for hunting and sporting purposes only, and the ammunition therefor, the annual license fee shall be the sum of twelve dollars and fifty cents ($12.50). * * *

Sec. 708-11. Restriction on Pawnbrokers. If a dealer licensed under the provisions of Section 708-9 carries on the business of pawnbroker or second-hand dealer, he shall not sell any firearms or dangerous weapons except shotguns and rifles of regulation size manufactured for hunting and sporting purposes only.

Sec. 708-13. Form of Application to Purchase Dangerous Weapon. The city manager shall prescribe a form of application covering the purchase of dangerous weapons. * * *

Sec. 708-15. Restriction on Sale of Weapons. No dealer shall sell a dangerous weapon to any person, unless such person shall fill out in full and sign an application blank as provided for in Section 708-13. No dealer shall sell such weapon to any purchaser with whom he is not personally acquainted, unless such purchaser is identified by a person who is personally known to him. * * *

The provisions of this section and of Section 708-13 shall not apply to sales at wholesale nor to sales of firearms which have a barrel over twelve (12) inches in length.

Sec. 708-17. Sale of Pistol Ammunition. No dealer shall sell pistol ammunition to any purchaser with whom he is not personally acquainted, unless such purchaser is identified by a person with whom he is personally acquainted.

Sec. 708-31. Ammunition, Sale to Minor. No person shall sell to a minor any cap or other explosive device used in the discharge of toy pistols and torpedo canes, or any blank cartridge, whether for use in pistols, revolvers or cannons. * * *

Cleveland

Chapter 627

627.01 same as 2923.11
627.06(a)(2) same as 2923.20(A)(4)

627.06(a)(4) Knowingly manufacture, possess, own, receive, purchase, possess for sale, sell, lend, give, acquire or furnish to any person any handgun of a .32 caliber or less and a barrel length less than three inches with such measurement in the revolver type weapon being made between the muzzle in the front edge of the cylinder, and in the automatic and other types of handguns, from the muzzle to the face of the bolt with action or slide closed. This subsection (a)(4) shall not apply to a law enforcement agent in the discharge of his duties, or to firearms described in Ohio R.C. 2923.11 (K)(1) and (5).

627.06(a)(5) Knowingly manufacture, possess for sale, sell, lend, give, acquire, furnish, purchase, own, possess, receive, have on or about his person or use any handgun which does not contain a serial number or other numerical identification, or which has had the serial number or other numerical identification obliterated.

627.07 same as 2923.21.

* * * * *

Chapter 674

674.01 Definitions. As used in this chapter:

(a) "Handgun" means any pistol, revolver or other firearm, having a barrel not exceeding twelve inches in length, measured by the insertion of a rod with the receiver or slide closed, or the barrel, receiver or any part of the firing mechanism of such weapon, which is designed to eject or propel a projectile by the action of an explosive or combustible propellant, but does not include inoperable handguns which cannot be rendered operable, curios, relics or antique handguns as presently or hereafter defined in Title 26, Part 178 of the Code of Federal Regulations, Commerce in Firearms.

(b) "Dealer" means any person, firm or corporation engaged in the business of selling or trading handguns or handgun ammunition at wholesale or retail within the limits of the City, whether as the principal business of such person, firm or corporation, or in addition thereto.

(c) "Resident" means any person who has a place of residence within the limits of the City of Cleveland.

(d) "Nonresident" means any person who does not have a place of residence within the limits of the City of Cleveland.

(e) "Identification card" means a handgun owner's identification card issued pursuant to Section 674.04.

(f) "Registration card" means a handgun registration card issued pursuant to Section 674.05.

* * * * *

674.04 Handgun Owner's Identification Card; Application; Prohibitions.

(a) Application for an identification card shall be made in writing, and shall be accompanied by an application fee of five dollars ($5.00) which shall be paid into the treasury of the City, with a separate accounting made therefor. If it does not appear upon investigation that the applicant is prohibited by this section from being issued an identification card, the Chief of Police shall issue an identification card to the applicant within not less than seven days nor more than sixty days from the date of application.

For the purposes of procuring an identification card, any and all forms and applications required shall be available, and may be filled out at the Central Police Station or any district police station.

(b) All handgun identification cards issued pursuant to this section shall be entitled "City of Cleveland, Ohio, Handgun Owner's Identification Card," be serially numbered according to a system devised by the Chief of Police; bear the date of issue, the date of expiration, the name of the Chief of Police, and the applicant's name, home address, birth date, physical description, and full face photograph; and shall be signed by the holder. A copy of each identification card shall be retained by the Chief, together with a copy of the application, which documents shall be maintained on permanent file by the Chief and shall be confidential and shall not be deemed a public record nor be disclosed to unauthorized persons.

(c) An identification card shall expire three years after the applicant's birthday next succeeding the date of issuance.

(d) An identification card shall not be issued to:

(1) A person now or hereafter prohibited by Ohio R.C. 2923.13 from purchasing, owning, possessing, receiving, having on or about his person or using any firearm or ammunition;

(2) A person under twenty-one years of age;

(3) A person convicted of an illegal use or possession of narcotics;

(4) A person with more than one conviction of being drunk and disorderly or driving a motor vehicle while intoxicated, either of which occurs within one year prior to the date of application.

(5) A person who is under indictment for, or who has been convicted of or who has been adjudged a juvenile delinquent for commission of any felony or a violation of subsection (e) hereof.

(6) Any person with more than one conviction of a misdemeanor involving the use of force and violence, or the threat of the use of force and violence against the person of another within two years prior to application for such identification card.

(e) No person shall knowingly give any false information in making application for an identification card, and no person shall use or attempt to use an identification card to purchase, own, possess, receive, have on or about

his person, or use any handgun, knowing such identification card belongs to another, or knowing it was obtained by means of false information, or when it is void by reason of the holder becoming a ember of the class of persons prohibited by subsection (d) hereof from being issued an identification card.

(f) A possessor of an identification card shall become ineligible to possess such a card if he becomes one of that class of persons to whom an identification card cannot be issued pursuant to subsection (d) hereof, and he shall thereupon immediately forfeit such card and return the same to the Chief of Police. Any and all handguns owned by him or in his possession shall be forthwith confiscated and disposed of by the Division of Police as provided in Section 674.03. However, if such person becomes ineligible only because of an indictment referred to in subsection (d)(6) hereof, such handgun and identification and registration cards shall not be disposed of and shall be held for safekeeping pending disposition of the indictment.

674.05 Registration of Handguns; Application; Fee.

(a) Application for a handgun registration card shall be made in writing by the person claiming to be the owner of the handgun to be registered at any office where identification cards may be issued pursuant to Section 674.04. Such application shall be accompanied by an application fee of one dollar ($1.00) for each handgun to be registered, which shall be paid into the treasury of the City, with separate accounting made therefor. Upon being satisfied that the applicant holds a valid identification card and is not in that class of persons prohibited from holding the same, a registration card shall be issued to the applicant within not less than three days and not more than sixty days from the date of application.

(b) All registration cards issued pursuant to this section shall be entitled "City of Cleveland, Ohio, Handgun Registration Card;" be serially numbered according to a system devised by the Chief of Police; bear date of issue, the name of the Chief of Police, the applicant's name, home address, identification card number, the signature of the applicant; and contain the name, type, caliber and serial number of the handgun. A copy of each registration card shall be retained by the Chief, together with a copy of the application, which documents shall be maintained on permanent file by the Chief and shall not be deemed a public record nor be disclosed to unauthorized persons.

(c) Any person who sells or otherwise transfers possession of a registered handgun shall, within five days of the date of transfer of possession thereof, surrender the registration card for such handgun with the name, address or social security number and identification card number, if required by law, of the buyer endorsed thereon, to any office where identification cards are issued, and obtain a receipt therefor. The office receiving the same shall immediately cancel such registration card.

674.06 Exemptions.

(a) The following shall be exempt from the provisions of this chapter:

(1) Any state of the United States, the United States or any political subdivision, department or agency of either;

(2) Any officer or agent of any state of the United States, or any agency of either, a member of the organized militia of any state or the armed forces of the United States, or a law enforcement officer of any political subdivision, but only to the extent that his official duties require him to purchase, own, possess, receive, carry or use handguns and not for the personal use of such individual.

(b) The requirements of an identification card and registration card contained in Sections 674.04 and 674.05 shall not apply to:

(1) A holder of a dealer's license issued pursuant to Section 674.07.

(2) A nonresident of the City who holds and exhibits upon request a valid permit, authorization or identification issued by the chief of police or the sheriff of his place of residence, to purchase, own, possess, receive, carry or use any handgun. It is provided further, that handguns in the possession of or under the control of nonresidents shall at all times be unloaded and encased, except while on a suitable firing range, or while being used for lawful hunting, or while unloaded at a public firearms display, show or exhibition.

(3) A new resident of the City, during a period not exceeding thirty days after he becomes a resident. However, such person shall possess and exhibit upon request such valid permit, authorization or identification as may be required by the laws of his former domicile to own, possess, receive or have on or about the person any handgun, or proof of former residence in a jurisdiction which does not require the same.

(4) An executor, administrator, guardian, receiver, trustee in bankruptcy, or other fiduciary duly qualified and appointed by a court of competent jurisdiction, when acting in his fiduciary capacity, and an attorney for such a person, when such handgun constitutes property of the estate or trust, but not for the personal use by such individual.

(5) The next of kin or legatee of a decedent acquiring a handgun through distribution of an estate, during a period not exceeding thirty days from the date of his coming into possession thereof, but in any event not more than fifteen days after the appointment of an executor, administrator or other fiduciary.

(6) Carriers, warehousemen and others engaged in the business of transportation and/or storage and their employees, to the extent that the possession, receipt or having on or about the person of any handgun is in the ordinary course of business and in conformity with State or Federal laws, but not for the personal use of any such person.

(7) A person owning or possessing any handgun on the effective date of Ordinance 975-A-75 who files an application for an identification card during a period not to exceed 100 days from such effective date, until such application is granted or denied. During any 100 day period, any person required to register a handgun shall cause the handgun to be brought, unloaded and securely wrapped, to the Central Police Station or to a district police station for verification of its type, caliber and serial number.

(8) A Federally licensed manufacturer of handguns.

674.07 Handgun Dealer's License; Fee.

(a) Every dealer in the City shall procure a license to engage in such business. Any dealer engaged in such business at more than one location in the City shall procure a separate license for each such location.

Application for a dealer's license shall be made in writing at the office of the Chief of Police and shall be accompanied by an application fee of five dollars ($5.00), which shall be paid into the City treasury, with a separate accounting made therefor. If it appears upon investigation that the applicant holds a Federal dealer's license, the Chief of Police shall issue a dealer's license to the applicant within not less than seven days nor more than sixty days from the date of application. A copy of each dealer's license shall be retained by the Chief, together with a copy of the application, which documents shall be maintained on permanent file by the Chief.

(b) A dealer's license shall remain in effect for one year or until such time as it is revoked, surrendered or the dealer discontinues business as a dealer. Licenses issued pursuant to the provisions of this section are not transferable.

(c) Notwithstanding the provisions of subsection (a) hereof, no dealer's license shall be issued to any applicant whose dealer's license has been revoked, nor to any applicant who has been convicted of a violation of any provision of this chapter, until the expiration of five years from the effective date of such revocation or five years from the date of conviction. The license issued pursuant to this section shall be prominently displayed by every dealer at his place of business.

(d) Ninety days after the effective date of Ordinance 975-A-75, no person, firm or corporation shall engage in business as a dealer in the City without a dealer's license. Each day of continuing violation of this section shall be deemed a separate offense.

(e) No dealer, or any agent or employee of a dealer shall fail to comply with this section or knowingly cause any false information to be entered on a record of purchase or sale of any handgun. No purchaser of any handgun

shall give any false information for entry on such record of sale.

674.08 License Revocation.

(a) When any licensed dealer has been convicted of a violation of any of the provisions of this chapter, the Chief of Police shall revoke the license of such dealer. A certified copy of the order of revocation shall be sent forthwith to the dealer, who may appeal such order or revocation to the Director of Public Safety within ten days from the receipt of the order. The Director of Public Safety shall conduct a hearing upon such appeal within ten days from the receipt of a written notice of appeal from such order or revocation.

(b) No dealer shall employ, or enter into any partnership or corporation with any person, firm or corporation whose dealer's license has been revoked.

674.09 Handgun Dealer's Records.

(a) Every dealer shall maintain records of the purchase and sale of handguns. Such records shall be maintained on forms prescribed by the Chief of Police; contain the name of the dealer; and identify each handgun by manufacturer, model number or name, type, caliber and serial number. If such weapon is other than a standard model, or has been modified and improved, the record of sale shall give a brief description of the weapon including such information as may be necessary to identify it.

(b) The record of purchase shall also contain the name of the person from whom each handgun was purchased and the serial number of the seller's identification card, if any, and the serial number of the registration card of each handgun, if any.

(c) The record of sales shall also contain the place and date of the sale; the name, address, age and Social Security number of the purchaser; the serial number of the identification card of the purchaser, if any, or if the purchaser is a nonresident of Cleveland who is exempt from the requirement of an identification card pursuant to Section 674.06(b)(2), then such information as is contained in a valid and effective permit, authorization or identification issued at the purchaser's place of residence. The record of the sale shall also include the serial number of the registration card issued to the purchaser with respect to the handgun purchased. In the case of a sale from one dealer to another, the license number of the dealer shall be recorded instead of the serial numbers of the identification card and registration card. The record of any sale required to be made under this section shall be turned over to the Chief within twenty-four hours of the sale.

(d) The Chief shall keep permanent records of all sales and transfers of handguns as required in this chapter, together with all copies of and applications for identification cards and registration cards. Such records shall be kept in such manner as to record all of the handguns in the ownership and/or possession of all persons who have been issued an identification card or registration card. Such records shall not be deemed public records and shall not be disclosed to unauthorized persons.

674.10 Stolen or Lost Handguns; Reports. Whenever any handgun is stolen or lost, the person losing possession thereof shall, immediately upon discovery of such theft or loss, make a report thereof to the Chief of Police showing the following:

(a) Name, address and Social Security number of the person owning or having possession of such handgun;

(b) Kind of handgun;

(c) Serial number of handgun;

(d) Model;

(e) Caliber;

(f) Manufacturer of handgun;

(g) Handgun registration card number, if any;

(h) Date and place of theft or loss;

(i) A complete statement of the facts and circumstances surrounding such theft or loss.

Cleveland Heights

Weapons and Explosives

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Regulation of Firearms

551.01 Definitions. (a) "Chief of Police" means the Chief of Police of the City of Cleveland Heights or his duly authorized agents.

(b) "Encased" means enclosed in a case, container or receptacle, designed and constructed specifically for the purpose of enclosing a firearm, but does not include a holster for a pistol or revolver.

(c) "Firearm" same as 2923.11(B)

(d) "Handgun" same as 2923.11(C)

(e) "Firearms dealer" means any person, firm or corporation regularly engaged in the business of selling or trading firearms or ammunition at wholesale or retail within the limits of the City, whether as the principal business of such person, firm or corporation, or in addition thereto.

(f) "Fugitive from justice" means a person who flees, escapes from custody, conceals or attempts to use any other unlawful means to avoid prosecution or punishment for a felony under the laws of this or any other state, the United States or any of its territories or possessions, the District of Columbia, or any foreign country with which the United States has a treaty of extradition in effect.

(g) "Resident" means any person who has a factual place of residence within the limits of the City.

(h) "Nonresident" means any person who does not have a factual place of residence within the limits of the City.

(i) "Minor" means any person under the age of twenty-one years.

551.03 Prohibitions. (a) No person shall purchase, receive, have on or about his person, or use any firearm or ammunition while under the influence of alcohol, any narcotic drug, hallucinogen or other dangerous drug.

(b) No person shall knowingly sell, transfer, give, deliver or furnish any firearms or ammunition to any person prohibited by this section from purchasing, owning, possessing, receiving, having on or about his person, or using such firearms or ammunition.

551.05 Owner's identification card required; application, fee and issuance. (a) No person shall purchase, own, possess, receive, have on or about his person, or use any handgun except upon a suitable firing range, unless such person has a handgun owner's identification card issued to him and in effect pursuant to this section, or unless such person is exempt from the requirements of an identification card pursuant to Section 551.06. * * *

(c) All identification cards issued pursuant to this section shall be entitled "City of Cleveland Heights, Ohio, Handgun Owner's Identification Card", [contact local authorities for required contents] * * *.

551.06 Exemptions. (a) The requirements of a handgun owner's identification card contained in Section 551.05 do not apply to the purchase, ownership, possession, receipt, having on or about the person, or use of any handgun or handgun ammunition by:

(1) Any state or the United States, or any political subdivision, department or agency of either;

(2) Officers or agents of any state or the United States, or any political subdivision, department or agency of either, members of the organized militia of any state, or the armed forces of the United States, or law enforcement officers of any political subdivision to the extent that the official duties of any such person require him to purchase, own, possess, receive, carry or use handguns;

(3) Licensed manufacturers and dealers, and their agents and servants, to the extent that the purchase, ownership, possession, receipt or use of any handgun is in the ordinary course of business;

(4) Nonresidents of the City who are residents of the State of Ohio; provided that such persons are not prohibited by the provisions of Section 551.03 or 551.05, and possess and exhibit upon request such valid permit, authorization, or identification issued by the Chief

of Police or the Sheriff of their place of residence to purchase, own, possess, receive, carry or use any handgun, * * *.

(5) Nonresidents of the City moving to this City for the purpose of establishing residence herein, during a period not exceeding thirty days from the date of their entry into this City for such purpose; provided that such persons shall possess and exhibit upon request such valid permit, authorization or identification as may be required by the laws of their former domicile to own, possess, receive or have on or about the person any handgun.

(6) Executors, administrators, guardians, receivers, trustees in bankruptcy, and other fiduciaries duly qualified and appointed by a court of competent jurisdiction, when acting in their fiduciary capacity, and their attorneys.

(7) Heirs and legatees acquiring any handgun or handgun ammunition through distribution of any estate, and other persons other than fiduciaries acquiring any handgun through operation of law, during a period not exceeding sixty days from the date of their coming into possession of any handgun.

(8) Carriers, warehousemen and others engaged in the business of transporting or storing firearms, handguns, and their agents, to the extent that the ownership, possession, receipt, or having on or about the person of any handgun by such persons is in the ordinary course of business and in conformity with the laws of this State or the United States.

* * * * *

551.07 Restrictions on sales, purchases and transfers. (a) No person shall, in the City, purchase or otherwise obtain ownership or possession of, or as security for a loan, any handgun from any person, unless the transferor exhibits a handgun owner's identification card valid on its face, issued to the transferor pursuant to Section 551.05, or unless the transferor exhibits evidence that he is exempt from the requirement of an identification card pursuant to Section 551.06.

(b) No person in this City shall sell, deliver, transfer or furnish any handgun to any person in this City unless the transferee exhibits a handgun owner's identification card valid on its face and issued to the transferee pursuant to Section 551.05, or unless the transferee exhibits evidence that he is exempt from the requirement of an identification card pursuant to Section 551.06. * * *

551.08 Dealer's license required; application and issuance. (a) Every firearms dealer in the City shall procure a license to engage in such business. * * *

Clifton

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

Clyde

134.03. Sale of firearms to minors. (A) No person shall sell, barter, furnish or give to a minor under the age of 17 years an air gun, musket, rifle, shotgun, revolver, pistol or other firearm, or ammunition therefor, or, being the owner or having charge or control thereof, knowingly permit it to be used by a minor under such age.

Columbiana

549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Columbus

545.01 License required; purchase permits. It shall be unlawful for any person to engage in the business of selling, or to sell, or to give away to any person, within the City, any pistol, revolver, * * * or other weapon of like character, which can be concealed on the person, nor shall any person doing business as a pawnbroker sell or give away or permit to be redeemed or removed from deposit or pledge, any of the deadly weapons hereinabove mentioned, without securing a license to do so. No person having secured such a license shall sell or give away, or permit to be redeemed or removed from deposit or pledge, any such weapon unless the person so purchasing, acquiring, redeeming or removing such property shall have secured a permit from the Director of Public Safety to purchase, acquire, redeem or remove such weapon as provided by C.C. 545.05.

545.05 Purchase permit applications; exceptions. It shall be unlawful for any person to purchase, or redeem, or remove from deposit or pledge, any pistol, revolver, derringer, * * * or other weapon of like character which can be concealed on the person, without first securing from the Director of Public Safety a permit to do so. Before any such permit is granted, an application in writing shall be made therefor, setting forth in such application the name, address, age, height, weight, complexion, nationality and other elements of identification of the person desiring such permit. The application shall also contain a recommendation for the issuance of a permit from two persons who shall be known to the Director of Public Safety as persons of good reputation and residents of the City for at least one year, or who shall appear to be taxpayers residing within the City; except no recommendation shall be required where the application is by a United States marshal, a sheriff or the Chief of Police of the City.

In case the application is by a deputy United States marshal, or a deputy sheriff, the approval of his chief officer shall be sufficient recommendation. In case the application is by a regular or special police officer of the City, the approval of the Chief of Police shall be sufficient recommendation. The fee provided by C.C. 545.06 shall not be required for any of the officers listed in this section.

Chapter 2323

2323.01 same as 2923.11
2323.05 same as 2923.17

Chapter 2534

2534.01 Definitions. * * * * * (e) "Dangerous Ordnance" means any of the following, except as provided in division (f) of this section:

(1) Any automatic or sawed-off firearm, or zip-gun;

(2) Any explosive device or incendiary device;

* * * * *

(4) Any firearm, rocket launcher, mortar, artillery piece, grenade, mine, bomb, torpedo, or similar weapon, designed and manufactured for military purposes, and the ammunition therefor.

(f) "Dangerous Ordnance" does not include any of the following:

(1) Any firearm, including a military weapon and the ammunition therefor, and regardless of its actual age, which is of a type in accepted use prior to 1887, has no mechanical hydraulic, pneumatic, or other system for absorbing recoil and returning the tube into battery without displacing the carriage, and is designed and safe for use only with black powder.

(2) Any pistol, rifle, or shotgun, designed or suitable for sporting purposes, including a military weapon as issued or as modified, and the ammunition therefor, unless such firearm is an automatic or sawed-off firearm;

(3) Any cannon or other artillery piece which, regardless of its actual age, is of a type in accepted use prior to 1887, has no mechanical hydraulic, pneumatic, or other system for absorbing recoil and returning the tube into battery without displacing the carriage, and is designed and safe for use only with black powder;

(4) Black powder, priming quills, and percussion caps possessed and lawfully used to fire a cannon of a type defined in division (f)(3) of this section during displays, celebrations, organized matches or shoots, and target

practice, and smokeless and black powder, primers, and percussion caps possessed and lawfully used as a propellant or ignition device in small-arms or small-arms ammunition;

(5) Dangerous ordnance which is inoperable or deactivated, and which is kept as a trophy, souvenir, curio, or museum piece.

(6) Any device which is expressly excepted from the definition of a destructive device pursuant to the "Gun Control Act of 1968", 82 Stat. 1213, 18 U.S.C. 921 (A)(4), and any amendments or additions thereto or reenactments thereof, and regulations issued thereunder.

* * * * *

2534.11 **Records.** * * * * * (e) No person shall sell any dangerous ordnance to any person unless that person exhibits a valid certificate of safety as provided by this Chapter. In addition to the information required by division (a) of this section, the seller of dangerous ordnance shall keep a record of the certificate number of the buyer and of the official who issued such certificate. A copy of the record of any sale of dangerous ordnance shall be forwarded at the end of each month to the Fire Prevention Bureau of the City of Columbus.

* * * * *

2534.13 **Exceptions.** The certification or licensing provisions of this Chapter do not apply to:

(a) Officers, agents or employees of this or any other state or the United States, members of the armed forces of the United States or the organized militia of this or any other state, law enforcement officers, and members of the Division of Fire to the extent that any such person is authorized to acquire, have, carry, or use dangerous ordnance and is acting within the scope of his duties;

(b) Importers, manufacturers, dealers, and users of explosives, having a license or user permit issued and in effect pursuant to the "Organized Crime Control Act of 1970", 84 Stat. 952. 18 U.S.C. 843, and any amendments or additions thereto or reenactments thereof, with respect to explosives and explosive devices lawfully acquired, possessed, carried or used under the laws of this state and applicable federal law;

(c) Importers, manufacturers, and dealers having a license to deal in destructive devices or their ammunition, issued and in effect pursuant to the "Gun Control Act of 1968", 82 Stat. 1213, 18 U.S.C. 923, and any amendments or additions thereto or re-enactments thereof with respect to dangerous ordnance lawfully acquired, possessed, carried, or used under the laws of this state and applicable federal law;

(d) Persons to whom surplus ordnance has been sold, loaned, or given by the Secretary of the Army pursuant to 70A Stat. 282 and 283, 10 U.S.C. 4684, 4685, and 4686, and any amendments or additions thereto or re-enactments thereof, with respect to dangerous ordnance when lawfully possessed and used for the purposes specified in such sections;

(e) Owners of dangerous ordnance registered in the National Firearms Registration and Transfer Record pursuant to the Act of October 22, 1968, 82 Stat. 1229, 26 U.S.C. 5841, and any amendments or additions thereto or re-enactments thereof, and regulations issued thereunder.

(f) Carriers, warehousemen, and others engaged in the business of transporting or storing goods for hire, with respect to dangerous ordnance lawfully transported or stored in the usual course of their business and in compliance with the laws of this state and applicable federal law.

* * * * *

Commercial Point

1200.06 Sec. 1 & 2 same as 2923.17(A) & (B).
1200.07 Sec. 1(b) same as 2923.20(A) (4).
1200.07 Sec. 1(c) same as 2923.20(A) (5).
1200.08 Sec. 1 same as 2923.21(A).

Coolville

Sec. 12-106. (A) No person shall: * * * * * (2) When transferring any dangerous ordinance to another, negligently fail to require the transferee to exhibit such identification, license, or permit showing him to be authorized to acquire dangerous ordinance pursuant to Section 12-105 of the General Offense Code or 2923.17 of the Ohio Revised Code, or negligently fail to take a complete record of the transaction and forthwith forward a copy of such record to the Sheriff of the county or Safety Director or Police Chief of the municipality where the transaction takes place; * * *

Cortland

* * * * *

2. It shall be unlawful for such non-citizen to purchase, carry or possess any firearm or other dangerous weapon and such firearms or dangerous weapon shall be delivered forthwith to the Mayor and by him impounded for a period of two years.

Coshocton

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

Crestline

Sec. 131.06 Sale of firearms to minors. No person shall sell, barter, furnish, or give to a minor under the age of seventeen years, an air gun, musket, rifle, shotgun, revolver, pistol, or other firearm, or ammunition therefor, or being the owner or having charge or control thereof, knowingly permit it to be used by a minor under such age.

Crooksville

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a)(2) same as 2923.20(A)(4).
549.07(a)(3) same as 2923.20(A)(5).
549.08 same as 2923.21.

Cuyahoga Falls

529.06(a) (2) same as 2923.20(A) (4).
529.06(a) (3) same as 2923.20(A) (5).
529.07 same as 2923.21.

Dayton

General Provisions

138.01 same as 2923.11.
138.06(A) (2) same as 2923.20(A) (4).
138.07 same as 2923.21.

Handguns

Sec. 138.10 Definitions. For the purpose of Secs. 138.10 to 138.23, the following words and phrases shall have the following meanings ascribed to them respectively.

(A) "Handgun." Any firearm designed or modified to be fired while being held in one hand and capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellent.

(B) "Possess." To knowingly carry or have a handgun on the person or ready at hand.

(C) "Resident." Any person who has an actual place of residence in the city.

(D) "Nonresident." Any person who does not have an actual place of residence in the city.

Sec. 138.11 Handgun Owner's Identification Card Required.

(A) No person shall possess any handgun, unless such person has a handgun owner's identification card issued to him and in effect under Sec. 138.12, or is exempt from the re-

quirement of an identification card under Sec. 138.22, or is on a suitable firing range.

(B) No person shall sell, deliver, transfer, or furnish any handgun to any person, unless the transferee exhibits a handgun owner's identification card valid on its face and issued to the transferee under Sec. 138.12, or unless the transferee exhibits evidence that he is exempt from the requirement of an identification card under Sec. 138.22.

(C) No person shall sell, deliver, transfer, or furnish any handgun to any person without first having notified the Director of Finance of his intention to do so not less than 5 days prior thereto. Such notification shall be in writing, and shall contain the name, home address, social security number, and handgun owner's identification card number of the intended transferee. The Director of Finance shall prescribe the form for such notification, and shall make them available upon request therefor.

(D) Every person regularly engaged in the business of selling or trading handguns at wholesale or retail whether as the principal business of such person or in addition thereto, having sold, delivered, or furnished a handgun to any person pursuant to the provisions of division (C) above, shall within 5 days thereafter, furnish to the Director of Finance the details of such transaction, including the name and address of the transferee, his handgun owner's identification card number, and a description of the handgun obtained, including the manufacturer's brand name, the caliber, and serial number.

* * * * *

(G) Whoever violates this section shall be guilty of a misdemeanor of the first degree.

* * * * *

Sec. 138.14 Persons Not Eligible for Handgun Owner's Identification Cards. A handgun owner's identification card shall not be issued to:

(A) Any person who is prohibited by R.C. Sec. 2923.13 from obtaining, possessing, carrying, or using a firearm;

(B) A person with more than one conviction within one year prior to his application for handgun owner's identification card, of any offense involving drunkenness or drug abuse;

(C) A person with a conviction of any offense involving the use of force and violence, or the threat of the use of force and violence, against the person of another.

Sec. 138.22 Persons Exempt. The requirements of a handgun owner's identification card contained in Secs. 138.10 to 138.23 do not apply to the following:

(A) The United States or any state or any political subdivision, or agency of either;

(B) Officers or agents of the United States or any state or any political subdivision, department, or agency, or members of the organized militia of any state, or the Armed Forces of the United States, or any law enforcement officer, to the extent that the official duties of any such person require him to obtain, possess, carry, or use handguns;

(C) Importers, manufacturers, and dealers licensed under Federal law, to the extent that the acquisition, possession, carriage, or use of any handgun is in the ordinary course of business;

(D) Carriers, warehousemen, and others engaged in the business of transporting or storing handguns, and their agents or employees, to the extent that possessing any handgun by such persons is in the ordinary course of business and in conformity with the laws of the State of Ohio or the United States;

(E) Executors, administrators, guardians, receivers, trustees in bankruptcy, and other fiduciaries duly qualified and appointed by a court of competent jurisdiction, when acting in their official capacity; and their attorneys;

(F) Heirs and legatees coming into possession of any handgun through distribution of an estate and other persons other than those persons named in division (E) acquiring any handgun through operation of law, during a period not exceeding 30 days from the date of their coming into possession of such handgun;

(G) Nonresidents of the city moving to the city for the purpose of establishing residence therein, during a period not to exceed 30 days of their entry into the city for such purpose;

(H) Nonresidents of the city who enter the city for a period not to exceed 30 days with a handgun or handguns for the purpose of exhibiting or trading a handgun or handguns at a public handgun display, show, or exhibition. However, the handgun or handguns shall be unloaded at all times and must be kept encased except when at such display, show, or exhibition.

(I) Nonresidents of the city who enter the city for a period not to exceed 30 days for the purpose of participating in an organized and sanctioned handgun match; provided, that any handgun shall be unloaded and encased except while participating in such handgun match.

Sec. 138.23 Nonapplicability of Secs. 138.10 to 138.22. The provisions of Secs. 138.10 to 138.22 shall not apply to the following:

(A) Any handgun which, regardless of its actual age, is designed and safe for use only with black powder, and uses a flintlock, percussion cap, or other obsolete ignition system, or with respect to any handgun which uses fixed ammunition of a type in use prior to 1899, which ammunition is no longer commercially manufactured in the United States and is not readily available in the ordinary channels of trade;

(B) Any device used exclusively for signalling or safety and recommended by the United States Coast Guard or the Interstate Commerce Commission;

(C) Any device used exclusively for firing of stud cartridges, rivets, or nails, and designed for industrial applications;

(D) Any device used exclusively as a starter gun for the purpose of firing blank cartridges as a means of controlling sporting events, or for use in theatrical productions; provided, that such gun is so constructed as not to be readily convertible to the firing of projectiles.

Defiance

138.01 same as 2923.11.
138.06(A) (2) same as 2923.20(4).
138.07 same as 2923.21.

Dover

545.09 same as 2923.17.
545.11(a) (2) same as 2923.20(A) (4).
545.12 same as 2923.21.

Doylestown

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a)(2) same as 2923.20(A)(4).
549.07(a)(3) same as 2923.20(A)(5).
549.08 same as 2923.21.

East Cleveland

545.01 (a) through (k) same as 2923.11.

(l) "Firearms dealer" means any person, firm or corporation regularly engaged in the business of selling or trading firearms or ammunition at wholesale or retail within the limits of the City, whether as the principal business of such person, firm or corporation, or in addition thereto.

(m) "Fugitive from justice" means a person who flees, escapes from custody, conceals or attempts to use any other unlawful means to avoid prosecution or punishment for a felony under the laws of this or any other state, the United States or any of its territories or possessions, the District of Columbia, or any foreign country with which the United States has a treaty in effect.

(n) "Resident" means any person who has a factual place of residence within the limits of the City.

(o) "Nonresident" means any person who does not have a factual place of residence within the limits of the City.

(p) "Minor" means any person under the age of twenty-one years.

545.12. Prohibitions. (a) No person shall purchase, own, possess, receive, have on or about his person, or use any firearm or ammu-

nition, if such person is a fugitive from justice or is under adjudication of mental incompetence.

(b) No person shall purchase, receive, have on or about his person, or use any firearm or ammunition while under the influence of alcohol, any narcotic drug, hallucinogen, or other dangerous drug.

(c) No person shall purchase, own, possess, receive, have on or about his person, or use any handgun or handgun ammunition if such person has been convicted of a felony under the laws of this or any other state, the United States or any of its territories or possessions, the District of Columbia, or any foreign country with which the United States has a treaty of extradition in effect, provided, however, such person shall be eligible to possess, purchase, own, receive or have on or about his person or use a handgun or handgun ammunition after ten (10) years have elapsed from the date or completion of any sentence, probationary period or parole imposed upon such person so convicted.

(d) No person shall knowingly sell, transfer, give, deliver or furnish any firearms or ammunition to any person prohibited by this section from purchasing, owning, possessing, receiving, having on or about his person, or using such firearm or ammunition.

545.14 Identification card required—registration of handguns required. (a) No person shall purchase, own, possess, receive, have on or about his person, or use any handgun except upon a suitable firing range, unless such person has a handgun owner's identification card issued to him and in effect pursuant to this section, or unless such person is exempt from the requirements of an identification card pursuant to Section 545.15 of the Codified Ordinances of the City of East Cleveland, Ohio.

* * * * *

545.15 Exemptions. (a) The requirements of a handgun owner's identification card contained in Section 545.14 of the Codified Ordinances of the City of East Cleveland do not apply to the purchase, ownership, possession, receipt, having on or about the person, or use of any handgun or handgun ammunition by:

(4) Nonresidents of the City of East Cleveland who are residents of the State of Ohio; provided that such persons are not prohibited by the provisions of Sections 545.12 or 545.14 of the Codified Ordinances of the City of East Cleveland, and possess and exhibit upon request such valid permit, authorization, or identification issued by the Chief of Police or the Sheriff or their place of residence to purchase, own, possess, receive, carry, or use any handgun, and provided, further, that handguns in the possession of or under the control of nonresidents shall at all times be unloaded and encased, except while on a suitable firing range, or while being used for lawful hunting, or while unloaded at a public firearms display, show or exhibition. The requirements of a valid permit, authorization or identification as required by this subsection shall not apply to a non-resident who enters the City with firearms for the sole and only purpose of exhibiting or trading said firearms at a public firearms display, show or exhibition, or for the sole and only purpose of participating in an organized and sanctioned pistol match. The permit, authorization or identification provided for in this sub-section shall be valid for thirty (30) days only from the date thereof.

(5) Nonresidents of the City of East Cleveland, Ohio moving to this City for the purpose of establishing residence herein, during a period not exceeding thirty (30) days from the date of their entry into this City for such purpose; provided that such persons shall possess and exhibit upon request such valid permit, authorization, or identification as may be required by the laws of their former domicile to own, possess, receive, or have on or about the person any handgun.

545.16 Further prohibitions—Sales—Purchases—Transfers. (a) No person in this City shall purchase or otherwise obtain ownership or possession of, or as security for a loan, any handgun from any person, unless the transferor exhibits a handgun owner's identification card valid on its face, issued to the transferor pursuant to Section 545.14 of the Codified Ordinances of the City of East Cleveland, Ohio, or unless the transferor exhibits evidence that he is exempt from the requirement of an identification card pursuant to Section 545.15 of the Codified Ordinances of the City of East Cleveland, Ohio.

(b) No person in this City shall sell, deliver, transfer, or furnish any handgun to any person in this City unless the transferee exhibits a handgun owner's identification card valid on its face and issued to the transferee pursuant to Section 545.14, or unless the transferee exhibits evidence that he is exempt from the requirement of an identification card pursuant to Section 545.15 of the Codified Ordinances of the City of East Cleveland, Ohio.

(c) No person in this City shall sell, transfer, give away, or otherwise dispose of a handgun to any other person unless, within five (5) days following said sale, transfer, gift, or other disposition, he shall report same to the Chief of Police of the City of East Cleveland, together with the manufacturer's name of said handgun, the caliber and serial number of said handgun, and if no serial number is contained thereon, an adequate description of the weapon.

545.17. Dealers license. (a) Every firearms dealer in this City shall procure a license to engage in such business. Any firearms dealer engaged in such business at more than one permanent location in this City shall procure a separate license for each such permanent location. Application for such license shall be made to the Chief of Police.

* * * * *

545.26 same as 2923.21(a).

Eastlake

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

East Palestine

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 same as 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

Eaton

672.01 same as 2923.11.
672.05 same as 2923.17.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

Edgerton

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Elmwood Place

137.01 same as 2923.11
137.05 same as 2923.17
137.07(a)(2) same as 2923.20(A)(4).
137.08 same as 2923.21.

Elyria

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

757.01. Permit required for purchases. No person shall purchase in the City any pistol, revolver, *** or other weapon of like character which can be concealed on the person without first securing from the Chief of Police a permit to do so.

* * * * *

757.05. Sales to persons without permits. No person shall sell to any person within the City any pistol, revolver * * * or other weapon of like character which can be concealed on the person unless the person to whom such weapon is sold presents to such person selling the same a permit properly signed by the Chief of Police, and such sale shall be unlawful unless made within fifteen days from the date of the signing of such permit by the Chief of Police, and such sale shall be unlawful unless such person makes and files a report of such sale with the Chief of Police * * *.

Enon

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a)(2) same as 2923.20(A)(4).
549.07(a)(3) same as 2923.20(A)(5).
549.08 same as 2923.21.

Evendale Village

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 same as 2923.18.
672.09(a)(2) same as 2923.20(A)(4).
672.10 same as 2923.21.

Euclid

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Fairfax

Section I. Every dealer in firearms and ammunition for firearms in the business of selling arms to the ultimate user or consumer, shall pay a license fee of $100.00 per annum, payable on the first day of January of each year hereafter, and such license shall be granted by the Chief of Police if he is satisfied that the applicant is of good repute in the conduct of such business, and that the conduct of such business will not be detrimental to the public safety and welfare. Where a dealer deals only in shotguns and rifles of regulation size, manufactured for hunting and sporting purposes only, and the ammunition therefor, the annual license fee shall be $25.00.

* * * * *

Section III. It shall be unlawful for any dealer to sell firearms to any person at retail, unless such person shall fill out and sign an application blank in triplicate, as provided for in Section II, and unless such dealer is either personally acquainted with the purchaser or the purchaser is identified to the dealer by a person acquainted with the dealer and the purchaser.

Fairport Harbor

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Fairview Park

539.01 same as 2923.11.
539.05 same as 2923.17.
539.07(A) (2) same as 2923.20(A) (4).
539.07(A) (3) same as 2923.20(A) (5).
539.08 same as 2923.21.

543.01 Definitions. As used in this chapter: (a) Firearm means any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant. Firearm includes an unloaded firearm, and any firearm which is inoperable but which can readily be rendered operable.

(b) Handgun means any firearm designed to be fired while being held in one hand. * * *

(d) Firearms dealer means any person, firm or corporation, regularly engaged in the business of selling or trading firearms or ammunition at wholesale or retail within the limits of the City of Fairview Park whether as the principal business of such person, firm or corporation, or in addition thereto.

(e) Fugitive from justice means a person who flees, escapes from custody, conceals or attempts to use any other unlawful means to avoid prosecution or punishment for a felony under the laws of this or any other state, the United States or any of its territories or possessions, the District of Columbia, or any foreign country with which the United States has a treaty or extradition in effect.

(f) Resident means any person who has a factual place of residence within the limits of the City of Fairview Park, Ohio.

(g) Nonresident means any person who does not have a factual place of residence within the limits of the City of Fairview Park, Ohio.

(h) Minor means any person under the age of eighteen years.

543.03. Permit to dispose of concealable weapons. It shall be unlawful for any person, firm or corporation to engage in the business of selling, or to sell or give away to any person, within the city, any pistol, hand gun, revolver, derringer, * * * or other weapon of like character, which can be concealed on the person, without securing a permit to do so, * * * and no person, firm or corporation having secured such a permit, shall sell or give away any such weapon to any person within this city who has not secured a permit from the Chief of Police to purchase such weapon * * *

543.07. Sale of firearms or ammunition to minors. No person, firm or corporation shall sell, barter, furnish or give to a minor under the age of seventeen years of age an air gun, musket, rifle, shotgun, revolver, pistol, hand gun, or other firearm, or ammunition therefor, or being the owner or having charge or control thereof, knowingly permit it to be used by a minor under such age.

Nothing in this section shall be deemed to prohibit or render it unlawful to possess, use, or furnish for use any such firearm, together with such ammunition as is necessary, for the purpose of receiving and being given instructions and training in marksmanship and the proper handling, use and care of such firearms on any suitable range, which, at the time of such instruction and use, is under the supervision and control of a competent adult instructor provided that the giving of such instructions and the training is supervised by an organization or association which has been and continues to be approved for this purpose by the Adjutant General or provided that such Instructor is the parent of the person receiving such instruction.

543.08. Sale of ammunition—record required. It shall be unlawful for any person, firm or corporation to sell, give, barter, or otherwise dispose of any ammunition which is capable of use in any pistol, hand gun, revolver, or other weapon of like character which can be concealed on the person, unless every such transaction is entered into a book by the person making such sale, gift, exchange or other disposition, together with the address of the recipient, the date and the description of the ammunition sufficient to identify it; which entry shall be signed by the recipient and witnessed by the person required to make such record. A report shall be made to the Chief of Police within thirty days of each such transaction on such forms as he may prescribe.

Satisfactory proof of identity shall be required of the recipient by the person making such sale, gift or exchange or other disposition of ammunition and the means or method of such identification shall be recorded in the book required to be kept hereunder.

Findlay

49.5. No firearms, etc., for minors under seventeen. It shall be unlawful for any person or persons, in the city, to sell, barter, fur-

nish or give to a minor under the age of seventeen years, a resident of the city, an air-gun, musket, rifle, shotgun, revolver, pistol or other firearm, or ammunition therefor, or being the owner or having charge or control thereof, knowingly permit it to be used by a minor under such age.

Flushing

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Forest Park

132.01 same as 2923.11.
132.09 same as 2923.20(A), (3), (4), (5); (B).
132.10 same as 2923.21.

Franklin

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

Gahanna

545.01 same as 2923.11.
545.06 same as 2923.20(A) (4) & (5).
545.07 same as 2923.21.

Galion

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.08 same as 2923.21.

Garfield Heights

511.01 same as 2923.11.
511.06 same as 2923.20(A) (4) & (5).
511.07 same as 2923.21.

Garrettsville

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a)(2) same as 2923.20(A)(4).
549.07(a)(3) same as 2923.20(A)(5).
549.08 same as 2923.21.

Genoa

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Gibsonburg

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Glenwillow

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Golf Manor

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Grand Rapids

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

Grand River

549.01 same as 2923.11
549.05 same as 2923.17
549.07(a)(2) same as 2923.20(A)(4).
549.07(a)(3) same as 2923.20(A)(5).
549.08 same as 2923.21.

Granville

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a)(2) same as 2923.20(A)(4).
549.07(a)(3) same as 2923.20(A)(5).
549.08 same as 2923.21.

Greenfield

140.01 same as 2923.11.
140.06 same as 2923.20(A) (4) & (5).
140.07 same as 2923.21.

Green Springs

38.12 Sale of explosives to minors. It shall be unlawful to sell, offer for sale or give away to a minor any explosive cap, cartridge, shell, guncotton or other similar article containing explosives.

Greenville

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

Greenwich

Chapter 529: Minors

529.01 Improperly furnishing firearms to a minor. (A) No person shall: (1) Sell any firearm to a person under eighteen; (2) Sell any handgun to a person under age twenty-one; * * * * *

Chapter 545: Weapons and Explosives

545.01 same as 2923.11
545.06(A)(2) same as 2923.20(A)(4)

Grove City

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Groveport

2323.05 same as 2923.17.

Hamilton

729.01. Record of sale. It shall be unlawful to sell any firearm, * * * unless at the time of such sale the vendor records in a book to be kept for that purpose:

(a) The name and address of the purchaser;

(b) The purpose for which the purchase is made;

(c) The date of such purchase and the hour when such purchase was made;

(d) An accurate description of the item purchased, the number thereof, and the name of the maker thereof;

(e) A description of the purchaser, which description shall set forth his age, his height, the color of his hair, and the color of his eyes, and any other identifying marks or characteristics;

(f) A description of the clothing worn by the purchaser;

(g) A description of all visible scars or marks on the face and hands of the purchaser, and of any apparent deformity; and

(h) Whether the purchaser is smooth shaven or wears a mustache, a beard, a goatee, or side whiskers.

729.03. Sale to minors. It shall be unlawful to sell any weapon enumerated in Section 729.01 to any person under the age of twenty-one years.

729.04 Dangerous weapons dealers license. A license is hereby required, to be obtained in the manner provided in this code, for every dangerous weapons dealer operating in the City of Hamilton.

1309.01. Identifying marks on weapons. It shall be unlawful to change, alter, remove, or destroy the name of maker, model, manufacturer's number, or other mark of identification or to sell any dangerous weapon, or to keep or have in possession dangerous weapon capable of use, on which any such mark of identification has been changed, altered, removed, or destroyed, to the knowledge of the person having or selling such weapon.

1315.18. Possession of explosive, flammable devices regulated. No person shall make, use, or possess on his person or have under his control, a molotov cocktail or any other explosive device containing flammable, combustible, or explosive material or substance which can be used as a fire bomb either by igniting the fuse and/or breaking the device; provided, however, any person engaged in any lawful activity, business, calling, employment, or occupation requiring him to have such a device or such material or substance in his possession or under his control is hereby exempt from the operation of this section.

Hicksville

Sec. 138.06(A) (2) same as 2923.20(A) (4).
Sec. 138.06(A) (3) same as 2923.20(A) (5).
Sec. 138.07 same as 2923.21.

Highland Heights

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Hilliard

134.01 same as 2923.11.
134.04 same as 2923.17.

Hilliar Township

See Centerburg Village

Hillsboro

131.06. Sale of firearms to minors. No person shall sell, barter, furnish, or give to a minor under the age of seventeen years, an air gun, musket, rifle, shotgun, revolver, pistol, or other firearm, or ammunition therefor, or being the owner or having charge or control thereof, knowingly permit it to be used by a minor under such age.

This section is not applicable to a minor under the age of seventeen years who is hunting in accordance with section 1533.13 of the Revised Code.

Holland

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Huron

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Independence

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a)(2) same as 2923.20(A)(4).
672.09(a)(3) same as 2923.20(A)(5).
672.10 same as 2923.21.

Ironton

545.01 same as 2923.11.
545.05 same as 2923.17.
545.06(b) same as 2923.20(A) (4).
545.06(c) same as 2923.20(A) (5).
545.07 same as 2923.21.

Kent

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(A) (2) same as 2923.20(A) (4).
549.08(A) same as 2923.21(A).

549.13. License to Sell Weapons. (A) No person shall engage in the business of selling, or sell or give away to any person within the City, any pistol, revolver, derringer, * * * or other weapon of like character, which can be concealed on the person, without securing a license to do so as provided in Section 549.14 and no person having secured such a license, shall sell or give away any such weapon to any person within this City who has not secured a permit from the Chief of Police to purchase such weapon in the manner hereinafter provided.

(B) No licensed or unlicensed commercial enterprise, or individual, engaged in the sale of weapons described in Subsection (A) hereof shall make available for purchase handguns unless said handgun complies with the following three requirements:

(1) the barrel length shall exceed three (3) inches or the handgun is sold at a price exceeding Eighty ($80.00) dollars;

(2) the barrel, cylinder, slide and frame of the handgun shall be entirely machined and/or investment cast;

(3) the barrel, cylinder, slide and frame of the handgun shall neither melt nor deform at a temperature of less than 800 degrees Fahrenheit.

(C) Whoever violates this section is guilty of a misdemeanor of the first degree. A fine of at least five hundred ($500.00) dollars is mandatory for a violation of this section. Each sale of a handgun in violation of this section is a distinct and separate offense.

549.14. Application for license. Any person desiring a license authorizing the sale of any of the deadly weapons mentioned in Section 549.13 shall make application in writing to the Mayor [contact local authorities for required contents] * * *

549.17 Application For Permit To Buy Weapon.

(A) No person shall purchase any deadly weapon, which can be concealed on the person, without first securing from the Chief of Police or Officer In Charge a permit to do so. Before any such permit is granted an application in writing shall be made therefor, [contact local authorities for required contents] * * *

(B) This section does not apply to persons showing proof that they are officers, agents or employees of this or any other state of the United States, or to any other law enforce-

ment officers authorized to carry deadly weapons capable of being concealed on the person, and acting within the scope of their duties, or federally licensed firearms dealers.

(C) Whoever violates subsection (A) is guilty of a misdemeanor of the fourth degree.

549.18 **Issuance of Permit to Buy Weapon.** The Chief of Police or Officer In Charge shall refuse to issue a permit to purchase any deadly weapon which can be concealed on the person to minors and to all persons convicted of any: (1) Crime of violence; (2) Felony; (3) Violation of Chapter 549, Codified Ordinances of the City of Kent

Kenton

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18(A), (B) (1), (C), (D), (E) and (F).
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21A(1), (2) & (3).

Kettering

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

Kipton

113-101 same as 2923.11
113-106(A)(2) same as 2923.20(A)(4)
113-107 same as 2923.21

La Grange

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Lakewood

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.08 same as 2923.21.

549.13. **License to sell weapons.** (a) No person, firm or corporation shall engage in the business of selling, or sell or give away to any person, within the City, any deadly weapon which can be concealed on the person, without securing a license to do so as hereinafter provided, and no person, firm or corporation having secured such a license shall sell or give away any such weapon to any person within this City who has not secured a permit from the Chief of Police to purchase such weapon in the manner hereinafter provided.

549.17. **Permit to purchase weapons; application.** (a) No person shall purchase any deadly weapon which can be concealed on the person without first securing from the Chief of Police a permit to do so. Before any such permit is granted, an application in writing shall be made therefor, [contact local authorities for required contents] * * *

Lancaster

529.03. **Sale of firearms.** No person shall sell, barter, furnish or give to a minor under the age of seventeen years an air gun, musket, rifle, shotgun, revolver, pistol or other firearm, or ammunition therefor, or being the owner or having charge or control thereof knowingly permit it to be used by a minor under such age.

Lima

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

Linndale

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Lockbourne

2323.01 same as 2923.11.
2323.05 same as 2923.17.

Lockland

Sec. 136.03 **Sale of firearms to minors.** No person shall sell, barter, furnish or give to a minor under the age of seventeen years an air gun, musket, rifle, shotgun, revolver, pistol or other firearm, or ammunition therefor, or, being the owner or having charge or control thereof, knowingly permit it to be used by a minor under such age.

Sec. 114.04 **Firearms trade.** No pawnbroker or second-hand dealer shall sell, pawn, take in trade, loan money on or deal in firearms.

Lorain

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.08 same as 2923.21.

Loudonville

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 same as 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

Loveland

74.8 **Sale of firearms to minors.** Whoever shall sell, barter, furnish or give to a minor under the age of seventeen years, an air gun, musket, rifle, shotgun, revolver, pistol, or other firearm, or ammunition therefor, or being the owner or having charge or control thereof, knowingly permit it to be used by a minor under such age shall be fined not more than fifty dollars. This section is not applicable to a minor under the age of seventeen years who is hunting in accordance with RC 1533.13.

Lowellville

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a)(2) same as 2923.20(A)(4).
549.07(a)(3) same as 2923.20(A)(5).
549.08 same as 2923.21.

Lyndhurst

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

Magnetic Springs

131.06 **Sale of firearms to minors.** No person shall sell, barter, furnish, or give to a minor under the age of seventeen years, * * *

(a) rifle, shotgun, revolver, pistol, or other firearm, or ammunition thereof, or being the owner or having charge or control thereof, knowingly permit it to be used by a minor under such age. * * * * *

Mansfield

13.101 same as 2923.11.
13.106(A) (2) same as 2923.20(A) (4).
13.106(A) (3) same as 2923.20(A) (5).
13.107 same as 2923.21.

Marietta

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a)(2) same as 2923.20(A)(4).
549.07(a)(3) same as 2923.20(A)(5).
549.08 same as 2923.21.

Marion

546.01 same as 2923.11.
546.06(A) (2) same as 2923.20(A) (4).
546.07 same as 2923.21.

Martins Ferry

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a)(2) same as 2923.20(A)(4).
549.07(a)(3) same as 2923.20(A)(5).
549.08 same as 2923.21.

Marysville

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a)(2) same as 2923.20(A)(4).
549.08 same as 2923.21.

Mason

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Massillion

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 same as 2923.18.
672.09(a)(2) same as 2923.20(A)(4).
672.10 same as 2923.21.

Maumee

140.01 same as 2923.11.
140.06(a) (2) same as 2923.20(A) (4).
140.06(a) (3) same as 2923.20(A) (5).
140.07 same as 2923.21.

Mayfield Heights

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.08 same as 2923.21.

549.13. Sale license, purchase permit required. (a) No person shall sell, offer to sell, exhibit for sale or engage in the business of selling firearms, air guns, B-B guns or similar weapons, ammunition or explosives without first securing a license to do so from the Chief of Police, as provided in Section 549.14. No person shall sell any weapon or other article as herein defined, which is concealable on the person, to any person within the City who has not secured a permit from the Chief of Police to purchase such weapon, in the manner provided in Section 549.15.

549.14. License application information; fee and renewal. Any person desiring a license authorizing the sale of any of the weapons or other articles mentioned in Section 549.13, shall make application in writing to the Chief of Police, [contact local authorities for required contents.] * * *

549.15. Permit application information; fee and disposition. (a) No person shall purchase a particular weapon or other article as specified in Section 549.13, concealable on the person, without first securing a permit to do so. Before any such permit is granted, an application in writing shall be made to the Chief of Police [contact local authorities for required contents] * * *. Such application shall be accompanied by a fee of one dollar ($1.00) and upon issuance shall be valid for the purchase of one particular weapon therein described. Such permit shall be given to and collected by the seller, and filed with the City in the seller's report of sales of such weapons.

549.16. License or permit refusal. It shall be the duty of the Chief of Police to refuse a license to engage in the business of selling or a permit to purchase any weapon or other article mentioned in Section 549.13 to any person who has been convicted of any crime other than a traffic offense, to any vagrant, any suspicious person, any minor under the age of eighteen years generally or any person who has violated a provision of this chapter during the preceding year.

McDonald

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a)(2) same as 2923.20(A)(4).
549.07(a)(3) same as 2923.20(A)(5).
549.08 same as 2923.21.

Mentor

133.01 same as 2923.20(A) (4) & (5).

Miamisburg

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Middleburg Heights

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 same as 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

Middlefield

560.01 same as 2923.11.
560.06(a) (2) same as 2923.20(A) (4).
560.06(a) (3) same as 2923.20(A) (5).
560.07 same as 2923.21.

Middletown

13-101 same as 2923.11.
13-106 same as 2923.20(A) (4) & (5).
13-107 same as 2923.21.

993.06 Sale of explosives to minors. It shall be unlawful for any person to sell to a minor any cap or other explosive device used in the discharge of toy pistols and torpedo canes, or any blank cartridge, whether for use in pistols, revolvers or cannons.

Millbury

549.01 same as 2923.11.
549.05 same as 2923.17.

549.07(a)(2) same as 2923.20(A)(4).
549.07(a)(3) same as 2923.20(A)(5).
549.08 same as 2923.21.

Millersburg

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Millville

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Mogadore Village

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

Monroe

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a)(2) same as 2923.20(A)(4).
549.07(a)(3) same as 2923.20(A)(5).
549.08 same as 2923.21.

Monroeville

545.01 same as 2923.11.
545.06(A) (2) same as 2923.20(A) (4).
545.06(A) (3) same as 2923.20(A) (5).

Montezuma

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a)(2) same as 2923.20(A)(4).
672.09(a)(3) same as 2923.20(A)(5).
672.10 same as 2923.21.

Montgomery

Chapter 134

134.01(A)(2) same as 2923.20(A)(4)

Chapter 95

95.01 Persons prohibited from owning weapons. No alien or person who has been convicted of a felony shall own or have in his possession or under his control a dangerous weapon.

Montpelier

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Moraine

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Mount Sterling

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a)(2) same as 2923.20(A)(4).
549.07(a)(3) same as 2923.20(A)(5).
549.08 same as 2923.21.

Mount Vernon

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Navarre

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

New Albany

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

New Athens

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Newburgh Heights

1. Permit to dispose of concealable weapons. It shall be unlawful for any person, firm or corporation to engage in the business of selling, or to sell or give away to any person, within the Village, any pistol, hand gun, revolver, derringer, * * * or other weapon of like character, which can be concealed on the person, without securing a permit to do so, as hereinafter provided, and no person, firm or corporation having secured such a permit, shall sell or give away any such weapon to any person within this village who has not secured a permit from the Chief of Police to purchase such weapons in the manner hereinafter provided.

5. Sale of firearms or ammunition to minors. No person, firm or corporation shall sell, barter, furnish or give to a minor under the age of seventeen years an air gun, musket, rifle, shotgun, revolver, pistol, hand gun, or other firearm, or ammunition therefor, or being the owner or having charge or control thereof, knowingly permit it to be used by a minor under such age.

7. Sale of ammunition—record required. It shall be unlawful for any person, firm or corporation to sell, give, barter or otherwise dispose of any ammunition which is capable of use in any pistol, hand gun, revolver, or other weapon of like character which can be concealed on the person, unless every such transaction is entered into a book by the person making such sale, gift, exchange or other disposition, together with the address of the recipient, the date and the description of the ammunition sufficient to identify it; which entry shall be signed by the recipient and witnessed by the person required to make such record. A report shall be made to the Chief of Police within thirty days of each such transaction on such forms as he may prescribe.

Satisfactory proof of identity shall be required of the recipient by the person making such sale, gift or exchange or other disposition of ammunition and the means or method of such identification shall be recorded in the book required to be kept hereunder.

8. Permit to purchase concealable weapons. It shall be unlawful for any person to purchase any pistol, hand gun, revolver, derringer, * * * or other weapon of like character, which can be concealed on the person, without first securing from the Chief of Police a permit to do so.

* * * * *

Ordinance 1975-20

Section 1: Certain Handguns Prohibited. No person shall possess, sell, transfer, give,

deliver or furnish a handgun having a retail value of $90.00 or less and having a barrel, slide, frame, or receiver which is a die casting of zinc alloy or any other non-homogeneous metal which will melt or deform at a temperature of less than 800 degrees Fahrenheit, either assembled or disassembled and having a gross weight of less than 19 ounces as orginally manufactured.

A. Such handguns are hereby declared to be illegal contraband, which may be confiscated and destroyed by the Police Division.

B. For purposes of this section, "handgun" shall mean a firearm having a barrel and firing mechanism designed to eject or propel a projectile by the action of an explosive or combustible propellant, and having a barrel not exceeding twelve inches in length, measured by the insertion therein of a rod with the receiver or slide closed, but does not include inoperable firearms which cannot be rendered operable, or handguns designed and safe only for use with black powder.

* * * * *

New Carlisle

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

New Philadelphia

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Newton Falls

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Niles

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

549.14 Sale of Weapons; License Required (a) No person shall engage in the business of selling or shall sell or give away to any person within the City any pistol, revolver, derringer, * * * or other weapons of like character which can be concealed, without first securing a license to do so. * * *.

* * * * *

549.15 Purchase of Weapons; Permit Required. (a) No person shall purchase any pistol, revolver, derringer, * * * or other weapon of like character which can be concealed, without first securing from a Committee, composed of the Chief of Police and the Mayor, a permit to do so.

North Baltimore

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

North Bend

13-101 same as 2923.11.
13-106(A) (2) same as 2923.20(A) (4).
13-106(A) (3) same as 2923.20(A) (5).
13-107 same as 2923.21.

North Canton

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

North Fairfield

545.01 same as 2923.11.
545.05 same as 2923.17.
545.06(A) (2) same as 2923.20(A) (4).
545.06(A) (3) same as 2923.20(A) (5).

Northfield

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

North Olmsted

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

North Randall

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

North Royalton

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

672.15 Sale or gift of concealable firearms. (a) No person shall sell, barter, furnish or give to any other person any pistol, revolver, derringer or other firearm of like character and caliber, which can be concealed on the person, without providing the Chief of Police with a copy of the United States Department of the Treasury Form 4473, at least seventy-two hours prior to such purchaser or donee taking possession of such firearm.
* * * * *

Norwalk

513.01 same as 2923.11.
513.06 same as 2923.20(A) (4) & (5).
513.07 same as 2923.21.

Norwood

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Oakwood

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Oberlin

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a)(2) same as 2923.20(A) (4).
549.07(a)(3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Obetz

549.01 same as 2923.11.
549.05 same as 2923.17.

549.07(a)(2) same as 2923.20(A)(4).
549.07(a)(3) same as 2923.20(A)(5).
549.08 same as 2923.21.

Olmstead Falls

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

Ontario

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18(A), (B) (1), (C), (D), (E), and (F).

672.08. Failure to secure dangerous ordnance. (a) No person, in acquiring, possessing, carrying or using any dangerous ordnance, shall negligently fail to take proper precautions:

(1) To secure the dangerous ordnance against theft or against its acquisition or use by any unauthorized or incompetent person;

(2) To insure the safety of persons and property.

672.09(a) (2) same as 2923.20(A) (4).
672.10 same as 2923.21.

Orange, Village of

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Orrville

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Oxford

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Parma

553.08. Sale of explosives, firearms and ammunition to minors. (a) No person shall sell, give away or otherwise dispose of or deliver to any person under twenty-one years of age any explosives, as defined in Ohio R.C. 3743.01(A), whether such person is acting for himself or for any other person.

(b) No person shall sell, give, barter or otherwise dispose of any air gun, musket, rifle, shotgun, revolver, pistol or other firearm, or ammunition therefor, to a minor under the age of seventeen years.

787.01. Definition. As used in this chapter, "person" means individual persons, firms or corporations.

787.02. Sales license and purchase permit required. No person shall engage in the business of selling, or sell or give away to any person, or barter or exchange with any person, within the City, any pistol, revolver, derringer, * * * or other weapon of like character which can be concealed on the person, without securing a license to do so as hereinafter provided. No person, having secured a license, shall sell, give away, barter or exchange any weapon to any person within the City who has not secured a permit from the Director of Public Safety to purchase or otherwise receive such weapon in the manner hereinafter provided.

787.06. Purchase permit: application information. No person shall purchase or receive as donee or as one who barters or exchanges, any pistol, revolver, derringer, * * * or other weapon of like character which can be concealed on the person, without first securing from the Director of Public Safety a permit to do so. Before any permit is granted, an application in writing shall be made therefor [contact local authorities for required contents] * * *

* * * * *

Parma Heights

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09 (a) (2) same as 2923.20(A) (4).
672.09 (a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

Pataskala

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a)(2) same as 2923.20(A)(4).
672.09(a)(3) same as 2923.20(A)(5).
672.10 same as 2923.21.

Pepper Pike

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07 (a) (2) same as 2923.20(A) (4).
549.07 (a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Perrysburg

672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2933.20(A) (5).
672.10 same as 2923.21.

Pickerington

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a)(2) same as 2923.20(A)(4).
672.09(a)(3) same as 2923.20(A)(5).
672.10 same as 2923.21.

Pleasant Hill

Sec. 38.10 Sale of explosives to minors. It shall be unlawful to sell, offer for sale or give away to a minor any explosive cap, cartridge, shell, guncotton or other similar article containing explosives.

Plymouth

3-74P. * * * * * Section 2: The Ohio Criminal Code as set forth in Chapter 29 of the Ohio Revised Code, together with all amendments thereof shall be and are * * * adopted * * *

Pomeroy

929.06 same as 2923.21.

Port Clinton

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Portsmouth

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

705.32. Dealers in firearms and ammunition; * * * All dealers in guns, revolvers, pistols, firearms, ammunition for firearms or dangerous weapons shall pay a license fee of ten dollars ($10.00) per annum.

Ravenna

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Reading

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a)(2) same as 2923.20(A)(4).
672.09(a)(3) same as 2923.20(A)(5).
672.10 same as 2923.21.

Reminderville

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

Reynoldsburg

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Richfield

549.01 same as 2923.11
549.05 same as 2923.17
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Ridgeville

513.01 same as 2923.11.
513.06(a) (2) same as 2923.20(A) (4).
513.06(a) (3) same as 2923.20(A) (5).
513.07 same as 2923.21.

Rittman

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Rocky River

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Rossford

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Sandusky

13-106. Unlawful transactions in weapons. (A) No person shall: * * * (2) When transferring any dangerous ordinance to another, negligently fail to require the transferee to exhibit such identification, license, or permit showing him to be authorized to acquire dangerous ordinance pursuant to Section 13-105 of the General Offense Code or 2923.17 of the Ohio Revised Code * * *
13-107(A) (1) same as 2923.21(A) (1).
13-107(A) (2) same as 2923.21(A) (2).
13-107(A) (3) same as 2923.21(A) (3).

Scio

549.01 same as 2023.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Sebring

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 923.20(A) (5).
549.08 same as 2923.21.

Seven Hills

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Shadyside

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a)(2) same as 2923.20(A)(4).
549.07(a)(3) same as 2923.20(A)(5).
549.08 same as 2923.21.

Shaker Heights

General Offense Code

753.01 Definitions. As used in this chapter:

(A) "Firearm" means any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant. "Firearm" includes an unloaded firearm, and any firearm which is inoperable but which can readily be rendered operable.

(B) "Handgun" means any pistol, revolver, or other firearm, having a barrel not exceeding twelve (12) inches in length, measured by the insertion of a rod with the receiver or slide closed, or the barrel, receiver, or any part of the firing mechanism of such weapon, which is designed to eject or propel a projectile by the action of an explosive or combustible propellant but does not include inoperable handguns which cannot be rendered operable, curios, relics, or antique handguns as presently or hereafter defined in Title 26, Part 178 of the Code of Federal Regulations, Commerce In Firearms.

(C) "Dealer" means any person, firm or corporation engaged in the business of selling or trading firearms or firearm ammunition at wholesale or retail within the limits of the City of Shaker Heights, Ohio, whether as the principal business of such person, firm, or corporation, or in addition thereto.

(D) "Resident" means any person who has a place of residence within the limits of the City of Shaker Heights, Ohio.

(E) "Non-resident" means any person who does not have a place of residence within the limits of the City of Shaker Heights, Ohio.

* * * * *

(G) "Identification Card" means a Handgun Owner's Identification Card issued pursuant to Section 753.04.

(H) "Registration Card" means a Handgun Registration Card issued pursuant to Section 753.05.

* * * * *

753.02 Prohibitions. (A) No person shall sell, purchase, own, possess, transfer, give,

deliver, receive or have on or about his person or use any handgun which does not contain an engraved serial number or other numerical identification, or which has had the serial number or other numerical identification obliterated; * * *.

(B) No person shall receive, or possess any handgun unless such person has an Identification Card issued to him and in effect and a Registration Card for each such handgun, except to the extent that he is exempt pursuant to Section 753.06 from such requirement.

(C) No person shall have on or about his person, or use any handgun unless such person has in his possession an Identification Card issued to him and in effect, and a Registration Card for each handgun, except to the extent that he is exempt pursuant to Section 753.06 from such requirement.

(D) No person shall deliver, transfer or furnish any handgun to any person unless the transferee exhibits at the time of transfer an Identification Card valid on its face and issued to the transferee, and a Registration Card for each such handgun, except to the extent that he is exempt pursuant to Section 753.06 from such requirement.

* * * * *

753.06 Exemptions. (A) The following shall be exempt from the provisions of this Chapter except sub-section (A) of Section 753.02.

(1) Any state of the United States, the United States or any political subdivision, department or agency of either;

(2) An officer or agent of any state or the United States, or any political subdivision, department, or agency of either, a member of the organized militia of any state or the armed forces of the United States, or a law enforcement officer of any political sub-division, but only to the extent that his official duties require him to purchase, own, possess, receive, carry, or use handguns and not for the personal use of such individuals.

(B) The requirement of an Identification Card and Registration Card contained in Sections 753.04 and 753.05 shall not apply:

(1) To a holder of a dealer's license issued pursuant to Section 753.07.

(2) To a non-resident of the City of Shaker Heights who holds and exhibits upon request a valid permit, authorization, or identification issued by the Chief of Police or the Sheriff of his place of residence to purchase, own, possess, receive, carry, or use any handgun; * * *

(3) To a non-resident of the City of Shaker Heights, moving to this City for the purpose of establishing residence herein, during a period not exceeding thirty (30) days from the date of his entry into this City for such purpose; provided that such person shall possess and exhibit upon request such valid permit, authorization, or identification as may be required by the laws of his former domicile to own, possess, receive, or have on or about the person any handgun, or proof of residence in a jurisdiction which does not require the same.

* * * * *

(6) To carriers, warehousemen, and others engaged in the business of transportation and/or storage and their employees to the extent that the possession, receipt, or having on or about the person of any handgun by such persons is in the ordinary course of business and in conformity with the laws of this State or the United States, but not for the personal use of any such person.

* * * * *

(8) To a federally licensed manufacturer of handguns.

753.07 Dealer's license (A) Every Dealer in this City shall procure a license to engage in such business. Any Dealer engaged in such business at more than one location in this City shall procure a separate license for each such location. * * * * *

Sharonville

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Sheffield Lake

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

672.15 Sale and possession of firearms and explosives.

(a) Definitions. As used in this section:

(1) "Firearm" means any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; or the frame or receiver of any such weapon; or any firearm muffler or firearm silencer.

(2) "Pistol" means any firearm with a barrel less than twelve inches in length.

(3) "Manufacturer" or "dealer" means any person engaged in the business of manufacturing, repairing or selling firearms at wholesale or retail.

(4) "Fugitive from justice" means any person who has fled or is fleeing from any law enforcement officer to avoid prosecution or incarceration for a felony or to avoid giving testimony in any criminal proceeding.

(5) "Subversive organization" means any group, committee, club, league, society, association or combination of individuals, the purpose of which, or one of the purposes of which, is the establishment, control, conduct, seizure or overthrow of the Government of the United States, or of any state or political subdivision thereof, by the use of force, violence, military measures or threats of one or more of the foregoing.

(b) Possession Restricted.

(1) No person who has been convicted of a felony in any court of the United States, the several states, territories, possessions, commonwealth countries or the District of Columbia, or who is a fugitive from justice, of unsound mind, a drug addict or an habitual drunkard, shall possess a firearm within the City.

(2) No person who is a member of a subversive organization shall possess a firearm within the City.

(3) No person under the age of twenty-one shall possess a handgun. This subparagraph shall not apply to the issue of pistols to members of the Armed Forces of the United States, active or reserve, State Militia or ROTC, when on duty or training, or to the temporary loan of pistols for instruction under the immediate supervision of a parent, guardian or adult instructor.

(c) Nonserialized Pistols. No person shall receive, possess, sell, lease or otherwise transfer any pistol from which the manufacturer's serial numbers or letters have been removed.

(d) Sales, Transfers and Displays Regulated.

(1) No manufacturer or dealer, except a manufacturer or dealer having a license issued by the Sheffield Lake Division of Police, shall sell any firearm at wholesale or retail.

(2) No person shall sell, lease, lend or otherwise transfer a firearm to any person whom he knows or has reasonable cause to believe has been convicted of a felony, or who is a fugitive from justice, of unsound mind, a drug addict, an habitual drunkard or a member of a subversive organization.

(3) When delivered, all pistols must be securely wrapped and must be unloaded.

(e) False Information Prohibited.

(1) No person, in applying for a license as a manufacturer or dealer, shall give false information or offer false evidence of his identity.

(2) No person shall give false information concerning the matters referred to in subsections (b)(1) and (b)(2) hereof or concerning his age or his name and address or offer false evidence of his identity when purchasing a pistol.

(f) Confiscation and Destruction. Any firearm of any type or explosive of any type sold or possessed in violation of any provision of this section shall be confiscated by the Sheffield Lake Division of Police and destroyed by such Division.

(g) Penalty. Whoever violated any of the provisions of this section is guilty of a misdemeanor of the second degree. Punishment shall be as provided in Section 698.92.

Sheffield Village

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a)(2) same as 2923.20(A)(4).
672.09(a)(3) same as 2923.20(A)(5).
672.10 same as 2923.21.

Shelby

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 same as 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

Shiloh

545.01 same as 2923.11.
545.06(A) (2) same as 2923.20(A) (4).
545.06(A) (3) same as 2923.20(A) (5).

Sidney

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

Solon

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

South Euclid

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

672.14. License required for sale of weapons. No person shall engage in the business of selling, or sell or give away to any person within the City any pistol, revolver, derringer, * * * or other weapon of like character, which can be concealed on or about the person, without first securing a license to do so as hereinafter provided. No person having secured such a license shall sell or give away any such weapon to any person within the City who has not first secured from the Chief of Police a permit to purchase such weapon in the manner hereinafter provided.

672.15. Application for license. Any person desiring a license authorizing the sale of any of the deadly weapons specified in Section 672.14 shall make application in writing to the Director of Public Safety, [contact local authorities for required information] * * *

672.18. Permit to buy weapon. No person shall purchase or acquire by gift or otherwise any pistol, revolver, derringer, * * * or other weapon of like character, which can be concealed on or about the person, without first securing a permit to do so. Before any such permit is granted, an application in writing shall be made therefor to the Chief of Police [contact local authorities for required information] * * *

* * * * *

South Russell Village

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

Springdale

672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

Springfield

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

St. Bernard

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

St. Clairsville

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Steubenville

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.08 same as 2923.21.

Stone Creek Village

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Stow

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

672.17 Possession and transfer of firearms.

(a) Definitions. As used in this section: (1) "Pistol" means any firearm with a barrel less than twelve inches in length.

(2) "Manufacturer" and "dealer" mean any person engaged in the business of manufacturing, repairing or selling firearms at wholesale or retail.

(3) "Fugitive from justice" means any person who has fled or is fleeing from any law enforcement officer to avoid prosecution or incarceration for a felony or to avoid giving testimony in any criminal proceeding.

(4) "Subversive organization" means any group, committee, club, league, society, association or combination of individuals, as listed by the United States Government Justice Department.

(b) Unlawful Possession. (1) No person who has been convicted of a felony in any court of the United States, the several states, territories, possessions, commonwealths, countries or the District of Columbia, or who is a fugitive from justice, or of unsound mind, or a drug addict, or an habitual drunkard, shall possess a firearm within the City.

(2) No person who is a member of a subversive organization shall possess a firearm in the City.

(3) No person under the age of eighteen shall possess a pistol. The provisions of this subsection shall not apply to the issue of pistols to members of the Armed Forces of the

United States, active or reserve, the State Militia, or the ROTC, when on duty or training, or to the temporary loan of pistols for instruction under the immediate supervision of a parent or guardian or adult instructor.

(c) **Manufacturers and Dealers.** (1) No person shall receive, possess, sell, lease or otherwise transfer any pistol from which the manufacturer's serial numbers or letters have been removed.

(2) No manufacturer or dealer, except a manufacturer or dealer having a license issued under the provisions of this section, shall sell any firearm at wholesale or retail within the City.

(3) No person shall sell, lease, lend or otherwise transfer a firearm to any person whom he knows or has reasonable cause to believe has been convicted of a felony, or is a fugitive from justice, or of unsound mind, or a drug addict, or an habitual drunkard, or a member of a subversive organization.

(4) When delivered all firearms must be unloaded.

(5) No person shall sell, lease, lend or otherwise transfer a pistol to any person under eighteen years of age except as provided in subparagraph (b)(3) hereof.

(6) Application for a manufacturer's or dealer's license required by subparagraph (c)(2) hereof shall be made to the Director of Public Safety on forms prescribed and furnished by the City. * * * * *

Streetsboro

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a)(2) same as 2923.20(A)(4).
549.07(a)(3) same as 2923.20(A)(5).
549.08 same as 2923.21.

Strongsville

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a)(2) same as 2923.20(A)(4).
672.09(a)(3) same as 2923.20(A)(5).
672.10 same as 2923.21.

Stryker

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a)(2) same as 2923.20(A)(4).
549.08 same as 2923.21.

Sugar Grove

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a)(2) same as 2923.20(A)(4).
672.09(a)(3) same as 2923.20(A)(5).
672.10 same as 2923.21.

Tallmadge

71.2.2 **Sale of firearms to minors.** 1. No person shall sell, order, furnish or give to a minor under the age of seventeen years, an air gun, musket, rifle, shot gun, revolver, pistol or other firearm, or ammunition therefore, or, being the owner or having charge or control thereof, knowingly permit it to be used by a minor under such age.

Terrace Park

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a)(2) same as 2923.20(A)(4).
549.07(a)(3) same as 2923.20(A)(5).
549.08 same as 2923.21.

Tiffin

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a)(2) same as 2923.20(A)(4).
549.07(a)(3) same as 2923.20(A)(5).
549.08 same as 2923.21.

Tipp City

140.01 same as 2923.11.
140.06(A)(2) same as 2923.20(A)(4).
140.06(A)(3) same as 2923.20(A)(5).
140.07 same as 2923.21.

Toledo

17-13-101. **Definitions.** As used in Sections 17-13-101 to 17-13-124 of the General Offense Code:

A. "Deadly Weapon" same as 2923.11(A).

B. "Firearm" means any weapon, including a handgun, by whatever name known, or the barrel, receiver, or any part of the firing mechanism of such weapon, which is designed to eject or propel a projectile by the action of an explosive or combustible propellant, but does not include inoperable firearms which cannot be rendered operable.

C. "Handgun" means any pistol, revolver, or other firearm, having a barrel not exceeding twelve (12) inches in length, measured by the insertion therein of a rod with the receiver or slide closed, but does not include handguns designed and safe only for use with black powder.

D. "Semi-Automatic Firearm" same as 2923.11(D).

E. "Automatic Firearm" same as 2923.11(E).

F. "Sawed-off Firearm" same as 2923.11(F).

G. "Zip-gun" same as 2923.11(G).

H. "Shotgun" means any weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned, and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

I. "Rifle" means any weapon designed or redesigned, made or remade, and intended to be fired from the shoulder, and designed or redesigned, and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire a single projectile through a rifled bore for each single pull of the trigger.

J. "Fixed Place of Business" means an established location of a commercial or industrial enterprise owned, managed, or operated by a person, firm or corporation.

K. "Unencased" means not enclosed in a case, container, or receptacle designed and constructed specifically for the purpose of encasing a firearm, but shall not include a holster for a pistol or revolver.

L. "Loaded" means any pistol, revolver, rifle, shotgun, or any other weapon, by whatever name known, designed to expel a projectile or projectiles by the action of expanding gases, which contains a round or rounds of ammunition in the chamber, slide, receiver, barrel, or cylinder, or clip attached thereto.

M. "Unloaded" means any pistol, revolver, rifle, shotgun, or any other weapon, by whatever name known, designed to expel or projectile or projectiles by the action of expanding gases, which does not contain a round or rounds of ammunition in the chamber, receiver, slide, barrel, cylinder or clip attached thereto.

N. "Firearms dealer" means any person, firm or corporation regularly engaged in the business of selling or trading firearms or ammunition at wholesale or retail within the limits of the City of Toledo, whether as the principal business of such person, firm or corporation, or in addition thereto.

O. "Fugitive from Justice" means a person who flees, escapes from custody, conceals or attempts to use any other unlawful means to avoid prosecution or punishment for a felony under the laws of this or any other state, the United States or any of its territories or possessions, the District of Columbia, or any foreign country with which the United States has a treaty of extradition in effect.

P. "Resident" means any person who has a factual place of residence within the limits of the City of Toledo.

Q. "Non-resident" means any person who does not have a factual place of residence within the limits of the City of Toledo.

R. "Minor" means any person under the age of twenty-one (21) years.

S. "Explosive device" same as 2923.11(H).

T. "Incendiary device" same as 2923.11(I).

U. "Dangerous Ordnance" same as 2923.11(J).

V. "Dangerous ordnance" same as 2923.11(K).

17-13-103. Prohibitions. A. No person shall purchase, own, possess, receive, have on or about his person, or use any firearm or ammunition, if such person is a fugitive from justice or is under adjudication of mental incompetence.

B. No person shall purchase, receive, have on or about his person, or use any firearm or ammunition while under the influence of alcohol, any narcotic drug, hallucinogen, or other dangerous drug, or drug of abuse.

C. No person shall purchase, own, possess, receive, have on or about his person, or use any handgun or handgun ammunition, if such person has been convicted of a felony involving the use or the threat of use of force or violence under the laws of this or any other state, the United States or any of its territories or possessions, the District of Columbia, or any foreign country with which the United States has a treaty of extradition in effect, provided however, such person shall be eligible to possess, purchase, own, receive or have on or about his person or use a handgun or handgun ammunition after ten years have elapsed from the date of completion of any sentence, probationary period or parole imposed upon such person so convicted.

D. No person shall knowingly sell, transfer, give, deliver, or furnish any firearm or ammunition to any person prohibited by this section from purchasing, owning, possessing, receiving, having on or about his person, or using such firearm or ammunition.

17-13-105. Identification Card Required. A. No person shall purchase, own, possess, receive, have on or about his person, or use any handgun except upon a suitable firing range, unless such person has a handgun owner's identification card issued to him and in effect pursuant to this section, or unless such person is exempt from the requirement of an identification card pursuant to Section 17-13-106 of the Toledo Municipal Code. * * *

17-13-106. Exemptions. A. The requirements of a handgun owner's identification card contained in Section 17-13-105 of the Toledo Municipal Code do not apply to the purchase, ownership, possession, receipt, having on or about the person, or use of any handgun or handgun ammunition by:

1. Any state of the United States, or any political subdivision, department, or agency of either;

2. Officers or agents of any state or the United States or any political subdivision, department, or agency of either, members of the organized militia of any state or the armed forces of the United States, or law enforcement officers of any political subdivision to the extent that the official duties of any such person require him to purchase, own, possess, receive, carry, or use handguns;

3. Licensed manufacturers and dealers, and their agents and servants, to the extent that the purchase, ownership, possession, receipt, or use of any handgun is in the ordinary course of business;

4. Non-residents of the City of Toledo who are residents of the State of Ohio; provided that such persons are not prohibited by the provisions of Section 17-13-103 or 17-13-105 of the Toledo Municipal Code, and possess and exhibit upon request such valid permit, authorization, or identification issued by the Chief of Police or the Sheriff of their place of residence to purchase, own, possess, receive, carry, or use any handgun * * *.

5. Non-residents of the City of Toledo, Ohio, removing to this city for the purpose of establishing residence herein, during a period not exceeding thirty (30) days from the date of their entry into this city for such purpose; provided that such persons shall possess and exhibit upon request such valid permit, authorization or identification as may be required by the laws of their former domicile to own, possess, receive, or have on or about the person any handgun.

6. Executors, administrators, guardians, receivers, trustees in bankruptcy, and other fiduciaries duly qualified and appointed by a court of competent jurisdiction, when acting in their fiduciary capacity, and their attorneys.

7. Heirs and legatees acquiring any handgun or handgun ammunition through distribution of an estate, and other persons other than fiduciaries acquiring any handgun through operation of law, during a period not exceeding sixty (60) days from the date of their coming into possession any handgun.

8. Carriers, warehousemen, and others engaged in the business of transporting or storing firearms, handguns and their agents, servants, to the extent that the ownership, possession, receipt, or having on or about the person of any handgun by such persons is in the ordinary course of business and in conformity with the laws of this state or the United States. * * * * *

Section 17-13-107. Further Prohibitions. A. No person in this city shall purchase or otherwise obtain ownership or possession of, or as security for a loan, any handgun from any person unless the transferor exhibits a handgun owner's identification card valid on its face, issued to the transferor pursuant to Section 17-13-105 of the Toledo Municipal Code, or unless the transferor exhibits evidence that he is exempt from the requirement of an identification card pursuant to Section 17-13-106 of the Toledo Municipal Code.

B. No person in this City shall sell, deliver, transfer, or furnish any handgun to any person in this City, unless the transferee exhibits a handgun owner's identification card valid on its face and issued to the transferee pursuant to Section 17-13-105, or unless the transferee exhibits evidence that he is exempt from the requirement of an identification card pursuant to Section 17-13-106 of the Toledo Municipal Code.

17-13-108. Dealers License. A. Every firearms dealer in this City shall procure a license to engage in such business * * *.

* * * * *

Section 17-13-110. Records. A. Every firearms dealer shall maintain a record of the sale of handguns. Such record of sale shall contain the (information required by the local authorities; contact them for record entries required under Sec. 17-13-110) * * *. Each such record of sale shall be signed by the purchaser and the salesman and no sale shall be made unless such identification card or permit is exhibited by the purchaser. In the instance of sales from a wholesale distributor to a dealer the license number of the dealer shall be recorded in lieu of the aforesaid identification card. (see 17-13-105)

* * * * *

C. No firearms dealer or any agent or employee of such dealer shall fail to comply with this section or knowningly cause any false information to be entered on a record of sale of any handgun, and no purchaser of any handgun shall give any false information for entry on such record of sale.

D. As used in this section the term "wholesale distributor" shall be an individual, partnership, or corporation, selling only to licensed dealers and not at retail or otherwise to individual consumers.

17-13-120(A) (2) same as 2923.20(A) (4).

17-13-120(A) (3) same as 2923.20(A) (5).

17-13-122 same as 2923.21.

Section 17-13-123, Exceptions. A. The provisions of this Article shall not apply to officers or agents of any State or of the United States, or any political subdivision, division or agency of either, members of the organized militia of any state or the armed forces of the United States, or law enforcement officers of any political subdivision to the extent that the official duties of any such person require him to carry, be in possession of, or have on or about his person any such firearm or weapon, nor to a person whose terms of employment require him to carry, possess, or have on or about his person during the hours of his employment such firearm or weapon; nor to the members of a color guard, military unit, or marching unit, while such col-

or guard, military unit, or marching unit is participating in a duly authorized parade, athletic event, funeral, or while so participating in such other civic events and functions in which the flag of the United States is displayed, provided, however, that any firearms borne by members of any such color guard, military unit, or marching unit while so participating in such events shall at all times remain unloaded.

B. Nothing in this Article shall be construed to limit, restrict, or modify the legitimate use of firearms as provided by the laws of the United States, or of the State of Ohio, nor shall it be construed to restrict, limit, prohibit or modify the conduct of legitimate business with manufacturers, wholesale dealers and retail dealers of firearms licensed by the Federal Government, or retail dealers of firearms licensed by the City of Toledo, or with or by persons, firms or coporations engaged in the business of repairing, altering, assembling, cleaning, polishing, engraving, or trueing or who performs any mechanical operation upon any firearm.

Section 17-12-127. Explosive Devices. A. No person shall make, use, or possess on his person or have under his control a Molotov cocktail, or any other explosive device containing a flammable, combustible or explosive material or substance which can be used as a firebomb either by igniting a fuse and/or breaking the device.

B. Persons engaged in a lawful activity, business, calling, employment or occupation are hereby exempt from the operation of this section. * * *

Tremont

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2933.20(A) (4).
540.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Trenton

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a)(2) same as 2923.20(A)(4).
672.09(a)(3) same as 2923.20(A)(5).
672.10 same as 2923.21.

Trotwood

545.01 same as 2923.11.
545.03 same as 2923.17.
545.07(A) (2) same as 2923.20(A) (4).
545.07(A) (3) same as 2923.20(A) (5).
545.08 same as 2923.21.

545.15 Sale License, Purchase Permit Required (A) No person, firm or corporation shall give, sell, offer to sell, exhibit for sale or engage in the business of selling firearms, * * * ammunition, explosives or fireworks without first securing a license to do so from the Chief of Police. No person, firm or corporation shall sell or give away any weapon, as herein defined, which is concealable on the person, to any person within the Municipality who has not secured a permit from the Chief of Police to purchase such weapons.

* * * * * *

545.20 Records of Sales (A) Any person, firm or corporation who shall sell any firearms, * * * or other weapon, ammunition, explosives or fireworks shall make and keep a permanent written record of such sale. Such record shall contain [information required by local authorities; contact them for required contents] * * * and the signature of the purchaser.

Troy

519.01 same as 2923.11.
519.05 same as 2923.17.
519.06(a) (2) same as 2923.20(A) (4).
519.06(a) (3) same as 2923.20(A) (5).
519.07 same as 2923.21.

University Heights

Chapter 626

626.01 Definitions. As used in this chapter:

(a) "Encased" means enclosed in a case, container or receptacle designed and specifically constructed for the purpose of enclosing a firearm, but shall not include a holster for a pistol or revolver.

(b) "Firearm" means any weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant. "Firearm" includes an unloaded firearm and any firearm which is inoperable but which can readily be rendered operable.

(c) "Fugitive from Justice" means a person who flees, escapes from custody, conceals or attempts to use any other unlawful means to avoid prosecution or punishment for a felony under the laws of this or any other State, the United States of America or any of its territories or possessions, the District of Columbia or any foreign country.

(d) "Handgun" means any pistol, revolver or other firearm having a barrel not exceeding 12 inches in length, measured by the insertion of a rod into the barrel with the receiver or slide closed, but does not include inoperable handguns which cannot be readily rendered operable, curios, relics or antique handguns as presently or hereinafter defined in Title 26, Part 178 of the Code of Federal Regulations, Commerce in Firearms.

(e) "Minor" means any person under the age of 21 years.

(f) "Nonresident" means any person who does not have a place of residence within the corporate territorial limits of the City of University Heights.

(g) "Pellet Gun" means any item designed to resemble a firearm which is capable of expelling or propelling, by the sudden release of gas or air, one or more projectiles at a speed sufficient to penetrate human tissue.

(h) "Resident" means any person who has a place of residence within the corporate territorial limits of the City of University Heights.

(i) "Restricted Weapon" means any firearm, pellet gun or stun gun for which a Restricted Weapons Owner's Identification Card is required by Section 626.04 of these Codified Ordinances or would be so required but for the exemptions set forth in Section 626.05.

(j) "Stun Gun" means any device designed to transmit charges of electricity in excess of 10,000 volts with a capability, when directed towards a human being, of rendering such person incapable of normal function.

626.02 Prohibitions.

(a) No person shall purchase, own, possess, receive, have on or about his person or use any firearm, pellet gun, stun gun or ammunition if such person is a fugitive from justice or is under adjudication of mental incompetence.

(b) No person shall purchase, receive, have on or about his person or use any firearm, pellet gun, stun gun or ammunition while under the influence of alcohol, any narcotic drug, hallucinogen or other dangerous drug.

(c) No person shall purchase, own, possess, receive, have on or about his person or use any firearm, pellet gun or stun gun, or ammunition if such person has been convicted of a felony under the laws of this or any other State, the United States or any of its territories or possessions, the District of Columbia or any foreign country. However, such person shall be eligible to possess, purchase, own, receive or have on or about his person or use a handgun or handgun ammunition after 10 years have elapsed from the date of completion of any sentence, probationary period or parole imposed upon such person so convicted.

(d) No person shall knowingly sell, transfer, give, deliver or furnish any firearm, pellet gun, stun gun or ammunition to any person prohibited by this section from purchasing, owning, possessing, receiving or having on or about his person or using such item.

(e) Whoever violates any of the provisions of this section shall be fined not more than $1,000 or imprisoned not more than one year,

or both. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.

* * * * *

626.04 Identification card required.

(a) No person shall purchase, own, possess, receive, have on or about his person or use any handgun, pellet gun or stun gun, unless such person has a Restricted Weapons Owner's Identification Card issued to him and applicable to such weapon by reason of a proof of registration form issued pursuant to Section 626.07 of these Codified Ordinances then in effect pursuant to this Chapter, or unless such person is exempt from the requirements of having such identification card pursuant to Section 626.05.

(b) Application for a Restricted Weapons Owner's Identification Card shall be made in writing under oath to the Chief of Police and shall be accompanied by an application fee of $5.00. * * * Such owner's identification card shall not in any manner authorize nor affect the carrying or possession of any weapon contrary to law.

(d) A Restricted Weapons Owner's Identification Card shall not be issued to any person who is:

(1) A person prohibited by Section 626.02 from purchasing, owning, possessing, receiving, having on or about his person or using any firearm or ammunition;

(2) A person under the age of twenty-one (21);

(3) A person convicted of a felony drug abuse offense as defined in RC 2925.01(I), effective 7/1/76, or similar definitions subsequently adopted;

(4) A person with more than one (1) conviction of disorderly conduct involving intoxication within one (1) year prior to his application for such identification card;

(5) Any person with more than one (1) conviction of a misdemeanor involving the use of force and violence, or the threat of the use of force and violence, against the person of another within one (1) year prior to his application for such identification card;

(6) Any person with a conviction of a felony involving, as an element thereof, the threat or use of force, at any prior time.

* * * * *

(f) No person shall use or attempt to use his Restricted Weapons Owner's Identification Card to obtain any restricted weapon for any person who does not have a Restricted Weapons Owner's Identification Card issued to him and in effect pursuant to this section and is not exempt from the requirement of an identification card pursuant to Section 626.05 and no person shall knowingly permit his identification card to be used by another to purchase, own, possess, receive, have on or about his person or use any restricted weapon or ammunition.

(h) A possessor of an identification card shall become ineligible to possess such a card if he becomes one of that class of persons set forth in subsection (d) hereof. At such time, he shall immediately forfeit such card and return the same to the Chief of Police and shall, within thirty (30) days from the date of forfeiture, dispose of any restricted weapon in his possession pursuant to the provisions of Section 626.06.

(i) A nonresident of the City who owns, manages or operates a business within the City, or whose terms of employment require him to own, possess or have on or about his person a restricted weapon during his employment within the City, or any nonresident of the City passing through the City who complies with the prerequisites of this chapter, may make application for and obtain a Restricted Weapons Owner's Identification Card pursuant to the provisions of this section.

* * * * *

626.05 Exemptions. (a) The requirement of a Restricted Weapons Owner's Identification Card obtained pursuant to Section 626.04 does not apply to the purchase, ownership, possession, receipt, having on or about the person or use of any restricted weapon or ammunition by:

(1) Any State or of the United States or any political subdivision, department or agency thereof;

(2) Officers or agents of any State or of the United States or any political subdivision, department or agency of either, members of the organized militia of any State or the Armed Forces of the United States, or law enforcement officers of any political subdivision, to the extent that the official duties of any such person requires him to purchase, own, possess, receive, carry or use restricted weapons;

(3) Licensed manufacturers and their agents and servants, to the extent that the purchase, ownership, possession, receipt or use of any restricted weapon is in the ordinary course of business;

(4) Non residents of the City who are residents of the State, provided that such persons are not prohibited by the provisions of Section 626.02 or 626.04 and possess and exhibit upon request such valid permit, authorization or identification issued under the authority of the government of their place of residence to purchase, own, possess, receive, carry or use any restricted weapon and provided, further, that restricted weapons in the possession of or under the control of nonresidents shall at all times be unloaded and encased, except while unloaded at a public firearms display, show or exhibition. The requirements of a valid permit, authorization or identification as required by this subsection shall not apply to a nonresident who enters the City with firearms for the sole purpose of exhibiting or trading such firearms at a public firearms display, show or exhibition, or for the sole purpose of participating in an organized and sanctioned pistol match. The permit, authorization or identification provided for in this subsection shall be valid for only thirty (30) days from the date thereof;

(5) Nonresidents of the City moving into the City for the purpose of establishing residence herein, during a period not exceeding sixty (60) days from the date of their entry into the City for such purpose, provided that such persons possess and exhibit upon request such valid permit, authorization or identification as may be required by the laws of their former domicile to own, possess, receive or have on or about the person any restricted weapon;

(6) Executors, administrators, guardians, receivers, trustees in bankruptcy and other fiduciaries duly qualified and appointed by a court of competent jurisdiction, when acting in their fiduciary capacity, and their attorneys;

(7) Heirs and legatees acquiring any restricted weapon or ammunition therefor through distribution of an estate, and other persons other than fiduciaries acquiring any restricted weapon through operation of law, during a period not exceeding sixty (60) days from the date of their coming into possession of any restricted weapon;

(8) Carriers, warehousemen and others engaged in the business of transporting or storing firearms, and their agents and servants, to the extent that the ownership, possession, receipt or having on or about the person of any such firearm by such persons is in the ordinary course of business and in conformity with the laws of this State or the United States.

* * * * *

626.06 Further Prohibitions; Thefts. (a) No person who knows or through the exercise of due diligence should know that a restricted weapon owned or possessed by him has been lost, converted or stolen shall fail to report such fact to the Chief of Police forthwith.

* * *

626.07 Restricted Weapons Registration. The Restricted Weapons Owner's Identification Card issued pursuant to this chapter shall be applicable only to handguns, pellet guns and stun guns specifically listed on the application therefor or on any supplemental application subsequently filed by the card holder. The card itself need not list the items so covered. A listed item shall be identified on such application by type, brand name, caliber and serial number. After filing of the original application, an owner shall file a supplemental application within ten (10) days after the acquisition of any handgun, pellet gun or stun gun, identifying such item in the same manner as on an original application, and upon filing such supplemental application no further approval shall be necessary but such listed item shall be automatically covered by

the Restricted Weapons Owner's Identification Card already issued.

626.06 Proof of Registration. Upon issuance of the original Restricted Weapons Owner's Identification Card and upon filing of any supplemental application thereafter, the Chief of Police shall issue a "Proof of Registration" form for each listed weapon. The Proof of Registration form shall contain the name of the person filing the application and to whom the Restricted Weapons Owner's Identification Card was issued, the date of expiration of the card, and the description of the registered item, including serial number.

Upper Arlington

523.01 same as 2923.11
523.04 same as 2923.17.

Urbana

137.01 same as 2923.11.
137.05 same as 2923.17.
137.07(A)(2) same as 2923.20(A)(4).
137.08 same as 2923.21.

Vermilion

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Wadsworth

529.02. Sale of firearms. No person shall sell, barter, furnish or give to a minor under the age of seventeen years an air gun, musket, rifle, shotgun, revolver, pistol or other firearm, or ammunition therefor, or being the owner or having charge or control thereof knowingly permit it to be used by a minor under such age.

This section is not applicable to a minor under the age of seventeen years who is hunting in accordance with Ohio R.C. 1533.13 or to persons exempted under Ohio R.C. 2903.07.

Wakeman

10-101 same as 2923.11.
10-106(A) (2) same as 2923.20(A) (4).
10-106(A) (3) same as 2923.20(A) (5).
10-107 same as 2923.21.

Walbridge

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

Waldo

Section 6: Unlawful Transactions in Weapons. (A) No person shall: * * * * *

2) When transferring any dangerous ordnance to another, negligently fail to require the transferee to exhibit such identification, license, or permit showing him to be authorized to acquire dangerous ordnance pursuant to Article XIV, Section 5 of the General Offense Code or 2923.17 of The Ohio Revised Code, or negligently fail to take a complete record of the transaction and forthwith forward a copy of such record to the sheriff of the county or safety director or police chief of the municipality where the transaction takes place;

3) Knowingly fail to report to law enforcement authorities forthwith the loss or theft of any firearm or dangerous ordnance in such person's possession or under his control.

Section 7 same as 2923.21.

Walton Hills

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a)(2) same as 2923.20(A)(4).
549.07(a)(3) same as 2923.20(A)(5).
549.08 same as 2923.21.

Wapakoneta

137.01 same as 2923.11.
137.05 same as 2923.17.
137.07(A)(2) same as 2923.20(A) (4).
137.08 same as 2923.21.

Warren

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a)(2) same as 2923.20(A)(4).
549.07(a)(3) same as 2923.20(A)(5).
549.08 same as 2923.21.

Warrensville

741.01 Permit to dispose of concealable weapons. No person shall engage in the business of selling, or shall sell or give away to any person, within the City, any pistol, revolver, derringer, * * * or other weapon of similar character, which can be concealed on the person, without securing a permit to do so as hereinafter provided. No person having secured such permit shall sell or give away any such weapon to any person within the City who has not secured a permit from the Chief of Police to purchase such weapon in the manner hereinafter provided.

* * * * *

741.05 Permit to purchase concealable weapons; application. No person shall purchase any pistol, revolver, * * * or other weapon of similar character, which can be concealed on the person, without first securing from the Chief of Police a permit to do so. Before any such permit is granted, an application in writing shall be made therefor, (which shall contain the information required under 741.05; contact the Chief of Police for assistance) * * *

* * * * *

741.09 Sale of ammunitions; record required. No person shall sell, give, barter or otherwise dispose of any ammunition which is capable of use in any pistol, revolver or other weapon of similar character which can be concealed on the person, unless every such transaction is entered into a book by the person making such sale, gift, exchange or other disposition, together with the address of the recipient, the date and the description of the ammunition sufficient to identify it. Such entry shall be signed by the recipient and witnessed by the person required to make such record. A report shall be made to the Chief of Police within thirty days of each such transaction on such forms as he may prescribe.

Satisfactory proof of identity shall be required of the recipient by the person making such sale, gift, exchange or other disposition of ammunition. The means or method of such identification shall be recorded in the book required to be kept hereunder.

* * * * *

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 same as 2923.18.
672.09(a)(2) same as 2923.20(A)(4).
672.09(a)(3) same as 2923.20(A)(5).
672.10 same as 2923.21.

Warrensville Heights

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 same as 2923.18(A), (B) (1), (C), (D), (E), and (F).

672.08. Failure to secure dangerous ordnance. (a) No person, in acquiring, possessing, carrying or using any dangerous ordnance shall negligently fail to take proper precautions:

(1) To secure the dangerous ordnance against theft or against its acquisition or use by any unauthorized or incompetent person;

(2) To insure the safety of persons and property.

672.09(a) (2) same as 2923.20(A) (4).

672.10 same as 2923.21.

741.01 Permit to Dispose of Concealable Weapons No person shall engage in the business of selling, or shall sell or give away to any person, within the City, any pistol, revolver, derringer, * * * or other weapon of similar character, which can be concealed on the person, without securing a permit to do so as hereinafter provided. No person having secured such permit shall sell or give away any such weapon to any person within the City who has not secured a permit from the Chief of Police to purchase such weapon in the manner hereinafter provided.

741.09 Sale of Ammunition; Record Required No person shall sell, give, barter or otherwise dispose of any ammunition which is capable of use in any pistol, revolver or other weapon of similar character which can be concealed on the person, unless every such transaction is entered into a book by the person making such sale, gift, exchange or other disposition, together with the address of the recipient, the date and the description of the ammunition sufficient to identify it. Such entry shall be signed by the recipient and witnessed by the person required to make such record. A report shall be made to the Chief of Police within thirty days of each such transaction on such forms as he may prescribe.

Satisfactory proof of identity shall be required of the recipient by the person making such sale, gift, exchange or other disposition of ammunition. The means or method of such identification shall be recorded in the book required to be kept hereunder.

Washington C.H.

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Waterville

510.06. Unlawful transactions in weapons. (A) No person shall: (2) When transferring any dangerous ordnance to another, negligently fail to require the transferee to exhibit such identification, license, or permit showing him to be authorized to acquire dangerous ordnance pursuant to Section 510.05 of the General Offense Code or 2923.17 of the Ohio Revised Code, * * *.

510.07(A) (1) same as 2923.21(A) (1).
510.07(A) (2) same as 2923.21(A) (2).
510.07(A) (3) same as 2923.21(A) (3).

Wellington

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a)(2) same as 2923.20(A)(4).
549.07(a)(3) same as 2923.20(A)(5).
549.08 same as 2923.21.

Wellston

131.06. Sale of firearms to minors. (A) No person shall sell, barter, furnish, or give to a minor under the age of seventeen years, an air gun, musket, rifle, shotgun, revolver, pistol, or other firearm, or ammunition therefor, or being the owner or having charge or control thereof, knowingly permit it to be used by a minor under such age.

West Alexandria

672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

West Carrollton

139.01 same as 2923.11.
139.06(A)(2) same as 2923.20(A)(4).
139.07 same as 2923.21.

Westerville

523.01 same as 2923.11.
523.06 same as 2923.17.
523.08 same as 2923.20(A) (4) & (5).
523.09 same as 2923.21.

Westlake

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

Westfield Center

672.01 same as 2923.11.
672.05 same as 2923.11.
672.07 same as 2923.18.
672.09(a)(2) same as 2923.20(A)(4).
672.09(a)(3) same as 2923.20(A)(5).
672.10 same as 2923.21.

West Milton

131.06 - Sale of Firearms to Minors. (A) No person shall sell, barter, furnish, or give to a minor under the age of seventeen, an * * * rifle, shotgun, revolver, pistol, or other firearm, or ammunition therefor, or being the owner or having charge or control thereof, knowingly permit it to be used by a minor under such age.

(B) This section is not applicable to a minor under the age of seventeen years who is hunting in accordance with Section 1533.13 of the Revised Code.

Weston

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a)(2) same as 2923.20(A)(4).
672.09(a)(3) same as 2923.20(A)(5).
672.10 same as 2923.21.

Whitehall

549.01 same as 2923.11
549.05 same as 2923.17

549.07. Unlawful transactions in weapons. (a) No person shall: (2) When transferring any dangerous ordnance to another, negligently fail to require the transferee to exhibit such identification, license or permit showing him to be authorized to acquire dangerous ordnance pursuant to Section 549.05, * * *.

549.08(a) (1) same as 2923.21(A) (1).
549.08(a) (2) same as 2923.21(A) (2).
549.08(a) (3) same as 2923.21(A) (3).

549.16. Sale or gift of deadly weapons; license required. (A) No person shall sell or give away to any person within the City any pistol, revolver, derringer, * * * or other weapon of like character which can be concealed on the person, nor shall any person doing business as a pawnbroker sell or give away or permit to be redeemed or removed from deposit or pledge, any of the deadly weapons hereinabove mentioned without securing a license to do so from the Chief of Police; and no person having secured such a license shall sell or give away, or permit to be redeemed or removed from deposit or pledge, any such weapon unless the person so purchasing, acquiring, redeeming or removing such property shall have secured a permit as required by Section 549.17.

549.17. Purchase of deadly weapons; permit required. (A) No person shall purchase, redeem or remove from deposit or pledge any pistol, revolver, derringer, * * * or other weapon of like character which can be concealed on the person without first securing from the Chief of Police a permit to do so.

Wickliffe

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.
549.14 Permit to Sell or Purchase Concealable Weapon Required. (a) Permit Required. No person shall engage in the business of selling, or sell or give away to any person within the City, any pistol, revolver or similar weapon, which can be concealed on the person, without securing a permit to do so, as hereinafter provided. No person having secured such a permit shall sell or give away any such weapon to any person within this City who has not secured a permit from the Chief of Police to purchase such weapon in the manner hereinafter provided.

Willard

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a)(2) same as 2923.20(A)(4).
672.09(a)(3) same as 2923.20(A)(5).
672.10 same as 2923.21.

Willoughby

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.
785.01 License to dispose of concealable weapons. No person shall engage in the business of selling, or sell or give away to any person within the City, any pistol, revolver, derringer * * * or other weapon of like character, which can be concealed on the person, without securing a license to do so * * *. No person having secured such a license shall sell or give away any such weapon to any person within the City who has not secured a permit from the Chief of Police to purchase such weapon * * *.
785.05 Permit to purchase concealable weapons. No person shall purchase any pistol, revolver, derringer, * * * or other weapon of like character, which can be concealed on the person, without first securing from the Chief of Police a permit to do so. * * *

Willoughby Hills

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Windham

549.07 same as 2923.20 (A) (4) & (5).
549.08 same as 2923.21.

Wintersville

771-1: It shall be unlawful for any person to engage in the business of selling, or to sell or give away to any person within the Village, any pistol, revolver, derringer * * * or other weapon of like character, which can be concealed on the person, without securing a license to do so, as hereinafter provided, and no person having secured such a license, shall sell or give away any such weapon to any person within this Village who has not secured a permit from the Chief of Police to purchase or receive the weapon * * *.
771-2: It shall be unlawful for any person to purchase any pistol, revolver, derringer * * * other weapon of like character, which can be concealed on the person, without first securing from the Chief of Police a permit to do so. * * *
771-3: It shall be unlawful for any person other than a citizen of the United States to own or possess firearms within the limits of the Village and no permit shall be issued under the provisions of this chapter either of sale or to purchase firearms by any person not a citizen of the United States.

Woodlawn

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

Woodsfield

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a)(2) same as 2923.20(A)(4).
549.07(a)(3) same as 2923.20(A)(5).
549.08 same as 2923.21.

Woodville

13-101 same as 2923.11.
13-106(A) (2) same as 2923.20(A) (4).
13-106(A) (3) same as 2923.20(A) (5).
13-107 same as 2923.21.

Wooster

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Worthington

549.01 same as 2923.11.
549.06 same as 2923.20(A) (4) & (5).
549.07 same as 2923.21.

Wyoming

672.01 same as 2923.11.
672.10 same as 2923.17.
672.12 same as 2923.18.
672.14(a) (2) same as 2923.20(A) (4).
672.14(a) (3) same as 2923.20(A) (5).
672.15 same as 2923.21.

Xenia

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Yellow Springs

672.01 same as 2923.11.
672.05 same as 2923.17.
672.07 adopts 2923.18.
672.09(a) (2) same as 2923.20(A) (4).
672.09(a) (3) same as 2923.20(A) (5).
672.10 same as 2923.21.

Yorkville

774-1. License required. It shall be unlawful for any person, firm, or corporation, to engage in the business of selling, or to sell or give away to any person within the Village of

Yorkville, any pistol, revolver, derringer * * * or other weapon of like character, which can be concealed on the person, without securing a license to do so * * *, and no person, firm, or corporation having secured such a license, shall sell or give away any such weapon to any person within this Village who has not secured a permit from the Chief of Police to purchase or receive the weapon * * *.

774-5. Application for permit by individual to purchase. It shall be unlawful for any person to purchase any pistol, revolver, derringer, * * * or other weapon of like character, which can be concealed on the person, without first securing from the Chief of Police a permit to do so. * * *

774-7. American citizenship required for sale or purchase of firearms. It shall be unlawful for any person other than a citizen of the United States to own or possess firearms within the limits of the Village and no permit shall be issued under the provisions of this chapter either for sale or to purchase firearms by any person not a citizen of the United States.

Youngstown

Sec. 133.04 Possession of firearms by aliens. It shall be unlawful for any person other than a citizen of the United States to own or possess firearms within the city. * * *

Sec. 133.05 License to sell weapons required. (a) It shall be unlawful for any person to engage in the business of selling, or to sell or give away to any person, within the city any pistol, revolver, * * * machine gun, bomb, or other weapon of like character, which can be concealed, without securing a license * * *.

(b) It shall be unlawful for any person whether or not licensed under the provisions of this section, to sell or give away or loan to any person under the age of twenty-one years any pistol, revolver, derringer * * * or other weapon of like character, which can be concealed.

Sec. 133.09 Weapon purchaser. It shall be unlawful for any person to purchase any weapon mentioned in section 133.05 unless he furnishes to the dealer the information required by section 133.08 (the name of the purchaser or donee with his address and age, and the purpose given by such person for the purchase of the weapon). It shall be unlawful for any person to purchase any weapon for a person under the age of twenty-one or to otherwise give, sell or loan such weapon to a person under the age of twenty-one years.

Zanesville

549.01 same as 2923.11.
549.05 same as 2923.17.
549.07(a) (2) same as 2923.20(A) (4).
549.07(a) (3) same as 2923.20(A) (5).
549.08 same as 2923.21.

Oklahoma

State Law

Okla. Stat. Ann.
Title 21
Chapter 53—Manufacturing, Selling and Wearing Weapons

Sec. 1272. Carrying weapons—Exceptions. It shall be unlawful for any person to carry upon or about his person, or in his portfolio or purse, any pistol, revolver * * * or any other offensive weapon, except as in this article provided. Provided further, that this Section shall not prohibit the proper use of guns and knives for hunting, fishing or recreational purposes, nor shall this Section be construed to prohibit any use of weapons in a manner otherwise permitted by statute. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

Sec. 1273. Selling weapons to minors. It shall be unlawful for any person within this State, to sell or give to any minor any of the arms or weapons designated, in the two preceding sections.

* * * * *

Sec. 1288. Purchases of firearms, ammunition and equipment in contiguous states by Oklahoma residents—Purchases in Oklahoma by residents of contiguous states. (a) Residents of the State of Oklahoma may purchase rifles, shotguns, ammunition, cartridge and shotgun shell handloading components and equipment in a state contiguous to the State of Oklahoma, provided that such residents conform to the applicable provisions of the Federal Gun Control Act of 1968, and regulations thereunder, as administered by the United States Secretary of the Treasury, and provided further that such residents conform to the provisions of law applicable to such purchase in the State of Oklahoma and in the contiguous state in which the purchase is made.

(b) Residents of a state contiguous to the State of Oklahoma may purchase rifles, shotguns, ammunition, cartridge and shotgun shell handloading components and equipment in the State of Oklahoma, provided that such residents conform to the applicable provisions of the Gun Control Act of 1968, and regulations thereunder, as administered by the United States Secretary of the Treasury and provided further that such residents conform to the provisions of law applicable to such purchase in the State of Oklahoma and in the state in which such persons reside.

Sec. 1289.3 "Pistols" defined. "Pistols" as used herein shall mean any firearm capable of discharging a projectile composed of any material which may reasonably be expected to be able to cause lethal injury, with a barrel or barrels less than sixteen (16) inches in length, and using either gunpowder, gas or any means of rocket propulsion, but not to include flare guns, underwater fishing guns or blank pistols.

Sec. 1289.4 "Rifles" defined. "Rifles" as used herein shall mean any firearm capable of discharging a projectile composed of any material which may reasonably be expected to be able to cause lethal injury, with a barrel or barrels more than sixteen (16) inches in length, and using either gunpowder, gas or any means of rocket propulsion, but not to include archery equipment, flare guns or underwater fishing guns. In addition, any rifle capable of firing "shot" but primarily designed to fire single projectiles will be regarded as a "rifle".

Sec. 1289.5 "Shotguns" defined. "Shotguns" as used herein shall mean any firearm capable of discharging a series of projectiles of any material which may reasonably be expected to be able to cause lethal injury, with a barrel or barrels more than eighteen (18) inches in length, and using either gunpowder, gas or any means of rocket propulsion, but not to include any weapon so designed with a barrel less than eighteen (18) inches in length. In addition, any "shotgun" capable of firing single projectiles but primarily designed to fire multiple projectiles such as "shot" will be regarded as a "shotgun".

Sec. 1289.10 Furnishing firearms to mentally incompetent or insane persons. It shall be unlawful for any person to knowingly transmit, transfer, sell, lend or furnish any shotgun, rifle or pistol to any person who is under an adjudication of mental incompetency, or to any person who is a moron, idiot or is insane.

Sec. 1289.12 Selling or transferring of firearms to convicted felons, disturbed persons or persons under influence of alcohol or drugs—Displaying notice. It shall be unlawful for any person within this state to knowingly sell, trade, give, transmit or otherwise cause the transfer of rifles, shotguns or pistols to any convicted felon, nor shall it be lawful for any person within this state to knowingly sell, trade, give, transmit or otherwise cause the transfer of any shotgun, rifle or pistol to any individual who is under the influence of alcohol or drugs or is mentally or

emotionally unbalanced or disturbed. All persons who engage in selling, trading or otherwise transferring firearms will display this section prominently in full view at or near the point of normal firearms sale, trade or transfer.

Ada

Sec. 17-26. Sale or furnishing of weapons to minors. It shall be unlawful for any person within the city to sell or give to any minor any of the arms or weapons designated in section 17-25.

Bethany

Section 1. Pistol and Revolvers Defined. The word pistol or revolver as used in this ordinance shall be construed as meaning any firearm with a barrel less than 12'' long.

* * * * *

Section 3. Sale to Person Without Permit—Exceptions. No person, firm or corporation shall sell, deliver, barter, or give, or otherwise transfer a pistol, revolver or like firearm within the City of Bethany to any person who is not a holder of a written permit from the Chief of Police of Bethany authorizing such person to purchase, receive or accept such revolver, pistol or like firearm; and in no case shall any person, firm, or corporation deliver a pistol or revolver or like firearm to the person to whom it is to be sold or transferred until approved by the Chief of Police in the manner provided hereafter.

Section 4. Application for Permit. Applications for permits to purchase, receive, or accept any revolver, pistol, or other like firearm shall be made to the Chief of Police of Bethany upon blanks to be provided therefore * * * [contact local authorities for required contents]

* * * * *

Section 8. Duty of Seller. It shall be the duty of any person, firm or corporation who sells, transfers, or gives away any pistol, revolver or other like firearm, as provided in this ordinance, at the time of such sale, gift, or delivery is made, to require the holder of such permit to deliver the said permit to such person, firm, or corporation who sells, transfers or gives away any pistol, revolver or other like firearm; and it shall be the duty of any such person, firm or corporation who sells, transfers, or gives away any pistol, revolver or like firearm to deliver such permit to the Chief of Police of Bethany, at the time the report of such sale or gift is made, as provided in this ordinance.

* * * * *

Colcord

Title 15—Weapons

* * * * *

Section 6: Sales Permitted-Rules All persons trading, or selling or offering for sale, any pistol, revolver, * * * capable of being carried concealed upon the person, shall at the time any such weapons are sold or delivered, require such persons receiving or purchasing such weapons to sign an application for the purchase of the weapon, upon blanks to be furnished by the Town of Colcord to the dealers in weapons of the above occupation, description, place of residence, the time such (applicant has been a resident) at such place and description of the weapon for the purchase of which such application is made, including the make, calibre and factory number, if any (are) there on.

Provided, the provisions of this section shall not apply to the sale or transfer of weapons herein defined between individuals who are not dealers in such weapons, nor to the sale of weapons usually used in hunting game and which are not capable of being carried concealed upon the body of the person carrying the same.

* * * * *

Healdton

2. It shall be unlawful for any person to sell to a minor any pistol, revolver, * * * or instrument manufactured or sold for the purpose of defense or offense, within the corporate limits of the City of Healdton.

Hominy

14c. Weapons, selling or giving them to minors. The act of selling or giving to any minor any pistol, revolver, device, * * * or any other dangerous weapon is a public offense.

Hugo

Article 3. Firearms

Sec. 14-40, Pistol permit required. It shall be unlawful and an offense for any person to purchase, receive or accept in any manner any revolver, pistol or other like firearm within the City of Hugo, Oklahoma without first having obtained a written permit from the chief of police of the City of Hugo, authorizing such person to receive or accept such revolver, pistol or other like firearm.

Sec. 14-41. Definition. The word "pistol" or "revolver" as used in this article shall be construed as meaning any firearm with a barrel less than twelve (12) inches long.

Sec. 14-42. Sale allowed only to permit holders. No person, firm or corporation shall sell, deliver, barter or give, or otherwise transfer a pistol, revolver or other like firearm within the City of Hugo to any person who is not the holder of a written permit from the chief of police of Hugo authorizing such person to purchase, receive or accept such revolver, pistol, or other like firearm; and in no case shall any person, firm or corporation deliver a pistol or revolver or other like firearm to the person to whom it is to be sold or transferred until approved by the chief of police of Hugo in the manner provided hereinafter.

Sec. 14-50. Sale restricted to certain hours. It shall be unlawful and an offense for any person, firm or corporation to purchase, receive or accept in any manner, or to barter or give away any pistol, revolver or other like firearm, as defined herein between the hours of five o'clock p.m. and one o'clock a.m.

Lawton

Sec. 7-116. Purchase and sale of pistol: Permit required. (a) No person shall purchase, receive, or accept in any manner any revolver, pistol, or like firearm within the City, without first having obtained a written permit from the police department authorizing such person to purchase, receive, or accept such revolver, pistol, or other like firearm. Regular dealers in such articles may accept such articles without a permit.

(b) No person shall sell, deliver, barter, or give, or otherwise transfer a pistol, revolver, or other like firearm within the City, to any person who is not a holder of a written permit from the police department authorizing such person to purchase, receive, or accept such revolver, pistol, or other like firearm; and in no case shall any person deliver a pistol, revolver, or other like firearm to the person to whom it is to be sold or transferred until approved by the police department in the manner provided hereinafter.

Sec. 7-117. Application for permit. Applications for a permit to purchase, receive, or accept any revolver, pistol, or other like firearm shall be made to the police department upon forms to be provided therefor. [contact local authorities for required contents] * * *

Sec. 7-118. Persons ineligible for permit; investigation. The police department shall refuse permits to all persons having been convicted of a felony under the laws of the State of Oklahoma or of any other state or of the United States, and to all minors, drug addicts, aliens and such other persons as it has reasonable cause to believe are not of sound mind and discretion and of good moral character. * * *

When it has reasonable cause to believe that such revolver, pistol, or other like firearm is to be used for lawful purposes the Po-

lice Department shall issue a qualified applicant a written permit authorizing him to purchase, receive, or accept such revolver, pistol, or other like firearm. Any permit so issued shall not be valid for a period in excess of thirty (30) days.

* * * * *

Sec. 7-121. Duty of seller. Any person who sells, transfers, or gives away any pistol, revolver, or like firearm, as provided in this article, at the time such sale, gift, or delivery is made, shall require the holder of such permit to deliver the permit to him, and he in turn shall deliver such permit to the police department at the time the report of such sale or gift is made, as provided in this article.

Sec. 7-122. Purchaser not authorized to carry pistol. Nothing contained in this article shall in any manner be construed as a permit to carry a revolver, pistol, or like firearm contrary to any ordinance of the City or the laws of the State.

Sec. 7-123. Antique pistols exempt from article. Nothing contained in this article shall be deemed to apply to antique pistols or revolvers which are incapable of being fired at the time of sale.

Sec. 7-124. Regular dealers exempt from permit requirement. The provision of this article pertaining to permits for transactions involving revolvers, pistols, or other like firearms shall not be applicable to transactions solely involving regular dealers in such articles.

* * * * *

Midwest City

Ordinance 258

Section 1. Pistol and Revolver Defined. The word "pistol" or "revolver," as used in this ordinance, shall be construed as meaning any firearm with a barrel less than twelve (12) inches long.

Section 2. Purchase of Pistol—Permit Required. It shall be unlawful and an offense for any person to purchase, receive, or accept in any manner any revolver, pistol or other like firearm within the City of Midwest City without first having obtained a written permit from the Chief of Police of the City of Midwest City, authorizing such person to receive or accept such revolver, pistol or other like firearm.

Section 3. Sale to Person Without Permit—Exception. No person, firm or corporation shall sell, deliver, barter or give, or otherwise transfer a pistol, revolver or other like firearm within the City of Midwest City to any person who is not the holder of a written permit from the Chief of Police of Midwest City authorizing such person to purchase, receive or accept such revolver, pistol or other like firearm; and in no case shall any person, firm or corporation deliver a pistol or revolver or other like firearm to the person to whom it is to be sold or transferred until approved by the Chief of Police of Midwest City * * *.

Section 11. Sales After 5:00 O'clock Prohibited. It shall be unlawful and an offense for any person, firm, or corporation to purchase, receive or accept in any manner, or to barter or give away any pistol, revolver, or other like firearm, as defined herein, between the hours of 5:00 o'clock P. M. and 8:00 o'clock A. M.

Moore

Sec. 14-31. Unlawful weapons prohibited. It shall be unlawful for any person to carry upon or about his person any pistol, revolver * * * or any other offensive or defensive weapon, except as herein provided.

Sec. 14-32. Not to sell unlawful weapons to minors. It shall be unlawful for any person to sell or give to any minor any of the arms or weapons designated in section 14-31.

Muskogee

18-7. Application for purchase of weapons. (a) All persons handling, selling or offering for sale, transferring or delivering any pistol, revolver, * * * or any similar dangerous or deadly weapon capable of being carried or concealed upon the person, shall, at the time of the sale or delivery thereof to any purchaser or other person receiving such a weapon, require the purchaser or other person receiving the same to sign and swear to an application [contact local authorities for required contents] * * *. The dealer or person selling or delivering any such weapon shall, at the time of the sale or delivery to such purchaser, require that the application have shown thereon, for the purpose of identification, the fingerprints of the purchaser.

(b) It shall be the duty of all persons subject to the provisions of this section to deliver to the police department of the city, not later than the day following any delivery or sale of any weapon hereunder, the application containing the information above required and the signature and fingerprints of the purchaser.

(c) The provisions of this section shall not apply to the sale, delivery or transfer of weapons between individuals who are not dealers therein, nor shall the provisions hereof apply to weapons commonly and usually used in hunting game and not capable of being carried concealed about the person.

Oklahoma City

Sec. 21-47. Pistol defined. As used herein:

Pistol shall mean any pistol, revolver, or like firearm with a barrel less than twelve (12") inches long.

Transfer shall mean any transfer, sale, gift, barter or delivery.

* * * * *

Sec. 21-53. Receipt of pistol; permit required. No person shall purchase, receive, or accept in any manner any pistol without first having obtained a written permit from the Chief of Police authorizing the person to receive or accept the pistol.

Sec. 21-54. Transfer of pistol to person without permit. (a) Transfer without permit. No person shall transfer a pistol to any person who is not a holder of a written permit from the Chief of Police authorizing the person to purchase, receive or accept the pistol.

(b) Delivery of pistol only after Police approval. No person shall deliver a pistol to the person to whom it is to be transferred until approved by the Chief of Police in the manner provided in this Division.

Sec. 21-56. Persons ineligible for pistol permit; investigation. The Chief of Police shall refuse to issue the permits described in Sections 21-53 and 21-55 to all persons having been convicted of a felony under the laws of the State, or of any other state, or of the United States, and to all minors, drug addicts, unnaturalized foreign born persons and such other persons as he has reasonable cause to believe are not of sound mind. If the Chief of Police shall be satisfied after an investigation that the applicant is a suitable person of sound mind and discretion and of good moral character, and that the pistol is to be used for lawful purposes, he shall issue the applicant a written permit authorizing him to purchase, receive or accept the pistol.

Sec. 21-57. Register of pistol permits. The Chief of Police shall at all times keep on file in his office a register containing the name, address, and description of all persons to whom a permit has been granted under this Division.

Sec. 21-58. Transfer of pistols to be reported; separate offense for each day of failure to report. Every person who transfers to any person, except to regular dealers in these articles, any pistol shall, within twenty-four (24) hours after making the transfer, make and file with the Chief of Police a legible report, written in the English language, stating the date of the transfer, the correct name, age, residence, height, weight, color of hair, eyes, race and nationality of the transferee. This written report shall also contain the make, kind, description, caliber, model, manufacturer's number, or other marks of identification of the pistol transferred. Each day of failure to make this report shall be a separate offense.

Sec. 21-59. Transfers of pistols. No person shall purchase, receive or accept in any

manner, or transfer any pistol between 5:00 P.M. and 8:00 A.M.

21-62. Antique pistols excepted. Nothing contained in this Division shall be deemed to apply to antique pistols which are incapable of being used as pistols.

Sec. 21-165. Sale or gift of explosives to minors. No person shall sell, give, or deliver to any minor any of the following explosives:

Gun-powder, blasting powder, giant powder, gun cotton, nitroglycerin, dynamite, dynamite caps, or other explosives of a similar character.

Sec. 21-166. Sale to or possession of weapons by minors. (a) No person under the age of twenty-one (21) years shall carry, discharge, use or be in possession of any firearm, weapon, air gun, gas-operated gun, or any bow or sling type instrument made for the purpose of throwing or projecting missiles of any kind and capable of inflicting injury.

(b) No person shall sell to a minor any of the firearms or weapons named in Subsection (a).

Shawnee

48-3. Sale of weapons to minors prohibited. It shall be unlawful for any person in the city to sell to any minor any of the arms or weapons enumerated in section 48-1. It shall be unlawful for any person, in the city to sell to a minor any rifle, shotgun or any firearm of any character without a written consent of parent or guardian of such minor.

48-6. "Pistol" and "revolver" defined. The words "pistol" and "revolver", as used in this article, shall be construed as meaning any firearm with a barrel less than twenty inches long.

48-7. Applicability of article. Nothing contained in this article shall be in any manner construed as a permit to carry such revolver, pistol or similar firearm contrary to any regulation of the city or the laws of the state.

Nothing contained in this article shall be deemed to apply to antique pistols or revolvers which are incapable of being used as such.

48-8. Permit to purchase, receive, etc.—Required. No person shall purchase, receive or accept in any manner any revolver, pistol or other similar firearm within the city, without first obtaining a written permit from the chief of police authorizing such person to receive or accept such revolver, pistol or other similar firearm.

48-12. Sale of pistols, revolvers, etc. (a) No person shall sell, deliver, barter, give or otherwise transfer a pistol, revolver or other similar firearm within the city to any person who is not the holder of a written permit from the chief of police authorizing such person to purchase, receive or accept such revolver, pistol or other similar firearm; and in no case shall any person deliver a pistol or revolver or other similar firearm to the person to whom it is to be sold or transferred until approved by the chief of police in the manner provided in this chapter.

* * * * *

(c) It shall be the duty of any person who sells, transfers or gives away any pistol, revolver or similar firearm as provided in this section, at the time such sale, gift or delivery is made, to require the holder of the required permit to deliver the permit to such person who sells, transfers or gives away any pistol, revolver or similar firearm; and it shall be the duty of any such person who sells, transfers or gives away any pistol, revolver or similar firearm to deliver such permit to the chief of police at the time the report of such sale or gift is made.

Tecumseh

Ordinance 241

Section 1 Permit to Purchase, Receive, etc.—Required No person shall purchase, receive, or accept in any manner any revolver, pistol, or other similar firearm within the City, without first obtaining a written permit from the Chief of Police, authorizing such person to receive or accept such revolver, pistol, or other similar firearm.

Tulsa

Section 441. Pistol Defined. The term "pistol" as used herein shall mean and include any firearm with a barrel or barrels less than sixteen (16) inches in length and using either gunpowder, gas or any means of rocket propulsion, capable of discharging a projectile composed of any material which may reasonably be expected to cause lethal injury, but not including flare guns or blank pistols.

Section 442. Rifle Defined. The term "rifle" as used herein shall mean any firearm with a barrel or barrels more than sixteen (16) inches in length and using either gunpowder, gas or any means of rocket propulsion, capable of discharging a projectile composed of any material which may reasonably be expected to be able to cause lethal injury; but shall not include archery equipment, flare guns or underwater fishing guns. In addition, any rifle capable of firing "shot" but primarily designed to fire single projectiles will be regarded as a "rifle".

Section 443. Shotgun Defined. The term "shotgun" as used herein shall mean and include any firearm with a barrel or barrels more than eighteen (18) inches in length and using either gunpowder, gas or any means of rocket propulsion, capable of discharging a series of projectiles of any material which may reasonably be expected to be able to cause lethal injury. Any "shotgun" capable of firing single projectiles but primarily designed to fire multiple projectiles such as "shot" will be regarded as a "shotgun".

Section 452. Firearms - Furnishing to Convicted Felons, Incompetents or Persons Under the Influence of Alcohol or Drugs. It shall be unlawful for any person to knowingly sell, trade, give, transmit, or otherwise cause the transfer of rifles, shotguns or pistols to any convicted felon, individual under the influence of alcohol or drugs or who is mentally or emotionally unbalanced or disturbed. All persons who engage in selling, trading or otherwise transferring firearms will display this Section prominently in full view at or near the point of normal firearm sale, trade or transfer.

Section 453. Firearms—Furnishing to Incompetents or Insane Persons. It shall be unlawful for any person to knowingly transmit, transfer, sell, lend or furnish any shotgun, rifle or pistol to any person who is under an adjudication of mental incompetency, or to any person who is a moron, idiot or is insane.

Section 454. Weapons - Selling to Minors. It shall be unlawful for any person to sell or give to any minor any of the arms or weapons designated in Section 455 (pistol, revolver).

Section 460. Weapons - Sale Procedure. All persons trading, selling or offering for sale any pistol, revolver, shotgun or weapon, as defined in this Chapter, capable of being carried concealed upon the person shall, at the time same are sold or delivered require the person receiving or purchasing same to sign an application for such purchase upon blanks to be furnished by the City of Tulsa Police Department to dealers. [contact local authorities for required contents] * * *. The dealer shall, at the time of sale or delivery, require purchaser to make and leave with such dealer, a record of such purchaser's fingerprints which shall be made on suitable blanks furnished to dealer by the City of Tulsa Police Department. * * *

. The provisions of this Section shall not apply to the sale or transfer of pistols, revolvers, shotguns or weapons between individuals who are not dealers in same; nor to their sale when used in hunting game and which are not capable of being carried concealed upon the body of the person carrying same.

Vinita

Sec. 14-56. Selling weapons and cartridges and dangerous articles to minors. It shall be unlawful for any person to sell, barter, give or furnish to any minor, any blank or loaded cartridges, or any pistol, revolver, toy or other thing made for the purpose of exploding any blank or loaded cartridges.

* * * * *

Oregon

State Law

Ore. Rev. Stat.

164.055 * * *(b) "Firearm" means a weapon, by whatever name known, which is designed to expel a projectile by the action of black powder or smokeless powder and which is readily capable of use as a weapon.

* * * * *

166.210 Definitions for ORS 166.230 to 166.470. As used in ORS 166.230, 166.250 to 166.270, 166.280, 166.290 and 166.410 to 166.470:

(1) "Pistol," "revolver" and "firearms capable of being concealed upon the person," apply to and include all firearms having a barrel less than 12 inches in length.

(2) "Machine gun" means a weapon of any description by whatever name known, loaded or unloaded, from which two or more shots may be fired by a single pressure on the trigger device.

* * * * *

166.250 Unlawful possession of weapons. (1) Except as otherwise provided in this section, ORS 166.230, 166.260, 166.270, 166.280, 166.290 or 166.410 to 166.470, any person who possesses or has in his possession any machine gun, or carries concealed upon his person or within any vehicle which is under his control or direction any pistol, revolver or other firearm capable of being concealed upon the person, without having a license to carry such firearm as provided in ORS 166.290, is guilty of a misdemeanor, unless he has been convicted previously of any felony or of any crime made punishable by this section, ORS 166.230, 166.260, 166.270, 166.280, 166.290 or 166.410 to 166.470, in which case he is guilty of a felony.

(2) This section does not prohibit any citizen of the United States over the age of 18 years who resides in or is temporarily sojourning within this state, and who is not within the excepted classes prescribed by ORS 166.270, from owning, possessing or keeping within his place of residence or place of business any pistol, revolver or other firearm capable of being concealed upon the person, and no permit or license to purchase, own, possess or keep any such firearm at his place of residence or place of business is required of any such citizen.

(3) Firearms carried openly in belt holsters are not concealed within the meaning of this section.

166.260 Persons not affected by ORS 166.250. ORS 166.250 does not apply to or affect:

(1) Sheriffs, constables, marshals, policemen, whether active or honorably retired, or other duly appointed peace officers.

(2) Any person summoned by any such officer to assist in making arrests or preserving the peace, while said person so summoned is actually engaged in assisting the officer.

(3) The possession or transportation by any merchant of unloaded firearms as merchandise.

(4) Members of the Army, Navy or Marine Corps of the United States, or of the National Guard, when on duty.

(5) Organizations which are by law authorized to purchase or receive weapons described in ORS 166.250 from the United States, or from this state.

(6) Duly authorized military or civil organizations while parading, or the members thereof when going to and from the places of meeting of their organizations.

(7) Members of any club or organization, for the purpose of practicing shooting at targets upon the established target ranges, whether public or private, while such members are using any of the firearms referred to in ORS 166.250 upon such target ranges, or while going to and from such ranges.

(8) Licensed hunters or fishermen while engaged in hunting or fishing, or while going to or returning from a hunting or fishing expedition.

166.270 Certain exconvicts forbidden to possess arms. (1) Any person who has been convicted of a felony under the law of this state or any other state, or who has been convicted of a felony under the laws of the Government of the United States, who owns, or has in his possession or under his custody or control any pistol, revolver, or other firearms capable of being concealed upon the person, or machine gun, commits the crime of exconvict in possession of a firearm.

(2) For the purposes of this section, a person "has been convicted of a felony" if, at the time of his conviction for an offense, that offense was a felony under the law of the jurisdiction in which it was committed. Provided, however, that such conviction shall not be deemed a conviction of a felony if:

(a) At the time of conviction, and pursuant to the law of the jurisdiction in which the offense occurred, the offense was made a misdemeanor by the type or manner of sentence actually imposed; or

(b) The offense was for possession of marijuana.

(3) Subsection (1) of this section shall not apply to any person who has been convicted of only one felony under the law of this state or any other state, or who has been convicted of only one felony under the laws of the United States, which felony did not involve the possession or use of a firearm, and who has been discharged from imprisonment, parole or probation for said offense for a period of 15 years prior to the date of alleged violation of subsection (1) of this section.

(4) Exconvict in possession of a firearm is a Class C felony.

Sale or transfer of firearms

166.410 Manufacture, importation, sale, gift, loan or possession of firearms. Any person who manufactures or causes to be manufactured within this state, or who imports into this state, or keeps, offers, exposes for sale, gives, lends or possesses a pistol, revolver or machine gun, otherwise than in accordance with ORS 166.230, 166.250 to 166.270, 166.280, 166.290 and 166.420 to 166.470, shall be punished upon conviction by imprisonment in the penitentiary for not more than five years.

166.420 Register of transfers of concealed weapons; form and content of register and by whom to be maintained.

* * * * *

(2) The purchaser of any firearm capable of being concealed upon the person shall sign, and the dealer shall require him to sign, his name and affix his address to the register in duplicate and the salesman shall affix his signature in duplicate as a witness to the signature of the purchaser. Any person signing a fictitious name or address is guilty of a misdemeanor.

* * * * *

166.430 Licenses to sell at retail. Licensing authorities of any city, county, town or other municipality within this state may grant licenses in form prescribed by the Attorney General, effective for not more than one year from date of issue, permitting the licensee to sell at retail within the municipality, pistols, revolvers and other firearms capable of being concealed upon the person, subject to the following conditions, for breach of any of which the license is subject to forfeiture:

(1) The business shall be carried on only in the building designated in the license.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed where it can easily be read by the customer.

(3) Before any pistol or revolver shall be delivered:

(a) One hundred twenty hours shall have elapsed after application for the purchase and the register entries required by ORS 166.420 have been completed; and

(b) The purchaser either is personally known to the seller or presents clear evidence of his identity.

(4) No pistol or revolver, or imitation thereof, or placard advertising the sale or other transfer thereof, shall be displayed in or on any part of the premises where it can readily be seen from outside the premises.

(5) When a pistol or revolver is delivered it shall be unloaded and securely wrapped.

166.440 Unlicensed persons selling or advertising for sale concealable firearms. Any person who, without being licensed as provided in ORS 166.430, engages in the business of selling or otherwise transferring, or who advertises for sale or offers or exposes for sale or transfer, any pistol, revolver or other firearm capable of being concealed upon the person, is guilty of a misdemeanor.

166.460. Antique firearms excepted. ORS 166.230, 166.250 to 166.270, 166.280, 166.290, 166.410 to 166.450, and 166.470 do not apply to antique pistols or revolvers incapable of use as such.

166.470 Limitations and conditions for sales of concealable firearms. No person shall sell, deliver or otherwise transfer any pistol, revolver or other firearm capable of being concealed upon the person to any person whom he has cause to believe to be within any of the classes prohibited by ORS 166.270 from owning or possessing such firearms, nor to any minor under the age of 18 years. Such firearm shall not be delivered to the purchaser on the day of the application for its purchase, and when delivered it shall be securely wrapped and unloaded. When neither party to the transaction holds a dealers' license, the vendor shall not sell or otherwise transfer any such firearm to any other person within this state who is not personally known to the vendor. Violation of this section is a misdemeanor.

166.480 Sale or gift of explosives and firearms to children. Any person who sells, exchanges, barters or gives to any child, under the age of 14 years, any explosive article or substance, other than an ordinary firecracker containing 10 grains of gunpowder; or who sells, exchanges, barters or gives to any such child any firearms, or other device of a like kind, ordinarily used or ordinarily capable of being used in discharging gunpowder in a greater quantity than 10 grains; or who sells, exchanges, barters or gives to any such child, any instrument or apparatus, the chief utility of which is the fact that it is used, or is ordinarily capable of being used, as an article or device to increase the force or intensity of any explosive, or to direct or control the discharge of any such explosive, is guilty of a misdemeanor.

166.490 Purchase of firearms in certain other states. (1) As used in this section, unless the context requires otherwise:

(a) "Contiguous state" means California, Idaho, Nevada or Washington.

(b) "Resident" includes an individual or a corporation or other business entity that maintains a place of business in this state.

(2) A resident of this state may purchase or otherwise obtain a rifle or shotgun in a contiguous state and receive in this state or transport into this state such rifle or shotgun, unless the purchase or transfer violates the law of this state, the state in which the purchase or transfer is made or the United States.

(3) This section does not apply to the purchase, receipt or transportation of rifles and shotguns by federally licensed firearms manufacturers, importers, dealers or collectors.

(4) This section expires and stands repealed upon the date that section 922(b) (3) of the Gun Control Act of 1968 (18 U.S.C. 922(b) (3)) and regulations pursuant thereto are repealed or rescinded.

486.070 Fire bombs prohibited; exceptions. (1) No person shall possess a fire bomb. For the purpose of this section a "fire bomb" is a breakable container containing a flammable liquid with a flash point of 150 degrees Fahrenheit or less, having an integral wick or similar device capable of being ignited, but no device commercially manufactured primarily for the purpose of illuminating shall be deemed to be a fire bomb for the purpose of this section.

(2) This section shall not prohibit the authorized use or possession of such fire bomb by a member of the Armed Forces of the United States or by any member of a regularly organized public fire or police department.

Canby

Adopted State Criminal Code

Corvallis

41. It shall not be lawful for any person or persons, within the limits of the city of Corvallis, to give or furnish, or sell to any minor or minors, under the age of 18 yrs. any target gun, or airgun, or pistol, or revolver, or shotgun, or any firearms, without the written order of the parent or legal guardian of such minor. * * *.

Eugene

3.440 Weapons - Conditions of License. Every license issued to a business dealing in deadly weapons or firearms is issued upon the following terms and conditions:

(b) The licensee will not sell, deliver, or otherwise transfer a pistol, revolver or other firearm capable of being concealed on the person to a person whom he has cause to believe is an alien or who has been convicted of a felony.

(c) The licensee shall not sell, deliver, or otherwise transfer a weapon to a minor under the age of 18 years.

* * * * *

(f) No pistol or revolver shall be delivered on the day of the application for the purchase, and when delivered, shall be unloaded and securely wrapped, unless the purchaser either is personally known to the seller or shall present clear evidence of his identity.

Fossil

79-2. Unlawful to sell firearms, etc. That hereafter it shall be unlawful for any person or dealer in the Town of Fossil to sell, expose, or offer for sale, or in any manner furnish or dispose of to any resident of the Town of Fossil, or to any person for use in said Town, or to any minor person at any time, any blank cartridge pistol or revolver, or any blank cartridges, or any of the explosives, firecrackers, or fireworks, the use of which is prohibited in Section 1 of this Ordinance.

Gresham

Ordinance 806

* * * * *

Section 2. Any person, firm or corporation within the City of Gresham dealing in the sale of firearms, particularly pistols, revolvers, rifles and other firearms must secure a City of Gresham Business License as well as adhere to all State and Federal Firearms Regulations.

* * * * *

Klamath Falls

Chapter 47

Article III Record of Receipt of Secondhand Firearms

* * * * *

Sec. 47-9. Required; contents. The owner or manager, of a business establishment, such as hardware stores, sporting goods stores and general merchandise stores, which receive from customers secondhand firearms, such as shotguns, rifles, pistols and revolvers, (air rifles excluded) in trade or exchange for merchandise or for cash shall keep a record, on blanks to be furnished by the city, containing (the information required under Sec. 47-9; contact local authorities for required entries) * * *

The customer delivering or trading such article shall sign his name and enter his address on the report in a legible manner. The owner

or the manager of such business establishment shall prepare such record and report at the time the transaction takes place.

Article IV. Teargas, etc., Guns.

Sec. 47-13. Sale, offering for sale, etc., prohibited. No person shall sell, offer for sale or give away, either as the owner or the agent of the owner thereof, any gun or device which can be carried on or about a person and used for the purpose of releasing gas, fumes or liquids to blind or impair the eyesight or sicken or disable a human being. Such gun or device is hereby declared to be a dangerous weapon.

Lane County

Ordinance 1-77
License for retail sale of firearms

3.501 License Required. No person shall engage in the business of the retail sale of pistols, revolvers or other firearms capable of being concealed on the person, within the unincorporated areas of Lane County, unless such person holds a valid license issued under this subchapter.

3.510 Planning and Public Safety Approvals. No license shall be granted under this subsection until the location of the proposed retail establishment has been certified to be in conformity with land use regulations by the Planning Division or its designee and until the Sheriff has certified that he has no information which would indicate that the applicant has been convicted within five years preceding the date of application of a felony or Class A misdemeanor. If the applicant is a corporation, the Sheriff shall make the required certification as to each officer thereof. If the applicant is an association, firm, or partnership, the Sheriff shall certify as to each member thereof.

* * * * *

(See local requirements for details of application, investigation, approval, revocation, and appeal.)

Myrtle Creek

5-6.5. (e) Sales to intoxicated persons and minors. No person shall purchase from or sell, loan, or furnish any weapon in which any explosive substance can be used to any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to a minor under the age of 18 years.

Oregon City

6-4-1: Definitions: (A) As used in this Chapter, "firearm" means a pistol, revolver, gun, rifle or other ordnance, including a miniature weapon, which projects a missile or shot by force of gunpowder or any other explosive, by spring or by compressed air. * * * * *

(C) "Deadly weapon" means any instrument, article or substance specifically designed for and presently capable of causing death or serious physical injury.

6-4-7: Sale or Distribution of Miniature Firearms and Ammunition: It is unlawful for any person to give, furnish, loan, sell, offer for sale, or distribute any miniature pistol, firearm, or instrument capable of receiving or discharging any cartridge, charge of powder, or other explosive or any ammunition therefor, within the City.

6-4-9: Sale or Distribution of Deadly Weapons or Ammunition to Minors; Possession By Minors: It is unlawful for any person to give, furnish, loan or sell to any minor under eighteen (18) years of age any deadly weapon as defined in 6-4-1, and it is unlawful for any person to give, furnish, loan or sell any ammunition to any minor to be used or capable of being used in any deadly weapon as defined in 6-4-1; and it is unlawful for any such minor to have any such deadly weapon or ammunition in his or her possession; and it shall be unlawful for any parent or guardian of any minor to permit such minor to have such a deadly weapon or ammunition in his or her possession, except that in the case of concealable deadly weapons, such as pistol or revolver, it is unlawful to sell these weapons to anyone under the age of twenty-one (21) years.

6-4-10: Licenses to Sell At Retail: Licensing authorities of Oregon City may grant licenses in form prescribed by the Attorney General of the State of Oregon, effective for not more than one year from date of issue, permitting the licensee to sell at retail within Oregon City pistols, revolvers and other firearms capable of being concealed upon the person, subject to the following conditions, for breach of any of which the license is subject to forfeiture: * * * * *

(C) Before any pistol or revolver shall be delivered:

1. One hundred twenty (120) hours shall have elapsed after application for the purchase and the register entries required by ORS 166.420 have been completed; and

2. The purchaser either is personally known to the seller or presents clear evidence of his identity. * * * * *

6-4-11: Unlicensed Persons Selling * * * Concealable Firearms: It is unlawful for any person, without being licensed as provided in 6-4-10, to engage in the business of selling or otherwise transferring, * * * any pistol, revolver or other firearm capable of being concealed upon the person.

Portland

14.32.030 Gas bombs. (a) As used in this section, "gas" includes all liquid, gaseous or solid substances intended to produce temporary physical discomfort, permanent injury or a noxious odor by being vaporized or otherwise dispersed in the air.

(b) It is unlawful for any person to possess or transport in the city any form of shell, cartridge or bomb containing and capable of emitting gas, or any weapon designed for using such shell, cartridge or bomb.

(c) This section does not apply to peace officers or members of the armed forces of this state or of the United States when possessing or transporting such shells, cartridges or bombs for official use.

14.32.040 Explosives and fire bombs. (a) As used in this section:

(1) "Explosives" means any substance or material that on ignition by heat, impact, friction or detonation will explode with such force as to injure a person or damage property in the immediate vicinity of the explosion.

(2) "Fire bomb" means a breakable container containing a flammable liquid or jelly with a flash point of 150 degrees Farenheit or less, that is capable of being ignited by an integral wick or similar device or that is capable of being ignited if the container is broken by impact, but no device commercially manufactured primarily for the purpose of illumination shall be deemed a fire bomb.

(c) It is unlawful for any person, other than a peace officer or a member of the armed forces of this state or of the United States, to use, possess or have under his control an explosive or fire bomb.

(d) This section does not apply to the possession of explosives or fire bombs otherwise authorized by this code or Oregon law.

* * * * *

Springfield

8-20-1 Definition. A weapons dealer is any person engaged in the business of selling or offering for sale at retail rifles, pistols, revolvers, derringers, or other weapons or firearms of like character.

* * * * *

8-20-2 Licenses. It shall be unlawful for any person to engage in a business as a weapons dealer without first having obtained a license from the city recorder to do so.

8-20-5 Condition of License. Every license issued to a business dealing in weapons is issued upon the following terms and conditions: * * *

(b) The licensee will not sell, deliver, or otherwise transfer a pistol, revolver or other firearm capable of being concealed on the person to a person whom he has cause to believe is an alien or who has been convicted of a felony.

(c) The licensee shall not sell, deliver or otherwise transfer a weapon other than a shotgun or rifle to any person who is under the age of 21 years, nor a shotgun or rifle to any person who is under the age of 18 years, nor any weapon to any person who is intoxicated or under any obvious abnormal mental condition. * * *

(f) No pistol or revolver or other firearms capable of being concealed on the person shall be delivered sooner than 120 hours after the application for the purchase and, when delivered, shall be unloaded and securely wrapped. * * *

Umatilla

Ordinance 371 adopts Chapters 161-167 of the Oregon Criminal Code of 1971 by reference. This includes Oregon Revised Statutes 166.005 through 166.645—Offenses against public order; firearms and other weapons.

Pennsylvania

State Law

Pa. Stat. Ann. (Purdon's)

Uniform Firearms Act

Title 18

Sec. 908. Prohibited offensive weapons. (a) Offense defined.—A person commits a misdemeanor of the first degree if, except as authorized by law, he makes repairs, sells or otherwise deals in, uses, or possesses any offensive weapon.

(b) Exception. —It is a defense under this section for the defendant to prove by a preponderance of evidence that he possessed or dealt with the weapon solely as a curio or in a dramatic performance, or that he possessed it briefly in consequence of having found it or taken it from an aggressor, or under circumstances similarly negativing any intent or likelihood that the weapon would be used unlawfully.

(c) Definition. —As used in this section "offensive weapon" means any bomb, grenade, machine gun, sawed-off shotgun, firearm specially made or specially adapted for concealment or silent discharge * * * or other implement for the infliction of serious bodily injury which serves no common lawful purpose.

Sec. 6102. Definitions. Subject to additional definitions contained in subsequent provisions of this subchapter which are applicable to specific provisions of this subchapter, the following words and phrases, when used in this subchapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Firearm." Any pistol or revolver with a barrel less than 12 inches, any shotgun with a barrel less than 24 inches, or any rifle with a barrel less than 15 inches.

"Crime of violence." Any of the following crimes, or an attempt to commit any of the same, namely: murder, rape, aggravated assault, robbery, burglary, entering a building with intent to commit a crime therein, and kidnapping.

Sec. 6105. Former convict not to own a firearm, etc. No person who has been convicted in this Commonwealth or elsewhere of a crime of violence shall own a firearm, or have one in his possession or under his control.

Sec. 6110. Persons to whom delivery shall not be made. No person shall deliver a firearm to any person under the age of 18 years, or to one he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, an habitual drunkard, or of unsound mind.

Sec. 6111. Sale of firearms. (a) Time and manner of delivery.—No seller shall deliver a firearm to the purchaser thereof until 48 hours shall have elapsed from the time of the application for the purchase thereof, and when delivered, said firearm shall be securely wrapped and shall be unloaded.

(b) Statement to be signed by purchaser.—At the time of applying for the purchase of a firearm, the purchaser shall sign in quadruplicate and deliver to the seller a statement containing his full name, address, occupation, color, place of birth, the date and hour of application, the caliber, length of barrel, make, model, and manufacturer's number of the firearm to be purchased, and a statement that he has never been convicted in this Commonwealth, or elsewhere, of a crime of violence. * * *

(c) Exemption.—This section shall not apply to sales at wholesale.

Sec. 6112. Retail dealer required to be licensed. No retail dealer shall sell, or otherwise transfer or expose for sale or transfer, or have in his possession with intent to sell or transfer, any firearm without being licensed as provided in this subchapter.

Sec. 6113. Licensing of dealers. (a) General rule. —The chief or head of any police force or police department of a city, and, elsewhere, the sheriff of the county, shall grant to reputable applicants licenses, in form prescribed by the Pennsylvania State Police, effective for not more than one year from date of issue, permitting the licensee to sell firearms direct to the consumer, subject to the following conditions in addition to those specified in section 6111 of this title (relating to sale of firearms), for breach of any of which the license shall be forfeited and the licensee subject to punishment as provided in this subchapter:

(1) The business shall be carried on only in the building designated in the license.

(2) The license, or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be read.

(3) No firearm shall be sold in violation of any provision of this subchapter.

(4) No firearm shall be sold under any circumstances unless the purchaser is personally known to the seller or shall present clear evidence of his identity.

(5) A true record in triplicate shall be made of every firearm sold, in a book kept for the purpose, the form of which may be prescribed by the Pennsylvania State Police, and shall be personally signed by the purchaser and by the person effecting the sale, each in the presence of the other, and shall contain the information required by section 6111 of this title.

* * * * *

Sec. 6115. Loans on, or lending or giving firearms prohibited. No person shall make any loan secured by mortgage, deposit, or pledge of a firearm; nor shall any person lend or give a firearm to another or otherwise deliver a firearm contrary to the provisions of this subchapter.

Sec. 6117. Altering or obliterating marks of identification. (a) Offense defined.—No person shall change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark of identification on any firearm.

(b) Presumption.—Possession of any firearm upon which any such mark shall have been changed, altered, removed, or obliterated, shall be prima facie evidence that the possessor has changed, altered, removed, or obliterated the same.

Sec. 6118. Antique firearms. This subchapter shall not apply to antique firearms unsuitable for use and possessed as curiosities or ornaments.

Sec. 6120. Limitation on municipal regulation of firearms. (a) General rule.— No county, municipality or township may in any

manner regulate the lawful ownership, possession or transportation of firearms when carried or transported for purposes not prohibited by the laws of this commonwealth.

(b) Definition —For the purposes of this section, the term "firearms" shall not include "air rifles" as defined in section 6304 (relating to sale and use of air rifles).

Sec. 6141. Purchase of firearms in contiguous states. (a) General rule.—It is lawful for a person residing in this Commonwealth, including a corporation or other business entity maintaining a place of business in this Commonwealth, to purchase or otherwise obtain a rifle or shotgun in a state contiguous to this Commonwealth and to receive or transport such rifle or shotgun into this Commonwealth.

(b) Applicability of section.—(1) This section applies to residents of this Commonwealth who obtain rifles or shotguns from a state contiguous to this Commonwealth in compliance with the Gun Control Act of 1968, State laws and local ordinances.

(2) This section shall not apply or be construed to affect in any way the purchase, receipt or transportation of rifles and shotguns by Federally licensed firearms manufacturers, importers, dealers or collectors.

(c) Definitions.—(1) As used in this section the term "a state contiguous to this Commonwealth" means any state having a common border with this Commonwealth.

(2) The other terms used in this section shall have the meanings ascribed to them by Public Law 90-618 known as the "Gun Control Act of 1968."

Sec. 6302. Sale or lease of weapons and explosives. (a) Offense defined.—A person is guilty of a misdemeanor of the first degree if he sells or causes to be sold or leases to any person under 18 years of age any deadly weapon, cartridge, gunpowder, or other similar dangerous explosive substance.

(b) Exception.—The provisions of subsection (a) of this section shall not prohibit hunting by minors under 18 years of age permitted under provisions of The Game Law.

6302. Sale of starter pistols. (a) Offense defined.—A person is guilty of a misdemeanor of the first degree if he sells, causes to be sold, gives or furnishes to any person under the age of 18 years, or if he, being under the age of 18 years, purchases, accepts, receives or possesses, any pistol commonly referred to as "starter pistol" specially designed to receive and discharge blank cartridges only or similar pistol.

(b) Exception.—Nothing in this section shall prohibit the use of starter pistols for the purpose of starting or officiating at athletic events, use in dramatic productions, or other similar events.

7306. Incendiary devices. (a) Offense defined.—A person is guilty of a misdemeanor of the first degree if he owns, manufactures, sells, transfers, uses or possesses any incendiary device or similar device or parts thereof, including but not limited to a "molotov cocktail."

(b) Exception.—The provisions of subsection (a) of this section shall not apply to authorized personnel of the United States, the Commonwealth or any political subdivision, who use incendiary devices as part of their duties.

(c) Definition.—As used in this section the phrase "incendiary device," means any inflammable liquid enclosed in a readily breakable container that can be equipped with an igniter of any type.

Mental Health—Retardation

Title 50

Sec. 4605. Penalties. * * *

(2) It shall be unlawful for anyone to directly or indirectly, sell, give or furnish to any person admitted, committed or detained in a facility, any weapon or other instrument which may be used to inflict injury unless the instrument is a tool of the activity in which the person has permission to engage.* * * * *

Abington Township

Sale to certain minors prohibited * * *. Whoever knowingly and wilfully sells or causes to be sold, or supplies or furnishes to any person under eighteen (18) years of age any rifle * * * of any description in the Township of Abington, shall upon conviction * * *

Caernarvon Township

Section 2A. No person shall sell or offer to sell or carry, store or discharge any explosives, handgrenades, molotov cocktails or any incendiary of whatsoever kind or nature within the geographic limits of the Township of Caernarvon; * * *

California Borough

4-4. Sales to intoxicated persons and minors. No person in the Borough shall sell, loan, or furnish any weapon in which any explosive substance can be used, to any person under the influence of alcohol or any narcotic drug, stimulant, or depressant or to any person in a condition of agitation and excitability, or to minor under the age of 18 years.

Clifton Heights Borough

1. That it shall be unlawful and it is hereby prohibited for any person, persons, firm or corporation to store, sell, offer or expose for sale at retail, use or discharge, or have in their possession with intent to sell at retail or with intent to use or discharge and/or to use or discharge within the limits of the Borough of Clifton Heights any * * * pistol, starter guns, blank guns, * * *. "At retail" shall mean any sale of less than one dozen such articles, or any sale to anyone not a bona fide dealer therein.

Harrisburg

751.01 Possession of Firearms by Minors. No minor under the age of eighteen years shall have in his possession, except in his place of residence, any firearm, flobert rifle, * * * or any implement which impels with force a metal pellet of any kind, unless such minor is accompanied by an adult.

Lower Moreland Township

3. Sale of Certain Weapons to Persons Under Age of 18 Prohibited. It shall be unlawful for any person within the Township of Lower Moreland knowingly and wilfully to sell or cause to be sold, to any person under the age of eighteen (18) years, any rifle, air rifle or air gun, pistol or firearm of any description.

4. Persons Under Age of 18 not to Purchase or Possess Certain Ammunition or Pellets; Exception. It shall be unlawful for any person under the age of eighteen years, unless acting under the supervision of and in the presence of his or her parent or guardian, within the Township of Lower Moreland, to purchase or possess any pellets or shot for an air gun or ammunition for a rifle or other firearm.

5. Restrictions on Sale or Furnishing of Ammunition or Pellets to Persons Under Age of 18. It shall be unlawful for any person within the Township of Lower Moreland to sell, furnish or give any * * * ammunition for a rifle or other firearm to any person under eighteen years of age, unless such minor receiving such shot, pellets or ammunition shall be accompanied by and shall act under the supervision of his or her parent or guardian.

Lower Yoder Township

Ordinance 15
4:1:d

Sales to Intoxicated Persons and Minors. Purchase from, or sell, loan, or furnish any weapon in which any explosive substance can be used to, any person under the influence of

alcohol or any narcotic drug, stimulant or depressant, or to any person in a condition of agitation and excitability, or to a minor under the age of eighteen years.

Marcus Hook Borough

The Borough Council of the Borough of Marcus Hook does ordain: 1. That it shall be unlawful for any person or persons to use and/or sell * * * guns of any nature which expel, shot or project a bullet, pellets, shot or any article whatsoever by use of air or otherwise within the limits of the Borough of Marcus Hook.

McKeesport

1. * * * it shall be unlawful for any person or persons, firm or corporation to engage in the sale, barter or trade of revolvers or pistols without first obtaining a license from the Mayor of the City of McKeesport to so engage in this business, * * *

2. It shall be unlawful for any person or persons, firm or corporation to sell to any individual any revolver or pistol without prospective purchaser first having secured a permit from Police Department showing the name of the prospective purchaser, together with said prospective purchaser's address and occupation.

Millcreek Township

Section 1: That it shall be unlawful for any person, persons, firm or corporation to sell, offer or expose for sale, within the Township of Millcreek, to any minor under the age of eighteen years, any rifle * * *.

Monongahela

Section 1. * * * no license or permit shall be granted to any person or persons for the purchasing transfer or bartering of revolvers and pistols in the City of Monongahela until and unless the purchaser shall have been finger-printed by the Chief of Police or officer designated by the Mayor for that purpose, and shall have furnished to said Chief of Police or designated officer a recent photograph of himself, of a size as prescribed by Chief of Police, and such description of himself as may be necessary adequately to describe said person, which said data and Bertillion measurements shall be kept as a record by the Police Department.

Mt. Lebanon Township

3. No person, firm or corporation shall sell or offer for sale any rifle, shot-gun, revolver, pistol, flobert rifle, or air gun, unless they, or it, shall have first received a written license so to do, signed by the Township Manager of said Township. * * *

Mt. Oliver Borough

5. No person other than duly authorized personnel of the Borough, City, County, State or Federal law enforcement agencies, shall carry, sell, or display, barter, loan, give away, transfer, transport, discharge, or use any weapon, ammunition or explosive device of any kind or nature whatsoever including firearms, * * * bombs, missiles or any other weapon or device designed or intended to inflict bodily harm or injury to property at any place within the Borough.

Philadelphia

9-606. Ammunition. (2) Definitions. In this Section, the following definitions apply: (a) Ammunition. Any material used in discharging any type of firearm or any projectile discharged by said firearm. (b) Minor. Any person under the age of 18 years.

(3) Prohibitions. (a) Any person engaged in the business of selling ammunition shall be required to comply with the following: * * *

(b) No person shall sell, give or deliver any ammunition to minors; provided, that this Section shall not apply to ammunition supplied by a parent or guardian to his child or children, for lawful purposes.

(c) No person shall sell any ammunition which can be used in pistols, revolvers or other hand guns unless the purchaser produces satisfactory written identification and registers his name and address.

(4) Licenses. (a) No person shall sell any ammunition unless he first receives a license from the Department.

Rockledge Borough

Ordinance 380

Sec. 9 * * * It shall be unlawful and it is hereby prohibited for any person or persons, firm or corporation to sell, offer or expose for sale within the limits of the Borough of Rockledge, to any minor child under the age of eighteen (18) years, any gun, rifle, pistol (whether revolver or automatic) or any other type of firearm.

Ross Township

Section 3. Every person, firm or corporation, engaged in selling or offering for sale, within the limits of the Township of Ross, any fire-arm * * * shall accompany each such sale with a copy of * * * Ordinance No. 937.

Scott Township

Ordinance 316

Section 3. No person, firm or corporation shall sell or offer for sale any rifle, shot-gun, revolver, pistol, flobert rifle * * * unless they, or it, shall have first received a written license so to do, signed by the Secretary of said Township, or his authorized agent, * * * No sale shall be permitted to any person under twenty-one (21) years of age, and a copy of this Ordinance shall be issued with each sale.

Scranton

1. * * * it shall be unlawful for any person, whether as principal or agent, to sell or otherwise dispose of any pistol, revolver, (including those for discharge of blank cartridges) * * * or other deadly weapon readily capable of concealment upon the person, unless a permit for such sale or other disposition has first been obtained from the Superintendent of the Bureau of Police in the manner hereinafter provided.

2. Every person desiring to purchase or acquire any weapon enumerated in Section 1 of this ordinance may make written application therefor * * * to the Superintendent of the Bureau of Police [contact local authorities for required contents] * * *

3. Such permit shall authorize the applicant within thirty days thereafter to purchase or otherwise lawfully acquire a weapon of the class enumerated in Section 1 of this ordinance, upon the surrender of such permit and the signing thereof for the purposes of comparison in the presence of the person selling or otherwise disposing of said weapon.

Shamokin

Sec. 52-4. Purchase, sale or discharge of fireworks, etc., prohibited; exception. From and after the passage of this ordinance, it shall be unlawful for any person or persons to purchase, sell or discharge any * * * guns, pistols, or other firearms * * * of any kind within the limits of the Borough of Shamokin (now City) unless a license for exhibition is granted for the same by the Chief Burgess (now Mayor) or the Borough Council (now City Council).

Slatington Borough

Ordinance 368

It shall be unlawful for any person or persons, firm or corporation within the corporate

limits of the Borough of Slatington, Pennsylvania, to possess, deliver possession of, sell or discharge firearms, * * * or any other dangerous combustible material unless permission of the Mayor therefore is first procured in writing.

Springfield Township

Sec. 48-5. Sales to minors. It shall be unlawful to knowingly and willfully sell or cause to be sold, or supply or furnish to any minor person any rifle * * * or ammunition or pellets for the same * * * or shotguns, guns or any firearm or weapon from which a shot or other object is discharged, in the Township of Springfield.

Stowe Township

Ordinance A-458

* * * * *

Section 3. No person, firm or corporation shall sell or offer for sale any rifle, shot-gun, revolver, pistol * * *, unless they, or it, shall have first received a written license so to do. * * *. * * * No sale shall be permitted to any person under twenty-one (21) years of age, and a copy of this Ordinance shall be issued with each sale.

Swissvale Borough

1464-3. No person, firm or corporation shall sell or offer for sale any rifle, shot-gun, revolver, pistol, flobert rifle, or air gun, to any person under twenty-one (21) years of age.

1579-2. Every prospective purchaser of any of the foregoing arms shall first apply to the Police Department for a permit, giving such information as to the said Department shall require, and no permit shall be issued until after three (3) days have elapsed from the date of application. No seller of said arms shall sell such arms or guns without said permit.

Upper Southampton

39.2. Whoever knowingly and willfully sells or causes to be sold or supplies or furnishes to any person under eighteen years of age, any gun, rifle, * * * or any firearm of any description in the Township of Upper Southampton, shall upon conviction thereof in a summary proceeding, be sentenced to pay a fine not exceeding One Hundred ($100.) Dollars, and in default of the payment of such fine and costs, shall be sentenced to imprisonment in the County Jail for a period not exceeding thirty (30) days.

West Conshohocken Borough

Sec. 54-3. Possession of firearms for sale restricted. It shall be unlawful and it is hereby prohibited for any person, persons, firms or corporations to transfer, store, sell, offer or expose for sale or to have possession with intent to sell any gun, pistol, shotgun, rifle or other firearm within the Borough of West Conshohocken unless duly licensed according to law.

West Pottsgrove Township

Sec. 13-7. Sale of deadly weapons, etc., to minors under sixteen prohibited. It shall be unlawful for any person to knowingly and wilfully sell or cause to be sold, to any person under sixteen (16) years of age, any deadly weapon, or knowingly or willfully to sell or cause to be sold to any such minor any cartridge, gun powder or other dangerous and explosive substance.

Williamsburg

3. It shall be unlawful for any person who knowingly and willfully sells or causes to be sold to any person under 16 years of age, any deadly weapon or knowingly or wilfully to sell any cartridge, gun powder or other dangerous and explosive substance.

Wyomissing Borough

578-1(c) Dealing with Minors and Certain Other Persons. [No person in the Borough shall:] Purchase from, or sell, loan, give, trade, deliver or otherwise furnish any weapon described in sub-section (b) herein, or ammunition therefor, to any person under the influence of alcohol or any narcotic drug, stimulant or depressant, or to any person in a condition of agitation and excitability, or to a minor under the age of 18 years.

Puerto Rico

Laws of P.R. Ann.

Title 25

Chapter 51—Weapons

* * * * * *

413. Sale or transportation of machine guns. Any person who sells or keeps for sale, or offers, gives, leases, or loans, or otherwise disposes of or transports any instrument or weapon of the kind usually known as a machine gun shall be guilty of a felony. This section shall not apply to the manufacture, sale or delivery of machine guns for the use of the police and other peace officers, or for the use by officers or employees of the Government of Puerto Rico or of the United States, prisons, penitentiaries, Commonwealth or municipal jails, or for the use of the armed forces of the United States or of Puerto Rico.

415. Possession of machine gun, carbine or sawed-off shotgun. Any person who possesses or uses without legal authorization a machine gun, or a sawed-off shotgun, as well as any modification thereof, shall be guilty of a felony. This section shall not be applicable to the possession or use of these weapons in the discharge of their official duties by members of the police, by wardens, superintendents or any of their deputies, of any prison, penitentiary, district or municipal jail, or other institution for the detention of persons convicted of or charged with any offense or held as witnesses in criminal cases, or any other public peace officers; nor shall it apply to the possession or use of these weapons by any person when on duty in the service of the armed forces of the United States or of Puerto Rico, or in the postal, customs, and immigration services of the United States or in any service of the Government of the United States authorized by the law of its creation to use such weapons, nor to the possession by common carriers while the latter transports them directly for delivery at any point for the use of the officers or persons above named.

Sec. 416. Possession of pistol or firearm without license. Any person who has or possesses any pistol, revolver, or other firearm without having a license therefor issued as hereinafter provided, shall be guilty of a misdemeanor (or felony) * * *

Sec. 420. Possession or sale of silencer. Any person who has in his possession, sells, or keeps for sale, loans, offers, gives or disposes of any instrument, attachment, weapon or appliance, for causing the firing of any firearm to be silent or intended to lessen or muffle the noise of the firing of any firearm, shall be guilty of a felony. The provisions of this section shall not apply to the members of the Police of Puerto Rico or the National Guard,

nor to the members of the armed forces of the United States.

Sec. 421. Serial number or name of owner on firearm—Removal or defacement. Every firearm shall bear, so as not [to] be easily altered or defaced, the name of the gunsmith or the trade-mark under which the firearm shall be sold or the name of the importer, and furthermore a serial number or the full name of the owner engraved thereon. The requirement that every firearm shall have engraved thereon a serial number or the name of the owner thereof shall not apply to guns or rifles whose barrel is 18 inches long or more, nor to rifles .22 caliber or less, whose barrel is 16 inches long or more, manufactured in Puerto Rico to be exported abroad by the gunsmith himself. The gunsmith shall be under obligation to take all reasonable measures and precautions to prevent that such firearms be stolen or otherwise removed from the gunsmith's warehouses where they are stored pending shipment and that same be offered, held for sale, sold, leased, or delivered to any person within Puerto Rico.

Any person shall be guilty of a felony who:

(a) Wilfully removes, defaces, covers, alters, or destroys the serial number of any firearm or the name of the owner thereof; or who:

(b) Knowingly buys, sells, receives, alienates, transfers, carries or has in his possession any firearm from which the serial number or name of the owner thereof has been removed, defaced, altered, or destroyed; or who:

(c) Being a dealer in firearms or a gunsmith, or an agent or representative of such dealer or gunsmith, knowingly purchases, sells, receives, delivers, alienates, transfers, carries, or has in his possession any firearm on which the serial number or name of the owner thereof has been removed, defaced, covered, altered, or destroyed.

Sec. 425. License to possess firearms; weapons for farmers. The Chief of Police of Puerto Rico may, when an application therefor is presented to him by any householder, merchant, or farmer, and provided the requirements hereinafter provided for are complied with, issue to such applicant a license to have and possess a pistol or revolver, and authorizing him, if a householder, to have and possess such weapon in his residence, or if a merchant, to have and possess a weapon in his place of business, or, if a farmer, a weapon in his farm. The license provided for by this section shall not authorize to carry such weapon outside the residence, place of business or farm, as the case may be.

The Chief of Police of Puerto Rico may also issue a license to any person to have and possess a shotgun on a farm of which such person may be the owner, possessor, or administrator.

The provisions of this paragraph shall not be construed in the sense of authorizing the Chief of Police of Puerto Rico to issue licenses to have and possess in the same farm more than one short weapon (revolver or pistol) and a long weapon (shotgun).

Sec. 427. Grounds for refusing to issue license. The Chief of Police of Puerto Rico shall not issue a license to have and possess a firearm to any person convicted in or outside Puerto Rico of any of the following offenses or of the attempt to commit the same: murder in any degree, voluntary manslaughter, kidnapping, rape, mayhem, assault with the intent to commit murder or manslaughter, aggravated assault and battery, when such offense was committed with a cutting, piercing or fire weapon, robbery, burglary, larceny, arson, incest, or violation of sections 1247-1257 of Title 33, or violation of section 1442 of Title 33; nor to any person who is mentally unbalanced, or a habitual drunkard or a narcotic or drug addict; nor to any person convicted for the violation of the provisions hereof.

Sec. 428. Qualifications of applicant; character, fingerprints. The Chief of Police of Puerto Rico shall not issue licenses to have and possess a firearm unless the said officer is satisfied that the applicant is a person of irreproachable conduct, of good moral repute, that his fingerprints have been duly taken and/or checked with the archives of the police, and unless, in the judgment of the said officer, no reason exists to deny such application.

Sec. 430. Persons who may lawfully carry weapons. (a) The following may lawfully have, possess, carry, transport and convey weapons:

1. The members of the Armed Forces of the United States and the members, officials and employees of the Military Forces of Puerto Rico in the discharge of their duties as such and under the provisions of the laws and regulations of their respective organizations.

2. The superintendent and the members of the Police of Puerto Rico, under the provisions of the regulations of the said Organization.

3. The Director of the Program of Penal Institutions and the heads of correctional institutions, under the regulations that the Correctional Administrator may provide.

4. Custody officers, under the regulations that the Correctional Administrator may provide.

5. United States Customs and Immigration officials, while in the discharge of their duties.

(b) The following may lawfully have, possess, carry, transport and convey a revolver or pistol:

1. Judges, prosecuting attorneys, secretaries, marshalls and deputy marshalls of the Court of Justice of the Commonwealth of Puerto Rico.

2. The members of the Legislature, and any official of the Government of the Commonwealth of Puerto Rico when in the judgment of the Superintendent of the Police of Puerto Rico, by reason of the duties of such official's office, a license should be issued to him to carry a weapon and said license is issued by the Superintendent of the Police of Puerto Rico.

3. Mail carriers, during the discharge of their duties as such.

4. Carriers and custodians of public funds, while such funds are in their custody.

5. Carriers of private funds and custodians of private funds in banking institutions, while such funds are in their custody, upon previous issuance of a license by the Superior Court before which the carrier or custodian of such funds, or his employers, shall justify the necessity of such license.

6. Internal-revenue collectors and agents, provided they have been authorized by the Superintendent of the Police of Puerto Rico, at the request of the Secretary of the Treasury of Puerto Rico, to carry a revolver or pistol.

7. Persons rendering security services to public or private enterprises, while rendering such services, upon previous issuance of a license by the Superior Court, before which said person, or his employer, shall justify the necessity of such license.

(c) No person shall be authorized to carry firearms under subdivision (b) of this section if such person is not authorized to own and possess firearms under sections 425, 426, 427, 428 and 429 of this title.

(d) The provisions of this section shall not be interpreted as authorizing the use of firearms in violation of the law.

Sec. 432. License to sell or deal in firearms and ammunition; report of transactions. (a) No person shall engage in the business of gunsmith or dealer in firearms and ammunition without holding a license therefor issued by the Secretary of the Treasury upon favorable report of the Superintendent of Police of Puerto Rico.

* * * * *

(b) The provisions of the preceding subsection (a) shall likewise be applicable to dealers who introduce firearms and ammunition into Puerto Rico.

(d) A dealer in firearms and ammunition who possesses a license issued in accordance with this chapter may acquire a firearm registered in the Weapons Registry under the provisions of subsections (a), (b) and (d) of section 439 of this title, by purchase from the person who has it registered in his name, provided such person has a license to have and possess said firearms, issued in accordance with this chapter. Before a firearm is sold under the provisions of this subsection, both the vendor and the vendee shall give notice thereof in writing to the Superintendent of Police, and the former shall deliver to said officer his license to have and possess a fire-

arm. The sale of a firearm under the provisions of this subsection shall not prevent the vendor from obtaining a new license to have and possess a firearm in accordance with this chapter.

Sec. 434. Qualifications of dealer applicant. No license as gunsmith or dealer in firearms and ammunition shall be issued to a person not over 21 years of age, and not a citizen of Puerto Rico and of the United States.

Sec. 436. Conditions for dealers' operations; records of transactions. Any person, partnership or corporation, to which a license has been issued under the foregoing sections may engage in the retail sale of firearms and ammunition or in the gunsmith business, under the following conditions:

1. The business shall be operated only on the premises specified in the license.

2. No gunsmith shall receive any weapon for repair, modification, cleaning, engraving, polishing, or for doing any mechanical work on it without first being shown the license to carry or possess such weapon. Violation of this subsection on the part of the gunsmith shall constitute a misdemeanor punishable by imprisonment in jail up to a maximum of six (6) months or a fine up to five hundred (500) dollars, or both, in the discretion of the court.

3. The license, or a copy thereof, certified by the authority issuing the same, shall be posted in the establishment so that it may be easily read.

4. Under no circumstance shall a weapon or shall ammunition be sold unless the vendor is personally acquainted with the buyer, or the latter clearly establishes his identity. This requirement shall not apply to gunsmith businesses as regards firearms and/or ammunition for export.

5. A record in triplicate shall be kept of each firearm sold and of each sale of ammunition, in books devoted to this purpose which shall be printed in the manner that may be prescribed by the Superintendent of the Police of Puerto Rico and the record of each sale shall be personally signed by the buyer and by the person making the sale, each in the presence of the other; and such record shall set forth [such information as is required under the laws of Puerto Rico; contact authorities for requirements] * * * Said record shall also state whether the buyer is personally known to the vendor, and in case he is not, the manner in which the buyer accredited his identity. * * *

* * * * *

8. Any dealer in firearms or ammunition to whom a license has been issued under the provisions of this section, who fails to keep the records and books herein required, or who fails to demand the presentation of a license to have and possess a firearm in cases where the presentation of such license is required by this chapter, shall be guilty of a misdemeanor; and when such dealer in firearms or ammunition sells or delivers a firearm to any person to whom a license to have and possess a firearm in accordance with the provisions of section 425 of this title has not been issued, he shall be guilty of a felony. * * *

Sec. 437. Acquisition of weapons by persons authorized in section 430. The officials and persons lawfully authorized to have, possess, carry, convey and transport firearms under the provisions of subdivision (a) and paragraphs 4, 5 and 7 of subdivision (b) of section 430 of this title, shall obtain such weapons and the ammunition therefor through the heads of their respective departments or services.

Sec. 438. Sales of weapons and ammunition without licenses, prohibited; delivery permit. No dealer in firearms or ammunition shall deliver a firearm or issue the corresponding delivery permit to a purchaser without the latter's handing over to him a license to have and possess a firearm, duly issued in accordance with the provisions of this chapter, * * * and unless said license contains an authorization for the purchase of said weapon, and said dealer shall not sell to such purchaser [any] other weapon than the one described in said license. The dealer in firearms and ammunition shall separate from such license and keep the sale permit, and shall return the license to the purchaser. No weapon shall be sold to the holder of a license from which the sale permit has been removed. * * *

No dealer in firearms or ammunition shall sell any quantity of ammunition to any person failing to present a license to carry, or a license to have or possess a firearm.

Sec. 445. Hunting and target shooting arms excepted. The provisions of this chapter shall not apply to the possession, bearing, carrying, transportation and use of hunting and target shooting arms to all of which the acts in force on the matter shall apply.

Sec. 446. Collections of antique weapons; certificates of uselessness. No provision hereof shall prevent that private collections of antique weapons, which may not be used as weapons, be preserved and maintained and that their owners possess them as ornaments or as matters of curiosity, nor the collections of weapons kept as relics, but for the preservation of any weapon of those included in this section the prior inspection thereof and approval therefor by the Chief of Police of Puerto Rico shall be necessary and the latter shall render such weapons useless, so that the same may not be used as such. The Chief of Police of Puerto Rico shall issue a certificate of uselessness of all the weapons possessed under the provisions of this section, and the possession of any weapon not included in said certificate shall be subject to all the provisions hereof.

Sec. 454. Definitions. For the purposes of this chapter, the phrases and terms hereinafter listed shall have the following meaning and definition:

(a) "Machine gun" is a weapon of any description, irrespective of size, by whatever name designated or known, loaded or unloaded, from which may be repeatedly or automatically discharged a number of bullets contained in a magazine, ribbon or other removable receptacle by one continued pull of the trigger. The term machine gun also includes a submachine gun.

(b) "Firearm" means any weapon by whatever name known, capable of discharging one or more ammunitions through the expanding action of gases.

(c) "Ammunition" means any bullet, cartridge, projectile, buckshot, or any load placed or which may be placed in a firearm to be discharged.

* * * * *

(f) "Gunsmith" means any person, firm, partnership, or corporation engaging in the manufacture, repairing, altering, assembling, cleaning, polishing, engraving, or trueing, or performing any mechanical operation for another on any pistol, revolver, or other firearm.

(g) "Dealer in Firearms or Ammunition" shall mean any person, firm, partnership or corporation who, per se or through its agents, servants, or employees, purchases or introduces for sale, sells, trades, exchanges, offers for sale, or displays for sale, or has for sale, in his business establishment or other place, whether or not also used as a residence or for any other purpose, any pistol, revolver, firearm, or ammunition.

(h) "Merchant" means any person, firm, corporation or partnership who engages on premises open to the public, which are not the residence of anyone, in the sale of merchandise and articles the object of lawful commerce between men.

(i) "Householder" means any person who has established a permanent home, domicile or residence under his own responsibility and authority. There may not be more than one householder in any permanent home, domicile or residence.

(j) "Dwellings" and "Buildings" mean the whole part of a structure used or occupied by a single person or a single family.

(k) "Vehicle" means any device serving for the transportation of persons or things by land, sea, or air.

(l) "Person", "Merchant" and "Farmer" for the purposes of sections 425, 426, 427, 428, 429 of this title, shall include a partnership or corporation, but any license requested for the benefit of such artificial person under the provisions of the sections mentioned, may be granted only in the name of a specific officer or employee of such artificial person, provided such officer or employee meets the requirements prescribed in this chapter.

(m) "Police" means the Police Force of Puerto Rico.

(n) "Chief of Police of Puerto Rico" means the Chief of the Police of Puerto Rico.

(o) Rifle—A firearm with a long, striated barrel designed to be fired from the shoulder, that discharges only one (1) shot. It may be fed by hand or by a magazine or removable receptacle, and fired manually, automatically or semiautomatically. The barrel shall have a minimum length of 16 inches.

(p) Shotgun—A long barreled firearm with one (1) or more smoothbore barrels, designed to be fired from the shoulder, that may discharge cartridges of one (1) or more shots. It may be fed by hand or by a magazine or removable receptacle and fired manually, automatically or semiautomatically.

(q) Carbine—A firearm with a long, striated barrel designed to be fired from the shoulder, that discharges only one (1) shot. It may be fed by hand or by a magazine or removable receptacle and fired manually, automatically or semiautomatically. The barrel shall be no more than 16 inches long.

Chapter 57—Revolvers, Pistols, etc.

541. Concealed weapons and instruments. It shall be a misdemeanor, punishable as provided in section 546 of this title, to bear, carry, transport, possess or sell any weapon, instrument or device whose general configuration conforms to that of a revolver or pistol and which is capable of detonating blank shells, blank cartridges or any other unit not provided with a missile, that could produce explosion through combustion, including among such weapons, instruments or devices, those revolvers, pistols, instruments and devices known by the name of starter's pistol, blank cartridge pistols, blank cartridge revolvers, blank starter's pistols, blank pistols, blank revolvers, blank starter's revolvers, or any others whose general configuration conforms to those of a revolver or pistol and which fires blank cartridges, blank capsules, or blank shells. By blank capsule, blank shell or blank cartridge shall be understood any hollow unit, cylindric or cubic in form, not provided with a missile, containing in its interior any chemical agent or compound capable of producing explosion by combustion, and provided with a percussion-sensitive detonator.

542. Exceptions. Excepted from the provisions of section 541 above are revolvers especially manufactured for sportive events and theatrical shows and used for such purposes, provided the barrel thereof is a solid cylinder with no orifice whatsoever and ending in a cone.

Title 24

Chapter 111—Controlled Substances

Sec. 2516. Driving vehicles; carrying firearms. No person who has been convicted of a felony under this chapter or of any law of the United States or of any state in connection with narcotic drugs, marijuana, depressant or stimulant substances, as well as of any foreign country and any person who has been declared addicted to narcotic drugs, may obtain a license from the corresponding authority to drive any kind of motor vehicle nor to hold, possess or carry firearms for a term of five (5) years from and after the serving of the sentence imposed by said conviction or after the date of the declaration. Officers or public employees in charge of the issuance of said licenses shall be prevented from extending them, whenever any of the circumstances expressed above may concur in the applicant for the license and any such licenses which have been issued prior to the conviction or declaration that the person is addicted to narcotic drugs shall immediately be cancelled by the corresponding authority.

Notwithstanding the prohibitions contained in this section, the Secretary of Health may, upon request of an interested party, render ineffective the prohibition that a license to drive a motor vehicle be issued to one of such persons, provided it is shown to his satisfaction that said person is reasonably rehabilitated and that the license request is necessary so that such person may lawfully carry out his work or trade.

The presentation of the certificate from the Secretary of Health relieving a person from the prohibition of possessing a license to drive a motor vehicle shall relieve from responsibility the employee or officer issuing it.

Rhode Island

State Law

Gen. Laws of R.I.

11-47-2. Definition of terms. When used in Secs. 11-47-1 to 11-47-56, inclusive, the following words and phrases shall be construed as follows:

"Pistol" shall include any pistol or revolver, and any shotgun, rifle or similar weapon with overall length less than twenty-six (26) inches, but shall not include any pistol or revolver designed for the use of blank cartridges only.

"Machine gun" means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any combination of parts designed and intended for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.

"Firearm" shall include any machine gun, pistol, rifle, air rifle, air pistol, "blank gun," "BB gun," so-called or other instrument from which steel or metal projectiles are propelled, or which may readily be converted to expel a projectile, except such instruments propelling such projectiles which instruments are designed or normally used for a primary purpose other than as a weapon. The frame or receiver of any such weapon shall be construed as a firearm under the provisions of this section.

"Person" shall include individual, partnership, firm, association or corporation.

"Licensing authorities" shall mean the board of police commissioners of a city or town where such board has been instituted, the chief of police or superintendent of police of other cities and towns having a regular organized police force, and in towns where there is no chief of police or superintendent of police it shall mean the town clerk who may issue licenses upon the recommendation of the town sergeant, and it shall also mean any other person or body duly authorized by the city or town charter or by state law.

"Crime of violence" shall mean and include any of the following crimes or an attempt to commit any of the same, viz.; murder, manslaughter, rape, mayhem, robbery, burglary, breaking and entering, assault with a dangerous weapon, assault or battery involving grave bodily injury, and/or assault with intent to commit any offense punishable as a felony.

"Fugitive from justice" shall mean any person who has fled from any state, territory, the District of Columbia, or possession of the United States to avoid prosecution for a crime of violence or to avoid giving testimony in any criminal proceeding.

"Sell" shall include let or hire, give, lend and transfer, and the word "purchase" shall include hire, accept and borrow, and the expression "purchasing" shall be construed accordingly.

"Sawed-off shotgun" shall mean any shotgun with overall length of less than twenty-six (26) inches and/or barrel length of less than eighteen (18) inches.

"Sawed-off rifle" shall mean any rifle with overall length of less than twenty-six (26) inches and/or barrel length of less than sixteen (16) inches.

"Antique firearm" shall be defined as that term is defined under the provisions of Title

18, United States Code, Subsection 921, entitled Definitions.

* * * * *

11-47-5. Possession of arms by person convicted of crime of violence or who is a fugitive from justice. No person who has been convicted in this state or elsewhere of a crime of violence or who is a fugitive from justice shall purchase, own, carry, transport or have in his possession or under his control any firearm.

11-47-6. Possession of arms by mental incompetents, drug addicts, and persons adjudicated an habitual drunkard. No person who is under guardianship or treatment or confinement by virtue of being a mental incompetent, or who has been adjudicated or is under treatment or confinement as a drug addict, or who has been adjudicated or is under treatment or confinement as an habitual drunkard shall purchase, own, carry, transport or have in his possession or under his control any firearm. Any person affected by the provisions of this section, other than a person who has been pronounced criminally insane by competent medical authority, after the lapse of a period of five (5) years from the date of being pronounced cured by competent medical authority, may, upon presentation of an affidavit issued by competent medical authority to the effect that he is a mentally stable person and a proper person to possess firearms, make application for the purchase of said firearm(s).

In the event that said application is approved and if said person has no other disqualifying record he will be allowed to purchase and possess firearms.

11-47-7. Possession of pistol or revolver by alien. No unnaturalized foreign born person who has resided in the United States for less than ten (10) years shall purchase, own, carry, transport or have in his possession or under his control any pistol or revolver. The provisions of this section shall be waived in the case of an unnaturalized foreign born person arriving in or passing through this state for the purpose of competing in a match organized under the auspices of a national shooting organization.

11-47-8. License required for carrying pistol—Possession of machine gun. (a) * * * * * No person shall manufacture, sell, purchase or possess a machine gun except as otherwise provided in this chapter.

(b) No person shall have in his possession or under his control any sawed-off shotgun or sawed-off rifle as defined in section 11-47-2.

11-47-9. Persons exempt from restrictions. The provisions of Sec. 11-47-8 shall not apply to sheriffs, deputy sheriffs, the superintendent and members of the state police, prison or jail wardens or their deputies, members of the city or town police force, capitol police and railroad police while traveling to and from official assignments or while on assignments, conservation officers, or other duly appointed law enforcement officers, nor to members of the army, navy, air force, marine corps of the United States, the national guard, or organized reserves, when on duty, or to members of organizations by law authorized to purchase or receive firearms from the United States or this state, provided such members are at or are going to or from their places of assembly or target practice, nor to officers or employees of the United States authorized by law to carry a concealed firearm, nor to any civilian guard or criminal investigator carrying sidearms or a concealed firearm in the performance of his official duties under the authority of the commanding officer of the military establishment in the state of Rhode Island where he is employed by the United States; provided, however, that the commanding officer of such military establishment shall have on file with the attorney general of this state a list of the names and addresses of all such civilian guards and criminal investigators so authorized; nor to duly authorized military organizations when on duty, nor to members thereof when at or going to or from their customary places of assembly, nor to the regular and ordinary transportation of pistols as merchandise, nor to any person while carrying a pistol unloaded and securely wrapped from the place of purchase to his home or place of business, or in moving goods from one place of abode or business to another. Persons exempted by the provisions of this section from the provisions of Sec. 11-47-8 shall have the right to carry concealed firearms everywhere within this state; provided, however, that this shall not be construed as giving the right to carry concealed firearms to a person transporting concealable firearms as merchandise or as household or business goods.

* * * * *

11-47-14. Permits to banks and carriers. The attorney-general may issue a license or permit to any banking institution doing business in this state or to any public carrier who is in the business of transporting mail, money, securities or other valuables, to possess and use machine guns under such regulations as the attorney-general may prescribe.

* * * * *

11-47-19. Machine gun manufacturers' permits. The attorney-general may issue to any person, firm or corporation engaged in manufacturing in this state, a license or permit to manufacture and sell machine guns and any or all machine gun parts under such regulations as the attorney-general may prescribe.

11-47-20. Sale or possession of silencers. It shall be unlawful within this state to manufacture, sell, purchase or possess, any muffler, silencer or device for deadening or muffling the sound of a firearm when discharged.

11-47-21. Restrictions on possession or carrying of explosives or noxious substances. Any person, except a member of the state police, the sheriff or his deputies, or a member of the police force of any city or town, or a member of the army, navy, air force, or marine corps of the United States, or of the national guard or organized reserves when on duty, who possesses, or carries on or about his person or in a vehicle, a bomb or bombshell, except for blasting or other commercial use, or who, with intent to use the same unlawfully against the person or property of another, possesses or carries any explosive substance, or any noxious liquid, gas or substance, shall be guilty of a violation of this chapter and punished as hereinafter provided.

11-47-25. Antique firearms and collections. Sections 11-47-1 to 11-47-56, inclusive, shall not apply to antique firearms unsuitable for use nor to collections of firearms utilized and maintained for educational, scientific or any similar purpose without intent to use such firearms.

11-47-30. Sale of firearms to minors. It shall be unlawful within this state for any person to sell any firearm to any person under eighteen (18) years of age without the prior approval or consent of the parent or legal guardian of said minor.

11-47-31. Sale of ammunition to minors. It shall be unlawful within this state for any person to sell any ammunition, including any priming charge of powder, propelling charge of powder or any form of missile or projectile to be ejected from a firearm to any person under eighteen (18) years of age without the prior approval or consent of the parent or legal guardian of said minor.

11-47-33. Possession of firearms by minors. It shall be unlawful within this state for any person under fifteen (15) years of age to possess and use any firearm unless he shall hold a permit therefor as provided in Sec. 11-47-34, and only in the presence of a qualified adult at any regular and recognized camp or rifle range approved by the Rhode Island state police or by the chief of police of the city or town in which such camp or rifle range is located; and provided, further, however, that said person under fifteen (15) years of age may carry such firearm, unloaded, in a suitable case to and from his home and such camp or range and from such camp or range to other such camp or range.

11-47-34. Firearms permits to minors. The Rhode Island state police or the chief of police of the city or town in which such person resides shall issue permits to any person under fifteen (15) years of age only upon satisfactory proof of being engaged in a course of training in the use of firearms at a regular and recognized camp or rifle range, and further provided that such person has the written consent of a parent or guardian.

11-47-35. Sale of concealable weapons. No seller shall deliver a pistol or revolver to a purchaser thereof until seventy-two (72) hours shall have elapsed from twelve o'clock noon of the day following the day of application for the purchase thereof, and when delivered, said pistol or revolver shall be unloaded and securely wrapped, with the bill of sale therefor to be inclosed within said wrapper with said pistol or revolver. Any loyal law abiding citizen of this state twenty-one (21) years of age or older, and any member of the armed forces of the United States who is stationed in this state and who has the written permission of his commanding officer and who is twenty-one (21) years of age or older, may upon application purchase or acquire a pistol or revolver. At the time of applying for the purchase of a concealable firearm the purchaser shall accomplish and sign in triplicate and deliver to the seller the application form prescribed below, and in no case shall it contain the serial number of the pistol or revolver. (Form deleted)

11-47-37. Sale to minors and others forbidden. No person shall sell a pistol or revolver to any person under the age of twenty-one (21) or to one who he has reasonable cause to believe falls under the provisions of sections 11-47-5, 11-47-6, 11-47-7, or 11-47-23.

11-47-38. Dealers to be licensed. No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell, or otherwise transfer, any pistol, revolver, or other firearm without being licensed as hereinafter provided.

Central Falls

17-22. Weapons—Possessing, harboring, etc. No person shall own, possess, harbor, carry or in any manner use or exercise control of any so-called actually or inherently dangerous weapon or instrumentality, such as a * * * rifle, gun, musket, blunderbuss, fowling piece, pistol, * * * or any contrivance arranged to discharge shot, bullets, arrows, darts, shells or other missiles in the limits of the city, except by special permission of the city council upon the recommendation of the chief of police, who shall prescribe such rules and regulations as each case may require. The city council shall exercise their discretion in each case and shall decide accordingly having in mind the best interests of the populace at large, and more particularly so during any war period.

17-25. Same—Sale to minors. No person shall sell or dispose of to any minor who has no special license to have the same in his possession any of the articles or contrivances mentioned in the two preceding sections. Any person violating this section shall be held responsible for any damage or injury caused as a result of his act.

East Providence

Sec. 20-12. Same—Sale of rifle, pistol, etc., to minors. No person shall sell or offer to sell any rifle, gun, pistol, * * * to any person under the age of eighteen years.

South Carolina

State Law

Code of Laws of S.C.

Title 16
Chapter 23
Article 1

Sec. 16-23-10. Definitions. When used in this article:

(a) "Pistol" means any firearm designed to expel a projectile and designed to be fired from the hand, but shall not include any firearm generally recognized or classified as an antique, curiosity, or collector's item, or any that does not fire fixed cartridges.

(b) The term "dealer" means any person engaged in the business of selling firearms at retail or any person who is a pawnbroker.

(c) The term "crime of violence" means murder, manslaughter (except negligent manslaughter arising out of traffic accidents), rape, mayhem, kidnapping, burglary, robbery, housebreaking, assault with intent to kill, commit rape, or rob, assault with a dangerous weapon, or assault with intent to commit any offense punishable by imprisonment for more than one year.

(d) The term "fugitive from justice" means any person who has fled from or is fleeing from any law enforcement officer to avoid prosecution or imprisonment for a crime of violence.

(e) The term "subversive organization" means any group, committee, club, league, society, association or combination of individuals the purpose of which, or one of the purposes of which, is the establishment, control, conduct, seizure or overthrow of the government of the United States or any state or political subdivision thereof, by the use of force, violence, espionage, sabotage, or threats or attempts of any of the foregoing.

(f) The term "conviction" as used herein shall include pleas of guilty, pleas of nolo contendere and forfeiture of bail.

(g) The term "Division" shall mean the State Law Enforcement Division.

(h) The terms "purchase" or "sell" mean to knowingly buy, offer to buy, receive, lease, rent, barter, exchange, pawn or accept in pawn.

(i) The term "person" shall mean any individual, corporation, company, association, firm, partnership, society or joint stock company.

Sec. 16-23-30. Sale or delivery of pistol to and possession by certain persons unlawful; stolen pistols. It shall be unlawful for any person to knowingly sell, offer to sell, deliver, lease, rent, barter, exchange or transport for sale into this State any pistol to:

(a) Any person who has been convicted of a crime of violence in any court of the United States, the several states, commonwealths, territories, possessions or the District of Columbia or who is a fugitive from justice or a habitual drunkard or a drug addict or who has been adjudicated mentally incompetent.

(b) Any person who is a member of a subversive organization.

(c) Any person under the age of twenty-one, but this shall not apply to the issue of pistols to members of Armed Forces of the United States, active or reserve, National Guard, State Militia or R. O. T. C., when on duty or training or the temporary loan of pistols for instruction under the immediate supervision of a parent or adult instructor.

(d) Any person who by order of a circuit judge or county court judge of this State has been adjudged unfit to carry or possess a pistol, such adjudication to be made upon application by any police officer, or by any prosecuting officer of this State, or sua sponte, by the court, but any person who shall be the subject of such an application shall be entitled to reasonable notice and a proper hearing prior to any such adjudication.

(e) It shall be unlawful for any person covered in (a), (b), (c) or (d) of this section to possess or acquire pistols within this State.

(f) No person shall knowingly buy, sell, transport, pawn, receive or possess any stolen pistol or one from which the original serial number has been removed or obliterated.

Article 3

Sec. 16-23-210. Definitions. When used in this article:

(a) The words "machine gun" apply to and include any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any combination or parts designed and intended for use in

converting a weapon into a machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

(b) "Sawed-off shotgun" means a shotgun having a barrel or barrels of less than eighteen inches in length or a weapon made from a shotgun which as modified has an overall length of less then twenty-six inches or a barrel or barrels of less than eighteen inches in length.

(c) "Shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each pull of the trigger. The term includes any such weapon which may be readily restored to fire a fixed shotgun shell, but does not include an antique firearm as defined in this section.

(d) "Sawed-off rifle" means a rifle having a barrel or barrels of less than sixteen inches in length or a weapon made from a rifle which as modified has an overall length of less than twenty-six inches or a barrel or barrels of less than sixteen inches in length.

(e) "Rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger. The term includes any such weapon which may be readily restored to fire a fixed cartridge, but does not include an antique firearm as described in this section.

(f) "Antique firearm" means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

Sec. 16-23-220. Unlawful transportation of machine gun or sawed-off shotgun or rifle within State. It shall be unlawful for any person in any manner to transport from one place to another in this State or for any railroad company, express company or other common carrier or any officer, agent or employee of any of them or other person acting in their behalf knowingly to ship or to transport from one place to another in this State in any manner or by any means whatsoever, except as provided in Secs. 16-23-250 and 23-31-330, any machine gun or firearm commonly known as a machine gun, sawed-off shotgun or sawed-off rifle.

Sec. 16-23-230. Unlawful storing, keeping or possessing machine gun or sawed-off shotgun or rifle. It shall be unlawful for any person to store, keep, possess or have in possession or permit another to store, keep, possess or have in possession any machine gun or firearm commonly known as a machine gun, sawed-off shotgun, sawed-off rifle, except as provided in Secs. 16-23-250 and 23-31-330.

Sec. 16-23-240. Unlawful selling, renting or giving away of machine gun or sawed-off shotgun or rifle. It shall be unlawful for any person to sell, rent, give away or participate in any manner, directly or indirectly, in the sale, renting, giving away or otherwise disposing of any machine gun or firearm commonly known as a machine gun, sawed-off shotgun, sawed-off rifle.

Sec. 16-23-250. Exceptions to application of article. The provisions of this article shall not apply to the Army, Navy or Air Force of the United States, the National Guard and organizations authorized by law to purchase or receive machine guns, or sawed-off shotguns or sawed-off rifles, from the United States or from this State and the members of such organizations. Any peace officer of the State or of any county or other political subdivision thereof, state constable, member of the highway patrol, railway policeman or warden, superintendent, head keeper or deputy of any state prison, penitentiary, workhouse, county jail, city jail or other institution for the detention of persons convicted or accused of crime or held as witnesses in criminal cases or person on duty in the postal service of the United States or any common carrier while transporting direct to any police department, military or naval organization or person authorized by law to possess or use a machine gun, or sawed-off shotgun or sawed-off rifle, may possess machine guns, or sawed-off shotguns or sawed-off rifles, when required in the performance of their duties. Nor shall the provisions hereof be construed to apply to machine guns, or sawed-off shotguns or sawed-off rifles, kept for display as relics and which are rendered harmless and not usable.

The provisions of this article shall not apply to any manufacturer of machine guns licensed pursuant to the provisions of 18 U.S.C. Section 921 et. seq., nor to any common or contract carrier transporting or shipping any machine gun to or from such manufacturer if the transportation or shipment is not prohibited by federal law.

Sec. 16-23-270. Article not applicable to antique firearms. The provisions of this article shall not apply to antique firearms.

Article 5

Sec. 16-23-280. Manufacture and sale of machine guns by licensed manufacturer. Notwithstanding the provisions of this article, machine guns manufactured by a firm licensed by the federal government and subject to the Federal Gun Control Act may be legally manufactured, transported, possessed and sold within the State by the manufacturer thereof.

Sec. 16-23-470. Illegal possession of tear-gas gun or ammunition. It shall be unlawful for anyone except duly authorized law enforcement officers to have in possession, use, transport, sell or buy any tear-gas machine or gun or any part thereof, or any ammunition or shells or equipment that may be used in a tear-gas gun or machine. Provided, however, that it shall be lawful for a person for self-defense purposes only to possess, use, transport, sell or buy tear-gas machines or guns or any parts thereof, or ammunition, shells or equipment for such tear-gas machines or guns, but the capacity of any such tear-gas cartridge, shell or container shall not exceed fifty cubic centimeters nor shall any such tear-gas machine or gun have the capability of shooting any cartridge, shell or container of more than fifty cubic centimeters. Any violation of this section shall be a misdemeanor and punishable by imprisonment for not less than one year nor more than five years or by a fine of not more than five thousand dollars, either or both, in the discretion of the court.

Except as otherwise permitted above, nothing in this section shall be construed to prohibit the purchase, sale, transportation or use of tear gas for the destruction of insects or rodents, provided such tear gas is not in containers or shells suitable for use in any tear-gas gun, equipment or machine and provided the purchaser has written authority for the purchase and use of such tear gas from the county agent of the county in which he resides.

Sec. 16-23-480. Manufacture or possession of article designed to cause damage by fire or other means. No person shall manufacture, cause to be manufactured, or possess any object or article which is designed to cause damage by fire or any other means to person or property either by ignition, detonation or other means, and further, no person shall possess any object or article when such object or article is possessed solely for the purpose of causing damage by fire or other means to person or property either by ignition, detonation or other means.

Title 23
Chapter 31
Article 1

Sec. 23-31-10. Purchase of rifle or shotgun in contiguous state. Any resident of

this State including a corporation or other business entity maintaining a place of business in this State, who may lawfully purchase and receive delivery of a rifle or shotgun in this State, may purchase a rifle or shotgun in a contiguous state and transport or receive the same in this State; *provided*, that the sale meets the lawful requirements of each such state, meets all lawful requirements of any Federal statute, and is made by a licensed importer, licensed manufacturer, licensed dealer, or licensed collector.

Article 3

Sec. 23-31-110. Definitions. (Editor's Note: The definitions in this Article are identical to those in Section 16-23-10 above.)

Sec. 23-31-130. Retail dealers shall be licensed. No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell, or otherwise transfer, any pistol without being licensed as hereinafter provided.

Sec. 23-31-140. Completion and contents of application prior to purchase of pistol; further restrictions on purchase. Prior to the purchase of a pistol, the purchaser shall complete an application in triplicate in the presence of the dealer. The application to be furnished by the Division shall contain * * * (that information required in 23-31-140; contact State law enforcement authorities for details)

No person shall be allowed to purchase a pistol from a dealer unless he has fully completed the application.

No person shall be allowed to purchase more than one pistol on each application and no person shall be allowed to purchase more than one pistol during each thirty-day period; *provided*, however, that a person whose pistol is stolen or irretrievably lost and who feels that it is essential that he immediately purchase a pistol may obtain a special permit which will enable him to purchase a pistol * * *

No person shall be allowed to purchase a pistol from a dealer unless he is a resident of the State of South Carolina. For the purpose of this article, the possession of a valid South Carolina driver's license or South Carolina Highway Department Identification Card shall constitute proof of residency.

Sec. 23-31-150. Issuance, duration, conditions and forfeiture of retail dealer's license. The Division shall grant a license to any person doing business in the State not ineligible to purchase, acquire or possess a pistol or be licensed as a dealer under the provisions of this article. Licenses shall be issued on a form furnished by the Division and be effective for two years from the date of issuance. Licensees shall be authorized to sell pistols at retail as dealers within this State subject to the following conditions, for breach of any of which the license shall be forfeited:

* * * * *

(b) No pistol shall knowingly be sold in violation of any provision of this article nor shall any pistol be sold without clear evidence as to the identity of the purchaser being furnished to the dealer.

(c) A true record shall be made of every pistol sold on a firearm transaction record form. The firearm transaction record form which shall be furnished by the Division shall be signed by the purchaser and by the dealer effecting the sale, each in the presence of the other and shall contain such information as may be required by the Division. * * *

* * * * *

Sec. 23-31-180. Certain pistols declared to be contraband; forfeiture and destruction of such. No licensed retail dealer shall possess in his place of business or sell any pistol or other handgun which has a die-cast frame or receiver which melts at a temperature of less than eight hundred degrees Fahrenheit.

* * * * *

Article 5

Sec. 23-31-310. Definitions. When used in this article: (Editor's Note: The definitions in this Article are identical to those in Section 16-23-210 above.)

Sec. 23-31-320. Exceptions to application of article. The provisions of this article shall not apply to the Army, Navy or Air Force of the United States, the National Guard and organizations authorized by law to purchase or receive machine guns, or sawed-off shotguns or sawed-off rifles, from the United States or from this State and the members of such organizations. Any peace officer of the State or of any county or other political subdivision thereof, state constable, member of the highway patrol, railway policeman or warden, superintendent, head keeper or deputy of any state prison, penitentiary, workhouse, county jail, city jail or other institution for the detention of persons convicted or accused of crime or held as witnesses in criminal cases or person on duty in the postal service of the United States or any common carrier while transporting direct to any police department, military or naval organization or person authorized by law to possess or use a machine gun, or sawed-off shotgun or sawed-off rifle, may possess machine guns, or sawed-off shotguns or sawed-off rifles, when required in the performance of their duties. Nor shall the provisions hereof be construed to apply to machine guns, or sawed-off shotguns or sawed-off rifles, kept for display as relics and which are rendered harmless and not usable.

The provisions of this article shall not apply to any manufacturer of machine guns licensed pursuant to the provisions of 18 U.S.C. Section 921 et seq., nor to any common or contract carrier transporting or shipping any machine guns to or from such manufacturer if the transportation or shipment is not prohibited by federal law. Any such manufacturer shall furnish to the South Carolina Law Enforcement Division the serial numbers of all machine guns manufactured by it within thirty days of such manufacture * * *.

Sec. 23-31-330. Application and registration of person allowed to possess machine gun or sawed-off shotgun or rifle. Every person permitted by Sec. 23-31-320 to possess a machine gun, or sawed-off shotgun or sawed-off rifle, and any person elected to or appointed to any office or position which entitles such person to possess a machine gun, or sawed-off shotgun or sawed-off rifle, upon taking office, shall file with the State Law Enforcement Division on a blank to be supplied by the Division on request therefor an application to be properly sworn to, which shall be approved by the sheriff of the county in which the applicant resides or has his principal place of business and shall include the applicant's name, residence and business address, physical description, whether or not ever charged or convicted of any crime, municipal, state or otherwise, and where, if so charged, and when the same was disposed of. The applicant shall also give a description, including the serial number and make, of the machine gun, or sawed-off shotgun or sawed-off rifle, which he possesses or desires to possess. Thereupon, the State Law Enforcement Division shall file such application in its office, registering such applicant together with the information required in the application in a book or index to be kept for that purpose, assign to him a number and issue to him a card which shall bear the signature of the applicant and which he shall keep with him while he has such machine gun or sawed-off shotgun or sawed-off rifle in his possession. Such registration shall be made on the date application is received and filed with the State Law Enforcement Division and shall expire on December thirty-first of the year in which the license is issued.

Sec. 23-31-350. Article not applicable to antique firearms. The provisions of this article shall not apply to antique firearms.

Aiken

Article I. Pistols and Other Weapons

Sec. 14A-1. Definitions. When used in this article:

(a) *Pistol* means any firearms designed to expel a projectile from a barrel less than twelve inches in length, but shall not include any firearm generally recognized or classified as an antique, curiosity or collector's item, or

any that does not fire fixed cartridges or fixed shotgun shells.

(b) The term *dealer* means any person regularly engaged in the business of selling firearms at retail.

(c) The term *crime of violence* means murder, manslaughter (except negligent manslaughter arising out of traffic accidents), rape, mayhem, kidnapping, burglary, robbery, housebreaking, assault with intent to kill, commit rape, or rob, assault with a dangerous weapon, or assault with intent to commit any of the aforesaid offenses.

(d) The term *fugitive from justice* means any person who has fled from or is fleeing from any law enforcement officer to avoid prosecution or imprisonment for a crime of violence.

(e) The term *subversive organization* means any group, committee, club, league, society, association or combination of individuals the purpose of which, or one of the purposes of which, is the establishment, control, conduct, seizure or overthrow of the government of the United States, the State of South Carolina, or the City of Aiken, by the use of force, violence, espionage, sabotage, or threats or attempts of any of the foregoing.

(f) The term *conviction* as used herein shall include pleas of guilty, pleas of nolo contendere and forfeiture of bail.

Sec. 14A-3. Sale to certain persons unlawful; possession or acquisition by such persons unlawful; stolen pistols. It shall be unlawful for any person to knowingly sell, deliver, lease, rent, barter, exchange or transport for sale into this city any pistol to:

(a) Any person who has been convicted of a crime of violence in any court of the United States, the several states, commonwealths, territories, possessions or the District of Columbia or who is a fugitive from justice or a habitual drunkard or a drug addict or who has been adjudicated mentally incompetent.

(b) Any person who is a member of a subversive organization.

(c) Any person under the age of twenty-one (21), but this shall not apply to the issue of pistols to members of Armed Forces of the United States, active or reserve, National Guard, State Militia or R.O.T.C., when on duty or training or the temporary loan of pistols for instruction under the immediate supervision of a parent or adult instructor.

(d) Any person who by order of a circuit judge or county court judge of this state has been adjudged unfit to carry or possess a pistol, such adjudication to be made upon application by any police officer, or by any prosecuting officer of this State, or sua sponte, by the court, but any person who shall be the subject of such an application shall be entitled to reasonable notice and a proper hearing prior to any such adjudication.

(e) It shall be unlawful for any person covered in (a), (b), (c) or (d) of this section to possess or acquire pistols within this city.

(f) No person shall knowingly buy, sell, transport, pawn, receive or possess any stolen pistol or one from which the original serial number has been removed or obliterated.

Sec. 14A-4. Retail dealers to be licensed. No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell, or otherwise transfer, any pistol without being licensed * * *.

Sec. 14A-5. Issuance of retail dealer's license; * * * conditions: The clerk of the city shall grant a license to any person doing business in the city not ineligible under the provisions of this article * * * permitting the license to sell pistols at retail within this city subject to the following conditions, for breach of any of which the license shall be forfeited:

* * * * *

(b) No pistol shall knowingly be sold in violation of any provision of this article nor shall a pistol be sold without clear evidence to the seller of the identity of the purchaser.

(c) A true record shall be made of every pistol sold, in a book kept for the purpose, the form of which shall be prescribed by the city attorney, and shall be signed personally by the purchaser and by the person effecting the sale, each in the presence of the other, and shall contain [such information as is required by the City of Aiken] * * * and a statement signed by the purchaser that he has never been convicted of a crime of violence, is not a fugitive from justice nor a member of any subversive organization * * *.

Sec. 14A-7. Mortgage or pledge of pistol. Only a licensed dealer shall make a loan secured by a mortgage, deposit or pledge of a pistol and the dealer shall keep such records as are required herein. A licensed dealer may mortgage any pistol or stock of pistols but shall not deposit the same with any other person.

Anderson

35-7. Definitions. For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Conviction. The term "conviction" shall include pleas of guilty, pleas of nolo contendere and forfeit of bail.

Crime of violence. Murder, manslaughter, except negligent manslaughter arising out of traffic accidents, rape, mayhem, kidnapping, burglary, robbery, housebreaking, assault with intent to kill, commit rape; or rob, assault with a dangerous weapon, or assault with intent to commit any offense punishable by imprisonment for more than one year.

Dealer. Any person regularly engaged in the business of selling firearms at retail.

Fugitive from justice. Any person who has fled from or is fleeing from any law enforcement officer to avoid prosecution or imprisonment for a crime of violence.

Pistol. Any firearm designed to expel a projectile from a barrel less than twelve inches in length, but such term shall not include any firearm generally recognized or classified as an antique, curiosity or collector's item, or any that does not fire fixed cartridges or fixed shotgun shells.

Subversive organization. Any group, committee, club, league, society, association or combination of individuals the purpose of which, or one of the purposes of which, is the establishment, control, conduct, seizure or overthrow of the government of the United States or any state or political subdivision thereof, by the use of force, violence, espionage, sabotage or threats or attempts of any of the foregoing.

35-9. Sale, etc., to certain persons prohibited; possession by such persons. It shall be unlawful for any persons to knowingly sell, offer to sell, deliver, lease, rent, barter, exchange or transport for sale into the city any pistol to:

(a) Any person who has been convicted of a crime of violence in any court of the United States, the several states, commonwealths, territories, possessions or the District of Columbia or who is a fugitive from justice or a habitual drunkard or a drug addict or who has been adjudicated mentally incompetent.

(b) Any person who is a member of a subversive organization.

(c) Any person under the age of twenty-one, but this shall not apply to the issue of pistols to members of armed forces of the United States, active or reserve, national guard, state militia or R.O.T.C. when on duty or training or the temporary loan of pistols for instruction under the immediate supervision of a parent or adult instructor.

(d) Any person who by order of a circuit judge or county court judge of this state has been adjudged unfit to carry or possess a pistol, such adjudication to be made upon application by any police officer, or by any prosecuting officer of this state or sua sponte, by the court, but any person who shall be the subject of such an application shall be entitled to reasonable notice and a proper hearing prior to any such adjudication.

(e) It shall be unlawful for any person covered in subsections (a), (b), (c), or (d) of this section to possess or acquire pistols within this state.

35-10. Purchase, sale, possession, etc., of stolen, etc., pistol. No person shall knowingly buy, sell, transport, pawn, receive or possess any stolen pistol or one from which the original serial number has been removed or obliterated.

35-11. Retail dealer's license—required. No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in

his possession with intent to sell, or otherwise transfer any pistol without being licensed as provided by this article.

35-13. Same—Giving false information to secure, etc. No person in applying for any license under this article shall give false information or offer false evidence of his identity, or give false information concerning the matters referred to in this article.

Andrews

10-14. Pistols, manufacturing, carrying and selling. It shall be unlawful for any person to possess or carry about the person or about any vehicle owned or controlled by him, whether concealed or not, any pistol less than twenty (20) inches long and three (3) pounds in weight; and, it shall be unlawful for any person to manufacture, sell, offer for sale, lease, rent, barter, exchange or transport any such weapon in the Town; provided however that this does not apply to legally appointed state, county or Town police officers; * * *

Charleston

49-2. Possession, sale, etc., of tear gas bombs, etc. It shall be unlawful for any person to have in his possession, sell or offer for sale in the city, any bomb, tube gun, gun or other device containing or intended to contain or discharge tear gas or other noxious or offensive or harmful gases or fluids.

Cheraw

Sec. 12-45. Same—Pistols. It shall be unlawful for any person within the town to carry about his person, whether concealed or not, any pistol less than twenty inches long and three pounds in weight, and it shall be unlawful for any person, firm or corporation to sell or offer for sale, lease, rent, barter, exchange or transport for sale or import for sale into the town any pistol of less length or weight; provided, that this section shall not apply to peace officers in the actual discharge of their duties or to the carrying or keeping of pistols by persons while on their own premises. If upon conviction it shall appear to the satisfaction of the mayor or presiding officer of the municipal court before whom such offense is tried that the defendant had good reasons to fear injury to his person or property and carried such weapon to protect himself or property, he may in his discretion suspend the sentence, and nothing herein contained shall abridge the right of self defense as established by the laws of the state.

Upon conviction of the violation of this section, in addition to the general penalty, the weapon so carried shall be forfeited to the town.

Chester

Sec. 10-304.2. Sale, etc., of pistol to certain persons unlawful; possession or acquisition of pistol by such persons unlawful; stolen pistols. It shall be unlawful for any person to knowingly sell, offer to sell, deliver, lease, rent, barter, exchange or transport for sale into this State any pistol to:

(a) Any person who has been convicted of a crime of violence in any court of the United States, the several states, commonwealths, territories, possessions or the District of Columbia or who is a fugitive from justice or a habitual drunkard or a drug addict or who has been adjudicated mentally incompetent.

(b) Any person who is a member of a subversive organization.

(c) Any person under the age of twenty-one, but this shall not apply to the issue of pistols to members of Armed Forces of the United States, active or reserve, National Guard, State Militia or R. O. T. C., when on duty or training or the temporary loan of pistols for instruction under the immediate supervision of a parent or adult instructor.

(d) Any person who by order of a circuit judge or county court judge of this State has been adjudged unfit to carry or possess a pistol, such adjudication to be made upon application by any police officer, or by any prosecuting officer of this State, or sua sponte, by the court, but any person who shall be the subject of such an application shall be entitled to reasonable notice and a proper hearing prior to any such adjudication.

(e) It shall be unlawful for any person covered in (a), (b), (c) or (d) of this section to possess or acquire pistols within this State.

(f) No person shall knowingly buy, sell, transport, pawn, receive or possess any stolen pistol or one from which the original serial number has been removed or obliterated.

Sec. 10-304.3. Retail dealers to be licensed. No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell, or otherwise transfer, any pistol without being licensed as hereinafter provided.

Sec. 10-304.4. Issuance of retail dealer's license; duration; conditions; forfeiture. The clerk of court of the county shall grant a license to any person doing business in the county not ineligible under the provisions of Sections 10-304 to 10-304.7 * * *

* * * * *

(c) A true record shall be made of every pistol sold, in a book kept for the purpose, the form of which shall be prescribed by the Attorney General and shall be signed personally by the purchaser and by the person effecting the sale, each in the presence of the other, [Contact local authorities for required contents] * * * and a statement [shall also be] signed by the purchaser that he has never been convicted of a crime of violence, is not a fugitive from justice nor a member of any subversive organization. The dealer shall retain the records for a period of three years from the date of sale or transfer to which the records relate.

* * * * *

Chesterfield

Sec. 6-24. Pistols, Manufacturing, Carrying and Selling. It shall be unlawful in the Town of Chesterfield for anyone to carry about the person, whether concealed or not, any pistol less than twenty inches long and three pounds in weight or for any person to manufacture, sell, offer for sale, lease, rent, barter, exchange or transport for sale or into this Town any pistol of less length and weight; * * * provided, this section shall not apply to peace officers in the actual discharge of their duties or to the carrying or keeping of pistols by persons while on their own premises nor abridge the right of self-defense.

Clemson

Sec. 9-149 Pistols less than twenty inches long and three pounds in weight. It shall be unlawful for * * * any person to manufacture, sell, offer for sale, lease, rent, barter, exchange or transport for sale or into the town any pistol [less than twenty (20) inches long and three (3) pounds in weight]. * * *

Florence

19-55. Weapons—carrying, sale, etc., of pistols of certain size and weight. It shall be unlawful for anyone to carry about the person, whether concealed or not, any pistol less than twenty inches long and three pounds in weight or for any person to manufacture, sell, offer for sale, lease, rent, barter, exchange or transport for sale or into this city any pistol of less length and weight. * * *; provided, this section shall not apply to peace officers in the actual discharge of their duties or to the carrying or keeping of pistols by persons while on their own premises nor abridge the right of self-defense.

Fort Mill

Sec. 4-22. Pistols—Sale restricted. No person shall sell, deliver, lease, rent, barter,

exchange or transport for sale any pistol to any person unless and until he has inquired of and received a report in writing from the chief of police as to whether or not such person has been convicted of a crime of violence, is a fugitive from justice, an habitual drunkard, a drug addict, a mental incompetent, or is a member of a subversive organization, a minor or a person who has been adjudged unfit to carry or possess a weapon by a circuit or county court judge.

Sec. 4-40 B. Definitions when used in this ordinance. (a) "Pistol" means any firearm designed to expel a projectile from a barrel less than twelve inches in length; but shall not include any firearm generally recognized or classified as an antique, curiosity or collector's item, or any that does not fire fixed cartridges or fixed shotgun shells.

(b) The term "dealer" means any person regularly engaged in the business of selling firearms at retail.

(c) The term "crime of violence" means murder, manslaughter (except negligent manslaughter arising out of traffic accidents), rape, mayhem, kidnapping, burglary, robbery, housebreaking, assault with intent to commit any offense punishable by imprisonment for more than one year.

(d) The term "fugitive from justice" means any person who has fled from or is fleeing from any law enforcement officer to avoid prosecution or imprisonment for a crime of violence.

(e) The term "subversive organization" means any group, committee, club, league, society, association or combination of individuals the purpose of which, or one of the purposes of which, is the establishment, control, conduct, seizure or overthrow of the government of the United States or any state or political subdivision thereof, by the use of force, violence, espionage, sabotage, or threats or attempts of any of the foregoing.

(f) The term "conviction" as used herein shall include pleas of guilty, pleas of nolo contendere and forfeiture of bail.

D. Selling Pistols. It shall be unlawful for any person to knowingly sell, offer to sell, deliver, lease, rent, barter, exchange or transport for sale into this town any pistol to:

(a) Any person who has been convicted of a crime of violence in any court of the United States, the several states, commonwealths, territories, possessions or the District of Columbia or who is a fugitive from justice or a habitual drunkard or a drug addict or who has been adjudicated mentally incompetent.

(b) Any person who is a member of a subversive organization.

(c) Any person under the age of twenty-one, but this shall not apply to the issue of pistols to members of Armed Forces of the United States, active or reserve, National Guard, State Militia or R. O. T. C., when on duty or training or the temporary loan of pistols for instruction under the immediate supervision of a parent or adult instructor.

(d) Any person who by order of a circuit judge or county court judge of this State has been adjudged unfit to carry or possess a pistol, such adjudication to be made upon application by any police officer, or by any prosecuting officer of this State or Town, or sua sponte, by the court, but any person who shall be the subject of such an application shall be entitled to reasonable notice and a proper hearing prior to any such adjudication.

(e) It shall be unlawful for any person covered in (a), (b), (c), or (d) of this section to possess or acquire pistols within this town.

(f) No person shall knowingly buy, sell, transport, pawn, receive or possess any stolen pistol or one from which the original serial number has been removed or obliterated.

E. Dealers to be Licensed. No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell, or otherwise transfer, any pistol without being licensed.

F. Dealer Licenses. The clerk of court of the county shall grant a license to any person doing business in the county not ineligible under the provisions of this act in a standard form prescribed by the Attorney General, effective for two years from date of issuance, permitting the licensee to sell pistols at retail within this State subject to the following conditions, for breach of any of which the license shall be forfeited: * * * * *

(b) No pistol shall knowingly be sold in violation of any provision of this act nor shall a pistol be sold without clear evidence to the seller of the identity of the purchaser.

(c) A true record shall be made of every pistol sold, in a book kept for the purpose, the form of which shall be prescribed by the Attorney General and shall be signed personally by the purchaser and by the person effecting the sale [contact local authorities for required contents] * * *

Greenville

Sec. 31-4. Pistols less than twenty inches long and three pounds in weight. It shall be unlawful for anyone to carry about his person, whether concealed or not, any pistol less than twenty (20) inches long and three (3) pounds in weight or for any person to manufacture, sell, offer for sale, lease, rent, barter, exchange or transport for sale or into the city any pistol of less length and weight. This section shall not be construed to apply to peace officers in the actual discharge of their duties or to the carrying or keeping of such pistols by persons while on their own premises nor to abridge the right of self-defense.

37-24. Definitions. For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them:

Conviction: Pleas of guilty, pleas of nolo contendere and forfeiture of bail as well as actual conviction by a court.

Crime of violence: Murder, manslaughter (except negligent manslaughter arising out of traffic accidents), rape, mayhem, kidnapping, burglary, robbery, housebreaking, assault with intent to kill, commit rape or rob, assault with a dangerous weapon, or assault with intent to commit any offense punishable by imprisonment for more than one (1) year.

Dealer: Any person regularly engaged in the business of selling firearms at retail.

Fugitive from justice: Any person who has fled from or is fleeing from any law enforcement officer to avoid prosecution or imprisonment for a crime of violence.

Pistol: Any firearm designed to expel a projectile from a barrel less than twelve (12) inches in length; but shall not include any firearm generally recognized or classified as an antique, curiosity or collector's item, or any that does not fire fixed cartridges or fixed shotgun shells.

Subversive organization: Any group, committee, club, league, society, association or combination of individuals the purpose of which, or one (1) of the purposes of which, is the establishment, control, conduct, seizure or overthrow of the government of the United States, or any state or political subdivision thereof, by the use of force, violence, espionage, sabotage or threats or attempts of any of the foregoing.

37-26. Sale, etc., to certain persons unlawful; possession or acquisition by such persons unlawful; stolen pistols. (a) It shall be unlawful for any person to knowingly sell, offer to sell, deliver, lease, rent, barter, exchange or transport for sale into this state any pistol to:

(1) Any person who has been convicted of a crime of violence in any court of the United States, the several states, commonwealths, territories, possessions or the District of Columbia or who is a fugitive from justice or a habitual drunkard or a drug addict or who has been adjudicated mentally incompetent.

(2) Any person who is a member of a subversive organization.

(3) Any person under the age of twenty-one (21) but this shall not apply to the issue of pistols to members of Armed Forces of the United States, active or reserve, National Guard, state militia or ROTC, when on duty or training or the temporary loan of pistols for instruction under the immediate supervision of a parent or adult instructor.

(4) Any person who, by order of a circuit judge or county court judge of this state, has

been adjudged unfit to carry or possess a pistol, such adjudication to be made upon application by any police officer, or by any prosecuting officer of this state, or sua sponte, by the court, but any person who shall be the subject of such an application shall be entitled to reasonable notice and a proper hearing prior to any such adjudication.

(b) It shall be unlawful for any person covered in subsection (a) to possess or acquire pistols within this state.

(c) No person shall knowingly buy, sell, transport, pawn, receive or possess any stolen pistol or one from which the original serial number has been removed or obliterated.

37-27. Retail dealers to be licensed. No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell, or otherwise transfer, any pistol without being licensed * * * * *

Greer

Sec. 31-1. "Pistol" defined. "Pistol" means any firearm designed to expel a projectile from a barrel less than twelve inches in length; but shall not include any firearm generally recognized or classified as an antique, curiosity or collector's item, or any that does not fire fixed cartridges or fixed shotgun shells.

* * * * *

Sec. 31-7. Sale, etc., of pistols to certain persons unlawful; possession or acquisition of pistols by certain persons unlawful; stolen pistols. It shall be unlawful for any person to knowingly sell, offer to sell, deliver, lease, rent, barter, exchange or transport for sale into this state any pistol to:

(a) Any person who has been convicted of a crime of violence in any court of the United States, the several states, commonwealths, territories, possessions or the District of Columbia or who is fugitive from justice or a habitual drunkard or a drug addict or who has been adjudicated mentally incompetent.

(b) Any person who is a member of a subversive organization.

(c) Any person under the age of twenty-one, but this shall not apply to the issue of pistols to members of Armed Forces of the United States, active or reserve, National Guard, state Militia or R.O.T.C., when on duty or training or the temporary loan of pistols for instruction under the immediate supervision of a parent or adult instructor.

(d) Any person who by order of a circuit judge or county court judge of this state has been adjudged unfit to carry or possess a pistol, such adjudication to be made upon application by any police officer, or by any prosecuting officer of this state, or sua sponte, by the court, but any person who shall be the subject of such an application shall be entitled to reasonable notice and a proper hearing prior to any such adjudication.

(e) It shall be unlawful for any person covered in (a), (b), (c) or (d) of this section to possess or acquire pistols within this state.

(f) No person shall knowingly buy, sell, transport, pawn, receive or possess any stolen pistol or one from which the original serial number has been removed or obliterated.

Inman

Section 12: * * * it shall be unlawful for any person, firm or corporation to manufacture, sell or offer for sale, lease, rent, barter, exchange or transport for sale in the corporate limits any pistol [of less than 20 inches in length and three pounds in weight].

Jackson

3-10(b) * * * sale, etc., of pistols. It shall be unlawful * * * for any person to manufacture, sell, offer for sale, lease, rent, barter, exchange or transport for sale or into this State any pistol * * * [less than twenty inches long and three pounds in weight.]

Jonesville

Section 1. * * * it shall be unlawful for any person or persons, firm, corporation or association to sell, barter, exchange, or give away to induce trade; or to offer for sale, exchange, barter or giving away to induce trade any such firearm or weapon as is usually designated and known as a "pistol".

* * * * *

Lake City

11. Firearms—carrying and sale generally. It shall be unlawful for any person to carry about the person, whether concealed or not, any firearm less than twenty inches long or less than three pounds in weight. It shall also be unlawful for any person to sell or offer for sale any firearm of less length or weight than herein stated; provided, however that this section shall not apply to peace officers in the actual discharge of their duty, nor to keeping and carrying pistols by persons while on their own premises.

Sec. 15-40. Sale of Pistols. No retail dealer in the City shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell, or otherwise transfer, any pistol without being licensed as hereinafter provided.

Laurens

16-25. (A) Manufacture, carriage, sale. It shall be unlawful in the city for anyone to carry about the person, whether concealed or not any pistol less than twenty inches long and three pounds in weight or for any person to manufacture, sell, offer for sale, lease, rent, barter, exchange or transport for sale or into this city any pistol of less length and weight; * * *

Marion

Sec. 12-44. Same—Minimum size of pistols. It shall be unlawful for * * * any person to manufacture, sell, offer for sale, lease, rent, barter, exchange or transport for sale or into the city any pistol of less [than 20 inches in length and three pounds in weight] * * *. Any violator of this section shall be guilty of a misdemeanor. This section shall not apply to peace officers in the actual discharge of their duties or to the carrying or keeping of pistols by persons while on their own premises nor abridge the right of self-defense.

Myrtle Beach

Sec. 31-3. Carrying, manufacturing, selling, etc., of certain pistols prohibited; exceptions. It shall be unlawful for any person to possess or carry about the person or about any vehicle owned or controlled by him, whether concealed or not, any pistol less than twenty inches long and three pounds in weight. It shall be unlawful for any person to manufacture, sell, offer for sale, lease, rent, barter, exchange or transport any such pistol in the city.

The provisions of this section shall not apply to legally appointed state, county or city police officers, nor shall this section prohibit the possession of any such pistol in the home or upon or within the private premises of a person within the city. * * * * *

Newberry

10-74. Same—Sale of pistols, rifles, etc. It shall be unlawful for any person, or any agent of any person in the city, to sell to any person any pistol, rifle or other species or kinds of firearms, except shotguns, unless the person purchasing the same, if a citizen of the city, has a permit in writing from the chief of police to purchase the same, or if not a citizen of the city, has a permit in writing from the sheriff of the county to purchase the same, such permit to specify the kind and amount of

firearms allowed to be purchased thereunder and to be filed with the person from whom the same is purchased, who shall within ten days after any sale file the permit with the officer issuing the same.

10-75. Same—Purchasing or receiving pistol, rifle, etc., without permit. It shall be unlawful for any person to purchase or receive in the city any firearm enumerated in the preceding section, without first having obtained the permit as provided in the preceding section.

New Ellenton

Sec. 11-44 * * * Minimum size of pistols. It shall be unlawful in the town * * * for any person to manufacture, sell, offer for sale, lease, rent, barter, exchange or transport for sale or into the town any pistol [less than twenty (20) inches in length and three (3) pounds in weight] * * * provided, this section shall not apply to peace officers in the actual discharge of their duties * * *

Pacolet

Section 3-12. * * * from and after the passage of this ordinance * * * it shall be unlawful for any person, firm or corporation to manufacture, sell or offer for sale, lease, rent, barter, exchange or transport for sale in the corporate limits any pistol [of less than 20 inches in length and three pounds in weight].

Pageland

Sec. 10-41. Adoption of Criminal Law of State of South Carolina. All acts and conduct that constitute violation of the common law and the statutory law of the State of South Carolina are hereby declared unlawful in the Town of Pageland and when such acts, conduct or violations occur within the town insofar as such provisions and violations can have application within the town and the punishment of which is within the jurisdiction of the town.

Rock Hill

Sec. 25-36. * * * (Pistols)—Sale restricted. No person shall sell, deliver, lease, rent, barter, exchange or transport for sale any pistol to any person unless and until he has enquired of and received a report in writing from the chief of police as to whether or not such person has been convicted of a crime of violence, is a fugitive from justice, an habitual drunkard, a drug addict, a mental incompetent, or is a member of a subversive organization, a minor or a person who has been adjudged unfit to carry or possess a weapon by a circuit or county court judge.

Spartanburg

24-72. Same—Firearms—Pistols under twenty inches long or three pounds in weight. It shall be unlawful for any person to carry about his person in the city, whether concealed or not, any pistol less than twenty inches long and three pounds in weight. It shall be unlawful for any person to manufacture, sell or offer for sale, lease, rent, barter, exchange or transport for sale into the city, any pistol of less length and weight. * * *

Wagener

Sec. 17-7. Pistols less than twenty inches long and three pounds in weight. It shall be unlawful for anyone to * * * manufacture, sell, offer for sale, lease, rent, barter, exchange or transport for sale or into the town any pistol of less [than twenty inches long and three pounds in weight] * * *.

South Dakota

State Law

S.D. Codified Laws

22-1-2. Definition of terms. Terms used in this title, and in other statutes which prescribe a penalty for a public offense, unless the context otherwise plainly requires, mean: * * *

(7) "Controlled weapon" includes a firearm silencer, machine gun, or short shotgun, as those terms are defined in subdivisions (16), (21) and (43) of this section;

(8) "Crime of violence," any of the following crimes or an attempt to commit, or a conspiracy to commit, any of the same: murder, manslaughter, rape, aggravated assault, riot, robbery, burglary, arson, kidnapping and any other felony in the commission of which the perpetrator used force, or was armed with a dangerous weapon, or used any explosive or destructive device;

(9) "Dangerous weapon" or "deadly weapon," any firearm, knife or device, instrument, material or substance, whether animate or inanimate, which is calculated or designed to inflict death or serious bodily harm, or by the manner in which it is used is likely to inflict death or serious bodily harm; * * *

(12) "Destructive device," (a) Any bomb, grenade, explosive missile, or similar device or any launching device therefor; or (b) Any breakable container which contains a flammable liquid with a flashpoint of one hundred and fifty degrees Fahrenheit or less and has a wick or similar device capable of being ignited.

The term does not include "permissible fireworks" defined by Sec. 34-37-5; any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety or similar device; surplus ordnance sold, loaned or given by the secretary of the army pursuant to the provisions of section 4684(2), 4685, or 4686 of Title 10 of the United States Code; or any other device which is an antique or is a rifle which the owner intends to use solely for sporting purposes; * * *

(15) "Firearm," any weapon from which a projectile or projectiles may be discharged by gunpowder. As used in this subdivision, the word "gunpowder" includes any propellant that upon oxidization emits heat and light and is commonly used in firearms cartridges;

(16) "Firearm silencer," any instrument, attachment, weapon or appliance for causing the firing of any gun, revolver, pistol, or other firearm to be silent, or intended to lessen or muffle the noise of the firing of any such weapon; * * *

(21) "Machine gun," any firearm, whatever its size and usual designation, that automatically discharges two or more cartridges by a single function of the firing device; * * *

(30) "Pistol," any firearm with a barrel less than sixteen inches in length, designed to expel a projectile or projectiles by the action of an explosive; * * *

(42) "Short rifle," a rifle having a barrel less than sixteen inches long, or an overall length of less than twenty-six inches;

(43) "Short shotgun," a shotgun having a barrel less than eighteen inches long or an overall length of less than twenty-six inches;

* * * * *

22-14-5. Possession of firearm with altered serial number as felony—Exception. Any person who possesses any firearm on which the manufacturer's serial number has been changed, altered, removed or obliterated is guilty of a Class 6 felony.

This section shall not apply to persons who have registered such firearms with the secretary of state as provided in sec. 23-7-42.

22-14-6. Possession of controlled weapon—Exceptions. Any person who knowingly possesses a controlled weapon is guilty of a Class 6 felony. Provided that, this section shall not apply to a person who:

(1) Is a law enforcement officer or a member of the armed forces of the United States or South Dakota national guard acting in the lawful discharge of his duties;

(2) Has a valid state or federal license issued pursuant to law for such weapon or has registered such weapon with the proper state or federal authority pursuant to law;

(3) Possesses a controlled weapon briefly after having found it or taken it from an aggressor; or

(4) Possesses a controlled weapon, except a machine gun or short shotgun, under circumstances which negate any purpose or likelihood that the weapon would be used unlawfully.

22-14-15. Possession of firearm by one with prior violent crime conviction as felony—Fifteen-year period. Any person who has been convicted in this state or elsewhere of a crime of violence, who has in his possession or under his control, a firearm, is guilty of a Class 6 felony. This section does not apply to any person who was last discharged from prison, jail, probation or parole, for a crime of violence more than fifteen years prior to the commission of the principal offense.

22-14-16. Providing firearm to person with known prior violent crime conviction as felony. Any person who knows that another person is prohibited by secs. 22-14-15 from possessing a firearm, and who knowingly gives, loans, or sells a firearm to that person is guilty of a Class 6 felony.

22-14-17. Antique firearms exempt from chapter—Firearms incapable of discharge exempt—Antique firearm defined. This chapter shall not apply to antique firearms or to firearms which have been permanently altered so they are incapable of being discharged.

An "antique firearm" is: (1) Any firearm, including any firearm with a matchlock, flintlock, percussion cap or similar type of ignition system manufactured in or before 1898; and (2) Any replica of any firearm described in subdivision (1) of this section if such replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

22-14A-4. Sale, transportation, or possession of destructive devices as felony—Increased penalty for prior violent crime conviction. Any person who knowingly sells, offers for sale, transports or possesses any destructive device is guilty of a Class 4 felony. If such person has been previously convicted of a crime of violence in this state or elsewhere, he is guilty of a Class 3 felony.

23-7-1. Definition of terms. "Pistol," as used in this chapter, means a pistol as defined in subdivision (30) of Sec. 22-1-2.

"Crime of violence" as used in this chapter, means a crime of violence as defined in subdivision (8) of Sec. 22-1-2.

"Antique firearm," as used in this chapter, means an antique firearm as defined in Sec. 22-14-17.

23-7-9. Delivery of pistol to purchaser—Waiting period—Wrapped and unloaded. No seller shall deliver a pistol to the purchaser thereof until forty-eight hours shall have elapsed from the time of the application for the purchase thereof, and when delivered said pistol shall be securely wrapped and shall be unloaded.

23-7-11. Regulation does not apply to sale of pistols at wholesale. Sections 23-7-9 and 23-7-10 shall not apply to sales at wholesale.

* * * * *

23-7-18. Sale of pistol by retail dealer—Restrictions. No pistol shall be sold in violation of any provisions of this chapter, nor shall a pistol be sold under any circumstances unless the purchaser is personally known to the seller or shall present clear evidence of his identity.

23-7-19. Sale of pistol by retail dealer—Record in triplicate, form and contents, distribution of copies. A true record in triplicate shall be made of every pistol sold in a book kept for the purpose, the form of which may be prescribed by the secretary of state and shall be personally signed by the purchaser and by the person effecting the sale, each in the presence of the other, and shall contain the date of sale, the caliber, make, model, and manufacturer's number of the weapon, the name, address, occupation, color, and place of birth of the purchaser, and a statement signed by the purchaser that he has never been convicted in this state or elsewhere of a crime of violence. One copy shall within six hours be sent by registered or certified mail to the chief of police of the municipality or the sheriff of the county of which the dealer is a resident; the duplicate the dealer shall within seven days send to the secretary of state; the triplicate the dealer shall retain for six years.

* * * * *

22-7-40. Purchase of rifles and shotguns by residents of South Dakota and contiguous states—Implementation of federal provisions. The state of South Dakota herewith permits residents of contiguous states and residents of this state, not otherwise precluded by any applicable laws, to purchase, sell, trade, convey, deliver, or transport rifles, shotguns, ammunition, reloading components or firearms accessories in South Dakota and in states contiguous to South Dakota. This authorization is enacted to implement for this state the permissive firearms sales and delivery provisions in section 922 (b), (3) (A) of Public Law 90-618 of the 90th United States Congress, second session.

Aberdeen

Pistol Dealers

9.1601 License. Any person, persons, firm or corporation desiring to engage in the business of selling pistols at retail shall, before engaging in such business, file with the City Auditor a written statement and application setting forth his or its intentions to engage in such business * * *.

* * * * *

Huron

5.44.010. License to sell. Any person, persons, firm, or corporation, desiring to engage in the business of selling pistols at retail, shall, before engaging in such business, file with the city auditor, a written statement and application setting forth his or its intention to engage in such business * * *.

Pierre

G. Sales to Minors. It shall be unlawful to give, sell, trade, barter or exchange for anything of value any deadly weapon, * * * or ammunition for any firearm to any person under the age of 18 years * * *.

Sioux Falls

8.1802. Dealers to be licensed. No retail dealer shall sell or otherwise transfer or expose for sale or transfer, or have in his possession with intent to sell, or otherwise transfer within the limits of the City of Sioux Falls, any pistol without being licensed * * *

Watertown

12.0601: License to Sell. Any person, persons, firm, or corporation, desiring to engage in the business of selling pistols at retail, shall, before engaging in such business, file with the City Auditor, a written statement and application setting forth his or its intention to engage in such business [contact local authorities for required contents] * * *

Tennessee

State Law

Tenn. Code Ann.

Mental Health Law

33-317 * * * Supplying patient or resident [of a mental institution] with harmful substances * * *

* * * * *

(b) * * * any person who, without permission of the superintendent [of the institution], shall give or sell to any patient or resident, whether on the premises of the institution or elsewhere, knowing him to be a patient or resident, any firearms * * *, is guilty of a felony * * *.

Criminal Offenses

39-4904. Selling or disposing of dangerous weapons. It is a misdemeanor to sell, or offer to sell, or to bring into this state for the purpose of selling, giving away, or otherwise disposing of any * * * prohibited weapon * * * [includes * * * a fountain pen pistol or gun, or like instrument containing a firing pin capable of shooting tear gas or pistol cartridges, or any pistol or revolver of any kind whatever, except the army or navy pistol which shall be carried openly in the hand, or any other dangerous weapon] * * *.

* * * * *

Provided, however, any person licensed by the state of Tennessee to sell rifles or other firearms may stock and sell pistols and/or sidearms to persons desiring them for protection of their home, business, or for target practice; however, sales to aliens, persons who have been convicted of a crime of violence, fugitives from justice, persons of unsound mind, minors, drunkards, drug addicts, and persons who have been convicted of the illegal sale of alcoholic beverages, are excluded.

Any person desiring to purchase a pistol or sidearm as above provided shall certify to the seller that he is not one of the persons listed above as excluded from legal sale of such firearm, and the person having the gun for sale, whether it be a firearms dealer engaged in the business of selling firearms, new or used, or any other person, shall file with the sheriff of the county wherein such sale is to be made, and with the chief of police if the sale be within a municipality, a copy of the certificate as notice to such law enforcement officer of the pending sale. Such certificate must also show the purpose for which the gun is to be used. If, after fifteen (15) days from the time of the receipt of such notice, the sheriff and/or chief of police make no objection tending to show that such proposed purchaser is in fact excluded by law from legal purchase, as set out above, the sale may be consummated and the gun delivered to the purchaser, together with a bill of sale therefor. The fifteen (15) days' notice of pending sale provided for above must be made by registered mail and return receipt requested unless the officer or officers, as the case may be, personally acknowledge receipt of such notice. The said certificate to be filed with the law enforcement officer shall carry the right thumb print of the applicant along with the information as to race, height, weight, age, color of eyes, color of hair and sex of the applicant. Provided, however, the sheriff and/or police chief may issue a written approval of such certificate, after investigation, within the fifteen (15) day period.

The fifteen (15) day waiting period shall not apply to transactions between licensed importers, licensed manufacturers, licensed dealers, or licensed collectors who meet the requirements of the first paragraph above and certify prior to the transaction the legal and licensed status of both parties. The burden shall fall upon the transferor to determine the legality of the transaction in progress. The fifteen (15) day waiting period shall not apply to transactions or transfers between a licensed importer, licensed manufacturer, or licensed dealer and a bona fide law enforcement agency or said agency's personnel as defined under Sec. 39-4902. However, all other provisions and requirements of the preceding paragraph above must be observed. The burden of proof of the legality of such transactions or transfers shall rest upon the transferor.

Nothing in this section shall preclude any person eligible to purchase a pistol or sidearm, as set out above, from making an occasional sale of a used or second hand gun legally purchased by him without being licensed to do business as such; but whenever such sale is made, the same procedure must be followed as is provided above for persons licensed by the state of Tennessee to engage in such business.

Provided however, before any person, firm or corporation shall engage in the business of selling, offering for sale, giving away or otherwise disposing of any pistol, revolver or other hand gun, such person, firm or corporation shall obtain from the commissioner of revenue a permit to engage in such business in the state of Tennessee.

Prior to the issuance of such permit by the commissioner of revenue, the applicant shall furnish the commissioner of revenue a certificate of good moral character signed by the chief of police or the sheriff of the county in which the licensed premises shall be located. In the event the licensed premises are located in the corporate limits of a municipality, said certificate of moral character shall be signed by the chief of police. If the licensed premises are located outside the corporate limits of the municipality, the certificate of moral character shall be signed by the sheriff of the county. The certificate of moral character must state that the applicant or applicants who are to be in actual control of said business are of good moral character and are personally known to the official signing the certificate, and if the applicant be a corporation, that the executive officers of those in control are of good moral character and personally known to the official signing said certificate.

39-4905. Selling or giving weapons to minor—Penalty. Any person who sells, loans, or gives to any minor a pistol * * * or like dangerous weapon, except a gun for hunting, is guilty of a misdemeanor, * * *

* * * * *

39-4915. Purchase of rifles and shotguns in contiguous states by residents of Tennessee. Any resident of the state of Tennessee who may legally purchase a rifle or shotgun in this state may purchase a rifle or shotgun in a contiguous state provided the sale meets the legal requirements in each state, meets all legal standards of any federal statute, and is made by a licensed importer, licensed manufacturer, licensed dealer, or licensed collector.

39-4917. Prohibited firearms—Definitions. For the purposes of Secs. 39-4917—39-4920 the following terms shall have the meanings ascribed in this section:

(a) "Sawed-off shotgun" means a shotgun having a barrel or barrels of less than eighteen inches (18") in length or a weapon made from a shotgun which as modified has an overall length of less than twenty-six inches (26") or a barrel or barrels of less than eighteen inches (18") in length.

(b) "Shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each pull of the trigger. The term includes any such weapon which may be readily restored to fire a fixed shotgun shell, but does not include an antique firearm as defined in this section.

(c) "Sawed-off rifle" means a rifle having a barrel or barrels of less than sixteen inches (16") in length or a weapon made from a rifle which as modified has an overall length of less than twenty-six inches (26") or a barrel or barrels of less than sixteen inches (16") in length.

(d) "Rifle" means a weapon designed or redesigned, made or remade, and intended to be

fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger. The term includes any such weapon which may be readily restored to fire a fixed cartridge, but does not include an antique firearm as described in this section.

(e) "Machine gun" means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot without manual reloading, by a single function of the trigger; the frame or receiver of any such weapon; any combination of parts designed and intended for use in converting a weapon into a machine gun; and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

(f) "Antique firearm" means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(g) "Unserviceable firearm" means a firearm which is incapable of discharging a shot by means of an explosive and incapable of being readily restored to a firing condition.

(h) "Manufactures any weapon" means making, putting together, altering, modifying, any combination of these, or otherwise producing a sawed-off shotgun, sawed-off rifle, or machine gun.

(i) "Sells or disposes of" means sells, offers for sale, assigns, pledges, leases, loans, gives away, transfers or otherwise disposes of.

(j) "Person" includes a corporation, firm, company, partnership or association.

39-4918. Manufacture, possession or sale of sawed-off shotgun, sawed-off rifle, or machine gun—Penalty. Any person who manufactures, imports, purchases, possesses, sells or disposes of, in this state, any weapon of the kind commonly known as a sawed-off shotgun, sawed-off rifle, or machine gun shall upon conviction thereof, for each offense, be imprisoned in the penitentiary for a term of not less than one (1) nor more than five (5) years; or in the county jail or workhouse for a term not to exceed one (1) year, or by fine not exceeding one thousand dollars ($1,000), or by both such fine and jail or workhouse sentence in the discretion of the court.

39-4919. Exceptions to firearms restrictions. The provisions of Sec. 39-4918 relating to sawed-off shotguns, sawed-off rifles, and machine guns shall not apply to or affect the following:

(a) The United States or any department, independent establishment or agency thereof; or the state of Tennessee, or any department or agency thereof, or any political subdivision thereof, or any official police organization or law enforcement agency of such government entity charged with enforcement of criminal laws or detention of persons convicted or accused of crime;

(b) The possession in the pursuit of official duty by a law enforcement, peace, police officer, or official or employee of a penitentiary, jail or other institution in the state of Tennessee for the detention of persons accused or convicted of crime, who is regularly employed and paid by the United States, this state or any political subdivision or governmental entity thereof as set forth in the preceding subsection (a);

(c) The possession by a member of the National Guard or the armed services or reserve forces of the United States who while serving therein possesses such weapon in the line of duty;

(d) Persons licensed by the state of Tennessee as manufacturers, importers, or dealers in such weapons provided that the manufacture, import, purchase, possession, sale or disposition of such weapons is authorized and incident to carrying on the business for which licensed and is for scientific or research purposes or sale or disposition to the classes designated in subsection (a) above;

(e) Any person who acquires or possesses a sawed-off shotgun, sawed-off rifle, or machine gun which is validly registered to such person under federal law in the National Firearms Registration and Transfer Records. A person who acquires or possesses a firearm registered as required by this subsection shall retain proof of registration;

(f) Any person who possesses a sawed-off shotgun, sawed-off rifle, or machine gun which is an unserviceable firearm.

Chattanooga

25-10. Dangerous weapons—Sale. It shall be unlawful for any person to sell or offer for sale in the city any pistol, pistol cartridges, * * *; provided, that this section shall not apply to the sale of regular army and navy pistols.

Greeneville

5-101. Sale of firearms. Only persons, firms, or corporations licensed by the State of Tennessee to sell rifles or other firearms may stock and sell pistols and/or sidearms within the corporate limits of the Town of Greeneville. Firearms may be sold to persons desiring same for the protection of their home or business or for target practice but for no other purpose.

The sale of pistols and/or sidearms within the corporate limits of the Town of Greeneville to aliens, persons who have been convicted of a crime of violence, fugitives from justice, persons of unsound mind, minors, drunkards, drug addicts, or persons who have been convicted of the illegal sale of alcoholic beverages, is prohibited.

Any person desiring to purchase a pistol or sidearm within the corporate limits of the Town of Greeneville shall certify to the seller that he is not one of the persons hereinabove designated as being excluded from the legal sale of such firearms. The person having the gun for sale, whether it be a firearm dealer engaged in the business of selling firearms, new or used, or any other person, shall file with the chief of police of the Town of Greeneville, a copy of the certificate as notice to such law enforcement officer of the pending sale. The certificate must also show the purpose for which the gun is to be used. If, after three (3) days from the time of the receipt of such notice, the chief of police makes no objection tending to show that such proposed purchaser is excluded by this section from legal purchase as above set out, the sale may be consummated and the gun delivered to the purchaser, together with a bill of sale therefor. The three (3) day notice of the pending sale provided for above must be made by registered mail and return receipt requested unless the officer to whom such notice must be given personally acknowledges receipt of such notice.

Nothing in this section shall preclude any person eligible to purchase a pistol or sidearm, as set out above, from making an occasional sale of a used or secondhand gun legally purchased by him even though such person is not licensed to engage in such business. However, when such sale is made, the same procedure must be followed as is described above for persons licensed by the State of Tennessee to engage in such business.

Jackson

Sec. 19-10.1(c) adopts Sec. 39-4904 of Tenn. Code.

Knoxville

28-103. Firearms—Sale. (b) Any person licensed by the State of Tennessee to sell rifles or other firearms may stock and sell pis-

tols and/or sidearms to persons desiring them for protection of their home, business, or for target practice; however, sales to aliens, persons who have been convicted of a crime of violence, fugitives from justice, persons of unsound mind, minors, drunkards, drug addicts, and persons who have been convicted of the illegal sale of alcoholic beverages, are excluded.

(c) Any person desiring to purchase a pistol or sidearm as above provided shall certify to the seller that he is not one of the persons listed above as excluded from legal sale of such firearms, and the person having the gun for sale, whether it be a firearms dealer engaged in the business of selling firearms, new or used, or any other person, shall file with the chief of police a copy of the certificate as notice to such law enforcement officer of the pending sale. Such certificate must also show the purpose for which the gun is to be used. If, after three (3) days from the time of the receipt of such notice, the chief of police makes no objection tending to show that such proposed purchaser is in fact excluded by law from legal purchase, as set out above, the sale may be consummated and the gun delivered to the purchaser, together with a bill of sale therefor.

(d) The three (3) day notice of pending sale provided for above must be made by registered mail and return receipt requested unless the officer personally acknowledges receipt of such notice.

(e) The seller shall deliver to the chief of police a legible true copy of the bill of sale showing the name of the firearm, the caliber, serial number, finish of the firearm, such as nickel.

Lawrenceburg

Section 1—Definitions

* * * * *

(3) "Explosive weapon" means any explosive, incendiary, or poison gas: (A) bomb; (B) grenade; (C) rocket; (D) mine; (E) shell, missile, or projectile that is designed, made, or adapted for the purpose of inflicting serious bodily injury, death, or substantial property damage.

(4) "Firearm" means any weapon designed, made, or adapted to expel a projectile by the action of an explosive, or any device readily convertible to that use.

(5) "Firearm silencer" means any device designed, made, or adapted to muffle the report of a firearm.

(6) "Handgun" means any firearm with a barrel length of less than twelve (12) inches that is designed, made, or adapted to be fired with one hand.

* * * * *

(9) "Machine gun" means any firearm that is capable of shooting more than two (2) shots automatically, without manual reloading, by a single function of the trigger.

(10) "Rifle" means any firearm designed, made, or adapted to be fired from the shoulder and to use the energy of the explosive in a fixed metallic cartridge to fire a projectile through a rifled bore by a single function of the trigger.

(11) "Short barrel" means a barrel length of less than sixteen (16) inches for a rifle and eighteen (18) inches for a shotgun, or an overall firearm length of less than twenty-six (26) inches.

(12) "Shotgun" means any firearm designed, made or adapted to be fired from the shoulder and to use the energy of the explosive in a fixed shotgun shell to fire through a smooth-bore barrel either a number of ball shot or a single projectile by a single function of the trigger. * * * * *

Section III—Prohibited Weapons. (a) An individual, corporation, or association commits an offense if he intentionally or knowingly possesses, manufactures, transports, repairs, or sells:

(1) an explosive or an explosive weapon;

(2) a device principally designed, made, or adapted for delivering or shooting an explosive weapon;

(3) a machine gun;

(4) a short-barrel rifle or shotgun;

(5) a firearm silencer;

(b) It is a defense to prosecution under this section that the actor's conduct:

(1) was incident to the performance of official duty by the armed forces or national guard, a governmental law enforcement agency, or a penal institution; or

(2) was incident to engaging in a lawful commercial or business transaction with an organization identified in subdivision (1); or

(3) was incident to using an explosive or an explosive weapon in a manner reasonably related to a lawful industrial or commercial enterprise; or

(4) was incident to using the weapon in a manner reasonably related to a lawful dramatic performance or scientific research; or

(5) was incident to displaying the weapon in a public museum or exhibition.

(c) It is an affirmative defense to prosecution under this section, which the actor must prove by a preponderance of the evidence:

(1) that his conduct was incident to dealing with the weapon solely as a curio, ornament, or keepsake, and if the weapon is a type described in subsections (a)(1)-(a)(5), that it was in a nonfunctioning condition and could not readily be made operable; or

(2) that his possession was brief and occurred as a consequence of having found the weapon or taken it from an aggressor.

(d) An offense under subsections (a)(1)-(a)(5) is a felony; and offense under subsection (a)(6) is a misdemeanor.

Section IV—Unlawful Sale of Firearm. (a) An individual, corporation, or association commits an offense if:

(1) he intentionally, knowingly, or recklessly sells, loans, or makes a gift of a firearm to a minor; or

(2) he intentionally, knowingly, or recklessly sells a firearm or ammunition for a firearm to a person who is intoxicated:

(3) he intentionally, knowingly, recklessly, or with criminal negligence violates the provisions of Section V of this Ordinance.

(b) It is a defense to subsection (a)(1) that:

(1) a rifle or shotgun was sold, loaned, or given to a minor for the purposes of hunting; and

(2) the actor is not required to obtain a license under Section V of this Ordinance.

(c) For purposes of this section, "intoxicated" means substantial impairment of mental or physical capacity resulting from introduction of any substance into the body.

(d) An offense under this section is a misdemeanor.

Section V—Lawful Sale of Firearms. (a) Only persons, firms or corporations licensed by the State of Tennessee to sell rifles or other firearms may stock and sell pistols and/or sidearms within the corporate limits of the City of Lawrenceburg. Firearms may be sold to persons desiring same for the protection of their homes or business or for target practice but for no other purpose.

(b) The sale of pistols and/or sidearms within the corporate limits of the City of Lawrenceburg to aliens, persons who have been convicted of a crime of violence, fugitives from justice, persons of unsound mind, minors, drunkards, drug addicts, or persons who have been convicted of the illegal sale of alcoholic beverages, is prohibited.

(c) Any person desiring to purchase a pistol or sidearm within the corporate limits of the City of Lawrenceburg shall certify to the seller that he is not one of the persons hereinabove designated as being excluded from the legal sale of such firearms. The person having the gun for sale, whether it be a firearm dealer engaged in the business of selling firearms, new or used, or any other person, shall file with the chief of police of the City of Lawrenceburg, a copy of the certificate as notice to such law enforcement officer of the pending sale.

(d) The certificate must also show the purpose for which the gun is to be used. If, after three (3) days from the time of the receipt of such notice, the chief of police makes no objection tending to show that such proposed purchaser is excluded by this section from legal purchase as above set out, the sale may be

consummated and the gun delivered to the purchaser, together with a bill of sale therefor. The three (3) day notice of the pending sale provided for above must be made by registered mail and return receipt requested unless the officer to whom such notice must be given personally acknowledges receipt of such notice.

(e) Nothing in this section shall preclude any person eligible to purchase a pistol or sidearm, as set out above, from making an occasional sale of a used or secondhand gun legally purchased by him even though such person is not licensed to engage in such business. However, when such sale is made, the same procedure must be followed as is described above for persons licensed by the State of Tennessee to engage in such business.

Lebanon

10-212.1. Selling or disposing of dangerous weapons. It shall be unlawful to sell, or offer to sell, or to bring into the City of Lebanon for the purpose of selling, giving away, or otherwise disposing of any * * * prohibited weapon mentioned in section 10-212 (pistol, revolver, * * * except the army or navy pistol * * *). Provided, however, any person licensed by the State of Tennessee to sell rifles or other firearms may stock and sell pistols and/or sidearms to persons desiring them for protection of their home, business, or for target practice; however, sales to aliens, persons who have been convicted of a crime of violence, fugitives from justice, persons of unsound mind, minors, druskards, drug addicts, and persons who have been convicted of the illegal sale of alcoholic beverages are excluded.

Any person desiring to purchase a pistol or sidearm as above provided shall certify to the seller that he is not one of the persons listed above as excluded from legal sale of such firearms, and the person having the gun for sale, whether it be a firearms dealer engaged in the business of selling firearms, new or used, or any other person, shall file with the chief of police a copy of the certificate as notice to such law enforcement officer of the pending sale. Such certificate must also show the purpose for which the gun is to be used. If, after fifteen (15) days from the time of the receipt of such notice, chief of police makes no objection tending to show that such proposed purchaser is in fact excluded by law from legal purchase, as set out above, the sale may be consummated and the gun delivered to the purchaser, together with a bill of sale therefor. * * *

* * * * * * *

* * * before any person, firm, or corporation shall engage in the business of selling, offering for sale, giving away or otherwise disposing of any pistol, revolver or other hand gun in the City of Lebanon, such person, firm, or corporation shall first obtain a permit.

McMinnville

12-54. Selling, giving weapons to minor. Any person who sells, loans, or gives to any minor a pistol, * * * or like dangerous weapon, except a gun for hunting, is guilty of a misdemeanor.

Nashville—Davidson, Metro

Sec. 41-2-1. Definitions. For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Crime of violence. Murder; manslaughter; rape; mayhem; kidnapping; burglary; housebreaking; assault with intent to kill, commit rape or rob; assault with a dangerous weapon; or assault with intent to commit any offense punishable by imprisonment.

Firearm. Any weapon by whatever name known, which is designed to expel a projectile by the action of expanding gases.

Fugitive from justice. Any person who has fled or is fleeing from any law-enforcement officer to avoid prosecution or incarceration for a crime of violence or to avoid giving testimony in any criminal proceeding.

Manufacturer or dealer. Any person engaged in the business of manufacturing, repairing or selling firearms at wholesale or retail, or of accepting or pledging firearms as security for loans.

Pistol. Any firearm with a barrel less than twelve inches in length.

Subversive organization. Any group, committee, club, league, society, association or combination of individuals, the purpose of which, or one of the purposes of which, is the establishment, control, conduct, seizure or overthrow of the government of the United States or of the state or of the metropolitan government by the use of force, violence, military measures or threats of one or more of the foregoing.

Sec. 41-2-2. Persons to whom firearms not to be sold, loaned or otherwise transferred. It shall be unlawful for any person to sell, lease, lend or otherwise transfer a firearm within the urban services district to any person whom he knows or has reasonable cause to believe has been convicted of a crime of violence or who is a fugitive from justice or who is of unsound mind or who is a drug addict or an habitual drunkard or who is a member of a subversive organization.

Sec. 41-2-3. Persons forbidden to possess firearms. It shall be unlawful for any person who has been convicted of a crime of violence in any court of the United States, the several states, territories, possessions or the District of Columbia, or who is a fugitive from justice, or is of unsound mind or is a drug addict or an habitual drunkard, to possess a firearm within the urban services district.

It shall be unlawful for any person who is a member of a subversive organization to possess a firearm within the urban services district.

Sec. 41-2-4, Stolen firearms. It shall be unlawful within the urban services district for any person to receive, conceal, store, barter, sell, lease, lend or otherwise transfer, or to pledge or accept as security for a loan, any firearm, knowing or having reasonable cause to believe the same to have been stolen.

Sec. 41-2-5. Obliteration, removal or alteration of manufacturer's identification mark or number. It shall be unlawful for any person to obliterate, remove, change or alter the manufacturer's identification mark or number on any pistol. Whenever, in a trial for a violation of this section, the defendant is shown to have or have had possession of any such pistol, such fact shall be presumptive evidence that the defendant obliterated, removed, changed or altered the manufacturer's identification mark or number unless the defendant can produce a bill of sale indicating that the pistol was legally purchased and that the manufacturer's identification mark or serial number was obliterated or destroyed at the time of purchase.

Sec. 41-2-6. Firearms manufacturer's or dealer's license. (a) Application for a firearms manufacturer's or dealer's license shall be made to the metropolitan collections officer on forms prescribed and furnished by him. * * *

Sec. 41-2-9. Sale, lease or transfer to persons under twenty-one. No person shall sell, lease or transfer a pistol, except when the relation of parent and child or guardian and ward exists, to any person under the age of twenty-one years.

Sparta

10-249. Selling, giving weapons to minor. Any person who sells, loans, or gives to any minor a pistol, * * * or like dangerous weapon, except a gun for hunting, is guilty of a misdemeanor.

Texas

State Law

Texas Codes Ann. (Vernon's)

Penal Code
Title 10.
Chapter 46. Weapons

Section 46.01. Chapter Definitions. In this chapter: * * * * * (2) "Explosive weapon" means any explosive, incendiary, or poison gas bomb, grenade, rocket, or mine, that is designed, made, or adapted for the purpose of inflicting serious bodily injury, death, or substantial property damage, and includes a device principally designed, made, or adapted for delivery or shooting an explosive weapon.

(3) "Firearm" means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use. Firearm does not include antique or curio firearms that were manufactured prior to 1899 and that may have, as an integral part, a folding knife blade or other characteristics of weapons made illegal by this chapter.

(4) "Firearm silencer" means any device designed, made, or adapted to muffle the report of a firearm.

(5) "Handgun" means any firearm that is designed, made, or adapted to be fired with one hand.

* * * * *

(9) "Machine gun" means any firearm that is capable of shooting more than two shots automatically, without manual reloading, by a single function of the trigger.

(10) "Short-barrel firearm" means a rifle with a barrel length of less than 16 inches or a shotgun with a barrel length of less than 18 inches, or any weapon made from a shotgun or rifle if, as altered, it has an overall length of less than 26 inches.

* * * * *

Sec. 46.05. Unlawful Possession of Firearm by Felon. (a) A person who has been convicted of a felony involving an act of violence or threatened violence to a person or property commits an offense if he possesses a firearm away from the premises where he lives. * * *

Sec. 46.06. Prohibited Weapons. (a) A person commits an offense if he intentionally or knowingly possesses, manufactures, transports, repairs, or sells:

(1) an explosive weapon;
(2) a machine gun;
(3) a short-barrel firearm;
(4) a firearm silencer; * * *

(b) It is a defense to prosecution under this section that the actor's conduct was incidental to the performance of official duty by the armed forces or national guard, a governmental law enforcement agency, or a penal institution.

(c) It is a defense to prosecution under this section that the actor's possession was pursuant to registration pursuant to the National Firearms Act, as amended.

(d) It is an affirmative defense to prosecution under this section that the actor's conduct was incidental to dealing with a switchblade knife, springblade knife, or short-barrel firearm solely as an antique or curio.* * *

Sec. 46.07. Unlawful Transfer of Firearm. (a) A person commits an offense if he:

(1) sells, rents, leases, loans, or gives a handgun to any person knowing that the person to whom the handgun is to be delivered intends to use it unlawfully or in the commission of an unlawful act;

(2) intentionally or knowingly sells, rents, leases, or gives or offers to sell, rent, lease, or give to any child younger than 18 years any firearm; or

(3) intentionally, knowingly, or recklessly sells a firearm or ammunition for a firearm to any person who is intoxicated.

(b) For purposes of this section, "intoxicated" means substantial impairment of mental or physical capacity resulting from introduction of any substance into the body.

(c) It is an affirmative defense to prosecution under Subsection (a)(2) of this section that the transfer was to a minor whose parent or the person having legal custody of the minor had given written permission for the sale or, if the transfer was other than a sale, the parent or person having legal custody had given effective consent.* * *

Sec. 46.08. Interstate Purchase. A resident of this state may, if not otherwise precluded by law, purchase firearms, ammunition, reloading components, or firearm accessories in contiguous states. This authorization is enacted in conformance with Section 922(b)(3)(A), Public Law 90-618, 90th Congress.

Ballinger

Selling pistol to minor. 48. If any person, within the Corporate limits of the City of Ballinger, Texas, shall knowingly sell, rent, or lease any pistol to a minor or to any other person under the heat of passion, he shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten, nor more than two hundred dollars.

Bellaire

Ordinance 1473.

1. No person shall make, carry, possess or use any type of "Molotov Cocktail," gasoline or petroleum base fire bomb, or other incendiary missile, within the City of Bellaire, Texas.

2. The words "Molotov Cocktail" as used herein shall mean a gasoline or kerosene filled bottle or container with a fuse or wick inserted in the neck.

Deer Park

1. No person shall make, carry, possess or use any type of "Molotov Cocktail", gasoline or petroleum base fire bomb, or other incendiary missile, within the City of Deer Park, Texas. 2. The words "Molotov Cocktail", as used herein, shall mean a gasoline or kerosene filled bottle or container, with a fuse or wick inserted in the neck.

Fort Worth

15-423. Small arms ammunition. A. *"Small arms ammunition" defined.* Small arms ammunition, whenever used in this article, shall mean any shotgun, rifle, pistol or revolver cartridge.

B. Manufacture. No person shall manufacture any small arms ammunition within the city. This provision shall not be construed as prohibiting the hand-loading of small arms ammunition for private use and not for resale.

C. Sale, etc. No person shall store for sale, sell or present for sale any small arms ammunition without a permit.

Harlingen

III. It shall hereafter be unlawful for any adult person to deliver to or place in the hands of, any minor under the age of seventeen (17) years any firearm * * *

IV. Firearms as used herein shall be defined to include any pistol, rifle, shot-gun, designed to propel any bullet, pellet, slug or metal object or other solid substance by means of force of an explosion of gun powder,

explosive liquid of any kind, or explosive gas of any kind.

Houston

Houston Code

* * * * *

Sec. 28-9. "Molotov cocktails", possession in public prohibited. It shall be unlawful for any person to have in his possession or on or about his person, upon any public street, alley, sidewalk, or other public place within the corporate limits of the city, any gasoline, kerosene, naphtha or any other volatile, inflammable or explosive liquid or substance and at the same time to have in his possession or on or about his person any container, susceptible to being broken, torn, shattered, or disassembled when thrown against or into any building or improvement.

* * * * *

Sec. 44-65. Pistol dealers. (a) There shall be levied and collected from every person engaging in the business of bartering, leasing, selling, exchanging, or otherwise dealing in pistols for profit within the city, whether by wholesale or retail, an annual occupation tax of five dollars ($5.00), to be paid on or before January first of each year, and to be paid before continuing such business. Before engaging in such business, each such dealer shall obtain a license therefor, to be issued by the city assessor and collector of taxes.

(b) The word "pistol", as used in this section, shall include every kind of pistol, revolver, automatic, semi-automatic, magazine pistol, and every other short firearm intended or designed to be aimed or fired from one hand.

(c) No person shall be required to have the license provided for in this section or pay the tax levied herein where such person is engaged exclusively in selling pistols to the militia of the United States or other agencies of the federal government authorized by law to purchase the same.

Janesville

19.62 * * * (2) Selling Certain Weapons Prohibited. No person shall sell any firearm, * * * to any minor in the City of Janesville * * *.

Midlothian

Ordinance 89

* * * * *

Section 2. No person, firm, company, corporation or association shall exhibit or have in his possession, with intent to give away or sell or offer for sale or sell, within the City of Midlothian, any * * * gun, revolver, pistol, cap or cartridge, * * * in the City of Midlothian, provided, however, that this section shall not apply to the sale of any such article or articles by wholesalers to each other or to the sale of any such article or articles at wholesale to merchants conducting business entirely without the City of Midlothian, or to the sale by wholesalers for private or public demonstration as hereinafter provided.

San Antonio

26.27. Explosives, etc.; furnishing to minors. It shall be unlawful for any person within the city to sell to, give to, or place in the possession of, any person under the age of sixteen years any loaded cartridge, or any explosive of any kind, or to sell to, give to or place in the possession of any person under the age of sixteen years, any gun or toy gun, capable of exploding or discharging any explosive cap or cartridge, or any toy cannon, capable of exploding or discharging any explosive cap or cartridge, or any other firearm of any description, capable of exploding or discharging any explosive cap or cartridge of any description.

15-125. Manufacture prohibited. (a) No person shall manufacture, within the limits of the city, small arms ammunition. This shall not be construed as prohibiting the hand loading of small arms ammunition for private use and not for resale. For this purpose not more than 15 pounds of smokeless powder and 1,000 small arms primers packed in approved I.C.C. containers shall be permitted to be kept on hand, without a permit.

15-126. Permit required. No person shall store, sell or offer for sale any small arms ammunition without permit.

Southside Place

Sec. 10-9. Sale of firearms * * * No person within the city shall sell, offer for sale or have in his possession for the purpose of sale any kind or any character of gun, revolver or pistol, * * *.

Stephenville

Sec. 11-2. Sale, exhibit of fireworks. It shall be unlawful for any person to exhibit or have in his possession with intent to give away or sell or offer for sale or sell within the city any * * * gun, revolver, pistol, cap or cartridge, * * *.

Universal City

III. It shall be unlawful for any person within the corporate limits of the City Of Universal City to sell, give, or place in the possession of any person under the age of 16 years any loaded cartridge or any explosive of any kind, or any gun, toy gun, or cannon capable of exploding or discharging a bullet, pellet, or missile by means of any explosive cap or cartridge of any description.

Wichita Falls

Sec. 24-8. Sale of pistols. (A) Definitions:

Retailer. The word "retailer" shall include any person engaged in selling of any items, new or used, in single lots, regardless of price, to persons not commonly known to be in the business of retail selling.

Pistol. The word "pistol" shall include any pistol, derringer or revolver, except that in this section shall not include any antique pistol.

Antique pistol. The term "antique pistol" means:

(1) Any pistol (including any pistol with a matchlock, flintlock, percussion cap or similar type of ignition system) manufactured in or before 1898, and

(2) Any replica of any pistol described in subparagraph (1) if such replica: (a) Is not designed or redesigned for using rimfire or conventional centerfire ammunition, or (b) Uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

(B) It shall be unlawful for any retailer to loan, sell, rent or otherwise transfer or to permit or cause to be loaned, sold, rented, or otherwise transferred, a pistol to any person except as set out in this section.

(C) The retailer shall obtain in writing upon duplicate forms to be supplied by the police department the [information required by local authorities] * * *.

(D) Forward the original of the required form, listed in subsection (C), to the police department within ten (10) days after sale or transfer of possession of pistol.

(E) Maintain the duplicate copy on record at the retailer's place of business for twelve (12) months for inspection by any commissioned law enforcement officer.

Utah

State Law

Utah Code Ann.

76-10-306. "Infernal machine" defined. An infernal machine is any box, package, contrivance, bomb, or apparatus containing or arranged with an explosive or acid or poisonous or inflammable substance, chemical, or compound, or knife, loaded pistol, or gun, or other dangerous or harmful weapon or thing, constructed, contrived, or arranged so as to explode, ignite, or throw forth its contents, or to strike with any of its parts, unexpectedly when moved, handled, or opened, or after the lapse of time or under conditions or in a manner calculated to endanger health, life, limb, or property.

76-10-308. Infernal machine—Construction or possession. Every person who knowingly constructs or contrives any infernal machine, or with intent to injure another in his person or property, has any infernal machine in his possession is guilty of a felony of the third degree.

76-10-501. Definitions. For the purpose of this part: (1) "Dangerous weapon" means any item that in the manner of its use or intended use is capable of causing death or serious bodily injury. In construing whether an item, object, or thing not commonly known as a dangerous weapon is a dangerous weapon, the character of the instrument, object, or thing; the character of the wound produced, if any; and the manner in which the instrument, object, or thing was used shall be determinative.

(2) "Firearms" means pistols, revolvers, sawed-off shotguns, or sawed-off rifles, and/or any device that could be used as a weapon from which is expelled a projectile by any force.

(3) "Sawed-off shotgun" means a shotgun having a barrel or barrels of less than eighteen inches in length, or in the case of a rifle, having a barrel or barrels of less than sixteen inches in length, or any weapon made from a rifle or shotgun (whether by alteration, modification or otherwise) if the weapon as modified has an overall length of less than 26 inches.

(4) "Prohibited area" means any place where it is unlawful to discharge a weapon.

(5) "Crime of violence" means murder, voluntary manslaughter, rape, mayhem, kidnapping, robbery, burglary, housebreaking, extortion, or blackmail accompanied by threats of violence, assault with a dangerous weapon, assault with intent to commit any offense punishable by imprisonment for more than one year, arson punishable by imprisonment for more than one year, or an attempt to commit any of the foregoing offenses.

(6) "Bureau" means the Utah state bureau of criminal identification.

76-10-503. Possession of dangerous weapon; Persons not permitted to have (1) Any person who is not a citizen of the United States or any person who has been convicted of any crime of violence under the laws of the United States, the state of Utah, or any other state, government, or country, or who is addicted to the use of any narcotic drug, or any person who has been declared mentally incompetent shall not own or have in his possession or under his custody or control any dangerous weapon as defined in this part. * * *

(2) Any person who is on parole for a felony or is incarcerated at the Utah state prison shall not have in his possession or under his custody or control any dangerous weapon as defined in this part. * * *

76-10-509. Possession of dangerous weapon by minor. A minor under the age of eighteen may not possess a dangerous weapon as defined herein unless he has the permission of his parent or guardian to have such weapon or is accompanied by parent or guardian while he has such weapon in his possession. In any event, any minor who is under the age of fourteen years must be accompanied by a responsible adult.

76-10-524. Purchase of firearms in contiguous states pursuant to federal law. This part will allow purchases of firearms and ammunition by residents in contiguous states pursuant to the Federal Fire Arms Gun Control Act of 1968, section 922, paragraph B, no. 3.

Clinton

* * * * *

33. Unlawful to Sell Firearms to Children Under Fourteen. It shall be unlawful for any person, firm or corporation to give, sell or furnish to any minor under the age of fourteen years, any firearm, * * * or any other such type instrument designed to propel or throw missiles.

Duchesne

Ordinance same as State Law
13-1050-1 same as 76-10-501
13-1050-3 same as 76-10-503(1)
13-1050-9 same as 76-10-509

Emery

Ordinance 13-1050-3 same as State Law 76-10-503(1) * * *.

Heber City

10-28. Firearms: Selling to Minors Under Fourteen: Any person who sells, gives, or disposes of, or offers to sell, give or dispose of any pistol, gun, target gun, or other firearm, to any person under the age of fourteen years, is guilty of an offense.

Henrieville

Ordinance same as State Law
13-1050-1 same as 76-10-501
13-1050-3 same as 76-10-503(1)
13-1050-9 same as 76-10-509

Honeyville

Ordinance 13-1050-3 same as State Law 76-10-503(1)

Hurricane

Ordinance same as State Law
13-1036 same as 76-10-306
13-1038 same as 76-10-308
13-1050-3 same as 76-10-503(1)
13-1050-9 same as 76-10-509

Logan

12-7-10. Revolvers, sale to minors, display prohibited. It shall be unlawful for any person, firm or corporation to exchange with, buy from, or sell to any minor under the age of eighteen (18) years any gun, pistol or revolver; or to show or display any pistol or revolver in any window or showcase in this city.

12-12-9. Sales to intoxicated persons and minors. No person in Logan City shall purchase from, or sell, loan or furnish any weapon in which any explosive substance can be used to any person under the influence of alcohol or any narcotic drug, stimulant or depressant or to any person in a condition of agitation and excitability or to a minor under the age of eighteen (18) years of age.

Mount Pleasant

15-6-5. Unlawful to Sell Firearms to Children under Fourteen. It shall be un-

lawful for any person, firm or corporation to give, sell or furnish to any minor under the age of fourteen years, any firearm * * *

Murray

17-6. Sales of firearms and other weapons prohibited. It shall be unlawful for any person to sell, give or furnish to any minor any firearm * * *.

20-23. Firearms and explosives—Permit for purchase. It shall be unlawful for any person, other than a manufacturer or wholesaler thereof to or from a wholesale or retail dealer therein, for the purpose of commerce, directly or indirectly, to buy, sell, borrow, loan, give away, trade, barter, deliver or receive, within the city, any pistol, revolver, gun or similar weapon, or any ammunition, shell, powder, dynamite or other explosive, unless the buyer, borrower or person receiving such weapon, ammunition or explosive shall first obtain and deliver to and the same be demanded and received by the person selling, loaning or delivering such weapon, ammunition or explosive, within thirty days after the issuance thereof, a permit of the chief of police authorizing such person to acquire such weapon, ammunition or explosive.

Such permit may be issued by the chief of police if he is satisfied that the person applying for the same is of good moral character and of lawful age, and that the purpose for which the same is sought is lawful, and the granting of the same will not endanger public safety. * * *

Panguitch

Ordinance same as State Law
13-1050-1 same as 76-10-308
13-1050-3 same as 76-10-503(1)
13-1050-9 same as 76-10-509

Paragonah

Ordinance same as State Law
13-1050-3 same as 76-10-503(1)
13-1050-9 same as 76-10-509

Payson

7-05-040 Minors—Sale to—Prohibited. It shall be unlawful for any person, firm or corporation to give or to sell or to furnish to any minor under the age of fourteen years, any pistol, gun, target gun or other firearm * * *

7-05-050 Sale of Firearms to be Recorded—Purchaser to Register Weapon. It shall be unlawful for any person to sell, loan, or give away any pistol, revolver, gun or similar weapon, without first making a full and complete record in a book kept by him for that purpose * * *

Plain City

Ordinance same as State Law
13-1050-1 same as 76-10-501
13-1050-3 same as 76-10-503(1)
13-1050-9 same as 76-10-509

Richmond City

Ordinance same as State Law
13-1050-3 same as 76-10-503(1)
13-1050-9 same as 76-10-509

River Heights

Ordinance same as State Law
13-1036 same as 76-10-306
13-1038 same as 76-10-308
13-1050-1 same as 76-10-501
13-1050-3 same as 76-10-503(1)
13-1050-9 same as 76-10-509

Salt Lake City

Sec. 23-6-5. Unlawful to sell firearms to children under fourteen. It shall be unlawful for any person, firm or corporation to give, sell or furnish to any minor under the age of fourteen years, any firearm, * * * or any other such type instrument designed to propel or throw missiles.

Salt Lake County

16-4-1. Unlawful use of weapons. (1) A person commits the offense of unlawful use of weapons when he knowingly:

(a) Sells, manufacturers, purchases, possesses or carries any * * * shotgun with a barrel less than eighteen inches in length, * * * or

(f) Possesses any device or attachment of a kind designed, used or intended for use in silencing the report of any firearm.

16-4-2. Record of sale. It shall be unlawful for any person to sell, loan or give away any pistol, revolver, gun or similar weapon, powder, dynamite or other explosive without first making a full and complete record in a book kept by him for that purpose, * * *

16-4-4. Seller to require permit. It shall be unlawful for any person to sell, trade or otherwise furnish to another any pistol, revolver or concealable gun or weapon unless the person to whom said pistol, revolver, gun or weapon is sold, traded or otherwise furnished exhibits and delivers to the person selling, trading or furnishing such pistol, revolver, gun or weapon a permit issued by the sheriff authorizing and permitting the person to purchase or receive such pistol, revolver, gun or other concealable weapon.

16-4-5. Obtaining weapons without permit illegal. It shall be unlawful for any person to purchase or otherwise obtain a pistol, revolver, gun or other concealable weapon without first obtaining a permit from the sheriff.

16-4-8. Furnishing to minors. It shall be unlawful for any person, firm or corporation except a parent or guardian, to give, or to sell or to furnish to any minor, any instrumentality named in the above-mentioned provisions.

South Salt Lake

Sec. 5B-2-7. Firearms. Any person who sells, gives away, or disposes of, or offers to sell, give away, or dispose of any pistol, gun, target gun, or other firearm to any person under the age of fourteen (14) years is guilty of a misdemeanor.

Tooele City

Ordinance 11-10-24 same as State Law 76-10-509

Toquerville

Ordinance same as State Law
13-1050-1 same as 76-10-501
13-1050-3 same as 76-10-503(1)
13-1050-9 same as 76-10-509

Vermont

State Law

Vt. Stat. Ann.

Title 13

Sec. 4066. Record of firearm sales. All pawnbrokers and retail merchants dealing in firearms shall keep a record book in which they shall record the sale by them of all revolvers and pistols, and the purchase by them of all secondhand revolvers and pistols. Such record shall include the date of the transaction, the marks of identification of the firearm, including the manufacturer's name, the caliber, model and manufacturer's number of

the firearm, the name, address, birthplace, occupation, age, height, weight and color of eyes and hair of the purchaser or seller. Such purchaser or seller shall sign his name to the record * * *.

Sec. 4007. Furnishing firearms to children. A person, firm or corporation, other than a parent or guardian, who sells or furnishes to a minor under the age of sixteen years a firearm or other dangerous weapon or ammunition for firearms shall be fined not more than $50.00 nor less than $10.00. This section shall not apply to an instructor or teacher who furnishes firearms to pupils for instruction and drill.

Sec. 4008. Possession of firearms by children. A child under the age of sixteen years shall not, without the consent of his parents or guardian, have in his possession or control a pistol or revolver constructed or designed for the use of gunpowder or other explosive substance with leaden ball or shot. * * *.

Sec. 4010. Gun silencers. A person who manufacturers, sells or uses or possesses with intent to sell or use, an appliance known as or used for a gun silencer shall be fined $25.00 for each offense. * * *.

Sec. 4013. Zip guns; * * *. A person who possesses, sells or offers for sale a weapon commonly known as a "zip" gun, * * * shall be imprisoned not more than ninety days or fined not more than $100.00.

Sec. 4014. Purchase of firearms in contiguous states. Residents of the state of Vermont may purchase rifles and shotguns in a state contiguous to the state of Vermont provided that such residents conform to the applicable provisions of the Gun Control Act of 1968, and regulations thereunder, as administered by the United States Secretary of the Treasury, and provided further that such residents conform to the provisions of law applicable to such purchase in the state of Vermont and in the contiguous state in which the purchase is made.

Virginia

State Law

Code of Va.

15.1-525. Same [Pistols and revolvers]; in certain counties. Chapter 297 of the Acts of 1944, approved March twenty-nine, nineteen hundred forty-four, requiring permits to sell or purchase pistols or revolvers in any county having a density of population of more than one thousand a square mile, is continued in effect.

Title 18.2

Sec. 18.2-288. Definitions. When used in this article: [Article 5]

(1) "Machine gun" applies to any weapon which shoots or is designed to shoot automatically more than one shot, without manual reloading, by a single function of the trigger.

(2) "Crime of violence" applies to and includes any of the following crimes or an attempt to commit any of the same, namely, murder, manslaughter, kidnapping, rape, mayhem, assault with intent to maim, disable, disfigure or kill, robbery, burglary, housebreaking, breaking and entering and larceny.

(3) "Person" applies to and includes firm, partnership, association or corporation.

Sec. 18.2-289. Use of machine gun for crime of violence. Possession or use of a machine gun in the perpetration or attempted perpetration of a crime of violence is hereby declared to be a Class 2 felony.

Sec. 18.2-290. Use of machine gun for aggressive purpose. Unlawful possession or use of a machine gun for an offensive or aggressive purpose is hereby declared to be a Class 4 felony.

Sec. 18.2-291. What constitutes aggressive purpose. Possession or use of a machine gun shall be presumed to be for an offensive or aggressive purpose:

(1) When the machine gun is on premises not owned or rented for bona fide permanent residence or business occupancy by the person in whose possession the machine gun may be found;

(2) When the machine gun is in the possession of, or used by, a person who has been convicted of a crime of violence in any court of record, state or federal, of the United States of America, its territories or insular possessions;

(3) When the machine gun has not been registered as required in Sec. 18.2-295; or

(4) When empty or loaded shells which have been or are susceptible of use in the machine gun are found in the immediate vicinity thereof.

Sec. 18.2-292. Presence prima facie evidence of use. The presence of a machine gun in any room, boat or vehicle shall be prima facie evidence of the possession or use of the machine gun by each person occupying the room, boat, or vehicle where the weapon is found.

Sec. 18.2-293. What article does not apply to. The provisions of this article shall not be applicable to:

(1) The manufacture for, and sale of, machine guns to the armed forces or law-enforcement officers of the United States or of any state or of any political subdivision thereof, or the transportation required for that purpose; and

(2) Machine guns and automatic arms issued to the national guard of Virginia by the United States or such arms used by the United States army or navy or in the hands of troops of the national guards of other states or territories of the United States passing through Virginia, or such arms as may be provided for the officers of the State Police or officers of penal institutions.

Sec. 18.2-293.1. What article does not prohibit. Nothing contained in this article shall prohibit or interfere with:

(1) The possession of a machine gun for scientific purposes, or the possession of a machine gun not usable as a weapon and possessed as a curiosity, ornament, or keepsake; and

(2) The possession of a machine gun for a purpose manifestly not aggressive or offensive.

Provided, however, that possession of such machine guns shall be subject to the provisions of Sec. 18.2-295.

Sec. 18.2-295. Registration of machine guns. Every machine gun in this State shall be registered with the Department of State Police within twenty-four hours after its acquisition. Blanks for registration shall be prepared by the Superintendent of State Police, and furnished upon application. To comply with this section the application as filed shall be notarized and shall show the model and serial number of the gun, the name, address and occupation of the person in possession, and from whom and the purpose for which, the gun was acquired. The Superintendent of State Police shall upon registration required in this section forthwith furnish the registrant with a certificate of registration, which shall be valid as long as the registrant remains the same. Certificates of registration shall be retained by the registrant and produced by him upon demand by any peace officer. Failure to keep or produce such certificate for inspection shall be a Class 3 misdemeanor, and any peace officer, may without warrant, seize the machine gun and apply for its confiscation as provided in Sec. 18.2-296. Upon transferring a registered machine gun, the transferor shall forthwith notify the Superintendent in writing, setting forth the date of transfer and name and address of the transferee. Failure to give the required notification shall constitute a Class 3 misdemeanor. Registration data shall not be subject to inspection by the public.

Sec. 18.2-299. Definitions. When used in this article: [Article 6.]

(1) "Sawed-off shotgun" applies to any weapon, loaded or unloaded, originally de-

signed as a shoulder weapon, utilizing a self-contained cartridge from which a number of ball shot pellets or projectiles may be fired simultaneously from a smooth or rifled bore by a single function of the firing device and which has a barrel length of less than eighteen inches for smooth bore weapons and sixteen inches for rifled weapons. Weapons of less than .225 caliber shall not be included.

(2) "Crime of violence" applies to and includes any of the following crimes or an attempt to commit any of the same, namely, murder, manslaughter, kidnapping, rape, mayhem, assault with intent to maim, disable, disfigure or kill, robbery, burglary, housebreaking, breaking and entering and larceny.

(3) "Person" applies to and includes firm, partnership, association or corporation.

Sec. 18.2-300. Possession or use of "sawed-off" shotgun—A. Possession or use of a "sawed-off" shotgun in the perpetration or attempted perpetration of a crime of violence is a Class 2 felony.

B. Possession or use of a "sawed-off" shotgun for any other purpose, except as permitted by Sec. 18.2-303, is a Class 4 felony.

Sec. 18.2-303. What article does not apply to. The provisions of this article shall not be applicable to:

(1) The manufacture for, and sale of, "sawed-off" shotguns to the armed forces or law-enforcement officers of the United States or of any state or of any political subdivision thereof, or the transportation required for that purpose; and

(2) "Sawed-off" shotguns and automatic arms issued to the national guard of Virginia by the United States or such arms used by the United States army or navy or in the hands of troops of the national guards of other states or territories of the United States passing through Virginia, or such arms as may be provided for the officers of the State Police or officers of penal institutions.

Sec. 18.2-303.1. What article does not prohibit. Nothing contained in this article shall prohibit or interfere with the possession of a "sawed-off" shotgun for scientific purposes, or the possession of a "sawed-off" shotgun not usable as a firing weapon and possessed as a curiosity, ornament, or keepsake.

Sec. 18.2-309. Furnishing certain weapons to minors. If any person sell, barter, give or furnish, or cause to be sold, bartered, given or furnished to any minor a pistol, * * * having good cause to believe him to be a minor, such person shall be guilty of a Class 4 misdemeanor.

Sec. 58-394. Pistol dealers. Every person, firm or corporation engaged in the business of selling pistols at retail shall pay for such privilege a special license tax of five dollars per annum. * * *

59.1-148.1. Purchase of firearms in contiguous state. Any resident of the Commonwealth of Virginia, including a corporation or other business entity maintaining a place of business in this State, who may lawfully purchase and receive delivery of a rifle or shotgun in this State, may purchase a rifle or shotgun in a contiguous state and transport or receive the same into the Commonwealth of Virginia provided the sale meets the lawful requirements of each such state, meets all lawful requirements of any federal statute, and is made by a licensed importer, licensed manufacturer, licensed dealer, or licensed collector.

Abingdon

Sec. 29-6. Selling pistols, etc., to minors under eighteen years of age. No person shall sell, barter, give or furnish, or cause to be sold, bartered, given or furnished to any minor under eighteen years of age a pistol, * * * having good cause to believe him to be a minor under eighteen years of age. * * *.

Alexandria

Article II

Sec. 41-7. Condition of pistol or revolver when delivered to purchaser. Every pistol or revolver sold or otherwise disposed of by a pistol or revolver dealer shall be securely wrapped and unloaded when delivered.

Sec. 41-8. Procedure for sale of pistols or revolvers; sale to certain persons prohibited. Every person desiring to purchase or otherwise acquire in the city a pistol or revolver shall sign in duplicate and deliver to the seller or person disposing thereof an application for the purchase of a pistol or revolver, [contact local authorities for required contents] * * *.

* * * No person shall within the city deliver or otherwise dispose of a pistol or revolver until seventy-two hours shall have elapsed from the time of the application.

No person shall within the city sell or otherwise dispose of a pistol or revolver to a person whom he has reasonable cause to believe is not a fit and proper person to possess the same, is not of sound mind, is under the age of eighteen years, is a drug addict, or is a person who has been convicted of a crime of violence.

If, within the seventy-two hour waiting period required by this section, the superintendent of police or anyone designated by him shall inform the proposed seller or person proposing to dispose of a pistol or revolver that the applicant is not a fit and proper person to possess the weapon, is not of sound mind, is under the age of eighteen years, is a drug addict or is a person who has been convicted of a crime of violence, such information shall be prima facie evidence that the seller or person disposing thereof had reasonable cause to believe the applicant is so unqualified to acquire such weapon.

* * * * *

Sec. 41-9. Record of pistols or revolvers sold or disposed of. Every person delivering or disposing of a pistol or revolver shall make in duplicate a true record of every such weapon sold or otherwise disposed of, which record shall be personally signed by the purchaser or person receiving the weapon and also by the person making the sale or disposition in the presence of each other. * * *

Division 2. Permits for Engaging in Business as Dealers.

Sec. 41-12. Required. Any person desiring to engage in the business of selling or dealing in pistols or revolvers in the city at retail shall obtain from the superintendent of police to permit to deal in such weapons. This permit shall be in addition to the revenue license required by section 58-394, of the Code of Virginia, and of any city revenue license.

* * * * *

Appomattox

17-4. Sale, etc., of guns * * *, to minors under age of eighteen years. If any person sells, barters, gives or furnishes, or causes to be sold, bartered, given or furnished to any minor under eighteen years of age a gun, rifle, air rifle, pistol, cartridge, * * * having good cause to believe him to be a minor under eighteen years of age, such person shall be guilty of a misdemeanor.

Arlington County

Chapter 297

1. In any county having a density of population of more than one thousand a square mile, as shown by the last preceding United States census, any person, firm or corporation engaged in the business of selling pistols or revolvers at retail shall, before making any such sale, register as such a dealer with the chief of police of the county and obtain from him a permit to sell such weapons to persons entitled to buy them, which permit he shall issue upon his being satisfied with the fitness of the dealer to engage in such business. Such permits shall be issued for a period of one year.

Any person desiring to buy at retail or otherwise acquire a pistol or revolver shall first apply to the chief of police, hereinafter called the Chief, for a permit so to do, and shall at the same time give to the Chief such information as he requires concerning his fitness to own and possess such weapon. The Chief may

grant such permit, or refuse same or defer the application until he has made an independent investigation of the applicant; provided no permit shall be granted to any person under the age of eighteen years, nor until the Chief is satisfied that the applicant is a proper person to own and have the weapon in his possession.

No dealer holding a permit issued hereunder shall sell, give, barter, exchange or furnish a pistol or revolver to any person unless he delivers to the dealer the permit of the Chief as required in this act. Upon the delivery of any such weapon to any person by the dealer, he shall endorse on the permit the date of delivery, the name and address of the person to whom delivered, the number, and the make and calibre of the pistol or revolver, and shall return the permit to the Chief not later than the day following that on which the weapon was sold or furnished.

The Chief shall make and preserve in his office a record of all permits issued by him hereunder, showing thereon the dates when and the persons to whom issued.

Any person violating any provision of this act shall be guilty of a misdemeanor.

NOTE: Arlington County, Virginia comes within the purview of the aforementioned act.

11-47. Pistol dealers. Every person selling pistols in the county shall pay for the privilege an annual license tax of twenty-five dollars, which-tax shall not be prorated. Before issuing any license under the provisions of this section the Commissioner of the Revenue shall obtain from the applicant evidence that he has obtained a permit from the Chief of Police in accordance with Acts of Assembly 1944, Chapter 297.

Bedford

Sec. 14-72. (Weapons)—Furnishing pistols, * * * to minors under eighteen years of age. If any person sells, barters, gives or furnishes, or causes to be sold, bartered, given or furnished to any minor under eighteen years of age a pistol, * * * having good cause to believe him to be a minor under eighteen years of age, such person shall, upon conviction, be fined not less than two dollars and fifty cents nor more than one hundred dollars.

Big Stone Gap

Nothing in this section shall be construed as preventing the sale of what are commonly known as cap pistols.

10-56. Furnishing certain weapons to minors. If any person sell, barter, give or furnish, or cause to be sold, bartered, given or furnished to any minor a pistol, * * * having good cause to believe him to be a minor, such person shall be guilty of a class 4 misdemeanor.

Bridgewater

4-37. Prohibiting sales to minors. It shall be unlawful for any person to sell, barter, give or furnish, or cause to be sold, bartered, given or furnished to any minor under eighteen years of age, any pistol * * * tear gas pen, or gun or other weapon of like kind, having good cause to believe him or her to be a minor under eighteen years of age.

Bristol

9-8. Definition. "Small arms ammunition", wherever used in this division, shall be taken to mean any shotgun, rifle, pistol or revolver cartridges.

9-9. Permit for manufacture, etc. No person shall manufacture or reload within the city any small arms ammunition, except pursuant to a permit issued by the bureau of fire prevention.

9-10. Permit for sale, etc. No person shall store for sale, or sell or offer for sale any small arms ammunition, except pursuant to a permit issued by the bureau of fire prevention.

Brunswick County

Sellers to obtain identity of purchaser; * * * In obtaining the name and address of the purchaser, * * * if the purchaser be not personally known to the seller, the seller shall use such means and methods to secure the correct name and address as are generally employed in Brunswick County to obtain the correct identity of a person tendering a check for payment * * *.

Purchasers to notify sheriff of intention to purchase pistols and revolvers. Any person intending to purchase a pistol or revolver shall first notify the Sheriff of Brunswick County of his intention so to do at least thirty (30) days before said purchase and shall state the type and calibre or calibres of said weapon or weapons and the name of the intended seller and purchaser. Whereupon, the Sheriff shall execute a writing, signed by him, showing thereon said information and shall deliver a copy thereof to the intended purchaser to exhibit to the seller.

Charlottesville

15-47. Dealers in firearms * * * No person shall sell firearms, dirks or Bowie knives without having first procured a license therefor. * * *

17-35. (Firearms)—Sales, etc., to minors. No person shall sell, barter, give or furnish, or cause to be sold, bartered, given or furnished, to any minor under eighteen years of age, firearms, cartridges, * * * having good cause to believe such minor to be under eighteen years of age.

17-36. (Firearms)—Sales of firearms. Permit required. No person shall sell firearms, * * * without having first procured an annual permit from the city manager to engage in such business.

Chase City

Sec. 13-20. Minors generally—Furnishing certain weapons * * * to minors. If any person sell, barter, give or furnish, or cause to be sold, bartered, given or furnished to any minor under eighteen years of age a pistol * * *, having good cause to believe him to be a minor under eighteen years of age, * * * such person shall be guilty of a misdemeanor * * *.

Chesapeake

Sec. 17-60. Same—Permit generally. No person shall sell, lease, rent, give or otherwise furnish within the city any pistol, * * * or any weapon of like kind, unless and until a permit, granted by the chief of police, shall be presented authorizing the holder of such permit to acquire such weapon, which permit shall be surrendered to the person furnishing such weapon, who shall preserve it for inspection, upon request, by the police of the city.

Chesterfield

Sec. 12-169. Pistol dealers—License required; tax. Any person engaged in the business of selling pistols and revolvers to the public shall obtain an annual county pistol dealer's license * * *.

Sec. 15-162. Furnishing certain weapons to minors. If any person sell, barter, give or furnish, or cause to be sold, bartered, given or furnished to any minor a pistol, * * * having good cause to believe him to be a minor, such person shall be guilty of a misdemeanor * * *.

Clifton Forge

13-44. It shall be unlawful for any person to sell, barter, give or furnish, or cause to be sold, bartered, given, or furnished to any mi-

nor under eighteen (18) years of age, a pistol, * * * having good cause to believe him to be a minor under eighteen (18) years of age. * * *

Colonial Heights

Sec. 15-53. * * * Sales, etc., to persons under age eighteen. If any person shall sell, barter, give or furnish, or cause to be sold, bartered, given or furnished to any minor under eighteen years of age, firearms, cartridges, * * * having good cause to believe such minor to be under eighteen years of age, he shall be fined not less than two dollars nor more than one hundred dollars.

Clintwood

Chapter 10

Section 56. Furnishing certain weapons to minors. If any person shall sell, barter, give or furnish, or cause to be sold, bartered, given or furnished to any minor a pistol, * * *, having good cause to believe him to be a minor, such person shall be guilty of a class 4 misdemeanor.

Covington

Sec. 17-3. Furnishing weapon to minor. It shall be unlawful for any person to sell, barter, give or furnish, or cause to be sold, bartered, given or furnished to any minor under eighteen (18) years of age, any pistol, * * * having good cause to believe him to be a minor under eighteen years of age.

Sec. 17-4. Furnishing ammunition to minor. It shall be unlawful for any person to sell, give, lend, barter or furnish or cause to be sold, given, lent, bartered or furnished to any person under the age of eighteen years any gunpowder or similar explosive substance, shells, cartridges, shot or pellets.

Sec. 17-5. Possession, transportation of certain weapons by minors. (a) It shall be unlawful for any person under the age of eighteen years to have in his possession or to carry or transport any gun, pistol, cannon or similar instrument capable of shooting or firing any shell, bullet, cartridge, or exploding any powder or similar substance, or propelling any ball, bullet, shot or pellet or similar object, by any means, for a distance of more than fifty (50) feet. * * *

Culpeper

27-4. Furnishing certain weapons to minors. No person shall sell, barter, give or furnish or cause to be sold, bartered, given or furnished to any minor under eighteen years of age a pistol * * * having good cause to believe him to be a minor under eighteen years of age. * * *.

Damascus

Sec. 14-25. (Weapons)—Furnishing certain weapons to minors. If any person sell, barter, give or furnish, or cause to be sold, bartered, given or furnished to any minor a pistol, * * * having good cause to believe him to be a minor, such person shall be guilty of a misdemeanor * * *.

Elkton

33-2. Sale of certain weapons to minors under age of eighteen years. It shall be unlawful for any person to sell, barter, give or furnish, or cause to be sold, bartered, given or furnished to any minor under eighteen years of age any pistol, * * * tear gas, pen or gun, or other weapon of like kind, having good cause to believe him to be a minor under eighteen years of age.

Emporia

Sec. 14-75.—Pistol permit required prior to purchase. It shall be unlawful for any person to purchase a pistol of any calibre or description within the city unless such person shall have obtained a written permit from the chief of police of the city authorizing such purchase. * * *

Sec. 14-76.—Exhibiting pistol permit to seller. It shall be unlawful for any person to sell a pistol of any calibre or description within the city to any person unless such purchaser shall first exhibit to the person selling the pistol, a written permit, executed by the chief of police of the city, authorizing the sale and purchase of a pistol within the city.

Fairfax City

1966-2B. (A) Definitions. The following terms, whenever used in this article shall have the meanings respectively set forth in this section, unless a different meaning is clearly required by the context:

"Applicant." Any person, firm, or corporation applying to the Chief of Police for certificate of registration to sell firearms or for authority to purchase a pistol.

"Chief of Police." The Chief of the City of Fairfax Police Department or his designated agent.

"Crime of Violence." Any of the following crimes or an attempt to commit any of the same, to-wit: Murder, voluntary manslaughter, rape, robbery, burglary, kidnapping, mayhem, and assault.

"Fixed Ammunition." Any ammunition composed of a projectile or projectiles, a casing and a primer, all of which shall be contained as one unit.

"Habitual Drunkard." Any person who has been convicted of being drunk in public three or more times within a period of one year.

"Licensed Dealer." Any person, firm or corporation engaged in the business of selling at retail or renting pistols in the City of Fairfax, who is either licensed, or required to be licensed, as such under State or Federal Law.

"Person." As used in this Ordinance includes individual, firm, association, or corporation.

"Pistol." Any firearm with a barrel less than sixteen inches in length that uses fixed ammunition.

(B) Dealers registration required * * *. (1) Any person, before engaging in the business of selling at retail or renting pistols in the City of Fairfax, Virginia, shall be required to register with the Chief of Police on application forms furnished by the Chief of Police. * * *

(C) Dealers not to sell, etc., without registration. (1) It shall be unlawful for any person, firm or corporation to engage in the business of selling at retail or renting pistols without having in force a registration approved by the Chief of Police as hereinbefore provided. * * *

(E) Dealers not to sell, etc., to minors and other persons. (1) No licensed dealer, or other person, shall sell, barter, give or furnish, or cause to be sold, bartered, given or furnished to any minor under 21 years of age, a pistol, having good cause to believe him to be a minor under 21 years of age nor shall any licensed dealer or other person sell, lend, rent, or otherwise transfer any pistol to any person whom he has reasonable cause to believe has been convicted of a crime of violence or a felony within the past 10 years, or is a drug addict, or is an habitual drunkard or is a fugitive from justice or is of unsound mind, nor to any person who has validly been denied the right to purchase, borrow, rent, or otherwise acquire a pistol by the Chief of Police under the provisions of this article.

(F) Acquisition of pistols from dealers or other persons. (1) Any person desiring to purchase, borrow, rent or otherwise acquire a pistol from a licensed dealer or other person shall make application under oath on forms provided by the Chief of Police * * *.

(G) Approval of application. (1) No licensed dealer or other person shall sell, rent, or transfer, any pistol to any purchaser who

does not exhibit an application approved by the Chief of Police.

(H) Waiting period for sale of pistols. (1) Except as hereinafter provided the Chief of Police shall approve the application of a purchaser of a pistol within 72 hours of the delivery of the same to the Chief of Police, excluding Saturdays, Sundays, and Holidays, unless he shall find one or more of the enumerated statements on the application to be untrue.

(2) Where the applicant is a nonresident of the City of Fairfax, but has been a resident of the State of Virginia for more than 3 years, immediately preceding the date of application the aforesaid time shall be extended to 5 days.

(3) Where the applicant is a nonresident or has not resided in the State of Virginia for a period of 3 years next preceding the date of application the time shall be extended to 30 days.

(I) Notice of rejection. (1) If, within the prescribed period, the Chief of Police shall inform in writing the licensed dealer or other person who proposes to sell the pistol that the application was rejected * * * it shall be unlawful for the dealer to deliver the pistol to the applicant.

(2) A copy of the letter of denial of the Chief of Police shall be furnished the applicant by the licensed dealer.

(K) Exemptions. (1) This article shall not apply to: (a) purchases by any licensed dealer registered in accordance with the provisions of this article; (b) rental of pistols by persons eighteen years of age or over while used upon a supervised rifle or pistol range; (c) the delivery of a pistol to its lawful owner by any person with whom such pistol has been left on consignment for safekeeping or for repairs; (d) a wholesale purchase from a licensed dealer by any person, firm or corporation engaged in the business of manufacturing, repairing, or selling pistols at retail.

Fairfax County

Sec. 6-1-1. Definitions. When used in this article, the following words shall have the following meanings, unless the context clearly requires a different meaning:

* * * * *

(2) Firearm shall mean any weapon which will, or is designed to, or may be readily converted to, expel a projectile or projectiles by the action of an explosive; provided, that stud nailing guns, rivet guns and similar construction equipment neither designed nor intended as weapons, shall not be deemed firearms.

(3) Gun shall mean and includes rifles, shotguns, pistols or other firearms, and also includes any air gun, air rifle or other similar device designed and intended to expel a projectile through a gun barrel of any length by means of explosive, expansion or release of compressed gas or compressed air.

* * * * *

(5) Pistol shall mean a gun having a barrel of less than sixteen (16) inches in length.

* * * * *

(7) Rifle shall mean a gun designed, made and intended to be fired from the shoulder and designed and made to use the energy of an explosive or compressed gas or compressed air to expel a single projectile through a rifled barrel for each pull of the trigger.

(8) Shotgun shall mean a weapon designed, made and intended to be fired from the shoulder and designed and made to use the energy of an explosive in a shotgun shell to fire thorugh through smooth bore one or a number of ball shot for each pull of the trigger.

(9) Starting pistols shall mean any device which is designed or functions to [simulate] the firing of a weapon by means of a primer or other explosive charge, but which cannot be readily converted for use as a firearm as defined in this Section.

Sec. 6-1-5. Transfer, etc., of guns to minors prohibited; exceptions. It shall be unlawful for any person to give, sell, rent, lend or otherwise transfer any gun or starting pistol as defined by section 6-1-1, or any projectile therefor within the county to a minor under the age of eighteen (18) years, except where the relationship of parent and child, guardian and ward or adult instructor and pupil exists between such person and the minor.

Sec. 6-3-1. Definitions. The following terms, whenever used in this article, shall have the meanings respectively set forth in this section unless a different meaning is clearly required by the context:

(1) Chief of police. The chief of the county police department or his designated agent.

(2) Crime of violence. Any of the following crimes or an attempt to commit any of the same: Murder, voluntary manslaughter, rape, robbery, burglary, kidnapping and assault.

(3) Habitual drunkard. Any person who has been convicted of being drunk in public three or more times within a period of one year.

(4) Fixed ammunition. Any ammunition composed of a projectile or projectiles, a casing and a primer, all of which shall be contained as one unit.

(5) Licensed dealer. Any person engaged in the business of selling at retail or renting pistols in the county who is either licensed or required to be licensed as such under state or federal law.

(6) Pistol. Any firearm with a barrel less than sixteen inches in length that uses fixed ammunition.

Sec. 6-3-2. Registration of dealers—Required; application; * * * (a) Any person, before engaging in the business of selling at retail or renting pistols in the county, shall be required to register with the chief of police on application forms furnished by the chief of police. * * *

Sec. 6-3-3. Dealer's registration certificate required; * * *. (a) It shall be unlawful for any person to engage in the business of selling at retail or renting pistols without having in force a registration statement endorsed by the chief of police as hereinbefore provided. * * *

Sec. 6-3-5. Sale of pistols to minors, drug addicts, habitual drunkards, and others prohibited. (a) No licensed dealer shall sell, barter, give or furnish or cause to be sold, bartered, given or furnished to any minor under eighteen (18) years of age a pistol, having good cause to believe him to be a minor under eighteen (18) years of age, nor shall any licensed dealer sell, lend, rent or otherwise transfer any pistol to any person whom such dealer has reasonable cause to believe has been convicted of a crime of violence or is a drug addict or is an habitual drunkard or is a fugitive from justice or is of unsound mind nor to any person who has validly been denied the right to purchase, borrow, rent or otherwise acquire a pistol by the chief of police under the provisions of this article.

Sec. 6-3-6. Application for acquisition of pistol. Any person desiring to purchase, borrow, rent or otherwise acquire a pistol from a licensed dealer shall make application on forms provided by the chief of police, which shall be signed in duplicate by such person [contact local authorities for required contents] * * *.

Sec. 6-3-7. Waiting period prior to delivery of pistol to purchaser—Required. No licensed dealer shall deliver any pistol to the purchaser thereof until seventy-two hours, excluding Saturdays, Sundays and holidays, shall have elapsed from the time the application has been received by the chief of police. The chief of police shall cause a postal card to be mailed to the dealer on the same day the application is received in his office stating the time and date the application was received.

Sec. 6-3-8. Same—Grounds for prohibiting delivery; notice to dealer of prohibition. If, within the seventy-two hour period, the chief of police shall inform, in writing, which shall not be privileged, the licensed dealer who proposes to sell the pistol that the applicant to purchase such pistol is (1) under the age of eighteen years, (2) a person who has been committed to an institution for treatment of mental illness or drug addiction and has not been discharged therefrom for a period of three years preceding the date of such application, (3) has been convicted of a crime of violence or (4) is an habitual drunkard, it

shall be unlawful for the dealer to deliver the pistol to the applicant.

Falls Church

Sec. 24-46. Sales of weapons to minors. It shall be unlawful to sell, barter, give or furnish, or cause to be sold, bartered, given or furnished to any minor under eighteen years of age a pistol, * * * having good cause to believe him to be a minor under eighteen years of age.

Sec. 40-1. Definitions. For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Crime of violence. Any of the following crimes, or any attempt to commit any of the same: Murder, manslaughter; rape; mayhem; maliciously disfiguring another; abduction; kidnapping; burglary; house-breaking; larceny; any assault with intent to kill, commit rape or robbery; assault with a dangerous weapon; or assault with intent to commit any offense punishable by imprisonment in the penitentiary.

Machine gun. Any weapon which shoots, or is designed to shoot, automatically or semi-automatically, more than one shot, without manually reloading, by a single function of the trigger, but not a shotgun or twenty-two calibre rifle.

Pistols. Any firearm with a barrel less than twelve inches in length.

Sawed-off shotgun. Any shotgun with a barrel less than twenty inches in length.

Sell and purchase. Includes letting or hiring and similar forms of transferring.

Sec. 40-2. Unlawful possession of pistol. (a) No person shall own or keep a pistol, or have a pistol in his possession or under his control, within the city if:

(1) He is a drug addict.

(2) He has been convicted in the city or elsewhere of a felony.

(3) He has been convicted of soliciting for prostitution, vagrancy or keeping a bawdy or disorderly house.

(4) He is not licensed under section 40-10 to sell weapons, and he has been convicted of violating section 40-2.

(5) He is a habitual drunkard.

(b) No person shall keep a pistol for, or intentionally make a pistol available to, such a person, knowing that he has been so convicted or that he is a drug addict or a habitual drunkard. Whoever violates this section shall be punished as provided in this Code, unless the violation occurs after he has been convicted of a violation of this section, in which case he shall be confined for not more than one year in jail.

Sec. 40-7. Sales of pistols to certain persons prohibited. No person shall within the city sell any pistol to a person who he has reasonable cause to believe is not of sound mind, or is forbidden by section 40-2 to possess a pistol, or, except when the relation of parent and child or guardian and ward exists, is under the age of twenty-one years.

Sec. 40-8. Transfers of firearms regulated. No seller shall within the city deliver a pistol to the purchaser thereof until seventy-two hours shall have elapsed from the time of the application for the purchase thereof; except, that the chief of police, in his discretion, may authorize in writing the seller to deliver a pistol to the purchaser during the seventy-two hours period, and, when delivered, the pistol shall be securely wrapped and shall be unloaded. * * * The seller shall, within six hours after such application, or not later than 10:00 A.M. on the succeeding day, sign and attach his address and deliver one copy to such person as the chief of police of the city may designate, and shall retain the other copy for six years. The chief of police or his designate shall, upon receipt of an application to purchase a pistol, make such investigation of the applicant and file an information report with the seller stating whether or not the applicant is, in his opinion, prohibited by section 40-2 or 40-7 from purchasing a pistol. No machine gun, sawed-off shotgun or blackjack shall be sold to any person other than the persons designated in section 40-14 as entitled to possess the same and then only after permission to make such sale has been obtained from the chief of police of the city. This section shall not apply to sales at wholesale to licensed dealers.

Sec. 40-9. Weapon dealer's license—Required. No retail dealer shall, within the city, sell or expose for sale or have in his possession with intent to sell, any pistol, machine gun, sawed-off shotgun or blackjack without being licensed as provided in section 40-10. No wholesale dealer shall, within the city, sell, or have in his possession with intent to sell, to any person other than a licensed dealer, any pistol, machine gun, sawed-off shotgun, or blackjack.

Sec. 40-10. Same—Issuance; conditions; records. The city council may, in their discretion, grant licenses and may prescribe the form thereof, effective for not more than one year from date of issue, permitting the licensee to sell pistols, machine guns, sawed-off shotguns and blackjacks at retail within the city subject to the following conditions, in addition to those specified in section 40-9 for breach of any of which the license shall be subject to forfeiture and the licensee subject to the punishment as provided in this Code:

(1) The business shall be carried on only in the building designated in the license.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can be easily read.

(3) No pistol shall be sold (a) if the seller has reasonable cause to believe that the purchaser is not of sound mind or is forbidden by section 40-2 to possess a pistol or is under the age of twenty-one years, and (b) unless the purchaser is personally known to the seller or shall present clear evidence of his identity. No machine gun, sawed-off shotgun, or blackjack shall be sold to any person other than the person designated in section 40-14 as entitled to possess the same, and then only after permission to make such sale has been obtained from the chief of police of the city.

(4) A true record shall be made in a book kept for the purpose [contact local authorities for required contents] * * *

(5) A true record in duplicate shall be made of every pistol, machine gun, sawed-off shotgun and blackjack sold, such record to be made in a book kept for the purpose [contact local authorities for required contents] * * *

(6) No pistol or imitation thereof or placard advertising the sale thereof shall be displayed in any part of the premises where it can readily be seen from the outside. No license to sell at retail shall be granted to anyone except as provided in this section.

Sec. 40-11. False information forbidden in sale of weapons. No person shall, in purchasing a pistol or in applying for a license to carry same, or in purchasing a machine gun, sawed-off shotgun or blackjack within the city, give false information or offer false evidence of his identity.

Sec. 40-12. Alteration of identifying marks of weapons. No person shall within the city, change, alter, remove or obliterate the name of the maker, model, manufacturer's number or other mark of identification on any pistol, machine gun or sawed-off shotgun. Possession of any pistol, machine gun or sawed-off shotgun upon which any such mark shall have been changed, altered, removed or obliterated shall be prima facie evidence that the possessor has changed, altered or obliterated the same within the city; provided, that nothing contained in this section shall apply to any officer or agent of any of the departments of the United States or the city engaged in experimental work.

* * * * *

Sec. 40-14. Possession of certain dangerous weapons prohibited. (a) No person shall, within the city, possess any machine gun, sawed-off shotgun * * * nor any instrument, attachment or appliance for causing the firing of any firearm to be silent or intended to lessen or muffle the noise of the firing of any firearms; provided, that machine guns or sawed-off shotguns, and blackjacks may be possessed by the members of the Army, Navy or Marine Corps of the United States, the National Guard or organized reserves when on duty, the Post Office Department or its em-

ployees when on duty, marshals, sheriffs, prison or jail wardens, or their deputies, policemen, or other duly-appointed law enforcement officers, officers or employees of the United States duly authorized to carry such weapons, banking institutions, public carriers who are engaged in the business of transporting mail, money, securities or other valuables, wholesale dealers and retail dealers licensed under section 40-10.

Farmville

Sec. 18-49.[Weapons]—Permits for purchase and sale. (a) No person within the town shall purchase or otherwise procure as his own property or for temporary use any pistol. * * * or any weapon of like kind unless and until that person shall procure from the chief of police a permit in writing signed by the chief of police, granting the person permission to make the purchase or procure the weapon.* * * * *

Sec. 18-50. Same—Sale to minors. It shall be unlawful for any person to sell, barter, give, furnish or cause to be sold, bartered, given or furnished to any minor under eighteen years of age a pistol * * * having good reason to believe him to be a minor under eighteen years of age.

Follansbee

Sec. 14-44. Weapons—Sale, etc., by merchants of certain weapons to minors prohibited. It shall be unlawful for any storekeeper, merchant, or proprietor or employee of any business establishment within the city to sell, give, lend, lease or distribute to any minor * * * or any other rifle, gun or other weapon, mechanical device or toy of like character capable of shooting bullets, shots * * * or other dangerous missiles.

Franklin

31-7. Selling pistols, etc., to minors under eighteen years of age. If any person shall sell, barter, give or furnish, or cause to be sold, bartered, given or furnished to any minor under eighteen years of age a pistol, * * * having good cause to believe him to be a minor under eighteen years of age, such person shall be guilty of a misdemeanor * * *.

Fredericksburg

Sec. 17.2-7. Furnishing certain weapons * * * to minors. If any person sell, barter, give or furnish, or cause to be sold, bartered, given or furnished to any minor (a pistol,) * * * having good cause to believe him to be a minor, such person shall be guilty * * *

Front Royal

Sec. 32-2. Furnishing pistols, * * *, to minors under eighteen years of age. If any person sells, barters, gives or furnishes, or causes to be sold, bartered, given or furnished to any minor under eighteen years of age a pistol, * * * having good cause to believe him to be a minor under eighteen years of age, such person shall be guilty of a misdemeanor and fined not less than two dollars and fifty cents nor more than one hundred dollars.

Galax

Sec. 11-93. Same—Sales, etc., to persons under age eighteen. If any person shall sell, barter, give or furnish, or cause to be sold, bartered, given or furnished to any minor under eighteen years of age, firearms, cartridges, * * * having good cause to believe such minor to be under eighteen years of age, he shall be fined not less than two dollars nor more than one hundred dollars.

The term "firearms," as used in this section, shall be construed to include any gun, rifle or pistol adapted to the use in any form of powder and shot (or balls) or cartridges, whether such firearms be called "toy pistols," "toy guns," or otherwise.

Greensville County

* * * it shall be unlawful for any person, firm, or organization to purchase a pistol of any calibre or description within Greensville County, Virginia, unless such person, firm, or organization shall have obtained a written permit from the Sheriff of Greensville County, Virginia, authorizing such purchase. * * * it shall be unlawful for any person, firm, or organization to sell a pistol of any calibre or description within Greensville County, Virginia, to any person, firm, or organization unless said purchaser exhibits a written permit executed by the Sheriff of Greensville County, Virginia, authorizing such purchase.

Hampton

Sec. 22-81. Pistol Dealers. Every person engaged in the business of selling pistols shall pay an annual license tax * * *.

41-4. Sale of certain weapons to minors under age of eighteen years. If any person shall sell, barter, give or furnish, or cause to be sold, bartered, given or furnished to any minor under eighteen years of age, a pistol, * * * having good cause to believe him to be under eighteen years of age, such person shall be guilty of a misdemeanor * * *.

Harrisonburg

19-53. Same—Furnishing to persons under eighteen years of age. It shall be unlawful for any person to sell, barter, give or furnish or cause to be sold, bartered, given or furnished to any minor under eighteen years of age any pistol, * * * having good cause to believe him to be a minor under eighteen years of age.

Henrico County

Ordinance 80

Section 3. Permits (a) Every person desiring a license * * * to sell or offer to sell at retail, pistols or revolvers, or to buy at retail or otherwise acquire a pistol or revolver, shall first apply to the Chief of Police for a permit * * *. * * *

Herndon

Sec. 27-4. Transfer, etc., of guns to minors prohibited; exceptions. It shall be unlawful for any dealer to give, sell, rent, lend or otherwise transfer any gun or any projectile therefor within the town to a minor, except where the relationship of parent and child, guardian and ward or adult instructor and pupil exists between such person and the minor.

Gun Dealers Generally

Sec. 27-8. Permit—Required. It shall be unlawful for any dealer, except a dealer holding a permit under this article, to sell, lend or otherwise transfer any gun or projectile therefor. It shall be unlawful for any dealer to rent any gun or projectile therefor to another person.

* * * * *

Pistols

Sec. 27-13. Registration of dealers—Required; application. (a) Any person, before engaging in the business of selling at retail or renting pistols in the town, shall register with the town sergeant on application forms furnished by the town sergeant. * * *

* * * * *

Sec. 27-17. Same—Engaging in business while unregistered prohibited. It shall be

unlawful for any person to engage in the business of selling at retail or renting pistols without having in force a registration statement endorsed by the town sergeant as provided in this article.

Sec. 27-18. Sale of pistols to minors, drug addicts, habitual drunkards, etc., prohibited. No dealer shall sell, barter, give or furnish or cause to be sold, bartered, given or furnished to any minor a pistol, having good cause to believe him to be a minor under eighteen years of age, nor shall any dealer sell, lend, rent or otherwise transfer any pistol to any person who such dealer has reasonable cause to believe has been convicted of a crime of violence or is a drug addict or is an habitual drunkard or is a fugitive from justice or is of unsound mind, nor to any person who has validly been denied the right to purchase, borrow, rent or otherwise acquire a pistol by the town sergeant under the provisions of this article.

Sec. 27-19. Application for acquisition of pistol. Any person desiring to purchase, borrow, rent or otherwise acquire a pistol from a dealer shall make application on forms provided by the town sergeant, [contact local authorities for required contents] * * * Within eight hours after receipt of such application, the dealer who proposes to sell a pistol shall sign and attach his address and mail or deliver one copy of such statement to the town sergeant. A duplicate of the application shall be retained by the dealer for six years.

Sec. 27-20. Waiting period prior to delivery of pistol to purchaser—Required. No dealer shall deliver any pistol to the purchaser thereof until seventy-two hours, excluding Saturdays, Sundays and holidays, shall have elapsed from the time the application has been received by the town sergeant. The town sergeant shall cause a postal card to be mailed to the dealer on the same day the application is received in his office stating the time and date the application was received.

Sec. 27-21. Same—Grounds for prohibiting delivery; notice to dealer of prohibition. If, within the seventy-two hour period, the town sergeant shall inform, in writing, which shall not be privileged, the dealer who proposes to sell the pistol that the applicant to purchase such pistol is [not eligible] * * * it shall be unlawful for the dealer to deliver the pistol to the applicant. A copy of the letter of denial of the town sergeant shall be furnished the applicant by the dealer.

* * * * *

Hopewell

Sec. 41-3. Sale of certain weapons to minors under age of eighteen years. If any person shall sell, barter, give or furnish, or cause to be sold, bartered, given or furnished, to any minor under eighteen years of age, a pistol, * * * having good cause to believe him to be under eighteen years of age, such person shall be guilty of a misdemeanor and shall be fined not less than two dollars nor more than one hundred dollars.

Jarratt

Section 1. (A) * * * it shall be unlawful for any person, firm or organization to purchase a pistol of any calibre or description within the Town of Jarratt, Virginia, unless such person, firm or organization shall have obtained a written permit from the Chief of Police of the Town of Jarratt, Virginia, authorizing such purchase.

(B) * * * it shall be unlawful for any person, firm or organization to sell a pistol of any calibre or description within the Town of Jarratt, Virginia, to any person, firm or organization unless said purchaser exhibits a written permit executed by Chief of Police of the Town of Jarratt, Virginia, authorizing such purchase.

(C) * * * it shall be unlawful for any person, firm or organization to purchase a rifle of any calibre or description within the Town of Jarratt, Virginia, unless such person, firm or organization shall have obtained a written permit from the Chief of Police of the Town of Jarratt, Virginia, authorizing such purchase.

(D) * * * it shall be unlawful for any person, firm or organization to sell a rifle of any calibre or description within the Town of Jarratt, Virginia, to any person, firm or organization unless such purchaser exhibits a written permit executed by Chief of Police of the Town of Jarratt, Virginia, authorizing such purchase.

Section II. (A) * * * it shall be unlawful for any person, firm or organization to offer for sale any pistol of any calibre or description within the Town of Jarratt, Virginia, unless such person, firm or organization shall have obtained a written permit from the Chief of Police of the Town of Jarratt, Virginia, authorizing such person, firm or organization to sell such pistol.

(B) * * * it shall be unlawful for any person, firm or organization to offer for sale any rifle of any calibre or description within the Town of Jarratt, Virginia, unless such person, firm or organization shall have obtained a written permit from the Chief of Police of the Town of Jarratt, Virginia, authorizing such person, firm or organization to sell such rifle.

Kilmarnock

Chapter 26—Weapons

Sec. 26-5. Furnishing pistols, dirks, etc., to minors under eighteen years of age. It shall be unlawful for any person to sell, barter, give or furnish or cause to be sold, bartered, given or furnished, to any minor under eighteen years of age a pistol * * * having good cause to believe him to be a minor under eighteen years of age, such person shall be guilty of a misdemeanor * * *.

Leesburg

24-7. Selling pistols, etc., to minors under eighteen years of age. If any person shall sell, barter, give or furnish, or cause to be sold, bartered, given or furnished to any minor under eighteen years of age a pistol, * * * having good cause to believe him to be a minor under eighteen years of age, such person shall be guilty of a misdemeanor * * *.

Lexington

Sec. 27-5. Sale, etc., of guns * * * to minors under age of eighteen years. If any person sells, barters, gives or furnishes, or causes to be sold, bartered, given or furnished to any minor under eighteen years of age a gun, rifle, * * * pistol, cartridge, * * * having good cause to believe him to be a minor under eighteen years of age, such person shall be guilty of a misdemeanor.

Luray

28-5. Furnishing pistols, * * * to minors under eighteen years of age. If any person sell, barter, give or furnish or cause to be sold, bartered, given or furnished, to any minor under eighteen years of age, a pistol * * * having good cause to believe him to be a minor under eighteen years of age, such person shall be guilty of a misdemeanor * * *.

Lynchburg

23-2. Selling, etc., dangerous weapons to minors. If any person shall sell, barter, give or furnish, or cause to be sold, bartered, given or furnished, to any minor under eighteen years of age, any firearms, cartridges, * * * having good cause to believe such minor to be under eighteen years of age, such person shall, upon conviction, be fined not less than ten dollars, nor more than one hundred dollars.

The term "firearms", as used in this section, shall be construed to include any gun, rifle or pistol adapted to use in any form powder and shot, or balls or pellets, or cartridges, whether

such firearms be called "toy pistols," "toy guns," or otherwise.

Manassas Park

20-4. Possession of pistols, etc., of home-made construction. It shall be unlawful for any person within the town to have in his possession, make or manufacture and sell or trade any pistol, gun or rifle of home-made construction; provided, that this shall in no way apply to pistols, guns and rifles or other like firearms that are manufactured by reputable persons that are engaged in such a manufacturing business.

Middletown

Sec. 16-5. No person shall sell, barter, give or furnish or cause to be sold, bartered, given or furnished, to any minor under eighteen years of age a pistol, * * * having good cause to believe him to be a minor under eighteen years of age.

Narrows

45. * * * it shall be unlawful for any child under 18 years of age to have in possession within the town of Narrows, any * * * small caliber firearm, and that it shall be unlawful for the parent of any child under the age of 18 years to permit such child to possess any such * * * small caliber firearm.

Newport News

Sec. 42-1. Sale of firearms and revolvers. It shall be unlawful for any person to sell to any individual under eighteen years of age any firearm of any type or any deadly weapon of whatever nature, or the ammunition thereof.

It shall be unlawful for any person to sell to any individual under twenty-one years of age any firearm being a revolver, pistol or hand-gun, or firearm of similar nature, or the ammunition thereof.

For the purpose of this section, the word "firearm" shall be taken to mean any instrument used in the propulsion of shot, shell, bullet or pellet by the action of gunpowder exploded within it.

Sec. 42-22. Statement of purchases, etc.—Generally. It shall be unlawful for any dealer to sell or otherwise transfer any pistol without first having obtained a signed statement from the purchaser of such pistol or from the transferee thereof [contact local authorities for required statement] * * *.

Norfolk

Sec. 51-5. Furnishing certain weapons to minors. If any person sell, barter, give or furnish, or cause to be sold, bartered, given or furnished to any minor a pistol, * * * having good cause to believe him to be a minor, such person shall be guilty of a misdemeanor and be punished by a fine not exceeding one hundred dollars.

Sec. 51-7. Permit for purchase of certain weapons. No person shall sell, lease, rent, give or otherwise furnish within the city any pistol, * * * unless and until a permit, granted by the judge of the corporation court in term time, shall be presented authorizing the holder of such permit to acquire such weapon, which permit shall surrender to the person furnishing such weapon, * * *

Petersburg

Article II. Purchase, Sale, etc.

Sec. 48-8. Permits to buy, etc., pistol, dirk, etc. No person within the city shall purchase or otherwise procure, as his own property, or for temporary use, any pistol * * * unless and until such person shall procure from the chief of police of the city a permit in writing, signed by the chief of police, granting such person permission to make such purchase or to procure such weapon; and such permit shall be delivered to and kept on file by the person from whom such purchase is made or from whom such weapon is procured, and shall be open to inspection by any police officer of the city. No person shall sell, give, or deliver to any person within the city any pistol, * * * unless the person to whom such weapon is sold, given or delivered shall thereupon deliver to the person who shall sell, give or deliver such weapon, a permit such as is referred to above. Nothing in this section shall apply to the sale, gift or delivery, or to the purchase or procurement of low powered rifles or rifle ammunition therefor of twenty-two calibre and under, commonly used for target practice purposes.

Sec. 48-11. Sale of certain weapons to minors under age of eighteen years. If any person shall sell, barter, give or furnish, or cause to be sold, bartered, given or furnished, to any minor under eighteen years of age, a pistol, * * * having good cause to believe him to be under eighteen years of age, such person shall be guilty of a misdemeanor and shall be fined not less than two dollars nor more than one hundred dollars.

Poquoson

Sec. 31-5. Possession of pistols, etc., of home-made construction. It shall be unlawful for any person within the town to have in his possession, make or manufacture and sell or trade any pistol, gun or rifle of home-made construction; provided, however, that this shall in no way apply to pistols, guns and rifles or other like firearms that are manufactured by reputable persons that are engaged in such a manufacturing business.

Sec. 31-7. Sale of certain weapons to minors under age of eighteen years. If any person shall sell, barter, give or furnish, or cause to be sold, bartered, given or furnished, to any minor under eighteen years of age, a pistol, * * * having good cause to believe him to be under eighteen years of age, such person shall be guilty of a misdemeanor * * *.

Portsmouth

Section 21-35. Selling or giving toy firearms. No person shall sell, barter, exchange, furnish, or dispose of by purchase, gift or in any other manner any toy gun, pistol, rifle or other toy firearm, if the same shall, by means of powder or other explosive, discharge blank or ball charges. Any person violating the provisions of this section shall be guilty of a class 4 misdemeanor. Each sale of any of the articles hereinbefore specified to any person shall constitute a separate offense.

Section 21-39. Furnishing certain weapons to minors. If any person sell, barter, give or furnish, or cause to be sold, bartered, given or furnished to any minor a pistol, * * * having good cause to believe him to be a minor, such person shall be guilty of a class 4 misdemeanor.

Section 21-42. Permit required to obtain weapon from dealer. Before any person purchases or otherwise acquires from a dealer any pistol, * * * or any weapon of a like kind, he shall obtain a permit therefor from the chief of police.

Pound

Chapter 10

* * * * *

Section 56. Furnishing certain weapons to minors. If any person sell, barter, give or furnish, or cause to be sold, bartered, given or furnished to any minor a pistol, * * * having

good cause to believe him to be a minor, such person shall be guilty of a class 4 misdemeanor.

* * * * *

Prince Edward County

(1) No person within the County of Prince Edward shall purchase or otherwise procure as his own property, or for temporary use, any pistol, * * * or any weapon of like kind, unless and until, such person shall procure from the Sheriff of Prince Edward County a permit, in writing, signed by the Sheriff, granting such person permission to make such purchase or procure such weapon, and such permit shall be delivered to and kept on file by the person from whom such purchase is made and from whom such weapon is procured and shall be open to inspection to any police officer. No person shall sell, give or deliver to any person within the County of Prince Edward any pistol, * * * or any other weapon of like kind, unless the person to whom such weapon is sold, given or delivered shall thereupon deliver to the person whom shall sell, give or deliver such weapon a permit as is referred to above.

* * * * *

Radford

Sec. 14-30. (Weapons)—Sale of certain weapons to minors. If any person shall sell, barter, give or furnish, or cause to be sold, bartered, given or furnished, to any minor a pistol, * * * having good cause to believe him to be a minor, such person shall be guilty of a misdemeanor and shall be fined not more than one hundred dollars.

Richmond

Sec. 22-38 Weapons—Definitions. When used in sections 22-38 to 22-48 the following words shall have the meanings ascribed to them as follows:

Ammunition. An explosive cap, cartridge, pellet, ball, missile or projectile adapted for use in a firearm, toy pistol or toy rifle.

Firearm. A weapon in which ammunition may be used or discharged by explosion, pneumatic pressure or mechanical contrivance, but shall not mean a toy pistol or toy rifle.

Minor. A person under the age of twenty-one years. A person of the age of eighteen years or older may purchase weapons and ammunition other than hand guns or hand gun ammunition.

Sec. 22-41. Same—Sale or exchange. No person shall sell or exchange within the city limits any pistol, * * * or pistol or rifle ammunition, unless and until he shall first have obtained a permit to be granted by the director of public safety to sell or exchange such weapon. Such permit shall be exhibited to the person to whom such weapon is sold or exchanged * * *

Sec. 22-42. Same—Purchase. No person shall purchase, or otherwise procure as his own property or for temporary use any pistol, * * * or pistol or rifle ammunition, unless and until he shall procure a permit from the director of public safety granting permission to make such purchase or to procure the same for use as aforesaid, which permit shall be filed with the person from whom such purchase or exchange is made; provided, that in this section [nothing] shall apply to the sale or exchange of low-power rifles or rifle ammunition known or designated as 22-calibre, commonly used for target practice purposes.

Sec. 22-48. Same—Same—Sale, etc., of ammunition, firearms to. If any person sell, barter, give or furnish, or cause to be sold, bartered, given or furnished to any minor a pistol, * * * having good cause to believe him to be a minor, such person shall be guilty of a Class 4 misdemeanor.

* * * * *

Sec. 29-126. Permits from director of public safety required for certain licenses. (a) Every person desiring * * * to sell or offer to sell at retail pistols or revolvers or to buy at retail or otherwise acquire a pistol or revolver under the provisions of section 29-236 of this Code, * * * shall first apply to the director of public safety for a permit (contact local authorities for requirements).

Rocky Mount

Sec. 12-86. Furnishing pistols, * * * to minors under eighteen years of age. No person shall sell, barter, give or furnish or cause to be sold, bartered, given or furnished, to any minor under eighteen years of age, a pistol, * * * having good cause to believe him to be a minor under eighteen years of age.

* * * * *

Round Hill

Sec. 24-7. Selling pistols, etc., to minors under eighteen years of age. If any person shall sell, barter, give or furnish, or cause to be sold, bartered, given or furnished to any minor under eighteen years of age a pistol * * * having good cause to believe him to be a minor under eighteen years of age, such person shall be guilty of a misdemeanor * * *.

Salem

Sec. 31-8. Selling, etc., pistols, etc., to minors under eighteen years of age. No person shall sell, barter, give or furnish, or cause to be sold, bartered, given or furnished to any minor under eighteen years of age, a pistol, * * * having good cause to believe him to be a minor under eighteen years of age.

* * * * *

Smithfield

Sec. 12-14. Any person in the town who offers for sale any pistol or revolver, when requested by a prospective purchaser to sell him such a firearm, shall first send the purchaser to the chief of police * * *.

The chief of police shall fill out a report either authorizing or declining to authorize the purchase of the weapon and the purchaser shall return to the seller with this police report. Should the report authorize the sale, the seller may proceed to sell the weapon requested, but if the report does not authorize the sale, the seller shall not complete the sale.

Southampton County

18-1. Pistol permit. No person shall purchase a pistol within the county without obtaining a permit from the sheriff to do so. Such pistol shall only be for the use of the purchaser [contact local authorities for additional requirements] * * *

18-6. Selling pistols, etc., to minors under eighteen years of age. No person shall sell, barter, give or furnish, or cause to be sold, bartered, given or furnished to any minor under eighteen years of age a pistol, * * * having good cause to believe him to be a minor under eighteen years of age.

Stanley

31. Prohibiting sales to minors. It shall be unlawful for any person to sell, barter, give or furnish, to any minor under eighteen years of age, any pistol * * * tear gas pen or gun, or any weapon of like kind having good cause to believe him or her under eighteen years of age.

Staunton

20-2. Selling, etc., to minor under eighteen. If any person sell, barter, give or furnish, or cause to be sold, bartered, given or furnished to any minor under eighteen years of age a pistol, * * * having good cause to believe him to be a minor under eighteen years of age, he shall be guilty of a misdemeanor

and be fined not less than twenty-five dollars nor more than one hundred dollars.

Strasburg

32-5. **Furnishing pistols, * * * to minors under eighteen years of age.** No person shall sell, barter, give or furnish or cause to be sold, bartered, given or furnished, to any minor under eighteen years of age a pistol, * * * having good cause to believe him to be a minor under eighteen years of age. Any person violating the foregoing provisions of this section shall be fined not less than two dollars and fifty cents nor more than one hundred dollars.

Suffolk

Section 1: Offense. No person shall sell, lease, rent, give, or otherwise furnish within the City of Suffolk any pistol, revolver, or similar type of handgun unless and until the person who is to acquire such shall present to the proposed seller, lessor or giver a permit issued by the Chief of Police of the City * * * authorizing the holder of such permit to acquire such weapon, * * *

Section 2: Persons to whom such permits shall not be issued. No permit required by Section 1 herein shall be issued to any person under the age of eighteen (18) years, to any convicted felon, to any person who at the time of application is charged with a crime involving violence, to any person acquitted of a felony on the basis of insanity, or to any patient of a mental institution, or to any person on furlough therefrom.

Virginia Beach

Chapter 38

* * * * * *

Sec. 38-5. Permit prerequisite to purchase of certain weapons. No person shall sell, lease, rent, give or otherwise furnish to any person within the city any pistol, * * * or any weapon of like kind, unless a permit granted by the chief of police or such other officer of the police department as may be designated in writing by the chief thereof, shall be presented authorizing the holder of such permit to acquire such weapon, which permit shall be surrendered to the person furnishing such weapon, who shall preserve it for inspection, upon request, by the police of the city. Each person filing for a permit shall pay to the city treasurer an application fee of three dollars.

Section 38-6 Possession and discharge of firearms, etc, by minors. It shall be unlawful for any person under the age of fifteen to have in his possession or use any firearm, shotgun, * * * provided, that such minor may possess and use the above mentioned weapons subject, however, to the provisions of Section 38-2 and only under the immediate supervision of an adult. * * *

Warrenton

Sec. 24-6. Selling pistols, etc., to minors under eighteen years of age. If any person shall sell, barter, give or furnish, or cause to be sold, bartered, given or furnished to any minor under eighteen years of age a pistol * * * having good cause to believe him to be a minor under eighteen years of age, such person shall be guilty of a misdemeanor and fined not less than two dollars and fifty cents nor more than one hundred dollars.

Waverly

* * * no person shall be permitted to sell pistols or revolvers within the corporate limits of the Town of Waverly, Virginia, without registration of the sale thereof, together with the name of the seller, name and address of the purchaser, age of purchaser, date of sale, and serial number of the firearm; that the sale of firearms to any person under the age of eighteen years shall be prohibited.

Waynesboro

Sec. 16-14. No person shall sell, barter, give or furnish or cause to be sold, bartered, given or furnished to any minor under eighteen years of age, firearms * * *

Wise

Section 56. Furnishing certain weapons to minors. If any person sell, barter, give or furnish, or cause to be sold, bartered, given or furnished to any minor a pistol, * * * having good cause to believe him to be a minor, such person shall be guilty of a class 4 misdemeanor.

Woodstock

Sec. 11-51. Pistol dealers. Every person selling pistols in the town, in addition to any other tax provided, shall pay for the privilege a license tax of ten dollars per annum, which license tax shall not be prorated.

Sec. 28-6. Furnishing pistols, * * * to minors under eighteen years of age. It shall be unlawful for any person to sell, barter, give or furnish or cause to be sold, bartered, given or furnished, to any minor under eighteen years of age a pistol, * * * having good cause to believe him to be a minor under eighteen years of age.

Wytheville

9-I. Furnishing certain weapons to certain minors. No person shall sell, barter, give or furnish, or cause to be sold, bartered, given or furnished to any minor under eighteen years of age a pistol, * * * having good cause to believe him to be a minor under eighteen years of age * * *.

Virgin Islands

V.I. Code

Title 23

Sec. 451. Definitions. As used in this chapter, unless the context clearly requires otherwise—

(a) "Ammunition" means any bullet, cartridge, projectile, buckshot, or any load placed or which may be placed in a firearm to be discharged.

(b) "Commissioner" means the Commissioner of Public Safety of the Virgin Islands.

(c) "Department" means the Department of Public Safety of the Virgin Islands.

(d) "Firearm" means any device by whatever name known, capable of discharging ammunition by means of gas generated from an explosive composition, including any air, gas or spring gun or any "BB" pistols or "BB" guns that have been adapted or modified to discharge projectiles as a firearm.

(e) "Crime of violence" means any of the following crimes, or an attempt to commit any of the same, namely: Murder in any degree, voluntary manslaughter, rape, arson, mayhem, kidnapping, assault in the first degree, assault with or by means of a deadly or dangerous weapon, assault to do great bodily harm, robbery, burglary, housebreaking, breaking and entering and larceny.

(f) "Dealer in firearms and/or ammunition" means any person engaged in the business of selling firearms and/or ammunition, for a profit or gain.

(g) "Gunsmith" means any person who en-

gages in the business of repairing, altering, cleaning, polishing, engraving, blueing or performing any mechanical operation on any firearm on an individual order basis.

(h) "Machine gun" means any firearm which shoots automatically or semi-automatically more than 12 shots without reloading * * *.

Sec. 452. Applicability of chapter. No person shall have, possess, bear, transport or carry a firearm within the Virgin Islands, or engage in the business of dealer in firearms and/or ammunition or the business of gunsmith, except in compliance with the provisions of this chapter.

Sec. 453. Persons who may lawfully carry firearms. (a) The following persons, in the discharge of their official duties, and in accordance with and subject to the conditions and restrictions imposed by the laws and regulations applicable to their conduct, may lawfully have, possess, bear, transport and carry firearms in the Virgin Islands:

(1) Members of the Armed Forces of the United States or of the organized reserves.

(2) Officers and employees of the United States duly authorized by Federal law to carry firearms.

(3) Persons employed in fulfilling defense contracts with the United States Government or agencies thereof where possession or use of firearms is necessary under the provisions of such contracts.

(4) Members of the police force of the Virgin Islands, marshals, or other duly authorized peace officers.

(5) Penitentiary and jail wardens and guards.

(b) The persons authorized by subsection (a) of this section lawfully to have, possess, bear, transport and carry firearms shall obtain such weapons and ammunition therefor only through the duly authorized officers or heads of their respective services or departments.

Sec. 454. Persons who may be licensed to carry firearms. A firearm may be lawfully had, possessed, borne, transported or carried in the Virgin Islands by the following persons, provided a license for such purpose has been issued by the Commissioner in accordance with the provisions of this chapter:

(1) An officer or employee of the Government of the Virgin Islands in cases where such license, in the judgment of the Commissioner, should be issued to such officer or employee by reason of the duties of his position;

(2) An agent, messenger or other employee of a common carrier, bank or business firm, whose duties require him to protect money, valuables or other property in the discharge of his duties; And provided, That the employer of such person shall have justified to the satisfaction of the Commissioner the need for the issuance of the license;

(3) A person having a bona fide residence or place of business within the Virgin Islands, who established to the satisfaction of the Commissioner that he has good reason to fear death or great injury to his person or property, or who establishes any other proper reason for carrying a firearm, and the circumstances of the case, established by affidavit of the applicant and of at least two credible persons, demonstrate the need for such license;

(4) A person licensed to and actively engaged in the business of manufacturing, repairing or dealing in firearms in the Virgin Islands, or the agents or representatives of any such person, having necessity to handle or use firearms in the usual or ordinary course of business;

(5) With respect to a rifle or a shotgun a person possessing a valid and current Virgin Islands hunting license.

Sec. 461. License to sell firearms and/or ammunition; gunsmiths; report of transactions; private transfer sales to minors or aliens. (a) No person may engage in the business of dealer in firearms and/or ammunition or as a gunsmith without holding a license therefor issued by the Commissioner of Finance upon favorable report of the Commissioner of Public Safety.

* * * * *

(d) No person licensed or otherwise, may sell or furnish firearms or ammunition to a minor, except that a shotgun or rifle of such type or caliber as the Commissioner may prescribe or ammunition therefor, may be sold or furnished by a licensed dealer to a minor who displays a hunting or sporting license issued him in accordance with the laws of the Virgin Islands, and who further displays the written consent of his parent, guardian, or other responsible person acting in their absence and interest, in which such sale or delivery has been authorized.

Sec. 462. Qualifications of dealer or gunsmith. No license to engage in the business of gunsmith or of dealer in firearms and/or ammunition shall be issued to a person not over 21 years of age, and not a resident of the Virgin Islands and a citizen of the United States.

When the applicant is a corporation, it shall be organized under the laws of the Virgin Islands, and if a partnership, all partners shall be residents of the Virgin Islands and citizens of the United States.

Sec. 465. Conditions for dealers' operations * * * Any person, to whom a license has been issued under section 461 of this chapter may engage in the business of gunsmith or of dealer in firearms and/or ammunition under the following conditions.

* * * * *

(3) Under no circumstance shall a weapon or shall ammunition be sold unless the vendor is personally acquainted with the buyer or the latter clearly establishes his identity.

* * * * *

Sec. 466. Sales of weapons and ammunition without licenses prohibited; sales slips. No dealer in firearms or ammunition shall deliver a firearm to a purchaser without the latter's handing over to him a license to have and possess a firearm, duly issued in accordance with the provisions of this chapter, and unless said license contains an authorization for the purchase of such firearm, and said dealer shall not sell to such purchaser any other weapon than the one described in said license. The dealer in firearms and ammunition shall separate from such license and keep the dealer's coupon, and shall return the license to the purchaser. No weapon shall be sold to the holder of a license from which the coupon has been removed, and in no case shall a pistol, revolver, or other firearm be delivered to the purchaser thereof until after forty-eight (48) hours have elapsed from the time he applies for the purchase and the same shall be delivered to him unloaded and securely wrapped.

No dealer in firearms or ammunition shall sell any quantity of ammunition to any person failing to present a firearm license.

Sec. 467. Selling firearms without a license. Whoever, without being licensed in accordance with the provisions of this chapter, sells, has in his possession with the intent to sell, exposes for sale, or advertises for sale, any firearm or ammunition, or without being so licensed engages in the business of a gunsmith, shall be punished [as prescribed by law] * * *.

Sec. 476. Collections of antique firearms; certificates of uselessness. No provision hereof shall prevent that private collections of antique firearms, which may not be used as weapons, be preserved and maintained and that their owners possess them as ornaments or as matters of curiosity, nor the collections of firearms kept as relics, but for the preservation of any weapon of those included in this section the prior inspection thereof and approval therefor by the Commissioner shall be necessary and he shall render such firearms useless, so that the same may not be used as such. The Commissioner shall issue a certificate of uselessness of all the weapons possessed under the provisions of this section, and the possession of any firearm not included in said certificate shall be subject to all the provisions hereof.

Washington

State Law

Wash. Rev. Code Ann.

Title 9

9.40.110 "Fire bombs"—Definitions. For the purposes of RCW 9.40.110 through 9.40.130, as now or hereafter amended, unless the context indicates otherwise:

(1) "Disposes of" means to give, give away, loan, offer, offer for sale, sell, or transfer.

(2) "Incendiary device" means any material, substance, device, or combination thereof which is capable of supplying the initial ignition and/or fuel for a fire and is designed to be used as an instrument of wilful destruction. However, no device commercially manufactured primarily for the purpose of illumination shall be deemed to be an incendiary device for purposes of this section.

9.40.120—Penalty. Every person who possesses, manufactures, or disposes of an incendiary device knowing it to be such is guilty of a felony, and upon conviction, shall be punished by imprisonment in a state prison for a term of not more than twenty-five years.

9.40.130—Exceptions. RCW 9.40.120, as now or hereafter amended, shall not prohibit the authorized use or possession of any material, substance, or device described therein by a member of the armed forces of the United States or by firemen, or peace officers, nor shall these sections prohibit the use or possession of any material, substance, or device described therein when used solely for scientific research or educational purposes or for any lawful purpose. RCW 9.40.120, as now or hereafter amended, shall not prohibit the manufacture or disposal of an incendiary device for the parties or purposes described in this section.

Chapter 9.41—Firearms and Dangerous Weapons

9.41.010 Terms defined.

"Short firearm" or "pistol" as used in RCW 9.41.010 through 9.41.160 means any firearm with a barrel less than twelve inches in length.

"Crime of violence" as used in RCW 9.41.010 through 9.41.160 means any of the following crimes or an attempt to commit any of the same: Murder, manslaughter, rape, riot, mayhem, first degree assault, second degree assault, robbery, burglary and kidnapping.

9.41.040. Certain persons forbidden to possess arms. No person who has been convicted in this state or elsewhere of a crime of violence, shall own a pistol or have one in his possession or under his control. Such person upon being convicted of a violation of this section shall be guilty of a felony and punished by imprisonment in the state penitentiary for not less than one year nor more than ten years.

9.41.080. Delivery to minors and others forbidden. No person shall deliver a pistol to any person under the age of twenty-one or to one who he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, an habitual drunkard, or of unsound mind.

9.41.090. Sales regulated—Application to purchase—Grounds for denial. In addition to the other requirements of RCW sections 9.41.010 through 9.41.150 as now or hereinafter amended, no seller shall deliver a pistol to the purchaser thereof until seventy-two hours shall have elapsed from the time of the application for the purchase thereof as provided herein, and, when delivered, said pistol shall be securely wrapped and shall be unloaded.

At the time of applying for the purchase of a pistol the purchaser shall sign in duplicate and deliver to the seller an application containing his full name, address, occupation, place of birth, and the date and hour of the application; and a description of the weapon including, the make, model, caliber and manufacturer's number; and a statement that he has never been convicted in this state or elsewhere of a crime of violence, drug addiction or habitual drunkenness, or is legally judged to be of unsound mind. The seller shall, by the end of the business day, sign and attach his address and deliver the original of such application to the chief of police of the municipality or the sheriff of the county of which the seller is a resident. The seller shall deliver the pistol to the purchaser following seventy-two hours thereafter unless the seller is notified in writing by the chief of police of the municipality or the sheriff of the county, whichever is applicable, denying the purchaser's application to purchase and the grounds thereof. The application shall not be denied unless the purchaser has been convicted in this state or elsewhere of a crime of violence, drug addiction, or habitual drunkenness, or is legally judged to be of unsound mind. The chief of police of the municipality or the county sheriff shall maintain a file containing the original of the application to purchase a pistol.

9.41.093. Exemptions. The following shall be exempt from the provisions of section 9.41.090 RCW as now or hereinafter amended: sales by wholesalers to dealers; and the sale of antique pistols exempted by the provisions of RCW 9.41.150, as amended.

9.41.110. Dealer's licenses, by whom granted and conditions thereof—Wholesale sales excepted—Permits prohibited. The duly constituted licensing authorities of any city, town, or political subdivision of this state shall grant licenses in forms prescribed by the director of licenses effective for not more than one year from the date of issue permitting the licensee to sell pistols within this state subject to the following conditions, for breach of any of which the license shall be forfeited and the licensee subject to punishment as provided in RCW 9.41.010 through 9.41.160.

(1) The business shall be carried on only in the building designated in the license.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be read.

(3) No pistol shall be sold (a) in violation of any provisions of RCW 9.41.010 through 9.41.160, nor (b) shall a pistol be sold under any circumstances unless the purchaser is personally known to the seller or shall present clear evidence of his identity.

(4) A true record in triplicate shall be made of every pistol sold, in a book kept for the purpose, the form of which may be prescribed by the director of licenses and shall be personally signed by the purchaser and by the person effecting the sale, each in the presence of the other, and shall contain the date of sale, the caliber, make, model and manufacturer's number of the weapon, the name, address, occupation, and place of birth of the purchaser and a statement signed by the purchaser that he has never been convicted in this state or elsewhere of a crime of violence. * * *.

(5) This section shall not apply to sales at wholesale.

(6) The dealer's licenses authorized to be issued by this section are general licenses covering all sales by the licensee within the effective period of the licenses.

(7) Except as provided in RCW 9.41.090 as now or hereinafter amended, every city, town and political subdivision of this state is prohibited from requiring the purchaser to secure a permit to purchase or from requiring the dealer to secure an individual permit for each sale.

The fee paid for issuing said license shall be five dollars which fee shall be paid into the state treasury.

9.41.140. Alteration of identifying marks—Exceptions. No person shall change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark of identification on any pistol. Possession of any pistol upon which any such mark shall have been changed, altered, removed, or obliterated, shall be prima facie evidence that the possessor has changed, altered, removed, or obliterated the same. This shall not apply to replacement barrels in old revolvers, which barrels are produced by eur-

rent manufacturers and therefor do not have the markings on the barrels of the original manufacturers who are no longer in business.

9.41.160. Exemptions. RCW 9.41.010 through 9.41.160 shall not apply to antique pistols and revolvers manufactured prior to 1898 and held as collector's items.

9.41.170. Alien's license to carry firearms. It shall be unlawful for any person who is not a citizen of the United States, or who has not declared his intention to become a citizen of the United States, to carry or have in his possession at any time any shotgun, rifle, or other firearm, without first having obtained a license from the director of motor vehicles, and such license is not to be issued by the director of motor vehicles except upon the certificate of the consul domiciled in the state and representing the country of such alien, that he is a responsible person and upon the payment for the license of the sum of fifteen dollars: PROVIDED, That this section shall not apply to Canadian citizens resident in a province which has an enactment or public policy providing substantially similar privilege to residents of the state of Washington and who are carrying or possessing weapons for the purpose of using them in the hunting of game while such persons are in the act of hunting, or while on a hunting trip, or while such persons are competing in a bona fide trap or skeet shoot or any other organized contest where rifles, pistols, or shotguns are used as to weapons used in such contest. Nothing in this section shall be construed to allow aliens to hunt or fish in this state without first having obtained a regular hunting or fishing license. Any person violating the provisions of this section shall be guilty of a misdemeanor.

9.41.190. Machine guns prohibited. That it shall be unlawful for any person to manufacture, own, buy, sell, loan, furnish, transport, or have in possession, or under control, any machine gun, or any part thereof capable of use or assembling or repairing any machine gun: Provided, however, That such limitation shall not apply to any peace officer in the discharge of official duty, or to any officer or member of the armed forces of the United States or the state of Washington.

9.41.200. Machine gun defined. For the purpose of RCW 9.41.190 through 9.41.220 a machine gun is defined as any firearm or weapon known as a machine gun, mechanical rifle, submachine gun, and/or any other weapon, mechanism, or instrument not requiring that the trigger be pressed for each shot and having a reservoir clip, disc, drum, belt, or other separable mechanical device for storing, carrying, or supplying ammunition which can be loaded into such weapon, mechanism, or instrument, and fired therefrom at the rate of five or more shots per second.

9.41.240. Use of firearms by minor. No minor under the age of fourteen years shall handle or have in his possession or under his control, except while accompanied by or under the immediate charge of his parent or guardian or other adult approved for the purpose of this section by the parent or guardian, or while under the supervision of a certified safety instructor at an established gun range or firearm training class, any firearm of any kind for hunting or target practice or for other purposes. Every person violating any of the foregoing provisions, or aiding or knowingly permitting any such minor to violate the same, shall be guilty of a misdemeanor.

Title 19

19.76.010. Out-of-state purchasing authorized. Residents of Washington may purchase rifles and shotguns in a state other than Washington: Provided, That such residents conform to the applicable provisions of the federal Gun Control Act of 1968, Title IV, Pub. L. 90-351 as administered by the United States Secretary of the Treasury: And provided further, That such residents are eligible to purchase or possess such weapons in Washington and in the state in which such purchase is made.

Title 26

26.28.060. Certain acts prohibited * * *

Every person who: * * *

(5) Shall sell, or give, or permit to be sold or given to any person under the age of eighteen years, any revolver or pistol;

Shall be guilty of a gross misdemeanor.

Aberdeen

4565-4. It shall be unlawful for any person within the City of Aberdeen to sell, give away, loan or cause to be sold, given or loaned, to any minor under the age of 18 years, any gun, revolver, pistol or the cartridges therefor.

4565-8. It shall be unlawful for any person who is not a citizen of the United States or who has not declared his intention to become a citizen of the United States, to carry or have in his possession at any time within the City of Aberdeen any shotgun, rifle or other firearms without first having obtained a license from the Director of Licenses * * *

Arlington

9.28.010 Definitions. (a) "Dangerous weapon" includes but is not limited to mean any weapon or device capable of propelling a missile through the force of compressed air or gas, or through the contraction or expansion of any rubber band or spring, or similar device, and includes compressed air rifles and pistols and slingshots.

(b) "Firearm" includes but is not limited to mean any weapon or device capable of propelling a missile through the force of combustion or explosion of gunpowder or similar substance.

9.28.020 Possession of arms. Every person who has been convicted in this state or elsewhere of a crime of violence, who owns a firearm or has one in his possession under his control, is guilty of a misdemeanor.

9.28.030 Forbidden deliveries. Every person who delivers a pistol to any person under the age of twenty-one years or to one whom he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, an habitual drunkard, or of unsound mind, is guilty of a misdemeanor.

9.28.040 Forbidden transfers. No person other than a duly licensed dealer shall make any loan secured by a mortgage, deposit, or pledge of a pistol. Any licensed dealer receiving a pistol as a deposit or pledge for a loan shall keep such records and make such reports as are provided by law for pawnbrokers and secondhand dealers in cities of the first class. A duly licensed dealer may mortgage any pistol or stock of pistols but shall not deposit or pledge the same with any other person. No person shall lend or give a firearm to another who is known, or with reasonable knowledge believed to have suicidal tendencies, or otherwise deliver a pistol contrary to the provisions of this title. Every person violating this section is guilty of a misdemeanor.

9.28.060 False information forbidden. Every person who, in purchasing or otherwise securing delivery of a pistol, gives false information or offers false evidence of his identity, is guilty of a misdemeanor.

9.28.090 Exceptions. The provisions of this chapter shall not apply to antique pistols and revolvers manufactured prior to 1898 and held as collector's items.

9.28.100 Machine guns and parts contraband. All machine guns, or parts thereof, illegally held or possessed are declared to be contraband, and it shall be the duty of all peace officers, and/or any officer or member of the armed forces of the United States or the state of Washington, to seize said machine gun, or parts thereof, wherever and whenever found.

9.28.110 Dangerous weapons. Every person who * * * uses any contrivance or device for suppressing the noise of any firearm, is guilty of a misdemeanor.

* * * * *

9.28.140 Use of firearms by minor. No minor under the age of fourteen years shall handle or have in his possession or under his control, except while accompanied by or under the immediate charge of his parent or guardian, any firearm of any kind for hunting or target practice or for other purposes. Ev-

ery person violating any of the foregoing provisions, or aiding or knowingly permitting any such minor to violate the same, is guilty of a misdemeanor.

Auburn

7.04.360 Short firearm * * * defined. "Short firearm" as used in Sections 7.04.370 through 7.04.530 means any firearm with a barrel less than twelve inches in length. * * *.

7.04.371 Definitions. The following words and phrases shall have the following meanings:

(1) "Pistol" means any firearm or other weapon for the purpose of discharging a projectile by means of compressed air, chemical combustion or otherwise and having a barrel less than twelve inches in length, but shall not include antique pistols or revolvers manufactured prior to 1898 and so held as collector's items.

(2) "Crime of violence" means any of the following crimes or an attempt to commit any of the same: murder, manslaughter, rape, mayhem, first degree assault, robbery, burglary and kidnapping.

(3) "Fugitive from justice" means a person who, having committed a crime, flees from the jurisdiction where it was committed to evade arrest.

(4) "Law enforcement officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses.

7.04.372 Pistol sale—Record sent to police chief. It is unlawful for any merchant, business, or secondhand dealer, or any clerk, agent, representative or employee of any such merchant, business or secondhand dealer, to sell, give away, or dispose of any pistol to any person at retail, unless such person is personally known to the seller or shall present clear evidence of his identity, or without completing a true record, in triplicate, of every pistol sold or disposed of. The written record shall be personally signed by the purchaser and by the person effecting the sale, each in the presence of the other [contact local authorities for required contents] * * * One copy of the record shall within six hours after the signing be sent by registered mail to the chief of police, or in the alternative, may be personally delivered to the office of the chief of police within such period of time, and the chief of police, shall, within seventy-two hours, exclusive of Sundays and legal holidays, investigate the information contained in the record, and shall notify the merchant within such time period if the prospective purchaser is a person prohibited to purchase a pistol by the terms of this chapter.

7.04.373 Pistol sale—Waiting period required. It is unlawful for any merchant, business, or secondhand dealer, or any clerk, agent, representative or employee of any merchant, business or secondhand dealer, to deliver any pistol to any purchaser unless the merchant, business or secondhand dealer has mailed or personally delivered a copy of the record to the chief of police as required by Section 7.04.372 and the seventy-two hour waiting period after delivery of the notice as provided in Section 7.04.372 has expired without the receipt of a notice from the chief of police that the prospective purchaser is a person prohibited to purchase a pistol by the terms of this chapter, provided that this section shall not apply to sales at wholesale, and further shall not apply to the sale of antique pistols exempt by the provisions of RCW 9.41.150, as amended, and provided further that when delivered said pistol shall be securely wrapped and shall be unloaded.

7.04.374 Pistol purchase forbidden to convicted persons. It is unlawful for any person who is a fugitive from justice or who has been convicted in this state or elsewhere of a crime of violence, or of drug addiction or of habitual drunkenness or has been confined to a mental institution to purchase a pistol, in the city, and it is further unlawful for any such person to fail to disclose such information when applying for the purchase of a pistol.

7.04.380 Certain persons forbidden to possess arms. No person who has been convicted in this state or elsewhere of a crime of violence, shall own a pistol or have one in his possession or under his control.

7.04.420 Delivery to minors and others forbidden. No person shall deliver a pistol to any person under the age of twenty-one years or to one whom he has reasonable cause to believe has been convicted of a crime of violence or is a drug addict, a habitual drunkard or of unsound mind.

7.04.430 Dealers to be licensed. No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell, or otherwise transfer, any pistol without being licensed as hereinafter provided.

7.04.450 Certain transfers forbidden. No person other than a duly licensed dealer shall make any loan secured by a mortgage, deposit or pledge of a pistol. Any licensed dealer receiving a pistol as a deposit or pledge for a loan shall keep such records and make such reports as are provided by law for pawnbrokers and secondhand dealers in cities of the first class. A duly licensed dealer may mortgage any pistol or stock of pistols but shall not deposit or pledge the same with any other person.

7.04.490 Machine guns prohibited. It shall be unlawful for any person to manufacture, own, buy, sell, loan, furnish, transport or have in possession or under control, any machine gun or any part thereof capable of use or assembling or repairing any machine gun; provided, however, that such limitation shall not apply to any police officer in the discharge of official duty, or to any officer or member of the armed forces of the United States or the State of Washington.

7.04.500 Machine gun defined. For the purpose of this chapter a machine gun is defined as any firearm or weapon known as a machine gun, mechanical rifle, submachine gun, and/or any other weapon, mechanism, or instrument not requiring that the trigger be pressed for each shot and having a reservoir clip, disc, drum, belt or other separable mechanical device for storing, carrying or supplying ammunition which can be loaded into such weapon, mechanism or instrument, and fired therefrom at the rate of five or more shots per second.

7.04.510 Machine guns or parts contraband. All machine guns, or parts thereof, illegally held or possessed are hereby declared to be contraband and it shall be the duty of all police officers to seize said machine gun or parts thereof, wherever and whenever found.

Bellevue

Firearms and Weapons

10.20.010. Definitions. "Short firearm" or "pistol" as used in this chapter means any firearm with a barrel less than 12 inches in length. "Crime of violence" as used in this chapter means any of the following crimes or an attempt to commit any of the same: murder, manslaughter, rape, riot, mayhem, first-degree assault, second-degree assault, robbery, burglary, and kidnaping.

* * * * *

10.20.030. Certain persons forbidden to possess arms. No person who has been convicted in this state or elsewhere of a crime of violence or of drug addiction or of habitual drunkenness or who has been confined in a mental institution shall own a pistol or have one in his possession or under his control.

* * * * *

10.20.070. Delivery to minors and certain others forbidden. No person shall deliver a pistol to any person under the age of 21 or to one whom he has reasonable cause to believe has been convicted of a crime of violence or of drug addiction or of habitual drunkenness or has been confined to a mental institution.

10.20.080. Pistol Sales Regulated A. No pistol shall be sold:

1. In violation of any provision of RCW 9.41.010 through 9.41.160; nor

2. Shall a pistol be sold under any circumstances unless the purchaser is personally known to the sellers or shall present clear evidence of his identity.

B. No seller shall deliver a pistol to the purchaser thereof until seventy-two hours

shall have elapsed from the time of the application for the purchase thereof as provided herein, and when delivered, the pistol shall be securely wrapped and unloaded.

C. At the time of applying for the purchase of a pistol the purchaser shall sign in duplicate and deliver to the seller an application * * * and a statement * * * [contact local authorities for required contents]. The seller shall, by the end of the business day, sign and attach his address and deliver the original of such application to the chief of police * * *.

10.20.090. Pistol dealers to be licensed. No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell, or otherwise transfer any pistol without being licensed as provided by law under the requirements of RCW 9.41.110.

* * * * *

10.20.120. False information in obtaining pistol. No person shall in purchasing or otherwise securing delivery of a pistol or in applying for a license to carry the same give false information or offer false evidence of his identity.

* * * * * *

10.20.140. Machine guns prohibited. It is unlawful for any person to manufacture, own, buy, sell, loan, furnish, transport, or to have in possession, or under control, any machine gun, or any part thereof capable of use or assembling or repairing any machine gun; provided, however, that such limitation shall not apply to any police officer in the discharge of official duty, or to any officer or member of the armed forces of the United States or the State of Washington.

10.20.150. Machine gun defined. For the purpose of this chapter a machine gun means any firearm or weapon known as a machine gun, mechanical rifle, submachine gun, and/or any other weapon, mechanism or instrument not requiring that the trigger be pressed for each shot and having a reservoir clip, disc, drum, belt or other separable mechanical device for storing, carrying or supplying ammunition which can be loaded into such weapon, mechanism or instrument and fired therefrom at a rate of five or more shots per second.

10.20.160. Machine guns or parts contraband. All machine guns, or parts thereof, illegally held or possessed are hereby declared to be contraband, and it shall be the duty of all police officers to seize said machine gun, or parts thereof, wherever and whenever found.

10.20.270 Application. It shall be unlawful for any merchant or secondhand dealer, or any clerk, agent or employee of any merchant or secondhand dealer, to sell, give away or dispose of any pistol to any person at retail, unless such person is personally known to the seller or presents clear evidence of his identity, nor without completing a true record in triplicate of every pistol sold or disposed of. Such record shall be personally signed by the purchaser and by the person effecting the sale, each in the presence of the other and shall contain * * * a statement signed by the purchaser [contact local authorities for required contents] * * *. One copy shall within six hours be sent by registered mail to the chief of police of the city who shall, within, seventy-two hours, exclusive of Sundays and holidays, investigate the information contained in the record and report his findings to the merchant or secondhand dealer.

10.20.280 Delivery. It is unlawful for any merchant or secondhand dealer or any clerk, agent or employee of any merchant or secondhand dealer to deliver any pistol to any purchaser until said merchant or secondhand dealer has received a report from the chief of police that the purchaser is not a fugitive from justice and that the purchaser has never been convicted in this state or elsewhere of a crime of violence, or of drug addiction or of habitual drunkenness and has never been confined to a mental institution; provided, that if such merchant or secondhand dealer does not receive such report from the chief of police within seventy-two hours, exclusive of Sundays and holidays, after he has mailed a copy of the record to the chief of police as required by Section 10.20.270, then such merchant or secondhand dealer may deliver the pistol to the purchaser; provided further, that this section shall not apply to sales at wholesale, or to sales to persons exhibiting a valid license to carry a pistol concealed issued pursuant to RCW 9.41.070, or to sales to law enforcement officers.

10.20.290 Prohibited transactions. It is unlawful for any person who is a fugitive from justice or who has been convicted in this state or elsewhere of a crime of violence, or of drug addtion or of habitual drunkenness or has been confined to a mental institution, to purchase a pistol in this city, and it is further unlawful for any person to fail to disclose such information when applying for the purchase of a pistol.

Bellingham

17.23.040. Sale to minor prohibited. The sale, giving away or other disposition of any revolver or pistol or any ammunition for same to persons under the age of 18 years in the City of Bellingham, be, and hereby is, prohibited.

Blaine

6-2647: "Short Firearms"; "Crime of Violence" Defined: "Short Firearm" as used in this Chapter means any firearm with a barrel less than twelve inches (12") in length.

"Crime of Violence" as used in this Chapter means any of the following crimes or an attempt to commit any of the same: Murder, manslaughter, rape, mayhem, first degree assault, robbery, burglary and kidnapping.

6-2650: Certain persons forbidden to possess arms: No person who has been convicted in this State or elsewhere of a crime of violence, shall own a pistol or have one in his possession under his control.

6-2654: Delivery to minors and others forbidden: No person shall deliver a pistol to any person under the age of twenty one (21) or to one whom he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, a habitual drunkard, or of unsound mind.

6-2655: Sales regulated: No seller shall deliver a pistol to the purchaser thereof until forty eight (48) hours shall have elapsed from the time of the application for the purchase thereof, and when delivered, said pistol shall be securely wrapped and shall be unloaded. At the time of applying for the purchase of a pistol, the purchaser shall sign in triplicate and deliver to the seller a statement containing his full name, address, occupation, birthplace, the date and hour of application, the calibre, make, model and manufacturer's number of the pistol to be purchased and statement that he has never been convicted in this State or elsewhere of a crime of violence. * * *

6-2656: Dealers to be licensed: No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell, or otherwise transfer any pistol without being licensed as provided by law under the requirements of Revised Code of Washington, Section 9.41.110.

6-2657: Certain transfers forbidden: No person other than a duly licensed dealer shall make any loan secured by a mortgage, deposit or pledge for a loan; shall keep such records and make such reports as are provided by law for pawnbrokers and secondhand dealers in cities of the first class. A duly licensed dealer may mortgage any pistol or stock of pistols but shall not deposit or pledge the same with any other person. No person shall lend or give a pistol to another or otherwise deliver a pistol contrary to the provisions of this Chapter.

6-2661: Machine guns; Prohibition: It shall be unlawful for any person to manufacture, own, buy, sell, loan, furnish, transport, or to have in possession, or under control, any machine gun, or any part thereof capable of use; or assembling or repairing any machine gun; provided, however, that such limitation shall not apply to any police officer in the discharge of official duty, or to any officer or member of the Armed Forces of the United States or the State of Washington.

6-2662: Machine gun defined: For the purpose of this Chapter a machine gun is de-

fined as any firearm or weapon known as a machine gun, mechanical rifle, submachine gun, and/or any other weapon, mechanism, or instrument not requiring that the trigger be pressed for each shot and having a reservoir clip, disc, drum, belt, or other separable mechanical device for storing, carrying, or supplying ammunition which can be loaded into such weapon, mechanism, or instrument, and fired therefrom at a rate of five (5) or more shots per second.

Bonney Lake

5.07.010 Certain persons forbidden to possess arms. No person who has been convicted in this state or elsewhere of a crime of violence, shall own a firearm or have one in his possession under his control.

5.07.014 Delivery to minors and others forbidden. No person shall deliver a pistol to any person under the age of 21 or to one whom he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, an habitual drunkard, or of unsound mind.

5.07.015 Sales regulated. No seller shall deliver a pistol to the purchaser thereof unless said pistol shall be securely wrapped and shall be unloaded. At the time of applying for the purchase of a pistol the purchaser shall sign in triplicate and deliver to the seller a statement [contact local authorities for required contents] * * *

5.07.016 Dealers to be licensed. No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell, or otherwise transfer any pistol without being licensed as provided by law under the requirements of Revised Code of Washington Section 9.41.110, as the same now is or hereafter may be amended.

5.07.017 Certain transfers forbidden. A duly licensed dealer may mortgage any pistol or stock of pistols but shall not deposit or pledge the same with any other person. No person shall lend or give a firearm to another known, or with reasonable knowledge believed, to have suicidal tendencies or otherwise deliver a pistol contrary to the provisions of this Ordinance.

Bothell

10.1. Firearm defined. The word firearm shall include but not be limited to mean any weapon or device capable of propelling a missile through the force of compressed air or gas, or spring, or similar device.

10.2. Dangerous weapon defined. The word dangerous weapon shall include but not be limited to mean any weapon or device capable of propelling a missile through the force of compressed air or gas, or through the contraction or expansion of any rubber band or spring, or similar device, and shall include compressed air rifles and pistols and slingshots.

10.3. Pistol defined. The word pistol as used in this ordinance means any firearm with a barrel less than twelve (12) inches in length.

10.4. Certain persons forbidden to possess firearms. No person who has been convicted in this state of elsewhere of a crime of violence, shall own a firearm or have one in his possession or under his control.

10.7. Delivery to minors and certain others forbidden. No person shall deliver a pistol to any person under the age of 21 or to one whom he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, an habitual drunkard, or of unsound mind.

10.9. Sale of cartridge, ammunition or gunpowder forbidden to certain minors. No person shall give, sell, or otherwise make available to any minor under the age of 16 years any cartridge or ammunition for firearms or the ingredients thereof: Provided that this section shall not apply to a parent or guardian who provides such minor with ammunition for a use which is lawful.

10.12. Sales regulated. No seller shall deliver a pistol to the purchaser thereof unless said pistol shall be securely wrapped and shall be unloaded. At the time of applying for the purchase of a pistol the purchaser shall sign in triplicate and deliver to the seller a statement [contact local authorities for required contents] * * * The seller, within 6 hours after such application is made, shall sign and attach his address and forward by registered mail or deliver by hand one copy of such statement to the Chief of Police; and the duplicate duly signed by the seller shall within 7 days be sent by him with his address to the Director of Licenses; the triplicate he shall retain for six years. This section shall not apply to sales at wholesale.

10.13. Dealers to be licensed. No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell or otherwise transfer any pistol without being licensed as provided by law under the requirements of Revised Code of Washington Section 9.41.110, as the same now is or hereafter may be amended.

10.14. Certain transfers forbidden. No person other than a duly licensed dealer shall make any loan secured by mortgage, deposit, or pledge of a firearm for a loan. A duly licensed dealer may mortgage any pistol or stock of pistols but shall not deposit or pledge the same with any other person. No person shall lend or give a firearm to another known, or with reasonable knowledge believed, to have suicidal tendencies, or otherwise deliver a pistol contrary to the provision of this ordinance.

* * * * *

10.16. False information forbidden. No person shall in purchasing or otherwise securing delivery of a pistol or in applying for a license to carry the same, give false information or offer false evidence of his identity or address.

10.17. Exceptions. This ordinance shall not apply to antique firearms unsuitable for use as firearms and possessed as curiosities or ornaments.

10.18. Machine guns or parts contraband. All machine guns, or parts thereof, illegally held or possessed are hereby declared to be contraband, and it shall be the duty of a police officer to seize said machine gun, or parts thereof.

10.19 Dangerous Weapons. Every person * * * who shall possess or use any contrivance or device for supressing the noise of any firearm, shall be guilty of a misdemeanor. * * *

Bremerton

9.45.010 Record of Revolver Sales—Report. It is unlawful for any merchant or secondhand dealer, or any clerk, agent or employee of any merchant or secondhand dealer, to sell, give away or dispose any revolver or pistol to any person at retail, without entering in a book to be kept for that purpose, in the English language, written in ink, at the time of such sale or disposition [the contents required by local authorities] * * * and requiring the person to whom such revolver or pistol is sold, given away or disposed of to sign his name, in ink, in such a book opposite the record of such transaction, or to fail, neglect or refuse to allow the chief of police, or any police officer to inspect said book at any reasonable time or to fail, neglect or refuse to send to the city clerk before the hour of nine a.m. of any day, a complete transcript of the entries of said book for the previous day.

Brier

The city of Brier has adopted the language of the State firearms laws, including sections 9.40.110 through 9.41.240 shown at the beginning of the Washington State listing in this publication.

Buckley

10.40.040 Certain persons forbidden to possess arms: No person who has been convicted in this state or elsewhere of a crime of

violence shall own a pistol or have one in his possession or under his control.

10.40.080 Delivery restricted: No person shall deliver a pistol to any person under the age of twenty-one or to one whom he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, an habitual drunkard, or of unsound mind.

10.40.090 Selling. In addition to the other requirements or RCW sections 9.41.010 through 9.41.150, no seller shall deliver a pistol to the purchaser thereof until seventy-two hours shall have elapsed from the time of the application for the purchase thereof * * * and, when delivered, said pistol shall be securely wrapped and shall be unloaded.

* * * * *

10.40.100 Pistol dealers to be licensed: No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell, or otherwise transfer any pistol without being licensed as provided by law under the requirements of RCW 9.41.110 and 18 U.S.C. Sec. 923.

10.40.110 Dealer loans—transfer of pistols: No person other than a duly licensed dealer shall make any loan secured by a mortgage, deposit or pledge for a loan shall keep such records and make such reports as are provided by law for pawnbrokers and secondhand dealers in cities of the first class (RCW Chapter 19.60). A duly licensed dealer may mortgage any pistol or stock of pistols but shall not deposit or pledge the same with any other person. No person shall lend or give a pistol to another or otherwise deliver a pistol contrary to the provisions of this chapter.

10.40.140 Antique pistols excepted: This chapter shall not apply to antique pistols unsuitable for use as firearms and possessed as curiosities or ornaments.

10.40.150 Machine guns prohibited: It shall be unlawful for any person to manufacture, own, buy, sell, loan, furnish, transport, or to have in possession, or under control, any machine gun, or any part thereof capable of use or assembling or repairing any machine gun; provided, however, that such limitation shall not apply to any police officer in the discharge of official duty, or to any officer or member of the armed forces of the United States or the State of Washington.

10.40.160 Machine gun defined: For the purpose of this chapter a machine gun is defined as any firearm or weapon known as a machine gun, mechanical rifle, a submachine gun, and/or any other weapon, mechanism or instrument not requiring that the trigger be pressed for each shot and having a reservoir clip, disc, drum, belt or other separable mechanical device for storing, carrying or supplying ammunition which can be loaded into such weapon, mechanism, or instrument and fired therefrom at a rate of five or more shots per second.

10.40.170 Machine guns or parts contraband: All machine guns, or parts thereof, illegally held or possessed are hereby declared to be contraband, and it shall be the duty of all police officers to seize said machine guns, or parts thereof, whereever and whenever found.

Camas

6.12.010 Giving to minors under eighteen or intoxicated persons prohibited. It shall be unlawful for any person, persons, firm or corporation, to sell, barter, exchange, give or otherwise dispose of any firearm or dangerous explosive, to any minor under the age of eighteen (18) years, or to any person in an intoxicated condition within the city limits of the City of Camas, Washington.

Carnation

H. Delivery to Minors and Other Forbidden. No person shall deliver a pistol to any person under the age of twenty-one or to whom he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, an habitual drunkard, or of unsound mind.

I. Pistol Sales Regulated. No person shall deliver a pistol to the purchaser thereof until forty-eight hours shall have elapsed from the time of the application for the purchase thereof, and, when delivered, said pistol shall be securely wrapped and shall be unloaded. At the time of applying for the purchase of a pistol, the purchaser shall sign in triplicate and deliver to the seller a statement [contact local authorities for required contents] * * * and statement that he has never been convicted in this state or elsewhere of a crime of violence. The seller within six hours after such application shall sign and attach his address and forward by registered mail one copy of such statement to the Town Marshall or Chief of Police, * * *. This section shall not apply to sales at wholesale.

J. Dealers to be Licensed. No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in this possession with intent to sell, or otherwise transfer any pistol without being licensed as provided by law under the requirements of RCW 9.41.110.

K. Certain Transfers of Pistols Forbidden. No person other than a duly licensed dealer shall make any loan secured by a mortgage, deposit or pledge for a loan shall keep such records and make such reports as are provided by law for pawnbrokers and secondhand dealers in cities of the first class (RCW Chapter 19.60). A duly licensed dealer may mortgage any pistol or stock or pistols but shall not deposit or pledge the same with any other person. No person shall lend or give a pistol to another or otherwise deliver a pistol contrary to the provisions of this chapter.

* * * * *

O. Machine Guns Prohibited. It shall be unlawful for any person to manufacture, own, buy, sell, loan, furnish, transport, or to have in possession, or under control any machine gun, or any part thereof capable of use or assembling or repairing any machine gun; provided, however, that such limitation shall not apply to any police officer in the discharge of official duty, or to any officer or member of the armed forces of the United States or the State of Washington.

P. Machine Gun Defined. For the purpose of this chapter a machine gun is defined as any firearm or weapon known as a machine gun, mechanical rifle, sub-machine gun, and/or any other weapon, mechanism or instrument not requiring that the trigger be pressed for each shot and having a reservoir clip disc, drum, belt or other separable mechanical device for storing, carrying or supplying ammunition which can be loaded into such weapon, mechanism, or instrument and fired therefrom at a rate of five or more shots per second.

Q. Machine Guns or Parts Contraband. All machine guns or parts thereof, illegally held or possessed are hereby declared to be contraband, and it shall be the duty of all police officers to seize said machine gun, or parts thereof wherever and whenever found.

R. Penalty for Dangerous Weapons. Every person * * * who shall use any contrivance or device for suppressing the noise of any firearm, shall be guilty of a misdemeanor.

Centralia

Ordinance 462

Dealer in deadly weapons or fire arms. Sec. 1. License. Any person engaging in the business of selling or offering to sell any pistol, revolver, derringer, * * * or other weapon of like character that can be concealed on the person, shall first obtain a license as a dealer in deadly weapons or firearms, and it shall be unlawful for any person licensed, to sell or give away any such weapon without reporting said sale or gift in the manner elsewhere provided, and it shall be unlawful for any person licensed, to sell or give away any such weapon to any person who has not secured a permit from the Chief of Police to purchase such weapon as herein provided.

Sec. 2. It shall be unlawful for any person to purchase any pistol, revolver, derringer, * * * which can be concealed on the person, without first securing from the Chief of Police a permit so to do. Before any such permit is

granted, an application in writing shall be made therefor [contact local authorities for required contents] * * *

* * * * *

Chelan

27. Minors, * * * selling * * * firearm to. Every person who: 5. Shall sell, or give, or permit to be sold or given to any person under the age of eighteen years, any revolver, or pistol, shall be guilty of a misdemeanor.

Des Moines

9.24.010. "Short Firearm" and "Crime of Violence" Defined: "Short Firearm" or "Pistol" used in this Article means any firearm with a barrel less than twelve inches (12'') in length. "Crime of Violence" as used in this Article means any of the following crimes or an attempt to commit any of the same: Murder, manslaughter, rape, mayhem, first degree assault, robbery, burglary and kidnapping.

* * * * *

9.24.030. Certain Persons Forbidden to Possess Arms: No person who has been convicted in this State or elsewhere of a crime of violence, shall own a pistol or have one in his possession or under his control.

* * * * *

9.24.080. Delivery to Minors and Others Forbidden: No person shall deliver a pistol to any person under the age of twenty-one years or to one whom he has reasonable cause to believe has been convicted of a crime of violence or is a drug addict, a habitual drunkard or of unsound mind.

9.24.090. Sales Regulated: No seller shall deliver a pistol to the purchaser thereof until 72 hours shall have elapsed from the time of the application for the purchase thereof, and, when delivered, said pistol shall be securely wrapped, and shall be unloaded. [At the time of applying for the purchase of a pistol the purchaser shall sign in triplicate and deliver to the seller a statement containing such information as the municipality may prescribe]. * * *

9.24.100. Dealers to be Licensed: No retail dealer shall sell or otherwise transfer, or expose for sale or transfer or have in his possession with intent to sell, or otherwise transfer any pistol without being licensed as provided by law under the requirements of Revised Code of Washington, Section 9.41.110.

9.24.110. Certain transfers forbidden: No person other than a duly licensed dealer shall make any loan secured by a mortgage, deposit or pledge of a pistol. Any licensed dealer receiving a pistol as a deposit or pledge for a loan shall keep such records and make such reports as are provided by law for pawnbrokers and second-hand dealers in cities of the first class. A duly licensed dealer may mortgage any pistol or stock of pistols but shall not deposit or pledge the same with any other person. No person shall lend or give a pistol to another or otherwise deliver a pistol contrary to the provisions of this title.

9.24.140. Exceptions: This chapter shall not apply to antique pistols unsuitable for use as firearms and possessed as curiosities or ornaments.

* * * * *

9.24.150. Machine Guns—Prohibition: That it shall be unlawful for any person to manufacture, own, buy, sell, loan, furnish, transport, or to have in possession, or under control, any machine gun, or any part thereof capable of use or assembling or repairing any machine gun; provided, however, that such limitation shall not apply to any police officer in the discharge of official duty, or to any officer or member of the armed forces of the United States or the State of Washington.

9.24.160. Machine Gun Defined: For the purpose of this title a machine gun is defined as any firearm or weapon known as a machine gun, mechanical rifle, submachine gun, and/or any other weapon, mechanism, or instrument not requiring that the trigger be pressed for each shot and having a reservoir, clip, disc, drum, belt, or other separable mechanical device for storing, carrying, or supplying ammunition which can be loaded into such weapon, mechanism, or instrument, and fired therefrom at a rate of five or more shots per second.

East Wenatchee

8.04.113 Delivery to minors and others forbidden. No person shall deliver a pistol to any person under the age of 21 years or to one who he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, an habitual drunkard, or of unsound mind.

Edmonds

5.12.068 Certain persons forbidden to possess arms. No person who has been convicted in this state or elsewhere of a crime of violence, shall own a pistol or have one in his possession or under his control. * * *

No person shall deliver a pistol to any person under the age of twenty-one, or to anyone whom he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, habitual drunkard, or of unsound mind.

No person shall, in the purchasing or securing delivery of a pistol or in applying for a license to carry the same, give false information or other false evidence of his identity.

The provisions of this section shall not apply to any antique pistols unsuitable for use as firearms and possessed as curiosities or ornaments.

5.12.076 Dangerous weapons. Any person who shall, * * * use any contrivance or device for suppressing the noise of any firearm, shall be guilty of a misdemeanor.

Elma

9.98.070 Pistol—Delivery to certain persons prohibited. No person shall deliver a pistol to a person under the age of twenty-one or to one who he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, an habitual drunkard or of unsound mind.

9.98.090 Pistol—Sales regulation procedure. No seller shall deliver a pistol to the purchaser thereof until forty-eight hours have elapsed from the time of the application for the purchase thereof; * * *

9.98.100 Pistol—Dealers to be licensed. No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell or otherwise transfer, any pistol without being licensed as provided by law under the requirements of RCW 9.41.110.

9.98.110 Pistol—Certain transfers prohibited or restricted. No person, other than a duly licensed dealer under RCW 9.41.110, shall make any loan secured by a mortgage, deposit or pledge for a loan. * * * A duly licensed dealer may mortage any pistol or stock of pistols but shall not deposit or pledge the same with any other person. No person shall lend or give a pistol to another or otherwise deliver a pistol contrary to the provisions of this chapter.

9.98.140 Antique pistols excepted. This chapter does not apply to antique pistols unsuitable for use as firearms and possessed as curiosities or ornaments.

Enumclaw

	RCW
9.30.030 adopts	9.41.040
9.30.070 adopts	9.41.080
9.30.080 adopts	9.41.090
9.30.090 adopts	9.41.093
9.30.110 adopts	9.41.100
9.30.130 adopts	9.41.120

Everett

9.76.010 Sale of firearms to minor. It is unlawful for any person or persons to sell or offer for sale any revolver or pistol, within this city, to any person under the age of eighteen years, and every person who sells, gives,

furnishes or causes to be furnished to any person under the age of eighteen years, any revolver or pistol or other pocket weapon in which explosives may be used, is guilty of a misdemeanor, and upon conviction shall be fined not to exceed five hundred dollars or shall be imprisoned for six months or both such fine and imprisonment.

9.92.030 Prohibited purchasers. It is unlawful for any person who is a fugitive from justice or who has been convicted in this state or elsewhere of a crime of violence, or of drug addiction or of habitual drunkenness or who has been confined to a mental institution, to purchase a pistol in this city, and it is further unlawful for any such person to fail to disclose such information when applying for the purchase of a pistol.

Everson

Ordinance 165

Section 3.e. Sales to intoxicated persons and minors. No person shall purchase from, or sell, loan, or furnish any weapon in which any explosive substance can be used to, any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to a minor under the age of 18 years.

Ferndale

521.09A.010 Definitions.

A. "Crime of violence," as used in this article, means any of the following crimes or an attempt to commit any of the same: Murder, manslaughter, rape, riot, mayhem, first degree assault, second degree assault, robbery, burglary and kidnapping.

B. "Short firearm" or "pistol," as used in this article, means any firearm with a barrel less than twelve inches in length.

521.09A.030 Certain persons forbidden to possess arms. No person who has been convicted in this state or elsewhere of a crime of violence or of drug addiction or of habitual drunkenness or who has been confined in a mental institution shall own a pistol or have one in his possession or under his control.

521.09A.070 Delivery to minors and certain others forbidden. No person shall deliver a pistol to any person under the age of twenty-one or to one whom he has reasonable cause to believe has been convicted of a crime of violence or of drug addiction or of habitual drunkenness or has been confined to a mental institution.

521.09A.080 Pistol sales regulated. A. No pistol shall be sold:

1. In violation of any provisions of RCW 9.41.160; nor

2. Shall a pistol be sold under any circumstances unless the purchaser is personally known to the seller or shall present clear evidence of his identity.

B. No seller shall deliver a pistol to the purchaser thereof until seventy-two hours shall have elapsed from the time of the application for the purchase thereof as provided herein, and when delivered, the pistol shall be securely wrapped and shall be unloaded.

C. At the time of applying for the purchase of a pistol the purchaser shall sign in duplicate and deliver to the seller an application [contact local authorities for required contents] * * * and a statement that he has never been convicted in this state or elsewhere of a crime of violence, drug addition or habitual drunkenness, and is not legally judged to be of unsound mind. The seller shall, by the end of the business day, sign and attach his address and deliver the original of such application to the chief of police. * * * This section shall not apply to sales at wholesale.

521.09A.090 Pistol dealers to be licensed. No retail dealer shall sell or otherewise transfer, or expose for sale or transfer, or have in his possession with intent to sell or otherwise transfer any pistol without being licensed as provided by law under the requirements of RCW 9.41.110.

521.09A.120 Exceptions of unusable pistols. This chapter shall not apply to antique pistols unsuitable for use as firearms and possessed as curiosities or ornaments.

521.09A.140 Machine guns prohibited. It is unlawful for any person to manufacture, own, buy, sell, loan, furnish, transport, or to have in possession or under control any machine gun or any part thereof capable of use or assembling or repairing any machine gun; provided, however, that such limitation shall not apply to any police officer in the discharge of official duty, or to any officer or member of the armed forces of the United States of the state.

521.09A.150 Machine gun defined. For the purpose of this article a "machine gun" means any firearm or weapon known as a machine gun, mechanical rifle, submachine gun and or any other weapon, mechanism or instrument not requiring that the trigger be pressed for each shot and having a reservoir clip disc, drum, belt or other separable mechanical device for storing, carrying or supplying ammunition which can be loaded into such weapon, mechanism or instrument and fired therefrom at a rate of five or more shots per second.

521.09B Pistols

* * * * *

521.09B.010 Definitions. The following words and phrases used herein shall be construed as follows:

A. "Crime of violence" means any of the following crimes or an attempt to commit any of the same: Murder, manslaughter, rape, mayhem, first-degree assault, robbery, burglary and kidnapping.

B. "Fugitive from justice" means a person who, having committed a crime, flees from the jurisdiction where it was committed to evade arrest.

C. "Law enforcement officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses.

D. "Pistol" means any firearm or other weapon for the purpose of discharging a projectile by means of compressed air, chemical combustion or otherwise and having a barrel less than twelve inches in length, but shall not include antique pistols or revolvers manufactured prior to 1899 and held as collector's items.

521.09B.020 Application. It is unlawful for any merchant or secondhand dealer, or any clerk, agent or employee of any merchant or secondhand dealer to sell, give away or dispose of any pistol to any person at retail, unless such person is personally known to the seller or presents clear evidence of his identity, nor without completing a true record in triplicate of every pistol sold or disposed of. Such record shall be personally signed by the purchaser and by the person effecting the sale, each in the presence of the other, and shall contain the date of sale, the caliber, make, model and manufacturer's number of the weapon, the name, address, occupation and place of birth of the purchaser, and a statement signed by the purchaser that he has never been convicted in this state or elsewhere of a crime of violence, or of drug addiction or of habitual drunkenness and has never been confined to a mental institution. One copy shall within six hours be sent by registered mail to the chief of police of the city who shall, within seventy-two hours, exclusive of Sundays and holidays, investigate the information contained in the record and report his findings to the merchant or secondhand dealer.

521.09B.030 Delivery. It is unlawful for any merchant or secondhand dealer or any clerk, agent or employee of any merchant or secondhand dealer to deliver any pistol to any purchaser until said merchant or secondhand dealer has received a report from the chief of police [see 521.09A.080(B), (C)] that the purchaser is not a fugitive from justice and that the purchaser has never been convicted in this state or elsewhere of a crime of violence, or of drug addiction or of habitual drunkenness and has never been confined to a mental institution; provided, that if such merchant or secondhand dealer does not receive such report from the chief of police within seventy-two hours, exclusive of Sundays and holidays,

after he has mailed a copy of the record to the chief of police * * * then such merchant or secondhand dealer may deliver the pistol to the purchaser; provided further, that this section shall not apply to sales at wholesale, or to sales to person exhibiting a valid license to carry a pistol concealed issued pursuant to RCW 9.41.070, or to sales to law enforcement officers.

521.09B.040 Prohibited transactions. It is unlawful for any person who is a fugitive from justice or who has been convicted in this state or elsewhere of a crime of violence, or of drug addiction or of habitual drunkenness or has been confined to a mental institution, to purchase a pistol in this city, and is further unlawful for any such person to fail to disclose such information when applying for the purchase of a pistol.

Fircrest

Section VI. Firearms.

a. "Short firearm" and "crime of violence" defined. "Short Firearm" as used in this ordinance means any firearm with a barrel less than 12 inches in length.

"Crime of violence" as used in this ordinance means any of the following crimes or an attempt to commit any of the same: Murder, manslaughter, rape, mayhem, first degree assault, robbery, burglary and kidnapping.

d. Certain persons forbidden to possess arms. No person who has been convicted in this state or elsewhere of a crime of violence, shall own a pistol or have one in his possession or under his control.

* * * * *

g. Delivery to minors and others forbidden. No person shall deliver a pistol to any person under the age of 21 or to one whom he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, or habitual drunkard or of unsound mind.

h. Dealer's licenses. Any person desiring to sell pistols within the Town of Fircrest shall obtain a license in the form prescribed by statute * * *.

* * * * *

3. No pistol shall be sold in violation of state law or this ordinance, nor shall a pistol be sold under any circumstances unless the purchaser is personally known to the seller or shall present clear evidence of his identity.

* * * * *

5. This section shall not apply to sales at wholesale. * * *

* * * * *

i. Certain transfers forbidden. No person other than a duly licensed dealer shall make any loan secured by mortgage, deposit or pledge of a pistol. Any licensed dealer receiving a pistol as a deposit or pledge for a loan shall keep such records and make such reports as are provided by law for pawnbrokers and secondhand dealers in cities of the first class. A duly licensed dealer may mortgage any pistol or stock of pistols but shall not deposit or pledge the same with any other person. No person shall lend or give a pistol to another or otherwise deliver a pistol contrary to the provisions of this ordinance, and the laws of the State of Washington.

* * * * *

l. Exceptions. This ordinance shall not apply to antique pistols unsuitable for use as firearms and possessed as curiosities or ornaments.

m. Machine guns—Prohibition. That it shall be unlawful for any person to manufacture, own, buy, sell, loan, furnish, transport or have in possession, or under control, any machine gun, or any part thereof capable of use or assembling or repairing any machine guns, Provided, however, that such limitation shall not apply to any police officer in the discharge of official duty, or to any officer or member of the armed forces of the United States or the State of Washington.

n. Machine gun defined. For the purposes of this ordinance a machine gun is defined as any firearm or weapon known as a machine gun, mechanical rifle, sub-machine gun, and/or any other weapon, mechanism, or instrument not requiring that the trigger be pressed for each shot and having a reservoir, clip, disc, drum, belt, or other separable mechanical device for storing, carrying or supplying ammunition which can be loaded into such weapon, mechanism or instrument, and fired therefrom at a rate of five or more shots per second.

* * * * *

Grandview

I. Firearms and weapons

7.78.010 Definitions. A. "Crime of violence," as used in this article, means any of the following crimes or an attempt to commit any of the same: murder, manslaughter, rape, riot, mayhem, first-degree assault, second-degree assault, robbery, burglary and kidnaping.

B. "Short firearm" or "pistol" as used in this article, means any firearm or other weapon for the purpose of discharging a projectile by means of compressed air, chemical combustion or otherwise and having a barrel less then twelve inches in length, but shall not include pistols or revolvers manufactured prior to 1898 and held as collector's items.

* * * * *

7.78.070 Delivery to minors and certain others forbidden. No person shall deliver a pistol to any person under the age of eighteen or to one whom he has reasonable cause to believe has been convicted of a crime of violence or of drug addiction or of chronic alcoholism or has been confined to a mental institution.

7.78.080 Pistol sales regulated. A. No pistol shall be sold:

1. In violation of any provisions of RCW 9.41.010 through 9.41.160; nor

2. Under any circumstances unless the purchaser is personally known to the seller or shall present clear evidence of his identity.

B. No seller shall deliver a pistol to the purchaser thereof until seventy-two hours shall have elapsed from the time of the application for the purchase thereof as provided herein, and when delivered, the pistol shall be securely wrapped and shall be unloaded.

C. At the time of applying for the purchase of a pistol the purchaser shall sign in duplicate and deliver to the seller an application containing (the information and purchaser's statement required by 7.78.080(C); contact local authorities for requirements) * * *. The chief of police shall maintain a file containing the original of the application to purchase a pistol. This section shall not apply to sales at wholesale.

* * * * *

7.78.090 Pistol dealers to be licensed. No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell or otherwise transfer any pistol, without being licensed as provided by law under the requirements of RCW 9.41.110.

* * * * *

7.78.110 Alteration of identifying marks on pistol prohibited. No person shall change, alter, remove or obliterate the name of the maker, model, manufacturer's number or other mark of identification of any pistol. Possession of any pistol upon which any such mark shall have been changed, altered, removed or obliterated shall be prima facie evidence that the possessor has changed, altered, removed or obliterated the same.

* * * * *

7.78.140 Machineguns prohibited. It is unlawful for any person to manufacture, own, buy, sell, loan, furnish, transport, or to have in possession or under control any machinegun or any part thereof capable of use or assembling or repairing any machinegun; provided, however, that such limitation shall not apply to any police officer in the discharge of official duty, or to any officer or member of the armed forces of the United States or the state.

7.78.150 Machinegun defined. For the purpose of this article a "machinegun" means any firearm or weapon known as a machinegun, mechanical rifle, submachinegun and/or any other weapon, mechanism or instrument not requiring that the trigger be pressed for each shot and having a reservoir clip disc, drum, belt or other separable mechanical device for storing, carrying or supplying ammu-

nition which can be loaded into such weapon, mechanism or instrument, and fired therefrom at a rate of five or more shots per second.

* * * * *

II. Pistols

7.78.260 Definitions. The following words and phrases used herein shall be construed as follows:

A. "Crime of violence" means any of the following crimes or an attempt to commit any of the same: murder, manslaughter, rape, mayhem, first-degree assault, robbery, burglary and kidnaping.

B. "Fugitive from justice" means a person who, having committed a crime, flees from the jurisdiction where it was committed to evade arrest.

C. "Law enforcement officer" means any person who, by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses.

D. "Pistol" means any firearm or other weapon for the purpose of discharging a projectile by means of compressed air, chemical combustion or otherwise and having a barrel less than twelve inches in length, but shall not include pistols or revolvers manufactured prior to 1898 and held as collector's items.

7.78.270 Application. It is unlawful for any merchant or secondhand dealer, or any clerk, agent or employee of any merchant or secondhand dealer, to sell, give away or dispose of any pistol to any person at retail, unless such person is personally known to the seller or presents clear evidence of his identity, nor without completing a true record in triplicate of every pistol sold or disposed of. Such record shall be personally signed by the purchaser and by the person effecting the sale, each in the presence of the other, and shall contain (the information and purchaser's statement required by 7.78.270; contact local authorities for details) * * *. One copy shall within six hours be sent by registered mail to the chief of police of the city who shall, within seventy-two hours, exclusive of Sundays and holidays, investigate the information contained in the record and report his findings to the merchant or secondhand dealer.

7.78.280 Delivery. It is unlawful for any merchant or secondhand dealer or any clerk, agent or employee of any merchant or secondhand dealer to deliver any pistol to any purchaser until the merchant or secondhand dealer has received a report from the chief of police that the purchaser is not a fugitive from justice and that the purchaser has never been convicted in this state or elsewhere of a crime of violence, or of drug addiction or of habitual drunkenness or chronic alcoholism and has never been confined to a mental institution; provided, that if such merchant or secondhand dealer does not receive such report from the chief of police within seventy-two hours, exclusive of Sundays and holidays, after he has mailed a copy of the record to the chief of police as required by Section 7.78.270, then such merchant or secondhand dealer may deliver the pistol to the purchaser; provided further, that this section shall not apply to sales at wholesale, or to sales to persons exhibiting a valid license to carry a pistol concealed issued pursuant to RCW 9.41.070, or to sales to law enforcement officers.

7.78.290 Prohibited transactions. It is unlawful for any person who is a fugitive from justice or who has been convicted in this state or elsewhere of a crime of violence, or of drug addiction, or of habitual drunkenness or chronic alcoholism or has been confined to a mental institution, to purchase a pistol in this city, and it is further unlawful for any such person to fail to disclose such information when applying for the purchase of a pistol.

Kennewick

10.12.050. Sale to minors prohibited. It is unlawful for any person within the city to sell, give, or permit to be sold or given to any person under the age of eighteen years, any revolver or pistol.

King County

12.48.010 Definitions. The following words and phrases used herein shall be construed as follows: (a) "Pistol" means any firearm or other weapon for the purpose of discharging a projectile by means of compressed air, chemical combustion or otherwise and having a barrel less than twelve inches in length, but shall not include antique pistols or revolvers manufactured prior to 1898 and held as collector's items.

(b) "Crime of violence" means any of the following crimes or an attempt to commit any of the same: Murder, manslaughter, rape, mayhem, first degree assault, robbery, burglary and kidnapping.

(c) "Fugitive from justice" means a person who, having committed a crime, flees from the jurisdiction where it was committed to evade arrest.

(d) "Law enforcement officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses.

12.48.020 Sale and registration. It is unlawful for any merchant or secondhand dealer, or any clerk, agent or employee of any merchant or secondhand dealer, to sell, give away or dispose of any pistol to any person at retail, unless such person is personally known to the seller or shall present clear evidence of his identity, nor without completing a true record in triplicate of every pistol sold or disposed of [contact local authorities for required contents] * * *

12.48.030 Delivery following sheriff's report. It is unlawful for any merchant or secondhand dealer or any clerk, agent or employee of any merchant or secondhand dealer to deliver any pistol to any purchaser until the merchant or secondhand dealer has received a report from the sheriff * * * provided that if such merchant or secondhand dealer does not receive such report from the sheriff within seventy-two hours, exclusive of Sundays and holidays, after he has mailed a copy of the record to the sheriff as required by Section 12.48.020, then such merchant or secondhand dealer may deliver the pistol to the purchaser; provided further, that this section shall not apply to sales at wholesale, or to sales to persons exhibiting a valid license to carry a pistol concealed issued pursuant to RCW 9.41.070, or to sales to law enforcement officers.

12.48.040 Purchase unlawful for certain persons. It is unlawful for any person who is a fugitive from justice or who has been convicted in this state or elsewhere of a crime of violence, or of drug addiction or of habitual drunkenness or has been confined to a mental institution to purchase a pistol and it is further unlawful for any such person to fail to disclose such information when applying for the purchase of a pistol.

Kirkland

11.28.030 Delivery to minors and certain others forbidden. No person shall deliver a pistol to any person under the age of twenty-one or to one whom he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, an habitual drunkard, or of unsound mind.

11.28.120 Pistol—Delivery to purchaser. In addition to the other requirements of Sections 11.28.110 through 11.28.180, no seller shall deliver a pistol to the purchaser thereof until seventy-two hours have elapsed from the time of the application for the purchase thereof as provided herein, and when delivered, the pistol shall be securely wrapped and shall be unloaded.

11.28.130 Pistol—Purchasing—Information required—Procedure. At the time of applying for the purchase of a pistol, the purchaser shall sign in duplicate and deliver to the seller an application [contact local authorities for required contents] * * *. The seller shall, by the end of the business day, sign and attach his address and deliver the original of such application to the chief of police of the city. The seller shall deliver the pistol to the purchaser following seventy-two hours thereafter, unless the seller is notified in writing by the chief of police of the city of denial. * * *

* * * * *

11.28.150 Pistol—Dealer—License required. No retail dealer shall sell or otherwise transfer, or expose for sale or tranafer, or have in his possession with intent to sell, or otherwise transfer any pistol without being licensed as a dealer pursuant to RCW Chapter 9.41.

11.28.160 Sale of pistols—Conformance required. No pistol shall be sold in violation of any provisions of Sections 11.28.110 through 11.28.180, nor shall a pistol be sold under any circumstances unless the purchaser is personally known to the seller or shall present clear evidence of his identity. Sales by wholesalers to dealers and the sale of antique pistols as herein defined shall be exempt from the provisions of Sections 11.28.110 through 11.28.180.

11.28.170 Possession of firearms by prohibited persons unlawful. It is unlawful for any person prohibited from possessing a firearm (as therein defined) under Title VII of the "Omnibus Crime Control and Safe Streets Act of 1968" as amended by Title III of the "Gun Control Act of 1968" (Sections 1201 through 1203 inclusive) to possess such a firearm within the corporate limits of the city.

11.28.180 Noncitizens—License required. It is unlawful for any person subject to the licensing requirements of RCW 9.41.170 relating to noncitizens of the United States to carry or possess any shotgun, rifle or other firearm without first obtaining such license.

Kitsap County

Ordinance 25

1. No person who has been convicted in this State or elsewhere of a crime of violence shall own a pistol or have one in his possession or under his control.

3. No person shall deliver a pistol to any person under the age of twenty-one years or to one whom he has reasonable cause to believe has been convicted of a crime of violence or is a drug addict, a drunkard or of unsound mind.

4. No person other than a dealer duly licensed by the State of Washington shall make any loan secured by a mortgage, deposit or pledge of a pistol. * * *

7. This Ordinance shall not apply to antique pistols unsuitable for use as firearms and possessed as curiosities or ornaments.

8. No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell, or otherwise transfer any pistol without being licensed as hereinafter provided.

9. No seller shall deliver a pistol to the purchaser thereof until forty-eight hours shall have elapsed from the time of the application for the purchase therof, and when delivered, said pistol shall be securely wrapped and shall be unloaded. At the time of applying for the purchase of a pistol the purchaser shall sign in triplicate and deliver to the seller a statement [contact local authorities for required contents] * * *.

Lake Forest Park

Chapter 6. Firearms.

6.1. "Crime of Violence" Defined. "Crime of Violence" as used in this ordinance means any of the following crimes or an attempt to commit any of the same: murder, manslaughter, rape, mayhem, first degree assault, robbery, burglary, and kidnapping.

6.2 Certain persons forbidden to possess arms. No person who has been convicted in this state or elsewhere of a crime of violence shall own a pistol or have one in his possession under his control.

* * * * *

6.6. Sales regulated. No seller shall deliver a pistol to the purchaser thereof until forty-eight hours shall have elapsed from the time of the application for the purchase thereof, and when delivered, said pistol shall be securely wrapped and shall be unloaded. At the time of applying for the purchase of a pistol, the purchaser shall sign in triplicate and deliver to the seller a statement [contact local authorities for required contents] * * * The seller within six hours after such application, shall sign and attach his address and forward by registered mail one copy of such statement to the Chief of Police; and the duplicate duly signed by the seller shall within seven days be sent by him with his address to the Director of Licenses; the triplicate he shall retain for six years. This section shall not apply to sales at wholesale.

6.7. Delivery to minors and others forbidden. No person shall deliver a pistol to any person under the age of twenty-one or to one whom he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, an habitual drunkard, or of unsound mind.

6.8. Dealers to be licensed. No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell, or otherwise transfer any pistol without being licensed as provided by law under the requirements of the Revised Code of Washington, Section 9.41.110.

6.9. Certain transfers forbidden. No person other than a duly licensed dealer shall make any loan secured by a mortgage, deposit, or pledge for a loan. He shall keep such records and make such reports as are provided by law for pawnbrokers and secondhand dealers in cities of the first class. A duly licensed dealer may mortgage any pistol or stock of pistols but shall not deposit or pledge the same with any other person. No person shall lend or give a pistol to another or otherwise deliver a pistol contrary to the provisions of this ordinance.

* * * * *

6.11. False information forbidden. Any person who shall in purchasing or otherwise securing delivery of a pistol or in applying for a license to carry the same give false information or offer false evidence of his identity shall be guilty of a misdemeanor.

6.12. Exceptions. This ordinance shall not apply to antique pistols unsuitable for use as firearms and possessed as curiosities or ornaments.

* * * * *

Lake Stevens

33.01.380 Certain persons forbidden to possess arms. No person who has been convicted in this state or elsewhere of a crime of violence, shall own a pistol or have one in his possession or under his control.

33.01.420 Delivery to minors and others forbidden. No person shall deliver a pistol to any person under the age of twenty one years or to one whom he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, a habitual drunkard or of unsound mind.

33.01.430 Dealers to be licensed. No retail dealer shall sell, or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell, or otherwise transfer, any pistol without being licensed as hereinafter provided.

33.01.440 Dealer's licenses, by whom granted and condition, thereof—Wholesale sales excepted. The Town Marshal shall grant licenses in forms prescribed by the director of licenses effective for not more than one year from the date of issue, permitting the licensee to sell pistols within this state subject to the following conditions, for breach of any of which the license shall be forfeited and the licensee subject to punishment as hereinafter provided:

(1) The business shall be carried on only in the building designated in the license.

(2) The license or a copy thereof, certified by the issuing authority shall be displayed on the premises where it can easily be read.

(3) No pistol shall be sold in violation of any of the provisions of Sections 33.01.360 through 33.01.470 of this chapter, nor shall a pistol be sold under any circumstances unless the purchaser is personally known to the seller or shall present clear evidence of his identity.

(4) A true record in triplicate shall be made of every pistol sold, and a book kept for the purpose, the form of which may be prescribed by the director of licenses and shall be personally signed by the purchaser and by the

person effecting the sale, each in the presence of the other, and shall contain [that information required by local authorities]. Only one copy shall within six hours be sent by registered mail to the Town Marshal; the duplicate the dealer shall within seven days send to the director of licenses; the triplicate the dealer shall retain for six years.

(5) This section shall not apply to sales at wholesale.

* * * * *

33.01.490 Machine guns prohibited. It shall be unlawful for any person to manufacture, own, buy, sell, loan, furnish, transport or have in possession or under control, any machine gun or any part thereof capable of use or assembling or repairing any machine gun; provided, however, that such limitation shall not apply to any marshal, or any police officer in the discharge of official duty, or to any officer or member of the armed forces of the United States or the State of Washington.

33.01.500 Machine gun defined. For the purpose of this chapter a machine gun is defined as a firearm or weapon known as a machine gun, mechanical rifle, submachine gun, and/or any other weapon, mechanism, or instrument not requiring that the trigger be pressed for each shot and having a reservoir clip, disc, drum, belt or other separable mechanical device for storing, carrying or supplying ammunition which can be loaded into such weapon, mechanism or instrument, and fired therefrom the rate of five or more shots per second.

Langley

121-6: Every person who shall sell, give, furnish or cause to be furnished to any person under the age of sixteen (16) years, any revolver, pistol, toy pistol, or other pocket weapon in which explosives may be used, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than Five Dollars ($5.00), or more than Twenty-five Dollars ($25.00).

Longview

15-4. Possession by convicted persons. No person who has been convicted in this state or elsewhere of a crime of violence, shall own a pistol or have one in his possession or under his control.

15-7. Delivery to minors and certain other persons. No person shall deliver a pistol to any person under the age of twenty-one or to one whom he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, an habitual drunkard, or of unsound mind.

15-8. Sales by dealers. Sales by dealers shall be regulated as hereinafter provided: (a) The City Clerk of said city shall grant licenses in forms prescribed by the Washington State Director of Licenses * * * (3) No pistol shall be sold (a) in violation of any provisions of this Chapter, nor, (b) shall a pistol be sold under any circumstances unless the purchaser is personally known to the seller or shall present clear evidence of his identity.

15-9. Dealer's license. No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell, or otherwise transfer any short firearm without being licensed as provided by law.

15-13. Antiques; excepted. This Chapter shall not apply to antique pistols and revolvers manufactured prior to 1898 and held as collector's items.

15-15. Machine guns—Defined. A machine gun is herein defined as any firearm or weapon known as a machine gun, mechanical rifle, submachine gun, and/or any other weapon, mechanism, or instrument not requiring that the trigger be pressed for each shot and having a reservoir clip disc, drum, belt, or other separable mechanical device for storing, carrying, or supplying ammunition which can be loaded into such weapon, mechanism, or instrument, and fired therefrom at a rate of five or more shots per second.

15-16. Same—Prohibited. It shall be unlawful for any person to manufacture, own, buy, sell, loan, furnish, transport, or to have in possession, or under control, any machine gun, or any part thereof capable of use or assembling or repairing any machine gun; provided, however, that such limitation shall not apply to any police officer in the discharge of official duty, or to any officer or member of the armed forces of the United States or the state of Washington.

Lynwood

10.04.360. Crime of violence defined. The term "crime of violence" as used in this chapter means any of the following crimes or an attempt to commit any of the same: murder, manslaughter, rape, mayhem, first degree assault, robbery, burglary and kidnapping.

10.04.370. Firearm defined. The word "firearm" shall include but is not limited to mean any weapon or device capable of propelling a missile through the force of combustion or explosion of gunpowder or similar substance.

10.04.400. Persons convicted of crimes of violence not to possess arms. No person who has been convicted in this state or elsewhere of a crime of violence, shall own a pistol or have one in his possession under his control.

10.04.450. Delivery to minors and certain other persons. No person shall deliver a pistol to any person under the age of twenty-one or to one whom he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, an habitual drunkard or of unsound mind.

10.04.460. Use of firearms by minor. No minor under the age of sixteen years shall handle or have in his possession, or under his control, except while accompanied by or under the immediate charge of his parent or guardian, any firearm of any kind, for hunting or target practice, or for other purposes. Every person violating any of the foregoing provisions, or aiding or knowingly permitting any such party to violate the same, shall be guilty of a misdemeanor.

10.04.470. Regulating sales—Purchaser's statement. No seller shall deliver a pistol to the purchaser thereof until forty-eight hours shall have elapsed from the time of the application for the purchase thereof, and when delivered, said pistol shall be securely wrapped and shall be unloaded. At the time of applying for the purchase of a pistol, the purchaser shall sign in triplicate and deliver to the seller a statement [contact local authorities for required contents] * * * The seller within six hours after such application, shall sign and attach his address and forward by registered mail one copy of such statement to the chief of police; and the duplicate duly signed by the seller shall within seven days be sent by him with his address to the director of licenses; the triplicate he shall retain for six years. This section shall not apply to sales at wholesale.

10.04.480. Dealers to be licensed. No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell, or otherwise transfer any pistol without being licensed as provided by law under the requirements of RCW 9.41.110.

10.04.490. Certain transfers of weapons prohibited. No person other than a duly licensed dealer shall make any loan secured by a mortgage, deposit or pledge for a loan. He shall keep such records and make such reports as are provided by law for pawnbrokers and secondhand dealers in cities of the first class. A duly licensed dealer may mortgage any pistol or stock of pistols but shall not deposit or pledge the same with any other person. No person shall lend or give a pistol to another or otherwise deliver a pistol contrary to the provisions of this chapter.

* * * * *

10.04.510. Purchasing weapon by use of false information. Any person who shall in purchasing or otherwise securing delivery of a pistol or in applying for a license to carry the same give false information or offer false evidence of his identity shall be guilty of a misdemeanor.

10.04.520. Antique pistols excepted. This chapter shall not apply to antique pistols unsuitable for use as firearms and possessed as curiosities or ornaments.

Marysville

6.64.010. Definitions. Short firearm, pistol. The term "short firearm" or "pistol" as used in this chapter means any firearm with a barrel less than twelve inches in length. Crime of violence. The term "crime of violence" as used in this chapter means any of the following crimes or an attempt to commit any of the same: murder, manslaughter, rape, mayhem, first degree assault, robbery, burglary and kidnaping.

6.64.040. Convicted persons. No person who has been convicted in this state or elsewhere of a crime of violence shall own a pistol or have one in his possession or under his control.

6.64.060. Prohibited pistol delivery. No person shall deliver a pistol to any person under the age of twenty-one or to one whom he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, an habitual drunkard, or of unsound mind.

6.64.090. Commercial sales of pistols—records. The chief of police shall grant licenses in forms prescribed by the director of licenses effective for not more than one year from the date of issue, permitting the licensee to sell pistols within this city * * *.

6.64.100. Pistol dealers—license required. No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell, or otherwise transfer any pistol without being licensed as provided by law under the requirements of RCW 9.41.110.

6.64.110. Prohibited transfer of pistols. No person other than a duly licensed dealer shall make any loan secured by a mortgage, deposit or pledge of a pistol. Any licensed dealer receiving a pistol as a deposit or pledge for a loan shall keep such records and make such reports as are provided by law for pawnbrokers and secondhand dealers in cities of the first class. A duly licensed dealer may mortgage any pistol or stock of pistols but shall not deposit or pledge the same with any other person. No person shall lend or give a pistol to another or otherwise deliver a pistol contrary to the provisions of this chapter. * * *

6.64.140. Unusable pistols. This chapter shall not apply to antique pistols unsuitable for use as firearms and possessed as curiosities or ornaments.

6.64.150. Machine guns prohibited. It shall be unlawful for any person to manufacture, own, buy, sell, loan, furnish, transport, or to have in possession, or under control, any machine gun, or any part thereof capable of use or assembling or repairing any machine gun; provided, however, that such limitation shall not apply to any police officer in the discharge of official duty, or to any officer or member of the armed forces of the United States or the state of Washington.

6.64.160. Machine gun defined. For the purpose of this chapter a "machine gun" is defined as any firearm or weapon known as a machine gun, mechanical rifle, submachine gun, and/or any other weapon, mechanism or instrument not requiring that the trigger be pressed for each shot and having a reservoir clip disc, drum, belt or other separate mechanical device for storing, carrying or supplying ammunition which can be loaded into such weapon, mechanism, or instrument and fired therefrom at a rate of five or more shots per second.

McCleary

Ordinance 70

Section I It shall be unlawful for any person under the age of sixteen years to have in his possession any fire arms * * * within the city limits of the Town of McCleary unless accompanied by and under the supervision of a parent or legal guardian.

* * * * *

Medical Lake

258. Section 29. Minors * * * Selling * * * Firearms to: Every person who— * * * * * 5. Shall sell, or give, or permit to be sold or given to any person under the age of eighteen years, any revolver, or pistol, shall be guilty of a misdemeanor.

* * * * *

Mercer Island

7.505.07. Certain acts prohibited—belief minor in representative capacity, no defense—penalty. Every person who: * * *: 5. Shall sell, or give, or permit to be sold or given to any person under the age of eighteen years any revolver or pistol, shall be guilty of a misdemeanor.

Monroe City

* * * * *

9.18.030 Certain Persons Forbidden to Possess Arms. No person who has been convicted in this state or elsewhere of a crime of violence or of drug addiction or of habitual drunkenness or who has been confined in a mental institution shall own a pistol or have one in his possession or under his control.

* * * * *

9.18.070 Delivery to Minors and Certain Others Forbidden. No person shall deliver a pistol to any person under the age of twenty-one or to one whom he has reasonable cause to believe has been convicted of a crime of violence or of drug addiction or of habitual drunkenness or has been confined to a mental institution.

9.18.080 Pistol Sales Regulated. A. No pistol shall be sold:

1. In violation of any provisions of R.C.W. 9.41.010 through 9.41.160; nor

2. Shall a pistol be sold under any circumstances unless the purchaser is personally known to the seller or shall present clear evidence of his identity.

B. No seller shall deliver a pistol to the purchaser thereof until seventy-two hours shall have elapsed from the time of the application for the purchase thereof as provided herein, and when delivered, the pistol shall be securely wrapped and shall be unloaded.

C. At the time of applying for the purchase of a pistol the purchaser shall sign in duplicate and deliver to the seller an application [contact local authorities for required contents] * * *

9.18.090 Pistol Dealers to be Licensed. No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell or otherwise transfer any pistol without being licensed as provided by law under the requirements of R.C.W. 9.41.110.

9.18.100 Certain Transfer of Pistols Forbidden. No person other than a duly licensed dealer shall make any loan secured by a mortgage, deposit or pledge of a pistol. Any licensed dealer receiving a pistol as a deposit or pledge for a loan shall keep such records and make such reports as are provided by law for pawnbrokers and secondhand dealers as provided by R.C.W. Chapter 19.60. A duly licensed dealer may mortgage any pistol or stock of pistols but shall not deposit or pledge the same with any other person.

* * * * *

9.18.120 False Information in Obtaining Pistol. No person shall, in purchasing or otherwise delivery of a pistol or in applying for a license to carry the pistol, give false information or offer false evidence of his identity.

9.18.130 Exceptions for Unusable Pistols. This chapter shall not apply to antique pistols unsuitable for use as firearms and possessed as curiosities or ornaments.

9.18.140 Machine Guns Prohibited. It is unlawful for any person to manufacture, own, buy, sell, loan, furnish, transport, or to have in possession or under control any machine gun

or any part thereof capable of use or assembling or repairing any machine gun; provided, however, that such limitation shall not apply to any police officer in the discharge of official duty, or to any officer or member of the armed forces of the United States or the state.

9.18.150 Machine Gun Defined. For the purpose of this article a "machine gun" means any firearm or weapon known as a machine gun, mechanical rifle, submachine gun and/or any other weapon, mechanism or instrument not requiring that the trigger be pressed for each shot and having a reservoir clip disc, drum, belt or other separable mechanical device for storing, carrying or supplying ammunition which can be loaded into such weapon, mechanism or instrument and fired therefrom at a rate of five or more shots per second.

* * * * *

9.18.170 Dangerous Weapons—Evidence. Every person who * * * uses any contrivance or device for suppressing the noise of any firearm, is guilty of a misdemeanor.

II. Pistols

9.18.260 Definitions. The following words and phrases used herein shall be construed as follows:

A. "Crime of violence" means any of the following crimes or an attempt to commit any of the same: Murder, manslaughter, rape, mayhem, first-degree assault, robbery, burglary, and kidnaping.

B. "Fugitive from justice" mean a person who, having committed a crime, flees from the jurisdiction where it was committed to evade arrest.

C. "Law enforcement officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses.

D. "Pistol" means any firearm or other weapon for the purpose of discharging a projectile by means of compressed air, chemical combustion or otherwise and having a barrel less than twelve inches in length, but shall not include antique pistols or revolvers manufactured prior to 1898 and held as collector's items.

9.18.270 Application. It is unlawful for any merchant or secondhand dealer, or any clerk, agent or employee of any merchant or secondhand dealer, to sell, give away or dispose of any pistol to any person at retail, unless such person is personally known to the seller or presents clear evidence of his identity, nor without completing a true record in triplicate of every pistol sold or disposed of. Such record shall be personally signed by the purchaser and by the person effecting the sale, each in the presence of the other, * * * [contact local authorities for required contents] * * * and a statement [shall also be] signed by the purchaser that he not a fugitive from justice and that he has never been convicted in this state or elsewhere of a crime of violence, or of drug addiction or of habitual drunkenness and has never been confined to a mental institution. One copy shall within six hours be sent by registered mail to the chief of police of the city who shall, within seventy-two hours, exclusive of Sundays and holidays, investigate the information contained in the record and report his findings to the merchant or secondhand dealer.

9.18.280 Delivery. It is unlawful for any merchant or secondhand dealer or any clerk, agent or employee of any merchant or secondhand dealer to deliver any pistol to any purchaser until said merchant or secondhand dealer has received a report from the chief of police that the purchaser is not a fugitive from justice and that the purchaser has never been convicted in this state or elsewhere of a crime of violence, or of drug addiction or of habitual drunkenness and has never been confined in a mental institution; provided, that if such merchant or secondhand dealer does not receive such report from the chief of police with seventy-two hours, exclusive of Sundays and holidays, after he has mailed a copy of the record to the chief of police as required by Section 9.18.270, then such merchant or secondhand dealer may deliver the pistol to the purchaser; provided further, that this section shall not apply to sales at wholesale, or to sales to persons exhibiting a valid license to carry a pistol concealed issued pursuant to R.C.W. 9.41.070, or to sales to law enforcement officers.

9.18.290 Prohibited Transactions. It is unlawful for any person who is a fugitive from justice or who has been convicted in this state of elsewhere of a crime of violence, or of drug addiction or of habitual drunkenness or has been confined to a mental institution, to purchase a pistol in this city, and it is further unlawful for any such person to fail to disclose such information when applying for the purchase of a pistol.

Mountlake Terrace

5.07.010. Certain persons forbidden to possess arms. No person who has been convicted in this state or elsewhere of a crime of violence, shall own a firearm or have one in his possession under his control.

5.07.014. Delivery to minors and others forbidden. No person shall deliver a pistol to any person under the age of 21 or to one whom he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, an habitual drunkard, or of unsound mind.

5.07.015. Sales regulated. It is unlawful for any merchant or secondhand dealer, or any clerk, agent or employee of any merchant or secondhand dealer, to sell, give away or dispose of any pistol to any person at retail, unless such person is personally known to the seller or shall present clear evidence of his identity, nor without completing a true record in triplicate of every pistol sold or disposed of [contact local authorities for required contents] * * * One copy shall within six hours be sent by registered mail to the chief of police of the City of Mountlake Terrace who shall, within seventy-two hours, exclusive of Sundays and holidays, investigate the information contained in said record and report his findings to the merchant or secondhand dealer.

5.07.0151. It is unlawful for any merchant or secondhand dealer or any clerk, agent or employee of any merchant or secondhand dealer to deliver any pistol to any purchaser until said merchant or secondhand dealer has received a report from the chief of police that said purchaser is not a fugitive from justice and that said purchaser has never been convicted in this state or elsewhere of a crime of violence, nor an offense involving narcotics nor of repeated drunkenness and has never been confined to a mental institution: provided, that if such merchant or secondhand dealer does not receive such report from the chief of police within seventy-two hours, exclusive of Sundays and holidays, after he has mailed a copy of the record to the chief of police as required by Section 2, then such merchant or secondhand dealer may deliver the pistol to the purchaser; provided further, that this section shall not apply to sales at wholesale, or to sales to persons exhibiting a valid license to carry a pistol concealed issued pursuant to RCW 9.41.070, or to sales to law enforcement officers.

5.07.0152. It is unlawful for any person who is a fugitive from justice or who has been convicted in this state or elsewhere of a crime of violence, or an offense involving narcotics or of repeated drunkenness or has been confined to a mental institution to purchase a pistol in this city, and it is further unlawful for any such person to fail to disclose such information when applying for the purchase of a pistol.

5.07.016. Dealers to be licensed. No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell, or otherwise transfer any pistol without being licensed as provided by law under the requirements of Revised Code of Washington Section 9.41.110, as the same now is or hereafter may be amended.

5.07.017. Certain transfers forbidden. No person other than a duly licensed dealer shall make any loan secured by a mortgage, deposit, or pledge for a loan. * * * No person shall lend or give a firearm to another known, or with reasonable knowledge believed to have suicidal tendencies or otherwise deliver

a pistol contrary to the provisions of this ordinance.

* * * * * *

5.07.019. False information forbidden. No person shall in purchasing or otherwise securing delivery of a pistol or in applying for a license to carry the same give false information or offer false evidence of his identity.

5.07.020. Exceptions. This ordinance shall not apply to antique firearms unsuitable for use as firearms and possessed as curiosities or ornaments.

5.07.021. Machine guns or parts contraband. All machine guns, or parts thereof, illegally held or possessed are hereby declared to be contraband, and it shall be the duty of all police officers to seize said machine gun, or parts thereof, wherever and whenever found.

* * * * * *

5.07.023. Definitions. The word firearm shall include but be not limited to mean any weapon or device capable of propelling a missile through the force of combustion or explosion of gunpowder or similar substance.

Mount Vernon

Ordinance 9.72.065 same as Washington State Law 9.41.080.

Normandy Park

7.24.030 Delivery restricted. No person shall deliver a pistol to any person under the age of twenty-one or to one whom he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, an habitual drunkard, or of unsound mind.

7.24.080 Possession restrictions. No person who has been convicted in this state or elsewhere of a crime of violence, shall own a pistol or have one in his possession under his control.

7.24.110 Certain transfers forbidden. No person other than a duly licensed dealer shall make any loan secured by a mortgage, deposit or pledge for a loan, shall keep such records and make such reports as are provided by law for pawnbrokers and secondhand dealers in cities of the first class. A duly licensed dealer may mortgage any pistol or stock of pistols but shall not deposit or pledge the same with any other person. No person shall lend or give a pistol to another or otherwise deliver a pistol contrary to the provisions of this title.

7.24.140 Antique pistols exempted. This title shall not apply to antique pistols unsuitable for use as firearms and possessed as curiosities or ornaments.

7.24.150 Machine guns. It is unlawful for any person to manufacture, own, buy, sell, loan, furnish, transport, or to have in possession, or under control, any machine gun, or any part thereof capable of use or assembling or repairing any machine gun; Provided, however, that such limitation shall not apply to any police officer in the discharge of official duty, or to any officer or member of the armed forces of the United States or the state of Washington.

7.24.160 Machine gun defined. For the purpose of this title, "machine gun" means any firearm or weapon known as a machine gun, mechanical rifle, submachine gun, and/or any other weapon, mechanism, or instrument not requiring that the trigger be pressed for each shot and having a reservoir clip disc, drum, bolt, or other separable mechanical device for steering, carrying or supplying ammunition which can be loaded into such weapon, mechanism, or instrument, and fired therefrom at a rate of five or more shots per second.

North Bend

9.72.030: No person shall deliver a pistol to any person under the age of eighteen years or to one who he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, an habitual drunkard, or of unsound mind.

* * * * * *

9.72.040 Pistol—Purchase—False information. No person shall, if purchasing or otherwise securing delivery of a pistol or in applying for a license to carry the same, give false information or offer false evidence of his identity.

* * * * * *

9.72.070 Firearm—Possession by minor unlawful when. No minor under the age of fourteen years shall handle or have in his possession or under his control, except while accompanied by or under the immediate charge of his parent or guardian or other adult approved for the purpose of this section by the parent or guardian, or while under the supervision of a certified safety instructor at an established gun range or firearm training class, any firearm of any kind for hunting or target practice or for other purposes.

Ocean Shores

7.28.040. Certain persons forbidden to possess arms. No person who has been convicted in this state or elsewhere of a crime of violence shall own a pistol or have one in his possession or under his control.

7.28.080. Delivery to minors and certain others forbidden. No person shall deliver a pistol to any person under the age of twenty-one or to one whom he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, an habitual drunkard, or of unsound mind.

7.28.090. Pistol sales regulated. No seller shall deliver a pistol to the purchaser thereof until forty-eight hours shall have elapsed from the time of the application for the purchase thereof, * * *.

7.28.100. Pistol dealers to be licensed. No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell, or otherwise transfer any pistol without being licensed as provided by law under the requirements of RCW 9.41.110.

7.28.110. Certain transfers of pistols forbidden. No person other than a duly licensed dealer shall make any loan secured by a mortgage, deposit or pledge for a loan shall keep such records and make such reports as are provided by law for pawnbrokers and second-hand dealers in cities of the first class (RCW Chapter 19.60). A duly licensed dealer may mortgage any pistol or stock of pistols but shall not deposit or pledge the same with any other person. No person shall lend or give a pistol to another or otherwise deliver a pistol contrary to the provisions of this chapter.

* * * * * *

7.28.140. Exceptions for unusable pistols. This chapter shall not apply to antique pistols unsuitable for use as firearms and possessed as curiosities or ornaments.

7.28.150. Machine guns prohibited. It shall be unlawful for any person to manufacture, own, buy, sell, loan, furnish, transport, or to have in possession, or under control, any machine gun, or any part thereof capable of use or assembling or repairing any machine gun; provided, however, that such limitation shall not apply to any police officer in the discharge of official duty, or to any officer or member of the armed forces of the United States or the state of Washington.

7.28.160. Machine gun defined. For the purpose of this chapter a machine gun is defined as any firearm or weapon known as a machine gun, mechanical rifle, submachine gun, and/or any other weapon, mechanism or instrument not requiring that the trigger be pressed for each shot and having a reservoir clip disc, drum, belt or other separable mechanical device for storing, carrying or supplying ammunition which can be loaded into such weapon, mechanism, or instrument and fired therefrom at a rate of five or more shots per second.

Olympia

Section 1. It shall be unlawful for any person, firm or corporation, to purchase any gun, pistol, firearm, or other deadly weapon, or any ammunition or explosive of any kind or character, without first obtaining a written permit therefor from the Chief of Police of the City of Olympia.

Section 2: The application for such permit shall be in writing and shall state the name of the person, firm or corporation, from whom such purchase is to be made, the kind of firearm, ammunition, or explosive desired, and the purpose for which it is to be used.

Section 3: The issuance of such permit shall be in the discretion of the Chief of Police. * * * no person, firm, or corporation, shall sell any gun, pistol, firearm, deadly weapon, ammunition, or explosive without first obtaining from the purchaser a permit so issued by the Chief of Police. * * *

Pasco

9.24.060 Selling revolvers and pistols to minors. It is unlawful for any person within the city to sell, give, or permit to be sold or given to any person under the age of eighteen years, any revolver or pistol.

Puyallup

9.28.04 same as 9.45.010 Bremerton

Raymond

5.040.010. It shall be unlawful for any person, firm, or corporation to sell any firearms * * * to minors.

* * * * *

Redmond

Redmond has adopted, by reference, Chapter 9.41 of the Washington Revised Code Annotated.

Renton

Firearms

6-137: "Short Firearm" and "Crime of Violence" Defined: "Short Firearm" as used in this Chapter means any firearm with a barrel less than twelve inches (12") in length.

6-140: Certain persons forbidden to possess arms: No person who has been convicted in this State or elsewhere of a crime of violence, shall own a pistol or have one in his possession or under his control.

6-144: Delivery to minors and others forbidden: No person shall deliver a pistol to any person under the age of twenty one (21) years or to one whom he has reasonable cause to believe has been convicted of a crime of violence or is a drug addict, a habitual drunkard or of unsound mind.

6-145: Sales regulated: No seller shall deliver a pistol to the purchaser thereof until forty eight (48) hours shall have elapsed from the time of the application for the purchase thereof, and when delivered, said pistol shall be securely wrapped and shall be unloaded. At the time of applying for the purchase of a pistol the purchaser shall sign in triplicate and deliver to the seller a statement [contact local authorities for required contents] * * * The seller shall within six (6) hours after such application, sign and attach his address and forward by registered mail one (1) copy of such statement to the Chief of Police; the duplicate duly signed by the seller, shall within seven (7) days be sent by him with his address to the Director of Licenses; the triplicate he shall retain for six (6) years. This Section shall not apply to sales at wholesale.

6-146: Dealers to be licensed: No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell or otherwise transfer, any pistol without being licensed as provided by law.

6-147: Certain transfers forbidden: No person other than a duly licensed dealer shall make any loan secured by a mortgage, deposit or pledge of a pistol. Any licensed dealer receiving a pistol as a deposit or pledge for a loan shall keep such records and make such reports as are provided by law for pawnbrokers and second-hand dealers in cities of the first class. A duly licensed dealer may mortgage any pistol or stock of pistols but shall not deposit or pledge the same with any other person. No person shall lend or give a pistol to another or otherwise deliver a pistol contrary to the provisions of this Chapter.

6-148: False information forbidden: No person shall, in purchasing or otherwise securing delivery of a pistol or in applying for a license to carry the same, give false information or offer false evidence of his identity.

* * * * *

6-150: Exceptions: This Chapter shall not apply to antique pistols unsuitable for use as firearms and possessed as curiosities or ornaments.

6-151: Machine guns; prohibited: That it shall be unlawful for any person to manufacture, own, buy, sell, loan, furnish, transport or have in possession or under control, any machine gun or any part thereof capable of use or assembling or repairing any machine gun; provided, however, that such limitation shall not apply to any police officer in the discharge of official duty, or to any officer or member of the armed forces of the United States or the State of Washington.

6-152: Machine gun defined: For the purpose of this Chapter a machine gun is defined as any firearm or weapon known as a machine gun, mechanical rifle, submachine gun, and/or any other weapon, mechanism, or instrument not requiring that the trigger be pressed for each shot and having a reservoir clip, disc, drum, belt or other separable mechanical device for storing, carrying or supplying ammunition which can be loaded into such weapon, mechanism or instrument, and fired therefrom at the rate of five or more shots per second.

6-153: Machine guns or parts contraband: All machine guns, or parts thereof, illegally held or possessed are hereby declared to be contraband and it shall be the duty of all police officers to seize said machine gun or parts thereof, wherever and whenever found.

Richland

9.04.280. Selling, etc., of revolvers and pistols to minors less than eighteen. It shall be unlawful for any person within the city to sell, give, or permit to be sold or given to any person under the age of eighteen years, any revolver or pistol.

Seattle

Section 12A.17.010 Definitons. The following definitions apply in this chapter.

(1) "pistol" means any firearm or other weapon for the purpose of discharging a projectile by means of compressed air, chemical, combustion, or otherwise and having a barrel less than twelve inches in length.

(2) "Fugitive from justice" means a person who, having committed a crime, flees from the jurisdiction where it was committed to evade arrest.

* * * * *

(5) "gas pen," "gas pencil," "gas bomb" and "gas pistol" mean any pen, pencil, bomb, pistol or other device which is capable of containing and emitting tear gas or any noxious liquid, gas or substance.

Section 12A.17.080 Unlawful sale of pistol. It is unlawful for any merchant or secondhand dealer or any clerk, agent or employee of any merchant or secondhand dealer, to knowingly sell, give away or dispose of any pistol to any person at retail, unless such person is personally known to the seller or shall present clear evidence of his identity, or without completing a true record in triplicate of every pistol sold or disposed of. Such record, which shall be in the form of an application for purchase, shall be personally signed by the purchaser and by the person effecting the sale, each in the presence of the other [contact local authorities for required contents] * * * One copy shall within six hours be sent by registered mail to the chief of police of the city of Seattle who shall, within seventy-two hours, exclusive of Sundays and holidays, investigate the information contained in the record and report in writing his findings to the merchant or secondhand dealer, and if the chief of police denies such application to pur-

chase, he shall in such report so notify said merchant or secondhand dealer stating the grounds for such denial; provided, that such application shall not be denied unless the purchaser has been convicted in this state or elsewhere of a crime of violence, drug addiction, or habitual drunkenness, or is legally judged to be of unsound mind; provided further, that this section and Section 12A.17.100 shall not apply to sales by wholesalers to dealers, or to the sale of antique pistols or revolvers manufactured prior to 1898 and held as collector's items.

Section 12A.17.100 Unlawful delivery to purchaser. It is unlawful for any merchant or secondhand dealer or as any clerk, agent, or employee of any merchant or secondhand dealer to knowingly deliver any pistol to any purchaser until seventy-two hours, exclusive of Sundays and holidays, shall have elapsed from the time of application for the purchase thereof as provided in Section 2 hereof; and it is further unlawful for any merchant or secondhand dealer, or any such clerk, agent or employee to knowingly deliver any pistol to any purchaser whose application to purchase has been denied by the chief of police and the merchant or secondhand dealer so notified in writing as provided in Section 2 hereof within such seventy-two hour period. * * * Provided, that if such merchant or secondhand dealer does not receive such report from the chief of police within seventy-two hours, exclusive of Sundays and holidays, after he has mailed a copy of the record to the chief of police as required by Section 12A.17.080, then such merchant or secondhand dealer may deliver the pistol to the purchaser; provided further, that this section shall not apply to sales at wholesale, or to sales to persons exhibiting a valid license to carry a pistol concealed issued pursuant to RCW 9.41.070 or 12A.17.040 of this title or to sales to peace officers.

Section 12A.17.120 Unlawful purchases—False statements. It is unlawful for any person who has been convicted in this state or elsewhere of a crime of violence, or of drug addiction or of habitual drunkenness or who is legally judged to be of unsound mind to purchase a pistol in this city, and it is further unlawful for any person to knowingly make any false statement in his application to purchase a pistol.

Section 12A.24.040 Unlawful purchase, acquisition, possession or use of arms. A person is guilty of unlawful purchase, acquisition, possession or use of arms if he is under the age of eighteen (18) years and knowingly purchases, attempts to purchase, acquires, possesses or uses any firearm of any kind or any spring gun, air gun or slingshot, or any ammunition for any such firearm or gun, except while accompanied by or under the immediate charge of his parent or legal guardian or other adult approved for the purpose of this section by such parent or guardian, or while under the supervision of a certified safety instructor at an established gun range or firearm training class.

Section 12A.24.050 Unlawful aiding the purchase, acquisition, possession or use of arms. A person is guilty of unlawfully aiding the purchase, acquisition, possession or use of arms if he knowingly aids in a violation of or permits any person to violate the provisions of Section 12A.24.040.

Section 12A.24.060 Unlawful furnishing, purchase, acquisition, possession or use of pistol. Notwithstanding the provisions of 12A.24.040 and 12A.24.050 a person is guilty of unlawful furnishing, purchase, acquisition, possession or use of a pistol if he is under the age of eighteen (18) years and knowingly purchases, attempts to purchase, acquires, possesses or uses a pistol as defined by Section 12A.17.010(1), or if he is a person who knowingly sells, gives, furnishes or causes to be furnished or permits to be sold, given or furnished a pistol to any person under the age of eighteen (18) years, or if he is a person who knowingly permits a person under the age of eighteen (18) years to possess or use a pistol.

Sedro Woolley

9.76.010 Pistol defined. "Pistol" as used in this chapter means any firearm with a barrel less than twelve inches in length.

9.76.020 Convicted persons owning pistol. No person who has been convicted in this state, or elsewhere, of a crime of violence shall own a pistol or have one in his possession or under his control.

9.76.080 Use by minors. No minor under the age of fourteen years shall handle or have in his possession or under his control, except while accompanied by or under the immediate charge of his parent or guardian or other adult approved for the purpose of this section by the parent or guardian, or while under the supervision of a certified safety instructor as at an established gun range or firearm training class, any firearm of any kind for hunting or target practice or for any other purposes. Any person violating any of the foregoing provisions, or aiding or knowingly permitting any such minor to violate the same, shall be guilty of a misdemeanor.

Shelton City

9.04.270 Selling or giving revolvers or pistols to minors. It shall be unlawful for any person within the city to sell, give, or permit to be sold or given to any person under the age of twenty-one years, any revolver or pistol.

Snohomish

941-36 Selling, etc., of revolvers and pistols to minors. It shall be unlawful for any person within the city to sell, give, or permit to be sold or given to any person under the age of twenty-one years, any revolver or pistol.

Spokane

The city of Spokane has adopted the language of the State firearms laws including Sections 9.40.110 through 9.41.240 shown at the beginning of the Washington State listing in this publication.

Spokane County

6.05.050. Persons prohibited from owning or possessing pistol. No person who has been convicted in this state or elsewhere of a crime of violence, shall own a pistol or have one in his possession or under his control.

6.05.060 Sales regulated. No seller shall deliver a pistol to the purchaser thereof until forty-eight hours shall have elapsed from the time of the application for the purchase thereof, and, when delivered, said pistol shall be securely wrapped and shall be unloaded.

6.05.070. Giving of false information prohibited. No person shall in purchasing or otherwise securing delivery of a pistol or in applying for a license to carry the same, give false information or offer false evidence of his identity.

* * * * *

6.05.090. Delivery to minors and others prohibited. No person shall deliver a pistol to any person under the age of twenty-one or to one who he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, an habitual drunkard or of unsound mind.

Sumas

8.44.040 Possession—Restrictions. No person who has been convicted in this state or elsewhere of a crime of violence, shall own a pistol or have one in his possession under his control.

8.44.080 Restrictions on delivery. No person shall deliver a pistol to any person under the age of twenty-one or to one whom he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, a habitual drunkard, or of unsound mind.

8.44.090 Sales regulated. No seller shall deliver a pistol to the purchaser thereof until forty-eight hours shall have elapsed from the time of the application for the purchase thereof, * * *.

8.44.100 Dealers to be licensed. No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell, or otherwise trans-

fer any pistol without being licensed as provided by law under the requirements of RCW 9.41.110.

8.44.150 Machine guns—Prohibition. It is unlawful for any person to manufacture, own, buy, sell, loan, furnish, transport, or to have in possession, or under control, any machine gun, or any part thereof capable of use or assembling or repairing any machine gun, provided, however, that such limitation shall not apply to any police officer in the discharge of official duty, or to any officer or member of the armed forces of the United States or the state of Washington.

8.44.160 Machine gun defined. For the purpose of this chapter a machine gun is defined as any firearm or weapon known as a machine gun, mechanical rifle, submachine gun, and/or any other weapon, mechanism, or instrument not requiring that the trigger be pressed for each shot and having a reservoir clip, disc, drum, belt, or other separable mechanical device for storing, carrying, or supplying ammunition which can be loaded into the weapon, mechanism, or instrument, and fired therefrom at a rate of five or more shots per second.

Tacoma

8.66.030. Sale to minors under eighteen. No person shall, within the City of Tacoma, sell, give or loan, or cause to be sold, given or loaned, to any minor under the age of eighteen years, any gun, revolver, pistol, toy pistol, or the cartridges therefor, * * *

8.66.080. Definitions. The following words and phrases used in Sections 8.66.080 to 8.66.120, inclusive, shall be construed as follows:

1. "Pistol" means any firearm or other weapon for the purpose of discharging a projectile by means of compressed air, chemical combustion or otherwise and having a barrel less than twelve inches in length, but shall not include antique pistols or revolvers manufactured prior to 1898 and held as collector's items.

2. "Crime of violence" means any of the following crimes or an attempt to commit any of the same: Murder, manslaughter, rape, mayhem, first degree assault, robbery, burglary and kidnapping.

3. "Fugitive from justice" means a person who, having committed a crime, flees from the jurisdiction where it was committed to evade arrest.

4. "Law enforcement officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses.

8.66.090. Records required before sale. It is unlawful for any merchant or secondhand dealer, or any clerk, agent or employee of any merchant or secondhand dealer, to sell, give away or dispose of any pistol to any person at retail, unless such person is personally known to the seller or shall present clear evidence of his identity, nor without completing a true record in triplicate of every pistol sold or disposed of. Such record shall be personally signed by the purchaser and by the person effecting the sale, each in the presence of the other, and shall contain [such information as is required by the locality; Contact local authorities for required contents] * * *. One copy shall within six hours be sent by registered mail to the chief of police of the City of Tacoma who shall, within seventy-two hours, exclusive of Sundays and holidays, investigate the information contained in said record and report his findings to the merchant or secondhand dealer.

8.66.100. Delivery prohibited prior to receipt of records. It is unlawful for any merchant or secondhand dealer or any clerk, agent or employee of any merchant or secondhand dealer to deliver any pistol to any purchaser until said merchant or secondhand dealer has received a report from the chief of police that said purchaser is not a fugitive from justice and that said purchaser has never been convicted in this state or elsewhere of a crime of violence, or of drug addiction or of habitual drunkenness and has never been confined to a mental institution; provided, that if such merchant or secondhand dealer does not receive such report from the chief of police within seventy-two hours, exclusive of Sundays and holidays, after he has mailed a copy of the record to the chief of police as required by Section 8.66.090, then such merchant or secondhand dealer may deliver the pistol to the purchaser; provided further, that this section shall not apply to sales at wholesale, or to sales to persons exhibiting a valid license to carry a pistol concealed issued pursuant to RCW 9.41.070, or to sales to law enforcement officers.

8.66.110. Sales prohibited to certain persons. It is unlawful for any person who is a fugitive from justice or who has been convicted in this state or elsewhere of a crime of violence, or of drug addiction or of habitual drunkenness or has been confined to a mental institution to purchase a pistol in this city, and it is further unlawful for any such person to fail to disclose such information when applying for the purchase of a pistol.

Tukwila

8.12.010. Definitions. * * * (d) "Other dangerous weapon" means any instrument not elsewhere defined in this chapter which is capable of producing bodily harm and which is carried or possessed with intent to use the same unlawfully against another. * * * (f) "Pistol" means any firearm or other weapon for the purpose of discharging a projectile by means of compressed air, chemical combustion or otherwise and having a barrel less than twelve inches in length. * * *

8.12.020. Unlawful use of weapons. (a) It is unlawful for anyone to: * * * (2) * * * sell or give away to any person under eighteen years of age any * * * other dangerous weapon, or for any such person to purchase or possess any such * * * other dangerous weapon; or * * * (5) Use any device or attachment of any kind designed, used or intended for use in silencing the noise of any firearm.

Tumwater

7.04.350 Crime of violence defined. The term "crime of violence" as used in this chapter means any of the following crimes or an attempt to commit any of the same: murder, manslaughter, rape, mayhem, first degree assault, robbery, burglary and kidnapping.

7.04.380 Firearm defined. The word "firearm" shall include but is not limited to mean any weapon or device capable of propelling a missile through the force of combustion or explosion or gunpowder or similar substance.

7.04.430 Delivery to minors and certain other persons. No person shall deliver a pistol to any person under the age of twenty-one or to one whom he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, an habitual drunkard or of unsound mind.

7.04.450 Regulating sales—Purchaser's statement. No seller shall deliver a pistol to the purchaser thereof until forty-eight hours shall have elapsed from the time of the application for the purchase thereof, and when delivered, said pistol shall be securely wrapped and shall be unloaded. At the time of applying for the purchase of a pistol, the purchaser shall sign in triplicate and deliver to the seller a statement * * * that he has never been convicted in this state or elsewhere of a crime of violence.

7.04.460 Dealers to be licensed. No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell, or otherwise transfer any pistol without being licensed as provided by law under the requirements of RCW 9.41.110.

7.04.470 Certain transfers of weapons prohibited. No person other than a duly licensed dealer under RCW 9.41.110 shall make any loan secured by a mortgage, deposit or pledge for a loan.

* * * * * *

7.04.500 Antique pistols excepted. This chapter shall not apply to antique pistols unsuitable for use as firearms and possessed as curiosities or ornaments.

Section 10: Handguns and Minors Less than Eighteen: No person shall sell or give or permit to be sold or given to any person under the age of eighteen years any revolver or pistol.

Section 11: Sale and Loaning of Firearms: No person shall sell, loan, or furnish any firearm or dangerous weapon to any person under the influence of alcohol or any narcotic or controlled substance, or to any person in a condition of agitation or excitability.

Winslow

Section 10: Handguns and Minors Less than Eighteen: No person shall sell or give or permit to be sold or given to any person under the age of eighteen years any revolver or pistol.

Section 11: Sale and Loaning of Firearms: No person shall sell, loan, or furnish any firearm or dangerous weapon to any person under the influence of alcohol or any narcotic or controlled substance, or to any person in a condition of agitation or excitability.

Woodland

9.80.010 Definitions. * * * "Crime of violence" as used in this title means any of the following crimes or an attempt to commit any of the same: murder, manslaughter, rape, mayhem, first degree assault, robbery, burglary and kidnapping.

* * * * *

9.80.040 Possession—Prohibited. No person who has been convicted in this state or elsewhere of a crime of violence, shall own a pistol or have one in his possession or under his control.

9.80.050 Delivery to minors and addicts. No person shall deliver a pistol to any person under the age of twenty-one or to one whom he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, or habitual drunkard or of unsound mind.

9.80.060 Certain transfers prohibited. * * * No person shall lend or give a pistol to another or otherwise deliver a pistol contrary to the provisions of this title, and the laws of the state.

* * * * *

9.80.080 Antique pistols. Chapters 9.80, 9.84 and 9.88 shall not apply to antique pistols unsuitable for use as firearms and possessed as curiosities or ornaments.

* * * * *

Yakima

8.28.010. Use by minors. No person under the age of twenty-one years shall be issued a county license for the possession and use of a handgun or pistol. Persons twenty-one years of age or over may be issued licenses for handguns and pistols subject to RCW 9.41.070.

Yelm

9.32.020 Pistol—Forbidden to certain persons. No person, who has been convicted, in this state or elsewhere of a crime of violence, who is a drug addict, or who has been confined in a mental institution, shall own a pistol or have one in his possession or under his control.

9.32.050 Pistol—Delivery to certain persons prohibited. No person shall deliver a pistol to any person under the age of eighteen years or to one who he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, or of unsound mind.

9.32.060 Pistol—Retail dealers—License required. No retail dealers shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell or otherwise transfer any pistol without being licensed as provided by law under the requirements of RCW 9.41.110.

West Virginia

State Law

W. Va. Code

Sec. 27-12-3. Miscellaneous offenses. If any person shall * * * without the permission of the superintendent of any such [state] hospital, give or sell to any such patient, whether on the premises thereof or elsewhere, any firearms, * * * he shall be guilty of a misdemeanor, * * *.

Sec. 28-1-8. Offenses relating to youth facilities; penalties; escape; arrest and return. If any person shall * * * give or sell, or aid or abet any other person to give or sell, to any youth in the youth facility, whether on the premises of such institution or otherwise, any * * * firearms, * * * such person shall be guilty of a misdemeanor, * * * more than one hundred dollars, or to be confined not more than twelve months in the county jail, or, in the discretion of the court, both fined and imprisoned. * * *

Sec. 61-7-8. Possession of machine guns, high-powered rifles, or ammunition therefor; permits; unnaturalized persons may not possess firearms; exception. It shall be unlawful for any person to carry, transport, or have in his possession, any machine gun, submachine gun, or what is commonly known as a high-powered rifle, or any gun of similar kind or character, or any ammunition therefor, except on his own premises or premises leased to him for a fixed term, until such person shall have first obtained a permit from the superintendent of the department of public safety of this State, and approved by the governor, or until a license therefor shall have been obtained from the circuit court as in the case of revolvers and pistols, and all such licenses, together with the numbers identifying such firearms, shall be certified to the superintendent of the department of public safety: Provided, that nothing herein contained shall prevent the use of rifles by bona fide rifle club members who are freeholders or tenants for a fixed term in this State, at their usual or customary place of practice, and: Provided, however, that notwithstanding any other provision of this article or any other provision of this Code, any resident, nonresident and unnaturalized person may lawfully possess, transport, carry and use any firearm he is permitted to use for hunting under any valid license he has been issued by the department of natural resources and which he holds in his possession. At all times such person shall comply with all of the requirements of law set forth in this Code and the rules and regulations promulgated thereunder pertaining to possessing, transporting, carrying and using firearms for hunting.

No such permit shall be granted by the superintendent except in cases of riot, public danger and emergency until such applicant shall have filed his written application with the superintendent in accordance with the rules and regulations that may be from time to time prescribed by the department of public safety relative thereto, * * *.

No unnaturalized person may own, keep, possess, transport, carry or use any firearm of any kind or character, except for hunting as provided in sections three and eight [Secs. 61-7-3 and 61-7-8] of this article and article two [Sec. 20-2-1 et seq.], chapter twenty of this Code.

Sec. 61-7-9. Display of dangerous weapons for sale or hire; sale to unnaturalized person; penalties for violation of this section or Sec. 61-7-8. It shall be unlawful for any person, firm or corporation to place or

keep on public display to passersby on the streets, roads or alleys, for rent or sale, any revolver, pistol, * * * or other dangerous weapons of like kind or character, or any machine gun, submachine gun or high-powered rifle, or any gun of similar kind or character, or any ammunition for the same. * * * It shall be unlawful for any person to sell, rent, give or lend any of the arms mentioned in this article to an unnaturalized person: Provided, that a person may lawfully sell, rent, give or lend any firearm which may lawfully be used for hunting to any unnaturalized person who has been issued and holds a valid permit in accordance with the provisions of section twenty-nine [Sec. 20-2-29], article two, chapter twenty of this Code and the unnaturalized person shows such permit to such person when the sale, rental, gift or loan is made.

Sec. 61-7-14. Purchase of firearms in contiguous state. Any resident of this State, including a corporation or other business entity maintaining a place of business in this State, who may lawfully purchase and receive delivery of a rifle, shotgun or any other legal firearm, or any part thereof, in this State, may purchase the same in a state contiguous to this State and transport or receive the same into this State provided the sale meets the lawful requirements of any federal statute, and is made by a licensed importer, licensed manufacturer, licensed dealer or private collector.

Beckley

25-3. Sale or rental of weapons to minors under eighteen. It shall be unlawful for any person to rent or sell any machine gun, high-powered rifle or any gun of similar kind or character, or revolver, pistol, * * * or other dangerous weapon of like kind or character, or any ammunition for any such weapon, to any person under the age of eighteen years, unless at the time of such rental or sale such minor shall be accompanied by his parents, or one of them, or by the minor's legal guardian.

Benwood

210.02. Selling or giving to minors. No person shall sell or give away to a person under twenty-one years of age, any revolver or other pistol * * * or any other dangerous or deadly weapon of like kind or character.

210.06. Sale to person not holding permit. No person shall sell, deliver, transfer or otherwise dispose of any pistol, revolver or other firearms of the kind described in Section 210.05, to any person who is not the holder of a written permit, bearing the signature of the Chief of Police, authorizing such person to purchase, receive or accept such pistol, revolver or other firearm.

210.07. Purchase without permit. No person shall purchase, receive or accept any pistol, revolver or other firearm of the kind described in Section 210.05 without first obtaining a written permit from the Chief of Police authorizing such person to purchase, receive or accept such pistol, revolver or other firearms.

210.09 Issuance and Duration of permits. It shall be the duty of the Chief of Police to issue to such applicant a written permit, on a standard form to be prescribed and provided by the Chief of Police, authorizing the applicant to purchase, receive or accept such pistol, revolver or other firearm of the kind described in Section 210.05, * * * provided, however, that a permit to purchase, receive or accept a pistol, revolver or other firearm of the kind described in Section 210.05 shall not be issued to minors, drug addicts, unnaturalized foreign-born persons, habitual drunkards, persons of unsound mind or to anyone who has been convicted of a felony under the laws of the United States, the State of West Virginia or any other state. Permits shall be valid for a period of ten days only.

210.10 Vendor to demand permit from Purchaser. At the time of the sale or delivery of a pistol, revolver or other firearm of the kind described in Section 210.05, the vendor or transferor thereof shall demand of and receive from the purchaser or recipient of such pistol, revolver or other firearm, a permit, issued pursuant to the provisions of this article authorizing such purchaser or recipient to purchase or receive such pistol, revolver or other firearm.

210.13. Exceptions. Nothing contained in this article shall be deemed to apply to the sale, transfer, purchase or receipt of antique pistols or revolvers which are incapable of being used as firearms.

Bluefield

13-215. Weapons. A license shall be required to sell or expose for sale pistols, revolvers, * * * or weapons of any kind, * * *.

Charleston

Sec. 18-70. Same—Possession by persons under age sixteen. No person under the age of sixteen years shall carry or have in his possession upon any street, park or other public space in the city any gun, pistol, rifle, * * * or other dangerous weapon of any character; provided, that nothing in this section shall be so construed as to prohibit members of duly authorized military, cadet corps or similar organizations from the proper use of their guns and other equipment as members of such organizations.

Chesapeake

Sec. 5. Sale or rental. It shall be unlawful for any person to rent or sell any revolver, pistol, * * * or other dangerous weapon of like kind or character, or any machine gun or high powered rifle, or any gun of similar kind or character, or any ammunition for the same, to any person under the age of eighteen years, unless at the time of such rental or sale such minor shall be accompanied by his or her parents, or one of them, or by the minor's legal guardian.

Clarksburg

17-72. Same—Sale to person under sixteen years of age; sale of explosives to persons under sixteen prohibited. It shall be unlawful for any person to sell, offer or give to any child or children under the age of sixteen years, firearms, gunpowder, gun caps, * * * or other explosives of like kind and character in any quantity whatever.

Davis

No. 20. It shall be unlawful for any person to * * * furnish or sell any such weapon to any other person under the age of 21 years. * * *

Fairmont

Sec. 16-6. Dangerous or deadly weapons—Carrying; sale, etc., to minors. If any person shall carry about his person any revolver or other pistol, * * * or any other dangerous or deadly weapon of like kind or character, he shall be punished as provided * * *. If any person shall sell or furnish any such weapon as is hereinabove mentioned to a person whom he knows or has reason from his appearance or otherwise to believe to be under the age of twenty-one years he shall be punished * * *

Logan

15-4. Sale, etc., to minor under sixteen of firearms or explosives. It shall be unlawful for any person to sell or give to any minor under the age of sixteen years firearms or

gunpowder or other explosives in any quantity.

Mannington

Chapter 22, Section 2m. No person without a city license therefore, shall sell pistols, revolvers, or weapons of like or kind.

Martinsburg

15-59. Display of dangerous weapons for sale or hire; sale to unnaturalized person. * * * It shall be unlawful for any person to sell, rent, give or lend any of the arms mentioned in article 7, chapter 61, West Virginia Code, 1961, to an unnaturalized person.

Mason

Art. 3 Section 4. Dangerous Weapons: Sale of. No person shall sell or furnish any revolver or other pistol, * * * to a person whom he knows, or has reason, from his appearance, or otherwise, to believe to be under the age of 18 years.

Morgantown

31-8. License—Required. No person shall sell, offer for sale, display, rent or exchange any dangerous or deadly weapon, including, but not by way of limitation, any revolver, pistol, * * * or other weapons of like kind within the city without first obtaining a license to engage in any such business.

31-15. Sale, etc., to intoxicated persons, minors under eighteen, etc. It shall be unlawful for any person or dealer licensed under this article to sell, loan or furnish any of the dangerous or deadly weapons mentioned and described in this article to any person under the influence of alcohol, or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability, or to a minor under the age of eighteen years, or to an unnaturalized person.

Moundsville

Sec. 14-81. Weapons. The annual license fee to sell or offer for sale pistols, revolvers, * * * shall be ten dollars. No license shall be issued without the prior certification of the chief of police of the city.

Mullens

Sec. 20-50. No person shall carry about his person any revolver, pistol * * * No person shall sell or furnish any such weapon as is hereinbefore mentioned to a person whom he knows, or has reason from his appearance or otherwise to believe, to be under the age of twenty-one years. * * *

Rupert

7-304 Dangerous Weapons: Sale of. No person shall sell or furnish any of the dangerous weapons referred in Section 3 (revolver or other pistol) of this article to a person when he knows, or has reason from his appearance or otherwise, to believe, to be under the age of twenty-one years.

St. Mary

Article XIV. Sec. 57 * * * It shall be unlawful for any person to sell, rent, give or lend any of the arms [handguns, rifles, machineguns] mentioned in this section to an unnaturalized person.

Summersville

* * * it shall be unlawful for any person, firm, or corporation to place or keep on public display to passers-by on the streets, roads, or alleys of said Town, for rent or sale, any revolver, pistol * * * or other dangerous weapon of like kind or character or any machine gun, sub-machine gun, or high powered rifle, or any gun of similar kind or character, or any ammunition for the same. * * * It shall be unlawful for any person to sell, rent, give, or lend any of the arms mentioned in this article to an unnaturalized person.

Thomas

Section 26. It shall be unlawful for any person to carry about his person any revolver or other pistol, * * * nor shall any person sell or furnish any such weapon as is hereinbefore mentioned, to a person whom he knows, or has reason to believe, from his appearance or otherwise, to be under the age of twenty-one years; * * *.

Weirton

553.07 Display of Dangerous Weapons; Reporting Purchases. No person shall place or keep on public display for rent or sale to passers-by on the street, roads or alleys, any revolver, pistol, * * * any machine gun, submachine gun or high-powered rifle, any gun of similar kind or character or any ammunition for the same. All dealers licensed to sell any of the foregoing arms or weapons shall take the name, address, age and general appearance of the purchaser, as well as the maker of the gun, manufacturer's serial number and the caliber and report the same at once in writing to the Police Chief.

553.08 Sale of arms to unnaturalized person or minor. No person shall sell, rent, give or lend any of the arms mentioned in this article to any unnaturalized person and no person shall sell any of the arms mentioned in this article to any minor under the age of sixteen years.

Wheeling

537.02 Selling or giving to minors. No person shall sell or give away to a person under twenty-one years of age, any revolver or other pistol * * * or any other dangerous or deadly weapon of like kind or character.

537.05 Sale, transfer of concealed weapons. No person shall sell, lend, give away, exchange or transfer, or purchase, receive or accept, any pistol, revolver or firearms of any kind whatsoever which is capable of being concealed on the person, except as authorized and provided by this article.

537.06 Sale to person not holding permit. No person shall sell, deliver, transfer or otherwise dispose of any pistol, revolver or other firearms of the kind described in Section 537.05, to any person who is not the holder of a written permit, bearing the signature of the Chief of Police, authorizing such person to purchase, receive or accept such pistol, revolver or other firearm.

537.07 Purchase without permit. No person shall purchase, receive or accept any pistol, revolver or other firearm of the kind described in Section 537.05 without first obtaining a written permit from the Chief of Police authorizing such person to purchase, receive or accept such pistol, revolver or other firearms.

537.10 Vendor to demand permit from purchaser. At the time of the sale or delivery of a pistol, revolver or other firearm of the kind described in Section 537.05, the vendor or transferor thereof shall demand of and receive from the purchaser or recipient of such pistol, revolver or other firearm, a permit, issued pursuant to the provisions of this article authorizing such purchaser or recipient to purchase or receive such pistol, revolver or other firearm.

537.13 Exceptions. Nothing contained in this article shall be deemed to apply to the sale, transfer, purchase or receipt of antique pistols or revolvers which are incapable of being used as firearms.

Wisconsin

State Law

Wisc. Stat. Ann.

175.30 Purchase of firearms in contiguous states permitted. It is lawful for a resident of this state or a corporation or other business entity maintaining a place of business in this state to purchase or otherwise obtain a rifle or shotgun in a state contiguous to this state if the transfer complies with federal law and the laws of both states.

175.35 Waiting period for purchase of handguns. (1) In this section, "handgun" means any weapon designed or redesigned, or made or remade, and intended to be fired while held in one hand and to use the energy of an explosive to expel a projectile through a smooth or rifled bore.

(2) (a) No firearms dealer licensed by the U.S. department of the treasury may transfer possession of any handgun to any person for 48 hours following purchase of such handgun.

(b) This section shall not apply to the transfer of any handgun classed as an antique by regulations of the treasury department or to transfers between licensed firearms dealers or between wholesalers and dealers.

* * * * *

939.22 Words and phrases defined. In the criminal code, the following words and phrases have the designated meanings unless the context of a specific section manifestly requires a different construction:

* * * * *

(10) "Dangerous weapon" means any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or great bodily harm, or any other device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.

* * * * *

941.22 Possession of pistol by minor. (1) Any minor who goes armed with a pistol or any person who intentionally sells, loans or gives a pistol to a minor is guilty of a Class A misdemeanor.

* * * * *

(4) In this section "pistol" means any firearm having a barrel less than 12 inches long.

941.25 Manufacturer to register machine guns. Every manufacturer shall keep a register of all machine guns manufactured or handled by him or her. This register shall show the model and serial number, date of manufacture, sale, loan, gift, delivery or receipt, of every machine gun, the name, address, and occupation of the person to whom the machine gun was sold, loaned, given or delivered, or from whom it was received; and the purpose for which it was acquired by the person to whom the machine gun was sold, loaned, given or delivered, or from whom received. Upon demand every manufacturer shall permit any marshal, sheriff or police officer to inspect his or her entire stock of machine guns, parts, and supplies therefor, and shall produce the register required under this section for inspection. Whoever violates any provision of this section is subject to a Class B forfeiture.

941.26 Machine guns and other weapons; use in certain cases; penalty. (1) No person may sell, possess, use or transport any machine gun or other full automatic firarm. No person may sell, possess, use or transport any bomb, hand grenade, projectile, shell or other container of any kind or character into which tear gas or any similar substance is used or placed for use to cause bodily discomfort, panic, or damage to property.

(2) Any person violating any of the provisions of this section is guilty of a Class E felony.

(3) the provisions of this section shall not apply to the sale, possession, use or transportation of any such weapons or containers to or by any armed forces or national guard personnel in line of duty, any civil enforcement officer of the state or of any city or county, or any person duly authorized by the chief of police of any city or the sheriff of any county to sell, possess, use or transport such weapons or containers. The restriction on transportation contained in this section shall not apply to common carriers.

941.27 Machine guns. (1) **Definition.** In ss. 941.25 and 941.26, "machine gun" includes a weapon of any description by whatever name known which was manufactured to discharge more than 2 shots or bullets by a single function of the firing device.

(2) **Exceptions.** Sections 941.25 and 941.26 shall not prohibit or interfere with the manufacture for, and sale of, machine guns to the military forces or the peace officers of the United States or of any political subdivision thereof, or the transportation required for that purpose; the possession of a machine gun for scientific purpose, or the possession of a machine gun not usable as a weapon and possessed as a curiosity, ornament or keepsake; or the possession of a machine gun other than one adapted to use pistol cartridges for a purpose manifestly not aggressive or offensive.

943.06 Molotov cocktails. (1) As used in this section, "fire bomb" means a breakable container containing a flammable liquid with a flash point of 150 degrees Fahrenheit or less, having a wick or similar device capable of being ignited, but does not mean a device commercially manufactured primarily for the purpose of illumination.

(2) Whoever possesses, manufactures, sells, offers for sale, gives or transfers a fire bomb is guilty of a Class E felony.

(3) This section shall not prohibit the authorized use or possession of any such device by a member of the armed forces or by firemen or law enforcement officers.

Appleton

8.01 Offenses endangering public safety. * * * * * (4) **Sale of dangerous weapons to minors prohibited.** No person shall buy for, sell or give away to any miner any dangerous weapon * * * without first having obtained the written consent of the parent or guardian of such minor. The term "dangerous weapon" shall mean and include the following instruments: * * * pistol, revolver, * * * any weapon in which loaded or blank cartridges are used. * * *

Beloit

15.01 Offenses against state laws subject to forfeiture. (Am. #1304) The following statutes defining offenses against the peace and good order of the State are adopted by reference to define offenses against the peace and good order of the municipality, provided the penalty for commission of such offenses hereunder shall be limited to a forfeiture. * * * * * **943.06** Molotov Cocktails. * * * * *

15.07 Firearms and Weapons, use of. * * * * * (3) **Sale of firearms and weapons to minors forbidden.** No person shall sell any firearm, * * * or loan such items to any minor within the City.

Big Bend

Chapter XI

11.01. Dangerous and Concealed Weapons. (1) Definitions. A. Dangerous Weapon. The term "dangerous weapon" shall include any instrument which by its capabilities of use is liable to produce death or great bodily harm. The following are dangerous per se: * * * pistol, revolver * * *.

(3) License for Sale of Weapons. A. No person shall engage in the business of buying or selling, or shall sell or give away to any person, or buy or receive of any person, within the Village, any weapon listed or defined as dangerous except rifles or shotguns used for hunting purposes, * * * (or) weapons used solely for target practice purposes, * * *

without securing a license to do so, and no person having such license shall sell or give away any such weapon to any person within the Village who has not secured a permit from the Chief of Police to purchase such weapon. * * *

(4) **Selling weapons to Minors Prohibited.** No person shall engage in the business of buying or selling or shall sell or give away to any minor under the age of 21, any weapon listed or defined as dangerous, * * *.

* * * * *

(6) **Permit Required for Purchase of Dangerous Weapons.** No person shall purchase or obtain by gift or otherwise without first securing from the Chief of Police a permit, any dangerous weapon, except a rifle, or shotgun used for hunting purposes, * * * (or) weapon used solely for target practice purposes * * *. Before any such permit is granted an application in writing shall be made therefor * * * (contact local authorities for required contents).

Brodhead

41.38 Weapons. No person shall: * * * * * (e) Intentionally sell, loan, or give a pistol to a minor. Pistol means any firearm having a barrel less than 12 inches long; * * *

Cudahy

9.02 Firearms and weapons. (1) Sale of. (a) To Minors Prohibited. No person shall sell to a minor under 18 years of age, and no such minor shall purchase, any * * * hand gun.

(b) **To Felons Prohibited.** No person shall sell a firearm or other dangerous weapon to a person who has been convicted of a felony unless such person has been pardoned.

(c) **Record of Sales.** Every person who deals in dangerous weapons or guns shall keep a record of sales of such dangerous weapons or guns, which records shall have the purchaser's name, address and date of birth, the identification number of the weapon or gun and a signed statement by the purchaser that he is the individual making the purchase and that the information contained in the statement is true and correct. * * *

Glendale

24.20. Making, possession, transfer or use of fire bombs and other similar devices. (a) No person shall make, carry, possess, sell, give, transfer to another or use any type of fire or explosive creating device which is defined to mean a flammable-liquid filled bottle or container with a fuse, wick, or any other type of ignition or detonating device, flammable liquid fire bomb or any other device or missile which can be ignited and cause ignition of any premises or material or which can cause damage by explosion.

Hales Corners

14.01 Dangerous and Concealed Weapons. (1) Definitions. (a) Dangerous Weapon. The term "dangerous weapon" shall include any instrument which by its capabilities of use is liable to produce death or great bodily harm. The following are dangerous per se: * * * pistol, revolver, * * * any weapon upon which loaded or blank cartridges are used, * * *.

(b) **Concealed Weapon.** The term "concealed weapon" shall include any dangerous weapon which is hidden from ordinary observation. Absolute invisibility is not necessary to constitute a weapon as being concealed. Any weapon which is carried within a case is not to be construed as a concealed weapon if the case is plainly visible.

* * * * *

(3) **License for Sale of Weapons.** (a) No person shall engage in the business of buying or selling, or shall sell or give away to any person, or buy or receive of any person, within the Village, any weapon listed or defined as dangerous, except rifles or shotguns used for hunting purposes, * * * without securing a license to do so, and no person having such license shall sell or give away any such weapon to any person within the Village who has not secured a permit from the Chief of Police to purchase such weapon * * *.

(4) **Selling Weapons to Minors Prohibited.** No person shall engage in the business of buying or selling or shall sell or give away to any minor under the age of 21, any weapon listed or defined as dangerous, * * *.

(6) **Permit Required for Purchase of Dangerous Weapons.** No person shall purchase or obtain by gift or otherwise without first securing from the Chief of Police a permit, any dangerous weapon, except a rifle, or shotgun used for hunting purposes, * * *. Before any such permit is granted, an application in writing shall be made therefor [contact local authorities for required contents]. * * *

Kennan

2.02(2) No minor shall go armed with a pistol and no person shall intentionally sell, loan or give a pistol to any minor. This subsection does not apply to a minor who is armed with a pistol when such pistol is being used in target practice under the supervision of an adult nor does it apply to an adult who transfers a pistol to a minor for use only in target practice under his supervision.

Kenosha

11.02-R. Possession or use of fire bombs and other similar devices. (1) It shall be unlawful for any person to make, carry, possess, sell, give, or use any type of "Molotov Cocktail" which is defined to mean a flammable-liquid filled bottle or container with a fuse, wick, or any other type of ignition or detonating device.

(2) It shall be unlawful for any person to make, carry, possess, sell, give, or use any type of flammable-liquid fire bomb or any other device or missile which can be ignited and cause ignition of any premises or material or which can cause damage by explosion.

11.06. Dangerous weapons. B. "Sale Forbidden". No person shall sell, loan or give away any gun, pistol, revolver or other dangerous or deadly weapon to any minor or intoxicated person.

Ladysmith

11.02 Concealed Weapons * * * (2) * * * no person shall intentionally sell, loan or give a pistol to any minor. * * *

Madison

25.01 Sale of Firearms.

(1) Definitions: For the purpose of this section:

Firearm. The term "firearm" means a shotgun or a rifle or any weapon made from a rifle or shotgun (modification or otherwise) or any other weapon, including a pistol or revolver, from which a shot is discharged by an explosive or propellant, but not including a stud gun when used for its intended purpose.

Handgun. The term "handgun" means any weapon designed or redesigned, made or remade, and intended to be fired while held in one hand, having a barrel of less than ten (10) inches in length, designed or redesigned, made or remade, to use the energy of an explosive to expel a projectile or projectiles through a smooth or rifled bore, including weapons commonly referred to as pistols or revolvers, but not including a stud gun.

Rifle. The term "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of a propellant to fire only a single projectile through a rifle bore for each single pull of the trigger.

Shotgun. The term "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of a propellant to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

* * * * *

(2) It shall be unlawful for any person, firm, association or corporation to sell, give away, trade or transfer a firearm to any other person, firm, association or corporation in the City of Madison unless within twenty-four (24) hours, excluding those hours falling on any Saturday, Sunday or holiday, after the transfer of possession of said firearm, such person, firm, association or corporation shall report such transfer to the Chief of Police, or his designee, giving a complete description of the firearm so sold [contact local authorities for required contents] * * *.

* * * * *

(4) * * * no person shall intentionally sell, loan or give a pistol or revolver to any person under eighteen (18) years of age. * * *.

(5) * * * no person under the age of eighteen (18) years shall have in his possession any ammunition for any firearm and no person shall intentionally sell, loan or give any firearm * * * or ammunition therefor to any person under the age of eighteen (18) years. This subsection shall not apply to anyone under eighteen (18) years of age who is armed with a firearm under the supervision of an adult when such firearm is being used in target practice or hunting, nor does it apply to an adult who transfers a firearm to a person under eighteen (18) years of age for use only in target practice or any hunting under his direct supervision.

(6) Notwithstanding any other provision of this section to the contrary, this section shall not apply to any person, firm, association or corporation acting under the control and at the direction of the state of Wisconsin or the United States Government.

* * * * *

(10) **Sale of Handguns and Handgun Ammunition Unlawful.**

(a) It shall be unlawful for any person, firm, association, or corporation to sell, give away, trade, or transfer any handgun to any other person, firm, association, or corporation within the corporate boundaries of the City of Madison.

(b) It shall be unlawful for any person, firm, association, or corporation to sell, give away, trade, or transfer any ammunition made exclusively for use in any handgun to any other person, firm, association, or corporation within the corporate boundaries within the City of Madison.

(c) The United States Government, the State of Wisconsin and its municipal subdivisions, the State Crime Laboratory, the University of Wisconsin, the Historical Society of the State of Wisconsin, their employees and peace officers thereof, shall be exempt from the provisions of this subsection with respect to handguns or ammunition made exclusively for use in any handgun which is owned, possessed, sold, given away, traded or transferred by them in the ordinary course of their official business.

(d) Persons manufacturing or selling ammunition made exclusively for use in handguns shall be exempt from the provisions of this subsection with respect to ammunition made exclusively for use in handguns which are owned, possessed, sold, given away, traded or transferred by them to any organization or person described in Subdivision (c) above.

25.04 Fireworks Regulated. (1) It is unlawful for any person to sell, expose or offer for sale, * * * blank cartridges, toy pistols or cannons, toy canes or cannons in which explosives are used, * * * within the City of Madison, except as hereinafter provided.

* * * * *

(3) Nothing herein contained shall prohibit the use or sale of blank cartridges for circus or theatrical purposes, or signal purposes in athletic contests or sports events * * *.

* * * * *

Menomonee Falls

10.01 Offenses Endangering Public Safety. (l) * * * * * (i) **Sale to Minors.** No person shall sell or give away any firearm, rifle, shotgun, * * * or ammunition therefor, to any person under the age of 18 years.

(j) **Possession by Minor.** No person under the age of 18 years shall go armed with a firearm of any type, * * * nor have in his possession any ammunition therefor.* * * * *.

Middleton

16.01-(b) Possession of Ammunition and sale to minors. No minor person under the age of 18 years shall have in his possession any ammunition for any firearm, rifle, * * *. No person shall intentionally sell or give away any firearm, rifle, * * * or ammunition therefor, to any person under the age of 18 years.

Milwaukee

* * * * *

Section 105-34. Carrying Dangerous or Concealed Weapons.

(2) **Definitions.** The term "concealed weapon" shall mean and include any dangerous weapon which is hidden from ordinary observation. Absolute invisibility is not necessary to constitute a weapon as being concealed. Any weapon which is carried within a case is not to be construed as a concealed weapon if the case is plainly visible.

The term "dangerous weapon" shall mean and include any instrument which by its capabilities of use is liable to produce death or great bodily harm. The following are dangerous per se: * * * pistol, revolver * * * any weapon upon which loaded or blank cartridges are used. * * * Instruments not herein specifically enumerated are none the less dangerous weapons when they fall within the terms of the above definition.

* * * * *

105-43. Sale of Dangerous Weapons.

(1) **License Required.** It shall be unlawful for any person, firm or corporation to engage in the business of buying or selling, or to sell or give away to any person, or to buy or receive of any person, within the city, any weapon listed or defined as dangerous in Section 105-34, except rifles or shotguns used for hunting purposes, * * * weapons used solely for target practice purposes, * * * without securing a license so to do as provided in Section 105-43(1) and (3) and no person, firm or corporation having such license shall sell or give away any such weapon to any person within the city who has not secured a permit from the chief of police to purchase such weapon in the manner provided in subsection (5). It is the intent of this section that no permit to purchase or no license to sell shall be required for the purchase or sale of sporting goods, which are defined as any of those items that further interest in the commonly accepted fields of sport.

(2) **Unlawful to Sell Weapons to Minors.** It shall be unlawful for any person, firm or corporation to engage in the business of buying or selling, or to sell or give away to any minor under the age of 18, any weapon listed or defined as dangerous in Section 105-34; or to any person under the age of 21 in the case of handguns, * * *

(5) **Permit Required to Purchase.** (a) From Chief of Police.

It shall be unlawful for any person to purchase or obtain by gift or any method, scheme or device by which possession is obtained, without first securing from the chief of police a permit so to do, any weapons listed or defined as dangerous in Section 105-34, except rifles or shotguns used for hunting purposes, * * * weapons used solely for target practice purposes * * *.

(b) **Permit to be Filed.** * * * No such permit shall be granted to persons having been convicted of crime or to minors under the age of 18. Said permit or permits shall be delivered to the person, firm or corporation or agent thereof from whom such instrument or weapon is purchased and shall be preserved by said person, firm or corporation, or agent

thereof, and the same shall be filed by him or them in the office of the city clerk of the city of Milwaukee within three months from the date of the issuance of the same.

105-43.2. Waiting Period Required for Purchase of Handguns. No person, firm, or corporation who is licensed to deal in the sale of weapons, pursuant to the requirements of Section 105-43, shall transfer possession of any handgun to any person for 48 hours following the application for purchase of such handgun.

Monticello

19.01(2) Definition. The term "dangerous weapon" shall mean and include any instrument which by its capabilities of use is liable to produce death or great bodily harm. The following are dangerous per se: pistol, revolver, * * * any weapon upon which loaded or blank cartridges are used. Instruments not herein specifically enumerated are none the less dangerous weapons when they fall within the terms of the above definition.

(3) Sale of dangerous weapons. It shall be unlawful for any person, firm, or corporation to engage in the business of buying or selling, or to sell or give away to any person, or to buy or receive of any person, within the Village of Monticello any weapon listed or defined as dangerous in Section 19.01(1), except rifles or shotguns used for hunting purposes, weapons used solely for target practice purposes, without securing a license to do so as provided in Section 19.01(2) and (5) and no person, firm or corporation having such license shall sell or give away any such weapon to any person within the Village of Monticello who has not secured a permit from the chief of police to purchase such weapon in the manner provided in subsection (5). It is the intent of this section that no permit to purchase or no license to sell shall be required for the purchase or sale of sporting goods, which are defined as any of those items that further the interest in the commonly accepted fields of sport.

(4) Unlawful to sell weapons to minors. It shall be unlawful for any person, firm or corporation to engage in the business of buying or selling, or to sell or give away to any minor under the age of 18, any weapon listed or defined as dangerous in subsection (2); or to any person under the age of 21 in the case of handguns.

(5) Permit required to purchase. (a) From Chief of Police. It shall be unlawful for any person to purchase or obtain by gift or any other method, scheme or device by which possession is obtained, without first securing from the chief of police a permit so to do, any weapons listed or defined as dangerous in subsection (2), except rifles or shotguns used for hunting purposes and weapons used solely for target practice purposes.

Oshkosh

18-24. Furnishing firearms to minors prohibited. No person shall sell, loan or furnish to any minor any gun, pistol, fowling piece or other firearm within the city.

Paddock Lake

41.02 Weapons. (a) A person who is not a village officer shall not carry about his person any concealed pistol, * * * or any other weapon or thing of deadly character.

(b) No person shall sell, give or transfer any such weapon to any minor person.

Port Washington

9.11. Sale of weapons. (1) License required. No person shall engage in the business of selling, or shall sell or give away to any person, within the City, any * * * revolver, pistol, * * * or other instrument or weapon which uses loaded or blank cartridges, except rifles and shotguns used for hunting purposes, without securing a license so to do as herein provided, and no person having such license shall sell or give away any such weapon to any person within the City who has not secured a permit from the Chief of Police * * *.

(5). Permit to purchase. No person shall purchase or possess any of the weapons or articles enumerated in subsection (1) until he has obtained a permit for such purpose from the Chief of Police.

Racine

25.06. Dangerous or concealed weapons. (2) The term "dangerous weapon" means any instrument which by its capabilities of use is liable to produce death or great bodily harm. The following are dangerous per se: * * * pistol, revolver, any instrument which impels a missile by compressed air, spring, or other means, any weapon upon which loaded or blank cartridges are used, * * *. Instruments not herein specifically enumerated are nonetheless dangerous weapons when they fall within the terms of the above definition.

* * * * *

(5) No person shall engage in the business of buying or selling, or sell or give away to any minor under the age of 18, any dangerous weapon, * * *

25.41 Possession or use of fire bombs and other similar devices. (1) It shall be unlawful for any person to make, carry, possess, sell, give, or use any type of "Molotov Cocktail" which is defined to mean a flammable-liquid filled bottle or container with a fuse, wick, or any other type of ignition or detonating device.

(2) It shall be unlawful for any person to make, carry, possess, sell, give, or use any type of flammable-liquid fire bomb or any other device or missile which can be ignited and cause ignition of any premises or material or which can cause damage by explosion.

(3) The provisions of paragraphs 1 and 2 of this Section shall not apply to any device used in any training program authorized by the Chief of the Racine Fire Department or the Chief of the Racine Police Department, nor to any person engaged in such an authorized training program while so engaged.

Reedsville

7.01 * * * * * (c) Sale to Minors. No person shall sell, loan or give any pistol to any person under eighteen (18) years of age.

River Falls

Ordinance 22.01

Section 1. Sales Prohibited. No person shall buy for, sell or give away to any minor, any dangerous weapon, without first having obtained the written consent of the parent or guardian of such minor. The term "dangerous weapon" shall mean and include the following instruments: pistol, revolver, * * * and any weapon in which loaded or blank cartridges are used.

Shorewood

Section 13-601 Definition. The term "dangerous weapon" shall mean and include any instrument which by its capabilities of use is liable to produce death or great bodily harm. The following are dangerous per se: * * * pistol, revolver, any instrument which impels a missile by compressed air, spring, or other means, any weapon upon which loaded or blank cartridges are used * * *

Section 13-603 Permit Required for Purchase of Dangerous Weapons. A. It shall be unlawful for any person to purchase or obtain by gift or any method, scheme or device by which possession is obtained, without first securing from the Chief of Police a permit so to do, any weapons listed or defined as dangerous in Section 13-601 except rifles or shot-

guns used for hunting purposes, * * * weapons used solely for target practice purposes,

* * * * *

Section 13-604 License for Sale of Weapons. It shall be unlawful for any person, firm or corporation to engage in the business of buying or selling, or to sell or give away to any person, or to buy or receive of any person, within the Village, any weapon listed or defined as dangerous in Section 13-601, except rifles or shotguns used for hunting purposes, * * * weapons used solely for target practice purposes, * * * and no person, firm or corporation having such license shall sell or give away any such weapon to any person within the Village who has not secured a permit from the Chief of Police to purchase such weapon in the manner provided in Section 13-603.

Section 13-605 Unlawful to Sell to Minors. It shall be unlawful for any person, firm or corporation to engage in the business of buying or selling, or to sell or give away to any minor, any weapon listed or defined as dangerous in Section 13-601 * * *

Section 13-609 Possession of Pistol by Minor. A. It shall be unlawful for a minor to be armed with a pistol or for any person to intentionally sell, loan or give a pistol to a minor.

* * * * *

D. In this section, "pistol" means any firearm having a barrel less than 12 inches long.

Section 13-610 Use of Fire Bombs Prohibited. No person shall make, carry, possess, sell, give or use any type of "molotov cocktail," which is defined to mean a flammable liquid filled bottle or container with a fuse, wick or any other type of ignition or detonating device, flammable liquid fire bomb, or any other device or missile which can be ignited and cause ignition of any premises or material, or which can cause damage by explosion.

Section 13-612 Fireworks Prohibited. A. No person, firm, partnership, or corporation shall sell, offer for sale, expose for sale, or possess or use or explode any blank cartridges, toy pistols or cannons, toy canes or toy cannons in which explosives are used * * *

B. Nothing herein contained shall prohibit * * * the use or sale of blank cartridges for theatrical purposes, or for signal purposes in athletic contests, sport events or by railroads for signal purposes, or for the use by militia, police, or military organizations.

Stevens Point

24.13 Firearms to minors. * * * any person who intentionally sells, loans, or gives a gun or other type of firearm * * * or ammunition for same, to a minor may suffer a forfeiture of not more than $200 and in lieu of such payment assessed, imprisonment for not more than sixty (60) days in the county jail.

Superior

Sec. 23-49. Furnishing firearms to minors. No person shall sell, give away or furnish to any person under twenty-one (21) years of age any revolver, pistol, shotgun, rifle or other firearm, intended for and capable of shooting powder, balls or cartridges, without the consent in person or writing, of the parent or guardian of the minor.

Twin Lakes Village

9.88.020 Sale or giving weapons prohibited. No person shall sell, loan or give away any gun, pistol, revolver or other deadly or dangerous weapon to any minor or intoxicated person.

Waunakee

11.03 Firearms It shall be unlawful for any dealer or other person to sell, loan, or give any pistol or revolver to any minor.

* * * * *

Wauwatosa

6.84.010 Definitions. In this chapter, unless the context otherwise requires:

1. "Dangerous gun" means any revolver, pistol, * * * rifle, shotgun, or any instrument or weapon in which loaded or blank cartridges or shells are used.

* * * * *

3. "Person" means any person, firm or corporation.

6.84.020 Sale or giving away—License required—Exceptions. A. No person shall engage in the business of selling or giving away any dangerous * * * gun without obtaining a license * * *, and no person having such license shall sell or give away any such dangerous * * * gun who has not secured a permit from the chief of police to obtain such dangerous * * * gun * * *.

B. This provision does not apply to rifles or shotguns used for hunting purposes, target practice weapons, or any sporting goods item defined as any of those items that further interest in the commonly accepted fields of sport * * *.

6.84.040 * * * Handguns of any caliber shall not be sold to persons convicted of a felony or to minors.

6.84.050 Purchase—Permit required—Exception. No person shall purchase any dangerous * * * gun without securing a permit therefor from the chief of police. * * * This section shall not apply to rifles or shotguns used for hunting purposes, target practice weapons, or any sporting goods items defined as any of these items that further interest in the commonly accepted fields of sport * * * except as to persons convicted of crime or to minors.

West Milwaukee

Ordinance 422

3.15 Firearms.

* * * * *

(2) Sale and Display Regulated. No person, firm, or corporation shall engage in the business of selling, sell or give away any * * * revolvers, pistols, rifles, shot gun, machine gun, grenade, bomb or any other weapon in which loaded or blank cartridges, shells, gas, explosives, or other projectiles are intended to be used, or display or exhibit for sale any such weapon, cartridges, shells, gas, explosives or projectiles, except in accordance with a seller's permit or dealer's license issued pursuant to subsection (3), and such sale or gift shall be made only to a person not otherwise prohibited from purchasing or using such items by the provisions of subsection (4).

(3) Dealers' Licenses. Dealers' licenses shall be issuedby the Chief of Police * * *.

(4) Purchase of. No person shall purchase or receive anyof the weapons or items mentioned in subsection (2) if said person:

a. Is under eighteen years of age.

b. Is under indictment in any court for a crime punishable by imprisonment for a term exceeding one year.

c. Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year.

d. Is a fugitive from justice.

e. Is an unlawful user of, or addicted to, marihuana or a depressant, stimulant, or narcotic drug.

f. Is under the influence of a drug or is intoxicated.

g. Has ever been adjudged mentally defective or has ever been committed to a mental institution.

h. Has been discharged from the Armed Forces under dishonorable conditions.

i. Is an alien illegally in the United States.

j. Is a person who, having been a citizen of the United States, has renounced his citizenship.

White Fish Bay

15.12. Weapon dealers (1) Sale and display prohibited. No person shall engage in the

business of selling, sell or give away any * * * revolvers, pistols, shot gun, machine gun, grenade, bomb or any other weapon in which loaded or blank cartridges, shells, gas, explosives or other projectiles are intended to be used, * * * except in accordance with a dealer's license issued pursuant to subsection (2) and shall make such sale or gift only to a person holding a buyer's license issued and in effect pursuant to subsection (3).

(2) **Dealers' licenses.** Dealers' licenses shall be issued by the Chief of Police and shall expire automatically on May 1 following the date thereof, and shall be issued upon the filing of a written application in form approved by said Chief of Police * * *.

(3) **Buyers' Licenses.** Buyers' licenses shall be issued by the Chief of Police upon an application in writing [contact local authorities for required contents] * * *

(4) **Purchase of.** No person shall purchase or receive any of the weapons mentioned in subsection (1) without first securing a license so to do as provided in subsection (3).

(5) **Rifles and shot guns for hunting purposes excepted.** The provisions of subsections (1) to (4), both inclusive, shall not apply to rifles or shot guns under twenty (20) inches length of barrel and ammunition for same, commonly and lawfully used for hunting purposes in this state.

Whitewater

15.03(a) No person, firm, partnership, association, or corporation shall display for sale, offer for sale, or sell any loaded pistol, gun, shot gun, * * * or other firearms within the City Limits of the City of Whitewater.* * *

Wisconsin Dells

18.01(1)(b) **Sale of Certain Weapons.** No person shall sell any firearm * * * to any minor in the City of Wisconsin Dells * * *.

Wyoming

State Law

Wyo. Stat.

Sec. 6-11-105. Possession of weapons by aliens. Every person, not being a citizen of the United States, who shall own, possess, wear or carry any * * * pistol, shotgun, rifle, or other firearm, * * * or any other dangerous or deadly weapon, shall upon conviction thereof, be adjudged guilty of a misdemeanor, * * *

Sec. 6-11-107. Firearms register; required to be kept; information to be shown. All wholesalers, retailers, dealers and pawnbrokers are hereby required to keep a record of all firearms which may come into their possession, whether new or secondhand, which record shall be known as the firearms register. Such register shall contain the following information, to-wit: The name of the manufacturer, person, persons, firm or corporation from whom the firearm was obtained, the date of its acquisition, its manufacturer's number, its color, its caliber, whether the same is new or secondhand, whether it is an automatic, a revolver, a single shot pistol, a rifle, a shotgun or a machine gun, the name of the party to whom said firearm is sold in such purchaser's handwriting and the date of such sale.

Sec. 6-11-108. same; to be signed by purchasers. Every person who purchases any firearm from any retailer, pawnbroker or dealer, shall sign his name or make his mark properly witnessed, if he cannot write, on said firearms register, at the time of the delivery to him of any firearm so purchased.

Sec. 6-11-111. Rifles and shotguns; defined. (a) Rifle. A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(b) Shotgun. A weapon designed and redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

Sec. 6-11-112. Same; persons who may sell or deliver; restrictions and requirements. (a) It is hereby declared by the state of Wyoming that it is lawful for a licensed importer, licensed manufacturer, licensed dealer or a licensed collector (licensed under the Federal Gun Control Act of 1968 [18 U.S.C. Secs. 921 to 928]) whose place of business is in the state of Wyoming, to sell or deliver a rifle or shotgun to a resident of a state contiguous to the state of Wyoming, subject to the following restrictions and requirements:

(i) The purchaser's state of residence must permit such sale or delivery by law;

(ii) The sale must fully comply with the legal conditions of sale in both such contiguous states;

(iii) The purchaser and the licensee must have, prior to the sale or delivery for sale, of the rifle or shotgun, complied with all of the requirements of section 922(c) of the Federal Gun Control Act of 1968 [18 U.S.C. Sec. 922(c)], applicable to interstate transactions other than at the licensee's business premises.

Sec. 6-11-113. Same; resident may purchase or receive delivery; restrictions and requirements. (a) It is hereby declared by the state of Wyoming that it is lawful for a resident of the state of Wyoming, otherwise qualified, to purchase or receive delivery of a rifle or shotgun in a state contiguous to the state of Wyoming, subject to the following restrictions and requirements:

(i) The sale must fully comply with the legal conditions of sale in both such contiguous states.

(ii) The purchaser and the licensee must have, prior to the sale or delivery for sale, of the rifle or shotgun, complied with all of the requirements of section 922(c) of the Federal Gun Control Act of 1968 [18 U.S.C. Sec. 922(c)], applicable to interstate transactions other than at the licensee's business premises.

Afton

6-302. Sales to intoxicated persons. No person in the town of Afton shall purchase from or sell, loan or furnish any weapon in which explosive substance can be used, to any person under the influence of alcohol or any narcotic drugs, stimulant or depressant, or to any person in a condition of agitation or excitability.

6-303. Sales to minors. No person in the town of Afton shall purchase from or sell, or loan, or furnish any weapon in which an explosive substance can be used, to any person under the age of 14 years.

Cheyenne

30-51. Definitions. For the purpose of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Dealer: Any person engaged in the business of selling firearms at wholesale or retail or of accepting pledges of pistols as security for loans.

Firearm: Any weapon which is designed to expel a projectile by the action of expanding gases.

30-52. Exceptions. This article shall not apply to duly appointed officers of the city, county or state or of the United States in the lawful discharge of their duties as such officers, nor to transactions in which delivery is made of a pistol by mail or other common carrier to a destination not within the city.

30-56. Possession of firearms—Criminals, drug addicts, etc. No person who has been convicted of a crime of violence in any court of the United States, the several states, territories, possessions or the District of Columbia or who is a fugitive from justice or is of unsound mind or is a drug addict or an habitual drunkard or is a member of a subversive organization shall possess a firearm within the city.

Arrests, without a warrant, and searches and seizures pursuant thereto, may be made for violations of this section by police officers, as in the case of a felony, upon probable cause that the person arrested is carrying a pistol in violation of this section at the time of arrest.

30-57. Same—Minors. No person under the age of eighteen (18) years shall possess a firearm. This section shall not apply to the issuance of pistols to members of the state militia, ROTC, or the armed forces of the United States for training or active duty or to temporary loans of pistols for instruction under the immediate supervision of a parent or guardian.

30-58. Sale, possession, etc., of firearms without manufacturer's identification mark prohibited. No person shall receive, possess, sell, lease or otherwise transfer any firearm from which the manufacturer's identification mark or serial number has been removed.

30-65. License—Required. No person shall sell any firearm at wholesale or retail or shall lease, pledge or accept any firearm as security for a loan without obtaining a license therefor.

30-69. Pistols—Sale and delivery. When any sale of a pistol, the overall length of which is less than six (6) inches, is made under this article, forty-eight (48) hours must elapse between the time of the sale and the time of delivery to the purchaser. All pistols shall be securely wrapped and unloaded when delivered to the purchaser.

30-71. Sales, etc., to criminals, dope addicts, etc. No person shall sell, lease, lend or otherwise transfer a firearm to any person whom he knows or has reasonable cause to believe has been convicted of a crime of violence or is a fugitive from justice or is of unsound mind or is intoxicated or is a drug addict or an habitual drunkard or is a member of a subversive organization.

30-72. Sales, etc., to minors. No dealer shall sell, lease, lend or otherwise transfer a firearm to any minor except as provided in section 30-57.

[FR Doc. 79-18685 Filed 6-18-79; 8:45 am]

BILLING CODE 4810-31-F

Cody

34-4. Furnishing deadly weapons * * * to minors. It shall be unlawful for any person to sell, barter, give away, or to dispose of in any other way, to any person under the age of twenty-one years, any pistol, * * * or any other deadly weapon of any kind, which can be worn or concealed upon the person.

It shall further be unlawful to sell, barter, give to or dispose of in any other way to any person under the age of sixteen years any cartridges manufactured and designed for use in a pistol.

Guernsey

69-9-503 Firearms * * * Any person who shall, within the Town of Guernsey, sell * * * any cannon, gun, fowling piece, pistol, revolver, rifle or firearms of any description, without permission from the Council, or written permission of the Mayor, * * * shall be guilty of a misdemeanor * * *.

Mountain View

Sec. 14-4. Furnishing deadly weapons and certain cartridges to minors. It shall be unlawful for any person to sell, barter, give away, or to dispose of in any other way, to any person under the age of twenty-one years, any pistol, * * * or any other deadly weapon of any kind, which can be worn or concealed upon the person.

It shall further be unlawful to sell, barter, give to or dispose of in any other way to any person under the age of sixteen years any cartridges manufactured and designed for use in a pistol.

Pine Bluffs

Section 7. Possession of firearms-Minors. No person under the age of nineteen years shall possess a firearm. This section shall not apply to the issuance of pistols to members of the State Militia, R.O.T.C., or the armed forces of the United States for training or active duty or to temporary loans of pistols for instruction under the immediate supervision of a parent or guardian.

Section 8. Sale, possession, etc., of firearms, without manufacturer's identification mark prohibited. No person shall receive, possess, sell, lease, or otherwise transfer any firearm from which the manufacturer's identification mark or serial number has been removed.

Powell

8.24. Disposing of weapons to minors. It shall be unlawful for any person to sell, barter, give away, or to dispose of in any other way, to any person under the age of twenty-one years, any pistol, * * * or any other deadly weapon of any other kind whatsoever, which can be worn or concealed upon the person, and it shall further be unlawful to sell, barter, give to or dispose of in any other way to any person under the age of sixteen years any cartridges manufactured and designed for use in a pistol.

8.25. Police excepted. The provisions of this Article shall not apply to any duly appointed law enforcement officer in the lawful discharge of his duties as such officer.

Sheridan

Sec. 19-44. Same—Sale, etc., to minors. It shall be unlawful for any person to sell, barter or give to any other person under the age of twenty-one years any pistol * * * or other deadly weapon that can be worn, carried or concealed upon or about the person, or to sell, barter or give to any person under the age of sixteen years any cartridges manufactured and designated for use in a pistol.

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Tuesday
June 19, 1979

Part III

Department of Agriculture

Food and Nutrition Service

Food Stamp and Food Distribution Programs on Indian Reservations

Federal Register

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Ch. II

[Amdt. No. 141]

Food Stamp and Food Distribution Programs on Indian Reservations

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rulemaking sets forth requirements for conducting the Food Stamp and Food Distribution Programs on Indian reservations under authority of the Food Stamp Act of 1977 and 1304(a) of the Food and Agriculture Act of 1977.

EFFECTIVE DATE: June 19, 1979.

FOR FURTHER INFORMATION CONTACT: Alberta Frost, Acting Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, USDA, Washington, D.C. 20250. (202) 447–8982.

SUPPLEMENTARY INFORMATION:

Introduction

On December 8, 1978, the Department published a comprehensive and detailed proposal concerning the implementation of the Food Stamp and Food Distribution Programs on Indian reservations (43 FR 57798–57820). The Department explicitly invited careful public scrutiny of that proposal and encouraged detailed written criticism and comment.

This preamble articulates the basis and purpose behind significant changes from the December 8 proposal. The reasons supporting the provisions of the December 8 proposal which are unchanged by the final rules were carefully examined in light of the comments to determine the continued applicability of each justification. Unless otherwise stated, or unless inconsistent with the final rules or preamble, the rationale contained in the proposal should be regarded as a basis for the pertinent final rules. Thus, a thorough understanding of the grounds for the final rules may require reference to the December 8, 1978, publication.

Moreover, while the Department examined all relevant letters, many comments did not disclose a factual or policy justification, or a significant rationale, for certain recommendations. Other comments requested changes contrary to the Act, or articulated a rationale inconsistent with statutory provisions. Still other recommendations, anticipated in the proposal, were unresponsive to Department justifications stated in the December 8 preamble. Even though some of these comments are addressed in the preamble, it was determined, in light of the number of responsive comments raising difficult issues, that not all the points raised should be addressed in this preamble.

Definitions (§ 272.2)

Indian Tribe

Six comments were received on the definition of Indian tribe. Some Indian groups felt the proposed definition, providing that organized Indian groups or communities could be considered as Indian tribes, was overly inclusive and would allow non-Indian groups to claim benefits.

The State of Alaska considered the Indian tribe definition too expansive and felt that it might be construed as including several hundred distinct tribal bodies in Alaska that are not associated with reservations and which assertedly do not possess governmental powers.

The definition of Indian tribe, while based on the definition cited in the Indian Self Determination Act (25 U.S.C. 450b(b)), has been modified to distinguish between Indian tribes eligible for programs under the Indian Self Determination Act and those eligible under the Food Stamp Act of 1977 (the Act). Under the Act, an Indian tribe must exercise governmental jurisdiction over a geographically defined area(s) (reservation as defined in § 3(j) of the Act) in order to be eligible for any of the special provisions for Indians included in the Act. Therefore, references which clearly pertain to non-reservation tribes contained in the definition of a tribe under the Indian Self Determination Act have been deleted, and other revisions made to prevent application of the definition to non-Indian groups.

Finally, it should be noted that Indian tribes must either be recognized as eligible in accordance with the Indian Self-Determination Act for Federal programs and services provided to Indians or hold a treaty with a State government. As required by the Act any tribes that are neither federally recognized nor which hold a treaty with a State, but are simply recognized by a State, are not covered by these regulations.

Indian Tribal Organization

A comment from the Bureau of Indian Affairs (BIA), U.S. Department of Interior, indicated that the definition of Indian tribal organization (ITO) should follow more closely the Indian Self Determination Act. But, as noted in the discussion of Indian tribe above, the Department believes that the regulatory definition is based on the Act and more clearly tracts the legislative purpose for the definition.

Reservation

Thirty-four coments were received on the definition of reservation. Apparently, there are over 250 geographic areas which have been traditionally regarded as reservations. In addition, there appear to be more than 200 Indian tribes which do not live on traditional reservations, as well as many other individual situations involving groups of Indians. Such a multiplicity of potential "reservations" makes it impractical for FNS to specifically predetermine those geographically defined areas which should be recognized as reservations under the Act.

Several commenters requested that government jurisdiction be defined, and some suggested expanding the definition to include "the provision of Federal services or benefits, or the authority to administer other Federal programs." Another comment recommended that the word significant be added to "governmental jurisdiction" and that this "significant governmental jurisdiction" be "over members which comprise the majority of the total population within the geographically defined areas."

Most commenters felt that the Department's statement in the preamble to the proposed regulations that there may be few, if any, areas in Oklahoma which would be considered reservations under the Food Stamp Act of 1977, was too restrictive. On this issue the Community Nutrition Institute noted:

> Although Oklahoma Indians are not located on formal reservations as most other tribes, Oklahoma Indian Nations still exercise certain types of governmental jurisdiction over Indian trust and allotment lands. Oklahoma Indian trust and allotment lands, though they may be "checkerboarded" with non-Indian lands, are within original reservation boundaries.

The Bureau of Indian Affairs also pointed out that, "some [Oklahoma] tribal governing bodies have certain defined jurisdiction not only over tribal members but over certain trust lands as well." However, the American Indian Law Center stated that:

> In Alaska and Oklahoma, tribes have conveyed their land into the public domain, but they have retained their tribal

organizations nonetheless. The definition [of reservation] should be rewritten so as to include all tribal organizations, irregardless of whether these organizations have tribal lands to administer.

With apparent reference to the "former reservations in Oklahoma," as that terminology is used by the BIA (25 CFR 20.1(v), the National Tribal Chairmen's Association asserted that, "the Oklahoma tribes have continued to exercise control over the prior historical reservation boundaries and have administered numerous Federal and other governmental programs based upon those boundaries."

The Department believes that tribal entities in Oklahoma,[1] as well as in all other parts of the country, should be given an opportunity to apply for consideration as Indian tribal organizations which exercise governmental jurisdiction over geographically defined areas. Additionally, as discussed later, any FNS decision that a reservation, as defined by these regulations, does not exist may be appealed on a case-by-case basis to the Office of the Administrator, Food and Nutrition Service (FNS).

Certain comments noted that the statutory definition of reservation does not establish precise requirements for determining reservation status. Based on issues raised by the commenters, the legislative history regarding Indian reservations was again carefully reviewed. Both the *House Report* (H. Rept. 95–464; June 24, 1977) and the *Senate Report* (S. Rept. 95–180; May 16, 1977) refer to sixty-two specific "reservations" in their discussions.

The references, generally speaking, are to the contiguous, precisely defined and relatively large land areas officially set aside mostly for communal Indian use or benefit, in the name of the appropriate tribe(s), by the Federal government or a State government.[2] The transcripts of the discussions of the House Agriculture Committee, especially the explanatory remarks of Representative Nolan on June 17, 1977, noted that the committee, through the proposed statutory reservation language, was "trying . . . to address the problems where that communal and tribal ownership still exist." In light of the purposes behind the Indian provisions of the Act, it does not seem useful for FNS to perform detailed case-by-case reviews of requests for reservation status filed by tribal entities located on these "traditional" reservation areas. Presumably, these contiguous, relatively large, legally recognized and defined Indian reservation areas were intended to be covered by the Act. Thus, under the final regulations, FNS will make a determination of whether a tribal entity is applying on behalf of an "established reservation." A decision adverse to the tribal entity would simply require that the Indian tribal organization apply as representing a geographically defined area over which that tribal authority exercises governmental jurisdiction. In this way, an adverse "established reservation" decision is immediately subject to the regular approval process and, if FNS then decides against the tribal entity that decision may be appealed to the office of the Administrator under the final regulations.

These procedures streamline the review process for all reservation areas, yet provide an opportunity for further consideration where FNS determines that established reservation status does not exist. Under the final rules, this presumption of reservation status for "established reservation" areas may be overcome by a Departmental finding, based on its thorough analysis, that the area is clearly not covered by the Act. In spite of such a finding, the appropriate ITO could still go through the normal application and appeal process.

Under the normal review designed for areas not considered "established reservations," three tests must be met for a geographic area to be recognized as a reservation under the Act and these regulations. The tests are: (1) there must be a geographically defined area (or areas) which has received legal recognition from the Federal or some level of a State government as an Indian area; (2) the area(s) must have operating within its boundaries a tribal organization which is recognized as such in accordance with section 3(p) of the Act; and (3) such tribal organization must exercise legislative, judicial or executive powers of government within the defined geographic boundaries.[3]

Note that under the three pronged reservation test that the ITO must qualify as such in accordance with these regulations which are patterned after the Indian Self Determination Act, and that the ITO must be able to clearly and precisely define the boundaries of the reservation. It is preferable that the boundaries be defined by some convenient and precise methods such as metes and bounds. The test involving the exercise of governmental jurisdiction contemplates more than the mere power to exercise governmental jurisdiction. The Act requires that the power must be *actively* exercised at the time the application is filed, and continue to be exercised as a prerequisite to the continuation of recognition of an area as a reservation. It is not necessary that an ITO actively exercise all three governmental powers; i.e., the legislative, executive and judicial functions. The substantial and autonomous exercise of one of these powers could suffice. In this regard, the ITO must be the principal exercisor of at least one of those powers to the extent that governmental powers other than those exercised by the Federal government are involved. Also, such exercise of powers must be more than symbolic. Therefore, the clear grant of some significant aspects of such power by the Federal or a State government to an Indian governing body or tribe is preferred. Other bases for the exercise of power probably will not qualify an ITO. Thus, the exercise of some aspect of the three powers concurrently with a State or county governing body will not ordinarily be considered in determining this issue. Moreover, the performance of functions not as a self-governing body but as any other private corporate entity, grant recipient, agent or contractor will not be considered as an exercise of a governmental function. Thus, for example, corporate entities governed or restricted by State laws would not be considered as governing bodies exercising "governmental jurisdiction" since the exercise of corporate power is prescribed or limited by State law. Thus, the degree of

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[1] The BIA letter states that many Oklahoma tribes, "conduct a variety of tribal business activities . . . and contract with Federal entities for tribal operation of Federal programs." These services appear to be provided, in some cases, "over the prior historical [former] reservation boundaries" in Oklahoma. (National Tribal Chairmen's Association letter.)

[2] The legislative history does not seem to contemplate, in its concept of reservation, the relatively small scattered tracts of land, often held in trust for individual tribal members after a particular reservation, or part thereof, has been officially disestablished. Along the same line, the legislative history does not discuss reservation exclusion for the normally small and distinct lots owned exclusively by non-Indians which may be scattered in a "checkerboard" pattern within the confines of established reservation boundaries. Moreover, from a policy standpoint, the Department does not believe that precise distinctions based on the land title of individual lots are practical or appropriate regarding the operation of the Food Stamp or Food Distribution Programs.

[3] It is recognized that certain areas defined as "established reservations" by FNS may not fully meet all aspects of each of the above three tests. However, it seems more likely than not that most of the established reservation areas could meet the three tests if the appropriate ITO carefully and fully presented supporting evidence to FNS. This rule regarding reservation status thus effectuates reasonable presumptions designed to implement the Act, accelerate the review process and improve program operations for Indians.

autonomy of action is an important consideration.[4]

While FNS will carefully apply the three pronged test of reservation status on a case-by-case basis there are several factors which will provide general guidance to tribal entities. The eligibility review for the exercise of governmental jurisdiction may consider such factors as: (1) The number and importance of the functions pertinent to one of the three governmental powers that an ITO exercises; (2) whether the ITO exercises each specific function exclusive of concurrent exercise by Federal, State or local governments; (3) whether the function is one that is typically reserved to a governmental body rather than available to private enterprise; and (4) whether the function is commonly recognized as a function of government. Each applicant ITO, which seeks recognition as representing Indians on a reservation, will need to make clear in its application the nature of the functions it performs in a given and precisely defined geographic area(s), and the extent of its role in the performance of those functions.[5]

There are some significant governmental functions such that the exercise of these functions could give rise to the conclusion by FNS that an ITO is the principal exercisor of a governmental power. Each application by an ITO for recognition of reservation status must necessarily be evaluated in terms of the facts provided in that application.

The following are examples of governmental functions. They are not intended to preclude consideration of other functions.

The legislative power may be manifested by the existence of a deliberative body, which has legal authority to enact laws, ordinances, regulations, or other meaningful legislative acts for precise geographic area(s). Codes of conduct, traffic control ordinances, the provision of services, and the levying of taxes, are but a few of the legislative acts which may indicate an ITO exercises the legislative power.

The judicial power contemplates that an ITO have lawful authority to control at least the Indians in the geographic area(s) involved through a system by which it renders judgements, exclusive of other governments, which judgements are enforcible if they are not honored. This power contemplates the existence of a judicial system with some form of court and judges.

The executive power is the power which likely will most frequently be claimed by an ITO as manifesting that it exercises governmental jurisdiction. There are many executive functions. Among the most common are: (1) The enforcement of laws through the maintenance of a police force, jails, and the exercise of independent authority to make arrests; (2) The administration of laws, ordinances, and regulations; (3) The issuance of licenses, the maintenance of streets and public buildings, the provision of necessary services (such as water and sewage, or trash collection) as an independent entity; (4) The levying and collection of taxes; (5) The exercise of the right of eminent domain; (6) The independent administration of schools and libraries rather than by contract or grant; (7) The administration of elections; and (8) the provision of social and welfare services through ones' own programs and rules rather than as an agent, grantee or employee of another entity.

Many activities of an ITO may involve the provision of services to Indians in a geographic area under a grant from or according to a contract with a governmental body or private institution. FNS doubts that these kinds of activities can quality an ITO as exercising governmental jurisdiction since the terms of such grants or contracts are not independently established by the tribe and since such grants and contracts are limited in duration and subject to cancellation or to the the beneficence of some other entity, thereby depriving the ITO of the right as an autonomous government or entity to determine the extent and precise nature of the activity or program. While applications which rely on the administration of grants and contracts as the basis for claiming an ITO exercises governmental jurisdiction will be evaluated carefully by FNS, an ITO in this circumstance will have difficulty qualifying as an entity which exercises executive governmental jurisdiction *on that basis.*[6]

Disclosure (§ 272.1)

Disclosure

One commenter pointed out that language in § 272.1(c) needed to be amended to allow the sharing of Food Stamp Program participation lists with the Food Distribution Program. Language permitting this sharing of information has been added.

General Purpose and Scope (§ 281.1)

Six comments were received on this introductory section. Four commenters felt that the section set a too restrictive tone. Two commenters felt this section should show more responsiveness toward Indians or to all persons on reservations.

This section was rewritten in response to the comments received to emphasize the special Indian provisions in the Food Stamp Act of 1977.

Administration by the Agency of State Government (§ 281.2)

State Plan

Twelve comments were received on the proposed regulations which required that a State agency, before it submits a plan of operation to the Department, consult in good faith with the ITO about those amendments or that portion of the plan which pertains to the operation of the Program for reservation residents. Some commenters felt that the regulations did not ensure that ITO input would adequately affect program implementation. For example, the Papago tribe of Arizona suggested that the State's plan of operation be available to the ITO 45 days prior to submission to FNS and that FNS not approve any plan that has not been fully approved by the ITO. New Mexico suggested that State agencies be allowed to submit their plans to FNS without consultation if the State

[4] Of course, no American Indian tribe exercises totally independent powers of self-government on a reservation since the Federal government has plenary powers in the area of Indian affairs. Nonetheless, within the limits of Federal law, the degree to which Indian governmental functions are not regulated or determined by State or local laws is important concerning the issue of the exercise of governmental powers.

[5] It is also necessary that each ITO apply for recognition as the representative of Indians who live on the particular reservation in question. The potential for variations among ITO's is so large that FNS cannot provide a rote formula by which to accept or reject a claim by an ITO that it represents Indians who live on a reservation. Nor should FNS do so, since if it did, it would lose the necessary flexibility to make its determinations on the basis of all the facts made available to it. Furthermore, the burden of demonstrating with sufficient information each aspect of the reservation test rests with the ITO.

[6] For example, if an ITO can show that a State legislature has enacted a law vesting the ITO with the power to make and enforce significant tribal ordinances, and the ITO is doing so, governmental jurisdiction probably is being exercised. Similarly, if the State legislature has enacted a law divesting State courts of jurisdiction over Indians, and vesting such power in the ITO, which actively exercises it, governmental jurisdiction probably is being exercised. However, if there remains concurrent jurisdiction, the ITO probably lacks power to exercise governmental jurisdiction. If an ITO has received a grant or contract to improve Indian schools, or to run a school for Indians, governmental jurisdiction is probably lacking. This would be equally true for other programs, such as welfare programs, job training programs, or a combination of several such programs. However, if an ITO operates its own social welfare systems, with its own money and under its own rules, the ITO is likely exercising a function of government.

agency's timely attempt to consult with the ITO was unsuccessful.

The final rules are more specific than the proposal. They provide that before a State agency can submit its plan of operation to FNS it must submit its outreach plans, service plans and all other portions of the State plan that pertain to the operation of the Program for residents on the reservation to the appropriate ITO for comment. After receiving these plans, the ITO will have 30 days to provide written comments to the State agency. The State agency is required to incorporate into the plan suggestions made by the ITO which the State agency determines are appropriate and practicable.

Additionally, the final rules provide that the State agency must administer the Food Stamp Program in a manner that is responsive to the needs of Indians on the reservation as determined by ongoing consultation with the ITO. The State agency shall be required to maintain records of all ITO consultations on State plans and ongoing ITO consultations for review by FNS.

Project Area Designation

Ten comments were received on the proposed provision to designate an Indian reservation as a separate project area or areas for the purpose of improving the accessibility of program services to Indians on the reservation. It was proposed that separate project areas would be created for the reservation unless the State agency could demonstrate to FNS that: (1) the size or population of the reservation does not warrant such designation; (2) the tribe can be adequately served by an existing project area because of the location of certification and issuance offices; or that (3) the designation as a project area(s) would impair the Statewide administration of the Food Stamp Program. Indian and advocacy groups felt that reservations should be project areas as often as possible. State agencies generally were concerned with the lack of funds and staff to set up reservations as separate project areas.

The Department believes that the proposal will result in designation of a number or reservations as separate project areas, and that such designations will result in improved service. Only in those instances where service on the reservation would be impaired or be impractical or inefficient would a separate designation be waived. A fourth condition has been added which allows for a State agency to demonstrate that the designation of a reservation as a project area would reduce the availability of certification and issuance offices under the regulations. Also the final rules are modified to consider project areas which the State is planning to develop in addition to existing project areas.

Single State Agency

The proposed regulations provided, where Indian reservation boundaries crossed State lines, that the appropriate State agencies could jointly request FNS approval of a single State agency for the Food Stamp Program (FSP) on all or part of that Indian reservation.

Six comment letters addressed this issue. The Papago and Navajo tribes felt that the ITO should be involved in any decision about single State agency administration of the FSP. Advocacy and Indian groups felt that States should be required to have one State operate the FSP when reservation boundaries cross State lines unless one or more States can demonstrate to FNS that failure to operate through one State agency would improve the operation of the FSP on a particular reservation. North Dakota doubted that Congress intended that a single State agency would administer a FSP on a reservation crossing State boundaries.

The final regulations have been revised to provide that ITO's and State agencies may jointly request approval that a single State agency be responsible for the FSP on all or part of a reservation when reservation boundaries cross State lines. The other State agency(ies) must agree to cooperate fully with the administering State agency to carry out the purposes of the Program.

Contracts With an Indian Tribal Organization

The proposed and final regulations provide that State agencies may contract certain Food Stamp Program functions to an ITO.

Four comment letters addressed this provision. Two commenters felt that State government contracting should represent a means for tribal administration of the FSP. The Navajo comment requested that the rule allow certification activities, such as eligibility determinations and interviews, to be contracted to ITO's

The conditions for tribal administration of the Food Stamp Program are discussed elsewhere in this preamble. The final rules allow ITO's that are not administering a Food Stamp Program to nonetheless perform certain program functions under contract. However, it is Departmental policy, based on the Office of Personnel Management requirements, that certification activities such as interviews and eligibility determinations not be contracted.

Determination of Failure (§ 281.2)

The Act requires that for an ITO to administer the Food Stamp Program on a reservation, the agency of State government responsible for administration of Federally aided public assistance programs must be failing to properly administer the Food Stamp Program in accordance with the purposes of the Act. The Act states that before there may be an administrative transfer of the Food Stamp Program to an ITO, the Department must determine that the State *"is failing . . .* properly to administer such program on such reservation . . . " (Emphasis added). The Act and due process require, at a minimum, that the State be notified of its alleged failure "properly to administer such program" and be given an opportunity to take corrective action or to contest the FNS determination that the State "is failing". Such a failure determination cannot be made merely because a State agency will not meet the service demands of the tribal organization.[1] The Department has determined that failure to take corrective action, as determined by the review or Management Evaluation provisions, represents State failure properly to administer the Program.

The proposed regulations provided for analysis of a State agency's success or failure in administering the Food Stamp Program on an Indian reservation through the use of special Management Evaluation (ME) reviews conducted by FNS, and through an examination of any other relevant information that became available during the course of the review.

The proposed regulations followed the normal FNS procedures by which a State agency is informally and, if necessary, formally warned regarding the improper administration of the Program. The State agency would have been accorded an opportunity to take corrective action prior to the issuance of a formal warning and before the Department determined if the Program could and should be transferred to an ITO. After program transfer to an ITO,

[1] Even without the statutory "is failing . . . properly to administer such program" constraint the Department would still have promulgated the same regulatory position. Administrative efficiency, fiscal integrity and program effectiveness require that FNS should attempt to enforce State compliance with national program rules in all areas of the country. Further, Congress has provided for increased administrative funding for States if the Department determines these additional funds are necessary to carry out the program.

and in the event that an ITO became no longer "capable of effectively and efficiently conducting such program," administration would revert to the State which would then have to administer the Program pursuant to the nationwide mandate.

Fifty-two comments addressed these provisions. Four commenters felt that the provisions placed tribes and States in adversary positions. Twenty-six commenters felt the process for determining State agency failure was too long, and several commenters provided suggestions on how the process could be shortened. Additionally, 22 commenters felt that there should be a special provision for State agencies which do not want to continue administration of the FSP on a reservation whereby program administration could immediately be turned over to an ITO.

As noted earlier, the Food Stamp Act of 1977 provides two tests regarding ITO administration. The first requires a demonstration that the State agency "is failing properly to administer" the Program. The language recognizes the State government as having the primary responsibility to run the Program on reservations as well as in other areas of the State. The Act does not treat proper program administration over any geographic area as a responsibility which may be dropped due to preference or inconvenience. Only after a showing of State failure would the ITO be considered for program administration. The second test that the Act imposes is that the ITO must be found capable of effectively and efficiently operating the Program. As such, the Act and these regulations provide tribes with safeguards against poor program administration, while maximizing the opportunity for program and fiscal efficiency.[8]

Special Review

The comments regarding the FNS proposed procedures for determining State failure generally criticized the informal/formal warning process as unnecessarily lengthy and repetitive. The Community Nutrition Institute noted that the:

"informal warning system . . . is an . . . additional layer in the determination process that serves little purpose. . . . If FNS has *already* determined that a serious deficiency exists in State agency operations and performs a . . . review . . . the State agency should be given only *one* further chance (not two—informal and formal) to take corrective action."[9]

In response to the comments the informal warning process has been dropped. To further expedite the review process the final regulations have added a response time that provides that subsequent to October 1, 1979, FNS shall complete these reviews within 90 days, except under unusual circumstances such as the receipt of a large number of simultaneous requests. Additionally, FNS plans to meet this goal, prior to October 1, 1979, to the extent it is administratively possible.

Formal Warning of Deficiency

As discussed earlier, the informal warning called for in the proposed regulations is eliminated in the final regulations. The final regulations provide that if FNS has determined that major deficiencies exist, a formal warning shall be issued to the State, with a copy to the ITO. At a minimum, such warning shall indicate the State agency deficiencies and shall detail the basis upon which the deficiencies were determined. The State shall have 30 days to respond with evidence that it is in compliance or to submit a corrective action proposal.[10] If satisfactory compliance is achieved by the State agency on deficiencies cited in a formal warning, FNS shall notify the State, with a copy to the ITO, that the warning for those deficiencies is satisfied. Since the circumstances of each deficiency could vary greatly, FNS is not publishing a universal time limit to be imposed in each case regardless of the facts. Nonetheless, FNS does not intend to tolerate lengthy corrective action periods when the circumstances will not justify a long timeframe.

Determination and Sanctions

The proposed regulations provided that under certain conditions appropriate Federal sanctions would be applied to the State. One commenter asked that FNS specify what sanctions would be applied and how they would operate.

The final regulations provide that if at any time after the warning period or during or after the corrective action period FNS determines that major deficiencies still exist which are not being appropriately addressed by the State agency's corrective action plan, FNS may determine that State failure has occurred and may impose appropriate Federal sanctions as specified in Part 276. In all cases, FNS will pursue program deficiencies even if review results do not lead to ITO administration of the Program.

Termination and Transition

Prior to turning program administration over to a capable ITO, the State agency shall continue to administer the Food Stamp Program on the reservation until an effective termination and transition arrangement has been completed in accordance with § 281.8.

Determining Indian Tribal Organization Capability (§ 281.4)

ITO Review

Under the Act, when the Department makes a specific finding of State agency failure, Food Stamp Program administration would be turned over to an ITO only if an additional determination is made that the ITO is capable of effectively and efficiently conducting the Program. The Act directs the Department's attention to four factors governing that determination, including: (1) the location of State certification and issuance centers, (2) the prior experience of the ITO in operating other Federal programs, (3) the ITO's management and fiscal capabilities, and (4) the adequacy of the ITO's measures to limit discrimination

[8] The Department recognizes that many tribal entities may wish to hire and train their own administrative staffs, print their own manuals, establish their own certification offices, maintain their own records and perform all those functions which the State would otherwise perform for the State as a whole. The statutory imposition of funding ceilings makes it imperative that administrative costs be kept at a minimum and that administrative efficiency be maximized. Administrative inefficiency may directly result in a reduction in the amount of money available to provide needy households with coupon benefits. Nonetheless, FNS must be diligent in ensuring that States properly perform their duties for all persons within their boundaries. The Minnesota Chippewa Tribe noted that, "far too often Indian people are not receiving the full benefits of what the . . . State [is] supposed to offer. Often times it is due to . . . language barriers, insensitivity on the part of the local agencies . . . [lack of] transportation . . . [and lack of] efforts on the part of the local State agencies to encourage Indian participation . . ." State compliance with the rules implementing the Food Stamp Act should greatly reduce the extent of the problems discussed in the Chippewa Tribe letter. Where States fail in this regard, tribes will be given the opportunity to apply to operate their own Food Stamp Programs.

[9] The Papago Tribe of Arizona also suggested that the informal warning step be dropped and that once "FNS determines there is a deficiency in a State agency operation of the Food Stamp Program on all or part of any Indian reservation, FNS should immediately issue a formal warning to the State agency." The State of Montana also criticized the proposed State failure review process as too lengthy.

[10] While differing in certain respects, the final State agency failure review regulations follow suggestions of the Papago Tribe of Arizona. They recommended that the informal warning step be eliminated and that the formal warning "status should commence immediately after FNS has received a request to investigate State agency failure and FNS determines there has been a failure . . . The State agency should then have 30 days to respond with evidence that it is in compliance or to submit a corrective action proposal . . ."

against any potential program beneficiary on the basis of race, color, sex, or national origin.

The proposed regulations required FNS to review these four factors to determine an ITO's capability. The proposed regulations provided that during the informal warning period FNS would determine whether an ITO wanted to be considered as a State agency for the purpose of administering its Food Stamp Program. If so, FNS would begin to determine ITO capability during the informal and formal warning periods.

The final regulations, however, establish more expedited procedures for determining State government agency failure and Indian tribal organization capability. During FNS's review of State government agency operation of the Food Stamp Program on a reservation, FNS shall, if the ITO requests to administer its own Food Stamp Program, begin to determine the ITO's potential capability for program administration not later than the date of issuance of the formal warning to the State agency if the reservation tests as established by these regulations are met.

Determination of Capability

Six commenters addressed the items to be reviewed in an ITO capability determination. One commenter felt ITO capability ought to be assumed rather than determined. The BIA felt performance under the Indian Self Determination Act should be considered, while two commenters suggested that consultation with BIA be eliminated.

The Act requires that the Department determine that the applicant ITO "is capable of effectively and efficiently conducting" the Food Stamp Program. However, the final regulations stress that the initial evaluation by FNS is of an ITO's potential capability to administer a Food Stamp Program allowing for fulfillment of that potential through necessary training and technical assistance. In order to assess the ITO's potential capability the final regulations expanded the list of proposed criteria to include past administration of Federal programs, consultation with BIA, and a description of the locations of projected certification and issuance offices. The final regulations also require the ITO to satisfy FNS that it is capable (if provided with needed training and technical assistance) of administering the Food Stamp Program effectively and efficiently and of complying with all provisions of the Food Stamp Act of 1977, and the regulations as amended, including provisions for quality control, fraud determinations and claims collections.

Training and Technical Assistance

The proposed regulations provided that if an ITO were deemed capable of operating the Food Stamp Program, the Department would provide the necessary training and technical assistance prior to the ITO's assumption of program operations.

Twelve commenters addressed this provision. Most commenters wanted training and technical assistane to be available to all tribes upon their request. The proposal was interpreted as precluding tribes with basic capabilities, which needed training and technical assistance, from becoming fully capable of administering the Food Stamp Program. The Department has revised the final rules to correct this misunderstanding. The final regulations articulate the Department's original intent which was to provide training and technical assistance to an ITO upon a determination by FNS that the State agency has failed to properly administer the Food Stamp Program and that the ITO is *potentially* capable of operating an effective and efficient Food Stamp Program. The Department does not intend to provide training and technical assistance to all ITO's upon request. The Department does not have sufficient funds or staff to do so unless an ITO has been determined potentially capable of Food Stamp Program administration. Such expenditures would divert funds that could be better utilized elsewhere for the benefit of Indians or other recipients.

Staff Merit System

The proposed regulations provided that the ITO was required to use personnel in the certification process employed under standards equivalent to State merit system personnel standards or any standards later prescribed by the Office of Personnel Management under Section 208 of the Intergovernmental Personnel Act of 1970. Six commenters addressed this issue. The Navajo tribe questioned whether the Intergovernmental Personnel Act of 1970 applied to trust territories. All six commenters recommended that FNS accept tribal personnel system standards, three qualified their recommendations by stating that the personnel systems must protect against discrimination, nepotism and political patronage.

The final rules remain unchanged as the Act requires that the "personnel utilized in undertaking such certification shall be employed in accordance with the current standards for a Merit System of Personnel Administration or any standards later prescribed . . ." Individual tribal personnel systems will be evaluated on a case-by-case basis to determine if they are equivalent to the appropriate Office of Personnel Management standards.

Civil Rights Assurance

The proposed regulations provided that the ITO shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352), the Age Discrimination Act of 1975 (Pub. L. 94–135), the Rehabilitation Act of 1973 (Pub. L. 93–112, Section 504), and Section 11(c) of the Food Stamp Act of 1977 and all pertinent regulations or directives to the effect that no person in the United States shall, on the grounds of sex, race, color, age, political belief, religion, handicap, or national origin, be denied benefits or otherwise be subjected to discrimination under the Food Stamp Program. Where appropriate, FNS shall consider the adequacy of measures taken by the ITO to ensure that there is no discrimination.

One comment was received from the Creek Nation of Oklahoma which stated that Indians should not have to serve non-Indians, and suggested the Indians on the reservation should be served by the ITO while non-Indians on the reservation should be served by the State.

The final rules remain unchanged since the Act requires that Indian tribal organizations assure FNS that, as a Food Stamp State agency, they will serve all eligible reservation residents, Indian and non-Indian alike.

Indian Tribal Organization Failure (§ 281.7)

The proposed regulations provided that when normal program reviews of an ITO administered Food Stamp Program indicate continuing and uncorrected deficiencies, FNS may conduct a Special Review to determine State failure or to determine if the ITO has failed properly to administer the Food Stamp Program. If ITO failure was determined, FNS would, after proper warnings to the ITO, require the appropriate agency of State government to resume administration of the Program on the reservation.

Seven comment letters addressed this provision. One commenter felt that procedures for determining ITO failure should be the same as those for the State agency. Other commenters wanted more guidelines on funding and transition time. Several questioned the provision that program operation might revert to the State government agency.

The Department intends to treat any ITO administering a Food Stamp Program in much the same manner as if it were any other State agency. Therefore, for the benefit and protection of Indian and other program participants, the Department will require that any ITO administering a Food Stamp Program must adhere to all relevant statutory and regulatory provisions, or be penalized as any other State agency. When Performance Reporting System reviews indicate continuing deficiencies exist and corrective action proposals, with or without application of appropriate sanctions, have not resulted in a sufficient degree of improvement, FNS will conduct a review to determine if the ITO has failed to administer the FSP under § 281.3(b)(1), and shall follow notification and determination procedures in § 281.3 (c), (d) and (e).

In accordance with the Act, the final rules provide in the event that an ITO becomes no longer "capable of conducting such program" administration that the Food Stamp Program would revert to the State which would then have to administer the Program on the reservation pursuant to the nationwide mandate.

Transfer of Program Administration (§ 281.9)

A new section 281.9 has been added to the final rules to provide for a formal termination and transition arrangement to efficiently and effectively transfer program responsibilities between State agencies. The procedure applies both when the Program is being transferred from the State government to an ITO, and in the event the Program must be subsequently transferred from an ITO back to the State government.

Funding (§ 281.9)

The proposed regulations provided that the State agency or ITO will automatically receive 50 percent of the administrative costs of running the Food Stamp Program on a reservation. Section 281.9 further proposed a process by which a State agency or an ITO could present compelling justification for additional funding above the 50 percent level. The Department explored the possibility of developing more specific criteria for providing funding in excess of 50 percent, and encouraged comments on this issue.

The Department received 53 comments on this issue. Many commenters felt the Department should provide 100 percent funding for Indian Food Stamp Programs. Some tribes and State agencies stated that 50 percent funding was completely inadequate. Some felt that the Department's requirement for compelling justification placed a heavy burden on tribes, and many commenters supported the combined position of the Food Research and Action Center (FRAC) and the Board of the Indian Food and Nutrition Resource Center,[11] who recommended that the Department provide 100 percent funding unless the Secretary found compelling justification to provide a lesser amount.

The final regulations authorize the Secretary to fund 75 percent of the approved administrative costs of an ITO operated Food Stamp Program on a reservation.[12] The final rules require some investment by the operating agency which should provide the ITO with an incentive to run a better and more cost efficient program. Any approval for funds in excess of 75 percent must be based on a compelling justification that such additional amounts are necessary for the effective operation of the Food Stamp Program on the reservation. If an ITO is dissatisfied with the level of funding made available by FNS the ITO may file an appeal under § 281.10.

The final regulations also authorize FNS to pay agencies of State government 75 percent of the administrative costs approved by FNS for such functions as certification, issuance, outreach, fair hearings, and quality control incurred on the reservation to meet the standards set by the Food Stamp Act of 1977. The final regulations further provide that FNS may pay to each agency of State government administering a Food Stamp Program on a reservation 75 percent of all approved administrative costs incurred off a reservation for activities that are primarily directed at providing better services for Indians on the reservation, such as hiring interpreters, or Indian outreach workers, or moving a certification or issuance center closer to a reservation. If the agency of State government is dissatisfied with the level of funding made available by FNS, it may file an appeal under § 281.10 for an increase in the 75 percent funding level if it can provide FNS with compelling justification. Especially since an appeal from the minmum funding level is permitted, as recommended by many comments, FNS believes that the 75 percent minimum is a reasonable balance between the need to provide adequate funding for program operations which benefit Indians (including off reservation activities) and the need for fiscal restraint. While many commenters desired a description of what constituted the "compelling justification" for an increased Federal funding contribution, few were able to offer any useful criteria. In light of the variety of possible situations, FNS believes that this issue should be handled on a case-by-case basis after careful review of the specific circumstances.

Formalized Review—Appeals Procedure (§ 281.10)

The preamble to the proposal noted that it did not include a section authorizing procedures for the administrative review of FNS determinations regarding: (1) the capabilities of an ITO to administer the Food Stamp Program; (2) the failure of a State agency to "properly administer" the Food Stamp Program; and (3) the failure of an ITO properly to administer the Food Stamp or Food Distribution Program. It was thought that most of the above determinations would likely be made after careful review by the Administrator, FNS. Therefore, a formalized administrative review procedure was not considered necessary. However, it is not contemplated that the FNS Regional Offices will play a major role in the resolution of these issues.

Eighteen commenters supported the establishment of formalized review procedures, and most commenters added that an appeal procedure for funding levels should also be developed. The Food Research and Action Center and the Board of the Indian Food and Nutrition Resource Center proposed that any tribe or State agency be allowed to challenge an initial determination made by FNS by addressing such appeal to the Secretary. They proposed that the Secretary designate a hearing official who would be required to conduct a hearing within 30 days of the appeal request. After the hearing, the hearing

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[11] FRAC and the Board of the Indian Food and Nutrition Resource Center submitted a combined comment. FRAC is a national public interest group which specializes in anti-hunger work.

[12] Regarding the increase in the minimum administrative funding level for the Food Stamp Program, the State of Texas noted that the "operation of the program on a reservation will most likely entail higher costs than normal . . ." The *House Report* also emphasized this point by noting that: the reason for this potential expansion on cost-sharing for administrative costs is that at present many States and counties are reluctant to provide the funds necessary to administer these programs properly on reservations [since] reservation residents often do not pay State or local taxes . . .

Regarding the proposed 50 percent funding ratio for tribal operation of the Food Stamp Program, the Navajo Nation bluntly stated, "if administering ITO's are required to provide 50 percent administrative match . . . ITO's [are] out of the food stamp administration picture . . ."

official would have to provide a recommendation to the Secretary who would render a decision within 15 days of the hearing's conclusion. Four other commenters supported this proposal.

The final regulations establish a direct appeal to the Administrator, FNS, or his/her designee, regarding the three issues in the proposal and two additional ones: whether a "reservation" exists and whether the Federal matching percentage level of administrative funding is sufficient. While in some situations the Administrator may have been to some extent involved in an original determination, these appeal procedures provide an opportunity to formally present all the relevant evidence directly to the Administrator, or his/her designee. Moreover, the rules require that a formal and final decision be made at that same level. Other funding issues must be appealed under the Administrative Review Procedures in Part 276. The same appeals procedures have been added to Part 283 for State agencies or ITO's dissatisfied with FNS's determinations regarding the Food Distribution Program.

Food Distribution Program (Part 283)

Much of the preceding discussion pertaining to the administration of the Food Stamp Program on a reservation is pertinent to this Part, and to the extent applicable the preceding discussion is hereby incorporated by reference. In addition, the following comments are applicable to the Food Distribution Program.

Definitions (§ 283.2)

One respondent suggested that "Food Distribution Program" be defined since it is not a statutory program but an activity authorized under various legislative authorities. FNS adopted the suggestion and the term is defined under § 283.2(a) in the final regulations.

Several commenters recommended that the phrase, "exercises governmental jurisdiction," used in the definition of a reservation should be clarified. Therefore, a definition of the phrase has been added to the final rules explaining that it means the active exercise of the legislative, executive or judicial powers of government by an Indian tribal organization. The phrase is further discussed in this preamble in the Food Stamp Program section.

Indian Tribal Household

Under the final rules for concurrent or separate operation of the Food Stamp or Food Distribution Programs, a definition of Indian tribal household is necessary. The rules, therefore, define Indian tribal household as a household containing at least one adult who is a member of a tribe represented by the ITO for the particular reservation on which that household is located. Also, Indians who live near a reservation on which their tribe is represented by that ITO shall be considered tribal members. The significance of this definition is discussed later in this preamble. The final rules purposely avoid precisely defining "tribal member." Certain tribes apparently define membership in differing ways. The manner in which each tribe defines its own menbers is left to each tribe's discretion. If the lack of a technical and nationwide definition of Indian tribal member raises significant problems, the Department will consider whether any such definition can be appropriately developed at a later date.

Availability of Commodities (§ 283.3)

Concurrent or Separate Food Program Operations

Three commenters expressed the belief that affording ITO's a choice of participating in either the Food Stamp or Food Distribution Program discriminates against non-Indians, especially migrants and elderly persons. One commenter believed that dual program operations defeat the purpose and intent of the Food Stamp Program. Concern was expressed by one person that the distribution of commodities on parts of a reservation would encompass administrative problems both for the State and tribes which would not allow for orderly certification and distribution of food.

The concurrent operation of both the Food Stamp and Food Distribution Programs, at the request of the appropriate ITO, and the restriction of the latter program to Indian reservation areas are provided for in the Food Stamp Act of 1977; therefore, the proposed language is retained in the final regulations.

Comments discussing the separate or concurrent operation of the Food Stamp and Food Distribution Programs raised some difficult problems. Of course, where the ITO does not request operation of the Food Distribution Program these problems do not exist. For almost all areas of the country, the Food Stamp Program already serves as the basic and most significant food assistance program and is designed to provide an opportunity for eligible households to obtain a more nutritious diet.

Subsection 1304(a) of the Food and Agriculture Act of 1977 requires the Department, to the extent it provides for commodity distribution to Indians, to improve the variety and quantity of those commodities "supplied to Indians in order to provide them an opportunity to obtain a more nutritious diet." The Department has already made those improvements in the operation of its Commodity Distribution, now called Food Distribution Program, and considers the Food Distribution Program an adequate substitute for Food Stamp Program participation. Of course, certain households for particular reasons may prefer one program over the other.[13]

The Act allows the ITO to decide whether to request the Food Stamp Program, the Food Distribution Program, or both, for operation on the appropriate Indian reservation. The authority to make this choice may raise due process problems where the ITO selects the Food Distribution Program only. It appears that tribal entities normally do not allow non-tribal members to vote in the selection of tribal governing body representatives or to otherwise have a voice in the resolution of issues faced by the tribe. Therefore, in most cases, non-tribal households (which would include Indians who are not members of that particular tribe and non-Indians) located on the reservation could not participate, directly or indirectly, in any decision to reject food stamp participation.

Moreover, unless the Food Distribution Program were made available to non-tribal households, including non-Indians, located on a reservation where the ITO rejected food stamp assistance, needy low-income non-Indian households could not apply for either program. To avoid this situation, and yet give meaning to the Congressional decision to provide for "distribution of commodities, with or without the Food Stamp Program . . ." where the ITO "request[s] . . . concurrent or separate food program operations . . ." for reservation areas, the final regulations provide that non-Indian households on such a reservation must also be allowed to apply for commodity assistance.

Since some non-tribal households which reside on a reservation may prefer food stamp participation instead of food distribution participation, FNS has decided as a matter of policy to require project areas adjacent to reservations to service non-tribal households which apply at food stamp offices off the reservations, when there is no Food Stamp Program on the

[13] Even if one program could potentially provide more nutritional benefits than the other, households could find participation in the other program, on balance, more convenient or desirable for a variety of reasons.

reservation. Controls will have to be established to ensure that no household simultaneously participates in both programs. It is recognized that certain non-tribal households which prefer food stamps but which live a distance from the reservation boundary may find it inconvenient or even impossible to apply for food stamps. Nonetheless, the commodity benefits which are provided under the Act and § 1304(a) of the Food and Agriculture Act should effectively substitute for food stamp assistance in most situations. Requiring food stamp services on the reservation where the ITO decides otherwise would undermine the statutory framework in a situation where other food assistance is in fact available.

In summary, where the appropriate ITO requests the distribution of only commodity benefits on the reservation, all household (tribal members and all others) are eligible to apply for commodity assistance. However, non-tribal households may apply for food stamps at food stamp certification offices which are located off the reservation. Tribal members shall be bound by the tribal decision made by their representatives to reject Food Stamp Program assistance.

However, to effectuate the purposes of the Act and greatly increase program efficiency, the final rules allow the Secretary, or the Secretary's designee, to determine if there are areas within the confines of a reservation where it would be appropriate to provide both food stamp and food distribution benefits. An example might be urban areas on reservations with high concentrations of non-tribal members who could play no role in the ITO decision to reject food stamp operations. In that circumstance, it would be especially unfair to these non-tribal members if such a city or town was located at a distance from off reservation food stamp certification offices. The *Senate Report* at page 129, mentioned that, "some areas, especially those near cities or towns, may best be served by food stamps. Other more remote areas may best be served by the Food Distribution Program or by concurrent operation." Under this exception to the normal rule, households located in those areas would be eligible for food stamp or food distribution benefits.[14]

This rule approximates, *in a workable manner,* certain program results that could have followed a narrower interpretation of the reservation definition found in the Act. There are situations where individual lots, otherwise within "established" Indian reservation boundaries, have been sold to non-Indians. For example, many individual lots situated in "non-indian towns" or urban areas may have been sold to non-Indians. The non-Indian owners of these lots which are carved out of larger established Indian reservations might not be subject ot the same tribal governmental jurisdiction as their Indian neighbors. Nonetheless, these final rules consider the "checkerboarded" non-Indian lots as part of the reservation. Had this decision not been made, households residing on those individual lots could have been eligible to apply for food stamp assistance from the State agency where the tribe requested commodities only. The decision avoided the creation of perhaps hundreds of tiny food stamp enclaves, based on the analysis of individual land titles, which would have created serious administrative problems.

Additionally, under the Food Stamp Act, ITO's are free to divide reservations into areas to be served by food stamps only or by commodities only, or both. Coordination between the Department and the ITO is thus important regarding the Department's decision to define the excluded areas discussed above.

The final rules also allow for the issuance of commodities to Indian tribal households which reside "near" the reservation. The Department believes that the issue of who lives sufficiently near the reservation will become self-defining. Households eligible for commodities will, in most cases, be eligible for food stamps. It is presumed that many Indian tribal households would be unwilling to travel very far to obtain commodities at a reservation office, especially if they were provided the alternative of food stamps.

The issuance of benefits to tribal members who live near, but not on, the reservation is consistent with the delivery of benefits under Bureau of Indian Affairs programs and should effectuate a purpose of § 1304(a) of the Food and Agriculture Act, which is to increase benefit delivery "to Indians." The Department, to reduce the possibility for fraud and taking into account the alternative availability of food stamp assistance, has limited this off-reservation commodity assistance to Indian tribal households. Normally, ITO's maintain enrolled tribal membership lists regarding their tribe(s), and thus could readily confirm tribal status. Moreover, in many cases most of the Indians living near a particular reservation will be members of one of the tribes represented by the ITO. The Navajo Tribal comment noted, in this regard, that:

> In reality Tribal Governments deliver services beyond such [treaty or legislatively] drawn boundaries to its members in areas contiguous to the reservation proper. . . . Currently, the BIA, IHS [Indian Health Service], CETA [Comprehensive Employment Training Act] and CSA [Community Services Administration] federal agencies recognize this situation and have allowed the delivery of services to such . . . areas.

The Department is fully aware that the resolution of the concurrent or separate program operations issue may benefit some households more than others. Nonetheless, the Department believes it has carefully balanced the issues involved and has developed a reasonable solution.

Household Distribution

One commenter expressed the desire that FNS should offer hunting and fishing equipment for Alaska. FNS has no authority under any legislation to provide such equipment.

One letter stated that FNS should purchase processed and raw foods for the commodity package from Indians. Federal requirements provide that foods acquired by the USDA for donation to eligible participants must be acquired on a competitive bidding basis. Indians may bid when purchase announcements for foods are published. However, the Department cannot favor any segment of the population in awarding food purchasing contracts for delivery.

Three commenters suggested that FNS make money available to Indian tribes so they can purchase native and cultural foods raised in their area for distribution under the program.

Enabling legislation authorizes the Secretary to acquire and distribute commodities for certain food assistance programs including distribution to Indians. There is no statutory authority for the Secretary to delegate or transfer this acquisition and distribution responsibility and function to Indian tribal entities. Consequently, FNS has not adopted this suggestion in the final regulations.

Many commenters expressed the desire for FNS to improve the commodity package described in the preamble of the proposed rules. Recommendations were offered regarding content, choice, packaging, labeling, amounts offered, and other aspects relative to commodities for use by households. FNS addresses these

[14] Based on prior experience the Department does not believe that great numbers of non-Indians will apply for food distribution assistance. It is anticipated that, when faced with the choice, non-Indians would not normally switch from food stamp assistance.

concerns in a separate section entitled, "The Commodity Package."

Implementation

In the preamble to the proposed rules, the Department specifically requested "suggestions regarding the practicality and reasonableness of the proposed implementation schedule." A small number of commenters discussed these issues. The State of North Dakota, which administers the Food Distribution Program on four Indian reservations, stated that the:

> Implementation of the new distribution rules within 120 days after publication . . . [is] very restrictive, and [we] suggest it be modified to 160 days. The time needed for consultation, developing manuals, setting meetings with tribal authorities, training certification workers, and working through the numerous interpretations with Regional personnel is very time consuming.

The State of Idaho stated that:

> A State agency must be allowed a reasonable time, no less than 180 days, to assume program administration to allow for staff training, printing of program eligibility manuals and forms, preparation of a plan of operation, etc.

The State of Texas, which may have two reservation areas "potentially affected by the proposed rulemaking," thought that while the 120 days allowed for conversion from the old to the new program rules would not be long enough "in the case of a large reservation," that "the 180 days allowed for starting up a new program seems to be adequate." [15]

The final rules provide, in the case of currently operating programs, that conversion from the old rules to the new must take place within 120 days from the FNS determination as to whether the ITO or the State agency will administer the Program on the reservation. Regarding the 120 day timeframes for the ITO, FNS may approve a tribal implementation schedule if such schedule extends beyond 120 days subsequent to a determination as to its capability upon good cause shown by a tribe.

In cases where the Food Distribution Program is not currently operating, the ITO or State agency will be allowed 120 and 180 days respectively to implement the new program. Extensions may be granted by FNS to the implementation timeframes based upon compelling justification, involving circumstances which were not reasonably foreseeable, and which were not the fault of the tribe or the State agency which circumstances present extraordinary problems that would render earlier implementation infeasible.

Since few comments were received on these issues, FNS also discussed implementation timeframes with its Regional offices. The Department believes these schedules fairly balance the need for a smooth and orderly transition (taking into account the concerns of the commenters) against the interests of rapid program implementation. FNS, to the extent necessary, shall take steps to ensure that implementation schedules are followed. The Department hopes that the "established reservation" approach will accelerate its own review process in many circumstances. Note, that regarding the FNS acknowledgement of properly addressed requests for tribal Food Distribution Program operation, that tribes should write to the appropriate FNS Regional Office and write "Attention: Tribal request" or similar language on the outside of the envelope.

Administration (§ 283.4)

State Administration

Six commenters expressed opposition regarding the proposed requirement that an agency of State government must administer a Food Distribution Program on Indian reservations in accordance with the written request of the ITO if the ITO does not desire to administer the Program or if the ITO is determined by FNS to be incapable of Program administration.

Four States insisted that no funds are available to administer the Food Distribution Program. One of those States maintained that, if funds were somehow made available, at least 180 days would be needed to assume administration because of the need to train staff, develop a plan of operation, print forms and complete related requirements. One State indicated that it has not distributed Federally donated foods to any eligible outlet since 1974, and does not intend to reactivate a distribution structure. One commenter contended that the first opportunity to operate the Food Distribution Program should be given to the ITO. If the ITO failed, then the State agency should administer the program.

Based on the Act, the final regulations have been revised to clarify that, if an ITO desires to have the Food Distribution Program operating on its reservation and is capable of administering the program, the ITO must do so. However, if both the ITO and the State agree, an agency of the State government may administer the Food Distribution Program on the Indian reservation. The language of the Act does not compel a State government to operate the program merely because an ITO prefers not to administer food distribution on a reservation. Only if FNS makes a finding of incapability on the part of the ITO, would the State government be required to administer the program on behalf of the Indian tribe.

Four commenters recommended that if an ITO requests approval to administer a Food Distribution Program the Secretary should determine the ITO's capability to do so within 30 days.

FNS concurs that a timeframe for determination should be specified, and has provided in the final rules that the capability of an ITO not currently administering the Food Distribution Program must be determined by FNS within 60 days after receiving the ITO's request. A 30-day timeframe is overly restrictive in that some determinations of reservation status or capability may require additional research and collateral contacts. Initially at least, FNS may also receive a number of requests all at the same time, which will make it difficult to assure that each request would be handled in no more than 30 days. A 30-day timeframe, however, is specified for determining capability of an ITO currently administering a Food Distribution Program.

One commenter recommended that the final rules affirmatively state that a State agency responsible for administering the Food Distribution Program may contract certain Program functions to an ITO. FNS has adopted this recommendation.

Application by an ITO

A provision has been added to the final rules that an ITO which desires to participate in the Food Distribution Program must submit an application to FNS specifying whether the Program is desired on all or part of the reservation; independent of, or concurrent with, the Food Stamp Program; and other relevant information.

Tribal Capability

The proposed rules provided that FNS would, if requested by an ITO which has been determined by FNS to be capable of administering a Food Distribution Program, provide the organization's designees with training and technical assistance as necessary to prepare the ITO to take over program

[15] The proposal actually established the 180 day deadline for the imposition of the new personnel and staffing requirements where the new rules required "the hiring [and training] of paid staff. . . ." Although Indian tribes and food advocacy groups submitted thorough comments, they did not recommend or discuss, by and large, particular implementation timeframes.

administration. FNS would consult with BIA to determine what training and technical assistance is necessary.

Several suggestions were received that FNS should also consult with the ITO as well as BIA. FNS did not intend to exclude the ITO from consultation regarding the training and technical assistance it needs. Clarifying language to this effect has been added.

Six commenters contended that FNS should be required to provide technical and training assistance to noncapable tribes so they could overcome their deficiencies and be able to operate the Food Distribution Program. Three additional comments stated that a reasonable amount of technical assistance should not be witheld from any tribe desiring to qualify for program administration.

The Department did not intend to preclude tribes with basic capabilities from becoming fully capable to administer a Food Distribution Program through necessary training and technical assistance. However, the Department does not intend to provide training and technical assistance to all ITO's upon request. The Department does not have sufficient funds or staff to do so unless the ITO has been determined potentially capable of Food Distribution Program administration. Such expenditures would only result in the diversion of limited funds which could be better used elsewhere to benefit Indians and other recipients. Therefore, the language has been revised to clarify that training and technical assistance for tribes determined to be *potentially* capable of program administration based on general management experience.

State Agency Requirements (§ 283.5)

Plan of Operation

One commenter stated that the State agency should be required to submit its plan of operation annually to the ITO for review. The final rules provide that the State agency should periodically consult with the ITO regarding the current status and applicability of provisions relating to Indians in the plan of operation.

The proposed rules require the State agency, if not an ITO, to consult in good faith with the ITO when developing the plan of operation for administering the Food Distribution Program on behalf of the ITO. One commenter recommended that FNS should elaborate on the standards used to judge whether a State agency is consulting in good faith with the ITO. Four others believed that FNS approval should be contingent upon the ITO approving every facet of the plan unless the State agency could demonstrate to FNS that it would be impractical to comply with the requests of the ITO.

FNS believes that the ITO is adequately protected regarding the consultation and approval process by the requirement that the State agency submit the plan of operation and any subsequent amendments to the ITO at least 45 days prior to submission to FNS, and that the State agency must attach any comments from the ITO to these documents. The comments should enable FNS to evaluate the extent and depth of consultation and any concerns of the ITO in determining approval or disapproval of the State agency's plan of operation.

One commenter recommended that FNS develop at the Federal level a standard Plan of Operation for use by State agencies.

FNS plans to consider this recommendation in the future. The experience gained in providing training and technical experience to a variety of State agencies with various administrative and operational structures should enable FNS to develop a more useful and adaptable model.

Operating Manuals

One commenter stated that the State agency's operating manuals should be submitted to the ITO, as well as to FNS, for final review and approval. As in the proposal, the final rules require the State agency to maintain ongoing consultation with the ITO in developing the State agency's operating manuals and to submit these to FNS prior to their use. A provision has been added to the final rules that the State agency must file for review by FNS any comments or recommendations offered by the ITO relating to the operating manuals.

Staffing

Regarding certification personnel, three commenters recommended that if an ITO is presently administering other Federal programs, the personnel system deemed adequate for those Federal programs should be deemed adequate for a Food Distribution Program.

FNS is primarily concerned that certifiers for the Food Distribution Program be employed in accordance with a personnel system that incorporates the basic elements of a merit system. The comment of the Navajo Tribe explained that tribes may wish to value prior work experience more than formal education. The Food Research and Action Center noted that protections against "discrimination, nepotism and political patronage" should be sufficient to guard against possible employment abuses. The requirement for a merit personnel system is not intended to set job qualifications for specific positions, but to assure that general employment and hiring practices are based on merit rather than patronage.

Three commenters proposed that if an agency of State government operates the Food Distribution Program on an Indian reservation it should attempt to ensure that substantial percentages of Indian people are hired to staff the Program's operation. Each State agency has sufficient administrative discretion to adopt this proposal as a goal. FNS recognizes the responder's concern, and encourages State agencies to do so within the framework of these regulations.

The hiring of tribal members to certify other tribal members should make applicants feel more at ease, should reduce communication difficulties, and should improve the Food Distribution Program's image among Indians.

Three commenters proposed that State agenies should be required to establish grievance procedures so that program applicants can initiate disciplinary action against administrators who refuse to respect Indian rights under the Program. FNS believes that the concern is adequately dealt with by § 283.7 of the final regulations. Under that provision, the State agency must provide a fair hearing to any household aggrieved by any action of the State agency which affects the participation of the household in the Food Distribution Program. Inherent in this is the requirement that remedial action will be taken to protect participants' rights. No change is made in the final regulations.

Bilingual Requirements

The proposed rules required the State ageny to provide bilingual staff and certification and outreach materials when either an estimated 100 or more low-income households or the majority of low-income households on a reservation are a single language minority.

One commenter believed such assistance should be provided if 25 or more households needed bilingual assistance. While State agencies may elect to lower the numerical base for bilingual assistance, FNS has decided to retain the standard as proposed. The Papago Tribe of Arizona noted that, "the requirements for bilingual staff, certification and outreach materials are excellent."

Four commenters preferred that the term "single language minority" be redefined to mean households whose language of primary familiarity is other than English. The bilingual requirement is intended to remove the lanauage participation barrier for many households which are unable to communicate in English rather than for those who prefer a language other than English.

This definition also permits State agenies to utilize information gathered for Food Stamp Program purposes to determine the need for bilingual services for the Food Distribution Program.

Outreach and Referral

One commenter supported the proposed provision that State agenies become familiar with other public and general assistance programs so that the State agency can identify households which might be eligible for food assistance and to refer those households to the appropiate office or program. Another letter recommended that this provision be deleted.

The proposed rule will be retained as an efficient means to assist potentialy eligible households to obtain knowledge about programs designed for their benefit. The Buffalo Area Metropolitan Ministries stated that, "we applaud the provision which requires that the State agency shall be sufficiently familiar with WIC [Women, Infants and Children feeding program], SSI [Supplemental Security Income Program], and Commodity Supplemental Program . . ." to provide referral services.

Four commenters recommended there should be at least one outreach coordinator and adequate bilingual staff for each reservation.

FNS believes that the proposed requirements are adequate and will prove effective. However, a State agency may decide to have more outreach or bilingual staff than required by the regulations based on considerations such as the size of program, the number of participants and the number of single-language minority households.

Training Requirements

One commenter stated that the State agency should institute a reservation-wide training program for outreach workers if the ITO requests such training.

The proposed rules required the State agency to institute a training program for those involved in outreach. FNS believes elaboration is not necessary in the final regulations.

Another commenter stated that the list of what topics the State agency training programs shall cover should be expanded to include the specific needs of the ITO's and the Indian tribes or bands to whom the State agency offers services. Three other commenters recommended that training should, when feasible, be conducted on reservations, and that the sessions should include instruction and information about the unique culture and background of Indian people. These respondents also recommended that tribal leaders and residents should be informed in advance about the training sessions and should be invited to attend.

The proposed training rules were developed to ensure a well-staffed, well-administered and responsive Food Distribution Program. It is anticipated that many training programs may in fact include the components envisioned in these comments. However, FNS does not believe it is appropriate to mandate training to the extent it covers more than administrative procedures and standards or program criteria. Therefore, no changes in this paragraph were made in the final regulations. Note that the final regulations provide for public, therefore Indian, participation at training sessions under certain circumstances.

Nutrition Education

Three commenters stated that the nutrition education aspects of the Program should be imposed by regulation and implemented registered dietitians who are familiar with nutritional needs and food preferences of Indians. One letter stated there should be a clarification of the Department of Agriculture's Extension Service's input and another letter stated that regulatory language should be clarified to preclude a State agency hiring additional personnel which would duplicate services provided by other organizations.

Therefore, to foster better nutrition and the effective use of program benefits, the final regulations are revised in light of the preceding comments except that no explicit provision for a registered dietitian is included. FNS believes it is unnecessary to require dietitians since other resources may be adequate to meet program needs.

Records and Reports

The final regulations include an OMB requirement regarding the retention of records when litigation, claims or audits are involved.

Investigations

Three commenters stated that USDA investigations should also be conducted upon the request of an ITO or upon the request of a substantial number of program applicants and recipients.

The proposed rules provided that the Department shall make investigations at the request of the State agency or when the Department determines an investigation is necessary. If an ITO or a substantial number of individuals request an investigation, the Department would be justified in determining that an investigation is necessary. The Department believes that the rules, as proposed, are adequate.

Sanctions

One commenter recommended that since many Indian reservations are a Federal responsibility, the Federal government should conduct the Food Distribution Program where an ITO requests the program but does not want to administer it. However, the Act envisions that only State agencies or ITO's may administer the Food Distribution Program. Therefore, the final regulations follow the requirements of the Act.

One commenter complained that the proposal discriminated against ITO's because the proposed rules provided that if a State agency were disqualified from administering the Food Distribution Program, it could be reinstated if FNS approved its plan for corrective action; whereas a disqualified ITO was not given the same opportunity. The Department had intended the term "State agency", unless otherwise specified, would apply equally to agencies of the State government or ITO's. However, the final regulations are revised to clarify that the ITO may also submit a corrective action plan.

Three commenters recommended that the lifting of sanctions against a State agency should not occur merely upon submission of a corrective action plan but upon a demonstration of full compliance with pertinent regulatory or State plan requirements. In some instances it may be necessary for FNS to lift sanctions in order for the State agency to comply with its plan for corrective action. For example, FNS might find it necessary to release or restore administrative funds to enable the State agency to undertake program improvements. To provide FNS with flexibility, no changes relating to this recommendation were made in the final regulations.

Three commenters suggested that FNS consider withholding administrative funds for the general operation of the Food Stamp Program in the State as an additional sanction against abuses in the Food Distribution Program. FNS has rejected this suggestion since the same State agency might not be responsible for the administration of both programs. For instance, it would not be effective to sanction a State welfare agency's food stamp administrative funds for an ITO failure to administer a Food Distribution Program properly. Even if both Programs are administered by the State government, different agencies or different personnel within the State may be involved.

Appeals

Based on the comments, a new section has been added to the final rules which details a procedure for the agency of the State government or an ITO to appeal initial determinations made by FNS regarding whether a "reservation" exists and regarding the administrative capability of an ITO, the imposition of sanctions against the State agency and the level of Federal matching funding.

Eligibility of Households (§ 283.6)

In response to proposed criteria on determining the eligibility of households for the Food Distribution Program, 12 letters with approximately 37 comments were received. The majority of commenters supported the Department's intent to simplify Food Distribution Program eligibility requirements rather than adopting identical Food Stamp Program criteria for eligibility. Several commenters posed suggested revisions, some of which were for clarification purposes only.

Areas to which comments were primarily addressed included categorical eligibility, jointly owned resources, income exclusions and allowable deductions. These areas of concern and others are discussed in more detail under specific headings.

Household Concept

To assure that all substantive criteria which affect eligibility are addressed in one place in the Food Distribution regulations, the definition of household concept has been moved from Definitions, § 283.2, to § 283.6.

One commenter felt that the eligibility of households should be based on economic units rather than common food purchasing and preparation units as proposed and that residents of institutions be eligible for the Food Distribution Program.

With regard to the first comment, the basic test for eligibility in the Food Distribution Program involves a review of financial resources. The basic purpose of the program is to provide benefits to needy households. Thus, it is felt that eligibility reviews should involve only those persons considered part of a food unit and hence seeking food assistance. This position is consistent with the position expressed in the *House Report* concerning the Food Stamp Program and is consistent with the food stamp regulations issued under the Act.

In the interest of program simplification and as recommended by the Papago tribe, FNS has decided to exclude boarders from the household concept.[16] Since the per person commodity allotment is not reduced as household size increases, it is not as critical to precisely define boarder status for food distribution purposes as compared to Food Stamp Program purposes. Moreover, while each program simplification considered alone may appear insignificant, taken together the simplifications should expedite the certification process for everyone and otherwise save time and effort which could better be spent on other matters.

Insofar as the eligibility of institutionalized residents is concerned, enabling legislation for food distribution permits participation by residents of institutions based on the eligibility of the institution rather than on a resident's individual or household status. The Department encourages institutions which are located on Indian reservations not already participating in Food Distribution to apply for USDA donated commodities.

Income and resource eligibility standards of public assistance, supplemental security income and certain general assistance households. Several commenters addressed the categorical eligibility of households in which all members are included in a Federally aided public assistance (PA) grant, a Supplemental Security Income (SSI) grant or certain general assistance program grants.

Comments were about evenly divided in support of or opposition to the proposal. The Department has retained the categorical eligibility provision in order to reduce to the extent possible administrative burdens involved in determining household eligibility. As noted by the Food Research and Action Center:

> Since benefit levels in the Commodity Distribution Program are not variable based on income, and since public assistance[17] recipients are most likely to be eligible for commodities, the Department's decision [providing automatic public assistance eligibility] is wise. Moreover, the Department's decision, in this respect, will help to simplify program administration.

Two commenters indicated that paragraph (c)(1) of this section needed to be amended to clarify that categorical eligibility does not extend to SSI households in cash-out States. Clarifying language to this effect has been added.

Resource Eligibility Standards.

The majority of commenters supported the requirements contained in this section except for the provision on the treatment of jointly owned resources. For example, the Buffalo Area Metropolitan Ministries noted that, "the efforts to simplify eligibility requirements for households are very good." Two commenters felt that all jointly owned resources should be prorated with only the prorated amount counting toward the applicant household's total resources. For administrative convenience, the Department has adopted those recommendations.

In responding to § 283.7(e)(3) one commenter pointed out that the proposed regulations had not provided language on how to treat the resources of a household member who had been disqualified from participation in the Food Stamp Program for fraud when determining the remaining household members eligibility for the Food Distribution Program. Therefore, language has been added to the final rules which count in their entirety the resources of disqualified individuals to remaining household members. Without this rule, which is consistent with Food Stamp Program rules, households could benefit from the intentional fraud of a household member by having fewer resources counted upon the disqualification of that member.

In addition, the paragraph on handling excluded funds has been revised to clarify the handling of student and self-employment income which has been prorated. While the intent was never to count these payments as a resource, the rules on handling an excluded resource

[16] Texas recommended the opposite simplification. They noted, "it is more realistic to consider those who live and eat together as one household than to exclude boarders and live-in attendants." This recommendation could result in the ineligibility of an entire household where the income and resources of boarders would place the rest of the household over the eligibility limits.

[17] The Navajo Tribe pointed out that the number of public assistance, general assistance or supplemental security income households that would not be eligible for the commodity distribution program, without categorical eligibility, would be "very small."

appeared to apply. Therefore, language has been revised to specify that prorated student and self-employment income is exempt as a resource so long as a portion is being counted as income.

The resource eligibility rules are also amended in three additional aspects. The resource exclusion for earned income tax credits is revised to take into account Public Law 95–600, the Revenue Act of 1978 and the treatment of Comprehensive Training and Employment Act (CETA) payments under CETA youth employment and training programs.

Handling of Commingled Funds

In the interest of program simplification the provisions concerning the handling of commingled excluded funds have been dropped. Since certain monies must be excluded under these final rules, State agencies may develop their own procedures to ensure that excluded monies are not considered when determining the household's resource level.

Definition of Income

In drafting procedures for the handling of income in the proposed rules, the Department inadvertently excluded as income payments from Government-sponsored programs, dividends, interest, royalties and all other direct money payments from any source which can be construed to be a gain or benefit. This language has been added to the final rulemaking, along with additional clarification on how to determine capital gains.

Again in response to a comment on the handling of persons disqualified from the Food Stamp Program for fraud when determining the eligibility of remaining household members for the Food Distribution Program, language including as income the earned or unearned income of the disqualified member less his/her pro rata share has been added to this section. This rule is consistent with the Food Stamp Program approach, and does not allow households to gain Food Distribution Program eligibility through the intentional fraud of a household member regarding the Food Stamp Program. Procedures for calculating the pro rata share are described in § 283.7(e)(3).

The Department has simplified the language used in describing types of income which are to be included and excluded in the computation of household income. The Department admits that this program clarification could result in slight variations in interpretation of those more simplified income examples and rules. However, since food distribution benefits are not reduced according to differences in total countable household income, the importance of precise and intricate computation procedures is reduced. The exact amount of income is important only for households near the income eligibility limits. The Department does not believe that such a consideration justifies the imposition of complicated and time-consuming procedures on all households.

Income Exclusions

One commenter felt that training allowances to individuals living on reservations should be excluded entirely as almost all of the training allowance would likely go toward meeting high transportation costs. The regulations provide an income exclusion for reimbursements which would cover job or training related expenses such as travel, per diem and transportation costs to and from work or training sites. Were the Department to exclude all training allowances because of transportation costs, certain trainees would be receiving more favorable treatment than wage earners. The Department believes that the rules represent a reasonable response to the needs of persons involved in training programs. In response to comments requesting explanatory language for defining mandatory fees, § 273.6(e)(3) has been amended to provide examples of mandatory fees. Minor language changes have been made in § 283.6(e)(3)(vi).

Several income exclusions in § 283.6(e)(3)(x) have been revised to clarify the exclusions and to reflect revisions in the legislation. The preamble to the October 17, 1978, food stamp regulations discussed the food stamp income exclusion under Title I (VISTA) of the Domestic Volunteer Service Act of 1973. The proposed language regarding the VISTA income exclusion for the Food Distribution Program was consistent with that food stamp approach. However, in technical amendments recently published the Department is slightly modifying that VISTA income exclusion rule. These final rules are likewise modified for the reasons stated in the preamble to those technical amendments.

An additional income exclusion is for earned income tax credits received as a result of Public Law 95–600, the Revenue Act of 1978 and for payments from certain CETA Youth Employment and Training Programs which are extended by Public Law 95–524. These issues are thoroughly discussed in the preamble to the technical amendments docket discussed above. Note that the Revenue Act of 1978 continues the disregard of earned income tax credits for determining assistance payments until January 1, 1980. The Revenue Act also authorizes advance payment of earned income credits by the employer in accordance with tables prescribed by IRS. Until January 1, 1980, the statutory exclusion applies to advance payments of the credit as well as to any payment at the end of the tax year. Assuming that the January 1980 expiration date remains in effect, the advance payments will be counted as earned income after that date. However, the payment at the end of the tax year will continue to be an income exclusion because it is a lump sum payment.

Income Deductions

The Department has amended § 283.6(g) to allow dependent care costs not to exceed the amount determined as the maximum allowable deduction for dependent care costs allowable under the Food Stamp Program in the 48 States and the District of Columbia when necessary for a household member to accept or continue employment or attend training or pursue education which is preparatory to employment. The Department wishes to encourage employment and job training so that households may eventually become self-supporting, or at least provide more of their own support. A child-care deduction allowing household members to work or attend training could serve that purpose for many households. An excess shelter care deduction would not, however, be directly related to the purpose of helping households break out of their cycle of poverty through employment. The preamble to the proposal, as with many aspects of the regulations, adequately discusses the issues regarding the requested excess shelter cost deduction.

Certification of Households (§ 283.7)

Fifteen letters with approximately 90 comments were received in response to the processing of applications for the Food Distribution Program. The majority of commenters supported proposed procedures, some with suggested changes. Regarding the proposed processing standards, the Food Research and Action Center stated, "we believe the Department's fine regulatory proposals for prompt service are fully justified." The most frequently commented on areas included: ITO receipt of certification and/or termination notices, interview requirements, the determination of income, verification provisions,

assignment of certification periods, procedures for households switching from the Food Stamp to the Food Distribution Program and vice-versa, treatment of income and resources of individuals disqualified for fraud in the Food Stamp Program, expedited processing standards and fair hearing requirements. These areas of concern and others are discussed in more detail under specific headings.

Application Processing

Several comments addressed the desirability of the ITO receiving copies of certification and/or termination notices. While the proposed regulations did not require ITOs to receive copies of notices, the proposed regulations did not preclude such action. Therefore, language has been added to indicate that when the State agency is other than an ITO, the ITO may receive copies of certification notices to the extent requested or agreed upon by the household and the State agency. Moreover, the final regulations permit ITOs and State agencies to establish formalized procedures to facilitate ITO receipt of notices.

Household Cooperation

As requested by one commenter, a minor language change has been made in the final regulations regarding household cooperation to indicate that in cases where there is some question as to whether a household had merely failed to cooperate, as opposed to refused to cooperate, the household should not be denied eligibility *solely* because of that failure.

Interviews

Several commenters were concerned about the exclusion of the Food Stamp Program's out-of-office certification criteria when determining a household's eligibility to participate in the Food Distribution Program. Some commenters felt that interviews should automatically be waived under specific conditions set by the Department. The Department left out the special interview provisions contained in the Food Stamp Program regulations for several reasons.

First, anticipating a significant increase in administrative costs, including worker time, in providing benefits to each household requiring out-of-office certification, the Department decided that those resources should be expended on maximizing delivery of basic services to all households. Second, these procedures could add needless complexity and increase administrative costs while not totally responding to potential transportation problems. Third, the much shorter food distribution application processing timeframes will likely require that interviews be conducted upon filing an application. This factor will limit the problem of repeated trips to be certified.

However, to allow States to respond to emergency or unusual circumstances, the final regulations have been revised to allow the State agency the option of telephone or home visit certifications. Households may not be interviewed by telephone for any two consecutive certifications and State agencies must attempt to schedule home visits in advance. Home visits may not extend required processing standards set forth in § 283.7(a)(7) or § 283.7(a)(9).

Verification

There were many and varied comments regarding verification provisions. Most of the comments sought to bring Food Distribution Program verification requirements in line with those established for the Food Stamp Program. However, a few comments were aimed at making the verification requirements less stringent.

In line with suggested revisions, language regarding the use of collateral contacts was added to the final regulations. Comments that income verification be to the exact dollar amount and that changes in monthly income of $25 or more, instead of $50 or more, be verified were rejected as inefficient because benefits in the Food Distribution Program are not reduced as income increases. Therefore, except in the few cases when the variation in the income in question would mean the difference between eligibility and ineligibility, it is not essential to know, for example, that a household's income is $190, rather than $150 a month.

One commenter proposed that verification only be sought at the time of application if the amount given by the household is questionable and at the time of recertification if it appears that the household's continued eligibility is uncertain. However, as recertifications will often be as far as a year apart, and since the final regulations provide some latitude to the extent that verification need not be to the exact dollar amount at application and only verified under certain circumstances at recertification, the Department is not adopting these comments. Moreover, casefile documentation of verification provides an audit trail for determining the accuracy of certification for program participation.

Comments regarding proposed expedited processing standards were fairly evenly divided for and against the provision. The major concern in olving the expedited delivery standard was stated by North Dakota. Their letter pointed out that, "warehouse supervisors would be required to be on duty 40 hours a week with an assistant or someone designated to act in his absence. . ." North Dakota also mentioned that, "there are times when the warehouse should be closed during working hours in order to inventory, spray to prevent infestation and other housekeeping chores." The final regulations explain that keeping warehouses open 40 hours a week may not be necessary so long as appropriate officials have access to commodities for distribution to destitute households. Under certain circumstances, FNS may approve alternative timeframes for responding to expedited cases, for example, if the distance to warehouses or distribution points is so great as to preclude same day or one day service.

ID Cards

Several commenters were concerned about the need for mandatory use of Identification Cards for the Food Distribution Program. The Navajo tribe commented that the "master card/record system in use presently on reservations administering the [Food Distribution] program" has been successful. Final regulations have been revised to allow States to use ID cards although other adequate identification must be accepted by the State. Thus, individuals, including authorized representatives, must present some form of identification before commodities can be issued to help guard against program fraud.

Determining Income

A few commenters suggested, for purposes of clarity and greater precision, that the section on determining income should include more of the language found in Food Stamp Program regulations regarding anticipated income, conversion factors, and unallowable self-employment costs of doing business. The Department has added some clarifying examples and has simplified the self-employment income calculations by eliminating the depreciation deduction while counting only the net profit from the sale of capital goods and equipment.

Certification Periods

Most of the comments in response to assigning appropriate certification periods favored the provisions as proposed. However, two commenters suggested that certification periods

automatically be one year. The proposed regulations recognized that certification periods assigned to households eligible for participation in the Food Distribution Program would normally be longer than those assigned in the Food Stamp Program, since fluctuations in income below the income eligibility limit do not affect the benefits received under Food Distribution. Moreover, the regulations allow for assigning a one year certification in situations where household circumstances are expected to remain sufficiently stable. The Department considers the proposed rules to have provided a reasonable balance between the participants' interest in long certification periods and the Department's interest in fiscal integrity.

Notices to Households

The majority of comments received on notices proposed that household notices be in the language of the household's primary familiarity. Section 283.5(d) of the final regulations requires the use of bilingual staff and certification and outreach materials when either an estimated 100 or more low-income households or the majority of low-income households on the reservation are a single-language minority. Certification materials include the notices of eligibility or ineligibility provided to households. As such, existing bilingual requirements will reasonably meet the need for issuing notices in other languages. Additionally, language regarding the use and requirements for the notice of adverse action have been moved from § 283.7(c) to this section and provisions regarding joint processing situations have been added.

Reporting Changes

Two commenters proposed that where the household has requested a fair hearing and continued benefits due to a reduction or termination of food distribution participation that benefits be continued only if the certification period has not expired. Since there are no provisions for retroactive benefits, should the fair hearing be decided in favor of the household, the Department provided for continued benefits past the expiration of the certification period if a fair hearing was requested by the household. On balance, the Department continues to believe that this is an equitable and reasonable approach and has retained the provision as proposed.

Recertification

It became apparent during the comment analysis that there was some confusion over the paragraphs discussing the signficance of applying in or before "the last week" of the certification period. The final rules simply provide that households which apply in "the last month" of the current certification period will be provided an opportunity to receive commodities on an uninterrupted basis. Since the final rules do not require the advance mailing of a termination notice, State agencies must develop some method to reasonably notably households of the termination date. Because of the tight normal processing standards, and the one day expedited processing standards, the need for formalized termination notice procedures and deadlines are obviated. Since benefits must be made available within seven working days, at the most, the Department felt that States should be allowed flexibility in providing appropriate notice. Even households which are inadvertently not notified of the termination date should be able to apply and receive benefits during the first month after the certification period has expired under the final processing standards.

One commenter proposed that households be permitted to receive continued benefits on a recertification denial if a fair hearing is requested by the household on a timely basis. Since the Food Distribution Program makes no provision for retroactive benefits, the Department concurs with this proposal and has revised the final regulations accordingly.

In addition, to reduce the burden of verification and since the amount of benefits is not reduced according to household income, this section has been revised to provide that previously verified income, if the source has not changed and the amount has changed by $50 or less, need not be verified again if applications for participation are received within 30 days after the household's certification period has expired.

Choice of Programs

Several commenters were concerned about the mechanics of households switching from one program to the other and the potential for households not receiving benefits under either program during the interim period of changing programs. Therefore, the final regulations have been revised to provide specific administrative procedures for use by State agencies when households express a desire to change programs. However, because eligibility in one of the programs does not necessarily mean the household is eligible for the other, to switch programs the household must terminate its participation in one program and reapply for the other program. Controls will assure that eligible households do not experience an interruption in benefits assuming prompt application for the other program and also prevent duplication participation.

Disqualification

One commenter pointed out that the proposed regulations provided no criteria on how to treat the resources, income, and deductible expenses of individuals disqualified for fraud in the Food Stamp Program when determining the eligibility of the remaining household members for participation in the Food Distribution Program. The final regulations have been revised to provide specific criteria for handling of income and resources of disqualified members.

Joint Processing PA/GA

One commenter proposed that joint processing be required, rather than a State option. However, since mandatory joint processing requirements could result in both the State agency and the ITO accepting food distribution applications, the Department has retained the requirement as proposed. Other modifications were made for clarity.

Fair Hearings

There were four comments received on fair hearing procedures. One commenter was uncertain as to whether or not the same fair hearing official could conduct the food stamp and food distribution hearings. While not specifically stated in the final regulations, the same official can conduct food stamp and food distribution fair hearings.

Another commenter felt that household should be allowed to request Food Distribution Program fair hearing postponements beyond 30 days. In the interest of program efficiency, criteria for food stamp and food distribution hearings are as closely aligned as possible. Additionally, the Department is not adopting this comment in the final regulations since delays in holding hearings will increase the possibility that information will be forgotten, that documents will be misplaced, that witnesses will become unavailable, or that facts will no longer be relevant.

One commenter also proposed that the notification of time and place of hearing be increased to 15 days in advance rather than the proposed ten day notice. Particularly in light of the postal and transportation problems existing on many Indian reservations and the "frequently isolated locations of

appellants' homes," as noted by one commenter, the Department has adopted that suggestion.

Finally, one commenter proposed that the Department provide retroactive benefits to households in which fair hearings are decided in the household's favor. However, as the final regulations permit the continued distribution of commodities to households beyond the expiration of the certification period in situation where fair hearings are involved and to households denied at recertification if a timely request for a fair hearing is made, the Department has not adopted this comment.

Moreover, issuing retroactive benefits could lead to food waste or encourage the sale of commodities for cash when provided in the form of extra food over and above the normal monthly commodity package. Note that the per person monthly commodity package is not reduced by either the individual's level of income nor the economics of scale used in the Food Stamp Program. Therefore, households could receive two, three or even more times their full monthly commodity package if benefits are provided retroactively.

The only effective remedy for the anticipated loss of food assistance is timely delivery of those benefits. As such, the final regulations require that State agencies establish special procedures for the prompt resolution of disputes over program eligibility, i.e., agency conferences. These conferences must be held within four working days of a request for an immediate resolution of a dispute involving program eligibility. To meet this standard, agency conference procedures need not duplicate the full dual process protections of a fair hearing. Households requesting agency conferences must also be allowed to request a fair hearing.

Moreover, the final regulations permit the continued distribution of food commodities to households beyond the expiration of the certification period in situations where fair hearings are involved and to households denied at recertification if a timely request for a fair hearing is made.

Commodity Control, Storage, and Distribution (§ 283.8)

Commodity Inventories

Five commenters recommended that the final regulations should provide that inventories be maintained at a level which ensures the constant availability of no less than a two months supply of the total commodity package for each participant.

FNS has decided to retain the language of the proposed rules which requires the State agency to ensure that an adequate supply for the uninterrupted distribution of commodities is on hand at all distribution sites. It may not be practicable nor reasonable to maintain a two months supply of commodities at a distribution site located in close proximity to a central warehouse. To specify a two months minimum might deter the State agency from maintaining a three to four months inventory if needed at major storage or distribution sites. The important consideration is that an adequate supply of commodities be available at all distribution sites.

Storage Facilities and Practices

Three commenters stated that points and hours for commodity issuance should be established. The Food Stamp Act of 1977 requires the State agency to comply with standards set by the Secretary with respect to points and hours of food stamp coupon issuance, but the Act does not extend this requirement to the Food Distribution Program. However, the regulations do generally provide for points and hours by requiring that sufficient distribution sites, either permanent or mobile, be geographically located or routed in relation to population density of eligible households and that days and hours of distribution be sufficient for caseload size and convenience.

Distribution

A new paragraph has been added in the final regulations to emphasize the State agency's responsibility for all aspects of the Food Distribution Program regardless of any assistance provided by other agencies or organizations or any delegations of responsibility made by the State agency.

Improper Distribution or Loss of or Damage to Commdodities

The requirement in the proposed rules that State agencies submit their claims procedure to FNS has been eliminated. FNS has determined that the provisions regarding claims set forth in Part 250 of this chapter provide adequate safeguards concerning the pursuit and resolution of claims resulting from improper certification and distribution practices.

Damaged or Out-of-Condition Commodities

Provisions in the proposed rules concerning damaged or out-of-condition commodities have been slightly modified to specify that if commodities are declared unfit for human consumption they shall be disposed of in accordance with § 250.7 of Part 250, Chapter 7 of the CFR.

Three commenters observed that the proposal did not allow families to be provided replacements for spoiled foods. Since the possibility exists that damaged or out-of-condition commodities could be inadvertently issued to a household, FNS has included a provision in the final regulations for replacement although State agencies have traditionally had discretion to make such replacement without specific provisions in Department regulations.

Administrative Funds for State Agencies (§ 283.9)

Authorization for Administrative Funds

The proposed rules provided that FNS pay 50 percent of administrative costs approved by FNS which are needed to operate a Food Distribution Program unless the State agency could submit compelling justification for an amount in excess of 50 percent.

Twelve commenters believed that State agencies which are ITO's should receive 100 percent funding for administrative costs and three additional commenters wanted the same funding level for State agencies which were not ITO's. Ten commenters expressed concern that receiving only 50 percent of program costs would place a heavy financial burden on State agencies which are ITO's who desire to administer their own Program. Several States expressed concern that their respective legislatures would be reluctant to appropriate funds to operate the Program on Indian reservations.

Six respondents complained that the "compelling justification" required for a higher percentage matching level was not defined and others were concerned that a heavy burden would be placed on State agencies if required to prepare justification.

A number of commenters insisted that the Federal reimbursement should be 100 percent unless FNS can show by compelling evidence that State agency funding, especially for ITO's, should be at a lower level.

FNS has modified the provisions concerning payment of administrative funds to provide that, within the limitations of available funds, FNS will pay to each State agency 75 percent of Program costs which are itemized in the budget information submitted by the State agency to FNS and are approved

by FNS as allowable and necessary for effective program administration.[18]

The Department examined the possibility of developing a sliding 50–100 percent funding scale or a scale with discrete funding levels to determine the appropriate funding ratio. However, the creation of a useful formula which could consider and appropriately balance the variety of needs and resources for each reservation proved impractical.

The detailed Navajo comment suggested a "three tiered [funding] allocation system," with 100 percent reimbursement, 75 percent reimbursement and a 50 percent reimbursement floor. They suggested that, "each tier level would again have specific need criteria associated with it." However, they did not suggest how these "need criteria" could be formulated.

The Navajo comment also emphasized the critical need for initial financial assistance. The Hunger Action Center stated that, "start up funding is necessary to invest in . . . basic necessities," such as warehouses and vehicles. Idaho suggested that States would also require higher levels of initial funding to set up the Food Distribution Program.

In terms of on-going funding, and based on their experience with tribal organizations, the Navajo BIA area office noted that, "very few tribes would be able to administer Federal programs if they only receive 50 percent reimbursement for their administrative costs." The Bureau of Indian Affairs national office in Washington, D.C., anticipated that, "most tribes involved in administration of these programs will require payment well over the 50 percent level . . . " They recommended, "that a tribal financial statement audited by a licensed CPA could be the basic determinant relative to that need."

The State of Texas noted, "the probable need for a Federal match in excess of 50 percent of administrative costs, whether the State agency *or* the ITO administers the program."

Taking into account points raised by the comments, the final regulations provide a minimum 75 percent administrative cost funding level for program costs which were submitted to FNS and approved as part of the State agency's or ITO's budget by FNS. To take into account any special demands or needs, the regulations also allow for approval of funds in excess of 75 percent based on compelling justification. The variety and nature of the possible grounds for additional funding make determination on a case-by-case basis the most practical approach. The possible need for higher start up funding ratios is given as an example of a "compelling justification."

The final rules provide that FNS will review and evaluate applications received from State agencies for administrative funds in the following order of priority and will give preference in the payment of funds in the same order of priority: (i) applications received from State agencies which desire to continue a Food Distribution Program now in operation, (ii) applications from State agencies, in the order received, which FNS determines are immediately capable of effectively and efficiently administering the Program, and (iii) applications from other State agencies, in the order received. It seems most cost efficient, since higher start up costs are avoided and expensive investments have already likely been made, to give first priority to maintaining existing programs. For lack of a better approach, it seems fair to allocate limited funding according to the order in which applications are received, allowing for special treatment where a State agency can immediately prepare for program operation.

Use of Funds

Two commenters recommended that funds provided by FNS be available for use to reimburse temporary loans from other Federal agencies so that State agencies could repay loans necessitated by emergency needs in the Program, and further, FNS should revise Part 275 which deals with the payment of certain administrative costs of State agencies to permit certain logistical improvements in Indian operations of the Food Distribution Program. Specifically, the commenters desire that Part 275 provide opportunities for reimbursing the costs of expanding, improving and increasing capital facilities.

FNS believes that Part 275 adequately provides for the concerns expressed, especially in the section on depreciation and use allowances, and requires no revisions.

Application for Funds

The proposed rules provided that if the State agency desired to receive administrative funds for the Food Distribution Program, it must have submitted a program budget to FNS which reflected by category of expenditure an estimate of the total amount to be expended in operating the Program during a Federal fiscal year. Approval of the budget was a prerequisite to tentative allocation of funds to State agencies.

Two commenters stated that 45 days provided for in the proposal was insufficient time to develop a budget for a new Program; 90 to 120 days was needed. In the interest of implementing the Program as soon as practical, but considering the concerns expressed, FNS has extended the 45 day maximum to 60 days for fiscal year 1980. In subsequent years, State agencies must submit an application for Federal assistance at least three months prior to the beginning of a Federal fiscal year.

Fifteen commenters protested that approval of the Program budget by FNS be a prerequisite to tentative allocation of funds to State agencies. They pointed out that they did not believe State agencies administering the Food Stamp Program had to obtain advance approval of their administrative budgets. In fact, FNS will be proposing regulations requiring prior approval of all budgets, including annual food stamp budgets. Moreover, FNS consistently retains approval authority over all administrative costs which involve a Federal matching percentage greater than 50 percent.

A limited amount of administrative funds was provided in fiscal year 1979 for operating the Food Distribution Program. To ensure maximum utilization of these funds among an unpredictable number of possible applicant State agencies, FNS preserved the right to review and approve budget estimates. For funds to be provided for future fiscal years from Section 4(b) of the Food Stamp Act of 1977, FNS will reserve the right to review and approve submissions for the Food Distribution Program in the interest of fiscal integrity and to ensure the effective and efficient operation of the program consistent with the language of the Act which authorizes the Secretary to pay such amounts for administrative costs for commodity distribution, "as the Secretary finds *necessary* for effective administration." The legislative history indicated Departmental responsibility for determining the amount or percent of administrative costs incurred by the State or tribal organization for which the Secretary will pay; and, implicitly, responsibility for determining the types of costs for which the Department will pay. Therefore, no changes in this paragraph were made in the final rules.

Availability of Funds

One letter requested that FNS delete the references in the proposed rules dealing with present and potential

[18] The administrative funding ratio problem arises in reference to both the Food Stamp and Food Distribution Programs. Issues discussed in reference to one program may also be relevant to the other program.

constraints concerning the availability of administrative funds. One commenter requested that FNS amend the rules to provide that notification by FNS to a State of Federal funds to be made available conveys to the State a vested right to those funds.

FNS has extensively modified provisions in the proposed rules regarding availability of funds. However, the final rules still recognize that the Department does not have unlimited funding available to operate the Food Distribution Program, although the amount of available funds has been greatly expanded over what was available in past years. Therefore, the Department has an order of priority included in the final regulations with regard to making payment of funds should there be insufficient funds available to meet the demand.

Method of Payment to State Agencies

This section of the proposed rules has been edited for clarity with respect to use of Letter of Credit and Treasury checks.

Return, Reduction, and Reallocation of Funds

A sentence has been added to this paragraph that FNS may reduce, transfer, or require the return of funds allocated to State agencies if FNS determines that circumstances or conditions justify such action.

Records, Reports, and Audits

Several editorial changes were made in this paragraph of the proposed rules. Also, a requirement has been added in the final regulations that a State agency receiving funds other than through a Treasury RDO Letter of Credit system submit monthly reports to FNS on Form SF–272, "Federal Cash Transactions Report," within 30 days after the end of the reporting month.

The Commodity Package

Section 1304 of the Food and Agriculture Act of 1977 gives the Secretary of Agriculture the authority to purchase and distribute "sufficient agricultural commodities with funds appropriated from the general fund of the Treasury to maintain the traditional level of assistance for food assistance programs as are authorized by law, including . . . distribution to . . . Indians." The section goes on to state that, "in providing for commodity distribution to Indians, the Secretary shall improve the variety and quantity of commodities supplied to Indians in order to provide them an opportunity to obtain a more nutritious diet." However, the report of the joint conference committee notes that the conferees do not intent that "commodity package will necessarily in and of itself constitute a 'nutritionally adequate diet'."

The directive to improve the variety and quantity of foods offered was the first provision of the Food and Agriculture Act, which includes the Food Stamp Act of 1977, implemented by FNS. In July 1978, the Department offered a substantially improved commodity package in which quantities of food were increased, variety was expanded, and nutrient values were increased.[19] The terms of this package offer were included in the preamble to the proposed Indian regulations and comments were invited on it.

While the proposed regulations did not address the contents or value of the package itself, the preamble to those regulation stated that, "the Department shall offer a variety and quantity of commodities for Indian households such that the commodity package represents an acceptable alternative to Food Stamp Program benefits."

Twenty-seven commenters responded by addressing issues related to the commodity package, including: Requests for greater varieties of foods, for greater quantities of food, for foods meeting the preferences of individual tribes, and for inclusion of additional food items. A number of commenters also called for a guarantee in the regulations of the amount of food to which each person would be entitled each month; and, beyond this basic entitlement, for a "tribal maximum" which would permit tribes to order up to a specified maximum quantity for each item the tribe desired in excess of a basic entitlement.

In partial response to comments calling for a regulatory guarantee of the minimum package households are entitled to receive, the Department has included language in the final regulations stating that the commodity package is intended to be an acceptable alternative to the Food Stamp Program benefits;[20] that the Department will offer a variety of foods from each of the four food groups; and that, to the extent practicable, foods offered will respond to households' preferences as determined by State agencies.

The Department is sympathetic to comments calling for a more specific guarantee of an entitlement and has given serious consideration to ways in which such an entitlement might be expressed. Several measures of the "value" of the package are possible: The number of pounds of food in each food group, the number of cans or packages of each food item offered, total nutrients offered and cost.

However, the Department has concluded that a guarantee expressed in such literal measures would be impracticable and inappropriate for the following reasons. First, the Department intends that the package offer be responsive to household preferences. These preferences now vary from tribe to tribe and, if more tribes enter the program, may vary yet more. They may also vary through time. In order to tailor the package as closely as practicable to individual tribal preferences, the Department needs the flexibility to modify its offer accordingly. This flexibility would be constrained if modifications could only be made within regulatory requirements for fixed numbers of pounds of food, numbers of cans or packages, nutrient values or costs. Alternatively, to the degree that modifications would change these measures, new regulations would have to be published for every such modification. Such an administrative burden could become a discouragement to the very flexibility that commenters call for.

Additionally, even if the current package offer were never modified, the Department cannot guarantee its delivery, due to factors beyond its control. Expressed most literally, the Department's package offer is an offer to attempt to buy and deliver specific foods. The Department's ability to buy and deliver these foods depends upon the market availability of any given item, whether State agencies have placed orders for a given item in a quantity sufficient to warrant purchase and distribution, interest on the part of the trade in bidding at a reasonable cost and in accordance with the Department's specifications for procurement, and the bidders' ability to deliver, which in turn depends upon the availability of transportation facilities and upon weather conditions.

The Department does provide substitutions for every item ordered by State agencies which cannot be delivered. However, standard

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[19] The Community Nutrition Institute stated that, "the commodity package offered for Indians contains some notable improvements over the former USDA offer."

[20] In the floor debates on the food stamp bill reported out of the conference committee, Representative Richmond noted: The conference [committee] opted for an upgraded food package, but did not specify the nature of the foods. However, since Indian households have a choice between . . . programs, we expect that the Secretary would endeavor to make the benefits to Indian households fairly comparable regardless of which program they elect to use, in order to allow a real choice. *Cong. Rec.* H–8643, September 16, 1977.

commercial container and package sizes for substitute items may differ regarding the items they replace, and the Department therefore cannot guarantee that substitute items will represent the same weight or number of containers or packages per person as those they replace. Nor will nutrient values of substitute items necessarily be identical to those of the items they replace.

Similarly, the cost of the package offer will vary according to market conditions and the need for substitutions.

For these same reasons, and for budgetary reasons as well, the Department has not adopted comments calling for a regulatory entitlement to "tribal maximums" that would permit tribes to order quantities in excess of a specified minimum. However, the Department believes that the intent of this recommendation—that tribal preferences for certain foods be satisfied—can be met in large part by offering greater variety from which foods can be selected and through provision for substitution of certain items for other items.

Accordingly, the Department plants to modify its next package offer, to be made in June 1979 for delivery starting in October 1979, to offer greater variety within the Meat, Bread-Cereal, Vegetable-Fruit, and Milk food groups; and to permit substitutions on a pound-for-pound basis within the Bread-Cereal group. Thus, for example, where rice is preferred to flour, greater quantities of rice and correspondingly lesser quantities of flour may be ordered. (As with the current package, substitution of evaporated milk for dry milk will be permitted.)

To provide yet more flexibility, the Department will consider, on a case by case basis, requests from State agencies for other substitutions. A consideration in approving such substitutions will be their logistical feasibility and impact on the cost of the package.

It must be noted that the extent to which State agencies will be able to provide increased variety to households will depend upon storage and distribution capabilities at the State and local levels. Where all varieties desired cannot be distributed within a given month, variety may be cycled in over a period of months. At a minimum, the Department's future package offers will afford households greater variety from which to select those foods which *can* be stored and distributed within the constraints of State and local capabilities.

Additionally, the Department cautions that it can only make purchases for items ordered by State agencies in quantities sufficient to warrant purchase and distribution. Thus, if sufficient orders are not received for a given item, substitutions will be arranged.

Several commenters called for an increase in the nutrient values of the package. In fact, nutrient values were significantly increased in the July 1978 package offer. Nutrient values are expressed in terms of recommended *daily* dietary allowances (RDA's). However, the package offer is expressed in terms of *monthly* quantities of food. To estimate the nutrient values of the package, it must be assumed that foods are consumed in equal portions over a 30-day period. While this is clearly an artificial assumption, it is the only practical method currently available to the Department for estimating the nutrient values of the package. By this measure, a representative selection of foods offered should provide the equivalent of, or in excess of, the average RDA's for food energy, protein, calcium, iron, vitamin A, ascorbic acid, thiamine and riboflavin. Obviously, the precise nutrient values received by a given household will depend upon the selection made from the variety offered. As noted by several commenters, nutrition education can play an important role in ensuring that households obtain maximum nutrient values from the package offer.

The effectiveness of the commodity package in providing Indian households "an opportunity to obtain a more nutritious diet" depends upon the extent to which nutritious foods offered suit household preferences and will therefore be consumed. The final regulations retain the requirement that State agencies determine household preferences in preparing their orders.

In addition, the Department invites State agencies to provide advice concerning household preferences for quantities in excess of those offered for specific foods and of preferences for foods not offered, so that the Department can determine the feasibility of adjusting quantities, adding new food items and increasing variety in future packages.

In making each determination, the Department will have to consider those factors that operate to constrain the features of the package. These include, as discussed above, market availability, the likelihood of orders in sufficient quantity to warrant purchase and distribution, and interest on the part of bidders. Additionally, the Department must consider the quantities and varieties of other foods desired; nutritional values of those foods singly and in combination, and preferences for convenient package sizes and materials; and the effect of all these factors on cost.

With respect to these factors, it must be remembered that the package is not intended in itself to constitute a nutritionally adequate diet and that the Department has a fixed budget for its food purchases. The Department, therefore, must be a "good shopper" for households within the constraints of that budget. Thus, while the Department could satisfy demands for a change in any one aspect of the package—quantity, variety and nutrients, or package sizes—it cannot satisfy all demands and still remain within its budget.

For example, per-pound costs generally increase as container sizes decrease. The Department has responded to requests for smaller container sizes by reducing the size of the non-fat dry milk carton and the process cheese package. It will also reduce the package size for oats and is exploring the possibility of reducing the container size for peanut butter. (Note a reduction in container size does not mean a reduction in quantity per person.) However, the Department has declined to reduce the size of the canned fruit from the standard 29-ounce can to the next smallest commercially available size—16 ounces. The increase in per-pound cost for the smaller can, coupled with the additional ounces that would have to be provided if quantity were not to be reduced (two 16-ounce cans, or 32 ounces, would be provided instead of one 29-ounce can) would result in an estimated $320,000 a year in additional expenditure of funds that would otherwise be available for the purchase of food itself.

Likewise, the Department could increase the total number of pounds of food offered by decreasing the quantities of more expensive items and increasing the quantities of less expensive items. For example, 10 pounds of cornmeal could be provided for the same price as 1 pound of canned poultry. Or, the Department could honor preferences for an item that costs $1.00 per pound, but at the expense of offering twice as much of another preferred item that costs 50 cents per pound. Similarly, the amount of protein offered could be increased by increasing the quantities of such items as meat and meat alternates, but at the expense of other items that contribute other needed nutrients and variety. In short, trade-offs such as these must be weighed in considering any modifications to the package offer.

Comments calling for modifications in the current package were extremely

useful to the Department in its planning for the future package offers. Future preference determinations by State agencies should provide a systematic method for ensuring that the Department continues to receive the information it needs to offer those foods, in those quantities and container sizes, most desired by households.

Another issue addressed by a number of commenters was package labeling. Commenters asked, variously, for use of graphics nutrition information, information about contents, information on usage and storage, information for persons on special diets and information in native languages.

Given the variety of tribal languages, the Department believes it would be impractical to provide labels for each item in each language, if indeed bidders could be found to do so. However, it agrees that greater use of graphics could help make labeling information clearer and it has redesigned the labels for egg mix and dry milk to include more graphics and has developed a new graphic label for masa flour. All commodities do bear ingredient labeling. As appropriate, all labels indicate the food group to which a food belongs and do provide information on storage, and recipes or serving suggestions. Percentage and nutritional labeling are used where applicable. The Department believes that information for persons with special diets may be better provided through nutrition education. However, with respect to this and all other comments on labeling, the Department is re-evaluating labels in conjunction with its development of nutrition education materials appropriate for use by Indian households—a project that is now underway.

A number of commenters also asked for reductions in container and package sizes, citing household storage problems. As discussed above, the Department has reduced the size of dry milk and process cheese packages and it is reducing the size of the container for oats. It is also exploring the possibility of reducing the size of the container for peanut butter. All food items are ordered in standard retail consumer sizes. While the Department has chosen not to reduce other container sizes at this time, for the reason of cost given above, it will examine possible changes in packaging materials and container sizes in conjunction with future recommendations from the State agencies to determine whether additional modifications should be made.

Numerous commenters called for the inclusion of fresh and frozen foods. While the Department fully agrees that such foods would add variety and appeal to the package, it cannot for logistical reasons offer them now. With respect to fresh foods, the USDA, State and local distribution systems cannot accommodate the very rapid inventory turnover required for handling perishables. While frozen foods do not need as rapid an inventory turnover, they do require freezer capacity at every level of the distribution system—in warehouses and households' homes, as well as in trucks and rail cars. Because of the possibility of spoilage and consequent waste and the danger of food poisoning if adequate refrigeration is not available at every level the Department must have sound assurances of such necessary freezer capacity before it can offer frozen foods. It does not at this time have such assurances. In fact, several commenters stated that many Indians do not have access to refrigeration. When the Department is assured that this capacity exists to the extent necessary to make distributions, it will give consideration to requests for frozen foods.

Therefore, in the table of contents, Subchapter C is retitled, Part 281 is retitled and a new Part 283 is added; Sections 271.2 and 272.1 are amended; and new Parts 281 and 283 are added to read as follows:

1. In the table of contents, Subchapter C and Part 281 are retitled and a new Part 283 is added to read as follows:

SUBCHAPTER C—FOOD STAMP AND FOOD DISTRIBUTION PROGRAM

* * * * *

PART 281—ADMINISTRATION OF THE FOOD STAMP PROGRAM ON INDIAN RESERVATIONS

* * * * *

PART 283—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM TO HOUSEHOLDS ON INDIAN RESERVATIONS

* * * * *

PART 271—GENERAL INFORMATION AND DEFINITIONS

2. Section 271.2 is amended to include the following definitions and reads as follows:

§ 271.2 Definitions.

* * * * *

"Exercises governmental jurisdiction" means the active exercise of the legislative, executive or judicial powers of government by an Indian tribal organization.

* * * * *

"Indian tribe" means (1) any Indian tribe, Band, Nation, or other organized Indian group on a reservation, for example, a Rancheria, Pueblo or Colony, and including any Alaska Native Village or regional or village corporation (established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688)), that is on a reservation and is recognized as eligible for Federal programs and services provided to Indians because of their status as Indians; or (2) any Indian tribe or Band on a reservation holding a treaty with a State government.

"Indian tribal organization (ITO)" means (1) The recognized governing body of any Indian tribe on a reservation; or (2) the tribally recognized intertribal organization which the recognized governing bodies of two or more Indian tribes on a reservation authorizes to operate the Food Stamp Program or a Food Distribution Program on their behalf.

* * * * *

"Reservation" means the geographically defined area or areas over which an ITO exercises governmental jurisdiction so long as such area or areas are legally recognized by the Federal or a State government as being set aside for the use of Indians.

* * * * *

"State" means any one of the fifty States, the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands of the United States, and the reservation of an Indian tribe whose ITO meets the requirements of the Food Stamp Act of 1977 for participation as a State agency.

"State agency" means (1) The agency of State government, including the local offices thereof, which is responsible for the administration of the federally aided public assistance programs within the State, and in those States where such assistance programs are operated on a decentralized basis, it includes the counterpart local agencies which administer such assistance programs for the State agency, and (2) the Indian tribal organization of any Indian tribe determined by the Department to be capable of effectively administering a Food Stamp Program or a Food Distribution Program in accordance with provisions of the Food Stamp Act of 1977.

* * * * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. Section 272.1(c) is amended and a new subparagraph (3) is added to 272.1(g). The revised paragraph and new subparagraph read as follows:

§ 272.1 General terms and conditions.

* * * * *

(c) *Disclosure.* (1) Use or disclosure of information obtained from food stamp applicant households, exclusively for the Food Stamp Program, shall be restricted to persons directly connected with the administration or enforcement of the provisions of the Food Stamp Act or regulations, or the Food Distribution Programs as defined in Part 283 of this Subchapter, or with other Federal or federally aided, means-tested assistance programs such as Title IV–A (AFDC), XIX (Medicaid), or XVI (SSI), or with general assistance programs that are subject to the joint processing requirements specified in § 273.2(j)(2).

(2) If there is a written request by a responsible member of the household, its currently authorized representative, or a person acting on its behalf to review material and information contained in its casefile, the material and information contained in the casefile shall be made available for inspection during normal business hours. However, the State agency may withhold confidential information, such as the names of individuals who have disclosed information about the household without the household's knowledge, or the nature or status of pending criminal prosecutions.

* * * * *

(g) *Implementation.* * * *

* * * * *

(3) Amendment 141. State agencies shall begin planning for and conducting ongoing consultations with the Indian tribal organizations of the reservations within their jurisdiction as soon as possible after the effective date of this amendment. Portions of the State Plan of Operation to be submitted for fiscal year 1980 shall be subject to ITO comment as required by § 281.2(a). The funding authority in § 281.9 shall apply to budgets beginning with the fourth quarter of fiscal year 1979.

* * * * *

(91 Stat. 958 (7 U.S.C. 2011–2027))

4. The new part 281 reads as follows:

PART 281—ADMINISTRATION OF THE FOOD STAMP PROGRAM ON INDIAN RESERVATIONS

Sec.
281.1 General purpose and scope.
281.2 Administration.
281.3 Determination of failure.
281.4 Determining Indian tribal organization capability.
281.5 Responsibilities of an Indian tribal organization designated as State agency.
281.6 Liabilities and sanctions
281.7 Indian tribal organization failure.
281.8 Transfer of program administration.
281.9 Funding.
281.10 Appeals.

Authority: 91 Stat. 958 (7 U.S.C. 2011–2027).

§ 281.1 General purpose and scope.

These regulations govern the operation of the Food Stamp Program on Indian reservations either separately or concurrently with the Food distribution program. In order to assure that the Food Stamp Program is responsive to the needs of Indians on reservations, State agencies are required to consult with Indian tribal organizations about the implementation and operation of the Food Stamp Program on reservations. Also, under certain specified conditions Indian tribal organizations on reservations can administer the Food Stamp Program. The Act authorizes the Secretary to pay such amounts for administrative costs as are determined to be necessary for the effective operation of the Food Stamp Program on Indian reservations.

The operation of the Food stamp Program on Indian reservations is governed by all of the terms and conditions set forth in the Food Stamp Act of 1977 as amended and the regulations of this Chapter.

Additionally, under no circumstances shall any household participate simultaneously in the Food Stamp Program and the Food Distribution Program. Policy governing this prohibition is found in Section 283.7(e).

§ 281.2 Administration.

(a) *Qualification.* (1) The appropriate ITO of an established Indian reservation will qualify for participation under the provisions of this Part, when that ITO files an application which demonstrates the status of an area as an established reservation, unless FNS determines that such area(s) does not qualify as a reservation, as that term is defined in these regulations. For purposes of this Part, established reservation means the geographically defined area(s) currently recognized and established by Federal or State treaty or by Federal statute whereby such geographically defined area(s) is set aside for the use of Indians. Where such established areas exist, the appropriate ITO is presumed to exercise governmental jurisdiction, unless otherwise determined by FNS:

(2) The appropriate ITO for other areas, in order to qualify as reservations for the provisions of this Part, must show to FNS:

(i) That the ITO exercises governmental jurisdiction over a geographic area(s) which enjoys legal recognition from the Federal or a State government and is set aside for the use of Indians.

(ii) A clear and precise description of the boundaries of such geographic area(s).

(3) Otherwise qualified areas for which the responsible ITO has requested operation of the Food Distribution Program alone in accordance with § 283.4, rather than concurrent operation with the Food Stamp Program, shall be exempt from the requirements of this Part, and shall not be considered food stamp areas for any other purposes of this subchapter. Indian tribal households (households in which at least one adult member is recognized by the appropriate ITO as a tribal member) resident in these areas shall be ineligible for food stamp benefits. However, non-Indian tribal households resident in these areas may apply and be certified for food stamps at the State agency's certification office which would otherwise service the area. Otherwise qualified areas for which the responsible ITO has requested operation of the food distribution Program concurrently with the Food Stamp Program or areas within the reservation where FNS has determined that concurrent operation is necessary in accordance with § 283.3(b)(2) shall be subject to all requirements of this Part and subchapter.

(b) *State plan.* In addition to the public comment requirements in § 272.2, the State agency shall submit for comment its outreach plans, service plans, and all other portions of the State plan that directly pertains to the operation of the Program for residents on the reservation to the responsible ITO for reservations that qualify under (a) of this subsection. The ITO shall have 30 days to provide comments in writing to the State agency. The State agency shall, if appropriate and to the extent practicable, incorporate into its plans any suggestions made by the ITO. Additionally, the State agency shall administer the Food Stamp Program in a manner that is responsive to the needs of the Indians on the reservation, as determined by ongoing consultation with the ITO and by other means, regarding such areas of program operation as project area designation, operating procedures, locations and hours of certification and issuance,

staffing and corrective action plans. The State agency shall maintain records of consultations on State plans and ongoing consultations held with ITO's for review by FNS. FNS shall study these records as part of reviews in accord with § 281.3 and Management Evaluation Reviews of the State agency.

(c) *Project area designation.* (1) An Indian reservation shall be designated as a separate project area or areas for the purpose of improving the accessibility of program services to Indians on the reservation unless:

(i) The State agency demonstrates to FNS that the size or population of the reservation does not warrant such designation;

(ii) The State agency demonstrates to FNS that the tribe can be adequately served by the existing or a planned project area because of the location of certification and issuance offices;

(iii) The State agency demonstrates to FNS that such designation would reduce the availability of certification and issuance offices; or

(iv) The State agency otherwise demonstrates to FNS that such designation would impair its Statewide administration of the Program.

(2) In the case where the Indian reservation boundaries cross State lines, the ITO and the appropriate State agencies may jointly request FNS approval that a single State agency administer the Food Stamp Program on all or part of the Indian reservation. A single agency of the State government would have to administer the Program under the same terms and conditions applied to all other political subdivisions within its jurisdiction. An ITO designated as a State agency pursuant to § 281.4(d) would have to administer the Program under the same terms and conditions on all areas of the reservation.

(d) *Contracts with an Indian tribal organization.* The State agency may contract program functions to an ITO. These functions include, but are not limited to, outreach, preparation of bilingual materials an issuance. The state agency may also use the ITO in prescreening, translations, interpretive services and other noncertification functions. The State agency shall not contract responsibility for certification activities such as interviews or eligibility determinations. In all cases, the State agency shall retain full responsibility for program administration.

§ 281.3 Determination of failure.

(a) *Request for determination of State government agency failure.* FNS shall examine State agency adminstration of the Food Stamp Program on all or part of a reservation when requested by the ITO, the State agency or at FNS' discretion. When FNS determines that a deficiency in a State agency operation of the Food Stamp Program on all or part of an Indian reservation may be serious enough to warrant a review, FNS shall advise the State agency and the ITO in writing of the alleged deficiencies and of its plans to conduct the review and document deficiencies, if any are found. Subsequent to October 1, 1979 FNS shall complete these reviews within 90 days from receipt of an ITO's or State agency's request except under unusual circumstances such as the receipt of a large number of simultaneous requests.

(b) *Review.*—(1) *Content of the review for State agency performance.* The review shall be designed to determine whether or not the State agency is properly administering the Food Stamp Program on a specific reservation. When an agency of State government is administering the Program on a reservation, FNS shall as a part of the review consult with the ITO about the operation of the Program on the reservation. The review should, depending on the nature of the complaint, include but not be limited to, an analysis of some of all of the following data:

(i) The records of State agency consultation with the ITO required under § 281.2(a);

(ii) The estimated percentage of all eligible Indians on the reservation who are participating the Program;

(iii) The nature and extent of violations, if any, of the 30 day and other processing standards for Indians;

(iv) The percentage of errors made in determining eligibility and/or the amount of benefits overissued or underissued;

(v) Compliance with standards for location and hours of certification and issuance offices as required in § 272.5;

(vi) Compliance with bilingual requirements of this regulation, where appropriate;

(vii) Compliance with nondiscrimination requirements of this regulation;

(viii) Compliance with other significant program requirements;

(ix) Comparison with services provided in all other areas of the State; and

(x) Any other relevant information that becomes available during the course of reviews including information received through contacts with the Indian tribe.

(2) *Finding of no or of minor deficiencies.* If after the review FNS determines either that deficiencies do not exist or that only minor deficiencies exist, FNS shall issue a report documenting its findings to both the State agency and the ITO and shall work closely with the State agency to achieve corrective action.

(c) *Formal warning.* After the review is completed, if FNS determines that major deficiencies exist, a formal warning shall be issued to the State, with a copy to the ITO. At a minimum, such warning shall indicate the State agency deficiencies and shall detail the basis upon which deficiencies were determined. The State shall have 30 days to respond with evidence that it is in compliance or to submit a corrective action proposal under Part 276. If satisfactory compliance is achieved by the State agency on deficiencies cited in a formal warning, FNS shall notify the State, with a copy to the ITO, that the warning for those deficiences is satisfied.

(d) *Determination of failure and sanctions.* If at any time after the formal warning period, or during or after the corrective action period, FNS determines that major deficiencies still exist which the State agency has not satisfactorily addressed or is not satisfactorily addressing, FNS shall determine State failure and may impose appropriate Federal sanctions on the State agency as specified in Part 276.

(e) *ITO operations.* If FNS has determined State failure and FNS has also determined that the ITO is capable of administering a Food Stamp Program in accordance with the terms and requirements for participating State agencies as established in the Act and regulations, then the ITO shall assume adminstration of the Food Stamp Program on the reservation. The State agency shall continue to administer the Food Stamp Program on the reservation until an effective termination and transition arrangement has been completed in accordance with § 281.8.

§ 281.4 Determining Indian tribal organization capability.

(a) *Determining capability of ITO.* If the ITO wishes to administer its own Food Stamp Program on the reservation FNS shall determine the ITO's potential capability for administering the Food Stamp Program in accordance with the criteria listed in § 281.4(b). FNS shall begin to evaluate the ITO's capability for all aspects of Food Stamp Program administration, allowing for fulfillment of that potential through necessary training and technical assistance, not

later than the date of the issuance of the formal warning to the State agency.

(b) *ITO responsibility.* (1) The ITO must satisfy FNS that it is capable (if provided with any needed training and technical assistance) of administering the Food Stamp Program effectively and efficiently, and of complying with all provisions of the Food Stamp Act of 1977, as amended, and the regulations of this Chapter, including provisions governing quality control procedures, fraud determinations, and establishment and collection of claims for both Indian and any non-Indian participants. The ITO shall provide FNS with the following information:

(i) *Operation of government programs.* The ITO shall provide FNS a list of all government programs that the ITO administers and has recently administered. FNS may ask the ITO to provide the names of appropriate officials of the government organizations having jurisdiction over these programs so FNS can obtain all relevant audits, GAO reports, program evaluations and any other documents pertaining to the effectiveness and efficiency of tribal administration of these programs. The ITO shall also provide FNS a list of its recent contractual responsibilities, if any, for the Food Stamp Program under § 281.2(b).

(ii) *Fiscal capabilities.* The ITO shall provide FNS documentation of its bookeeping and accounting procedures, including procedures in use for fiscal accountability under Part 277 and for other government programs that the ITO administers.

(iii) *Projected certification and issuance facilities.* The ITO shall provide FNS with a description of the location of projected certification and issuance facilities.

(iv) *Fraud hearings and claims.* The ITO shall provide FNS with a description of how it will pursue fraud hearings and claims against Indian and non-Indian participants.

(v) *Staffing.* The ITO shall provide FNS with sufficient information to determine that personnel who will be used in the certification process will be employed under standards equivalent to current standards for a Merit System of Personnel Administration or any standards later prescribed by the Office of Personnel Management under Section 208 of the Intergovernmental Personnel Act of 1970.

(vi) *Civil rights assurance.* The ITO shall provide FNS an assurance that the ITO shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352), the Age Discrimination Act of 1975 (Pub. L. 94–135), the Rehabilitation Act of 1973 (Pub. L. 93–112), Section 504), and Section 11(c) of the Food Stamp Act of 1977 and all pertinent regulations or directives to the effect that no person in the United States shall, on the grounds of sex, race, color, age, political belief, religion, handicap, or national origin, be denied benefits or otherwise be subject to discrimination under the Food Stamp Program. Where appropriate, FNS shall consider the adequacy of measures taken by the ITO to ensure that there shall be no discrimination.

(2) Prior to the determination of ITO capability, FNS shall consult with other sources such as the Bureau of Indian Affairs (BIA) to obtain any information relevant to the capability determination.

(3) If it is determined by FNS, after consultation with other sources such as the BIA, that the ITO is not capable of operating an efficient and effective Food Stamp Program, the agency of the State government shall continue to operate the Program on the reservation in accordance with § 281.3.

(c) *Training and technical assistance.* Upon determining that the State agency has failed to properly administer the Food Stamp Program and that the ITO is potentially capable of operating an effective and efficient Food Stamp Program, FNS shall determine, based on information provided by the ITO and other sources such as BIA, the training and technical assistance which is necessary to assure efficient and effective program administration. FNS will assure that appropriate training and technical assistance is provided as expeditiously as possible prior to the ITO's assumption of the administration of the Food Stamp Program.

(d) *Assumption of duties.* When FNS is satisfied that the ITO has successfully completed (c) above, FNS shall designate the ITO as a State agency, contingent on the following:

(1) *State plans.* The ITO shall prepare and submit to FNS a Plan of Operation as provided in § 272.2. In completing the Plan of Operation the ITO shall affirm that it will comply with the Civil Rights assurances detailed in (b)(vi) above.

(2) *Proposed budget.* As part of the Plan of Operation, the ITO shall annually submit to FNS a proposed statement which shall provide a summary of program information and amounts budgeted to carry out the various program functions. This information shall be submitted to FNS for approval prior to the commitment of any Federal funds for administrative costs for that year. FNS shall provide the ITO any technical assistance which is necessary to prepare this information.

(3) *Termination and transition arrangement.* An effective termination and transition arrangement shall be established as required in § 281.8.

§ 281.5 Responsibilities of an Indian tribal organization designated as State agency.

An ITO administering the Food Stamp Program on a reservation shall adhere to the Food Stamp Act of 1977, all subsequent amendments, and all regulations issued pursuant to that law in the same manner as any other State agency. The ITO may contract certain administrative functions to private organizations as provided in Parts 274 and 277. The ITO may not, however, contract responsibility for certification activities such as interviews or eligibility determinations. The ITO shall retain full responsibility for program administration.

§ 281.6 Liabilities and sanctions.

An ITO administering the Food Stamp Program on a reservation is subject to the same liabilities and Federal sanctions as is any other State agency. FNS shall monitor administration of the Program and conduct reviews through the Performance Reporting System described in Part 275. When necessary, warning procedures and other Federal sanctions prescribed in Part 276 will be implemented.

§ 281.7 Indian tribal organization failure.

When Performance Reporting System reviews indicate that continuing deficiencies exist and corrective action proposals (including training and technical assistance to overcome these deficiencies), and/or appropriate sanctions have not, in the opinion of FNS, resulted in a sufficient degree of improvement, FNS will conduct a review to determine if the ITO has failed to properly administer the Food Stamp Program. FNS shall examine the relevant factors specified in § 281.3(b)(1) and shall follow the notification and determination procedures set forth in § 281.3 (c) and (d). If ITO failure is determined, FNS shall require the appropriate agency of the State government to resume administration of the Program on the reservation in accordance with an approved termination and transition arrangement.

§ 281.8 Transfer of program administration.

The transfer of program administration from an agency of the State government to an ITO pursuant to a determination of failure as provided for in § 281.3, or from an ITO to an agency of the State government pursuant to § 281.7, shall be contingent

on the establishment of an effective termination and transition arrangement and an approved Plan of Operation from the State agency assuming program administration. Grant closeout procedures shall be followed in accordance with Part 277. FNS shall approve the transition plan, monitor its implementation and resolve any issues which may arise during the transition and after the transfer of program administration.

§ 281.9 Funding.

(a) *Agency of State government.* From the funds available to carry out this provision beginning July 1, 1979, FNS may pay to each agency of State government administering a Food Stamp Program on a reservation, 75 percent of all approved administrative costs, such as: certification, issuance, outreach, fair hearings and quality control, incurred on the reservation for residents of the reservation and approved by FNS to meet standards set by the 1977 Food Stamp Act. FNS may pay each agency of State government administering a Food Stamp Program on a reservation 75 percent of all approved administrative costs incurred off the reservation for activities begun after the effective date of these regulations that are primarily directed at providing better services for Indians on the reservation, such as hiring an interpreter or an Indian outreach worker, or moving a certification or issuance center closer to a reservation. The provisions of Part 277 apply to any funds received under this section.

(b) *Indian tribal organization acting as State agency.* From the funds available to carry out the provisions of this part beginning October 1, 1979, FNS is authorized to pay to each ITO acting as a State agency and administering a Food Stamp Program on a reservation 75 percent of all administrative costs approved by FNS as needed for operation of a Food Stamp Program on a reservation. Any approval for payment of funds in excess of 75 percent must be based on compelling justification that such additional amounts are necessary for the effective operation of the Food Stamp Program on the reservation. The provisions of Part 277 apply to any funds received under this Section.

§ 281.10 Appeals.

(a) *Failure/Capability.* (1) Any State agency or ITO may appeal the determination made by FNS on:

(i) Whether or not the reservation definition is met;

(ii) The failure or absence of failure of an agency of State government to properly administer the Food Stamp Program;

(iii) The capability or incapability of an ITO to administer the Food Stamp Program;

(iv) The failure of an ITO to properly administer the Food Stamp Program;

(v) The Federal matching percentage level of administrative funding made available by FNS. To prevail the State agency must show a compelling justification that additional funding is needed for the effective administration of the Program on the reservation.

(2) At the time FNS advises the State agency or ITO of its determination, FNS shall also advise the State agency or ITO of its right to appeal and, except for appeals of funding determinations, shall advise the State agency or ITO of its right to request either a meeting to present its position in person or a review of the record. On appeals of funding determinations, FNS shall advise the State agency or ITO that it may indicate if it wishes a meeting, however, FNS need schedule a meeting only if FNS determines a meeting is warranted to reach a proper adjudication of the matter. Otherwise, FNS shall review supportive information submitted by the State agency or ITO in paragraph (b)(2) of this section.

(b) *Procedures.* (1) *Time Limit.* Any State agency or ITO which wants to appeal an initial FNS determination under paragraph (a) of this section must notify the Administrator of FNS, in writing within 15 days from the date of the determination and must advise FNS if it wishes a meeting or a review of the record.

(2) *Acknowledgement.* Within five days of receipt by the Administrator of FNS of a request for review, FNS shall provide the State agency or ITO by certified mail, return receipt requested, with a written acknowledgement of the request. The acknowledgment shall include the name and address of the official designated by the Administrator to review the appeal. The acknowledgment shall also notify the State agency or ITO that within ten day of receipt of the acknowledgment, the State agency or ITO shall submit written information in support of its position.

(3) *Scheduling a meeting.* If the Administrator, FNS, grants a meeting FNS shall advise the State agency or ITO by certified mail, return receipt requested, of the time, date and location of the meeting at least ten days in advance of the meeting. FNS shall schedule and conduct the meeting and make a decision within 60 days of the receipt of the information submitted in response to paragraph (b)(2) of this section.

(4) *Review.* If no meeting is conducted, the official designated by the Administrator, FNS, shall review information presented by a State agency or ITO which requests a review, and shall make a final determination in writing within 45 days of the receipt of the State agency's or ITO's information submitted in response to paragraph (b)(2) of this section setting forth in full the reasons for the determination.

(5) *Final decision.* The official's decision after a meeting or a review shall be final.

(c) *Funding and other sanctions.* Any State agency or ITO that wishes to appeal a funding determination made by FNS other than under (a)(5) above, or the application of a Federal sanction, shall follow the Administrative Review Procedures set forth in Part 276.

PART 283—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM TO HOUSEHOLDS ON INDIAN RESERVATIONS

Sec.

283.1 General purpose and scope.
283.2 Definitions.
283.3 Availability of commodities.
283.4 Administration.
283.5 State agency requirements.
283.6 Eligibility of households.
283.7 Certification of households.
283.8 Commodity control, storage and distribution.
283.9 Administrative funds for state agencies.

Authority: 91 Stat. 958 (7 U.S.C. 2011–2027).

§ 283.1 General purpose and scope.

This part describes the terms and conditions under which commodities (available under Part 250 of this chapter) may be distributed to households on or near all or any part of any Indian reservation, the program may be administered by capable Indian tribal organizations, and funds may be obtained from the Department for the costs incurred in administering the program. This part also provides for the concurrent operation of the Food Distribution Program and the Food Stamp Program on Indian reservations when such concurrent operation is requested by an ITO.

§ 283.2 Definitions.

(a) "Exercises governmental jurisdiction" means the active exercise of the legislative, executive or judicial powers of government by an Indian tribal organization.

(b) "Food Distribution Program" means a food distribution program for households on Indian reservations

operated pursuant to Sections 4(b) and 1304(a) of P.L. 95-113.

(c) "Indian tribal household" means any household in which at least one adult member is recognized by the appropriate ITO as a tribal member.

(d) "Indian tribe" means (1) any Indian tribe, Band, or other organized Indian group, for example, a Rancheria, Pueblo, or colony, and including any Alaska Native village or regional or village corporation (established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688)), and that is on a reservation and recognized as eligible for Federal programs and services provided to Indians because of their status as Indians; or (2) any Indian tribe or Band on a reservation holding a treaty with a State government.

(e) "Indian tribal organization (ITO)" means (1) the recognized governing body of any Indian tribe on a reservation; or (2) the tribally recognized intertribal organization which the recognized governing bodies of two or more Indian tribes on a reservation authorize to operate the Food Stamp Program or a Food Distribution Program on their behalf.

(f) "Reservation" means the geographically defined area or areas over which an ITO exercises governmental jurisdiction so long as such area or areas are legally recognized by the Federal or a State government as being set aside for the use of Indians.

(g) "State" means any one of the fifty States, the District of Columbia, and the reservation of an Indian tribe whose ITO meets the requirements of the Food Stamp Act of 1977 for participation as a State agency.

(h) "State agency" means (1) the agency of State government, including the local offices thereof, which enters into an agreement with FNS for the distribution of commodities on all or part of an Indian reservation, and

(2) the ITO of any Indian tribe, determined by the Department to be capable of effectively administering a Food Distribution Program, which enters into an agreement with FNS for the distribution of commodities on all or part of an Indian reservation.

§ 283.3 Availability of commodities.

(a) *Conditions for distribution.* In jurisdictions where the Food Stamp Program is in operation, there shall be no distribution of commodities to households under the authority of any law, except that distribution may be made (1) on a temporary basis under programs authorized by law to meet disaster relief needs, (2) for the purpose of the Commodity Supplemental Food Program, and (3) whenever a request for concurrent or separate Food Distribution Program on a reservation is made by an ITO.

(b) *Concurrent or separate food program operation.* Distribution of commodities, with or without the Food Stamp Program, shall be made whenever an ITO submits to FNS a completed application for the Food Distribution Program on all or part of a reservation and the application is approved by FNS.

(1) Except as provided in paragraph (2) of this section, when the Food Distribution Program is operating on all or part of a reservation, all eligible households within those boundaries may participate in the Food Distribution Program, or, if the ITO has elected concurrent operation of the Food Stamp Program, may elect to participate in either program, without regard to whether the household is an Indian tribal household.

(2) FNS may determine, based on the number of non-Indian tribal households located on all or part of a reservation, that concurrent operation is necessary. When such a determination has been made all households residing in such areas may apply to participate in either the Food Stamp or the Food Distribution Program.

(c) *Household distribution.* Commodities acquired under section 416 of the Agricultural Act of 1949, as amended; section 32 of Pub. L. 320, 74th Congress, as amended; section 709 of the Food and Agricultural Act of 1965, as amended; and section 4(a) of the Agriculture and Consumer Protection Act of 1973, as amended, by Section 1304 of the Food and Agriculture Act of 1977, may be made available under Part 250 of this chapter for distribution to households in accordance with the provisions of that part and the additional provisions and requirements of this part.

(d) *Food Distribution Program benefits.* Households eligible under this part shall receive a monthly food package based on the number of household members. The food package offered to each household shall consist of a quantity and variety of commodities made available by the Department to provide eligible households with an opportunity to obtain a more nutritious diet and shall represent an acceptable nutritional alternative to Food Stamp Program benefits. The food package offered to each household by the State agency shall contain a variety of foods from each of the four food groups: Meat, Vegetable-Fruit, Milk, and Bread-Cereal. FNS shall periodically notify State agencies of the kinds of commodities it proposes to make available based, insofar as practicable, on the preferences of eligible households as determined by the State agency. In the event one or more of the proposed commodities cannot be delivered, the Department shall arrange for delivery of a similar commodity within the same food group.

§ 283.4 Administration.

(a) *Federal administration.* Within the Department of Agriculture, the Food and Nutrition Service (FNS) shall be responsible for the Food Distribution Program. FNS shall have the power to determine the amount of any claim and to settle and adjust any claim.

(b) *State agency administration.* (1) If FNS determines that the ITO is capable of effective and efficient administration, the ITO shall administer the Food Distribution Program on all or part of the reservation. If FNS determines that the ITO is not capable of effective and efficient administration of the Food Distribution Program, the appropriate agency of the State government shall be responsible for the Food Distribution Program on all or part of the Indian reservation. In addition, the appropriate agency of the State government may administer the Program on behalf of an otherwise capable tribe if agreed to in writing by both parties.

(2) In the case where the Indian reservation boundaries cross State lines, the ITO and appropriate State agencies may jointly request FNS approval that a single State agency administer the Food Distribution Program on all or part of the Indian reservation.

(3) An agency of State government responsible for administering the Food Distribution Program may contract Program functions to an ITO. These functions include, but are not limited to, outreach, preparation of bilingual materials, commodity issuance, determination of food preferences of households, publicizing uses of commodities, and transportation and on-site delivery services. The State agency may also use the ITO in prescreening translations, interpretive services and other noncertification functions. The State agency shall not contract responsibility for certification activities such as interviews or eligibility determinations with an ITO that has been determined incapable of administering the Food Distribution Program. In all cases the State agency shall retain full responsibility for program administration.

(c) *Qualification as a reservation.* (1) The appropriate ITO of an established

Indian reservation will qualify for participation under the provisions of this Part, when that ITO files an application which demonstrates the status of an area as an established reservation, unless FNS determines that such area(s) does not qualify as a reservation as that term is defined in these regulations. For purposes of this Part, established reservation means the geographically defined area(s) currently recognized and established by Federal or State treaty or by Federal statute whereby such geographically defined area(s) is set aside for the use of Indians. Where such established areas exist, the appropriate ITO is presumed to exercise governmental jurisdiction, unless otherwise determined by FNS.

(2) The appropriate ITO for other areas, in order to qualify as reservations for the provisions of this Part, must show to FNS:

(i) That the ITO exercises governmental jurisdiction over a geographic area(s) which enjoys legal recognition from the Federal or a State government and is set aside for the use of Indians;

(ii) A clear and precise description of the boundaries of such geographic area(s).

(d) *Application by an ITO.* An ITO which desires to participate in the Food Distribution Program shall file an application with the FNS Regional Office serving the State or States in which the reservation is located. In the application, the ITO shall specify if it is requesting the Food Distribution Program alone or concurrently with the Food Stamp Program. The ITO shall also specify whether it wants either or both programs on all or part of the reservation, and if on part, shall describe the geographic boundaries of the relevant part(s). The application shall also provide other information requested by FNS, including, but not limited to, that the ITO serves an established reservation or a reservation otherwise qualified as described in paragraph (c). Properly addressed applications shall be acknowledged by the FNS Regional Office in writing within five working days of receipt.

(e) *Tribal capability.* (1) In determining whether the ITO on a given reservation is potentially capable of effectively and efficiently administering a Food Distribution Program, allowing for fulfillment of that potential through training and technical assistance, FNS shall consult with other sources, such as the BIA, and shall consider the ITO's experience, if any, in operating other government programs and its management and fiscal capabilities. Other factors for evaluation include, but are not limited to, the ITO's ability to:

(i) Order and properly store commodities,

(ii) Certify eligible households,

(iii) Arrange for physical issuance of commodities,

(iv) Keep appropriate records and submit required reports,

(v) Budget and account for administrative funds,

(vi) Determine the food preferences of households, and

(vii) Conduct on-site reviews of certification and distribution procedures and practices.

(2) FNS shall make a determination of potential ITO capability within 60 days of receipt of a completed application for the Food Distribution Program. FNS shall promptly advise ITO's of the need for additional information if an incomplete application is received.

(3) FNS shall, if requested by an ITO which has been determined by FNS to be potentially capable of administering a Food Distribution Program, provide the ITO's designees with appropriate training and technical assistance to prepare the ITO to take over program administration. In determining what training and technical assistance are necessary, FNS shall consult with the ITO and other sources, such as the BIA.

§ 283.5 State agency requirements.

(a) *Plan of operation.* (1) The State agency which assumes responsibility for the Food Distribution Program shall submit a plan of operation for approval by FNS. Approval of the plan by FNS shall be a prerequisite to the donation of commodities available for use by households under Part 250 of this chapter and to the payment of administrative funds under § 283.9, of this part. No amendment to the plan of operation of any State agency shall be effective without prior approval of FNS, and FNS may require amendment of any plan as a condition of continuing approval. If the State agency is not an ITO, the appropriate agency of the State government shall also:

(i) Consult in good faith with the ITO on the reservation where the appropriate agency of the State government is responsible for administering the Food Distribution Program.

(ii) Submit its plan of operation and any subsequent amendments to both the ITO and the State Governor, or the Governor's delegated authority, for comment at least 45 days prior to submission of the plan or amendment to FNS. Comments by the Governor, or the Governor's delegated authority, and the ITO shall be attached to the plan or amendment which is submitted to FNS. This paragraph does not apply to amendments required by FNS under § 283.5(a)(1).

(iii) Periodically consult with the ITO regarding the current status and applicability of provisions in the plan of operation and the possible need to submit amendments to FNS for approval. Such consultations shall be documented for review by FNS.

(2) The plan of operation shall describe the manner in which commodities will be distributed, including, but not limited to, the storage and distribution facilities to be used, the procedures to assure ongoing consultation with the ITO where the appropriate agency of the State government administers the Program, the method by which the food preferences of households shall be determined, the manner in which the State agency plans to supervise the Food Distribution Program, and plans by which the State agency will control dual participation. The plan shall also include by reference or otherwise the following assurances:

(i) No household on any Indian reservation shall be permitted to participate simultaneously in the Food Stamp Program and the Food Distribution Program.

(ii) The value of the commodities provided to any eligible household shall not be considered income or resources for any purposes under any Federal, State, or local laws, including, but not limited to, laws relating to taxation, welfare, and public assistance programs; and no State agency shall decrease any assistance otherwise provided to a household because of the receipt of commodities.

(iii) The distribution of commodities shall not be used as a means for furthering the political interest of any individual or party.

(iv) There shall be no discrimination in the certification of applicant households or in the distribution of commodities because of sex, race, color, age, political beliefs, religion, handicap or national origin.

(v) Households shall not be required to make any payments in money, materials or services for, or in connection with, the receipt of commodities; and they shall not be solicited in connection with the receipt of commodities for voluntary cash contributions for any purpose.

(vi) Adequate personnel, including supervisory personnel, to review the Food Distribution Program shall be

provided to ensure compliance with the requirements of this part.

(vii) Use of disclosure of information obtained from food distribution applicant households, exclusively for the Food Distribution Program, shall be restricted to persons directly connected with the administration or enforcement of the provisions of the Food Distribution Programs as defined in Part 283 of this subchapter, the Food Stamp Act or regulations, or with other Federal or federally aided, means-tested assistance programs such as Title IV–A (AFDC), XIX (Medicaid), or XVI (SSI), or with general assistance programs that are subject to the joint processing requirements specified in § 273.2(j)(2).

(b) *Operating manuals.* The State agency shall maintain ongoing consultation with the ITO in developing the State agency's written internal policies, instructions, and forms which are necessary to carry out the Food Distribution Program and shall submit them to FNS for approval prior to their use. The State agency shall file any comments or recommendations offered by the ITO, for review by FNS.

(c) *Staffing.* Personnel used in the certification process shall be employed in accordance with (1) the current standards for a Merit System of Personnel Administration or any standards later prescribed by the Office of Personnel Management under Section 208 of the Intergovernmental Personnel Act of 1970 or (2) when appropriate, the ITO's personnel system if it incorporates the basic elements of a merit system.

(d) *Bilingual requirements.* (1) The State agency shall provide bilingual staff, certification forms, including the application form and certification notices as specified in § 283.7(a)(2) and (b)(3), respectively, and any form developed by the State agency for reporting changes in household composition and income, pursuant to § 283.7(c), and outreach materials, when either an estimated 100 or more low income households or the majority of low-income households on the reservation are a single language minority. Single-language minority refers to households which speak the same non-English language and which do not contain adults(s) fluent in English as a second language. If the non-English language is spoken but not written, the State agency shall provide bilingual staff, if required, but not bilingual material.

(2) The State agency shall ensure that offices serving reservations subject to the critiria in paragraph (d)(1) of this section provide sufficient bilingual staff for the timely processing of non-English speaking applicants.

(3) The State agency shall develop estimates of the numbers of low-income, single-language minority households by using census data (including the Census Bureau's Current Population Report: Population Estimates and Projections, Series P–25, No. 627) and knowledge of the reservation. Local Bureau of Census offices, Community Services Administration offices, Community Action agencies, Bureau of Indian Affairs, Indian Health Services, planning agencies, the ITO and school officials may be important sources of information in determining the need for bilingual services.

(e) *Outreach and referral.* The State agency shall inform potentially eligible households of the availability of the Food Distribution Program. The State agency shall develop and distribute printed information in the appropriate languages about the Program and eligibility requirements. Outreach material shall contain information about a household's right to file an application on the same date it contacts the certification office. The State agency shall be sufficiently familiar with general eligibility requirements for the Supplemental Food Program for Women, Infants and Children (WIC) or the Commodity Supplemental Food Program, if available to reservation residents, the Supplemental Security Income Program (SSI), and appropriate public and general assistance programs, to identify those applicants whose households contain persons who may be eligible for these programs, to inform the applicants of their potential eligibility, and to provide the applicants with the addresses and telephone numbers for these programs. For example, the State agency should provide information on the WIC program to applicants whose households contain pregnant women, nursing or postpartum women, or children up to the fifth birthday.

(f) *Training requirements.* The State agency shall institute a training program for all personnel who are assigned responsibility for the certification of applicant households, for fair hearing officers, for field supervisors who review local Food Distribution Programs, for those involved in outreach and those responsible for ordering, storing, and distributing commodities.

(1) State agency training programs shall cover eligibility criteria, certification procedures, commodity ordering, storage and distribution practices, household rights and responsibilities and other job-related responsibilities. The content of the training material shall be reviewed and revised periodically to correct deficiencies in program operations or reflect changes in policy and procedures.

(2) The State agency shall allow public attendance at formal certification training sessions in accordance with § 274.2(e)(1)(iv).

(3) FNS shall review the effectiveness of State agency training based on information obtained from field reviews, administrative analyses and other sources.

(g) *Nutrition education.* The State agency shall publicize how commodities may be used to contribute to a nutritious diet and how commodities may be properly stored by means of visual displays, and printed material. The State agency shall encourage appropriate organizations, county extension home economists, expanded Food and Nutrition Program aides, and qualified volunteers to provide food and nutrition information, menus, or cooking demonstrations, as appropriate for participating households. The State agency shall encourage the dissemination of food and nutrition information designed to improve the nutrition of households on reservations.

(h) *Records and reports.* The State agency shall keep records and submit reports and other information as required by FNS. Records required under this part shall be retained for a period of three years from the date of the submission of the annual financial status report, SF–269; except that, if any litigation, claim or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

(i) *Monitoring.* In accordance with its responsibility for efficient and effective program administration the State agency shall monitor and review its operations under this part to ensure compliance with the provisions of this part and with any applicable instructions of FNS.

(1) The State agency shall review program operations at least annually, document program deficiencies and establish and implement specific plans of corrective action for deficiencies noted.

(2) Reviews of operations shall include, but not be limited to, certification of households, determination of food preferences, distribution of commodities, fair hearing procedures, commodity inventories and timeliness and accuracy of reports to FNS.

(3) Program reviews and corrective action plans shall be available to FNS upon request.

(j) *Investigations and complaints.* The State agency shall promptly investigate complaints received of irregularities in the handling, distribution, receipt or use of commodities, other than use of commodities by eligible households in the preparation of meals for home consumption, and shall take appropriate action to correct any irregularities. The State agency shall also promptly investigate complaints of irregularities relating to certification procedures or the delivery of services and shall take appropriate action to correct any irregularities or noncompliance with provisions relating to certification procedures, provision of services or household rights. The State agency shall document each investigation and action in sufficient detail to allow for FNS review of all State agency actions and information. The Department shall make investigations at the request of the State agency and ITO or when the Department determines an investigation is necessary.

(k) *Sanctions.* If the State agency fails to comply with the provisions of this part or its plan of operation, FNS may (1) take action against any State agency under § 283.9(g) of this part with respect to administrative funds available from FNS for use by the State agency or (2) disqualify the State agency from further distribution of commodities to households. Disqualification of the State agency shall not prevent FNS or the Department from taking other actions, including prosecution under applicable Federal statutes, when deemed necessary. Reinstatement shall be contingent upon approval by FNS of the State agency's plan for corrective action or determination by FNS that the State agency has complied with any other requirements for reinstatement which FNS may set forth. These provisions apply to all State agencies, regardless of whether the Program is administered by an agency of the State government or an ITO. If the ITO is disqualified as a State agency, an appropriate agency of State government shall administer the Food Distribution Program on the reservation. If an agency of State government is disqualified as the State agency for the Food Distribution Program on the reservation, the ITO may request in writing a capability determination for program administration in accordance with § 283.4.

(l) *Appeals.* (1) The agency of the State government or an ITO may appeal an initial determination by FNS on:

(i) Whether or not the reservation definition is met;

(ii) The capability of an ITO to administer the Food Distribution Program;

(iii) Sanctions taken under § 283.5(k) or § 283.9(g); or

(iv) The Federal matching percentage level of administrative funding made available by FNS.

(2) At the time FNS advises the State agency or ITO of its determination, FNS shall also advise the State agency or ITO of its right to appeal and, except for appeals of funding determinations, shall advise the State agency or ITO of its right to request either a meeting to present its position in person or a review of the record. On appeals of funding determinations, FNS shall advise the State agency or ITO that it may indicate if it wishes a meeting, however, FNS need schedule a meeting only if FNS determines a meeting is warranted to reach a proper adjudication of the matter. Otherwise, FNS shall review supportive information submitted by the State agency or ITO in paragraph 3(ii) of this section.

(3) *Procedure.* (i) *Time Limit.* Any State agency or ITO that wants to appeal an initial FNS determination under paragraph (1) of this section must notify the Administrator of FNS, in writing, within 15 days from the date of the determination. If the appeal concerns either subparagraphs (1)(i) or (ii) of this section, the implementation timeframes as specified in § 283.4(d)(2) and the timeframe for determining an ITO's capability as specified in § 283.5 are suspended from the date the appeal is requested to the date of the final determination.

(ii) *Acknowledgement.* Within five days of receipt by the Administrator, of FNS, of a request for review, FNS shall provide the State agency or ITO with a written acknowledgement of the request by certified mail, return receipt requested. The acknowledgement shall include the name and address of the official designated by the Administrator, FNS, to review the appeal. The acknowledgement shall also notify the State agency or ITO that within ten days of receipt of the acknowledgement, the State agency or ITO shall submit written information in support of its position.

(4) *Scheduling a meeting.* If the Administrator, FNS, grants a meeting FNS shall advise the State agency or ITO of the time, date and location of the meeting by certified mail, return receipt requested at least ten days in advance of the meeting. FNS shall schedule and conduct the meeting and make a decision within 60 days of the receipt of the information submitted in response to paragraph (3)(ii) of this section.

(5) *Review.* If no meeting is conducted the official designated by the Administrator, FNS, shall review information presented by a State agency or ITO which requests a review and shall make a final determination in writing within 45 days of the receipt of the State agency's or ITO's information submitted in response to paragraph (3)(ii) of this section setting forth in full the reasons for the determination.

(6) *Final decision.* The official's decision after a meeting or a review shall be final.

(m) *Implementation.* The State agency shall implement changes required by amendments to these regulations in accordance with schedules specified in the amendment. (1) *Amendment 141.* (i) If an ITO currently participates in, but does not administer, the Food Distribution Program:

(A) FNS shall determine tribal eligibility and capability to administer the Food Distribution Program within 60 days of receipt of a completed application. If an incomplete application is received, FNS shall within 15 days, notify the ITO of what additional information is required. If an otherwise completed application was received by FNS prior to the effective date of these regulations, but as a result of these regulations additional information is now required, FNS shall promptly notify the ITO of what additional information to submit. If the ITO submits the necessary additional information on an application received by FNS prior to the effective date of these regulations within 15 days of the request for additional information from FNS, the 60 days to determine capability shall continue to date from receipt of the initial completed application. Otherwise, the processing time for the capability determination shall start from the date the additional information is received by FNS.

(B) Upon FNS' determination that the ITO will administer the Food Distribution Program, FNS shall expeditiously plan for and provide needed training and technical assistance to facilitate timely commencement of tribal administrative responsibilities. The ITO shall have 120 days from FNS' determination in (A) to submit and have approved a plan of operation, operating manuals, and to commence program operations under the regulations as specified in this Part. Extensions may be granted by FNS to Indian tribal organizations if good cause is shown.

(C) If FNS determines that an ITO is not capable of administering the Food

Distribution Program, FNS shall direct the State to continue program operations and to submit a new plan of operation and to commence program operations under the regulations as specified in this Part within 120 days from FNS' determination in (A).

(ii) If an ITO currently administers the Food Distribution Program, the timeframe specified in subparagraph (i) above apply except that:

(A) FNS shall determine tribal eligibility and capability to administer the Food Distribution Program within 30 days of receipt of a completed application.

(B) If FNS determines that the ITO will not administer the Food Distribution Program, FNS shall direct the ITO to continue program operations until the State government can commence program operations. The State government shall have 120 days from FNS' determination in (A) to submit and have approved a plan of operation and to commence program operations under the regulations as specified in this Part.

(iii) If an ITO does not currently participate in a Food Distribution Program, the timeframes in subparagraph (i) above apply except that if FNS determines that an ITO can not administer the Program, FNS shall direct the State to submit a plan of operation and to commence program operations under the regulations as specified in this Part within 180 days from the determination.

(iv) Extensions to the above implementation timeframe (except for those timeframes set forth in paragraphs (i)(A) and (ii)(A) of this subsection) may be granted by FNS to ITO's or State government agencies if there is compelling justification involving circumstances which were not reasonably foreseeable and which are not the fault of the ITO or the State agency and which circumstances present extraordinary problems that would render earlier implementation impossible.

§ 283.6 Eligibility of households.

(a) *Household concept.* (1) The State agency shall determine eligibility for the Food Distribution Program on a household basis. Household means any of the following individuals or groups of individuals, provided that such individuals or groups are not boarders or residents of an institution and provided that separate household or boarder status shall not be granted to a spouse of a member of the household, or to children under 18 years of age under the parental control of a member of the household.

(i) An individual living alone.

(ii) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from the others.

(iii) A group of individuals living together for whom food is customarily purchased in common and for whom meals are prepared together for home consumption.

(2) *Nonhousehold members.* The following individuals residing with a household shall not be considered household members in determining the household's eligibility. Nonhousehold members specified in (i) and (v) who are otherwise eligible may participate in the Program as separate households.

(i) *Roomers.* Individuals to whom a household furnishes lodging, but not meals, for compensation.

(ii) *SSI recipients in "cash-out" States.* Recipients of SSI benefits who reside in a State designated by the Secretary of Health, Education, and Welfare to have specifically included the value of the coupon allotment in its State supplemental payments. These persons are not eligible for Food Distribution Program benefits.

(iii) *Disqualified individuals.* Individuals disqualified from the Food Stamp Program for fraud, as set forth in § 273.16.

(iv) *Illegal residents.* Individuals who are not legal residents of the United States. While U.S. citizenship is not required for participation in the Food Distribution Program, persons receiving food distribution benefits must be lawfully living in the United States.

(v) *Others.* Other individuals who share living quarters with the household but who do not customarily purchase food and prepare meals with the household. For example, if the applicant household shares living quarters with another family to save on rent, but does not purchase and prepare food together with that family, the members of the other family are not members of the applicant household.

(3) *Authorized representatives.* The head of the household, spouse, or any other responsible member of the household may designate an authorized representative to act on behalf of the household in making application for commodities and/or obtaining commodities as provided in § 283.7(a)(10)(i) and § 283.7(a)(10)(ii) respectively.

(b) *Residency or citizenship.* (1) A household must be living on the reservation in which it files an application for participation, except that Indian tribal households need only be living near the reservation for participation purposes. Residency shall not mean domicile nor shall the State agency impose any durational residency requirement. However, persons on the reservation solely for vacations shall not be considered residents. No household may participate in the Food Stamp Program or in the Food Distribution Program in more than one geographical area at the same time.

(2) No person shall participate in the Food Distribution Program on an Indian reservation unless the person is legally a resident of the United States. A further discussion of "legal residency" is provided in § 283.6(a)(3)(iv).

(c) *Income and resource eligibility standards of public assistance, supplemental security income, and certain general assistance households.* (1) Households in which all members are included in a Federally aided public assistance or supplemental security income grant, except as provided for in § 283.6(a)(2)(ii), shall, if otherwise eligible under this part, be determined to be eligible to participate in the Food Distribution Program while receiving such grants without regard to the income and resources of the household members.

(2) If FNS determines that a State or local general assistance program applies criteria of need the same as or similar to, those applied under any of the Federally aided public assistance programs, households in which all members are included in such a general assistance grant, shall, if otherwise eligible under this part, be determined to be eligible to participate in the Food Distribution Program while receiving such grants without regard to the income and resources of household members.

(d) *Resource eligibility standards.* (1) *Uniform household standards for nonassistance households.* The State agency shall apply uniform national resource standards of eligibility to all applicant households, except those in which all members are recipients of Federally aided public assistance, supplemental security income, or certain general assistance program benefits as provided in (c)(2). The maximum allowable resources shall not exceed $1,750 for the household; except that, for households of two or more members which include a member or members age 60 or over, such resources shall not exceed $3,000.

(2) *Resources.* In determining the resources of a household, only cash on hand, money in checking or savings accounts, savings certificates, stocks, or bonds, or other readily negotiable and accessible certificates or instruments

shall be counted; except that the following resources shall be entirely excluded:

(i) The cash value of life insurance policies and pension funds, including funds in pension plans with interest penalties for early withdrawals, such as a Keogh plan or an Individual Retirement Account (IRA), as long as the funds remain in the pension plans.

(ii) Any governmental payments which are designated for the restoration of a home damaged in a disaster, if the household is subject to a legal sanction if the funds are not used as intended, for example payments made by the Department of Housing and Urban Development through the individual and family grant program of disaster loans or grants made by the Small Business Administration.

(iii) Resources, such as those of students or self-employed persons, which have been prorated as income. The treatment of self-employment income is explained in § 283.7(b)(1)(iii).

(iv) Resources which are excluded by express provision of Federal statute. The following is the current listing of resources excluded by Federal statute:

(A) Payment received under the Alaska Native Claims Settlement Act (Pub. L. 92–203, section 21(a) or the Sac and Fox Indian claims agreement Pub. L. 94–189);

(B) Payments received by certain Indian tribal members under Pub. L. 94–114, section 6, regarding submarginal land held in trust by the United States;

(C) Payments received by certain Indian tribal members under Pub. L. 94–540 regarding the Grand River Bank of Ottawa Indians;

(D) Reimbursements from the Uniform Relocation Assistance and Real Property Acquistion Policy Act of 1970 (Pub. L. 91–646, section 216);

(E) Earned income tax credits received before January 1, 1980, as a result of Pub. L. 95–600, the Revenue Act of 1978.

(F) Payments received from the youth incentive entitlement pilot projects, the youth community conservation and improvement projects and the youth employment and training programs under Title IV of the Comprehensive Employment and Training Act Amendments of 1978 (Pub. L. 95–524).

(3) *Jointly owned resources.* Resources owned jointly by separate households shall be prorated between or among those households unless the applicant can demonstrate that such resources are inaccessible to it because access to the value of the resource is dependent upon the agreement of a joint owner who refuses to comply.

(4) *Resources of disqualified members.* Resources of individuals disqualified from participation in the Food Stamp Program for fraud shall continue to count in their entirety to the remaining household members when determining the household's eligibility for the Food Distribution Program.

(e) *Income.* (1) *Income eligibility standards for nonassistance households.*

(i) The State agency shall apply uniform national income eligibility standards for the Food Distribution Program except for households in which all members are recipients of public assistance, supplemental security income except as provided for in § 283.6(a)(2)(ii) or certain general assistance program payments as provided in § 283.6(c). The income eligibility standards shall be the monthly income eligibility standards for the Food Stamp Program in the State, increased by the amount of the standard deduction for that State, as published in the appendix to § 273.9.

(ii) The income eligibility standards for the Food Distribution Program shall be adjusted each January 1 and July 1, as necessary, to reflect changes in the Food Stamp Program income eligibility limits and standard deductions.

(2) *Definition of income.* Household income shall mean all income from whatever source, excluding only items specified in paragraph (3) of this section.

(i) Earned income shall include:

(A) All wages and salaries of an employee.

(B) The total gross income from a self-employment enterprise, including the net profit from the sale of any capital goods or equipment related to the business. Ownership of rental property shall be considered a self-employment enterprise. Payments from a roomer and returns on rental property shall be considered self-employment income.

(C) Training allowances from vocational and rehabilitative programs recognized by Federal, State or local governments, such as the Work Incentive Program, and programs authorized by the Comprehensive Employment and Training Act, to the extent they are not a reimbursement.

(ii) Unearned income shall include, but not be limited to:

(A) Assistance payments from Federal or Federally aided public assistance programs, such as Supplemental Security Income (SSI) or Aid to Families with Dependent Children (AFDC), General Assistance (GA) programs, or other assistance programs based on need.

(B) Annuities; pensions; retirement; veteran's or disability benefits; worker's or unemployment compensation; old-age, survivors, or social security benefits; strike benefits; foster care payments for children or adults.

(C) Support or alimony payments made directly to the household from nonhousehold members.

(D) Scholarships, education grants, fellowships, deferred payment loans for education, veteran's education benefit and the like in excess of amounts excluded under paragraph (e)(3)(iii) of this section.

(E) Payments from Government-sponsored programs, dividends, interest, royalties, and all other direct money payments from any source which can be construed to be a gain or benefit.

(F) The earned or unearned income of an individual disqualified from participation in the Food Stamp Program for fraud shall continue to be counted as income, less the pro rata share for the disqualified member. Procedures for calculating this pro rata share are described in § 283.7.

(iii) Income shall not include the following:

(A) Monies withheld from an assistance payment, earned income or other income source, or monies received from any income source which are voluntarily or involuntarily returned to repay a prior overpayment received from that income source.

(B) Child support payments received by AFDC recipients which must be transferred to the agency administering Title IV–D of the Social Security Act of 1935, as amended, to maintain AFDC eligibility.

(3) *Income exclusions.* Only the following items shall be excluded from household income and no other income shall be disregarded:

(i) Any gain or benefit which is not in the form of money payable directly to the household, including:

(A) *In-kind income.* Nonmonetary or in-kind benefits, such as meals, clothing, public housing, or produce from a garden.

(B) *Vendor payments.* A payment made in money on behalf of a household shall be considered a vendor payment whenever a person or organization outside of the household uses its own funds to make a direct payment to either the household's creditors or a person or organization providing a service to the household. For example, if a relative, who is not a household member, pays out of its own resources the household's rent directly to the landlord, the payment is considered a vendor payment and is not counted as income to the household. Also, payments specified by a court order or other

written support or alimony agreement to go directly to a third party rather than the household and support payments which are paid to a third party are excluded as vendor payments. Wages garnished or diverted by employers, or money deducted or otherwise diverted from a household's public assistance grant by a State for purposes such as managing the household's expenses, shall not be considered a vendor payment, since the person or organization making the the payment is using money payable to the household rather than its own funds.

(ii) Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of $30 in a quarter.

(iii) Education loans on which payment is deferred, grants scholarships, fellowships, veterans' educational benefits, and the like to the extent that they are used for tuition and mandatory school fees. Mandatory fees are those charged to all students or those charged to all students within a certain curriculum. For example, uniforms, lab fees, or equipment charged to all students to enroll in a chemistry course would be excluded. However, transportation, supplies, and textbook expenses are not uniformly charged to all students and, therefore, would not be excluded as mandatory fees.

(iv) All loans, including loans from private individuals as well as commercial institutions, other than education loans on which repayment is deferred.

(v) Reimbursements for past or future expenses to the extent they do not exceed actual expenses. For example, reimbursements of flat allowances for job or training related expenses such as travel per diem, uniforms, and transportation to and from the job or training site are excluded as income.

(vi) Monies received and used for care and maintenance of a third party beneficiary who is not a household member.

(vii) The earned income (as defined in paragraph (e)(2)(i) of this section) of children who are members of the household, who are students at least half time and who have not attained their eighteenth birthday. The exclusion shall continue to apply during temporary interruptions in school attendance due to semester or vaction breaks, provided the child's enrollment will resume following the break. Individuals are considered children for purposes of this provision if they are under the parental control of another household member.

(viii) Money received in the form of a nonrecurring lump sum payment, including but not limited to, income tax refunds, rebates, or credits; retroactive lump-sum social security, SSI, public assistance, railroad retirement benefits or other payments, or retroactive lump-sum insurance settlements; refunds of security deposits on rental properties or utilities or lump-sum payments arising from land interests held in trust for, or by, a tribe. These payments shall be counted as resources in the month received unless specifically excluded from consideration as a resource by other Federal law.

(ix) The cost of producing self-employment income. The procedures for computing the cost of producing self-employment income are described in § 283.7(b)(1)(iii).

(x) Any income that is specifically excluded by any other Federal statute from consideration as income. The following Federal statutes provide such an exclusion.

(A) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (Pub. L. 91-646, section 216).

(B) Payments received under the Alaska Native Claims Settlement Act (Pub. L. 92-203, section 21(a)).

(C) Any payment to volunteers under Title II (RSVP, foster grandparents, and others) and Title III (SCORE and ACE) of the Domestic Volunteer Services Act of 1973 (Pub. L. 93-113), as amended. Payments under Title I (VISTA) to volunteers shall be excluded for those individuals receiving federally donated commodities, food stamps, or public assistance at the time they joined the Title I program, except that households which are receiving an income exclusion for a VISTA or other Title I subsistence allowance at the time of implementation of these rules shall continue to receive an income exclusion for VISTA for the length of their volunteer contract in effect at the time of implementation of these rules. Temporary interruptions in food distribution shall not alter the exclusion once an initial determination has been made. New applicants who are not receiving Federally donated commodities, food stamps or public assistance at the time they joined VISTA shall have these volunteer payments included as earned income.

(D) Income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes (Pub. L. 94-114, section 6).

(E) Payments received by certain Indian tribal members under Pub. L. 94-540 regarding the Grand River Band of Ottawa Indians.

(F) Payments from the Crisis Intervention Program (CIP) administered by the Community Services Administration (CSA).

(G) Payments received from the youth incentive entitlement pilot projects, the youth community conservation and improvement projects and the youth employment and training programs under title IV of the Comprehensive Employment and Training Act Amendments of 1978 (Pub. L. 95-524).

(f) *Income deductions.* (1) Households with earned income, as defined in paragraph (e)(2)(i) of this section, shall be allowed a deduction of twenty percent of their earned income. Earned income excluded under paragraph (e)(3) of this section shall not be considered earned income for the purpose of computing this deduction.

(2) Households shall also receive a deduction for the actual costs for the care of a child or other dependent when necessary for a household member to accept or continue employment or attend training or pursue education which is preparatory to employment. This deduction shall not exceed the maximum allowable deduction for dependent care costs allowable under the Food Stamp Program in the 48 States and the District of Columbia.

§ 283.7 Certification of households.

(a) *Application processing*—(1) *General purpose.* The application process includes filing and completing an application form, being interviewed, and having certain information verified. The State agency shall act promptly on all applications. Expedited service shall be available to household in immediate need. When the State agency is other than the ITO, the ITO, when appropriate, may receive copies of certification and/or termination notices to the extent requested or agreed upon by the household. State agencies and ITOs may develop formalized mechanisms to ensure ITO receipt of notices.

(2) *Food Distribution Program application form.* The State agency shall use an application form acceptable to FNS. The State agency shall consult with the ITO in developing the application form. The State agency shall make application forms readily accessible to potentially eligible households and those groups or organizations involved in outreach efforts. The State agency shall also provide an application form to anyone who requests the form. State agencies which elect joint PA or GA/Food Distribution Program procedures shall follow the requirements of § 283.7(f) for

the application form. State agencies may also use an abbreviated recertification form.

(3) *Filing an application.* Households must file an application for the Food Distribution Program by submitting the form to a certification office in person, through an authorized representative or by mail. The State agency shall document the date the application was received. Each household has the right to file an application form the same day it contacts the certification office during office hours on the reservation where the household resides. The household shall be advised that it does not have to be interviewed before filing the application and may file an incomplete application form as long as the application contains the applicant's name and address and is signed by a responsible member of the household or the household's authorized representative.

(4) *Household cooperation.* To determine eligibility, the application form must be completed and signed, the household or its authorized representative must be interviewed, and certain information on the application must be verified. If the household refuses to cooperate with the State agency in completing this process, the application shall be denied upon a determination of refusal. For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take actions that it can take and that are required to complete the application process. For example, to be denied for refusal to cooperate, a household must refuse to be interviewed and not merely fail to appear for the interview. If there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household shall not be denied solely for this reason. The household shall also be determined ineligible if it refuses to cooperate in any subsequent review of its eligibility. Once denied or terminated for refusal to cooperate, the household may reapply but shall not be determined eligible until it cooperates.

(5) *Interviews.* All applicant households, including those submitting applications by mail, shall have an interview with a qualified eligibility worker prior to initial certification and all recertifications. At State agency discretion, applicants may be interviewed by telephone or in the home. No household shall be interviewed by telephone for any two consecutive certifications without a face-to-face interview. State agencies must attempt to schedule home visits in advance. Home visits cannot extend required processing standards set forth in § 283.7(a)(7) or § 283.7(a)(9). The individual interviewed may be the head of household, spouse, any other responsible member of the household or an authorized representative. The household, if it wishes, may be accompanied to the interview by anyone of its choice. The interviewer shall not only review the information that appears on the application, but shall explore and resolve with the household unclear and incomplete information. Households shall be advised of their rights and responsibilities during the interview. The interview shall be conducted as an official and confidential discussion of household circumstances. The applicant's right to privacy shall be protected during the interview. Facilities shall be adequate to preserve the privacy and confidentiality of the interview.

(6) *Verification.* Verification is the use of third party information or documentation to establish the accuracy of statements on the application in order to determine eligibility or ineligibility of the household.

(i) *Mandatory verification.* Gross nonexempt income shall be verified for all households prior to certification. Income verification need not be to the exact dollar amount unless the household's eligibility would be affected since benefits are not reduced as income rises in the Food Distribution Program. However, where all attempts to verify the income have been unsuccessful either because the person or organization providing the income has failed to cooperate with the household and the State agency or because the other sources of verification are unavailable, the eligibility worker shall determine an amount to be used for certification purposes based on the best available information.

(ii) *Verification of questionable information.* Eligibility criteria other than income, including residency on or near the reservation, shall be verified prior to certification only if they are questionable. To be considered questionable, the information on the application must be inconsistent with statements by the applicant, inconsistent with other information on the application or previous applications, or inconsistent with other information received by the State agency. However, due to the difficulty in verifying whether a group of individuals is a household, State agencies shall generally accept the household's statement regarding food preparation and consumption.

(iii) *Responsibility for obtaining verification.* The household has primary responsibility for providing documentary evidence or an acceptable collateral contact to support its income statements and to resolve any questionable information. However, the State agency shall assist the household in obtaining the needed verification. The State agency shall accept any reasonable documentary evidence provided by the household and shall be primarily concerned with how adequately the verification proves the statements on the application. The State agency shall also accept verification from collateral contacts so long as the collateral contacts can provide accurate third party verification. The State agency shall rely on the household to provide the name of the collateral contact. The State agency is not required to use a collateral contact designated by the household if the collateral contact cannot be expected to provide accurate third party verification. If the collateral contact designated by the household is unacceptable to the State agency, the State agency shall ask the household to designate another collateral contact, and the State agency shall document the casefile as to the reason the collateral contact was rejected and an alternate was requested. The State agency shall use collateral contacts, rather than documentary evidence, for verification if such verification is acceptable, and would result in better service to the household. For example, the household may be able to obtain a wage stub from the employer, but the State agency could call the employer the same day to provide the verification of income. Home visits shall be used as verification only if documentary evidence and collateral contacts cannot be obtained, and the State agency attempts to schedule the visit in advance with the household.

(iv) *Documentation.* Casefiles must be documented to support a determination of eligibility or denial. Documentation shall be in sufficient detail to permit a reviewer to determine the reasonableness and accuracy of the determination.

(v) *Verification for recertification.* At recertification, the State agency shall verify a change in income if the source has changed or the amount has changed by more than $50 per month since the last time the income was verified. State agencies may verify income which is unchanged or has changed by $50 per month or less, provided verification is, at a minimum, required when information is questionable as defined

in paragraph (a)(6)(ii) of this section. All other changes reported at the time of recertification shall be subject to the same verification procedures as apply at initial certification. Unchanged information, other than income, shall not be verified at recertification unless the information is questionable as defined in paragraph (a)(6)(ii) of this section.

(7) *Processing standards.* The State agency shall provide eligible households that complete the initial application process an opportunity to participate as soon as possible, but not later than seven calendar days excluding weekends and holidays after the application was filed. An application is filed the day the State agency receives an application containing the applicant's name and address and which is signed by either a responsible member of the household or the household's authorized representative.

(8) *Delays in processing.* If the State agency cannot determine a household's eligibility within seven calendar days excluding weekends and holidays of the date the application was filed due to lack of verification as required in paragraph (a)(6), the State agency shall authorize the distribution of commodities to the household for one month pending verification. In order to certify the household pending verification, the information on the application form must be complete and indicate that the household will likely be eligible. No further distribution of commodities shall be made without completing the eligibility determination.

(9) *Expedited Service.* The State agency shall provide an opportunity to obtain commodities within one calendar day excluding weekends and holidays after the date the application was filed for those households with no income in the current month and also for those households which, in the judgment of the certifying agency, would likely be eligible and would otherwise suffer a hardship. The basis for this determination shall be recorded in the casefile. State agencies shall provide same day service, if possible, to households eligible for expedited service which would likely suffer a hardship if required to return to the office the next day. Warehouses or other distribution points need not be open during all certification hours to meet this need. However, accessibility to federally donated commodities by appropriate certification or other personnel should be established for households in immediate need. When State agencies can demonstrate a need, FNS may approve other expedited timeframes based on circumstances such as distance to warehouses or other distribution points. To expedite the certification of households in immediate need the State agency shall postpone the verification required under paragraph (a)(6) of this section. However, the State agency shall verify the household's identity and address through a collateral contact or readily available documentary evidence. If possible, the household's income statements should be verified at the same time. The State agency shall complete the verification for households certified on an expedited basis prior to the distribution of commodities to the household for any subsequent month.

(10) *Authorized representatives.* The head of the household, spouse, or any other responsible member of the household may designate an authorized representative to act on behalf of the household in one or all of the following capacities:

(i) *Making application for commodities.* When the head of the household or the spouse cannot make application, another household member may apply or an adult nonhousehold member may be designated in writing as the authorized representative for that purpose. The head of the household or the spouse should prepare or review the application whenever possible, even though another household member or the authorized representative will actually be interviewed. Adults who are nonhousehold members may be designated as authorized representatives for certification purposes only if they are sufficiently aware of relevant household circumstances.

(ii) *Obtaining commodities.* An authorized representative of the household may be designated to obtain commodities. Designation shall be made at the time the application is completed. State agencies may distribute commodities to household members or authorized representatives presenting an Identification Card or other appropriate identification that satisfactorily identifies the member obtaining commodities.

(b) *Eligibility determinations.* (1) *Determining income.* (i) The State agency shall take into account the income already received by the household during the certification period and any anticipated income the household and the State agency are reasonably certain will be received during the remainder of the certification period. If the amount of income that is anticipated is uncertain, that portion of the household's income that is uncertain shall not be counted by the State agency. For example, a household anticipating income from a new source, such as a new job or recently applied for public assistance benefits, may be uncertain as to the timing and amount of the initial payment. These monies shall not be anticipated by the State agency unless there is reasonable certainty concerning the month in which the payment will be received and in what amount. If the exact amount of the income is not known, that portion of it which can be anticipated with reasonable certainty shall be considered as income. In cases where the receipt of income is reasonably certain but the monthly amount may fluctuate, and the household's income is close to the income eligibility limit the State agency may elect to average income provided that such averaging does not disadvantage the household. Such averaging shall be based on income that is anticipated to be available to the household during the certification period. The State agency shall use income received in the past 30 days as an indicator of future income during the certification period unless changes in income have occurred or can be anticipated.

(ii) Income anticipated during the certification period shall be counted as income only in the month it is expected to be received, unless the income is averaged.

(iii) (A) Self-employment income which represents a household's annual support including the net profit from the sale of any capital goods or equipment related to the business shall be annualized over a 12-month period, even if the income is received in only a short period of time. For example, self-employment income received by farmers shall be averaged over a 12-month period if the income represents the farmer's annual support.

(B) Self-employment income which represents only a part of a household's annual support, including the net profit from the sale of any capital goods or equipment related to the business, shall be averaged over the period of time the income is intended to cover. For example, self-employed vendors who work only in the summer and supplement their income from other sources during the balance of the year shall have their self-employment income averaged over the summer months rather than a 12-month period.

(C) For the period of time over which self-employment income is determined, the State agency shall add all gross self-employment income, exclude the cost of producing the self-employment income and divide the net self-employment

income by the number of months over which the income will be averaged. The allowable costs of producing self-employment income include but are not limited to, the identifiable costs of labor, stock, raw materials, seed and fertilizer, interest paid to purchase income producing property, insurance premiums, and taxes paid on income producing property.

(D) In determining net self-employment income, payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods, net losses from previous periods, Federal, State, and local income taxes, money set aside for retirement purposes, and other work-related personal expenses (such as transportation to and from work) will not be allowable costs of doing business.

(iv) The monthly net self-employment income shall be added to any other earned income received by the household. The total monthly earned income, less the 20 percent earned income deduction, shall then be added to all monthly unearned income received by the household.

(v) Allowable costs for dependent care shall be subtracted from the household's total monthly income to determine net monthly income.

(vi) The total net monthly income shall be compared to the income eligibility standard for the appropriate household size to determine the household's eligibility.

(2) *Certification periods.* (i) the State agency shall establish definite periods of time within which households shall be eligible to receive benefits. Further eligibility shall be established upon a recertification based upon a newly completed application, an interview, and such verification as required by paragraph (a)(6)(v) of this section.

(ii) Certification periods shall conform to calendar months. The first month in the certification period of initial applicants shall be the month in which eligibility is determined. For example, if a household submits an application in late January and the household is determined eligible on the fifth working day which falls in February, a six-month certification period would include February through July. Upon recertification, the certification period will begin with the month following the last month of the previous certification period.

(iii) A household shall be assigned a certification period for as long a period as the household's circumstances are expected to remain sufficiently stable such that the household is expected to continue to meet the program's eligibility standards. In no event shall a certification period exceed one year.

(3) *Certification notices.* (i) *Notice of eligibility.* If an application is approved, the State agency shall provide the household a written notice of eligibility and the beginning and ending dates of the certification period. Households certified on an expedited basis shall be advised that the subsequent month's eligibility will depend upon completion of the postponed verification.

(ii) *Notice of denial.* If the application is denied, the State agency shall provide the household written notice explaining the basis for the denial, the household's right to request a fair hearing, and the telephone number and address of the person to contact for additional information. If there is an individual or organization available which provides free legal representation, the notice shall also advise the household of the availability of the service.

(iii) *Notice of adverse action.* (A) Prior to any action to reduce or terminate a household's benefits within the certification period State agencies shall provide the household timely and adequate advance notice before the adverse action is taken.

(B) In State agencies that have elected joint public assistance or general assistance and Food Distribution processing, the notice of adverse action shall be considered timely if the advance notice period conforms to that period of time defined by the State agency as an adequate notice period for its public or general assistance caseload, provided that the period includes at least 10 days from the date the notice is mailed to the date upon which the action becomes effective. In circumstances other than joint processing, the advance notice shall be considered timely if the advance notice period includes at least 10 and no more than 20 days from the date the notice is mailed to the date upon which the action becomes effective.

(C) The notice of adverse action shall be considered adequate if it explains in easily understandable language: the reason for the proposed action, the household's right to request a fair hearing, when the proposed action will take effect, the telephone number and address of someone to contact for additional information and the availability of continued benefits. If there is an individual or organization available which provides free legal representation, the notice shall also advise the household of the availability of the service. The State agency shall consult with the ITO in developing the notice of adverse action.

(D) The State agency shall continue distribution of commodities to the household after the end of the adverse notice period if the household requests a fair hearing during the advance notice period.

(c) *Reporting changes.* (1) Certified households are required to report changes in household composition and income which would necessitate a change in the determination of eligibility. To facilitate reporting changes in income each certified household shall be advised at the time of certification what the maximum monthly income limit, as defined in § 283.6(e)(1), is for its size household, and shall be required to report any change in income that goes above that limit to the certification office within ten days after the change becomes known to the household. Households must also report within ten days when cash on hand, money in checking or savings accounts, savings certificates, stocks, or bonds, or other readily negotiable instruments exceeds $1,750. The State agency shall develop the procedures for when and how changes in household circumstances are reported. Changes reported over the telephone or in person shall be acted on in the same manner as those reported in writing.

(2) If the State agency determines that the household is no longer eligible or reduces the amount of commodities due the household because the household has lost a member or members, the State agency shall provide the household with a notice of adverse action not later than ten days after the change is reported. If the reported change increases the amount of commodities due the household, the household shall be notified that the increase shall be effective not later than the month following the date the change was reported.

(d) *Recertification.* (1) The State agency shall develop a procedure for notifying the household prior to or shortly after the end of its certification period that the household must reapply and be recertified for continued participation. Households shall also be notified of the date upon which termination from participation will be effective should the household fail to reapply before the expiration of the certification period.

(2) The State agency shall approve or deny a household's application for recertification and notify the household of that determination prior to the expiration of the household's current certification period. Households

applying for recertification in the last month of the current certification period must be provided an opportunity to obtain commodity distribution on an uninterrupted basis.

(3) The State agency shall continue distribution of commodities to the household denied at the point of recertification if the household timely requests a fair hearing.

(e) *Controls for dual participation.* (1) *Prohibition on dual participation.* No household shall be allowed to participate simultaneously in the Food Stamp Program and Food Distribution Program. The State agency shall inform each applicant household of this prohibition and shall develop a method to detect dual participation. The method developed by the State agency shall, at a minimum, employ lists of currently certified households provided by and provided to the appropriate food stamp agency on a monthly basis. The State agency may also employ computer checks, address checks and telephone calls to prevent dual participation. The State agency shall coordinate with the appropriate food stamp agency or agencies in developing controls for dual participation.

(2) *Choice of programs.* Households eligible for either the Food Stamp Program or Food Distribution Program on reservations on which both programs are available may elect to participate in either program. Such households may elect to participate in one program, and subsequently elect the other at the end of the certification period. Households may also elect to switch from one program to the other program within a certification period only by terminating their participation, and notifying the State agency of their intention to switch programs. Households certified in either the Food Distribution or Food Stamp Program on the first day of the month can only receive benefits in the program for which they are currently certified during that month. At the point the household elects to change programs the household should notify the State agency of its intent to switch programs, and should file an application for the program in which it wishes to participate. Households voluntarily withdrawing from one program with the intent of switching to the other shall have their eligibility terminated for the program in which they are currently certified on the last day of the month in which the household notifies the State agency of its intent to change programs. Entitlement in the program for which a household is now filing an application, if all eligibility criteria are met, would begin in the month following the month of termination in the previous program.

(3) *Disqualification.* (i) No individual disqualified from participation in the Food Stamp Program for fraud may participate in the Food Distribution Program until the period of disqualification expires. The State agency in cooperation with the appropriate food stamp agency must develop a procedure to identify these individuals.

(ii) During the time a household member is disqualified, the eligibility and food distribution benefits of any remaining household members shall be determined as follows:

(A) *Resources.* The resources of the disqualified member shall continue to count in their entirety to the remaining household members.

(B) *Income.* A pro rata share of the income of the disqualified member shall be counted as income to the remaining members. This pro rata share is calculated by dividing the disqualified member's earned (less the 20 percent earned income deduction) and unearned income evenly among all household members, including the disqualified member. All but the disqualified member's share is counted as income to the remaining household members.

(C) *Eligibility and benefits.* The disqualified member shall not be included when determining the household's size for purposes of assigning food distribution benefits to the household or for purposes of comparing the household's net monthly income with the income eligibility standards.

(f) *Joint Processing PA/GA.* (1) State agencies which are responsible for and administer both the Food Distribution and public assistance (PA) or general assistance (GA) programs on Indian reservations may allow a household to apply for the Food Distribution Program at the same time the household applies for PA or GA benefits. However, while PA households are categorically eligible, GA households except for those households in GA programs which have been determined by FNS to have criteria of need the same as, or similar to those under Federally aided public assistance programs as provided for in § 283.6(c)(2) shall have their eligibility for commodities based solely on Food Distribution eligibility criteria. All criteria provided in this subsection, (f), are applicable to State agencies which administer both the Food Distribution and assistance programs and which elect joint processing. Under joint processing, the State agency shall use joint application forms that contain all the information needed to determine eligibility for commodities or shall attach a form for the other needed information.

(2) The State agency shall process all applications for PA or GA as applications for the Food Distribution Program as well, unless the household clearly indicates on a space on the application that the household does not want commodities. The State agency shall conduct a single interview for PA or GA and Food Distribution Program eligibility, unless the State agency is unable to do so within the Food Distribution Program processing standards specified in § 283.7(a)(7) and § 283.7(a)(9). In such cases the State agency shall provide separate certification for PA or GA and Food Distribution Program eligibility.

(3) The State agency may verify those factors of eligibility which must be verified for PA or GA, under PA or GA rules, but must follow the Food Distribution Program rules for all other factors.

(4) PA households have the same reporting requirements as any other food distribution household. PA households which report a change in circumstances to the PA worker shall be considered to have reported the change for food distribution purposes. All of the requirements pertaining to reporting changes for PA households shall be applied to GA households in project areas where GA and food distribution cases are processed jointly.

(5) The State agency must follow all Food Distribution Program timeliness rules for certification of households for the Food Distribution Program.

(g) *Fair Hearing.* (1) *Availability of hearings.* The State agency shall provide a fair hearing to any household aggrieved by any action of the State agency which affects the participation of the household in the Food Distribution Program.

(2) *Timely action on hearings.* (i) *Receipt of request.* Within 60 days of receipt of a request for a fair hearing, the State agency shall conduct the hearing, arrive at a decision and either issue or not issue commodities to the household.

(ii) *Household requests for postponement.* The household may request and is entitled to receive, a postponement of the scheduled hearing. The postponement shall not exceed 30 days and, the time limit for action on the decision may be extended for as many days as the hearing is postponed.

(3) *Notification of right to request hearing.* At the time of application, each household shall be informed of its right

to a hearing, of the method by which a hearing may be requested, and that its case may be presented by a household member or a representative, such as a legal counsel, a relative, a friend or other spokesperson. If there is an individual or organization available which provides free legal representation, the household shall also be informed of the availability of that service. Hearing procedures shall be published by the State agency and made available to any interested party.

(4) *Time period for requesting hearing.* A household shall be allowed to request a hearing on any action by the State agency which occurred in the prior 90 days or which affects current benefits.

(5) *Request for hearing.* A request for a hearing is any clear expression, oral or written, by the household or its representative to the State agency that it wishes to present its case to a higher authority. The freedom to make such a request shall not be limited or interfered with in any way. Upon request, the State agency shall make available without charge the specific materials necessary for a household or its representative to determine whether a hearing should be requested or to prepare for a hearing.

(6) *Denial or dismissal of request for hearing.* The State agency shall not deny or dismiss a request for a hearing unless:

(i) The request is not received within the time period specified in paragraph (g)(4) of this section;

(ii) The request is withdrawn in writing by the household or its representative; or

(iii) The household or its representative fails, without good cause, to appear at the scheduled hearing.

(7) *Notification of time and place of hearing.* The time, date and place of the hearing shall be convenient to the household. At least 15 days prior to the hearing, advance written notice shall be provided to all parties involved to permit adequate preparation of the case. The notice shall:

(i) Advise the household or its representative of the name, address, and the phone number of the person to notify in the event it is not possible for the household to attend the scheduled hearing.

(ii) Specify that the State agency will dismiss the hearing request if the household or its representative fails to appear for the hearing without good cause.

(iii) Include the State agency hearing procedures and any other information that would provide the household with an understanding of the proceedings, and that would contribute to the effective presentation of the household's case.

(iv) Explain that the household or representative may examine the casefile prior to the hearing.

(8) *Hearing official.* Hearings shall be conducted by an impartial official(s), designated by the State agency, who does not have any personal interest or involvement in the case and who was not directly involved in the initial determination of the action which is being contested. The hearing official shall:

(i) Administer oaths or affirmations if required by the State;

(ii) Ensure that all relevant issues are considered;

(iii) Request, receive and make part of the record all evidence determined necessary to decide the issues being raised;

(iv) Regulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing; and

(v) Render a hearing decision in the name of the State agency, in accordance with paragraph (g)(11) of this section, which will resolve the dispute.

(9) *Attendance at hearing.* The hearing shall be attended by a representative of the State agency which initiated the action being contested and by the household and/or its representative. The hearing may also be attended by friends or relatives of the household upon household consent.

(10) *Conduct of hearing.* The household may not be familiar with the rules of order and it may be necessary to make particular efforts to arrive at the facts of the case in a manner that makes the household feel most at ease. The household or its representative must be given adequate opportunity to:

(i) Examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing, as well as during the hearing. The contents of the casefile, including the application forms and documents of verification used by the State agency shall be made available, provided the confidential information is protected from release. The State agency shall provide a free copy of the relevant portions of the casefile if requested by the household or its representative. Confidential information that is protected from release and other documents or records which the household will not otherwise have an opportunity to contest or challenge shall not be introduced at the hearing or affect the hearing official's decision.

(ii) Present the case or have it presented by a legal counsel or other person.

(iii) Bring witnesses.

(iv) Advance arguments without undue interference.

(v) Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses.

(vi) Submit evidence to establish all pertinent facts and circumstances in the case.

(11) *Hearing decisions.* (i) Decisions of the hearing officials shall comply with Federal law or regulations and shall be based on the hearing record. The verbatim transcript or recording of testimony and exhibits or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for a final decision by the hearing official.

(ii) A decision by the hearing official shall be binding on the State agency and shall summarize the facts of the case, specify the reasons for the decision and identify the supporting evidence and the pertinent FNS regulations. The decision shall become a part of the record.

(iii) The household shall be advised of the decision of the hearing official and of the right to pursue judicial review.

(12) *Agency conferences.* (1) The State agency shall offer agency conferences to households which request an immediate resolution by a higher authority of a denial of eligibility for food distribution benefits. The State agency may also offer agency conferences to households adversely affected by any agency action. The State agency shall advise households that use of an agency conference is optional and that such use shall in no way delay or replace the fair hearing process. The agency conferences may be attended by the eligibility worker responsible for the agency action, and shall be attended by an eligibility supevisor and/or the agency director, as well as the household and/or its representative. An agency conference may lead to an informal resolution of the dispute. However, a fair hearing must still be held if requested by the household.

(2) An agency conference for households requesting an immediate resolution by a higher authority of an eligibility issue shall be scheduled within four working days of the request unless the household requests that it be scheduled later or states that it does not wish to have an agency conference.

§ 283.8 Commodity control, storage and distribution.

(a) *Control and accountability.* The State agency shall be responsible for the issuance of commodities to households and the control of and accountability for the commodities upon its acceptance of the commodities at time and place of delivery.

(b) *Commodity inventories.* The State agency shall, in cooperation with the FNS Regional office, develop an appropriate procedure for determining and monitoring the level of commodity inventories at central commodity storage facilities and at each local distribution point. The State agency shall maintain the inventories at proper levels taking into consideration, among other factors, household preferences and the historical and projected volume of distribution at each site. The procedures shall provide that commodity inventories at each central storage facility and each local distribution point are not in excess, but are adequate for, an uninterrupted distribution of commodities.

(c) *Storage facilities and practices.* The State agency shall as a minimum ensure that:

(1) Adequate and appropriate storage facilities are maintained. The facilities shall be clean and neat and safe-guarded against theft, damage, insects, rodents and other pests.

(2) Department recommended dunnage, stacking and ventilation methods are followed.

(3) Commodities are stacked in a manner which facilitates an accurate inventory.

(4) Commodities are issued on a first-in, first-out basis.

(5) Commodities held in storage for a protracted period of time are reinspected prior to issuance.

(6) Out-of-condition commodities are disposed of in accordance with Department approved methods.

(7) Notification is provided to certified households of the location of distribution sites and days and hours of distribution.

(8) An adequate supply of commodities which are available from the Department is on hand at all distribution sites.

(9) Sufficient distribution sites, either stationary or mobile, are geographically located or routed in relation to population density of eligible households.

(10) Days and hours of distribution are sufficient for caseload size and convenience.

(11) Households are advised they may refuse any commodity not desired, even if the commodities are prepackaged by household size.

(12) Emergency issuance of commodities will be made to households certified for expedited service in accordance with the provisions of § 283.7(b)(9).

(13) Eligible households or authorized representatives are identified prior to the issuance of commodities.

(14) Authorized signatures are obtained for commodities issued and the issue date recorded.

(15) Posters are conspicuously displayed advising program participants to accept only those commodities, and in such quantities, as will be consumed by them.

(16) Complete and current records are kept of all commodities received, issued, transferred, and on hand and of any inventory overages, shortages, and losses.

(17) A list of commodities offered by the Department is displayed at distribution sites so that households may indicate preferences for future orders.

(d) *Distribution.* The State agency shall distribute commodities only to households eligible to receive them under this part. If the State agency uses any other agency, administration, bureau, service or similar organization to effect or assist in the certification of households or distribution of commodities, the State agency shall impose upon such organization responsibility for determining that households to whom commodities are distributed are eligible under this part. The State agency shall not delegate to any such organization its responsibilities to the Department for overall management and control of the Food Distribution Program.

(e) *Improper distribution or loss of or damage of commodities.* State agencies shall take action to obtain restitution in connection with claims arising in their favor for improper distribution, use or loss, or damage of commodities in accordance with the State agency's agreement with the Department under § 250.6(b) of part 250 of this chapter and the requirements of § 250.6(l) of this same chapter.

(f) *Damaged or out-of-condition commodities.* The State agency shall immediately notify the appropriate Food and Nutrition Service Regional Office (FNSRO) if any commodities are found to be damaged or out-of-condition at the time of arrival, or at any subsequent time, whether due to latent defects or any other reason. FNSRO shall advise the State agency of the appropriate action to be taken with regard to such commodities. If the commodities are declared unfit for human consumption in accordance with § 250.7 of Part 250 of this chapter, they shall be disposed of as provided for under that section. When out-of-condition commodities do not create a hazard to other food at the same location, they shall not be disposed of until FNSRO or the responsible commodity contractor approves. When circumstances require prior disposal of a commodity, the quantity and manner of disposition shall be reported to the appropriate FNSRO. If any damaged or out-of-condition commodities are inadvertently issued to a household and are rejected or returned by the household because the commodities were unsound at the time of issuance and not because the household failed to provide proper storage, care or handling, the State agency shall replace the damaged or out-of-condition commodities with the same or similar kind of commodities which are sound and in good condition. The State agency shall account for such replacements on its monthly inventory report.

§ 283.9 Administrative funds for State agencies.

(a) *Payments.* Within the limitation of funds available to carry out the provisions of this Part, FNS shall, beginning with fiscal year 1980, make available to each State agency 75 percent of approved administrative costs. Any approval for payment of funds in excess of 75 percent shall be based on compelling justification that such additional amounts are necessary for the effective operation of the Food Distribution Program on an Indian reservation. Compelling justification may include, but not be limited to, such factors as the need for a larger Federal contribution during a State agency's first year of operation of the program, and the need to assure that no State agency currently operating the program receives a level of funding that would cause a diminution of program services. Administrative costs must be included in annual or revised budget information submitted by the State agency to FNS for approval prior to the contribution of Federal funds. Administrative costs must be allowable under Part 277 of this Chapter.

(b) *Use of funds by State agencies.* Any funds received under this section shall be used for any costs which are allowable under Part 277 of this chapter and which are incurred in operating the Food Distribution Program for households on a reservation. The value of services rendered by volunteers, Part

277 notwithstanding, shall be allowable to meet the matching administrative costs requirements for the Food Distribution Program. In no event shall such funds be used to pay any portion of such expenses if reimbursement or payment therefor is claimed or made available from any other Federal source. State agencies shall also adhere to the provisions of Part 277 of this chapter, as apply to the Food Distribution Program, which establish:

(1) Uniform requirements for the adminstration of funds to State agencies; and

(2) Principles for determining costs applicable to activities assisted by the Food Stamp Program funds provided to State agencies. The provisions of Part 277 are generally adaptable to this section and the appropriate provisions shall be used in complying with paragraphs (b) and (f) of this section.

(c) *Application for funds.* (1) Any State agency administering an ongoing Food Distribution Program which desires to receive administrative funds under this section shall submit a Form AD–623, "Application for Federal Assistance," to the appropriate FNS Regional Office at least three months prior to the beginning of a Federal fiscal year; except that, for funds needed during fiscal year 1980, the application shall be submitted as soon as practicable, but no later than 60 days followed final publication of this part in the **Federal Register**. The budget information required in Part III of the application shall reflect by category of expenditure the State agency's best estimate of the total amount to be expended in the administration of the Food Distribution Program during a Federal fiscal year. FNS may require that detailed information be submitted by the State agency to support or explain the total estimated amounts shown for each cost budget category. Prior to submission by an agency of State government of the AD–623 to FNS, it shall be submitted to the State clearinghouse pursuant to Part I of OMB Circular A–95. ITO's which act as State agencies are encouraged to submit the AD–623 to the State clearinghouse.

(2) Approval of the application by FNS shall be a prerequisite to the payment of any funds to State agencies.

(d) *Availability of funds.* (1) FNS shall review and evaluate the budget information submitted by the State agency in relationship to the State agency's plan of operation and any other factors which may be relevant to FNS' determination as to whether the estimated expenditures itemized by budget category are reasonable and justified. FNS shall give written notification to the State agency of (i) its approval or disapproval of any or all of the itemized expenditures, (ii) the amount of funds which will be made available, and (iii) the period for which funds are available.

(2) FNS shall review and evaluate applications submitted by State agencies for administrative funds available under this section in the following order of priority and shall give preference in making payments of funds under this section in the same order of priority: (i) applications from State agencies which desire to continue a Food Distribution Program now in operation, (ii) applications from State agencies, in the order received, which FNS determines are immediately capable of effectively and efficiently administering the Program, and (iii) applications from other States agencies, in the order received.

(e) *Method of payment to State agencies.* (1) Payments are made to State agencies through a Letter of Credit or an advance by Treasury check. The Letter of Credit funding method shall be used by FNS except when the advances to be made within a 12 month period are estimated to be less than $120,000. However, FNS may, at its option, reimburse a State agency by Treasury check regardless of the amount in response to a valid claim submitted by the State agency.

(2) The Letter of Credit funding method shall be done in conjunction with Treasury Department procedures, Treasury Circular No. 1075 and through an appropriate Treasury Regional Disbursing Office (RDO). The Standard Form 183, "Request for Payment on Letter of Credit and Status of Funds Report," shall be correctly prepared and certified by a duly appointed official of the State for requesting payment from an RDO.

(3) The advance by Treasury check method shall be done by use of the Standard Form 270, "Request for Advance or Reimbursement," and procedures associated with its use. State agencies receiving payments under this method may request payments before cash outlays are made.

(4) Any State agency receiving payment under the Letter of Credit method or the advance by Treasury check method shall have in place and in operation, a financial management system which meets the standards for fund control and accountability prescribed in Part 277 of this chapter, as amended. The State agency shall demonstrate on a continuing basis its willingness and ability to have and to function within procedures that will minimize the time lapse between the transfer of funds and its disbursement to meet obligations. For any State agency which does not meet the requirement of this paragraph, the reimbursement by Treasury check method shall be the preferred method for FNS to make payments to that State agency.

(f) *Accounting for funds.* Each State agency which receives administrative funds under this section shall establish and maintain an effective system of fiscal control and accounting procedures. Expenditures and accountability of such funds shall be in accordance with the appropriate provisions of Part 277. The accounting procedures maintained by the State agency shall be such as to accurately reflect the receipt, expenditure and current balance of funds provided by FNS and to facilitate the prompt preparation of reports required by FNS. The accounting procedures shall also provide for segregation of costs specifically identifiable to the Food Distribution Program from any other costs incurred by the State agency. Any budget revisions by a State agency which require the transfer of funds from an approved cost category to another shall be in accordance with the budget revision procedures set forth in OMB Circular No. A–102, Attachment K, and shall be approved by FNS prior to any transfer of funds.

(g) *Return, reduction, and reallocation of funds.* (1) FNS may require State agencies to return prior to the end of the fiscal year any or all unobligated funds received under this section, and may reduce the amount it has apportioned or agreed to pay to any State agency if FNS determines that:

(i) The State agency is not administering the Food Distribution Program in accordance with its plan of operation approved by FNS and the provisions of this part, or

(ii) The amount of funds which the State agency requested from FNS is in excess of actual need, based on reports of expenditures and current projections of Program needs.

(iii) Circumstances or conditions justify the return reallocation or transfer of funds to accomplish the purpose of this part.

(2) The State agency shall return to FNS within 90 days following the close of each Federal fiscal year any funds received under this section which are unobligated at that time.

(h) *Records, reports, audits.* (1) The State agency shall:

(i) Keep such accounts and records as may be necessary to enable FNS to

determine whether there has been compliance with this section, and

(ii) Adhere to the retention and custodial requirements for records set forth in § 277.4 of this chapter.

(2) The State agency receiving funds either through a Treasury RDO Letter of Credit system or Treasury check shall submit quarterly reports to FNS on Form SF–269, "Financial Status Report," by the 30th day after close of the reporting quarter and shall submit such other reports as may be required by FNS.

(3) The State agency receiving funds other than through a Treasury RDO Letter of Credit system shall submit quarterly reports to FNS on Form SF–272, "Federal Cash Transactions Report," within 30 days after the end of the reporting quarter.

(4) The appropriate provisions of Part 277 are adaptable to this section for additional guidance.

Note.—The Food and Nutrition Service has determined that this document contains a major proposal requiring preparation of an impact analysis statement and certifies that an impact analysis statement has been prepared. A copy may be obtained from Acting Deputy Administrator, Alberta Frost.

(Catalog of Federal Domestic Assistance Programs No. 10.551, Food Stamps.)

The Indian Tribal Organization application for a Food Distribution Program for households and other recordkeeping and reporting requirements have been submitted to OMB for approval under the Federal Reports Act of 1942.

Dated: June 13, 1979.

Carol Tucker Foreman,

Assistant Secretary.

[FR Doc. 79–18930 Filed 6–18–79; 8:45 am]

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Federal Register

Tuesday
June 19, 1979

Part IV

Department of Health, Education, and Welfare

National Institutes of Health

Request for Nominations for Members of NIH National Advisory Councils and Boards

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health

Request for Nominations for Members of NIH National Advisory Councils and Boards

The National Institutes of Health (NIH), the medical research arm of the Department of Health, Education and Welfare (HEW), invites nominations for membership on national advisory councils and boards.[1] Each of the NIH bureaus, institutes and divisions (BIDs) awarding grants has a national advisory council whose members generally are leaders in the fundamental sciences, medical sciences, education, or public affairs. Section 301 of the Public Health Service (PHS) Act (42 U.S.C. 241), the basic authority under which NIH research project grants are made, provides that no grant may be awarded unless it has been recommended for funding by the appropriate national advisory council.

The councils review and evaluate program accomplishments and help to identify and resolve problems in program planning and development. They provide guidance to the programs of the BIDs in the context of national health needs as part of their statutory responsibilities to "advise, consult with, and make recommendations to" the Secretary, HEW, on "matters relating to health activities . . ." The councils also consider the impact of BID decisions on grantee institutions. With increasing frequency, the councils are also asked to review the concept of new initiatives before solicitation of grant applications, Request for Applications (RFA), or contract proposals, Request for Proposals (RFP). Also the councils provide final review for merit and program relevance of all applications for research grants, Institutional National Research Service Awards, and other grant applications that require such approval under the PHS Act.

Information about the functions of each national advisory council, the expertise required, and the number of anticipated vacancies for terms generally beginning November 1, 1980, will be found in the listing which follows. Nominations must be submitted by August 1, 1979, and will be solicited annually thereafter.

Any person may nominate one or more candidates for consideration on one or more specific councils. Self nominations are accepted. NIH/HEW have a special interest in assuring that women, ethnic minorities and the handicapped are adequately represented on advisory councils and particularly encourage their nominations.

All nominations will receive careful consideration; however, appointment authority resides with the Secretary, HEW.

Description of the Peer Review System

The NIH peer review system is based upon two sequential levels of review, referred to as the "dual review system." Both levels have statutory bases. The first level of review is performed by scientific review groups which are established, in general, along lines of scientific disciplines and consist of experts in relevant research fields. The scientific review groups managed by the Division of Research Grants are referred to as Study Sections. The Study Sections consist of 12 to 20 scientific members each and have as their primary function the review and evaluation for scientific merit of research grant applications.

Other scientific review groups are managed by the BIDs and have diverse review responsibilities, such as multidisciplinary research requests and a variety of other specialized proposals, including research contract proposals.

The second level of review for research grant applications is performed by a national advisory council for each BID which supports extramural research. These groups are comprised of both scientists and non-scientists and have broader responsibilities. The mix of members adds to the grant review and selection process relevant programmatic and policy considerations. The councils also offer advice and make recommendations on public policy and matters of significance to the mission and goals of the BIDs they serve.

Responsibilities of Advisory Councils and Their Members

Each advisory council is composed primarily of non-Federal scientists and public members selected for their competence, interest, and knowledge in the missions of the specific BID involved. Council members review BID program objectives, priorities, balance and accomplishments. They also may make recommendations on factors related to resource allocation, program management and administration. Council members provide assurance of NIH responsiveness to public needs as well as NIH support to high quality biomedical research. Usually a minimum of three meetings are held yearly. Each meeting generally requires two or three days of intensive review of research proposals, policy matters, and program review. At least two weeks before each meeting date, the BID staff sends out material on each grant application, agenda items, and reports to be reviewed. Council members are expected to read and be prepared to contribute to the discussion on all applications and to identify those needing special attention. Specific assignments are made in advance of the meeting so that designated council members can lead the discussion on various matters related to the deliberations and recommendations to be formulated at the meeting.

Occasionally members also participate in project site visits when additional information or personal discussion with the applicant institution and investigators are deemed necessary for the council to reach a definitive recommendation. A BID may convene special council meetings in addition to the minimum of three each year to deal with special reports, new initiatives for the future, and to advise further on public issues related to biomedical research. Furthermore, certain councils are madated by law to submit annual reports to the Congress on the needs, progress, and achievements of the BID. Members generally serve terms not to exceed four years.

Criteria for Selection of Council Members

The PHS Act directs the Secretary, HEW, to appoint members to NIH advisory councils in accordance with the requirements set forth by the enabling legislation.* These requirements are designed to assist in the selection and appointment of individuals who are knowledgeable in the programmatic areas of the BID mission, familiar with NIH procedures, aware of the roles of diverse institutions in biomedical research, and mindful of the health needs of the American people. To provide this range of expertise, each council consists of both scientific and public members. Ex-officio members from other agencies are appointed as required by law or for administrative reasons.

Criteria for Selection of Scientific Members

Individuals selected as scientific members are chosen from among those recognized as outstanding leaders and experts in their research fields and considered to have a broad interest in, and understanding of, the relationship of biomedical science to societal needs. Individuals who are regarded as senior scientists are viewed as particularly desirable members because they bring to such deliberative bodies a wealth of experience and perspective gained from scientific research and training. It is expected that council members have made significant research contributions in a field relevant to the mission of the BID and are recognized also for other scientific accomplishments. Scientific members should have an awareness of the standards of scientific merit and of the review criteria utilized by the NIH peer review system. In addition to scientific accomplishment, mature judgment, balanced perspective, and objectivity are essential.

Criteria for Selection of Public Members

Individuals selected as public members are leaders in such fields as eduction, law, social sciences, public health, or public and community affairs, and must have a demonstrated interest in, and background relevant to, the needs of society in the areas of the mission of the BID. Public members constitute approximately one third of each council.

Other Considerations for Membership

Within a given council, representation of scientific disciplines or medical research specialties must permit the attainment and maintenance of a proper balance of expertise to cover the range of the mission and goals of the BID. In addition, such factors as geographic distribution and adequate representation of minority, female and handicapped candidates must be considered.

No two members of the council are appointed from the same institution or organization. With rare exceptions, no member may serve concurrently on more than one HEW advisory group.

Within these criteria, guidelines, and conditions, the practice is to make selections for advisory service from the widest available pool of qualified candidates.

Nomination Procedures

Recommendations for membership originate with the BID staff who draw on personal knowledge of the disciplines and of the scientists who have made significant research contributions and are regarded as senior scientific statesmen. Recommendations from other NIH staff and current and former members are also considered. Responses to this announcement will constitute an important new source of potential members for BID staff to consider.

Approximately twenty-five percent of the positions become vacant each year. The general procedure is for NIH to nominate one principal and one alternate candidate for each vacancy on an advisory council. Final appointment is made by the Secretary who issues the invitation letter. The PHS Act directs the Secretary to appoint members to advisory councils in accordance with the requirements set forth by each of the sections of the act which apply to the particular council.

How to Respond to the Announcement

This announcement invites nominations to fill vacancies on NIH advisory councils for terms beginning November 1, 1980. The missions of the various BIDs listed below apply to the entire council and are not limited to current vacancies.

Nominations must be received by August 1, 1979. Please submit a mailing address with the name of each nominee so that the nominee may be contacted to provide more detailed information. Specify the council on which you feel the nominee is qualified to serve. An individual may be nominated for more than one council. To be considered, the nomination should include a statement that the nominee is aware of the nomination and is willing to serve.

In addition to the council for which a nominee is proposed, he/she may be considered by the NIH for other consultant activities. Prior to appointment candidates will be asked by the NIH to provide detailed information concerning financial holdings and consultancies to identify any possible conflicts of interest.

Address nominations to: Joan T. Bailey, DRA—Nominations, Office of the Director, National Institutes of Health, Room 1B58, Building 31, Bethesda, Maryland 20205.

NIH National Advisory Councils and Boards

National Advisory Council on Aging

Number of anticipated vacancies: 3.

Functions: Advises and makes recommendations on programs relating to aging and the elderly. Reviews applications for research projects on the aging process and the diseases and other special problems and needs of the aged.

Structure: Consists of twelve public and professional members, seven of whom are leading medical or scientific authorities skilled in aspects of the basic biological, biomedical, social, and the behavioral sciences related to aging.

National Advisory Allergy and Infectious Diseases Council

Number of anticipated vacancies: 1.

Functions: Advises and assists the Director in development of policy and program; undertakes specific studies to determine national needs; and makes recommendations on matters related to program in the areas of allergy and other immunological diseases, infectious diseases, and the basic disciplinary areas of research related to these health problems. Provides final review of research and training grant applications in these fields of research.

Structure: Consists of fifteen members, ten of whom are leading medical or scientific authorities outstanding in the study, diagnosis, or treatment of allergy, immunology, and infectious diseases.

National Arthritis, Metabolism, and Digestive Diseases Advisory Council

Number of anticipated vacancies: 3.

Functions: Reviews applications for research projects in arthritis, rheumatism, metabolism, diabetes, and digestive diseases. There is within the council a Digestive Diseases Committee which specifically reviews applications for projects relating to digestive diseases and nutrition.

Structure: Consists of eighteen members, at least fourteen of whom are leading medical or scientific authorities outstanding in the study, diagnosis, treatment or prevention of arthritis, bone and skin diseases, diabetes, endocrinology, metabolism, digestive diseases, nutrition, kidney, urologic and blood diseases.

National Advisory Child Health and Human Development Council

Number of anticipated vacancies: 6.

*Members of the National Cancer Advisory Board are appointed for six year terms by the President.

Functions: Reviews applications for research projects in the fields of maternal health, child health and human development. Advises on matters relating to maternal health, child health and human development.

Structure: Consists of fourteen members, nine of whom are leading medical or scientific authorities outstanding in the fields of research or training related to the biological and behavioral facets of maternal health, child health and human development.

National Advisory Dental Research Council

Number of anticipated vacancies: 3.

Functions: Reviews applications for research projects in the field of dental and oral diseases and conditions. Advises on matters relating to programs and activities in this area.

Structure: Consists of twelve members, six of whom are leading dental, medical or scientific authorities outstanding in the study, diagnosis, or treatment of dental diseases and conditions; at least four of the six are dentists.

National Advisory Environmental Health Sciences Council

Number of anticipated vacancies: 4.

Functions: Reviews applications for research projects and for grants and awards for research and training activities in the environmental health sciences. Advises on matters relating to programs and activities in the area of environmental health sciences.

Structure: Consists of fifteen members, eleven of whom are leading medical authorities, trained in toxicology, pharmacology, pathology, biochemistry, etc., knowledgeable in environmental health sciences, with special interest and understanding in how environmental contaminants (toxicants) adversely affect human health.

National Advisory Eye Council

Number of anticipated vacancies: 3.

Functions: Reviews applications for research projects in the field of eye disease and the visual system. Develops reports on vision research program planning to guide the national effort toward better understanding of the cause, prevention, and treatment of visual system disorders. Reviews research contract projects prior to solicitation of proposals from the scientific community. Makes recommendations on matters relating to diagnosis, prevention, and treatment of visual disorders, and to the mechanism of sight and visual function.

Structure: Consists of twelve members, eight of whom are leading medical or scientific authorities outstanding in the study, diagnosis, or treatment of blinding eye diseases and visual disorders. Some scientific areas represented on the Council include clinical ophthalmology and research, ophthalmic optics, immunology, physiology, biochemistry, optometry, psychophysics, and microbiology. Also included on the Council are members whose prime interest in eye care service.

National Advisory General Medical Sciences Council

Number of anticipated vacancies: 3.

Functions: Reviews applications for research projects and grants and awards for research and research training activities in the basic biomedical fields of cellular biology, molecular biology, biochemistry, genetics, pharmacology and physiology and biomedical engineering as well as in certain clinical sciences related to research in medical genetics, clinical pharmacology, anesthesiology and the mechanisms underlying response to trauma and burn injury. Advises on matters relating to general or basic medical sciences, particularly as outlined above.

Structure: Consists of twelve members, six of whom are leading medical or scientific authorities outstanding in cellular and molecular biology, genetics, pharmacology and clinical pharmacology, physiology, biomedical engineering, and related clinical areas such as anesthesiology and trauma burn studies.

National Heart, Lung, and Blood Advisory Council

Number of anticipated vacancies: 5.

Functions: Reviews applications for research and research training in heart, blood vessel, lung, and blood diseases and blood resources. Advises regarding the National Heart, Blood Vessel, Lung, and Blood Diseases Program. Submits report annually on the progress of the Program toward the accomplishment of its objectives. Recommends areas of research to be supported by contracts. Advises on establishment of prevention and control programs and on national research and demonstration centers for these diseases.

Structure: Consists of eighteen members, eleven of whom are selected from among leading medical or scientific authorities who are skilled in the sciences related to diseases of the heart, blood vessels, lungs, and blood; two members are selected from persons enrolled in residency programs providing training in heart, blood vessel, lung, or blood diseases; and five members are from the general public.

National Advisory Neurological and Communicative Disorders and Stroke Council

Number of anticipated vacancies: 4.

Functions: Reviews applications for research projects for grants and awards for research and training activities in the fields of neurological and communicative disorders and stroke. Advises on matters relating to programs and activities in these fields.

Structure: Consists of sixteen members, twelve of whom are leading medical or scientific authorities outstanding in the study, diagnosis, or treatment of neurological and communicative disorders and stroke.

National Advisory Research Resources Council

Number of anticipated vacancies: 4.

Functions: Advises concerning the Animal Resources, General Clinical Research Centers, Biotechnology Resources, Minority Biomedical Support, Biomedical Research Support, and Biomedical Research Development Programs. Reviews applications for research in these programs. Advises on the establishment and maintenance of ongoing evaluation studies and reports concerning any one or all of the above programs.

Structure: Consists of eighteen members, twelve of whom are leading medical or scientific authorities outstanding in the fields of research and/or research administration related to the programs of the Division of Research Resources. Scientific disciplines/expertise are required in the areas of clinical investigation, biomedical engineering, veterinary medicine, pathology, physiology, biochemistry, internal medicine, biophysics, biomedical communications, pediatrics, and research administration. Six members are from the lay community, with expertise in program planning administration, management, and public information.

Board of Regents of the National Library of Medicine

(Terms for this Board begin on August 4, 1980.)

Number of anticipated vacancies: 3.

Functions: Advises on important matters of policy for the Library, including the acquisition of materials, the scope, content, and organization of the Library's services, and the rules under which its materials, publications, facilities, and services shall be made available to various kinds of users. The Board performs a final review of proposals for support.

Structure: Consists of ten members selected from among leaders in the various fields of the fundamental sciences, medicine, dentistry, public health, hospital administration, pharmacology, or scientific or medical library work, or public affairs. At least six are selected from among leaders in the fields of medical, dental, or public health research or education.

National Cancer Advisory Board

(Six-year terms for this Board begin on March 9, 1980.)

Number of anticipated vacancies: 6.

Functions: Reviews applications for grants-in-aid relating to cancer research. Advises and assists the Director, National Cancer Institute, with respect to the National Cancer Program.

Structure: Eighteen members appointed by the President. Not more than twelve of the appointed members shall be scientists or physicians and not more than eight of the appointed members shall be representatives from the general public and not less than five of the appointed members shall be individuals knowledgeable in environmental carcinogenesis (including carcinogenesis, involving occupational and dietary factors). The scientists and physicians appointed to the Board shall be appointed from among persons who are among the leading scientific or medical authorities outstanding in the study, diagnosis, or treatment of cancer or in fields related thereto and at least two of the physicians appointed to the Board shall be physicians primarily involved in treating individuals who have cancer. Each appointed member of the Board shall be appointed from among persons who by virtue of their training, experience, and background are

especially qualified to appraise the programs of the Institute. The above announcement was published as an issue of the *NIH Guide for Grants and Contracts, Volume 8, No. 8,* May 4, 1979. Those who do not routinely receive the *Guide* may obtain a copy of this issue by writing to Ms. Joan Bailey, Division of Resources Analysis, Office of the Director, National Institutes of Health, Building 31, Room 1B58, Bethesda, Maryland 20205. The availability of this issue of the *Guide* also was noticed in *Science,* Volume 204, June 15, 1979, and the *Chronicle of Higher Education,* Volume 18, No. 14, May 28, 1979.

Dated: June 5, 1979.

Donald S. Fredrickson, M.D.,

Director, National Institutes of Health.

[FR Doc. 79-18880 Filed 6-18-79; 8:45 am]

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Federal Register

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Part V

Environmental Protection Agency

Review of Standards of Performance for New Stationary Sources: Secondary Brass and Bronze Ingot Production

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ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 60]

[FRL-1231-1]

Review of Standards of Performance for New Stationary Sources: Secondary Brass and Bronze Ingot Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Review of Standards.

SUMMARY: EPA has reviewed the standard of performance for secondary brass and bronze ingot production plants (40 CFR 60. 130, Subpart M). The review is required under the Clean Air Act, as amended August.1977. The purpose of this notice is to announce EPA's intent not to undertake revision of the standards at this time.

DATES: Comments must be received on or before August 20, 1979.

ADDRESSES: Comments should be sent to the Central Docket Section (A-130). U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, Attention: Docket No. A-79-10. The Document "A Review of Standards of Performance for New Stationary Sources—Secondary Brass and Bronze Plat Plants" (EPA-450/3-79-011) is available upon request from Mr. Robert Ajax (MD-13), Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Ajax, telephone: (919) 541-5271.

SUPPLEMENTARY INFORMATION:

Background

In June of 1973, the EPA proposed a standard under Section 111 of the Clean Air Act to control particulate matter emissions from secondary brass and bronze ingot production plants (40 CFR 60.230, Subpart M). The standard, promulgated in March 1974, limits the discharge of any gases into the atmosphere from a reverberatory furnace which;

1. Contain particulate matter in excess of 50 mg/dscm (0.022 gr/dscf).

2. Exhibit 20 percent opacity or greater.

In addition, any blast (cupola) or electric furnace may not emit any gases which exhibit 10 percent opacity or greater.

The Clean Air Act Amendments of 1977 require that the Administrator of the EPA review and, if appropriate, revise established standards of performance for new stationary sources at least every 4 years [Section 111(b)(1)(B)]. This notice announces that EPA has completed a review of the standard of performance for secondary brass and bronze ingot production plants and invites comment on the results of this review.

Findings

Industry Statistics

In 1968, there were approximately 60 brass and bronze ingot production facilities in the United States. Currently, only 35 facilities are operational, and only one facility has become operational since the promulgation of the NSPS in 1974. No new facilities or modifications are know to be currently planned or under construction.

Ingot production has shown a steady decline from the 1966 peak year production of 315,000 Mg (347,000 tons) to a low of 160,000 Mg (166,000 tons) in 1975, the last year for which nationwide statistics were published. The decline has been caused by a decline in the demand for products made with brass or bronze and large scale substitution of other materials or technologies for the previously used brass or bronze. No information has been reported which would indicate a reversal of the decline in brass and bronze ingot production or in the number of operating plants.

Emissions and Control Technology

The current best demonstrated control technology, the fabric filter, is the same as when the standards were originally promulgated. No major improvements in this technology have occurred during the intervening period.

High-pressure drop venturi scrubbers are used, to some extent, in the brass and bronze industry, but their overall control efficiency is lower than that of fabric filters. Electrostatic precipitators have not been used in the industry due to both the low gas flow rates and high resistivity of metallic fumes.

Only one facility has become subject to the standard since its original promulgation. This facility was tested in February 1978. The average test result of 16.9 milligrams/dry standard cubic meters (mg/dscm), or 0.0074 grains/dry standard cubic feet (gr/dscf), is lower than most of the test data used for justification of the current standard of 50 mg/dscm (0.022 gr/dscf), but this single test is not considered sufficient to draw any overall conclusion about improved control technology.

Fugitive emissions continue to be a problem in the brass and bronze industry. In most cases, these emissions are very difficult to capture and equally difficult to measure during testing. It was primarily for the former reason that the current particulate standard does not apply during pouring of the ingots. This overall situation has not changed in that only complete enclosure of the furnace can result in full control of fugitive emissions. However, information is available indicating that there may be additives capable of reducing fugitive emissions during pouring. Also, improved control of fugitive emissions may be possible through improved hood design.

Conclusions

Based on the above findings, EPA concludes that the existing standard of performance is appropriate and no revision is needed. While extension of the standard to include fugitive emissions would be possible, the lack of anticipated growth in the industry does not justify such action.

PUBLIC PARTICIPATION: All interested persons are invited to comment on this review and the conclusions.

Dated: June 12, 1979.

Douglas M. Costle,

Administrator.

[FR Doc. 79-18003 Filed 6-18-79; 8:45 am]

BILLING CODE 6560-01-M

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Tuesday
June 19, 1979

Federal Register

Part VI

Department of Justice

Bureau of Prisons

Control, Custody, Treatment, and Instruction of Inmates

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 540

Control, Custody, Care, Treatment, and Instruction of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rules.

SUMMARY: This document contains interim final rules relating to correspondence. This document is intended to give the public notice of the rules in this area, not just changes from prior policy.

DATES: Effective Date: July 1, 1979 and until final rules are issued. Comment Date: Written comments will be considered if received on or before October 1, 1979.

ADDRESS: Send written comments to the Office of General Counsel, Bureau of Prisons, Room 910, 320 1st Street, NW., Washington, D.C. 20534.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724-3062.

SUPPLEMENTAL INFORMATION: On May 23, 1977, the Bureau of Prisons published its proposed rules [at 42 FR 26335 et seq.] relating to correspondence. Interested persons were invited to submit comments on the proposed rules. On the basis of comments received and staff review, some changes have been made.

The interim rules provide an inmate with postage sufficient to mail five pieces of first-class domestic mail each month. This clarifies a provision allowing a "reasonable number of letters". It places a specific limit on regular mail, to avoid abuses in volume by a small number of inmates, at taxpayers' expense. Provisions are available for the mailing at government expense of legal mail or administrative remedy appeals, or in verified emergency situations, when the inmate is without funds or sufficient postage. Additional letters may be mailed provided the inmate pays the postage. This revision allows what one commenter calls an inmate's "* * * First Amendment right to mail as many letters as he or she desires if he or she pays the postage".

On July 17, 1978, the Bureau of Prisons published its proposed rules [at 43 FR 30573] relating to Change of Address and Forwarding of Mail for Inmates. Interested persons were invited to submit comments on the proposed rules. On the basis of comments and staff review, changes have been made. Of special note is the inclusion of Change of Address and Forwarding of Mail for Inmates within the scope of the rules on correspondence. This change recognizes Change of Address and Forwarding of Mail as an appropriate component of correspondence.

Many of the changes in the final rules on correspondence are of a minor, technical nature. Significant changes were suggested by comments on the proposed rules. Changes in the rules either clarify prior rule language, relieve restrictions in those rules, or state policy of longstanding application. Correspondence is recognized to be a highly desirable means for many inmates to maintain contact with those in the outside community. The rule content has been very carefully reviewed by staff. Further assessment of the correspondence rules will be conducted in the fall of this year. Comments of the public are invited and will be considered during that assessment.

PART 540—SUBPART A—GENERAL

Summary of Changes

Section 540.2(a) deletes reference to "mail sent through the prisoner's mail box" (PMB), since the Bureau's revised procedure eliminates the need for a PMB in all institutions. The new rule recognizes packages sent through the mail as general correspondence. Proposed §§ 540.2 (b) and (c) become respectively subpart (2) and (1) of § 540.2(a). An amended cross reference to § 540.16 is included in § 540.2(a)(1).

Proposed § 540.2(d), "PMB", is deleted. Proposed § 540.2(e) becomes final § 540.2(c) and is retitled "Special Mail". Agencies within the Department of Justice, specifically listed in the former rules, are now encompassed within the scope of the term "U.S. Department of Justice". Additional persons to whom the inmate may send special mail are "other law enforcement officers" and "attorneys".

A second paragraph is added to § 540.2(c). The contents encompass former § 540.2(g), now deleted, and list incoming correspondence which the Bureau recognizes as special mail. The new rule adds correspondence from "other Federal law enforcement officers" and "President and Vice President of the U.S." as special mail and specifically deletes the Bureau of Prisons from this recognition. This exclusion is made to avoid adding unnecessarily to staff time spent in processing mail. As a result of the aforementioned changes, former § 540.2(f), "Representatives of the News Media", becomes a new § 540.2(b).

PART 540—SUBPART B—CORRESPONDENCE

Summary of Changes

1. Section 540.10—This section was amended to state that regulations in this subpart supplement regulations, generally applicable to mail, issued by the U.S. Postal Service. The word "rehabilitative" is deleted from the new language as the phrase "socially useful goals" is seen as encompassing our intent.

2. Section 540.11—The term "individuals" is substituted for "inmates" in § 540.11(a), since correspondence regulations may affect persons in addition to the inmate. The new rule also incorporates the Bureau's establishment of a security level for each institution and recognizes this as a factor in the issuance of correspondence procedures for the institution. The rule requires the Warden to establish open general correspondence regulations. The final rule deletes that section of the proposed rule pertaining to the Warden's authority to impose restricted general correspondence on an institution without special procedures. There was no perceived need for this provision.

Section 540.11(b) now requires that the inmate be informed of the institution's rules for handling of inmate mail "promptly" after arrival at the institution; the change was made to emphasize the priority attached to this aspect. The notice contained in § 540.11(b) is amended to specify that, if the inmate elects not to receive his general correspondence, the correspondence is returned to the Postal Service, as opposed to the sender. The notice identifies that which is considered special mail, as specified in the second paragraph of final § 540.2(c). Another change in the notice specifies that, when an inmate refuses to sign the form, staff shall advise the inmate that the refusal shall have the same effect as if the inmate had requested his or her correspondence be returned to the Postal Service.

Section 540.11(c) substitutes the more expensive phrase "federal laws" for U.S. Postal Regulations. § 540.11(d) is new and requires that the inmate place his or her name on each outgoing envelope.

3. Section 540.12—§ 540.12, "Notificaton of Rejections" is new and contains notification procedures applicable to all rejected correspondence. Deleted from the final rules are proposed § 540.20 which

discussed "exception to notification procedures" and those parts of proposed §§ 540.18(c) and 540.19(c) which discussed rejection of correspondence.

4. Section 540.13—This section was proposed § 540.12. Proposed §§ 540.12 (a) and (b) have been deleted, since the Bureau now provides an inmate with five free postage stamps or the equivalent each month, with additional postage purchased by the inmate. Former subsections (c) and (d) become new subsections (a) and (b). § 540.13(b) is limited to incoming general correspondence. Deleted from the proposed rule is the phrase which allowed incoming mail to be read to "alert the staff to any matter that may help in evaluating the inmate's progress". Subsections 540.13 (c) and (d) are new and discuss outgoing general correspondence in relation to the security level of the institution. Subsection 540.13(e)(1) expands the proposed rule (§ 540.12(e)(1)) by specifying that the Warden may reject correspondence if it contains matter which is nonmailable under law or postal regulations. Subsection (e)(3) is amended to include a cross-reference to § 541.11(d). Subsections (e)(4) through (e)(6) are added as these provisions reflect current Bureau policy and a need for protection of the public and of institutional security. Former subsection (f), which required outgoing correspondence to be written in English, is deleted.

5. Section 540.14—This section was proposed § 540.13. Former subsections (a) and (b) become new subsections (b) and (a) respectively. New § 540.14(a) is amended in several ways. In subsection (a)(1) the cross reference is now § 540.13(e). Proposed § 540.13(b)(2) is deleted as no limit exists on the number of letters mailed by an inmate. Abuse of the mailing privilege, when an inmate was provided unlimited free mailing privilege, was regulated by the proposed requirement as to mailing "an excessive number of letters". Several commenters objected to "excessive number" as being too vague. As noted, a commenter suggested that this presented a First Amendment problem, discouraging voluminous correspondence. The commenter further suggested that this would not be a problem, if an inmate could purchase postage. These rules have been revised to accommodate that suggestion. In this way, a balance is achieved between (1) reasonable limits on the use of public monies for inmate mail, (2) an opportunity for all inmates to have some correspondence even if they lack funds, and (3) an opportunity for the inmate with minimal funds to purchase the postage he wants, to mail any volume of letters. Proposed subsections (b)(3) through (b)(8) are renumbered (a)(2) through (a)(7). § 540.14(c) deletes references to the inmate in admission and orientation and holdover status and to the whole institution being placed on restricted general correspondence. Inmates in admission and orientation now fall within the purview of the same correspondence rules as the general population. Correspondence procedures for inmates in holdover status are described in § 540.15. Reference to the whole institution being placed on restricted correspondence is deleted as there is no perceived need for this provision. Subsections (c)(1) and (c)(2) substitute the word "incident" for "misconduct" to reflect the proper title of the report. A cross-reference in subsection (d) is amended to read §§ 540.15 and 540.16. Subsection (d)(1) is expanded to include siblings as individuals with whom the individual may correspond. This subsection also discusses restrictions on correspondence. Subsection (d)(2) requires prior approval for an inmate to write a proposed correspondent to obtain a release authorizing an investigation. The new rule deletes reference to the investigation being conducted, as this statement adds no new information to the rule. Subsection (d)(3) deletes language pertaining to correspondence with friends, including the provision that the inmate and correspondent have known each other prior to confinement. Correspondence with friends is encompassed within final § 540.14(d)(2). New subsection (d)(3) revises the proposed language to specify threat to the security or good order of the institution or reasonable expectation of criminal activity as a basis for disapproval of an inmate's correspondence with a former business associate. Former subsection (d)(4) is deleted as new § 540.16 discusses Bureau procedure in respect to correspondence between confined inmates.

6. Section 540.15—This section was proposed § 540.14. Proposed subsection (a) is deleted as inmates in admission and orientation status are now recognized as falling within the purview of the general rule on correspondence. "Admission and orientation" is also deleted from the title of § 540.15. Proposed subsection (b) becomes new subsection (a) and is amended to include a definition of the term "holdover". Proposed subsection (c) becomes new subsection (b) and the cross-reference within this section is changed to read § 540.14.

7. Section 540.16—This section was proposed § 540.15. It amends the proposed rule in several ways. The new rule authorizes inmate-to-inmate correspondence with members of the immediate family as opposed to the term "close relatives" specified in the proposed rule. The new language refers to factors that the Warden is to consider prior to approving inmate-to-inmate correspondence in circumstances other than those specifically referred to in the rule. Deleted from the final rule are those portions of proposed subsection (b)(3) which required a relationship between the confined inmates prior to commitment and an acknowledgement that the relationship is beneficial. The new rule specifies that the Wardens of both institutions must approve the correspondence and that correspondence between confined inmates may not be sealed and is subject to inspection and reading by staff at both the sending and receiving institution.

8. Proposed § 540.16, "Prisoner's Mail Box (PMB)", is deleted as Bureau institutions no longer have a PMB.

9. Section 540.17—This section is retitled "Special Mail" to encompass both incoming and outgoing correspondence. Subsection (a) expands the former language to state that incoming special mail is inspected for physical contraband and for the qualification of enclosures as special mail. The new rule states that the correspondence may not be read or copied if the sender has provided adequate identification on the envelope as specified in the rule. Subsections (c) and (d) are new and provide for outgoing special mail to be sealed by the inmate. The rule also requires outgoing special mail to contain a statement (stamped on the back of the envelope) as to the nature of special mail and procedures to follow in the event the recipient wishes further information or clarification on the contents of the letter or in the event that the letter contains an enclosure for forwarding to another addressee.

10. Section 540.18—Proposed subsection (a) is deleted as its provisions are encompassed within new § 540.17. Former subsection (b) becomes new subsection (a). Former subsection (c) becomes new subsection (b) and is revised to state that the inmate is responsible for advising his attorney that the attorney's correspondence is handled as special mail only if marked as specified within the rule. The new rule includes a cross-reference to

§ 540.17. Reference in the former rule to staff attaching a statement to an inmate's correspondence with the attorney and to disposition of any contraband that may be found in an attorney-to-inmate correspondence is deleted. Former subsection (d) becomes new subsection (c) and amends the cross-reference to read Part 543, Subpart B. A new subsection (d) is added and discusses procedures for an inmate to send mail to an attorney's assistant or to a legal aid student or assistant. Subsection (e) amends the cross-reference within the rule to refer to "paragraph (b) of this section".

11. Section 540.19—Subsection (a) substitutes the term "Special Mail" for "PMB". Subsection (c) amends the former rule by requiring staff to inspect incoming correspondence from representatives of the news media for its qualification as media correspondence. Reference in the former rule to rejection of correspondence from the news media is deleted as this aspect is encompassed within the general context of new § 540.12.

12. Sections 540.20 and 540.21 are new. Section 540.20, "Payment of Postage" authorizes each inmate to receive five postage stamps or the equivalent each month, sufficient to mail five pieces of first class domestic mail. Additional postage charges are borne by the inmate. The rule discusses provisions for the purchase of postage, the conditions under which mail is sent at the government's expense when an inmate is without funds or sufficient postage, and the Bureau's rule when mail is received with postage due. Implementation of this rule recognizes the inmate's right to mail as many letters as he or she wishes, provided the inmate pays the postage. The rule will reduce the significant financial expense incurred by the Bureau paying all postage charges, without placing the total burden on the inmate.

Section 540.21, "Returned Mail", discusses Bureau procedure when undelivered mail is returned to the institution by the Postal Service. It provides for the mail to be inspected by institution staff for contraband prior to its return to the inmate. Special mail which is returned undelivered is opened and inspected for contraband in the presence of the inmate.

13. Section 540.22—This section was originally published in the Federal Register July 17, 1978 (at 43 FR 30576) as Part 540, Subpart G, proposed §§ 540.80–81. As the subject matter relates to mail, it is being included within the rules on correspondence. Several changes have been made in the former rules. Proposed § 540.80 is deleted. Former § 540.81(a) becomes new § 540.22(b) and now states that mail is forwarded in accordance with postal regulations for a period of 90 days, as opposed to 180 days in the proposed rule, after the inmate's release or transfer. 90 days is believed sufficient time for an inmate to notify his or her correspondents of a change in address. The Bureau provides the inmate, prior to his or her release or transfer, with postage-paid change of address cards. The Bureau also will forward the inmate's mail, at no cost to the inmate, for this 90-day period. These steps should ensure that an inmate has adequate opportunity to notify his or her correspondents of a change in address without the inmate experiencing a loss of contact with them. Former §§ 540.81 (b) and (d) become new §§ 540.22(a)(1)–(2). Section 540.22(a)(1) requires staff to provide an inmate with a copy of the receipt form. Deleted from the proposed rule is the reference to mail being returned to the Postal Authorities as this intent is clearly stated in § 540.22(a)(2). Section 540.22(a)(2) further amends the proposed rule to specify that, when an inmate refuses to complete change of address cards during release or transfer processing, staff shall indicate this fact on the cards and deliver these to the institution mail room as opposed to the central file. This provision allows mail room staff to maintain forwarding information, whether in the form of an address or a declination, on each transferred or released inmate.

Former § 540.81(c), which discussed the inmate completing and mailing the change of address cards, is deleted from the rule language since the completion and mailing of these cards are the inmate's decision and not a rule of the Bureau of Prisons.

PART 540—SUBPART A—GENERAL

Other Comments

1. Section 540.2—One comment indicated that legal organizations and federal and state agencies should be added to the list of authorized recipients of PMB (now Special) mail. Inmates may send special mail to an attorney's assistant as indicated in § 540.18. Inmates are not authorized to send special mail to organizations, as opposed to individuals within organizations, due to increased potential for abuse of special mail. The same rationale applies to federal and state agencies. Other comments expressed concern that "representatives of the news media" includes only those papers which qualify to publish legal notices. The rule language does not exclude other representatives but states that a key test to determine whether a newspaper qualifies as a "general circulation" newspaper is whether it qualifies for the purpose of publishing legal notices. The Warden may approve another newspaper which is shown to qualify as a general circulation newspaper in the community in which it is published. Another comment on § 540.2 indicated that all authorized recipients of PMB mail should be able to send "Special Mail". This change is not made, as there are greater security risks and significant administrative burdens with incoming mail, thus requiring greater restrictions. The list of those authorized to send in special mail has, however, been slightly expanded.

2. Section 540.12—One comment favored notice always being given that correspondence is rejected. The only time that this is not done is when to do so would hamper criminal investigations, and this limitation is deemed to be necessary.

3. Section 540.13—Several comments on former §§ 540.11–12 attacked provisions authorizing the Bureau to read and inspect incoming and outgoing general correspondence and to reject correspondence according to factors identified in former § 540.12(e). The Bureau has changed the regulations concerning outgoing mail as noted in the summary of changes. The Bureau retains the authority to read and inspect incoming general correspondence (and, as specified in the rule, outgoing general correspondence) in order to preserve security and good order (e.g., to prevent escapes or to prevent money procured illegally from being sent out of the institution or to prevent drugs or other contraband from being sent into the institution). These correctional interests would not be totally met by only subjecting incoming or outgoing correspondence to fluoroscopic or other exterior inspections or by opening this correspondence only on the basis of probable cause that it contains material enumerated in subsection (e). Money, which is contraband, could not be detected through that means or standard. Several comments were directed particularly at the prohibition of an inmate running a business while incarcerated. In addition to the virtual physical impossibility of establishing procedures for inmates to continue their business while confined, the Bureau considers this prohibition to be an inherent punitive aspect of imprisonment, contemplated by any court within a sentence of confinement. Further, conducting a business would present an equal protection and

treatment problem, inevitably allowing some (particularly white collar) offenders to continue their business while confined, while others would of necessity be cut off from their regular employment by the fact of confinement.

A commenter suggested that the Bureau provide inmates with copies of all pertinent correspondence rules and regulations published by the U.S. Postal Service. While § 540.10 incorporates a cross-reference to 39 CFR, Chapter 1, which pertains to regulations generally applicable to mail issued by the Postal Service, it is considered impractical to provide inmates with current copies of all postal regulations. A common sense approach on the part of the inmate (as with the general public) and adherence to Bureau rules on correspondence, which are available to the inmate, should eliminate the possibility of violation of postal regulations.

Another comment objected to the provision that authorized the Warden (§ 540.13(a)) to limit the number of incoming letters an inmate may receive when this number places an unreasonable burden on the institution. The Bureau does not see this, from its experience, as a frequent occurrence, but considers retention of this provision necessary to protect the security and good order of the institution (for example, when incoming mail is sent from persons not directly known by the inmate and is sent in such quantity as to delay staff's processing of mail for other inmates, thereby creating a potentially disruptive situation for the institution).

4. Section 540.14—Several comments attacked the provisions contained in subsections (a) and (b) as vague and overbroad. These regulations were drafted in broad language to give Wardens maximum discretion within constitutional boundaries. It was felt impossible to clearly delineate every situation which might justify placing an inmate on restricted general correspondence. Instead, the Bureau relies on its Wardens to apply these provisions prudently and only when necessary to ensure the security or good order of the institution or to further treatment of the inmate. In practice, the Wardens have used the guidelines prudently. Other comments questioned the wisdom of restricting correspondence due to some sort of misconduct. The Bureau's new rule on inmate discipline (Part 541, Subpart B) suggests this restriction is most appropriate when the actual misconduct involves a misuse of the mail. Another comment was that "the categories of correspondents and the criteria for permitting correspondence with each category are wholly unrelated to the criteria * * * for placing a prisoner on 'restricted general correspondence' ". A restricted list identifies persons with whom an inmate may immediately correspond. The Warden may conduct an investigation of other persons requested by the inmate, prior to their placement on the restricted correspondence list. The relationship of the correspondent categories to the restricted correspondence criteria is considered ample and necessary to protect the Bureau's interests. The Bureau considers this review action necessary for persons placed on restricted general correspondence in order to protect the security and good order of the institution and to protect the public.

5. Section 540.17—A commenter objected to the Bureau's requirement that special mail, in order to be so identified, must have specific identification on the envelope. The Bureau recognizes various types of correspondence as special mail, and to ensure appropriate recognition by staff it is appropriate to require that such mail carry some outward identification. This is a minimal burden on correspondents, resulting in significant administrative advantage in speeding up the accurate processing of mail.

6. Section 540.19—Commenters objected to the exclusion of incoming correspondence from the news media from receiving recognition as special mail. The Bureau recognizes greater security risks relative to incoming mail, thus requiring greater restrictions. The Bureau does not recognize correspondence from the news media as having the same qualifications for recognition as privileged or protected mail as that afforded correspondence from attorneys and specific agencies of the government. Another comment contended that the provisions of § 540.19(b), barring confined inmates from acting as a reporter or publishing under a byline, involved an unjustified deprivation of First Amendment rights. However, such activities can result in an inmate obtaining a disproportionate prominence and influence among other prisoners which can pose a serious threat to the order of the institution. Further, it can result in an inmate using his confined situation, and information gained thereby, to conduct a business. For reasons stated above, conducting of a business is improper in a prison setting.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 USC 552(a) and delegated to the Director of the Bureau of Prisons in 28 CFR 0.96(t), 28 CFR Chapter V is amended as set forth below. The effective date of these rules is July 1, 1979.

Norman A. Carlson,
Director, Bureau of Prisons.

Part 540 is added to read as set forth below:

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

Subpart A—General

Sec.
540.2 Definitions.

Subpart B—Correspondence

540.10 Purpose and scope.
540.11 Control and procedures.
540.12 Notification of rejections.
540.13 General correspondence.
540.14 Restricted general correspondence.
540.15 Inmate correspondence while in segregation and holdover status.
540.16 Correspondence between confined inmates.
540.17 Special mail.
540.18 Legal correspondence.
540.19 Inmate correspondence with representatives of the news media.
540.20 Payment of postage.
540.21 Returned mail.
540.22 Change of address and forwarding of mail for inmates.

Authority: 5 USC 301; 18 USC 4001, 4042, 4081, 4082, 5015, 5039; 28 USC 509, 510; 28 CFR 0.95–0.99.

Subpart A—General

§ 540.2 Definitions.

(a) "General Correspondence" means incoming or outgoing correspondence other than "special mail". "General Correspondence" includes packages sent through the mail.

(1) "Open General Correspondence" means general correspondence which is not limited to a list of authorized correspondents, except as provided in § 540.16.

(2) "Restricted General Correspondence" means general correspondence which is limited to a list of authorized correspondents.

(b) "Representatives of the News Media" means persons whose principal employment is to gather or report news for:

(1) A newspaper which qualifies as a general circulation newspaper in the community in which it is published. A newspaper is one of "general circulation" if it circulates among the general public and if it publishes news of a general character of general interest. A key test to determine whether a newspaper qualifies as a

"general circulation" newspaper is to determine whether the paper qualifies for the purpose of publishing legal notices in the community in which it is located or the area to which it distributes. It is generally held that for a newspaper to be considered, by law, a newspaper of general circulation, and so be qualified to publish legal notices, it must contain items of general interest to the public such as news of political, religious, commercial or social affairs;

(2) A news magazine which has a national circulation and is sold by newsstands and by mail subscription to the general public;

(3) A national or international news service; or

(4) A radio or television news program of a station holding a Federal Communications Commission license.

(c) "Special Mail" means correspondence *sent to* the following: President and Vice President of the U.S., the U.S. Department of Justice (including the Bureau of Prisons), U.S. Attorneys Offices, Surgeon General, U.S. Public Health Service, Secretary of the Army, Navy, or Air Force, U.S. Courts including U.S. Probation Officers, Members of the U.S. Congress, Embassies and Consulates, Governors, State Attorneys General, Prosecuting Attorneys, Directors of State Departments of Corrections, State Parole Commissioners, State Legislators, State Courts, State Probation Officers, other law enforcement officers, attorneys, and representatives of the news media. "Special Mail" also includes correspondence *received from* the following: President and Vice President of the U.S., attorneys, Members of the U.S. Congress, Embassies and Consulates, the U.S. Department of Justice (excluding the Bureau of Prisons), other Federal law enforcement officers, State Attorneys General, Prosecuting Attorneys, Governors, U.S. Courts, and State Courts.

Subpart B—Correspondence

§ 540.10 Purpose and scope.

The Bureau of Prisons encourages correspondence that is directed to socially useful goals. The Warden shall establish correspondence procedures for inmates in each institution, as authorized and suggested in this rule. Regulations contained in this subpart supplement regulations generally applicable to mail, issued by the United States Postal Service (See 39 CFR, Chapter I).

§ 540.11 Control and procedures.

(a) The Warden shall establish and exercise controls to protect individuals, and the security, discipline and good order of the institution. The size, complexity and security level of the institution, the degree of sophistication of the inmates confined, and other variables require flexibility in correspondence procedures. All Wardens shall establish open general correspondence procedures.

(b) Staff shall inform each inmate in writing promptly after arrival at an institution of that institution's rules for handling of inmate mail. This notice includes the following statement:

The staff of each institution of the Bureau of Prisons has the authority to open all mail addressed to you before it is delivered to you if you elect to receive all mail. "Special Mail" (mail from President and Vice President of the U.S., attorneys, Members of the U.S. Congress, Embassies and Consulates, the U.S. Department of Justice (excluding the Bureau of Prisons), other Federal law enforcement officers, State Attorneys General, Prosecuting Attorneys, Governors, U.S. Courts and State Courts) may be opened only in your presence to be checked for contraband. This procedure occurs only if the sender adequately identifies himself on the envelope and the envelope is marked "Special Mail—Open Only in the Presence of the Inmate". Other mail may be opened and read by the staff.

If you do not want your general correspondence opened and read, the Bureau will return it to the Postal Service. This means that you will not receive such mail. You must choose whether you want your general correspondence opened, read, and delivered to you, or returned. Whatever your choice, special mail will be delivered to you, after it is opened in your presence and checked for contraband. You can make your choice by signing Part I or Part II.

PART I—GENERAL CORRESPONDENCE TO BE RETURNED TO THE POSTAL SERVICE

I have read the notice regarding mail. I do not want my general correspondence opened and read. I understand that this means that my general correspondence will be returned to the Postal Service. I also understand that special mail will be delivered to me, after it is opened in my presence and checked for contraband.

(Name) _____

(Reg. No.) _____

(Date) _____

PART II—GENERAL CORRESPONDENCE TO BE OPENED, READ, AND DELIVERED

I have read the notice regarding mail. I wish to have my general correspondence delivered to me. I understand that this means the Bureau staff may open and read my general correspondence. I also understand that special mail will be delivered to me, after it is opened in my presence and checked for contraband.

(Name) _____

(Reg. No.) _____

(Date) _____

Inmate name _____

Req. No. _____

refused to sign this form. He (she) was advised by me that this refusal would have the same effect as if he or she had signed Part I above.

Staff Member's Signature _____

Date _____

(c) Staff shall inform an inmate that letters placed in the U.S. Mail are placed there at the request of the inmate and he must assume responsibility for the contents of each letter. Correspondence containing threats, extortion, etc. may result in prosecution for violation of federal laws. When such material is discovered, the inmate may be subject to disciplinary action, the written material may be copied, and all material may be referred to the appropriate law enforcement agency for prosecution.

(d) An inmate shall place his or her name on each outgoing envelope.

§ 540.12 Notification of rejections.

When correspondence is rejected because of content, the Warden shall notify the sender in writing of the rejection and the reasons for the rejection. The Warden shall also give notice that the sender may appeal the rejection. The Warden shall also notify an inmate of the rejection of any letter addressed to him, along with the reasons for the rejection and notify him of the right to appeal the rejection. The Warden shall refer an appeal to an official other than the one who originally disapproved the correspondence. The Warden shall return rejected correspondence to the sender unless the correspondence includes plans for or discussion of commission of a crime or evidence of a crime, in which case there is no need to return the correspondence or give notice of the rejection, and the correspondence should be referred to appropriate law enforcement authorities. Also, contraband need not be returned to the sender.

§ 540.13 General correspondence.

(a) The Warden may not limit the number of incoming letters an inmate may receive unless the number received places an unreasonable burden on the institution.

(b) Institution staff shall open and inspect all incoming general correspondence. Incoming general correspondence may be read as frequently as deemed necessary to maintain security or monitor a particular problem confronting an inmate.

(c) Outgoing mail in Security Level I, II, III, and of pretrial detainees in all institutions may be sealed by the inmate and is sent out unopened and uninspected. Staff may open an inmate's outgoing general correspondence:

(1) If there is reason to believe it would interfere with the orderly running of the institution, that it would be threatening to the recipient, or that it would facilitate criminal activity;

(2) If the inmate is on a restricted correspondence list; or

(3) If the correspondence is between inmates. (See § 540.18)

(d) Outgoing mail in Security Level IV, V, and VI and administrative institutions, except "Special Mail", will not be sealed by the inmate and may be inspected and read by staff.

(e) The Warden may reject correspondence sent by or to an inmate if it contains any of the following:

(1) Matter which is nonmailable under law or postal regulations;

(2) Information of escape plots, of plans to commit illegal activities, or to violate institution rules;

(3) Direction of an inmate's business (see § 541.11(d), Prohibited Act No. 408). An inmate, unless he is a pretrial detainee, may not direct a business while confined. This does not, however, prohibit correspondence necessary to enable an inmate to protect property and funds that were legitimately his at the time of commitment. Thus, for example, an inmate may correspond about refinancing a mortgage on his home or sign insurance papers, but he may not operate a mortgage or insurance business while in the institution.

(4) Clear harassment of a member of the public, including invasion of privacy;

(5) A code; or

(6) Contraband (See § 500.1—An example of contraband is a package received without prior authorization by the Warden).

§ 540.14 Restricted general correspondence.

(a) The Warden may place an inmate on restricted general correspondence based on misconduct or as a matter of classification. Determining factors include the inmate's:

(1) Involvement in any of the activities listed in § 540.13(e);

(2) Attempting regularly to correspond with persons or businesses where the addressee is known by the inmate only through such sources as advertisements in newspapers, magazines, telephone directories, etc.;

(3) Being a security risk;

(4) Threatening a government official;

(5) Having committed an offense involving the mail;

(6) Having participated in major criminal activity of a sophisticated nature; or

(7) Notoriety or being highly publicized.

(b) The Warden may limit to a reasonable number persons on the approved restricted general correspondence list of an inmate.

(c) The Warden shall utilize one of the following procedures before placing an inmate on restricted general correspondence.

(1) Where the restriction will be based upon an incident report, procedures must be followed in accordance with inmate disciplinary regulations (Part 541 of this chapter).

(2) Where there is no incident report, the Warden:

(i) Shall advise the inmate in writing of the reasons the inmate is to be placed on restricted general correspondence;

(ii) Shall give the inmate the opportunity to respond to the classification or change in classification; the inmate has the option to respond orally or to submit written information or both; and

(iii) Shall notify the inmate of the decision and the reasons, and shall advise the inmate of the Administrative Remedy Procedure.

(d) When an inmate is placed on restricted general correspondence, the inmate may, except as provided in §§ 540.15 and 540.16:

(1) Correspond with his spouse, mother, father, children, and siblings, unless the correspondent is involved in a violation of correspondence regulations or would be a threat to the security or good order of the institution;

(2) Request other persons also to be placed on the approved correspondence list, subject to investigation, evaluation, and approval by the Warden; with prior approval, the inmate may write to a proposed correspondent to obtain a release authorizing an investigation; and

(3) Correspond with former business associates, unless it appears to the Warden that the proposed correspondent would be a threat to the security or good order of the institution, or that the resulting correspondence could reasonably be expected to result in criminal activity. Correspondence with former business associates is limited to social matters.

(e) The Warden may allow an inmate additional correspondence with persons other than those on his approved mailing list when the correspondence is shown to be necessary and does not require an addition to the mailing list because it is not of an ongoing nature.

§ 540.15 Inmate correspondence while in segregation and holdover status.

(a) The Warden shall permit an inmate in holdover status (i.e., en route to a designated institution) to have correspondence privileges similar to those of other inmates insofar as practical.

(b) The Warden shall permit an inmate in segregation to have full correspondence privileges unless placed on restricted general correspondence under § 540.14.

§ 540.16 Correspondence between confined inmates.

An inmate may be permitted to correspond with an inmate confined in another penal or correctional institution, providing the other inmate is either a member of the immediate family, or is a party or a witness in a legal action in which both inmates are involved. The Warden may approve such correspondence in other exceptional circumstances, with particular regard to the security level of the institution, the nature of the relationship between the two inmates, and whether the inmate has other regular correspondence. The following additional limitations apply:

(a) Such correspondence may always be inspected and read by staff at the sending and receiving institutions (it may not be sealed by the inmate);

(b) The Wardens of both institutions must approve of the correspondence.

§ 540.17 Special mail.

(a) The Warden shall open incoming special mail only in the presence of the inmate for inspection for physical contraband and the qualification of any enclosures as special mail. The correspondence may not be read or copied if the sender has adequately identified himself on the envelope, and the envelope is marked "Special Mail—Open Only in the Presence of the Inmate".

(b) In the absence of adequate identification appearing on the envelope, staff may treat the mail as

general correspondence and may open, inspect, and read the mail.

(c) Outgoing special mail may be sealed by the inmate and is not subject to inspection. The Warden, in Security Level IV, V, and VI and administrative institutions, may set aside special mail boxes for the use of inmates, to facilitate the separation and mailing of outgoing special mail.

(d) Each institution shall have a stamp made that includes the following statement: "The enclosed letter was processed through special mailing procedures for forwarding to you. The letter has been neither opened nor inspected. If the writer raises a question or problem over which this facility has jurisdiction, you may wish to return the material for further information or clarification. If the writer encloses correspondence for forwarding to another addressee, please return the enclosure to the above address".

§ 540.18 Legal correspondence.

(a) Staff shall mark each envelope to show the date and time of receipt, the date and time the letter is delivered to an inmate and opened in his presence, and the name of the staff member who delivered the letter.

(b) The inmate is responsible for advising his attorney that correspondence will be handled as special mail only if the envelope is marked with the attorney's name and an indication he is an attorney. Legal mail will be opened in accordance with special mail procedures (see § 540.17).

(c) Grounds for the limitation or denial of an attorney's correspondence rights or privileges are stated in Part 543, Subpart B. If such action is taken, the Warden shall give notice to the attorney and the inmate affected.

(d) In order to send mail to an attorney's assistant or to a legal aid student or assistant, an inmate shall address the mail to the attorney or legal aid supervisor, or the legal organization or firm, to the attention of the student or assistant.

(e) Mail to an inmate from an attorney's assistant or legal aid student or assistant, in order to be identified and treated by staff as special mail, must be properly identified on the envelope as required in paragraph (b) of this section, and must be marked on the envelope as being mail from the attorney or from the legal aid supervisor.

§ 540.19 Inmate correspondence with representatives of the news media.

(a) An inmate may write through "Special Mail" to representatives of the news media specified by name or title (see § 540.2(b)).

(b) The inmate may not receive compensation or anything of value for correspondence with the news media. The inmate may not act as reporter or publish under a byline.

(c) Representatives of the news media may initiate correspondence with an inmate. Staff shall open incoming correspondence from representatives of the media and inspect for contraband, for its qualification as media correspondence, and for content which is likely to promote either illegal activity or conduct contrary to Bureau regulations.

§ 540.20 Payment of postage.

(a) Each inmate shall receive five postage stamps, or the equivalent, each month, sufficient to mail five pieces of first-class domestic mail, weighing one ounce or less. Additional postage charges are borne by the inmate. Postage shall be available for purchase in the inmate commissary. Writing paper and envelopes are provided at no cost to the inmate. Inmates who have verified correspondents in foreign countries may be provided postage for foreign mail in lieu of the domestic allowance. Inmate organizations will purchase their own postage.

(b) When an inmate is without funds or sufficient postage and wishes to mail legal mail or Administrative Remedy Appeal forms, such mail is sent at government expense. Mailing at government expense is also allowed for necessary correspondence in verified emergency situations for inmates without funds or sufficient postage.

(c) Mail received with postage due may not be delivered to the inmate until he or she has authorized withdrawal of funds from his or her commissary account to pay the postage due.

(d) Holdovers and pretrial commitments will be provided a reasonable number of letters at government expense.

§ 540.21 Returned mail.

Staff shall open and inspect for contraband all undelivered mail returned to an institution by the Post Office before returning it to the inmate. The purpose of this inspection is to determine if the content originated with the inmate sender identified on the letter or package; to prevent the transmission of material, substances and property which an inmate is not permitted to possess in the institution; and to determine that the mail was not opened or tampered with before its return to the institution. Any remailing is at the inmate's expense. Any returned mail qualifying as "Special mail" is opened and inspected for contraband in the inmate's presence.

§ 540.22 Change of address and forwarding of mail for inmates.

(a) Staff shall provide change of address cards, in accordance with the following procedures, to an inmate who is scheduled for release or transfer.

(1) At least one day prior to an inmate's release or transfer, staff shall give the inmate as many change of address cards as the inmate requires. Staff shall have the inmate sign a receipt for the change of address cards. If the inmate refuses to sign a form acknowledging receipt of the cards, staff shall note the reason, sign and date the receipt form and forward it to the inmate's central file. A copy of the receipt form is provided to the inmate.

(2) An inmate to be transferred or released must complete two change of address cards during release or transfer processing for use by the institution for forwarding mail. If the inmate refuses, staff shall record the refusal on the cards and deliver these to the institution mail room. Where there is no forwarding address, staff shall return the mail to the postal authorities for their disposition.

(b) Staff shall maintain forwarding addresses for a transferred or released inmate for a period of 90 days after the action, and forward the inmate's mail in accordance with postal regulations to the appropriate destination. Staff shall return mail, received after 90 days from the date of the transfer or release, to the postal authorities for their disposition.

[FR Doc. 79-19040 Filed 6-18-79; 8:45 am]
BILLING CODE 4410-05-M

Federal Register

Tuesday
June 19, 1979

Part VII

Department of Agriculture

Farmers Home Administration

Rural Development: Section 601 Energy Impacted Area Development Assistance Program

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1948

Section 601 Energy Impacted Area Development Assistance Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) issues final regulations to provide assistance to areas impacted by increased coal or uranium production, processing or transportation. This action is taken to implement a public law.

EFFECTIVE DATE: June 19, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Paul R. Kugler, 202–447–2573.

SUPPLEMENTARY INFORMATION: On page 12936 of the Federal Register for Thursday, March 8, 1979, the Farmers Home Administration published a notice of proposed rulemaking regarding addition of a new Subpart B, "Section 601 Energy Impacted Area Development Assistance Program," to Part 1948, Chapter XVIII, Title 7 in the Code of Federal Regulations. This action is taken to implement Pub. L. 95–620. Numerous comments have been accepted and analyzed and are discussed below. Public meetings were held to receive comments on these regulations on March 28, 1979, in Lexington, Kentucky; on March 30, 1979, in Charleston, West Virginia; on April 9, 1979, in Albuquerque, New Mexico; on April 11, 1979, in Denver, Colorado; and April 17, 1979, in Bismarck, North Dakota. Statements given at these public meetings have also been analyzed and are discussed below.

FmHA received 142 written responses to the March 8, 1979 publication as of May 8, 1979. These comments, along with the comments received at the public meetings, were seriously considered and were the basis of several changes in the final regulations.

Numerous comments were received expressing concern that the regulations as proposed were excessively lengthy, unclear in some sections, and unduly complicated. Numerous concerns were also expressed regarding the burden of documentation placed on State and local governments by the proposed regulations. In response to these comments, FmHA has reorganized, clarified, and simplified the regulations to the greatest extent possible. Requirements for documentation have been reduced to the minimum required by legislation wherever possible.

Major comments and changes are noted below:

§ 1948.51 Comments were received regarding application of the program in areas other than those impacted by increased coal and uranium production, processing and transportation activities.

FmHA believes the scope of the program in the proposed regulations accurately reflects the intent of the Congress.

§ 1948.52 Comments were received reflecting concern that the objectives of the program did not clearly state whether funding actually was available for construction purposes. This section has been reworded to clarify the program objectives.

§ 1948.53(a) This section has been reworded to clarify the meaning of an approved designated area.

§ 1948.53(c) The use of the base year as proposed has been determined to be inappropriate by the Comptroller General of the United States. FmHA has changed the regulations to reflect the ruling by the Comptroller General. The use of the term "base year" has been eliminated. A new section , § 1948.53(c) has been added to clarify the meaning of the term coal.

§ 1948.53(d)(1) A number of comments were received requesting that a section be added that would explicitly cover the inclusion of the generation of electricity at the mine-mouth. FmHA believes that such mine-mouth generation is not an eligible activity. Comments were received requesting the addition of secondary production activities as eligible within this definition. FmHA believes this inclusion would be inconsistent with Pub. L. 95–620.

§ 1948.53(d)(2) Comments were received requesting the inclusion of construction activities, and other operations relating to research, concerning the production of new fuel sour es. FmHA believes that these activities are covered under the current definition as long as the basic raw material being processed is coal or uranium or a derivative thereof.

§ 1948.53(d)(3) Comments were received indicating that the definition of transportation was too broad and ambiguous. This definition has been reworded to reflect comments received.

§ 1948.53(e) This section has been reworded to clarify its meaning based on comments received.

§ 1948.53(f) Comments were received suggesting changes in this definition to more accurately reflect the legislative definition. FmHA has changed this definition in response to those comments.

§ 1948.53(g) Comments were received requesting that this definition be expanded to include auxiliary work relating to coal and uranium development activities. FmHA interprets Pub. L. 95–620 as applying only to employment directly related to coal and uranium development activities. The definition has been reworded for clarity.

§ 1948.53(h) Comments were received requesting that mine-mouth generation plants be specifically included as eligible employment facilities. FmHA believes that Pub. L. 95–620 will not allow their inclusion.

§ 1948.53(i) This section has been reworded for clarification.

§ 1948.53(l) Comments were received requesting clarification of the meaning of growth management planning. FmHA believes that §§ 1948.78 and 1948.82 currently provide the desired clarification.

§ 1948.53(m) This section has been reworded for clarification.

§ 1948.53(n) One comment received reflected the concern that these reports can only be requested by a Governor after the area has been designated and approved and that the reports might be needed prior to that time. Pub. L. 95–620 states that industry reports may be requested by a Governor only after the area has been designated and approved.

§ 1948.53(o) Comments were received requesting that the restriction of "power to levy taxes" be removed from the definition. FmHA has removed this restriction in response to these comments. Comments were received requesting that public nonprofit organizations formed for special purposes by local governments be included in this definition. FmHA has included these entities in the definition in response to these comments. Comments were received requesting the inclusion of Indian tribes within the definition of local governments. FmHA believes that Pub. L. 95–620 is intended to restrict the definition of local governments to governments which are political subdivisions of States.

§ 1948.53(s) This section has been renumbered to § 1948.53(t). A new section § 1948.53(s) has been added to define "site" for clarification and the definition of site acquisition has been reworded for clarification. Comments were received questioning whether right-of-way acquisition for public facilities services were covered under this definition. FmHA interprets this definition as it appears in the final regulations as including acquisition of rights-of-way.

§ 1948.53(t) This section has been renumbered to § 1948.53(u). Comments were received requesting the inclusion of the improvement of existing water and waste disposal systems within this definition. Pub. L. 95–620 expressly prohibits the improvement of existing public facilities as an eligible activity under this program. Existing water and sewer lines may be replaced or rehabilitated only as is necessary to supply these services to new sites for housing and public facilities developed under the provisions of this subpart.

§ 1948.53(u) This section has been renumbered to § 1948.53(v).

§ 1948.53(v) This section has been renumbered to § 1948.53(w).

§ 1948.53(w) This section has been renumbered to § 1948.53(x). Comments were received requesting the inclusion of "with cooperation of any Federally recognized tribes within such areas." Governors may within their authority cooperate with Indian tribes and other entities which may be included within a designated area; therefore, FmHA does not feel it is necessary to make special mention of any of the entities with which a Governor may choose to cooperate. At the discretion of the Governor, Indian tribal needs may be included within the State Investment Strategy for Energy Impacted Areas provided other program requirements are met.

§ 1948.53(x) This section has been renumbered to § 1948.53(y).

§ 1948.57 This section has been renumbered to § 1948.54. A number of comments have been received requesting the inclusion of the following additional types of entities as eligible applicants: Indian tribes, private nonprofit organizations, private for-profit organizations, and Title V Regional Commissions. Pub. L. 95–620 restricts eligibility for assistance to States, councils of local government, and local governments. Comments were received requesting eligibility for certain public nonprofit organizations. The eligibility of organizations has been established in the definitions under § 1948.53, paragraphs (o) and (w). Comments were received requesting that eligibility for planning grants be restricted to those organizations identified by the Governors in their designations as approved planning agencies for the various designated areas. FmHA believes that this restriction of eligible applicants cannot be made.

§ 1948.58 This section has been renumbered to § 1948.55. Comments were received expressing concern that 10 percent of all funds appropriated for and allotted to this program were required to be used for planning. FmHA has changed this section in response to these comments.

§ 1948.59 This section has been renumbered to § 1948.57 and retitled "Eligible activities." This section has been reorganized for clarification and shortened to eliminate duplication. Comments received recommended the combination of site development and site acquisition eligible activities. FmHA has combined these sections in response to comments. Comments were received requesting the inclusion of construction or rehabilitation of various public facilities as eligible activities. Pub. L. 95–620 expressly forbids these activities under this program. Comments were received requesting the inclusion of administrative costs as eligible expenses under site development and acquisition grants. Costs allowed under FMC 74–4 may be eligible.

§ 1948.60 This section has been renumbered to § 1948.56 and retitled "Program purposes." This section has been expanded to include references to direct land acquisition by FmHA and condemnation of land by the Secretary of Agriculture for the purpose of providing a better overall view of the program.

§ 1948.62 This section has been renumbered to § 1948.59. This section has been shortened and clarified to eliminate duplication. A number of comments were received requesting that repair and rehabilitation of housing and public facilities be eligible activities. Comments were received requesting the elimination of administrative expenses as ineligible activities under grants for site development and acquisition. FmHA believes that it was not the intent of Congress for these activities to be eligible under site development and acquisition grants.

§§ 1948.66–.69 These sections have been renumbered to §§ 1948.62–.65.

§ 1948.70 This section has been renumbered to § 1948.66. Comments were received regarding the A–95 review process and recommendations were received that this process be eliminated due to the short time involved in the fiscal year 1979 funding cycle. OMB Circular A–95 requires review of applications for these grants.

§ 1948.72 This section has been renumbered to § 1948.67. Comments were received expressing concern that the requirement for local governments to provide information for designation was unduly burdensome to local governments. FmHA has removed this requirement in response to these comments. Comments were received requesting that authority be given to officials other than the Governor to make designations. Pub. L. 95–620 specifically identifies the Governor of the appropriate State as the designating authority. Comments were received requesting that the boundaries of designated areas be the same as the boundaries of substate districts. The boundary lines of substate districts are drawn in response to concerns other than energy impact. Therefore, FmHA believes the Governor should have the latitude to define the energy impacted area in accordance with the socioeconomic impacts that are occurring due to coal or uranium development activities. Where such impact occurs throughout the area served by a substate district, the Governor may choose to define the area's boundaries as coterminous with the boundaries of the substate districts. A comment was received requesting additional language prohibiting a Governor from arbitrarily drawing the boundary of energy impacted areas for purposes of discrimination against minorities. FmHA believes that these considerations will be reflected in the designation approval process conducted by the Secretary of Energy and a specific reference to activities of this type is unnecessary. Comments were received expressing concern over areas where employee residence and place of employment are located in two different States. FmHA has provided for situations of this nature in § 1948.68(c).

§§ 1948.73 and .74 These two sections have been combined into § 1948.68 and retitled "Criteria for designation and submission of designation," in response to comments received requesting simplification and elimination of duplication.

§ 1948.73(a) Comments were received suggesting that employment within related industry should be included as eligible under this section. Pub. L. 95–620 expressly limits eligible employment to employment directly related to coal and uranium development activities. Requests were made that FmHA identify standard data sources which would be acceptable under this section. It is the intention of FmHA that the Governor of the appropriate State select the data source which the Governor believes most accurately reflects the impact conditions within the State. Reference to "base year" have been eliminated in this section in response to the ruling of the Comptroller General.

§ 1948.73(b) Comments were received concerning typographical errors in this section. These have been eliminated in the final regulations.

§ 1948.73(c) Comments were received stating that this section was too burdensome and restrictive. FmHA has changed this section to a suggested list of sources for available financial resources which the Governor should examine if data presently exists that will enable the Governor to do so. Section 1948.73(c)(8) has been renumbered to § 1948.68(a)(3)(viii) and has been reworded for clarification in response to comments received.

§ 1948.74(a) FmHA has eliminated the requirement that maps for whole counties of designated energy impacted areas be submitted with a designation. This was done in order to reduce the data burden on the States.

§ 1948.74(c) FmHA has eliminated this section in response to comments indicating that it was duplicative.

§ 1948.74(d) This section has been eliminated and partially replaced by § 1948.68(d) in the interest of clarification and reduction of burden upon the States.

§ 1948.74(e) This section has been eliminated in response to comments indicating that it would reduce the burden of designation on the States.

§ 1948.74(f) This section has been eliminated and replaced by § 1948.68(f)(4) in response to comments received.

§ 1948.74(g) A number of comments were received stating that this section was unduly burdensome on the States and in response to these comments, FmHA has eliminated this section.

§ 1948.74(h) This section has been renumbered to § 1948.68(c). FmHA has added a new § 1948.68(e) due to comments received. FmHA has added new §§ 1948.68 (f) and (g) in the interest of a more expedient flow of information. FmHA has added a new § 1948.68(g) in order to relax the timetable for action by States in making designations. This action was taken in response to numerous comments received stating that the time period for States to complete their designations and be eligible for fiscal year 1979 funding was too short.

§ 1948.75 This section has been renumbered to § 1948.70. Comments were received requesting that the Secretary of Energy consider other socioeconomic factors than those listed in the designation criteria in approval of the designation made by the Governor of a State. FmHA can find no basis in Pub. L. 95–620 for a more detailed socioeconomic analysis than is required for the compliance with the designation criteria as they appear in the final regulations.

§ 1948.76 This section has been renumbered to § 1948.72. Comments were received on this section requesting that a copy of all reports submitted to the Secretary of Energy be forwarded to the Governor who requested the report by the person filing the report. Pub. L. 95–620 states that: "Copies of the report shall be provided to the Secretary of Energy and the Secretary shall, subject to the provisions of section 11(d) of the Energy Supply and Environmental Coordination Act of 1974, provide the report to the Secretary of Agriculture, the Governor, and the appropriate county or local officials and make it available for public review."

§ 1948.77 This section has been renumbered to § 1948.73 and combined with section 1948.86. A large number of comments were received on these sections. These comments reflected concern that a large number of factors were being used to allocate funds, and that data for some of these factors might not be available at the time of allocation. A number of comments suggested alternative ways of allocating funds. This section has been completely rewritten reflecting these concerns and maintaining consistency with Pub. L. 95–620. The date of allocation of funds has been moved forward to allow the submission of State Investment Strategies for Energy Impacted Areas prior to the allocation of funds in order to eliminate data problems. Comments were received expressing concern that 10 percent of the funds were being reserved for planning. This reservation has been changed but the Pub. L. 95–620 requirement that 10 percent of all funds be the maximum allowable percentage used for planning will be maintained. Comments were received requesting that all planning funds for a State be granted to a single State agency and allowing that agency to subcontract with other planning agencies within the State. FmHA believes that the system of making grants both to States and other eligible applicants within approved designated areas within the State will maintain the best accountability for the program as mandated by the Congress in Pub. L. 95–620. Joint applications between a State agency and other planning agencies within a State will be considered for funding by FmHA.

§ 1948.82 This section has been renumbered to § 1948.79. Comments were received reflecting concern that the process outlined in this section was too burdensome and time consuming. FmHA believes that this section complies with existing public law and agency regulations. Comments were received reflecting concerns that the preapplications and applications were filed with FmHA rather than with the Governors of the various States. FmHA has changed this section to require that a copy of all the preapplications and applications filed be submitted to the Governors of the appropriate States. Direct administration is placed on the FmHA by Pub. L. 95–620; therefore, it is the position of FmHA that all original preapplications for assistance under this program be filed with FmHA and that all approval of assistance granted under this program rest with the FmHA.

§ 1948.83 This section has been renumbered to § 1948.80. A number of comments were received concerning this section. FmHA has rewritten this section to reflect these comments. Specific changes are outlined below. New sections 1948.80(b) and (c) have been added in compliance with Pub. L. 95–620. Section 1948.83(c) has been eliminated in response to these comments. Section 1948.83(b) has been renumbered 1948.80(d). Section 1948.83(d) has been eliminated in response to comments received. A new § 1948.80(e) has been added concerning the appropriateness of the project to the needs of the area. A new § 1948.80(f) has been added for assessing the need for planning. Comments were received requesting that FmHA consider the Governor's recommended level of funding for each planning project. This consideration has been added in § 1948.80(d). Questions were asked regarding the appropriateness of using consultant firms for the preparation of growth management and housing plans under this section. It is the position of FmHA that the Congressional intent for this program is to build planning capacity to the State and local level to deal with the adverse effects of energy development. Consulting firms, in the opinion of FmHA, should be used for technical aspects of planning, but primary responsibility for the preparation of growth management and housing plans should remain with staff directly under control of responsible elected officials at the State, council of local government, and local level whenever possible.

§ 1948.84 This section has been renumbered to § 1948.78. Comments were received indicating that FmHA was not giving full consideration to existing plans for growth management and housing. A new § 1948.78(a) has been added to emphasize the use of existing plans to meet planning requirements in this program. Comments were received reflecting concern that the Governors were not given a strong enough role for coordination and

planning. A new section 1948.78(c) has been added to strengthen the Governor's role in coordination and planning with a State. Section 1948.84(d) has been renumbered to § 1948.78(f) and modified to require submission of the State Investment Strategy for Energy Impacted Areas to the appropriate A–95 clearinghouse for comment. This classification was made in response to comments received concerning this section. Comments were received requesting a detailed explanation of the requirement for maximum possible citizen involvement in the plan. The purpose of this requirement is to ensure that citizens be allowed to participate in this process to the degree to which they desire to do so. The planning process should be open and provision for interaction among citizens and officials responsible for planning preparation should be made.

§ 1948.85 This section has been divided and renumbered to §§ 1948.81 and 1948.82. § 1948.81 describes the components required for the State Investment Strategy for Energy Impacted Areas. § 1948.82 covers the process by which planning and State investment strategies will be approved by FmHA. Specific changes in this section are outlined below. Comments were received stating that § 1948.85(a)(3) and (4) required a more detailed analysis than is likely to be present in existing plans. The language in these sections has been modified to require only a brief description of socioeconomic impacts, and these subsections have been renumbered to § 1948.82(a)(3) and (4). FmHA has added an exception provision § 1948.82(e) to accommodate the use of existing plans in fiscal year 1979. Section 1948.85(a)(5) has been eliminated to avoid duplication. Section 1948.85(a)(7), (8) and (9) have been eliminated in order to reduce the planning burden on State and local government in response to comments received. Section 1948.85(a)(10)(v) has been eliminated in response to comments requesting that the planning burden on State and local government be reduced. Section 1948.85(a)(13), (14), (15) and (16) have been eliminated in response to comments requesting the elimination of the planning burden on State and local government. Comments were received reflecting concern that the Governor would have to submit to FmHA for approval all plans which the Governor has received. Other comments were received stating that the Governor's role in plan approval was not as strong as envisioned in Pub. L. 95–620. As a matter of clarification, the final regulations require the Governor to submit to FmHA for approval only those plans which the Governor believes are appropriate. The State Investment Strategy for Energy Impacted Areas will cover only those plans which the Governor believes should be included. Because no authority other than the Governor can be the author of the State Investment Strategy for Energy Impacted Areas, FmHA believes that the Governor has the primary role under this program for coordination of development within the State. Comments were received requesting that FmHA change plan approval authority from the FmHA National Office to FmHA State Offices. FmHA believes that Pub. L. 95–620 is intended to provide a national program which addresses national needs and to ensure the coordination of FmHA activities within the energy impacted areas of all of the affected States. To comply with this intent, plan approval should be at the national level. Comments were received reflecting concern that local government was not given adequate consideration for its priorities in the development of the State Investment Strategy for Energy Impacted Areas. The plans upon which the investment strategy is based are developed at the local level, and § 1948.78(f) requires that State investment strategies be submitted to the appropriate A–95 clearinghouses for comment. FmHA believes that the formulation of development plans at the local level and the submission of State Investment Strategies for Energy Impacted Areas to A–95 clearinghouses will provide for adequate consideration of local priorities. A comment was received suggesting that FmHA consider requiring an advisory cross-review of applications by field offices of other agencies to establish that an applicant has thoroughly explored other available avenues of funding. FmHA feels that this requirement is unnecessary since the Governor has already certified, in the designation of the impacted area, that available financial resources are inadequate to meet the public need for the project in a timely manner.

§ 1948.86 This section has been combined with § 1948.77 and renumbered to § 1948.73. Comments received under this section are outlined in § 1948.77.

§ 1948.87 This section has been renumbered to § 1948.83.

§ 1948.88 This section has been combined with section 1948.90 and renumbered to § 1948.84. This section has been shortened and duplication eliminated in response to comments received. Comments were received expressing concern that the front-end cost of developing the applications for these grants is too burdensome. Requirements for applications under this section are mandated by Federal law and regulation. A preapplication process has been added to this section to comply with OMB Circular A–102. Many comments were received expressing concern that these program funds could not be used in flood plain areas. This provision is required under Executive Order 11988. Comments were received expressing concern that the 25 percent matching funds requirement under this section was too burdensome to State and local government. The 25 percent local match is required by Pub. L. 95–620. Comments were received requesting that architects or engineers be specifically mentioned in § 1948.88(b)(5). This addition has been made in § 1948.84(d)(5). A comment was received requesting removal of the requirement for the Governors concurrence. FmHA feels that this requirement is necessary to ensure that the project is in accordance with the State Investment Strategy for Energy Impacted Areas.

§ 1948.89 This section has been combined with § 1948.91 and renumbered to § 1948.86 in order to avoid duplication. This section was rewritten for purpose of clarity. Sections 1948.89(b) and 1948.91(b) were changed as outlined below in response to comments. Comments requested that the Governor be the sole selecting authority for projects funded by this program. Pub. L. 95–620 assigns responsibility for the administration of this program to FmHA. Pub. L. 95–620 states that FmHA should consult with the Governor before making a grant within a State. FmHA interprets the Governor's development of a State Investment Strategy for Energy Impacted Areas and the consideration of the Governor's priorities for funding of the projects as expressed in that investment strategy under § 1948.86(b)(1) as fulfilling the full intent of the law. Sections 1948.89(b)(3) and 1948.91(b)(3) have been eliminated in response to comments received which expressed concern that the projects with high cost would be discriminated against. A new § 1948.86(b)(2) has been added in compliance with Pub. L. 95–620. A new § 1948.86(b)(4) has been added which reflects the local priority of the project. Comments were received requesting that lack of developable land be added as a selection criterion. FmHA was unable to find an effective base for this criterion in Pub. L. 95–620. A comment was received requesting the removal of the priority given to previously mined land for site

development and site acquisition grants. Pub. L. 95-620 expressly mandates this provision. Concern was expressed regarding land ownership requirements. In response to these concerns, this section now allows ownership, or leases in lieu of ownership. Concern was expressed over the length of time that might be required for an A-95 review. FmHA believes that A-95 review is a critical requirement which is needed to ensure coordination of projects within an area. This review should not require so much time as to prevent the funding of any particular project.

§ 1948.90 This section was combined with § 1948.88 and renumbered to § 1948.84. Comments received concerning this section are addressed in the discussion of § 1948.88.

§ 1948.91 This section was combined with § 1948.89 and renumbered to § 1948.86. Comments received concerning this section are addressed in the discussion of § 1948.89.

§ 1948.93 This section was divided into two sections for clarification and numbered §§ 1948.88 and 1948.89. § 1948.88 addresses the acquisition of land by FmHA at the request of the Governor of a State by purchase or trade. § 1948.89 addresses the acquisition of land by FmHA through the use of the power of the Secretary of Agriculture to condemn land under the provisions of Pub. L. 95-620. Comments were received expressing concern that Federal powers of condemnation would be used to acquire Indian Trust lands. This use of Federal condemnation power is prohibited by Pub. L. 95-620. Comments were received expressing concern that windfall profits would accrue to developers as a result of direct acquisition by FmHA. Provisions to safe-guard against windfall profits are covered in § 1948.90(b). Comments were received concerning the acquisition of Bureau of Land Mangement land for the purpose of this program. A new § 1948.88(c) has been added to clarify FmHA power to acquire Bureau of Land Management and other Federal agency held land not expressly prohibited by Pub. L. 95-620. A comment was received requesting clarification of the reimbursement process to FmHA for land acquired directly by FmHA. FmHA will be reimbursed at the fair market value by the State for all land which is acquired by FmHA at the request of the Governor of that State. Reimbursement terms will be outlined in a transfer agreement between the State and FmHA.

§1948.94 This section has been renumbered to § 1948.90. Comments were received requesting information concerning land transfers from public bodies to private individuals. A new § 1948.90(b) has been added to outline conditions under which land may be transferred from grantees to private individuals.

§ 1948.95 This section has been renumbered to § 1948.91.

§ 1948.96 This section has been renumbered to § 1948.92. Comments were received expressing confusion concerning who will be the approving officer for grants made under this program. FmHA has added a new section 1948.92(b) to clarify that the FmHA State Director of the appropriate State shall be the approving officer of all grants made under this program.

§ 1948.98 This section has been renumbered to § 1948.94. Based on comments received, a procedure has been added which describes reporting requirements for site acquisition and development projects.

§§ 1948.99-.101 These sections have been renumbered to §§ 1948.95-.97.

§ 1948.102 This section has been renumbered to § 1948.98.

FmHA has added new §§ 1948.60 and 1948.61 to provide for State establishment of procedures in addition to those required by these regulations. FmHA has added a new § 1948.93 to establish appeal procedures.

Therefore, as added Part 1948, Subpart B reads as follows:

Subchapter H—Program Regulations

PART 1948—RURAL DEVELOPMENT

Subpart B—Section 601—Energy Impacted Area Development Assistance Program

Sec.

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1948.56 Program purposes.
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1948.58 [Reserved]
1948.59 Ineligible activities.
1948.60 Delegation and redelegation of authority.
1948.61 State supplements and guides.
1948.62 Environmental impact requirements.
1948.63 Historic preservation requirements.
1948.64 Equal opportunity requirements.
1948.65 Relocation Act requirements.
1948.66 A-95 and other administrative requirements.
1948.67 Procedure for designation.
1948.68 Criteria for designation.
1948.69 [Reserved]
1948.70 Designation approval.
1948.71 [Reserved]
1948.72 Industry reports.
1948.73 [Reserved]
1948.74-.77 [Reserved]
1948.78 Growth management and housing planning projects.
1948.79 Application procedure for planning grants.
1948.80 Planning grant selection criteria.
1948.81 State Investment Strategy for Energy Impacted Areas.
1948.82 Plan and State Investment Strategy approval procedure.
1948.83 Performance of site development work.
1948.84 Application procedure for site development and acquisition grants.
1948.85 [Reserved]
1948.86 Site development and acquisition grant selection criteria.
1948.87 [Reserved]
1948.88 Direct land acquisition by FmHA.
1948.89 Land condemnation by FmHA.
1948.90 Land transfers.
1948.91 Inspections of development.
1948.92 Grant approval and fund obligation.
1948.93 Appeal procedure.
1948.94 Reporting requirements.
1948.95 Grant monitoring.
1948.96 Audit requirements.
1948.97 Grant closing and fund disbursement.
1948.98 Grant agreements.
1948.99-100 [Reserved]

Exhibit A—Grant Agreement Growth Management and Housing Planning for Approved Designated Energy Impact Area.

Exhibit B—Grant Agreement (Public Bodies) for Site Development and/or Site Acquisition for Housing and/or Public Facilities and/or Services.

PART 1948—RURAL DEVELOPMENT

Subpart B—Section 601 Energy Impacted Area Development Assistance Program

§ 1948.51 General.

This Subpart sets forth policies and procedures for designation, approval of designation, and making grants for assistance to areas impacted by increased coal and uranium production, processing, or transportation. The Farmers Home Administration (FmHA) will fully consider all A-95 clearinghouse review comments and recommendations in selecting applications for funding.

§ 1948.52 Objectives.

The objective of the program is to help areas impacted by coal or uranium development activities by providing assistance for the development of growth management and housing plans and in developing and acquiring sites for housing and public facilities and services.

§ 1948.53 Definitions.

(a) *Approved designated area.* A group of counties, a county, or a part of

a county designated as an energy impacted area by the Governor of a State and approved by the Secretary of Energy.

(b) *Available financial resources.* All existing financial resources which could be used for impact assistance including Federal, State, and local financial resources and financial resources accruing to States and local governments as a result of coal or uranium development activity and not already committed to other programs by low or historical precedent.

(c) *Coal.* Coal means anthracite and bituminous coal, lignite, and any fuel derivative thereof.

(d) *Coal or uranium development activities.* The production, processing, or transportation of coal or uranium.

(1) Production includes the mining of coal or uranium and all mine site operations connected with such mining operations and processing activities. This includes construction activities on mine sites relating to mining, production, and processing.

(2) Processing includes all operations performed on coal or uranium including construction of processing plants. However, processing does not include conversion into electrical energy.

(3) Transportation which directly relates to the production and processing of coal or uranium including transportation networks in the county of origin of the coal or uranium and counties of processing of coal and uranium. This includes transportation depots along transportation networks that are used primarily for the transfer of coal or uranium for domestic consumption. This also includes unit train rolling stock construction and repair facilities.

(e) *Condemnation by U.S. Department of Agriculture (USDA).* The use of Federal authority by the Secretary of Agriculture to condemn real property.

(f) *Council of local governments.* An areawide development organization which includes one or more local governments servicing at least a portion of an approved designated area. Such organization must either have a policymaking body made up of a majority of local elected officials.

(g) *Eligible employment.* Full time work related to coal or uranium development activities.

(h) *Eligible employment facility.* A coal or uranium mine, processing plant, or transportation depot.

(i) *Energy impacted areas.* An area where coal and uranium development activities have a significant impact on the socio-economic structure of the area and which meet the criteria set out at § 1948.60 of this Subpart.

(j) *Fair market value.* The price at which a property will sell in the open market allowing a reasonable period of time for typical, fully-informed buyers and sellers to react, assuming that the purchaser and seller are both willing participants in the transaction.

(k) *Grantee.* An entity with whom FmHA has entered into a grant agreement under this program.

(l) *Growth management planning.* Planning for the orderly development of an approved designated area. This planning includes, but is not limited to: planning for provision of resources to support housing, public facility needs, sewer and water needs; planning for the provision of additional public services needed; overall plans for the coordinated development of all approved designated areas within a State; the development of State Investment Strategies for Energy Impacted Areas; and coordination of development of approved designated areas at the interstate level where impact is interstate in nature.

(m) *Housing planning.* Identification of present and future housing needs within an approved designated area and providing methods for developing needed housing. This planning includes, but is not limited to the identification of: housing sites; housing site development needs; data and resource needs; funding needs; acquisition methods; and agencies of government responsible for delivery of housing services.

(n) *Industry reports.* Those reports concerning production, expected production, and employment within an approved designated area which are requested by the Governor and submitted by a person to the Secretary of Energy.

(o) *Local government.* Any county, parish, city, town, township, village, or other general political subdivision of a State with the power to expend Federal, State, and local funds and exercise governmental powers. Local government may act through special authorities.

(p) *Person.* Any corporation, individual, partnership, company, association, firm, institution, society, trust, joint venture, or joint stock company, any State or any agency or instrumentality thereof.

(q) *Public facilities.* Installations open to the public and used for the public welfare. This includes but is not limited to: hospitals, clinics, firehouses, parks, recreation areas, sewer plants, water plants, community centers, libraries, city or town halls, jailhouses, courthouses, and schoolhouses.

(r) *Public services.* The provision to the public of services such as: health care, fire and police protection, recreation, etc.

(s) *Site.* A site is a plot of land which is suitable or can be made suitable for providing housing, public facilities, or services.

(t) *Site acquisition.* Obtaining legal title to a site (or sites) or obtaining leaseholds by an instrumentality of a State or local government, or by FmHA, for housing, public facilities, or services.

(u) *Site development.* Site restoration, necessary off-site improvements and such on-site improvements as the construction of sewerage collection and water distribution lines (does not include individual taps) and construction of access roads; but does not include the construction of houses or public facilities.

(v) *Site restoration.* On-site improvements to the real property (such as backfilling, compacting, grading and leveling) necessary for the construction of houses and public facilities.

(w) *State.* Any of the fifty States, Puerto Rico, and any territory or possession of the United States.

(x) *State Investment Strategy for Energy Impacted Areas.* The investment strategy for the development of approved designated areas within a State as proposed by the Governor and approved by FmHA.

(y) *Substandard housing.* All housing units which do not have complete plumbing fixtures, lack adequate heating systems, are not structurally sound, or contain any other conditions that would cause a safety, sanitary, or health hazard to the family or community.

§ 1948.54 Eligible applicants.

Organizations eligible for grants include local governments, councils of local government, and State governments.

§ 1948.55 Source of funds.

(a) Grants will be awarded from appropriate funds specifically allocated for this program.

(b) Grants made for growth management and housing planning may equal but will not exceed 10 percent of the total amount of funds appropriated for and allocated to this program.

§ 1948.56 Program purposes.

(a) FmHA will make grants for assistance to approved designated areas in accordance with criteria contained in this Subpart by providing assistance to fill gaps in growth management and housing planning, and to provide supplementary support for acquisition

and development of sites for housing and public facilities and services by States, local governments, and councils of local government.

(b) Efforts will be made to provide comprehensive assistance to approved designated areas through the coordination power of the Secretary of Agriculture by utilizing existing plans, State and local programs, and other Federal programs to the maximum extent possible. Particular attention will be given to the utilization of existing FmHA authorities under other FmHA programs in conjunction with this Subpart for providing assistance to approved designated areas in accordance with the Governor's approved State Investment Strategy for Energy Impacted Areas.

(c) Where existing plans are unsuitable or nonexistent, and other assistance programs are inadequate or unavailable on a timely basis, FmHA will provide assistance under this Subpart to States, councils of local governments, and local governments for the modification, updating, and/or development of growth management and/or housing plans to deal with problems resulting from coal or uranium development within approved designated areas according to the criteria contained in this Subpart.

(d) Where needed, FmHA will provide assistance for the development of sites and/or the acquisition of sites for housing and public facilities and services within approved designated areas according to the criteria contained in this Subpart. Such assistance for site development and acquisition will be made in accordance with FmHA approved plans and State Investment Strategies for Energy Impacted Areas in accordance with the criteria contained in the Subpart.

(e) At the request of the Governor of the appropriate State, FmHA will take action to acquire real property directly for sites for housing and/or public facilities and services in accordance with procedures set forth in this Subpart.

(f) At the request of the Governor of the appropriate State, where neither the State nor local government has power to do so for this purpose, FmHA may take action through condemnation to acquire real property for sites necessary for housing, public facilities, or services.

§ 1948.57 Eligible activities.

Grant Funds may be used for:

(a) The preparation of growth management and/or housing plans (or aspects thereof) for which financial resources are not available for approved designated areas as set forth in the grant agreement, including but limited to:

(1) One hundred percent of the total cost of developing growth management and/or housing plans.

(2) One hundred percent of the cost of developing aspects of growth management plans and/or housing plans including but not limited to:

(i) Sewer plans;

(ii) Water plans;

(iii) Recreation plans;

(iv) Transportation plans;

(v) Education plans; and

(vi) Subdivision plans.

(3) Payment of salaries of professional, technical, and clerical staff to carry out growth management and housing planning and evaluation;

(4) Payment of necessary reasonable office expenses such as office rental, office utilities, and office equipment rental;

(5) Purchase of office supplies;

(6) Payment of necessary reasonable administrative costs, such as workmen's compensation, liability insurance, and employer's share of social security and travel; and

(7) Payment of costs to undertake tests, make appraisals, and arrange for engineering/architectural services necessary for the planning activity.

(b) Up to 75 percent of the actual cost of developing or acquiring sites for housing, public facilities, or services for which financial resources are otherwise not available as set forth in the grant agreement, including but not limited to:

(1) Necessary grading and leveling;

(2) Sewer and water connections;

(3) Necessary water and sewer lines to housing and public facilities sites;

(4) Access roads to housing and public facilities sites;

(5) Restoring previously mined sites;

(6) Necessary engineering reports in connection with site development;

(7) Payment of costs to undertake tests, make appraisals, and engineering/architectural services necessary for the site development and/or site acquisition;

(8) Necessary legal fees involved in the transfer of the real property.

§ 1948.58 [Reserved]

§ 1948.59 Ineligible activities.

(a) Growth management and housing planning grant funds may not be used for:

(1) Acquisition, construction, repair, or rehabilitation of existing housing and public facilities;

(2) Replacement of, or substitution for, any financial support previously provided or assured from any other source which would result in a reduction of current efforts on the part of the applicant;

(3) Duplication of current services;

(4) Routine administrative activities not allowed under Federal Management Circular FMC 74-4, "Cost Principles Applicable to Grants and Contracts with State and Local Governments;"

(5) Planning for areas other than approved designated areas;

(6) Planning other than growth management and housing planning; or

(7) Political activities.

(b) Grant funds for site development may not be used for:

(1) Construction, repair, or rehabilitation of housing and public facilities;

(2) Replacement of, or substitution for, any financial support previously provided or assured from any other source which would result in a reduction of effort on the part of the applicant;

(3) Administrative expenses not allowed under FMC 74-4;

(4) Purposes for which funding exists under other State or Federal programs that may reasonably be obtained on a timely basis by the applicants;

(5) Duplication of current services; or

(6) Political activities.

§ 1948.60 Delegation and redelegation of authority.

The FmHA State Director is responsible for implementing the authorities contained in this Subpart and may issue State supplements redelegating these authorities to appropriate FmHA employees.

§ 1948.61 State supplements and guides.

FmHA State Directors will obtain National Office clearance for all State supplements and guides in accordance with paragraph VIII of FmHA Instruction 021.2, (available in any FmHA office).

(a) *State supplements.* State Directors may supplement this Subpart as appropriate to meet State and local laws and regulations and to provide for orderly application processing and efficient service to applicants. State supplements shall not contain any requirements pertaining to designations, designation approval, or plan approvals more restrictive than those in this Subpart.

(b) *State guides.* State Directors may develop guides for use by applicants if the guides to this Subpart are not adequate. State Directors may prepare guides for: items needed for the application; items necessary for the docket; and items required prior to grant closing or construction starts.

§ 1948.62 Environmental impact requirements.

(a) The policies and regulations contained in Part 1901, Subpart G, of this Chapter apply to grants made and other actions under this program. Environmental Assessments and, if necessary, Environmental Impact Statements shall be prepared on all applications for assistance under this Subpart. Assessments and Statements shall be prepared to consider cumulative as well as site-specific effects.

(b) Subsequent to an energy impact area designation by the Governor and establishment of priorities, the FmHA State Director, in consultation with the Governor, shall define the geographic boundaries or otherwise delineate the areas which will be studied for environmental impacts.

(c) Boundaries shall define the area within which the environmental impacts of the proposed action can be reasonably studied. Proper delineation of impact areas will avoid duplication of effort by using one assessment or impact statement to study a broad area rather than numerous overlapping documents prepared for smaller projects.

§ 1948.63 Historic preservation requirements.

The policies and regulations contained in Part 1901, Subpart F, of this Chapter apply to this program.

§ 1948.64 Equal opportunity requirements.

The policies and regulations contained in Part 1901, Subpart E, of this Chapter apply to grants made under this program.

§ 1948.65 Relocation Act requirements.

The policies and regulations contained in Title 7, Subtitle A, Part 21 of the Code of Federal Regulations (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970) will apply to site development and acquisition grants and other actions under this program.

§ 1948.66 A-95 and other administrative requirements.

The policies and regulations contained in Chapter 4, Sections 4 and 5 of the USDA Administrative Regulations; Part 1901, Subparts H and J of this Chapter; Treasury Circular Number 1082, Revised; and OMB Circular A-95 apply to grants and other actions under this program.

§ 1948.67 Procedure for designation.

(a) Local governments may request the Governor of the State in which they are located to designate an area served by them as an energy impacted area.

(b) The Governor will define the geographic area of a designated area consistent with the nature of the impact and the socio-economic integration of the area.

(c) The Governor may designate an area as an energy impacted area based on the criteria contained in this Subpart.

§ 1948.68 Criteria for designation.

(a) An area designated by the Governor must have the following characteristics:

(1) During the most recent calendar year, the eligible employment in coal or uranium development activities within the area has increased by eight percent or more from the preceding year, or such employment (as projected by generally acceptable estimates) will increase by eight percent (of the eligible employment in the year of the designation) or more per year during each of the next three calendar years.

(2) Because of increased employment in coal or uranium development activities, a shortage of housing, inadequate public facilities, or services exists or will exist in the area. Such shortages or inadequacies may be demonstrated by: housing shortage statistics; higher occupancy rates of substandard houses than has historically occurred within the area; an increase (for which data or projected data is available) in eligible employment from the year of the designation of at least 100 workers or one-half of one percent of the designated area's population; or data showing that available public facilities and services in the area are below generally accepted standards due to the increased demand resulting from coal and uranium development activities.

(3) Available State and local financial resources are inadequate to meet the public need for housing or public facilities and services at present or in the next three years. In making this determination the Governor should consider the following:

(i) State revenue increases resulting from coal and uranium development activity based on existing tax laws;

(ii) Federal funds transferred to the State for impact assistance;

(iii) Local revenue increases resulting from coal or uranium development activities based on existing tax laws;

(iv) Other federal financial assistance to which the area may have access;

(v) All other available State and local sources of funding;

(vi) The time during which the resources will be available;

(vii) Existing laws committing increases in State and local revenues and Federal transfers to purposes other than impact assistance; and

(viii) The estimated cost of development based on the best available informed judgment.

(b) Designations submitted to the Secretary of Energy for approval must have the following attached:

(1) A list of all counties and parts of counties covered by the designation;

(2) If the area is smaller than a county, a map showing the boundary of the area and the approximate location of all eligible employment facilities in the area and nearby;

(3) A written justification for the inclusion of an area if the area is smaller than a county;

(4) The level of eligible employment within the designated area for each of the two most recent calendar years. This data should be obtained from a single source for the entire State, if possible; special surveys may be used when the Governor determines that these more accurately reflect employment conditions within the designated area, or in cases where data from other sources for the most recent calendar year is unavailable at the time of designation. Reference should be made to the data sources used if it is a Federal source; if a non-Federal sources is used, a copy of the source and a brief description of the procedures used for justification should be included. If projections of eligible employment are to be considered, projections of such employment for the next three years must be attached; identification of data sources and methodology used in developing those projections and a copy of any survey data used should be included.

(c) In areas where the impacted area covers counties or parts of counties located in more than one State, the Governors of the affected States may jointly designate such area and submit the designation to the Secretary of Energy for approval.

(d) After examining these factors and determining that the area meets the criteria of (a) above, the Governor may so certify in a letter bearing his or her signature and submit the letter of certification with all data and estimates upon which the designation is based to the Secretary of Energy for approval.

(e) Each designation submitted should have the name and phone number of a contact person in the Governor's designating office.

(f) An original and one copy of the designation should be submitted to the Secretary of Energy, Department of

Energy, Mail Stop 8G–031, Forrestal Building, Washington, D.C. 20585.

(g) Two copies of all designations submitted for approval shall be submitted to the appropriate FmHA State Director. The FmHA State Director shall forward one copy to the Office of Area Development Assistance in the FmHA National Office.

(h) The Governor should designate all areas expected to be considered in fiscal year 1979 allocations of funds before July 1, 1979.

§ 1948.69 [Reserved]

§ 1948.70 Designation approval.

Upon receipt of a request for approval of a designation made under this section, the Secretary of Energy shall:

(a) Determine to the best of his ability the consistency of the supporting data submitted along with the designation by the Governor;

(b) Confer with FmHA on approval;

(c) Notify the Governor and the Administrator of FmHA of action taken on each designation within 30 calendar days of the receipt of a request for approval;

(d) Consult with the Governor before the disapproval of any designation; and

(e) Publish a description in the Federal Register of all designated areas approved within 30 days of their approval.

§ 1948.71 [Reserved]

§ 1948.72 Industry reports.

Any person regularly engaged in any coal or uranium development activity within an area designated and approved in accordance with this Subpart, shall prepare and transmit a report to the Secretary of Energy, Department of Energy, Mail Stop 8G–031, Forrestal Building, Washington, D.C. 20585 within 90 days after a written request to such person by the Governor of the State in which such area is located.

(a) The report shall contain:

(1) Projected levels of employment in coal or uranium development activities within the approved designated area for the next three calendar years;

(2) The projected number of new jobs to be created in coal or uranium development activities by the person within the approved designated area in each of the following three calendar years;

(3) Current or planned actions of the person in relation to the provision of housing or public facilities for such person's employees in the next three calendar years;

(4) Contracts in force whereby the person intends to provide funds to State government, local governments, and public or private nonprofit organizations for the provision of housing or public facilities for such person's employees; and

(5) The projected quantity of coal or uranium to be produced, processed, or transported by the person in each of the next three years.

(b) The Governor requesting the report will notify the Secretary of Energy of persons from whom reports have been requested.

(c) The Secretary of Energy shall provide a copy of these reports to the Secretary of Agriculture, the appropriate Governor, and the appropriate county or local officials, and make it available for public inspection and copying in the public reading room of the Department of Energy, Room GA152, Forrestal Building, Washington, D.C. 20585.

§ 1948.73 [Reserved]

§ 1948.74–77 [Reserved]

§ 1948.78 Growth management and housing planning projects.

(a) Existing plans for growth management and housing may be used to meet the planning requirements of this Subpart.

(b) A reasonable effort should be made to modify existing plans for use in meeting the planning requirements of this section.

(c) The Governor shall be responsible for the coordination of planning within a State.

(d) The planning process developed with assistance under this section should begin at the local level and flow upward to the State.

(e) Planning processes developed with assistance under this section should have the maximum possible citizen involvement in the development of plans.

(f) Governors should give full consideration to local and substate priorities in the development of the State Investment Strategy for Energy Impacted Areas and submit the State Investment Strategy for Energy Impacted Areas for comment to appropriate A–95 clearinghouses.

(g) Plans developed with assistance under this section should be fully coordinated with other Federal, State, substate, and local planning activities affected by the project.

(h) To the greatest extent possible, planning projects should be coordinated with related planning and development activities presently carried out by the A–95 clearinghouse agency.

(i) Planning conducted by the State include effective management activities for coordinated development of approved designated areas through the plan implementation stage.

§ 1948.79 Application procedure for planning grants.

(a) Applicants may submit a preapplication for a planning grant upon designation of the area as an energy impacted area by the Governor. FmHA will not take final action on the preapplication until the designation has been approved by the Secretary of Energy.

(b) All applicants should notify the appropriate designated clearinghouse(s) of the intent to submit an application consistent with OMB Circular A–95.

(c) Applicants shall file an original and one copy of Form AD–621, "Preapplication for Federal Assistance," with the appropriate FmHA office. A copy should also be filed with the Governor's office of the appropriate State. This form is available in all FmHA offices. Local governments and councils of local governments shall submit preapplications to the appropriate FmHA District Office. State governments shall apply to the appropriate FmHA State Office. The FmHA District Office will forward the preapplication with written comments within 10 working days to the appropriate State Office.

(d) All preapplications shall be accompanied by:

(1) Evidence of applicant's legal existence;

(2) Evidence of applicant's authority to prepare growth management and/or housing plans;

(3) A statement declaring that the planning neither duplicates nor conflicts with current activities;

(4) A complete original and one copy of Form FmHA 449–10, "Applicant's Environmental Impact Evaluation;"

(5) An original and one copy of Forms FmHA 400–1, "Equal Opportunity Agreement," and Form FmHA 400–4, "Nondiscrimination Agreement;" and

(6) A statement regarding other financial resources available to the area for this planning.

(e) District and State FmHA Offices receiving preapplications will:

(1) Determine if the area to be covered by this project is an "approved designated area" as defined in this Subpart;

(2) Comply with the environmental requirements set forth in this Subpart; and

(3) Prepare a Historic Preservation Assessment in accordance with Part 1901, Subpart F, of this Chpater.

(f) District FmHA Offices receiving preapplications will also provide written comments reflecting planning grant selection criteria listed in this Subpart.

(g) The FmHA District Office will forward the original of the preapplication and accompanying documents including those described in paragraphs (e)(1) through (e)(3) and (f) of this section to the appropriate FmHA State Director within 10 working days of receipt of the preapplication.

(h) Upon receipt of a preapplication, the FmHA State Office will:

(1) Review and evaluate the preapplication and accompanying documents;

(2) Consult with the Governor of the appropriate State concerning the Governor's priorities and recommended funding level for the project; and

(3) Respond to the applicant within 30 days of the date of receipt of the preapplication using Form AD–622, "Notice of Preapplication Review Action," indicating the action taken on the preapplication.

(i) Upon notification that the applicant is eligible to compete with other applicants for funding, a Form AD–623, "Application for Federal Assistance (Nonconstruction Programs)," may be submitted to the FmHA State Office by all applicants.

(j) The FmHA State Office will send evidence of the applicant's legal existence and authority to the USDA Regional Office of General Counsel (OGC) and request that a legal determination be made of the applicant's legal existence and authority to prepare growth management and/or housing plans in those cases where an application (AD–623) is requested.

(k) Upon receipt of an application on Form AD–623 by the FmHA State Office, a docket will be prepared which will include the following:

(1) Form AD–621;

(2) Form AD–622;

(3) A–95 Clearinghouse comments;

(4) Form AD–623;

(5) Evidence of the applicant's legal existence and authority to prepare growth management and/or housing plans;

(6) OGC legal determinations;

(7) Grant agreement and scope of work;

(8) Form FmHA 440–1, "Request for Obligation of Funds;"

(9) Form FmHA 400–1;

(10) Form FmHA 400–4;

(11) Form FmHA 449–10;

(12) Form FmHA 440–46, "Environmental Impact Assessment;"

(13) Historic Preservation Assessment;

(14) District, where appropriate, and State FmHA written comments, assessments, and analysis of the proposed projects in accordance with the grant selection criteria; and

(15) All certificates and statements accompanying the pre-application and/or application.

§ 1948.80 Planning grant selection criteria.

The following criteria will be used in the selection of planning grant recipients:

(a) Planning assistance which could be used for the purpose of the proposed planning process is not available from other sources on a timely basis (Mandatory);

(b) The increase in the number of new employees and the percentage of increase in employment in coal and/or uranium development activities in the year of designation within the approved designated area (years projected will be averaged and treated equally);

(c) The need for planning in relation to the financial resources available for such planning;

(d) The planning priorities and recommended funding level of the Governor(s) of the appropriate State(s);

(e) The appropriateness of the proposed planning activity for meeting the planning needs of the area, including but not limited to the building of planning capacity and the local priority for the project;

(f) The inadequacy of existing plans for mitigating the effects of coal and/or uranium development activities; and

(g) The nature of comments and recommendation from the A–95 clearinghouse(s).

§ 1948.81 State Investment Strategy for Energy Impacted Areas.

(a) The State Investment Strategy for Energy Impacted Areas should be a dynamic document updated as each plan or group of plans is submitted to FmHA for approval.

(b) The Governor shall consult with the FmHA State Director when developing or updating a State Investment Strategy for Energy Impacted Areas.

(c) The State Investment Strategy for Energy Impacted Areas will include but is not limited to:

(1) A list of projects in order of priority;

(2) The Governor's recommended level of and method of funding for each project through completion of the project identified in the plans submitted and incorporated into the State Investment Strategy for Energy Impacted Areas;

(3) Methods of coordinating assistance with other State and Federal development programs;

(4) The differential between available financial resources and the cost of needed site development and acquisition for housing and public facilities and services within the area covered by the State Investment Strategy for Energy Impacted Areas;

(5) References to plan and page number of plan on which each priority project is described.

(d) The State Investment Strategy for Energy Impacted Areas having projects expected to be funded in FY 1979 should be submitted to the FmHA State Director of the appropriate State before July 15, 1979. A copy should also be forwarded to the Administrator, FmHA.

§ 1948.82 Plan and State Investment Strategy approval procedure.

(a) Any plan submitted for FmHA approval, whether it is a plan developed with assistance under this section, an existing plan, or a modified plan, should contain:

(1) The present level of coal or uranium production, processing, or transportation within the approved designated area covered by the plan;

(2) The anticipated level of coal or uranium production, processing, or transportation in each of the next three calendar years within the area covered by the plan;

(3) A brief description of the socio-economic impacts that have occurred during the two most recent calendar years in the approved designated area covered by the plan;

(4) A brief description of the socio-economic impacts that are expected to occur in the approved designated area covered by the plan within each of the next three calendar years;

(5) The anticipated number of new employees expected to be hired in coal or uranium development activities in each of the next three years within the approved designated area covered by the plan;

(6) Available financial resources and federal programs that may be applied to meeting the needs of the approved designated area including but not limited to the following:

(i) The expected amount of State assistance and State expenditures in the approved designated area covered by the plan which will be used for impact assistance in the next three years;

(ii) The amount of tax revenues expected to accrue to local governments serving the approved designated area covered by the plan in each of the next three years due to increased economic

activities which have occurred since the year prior to designation or are expected to occur as a result of coal and uranium development activity;

(iii) Sources and amount of assistance State and local governments are now receiving or are expected to receive from persons for the provision of housing and public facility and services; and

(iv) Existing budget surplus at the State and local level.

(7) The specific needs of the area covered by the plan as to the number of housing units now needed and the number that are expected to be needed in each of the next three years, and/or the number and type of public facilities and services now needed or expected to be needed in the next three years;

(8) The type and quantity of real property now needed or expected to be needed in the next three years for the construction of public facilities and/or housing and/or in the provisions of public services;

(9) Proposed method of acquisition for each site to be acquired by the State or local governments; and

(10) An estimate of assistance that will be necessary under this section and/or other FmHA or Federal programs for the development of the site.

(b) All plans meeting the criteria in paragraph (a) of this section should be forwarded to the Governor of the appropriate State or States for possible incorporation into the State Investment Strategy for Energy Impacted Areas.

(c) Appropriate growth management and/or housing plans received by the Governor under this section may be submitted to the appropriate FmHA State Office by the Governor.

(d) The Governor shall submit a copy of the State Investment Strategy for Energy Impacted Areas along with all plans the Governor is submitting to FmHA for approval.

(e) During fiscal year 1979 the Governor may submit existing plans to FmHA for qualified approval in which some sections under paragraph (a) above are incomplete, provided that planning is presently being done to fill these gaps, or application for a planning grant has been submitted or is to be submitted to cover the cost of the needed planning. These plans must be resubmitted for final approval on or before December 31, 1980. No requested grant will be approved for land acquisition or site development unless the request is cited in the FmHA-approved comprehensive growth management plan for the designated area in which the project is located.

(f) The FmHA State Director shall review all plans and the State Investment Strategy for Energy Impacted Areas and provide comments on the following:

(1) Appropriateness of FmHA assistance under this section as called for in the plans;

(2) Appropriateness of FmHA assistance under other programs as called for in the plans;

(3) Appropriateness of the State Investment Strategy for Energy Impacted Areas;

(4) Other Federal programs which could be used instead of, or in addition to, assistance under this section; and

(5) Recommended action.

(g) The FmHA State Director shall submit all plans received from the Governor, the State Investment Strategy Energy Impacted Areas, and any comments to the FmHA National Office for approval within 10 days of the submission of plans and the State Investment Strategies for Energy Impacted Areas to the State Director.

(h) The FmHA National Office shall review all plans and State Investment Strategy for Energy Impacted Areas received and approve or return them for modification within 30 days of their receipt in the FmHA National Office.

(i) The FmHA National Office shall notify the appropriate State Director of all plans that have been approved by the Administrator.

(j) Upon approval of the plans and State Investment Strategies for Energy Impacted Areas by the Administrator, FmHA, the FmHA State Director may exercise the authority of the Secretary of Agriculture under Section 603 of the Rural Development Act of 1972 to convene a meeting of the appropriate representatives of all Federal and State agencies which are requested to supply development funds by the State Investment Strategy for Energy Impacted Areas for the purpose of obtaining tentative funding commitments consistent with their authorities.

(k) The FmHA State Office shall notify the Governor and the appropriate District Directors of all plans approved by the Administrator, FmHA.

(l) Modifications to approved plans shall be approved by the Administrator of FmHA following the above procedure.

(m) The Governor's modification to the State Investment Strategy for Energy Impacted Areas may be approved by the FmHA State Director provided the modification is consistent with FmHA approved plans.

§ 1948.83 Performance of site development work.

Site development work will be done in accordance with § 1942.18 of FmHA Instruction 1942-A.

§ 1948.84 Application procedure for site development and acquisition grants.

(a) For those projects for which Federal funding is sought in excess of $100,000 the applicant shall file Form AD-621 with the appropriate FmHA office. For those projects for which Federal funding is sought for less than $100,000, the applicant shall file Form AD-624, "Application for Federal Assistance (For Construction Programs)," with the appropriate FmHA office. A copy should also be filed with the Governor's office of the appropriate State.

(b) The FmHA office receiving a Form AD-621 shall reply to the applicant with-in 45 calendar days regarding the applicant's eligibility to compete for funding under this program using Form AD-622. (FmHA District offices will send each preapplication to the FmHA State Offices for review before replying to the applicant. FmHA District offices will send a copy of Form AD-622 to the FmHA State Office at the time the AD-622 is sent to the applicant.)

(c) All applicants should notify the appropriate designated clearinghouse(s) of the intent to submit an application consistent with OMB Circular A-95.

(d) Applicants shall file an original and one copy of Form AD-624, with the appropriate FmHA office. Local governments and councils of local government shall submit applications to the FmHA District Office and State governments to the FmHA State Office. Applications shall include:

(1) Evidence of applicant's legal existence and authority to undertake the proposed project;

(2) Evidence of ownership of or lease on a site to be developed or "Options to Purchase Real Property," Form FmHA 440-34, (Lease on a site for a public facility will be in accordance with FmHA Instruction 1942-A and lease on a site for housing will be in accordance with Part 1822 Subpart A (FmHA Instruction 444.1));

(3) Description of project and relationship to approved growth management and housing plan. Applicant must cite pages and section of the approved plan;

(4) A plat of the area including elevations;

(5) Preliminary plans and specifications on proposed development which will contain an estimate of the projected cost of site development

prepared by independent qualified appraisers or architects/engineers;

(6) The amount of Federal grant needed;

(7) The amount and source of applicant's financial contribution to the project;

(8) An original and one copy of Form FmHA 449–10;

(9) An original and one copy of Forms FmHA 400–1 and Form FmHA 400–4;

(10) Evidence that the land is stable if the land has been previously mined (include relevant data on soil and analysis);

(11) Evidence that the site will comply with Executive Order 11988, "Flood Plain Management," and Executive Order 11990 "Protection of Wetlands;" and

(12) Assurance that the requirements set forth in Title 7, Subtitle A, Part 21 of the Code of Federal Regulations (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970) have been met.

(e) District and State FmHA Offices receiving applications shall:

(1) Determine if the project is in accordance with a FmHA approved growth management and/or housing plan covering the approved designated area;

(2) Comply with environmental requirements set forth in this Subpart;

(3) Prepare a Historic Preservation Assessment in accordance with Part 1901, Subpart F, of this Chapter;

(4) Determine site stability if the land has been previously mined; and

(5) Determine that all sites for public facilities and/or housing will comply with Executive Orders 11988, "Flood Plain Management" and 11990, "Protection of Wetlands."

(f) District FmHA Offices receiving applications shall also provide written comments reflecting site development and acquisition grant selection criteria (§ 1948.86) listed in this Subpart.

(g) The FmHA District Office shall forward the original of the application and accompanying documents including those required in paragraph (e) of this section to the FmHA State Director within 10 working days of receipt of the application.

(h) Upon receipt of an application, the FmHA State Office shall:

(1) Review and evaluate the application and accompanying documents;

(2) Determine that the project is a part of and consistent with the State Investment Strategy for Energy Impacted Areas;

(3) Send a copy of the applicant's evidence of legal existence and authority to the USDA Regional OGC for review;

(4) If applicant is local government(s), consult with the Governor on funding recommendation of the project; and

(5) Respond to the applicant within 30 days of the date of receipt of the application.

(i) Upon receipt of an application by the FmHA State Office, a docket shall be prepared which shall include the following:

(1) Application Form AD–624 and enclosures;

(2) A–95 clearinghouse comments;

(3) Evidence of ownership or lease of site to be developed;

(4) Evidence of applicant's legal existence and authority;

(5) OGC legal determination;

(6) Preliminary plans and specifications concerning the proposed development;

(7) Grant agreement and scope of work;

(8) An estimate of projected cost of site development prepared by independent qualified appraisers or engineers/architects;

(9) A topographical map of the area;

(10) Form FmHA 440–1;

(11) Form FmHA 400–1;

(12) Form FmHA 400;

(13) Form FmHA 449–10–4;

(14) Form FmHA 440–46;

(15) Historic Preservation Assessment;

(16) A copy of the State Investment for Energy Areas; and

(17) District, where appropriate, and State FmHA written comments, assessments and analysis of the proposed project in accordance with the grant selection criteria.

§ 1948.85 [Reserved]

§ 1948.86 Site development and acquisition grant selection criteria.

The following criteria will be considered in the selection of site development and/or acquisition grant recipients:

(a) *Required criteria.* Each project must meet the following criteria:

(1) The area is covered by a FmHA approved plan;

(2) The FmHA approved plan specifically calls for the site development and/or acquisition;

(3) Other Federal funds that the community could receive for the project are inadequate or not available, and no State or local funds for site development are available to permit development on a timely basis;

(4) The site is to be developed and/or acquired and is to be used for housing, public facilities, or services;

(5) The applicant has title to the site, lease on site, or an option on the site and funds to purchase the site, or is applying for site acquisition funds;

(6) The site will comply with Executive Orders 11988, "Flood Plain Management" and 11990, "Protection of Wetlands;"

(7) An appraisal of the fair market value of the site must have been completed;

(8) Priority has been given in the selection of site to unoccupied or previously mined land;

(9) Class I or Class II farm land was included in the site only if other suitable land was not available;

(10) The land is stable if previously mined; and

(11) Assurance that the requirements set forth in Title 7, Subtitle A, Part 21 of the Code of Federal Regulations (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970) have been met.

(b) *Competitive criteria.* The following criteria will be considered in the selection of grantees:

(1) Priority assigned and recommended funding level by the Governor in the State Investment Strategy for Energy Impacted Areas;

(2) The increase in the number of new employees and the percentage of increase in employment in coal and/or uranium development activities in the year of designation within the approved designated area (years projected will be averaged and treated equally);

(3) The severity of need for housing, public facilities, services that has resulted from coal or uranium development activities in relation to available financial resources within the approved designated area covered by the plan calling for the project;

(4) Local priority for the project;

(5) The amount of effort by State and local government to meet the needs of the area covered by the application as called for in the State Investment Strategy for Energy Impacted Areas in relation to available financial resources;

(6) An assessment of the environmental impacts of the project; and

(7) The nature of comments and recommendations of A–95 clearinghouse(s).

§ 1948.87 [Reserved]

§ 1948.88 Direct land acquisition by FmHA.

(a) FmHA may take action to acquire real property directly upon the written request of the Governor of the State in which the real property is located.

FmHA will not acquire real property directly under this section without such a request.

(b) All requests for direct land acquisition should be submitted to the FmHA State Director. The following conditions must be met prior to the submission of a request for direct acquisition by FmHA:

(1) The State or local government serving the area must lack power to condemn land of this type for this purpose and must supply an opinion by the State Attorney General that this authority is lacking;

(2) The real property is to be used as a site for needed housing, public facilities, or services;

(3) The site acquisition is called for in a FmHA approved plan;

(4) The site is specifically identified by a FmHA approved plan;

(5) State and local governments have been unable to obtain the real property for a price which does not substantially exceed its fair market value; and suitable alternate sites are not available;

(6) The land is not Indian Trust land;

(7) The land is not U.S. Forest Service land; and

(8) There is legal authority to undertake the proposed project.

(c) FmHA may acquire Federal real property not prohibited in paragraphs (b) (6) and (7) of this section for purposes contained in this Subpart. Farm land (Class I and II) will not be considered unless there is no other suitable land available.

(d) If the State Director determines that no other suitable real property exists that can be obtained at a price which does not substantially exceed its fair market value, and if the appropriate State or local government lacks condemnation authority as evidenced by opinion from the Attorney General, and there is authority to undertake the proposed project, then the State Director shall follow the procedures set out in Title 7, Subtitle A, Part 21 of the Code of Federal Regulations (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970) and immediately open negotiations to directly acquire the real property through purchase or trade.

(e) The FmHA State Director may acquire real property by purchase to trade for other real property when FmHA has been requested to acquire real property by the Governor of the State in which the real property is located.

(f) The Governor shall submit, with this request, a commitment from the State to acquire real property, together with a plan of compensation to FmHA and evidence of the State's legal authority to enter into this agreement with FmHA to accept the real property and repay FmHA for the fair market value of the real property for the intended purpose.

(g) Real property acquired by FmHA shall be transferred to the State requesting by a quitclaim deed for a price equal to the fair market value in accordance with the terms of a transfer agreement.

(h) After obtaining title to the real property and prior to transfer to the State, the property shall be managed by FmHA in accordance with Part 1955, Subpart B of this Chapter.

(i) The State Director shall inform the Governor that FmHA real property acquisition is not likely to occur by purchase or trade if negotiations have failed to produce acceptable results within 90 days of the request for FmHA acquisition of real property.

§ 1948.89 Land condemnation by FmHA.

(a) If FmHA attempts to acquire real property at the request of a Governor through purchase or trade and is unable to do so, FmHA may take action to condemn the real property by the following procedures:

(1) A request for condemnation shall be submitted by the FmHA State Director to the Administrator, FmHA, Washington, D.C. 20250 at the request of the Governor of the appropriate State. A copy of the Governor's request for FmHA real property condemnation and the State Attorney General's opinion that State and local government condemnation authority is lacking shall be attached to the FmHA State Director's request.

(2) The Administrator shall forward all requests for Federal condemnation to the OGC, USDA with a recommendation for action.

(3) The Administrator, FmHA shall inform the Governor of any action on the request for condemnation.

(4) Real property condemned by FmHA shall be transferred to the requesting State by a quitclaim Deed for a price equal to the fair market value of the real property in accordance with terms of a negotiated real property transfer agreement.

(5) After obtaining title to real property and prior to transfer to the State, the property shall be managed by FmHA in accordance with Part 1955, Subpart B of this Chapter.

(b) FmHA may not condemn Indian Trust Land or U.S. Forest Service Land.

§ 1948.90 Land transfers.

(a) Transfers of real property acquired by FmHA.

(1) A request for FmHA acquisition of real property by a Governor of a State constitutes an agreement by that State to receive said real property and to reimburse FmHA for the fair market value of said real property for the intended use.

(2) Terms and conditions, including reimbursement terms, for real property transfers shall be set forth in a Real Property Transfer Agreement between the Administrator, FmHA and the appropriate Governor. These terms and conditions will be agreed upon by FmHA and the State prior to FmHA attempting to acquire the property. These agreements shall be prepared after consulting with OGC, and forwarded for prior approval by the FmHA National Office.

(3) All funds from real property transfers received by FmHA shall be deposited in the U.S. Treasury.

(b) Transfer of real property acquired and/or developed with grant funds from a grant made under this Subpart to a person.

(1) Real property acquired and/or developed under this Subpart may be transferred to a person for the purposes of construction of privately-owned housing.

(2) All transfers of real property to a person must be approved by the FmHA State Director of the appropriate State.

(3) Transfer of real property by a recipient of assistance under this Subpart to a person must be by contract which assures FmHA that the real property will be used for the purposes under which the grant was made and all financial benefits of the grant will be passed on to the residents of housing constructed or sites acquired or developed under this Subpart.

§ 1948.91 Inspections of development.

Inspections will be made by the FmHA State Engineer or other employee designated by the FmHA State Director to ascertain whether site development is proceeding in accordance with plans and specifications. Such inspections are solely for the benefit of the Government and not for the benefit of the Grantee or any other person.

§ 1948.92 Grant approval and fund obligation.

(a) The FmHA State Office shall review the docket to determine whether the proposed grant complies with this Subpart and that funds are available.

(b) The FmHA State Director shall be the approving officer on all grants made under this Subpart.

(c) If at any time prior to grant approval it is decided that favorable action will not be taken on a preapplication or application, the FmHA State Director will notify the applicant in writing of the reasons why the request was not favorably considered. The notification to the applicant will state that a review of this decision by FmHA may be requested by the applicant in accordance with FmHA Instruction 1900–B.

(d) If a grant is recommended, Form FmHA 440–1 and the proposed grant agreement and scope of work will be prepared and forwarded to the applicant for signature.

(e) When Form FmHA 440–1 and the grant agreement and scope of work are received by the applicant, the applicant will sign these documents and forward them to the State Director.

(f) Form FmHA 071–1, "Project Information Card," will be prepared by the State Director and sent to the Director of Information, Farmers Home Administration.

(g) If the State Director approves the project, the following actions will be taken in the order listed:

(1) The State Director, or a designee, will telephone the Finance Office requesting that grant funds for a particular project be obligated. Immediately after contacting the Finance Office, the requesting official shall furnish the requesting office's security identification code. Failure to furnish the security code will result in the rejection of the request of obligation. After the security code is furnished, the required information from Form FmHA 440–1 shall be furnished to the Finance Office. Upon receipt of the telephone request for obligation of funds, the Finance Office shall record all information necessary to process the request for obligation in addition to the date and time of request.

(2) The individual making the request shall record the date and time of the request.

(3) The Finance Office will notify the FmHA State Office by telephone when funds are reserved and the date the funds will be obligated. If funds cannot be reserved for a project, the Finance Office will notify the FmHA State Office that funds are not available. The obligation date will be six working days from the date the request for obligation is processed.

(4) The Finance Office will send Form FmHA 440–57, "Acknowledgement of Obligated Funds/Check Request," to the FmHA State Director, informing the State Director of the reservation of funds with the obligation date inserted as required by Item 9 on the Forms Manual Insert (FMI) for Form FmHA 440–57.

(5) Form FmHA 440–1 will not be mailed to the Finance Office.

(6) A copy of Form FmHA 440–1 will be sent the FmHA National Office.

(7) The State Director shall notify the Director of Information in the FmHA National Office with a recommendation that the project announcement be released.

(8) An executed copy of Form FmHA 440–1 shall be sent to the applicant along with an executed copy of the grant agreement and scope of work on or before the date funds are obligated.

(9) The actual date of applicant notification will be entered on the original of Form FmHA 440–1 and the original of the form will be included as a permanent part of the file.

(10) For planning grants, Standard Form 270, "Request for Advance or Reimbursement," will be sent to the applicant for completion and return to FmHA. For site acquisition and site development grants, Standard Form 271, "Outlay Report and Request for Reimbursement for Construction Programs," will be sent to the applicant for completion and returned to FmHA.

(11) If it is determined that a project will not be funded or if major changes in the scope of the project are made after release of the approval announcement, the FmHA State Director will notify the Director of Information by telephone giving the reasons for such action. The Director of Information will inform all parties who were notified by the project announcement that the project will not be funded or of major changes in the project using a procedure similar to the announcement process. Form FmHA 440–10, "Cancellation of Loan or Grant Check and/or Obligation," will not be submitted to the Finance Office until five working days after notifying the Director of Information.

(12) Upon receipt of a properly completed SF 270 or SF 271, the appropriate check request information will be telephoned to the Finance Office.

§ 1948.93 Appeal procedure.

Any grantee or applicant for FmHA assistance under this Subpart who has been directly and adversely affected by an administrative decision by FmHA may appeal such decision in accordance with FmHA Instruction 1900–B.

§ 1948.94 Reporting requirements.

(a) For planning grants, SF–270 shall be submitted by grantees on an as-needed basis but not more frequently that once every 30 days. SF–269, "Financial Status Report," and a project performance activity report will be required of all grantees on a quarterly basis. SF–269 and a final project performance report will also be required. These final reports may serve as the last quarterly reports. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. All grantees except States should submit an original of each report and one copy to the appropriate FmHA District Office. When the grantee is a State, an original should be submitted to the appropriate FmHA State Office. The project performance reports shall include, but need not be limited to the following:

(1) A comparison of actual accomplishments to the objectives established for that period;

(2) Reasons why established objectives were not met;

(3) Problems, delays, or adverse conditions which will materially affect attainment of planned project objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated and any Federal assistance needed to resolve the situation; and

(4) Objectives established for the next reporting period.

(b) For site development and land acquisition grants, grantees shall submit Form SF–271 for payment of site development costs. Multiple advances will be made in accordance with FmHA Instruction 402.1 (available in any FmHA office) and will be made as needed to cover required disbursements for not less than 30 day periods. Advances will be requested for the next 30 day period by the grantee on Form SF–272, "Report of Federal Cash Transactions." Each payment estimate must be approved by the grantee. A final Form SF–272 will be submitted to FmHA to include the final advance not later than 90 days after the final advance.

§ 1948.95 Grant monitoring.

Each grant will be monitored by FmHA to ensure that the Grantee is complying with the terms of the grant

and that the project activities are completed as approved. This will involve on-site visits to the project area and review of quarterly and final reports by FmHA .

§ 1948.96 Audit requirements.

(a) Audit requirements for Site Development and Acquisition Grants will be made in accordance with FmHA Instruction 1942–G.

(b) Audits for planning grants made in accordance with State statutes or regulatory agencies will be acceptable provided they are prepared in sufficient detail to permit FmHA to determine that grant funds have been used in compliance with the proposal, any applicable laws and regulations, and the grant agreement. A copy of the audit shall be submitted to the State Director as soon as possible but in no case later than 90 days following the period covered by the grant.

§ 1948.97 Grant closing and fund disbursement.

Grant closing and fund disbursement will be accomplished in accordance with FmHA Instruction 1942–G.

§ 1948.98 Grant agreements.

The following Grant Agreements are a part of this regulation.

(a) Exhibit A of this Subpart is a Grant Agreement for Growth Management and Housing Planning Grants for approved Designated Energy Impacted Areas.

(b) Exhibit B of this Subpart is a Grant Agreement for Site Development and/or Site Acquisition for Housing and/or Public Facilities and/or Services.

§§ 1948.99–1948.100 [Reserved]

Exhibit A—Grant Agreement

Growth Management and Housing Planning for Approved Designated Energy Impacted Areas

This Agreement is between

(Name), ———————————
(Address),(Grantee) and the United States of American acting through the Farmers Home Administration (Grantor or FmHA). Grantee has determined to undertake certain growth management and housing planning for energy impacted areas at an estimated cost of $——— and has duly authorized such planning. The Grantor agrees to grant to Grantee a sum not to exceed $——— subject to the terms and conditions established by the Grantor; provided, however, that any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of the grant. In consideration of said grant by Grantor to Grantee, to be made pursuant to Section 601 of the Powerplant and Industrial Fuel Use Act of 1978 (Pub. L. 95–620) for the purpose only of defraying the planning costs as permitted by applicable Farmers Home Administration regulations: ———————————

Part A

Grantor and Grantee agree:

1. This agreement shall be effective when executed by both parties.

2. The scope of work set out below shall be completed prior to———.

3. (a) Use of grant funds for travel which is determined as being necessary to the program for which the grant is established may be subject to the travel policies of the Grantee institution if they are uniformly applied regardless of the source of funds in determining the amounts and types of reimbursable travel expenses of Grantee staff and consultants. Where the Grantee institution does not have such specific policies uniformly applied, the Federal Travel Regulations shall apply in determining the amount charged to the grant. Grantee may purchase furniture and office equipment only if specifically approved in the scope of work. Approval will be given only when Grantee demonstrates that purchase is necessary and would result in less cost to the Government in providing Federal-share funds or to the Grantee in providing its contributions. Commercial purchase under these circumstances will be approved only after consideration of Federal supply sources.

(b) Expenses and Purchases Excluded:

(i) In no event shall the Grantee expend or request reimbursement from Federal-share funds for obligations entered into or for costs incurred or accrued prior to the effective date of this grant.

(ii) Funds budgeted under this grant may not be used for entertainment expenses.

(iii) Funds budgeted under this grant may not be used to pay for capital assets, the purchase of real estate or vehicles, improvement and renovation of space, and repair and maintenance of privately-owned vehicles.

(c) Grant funds shall not be used to replace any financial support previously provided or assured from any other source. The Grantee agrees that the general level of expenditure by the Grantee for the benefit of program area and/or program covered by this agreement shall be maintained and not reduced as a result of the Federal share funds received under this grant.

4. (a) In accordance with Treasury Circular 1075, grant funds will be disbursed by the FmHA as cash advances on an as-needed basis not to exceed one advance every 30 days. The financial management system of the recipient organization shall provide for effective control over and accountability for all Federal funds as stated in OMB Circular A–102 revised for State and local governments.

(b) Cash advances to the Grantee shall be limited to the minimum amounts needed and shall be timed to be in accord only with the actual, immediate cash requirements of the Grantee in carrying out the purpose of the planning project.

(c) The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program costs.

(d) Federal funds should be promptly refunded to the FmHA and redrawn when needed if the funds are erroneously drawn in excess of immediate disbursement needs. The only exceptions to the requirement for prompt refunding are when the funds involved:

(i) Will be disbursed by the recipient organization within seven calendar days, or

(ii) Are less than $10,000 and will be disbursed within 30 calendar days.

(e) Grantee shall provide satisfactory evidence to FmHA that all officers of Grantee organization authorized to receive and/or disburse Federal funds are covered by such bonding and/or insurance requirements as are normally required by the Grantee.

(f) Grant funds will be placed in a bank account(s). If for any reason grant funds are invested, income earned on such investment shall be identified as interest income on grant funds and forwarded to the Finance Office, FmHA, St. Louis, Missouri, unless the Grantee is a State. "State" includes instrumentalities of a State but not political subdivisions of a State. A State Grantee is not accountable for interest earned on grant funds.

5. The Grantee will submit Performance and Financial reports as indicated below:

(a) As needed, but not more frequently than once every 30 days, an original and 2 copies of Standard Form 270, "Request for Advance or Reimbursement;"

(b) Quarterly, an original and 2 copies of Standard Form 269, "Financial Status Report," and a Project Performance report according to the schedule below:

Period	Date due

(c) Final, an original and 2 copies of Standard Form 269, "Financial Status Report," and a Project Performance report according to the schedule below:

Period	Date due

Note.—Final reports may serve as the last quarterly reports.

(d) The Project Performance reports shall include but need not be limited to the following:

(i) A comparison of actual accomplishment to the objectives established for that period;

(ii) Reasons why established objectives were not met;

(iii) Problems, delays, or adverse conditions which will materially affect attainment of planned project objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of project work elements during established time periods. This disclosure shall be accompanied by a Statement of the action taken or comtemplated and any Federal assistance needed to resolve the situation; and

(iv) Objectives established for the next reporting period.

(e) All Grantees except States shall submit an original of each report and one copy to the appropriate FmHA District Office. A State

Grantee shall submit original reports to the appropriate FmHA State Office.

(f) The plan(s) developed under this grant shall be submitted to the appropriate Governor for incorporation into the State Investment Strategy for Energy Impacted Areas. The Governor will submit the plan and the State Investment Strategy to the appropriate FmHA State Office(s). The FmHA State Office will forward the plan and State Investment Strategy to the FmHA National Office for approval of the plan.

6. The Budget covered by this agreement is:

Budget categories	Federal funds	Non-Federal share: Cash	Non-Federal share: In-kind	Total
Direct Charges:				
1. Personnel	$			
2. Fringe Benefits				
3. Travel				
4. Equipment				
5. Supplies				
6. Contractual				
7. Others				
Total Direct Charges				
8. Indirect Charges				
Total				

(a) In accordance with FMC 74-4, Attachment B, compensation for employees will be considered reasonable to the extent that such compensation is consistent with that paid for similar work in other activities of the State or local government.

(b) In accordance with OMB Circular A-102, Attachment K, transfers among direct cost budget categories of more than 5 percent of the total budget must have prior written approval by the State Director, Farmers Home Administration.

7. (a) The scope of work is described in the attached exhibit 1. The Grantee accepts responsibility for establishing a development process which will improve local conditions and alleviate problems associated with increased coal or uranium production in the Grantee areas. The Grantee shall:

(i) Develop a growth management and housing plan for assistance to approved designated area(s) impacted by increased coal or uranium production.

(ii) Contribute to development of a State Investment Strategy for Energy Impacted Areas.

(iii) Endeavor to coordinate and provide liaison with State development organizations, where they exist.

(iv) Provide continuing information to FmHA on the status of Grantee programs, projects, related activities, and problems.

(b) The Grantee shall inform the Grantor as soon as the following types of conditions become known:

(i) Problems, delays, or adverse conditions which materially affect the ability to attain program objectives, prevent the meeting of time schedules or goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated, and any Grantor assistance needed to resolve the situation.

(ii) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

Part B

Grantee agrees:

1. To comply with property management standards established by Attachment N of OMB Circular A-102 for expendable and nonexpendable personal property "Personal property" means property of any kind except real property. It may be tangible—having physical existence—or intangible—having no physical existence, such as patents, inventions, and copyrights. "Nonexpendable personal property" means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit. A Grantee may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above. "Expendable personal property" refers to all tangible personal property other than nonexpendable property. When nonexpendable tangible property is acquired by a Grantee with project funds, title shall not be taken by the Federal Government but shall vest in the Grantee subject to the following conditions:

(a) Right to transfer title. For items of nonexpendable personal property having a unit acquisition cost of $1,000 or more, FmHA may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such reservation shall be subject to the following standards:

(1) The property shall be appropriately identified in the grant or otherwise made known to the Grantee in writing.

(2) FmHA shall issue disposition instructions within 120 calendar days after the end of the Federal support of the project for which it was acquired. If FmHA fails to issue disposition instructions within the 120 calendar day period, the Grantee shall apply the standards of paragraph (4) below.

(3) When FmHA exercises its right to take title, the personal property shall be subject to the provisions for federally owned nonexpendable property discussed in paragraph (4), below.

(4) When title is transferred either to the Federal Government or to a third party and the Grantee is instructed to ship the property elsewhere, the Grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the Grantee participation in the cost of the original grant project or program to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred.

(b) Use of other nontangible expendable property for which the Grantee has title.

(1) The Grantee shall use the property in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When it is no longer needed for the original project or program, the Grantee shall use the property in connection with its other Federally sponsored activities, in the following order of priority:

(a) Activities sponsored by FmHA.

(b) Activities sponsored by other Federal agencies.

(2) Shared use. During the time that nonexpendable personal property is held for use on the project or program for which it was acquired, the Grantee shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the property was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by FmHA; second preference shall be given to projects or programs sponsored by other Federal agencies. If the property is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissable if authorized by FmHA. User charges should be considered if appropriate.

(c) Disposition of other nonexpendable property. When the Grantee no longer needs the property as provided in 1(a)(4) above, the property may be used for other activities in accordance with the following standards:

(1) Nonexpendable property with a unit acquisition cost of less than $1,000. The Grantee may use the property for other activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(2) Nonexpendable personal property with a unit acquisition cost of $1,000 or more. The Grantee may retain the property for other use provided that compensation is made to FmHA or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the property. If the Grantee has no need for the property and the property has further use value, the

Grantee shall request disposition instructions from the original Grantor agency.

FmHA shall determine whether the property can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the property shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR), to the General Services Administration by FmHA to determine whether a requirement for the property exists in other Federal agencies. FmHA shall issue instructions to the Grantee no later than 120 days after the Grantee request and the following procedures shall govern:

(a) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the property and reimburse FmHA an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal share $100 or ten percent of the proceeds, whichever is greater, for the Grantee's selling and handling expenses.

(b) If the Grantee is instructed to dispose of the property other than as described in (1)(a)(4) above, the Grantee shall be reimbursed by FmHA for such costs incurred in its disposition.

(c) Property management standards for nonexpendable property. The Grantee's property management standards for nonexpendable personal property shall include the following procedural requirements:

(1) Property records shall be maintained accurately and shall include:

(a) A description of the property.

(b) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(c) Sources of the property including grant or other agreement number.

(d) Whether title vests in the Grantee or the Federal Government.

(e) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.

(f) Percentage (at the end of the budget year) of Federal participation in the cost of the project or program for which the property was acquired. (Not applicable to property furnished by the Federal Government.)

(g) Location, use and condition of the property and the date the information was reported.

(h) Unit acquisition cost.

(i) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a Grantee compensates the Federal agency for its share.

(2) Property owned by the Federal Government must be marked to indicate Federal ownership.

(3) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The Grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented; if the property was owned by the Federal Government, the Grantee shall promptly notify FmHA.

(5) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(6) Where the Grantee is authorized or required to sell the property, proper sales procedures shall be established which would provide for competition to the extent practicable and result in the highest possible return.

(7) Expendable personal property shall vest in the Grantee upon acquisition. If there is a residual inventory of such property exceeding $1,000 in total aggregate fair market value, upon termination or completion of the grant and if the property is not needed for any other Federally sponsored project or program, the Grantee shall retain the property for use on nonfederally sponsored activities, or sell it, but must in either case compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as nonexpendable personal property.

2. To provide Financial Management Systems which will include:

(a) Accurate, current, and complete disclosure of the financial results of each grant. Financial Reporting will be on an accrual basis.

(b) Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(c) Effective control over and accountability for all funds, property, and other assets. Grantee shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

(d) Accounting records supported by source documentation.

(e) Provide an audit report prepared in sufficient detail to allow Grantor to determine that funds have been used in compliance with the proposal any applicable laws and regulations and this agreement.

3. To retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm copies may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee which are pertinent to the specific grant program for the purpose of making audit, examination, excerpts, and transcripts.

4. To provide information as requested by the Grantor to determine the need for and complete any necessary Environmental Impact Statements.

5. To provide information as requested by the Grantor concerning the Grantee's actions in soliciting citizen participation in the application process, including published notice of public meetings, actual public meetings held, and content of written comments received.

6. To account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes unless the Grantee is a State. See Part A 4(f) above.

7. Not to encumber, transfer, or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in Part B 1.

8. To provide Grantor such periodic reports as it may require of Grantee operations by designated representative of the Grantor.

9. To execute Form FmHA 400–1, "Equal Opportunity Agreement," and to execute any other agreements required by Grantor to implement the civil rights requirements.

10. To include in all contracts in excess of $100,000 a provision for compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970. Violations shall be reported to the Grantor and the Regional Office of the Environmental Protection Agency.

11. That, upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will, to the extent legally permissible, repay to the Grantor forthwith the original principal amount of the grant stated herein above, with interest at the rate of five per centum per annum from the date of the default. The provisions of this Grant Agreement may be enforced by Grantor, at its option and without regard to prior waivers by it of previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

12. That no member of Congress shall be admitted to any share or part of this grant or any benefit that may arise therefrom; but this provision shall not be construed to bar as a contractor under the grant a publicly held corporation whose ownership might include a member of Congress.

13. That all non-confidential information resulting from its activities shall be made available to the general public on an equal basis.

14. That the purpose and scope of work for which this grant is made shall not duplicate programs for which monies have been received, are committed, or are applied for from other sources, public and private.

15. That the Grantee shall relinquish any and all copyrights and/or privileges to the materials developed under this grant, each material being the sole property of the Federal Government. In the event anything developed under this grant is published in whole or in part, the material shall contain notice and be identified by language to the following effect: "The material is the result of tax-supported research and as such is not copyrightable. It may be freely reprinted with the customary crediting of the source."

16. That the Grantee shall abide by the policies promulgated in OMB Circular A–102, Attachment O, which provides standards for use by Grantees in establishing procedures for the procurement of supplies, equipment, and other services with Federal grant funds.

17. To the following termination provisions:

(a) Termination for cause: The Grantor agency may terminate any grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of the grant. The Grantor agency shall promptly notify the Grantee in writing of the determination and the reasons for the termination, together with the effective date.

(b) Termination for convenience. The Grantor agency or Grantee may terminate grants in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The Grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Grantor agency shall allow full credit to the Grantee for the Federal share of the noncancelable obligations, properly incurred by the Grantee prior to termination.

Part C

Grantor agrees:

1. That it will assist Grantee, within available appropriations, with such technical assistance as Grantor deems appropriate in planning the project and coordinating the plan with local official comprehensive plans and with any State or area plans for the area in which the project is located.

2. That at its sole discretion, Grantor may at any time give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (a) advisable to further the purposes of the grant or to protect Grantor's financial interest therein, and (b) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

This agreement is subject to current Grantor regulations and any future regulations not inconsistent with the express terms hereof.

Grantee on ———————, 19—, has caused this agreement to be executed by its duly authorized ——————— and attested and its corporate seal affixed by its duly authorized ———————.

Attest:

Grantee:

By———————————

———————————

(Title)

By———————————

———————————

(Title)

Grantor:

United States of America Farmers Home Administration.

By———————————

———————————

(Title)

Exhibit B—Grant Agreement (Public Bodies)

For Site Development and/or Site Acquisition For Housing and/or Public Facilities and/or Services

This agreement dated ———————, 19—, between

——————————— a public body corporate organized and operating under ———————

(Authorizing State Statute)

Herein called "Grantee," and the United States of America acting through the Farmers Home Administration, Department of Agriculture, herein called "Grantor," Witnesseth:

Grantee has determined to undertake a project for site acquisition and/or site development as follows:

——————————— (herein called project) to serve the approved designated energy impacted area under its jurisdiction at an estimated cost of $———, and has duly authorized the undertaking of such project;

Grantee is able to finance not more than $——— of the site acquisition and/or site development costs through revenues, charges, taxes or assessments, or funds otherwise available to Grantee. Said sum has been committed to and by Grantee for such project acquisition and/or site development costs.

The Grantor agrees to grant to Grantee a sum not to exceed $——— subject to the terms and conditions established by the Grantor. Provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of the grant

In consideration of said grant by Grantor to Grantee, to be made pursuant to Section 601 of the Powerplant and Industrial Fuel Use Act of 1978 (P.L. 95–620) for the purpose only of defraying a part of the acquisition and/or site development costs, as defined by applicable Farmers Home Administration regulations:

Grantee agrees that Grantee will:

1. Cause said project to be completed within the total sums available to it, including said grant, in accordance with the project plans and specifications and any necessary modifications thereof prepared by Grantee and approved by Grantor.

2. Permit periodic inspection of the project by a representative of Grantor.

3. Make the housing or public facility or services available to all persons in Grantee's service area without regard to race, color, national origin, religion, sex, marital status, age, physical or mental handicap.

4. Use the real property including land and land improvements for authorized purposes of the grant as long as needed.

a. The Grantee shall obtain approval of the Grantor before using the real property for other purposes when the Grantee determines that the property is no longer for the original purposes.

b. When the real property is no longer needed as provided above, return all real property furnished or purchased wholly with Federal grant funds to the Grantor. In the case of property purchased in part with Federal grant funds, the Grantee may be permitted to take title to the Federal interest therein upon compensating the Federal Government for its fair share of the property. The Federal share of the property shall be the amount computed by applying the percentage of the Federal Participation in the total cost of the grant program for which the property was acquired to the current fair market value of the property.

5. Not use grant funds to replace any financial support previously provided or assured from any other source. The Grantee agrees that the general level of expenditure by the Grantee for the benefit of program area and/or program covered by this agreement shall be maintained and not reduced as a result of the Federal share funds received under this grant.

6. Not use grant funds to pay for construction costs of housing or public facilities.

This Grant Agreement covers the following described real property (use continuation sheets as necessary).

7. Abide by the following conditions pertaining to nonexpendable personal property which is furnished by the Grantor or acquired wholly or in part with Grant Funds.

a. The Grantee shall retain such property as long as there is a need for the property to accomplish the purpose of the grant. When there is no longer a need for the property to accomplish the purpose of the grant, the Grantee shall use the property in connection with other Federal grants it has received in the following order of priority.

(1) Other grant of the Grantor needing the property.

(2) Grants of other Federal agencies needing the property.

b. When the Grantee no longer has need for the property in any of its Federal grant programs, the property may be used for its own official activities in accordance with the following standards:

(1) Nonexpendable property with an acquisition cost of less than $500 and used four years or more. The Grantee may use the property for its own official activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(2) All other nonexpendable property. The Grantee may retain the property for its own use provided that a fair compensation is made to the Grantor. The amount of compensation shall be computed by applying the percentage of the Grantor participation in the grant program to the current fair market value of the property as determined by the Grantor.

c. If the Grantee has no need for the property, disposition shall be made as follows:

(1) Nonexpendable property with an acquisition cost of $1,000 or less. Except for that property which meets the criteria of b (1) above, the Grantee shall sell the property and reimburse the Grantor an amount which is computed in accordance with (3) below.

(2) Nonexpendable property with an acquisition cost of over $1,000. The Grantee shall request disposition instructions from Grantor.

(3) If disposition instructions are not issued within 120 days after reporting, the Grantee shall sell the property and reimburse the Grantor an amount which is computed by applying the percentage of the Grantor participation in the grant program to the sales proceeds. Further, the Grantee shall be permitted to retain $100 or ten percent of the proceeds, whichever is greater, for the Grantee's selling and handling expenses.

d. The Grantee's property management standards for nonexpendable personal property shall also include:

(1) Property records which accurately provide for: a description of the property; manufacturer's serial number or other identification number; acquisition date and cost; sources of the property; and ultimate disposition data including sales price or the method used to determine current fair market value if the Grantee reimburses the Grantor for its share.

(2) A physical inventory of property shall be taken and the result reconciled with the property records at least once every two years to verify the existence, current utilization, and continued need for the property.

(3) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft to the property shall be investigated and fully documented.

(4) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(5) Proper sales procedures shall be established for unneeded property which would provide for competition to the extent practicable and result in the highest possible return.

This Grant Agreement covers the following described nonexpendable property (use continuation sheets as necessary).

8. Provide Financial Management Systems which will include:

(a) Accurate, current, and complete disclosure of the financial results of each grant. Financial Reporting will be on an accrual basis.

(b) Records which identify adequately the source and application of funds for grant-supporting activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(c) Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

(d) Accounting records supported by source documentation.

9. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm copies may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee governments which are pertinent to the specific grant program for the purpose of making audit, examination, excerpts and transcripts.

10. Provide information as requested by the Grantor to determine the need for and complete any necessary Environmental Impact Statements.

11. Provide an audit report prepared in sufficient detail to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this agreement.

12. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes when the Grantee is a unit of local government. States and agencies of instrumentalities of states shall not be held accountable for interest earned on grant funds pending their disbursement.

13. Not encumber, transfer, or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in item 5 above.

14. Provide Grantor with such periodic reports as it may require and permit periodic inspection of its operations by a designated representative of the Grantor.

15. Execute Form FHA 400-1, "Equal Opportunity Agreement," Form FHA 400-4, "Nondiscrimination Agreement," and any other agreements required by Grantor to implement the civil rights requirements. If any such form has been executed by Grantee as a result of a loan being made to Grantee by Grantor contemporaneously with the making of this grant, another form of the same type need not be executed in connection with this grant.

16. Include in all contracts for construction or repair a provision for compliance with the Copeland "Anti-Kick Back" Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). The Grantee shall report all suspected or reported violations to the Grantor.

17. In Contracts in excess of $2,000 and in other contracts in excess of $2,500 which involve the employment of mechanics or laborers, to include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5).

18. Include in all contracts in excess of $2,500 a provision for compliance with applicable regulations and standards of the Cost of Living Council in establishing wages and prices. Grantee shall report any violations of such regulation and standards to the Grantor and the local Internal Revenue Service field office.

19. Include in all contracts in excess of $100,000 a provision for compliance with all applicable standards, orders, or regulations issued pursuant to the Clear Air Act of 1970. Violations shall be reported to the Grantor and the Regional Office of the Environmental Protection Agency.

20. Upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and the demand of Grantor, will, to the extent legally permissible, repay to Grantor forthwith the original principal amount of the grant stated hereinabove, with interest at the rate of five per centum per annum from the date of the default. The provisions of this Grant Agreement may be enforced by Grantor at its option and without regard to prior waivers by it of previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

21. That no member of Congress shall be admitted to any share or part of this grant or any benefit that may arise therefrom; but this provision shall not be construed to bar as a contractor under the grant a publicly held corporation whose ownership might include a member of Congress.

22. That all non-confidential information resulting from its activities shall be made available to the general public on an equal basis.

23. That the purpose and scope of work for which this grant is made shall not duplicate programs for which monies have been received are committed, or are applied for from other sources, public and private.

24. That Grantee shall relinquish any and all copyrights and/or privileges to the materials developed under this grant, such material being the sole property of the Federal Government. In the event anything developed under this grant is published in whole or in part, the material shall contain notice and be identified by language to the following effect: "The material is the result of tax-supported research and as such is not copyrightable. It may be freely reprinted with the customary crediting of the source."

25. That the Grantee shall abide by the policies promulgated in OMB Circular A-95, Attachment O, which provides standards for use by Grantees in establishing procedures

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for the procurement of supplies, equipment, and other services with Federal grant funds.

28. To the following termination provisions:

(a) Termination for cause: The Grantor agency may terminate any grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of the grant. The Grantor agency shall promptly notify the Grantee in writing of the determination and the reasons for the termination, together with the effective date.

(b) Termination for convenience. The Grantor agency or Grantee may terminate grants in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The Grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Grantor agency shall allow full credit to the Grantee for the Federal share of the noncancelable obligations, properly incurred by the Grantee prior to termination.

Grantor agrees that it will:

1. Assist Grantee, within available appropriations, with such technical assistance as Grantor deems appropriate in planning the project and coordinating the plan with local official comprehensive plans and with any State or area plans for the area in which the project is located.

2. In its sole discretion, Grantor may at any time give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (a) advisable to further the purposes of the grant or to protect Grantor's financial interest therein, and (b) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Grantee on the date first above written has caused this agreement to be executed by its duly authorized_____
and attested and its corporate seal affixed by its duly authorized_____
Attest:
(Seal)
By_____

_____
(Title)
Grantee

_____
By_____

_____
(Title)

Grantor
United States of America
Farmers Home Administration

By_____

_____
(Title)

Note.—The Farmers Home Administration has reviewed this document for compliance with National Environmental Quality Regulations, 7 CFR Part 1500 and Farmers Home Administration Regulation 1901–G "Environmental Impact Statement."

Funds authorized under Section 601 may be utilized for a wide variety of project types. Area designations and priorities are to be established by the Governor of the State. The circumstances do not allow an analysis of potential environmental effects on a programmatic basis. Special provisions have been incorporated to insure that environmental impacts will be studied when priorities are established and applications are processed.

The proposed regulations require that environmental consequences of any action funded under this Subpart will be considered both on a site specific and cumulative basis. The Farmers Home Administration has determined that the regulations are in full compliance with NEPA and CEQ guidelines.

A copy of the Final Impact Analysis prepared by FmHA is available in the Office of the Chief, Directives Management Branch, Room 6346, South Building, Washington, D.C. 20250. This regulation has been determined significant under the USDA criteria implementing Executive Order 12044.

(Section 601 Pub. L. 95–620; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70)

(Approval has been requested from the Office of Management and Budget in accordance with the Federal Reports Act of 1942 for the reporting and/or recordkeeping requirements contained herein)

Dated: June 14, 1979.

Gordon Cavanaugh,

Administrator, Farmers Home Administration.

[FR Doc. 79-19109 Filed 6-18-79; 8:45 am]
BILLING CODE 3410-07-M

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